

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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HAKAN LANS, :

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Plaintiff, :

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v. : CA 97-2523

:

GATEWAY 2000, INC., :

:

Defendant. :

:

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:

HAKAN LANS, :

:

Plaintiff, :

:

: CA 97-2526

v. :

:

DELL COMPUTER CORP., :

AMS Exhibit 29	145	145
AMS Exhibit 30		201
Mastriani Exhibit 28		260

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1 P R O C E E D I N G S

2 THE DEPUTY CLERK: Civil Action 97-2523,
3 Hakan Lans v. Gateway 2000, Incorporated; Civil
4 Action 97-2526, Hakan Lans v. Dell Computer
5 Corporation; Civil Action 99-3153, Uniboard v. Acer
6 America Corporation.

7 THE COURT: Good morning, counsel.
8 Are there any preliminary matters?

9 MR. HAINLINE: No, sir.

10 MR. HANDLEMAN: None, Your Honor.

11 THE COURT: Okay.

12 MR. HAINLINE: That's a good sign, I
13 think.

14 THE COURT: What's that?

15 MR. HAINLINE: It's a good sign, with no
16 preliminary matters.

17 THE COURT: Oh. Okay. Good.

18 Mr. Lans, if I can have you take the stand
19 again. I remind you, for the record, that you are

20 still under oath.

21 HAKAN LANS, PLAINTIFF, PREVIOUSLY SWORN, RESUMED

22 THE COURT: Good morning, Mr. Lans, or Dr.

23 Lans.

24 I just have a few questions for you. And

25 first let me ask you with respect to the 2000

5

1 summary -- you remember that document?

2 THE WITNESS: Yes. Yes, Your Honor.

3 THE COURT: Which I think was sent to the

4 Court of Appeals?

5 THE WITNESS: I don't think so.

6 THE COURT: You don't think so?

7 THE WITNESS: No.

8 THE COURT: But it was prepared for what

9 purpose?

10 THE WITNESS: I was asked to put down

11 notes, and I started to do so, and I sent the notes

12 to the lawyer, Peter Utterstrom, at Delphi Law

13 Firm, and he added information. He changed

14 information. He told me to write some parts and he

15 actually developed the document, and the document

16 was developed during a long period of time. And

17 then he wrote -- that document was prepared in

18 Swedish, and then he made a new document in
19 English, and he gave me that document.

20 THE COURT: Now did you read that
21 document?

22 THE WITNESS: Yeah. I read through it
23 quite rapidly, but I read through it. It was
24 slightly different from the Swedish document.

25 THE COURT: I'm just curious, were you

6

1 satisfied with that summary?

2 THE WITNESS: I mean I trusted what they
3 told me, and the advices they gave me, and I think
4 it was a reasonable -- at that time, it was a
5 collection of information I had got from these
6 lawyers and also others.

7 THE COURT: Well, I noticed throughout
8 your testimony you keep saying that you trusted
9 what the attorneys told you, and you left it to
10 them. But you had quite a bit at stake here,
11 didn't you?

12 THE WITNESS: Yes, I had. But it should
13 be seen in the light of the terrible overload I
14 had. And according to the initial agreement, I
15 stated very clear that I can't spend any time at

16 all, and they convinced me that there should be a
17 minimum of time I had to spend and just answer
18 questions. So I realized that it was a wrong
19 decision for me to start with colorgraphic patent
20 from the beginning. I simply had no time.

21 So I had to take the position to take the
22 advices they gave me, and I did so. I simply had
23 no possibility to change.

24 THE COURT: Dr. Lans, I very much
25 appreciate how busy you are, and busy you were, but

7

1 this was very important as well. What were you so
2 busy doing?

3 THE WITNESS: Well, I didn't expect the
4 terrible overload to -- that was a big surprise for
5 me to hear the different opinions. I found very,
6 very strong support from some people and other
7 people tried to do something else, and it was
8 necessary from a scientific point of view to
9 analyze all statements they made and try to do
10 absolutely the best. And it was not just technical
11 questions. I realized that some of the questions
12 about the technology were of a business interest.
13 We were scientists. We had just been asked to

14 create complaints under theories, very, very
15 complex, and I talked to the scientists, and they
16 said, well, we agree to you, but we have been asked
17 to criticize the technology.

18 So I tried to do my best in order to
19 create the two-world standard.

20 And we should also remember that a lot of
21 people was involved. It was hundreds of people,
22 and the cost to develop the standard exceeds \$300
23 US dollars. And most of the money are coming from
24 authorities outside Sweden. The European
25 Commission has spent hundreds of million of dollar.

8

1 THE COURT: So with respect to the 2000
2 summary again -- and forgive me if this has been
3 asked, but with respect to that summary, is that a
4 true representation of your belief?

5 THE WITNESS: I can't say it's my personal
6 belief, but I believed the argument I got, and as
7 an expert I found that the summary were reasonable.
8 Some of the parts was absolutely my own belief.
9 Some is what people told me. But, yeah.

10 THE COURT: Is it fair to say that you
11 adopted it as your own?

12 THE WITNESS: I -- that what they told me,
13 and I--

14 THE COURT: Well, not only what they told
15 you. I'm asking what you did.

16 THE WITNESS: I -- I think it's hard for
17 me to answer that question because I really don't
18 know. I read through it and I found it reasonable.

19 THE COURT: As we lawyers sometimes say,
20 did you find it reasonable or did you find that it
21 was unreasonable?

22 THE WITNESS: To me, it's -- I didn't find
23 it unreasonable. I found it reasonable.

24 THE COURT: Okay. And if a suit, the
25 original suits in this case had been filed in the

9

1 name of Uniboard, and let's say it had gone to the
2 end and you had prevailed, or Uniboard had
3 prevailed, there wouldn't be any difference between
4 a suit filed by Uniboard or a suit filed by you.

5 THE WITNESS: No.

6 THE COURT: The money would go to you.

7 THE WITNESS: Yes. Over to research.

8 THE COURT: All right. One last question,
9 Dr. Lans. And it relates to the first question I

10 asked. And perhaps you have already answered it,
11 but over and over you have stated that you glanced
12 at something, you read it, you relied on your
13 attorneys, and so forth.

14 Now my other question is related to the
15 2000 document, the summary. But overall, I saw
16 documents that were signed, signed by you, and I
17 saw responses to interrogatories that were signed
18 by you. Are you telling me -- well, did you read
19 those matters carefully before you signed them?

20 THE WITNESS: To read carefully to me
21 means that I sit down a day with a paper and I read
22 it, and I switch off telephones, and I
23 concentrated. I didn't do that. I read through
24 the documents, and I would also like to point out
25 that the documents I have been reading has my

10

1 signature on each page.

2 THE COURT: Yes.

3 THE WITNESS: That is for me. I confirmed
4 for myself I had been reading that page. And I
5 have seen that only a few documents has my
6 signature, and that means that I didn't read the
7 last page of that document, and the rest I don't

8 know. That is something I always do. And you have
9 seen that some of the document has my signature on
10 each page. So I stand for these documents, this
11 document I have been reading. I have not spend
12 much time. I have spent the time I could on the
13 document, the time available. And I would say that
14 if I start to read the document at 3 o'clock during
15 the night, I don't have full capacity. But that is
16 the best I can do.

17 THE COURT: One last question, then. I
18 want to refer, Dr. Lans, to my opinion that I wrote
19 on November 23, 1999, and for the record, it's 84
20 Fed Sup 2d 112.

21 I'm not asking you to agree or disagree
22 with what was written here, but I do want to give
23 you an opportunity to respond to what I wrote, and
24 what I wrote was based upon my findings after the
25 documents were submitted to me. And some of those

11

1 documents were documents signed by you; they were
2 answers to interrogatories and so forth.

3 So don't be alarmed that I am reading this
4 to you, and it's not an allegation. I am only
5 asking you to hear this and then give you an

6 opportunity to respond to it. And perhaps you
7 already have.

8 And I said -- this is at page 114 of that
9 opinion:

10 "Prior to filing his motion for leave to
11 amend by substituting plaintiffs, Lans had denied
12 that the 986 patent had ever been assigned. Lans'
13 original complaint made no mention of Uniboard or
14 any assignment. During discovery Lans appeared to
15 resist disclosing any information that would cast
16 doubt on his status as patentee. For example, in
17 response to an interrogatory filed in a related
18 case" -- that's one of the related cases -- "Lans
19 declared that 'there has been no assignment of the
20 983 patent.'"

21 And that was in response to an
22 interrogatory.

23 Do you want to comment on that?

24 THE WITNESS: Well, I think it's a
25 reasonable judgment based on the information given

12

1 to the Court. But I think that not all the
2 information has been given to the Court, and I
3 think that -- I believe that things could be a

4 little bit different today because we have added
5 information. So I fully understand the judgment.

6 THE COURT: With respect to
7 interrogatories that you may have received in this
8 case from one of the other parties, were the
9 interrogatories forwarded to you?

10 THE WITNESS: Some of them I received at
11 some stages, but as you know, I had also comments
12 on some important points of question 10, for
13 example, and I had a slightly different view, and I
14 forwarded that view. And that view is exactly what
15 I was told from the beginning, that I believed that
16 the patent belongs to Uniboard by the fact that
17 Uniboard had the benefit of the patent.

18 But I have also been told that what is
19 important in United States is the registration. So
20 I wrote that the patent has registered. I tried to
21 forward the truth, correct or not, but that was my
22 belief. And I understand that my requested changes
23 never was received by the Court. And I don't know
24 the reason.

25 THE COURT: A statement that there had

13

1 been no assignment of the 986 patent, was that

2 accurate? That was in a response that you made.

3 THE WITNESS: With the explanation I got,
4 I think it was correct, but I know that different
5 people has different opinions about that statement.
6 We should remember that I didn't write the
7 statements. They were written for me, and I were
8 asked to read and to sign. And I frequently had
9 different opinions and I expressed my opinions, and
10 when I got a reasonable explanation, as a nonlawyer
11 or educated in law person, I accepted what they
12 told me, if it was reasonable.

13 THE COURT: Dr. Lans, I know that you had
14 -- Mr. Berg, who was a neighbor?

15 THE WITNESS: No, he was not.

16 THE COURT: He was not a neighbor?

17 THE WITNESS: No.

18 THE COURT: That was Peter --

19 THE WITNESS: Peter Utterstrom.

20 THE COURT: -- was a neighbor?

21 THE WITNESS: Yes. He is my neighbor.

22 THE COURT: And you had great trust in
23 him?

24 THE WITNESS: Yes, I do, for several
25 reason. First of all, I do trust lawyers, and

1 especially if it's not just a lawyer, it is a
2 person living close to me, a person I have seen for
3 years. And then I trust him. And we should also
4 remember that I'm member of the Royal Swedish
5 Academy of Sciences. I am vice chairman, in fact.
6 And the people I am working with is so trustful, if
7 I ask a question or if I ask a person to do
8 something, they do it. If they don't know the
9 exact answer, they tell me, or if they can't do it,
10 they tell me, and everything happens. It never
11 fails. It's such a high quality of these people.
12 And that is the people I'm normally working with.

13 So I have a very high degree of trust with
14 people. If you communicate, if you send an e-mail
15 with a request like the February 19 fax, I know
16 that it can fail -- I mean the e-mail system can
17 fail or the fax can fail or disappear for some
18 reason. So for that reason I always verifies that
19 the person has received the message. And if they
20 have received the message, then I forwarded the
21 bullet to that person. It will happen. It's never
22 fails, with the person I am working with.

23 So I maybe did wrong when I applied this
24 trust on people I didn't know with maybe different

25 culture or maybe different opinion of what to do

15

1 and what to do, what they couldn't do. But I trust
2 people. I think that's wrong.

3 THE COURT: Well, did you ever consult
4 with Mr. Utterstrom?

5 THE WITNESS: Yes, I did.

6 THE COURT: When you had say a need to
7 answer interrogatories or --

8 THE WITNESS: Yes. I talked to him, but I
9 in fact did not -- when I found that I didn't
10 understand anything, I went to the police office,
11 the security police, and told them that something
12 is possibly wrong. And they started an
13 investigation. So I really did what I could. I
14 like to do my absolutely best. I like to tell the
15 truth, always. But we know that there are
16 different systems in different parts of the world,
17 and it's very hard to apply Swedish law on U.S. I
18 mean it's different. No one is a better system
19 than the other. It's like a different system. And
20 to me, it's impossible to know is it important that
21 I respond in the capacity of director for Uniboard,
22 or Hakan Lans. When I get a question, I answer in

23 those capacities to those people who knew about
24 Uniboard and Hakan Lans.
25 That is not a big difference for me. And

16

1 in Sweden, there has been a lot of discussions.
2 There is no different. I mean if there are any
3 differences, then it's a question of the relation
4 between Uniboard and myself. In the Swedish court
5 we can say we did in the name of Hakan Lans or
6 Uniboard, if there are dispute, then it's some
7 person said it's a medical problem, if you have
8 different opinions in different capacities.

9 So for me it's -- I shouldn't say -- it's
10 wrong to use the word "identical," but quite close
11 to. And what is important to me is that I forward
12 all information, I told Mr. Mastriani that there
13 has been assignment or agreement between me and
14 Uniboard.

15 I also told them that Gunnar Berg had them
16 in his archive, and this has been also confirmed
17 during testimonies. So I think I gave all
18 information correct, and then I applied my trust.

19 THE COURT: With respect to certain
20 documents, I think you indicated that you did not

21 have copies of them; that you gave them to -- well,
22 one was Mr. Berg had one.

23 THE WITNESS: That's correct.

24 THE COURT: Right. Why didn't you keep
25 copies of important documents in this case?

17

1 THE WITNESS: I simply had no storage.

2 And I mean if I can say, I live in a regular house.

3 I think it's much safer that professional people

4 with professional archives, registrations,

5 secretaries, et cetera, take care of important

6 document, and I don't know simply where to put

7 them.

8 I mean I'm so overloaded with papers, it's

9 unbelievable.

10 THE COURT: Where would the documents be
11 kept? You say your archives, but where is that?

12 THE WITNESS: In the law firm of Gunnar

13 Berg. And also in the archive of the accountants.

14 They do have the important document. And that

15 means that you have registration, you have

16 professional people, and if you have a question

17 concerning let's say taxes, they can respond, they

18 have the originals, and that creates less load on

19 me. And it's professional people. They are much
20 more knowledgeable than I.

21 Of course, I do have copies of document,
22 but that is usually scientific reports which I need
23 for my work. And it is so much document that I
24 even can't keep these documents.

25 THE COURT: All right. Thank you very

18

1 much, Dr. Lans.

2 THE WITNESS: Thank you.

3 THE COURT: Counsel, are there any
4 questions that either side would have in view of my
5 questions? If not, why, then we will go on to the
6 next witness.

7 MR. HAINLINE: No, Your Honor.

8 MR. HANDLEMAN: I just have one question,
9 Your Honor.

10 THE COURT: Yes.

11 FURTHER CROSS-EXAMINATION BY COUNSEL

12 FOR DEFENDANT ACER AMERICA

13 BY MR. HANDLEMAN:

14 Q Mr. Lans, I think you said -- you

15 indicated that there was some kind of security

16 investigation. You went to the Swedish police in

17 response to the Judge's question. Do you have a
18 single document from the security police that you
19 made reference to about this so-called
20 investigation?

21 A Yes. You can -- I can arrange a contact
22 with them. I am not allowed to make any statement
23 about that. You can go through the diplomatic
24 channels, we have a representative here.

25 Q So you have no -- you yourself have no

19

1 document?

2 A No.

3 MR. HANDLEMAN: Thank you.

4 THE COURT: Any other questions?

5 MR. PARTRIDGE: No questions, Your Honor.

6 MS. PLOEGER: No questions, Your Honor.

7 THE COURT: All right. Thank you very

8 much, Dr. Lans. You may step down.

9 THE WITNESS: Thank you.

10 [Witness excused.]

11 MR. HANDLEMAN: Your Honor, I am going to
12 call Mr. Mastriani to the stand. And in doing so,
13 Your Honor, let me just say I'm going to give you
14 another book. It's the same documents, but it is -- again

15 it's called Mastriani Intervenor Exhibits.
16 We have 1 through 9. They have been seen by all
17 the parties. These are the documents, Your Honor,
18 I will be referring to during this examination.

19 LOUIS MASTRIANI, DEFENDANT, SWORN

20 DIRECT EXAMINATION

21 BY MR. HANDLEMAN:

22 Q Mr. Mastriani, for the record, state your
23 name and where you reside.

24 A Louis Mastriani, 1615 Juniper Street,
25 Northwest, Washington, D.C.

20

1 Q Okay. And you are a member, are you not,
2 of the D.C. Bar?

3 A I am.

4 Q And how long have you been practicing law?

5 A Approximately 29 years.

6 Q And are you licensed in any other -- with
7 any other bars other than D.C.?

8 A Yes. California and New York.

9 Q Okay. And what law firm are you presently
10 with?

11 A Adduci, Mastriani and Schaumberg.

12 Q And what is your position at that law

13 firm?

14 A I am a partner.

15 Q And that law firm is located where?

16 A In Washington, D.C.

17 Q Okay. And it doesn't have any offices in
18 any other place, does it?

19 A No, it does not.

20 Q Okay. Mr. Mastriani, have you ever had a
21 bar complaint filed against you before the one that
22 was filed in this case?

23 A No.

24 Q Okay. Let me give you, if I might --

25 MR. HANDLEMAN: Your Honor, if I can

21

1 approach the witness and give him a copy of the
2 same booklet that I have given the Court.

3 THE COURT: You may.

4 BY MR. HANDLEMAN:

5 Q Mr. Mastriani, I have given you a booklet
6 that is called Lou Mastriani Intervenor Exhibits.
7 During the course of this examination I will refer
8 you to documents. To the extent that I do, it's
9 there, and to the extent that we need to get any
10 others, I don't know where they are, but we'll find

11 them. I know the Court has them. But -- and if
12 there is a document you need to see, please feel
13 free to ask me.

14 Can you tell the Court the circumstances
15 under which you -- and I say you, I'm going to say
16 you and AMS together, rather than saying the law
17 firm -- learned of a Mr. Lans?

18 A I received a call from Talbot from the
19 Delphi Law Firm in Stockholm, Sweden in December
20 1995, telling me that Mr. Lans was a client of the
21 firm.

22 Q Okay. And what did you learn during that
23 conversation with regard to what they were seeking
24 or what Mr. Lans was seeking?

25 MR. HAINLINE: Objection; hearsay.

22

1 MR. HANDLEMAN: I think he can say what
2 his understanding of what he heard in the context
3 of what has been provided in the testimony
4 yesterday. It seems to me it's kind of remote to
5 be arguing hearsay in connection with these
6 preliminary matters. So I would -- I think it's a
7 proper question.

8 THE COURT: I'll overrule the objection.

9 There's no jury.

10 THE WITNESS: Mr. Lindstrom informed me
11 that Delphi's client, Mr. Lans, was interested in
12 exploiting a patent that he had involving
13 colorgraphics. It was a U.S. patent, and that was
14 what was particularly being referred to, although
15 there were foreign counterparts. And Mr. Lindstrom
16 indicated that Mr. Lans was interested in selling
17 the patent to initially, this was, the U.S.
18 government, because it had, according to Mr. Lans,
19 some type of security aspects to it, national
20 security aspects to it, or to a consortium of
21 companies in the United States.

22 BY MR. HANDLEMAN:

23 Q And do you know if the patent that he was
24 referring to was what we are going to call the 986
25 patent?

23

1 A Yes.

2 Q Okay. Now --

3 THE COURT: Now you said he knows, but I'm
4 not sure what the answer is.

5 BY MR. HANDLEMAN:

6 Q What -- did -- okay, let me strike that.

7 During your preliminary conversations, did
8 you come to learn the identification of the patent?

9 A Yes. Mr. Lindstrom read the title of the
10 document, the actual patent that he had in his
11 file.

12 Q Okay. And do you recall what the patent -- was
13 there a patent number that he gave you?

14 A Yes. He read the heading on the patent --
15 in other words, U.S. Patent No. -- I think it was
16 4303986, and then the title of the invention,
17 colographics. I can't recall exactly, apparatus
18 for colorgraphics; something like that.

19 Q Is that ultimately the patent that you
20 were retained on behalf of Lans to seek license
21 agreements?

22 A That's correct, that patent along with its
23 foreign counterparts.

24 Q And what did you come to call that patent?

25 A We referred to it as a 986 patent. I mean

24

1 it's typical that attorneys -- it was our practice
2 to refer to the last three numbers.

3 Q Okay. So that when we are discussing in
4 examination, when I say the 986 patent, we all know

5 that's the patent you're talking about; is that

6 correct?

7 A That's correct.

8 Q Okay. Now what did you know about the

9 Delphi Law Firm at the time that you heard from Mr.

10 Lindstrom?

11 A I knew about the firm from several years

12 before, when Mr. Lindstrom had joined the firm, and

13 I was invited to Sweden through the firm, but at

14 the invitation of the Swedish Federation of

15 Industries to make presentations to Swedish

16 industry and the Swedish government on U.S.

17 antidumping laws and other trade laws as well as

18 intellectual property protection in the United

19 States.

20 Q Did there come a time that you sent a

21 letter, after talking to Mr. Lindstrom to Mr. Lans

22 in connection with the 986 patent?

23 A Yes. I mean after some initial

24 correspondence back and forth between Delphi and

25 our firm in I believe it was December or January or

25

1 February into March, we then sent a letter to Mr.

2 Lans, I believe it was around March 20th, 1996.

3 Q Okay. And did you undertake any, from the
4 standpoint of AMS, any preliminary investigation
5 before sending this March of 1996 letter that you
6 made a reference to?

7 A The preliminary investigation was the
8 discussions that we had with Delphi to find out
9 information, along with a memorandum that was sent
10 to us by Delphi that gave us information about Mr.
11 Lans and the -- what was referred to as the
12 colorgraphics patent, but the 986 patent, including
13 the litigation about it. And then we secured
14 initially a copy of the patent from the Patent
15 Office database.

16 Q And what did the patent -- who did -- what
17 -- who did the patent identify as the owner of it
18 when you obtained the document?

19 A The -- the identity on the patent was
20 Hakan Lans, and there was no indication of any
21 assignee, which would be an owner, if there was
22 one. I mean Mr. Lans -- we also know at the time
23 because we secured another patent of his, this so-called GPS
24 or STDMA patent, and on that patent Mr.
25 Lans was identified as the inventor, but the

1 assignee was his company, GP&C, International.

2 Q Okay. Now I want to ask you to take a
3 look at, if you would, in your exhibit book,
4 Exhibit 1, and ask you whether, sir, you can
5 identify that document.

6 A Yes. This is the March 20, 1996 letter
7 from me to Mr. Lans, with a cc to Talbot Lindstrom
8 at the Delphi Law Firm.

9 Q Okay. And did there come a time that you
10 met with Mr. Lans in connection with the matter of
11 the patent?

12 A Yes. I met Mr. Lans in May 1996, along
13 with my partner Jim Adduci. We were asked by Mr.
14 Lans through the Delphi firm to come to a meeting
15 in Stockholm to discuss options that would be
16 available to him to exploit the 986 patent.

17 Q And can you tell us, do you recall,
18 besides you and Mr. Adduci and Mr. Lans, was there
19 anyone else at that meeting that you can recall?

20 A Yes. Tal Lindstrom was at the meeting.
21 Another attorney called Sven Goram -- that's
22 spelled G-o-r-a-m -- was present for part of the
23 meeting, and also another attorney was present for
24 part of the meeting, a gentleman by the name of
25 Christer Holm, H-o-l-m. There may have been some

1 other Delphi attorneys that came in, but I don't
2 recall them.

3 Q Okay. Can you tell us, to the best of
4 your recollection, you know, what else, if
5 anything, was discussed at the meeting? Again,
6 we're talking the first meeting, May of 1996,
7 because that's the first time you met with Mr.
8 Lans; correct?

9 A That's correct. What was discussed was
10 the fact that the -- it was our belief, based upon
11 what we understood the patent was about, and the
12 fact that it only had a short time before it
13 expired, was that it was not a feasible option at
14 all to try and sell the patent to the U.S.
15 government, because that just wasn't going to
16 happen. It would be highly unusual and irregular.
17 And nor that it could be sold to a consortium of
18 high-technology companies in the United States.

19 What we recommended as a more viable
20 option was to try and license the patent by
21 engaging in negotiations with companies that sold
22 products that were determined to be infringing, and
23 based upon that we went into discussions on how

24 that could be done.

25 One of the options that had been proposed

28

1 earlier on, I believe in Exhibit 1 here, was that

2 Mr. Lans could assign ownership or partial

3 ownership, either in toto or partial, to a group of

4 companies or, excuse me, a company, a group of

5 people or a company to try and go out and license

6 the patent. Or he could do it in his name.

7 Q When the question of assignment was

8 raised, do you recall what, if any, response Mr.

9 Lans had at that meeting?

10 A Well, just so you understand, Mr. Lans was

11 advised in this meeting that there were two aspects

12 of U.S. patent law that were unique to the United

13 States, and therefore different when contrasted

14 with patents in foreign jurisdictions.

15 MR. HAINLINE: Objection, Your Honor. In

16 testimony like this, could we have an active voice

17 of who is giving the advice rather than Mr. Lans or

18 Dr. Lans was advised?

19 THE COURT: Yes.

20 MR. HANDLEMAN: That's reasonable.

21 BY MR. HANDLEMAN:

22 Q Can you, in response, to the best of your
23 recollection, tell us who said what at this
24 meeting.

25 A Yes. I informed Mr. Lans directly that,

29

1 as I just said, that there were two aspects of U.S.
2 law that are unique to the United States. The
3 first, and in our mind the most important at that
4 meeting, was that in foreign countries, the first -- the
5 person who files first gets the patent, and
6 whoever invented the invention first is not the
7 person who gets the patent if somebody else files
8 before that person does.

9 In the U.S., it's different. It's the
10 first to file -- excuse me, the first to invent in
11 the United States.

12 Likewise, in foreign jurisdictions, the
13 owner of the patent and therefore the person who
14 can give notice and who can sue is the person who
15 appears in the registry of the patent office.

16 In the United States, that's not the case
17 because you can have a patent where the owner
18 appears on the face with no indication of an
19 assignment, and no recorded assignment, i.e., an

20 assignment recorded at the U.S. Patent Office, but
21 there can be an assignment that has been made that
22 is a private contract and that serves to transfer
23 the entire right, title and interest in that patent
24 to that other person, who is then really the owner
25 and only that person can file suit or if there has

30

1 been an exclusive license, the exclusive licensee
2 can file suit, if they are given that right.

3 Q What, if any, response did Mr. Lans have
4 to the discourse that you have just indicated about
5 assignment and the options?

6 A Well, the only -- he was nodding his head
7 and he was listening to all this. The only
8 affirmative thing that he said was that he
9 understood assignments because he had engaged in
10 assignment with respect to his STDMA or GPS patent
11 because he said that he had assigned all right,
12 title and interest in that patent to his company
13 GP&C, International.

14 Q What, if anything, did he say as to the
15 question of whether he owned the 986 patent at that
16 meeting?

17 A He stated that he was the owner of the

18 patent, and also the -- and also the foreign
19 counterparts, and he had been represented to us
20 before by Delphi, who was speaking for Mr. Lans, as
21 the owner.

22 Q What, if any, discussions did he state he
23 had on whether or not there was an assignment of
24 the 986 patent at that meeting?

25 A There were no discussions about whether he

31

1 had assigned the patent at that meeting. It came
2 later.

3 Q Okay. What conclusion, if any, did you
4 reach when you left the meeting as to who was the
5 owner of the 986 patent?

6 A My conclusion was that Mr. Lans was the
7 owner.

8 Q Now after the meeting on May 26th, '96, I
9 take it you came back to the country?

10 A Yes, we came back to the United States.

11 Q Did you have occasion to communicate with
12 him by correspondence after that meeting, if you
13 recall?

14 A Yes. I wrote him a letter later on, in
15 late -- later on in May.

16 Q Okay. Well, let me show you, if I could -- take a
17 look at Exhibit 2 in your booklet, and ask
18 you whether you can identify that document.

19 A This is the letter of May 29, 1996 that I
20 sent to Mr. Lans with cc's to Tal Lindstrom and
21 Peter Utterstrom at Delphi.

22 Q Okay. And, incidentally, before I forget,
23 do you recall if there was any discussions at all
24 at the May '96 meeting as to how if you all
25 represented Mr. Lans, how the representation, what

32

1 form it would take in terms of compensation?

2 A Well, Mr. Lans made it clear at the
3 meeting that he was not going to pay any money for
4 legal fees or expenses, and that he would require
5 any attorneys that represented him with respect to
6 this matter to work on a contingency arrangement,
7 and that they would be responsible for getting
8 financing for any expenses.

9 Q Okay. Now Exhibit 2, you know, what was
10 the purpose of sending, if you recall, this
11 particular letter?

12 A Well, we -- based upon the discussions
13 that we had at the meeting, we were -- we were

14 suggesting to him what we felt was the most viable
15 option for him to realize the potential in his U.S.
16 patent, and we recommended that he be -- he give
17 notice to -- notice of infringement to known
18 infringers that would hopefully lead to licensing
19 negotiations and licensees, and then in the event
20 that there was not a satisfactory result in any of
21 these negotiations, then he would have the option
22 of taking legal action both in the Federal courts
23 and before the U.S. International Trade Commission.
24 Q Did there come a time, Mr. Mastriani, that
25 in fact Lans entered into a fee arrangement, Mr.

33

1 Lans, with you and Delphi?

2 A Yes. In July -- sometime in July of 1996.

3 Q And isn't that reflected, is it not, in
4 your Exhibit 3 that you have before you?

5 A Yes.

6 Q Okay. And who signed that fee agreement?

7 A It was signed by Peter Utterstrom and by
8 Hakan Lans.

9 Q Okay. And who did you understand when you
10 entered into the free agreement you were
11 representing in connection with the 986 patent?

36

12 A Hakan Lans.

13 Q And what was your understanding that AMS

14 was retained to perform on behalf of Mr. Lans?

15 What was your job?

16 A Our job was to investigate and identify

17 companies that sold infringing products and then

18 send notices of infringement to those companies on

19 behalf of Mr. Lans, the owner of the patent.

20 Q Okay. Now once you were retained, what

21 investigation, if any, did you undertake, to

22 satisfy yourself as patent counsel that you were

23 representing the right person in terms of ownership

24 and in terms of what you needed to do to file a

25 case, because it, after all, deals with

34

1 infringement of patent? Can you tell the Court

2 what you -- and when I say you, I mean you and AMS,

3 totally.

4 A Did you preface the question with before

5 we sent the notice of infringement out?

6 Q Yes. Yes.

7 A Okay.

8 Q You were retained. Now you know your

9 client, you have a responsibility, you have told

10 the Court what it was you were hired for, and my
11 question simply was before you then undertook the
12 action, what, if any, investigation did you do in
13 connection with your responsibilities?

14 A Well, we sent the first group of notices
15 of infringement out in late September 1996. So
16 prior to that time, in addition to having
17 communications with Delphi and the meeting with Mr.
18 Lans and letter to Mr. Lans, we also solicited
19 information from Mr. Lans in a letter -- I believe
20 it was in August that basically asked him for any
21 and all documents he had involving license
22 agreements --

23 MR. HAINLINE: Objection, Your Honor.
24 Best evidence rule. If we have -- he's going to
25 talk about the contents of a letter he sent to Dr.

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1 Lans, I think we should have that letter.

2 THE COURT: Do you have the letter?

3 MR. HANDLEMAN: I'm sure I do, Your Honor.

4 BY MR. HANDLEMAN:

5 Q I would refer you, if I could, sir, to
6 Exhibit 4, Mr. Mastriani.

7 A Yes.

8 Q Is that the letter you're making reference
9 to?

10 A Yes, that is one of the letters, yes.

11 Q Okay. Well, let's do this for the record.

12 That's a letter of August 22, 1996?

13 A That's correct.

14 Q Okay. And I think you were talking in
15 terms before counsel raised the issue of what you
16 did. So let's start at the letter. Okay.

17 You said that -- I think you said that you
18 told him you wanted the files; right?

19 A Right. And I was going to include
20 activities up to this point also and after this
21 point.

22 Q Okay. Well, let's do this. Let's do it
23 in sequence. We know that that's the letter. In
24 fact, that letter on page 2 of No. 2 does make
25 reference to files, doesn't it?

36

1 A It says the license agreements that you
2 have entered as well as the negotiation files, and
3 then there is six other categories of documents
4 that we wanted to have access to.

5 Q And you sent this to Mr. Lans; correct?

6 A It was sent to Mr. Lans, correct, with a
7 cc to Mr. Peter Utterstrom.

8 Q Okay. And do you recall whether or not in
9 this letter you requested that you wanted to also
10 come and meet with him to go through everything
11 prior to filing notice of infringement; correct?

12 A That's correct. We had -- prior to
13 sending this letter, we had also done a great deal
14 of research into the patent in the U.S. as well as
15 in foreign jurisdictions, and we searched the
16 databases of all patent offices, both the United
17 States and overseas, the assignee databases at the
18 U.S. Patent Office, and also the foreign
19 registries, to the extent that they had any. And
20 then also we went through a commercial database
21 called DERWENT and did a worldwide assignee search
22 in connection with the 986 patent and all of its
23 foreign counterparts which were principally in
24 Europe and also there was one in Japan.

25 Q Okay. Because I want to make sure --

37

1 obviously this is a very important issue -- putting
2 aside the letter of August 22 that you have
3 testified to, that the Court knows everything that

4 you did -- you being you and your firm -- to
5 investigate not only the ownership but also, as I
6 understand patent law, you know, do you have a
7 case. Make sure you cover everything that you did.

8 Q Well, after the August 22nd letter, we met
9 with Mr. Lans in Stockholm. We went over for
10 approximately a week. I say a week, I mean like a
11 business week, of five, six days, and met with Mr.
12 Lans for a couple of days, met with Delphi for a
13 couple of days, and met with Dr. Grennberg for a
14 day, and after that meeting, when we came back to
15 the United States, we also met for two days with
16 Carl Mackover of Mackover & Associates, who had
17 been Mr. Lans' consultant from 1980 through the
18 mid-1990s, in connection with commercializing or
19 trying to commercialize the 986 patent in the
20 United States. And Mr. Mackover had a lot of
21 interaction with Mr. Lans on behalf of Mr. Lans
22 with a number of companies in the U.S. regarding
23 the 986 patent technology. And so we went to him,
24 interviewed him, went through all of his archives,
25 and he had a huge amount of information, and

38

1 received that information.

2 And we also then made sure that we got
3 copies of all the files from the Hitachi
4 litigation, from Dr. Pietzeker in Europe.
5 We also had Dr. Grennberg get us
6 information from Japan regarding the Japanese
7 patent, and we were able to locate the original
8 patent prosecution files from the firm that
9 represented Mr. Lans in Texas, in filing
10 application for the 986 patent, that had become
11 defunct, but we tracked down the lawyer that had
12 represented Mr. Lans at -- I believe it was at
13 Jones Day, Bob Turner, and we were able to secure
14 those original files out of some archives -- out of
15 some storage.

16 And that's what I can recall generally, in
17 addition to the fact that we, during this whole
18 time period, we were analyzing the graphics
19 engines, components, various computer devices in
20 order to ascertain whether or not the claims or any
21 of the claims of the 986 patent read upon those
22 products.

23 Q And what conclusion did you reach whether
24 or not you could go forward in terms of the
25 substantively the graphics, that there was a patent

1 to enforce?

2 A Well, we confirmed through the -- we had
3 hired experts, two very highly regarded experts in
4 this area, both hardware and software, and also
5 some consulting experts, and had concluded that we
6 were able to define a prima facie case of
7 infringement against virtually against all
8 computers that were being sold in the U.S. market.

9 Q And what conclusion did you reach after
10 you did your investigation as to who was the owner
11 of the 986 patent?

12 A Our conclusion was that Mr. Lans was the
13 owner. That's what he represented to us, and in
14 fact when we, as for instance, filed a certificate
15 of correction on his behalf to correct a
16 typographical error in that patent, he signed the
17 declaration to the Patent Office stating that he
18 was the owner of the entire right, title and
19 interest in the 986 patent.

20 Q Okay. Now you mentioned a meeting in
21 September of 1996; right?

22 A That's correct.

23 Q And you heard Mr. Lans testify yesterday
24 that there was a meeting in September of '96;

25 correct?

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1 A Yes.

2 Q Is your recollection of Mr. Lans'
3 testimony about what happened in the meeting
4 consistent with his?

5 A No, it isn't, in several respects. He
6 testified that the people in attendance at that
7 meeting, in addition to himself, were me, Tom
8 Schaumberg, and Peter Utterstrom, and that is
9 incorrect. The people in attendance at the meeting
10 with him at his home/office in Saltsojobaden,
11 Sweden, were myself and Raymond Powell, who was
12 with the law firm Westerlund & Powell, and was of
13 counsel to our firm on this case. And Mr. Lans
14 made reference to the fact that he remembered
15 taking a boat trip with all of us at that time, and
16 I can tell you that the boat trip that he is
17 referring to did not take place in September 1996.
18 It took place at the end of July of 1998.

19 Q Now how do you know that your recollection
20 of that meeting is more accurate than Mr. Lans'?

21 A Because I went back and looked at my notes
22 that I took at that meeting last night.

23 Q Okay.

24 MR. HANDLEMAN: Your Honor, I would mark
25 as Exhibit 10 -- I would like to have these notes

41

1 shown to Your Honor.

2 MR. HAINLINE: Your Honor, I object to
3 this. When we took over as counsel for Dr. Lans, I
4 asked for all the attorney files. I have asked for
5 files having to do with anything that supports the
6 claims in opposition to our motion. I have never
7 seen this document before. It is a document that
8 the original of which I would in the normal course
9 have examined by a document expert for -- to date
10 it, and it is certainly a document I should have
11 had before today and have had an opportunity to
12 examine Mr. Mastriani about at his deposition.

13 MR. HANDLEMAN: Your Honor, all I know is
14 we have -- there -- my client produced a bunch of
15 documents that were made available to Mr. Hainline,
16 some of which he made copies of, some of which he
17 did not make copies of.

18 The document that I have are notes. I
19 will give the Court the original. I have copies
20 for him. The question of whether notes, attorney

45

21 taking notes, whether or not that is a question of
22 belonging to a file is a separate issue. I believe
23 these documents were in fact made available. The
24 question of discovery and the letters that went
25 back and forth -- there's been no discovery in the

42

1 case. Yesterday there were documents that were
2 filed by Mr. Hainline that I have never seen
3 before.

4 The bottom line is we are searching for
5 the truth, for the Court to make the determination
6 on credibility. This witness has laid the
7 foundation that he kept notes, and I would submit
8 that in cross-examination or if counsel wants to do
9 a voir dire he can elicit when this was done to
10 establish that it was contemporaneous.

11 There are no secrets here. I have copies.
12 I would offer -- I would have them marked as
13 Exhibit 10 that I would like to proffer to Your
14 Honor and give a copy to counsel. May I do that?

15 THE COURT: You may hand it to counsel,
16 yes.

17 MR. HANDLEMAN: Yes.

18 MR. HAINLINE: One thing, Your Honor, it

19 is not correct that we made copies of some
20 documents and not copies of others. We asked for
21 the files, the client files, all of which to be
22 delivered to successor counsel, and it was not a
23 question of us looking at and parsing between
24 documents. And I have repeatedly asked for any
25 notes which confirm any of the representations

43

1 about advice or meetings or anything else that he
2 has, and this is the first I have ever gotten one.

3 THE COURT: Did you do this by letter? I
4 take it you did.

5 MR. HAINLINE: Yes, Your Honor. There are
6 a number of letters between -- when I was taking
7 over as successor counsel, between me and Mr.
8 Mastriani. Mr. Mastriani, both in letters to me
9 and in his deposition, you will see a part of his
10 deposition -- I'll see if I can find you the page
11 reference -- has said that certain documents which
12 he considered to be the law firm's documents, he
13 considered to be privileged and he was not giving
14 them to us.

15 Now apparently this is one of those where
16 he is selectively waiving that privilege. I mean

17 if this document comes in, or is used in any way,
18 or even referred to in any way, I think it is a
19 wholesale waiver of all these internal notes that
20 his law firm that we should have, and have a chance
21 to look at, and comment about, and maybe take some
22 discovery about so that -- because it's going to be
23 important as this one, apparently, according to
24 their case, is for you to hear about.

25 MR. HANDLEMAN: In response, Your Honor, I

44

1 do know this: There is correspondence between Mr.
2 Hainline and my clients before we were retained in
3 connection with, of course, the transition upon the
4 reconsideration. Mr. Hainline wasn't with the law
5 firm he is with now. It is my understanding, and I
6 recall seeing correspondence, where Mr. Hainline
7 had made available documents and he chose to --
8 chose what he wanted and what he didn't. There are
9 boxes and boxes and boxes, you can imagine, of
10 documents which in the companion case, if it goes
11 forward and there is discovery, there will be
12 documents to be gotten.

13 There is no question, I will say, however,
14 that there were certain documents at Mr.

15 Mastriani's deposition that there was invoked
16 privilege as it related to documents in terms of
17 other parties that were privileged information, not
18 available.

19 But this -- we haven't -- this does not
20 impede going forward and concluding this matter. I
21 don't know how significant this is. Your Honor can
22 assess from this, you know, even if you didn't have
23 this document. The fact remains, however, that is
24 that what became significant that gave rise to
25 looking at the minutes or looking at the notes was

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1 Mr. Lans' own testimony yesterday that surprised us
2 as to what happened at the meeting.

3 He testified on the stand that he laid out
4 all this information specifically about assignments
5 and all the rest, and that give rise, frankly, to
6 looking at the notes.

7 So I would submit that it is relevant, the
8 Court can take it for what it is, just like, Your
9 Honor, when we said on the translation documents
10 yesterday that were sprung, that it was admitted
11 subject to the ability to make a motion to strike
12 if it wasn't an accurate -- if it wasn't an

13 accurate interpretation. Here if he has some
14 expert that says this document wasn't
15 contemporaneous, that it wasn't on September 5,
16 '96, then I think it's under the same premise. He
17 could file a motion to strike.

18 So I submit that it is relevant and, in
19 fact, I should be allowed to offer it, and it
20 should be admitted for what it's worth.

21 THE COURT: Last word.

22 MR. HAINLINE: Thank you. I'll make it
23 short. Two things:

24 I wasn't with Pillsbury when I became
25 successor counsel. Pillsbury also became successor

46

1 counsel. I did not pick and choose, and I did not
2 not receive or choose not to receive any documents.
3 I asked for -- I demanded, in fact, all the files.

4 So Mr. Handleman's representation is not
5 correct.

6 Secondly, Dr. Lans testified yesterday
7 consistently with what he said at his deposition.

8 Third, if we have -- and now that we have
9 this document of notes, I would like -- I would ask
10 Your Honor if you would honor Mr. Mastriani to

11 produce all of his notes, all of his internal
12 memoranda about these issues, about his
13 conversations with Dr. Lans, about the Uniboard
14 issue, about the assignment issue -- every single
15 one of them we should have, not a selective parsing
16 about which I had no chance to inquire at
17 deposition.

18 And if Your Honor would order that, I
19 withdraw my objection to this document. I think
20 that we should have these, and if I can't read the
21 notes, we should have -- either have them through
22 an interrogatory by written questions have
23 translations done, or be able to take further
24 examination.

25 MR. HANDLEMAN: Your Honor, I mean as I

47

1 understand the purpose of this particular
2 evidentiary hearing, it is for the Court to
3 consider, having seen the witnesses and heard from
4 the witnesses' own mouths their positions, we
5 argued the law in December -- for the Court to make
6 a determination whether or not based on the
7 standards it should reconsider the decision to have
8 Mr. Lans pay the fees and not be the attorneys'

9 award. And that's nothing else. That's what it
10 is. This goes relevant to that, not opening the
11 door to all this other stuff. He wants all this
12 stuff that has to do with the malpractice case.
13 This isn't the malpractice case, Your Honor. It is
14 for the simple people to look, listen to these
15 witnesses, and make a determination whether or not
16 you should reconsider your motion.

17 So I stand with my position. I think it
18 is perfectly appropriate, it is consistent with the
19 way this proceeding has been, and would offer it.

20 THE COURT: I note that Dell wants to
21 address the question.

22 MR. PARTRIDGE: Very briefly, Your Honor.

23 We did not engage in the discovery process
24 between these two parties, and relied upon what
25 they would produce in connection with the

48

1 depositions that Your Honor --

2 THE COURT: "They" being both parties?

3 MR. PARTRIDGE: Yes, Your Honor. And we
4 did that, and I think this is true of Gateway, to
5 keep expenses down, because this essentially became
6 a battle between Mr. Lans and AMS. And, in fact, I

7 was quite surprised that there were no notes that
8 had been produced or referenced in the depositions
9 that were taken.

10 And from my point of view, in terms of
11 what I was contemplating asking this witness today,
12 given that I was surprised there were no notes,
13 that I do think this has an effect on the inquiries
14 that would have otherwise been made.

15 I may change my inquiries based on these
16 notes and look at the issues a bit differently as a
17 consequence. I can't complain because I served no
18 discovery. I left it to these two parties. So I
19 am not in that position, though I must say I think
20 at this stage it appears to me that if there are
21 notes about the May meeting and the September
22 meeting and notes about constructing this case in
23 the first instance, they would be relevant to the
24 inquiries that are going to be made of this
25 witness.

49

1 MR. HANDLEMAN: One final word, if I may,
2 Your Honor.

3 He talks about the discovery as if there
4 was formal discovery in the case. There's been no

5 formal discovery. We have --

6 THE COURT: Does that really make a
7 difference?

8 MR. HANDLEMAN: No, it doesn't. It
9 doesn't make a difference, but I don't think that
10 Dell or Gateway is put at a disadvantage as a
11 result of -- this witness could testify as to what
12 his recollection of the meeting is, and all it is
13 is notes that he took, and I think it's perhaps
14 much ado about nothing in terms of an argument to
15 raise that's not appropriate.

16 THE COURT: If it's much to do about
17 nothing, then I take it you have no problem in
18 producing the other documents.

19 MR. HANDLEMAN: Well, I think certainly
20 this document -- I mean some of the documents of
21 notes, that's fine; I don't have any problem with
22 that. But I think what we are talking about, Your
23 Honor, is I don't know if he's talking about a
24 wholesale discovery. He sent letters before this
25 evidentiary hearing. What I think we ought to do

50

1 is consistent with what they did yesterday, and
2 coming in with surprise documents, is hear the

3 testimony and the Court can make a determination as
4 the trier of fact as to what is of significance, if
5 any.

6 MR. HAINLINE: Your Honor, I'm sorry to
7 raise one other thing. I promised I wouldn't, but
8 this -- I would like to call your attention to Mr.
9 Mastriani's deposition at page 27, where this issue
10 was specifically addressed.

11 THE COURT: Page 27?

12 MR. HAINLINE: Yes, sir. Beginning at
13 line 11. Have you found it, Your Honor?

14 THE COURT: Yes, I have.

15 MR. HAINLINE: May I read it?

16 THE COURT: You may.

17 MR. HAINLINE: "Question: Do you have any
18 writings where you took contemporaneous notes of
19 the conversation you claim to have had with Dr.
20 Lans where you claim that he authorized you to make
21 this statement to the Court?"

22 There, of course, I'm talking about one
23 specific conversation.

24 "Answer: I'm not sure we -- one thing
25 that you don't have is our attorneys' notes of

1 which there are a number of attorneys' notes, but
2 those are -- those were not turned over to Dr. Lans
3 because they are property of our firm and the
4 attorneys who authored the notes. So I don't
5 recall whether those -- there were notes on that."

6 And then I asked Mr. Handleman for notes.

7 "If we have them, we will provide them."

8 The notes were not turned over to the
9 client as client files, but withheld as so-called
10 attorney property. I don't think that was proper.
11 And now we have a selective waiver.

12 THE COURT: All right. I think I've heard
13 enough of it.

14 I am going to overrule the objection at
15 this point, but I will advise Mr. Lans' counsel
16 that if you wish to voir dire the witness, you may
17 do so, either at this point, or when you have a
18 chance to cross-examine him, and I will take it
19 subject to a motion to strike.

20 MR. HAINLINE: Thank you, Your Honor.

21 THE COURT: All right.

22 MR. HANDLEMAN: Thank you, Your Honor.

23 [Defendant ACER Exhibit
24 10 marked for
25 identification.]

1 MR. HANDLEMAN: I hand what we marked as
2 Exhibit 10 to the Court.

3 BY MR. HANDLEMAN:

4 Q Mr. Mastriani, I show you what we have
5 marked as Exhibit 10 and ask you whether you can
6 identify this document.

7 A I don't yet have the exhibit.

8 Q Oh, I didn't give it to you. Okay.

9 Excuse me.

10 I show you what we have marked as Exhibit
11 10, which is a copy of the original notes. Can you
12 tell me what that is?

13 A Yes. These are notes in my handwriting
14 from probably September 1996 regarding meetings
15 with Mr. Lans, and then a meeting with Dr.
16 Grennberg at Ahlbins -- that's
17 A-h-l-b-i-n-s -- Patent Bureau.

18 Q Okay. Now when did you take these notes?

19 A On the dates indicated.

20 Q And did you write those notes on a yellow
21 pads? I mean I know you have a copy. Did you
22 write them on a yellow pad?

23 A Yes, I did.

24 Q Okay. And what did you do with the notes
25 after you wrote them down that day?

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1 A They stayed in the legal pad, and then
2 when the legal pad was used up sometime later,
3 these notes were excerpted and put in that file for
4 the case.

5 Q Okay. Now did you take notes down as
6 people were talking, or did you do it after the
7 meeting?

8 A No, I took notes contemporaneously with
9 statements that were made. Not each and every
10 statement, but statements that were noteworthy,
11 worthwhile writing down, let's put it like that.

12 Q Okay. Well, directing your attention to
13 the fourth page.

14 A The fourth page?

15 Q Your fourth page, which would be
16 NAMS007763 Bates stamped.

17 A Six three?

18 Q Yes. Do you have that?

19 A Yes, I do.

20 THE COURT: Well, before you ask the
21 question, you responded that you took these notes

22 on the dates indicated?

23 THE WITNESS: Yes, Your Honor.

24 THE COURT: And I know there are dates on
25 here, but I would ask you specifically, you are

54

1 speaking of September 5, 1996 and September 6,
2 1996?

3 THE WITNESS: That's correct, Your Honor.

4 THE COURT: All right.

5 THE WITNESS: And I would -- yes, that's
6 correct.

7 BY MR. HANDLEMAN:

8 Q In connection with September 5, '96,
9 that's the meeting with Mr. Lans that you talked
10 about before we got to this exhibit; correct?

11 A That's a meeting that both Ray Powell and
12 I had with Mr. Lans at his home and office in
13 Saltsojobaden, Sweden.

14 Q That was the meeting that who was present
15 at?

16 A Ray Powell, myself, and Mr. Lans.

17 Q Ray Powell was with your law firm; is that
18 right?

19 A He was of counsel to my law firm, correct.

20 Q And was anyone there from Delphi?

21 A No.

22 Q Okay. And it was in Mr. Lans' house?

23 A That's correct. In his -- the lower part

24 of his house is his office.

25 Q Okay. Then turning your attention to the

55

1 AMS007763, was that note made during the course of

2 that page, prepared during the course of your

3 meeting with Mr. Lans on that day, September 6th,

4 1996?

5 A September 5th, 1996.

6 Q September 5th, I'm sorry.

7 A That's correct.

8 Q Okay. And there is a reference to a

9 European patent. Do you see that, NB?

10 A Yes, NB standing for note bene.

11 Q Excuse me, what does it stand for?

12 A It stands for note bene, the Latin for

13 note well -- just, you know, in other words,

14 marking it as being a significant point.

15 Q What did Mr. Lans say to you that you

16 wrote down in connection with the ownership of the

17 patent, the 986 patent?

18 A Well, we had asked him about the one of
19 the patents in Europe still appeared in the name of
20 L.M. Ericsson, AB, and he informed us that he had
21 been a consultant, had been in the consulting and
22 business arrangement on and off for a number of
23 years with Ericsson, and that he had indicated to
24 Ericsson during the time of -- that he wanted to
25 file the patent applications in Europe that were

56

1 related to the U.S. patent, that he didn't have
2 time to perform certain consulting for the company
3 because he wanted to devote his attention to these
4 particular patents, and he told us that the company
5 offered to have its in-house patent counsel
6 prosecute the patents, which they did for him, and
7 then when the patents issued to Ericsson or the
8 patent here, it then was assigned by Ericsson in a
9 document back to Mr. Lans.

10 We had asked him earlier about whether he
11 had ever assigned the patent, the 986 patent --

12 Q When you said you asked him earlier, that
13 day or the prior day?

14 A No, I did that that day.

15 Q Okay.

16 A Had ever assigned the patent or given any
17 security in it or ever pledged it as collateral for
18 anything, and he said no. And we again asked him
19 again about assignment or ownership, I should say,
20 of the patent, the U.S. 986 patent, and he stated
21 that he had never transferred -- he used the word
22 "transferred" -- and then we asked him did you ever
23 assign that patent, meaning give up any ownership
24 interest in that patent, and he said no.

25 Q And what did you write then, if you would

57

1 read to the Court what you actually wrote in
2 connection with the representations of Mr. Lans on
3 September 5, '96 at that meeting?

4 A Well, it says NB re European patent,
5 Ericsson filed patent at and reassigned patent back
6 to Lans. He is -- then underneath that, with a
7 hyphen or dash before the sentence -- he is the
8 sole owner of the 986 patent, hyphen, never
9 transferred or assigned.

10 Q Thank you.

11 A You're welcome.

12 Q Now after this meeting on September 5,
13 '96, you ultimately then had a follow-up meeting on

14 September 6; correct?

15 A With Mr. Lans.

16 Q Okay.

17 A That's correct. And we then -- I believe

18 it was in -- it was just after lunch we went and

19 met with Dr. Grennberg at his offices in Stockholm.

20 Q And it was -- Mr. Lans attended with you?

21 A Mr. Lans, Mr. Powell, and myself.

22 Q Okay. And what was the purpose of the

23 meeting with Mr. Grennberg, do you recall?

24 A We wanted to talk to him principally about

25 the European patents and particularly about the

58

1 Hitachi litigation, because he had assisted Mr.

2 Lans with the Hitachi litigation, although Mr. Lans

3 had told us that he basically ran the entire

4 litigation and did everything but argue the case in

5 Germany.

6 Q Is that the first time you met Mr.

7 Grennberg?

8 A That was.

9 Q Okay. And had you talked to Mr. Grennberg

10 before that?

11 A No.

12 Q Okay. And -- all right. Let me ask you
13 this. Can you tell the Court when you first became
14 aware of a corporation by the name of Uniboard?

15 A In late August 1996.

16 Q And how did you learn about Uniboard?

17 A We received a copy of the license
18 agreement between Uniboard and IBM.

19 Q And who sent that to you?

20 A I don't recall whether it was actually
21 sent by Mr. Lans directly to us or whether it was
22 sent through Delphi.

23 Q Okay. Now what did you do when you got
24 the licensing agreement between Uniboard and IBM?

25 A We reviewed it.

59

1 Q Okay.

2 A We were in the United States at the time.

3 Q Right.

4 A When we received it.

5 Q Okay. And what did you do after you
6 reviewed the document? Did you reach any
7 conclusions in connection with the significance of
8 that document?

9 A We didn't reach any conclusions about the

10 significance other than that it was what it
11 purported to be, a license that was not an
12 exclusive worldwide license that was granted to IBM
13 under the U.S. Patent and the foreign counterparts
14 along with a proviso that in the event that the
15 Hitachi litigation was successfully decided in
16 favor of the validity of the German patent that IBM
17 would pay another \$500,000, and the copy that we
18 got only had Exhibit A to it, which was the
19 European patent claim, and we did not have an
20 Exhibit B, the press release that was discussed
21 yesterday.

22 Q Did you ever see the press release before
23 yesterday?

24 A Never.

25 Q Okay. Did you have any discussion --

60

1 well, let me strike that.

2 Were you aware of the IBM-Uniboard license
3 agreement as of your September 5, 1996 meeting with
4 Mr. Lans?

5 A Yes.

6 Q Okay.

7 A In fact, we had brought a copy with us to

65

8 that meeting.

9 Q Did you have any discussions at any time
10 with Mr. Lans as to what Uniboard was?

11 A Yes.

12 Q Okay. And what did you -- what was your
13 understanding based on what Mr. Lans said, what was
14 Uniboard?

15 A He said Uniboard was a company that was
16 wholly owned by him. He was the president, the
17 only shareholder, the chairman of the board, and
18 the only other director was his wife. I believe
19 her name was Inga.

20 Q What, if anything, did he tell you about
21 the relationship between Lans owning the 986 patent
22 and the licensing of the patent by Uniboard to IBM?

23 MR. HAINLINE: Objection. Could we get a
24 date, what date this was?

25 BY MR. HANDLEMAN:

61

1 Q As of the time as of -- let's put it -- as
2 of the date, the date prior to sending out the
3 notice of the infringement letters, which I think
4 we have established is September of '96.

5 A Right. So September 26, I think it was,

6 right.

7 Q Okay. All right. So what was your
8 understanding of the relationship between Uniboard
9 and Lans and the licensing with IBM?

10 A Our understanding was that Uniboard was
11 authorized by Mr. Lans to license the patent at one
12 time and one time only, and that was to IBM back in
13 1989, and that was its only involvement with the
14 patent.

15 Q Can you tell the Court whether or not you
16 learned at the September '96 meeting that there
17 were other license agreements that Lans had vis-a-vis his
18 986 patent?

19 A We found out, and we could have -- well,
20 let me say this. We found out that the patent had
21 been licensed along with the foreign counterparts
22 to Hitachi and Miro, and actually Miro was a
23 company that was using the Hitachi chips in its
24 graphics cards.

25 I believe that we knew just before the --

62

1 going to Sweden that -- or maybe even a couple
2 months before that Hitachi had licensed the patent,
3 and I think actually that may -- that we may have

4 known that as far as back as December of '95 when
5 we got the memorandum from Delphi, because there
6 was a -- I can't recall now whether that stated --
7 in fact, I can -- actually I can look at it for
8 you, if it's in here.

9 Actually we don't have it in here, but it
10 was the fax from Tal that was a cover page with
11 some text on it, and attached to it was the
12 memorandum prepared by Peter Utterstrom about Mr.
13 Lans, the patent, and the Hitachi litigation.

14 MR. HAINLINE: Could we have that document
15 so we have the best evidence?

16 MR. HANDLEMAN: I don't have it with me
17 right now, Your Honor. I mean I have it here; I
18 don't have it in the booklet in front of me. We're
19 searching for it. It's Exhibit No. 6, it's the
20 opposition that we filed to the motion for
21 reconsideration. So if you want to --

22 MR. HAINLINE: For the Court's records,
23 that is Exhibit 1-6 to Mastriani's deposition.

24 THE COURT: 1-6?

25 MR. HAINLINE: Yes.

1 THE COURT: All right.

2 MR. HAINLINE: It's in the bound volume
3 which is Exhibit 1 to Mastriani.

4 [Pause.]

5 MR. HANDLEMAN: If I might, Your Honor,
6 just so we're clear, if I can approach the witness
7 and I will show him the document and make sure
8 that's the one he's talking about.

9 THE COURT: All right.

10 MR. HANDLEMAN: All right.

11 [Pause.]

12 BY MR. HANDLEMAN:

13 Q Mr. Mastriani, I show you what we have
14 marked as -- I guess it's Mastriani Exhibit 1-6,
15 and ask you whether that is the document that you
16 were referring to just a moment ago with your
17 testimony with regard to documentation with Mr.
18 Lindstrom? Is that correct?

19 A It is, and if you go to the last page,
20 which is the third page of the attached Delphi
21 memorandum on behalf of its client Hakan Lans, it
22 says, "Major worldwide nonexclusive license
23 agreements," and then it's got an International
24 Business Machines, IBM year, 1989, and then
25 Hitachi, Inc., Japan, year 1995.

1 So as of that date, the date of receipt of
2 this document, which was on or about December 11,
3 1995, we knew that Hitachi had entered into a
4 license agreement.

5 Q And who was the license agreement with?

6 A Well, it doesn't say it here. We found
7 out later when we saw the actual agreement which I
8 -- Mr. Lans told us that he had -- he had been the
9 party that licensed the patent to both Hitachi and
10 Miro during the week of let's call it September
11 5th.

12 Q Okay.

13 A When we were at that meeting in Sweden,
14 and then we made a request for the documents, and
15 then Mr. Lans had directed us that we could get the
16 documents, and I believe we eventually got it from
17 -- a copy from Dr. Grennberg, and that -- that
18 agreement, the Hitachi agreement, was basically
19 identical to the IBM agreement, except that Mr.
20 Lans was the licensor, not Uniboard.

21 Q Okay. Now what significance -- well, let
22 me strike this.

23 You were aware, were you not, that there
24 was some German litigation going on over the 986

25 patent, the foreign counterpart; correct?

65

1 A Yes. Hitachi filed what is called a
2 "melody proceeding" in 1985, regarding the German
3 patent, which consisted of one claim, which was the
4 corresponding claim in the U.S., was claim 29. The
5 U.S. patent had 30 claims, the European patent had
6 one, one primary claim.

7 Q Can you tell the Court what, if any,
8 significance you saw in the German litigation?

9 A The significance of the German litigation
10 to us revolved primarily and principally around
11 what prior art had been adduced by Hitachi with
12 respect to allegations of invalidity of the German
13 patent, which would necessarily have implications
14 for the U.S. patent.

15 Q Okay. Upon reviewing the license
16 agreements that you have testified to on the IBM
17 and the Hitachi agreement, did it cause you to make
18 any determination as to who was the owner, or a
19 different determination as to who was the owner of
20 the patent?

21 A None. None whatsoever.

22 Q And why not?

23 A Because there was no indication that Mr.
24 Lans was not the owner of the patent. There was no
25 indication that any other entity had any ownership

66

1 interest in the patent.

2 Q And what, if anything, did you find when
3 you checked out the assignment registry? I think
4 you identified an assignment registry. What did
5 you find out, if anything?

6 A In our searches of the -- of all of the
7 available databases in the patent office records,
8 both in the United States and also overseas, Mr.
9 Lans was the identified owner, and there was no
10 evidence of any assignment in the U.S., certainly,
11 and the only evidence of assignment in Europe was
12 when L.M. Ericsson assigned the patent to Mr. Lans
13 when the patent issued.

14 Q Okay. Now do you recall whether or not
15 you had any discussions at all at Mr. Lans about
16 Uniboard being a plaintiff or Uniboard being in the
17 notice of infringement?

18 MR. HAINLINE: Objection, compound and
19 indefinite as to time.

20 MR. HANDLEMAN: Okay.

21 THE COURT: Restate your question.

22 MR. HANDLEMAN: Okay.

23 BY MR. HANDLEMAN:

24 Q Do you recall whether or not as to prior
25 to September of 1996, whether or not you had any

67

1 discussions with Mr. Lans as to whether Uniboard
2 should be named as either a plaintiff or in the
3 notice of infringement?

4 A No -- let me answer it this way. There
5 was no discussion of Uniboard being identified in
6 the notice of infringement because Mr. Lans made it
7 clear that the notices of infringement were to
8 identify him as the owner of the 986 patent, and
9 that that letter would go out to the people that
10 were identified, the companies that were identified
11 as selling products that were believed to be
12 infringing that patent.

13 Q Do you recall whether or not prior to
14 September '96, when the notices went out, whether
15 there was any discussion about there being in the
16 making formally an assignment from Lans to
17 Uniboard?

18 A No.

19 Q Okay. What was --

20 MR. HAINLINE: Your Honor, my objection

21 was indefinite as to time. Is there -- could we

22 get a time on the statement that Mr. Lans made,

23 according to Mr. Mastriani's testimony?

24 THE COURT: I think that's important.

25 MR. HANDLEMAN: I thought I had asked a

68

1 date.

2 BY MR. HANDLEMAN:

3 Q Can you tell us when -- let me strike

4 that.

5 Did there come a time that you discussed

6 and suggested -- you being AMS and you -- that

7 Uniboard participate at all in terms of any of the

8 notices of infringement?

9 A Not with the notices of infringement. The

10 discussion with Mr. Lans where he stated that he

11 would be identified as the owner of the patent --

12 THE COURT: Okay, and when was that? When

13 was that? I think that's what --

14 THE WITNESS: That occurred in September.

15 THE COURT: September of?

16 THE WITNESS: Of 1996.

17 BY MR. HANDLEMAN:

18 Q Okay. And what did he say in September of
19 '96?

20 A Well, these were meetings -- these were
21 meetings at the -- at Delphi. We had two days of
22 meetings at Delphi in addition to the meetings with
23 Mr. Lans and Dr. Grennberg on the 5th and 6th of
24 September. And it was in the context of what the
25 letters -- the letter would say regarding Mr. Lans,

69

1 his patent, his achievements, the Hitachi
2 litigation, and what the proposed royalty would be.

3 MR. HAINLINE: Your Honor, objection. You
4 did mention that I could voir dire on this issue of
5 these notes.

6 THE COURT: Yes.

7 MR. HAINLINE: And I would ask if I can
8 ask a couple voir dire questions now on this issue
9 of notes.

10 THE COURT: I will permit it.

11 MR. HAINLINE: Thank you.

12 VOIR DIRE EXAMINATION

13 BY MR. HAINLINE:

14 Q Mr. Mastriani, you took notes apparently

15 in meetings you had with Dr. Lewis in September 5
16 and then meetings you had with Mr. Grennberg on
17 September 6. Did you take notes at Delphi?

18 A I don't know if I did or not. I'd have to
19 check the record.

20 Q And where would you check?

21 A I would check in the notes in our offices.

22 Q Would you check in the same place you
23 checked for the notes that you produced to your
24 client -- your counsel produced today?

25 A Yes. These are -- all these notes -- all

70

1 these notes are in a Redwell, and they are in
2 separated manila folders that have different
3 attorneys' names on them.

4 Q And were the notes about your September
5 meeting in Stockholm, were all the notes on all the
6 days of those meetings in one place?

7 A How do you mean in one place? On one pad
8 or in one --

9 Q In one folder?

10 A They would be in one folder. My notes
11 would be in one folder.

12 Q And did you give all those notes to Mr.

76

13 Handleman?

14 A Mr. Handleman has all of these notes.

15 MR. HAINLINE: Your Honor, I would request
16 all the notes from all the meetings of September
17 where he is testify about what Dr. Lans said. He
18 has contemporaneous notes. I think that it would
19 be highly useful.

20 THE COURT: Mr. Handleman?

21 MR. HANDLEMAN: Your Honor, I'm not sure I
22 have the notes, but if the question is he wants the
23 notes, I don't have a problem. I just don't have
24 them with me here.

25 THE COURT: Where are they?

71

1 MR. HANDLEMAN: The notes, I would
2 presume, would either be in my client's office or
3 somewhere in my office. That I'm not sure. I
4 haven't looked at these notes. I got them today.

5 THE COURT: Would it help if we took a
6 brief recess?

7 MR. HANDLEMAN: No, I think we -- I mean
8 we could proceed and I can ask somebody to try to
9 find the notes.

10 THE COURT: Well, why don't we take a

11 brief recess --

12 MR. HANDLEMAN: Okay.

13 THE COURT: -- and you and your colleagues

14 --

15 MR. HANDLEMAN: That's fine. Thank you,

16 Your Honor.

17 THE COURT: -- discuss it and advise us.

18 MR. HANDLEMAN: Thank you.

19 THE COURT: We'll stand in recess for 15

20 minutes.

21 [Recess.]

22 MR. HANDLEMAN: Your Honor, I'm happy to

23 report that the document --

24 THE COURT: Did you say you're happy?

25 MR. HANDLEMAN: Yes, I'm happy --

72

1 THE COURT: Okay.

2 MR. HANDLEMAN: -- to report to Your Honor

3 that the documents are on their way.

4 THE COURT: All right.

5 MR. HANDLEMAN: And they will be delivered

6 to counsel before the noon break or by the break.

7 THE COURT: All right.

8 MR. HANDLEMAN: Okay. As soon as I left,

78

9 I made the call.

10 I am prepared to continue with this.

11 THE COURT: Please do.

12 BY MR. HANDLEMAN:

13 Q Now, Mr. Mastriani, I forgot where we left
14 off, but I was asking you whether or not you recall
15 if, I think, prior to July of 1997 whether there
16 was any discussion about naming Uniboard as a party
17 in connection with ITC litigation?

18 A There was a discussion in late 1996 with
19 Mr. Lans, and in attendance were Robert -- or Bob
20 Westerlund and Ray Powell, and it was being
21 proposed to Mr. Lans in connection with the draft
22 complaint that was going to be filed at the
23 International Trade Commission against a number of
24 computer companies, principally foreign computer
25 companies. The proposal was to name Mr. Lans as a

73

1 what they call complainant at the ITC, along with
2 Uniboard as a cocomplainant.

3 Q Let me understand, so for the Court, you
4 mentioned a gentleman by the name of Mr. Powell,
5 the late Mr. Powell; correct?

6 A That's correct. He passed away

7 unexpectedly in September 2003.

8 Q Okay. And he was with your law firm;

9 correct?

10 A He was of counsel. He was with Westerlund

11 & Powell in Alexandria, but they were of counsel

12 with our firm in a number of cases including this

13 case.

14 Q Okay. Mr. Westerlund, he was of counsel

15 to your firm as well?

16 A Yes, he was.

17 Q Okay. And is Mr. Westerlund the one who

18 put an affidavit in a record in this case?

19 A That's correct.

20 Q Okay. So these gentlemen were with you

21 during, you say, during the late 1996?

22 A This was in late 1996, correct.

23 Q Okay. And can you tell the Court who else

24 was present during -- when it was discussed about

25 Uniboard being a party in the ITC litigation?

74

1 A Just the three of us, along with Mr. Lans

2 on the speakerphone.

3 Q Okay. And Mr. Lans was on the

4 speakerphone from Sweden?

5 A That's correct.

6 Q Okay. And do you recall why it was that
7 you suggested that Uniboard together with Mr. Lans
8 be named as a plaintiff or a party in that ITC
9 litigation?

10 A At the ITC, an intellectual property
11 owner, i.e.c, a patent owner, can avail themselves
12 of potential relief under a trade law called
13 Section 337. It's basically an unfair trade act
14 law that applies to imported goods, and one of the
15 differences in those actions vis-a-vis district
16 court action is that the complainant or
17 complainants have to demonstrate the existence of a
18 domestic industry. If you are a manufacturer in
19 the United States, if you are doing things like R&D
20 and engineering here and so on, then with respect
21 to those products then it is clear you have a
22 domestic industry.

23 But Mr. Lans did not have that kind of
24 standing at the ITC, and the only activity that we
25 could rely on, because he wasn't making and selling

75

1 products in the U.S., was licensing accountability
2 in connection with an existing licensee, and in

3 this case it was IBM that we were going to rely on,
4 because IBM was manufacturing products in the U.S.
5 that we believed practiced a 986 patent and because
6 Uniboard was the entity that licensed IBM, it was
7 Uniboard that technically engaged in the licensing
8 activities, and therefore we proposed naming
9 Uniboard in addition to Mr. Lans.

10 Q All right. Now what, if any, response did
11 you get from Mr. Lans with regard to your
12 suggestion?

13 A Mr. Lans vehemently rejected any
14 suggestion that Mr. -- that Uniboard be a party to
15 the ITC action because it only received some
16 financial revenues, and it had no ownership
17 interest or any other legal interest in the patent.

18 Q And when again was that when Mr. Lans per
19 your testimony rejected your suggestion to have
20 Uniboard be a party?

21 A My recollection that it was late '96. I
22 believe it was in December, but I'm -- it could
23 have been the beginning -- it could have been in
24 January. But I believe it was either December --
25 anyway, let's say late, the very end of November

1 into sometime in January.

2 Q Okay. All right. Now did there come a
3 time, sir, that you received what I'll call the
4 infamous or the February 1997 fax that Mr. Lans has
5 testified to yesterday?

6 A Yes.

7 Q Okay. And let me just, so you have it up
8 there, because it's not part of our exhibit book,
9 Your Honor, it is Lans -- in the booklet that's
10 called Lans Intervenor Exhibits. It's many places,
11 but this is Lans Exhibit 6 from his deposition. So
12 I'm going to leave that with you.

13 Now looking at Lans Exhibit 6, you recall
14 receiving that fax, do you not?

15 A Yes. I -- it was received sometime during
16 the night of the 19th and I saw it the next day on
17 the 20th of February.

18 Q Do you recall also if there was a
19 companion fax that came along with that?

20 A There was a fax I believe of the same
21 date, advising -- well, Mr. Lans advised me that he
22 had -- that he had been served with the Micron
23 declaratory judgment complaint by the Swedish
24 police.

25 Q Okay. And can you tell the Court what

1 that Micron suit complaint, what it related to?

2 A When -- what happened was that Micron
3 received a notice of infringement in late September
4 1996, and it then filed a declaratory judgment
5 action in Boise, Idaho in the Federal district
6 court against Mr. Lans, asserting invalidity,
7 noninfringement of the patent, and it then served
8 Mr. Lans with the complaint under The Hague
9 Convention. We didn't receive a copy of it, and
10 Mr. Lans received the actual papers at -- in
11 February. And I believe they filed actually in
12 November. It wasn't -- it -- because we sent
13 Micron a second notice, basically, to follow up the
14 September notice. I believe that those -- that
15 notice went to Micron either in late October or
16 early November, and in response to that, Micron
17 filed the declaratory judgment complaint.

18 Q Okay. Just for clarification, when you
19 say October, November, you are talking about you
20 sent the infringement letters out on behalf of
21 Lans? Is that what we are talking about?

22 A Yes, in September '96.

23 Q Okay. And one of those letters went to

24 Micron?

25 A That's correct.

78

1 Q Okay. And as a result of the infringement
2 letter, rather than them contacting you to try to
3 negotiate a license agreement, they filed a
4 declaratory judgment?

5 A That's correct.

6 Q Okay. And they named Lans as a party;
7 right?

8 A That's correct.

9 Q And why was Lans listed as a defendant?

10 A Because he was the person identified in
11 the notice of infringement letter as the owner of
12 the patent.

13 Q Okay. And, incidentally, do you recall if
14 before the infringement letters went out, a copy
15 was sent to Mr. Lans for his review?

16 A Yes. That occurred. I mean he worked --
17 he worked on that with Delphi and made whatever
18 comments he made.

19 Q When you say worked on it, that is in
20 connection with the notice letter?

21 A Yes, correct.

22 Q And these -- approximately how many notice
23 of infringement letters were sent out?

24 A I think it was on the order of 120, in
25 September.

79

1 Q And Mr. Lans reviewed the form before it
2 went out?

3 A It was a -- yes, it was a -- he didn't
4 receive every single letter as addressed to each
5 addressee. He saw the letter that went to
6 everybody. It was the same identical letter, with
7 the same attachments.

8 Q And who did the letter identify as the
9 owner of the patent?

10 A The letter identified Hakan Lans as the
11 owner of the patent.

12 Q Do you recall if you ever received any
13 either oral or written communication from Mr. Lans
14 objecting to him being listed as the owner of the
15 patent in the notices of infringement?

16 A None whatsoever.

17 Q Okay. Now when you received this exhibit
18 that you have in front of you --

19 A Yes.

20 Q -- what did you do?

21 A I made a telephone call to him on February
22 20th.

23 Q Okay. Do you recall what the
24 circumstances --

25 THE COURT: Would you give us the year?

80

1 THE WITNESS: I'm sorry, Your Honor. I
2 beg your pardon. I called him on February 20th,
3 1997.

4 BY MR. HANDLEMAN:

5 Q So this was faxed to you February 19th.
6 As you said, there was a -- 1997, a companion fax
7 that you have testified to, and you called, as you
8 recall, the next day? Right?

9 A Yes. What happened was is on the 19th, I
10 received the earlier fax advising me that he had
11 been served with a declaratory judgment complaint.
12 I then sent him a fax asking him questions about
13 that, in other words, about that service, and this
14 February 19th, 1997 fax was a response to my fax,
15 and I read this -- received it and read it on
16 February 20th, and I called him upon receipt of the
17 fax.

18 Q Now why did you call him when you received
19 the fax?

20 A Because I wanted to ask him questions
21 about some of the statements that are made in this
22 particular document.

23 Q Okay. Why don't you tell the Court to the
24 best of your recollection what it was that caused
25 you to want to ask him questions and what you asked

81

1 him?

2 A What caused me to want to ask him
3 questions was not really so much the first part of
4 the fax, but was the last part, where he said the
5 company has the same address as my private address.
6 In order to make this clear, I have signed the
7 paper for changing registration at the U.S. Patent
8 Office. Dr. Grennberg will send you this document.
9 I will not be in Sweden next week.

10 So I -- that was what prompted me to call
11 him, although we discussed the text of the entire
12 fax and including the statement he made that the
13 patent has been transferred to the company from
14 many years ago, and the agreement with IBM was made
15 with Uniboard, AB.

16 Q Okay. Well, when you called him up, tell
17 us what your best recollection of what was
18 discussed in connection with this fax.

19 A Mr. Lans was upset that he had been named
20 as a defendant in the Idaho action, and he was
21 trying to determine whether there was any way that
22 we could substitute Uniboard in for him as the
23 declaratory judgment defendant.

24 Q And what did you say to him?

25 A What I told him was is that you were

82

1 served with the complaint because you are the owner
2 who gave notice of infringement, and Uniboard could
3 only be substituted in if it was an owner. And
4 that's when we discussed this issue. I pointed out
5 to him, I said, your statement here in your fax
6 that the patent has been transferred to the
7 company, I said that's the arrangement that you
8 have. And he always used the word arrangement,
9 because there is no document other than the annual
10 reports that say that there was any arrangement for
11 Uniboard to receive financial revenue. And I told
12 him that if that's the only -- that's the only
13 involvement with Uniboard with respect to the

14 patent, then it could not be properly substituted
15 in as the correct or -- the correct party.

16 Q What did you understand from Mr. Lans as
17 to you said the word arrangement between Lans and
18 Uniboard? What did you understand that to mean?

19 A The arrangement was is that Uniboard could
20 receive -- had received and could receive revenues,
21 not that it always received revenues, but that
22 based upon Mr. Lans' decision, it could or could
23 not receive revenues from licenses or judicial
24 awards relevant to the U.S. 986 patent and the
25 European counterpart patents.

83

1 Q Do you recall ever seeing any documents
2 that -- of Uniboard that evidenced such an
3 arrangement?

4 A The only documents I have seen are the
5 translations of the 1989 document -- excuse me,
6 annual report, and the declarations under oath by
7 Leif Gyllenhoff and Margaretha Ehefjard, I think
8 her name is, the accountants for Uniboard since its
9 inception.

10 Q Those were the affidavits you saw
11 identified yesterday?

12 A That's correct.

13 Q Okay. Now -- and those are the CPAs;
14 right, for Uniboard?

15 A Well, those are the CPAs who, as Mr. Lans
16 testified, who wrote -- who wrote the annual
17 reports. I mean the language in the annual reports
18 is the language from the CPAs.

19 Q Okay. Now when you said -- you were
20 talking when I interrupted you about you discussed
21 with Mr. Lans the issue of registration. What do
22 you recall about that discussion as a result of
23 this February 19, 1997 fax?

24 A Well, I read this when I received it --
25 and it says in order to make this clear, it's

84

1 referring to the preceding sentence, not -- in my
2 mind, it wasn't anything before then, where it says
3 the company has the same address as my private
4 address. In order to make this clear I have signed
5 a paper for changing registration at the U.S.
6 Patent Office.

7 The address that the U.S. Patent Office
8 had at the time was Mr. Lans' old address at
9 Vollingee (phon.), Stockholm, Sweden. It wasn't

10 the Saltsjobaden address. And I thought that that
11 was what he was referring to. And then I asked him
12 about that particular document that he says he
13 signed, and he indicated very ambiguously that he
14 thought he had signed some type of document
15 regarding changing the registration regarding the
16 address. That's what I understood him to say. But
17 he was unclear on it, he didn't have a copy of it,
18 so I told him that I would call Dr. Grennberg,
19 which I did on March 4th.

20 Q Okay. Now so at the conclusion of this
21 conversation with Mr. Lans you have testified to,
22 you then I take it had another conversation with
23 Mr. Grennberg, you said?

24 A Yes. And then just to finish up, I mean I
25 -- the discussion concluded with Mr. Lans is that -- that

85

1 under the present circumstances, with him
2 being the owner of the patent, he had to remain as
3 the defendant in Idaho. I mean he didn't say
4 anything more about that. And I then placed a
5 telephone call to Dr. Grennberg after I hung up
6 with Mr. Lans, but he was out of town, and I did
7 not get to him, because he was not back in town in

8 his office in Stockholm until -- I believe it was

9 March 4th.

10 Q Okay. And can you just tell the Court

11 about to the best of your recollection the sum and

12 substance of your conversation with Mr. Grennberg

13 on March 4th, 1997?

14 A Yes. Well, because Dr. Grennberg never

15 got a copy --

16 THE COURT: There's an objection coming.

17 Yes?

18 MR. HAINLINE: The date, I believe, could

19 not have been 1996 we're talking about.

20 MR. HANDLEMAN: I think I said -- I think

21 I corrected by saying 1997 with my question.

22 MR. HAINLINE: I think you said '96.

23 MR. HANDLEMAN: Okay. Well, I'm sorry.

24 If I did say that, I apologize, Your Honor. I

25 shouldn't have repeated your answer. Okay.

86

1 Lesson.

2 BY MR. HANDLEMAN:

3 Q So can you describe to the Court, to the

4 best of your recollection, the sum and substance of

5 your conversation with Mr. Grennberg on March 4th,

6 1997?

7 A Yes. Because Dr. Grennberg was not copied
8 on the fax to me that -- from Mr. Lans, I read him
9 the -- I read Dr. Grennberg the fax on March 4th in
10 a telephone conversation, and he told me that he
11 did not send any paper for changing registration at
12 the U.S. Patent Office to Mr. Lans. He never got
13 any such document, and he had never sent me any
14 such document.

15 Q Okay.

16 A And I would just add, we never received
17 any such document.

18 Q Did you ever hear anything further from
19 Mr. Grennberg in connection with that document?

20 A No.

21 Q Did you hear anything -- did you ever get
22 a call from Mr. Lans as it related to this
23 registration document?

24 A No, but I spoke to Mr. Lans as he -- when
25 he mentioned yesterday in his testimony that he

87

1 spoke to me two weeks later, that was a call that
2 we had after I talked to Dr. Grennberg to call Mr.
3 Lans that Dr. Grennberg didn't know what he was

4 talking about.

5 Q And what did Mr. Lans say in response when
6 you reported that Grennberg didn't know what he was
7 talking about?

8 A I don't recall that he said anything.

9 Q Did he ever raise the issue again that was
10 raised in the February 1997 about registration?
11 Did he ever raise that again to you?

12 A About -- about changing the address or --
13 or --

14 Q About the registration. The issue, as you
15 understood it in this fax, was that ever raised
16 again after your follow-up question?

17 A No. No, it was not.

18 Q Okay. Now in the underlying litigation
19 that you ultimately filed on behalf of Lans, there
20 was discovery, wasn't there?

21 A That's correct.

22 Q There were no depositions taken; right?

23 A No, there were not.

24 Q But there were a lot of document requests
25 and interrogatories, I take it?

88

1 A That's correct. That was the only -- that

2 was the extent of discovery.

3 Q Do you recall whether or not there were
4 interrogatories that were served interrogatories
5 that were served I think by Compaq that had to be
6 answered by Mr. Lans?

7 A Yes.

8 Q And when you got the interrogatories
9 served on you as counsel, did you provide those to
10 Mr. Lans?

11 A All discovery requests were sent to Mr.
12 Lans care of Delphi per his instructions when they
13 were received. And with regard to the Delphi --
14 excuse me, the Compaq interrogatories, I believe
15 that counsel for Delphi -- for -- excuse me, I'm
16 sorry, for Compaq had given us a 30-day extension,
17 so we had basically almost 60 days to work with,
18 and Delphi was working with Mr. Lans, particularly
19 Tal Lindstrom, to draft responses to those
20 interrogatories.

21 Q Okay. And before I forget, because I
22 didn't ask you this question, do you recall if
23 prior to the filing of the lawsuit whether or not
24 you forwarded a copy of the complaint to Mr. Lans
25 to review?

1 A Yes.

2 Q And what were the circumstances under
3 which, as you recall, the complaint was sent and
4 reviewed?

5 A You're talking about the -- you're talking
6 about the complaint that -- in the District of
7 Columbia; correct?

8 Q Right. Right.

9 A That was forwarded to Delphi and Mr. Lans
10 and Delphi and Mr. Lans met and discussed the --

11 MR. HAINLINE: Objection; hearsay, Your
12 Honor. What's the source of this testimony?

13 THE COURT: Sustained.

14 BY MR. HANDLEMAN:

15 Q Do you recall if you had any conversations
16 with Mr. Lans with regard to the complaint before
17 it was filed?

18 A Yes.

19 Q Okay. And can you tell me, to the best of
20 your recollection, what you recall if -- you know,
21 what you recall about your discussion with Lans
22 regarding the lawsuit?

23 A He told me that he had -- he had met with
24 Peter Utterstrom and Tal Lindstrom about the

25 complaint, and he said I have looked at it and it

90

1 looks fine. Because, as you recall, it was -- it
2 was a complaint that was filed -- a number of
3 complaints were filed and they were consolidated.

4 MR. HAINLINE: Could we get a date for
5 this conversation, please?

6 MR. HANDLEMAN: Yes.

7 BY MR. HANDLEMAN:

8 Q Can you tell us, to the best of your
9 recollection, when it was that you had the
10 conversation?

11 A It was late '97, late, I mean like the
12 fall. It was about three weeks before -- four
13 weeks, maybe, before the filing of the complaint.

14 Q Thank you.

15 All right, now, getting back to these
16 Compaq interrogatories, I think you said you got
17 them and you had 60 days; right? You had an
18 extension of 30 days plus you got an extra 30 days?

19 A That's correct.

20 Q Okay. And you said you sent them to
21 Delphi?

22 A They were sent to Delphi within a matter

23 of a few days after receiving them.

24 Q Did there come a time that you received

25 input from Lans in order to prepare -- prepare the

91

1 answers for him to look at and sign?

2 A Yes. What occurred is that Delphi

3 attorneys, primarily Mr. Utterstrom and Mr.

4 Lindstrom, would meet with Mr. Lans and interview

5 him on -- on every -- on every interrogatory that

6 asked him for particular information, and he would

7 respond to them, and they would take notes, and

8 they would draft answers. And then they would

9 transmit them to us for -- in other words,

10 finalizing it into a draft response in the format

11 that you need to submit them in.

12 Q And did there come a time that you

13 submitted what you considered to be the final

14 answer for Mr. Lans to sign to him in Sweden?

15 A Yes. On January 28th, 1999, the final

16 draft answers had been sent to Mr. Lans for his

17 review and signature and verification.

18 Q Okay. And do you recall if you heard from

19 him as to his views as to whether the answer was

20 okay as drafted?

21 A Yes. We received a response to that fax

22 which had a Word file attached to it.

23 Q Okay. Did he ultimately the verification

24 for the answers?

25 A Yes.

92

1 Q And then was that sent to you?

2 A Yes, it was.

3 Q Okay. Now I think it's in -- this would

4 be Mastriani Exhibit 18, in the deposition, and

5 it's -- I'm referring, I'm going to show the

6 witness the January 29, 1999 fax from Mr. Lans.

7 [Pause.]

8 MR. HANDLEMAN: May I approach?

9 THE COURT: Yes.

10 MR. HANDLEMAN: Thank you.

11 MR. HAINLINE: You're welcome.

12 BY MR. HANDLEMAN:

13 Q I show you what is Mastriani Deposition

14 Exhibit 18, and ask you, sir, if that is in fact a

15 copy of the e-mail that you received from Mr. Lans?

16 A Yes, it is.

17 Q Okay. Now what did you do when you got

18 this e-mail?

19 A I called Mr. Lans.
20 Q Why did you call him when you got the e-mail?
21 A Because he -- he said that he had studied
22 the responses to interrogatories and stated that
23 they were correct, but he was suggesting that a
24 potential -- he says, however, the response to

93

1 interrogatory 10, which asked for an identification
2 of any assignments, could maybe be changed from --
3 and then he goes on to say what he thought it
4 potentially could be changed to. And so I called
5 him up to discuss his suggestion.

6 Q And what did you tell him?

7 A I told him that interrogatory No. 10
8 simply asked for an identification of any
9 assignments of the 986 patent.

10 Q Is that what you recall the question was?

11 A Yes, that's exactly what it was.

12 Q So what was it again?

13 A It was to identify any -- I believe it was
14 identify any assignments of the 986 patent.

15 Q Okay. And --

16 THE COURT: What is the exhibit number?

17 MR. HANDLEMAN: I'm sorry, Your Honor,

18 it's Mastriani Exhibit 18 in his deposition.

19 MR. HAINLINE: Your Honor, you are looking
20 at Exhibit 1, which has tabs, so Mastriani 18 would
21 not be there. There is a separate book, and I
22 apologize to you for the confusion. It is a black
23 book that is just Mastriani exhibits.

24 MR. HANDLEMAN: Your Honor, I think if I
25 may give you --

94

1 THE COURT: Yes. All right.

2 MR. HAINLINE: That's the last time I do
3 it that way.

4 [Laughter.]

5 THE COURT: All right.

6 MR. HAINLINE: Your Honor, do you have
7 that?

8 THE COURT: Yes.

9 MR. HAINLINE: Okay. Thank you.

10 THE COURT: And it's No. 18?

11 MR. HAINLINE: Yes.

12 MR. HANDLEMAN: Okay.

13 BY MR. HANDLEMAN:

14 Q So you said the question was --

15 A I believe the question was something like

16 identify all or -- or identify all or any and all

17 assignments of the 986 patent.

18 Q Okay. And what did you tell Mr. Lans as

19 to why h answered it the way you did?

20 A Well, I explained again that assignment

21 only relates to ownership, and ownership only, and

22 I confirmed with him again that Uniboard -- the

23 reference to Uniboard is the owner of the 986

24 patent rights meant that Uniboard sometimes

25 received revenues from the patent. And I told him

95

1 that that does not constitute an assignment under

2 any interpretation.

3 Q Did you have any understanding as of

4 January of 1999 whether Uniboard had received any

5 royalties other than from IBM?

6 A It had received royalties from the

7 license agreements that we negotiated at the

8 direction of Mr. Lans.

9 Q Right. But the license agreements that

10 you negotiated on behalf of Mr. Lans were between

11 the computer companies and which entity?

12 A Mr. Lans.

13 Q Okay. And to whom did those revenues from

14 the license agreement go?

15 A We were instructed when we asked for Mr.
16 Lans' wire transfer information for his bank in the
17 first distribution from the first two or three
18 settlements, we received instructions that the
19 funds should go to Uniboard's bank account by wire
20 transfer.

21 Q Okay. Now when you gave Mr. Lans that
22 explanation vis-a-vis the January 29, 1999 e-mail
23 answer, what if any response did he have?

24 A He then agreed that the answer as drafted,
25 which was I am the sole owner of the 986 patent,

96

1 was correct, and then he signed the verification.
2 I would just note that the document yesterday where
3 he sent a fax to me with the verification, both of
4 which are dated January 28th, are just -- they are
5 incorrectly dated. Those were dated -- those were
6 really actually dated on the 29th and they were
7 sent to us on February 2nd.

8 Q And you received -- who did you receive
9 the actual executed original from?

10 A From -- it was from Delphi. It was -- if
11 you look at the document, it has the fax banner,

12 the identification of Delphi.

13 Q Okay. Thank you.

14 Let me ask --

15 A And let me just --

16 Q Okay.

17 A Then the original, the actual physical

18 original, came to us from Mr. Lans.

19 Q So Mr. Lans sent you the actual original

20 signed?

21 A Yes. What -- every -- every document that

22 he physically signed, and to the extent that he

23 annotated any additional pages, came -- generally

24 came, from my understanding, directly from him,

25 like by DHL, I think it was.

97

1 Q Okay. Let me ask you a question. When

2 was the first time, the very first time, that you

3 learned, AMS learned, that someone claimed that

4 Uniboard was the owner of the 986 patent?

5 A When we received the Gateway motion for

6 summary judgment for lack of standing in August of

7 1999.

8 Q Did it have a copy of the assignment

9 attached to it?

10 A Yes.

11 Q Had you ever seen that document before?

12 A Never.

13 Q Had anyone ever mentioned that document to
14 you before?

15 A Never.

16 Q What did you do -- what was your reaction
17 -- let me strike that.

18 What was your reaction when you received
19 this motion?

20 A We were stunned. We were stunned and then
21 became very upset.

22 Q And why was that?

23 A Because it was complete news to us.

24 Q What was news to you?

25 A That the Uniboard -- that Mr. Lans had

98

1 actually executed a formal written association of
2 all right, title, and interest to Uniboard in
3 October 1989.

4 Q What did you do when you got this
5 document?

6 A We immediately called him and I believe we
7 conferenced in Delphi.

8 Q When you called Mr. Lans and told him the
9 news, what did he say?

10 A He said he didn't know what I was talking
11 about, didn't recall the document.

12 Q And what did you do?

13 A We told him that we were going to send him
14 the document by fax, and that he should call us
15 back as soon as possible after he looked at the
16 document.

17 Q And did you do that?

18 A We -- we did send it to him and then he
19 called us back within an hour, I would say.

20 Q All right. And when he called you back,
21 what did he say?

22 A He said now that I've seen the document, I
23 remember it. But I had forgotten it.

24 Q Do you recall if you received a fax from
25 him that day? Do you remember receiving a fax?

99

1 A We received a fax, I don't know if it was
2 that day, where he, you know, ruminated further
3 about it and got back to us about what he thought
4 about the document.

5 Q Okay. All right. When you talked to him

6 on the phone, what did he say after he look at the
7 assignment?

8 A Just as I said. He said now that I've
9 seen the assignment, I remember it, but I had
10 forgotten it.

11 Q And what was your reaction?

12 A We -- I don't know that we -- we were
13 surprised that he said that, certainly, but we said
14 this is a real problem because what -- if this
15 document is correct, which it appears on its face,
16 you are not the proper owner of the patent, we
17 filed suit in the name of the wrong owner, and we
18 gave notice in the name of the wrong owner, and
19 that's a big problem in American law.

20 Q And what did he say in response to it?

21 A He didn't say anything.

22 Q Take a look at Exhibit 5 in your booklet.
23 That's the small one.

24 A Okay. Yes.

25 Q You remember getting that fax, do you not?

100

1 A I do.

2 Q It says the assignment and declaration is
3 no longer valid. And I signed the declaration and

4 it could not be -- and found out it couldn't be

5 transferred.

6 What did you do? Do you remember if after

7 you got this, you sent him a memo or a letter?

8 A I know that we responded, we responded to

9 him, certainly, about his statement that it was

10 invalid.

11 Q And let me show you next Exhibit 6, same

12 booklet, and ask you whether you can identify that

13 document.

14 A Same booklet?

15 Q Yeah, same booklet.

16 A Yes. This is a response to -- on August

17 10th, 1999, to Mr. Lans' earlier e-mail of the same

18 date.

19 MR. HANDLEMAN: Your Honor, I'm showing

20 Mr. Mastriani Intervenor Exhibit 6.

21 THE COURT: Yes.

22 BY MR. HANDLEMAN:

23 Q It's a memorandum you wrote; right?

24 A That's correct.

25 Q And it's re assignment to Uniboard;

2 A Yes, it is.

3 Q Why did you send that to him that day?

4 A Because his -- we wanted to interrogate
5 him on his remarkable statement that the assignment
6 and declaration submitted by Gateway 2000 is no
7 longer valid. And after I signed the declaration,
8 it was found that the patent could not be
9 transferred to my company, Uniboard AB. We wanted
10 to find out why he believed it wasn't valid and who
11 found that the patent could not be transferred.

12 Q And did you get a response right away from
13 Mr. Lans? Take a look at Exhibit 7.

14 A Okay.

15 Q Mastriani Exhibit --

16 A Yes.

17 Q Do you see that document?

18 A Yes, I do.

19 Q You received it, it's August 10, 1999 and
20 what did you understand when you -- what was your
21 understanding after receiving this fax?

22 A Well, we -- I mean this was not -- this
23 did not respond to any of the questions that we
24 asked. I mean we asked him, if you look at Exhibit
25 6, a number of questions about -- about the bases

1 for his statements about who, you know, said it and
2 what evidence is there, and so on, and we also
3 informed him that we -- if you look at the bottom
4 of the first page in item 3(a), we checked with our
5 German counsel who was prosecuting the German --
6 the German case about this statement that under
7 German law, if there is a court trial going on,
8 including nullification proceeding, that you cannot
9 assign a patent. And our German counsel said that
10 --

11 MR. HAINLINE: Objection; hearsay.

12 THE WITNESS: I'm reading from the --
13 excuse me.

14 MR. HANDLEMAN: Well, Your Honor, the
15 document is in evidence. I think he can read from
16 it.

17 THE COURT: I think counsel withdrew his
18 objection.

19 MR. HAINLINE: I didn't know he was
20 reading. I apologize. Withdraw the objection.

21 THE WITNESS: I'll read it just to be
22 precise. It says you state the reason was that the
23 patent was subject to court trials, close quote.
24 And I'm quoting from our response, my response: We

25 have checked with Mr. Schilling who said that under

103

1 German law a court trial, including nullification
2 proceeding, has no effect on whether a patent can
3 be assigned.

4 And then we go on to tell him -- this is
5 Mr. Lans, in the second page of this exhibit, that
6 unless a reassignment from Uniboard back to Mr.
7 Lans can be found, then the last assignee, which is
8 Uniboard, would be the owner. And therefore it
9 should have been the plaintiff in all of the legal
10 actions, including the United States, and that also
11 there is a misrepresentation then in the license
12 agreements that we had signed that Lans owns the
13 entire right, title, and interest to the licensed
14 patents and the inventions disclosed and claimed
15 therein.

16 And we concluded with the statement that
17 these are all very serious matters that can lead to
18 the dismissal of your cases in the United States,
19 the payment of attorneys' fees to lawyers on the
20 other side and, most importantly, unknown liability
21 for the misrepresentation in the current license
22 agreements. We need better information, more

23 facts, and real evidence that the assignment you
24 signed is invalid. What can you provide to us.

25 BY MR. HANDLEMAN:

104

1 Q Okay. And then you got this Exhibit 7,
2 right?

3 A Correct.

4 Q And that wasn't acceptable?

5 A No, because it was a nonanswer.

6 Q Was there any discussion with Mr. Lans
7 around August 10th of 1999 about the fact that you
8 had to file a response to the motion to dismiss by
9 Gateway?

10 A Yes.

11 Q Okay. And what do you recall discussing
12 with him?

13 A We told him that we had to file a
14 response. We had contacted Gateway counsel and
15 asked for an extension. We were refused any
16 extension by Gateway counsel.

17 We then told Mr. Lans that because he was
18 saying that he wanted to try and find additional
19 information about this, and because many people in
20 Europe that he wanted to talk to, because it was

21 August, were on vacation, that we needed to file an
22 emergency motion for an extension of time, and that
23 we would have to make representations to the Court
24 about -- about the issue of whether or not any
25 assignments existed.

105

1 Q And what did he say?

2 A He said do everything and anything you
3 have to.

4 Q Okay. And what did you do?

5 A We filed a -- the motion, emergency motion
6 for an extension of time, and along with my
7 affidavit.

8 Q Okay. And do you recall what if any
9 discussions you had with Mr. Lans before you filed
10 your affidavit in support of a motion for an
11 extension of time, an emergency motion?

12 A My affidavit was -- it was a declaration,
13 actually, was read, the draft declaration was read
14 to Peter Utterstrom, Tal Lindstrom, and Hakan Lans
15 prior to filing.

16 Q Okay.

17 A And -- or prior to execution and filing.

18 Q All right. Now I want you to take a look

19 at that affidavit. Let me find it.

20 MR. HANDLEMAN: If I can approach, Your
21 Honor.

22 THE COURT: You may.

23 [Pause.]

24 MR. HANDLEMAN: I know it was Mastriani
25 Exhibit No. 2. I believe it was No. 2, actually,

106

1 not in the big book there. It's regular 2, Your
2 Honor. I think you will find it there. I think I
3 got it right.

4 MR. HAINLINE: That's correct.

5 MR. HANDLEMAN: Okay. So that's before
6 counsel started with this 1-1 business.

7 MR. HANDLEMAN: If you look at Lou
8 Mastriani -- Louis Mastriani Exhibit No. 2, that
9 will be the declaration of Mr. Mastriani.

10 [Pause.]

11 BY MR. HANDLEMAN:

12 Q All right. Now, Mr. Mastriani, I show you
13 that document. Do you see that document?

14 A Yes.

15 Q You signed it; right?

16 A I did.

17 Q Can you read what paragraph 3 says? Have

18 I got the right paragraph?

19 A Inasmuch as I and other counsel to Mr.

20 Lans have been repeatedly informed by Mr. Lans that

21 no assignment had ever taken place with respect to

22 the Lans patent, we are investigating the

23 circumstances surrounding the referenced

24 assignment.

25 Q Did Mr. -- did you read that to Mr. Lans

107

1 before you filed it with the Court?

2 A Yes, I did.

3 Q Did Mr. Lans express any disagreement with

4 that?

5 A No.

6 Q Did you believe at the time that you

7 signed that that you were telling the truth?

8 A Unquestionably.

9 Q Do you believe today that you were telling

10 the truth?

11 A Absolutely.

12 Q Now do you recall if the Court required,

13 in connection with providing an extension, that

14 there be an affidavit that would be filed on behalf

15 of Mr. Lans?

16 A Yes. Before the Court would grant an
17 extension, it wanted an acknowledgement of the
18 assignment by Mr. Lans.

19 Q Okay. And do you recall that there was a
20 declaration filed by Mr. Lans?

21 A Yes.

22 Q Do you recall whose -- who prepared that
23 affidavit? Declaration, excuse me. Who prepared
24 that declaration?

25 A Delphi prepared that declaration based

108

1 upon statements made by Mr. Lans. The language of
2 the declaration is Mr. Lans' language. Almost in
3 its entirety. The lead-in and the close, the --

4 MR. HAINLINE: Objection, Your Honor.

5 Delphi prepares it all on -- this is all hearsay as
6 to whether it was word from word from Mr. Lans.
7 It's something he heard from Delphi.

8 MR. HANDLEMAN: We heard testimony
9 yesterday from Mr. Lans with regard to that
10 affidavit. Let me reask the question.

11 THE COURT: All right.

12 BY MR. HANDLEMAN:

13 Q Who provided you an executed declaration
14 that you filed with the Court?

15 A Delphi did by fax and the original came by
16 express mail from Mr. Lans.

17 Q Did you recognize the signature on the
18 declaration that was filed with the Court?

19 A Yes, I did.

20 Q And whose signature was it?

21 A It was Mr. Lans'.

22 Q Okay. Thank you.

23 THE COURT: Is that Exhibit 3, AMS 3?

24 MR. HANDLEMAN: Yes.

25 THE WITNESS: Yes.

109

1 THE COURT: September 11, '99?

2 MR. HANDLEMAN: Yeah, I believe it is.

3 Yeah, I believe it -- yes, Your Honor.

4 THE WITNESS: Just so I have -- I have AMS

5 Exhibit 2 on here. It's an August 13th.

6 MR. HANDLEMAN: Right. Now you were

7 asking, Your Honor, about Mr. Lans --

8 THE COURT: Mr. Lans.

9 MR. HANDLEMAN: -- there is a second

10 declaration of Hakan Lans on Exhibit 3.

11 THE COURT: All right.

12 BY MR. HANDLEMAN:

13 Q Tell me whether or not you believe that's
14 the declaration that was required by the Court.

15 A No. No. It was the -- there's a first
16 declaration that's from August 1999.

17 MR. HANDLEMAN: That's what I'm trying to
18 give Your Honor. So that's the second one. Let me
19 get that, if I can, with the Court's indulgence.

20 [Pause.]

21 MR. HANDLEMAN: Your Honor, it's -- it's
22 Hakan Lans Intervenor Exhibit -- and that's my
23 fault, because I had the book -- Exhibit 20, but it
24 is -- so it's Exhibit 20, and it was from Lans'
25 deposition, but it's not -- you have to go through

110

1 the page. It's the -- and I'll show it to the
2 witness. It's midway through, I would say. Just
3 give me a second. One, two, three -- seventh
4 document -- seventh page. It's AMS Bate stamp
5 255820, which I believe Mr. Lans testified with
6 regard to yesterday.

7 Let me if I could show you --

8 THE COURT: Is that the large book?

9 MR. HANDLEMAN: Yes. It's the one I used
10 yesterday. So, Your Honor, with the --

11 THE COURT: That would be 20?

12 MR. HANDLEMAN: It would be 20, but
13 unfortunately we put a number of these affidavits
14 together, so it would be the one -- I guess the
15 best way, if you look near the end, it's Bate
16 stamped AMS 255820. It's a three-page document,
17 and actually attached to it is the assignment, and
18 that's before the second -- I don't know if Your
19 Honor has found that.

20 THE COURT: I have it.

21 MR. HANDLEMAN: Okay.

22 BY MR. HANDLEMAN:

23 Q All right. Let me show you this, if I
24 can, Mr. Mastriani, and ask you whether or not that
25 document represents the document that you believe

111

1 was required by the Court prior to granting the
2 extension on the emergency motion?

3 A It is.

4 Q And do you see on that document whether or
5 not Mr. Lans has initialed each of the pages?

6 A He has.

7 Q Okay. And is that Mr. Lans' signature on
8 the third page?

9 A Yes. And just to be -- to explain that,
10 many times -- a number of times declarations were
11 filed because they were -- they were faxes or the
12 fax, the signature came by way of fax that was to
13 be appended to the declaration, and so the
14 preceding pages were not initialed, but then the
15 original would always follow with all of the pages
16 initialed. And every declaration that was
17 submitted on behalf of Mr. Lans to this Court or
18 any Court were always signed by him.

19 Q And you recall receiving the original from
20 Mr. Lans; is that correct?

21 A Yes.

22 Q All right. Now what was -- do you recall
23 what Mr. Lans' position was after the motion was
24 filed as to who owned the patent?

25 A Well, he believed that he was the owner of

112

1 the patent.

2 Q And do you recall a series of e-mails that
3 you saw yesterday, you received those e-mails;
4 right?

5 A Yes.

6 Q Okay. Now do you recall whether after the
7 Court dismissed the Lans suit, which I believe was
8 in November of 1997, that Mr. Lans discovered some
9 document, a new document?

10 A Yes. I mean what happened was that he
11 received word of the dismissal, which occurred at
12 the end of November of 1999, and then he, on his
13 own, went to a number of -- a number of people and
14 to try and find additional information. He
15 instructed Delphi to go to, among other people, the
16 widow of Mr. Berg on his behalf to try and find any
17 such document.

18 MR. HANDLEMAN: And incidentally, Your
19 Honor, just for clarification, that was my fault,
20 the document we have obviously identified -- and I
21 could have made it easier, August, the Exhibit 20,
22 it was my Exhibit 8 in the Mastriani Exhibit book,
23 so Exhibit 8 is the same document.

24 THE COURT: All right.

25 MR. HANDLEMAN: Okay. Thank you. Sorry

113

1 about that.

2 BY MR. HANDLEMAN:

3 Q All right. Now you say -- and then what
4 happened? Did there come a time that you learned
5 that there was in fact a document called a
6 clarification contract?

7 A We learned of the existence of that
8 document when we received a call -- I want to say
9 it was in January -- from Delphi stating that Mr.
10 Lans had found a document in the possession of his
11 former accountant, Leif Gyllenhoff.

12 Q That was the first time you learned of
13 that document?

14 A Yes.

15 Q Did you have a conversation at any time
16 after finding out about that with Mr. Lans?

17 A Yes. What we did is we asked Delphi -- we
18 told Delphi to make sure that Mr. Lans did not get
19 a copy of that, and that they secured that document
20 right from the Mr. Gyllenhoff so we could preserve
21 the chain of custody.

22 Q Why did you do that?

23 A Well, because let's put it like this, it
24 was a document that we knew was going to raise
25 eyebrows, at a minimum, and that it was going to be

1 challenged as to its provenance and when it was
2 generated, and who knows what people were going to
3 say about it. We wanted to make sure that it came
4 from a person who had no motive to concoct
5 anything, who had just run into this document in a
6 part of his old office where he -- that he had
7 vacated and to have it sent from -- he would bring
8 it or it would be secured from him by Delphi and
9 then sent to us and then given to the Court. And
10 it was the original document.

11 Q So you got the document and you presented
12 it to the Court?

13 A That's correct, in conjunction with a rule
14 60(b) motion based upon newly discovered evidence.

15 Q Did you discuss with Mr. Lans, after
16 receiving the document, how it was that he never
17 saw the document before?

18 A Yes.

19 Q And what did he say?

20 A He said he forgot about it.

21 Q Now who is this document between?

22 MR. HAINLINE: Can we have a date for this
23 conversation, please?

24 MR. HANDLEMAN: Okay. Excuse me.

25 BY MR. HANDLEMAN:

1 Q Do you recall approximately, to the best
2 of your recollection, when it was that you learned
3 about the clarification?

4 A It was in -- I believe it was early
5 January or the middle of January 1998, now --
6 excuse me, 2000.

7 Q 2000?

8 A Yes. Because the decision dismissing the
9 case was November 23rd, 1999. Mr. Lans started
10 having people do all these searches as evidenced by
11 his e-mail to Mr. Utterstrom to go speak to the
12 widow of Mr. Berg. That occurred in December of
13 1999, and then we received word of the
14 clarification contract in January 2000.

15 Q Okay.

16 A And we spoke -- I spoke to Mr. Lans about
17 that clarification contract with 24 to 48 hours
18 after we were told about its existence, and also
19 prior to the preparation of a declaration by Mr.
20 Lans that accompanied the motion under rule 60(b).

21 Q Do you recall what Mr. Lans' position was
22 in connection, after you discussed the
23 clarification agreement, with who owns the patent?

24 A Mr. Lans believed that he was the owner of
25 the patent.

116

1 Q Do you recall if -- let me show you
2 Exhibit No. 9 in your booklet, the final exhibit
3 that's in your book, and ask you whether or not --

4 A And could I just make one statement? Just
5 a clarification. Because the statement made about
6 Exhibit 8 --

7 THE COURT: Just a moment.

8 MR. HAINLINE: Your Honor, I object to
9 this. If there is a question pending, he can
10 answer a question. Yesterday I think properly Mr.
11 Lans was not allowed to explain answers, and I'm
12 not objecting to that. I just think Mr. Mastriani
13 should not be allowed to just interject testimony
14 that he would like to be in the record. He should
15 answer questions.

16 MR. HANDLEMAN: I certainly don't know
17 what you're going to say, Your Honor, so as far as
18 I'm concerned, I thought my -- whatever question I
19 asked was responded to. So I certainly don't have
20 any problem with -- although I think he wanted to
21 clarify an answer, and I think procedurally it's a

22 little bit different than giving an explanation.

23 He may want to clarify an answer he gave, but I

24 really -- it's up to the Court, as everything is.

25 MR. HAINLINE: If it's an explanation for

117

1 an answer, I object to it. If he testified

2 incorrectly and he would like to correct it, I have

3 no objection to that.

4 THE COURT: Well, I'm not a magician. I'm

5 not sure what he wanted to --

6 MR. HANDLEMAN: I don't either.

7 THE COURT: I'll take the clarification

8 and then you can strike it if you wish.

9 THE WITNESS: Your Honor, I was just

10 simply going to say that the declaration I was

11 examined about was not Exhibit 8, but is in Exhibit

12 8, but that has Exhibit 8 has a cover letter from

13 Delphi talking about the fact that the declaration

14 is based on discussions with Hakan Lans, et cetera.

15 And my only point was to clarify that Exhibit 8 has

16 got a cover letter on it, and that the exhibit that

17 we were referring to that was said to be the same

18 as Exhibit 8 is that there's an additional page,

19 and that's all.

20 MR. HANDLEMAN: And, Your Honor, he is
21 absolutely correct, because I used Exhibit 20, that
22 was a signed document, and then I was cross-referencing it
23 to 8, so that is in fact a
24 clarification. I thank you for that because that
25 clearly is a bit of a different document.

118

1 THE COURT: All right.

2 BY MR. HANDLEMAN:

3 Q All right. Now --

4 A You're on Exhibit 9 now?

5 Q Yes. Do you recall receiving Exhibit 9
6 from Mr. Lans?

7 A Yes, I do.

8 Q Had you asked Mr. Lans to provide you with
9 some summary of a document?

10 A No, neither -- neither I or Mr. Schaumberg
11 requested this summary.

12 Q Did you read this document when it came
13 in?

14 A Yes, we did.

15 Q What did you conclude that Mr. Lans'
16 position was with regard to the ownership of the
17 986 patent?

18 A That he was and always had been the owner
19 of the patent, and that Uniboard only received some
20 revenues pursuant to an arrangement he had with the
21 company.

22 Q Do you recall if you received any
23 notification from Mr. Lans at any time after this
24 document was sent that he didn't write this
25 document, somebody else made him send it?

119

1 A No.

2 Q Okay. Now there came a time that the suit
3 was filed -- a suit was filed in the name of
4 Uniboard; correct?

5 A That's correct.

6 Q Okay. Now do you recall who made the
7 recommendation that Uniboard be named as a party?

8 A Our firm did, along with Delphi.

9 Q Okay. And what were the reasons why, as
10 you recall, that you made that recommendation on
11 behalf of your client Lans?

12 A We had a discussion with Mr. Lans and
13 Delphi in late October 1999 to discuss the worst-case
14 scenario in the event that the Court granted
15 the Gateway motion, and during that conversation,

16 everybody was cognizant about the great potential

17 for the computer companies --

18 MR. HAINLINE: Objection, Your Honor.

19 It's conclusory. Everybody was cognizant of.

20 Could we have what was said at the meeting and by

21 whom?

22 BY MR. HANDLEMAN:

23 Q Yes. Can you just simply tell us what you

24 recall -- I think it's October of 1999; right?

25 A Late October.

120

1 Q Okay. And let me just -- going back to

2 the question, but for clarification purposes, at

3 that time the motion was pending, right, for -- to

4 dismiss?

5 A That's correct.

6 Q The case hadn't been dismissed yet; right?

7 A That's correct.

8 Q Lans is the plaintiff in the case; right?

9 A That's correct.

10 Q Did you have a concern that in fact the

11 motion to dismiss might be granted based on the

12 assignment?

13 A Yes.

130

14 Q Okay. And in that context, did you have
15 any discussions with Mr. Lans around October of
16 1999 about your concerns about the suit being
17 dismissed and about the need for Uniboard to get
18 involved in the case?

19 A Yes. In the -- in the conference call
20 with Mr. Lans, Peter Utterstrom, and Tal Lindstrom,
21 it was discussed that --

22 Q What did you say? Excuse me. Okay. What
23 was said? I mean obviously I want to hear what Mr.
24 Lans said, I want to hear what you said, but point
25 well taken, we want, to the best of your

121

1 recollection, specifics.

2 A Yeah. Excuse me. I made the statement to
3 everybody on the call, and with me were Jim Adduci
4 and Tom Schaumberg from my office, that if the
5 Court granted the motion and dismissed the case,
6 the defendants in the case that were remaining --
7 there was a number of them -- would almost
8 certainly file declaratory judgment actions in
9 every venue in which they resided, and that we
10 recommended that a complaint be prepared in the
11 name of Uniboard if it was determined to be the

12 proper owner, and to be ready to file that.

13 Q And what was Mr. Lans' response?

14 A He was completely in favor of that.

15 Q Okay. And did there come a time that Mr.

16 Lans actually signed the document authorizing the

17 case to be filed in Uniboard?

18 A Yes. He authorized us in late October to

19 prepare the complaint. He authorized us to have it

20 -- to draft it and to have it ready and to file it

21 as soon as we received any negative ruling.

22 Q And there came a time you got a negative

23 ruling; correct?

24 A On or about November 23rd, 1999.

25 Q And you filed it?

122

1 A That's correct.

2 Q And do you recall if you discussed with --

3 let me strike that.

4 Do you recall if you sent him a copy of

5 the complaint?

6 A Yes.

7 Q Okay. Now you recall arguments of counsel

8 in a December 8th hearing, because you were here,

9 with regard to AMS acting as some kind of licensing

10 counsel for Uniboard? You remember those
11 arguments?

12 A Yes.

13 Q Was that accurate? Was AMS, as far as you
14 understand, a licensing counsel for Uniboard?

15 A No. The licensing counsel for Uniboard
16 was Gunnar Berg, and that activity ceased back in
17 1989.

18 Q Okay.

19 A We represented Uniboard, technically
20 represented Uniboard on the very specific narrow
21 issue that had nothing to do with licensing.

22 Q Well, can you tell the Court briefly what
23 you were representing Uniboard on, on the narrow
24 issue in connection with the IBM agreement?

25 A Well, just to lay the foundation, what

123

1 occurred was after we sent out the notices of
2 infringement in late September 1996, we received a
3 communication from a company called Cirrus Logic,
4 which was a major supplier for graphic chips to the
5 computer industry. And Cirrus was taking the
6 position that it was covered, or its products were
7 covered by the IBM license because of the fact that

8 its chips were made in a facility that was a joint
9 venture with IBM in New York.

10 Q If that position prevailed, what effect
11 would that -- what effect did you view that as
12 having on Lans' ability to collect money on the IBM
13 license?

14 A It would mean that he would be unable to
15 do so with regard to Cirrus products because if
16 they had the benefit of the IBM license, they were
17 licensed, and the payment for the license had all
18 right been made.

19 Q Do you recall in April of 1997 or
20 thereabouts having any discussion with Mr. Lans
21 about taking action with regard to this narrow
22 issue on Uniboard's behalf?

23 A Yes. We had been in communication with
24 senior intellectual property counsel at IBM, I
25 believe his name was Edward Gershuny, and he had

124

1 sent us a proposed letter that he wanted to send to
2 Micrus basically telling Micrus that it was covered
3 under the agreement and, as he put it, the IBM
4 agreement with Mr. Lans, and he called it the Lans
5 patent, and he knew that Lans was claimed to be the

6 owner based --

7 MR. HAINLINE: Objection. Best evidence.

8 THE COURT: Counsel?

9 MR. HANDLEMAN: Yes, we have -- we have a
10 document.

11 BY MR. HANDLEMAN:

12 Q While we are looking for the document, do
13 you recall if there was, after the IBM letter was
14 received, whether or not you had a discussion with
15 Mr. Lans in connection to how to react to the
16 request that it be -- that the Cirrus Logic joint
17 venture thing be covered under the IBM agreement?

18 A Yes, we had a discussion with Mr. Lans,
19 and Mr. Utterstrom and/or Mr. Lindstrom, and then
20 there was a letter that was sent, a memorandum that
21 was sent to Mr. Lans and the Delphi lawyers with
22 draft letters to IBM, basically rejecting the
23 position of IBM that the Micrus -- it was called
24 Micrus, M-i-c-r-u-s, joint venture insulated Cirrus
25 from liability under the patent.

125

1 Q Do you recall if that was all the work
2 that was provided in connection with -- in the
3 licensing context?

4 A Well, in the licensing --

5 Q As it relates, of course, to the IBM.

6 A We -- because -- because we were taking
7 the position that -- that IBM supported Cirrus'
8 claim, we were taking the position that it was a
9 breach of the agreement, and in order to actively
10 inform IBM of that position, we had to state that
11 we were representing Uniboard in that regard,
12 because it was a licensor. But we were authorized
13 to do so by Mr. Lans.

14 MR. HANDLEMAN: Okay, this would be -- I
15 think this is under the Mr. Hainline filing system.

16 It -- I have it as 27, but the I -- what was that --

17 MR. HAINLINE: I-27 for Mr. Mastriani,
18 Your Honor.

19 MR. HANDLEMAN: Okay. Thank you.

20 MR. HAINLINE: You're welcome.

21 BY MR. HANDLEMAN:

22 Q Let me show you 1-27 and ask you whether
23 you can identify that, Mr. Mastriani, as the
24 document that you had been testifying to where it

126

1 makes reference to even in the context of the IBM

2 license agreement being the Lans agreement?

3 A Yes. This is a January 21, 1997 letter
4 from Edward S. Gershuny, senior intellectual
5 property and licensing counsel to IBM, regarding a
6 license agreement between IBM and H. Lans under
7 U.S. Patent 4303986. He talks about this issue
8 about Cirrus Logic, asking IBM for a letter stating
9 that Micrus is licensed under the Lans patent.

10 Q Thank you. Do you know who a gentleman by
11 the name of Klaus Vorwerk -- V-o-r-w-e-r-k -- is?

12 A Yes. He was a German lawyer that was
13 contacted in -- it was in -- I think it was in
14 April of 1997 to ask him for an opinion as to
15 whether the Micrus joint venture was licensed, had
16 the benefit of the IBM license, because the IBM
17 license agreement is governed by German law and not
18 U.S. law, and therefore we wanted to get an opinion
19 of a German attorney as to whether the Micrus
20 facility could be in any way covered by the IBM
21 agreement.

22 THE COURT: Excuse me. Counsel, we should
23 be taking a break soon. Is this a good place, or --

24 MR. HANDLEMAN: Yes, it is, Your Honor,

1 and I will say that after we take a break and come

2 back, I know I am subject to qualifications, but I
3 am very close to wrapping up. But I am not
4 suggesting you delay, but I will be, so you know, I
5 should be finished shortly after the lunch break.
6 I promise.

7 THE COURT: I'm concerned about the
8 "shortly after," after yesterday.

9 MR. HANDLEMAN: Well, Your Honor, I'm
10 going to go out on a limb. I'm going to say within
11 15 minutes of the lunch break.

12 THE COURT: All right.

13 MR. HANDLEMAN: Hold me to that, okay?
14 Thank you.

15 THE COURT: We will take a recess. We
16 will stand in recess until 1:35.

17 [Whereupon, at 12:37 p.m., the hearing was
18 recessed, to reconvene at 1:35 p.m., this same
19 day.]

128

1 AFTERNOON SESSION

2 [1:39 p.m.]

3 MR. HANDLEMAN: Good afternoon, Your
4 Honor.

5 THE COURT: Good afternoon.

6 DIRECT EXAMINATION - Continued

7 BY MR. HANDLEMAN:

8 Q Mr. Mastriani, I think where we had left
9 off before the lunch break, I had asked you to
10 identify if you knew somebody named Klaus Vorwerk,
11 and you had indicated that you had contracted with
12 him; is that correct?

13 A He was a German attorney that was
14 contacted in April, I believe it was, maybe March
15 originally, but in April certainly, 1997, to give
16 an opinion as to whether the IBM agreement as
17 interpreted under German law would license the
18 Cirrus products that were made in the joint venture
19 facility in New York.

20 Q Do you have a recollection whether he did
21 render an opinion?

22 A He -- I wouldn't call it an opinion, per
23 se. I think he had some thoughts, because we never
24 got a formal full opinion because after we received
25 his initial thoughts, Micrus -- excuse me, Cirrus

129

1 backed down from its claim that it was covered by
2 the IBM license.

3 Q Do you have a recollection whether or not

4 the information he provided you was accurate in the
5 context of ownership?

6 A In the context of ownership, he had
7 clearly made a mistake of fact because the letter
8 he received from Mr. Schaumberg on our letter head
9 clearly identified -- I believe it was an April
10 9th, 1997 letter from Mr. Schaumberg to Klaus
11 Vorwerk, and it clearly states on its face --

12 MR. HAINLINE: Objection. Best evidence.

13 He's talking about --

14 THE COURT: Microphone.

15 MR. HAINLINE: I'm sorry, Your Honor. I
16 apologize for that.

17 Best evidence. He's talking about the
18 contents of a document.

19 MR. HANDLEMAN: Well, I have the documents
20 here. We can put them in evidence, but to shorten
21 things --

22 BY MR. HANDLEMAN:

23 Q Do you have a recollection of what a
24 problem with -- let me strike that.

25 Was he somebody you were asking for a

130

1 hypothetical opinion?

2 A That's correct.

3 Q Do you recall what facts you were -- he
4 was provided with as to who was the owner of the
5 patent?

6 A Yes, he was told that Mr. Lans was the
7 owner of the 986 patent, and that he, Mr. Lans,
8 owned Uniboard, and that Uniboard was the party
9 that licensed IBM.

10 Q And do you recall if he advised you in his
11 response, or you learned that he was taking the
12 position that Uniboard was the owner?

13 A He stated in his letter, quite
14 erroneously, that Uniboard was the owner of the 986
15 patent, and all of the European patents, and that
16 was clearly incorrect.

17 Q Now let me ask you this. Do you recall,
18 in connection with the discovery in this case --

19 THE COURT: Do you have the letter?

20 MR. HANDLEMAN: Oh, yes, I do, Your Honor.
21 I'll be happy to have it marked. I have the whole
22 series of documents. Why don't we do this. Let me
23 have it marked as Exhibit 11.

24 MR. HAINLINE: I think they are already in
25 evidence if you would just call the Court's

1 attention to which one it is so we don't have to
2 have multiple -- the same document marked so many
3 times.

4 THE COURT: All right.

5 MR. HANDLEMAN: That's fine. I've got to
6 find where the document is. Well, I don't know if
7 it's in -- you know, I don't think, since counsel
8 has raised the, you know, the issue, as far as I am
9 concerned, I find it very easy to have copies to
10 just have it as Exhibit 11.

11 THE COURT: Well, I gather that we already
12 have it.

13 MR. HANDLEMAN: Well, I'm not sure we have
14 it all because what happened is there was a request
15 made for -- by Mr. Hainline for a document after we
16 had the legal argument December 8th, and we
17 provided it to him, and therefore there is a
18 package of documents. So I -- a package being
19 three or four documents. So if counsel wants the
20 document, although I wasn't going to offer it, then
21 I certainly think it makes sense just to --

22 THE COURT: Well, I understand it's
23 already in. Is that right?

24 MR. HAINLINE: I believe the Vorwerk

25 document is already in, Your Honor, and let me see

132

1 if I can quickly give you the reference. One

2 second, please.

3 [Pause.]

4 MR. HANDLEMAN: Again I'm told this is

5 Exhibit J to their prehearing brief.

6 MR. HAINLINE: Exhibit -- Mastriani

7 Exhibits 13, 14, and 15 are correspondence with

8 German counsel, I believe, Your Honor.

9 [Pause.]

10 MR. HAINLINE: Here you go.

11 MR. HANDLEMAN: Which case?

12 MR. HAINLINE: This is Mastriani, and

13 that's Exhibits 13, 14, and 15 are letters to and

14 from Vorwerk, Your Honor.

15 MR. HANDLEMAN: That's fine. But this is

16 -- can I --

17 THE COURT: All right, so 13, 14, and 15

18 of the Mr. Mastriani --

19 MR. HANDLEMAN: Excuse me a minute.

20 THE COURT: Yes.

21 MR. HANDLEMAN: Is this your numbering

22 system?

143

23 MR. HAINLINE: Your Honor is looking in
24 Exhibit 1. It wouldn't be those tabs. I'm sorry.
25 THE COURT: It's not in No. 1.

133

1 MR. HAINLINE: No, it's Exhibits Mastriani
2 13, 14, and 15, which begins with 2. I'm sorry we
3 have so many books now.

4 MR. HANDLEMAN: That's fine, Your Honor.
5 It would be easier for me just to put a stickie on
6 the one I have, but --

7 THE COURT: It's quite an exercise here,
8 I'll tell you. That's not it, either.

9 [Pause.]

10 THE COURT: All right, 13, 14, and 15.
11 Yes, I have it.

12 BY MR. HANDLEMAN:

13 Q All right, I'm going to show you, Mr.
14 Mastriani, Exhibits --

15 [Pause.]

16 Q Take a look at Exhibit 13. I think my
17 question to you is -- was what if anything did you
18 determine was erroneous with regard to Mr.
19 Vorwerk's opinion or his report?

20 A Well, the first correspondence is Exhibit

21 -- Mastriani Exhibit 13, and it's a letter of April
22 9, 1997, from Tom Schaumberg from my firm to Mr.
23 Vorwerk, and he states in the preamble, actually
24 the first paragraph, we are working jointly with
25 Delphi on behalf of Mr. Lans, the owner of the

134

1 patent in question, and party to the license
2 agreement that is the subject of our analysis.
3 And then in the second paragraph it says,
4 as you are perhaps aware, the license agreement in
5 question is between Uniboard Aktiebolag, owned by
6 Mr. Lans and IBM.

7 And then in Mr. Vorwerk's response of
8 April 22, 1997, which is Mastriani 15, he states,
9 our legal findings are based on the following
10 facts, and these facts were all given to him by Mr.
11 Schaumberg.

12 On page 2 in the third paragraph, he says,
13 Uniboard Aktiebolag, hereinafter Uniboard, holds
14 various patents, i.e., U.S. patents 4303986, as
15 well as European patent, which is misspelled,
16 0023127, D, which is a German patent, 30360711.

17 That is clearly an incorrect statement
18 because the letter by Mr. Schaumberg clearly

19 identifies Mr. Lans as the owner of the U.S. patent
20 and all of the U.S. Patent Office -- excuse me, all
21 of the patent offices in Europe in question clearly
22 list Mr. Lans as the owner, and that governs what
23 the ownership is in Europe.

24 Q Thank you.

25 A You're welcome.

135

1 Q Now in connection with the litigation in
2 this case, do you recall that there was some kind
3 of discovery plan, a joint discovery plan that was
4 required in terms of the underlying litigation?

5 A Yes. After the cases were consolidated,
6 discovery had been served, Magistrate Judge
7 Facciola wanted the views of the party on discovery
8 with proposals for a discovery plan.

9 Q Okay. Standard procedure, as far as your
10 experience?

11 A In this court, it is, yes.

12 Q Okay. And do you recall whether or not --
13 and what was the purpose, by the way, of the plan
14 when the cases were consolidated?

15 A It was to -- to plan discovery and stage
16 it and schedule it, basically.

146

17 Q Do you recall whether or not the computer
18 companies were attempting to get copies of the
19 license agreements?

20 A Yes, that had been something that the
21 computer companies wanted from the date that they
22 received the notices of infringement. We had
23 always received repeated requests for copies of
24 license agreements, and as a couple of people
25 indicated, they candidly wanted to know what other

136

1 people had paid because in the industry that they
2 were in, they didn't want to pay more than their
3 competitors did.

4 Q What position did AMS take as counsel to
5 Mr. Lans in connection with the computer companies'
6 requests for these documents?

7 A The first time we ever took a position was
8 in the declaratory judgment action in Idaho with
9 Micron and its supplier Diamond Multimedia.

10 Q And what happened? And what was the
11 decision that was made in terms of that?

12 A At first Judge Winmill that the IBM
13 license and the Hitachi license and Miro license
14 should be produced, and then he reconsidered it sua

15 sponte because he stated that he had -- he had not
16 really focused on one of the arguments we were
17 making, the principle argument, that under the
18 Bottaro -- B-o-t-t-a-r-o -- line of cases, and I
19 think another case called Vardon -- V-a-r-d-o-n --
20 Golf that Micron and Diamond Multimedia had not
21 made the particularized showing that is necessary
22 in order to avoid the mandate of the Federal Rule
23 of Evidence 408 that any type of compromise or
24 offer of compromise is -- cannot be discovered or
25 admitted. And so we then, in this case, the

137

1 underlying cases, made the same requirement to
2 defendants, and they failed to do that. And so we
3 took the position that unless and until a
4 particularized showing was given to the Court that
5 any production would be inappropriate.

6 Q And did they, as far as you recall, was
7 any such showing made in this Court?

8 A No. We made the objections in good faith
9 under the law and under the Federal Rule of
10 Evidence, and the computer companies never followed
11 up on that.

12 Q Was there any kind of compromise or did

13 you provide any information in the joint discovery
14 plan as to who the license agreements were entered
15 into?

16 A As I recall, we did do is I think we
17 offered to identify the licenses that had been
18 entered into to date by Mr. Lans, and we did that
19 in one of the documents.

20 Q Do you recall whether or not in reviewing
21 that document that you concluded it was accurate?
22 The document that was filed in the discovery plan?

23 A Identifying the licensees?

24 Q Yeah.

25 A It was accurate except I would say now

138

1 looking at it that IBM -- I think it says that Mr.
2 Lans entered into licensing agreements with the
3 following companies, and there's a list that's on
4 two columns, and International Business Machines is
5 in there, and I think for the sake of complete
6 accuracy it could have had an asterisk or a
7 footnote with an indication that Mr. Lans had
8 entered into that agreement on behalf of Uniboard.
9 He had signed that agreement on behalf of Uniboard,
10 not in his personal capacity.

149

11 Q Thank you. Let me ask you this. Does AMS
12 have an escrow account, as we sit here today, in
13 connection with the license agreement work that was
14 done for Mr. Lans in representation?

15 A Yes.

16 Q And can you tell the Court approximately
17 how much money is in that escrow agreement? Escrow
18 account, I'm sorry.

19 A It's an escrow account of funds received
20 that are undistributed. It's -- I want to say it's
21 somewhere around \$525,000, give or take, you know,
22 10 to \$15,000, and it comprises the amount of the
23 Compaq agreement, which is confidential, so I can't
24 say it on the record, but is a fair amount. It's a
25 fair amount less than what's in there.

139

1 Q And it's being held there because of the
2 dispute between the parties; correct?

3 A Because of the dispute that -- yes, with
4 regard to the tax credit issue that Mr. Lans
5 insisted upon adhering to.

6 Q Now you heard references to the testimony,
7 I think, yesterday to the fact that at least Mr.
8 Lans, my recollection is, thought there was some

9 kind of \$1.6 million that somehow was lost? Did
10 you hear that testimony?

11 A I think he said it was missing.

12 Q Missing. What is your understanding of
13 what he is referring to?

14 A What he is referring to is the
15 approximately it's just under \$1.6 million that the
16 Japanese government took out of the payments of
17 license payments by the Japanese companies that
18 signed licenses, principally Toshiba, Fujitsu,
19 Sharp, Seiko Epson, and I believe it was Sony, and
20 that comes up to just under 1.6 million, which was
21 10 percent of almost 16 million, and that 10
22 percent -- it's not really a withholding tax, it
23 was a tax that's paid to the Japanese government by
24 Mr. Lans as a tax on the receipt of those
25 royalties, and he has the benefit of offsetting his

140

1 income in Sweden by the same amount by treaty this
2 \$1.6 million.

3 Q And do you know whether or not at this
4 point in time he has taken that offset?

5 A No, I don't. I have -- I'm not privy to
6 his tax affairs and business affairs, which I know

7 are myriad.

8 Q Okay. Did Mr. Lans ever send you any
9 correspondence telling you up to the time obviously
10 you ceased representing him that he was
11 dissatisfied in any way with AMS' legal services or
12 with yours?

13 A Up until what time?

14 Q Up until the time you were replaced as
15 counsel. Up until the time motion reconsideration
16 was filed.

17 A Well, I think there was a letter back in
18 2002 where he asked us to make the files available
19 because another law firm was taking -- going to
20 take over, but at that time it was our decision,
21 our firm's decision that we weren't going to be
22 representing him any more based upon his lack of
23 candor with us, which came to -- I would say came
24 to light in 2002.

25 Q Okay. Prior to 2002, did Mr. Lans ever

141

1 express, either orally or by a written
2 communication, dissatisfaction with the services
3 provided by AMS?

4 A No, he did not.

152

5 Q Prior to 2002, did he ever tell you or
6 AMS, either verbally or in writing, that you failed
7 to file his instructions as to the ownership of the
8 patent?

9 A No.

10 MR. HANDLEMAN: No further questions, Your
11 Honor.

12 THE COURT: All right. Cross-examination.

13 MR. HAINLINE: Thank you, Your Honor.

14 Before we start, I would like to just, if
15 I could, see what books Mr. Mastriani has before
16 him, so that he has what he will need during my
17 examination.

18 THE COURT: Fine.

19 MR. HAINLINE: Thank you.

20 [Pause.]

21 CROSS-EXAMINATION

22 BY MR. HAINLINE:

23 Q Mr. Mastriani, you mentioned toward the
24 end of your testimony some interrogatory answers
25 that were filed by your office that identified Dr.

142

1 Lans as the licensor under the IBM agreement. Do
2 you recall that?

3 A No, I did not say that.

4 MR. HAINLINE: I would like to have
5 marked, Your Honor, as AMS 27 -- or I have marked
6 the consolidated reply of plaintiff Hakan Lans to
7 defendants' responses in opposition to his
8 counterproposal regarding a discovery plan for
9 discovery. If I could hand these to the clerk.

10 THE COURT: Yes.

11 MR. HAINLINE: Whoops. Sorry. Hold on.

12 MR. HANDLEMAN: Do you have a copy of that
13 for me?

14 MR. HAINLINE: I will give you a copy as
15 soon as I decide if this is the right document.

16 MR. HANDLEMAN: Oh, sure. Thank you.

17 [Pause.]

18 [AMS Exhibit 27 marked
19 for identification.]

20 BY MR. HAINLINE:

21 Q Is Exhibit 27 a document that your office
22 filed in the consolidated cases?

23 A Exhibit 27 in Exhibit --

24 Q Exhibit --

25 MR. HAINLINE: Oh, I'm sorry, Your Honor.

1 May I approach the witness and hand him what I have
2 just marked as 27?

3 THE COURT: Yes.

4 THE WITNESS: Is this what you just
5 referred to as responses to interrogatories?

6 Because that's what your first question was before
7 you brought this out.

8 BY MR. HAINLINE:

9 Q My question is, is this document, Exhibit
10 27, a document that you filed on behalf of Hakan
11 Lans in the -- in this underlying case?

12 A Yes, it was.

13 Q And it was filed on February 3, 1999?

14 A That's correct.

15 Q Please turn to page 14 and 15.

16 A Yes.

17 Q And you say at the end of the last
18 sentence, actually the last two sentences on 14, In
19 any event, the supposed concern on Gateway's part
20 can be easily disposed of as follows. Mr. Lans has
21 entered into license agreements with the following
22 entities, and then the next page you say,
23 International Business Machines.

24 You made that representation in this
25 document to opposing counsel and the Court?

1 A That's correct.

2 Q And you knew at the time that Uniboard had
3 entered into the license agreement with IBM?

4 A I knew at the time that Mr. Lans had
5 entered into the agreement with IBM on behalf of
6 Uniboard, that's correct.

7 Q You did not say that in this response, did
8 you?

9 A That's correct. I just testified to that
10 before on my direct.

11 Q And you knew that there was an issue that
12 the computer company defendants were seeking the
13 IBM license agreement because they were saying,
14 well, the license agreement is with another
15 company, and we should see this agreement so that
16 we can see who owns the patent.

17 A I knew no such thing, and no such thing
18 had ever been said, as far as I can recall, at this
19 date. It was the only time that that came up was
20 in the August 1999 summary judgment motion by
21 Gateway.

22 Q All right.

23 A I wasn't aware that at this time, I don't

24 believe, that the computer companies were focusing
25 only on the IBM agreement.

145

1 MR. HAINLINE: Let me, Your Honor, please
2 have marked as AMS Exhibit 29 the transcript of a
3 telephone conference call before the Honorable John
4 Garrett Penn which occurred on March 3, 1999.

5 [AMS Exhibit 29 marked
6 for identification.]

7 MR. HAINLINE: This is an official
8 transcript of that proceeding, Your Honor, and I
9 would offer it under the official records.

10 THE COURT: Any objection?

11 MR. HANDLEMAN: No objection.

12 MR. HAINLINE: I would also offer 27, Your
13 Honor.

14 THE COURT: Any objection?

15 MR. HANDLEMAN: No objection.

16 THE COURT: Received.

17 MR. HAINLINE: Thank you.

18 [AMS Exhibits 27 and 29
19 were admitted in
20 evidence.]

21 BY MR. HAINLINE:

157

22 Q Please turn to page 45 of Exhibit 29.

23 A I cannot because I do not have the
24 exhibit.

25 Q I'm sorry.

146

1 MR. HAINLINE: May I approach, Your Honor?

2 THE COURT: You may.

3 THE WITNESS: Thank you. You said page
4 45?

5 BY MR. HAINLINE:

6 Q Yes, sir, 45, line 21. And this is
7 counsel for Compaq. Also I would like to make the
8 point there has been a dispute over the ownership
9 of the patent, and this revolves around the fact
10 that some of the title problems, some issues that
11 we believe that Mr. Lans may not be the proper
12 owner and may not be the proper plaintiff in this
13 case. We have seen some documents where Ericsson
14 was involved and recently we were produced a copy
15 of the IBM license which showed another entity that
16 was the licensor to the patent in suit. So we need
17 to see these license agreements to try to clarify
18 these issues of the royalty base.

19 And then on page 51, you are speaking, Mr.

20 Mastriani, and you say, This issue that Mr. Baker
21 raised with regard to a dispute over the ownership
22 of the patent is just mystifying. There is no
23 dispute. There is no dispute. Certainly I don't
24 know who the dispute is with.

25 Well, you knew at the time you were

147

1 speaking to Judge Penn, Mr. Mastriani, that IBM had
2 entered into a license agreement with Uniboard,
3 didn't you?

4 A Yes, I did.

5 Q And yet just a month earlier you
6 represented to the Court and to opposing counsel
7 that Mr. Lans, as you called him, had entered into
8 the license agreement with Uniboard.

9 A That's correct.

10 Q And you didn't mention Uniboard, did you?

11 A Not at that time, no.

12 Q Now you learned about Uniboard as early as
13 May 1996, didn't you?

14 A That's incorrect. I actually learned
15 about it when I received the agreement in August of
16 1996. I had thought at one time that it may have
17 been mentioned, Uniboard the company may have been

18 mentioned in May, but I believe that I corrected
19 that to state that it was not until I received the
20 -- or we received the IBM agreement in August, late
21 August of 1996.

22 Q So by August of 1996, you had -- you had
23 learned about Uniboard and you had obtained a copy
24 of the IBM license agreement; correct?

25 A That's correct.

148

1 Q If you would please open up your Exhibit 1
2 to 118. This is the IBM license agreement, is it
3 not?

4 A It is.

5 Q And you read this?

6 A Yes.

7 Q In paragraph 6.1 on page 4 --

8 THE COURT: What is the paragraph?

9 MR. HAINLINE: Paragraph 6.1, Your Honor,
10 page 4.

11 BY MR. HAINLINE:

12 Q The agreement says that IBM would pay \$1
13 million upon receipt of satisfactory documentary
14 evidence of Uniboard's right to grant the license.
15 You read that?

16 A Yes.

17 Q And you -- did you determine that the
18 million dollars had in fact been paid to Uniboard?

19 A We were told that Mr. Lans did receive
20 payment at some time.

21 Q You were told that Uniboard was made the
22 payment, weren't you?

23 A We were not told -- no, we were never told
24 that Uniboard was made the payment. We just know
25 the payment was made.

149

1 Q Knowing the payment was made, you knew
2 that there was documentary evidence of Uniboard's
3 right to grant the license, didn't you?

4 A We knew that according to this, that some
5 documentary evidence may have been shown to IBM.

6 Q Now when you met with Dr. Lans in
7 Stockholm, in September of 1996, you learned,
8 didn't you, that there was a lawyer named Gunnar
9 Berg who had represented Dr. Lans in his
10 negotiations with IBM?

11 A We learned from Delphi after we met with
12 Dr. -- Mr. Lans that the lawyer who represented
13 Uniboard in the IBM discussions was Gunnar Berg.

14 We didn't -- Mr. Lans never mentioned Gunnar Berg
15 as far as I can recall in that meeting.

16 Q All right. If -- and after you learned
17 from Delphi that Gunnar Berg had represented Dr.
18 Lans in the negotiations with IBM, did you call Dr.
19 Lans and ask him if he had any of Gunnar Berg's
20 files in connection with the IBM license?

21 A We had spoken to Dr. Lans during the
22 meeting and had written to him beforehand, asking
23 for all of the negotiation files for all of the
24 existing license agreements, and he gave us
25 everything that he said he had.

150

1 When we asked him about this provision in
2 6.1, he said he was not aware of any document that
3 was shown to IBM, and he was unaware that any third
4 party, or he said any other party had any such
5 document. It was when we met and spoke with Delphi
6 that the subject came up of going to Gunnar Berg.

7 I thought last year that Mr. Berg was
8 unfortunately already deceased, but he wasn't. So
9 the only time that we ever asked Delphi to go to
10 Mr. Berg was in September of 1996, not later on in
11 1999. That's when Mr. Lans made that request.

12 Q I got a little lost where you stopped
13 answering my question. But let me ask you this.
14 After Dr. Lans told you, or after Utterstrom told
15 you that Gunnar Berg had represented Lans and
16 Uniboard in the negotiations with IBM, did you call
17 Dr. Lans and ask him if he had any of Berg's files?

18 A No.

19 Q Did you call Gunnar Berg and ask him for
20 any of the IBM files?

21 A No, I asked Delphi to do that.

22 Q And did Delphi give you any report on what
23 they had done?

24 A I believe sometime thereafter -- it may
25 have been later on in September or October -- we

151

1 were told that -- by Delphi that a contact had been
2 made, but no documents had been found.

3 Q Is this report in writing?

4 A No, I think it was -- it could be, but I
5 believe it was in a telephone call with Tal
6 Lindstrom.

7 Q So you read the IBM license agreement and
8 you see that there is a document evidencing
9 Uniboard's right to license, and you don't have

10 that document from Dr. Lans; correct?

11 A That's correct.

12 Q And you know that Dr. Lans was represented
13 by a lawyer named Berg, and you asked Delphi to
14 contact Berg; correct?

15 A Yes.

16 Q And they told you they did and he didn't
17 have anything; correct?

18 A That's correct.

19 Q And you did not contact Berg yourself to
20 see whether this document evidencing the right of
21 Uniboard to license the patent existed in Berg's
22 files, did you?

23 A No, no, there was no need to because
24 Delphi had already done that. And I trusted Delphi
25 in that regard.

152

1 Q Would you agree with me that a document
2 transferring all or some part of the rights under a
3 patent if -- whether that document is an assignment
4 or a license depends upon what the document says?

5 MR. HAINLINE: Could you please read that
6 question back, Mr. Court Reporter?

7 [Whereupon, the reporter read the record,

8 as requested.]

9 THE WITNESS: If the document transfers
10 either all right, title and interest in the
11 ownership of the patent, part of that ownership or
12 all of that ownership in a specific geographic
13 region, and it's in writing, that is an assignment
14 of the patent.

15 Anything less is a license. So a license
16 and assignment are two completely different
17 animals. Okay. There is no relationship between
18 them whatsoever.

19 BY MR. HAINLINE:

20 Q And whether a document is a license or an
21 assignment depends upon what the document says;
22 correct?

23 A That's -- yeah, that's correct, sure.

24 Q And you knew that there was a document
25 that did something which allowed Uniboard to

153

1 license the 986 patent to IBM; correct?

2 A No. I would have to disagree with that.

3 The documentary evidence, according to paragraph

4 6.1, was to demonstrate to IBM that Uniboard had

5 the authority to grant the license; nothing more.

6 Q You knew there was a document that gave
7 Uniboard the authority to grant the license?

8 A I knew according to this there was, but --
9 but Mr. Lans said he didn't know of any document,
10 and I can tell you that on the -- that the Hitachi
11 agreement has the exact same provision and there is
12 no such document showing that Mr. Lans had the
13 authority.

14 Q In any event, you knew that Berg was Lans'
15 lawyer, and you did not make any effort to call
16 Berg to see what he had in his file; correct?

17 A My cocounsel Delphi did.

18 Q You -- please answer --

19 A Well, yes, you're right. I just told you
20 that I did not answer that before, that I did not
21 and that Delphi had.

22 Q And no one in your office did?

23 A No.

24 Q And you don't have any documents from
25 Delphi showing whether in 1996 they did or did not?

154

1 A No.

2 Q Now I believe that you said that IBM
3 contacted your firm to say that they wanted to

4 engage in negotiations about what they called the
5 Lans patent. I think you testified about that
6 earlier today. Do you remember that?

7 A Not that they wanted to engage in
8 negotiations; they contacted us to approve a letter
9 that the company wanted to send to Cirrus.

10 Q And I think you told me that they said
11 they wanted to engage in negotiations about the
12 Lans patent.

13 A You are incorrect. I didn't say that they
14 wanted to engage in negotiations at all.

15 Q Okay. They referred to the Lans patent, I
16 think you said?

17 A Yes, it -- the -- the header on the letter
18 from Edward Gershuny in 1996, I believe it was --
19 now I'm not sure, it may be 1997 -- basically the
20 re line said license agreement between IBM and H.
21 Lans, I believe it was, and then later --

22 Q Why don't we look at the document to see
23 what it really says.

24 A Uh-huh.

25 Q It's Exhibit 1 to your deposition, dash

2 A Just to be clear, I don't have an Exhibit
3 28, but it's listed as Exhibit 27. There is no
4 Exhibit 28 here. But are you talking about the
5 January 21, 1997 letter from Edward --

6 Q I apologize. 1-27. You are right.

7 A I have it.

8 Q All right. Now in response to this letter
9 from IBM, did your firm ask Dr. Lans for permission
10 to undertake this representation of negotiating
11 with IBM?

12 A Yes.

13 Q Look, if you will, please, to Exhibit 10
14 to your deposition.

15 MR. HAINLINE: That would be in the black
16 binder, Your Honor. Exhibits 2 through 24.

17 BY MR. HAINLINE:

18 Q Exhibit 10 is a memorandum to Hakan Lans
19 with a copy to Utterstrom from Mr. Schaumberg?

20 A That's right.

21 Q Dated April 7, '97?

22 A Yes. This is an incomplete exhibit. You
23 should use Exhibit 29 in your Exhibit 1 because it
24 has the attachments.

25 Q Thank you. I will.

1 Looking at Exhibit 21-29, which has the
2 attachment.

3 A I have it.

4 Q Did your office send this document to
5 Hakan Lans on April 7, 1997?

6 A Yes, it did.

7 Q Our telephone conversation last week
8 reinforced the need to clarify the Cirrus Logic
9 situation. I am sending these two letters to you
10 in draft to obtain your approval for a more
11 aggressive posture towards IBM and to confirm that
12 we are authorized to act on behalf of Uniboard.

13 Now in fact you did send out letters to
14 IBM on behalf of Uniboard, didn't you? Your firm?

15 A Actually at -- I'm not sure about whether
16 any letters went out after this date to IBM. There
17 was correspondence beforehand, but I don't know
18 that there was any after we sent this fax and after
19 we received the authorization from Mr. Lans on
20 April 9th, which is tab 30, Exhibit 30.

21 Q Well, let's go to tab I-30 first. I'm
22 sorry, it's not 1-30, it's tab -- it's Exhibit 30.

23 MR. HAINLINE: I'm sorry for the
24 confusion, Your Honor.

25 BY MR. HAINLINE:

157

1 Q Let me get Dr. Lans writing you back. I'm
2 sorry, Mr. Mastriani, you mentioned that Dr. Lans
3 did give the approval that you sought?

4 A In your next exhibit, Exhibit 30, it says
5 -- it's a reply to the fax dated April 7th. I do
6 agree -- I'm quoting. I do agree to your proposed
7 letter to IBM. They simply must take a position if
8 Cirrus Logic claims that they are covered by the
9 agreement between IBM and Uniboard AB.

10 There's a couple of typos in there that I
11 corrected.

12 Q All right. Well, maybe we'll forgive
13 those.

14 So in Exhibit 1-30, April 9, 1997, Dr.
15 Lans wrote you and said that you were authorized to
16 proceed on behalf of Uniboard to negotiate with IBM
17 as you had requested; correct?

18 A Yes. He approved of the letter, the draft
19 letter in that, correct.

20 Q Now if you would look in your black binder
21 of exhibits 2-24 of your deposition.

22 A Yes. And which exhibit is it, please?

23 Q Eleven.

24 A Yes.

25 Q This is the letter on April 9, 1997,

158

1 written by Mr. Schaumberg of AMS to Mr. Gershuny of

2 IBM.

3 A Yes.

4 Q And it was written as you see in the top

5 line of the second page on behalf of Uniboard;

6 correct?

7 A You mean in the re line?

8 Q No.

9 A Where?

10 Q Page 2, top of the page.

11 A Yes, I'm sorry. I see that, yes.

12 Q On behalf of Uniboard Aktiebolag, do you

13 see that?

14 A Yes, I do see that.

15 Q And then in the second from the last

16 paragraph, where it is flush left, By this letter

17 we invoke the provisions of section 11.2 on behalf

18 of Uniboard.

19 A Yes.

20 Q And then if you would, please, look at

21 Exhibit 12 to your deposition.

22 A I have it.

23 Q This is a letter from Mr. Schaumberg to

24 Mr. Gershuny of IBM, April 18, 1997?

25 A That's correct.

159

1 Q And he's saying to Mr. Gershuny that he is

2 -- your office to provide information to help

3 clarify the scope of the license granted to IBM by

4 Uniboard is appreciated.

5 A Yes.

6 Q And Mr. Schaumberg had requested,

7 according to your knowledge, that IBM provide your

8 office with some of the information about the scope

9 of the license; correct?

10 A No, not about the scope of the license.

11 It was about the -- about the nature of the joint

12 venture. The scope of the license was a legal

13 matter. We wanted -- we wanted to know what the

14 facts and details were about the joint venture in

15 Fishkill, New York that was named Micrus, which was

16 owned by IBM 50 percent and Cirrus Logic 50

17 percent.

18 Q Did Mr. Schaumberg or you or anybody at

19 AMS ever ask IBM for a copy of whatever document
20 might exist that was satisfactory evidence of
21 Uniboard's right to enter into the IBM license
22 agreement?

23 A No.

24 Q Now at the time that you wrote Mr.
25 Gershuny in April of 1997, you knew that you did

160

1 not have such a document?

2 A That's correct.

3 Q And you did not personally, or anybody in
4 your office, try to get it from Mr. Berg; correct?

5 A That's correct.

6 Q And you didn't ask -- neither you nor
7 anybody else in your office asked IBM for it;
8 correct?

9 A That's correct.

10 Q Now let's look at the book that Mr.
11 Handleman provided to you this morning. It's
12 called -- it's labeled Louis Mastriani Intervenor
13 Exhibits.

14 MR. HAINLINE: Your Honor, it looks like
15 this.

16 THE COURT: Yes.

17 THE WITNESS: All right.

18 BY MR. HAINLINE:

19 Q And please turn to tab 4. I think that I
20 heard you this morning -- please correct me if I
21 misheard -- that when you wrote this letter to Dr.
22 Lans, I think you characterized it as you wrote him
23 a letter telling him the information you wanted him
24 to gather for you. Did I hear you right?

25 A The information that we were -- that we

161

1 wanted to have.

2 Q Did I hear you right that you -- when you
3 wrote this letter to Dr. Lans, I think you
4 testified that it was a letter telling Dr. Lans
5 what you wanted him to gather for you?

6 A What I told him in this letter is that we
7 wanted to come to meet with him in Sweden, and I
8 mentioned two Washington-based patent attorneys
9 with strong electrical engineering credentials and
10 extensive computer --

11 Q I'm not asking you what the letter says.
12 I'm asking you -- and I'll move on. I'm asking you
13 about your characterization of it this morning.
14 Did I hear you right when you characterized this

15 letter as a request to Dr. Lans to get information

16 for you?

17 A Yes, that's correct.

18 Q Now look at the letter. It doesn't say

19 that, does it?

20 A I -- I think it does.

21 Q First page, end of the second sentence. I

22 would like to come to Sweden with at least one of

23 them at your earliest convenience to cover the

24 following matters.

25 A Yes.

162

1 Q It doesn't say I want you to get this

2 information for us. It says we're coming to cover

3 the matters. Right?

4 A Mr. Hainline, to cover the matters in

5 order to go over your correspondence files, the

6 license agreements, the negotiation files, means

7 that we want to look at them. That's what "cover"

8 means when I used it here in this letter.

9 Q And one of the things that you knew you

10 needed to cover was the license agreements that you

11 have entered as well as the negotiation files.

12 A That's correct.

175

13 Q And you learned when you went to Sweden
14 that the person who had negotiated the IBM license
15 was a lawyer named Gunnar Berg.

16 A That's correct.

17 Q And Dr. Lans said he didn't have any
18 documents such as those referred to in the IBM
19 license agreement.

20 A He had -- he had the IBM agreement.

21 Q And nothing else?

22 A And nothing else, correct.

23 Q And didn't have the negotiation files?

24 A That's correct, if any existed.

25 Q Pardon me?

163

1 A If any existed.

2 Q If any existed. But the lawyer who
3 negotiated them, you didn't call.

4 A Delphi called them.

5 Q And you have no writing to confirm that?

6 A No, I don't.

7 THE COURT: Well, you didn't call them?

8 THE WITNESS: Yes, absolutely, Your Honor.

9 We did not. I didn't and nobody in my office did.

10 THE COURT: All right.

176

11 BY MR. HAINLINE:

12 Q Now let's look for a minute at this letter
13 from German counsel again. I think I heard you say
14 that the first time you ever heard from anybody
15 that Uniboard owned the 986 patent was when Gateway
16 filed its motion to dismiss. Did I hear that?

17 A That's correct.

18 Q Now look, if you would, for a minute at
19 Exhibit 15.

20 A In which book?

21 Q In the book that is Exhibits 2 to 24 to
22 your deposition. Now Mr. Vorwerk, the German
23 lawyer, wrote to your office with his legal and
24 factual conclusions based upon the information that
25 your office had provided him; correct?

164

1 A He actually says he was given a summary of
2 our findings with respect to the problems put to
3 our attention. That's what he says on the first
4 page.

5 Q All right. And I think you testified
6 earlier that the information he received he got
7 from your office?

8 A That's correct, from both -- from Mr.

9 Schaumberg's letters.

10 Q All right. Your partner, Mr. Schaumberg.

11 A That's correct.

12 Q And he says here on page 2 Uniboard

13 Aktiebolag, hereinafter Uniboard, holds various

14 patents, i.e., U.S. patents, and then he lists the

15 patent numbers.

16 Now if you read the word "holds" as in any

17 way equating to "own," whether he was right or

18 wrong, Vorwerk is telling you that's what he

19 thinks, isn't he?

20 A Mr. Vorwerk made an erroneous statement

21 based upon the facts that were given to him.

22 That's the way it was interpreted. He's not making

23 a statement of fact based upon his independent

24 investigation. He misread the letter of April 7th

25 to 9th by Mr. Schaumberg that's earlier on when Mr.

165

1 Schaumberg clearly identified Hakan Lans as the

2 owner of the patent, and then Hakan Lans as the

3 owner of Uniboard. That was the party that

4 negotiated the license with IBM. He interpreted

5 that to mean that Uniboard owned the license. That

6 is an erroneous factual conclusion.

7 Q It may be, and what he had to come to that
8 erroneous conclusion were the statements of Mr.
9 Schaumberg and the IBM Uniboard license agreement;
10 correct?

11 A Yes, among other things.

12 Q Well, what other things did he have that
13 led him to this erroneous conclusion?

14 A You would have to ask Mr. Vorwerk about
15 that.

16 Q Did you?

17 A No.

18 Q You didn't?

19 A No. There was no need to ask him.

20 Q No need. Let's look at the Exhibit 6 to
21 Hakan Lans' deposition. It's in a black book.
22 It's not Intervenor's book. It's not Intervenor's
23 book.

24 A I've got it.

25 Q Okay. Exhibit 6 to Hakan Lans'

166

1 deposition.

2 A Is it the February 19th, 1997 --

3 Q It is.

4 A Okay.

5 Q On February 19, 1997, Dr. Lans said to
6 you, The patent has been transferred, didn't he?

7 A He says, The patent has been transferred
8 to the company from many years ago, and the
9 agreement with IBM was made with Uniboard AB.

10 Q So if that transfer was a license or if
11 that transfer was an assignment would depend upon
12 what the transfer said; correct?

13 A The transfer that Mr. Lans was talking
14 about here was the -- what he called the
15 arrangement between he and Uniboard whereby
16 Uniboard would receive some revenues from the
17 patent. There was no -- nothing more.

18 Q All right. Well, he's not a lawyer, is
19 he?

20 A Well, he's not a lawyer, but I'll tell you
21 this; he ran the Hitachi litigation for 10 years.
22 That's what he told us. So he was very conversant
23 with legal proceedings in Germany, and he was also
24 involved very heavily in interference proceedings
25 at --

167

1 MR. HAINLINE: Your Honor, he can argue on
2 cross-examination, but I asked him the question if

3 he's a lawyer, and he gives me -- and then he wants
4 to give an argument.

5 THE COURT: He's not a lawyer. All right.

6 THE WITNESS: He's not a lawyer.

7 BY MR. HAINLINE:

8 Q And whatever arrangement he had or didn't
9 have with Uniboard, you knew was the subject of a
10 document?

11 A No, it -- to the contrary, Mr. Hainline.
12 When I asked Mr. Lans whether his arrangement with
13 Uniboard, whereby Uniboard received revenue,
14 whether there was an agreement, he said no, there
15 was not. The only thing that turned up was the
16 annual report for Uniboard that stated that the
17 company -- the company administered the patent.

18 Q Okay. I'll get to that in a minute.

19 Now you knew that IBM only gave money to
20 Uniboard after it received a document of some sort,
21 according to the license agreement?

22 A It received the first million dollars
23 based upon supposedly the receipt of a document and
24 the -- it paid the next \$500,000 based upon the
25 successful outcome in the Hitachi litigation.

1 Q Did you ever ask anybody with IBM at any
2 time when you were representing Uniboard in your
3 negotiations with IBM if there was such a document?

4 A No. We -- that was --

5 Q I really didn't ask you for your
6 explanation.

7 Now there were -- we talked about some
8 interrogatory answers that were drafted and that
9 Dr. Lans commented upon in January of 1999. Would
10 you please look at the Exhibit 18 to Dr. Lans'
11 deposition.

12 A Yes.

13 THE COURT: Which book is that?

14 MR. HAINLINE: This is the book that says
15 Exhibits to the Deposition of Hakan -- is it Hakan
16 -- hold on a minute. Sorry, Your Honor. I
17 apologize. It's Mastriani Exhibit 18. It's in one
18 of the -- the black book you were already looking
19 at.

20 THE COURT: Okay.

21 BY MR. HAINLINE:

22 Q Now I think again you testified this
23 morning that the first time anybody ever said to
24 you that Uniboard owns the patent is when Gateway
25 made its motion to dismiss.

1 A I said this morning the first time I found
2 out about an assignment of the ownership of the
3 patent to Uniboard was in Gateway's motion.

4 Q Well, the record will show whatever you
5 said. If I misheard, I misheard. This document
6 says, however, the company Uniboard is the owner of
7 the 986 patent rights. Correct?

8 A Patent rights, correct.

9 Q Now you have mentioned several times that
10 there was an annual report that Uniboard filed that
11 talked about what Uniboard's rights were and were
12 not; correct?

13 A That's correct. We found out some time in
14 late 1996 into 1997, I'm not sure quite when, that
15 the annual report, the '89 annual report of
16 Uniboard talks about the fact that the company took
17 over administration of the patent on behalf of the
18 owner Hakan Lans.

19 Q All right. You found this out in '96 or
20 '97?

21 A Yes. Somewhere in there.

22 Q All right. Before you filed the lawsuit?

23 A That's correct.

24 Q Now did you personally look at this annual
25 report that you are talking about?

170

1 A No, the --

2 Q Before you filed the lawsuit?

3 A No. Delphi did and told us what was in
4 there.

5 Q Did you ask Delphi if there were other
6 annual reports?

7 A Delphi talked about looking at all of the
8 annual reports, so what they said was that --
9 exactly what I said, is that -- is that the annual
10 reports reflected that. And I actually think there
11 was just two that actually explicitly said that.
12 Those would have been the '89 to '90 and the '90 to
13 '91 reports.

14 Q And those all said that only -- those said
15 that Uniboard took over administration of the
16 patent; correct?

17 A Generally that's what they said, yes.

18 Q All right. Look at Exhibit 1 to your
19 deposition, and the first document in Exhibit 1 is
20 your intervenor's memorandum.

21 A Is it an exhibit or just a --

22 Q It is the first document in the exhibit.

23 It is part of the exhibit as the first document,

24 which is your memorandum.

25 A Okay.

171

1 Q Please turn to page 18, in the footnote.

2 A I don't have a footnote here.

3 Q Page 13, I'm sorry. Footnote 7.

4 A Yes.

5 Q Lans also stated that this arrangement was

6 reflected in Uniboard's annual reports. A review

7 of the English translation of the administration

8 report of Uniboard's annual report for the period

9 ending December 31, 1989, after the IBM license

10 agreement, supported this representation indicating

11 that the company took over administration of a

12 patent relating to graphic terminals, and then you

13 referenced Exhibit 29. Correct?

14 A That's correct.

15 Q And that's the Exhibit 1-29, the '89

16 document that you gave to the Court?

17 A Now your Exhibit 29 is something else. I

18 -- this exhibit -- 29 is not what is being referred

19 to.

20 Q I -- that happens in documents. It's
21 Exhibit 1-31.
22 A This is the translation, the certified
23 translation that Mr. Lans sent us for that annual
24 report. This came with a cover fax from Mr. Lans
25 that's already in evidence, I believe.

172

1 Q Now would you please turn to Exhibit 24 to
2 your deposition.
3 A That's a separate book?
4 Q It's in the black book.
5 A I have several black books.
6 Q It's the one that says Exhibits 2 to 24 to
7 the Deposition of Louis Mastriani.
8 A And which exhibit are you referring to?
9 Q 24.
10 A Yes.
11 Q You heard testimony yesterday about the
12 word "ager" in the annual -- in one of the annual
13 reports; correct?
14 A That's correct.
15 Q And if you look at Exhibit 1-31 that you
16 presented to the Court, the word "ager" is not in
17 it; correct?

186

18 A I'm sorry, say that again.

19 Q If you look at Exhibit 1-31 --

20 A This is in the other book; right?

21 Q It is.

22 A Yes.

23 Q You will see that "ager" is not in the

24 Swedish, which is up on the top of the document.

25 A That's right, the term "ager" is in the

173

1 subsequent report, the 1990 report.

2 Q And on August 1, 2001, you wrote to Petter

3 Utterstrom, We -- and this is in Exhibit 24 -- We

4 absolutely do not want to get into the translation

5 of actual words for a very good reason. Everyone

6 agrees that "overtagit" translates into "acquire,"

7 which is defined as to gain possession of. We

8 agree that this does not necessarily connote

9 ownership. However, in the 1990 annual report, the

10 Swedish "ager" means "own," which also places the

11 wording in the 1989 report in such a posture that

12 any reasonable person would conclude that ownership

13 of the patent is likely.

14 Now at the time that you were

15 investigating the case before you sent out the

16 notices of infringement and before you filed the
17 lawsuit, did you ask Peter Utterstrom to look at
18 the -- to let you look at the Uniboard annual
19 reports?

20 A No.

21 Q Did you ask Dr. Lans?

22 A He did not have copies of them.

23 Q Did you ask his accountant?

24 THE COURT: Did you --

25 THE WITNESS: No, I did not. I think we

174

1 asked. We asked for any copies of corporate
2 documents that he had, and he didn't have any.

3 BY MR. HAINLINE:

4 Q All right. But you knew that Utterstrom
5 had access to them because he at least told you
6 about one of them.

7 A Yes, because he was -- he had talked -- he
8 or Tal Lindstrom had talked to the -- to the
9 accountant. At that time it was Margaretha
10 Ekefjard, who wrote the -- actually both of these
11 annual reports.

12 Q And you would agree with me that, to
13 paraphrase your own letter, if you take the '89 and

14 '90 reports together, it makes -- it creates some
15 ambiguity about what the ownership is, doesn't it?
16 A No, it really doesn't because the
17 definitions being given here were by someone who
18 was not expert, namely myself, using a dictionary,
19 and it turns out that the word "ager" is not
20 translated as "own," and as Madam Ekefjard stated
21 under oath, who wrote that report, she said that
22 Uniboard does not own the patent, it just
23 administers it for the owner Hakan Lans. And that
24 -- and there's many more e-mails, by the way, that
25 follow this, that get into this issue.

175

1 Q Okay. And before you filed the lawsuit,
2 in terms of the investigation that you did, at that
3 time you just took Peter Utterstrom's word for what
4 the annual reports connoted or did not connote;
5 correct?

6 A I took Peter Utterstrom's word, coupled
7 with statements made by Mr. Lans that he was the
8 owner of the patent, that Uniboard only had the
9 rights to receive some revenues. And Mr.
10 Lindstrom, by the way.

11 Q You always took Dr. Lans' statements at

12 face value?

13 A Not at face value, per se, no. We had
14 access to documents and other people to talk to,
15 but on certain things that were black and white and
16 very clear, we took him at his word.

17 Q So when Dr. Lans told you that Uniboard
18 only had the right to revenues, you took him at his
19 word, and when Dr. Lans told you that the patent
20 has been transferred to Uniboard, you cross-examined him;
21 correct?

22 A First I'm not quite sure what you're
23 referring to. When we asked him about the -- about
24 the annual report, it was corroborated by the
25 corporate documents according to Delphi. And as

176

1 far as -- when you say asked him about the second
2 part, which communication are you talking about?

3 Q In February 19, 1997, when he said the
4 patent has been transferred to the company
5 Uniboard.

6 A I didn't cross-examine him at all. I
7 asked him a question about what he meant by that,
8 and he said I mean the fact that Uniboard -- the
9 arrangement I have with Uniboard to receive

10 revenues. That was a cross-examination. I never --

11 Q Did you ever --

12 Q Let me just finish, please. I never --

13 Q I think you have answered my question.

14 THE COURT: Let him answer.

15 MR. HAINLINE: All right.

16 THE WITNESS: Please. Thank you, Mr.

17 Hainline.

18 I never cross-examined Mr. Lans at any

19 time except for the one, if you want to call it

20 cross-examination, that one memo when he said that

21 the assignment that Gateway produced was invalid.

22 If you want to call that cross-examination, then

23 fine. But that was the only time that he was ever

24 given a list of questions to come up with, you

177

1 know, who know what and when and how.

2 BY MR. HAINLINE:

3 Q Did you ever ask Dr. Lans what is the

4 document that defines Uniboard's rights?

5 A He said there was no document. He had an

6 arrangement. That's what he said. An arrangement.

7 He made it happen. It just happened. And it was

8 corroborated by the '89 agreement, which was the

9 first time that acknowledged that arrangement.

10 You have to remember Mr. Lans and Uniboard
11 were -- it was a one-man company, along with his
12 wife, as I say, as a codirector.

13 THE COURT: I take it you asked him?

14 THE WITNESS: Yes.

15 THE COURT: That was the question.

16 THE WITNESS: That's the answer.

17 BY MR. HAINLINE:

18 Q Now turn, if you would for a minute, to
19 AMS Exhibit 16.

20 THE COURT: Is that the small black book?

21 MR. HAINLINE: Yes, Your Honor. Exhibits
22 2 through 24 to Mastriani's deposition.

23 THE WITNESS: Did you say 16, Mr.
24 Hainline?

25 BY MR. HAINLINE:

178

1 Q I did.

2 A Thank you. Yes, I have it.

3 Q This is August 8, 1997, Utterstrom is
4 writing to you.

5 A Yes.

6 Q You received this document.

7 A Yes, I did.

8 Q This is before you filed the lawsuit.

9 A That's correct.

10 Q Paragraph 2, The starting point is the
11 fact that HL did ask us, the two firms, to
12 represent him/Uniboard in the collection of license
13 fees from the infringers.

14 And every time he refers in this document
15 to HL, he puts HL/Uniboard, doesn't he?

16 A He does.

17 Q Did you write to Mr. Utterstrom and ask
18 him or correct him to say, no, we're not
19 representing Uniboard, we're representing Lans?

20 A No, I assumed he was referring to the fact
21 that his firm represented Uniboard in some other
22 matter because he was -- because Delphi was
23 actively --

24 Q I didn't ask you why, but I'll -- finish
25 your explanation and I'll let you go ahead and

179

1 explain your answers to your heart's delight.

2 A I'm not trying to explain my answers
3 except to give a complete answer. I -- we knew
4 that Delphi was representing Uniboard with regard

5 to tax matters and dealing with the Swedish tax
6 authorities on behalf of Mr. Lans and also
7 Uniboard. So I didn't take that statement, did ask
8 us, the two firms, to represent him and Uniboard to
9 be referring to us, because the only agreements we
10 had were with Mr. Lans and Mr. Lans alone.

11 Q What other firm did you understand the two
12 firms to include other than your firm and Delphi?

13 A No, that's exactly what I understood it to
14 be, both firms.

15 Q And he says to represent him/Uniboard in
16 the collection of license fees for the infringers.

17 Q I will just point out I interpret a slash
18 between two things to mean "or," not "and." It
19 means "or." And when you say and slash or, it's
20 "or," not "and."

21 Q Just for curiosity, in the declaration
22 that you filed with the Court -- let's look at it
23 for a minute. It's Exhibit 1 -- whoops. Let's
24 see. Exhibit 2 to your deposition in the book
25 Exhibits 2 through 24.

180

1 A I have it.

2 Q Looking at paragraph 3, did you intend to

3 convey to the Court that until Gateway filed its
4 motion to dismiss, you didn't know anything about
5 Uniboard?

6 A No, not at all.

7 Q Because if you had intended to convey that
8 message to the Court, that would have been false;
9 correct?

10 A That we did not -- we had not heard about
11 Uniboard?

12 Q Uniboard, yes.

13 A Prior to August let's say 10th or 13th,
14 1999? No. I was not trying to convey that to the
15 Court.

16 Q If you had tried to convey that, it would
17 have been false, wouldn't it?

18 A That's correct.

19 Q Now the money that was negotiated and
20 collected in your representation of Dr. Lans in
21 this case was all paid to Uniboard's account, was
22 it not?

23 A At Mr. Lans' instruction, it was paid,
24 yes.

25 Q Well, sure. Don't you always pay your

1 client according to your client's instructions?

2 A Yes.

3 Q So there's nothing insidious about that,

4 is there?

5 A No, but the -- we had communicated with

6 Mr. Lans and asked him for his -- the wire transfer

7 instructions for his account, for him personally,

8 and the reply that we received was to wire it to

9 Uniboard's account.

10 Q All right. And that's what you did, every

11 penny?

12 A That's correct.

13 Q Correct?

14 A Whatever was distributed was distributed

15 to Uniboard at Mr. Lans' instruction.

16 Q Now when you began to discuss with Dr.

17 Lans representing him in this case, he told you

18 that he was very busy and did not want to be much

19 involved in the case, didn't he?

20 A No, he didn't really say that, actually.

21 What he said was that due to his experience in the

22 Hitachi litigation, where he said he basically did

23 everything but argue the case -- he wrote the

24 briefs, he formulated the arguments, he analyzed

25 the prior art, and so on, that he did not want to

1 get drawn into any other litigation or licensing
2 that was going to drain his time to that extent.
3 And for that reason he just wanted to be involved
4 to the extent that he was required to give
5 information to testify and also to the extent that
6 he could give us documents and consult on technical
7 issues regarding below the infringement.

8 Q Please look at Exhibit 1-7 to your
9 deposition. It's a letter you wrote to Dr. Lans on
10 March 20, '96?

11 A Yes.

12 Q And you say at the last sentence on the
13 first page, I understand from Tal -- that's Tal
14 Lindstrom, correct?

15 A Yes.

16 Q -- that you do not have an interest in
17 personally initiating litigation against infringers
18 of your patent.

19 A That's correct.

20 Q And that's what you were told by
21 Lindstrom?

22 A At that time, that's correct.

23 Q And then if you would look for a minute,

24 please, at Exhibit 1-8, it is a letter of May 29,
25 1996 from you to Mr. Lans, Dr. Lans.

183

1 A Yes.

2 Q And you say on the second page, You have
3 indicated that you do not wish to be directly
4 involved in managing these activities because of
5 commitments to other projects.

6 A Yes.

7 Q And that's what Dr. Lans told you?

8 A That's what he told us at that time in the
9 May meeting.

10 Q All right. And is there any place where
11 you write or confirm or have notes of Dr. Lans
12 saying to you that I ran the Hitachi litigation and
13 that's why I'm not interested in doing this now?

14 A I know that there's something in the
15 documents about him talking about his involvement
16 in the litigation, but whether he -- to the extent
17 that he went into that kind of detail, I don't
18 know.

19 Q Let's look back at Exhibit 1-7 for a
20 minute and look at the second page with me. You
21 mentioned --

198

22 MR. HAINLINE: I'm sorry, Your Honor,

23 that's -- 1-7 is in this book.

24 THE COURT: All right.

25 BY MR. HAINLINE:

184

1 Q You mentioned in the -- I think it's the
2 second -- third sentence on the second page, The
3 second option would be for you to assign a partial
4 interest in the patent to an existing company.

5 What is the assignment of a partial
6 interest in a patent?

7 A That's a partial interest and partial
8 ownership of the patent. I told you before that
9 there's three ways you can do it. It's either all,
10 some, or all in a specific geographic region.
11 That's the only definition of assignment under
12 American law as it relates to a patent, as long as
13 it's a written document.

14 Q And it's a written document?

15 A It must be in writing. An oral
16 assignment, no matter how explicit, no matter how
17 many witnesses, whether made in front of a judicial
18 officer, is of no force and effect.

19 Q Okay.

20 A It must be in writing.

21 Q And must a transfer of the right to
22 license be in writing?

23 A A transfer of a right to -- no. Not
24 necessarily.

25 Q But I -- so when IBM required a writing to

185

1 evidence Uniboard's right to license the 986
2 patent, they were asking for something that was not
3 required under law, but they needed to protect
4 themselves?

5 A Yeah, but the way we interpreted it at
6 that time was that they wanted to be shown
7 something that said that Mr. Lans had given
8 Uniboard the authority to license, to assign the
9 license on behalf -- to assign the license that
10 granted the license to -- the license agreement
11 that granted the license to IBM.

12 Q And they wanted to see a writing that said
13 that and made it clear that Uniboard actually could
14 grant the license?

15 A That's the way we interpreted it.

16 Q All right. And that's the document that
17 Gateway was able to obtain from IBM?

18 A It transpired ultimately that that's what
19 Mr. Lans had signed, although he stated -- he
20 states that he signed the second document that
21 invalidated that first document, and then he came
22 up with the third document which was the
23 clarification contract.

24 Q And you didn't ask IBM for any of the
25 documents they had; correct?

186

1 A No, we were involved with --

2 Q No, you did not ask IBM for any of the
3 documents they had related to the Uniboard license;
4 correct?

5 A No. I answered that before. That's
6 correct.

7 Q And you didn't ask any of -- I don't know
8 if I asked you if you asked any of Dr. Lans'
9 accountants for their files before you filed the
10 lawsuit.

11 A Delphi --

12 Q Did you ask?

13 A We asked Delphi to do that and Delphi had
14 gone through those and reported back to us.

15 Q Did they make these reports in writing?

16 A I believe so, yes. I have seen memoranda
17 or e-mails to that effect that -- of discussions
18 with the accountants and looking at the files.

19 Most of the corporate documents were a
20 public record.

21 MR. HAINLINE: We don't have documents
22 from before the lawsuit was filed from Delphi
23 saying that they had made any search of
24 accountants' records, Your Honor. I would request
25 if there are such documents that we get them, or if

187

1 we don't, that this testimony be stricken.

2 MR. HANDLEMAN: Your Honor, may I respond
3 to that?

4 THE COURT: Yes.

5 MR. HANDLEMAN: Your Honor has made a
6 decision in the case, there's a motion for
7 reconsideration. Your Honor is hearing witnesses.
8 The concept that counsel seems to be making is that
9 we have to start producing documents. He has
10 another case. This isn't that case. This is a
11 case about Your Honor deciding whether or not this
12 decision should be reconsidered.

13 So, you know, there has got to be an end

14 at some point. We have produced, we have the
15 witnesses, we got documents at the end yesterday,
16 surprise and whatnot. I don't understand why he is
17 making document requests, and I would object to it.
18 I think we need to get this finished with and have
19 the Court make the decision.

20 And as to the other case, when there are
21 discovery requests that are made, then we would
22 respond to discovery requests, just as we would
23 have to counsel for Mr. Lans.

24 THE COURT: Have these documents been
25 requested?

188

1 MR. HAINLINE: We requested in a whole
2 series of letters, Your Honor, for all of the --
3 for all of their files. Dr. Lans as the former
4 client here would have a right to this document if
5 it exists. They are supposed to -- under the --
6 nothing to do with discovery, but under the bar
7 rules, they are supposed to turn over their files.
8 And this is a document that if it existed should
9 have been turned over and wasn't.

10 MR. HANDLEMAN: Your Honor, counsel has
11 filed a legal malpractice case. He has filed a bar

12 complaint. He made requests for documents. My
13 understanding is that some documents were produced,
14 some documents weren't produced. The bottom line
15 is this is not -- there is no -- there are no
16 discovery requests. There have been no requests
17 for production of documents in this case, and
18 therefore there hasn't been any responses.

19 Whatever has been produced has been voluntarily
20 produced, consistent with, at least my client
21 believes, with the bar rules.

22 He has filed a bar complaint. The record
23 is replete with documents and charges that are
24 made. That, I would submit to Your Honor, is not
25 this case.

189

1 Now I don't even think the document that
2 he is talking about, if it exists, is germane to
3 the issues before the Court. And I would submit,
4 therefore, that -- I don't know if he is seeking to
5 have the Court keep this open indefinitely, but I
6 would hope that we would finish the examination and
7 the Court make a determination on the motion for
8 reconsideration, period.

9 MR. HAINLINE: What is germane to the

10 Court, Your Honor, is whether or not lawyers
11 representing a layman who have a document before
12 them that says there exists a document giving the
13 right of this company to license an agreement, and
14 the client says I don't have these files, whether
15 it is prudent, whether it is prudent under rule 11
16 for the lawyers to just delegate, if they did, this
17 search of files to somebody else.

18 Now he didn't talk to Dr. Lans' lawyer, he
19 didn't talk to the accountant, and now he tells us,
20 well, I -- somebody else talked to the accountant,
21 and we got a report.

22 Later in this case the accountant did
23 produce some documents. What is the explanation
24 for that?

25 THE COURT: Do you have those documents?

190

1 MR. HAINLINE: No, you got them. The
2 accountants produced the clarification agreement
3 from their files, and Mr. Mastriani testified this
4 morning that he not only got that document
5 produced, but he had it produced directly to him
6 and not through Dr. Lans so that he would have a
7 chain of custody. So that we know that that

8 accountant had some documents.

9 And we heard the testimony of Dr. Lans
10 that the accountant prepares the annual reports,
11 and we know that Mr. Utterstrom was aware of the
12 annual reports. I mean these accountants weren't
13 mysteries. Gunnar Berg wasn't a mystery. Where is
14 -- where is any evidence that anybody -- anybody --
15 before this lawsuit was filed searched anything?

16 The only evidence about Gunnar Berg is Mr.
17 Utterstrom's document that says, well, I have to
18 look for that in her files in 1999. And Mr.
19 Mastriani, who claims to have at least in some
20 cases taken meticulous notes, on these key issues
21 has not a document. And then he says, well, some
22 exist. Those are client files that should have
23 been turned over, and should have been turned over
24 to a client who in our motion believes it had been
25 abandoned by its lawyers and had a right to look at

191

1 it under the bar rules, not discovery.

2 MR. HANDLEMAN: Your Honor, may I respond
3 to that just briefly?

4 We don't even know if these documents
5 exist. We don't -- we haven't been through all the

6 files. There hasn't been a document production.
7 I do know this, despite what counsel says,
8 documents were made available when he entered the
9 record as counsel in this case before he joined the
10 law firm. The bottom line is, Your Honor, I don't
11 know if those documents exist. There are thousands
12 and thousands of documents, and that's why when
13 somebody files a suit for legal malpractice, there
14 is discovery and the like. That is not the issue,
15 I do not believe, that is before the Court.

16 And to the extent that a witness says that
17 I think a document exists to support my position
18 and the document doesn't come forth with a
19 document, then the Court says, Your Honor, we'll
20 take it for what it's worth.

21 But this idea that suddenly there are
22 documents that we are withholding is just simply
23 not correct. And I would submit that this is
24 basically creating a red herring in terms of these
25 files and these documents and what counsel says is

192

1 part of the responsibility.

2 The documents that we had -- for example,
3 the clarification agreement, yeah, he testified

4 that he wasn't going to let Mr. Lans have his hands
5 on it because he didn't know about it until the
6 end, and it would have been -- made it worse from a
7 credibility standpoint if that document went
8 directly to the client. So that's why it was
9 submitted in the underlying litigation to Your
10 Honor.

11 But I believe that -- I don't know if
12 those documents exist. There are thousands and
13 thousands and thousands of documents --

14 THE COURT: What is the document?

15 MR. HANDLEMAN: I don't even know what the
16 document is. What document did the witness
17 indicate he thought might exist?

18 MR. HAINLINE: A document from Mr.
19 Utterstrom stating that he had looked in the
20 accountant's files, one, that there was a search,
21 and two, having looked, there were no documents.

22 Now that's a very important fact. If --
23 it may be important that it was delegated
24 completely to another lawyer. But if it wasn't
25 delegated at all, if there is no record of any

1 search of the accountants and no record of any

2 search of Gunnar Berg before 1999, I think that is
3 highly relevant.

4 MR. HANDLEMAN: But, Your Honor --

5 THE COURT: Did you -- are you familiar
6 with the document?

7 THE WITNESS: Your Honor, no, what my
8 testimony was is that I know that Delphi talked to
9 the former accountant, which was Mr. Gyllenhoff,
10 and then the current accountant, Ms. Ekefjard, and
11 looked at corporate documents. I know that for a
12 fact at this time.

13 I believe that I recall -- I believe -- if
14 I recall, I believe that there are references to
15 those contacts by the Delphi attorneys with -- with
16 the former and the current accountant. And we did
17 -- I will say this to you -- delegate to our
18 cocounsel Delphi in Sweden the contacts with those
19 people, and we did rely upon them.

20 THE COURT: Do you have the documents?

21 THE WITNESS: We may. I'm talking about
22 like e-mails and memos and memos and faxes, so
23 there's a lot of -- that's why I can't say there's
24 a particular one, but I -- in the back of my mind,
25 I believe there's some references to those

1 contacts. But I can't recall who made them,
2 whether it was Mr. Utterstrom or Mr. Lindstrom or
3 somebody else at Delphi, and when that was.

4 THE COURT: How long would it take you to
5 determine whether or not you have the documents?

6 THE WITNESS: I would have to go -- we'd
7 have to go back and look through all of the
8 documents, and I mean every e-mail, fax,
9 everything.

10 THE COURT: Related to --

11 THE WITNESS: The whole case, yeah, the
12 whole matter up until -- up until I guess the
13 filing of the Gateway motion.

14 And then the other thing is that I will
15 add that -- and we found this out because Mr. Lans
16 keeps on producing documents that we hadn't seen
17 before -- Delphi has a number of documents that we
18 haven't seen about things that they did with regard
19 to the case, and other matters. So it is very
20 possible that Delphi has that, too.

21 But I have a belief, let's put it like
22 that, I don't have a recollection, that there are
23 some -- there is a reference or maybe references to
24 those contacts. But I do know for a fact and I can

25 say that Delphi did interact with the accountants

195

1 and looked at the corporate records before the suit
2 was filed, and did try to get documents from Mr.
3 Berg's files well prior to the suit being filed.

4 THE COURT: All right. What is your
5 request, counsel? If any.

6 MR. HAINLINE: My request, Your Honor, is
7 that if there is any document that supports the
8 claim that anybody, either Delphi on its own or
9 Delphi acting at the instance of AMS, looked at
10 Gunnar Berg's files or the accountant files, before
11 the lawsuit was filed, we should have that
12 document.

13 THE COURT: Anything else?

14 MR. HANDLEMAN: The only thing I can say,
15 Your Honor, to the extent Delphi obviously is not a
16 party here in this proceeding, but Delphi is a
17 party to the legal malpractice case, and we would
18 love to get any documents that Delphi sent to Mr.
19 Lans, but we can't get it because of the attorney-client
20 privilege, and perhaps they ought to agree
21 to waive the attorney-client privilege as between
22 Delphi and Mr. Lans so that we can have those

23 documents. Because that's part of the same flip
24 side of what they are asking, is my point.

25 MR. HAINLINE: What I'm interested in is

196

1 what AMS has, Your Honor, and that's what we are
2 talking about. AMS either has or doesn't have a
3 record of a search being made in areas where it
4 knew it was important to search. If it doesn't
5 have them, that's an evidentiary fact. If it has
6 them, that possibly is an evidentiary fact.

7 THE COURT: How long will it take you to
8 determine whether or not you have them?

9 THE WITNESS: I would say it would take
10 several days, Your Honor. I mean several days. I
11 personally -- I have a hearing on Monday in Los
12 Angeles, and I won't be back until Wednesday night,
13 so I physically cannot do it because I will be -- I
14 have a matter before Judge Collins in Los Angeles
15 next week, but we could do it thereafter, and
16 whether or not we could get documents from Delphi -- because
17 I think the point is, is whether Delphi
18 did this, and that's the point. If Delphi would
19 give us documents, if we could get documents from
20 Delphi, that would be helpful. But Delphi claims

21 that Mr. Lans will not waive the privilege between
22 himself and Delphi, so we cannot get documents from
23 Delphi.

24 THE COURT: But you can have them by April
25 5?

197

1 THE WITNESS: Oh, certainly. Certainly.

2 THE COURT: All right. Then I would
3 direct you to search your records as to whether or
4 not you have those documents, and if you do,
5 produce them. If you feel that there is some
6 privilege that is somehow attached to it, then you
7 can produce them to me in camera, but otherwise
8 they are to be produced to counsel.

9 If you don't have it, you can tell me
10 that, and then I will just weigh the evidence for
11 what it's worth.

12 THE WITNESS: Your Honor, may I have a
13 clarification? What time period are we speaking
14 about? Is this prior to the filing of the -- of
15 the underlying actions?

16 MR. HAINLINE: That's what I'm asking for,
17 Your Honor.

18 THE COURT: Yes. All right?

19 THE WITNESS: Yes, Your Honor, I

20 understand. Thank you.

21 THE COURT: All right, counsel, let's just

22 take a brief recess.

23 How -- what do we look timewise? How do

24 we look?

25 MR. HAINLINE: No more than 30 minutes.

198

1 THE COURT: No more than 30 minutes.

2 MR. HAINLINE: And if I can do it in 15, I

3 will, but I'll give you 30 as an absolute break in

4 time.

5 THE COURT: All right. Let's take a 15-minute

6 break.

7 [Recess.]

8 MR. HAINLINE: Thank you.

9 BY MR. HAINLINE:

10 Q Please look, Mr. Mastriani, at Louis

11 Mastriani Intervenor Exhibit 4.

12 A I have it.

13 Q Is there in Exhibit 10, which are the

14 notes that Mr. Handleman marked, that show or that

15 reference any discussion about topic No. 4, the

16 license agreements you have entered as well as the

17 negotiations files? Anything that references --

18 I'm sorry, yes, anything in Exhibit 10 that

19 references the IBM negotiation files? Did you

20 discuss that with Dr. Lans?

21 A There is a reference on Bates No. 7765

22 under correspondence regarding IBM. We looked at

23 that correspondence with IBM and Digital.

24 Q My question was is there anything that

25 references that you talked about the negotiation

199

1 files which you reference in your letter of August

2 22 to Dr. Lans?

3 A Well, I know that part of that was part of

4 that, the negotiations with IBM. The

5 correspondence with IBM was part of the

6 negotiations with IBM.

7 Q Now item 7 here in your Exhibit

8 Intervenor's 4 says the strategy for and terms on

9 which we propose to license the industry, that's

10 not something you wanted Dr. Lans to provide you

11 with, is it?

12 A No, that was one of the items that we

13 wanted to cover in discussions.

14 MR. HAINLINE: Your Honor, I received some

15 other handwritten notes, and I -- there's one page
16 that I want to talk about, but I'll -- I would like
17 to -- I have had marked as AMS 30 one of the sets
18 of notes that I received that you asked counsel to
19 provide for us over lunch.

20 THE COURT: Okay.

21 MR. HAINLINE: It's a new exhibit.

22 THE COURT: That's AMS --

23 MR. HAINLINE: 30.

24 THE COURT: -- 30?

25 MR. HAINLINE: And it's a new exhibit.

200

1 It's not 1-30.

2 THE COURT: All right.

3 MR. HAINLINE: It's 30. And again, I'll

4 never do one dash through whatever again.

5 You have copies?

6 MR. HANDLEMAN: Yes, thank you.

7 MR. HAINLINE: Thank you. Let me have a

8 copy for Mr. Mastriani.

9 [Pause.]

10 BY MR. HAINLINE:

11 Q We will put a sticker on that copy for you

12 later, Mr. Mastriani.

13 Are these your handwritten notes?

14 A Yes, they are.

15 Q Please turn to AMS 007806. It shows a
16 date of February 11, '97. Do you see that? Am I
17 reading the date correctly?

18 A Which one? The one at the top or the
19 bottom? They are both February 11.

20 Q Okay. That's what I want to know because
21 I want you to turn two pages in to AMS 7808 where
22 the month is not legible, and I'm wondering if
23 having looked at the first pages if this tells you
24 that page 007808 was in February?

25 A I believe -- let me just see what this

201

1 intermediate page is. I can't see that, either.

2 Q If you will look at the very next page,
3 it's also February.

4 A I believe it is February.

5 MR. HANDLEMAN: I think on the original it
6 is February '97.

7 THE COURT: All right.

8 MR. HAINLINE: Your Honor, I would -- I
9 have no objection to Exhibit 10 which was offered
10 earlier by -- I guess it's Intervenor's Hearing

11 Exhibit 10 offered by Mr. Handleman, which was the
12 earlier set of notes, and I would like to offer AMS
13 Exhibit 30 which I have just handed up.

14 THE COURT: Any objection?

15 MR. HANDLEMAN: No objection, Your Honor.

16 THE COURT: Received.

17 [AMS Exhibit 30 was
18 admitted in evidence.]

19 BY MR. HAINLINE:

20 Q If you look at --

21 THE COURT: Now I have a copy that's been
22 marked?

23 MR. HAINLINE: Yes.

24 THE COURT: Are you offering the original
25 or the copy?

202

1 MR. HAINLINE: No, I'm offering -- that's
2 a good point, Your Honor.

3 THE COURT: It almost makes me sorry that
4 I asked.

5 [Laughter.]

6 MR. HAINLINE: But, you know, your
7 question and my answer is on my 30 minute so I'm
8 not going to -- if they keep the original available

9 to us for investigation, I would mark the copy for
10 purposes of this hearing.

11 THE COURT: All right.

12 MR. HAINLINE: And if there is any issue,
13 then we will let the Court know.

14 MR. HANDLEMAN: Yes, Your Honor. And
15 actually we have given you the original of my No.
16 10. Maybe we would substitute a copy then.

17 THE COURT: For this one?

18 MR. HANDLEMAN: Yes, if that's okay with
19 Your Honor.

20 THE COURT: Yes.

21 MR. HANDLEMAN: We will do this later on.
22 We'll have it available to be checked.

23 THE COURT: All right.

24 MR. HAINLINE: That will be fine.

25 BY MR. HAINLINE:

203

1 Q So your notes on 7808, February 19th,
2 1997, there is some numbered points here?

3 A Yes.

4 Q And No. 2, Uniboard assignment, who owns
5 Uniboard, shareholders, et cetera? You wrote that?

6 A Yes. I don't know whether that says

7 assignment, by the way, because that's not the way
8 I've written it elsewhere. But I'm not sure what
9 it says, actually.

10 Q Uniboard -- what would you say that is? I
11 don't want to --

12 A Well, I would just say it's Uniboard ASEIP
13 and then something. I'm not sure what it means. I
14 mean when I write assignment, I write, you know,
15 the full A-s-s-i-g-n-m-e-n-t, just like --

16 Q Well, we don't have to argue about --

17 A -- just like I did in my other note.

18 Q It says Uniboard -- Uniboard something,
19 and maybe we need an expert to tell us what you
20 meant.

21 A Right.

22 Q One last time let's look at Lans Exhibit
23 6. It's Lans Exhibit 6, the February 19th, 1997
24 fax.

25 A Yes.

204

1 Q That's the same day as these notes were
2 made.

3 A Yes.

4 Q And it says, As you know, the licenses has

5 been signed with the company Uniboard, et cetera.

6 Correct?

7 A Yes. Except that I did not see this -- I

8 did not see this fax until February 20th, as I

9 testified.

10 Q Do you have any notes of the conversation

11 you testified that you had with Dr. Lans about Lans

12 Exhibit 6?

13 A Not that I recall. Except for -- except

14 for a time entry.

15 Q A time entry?

16 A Yes.

17 Q All right.

18 A That I had a telephone call with him on

19 February 20th after I received the -- or came in

20 the office and received the fax that morning.

21 Q Please look at AMS 21. That's in the

22 booklet Mastriani Exhibits 2 through 24.

23 A Twenty-one?

24 Q Yes, sir.

25 A Yes, I have that.

205

1 Q That's the Uniboard complaint?

2 A That's correct.

3 Q Filed November 29, 1999?

4 A Yes.

5 Q Do you have any notes of the conversation
6 that you testified that you had before you filed a
7 Uniboard complaint where you testified that Dr.
8 Lans said he approved you doing so?

9 A I have the agreement with him authorizing
10 us to file suit in his name against any and all
11 infringers of his patent, and that's in the record.

12 Q Which agreement are you talking about?

13 A The second agreement that followed the --
14 excuse me, the second agreement that followed the
15 July agreement. There's a several-paragraph
16 agreement where I, Hakan Lans, hereby authorize
17 Adduci, Mastriani and Schaumberg to institute
18 actions in my name on my patent. It was discussed
19 yesterday.

20 Q All right. And you believe that this
21 agreement -- I don't have to get it right now --
22 authorized you to file this Uniboard complaint?

23 A I'm sorry, I --

24 Q That was my question.

25 A No, no, you're right. I was thinking that

1 this was the Lans complaint, the Lans complaint. I
2 was just -- no, the letter of December 19th, 1999.

3 Q My question was before -- you said earlier
4 when you were on direct that you had a conversation
5 with Dr. Lans before the Uniboard complaint was
6 filed, where he told you you could go ahead and
7 file it. Do you have any notes about that
8 conversation?

9 A I don't have notes, no.

10 Q Did you have any document memorializing
11 that?

12 A I -- we -- I believe that there may be a
13 memo from Peter Utterstrom talking about a meeting
14 between he and Mr. Lindstrom and Mr. Lans to
15 discuss the filing of that suit. And it was in --
16 I believe it was either late November or very early
17 December of 1999.

18 Q All right. And we'll see what that
19 document says.

20 Let's look ahead, please, at Exhibit 1-40,
21 which is in the clear binder.

22 A Yes.

23 Q This is a document you wrote to Dr. Lans
24 on December 17, 1999 after the Uniboard complaint
25 was already filed?

1 A That's correct.

2 Q Now you received Dr. Lans' e-mail on or
3 about December 17, 1999, raising some questions
4 about filing the Uniboard complaint, did you not?

5 To be fair, let's look at Lans Exhibit 25,
6 the exhibits to Hakan Lans deposition 25.

7 A I don't have an Exhibit 25. It just runs
8 to 24.

9 Q I'm sorry, it was marked separately.

10 MR. HAINLINE: It was one of the ones that
11 was marked separately, Your Honor. I guess we ran
12 out at 23 or something. We marked it and offered
13 it yesterday.

14 THE COURT: All right.

15 [Pause.]

16 MR. HAINLINE: May I approach?

17 THE COURT: Yes.

18 MR. HAINLINE: Thank you.

19 BY MR. HAINLINE:

20 Q Did you receive this e-mail?

21 A Yes.

22 Q Did you have a telephone conversation with
23 Dr. Lans about it?

24 A Yes, I did.

25 Q Did you make notes about your conversation

208

1 with Dr. Lans?

2 A Not about this discussion, I don't

3 believe.

4 Q And did you have any memo about that

5 conversation with Dr. Lans?

6 A No, not that I know of.

7 Q Now you told Dr. Lans -- you gave Dr. Lans

8 your legal advice that there would be no risk to

9 him in filing the Uniboard complaint, didn't you?

10 A I never said that there would be no risk.

11 Q Let's look at your deposition, please, at

12 pages 195 and 196. Do you have it up there, sir?

13 A No, I do not.

14 Q Here we go.

15 MR. HAINLINE: May I approach, Your Honor?

16 THE COURT: You may. 195?

17 MR. HAINLINE: Yes, sir.

18 BY MR. HAINLINE:

19 Q And I'll start at line 19.

20 A Let me just get there, please.

21 Q Yes, sir.

225

22 A Yes.

23 Q "Question: Okay. What about the
24 advisability of bringing a lawsuit in Uniboard's
25 name after the patent had expired? Did you discuss

209

1 with Dr. Lans the risk that might attend that
2 decision?

3 "Answer: I don't see how that was a risk
4 because it was our view that Uniboard would have
5 benefit of the original notice of infringement
6 because it was -- it was -- Mr. Lans was -- was a
7 party that was -- had the authority to grant notice
8 of infringement."

9 MR. HANDLEMAN: Objection, Your Honor,
10 that's not -- that's improper impeachment. He
11 hasn't set the foundation. It's improper.

12 MR. HAINLINE: It is absolutely not, Your
13 Honor. I asked if he gave that opinion and you
14 will see that that is exactly the question that I
15 asked him.

16 THE COURT: Anything else, counsel?

17 MR. HANDLEMAN: No. Unless he has
18 something more to say, it certainly was -- what
19 about the advisability of bringing a lawsuit is not

20 in the context of an opinion.

21 MR. HAINLINE: Did you express that --

22 maybe he's not -- before I -- the next question

23 was:

24 "Did you express the legal opinion?"

25 THE COURT: Will the reporter read back

210

1 the question for me.

2 [Whereupon, the reporter read the record,

3 as requested.]

4 BY MR. HAINLINE:

5 Q "Question: What about the advisability of

6 bringing a lawsuit in Uniboard's name after the

7 patent had expired? Did you discuss with Dr. Lans

8 the risk that might attend that decision?

9 "Answer: I don't see how that was a risk

10 because it was our view that Uniboard would have

11 benefit of the original notice of infringement

12 because it was -- Mr. Lans was a party that -- was

13 -- had the authority to grant notice of

14 infringement. Our appeal brief to the Federal

15 circuit laid all this out.

16 "Question: Did you express that legal

17 opinion and advice to Dr. Lans?

18 "Answer: And Delphi.

19 "Question: And Delphi, yes to Dr. Lans

20 and yes to Delphi?

21 "Answer: Yes."

22 A And, Mr. Hainline, that opinion was that

23 Uniboard would have the benefit of the original

24 notice of infringement. It was not that there was

25 no risk. I told you that your statement that there

211

1 was risks, I disputed that. So I never said to Mr.

2 Lans there was no risk. Of course, there is always

3 a risk in litigation.

4 Q I asked you the question, did I not, "Did

5 you discuss with Dr. Lans the risks that might

6 attend the filing of a complaint in Uniboard's

7 name?"

8 A And I --

9 Q Given something, and you said there was no

10 risk.

11 A No, that's incorrect. I said I don't see

12 how to you, sir, that was a risk because it was our

13 view that Uniboard -- and this was the opinion that

14 we gave, this was the opinion, Your Honor, that

15 Uniboard would have benefit of the original notice

16 of infringement because it was Mr. Lans that was a
17 party that had the authority to grant the notice of
18 infringement and that that position was set forth
19 in our appeal brief to the Federal circuit.

20 Q Did you ever discuss with Dr. Lans the
21 risks that might attend if he filed a suit in
22 Uniboard's behalf? Yes or no.

23 A I told Mr. Lans in my memo to him in
24 response to his disavowal of the assignment that
25 the naming of a wrong party of a lawsuit, a wrong

212

1 plaintiff, could result in attorneys' fees and
2 other adverse consequences.

3 Q At this -- at the time you filed the
4 Uniboard complaint, did you tell Dr. Lans before
5 you filed it this could be a risk to you?

6 A No.

7 Q Did you tell him this could be of risk to
8 Uniboard?

9 A No.

10 Q Please look -- now at the time that you
11 were representing Dr. Lans in the 986 patent, you
12 knew all about the STDMA patent, did you not?

13 Well, I'll withdraw that.

14 You knew about it?

15 A I -- we were aware of it because Dr. Lans
16 tried -- he asked us to consider --

17 Q Were you aware of it?

18 A Yes.

19 Q I've got 30 minutes. I'm going to ask you
20 to answer my questions.

21 A Yes.

22 Q Now did you recommend to Dr. Lans that he
23 settle with Gateway and give up all his rights to
24 the STDMA patent?

25 A No.

213

1 Q Please look at Exhibit 22 to your
2 deposition.

3 A I have that.

4 Q You recommended that this agreement,
5 Exhibit 22, that Dr. Lans sign it, did you not?

6 A We recommended that it be signed, correct.

7 Q And you knew at the time you recommended
8 it that it would give up his rights to the STDMA
9 patent; right?

10 A Unequivocally and categorically, no. This
11 merely gave a license to Gateway under the patent,

12 a nonexclusive license. That doesn't give up any
13 rights.

14 Q Let me rephrase it. Did you understand at
15 the time you recommended this settlement to Gateway
16 that Dr. Lans would be licensing Gateway under the
17 STDMA patent as well as the 986 patent?

18 A That is correct, Mr. Hainline.

19 Q And did you understand that Gateway in
20 turn could give a license under this agreement to
21 any company in which Gateway owned 10 percent of
22 the stock?

23 A It could give a nonexclusive sublicense,
24 correct.

25 Q Did you have -- do you have any document

214

1 where you discussed with Dr. Lans, if you sign this
2 agreement, you are licensing not only the 986
3 patent, but the STDMA patent?

4 A Yes. There was an exchange of e-mails
5 with -- with -- with Mr. Lans about this issue, and
6 where he ultimately rejected signing the document,
7 and we acceded to his request and informed Gateway
8 that there was no -- that the client would not
9 agree to enter into the agreement.

10 Q Dr. Lans refused to sign, didn't he?

11 A That's correct.

12 Q Look at Exhibit 23 to your deposition.

13 A Yes.

14 Q Is this the document where Dr. Lans
15 refused to sign and changed the language so that it
16 would relate only to computer graphics?

17 A Yes. I mean we don't have the
18 interlineated -- we don't have what he is referring
19 to where he added the text on the rest of the
20 agreement, but this alerted us to that, yes.

21 Q Now Mr. Utterstrom wrote you and said you
22 shouldn't -- this agreement with Gateway should not
23 include the STDMA, did he not?

24 A I believe that he did. I believe that Mr.
25 Lans asked him to send -- to send that e-mail.

215

1 Q Well, what is your belief that Mr. -- Dr.
2 Lans asked Utterstrom to send the e-mail?

3 A What is --

4 Q I asked you whether Utterstrom wrote you
5 an e-mail. You said yes, and then you added some
6 other comment about how -- about your belief that
7 Dr. Lans asked him. What's the basis for that

8 statement?

9 A Oh, I know -- I know that Dr. -- Mr. Lans

10 --

11 Q What's the basis for that?

12 A Because I know, because Peter Utterstrom

13 told me that, and --

14 Q So Peter Utterstrom --

15 A -- so did Hakan Lans tell me that.

16 Q Let's look at Mastriani Exhibit 28, which

17 is a new document.

18 MR. HAINLINE: May I approach?

19 THE COURT: You may.

20 MR. HAINLINE: Thank you.

21 BY MR. HAINLINE:

22 Q Did you receive the original of 28 on or

23 about its date?

24 A Yes, I'm sure we did.

25 Q And this is the document where Peter

216

1 Utterstrom wrote to you that the risk of him, Lans,

2 being required by Judge Penn ruling to pay as you

3 indicate hundreds of thousands of dollars in legal

4 fees is in that context of lesser importance, the

5 potential value of STDMA is simply far greater?

6 A Yes. And he prefaces it by saying I have
7 just received information from Hakan Lans regarding
8 the Gateway agreement, so that's how I knew that
9 Mr. Lans had authorized him to. And then, yes,
10 you're right, he makes that statement in here.

11 Q Had you not sent a copy of the proposed
12 Gateway settlement to cocounsel Utterstrom
13 yourself?

14 A Yes.

15 Q Was there -- then did Mr. -- I'm reading
16 this. I have just received information from HL
17 concerning the Gateway agreement.

18 A He's -- yes. He's not saying that he
19 received the agreement. He's saying that he
20 received information regarding the agreement, i.e.,
21 that Mr. Lans did not sign it as written, as
22 including the STDMA patent. That's what he's
23 saying there.

24 Q All right. A few other questions. He
25 said, Mr. Lans made it clear that notices go out in

217

1 Mr. Lans' name, Dr. Lans' name. Do you have any
2 notes of those conversations?

3 A I'm sorry, I thought you were referring to

4 this. Could you just repeat the question.

5 Q You testified that Dr. Lans made it clear
6 that notices should go out in his name personally.
7 Do you have any notes of such conversations?

8 A Other than -- no, I mean we have the
9 agreement with him that says that, and he was sent
10 a draft. We have a copy of a letter that was sent
11 out, the draft letter that went out to him and to
12 Delphi before it was sent out.

13 Q My question is do you have any notes of
14 the conversation you testified about where you made
15 it clear, you said, that notices should go out in
16 his name?

17 A No.

18 Q Do you have any memorandum or -- either to
19 your file or to Dr. Lans confirming that?

20 A I have memoranda where he says that
21 unequivocally that he's the owner, but I mean I'm
22 not --

23 Q That's not my question now, and I have
24 five minutes. I would like you to please answer my
25 questions.

218

1 A Well, please restate it, then because

2 you're --

3 Q Do you have any memoranda of this
4 conversation you testified that you had where Lans
5 said he made it clear that notices go out in his
6 name?

7 A I don't have memoranda or notes, no.

8 Q You said you discussed --

9 A That I can recall, I should say.

10 Q You said you discussed naming Uniboard in
11 a draft ITC complaint. Do you have that draft
12 complaint?

13 A Yes. Yes, we do. And you have it, too,
14 sir.

15 Q Do you have any memoranda of the
16 conversation you say you had with Dr. Lans where he
17 told you he didn't want Uniboard to be in that
18 complaint? Notes or memoranda?

19 A No.

20 Q Do you have any notes or memoranda
21 memorializing that you had a conversation with Dr.
22 Lans about his February 19th e-mail where he said
23 he was talking about changing the address rather
24 than changing registration to Uniboard?

25 A No, I just have his -- his language to

1 that effect.

2 Q Do you have any notes of your telephone
3 conversation that you said you had with Bertil
4 Grennberg after you received the February 19, 1997
5 e-mail from Dr. Lans?

6 A Not that I recall.

7 Q Do you have any memo that you sent --

8 A I'm sorry, except for the time entry, the
9 time entry for the telephone call on March 4th.
10 That's the -- but no notes.

11 Q Did you ever ask Delphi to give you any
12 memoranda detailing the investigation that they did
13 at your urging before you filed the lawsuit?

14 A No.

15 Q You mentioned that there was a
16 verification that was dated incorrectly. Do you
17 recall that testimony?

18 A Yeah, I believe --

19 Q What's the basis for your statement?

20 A Because Mr. Lans -- Mr. Lans sent me an e-mail on
21 the 29th of January saying that he had
22 reviewed the document and it was correct, but
23 perhaps the answer to interrogatory No. 10 could be
24 changed, and that was dated on the 29th.

25 Q Yes, we are familiar with that document.

220

1 A Yes. Yet the facts from Delphi on the 2nd
2 of February has a January 28th fax from Mr. Lans
3 stating that he has reviewed and signed the
4 verification and he has attached the verification.
5 Logically it would seem that the -- that would
6 follow his question of the 29th.

7 Q Do you have any notes of your conversation
8 that you testified with, with Dr. Lans, where you
9 discussed the declaration for Dr. Lans that says
10 that he didn't recall the document? You testified
11 about some conversation you had with Dr. Lans. Do
12 you have notes of that?

13 A No, no notes, because it was Delphi that
14 worked with -- as the memo from Mr. Utterstrom
15 explains, it was Delphi that worked with Mr. Lans
16 to put that together.

17 Q Do you -- is it your testimony you had no
18 conversation with Dr. Lans about that paragraph?

19 A We had conversations with him, yes.

20 Q And did you -- do you have any notes of
21 those?

22 A No. Other than what Dr. Lans had said in

23 his declaration.

24 Q Did you ever tell Dr. Lans at any time,
25 from the time that Gateway filed its motion to

221

1 dismiss until the time that your attorney-client
2 relationship terminated, that you had a conflict of
3 interest or a potential conflict of interest
4 continuing to represent Dr. Lans?

5 A No, because there was none. And I will
6 amend that. We did --

7 Q The answer is yes or no.

8 A I just said no, but I want to amend it. I
9 did -- we did alert Dr. Lans prior to the filing of
10 the suit that some of the members of the firm had
11 some small amounts of stock in some of the named
12 defendants.

13 Q All right.

14 A And that was not a -- he indicated that
15 was not a problem.

16 Q Thank you.

17 MR. HAINLINE: Thirty minutes is up.

18 THE COURT: If you need a few more
19 minutes, you may have them.

20 MR. HAINLINE: Just let me look very

21 quickly.

22 BY MR. HAINLINE:

23 Q One thing that did occur to me. Did you -- were
24 you contending to the Court that the IBM
25 license agreement was a settlement agreement and

222

1 that's why you were withholding it from discovery?

2 A The IBM license agreement was being
3 withheld under Federal Rule of Evidence 408 which
4 relates to compromises and offers of compromise,
5 and that's what a license agreement is.

6 MR. HAINLINE: I'm finished. Thank you,
7 Your Honor.

8 THE COURT: All right. Dell?

9 MR. PARTRIDGE: Yes, Your Honor.

10 Now let me begin by first thanking the
11 Court and the staff for staying on a Friday before
12 Easter as long as we have here, and I know that we
13 are all appreciative of that. We are all tired and
14 we all want to get out of here, and I just want you
15 to know that I think we all appreciate it very
16 much.

17 I will endeavor to be brief and try not to
18 be repetitive here. However, I do have a number of

19 questions for you, Mr. Mastriani.

20 CROSS-EXAMINATION BY DEFENDANT DELL

21 BY MR. PARTRIDGE:

22 Q Let me at least try to clear up a couple

23 of things, if I may, to begin with.

24 Would you get out AMS 30, which is the set

25 of notes, handwritten notes that is entitled on the

223

1 first page Lans Agenda. Do you have that document

2 in front of you?

3 A Yes, I do.

4 Q Mr. Hainline asked you some questions

5 about page AMS 007808. Would you turn to that

6 page.

7 A Yes.

8 Q And I believe you indicated that you

9 believed the date on this page is February 19th,

10 1997; is that correct?

11 A I believe that's correct, and it was

12 corroborated by counsel.

13 Q You had testified about an e-mail that Mr.

14 Lans had sent to you on that date which we have had

15 plenty of discussion about during the course of

16 yesterday and today, and I think you indicated that

17 you thought you had received it on the 20th of
18 February rather than the 19th. I would like to try
19 to avoid going back into the documents, but as I
20 thought about that, in Sweden, they are six hours
21 ahead of us, and it would have seemed to me that if
22 a document is sent on the 19th of February in
23 Sweden, it gets here six hours or so earlier our
24 time.

25 Are you sure that you did not receive that

224

1 document on the 19th of February?

2 A No, if you recall, Mr. Partridge, I said
3 that we received it on the 19th in the evening our
4 time, like 6, something like that, and but I did
5 not see it. None of us saw it till the next day,
6 and that's when the call was made to Mr. Lans, and
7 that's what the phone records and the time records
8 reflect.

9 Q Looking at your notes on page 7808, there
10 is a line drawn under a top portion of notes, the
11 meeting with Samsung Electronics. Do you see that?

12 A Yes.

13 Q Down about seven or eight lines, and after
14 the last number, the 3 million number that's there,

15 there's a line drawn. Is that an indication of a
16 separation of events? Is that your practice? Or
17 does what follow relate to the meeting with
18 Samsung?

19 A I don't know that it's that. It's a --
20 it's not -- I usually go right across the page. I
21 mean I make it clear, like if you look down below,
22 you can see that I tend to go right across the
23 entire page, not just -- usually that means just a
24 break in specific subject matter.

25 Q Did you ask Samsung some questions about

225

1 Uniboard, or did they ask you some questions about
2 Uniboard?

3 A No, I think that this -- what this was is
4 these were referring to questions from Samsung, and
5 the questions were, number one, it was a tax issue
6 that for any license payment that was paid by
7 Samsung, that just like in Japan, there would have
8 to be a tax taken out and paid to the Republic of
9 Korea which would be a tax credit to Mr. Lans, and
10 then number two, Samsung asked whether there had
11 ever been any assignment to Uniboard, I believe, if
12 this is the word assignment, and they wanted to

13 know who owns Uniboard and who are the
14 shareholders. So --
15 Q Your interpretation of the notes, these
16 are questions raised by Samsung, and they asked you
17 as of February 19th, 1997 who owns Uniboard and the
18 reason that they did that was because you were
19 talking about Samsung making a payment to Uniboard;
20 is that correct?

21 A No, they're making a payment to Mr. Lans.
22 These were three -- these are questions from Chuck
23 Donahue, general counsel to Samsung Electronics
24 USA, who also asked three. He wanted to know
25 whether we were on an hourly basis or --

226

1 Q Mr. Mastriani, I'm only focusing -- I'm
2 sorry to interrupt you --

3 A Okay, sorry. Go ahead.

4 Q I want to get through this.

5 A Sure.

6 Q And I don't want to spend a lot of time on
7 this document.

8 A I apologize.

9 Q It's your understanding that Samsung asked
10 you questions at this meeting about Uniboard,

11 including own owns Uniboard?

12 A Exactly, yes.

13 Q What was your understanding, if any, as of
14 that time as to why Uniboard would have been raised
15 by Samsung during the course of those discussions?

16 A I don't know.

17 Q You have no recollection?

18 A No, I have no recollection why Mr. Donahue
19 asked those questions.

20 Q Okay. Would you turn to the handwritten
21 notes that were marked as Exhibit -- Mastriani
22 Exhibit 10, and those were the notes that were from
23 the September 5th and 6th, 1996 meetings in Sweden
24 with Mr. Lans and others. Do you have Exhibit 10?

25 A I do.

227

1 Q Now I looked through these notes, a
2 photocopy of them, to see if I could find in them
3 any mention of Uniboard, and if I recall correctly,
4 you testified earlier that you found out about the
5 Uniboard license agreement with IBM at least as of
6 August of 1996, so these notes follow your
7 knowledge about the Uniboard-IBM license agreement;
8 correct?

9 A That's right.

10 Q Anywhere in these notes do you make
11 reference to the fact that you discussed with Mr.
12 Lans Uniboard?

13 A There are no references in here that we
14 discussed Uniboard, but these notes are not
15 exhaustive of everything that was discussed.
16 Because, as I said, we met with him for two full
17 days, for eight hours each day.

18 Q Do you have any notes whatsoever with
19 respect to discussions in September of 1996 with
20 Mr. Lans about Uniboard?

21 A Not that -- I don't believe so, no.

22 Q Okay. Would you find the IBM license
23 agreement, please. I don't know what exhibit
24 number it is. I've seen so many different exhibit
25 numbers for these that I'm down to the point of

228

1 just referring to the documents. Help me out.

2 MR. HAINLINE: It's 1-18, Your Honor, for

3 --

4 THE COURT: 1-18?

5 MR. HAINLINE: Yes, sir.

6 THE WITNESS: I have it.

7 BY MR. PARTRIDGE:

8 Q I anticipate I'm going to be most confused
9 when I read this record. Okay. You have the IBM
10 license agreement, Exhibit 1-18. And this is the
11 license agreement which you reviewed and
12 familiarized yourself with prior to your meetings
13 on September 5th and 6th, 1996 with Mr. Lans; is
14 that correct?

15 A I wouldn't say I familiarized myself with
16 it. I mean we read it. It was read and reviewed.
17 It was literally a week -- we received this in late
18 August. I mean literally a couple, three days
19 before leaving for Sweden. But I most definitely
20 read it.

21 Q In your declaration submitted in the Idaho
22 case in connection with the motion papers there,
23 you -- and again, this is Lans Exhibit 23. I think
24 it shows up as a different exhibit here. If you
25 want to see my copy of it, I would be happy to

229

1 bring it up. It's already of record.

2 In the third paragraph you state, "I have
3 reviewed and am familiar with the patent license
4 agreement negotiated in Europe in 1989 between a

5 company wholly owned by Hakan Lans and IBM.

6 Do you recall declaring, making that
7 declaration?

8 A Yes. But just for the sake of the record,
9 I'd like to see it, please.

10 MR. PARTRIDGE: May I approach, Your
11 Honor?

12 THE COURT: You may.

13 THE WITNESS: And you were referring to
14 three, am I correct?

15 BY MR. PARTRIDGE:

16 Q Yes, first sentence in paragraph three.

17 A Yes. Uh-huh.

18 Q Is it fair to say that you had read and
19 were familiar with the IBM license agreement with
20 Uniboard prior to filing the complaint in this
21 action?

22 A Yes.

23 Q Would it be fair to say that you carefully
24 reviewed it prior to filing the complaint in this
25 action?

230

1 A Yes.

2 Q Would you turn to paragraph section 2.2 of

3 the agreement under the section entitled Licenses
4 and Immunities.

5 A Section --

6 Q 2.2 of the agreement.

7 A I have it.

8 Q Did you understand prior to filing suit
9 against my client Dell and others that Uniboard
10 granted in that paragraph an immunity from suit to
11 IBM in connection with certain combinations?

12 A Yes.

13 Q And did you understand that in order for a
14 party to grant an immunity from suit, such a party
15 needed to be in a position that it could actually
16 bring a suit?

17 A No. I don't believe that, and I don't
18 believe that's the law.

19 Q Did you -- do you understand, Mr.
20 Mastriani, that in connection with the filing of a
21 patent infringement suit, the owners of the patent
22 must bring suit or the -- a party that is
23 tantamount to the assignee of the patent must bring
24 suit, and if there are more than one entities that
25 qualify, they must be entities that are involved in

1 the bringing of the lawsuit? You understand that
2 as a patent lawyer; correct?

3 A First of all, I'm not a patent lawyer.
4 I'm a patent litigator. I'm a registered patent
5 lawyer with the Patent Office, but it's my
6 understanding that people who can bring suit on a
7 patent are the owner of the patent or owners, the
8 actual legal owners, or an exclusive licensee in
9 which -- who has got the authority in the exclusive
10 license to bring suit in its name.

11 Q And that's been the law for quite some
12 time. It goes back to the late 1800s, U.S. Supreme
13 Court cases in the late 1800s, in the 1920s, and
14 confirmed by the Federal Circuit Court of Appeals
15 in a number of opinions including the Ethicon case,
16 which you mentioned to me in your deposition, the
17 Ritehite case, and quite a number of other cases.
18 And you understand that?

19 A Right. And I think the Ethicon case we're
20 talking about omitted inventors and the rights that
21 they may have.

22 Q And with respect to section 2.2, when you
23 read it and understood it prior to filing suit
24 against my client, did it occur to you that it
25 would be worth inquiring as to whether or not

1 Uniboard was in the position of a party qualified
2 to give an immunity from suit prior to bringing the
3 action against my client?

4 A No, because if that were true, then
5 Uniboard would have had to have substituted in in
6 the German litigation.

7 Q Unless, of course, Uniboard had some
8 rights with respect to the U.S. patent that were
9 different than those rights with respect to the
10 German patent; correct?

11 A This -- no, that's not correct. This --
12 this document deals with the license patents. That
13 means all of the patents, but principally the 986
14 U.S. patent and the German patent, which was at the
15 time in litigation in Germany. So I disagree with
16 what you're saying; I'm sorry.

17 Q You are contemplating filing a lawsuit on
18 behalf of Dr. Lans in the United States against my
19 client Dell; correct?

20 A We contemplated bringing suit on behalf of
21 the owner that we knew was the owner based upon the
22 statements, and that was Dr. Lans, yes.

23 Q And under U.S. law, you were required to

24 identify all those parties who might have an
25 ownership interest in the patent and who might

233

1 necessarily be required to join in that lawsuit
2 before filing it. Would you agree with that?

3 A I would agree with that.

4 Q And would you agree, Mr. Mastriani, that
5 there is a difference between granting a
6 prospective license and granting a release
7 forgiving a party for past infringement? I'm just
8 asking that question. I'm not referring to
9 anything in the agreement. Can you answer my
10 question?

11 A Well, then, if you're asking a
12 hypothetical, restate the question, please.

13 MR. PARTRIDGE: Would you read the
14 question back, please.

15 [Whereupon, the reporter read the record,
16 as requested.]

17 THE WITNESS: May I proceed?

18 BY MR. PARTRIDGE:

19 Q Yes. Please.

20 A I cannot answer that question. That is a
21 very incomplete, very vague and ambiguous

252

22 hypothetical. And I also don't understand what you
23 mean by the second part about a release, whatever
24 that is, in connection with this.

25 Q Are you familiar with requirements in the

234

1 law that go to the effect that in order to forgive
2 a past infringement of the patent, one must be in a
3 position of owning the right to grant that
4 forgiveness? Are you familiar with that
5 requirement in the law?

6 A I'm aware that -- to the extent that that
7 is correct, that the license -- the party that's
8 doing the licensing has to be authorized to
9 license. And in this case Uniboard was authorized
10 by Mr. Lans to license the patent.

11 Q Prior to filing the lawsuit against my
12 client, did you take the time to look at the law
13 with respect to whether or not Uniboard had to have
14 some ownership interest of past infringement in
15 order to grant the release in accordance with
16 section 4.1 of this agreement?

17 A We were not -- I'm not aware of any law
18 that required that at all. And I disagree with
19 your characterization of what the law is, and I

20 would appreciate a citation to any authority to
21 that effect, Mr. Partridge. With all due respect.
22 Q As you sit here today, are you telling me
23 you are not aware of any distinction that's drawn
24 in the law between prospective licensing and the
25 release and forgiveness of past infringement in a

235

1 patent case?

2 A Prospective licensing -- this is a license
3 agreement that we are looking at, and forgetting
4 about your hypothetical, if you'll forgive me, the
5 fact of the matter is that this was an actual
6 license agreement and the power that Uniboard
7 evinced in 2.2 does not require ownership, only
8 authorization to enter into a license, nothing
9 more.

10 Q I'm referring to section 4.1 --

11 A You were --

12 Q This is my last question.

13 A Okay, I'm sorry.

14 Q This is my last question, and I'm
15 referring to section 4.1 by which Uniboard
16 irrevocably releases IBM from any and all claims of
17 infringement of any of the licensed patents, which

18 claims have been made or which might have been made
19 at any time before the effective date. Do you see
20 that language?

21 A Yes, I do.

22 Q And you understand that under U.S. patent
23 law, one can reach back six years from a particular
24 point in time in which you give notice and bring a
25 lawsuit to recover damages; correct?

236

1 A Yes, as referenced in the record,
2 actually.

3 Q And you would understand that a release
4 such as one granted here is a release that
5 forgives, releases and discharges IBM with respect
6 to any claim that might have been made going back
7 at least six years; correct?

8 A Well, the release is the consideration
9 that's being given in exchange for the granting of
10 the license and the payment by IBM. So it's not a
11 one-way street. The release -- there is
12 consideration given by IBM for that release.

13 Q And you agree -- I don't -- with all due
14 respect, I don't think you are answering my
15 question. You understood prior to filing the

255

16 lawsuit against my client that the license
17 agreement between Uniboard and IBM granted IBM a
18 release for past infringement predating October of
19 1989 when the agreement was signed; correct?

20 A Yes, that's the same release that's in the
21 Hitachi agreement six years later. It's identical
22 in language. And Mr. Lans gave that release.

23 Q You understood that the release provision
24 was in the agreement before you filed suit, and as
25 I understand it, you, sitting here today and at any

237

1 time prior to today, do not know whether there is a
2 difference in the law between the rights a party
3 must have to grant a release versus granting a
4 prospective license; is that correct?

5 A Well, this is the first time you have
6 raised it in this entire travail, and I don't -- I
7 don't -- I don't agree with your -- your
8 characterization of what the law is.

9 Q And not an issue you researched before
10 filing suit; correct?

11 A Not specifically, no.

12 Q And would you turn to section 9.2 of the
13 IBM agreement. Section 9.2 reads, Uniboard shall

14 not assign any of the licensed patents unless such
15 assignment is made subject to the terms and
16 conditions of this agreement.

17 Q Did I read it correctly?

18 A You did.

19 Q And when you saw that provision, you did
20 not, as I understand it, contemplate the
21 possibility that that agreement was referring to
22 the fact that some assignment had been made by
23 Uniboard and that IBM was concerned that some new
24 future assignment might be made and they wanted to
25 know if that was the case?

238

1 A Not --

2 Q You didn't read it that way?

3 A No, I didn't, not based upon the facts --

4 Q You answered my question.

5 A -- available.

6 Q And in going forward with this litigation,
7 with the issues of immunity release in 9.2, you,
8 instead of finding for yourself, from Mr. Lans,
9 about the details -- at least we can't tell that
10 from your notes from September of 1996 -- trusted
11 the Delphi firm to resolve these questions for you

257

12 and made, as best I can understand from your
13 testimony today, no inquiry of your own with
14 respect to any documents that might have been
15 possessed -- possessed by Mr. Berg on this subject?

16 A We trusted investigations that were done
17 by Delphi, Dr. Grennberg, and also to Dr.
18 Pietzcker, and we relied on the factual
19 investigation, no legal analysis. The facts were
20 given to us and we did the legal analysis, and
21 based upon the facts given to us, Mr. Lans was the
22 only owner of the patent, and had always been the
23 owner of the patent, and there had never been any
24 assignment in whole or part, or under any
25 interpretation.

239

1 Q Would you agree, Mr. Mastriani, that some
2 might read -- and in fact it might be a reasonable
3 construction of 9.2 -- that there is some
4 assignment documentation that pertains to the
5 licensed patents?

6 THE COURT: That's sort of a compound
7 question.

8 MR. PARTRIDGE: Yeah, it is, Your Honor.
9 Let me state it again.

10 BY MR. PARTRIDGE:

11 Q Would you agree, upon reading section 9.2,
12 that there is a possibility that this section is
13 referring to changes in the current assignment
14 relationship between Uniboard and Dr. Lans?

15 A You mean acknowledging that there was a
16 current association relationship?

17 Q That's correct.

18 Q In other words, that Uniboard was the
19 owner?

20 A No, I didn't --

21 Q You wouldn't read it that way?

22 A No.

23 Q And you don't --

24 A Well, I certainly did not read it that way
25 then, and I -- and now, of course, I can read it,

240

1 and we know what it was referring to.

2 Q And you don't believe it would have been
3 reasonable of you in exercising your due diligence
4 in preparing and filing the lawsuit to ascertain
5 whether or not the inference one might draw from
6 9.2 is true? That is, that Uniboard had an
7 assignment?

8 A We collectively did not make that
9 determination that that's what that referred to,
10 and the only party that had a copy of the
11 assignment, as you know, was an ex-IBM employee in
12 England, which never would have been discovered by
13 us.

14 Q Now, you recognized, as I think you
15 testified earlier, one of the provisions of this
16 license agreement concerning payment, section 6.1,
17 required receipt by IBM of satisfactory documentary
18 evidence of Uniboard's right to grant the license;
19 right?

20 A Yes, right.

21 Q Okay. And we now recognize in connection
22 with section 9.2 that if there was any change in
23 connection with Uniboard's rights that those
24 changes needed to be identified to IBM; correct?

25 A That's correct.

241

1 Q And you went forward with a representation
2 of Uniboard with respect to the Cirrus Logic
3 matter, not knowing whether or not any
4 documentation of that sort had been provided to
5 IBM, indicating any change in the rights of

6 Uniboard; is that correct?

7 A We -- the --

8 Q Let me state that again.

9 A Okay. Please do.

10 Q It was a point in time where you
11 represented Uniboard in discussions with IBM;
12 correct?

13 A Yes. Solely with respect to Cirrus' claim
14 that it was licensed.

15 Q And you held yourself out to IBM as
16 representing Uniboard; correct?

17 A For that particular issue, yes.

18 Q And at the same time you were holding
19 yourself out as representing Uniboard, you had a
20 belief, based on your communications with Dr. Lans
21 and Delphi and others, that Dr. Lans actually owned
22 the patent; correct?

23 A Yeah, as did IBM. Mr. Gershuny believed
24 that Mr. Lans was the owner also.

25 Q Yeah. And at the time of those

242

1 discussions with IBM, you didn't request any
2 documentation either from IBM or anyone else that
3 might have clarified the situation with respect to

4 Uniboard and Lans' ownership position?

5 A No, that was not a consideration of that
6 particular activity.

7 Q You didn't even think to ask about that at
8 the time?

9 A No. Not at all. It only dealt with
10 trying to get information about the joint venture
11 between Cirrus and IBM, and that's reflected in the
12 correspondence.

13 Q You mentioned the Hitachi agreement, or
14 were asked some questions about Hitachi agreement
15 earlier today. The Hitachi agreement is Exhibit I
16 think 1-20 from your deposition, if I'm reading
17 those deposition numbers correctly.

18 A Yes.

19 Q Okay. Now if you look at the Hitachi
20 agreement, it also contained a release in section
21 4.1; correct?

22 A That's correct.

23 Q And with respect to the U.S. patent
24 covered by that release, the release would go back
25 six years; correct?

243

1 A Yes.

2 Q I'm sorry, I didn't hear your answer.

3 A I said yes. Yeah.

4 Q And if you look at the date of this
5 agreement, January 2nd, 1995, and you go back six
6 years, that takes you back to January the 2nd,
7 1989; correct?

8 A That's correct.

9 Q Would you agree that a careful review of
10 the IBM and Hitachi licenses would indicate that
11 there was an overlap of some 10 months between
12 those two agreements?

13 A With regard to the release?

14 Q Yes. And the immunity from suit.

15 A The releases were personal to the
16 companies. There was no overlap. The IBM
17 agreement --

18 Q I'm just talking about a release -- an
19 overlap in time --

20 A Oh, in time. I'm sorry. I thought you
21 were trying to say that the releases overlap
22 somehow.

23 Q Overlap in time of some 10 months. You
24 agree?

25 A Yes, of course.

1 Q An overlap of 10 months, and in one
2 instance the party granting the immunity from suit
3 and the party granting the release was Uniboard.
4 In the other instance the party granting the
5 immunity from suit and granting the release was Dr.
6 Lans; correct?

7 A Correct.

8 Q Two different parties granting a release
9 for a 10-month period of time that overlapped
10 between the two agreements?

11 A For two separate parties that were
12 unrelated. Hitachi and IBM, in fact, were in
13 protracted litigation against each other at this
14 time on a trade secret case. They -- they have no
15 relationship whatsoever, so I don't understand how
16 one release could affect the other.

17 Q I'm not asking you to understand. Is the
18 answer to my question yes?

19 A I -- restate it.

20 Q I'll read the question back. Instead of
21 jumping to explanations, if you would just answer
22 my question. If you then want to provide an
23 explanation, I will allow it.

24 MR. PARTRIDGE: Read the question back.

25 THE WITNESS: And I will say I did answer

245

1 your question and then gave an explanation, Mr.

2 Partridge.

3 MR. PARTRIDGE: If you did, then I

4 apologize.

5 THE WITNESS: Okay. So let's have it read

6 back, please.

7 [Whereupon, the reporter read the record,

8 as requested.]

9 BY MR. PARTRIDGE:

10 Q I don't believe you ever answered that

11 question, so the answer to my question is that

12 that's correct?

13 A It is correct that --

14 Q You have answered it.

15 A -- there was an overlap, yes.

16 Q Thank you. And prior to filing the

17 lawsuit, initiating this litigation against my

18 client, as I understand it, it did not occur to you

19 that the conflict that we have just discussed with

20 respect to the releases in the IBM agreement and

21 the Hitachi agreement didn't cause you to have some

22 concern about whether or not you had the proper

23 parties in the litigation; is that correct?

24 A None whatsoever.

25 Q And you undertook no investigation within

246

1 your law firm of the relationship between Uniboard
2 and Dr. Lans? You relied on others to do that, and
3 as we sit here today, we have no documentation of
4 what that investigation was. Is that correct?

5 A That's flatly incorrect. There was a --
6 plenty of investigation within our firm and -- of
7 the relationship between Dr. Lans and -- and
8 Uniboard. There are legal memoranda on that, just
9 noting who they are and what they are. So we knew
10 exactly who they are and what their relationship
11 was to each other and what it was with respect to
12 the patent.

13 Q As I understand it from your testimony
14 today, is that in September of '96 you knew about
15 the IBM agreement with Uniboard and you had heard
16 that there were some annual reports which you
17 didn't look at in September of 1996 yourself;
18 correct?

19 A That's correct.

20 Q And that at some point you got some report

21 from Delphi about the 1989 report prior to filing
22 suit; correct?

23 A That's correct.

24 Q And you had the February 1997 e-mail from
25 Dr. Lans in which he raised the question about who

247

1 owns these rights, to whom those rights belong?

2 A That's not correct. You have heard --
3 that is absolutely not correct.

4 Q You disagree with my characterization of
5 the e-mail.

6 A Yes.

7 Q But you are familiar with the fact that
8 there was a February 1997 e-mail concerning
9 Uniboard; correct?

10 A Correct.

11 Q You had that. And prior to filing suit,
12 you did not have in your possession any other
13 documentation that precluded the possibility that
14 Uniboard may have owned rights to the patent that
15 was in suit, documentation that precluded the
16 possibility that Uniboard did not own rights to
17 that patent; is that correct?

18 A I'm not sure what you -- what do you mean

19 by precluded the possibility that it owned rights?

20 Q Precluded the possibility that Uniboard
21 did not own any rights to the patent in suit.

22 A Not having any documents that showed it
23 had rights -- I don't understand your question
24 because we had no documents that showed that
25 Uniboard had any rights, much less even the

248

1 financial rights other than the reference in the
2 annual report.

3 Q My question is flipping that. You had no
4 documentation that precluded the possibility that
5 Uniboard owned some rights in the patent prior to
6 filing suit; correct?

7 A I think we had -- sure, we had -- we had
8 the Hitachi and Miro licenses that precluded in our
9 mind that Uniboard had ownership rights. And maybe
10 I'm just not understanding the way you reversed
11 logic here, you know. I'm just have a difficult
12 time --

13 Q Let me ask you --

14 A -- following your reasons.

15 Q Let me ask this a different way. With
16 respect to Uniboard, prior to filing the lawsuit,

17 the documentation that you had in your possession
18 pertaining to Uniboard consisted of the IBM license
19 agreement; correct?

20 A That's correct.

21 Q The e-mail of February of 1997?

22 A That's right.

23 Q You had some references that Delphi had
24 made to you about looking at the annual reports;
25 correct?

249

1 A Right.

2 Q And that was it?

3 A No, we had statements by Mr. Lans that he
4 was the owner. We had a --

5 Q The question was documents.

6 A That's what I'm saying, documents. We had
7 a -- we had a -- we had a document that was filed
8 with petition -- for petition for correction with
9 the U.S. Patent and Trademark Office in October
10 1997, when Mr. Lans said he was the sole owner of
11 all right, title and interest in the 986 patent. I
12 mean that's a legal document, under oath, to the
13 U.S. Patent Office by Dr. Lans or Mr. Lans saying
14 that he's the sole owner.

269

15 So there's that, and there's much more,
16 Mr. Partridge. And maybe I'm too tired and I'm not
17 following your logic, but there's a lot of
18 information, all of which says categorically and
19 unequivocally that Mr. Lans has always been the
20 owner, and that Uniboard never owned any part of
21 the ownership of the patent but had the right to
22 receive some revenues.

23 Q I think you are not following my question,
24 and I apologize. It's probably in the way that I'm
25 asking it.

250

1 A And I apologize, too.

2 Q My question is focused on documents that
3 referred to Uniboard, documents that referred to
4 Uniboard that would evidence either that Uniboard
5 had some rights or didn't have some rights prior to
6 filing suit. And so far, we have identified three
7 things, and my question to you is whether you had
8 anything else prior to filing of the lawsuit that
9 was specific as to Uniboard.

10 A As to Uniboard having ownership rights.
11 No, there were none.

12 Q Okay. I'm going to hand you a -- this is

270

13 already of record so we needn't make more exhibits
14 for the record -- an affidavit of Mr. Mastriani
15 that was attached to the Intervenor's Memorandum in
16 Opposition to the Motion for Reconsideration.

17 MR. PARTRIDGE: I'll give copies to the
18 Court and the witness and the parties, but I don't
19 think we need to mark it as an exhibit, Your Honor.

20 THE COURT: Well, I would want it marked
21 as an exhibit.

22 MR. HAINLINE: Your Honor, it's 1-1.

23 THE COURT: Oh. All right. We already
24 have it?

25 MR. HAINLINE: Yes, sir.

251

1 THE COURT: Great. Thank you.

2 MR. HAINLINE: Let's just make sure, if
3 Mr. Partridge will allow me --

4 MR. PARTRIDGE: This is it. This is it.

5 MR. HAINLINE: Okay, it's 1-1, first one.

6 THE COURT: The affidavit?

7 MR. HAINLINE: Yes, Your Honor.

8 THE COURT: All right.

9 BY MR. PARTRIDGE:

10 Q Do you have it, Mr. Mastriani?

11 A Yes, I do.

12 Q This is an affidavit prepared and signed
13 by you on or about May of 2004?

14 A May 10th, 2004, yes.

15 Q Would you turn to paragraph 12 of your
16 affidavit.

17 A Yes, I have it.

18 Q It appears to me that this paragraph is
19 addressing the events of September of 1996; is that
20 correct?

21 A That's correct.

22 Q And if you go through the discussion in
23 paragraph 12, you talk about the interview
24 concerning the 986 patent and a number of events,
25 and then on the second page of the paragraph, which

252

1 is page 5 of the declaration, you state in the
2 fifth line, "Nevertheless, I requested the
3 attorneys at Delphi to contact the widow of the
4 deceased attorney who represented Uniboard in the
5 IBM negotiations, Gunnar Berg, to investigate the
6 existence of any relevant documents."

7 Did I read that correctly?

8 A That's correct.

9 Q Would you agree with me that that cannot
10 be a true statement with respect to September of
11 1996?

12 A It is not a true statement regarding that
13 -- that -- the contact of the widow, because I
14 misremembered that Mr. Berg had died in March of
15 1996, and he died, unfortunately, in March of 1997,
16 and the contact was made by Delphi for us to Gunnar
17 Berg, who was still alive, and then they made a
18 contact in December of 1999 to the widow of Mr.
19 Berg per the request of Mr. Lans and not at our
20 request.

21 Q So this statement and the next sentence,
22 which said that Delphi contacted Mrs. Berg and
23 informed me that none of her husband's files
24 apparently existed any longer, those two statements
25 are not correct with respect to meetings in

253

1 September of 1996? Correct?

2 A Well, the first sentence, they did -- it's
3 not correct because it was -- the contact was made
4 with Mr. Berg and not with Mrs. Berg. And the
5 second -- the second -- the next sentence says that
6 they did contact Mr. Berg and they were told that

7 he did not have any files.

8 Q Yeah. And the contact with Mr. Berg's
9 widow occurred in 1999, almost three years after
10 the paragraph that's being referenced here in your
11 declaration.

12 A Right. And that was because Mr. Lans was
13 trying to find what came to be called the
14 clarification contract.

15 Q And as I understand it from your
16 testimony, and certainly I didn't see it in your
17 notes from the meetings on September 5th and 6th,
18 there is no indication in any notes or memoranda
19 that you have from September of 1996 that you
20 requested Delphi to make that contact. Is that
21 correct?

22 A No, because the -- the notes were of our
23 interview of Mr. Lans and the meetings of two days
24 with him. The request was made to Delphi when we
25 went to Delphi's offices in Stockholm and met with

254

1 them.

2 Q Do you have any notes that reflect that
3 you requested Delphi to interview Mr. Berg while he
4 was still alive in September --

274

5 A No.

6 Q -- of 1996?

7 A No. Excuse me for the interruption.

8 Q You made the statement earlier today that

9 it was your understanding that Uniboard was

10 authorized to license the patent one time only to

11 IBM. Do you recall making that statement?

12 A I think I said -- I testified it was

13 authorized to license IBM and apparently one-time

14 only -- for a one-time-only license.

15 Q What's the basis for your testimony that

16 Uniboard was authorized one time to license that

17 patent?

18 A Because that was the only time that it was

19 -- it performed -- it actually licensed the patent.

20 Q Do you have any reason to believe, any --

21 strike that.

22 Do you have any basis to believe that

23 Uniboard is -- was not authorized to grant licenses

24 at any time after the IBM license agreement was

25 consummated?

255

1 A There was no -- there was no document that

2 evidenced any such authority.

3 Q So you didn't know whether they had
4 authority or not subsequent to the execution of the
5 IBM agreement?

6 A Well, the document that intuitively told
7 us that was the Hitachi agreement and the Miro
8 agreement, and then the next time that there was a
9 discussion about licensing the patent, it was to
10 Delphi and then to us about Mr. Lans licensing it.
11 So Uniboard was apparently, at least in Mr. Lans'
12 mind, out of the picture for licensing since 1989.

13 MR. PARTRIDGE: I'm almost finished, Your
14 Honor.

15 [Pause.]

16 BY MR. PARTRIDGE:

17 Q Would you turn to what I think was marked
18 as Exhibit 6 to -- it's your memo dated August
19 10th, 1999 to Mr. Lans concerning the assignment to
20 Uniboard.

21 MR. PARTRIDGE: I'm sorry, Your Honor, I
22 don't know where this thing comes from.

23 THE WITNESS: It's -- I think -- if --
24 it's Exhibit 6 in Louis Mastriani Intervenor
25 Exhibits. I think that is what you are referring.

1 MR. PARTRIDGE: Ah. Okay.

2 BY MR. PARTRIDGE:

3 Q I remain confused by our exhibit
4 notations.

5 Do you have that particular --

6 A Is that the August 10th, 1999 --

7 Q Yes.

8 A -- re assignment to Uniboard?

9 Q Thank you, Mr. Mastriani.

10 A Yes.

11 Q This was a set of questions that you sent
12 to Dr. Lans after seeing the assignment document
13 from Dr. Lans to Uniboard that was executed about
14 the time of the IBM agreement; correct?

15 A No, that's not correct. This was the
16 response to Mr. Lans' August 10th e-mail, which is
17 Exhibit 5.

18 Q Following the motion to dismiss by
19 Gateway?

20 A That's correct.

21 Q Yeah. So at this point in time you had
22 seen the assignment document that was associated
23 with the motion to dismiss?

24 A That is correct.

25 Q And is it fair to say that this memo was

1 prompted by the motion to dismiss in that
2 assignment document?

3 A No, it was not. It was prompted by Mr.
4 Lans' statement in his e-mail of the same date,
5 which is Exhibit 5 in Louis Mastriani Intervenor
6 Exhibits, and I'm quoting to you, "The assignment
7 declaration submitted by Gateway 2000 is no longer
8 valid. After I signed the declaration it was found
9 that the patent could not be transferred to my
10 company Uniboard AB. The reason was that the
11 patent were subject of court trials."

12 That's what primarily prompted all of
13 these questions.

14 Q Would it be fair to say, Mr. Mastriani,
15 that had you possessed the assignment document from
16 Dr. Lans to Uniboard that was associated with the
17 execution of the IBM license agreement, had you
18 possessed that in September of 1996, that you would
19 have asked Dr. Lans this set of questions contained
20 here?

21 A Had we had that?

22 Q Yes.

23 A Absolutely. If he was claiming to be

24 owner. If -- under your hypothetical, if he had
25 given us the IBM agreement with all of the

258

1 documents that related to it, including the
2 assignment, particularly and especially, and -- and
3 -- if he said it was -- if he said that he was
4 still the owner, then we would have of course asked
5 many questions.

6 Q And had you obtained from Mr. Berg's
7 files, by talking to Mr. Berg in September of 1996,
8 that assignment document, you would have asked this
9 set of questions of Dr. Lans and probably Mr. Berg;
10 correct?

11 A No, we would not have asked those
12 questions unless -- you have to understand, the
13 assignment speaks for itself. In our mind, it's
14 clear, unequivocal, it couldn't be more clear, it
15 transferred ownership.

16 Q Fair enough, if he was still claiming
17 ownership, you would have asked him?

18 A If -- if he said that it is not -- no
19 longer valid or Mr. Berg said it was no longer
20 valid, or anybody said it was no longer valid, then
21 there would have been a full investigation of what

22 the basis for that was, and whether there were any
23 subsequent documents that reinstalled ownership in
24 Mr. Lans and Mr. Lans only.

25 THE COURT: Are we there, counsel?

259

1 MR. PARTRIDGE: We are just about, Your
2 Honor.

3 [Pause.]

4 MR. PARTRIDGE: We are, Your Honor. Thank
5 you very much.

6 Thank you, Mr. Mastriani.

7 THE WITNESS: Thank you, Mr. Partridge.

8 THE COURT: All right. Gateway?

9 MS. PLOEGER: My questions have been
10 covered.

11 THE COURT: All right. Any other
12 questions of the witness?

13 MR. HANDLEMAN: No, Your Honor. I would
14 note at this point that I notice that Mastriani
15 Exhibit 28 that Mr. Hainline asked him about -- I
16 don't know that he moved it into evidence, but I
17 think it should be part of evidence, so the only
18 thing I would say, Your Honor, is Mastriani Exhibit
19 28 should be in the record.

20 MR. HAINLINE: I'll move it in.
21 MR. HANDLEMAN: Thank you, Your Honor.
22 Nothing further.
23 THE COURT: No objection? 28 -- 28 --
24 which --
25 MR. HANDLEMAN: It's Mastriani 28.

260

1 THE COURT: Oh, yes, I see.
2 MR. HANDLEMAN: That was that last copy I
3 think he put in. That was to Peter Utterstrom to
4 Mr. Tatomineu (phon.).
5 THE COURT: Yes.
6 MR. HANDLEMAN: That was an interesting
7 document. So thank you, Your Honor.
8 THE COURT: That is received.
9 [Witness excused.]
10 [Mastriani Exhibit 28
11 admitted in evidence.]
12 THE COURT: All right, counsel. The
13 record is closed insofar as the hearing is
14 concerned. Would counsel like some time to review
15 what we have and to make any further submission to
16 the Court, number one? Perhaps that's number two,
17 and number one is whether counsel are ordering the

18 transcript.

19 MR. HAINLINE: Number one is yes. Number
20 two is two.

21 THE COURT: Well, that's short.

22 [Laughter.]

23 MR. HAINLINE: I try to answer your
24 questions.

25 MR. HANDLEMAN: To make sure I understand

261

1 the question, we have ordered the transcript. Was
2 that question two or one?

3 THE COURT: Now don't try to confuse me.

4 MR. HANDLEMAN: No, I won't, Your Honor.

5 No, we have ordered the transcript. And Your Honor

6 had already indicated by April 5th that Your Honor

7 left the record open for the documents to be

8 submitted if in fact we find the documents that

9 related to one of the questions that was asked to

10 Mr. Mastriani.

11 THE COURT: And I would like to be advised

12 --

13 MR. HANDLEMAN: Yes.

14 THE COURT: -- if you do or if you don't.

15 MR. HANDLEMAN: Either way, Your Honor.

16 And is that what you are talking about as the final
17 submission? You're not talking about any other
18 submissions, I presume.

19 THE COURT: Well, as far as the evidence.

20 MR. HANDLEMAN: Evidence. Right. That's
21 fine. We will have that certainly one way or the
22 other, that Your Honor will have it, and obviously
23 counsel. To the extent there is document, we will
24 provide it to counsel and Your Honor at the same
25 time.

262

1 THE COURT: I don't know what will happen
2 when counsel looks at those documents, but I can't
3 cross that bridge at this point.

4 All right. How much time would counsel
5 like? Considering the time --

6 MR. HAINLINE: I think, Your Honor, for --

7 MR. HANDLEMAN: Your Honor, could I just
8 say one --

9 MR. HAINLINE: I don't think we should
10 argue today.

11 THE COURT: No, no, we're not.

12 MR. HAINLINE: How much time would we like
13 for preparing something and giving it to Your

14 Honor?

15 THE COURT: Right. If you wish.

16 MR. HAINLINE: I would like to the end of
17 April.

18 THE COURT: End of April. All right.

19 MR. HANDLEMAN: Your Honor, with all due
20 respect, I was going to suggest that we not submit
21 anything further. We filed prehearing briefs. We
22 obviously had legal argument in December 8th,
23 extensive, before the Court. The Court has the
24 transcript. We submitted our motions, pleadings,
25 memorandum, and indeed we did a prehearing brief,

263

1 both of us, with documents. I would suggest that,
2 at least from our standpoint -- obviously if
3 counsel is going to request it and the Court is
4 going to order it, then we will likewise respond.

5 I would suggest that perhaps there would
6 be -- it wouldn't be necessary to file posttrial
7 briefs because Your Honor has heard the evidence,
8 has the evidence, and you have the law of the
9 arguments we made already.

10 THE COURT: Mr. Partridge?

11 MR. PARTRIDGE: Your Honor, we did not

12 file a brief because Your Honor hadn't requested
13 briefs, and the parties just submitted them in any
14 event, and I do think limited briefing would be
15 helpful. I think there probably ought to be page
16 limits that make this not get out of hand for you,
17 and whether or not we just do one simultaneous set
18 of briefs, or if you want to stage them, I'm open
19 to that. I would just as soon get the process over
20 sooner rather than later by not having, you know,
21 one brief after another brief after another, and
22 try to just be done with this with maybe, you know,
23 15 or 20 pages max per party, and then you can
24 decide from there.

25 MS. PLOEGER: And, Your Honor, if you

264

1 would like posttrial briefs, we are more than happy
2 to provide them.

3 MR. HAINLINE: Your Honor, I agree with
4 Mr. Partridge's idea of a 20-page page limit and
5 just have simultaneous briefing at the end of
6 April. I think it would help everybody.

7 THE COURT: Any objection?

8 MR. HANDLEMAN: I'm outvoted, Your Honor.

9 But I would take it what we are doing is doing

10 basically a posttrial brief, 20 pages.

11 THE COURT: Well, yes, but you know, you
12 have filed extensive briefs, and I just thought
13 that something may have come up after you go back
14 to your offices and read the transcript that you
15 wish to briefly address.

16 There will be a 20-page limit, and it will
17 be due on or about April 29. If counsel feel that
18 they -- a particular counsel or particular side
19 does not want to file anything, why, so be it. It
20 won't be held against you.

21 MR. HANDLEMAN: Thank you, Your Honor. I
22 appreciate it.

23 THE COURT: Anything else?

24 MR. HAINLINE: No. Thank you again, Your
25 Honor, for having it today. I know that it was not

265

1 in your plans, and we appreciate the effort of the
2 Court and the Court staff on a down day. And it
3 was a holiday, a holy day as well. So.

4 THE COURT: Well, I thank the staff, the
5 court clerk and the reporter and my clerk, the
6 clerks.

7 All right. All right, then, counsel.

8 Mr. Lans, it's the first time I've had a
9 chance to see you. It was nice meeting you at
10 last. I have seen pictures of you, but I have
11 never seen you in person. When are you going back
12 to Sweden, if I might ask?

13 MR. LANS: Unfortunately, there are no
14 flights today, so I will try tomorrow and I have a
15 reservation. So probably tomorrow.

16 THE COURT: Well, have a safe trip.

17 MR. LANS: Thank you so much for your
18 time.

19 THE COURT: Court will stand in recess.

20 [Whereupon, at 4:58 p.m., the evidentiary
21 hearing was concluded.]