

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF COLUMBIA

3 HAKAN LANS :
4 Plaintiff :
5 v. : Case No.
6 GATEWAY 2000, INC., and : 97-2523 (JGP)
7 DELL COMPUTER CORP. : 97-2526 (JGP)
8 Defendants :

9 _____
10 UNI BOARD AKTI EBOLAG :
11 Plaintiff :
12 v. : Case No.
13 ACER AMERICA CORP., et al : 99-3153 (JGP)
14 Defendants :

15 -----
16 Deposition of LOUIS S. MASTRIANI, ESQUIRE
17 Washington, D.C.
18 Thursday, January 27, 2005
19 10:08 a.m.

20 Job No.: 22-50038
21 Pages: 1 - 254
22 Reported By: Dawn M. Hart, Notary Public, RPR/RMR
23
24
25

2 Lans v Gateway
3 Deposition of Louis S. Mastriani, Esquire,
4 held at the law offices of:
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10 Pursuant to Notice, before Dawn M. Hart,
11 RPR/RMR and Notary Public in and for the State of
12 Maryland.

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1 P R O C E E D I N G S
2 LOUIS S. MASTRIANI, ESQUIRE
3 having been duly sworn, testified as follows:
4 EXAMINATION BY COUNSEL FOR PLAINTIFF
5 BY MR. HAINLINE:
6 Q State your name for the record, please.
7 A Louis Mastriani.
8 Q What is your business address?
9 A 120 17th Street, Northwest, Washington, D.C.
10 20036.
11 Q And what is your home address?
12 A 1615 Juniper Street, Northwest, Washington,
13 D.C. 20012.
14 (Exhibit No. 1 was marked for identification and
15 was attached to the transcript.)
16 BY MR. HAINLINE:

17 Q I've had marked as Exhibit 1 to your
18 deposition -- and I'm calling the exhibits to your
19 deposition AMS 1 through whatever for a shortcut --
20 and Exhibit 1 is Intervener's Memoranda of Points and
21 Authorities in Opposition to Lans/Uni board's Motion
22 for Reconsideration and the Motions of Gateway and
23 Dell to Hold Counsel Jointly and Severally Liable,
24 along with the Exhibits 1 through 54 to that
25 memorandum, with the exception of Exhibit -- or Tab

8

1 28, which we do not have in our, in our firm file.

2 What I'd like you to do, Mr. Mastriani --
3 for some reason we didn't get Exhibit 28, but I'm not
4 complaining about it, I'm just pointing out that this
5 document doesn't have Exhibit 28.

6 MR. HANDLEMAN: You say you never got 28?

7 MR. HAINLINE: I don't think we got 28.

8 MR. SWEETLAND: Would you like it now?

9 MR. HAINLINE: That would be great. We can
10 have 28 and we can have a full set. If --

11 MR. HANDLEMAN: I didn't realize. I thought
12 we gave you every exhibit that we have. That's the
13 first news --

14 MR. HAINLINE: Now we have it. Why don't we
15 mark the fax from Hakan Lans to Mr. Mastriani dated
16 April 9, 1997 with the Production Nos. AMS 001872,
17 which I believe is, would be Tab 28 to the memorandum
18 which is Exhibit 1, but because I don't have it behind
19 28, I'll have this document, the Hakan Lans memo,

20 marked Exhibit 1A.

21 (Exhibit No. 1A was marked for identification and
22 was attached to the transcript.)

23 BY MR. HAINLINE:

24 Q Mr. Mastriani, let me hand you Exhibit 1 and
25 Exhibit 1A and take as much time as you need to

9

1 confirm that those exhibits are the memorandum filed
2 on your and your law firm's behalf in opposition to
3 the Motion for Reconsideration, along with the
4 exhibits?

5 A Did you just say the exhibits or the
6 memorandum that was filed? Could you repeat the
7 question, please?

8 Q Let me -- here, let me redo it if I wasn't
9 clear. Exhibit 1 is a memorandum that was filed on
10 your behalf and on your firm's behalf, along with the
11 tabbed exhibits that were appended to it, and I'd like
12 you to please take a minute, as much time as you need
13 and confirm that that's what that exhibit is.

14 A (Reviewing.)

15 MR. HANDLEMAN: Counsel, I assume that you
16 were the one that bound these?

17 MR. HAINLINE: Yes.

18 MR. HANDLEMAN: They didn't come from us
19 bound.

20 MR. HAINLINE: That's correct.

21 MR. HANDLEMAN: Okay. I didn't bring my
22 copy of this, and it appears that the numbers don't

23 necessarily match up with the exhibits. You call them
24 tabs, but they were exhibits to it. So what I want to
25 do is make sure we don't get hung up on a

10

1 technicality, and we're talking about more than a
2 technicality, it would be of some consequence -- I
3 should have brought my copy -- but I want to make
4 certain, and it shouldn't hold up the questioning
5 unless you're going to say you may make reference to
6 Exhibit 16 --

7 MR. HAINLINE: If I make reference to a
8 particular exhibit to the memorandum I will use the
9 word tab --

10 MR. HANDLEMAN: Okay.

11 MR. HAINLINE: -- and I'll reference that
12 specific tab.

13 MR. HANDLEMAN: As it relates to this
14 document?

15 MR. HAINLINE: As it relates to my exhibit.

16 MR. HANDLEMAN: Okay.

17 MR. HAINLINE: And I will attach no
18 importance whatsoever --

19 MR. HANDLEMAN: Okay.

20 MR. HAINLINE: -- to how those tabbed
21 exhibits are arranged.

22 MR. HANDLEMAN: Okay, that's fair. That's
23 fair.

24 (Discussion off the record.)

25 A (Reviewing.)

1 Mr. Hainline, this appears to be the
2 Intervener's motion and exhibits. I'm not going to
3 take a lot of time to go through each and every
4 exhibit to make sure they're in the right order and
5 they're complete, but these appear to be.

6 BY MR. HAINLINE:

7 Q Thank you.

8 A You're welcome.

9 Q Please look at Exhibit 2 to your deposition,
10 which is the declaration of Louis S. Mastriani in
11 Support of an Emergency Motion for Extension of Time
12 to Respond to Motions by Gateway with a file stamp
13 date of August 13, 1999. And I'm going to ask you,
14 Mr. Mastriani, if that is a copy of a declaration you
15 filed?

16 A It is.

17 Q Is that the declaration you filed on that
18 date, sir?

19 A It wasn't filed on August 3 -- it was filed
20 on August 13th, excuse me, yeah, 2:45 p.m.

21 (Discussion off the record.)

22 MR. HAINLINE: Will you mark this one and
23 this, too.

24 (Exhibit No. 2 was marked for identification and
25 was attached to the transcript.)

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1 BY MR. HAINLINE:

2 Q Mr. Mastriani, if you look at Exhibit 2 for
3 a minute, please look at Paragraph 3.

4 A (Complying.)

5 Yes.

6 Q You say, inasmuch as I and other counsel to
7 Mr. Lans have been repeatedly informed by Mr. Lans
8 that no assignment had ever taken place with respect
9 to the Lans patent, we are investigating the
10 circumstances surrounding the referenced assignment.

11 What did you intend to convey to the Court
12 by that statement?

13 A Just what it says. Following on from
14 Paragraph 2, that Mr. Lans had never informed myself
15 or any other counsel that I knew of that he had
16 assigned all right, title, and interest in the '986
17 patent to Uni board or anyone else.

18 Q When you were using the word assignment in
19 Paragraph 3, did you -- what did you mean by that
20 word?

21 A Assignment under American law has a certain
22 meaning, and it's either an assignment of all
23 ownership rights in the patent, it's an assignment, or
24 it can be the assignment of a partial interest in the
25 underlying whole, or three, it can be an assignment of

13

1 all of the ownership rights for a specific geographic
2 region within the United States.

3 Q So an assignment could be an assignment of

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4 some of the rights?

5 A The assignment can only be with respect to
6 ownership. Nothing less than ownership. Assignment
7 must mean ownership and nothing less.

8 Q Did you intend to convey -- well, let me ask
9 you this. Does assignment mean, as you were using it,
10 a transfer of an interest?

11 A No. Paragraph 3, Mr. Hainline, follows
12 directly from Paragraph 2 where assignment is defined
13 as an assignment of all right, title, and interest in
14 the Lans patent to Mr. Lans's wholly-owned company,
15 Uni board Aktiebolag.

16 Q Did you intend to convey to the Court that
17 there had been no partial assignment of any interest
18 in the Lans patent?

19 A There was no partial assignment of any
20 ownership rights in that patent at any time --

21 Q Did you intend --

22 A -- as far as we knew at the time that this
23 was filed.

24 Q Did you intend to convey to the Court that
25 you did not know of any interest that Uni board had in

14

1 the Lans patent?

2 A The only interest we knew of, and I -- let's
3 say we knew of no interest. We were informed by
4 Mr. Lans, and it was confirmed by Uni board's annual
5 report and by his accountants, both former accountant
6 Mr. Lief Gilen Hof and his current and Uni board's

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7 current accountant at the time Margari te Ekafard, was
8 that the company, Uni board, was to receive revenues
9 from the patents. There was no, there was no written
10 document that we knew of that conferred that, but it
11 was an arrangement.

12 Q Putting aside what you knew or didn't know,
13 did you intend to convey to the Court that so far as
14 you knew, Uni board had no interest in the Lans patent?

15 A No. You're not following me, Mr. Hainline.
16 What I intended to convey to the Court as counsel to
17 Mr. Lans is exactly what is said in Paragraph 2 and 3,
18 and specifically in 3, that neither I nor any of my
19 colleagues or co-counsel in Europe were ever informed
20 by Mr. Lans or by anyone else that he had assigned any
21 ownership right, much less the entire ownership right
22 in the patent.

23 Q Okay. So you intended to convey to the
24 Court that so far as you knew, Mr. Lans had never
25 assigned any ownership right in the Lans patent?

15

1 A That's correct.

2 Q Did you intend to convey to the Court that
3 so far as you knew Doctor Lans had never assigned any
4 rights in the Uni board -- in the Lans patent to
5 Uni board?

6 A When you say assigned any rights, assignment
7 the way I used it and the way it's understood and the
8 way any competent patent attorney that I know or any
9 other patent-engaging attorney or any competent

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10 attorney in the United States can use it and can only
11 use it is it can only relate to ownership rights.
12 Assign -- assignment of some other, some other right
13 to the flow of income from the patent or to, to
14 maintain custody of the patent or something like that
15 without any indicia of ownership and legal title of
16 ownership is not an assignment, it's something else,
17 and that -- I won't speculate as to what that would be
18 unless I was given a specific document that would lay
19 out what exactly, exactly what the patent owner was
20 intending to transfer.

21 Q And so with that explanation, you did not,
22 as I understand you, intend to convey to the Court
23 that so far as you knew Doctor Lans had never assigned
24 any partial right in his patent to Uni board?

25 MR. HANDLEMAN: Objection. I think he's

16

1 answered it three times, and what you're trying to do
2 is put it in a different context. He's answered it,
3 and if you ask him four more times he'll give the same
4 answer. There's a fundamental difference in terms of
5 the term of art of assignment.

6 MR. HAINLINE: Thank you for coaching.

7 MR. HANDLEMAN: I wasn't coaching.

8 MR. HAINLINE: Thank you for the coaching.

9 I'll ask the question again.

10 BY MR. HAINLINE:

11 Q With that explanation, Mr. Mastriani, is it
12 fair to say that you did not intend to convey to the

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13 Court that Doctor Lans had not assigned a partial
14 interest in the Uni board patent -- in the Lans patent
15 to Uni board?

16 A I'm trying to understand. I've already
17 answered the question as Mr. Hand -- counsel mentioned
18 three or four times. I stand by my prior answer. How
19 are you defining the word assignment? Maybe that's
20 where the disconnect here is, because maybe we both
21 have different definitions of what I believe is a term
22 that could only be defined properly and legally one
23 way.

24 Q Does your definition of the word assignment
25 mean to transfer?

17

1 A Does my definition -- my definition of
2 assignment is the one I just gave you before.

3 Q Doesn't include -- sorry.

4 A It, it's a conveyance, the assignment, the
5 conveyance, the legal conveyance, a contractual
6 conveyance in writing of either all of the ownership
7 rights in the patent -- of the U.S. patent, a partial
8 ownership interest in the undivided whole of that
9 patent, or the entire ownership interest in that
10 patent in a specific and specifically delineated
11 geographical region in the United States and only in
12 the United States as it relates to the U.S. patent.

13 Q With that explanation as you understand the
14 word, does assignment mean transfer?

15 A Transfer of what?

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16 Q Transfer of all of the rights, or as you
17 just said, the undivided, a partial interest in the
18 undivided rights, just using your exact language. But
19 is it fair to use the word transfer as a synonym for
20 assignment so long as I have all your other terms as
21 the answer?

22 A As legal -- I don't mean to quibble. As a
23 legal synonym? You mean does a dictionary definition
24 for the generic term assignment maybe include
25 transfer, is that what you're saying?

18

1 Q Does it in your understanding?

2 A It may.

3 Q It may.

4 A It may. But assignment the way it's being
5 used in Paragraph 3 is a purely legal term, and more
6 importantly, it's a purely legal term peculiar and
7 restricted to a patent and under patent law.

8 Q Under patent law and under the peculiarities
9 of patent law, if one person owns a patent, under what
10 right might another person or entity have the right to
11 license that patent?

12 A With express written authorization from the
13 patent owner.

14 Q And that --

15 A The patent owner can have anybody act as a
16 licensor, or any company, any individual --

17 Q Would --

18 A -- without -- and I may say, without,

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19 without anything more. There's no, there's no,
20 there's no rights other than that right that would be
21 pertinent to that authorization unless, unless the,
22 con -- the written authorization has some other type
23 of language.

24 Q Okay. And so in order for one entity which
25 is not the registered patent holder to have the

19

1 ability to license the patent to a third entity, it
2 would have to have some writing giving it that right?

3 A Yeah. It could -- I mean it doesn't have to
4 be a writing. It can be -- it could be an oral, an
5 oral authorization. It doesn't have to be in writing.
6 But you were just giving me a very generic and
7 incomplete hypothetical, so I was, I was answering
8 that way. But the authority could, the authorization
9 of the, or the permission can be done, done anywhere
10 from a simple, I want you to license this patent for
11 me, you know, completely, to anybody, or to X, Y, Z
12 Corporation, all the way to a very complex legal
13 document, perhaps.

14 Q In terms of the patent law as you understand
15 it, if one person gives another the right to license
16 the registered owner's patent, is the registered owner
17 assigning the right to license to the other person?

18 A Could you repeat the question, please?
19 (Record read.)

20 A That's a confusing question because --

21 Q Let me rephrase it then. I don't want you

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22 to be confused, and I'll rephrase it.

23 A Go ahead.

24 Q In terms of the world of patents, not under
25 patent laws, but under the world of patents, if a

20

1 registered patent owner gives another person or firm
2 the right to license the patent, is the registered
3 owner assigning the right to license to that other
4 person?

5 A When you say registered patent owner, what
6 are you referring to? Registered where and how?

7 Q Does it matter to answer my question?

8 A Yes. I just, I'd like to know what you mean
9 by that.

10 Q Does it have significance to you to know
11 that to be able to answer the question?

12 A Yes. I want to understand, when you say
13 registered owner, do you mean the person to whom the
14 patent was issued, the person to whom it's indicated
15 on the patent that was the assignee or the person to
16 whom the patent was assigned that is evidenced by the
17 recordation of the assignment to the Patent Office?

18 Q Let's take each of those in turn. And for
19 each of those, please tell me in that situation if, as
20 you just defined them, that person transfers the right
21 to license to another person, is that an assignment of
22 that right?

23 A If the person to whom the patent was issued
24 is not the owner of the patent because there's been an

25 assignment of the legal title and ownership, then

21

1 whatever that person has done has no force and effect.

2 Q Okay.

3 A And I would also add that, that the
4 authorization to, to somebody to, to act as a
5 licensing agent is not an assignment. I've never
6 heard of that term ever used.

7 Q What do you call it?

8 A Authorization. Permission. I would say
9 authorization is more appropriate because you're,
10 you've got a -- somebody who has the ownership of the
11 patent, either one person or the owners of the patent
12 authorizes an entity or a person to act as a licensor
13 of the patent.

14 Q Did you read Judge Penn's two opinions that
15 followed your declaration, Exhibit 2, the one first
16 dismissing the case that Doctor Lans -- that you filed
17 on behalf of Doctor Lans, and second, the case warning
18 action against Lans and Uni board; did you read those
19 opinions?

20 A Yes.

21 Q And when you read those opinions, was it
22 your conclusion and impression that Judge Penn read
23 your statement in the same way that you testified
24 today you intended him to read it?

25 A You'd have to ask Judge Penn that. I don't

1 know what you mean. I mean his opinion is, is very
2 well-reasoned, explicated. We obviously appealed the
3 first decision dismissing the, the Lans case, and then
4 subsequently the Uni board case in the Federal Circuit.
5 But the fact is that Judge Penn's views are clear, and
6 I don't know what he was thinking when he made a
7 particular statement, but whatever he said in his
8 opinions I believe are, are clear.

9 Q Have you ever in the -- how many years have
10 you been practicing law?

11 A Since 1976.

12 Q Twenty-nine years practicing law?

13 A Right.

14 Q Have you ever seen any reference in any case
15 or any contract to an owner of a patent assigning to
16 another the right to license the patent?

17 A Assigning, using what, the word, with the
18 word assignment?

19 Q Yes.

20 A No, I don't believe I've seen, I've seen
21 that where it says that it's an assignment. I don't
22 recall any.

23 Q Now, when you filed Exhibit 2, and you were
24 referring to the conversations that you had with
25 Doctor Lans, you were aware, weren't you, that if

1 Doctor Lans was going to take issue with your

2 statement, he would necessarily have to disclose all
3 the communications, attorney/client communications
4 that he had with you and with the Delphi lawyers;
5 isn't that right?

6 A Not necessarily. This, this declaration and
7 draft was discussed with attorneys from Delphi and
8 Mr. Lans, and Mr. Lans approved of all of the language
9 in the declaration, the filing of the declaration.

10 Q I will tell you that I've reviewed the
11 documents that you produced -- that you transferred
12 after Doctor Lans discharged you, and I will tell you
13 that I have not seen any transmission of this
14 declaration to Doctor Lans. If you have such a
15 document, I'd like it. It should have been given to
16 me before, but if for some reason you did and I missed
17 it by Bates number and you could, would you please
18 call my attention to it?

19 A This was discussed in a conference call with
20 Peter Utterstrom, Tal Lindstrom, another attorney from
21 Delphi, his name, I believe, is Sven, S-V-E-N, then
22 Goram, G-O-R-A M, and Mr. Lans. I don't know whether
23 Mr. Lans was physically in the offices of Delphi. You
24 have a draft copy of this declaration -- or whether he
25 was at his home, but he, this was read, this was

24

1 discussed, and he was adamant that an emergency motion
2 for an extension of time be filed.

3 And this was one of the mechanisms by which
4 we felt that we could get some time from the Court

5 because it was August in Sweden and in Germany, and
6 Mr. Lans was absolutely desperate to contact a number
7 of people identified and unidentified to try and
8 explain what he believed the case to be with respect
9 to the assignment to Uni board that was attached to the
10 Gateway motion.

11 Q Did you send a draft of this declaration to
12 Doctor Lans?

13 A Directly to Doctor Lans? I don't recall
14 whether it was sent directly to him, but I know that
15 he knew of it in the conversation because it was read
16 to him and discussed, and that Delphi had it, and I
17 believe Delphi showed it to him. I know that he saw
18 it after it was filed because, because he got a copy
19 of the, the entire response to Gateway. But he was
20 aware of this document prior to finalization and
21 execution and filing.

22 Q If you have either a transmittal of this
23 document to Doctor Lans or a transmittal of this
24 document to Peter Utterstrom with any comment
25 instructing Peter Utterstrom or Delphi to show it to

25

1 Doctor Lans, I'd like to see.

2 A You should direct any inquiries to my
3 attorney.

4 MR. HANDLEMAN: All documents in connection
5 with this matter have been produced, provided to you,
6 and --

7 MR. HAINLINE: I know they have, and this

8 was not provided to me.

9 (Discussion off the record between witness and
10 counsel.)

11 BY MR. HAINLINE:

12 Q The point is there is no such document. If
13 there is one, call it to my attention.

14 Now, don't you think that the stand --
15 when -- going back to my question, putting aside
16 conversation you claimed to have had with Doctor Lans
17 about this statement, would you agree with me that if
18 Doctor Lans disagreed with this statement it would
19 require him to open up his attorney/client
20 communications with you and with Delphi?

21 A I'd be speculating because Mr. Lans agreed
22 with this statement, so I don't know what -- I don't
23 know how to answer that because it would be
24 speculation. My personal knowledge and recollection
25 under oath as stated here and as I'm stating to you

26

1 right now, Mr. Hainline, is that Mr. Lans specifically
2 and expressly approved of the filing of this
3 declaration, including the exact language in
4 Paragraph 3.

5 Q Would the standard of care have required you
6 to get his permission in writing to open up
7 attorney/client communications --

8 MR. HANDLEMAN: Objection.

9 Q -- or waive them?

10 MR. HANDLEMAN: I'm sorry. Objection.

11 You're asking this witness to give an opinion, a legal
12 opinion as an expert. He's not going to do it. You
13 ask standard of care questions, not appropriate to ask
14 a fact witness. You've asked him the question, he's
15 given you the answer. You can make an argument to the
16 Court. I think it's an inappropriate question.

17 MR. HAINLINE: Are you instructing him not
18 to answer?

19 MR. HANDLEMAN: No.

20 Q Please answer.

21 MR. HANDLEMAN: You can answer.

22 THE WITNESS: Can you read that back? With
23 that colloquy, I've forgotten exactly how it was
24 phrased.

25 (Record read.)

27

1 A I don't believe that that, that the Rules of
2 Ethics required us to get a written authorization from
3 Mr. Lans to make this statement in view, in view of
4 the fact that he had authorized the filing of the
5 affidavit.

6 BY MR. HAINLINE:

7 Q Did Doctor Lans authorize the filing of this
8 declaration in writing?

9 A Not that I'm aware of, no. He -- not that
10 I'm aware of.

11 Q Do you have any writing where you took
12 contemporaneous notes of the conversation you claimed
13 to have had with Doctor Lans where you claim that he

14 authorized you to make this statement to the Court?

15 A I -- I'm not sure we -- one thing that you
16 don't have is our attorney's notes, of which there are
17 a number of attorney's notes, but those are, those
18 were not turned over to Doctor Lans because they're
19 property of our firm and the attorneys who authored
20 the notes, so I don't recall whether there were notes
21 on that.

22 MR. HAINLINE: If you happen to find,
23 Mr. Handl eman --

24 MR. HANDLEMAN: Yes.

25 MR. HAINLINE: -- notes that purport to be

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1 contemporaneous notes, I would like to see them in
2 their original form. And if they are computer files,
3 I'd like to see them with all the metadata.

4 MR. HANDLEMAN: If we have them, we will
5 provide them.

6 BY MR. HAINLINE:

7 Q Look for a minute at Exhibit No. 1 -- Tab
8 No. 1.

9 A Yes.

10 Q Is this an affidavit that you made on the
11 10th of May 2004?

12 A It is.

13 Q Did you write this yourself?

14 A Yes.

15 Q You say in Paragraph 4, the idea for
16 exploitation of the '986 patent was not conceived by

17 any attorney at Adduci, Mastriani & Schaumberg, AMS,
18 but by Lans.

19 What's the basis for that statement?

20 A That was based on the communications from --
21 in December 1995 from Delphi counsel to Mr. Lans
22 asking for our views about Mr. Lans's desire to
23 exploit his patent in the United States.

24 Q Are you referring to Tab 9 of Exhibit 1?

25 A (Reviewing.)

29

1 July 23, 1996 agreement, because that's
2 not --

3 Q Tab, I'm sorry.

4 A Not, that's not it.

5 Q Tab 6. I apologize for my dyslexia. It
6 occasionally has me transpose numbers.

7 A This -- I'm referring to the telephone call
8 that Mr. Lindstrom refers to on, he says, great
9 talking with you Friday, that telephone call where he
10 communicates --

11 Q Which tab?

12 A 6.

13 MR. HANDLEMAN: Tab 6.

14 A First page, the one you directed me to.

15 Q Okay.

16 A You have that?

17 Q Yes, I have it.

18 A Do you see what I'm talking about, right on
19 the front page?

20 Q I see where he says, Dear Lou, great talking
21 to you on Friday.

22 A Right. Well, I'm referring to that
23 conversation, and I'm then referring to the rest of
24 the text where Mr. Lindstrom says, quote, I think he,
25 meaning Mr. Lans, wants to deal with the U.S. because

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1 of other things that are in progress, closed quote.
2 And I'm referring to Mr. Utterstrom's memorandum of
3 December 10, 1995 that's attached.

4 And then attached to that is a Delphi
5 lawyer's December 7, 1995 memorandum about potential
6 companies for license agreements. And then they
7 mention here semi conductors, manufacturers of graphic
8 components, paren, Texas Instruments, Intel, et
9 cetera, then computer graphic board manufacturers,
10 paren, representing 20 of 100 types of graphic
11 components, closed paren, and then the final potential
12 list or category of companies is manufacturers of
13 computers and work stations.

14 Q Where in this document in Tab 9, any of the
15 documents that are part -- I'm sorry, Tab 6, does
16 anybody from Delphi say that the idea for exploitation
17 of the patent was conceived by Lans?

18 A This is the conversation with Mr. Lindstrom
19 to -- on Friday was a record -- was an inquiry made on
20 behalf of Mr. Lans who we were informed, or I was
21 informed, actually, in that conversation, wanted to
22 exploit his patent in the United States. He had a

23 specific intent to exploit it in the United States and
24 he wanted to either sell it to the U.S. Government, he
25 was treat -- he was interested to see if that could be

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1 done, or sell it to a U.S. company or group of
2 companies, or to license it. And the documents
3 attached here reference those different aspects of
4 exploitation. Exploitation of a patent means that you
5 want to use it to produce income.

6 Q It says on Mr. Utterstrom's memo of
7 December 10, 1995, Page 1 of 2, based on personal
8 contacts within Delphi lawyers, it is reasonable to
9 assume that Mr. Lans is likely to be interested in
10 transferring all the rights under the patent to a
11 third party, the reason being that he wishes to focus
12 on development of other patents.

13 That's what Mr. Utterstrom told you,
14 correct?

15 A Mr. Utterstrom didn't tell me anything at
16 the time of this document because I had never talked
17 to him or met him. I was reading what his memorandum,
18 and I read that paragraph to mean that based on
19 personal contacts that were between Delphi and Mr.
20 Lans, and based upon Mr. Lans's discussions with
21 Delphi lawyers, they were concluding that he was
22 likely interested in transferring all of the rights
23 under the patent to a third party, which I read to be
24 assignment of the ownership of his patent, and that he
25 had a reason for doing so, is he wanted to focus on

1 the development of other patents of which I was not
2 aware of at the time.

3 Q All right. Is there any other basis for
4 your sworn statement that the idea for exploitation of
5 the patent was not conceived by any attorney at AMS
6 but by Lans?

7 A Yes. If you go to the March 20th, 1996
8 letter, Tab 7. It's a letter directly to Mr. Lans,
9 care of his attorney, Talbot Lindstrom, Advocatfirman
10 Delphi, and as I say in the first paragraph, Mr.
11 Hainline, as you know -- it says, Dear Mr. Lans, as
12 you know, Talbot Lindstrom contacted me in
13 December 1995 to discuss options which would be
14 available to you in the assignment and/or licensing of
15 the above-referenced patent and its related foreign
16 counterpart which have been granted to you. And then
17 there's a list of some potential options.

18 Q Now, in this letter of March 20, 1996 -- you
19 wrote this to Mr. Lans --

20 A That's correct.

21 Q -- on or about that date?

22 A That's correct.

23 Q Tab 7 to Exhibit 1?

24 A That's correct.

25 Q You say in the last paragraph on the

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1 beginning of the first page, I understand from Talbot
2 that you do not have an interest in personally
3 initiating litigation against infringers of your
4 patent.

5 That's what Mr. Lindstrom told you, correct?

6 A At the time, yeah, at that time
7 Mr. Lindstrom had indicated in the December
8 discussion, or maybe it may have been actually after
9 then, that, that it was Delphi's understanding that
10 Mr. Lans did not have an interest in personally
11 initiating litigation against the infringers of his
12 patent and that's why he wanted to sell the patent, he
13 wanted to sell his patent to a group of companies, I
14 believe he called it a consortium of companies, or to
15 the U.S. Government, and that those companies -- in
16 other words, not the U.S. Government, but those
17 companies could initiate litigation if they wanted to.
18 He wanted something like, he wanted several tens of
19 millions of dollars for the patent at that time.

20 Q But he did not personally want to initiate
21 litigation, correct? That's what he told you?

22 A No, he didn't, he didn't tell me that.

23 Q That's what Lindstrom told you Lans told
24 Lindstrom?

25 A Lindstrom told me that Lans told him that he

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1 wanted to sell the patent so other people could sue on
2 it. That he was interested in not initiating
3 litigation because he wanted to sell the patent at

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4 that time.

5 Q Going back to your affidavit, Paragraph 6 --
6 by the way, sorry to jump around, in Tab 6 to
7 Exhibit 1, as early as December 10, 1995 the Delphi
8 lawyers informed you of the IBM license agreement,
9 correct?

10 A It says, in Mr. Utterstrom's memorandum it
11 says, Hakan Lans color graphics patent, et cetera, it
12 says in 1989 IBM entered into a worldwide
13 nonexclusive license agreement for the use of the
14 technique.

15 Q So -- yes. So as early as December 12, 1995
16 you learned about the existence of the IBM licensing
17 agreement, correct?

18 A In -- as it -- I learned about what was said
19 in this statement, so I read this to mean that IBM had
20 entered into a license agreement with Mr. Lans.

21 Q And you also learned about an Hitachi
22 agreement as early as December 10, 1995, correct?

23 A That's correct.

24 Q Now, in your letter of March 20, 1996 to
25 Doctor Lans, you ask him for copies of the IBM

1 agreement, correct, or a copy?

2 A On the last page I ask him for -- see, we
3 would appreciate a list identifying those companies
4 which you believe are infringing the patent, as well
5 as copies of the license agreement with IBM and the
6 settlement agreement with Hitachi so that we may

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7 formulate a more comprehensive course of action for
8 your consideration.

9 Q So that's a yes?

10 A Of course. Yes.

11 Q Now, when did you obtain a copy of the IBM
12 licensing agreement?

13 A We received a copy of the IBM -- it's a
14 license agreement, not a licensing agreement. It's
15 the IBM license agreement. We received a copy of that
16 in late August of 1996.

17 Q Now, when you read, as I think you testified
18 a minute ago, when you read Mr. Utterstrom's E-mail of
19 December 10, 1995, I believe you testified that you
20 concluded that the company -- Hakan Lans had entered
21 into a license agreement with IBM?

22 A At that time that's what the -- it's not an
23 E-mail, by the way, it's a memorandum from
24 Mr. Utterstrom and it just indicated that Mr. Lans was
25 the owner of the patent and that there was a license

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1 agreement that was worldwide, nonexclusive that had
2 been entered into with IBM.

3 Q Did you conclude from Mr. Utterstrom's memo
4 that Hakan Lans had entered into the license agreement
5 with IBM?

6 A Well, based upon this, that was my
7 assumption, yes.

8 Q All right. Now, when you obtained a copy of
9 the IBM license agreement in August of 1996, you

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10 I learned that the licensor was not Hakan Lans, but a
11 company named Uni board, correct?

12 A That's correct. But I -- but I knew about,
13 about the fact of Uni board was a licensor in May of
14 1996, I believe it was May 11th, in a meeting with
15 Mr. Lans and Delphi in Stockholm, Sweden.

16 Q So in May, as early as May 1996 you had a
17 meeting with Doctor Lans and Delphi in Stockholm,
18 Sweden, and at that meeting you first learned about
19 Uni board; is that correct?

20 A That -- I believe that's correct. It's
21 possible that the name had been mentioned before, but
22 my recollection is that it was, it was in, it was in
23 May of 1996.

24 Q So May at the latest, '96, is when you
25 learned about Uni board?

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1 A Correct. Well, we learned about the fact
2 that Uni board had licensed the patent to IBM. We
3 simply did not have a copy of the agreement.

4 Q Did you --

5 A I just remind you that we, we were not
6 retained by, by Mr. Lans until sometime in the Summer
7 of 1996.

8 Q All right. Thank you for that information.
9 So before Mr. Lans, Doctor Lans ever
10 retained you, he told you that Uni board existed and
11 that Uni board licensed the '986 patent to IBM?

12 A Correct.

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13 Q Look at your affidavit on Page 2, Paragraph
14 6. You swear, therefore --

15 MR. HANDLEMAN: Thereafter.

16 MR. HAINLINE: Thereafter, thank you.

17 MR. HANDLEMAN: Okay.

18 Q -- the attorneys from Delphi and I had
19 several communications regarding options available to
20 Lans in licensing the '986 patent and its related
21 foreign counterparts which were previously issued to
22 Lans. No communications occurred regarding an entity
23 known as Uni board.

24 What time period did you include in the
25 thereafter?

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1 A December 12, 1995 to March 19, 1996.

2 MR. HAINLINE: Read that back, please.

3 (Record read.)

4 BY MR. HAINLINE:

5 Q Do you believe that this paragraph is
6 misleading in suggesting that you -- that there was a,
7 quite a long period of time here where you never
8 learned of Uni board?

9 A No, Mr. Hainline. If you look at this
10 evidence, it's clearly chronological. It goes
11 paragraph by paragraph. It's basically a definable
12 period of time that, that doesn't jump around. It
13 starts out at the earliest time, going to the latest
14 time, so I don't consider it misleading.

15 Q All right. So anyway, at the latest, in May

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16 you learned about Uni board. Did you ask Doctor Lans
17 by what right Uni board could license the '986 patent
18 to IBM?

19 A Mr. Lans informed us that he was the sole
20 owner of Uni board, the Managing Director, Chairman of
21 the Board, and that he had designated Uni board to be
22 the licensor of the patent with respect to IBM. He
23 then told us that he was the entity that licensed the
24 Hitachi and the Mi ro -- excuse me, the patent to
25 Hitachi and Mi ro.

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1 Q Did you ask Doctor Lans whether he had
2 granted the right to license to Uni board orally or
3 whether it was in writing?

4 A I don't believe -- we didn't ask him at that
5 May meeting. We didn't get into that level of detail.
6 I think those discussions about the, about the
7 Uni board license to IBM in depth occurred in meetings
8 in September 1996 with Mr. Lans when Mr. Powell and I
9 met with him. And then he was also the -- he also had
10 a discussion with Mr. Westerlin on the telephone.

11 Q Why didn't you ask him whether the granting
12 the right to Uni board was oral or in writing when you
13 first heard about Uni board?

14 A It wasn't -- I didn't -- looking back, I
15 don't recall the necessity to do so at the time.
16 These were exploratory discussions. And the meeting
17 was held at the request of Mr. Lans, that, that we
18 come to Sweden and meet with he and Delphi.

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19 Q Mr. Lans, Doctor Lans requested that you
20 come to Sweden and meet with him and Delphi?

21 A That's correct.

22 Q Now, in August of 1996 I believe you said is
23 when you got a copy of the IBM license agreement?

24 A We received a copy of the agreement, I mean
25 like a week or so before we flew to Stockholm, at the

40

1 very beginning -- in the first week of September.

2 Q Please look at Tab 18 to Exhibit 1. Is this
3 a copy of the IBM license agreement --

4 A It is.

5 Q -- that you obtained?

6 A It is.

7 Q Did you read it?

8 A Yes.

9 Q Look at Paragraph 7.1, please.

10 A I see that.

11 Q It says, Uni board represents and warrants
12 that it has the full right and power to grant the
13 licenses, immunities and release set forth in Sections
14 2 and 4, et cetera. Oh, and that there are no
15 outstanding agreements, assignments, or encumbrances
16 inconsistent with the provision of said licenses,
17 immunities, or releases, or with any other provisions
18 of this agreement. And that neither it, nor its
19 shareholders owns or has the right to grant licenses
20 under any patents or pending patent applications which
21 are not licensed patents and which would necessarily

22 be infringed by the practice of an invention covered
23 by a license patent.

24 Did you inquire as to what gave Uni board the
25 right and power to grant the licenses in this

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1 agreement?

2 A Mr. Lans informed us that he had authorized
3 Uni board to license the patent to IBM.

4 Q And did you ask him in what form he
5 authorized the grant of the license?

6 A No, because there was nothing.

7 Q Did you ask him in what form you granted the
8 right to license?

9 A Well, in essence yes, because if you look
10 back at, in the Payment section, 6.1, it says that IBM
11 will pay Uni board \$1 million promptly after the
12 signature of this agreement by both parties and
13 received by IBM of satisfactory documentary evidence
14 of Uni board's right to grant the said licenses and
15 immunities.

16 Q Yes.

17 A And we asked Doctor Lans -- excuse me,
18 Mr. Lans about this document, whether there was such a
19 document, and he said there was no document. And he
20 said that there was a statement in the annual report
21 for the company for 1989 and 1990 that evidenced the
22 authority of Uni board to, I think it says in the
23 annual report, to administer the patent on behalf of
24 the beneficial owners, and he identified himself as

25 the beneficial owner.

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1 Q Yes. So you read this statement that IBM
2 would pay upon receipt of satisfactory documentary
3 evidence of Uni board's right to grant the license and
4 immunities. As I understand it, you asked Doctor Lans
5 if there is such a document and he said no, and then
6 you dropped the matter?

7 MR. HANDLEMAN: Objection. That's not what
8 he said.

9 A That's -- you just mischaracterized --

10 Q How did I mischaracterize?

11 THE WITNESS: Can you read my answer back to
12 me, please.

13 Q Well, I'll ask a different question.

14 A I'd like to hear my answer read back,
15 Mr. Hainline. I've got that right. I would like to
16 hear my answer read back.

17 MR. HANDLEMAN: You have the right to have
18 it read back, so ask the Reporter to read it back.

19 MR. HAINLINE: Read the question first and
20 then --

21 MR. HANDLEMAN: Yes, that's the appropriate
22 way.

23 MR. HAINLINE: -- then his answer.

24 (Discussion off the record.)

25 (Record read.)

1 A The answer to your question is no, that
2 matter wasn't dropped. It was confirmed that there
3 was no document that we knew of other than the
4 statements in the annual report that were
5 contemporaneous with this IBM agreement, the '89
6 annual report that stated that IBM was -- excuse me,
7 that Uni board was responsible for administering the
8 patent on behalf of the beneficial owner, Hakan Lans.

9 Q Did you contact IBM to see what documentary
10 evidence IBM received as evidence of Uni board's right
11 to grant the license?

12 A No.

13 Q Why not?

14 A There was no need to.

15 Q Why was there no need to?

16 A There was no confusion about anything about
17 this. And to go to a licensee and ask the licensee
18 for, for those type of documents would be highly
19 irregular.

20 I will say this, that if you look at the
21 record, in our discussions with IBM, IBM talked about,
22 in the letter from Mr. Gershuny to either me or
23 Mr. Schaumberg, he stated explicitly that it was the
24 Lans patent and that Mr. -- the agreement was between
25 IBM and Mr. Lans, and IBM knew that Mr. Lans was

1 asserting the patent as the owner of the patent, and

2 IBM never voiced any concern or questions about
3 Mr. Lans's right to assert the patent. So we had no
4 reason to go to IBM and ask for a document that our
5 client had said doesn't exist other than in the annual
6 report.

7 Q Did you know as of August of 1996 the name
8 of the lawyer who had represented Doctor Lans in his
9 negotiations with IBM?

10 A In 1996 -- I don't believe so. I believe
11 that, that Gunnar Berg -- G-U-N-N-A-R, then B-E-R-G --
12 was identified, I believe, after that time.

13 Q Look at Paragraph 12 to your affidavit,
14 please.

15 A (Complying.)

16 Yes.

17 Q I think you told me earlier today that this
18 affidavit is carefully chronological?

19 A It -- the -- it's not -- when you say
20 carefully chronological, it's, it's generally
21 chronological, yes. I didn't say it was carefully
22 chronological, I said it was generally, generally
23 chronological.

24 Q It's chronological enough that Paragraph 6
25 is not misleading because you're writing

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1 chronologically?

2 MR. HANDLEMAN: Objection. That's
3 argumentative.

4 Q Well, let's look at Paragraph -- I agree.

5 MR. HANDLEMAN: You agree with that?
6 MR. HAINLINE: Yes, it is.
7 MR. HANDLEMAN: Okay.
8 Q Let's look at Paragraph 12 and Paragraph 13,
9 and would you agree with me that Paragraph 12 and
10 Paragraph 13 each refer to September 1996?
11 A (Reviewing.)
12 Let me take the time to read them both.
13 Q Please.
14 (Record read.)
15 A 13 is related to the IBM agreement really,
16 so it's not limited to September 1996.
17 BY MR. HAINLINE:
18 Q Okay.
19 A 12 deals with events in September 1996,
20 right. And then 13 deals with the agreement and, and
21 obviously the reading of the agreement, and then the
22 questioning about the agreement.
23 Q Okay.
24 A So this would be September 1996, and
25 subsequent to that, so immediately subsequent to this

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1 meeting.
2 Q Now, you say on Page 5, within Paragraph 12,
3 that you requested an attorney at Delphi to contact
4 the widow of the deceased attorney who represented
5 Uni board in the IBM negotiations, Gunnar Berg, to
6 investigate the existence of any relevant documents.
7 A That's correct.

8 Q And why did you do that?

9 A We had heard from Delphi during meetings
10 that week that Mr. Lans was represented by a Swedish
11 attorney called Gunnar Berg during the IBM
12 negotiations. And based upon that, after we had our
13 meetings with Mr. Lans and he could not identify, or
14 did not identify any documents with regard to
15 Paragraph 6.1 of the IBM agreement, we then asked
16 attorneys at Delphi, specifically Tal Lindstrom and
17 Peter Utterstrom, to contact the widow of Gunnar Berg,
18 because we had been told that he was deceased, to try
19 and get any relevant documents that were in any files
20 that existed that were relevant to the IBM license.

21 And Delphi actually did that, and I don't
22 remember if it was actually that week they came back
23 to us, but it was -- or whether it was the following
24 week, but they did contact Gunnar Berg's widow,
25 Mrs. Berg, and asked for her husband's files related

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1 to Mr. Lans in general and specifically to any IBM,
2 any IBM negotiations, and that she informed them that
3 she had no files at all.

4 Q Now, isn't it the case that Gunnar Berg was
5 still living in September 1996?

6 A We were told that he was deceased.

7 MR. HAINLINE: Let me mark as Exhibit 3 a
8 document called Second Declaration of Hakan Lans
9 executed on September 11, 1999.

10 (Exhibit No. 3 was marked for identification and

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11 was attached to the transcript.)

12 BY MR. HAINLINE:

13 Q Did you draft the original of Exhibit 3 for

14 Hakan Lans?

15 A This was drafted by Mr. Lans and Delphi.

16 Q Did you review it?

17 A Yes. We, we were involved in discussions

18 about this by conference call.

19 Q And you reviewed it and filed the document,

20 did you not?

21 A Yes.

22 Q All right. Look at Paragraph 5.

23 A Yes.

24 Q It is my understanding that Mr. Berg died in

25 March 1997.

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1 A Yes.

2 Q Did you ever investigate as to when Mr. Berg

3 actually died?

4 A No. No. My recollection is that, that I

5 was told back in September 1996, or not long after

6 that that Mr. Berg was deceased.

7 Q Did you or anybody at AMS make any effort to

8 contact either Mr. Berg if he was living, or his widow

9 if he was not --

10 A Mr. -- excuse me.

11 Q -- in September 1996?

12 A Delphi did.

13 Q I know that's your testimony.

14 A Uh-huh.

15 Q I have a different question. Did you or
16 anybody at AMS make such an attempt?

17 A No.

18 Q Did you ever learn that Delphi did not
19 contact Mr. Berg's widow until sometime several years
20 after 1996?

21 A I'm not aware of that. My recollection is
22 that it was a contact made regarding Mr. Berg's files
23 relevant to Mr. Lans and the '986 patent at or about
24 September 1996.

25 Q So in order to further investigate whether

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1 there were any documents connected with the IBM
2 Uni board transaction, as I understand you, you
3 requested that Delphi contact the estate of the lawyer
4 who had represented Lans with IBM, right?

5 A I -- no, not the estate. There was a -- my
6 recollection was that the request was made to contact
7 the widow of the deceased attorney. My recollection
8 in May of 2004 was that the contact was with the widow
9 of Mr. Berg because at that -- my recollection was
10 that he was deceased at the time.

11 Q Okay.

12 A Whether -- was he alive at the time?
13 Perhaps. I don't know. But the fact of the matter
14 remains that Delphi made contact with at -- in
15 September or sometime around that time to find out
16 whether Mr. Berg, or if he was deceased at that time,

17 his widow or whoever had custody of the files had any
18 files related to Mr. Lans and the '986 patent, and
19 specifically with respect to any licensing
20 negotiations.

21 Q With IBM?

22 A With anybody.

23 Q Or anybody?

24 A With anybody, yes, with anybody.

25 Q And you were told, as I understand it, that

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1 she had none?

2 A It says right here, we did -- we were
3 informed by Delphi that they were informed that
4 Mr. Berg's files no longer existed.

5 Q Did Delphi give you this information in
6 writing?

7 A I can't recall how it was communicated,
8 whether it was in writing or it was oral and in
9 writing, I don't recall.

10 Q Now, at some point your law firm had a
11 series of communications back and forth with IBM,
12 correct?

13 A Yes.

14 Q In any of those communications, did you ever
15 ask for any underlying documents that were referenced
16 in the IBM license agreement with Uni board?

17 A No.

18 Q In Paragraph 13 of your affidavit you say, I
19 first became aware of an entity called Uni board upon

20 receipt of the IBM license agreement from Delphi prior
21 to the September 1996 meeting with Lans. That's
22 incorrect, isn't it?

23 A That's what I said here. And if I --
24 looking at this, I would say that the affidavit is
25 more correct. But if I stated before I believe -- I

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1 stated before that I recall that I -- that Mr. Lans
2 mentioned Uni board in the May meeting, that would be
3 incorrect. This, this would be more correct.

4 Q So when you testified that Mr. Lans made --
5 referenced Uni board in the May meeting and he made
6 some comments to you about Uni board in the May
7 meeting, that that was wrong, that that never
8 happened?

9 A It -- the conversation happened, but it was
10 after that time. Mr. Lans referred to a number of
11 companies he was affiliated with, I remember, at the
12 meeting, and I remember reference to engineer a firma
13 (phonetic) Hakan Lans, he made reference to GP&C, made
14 reference to Erickson with whom he was doing work for
15 as a consultant, and the -- also with a couple of
16 other companies. But, but this affidavit would be
17 more correct with regard to when I actually heard, or
18 first learned about Uni board.

19 Q Now, you say in Paragraph 13, the second-
20 from-the-last line from the bottom, that Lans only
21 transferred to Uni board the receipt of revenue. You
22 see that statement?

23 A Well, I didn't say that. I -- I am saying
24 here that Mr. Lans said that.
25 Q Right. All right. Well, if Mr. Lans said

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1 that, you knew that was incorrect, didn't you?

2 A No, I don't know that.

3 Q You knew at the very least that Lans had
4 transferred to Uni board the right to license the '986
5 patent, didn't you?

6 A No, there was no -- there was -- there was
7 no transfer of the right to license, Mr. Hainline.
8 Uni board was a one-time licensor. You forget that
9 this was 1989. The Uni board license -- in 1989 it was
10 a first license. The next two licenses were the
11 Hitachi license and the Miro license in 1995, and that
12 was by Mr. Lans. In fact he made representation in
13 that, in that -- in those agreements that he was the
14 owner of the patent, and then in every license after
15 that, he was the licensor. So --

16 MR. HANDLEMAN: Did you finish?

17 THE WITNESS: No, no, I am finished.

18 Q Keep going.

19 A I am finished.

20 Q At the very least you knew that at the time
21 of the IBM license, Mr. Lans had transferred to
22 Uni board the right to license the '986 patent?

23 A Transfer of a right to license, that, that
24 doesn't parse -- that doesn't make sense to me. He,
25 he authorized Uni board to, for a one-time only to be a

1 licensor.

2 Q How did you know it was one time only?

3 A Because I -- now I'm telling you that.

4 Q How did you know then it was one time only?

5 MR. HANDLEMAN: Then being when?

6 Q As of September 1996, what made you believe,
7 if you did believe this, that Uni board had a one-time-
8 only right to grant a license to the '986 patent?

9 A Well, we knew that. We had been told by
10 Mr. Lans. We had been told by Delphi that Mr. Lans
11 had licensed the patent himself to Hitachi and to Miro
12 six years after he, he -- after Uni board licensed the
13 patent to IBM. To me that's a one-time license.
14 That's -- I mean I -- at that time I had heard of one,
15 one license transaction by Uni board. That -- in my
16 lexicon one equals one and can only be one unless it's
17 added to with another transaction.

18 Q But you didn't ask IBM for a copy of the
19 document --

20 A There was --

21 Q -- that they insisted receiving before they
22 paid Uni board?

23 A We had, we had information from, from the
24 accountants through Delphi about Uni board's
25 involvement with the patent, and we had annual

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1 reports. The annual reports are explicit that the
2 company has the, has the administration, I believe it
3 says it has the administration or it's been given the
4 administration of the patent on behalf of the
5 beneficial owner, and that was Hakan Lans. And also
6 the company books which had been looked at by, by, by
7 Delphi do not list the patent as an asset.

8 Q Did you ask Doctor Lans by what instrument
9 Uni board had been given the right to administer the
10 '986 patent?

11 A We asked him for all documents that he had,
12 and he gave us all documents, according to him. And
13 there was no document like that, which is not unusual.

14 Q But you did know that IBM, before they paid
15 Uni board, insisted upon receiving the document?

16 A Mr. Lans said that he did not recall such a
17 document, but he referred to the fact that it was
18 commonly known that the company had the right to make
19 that license agreement and that it received the
20 revenues and that was in the annual reports.

21 Q Nevertheless, you did find it prudent to
22 have Delphi check with Gunnar Berg's widow, correct?

23 A We -- I believe what we say here is that we
24 asked Delphi to check with Gunnar Berg, or here, his
25 widow to investigate the existence of any relevant

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1 documents. That's any documents relevant to matters
2 to the '986 patent. Delphi wasn't asked to go look
3 for a specific document, but it was asked to go to Mr.

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4 Lans' s counsel , Gunnar Berg, and ask for all relevant
5 documents to the '986 patent.

6 Q Did you ask Delphi to look specifically for
7 the document referenced in Paragraph 6.1 of the IBM
8 license agreement?

9 A That -- any such document, assuming one
10 existed, would fall within any relevant documents,
11 Mr. Hainline.

12 Q And did you ask IBM in any of your
13 communications with IBM if they could give you a copy
14 of the document?

15 A No.

16 Q Do you have any reason to believe IBM would
17 have declined your request?

18 MR. HANDLEMAN: Objection. That's
19 speculation.

20 Go ahead.

21 A I can tell you this, Mr. Hainline, and it's
22 in your own client's documents, Mr. Lans's documents,
23 that IBM in the U.S. did not have that document. It
24 came from Peter Evans, a retired IBM attorney who was
25 present at the negotiations. That's in an E-mail from

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1 Mr. Lans when he had separate communications with IBM
2 unbeknownst to us.

3 So IBM in the U.S. never had the assignment
4 certainly, and it didn't -- and it doesn't sound like
5 they had any other document.

6 Q What about IBM in Europe?

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7 A I believe that this agreement was with IBM
8 in the United States. I don't have -- what's that,
9 Tab 9?

10 MR. DeVINNEY: 18.

11 Q 18.

12 A Tab 18, thank you.

13 It says it's an agreement between
14 International Business Machines Corporation, a
15 New York corporation, and it's signed by the U.S.
16 Vice-President, I believe H. G. Figueroa.

17 Q Did you ask Mr. Figueroa if he had the
18 document and if he could give it to you?

19 A No.

20 Q Did you ask Mr. Gershuny if he had the
21 document and if he would give it to you?

22 A No.

23 Q Did you ever ask anybody at IBM if they had
24 the document and if they would give it to you?

25 A No.

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1 Q Now, you say in Paragraph 13 of your
2 affidavit, Page 6, up at the top of the page --

3 A Page 6, is that what you said?

4 Q Page 6.

5 -- that the Hitachi license confirmed to you
6 Lans's statement that he was the owner of the patent.

7 A Well, it -- the entire sentence says,
8 furthermore -- I mean this is at the end of a long
9 series of statements. It says, the last sentence

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10 says, furthermore, other documentation provided by
11 Lans, including a license agreement with Hitachi
12 executed in 1995 and decisions entered by the Court in
13 the German litigation, confirmed Lans's statement that
14 he was the owner of the patent.

15 Q Is there something in the Hitachi agreement
16 that confirmed to you that Doctor Lans is the owner of
17 the patent?

18 A I have to look at it to see whether in and
19 of itself it does. I mean this is, this statement is
20 made about the license agreement with Hitachi in
21 conjunction with many other documents, and that that
22 confirmed Mr. Lans's statement that he was the owner
23 of the patent, so I didn't --

24 Q Let me ask this, see if I can get a clear
25 answer.

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1 MR. HANDLEMAN: I think you got a clear
2 answer. You want to ask another question?

3 MR. HAINLINE: No, I -- it may be my own
4 defect, so that I'm not --

5 MR. HANDLEMAN: Okay.

6 MR. HAINLINE: -- trying to argue with you
7 or cast assertions upon Mr. Mastriani, just trying to
8 clarify something for myself.

9 MR. HANDLEMAN: Fair enough.

10 BY MR. HAINLINE:

11 Q Did he intend to convey in this sentence
12 that the Hitachi agreement confirmed to you the

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13 statement you say Lans made to you that he was the
14 owner of the patent?

15 A No, not that that agreement in and of itself
16 did. No, not at all. Because if I recall correctly,
17 the Hitachi agreement, I think is virtually verbatim
18 to the IBM agreement.

19 Q If you look at Tab 20 to Exhibit 1, Page 1,
20 it says, Lans has the right to license others,
21 correct?

22 A Where? Which paragraph?

23 Q Second paragraph on the first page.

24 A Numbered paragraph or --

25 Q No, second --

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1 MR. HANDLEMAN: Second.

2 A Second paragraph.

3 Q On the first page.

4 A Yes, I see that. Right.

5 Q If you to look back at Tab 18 in the
6 Uni board/IBM agreement, in the first paragraph,
7 unnumbered paragraph it says, Uni board has the right
8 to license, correct?

9 A Uni board has the right to license, that is
10 correct.

11 Q There's nothing in the Hitachi agreement
12 that represents that Lans is the owner of the patent,
13 is there?

14 A Not at all.

15 Q All right. And so if, if your sworn

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16 statement conveys that message, you didn't intend to
17 convey it?

18 MR. HANDLEMAN: Objection. I think you're
19 reading into it -- you left out part of the paragraph.

20 MR. HAINLINE: Fair question.

21 MR. HANDLEMAN: I don't think it is, but you
22 can answer.

23 BY MR. HAINLINE:

24 Q If it conveys that message that's not your
25 intention. That's my question.

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1 MR. HANDLEMAN: He can't know if it conveyed
2 that message, but you can answer.

3 A Yes, I don't think it -- it certainly -- in
4 my mind it does not convey that message. And if it
5 does to you, Mr. Hainline, then you would be
6 operating, or laboring under a misapprehension of what
7 that sentence states, and you would be ignoring all of
8 the preceding sentences, at least in that paragraph,
9 if not in the affidavit.

10 BY MR. HAINLINE:

11 Q In your conversations with Mr. Grennberg --
12 would you like --

13 MR. HANDLEMAN: You want to take --

14 MR. HAINLINE: Would you like to take a
15 break?

16 THE WITNESS: In a couple of minutes it
17 would be nice to take a break. We've been going an
18 hour and a half.

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19 MR. HAINLINE: Yeah, I just noticed that.
20 Time flies when you're --

21 MR. HANDLEMAN: It sure does. If we
22 haven't --

23 BY MR. HAINLINE:

24 Q Did you personally have any conversations in
25 September of 1996 with Bertil Grennberg?

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1 A Yes.

2 Q Did Doctor Grennberg tell you that Doctor
3 Lans did not like the fact that he was named
4 personally in the German action brought by Hitachi to
5 nullify the patent?

6 A No, he never said that.

7 Q Did Doctor Grennberg tell you that it was
8 his opinion that Doctor Lans should not personally be
9 a Plaintiff in any patent case?

10 A No.

11 (Witness consulting with counsel.)

12 Q Did you meet with Doctor Grennberg
13 personally in Sweden?

14 A Yes.

15 Q Did you ever talk to Doctor Grennberg again?

16 A Yes.

17 Q How did you talk to him; by phone, or in
18 person?

19 A Talked to him by phone a couple of times,
20 and communicated with him in writing.

21 Q Do you have any phone records showing that

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22 you actually called Doctor Grennberg?

23 A I -- I don't maintain phone records in the
24 sense that you're talking about, no. You mean like a
25 list of calls, like old bills, something like that?

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1 Q Anything. An old bill, a list of calls, a
2 time sheet, a contemporaneous note.

3 A There may be time sheets. It's possible
4 there may be time sheets on that, but there's
5 correspondence in the record between Bert Grennberg
6 and our office, and you can see that that -- it's in
7 part of one of the exhibits in Exhibit 1. And there
8 was a meeting with Mr. Grennberg at the end of the
9 week that -- in September 1996.

10 Q Is it your sworn testimony that the
11 documents that are part of Exhibit 1 reference
12 telephone calls between you and Mr. Grennberg?

13 A I don't believe they reference telephone
14 calls.

15 Q So you're not suggesting that there's
16 documentary evidence here supporting your claim that
17 you talked to Doctor Grennberg on the phone?

18 A Mr. Hainline, the documents that were
19 submitted in Opposition for the Motion of
20 Reconsideration are not all the documents that we
21 have. We submitted what we believed was necessary to
22 counteract the false statements made by Mr. Lans in
23 his Motion for Reconsideration.

24 MR. HAINLINE: If there is some -- any

25 record referencing or validating Mr. Mastriani's claim

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1 that he telephoned Doctor Grennberg, I'd like you to
2 point those out to me because I don't think -- I've
3 looked carefully and I haven't seen --

4 MR. HANDLEMAN: I'll take your request under
5 consideration.

6 MR. HAINLINE: Let's take a break, please.

7 MR. HANDLEMAN: Okay. Thank you.

8 (Break taken at 11:36 a.m.)

9 BY MR. HAINLINE:

10 Q Let me clear up some things that I'm unclear
11 about. As you understand terms used in connection
12 with patents, is it possible to -- for an owner of a
13 patent to assign a partial interest in a patent?

14 MR. HANDLEMAN: Objection. I think it was
15 answered, but you can answer again.

16 A It's possible an owner of a patent can
17 assign part of the ownership of the patent, sure.
18 That's one of the three, the only three ways that you
19 can assign, either everything, part of everything, or
20 everything for a limited geographic area. I mean the
21 case law is legion on that.

22 Q Could the owner as part of a partial
23 assignment assign the right to another the right to
24 license the patent and to collect revenues?

25 A No, not in my opinion. I told you,

1 Mr. Hainline, I told you that in my lexicon and the
2 lexicon I'm familiar with in the practice of patent
3 litigation and patent law, assign is synonymous and
4 only synonymous with ownership. What you're talking
5 about sounds like a contractual arrangement of some
6 type.

7 Q Would it be -- and these are just questions.
8 I'm not really hypothesizing or claiming that
9 something exists. I'm wondering if in your opinion it
10 can exist. Is it possible as you understand
11 assignments in the world of patents for an owner of a
12 patent to assign to another company the right to
13 license a patent, the right to bring litigation for
14 infringement of the patent, and the right to collect
15 money, either in settlement or in license fees?

16 A No, it's not. You can't -- first of all,
17 assign means ownership. You can -- and you can't,
18 certainly cannot assign the right to bring litigation
19 without either granting an exclusive license or giving
20 the ownership of the patent to the person because in
21 the U.S., the actual owner of the patent must be a
22 party initiating litigation, otherwise they don't have
23 standing. And that person could be the owner, or it
24 could be an exclusive licensee that either has a right
25 or doesn't have the right to bring litigation.

1 Q So an exclusive licensee could bring

2 litigation?

3 A If the license agreement includes that as
4 part of the exclusive license, that's correct. There
5 are, there are instances where it does, and there are
6 other instances where the patent owner reserves a
7 right to initiate any litigation, either on its own or
8 at the request of the exclusive licensee.

9 Q Look for a minute at Tab 7 of Exhibit 1. I
10 can't remember if I asked you about this document
11 before.

12 Oh, I did. I already asked this and you
13 said you wrote it. I apologize.

14 Look at Tab 13 to Exhibit 1. This was a
15 document that was appended to your motion for your
16 opposition to the Motion for Reconsideration, correct?

17 A That's correct.

18 Q Whose handwriting is this?

19 A Tom Schaumberg's.

20 Q Did Mr. Schaumberg go over this list of
21 things to do with you at any time?

22 A Let me just go through this so I can read it
23 first.

24 Q Sure.

25 A This was written while Mr. Powell and I were

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1 in Sweden meeting with Mr. Lans, Delphi,
2 Doctor Grennberg. And because it's dated September 9,
3 1996, I'm not sure when I saw this for the first time,
4 but it just seems like a, like an action item list

5 with some of them being assigned to, to particular
6 individuals.

7 Q You said when Mr. who and you were in
8 Sweden?

9 A Mr. Powell and I.

10 Q Powell, okay.

11 A Raymond Powell.

12 Q And Schaumberg as well?

13 A No. Mr. Schaumberg --

14 Q Oh.

15 A Mr. Lans was wrong both in his declaration
16 and in his testimony yesterday that he met with
17 Mr. Schaumberg in May of 1996. He never met with
18 Mr. Schaumberg. He met with me and Mr. Adduci. The
19 first time he met Mr. Schaumberg was sometime in late
20 '97 or maybe in '98. That was a purely, for the most
21 part, social-type of meeting.

22 Q I apologize for being confused, but it's not
23 the first or last time I'll be confused.

24 This is Mr. Schaumberg's writing?

25 A Yes.

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1 Q And it was -- Schaumberg wrote this while
2 you and Powell, but not Schaumberg, were in Sweden?

3 A That's correct.

4 Q And did Schaumberg write this while you were
5 on the phone with him?

6 A It's possible. I don't, I don't recall
7 specifically that he wrote it while we were on the

8 phone. I don't -- I -- I don't know.

9 Q Why did you present this list to the Court?

10 MR. HANDLEMAN: Objection.

11 A You'd have --

12 MR. HANDLEMAN: That's -- it's not an --
13 unless you can show it's referenced in his affidavit,
14 which I don't believe it is, it's part of the body of
15 the memorandum, and that's an exhibit that's attached.
16 And let me just note, this is one where when it says
17 Exhibit 13 in the body --

18 MR. HAINLINE: Yes.

19 MR. HANDLEMAN: -- you go to Tab 13 and it's
20 not the same document. This one doesn't matter for
21 the purposes of our deposition. I just thought I'd
22 bring that to your attention.

23 MR. HAINLINE: Thank you.

24 BY MR. HAINLINE:

25 Q Do you know what purpose this document was

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1 to serve as part of the memorandum on your behalf that
2 was filed with the Court?

3 A You'd have to look at the memorandum and see
4 how it's cited. I mean I think it just -- it -- it
5 evidences certain activities within, within our firm
6 with regard to this matter.

7 Q What is a Certificate of Correction?

8 A A Certificate of Correction is a document
9 that is issued by the Patent Office as a result of a
10 filing of a petition for a Certificate of Correction,

11 and it's done to correct either a typographical error
12 in, in the patent, especially in claim language, or
13 to, to add an inventor who should have been named, or
14 to delete an inventor who should not have been named
15 as long as the addition or the deletion of the
16 inventor is without deceptive intent.

17 Q If you know, why was the Certificate of
18 Correction listed on the things to do in connection
19 with the '986 patent?

20 A I do know, and there is, as you know, a
21 Certificate of Correction in this document, Exhibit 1.
22 There was a typographical error in one of the claims,
23 it may have been Claim 29, where the word column was
24 used and it should have been colors. And so to be
25 absolutely crystal clear before we began to license

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1 this patent or attempt to license it, that that
2 correction be made, even though the specification of
3 the patent in a the did dependent claims made it clear
4 the word column, I believe it was, should really be
5 colors -- or color. I can't remember which one it
6 was.

7 Q Now, is it fair to say that you expressed
8 some frustration to Mr. Utterstrom with Mr. Lans at
9 that time, Mr. Lans seeming reluctant to sign up for
10 the litigation project?

11 A When you say frustration, I don't know what
12 you mean by that. I --

13 Q Look at Tab 11 to Exhibit 1. Did you write

14 this memo to Mr. Utterstrom on or about its date,
15 July 12, 1996?

16 A Yes.

17 Q You mentioned Mr. Utterstrom's frustration
18 with respect to the signing of an agreement.

19 A Right. It says, quote, we understand your
20 frustration with respect to the signing of an
21 agreement for the enforcement of the Lans '986 color
22 graphic patent. It may be that Mr. Lans's
23 preoccupation with pending projects has prevented him
24 from focusing upon the details of the agreement and
25 signing it. In the event this is incorrect because

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1 you have reason to believe that Mr. Lans and/or a
2 business associate of his are no longer interested in
3 enforcing the patent or designating our firm as being
4 responsible for enforcing the patent, please notify us
5 immediately. We believe that we should not place
6 undue pressure on Mr. Lans regarding the signed
7 agreement so as not to make him distrustful of us and
8 perhaps alienate us.

9 Q Did you share Mr. Utterstrom's frustration?

10 A No, not at all.

11 Q Look at the second page, the second
12 paragraph. You're referring to U.S. Patent '587?

13 A Yes.

14 Q Is that the STDMA patent?

15 A That's correct, also known as -- otherwise
16 as the GPS patent, too.

17 Q So if at any time you were to recommend to
18 Doctor Lans that in settlement of the case that you
19 filed on his behalf he gave up all interest he had in
20 any patent and all patents, that would include the
21 STDMA patent '587, wouldn't it?

22 A Could you repeat the question, please?

23 (Record read.)

24 A Well, that's unintelligible to me because we
25 never recommended Mr. Lans give up all right, title,

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1 and interest, I think you said to that patent or
2 settle some controversy with regard to another patent,
3 so I don't understand your question at all.

4 BY MR. HAINLINE:

5 Q Would it have been imprudent of you to
6 recommend to Doctor Lans that he, in settlement of the
7 color graphics case, that he give up all interest in
8 the STDMA patent?

9 A That he give up all -- what do you mean by
10 give up all interest? You mean license, give up the
11 ownership to, to an adversary and just give the patent
12 over to them, or what?

13 Q Give a license to somebody else for all --
14 for rights to use and exploit the STDMA patent.

15 A That's certainly not giving up the patent.
16 I believe, Mr. Hainline, when one licenses, you retain
17 the right -- it's like renting a, like renting a house
18 to somebody. When you own it, you get the rent and
19 they get to live there until the rental agreement is

20 over, the license is terminated.

21 So you're still talking in very gross
22 generalities, to be quite frank. Now, if you could
23 give me specifics here, especially that are based on
24 the facts, I think that would be helpful.

25 Q We'll do that. We'll get back to this

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1 later.

2 I'm just -- so that the question, at least
3 with my imperfect ability to understand things, from
4 the very beginning of this case you were aware of the
5 global positioning patent, '587, and you were aware
6 that that was one patent -- another patent of -- that
7 Mr. Lans had, correct?

8 A Yes, because Mr. Lans asked us to sell the,
9 try and sell that patent for \$35 million to, to
10 anybody who would pay that kind of money. And in fact
11 we did secure a group headed by Frank Borman, who was
12 an ex-astronaut and owner of a company in Florida, to
13 look into this, the possibility, and that never came
14 to pass because Mr. Lans decided that he didn't want
15 us to deal with that patent.

16 Q Any of these communications in writing?

17 A Some of that is in writing, yeah, sure.

18 Q These are documents you handed over when you
19 were terminated by -- Doctor Lans terminated you,
20 handed over to his successor counsel?

21 A You mean about Mr. Lans wanting to sell for
22 \$35 million or so, yes, I think that's even in this

23 particular document here. If you're talking about
24 communications with, with po -- with potential buyers
25 and so on, that's not part of this.

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1 Q Is there any writing where Mr. Lans asks you
2 to sell the global positioning patent on his behalf?

3 A I believe there is. Yes, I believe -- I
4 believe that there is a, that that is a letter, I
5 don't know whether it's between us and Mr. Lans or
6 it's with Delphi about selling the patent, this
7 particular STDMA or GPS patent for \$35 million. There
8 is a -- there is such a communication.

9 Q From Doctor Lans?

10 A I don't recall if it was from Doctor Lans or
11 it was attorneys at Delphi. You have to remember that
12 Mr. Lans was represented by Delphi at this time. He
13 switched counsel. He first approached us in 1995, but
14 it's -- I believe it's in the record. If it's not,
15 it's available.

16 MR. HAINLINE: Let's mark as Exhibit 4 a
17 document from Hakan Lans to Mr. Mastriani dated
18 February 19, 1997.

19 (Exhibit No. 4 was marked for identification and
20 was attached to the transcript.)

21 (Discussion between witness and counsel.)

22 BY MR. HAINLINE:

23 Q Before we go to that, have you found the
24 document you're referring to, Mr. Mastriani?

25 A Actually, if you look at Exhibit 22, Tab 22

1 to Exhibit 1 --

2 Q Is this from you to Peter Utterstrom?

3 A Peter Utterstrom. And yes, you can see
4 there's a reference in the second paragraph, reference
5 to GP&C project, which is referencing to the '587
6 STDMA patent, and you can see the draft letter that
7 was drafted based upon discussions with Mr. Lans about
8 where it says, quote, my personal objective is to
9 obtain \$35 million from the sale, assignment or
10 transfer of the patent.

11 Q That is a document you drafted for Mr. Lans
12 to sign?

13 A Based upon what he told Mr. Delphi -- excuse
14 me, Mr. Utterstrom at Delphi.

15 Q And this is a document Mr. Lans never
16 signed?

17 A He didn't sign it because we could not come
18 to an agreement on, on certain things, if I recall
19 correctly, or he lost interest. I don't recall what
20 the reason was.

21 Q If there's any document from -- originating
22 from Mr. Lans asking you to represent him in
23 connection with this patent, I'd appreciate your
24 identifying it for me.

25 A And when I -- just so we're clear,

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1 Mr. Utterstrom was representing Mr. Lans as his
2 attorney, so he was Mr. Lans's agent as far as we were
3 concerned.

4 Q Well, as far as you were concerned
5 Mr. Utterstrom was representing Doctor Lans in
6 connection with the STDMA patent?

7 A He was representing Mr. Lans in trying to
8 exploit both his '986 patent and also his '587 patent.

9 Q Before we talk about Exhibit 4, would you
10 please turn to Tab 9, please, of Exhibit 1.

11 A (Complying.)

12 I have it.

13 Q Is this the fee agreement that you entered
14 into with Doctor Lans and Delphi?

15 A This is the agreement that our firm and
16 Delphi entered into with Mr. Lans.

17 Q And does this agreement in your view also
18 govern the relationship between your firm and Delphi
19 with respect to the representation of Hakan Lans?

20 A What do you mean by govern the relationship?
21 I don't understand what you mean by that. Is that --
22 you mean govern the relationship between Delphi and
23 AMS with Mr. Lans, or between --

24 Q Yes.

25 A Okay. Yes, it does.

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1 Q Look at the page numbered AMS 006195 going
2 over to 6196, numbered Paragraph 2 in Part B.

3 A Yes.

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4 Q The decision as to whether or not to pursue
5 such litigation will be subject to the sole and
6 exclusive discretion of AMS. Tell me what that means.

7 A This is drafted by Delphi, and the decision
8 to initiate litigation was going -- in other words,
9 the decision whether to initiate litigation would be
10 up to our firm to determine whether it was feasible
11 and, and advisable to, to go into litigation because
12 this agreement does not cover the litigation.

13 Q Did your firm or did someone on behalf of
14 your firm agree to this agreement? I don't see your
15 signature on this particular document.

16 A We were -- we had -- we saw this. I mean,
17 cover the -- in the form that it went to Mr. Lans, and
18 we were in agreement with it in general.

19 Q Is there a document where you adopt it?

20 A Where we adopt it?

21 Q Yes. Where you say, I -- we accept, we
22 accept this agreement.

23 A There --

24 Q Is there any writing where you execute and
25 agree to this agreement?

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1 A Well, we adopt it because Delphi was
2 authorized to speak for us here.

3 Q Okay.

4 A It says right in the first paragraph, if you
5 look at the first page, Adduci, Mastriani, Schaumberg,
6 L.L.P. in Washington, D.C. is also a part of the

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7 understanding, as a result of which I keep myself to
8 English. That's Mr. Utterstrom speaking. And that's
9 after he says before, further to our meetings and
10 discussions over the phone, faxes and E-mails, please
11 find below my interpretation of what has been agreed
12 as regards the financial aspects of the pursuit of
13 infringers of your U.S. Patent 4,303,986. Below the
14 patent.

15 Q Yes, my question is, is there some writing
16 where you, you or your firm adopt this agreement on
17 behalf of your firm?

18 A Right here. You're looking at it.

19 Q Delphi was authorized to adopt this
20 agreement on your behalf?

21 A We --

22 Q Is that what you're saying?

23 A Delphi was authorized to speak for it.
24 That's what it says. It also refers -- it says that
25 in the first paragraph explicitly. It then says it

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1 furthermore explicitly in Paragraph 2. Then you'll
2 note in Paragraph 3 on the first page, AMS 006194,
3 that there's references to other communications from
4 our firm to Mr. Lans that are dated May 29, 1996;
5 June 6, 1996; and June 12, 1996.

6 Q All right. And because this is on somebody
7 else's letterhead, my question -- and I think you've
8 answered it, but I apologize for being a little
9 thick -- Delphi was authorized to speak on behalf of

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10 AMS in this agreement?

11 A Right. This was -- if you look at Page 2,
12 this is a summary. It says to summarize the
13 discussions, the following is our understanding as
14 regards the phases and the financial aspects of the
15 undertaking and the relationship between the parties
16 hereto. This was, this document was meant to speak
17 for, for both law firms.

18 Q Okay. Look at Exhibit 4, please.

19 A In --

20 Q I'm sorry, Exhibit 4 to your deposition.

21 MR. HANDLEMAN: Put that aside.

22 Q AMS 001654.

23 A Yes.

24 Q Did you receive the original of this
25 document on or about its date?

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1 A I did.

2 Q Was it faxed to you or E-mailed to you?

3 A It was faxed.

4 Q The document says, as you know, the licenses
5 has been signed with a company Uni board and not me,
6 with -- and not with me as an individual. The patent
7 has been transferred to the company for many years
8 ago, and the agreement with IBM was made with Uni board
9 AB.

10 So on February 19 Doctor Lans told you this?

11 A That's correct.

12 Q And he had told you this before February 19,

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13 1997 as well, had he not?

14 A He had told me before February 19th, '97,
15 that Uni board had licensed the patent one time to IBM.
16 He had also told me that the patent was being
17 administered by Uni board with -- and which received
18 revenues from the patent.

19 Q Had he ever told you before February 19,
20 1997, that the patent had been transferred to
21 Uni board?

22 A No, he never said the patent had been
23 transferred.

24 Q But he did say it on February 19, 1997?

25 A He did.

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1 Q Now, when you told the Court that I and
2 other counsel to Mr. Lans have been repeatedly
3 informed by Mr. Lans that no assignment had ever taken
4 place with respect to Lans's patent --

5 MR. HANDLEMAN: I'm just giving it to him.
6 The question?

7 Q -- you were being untruthful, weren't you?

8 A Absolutely not. As I told you before,
9 assignment in Paragraph 3 of Exhibit 2 relates to
10 ownership as set forth in Paragraph 2. And when
11 Mr. Lans communicated this statement to me, he told me
12 that that meant that the patent had been given to the
13 company for administration purposes only and for --
14 and it could receive the revenue and that was being
15 administered on behalf of the beneficial owner as I

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16 recall the annual report says, which was Mr. Lans.

17 Q Did you discuss with Mr. Lans whether it
18 would be prudent to create a writing defining what
19 Uni board's rights were and were not?

20 A No. It -- no. There was already a very
21 clear writing, the 1989 and 1990 annual reports, and I
22 believe annual reports every year thereafter had an
23 explicit statement what, what the company's
24 involvement was. It didn't even say it was a right.
25 It said that the company administered the patent on

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1 behalf of the beneficial owner, which is Mr. Lans.

2 Q Did the company's Minutes, as you are
3 recalling them, say that this right to administer was
4 a one-time right applicable to the IBM agreement only?

5 A No, it -- it's not -- it wasn't diminutive.
6 This was the official annual reports filed with the
7 Swedish Government.

8 Q Yes. And did they say that the right to
9 administer was a one-time right applicable only to the
10 IBM agreement?

11 A No.

12 Q So whatever rights Uni board had with respect
13 to the IBM agreement, if those rights are set forth in
14 the records of the company that we just talked about,
15 those rights continued?

16 A The rights aren't set forth. If you --
17 I've -- I'm referring to an explicit statement made in
18 Swedish, translated by a certified translator as to

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19 what it means, and it says exactly what I just said.
20 That the patent was given over to Uni board for
21 administration on behalf of the beneficial owner, and
22 that was Hakan Lans. And Mr. Lans explained, as did
23 his accountants, that the company only received
24 revenues and had no ownership rights to that patent or
25 any foreign counterpart.

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1 Q At one point you knew that the company at
2 least had the right to license the patent?

3 A At one time, in October 1989 it had the
4 right to license to IBM. That was the only time, that
5 was the only time it had a right as far as I'm aware.

6 Q And what made that right applicable only in
7 1989 and not thereafter?

8 A Because Mr. Lans elected not to authorize
9 the company to do any more licensing thereafter
10 because he took over the licensing and he licensed
11 from then on out.

12 Q Did you consider whether it would have been
13 prudent to create a document clarifying what
14 Uni board's rights were and were not?

15 A There was no need to. Mr. Lans had already
16 done that in his annual reports, and the right to
17 revenue had no legal effect. I mean that's like, as I
18 said before, if, if I own a house and I rent it to
19 somebody and I elect to give the revenue to a niece,
20 that's -- I mean that's, that's my right to do, and
21 it's, it's not necessarily legal.

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22 Q Did you review the records of Uni board in
23 September 1996?

24 A By the way, when I say not necessarily
25 legal, I mean a legal contract.

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1 Q Did you --

2 A Repeat that, please, I'm sorry.

3 Q Did you review the records of Uni board, the
4 books and records you've been talking about, in
5 September 1996?

6 A Uni board -- excuse me, Delphi had looked at
7 certain documents I know, but I know at some point
8 not -- either before or during that week and
9 subsequent weeks Delphi did, did have access to, and
10 they may have had copies of all these documents
11 because we actually, the copies that we got of
12 Uni board, the annual reports and so on, came from
13 Delphi, not Mr. Lans, later on.

14 Q I'm sorry, when did you get the copies of
15 Uni board's annual reports?

16 A The actual copies?

17 Q Yes.

18 A I believe -- I'm not sure. I know that we
19 got, we got them at least as early as when Gateway
20 filed its motion, but I believe, I believe, I believe
21 it may have been earlier than that.

22 Q Well, is it your best memory, your testimony
23 here that you ever looked at Uni board's corporate
24 records before you filed the lawsuit in Mr. Lans's

25 name?

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1 A In 1997, is that --

2 Q In '96 or '97. '97 is when you filed.

3 A I believe it was late '97, right.

4 Q Yes.

5 A No, we -- because first of all, there
6 were -- those were in Swedish at the time. They
7 aren't -- I don't believe they were translated until
8 1999, but we knew the content of them with respect to
9 what they said about the patent.

10 Q How did you know the content?

11 A Because of being told that by Delphi
12 attorneys who had looked, who had looked at the
13 documents -- I believe they may have translated them
14 themselves unofficially -- and also having spoken to
15 at least one of the accountants, and that would have
16 been Margari te Ekafarb.

17 Q Now, so all the testimony that you've given
18 thus far today about what you knew from the corporate
19 records of Uni board was not based on your firsthand
20 knowledge in 1996 or 1997; is that correct?

21 MR. HANDLEMAN: Objection. He didn't say
22 that.

23 A No, it was, it was my firsthand knowledge
24 based upon statements made by -- to me explicitly by
25 Mr. Lans and by Delphi. And Mr. Lans explicitly told

1 me at least as early as September, early
2 September 1996 that Uni board received revenues from
3 the patent.

4 Q Yes. And did Mr. Lans also tell you that
5 Uni board, that there was something about Uni board's
6 connection with the patent and Uni board's corporate
7 books and records?

8 A I know that he mentioned something along the
9 lines that everything is, is contained in company
10 documents, and that, that may have been the first time
11 it prompted our discussions or inquiry into Delphi.
12 But Delphi was there, too, in some of the meetings
13 during that week. We were in Sweden for the entire
14 week.

15 Q You're talking about September '96?

16 A Yes.

17 Q Yes.

18 A So let me just finish.

19 Q Yes.

20 A So it may have been that Delphi -- this was
21 a discussion amongst all of us, that is Mr. Lans, the
22 attorneys, certain attorneys from Delphi, myself and
23 Mr. Powell, but I don't have a specific recollection,
24 explicitly specific recollection except that Mr. Lans
25 had made those statements to us starting around, in --

1 at that time, and Delphi did, and they never, Mr.

2 Lans' s statements about that certainly never varied
3 and I believe are still the same until this day.

4 Q I'm unclear of what your answer is so I'm
5 going to try to break it down --

6 A Uh-huh.

7 Q -- very simply. Little baby steps. In or
8 about September 1996, did Mr. Lans mention that there
9 was something in Uni board' s corporate books and
10 records that had to do with the '986 patent?

11 A I don't explicitly recall that. I do recall
12 that he said that the company did receive revenues
13 from the patent, and not -- and he didn't -- I don't
14 know that he said all the revenues or some of the
15 revenues.

16 Q Did you ask him whether the company' s
17 connection to the '986 patent and whatever rights it
18 had were in any way referenced in Uni board' s corporate
19 books and records?

20 A I don't explicitly remember that, that he
21 was -- that I asked him that. It may have been, but I
22 don't explicitly remember that.

23 Q When was the first time that you recall
24 learning, first time by date and by year, if you have
25 a month, but I'd like to get the year anyway, that you

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1 first learned that Uni board' s corporate books and
2 records referenced something to do with the '986
3 patent?

4 A The only date that I can explicitly say with

5 certainty that I recall would be in 1999. Like I
6 would say sometime late August or into September,
7 probably September, after the filing of the Gateway
8 motion.

9 Q Okay.

10 A Because of the interviews by, by Delphi
11 explicitly with Mr. Lans, and especially the former
12 and current bookkeepers, or accountants I should say,
13 certified chartered accountants for Uni board.

14 Q Now, when you looked at the corporate books
15 and records of Uni board sometime in 1999, they were in
16 Swedish?

17 A I didn't say I looked at them in -- first of
18 all.

19 Q I apologize. Let me back up to correct it.

20 A Yes, please do.

21 Q You learned about them in 1999?

22 A No, I didn't. I didn't. I think you're,
23 you're adding, you're adding to my testimony.

24 Q Let me go back and --

25 A I --

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1 MR. HANDLEMAN: Clarify it.

2 MR. HAINLINE: Let's go back and read -- or
3 he can clarify.

4 MR. HANDLEMAN: He wanted to clarify.

5 MR. HAINLINE: I'll let him clarify.

6 A I just want to say what I was referring to
7 in 1999 was the section of the annual report that has

8 the statement in Swedish that was then subsequently
9 translated, I mean officially. At some time
10 thereafter it was translated by Delphi and people at
11 Delphi, in 1999, that the company, the patent was
12 given over to the company for administration on behalf
13 of the beneficial owners. And we did not look at
14 books and records and other things, at least our firm
15 did not. Delphi may have.

16 Q And so that I get this clear, and I
17 apologize, the first time you learned that there was a
18 reference in Uni board's books and records to something
19 to do with the '986 patent was 1999, if I understand
20 you right?

21 MR. HANDLEMAN: But he keeps on saying --
22 you keep on saying books and records. He said annual
23 reports, just so it's clear.

24 THE WITNESS: Yeah.

25 Q Annual report. I'll substitute annual

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1 report. Something in Uni board's annual report having
2 to do with the '986 patent, the first time you learned
3 anything about this was 1999?

4 A You asked me before what date was I certain
5 and I told you in August of 1999 probably, maybe
6 September. I believe that beforehand I had learned
7 that from, from Delphi because Delphi had obviously
8 read the annual reports or had copies of them in
9 Swedish.

10 Q And did you ever yourself look at that

11 reference in the annual report?

12 A At any time?

13 Q At any time.

14 A Sure.

15 Q When did you first look at it?

16 A Well, I know for a fact it was, it was in
17 August or September of 1999, and before then, it was
18 described to us by Delphi, something by Peter
19 Utterstrom or Tal Lindstrom, possibly Sven Goram or
20 another gentlemen by the name of Christopher Holm.

21 Q When you looked at the annual report it was
22 Swedish, correct?

23 A No. We probably would have seen -- well, I
24 shouldn't say that. The excerpt -- was it in Swedish
25 or translated? I don't, I don't remember now. I mean

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1 I know that what I read was a, was a translation by
2 Delphi with -- it was a translation by Delphi. We
3 subsequently got a certified translation sometime, I
4 think -- actually it was the certified translation.
5 We had submitted uncertified translations in, in our
6 papers and I believe Mr. Lans's declaration or the,
7 the accountants' declarations, but there was
8 certified -- that was in '99 and 2000. But in 2001
9 there was a certified translation that was given to
10 Judge Penn because there was a translation that was
11 given to the Court by counsel for Gateway that was a
12 conveniently erroneous translation and it turned out
13 to be a false -- I shouldn't say -- clearly incorrect

14 translation. And we secured the services of a
15 certified translator to translate that language about
16 administration of the patent on behalf of the
17 beneficial owners.

18 Q Have you ever in your 29 years of practicing
19 law been involved in a lawsuit where one of the issues
20 in the case was which translator is right?

21 A Well, it's -- well, which translator is
22 right? Usually it will be -- the only time I've, I
23 can recall that there have been issues is in
24 translation of a particular term, and usually in my
25 experience in cases it's been, always been like a

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1 highly technical term, and usually in patent cases
2 it's an element of a claim.

3 Q But occasionally you're aware that the
4 correct translation is an issue in the case for the
5 fact finder to decide which of the translations is
6 right?

7 A That's, that's a possibility in, in the case
8 in your hypothetical. I suppose that that would be a
9 possibility.

10 Q And Gateway's translation, is it correct
11 that Gateway's translation of the Uni board entry in
12 the books and records was that Uni board took over
13 ownership of the patent?

14 A Gateway's, Gateway's translation was not
15 only by -- it wasn't even by an interpreter,
16 translator, it was by a Swedish attorney, and it --

17 Gateway conceded that it was an erroneous translation
18 if you recall.

19 Q Whatever they conceded and whoever it was
20 by, is it your memory that their translation was that
21 Uni board took over ownership of the patent?

22 A I don't think it said took over ownership,
23 it just said took over the patent. So it was a
24 problem with the translation because it was clearly
25 incomplete because it omitted some of the important,

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1 important words, and it was also -- what was the
2 incomplete translation was also incorrect. And again,
3 like I said, as I said, Gateway conceded that it was
4 an erroneous translation by its Swedish counsel. This
5 was Gateway's Swedish attorney.

6 Q I thought earlier today when I was asking
7 you about why you didn't look for or insist upon
8 finding the document referenced in Paragraph 6.1 of
9 the IBM Uni board license, I believe one of the things
10 you said was it wasn't necessary because the Uni board
11 annual report documented what Uni board's rights were.
12 Did I misunderstand you, or am I mischaracterizing
13 what you said?

14 A You may be, I don't know. The way you're
15 saying that makes it sound like it was an absolute
16 statement at a particular point in time, so that's why
17 I'm hesitant to agree with you, because you asked
18 about at any time with regard to that document, and as
19 I told you, at, at least at some point in time we were

20 aware of, explicitly of what the annual report said.
21 But the annual report, all the annual report
22 does is it completely corroborates the exact
23 statements made to us by Mr. Lans from very -- like
24 back in 1996, and also what Delphi had told us the
25 annual report said.

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1 Q But you -- just to make it clear, at no time
2 before you filed the lawsuit on behalf of Hakan Lans
3 did you ever see any of the Uni board annual reports
4 with any reference to the '986 patent; is that
5 correct?

6 A We physically never -- did not see them, but
7 Delphi had, and Delphi had informed us of the content.

8 Q Were any of those references by Delphi to
9 the Uni board annual report before you filed the
10 lawsuit on behalf of Hakan Lans in writing?

11 A About -- you're talking about the annual
12 reports themselves?

13 Q Yes. Yes.

14 A I -- I don't know whether they are or not.
15 All I know is that they're corroborated by the
16 declarations of Mr. Lans and his accountants, among
17 others.

18 Q Now, going back to Exhibit 4, just so I'm
19 clear about your testimony, is it your testimony that
20 February 19, 1997 is the first time that Mr. Lans told
21 you that the patent was transferred to Uni board?

22 A That was the first time he made that

23 statement that is in Exhibit 4, yes.

24 Q Without making that statement, had he in
25 substance told you this before?

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1 A No.

2 Q All right. And then he said, in order to
3 make this clear, I have signed a paper for changing
4 registration at the U.S. Patent Office. Doctor Bertil
5 Grennberg will send you this document.

6 A Yes.

7 Q When you received this, was this a fax --
8 I'm sorry, a fax?

9 A Yes, it says fax up above.

10 Q When you received this fax from Hakan Lans,
11 did you call him?

12 A Yes.

13 Q And what did you say?

14 A Well, first of all I called him to ask, to
15 talk to him about, about this, and it was relevant to
16 a prior communication with him of the day before
17 because he had just been served with the declaratory
18 judgment papers filed by Micron and Diamond Multimedia
19 in Idaho, and he was served under the Hague
20 Convention, ultimately by the Swedish police. And he
21 was very upset about this because he did not want to
22 be a Defendant in Idaho because he was concerned that
23 he would not get a fair hearing because Micron was
24 owned by a gentleman called Simpla (phonetic) who he
25 called the potato man or potato king, I don't remember

1 how he said it, and that he wanted to substitute
2 Uni board in as the Plaintiff -- as the declaratory
3 judgment Defendant and take himself out.

4 When I asked him about this statement, I
5 said what do you mean by this statement, the patent
6 has been transferred? He then reiterated to me what
7 he had told me before a few times, that Uni board
8 received the revenues and therefore it should be the
9 Plaintiff here. And I told him, it's the owner of the
10 patent, which is you, that has been identified in the
11 letter to Micron that is the Plaintiff, and Uni board
12 cannot be a substitute Plaintiff if it's not the owner
13 or an owner.

14 Q Well, then he went on to say that he has
15 signed a paper for changing registration?

16 A Yes.

17 Q Did you discuss with Doctor Lans changing
18 the registration from him to Uni board?

19 A I didn't discuss changing the registration
20 because he said he had already signed the paper for
21 changing registration. And I asked him what he meant
22 by that, and he was very unclear. He said, well, I
23 signed something. He talked to Grennberg. And as I
24 recall Mr. Lans's testimony yesterday, he said that
25 Doctor Grennberg sent him a Patent Trademark Office

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1 form, an assignment form, which I can tell you right
2 now I'm not aware of any form available from the U.S.
3 Patent Trademark Office that's a form assignment form.
4 There may be a -- forms for recordation of
5 assignments, but there are no forms that are there for
6 people to fill in the blanks for assignments.

7 Assignments are very precise, contractual instruments.

8 Q Well, whatever he did or did not get from
9 Doctor Grennberg, he says to you that he has signed a
10 paper for changing registration --

11 A Right.

12 Q -- correct?

13 A And I asked him about that. He, he was very
14 equivocal and unclear about what he had in fact done.
15 I then told him I would call Doctor Grennberg. And
16 that's in there, I did call Doctor Grennberg and
17 Doctor Grennberg just said, I don't know what you're
18 talking about. We then went and we monitored the U.S.
19 Patent Trademark Office assignment database just in
20 case something was filed or going to be filed, and
21 nothing ever turned up. So this, this statement that
22 he had signed a paper for changing the registration,
23 as far as we know, has to this date never happened at
24 any time.

25 Q And you were --

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1 A And may I finish, please?

2 Q Yeah, sure.

3 A And number two, Doctor Grennberg never sent

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4 that document because we never received any such
5 document. And Doctor Grennberg told us that he had
6 never heard of the document, seen the document, much
7 less sent us a document.

8 Q Doctor Grennberg may have a different memory
9 of whether he had that conversation with you.

10 A Well, if that's an -- if that's a question,
11 Mr. Hainline, Doctor Grennberg has been free in this
12 proceeding to show up and he's conspicuously absent.
13 If you're insinuating that he has -- that he's going
14 to say that he received that document, because I, I
15 submit that he never received -- he never sent that
16 document to Mr. Lans and he never got that document
17 back from Mr. Lans filled out or signed, and he
18 certainly never sent it to me, and he certainly never
19 filed it with the U.S. Patent and Trademark Office.

20 Q Let's go through a little bit of this.
21 You're Doctor Lans's lawyer at this time?

22 A Yes.

23 Q And Doctor Lans tells you, I don't want to
24 be a party to the case that Micron filed, I want
25 Uni board to be a party.

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1 A He didn't say -- he said, he said, I want to
2 be -- I want Uni board -- he didn't say I want. He
3 said, can't Uni board be the party here instead of me?
4 And I told him the only way that Uni board can be the
5 party is if it owns the patent.

6 Q Okay.

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7 A And he accepted that and said, well, since
8 I'm the owner, then I am the party, and that was the
9 end, the end of the discussion.

10 Q So he tells you, in effect, I'd like
11 Uni board to be the party, not me?

12 A He didn't say -- no, that's exactly wrong.
13 You've mischaracterized my statement. My -- I said he
14 said, can't -- he asked me for an opinion as to, based
15 upon the present facts, could Uni board be substituted
16 in for he.

17 Q For him?

18 A Hakan Lans. I --

19 MR. HANDLEMAN: Wait a second.

20 A If you want to correct my grammar, you can.
21 I just want to continue.

22 MR. HANDLEMAN: Just finish the answer.

23 A And he asked me whether that could be done
24 and I told him it could not because he was, he was the
25 owner, that -- he did not ask me whether we could

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1 change the ownership of the patent and then switch it
2 over to Uni board at any time.

3 Q Okay. Part of the conversation he discusses
4 with you, as you characterized it, having Uni board
5 instead of him as the party in this. That's part one,
6 correct?

7 A No.

8 Q Just in your words, can't Uni board be the
9 party instead of me?

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10 A Right.

11 Q That's what he said, right?

12 A Uh-huh.

13 Q And then in this document he says, I have
14 signed a paper for changing registration now, which
15 you got, right? You got this document from him where
16 he said he had signed a document for changing
17 registration, correct?

18 A Yes.

19 Q And you had told him you can't be the party,
20 or Uni board can't be the party unless there's a change
21 of registration. You told him that, correct?

22 MR. HANDLEMAN: He didn't -- objection. He
23 didn't use the word registration.

24 A No, I didn't say that. I didn't say that at
25 all. I said Uni board cannot be the Plaintiff -- the

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1 declaratory Defendant here because it's not the owner
2 of the patent, you are, and you are the party. You
3 gave notice to Micron. That's what was said.

4 Q I didn't hear the part about, and you are
5 the party that gave notice to Micron.

6 A I said that earlier --

7 Q Earlier?

8 A I apologize for interrupting you. I said
9 that earlier in my testimony when you first asked me
10 about this document and about it in detail.

11 Q Once you did not receive a document for
12 changing registration from Doctor Grennberg, did you

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13 prepare a document for changing registration yourself?

14 A No, of course not. I wasn't authorized to
15 do so.

16 Q Well, this Exhibit 4 says that in order to
17 make this clear, I have signed a paper for changing
18 registration, and he sent it to his lawyer who was
19 you. Tell me why you didn't --

20 MR. HANDLEMAN: Objection. That's not what
21 it says. You're taking it out of context.

22 Q -- create a document to change registration
23 for him.

24 A Mr. Hainline, he doesn't say here that he
25 signed the document and sent it to me. He said

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1 Doctor -- he said he signed the document and
2 Doctor Grennberg will send me the document. I
3 follow -- I asked him about what he meant about this
4 document. He was at best unequivocal (sic) about
5 recalling what it was exactly. I took it to Doctor
6 Grennberg who said he had no idea what I was talking
7 about and that no such document changing any, any, any
8 ownership of the patent or registration of the patent
9 with the U.S. Patent Trademark Office had been sent to
10 me. And this certainly in my mind was not an
11 instruction from Mr. Lans for us to respond to any --
12 to do an assignment because if we had done that, we
13 obviously would have to send it back to him and have
14 him sign it and send it back to us for filing.

15 Q If you had changed the registration from

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16 Lans to Uni board in February of 1997, in your view
17 would you have had to send out new Notices of
18 Infringement in the name of Uni board?

19 A That, that's a hypothetical that probably is
20 incomplete. I don't know whether, whether we would
21 have done so.

22 MR. HANDLEMAN: I would note an objection.
23 You're asking for a legal opinion, but you can answer.

24 A We may have, we may have -- we may well have
25 done that, sent out, sent out additional notices

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1 potentially.

2 Q In your view, would the original notices
3 sent out at the end of 1996 in the name of Hakan Lans
4 have been sufficient for a collection of damages
5 against these infringers if Hakan Lans had changed the
6 registration to Uni board?

7 MR. HANDLEMAN: Objection. You're asking
8 for a legal opinion from a fact witness, but you can
9 answer if you can.

10 THE WITNESS: Read the question back.

11 (Record read.)

12 A Our views were contained in our appellate
13 brief to the Federal Circuit on that issue. We -- it
14 was our position on behalf of Mr. Lans that the Notice
15 of Infringement sent out by Mr. Hakan Lans were
16 sufficient notice, even though it ultimately turned
17 out that Uni board was the owner.

18 BY MR. HAINLINE:

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19 Q Okay.

20 A And that -- and the Federal Circuit -- I
21 wasn't done. Sorry. And the Federal Circuit said --
22 disagreed but said it was a very close case and a case
23 of first impression.

24 Q Are there any internal memos at Adduci,
25 Mastriani & Schaumberg at anytime from February 1997

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1 until the date that the case was filed in Hakan Lans's
2 name discussing this issue?

3 A Oh, Hakan Lans. I don't recall
4 specifically. I think there may be. I mean one of
5 the things that was not turned over were, were our
6 attorney internal research memos.

7 Q And did any of these memos discuss whether
8 you would need new Notices of Infringement if Uni board
9 were the named Plaintiff rather than Doctor Lans?

10 A The -- I did -- now I'm going to maybe back
11 up because you're talking -- now I understand you're
12 talking, you're using a hypothetical, and at this time
13 I just told you the, the only time this became an
14 issue was, was on appeal to the Federal Circuit. So
15 there may have been memos for those briefs, but there
16 was never any memo before that time opining as to
17 whether notice by Mr. Lans prior to the filing of the
18 Gateway motion was sufficient notice or prior to the
19 filing of the Uni board case also.

20 Q Are there any internal memos discussing
21 whether new notices would have to be sent, sent out

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22 if -- and this is before the lawsuit was filed -- if
23 Uni board rather than Lans were the Plaintiff?

24 A Oh, no. Before the lawsuits were filed
25 there were no such, there were no such memos like

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1 that. We, we -- everybody was thoroughly convinced
2 based upon Mr. Lans's explicit representations and all
3 the other information that he was the owner, had
4 always been the owner, and -- was the sole owner and
5 had always been the sole owner of the '986 patent.

6 The only issues that came up with regard to
7 ownership was that some of the European patents had
8 been assigned -- issued to Erickson out -- L.M.
9 Erickson, the Swedish company. Mr. Hakan Lans states
10 in an E-mail in Exhibit 1 in one of the exhibits that
11 he was a consultant to and worked for, and when we
12 asked him about that, why -- about Erickson being the
13 identified owner of the patents, he told us that
14 they -- that because he was doing so much work for
15 Erickson, he didn't have the time to or the money to
16 spend on prosecuting the patents, and -- but he --
17 what he did, what they did for him was that they
18 offered to, to -- they offered to have their in-house
19 people prosecute the patents for him.

20 So what happened was that the patents had
21 issued to him because we explained to him very
22 carefully early on, and this was in 1996, maybe the
23 beginning of 1997, but certainly in 1996, I believe,
24 is that the -- while in Europe the name on the

25 country's patent registry is the actual owner, in the

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1 U.S. that's not the case because you can have a patent
2 issued to somebody in the U.S., but if it was assigned
3 in an assignment that wasn't recorded with the Patent
4 Office, then you could wind up having a different
5 owner than that identified in the patent that was
6 originally issued.

7 Q When was it by year when you learned about
8 these Erickson assignments?

9 A It was 1996, I believe it was. There's --
10 yeah, I believe it was 1996. First there was
11 something, some questions about that because we -- we
12 had done an assignee database search, both -- not only
13 in the U.S., on the official registry of the U.S.
14 Patent Trademark Office assignee registry, but also we
15 had done it in Europe on the official databases there,
16 then we used the commercial database. And L.M.
17 Erickson was identified on a couple, on the Swedish
18 patent, I think it was, I believe it was the Dutch
19 patent, and maybe one other country other than
20 Germany. Germany, Mr. Lans was the identified owner.

21 Q Now, if the registration of the '986 patent
22 was changed from Hakan Lans to Uni board, would that be
23 an assignment of the patent?

24 A What do you mean by registration?

25 Q Do you have an understanding of what

1 Mr. Lans meant when he wrote here that he had signed a
2 paper for changing registration at the U.S. Patent
3 Office?

4 A No, because when I asked him about it, he
5 didn't know what he meant by that statement. He -- it
6 says signed a paper for changing registration. I
7 assumed that meant an assignment.

8 Q Okay.

9 A But I wasn't sure. That's why I called him.

10 Q Okay.

11 MR. HANDLEMAN: Let's have some lunch.

12 (Luncheon recess taken at 12:53 p.m.)

13 BY MR. HAINLINE:

14 Q Sometimes when you're trying to remember
15 dates, it's a little difficult. But then if you take
16 a break, you -- occasionally they come back in your
17 head. So that's a preface to this question.

18 Mr. Mastriani, can you tell us by month and
19 year the best recollection you have of when you first
20 saw the Uni board annual report reference to the '986
21 patent?

22 MR. HANDLEMAN: I think he answered. He
23 answered, but you can go again.

24 A I can tell you that I know for certain that
25 I saw, saw it in both the Swedish and the version with

1 a translation of the operative section, I'm talking

2 about the page, not the entire report, and this is for
3 '89, I was told for '90, in August, at the September
4 of '99. And prior to that I can't give you any date.
5 I'm not sure I actually physically saw one. I know
6 that I was told what, what, what it said regarding the
7 '986 patent by both Mr. Lans and Delphi.

8 Q When, if you know, was the German
9 nullification proceeding instituted having to do with
10 the '986 patent?

11 A There was no nullification proceeding ever
12 instituted against the '986 patent because that's a
13 U.S. patent and it's only subject to U.S. proceedings.
14 You may be referring to the German patent.

15 Q I correct myself. The German counterpart of
16 the '986 patent.

17 A It's my understanding that that was
18 initiated by Hitachi, I believe it was sometime in
19 19 -- in '85 I think it was, something like that.

20 MR. HAINLINE: Let's have marked as
21 Exhibit 5 a fax to Mr. Mastriani from Mr. Utterstrom
22 dated January 30, 1997.

23 (Exhibit No. 5 was marked for identification and
24 was attached to the transcript.)

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1 BY MR. HAINLINE:

2 Q Did you receive the original of this fax on
3 or about its date?

4 A Let me just finish reading this.

5 Q Of course.

6 A Yes.

7 Q Look at the last paragraph before the,
8 before the sign-off on the second page. It says,
9 finally, with the risk of stating the obvious, but
10 Lans is not fully informed of our discussions
11 concerning the financing.

12 Did you have any discussions with
13 Mr. Utterstrom about that statement?

14 A Well, let me just complete the statement. I
15 think you didn't cite the entire statement -- the
16 sentence. It says finally, hyphen, at the risk of
17 saying the obvious, but Lans is not fully informed of
18 our discussions concerning the financing, hyphen, he
19 emphasized any litigation may not even -- may not be
20 initiated unless there's adequate financing.

21 I'm sorry, what was your question, please?

22 Q Did you discuss this statement with
23 Mr. Utterstrom?

24 A No.

25 Q Did you know why Lans was not fully informed

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1 of your and Peter Utterstrom's discussions regarding
2 financing?

3 A I'm not sure what Mr. Utterstrom was saying
4 here other than what is said, and that is that
5 Mr. Lans knew that there was financing for the
6 litigation and that he insisted that no litigation be
7 initiated unless there was adequate financing. As to

8 what Mr. Utterstrom meant by Mr. Lans was not fully
9 informed of the discussions concerning the financing,
10 all I can assume is that he meant that Mr. Lans wasn't
11 told about every single word that was said in any
12 discussion, but you'd have to ask Mr. Utterstrom that.

13 MR. HAINLINE: Please mark as Exhibit 6 a
14 letter, confidential letter sent to Adduci,
15 Mastriani & Schaumberg on February 8, 1997 from James
16 M. Scott for and on behalf of 4,303,986 Partners.

17 (Exhibit No. 6 was marked for identification and
18 was attached to the transcript.)

19 A (Reviewing.)

20 Yes.

21 BY MR. HAINLINE:

22 Q Did you receive the original of Exhibit 6 on
23 or about its date?

24 A I did not personally receive it. I know the
25 firm received it; it's says so on the fax legend. I

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1 saw this sometime within the next week or two, or few
2 weeks thereafter.

3 Q Look at the last page, if you will, please,
4 AMS 001740.

5 A Yes.

6 Q Whose signature is that on behalf of AMS?

7 A That is Jim Adduci.

8 Q Did you ever provide this document to
9 Doctor Lans?

10 A No, there was no need to.

11 Q Did you ever discuss with Doctor Lans that
12 another group had a contingent interest in the
13 litigation?

14 A Oh, yes.

15 Q Did you identify who the group was?

16 A No. He didn't -- no, I didn't, and he
17 didn't ask. Okay. He had no interest in, in any of
18 the details. All he wanted to know and be assured of
19 was that there was financing, which we told him there
20 was.

21 Q Did you provide any information about the
22 lawsuit in writing to the '986 Partners before the
23 document Exhibit 6 was executed by your firm and
24 Delphi?

25 A I think there were some, there was some

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1 correspondence, maybe a memo about this that was given
2 to them. I think it may have been to Mr. Scott at
3 Cappel Howard in Montgomery, Alabama.

4 Q And did that memo describe the lawsuit?

5 A I don't have a recollection of the
6 memorandum right now. That -- and there was no
7 lawsuit, Mr. Hainline. I just told you before, this
8 morning that the litigation wasn't filed until, I
9 believe it was late 1997.

10 Q Did --

11 A And this is, for the record, February 3rd --
12 February 3rd, 1997.

13 Q Did the memo describe the contingency in

14 which the '986 Partners invested?

15 A Did the memo describe the contingency in
16 which the '986 Partners had invested? No, because
17 there was no investment at the time. There were no
18 '986 Partners. So the memo, I believe there was a
19 memo that went to Mr. Scott that, that described, that
20 may have described what the project, licensing project
21 was about, but I don't, I don't have a clear
22 recollection without seeing that document.

23 Q Have you refused to produce that document to
24 Doctor Lans's successor counsel?

25 A Did we refuse? Have we refused?

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1 Q Yes, have you refused to produce that
2 document to successor counsel?

3 A A memorandum? Not that I'm aware of. It --
4 maybe, but I don't know whether or not it was.

5 MR. HAINLINE: Okay. I'll follow-up with
6 you on that, Aaron. Just showing you there was a
7 document that the witness declined to produce it and
8 asking that it be produced. So I'll -- just to let
9 you know. But I'll do this in writing after --

10 MR. HANDLEMAN: Whatever suits you, that's
11 fine.

12 MR. HAINLINE: Okay. Well, what suits me is
13 alerting you and then getting it.

14 MR. HANDLEMAN: Okay.

15 MR. HAINLINE: I won't have to wait.

16 Let's mark as Exhibit 7 the letter from me

17 to Mr. Mastriani dated December 13, 2001.

18 (Exhibit No. 7 was marked for identification and
19 was attached to the transcript.)

20 BY MR. HAINLINE:

21 Q Did you receive the original of this letter
22 on or about its date?

23 A There is no indication on this that it was
24 received. There's no fax legend that it was received
25 like there is on Exhibit 6, so I don't know for sure.

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1 It may well be that it was received. I assume it was
2 received if you represent that you sent it.

3 Q Do you recall receiving it?

4 A (Reviewing.)

5 I know that there was a request at some time
6 regarding, regarding -- in fact it was a request by
7 you as a sole practitioner for, for our firm to supply
8 Pillsbury Winthrop, who at that time I don't believe
9 was representing anybody in the case, with documents
10 related to 4,303,986 Partners.

11 MR. HAINLINE: Let's mark as Exhibit 8 a
12 letter of December 14, 2001 from Mr. Mastriani to me.

13 (Exhibit No. 8 was marked for identification and
14 was attached to the transcript.)

15 BY MR. HAINLINE:

16 Q Did you write the original of Exhibit 8 and
17 send it to me on or about its date?

18 A Yes.

19 Q Please look at the second page, the second-

20 from-the-last paragraph. Please also be advised that
21 neither Pillsbury Winthrop nor you were provided with
22 copies of any correspondence between 4, 303, 986
23 Partners and our firm for the simple reason that these
24 are not client files, but rather confidential business
25 information of this firm that relate to its financing

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1 of expenses. In the event, however, you can
2 articulate a compelling argument to the contrary, I'd
3 be willing to reconsider this position.

4 The '986 Partners financing was all related
5 to the Lans licensing project, wasn't it?

6 A It was not related to the licensing project.
7 It was related to the internal arrangement that the,
8 that the law firms undertook with the knowledge of
9 Mr. Lans to secure financing to pay for expenses of
10 litigation. So it wasn't, it wasn't related to the
11 project other than in that sense.

12 Q So it was related to the litigation part of
13 the licensing project; is that correct?

14 A It was related to securing financing in the
15 event it was needed for expenses for potential
16 litigation in the future.

17 Q And the litigation you're talking about is
18 litigation over the '986 patent, correct?

19 A That's correct.

20 Q No other litigation?

21 A That's correct.

22 Q And have you continued to withhold

23 correspondence between your firm and the '986

24 Partners?

25 MR. HANDLEMAN: I'm going to object and say

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1 the position remains the way it was. It's not being
2 produced. This is not in connection with any other
3 related litigation that -- you have a malpractice
4 case, and our position remains the same and that is
5 you're not entitled to it.

6 A Should I answer all the same?

7 Q Yes, I'd like an answer as to whether you're
8 withholding documents. I hear your lawyer talk, but
9 I'd like your testimony as to whether you continue to
10 withhold documents.

11 A This letter invites you to, quote,
12 articulate a compelling argument to the contrary
13 whereupon, quote, it was indicated to you from me
14 that, quote, I would be willing to reconsider the
15 position, closed quote. That's never happened. It
16 was not even a response to this request. So we
17 believe, and continue to believe, that this is
18 information that is, that is information that is
19 confidential to the firm and had nothing to do with
20 the, any part of the project as it related to Mr.
21 Lans. It was merely how we determined to finance
22 the -- any expenses that could be incurred by the firm
23 because Mr. Lans insisted he would not spend one penny
24 of his money on any aspect of this project, and he
25 required and demanded that any financing be, be

1 undertaken by us, whether directly or through
2 investors. And in fact he suggested it because his
3 whole modus operandi in all his business was to never
4 spend one penny of his money, but to get investments
5 from various investors in Sweden and other European
6 countries, and his testimony yesterday bears that out.

7 Q With that explanation, could you answer my
8 question; do you continue to withhold documents?

9 A I just answered that and, and I said yes, we
10 continue to withhold it because we have never received
11 a response from you articulating what the basis would
12 be for us giving you and your firm that type of
13 information.

14 Q So your sworn testimony is I never provided
15 you with any further explanation?

16 A I, I don't recall receiving any, any
17 explanation, any compelling argument is what it says,
18 and that's what I wanted. And you -- you may have
19 given me an explanation, but whether I considered it
20 to be a compelling argument or less than compelling
21 argument I don't know unless I see what you may have
22 given me.

23 Q I see. And do the documents that you
24 withheld describe the '986 patent and the strategy for
25 enforcing it?

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1 A No. I -- I would -- I don't believe that
2 that's the case. I think that any document that may
3 have been given to '986 Partners was just probably
4 background information about Mr. Lans specifically,
5 what was appended to the license. I think it was the
6 license, the letter that went out notifying people
7 with the infringement, with the draft license
8 agreement and the background about Mr. Lans and the
9 '986 and related European counterpart patents. But
10 there was, there was certainly nothing about strategy
11 in the sense of, of specific strategic considerations.

12 Q The '986 Partners were folks who you were
13 hoping would invest in the litigation in the hope that
14 their investment would lead to a profit, correct?

15 A It -- I think it sets forth, actually, in
16 Exhibit 6 as to what, what the agreement was and
17 that, that states on its face that, that the
18 partnership was willing to advance up to \$300,000 in
19 increments of \$60,000, and that in return for each
20 \$60,000, the partnership would receive an amount equal
21 to one percent of the net recovery, and that is the
22 net recovery paid to the law firms. That would be
23 after, after 67 percent of any revenues were given to
24 Mr. Lans per, per the agreement. So in other words,
25 the partnership would get -- of the 33 percent that

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1 the lawyers would get, they would -- if, if \$60,000,
2 for instance, was, was what was drawn, then the
3 partnership would get one percent of the 33 percent.

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4 In other words, one point of the 33 points.

5 Q And in order to give these potential
6 investors adequate information upon which they would
7 make the decision about investment, did you describe
8 the project and the amount of money you thought the
9 project would generate?

10 A Only in -- no. Only in the sense of the
11 most general terms. These people were not strangers
12 to, to our firm. We -- some of them were, were -- one
13 person was a, a former client, and one person was a --
14 the attorney, Jim Scott, was somebody who knew us and
15 they relied on our, on our judgment that it was a
16 worthwhile project to invest in.

17 Q And did any of the writings set forth your
18 judgment and the facts upon which you were making that
19 judgment, writings to Mr. Scott and these other folks
20 who were known to you?

21 A Well, I don't, I don't recall the writings
22 right now, not having them in front of me. But I just
23 told you before that to the extent that that was the
24 case, it was only in the most general terms about what
25 was going to be done. In other words, attempts to

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1 license and failing attempts -- failing in securing
2 licenses from, from parties who received Notices of
3 Infringement, there was a possibility of litigation.
4 But there were no representations, in other words,
5 that something was definitely going to be, going to be
6 done or not be done.

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7 Q Mr. Scott is a lawyer?

8 A That's correct.

9 Q And you knew he was a lawyer at the time
10 that your firm signed with the '986 partnership
11 agreement?

12 A Yes. He was, he was, he was -- he wasn't
13 approached as a lawyer. He was approached as a
14 private individual. If you look at the document, the
15 agreement, it's on his private letterhead. It just
16 happens to have been sent from his law firm fax, just
17 like I'm sure you send personal correspondence on your
18 firm's fax.

19 Q Who was the other person you mentioned who
20 was known to you who was a member of '986 Partners?

21 THE WITNESS: Could you repeat the question?

22 (Record read.)

23 A June Collier, who you have identified
24 erroneously as a licensee making a payment to
25 Mr. Lans.

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1 BY MR. HAINLINE:

2 Q And who is June Collier?

3 A She's a business person that lives down
4 south and has been a former client of our firm.

5 Q And were funds paid to Miss Collier from
6 monies received from licensees of the '986 patent?

7 A That's correct.

8 Q How much money?

9 A One percent. Just so it's clear, it's not

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10 one percent of -- it would be of the 33 points, let's
11 put it that, that was paid. After Mr. Lans was paid
12 67 percent, Ms. Collier received one of those points
13 before the lawyers were paid.

14 Q Can you tell me how much that was in
15 dollars?

16 A No, I don't know that. I mean I think it
17 may have been a couple hundred thousand dollars or
18 thereabouts, maybe a little bit more.

19 Q And what was her investment that led to the
20 couple hundred thousand dollars?

21 A The \$60,000, which is the one as set forth
22 in the agreement.

23 Q Did any other member of the '986 Partners
24 receive any distribution from licensee fees under the
25 '986 patent?

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1 A Well, I don't know that. I mean the money
2 went to Ms. Collier. Whether it was, whether it was
3 then split up among the rest of the partners, I don't
4 know that.

5 MR. HAINLINE: Okay. Please, let's mark as
6 Exhibit 9 a memo from Mr. Mastriani to Mr. Utterstrom
7 dated January 22, 1997.

8 (Exhibit No. 9 was marked for identification and
9 was attached to the transcript.)

10 A Yes.

11 BY MR. HAINLINE:

12 Q Did you write the original of Exhibit 9 and
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13 send it to Mr. Utterstrom on or about its date?

14 A Yes.

15 Q When did you first learn about the issue
16 regarding the extent of the license grant in the IBM
17 agreement?

18 A You're talking about Paragraph 2 with regard
19 to Cirrus Logic?

20 Q Yes. I think it's Paragraph 3.

21 A Yeah, you're right, I apologize, you're
22 right.

23 Q That's okay. Most of the mistakes today
24 have been mine, so yeah, Paragraph 3.

25 A Yes, I see that.

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1 I received a telephone call sometime in
2 October, perhaps November of 1996 from Shirley Church
3 who was general patent counsel for Cirrus Logic. She
4 was located in Fremont, California. And then I had
5 another series of conversations with she and Robert
6 Donahue, who was the general counsel, and Ms. Church
7 first made inquiry into whether Cirrus Logic could
8 have a license under the Lans patent which she knew
9 about because the genesis for her call was the fact
10 that these letters had gone out in September of '96 to
11 a variety of computer manufacturers. And in
12 subsequent discussions with she and Mr. Donahue, they
13 claimed that their graphics, in other words, Cirrus
14 Logic graphic chips were manufactured in a facility
15 called Micrus, which is a joint venture and had

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16 formerly been an IBM fabrication facility in Fishkill,
17 New York, and they both indicated that it was their
18 opinion that the Cirrus Logic products, graphic chips
19 specifically that were manufactured in that facility,
20 were protected by the license agreement with IBM.

21 Q And did you study the IBM Uni board license
22 agreement so that you could satisfy yourself as to
23 whether Cirrus Logic was correct?

24 A Well, we knew from looking at the agreement
25 that there was nothing in there about -- per se about

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1 joint venture facilities as being clear about, about
2 which of the IBM subsidiaries and affiliated companies
3 were covered. It was our opinion that, that it would
4 not cover a joint venture facility that manufactured
5 products for another company. And that agreement was
6 also covered by German law. So we secured, we
7 endeavored to secure opinions from, from German
8 counsel that, that Delphi knew. I believe the
9 particular German attorney's name was Klaus Vorwerk.

10 Q You also mentioned in Exhibit 9 that it is
11 imperative that we receive the signed agreement from
12 Hakan because the attorney for the investor group
13 wants to attach it to the financing agreement. Was
14 the person -- well, let me ask this first. Is the
15 investor group you're referring to here the '986
16 Partners?

17 A Yes. Yeah. And the re line says Lans
18 agreement, semi colon, and then, then, then opinion on

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19 application of German law to license agreement, IBM
20 license agreement.

21 Q And is the attorney for the '986 Partners
22 the attorney for the finance -- I'm sorry, for -- the
23 attorney for the investment group, is that Mr. Scott?

24 A I -- it may be. I'm not sure.

25 Q Was there some other attorney for the

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1 investor group you were aware of other than Mr. Scott?

2 A No.

3 MR. HAINLINE: Let's have marked as
4 Exhibit 10 a memorandum from Mr. Schaumberg to
5 Doctor Lans with a copy to Peter Utterstrom dated
6 April 7, 1997.

7 (Exhibit No. 10 was marked for identification and
8 was attached to the transcript.)

9 BY MR. HAINLINE:

10 Q Mr. Schaumberg is your partner?

11 A That's correct.

12 Q Was he your partner on April 7, 1997?

13 A That's correct.

14 Q Did you see the original of Exhibit 10
15 before it may have been sent to Hakan Lans and Peter
16 Utterstrom?

17 A Well, I know that this document you're
18 showing me, No. 10, wasn't sent. It was incomplete.
19 There were two letters attached to that and they were
20 discussed yesterday in Mr. Lans's deposition, so this
21 is an incomplete document. But this document, along

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22 with the draft letter to Edward Gershuny at IBM, as
23 well as the draft letter to Klaus Vorwerk, Germany,
24 regarding the, an opinion on the IBM license did go to
25 Mr. Lans, and I did see that.

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1 Q So this memo was sent to Doctor Lans and
2 Peter Utterstrom, and you were aware of, that along
3 with it were sent two other documents; is that
4 correct?

5 A That's correct. The two letters to which
6 Mr. Lans in an E-mail authorized being sent and
7 authorizing, authorizing our firm to represent
8 Uni board with respect to asking IBM about its
9 interpretation of the IBM agreement as to what
10 products it could cover.

11 Q Let me show you a document that was marked
12 as Exhibit 12 to Doctor Lans's deposition yesterday.

13 A It is in Exhibit 1, Mr. Hainline.

14 Q It is?

15 A I know it is. I believe it's in here
16 somewhere.

17 Q Let me see if I can find it and make it
18 easier for us without having to cross-reference.

19 Oh, I think I see it as -- at least as --
20 it's Tab 29 to Exhibit 1. And again, I -- there's no
21 significance to how these numbers appear, and it may
22 be that they're not in -- the numbers for some reason
23 aren't corresponding to the way they were put in your
24 memorandum, and for that I apologize.

25 Will you look at Tab 29 to Exhibit 1?

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1 A I have that.

2 Q Is this the complete Exhibit 10, or let me
3 put it that way. I showed you, I showed you
4 Exhibit 10 as one page and you explained to me why it
5 was incomplete. Is Tab 29 to Exhibit 1 the complete
6 document you were talking about?

7 A Tab 29 is the complete document I was
8 talking about, along with fax confirmations for
9 receipt fax, or fax receipt confirmations for both
10 Mr. Utterstrom and Mr. Lans for this document.

11 Q Okay. Was it your firm's practice when
12 sending faxes to Doctor Lans to have fax confirmation
13 sheets and keep them in your files?

14 A Yes.

15 Q And I think you said Doctor Lans responded
16 to Mr. Schaumberg's memo that AMS was authorized to
17 act on behalf of Uni board in negotiations with IBM?

18 A If you turn to Tab 30 of Exhibit 1, you'll
19 see his April 9, 1997 response to me, actually.

20 Q Okay. Let's do that. Tab 30 to Exhibit 1
21 is a fax from Hakan Lans to Mr. Mastriani dated
22 April 9, 1997. Did you receive the original of this
23 document on or about its date?

24 A Yes.

25 Q And is this the document that you understood

1 Doctor Lans was sending to you authorizing AMS to act
2 on behalf of Uni board in the discussions with IBM?

3 A Yes.

4 MR. HAINLINE: Let's mark as Exhibit 11, a
5 letter from Mr. Schaumberg to Mr. Gershuny dated
6 April 9, 1997, with a certified mail receipt as the
7 last page of the document.

8 (Exhibit No. 11 was marked for identification and
9 was attached to the transcript.)

10 BY MR. HAINLINE:

11 Q To your knowledge, did Mr. Schaumberg send
12 the original of Exhibit 11 to Mr. Gershuny at IBM?

13 A Yes.

14 Q In the second page, the second-from-the-last
15 paragraph after the indented quote it says, by this
16 letter we invoke the provisions of Section 11.2 on
17 behalf of Uni board and request a meeting at the
18 earliest practicable opportunity, et cetera.

19 Did you in fact have a meeting with anyone
20 at IBM?

21 A Well, if you don't mind, I'd like to read
22 the entire sentence because you cut it off in the
23 middle. It says, by this letter we invoke the
24 provisions of Section 11.2 on behalf of Uni board and
25 request a meeting at the earlier practicable

1 opportunity with a representative of IBM to establish

2 the basis, if any, of the position espoused by Cirrus
3 Logic under the law applicable to the agreement,
4 closed quote.

5 There was no meeting with a representative
6 of IBM, actual, actual face-to-face meeting.

7 Q Okay. There's a statement at the top of
8 Page 2, in the paragraph that begins on behalf of
9 Uni board Aktiebol ag.

10 A Yes.

11 Q That if you go in there, I think it's the
12 second sentence where Mr. Schaumberg writes, in fact,
13 in recent correspondence from Cirrus Logic the
14 statement was made that, quote, IBM licensing counsel
15 assured me that products purchased from Micrus would
16 be licensed, closed quote.

17 Are you aware of who that IBM licensing
18 counsel was?

19 A That, I believe, I believe is Mr. Gershuny,
20 because when we -- what happened was, as a result of
21 the discussions with Cirrus Logic and its claim that
22 its products were covered by the agreement, contact
23 was made with IBM and Mr. Gershuny was identified as
24 the person that was involved in this, and his title
25 was senior counsel and he was in the intellectual

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1 property and licensing services division of IBM in
2 Thurmont, or Thurwood -- excuse me, Thornwood, New
3 York.

4 Q Did you or Mr. Schaumberg to your knowledge

5 have any telephone conversations with Mr. Gershuny?

6 A A number, a number of telephone
7 conversations.

8 Q In any of those, did you ever happen to ask
9 him if he had a copy of the agreement referenced in
10 6.1 of -- Paragraph 6.1 of the IBM license agreement?

11 A No. Mr. -- actually Mr. Gershuny always
12 referred to the agreement as an agreement between
13 Mr. Lans and IBM regarding Mr. Lans's patent, and
14 Mr. Gershuny knew directly and also through Cirrus
15 Logic that Mr. Lans was identified in the
16 September '96 Notices of Infringement as the owner of
17 the '986 patent.

18 Q But you were writing to Mr. Gershuny on
19 behalf of Uni board, correct?

20 A We were writing to Mr. Gershuny only with
21 respect to the Cirrus Logic and Micrus issue. And in
22 order to have the technical right to ask -- to raise a
23 dispute with IBM about its interpretation of the
24 agreement, we had to have authority from Mr. Lans to
25 say that we were acting on behalf of Uni board. So it

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1 was -- the contact with IBM came under two general
2 subject matter areas. One was about the Cirrus Logic
3 issue, which was a, which was a claim by Cirrus Logic
4 that because its products were covered by the license,
5 therefore its customer's product, computer that had
6 its graphics chips in them were covered, which was
7 something that Mr. Lans was -- did not want to happen

8 under any circumstance.

9 Number two, at -- in 1996, late '96 into
10 early '97 there we were contemplating with Mr. Lans's
11 authority filing a Section 337 complaint with the U.S.
12 International Trade Commission alleging patent
13 infringement against a number of foreign companies,
14 including one company that imported its computer
15 products from, from abroad. And as part of that
16 Complaint, we had to demonstrate the existence of a
17 domestic industry. And since there was no
18 manufacturing that was owned by Mr. Lans doing
19 anything with regard to the patent in the United
20 States or any engineering being done by Mr. Lans and
21 being done by Mr. Lans in the United States, we had to
22 rely on licensing, which is a recognizable activity
23 under statute.

24 And because of that, we needed to rely on,
25 in part, Lans, excuse me, not only the licensing

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1 activities by Mr. Lans currently, but also the
2 original licensing activity by Uni board with regard to
3 IBM, coupled with what was IBM doing in this country
4 with regard to manufacturing any products that were
5 covered by the '986 patent so we could allege that
6 there was manufacturing by a licensee in the United
7 States of a licensed product.

8 Q I thank you. I think that I asked that if
9 you wrote this document on behalf of Uni board
10 Aktiebolag?

11 A And I told you yes, and I told you why.

12 Q So however Mr. Gershuny referred to the
13 patent, there was no question in your mind that the
14 license between IBM -- or that the license with IBM
15 was with Uni board?

16 A Oh, unquestionably.

17 MR. HAINLINE: 12 will be a letter of
18 April 18, 1997, to Mr. Gershuny.

19 Q Is that how you pronounce, Mr. Gershuny,
20 rather Gershuny. This won't show up in the transcript
21 as to what my difference is. How does you're --

22 A Depending on what part of the country,
23 you're Gershuny, Gershuny, because -- you say potato,
24 I say potato.

25 Q I'll say Gershuny.

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1 April 18, '97, Schaumberg to Gershuny. And
2 my question is?

3 MR. HANDLEMAN: You do know, gentlemen, that
4 the absence of a videographer makes your pronunciation
5 rather moot, so --

6 (Discussion off the record.)

7 (Exhibit No. 12 was marked for identification and
8 was attached to the transcript.)

9 BY MR. HAINLINE:

10 Q Do you know whether Mr. Schaumberg sent the
11 original of Exhibit 12 to Mr. Gershuny on or about its
12 date?

13 A He did, because see, with a cc to Mr. Lans.

14 Q Okay. Did Mr. Gershuny respond to this
15 letter and provide Mr. Schaumberg and your firm with
16 the information he requested?

17 A There was some information that was
18 communicated, and I'm not sure in which form, what it
19 was precisely and in what form.

20 Q Now, at the end of the first paragraph
21 Mr. Schaumberg writes that since the Micrus joint
22 venture with IBM appears to be key to Cirrus Logic's
23 claims, it is important that IBM's licensor, Uni board,
24 understand the nature of the joint venture and thereby
25 the basis for Cirrus Logic's position.

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1 Did IBM provide you with the joint venture
2 agreement?

3 A I do not specifically recall whether that
4 was provided by IBM or Cirrus Logic.

5 Q Did one of those two companies provide you
6 with a joint venture agreement, I mean, you know,
7 either IBM or Cirrus Logic, but did you get it from
8 somebody, one of those two?

9 A I don't, I don't, I don't specifically
10 recall that we did.

11 Q Did Mr. Gershuny ever tell you that he
12 was -- it was none of your business, he's not going to
13 provide you with any of this information?

14 A I know that a significant amount of the
15 information that was asked for on Pages 1 and 2, Items
16 1 through 12, IBM objected to, to providing.

17 Q Was there a letter back from IBM to
18 Mr. Schaumberg?

19 A I don't recall. I know that what happened
20 was Cirrus Logic did back down from its claims that it
21 was definitely covered by the license agreement, and I
22 think ultimately this dispute basically became defused
23 by Cirrus Logic's backing away from its claim.

24 Q When did that happen?

25 A I -- I remember that there, there was a

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1 letter that Mr. Gershuny wanted to send out at one
2 point regarding its, the Micrus and Cirrus Logic and
3 wanted permission from Mr. Lans -- the request was
4 made to us to send it out, and that was refused. But
5 at some point, at some point in the Spring to early
6 Summer of -- mid Summer of '97, 1997 the, the dispute
7 really became defused because Cirrus Logic backed away
8 from, from its unequivocal statements in the
9 marketplace and to its customers and in the press that
10 its customers were protected because its products were
11 licensed under the IBM agreement.

12 MR. HAINLINE: Let's have marked as
13 Exhibit 13 a letter from Mr. Schaumberg to Klaus
14 Vorwerk dated April 9, 1997.

15 (Exhibit No. 13 was marked for identification and
16 was attached to the transcript.)

17 BY MR. HAINLINE:

18 Q Did Mr. Schaumberg send the original of
19 Exhibit 13 to Mr. Vorwerk on or about April 9, 1997?

20 A Yes. This is the, this is the final copy of
21 the draft that's in Tab 29 of Exhibit 1 that was sent
22 to Mr. Lans for his approval and authorization. And
23 when we received Mr. Lans's authorization on
24 April 9th, 1997, which is Tab 30 to Exhibit 1, this
25 letter was then sent out by Federal Express to Klaus

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1 Vorwerk in Germany with copies to Talbot Lindstrom of
2 Delphi and Mr. Lans.

3 Q On the second page, AMS 001989, in the
4 second full paragraph, first sentence it says, we do
5 not have access to the details of the joint venture
6 arrangement between IBM and Cirrus Logic.

7 Does that statement in any way refresh your
8 recollection as to whether you ultimately got the
9 joint venture agreement from somebody?

10 A Well, I don't know. It doesn't really. I
11 know that at this time, because of course we had the
12 letter of -- the draft letter, excuse me, we didn't
13 even ask for that from Mr. -- from IBM until
14 April 18th, which is Exhibit 12 to this deposition.
15 But at the time on April 9th, we did not have access
16 to the details of that arrangement.

17 MR. HAINLINE: Let's mark as Exhibit 14 a
18 letter to Mr. Schaumberg from Klaus Vorwerk dated
19 April 15, 1997.

20 (Exhibit No. 14 was marked for identification and
21 was attached to the transcript.)

22 BY MR. HAINLINE:

23 Q To your knowledge, did Mr. Schaumberg
24 receive this letter on or about its date?

25 A I believe, yes. I know that we received

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1 that, and I have to assume it's on or about this date.

2 Q And you became aware of the letter on or
3 about its date?

4 A Yes, somewhere around there. It was in
5 response to Mr. Schaumberg's letter of April 9th,
6 1997.

7 (Exhibit No. 15 was marked for identification and
8 was attached to the transcript.)

9 BY MR. HAINLINE:

10 Q 15 is the letter of April 22, 1997 from Mr.
11 Vorwerk to Mr. Schaumberg. To your knowledge, did
12 Mr. Schaumberg receive this document on or about its
13 date?

14 A Yes.

15 Q Did you become aware of the document on or
16 about its date?

17 A Yes.

18 Q Did you review the April 15, 1997 letter
19 from Mr. Schaumberg to Mr. Vorwerk that Exhibit 15
20 references?

21 A I don't know whether this refers to a letter
22 from Mr. Schaumberg or Mr. Lindstrom because I'm -- I
23 don't know. I'm not sure that there -- I don't
24 believe there is a letter, April 15, 1997, from Tom
25 Schaumberg to Mr. Vorwerk.

1 Q I see. If you look at the salutation --

2 A Yes.

3 Q -- it says Dear Mr. Schaumberg, Doctor --
4 Mr. Lindstrom.

5 So if I understand you, Mr. Mastriani, the
6 letter that Mr. Vorwerk is referring to could have
7 been from Lindstrom rather than Mr. Schaumberg,
8 correct?

9 A It could have been, yes. I think that may
10 be the case.

11 Q Right. Now, did your office receive a copy
12 of the April 15 letter -- let's say it's from
13 Lindstrom. Do you know if you got a copy of that
14 letter so that -- that Vorwerk is referring to here?

15 A I -- we would -- I assume we would have. I
16 don't recall it. I don't recall it right now off the
17 top of my head.

18 MR. HAINLINE: Okay. Aaron, I'm not going
19 to make any representation about the April 15 letter
20 one way or the other. I don't think I've seen it. I
21 could have. I'm going to look very carefully to look
22 to see if that was one that was produced and I will
23 put that in a letter if it's not.

24 MR. HANDLEMAN: Okay. All right. Okay.

25 Can I just take a break for a second?

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1 MR. HAINLINE: Sure.

2 (Break taken at 2:58 p.m.)

3 MR. HAINLINE: Let's mark as Exhibit 16 a
4 telefax from Peter Utterstrom to Mr. Mastriani dated
5 August 8, 1997.

6 (Exhibit No. 16 was marked for identification and
7 was attached to the transcript.)

8 BY MR. HAINLINE:

9 Q Mr. Mastriani, did you receive the original
10 of Exhibit 16 on or about its date?

11 A Yes.

12 Q And this discussion had to do with paying
13 taxes on license fees, correct?

14 A This -- the telephone call that led
15 Mr. Utterstrom to write this letter was a
16 communication from him to us from -- which literally
17 emanated from Mr. Lans regarding Mr. Lans's statement
18 that he was unable to use the Japanese tax credits
19 that were incurred in the license agreements with the
20 Japanese companies whereby 10 percent of the gross
21 amount was withheld by the Japanese Government in the
22 name of Hakan Lans and would be available to him to
23 use as a tax credit, tax credit in whatever country he
24 declared receipt of income and filed a tax return.

25 Q As between the AMS firm and the Delphi firm,

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1 were your two firms familiar with these tax issues
2 when you were negotiating the structure of the
3 license, of the license agreement with the Japanese

4 companies?

5 A What do you mean when you say these tax
6 issues?

7 Q The tax issue referred to in Exhibit 16.

8 A The tax issues discussed in 16 have almost
9 nothing to do with the negotiations with the Japanese
10 companies that eventually signed license agreements.
11 The only tax issue that came up in that instance was,
12 was by operation of law where, where a Japanese
13 company that pays royalties for intellectual property
14 to any intellectual property owner will deduct
15 automatically before the money is -- leaves the
16 country, that is Japan, 10 percent of the gross
17 amount.

18 Q And were you familiar with that practice of
19 the Japanese or Japanese law before you entered into
20 the license agreements with the Japanese companies?

21 A Yes, especially after Mr. Lans had indicated
22 that that was his experience with respect to Hitachi.

23 Q And did you draft the agreement in such a
24 fashion that Doctor Lans would be protected?

25 A I don't know what you mean by -- protected

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1 against what? That he would not -- so he would not
2 have to pay taxes?

3 Q Well, how -- if you in your own words can
4 describe it. It seems to me reading this that you and
5 Mr. Utterstrom don't have the same view about whether
6 Mr. Lans is right. And if -- first of all, I'd like

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7 to ask you if that is a correct gross summary of your
8 positions here that you're taking, you and Utterstrom
9 are taking different positions as to whether Lans is
10 right?

11 A Right about what, Mr. Hainline?

12 Q On the tax issue and what he has to do to
13 reap -- to make payments as a result of, as a result
14 of it.

15 A We -- we, we, that is, AMS knew one thing,
16 and that is that under Japanese law, that when a
17 Japanese company pays royalties to a patent owner,
18 whether they're in Japan or outside of Japan, 10
19 percent must be deducted. There's no exception to
20 that whatsoever. As long as the payment is coming
21 from a Japanese company, directly or indirectly, even
22 sometimes through its subsidiary, the 10 percent must
23 be paid in. And it was on that basis that the
24 agreements were entered into with several, several
25 Japanese companies. So even -- let's say for

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1 instance, if Fujitsu agreed to \$7,975,000 as a lump
2 sum paid-up royalty, that money was paid by -- that
3 money was drawn by Fujitsu in Japan and 10 percent was
4 given to the Japanese Government -- the record is
5 littered with, with evidence of this -- and it's in
6 Mr. Lans's name, and then 90 percent of the gross
7 amount was then sent to us. And you take that
8 90 percent and the 10 percent and it's a hundred
9 percent. We knew that for a fact.

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10 As for Swedish law and how one uses those
11 credits or applies them, credits and/or applies them,
12 we were an American law firm, but Delphi knew how that
13 worked.

14 Q According to Mr. Utterstrom, he's pressing
15 the view that Mr. Lans is entitled to 33 percent --
16 I'm sorry, that Mr. Lans is required to pay a legal
17 fee of 33 percent maximum based upon a gross recovery,
18 and it appears that according to Mr. Utterstrom that
19 you believe the recovery should be based on a net
20 recovery?

21 A That's correct. That's -- well,
22 Mr. Utterstrom is communicating Mr. Lans's thoughts on
23 this. That's not a tax issue, you're right. But what
24 happened here is that the agreement with Mr. Lans
25 provided that the law firms would receive 33 percent

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1 of the amount paid by the licensee, and of the gross
2 amount paid. And for instance, in the example I just
3 gave you before, Fujitsu paid \$7,975,000, not
4 90 percent of that. The 10 percent that went to the
5 Japanese Government was a withholding tax paid by
6 Mr. Lans to the Japanese Government because of the
7 receipt of royalty income for which he could use in
8 any country where he declared income and filed a tax
9 return. And that was our position based upon the
10 agreement in July 1996.

11 Q And Mr. Utterstrom is disagreeing with you?

12 A I don't know that he's disagreeing with me.

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13 He's communicating to, to me on behalf of Mr. Lans. I
14 mean Mr. Utterstrom -- don't forget, Mr. Utterstrom
15 was impacted by this also in the sense that money that
16 was rightfully owed to his firm was being withheld by
17 Mr. Lans because that's what happened. In fact, Mr.
18 Lans refused to sign the license agreements that we
19 already negotiated and got agreements on until, until
20 we would agree, at least for the time being, to, to
21 give him more than we believed he was entitled to
22 under the agreement, which we did.

23 Q Were you withholding money from Doctor Lans
24 from the escrow account based upon your interpretation
25 of your contingent fee agreement which was different

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1 than Doctor Lans's interpretation?

2 A At -- when you say were you, what time are
3 you referring to?

4 Q As of August 1997 when you received the
5 original of Exhibit 16.

6 A No. I told you in my previous answer that
7 we were, we were paying Mr. Lans money, in other
8 words, 67 percent of the, of the money less the tax
9 credits under protest. In other words, Mr. Lans
10 coerced us into agreeing to do that because he said he
11 would refuse to sign any license agreement saying it
12 was our perception that if, if he refused to sign
13 license agreements with several companies that we had
14 agreements with, that that would have a very serious
15 adverse effect on the entire licensing program.

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16 Q Did you later withhold money from Doctor
17 Lans from the escrow account based upon your
18 interpretation of this dispute having to do with the
19 tax credit?

20 A The money in the escrow account was not
21 distributed pending the resolution of the dispute
22 after our relationship was terminated with Mr. Lans,
23 after we terminated our relationship.

24 Q Did Mr. Utterstrom ever write you any other
25 document besides Exhibit 16 on this issue?

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1 A Well, he may have. I mean there was a lot
2 of -- later on, like in 2001, there may have been
3 references to this. I'm not sure if there were or
4 not.

5 Q Now, Mr. Utterstrom says the starting point
6 is the fact that HL did ask us, the two firms, to
7 represent him/Uni board in the collection of license
8 fees from the infringers with an arrangement where we
9 split the gross revenue. That was correct, wasn't it?

10 A No, it's incorrect. There's nothing in any
11 communication from Mr. Lans or Delphi or in any
12 agreement that references Uni board other than the
13 authorization from Mr. Lans that we could, that is,
14 AMS could represent Uni board in the limited context
15 with IBM regarding the Cirrus Logic issue.

16 Q When did you file the Complaint against the
17 computer companies in Doctor Lans's name?

18 A I believe it was in late 1997. I'm not

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19 quite sure when.

20 Q Was it after the receipt of Exhibit 16?

21 A I'm not sure. I may have a record when
22 those cases were filed. I just don't have it before
23 me right now.

24 Q Did you call up Mr. Utterstrom and say,
25 Peter, what are you talking about saying that HL/

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1 Uni board asked us to represent them? I never heard of
2 this before.

3 A No, I didn't. I didn't call him up about
4 that. He -- I just assumed from this that he was
5 referring to the fact that Uni board was who was to
6 receive the license fees, and -- in other words, when
7 we received the first licenses and the first -- there
8 was like about two or three of them, I think there
9 were, and then there was going to be a transmission of
10 the funds. We asked for Mr. Lans's wire information
11 for his bank account, and we received a communication
12 from Delphi that Mr. Lans had requested that the funds
13 go to Uni board and they gave us the wiring
14 information, and that until we heard further, any
15 funds were to go to Uni board.

16 Q Mr. Lans in fact told you that he had given
17 Uni board the rights to receive the licensing fees,
18 correct?

19 A He didn't say the rights. He said that,
20 that they, that they -- that Uni board receive
21 licensing fees. He didn't say all of them. We had no

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22 idea as to whether they did or not. It was our
23 understanding that the, what the -- with the Hitachi
24 agreement, that Mr. Lans received the \$300,000 for the
25 license agreement and then the secret \$4 million

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1 payment a few months later. That was really part of
2 the license agreement, but that was given to him as a
3 so-called research grant. This was tax-free. He was
4 able to put that in his pocket without paying taxes.

5 Q Did you ever take any of the license fees
6 that you paid out of the escrow and pay them to any
7 entity other than Uni board?

8 THE WITNESS: Can you repeat that, please?
9 Thank you.

10 MR. HAINLINE: Let me withdraw the question.
11 I've --

12 MR. HANDLEMAN: Are you withdrawing it?

13 MR. HAINLINE: I'm withdrawing the question.

14 MR. HANDLEMAN: He can do it.

15 THE WITNESS: Yeah.

16 BY MR. HAINLINE:

17 Q Did any of the license fees that you
18 collected ever get paid to Doctor Lans rather than
19 Uni board?

20 A My recollection is that all of the
21 transmissions of funds, the 67 percent that, whatever
22 funds that were disseminated went to Uni board at
23 Mr. Lans's instructions.

24 Q So as far as you knew, from the time that

25 you began representing Doctor Lans, he had given to

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1 Uni board the right to receive revenue from the '986
2 patent?

3 A We knew that he had said that Uni board
4 received license revenues, and for purposes of the
5 license agreements that we worked on, those were his
6 instructions. In fact, except for, except for -- the
7 only difference was, is that there was, I want to say
8 three or maybe four licenses late in the game that
9 were somewhere around, accumulated about \$400,000 and
10 change, let's say, that there was an agreement between
11 Mr. Lans, Delphi, and our firm that it would be either
12 marked as and put into an escrow fund to pay the cost
13 of European litigation, and those monies were paid to
14 the German patent lawyers who were representing
15 Mr. Lans in Germany and the Mannheim action, and then
16 also to the Italian law firm for the action in Milan.

17 Q In fact, you knew that Doctor Lans had
18 transferred to Uni board the receipt of revenue from
19 the '986 patent, correct?

20 A No. No. I mean you say transferred --

21 Q You don't know what that means?

22 A He used the word transfer in the
23 February 19th, 1997 E-mail. He knew that he had an
24 arrangement with Uni board that, that in return for
25 administering the patent, it would receive -- for

1 administering the patent on behalf of the, the
2 beneficial owners, that is him, it would receive
3 revenues. Now, whether it was all the revenues, some
4 of the revenues, all the revenues some of the time or
5 some of the revenue all the time, we didn't know
6 particularly because it wasn't our business. But I
7 can say unequivocally that for any money that came in
8 that was then sent to Mr. -- that was owed to Mr.
9 Lans, in other words, that was payable to Mr. Lans
10 when there was a disbursement or a distribution, let's
11 call it, that money, at Mr. Lans's instruction, went
12 to Uni board's bank account.

13 Q Because he told you he transferred to
14 Uni board the right to receive those revenues; isn't
15 that right?

16 A It's not a right. He never said I
17 transferred the right to us. I mean until later on
18 when he was explaining things he used that term. He
19 just said that, that Uni board was to receive revenues.
20 I don't know that it was a right. I hear right and I
21 think of a formal legal document and, and something a
22 lot more elaborate and formal than was the case, than
23 a notation in an annual report.

24 Q And you hadn't seen the annual report as of
25 August 8, 1997, in any event?

1 A I physically had not seen it, I don't

2 believe, but I knew, I knew what was in there from
3 Mr. Lans and from Delphi on several occasions.

4 Q And you didn't see any document that set
5 forth whatever Uni board's rights might be with respect
6 to the patent --

7 A That's incorrect.

8 Q -- as of that date, did you?

9 A Well, not as of that date, no. I did later
10 on when, when the clarification contract was
11 discovered.

12 Q And did you ever send to Doctor Lans a copy
13 of the Complaint you filed in his name for review
14 before you filed the case?

15 A The Complaint was sent to, to Delphi and was
16 gone over with Mr. Lans because Mr. Lans was part of
17 the, of a conference call to discuss who, who to file
18 against. And he was very keen on filing against big
19 companies, well-known companies, and principal lummes
20 companies. He wanted, he wanted Dell, and Compaq, and
21 he especially wanted Digital Equipment, which
22 subsequently was acquired by Compaq, but he definitely
23 wanted Digital Equipment because he said that he had
24 been in negotiations with Digital Equipment back in
25 the early 1980s and he felt that they gave him short

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1 shift on his invention after he gave them a prototype,
2 that they supposedly -- that he said that they put up
3 in their corporate headquarters and caused a lot of
4 admiration and favorable reactions. And he was very

5 chagrined that Digital never did business with him,
6 and he was very keen that Digital be a principal
7 Defendant in the lawsuit along with Dell and Compaq.

8 Q When was this telephone conversation?

9 A Telephone -- there was a telephone -- there
10 was -- the Complaint was sent to Delphi and discussed
11 with Mr. Lans.

12 Q I thought you just told me --

13 A Oh, that was --

14 Q -- Doctor Lans -- excuse me.

15 A Go ahead.

16 Q -- until I finish.

17 I thought you just said that Doctor Lans was
18 part of a conversation with you where he discussed the
19 Complaint, and I'd like to know when that was.

20 A I believe that was in a face-to-face
21 meeting.

22 Q When?

23 A In, I believe it was in 1997, August, but I
24 know for a fact that, that, that there was a telephone
25 conference call in July of 1997 where that was

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1 discussed with Mr. Lans, Delphi, Italian and German
2 counsel, I should say, excuse me, not German counsel,
3 just Italian counsel.

4 Q Now, which of these -- well, let me take
5 them one at a time. The July conference was in
6 Washington, D.C., in your offices, correct?

7 A That's correct.

8 Q And Utterstrom and Lindstrom were present,
9 correct?
10 A Correct.
11 Q And Lans was not present, correct?
12 A He was present by speaker phone. He called
13 in.
14 Q He was not physically present, correct?
15 A He wasn't physically present in corporal
16 body, but he was present on the phone.
17 Q Was there a draft of the Complaint discussed
18 at that meeting?
19 A There was, there was a -- it wasn't a draft
20 that was being discussed. It was a discussion about
21 who to name in which jurisdictions.
22 Q Now, let's go to the August meeting. You
23 say you had a face-to-face meeting with Doctor Lans in
24 August of '97?
25 A I believe that, that there -- I believe that

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1 that's when we went to Stockholm, end of July to the
2 beginning of August, but I'm not, I'm not dead certain
3 on that. I'd have to look at my passport, my old
4 passport.
5 Q Did you have with you a Complaint?
6 A During that meeting?
7 Q Yes.
8 A No. I did -- I was not finished.
9 MR. HANDLEMAN: Well, finish.
10 A Yes, okay, thank you.

11 The draft Complaint was sent a few weeks
12 before the, the action was filed in the Court, the
13 Federal District Court for the District of Columbia.

14 Q Was sent. Let's use the active voice and
15 let's tell me who sent it and to whom. Who sent the
16 draft Complaint and to whom and when?

17 A The draft Complaint would have been sent by
18 me and/or Tom Schaumberg and/or Jim Adduci to Tal
19 Lindstrom/Peter Utterstrom at Delphi with a cc to Mr.
20 Lans. Mr. Lans -- excuse me, Mr. Hainline, Mr. Lans
21 wanted the copies that we were sending, his copies
22 sent to Delphi. That was his requirement. He didn't
23 want a lot of papers at his house where he maintained
24 his office, so when we sent things to Mr. Lans, we
25 often would send, would send them to Delphi, unless it

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1 was a, a, a fax or an E-mail directly to Mr. Lans with
2 a cc to Delphi.

3 Q Well, if you sent the draft Complaint by
4 E-mail attachment, it would not be a document that
5 cluttered up his office, would it?

6 A That, that's correct. But we, we didn't
7 have very many E-mail communications with Mr. Lans in
8 1997 because our E-mail capabilities were very, very
9 sparse, I think, at that time. In fact, we just had
10 the general mailbox. But most of our communications
11 were, were by fax or Federal Express, DHL, that type
12 of thing.

13 Q Now, your testimony is a little confusing to

14 me on this subject so I'm going to see if I can
15 clarify. You said at first, I thought, that you sent
16 a copy of the draft Complaint to Utterstrom and
17 Lindstrom with a copy to Lans, and then you said, I
18 thought, or I heard that you didn't want -- you didn't
19 send it to Lans because he didn't want a lot of
20 documents. So my question to clarify this is, did you
21 send a copy of the draft Complaint to Lans?

22 A I sent a copy of the Complaint, or somebody
23 in my office sent a copy of the Complaint to Delphi
24 and a copy was available to Mr. Lans and he saw that,
25 according to Mr. -- at least Mr. Lindstrom, if not

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1 Mr. Utterstrom also.

2 Q Did Mr. Lindstrom and/or Mr. Utterstrom tell
3 you in any writing that Doctor Lans had seen a copy of
4 the Complaint?

5 A I don't recall whether it was in writing. I
6 know that I was told orally that he had.

7 Q And did you confirm this oral communication
8 in any writing to your file?

9 A In my file?

10 Q Yes.

11 A You mean like a memo to the file?

12 Q Yes.

13 A No.

14 Q Talked to Utterstrom and he said he showed
15 the Complaint to Doctor Lans, anything like that?

16 A No. Mr. Utterstrom was Doctor Lans's

17 counsel .

18 Q As were you.

19 Now, let me ask you this, did you ever send
20 Doctor Lans a copy of the Complaint that you filed in
21 his name, ever?

22 A I'm sure he had copies of the Complaint.

23 Q I didn't ask you that. Did you ever send or
24 your firm ever send Doctor Lans a copy of the
25 Complaint?

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1 A I sent Delphi, I know for sure. I know I
2 sent Delphi copies of the Complaint. Copies were sent
3 to Doctor Lans.

4 Q Did you -- I'm not asking what Delphi did,
5 I'm asking what you did. You already told me what
6 Delphi did. I'm asking you what AMS did. Did AMS,
7 you or your partners, associates, or secretaries under
8 your direction, ever send a copy of the Complaint
9 filed in Lans's name to Lans?

10 A I can't say that one was sent directly to
11 Mr. Lans, no, but I know that he had copies from, from
12 Delphi.

13 Q Because of something either Lindstrom or
14 Utterstrom told you?

15 A And that Mr. Lans said. Mr. Lans told me
16 that he had seen copies of the Complaint and he knew
17 what was in there. He was very happy. He expressed,
18 he expressed pleasure that, that the case had been
19 filed, especially against Digital Equipment

20 Corporation, and to a lesser degree Dell and Compaq.

21 Q When did you have this conversation with
22 Doctor Lans?

23 A Right around the time that the -- this --
24 the action was filed.

25 Q Who called whom?

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1 A I don't recall.

2 Q Did you make any notes of this conversation?

3 A Not of a conversation like that.

4 Q What did Doctor Lans tell you about whether
5 he had seen the Complaint you filed?

6 A He just acknowledged having seen the
7 Complaint.

8 Q What did he say?

9 A I just told you. He acknowledged having
10 received the Complaint.

11 Q So Doctor Lans acknowledge, I have seen the
12 Complaint?

13 A No. He said something along the lines, I
14 have seen the Complaint, I am very happy with it.

15 MR. HAINLINE: Let's mark as 17 an E-mail
16 from Mr. Mastriani to Doctor Lans dated January 28,
17 1999.

18 (Exhibit No. 17 was marked for identification and
19 was attached to the transcript.)

20 BY MR. HAINLINE:

21 Q Did you send Doctor Lans this E-mail on or
22 about its date?

23 A Yes. I had Steve Adkins of my firm send it
24 to Mr. Lans for me.
25 Q Who is --

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1 MR. HANDLEMAN: Just for clarification, what
2 is H -- it's got several Bates stamps. What is HLE,
3 do you know what that means, HLE 000010?

4 MR. HAINLINE: Probably means Hakan Lans
5 E-files.

6 MR. HANDLEMAN: Okay. Thank you.

7 MR. HAINLINE: So -- I think this was a
8 document produced from his files at AMS.

9 MR. HANDLEMAN: Okay. Just curious. Thank
10 you.

11 MR. HAINLINE: You're welcome.

12 BY MR. HAINLINE:

13 Q I'm sorry, you said Adkins sent it for you?

14 A Yes.

15 Q That's correct?

16 A That's correct.

17 Q Was Adkins a partner at this time or an
18 associate?

19 A He, I believe he was a partner.

20 Q And the Interrogatory responses were due,
21 according to this, the next day?

22 A These were due -- let's see, yeah, these
23 were sent -- the, the Interrogatories were originally
24 sent to Mr. Lans and Delphi in late October or early
25 November of 1998, and Mr. Lans and Delphi

1 specifically, and especially Mr. Lindstrom were
2 working on responses to these Interrogatories for over
3 six weeks. And when we finally got the Answers in
4 January, late January, we put them together and we
5 sent the, what we thought was a close-to-final draft
6 to Mr. Lans for his review and signature of the
7 verification.

8 Q Do you have any document that shows that you
9 sent the Interrogatories that you're talking about in
10 Exhibit 17 to Doctor Lans at any time before
11 January 28, 1999?

12 A Oh, yes, I've got -- there, there are
13 documents to that effect, and there's also a long
14 letter from Mr. Lindstrom back in December of '98
15 explaining how Mr. Lans was complaining bitterly about
16 having to be bothered to answer all these questions
17 and asking whether we could buy more time by having
18 Interrogatories and Document Requests translated into
19 Swedish so it would give him more time. And we
20 indicated that that was going to be unlikely, and I
21 think we got an extension from Compaq, as I recall we
22 did; I don't remember how long it was, and then we
23 answered them right at the end of January.

24 MR. HAINLINE: Okay. Aaron, I'll review my
25 files for those documents. If I have them, I'll let

Lans v Gateway

1 you know. If I don't, I'll let you know.

2 MR. HANDLEMAN: Okay.

3 BY MR. HAINLINE:

4 Q Now, 1900 hours is 7:00 at night?

5 A That's correct.

6 Q And Sweden is six hours later?

7 A Depends on -- probably five hours later.

8 I'm not sure. It depends on Daylight Savings Time

9 issues -- or standard time.

10 Q Would there be Daylight Savings Time in

11 Sweden in January?

12 A No. That's what I'm saying. We go on

13 Daylight Savings Time. We go -- Europe gets an hour

14 later than we do, if I recall. I mean it's either,

15 it's either five or six hours.

16 Q Washington is not on Daylight Savings Time

17 in January.

18 A No, it's standard time, but when this was

19 sent, it was obviously the early, very early morning

20 -- I shouldn't say that. It was about, it was about,

21 let's say midnight or close to midnight Sweden time on

22 Thursday, January 28.

23 Q 1:00 in the morning Sweden time?

24 A Somewhere around there, or 12:00.

25 Q Well, 12:00 would be actually 3:00 in the

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1 morning, wasn't it? My math is awful.

2 A Seven plus five is twelve, seven plus six is

3 1:00. Seven plus seven is 2:00. I don't think it was

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4 any later than 2:00. It could have been as early as
5 12:00. So suffice it to say --

6 Q Six plus nine is 20, 25 -- so it's 1:00 in
7 the morning, I think, for all of us geniuses here in
8 math.

9 MR. HANDLEMAN: See why we all went into
10 law?

11 MR. HAINLINE: All right. Let's have marked
12 as Exhibit 18 an E-mail to Mr. Mastriani from
13 Doctor Lans dated January 29, 1999.

14 (Exhibit No. 18 was marked for identification and
15 was attached to the transcript.)

16 BY MR. HAINLINE:

17 Q Did you receive the original of this E-mail
18 on or about its date?

19 A Yes.

20 Q Doctor Lans said, I have studied the
21 document and it is correct. However, the response to
22 Interrogatory 10 should maybe be changed from I am the
23 sole owner of the '986 patent to the company Uni board
24 AB is the owner of the '986 patent rights, but the
25 patent is still registered in Mr. Hakan Lans's name.

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1 Consequently Mr. Lans has the sole right to sign
2 license agreements.

3 Now, when you read that, did you recall the
4 February 19, 1997 E-mail where he wrote you and said
5 that he had transferred the patent to Uni board?

6 A What I recalled and -- specifically was that

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7 this, this E-mail triggered exactly the recollection
8 of the conversation I had with Mr. Lans regarding that
9 February 19th, 1997 E-mail. But I had called him back
10 again to ask him about what he meant by this when he
11 said could maybe, could maybe be changed.

12 Q But he told you in this E-mail the company
13 Uni board is the owner of the patent, correct?

14 A No. You -- he absolutely, categorically did
15 not do that.

16 Q Well, read this with me. The E-mail says,
17 the company Uni board AB is the owner of the '986
18 patent rights. That's in the E-mail, is it not?

19 A Yes.

20 Q And when you talked to Doctor Lans about
21 this, what did you ask him and what did he say?

22 A This Interrogatory 10 asks whether there had
23 been any assignments of ownership of the patent, and
24 when I talked to Mr. Lans about this I told him that
25 as asked in previous Interrogatories, because Mr. Lans

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1 had signed -- had answered previous Interrogatories
2 along these lines from other parties other than
3 Compaq, I explained to him that this involves
4 ownership. Are you referring to Uni board here as an
5 owner of the patent, or are you referring to, again to
6 what you told us before, is that Uni board gets
7 revenues from the patents? And he said it's that they
8 get revenues from the patents. And I explained to him
9 again that assignment only means ownership, that it

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10 doesn't relate to any other right under American law,
11 and it -- as defined in that Interrogatory.

12 And then he agreed as, as you'll note from a
13 subsequent E-mail, that, that, that the Answer was
14 correct, and that's why he signed the verification and
15 said it was the correct, the Answer that he received
16 from us, the draft Answer which he had previously
17 supplied was right.

18 Q So after his conversation with you and your
19 explanation, he concluded that the Interrogatory
20 Answer that you had drafted was right?

21 A He understood, again, that that assignment
22 is limited to ownership and does not implicate under
23 U.S. patent law any other rights to revenues, to
24 license, that -- anything like that. Then he, then he
25 agreed that the Answer was correct as, as drafted.

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1 Q When you swore to Judge Penn in Court that
2 you had never heard about any, any assignments in
3 connection with the '986 patent, don't you think that
4 it would have been honest of you to at least reference
5 this E-mail where Doctor Lans is trying to remind his
6 lawyer that Uni board has an ownership interest in the
7 '986 patent?

8 MR. HANDLEMAN: Objection. It's
9 argumentative.

10 You can answer.

11 A Mr. Hainline, this, this does not state that
12 Uni board has an ownership interest --

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13 Q No, it says it is owner --

14 A -- in the '986 patent.

15 Q No, it says Uni board is the owner.

16 A Is the owner of the '986 patent rights. And

17 Mr. Lans explained, again, as he did before, and he's

18 explained to this very day that what he meant by that

19 was that Uni board gets revenues and only gets

20 revenues. It has no ownership in the patent

21 whatsoever. That's been confirmed in its annual

22 reports, and by, by his certified, or I should say

23 chartered public accountants. There's nothing that

24 says that anywhere except in your pleadings.

25 Q Now, Doctor Lans is not a lawyer, correct?

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1 A He's not a lawyer, but he's a very
2 sophisticated businessman. He refers to himself, and
3 you can see it in correspondence here, as an
4 entrepreneur.

5 Q You knew he was not a lawyer?

6 A I knew he was not a lawyer, correct.

7 Q And you knew you were his lawyer?

8 A Yes, along with Delphi in this matter,
9 that's correct.

10 Q And you knew when you told the Court that
11 the lawyers -- his lawyers had never been told about
12 any assignment that you were suggesting to the Court
13 that Doctor Lans hid the whole Uni board transaction
14 from you, weren't you?

15 MR. HANDLEMAN: Objection. Again, this is
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16 another argumentative quasi question.

17 You can answer that. I object to it.

18 A At the time that I made the, the, the
19 declaration -- let me just pull it out. I was going
20 to say August of 19 -- yes, it is August of 1999, in
21 Exhibit 2. When I made the statement in Paragraph 3
22 that Mr. Lans had repeatedly informed both myself and
23 all other counsel that there'd never been any
24 assignment of ownership in the '986 patent, that was
25 true, and I firmly believed it, and I didn't think at

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1 all that Mr. Lans had hidden that from me or any other
2 attorney. He'd -- it only turned out that we
3 discovered that he'd hidden it when he admitted it in
4 July 2001 in an unsolicited E-mail where he admitted
5 it, and I sent that to every lawyer on the case, and
6 you've got that in your documents.

7 Q When Judge Penn read your statement and
8 concluded in two decisions that Doctor Lans had not
9 been forthcoming with his lawyers because he hid the
10 Uni board transaction from you and even the IBM license
11 agreement from you, didn't you think that maybe you
12 should go to Judge Penn and correct his impression
13 based upon your sworn statement?

14 MR. HANDLEMAN: Objection.
15 Mischaracterization, argumentative.

16 You can answer.

17 A Judge Penn never said anything about
18 Mr. Lans hiding the IBM agreement from us. I don't

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19 know what you're referring to. I don't believe he
20 ever said that in any of his opinions.

21 As far as Mr. Lans hiding the, as you put
22 it, the assignment from us, he did, he did do that.
23 But I mean what he told us was, when he was sent the,
24 the assignment, he said, now that I see it, I remember
25 it, but I had forgotten about it. And he, and he

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1 never ever referred to any assignment of the '986
2 patent. He never used that word, ever.

3 Q He did not use the word, which you told me
4 under your first very answer to my, almost my first
5 question today was the way you were using the word was
6 a highly technical, legal way that patent lawyers
7 talk.

8 A No.

9 Q And you're complaining now that Doctor Lans
10 didn't use that word?

11 A No, not ever.

12 MR. HANDLEMAN: First of all, I would
13 object. That is clearly an argumentative question.
14 You can argue all you want to the Court, but that
15 clearly is just arguing with the witness. But I have
16 no problem with him answering.

17 A Yeah, I apologize for interrupting. It's
18 not -- the word has only one meaning. It's not highly
19 technical, legal, or anything like that. It has one
20 meaning, and one meaning only. And Mr. Lans knew
21 about what it meant because in my first communication

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22 with him in March of 1996 I used the word. And I used
23 it in subsequent communications, and other lawyers
24 did. And we had subsequent discussions with
25 Mr. Lans, including the July 1997 conference call when

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1 there was a discussion at that time about whether or
2 not it would be more feasible to have Uni board file
3 the litigation, in which case Mr. Lans would have to
4 execute an assignment of all right, title, and
5 interest in that patent. And at that time Mr. Lans
6 got very agitated, very adamant, said, I own the
7 patent, not Uni board. Uni board gets the money. I am
8 going to be the Plaintiff in these cases and any cases
9 filed on these patents.

10 Q Did you ever read Peter Utterstrom's E-mail
11 to Doctor Lans where he recollects that July meeting
12 and says that the decision to file on behalf of
13 Doctor Lans rather than Uni board was your decision,
14 wholly an AMS decision, for tactical reasons?

15 A That's incorrect. I believe, I believe
16 there was a discussion about it, and Mr. Lans was
17 involved, and that the collective consensus was,
18 especially based upon Mr. Lans's insistence was that
19 it would be best not to transfer any ownership right
20 or assign any ownership right.

21 Q My question, though, was whether you -- you
22 may have answered it implicitly. I'll ask for an
23 explicit answer. My question is whether you have read
24 Mr. Utterstrom's E-mail where he says it was your

25 decision, not Doctor Lans?

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1 A I have read Mr. Utterstrom's E-mail, but I
2 think you're mischaracterizing what he said. So I did
3 read it for -- with the characterization that you're
4 attributing to it, I read that E-mail, and I submit
5 that it has a different, a different characterization
6 than you're giving it.

7 Q I take it then you never telephoned
8 Mr. Utterstrom to talk about that E-mail because you
9 didn't believe he was disagreeing with you?

10 A You'd have to show it to me to -- for me to
11 be able to answer that question.

12 Q Do you recall telephoning Mr. Utterstrom
13 after you were discharged as counsel by Doctor Lans
14 and complaining to him that he had opined that it was
15 AMS who decided to sue in Lans's name and that wasn't
16 the case? Did you ever do that?

17 A Telephoning him? I know -- I don't know
18 about telephoning him for sure. There was a, there
19 were -- there were E-mail communications to Mr.
20 Utterstrom with ccs to Mr. Lans, and any responses
21 from Mr. Utterstrom, and then, and then, and then
22 responses from Mr. Lans, but I don't recall that it
23 was on this particular issue at all.

24 Q Look if you will with me for a minute at
25 Exhibit 49 -- Tab 49 to Exhibit 1.

1 A (Complying.)

2 Q This is a memo with an attached Law Review
3 article sent by you to Doctor Lans, Utterstrom, and
4 Lindstrom, October 20, 1999. Did you send this memo
5 and the attached Law Review article on or about this
6 date --

7 A Yes.

8 Q -- to those addressees?

9 A Yes.

10 Q Now, in 1997 when you filed the Complaint on
11 behalf of Hakan Lans, were you aware of this standing
12 issue that is the subject of the Law Review article
13 you sent in '99?

14 A Yes.

15 Q Did you send Doctor Lans or Utterstrom or
16 Lindstrom any memo about the standing issue before the
17 Complaint was filed?

18 A No, other than communications, both in
19 writing and also in meetings, that, that the patent
20 owner had to file any actions against alleged
21 infringers.

22 Q And who did you write those writings to?

23 A Well, the -- Mr. Lans for one in the
24 March 1996 letter discussion about -- there's a
25 discussion about the patent owner.

1 Q Look at Tab 7 to Exhibit 1. I believe

2 that's the March letter you're referring to.

3 A Yes, and it says right -- there's a
4 discussion in the first paragraph about assignment or
5 licensing, and then later on in the second paragraph
6 it talks about entity or entities that would be most
7 interested in acquiring ownership from Mr. Lans of the
8 patent because as I explained earlier, he had
9 initially indicated he wanted to sell the patent. And
10 then there's a statement there that U.S. patent law
11 permits a patent owner to seek royalties and damages
12 from infringers going back six years from the date of
13 written notice of patent infringement. I always use,
14 and attorneys in my firm always use patent owner, and
15 you'll see it throughout the correspondence with Mr.
16 Lans.

17 Q Exhibit 49 discusses in some detail the
18 complications of the cases in terms of who is a patent
19 owner, whether it's the registered owner or whether
20 you have to file a chain of title, and it talks about
21 a dispute in the District Courts and the Federal
22 Circuit finally coming to some resolution about the
23 issue.

24 Did you ever, in writing ever explain to
25 Doctor Lans or to Utterstrom or Lindstrom how in the

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1 United States the patent owner with standing may not
2 necessarily be the registered patent owner?

3 A Oh, absolutely. Mr. Lans was informed about
4 two differences in U.S. law.

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Q In writing?

A No. This would have been in a meeting in May.

Q May of what year?

A May of 1996, and again September.

Q What did you say?

A But he was told that there were two differences; one of which at the time was more important, really, with regard to American law as vis-a-vis other countries' patent laws, and that is that whereas in other countries, or countries other than the U.S. the person that is the first to file has the right to the patent, in the United States it's the first to invent. So even though a company would file a patent on one date, if it could be shown that even though somebody else had not filed, if that person could prove that it invented the invention and that that was prior art, then the patent would have no force and effect.

And the discussions about ownership came up by way of the discussions about Erickson because it

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was explained to Mr. Lans that although the registered owner -- and that's kind of a misnomer, but the owner on the Patent Office records, in other words, is considered to be the owner and may maintain suit. That -- and in this case it was Erickson, and we confirmed from Mr. Lans that that, that the registration had been changed, and we confirmed that

8 with Doctor Grennberg eventually.

9 It was explained to Mr. Lans, in the United
10 States that the registered owner, the person that is,
11 whose name is on the name of the patent, that's what
12 registered owner meant, is not necessarily the owner
13 because you can have a line where it says assignee
14 with the party's name -- and Mr. Lans knows about this
15 because his STDMA patent has right on its face back in
16 the early '90s an assignment to GP&C International, so
17 he knew that. And he understood that if there was an
18 assignment, which could only be of the ownership,
19 whoever was a beneficiary of the assignment was the
20 owner, notwithstanding that somebody else's name was
21 on the patent, and that's what he was told.

22 Q Have you ever represented Plaintiffs in
23 patent cases before?

24 A Yes, many times.

25 Q And have you ever in any of your cases

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1 thought it prudent to clarify ownership so that you
2 avoided the standing problem?

3 A We -- we have asked for any and all
4 documents relating to assignments, encumbrances,
5 pledging of security interests, anything like that. I
6 mean that, that is something that would be routinely
7 asked.

8 Q Do you have a document that you routinely
9 use in your firm that you give to clients asking them
10 for the information, kind of information that they

11 should provide you?

12 A There may be general documents. I mean at
13 this time, to some extent. But usually an in-depth
14 interview with, with everybody connected with the
15 patent, the inventors, the company that owns the
16 patent or to whom it was assigned by the inventors if
17 they're employees, all that type of thing. And then
18 also part and parcel of that is a search of the U.S.
19 PTO assignment database because assignments can be and
20 should be -- I stress should be -- recorded with the
21 U.S. Patent Trademark Office, and there's that that
22 we, that we do routinely, and we did in this case with
23 Mr. Lans, Lans's United States patent, as well as
24 searching the international databases, as well as
25 commercial databases; for instance, Derwent.

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1 Q Assignments aren't always recorded in
2 assignment databases, are they?

3 A Not always, but they very, very -- they,
4 they are very often recorded, especially, especially
5 where individuals are the owners.

6 Q And if there had been any doubt at all about
7 whether Uni board had an ownership interest in the '986
8 patent, you could have recorded an assignment from
9 Uni board back to Lans, could you not?

10 A If there had been any doubt. There was no
11 such doubt, and therefore, so to enter into a
12 gratuitous and meaningless licensing agreement from a
13 company that had no rights to grant an assignment of

14 the ownership interest would have been illogical at
15 best.

16 Q In fact if hypothetically someone had told
17 you that Doctor Lans had transferred the ownership of
18 the '986 patent to Uni board, you could have documented
19 a transfer of all appropriate rights from Uni board to
20 Doctor Lans, couldn't you?

21 A Well, you keep saying all appropriate
22 rights. If -- there was no evidence that Uni board had
23 any ownership right. To the contrary, there was
24 evidence in documentary form and in the form of
25 statements made by Mr. Lans that was corroborated by

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1 his chartered public accountants, his Swedish counsel,
2 patent counsel, and corporate counsel at Delphi, and
3 also his German counsel in the Hitachi litigation was
4 that he was the owner and was always the owner and the
5 only owner of, of the patents.

6 Q Hypothetically if somebody had told you that
7 Lans had transferred ownership of the '986 patent to
8 Uni board, you could have created a document that would
9 have made it clear that Lans not only was the owner
10 listed in the U.S. Patent Office but had standing to
11 sue; isn't that correct?

12 A If, if we had evidence, clear, unequivocal
13 evidence that Mr. Lans had assigned all right, title,
14 and interest in the patent to any other entity,
15 including -- or let's say Uni board, then -- and he
16 wanted it changed back, that would have been easily

17 done.

18 Q In fact it could have been very easily done
19 with Doctor Lans and Uni board because Doctor Lans
20 owned all of Uni board. You wouldn't have had to
21 negotiate with any third party, right?

22 A No. Excuse the interruption.

23 No, in your hypothetical I would think not.
24 I don't -- I don't know that Mr. Lans would, would
25 have, would have withheld permission if that was the

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1 case, but as I explained before, Mr. Lans was always
2 adamant that Uni board not receive any ownership
3 interest when it was first discussed in July of 1997
4 and earlier. I believe it was earlier, in January,
5 February of '97, it could -- actually I think it was
6 in late '96 actually, December '96, there was a
7 discussion about a potential, his potential ITC
8 action, and it was proposed that Uni board also be a
9 co-complainant because of its role in licensing IBM,
10 and Mr. Lans vehemently insisted that Uni board not be
11 a co-complainant because he was the owner of the
12 patent and that any action to enforce that patent in
13 the U.S. or patents in Europe, that he was going to be
14 the only Plaintiff.

15 Q Okay, I think I may have been unclear. I'm
16 not asking you whether you could have created a
17 document transferring ownership from Doctor Lans to
18 Uni board. I'm asking you if you could have created a
19 document that would have clarified what Uni board's and

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20 Lans's rights were with respect to the '986 patent so
21 as to make sure that there was no standing problem if
22 you sued in Doctor Lans's name personally.

23 A Well, your hypothetical -- I mean, to
24 clarify it, an assignment is an assignment. It's like
25 being pregnant. You're not a little pregnant; you're

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1 either pregnant or you're not pregnant. So the -- to
2 clarify, you either -- people either owned the patent,
3 either Mr. Lans in your hypothetical owns the patent
4 or Uni board owns the patent in its entirety. The
5 owner of the patent can make a decision on its own
6 whether it wants to assign any part or all of the
7 ownership of the patent to whoever it wants.

8 So in your hypothetical, which is very
9 incomplete and very speculative, Uni board could do
10 whatever it wanted as long as, as it truly owned the
11 patent, that it was clear that it had, it had a valid
12 assignment of the '986 patent ownership.

13 Q And what I'm asking hypothetically is, is
14 this something that your firm can do? Is this
15 something that you know how to do?

16 A To write --

17 Q To clarify these issues so there's no
18 standing problem.

19 A To clarify the issues means to analyze -- to
20 me, if I interpret what you're saying, to analyze any
21 questions or inconsistencies or contradictions. Yes,
22 we can do that. But can we draft an assignment? Yes.

23 An assignment is a, is a, is a very brief document.
24 Q Let's look at what is marked as Exhibit 19,
25 an E-mail -- a telefax from Utterstrom to you dated

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1 July 17, 1997.

2 (Exhibit No. 19 was marked for identification and
3 was attached to the transcript.)

4 BY MR. HAINLINE:

5 Q Did you receive the original of this telefax
6 on or about its date?

7 A Yes.

8 Q What was the date of the meeting where
9 Utterstrom was in Washington?

10 A And let me just amend my answer. This is an
11 incomplete document because it says seven pages and
12 you've only got one page here. So I'd have to say
13 that given that, I'm going to say that I did not
14 receive this document, just this document on
15 July 17th, 1997. I received this document with other
16 documents, with other pages attached.

17 Q And what was the date of the meeting with
18 Utterstrom?

19 A Prior to July 17th, 1997, I just -- it
20 could -- I think it was very shortly before this date.

21 Q This was the meeting in Washington where the
22 lawsuit and filing of the lawsuit was discussed?

23 A This, I believe was the meeting in
24 Washington to discuss a series of enforcement actions
25 in Italy, Germany, and the United States.

1 Q It says certain issues are deliberately left
2 out. Do you know what he was talking about there?

3 A No.

4 Q Did you ever ask him?

5 A No, not that I recall. I should -- I don't
6 recall asking him what that meant. I -- and I don't
7 know what he meant by reading it right now.

8 Q Let's mark -- sorry.

9 A I was going to say, it could be, since
10 you've given me an incomplete document, I don't --
11 I -- I -- it's hard for me to tell what may have been
12 left out because it could be -- by looking at the
13 document. There may be other issues that he decided
14 did not need to be included in his draft of the
15 meeting.

16 Q Because I deliberately left off the
17 attachment, you can't tell what he deliberately left
18 out of it.

19 A That sounds like good logic.

20 MR. HAINLINE: Let's mark as Exhibit 20 an
21 E-mail from Peter Utterstrom to Hakan Lans dated
22 July 9, 2002.

23 (Exhibit No. 20 was marked for identification and
24 was attached to the transcript.)

25

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1 BY MR. HAINLINE:

2 Q My question is, did you ever see this
3 document in connection with filings that we have made
4 on behalf of Doctor Lans in the Motion for
5 Reconsideration?

6 A Yes.

7 Q If you would look at Paragraph 4.

8 A Paragraph No. 4?

9 Q Yes, sir, thank you, numbered 4.

10 A Yes.

11 Q The document says, the part of the
12 discussion which I remember distinctly focused on you
13 continuing as the owner or whether a transfer of the
14 title to, to the patent should be made to Uni board.
15 This was at the time a strategic issue and would
16 decide whether you personally or your company Uni board
17 would be the Plaintiff. From our, i.e., Delphi, point
18 of view we were more concerned with you personally
19 litigating in Italy and Germany. However, at the time
20 the Italian lawyer, the German lawyer was not present,
21 argued strongly for the exposure being marginal.

22 Ultimately AMS decided against a transfer of
23 title. One argument was that the transfer prior to
24 filing suit may be taken as a sign of weakness.

25 Did you ever call Peter Utterstrom and tell

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1 him that his recollection was wrong?

2 MR. HANDLEMAN: Are you talking about after
3 he saw this the first time?

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4 MR. HAINLINE: Yes.

5 MR. HANDLEMAN: After we were involved in
6 litigation in this case?

7 MR. HAINLINE: Yes.

8 A When you say his recollection is wrong, I
9 don't know what you mean by his recollection was
10 wrong.

11 Q So you don't see anything in here that
12 caused you to call him to disagree?

13 MR. HANDLEMAN: Objection. That's not --
14 you mischaracterized. I think he asked -- he's having
15 confusion in your question.

16 Q Do you understand the question?

17 A Well, not really, but I mean, the last thing
18 you referred to at the, at the beginning of the bottom
19 paragraph is a reference to one argument. I mean
20 obviously that means that there were other arguments
21 and discussions. And if you recall, there is a
22 letter, or excuse me, a responsive E-mail from Mr.
23 Lans that you also submitted, or at least turned over
24 to us in response to this that acknowledges the
25 statements in large part made by Mr. Utterstrom about

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1 that meeting that Mr. Lans was also present at by way
2 of speaker phone.

3 Q Mr. Utterstrom goes on to say in this E-mail
4 that the, from your, from your financial exposure
5 point of view we, i.e., Delphi, could live with this
6 approach as we were informed that under U.S. law each

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7 party would carry his costs. Again, the issue was
8 clearly a U.S. matter and it belonged so clearly to
9 AMS.

10 Did you ever call Peter Utterstrom and tell
11 him that his recollection about the meeting was wrong?

12 A At this time?

13 MR. HANDLEMAN: No, again, let me just be
14 clear. We're talking about a memorandum after this
15 litigation that Mr. -- that counsel, Mr. Utterstrom,
16 for Lans is sending to Lans from which no copy was
17 shown demonstrating that my clients got other than
18 through the litigation. And your question is whether
19 or not counsel has called him up on his own while
20 litigation is pending and took issue with what's in
21 here? That's the question I presume?

22 MR. HAINLINE: Thank you for coaching him
23 and helping him understand the question.

24 MR. HANDLEMAN: I'm not coaching. I want to
25 make sure it's clarified.

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1 MR. HAINLINE: I think it was pretty clear.
2 Now that you've said it again, if you think that's
3 hard for him to answer, I'll say the question a third
4 time so he can have it in mind.

5 MR. HANDLEMAN: No. The dates -- it's
6 unusual to be asking questions about post-litigation
7 documents.

8 MR. HAINLINE: Might or might not.

9 MR. HANDLEMAN: I think it is, but --

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10 A (Reviewing.)

11 Is there a question pending?

12 BY MR. HAINLINE:

13 Q Yes. Did you ever call Utterstrom and tell
14 him, you -- if you said this, your recollection is
15 wrong?

16 A No, because I was not communicating with
17 Mr. Utterstrom.

18 Q I beg your pardon?

19 A I was not communicating with Mr. Utterstrom
20 at this time. And this was received during the
21 pendency of the litigation that's the subject of the
22 Motion for Reconsideration.

23 Q If this is Mr. Utterstrom's recollection, is
24 it wrong?

25 A Is Mr. Utterstrom's recollection wrong?

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1 Q Yes.

2 A Well, I think it's wrong in 3 where he says
3 the focus of the meeting in Washington -- and I think
4 you didn't refer to 3, you just moved me right to 4, I
5 think, without --

6 Q I did.

7 A Well, 3, I think in order to, to understand
8 4 you have to read 3 because it talks about the
9 meeting. And actually, just hang on, just let me
10 read --

11 MR. HANDLEMAN: Take the time to read the
12 document --

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13 THE WITNESS: Yeah.

14 MR. HANDLEMAN: -- because I don't know if
15 there's any other questions other than 4, so it's not
16 of out context.

17 A Right. You have to go right to the
18 beginning of this document because it says here in 1,
19 as far as I can remember, I've only participated in --
20 once in a discussion concerning the issue who shall be
21 the potential Plaintiff against the infringers. The
22 discussion occurred sometime during the Summer of --
23 prior to filing of suit against the main U.S.
24 infringers, Compaq, Dell, Gateway, et cetera.

25 Not having access to my files and documents,

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1 I assume the meeting occurred in July 1997, in
2 Washington, at AMS's office. That's correct, that's
3 all correct.

4 As regards Talbot's involvement in this
5 issue, we will have to ask him. However, he's
6 currently on vacation in U.S. I do not know when he
7 will be able to provide comments.

8 3, the focus of the meeting in Washington
9 was not specifically who shall be the Plaintiff, but
10 other issues of a general nature, however all related
11 to your case. I mean that's correct, as tempered by 1
12 because obviously 1 said that one of the issues in the
13 meeting was who should be the Plaintiff in any action
14 against the infringers.

15 You want me to keep on going?

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16 Q I do. And keep doing what you're doing.
17 Tell me where you agree and disagree. It's very
18 helpful.

19 A I met with AMS primarily to get an update of
20 the status of the matter. As you know, we from time
21 to time complained that the flow of information was
22 insufficient as part of being generally updated. The
23 issue of litigation was discussed, not only in the
24 U.S., but also actions in Italy and Germany.

25 As far as him, his meeting with us to get an

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1 update, I'm not sure what he's referring to. When?
2 And then as far as complaints about the flow of
3 information was insufficient, that related to the fact
4 that Delphi wanted to, to receive all documents filed
5 from any source immediately, and sometimes they did
6 not get those documents for a few, a few days to a
7 couple of weeks, and that was remedied.

8 As part -- the last sentence says, as part
9 of being generally updated, this issue of the
10 litigation was discussed. That -- the way he wrote
11 it, not only in the U.S., but also actions in Italy
12 and Germany, those were the subject of the discussion
13 in the July 1997 meeting with Swedish counsel, Delphi,
14 Italian counsel, and Mr. Lans.

15 And then 4, the part of the discussion which
16 I remember distinctly focused on you continuing -- you
17 being Hakan Lans -- continuing as the owner or whether
18 his transfer of the title to the patent should be made

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19 to Uni board. This was, at the time, a strategic issue
20 and will decide whether you personally or your company
21 Uni board will be the Plaintiff. That's, that's
22 correct. From our, Delphi's point of view, we were
23 more concerned -- I have -- I'm not a mind reader. I
24 have no idea what their point of view was. That
25 wasn't expressed to me at that time or any time until

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1 I read this, and I still, still don't know what that
2 means.

3 Then the beginning of the last paragraph
4 that bridges over to the second page ultimately, AMS
5 decided against a transfer of title. One argument was
6 the transfer prior to filing the suit may be taken as
7 a sign of weakness. We didn't, AMS, we did not
8 decide. It was determined that based upon Mr. Lans's
9 vehement objection to Uni board being made the owner,
10 or an owner along with him of the patent, that it
11 didn't make any sense to have a transfer of title.
12 And perhaps it was a good thing because any, any
13 assignment right prior to suit could, could be seen as
14 a sign of weakness. I don't know that it was said
15 like that. It's possible.

16 And then it says, from your financial
17 exposure point of view, we, Delphi -- I have no
18 knowledge of that. That wasn't expressed to me at any
19 time. And we -- where it says we could live with this
20 approach as we were informed that under U.S. law each
21 party would carry his costs, I don't know what that

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22 means, and I don't know who Mr. Utterstrom is
23 referring to.

24 Q Did you make that statement?

25 A No.

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1 Q Or Schaumberg?

2 A No, the -- Mr. Lans understood, because --
3 that in the U.S., unlike in Europe, if you are the
4 losing party, if you're -- if -- obviously if you're,
5 if you're an infringer, you could be made to pay for
6 attorney's fees if your infringement was found to be
7 willful and you did not have an acceptable opinion of
8 counsel that met the Underwater Devices case criteria
9 as enunciated by the U.S. Court of Appeals of the
10 Federal Circuit, and --

11 Q Did you explain that to everyone?

12 A Pardon me?

13 Q You said Mr. Lans understood. I mean you're
14 the lawyer. Did you explain it to everybody?

15 A That's -- yes.

16 Q Did you have any writing explaining that to
17 people?

18 A Pardon me?

19 Q Did you put it in writing in any way?

20 A That may be in writing.

21 And then the other point was that -- and I
22 don't recall whether it's in writing, but it may be in
23 writing -- and the only caveat that was made, and it
24 came up with regard to infringement, was that we, in

25 order to insulate one's self from any potential

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1 liability for attorney's fees and other costs, the
2 allegation of infringement had to be grounded in a
3 well-reasoned belief that there was in fact
4 infringement which required an analysis of, of the
5 accused product and, and rigging an asserted claim on
6 the accused product.

7 Q All right. And did you explain that to
8 people?

9 A Yes.

10 Q In writing?

11 A Yes.

12 Q And that writing was handed out?

13 A That would have been to -- that would have
14 been to Delphi because there was back-and-forth about
15 talking about our analyses. There's memoranda that
16 are in the record to Delphi, I think also to Mr. Lans,
17 talking about analyses that we had done with regard to
18 the different people's products, and it was ongoing.

19 Q Okay. Anything else in that paragraph?

20 A Then it -- again, the issue is clearly a
21 U.S. matter, and clearly so -- and it belongs so
22 clearly to AMS. I'm not sure what that refers to. I
23 think it may be the first -- I believe it's the first
24 sentence where it says about -- about -- the fact that
25 an assignment would not take place.

1 Q And did you disagree with that?

2 MR. HANDLEMAN: Objection. Your question is
3 do you disagree with that now? He's already
4 established that there's been no conversation between
5 him and Mr. Utterstrom.

6 Q I'm sorry, do you disagree with that?

7 MR. HAINLINE: Thank you.

8 A Do I disagree with that?

9 Q That last sentence.

10 A The issue, issue of, of who should sue in
11 the United States was something that was primarily
12 AMS's responsibility.

13 MR. HAINLINE: Let me mark as 21 a letter of
14 December 17, 1999, from Mr. Mastriani to Mr. Lans.

15 Let me withdraw that.

16 Q Let me ask you to please look at Tab 40 to
17 Exhibit 1 --

18 MR. HANDLEMAN: Okay.

19 Q -- which is a December 17 letter from
20 Mr. Mastriani to Mr. Lans?

21 A (Reviewing.)

22 Q Did you write the original?

23 A Yes.

24 Q Send it to Hakan Lans on or about its date?

25 A That's correct.

1 Q Did you consider this letter to be

2 requesting Doctor Lans's permission for you to file a
3 lawsuit in Uni board's name?

4 A Yes, coupled with a conversation that we had
5 where he required us to file that -- those cases as
6 soon as we heard about any adverse decision on the
7 Gateway motion in order to prevent the filing of
8 multiple declaratory judgment actions by the named
9 Defendants in the original case, and perhaps others.

10 Q Did you discuss with Doctor Lans in this
11 telephone conversation that if Gateway's Motion to
12 Dismiss were granted, there could be multiple
13 declaratory judgment relief actions filed?

14 A Yes. And that had also been discussed
15 before this time. There was, there was a -- I think
16 it was even a memorandum to Delphi and Mr. Lans
17 earlier, you know, back in September or October.
18 There were a number of conversations that led up to
19 this letter about what to do in the event of an
20 adverse decision by Judge Penn in the District of
21 Columbia Court.

22 Q Did you consider it to be important to get
23 Doctor Lans's permission before you filed a lawsuit in
24 Uni board's name?

25 A We had no agreement with, with Uni board, so

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1 therefore we needed express authorization from, from
2 Uni board, and we needed to understand what the, what
3 the basis for compensation was. And that's what was
4 discussed. That's what Mr. Lans proposed, and that's

5 what I wrote up here to memorialize our conversation,
6 and that's what he signed on December 20th. But he
7 had authorized the filing of the Uni board lawsuits
8 long before this, this letter.

9 Q So it was not necessary, then, to get
10 written authorization before filing? Either it was or
11 it wasn't. I don't care what the answer is, just give
12 me an answer.

13 A I had authorization, and it was memorialized
14 in this writing. I had expressed authorization and
15 it's evidenced by this letter.

16 Q Where do you say in here that Uni board will
17 be the Plaintiff?

18 A (Reviewing.)

19 In 3, you as managing agent of Uni board AB
20 have authorized this firm to file infringement action
21 with respect to the '986 patent against any parties
22 who we deemed appropriate, including parties who were
23 Defendants in the suit dismissed by Judge Penn. It
24 could not be more clear.

25 Q You believe that clearly allows you to file

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1 in Uni board's name?

2 A Unquestionably.

3 Q And did you ever discuss with Doctor Lans
4 the dangers of filing a lawsuit in Uni board's name
5 when the patent -- when Uni board had not sent out the
6 infringement letters?

7 A Repeat the question, please.

8 Q Let me withdraw it and I'll ask it a
9 different way.

10 Did you ever discuss with Doctor Lans any
11 risks that might attend filing a lawsuit in Uni board's
12 name?

13 A Mr. Lans had been informed that the owner of
14 the patent had to give notice of infringement.

15 Q Well, let's try to do this in the active
16 voice because what he may have been informed by or
17 whom doesn't help me. Did you ever tell Doctor Lans
18 of the risks that might attend filing a lawsuit in
19 Uni board's name?

20 A The risks meaning what?

21 Q Well, are you aware that Judge Penn
22 dismissed the Uni board case?

23 A Yes.

24 Q Are you aware that Judge Penn issued an
25 Order of attorney fees against Uni board for the filing

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1 of the Uni board case?

2 A Yes.

3 Q That kind of risk.

4 A Mr. Lans was, was informed of the danger of
5 the assessment of attorney's fees with regard to
6 dismissal of these cases, and that's in the memorandum
7 that was back, I think in August of 1999.

8 Q Did you inform Doctor Lans that if he
9 filed -- if you drafted and filed a lawsuit in
10 Uni board's name, there could be risks?

11 MR. HANDLEMAN: Objection. I think he just
12 answered that.

13 Answer it again.

14 MR. HAINLINE: I don't believe he did, and
15 I'm willing, I'm willing --

16 MR. HANDLEMAN: Don't get yourself worked up
17 here. I mean, don't yell. Take it easy.

18 MR. HAINLINE: If I'm repetitive, I
19 apologize.

20 MR. HANDLEMAN: No reason to get upset.

21 MR. HAINLINE: And I'm not upset. If I'm
22 upset, you'll know.

23 MR. HANDLEMAN: Okay. I haven't experienced
24 that yet, so I suppose --

25 MR. HAINLINE: You will, and then you'll

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1 know.

2 MR. HANDLEMAN: Okay.

3 THE WITNESS: Please let me have the
4 question read back. Thank you.

5 (Record read.)

6 A In the conversations with Delphi and with
7 Mr. Lans, it was discussed that he had given notice
8 from time to time in September and then again in
9 October of 1996, and that could present a problem.
10 But since the patent was expired as of this time,
11 Uni board was not in a position to give notice and we
12 thought that it would be best not to because it would
13 only create a basis for potential attack on that

14 front.

15 BY MR. HAINLINE:

16 Q Okay. That was your legal opinion and
17 advice?

18 A That was our legal opinion and advice, yes.

19 Q Okay. What about the advisability of
20 bringing a lawsuit in Uni board's name after the patent
21 had expired, did you discuss with Doctor Lans the
22 risks that might attend that decision?

23 A I don't see how that was a risk because it
24 was our view that, that Uni board would have benefit of
25 the original Notice of Infringement because it was, it

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1 was -- Mr. Lans was, was a party that was, had the
2 authority to grant Notice of Infringement. Our appeal
3 brief to the Federal Circuit laid this all out.

4 Q Did you express that legal opinion and
5 advice to Doctor Lans?

6 A And to Delphi.

7 Q And to Delphi. Yes to Doctor Lans, and yes
8 to Delphi?

9 A Yes.

10 MR. HAINLINE: Let's mark as Exhibit 21 the
11 Complaint of --

12 (Discussion off the record.)

13 (Exhibit No. 21 was marked for identification and
14 was attached to the transcript.)

15 BY MR. HAINLINE:

16 Q Is this the Complaint your firm filed on

17 behal f of Uni board in the Di strict of -- is that
18 Federal Di strict Court for the Di strict of Columbi a,
19 Exhi bi t 21?

20 A (Revi ewi ng.)

21 Yes, it is.

22 Q And it was filed on November 29, 1999?

23 A It is -- yes, it is.

24 MR. HAINLINE: Let me mark as Exhi bi t 22 an
25 E-mai l from Mr. Schaumberg to Hakan Lans dated

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1 December -- dated August 22, 2001.

2 (Exhi bi t No. 22 was marked for i denti fi cati on and
3 was attached to the transcript.)

4 BY MR. HAINLINE:

5 Q Did Mr. Schaumberg send this document to
6 Hakan Lans on or about its date?

7 A Yes, it looks like he did.

8 Q And is this an agreement that your firm
9 negotiated wi th Gateway?

10 A This was an agreement that was the subject
11 of negoti ation wi th Gateway.

12 Q Did you suggest and advise Doctor Lans to
13 sign this agreement?

14 A Let me just make sure --

15 THE WITNESS: Can you read the questi on
16 agai n?

17 (Record read.)

18 A (Revi ewi ng.)

19 MR. HAINLINE: Let's go off the record and

20 take a short break, because I'll finish a lot faster
21 if I can take a break and --

22 (Discussion off the record.)

23 THE WITNESS: Are you withdrawing the
24 question?

25 MR. HAINLINE: No, I'm not. But just -- I

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1 don't expect an answer until we get back because I
2 just have to have a little outline of where I'm going
3 so I can finish this efficiently.

4 (Break taken at 4:34 p.m.)

5 MR. HAINLINE: Please read the pending
6 question to Mr. Mastriani.

7 (Record read.)

8 A Actually Mr. Schaumberg did in this
9 particular document.

10 Q Okay. If you --

11 A But I will say that I, I agreed with
12 Mr. Schaumberg's recommendation.

13 Q Now, at the time that Mr. Schaumberg
14 recommended to Doctor Lans that he sign this
15 agreement, you were aware of the global positioning,
16 or STDMA patent, correct?

17 A Yes, we were aware that the only patents at
18 this time were the '986 patent and the, the GPS
19 patent.

20 Q And this settlement agreement would have
21 conveyed to Gateway a license under the STDMA patent,
22 correct?

23 A Yes. In exchange for \$5,000 being paid by
24 Mr. Lans, Gateway was going to waive its claim to
25 an -- in excess of a million dollars in damages and

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1 any other claims it had against Mr. Lans in exchange
2 for a license under the '986 patent and under the GPS
3 patent, which was not being practiced in the United
4 States by anybody because it had been disavowed by the
5 aviation industry because of another standard that was
6 being adopted. I think it was being advocated by
7 Honeywell.

8 So it was our view that this was a very good
9 deal with -- for Mr. Lans because he was essentially
10 going to avoid the possibility of a million dollars in
11 legal -- in attorney's fees, plus I see -- at least a
12 million dollars in attorney's fees, plus other
13 contingent liabilities on claims that Gateway felt it
14 may have.

15 Q And Gateway not only included Gateway as
16 having the right to license under the STDMA patent,
17 but anyone with, that Gateway had more than 10 percent
18 of their shares?

19 A Are you referring to something --

20 Q Yes, the definition of Gateway.

21 MR. HANDLEMAN: Page 2.

22 A Yes, an affiliate as defined under Gateway.

23 Q And it's any company where Gateway has 10
24 percent of their shares?

25 A That's correct.

1 Q Did you have any correspondence with Gateway
2 about this, this potential settlement?

3 A This was all conducted in telephone
4 conference, conferences with Janet Cullum and Gary
5 Ritchey of Cool ey, Goddard, which is Gateway's
6 counsel, and Gateway's general counsel or general
7 patent counsel, I can't remember which one it was.

8 Q What is his name or her name?

9 A I can't remember. It was a male. It was a
10 man. I don't remember his name.

11 Q Did Gateway offer to, offer any
12 consideration to Adduci, Mastriani & Schaumberg if
13 this settlement went through?

14 A Not at all.

15 Q Did they offer to, either orally or in
16 writing to not appeal the denial of their attempt to
17 get fees against you?

18 A Not at all.

19 Q Now, Doctor Lans told Mr. Schaumberg that he
20 owned -- that he did not want to license the global
21 positioning or STDMA patent, didn't he?

22 A I think he told both of us that because we
23 had a discussion with Mr. Lans and he said that he did
24 not -- he actually -- he wasn't concerned about the
25 STDMA patent at all. What he was concerned about was

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1 the possibility that this could involve other future
2 patents he said that, that he could get in the medical
3 field, I think he was talking about. And we told him
4 that the patent was limited -- excuse me, the
5 agreement was limited to patents that were -- where
6 does it say here -- that were in effect as of the
7 effective date of this agreement, which would have
8 been sometime in August of 2001. And the only patents
9 that, that there were according to Mr. Lans was the
10 '986 patent and the, and the STDMA patent. And as far
11 as future patents, Mr. Lans mentioned that he may get
12 patent, patent or patents in the medical field. We
13 just indicated that that may be the case, but we felt
14 that if Gateway was going to have a license for
15 computer products, that it would -- it would be
16 unlikely that they would practice that technology
17 anyway. So it was up to him. It was an agreement
18 that we felt was more than fair, and we recommended
19 that.

20 Mr. Lans rejected it, and we acceded to his
21 wishes and informed Gateway that Mr. Lans refused to
22 sign.

23 MR. HAINLINE: Please mark as 23 a fax from
24 Lans to Schaumberg, August 22, 2001.

25

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1 (Exhibit No. 23 was marked for identification and
2 was attached to the transcript.)

3 BY MR. HAINLINE:

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4 Q To your knowledge, did Mr. Schaumberg
5 receive the original of this fax on or about its date?

6 A Yes, he did.

7 Q And he told your firm that he wanted to
8 restrict the license to computer graphics?

9 A That's right.

10 Q And that meant that he did not agree to
11 license the STDMA patent?

12 A That's correct. As I told you before, he
13 refused to sign 22. So that, that means exactly that.
14 He refused to, refused to do that.

15 Q I thought you said he didn't care about the
16 STDMA patent, he's just talking about medical devices?

17 A Well, if I understand from him, that's what
18 his real concern was about, was about work that he was
19 planning to do or may be doing in the medical field
20 and he thought he may get patents.

21 Q Did you ever in any of the hearings before
22 Judge Penn tell Judge Penn that Doctor Lans wanted to
23 testify?

24 A I told Judge Penn that Mr. Lans -- I think
25 in one of the oral arguments, in one of the last

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1 motions, that Mr. Lans was available to testify.
2 Mr. Lans never expressed an interest in testifying
3 until the cases went up to the Federal Circuit.

4 Q And did Judge Penn ever indicate that he had
5 no interest in hearing testimony from Doctor Lans?

6 A Did he ever say he had no interest?

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7 Q Did he ever indicate that he had no
8 interest?

9 MR. HANDLEMAN: Did he ever -- I don't
10 understand the question. I object.

11 MR. HAINLINE: Well, maybe, maybe this will
12 help. Let's mark as Exhibit 24 an E-mail from
13 Mr. Lans to Utterstrom and Lindstrom dated August 1,
14 2001.

15 (Exhibit No. 24 was marked for identification and
16 was attached to the transcript.)

17 BY MR. HAINLINE:

18 Q And this is an E-mail, E-mail chain, the
19 last E-mail of which is yours. There's an earlier
20 E-mail from Utterstrom to you.

21 So my question is, did you receive
22 Utterstrom's E-mail and did you write your E-mail to
23 Utterstrom on the August 1 date?

24 A Yes.

25 Q And did you tell Utterstrom that I, I

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1 informed Judge Penn at the hearing that Hakan has
2 always been prepared to testify and desperately wants
3 to testify about the ownership issues in order to
4 demonstrate his credibility to the Judge?

5 A Yes.

6 Q You did. Did you tell the Judge this --
7 I -- my first question which you answered was did you
8 tell Utterstrom. Now my question is, did you actually
9 say that to the Judge?

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10 A I say that here.
11 Q Well, did you say it to the Judge?
12 A It says here I did say it to the Judge.
13 Q And was that a true statement?
14 A Of course it was a true statement,
15 Mr. Hainline.
16 Q Did you have a transcript of that
17 statement -- of that hearing?
18 A I don't recall if that was on the record or
19 not on the record. There were discussions in the
20 Court that weren't on the record also.
21 Q Do you remember what day you said this to
22 the Judge?
23 A Well, it had to be before August 1, 2001.
24 Q And you go on to say that the Judge has
25 indicated no interest in hearing testimony from Hakan.

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1 A Let me just point out that it says, in
2 response to your last comment, as explained in my
3 previous E-mail, I don't have that in front of me, I
4 don't know what was said there, but I apparently in my
5 previous E-mail made reference to the fact I informed
6 Judge Penn at the hearing that Hakan has always been
7 prepared to testify and desperately wants to testify
8 about the ownership issue in order to demonstrate his
9 credibility to the Judge. I have to assume this is
10 probably about the attorney's fees hearing.
11 Q Did Judge Penn indicate no interest in
12 hearing testimony from Hakan?

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13 A If -- because of the fact that Judge Penn
14 never asked for Mr. Lans to appear, that would
15 indicate no interest. He never -- I can say this. He
16 never -- I don't recall Mr. -- excuse me, Judge Penn
17 ever saying, saying that he had no interest, but he
18 never, he never indicated that he had an interest by
19 saying so. And as you can see, I say, the Judge has
20 indicated no interest in hearing testimony from Hakan,
21 hopefully because he sees no need to do so because
22 he's inclined to deny the motions.

23 MR. HAINLINE: All right. I'm going to turn
24 this over to Mr. Partridge. I'm going to vacate this
25 seat, just to make it easier for everyone.

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2 EXAMINATION BY COUNSEL FOR DEFENDANT DELL

3 BY MR. PARTRIDGE:

4 Q Good afternoon, Mr. Mastriani. I just have
5 a few questions for you that hopefully will only take
6 15 or 20 minutes.

7 I'd like to start with the last exhibit
8 before we shuffle too many of those, if I may, AMS 24
9 I believe it is, which was the, or is the E-mail from,
10 oh, I guess it's from you to Mr. Utterstrom,
11 August 1st, 2001, which was predated by another
12 E-mail on the same document from earlier that day, I
13 gather from Mr. Utterstrom to you, correct?

14 A Yes.

15 Q With copies to a couple of other people?

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16 A That's correct.

17 Q In the first of the two E-mails
18 chronologically, the one from Mr. Utterstrom to you,
19 he talks about the translation of a document, which I
20 gather from this is the, is one of those annual
21 reports of Uniboard; is that correct? Is that what
22 he's talking about?

23 A Yes. And this is in reference to Gateway's
24 Swedish counsel, Mr. Leijonhielm's translation.

25 Q And the question concerns at least one

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1 Swedish word, there may be some others, but the
2 Swedish word is overtagit, O-V-E-R-T-A-G-I-T; is that
3 right?

4 A That's right.

5 Q And it appears as though Mr. Utterstrom is
6 indicating that in the context of the annual report
7 it's possible that the sentence in which it appears
8 could be read as indicating a possession of the patent
9 on behalf of the owners, though not actual ownership;
10 is that right?

11 A That's right.

12 Q And then in your response to Mr. Utterstrom,
13 in the second paragraph you, you talk about the
14 Swedish word ager, A-G-E-R, which means owned. Do you
15 see that, middle of the second paragraph?

16 A Yes.

17 Q And I'm going to read that sentence and I'd
18 ask you to tell me if I've read it correctly, and then

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19 I'll ask you a question about it.

20 It says, however, in the 1990 annual report
21 the Swedish word ager means own, which also places the
22 wording in the 1989 report in such a posture that any
23 reasonable person would conclude that ownership of the
24 patent is likely.

25 Did I read that correctly?

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1 A That's right.

2 Q When did you first come to an understanding
3 that there was a word in the annual report that could
4 be interpreted to mean ownership of the patent as
5 opposed to some other rights?

6 A At -- we were talking to, at this time a
7 translator about, about, about the potential meanings
8 of the different words.

9 Q Now, I understand from your earlier
10 testimony you were aware of the 1990 annual report and
11 the 1989 annual report at some time prior to the
12 filing of the lawsuit against my client Dell in 1997;
13 is that correct?

14 A Right. That's correct.

15 Q Now, did you ask any Swedish translators or
16 interpreters about the meaning of the actual language
17 in those annual reports before the filing of the
18 Complaint?

19 A Yes. It was Tal Lindstrom, and I believe
20 there's another attorney in Delphi. It may have been
21 Christopher Holm.

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22 Q Did either of those gentlemen indicate to
23 you at any time prior to the filing of the Complaint
24 that there might be some question about what the 1989
25 and 1990 annual reports meant with respect to the use

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1 of the term ager?

2 A No, because -- well, no, because the, the
3 interpretation was, as is confirmed by Tab 31 of
4 Exhibit 1 when we had asked the translator, an
5 authorized public translator what the language means,
6 and she explicitly stated that, that the words do not
7 have any ownership connotation, just, just
8 administration.

9 Q What I'm trying to get is what occurred
10 prior to the filing of the Complaint, not what you
11 came to know later. I think Tab 31 deals with a
12 translation that occurred after the filing of the
13 lawsuit, correct?

14 A Right. It was dated -- it was a translation
15 that was on August 2, 2001, which is literally hours
16 after this E-mail.

17 Q And so my question concerns what you knew
18 prior to the filing of the Complaint against Dell in
19 1997 with respect to the 1990 annual report and the
20 1989 annual report. Prior to that point in time you
21 had seen the annual reports in some translated form,
22 correct?

23 A We saw the, the only -- the only time I can
24 remember seeing the annual report or an excerpt, I

25 should say, this is an excerpt of an '89 annual

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1 report, was in August, late August, mid to late
2 August/September of 1999 after the Gateway motion was
3 filed.

4 Q That was the first time you actually saw the
5 annual report?

6 MR. HANDLEMAN: He said he saw the excerpts
7 of the annual --

8 Q Saw the excerpt.

9 A I'm sorry. Right.

10 Q Saw the excerpt of the annual report, and
11 you saw it in English?

12 A I saw it in Swedish with -- and I believe
13 there was an appended, or else a cover, cover letter
14 E-mailed from, from, from Delphi translated the
15 relevant portion about the administration of the, of
16 the, of the patent on behalf of the beneficial owner.

17 Q So that -- let's back the clock up a bit.
18 Prior to the filing of the Complaint in 1997, were you
19 aware of the existence of the annual reports of
20 Uni board in 1989 and 1990?

21 A I was aware of the existence from
22 discussions with Mr. Lans and with Delphi.

23 Q And who, if anyone, did you rely upon with
24 respect to the content of those annual reports insofar
25 as they related to the color graphics patent?

1 A Delphi primarily, and Mr. Lans secondarily.

2 Q And at that time, had you yourself engaged
3 anyone to give you a translation into English of the
4 relevant portions of that report?

5 A No. I relied on the attorneys at Delphi to,
6 to tell us anything in the annual reports, annual
7 reports that were germane to the patent.

8 Q I'm sorry.

9 A Go ahead. Go ahead.

10 Q And what did they represent to you, that is
11 the Delphi lawyers, with respect to the content of
12 that annual report at a time predating the filing of
13 the lawsuit against my client?

14 A They essentially confirmed what Mr. Lans
15 said. They confirmed that, from the standpoint that,
16 that the company, Uni board, was administering, had
17 administration power over the patent on behalf of the
18 owner Hakan Lans. And we knew from Mr. Lans that
19 Uni board received the revenues, although that wasn't
20 reflected in the annual reports. There was no
21 statement to that effect.

22 Q And is it your recollection that Mr. Lans
23 confirmed that interpretation of the annual reports to
24 you?

25 A Did he confirm Delphi's interpretation?

1 Q Yes, that's my question.

2 A No, I don't recall that.

3 Q So you primarily relied upon what Delphi

4 told you about the meaning of those annual reports?

5 A Right. And that was corroborated in -- by

6 the certified translation on August 2nd, 2001, which

7 was submitted to Judge Penn.

8 Q And you understood prior to the filing of

9 the lawsuit against my client, Dell, that there had

10 been a license agreement granted to IBM by Uni board,

11 and that Uni board at least had certain so-called

12 administrative responsibilities with respect to the

13 patent, correct?

14 A We knew, we knew that -- yes, we knew that

15 Uni board licensed IBM, and that it, it administered

16 the patent, although those -- it wasn't specified

17 anywhere what, what, what the nature of the

18 administration was.

19 Q And that was -- it's actually -- you

20 anticipated my next question. Did you ascertain from

21 either Doctor Lans or Delphi as to the current nature

22 of the administration of the patent by Uni board prior

23 to the filing of the lawsuit against my client Dell?

24 A The only information we received was that

25 Uni board received the revenues and it didn't do

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1 anything active with regard to the patent. It just --

2 Q Prior to the filing of the lawsuit against

3 Dell, did you request any evidence of the termination

4 of the responsibilities of Uni board to administer the

5 color graphics patent?

6 MR. HANDLEMAN: Objection. That assumes he
7 had made such a request, but you can answer.

8 A We didn't ask for, for any, any evidence of
9 termination responsibilities because there was no
10 delineation of any active responsibilities. All that
11 the company -- the only actions by the company was to
12 be a repository for the receipt of revenues, and it
13 was for tax purposes.

14 Q Are you familiar with what a quick claim is?

15 A A -- yes.

16 Q What is --

17 A In terms of real property.

18 Q What is a quick claim?

19 A I believe a quick claim is just a simple
20 deed where you, you basically, you, you quick claim.
21 You, you give -- sell all of your rights in a piece of
22 real property in toto to a different person.

23 Q You clear up title to a piece of real
24 property in essence?

25 A I don't believe that's the case. I, I -- I

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1 understand quick claim to be where you trans -- where
2 you transfer a piece of property, the ownership in its
3 entirety to somebody and it's a, more of an informal
4 transaction, very simple piece of paper, rather than
5 an elaborate type of legal document or contract.

6 Q Are you familiar with the use of quick
7 claims in patent law to clear up title to patents, a

8 simple document that clears up title?

9 A A quick claim that clears up -- you have to
10 be more specific. You're being too vague.

11 Q Have you ever heard of the use of a quick
12 claim document in order to make sure that in the event
13 a party may contend or may otherwise still possess any
14 rights whatsoever with respect to a patent, that it
15 quick claims any possible rights it might have in
16 order to clear up title? Are you familiar with the
17 use of such documents in that context?

18 A The only time I've ever seen any, anything
19 in that vein, and they haven't been called quick
20 claims, has been in an instance where there is a
21 punitive inventor who has not been named for whatever
22 reason, whether it's deceptive intent or no deceptive
23 intent. Let's say an employee who worked on the
24 project with a team of people that were named
25 inventors and yet that man or woman was not named and

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1 there's a possibility that they contributed something
2 to the patent which may elevate them to the status of
3 an inventor, and that somebody goes to them, either
4 the patentee goes to them and gets an assignment, what
5 it is, or a potential infringer goes to that person
6 like in the Ethicon case, which I'm sure you're
7 familiar with, and gets a license from that person and
8 they get a, basically a license or an assignment of
9 all rights that person may have. And then that
10 person, in the case of an alleged infringer, turns

11 around and says, I have, I have a, I have -- I have
12 rights to the title myself, or I have a license. I
13 just did this recently in a case. I can't give you
14 the details, but two, with two people, and we
15 purchased from each of them all of their right, title,
16 and interest, whatever that may be, in the particular
17 patent that's the foundation patent for a whole
18 portfolio of patents.

19 Q And that is a very simple document. A page
20 or two, correct?

21 A It's -- yes. It's an assignment, though,
22 and it's not called a quick claim. I've never heard
23 it called a quick claim. Maybe that's shorthand
24 amongst some people, but the documents I'm referring
25 to specifically that I'm, most recent ones where we

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1 represented an accused infringer, it's called an
2 assignment and it's a formal document and it's going,
3 they're going to be -- we got one, when we get the
4 other, we're going to record those with the U.S.
5 Patent and Trademark Office. And that's happened in
6 the past. In those instances, I mean it's only been,
7 I've only been involved in something like that where
8 that's happened in -- well, I mean, I mean a few
9 cases.

10 Another case we, we bought --

11 MR. HANDLEMAN: I don't know that -- I don't
12 think that's germane to the question.

13 A I'm just going to finish it, though, because

14 you're asking.

15 Again, it was an assignment. It was a,
16 where a prior art patent was purchased and then also
17 any rights this company had in this asserted patent,
18 because the allegation was from our side that the, an
19 ex-employee who was a named inventor was required to
20 have assigned the rights to that patent after he left
21 back to the company because it was based upon his work
22 with the company. That was an assignment.

23 Q Okay.

24 A I've never used quick claim. I've never
25 heard of it in that context.

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1 Q Let's see if we agree on a couple of things.
2 Prior to the filing of the lawsuit against my client
3 you were aware of the IBM license agreement and the
4 fact that the licensor in that agreement was Uni board,
5 correct?

6 A That's correct.

7 Q And prior to the filing of the lawsuit
8 against Dell, you were aware of these two annual
9 reports that allegedly made some reference to some
10 interest that Uni board had with respect to the
11 administration of the patent, correct?

12 A There's no reference in the annual reports
13 to an interest in a patent.

14 Q Strike the word interest. That it had some
15 administrative rights with respect to the patent?

16 A No, that's incorrect. It says the -- the

17 annual report says that the company administers the
18 patent on behalf of the beneficial owner, who is, who
19 is Hakan Lans. That's exactly what it said.

20 Q And you were aware of that before filing the
21 lawsuit, correct?

22 A Yes.

23 Q And before filing the lawsuit, you had the
24 February 1997 fax from Mr. Lans in which he talked
25 about this document that he said that he had signed

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1 and given to Mr. Grennberg, correct?

2 A Yeah. Doctor Grennberg.

3 Q Doctor Grennberg?

4 A Yes.

5 Q So you knew at least those three facts --

6 A Uh-huh.

7 Q -- that related to the '986 patent, the
8 color graphics patent?

9 A I'm --

10 MR. HANDLEMAN: Going to include in this
11 question the Hitachi? Are you including that in there
12 or restricting your question?

13 MR. PARTRIDGE: I'm asking my question.

14 Q You knew those three facts, correct?

15 A No, I didn't know those three facts because
16 the third fact that you mentioned is not a fact, was
17 not a fact and is still not a fact; that is, no
18 document was ever signed by Mr. Lans changing
19 registration from him to Uni board. No document was

20 given to Doctor Grennberg. No document was sent by
21 Doctor Grennberg to us. And I testified about that
22 before. So that part of the February 19th, 1997
23 E-mail is not a fact.

24 Q Yeah, you're reading more into my question
25 than was in my question.

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1 MR. HANDLEMAN: Except -- let me say --
2 well, let me say this. You can ask your question,
3 then I'll get an objection because after seven hours
4 of, of questioning, for you to put a question and make
5 it so simplified, you're going to get an objection
6 because that's, quite frankly, an unfair question in
7 my view.

8 MR. PARTRIDGE: That's fine.

9 Q My question is, the third point was that you
10 were aware of the fax from Mr. Lans dated
11 February 1997 that made certain assertions with
12 respect to the '986 patent, correct?

13 A That's correct.

14 Q Okay. Prior to the filing of the lawsuit,
15 given your knowledge of the three things that we just
16 identified, did you contemplate the possibility of
17 making certain that all rights whatsoever with respect
18 to the '986 patent could have been cleared up by a
19 simple assignment document of the type that we just
20 discussed?

21 A No. There was no, there was no reason for,
22 for me or anyone else to, to make that conclusion.

23 Q And you would disagree that it would have
24 been prudent for you as a lawyer about to file a
25 lawsuit against my client, given the knowledge of

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1 those three facts, to not prepare a simple assignment
2 document clearing up the ownership of the patent?

3 MR. HANDLEMAN: Object.

4 THE WITNESS: Go ahead. I'm sorry.

5 MR. PARTRIDGE: Make an objection, but don't
6 make an argument.

7 MR. HANDLEMAN: I'm not going to make an
8 argument. I'm going to object. It mischaracterizes
9 the testimony you heard. That's not a speaking
10 objection.

11 MR. PARTRIDGE: Fair enough.

12 Q And your answer?

13 A No, I thoroughly disagree and would point
14 you to the affidavits of Samuel Miller to the effect
15 there was no reason that any attorney would do so.
16 And I submit that only an incompetent attorney would
17 have done that.

18 Q There was reference yesterday -- and you
19 were at Mr. Lans's deposition, correct?

20 A Yes.

21 Q -- to a -- I'll probably use the wrong word
22 to characterize it -- a fund or an account at AMS that
23 related to income received from the color graphic
24 patent, correct?

25 A An escrow account, yes.

1 Q And Mr. Lans testified yesterday that he
2 thought there was a fund, the amount of which he
3 thought should have been in the nature of
4 \$1.6 million. Do you remember him testifying about
5 that?

6 A Yes.

7 Q First of all, setting aside the amount, is
8 there a fund at AMS or an account at AMS in which
9 certain monies have been placed that relate to the
10 color graphics patent?

11 A Yes.

12 Q How much money is in that account?

13 A There's -- let's see. I want to say there's
14 three accounts. There is a Lans Escrow Account which
15 is about a little over \$500,000, and that's
16 undistributed license income. It may be somewhere
17 between 500 and 550,000, something like that. I
18 haven't looked at it for a long time.

19 And then there is about 25 or \$26,000 in a
20 fund that says Lans USA Fund, and that is the property
21 of AMS, Delphi and Robert Westerlin and the Estate of
22 Ray Powell because that is post-distribution funds
23 that were put in that fund to, for expenses, for
24 expenses in the litigation. So it's -- there's that.
25 And then --

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1 Q How much? I'm sorry.

2 A About 25 or \$26,000.

3 And then there's a Lans Europe Fund that
4 literally, if it still exists, may have a couple of
5 dollars in it because that was the escrow account in
6 which was deposited funds, undistributed funds from
7 several settlements by agreement of Mr. Lans, Delphi,
8 and AMS to pay the Italian and German lawyers for the
9 enforcement actions in Italy and Germany. But that
10 was, that was exhausted, and I -- it's possible there
11 could be a couple of dollars literally in there, but
12 given bank fees, that account may have been closed
13 because of a deficit.

14 Q Let's talk about the first of those
15 accounts. You said it's the Lans undistributed
16 account?

17 A Yes. That has basically the Compaq -- it's
18 the Compaq settlement, I believe, that that money is.

19 Q Does it include the Micron settlement?

20 A No.

21 Q So as far as you know it's -- the monies in
22 that fund are the monies received from Compaq?

23 A Yes. My -- that's what my recollection is.

24 Q I thought that Mr. Lans said yesterday that
25 Compaq paid \$450,000. Was he incorrect?

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1 A I, I think he may be. I'm not sure
2 because -- I mean it was news to me when he mentioned
3 that he had been -- negotiated with the President of

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4 Compaq and reached an agreement because the, the
5 license agreement was negotiated between AMS and
6 Compaq's counsel, Stephen Zager, at what was then
7 Brobach Plager (phonetic). I mean that's where the
8 negotiations took place. What Mr. Lans may have been
9 doing with some Compaq employee in Sweden was unknown
10 to us.

11 Q The \$550,000 or so that's in the account, is
12 that \$550,000 the total amount paid by Compaq or was
13 the portion that was owed to AMS and Delphi subtracted
14 before those monies were put in the account?

15 A No, the total receipts were put into that
16 account. Anything that went into that account came
17 right from the licensee into the account. The amount
18 that's in there is with interest over a fair amount of
19 time, so that's why I say it's somewhere between 500
20 and 550,000, I believe somewhere in that neighborhood.

21 Q Does AMS have a position as to how the
22 monies in that account should be used?

23 A Yes.

24 Q And what is that position?

25 A I should say used or paid.

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1 Q Used, distributed, I'm sorry.

2 A That should be distributed to, in its
3 entirety to the attorneys, leaving a further balance
4 owed by Mr. Lans because of the withholding of payment
5 based upon the gross receipts rather than the net
6 receipts from the Japanese companies.

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7 Q And to summarize that, that has to do with
8 the dispute that existed between AMS and Mr. Lans with
9 respect to the 10 percent tax charged by the Japanese
10 Government for those licenses that were executed with
11 Japanese companies?

12 A That's correct. The -- what -- the position
13 by Mr. Lans that it's a million, \$1.2 million missing
14 from the account is in error because that money was
15 never in the account, because it's being held as we
16 speak by the Japanese Government as a tax, as a
17 withholding tax for which Mr. Lans has the benefit of,
18 or maybe no more he doesn't, but he did have at the
19 time it was made.

20 Q Let me see if I understand how you
21 internally resolved the problem. Did you go ahead and
22 pay Mr. Lans 60 percent of the gross despite the fact
23 that you thought it should have been 67 percent of
24 90 percent of the gross, and now the dispute is
25 getting back your percentage of that?

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1 A We gave -- he was always paid 67 percent
2 even of the net, and that was despite that he should
3 not have gotten 67 percent of the net. What he should
4 have gotten was after 33 percent of the gross was paid
5 to the law firms per the July '96 agreement, that then
6 he would be entitled to the remainder, which
7 mathematically would be less than 67 percent, but more
8 than 62 or 63 percent.

9 Q Is the disposition of monies in that account

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10 the subject of the litigation between AMS and Lans at
11 the current time?

12 A In the, the other litigation, that's an
13 issue, yes. I mean it -- the -- our firm has
14 obviously not to this point made any claims yet
15 because we're not -- there's a number of motions to
16 dismiss and so on pending.

17 Q What's your intention, your firm's intention
18 with respect to that account over the next six months
19 to a year?

20 A That account is going to remain in, in, in
21 place until there's a judicial resolution. But it's
22 the position of the firm that, that there's an
23 attorney's lien on that, and that Adduci, Mastriani &
24 Schaumberg, and Delphi, as well as Robert Westerlin
25 and the Estate of Raymond Powell have the sole right

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1 to those monies.

2 Q Have you been ordered by the Court to keep
3 those funds in that account or is that a voluntary
4 action on your part?

5 A That's a voluntary action on our part.

6 Q When you began this process of consideration
7 of the '986 patent, is it fair to say that you
8 anticipated that if you were successful, the royalties
9 in return by way of revenue, either through litigation
10 or licensing, would be in the tens of millions of
11 dollars?

12 A Could you repeat the question?

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13 Q I mean let me state it more simply. When
14 you began considering assisting Mr. Lans in enforcing
15 and licensing the '986 patent, did your firm
16 contemplate that the revenue from the patent could be
17 in the tens of millions of dollars?

18 A Did we contemplate? I wouldn't say that. I
19 mean we, we thought that, that, that the project had
20 promise, I would say that. As, as we went into the
21 project and began to license companies, especially
22 some of the larger licenses that we received, we
23 started believing that, that the project had, had
24 promise. But of course that's all tempered by what
25 else was going on with regard to people's positions on

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1 validity and infringement. And as you know, I think
2 we were down to two claims out of 30 claims and
3 probably one claim by the end of the case.

4 Q But is it fair to say that were you
5 successful in the enforcement process, that you
6 anticipated at some point that the revenues, not your
7 take, but the total revenues would be in the tens of
8 millions of dollars?

9 A I think that's a fair statement given that I
10 think we wound up collecting with the licensees to
11 date that we did deal with something on the order of
12 22 or \$23 million, so somewhere in there.

13 Q And with respect to undertaking this
14 representation, you also recognized that substantial
15 fees would be incurred by your firm in connection with

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16 enforcement, especially if you had to bring
17 litigation, correct?

18 A Well, with fees, I would -- I wouldn't say
19 that because the agreement initially in July of '96
20 was only for licensing. And then there was a proposal
21 from Mr. Lans with regard to litigation asking for
22 setting the budget on an hourly rate and so on.
23 Mr. Lans rejected that, and then requiring that
24 litigation be subject to the same terms that the
25 licensing project was, so there were no fees incurred

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1 by Mr. Lans.

2 Q Understood. I'm looking at your investment.
3 Maybe that's a better way --

4 A Our investment was huge. I mean we had
5 thousands and thousands and thousands of hours --

6 Q And --

7 A -- over the course of five years.

8 Q And if you took this through litigation,
9 your investment would have been probably in the seven
10 figures somewhere?

11 A Probably would have been, would have been --
12 it was already in the seven figures, so it probably
13 would have been in the eight figures.

14 Q And you were looking at a possible return to
15 your law firm that would have been in the seven- or
16 eight-figure range as well, correct?

17 A Ultimately, yes.

18 Q And ultimately you achieved settlements with

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19 a number of companies that netted approximately, what,
20 \$20 million in revenues?

21 A Something like that. Twenty, I mean 20 to
22 very low 20s. I don't have a precise figure.

23 Q And a share of that for the lawyers for your
24 firm and the Delphi law firm was roughly \$7 million?

25 A No, it was -- you have to remember you have

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1 to take that 10 percent out, and the Japanese, the
2 Japanese licenses were the largest. I mean between
3 Fujitsu, was a few thousand shy --

4 Q Just ballpark it.

5 A I'm just -- probably I could say for -- I
6 would say something on the order of like maybe five
7 million, like five, five and a half million. It could
8 have been a little bit more than that. I'm just
9 thinking from AMS's standpoint I think it was
10 somewhere just over three million.

11 Q So you split that with Delphi and your take
12 was roughly half?

13 A No, I'm sorry, that was what we received as
14 our share. In other words, it was more than that. So
15 there was an agreement internally to, to, to share the
16 32 percent a certain way because the one percent went
17 to the '986 Partners.

18 Q Approximately how much did AMS make from the
19 revenue that was collected with respect to this
20 patent?

21 A AMS made, I want to say three, 3.3,

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22 four million, somewhere around there. I could be off
23 by a couple of thousand dollars. That's my
24 recollection. I haven't looked at that in at least a
25 couple of years.

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1 Q When you were doing your due diligence with
2 respect to undertaking this representation, I
3 understand from your testimony earlier today that you
4 asked Mr. Lans for documents that related to the color
5 graphics patent, correct?

6 A Correct.

7 Q Did Mr. Lans himself give you any documents?

8 A Yes, many documents.

9 Q What sorts of documents did he give you?
10 And don't -- you know, just a brief answer.

11 A He gave, gave us all correspondence,
12 technical documents, prototype development documents,
13 and then we secured documents from a consultant that
14 he used in the United States, Carl Mackover, we
15 secured documents from, from, from Doctor Grennberg,
16 from Doctor Hichka (phonetic) and some other sources.

17 Q Did you ask him during the course of doing
18 your due diligence what people he had worked with in
19 the past who might have documents?

20 A Did we ask him?

21 Q Yes.

22 A Yes. And that's why we went to people like
23 Carl Mackover, for instance, Carl Mackover &
24 Associates in New York.

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25 Q And he gave you the name of Mr. Berg as

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1 well?

2 A No. Mr. Berg -- Mr. Lans mentioned
3 Mr. Berg, as well as Delphi as being, as being a
4 licensing -- excuse me, the counsel that was present
5 in the licensing negotiations between Mr. Lans and
6 IBM.

7 Q So prior to filing the lawsuit in 1997,
8 Mr. Lans had told you about Mr. Berg and his role in
9 connection with the color graphics patent, correct?

10 A Yes.

11 Q And prior to the filing of the lawsuit in
12 1997, had you sought the documents of Mr. Berg?

13 A Yeah. Let me just say before -- yes, but
14 let me just point out that we knew, we knew that
15 Mr. Berg was Mr. Lans's counsel in the negotiations.
16 We didn't know the details of the negotiations and so
17 on per se except that there were negotiations, and we
18 knew, we knew that he represented, that Mr. Berg
19 represented Mr. Lans in regard to those negotiations
20 and that's what led to the request to Delphi to secure
21 any documents related to the color graphics patent
22 from Mr. Berg or his widow. At the time when we made
23 the request, we were under the impression that
24 Mr. Berg was deceased and that he had a wife.

25 Q And it's your understanding that Delphi made

1 a request and that they turned up no documents, that
2 they did make a request to Mrs. Berg and that she said
3 no documents existed. Have any documents ever turned
4 up through Mr. Berg, actually through his widow or
5 those associated with Mr. Berg?

6 A Never. I've never seen one document from
7 any file attributed to Mr. Berg.

8 Q Did Mr. Lans tell you about his accountants
9 in advance of filing the lawsuit and the fact that
10 they may have documents?

11 A No, no. There was -- the accountants would
12 have -- no, I don't recall that. I mean we knew that
13 he -- you say Mr. Lans's accountants?

14 Q Yes.

15 A His personal accountants?

16 Q Yes.

17 A No. I mean we asked, we asked Mr. Lans for
18 all relevant documents and he gave us everything he
19 had and he told us who might have documents. We
20 contacted those people. And I may add, I'm not aware
21 that Mr. Lans had a personal accountant.

22 Q That was my question, whether you were aware
23 that he had an accountant prior to the filing of the
24 lawsuit?

25 A I don't know one way or another. I know

1 that Uni board -- well, I know now that Uni board, and

2 I've known for a couple -- a few years, since '99 at
3 least, that Uni board had accountants. And I believe
4 I, I believe I testified before that Delphi had
5 informed us that, that Uni board had an accountant.
6 They call it chartered public accountant.

7 Q Other than the annual reports of Uni board,
8 did you obtain any other documents -- and the IBM
9 license agreement, did you obtain any other documents
10 in advance of filing the lawsuit that related to
11 Uni board?

12 A That related to Uni board?

13 Q Yes.

14 A Other than the IBM agreement, the knowledge
15 about the annual reports, I don't recall any.

16 Q Did you ask for any other documents other
17 than those?

18 A We asked for all documents relevant to the
19 '986 patent from Mr. Lans or from anybody who, that he
20 knew of that could have documents. And that, that,
21 that request was an ongoing request.

22 Q And your belief is that Mr. Lans interpreted
23 that request as encompassing at least Uni board, as
24 well as others?

25 A Exactly. Any document relevant to Uni board,

1 the '986 patent. It wasn't limited to the documents
2 in his possession, but in anybody's possession. And I
3 would just point out, Mr. Partridge, that Mr. Lans and
4 Uni board sit in the same location, his house, and in

5 Sal sj obaden, and hi s files and Uni board' s files are
6 basically one in the same.

7 Q Would you look at AMS 15, please.

8 Do you have AMS 15?

9 MR. HANDLEMAN: Yes.

10 A Yes.

11 Q I believe you identified this earlier as a
12 communication that was, that resulted from some
13 correspondence that you had had with the Wessing law
14 firm about the Cirrus Logic situation, correct?

15 A That's right.

16 Q And that the communications actually
17 began -- this one is dated April 22nd, 1997 -- from
18 Mr. Vorwerk to Mr. Schaumberg, your partner, and
19 Mr. Lindstrom, correct?

20 A Right.

21 Q And that this is responsive to at least an
22 earlier communication, which I didn't bring with me,
23 that was earlier that month that came from your law
24 firm, I think it was April 7th, 1997, and then
25 apparently another communication from someone, either

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1 Mr. Schaumberg or Mr. Lindstrom of April 15th, 1997,
2 correct?

3 A Except -- yes, except for the communication
4 from our office. The initial one was dated
5 April 9th, 1997 as set forth in AMS Exhibit 13.

6 Q Is it your belief that on or about
7 April 22nd, 1997 that you were aware of and

8 considered this document?

9 MR. HANDLEMAN: You being him personally?

10 MR. PARTRIDGE: Yes, him personally. Thank
11 you.

12 A That we considered this document with regard
13 to what?

14 Q With respect to your representation of
15 Doctor Lans and the issues that are addressed in it.

16 A We considered the document for one purpose
17 and one purpose only, and, and that is going back to
18 Exhibit 13 where we contact Mr. Vorwerk and we state,
19 your letter of February 18, 1997 to Mr. Tal Lindstrom,
20 Stockholm, Sweden, was forwarded to our office. We
21 are working jointly with Delphi on behalf of Mr. Lans,
22 the owner of the patent in question and party to the
23 license agreement that is the subject of our analysis.

24 Then we go on to inquire in the next
25 paragraph about whether there is a proceeding

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1 available in Germany similar to a declaratory judgment
2 action as designed -- I'm quoting -- simply to tell
3 the parties what their respective rights are under an
4 agreement about which there is a, is a dispute. As
5 you are perhaps aware, the license agreement in
6 question is between Uni board Aktiebolag owned by
7 Mr. Lans and IBM, and then we cite that section of
8 that. And then the intent really was to find out
9 whether the Cirrus -- whether the Intel case that was
10 actually in the U.S. with this foundry-type of

11 situation --

12 Q I'm familiar with that.

13 A Yes, I know you are.

14 -- whether that had any corollary under
15 German law because the IBM agreement is governed by
16 German law, and as interpreted under German law in a
17 dispute has to be adjudicated under German law.

18 Q I would suspect you're not suggesting that
19 if you received information through this interchange
20 with the Wessing firm or in connection with the Cirrus
21 Logic IBM matter in general, that you were not
22 intending to put blinders on and ignore it if it was
23 also related to your enforcement of the color graphic
24 patent against the computer companies in the United
25 States, right?

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1 A No, absolutely not.

2 Q You're agreeing with me that --

3 A Yes.

4 Q -- you wouldn't have put blinders on and
5 ignored it?

6 A Not at all.

7 Q With respect to the content of the letter of
8 April 22nd, 1997, AMS 15, did you -- you meaning you
9 or Mr. Schaumberg or anyone at AMS -- follow-up with
10 Mr. Lindstrom as to whether or not he had provided
11 information to Mr. Vorwerk in connection with the
12 preparation of his letter?

13 A I -- I don't know for sure. I know that

14 Mr. Vorwerk was recommended to us by Delphi because
15 Delphi had had previous relations with, with
16 Mr. Vorwerk, or at least his firm, and we wanted to
17 get an opinion of that firm regarding the, whether or
18 not Cirrus would be considered to be covered by the
19 IBM agreement if it had got that far.

20 Q I'm not asking you to guess, Mr. Mastriani,
21 but is it your belief that the letter of April 15th,
22 1997 that's referenced in the first paragraph of this
23 letter is likely a letter that was sent by
24 Mr. Lindstrom?

25 A I don't know. I mean it could, it could

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1 have been from our firm or Mr., or Mr. Lindstrom
2 because one would think that --

3 MR. HANDLEMAN: Don't speculate.

4 A Yes. I mean, I don't know.

5 Q I would assume that in your production of
6 documents that, the full scope of which I, I don't
7 know because I received -- I haven't received all the
8 documents other than what I've gotten in these
9 depositions the last two days, but that you did not
10 find in your documents at AMS a letter dated April 15,
11 1997; is that correct?

12 A I think that's not correct, because I'm just
13 saying because we have not submitted the universe of
14 documents in our Opposition to Motion for
15 Reconsideration, there's a lot of documents, so -- all
16 of which Mr. Lans and his counsel have -- so there may

17 be that letter. I mean that letter may be available.
18 I -- and I mean there is such a letter; I just don't
19 know who was the author of it and what it said. Okay?
20 I mean, I mean this could have been a letter with --
21 MR. HANDLEMAN: You don't know.
22 A I don't know. It could have been something
23 very simple or very, you know, involved. I have no
24 idea.
25 Q Prior to the filing of the lawsuit later

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1 that year against my client Dell, did you or anyone
2 else at AMS undertake to ascertain the accuracy of the
3 various facts that are asserted within the letter of
4 Mr. Vorwerk?
5 THE WITNESS: Could you repeat --
6 MR. HANDLEMAN: Let's hear the question.
7 (Record read.)
8 A No, because this issue, as I testified
9 before, regarding Cirrus Logic was defused a couple of
10 months, three months later, maybe, probably at the
11 outside. Cirrus Logic backed down from its
12 representations to, to the public and also to its
13 customers, and I believe Dell was one of its
14 customers, that it was licensed, its products were
15 licensed under the IBM agreement because its graphic
16 chips were, in part were manufactured in the Micrus
17 fabrication facility in Fishkill, New York.
18 BY MR. PARTRIDGE:
19 Q Did you or anyone else at your law firm

20 between April 22nd, 1997 and the two- or three-month
21 time period thereafter that you just mentioned go back
22 to Mr. Vorwerk and tell him that he had some of his
23 facts wrong?

24 A Well, there are a number of facts wrong in
25 here he makes.

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1 Q My question is, did you or anyone else go
2 back to Mr. Vorwerk and tell him he had some of his
3 facts wrong? That's my question.

4 A No, because there was no further
5 communication with Mr. Vorwerk because there was no
6 follow-up on any of his recommendations because there
7 was no need to file a declaratory judgment action or
8 some other type of action in, in Germany.

9 Q Did you or anyone at your law firm as a
10 consequence of the receipt and review of this letter
11 go back to Mr. Lindstrom and ascertain whether or not
12 you, AMS, had any of your facts wrong in light of what
13 was communicated in this letter prior to the filing of
14 the lawsuit?

15 A No. No. I mean it was clear, it was clear
16 to us that, that if Mr. Vorwerk referred to Uni board
17 as the owner of the patent, that he was sadly mistaken
18 because the April 9th, 1997 letter to him states
19 explicitly on its face that Mr. Lans is the owner of
20 the patent, but that Mr. Lans owns Uni board. So
21 Mr. Vorwerk made an erroneous conclusion, and --

22 Q So the answer to my question is no, correct?

23 A The answer -- whether we went back to
24 Mr. Lindstrom about this?

25 MR. PARTRIDGE: Read the question back.

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1 MR. HANDLEMAN: Read the question. Listen
2 to the question.

3 (Record read.)

4 A Okay. Then I understand this letter was
5 discussed with Mr. Lindstrom and Mr. Utterstrom.

6 BY MR. PARTRIDGE:

7 Q And during the course of that discussion,
8 did you determine that any of the facts stated in this
9 letter were incorrect?

10 A Of course, yes. I just, I just identified,
11 at least generally Mr. Vorwerk's erroneous statement
12 that Uni board, I believe he says in here somewhere, is
13 an owner of the patent, of the U.S. patent because the
14 letter that was sent only references the U.S. patent.
15 It says, yes, right here, on Page 2, where it says
16 Uni board Aktiebol ag, hereinafter Uni board, holds
17 various patents, i. a., U.S. Patent 4,303,986, as well
18 as European patents 0,023,217, DE for the German
19 patent, 30,360,711. That was clearly erroneous and
20 he -- and with respect to the, the European patents,
21 that could have easily been seen by just going to the
22 various patent registries for those countries, and
23 clearly wrong when you contrast that with the
24 statement, the explicit, unequivocal, and absolute
25 statement made in the April 9, 1997 letter from

1 Mr. Schaumberg to Mr. Vorwerk that Mr. Lans is the
2 owner of the patent in question, i.e., the '986
3 patent, but later on he's identified Mr. Lans as the
4 owner of Uni board.

5 Q Yeah. I'd like to set aside
6 Mr. Schaumberg's contentions with respect to that and
7 with -- and I'd like to focus only on the U.S. patent.
8 With me so far?

9 A And I would -- when you say his contentions,
10 there's no contention here. This was a letter of
11 communication of a fact, and the fact that's being
12 communicated, Mr. Partridge, is that Mr. Lans was the
13 owner of the '986 patent. It wasn't a contention, it
14 was a statement of fact.

15 Q It's not my intention to argue with you
16 about whether that's an assertion, contention, or
17 whether there's any basis for it. I want to ask a
18 question and I want you to set aside that letter in
19 answering my question, if you would.

20 My question is, focusing on the, only the
21 U.S. patent, and focusing on the time period April/
22 May 1997, not anything that you've discovered since
23 then, and you -- if you're not able to answer a
24 question based on the recollection of the April/May
25 time period 1997 you should say, I can't answer it

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1 based on that time period. If you're able to answer
2 it as of that time period, do so. I'm not looking for
3 what your point of view is today based on all the
4 documents that you've seen. Are you with me in that
5 regard?

6 A Yes.

7 Q So as of April/May 1997, what facts did you
8 possess as of that time that led you to believe that
9 the statement in Mr. Vorwerk's letter that Uni board
10 held the U.S. patent was wrong? What were the facts
11 that you recollect having in your mind as of April/
12 May 1997, if you can recall that?

13 MR. HANDLEMAN: Okay.

14 Q If not, I can accept that too.

15 MR. HANDLEMAN: Objection. You're not
16 qualifying by other and what he's testified to today.
17 So if you're not, we're going to sit here and he's
18 going to lay out every single fact, which I would
19 submit you heard before today in the deposition. That
20 if that is what you want, that's what you'll get. I
21 don't care how long it takes.

22 Read the question and give him every single
23 fact, even if we're sitting here for two more hours.

24 (Record read.)

25 A And this is only with regard to the '986

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1 patent and not his misstatement of the European
2 patents?

3 Q That's correct.

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4 A Going back to Day 1 when we got the phone
5 call, December 1996, Mr. Lindstrom called me to say
6 that he was calling on behalf of Hakan Lans who was a
7 client of the firm, who was the owner of the '986
8 patent and foreign counterparts.

9 MR. HANDLEMAN: Uh-huh.

10 Q Let me --

11 MR. HANDLEMAN: No, he's got to answer the
12 question.

13 MR. PARTRIDGE: I'm going to amend it so
14 that it's simpler, that it's simpler, because I
15 appreciate --

16 MR. HANDLEMAN: I'm not trying to be --
17 straightforward.

18 Q I'd like to confine the facts -- I
19 understand you've had discussions with Doctor Lans and
20 others, so I want to limit the facts to documentary
21 facts. I appreciate that there are others that you've
22 talked about, conversations that you had during your
23 testimony today, so I'd like to limit my question to
24 documentary facts that you were aware of as of April/
25 May 1997. Is that clear?

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1 A That showed that Mr. Lans was the owner and
2 not Uni board?

3 Q Correct.

4 MR. HANDLEMAN: Can you -- if you can do
5 that without giving the dialogue in the context of
6 which -- if you can't, then give him the answer.

Lans v Gateway

7 A There was the December communication, the
8 letter of, the letter from Mr. Lindstrom along with
9 the Utterstrom memorandum, along with the Delphi
10 memorandum about Lans owning the patent. There was
11 correspondence -- there was correspondence in the
12 Spring of '96, including my March 1996 letter to
13 Mr. Lans referring to him as the owner. There was
14 document -- there was the -- at least the July 1996
15 agreement between Lans, Mr. Lans that is, and the
16 attorneys. There was plenty of correspondence by
17 Mr. Lans identifying himself as the owner of the
18 '986 patent. There are the European patents. There
19 was the October 1996 Revocation of Power of Attorney
20 signed by Mr. Lans under oath that he was the owner of
21 all right, title, and interest. There was the --

22 Q That document was in connection with what?

23 A Correcting the word column to color.

24 Q Okay.

25 A There were -- I will testify -- I'm going to

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1 adopt everything I testified to today.

2 Q I understand.

3 A That should be taken into account. Just
4 trying to remember, because you're saying documents.
5 There were license agreements.

6 Q What license agreements?

7 A License agreements signed by Mr. Lans.
8 There was a letter that went out in -- letters that
9 went out in September and October of 1996 on behalf of

Lans v Gateway

10 Mr. Lans identifying him as the owner that he approved
11 of.

12 Q Those were the letters that were sent by
13 your firm to the various alleged infringers?

14 A That's correct. Yeah. That's right.
15 Actually, I'm going to just --

16 MR. HANDLEMAN: Feel free to refer to the
17 exhibits. Oh, yeah.

18 A I'm going to just look through some of these
19 exhibits just to be potentially a little more precise.

20 And these are documents prior to or up to
21 and including April and May of '97?

22 Q Right.

23 A Right.

24 (Reviewing.)

25 There was the May 29, 1996 letter to

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1 Mr. Lans from me, that follow-up to the, to the
2 meeting the week before.

3 MR. HANDLEMAN: Exhibit 1, Tab 8. You want
4 me to lay that out for you? You want that?

5 A (Reviewing.)

6 I will add, by the way, there are a number
7 of internal legal memoranda in our firm that refer to
8 Mr. Lans as the owner of the patent that were prior to
9 May -- April/May of 1997.

10 Q With respect to Uni board?

11 A And I'm -- I'd just like to go through this.
12 Let's be complete, if you don't mind.

Lans v Gateway

13 (Reviewing.)
14 Documents that we saw also were the U.S.
15 Patent Office assignment database, the Derwent
16 database, as well as the European Patent Office
17 databases and the, and the commercial assignee
18 databases. I also believe the Micrus license may also
19 reflect that, the language of that as translated
20 that's dated May 17, 1995. And I'm going -- ignore
21 all of many references to your patent and
22 communications with Mr. Lans.

23 Q So it's your view that there are many
24 documents in, I think that's AMS 1 that you're looking
25 through right now?

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1 A Yes, among others.

2 Q I've got your answer. I think it's fair. I
3 know what you've said so far. I stated it a little
4 more broadly, I think, obviously than I would have
5 liked so that I could make this a little simpler for
6 you.

7 What documents were you aware of prior to
8 the filing of the lawsuit that specifically addressed
9 Uni board and Uni board's connection, if any, to the
10 color graphics patent? So far we know about the IBM
11 agreement, correct? We know about the 1989 and 1990
12 annual reports. Are there any other documents that
13 you were aware of prior to the filing of the lawsuit
14 other than those three that specifically addressed the
15 role of Uni board with respect to the patent?

Lans v Gateway

16 A As far as documents, I can categorically say
17 that we knew of the, the IBM license agreement.
18 Whether we knew -- we did not have the annual reports,
19 so we didn't have them, either the Swedish document
20 form or translated at that time. So we knew generally
21 about them from, from Delphi, and to some extent at
22 that time by -- from Mr. Lans, but we didn't have
23 those -- but as far as a document, the only document
24 that I can think of is the IBM agreement at that time.
25 Q So prior to the filing of the lawsuit, the

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1 only Uni board document that you recollect having in
2 your possession for your consideration was the IBM
3 license agreement?

4 A That is correct.

5 Q That is correct?

6 A That is my recollection.

7 MR. PARTRIDGE: That concludes my questions.
8 Thank you very much.

9 MR. HANDLEMAN: Thank you.

10 MR. HAINLINE: Nothing further.

11 MR. HANDLEMAN: Read and sign. Thank you.

12

13

14 (Signature having not been waived, the
15 examination of Louis S. Mastriani, Esquire, was
16 concluded at 6:05 p.m.)

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ACKNOWLEDGMENT OF DEPONENT

I, Louis S. Mastriani, Esquire, do hereby
acknowledge that I have read and examined the
foregoing testimony, and the same is a true, correct
and complete transcription of the testimony given by
me, and any corrections appear on the attached Errata
sheet signed by me.

250

(DATE)

(SIGNATURE)

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1 CERTIFICATE OF SHORTHAND REPORTER/NOTARY PUBLIC

2 I, Dawn M. Hart, Registered Professional
3 Reporter, the officer before whom the foregoing
4 proceedings were taken, do hereby certify that the
5 foregoing transcript is a true and correct record of
6 the proceedings; that said proceedings were taken by
7 me stenographically and thereafter reduced to
8 typewriting under my supervision; and that I am
9 neither counsel for, related to, nor employed by any
10 of the parties to this case and have no interest,
11 financial or otherwise, in its outcome.

12 IN WITNESS WHEREOF, I have hereunto set my hand
13 and affixed my notarial seal this 1st day of February
14 2005.

15 My Commission Expires:
16 January 1, 2009

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19 _____

20 NOTARY PUBLIC IN AND FOR THE
21 STATE OF MARYLAND

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CERTIFICATE OF NOTARY PUBLIC

I, Cali Day, Notary Public, the officer before whom Charles Frew appeared, do hereby certify that the foregoing witness personally appeared before me and was duly sworn by me.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 1st day of February 2005.

My Commission Expires:
March 14, 2009

NOTARY PUBLIC IN AND FOR
THE DISTRICT OF COLUMBIA

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2	IN RE: Lans v. Gateway 200, Inc., et al		
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Lans v Gateway

IN RE: Lans v. Gateway 2000, Inc., et al

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