

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

HÅKAN LANS,)	
)	Case No. 97-2523 (JGP)
)	Case No. 97-2526 (JGP)
Plaintiff,)	
)	
v.)	
)	
GATEWAY 2000, INC., and DELL)	
COMPUTER CORP.,)	
)	
Defendants.)	

UNIBOARD AKTIEBOLAG,)	Case No. 99-3153 (JGP)
)	
Plaintiff,)	
)	
v.)	
)	
ACER AMERICA CORP., et al.,)	
)	
Defendants.)	

**PLAINTIFFS' REPLY IN SUPPORT OF THEIR OBJECTION
TO EXHIBIT 3 TO INTERVENOR'S POST-HEARING BRIEF**

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OBJECTION TO EXHIBIT 3 TO INTERVENOR'S POST-HEARING BRIEF

The statement regarding Gunnar Berg's files in Exhibit 3 is not admissible under any exception to the rule prohibiting hearsay. Exhibit 3 has no bearing on Mastriani's state of mind in September 1996 because it was drafted three years later. Nor is Exhibit 3 an admission by Dr. Lans. The documents exchanged between Dr. Lans and Lindstrom demonstrate that it was Lindstrom who, without any authority from Dr. Lans, made the statement in question.

AMS implores the Court to admit Exhibit 3 even if it does not fall within an established hearsay exception because it claims that it was "surprised" by Dr. Lans' testimony at the hearing. Dr. Lans, however, had given the same testimony in his deposition prior to the hearing.

I. LINDSTROM'S STATEMENT IN EXHIBIT 3 DOES NOT FIT WITHIN ANY RECOGNIZED EXCEPTION TO THE RULE AGAINST HEARSAY

A. Lindstrom's Statement in Exhibit 3 Is Not Relevant to Mastriani's State of Mind

AMS originally offered Exhibit 3 to prove that there was antipathy between Dr. Lans and Berg but now claims that it is evidence of Mr. Mastriani's state of mind.¹ As evidence of Mastriani's state of mind, Exhibit 3 is irrelevant. The issue before the Court is whether Mastriani properly investigated the ownership of the patent, including researching Gunnar Berg's files, before issuing the notices of infringement and filing the complaints. Talbot Lindstrom

¹ See Intervenor's Reply to Lans' Objection to Exhibit 3 ("Opp. Br."), at 1, 3. In its brief, AMS cited Exhibit 3 in the following manner:

Lans also sent Intervenor's a draft interrogatory response on September 16, 1999, in which he stated that Gunnar Berg refused Lans access to his papers "both before and after our relationship was terminated." See Exhibit 3 at Bates AMS 267140. In light of the antipathy between Lans and Mr. Berg and Mr. Berg's alleged refusal to provide Lans with documents, it is not credible that Lans instructed Mr. Mastriani in September 1996 to obtain essential documents from Mr. Berg.

drafted Exhibit 3 in September 1999, nearly two years after the complaint was filed, and three years after Mastriani allegedly instructed Delphi to obtain Gunnar Berg's files.

Further, the Federal Rules of Evidence except statements from the definition of hearsay only if offered to prove *the declarant's* state of mind.² Since Lindstrom, not Mastriani, authored Exhibit 3, it is inadmissible to prove Mastriani's state of mind.

B. Lindstrom's Statement in Exhibit 3 Is Not An Admission By Dr. Lans

Contrary to AMS' assertions, Dr. Lans did not author Exhibit 3 or dictate to Lindstrom the substance of Exhibit 3.³ Had AMS made such a claim at the evidentiary hearing, Dr. Lans would have introduced a September 6, 1999, e-mail to Lindstrom attaching Dr. Lans' proposed answer to Interrogatory No. 3 that did not mention any difficulty in procuring documents from Berg.⁴ The statement by Lindstrom that Lans reviewed Exhibit 3 is double hearsay and cannot be used to establish admissibility.⁵

Delphi was not authorized to make the statement in Exhibit 3 on behalf of Dr. Lans. The Federal Rules allow an attorney to attest only to the objections to interrogatories. Interrogatory answers must be signed by the party making them.⁶

II. LINDSTROM'S STATEMENT IN EXHIBIT 3 IS NOT ADMISSIBLE UNDER THE RESIDUAL EXCEPTION OF FRE 807

A. Dr. Lans' Testimony Was Not "Surprise" Testimony

AMS carps that Exhibit 3 is necessary due to Dr. Lans' "surprise testimony" that "he had told Mr. Mastriani of the assignment agreement and where to find it" and should be admitted under FRE 807. Opp. Br. at 10.

² See FRE 803(3).

³ See Opp. Br. at 4-6.

⁴ E-mail from H. Lans to T. Lindstrom, dated September 6, 1999, attached as Lans 27.

⁵ See FRE 902 (listing categories of self-authenticating documents).

⁶ See FRCP 33.

If AMS was surprised by Dr. Lans' testimony, it was because AMS had not read the transcript of Dr. Lans' deposition. Dr. Lans testified that in September 1996 he told Mastriani that he had signed a document establishing the rights between himself and Uniboard. (Lans Dep. at 81-82). Dr. Lans also testified that he told Mastriani that Mastriani could get those documents from Berg. (Lans Tr. at 88-89). AMS can hardly claim that it was blindsided by Dr. Lans' testimony.

B. Exhibit A to AMS' Opposition Supports Admitting Exhibit 3 Only for the Purpose of Demonstrating that Dr. Lans Told Mastriani About Berg's Files

Incredibly, AMS also argues the Court should admit Exhibit 3 under FRE 807 because it could not get an affidavit from Utterström stating that Dr. Lans lied about informing Mastriani about Berg.⁷ Of course, the fact that Utterström refused to provide such an affidavit supports, not undermines, Dr. Lans' testimony that he informed Mastriani about Berg and the files Berg possessed.

III. AMS' ARGUMENT STRENGTHENS THE PERJURY CASE AGAINST MASTRIANI

AMS now argues, based on Exhibit 3, that Mastriani knew all along that Berg would not give any documents to Dr. Lans because there were hard feelings between the two. Yet, Mastriani attested to this Court in an affidavit (AMS 1, Tab 1, at 4-5, ¶ 12), in a deposition (Mastriani Dep. Tr. at 45:8 – 47:6), and in an evidentiary hearing (Day 2 at 149:16 – 151:2) that he asked the attorneys at Delphi to investigate Berg's files but that Delphi did not find any files. If AMS' argument is true, either: (i) Mastriani would not have asked Delphi to get Berg's files, or (ii) Delphi would have told Mastriani that Berg would not release the files. According to Mastriani's previous, sworn testimony, neither happened.

IV. CONCLUSION

⁷ See Opp. Br. at Ex. A.

Exhibit 3 is not evidence of anything other than that Delphi and Mastriani knew that Gunnar Berg had files related to the '986 patent and did not try to obtain those files when Mastriani claims that they did. In Mastriani's continuing effort to blame his former client for his own mistakes, Mastriani cannot keep his story straight. His current version of the fact contradicts his prior sworn testimony.

Dated: May 19, 2005

/s/

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Exhibit

Lans 27

Translation of Dr. Lans' Response to Interrogatory No. 3 found on page 6 of Lans 27:

SVAR3: Håkan Lans sparar normalt sett bara dokument i 10 år undantaget är dock dokument som eventuellt kan få framtida betydelse. Dessutom förvarades flertalet av dokumenten rörande patenten hos advokaten Gunnar Berg. Eftersom Farellgruppen upphörde och advokaten Gunnar Berg senare avled så har Håkan Lans inga dokument kvar.

Answer3: Håkan Lans is normally saving documents for 10 years with the exception of documents that could be of future importance. However most of the documents concerning the patent is archived by the lawyer Gunnar Berg. Because Farrell Group closed down and lawyer Gunnar Berg later died, Hakan Lans has no documents left.

Skickat: den 6 september 1999 00:43
Till: Peter Utterström (E-post); DELPHI Talbot Lindström (E-post!)
Ämne: Svaren på de två frågedokumenten.

Hej,

Hag har nu fyllt i Interrogatory 1-5 och 11 och Request 1-37 och 43++. Jag är dock inte färdig men troligen är det inte mycket mer jag kan svara på. Jag har inte heller hunnit med att göra texten klar. Det som finns är ett utkast på svenska. Det kanske inte gör så mycket eftersom Ni torligen har en del synpunkter. Jag skall försöka hinna med att överlämna de dokument jag har hittat. Som jag sagt tidigare så är jag bortrest en del under veckan.



Svar90z201!
.doc



Svar90z@01!
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Hälsningar,

Håkan

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

HAKAN LANS,)	Civil Action No. 97-2523 (JGP)
Plaintiff,)	
v.)	
GATEWAY 2000, INC.,)	DEFENDANT GATEWAY 2000, INC.'S FIRST SET OF
Defendant.)	INTERROGATORIES TO PLAINTIFF (RULE 33)
_____)	

TO: ALL PARTIES HERETO AND THEIR ATTORNEYS OF RECORD:

Pursuant to Federal Rule of Civil Procedure 33, defendant Gateway 2000, Inc. (hereinafter "Gateway") hereby requests that plaintiff Hakan Lans (hereinafter "Lans") answer separately and truthfully in writing under oath within the time period set forth in Rule 33 each of the Interrogatories set forth below in accordance with the following Definitions and Instructions.

I. DEFINITIONS

1. As used herein, the terms "Lans," "you" or "your" refer to plaintiff Hakan Lans and all persons and/or entities purporting to act under his direction or control, including but not limited to Häkan Lans Ingenjörfirman, Uniboard AB, and GP&C Systems International AB.
2. As used herein the term "Uniboard" refers to Uniboard Aktiebolag, its officers, directors, employees, parent corporations, divisions, subsidiaries, predecessors or successors-in-interest, consultants, agents and all other persons operating under its direction or control.
3. As used herein the term "Ericsson" refers to Telefonactiekolaget LM Ericsson, its officers, directors, employees, parent corporations, divisions, subsidiaries, predecessors or successors-in-interest, consultants, agents and all other persons operating under its direction or control.
4. As used herein the term "Bausch & Lomb" refers to Bausch & Lomb, Inc., its officers, directors, employees, parent corporations, divisions, subsidiaries, predecessors or successors-in-interest, consultants, agents and all other persons operating under its direction and

control.

5. As used herein the term “Houston Instruments” refers to Houston Instruments and/or Houston Equipment, their officers, directors, employees, parent corporations, divisions, subsidiaries, predecessors or successors-in-interest, consultants, agents and all other persons operating under their direction and control.

6. As used herein the term “Gerber Scientific” refers to Gerber Scientific, its officers, directors, employees, parent corporations, divisions, subsidiaries, predecessors or successors-in-interest, consultants, agents and all other persons operating under its direction and control.

7. As used herein, the term “Investor Group” refers to “The Investor Group” and/or the “investment group” referred to in the documents attached hereto as Exhibit A, including any individual or entity which is a member of said Investor Group.

8. As used herein, the term “document” means any written, printed, typed, recorded, magnetic, punched, copied, graphic or other tangible thing in, upon, or from which information may be embodied, translated, conveyed, or stored (including, without limitation, correspondence, memoranda, notes, records, books, papers, telegrams, e-mails, telexes, dictation or other audio tapes, video tapes, computer tapes, computer discs, computer printouts, microfilm, microfiche, worksheets, diaries, calendars, photographs, charts, drawings, sketches and all other writings or drafts thereof) as defined in Fed. Rule of Civil Procedure 34(a) and Fed. Rule of Evidence 1001.

9. As used herein, the term “communication” means any transmission of information from one person or entity to another, including (without limitation) by personal meeting, letter, memorandum, note, telephone, fax, radio, telegraph, electronic mail, teleconference, etc.

10. As used herein, the term “person” means any natural person and any other cognizable entity, including (without limitation) corporations, proprietorships, partnerships, joint ventures, consortiums, clubs, associations, foundations, governmental agencies or instrumentalities, societies and orders.

11. As used herein, the term “‘986 patent” refers to U.S. Patent No. 4,303,986, all foreign counterparts thereof, and the applications from which the ‘986 patent and any foreign counterparts resulted.

12. Whenever used herein, the singular shall include the plural and the plural shall include the singular.

II. INSTRUCTIONS

1. In answering these Interrogatories, you are required to furnish truthfully and in good faith all information that is presently available to you, regardless of whether such information was obtained directly by you, by your attorneys, their agents, employees or investigators.

2. If any of the following Interrogatories cannot be answered in full, please answer to the extent possible, specifying the reasons for your inability to answer the remainder of the Interrogatory and stating whatever information, knowledge or belief you do have concerning the unanswered portion thereof.

3. Each Interrogatory shall be answered fully unless it is in good faith objected to, in which event the reasons for your objection shall be stated in detail. If an objection pertains to only a portion of an Interrogatory, or a word, phrase, or clause contained in it, you are required to state your objection to that portion only and to respond to the remainder of the Interrogatory, using your best efforts to do so. Your answers hereto are to be signed and verified by the person making them, and the objections signed by the attorney making them.

4. A request for identification of documents means to provide a description sufficient to obtain production thereof by subpoena, discovery request, or court order, including:

(a) The name and current business address of the individuals who (i) prepared it, (ii) signed it or over whose signature it was issued, and (iii) to whom it was addressed or distributed;

(b) The title and nature of its contents;

(c) The date appearing on it or if none, the date when it was prepared; and

(d) The current physical location of it.

ALTERNATIVELY, you may identify any document by instead attaching a full, clear, legible copy thereof to your response hereto, provided that each such copy contains a reference to each Interrogatory to which it is responsive.

5. A request for identification of communications means to:

(a) State the date and place of each communication;

(b) State the medium through which such communication was made (e.g., in person, by telephone, etc.);

(c) Identify each person who participated or was witness to such communication; and

(d) State the substance of the communication.

6. A request for identification of persons refers to each natural person or entity and means to provide such person's or entity's full name and the current business or employment address and, if a natural person, such person's residence address and telephone number.

7. A request for identification of offers to sell, agreements to sell and/or sales means to identify the relevant persons, communications, and documents, together with a description of the proposed or actual transaction and the date.

8. If an Interrogatory is silent as to the time period for which a response is sought, please respond with respect to the time period commencing January 9, 1975 through the date of your response.

9. If you or your counsel assert that any information or response herein requested is privileged or otherwise protected from discovery, please set forth in your written response hereto with respect to each document, communication or thing for which a claim of privilege is made:

(a) The place, approximate date, and manner of recording, creating or otherwise preparing the document, communication or thing;

(b) The name and organizational position, if any, of each sender of the document, communication or thing;

(c) The name and organizational position, if any, of each recipient and/or custodian of the document, communication or thing;

(d) A statement of the basis on which privilege is claimed with respect to each document, communication or thing and whether or not its contents are limited solely to legal advice or information provided for the purpose of securing legal advice; and

(e) The number of the Interrogatory to which the document, communication or thing is responsive.

10. You are required to supplement each response hereto to the full extent provided for in Federal Rule of Civil Procedure 26(e) and the local rules.

III. INTERROGATORIES

INTERROGATORY NO. 1:

Describe in detail all facts and circumstances related to the October 19, 1989 agreement between International Business Machines Corporation and Uniboard Aktiebolag, including but not limited to the identification of each communication, document and person connected to the negotiation, drafting and entry into that agreement and any related agreements.

SVAR1: Vid ett flertal tillfällen träffade och under en längre tid pågick förhandlingar med IBM. IBM patentavdelning undersökte noga innebörden av grafikpatentet. IBM kände också till att det japanska företaget HITACHI förde en ogiltighetstalan mot patentet men detta diskuterades inte ingående. Kontakterna med IBM skedde genom den svenska advokaten Gunnar Berg som företrädde Håkan Lans och hans bolag. Efter att det överenskommits att avtal skulle ingås mellan IBM och Uniboard AB önskade IBM ett dokument som visade att Uniboard AB hade rätt att ingå avtal för grafikpatentet. IBMs jurister ordnade så att ett dokument skrivs ut och presenterade dokumentet för min advokat Gunnar Berg. Berg läste igenom avtalet och bad mig skriva under. Efter att jag hastigt läst igenom dokumentet skrev jag under. IBM tog en kopia av dokumentet och advokaten Gunnar Berg originalet. Jag har inte sett dokumentet sedan dess.

INTERROGTORY NO. 2:

Describe in detail all facts and circumstances concerning the relationship of the Investor Group to the '986 patent.

SVAR2: På initiativ av Håkan Lans advokat Gunnar Berg bildades en grupp där Farellgruppen AB skulle svara för administration, finansiering och förhandlingar i samband med exploateringen av patentet. Anledningen var att avlasta Lans som arbetade med ett annat stort internationellt projekt. Enligt berg var Farellgruppen AB mycket kunniga och framgångsrika. Farellgruppen hade ett mycket stort innehav av fastigheter och när den stora fastighetskrisen inträffade i Sverige fick Farellgruppen ekonomiska svårigheter vilket resulterade i att exploateringen av patenten missköttes. Detta resulterade i att Håkan Lans tvingades att fortsätta på egen hand genom ökade insatser såväl ekonomiskt som tidsmässigt.

INTERROGTORY NO. 3:

Identify each communication between you and/or your counsel with members of the Investor Group concerning in any way the '986 patent.

SVAR3: Håkan Lans sparar normalt sett bara dokument i 10 år undantaget är dock dokument som eventuellt kan få framtida betydelse. Dessutom förvarades flertalet av dokumenten rörande patenten hos advokaten Gunnar Berg. Eftersom Farellgruppen upphörde och advokaten Gunnar Berg senare avled så har Håkan Lans inga dokument kvar.

INTERROGTORY NO. 4:

Identify each person who is now or at any time has been a member of the Investor Group.

SVAR: Gunnar Berg, Håkan Lans och Claes Ekbom. Dessutom fanns det dågra personer som till från fungerade som rådgivare.

INTERROGTORY NO. 5:

Identify each offer to sell, agreement to sell and/or sale by Lans of a graphics product prior to January 9, 1979, including but not limited to the "color screen system for computer terminals" referenced in the document produced as HL 009228 and the Data Color product referenced in the

document produced as HL 009645.

SVAR5: Eftersom produkten inte var färdigutvecklad före 1979 så fanns det inga produkter att sälja. Det förekom dock diskussioner att överlåta rättigheterna till teknologin före januari 9, 1979. Prototypen visades för det amerikanska företaget Houston Instrument som blev intresserade.

INTERROGATORY NO. 6:

Separately for each product identified by plaintiff in Plaintiff's Supplemental Initial Disclosure of Asserted Claims, dated June 28, 1999, state with specificity how each claim limitation of claims 23 and 29 of the '986 patent reads on the product, including an identification of the corresponding structure in the patent which you contend is the same as or equivalent to an element in the accused product for any limitation in means-plus-function format.

INTERROGATORY NO. 7:

Separately for each video graphics card and/or graphics controller chip component (as those terms are used in "Reply Memorandum of Plaintiff Hakan Lans In Support of the Motion to Consolidate for Pretrial Proceedings") which you contend, as used by Gateway, supports your claim of infringement, state with specificity how each claim limitation of claims 23 and 29 of the '986 patent reads on the component, including an identification of the corresponding structure in the patent which you contend is the same as or equivalent to an element in the component for any limitation in means-plus-function format.

INTERROGATORY NO. 8:

Separately for each product identified in Plaintiff's Supplemental Initial Disclosure of Asserted Claims, dated June 28, 1999, describe in detail the pre-filing investigation you conducted, including but not limited to specifically identifying the documents reviewed, the identity of the person or persons conducting the review, the date(s) of the review, and the specific support for the conclusion that the accused product infringes.

INTERROGATORY NO. 9:

Separately for each video graphics card and/or graphics controller chip component (as those

terms are used in “Reply Memorandum of Plaintiff Hakan Lans In Support of the Motion to Consolidate for Pretrial Proceedings”) which you contend, as used by Gateway, supports your claim of infringement, describe in detail the pre-filing investigation you conducted, including but not limited to specifically identifying the documents reviewed, the identity of the person or persons conducting the review, the date(s) of the review, the conclusion reached as to whether use of the component supports a claim of infringement, and the specific support for any conclusion that use of the component supports a claim of infringement.

INTERROGATORY NO. 10:

As per Federal Rule of Civil Procedure 26(a)(1)(C), provide a calculation of your claimed damages, including but not limited to the reasonable royalty you claim is due and the base it is to be applied against.

INTERROGATORY NO. 11:

Identify all communications between Lans on the one hand and any of Ericsson, Bausch & Lomb, Houston Instruments or Gerber Scientific on the other hand in regard to the ‘986 patent or any invention claimed therein.

SVAR11: Håkan Lans sparar normalt sett bara dokument i 10 år undantaget är dock dokument som eventuellt kan få framtida betydelse. Vad beträffar Eriksson så finns ett avtal daterat april 15, 1983 att överlåta patenten till Håkan Lans. Vidare så finns tio överlåtelser av patenten från Eriksson till Håkan Lans daterad december 19, 1983. Nio instruktioner från Erikson till patentombud att omregistrera patenten på Håkan Lans. Håkan Lans har inte funnit några sparade dokument rörande Bausch & Lomb eller Houston Instrument. Ett avtal daterat februari 29, 1980 mellan Gerber Scientific och Håkan Lans ger Gerber exklusiv rätt till ett CAD-system för kretskort. I samband med försäljning av detta system så får Gerber också sälja grafikkort baserade på den patentet.
Dated: August 20, 1999

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