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FEDERAL TRADE COMMISSION
I N D E X (PUBLIC RECORD)

WITNESS:	DIRECT	CROSS	REDIRECT	RE CROSS
Grossmeier	10930	10953	10979	10983

EXHIBITS	FOR ID	IN EVID	WITHDRAWN
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CX

None

RX

None

JX

None

DX

None

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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of:)
Rambus, Inc.) Docket No. 9302
-----)

Tuesday, July 29, 2003
9:30 a.m.

TRIAL VOLUME 52
PART 1
PUBLIC RECORD

BEFORE THE HONORABLE STEPHEN J. McGUIRE
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C.

Reported by: Susanne Bergling, RMR

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P R O C E E D I N G S

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3 JUDGE McGUIRE: This hearing is now in order.

4 Before we I guess get started, any housekeeping
5 items we need to take up this morning?

6 MR. PERRY: Yes, Your Honor. It's a little
7 more serious than housekeeping, I'm afraid. Something
8 came up yesterday that we need to bring to your
9 attention. This has to do with the nature of the
10 deposition testimony that can fairly be presented by
11 complaint counsel as part of their case in chief, and
12 let me explain that.

13 Yesterday, we received from complaint counsel a
14 substantial quantity of additional deposition
15 designations for two witnesses, Mr. Geoff Tate, our
16 CEO, and Mr. William Davidow, the chairman of our board
17 of directors. The new designations are from over 200
18 pages in those deposition transcripts. They apparently
19 intend to offer those deposition designations as part
20 of their case in chief, even though we are resting
21 today. That raises numerous issues for us.

22 Let me back up to April. In April, they gave
23 us their final witness list. We gave them our final
24 witness list. On their list, they said they would not
25 call Mr. Tate and Mr. Davidow live in their case in

1 chief. They said they would rely upon portions of
2 their depositions, and there are a lot of deposition
3 transcripts for those gentlemen. Obviously they could
4 have called those gentlemen live. They chose not to.

5 In mid-April, they gave us their deposition
6 designations for those two gentlemen. On April 21 and
7 April 28, before the trial began, we gave them our
8 counter-designations, and we have those letters here if
9 you need to look at them. We did not receive any
10 further designations from them until yesterday for
11 those two witnesses. We have received designations --
12 counter- designations and counter-counter-designations
13 on everyone else, long before now.

14 When complaint counsel rested their case on
15 June 30, they did so with one exception, and rather
16 than paraphrasing that, Your Honor, if I could bring up
17 that page -- if I could approach?

18 JUDGE McGUIRE: Yes. Yeah, I think I recall
19 the exception, but let's see that.

20 MR. PERRY: Let me just show you the language,
21 Your Honor.

22 JUDGE McGUIRE: Thank you.

23 MR. PERRY: And it's from page 8030 where you
24 asked Mr. Oliver, "Does that conclude the presentation
25 of your case in chief?" He says, "There's an exception

1 of the designations of deposition testimony that we
2 will be submitting in written form," and he says, "We
3 are going to be working with respondents on that, and
4 we will have those presented by July 9, 10 or 11."

5 Now, that was June 30, and that weekend, we did
6 receive numerous additional designations, and it was
7 our belief and our understanding on which we relied
8 that the additional designations and materials that we
9 received over that weekend concluded their case in
10 chief, and we made decisions about defense strategy as
11 a result. We have a right to know what the evidence is
12 that the respondent is responding to, because we have a
13 right to confront that evidence.

14 We also know that on some issues, it was our
15 judgment that they hadn't met their burden in their
16 case in chief. So, we saw no need to call certain
17 witnesses. We made those decisions as well. We cut
18 back on witnesses we intended to call, and we cut back
19 on the areas of questioning that we used with certain
20 witnesses as a result.

21 We also were very aware of the case law that
22 says that adverse inferences cannot be drawn from a
23 party's failure to call a witness if both sides had the
24 right to call that witness. So, we made decisions
25 based upon the state of the record.

1 That brings us to yesterday, the day before we
2 rest, when -- I'm sorry, Your Honor, I am not going to
3 make accusations of this conduct, but it was quite
4 disturbing to our team to see an effort to create -- we
5 attribute motives, but we don't have evidence -- that
6 what this is is a regret on their part that they didn't
7 call these gentlemen and an effort to bulk up the
8 evidence that they wished they had put in in their case
9 in chief, but they can't do it under the guise of
10 counter-counter-designations after we are done with our
11 case.

12 We would ask Your Honor to order that all
13 designations not received by us by July 12th, the date
14 Mr. Oliver told you about, be barred.

15 JUDGE MCGUIRE: Okay, thank you, Mr. Perry.

16 Does complaint counsel want to respond to this
17 issue?

18 MR. ROYALL: Yes, Your Honor, thank you.

19 There are a number of things that Mr. Perry has
20 raised, and I'd like to respond to several of them.

21 First of all, the counter-counter-designations
22 that he's referring to were submitted it is my
23 understanding yesterday. The other counter-
24 counter-designations for other witnesses were submitted
25 earlier in July, but it is only a matter of weeks

1 between when those were submitted and these were
2 submitted.

3 JUDGE McGUIRE: Okay, now, I'm a little
4 confused. Let's be clear as to which ones we're
5 talking about and those that are in issue so we'll have
6 no ambiguity there.

7 MR. PERRY: There are no designations other
8 than the Tate/Davidow designations that we received
9 yesterday that we're complaining about, because there
10 are no designations --

11 JUDGE McGUIRE: All right, so I only want to
12 hear about those, Mr. Royall. I don't want to hear
13 about any other designations. I want to hear about the
14 issues between the Tate and -- who's the other one?

15 MR. PERRY: Davidow.

16 JUDGE McGUIRE: -- Davidow.

17 MR. ROYALL: My only point to raising the
18 others, as I will be the first to admit -- I only
19 learned about this yesterday -- is I'll be the first to
20 admit we should have gotten these submissions for Tate
21 and Davidow in earlier, and the only point I was making
22 is they lagged behind by a couple of weeks behind the
23 others, not a couple of months, but a couple of weeks,
24 but there is no excuse, we should have gotten these in
25 earlier.

1 Now, with respect to -- there have been some
2 suggestions here of some strategic conduct on our part.
3 Respectfully, Your Honor, I would submit that there's
4 absolutely no basis for that here. We can't excuse
5 being tardy. We were tardy in getting these, we should
6 have gotten them in earlier, but there is nothing
7 strategic about it. The fact of the matter is their
8 counter-designations to our original designations were
9 extremely broad, and our counter-counter-designations
10 are broad as well, but it's in response to very broad
11 counter-designations on their part, and it's really
12 nothing beyond that.

13 My understanding is that the lawyer for
14 complaint counsel responsible for this, who is not here
15 because I think she was literally here all night
16 working through these issues, made a proposal last
17 night to Mr. Perry to deal with any substantive issues
18 if. There's any area where they believe that we have
19 gone beyond the scope of their counter-designations, we
20 have told them that we are more than happy to work
21 through that, and we're more than happy to commit
22 whatever resources to working through it tomorrow,
23 whatever we need to do. We haven't yet heard of any
24 substantive issues yet, and we're happy to work through
25 any substantive issues as to scope.

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1 Now, as to prejudice, we don't believe that
2 there has been any prejudice to Rambus by the fact that
3 they received these counter-counter-designations a
4 couple weeks later than they received the earlier ones,
5 and if -- on the other hand, it would be extremely
6 prejudicial to us if these counter-counter-designations
7 were stricken. I say that because Rambus has made a
8 decision not to call at this trial -- there is -- the
9 two witnesses we're talking about, Davidow and Tate,
10 are the chairman of the board and their CEO, and for us
11 to be denied an ability to have in the record
12 counter-counter-designations that are properly within
13 the scope would be extremely prejudicial to us.

14 We're willing to work it out, to do whatever --
15 tomorrow is a dark day, to sort through any issues of
16 substance, but to simply strike those counter-
17 counter-designations because they are late in arriving
18 we think would be highly prejudicial and uncalled for
19 under the circumstances.

20 JUDGE McGUIRE: All right, thank you, Mr.
21 Royall.

22 Did you want to comment on anything in
23 follow-up?

24 MR. STONE: May I, Your Honor?

25 We were strategic. We were strategic in

1 deciding what witnesses to call and what evidence to
2 present and what questions to ask, and whether
3 complaint counsel says they were or were not strategic,
4 we were, and we did rely on Mr. Oliver's statement that
5 we would have all their counter-designations or their
6 counter-counter-designations by July 12th.

7 With all respect to Mr. Royall, I cannot
8 believe that he has actually looked at the
9 counter-counter-designations to say to this Court that
10 they are within the scope of what we did. In putting
11 together our case, I think we were within our rights to
12 rely on the statements that were made. We did give
13 them our last designations for these two witnesses on
14 April 28th, and to say now that we should take the day
15 after we rest our case to work out issues that we have
16 had three months for them to raise with us does
17 significantly prejudice our case.

18 So, we do ask with respect to these two
19 witnesses that you simply bar any counter-
20 counter-designations that were not submitted by July
21 12th.

22 JUDGE McGUIRE: All right, Mr. Royall, one last
23 comment, then I'm going to rule.

24 MR. ROYALL: Well, again, Your Honor, Mr. Stone
25 made the reference to April, but the fact of the matter

1 is that the other counter-counter-designations that
2 there's been no objection to were received also in
3 July, only a couple of weeks earlier than these, and
4 there was no objection to those or any prejudice
5 claimed.

6 The other thing is that this matter has been --
7 has been open. It's under -- it's our understanding
8 that this matter hasn't been resolved. There's been
9 back and forth. And our -- in the rebuttal submission
10 that we filed with Your Honor late last week, we had a
11 footnote in which we noted that these issues of
12 counter-counter-designations had not yet been resolved
13 by the parties, and that was simply our reference to
14 the unresolved nature of this.

15 But the other thing -- the final thing is that
16 Mr. Stone says that I'm not aware of the scope issues.
17 We have said, if there are any issues of scope that are
18 legitimate issues -- and they've failed to identify any
19 for us -- we are happy to resolve any of those issues
20 and we will commit whatever resources we need to doing
21 that.

22 JUDGE McGUIRE: Okay, let me rule. I have
23 heard the arguments in this case. Without ascribing
24 any ill intent on behalf of complaint counsel, I am
25 going to conclude that these counter-counter-

1 designations are untimely offered and will be barred
2 from this proceeding on the grounds that I believe it
3 clearly creates a prejudice to the case of the
4 respondents. Counsel, it's just -- you should have had
5 this taken care of a long time ago, and now it's too
6 late. So, issue resolved.

7 Anything else we need to take up?

8 MR. PERRY: No, Your Honor.

9 MR. STONE: No, Your Honor.

10 JUDGE McGUIRE: I did want to take up one other
11 thing. I have also -- I had received from respondent a
12 request to take notice of certain issued U.S. patents.
13 Does complaint counsel have any opposition to that
14 request?

15 MR. OLIVER: Your Honor, we're still looking at
16 that, and if we could, we would like the opportunity to
17 respond in writing. We believe that patents are very
18 complicated documents, and we want to have the
19 opportunity to look at the case law and determine
20 exactly what is appropriate in terms of taking official
21 notice of patents.

22 JUDGE McGUIRE: Okay, that's fine. Let me ask
23 you, how much time do you need to file your opposition?
24 I was hoping to get this resolved by Friday, but it's
25 not inherent that we do it by Friday. Just give me an

1 idea as to how soon I can anticipate -- and we could do
2 this sometime next week if you feel you need that much
3 time.

4 MR. OLIVER: In light of our need to prepare a
5 rebuttal case, Your Honor, I would appreciate having
6 until next week, if we could.

7 JUDGE McGUIRE: Okay, that will be fine.

8 MR. OLIVER: Thank you, Your Honor.

9 JUDGE McGUIRE: Mr. Royall?

10 MR. ROYALL: Your Honor, just one other thing,
11 and this is something that we were intending to raise
12 with Your Honor independent of this issue of
13 designations.

14 As Mr. Stone just said, they have been
15 strategic, and in their strategic choice, they have
16 made a decision not to call their CEO --

17 JUDGE McGUIRE: Now, what issue are we talking
18 about now, Mr. Royall?

19 MR. ROYALL: This is an issue that we had
20 planned to raise with Your Honor independent of
21 designations.

22 JUDGE McGUIRE: Okay, go ahead.

23 MR. ROYALL: I am not going to in any way go
24 into the issue that you have already ruled on.

25 They have made a strategic choice not to call

1 their CEO, their president, their chairman of the
2 board. Now, when Mr. Perry was speaking, he made some
3 reference to the law on adverse inferences, and we
4 don't need to argue this issue or resolve this issue
5 now. We plan to deal with it in our post-trial briefs,
6 but we believe that an adverse issue is appropriate
7 here and it's justified in that these witnesses were
8 not equally available to us, and the case law will show
9 that and that it's proper to infer, adverse to Rambus,
10 that if these witnesses would have testified at trial,
11 they would have given -- that they would have called
12 them if they would have given helpful testimony.

13 We will deal with that in our post-trial
14 briefs, but there's another issue that this raises.
15 Their strategic choice not to call the president of the
16 company, the CEO of the company and the chairman of the
17 board has deprived us of an ability to cross examine
18 these witnesses and an ability to present, through
19 their testimony, to ask for the admission of documents
20 that relate to those individuals and uniquely to those
21 individuals.

22 What we have been preparing is a list of
23 documents that we would ask be admitted in the record,
24 despite the fact that they have strategically chosen
25 not to call these witnesses, because we have been

1 deprived by that choice of an ability to get these
2 documents in the record through any other witness, and
3 we have that list. I don't have it available now. We
4 were going to present it to Rambus today to see if we
5 can work something out, but I don't want there to be
6 any suggestion that this is an issue that is in
7 response to Your Honor's ruling. This is something we
8 have been planning on doing. That's the reason I'm
9 mentioning it now.

10 If we can work it out with respondents to agree
11 to something on admission of these documents, we may
12 not need to raise it with you, but otherwise, we are --
13 our intention is to raise it with you and ask that
14 these documents be admitted so they will be part of the
15 record so that we are not prejudiced by their strategic
16 choice not to bring into this courtroom to submit to
17 cross examination the most senior executives of the
18 company.

19 JUDGE MCGUIRE: Okay, Mr. Stone, response?

20 MR. STONE: Thank you, Your Honor.

21 When Mr. Oliver stood before you and said we
22 rest, he did not say we rest except for a list of
23 documents that we might want to put together depending
24 on who you call. We will oppose an effort on the part
25 of complaint counsel to supplement the record after

1 they have rested their case with respect to issues they
2 could have brought before the Court sooner, and I am
3 reminded, as I know complaint counsel are reminded,
4 that the FTC's operating manual is quite explicit in
5 its direction for complaint counsel.

6 It says you should put into your case in chief
7 all the evidence on which you think you may bear the
8 burden of proof, because you do not know who the
9 respondent will call or what evidence they will offer,
10 because they're not obligated to offer any, and we -- I
11 can say that I'm happy to talk with Mr. Royall about
12 his list, but I can also say I think with some
13 confidence that our position will be the case we put on
14 is a case intended to respond to the evidence that
15 complaint counsel offered before they rested, not to
16 evidence that they might seek to offer later.

17 JUDGE MCGUIRE: All right, I am going to ask
18 the parties go ahead and confer to the extent that that
19 may be productive, and then if complaint counsel
20 chooses to raise this issue, you can do so in the form
21 of a written motion which you can file sometime in the
22 next seven days, and then I'll give respondent adequate
23 time to file whatever response that it sees fit on that
24 motion, okay?

25 MR. ROYALL: Yes, Your Honor.

1 MR. STONE: Thank you, Your Honor.

2 MR. ROYALL: The only -- did you say seven
3 days?

4 JUDGE McGUIRE: Is that adequate time to do it?

5 MR. ROYALL: That's more than adequate time.
6 The only issue I have is that I assume then the -- for
7 this purpose the record will remain open until
8 there's --

9 JUDGE McGUIRE: For that purpose.

10 MR. ROYALL: -- resolution?

11 JUDGE McGUIRE: Right, for that purpose only.

12 MR. ROYALL: All right. Thank you, Your Honor.

13 JUDGE McGUIRE: Okay. Then at this time, if
14 there are no other housekeeping tasks, at this time
15 respondent may call its next witness.

16 MR. STONE: Thank you, Your Honor. At this
17 time we would call Alan Grossmeier.

18 JUDGE McGUIRE: All right, sir, would you
19 please approach the Bench, and you'll be sworn in by
20 the court reporter.

21 Whereupon--

22 ALAN M. GROSSMEIER
23 a witness, called for examination, having been first
24 duly sworn, was examined and testified as follows:

25 JUDGE McGUIRE: If you will have a seat right

1 there.

2 DIRECT EXAMINATION

3 BY MR. STONE:

4 Q. Good morning.

5 A. Good morning.

6 Q. Would you state your full name for us, please?

7 A. Alan Michael Grossmeier.

8 Q. And Alan is A L A N?

9 A. That's correct.

10 Q. And Grossmeier, G R O S S M E I E R?

11 A. That's correct.

12 Q. Okay, thank you.

13 And are you here pursuant to a subpoena, Mr.

14 Grossmeier?

15 A. Yes, I am.

16 Q. Have you ever testified in a courtroom before?

17 A. In a courtroom, yes.

18 Q. Okay. In a courtroom like this one?

19 A. No, not -- traffic court.

20 Q. Traffic court?

21 And have you ever given a deposition before?

22 A. No.

23 Q. Okay, just a couple of ground rules. Try to

24 let each of the attorneys who ask you questions finish

25 their questions before you answer, and we'll try very

1 hard not to interrupt your answers.

2 Are you currently employed?

3 A. Yes, I am.

4 Q. Where are you -- why don't you move the mike
5 just a tad closer, if you would.

6 Where are you currently employed, Mr.
7 Grossmeier?

8 A. I'm employed with Cray, Incorporated.

9 Q. And what kind of business is Cray, Incorporated
10 in?

11 A. We build supercomputers.

12 Q. And where are you located?

13 A. I'm located in Chippewa Falls, Wisconsin.

14 Q. And how long have you worked for Cray?

15 A. For -- I have had the same job for 24 years.
16 During that time, it was Cray Research, Incorporated
17 initially in 1979. In 1995, Silicon Graphics bought
18 Cray Research, and I worked in a Cray business unit
19 with SGI. In April of 2000, Silicon Graphics sold the
20 Cray business unit to Terra Computer in Seattle, and
21 they changed their name to Cray, Inc. So, it was
22 basically the same job for --

23 Q. Same job, different owners?

24 A. Same job, different owners.

25 Q. Okay. And all the time involved with

1 supercomputers?

2 A. That's correct.

3 Q. What was your position when you first joined
4 Cray -- I guess was that in 1979?

5 A. 1979, that's correct. I was a component
6 engineer.

7 Q. A component engineer?

8 A. That's correct.

9 Q. And what sort of responsibilities did you have
10 then?

11 A. I was responsible for the quality and
12 reliability of all of the electronic components that
13 were within the Cray supercomputer.

14 Q. And have you held the same position as a
15 component engineer since 1979?

16 A. The same position, different responsibilities.
17 For a while I -- the group grew, I was component
18 engineering manager until 1989, at which point I was
19 requested to be re-assigned as an individual
20 contributor and specifically with memory components,
21 since they became a significant portion of the cost of
22 our systems.

23 Q. So, beginning in 1989, what were your
24 responsibilities?

25 A. It was all memory products used within Cray

1 Research.

2 Q. And the memory products, do they include DRAM?

3 A. Yes.

4 Q. And what's your role within Cray with respect
5 to DRAM?

6 A. I'm involved in the selection for new products,
7 communicating with suppliers on their direction, back
8 to our design teams, communicating to the suppliers our
9 design teams' desires, dealing with manufacturing
10 issues, dealing with field failure issues, basically
11 covering from cradle to grave on all memory product
12 within the company.

13 Q. And who within Cray do you interface with in
14 connection with memory products?

15 A. Every group within the company. There's
16 several design teams, both based in Chippewa Falls and
17 in Seattle, dealing with multiple programs. I deal
18 with the design engineers, manufacturing engineers,
19 purchasers, field service engineers, as well as the
20 supply base.

21 Q. Before you joined Cray in 1979, were you
22 employed full-time?

23 A. Yes, I was.

24 Q. Where were you employed before Cray?

25 A. I was employed at Honeywell in Minneapolis.

1 Q. And then were you in a similar position there?

2 A. I was a semiconductor process engineer there
3 working on CMOS, CCD devices.

4 Q. And were you employed prior to Honeywell?

5 A. Yes, at Control Data.

6 Q. What were your positions at Control Data?

7 A. It was the same, semiconductor process
8 engineer.

9 Q. And when did you first start with Control Data?

10 A. 1974.

11 Q. And was that your first full-time employment in
12 this industry?

13 A. In this industry, yes.

14 Q. Okay. Are you familiar with JEDEC?

15 A. Yes, I am.

16 Q. Have you attended JEDEC meetings?

17 A. Yes, I have.

18 Q. When did you first start attending JEDEC
19 meetings?

20 A. I attended two meetings in 1988 as a guest of
21 National Semiconductor and joined as an official member
22 in January 1989.

23 Q. And you were a member on behalf of Cray?

24 A. Yes.

25 Q. Why did you start attending JEDEC meetings?

1 A. At that time, we were pursuing large static RAM
2 memories for main memory in our systems, and because
3 our uniqueness and our packaging required a custom
4 package, we found reluctance from the supply base to
5 support a custom package, and they suggested that we
6 standardize it. So, we began with -- National was one
7 of our suppliers that encouraged us. So, National
8 invited us to several meetings to get an idea of what
9 it is that would take.

10 And we subsequently joined -- I joined JC-11,
11 which is the mechanical standardization committee, to
12 introduce the packages that we were using, and we had a
13 unique pin-out that was being promoted by National and
14 by Phillips at the time, and they asked for some
15 support in JC-42, which is the memory standards
16 committee, because it's -- it was termed as a
17 revolutionary pin-out rather than evolutionary pin-out,
18 and there was some reluctance within the industry to
19 make this revolutionary change, so they wanted to -- a
20 high-profile user to endorse it at the committee
21 meetings.

22 Q. So, did you initially start going to just JC-11
23 or did you attend other committees as well?

24 A. I attended JC-11 and JC-42.

25 Q. Okay. And how long -- after you started

1 attending them in January of 1989, how long have you
2 continued to attend?

3 A. I continued pretty regularly -- I missed a few
4 meetings during the time -- except for the calendar
5 year 2000, when Cray had just spun out or just been
6 sold out of SGI, we had no money, so I did not attend
7 any meetings in the year 2000.

8 Q. And have you served on the JEDEC Council at any
9 point in time?

10 A. Yes, I did, in 1989 (sic), I was appointed to
11 the board or elected to the board, I'm not sure how I
12 got put on the board, but I was on the board of
13 directors. Subsequently, in -- when we knew the sale
14 was going through at the end of '99 of selling the
15 business unit, and Cray was not going to support my
16 attendance, Cray, Inc. would not support my attendance
17 to the board, so I resigned from the board in December
18 of '99.

19 Q. And when did you go on the board?

20 A. January of 1999.

21 Q. Okay.

22 A. February I believe was the meeting date.

23 Q. Earlier you mentioned that DRAM was
24 significant -- a significant item in your product line.
25 Do you recall that?

1 A. That's correct.

2 Q. In terms of the percentage of costs or some
3 other way, can you describe to us how significant it
4 is?

5 A. Depending upon the system configuration, it
6 ranges anywhere from 17 to 30 percent of the system
7 cost, the hard cost of the system.

8 Q. And can you pick sort of a average
9 supercomputer -- I know that's probably a hard thing to
10 think of -- and give us some sense of how many DRAMs
11 are in it?

12 A. Our smallest configuration has -- just a
13 minute, about 4000 DRAMs in it. Our largest
14 configuration -- the largest configuration that we'll
15 ship in the next 18 months will have about 300,000 DRAM
16 in it.

17 Q. Do you use different versions or generations or
18 flavors of DRAM?

19 A. Yes, we do.

20 Q. Which different ones do you use?

21 A. We're currently using a standard SDR
22 synchronous DRAM, PC-133, in our entry-level product.
23 In our high-end product line, the Cray X1, we use a
24 direct RDRAM. In a -- two special programs that we
25 have going, one is a DDR SDRAM, PC-2700 base on the

1 DIMM, and the other is a 133-megahertz SDR SDRAM. It's
2 a small usage.

3 Q. And have you in the past used EDO?

4 A. Yes, we have.

5 Q. And when did you stop using EDO as best you can
6 recall?

7 A. One of the legacy products that we continued
8 to -- that we were allowed to keep when SGI sold us off
9 was a Cray 23E product which was based on EDO or fast
10 page mode DRAM. Fast page mode DRAM was the largest
11 configuration the system would support. We were able
12 to continue to market that in the year 2000 and early
13 2001, so we continued to purchase -- at that time fast
14 page mode was no longer available, so we used EDO 64K
15 DRAM.

16 Q. Okay, let me go back to JEDEC if I can, Mr.
17 Grossmeier, and I'm going to ask you some questions
18 about JEDEC's patent policy. That will be the general
19 subject.

20 Are you familiar or did you know a man by the
21 name of Jim Townsend?

22 A. Yes, I did.

23 Q. And did you meet him or talk with him at JEDEC
24 meetings?

25 A. Yes, I did.

1 Q. Do you recall whether he gave presentations at
2 any JEDEC meetings regarding the patent policy?

3 A. Yes, he did.

4 MR. OLIVER: Objection, Your Honor, vague as to
5 time.

6 JUDGE McGUIRE: Sustained.

7 MR. STONE: Certainly.

8 BY MR. STONE:

9 Q. Let me limit you for purposes of my questions
10 about the JEDEC patent policy, Mr. Grossmeier, to 1991
11 through 1996. Can we do that?

12 A. Yes.

13 Q. During the time period 1991 through 1996, do
14 you recall if Mr. Townsend gave any presentations on
15 the patent policy?

16 A. Yes, he did. I'm not sure when he began them
17 in that time frame, but he did give some.

18 Q. And in the binder in front of you, if you
19 wouldn't mind, there's several documents, and if you
20 turn to the last document in the binder, which should
21 be marked JX-22, do you have that document in front of
22 you?

23 A. Yes, I do.

24 Q. Okay. Do you recognize JX-22?

25 A. It's meeting minutes from a meeting on December

1 7th, '94 in Maui.

2 Q. Okay. And if you turn to the second page of
3 JX-22, you'll see your name as the fourth one down the
4 list?

5 A. That's correct.

6 Q. Do you recall being in attendance at this
7 meeting?

8 A. Yes, I do, and I shouldn't have been listed as
9 an "other."

10 Q. You should have been listed as a member?

11 A. That's correct.

12 Q. Okay. In any event, this would be one of the
13 meetings you did attend?

14 A. Yes, that's correct.

15 Q. Okay. Turn, if you would, to page 3 of JX-22,
16 and look, if you would, at item 3 where it says,
17 "Patent Presentations." Let me just draw your
18 attention -- do you see where it says, "Mr. Townsend
19 made a presentation (See Attachment A)"?

20 A. Yes.

21 Q. And then if you would turn to page 12 of this
22 document, and if you'd look at page 12 and you might
23 flip and look at page 13 and tell us, if you can, if
24 you recognize those two pages.

25 A. Yes, these are the slides that were used in his

1 presentations when Jim would present the patent policy
2 at the beginning of each of the meetings.

3 Q. What was his general practice as you recall it
4 during the time period '91 to '96 in terms of how the
5 patent policy would be presented?

6 A. Typically he would flash these slides, usually
7 not long enough to read them, he would just kind of --
8 these are the JEDEC patent policy, and don't worry
9 about reading them, they will be in the minutes. He
10 would flash the -- the first couple slides, and then he
11 had a tracking list of -- it was humorously referred to
12 as the squealer's list basically.

13 Q. Referred to as the squealer's list?

14 A. The squealer's list.

15 Q. Why was that?

16 A. It was started out as companies who had
17 knowledge of other firms' patents that may be
18 applicable to standards that were being set by JEDEC or
19 had been set by JEDEC.

20 Q. Okay.

21 A. Not necessarily the patent holder would divulge
22 the information.

23 Q. So, one company might disclose patents of
24 another company?

25 A. That's correct.

1 Q. Okay. Look, if you would, at page 14 of JX-22.
2 Is that the first page of what you referred to as the
3 tracking list?

4 A. Yes.

5 Q. Okay. Do you recall whether copies of the
6 slides were generally or in your recollection during
7 the time period '91 to '96 attached to the minutes?

8 A. Yes, they were.

9 Q. Did Mr. Townsend's presentations inform you in
10 any way as to what JEDEC's patent policy was?

11 A. He presented the excerpts from the manual on
12 what the EIA patent policy was, the EIA -- yes, EIA I
13 guess it is, and he informed us that that was the
14 patent policy that was being used within JEDEC.

15 Q. He informed you that the EIA policy was what
16 JEDEC was using?

17 A. That's correct.

18 Q. How in -- were there other sources of
19 information that you had that helped you understand the
20 JEDEC patent policy during the time period '91 through
21 '96 other than these presentations by Mr. Townsend?

22 A. Other than I guess -- I don't think there was
23 any formal documentation that was presented to the
24 committee. There was -- I guess my interpretation was
25 based more on how the committee members themselves

1 handled it.

2 Q. Okay. Do you recall ever reading any JEDEC
3 manuals, 21-H, 21-I or other manuals, to learn what the
4 JEDEC patent policy was?

5 A. For a long time, I thought I was reading the
6 right manual, but it was -- I was having difficulty
7 finding the JEDEC patent policy or any -- any
8 demonstrative of what I thought was the document they
9 were referring to, because it was the document that
10 JC-42 created. It was -- I'm not even sure if the
11 correct terminology is Standard 21, but it's memory
12 pin-outs and features and functions. Apparently there
13 was another 21 that -- that I was not aware of.

14 Q. Okay. In your -- let me ask you to look in
15 your binder. Take a look at the first document, which
16 is RX-1211, and let me get a copy of that for Mr.
17 Oliver.

18 Directing your attention to RX-1211, which says
19 JEDEC Publication 21-H, do you recall having seen this
20 document before?

21 A. I have seen this document. I don't recall when
22 I first saw it. When we first joined JEDEC, we had
23 received a packet of information, actually a pretty
24 good-sized package that had -- because as a member of
25 JC-11, you got a copy of Publication 95, which is the

1 index of all of the mechanical packages, you got a hard
2 copy of whatever that Standard 21 was, the
3 mechanical -- or the memory pin-outs.

4 I was also on the reliability committee. What
5 number was on that one? So, I got a bunch of the
6 reliability standards and documents, and all of this
7 came as a package. I would believe that maybe this was
8 in there. I don't know.

9 Q. Okay. During the time period 1991 through
10 1996, was your understanding of the JEDEC patent policy
11 informed or influenced by this particular manual,
12 RX-1211, as far as you can recall?

13 A. Not that I can recall. I mean, it didn't
14 inform me. It's probably -- if it's a manual for
15 organization and procedure, I would guess it influenced
16 the committee proceedings.

17 Q. Let me ask you to look at one other document in
18 the binder, if you would, and that is going to be
19 CX-208, and this is labeled JEDEC Publication JEP 21-I.

20 Do you recall having seen CX-208 before or do
21 you recognize it?

22 A. Again, it's -- you know, basically it's a rev
23 of the original H. I don't recall having seen it. It
24 was not the practice of JEDEC to mail all documents as
25 they were rev'd. If you wanted the document, you

1 ordered it and paid for it.

2 Q. Do you know whether you ever received a copy of
3 CX-208 during the time period '91 through '96?

4 A. I don't recall.

5 Q. Do you recall whether this particular document
6 in any way informed your understanding of the JEDEC
7 patent policy?

8 A. No.

9 Q. Okay. Let me ask you about that understanding,
10 if I can, Mr. Grossmeier, your understanding of the
11 JEDEC patent policy, and I want to ask you about your
12 understanding during the time period 1991 to 1996,
13 okay?

14 What did you understand members were expected
15 to disclose to the JEDEC committees during that time
16 period?

17 A. If a patent could -- if a patent holder had a
18 patent that in any way was applicable to a proposed
19 standard, they were to disclose that at the time of
20 balloting within the committee.

21 Q. Now, when you say it was in any way applicable
22 to the standard, can you tell us what that means?

23 A. There is -- you know, there was numerous
24 patents on device technology or device functionality
25 that are useful in building a device, in building a

1 certain architecture of a device, but not mandatory to
2 build the device, but what they were asking is if
3 anyone had any patents that were useful, that may
4 infringe on a design that someone else may have is my
5 interpretation.

6 Q. So, you -- you said there were some process
7 patents, for example, that might be useful in
8 developing a part.

9 A. There's probably thousands of patents that are
10 applicable to every device that's built, basically
11 semiconductor technology patents that undoubtedly are
12 being duplicated by other companies. You can't
13 disclose every -- I mean, there would be lists of
14 thousands of patents on every standard.

15 Q. So, which ones -- when you said that some would
16 be infringed, was it expected that ones that would be
17 infringed would be disclosed or not?

18 MR. OLIVER: Objection, leading.

19 JUDGE McGUIRE: Sustained.

20 BY MR. STONE:

21 Q. Mr. Grossmeier, when you talked about patents
22 that would be infringed, did you have an understanding
23 as to whether those patents were expected to be
24 disclosed?

25 MR. OLIVER: Objection, still leading, Your

1 Honor.

2 JUDGE McGUIRE: Sustained.

3 BY MR. STONE:

4 Q. With respect to patents that were -- you
5 understood to be infringed, did you have an expectation
6 one way or the other as to whether those would be
7 disclosed?

8 A. It was basically up to the member, either the
9 patent holder or the -- according to the JEDEC
10 guideline, as I understood it, if anyone was aware of a
11 patent that may be applicable, they would disclose it
12 if another company held it. It was not real clear on
13 the definition of what patents should be disclosed.
14 Clearly if the sponsor presented information that they
15 were developing and patenting, they would disclose it,
16 but other parties, it was pretty vague.

17 Q. Did you during the time period 1991 through
18 1996 have any understanding as to whether members were
19 expected to disclose patent applications?

20 A. No.

21 Q. No, they were not expected --

22 A. They were not -- they were not -- no, I did not
23 expect that someone would.

24 Q. Okay. Let me ask you to look at the tracking
25 list that we mentioned earlier, if you could go back to

1 that last tab in your binder, JX-22, and turn back to
2 page 14 of that document, if you would.

3 Do you have that page handy?

4 A. Yes.

5 Q. And if you would look down that first page,
6 you'll see, oh, a little ways down there's one listed
7 for Fujitsu, and it says "pending" beside it.

8 A. Yeah.

9 Q. In the time period '91 to '96, and I've shown
10 you a document from '94 here, did you have an
11 understanding of what it meant when it said "pending"
12 on the tracking list?

13 A. That a patent had been applied for --

14 Q. Okay.

15 A. -- and hadn't been issued yet.

16 Q. And did you have an understanding as to why a
17 patent that had been applied for would be shown on the
18 tracking list?

19 A. In this -- in this time frame, there was an
20 initiative within the industry to go with a new memory
21 package, to get better memory packaging, it was
22 vertical packaging, and in this case Fujitsu had a
23 proprietary package they were proposing that was a
24 V-Pack -- I don't know if it's on here -- and the
25 STZip --

1 Q. I think on my copy it's VSMP, but I'm not sure.

2 A. Yeah, it's vertical surface mount package.

3 There were also the STZip and the V-Pack, which were
4 competing vertical packages. These were all presented
5 to JC-11, and one of the nice things about JC-11 is you
6 could introduce a proposal as a registration rather
7 than a standard. A standard within JEDEC requires
8 multiple showings. You could not move it to ballot on
9 your first showing. You had to wait for a second
10 showing so that the committee could review it.

11 In JC-11, you could present as a registration a
12 package proposal, as long as you had met the JEDEC
13 criteria for -- guidelines in laying out the document
14 to describe the package and have mechanical samples of
15 it. You couldn't just do vaporware. You had to
16 have -- you had to register real stuff. You could
17 present this, and it could be balloted immediately as a
18 registration.

19 Since it was balloting, in these cases mostly
20 it was the sponsor that presented these things, they
21 would also say we have a patent application on this,
22 because they were competing proprietary packaging. We
23 voted for VSMP, because that's what we used.

24 Q. During the time period 1991 to 1996, do you
25 recall patent applications being disclosed other than

1 with respect to these packaging issues you've just
2 described?

3 A. No, no.

4 Q. And your answer, I'm sorry?

5 A. No.

6 Q. So, other than in the context of these
7 packaging standards, did you have an understanding one
8 way or the other as to whether members would disclose
9 patent applications in the time period 1991 through
10 1996 if they were not the proposer or sponsor of a
11 proposal?

12 A. No, I don't recall that ever happening.

13 Q. And did you have an understanding or did you
14 have an expectation that people would make those
15 disclosures?

16 A. No, I didn't.

17 Q. Okay. Let me go back to a question of the
18 timing. During the time period '91 through '96, when
19 did you understand members were expected to make
20 disclosures of patents?

21 A. At the time of balloting.

22 Q. And when you say "balloting," what does that
23 mean?

24 A. The proposal would be presented to the
25 committee as a first showing, would come back at the

1 next quarterly meeting as a second showing, giving the
2 member companies time to review the proposal. At that
3 point, it would be presented usually with changes that
4 may have been communicated during the interim as a
5 consensus of the committee and presented as a ballot
6 that would then be issued out to the members. In that
7 time frame it was a paper ballot that was mailed out.
8 The balloters, when voting on them, were to disclose if
9 you were aware of any patents that were applicable to
10 that particular proposal.

11 Q. And then assuming -- after this ballot occurred
12 and assuming the ballot passed, what would be the next
13 step then for a proposal or a standard regarding
14 patents?

15 A. If there were patents declared or disclosed,
16 the committee chair would advise that they could not --
17 that proposal or that standard could not proceed to the
18 JEDEC Council for approval until a letter was received
19 by the JEDEC office from the patent holder saying that
20 it would be -- it would comply with the EIA guidelines
21 on accessibility of the patent, with reasonable terms
22 and nondiscriminatory access.

23 Q. Okay. If there were no patents identified and
24 if the ballot passed, where would the proposed standard
25 go next? Would it go to the Council?

1 A. It would be typically voted out of committee --
2 if it was not an acclamation of no votes, it would be
3 voted out of the committee to be sent to JEDEC Council
4 for their review and subsequent Council balloting.

5 Q. Okay. And then if patents were disclosed, you
6 started to tell us -- and I probably interrupted you --
7 if a patent was disclosed at the time of balloting,
8 what would then happen?

9 A. The patent-holding -- the patent holder would
10 be asked to provide a letter to the JEDEC office
11 expressing that they would comply with the EIA
12 guidelines on accessibility of the patent,
13 nondiscriminatory licensing and reasonable terms.

14 Q. Okay. And if that letter was received by the
15 JEDEC office, then what would happen?

16 A. Then the committee would pass the ballot on to
17 the Council for their review and approval and
18 publishing.

19 Q. During the time period 1991 to 1996, do you
20 recall a ballot ever being held up after a letter had
21 been received from the patent holder because anyone in
22 the committee thought that the royalty rate was too
23 high?

24 A. No, no.

25 MR. STONE: I have no further questions of Mr.

1 Grossmeier. Thank you, Your Honor.

2 JUDGE McGUIRE: Okay, thank you.

3 Mr. Oliver, any cross examination?

4 MR. OLIVER: Yes, Your Honor.

5 Could I have just a moment to make sure that
6 we're on the same page, Your Honor?

7 JUDGE McGUIRE: Sure.

8 MR. OLIVER: Thank you.

9 (Pause in the proceedings.)

10 CROSS EXAMINATION

11 BY MR. OLIVER:

12 Q. Good morning, Mr. Grossmeier. If you could
13 give me just a moment, please.

14 Mr. Grossmeier, I'd like to ask you a few
15 follow-up questions to the questions that Mr. Stone
16 asked, and I would also like to focus on the 1991 to
17 1996 time period, please.

18 Now, would it be fair to say that from the 1991
19 to 1996 time period, JEDEC aimed to create open
20 standards?

21 A. Yes, yes.

22 Q. And you would agree that JEDEC did have a
23 patent policy during that time?

24 A. Yes.

25 Q. Now, have you heard the term "patent ambush"?

1 A. No, I haven't.

2 Q. Now, during your time at JEDEC -- and again,
3 we're focused on the 1991 to 1996 time period -- you
4 heard some discussion involving the WANG litigation.
5 Is that right?

6 A. That's correct.

7 Q. Can you please explain your understanding in
8 that time period of what the WANG litigation involved?

9 A. I wasn't a member of the committee at the time
10 that the WANG proposal was approved as a standard, I'm
11 not even sure what it was, a 30-pin DIMM or 30-pin --
12 it was a small module, small memory module. Apparently
13 it was approved as a standard, and after it was
14 approved, WANG then came forward and said we have a
15 patent on this and were attempting to charge
16 unreasonable and discriminatory licensing. They
17 didn't -- they did not want to comply with the JEDEC or
18 the EIA patent policy is my understanding of what
19 happened.

20 Q. I'm sorry, excuse me.

21 Now, when you heard that discussed in JEDEC, in
22 what context was that discussed?

23 A. Let's not let it happen again.

24 Q. Okay. Now, when you were at JEDEC meetings,
25 you also heard discussion of so-called quad CAS

1 technology?

2 A. That's correct.

3 Q. And you're aware that Micron had accused Texas
4 Instruments of failing to disclose a patent -- a
5 ballot --

6 A. That's correct.

7 Q. -- I'm sorry, failing to disclose a patent
8 relating to quad CAS technology?

9 A. That's correct.

10 Q. And would it be fair to say that the JEDEC
11 members were rather upset with Texas Instruments about
12 that?

13 A. Yes.

14 Q. And in fact, the committee approved a ballot to
15 remove quad CAS from the standard, didn't it?

16 A. That's correct.

17 Q. And again, your understanding was that the
18 committee members felt as though they had been ambushed
19 by Texas Instruments in that case?

20 A. There was a lot of discussion about that,
21 that -- why they didn't disclose, and some members
22 agreed that they didn't need to and others felt that
23 they were in violation of the JEDEC policy by not.

24 JUDGE McGUIRE: All right, let me just expand
25 on that answer you just gave, Mr. Grossmeier. You're

1 saying that some members felt that there was no need
2 for TI to disclose, and others thought, you know, that
3 they should have. Is that correct?

4 THE WITNESS: That's correct.

5 JUDGE McGUIRE: Could you tell me if you recall
6 exactly why that was, why there was this split in
7 opinion between these various people at JEDEC?

8 THE WITNESS: Most of it was workload related.
9 For instance, IBM said they didn't feel they had the
10 resources to review their entire patent portfolio every
11 time a proposal was made to see if there was anything
12 in there that was applicable. So, they would not
13 disclose any patents that they had that were related to
14 the standard.

15 JUDGE McGUIRE: Well, is it -- what I'm trying
16 to get to, was it an issue regarding how various JEDEC
17 members interpreted the patent policy, or was it other
18 circumstances that caused, you know, what you just
19 testified to, that there were, you know, certain
20 members that felt TI's conduct -- you know, that they
21 should have disclosed and others felt that they should
22 not have? I'm just trying to understand why that was,
23 and to the extent that, you know, that you can recall
24 that episode.

25 THE WITNESS: Yeah, I think they all understood

1 the policy. I think they just elected not to practice
2 it. You know, I -- but there was no real reason for
3 not.

4 JUDGE McGUIRE: All right, Mr. Oliver.

5 MR. OLIVER: Thank you, Your Honor.

6 BY MR. OLIVER:

7 Q. Actually, Mr. Grossmeier, perhaps we will
8 return to the quad CAS incident in a couple of minutes.

9 Would it be fair to say that when you were
10 attending JEDEC meetings, that patent issues were not
11 necessarily the priority for you?

12 A. That's correct.

13 Q. Would it be fair to say that there were other
14 individuals at JEDEC who were more knowledgeable than
15 you about the requirements of the JEDEC patent policy?

16 A. I would assume so, yeah.

17 Q. Would it be fair to say that Mr. John Kelly was
18 a more authoritative source with respect to the
19 substance of the patent policy?

20 A. He was typically the one that was referred to
21 if someone had any question about the patent policy.

22 Q. And Mr. John Kelly was the general counsel of
23 EIA at that time. Is that right?

24 A. That's correct.

25 Q. Now, you never spoke to Mr. Kelly about the

1 substance of the JEDEC disclosure policy, did you?

2 A. No.

3 Q. I'd like to take a look at a few of the minutes
4 of the meetings that were held, if I could.

5 May I approach, Your Honor?

6 JUDGE MCGUIRE: Yes.

7 BY MR. OLIVER:

8 Q. Mr. Grossmeier, I have handed you a document
9 marked JX-14. These are the minutes of the December
10 1992 JC-42.3 subcommittee meeting.

11 Now, you did not attend this meeting, did you?

12 A. That's correct.

13 Q. You have seen portions of these minutes before,
14 though, haven't you?

15 A. Yes, I have.

16 Q. If I could ask you to turn, please, to page 3,
17 and if I could direct your attention to paragraph 5,
18 Patent Policies, you'll see that it states, "A
19 presentation was made on the EIA patent policies by Mr.
20 Townsend (See Attachment A)," then I will skip down a
21 few lines.

22 Now, you don't know -- actually, let me just
23 stop there.

24 You don't know exactly what Mr. Townsend
25 discussed with respect to the patent policy at this

1 meeting, do you?

2 A. I was not there, no.

3 Q. If I could ask you to turn, though, to page 25,
4 this is a page with the caption at the top Attachment
5 C, 8.3, Reference to Patented or Patentable Products in
6 the EIA/JEDEC Standards.

7 Do you see that?

8 A. Yes.

9 Q. Now, you have seen this page before as well,
10 right?

11 A. If it was in the minutes, I -- there's a chance
12 I would have looked at it.

13 Q. Okay. And you understood this to be one of the
14 pages that Mr. Townsend showed at that meeting?

15 A. If it's Attachment C of what he presented, yes.

16 Q. Now, did you understand this to be a portion of
17 the proposed revisions that were being shown for the
18 JEDEC manual?

19 A. No, I would -- unless he presented it that way,
20 I don't know. I --

21 Q. Okay. So, when you saw this page, you did not
22 know one way or another as to whether this was a
23 proposed revision to the JEDEC manual?

24 A. Right.

25 Q. Let me direct your attention, if I could, to

1 the second sentence. It begins, "While there is no
2 objection in principle," do you see that?

3 A. Yeah, sort of. These are terrible.

4 Q. I apologize for the copies. They are very
5 difficult to read.

6 Are you able to make out that sentence?

7 A. "While there is no objection in principle to
8 drafting --"

9 JUDGE MCGUIRE: You know, if you can't read it,
10 sir, perhaps counsel could indicate what it does, in
11 fact, read. I assume you have had some time to go over
12 this, Mr. Oliver, and you know what it says better than
13 the witness.

14 MR. OLIVER: Yes.

15 BY MR. OLIVER:

16 Q. Let me just state before I read it that I'm
17 particularly interested in the phrase in that sentence
18 "existing or pending patented items," and the sentence
19 to the extent I can make it out reads, "While there is
20 no objection in principle to drafting a proposed
21 standard in terms that include the use of an existing
22 or pending patented item if it is considered that
23 technical reasons justify this approach, committees
24 should ensure that no program of standardization shall
25 refer to a product on which there is a known patent

1 unless all the relevant technical information covered
2 by the patent is known to the formulating committee,
3 subcommittee or working group."

4 Does that help you see that sentence?

5 A. Yeah.

6 Q. Okay. Now, did you understand the underlining
7 there, particularly under the term "existing or pending
8 patent item," to indicate that these were proposed
9 revisions to the manual?

10 MR. STONE: Objection, lacks foundation as
11 to -- I think the witness' testimony was just he may
12 have seen this.

13 JUDGE McGUIRE: Sustained.

14 BY MR. OLIVER:

15 Q. Mr. Grossmeier, do you have any recollection of
16 having understood that language, "existing or pending
17 patented item," at the time?

18 A. Could you repeat what it is you just asked?

19 Q. Yes. In the sentence that I just read you, did
20 you -- do you remember at the time having an
21 understanding of that term, "existing or pending
22 patented item"?

23 A. At the time, no.

24 Q. Let me direct your attention, if I could, to
25 the next sentence. This sentence reads, "If the

1 committee determines that the standard may require the
2 use of patented or patentable items, then the committee
3 chairperson must also receive a written assurance from
4 the organization holding rights to such patents or
5 patentable items that a license will be made available
6 without compensation to applicants desiring to use the
7 license to implement the standard or a written
8 assurance that a license will be made available to all
9 applicants under reasonable terms and conditions that
10 are demonstrably free of unfair discrimination."

11 Do you see that sentence?

12 A. Yes.

13 Q. And I'm particularly interested in the term
14 "patented or patentable items" that appears twice in
15 that sentence. Again, my question is, at the time that
16 you read that, did you have any understanding as to
17 whether those terms were being proposed to be added to
18 the JEDEC manual?

19 MR. STONE: Objection, assumes facts not in
20 evidence, that he read it, and lacks foundation.

21 JUDGE MCGUIRE: Sustained.

22 BY MR. OLIVER:

23 Q. Mr. Grossmeier, I believe you did testify that
24 you read the minutes at the time?

25 A. Yes.

1 Q. At the time that you read the minutes, did you
2 have any understanding as to whether those terms,
3 "patented or patentable items," were being proposed to
4 be added to the manual?

5 A. I didn't -- I guess I didn't understand what
6 this proposal was for, what Attachment -- you know,
7 what he had proposed. If it didn't state in the
8 minutes that he was proposing this as a change, I would
9 have thought it was just some discussion topic.

10 Q. Let me direct your attention, if I could, to
11 the last sentence in that paragraph. That sentence
12 reads, "The term 'patented,' as used in this policy,
13 also includes pending patents on items and processes
14 under consideration by a committee, subcommittee or
15 working group."

16 Do you see that?

17 A. Yes.

18 Q. Do you recall seeing that sentence at the time
19 that you reviewed these minutes?

20 A. I don't recall it. I may have read this, but
21 you know, there's a lot of these minutes.

22 Q. Let me direct your attention, if I could, under
23 the heading 8.3.1 and the first sentence under that
24 heading. It reads, "The chairperson must call to the
25 attention of the members present the requirements

1 contained in the EIA Legal Guides, and all attention to
2 the obligation of all participants to inform the
3 Committee of any knowledge they may have of any
4 patents, or pending patents, that might be involved in
5 the work they are undertaking."

6 Do you see that sentence?

7 A. Yes.

8 Q. Do you recall reading that sentence at the time
9 that you reviewed these minutes?

10 A. I don't recall reading it, but if I read
11 through the whole minutes, I would have. This was a
12 few years ago.

13 Q. Well, do you recall having any understanding of
14 the meaning of that sentence at the time that you read
15 these minutes?

16 A. Not that I can recall. It's -- I was not real
17 concerned about patents and patentable products and
18 patent policies in that time frame.

19 Q. Okay. Would it be fair to say that the
20 document that we just looked at did not influence your
21 understanding at the time of the JEDEC patent policy?

22 A. That's -- yeah, yeah.

23 Q. If I could ask you to locate CX-208 in front of
24 you -- or actually, I'm sorry, in your binder. This is
25 a copy of the JEDEC Manual of Organization and

1 Procedure, JEP 21-I.

2 A. I've got it.

3 Q. Did you have any understanding that the
4 language in the page that we were just looking at from
5 JX-14, that is, the minutes from December of 1992, that
6 a portion of that language made their way into the
7 JEDEC manual, 21-I?

8 A. I wasn't aware of that, no.

9 Q. I'm sorry, you say you were not aware of that?

10 A. I was not.

11 Q. Okay. And by the way, with respect to the page
12 we were just looking at in JX-14, the December 1992
13 minutes, I assume that you have no understanding of
14 what discussion of that page took place at the December
15 1992 meeting?

16 A. That's correct. Kevin didn't keep good notes.

17 Q. I'm sorry, what was that?

18 A. Kevin Warren was -- attended that meeting, and
19 he didn't -- that was I think one of the first ones he
20 attended, and he didn't keep good notes.

21 Q. He was the --

22 A. Vote tallies, and that was it.

23 Q. That was the person attending on behalf of
24 Cray?

25 A. Yes.

1 MR. OLIVER: May I approach, Your Honor?

2 JUDGE McGUIRE: Yes.

3 BY MR. OLIVER:

4 Q. Mr. Grossmeier, I've handed you a document
5 marked CX-306. It's a two-page document. The first
6 page under the logos has the caption Meeting Attendance
7 Roster.

8 Now, in the 1991 to 1996 time period, do you
9 recall having seen this document?

10 A. Either this or something very similar to it,
11 yes.

12 Q. And this was used as a sign-in sheet at the
13 various meetings?

14 A. Yes, the attendance roster, right.

15 Q. If I could direct your attention to the
16 language just above the captions, Name, Status,
17 Company, Phone, Fax Number, there is some language
18 there in italics. Do you see that?

19 A. Yes.

20 Q. And if I could direct your attention to the
21 last two sentences there, it reads, "Subject involving
22 patentable or patented items shall conform to EIA
23 Policy (reverse side). Consult the EIA General Counsel
24 about any doubtful question."

25 Do you see that?

1 A. Yes.

2 Q. Now, at the time, did you have an understanding
3 of the term "patentable or patented items"?

4 A. You know, it was just like with the JC-11 where
5 a package would be introduced that was proprietary --
6 there was basically a package that I introduced at
7 JC-11 that was a proprietary package that probably was
8 patentable that we elected not to, but there were cases
9 with the vertical surface mounts that apparently they
10 felt the need to, that was my interpretation of what --
11 because this is a case where it's an immediate
12 registration.

13 Q. But in any event, the -- the sentence there on
14 the sign-in sheet does make a distinction between
15 patented items and patentable items, right?

16 A. Everything we did was patentable, though. We
17 invented things.

18 Q. My question, Mr. Grossmeier, is that this
19 sign-in sheet does make that distinction, right?

20 A. Yes, because everything we did was patentable
21 or -- I mean --

22 Q. But this statement here does say, "Subjects
23 involving patentable or patented items shall conform to
24 the EIA Policy," right?

25 A. Right.

1 Q. And so this sentence is distinguishing between
2 patented items, in other words, items that have a
3 patent on them, and patentable items, presumably items
4 that don't have a patent on them. Is that right?

5 A. Which is everything else. I'm not sure what...

6 Q. And the final sentence reads, "Consult the EIA
7 General Counsel about any doubtful question."

8 A. Right.

9 Q. Again, that was a reference at the time to --

10 A. John Kelly.

11 Q. -- to Mr. John Kelly?

12 Mr. Grossmeier, I would like to take a look at
13 a few more meeting minutes, if we could.

14 May I approach, Your Honor?

15 JUDGE MCGUIRE: Yes.

16 BY MR. OLIVER:

17 Q. Mr. Grossmeier, I've handed you a document
18 marked JX-13. These are the JEDEC meeting minutes of
19 the JC-42.3 subcommittee of July 1992.

20 Now, you were present at this meeting, right?

21 A. Yes, sir, I was.

22 Q. And if I could ask you to turn, please, to page
23 4 --

24 A. I guess this is 4. It's cut off in the --

25 Q. If you look in the lower right-hand corner,

1 sometimes the page number is a bit difficult to read.
2 There should also be a Bates number above that, JEDEC
3 0014771.

4 A. Yes.

5 Q. Okay. And if you look about the middle of that
6 page, there's a paragraph number 4, Patent Issues.

7 Do you see that?

8 A. Yes.

9 Q. And that reads, "Chairman Townsend showed the
10 patent policy and the tracking list (See Attachment
11 A)."

12 Do you see that?

13 A. Yes.

14 Q. And if I could ask you to turn, please, to page
15 14, and you'll see a document with handwritten note in
16 the upper right-hand corner, "Attachment A."

17 A. Yes.

18 Q. Now, this is the document that Mr. Townsend
19 showed at that meeting. Is that right?

20 A. That's correct.

21 Q. And if I could direct your attention down to
22 the body of the text appearing towards the bottom,
23 you'll see that -- first of all, the Subject line
24 reads, "Subject: Patent Issues in JEDEC"?

25 A. Yes.

1 Q. And then in the text, I'd like to direct your
2 attention to the fourth sentence. It reads, "Please
3 examine the list and research your company's position
4 on patents held or applied for on the items next to
5 your company name in the 'Holder' column, and reply
6 with the patent number, application number, or letter
7 indicating the intent of your company to patent or not
8 patent the subject matter."

9 Do you see that?

10 A. Yes.

11 Q. So, the memorandum that Mr. Townsend showed at
12 this July 1992 meeting clearly referred to patents
13 applied for, right?

14 MR. STONE: Objection, Your Honor, the document
15 speaks for itself. Counsel is simply arguing with the
16 witness at this point.

17 JUDGE MCGUIRE: Sustained.

18 BY MR. OLIVER:

19 Q. In any event, that is the document that Mr.
20 Townsend showed at that meeting, right?

21 A. Yes.

22 Q. Okay. By the way, if I could direct your
23 attention to the -- towards the end of that sentence,
24 "letter indicating the intent of your company to patent
25 or not patent the subject matter."

1 Now, at the time, did you understand that to be
2 referring to the intent of a company with respect to
3 whether it would apply for a patent in the future?

4 A. What -- what they were asking for -- my
5 understanding of this was what they were asking for is
6 this was this patent tracking list. There were a
7 number of functions or features or things that were
8 believed to be patented by a company, you know, for
9 instance, Samsung says auto-precharge was patented by
10 AT&T. AT&T wasn't an active participant in JC-42. So,
11 what he's asking in this fax, which was sent I would
12 guess to AT&T, if you have a patent on it, let us know,
13 or are you applying for a patent on this. I thought it
14 was addressing these issues that were open on the
15 tracking list, not announced disclosures.

16 Q. But in any event, Mr. Townsend was asking if
17 they had a patent or were applying for a patent. Is
18 that right?

19 A. Yes.

20 MR. OLIVER: May I approach, Your Honor?

21 JUDGE McGUIRE: Yes.

22 BY MR. OLIVER:

23 Q. Mr. Grossmeier, I've handed you a document
24 marked CX-42. These are the meeting minutes of the
25 JC-42.3 subcommittee meeting of September 1992. Now,

1 you were not present at this meeting, were you?

2 A. No, I don't recall being at Crystal City,
3 Virginia.

4 Q. But you did receive a copy of the minutes,
5 didn't you?

6 A. Yeah, I would have received copies of all the
7 minutes.

8 Q. If I could ask you to turn, please, to page 3,
9 and I'd like to direct your attention to paragraph 4,
10 patent Issue, and it states, "Chairman Townsend
11 reported on the EIA patent policies and showed the
12 patent tracking list (See Attachment A)."

13 Do you see that?

14 A. Yes.

15 Q. And then if I could ask you to turn, please, to
16 page 13, and you'll see there's a document there with a
17 handwritten notation in the upper right-hand corner.

18 A. Yes.

19 Q. Attachment A.

20 And if I could direct your attention to the
21 text towards the bottom of the page, the fourth
22 sentence, you'll see a sentence there that also reads,
23 "Please examine the list and research your company's
24 position on patents held or applied for on the items
25 next to your company name in the 'Holder' column, and

1 reply with the patent number, application number, or
2 letter indicating the intent of your company to patent
3 or not patent the subject matter."

4 Now, at the time that you saw these minutes,
5 again, did you understand that this was the document
6 that Mr. Townsend showed at that meeting?

7 A. Yes.

8 Q. And by the way, I assume that you have no
9 direct knowledge of any discussions that took place at
10 that September 1992 meeting concerning the patent
11 policy?

12 A. No, it's the same thing he did every meeting,
13 though, so it's --

14 Q. My question is, Mr. Grossmeier, you don't know
15 that, do you? You don't know firsthand what was
16 discussed at that meeting about the patent policy?

17 A. No.

18 MR. OLIVER: May I approach, Your Honor?

19 JUDGE McGUIRE: Yes.

20 THE WITNESS: Looks like I missed a lot.

21 BY MR. OLIVER:

22 Q. I'm sorry, what was that, Mr. Grossmeier?

23 A. I said it looks like I missed a lot of
24 meetings.

25 Q. Missed more meetings than you had recalled?

1 A. Yeah.

2 Q. Okay. I've handed you a document marked JX-18.
3 These are the meeting minutes of the December 1993
4 JC-42.3 committee meeting, and this again was a meeting
5 that you were not at. Is that right?

6 A. That's right.

7 Q. But again, you received the minutes at the
8 time?

9 A. That's correct.

10 Q. If I could ask you to turn, please, to page 3,
11 and you'll see Patent Discussions, "A presentation was
12 made on patent policies and the tracking list was
13 updated (See Attachment A)," and then if I could ask
14 you to turn, please, to page 14. Page 14 has a
15 handwritten note in the upper right-hand corner,
16 "Attachment A."

17 Do you see that?

18 A. Yes.

19 Q. And I won't take time to slog through this
20 document, but you do -- at the time that you received
21 these minutes, you understood that this was the
22 document that Mr. Townsend showed as part of his patent
23 policy description?

24 A. Yes.

25 Q. And again, the -- you don't have any firsthand

1 understanding of any discussions involving the patent
2 policy at this December 1993 meeting, do you?

3 A. No.

4 Q. Were you aware one way or another as to whether
5 the quad CAS issue was discussed at this December 1993
6 meeting?

7 A. It should have been. I mean, I think it was
8 on -- I think the ballot to remove it was in that time
9 frame, or it could have been, I guess, not should have
10 been. It could have been.

11 Q. In any event, if there were any discussions of
12 the quad CAS issue at this December 1993 meeting, you
13 would not have had any firsthand knowledge of those
14 discussions, would you?

15 A. No, unless they were in the minutes here, and
16 that's not likely.

17 MR. OLIVER: May I approach, Your Honor?

18 JUDGE McGUIRE: Yes.

19 BY MR. OLIVER:

20 Q. Mr. Grossmeier, I've handed you a document
21 marked JX-28. These are the minutes of the JC-42.3
22 subcommittee meeting in December of 1995. Now, you
23 were present at this meeting, right?

24 A. Yes, I was.

25 Q. And if I could ask you to turn, please, to page

1 4 -- I'm sorry, I'd like to ask you to turn to page 3,
2 please, and if I could direct your attention to the
3 paragraph 4 toward the bottom of the page, Patent
4 Policies. "This subject was covered in the plenary
5 session on December 4. A copy of the presentations is
6 shown as Attachment B."

7 Do you see that?

8 A. Yes.

9 Q. Now, do you recall whether you attended that
10 plenary session?

11 A. Yes, sir.

12 Q. And if I could ask you to turn, please, to page
13 12, and you'll see here again a document, if you look
14 at the upper right-hand corner, the stamp, it says,
15 "Faxed November 30, 1995," and then partly superimposed
16 on that is a handwritten note, "Attachment B."

17 A. Yes.

18 Q. Now, this was the document that Mr. Townsend
19 showed at the plenary session in connection with his
20 description of the patent policy. Is that right?

21 A. This was his tracking list presentation.

22 Q. Okay. But in any event, he did show this
23 document as part of his presentation?

24 A. Yes.

25 MR. OLIVER: May I approach, Your Honor?

1 JUDGE McGUIRE: Yes.

2 BY MR. OLIVER:

3 Q. Mr. Grossmeier, I've handed you a document
4 marked JX-19. These are the minutes of the meeting of
5 the JC-42.3 subcommittee in March of 1994. Now, you
6 were not present at this meeting, were you?

7 A. That's correct.

8 Q. But again, you did receive a copy of the
9 minutes at the time?

10 A. Yes.

11 Q. If I could ask you to turn, please, to page 4,
12 and if I could direct your attention to paragraph 3 and
13 the caption of Patent Policy. It reads, "The patent
14 policy is shown as Attachment B."

15 Do you see that?

16 A. Yes, I can't believe they did this in italics.

17 Q. Excuse me?

18 A. I can't believe they did this in italics. It
19 looks like italics.

20 Q. If I could ask you to turn, then, to page 17,
21 please. You'll see there's's a document with the
22 handwritten note "Attachment B"?

23 A. Yes.

24 Q. At the time you saw these minutes, did you
25 understand this to be the document that Mr. Townsend

1 presented as part of his discussion of the patent
2 policy?

3 A. Yes.

4 Q. If I could ask you to turn, please, back to
5 page 4, now, did you have any understanding as to
6 whether the quad CAS incident was discussed again at
7 this March 1994 meeting?

8 A. There was an ongoing discussion about whether
9 or not -- because it was -- it was being used, that
10 functionality was being used within the industry, as to
11 whether or not there would be a letter from TI to JEDEC
12 that would allow us to re-introduce that as a standard,
13 and that discussion carried on for quite some time
14 after it was removed. So, it's likely it was
15 discussed, because this would have been the meeting
16 immediately after it was withdrawn.

17 Q. Okay, let me direct your attention, if I could,
18 towards the bottom of page 4, the paragraph that
19 carries over to the top of page 5. It reads,
20 "Applicability of patents to use in JEDEC standards was
21 discussed. The issue is warning, IBM noted. Failure
22 to disclose a patent prevents the Committee from
23 considering the standard."

24 Then turning to the top of page 5. "The
25 committee was asked if the patent policy is clear. The

1 committee felt it was clear."

2 Do you see that?

3 A. Yes. Yes.

4 Q. Okay. Now, you were not present for that
5 discussion, were you?

6 A. If I wasn't at this meeting, I probably wasn't.
7 That's correct.

8 Q. So, you have no firsthand knowledge of what the
9 JEDEC members discussed --

10 A. No.

11 Q. -- with respect to the sentence -- the
12 paragraph I just read to you?

13 A. That's correct.

14 MR. OLIVER: I have no further questions, Your
15 Honor.

16 JUDGE MCGUIRE: All right, thank you, Mr.
17 Oliver.

18 Mr. Stone, any redirect?

19 MR. STONE: Yes, briefly, Your Honor, if I
20 might.

21 REDIRECT EXAMINATION

22 BY MR. STONE:

23 Q. Mr. Grossmeier, you were shown several copies
24 of the patent tracking list in the course of your cross
25 examination, and I want to ask you about that.

1 Was the patent tracking list ever -- do you
2 recall it ever being sent to Cray or to you as one of
3 the addressees on that list?

4 A. Not as the -- no, not in the fax distribution.
5 It was only accompanied with the minutes.

6 Q. Okay. Did you ever -- did you ever
7 understand -- let me see if I can just look at one. I
8 think that's easier.

9 If you have -- do you have CX-42 handy?

10 A. Is that in the book or is it --

11 Q. Not in the book. It would be in the stack that
12 Mr. Oliver showed you.

13 A. Yes, got it.

14 Q. Okay. And if you would turn to page 13, which
15 I think is the first page of the tracking list, in the
16 time period '91 to '96 and at the time of this
17 particular document, did you have an understanding of
18 why the -- well, why the names were listed as
19 addressees or CCs on this particular tracking list?

20 A. They were either representatives within JEDEC
21 of one of the companies that there was some question of
22 whether an applicable patent existed or they were
23 people that requested to be added to the list.

24 Q. Okay. And so far as you recall during '91 to
25 '96, did that ever include you or Cray?

1 A. No, no.

2 Q. Did you ever attend a meeting of JEDEC at which
3 the quad CAS was discussed?

4 A. Yes.

5 Q. And do you recall in connection with a
6 discussion of quad CAS if there was ever any statement
7 made by IBM as to how they would handle things?

8 A. Yes, there was.

9 Q. And what do you recall being said by IBM at the
10 time about discussion of the TI quad CAS?

11 A. That they would not disclose if they had
12 patents that may be applicable to JEDEC standards.

13 Q. And that's the conversation you referenced
14 earlier?

15 A. Yes.

16 Q. Did -- let me ask you to look at CX-306, if you
17 would. That's the sign-in sheet.

18 MR. OLIVER: Excuse me, Counsel, if I could
19 have just a moment, I guess I do need my documents
20 back.

21 MR. STONE: Okay, no problem.

22 MR. OLIVER: Thank you, Counsel.

23 MR. STONE: Sure.

24 BY MR. STONE:

25 Q. Do you have CX-306, Mr. Grossmeier?

1 A. Yes.

2 Q. Directing your attention to the language on the
3 first page that Mr. Oliver asked you about earlier
4 where it says, "Subjects involving patentable or
5 patented items shall conform to EIA Policy (reverse
6 side)."

7 Do you see that?

8 A. Yes.

9 Q. And then if you would turn to page 2 of CX-306,
10 is what we see on page 2 of 306, was this the reverse
11 side of the sign-in sheets like this that you recall?

12 A. Yes, I believe so.

13 Q. And did you ever understand from the contents
14 of this document that your -- let me put it
15 differently.

16 When it says the EIA policy and then it says
17 reverse side, when we saw that on the front side, what
18 portion of this page 2 or reverse side of the document
19 did you understand that to be referring to, if you had
20 an understanding at the time?

21 A. Probably the last portion that's bracketed by
22 the asterisks.

23 Q. Where it says, "Reference to Patented Products
24 in EIA Standards"?

25 A. Yes.

1 Q. Mr. Grossmeier, during the time period '91 to
2 '96, do you ever recall at a JEDEC meeting anyone
3 saying after a patent had been discussed or disclosed
4 that they would have expected it to have been disclosed
5 as a patent application or words to that effect?

6 A. No.

7 Q. Okay.

8 Thank you, I have no further questions.

9 JUDGE McGUIRE: Okay, Mr. Oliver, any recross?

10 MR. OLIVER: Briefly, Your Honor.

11 JUDGE McGUIRE: Oh, I'm sorry, what did you
12 say?

13 MR. OLIVER: Briefly, Your Honor.

14 JUDGE McGUIRE: Okay, go ahead.

15 RE CROSS EXAMINATION

16 BY MR. OLIVER:

17 Q. Mr. Grossmeier, I'd like to follow up on the
18 questions that Mr. Stone asked you with respect to IBM.
19 Do you recall those questions?

20 A. Yes.

21 Q. Now, in fact, what IBM said was that they
22 couldn't confirm or deny whether they had patents or
23 applications that would relate to a standard. Isn't
24 that right?

25 A. That's correct.

1 Q. And that their concern was that IBM was so
2 large, they couldn't possibly search the whole company
3 for applicable standards?

4 A. That was their -- what they stated as their
5 reason for not complying.

6 Q. So, in other words, they said that they could
7 not come to JEDEC with a list of all the patents or
8 applications that IBM held that would be relevant to a
9 standard. Is that right?

10 A. Yeah.

11 MR. OLIVER: Nothing further, Your Honor.

12 JUDGE McGUIRE: Okay, thank you very much, sir,
13 for your testimony. You are excused from this
14 proceeding.

15 THE WITNESS: I don't need to take these with
16 me?

17 JUDGE McGUIRE: Ah, no, I don't think you want
18 to take those with you.

19 If I understand, then, Mr. Stone, that
20 concludes the presentation of your case in chief?

21 MR. STONE: Yes, it does, Your Honor.

22 JUDGE McGUIRE: Okay, very good.

23 So that we're clear on what we're going to do
24 now through the end of the week, it is the Court's
25 understanding that the courtroom will be dark on

1 Wednesday, and then starting Thursday, we'll take up
2 with complaint counsel's rebuttal case. Is that
3 correct, Mr. Oliver?

4 MR. OLIVER: That's correct, Your Honor.

5 JUDGE McGUIRE: And then who do you intend to
6 call again on Thursday?

7 MR. OLIVER: On Thursday, we'll be calling Mr.
8 Terry Lee and Professor Bruce Jacob.

9 JUDGE McGUIRE: Then on Friday?

10 MR. OLIVER: On Friday we will be calling
11 Professor McAfee.

12 JUDGE McGUIRE: Okay, very good, we will
13 adjourn and take up -- oh, I'm sorry.

14 MR. OLIVER: Your Honor, if I could, as I
15 mentioned yesterday, Mr. Terry Lee does have a very
16 tight schedule, and if I could request the Court's
17 indulgence, I would like to start early, if we could.

18 JUDGE McGUIRE: What time do you want to start?

19 MR. OLIVER: Would it be possible to start at
20 8:30?

21 JUDGE McGUIRE: That's fine with me.

22 Any problems, Mr. Stone?

23 MR. STONE: No, that's fine, Your Honor.

24 JUDGE McGUIRE: We will start at 8:30 a.m. on
25 Thursday.

1 MR. OLIVER: Thank you very much, Your Honor.

2 JUDGE McGUIRE: Okay, we will adjourn until
3 that time.

4 (Whereupon, at 11:05 a.m., the hearing was
5 adjourned.)

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1 C E R T I F I C A T I O N O F R E P O R T E R

2 DOCKET NUMBER: 9302

3 CASE TITLE: RAMBUS, INC.

4 DATE: JULY 29, 2003

5

6 I HEREBY CERTIFY that the transcript contained
7 herein is a full and accurate transcript of the notes
8 taken by me at the hearing on the above cause before
9 the FEDERAL TRADE COMMISSION to the best of my
10 knowledge and belief.

11

12 DATED: 7/29/03

13

14

15

16 SUSANNE BERGLING, RMR

17

18 C E R T I F I C A T I O N O F P R O O F R E A D E R

19

20 I HEREBY CERTIFY that I proofread the
21 transcript for accuracy in spelling, hyphenation,
22 punctuation and format.

23

24

25 DIANE QUADE

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