

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

* * * * *

RICOH COMPANY, LTD.,

Plaintiff, VOLUME 1-C (Daily Copy)

vs.

Case No. 06-CV-462-BBC

QUANTA COMPUTER INC.,
QUANTA STORAGE INC.,
QUANTA COMPUTER USA, INC.,
NU TECHNOLOGY, INC.,

Madison, Wisconsin
November 9, 2009
1:40 p.m.

Defendants.

* * * * *

STENOGRAPHIC TRANSCRIPT OF FIRST DAY OF TRIAL
AFTERNOON SESSION

HELD BEFORE CHIEF JUDGE BARBARA B. CRABB, and a Jury

APPEARANCES:

For the Plaintiff: Lathrop & Clark, LLP
BY: KENNETH B. AXE
740 Regent Street, Suite 400
P.O. Box 1507
Madison, Wisconsin 53701-1507

Kellogg, Huber, Hansen, Todd,
Evans & Figel, PLLC
BY: J.C. ROZENDAAL
MICHAEL J. GUZMAN
MICHAEL JOFFRE
CHRISTOPHER WALKER
1615 M Street N.W., Suite 400
Washington, D.C. 20036

CHERYL A. SEEMAN, RMR, CRR
Official Court Reporter
United States District Court
120 North Henry Street
Madison, Wisconsin 53703
1-608-255-3821

APPEARANCES: (Continued)

For the Plaintiff: Cooper & Dunham, LLP
BY: IVAN KAVRUKOV
1185 Avenue of the Americas
23rd Floor
New York, New York 10036

For the Defendants: Godfrey & Kahn
BY: TODD SMITH
One East Main Street, Suite 500
P.O. Box 2719
Madison, Wisconsin 53701-2719

Paul, Hastings, Janofsky & Walker
BY: TERRY D. GARNETT
PETER J. WIED
JOHN PORTER
515 South Flower Street
Twenty-Fifth Floor
Los Angeles, California 90071-2228

I N D E X

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1 THE COURT: I just wanted to say that
2 although I'm still thinking about the *willfulness*, I
3 certainly wouldn't include that question in the
4 liability verdict, so it would only come up in
5 damages.

6 MR. GARNETT: Okay. Your Honor, should I sit
7 down?

8 THE COURT: No. That's okay. You can stand,
9 because the jury will be coming in.

10 MR. GARNETT: Okay. Then I think we have a
11 problem because most or many of the statements in
12 Mr. Rozendaal's opening statement go only to
13 willfulness. And at the time he made them, I didn't
14 know if willfulness would be part of the liability
15 phase or the damage phase, although I agree with the
16 Court, it should be part of the damage phase.

17 And I think those statements are extremely
18 prejudicial to my clients; statements such as my
19 clients were approached, asked to take a license, and
20 they turned them down; statements such as there are
21 other folks who took licenses, but they refused to
22 take a license.

23 That information and evidence could only be
24 relevant to the willfulness issue. And if that's not
25 part of the liability phase, then we have to move for

1 a mistrial. I think we need a new jury.

2 MR. ROZENDAAL: Your Honor, there is no
3 practical way to separate out the evidence of that
4 willfulness from the evidence about the intent that we
5 are required to prove for the contributory and
6 inducing infringement portions of the case. And it is
7 absolutely normal for the question of willfulness to
8 be decided together with the question of
9 infringement -- was there infringement; if there was
10 infringement, was it willful.

11 In the damages phase, there will be nothing for
12 the jury to do about the question of willfulness
13 because if there is any increase in the damages, it
14 will be decided by Your Honor.

15 THE COURT: Well, I would not include it in
16 the liability phase. I don't think I ever have.

17 MR. ROZENDAAL: But in terms of the
18 presentation of the evidence, this is all one package.
19 We have to be able to talk about the notice that we
20 gave them, that they knew about the patents, so that
21 their contributory and inducement met the intent
22 requirements of the statute, and I don't think we can
23 slice the evidence so fine we can distinguish between
24 the willfulness and the other parts of the story.

25 THE COURT: I don't see why not. The

1 question is now what to do about what's already
2 happened. I think -- I don't want to grant a
3 mistrial. I think it would be better to craft some
4 sort of instruction to give to the jury tomorrow
5 morning that would explain to them some way that they
6 should just ignore all of that at this point.

7 MR. GARNETT: Okay. Your Honor, I understand
8 your reluctance to grant a mistrial, but I do think it
9 was extremely prejudicial telling the jury that we
10 knew of the patents, is one thing. Telling the jury
11 that we refused to take a license and that everybody
12 else in the industry took a license is extremely
13 prejudicial then in the liability phase.

14 THE COURT: I think we can work out an
15 instruction that will tell them. I guess I have
16 trouble figuring out essentially why there is any
17 willful -- this case, you know, Quanta essentially got
18 summary judgment on all but the one issue or the thing
19 that we are trying now.

20 It seems to me a little strange that you would
21 base a willfulness case situation in which, you know,
22 there certainly is a very very strong question about
23 the issues in this case, which I think goes a long way
24 to undercut a willfulness claim.

25 MR. ROZENDAAL: Well, Your Honor, the fact

1 remains that they were told in detail about the
2 patents, that they continued to sell their infringing
3 drives and that the jury should be entitled to
4 consider that in determining whether or not the
5 infringement was willful.

6 The fact that there were other patents in the
7 case, that for one way or another are no longer in the
8 case, doesn't alter the fact that where there is
9 strong evidence they were infringing, they should be
10 held accountable for their intentional continued
11 infringement, which we think the evidence will
12 support.

13 One other point: The question of licenses is
14 relevant not only to licenses, it's also relevant to
15 commercial success, which is one of the secondary
16 indicia of non-obviousness. That's something that's
17 going to come in the case one way or another anyway.

18 MR. GARNETT: It's how it was presented to
19 the jury and the particular statements made by
20 Mr. Rozendaal that I find particularly prejudicial
21 because the implication was that the defendants
22 infringed willfully; it wasn't that Ricoh enjoyed
23 success in the market and that it had a wide licensing
24 program. It was not presented in that way; it was
25 presented in a very prejudicial light to my client.

1 I think that was entirely improper. In fact, I
2 was shocked to hear it in opening, but I understood
3 that there was no ruling yet on willfulness and
4 whether it would be part of the liability phase or the
5 damage phase and so --

6 MR. ROZENDAAL: Again, Your Honor, that's all
7 intertwined with the intent that the defendants had
8 with regard to their infringement, which is the
9 elements we are going to have to prove for inducement.
10 We are going to have to show that they intended people
11 to use the invention and that they knew about them
12 and that's all part of the same evidence.

13 I think we are going to need some guidance. If
14 the Court wants to try to separate those out, we are
15 going to need some guidance on how to separate it
16 because it's really all one bundle of facts. They
17 were told, they had notice of the patents.

18 MR. GARNETT: That's all that's required,
19 that we had notice. The intent issue goes to whether
20 the product was made or adapted to infringed use and
21 whether we encouraged others to infringe in the United
22 States and whether there is some separate or distinct
23 component of the device that has no other use to
24 infringe. I don't see how Quanta Computer or Quanta
25 Storage not taking a license has anything to do with

1 those intent issues.

2 MR. ROZENDAAL: Your Honor, if they had said,
3 for example, hypothetically, we were told about their
4 infringement and we went out and got an opinion of
5 counsel that told us we didn't infringe and therefore
6 we couldn't possibly have intended our drives to
7 result in infringement by anyone, that would be a
8 possible defense they could raise.

9 The fact that they essentially admit they didn't
10 do anything to investigate, or at least there is no
11 evidence of any such investigation, is relevant to the
12 intent they had or the recklessness -- the willful
13 ignorance about the consequences of continuing to sell
14 their products.

15 THE COURT: I think the thing that
16 Mr. Garnett is objecting to the most, that everybody
17 else said, "Oh, yes, we will take the licenses because
18 we know your product is so wonderful, we can't live
19 without it."

20 MR. ROZENDAAL: Again, that's going to come
21 in. That is relevant evidence of commercial success,
22 which is one of the factors for the obviousness case.
23 So we expect to present that evidence, in any event,
24 quite apart from willfulness.

25 MR. GARNETT: Well, I do believe that the

1 commercial success of the product is relevant to
2 invalidity. But whether or not we agree to take a
3 license and everybody else did, and in the way it was
4 presented in the opening, is not relevant to the
5 liability phase.

6 And in fact, Ricoh actually made money under many
7 of those license agreements to the other party to the
8 license agreement that wasn't mentioned by
9 Mr. Rozendaal, and I would need some guidance on how I
10 can handle that situation during my opening statement.

11 I just think that the opening statement given by
12 Mr. Rozendaal was so geared towards willfulness and
13 the way that he spoke and how he put those issues
14 together, it was clear that the jury was to come away
15 with the understanding that Quanta Storage and Quanta
16 Computer were willful infringers. He wasn't
17 presenting that evidence in a manner that dealt with
18 commercial success, not in any way.

19 MR. ROZENDAAL: Your Honor, again, from the
20 outside of the case in the complaint, we said that we
21 asked them not to infringe and they continued to
22 infringe and that is what we expect the evidence to
23 show and that is relevant to their intent in
24 continuing to sell these products, which is one of the
25 things we have to prove for both of our indirect

1 infringement arguments.

2 MR. GARNETT: I beg to differ. We can look
3 at what contributory infringement means and what
4 inducement means.

5 THE COURT: And we will.

6 MR. GARNETT: Thank you, Your Honor.

7 THE COURT: I'm contemplating telling them
8 this, the jurors, when they come back in:

9 "Mr. Rozendaal told you in his opening statement
10 the defendants were offered licenses from Ricoh but
11 refused to purchase them. I am instructing you that
12 any prospective purchaser of a license may decline
13 such a license for any number of reasons in the same
14 way prospective purchasers of license may accept them
15 for any number of reasons for their own, including a
16 disinclination to engage in litigation. You should
17 not draw any inference from the defendants' refusal of
18 Ricoh's license offers."

19 MR. GARNETT: Thank you, Your Honor. May I
20 also be allowed to say during my opening that Ricoh
21 mentioned that license agreements were entered into
22 between Ricoh and other parties; what Ricoh's counsel
23 failed to tell you was that under many of those
24 license agreements, Ricoh actually paid money to the
25 other parties, so Ricoh actually licensed technology

1 and paid royalties out in order to obtain technology
2 for its disc drive, something along those lines?

3 THE COURT: Mr. Rozendaal, any objection?

4 MR. ROZENDAAL: Your Honor, if Mr. Garnett
5 thinks that's what the evidence will show, we don't
6 object to what he thinks the evidence will show about
7 the licenses. But your instruction, as it's phrased,
8 the jury should not draw any inference for their
9 refusal to take a license, does muddle up the whole
10 intent issue that's going to be part of the case and
11 we would respectfully object to that portion of the
12 instruction.

13 MR. GARNETT: If we are going to have license
14 agreements in this part of the case, then --

15 THE COURT: I'm just going to say the
16 defendants' mere refusal of Ricoh's license offers.

17 MR. ROZENDAAL: Well, I believe, as I heard
18 Your Honor say, you said something about not draw any
19 inference.

20 THE COURT: Right, from the defendants' mere
21 refusal of Ricoh's license offers. That leaves you
22 plenty of leeway to tell them other things about what
23 happened.

24 MR. GARNETT: Thank you again, Your Honor.
25 We understand your ruling. I just want to make it

1 clear that we are not waiving our motion for mistrial.

2 THE COURT: I understand that.

3 MR. GARNETT: Thank you.

4 THE COURT: All right. Would you bring in
5 the jurors?

6 (Jury in at 1:57 p.m.)

7 THE COURT: Before Mr. Garnett begins his
8 opening statement, members of the jury, I want to say
9 something to you. Mr. Rozendaal told you in his
10 opening statement that defendants were offered
11 licenses from Ricoh but refused to purchase them.

12 I'm instructing you that any prospective
13 purchaser of the license may decline such an offer for
14 any number of reasons in the same way prospective
15 purchasers of licenses may accept them for any number
16 of reasons, including a disinclination to engage in
17 litigation. You should not draw any inference from
18 defendants' mere refusal of Ricoh's license offers.

19 Mr. Garnett, you may proceed.

20 MR. GARNETT: Thank you, Your Honor. Good
21 morning -- or good afternoon, ladies and gentlemen.
22 On behalf of Quanta Computer, Quanta Storage and
23 Quanta Computer USA, I want to thank you for your time
24 and attention to this matter. Your jury service is
25 greatly appreciated by all of the defendants and, I'm

1 confident, by Ricoh as well.

2 Now, I have some representatives from Quanta
3 Computer and Quanta Storage here today and throughout
4 the trial and I would like to introduce them to you.

5 First I have from Quanta Computer, Ms. Tracy Li.
6 She is the head of the legal department at Quanta
7 Computer. And from Quanta Storage I have Mr. William
8 Wang. He is the chief financial officer of Quanta
9 Storage. Now that you have met the representatives, I
10 would like to tell you a little bit about what Quanta
11 Computer and Quanta Storage do.

12 Now, let me start with Quanta Storage. Quanta
13 Storage is an assembler of disc drives. Quanta
14 Storage buys various components of the disc drive and
15 puts them together to make a functioning drive.

16 Now, one of the components that Quanta Storage
17 purchases is a controller chip and this controller
18 chip controls the reading and the writing functions of
19 the disc drive.

20 Because Ricoh's patents relate to a specific
21 method of recording, this case is really about this
22 controller chip, and this controller chip is made by a
23 company that is not a party to this lawsuit.

24 You will not hear any testimony from any chipset
25 designer that will tell you exactly how this

1 controller chip controls the recording function of
2 this disc drive, and that is one of the reasons, and
3 just one of the reasons, we believe that Ricoh cannot
4 meet its burden to show infringement in this case.

5 Now, Quanta Computer assembles notebook or laptop
6 computers. Quanta Computer buys the components of the
7 laptop computer and puts them together into a
8 functioning notebook or functioning laptop. Just one
9 of the components that Quanta Computer purchases is
10 the disc drive.

11 Quanta Computer USA is also a defendant in this
12 case. Quanta Computer USA is a wholly-owned
13 subsidiary of Quanta Computer. Now, there won't be
14 much testimony about Quanta Computer USA during the
15 trial. And so other than to tell you that they do
16 some replacement of disc drives, I won't mention them
17 during my opening.

18 Now, as you know, Ricoh is the plaintiff in this
19 case. Ricoh has not made disc drives for many years
20 and Ricoh does not make laptop computers. In fact,
21 when Ricoh was making disc drives, you will learn that
22 it never made a profit on its disc drive business.
23 Even before Quanta Storage entered the disc drive
24 market, Ricoh's disc drive business was a failure.

25 Now, Ricoh's counsel mentioned some license

1 agreements and that Ricoh has entered into many
2 license agreements with other major players in the
3 disc drive industry. What Ricoh's counsel didn't tell
4 you is that under many of those license agreements,
5 Ricoh actually paid money to the other company to use
6 the other company's technology, so Ricoh actually
7 licensed in technology from other major players in the
8 disc drive business.

9 Now, Ricoh's attorney spent a significant amount
10 of time discussing Ricoh's infringement claim and so I
11 would like to tell you why I believe the defendants do
12 not infringe. Now, before I do that, I think it would
13 help to give you some context and explain a little bit
14 about the disc drive technology at issue in this case.

15 Now, this is a slim optical disc drive and it's
16 designed to go into a laptop computer. And I think
17 Ricoh's counsel showed you this slim drive, a slim
18 drive similar to this.

19 Now, if I were to open the drawer and I were to
20 put in a disc that had information on it and this slim
21 drive was in a laptop computer, the laptop computer
22 would read the information off of the disc.

23 For example, if I put in a music CD, the laptop
24 computer would play music. If I put in a DVD, the
25 laptop computer would play a movie. So this disc

1 drive has a non-infringing use because Ricoh's patents
2 are directed to recording information and only
3 recording information.

4 Now, after listening to Ricoh's counsel, you
5 might think that this disc drive itself infringes.
6 That's not accurate. Ricoh's patents are directed
7 again to a specific method of recording information.
8 The disc drive itself is not infringing; it's the use
9 of this disc drive to record information in a specific
10 way that is infringing.

11 Now, as you may know, some disc drives are also
12 able to record information. So not only can they play
13 a CD, they might be able to burn music onto a CD.
14 Now, recording information may or may not be
15 infringement and that's an issue that you will have to
16 decide in this case.

17 With that background, I want to explain more why
18 we believe Ricoh cannot meet its burden to show
19 infringement.

20 Now, there are two issues that you will have to
21 decide with respect to infringement; is there direct
22 infringement and is there indirect infringement; in
23 other words, has Quanta Storage or Quanta Computer
24 contributed to or induced others to infringe. That's
25 indirect infringement.

1 Now, you may wonder what direct infringement
2 means, what does indirect infringement mean, what does
3 contributory infringement mean, what does inducement
4 infringement mean, so I want to take a minute and
5 explain that to you because I think it's important.

6 For direct infringement, you will have to decide
7 whether the controller chip controls the disc drive in
8 such a way as to perform all of the steps of a Ricoh
9 patent claim and you will have to determine whether
10 those steps were performed in the United States.

11 Now, I have on the board, Ricoh's patent claims
12 that they are asserting against the defendants and I
13 find it odd that Ricoh's counsel didn't show you the
14 actual patent claims that are at issue in this case
15 and so I have blown them up here and put them on this
16 board for you to look at. These are the patent claims
17 that are relevant to this case.

18 Now, each claim recites a series of steps. For
19 direct infringement, you will have to decide if each
20 of those steps or all of those steps in any one claim
21 is performed in the United States. And after you have
22 heard the evidence, I think you will agree that the
23 accused drives made by Quanta Storage are not even
24 capable of performing all the steps in any one Ricoh
25 patent claim. And in a moment I will discuss that

1 evidence. But as I said, I want to explain indirect
2 infringement to you first.

3 Now, there are two types of indirect
4 infringement, as you have heard; contributing to
5 infringement and inducing infringement. Now, if you
6 do not find direct infringement, then you don't have
7 to reach the issue of indirect infringement.

8 But Ricoh can only accuse the defendants in this
9 case of indirect infringement. They cannot accuse the
10 defendants of direct infringement because the
11 defendants don't use the disc drives to record
12 information.

13 Now, for contributory infringement, again you
14 will have to find that the defendants contributed to
15 someone else's infringement. After the parties
16 present their evidence, the judge will instruct you on
17 what contributory infringement means.

18 But as you listen to the evidence in this case, I
19 would like you to pay attention to a couple of
20 contributory infringement issues; first, did the
21 defendants know the accused disc drives were made or
22 adapted to infringe a Ricoh patent; and second, is
23 there any non-infringing use for an accused disc drive
24 or part of the disc drive other than to infringe.

25 Now, Ricoh also contends that Quanta Storage, but

1 not Quanta Computer or Quanta Computer USA, induces
2 others to infringe. The judge will instruct you on
3 what inducing infringement means at the end of the
4 evidence.

5 But as you are listening to the evidence in this
6 case, I want you to pay attention to a couple of
7 issues that relate to inducing infringement; first,
8 did Quanta Storage take some action to encourage
9 others to use a Quanta Storage disc drive in the
10 United States in an infringing manner; and second, did
11 Quanta Storage know or should it have known that its
12 drives would be used to infringe a Ricoh patent in the
13 United States. And as I discuss the evidence in this
14 case, I will remind you of these issues that I raise
15 with respect to contributory infringement and inducing
16 infringement.

17 Now, to understand why there is no contributory
18 infringement or inducement infringement here, I think
19 it's helpful to understand the business of Quanta
20 Computer and Quanta Storage in a little bit more
21 detail, so let me tell you about Quanta Storage first.

22 Now, as I already mentioned, Quanta Storage is an
23 assembler of optical disc drives. And I have a
24 graphic that I think will help illustrate their
25 business model. Quanta Storage will buy, for example,

1 a laser and a motor and the controller chip and it
2 will assemble those components together into a
3 functioning disc drive.

4 Now, for the last several years, Quanta Storage
5 has had only one main customer and that customer is
6 Sony Optiarc. You may have heard of the company
7 called Sony. Well, Sony owns Sony Optiarc. You will
8 learn that Quanta Storage sells almost no disc drives
9 under its own brand name. It assembles the disc
10 drives for Sony Optiarc.

11 Now, Sony Optiarc helps Quanta Storage design the
12 disc drives. Sony Optiarc puts its brand name on the
13 disc drive and then Sony Optiarc sells the disc drive
14 to brand name computer companies, companies that you
15 are likely familiar with -- HP, Apple, Dell, for
16 example.

17 Now, Quanta Storage does have contact with the
18 brand-name companies -- with HP, with Apple, with
19 Dell. Quanta Storage does not have contact with the
20 end user of the optical disc drive. Quanta Storage
21 does not have contact with the end consumer of the
22 optical disc drive.

23 Now, this fact is relevant because one of the
24 issues you will be asked to consider is whether Quanta
25 Storage encourages someone else to use a disc drive in

1 an infringing manner in the United States. Quanta
2 Storage does not do that. Quanta Storage does not
3 take any action that would encourage an end user to
4 record information onto this disc because Quanta
5 Storage does not have contact with the end user.

6 Now, I want to take a moment and talk to you a
7 little bit more about the controller chip. The
8 controller chip, as you learned, has hardware and
9 software called *firmware* and that hardware and that
10 software controls the reading and the writing
11 functions of the accused disc drive.

12 Now, Quanta Storage buys these controller chips
13 predominantly from a company called *Mediatek* and also
14 from a company called *Philips*. When Quanta Storage
15 buys the chip, it already has the reading to play
16 music and the writing functionality built in.

17 So why is that important? Well, for three
18 reasons. First, one of the issues you will have to
19 decide is whether a Quanta Storage disc drive or a
20 part of that drive has any use other than to infringe
21 the Ricoh patent claim.

22 Now, as I told you, the Ricoh patents relate to a
23 specific way of recording information. So this
24 controller chip has a use that is never infringing,
25 and that is to play music and to play a movie.

1 There is a second reason that the controller chip
2 is important. Now, you will hear testimony from an
3 expert in this case, Dr. Drabik. And as Dr. Drabik
4 will tell you, whether a Quanta Storage disc drive is
5 even capable of performing the steps in one of Ricoh's
6 patent claims, you have to examine the firmware and
7 the hardware of the controller chip. Dr. Drabik will
8 also tell you that you likely need to speak with the
9 firmware and the hardware designer for the controller
10 chip.

11 What you won't hear at trial from Ricoh's expert
12 is any discussion of the firmware and the hardware of
13 the controller chip that controls the reading and the
14 writing functions of the disc drive.

15 Now, these facts are relevant because they relate
16 to an issue that you must decide, which is whether
17 Ricoh can show that the accused disc drives are even
18 capable of performing all of the steps of one of
19 Ricoh's patent claims. Ricoh cannot meet that burden
20 because Ricoh did not examine the hardware or the
21 firmware of this controller chip.

22 The third reason the controller chip is relevant
23 is because Quanta Storage does not make the controller
24 chip and it doesn't design the firmware for the
25 controller chip.

1 Now, as you know, one of the issues you will have
2 to decide is whether Quanta Storage knew that its
3 accused drives were made or adapted to operate in an
4 infringing manner. Quanta Storage doesn't know that.
5 Quanta Storage does not offer the firmware and it does
6 not manufacture the hardware of this controller chip.
7 Quanta Storage buys this controller chip from a
8 third-party manufacturer.

9 Now, Ricoh contends that Quanta Storage tweaks
10 the firmware in this controller chip. And a Quanta
11 Storage engineer will testify that Quanta Storage does
12 set some parameters for the firmware, but that work
13 does not require a detailed understanding of the
14 complicated workings of this controller chip.

15 Quanta Storage does not know how a controller
16 chip controls the complicated writing functions of the
17 drive; it's just not their business. They assemble
18 disc drives from components that they buy from third
19 parties.

20 Now, you will hear that Quanta Storage tests the
21 disc drives, but those tests do not show whether the
22 accused product performs all the steps of one of
23 Ricoh's patent claims and the tests weren't even
24 designed to show that.

25 Now, let me explain how Quanta Computer enters

1 the picture. And I have a graphic that I think helps
2 illustrate Quanta Computer's business model. Quanta
3 Computer is an assembler of laptop computers. Like
4 Quanta Storage, Quanta Computer buys the components of
5 the laptop -- like a CPU, an LCD screen, a keyboard --
6 and it assembles those components together into a
7 functional laptop.

8 Now, one of the components that Quanta Computer
9 purchases is an optical disc drive. Quanta Computer
10 then sells the laptop computer to a brand name
11 computer company like HP, like Dell and like Apple, to
12 name just a few.

13 Now, these brand-name companies, not Quanta
14 Computer, market and sell the laptop computer to the
15 end consumer, to the public, to someone like you and
16 to me. Like Quanta Storage, Quanta Computer does not
17 have any interaction with the end user of the laptop
18 computer.

19 Now, I would like to discuss how Quanta Computer
20 buys the disc drives that it puts into its laptop
21 computers. That is not as straightforward as you
22 might think. Now, several years ago, Quanta Computer
23 bought the laptops directly from the -- excuse me --
24 Quanta Computer bought the disc drive directly from
25 the disc drive vendors, somebody like Sony, for

1 example.

2 But more recently, I think since about 2005,
3 Quanta Computer buys its disc drives from the
4 brand-name companies -- from HP, from Apple and from
5 Dell. Now, why is that? Well, HP, Apple and Dell,
6 they want to buy the disc drives in bulk so that they
7 can negotiate a good price, and so those companies buy
8 the disc drive and they sell the disc drives to Quanta
9 Computer. Quanta Computer then assembles the finished
10 laptop and sells the laptop back to the brand-name
11 company. And that way the disc drive is then sold
12 back to the brand-name company from Quanta Computer.

13 Now, you will learn that Quanta Computer has been
14 building laptop computers for brand-name companies for
15 many many years and you will learn that Quanta
16 Computer uses disc drives from all of the major disc
17 drive suppliers in the world.

18 Quanta Computer buys disc drives from companies
19 like Philips, Hitachi and LG, which is now a joint
20 venture called HLDS; from Samsung, from Toshiba, from
21 Pioneer, all of the major disc drive companies.

22 You will hear that Quanta Computer does not
23 purchase and has never used a Ricoh disc drive in any
24 of its laptop computers. Now, in this case, only Sony
25 disc drives made by Quanta Storage are accused of

1 infringement and you will only hear evidence about the
2 Sony disc drives made by Quanta Storage.

3 Now, if you recall, one of the issues you will
4 have to decide is whether Quanta Computer knows that
5 the disc drive that it sells has a use or -- excuse
6 me -- whether Quanta Computer knows that the disc
7 drive that it sells is adapted or made to infringe
8 Ricoh's patents.

9 Now, Quanta Computer simply uses the disc drives
10 that the brand-name companies select and sell to it.
11 Quanta Computer does not build disc drives and Quanta
12 Computer has no interaction with the manufacturer of
13 the controller chip that controls the recording
14 function of the disc drive.

15 While Quanta Computer does test disc drives to
16 see if they work, it does not test the disc drives to
17 see if they operate to perform all the steps of one of
18 Ricoh's patent claims.

19 Now, you will hear that Quanta Computer's
20 customers -- Dell, Apple, HP perhaps -- that they also
21 test the disc drive, but those tests also are not
22 designed and do not show whether the disc drive
23 performs all of the steps in one of Ricoh's patent
24 claims.

25 Now, Dr. Drabik will testify that even the tests

1 run by Ricoh's own expert do not show whether the
2 accused drives are even capable of performing all of
3 the steps of one of Quanta Storage's or one of Ricoh's
4 patents.

5 At trial, you will not hear from a single chipset
6 designer who will tell you how this chipset operates
7 to control the recording function of the disc drive.

8 Quanta Computer's business model is important for
9 another reason, for contributory infringement. One
10 issue you will have to decide is whether or not the
11 accused disc drive or a separate part of that drive
12 has any use other than to infringe a Ricoh patent
13 claim.

14 Now, as you have already learned, this disc drive
15 in a Quanta Computer laptop can play music, it can
16 play a DVD, and that is a non-infringing use. So the
17 disc drives sold by Quanta Computer have a
18 non-infringing use, which is to play music or to play
19 a DVD.

20 Now, what you will not hear at trial is the
21 defendants sell any separate and distinct component
22 whose only use is to infringe Ricoh's patent claims.
23 Ricoh's expert might say that there is some separate
24 and distinct component whose only use is to infringe,
25 but Ricoh's expert will not identify for you what that

1 separate and distinct component is. No one at trial
2 will identify for you what separate and distinct
3 component has only one use and that use would be to
4 infringe. No one will tell you that at trial.

5 Now, I would like to take a brief moment to
6 discuss Ricoh's two patents. Now, before I do that, I
7 want to point out that Ricoh's counsel mentioned two
8 standard organizations that Ricoh belongs to.

9 What Ricoh's counsel didn't tell you was that the
10 two patents in this case are not part of that standard
11 organization. So the fact that Ricoh was part of a
12 standard organization is completely irrelevant to the
13 issue of whether there is infringement of these two
14 patents like Quanta Storage or Quanta Computer.

15 Now, you have heard Ricoh's counsel refer to the
16 '552 patent as employing zone constant linear velocity
17 or Z-CLV. That phrase, *Z-CLV*, is found no nowhere in
18 the '552 patent. Ricoh did not invent Z-CLV.

19 Now, are there documents that show that some of
20 the accused products employ Z-CLV? Yes. Do those
21 documents, if you examine them, show that the accused
22 product performs all of the steps in one of Ricoh's
23 '552 patent claims? No, they do not.

24 Now, with respect to whether the '552 patent is
25 valid, another expert will testify at trial, Dr. Zech,

1 will show you that Ricoh did not invent the '552
2 method. Now, I have an article that I would like to
3 put up on the screen. It's a 1981 article written and
4 published by IBM. Now, this article was not reviewed
5 by the United States Patent and Trademark Office while
6 the '552 application was pending.

7 Now, at trial, Dr. Zech will talk more about this
8 article, but I would like to point out to you now that
9 this IBM article discloses dividing a recording
10 surface into zones and keeping something called *write*
11 *frequency* constant. That is part of Ricoh's '552
12 patent claims. The article also discloses keeping
13 something called *bit density* constant and that is also
14 one of the steps in Ricoh's '552 patent.

15 As Dr. Zech will explain to you, a person of
16 ordinary skill in the art would consider the '552
17 patent obvious and invalid in light of this IBM
18 article.

19 With respect to Ricoh's claim of infringement of
20 the '552 patent, we have already discussed the issue
21 of indirect infringement and that the defendants are
22 not accused of direct infringement. But as I
23 mentioned, one of the other issues you will have to
24 decide is whether the accused drives are even capable
25 of performing the steps in Ricoh's patent claim, and I

1 want to take a moment and discuss that with you.

2 Now, instead of examining the firmware and the
3 hardware of the controller chip to determine how the
4 controller chip controls the recording functions of
5 the drives, Ricoh's experts simply ran some tests on
6 seven sample drives, but the tests Ricoh's own expert
7 ran do not establish that the disc drives directly
8 infringe because they do not show that the disc drives
9 perform all of the steps in one of Ricoh's '552 patent
10 claims or in any of Ricoh's '552 patent claims.

11 Now, let me move on briefly and discuss Ricoh's
12 '755 patent. Now, Ricoh describes this patent as
13 providing buffer under-run protection. So what is a
14 buffer under-run? Well, let me try to explain that
15 briefly using a diagram.

16 Let's say you want to record information onto a
17 disc from a computer hard drive. The data will come
18 from a computer hard drive, it will come into the disc
19 drive, and it has to be stored somewhere before it's
20 transferred onto the disc. It's stored in what's
21 called a *buffer*.

22 Now, let's assume that the rate at which the data
23 is supplied from the buffer to the disc is faster than
24 the rate at which the data is coming from the hard
25 drive. If that were to occur, then the buffer at some

1 point would run low on data and that is what's called
2 a *buffer under-run* situation.

3 Ricoh's patent, the '755 patent, describes one
4 method of dealing with a buffer under-run situation.
5 Are there other methods of dealing with buffer
6 under-run? Yes, there are. Did Ricoh invent buffer
7 under-run prevention? No, they did not invent buffer
8 under-run prevention. Ricoh invented what's described
9 in these patent claims.

10 Now, are there documents then that show that some
11 of the accused products have buffer under-run
12 prevention? Yes. Do those documents show that the
13 accused drives repeat all the steps in any of Ricoh's
14 '755 patent claims? No, they do not.

15 Now, to try to show infringement in this case,
16 Ricoh's expert ran some more tests. He put some data
17 into a computer and he examined the output, but he
18 didn't examine the process between the input and the
19 output.

20 Now, it's the process between the input and the
21 output that would tell you whether or not the accused
22 drive performs or practices the steps in Ricoh's '755
23 patent claims. Because their experts tests do not
24 look at the process, they do not show whether or not
25 there is infringement and therefore Ricoh cannot meet

1 its burden to show infringement by the accused drives.

2 Now, on the issue of validity, Dr. Zech will
3 demonstrate that Ricoh's method of handling buffer
4 under-run is not new. Engineers from Philips, one of
5 the pioneering companies in the disc drive world,
6 thought of it first and therefore the '755 patent is
7 obvious and invalid. At trial, Dr. Zech will tell you
8 why he believes that is true.

9 Now, as the trial progresses, you will learn more
10 about why the defendants believe Ricoh cannot meet
11 their burden to show infringement. Equally as
12 important, you will learn that because none of the
13 defendants make the disc drive controller chip, they
14 do not know if the accused drives infringe.

15 You won't hear at trial any evidence that the
16 defendants buy or sell any separate component or a
17 disc drive whose only use is to infringe and you won't
18 hear any evidence that Quanta Storage encourages
19 someone else to infringe. As a result, we think you
20 will agree that Ricoh has not met its burden to show
21 indirect infringement.

22 Again, I greatly appreciate your jury service. I
23 want to thank you for your time and attention again.
24 We will do our best to make this trial informative and
25 to get it to you for decision as quickly as possible.

1 Thank you.

2 THE COURT: Thank you, Mr. Garnett. If you
3 can, move the lecturn and then the plaintiff may call
4 its first witness.

5 MR. ROZENDAAL: Your Honor, Ricoh calls
6 Masanobu Nishimiya.

7 (Interpreter sworn.)

8 MASANOBU NISHIMIYA, PLAINTIFF'S WITNESS, SWORN

9 DIRECT EXAMINATION

10 BY MR. JOFFRE:

11 Q. Good afternoon. Could you please introduce
12 yourself to the jury?

13 A. I'm Masanobu Nishimiya.

14 Q. Where do you live?

15 A. In Japan.

16 Q. Who do you work for, Mr. Nishimiya?

17 A. I work for Ricoh Company, Limited.

18 Q. Where are Ricoh's offices?

19 A. In Yokohama, Japan.

20 Q. What does Ricoh manufacture and sell?

21 A. It sell principal products, include copiers,
22 printers, digital cameras and the like.

23 Q. What would you say Ricoh is most known for in the
24 United States?

25 A. Probably the copiers and servicing of the

1 copiers.

2 Q. So put your business in context. How big is
3 Ricoh?

4 A. The annual sales is about two trillion yen.

5 Q. And do you know how much that is in U.S. dollars?

6 A. It's about \$20 billion.

7 Q. And just to give a further idea how big Ricoh is,
8 how many people does Ricoh employ?

9 A. Globally, including the affiliated companies,
10 about 100,000.

11 Q. And about how many are in the United States?

12 A. About 40,000.

13 Q. Okay. And do you have any idea of how big
14 Ricoh's presence is in Wisconsin?

15 A. Ricoh has three sales offices in Wisconsin.

16 Q. You mentioned that Ricoh sells printers, copiers
17 and video cameras. What else has Ricoh sold in the
18 past?

19 A. In the past, Ricoh used to manufacture optical
20 disc drives and the optical disc media.

21 Q. How long have you personally worked at Ricoh?

22 A. About 27 years.

23 Q. And what do you do right now at Ricoh?

24 A. I'm engaged in new business planning work in a
25 Ricoh research and development department.

1 Q. Well, during your time at Ricoh, all that time,
2 what technologies have you worked on?

3 A. During the 25 out of the 27 years I spent at
4 Ricoh, I work on the optical disc drives and the
5 optical disc media. When I first joined Ricoh, I was
6 doing work having to do with the electrical circuit,
7 the design for optical disc drives.

8 And for the very first CD-RW product which Ricoh
9 came out with, I was the project manager and that was
10 followed by my becoming the manager of the entire
11 development department and that was followed by Ricoh
12 getting out of the optical disc drive business.

13 And after that, Ricoh was engaged in work having
14 to do with media and I was in work having to do with
15 business plans for the optical disc media. And after
16 that work, I am doing -- I have been doing what I am
17 doing now, which is business planning in general.

18 Q. How long did Ricoh manufacture and sell optical
19 disc drives?

20 A. Ricoh manufactured the very first drive in around
21 1984 and Ricoh went out of the business, exited the
22 business, in 2004, so Ricoh was in the drive
23 manufacturing business for about 20 years.

24 Q. Could you please tell the jury what types of
25 optical drives Ricoh manufactured and sold?

1 A. Ricoh initially manufactured the drives in 1984
2 about and that was the write ones, CD drives. That
3 was followed by what is referred to as the *MO drive*,
4 which stands for *Magneto optical drives*. And starting
5 around 1994, Ricoh began manufacturing of the CD-R and
6 CD-RW drives. And in 2001, Ricoh began manufacturing
7 of DVD recordable drives.

8 Q. When did Ricoh start its development on CD-R
9 drives?

10 A. That would be about two years prior to 1994, so
11 the development work on CD-R drives began around 1992.

12 Q. How much did Ricoh invest in developing optical
13 disc drives?

14 MR. GARNETT: Objection, Your Honor, pretrial
15 ruling.

16 THE COURT: I'm sorry?

17 MR. GARNETT: This implicates a pretrial
18 ruling, this question. Perhaps we need to approach.

19 THE COURT: Can you go on to another
20 question? We can take it up at the break.

21 BY MR. JOFFRE:

22 Q. Let's go back then and talk a little bit about
23 your role when you were overseeing the production of
24 optical disc drives. When you were project manager
25 overseeing the development of optical disc drives,

1 what were your responsibilities?

2 A. The responsibilities of the project manager can
3 be classified into three big categories. The first
4 one has to do with the establishment of the
5 development plan and see to it that the development
6 proceeds according to the plan so that the
7 specifications and cost objectives established for the
8 product, that can be met. And when I say *development*
9 *plan*, that would be include the budget, cost, manpower
10 aspects.

11 And the second role of the project manager is to
12 decide on the key parts of the optical disc drives.
13 And when I say *key parts*, I mean the chipset, the
14 optical pickup and the like.

15 And the third role to be played by the project
16 manager would be to service the technical interface
17 with the customers.

18 Q. Well, who worked with Ricoh's customers for
19 optical disc drives.

20 A. Let me answer that question in two phases. When
21 Ricoh was engaged in the manufacturing of the CD-R and
22 the RW drives, Ricoh had two primary customers. One
23 would be the end customers who would be buying the
24 Ricoh brand drives in the consumer marketplace. And
25 the other manufacturer for the CD-R and the RW drives

1 would be the third-party manufacturers to whom Ricoh
2 would be selling and Ricoh products would be sold by
3 those third-party manufacturers under their brand.

4 And with respect to the DVD record, Ricoh's
5 customers were primarily PC manufacturers,
6 manufacturers such as Dell and HP.

7 Q. Well, what do you understand were the reasons HP
8 and Dell bought your drives?

9 A. Back then, the PC manufacturers, HP and Dell, had
10 plans of incorporating in their top-of-the-line model
11 PCs, a recordable DVD drive and back then the only
12 manufacturers who could manufacture a recordable DVD
13 drive was Ricoh and that was the reason for their
14 selection.

15 Q. You mention also that Ricoh sold optical discs.
16 About how many portable discs did Ricoh sell?

17 A. That is a number which fluctuates quite largely
18 depending on the year. But for the year 2006 in the
19 North American market, the DVD disc market, the size
20 was about 2 billion media of which about 50 million to
21 Ricoh.

22 Q. Let's go back a little bit and talk about your
23 earlier responsibilities. I believe you said you
24 helped choose key components for optical disc drives
25 based on cost. What do you mean by *key components*?

1 A. By *key components*, we are talking about the
2 optical pickup, the chipset and the software that
3 controlled the chipset. Sometimes the software is
4 considered a part of the key components, at times not,
5 but typically those three.

6 Q. Well, who manufactures the key components for
7 Ricoh's drives during that period of time?

8 A. With the very first CD-R drive from Ricoh, which
9 is the one I worked on personally, the key components
10 have been supplied by Philips. But starting with the
11 next model, the next CD-RW model, Ricoh began the use
12 of Ricoh's own internally-developed chipset, the
13 controlling software and the optical pickup.

14 Q. Well, how did cost factor in Ricoh's decision to
15 first develop and manufacture disc drives that used
16 Philips' key components and then moved to Ricoh's
17 decision to use its own internally-produced controller
18 chips and key components?

19 A. You are talking about the cost factor and the
20 decision-making. I would need to explain what
21 Philips' key components were. Philips' key components
22 came after optical pickup, the chipset and the
23 controlling software. And the software was modularized
24 so we would be able to add new functions or improve
25 the performance by adding new software modules.

1 But the Philips chipset and the software were
2 designed in such a way that the additional
3 performance -- the additional functional modifications
4 which we, Ricoh, can make -- would be limited by the
5 very way which the chips and the software from Philips
6 had been crafted.

7 So what Ricoh decided was that we would go ahead
8 and do the development of the chipset and the software
9 on our own starting with the second model so that
10 additional functions, additional performance
11 improvements, could be more easily done.

12 So talking about the cost factor, the cost
13 implications with our doing the new development of the
14 chipset and the software, there was certainly an
15 increase in the development of cost for that year as
16 compared to the previous years.

17 But we felt that in terms of being able to add
18 new functions, improve the existing performance, that
19 despite the increase in the development costs, it
20 would be, in the long run, a better decision overall.

21 Q. Well, what are some of the features that Ricoh
22 eventually decided to include in its software?

23 A. Examples of the new features which are eventually
24 added by Ricoh would be the buffer under-run
25 protection feature and also the Zone CLV function

1 which would be required for achieving a high-speed
2 recorder.

3 Q. I'm showing you what's marked Exhibit 5. Do you
4 recognize that? It's also in your binder.

5 A. This is the patent specification for Ricoh's Zone
6 CLV patent.

7 MR. JOFFRE: Your Honor, I move for admission
8 of Exhibit 5.

9 THE COURT: Any objection?

10 MR. GARNETT: No, Your Honor.

11 THE COURT: Received.

12 BY MR. JOFFRE:

13 Q. I'm sorry. Again, which patent was this?

14 A. This is the Ricoh Zone CLV patent.

15 Q. Okay. And I put in front of you what is marked
16 Exhibit 6. Do you recognize this?

17 A. This is the Ricoh buffer under-run protection
18 function patent.

19 MR. JOFFRE: We offer Exhibit 6 into
20 evidence.

21 MR. GARNETT: No objection.

22 THE COURT: Received.

23 BY MR. JOFFRE:

24 Q. And finally, I will show you what's been marked
25 as Exhibit 1 and Exhibit 2. Do you recognize Exhibit

1 1 and Exhibit 2?

2 A. Exhibit 1 would be the certified copy of the
3 United States patent on the Zone CLV. Similarly,
4 Exhibit No. 2 would be the certified copy of the U.S.
5 patent on buffer under-run protection.

6 MR. JOFFRE: We would offer Exhibit 1 and 2.

7 THE COURT: This is 8?

8 MR. JOFFRE: I'm sorry?

9 THE COURT: Which one are you on?

10 MR. JOFFRE: I'm on Exhibit 1 and Exhibit 2,
11 which are certified copies.

12 THE COURT: Any objection?

13 MR. GARNETT: No objections, Your Honor.

14 THE COURT: They are both received.

15 BY MR. JOFFRE:

16 Q. That's Exhibit 1 and Exhibit 2. Why did Ricoh
17 decide to include patented buffer under-run protection
18 in its drives?

19 A. Back then, the CD-R drive research then, if a
20 buffer under-run were to occur during the process of
21 the user writing data to the media, then a write
22 failure would occur. And if a write failure occurred,
23 the disc had to be thrown away, it could not be
24 reused, it would have to be thrown away, so this was a
25 big inconvenience to the customers.

1 So what we wanted to do was to come up with a
2 solution that would prevent this problem from
3 occurring for the end users so that if even a buffer
4 under-run were to occur, data could be successfully
5 written and that we could place such drives in the
6 marketplace and get a good sales quantity for those
7 drives.

8 Q. Similarly, why did Ricoh decide to include its
9 patented Z-CLV features in its drive?

10 A. Starting about with the second model, the
11 recording speed as a competition factor between
12 manufacturers became very fierce. And what every
13 drive manufacturer was doing were trying to increase
14 the amount of drive sales by driving down the
15 recording time; in other words, increasing the
16 recording speed.

17 And Ricoh also wanted to distinguish its drives
18 from other drives by making the drives faster and
19 hoping that would contribute to increase in sales, so
20 it was with this in mind that we came to include that
21 feature in our drives.

22 From the users' perspective, the reduction in the
23 recording time from say 5 minutes to 2 minutes and
24 then to 1 minute is certainly an advantage and we
25 wanted to deliver to the customers the benefit of that

1 quicker recording through our CD hard drives.

2 Q. How expensive was it for Ricoh to actually put
3 these features into its drives?

4 A. Well, to give you an idea, the development of the
5 unique chipset for a model requires about 30 million
6 yen to 60 million yen for any particular model
7 chipset. In addition to that, the development of the
8 software would require additionally, 50 to 20
9 engineers.

10 Q. Well, if it was so expensive to incorporate these
11 features, why did Ricoh decide to put it into its
12 drives?

13 A. Well, we are a manufacturer and as a
14 manufacturer, we would like to consider it as a
15 mission for us to deliver to the customers, better and
16 more improved functions. That's point number one.

17 In addition to that, the competition in the drive
18 market was very fierce and we had to come up with
19 drives with new functions and new features for us to
20 be able to sell. Those were the reasons.

21 Q. Now, did Ricoh include or not include these
22 patented features in all of its drives?

23 A. The buffer under-run protection patent, that was
24 incorporated in every Ricoh drive which followed the
25 initial drive that was used.

1 With respect to the Zone CLV patent, that was not
2 used in all of Ricoh's drives. They were not used in
3 the low-speed drives, but they were used in every
4 high-speed drive. And when I say *high-speed drives*,
5 examples would be include 20X or 24X.

6 Q. Now, I know Ricoh left the drive business in
7 2004. But in 2002, before you left the drive
8 business, what were your plans regarding the use of
9 the patented CLV and buffer under-run features in your
10 future drives?

11 A. Essentially, there were three plans. The first
12 plan would be that in all of the DVD recordable
13 drives, the developed -- the patented technology would
14 be used in all of them. In the high-speed drives,
15 they would be used.

16 The second plan was that Ricoh had a business,
17 was contemplating a business, of becoming a key
18 component supplier. When I say a *key component*, I
19 mean the chipset, the software and the optical pickup,
20 but we were considering business as part of the key
21 components. And as a part of the key components, the
22 patented technologies, the buffer under-run protection
23 and the Zone CLV, will be provided to other drive
24 manufacturers.

25 And the third plan we had was that we would start

1 the business of licensing the patents.

2 Q. Why did you decide to include in those future
3 plans, the Z-CLV and buffer under-run feature in your
4 future drives?

5 A. By that time the recording speeds had increased
6 to a point that including a buffer under-run
7 protection feature and the Zone CLV technology in a
8 drive was considered to be just as a matter of course.

9 Q. And was the disc drive business actually
10 profitable for Ricoh?

11 A. Unfortunately not, it was not profitable.

12 Q. And why wasn't it profitable?

13 A. Well, on the one hand, there is the cost of doing
14 the development work and on the other hand, there is
15 the profit to be gained by the selling of the
16 products. And the relationship between the cost of
17 development work which we did and the profit from the
18 sales was such that there were more development costs
19 and other costs incurred than the profits coming in.
20 That was why it was not a profit.

21 Q. Over time, did the profits decrease or increase
22 regarding the sale of the drives?

23 A. There was a steady decline in the profit and the
24 reason was that the decrease in the price levels was
25 much quicker than we had anticipated.

1 Q. And what caused this decrease in price levels?

2 A. I believe that one of the causes had to do with
3 the Korean and Taiwanese manufactures who were able to
4 enter the marketplace with cheaper drives without the
5 R and D expenses and that resulted in their market
6 prices being very low.

7 Q. How did Ricoh know the prices of optical disc
8 drives in the industry?

9 A. Primarily two sources. There would be research
10 reports available from researcher companies such as
11 TSR. And based on the reports which are issued every
12 year, we would be able to get a fairly good picture as
13 to the actual sales price for the year and the
14 forecasts for the coming year.

15 In addition to that, our sales forces would visit
16 the PC manufacturers and engage in sales and
17 negotiation talks. And during the course of such
18 talks, information as to comparative prices would
19 sometimes become known.

20 Q. Now, you said that one of the reasons the price
21 of optical disc drives dropped was because of
22 Taiwanese disc drive manufacturers who could price
23 their product lower because they didn't have research
24 and development costs. How could you know how much
25 resource and development costs those Taiwanese and

1 Korean manufacturers had?

2 A. Well, there were a number of ways where I could
3 come to know of that. I never could really know the
4 precise number. But by looking at, for example, the
5 number of patent publications, you can get a fair idea
6 as to what the R and D efforts are. The number of
7 patent applications filed by Korean and Taiwanese
8 manufacturers as compared to Ricoh would be much much
9 less.

10 In addition to that, I had a personal experience
11 of mine and this had to do with Ricoh's business of
12 selling the key components to drive manufacturers --
13 the chipsets, the optical pickup and the controlling
14 software.

15 And as a part of that business, I had occasions
16 to go to the PC manufacturer sites to offer technical
17 support where I in fact worked with people from the
18 Korean and the Taiwanese manufacturers and I came to
19 learn that the labor expenses incurred in development
20 work on their part was probably about one-third of
21 Ricoh's expense level.

22 Q. Now, we talked about the cost of developing and
23 manufacturing Ricoh's drives. Are there other costs
24 we haven't talked about?

25 A. There is testing costs as a part of the

1 developmental costs.

2 Q. What are the testing that Ricoh does?

3 A. There are primarily three tests. The first one
4 would be what is referred to as the design
5 verification task, and what would be looked into would
6 be the basic functions of what is developed. So the
7 testing of the buffer under-run protection function or
8 the Zone CLV function would be a part of the design
9 verification test for DVD.

10 The second test would be the test that is
11 conducted at the manufacturing lines to screen out any
12 bad drives that there may be. So what would be tested
13 would be a hundred percent all of the drives which are
14 manufactured and the testing that would be done would
15 be at the very fundamental level.

16 The third test are the tests which are done in
17 concert with the PC manufacturers which would
18 incorporate the drives. And so in this aspect, what
19 is tested would be primarily the reliability tests and
20 these would be the tests mandated by the PC
21 manufacturers on us.

22 And what this test entails is to vary the
23 different operating conditions -- for example, the
24 temperature, the humidity or the media type -- and see
25 how the media drive performs over a continuous run in

1 the environment. So this is a very difficult test, a
2 very tough test.

3 Q. Let's talk about that last test. Why did Ricoh
4 decide to spend the money on those type of tests for
5 PC manufacturers?

6 A. Well, there was no choice. All of the PC
7 manufacturers had a program of their own, their
8 original program which had to be run by every
9 prospective driver vendor for their drives to be
10 adopted by the PC manufacturer, so this was a test
11 that was mandated upon us.

12 Q. Just to make things kind of complete, can you
13 give me an example for one of these computer-makers
14 that you personally participated in?

15 A. I can talk about my personal experience in a lab
16 in Colorado belonging to Hewlett-Packard. That was
17 where our drive was tested. And in that case, HP
18 would provide to us their own software program which
19 would be used as a part of the testing.

20 And the whole idea is that there were to be some
21 errors or problems which occurred during that testing
22 that we, the engineers who would be present there, to
23 be able to analyze the problem, make corrections and
24 have the testing resumed without delay, so we
25 engineers would be resident at the lab for that

1 purpose.

2 And one example of a counter-measure may be, for
3 example, if a software were not to be running right,
4 then we would make the correction to the software,
5 analyze the software, correct the software,
6 incorporate a new portion of the software, correct the
7 software portion into the software and have the
8 testing done.

9 You don't want to, for example, wait to do that,
10 so there would be communications taking place with
11 Japan and the software would be modified and the
12 modified software implemented and tested, so that is
13 my experience.

14 MR. JOFFRE: Thank you. I only have the one
15 question subject to objection. Would you like to take
16 that up now?

17 THE COURT: Why don't you come to side bar
18 for a minute.

19 (AT side bar.)

20 THE COURT: It had to do with the expense
21 involved?

22 MR. GARNETT: Yes.

23 THE COURT: And was that because it was
24 something he hadn't talked about before?

25 MR. GARNETT: No. It wasn't included in the

1 deposition topics of the witness that he is replacing.
2 He is replacing a retired gentleman and so that's why
3 I objected to that question. In fact, when we tried
4 to ask questions about research and cost in his
5 deposition, we were shut down. We were told
6 Mr. Nishimiya was the person to testify on those
7 topics.

8 MR. JOFFRE: I think the topic was the
9 research cost for developing the patents. I want to
10 ask about the research and development of the disc
11 drives, and so I just -- I could specifically ask, you
12 know, leaving aside the cost for development of
13 patents, how much development costs are there for disc
14 drives.

15 MR. GARNETT: First of all, that's not in the
16 topics, so that's the threshold issue that I think
17 they can't get past. And second, I think the
18 questions in the deposition involving different topics
19 were cut off, so it included all research and
20 development costs.

21 I think he is trying to draw the distinction
22 between patents and research and development of the
23 products, but there is really no difference. Research
24 and development is research and development. When it
25 goes into a patent, a patent goes into a product.

1 MR. JOFFRE: This is the deposition about the
2 topic. We are asking about research cost attributed
3 to the development of Ricoh's products. So I'm not
4 going to ask about the patent, but just about the
5 product.

6 THE COURT: No. 9 of topics?

7 MR. JOFFRE: No. 9, right. I think this was
8 the objection to -- that was called out by
9 Mr. Garnett.

10 It was, "Do you know how much money was spent on
11 developing of these patents?"

12 And then we objected, "Outside the scope."

13 It's on page 72.

14 MR. GARNETT: But there is a lot more as
15 well.

16 THE COURT: Why don't we take our 15-minute
17 recess and perhaps you could be looking at these
18 things and we will take it up before the jury comes
19 back.

20 MR. JOFFRE: All right.

21 MR. GARNETT: Thank you, Your Honor.

22 (End of side bar.)

23 THE COURT: Members of the jury, we will take
24 a 15-minute recess at this time. Please remember not
25 to talk about the case. If you have been taking any

1 notes, leave your notepads on your chairs. Nobody is
2 going to be looking at them while you are out.

3 (Recess at 3:27 p.m.)

4 ***

5 I, CHERYL A. SEEMAN, Certified Realtime and
6 Merit Reporter, in and for the State of Wisconsin,
7 certify that the foregoing is a true and accurate record
8 of the proceedings held on the 9th day of November, 2009,
9 before the Honorable Barbara B. Crabb, Chief Judge of the
10 Western District of Wisconsin, in my presence and reduced
11 to writing in accordance with my stenographic notes made
12 at said time and place.

13 Dated this 9th day of November, 2009.

14

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/s/

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Cheryl A. Seeman, RMR, CRR
Federal Court Reporter

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