Erik Moberg:

The New Judgment against Hakan Lans - A Further Step in a Planned Judicial Crime!

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Introduction

On September 6, 2001, the American District Court for the District of Columbia pronounced its judgment in the case which had begun by the filing of a lawsuit against a number of US computer companies for infringement on Hakan Lans's color graphics

patent. The judgment was remarkable not only since the infringement issue was never addressed but also since Hakan Lans, departing from the main rule in US that the parties to a civil dispute pay their own costs, was sentenced to pay the attorney fees of his opponents. In January 2002 Hakan Lans, through his new attorneys, filed a motion for reconsideration of the 2001 judgment about the attorney fees.[1] The motion was accepted and on June 23, 2005, the judgment in the reconsideration case was issued. The new judgment was, in all respects, exactly the same as the former one.[2] Lans was again sentenced to pay the attorney fees of both parties.

In the essay "The Judgment against Hakan Lans - A Planned Judicial Crime?" I have earlier discussed three hypotheses abut the judgment in 2001.[3] The one of these hypotheses which, at that time, I found strongest was that the judgment, in fact, was a planned judicial crime. The new information which has been brought forward during the reconsideration process is to a considerable extent relevant for this hypothesis, and the same is true for various aspects of the court's and the attorneys' acting. The purpose of this comment is to discuss and evaluate this new evidence, and I will limit my account to the requirements of that purpose. For the rest I will refer to my earlier essay.

Already here I can however say that the judicial crime hypothesis has become considerably stronger during the reconsideration process. The likelihood that we are, in fact, witnessing a phony process and a first rate legal scandal has become even greater than before.

The process 1997-2001 - the main events

In October, 1997, through his attorneys at that time, "Adduci, Mastriani & Schaumberg" (AMS), Hakan Lans filed a patent infringement suit against a number of big American computer companies. The companies sued were Gateway 2000, Dell, Hewlett Packard, Packard Bell NEC, Acer America, Compaq, AST Research, Digital Equipment and Olsy North. These companies used, without any license or other permission, Lans's patented technique for displaying information on computer monitors, the so called color graphics.

The process which followed was remarkable in several ways. First, the infringement issue, which was the basic reason for the whole process, was never dealt with. Rather, the process turned into irrelevant side-tracks. This development started when one of the companies sued, Gateway, in 1999, argued that Lans was not qualified to sue. According to Gateway the color graphics patent was not owned by the physical person Hakan Lans, but by the company and juridical person Uniboard AB, which in turn was wholly owned by Hakan Lans. But the validity of this position was never really investigated. It was rather taken for granted that Gateway was right, and then the process turned into another side-track. The court asked about the reason why the filing had been done by the wrong person, and the answer, which was accepted by the court, was given by Lans's own attorney Louis S. Mastriani. Lans had only himself to blame. Lans had behaved dishonestly and concealed important facts from him, Mastriani, and the court. It should be added that Lans himself never was present in the court (in spite of his asking for it) - either because his attorney Mastriani opposed it, or because the judge, John Garret Penn, not was interested in hearing him.

The judgment of September 6, 2001, mirrored the events described. It contained nothing about the patent infringement, which had caused the suing, but dealt rather exclusively with the distribution of the attorney fees. Departing from the main rule in US civil law, Lans was sentenced to pay the costs of both parties. The costs of his opponents, which Lans thus should pay, have not so far become exactly determined, but the estimation one or several hundred million Swedish crowns has been mentioned. The reason given for this decision by the court is "exceptional circumstances". According to Judge Penn the non-present Lans had behaved tricky and unhonestly.

The process 1997-2001 - the real agenda

The route away from the main issue

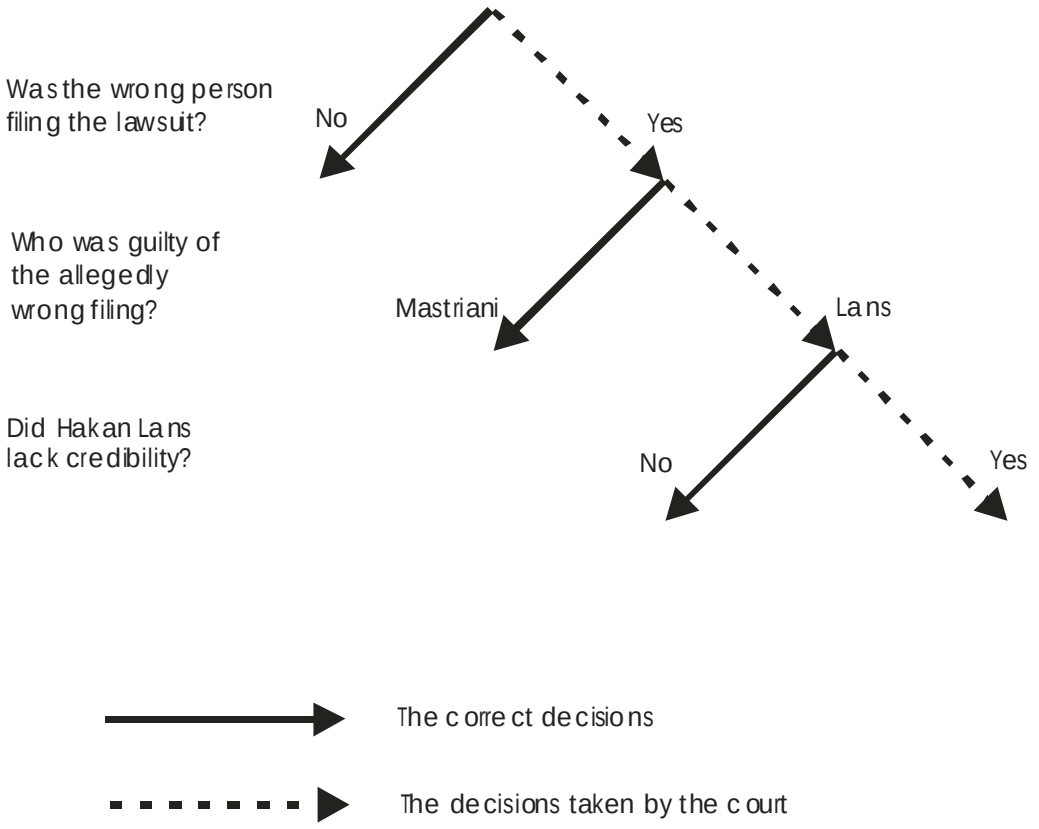
During the 1997-2001 process, and during the reconsideration thereafter, an enormous amount of court documents have been produced. It is very easy to get lost in this material and it is, without thorough and lengthy reading, difficult or impossible to judge what, in reality, has been essentials and non-essentials - and what ought to have been essentials and non-essentials. In this section I shall therefore describe and discuss the real structure of the argumentation of the proceedings. I shall try to bring forward the agenda which was in fact followed, and I shall discuss the reasonableness of this agenda.

The first interesting point is that the main issue, the one about patent infringement, never was dealt with. Still, there is no doubt at all that the color graphics patent was violated. That Hakan Lans has invented color graphics, that this technique is used in all computers around the world, and that it is, or rather was, patented are thus undisputed facts. The US patent was issued in 1981 and expired in 1999. Several big companies have also recognized these matters of fact. IBM thus signed a license agreement in 1990, and in 1995, after a long lawsuit, Hitachi also honored Lans's patent. After having received notice of infringement letters in the autumn 1996 a number of US companies also choose to sign license agreements. Those companies were Apple Computer, Inc., Canon, Inc., Epson America Inc., Fujitsu Ltd., Matsushita Electric Industrial Co., Motorola, Inc., Power Computing Corporation, Seiko Epson Corporation, Sharp Corporation, Siemens AG, Sony Corporation, Texas Instruments, Inc., Toshiba Corporation and Wang Laboratories, Inc.

After the initial breakthrough of the IBM- and Hitachi-agreements Lans's color graphics prerogatives have never been questioned. It is therefore clear that those US companies which were sued in 1997 were guilty of patent infringement, and that they, during the years, had earned large amounts of money from this theft. Sums amounting to at least 100 million dollars have been mentioned.[4]

Thus, the obvious patent infringement was never dealt with in the court. Rather, under the leadership of Judge Penn, the proceedings focused on other issues, the one after the other. This development is illustrated by the diagram below. Three issues, and the decisions concerning them, were crucial. The first issue was whether the filing of the lawsuit had been done by the right person or not. The second issue concerned the

responsibility for the allegedly wrong filing: who was guilty? The third issue, at last, was whether Lans, who was considered guilty to the allegedly wrong filing, had been acting in good faith or had been deliberately fraudulent.



In the following I will at first discuss these three issues and decisions in the perspective of the conditions prevailing in the 1997-2001 process. In that undertaking, and for the sake of simplicity, I will as far as possible use the section "Background" in the new judgment as my source.[5] Thereafter, in the next main section, I will discuss the relevance of the new information, which has been brought forward during the reconsideration process, for the three decisions mentioned. In the process the diagram's descriptions of decisions as correct or wrong will be, step by step, explained. Already here it should however be said that the diagram, with all of its details taken into account, relates to the situation after the 2005 judgment.

Was the wrong person filing the lawsuit?

As I have already mentioned, it was a motion in 1999 from one of the companies sued, Gateway, which made the standing of the filing person an issue for the court. The background to Gateway's motion was Hakan Lans's agreement with IBM 1990. For tax

reasons Lans had not signed the license agreement with IBM himself, but rather used his own, wholly owned, stock company Uniboard AB, as licensee. In order to be able to do so Lans had, at the time of the IBM agreement, made an agreement, the so called assignment declaration, by which the patent rights were transferred from the physical person Hakan Lans to the juridical person Uniboard AB.[6] Somehow Gateway had got hold of this declaration and, referring to it, argued that the physical person Hakan Lans lacked standing to sue. In order to be valid the suing should rather have come from the real patentee, namely the juridical person Uniboard AB. Or, as it is formulated in the new judgment:[7]

> During the discovery process, Gateway found that on October 19, 1989, Lans had assigned and transferred the 986 patent to Uniboard Aktiebolag, a company wholly owned by Lans. Gateway subsequently filed a motion for summary judgment arguing that Lans was not the registered owner of the patent, and thus lacked standing to sue.

But this position was not tenable. Certainly there was an assignment declaration by which Lans transferred all rights associated with the patent to the company Uniboard, which he wholly owned himself. This declaration was signed by the physical person Hakan Lans on October 19, 1989. It is however also true that Lans a good week later, on October 27, wrote a new agreement in which he clarified, or changed, the assignment declaration. In this new agreement, the so called clarification contract, it was stated that the ownership to the patent had not been transferred to Uniboard, whereas all other economic rights associated with the patent were transferred.[8] The clarification contract was also presented for the court.

The two agreements, the assignment declaration and the clarification contract, are formally very similar. Both are signed by Hakan Lans and none has any mark of notarization. The only formal difference is that Hakan Lans's signature on the assignment declaration is attested, though in a way which is completely impossible to interpret, whereas it is not attested at all on the clarification contract. Therefore, one could argue, either both agreements are valid, or none of them is valid. If both are valid the patent has belonged to Uniboard during a good week in October 1989, while it has belonged to Hakan Lans all the time before this week as well as after it. If both agreements are invalid the patent has never belonged to Uniboard but all the time, without change, to Hakan Lans.

This was however not the view of the court. The court rather choose to consider the assignment declaration as completely valid and, simultaneously, totally ignore the clarification contract. The Federal Circuit supported this latter attitude and summarized it as follows.[9] "... the district court held that the Clarification-Contract was not credible and was not of such a nature as to probably change the outcome of the judgment." But, given all the facts about the two agreements, this position is hardly tenable - either both are valid, or both are invalid.

But still, this is hardly the heart of the matter. What is really important is mentioned in the justification for the judgment as quoted above. There it is written (my italics) that "Lans was not the *registered* owner of the patent, and thus lacked standing to sue." This is simply false. Lans has been the *registered* owner of the patent all the time.

From 1981 until today the patent has been registered on the physical person Hakan Lans. This is easily checked with the US Patent and Trademark Office.[10]

Thus, and however one argues, the conclusion is the same, namely that Gateway was wrong. The lawsuit was not filed by the wrong person, it was filed by the proper person. Therefore, Gateway's motion should have been denied, and the infringement issue should have been dealt with. But that is not what happened. Rather judge Penn let himself be governed by Gateway's argument, and thereby secured that the main issue, the basic infringement issue, was removed from the agenda.

To this it should be added that it was not obvious that the filing should be rejected even if the patent had belonged to Uniboard rather than to Hakan Lans. The reason why, usually, it is considered important that the patentee files, is that it should be easy for persons or companies accused of infringement to get into contact with the proper owner of the patent. This reason is however not of any importance in the case of Lans and Uniboard. It is, in practice, impossible to contact the one without also contacting the other. And, furthermore, there are no precedents.[11]

Thus the reasonable conclusion is that the court, even if we only take into account the information available during the 1997-2000 process, took the wrong decision concerning the standing of the filing person. But even if we, hypothetically, accept this wrong decision, that does not mean that the proceedings ought to continue. Rather, it had been straightforward to state that the filing was invalid, that the infringement issue therefore could not be taken up, and that the proceeding therefore had to be closed. And thereafter, finally, each party would have to pay its own attorney fees.

But that is not what happened. Rather the court went ahead and focused on showing that Hakan Lans's deceptive behavior was the real cause for the allegedly invalid filing. In doing so, and thus by immediately turning to the issue of Lans's credibility, the court had, however, almost imperceptibly, taken its decision in another issue of greatest importance, namely this one: If the filing really was faulty, why should the burden necessarily be put on Lans? Couldn't Lans's attorney, Mastriani, as well have been the guilty one? This is the second issue in the diagram.

Who was guilty of the allegedly wrong filing?

Concerning this issue it is easy to see that the responsibility for the correctness of the filing of the lawsuit, at least primarily, was Mastriani's. This follows directly from the contingency fee agreement which Lans had with his lawyers.[12] In that agreement it is explicitly stated about the filing of lawsuits that "[t]he decision as to whether or not to pursue such litigation will be the sole and exclusive discretion of AMS." It is also clearly stated that Lans's possible contribution to this part of the work should be limited. Thus it is written that "[y]our personal involvement in this phase will be limited to testimony, depositions and technical guidance."

The fundamental answer to the question put thus is that Mastriani, not Lans, was guilty of the allegedly wrong filing. One circumstance, however, could change this. Thus it is possible, in principle, that Lans had withheld information from his attorney so systematically and completely, that he, the attorney, in good faith and without any

suspicions, filed erroneously. And possibly it was like that - or at least we may assume so at this point in the reasoning. And if so, it is also easy to imagine that judge Penn, since he had no other sources of information, thought exactly the same, namely that Lans had never informed his lawyers about the assignment declaration and Uniboard. And in that case his 2001 judgment, on this particular point, could have been correct.

But this, as we shall see, is only a theoretical possibility. Thus, in the background section of the new judgment, judge Penn writes about the 2001 judgment in the following way:[13]

> However, the Court did not hold AMS liable stating that although AMS' dual representation of Lans and Uniboard, when both were claiming ownership of the patent, should have raised ethical considerations for the firm, there was no evidence that AMS engaged in "vexatious and unreasonable conduct."

This shows that judge Penn, in 2001, realized that Mastriani knew about Uniboard and the assignment declaration when filing the lawsuit. Hence, the aspect of the 2001 judgment which is discussed here - that is the second decision in the diagram above - was not correct.

But the quotation shows more than that, it also illustrates Penn's partiality. Although Penn criticizes AMS for their acting in a very essential matter, and talks about "ethical considerations for the firm", he still ends forbearing. Certainly AMS had done wrong, but just a little, not enough for having any legal consequences.

Did Hakan Lans lack credibility?

The whole discussion about Lans's lacking credibility concerns what he said or not said, or rather what he allegedly said or not said, about the assignment declaration and Uniboard. And those who supplied these allegations about what Lans said were solely his own lawyers, that is AMS. Lans never spoke himself in the court, he was never even present, and neither did he write any documents himself for the court - there are, however, some documents which are composed by AMS or Delphi, and which Lans has signed in good faith since his attorneys told him to do so. Everything which Lans allegedly has said or not said, and on which the judgment consequently was based, was thus supplied by his attorneys. In their acting in the court they thus had all possibilities to shape what they choose to put in the mouth of Lans.

The main argument was that Lans never informed about the assignment declaration. This contention got its most pregnant expression in a declaration by Mastriani on August 13, 1999.[14] The declaration was thus made in the situation which had ensued as a result of Gateway's presentation of the assignment declaration to the court. In the court, under penalty of perjury, Mastriani said:

> Inasmuch as I and other counsel to Mr. Lans have been repeatedly informed by Mr. Lans that no assignment had ever taken place with respect to the Lans patent, we are investigating the circumstances surrounding the referenced Assignment.

This means that Mastriani told the court that the assignment declaration, and thereby the possible, but under all circumstances temporary, transfer, of the patent from Hakan Lans to Uniboard AB, had come as a complete surprise for him. The court accepted this and accordingly wrote:[15]

> Lans chose to conceal all information about the assignment, possibly even from his attorneys, until confronted with irrefutable evidence that the assignment had occurred.

The court thus concluded that Lans had behaved deceitfully and declared:[16]

> The Court's basis for granting the computer companies' motions for attorneys fees against Lans and Uniboard stemmed from Lans' behavior during the litigation process. The Court found that Lans's failure to sue in the name of the proper party was not "an honest and understandable mistake".

The fundamental rationale for the contention that Lans lacked credibility thus was the declaration by Mastriani quoted above. As we will see in the following this declaration was however a flat lie.

It is indeed also possible that the court even at this early stage, that is during the 1997-2001 process, suspected that something was not in order. Judge Penn's phrasing indicates that. One gets the feeling that he himself is not quite convinced and therefore emphasizes a bit extra. As we have seen he writes, for instance, about "Lans' behavior during the litigation process". But, as we know, Lans was never there - so, taking that into account, what is the meaning of "behavior"? Or, consider the wording that Lans concealed all information about the assignment declaration, "possibly even from his own attorneys". What does "possibly" mean here? From whom else than his own lawyers could he conceal anything if he was not present during the proceedings in the court?

The judgment

Thus, step by step, the proceedings were steered away from the main issue. In the decision situations illustrated in the diagram - one after the other - the court adopted the wrong alternative and thereby succeeded in making the question about Lans's credibility the main issue. Concerning this alleged main issue John Garret Penn accepted uncritically what Mastriani told him in the testimony quoted above and in other contexts. These circumstances were considered exceptional, and therefore, according to the court, there were also reasons to depart from the main rule in US civil law saying that each party pays its own costs. Lans was sentenced to paying the attorney fees of both parties.

The reconsideration

The main events

In January 2002 Hakan Lans, through his new lawyers Forrest Hainline III and Christopher R. Wall at Pillsbury and Winthrop, LLP, filed a motion for reconsideration of the court's 2001 decision about the attorney fees.[17] In this motion essential new information was added, some of which undermined the foundations of the earlier judgment - in particular this is true for a fax from Lans to Mastriani of February, 19, 1997. After quite some time reconsideration was admitted, and it has now also taken place. For the first time Hakan Lans himself has been present in the proceedings. On the 26 and the 27 of January, 2005, extensive interrogations were held with Lans and with his former attorney Lous Mastriani. Later, on March 24 and 25, the proceedings in the court took place and Lans was again present. During these interrogations and proceedings further information has appeared.

On June 23 this year, 2005, the judgment was pronounced. This new judgment, however, is in all parts an exact copy of the old one. Nothing is changed. Nothing in the new information has been found relevant for the judgment. The judgment, catastrophic for Lans, that he should pay both parties attorney fees remains. Again the judgment was signed by John Garret Penn.

Is this reasonable? Let us have a look at the new information which has been brought forward since 2001. And let us also see how this information has affected the arguments supporting the judgment. I will use the same diagram, and mainly the same headlines, as the ones I used for describing the 1997-2001 process.

The main issue

As for the main issue the new judgment is as taciturn as the former one. In the same way as in the 1997-2001 process this issue has been completely absent also in the reconsideration process. Perhaps this is just natural since the reconsideration formally only concerned the attorney fee issue, but still it is worth mentioning. Thus, and in the same way as earlier, it is perfectly clear that the companies sued are guilty of patent infringement, that they thereby have captured large amounts of money, and that this is considered as completely irrelevant and insignificant. What is highlighted, rather, is the damage allegedly threatening these companies, if they have to pay their own attorney fees.

The issue whether the lawsuit was filed by the wrong person

Concerning this issue new information is now available. In his new judgment, referring to the interrogation with Lans on January 26, judge Penn writes that[18]

> [T]he Court is troubled by the fact that Lans continued to claim that he was the registered owner of the patent even after the transfer to Uniboard was revealed.

This is written in a context where the judge's ambition is to demonstrate Lans's failing credibility, and the judge therefore gives an example of what he considers as the lying Lans. The problem only is that the judge is wrong. As we know Lans has all the time been "the *registered* owner of the patent" (my italics), and this is true irrespectively of what happened during the week between the assignment declaration and the clarification contract. Whatever happened at that time, the patent was not *re-registered*, neither at any later time. This, as judge Penn knows, is easily checked with the US Patent and Trademark Office. Thus, his writing in the passage quoted is a plain lie.

But even if judge Penn consequently fails in his ambition to discredit Lans, he is, unintentionally, successful in a completely different matter. His very lucid, and obviously mendacious, writing about the registered owner in the new judgment also sheds a ruthless light upon his assessment of Gateway's motion in the 1997-2001 process. Gateway's contention that the lawsuit was wrongly filed was, at that time, accepted by a judge who - as we now know - purposely lies on this point.

This further supports the assertion that the 2001 judgment was manipulated. In the first decision point in the diagram above the court intentionally adopted the wrong decision. And now, in the 2005 judgment, the court has done nothing in order to change this.

The issue about the responsibility for the allegedly wrong filing

But if, hypothetically - the lawsuit was in fact filed by the wrong person, who was, in that case, guilty? As we have seen the court choose, without really arguing, to lay the guilt on Lans when, reasonably, Louis Mastriani should have been focused. This matter has also become illuminated by new information and new arguments.

In a document attached to the motion for reconsideration in December 2001, that is a few months after the 2001 judgment, the distinguished lawyer and expert on intellectual property rights Bruce A. Lehman generally described the relevant rules like this:[19]

> The standard of care for an attorney filing a patent lawsuit requires the attorney independently to investigate and determine that the suit is being brought in the name of the patent owner.

Lehman furthermore contended that the lawyer, in addition to investigating the actual circumstances, is also obliged, if needed, to actively change the legal situation so that clarity is created. Thus he wrote:[20]

> The standard of care for an attorney professing familiarity with preparing, filing and prosecuting U.S. patent applications, when faced with confusion or ambiguity regarding ownership of a patent, would be to clarify the

> ownership issue by creating and filing appropriate documentation with the Patent and Trademark Office. In this case, because Mr. Lans owned 100% of Uniboard, it would have been a straightforward procedure to create and file an assignment of the Lans Patent rights either from Mr. Lans to Uniboard, or from Uniboard to Mr. Lans.

Thus, an attorney, who has any suspicion about confusion, is obliged to create ownership clarity before the filing of a patent lawsuit. And in that undertaking an investigation is not enough. If needed, the attorney should also enhance clarity, for instance by additional contracts or assignments.

And certainly Mastriani had reasons for suspicions. As we now know, and as will be shown in more detail in the next section, he was well informed about the IBM-agreement, about Unibord and about the transfer of rights to Uniboard. There is a lot of support for this claim but most important is a fax from Lans to Mastriani on February 19, 1997 (the fax will be presented in the next section). Referring to this fax Lehman writes as follows:[21]

> The letter dated February 19, 1997 from Mr. Lans to Mr. Mastriani clearly states that Mr. Lans not only believed that his patent had been assigned to Uniboard AB, but also that steps had been taken to record this assignment.

And Lehman also writes that:[22]

> In these cases, by January 1997, Mr. Mastriani and his firm had the IBM license agreement and were familiar with its provisions. Knowledge of the IBM license agreement standing alone would require an attorney to inquire as to [the] basis for Uniboard's rights to license the Lans patent to IBM.

The date mentioned in Lehman's declaration, January 1997, precedes the suing of the computer companies by more than half a year. Lehman thus concludes:[23]

> Given Mr. Mastriani's knowledge of the confusion regarding ownership of the Lans patent, he and his firm acted beneath the standard of care in failing to prepare and file the necessary clarifying documents.

The only thing which could lift the guilt for the allegedly wrong filing from Mastriani would thus be a total ignorance about the assignment declaration and the circumstances surrounding it. But Mastriani was in no way ignorant about these matters - in the next section the arguments related to this ignorance will be presented in more detail.

Judge Penn knows perfectly well that Mastriani was informed about the assignment declaration and Uniboard at the time of filing in 1997. But in spite of this he says nothing about these matters in his new 2005 judgment: Nothing about Lehman's declaration, nothing about the obligation of lawyers to clear things up before filing. All of this is passed without comments.

Thereby the conclusion concerning the second decision in the diagram above is perfectly clear. During the reconsideration process it has been shown beyond all doubt that the court, in spite of knowing better, has chosen to lay to guilt for the allegedly faulty filing on Lans rather than on Mastriani.

The issue about Hakan Lans's credibility

The issue about Hakan Lans's credibility has, in the way I have explained, by successive digressions from the basic infringement issue become the main issue. Or, as judge Penn writes in his new judgment, "The main issue before the Court concerns Lans' credibility".[24] The questioning of Lans's credibility depends, in turn, on the allegation that he covered the transfer of patent rights to Uniboard, by means of the assignment declaration, in connection with the IBM affair. The court's acceptance of the notion of Lans's failing credibility was, as it seems, above all due to Mastriani's affirmation on August 13, 1999, under perjury, that Lans repeatedly had declared that no transfer, ever, had taken place.

The relevant main argument for Lans's lacking credibility thus is not, which is important to underline, that he is inconsistent, that sometimes he said this, and sometimes that. Certainly there arguments like that as well, but first they are in all essentials wrong and furthermore, which is the important point, they are lacking relevance. No, the relevant main argument rather is that Lans never, ever, said anything whatsoever about any transfer of the patent, that he completely and consistently concealed this matter from his lawyers. It is this thesis that, again and again, is brought to light and underscored, and it is easy to understand that that is the way it has to be. As we have already seen, the only thing which could save Mastriani from the guilt for the allegedly wrong filing is a total ignorance about the IBM affair. Therefore it is necessary for Lans's earlier attorneys to show that Lans completely and consistently hid all information about Unibord's role in the IBM deal. Nothing else will do, and therefore the testimonies are the ones they are.

Let us start by repeating Mastrini's pronouncement under penalty of perjury on August 13, 1999, which went as follows:

> Inasmuch as I and other counsel to Mr. Lans have been repeatedly informed by Mr. Lans that no assignment had ever taken place with respect to the Lans patent, we are investigating the circumstances surrounding the referenced Assignment.

The pronouncement is categorical in exactly the way we have reasons to expect. It is not difficult to find more declarations of the same character.

In an affidavit to the court on May 10, 2004, Mastriani thus describes Gateway's presentation of the assignment declaration to the court in 1999 as a complete surprise. He writes:[25]

> When we were served on August 6, 1999, with the Gateway motion and the attached document, we were stunned.

And when Mastriani in the interrogation of January 27, 2005, was asked abut his pronouncement on August 13, 1999, and about what Lans had actually told him, he answered among other things this:[26]

> And he, and he never ever referred to any assignment of the '986 patent. He never used that word, ever.

Thus and again the same kind of very categorical, emphatically insisting declaration. I, Mastriani, have never, in any way whatsoever, been informed.

And the same story was repeated during the proceedings in the court on March 25, 2005, when Mastriani, answering a question from Lans's present lawyer Forrest Hainline, tells about the first time he heard about Uniboard and the patent. This is the exchange of words:[27]

> Q Okay. Let me ask you a question. When was the first time, the very first time, that you learned, AMS learned, that someone claimed that Uniboard was the owner of the 986 patent?
>
> A When we received the Gateway motion for summary judgment for lack of standing in August of 1999.

And in AMS's written posthearing brief the same kind of insisting recurs when they refuse to accept any fault whatsover. They defend themselves like this:[28]

> The simple reason for this glaring absence of authority is that Intervenors' [AMS's] inability to discover an assignment document, the existence of which was neither apparent nor mentioned by their client and, in fact, consistently denied, was not even negligent, let alone reckless.

For Mastriani it is thus compulsory, for the reasons I have given, to prove complete ignorance. Conversely this means that Mastriani's position becomes untenable as soon as the counterparty, that is Lans and his new lawyers, are able to present a single, solid proof that Mastriani, in fact, was informed. One such proof is a fax which Hakan Lans sent to Louis Mastriani on February 19, 1997, that is about half a year before the filing of the lawsuit against the computer companies. The fax contained among other matters the following:[29]

> As you know the license has been signed with a company (UNIBOARD AB) and not with me as an individual (the patent has been transferred to the company for many years ago and the agreement with IBM was made with UNIBOARD AB).

First, and for the sake of clarity, it should be said that the fax is not mentioned here in order to confirm the possible transfer of the patent to Uniboard - for the assessment of that issue it is, as we have seen, also necessary to consider other matters such as the clarification contract, which appeared a good week after the assignment declaration. No, the fax is mentioned solely in order to show that Mastriani was well

informed about the connection between Uniboard and the patent. Mastriani has also explicitly confirmed the reception of the fax (which, incidentally, he calls "e-mail").[30]

Thus it is perfectly clear that Mastriani at an early stage was informed about the transfer of patent rights to Uniboard and about Uniboard's role in the IBM affair. And this contention is by no means dependent only on the fax mentioned - there is considerably more evidence than this fax which shows the same thing. I will however not repeat all of this here. In my earlier essay further such evidence is presented.[31]

In his judgment of June 23, 2005, judge Penn silently bypasses all of this information which erases the foundation for the contention about Lans's wanting credibility. This is remarkable. Penn may have a different opinion about this matter, but in that case he should reasonably give his arguments. But he does not. He just acts as if Mastriani's declaration on August 13, 1999, and the whole discussion about it, are nonexistent.

And not only that. Penn even supports Mastriani by writing this:[32]

> During an evidentiary hearing held on March 24, 2005, Lans admitted that he did not tell AMS that he had signed an agreement transferring his ownerships rights.

Now, it is at first interesting to see how closely this wording resembles a corresponding passage in AMS's posthearing brief. There we find the following:[33]

> Indeed, Lans admitted, in response to direct questioning from the Court, that he had neither communicated the existence of the assignment to Intervenors [AMS] nor provided them with a copy of that document.

In both the judgment and AMS's posthearing brief this is presented as a general fact, as an assertion that Lans never informed AMS about the assignment declaration or about Uniboard. But, as we know, this was not so. The fax of February 19, 1997, with the information about both the patent transfer and Uniboard, was there all the time, and hence it is also clear that the passage from the judgment, and from AMS's posthearing brief, just quoted is false. But if so, what is there behind the assertion in the judgment and in AMS's posthearing brief.

Both documents refer to a passage in the proceedings in the court on March, 24, where Lans is questioned by Mastriani's lawyer Aaron L. Handleman. The questions and answers invoked are these:[34]

> Q Are you telling the Court that you communicated to AMS that you signed an agreement transferring your ownership rights, you, Lans to the patent to Uniboard?
>
> A No.
>
> Q So the answer is no, correct?
>
> A Yes, that is correct.

But this hardly supports the sweeping, general assertions in the judgment and in AMS's posthearing brief. The answers and questions quoted refer to a particular situation in a particular context. If one reads more in the minutes from the proceedings one finds that the short exchange of words cut out is about the oral communication between Lans and his lawyers in May and September 1996. Somewhat preceding the quoted few questions and answers the minutes offer the following insight into this communication (still Handleman is asking and Lans answering):[35]

> A Now you are talking law. Can you explain it in common words?
>
> Q With all due respect, I think it is a straightforward question. That you never ever told AMS that you signed, that you signed a document giving your ownership rights, you, Lans, to Uniboard. Isn't that correct?
>
> A I told them that I had signed an agreement between me and Uniboard.
>
> Q It is a fact, is it not, that you didn't remember that you signed an assignment agreement. Isn't that a fact?
>
> A I told them that I had an assignment agreement between me and Uniboard. That's exactly what I told them.
>
> Q But isn't it a fact that you did not remember in May of '96 or September of '96 that you actually assigned your ownership right, your title in the 986 patent from you personally to Uniboard. Isn't that a fact? You didn't remember that?
>
> A I remember that clearly.
>
> Q You remembered it clearly back then in 19--
>
> A I remembered that I had signed an agreement and we never discussed the details in the agreement. I told them where to find it. I also told them that I maybe could contact Gunnar Berg to get a copy.

If the questions and answers quoted in the judgment and in AMS' posthearing brief prove anything that must certainly be true for the other questions and answers as well. And these other questions and answers clearly demonstrate that Lans, at the time we are talking about, informed about Uniboard, about the agreement between him and Uniboard, and about where this agreement could be found. This, of course, is what is important and crucial in the context.

For this reason judge Penn's and AMS's invoking of a few questions and answers, which are cut out from a context necessary for their interpretation, is misleading. They do not prove what the judge and AMS want them to prove, namely that Lans *never* informed about the assignment declaration and Uniboard - they are only dealing with the oral communication between Lans and his attorneys at some occasions in 1996. But even if the quotation from the minutes does not show what it purports to show, it shows

something else. It illustrates very clearly the ambition of the judge and AMS, namely to portrait Lans as having never, ever, informed about the patent transfer to Uniboard. When the context in the minutes is added, that portrait falls into pieces.

At last, the following general comments concerning Lans's credibility may be made. First, there are no imaginable motives which would make it interesting for Lans to deceive his lawyers. This, indeed, should be emphatically underlined - How could there possibly be any motives for Lans to behave in the way judge Penn and Louis Mastriani claims that he behaved? Furthermore, Lans account for the assignment declaration, and Uniboard, and related matters, in the interrogation on January 26, is straight and consistent. These matters, of course, give further support to the contention that Hakan Lans is, in fact, a credible person.

Summarizing we now know, after the reconsideration, that AMS's and judge Penn's assertion about Lans's lacking credibility is completely untenable. After the presentation of the fax of February 19, 1997, and a lot of other evidence, it is on the contrary clear that the failing credibility should be sought elsewhere. The only remaining question, rather, is whether AMS's and judge Penn's acting have been coordinated or not. The similarity between John Garret Penn's judgment and AMS's posthearing brief is, however, telling.

Anyway, and again referring to the diagram above, the wrong judgment in the third point of decision, is now obvious.

Further support for the judicial crime hypothesis

For the sake of clarity I have so far, in the main, used the same headlines for describing the 1997-2001 process and the reconsideration process. The judicial crime hypothesis is however supported by other information as well, which is not naturally captured by these headlines. I will therefore present this information in this additional section. In particular this information is about two matters.

The first one concerns the initiative to the US color graphics lawsuit. The judicial crime hypothesis, as we know, is to a considerable extent dependent on the assumption that the initiative did not come from Lans, but from someone contacting Lans from the outside. The contention that the initiative really came from the attorneys, not from Lans, has now got further support. When interrogated on January 26, 2005, Lans himself described in considerable detail the events leading up to the US process.[36] Lans confirms that the initiative came from Peter Utterstrom at the Delphi law firm in Stockholm and the Swedish-American attorney Talbot Lindstrom, also with Delphi at that time. Lans's narration is straight and consistent and he was not, during the interrogation, subject to any questioning counter arguments. Neither was Lans's narration about the initiatives preceding the process questioned later on - not in the court proceedings on March 24-25, not in any of the motions to the court filed by AMS after the interrogation with Lans on January 26.

The one document from the opposite side, that is AMS and Mastriani, which is really relevant for the initiative issue is Mastriani's affidavit of May 10, 2004. There Mastriani describes how the initiative, according to his understanding, came about.[37] First

he writes that "The idea for exploitation of U.S. Patent No. 4,303,986 ("the '986 patent") was not conceived by any attorney at Adduci, Mastriani & Schaumberg ("AMS") but by Lans." When writing so Mastriani does however exclude a third possibility - obviously the initiative did not have to come from either Lans or Mastriani, it also could have come from the constellation Delphi, Peter Utterstrom and Talbot Lindstrom. And Mastriani also writes in several places in the paragraphs mentioned that, in fact, he was contacted by these latter ones at the end of 1995. In the interrogation with Mastriani on January 27, this particular part of his affidavit was also dealt with, and nothing of what appeared there changes the picture given here.[38]

The contention that the initiative to the US process really came from the attorneys, not from Lans, thus is noticeably stronger after the reconsideration process. Now, Lans has presented his version of the events leading to the US process in considerable detail, and Mastriani and AMS have not challenged this narration despite several opportunities to do so.

The other matter concerns the content of the settlement agreement which Gateway presented in 2001, and which Lans attorneys at that time, that is AMS, in a blackmailing manner tried to make Lans sign. This proposed agreement, and the circumstances around it, are accounted for in detail in my earlier essay.[39] Here it is therefore enough to repeat that there were strong reasons for suspecting that Gateway, by means of the settlement agreement, was trying to get hold of Lans's revolutionary position indicting patent (sometimes also referred to as the STDMA-technique, or the satellite navigation system). Since the patent was not mentioned by name in the settlement agreement, and thus at most involved implicitly, there has only been suspicions, although very strong ones.

Now, however, this matter has become perfectly clear. In the interrogation on January 27 Mastriani explicitly admitted that the STDMA-patent was included in the settlement agreement which he, Mastrinai, and his colleagues tried to compel Lans to sign in 2001. Here is the question from Lans's present attorney Forrest Hainline and Mastriani's answer:[40]

> Q And this settlement agreement would have conveyed to Gateway a license under the STDMA patent, correct?
>
> A Yes. In exchange for $5,000 being paid by Mr. Lans, Gateway was going to waive its claim to an -- in excess of a million dollars in damages and any other claims it had against Mr Lans in exchange for a license under the '986 patent and under the GPS patent, which was not being practiced in the United States by anybody because it had been disavowed by the aviation industry because of another standard that was being adopted. I think it was being advocated by Honeywell.

This means that the connection between the two patents - the color graphics patent and the position indicating patent - now is corroborated. In order to compensate for his alleged fraudulent behavior in the process about the first patent Hakan Lans should be forced to give up the latter one. That Mastriani, now and afterwards, belittles the significance of the STDMA-patent is only what one would expect.

Conclusions

In my earlier essay I presented the hypothesis that the judgment against Hakan Lans on September 6, 2001, including the process preceding it, was a planned judicial crime. The immediate purpose, in that case, should have been to crush Lans by means of the color graphics process. The purpose of that, in turn, could be either to get hold of the position indicating patent in some way or another, or to obstruct the development of that system. The position indicating system touched, as I described in my earlier essay, very strong and powerful interests of various kinds.

Now, during the reconsideration process, including among other matters long and thorough interrogations with Hakan Lans as well as Louis Mastrini, nothing has appeared which creates problems for this hypothesis. This, alone, may be considered as further implicit support for the hypothesis since it has proved itself compatible with a considerably larger amount of information than earlier - it has, to put it that way, passed a considerably more demanding filter than before. But in addition to that new explicit support for the hypothesis has appeared. With the information now available it is difficult find any other hypothesis than the judicial crime hypothesis reasonable at all.

This new information is of two kinds. First there is the information which supports the contention that we are witnessing a phony legal process, then there is the information which supports the contention that the motive behind the phony process is related to the position indicating system. As for the first kind of information the following points, which are related to the decisions in diagram above, are of particular interest:

- First: It is now obvious that the original lawsuit was filed correctly, not by the wrong person as the court maintains.

- Second: It is now clear that the one guilty for the allegedly wrong filing is Louis Mastriani, not Hakan Lans.

- Third: The idea about Hakan Lans's lacking credibility, which formed the foundation for the court's judgment, is now erased. This ideas was, as we now know, exclusively based on Mastriani's lies, some of them under penalty of perjury.[41]

- To these three points, which have been extensively discussed above, a fourth one may now be added. During the reconsideration it has become obvious that not only Mastriani, but also John Garret Penn, actively and intentionally took part in what he knew was a phony process. In the foregoing I have accounted for a repeated lie committed by Penn, for his obviously partial dealing with some information, and for his total disregard for other highly relevant information. Most important, however, is how he, in the way illustrated in the diagram, step by step led the proceedings away from the basic infringement issue to the strange, unsubstantiated and irrelevant issue about Hakan Lans's credibility. This certainly looks like manipulation. All of this shows that judge Penn has acted as an instrument for something else than justice.

The second part of the information, the one which is relevant for the position indicating system connection, relates in particular to two important matters.

- First, the contention that the initiative to the US color graphics lawsuit not came from Lans, but from somewhere else, has become much stronger.

- Second, The contention that the STDMA-patent was included in the settlement proposal, which was presented by Gateway and which AMS urged Lans to sign, is now ascertained beyond doubt.

I am fully aware that the judicial crime hypothesis is difficult to sell. Many people believe or argue that such things just don't happen, in particular not in the US which a western democracy ruled by law - many would even say that the US is the leading country of this kind in the world. Still, if you carefully and to the best of your ability scrutinize the details and arguments of an individual case, and turn the arguments around in all ways in order not to miss any alternative interpretations, you finally have to believe in the testimony of your own senses. That, at least, is my opinion.

Remember the old saying that "if something looks like a duck, quacks like a duck, and tastes like duck, then it's a duck". This is as true for a phony process, or for a legal scandal, as for a duck. The US color graphics process, including the judgment against Hakan Lans, is a phony process and a first rate legal scandal.

We are indeed witnessing a planned judicial crime!

Endnotes

All of the references below, which are written in bold letters, are available by links presented in the document list (**www.mobergpublications.se/patents/document-2.html**). Most of these links lead to documents posted on this site, but a few of them, rather, lead to other sites on the web.

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[1] **The motion for reconsideration**
[2] **Memorandum opinion**
[3] **The Judgment against Hakan Lans - A Planned Judicial Crime?**
[4] Later Compaq has however reached a separate agreement with Lans. In spite of this Lans has however, not seen anything of the resulting license fees - they are locked in the client account of Lans's former attorneys (AMS).
[5] **Memorandum opinion**, the "Background" section, p 2
[6] **The assignment declaration**
[7] **Memorandum opinion**, p 2f
[8] **The clarification contract**
[9] **The Federal Circuit's pronouncement**, section I
[10] **The color graphics patent 1**, **The color graphics patent 2**

[11] This argument is further developed in **The Judgment against Hakan Lans - A Planned Judicial Crime?**, in the section "Justice in the patent issue?".
[12] The contingency fee agreement is described in more detail in **The Judgment against Hakan Lans - A Planned Judicial Crime?**, in the section "The color graphics 1995-2001 - the American process - The beginning".
[13] **Memorandum opinion**, p 5
[14] **The motion for reconsideration**, p 1
[15] **Memorandum opinion**, p 3
[16] **Memorandum opinion**, p 4f
[17] **The motion for reconsideration**
[18] **Memorandum opinion**, p 8
[19] **Bruce A. Lehman's declaration**, p 3
[20] **Bruce A. Lehman's declaration**, p 4
[21] **Bruce A. Lehman's declaration**, p 5
[22] **Bruce A. Lehman's declaration**, p 3f
[23] **Bruce A. Lehman's declaration**, p 4f
[24] **Memorandum opinion**, p 6
[25] **Mastriani's affidavit**, paragraph 22
[26] **Louis Mastriani's deposition, January 27, 2005**, p 150
[27] **The court proceedings, March 25**, p 105
[28] **AMS's post-hearing brief**, p 10
[29] **The fax of February 19, 1997**
[30] **Mastriani's affidavit**, paragraph 15
[31] **The Judgment against Hakan Lans - A Planned Judicial Crime?**, the section "Justice in the attorney fee issue?"
[32] **Memorandum opinion**, p 8
[33] **AMS's post-hearing brief**, p 8
[34] **The court proceedings, March 24**, p 59
[35] **The court proceedings, March 24**, p 58
[36] **Hakan Lans's deposition, January 26, 2005**, p 13f
[37] **Mastriani's affidavit**, paragraph 4f
[38] **Louis Mastriani's deposition, January 27, 2005**, p 27ff
[39] **The Judgment against Hakan Lans - A Planned Judicial Crime?**, the section "A link between color graphics and position indicating"
[40] **Louis Mastriani's deposition, January 27, 2005**, p 149f
[41] A systematic list of Mastriani's falsehoods is presented in the section "Mastriani's lack of credibility and lack of any corroborating evidence" in **Hakan Lans's post-hearing brief**, p 14ff