

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS
G. Kelley	2499	2605	2752	2758

EXHIBITS	FOR ID	IN EVID
----------	--------	---------

CX

Number 46	2497
Number 54	2497
Number 352	2498
Number 1252	2605

RX

JX

Number 17	2498
Number 19	2498
Number 25	2498
Number A	2604
Number B	2604
Number C	2604

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

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

Wednesday, May 21, 2003
9:30 a.m.

TRIAL VOLUME 14
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: Josett F. Hall, RMR-CRR

For The Record, Inc.
Waldorf, Maryland
(301) 870-8025

1 APPEARANCES:

2

3 ON BEHALF OF THE FEDERAL TRADE COMMISSION:

4 M. SEAN ROYALL, Attorney

5 GEOFFREY OLIVER, Attorney

6 JOHN C. WEBER, Attorney

7 MICHAEL FRANCHAK, Attorney

8 Federal Trade Commission

9 601 New Jersey Avenue, N.W.

10 Washington, D.C. 20580-0000

11 (202) 326-3663

12

13 ON BEHALF OF THE RESPONDENT:

14 GREGORY P. STONE, Attorney

15 STEVEN M. PERRY, Attorney

16 PETER A. DETRE, Attorney

17 SEAN GATES, Attorney

18 Munger, Tolles & Olson LLP

19 355 South Grand Avenue, 35th Floor

20 Los Angeles, California 90071-1560

21 (213) 683-9255

22

23

24

25

For The Record, Inc.
Waldorf, Maryland
(301) 870-8025

1 APPEARANCES:

2

3 ON BEHALF OF THE RESPONDENT:

4 A. DOUGLAS MELAMED, Attorney
5 Wilmer, Cutler & Pickering
6 2445 M Street, N.W.
7 Washington, D.C. 20037-1420
8 (202) 663-6090

9

10 ON BEHALF OF IBM CORPORATION AND GORDON KELLEY

11 HOWARD WEBER, Attorney
12 Hogan & Hartson L.L.P.
13 875 Third Avenue
14 New York, New York 10022
15 (212) 918-3000

16

17

18

19

20

21

22

23

24

25

P R O C E E D I N G S

- - - - -

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JUDGE McGUIRE: This hearing is now in order.

Mr. Kelley, I believe you're still on the stand this morning.

Are there any other items that we should take up before we start today, Mr. Oliver?

MR. OLIVER: Your Honor, the only item that I'm aware of is we'd like to move to admit six documents from yesterday at this time.

JUDGE McGUIRE: Okay. Why don't we do that.

MR. OLIVER: First, Your Honor, is CX-46. These are the council minutes from January of 1993.

MR. PERRY: No objection.

JUDGE McGUIRE: Entered.

(CX Exhibit Number 46 was admitted into evidence.)

MR. OLIVER: Second is CX-54. These are council minutes from May 1993.

MR. PERRY: No objection.

JUDGE McGUIRE: Entered.

(CX Exhibit Number 54 was admitted into evidence.)

MR. OLIVER: Third is JX-17. These are the 42.3 committee minutes of September 1993.

1 MR. PERRY: No objection.

2 JUDGE McGUIRE: Entered.

3 (JX Exhibit Number 17 was admitted into
4 evidence.)

5 MR. OLIVER: Fourth is JX-19. These are the
6 42.3 minutes from March 1994.

7 MR. PERRY: No objection.

8 JUDGE McGUIRE: Entered.

9 (JX Exhibit Number 19 was admitted into
10 evidence.)

11 MR. OLIVER: Fifth is CX-352. This is the
12 four-page Texas Instruments letter from March 9, 1994.

13 MR. PERRY: No objection.

14 JUDGE McGUIRE: Entered.

15 (CX Exhibit Number 352 was admitted into
16 evidence.)

17 MR. OLIVER: Sixth is JX-25. These are the
18 42.3 minutes from March of 1995.

19 MR. PERRY: No objection.

20 JUDGE McGUIRE: Entered.

21 (JX Exhibit Number 25 was admitted into
22 evidence.)

23 JUDGE McGUIRE: Then if you would please take
24 the stand again, Mr. Kelley, and I caution you that you
25 are still under oath from Tuesday. Have a seat, sir.

1 Whereupon --

2 GORDON KELLEY

3 a witness, called for examination, having been
4 previously duly sworn, was examined and testified as
5 follows:

6 DIRECT EXAMINATION

7 BY MR. OLIVER:

8 Q. Good morning, Mr. Kelley.

9 A. Good morning.

10 Q. How are you today?

11 A. I'm more rested than yesterday afternoon.

12 Q. Mr. Kelley, I'd like to go back to two topics
13 that were discussed yesterday just to be certain the
14 record is clear.

15 First, yesterday I asked you some questions
16 concerning a disclosure of a patent you made in
17 December 1991. I believe that was related to the
18 half SAM technology. Do you recall that?

19 A. Yes, I do.

20 Q. Could you please explain when IBM first made a
21 presentation with respect to the half SAM technology.

22 A. I believe that the first presentation was one
23 or two meetings before that meeting.

24 Q. Could you please explain why, if you in fact
25 did not, why you did not disclose the IBM patent at an

1 earlier point in time.

2 A. I had sent out my trip reports as I always did,
3 and after the September trip report, someone came to me
4 and told me that they had a patent that they were one
5 of the authors of that might apply on the topic of the
6 half SAM, so I looked at that and I agreed with them
7 that it probably did apply to the topic of the half SAM
8 and so I brought it to the December meeting to
9 disclose.

10 Q. When that person came to you with that
11 information, was that the first time that you were
12 aware that IBM might have a patent that would apply to
13 the half SAM technology?

14 A. Yes.

15 Q. And after you became aware that IBM might have
16 a patent that might apply to the half SAM technology,
17 how soon thereafter did you bring that to the attention
18 of JEDEC?

19 A. At the very next meeting.

20 Q. Thank you.

21 The second topic I wanted to touch upon briefly
22 this morning was your conversations with
23 Mr. Richard Crisp concerning his request to make a
24 presentation.

25 Do you recall that?

1 A. Yes.

2 Q. And I'd just like to be clear for the record,
3 did you understand his request as a request to present
4 a proposal relating to Rambus' RDRAM, to SDRAMs or to
5 something else?

6 A. I understood his proposal to relate to a Rambus
7 DRAM.

8 Q. And I believe that you said that during the
9 course of conversations Mr. Crisp indicated that there
10 might be patents that might relate to that?

11 A. I asked him if there was intellectual property
12 on the proposal and he said yes.

13 Q. Based on that, what understanding, if any, did
14 you have as to what that intellectual property might
15 relate to?

16 A. I didn't know the extent of the intellectual
17 property, but I understood from what he said that there
18 was at least some intellectual property. I believe I
19 already knew from a presentation that Rambus made at
20 IBM Burlington just prior to this meeting where in
21 their presentation, which I witnessed, they mentioned
22 that they had a patent or patents -- and I remember
23 which -- I don't remember which one it was -- on the
24 presentation of a Rambus DRAM.

25 Q. Again to be certain that the record is clear,

1 was it your understanding that when Mr. Crisp said
2 there might be patents relating to his proposal
3 presentation that those patents would relate to Rambus
4 RDRAM architecture?

5 MR. PERRY: Objection. Leading.

6 JUDGE McGUIRE: Sustained.

7 BY MR. OLIVER:

8 Q. At the time that you had this conversation with
9 Mr. Crisp, did you have any understanding as to whether
10 the intellectual property that Mr. Crisp referred to
11 would relate to Rambus' RDRAM architecture, to the
12 SDRAM architecture that was being worked on at JEDEC,
13 or to something else?

14 MR. PERRY: Asked and answered. He started
15 with that question in his line and he got an answer
16 already.

17 MR. OLIVER: Your Honor, I believe I started
18 with the presentation. I'm now asking with respect to
19 the intellectual property that --

20 JUDGE McGUIRE: All right. Overruled. I'll
21 hear the question.

22 THE WITNESS: Would you repeat the question,
23 please.

24 MR. OLIVER: Could I please ask that the
25 question be read back.

1 (The record was read as follows:)

2 "QUESTION: At the time that you had this
3 conversation with Mr. Crisp, did you have any
4 understanding as to whether the intellectual property
5 that Mr. Crisp referred to would relate to Rambus'
6 RDRAM architecture, to the SDRAM architecture that was
7 being worked on at JEDEC, or to something else?"

8 MR. PERRY: Your Honor, just for the record,
9 that exact question appears in the transcript earlier,
10 it was asked and answered, and his answer was: "I
11 understood his proposal to relate to a Rambus DRAM."

12 MR. OLIVER: Your Honor, the response was with
13 respect to a proposal and I'd like to get an answer of
14 his understanding with respect to Rambus intellectual
15 property rights.

16 JUDGE McGUIRE: Well, if that was the same
17 answer, then how can the answer at this point be any
18 different?

19 MR. OLIVER: Your Honor, I'm not sure that he
20 fully understood the question.

21 JUDGE McGUIRE: All right. I'm not sure --

22 MR. PERRY: That's fine, Your Honor. I'll
23 withdraw.

24 JUDGE McGUIRE: The question has been asked and
25 answered and that's sustained. Now, if you want to

1 re-ask the question in a form that he can now
2 understand as it deals with IP, you may proceed.

3 MR. OLIVER: Thank you, Your Honor.

4 BY MR. OLIVER:

5 Q. With respect to your conversation with
6 Mr. Crisp concerning his request to make a presentation
7 at JEDEC, what understanding, if any, did you have at
8 that time with respect to what might be covered by any
9 Rambus intellectual property?

10 A. I understood that he was saying that there was
11 intellectual property on the Rambus DRAM presentation.
12 I had seen a presentation in Burlington where the RDRAM
13 was presented to us and they were asked if they had a
14 patent or patents on the presentation and the answer
15 there was yes, so I only thought of this as applying to
16 the Rambus DRAM.

17 Q. Thank you.

18 Mr. Kelley, I'd like to ask you some questions
19 now with respect to the JC 42.3 committee meeting in
20 December 1991. I believe that we discussed the minutes
21 yesterday. It should be JX-10 in the pile of documents
22 in front of you.

23 Do you have that document, Mr. Kelley?

24 A. Yes.

25 Q. If I could ask you to turn, please, to page 84

1 of that document.

2 A. Okay.

3 Q. This is a handwritten page. The upper
4 right-hand corner reads "Attachment M." Underneath
5 that it says "Synchronous DRAM versus HST toggle."

6 Do you see that?

7 A. Yes.

8 Q. Do you recognize this page?

9 A. Yes, I do.

10 Q. What is this page?

11 A. This page is a presentation by Mark Kellogg,
12 one of my alternates, comparing the synchronous DRAM to
13 high-speed toggle and various points.

14 Q. Mark Kellogg is the individual that you also
15 testified about yesterday?

16 A. Yes.

17 Q. Now, at the time that Mr. Kellogg gave his
18 presentation, did you observe his presentation?

19 A. Yes.

20 Q. And did you understand it?

21 A. Yes.

22 Q. Could you please explain your understanding of
23 this presentation at the time that it was delivered.

24 A. Yes. I believe that Mark was trying to show
25 the committee the various advantages of synchronous

1 DRAM and high-speed toggle and in some cases one is
2 better than the other and in other cases the second
3 might be better than the first.

4 Q. Now, is this the same high-speed toggle
5 technology that I believe you testified that you had
6 presented earlier at JEDEC?

7 A. Yes, it is.

8 Q. Based on your understanding of the JEDEC
9 disclosure policy at that time, would this
10 presentation by Mr. Kellogg have constituted JEDEC
11 work?

12 A. Yes.

13 Q. And again based on your understanding of the
14 JEDEC disclosure policy at the time, would this
15 presentation have created an obligation on a member to
16 disclose any relevant patents or patent applications?

17 A. Yes, it did.

18 Q. Mr. Kelley, if I could ask you some questions
19 now about the JC-42.3 committee meeting in February of
20 1992.

21 A. Do I have this document?

22 Q. I'm trying to find out.

23 Apparently not.

24 May I approach, Your Honor?

25 JUDGE MCGUIRE: Yes, you may.

1 BY MR. OLIVER:

2 Q. Mr. Kelley, you've been handed a document
3 that's been marked as JX-12 for identification.

4 Do you recognize this document?

5 A. Yes.

6 Q. What is this document?

7 A. This is the minutes of the JC-42.3 committee
8 from February 1992.

9 Q. Were you present at this meeting?

10 A. Yes.

11 Q. Can you please turn to page 5 of JX-12.

12 A. Okay.

13 Q. If I could direct your attention to
14 paragraph 4, please. It reads "Active Item List."

15 Do you see that?

16 A. Yes, I do.

17 Q. Under that it says, "Mr. Kelley showed both his
18 own and Reese Brown's item logs (see attachment B)."

19 Do you see that?

20 A. Yes, I do.

21 Q. Can you please explain what is meant by your
22 and Reese Brown's item logs?

23 A. In order to control and establish the many
24 activities that were going on on my committee, we
25 needed to create a committee item list. Reese Brown,

1 who was a consultant to JEDEC, maintained the item
2 list for all of the committees and I worked with Reese
3 to maintain the item list for my task group on the
4 JC-42.3 committee. If we looked at these documents,
5 you'd see that my active item list is much shorter
6 than Reese's.

7 Q. Why don't we do that then. If we could turn,
8 please, to page 17.

9 A. Okay.

10 Q. This has a caption in the upper right-hand
11 corner right underneath Seattle "Attachment B."

12 Do you see that?

13 A. Yes.

14 Q. Is this one of the two item lists that you're
15 referring to?

16 A. Yes, it is.

17 Q. Which one is this?

18 A. This is mine.

19 Q. Okay. If I could ask you to turn, please, to
20 page 19.

21 A. Okay.

22 Q. And if I could ask you to look about halfway
23 down that page, there's an item 312.1, then next column
24 number 2, next to that "toggle mode."

25 Do you see that?

1 A. Yes.

2 Q. And if you go all the way across to the
3 right-hand column, it lists IBM?

4 A. Yes.

5 Q. Can you please explain what that listing
6 signifies?

7 A. The listing signifies that toggle mode was an
8 active item. It shows IBM as the company responsible
9 for that new item and it shows that there was a ballot
10 in the committee with a ballot number shown so if
11 someone wanted to look up the information on the active
12 item they could go to that ballot.

13 Q. And the number in the left-hand column, 312.1,
14 I assume that that refers to the item number?

15 A. That's the committee item number.

16 Q. Now, Mr. Kelley, with respect to whether a
17 particular presentation would constitute JEDEC work,
18 what, if any, is the relevance of an item number?

19 A. The item number means that a company has made a
20 proposal, and it could have been multiple proposals,
21 but that it was active committee work.

22 Q. If something is listed on one of these item
23 logs with an item number, would it be fair to conclude
24 that that constitutes JEDEC work?

25 A. Yes.

1 Q. If I could ask you to turn, please, to page 23
2 in JX-12.

3 A. Okay.

4 Q. And here is a chart that is much more difficult
5 to read, but can you please identify what this chart
6 is?

7 A. Yes. This is Reese Brown's item list.

8 Q. Thank you.

9 Next, Mr. Kelley, I'd like to ask you some
10 questions about the May 1992 42.3 committee meeting.

11 May I approach, Your Honor?

12 JUDGE McGUIRE: Yes.

13 BY MR. OLIVER:

14 Q. Mr. Kelley, I've handed you a document that's
15 been marked as CX-34 for identification.

16 Do you recognize this document?

17 A. Yes.

18 Q. What is this document?

19 A. This is the minutes from the JC-42.3 committee
20 from May of 1992.

21 Q. If I could ask you to turn, please, to page 30
22 of CX-34.

23 A. Okay.

24 Q. And this page has a handwritten note on the
25 top, "Attachment E." Do you see that?

1 A. Yes.

2 Q. Do you recognize this page?

3 A. Yes. This is an e-mail memo that I wrote to
4 Ken McGhee.

5 Q. What did you describe in this e-mail note?

6 A. Can you give me a minute to review?

7 Q. Certainly.

8 (Pause in the proceedings.)

9 A. Okay. Now I remember.

10 There had been a special task group meeting in
11 April of 1992. At a task group meeting, the JEDEC
12 office representative is not required to attend because
13 at a task group meeting no official business can
14 transpire.

15 Because Ken McGhee, who was the committee
16 secretary, did not attend, I was sending this to
17 Ken McGhee as a report on what transpired at the
18 special meeting in Dallas in April of 1992.

19 Q. And can you please explain in a little more
20 detail what a special task group is?

21 A. The work of the committee is more difficult
22 because in the room we have people representing other
23 committees. 42.3 is not just about DRAMs.

24 So, for example, there were people in the room
25 who didn't care about DRAMs but did care about SRAMs or

1 EPROMs or ROMs and I could list probably half a dozen
2 others.

3 So in the committee of 42.3, it's a little
4 more difficult to focus on DRAMs compared to a task
5 group where, when we call a special task group
6 meeting, only the people that are interested in DRAMs
7 will, I'll use the word, bother to attend the task
8 group meeting, and that's good news from my point of
9 view because then we can really focus on the items
10 that are for DRAMs with only those parties that are
11 truly interested.

12 Q. And by the way, if I could ask you to flip
13 quickly through the next few pages up to page 37 of
14 CX-34, I simply want to confirm that the notes that you
15 wrote with respect to this special task group meeting
16 consist of pages 30 through 37 of CX-34.

17 A. Yes. My report on the special task group
18 meeting goes through page 37.

19 Q. If I could ask you to turn now to page 32,
20 please.

21 A. Okay.

22 Q. And I'd like to direct your attention in
23 particular to item I.D. It starts about two-thirds of
24 the way down the page. Next to that is "IBM:
25 (William Hardell - Austin)."

1 Do you see that?

2 A. Yes, I see that.

3 Q. First of all, do you know Mr. Hardell?

4 A. Yes, I do.

5 Q. And who is Mr. Hardell?

6 A. Bill Hardell is one of our system designers
7 that specializes in building the memory part of an IBM
8 workstation. An IBM workstation is the high end of the
9 PC kind of computer.

10 Q. Now, you may have testified to this yesterday,
11 but could you please remind us today of what IBM
12 facility is located in Austin.

13 A. The IBM facility in Austin works on high-end PC
14 design, development and manufacturing.

15 Q. Now, does this item I.D indicate that
16 Mr. Hardell made a presentation at this April 1992
17 meeting?

18 A. Yes.

19 Q. At the time he made the presentation, were you
20 present?

21 A. Yes.

22 Q. And you observed that presentation?

23 A. Yes.

24 Q. And did you understand the presentation that
25 Mr. Hardell was making?

1 A. Yes.

2 Q. If I could direct your attention to the second
3 line, it reads "A-Synchronous RAS/CAS with synchronous
4 DQ." Do you see that?

5 A. Yes.

6 Q. And underneath that it reads "dual clock edge."
7 Do you see that?

8 A. Yes.

9 Q. Could you please explain your understanding at
10 the time of what was meant by those entries.

11 A. In 1986, we invented an asynchronous DRAM with
12 a synchronous output using both edges of the clock, the
13 rising edge of the clock and falling edge of the clock,
14 to output data.

15 The advantage of that is that if you only
16 output data on one edge of the clock, then, let's say,
17 you get 50-megahertz performance data rate, but if you
18 can do it on both of the edges of the clock, then you
19 double the data rate without impacting any other
20 function in the chip. Now you get 100-megahertz
21 capability from the same part. We called -- internally
22 we called that high-speed toggle.

23 Q. Now, at this April 1992 meeting, was
24 Mr. Hardell proposing that JEDEC use that technology?

25 A. Yes.

1 Q. Now, do you have a recollection of what, if
2 any, consensus was reached at this meeting with respect
3 to whether JEDEC would use a dual-edge clock or
4 high-speed toggle technology?

5 A. At the meeting, we discussed the advantages of
6 a double-edged clock versus a single-edged clock and we
7 decided as a group that we could meet the requirements
8 of the high-performance systems for the next-generation
9 DRAM without needing a double-edged clock for that
10 doubling of the performance and that we would
11 reconsider the double-edged feature in the next
12 generation.

13 Q. I believe you referred to two different
14 generations in your answer.

15 With respect to the generation for which
16 members believed that they did not need this
17 technology, would that refer to what became the SDRAM
18 standard?

19 A. Yes.

20 Q. And then you, if I understood you correctly,
21 said that it would reconsider with respect to the next
22 generation. What generation did that refer to?

23 A. I think it's commonly called the DDR or double
24 data rate SDRAM.

25 Q. Thank you.

1 Mr. Kelley, you can set that document aside. I
2 will be coming back to CX-34.

3 In the meantime, if I could ask you to locate
4 CX-35. I believe it's in the pile in front of you.
5 That would be the JEDEC council minutes from May of
6 1992.

7 MR. PERRY: 35?

8 MR. OLIVER: CX-35.

9 Your Honor, may one of us approach the
10 witness?

11 JUDGE McGUIRE: Yes, go ahead.

12 THE WITNESS: Thank you.

13 BY MR. OLIVER:

14 Q. Mr. Kelley, do you now have CX-35 in front of
15 you?

16 A. Yes.

17 Q. If I could ask you to turn, please, to page 16
18 of CX-35.

19 A. Okay.

20 Q. This appears to be a letter with the IBM logo
21 in the upper right-hand corner and your name but no
22 signature at the bottom.

23 Do you see that page?

24 A. Yes.

25 Q. Do you recognize this page?

1 A. Yes. This is a letter that I wrote to
2 Ken McGhee.

3 Q. As I noted, there is no signature on this
4 letter.

5 Is this a letter that you actually sent?

6 A. There's no signature because I sent this
7 e-mail.

8 Q. And this is a letter you sent on or about
9 April 16, 1992; is that right?

10 A. Yes.

11 Q. So in other words, about a week or so after the
12 task group meeting that we just looked at?

13 A. Yes.

14 Q. If I could direct your attention to the second
15 paragraph. It begins, "On another topic, I am
16 concerned about press leaks from JC-42."

17 Do you see that?

18 A. Yes.

19 Q. Could you please explain what you had in mind
20 when you wrote that sentence.

21 A. I believed that the decisions that had been
22 made and the work that had been discussed at the
23 special meeting in Dallas in April were very
24 significant points in the work of JEDEC and I was
25 concerned that people who were in attendance at the

1 meeting would leak this to the press.

2 Sometimes that happened and we would pick up
3 the Electronic News or a like press report that showed
4 us what somebody thought transpired at the meeting, and
5 I was concerned about that.

6 Q. Why were you concerned about leaks to the
7 press?

8 A. Once an item gets into the press, then it does
9 a couple of things. Debate begins in the media of the
10 press and usually only very few companies participate
11 in that press debate, which limits the discussion
12 openly. And also in the press, we can have
13 encouragements or biases that leak into the issues from
14 nonmember companies and I was just concerned about all
15 of this non-JEDEC information getting into the open
16 press.

17 Q. With respect to the concerns that you've
18 expressed, were these concerns related to the ability
19 of JEDEC to carry out its work or were they concerns
20 related to some other subject?

21 A. No. I was concerned about the ability of
22 JEDEC to carry out its work and the fact that if it
23 was out in the non-JEDEC company debate, then
24 situations could arise that would impede the work of
25 JEDEC.

1 Q. Did JEDEC have any rules or procedures in place
2 to deal with leaks to the press?

3 A. Yes, we did. We specified that members were
4 only to talk about JEDEC work within their companies.

5 Q. And why was that?

6 A. Because we were concerned about leaks.

7 Sir, may I clarify that a little bit?

8 Q. Yes, please.

9 A. That last statement?

10 When I say only within their companies, I don't
11 mean to imply that we couldn't talk with each other as
12 members about it.

13 Q. Okay. Thank you.

14 Your Honor, may I approach?

15 JUDGE McGUIRE: Yes.

16 Let's go off the record for a moment.

17 (Discussion off the record.)

18 JUDGE McGUIRE: Mr. Oliver.

19 MR. OLIVER: Thank you, Your Honor.

20 BY MR. OLIVER:

21 Q. Mr. Kelley, I've handed you a document that's
22 been marked as CX-1708 for identification. I don't
23 know if it's a document that you have seen before or
24 not.

25 Let me represent to you that it is an e-mail

1 apparently written by Mr. Richard Crisp at or shortly
2 after the April 1992 meeting that we've been looking
3 at. And I'd like to direct your attention to a couple
4 portions of this document and then ask you a couple of
5 questions.

6 If I could ask you to turn, please, to page 5
7 of the document.

8 A. Okay.

9 Q. And I'd like to direct your attention to the
10 next to last paragraph on this page.

11 The paragraph reads: "I think we should make
12 sure this gets leaked to the press" -- actually in
13 fact, before I read that paragraph, let me first
14 direct your attention to the caption at the top of that
15 page. The caption reads "Dissension in the JC-42
16 meeting."

17 And then back to the next to last paragraph
18 where I directed your attention: "I think we should
19 make sure this gets leaked to the press. Something
20 like RIFT forms in JEDEC SDRAM working group: major
21 system houses now leaning away from JC-42 committee
22 recommendation."

23 Do you see that?

24 A. Yes, I do.

25 Q. And then if I could continue in the next

1 paragraph: "Now, if we can get this on the front page
2 of EETimes and the next issue of Nikkei Electronics,
3 this should help our air war. One downside is that
4 the discussions are confidential and if it was learned
5 that the story came from us we would certainly be
6 censured by JEDEC if we weren't tossed out. On the
7 other hand, this sort of story could be very useful to
8 us in print. I suspect that our buddy, Osamu Kobayashi
9 of Nikkei Electronics, would be willing to help. I
10 also know," continuing on to the next page, "a guy
11 with Electronics Buyers News that would probably be
12 willing to publish this story. Let's talk about it on
13 Monday."

14 Do you see that?

15 A. Yes, I do.

16 Q. Now, Mr. Kelley, were you aware of this e-mail
17 at the time you wrote your letter to Mr. Ken McGhee of
18 April 16, 1992?

19 A. No.

20 Q. Is this the type of concern you had in mind
21 when you wrote your letter to Mr. Ken McGhee?

22 MR. PERRY: Your Honor, that's vague. This is
23 an internal discussion. The question needs to have
24 some more in it. It's quite vague as to what it is he
25 had in mind. This is simply an internal discussion.

1 There's no evidence Mr. Kelley was concerned about what
2 people talked about in their own companies as opposed
3 to actually leaking anything.

4 MR. OLIVER: Your Honor, Mr. Kelley clearly had
5 a concern about leaks in mind at the time he wrote his
6 letter to Mr. McGhee. This now indicates a particular
7 type of leak being proposed by a particular
8 representative following a specific JEDEC meeting.
9 And --

10 MR. PERRY: My -- I'm sorry. Go ahead.

11 MR. OLIVER: And I'd simply like to know if
12 this is the type of leak that Mr. Kelley was concerned
13 about at the time he wrote his letter to Mr. McGhee.

14 MR. PERRY: My only objection is that there's
15 no evidence of any leaks. He needs to have a
16 good-faith basis for a question. If he's going to say
17 are you concerned about this type of leak, he needs to
18 have a good-faith basis that the proposal, as he calls
19 it, was ever carried out, and he knows there's
20 absolutely no evidence that they've ever found that any
21 of this ever happened.

22 This is a discussion that took place in a
23 nanosecond and now he's asking this witness are you
24 concerned about this kind of leak. There's no leak
25 that's been demonstrated.

1 JUDGE McGUIRE: All right. Overruled -- no.
2 It's sustained to the extent that you questioned about
3 a leak.

4 I believe the question was: Is this the type
5 of thing you were concerned with?

6 Now, maybe that's, you know, a very fine
7 distinction. But I'll hear the answer to it to that
8 extent. It hasn't been indicated yet that there has
9 been any leaks, so to that extent, I'm going to uphold
10 his objection. But I thought the question stated, Is
11 this the type of concern that you had? So I will hear
12 that answer.

13 MR. OLIVER: Your Honor, would it help if I
14 were to rephrase the question?

15 JUDGE McGUIRE: I think it would.

16 BY MR. OLIVER:

17 Q. Okay. Mr. Kelley, is the proposal that we have
18 just read a source of the type of concern you had at
19 the time you wrote your letter to Mr. McGhee?

20 A. This was my concern.

21 Q. And Mr. Kelley, based on your understanding of
22 the concept of good faith as it applied to JEDEC's
23 activities in 1992, would it be consistent with your
24 understanding of good faith at that time to propose to
25 plant a story with the press about dissension within

1 JEDEC?

2 A. This is an example of not having good faith or
3 not showing good faith.

4 Q. Why not?

5 A. Because this undermines the JEDEC process. It
6 talks about discussions of JEDEC confidential
7 information, company confidential information for
8 other companies, and it puts it out into the media
9 where anyone in the world can participate in that
10 debate.

11 Q. Thank you.

12 If I could ask you to turn back now to CX-34,
13 these are the meeting minutes from May 1992 that we
14 were looking at just a moment ago.

15 All right, Mr. Kelley. If I could ask you to
16 turn, please, to page 31 of CX-34.

17 A. Okay.

18 Q. I'd like to direct your attention now to the
19 bottom portion of page 31. There's a caption that
20 reads "I.A" and next to that "IBM" and next to that
21 "John Szarak Boca."

22 Do you see that?

23 A. Yes.

24 Q. Again, I believe that you mentioned John Szarak
25 yesterday, but could you please remind us today who

1 Mr. Szarak is.

2 A. Yes. John Szarak is one of the system
3 designers for the application of memory in our IBM PC
4 division.

5 Q. And again I believe you also testified
6 yesterday with respect to Boca, but could you remind
7 us again, please, what IBM facility was located in
8 Boca.

9 A. IBM had a large facility in Boca Raton,
10 Florida where we designed, developed and produced IBM
11 PCs.

12 Q. Now, does this indicate that Mr. Szarak made a
13 presentation at the April 1992 meeting?

14 A. Yes.

15 Q. Were you present when he made the
16 presentation?

17 A. Yes.

18 Q. And did you observe his presentation?

19 A. Yes.

20 Q. Did you understand his presentation when he
21 gave it?

22 A. Yes.

23 Q. Could you summarize briefly what presentation
24 Mr. Szarak was making.

25 A. John Szarak had put together a presentation

1 that he felt represented a wide cross-section of DRAM
2 use within the IBM Corporation. In his first bullet he
3 mentions SDRAMs for IBM mainframes, minis,
4 workstations, PCs and portables, so he's speaking for a
5 very broad range of IBM applications of DRAMs.

6 Q. If I could direct your attention to the next
7 line underneath that, it reads, all caps, "LOW COST"
8 followed by three exclamation points.

9 Can you please explain what he meant by that?

10 A. Well, the three exclamation points mean, in my
11 paraphrase, low cost, low cost, low cost. John --
12 John's position was that the SDRAM could not cost more
13 than the preceding nonsynchronous DRAM.

14 Q. I see immediately after that there's
15 parentheses and then I believe a less-than symbol of
16 5 percent more than DRAM. Do you see that?

17 A. Yes, I do.

18 Q. What was meant by that phrase?

19 A. There's a lot in that phrase because at the
20 meeting in Dallas, each of the IBM system users of DRAM
21 were present at that meeting and each one was asked
22 separately what their requirement for DRAMs was, and
23 John Szarak for the IBM PCs said it had to be
24 zero percent increase over the preceding DRAM, the
25 representative for IBM minicomputers said 3 to

1 5 percent was acceptable, and the mainframe computers
2 said that 5 to 10 percent would be acceptable.

3 And let me orient you. A PC costs one to
4 two thousand dollars, a mini costs \$50,000, and a
5 mainframe costs one to five million dollars.

6 Q. I believe that you said -- you were speaking of
7 an increase with respect to prior DRAM.

8 At this time what was the prior DRAM?

9 A. It was the asynchronous DRAM that we had
10 standardized before we got to the consideration of a
11 synchronous DRAM.

12 Q. I see.

13 Again, just to be certain the record is clear,
14 was this then an indication of the desire to limit, if
15 you will, the price increase of SDRAM over asynchronous
16 DRAM?

17 A. You used the word "price increase." We never
18 at JEDEC talked about prices. However, we did talk
19 about relative impact and that's why this is in a
20 percentage, so we could talk about a relative impact of
21 the new SDRAM compared to the preceding asynchronous
22 DRAM as a relative number. Zero percent of course
23 means no increase up to 10 percent means a 10 percent
24 increase.

25 Q. Now, underneath that is a caption that reads

1 "Sync DRAM requirements."

2 Do you see that?

3 A. Yes.

4 Q. And underneath that appears to be a list of
5 features; is that right?

6 A. Yes.

7 Q. And if I could then direct your attention to
8 the top of page 32.

9 A. Yes.

10 Q. Blow up the top portion of that page, please.

11 Now, is this a continuation of Mr. Szarak's
12 presentation?

13 A. Yes.

14 Q. And at the top of the page, the caption SDRAM
15 Requests or -- excuse me -- Sync DRAM Requests; is that
16 right?

17 A. Yes.

18 Q. The first item underneath that is multiple
19 banks with interleaving. Do you see that?

20 A. Yes.

21 Q. Based on your understanding at the time, could
22 you please explain what Mr. Szarak meant by the term
23 "multiple banks with interleaving" in his
24 presentation.

25 A. The discussion at our committee had been

1 should we have one bank of DRAM as we had had in the
2 past or should we go to a dual-bank DRAM of memory,
3 which is an architecture change of the memory, which we
4 could interleave from the two banks and improve
5 performance.

6 Q. Again so the record is clear, a dual bank would
7 be the same as a two-bank design?

8 A. Yes.

9 Q. Now, at some time about the time or shortly
10 after the time of this meeting, did you hear any
11 concern that Rambus might have patent rights relating
12 to use of two banks?

13 A. I believe that came up. I don't remember if
14 it was at this meeting, but it was about this time,
15 yes.

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

17 JUDGE McGUIRE: Yes.

18 BY MR. OLIVER:

19 Q. Mr. Kelley, I've handed you a document that's
20 been marked as RX-289.

21 Do you recognize this document?

22 A. Yes, I do.

23 Q. What is this document?

24 A. This is a fax that I received from a
25 Willi Meyer from Siemens Corporation.

1 Q. Just to put this in perspective, at this time
2 was IBM doing anything in particular with Siemens?

3 A. Yes. Around the late '80s or around 1990, IBM
4 and Siemens agreed in a joint venture to develop,
5 design and separately put into production a single
6 design that was JEDEC's standard in nature.

7 Q. Now, was this document sent by Mr. Meyer to you
8 in connection with that joint venture?

9 A. Yes. There was going to be a meeting of the
10 key designers, both from Siemens and from IBM, at
11 IBM Burlington in June, and Willi Meyer was sending me
12 this for consideration to be presented at that June
13 meeting.

14 Q. Now, I'd like to ask you a few questions about
15 your understanding of what Mr. Meyer was trying to
16 convey when he sent this document to you.

17 Looking first at the left-hand column, there's
18 an entry "Sync DRAM." Do you see that?

19 A. Yes.

20 Q. What did you understand Mr. Meyer to be
21 referring to as Sync DRAM?

22 A. My understanding is he was talking about the
23 discussion at JEDEC called Sync DRAM.

24 Q. And underneath that there's an entry for Rambus
25 DRAM?

1 A. Yes.

2 Q. And what do you understand Mr. Meyer to be
3 referring to there?

4 A. I had just seen the Rambus presentation that
5 they presented to IBM Burlington just prior to this,
6 receiving this fax, so I understood that he was talking
7 about the Rambus DRAM that I had seen as presented by
8 Rambus.

9 Q. Now, there are two captions across the top.
10 One reads "Pros" and one reads "Cons." Do you see
11 that?

12 A. Yes.

13 Q. What did you understand Mr. Meyer to be
14 referring to with those two captions?

15 A. You could relabel "pros" as advantages and
16 "cons" as disadvantages.

17 Q. If I could direct your attention to the box
18 towards the upper right corner, it's in the Sync DRAM
19 row under Cons. Do you see that box?

20 A. Yes.

21 Q. And the second entry there reads "2-bank sync
22 may fall under Rambus patents."

23 Do you see that?

24 A. Yes.

25 Q. What do you understand Mr. Meyer to mean with

1 that entry?

2 MR. PERRY: Do you mean to say what did he
3 understand? I object to --

4 MR. OLIVER: Yes. I'll withdraw the question.

5 BY MR. OLIVER:

6 Q. At the time that you received this, what did
7 you understand Mr. Meyer to mean with that entry?

8 A. I understood Mr. Meyer to be concerned about
9 the two-bank feature on the synchronous DRAM at JEDEC
10 and concerned for whether Rambus patents applied to
11 that design.

12 Q. At the time that you received this fax from
13 Mr. Meyer, did you have an understanding or did you
14 have a belief as to whether Rambus' patents would
15 apply a two-bank design as being discussed within
16 JEDEC?

17 A. The details that I had on the Rambus DRAM came
18 from the meeting that they presented to IBM Burlington
19 just shortly before this. That meeting was a
20 nonconfidential meeting, so we didn't get into great
21 depth of the Rambus design. However, what I saw and
22 what they presented was a very different design than
23 what the JEDEC committee was considering for the
24 Sync DRAM.

25 For example, the Rambus DRAM had many more than

1 two banks. I remember the number of banks of being 18
2 or so, maybe even twice that.

3 I also remember that it was a -- it was a long
4 latency between the request for data until you
5 received the first data, so the first access was very
6 long compared to what was the normal in a synchronous
7 DRAM.

8 And also, they had a structure that serialized
9 data in a packet, and that was very different than what
10 the synchronous DRAM was being discussed at JEDEC.

11 So I did not believe that I agree with Willi on
12 this concern.

13 Q. Just for purposes of context, do you recall
14 approximately when that Rambus presentation took place
15 at IBM?

16 A. It was at or about April 23rd of 1992.

17 Q. Okay. Thank you.

18 May I approach, Your Honor?

19 JUDGE McGUIRE: Yes.

20 BY MR. OLIVER:

21 Q. Mr. Kelley, I've handed you a document that's
22 been marked as CX-1252 for identification.

23 Do you recognize this document?

24 A. I can't be sure that I did. This was the kind
25 of information I saw at the Rambus presentation on

1 April 23rd, but I did not receive a copy of that
2 presentation, and all I can say is that I remember
3 seeing information like this at that meeting.

4 Q. Let me direct your attention to the -- to a
5 line towards the bottom of the page. It reads "Highly
6 Confidential Outside Counsel Only" and next to that
7 "IBM" followed by a number.

8 Do you see that?

9 A. No. Could you point that out to me.

10 Q. If you hold the page vertically (indicating)?

11 A. Okay.

12 Q. And then there's a line about an inch and a
13 half from the bottom?

14 A. Oh. I'm sorry. I was looking at the data.
15 Yes, I see that line.

16 Q. Do you recognize that to be a production number
17 from IBM?

18 A. Yes, I do.

19 Q. Does that signify to you that this document
20 came from the files of IBM?

21 A. Yes.

22 Q. Mr. Kelley, if I could direct your attention to
23 the slide represented in the upper right-hand corner of
24 the first page that has the caption RDRAMs versus
25 SDRAMs.

1 Do you see that?

2 A. Yes.

3 Q. Do you recall from the presentation that IBM
4 made --

5 MR. PERRY: Rambus.

6 BY MR. OLIVER:

7 Q. Thank you. Let me start the question again.

8 Do you recall from the presentation that
9 Rambus made in about April of 1992 a discussion of the
10 features of RDRAMs versus features of SDRAMs?

11 A. Yes.

12 Q. Now, does the slide that is now appearing on
13 the screen summarize the features that you recall being
14 discussed in that April 1992 meeting?

15 A. It summarizes the Rambus presentation on that
16 comparison, yes.

17 Q. Now, Mr. Kelley, did Rambus discuss at all its
18 patents or its intellectual property rights at that
19 meeting in April 1992?

20 MR. PERRY: Asked and answered.

21 MR. OLIVER: I'd like to focus specifically on
22 what Rambus said during the course of the meeting.

23 MR. PERRY: But about twenty minutes ago he
24 asked this same question. I'm just trying to speed
25 things along.

1 JUDGE MCGUIRE: Yes, that's sustained. You can
2 restate, Mr. Oliver.

3 BY MR. OLIVER:

4 Q. With respect to -- if I could direct your
5 attention to the two columns on the -- currently
6 appearing on the computer screen, with reference to
7 this page, could you please explain your understanding
8 following the April 1992 meeting of the potential scope
9 of Rambus patent rights or patent applications.

10 A. At the opening of the meeting where Rambus was
11 presenting their RDRAM and I believe also their module
12 called a RIMM to us, Mike Concannon, who was the
13 executive for IBM that opened the meeting, warned
14 Rambus that this was a nonconfidential meeting and that
15 anything that would be said could be shown in The Wall
16 Street Journal tomorrow morning, and Rambus agreed with
17 that, so I believe that we were not receiving
18 confidential information.

19 Q. My question is: With respect to the list of
20 features on the left-hand side under RDRAMs and the
21 list of features on the right-hand side under SDRAMs,
22 did you have any understanding after the April 1992
23 meeting with Rambus as to whether the -- whether Rambus
24 had any potential patent rights that might apply to
25 features either in the left-hand side or in the

1 right-hand side or both sides of the columns listed on
2 that page?

3 MR. PERRY: Your Honor, the question
4 necessarily assumes that this chart was shown at that
5 meeting, and he's been unable to establish that, so I'd
6 ask him to --

7 MR. OLIVER: Your Honor, I did ask him whether
8 this table reflects his recollection of the features
9 that were discussed at that meeting. I believe he
10 testified yes.

11 JUDGE McGUIRE: Are you talking about this
12 chart? Because I believe he also said he has not seen
13 this chart before but that he was aware of this kind of
14 information.

15 Now, is that the context of your opposition,
16 Mr. Perry?

17 MR. PERRY: Yes, Your Honor.

18 JUDGE McGUIRE: The chart.

19 Then that's sustained. He has not seen this
20 chart.

21 BY MR. OLIVER:

22 Q. Mr. Kelley, following the April 1992
23 presentation by Rambus at IBM, what understanding, if
24 any, did you have with respect to the potential
25 application of Rambus patents or patent applications to

1 work being done within JEDEC?

2 A. What I saw at the presentation by Rambus in
3 Burlington told me that the Rambus DRAM was so
4 different from the synchronous DRAM being discussed at
5 JEDEC that I just did not believe that anything that
6 Rambus had on the RDRAM might apply to the SDRAM or to
7 JEDEC.

8 Q. By the way, Mr. Kelley, at any point in time
9 did you recommend that IBM consider signing a license
10 with Rambus for the RDRAM architecture?

11 A. Yes, I did.

12 Q. Can you please explain how that came about?

13 A. I was asked by my executives if I felt that
14 there was a need to license the Rambus DRAM, and my
15 answer to them was yes, that there was a niche market
16 within IBM and our non-IBM customers that would be an
17 important, small part of the IBM needs and that we
18 needed to consider that option.

19 Q. Can you explain what that niche market was?

20 A. I recognized that the Rambus DRAM design was
21 very applicable to a video application. The packetized
22 handling of data falls in very well with writing
23 information on a screen that is very predetermined and
24 organized.

25 That is also true for transfer of data from the

1 memory in the PC or any other computer to a magnetic
2 media such as a hard drive that you might have in your
3 PC. It's very well-organized data and you can predict
4 the address stream. The packetized way that Rambus put
5 that together is very applicable.

6 And that there were other applications like
7 that. There were some printer applications, and so
8 forth, where data was put together in a very specific
9 stream and the packetized Rambus architecture worked
10 well. However, if you put all these together, they
11 were probably less than 5 percent of the DRAM usage in
12 IBM.

13 Q. Mr. Kelley, if I could ask you to locate again
14 CX-34 in front of you. These are the JC-42.3 committee
15 minutes from May of 1992.

16 A. Okay.

17 Q. And if I could ask you to turn, please, to
18 page 49.

19 I'm sorry. If I could ask you to turn to
20 page 59.

21 Actually why don't we start with page 58 just
22 to put this in context.

23 A. Okay.

24 Q. Do you recognize the document appearing at
25 page 58 of CX-34?

1 A. Yes, I do.

2 Q. What is this document?

3 A. This is a proposal by the NEC Corporation in
4 Japan proposing a synchronous DRAM to the JEDEC
5 committee as a work item.

6 Q. Were you present at the time this proposal was
7 made?

8 A. Yes, I was.

9 Q. Did you observe the presentation?

10 A. Yes.

11 Q. And did you understand it at the time?

12 A. Yes.

13 Q. If I could ask you to turn to the next page,
14 please, page 59.

15 Towards the top of the page immediately
16 underneath the small box there's a line that reads "two
17 banks pingpong operation using A11."

18 Do you see that?

19 A. Yes.

20 Q. Based on your understanding of the NEC
21 presentation at the time, can you please explain what
22 you understood NEC to be proposing with that line?

23 A. I understood that this was the same concept
24 that had been discussed called two-bank interleave.
25 With the two-bank pingpong operation you could increase

1 the data rate coming onto the DRAM by interleaving data
2 coming out of two banks at a much higher rate than you
3 would have been able to obtain taking data out of only
4 one bank.

5 Q. And if I could also ask you to turn, please, to
6 page 83.

7 Again, I'm sorry. If you could please start
8 with page 82 to put this in context.

9 A. Okay.

10 Q. Do you recognize the document starting at
11 page 82?

12 A. Yes.

13 Q. And what is this document?

14 A. This is a presentation proposal from Toshiba on
15 a synchronous DRAM as the JEDEC work item.

16 Q. And if I could ask you to turn to page 83,
17 please. If I could direct your attention to the second
18 line underneath Feature. There's a line that reads
19 "1Mx2 bank x 8 bit organization."

20 Do you see that?

21 A. Yes.

22 Q. I'm particularly interested in the two-bank
23 portion.

24 Can you please explain, based on your
25 understanding at the time, what Toshiba was proposing?

1 A. Again, I believe this is the same concept of
2 internal architecture of the DRAM, designing it so that
3 data is taken from two banks which gives you an
4 increased performance over data that would otherwise be
5 taken from one bank.

6 Q. If I could ask you to turn, please, to page 8
7 of CX-34.

8 A. Okay.

9 Q. And if I could direct your attention to
10 paragraph 13 appearing about the middle of the page,
11 the caption reads "Motorola Sync DRAM patent status."
12 Do you see that?

13 A. Yes.

14 Q. Underneath that it reads: "A question was
15 asked about this. Motorola had promised a license
16 letter at last meeting but has not produced one yet."

17 Do you see that?

18 A. Yes.

19 Q. Do you recall a question being raised about the
20 Motorola patent with respect to DRAMs at this May 1992
21 meeting?

22 A. Yes, I do.

23 Q. Can you please explain what you recall about
24 the discussion of the Motorola patent at this meeting?

25 A. Yes. Motorola at the meeting was asked if they

1 were aware of a patent or patent application that their
2 company may hold on the issues of a synchronous DRAM
3 that were being discussed at the task group meeting,
4 and Motorola had not yet responded.

5 Q. By the way, do you recall Mr. Willi Meyer of
6 Siemens raising a question at this meeting about
7 whether Rambus had patents that would apply to JEDEC's
8 SDRAM work?

9 MR. PERRY: Objection. Leading. Vague.

10 JUDGE McGUIRE: Sustained.

11 BY MR. OLIVER:

12 Q. Mr. Kelley, what, if anything, do you recall
13 Willi Meyer saying at the May 1992 meeting with respect
14 to Rambus patents?

15 A. I believe that I was probably sensitized to
16 this by the earlier facts that I received because
17 Willi had raised that question to me in the fax and
18 then I remembered him bringing it up at the meeting
19 again, and the question to Rambus was Motorola has
20 indicated that they're searching for patent material
21 that they might hold on the concept of a synchronous
22 DRAM and Willi was asking Siemens -- or Willi was
23 asking Rambus if they were aware that they had
24 patentable material on the concept of the synchronous
25 DRAM.

1 Q. What, if anything, do you recall you saying at
2 this meeting with respect to any potential Rambus
3 patent rights?

4 A. I'm not real sure that I said anything at this
5 meeting.

6 Q. So your best recollection today is that you
7 can't recall whether you said anything at this meeting
8 with respect to Rambus patent rights?

9 A. Yes.

10 MR. OLIVER: May I approach?

11 JUDGE McGUIRE: Yes.

12 BY MR. OLIVER:

13 Q. Mr. Kelley, I've handed you a document that's
14 been marked as RX-303 for identification.

15 Do you recognize this document?

16 A. Yes.

17 Q. What is this document?

18 A. We talked earlier about a fax that I received
19 from Willi Meyer in preparation for a joint meeting of
20 the group of designers of IBM and Siemens that was
21 going to meet in June. I took the information that
22 Willi Meyer had given me, I modified it somewhat, and I
23 created this presentation for that June meeting.

24 Q. Would it be fair to say then that in the
25 left-hand column the terms "sync" and "Rambus" have the

1 same meanings that you described earlier when
2 describing Willi Meyer's document?

3 A. Yes.

4 Q. And likewise that the caption at the top,
5 Pros and Cons, would have the same meaning as the
6 meaning you described earlier when describing
7 Willi Meyer's document?

8 A. Yes.

9 Q. And if I could direct your attention to the box
10 towards the upper right-hand corner of this table under
11 Cons, there's an entry there that reads: "Patent
12 problems? (Motorola/Rambus)."

13 Do you see that?

14 A. Yes, I do.

15 Q. Can you please explain what you had in mind
16 when you included that reference in this document?

17 A. I was notifying the people involved in the
18 design of the joint work that was going on between IBM
19 and Siemens that there was concern about potential
20 patent problems as I had heard at the JEDEC meeting
21 about Motorola and Rambus intellectual property, and I
22 wanted the group to recognize that there was this
23 concern.

24 My own personal belief was that at least the
25 Rambus part of it didn't apply, but I didn't know

1 anything about the Motorola part of it, so I was
2 raising the issue of both of them to the committee as
3 basically Willi had asked me to do.

4 Q. What caused you to include the reference to
5 Motorola in this document?

6 A. The meeting at JEDEC.

7 Q. And with respect to your understanding that the
8 reference to Rambus patents did not apply, can you
9 please explain why you thought the Rambus patents did
10 not apply?

11 MR. PERRY: Misstates his testimony. He said
12 he thinks he believed at the time. He didn't use the
13 word "understanding."

14 MR. OLIVER: Your Honor, I'll withdraw the
15 question and rephrase.

16 JUDGE McGUIRE: All right.

17 BY MR. OLIVER:

18 Q. Can you please explain why you believed at the
19 time that the Rambus patents would not apply?

20 A. In my mind, after seeing the Rambus
21 presentation at IBM Burlington in April, I just did not
22 recognize that the design that they had shown me had
23 any merit with regard to the issues of the synchronous
24 DRAM discussed at JEDEC and considered here by the
25 joint venture.

1 Q. After you prepared RX-303, what, if anything,
2 was done with this document?

3 A. I believe that a summary was put together from
4 this meeting and shown to executives who had not
5 attended the joint meeting.

6 Q. Do you recall whether this statement regarding
7 Motorola/Rambus patent, question mark, was included in
8 that summary?

9 MR. PERRY: Your Honor, I object. He's
10 testifying about documents that aren't in the
11 courtroom. That's the best evidence. It's never been
12 produced to us as far as I know.

13 MR. OLIVER: Your Honor, I'm simply asking for
14 his understanding.

15 JUDGE McGUIRE: Overruled. I'll hear the
16 question.

17 THE WITNESS: Would you repeat the question.

18 (The record was read as follows:)

19 "QUESTION: Do you recall whether this
20 statement regarding Motorola/Rambus patent, question
21 mark, was included in that summary?"

22 THE WITNESS: I don't remember.

23 BY MR. OLIVER:

24 Q. Mr. Kelley, I'd like to shift gears somewhat
25 at the moment and ask you about a couple of

1 technologies.

2 First, I'd like to ask you about programmable
3 CAS latency.

4 Now, focusing again on the time period between
5 1991 and 1996, did you have an understanding at that
6 time of the term "programmable CAS latency"?

7 A. Yes, I did.

8 Q. What was your understanding at that time of
9 that term?

10 A. Programmable CAS latency refers to one of the
11 features that we agreed to standardize on a synchronous
12 DRAM.

13 Q. And do you recall that during the 1992 time
14 frame the 42.3 subcommittee was considering including
15 programmable CAS latency in a JEDEC standard?

16 A. Yes.

17 Q. During the 1992 time frame, do you recall
18 whether the JC-42.3 subcommittee was considering any
19 alternative methods for setting CAS latency?

20 A. Yes.

21 Q. Can you please explain what alternatives you
22 recall the 42.3 committee considering to set CAS
23 latency at that time?

24 A. The feature of programmability of CAS latency
25 is not required for the operation of a synchronous

1 DRAM. You could build a part that did a single CAS
2 latency without having it programmable and then you
3 could build a second part that had a different single
4 CAS latency and a third part that had a third single
5 CAS latency, so you could build very similar designs
6 with different CAS latencies and none of them would
7 have a programmable feature.

8 The programmable feature allows you to set up
9 the architecture of the device when you power the
10 device up. Another way of doing that would be to allow
11 some programmability, but you would do it with fuses
12 that we put on the chip that would be fused at the time
13 of final production.

14 So you could have a design, a chip design that
15 would be programmable and then fuse at the final
16 selection of which part you were going to offer,
17 whether it would be a CAS latency of one or a CAS
18 latency of two, et cetera, and that fusing would occur
19 just before final test. That would be another option
20 of programmability that would be different than the one
21 that we selected at the JEDEC committee, so there were
22 a few options with regard to the choice of programmable
23 CAS latency.

24 Q. With respect to the technology known as
25 programmable burst length, again from 1991 to 1996, did

1 you have an understanding of the term "programmable
2 burst length"?

3 A. Yes.

4 Q. Can you please explain what your understanding
5 during that time frame was?

6 A. My understanding of programmable burst length
7 is essentially the same as programmable CAS latency.
8 You could have parts that would do a single burst
9 length, such as a one-bit burst, you could have a
10 different part that had only a two-bit burst or a
11 different part that had a four-bit burst. You could
12 also make that again fuse selectable and make the
13 decision just before the final test was made and ship
14 it as a single burst type.

15 The programmable feature allowing you to make
16 that selection when the PC or the computer powered up
17 was a nice feature because it allowed you to use
18 devices that were common from multiple suppliers, put
19 them into many different types of machines. Some of
20 them would be a burst length of one, some would be a
21 burst length of four, with the same part that was
22 programmed at power-up.

23 One of the advantages of that is that that
24 drives low cost. The producer does not have to
25 maintain multiple part numbers. One part number fits

1 many applications. That's one of the drives to low
2 cost.

3 Q. Do you recall during the 1992 time frame the
4 42.3 subcommittee was considering including
5 programmable burst length in the standard?

6 A. Yes.

7 Q. Do you recall whether in the 1992 time frame
8 the 42.3 subcommittee was considering any alternative
9 methods for setting the burst length?

10 A. Yes. Those are the ones I just spoke of, the
11 fixed burst length versus the possibly fused burst
12 length selection.

13 Q. By the way, do you recall during the 1992 time
14 frame any proposals or any discussion of the
15 possibility of using a pin to determine either CAS
16 latency or burst length?

17 A. Yes. That would be another way to make the
18 selection of burst length. You could basically address
19 which burst length you wanted to choose.

20 Q. And with respect to the proposals or
21 discussions at that time, when would that selection
22 have occurred?

23 A. That selection could have occurred like the
24 programmable selection, when the device was powered up.
25 Actually it could have occurred even during operation.

1 That's probably the freest form of all.

2 Q. Again focusing on the proposals or the
3 discussions that were occurring at that time, would
4 the proposals have allowed one to achieve the same
5 benefits that you described with respect to
6 programmable burst length through use of a pin to set
7 burst length?

8 MR. PERRY: Objection. Leading.

9 JUDGE McGUIRE: Sustained.

10 BY MR. OLIVER:

11 Q. Mr. Kelley, again focusing on certain of the
12 presentations or discussions about using a pin at that
13 time, what advantages, if any, could be obtained
14 through use of a pin to set burst length?

15 A. I can't think of a lot of advantages compared
16 to the programmable feature, which did not require a
17 pin.

18 I can think of the disadvantage that having a
19 pin or using up a pin to do burst length selection was
20 not a thing that we did easily, because once you use
21 that pin up for a function, you don't have it
22 available to you in the future for generation advance.
23 As the memory densities increase, we need pins for
24 more addressing of more address locations and those
25 pins are very valuable for that feature, so this

1 would have limited the number of generations of DRAM
2 design that we could have used if we were to use up
3 this pin.

4 Q. Mr. Kelley, I'd like to ask you some questions
5 about the March 1993 JC-42.3 subcommittee meeting.
6 There's a document with the Bates number JX-15. I
7 believe that document is in the pile in front of you.

8 Your Honor, may I approach with another copy?

9 JUDGE McGUIRE: Yes, go ahead.

10 BY MR. OLIVER:

11 Q. Mr. Kelley, I've handed you a copy of JX-15
12 which I believe that you have already testified about
13 yesterday.

14 I'd like to ask you to turn, please, to
15 page 14.

16 And specifically I'd like to direct your
17 attention to paragraph 12 appearing at the middle of
18 the page.

19 A. Okay.

20 Q. Paragraph 12 bears the caption Conclusion of
21 All Synchronous DRAM Pass/Hold Ballots. Do you see
22 that?

23 A. Yes.

24 Q. Underneath that it reads: "VLSI moved to send
25 all pass/hold ballots on to council. Seconded by TI.

1 The vote was 26 yes, 0 no. Motion passed."

2 Do you see that?

3 A. Yes.

4 Q. Now, were you present during this portion of
5 the discussion?

6 A. Yes.

7 Q. And did you understand this portion of the
8 discussion?

9 A. Yes.

10 Q. Can you please explain, based on your
11 recollection, what was occurring at this portion of the
12 meeting?

13 A. The committee had spent more than a year
14 passing the synchronous ballots because we knew we had
15 to deal with each feature and item under discussion one
16 at a time so that we would know which ones needed to be
17 fixed, and we agreed as a committee that as we passed
18 these items individually we would place them on hold
19 until the whole list of items that were -- that we
20 needed to define synchronous DRAM was complete, and
21 once that group of ballots was complete and passed,
22 then together we motioned them to go to council for
23 publication.

24 Q. Now, following this vote, were the ballots in
25 fact sent to council?

1 A. Yes.

2 Q. If I could direct your attention to
3 paragraph 13, it reads "Press release on Sync DRAM."

4 Do you see that?

5 A. Yes.

6 Q. Underneath that it reads: "The committee
7 agreed to issue a press release stating that the
8 Sync DRAM standard had been approved by committee. The
9 committee agreed to have Mr. Fusco and create the
10 wording off-line. The executive committee will review
11 it before it is issued to the press. A copy of the
12 release is shown here (see attachment Z)."

13 Do you see that?

14 A. Yes.

15 Q. Do you recall whether the JC-42.3 subcommittee
16 in fact issued a press release at this time?

17 A. Yes, we did.

18 Q. Do you have an understanding of why JC-42.3
19 subcommittee issued a press release at that time?

20 A. This is the proper use of speaking to the
21 press. This was the committee taking action to
22 together release the information that we had already
23 decided so no further issues needed to be debated, we
24 didn't have to worry about decisions that could be
25 impacted because of open discussion in the press. The

1 decisions had been made. We believed that it was
2 newsworthy. We believed that the committee's putting
3 together of the definition of this synchronous DRAM was
4 a significant statement in the work of our committee
5 over a few years.

6 MR. OLIVER: May I approach?

7 JUDGE McGUIRE: Yes.

8 BY MR. OLIVER:

9 Q. Mr. Kelley, I've handed you a document that's
10 been marked as JX-16 for identification.

11 Do you recognize this document?

12 A. Yes.

13 Q. What is this document?

14 A. This is the JC-42.3 minutes from the meeting we
15 held in May of 1993.

16 Q. Were you present at this meeting?

17 A. Yes.

18 Q. If I could ask you to turn, please, to page 5
19 of JX-16.

20 And I'd like to direct your attention to
21 paragraph 8.1 appearing above the middle of the page.
22 It has a caption Sync DRAM Ballots. Do you see that?

23 A. Yes.

24 Q. The paragraph reads, "Mr. Kelley noted that the
25 14 Sync DRAM ballots had gone to council."

1 Now, the Sync DRAM ballots referred to there,
2 were those the ballots being referred to as having
3 passed at the previous meeting?

4 A. Yes.

5 Q. Continuing to read that paragraph: "There was
6 only one no vote from ATT on JCB-93-15. Mr. Kelley
7 showed his response to ATT's comment (see
8 attachment H). During the meeting, Mr. Kelley
9 distributed copies of all the SDRAM council ballots to
10 allow companies to review them."

11 Do you see that?

12 A. Yes.

13 Q. Actually before I ask you a couple of
14 questions, let me represent to you that the council
15 meeting in May took place one week after this. If you
16 want, I believe you have the minutes and you can verify
17 that if you want.

18 But my question is: How was it that you're
19 able to report to the 42.3 subcommittee on the ballots
20 if the council meeting had not yet taken place?

21 A. It was the practice of the secretary for
22 council to send out a preparation report to all of the
23 members of council before the council meeting. The
24 voting period ended for the council two weeks before
25 the council meeting, so at that point I had a report

1 from the secretary of the council on the votes of these
2 ballots as reported before the meeting.

3 Q. Now, why did you distribute copies of the
4 ballots to everyone present at this meeting?

5 A. Because I wanted them to see what the council
6 had done and especially I wanted them to see any
7 comments that were made on the -- from the council.

8 Q. Now, during this meeting, that is, the May 1993
9 42.3 subcommittee meeting, did Rambus disclose that it
10 had any patents or patent applications it claimed
11 relevant to any of these patents -- to any of these
12 ballots?

13 A. No.

14 Q. At this 42.3 subcommittee meeting did any
15 company disclose that it had any patents or patent
16 applications that might be relevant to these ballots?

17 A. No.

18 Q. Mr. Kelley, I'd like to ask you next about the
19 council meeting in May of 1993. This is a document
20 bearing the number CX-54. I believe it's in the pile
21 in front of you.

22 Your Honor, could one of us approach to assist
23 him?

24 JUDGE McGUIRE: Go ahead.

25 (Pause in the proceedings.)

1 THE WITNESS: Okay.

2 BY MR. OLIVER:

3 Q. Mr. Kelley, do you recall that we talked about
4 CX-54 yesterday?

5 A. Yes.

6 Q. If I could ask you to turn to page 8, please.

7 Now, on page 8 is it correct that there appears
8 a list of ballots that were being considered at this
9 May 1993 council meeting?

10 A. Yes.

11 Q. I'd like to direct your attention to a number
12 of items appearing over the course of the next two
13 pages. Essentially I'm trying to identify the
14 collection of ballots that constituted the ballots
15 coming from 42.3 subcommittee from the March meeting.

16 If I could direct your attention to the item
17 third from the bottom with the number JCB-93-13,
18 proposed 2M x8/x9 Sync DRAM JC-42.3 item 376.1.

19 Do you see that?

20 A. Yes.

21 Q. Is that one of the ballots that was in the
22 package of ballots forwarded by the 42.3 subcommittee?

23 A. Yes.

24 Q. And if I could ask you to look at the following
25 13 ballots, so the three last ballots on page 8, the

1 various ballots on page 9 and the first four ballots on
2 page 10, and if you could please look at those and then
3 if you could please respond as to whether that
4 constitutes the package of ballots that was referred to
5 council from the 42.3 subcommittee.

6 A. Yes. This is those ballots that the committee
7 sent to council on the synchronous DRAM.

8 Q. Now, at this May 1993 council meeting, what
9 happened with respect to those ballots?

10 A. They were approved.

11 Q. By the way, you had reported at the 42.3
12 subcommittee meeting a week or so previously with
13 respect to the voting.

14 Did that indicate that final vote had in fact
15 occurred prior to this meeting or was the final vote
16 taking place at this meeting?

17 A. The final vote for approval was at the
18 meeting. The council needed to motion these to be
19 approved.

20 Q. So with respect to the votes that you were
21 explaining to the 42.3 subcommittee, were those
22 something other than final votes?

23 A. No, they were not. The final vote occurred at
24 this meeting.

25 Q. Now, if a council member had previously

1 indicated that they would vote in favor of these
2 ballots, would it still have been possible for the
3 council members to change their votes at this meeting?

4 A. Yes.

5 Q. If a patent issue had arisen at the May 1993
6 42.3 subcommittee meeting, would that have affected the
7 vote taking place at the May 1993 council meeting?

8 MR. PERRY: It calls for speculation.
9 Incomplete hypothetical.

10 JUDGE McGUIRE: Sustained.

11 BY MR. OLIVER:

12 Q. Mr. Kelley, what, if anything, might have
13 caused -- I'm sorry, Your Honor. Let me withdraw
14 that.

15 Mr. Kelley, let me ask you a couple of
16 questions with respect to IBM's position concerning
17 inclusion of programmable CAS latency and programmable
18 burst length in the SDRAM standard.

19 First of all, did IBM cast a vote with respect
20 to including programmable CAS latency and programmable
21 burst length in the SDRAM standard?

22 A. Yes, I did.

23 Q. You may have anticipated my next question. My
24 next question was: Who was responsible for casting
25 that vote?

1 A. That was me.

2 Q. Was that you individually or did you have input
3 from any others?

4 A. I cast the vote individually, but I got input
5 from many IBMers around the corporation before casting
6 the vote.

7 Q. How did you vote with respect to the proposal
8 to include programmable CAS latency and programmable
9 burst length in the standard?

10 A. I approved both.

11 Q. Now, at that time that you approved both, did
12 you have any understanding that Rambus might have any
13 patent rights that might relate to use of programmable
14 CAS latency or programmable burst length in the SDRAM
15 standard?

16 A. I did not.

17 Q. At the time you voted in favor of including
18 programmable CAS latency and programmable burst length
19 in the standard, did you have any particular overriding
20 factor that influenced your vote?

21 A. The overriding factor on all of my votes on
22 DRAM was low cost.

23 Q. Can you please explain why that's the case?

24 A. The DRAM is used as the most silicon in any
25 computer, whether it's a PC or a mainframe, and

1 therefore the cost of the DRAM is very significant.
2 One of the realizations that I made was that I could
3 pay \$300-400 for one microprocessor in a PC, but I
4 could not pay \$10 for 30, 40, 50 DRAMs in a PC.

5 Q. Now, Mr. Kelley, if you had known at the time
6 that you were casting your vote to include programmable
7 CAS latency and programmable burst length in the SDRAM
8 standard, if you had known that Rambus would claim to
9 have patent rights covering use of those technologies,
10 what impact, if any, would that have had on your
11 decision on how to vote?

12 MR. PERRY: Objection. Calls for speculation
13 and incomplete hypothetical.

14 MR. OLIVER: Your Honor, again this is an issue
15 that they have raised in their brief at page 57 and
16 following. They claim that we are expected to prove
17 the but-for world of what would have happened.

18 We are concerned that if we go on appeal that
19 they will, first of all, raise objections to our
20 attempts to elicit that evidence here and then argue on
21 appeal that we've somehow failed to prove the evidence
22 of what would have happened in a but-for world. We're
23 simply trying to elicit that evidence.

24 MR. PERRY: Your Honor, the fact that a party
25 has a burden of proof on an issue does not mean that

1 the rules of evidence go away. They've been objecting
2 to lots of questions where we're trying to prove stuff
3 that will help our case, and you know, just because
4 we're trying to put some evidence in because we have
5 the burden on something doesn't mean that the rules of
6 evidence are relinquished.

7 MR. OLIVER: Your Honor, the but-for world is
8 by its nature speculative. There's no other way to get
9 at evidence of this.

10 JUDGE McGUIRE: All right. Overruled. I will
11 hear -- I'll entertain the question.

12 Do you intend to spend quite a bit of time on
13 this, Mr. Oliver?

14 MR. OLIVER: No, I do not, Your Honor.

15 JUDGE McGUIRE: Then I will hear it on that
16 limited basis.

17 MR. OLIVER: Thank you, Your Honor.

18 Could we please have the question read back.

19 (The record was read as follows:)

20 "QUESTION: Now, Mr. Kelley, if you had known
21 at the time that you were casting your vote to include
22 programmable CAS latency and programmable burst length
23 in the SDRAM standard, if you had known that Rambus
24 would claim to have patent rights covering use of those
25 technologies, what impact, if any, would that have had

1 on your decision on how to vote?"

2 THE WITNESS: The answer depends on what I
3 knew. If they had disclosed, then I would have
4 required a statement on whether they were going to meet
5 the policies of licensing, which was reasonable rates
6 and not excluding anyone. Given that statement, I
7 would have had to consider accepting their intellectual
8 property as a possible approval.

9 On the other hand, if they would not give a
10 statement on RAND, then I would have had to vote no.

11 BY MR. OLIVER:

12 Q. In the first part of your answer you say
13 consider accepting as a possible approval.

14 What factors would have influenced that
15 consideration?

16 MR. PERRY: Same objection, Your Honor.

17 JUDGE McGUIRE: Continuing objection
18 overruled.

19 THE WITNESS: Their RAND statement.

20 BY MR. OLIVER:

21 Q. Would you also have considered the possibility
22 of trying to work around even despite the existence of
23 a RAND statement?

24 MR. PERRY: Leading, Your Honor.

25 JUDGE McGUIRE: Sustained.

1 BY MR. OLIVER:

2 Q. What, if any, impact would have potential
3 alternative technologies have had on your
4 consideration?

5 A. The first consideration for any information
6 that we have on patents -- and remember that "patents"
7 includes patent applications by our definition -- the
8 consideration of anything on patents required as a
9 first consideration avoidance and as a next
10 consideration a RAND statement. The ideal RAND
11 statement would be free. The next ideal RAND
12 requirement would be that it would meet the
13 requirements of reasonable and nondiscriminatory.

14 MR. OLIVER: Your Honor, this might be an
15 appropriate place for a morning break.

16 JUDGE McGUIRE: Okay. Let's take a ten-minute
17 break, Mr. Oliver.

18 Off the record.

19 (Recess)

20 BY MR. OLIVER:

21 Q. All set, Mr. Kelley?

22 A. Yes.

23 Q. Mr. Kelley, when we left off, we had walked
24 through the process of the approval of the ballots in
25 March and May of 1993 on the SDRAM standard, and my

1 first question is: After adoption of the series of
2 SDRAM ballots, what did the JC-42.3 subcommittee do
3 next?

4 A. I believe that the next item that we pursued
5 was the next generation of synchronous DRAM.

6 Q. What do you mean by "the next generation of
7 synchronous DRAM"?

8 A. The one that we had just approved was the first
9 synchronous DRAM in our JEDEC standards and we had
10 already discussed at the early discussion of the
11 synchronous DRAM that we would probably need to take
12 some of the ideas of that first discussion and generate
13 a second generation. We were now beginning that
14 process.

15 Q. And do you recall which ideas people had in
16 mind that would need to be discussed for the second
17 generation?

18 A. Well, clearly one of the ideas was the
19 dual-edged clock control of the output that we had
20 earlier called toggle mode and now was called dual-edge
21 clock and became what we called DDR or double data
22 rate.

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

24 JUDGE McGUIRE: Yes.

25 THE WITNESS: Your Honor, may I take a minute

1 to control my stack?

2 JUDGE McGUIRE: Sure, go ahead, Mr. Kelley.

3 MR. OLIVER: Your Honor, it might help if we
4 could actually remove some of the exhibits we don't
5 think we're going to need any further.

6 MR. PERRY: Well, could we just keep those
7 separate because we might use them again this
8 afternoon.

9 MR. OLIVER: Certainly.

10 (Pause in the proceedings.)

11 BY MR. OLIVER:

12 Q. Mr. Kelley, I've handed you a document marked
13 as JX-21 for identification.

14 Do you recognize this document?

15 A. Yes.

16 Q. What is this document?

17 A. It's the minutes of the JC-42.3 meeting from
18 September of 1994.

19 Q. Were you present at this meeting?

20 A. Yes.

21 Q. If I could ask you to turn, please, to page 86.

22 A. Okay.

23 Q. Do you recognize the portion of the document
24 beginning at page 86?

25 A. Yes.

1 Q. And what is this portion of the document?

2 A. This is a proposal by NEC for the consideration
3 of the number of banks that we're going to consider for
4 the next generation of synchronous DRAM.

5 Q. Were you present at the time that NEC made this
6 presentation?

7 A. Yes.

8 Q. Did you observe this presentation?

9 A. Yes.

10 Q. Did you understand this presentation at the
11 time?

12 A. Yes.

13 Q. If I could ask you to turn to the next page,
14 page 87, please.

15 A. Okay.

16 Q. I'd like to direct your attention to an item
17 appearing close to the bottom of this page that is in
18 the black box that reads "PLL enable mode (option)."

19 Do you see that?

20 A. Yes.

21 Q. Can you please explain your understanding of
22 what NEC was proposing with this item?

23 A. The first-generation synchronous DRAM had had a
24 mode register, and the items that are listed there in
25 the mode register that are not highlighted are from

1 that first generation. The ones that are highlighted
2 with the black box are items that NEC was proposing as
3 additions to the mode register for the
4 second-generation SDRAM.

5 The last item there on the list called PLL
6 enable mode is for the addition of a feature called
7 phase lock loop.

8 Q. If I could ask you to turn, please, to page 91.

9 A. Yes.

10 Q. And this is a table with a caption reading
11 "PLL Enable Mode." Do you see that?

12 A. Yes.

13 Q. Again based on your understanding of NEC's
14 proposal at the time, can you please explain what NEC
15 was proposing with this table?

16 A. There were two or more possibilities for
17 including a phase lock loop for use with a DRAM.

18 The proposal on the left asks us to consider
19 not putting the PLL on chip, in other words, doing the
20 phase lock loop operation with another device. And
21 then the proposal on the right as a comparison shows us
22 the option of putting the phase lock loop on the DRAM
23 chip as a new feature. And the comparison shows why
24 the inclusion of the phase lock loop on the chip buys
25 performance.

1 Q. Now, based on your understanding of the JEDEC
2 disclosure policy at this time, did you understand this
3 NEC proposal to constitute JEDEC work?

4 A. Yes.

5 Q. Based on your understanding of the JEDEC
6 disclosure policy at that time, if a member had a
7 patent or patent application relating to use of on-chip
8 PLL technology, would the JEDEC disclosure obligation
9 have applied?

10 A. Yes.

11 MR. PERRY: Objection. Vague and leading.

12 MR. OLIVER: Your Honor, it simply calls for a
13 yes or no answer.

14 JUDGE McGUIRE: Overruled.

15 You may answer.

16 THE WITNESS: Yes.

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

18 JUDGE McGUIRE: Yes.

19 BY MR. OLIVER:

20 Q. Mr. Kelley, I've handed you a document marked
21 as JX-26 for identification.

22 Do you recognize this document?

23 A. Yes.

24 Q. What is this document?

25 A. It is the minutes of the JC-42.3 committee from

1 May of 1996.

2 Q. Were you present at this meeting?

3 A. Yes.

4 Q. If I could ask you to turn, please, to page 111
5 of this document.

6 A. Okay.

7 Q. And at this page there is a box at the top that
8 reads "Mitsubishi Electric" and underneath that
9 "64 Mbit SyncLink SDRAM."

10 Do you see that?

11 A. Yes.

12 Q. Do you recognize this portion of JX-26?

13 A. Yes.

14 Q. What is this portion of JX-26?

15 A. Mitsubishi was proposing to the JEDEC committee
16 a packaged pinout and packaged type selection for a
17 64-meg SDRAM that had the features of a SyncLink
18 defined operation.

19 Q. Were you present at the time Mitsubishi made
20 this presentation?

21 A. Yes.

22 Q. And did you observe this presentation?

23 A. Yes.

24 Q. Did you understand this presentation at the
25 time?

1 A. Yes.

2 Q. At this time, did you have an understanding of
3 the SyncLink architecture generally?

4 A. I attended one SyncLink meeting because I
5 happened to be in the area while they were holding the
6 meeting. I had a little bit of knowledge of SyncLink,
7 but I really chose not to know a lot about SyncLink
8 because I didn't want to confuse what SyncLink as a
9 group was doing with what I was working with as the
10 chairman of the DRAM committee at JEDEC.

11 Q. Did you gain any understanding of the SyncLink
12 architecture through the Mitsubishi Electric
13 presentation at the JEDEC meeting?

14 A. Yes. Some.

15 Q. Did you have any understanding one way or the
16 other as to whether the SyncLink architecture was a
17 packetized system?

18 A. I understood that it was, yes.

19 Q. And I believe you testified earlier today, but
20 just to be certain the record is clear, did you have an
21 understanding one way or the other as to whether the
22 Rambus architecture was a packetized system?

23 A. Yes, I did know that because of the Rambus
24 presentation to us in April of '92.

25 Q. Now, apart from this SyncLink proposal, were

1 you aware of any other work within JEDEC at this time
2 that would have involved a packetized system?

3 A. I was not.

4 Q. So the standard that eventually became the DDR
5 standard, for example, do you understand one way or
6 another whether that is a packetized system?

7 A. I believe it is not.

8 Q. On page 111 of JX-26 I note that towards the
9 upper right-hand corner of this box there's an item
10 number and next to that is written "704."

11 Do you see that?

12 A. Yes, I do.

13 Q. What, if any, is the significance of this item
14 number?

15 A. That means that the committee considered this
16 task group or committee work.

17 Q. If I could ask you to turn to the next page,
18 please, page 112.

19 A. Yes.

20 Q. And underneath the heading Signal Name
21 Definition towards the right-hand side reads "Reference
22 clock both edge for input, positive edge for," and then
23 it goes on to the next line, "output."

24 Do you see that?

25 A. Yes.

1 Q. Now, at the time that you were observing the
2 Mitsubishi Electric presentation, did you have an
3 understanding of what they were referring to with that
4 reference?

5 A. Yes.

6 Q. Can you please explain your understanding of
7 what Mitsubishi was referring to with that reference?

8 A. Yes. I understood that this was proposing a
9 new concept of double-edge clock. It was similar to
10 the concept that we had discussed for some time called
11 toggle mode where you use the double-edge clock on
12 output control. This was using a double-edge clock on
13 input control with data coming into the DRAM.

14 Q. If I could ask you to turn, please, to page 10.
15 And I'd like to direct your attention to paragraph 13.7
16 appearing near the bottom of the page.

17 A. Okay.

18 Q. 13.7 bears a caption Hyundai SyncLink No Item.
19 Do you see that?

20 A. Yes.

21 Q. Did you understand this to be related to the
22 Mitsubishi presentation we just looked at?

23 A. Yes.

24 Q. Within paragraph 13.7, if I could direct your
25 attention to the third line, the statement reads:

1 "Patent issues were a concern in this proposal. It was
2 stated that no known patents exist on this proposal.
3 It was intended to be an open system."

4 Do you see that?

5 A. Yes.

6 Q. Now, do you recall why patent issues were a
7 concern in this proposal?

8 A. Patent issues are a concern on every JEDEC
9 proposal, and because this was something new and was
10 being proposed to us for the first time, it was
11 especially valuable to have the consideration of
12 patents so that we could possibly avoid them.

13 Q. Do you recall whether there was any particular
14 company's patents that were a concern?

15 A. I remember that the companies that were
16 proposing SyncLink proposals at this meeting including
17 this one from Hyundai, that the people in the meeting
18 from those companies were asked if they held patents on
19 the issues that were being described as SyncLink
20 related. I can't be sure if there was any other issues
21 on that. I remember the issues on SyncLink.

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

23 JUDGE McGUIRE: Yes.

24 BY MR. OLIVER:

25 Q. Mr. Kelley, I've handed you a document that's

1 been marked as JX-27 for identification.

2 Do you recognize this document?

3 A. Yes.

4 Q. What is this document?

5 A. This is the minutes of the meeting of JC-42.3
6 committee in September of 1995.

7 Q. Were you present at this meeting?

8 A. Yes.

9 Q. If I could direct your attention, please, to
10 page 4 of JX-27 and specifically to the paragraph at
11 the top of that page, Patent Policies.

12 Do you see that?

13 A. Yes.

14 Q. It reads, "Patent policies are shown as
15 attachment B" and, after that, "SyncLink/RamLink
16 patents were discussed. Rambus noted at the general
17 meeting their position (see attachment C)."

18 Do you see that?

19 A. Yes.

20 Q. And then if I could ask you to turn, please, to
21 page 26.

22 This is a page with a handwritten notation
23 "Attachment C" in the upper right, under that
24 "Facsimile Sheet." Do you see that?

25 A. Yes.

1 Q. Now, do you recognize this particular page of
2 JX-27?

3 A. Yes.

4 Q. Do the two references that we just looked at
5 refresh your recollection in any way with respect to
6 any discussion of Rambus patents at the May 1995
7 JC-42.3 committee meeting?

8 A. Yes, it does.

9 I remember now that at the May meeting that we
10 looked at earlier Richard Crisp had been asked if he
11 was aware of Rambus-held patents or pending patents
12 that might apply to what had been proposed with the
13 label of SyncLink at the May meeting and the committee
14 asked him to get a statement from his company on the
15 issue of whether they held patents on the concepts of
16 the SyncLink DRAM that had been presented at the
17 previous meeting.

18 Q. On page 26 of JX-27, if I could direct your
19 attention to the last paragraph on that page.

20 It reads, "At this time Rambus elects not to
21 make a specific comment on our intellectual property
22 position relative to the SyncLink proposal."

23 Do you see that?

24 A. Yes.

25 Q. Now, at the time that Rambus made this

1 response, did you believe that this was an adequate
2 response to the question posed at the May 1995
3 meeting?

4 A. I did not.

5 Q. Why not?

6 A. A comment of no comment is notification to the
7 committee that there should be a concern, because in
8 the past when we either had companies taking the
9 position that they did not have intellectual property
10 on the work of the committee or that they did have
11 intellectual property on the work of the committee and
12 whenever we learned that there was disclosure of
13 patent or patentable material, we always asked the
14 committee for a RAND statement on that issue, that
15 patent issue.

16 So this no comment is unusual on the committee
17 and is surprising, and I guess I was concerned.

18 Q. Did JEDEC ever standardize the SyncLink
19 architecture, to the best of your knowledge?

20 A. Not to my knowledge.

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

22 JUDGE McGUIRE: Yes, please.

23 BY MR. OLIVER:

24 Q. Mr. Kelley, I've handed you a document marked
25 as JX-31 for identification.

1 Do you recognize this document?

2 A. Yes.

3 Q. What is this document?

4 A. It's the minutes of the JC-42.3 committee that
5 met in March of 1996.

6 Q. Were you present at this meeting?

7 A. Yes.

8 Q. If I could ask you to turn, please, to page 68.

9 A. Okay.

10 Q. And if I could actually ask you to glance
11 through pages 68 through 72, please.

12 (Pause in the proceedings.)

13 A. Okay.

14 Q. Do you recognize pages 68 through 72 of JX-31?

15 A. Yes.

16 Q. What do these pages consist of?

17 A. These pages consist of a presentation by
18 Samsung on what they were proposing as consideration
19 for a future SDRAM.

20 Q. Were you present at the time Samsung made its
21 presentation?

22 A. Yes.

23 Q. Did you observe this presentation?

24 A. Yes.

25 Q. Did you understand this presentation?

1 A. Yes.

2 Q. What was your understanding of what Samsung
3 Electronics meant by "future SDRAM"?

4 A. The committee always needs to be looking ahead
5 to determine what they want for the generation of DRAM
6 that they're presently working on, which at this time I
7 believed was the one that we called DDR SDRAM, and also
8 the possibility of consideration for the next
9 generation that I don't believe has a label yet.

10 Q. If I could ask you to turn, please, to
11 page 71.

12 A. Okay.

13 Q. If I could direct your attention to the fourth
14 and the sixth bullet points on this page.

15 It reads: "Data in sampled at both edge of
16 clock into memory."

17 And the sixth bullet point reads: "Use both
18 edge of the strobe clock to sample the memory data into
19 controller."

20 Do you see that?

21 A. Yes.

22 Q. Now, at the time that you observed the Samsung
23 presentation, what was your understanding of what
24 Samsung was proposing with those two items?

25 A. My understanding is that they were proposing

1 continued consideration of what they called the double
2 data rate, where you clocked the data on the rising and
3 falling edges of a strobe clock.

4 Q. You referred to double data rate I believe. Is
5 that the same as dual-edge clock?

6 A. That's the same as dual-edge clock, yes.

7 Q. Now, Mr. Kelley, at the time that you observed
8 this presentation, did you understand this presentation
9 to be work of the type that would trigger a JEDEC
10 disclosure obligation?

11 A. Yes.

12 Q. Now, based on your understanding of the JEDEC
13 disclosure policy and your understanding of this
14 presentation at the time it was made, would this
15 presentation have triggered an obligation on a member
16 to disclose if that member was aware of patents or
17 patent applications relating to dual-edge clock
18 technology?

19 A. Yes.

20 MR. OLIVER: May I approach?

21 JUDGE McGUIRE: You may.

22 BY MR. OLIVER:

23 Q. Mr. Kelley, I've handed you a document marked
24 as CX-2388 for identification.

25 Do you recognize this document?

1 A. Yes.

2 Q. What is this document?

3 A. This is an e-mail from Desi Rhoden to
4 Ken McGhee of the JEDEC office, copying myself and
5 several others.

6 Q. Mr. Kelley, it's a rather long e-mail and I'll
7 give you a chance to glance through it to refresh your
8 recollection if you wish to do so. I intend to ask you
9 questions primarily about the second page.

10 MR. PERRY: While he's glancing through it --
11 you don't need to listen to this, Mr. Kelley -- I just
12 wanted to put on the record that this document was
13 produced to us by IBM with an additional portion on the
14 top on the front page. Before I showed it to
15 Mr. Rhoden at his deposition -- you see it's marked as
16 Rhoden Exhibit 5 -- that portion was redacted so that
17 the only portion that Mr. Rhoden saw and is now in
18 front of this witness was the portion that Mr. Rhoden
19 had written.

20 JUDGE McGUIRE: So noted.

21 THE WITNESS: Okay.

22 BY MR. OLIVER:

23 Q. I direct your attention to the second page,
24 please, the paragraph appearing about a third of the
25 way down, "There are several in the industry and some

1 on the committee who think JEDEC is too slow."

2 Do you see that?

3 A. Yes.

4 Q. And then after that: "Indeed we could have
5 finished the DDR standard sooner if only we had
6 started sooner. Let us recap what has transpired in
7 DDR."

8 Do you see that?

9 A. Yes.

10 Q. And then Mr. Rhoden references independent
11 work outside of JEDEC for most of 1996. Do you see
12 that?

13 A. Yes.

14 Q. And then number 2 references a presentation in
15 the December 1996 meeting. Do you see that?

16 A. Yes.

17 Q. Mr. Kelley, based on your recollection and your
18 participation within JEDEC, what is your understanding
19 of when JEDEC began work on the standard that became
20 the JEDEC DDR SDRAM standard?

21 A. In my mind, the consideration of using a
22 double-edged clock actually began when I made the first
23 presentation in 1988 and IBM repropose in 1990 and
24 1991 and several other companies picked up in that --
25 on that concept in 1991. I think we had five companies

1 showing what they called their own toggle mode in their
2 presentations on the consideration of the
3 first-generation synchronous DRAM.

4 So in my mind, the consideration of the
5 dual-edge clock began in 1988 and was essentially
6 tabled because it was felt by the committee that it was
7 not needed for the first generation part and that we
8 would pick up the idea for consideration of the second
9 generation part, which is now called DDR SDRAM.

10 Q. In your previous answer you referred to
11 tabled. Was that a reference to the events in and
12 around the April 1992 task group meeting we discussed
13 earlier today?

14 A. Yes, in and around that time. The IBM toggle
15 mode had actually been passed and was put on hold
16 pending further consideration, so that's what I meant
17 by "tabled."

18 Q. And then based on your recollection, do you
19 recall when further consideration was given to use of
20 the dual-edge clock technology?

21 A. As I recall, it was in the '95, '96, into
22 the '97 time frame.

23 Q. Mr. Kelley, would you agree that the first use
24 of the term "DDR SDRAM" in late 1996 marked the
25 beginning of the work on what became the DDR SDRAM

1 standard?

2 A. Not in my mind. My mind believes that it
3 began with the consideration of IBM's high-speed
4 toggle mode.

5 Q. Mr. Kelley, based on your understanding of the
6 JEDEC disclosure policy, was a member's duty to
7 disclose patents and patent applications relating to
8 dual-edge clock technology triggered only by
9 presentations occurring during or after December 1996?

10 A. I'm concerned about part of your statement.
11 Could I hear that statement back.

12 (The record was read as follows:)

13 "QUESTION: Mr. Kelley, based on your
14 understanding of the JEDEC disclosure policy, was a
15 member's duty to disclose patents and patent
16 applications relating to dual-edge clock technology
17 triggered only by presentations occurring during or
18 after December 1996?"

19 THE WITNESS: No. In my mind, we had been
20 considered -- considering toggle mode, which is a
21 dual-edge clock, in the early considerations of SDRAM
22 in the 1990, 1991, 1992 time frame significantly.
23 There were lots of presentations that included
24 consideration in those early '90 years, so it did not
25 begin with the later consideration of what the

1 committee called DDR.

2 BY MR. OLIVER:

3 Q. Again, Mr. Kelley, based on your understanding
4 of the JEDEC disclosure policy, was a member's duty to
5 disclose patents and patent applications relating to
6 use of on-chip PLL or on-chip DLL technology triggered
7 only by presentations occurring during or after
8 December 1996?

9 A. No. They had to be disclosed when the
10 presentations were first considered in the '95,
11 possibly even '94 time frame. I specifically
12 remember '95.

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

14 JUDGE McGUIRE: Yes.

15 BY MR. OLIVER:

16 Q. Mr. Kelley, you've been handed a document that
17 has been marked as CX-2387 for identification.

18 Do you recognize this document?

19 A. Yes, I do.

20 Q. What is this document?

21 A. This is an e-mail that I sent to an IBM sales
22 office in Waltham, Massachusetts in January of 1998.

23 Q. What was the purpose of you sending this e-mail
24 to that salesperson?

25 A. Mr. Thomas Kelley had called me up and asked me

1 about information on the 256-meg synchronous DRAM that
2 we were designing and developing for production and he
3 wanted some detailed information on the features and
4 characteristics of that DRAM.

5 Q. Mr. Kelley, if I could direct your attention at
6 the beginning of the e-mail: "Our IMD 256M synchronous
7 DRAM has a planned qualification T2 for year-end this
8 year 1998. First engineering hardware will be
9 available 2Q98."

10 Do you see that?

11 A. Yes.

12 Q. What did you mean by your reference to first
13 engineering hardware?

14 A. First engineering hardware is before
15 qualification, T2 is an acronym that IBM uses for
16 qualification, so I was saying to him that first
17 engineering parts would be available with -- for the
18 2Q98 time frame with final qualification following at
19 the end of the year.

20 Q. Now, the 2Q98 refers to the second quarter of
21 1998; is that correct?

22 A. Yes.

23 Q. Now, what would the use be of first engineering
24 hardware?

25 A. The users needed to get parts as soon as

1 possible so that they could try them in their systems
2 and tune their systems to the characteristics of the
3 part.

4 Q. So in other words, this would be used for
5 testing purposes?

6 A. Yes.

7 Q. Mr. Kelley, do you recall approximately how
8 long IBM had been working on DDR parts before you wrote
9 this e-mail in early 1998?

10 MR. PERRY: Vague as to "working on DDR parts."
11 I think he said 1988 if I understood his prior
12 testimony.

13 JUDGE McGUIRE: Sustained.

14 BY MR. OLIVER:

15 Q. Mr. Kelley, do you recall approximately when
16 IBM began design work on the first DDR part?

17 A. I believe that it began in late '96 or the
18 first half of '97.

19 Q. Mr. Kelley, could you please explain how it is
20 that IBM was able to start its design work before all
21 of the features of the DDR SDRAM standard had been
22 adopted and finalized in JEDEC.

23 MR. PERRY: I don't think he's laid a
24 foundation that he was involved in that design work,
25 Your Honor. Objection.

1 JUDGE McGUIRE: Any response, Mr. Oliver?

2 MR. OLIVER: Your Honor, I'll withdraw the
3 question and see if I can lay a better foundation.

4 JUDGE McGUIRE: All right. Go ahead.

5 BY MR. OLIVER:

6 Q. Mr. Kelley, during the years 1996 and 1997,
7 can you please explain your job function within IBM?

8 A. One of the functions that I had within IBM was
9 to work with the DRAM designers to make sure that they
10 understood what the JEDEC information was as it began
11 to unfold at the committee. And I also was working --
12 and this is an example of working with a customer or a
13 sales office that worked with customers so that they
14 too would have an understanding of what the DRAM was
15 going to become.

16 We could begin the DRAM before JEDEC
17 information became finalized because most of the DRAM
18 is not the control features that are decided at JEDEC.
19 Most of the DRAM is the memory array, and all of that
20 is going to be the same regardless of what the JEDEC
21 feature/function requirements are and we could add
22 those control features as JEDEC began to make decisions
23 late in the design process.

24 Q. With respect to the control features,
25 Mr. Kelley, do you recall whether IBM began its design

1 work on control features before the JEDEC DDR SDRAM
2 standard was finalized and adopted?

3 A. Yes. I believe that it was at least a year and
4 a half before.

5 Q. Can you, again based upon your interaction
6 with designers at IBM, can you please explain how IBM
7 was able to begin its design work on the control
8 features of DDR before JEDEC finalized its DDR SDRAM
9 standard?

10 A. We could do it for the purpose of designing
11 the basic architecture of the chip and then put in
12 those design control features as the information
13 became available from JEDEC.

14 Q. Now, during 1997, you were still a participant
15 of the 42.3 subcommittee; is that right?

16 A. Yes.

17 Q. Now, what, if anything, did you do with the
18 information that you learned concerning the progress
19 that JEDEC was making with respect to the features in
20 the DDR SDRAM standard during 1997?

21 A. As I would come back from my JEDEC trip, I
22 would put together a trip report and I would send that
23 trip report out to several IBM members -- many of them
24 were chip designers that were designing this chip that
25 we're speaking of on this sheet of paper -- and then I

1 would work with those designers so that they understood
2 the details of the decisions that were being made at
3 JEDEC. I could do that readily because those chip
4 designers were at the same location that I was at
5 IBM Burlington.

6 Q. Do you have an understanding of what use, if
7 any, chip designers were making of the information that
8 you provided to them from JEDEC?

9 A. Yes. They would install the features that
10 JEDEC had decided.

11 So, for example, in the conversation we've had
12 here today, we talked about an expanded role of the
13 programmable features that were on the device, and once
14 JEDEC had decided what that program register was to be,
15 they could install it in their designs.

16 We've talked here today about adding a phase
17 lock loop consideration to the design, and once that
18 was understood by the chip designers, they could
19 install that feature and likewise the double data rate
20 clock control of the output and, if need be, the
21 input.

22 Q. Mr. Kelley, I believe you testified to this
23 yesterday, but if you could just remind us again here
24 today, when did you cease participation in JEDEC?

25 A. I ceased participation at the August meeting in

1 1998 with JEDEC council and then at the September
2 meeting of 1998 at the JEDEC 42 committee.

3 Q. At any time up until you left JEDEC, did any
4 representative of Rambus ever say anything to you to
5 indicate that Rambus might have patent rights relating
6 to use of on-chip PLL technology if used in SDRAMs?

7 A. No.

8 Q. At any time up until you left JEDEC, did any
9 representative of Rambus ever say anything to you to
10 indicate that Rambus might have patent rights relating
11 to use of on-chip DLL technology if used in SDRAMs?

12 A. No.

13 Q. At any time up until you left JEDEC, did any
14 representative of Rambus ever say anything to you to
15 indicate that Rambus might have patent rights relating
16 to use of dual-edge clock technology if used in
17 SDRAMs?

18 A. No.

19 MR. OLIVER: I pass the witness, Your Honor.

20 JUDGE McGUIRE: All right. Thank you,
21 Mr. Oliver.

22 Then, Mr. Perry, how would you like to
23 proceed?

24 MR. PERRY: I guess I would propose, if
25 Your Honor doesn't mind, that we take a lunch break and

1 come back at 1:15 maybe.

2 JUDGE McGUIRE: That's fine.

3 MR. OLIVER: That's fine.

4 JUDGE McGUIRE: Okay. We'll adjourn and we'll
5 be back at a quarter after one.

6 The hearing is adjourned.

7 (Whereupon, at 12:03 p.m., a lunch recess was
8 taken.)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

A F T E R N O O N S E S S I O N

(1:15 p.m.)

1
2
3 JUDGE McGUIRE: Counsel, before we proceed, I
4 want to take up a housekeeping task this afternoon.

5 I've had a chance over the last hour to go
6 through the parties' proposed agreement on evidence,
7 and I thought we had this clear the other day when we
8 had the sidebar as to what I wanted to see and what I
9 did not want to see, and it looks like the parties have
10 still indicated that they're seeking to, I suppose, I
11 think preserve, I guess, objections for some future
12 point beyond this trial, and I'm not going to agree to
13 that.

14 As I think I said the other day, I want the
15 parties to agree and offer me in a joint exhibit those
16 items of evidence that you agree to be entered, I will
17 enter them, and on any other items of evidence that you
18 don't agree to, then we will take them up during the
19 course of the hearing one at a time.

20 I have an obligation in this hearing to see to
21 it that any evidence that comes in or does not come in
22 is based on a proper objection and then my ruling on
23 that issue, and this appears to be an attempt to have
24 some sort of a global waiver of objections, which I
25 think I said the other day I'm not in agreement with

1 and I'm not quite sure exactly why it is this is still
2 in here, so I'm not going to approve this again, and
3 you know, are we clear on this for the third time?

4 MR. STONE: Your Honor, maybe I misunderstood
5 you, but let me see if I can just address the concern.

6 The concern is not any effort to preserve
7 objections for this proceeding, at all. Our concern is
8 only that we not, and by stipulating to the admission
9 of certain exhibits here, that we not sort of make a
10 statement here that will be used in other proceedings
11 to suggest that we don't have any objections to the
12 documents, because the evidentiary standards here are
13 to some extent, as I know you know, different than they
14 are in other proceedings.

15 JUDGE McGUIRE: I appreciate that.

16 MR. STONE: So all we're trying to do is -- and
17 some of these documents if we had a big fight over them
18 might result in some being admitted and maybe some not
19 being admitted.

20 JUDGE McGUIRE: That's typically the case.

21 MR. STONE: And we recognize that that could
22 happen, but we took to heart your desires and our
23 desires to move this along and not have a lot of fights
24 over the exhibits.

25 So what we were trying to do is draft it in a

1 way not to preserve the issues for this proceeding but
2 simply to not take a position that it impacts us in
3 other proceedings.

4 JUDGE McGUIRE: All right. I understand that.

5 But the problem is, in attempting to achieve
6 that end, I think it's very confusing on appeal as to
7 what I've determined that there is a good objection to
8 and what -- it's my obligation to and under our
9 practice rules I'm required on offers of evidence to
10 rule, you know, on that offer and to hear objections on
11 that offer, and what this does, it avoids that
12 obligation and I'm concerned it's going to have just
13 the opposite effect of what you're hoping to achieve,
14 and I think this is going to create great ambiguity on
15 appeal as to on what grounds were these things entered
16 or not entered.

17 And you know, if we have to talk about this
18 now for a while, I want to get this clear once and for
19 all.

20 MR. STONE: So do I. So let me ask you -- let
21 me suggest another way we might handle it.

22 We will stipulate either now on the record or
23 in the stipulation that we will not on appeal contend
24 that the exhibits which are the subject of this
25 stipulation were improperly admitted.

1 JUDGE McGUIRE: I'm sorry.

2 MR. STONE: We will not contend on the appeal
3 of this matter at any level that the exhibits that are
4 the subject of that stipulation were improperly
5 admitted. It's not our purpose to in any way put in a
6 stipulation that allows us the ability to argue in this
7 proceeding, either here or on the appeal of this
8 proceeding, that the rulings that we've stipulated to
9 be made somehow were made incorrectly.

10 We can either make that -- I'm happy to make it
11 on the record now. I'm happy to make it in writing.
12 That's not our contention. Our concern is not with
13 this proceeding in terms of this stipulation.

14 JUDGE McGUIRE: I understand that's your
15 concern, but my concern is with this proceeding and
16 what happens on appeal to those findings I've made on
17 evidence or have not made on evidence, and I'm terribly
18 concerned that what the parties have agreed to in
19 paragraph 1 of this stipulation, to me, I can't make
20 any sense of it.

21 It seems to me like you're attempting to
22 provide a global waiver of objections to evidence and
23 that on appeal you can hold this up and say, Look, see,
24 here's a foundation as to why this item of evidence
25 should have been entered or should not have been

1 entered, and I believe that's going to cause great
2 confusion.

3 At least to the extent that I rule on these
4 objections to evidence, then any appellate forum is
5 going to be clear exactly why that evidence came in or
6 it did not come in. If it does not come in, the
7 practice is you can make the offer of proof for
8 appellate purposes, and that's the process by which I
9 want to proceed, and I thought I made that clear the
10 other day when we talked.

11 And if we have to, on those items of evidence
12 that the parties cannot agree on, we'll take them one
13 at a time as they come up and at that point I will
14 rule.

15 Isn't that the practice that we're all
16 accustomed to?

17 MR. STONE: And that's I think -- I think that
18 is one of the things we were trying here to simply
19 expedite.

20 Would it work -- can I ask this question of
21 Your Honor, and I know that's a little out of the
22 ordinary that I'm asking you, but would it work if we
23 simply said we stipulate that these exhibits may be
24 admitted for purposes of this proceeding but not with
25 respect to -- but this is not a waiver of our position

1 with respect to admissibility in other proceedings?

2 JUDGE McGUIRE: As long as you don't ask me to
3 sign off on it. You can stipulate as to, I guess,
4 anything you choose to agree to with opposing counsel.

5 All I want to see basically is a joint exhibit
6 that's going to include -- I have no problems with
7 these three attachments that you've -- I mean, I have
8 no problem getting this evidence in. I'm just
9 concerned about the vehicle under which you're
10 attempting to do it and I don't want to be a party to
11 that stipulation.

12 MR. STONE: Okay. What if we just stood up and
13 moved into evidence everything on those three lists, we
14 moved them in, our list, and the complaint counsel
15 moved in their list and they didn't object and we
16 didn't object and you said, Hearing no objection,
17 they're all admitted?

18 JUDGE McGUIRE: Actually that's exactly what
19 I'd want to see.

20 MR. STONE: Oh. Well, let us -- I mean, I
21 don't mean to -- go ahead. I'm sorry.

22 MR. OLIVER: That's fine with us, Your Honor.

23 MR. STONE: I mean, that's fine with me.

24 JUDGE McGUIRE: We've got to confine ourselves
25 to these three attachments, which is approximately

1 1400-1500 exhibits.

2 MR. STONE: Yes. That would be what we'd move
3 on. And I would just stand up for our sake and I'd
4 say, As to those on respondent's list, we would move
5 them into evidence and --

6 JUDGE McGUIRE: No objection entered and then
7 the same thing with A and C.

8 MR. STONE: Right. And then I'll join in
9 moving in the joint exhibits.

10 JUDGE McGUIRE: So why didn't we attempt to do
11 that at an earlier point in this proceeding?

12 MR. STONE: Your Honor, I'm sure -- I'm sure we
13 had more complicated thoughts in this regard than were
14 necessary.

15 JUDGE McGUIRE: Okay.

16 MR. STONE: And I apologize if I'm to blame for
17 that.

18 JUDGE McGUIRE: I'm just trying to get this
19 thing resolved once and for all and I just think this
20 here is very troublesome.

21 So do you have any problem on that proposal,
22 Mr. Oliver?

23 MR. OLIVER: Not at all, Your Honor. We have
24 no concerns about future proceedings and we're happy
25 just to move them into evidence.

1 JUDGE McGUIRE: We'll do it on the record. Do
2 you want to do it right now or do you want to get it
3 organized first?

4 MR. STONE: I just don't remember -- I think I
5 need to find a better way to identify them for the
6 record. Maybe I -- can you tell me which exhibit is
7 ours?

8 JUDGE McGUIRE: B is yours.

9 MR. STONE: Let me just try.

10 Your Honor, at this time on behalf of
11 respondent we would move into evidence all of the
12 exhibits identified on the list attached as Exhibit B
13 to the stipulation that was filed with the court
14 yesterday.

15 And as to those listed on Exhibit C, the joint
16 exhibits, we would join in a request that those be
17 admitted if complaint counsel concurs.

18 JUDGE McGUIRE: Now, you're not seeking,
19 though, to incorporate in that motion your
20 stipulation?

21 MR. STONE: I am not. I'm just moving those
22 in.

23 JUDGE McGUIRE: You're just moving in those
24 exhibits.

25 Any objection to those exhibits under

1 attachments B and C, Mr. Oliver?

2 MR. OLIVER: No objection to the list in
3 attachment B and we join in the motion for
4 attachment C.

5 JUDGE McGUIRE: Now, I suppose you want to
6 offer in those items of evidence under attachment A?

7 MR. OLIVER: Yes, Your Honor. Complaint
8 counsel would seek to offer into evidence all of the
9 exhibits listed on attachment -- listed on appendix A
10 of the stipulation.

11 JUDGE McGUIRE: Any objection, Mr. Stone?

12 MR. STONE: None, Your Honor.

13 JUDGE McGUIRE: If not, they will all be
14 entered.

15 Now, how do we want to mark these three
16 attachments now? Do we want to call that an exhibit in
17 and of its own?

18 MR. STONE: I think we should give them each a
19 JX number so we have them for the record.

20 JUDGE McGUIRE: Do you want to make it JX-A,
21 JX-B and JX-C?

22 MR. OLIVER: A, B and C.

23 JUDGE McGUIRE: JX-A are the complaint
24 counsel's proposed exhibits, JX-B is the respondent's
25 proposed exhibits, and JX-C are the joint exhibits.

1 MR. STONE: Yes, Your Honor.

2 JUDGE McGUIRE: Hereby offered and entered
3 without objection.

4 (JX Exhibit Numbers A, B and C were admitted
5 into evidence.)

6 MR. STONE: Thank you.

7 JUDGE McGUIRE: Okay. Does that resolve this?

8 MR. STONE: It does, Your Honor.

9 JUDGE McGUIRE: So we can take this and put it
10 in the trash can (indicating).

11 MR. STONE: Yes. Thanks, Your Honor, and I
12 apologize again for being slow in figuring this one
13 out.

14 JUDGE McGUIRE: No, you weren't slow.

15 MR. OLIVER: Thank you, Your Honor.

16 JUDGE McGUIRE: Mr. Oliver.

17 MR. OLIVER: At this time I wish to offer one
18 additional exhibit into evidence. That would be
19 Exhibit --

20 MR. PERRY: I'm going to object to this.

21 JUDGE McGUIRE: All right. Go ahead.

22 MR. OLIVER: This would be CX-1252. This is
23 entitled Rambus System Impact and Implementation,
24 bearing the IBM Bates number that was discussed this
25 morning.

1 JUDGE McGUIRE: Objection?

2 MR. PERRY: We do not object to the admission
3 into evidence of this document. We do not agree with
4 the description of it that counsel provided this
5 morning during the examination.

6 JUDGE McGUIRE: All right. You can go into
7 that on either cross-examination or in your
8 post-hearing brief.

9 On that basis, they're entered into at this
10 time.

11 (CX Exhibit Number 1252 was admitted into
12 evidence.)

13 MR. OLIVER: Thank you, Your Honor.

14 JUDGE McGUIRE: Mr. Perry, you can begin your
15 cross-examination of this witness.

16 MR. PERRY: Your Honor, just so you know, I'm
17 shooting for about 5 o'clock and I told Mr. Oliver that
18 as well in the hope he can finish then as well.

19 JUDGE McGUIRE: Okay.

20 CROSS-EXAMINATION

21 BY MR. PERRY:

22 Q. Mr. Kelley, how are you?

23 A. I'm fine.

24 Q. Mr. Oliver asked you yesterday about your
25 understanding of the phrase "open standards" as it was

1 used in the 1991 to 1996 time period. Do you remember
2 that?

3 A. Yes, I do.

4 Q. And you said in substance -- and I haven't
5 looked back at the transcript -- I think you said in
6 substance that that meant standards that avoided
7 intellectual property. Do you remember that?

8 A. Yes.

9 Q. And he asked you why you understood that it was
10 an important goal of standards to avoid intellectual
11 property, and you said, in substance, that the industry
12 enjoyed so little profit that we could not afford even
13 the smallest increase in cost due to fees and
14 royalties. Do you remember that testimony?

15 A. Yes.

16 Q. Was there discussion at JEDEC meetings in your
17 presence about the profitability of different JEDEC
18 members?

19 A. No.

20 Q. So were you speculating when you talked about
21 those razor-thin profits for other companies other than
22 IBM?

23 A. No. I was speaking for myself.

24 Q. Oh, you were only speaking of IBM's profit
25 margins; is that right?

1 A. As I understood them, yes.

2 Q. And were those IBM's margins for the
3 microelectronic divisions or just for chip
4 manufacturing or for the overall company?

5 A. I was speaking of the margins for the
6 microelectronics division.

7 Q. So you weren't speaking about IBM's overall
8 profits as an entire company during the '90s; right?

9 A. That's correct.

10 Q. Okay. And were you ever informed by Micron
11 members at a JEDEC meeting or outside a JEDEC meeting
12 that their semiconductor gross margins averaged over
13 50 percent from 1993 through 1996?

14 A. I don't remember -- I don't remember that.

15 Q. Now, would you also agree that JEDEC's policies
16 in that time period were not designed to benefit only
17 DRAM manufacturers?

18 A. Yes.

19 Q. And was it JEDEC's goal in that time period to
20 come up with standards that represented the lowest
21 possible cost to manufacture a product in compliance
22 with the standard?

23 A. I would not agree with that.

24 Q. Isn't it JEDEC's goal to standardize around the
25 best technology that the industry has to offer?

1 A. I would couple the two and say the lowest --
2 I'm sorry -- the best technology for an acceptable low
3 cost.

4 Q. And would you accept "reasonable" instead of
5 "acceptable"?

6 A. Yes.

7 Q. And in fact, the part of the JEDEC patent
8 policy has the word "reasonable" in it when it refers
9 to licensing; correct?

10 A. Correct.

11 Q. But JEDEC doesn't get involved in deciding
12 whether a royalty rate is reasonable; isn't that also
13 true?

14 A. Yes.

15 Q. Well, let's go back to your definition of open
16 standards.

17 Now, you know that throughout the 1990s there
18 were official IBM manuals that talked about how
19 representatives of IBM at standard-setting bodies
20 should conduct themselves. You remember that; right?

21 A. Yes.

22 Q. Let me show you one such manual or actually
23 several. I'm going to look at RX-653.

24 By the way, Your Honor, I've placed on the
25 bench this witness' deposition volumes. There are two

1 volumes from the Infineon case, two volumes from the
2 Micron case and one volume from this case. That will
3 be the short one.

4 JUDGE McGUIRE: Okay.

5 MR. PERRY: And they're also up on the bench
6 next to the witness. And I think you guys have yours
7 (indicating).

8 MR. OLIVER: We have copies of the deposition
9 transcripts. Could I have a copy of the exhibit.

10 MR. PERRY: May I?

11 JUDGE McGUIRE: Approach.

12 BY MR. PERRY:

13 Q. Now, Exhibit 653 starts with a declaration of
14 Gerald T. Lane that was provided to us by IBM in this
15 matter.

16 Are you familiar with a man named Gerald Lane?

17 A. No.

18 Q. Haven't you been to JEDEC meetings with
19 Mr. Lane?

20 A. I don't remember that.

21 Q. Mr. Lane states that, as you can see on
22 paragraph 3, that he has attached certain documents
23 that were in effect in 1996 that relate to standards
24 work. Do you see that?

25 A. Yes.

1 Q. Let's go back to those in that time period and
2 I'll point you to -- there are page numbers on the
3 bottom right corner and I'll point you to the page
4 numbers that end in 8080, and that's page 94 of the
5 exhibit.

6 A. I see 808. I haven't found 8080.

7 Q. It's 128080.

8 A. Yes. I've found it.

9 Q. And that page is labeled IBM Industry Standards
10 Participation Guide. Do you see that?

11 A. Yes.

12 Q. From corporate standards in Thornwood,
13 New York.

14 Were you aware in the 1991 through '96 time
15 period that there was a corporate standards division or
16 department?

17 A. Yes, I was.

18 Q. And at some point in time Mr. Holleman was in
19 charge of that; is that right?

20 A. I wasn't close enough to know that.

21 Q. All right. Would you look now at page 128115,
22 and that's on page 129 of the exhibit.

23 128115, Mr. Kelley?

24 A. Yes, I have that.

25 Q. And that's labeled IBM Standards Practices

1 Manual. Do you see that?

2 A. Yes.

3 Q. January 14, 1993; right?

4 A. Yes.

5 Q. I want to look at -- I want you to look at a
6 particular section here, at page 811 -- I'm sorry --
7 8122.

8 A. Yes, I have 8122.

9 Q. And if you'll look at section 1.5, IBM's
10 participation in standards activities?

11 A. Yes.

12 Q. And let's go up to the top of the second
13 column.

14 And do you see there the language "openness" --
15 do you see the reference to openness in that top
16 paragraph there?

17 A. Yes, I do.

18 Q. It says, "Customers increasingly want openness,
19 that is, interoperability and portability of
20 applications and data."

21 Do you see that?

22 A. Yes.

23 Q. And was it your understanding that IBM's
24 definition of openness with respect to standards had to
25 do with interoperability and portability of

1 applications and data?

2 A. I understood that to be part of the
3 requirement, yes.

4 Q. And in that time period -- this manual is
5 dated 1993 -- IBM specifically rejected the view that
6 standards should not include intellectual property;
7 right?

8 A. I did not understand that, and if you'll let me
9 look, I might be able to find my misunderstanding of
10 that here.

11 Q. Why don't you look at section 1.6 and go ahead
12 and read that to yourself. It's not very long. It's
13 entitled Intellectual Property and Standards.

14 (Pause in the proceedings.)

15 A. Okay.

16 Q. And you see there at the top of the page that's
17 labeled 8123 that it says, "IBM's position is that the
18 existence of patents covering the subject of a proposed
19 standard should not preclude the establishment of the
20 standard, provided such patents are made available on a
21 nondiscriminatory basis under a nonexclusive license on
22 reasonable terms."

23 Do you see that?

24 A. Yes.

25 Q. And was that your understanding of IBM's

1 official position with respect to standard-setting back
2 in the 1993 time period?

3 A. I believe that there's another statement in the
4 standard that says that the inclusion of work of a
5 standards committee requires the IBM member to work
6 under the rules of that standards committee, which
7 would modify this somewhat.

8 Q. Depending on the rules?

9 A. Depending on the rules.

10 Q. If a standard -- under IBM's official position
11 as you understood it back in 1993, if a
12 standard-setting body had rules that were not intended
13 to avoid the inclusion of patents as long as there was
14 an agreement to license on reasonable and
15 nondiscriminatory terms, as you understood IBM's
16 position, would IBM have a problem with that?

17 A. I don't want us to be confused that this was a
18 policy that all IBMers were working under.

19 For example, I was never asked by my
20 management to work to the policies listed here, and I
21 think that you'll find, if you research the IBM
22 standards policies on such matter, you'll find several
23 documents that look very similar but may have slightly
24 different wording and rules. This was not the only
25 one.

1 Q. Aren't you aware that these documents were
2 produced to us by IBM as the official standards manuals
3 that were in effect before 1996?

4 A. And I don't know what "official standards
5 manual for IBM" means. I don't know if all divisions
6 of IBM and all locations around the world were subject
7 to these rules. I just don't know that.

8 Q. Did you have your own manual?

9 A. I did not have my own manual.

10 Q. Did you use this manual?

11 A. I did not use this manual.

12 Q. Were you aware of it?

13 A. I was aware that there was a manual, yes.

14 Q. And you chose to ignore it?

15 A. I saw the part of the manual that I read that
16 said that we were authorized to work under the rules of
17 the organization that we were in and that's what I
18 believe I was working to.

19 Q. All right. Well, let me go back to the
20 question I asked that started this little dialogue, and
21 that is: If there was a standard-setting body whose
22 rules permitted the incorporation of intellectual
23 property into a standard as long as there was an
24 agreement to license the intellectual property on
25 reasonable and nondiscriminatory terms, as you

1 understood IBM's position in 1993, would that have been
2 a problem for IBM?

3 A. With the assumption that there was disclosure,
4 that would not have been a problem.

5 Q. Now, if you'll look at paragraph 1.7, and
6 that's entitled Patent Considerations and Technical
7 Committees -- do you see that?

8 A. Yes.

9 Q. In all your time at JEDEC, had you ever read
10 that before?

11 A. Yes, I did believe -- I believe I did read this
12 section, yes.

13 Q. And let me point you to the discussion of
14 IBM's -- the IBM patent policy. It's in the second
15 column, the three paragraphs up from the bottom.

16 Do you see that it says, "The IBM participant
17 when requested by the standards organization may submit
18 the following IBM patent policy as an official
19 statement for the record"?

20 Do you see that?

21 A. Yes, I do.

22 Q. And you understood that the paragraph that
23 follows what I just read was an official statement of
24 IBM policy, didn't you?

25 A. Again, I don't know what "an official statement

1 of IBM policy" means in that I could point to several
2 documents that were considered IBM policy and this was
3 just one official statement of IBM policy. It's a big
4 corporation with multiple facets, so I cannot say that
5 I completely agreed with the concept that this was
6 IBM's only policy.

7 Q. Wasn't this policy on this page submitted to
8 JEDEC in December 1991 at a meeting you attended and
9 described to JEDEC as IBM's official policy?

10 A. I believe that that probably was the case and
11 that was not presented by me and this policy does not
12 completely agree with JEDEC's policy, and if it had
13 become an issue at JEDEC, I would have said that our
14 policy is to work within the stated policies of the
15 committee.

16 Q. Regardless of what IBM wanted; is that
17 correct?

18 A. In order for IBM to work in a standards body I
19 believe that we had to work under the policies of that
20 body.

21 Q. So if IBM had instructed you, Gordon Kelley, if
22 your manager had instructed you, Gordon Kelley, not to
23 disclose something and you felt you were required by
24 JEDEC rules to disclose them, you would have
25 disregarded the instruction you got from your manager

1 and made the disclosure; is that right?

2 MR. OLIVER: Objection. It calls for
3 speculation.

4 JUDGE McGUIRE: Sustained.

5 BY MR. PERRY:

6 Q. Would you look on page -- the next page, the
7 page that ends in 24. It's page 138.

8 And would you look over on the right-hand
9 column, the third paragraph from the bottom. Just pull
10 that up.

11 Do you see the description of the normal
12 royalty rate for a license to IBM patents?

13 A. Yes, I do.

14 Q. Do you see that says that "The normal royalty
15 rate for a license to IBM patents ranges from 1 percent
16 to 5 percent of the selling price for the apparatus
17 that practices the patents. This is a very reasonable
18 rate in our industry and generally meets the
19 requirement of standards organizations that licenses be
20 made available on reasonable and nondiscriminatory
21 terms and conditions"?

22 Do you see that?

23 A. Yes, I do.

24 Q. And that statement was delivered to JEDEC in
25 December 1991, wasn't it?

1 A. Yes, it was.

2 Q. Let me look at that -- let me show you those
3 minutes. That's JX-9. Let's pull that up.

4 And let's look at page 24 of these minutes.

5 First, let's look at the first page. I'm
6 sorry. Let's pull up the first page.

7 Do you see that these appear to be the minutes
8 of JC-42.5 December 1991 in Maui?

9 A. Yes.

10 Q. And you're listed as being present, others
11 present on the second page. Do you see that?

12 A. Yes.

13 Q. Along with Paul Lane?

14 A. Yes.

15 Q. His name appears just before you?

16 A. Okay.

17 Q. Do you see that?

18 A. Yes.

19 Q. Does that refresh your recollection that you
20 were at a JEDEC meeting in Maui with Mr. Lane?

21 A. Yes. But I don't believe this is the first
22 Mr. Lane that you spoke of.

23 Q. Oh. Paul is different from Gerald.

24 A. Yes.

25 Q. My mistake.

1 Do you ever remember going to a
2 standards-setting meeting with Gerald Lane?

3 A. No.

4 Q. That explains that.

5 Now, let's look at page 24.

6 This is a little hard to read, but do you see
7 that this is an attachment that says "IBM worldwide
8 patent licensing practices"?

9 A. Yes, I see that.

10 Q. Do you see that?

11 And do you see the third paragraph, the
12 description of royalty rates? Do you see that the
13 royalty rate that IBM says it would charge depends upon
14 the kind of patent and whether it's a category I patent
15 or a category II patent? Do you see that?

16 A. Yes, I do.

17 Q. Do you know if those IBM toggle mode patents
18 are category I or category II?

19 A. I do not.

20 Q. Do you know how a patent gets into IBM's
21 category I or category II?

22 A. I do not.

23 Q. Are you aware that category II patents command
24 a higher royalty?

25 A. That's what this document says.

1 Q. That's what this document says.

2 And it says that if the product is covered by
3 two or more category I IBM patents, the royalty rates
4 are 2 percent. Do you see that?

5 A. I see that, yes.

6 Q. And then if the product is covered by one, two
7 or three or more category II patents, the royalty will
8 be, respectively, 1 percent, 2 percent or 3 percent of
9 the selling price added to any royalty incurred for
10 category I patents. Do you see that?

11 A. Yes.

12 Q. So that means if you add that up that the
13 royalty rate could range from 1 percent to 5 percent;
14 right?

15 A. Yes.

16 Q. Now, at that December 1991 JEDEC meeting, when
17 this was shown, you were in the room; right?

18 A. Yes, I was.

19 Q. Did anyone say those royalty rates are
20 unreasonable under the JEDEC patent policy?

21 A. I don't remember anyone saying that.

22 Q. Now, you talked about this a little bit this
23 morning I think or maybe yesterday, that you were
24 involved in 1992 in a joint DRAM development project
25 between IBM and Siemens; right?

1 A. Yes.

2 Q. And the goal of that project was to develop a
3 future DRAM?

4 A. Yes.

5 Q. What does that mean to you, "future DRAM"?

6 A. Next-generation DRAM.

7 Q. And one of your roles in that joint development
8 project at Siemens was to bring back to the joint team
9 of engineers reports on what was happening at JEDEC;
10 correct?

11 A. Yes.

12 Q. And Willi Meyer was the Siemens representative
13 at JEDEC at that time; right?

14 A. Yes.

15 Q. And you understood his role to be very similar
16 to yours in terms of bringing back to the joint team
17 reports on what was going on at JEDEC.

18 A. Is that a question?

19 Q. Do you remember that?

20 A. Yes.

21 Q. Thank you.

22 Now, the JEDEC meeting discussions were not
23 confidential back in that time period, 1992; right?

24 A. I considered the work that JEDEC was doing at
25 the meeting to be considered confidential to the JEDEC

1 membership. My paraphrase of that work I did not
2 consider confidential as I reported just an outline of
3 what that work was.

4 Q. Weren't the meeting minutes available in that
5 time period to anyone who asked for them?

6 A. I'm not sure that that's true. I understood
7 that they were often delivered when asked. I don't
8 know what the conditions of the askance was. It could
9 have been under subpoena. I just -- I do not know the
10 rules.

11 I know, for example, that there was a time when
12 we had a request in the JEDEC office while I was
13 council chairman that a Russian company wanted to join
14 JEDEC JC-42 and receive the minutes, but they notified
15 us in their request that because of the traveling
16 expense they could not afford to attend the meetings so
17 they just wanted minutes, and they were denied, so we
18 didn't always -- we didn't always issue the information
19 coming out of JEDEC upon request.

20 Q. Are you done?

21 A. Yes.

22 Q. I'll ask you to pick up the top transcript -- I
23 believe it's the Infineon transcript from January 26,
24 2001 -- and I'll ask you to look at page 70 at line 22.
25 Just read that question and answer to yourself.

1 (Pause in the proceedings.)

2 Do you see that you were asked, "Were the
3 discussions that took place with inside the JEDEC
4 meeting confidential?"

5 Do you see that?

6 A. Yes.

7 Q. And the answer you gave is: "I don't believe
8 they were confidential in that the minutes were
9 available from the JEDEC office from anyone who
10 requested those minutes."

11 Do you see that?

12 A. Yes.

13 Q. And you gave that answer in January 2001 having
14 been sworn to tell the truth; correct?

15 A. Yes.

16 Q. And it was a true statement when you made it?

17 A. That was my understanding when I made it, but
18 since that time I remembered the incident where there
19 was a Russian company that requested the minutes. I
20 had forgotten that at this point, and so I knew of a
21 case where the request was denied.

22 Q. But putting aside the Russians, the statement
23 you made in that deposition transcript under oath was
24 true, wasn't it?

25 A. It was true as I believed it until I thought

1 about other things, yes.

2 Q. You didn't make any corrections to the
3 transcript, though, when that was offered to you, did
4 you?

5 A. No. I found that information out later or
6 thought about that information later.

7 Q. Now, when you were -- let's go back to the
8 spring of 1992 when you were part of this joint DRAM
9 future DRAM development team; right? That's the time
10 period I'm in.

11 A. The joint development with Siemens.

12 Q. Correct.

13 And when you were reporting back to that joint
14 team of engineers about what was going on at JEDEC
15 meetings, you weren't acting in bad faith; right?

16 A. Repeat the question?

17 Q. When you were reporting back to the joint
18 development team what was going on inside JEDEC, you
19 weren't acting in bad faith; right?

20 A. No, I was not.

21 Q. And you weren't trying to take advantage of the
22 fact that IBM and Siemens were JEDEC members to get a
23 jump on nonmembers in designing future DRAM products,
24 were you?

25 A. Oh, I think that the joint venture of two

1 companies joining together gives them some advantage in
2 that arena. I'm not sure that there's an advantage
3 relative to JEDEC because we were members -- Siemens
4 was members, so on and so forth.

5 Q. Well, I'm talking now about the use of the
6 information from the JEDEC meetings.

7 Didn't you understand at the time that the EIA
8 policy didn't permit the use of confidential
9 information being discussed at JEDEC meetings in an
10 effort to get an advantage over nonmembers of the
11 standards-setting body?

12 That would be a problem, wouldn't it, if you
13 were using confidential information not known to
14 nonmembers to get a jump on them in the marketplace?

15 A. I believe that there were occasions when I
16 disclosed IBM confidential information in order to
17 create the best proposal for a potential JEDEC
18 standard.

19 Q. I was asking, Mr. Kelley, about the use by IBM
20 and Siemens in its joint development project of
21 confidential information learned at JEDEC meetings to
22 get a jump on nonmembers in designing future DRAM
23 products.

24 Wasn't it your understanding that if
25 confidential information was being used to get a jump

1 on nonmembers that there would be a problem in that
2 under the EIA legal guides?

3 A. I did not understand that the use of JEDEC
4 confidential information was an abuse as long as the
5 people using the information were members.

6 Q. Now, IBM required its JEDEC representatives to
7 prepare reports of JEDEC meetings; right?

8 A. Yes.

9 Q. And you saw JEDEC representatives in the
10 meeting with laptop computers that they were typing
11 away on; correct?

12 A. Yes.

13 Q. In the meeting?

14 A. Yes.

15 Q. And you assumed that those folks were, like
16 you, writing trip reports back to their companies;
17 correct?

18 A. I believe I assumed that, yes.

19 Q. And as long as those meeting reports were for
20 the company's own use, you didn't see any problem with
21 that, did you?

22 A. That's correct.

23 Q. Well, let's again go back to that joint DRAM
24 development project that you were working on back in
25 the spring of 1992.

1 And you interacted some with Willi Meyer for
2 Siemens in connection with that joint project; right?

3 A. Yes.

4 Q. And one of the topics that you discussed with
5 Mr. Meyer in the spring of 1992 was Rambus; right?

6 A. On the facts that I received from Willi and the
7 facts that I -- and the proposal that I made following
8 that fact, yes.

9 Q. And in March and April of 1992 there was some
10 interest at IBM with respect to Rambus; right?

11 A. Yes.

12 Q. Now, Rambus had just joined JEDEC at that
13 point; correct?

14 A. Yes.

15 Q. Now, let's look if we could at a memo you wrote
16 in that time period about Rambus. That would be
17 RX-240.

18 May I?

19 JUDGE McGUIRE: Yes.

20 BY MR. PERRY:

21 Q. Let's pull up the top third if we could.

22 Now, I think you saw this at your deposition in
23 this case.

24 Is this a memo that you prepared on or about
25 March 19, 1992 and sent to other folks at IBM about

1 Rambus?

2 A. Yes.

3 Q. And in the first paragraph you say, "Rambus is
4 a small California company that has married several
5 pieces of practiced computer designs of several
6 companies in order to put together a high-performance
7 interface/architecture."

8 Do you see that?

9 A. Yes.

10 Q. Then you say: "This requires a unique and
11 probably patented Rambus protocol; it also requires a
12 special microprocessor and DRAM interface other than
13 industry standard. I am asking Mark" --
14 C-H-A-D-U-R-J-I-A-N -- "to get me a copy of Rambus
15 patents."

16 Do you see that?

17 A. Yes, I do.

18 Q. And was Mark a lawyer at IBM?

19 A. Yes.

20 Q. Did he provide you a copy of Rambus patents?

21 A. He did not.

22 Q. Why did you ask him for a copy of Rambus
23 patents?

24 A. I was aware that Rambus had a unique DRAM, and
25 of course my world was DRAMs, I wanted to learn more

1 about it. I went to the World Wide Web and I looked up
2 Rambus information on the World Wide Web about their
3 company and their design and I learned some information
4 which I'm reporting here and I thought that I might
5 need to know more information, so I asked my IPO office
6 for copies of Rambus patent information that was
7 publicly available.

8 Q. And when you used the word "patents" in that
9 paragraph, that last sentence -- I'm sorry -- that last
10 word in that first paragraph, you said "patents." Did
11 you mean patents and patent applications?

12 A. No. I knew that I couldn't get patent
13 application information. I was looking for
14 published -- any patents that had been published at
15 that point.

16 Q. Couldn't you get published copies of European
17 or World Intellectual Property Organization patents,
18 WIPO patent applications?

19 A. I didn't know that if I could. I used my
20 intellectual property law office to get information.

21 Q. And didn't they give you a copy of the Rambus
22 European patent application?

23 A. No, they didn't.

24 And the reason is because not too long after
25 this Rambus visited Burlington and made a presentation

1 to us that I've described before.

2 After that visit, my manager came to me and
3 said: Gordon, we're interested in finding people who
4 are willing to work with Rambus if we become a licensee
5 of the Rambus design and patented information and would
6 you like to be one of the engineers who works with
7 Rambus in that arena? And if so, you need to sign a
8 nondisclosure agreement with us because any information
9 you get on Rambus under this license is going to be
10 considered highly confidential and you need to make
11 sure that you don't disclose that information to
12 others.

13 And as the chairman of the DRAM committee where
14 I'm up front speaking to a large group, I was
15 frightened by the concept.

16 Q. Are you done?

17 A. Yes.

18 MR. PERRY: Your Honor, may I move to strike
19 everything after the word "no" as nonresponsive to my
20 question? My question was, simply, did you get a
21 copy.

22 JUDGE McGUIRE: Sustained.

23 BY MR. PERRY:

24 Q. You personally met with Rambus in April 1992;
25 correct?

1 A. Yes.

2 Q. Mr. Mooring came from Rambus to visit IBM;
3 right?

4 A. Yes.

5 Q. Mr. Farmwald came to visit; right?

6 A. Yes.

7 Q. And that was the first time you had met anyone
8 from Rambus; correct?

9 A. No. I believe that I met Billy Garrett at the
10 December meeting of JC-42.3 and again at the February
11 meeting of JC-42.3 and I had also met Richard Crisp at
12 the April meeting of the task group in Dallas.

13 Q. We don't seem to have any meeting notes for
14 you. Did you take meeting notes of that meeting with
15 Farmwald and Mooring?

16 A. I did not.

17 Q. Let me show you first a letter that appears to
18 have been written from Mr. Mooring to Mr. Concannon
19 April 16, 1992, RX-273.

20 May I?

21 JUDGE McGUIRE: Go ahead.

22 BY MR. PERRY:

23 Q. Now, is it correct that in April 1992 you were
24 working with Mr. Concannon in some respect?

25 A. Yes.

1 Q. Was he working as part of this joint
2 Siemens-IBM future DRAM task force?

3 A. Mike Concannon was like a third-level manager.
4 I don't remember if he was part of the joint venture or
5 not.

6 Q. Is third level below second level or above it
7 (indicating)?

8 A. Above.

9 Q. Was he in your reporting chain up the ladder
10 (indicating)?

11 A. Yes, he was.

12 Q. Does it appear to you that the meeting
13 described in this letter of April 16, 1992 is the same
14 meeting you went to April 23 of 1992?

15 A. Yes.

16 Q. Let me show you the notes of that meeting, we
17 believe the notes of that meeting that were produced to
18 us by IBM, CX-2355.

19 Do you see that your name seems to list you as
20 an attendee in the second column at the top?

21 A. Yes, I do.

22 Q. I'm going to ask you just to read these notes
23 to see if it refreshes your recollection about the
24 meeting with Mr. Mooring and Mr. Farmwald.

25 And let me first establish, this is not your

1 handwriting, is it?

2 A. It is not.

3 Q. Do you recognize it?

4 A. I do not.

5 (Pause in the proceedings.)

6 Okay.

7 Q. Now, going back to the list of attendees, do
8 you see under your name is someone named Beilstein?

9 A. "Beilstein," yes.

10 Q. "Beilstein."

11 And was that someone that you worked with at
12 IBM?

13 A. Yes.

14 Q. And then next to that on the left is Clinton?
15 Do you see that?

16 A. Yes.

17 Q. Mike Clinton; is that right?

18 A. That's correct.

19 Q. And were the three of you working on assessment
20 of Rambus at the time?

21 A. The -- yes. I would say yes.

22 Q. Now, having looked at these notes, let me call
23 your attention to a portion of the notes about halfway
24 down the page on the right side.

25 And do you see that seems to say "want to set

1 industry standard, penetrate consumer market as well"?

2 Do you see that?

3 A. Yes.

4 Q. Do you remember either Mr. Mooring or
5 Mr. Farmwald in that meeting that you attended saying
6 anything about Rambus wanting to be an industry
7 standard?

8 A. No, I don't.

9 Q. Now, during the meeting that you attended in
10 April 1992 there was a technology presentation;
11 correct?

12 A. Yes.

13 Q. And there was a description given of the RDRAM;
14 is that right?

15 A. Yes.

16 Q. Would you look at the very last line on this
17 first page.

18 Do you see the reference to a PLL?

19 A. Yes.

20 Q. And that says "PLL," dash, "most difficult
21 challenge."

22 Do you see that?

23 A. Yes.

24 Q. Was there some discussion in the meeting that
25 you attended with Farmwald and Mooring that putting a

1 PLL on a chip and getting it to work was tough?

2 A. I don't remember that specifically and I don't
3 remember whose notes or know whose notes these are, but
4 it's obviously their opinion.

5 Q. Well, you certainly saw from the technology
6 presentation that Rambus was using a PLL on a chip,
7 didn't you?

8 A. Yes.

9 Q. And you saw that they were using what you
10 considered to be dual-edge clocking as well; right?

11 A. That's correct.

12 Q. Well, let's look if we could at RX-279.

13 Now, this was produced to us by IBM, and you
14 remember that I showed you this at your deposition?

15 A. Yes.

16 Q. Let's pull up the title if we could at the top
17 quarter of the page.

18 Is this an assessment of Rambus that you and
19 Dr. Beilstein and Mr. Clinton put together in late
20 April of '92?

21 A. Yes.

22 Q. And in fact, if we have the April 23 date
23 correct for the meeting with Rambus, this is dated the
24 day after that; correct?

25 A. Yes.

1 Q. And you assisted in the presentation -- in the
2 preparation of this document, Exhibit 279?

3 A. Yes.

4 Q. Well, let's go to the last page if we could.

5 And I see a recommendation down at the bottom.
6 Was that a recommendation of the three of you to IBM
7 management?

8 A. Yes.

9 Q. And it says, "License the technology for as
10 little as possible - royalty oriented -- buy insurance
11 for the future in case Rambus really catches on."

12 Do you see that?

13 A. Yes.

14 Q. And then up at the top it says "Net."

15 What did "net" mean?

16 A. A summary.

17 Q. Right. Okay. And one of the things it says
18 under Net down a bit is the risk.

19 It says, "The risk is whether it becomes a
20 standard for the low end -- bulk of DRAM bit volume --
21 and that it provides a simple low-end solution for
22 anyone to get into the PC business."

23 Do you see that?

24 A. Yes.

25 Q. Why was that considered by the three of you to

1 be a risk for IBM in April 1992?

2 A. I was under the impression that the RDRAM
3 worked well for non-mainstore applications. I believed
4 that it, for example, was very useful for graphic
5 applications and there are graphic PCs. I believed
6 that it was very useful for the buffer to the hard
7 drive and others as I mentioned before.

8 So I believed that there was certainly
9 application. I did not believe that it was applicable
10 to the mainstore usage and therefore would not
11 necessarily drive the large volume that the PC division
12 was usually seen as doing.

13 Q. Didn't you identify that there was a risk for
14 IBM if Rambus became a standard?

15 A. No. I didn't think of it that way. In fact,
16 my hope was that Rambus would bring it to JEDEC and
17 make it a standard.

18 Q. Well, let's look at the page just prior to
19 this, page 7 of the document.

20 And do you see the heading is IBM/Rambus
21 Future? Do you see that?

22 A. Yes.

23 Q. And it says "with IBM endorsement through
24 license" and then "the combined weight of NEC,
25 Fujitsu, Toshiba, Intel, IBM and possibly others

1 through our partnerships will most likely lead to
2 defacto and eventually JEDEC standardization of
3 Rambus."

4 Do you see that?

5 A. Yes, I do.

6 Q. And then the next heading is Without IBM
7 Endorsement. Do you see that?

8 A. Yes.

9 Q. And one of the things it says under that is:
10 "If Rambus fails to become standard, then it is
11 business as usual for BTV" -- that's a reference to
12 IBM Burlington; right?

13 A. That's correct.

14 Q. -- "and the SDRAM has a significant chance of
15 being a standard."

16 Do you see that?

17 A. Yes.

18 Q. And that was your view at the time?

19 A. Yes.

20 Q. Now -- and the risk to IBM that you identified
21 from Rambus was greater, even greater because Intel was
22 already a Rambus licensee back in the spring of 1992;
23 right?

24 A. I don't believe I knew that.

25 Q. Let's look at page 4 of this exhibit. It's

1 Exhibit 279.

2 And bring that up on the screen.

3 That's entitled Intel Connection. Do you see
4 that?

5 Page 4.

6 A. Yes, I see it now.

7 Q. And that says, "Intel is Rambus licensee." Do
8 you see that?

9 A. Yes.

10 Q. Does that refresh your recollection that you
11 knew in the spring of 1992 that Intel was a Rambus
12 licensee?

13 A. Yes, it does.

14 Q. And it says, the last line says, "Potential
15 future Intel memory strategy to marry with
16 586/686 processor with Rambus protocol to corner
17 PC/notebook market with state-of-the-art performance."

18 Do you see that?

19 A. Yes.

20 Q. And that was a threat to IBM, wasn't it?

21 A. Not if we licensed.

22 Q. And it wouldn't be a threat if Rambus didn't
23 become a standard either; right?

24 A. Not if we licensed.

25 Q. Now, Rambus also presented a risk to IBM

1 because IBM was not yet cross-licensed with Rambus;
2 correct?

3 A. I don't know the details of when we were
4 cross-licensed.

5 Q. What is a cross-license?

6 A. As I understand it, a cross-license is when two
7 companies come together in agreement that for the
8 requirements of the agreement they will be able to use
9 each other's licenses without license or fee under the
10 agreement.

11 Q. And IBM feared new companies that weren't
12 cross-licensed with IBM or other JEDEC members;
13 right?

14 MR. OLIVER: Objection, Your Honor. Could I
15 ask for a clarification if he's asking this witness'
16 understanding.

17 BY MR. PERRY:

18 Q. Yes.

19 Your understanding in this time period was IBM
20 feared new companies with which it was not
21 cross-licensed, and other JEDEC members weren't
22 cross-licensed with the new company, IBM feared that
23 kind of new company, didn't it?

24 A. Yes. I believe that IBM was concerned, and
25 that might be a better choice than "feared," concerned

1 with licensing the royalties for companies that it was
2 not cross-licensed with.

3 Q. Going back to March and April of '92, again,
4 you've been working with Willi Meyer; right?

5 A. Yes.

6 Q. And you and he talked about Rambus; correct?

7 A. Yes.

8 Q. And you told him some of what you had heard
9 about Rambus in that April 23 meeting; right?

10 A. I don't remember that I needed to tell Willi
11 much about Rambus. I remember him telling me that they
12 had already had a visit from Rambus.

13 Q. You talked to him about the meeting, though,
14 didn't you?

15 A. I probably did, yes. I don't remember.

16 Q. Rambus had told you none of it was
17 confidential. You testified to that; right?

18 A. Yes.

19 Q. So you felt free to talk to him about what was
20 said in the meeting; correct?

21 A. Yes.

22 Q. Well, let's look at RX-286-A.

23 May I?

24 JUDGE McGUIRE: Go ahead.

25 BY MR. PERRY:

1 Q. Now, I'll tell you that this appears to be --
2 well, it is a document produced to us by Infineon in
3 connection with the prior litigation with Infineon.
4 It's been translated and there's a translator's
5 certificate attached to this exhibit, RX-286-A. And I
6 believe I showed you a prior translation prepared by
7 Infineon at your deposition.

8 But having said all that, have you had a chance
9 to read this memorandum that appears to have been
10 prepared by Mr. Meyer in April of 1992?

11 A. Let me finish it.

12 Q. Sure.

13 (Pause in the proceedings.)

14 A. Okay.

15 Q. Now, on April 30, 1992, did you have a
16 telephone conference call with Dr. Peisl, P-E-I-S-L,
17 and Willi Meyer?

18 A. Yes.

19 Q. Is one of the things you talked about Rambus?

20 A. Yes.

21 Q. And you told him that IBM had had a visit from
22 Rambus?

23 A. No. They told me that.

24 Q. Infineon told you that Rambus had visited IBM?

25 A. Yes. Several locations.

1 Q. Okay. And you didn't know that Rambus had been
2 visiting the IBM people?

3 A. I knew that they had visited Burlington.

4 Q. Did you say they hadn't visited Burlington?

5 A. Had.

6 Q. Had. Because you were in the meeting?

7 A. Yes.

8 Q. And at least Mr. Meyer says, "IBM is still
9 keeping its eye on Rambus."

10 Do you see that?

11 A. Yes.

12 Q. Is that something you told Mr. Meyer in that
13 April 30 call?

14 A. No. That's something he told me.

15 Q. And then it says, "Rambus has announced a claim
16 against Samsung for USD 10 million due to the
17 similarity of the SDRAM with the Rambus storage device
18 architecture."

19 Do you see that?

20 A. Yes.

21 Q. Is that something you told Mr. Meyer in that
22 April 30 phone call?

23 A. No. I believe again that's something he told
24 me.

25 Q. Did you report that to your managers?

1 A. I don't remember that I reported that to my
2 managers, no.

3 Q. And then it says, "For that reason, IBM is
4 seriously considering to preemptively obtain a license
5 as soon as possible at an introductory price."

6 Do you see that?

7 A. Yes.

8 Q. Is that something you told him?

9 A. Again, I believe that that's a statement from
10 the IBM users who were considering obtaining a license
11 for the use of DRAM in their systems.

12 Q. Did you tell him that your recommendation seven
13 days earlier was to license the Rambus technology for
14 as little as possible as insurance?

15 A. As insurance? No. I said that as insurance?
16 Can you show me that?

17 Q. If you look at 279, the last -- and I should
18 read the whole thing for the record.

19 It says, "License" -- the last page of 279 --
20 "Recommendation: License the technology for as little
21 as possible -- royalty oriented -- buy insurance for
22 the future in case Rambus really catches on."

23 Do you see that?

24 A. Yes. But that was in the context of making
25 sure that we had the option for those parts of the

1 various computers that I mentioned during the
2 discussion on this document.

3 Q. You understand you'd need a license to build
4 them?

5 A. Yes.

6 Q. Why did you think you'd need a license?

7 A. Because Rambus had told us that.

8 Q. Now, you thought back in March of '92 that all
9 Rambus had done was marry features from other computer
10 companies; isn't that what you thought before?

11 A. Well, I saw items in the Rambus information
12 that I had found that included items that I knew that
13 IBM was practicing. For example, the dual-edge clock.

14 Q. How about PLL on a chip? Did you recognize
15 that as something that looked to be new to you?

16 A. I knew that we were using PLL at several levels
17 of systems. I understood at that time that we were
18 using PLL on our microprocessors, and that concept was
19 not new to me. It was new to me from a DRAM point of
20 view, yes.

21 Q. So you personally weren't concerned in 1992
22 that Rambus might claim IP over PLL on a chip; right?

23 A. No. I cannot agree with that because I did not
24 know what the impact would be on the other members of
25 JEDEC.

1 Q. Well, but if you guys had been doing it --
2 strike that.

3 If IBM had been using PLL in a way that was
4 substantially identical to what Rambus was doing on a
5 chip, then wasn't it true at the time that Rambus
6 couldn't claim intellectual property on that?

7 A. I didn't know that it was substantially
8 identical. I just knew that we had been practicing PLL
9 and double-edge data rate for some time.

10 Q. Had IBM been using PLL on a chip?

11 A. I don't specifically know if they had or not.
12 I thought they had.

13 Q. Let me get back to my question.

14 When you saw PLL on a chip in the Rambus
15 technology presentation in April 1992, didn't you
16 recognize that as something that was different from
17 what you'd seen before?

18 A. Certainly for DRAM, yes.

19 Q. And weren't you interested in whether or not
20 there was intellectual property that might attach to
21 that particular use of a DLL?

22 A. Yes. But I was also aware that we were
23 seriously considering licensing and that through the
24 license agreement we would find that information out.

25 Q. And if you got a license, you could make an

1 RDRAM that had a DLL or PLL on a chip; right?

2 A. Yes.

3 Q. Now, that document that we just looked at is
4 dated April 30, 1992; correct?

5 A. Yes.

6 Q. And the next day, on May 1, 1992, you attended
7 a presentation by an in-house IBM lawyer named
8 J. Walter about Rambus patents; correct?

9 A. I don't remember that specifically, but I
10 worked with Jerry Walter from time to time.

11 Q. And you were part of --

12 MR. WEBER: Excuse me, Your Honor. My name is
13 Howard Weber and I represent IBM.

14 JUDGE McGUIRE: Could you stand up --

15 MR. WEBER: My name is Howard Weber.

16 JUDGE McGUIRE: Are you an attorney with IBM?

17 MR. WEBER: No. I'm an attorney with
18 Hogan & Hartson representing IBM in this matter and
19 this witness.

20 And from counsel's description of this
21 document, it sounds as if there may be some --

22 MR. PERRY: It's your privilege log. That's
23 all I've got.

24 MR. WEBER: Excuse me. I was just afraid that
25 there may be a --

1 JUDGE McGUIRE: I appreciate your concern,
2 counselor, but I think we've got this under control.

3 MR. WEBER: Thank you.

4 MR. PERRY: I wasn't going to ask about the
5 discussion of the document. I was using the
6 description that's on the privilege log.

7 JUDGE McGUIRE: Right.

8 MR. PERRY: Which, to Mr. Kelley's fairness,
9 doesn't include his name.

10 JUDGE McGUIRE: But just from this point on,
11 don't hesitate to err on the side of caution for any
12 evidence that's been marked for in camera treatment, so
13 that's fine.

14 MR. WEBER: Thank you.

15 And may I see the -- just one second. I'm
16 sorry, Your Honor.

17 Can I see the entry you're --

18 (Pause in the proceedings.)

19 Okay. I guess he can go ahead, although --

20 MR. PERRY: I'm done.

21 MR. WEBER: Okay.

22 MR. PERRY: Thank you.

23 BY MR. PERRY:

24 Q. Were you part of the Arzubi staff?

25 A-R-Z-U-B-I.

1 Was there someone named Arzubi at IBM?

2 A. Yes.

3 Q. Were you part of his staff?

4 A. I was under him, yes.

5 Q. Now, we were talking about May 1, 1992.

6 A week later you went to New Orleans for the
7 JEDEC meeting; right?

8 A. Yes.

9 Q. That was around May 7 to 8, 1992; correct?

10 A. Yes.

11 Q. And Mr. Crisp was there on behalf of Rambus;
12 correct?

13 A. Yes.

14 Q. And you told us yesterday that at that May 1992
15 meeting you refused to allow Mr. Crisp to present the
16 Rambus DRAM for standardization by JEDEC; correct?

17 A. Yes.

18 Q. And you made that decision on your own; right,
19 without consulting anybody else?

20 A. Yes. That's correct.

21 Q. And you made that decision after Mr. Crisp
22 told you that Rambus could not agree at that time to
23 the licensing portion of the JEDEC patent policy;
24 right?

25 A. He told me at that time that he did not agree

1 with the licensing policy on the intellectual property
2 that pertained to the presentation that he wanted to
3 make.

4 Q. And Mr. Crisp had asked you what those
5 licensing requirements were; right?

6 A. No, he did not.

7 Q. Didn't you use a 1 percent royalty figure in
8 talking to Mr. Crisp at that 1992 New Orleans meeting?

9 A. No.

10 Q. Didn't you tell Mr. Crisp what "reasonable"
11 meant according to JEDEC policy?

12 A. No.

13 Q. Did you tell him that IBM's standard rates were
14 in the 1 percent to 5 percent range?

15 A. No, I did not.

16 Q. Now, you knew at the time, didn't you, as the
17 committee chairman, that EIA required that a member be
18 allowed to present its technology for standardization
19 without agreeing in advance to the licensing
20 restrictions? Right?

21 A. No, I did not understand that.

22 Q. Well, you said yesterday that the ANSI,
23 A-N-S-I, patent policy guidelines had been circulated
24 at JEDEC from time to time. Do you remember that?

25 A. Yes.

1 Q. Well, let's take a moment and look at them.
2 That's CX-355.

3 I think you have it there, but just to save
4 time, it's a small document. I don't want to add to
5 your pile.

6 A. Uh-huh.

7 Q. Now, if you look on the first page, you'll see
8 that Mr. McGhee is attaching the ANSI guidelines for
9 implementation of the ANSI patent policy. Do you see
10 that?

11 A. Yes.

12 Q. And I think yesterday we looked at page 2, but
13 what I'd like to ask you to look at is page 3 where the
14 guidelines start.

15 You've read these guidelines before?

16 A. Yes.

17 Q. I'll ask you to look at page 6 of the exhibit.

18 There's a section entitled Early Indication of
19 a Willingness to License on page 6.

20 And I'll ask you to turn the page to the last
21 paragraph in that section, which appears at the top of
22 page 7 of this document.

23 Go ahead and read that to yourself, Mr. Kelley.

24 (Pause in the proceedings.)

25 A. Okay.

1 Q. Do you see that the last sentence in that
2 paragraph says, "While participants in the standards
3 development effort might consider a refusal to provide
4 assurances or a refusal to commit to offer acceptable
5 licensing terms and conditions as a ground for favoring
6 an alternative technology, the patent holder is only
7 required to provide assurances called for by the patent
8 policy prior to the final approval of the proposed
9 standard as an American National Standard."

10 Do you see that?

11 A. Yes, I do.

12 Q. And didn't you understand at the time in May of
13 1992 that EIA's policy, for legal reasons, was that a
14 member did not have to provide licensing assurances to
15 have the right to present its technology for
16 standardization? Right?

17 A. That's true, but there's a "but."

18 Q. I'll get to the "but."

19 You didn't tell Mr. Crisp that he had the right
20 to wait until after he had presented to give you an
21 answer to your question about agreeing to the licensing
22 provisions?

23 A. I didn't believe I had to because of the
24 "but."

25 Q. You didn't tell him -- let's establish that.

1 A. Yes.

2 Q. It's true that you didn't tell him?

3 A. Yes.

4 Q. What's the "but"?

5 A. The "but" is that the JC-42 committee had added
6 additional requirements to the patent policy of JC-42
7 beginning at this time frame, and one of the additional
8 requirements was that the chairman was instructed to
9 ask presenters if their company held intellectual
10 property under presentation and, if so, did they agree
11 with the JEDEC patent policies.

12 Q. When did the committee add that requirement?

13 A. I believe it was at that meeting.

14 Q. At that meeting?

15 A. Yes.

16 Q. Now, Mr. Crisp came to you before the meeting,
17 didn't he?

18 A. He came to me at the beginning of my task
19 group, which was well after we started the meeting.

20 Q. So just prior to him coming to you, the
21 committee had adopted a new requirement of the type you
22 just said; is that right?

23 A. Yes.

24 Q. Was there a vote on that?

25 A. Yes, there was.

1 Q. Is it recorded in the minutes?

2 A. I don't remember if it's recorded in the
3 minutes, but I saw it. I was there.

4 Q. Have you ever seen any written evidence of this
5 new requirement being adopted by vote at the May '92
6 JEDEC meeting in New Orleans?

7 A. I don't remember seeing written evidence, no.

8 Q. Who proposed this new requirement?

9 A. Jim Townsend.

10 Q. Did he say why he was proposing it?

11 A. Yes. He had experience --

12 Q. No. Just yes or no?

13 A. Repeat the question.

14 Q. Did he say why he was proposing it?

15 A. Yes.

16 Q. Had you known in advance that he was going to
17 propose it?

18 A. Yes. I knew from the February meeting because
19 at the February meeting he told us that he was going to
20 make a proposal and in fact he started some of the
21 practices of that proposal at the February meeting.

22 Q. Now, what was the new requirement again?

23 A. The new requirement was multifaceted. The
24 first thing that he mentioned was the addition of a
25 patent tracking list.

1 Q. I'm asking now about the new requirement that
2 relates to whether or not Rambus could present its
3 technology without agreeing in advance to the licensing
4 restrictions. What was that new requirement that you
5 described?

6 A. The requirement that chairpersons were required
7 to ask presenters if their company held intellectual
8 property on the proposal that they wanted to present
9 and, if so, did they agree with the JEDEC patent
10 policy.

11 Q. And was part of that requirement that if the
12 member said, We don't agree, they couldn't present the
13 technology for standardization?

14 A. That was my understanding, yes.

15 Q. Did anyone at JEDEC 42.3 get any legal advice
16 on whether or not that might be a violation of the
17 antitrust laws?

18 MR. OLIVER: Objection on a lack of
19 foundation.

20 BY MR. PERRY:

21 Q. As far as you know, did anyone on behalf of
22 JEDEC 42.3 seek legal advice with respect to the
23 legality of that requirement?

24 A. Not to my knowledge.

25 Q. And you were empowered by that requirement to

1 tell Mr. Crisp that Rambus could not even present its
2 technology for standardization at the May '92 meeting;
3 right?

4 A. Yes. I asked Richard to go back to Rambus to
5 get agreement.

6 Q. But you told him he couldn't present
7 technology; right?

8 A. Yes.

9 Q. Now, you didn't tell Mr. Crisp that two weeks
10 before you had written a presentation that said there
11 was a risk to IBM if Rambus became a standard, did
12 you?

13 A. No. I don't believe that's what I said in
14 that statement. I believe that the risk was not
15 licensing.

16 Q. You didn't tell Mr. Crisp that you had prepared
17 or assisted in the preparation of a presentation two
18 weeks before that said if Rambus fails to become
19 standard, it is business as usual for Burlington and
20 the SDRAM has a significant chance of being standard?
21 You didn't tell him that, did you?

22 A. No, I did not.

23 Q. You didn't tell anyone else at the meeting
24 that you had written those words or participated in
25 the drafting of those words two weeks earlier, did

1 you?

2 A. No, I didn't.

3 Q. Now, looking back, do you think it would have
4 been more appropriate to have someone else take the
5 responsibility for talking to Mr. Crisp about whether
6 or not RDRAM technology could be presented for
7 standardization?

8 MR. OLIVER: Objection, Your Honor. Calls for
9 speculation.

10 JUDGE McGUIRE: Sustained.

11 BY MR. PERRY:

12 Q. Rambus was the only member company of JEDEC in
13 your twelve-year or more history of going to JEDEC
14 meetings that you told they couldn't present a
15 proposal; right?

16 A. No.

17 Q. You know I said "member company of JEDEC." Did
18 you hear me say that?

19 A. I need to explain.

20 Q. Let me first establish that you've answered the
21 question I asked.

22 Was Rambus the only member company of JEDEC in
23 your long period of time in going to JEDEC meetings
24 where you, Gordon Kelley, told that member company
25 they could not present a technology for

1 standardization?

2 A. No.

3 Q. Who else was there?

4 A. Texas Instruments had brought a visitor, a
5 nonmember, and first the nonmember wanted to make a
6 presentation at the meeting and I told the nonmember
7 representative of his company that he could not, and
8 then Texas Instruments, who was a member, asked if they
9 could make the presentation on behalf of the other
10 company and I told him that they could not.

11 Q. Because it was clear it was really just a
12 presentation of the nonmember; right?

13 A. Yes.

14 Q. So putting that aside, putting that one aside,
15 was Rambus the only member company that you ever told
16 they couldn't present their technology for
17 standardization at JEDEC?

18 A. Yes.

19 Q. Well, let's go back to that joint development
20 project between IBM and Siemens. That was going on in
21 the spring of '92; right?

22 A. Yes.

23 Q. And after you came back from the May '92 JEDEC
24 meeting, you gave a presentation about Rambus to a
25 group of about 30 engineers; correct?

1 A. Yes.

2 Q. Half of them IBM engineers, half of them from
3 Siemens; right?

4 A. Yes.

5 Q. And I've been using Infineon as Siemens
6 interchangeably. You know that there was a name
7 change?

8 A. Yes, I do.

9 Q. Back then it was known as Siemens; right?

10 A. Yes.

11 Q. And in that presentation that you made to this
12 group of 30 engineers, you compared the SDRAM to
13 Rambus; right?

14 A. Yes.

15 Q. And I think we showed a chart that you used
16 this morning.

17 Let's pull up RX-303.

18 Do you need another copy of this, Mr. Kelley?

19 A. No. I can see it on the screen.

20 Q. Now, you described some of these entries this
21 morning, and I'm not going to ask you to go back over
22 that.

23 I am going to ask you if you were looking at
24 any notes or other materials related to the May 1992
25 JEDEC meeting when you prepared this.

1 A. I prepared it from notes that I took mentally
2 at the meeting, yes.

3 Q. Now, you testified earlier that I believe one
4 of the reasons why Mark Kellogg started going is, once
5 you became the chairman, you needed someone to take
6 really good notes because you were running the meeting;
7 is that right?

8 A. No.

9 Q. Okay. Let me ask it again a different way.

10 Did Mark -- once Mark Kellogg started going to
11 JEDEC meetings with you, did you use his notes of the
12 meeting as a guide, in part, to prepare your trip
13 reports for the meeting?

14 A. In part, yes.

15 Q. Well, let's look at his notes of the May '92
16 meeting, I believe, RX-290.

17 May I?

18 JUDGE McGUIRE: Yes.

19 BY MR. PERRY:

20 Q. Do you recognize his handwriting?

21 A. Yes.

22 Q. And by "his" I meant Mark Kellogg.

23 A. Yes.

24 Q. And these notes say at the top on the first
25 page "JEDEC JC-42.3 meeting New Orleans 5-7-92." Do

1 you see that?

2 A. Yes.

3 Q. Well, I want to draw your attention to the
4 discussion on page 3 of this Exhibit 290. But to be
5 fair to you, what I'm asking you to do is to read to
6 yourself the first six or seven entries. You can go
7 all the way down to your name, Gordon, and then I'll
8 ask you a few questions.

9 (Pause in the proceedings.)

10 A. Okay.

11 Q. Now, do you see there's a reference next to FUJ
12 that says "two bank because only one customer is enough
13 to force. Two bank low cost adder"?

14 Do you see that?

15 A. Yes.

16 Q. And do you remember the Fujitsu representative
17 saying words to that effect at the May '92 meeting?

18 A. Yes.

19 Q. And then there's something where it says
20 "Siemens." Do you see that?

21 A. Yes.

22 Q. Was Mr. Meyer the official JEDEC representative
23 from Siemens at the time?

24 A. Yes.

25 Q. It says: "Kernel," K-E-R-N-E-L, "of chip

1 similar to Rambus. Patent concerns? (No Rambus
2 comments)."

3 Do you remember Mr. Meyer in the meeting
4 talking about the kernel of the SDRAM being similar to
5 Rambus?

6 A. I remember Mr. Meyer in the meeting raising the
7 issue of concern with Rambus and Rambus patents.

8 Q. And do you remember that Rambus declined to
9 comment?

10 A. I believe I do remember that, yes.

11 Q. And then down a little bit further it says
12 "NEC." Do you see that?

13 A. Yes.

14 Q. Was Mr. Howard Sussman NEC's representative as
15 of May 1992?

16 A. Yes.

17 Q. Well, next to NEC Mr. Kellogg has written
18 "Rambus international patent 150 pages, Motorola
19 patents/Rambus patent - suspect claims won't hold."

20 Do you see that?

21 A. Yes.

22 Q. Do you remember Mr. Sussman saying at the
23 May '92 meeting that he had looked at a very large
24 Rambus international patent application?

25 A. I remember him bringing up the international

1 patent, yes.

2 Q. And did Mr. Sussman say that in his view the
3 Motorola SDRAM patent predated the Rambus patent
4 application?

5 A. I don't remember that.

6 Q. Do you remember Mr. Sussman saying that he
7 suspected that the Rambus claims wouldn't hold?

8 A. I don't remember that either.

9 Q. Do you remember Willi Meyer being at that
10 meeting?

11 A. I don't remember if it was Willi Meyer or there
12 was a time when Hans -- we have to look at the list of
13 attendees to find out -- I believe there was someone
14 else that attended. I'm not sure if Willi Meyer was at
15 this meeting.

16 Q. I can tell you without looking at the minutes.
17 We can take the time, but they show Mr. Meyer being
18 there.

19 A. Okay.

20 Q. I just wondered if you remembered him in your
21 mind's eye.

22 But let's look at what's been identified
23 previously as RX-297 as Mr. Meyer's trip report from
24 that meeting.

25 If I could, Your Honor?

1 JUDGE McGUIRE: Go ahead.

2 BY MR. PERRY:

3 Q. Now, the first page of this exhibit is in
4 German, but I'm not going to ask you anything about the
5 first page or about any translated portion of the first
6 page.

7 If you'll look at page 5, do you see in the
8 middle of the page it refers to Siemens and Philips?

9 A. Yes.

10 Q. It says: "Siemens and Philips concerned about
11 patent situation with regard to Rambus and Motorola.
12 No comments given. Motorola patents have priority over
13 Rambus'. Rambus patents filed but pending."

14 Do you see that?

15 A. Yes.

16 Q. Does seeing those statements refresh your
17 recollection that Mr. Sussman said, in essence, the
18 Motorola SDRAM patent has priority over, it came
19 before, predated, anything like that, with respect to
20 Rambus?

21 A. I don't remember that.

22 Q. Okay. And after May of 1992, you continued to
23 talk to Willi Meyer from Siemens from time to time
24 about the potential applicability of Rambus
25 intellectual property to SDRAM devices; correct?

1 A. I don't consider -- I don't remember
2 considering the applicability of Rambus intellectual
3 property on SDRAM, no.

4 Q. Well, I'll ask you to pick up what is
5 described as volume 2 of the Infineon deposition
6 transcripts. It should be up to your right. It's
7 April 13, 2001.

8 And look at page 401. And would you look at
9 starting at line 7 down to the bottom of that page.

10 (Pause in the proceedings.)

11 A. Okay.

12 Q. Did you testify back in 2001 that you had had
13 conversations with Mr. Meyer that you believe related
14 to the potential applicability of Rambus patents to
15 SDRAM devices after 1992?

16 A. Yes, I did.

17 Q. Now, you can't remember the content of any of
18 those conversations, can you?

19 A. No.

20 Q. All right. Let's change the subject just a
21 bit. You can put that transcript away for now.

22 Yesterday, Mr. Oliver asked you quite a few
23 questions about JEDEC manual 21-I. Do you remember
24 that?

25 A. Yes.

1 Q. And that's Exhibit CX-208.

2 Were the exhibits from yesterday kept around so
3 that --

4 MR. CATT: They're up on the table.

5 MR. OLIVER: Would you like 208?

6 MR. PERRY: Yes. For the witness.

7 BY MR. PERRY:

8 Q. Do you have Exhibit CX-208?

9 A. Yes.

10 Q. Thank you.

11 And you were part of a group responsible for
12 taking 21-H, the prior manual, and revising it so it
13 became 21-I; is that right?

14 A. Yes.

15 Q. How big was that group?

16 A. As I remember, it was a half a dozen.

17 Q. Now, you pointed us or Mr. Oliver pointed you
18 to page 19, and I'll ask you to go there again.

19 And you talked about paragraph 9.3, Reference
20 to Patented Products in EIA Standards; right?

21 A. Yes.

22 Q. And you talked about the footnote at the bottom
23 of the page that says, "For the purpose of this policy,
24 the word 'patented' also includes items and processes
25 for which a patent has been applied and may be

1 pending"; correct, you talked about that?

2 A. Yes.

3 Q. Now, upon the publication in October 1993 of
4 JEDEC manual 21-I, you would agree with me that that
5 was the first time that there was an explicit written
6 reference to patent applications in a JEDEC or EIA
7 manual?

8 MR. OLIVER: Point of clarification, this
9 witness' understanding?

10 BY MR. PERRY:

11 Q. As far as you know.

12 A. Yes. In the words of the manual, yes.

13 Q. I said "explicit written reference." You agree
14 with that; right?

15 A. Yes.

16 Q. And you told us several times yesterday that
17 the inclusion of that written reference to patent
18 applications in this 1993 manual was just adding the
19 language and not making any changes to the existing
20 JEDEC patent policy. Was that your testimony?

21 A. That was true for JC-42, yes.

22 Q. Oh, I'm sorry. It was true for JC-42; is that
23 what you said?

24 A. Yes.

25 Q. Well, I wrote down that you'd said it was true

1 for all of JEDEC, but let's make sure we understand
2 each other.

3 As of the time of the publication of 21-I in
4 1993, had any other JEDEC committee besides 42.3 been
5 requiring the disclosure of patent applications?

6 MR. OLIVER: Objection, Your Honor. Lack of
7 foundation.

8 JUDGE McGUIRE: Overruled. He's answered --
9 he's opened the door on this, so go ahead, Mr. Perry.

10 THE WITNESS: Yes.

11 BY MR. PERRY:

12 Q. How many other committees?

13 A. One.

14 Q. Which one was that?

15 A. JC-16.

16 Q. But putting aside JC-42.3 and JC-16, were all
17 the other JEDEC committees prior to the publication of
18 21-I -- in those committees the members weren't
19 required to disclose patent applications; was that your
20 understanding?

21 MR. OLIVER: Objection, Your Honor. This
22 witness was not a member of most of the other
23 committees in JEDEC. There's no foundation to answer
24 the question.

25 JUDGE McGUIRE: The question is to his

1 understanding, so if he can answer, I'll give him that
2 opportunity.

3 Overruled.

4 THE WITNESS: To my understanding, that is
5 correct.

6 BY MR. PERRY:

7 Q. Now, is it your testimony that JC-42.3 within
8 that committee adopted a new requirement that members
9 within that committee had to disclose patent
10 applications, that they did that at some point?

11 A. Is that a question?

12 Q. Yeah.

13 A. Yes.

14 Q. When did that happen?

15 A. At the May meeting in 1992.

16 Q. Was there a ballot?

17 A. There was a hand vote.

18 Q. I've seen so many written ballots. Was there a
19 written ballot that asked people to vote, to check a
20 "yes" box or a "no" box and to give reasons why they
21 didn't want to have this policy change?

22 A. It was a hand vote agreement of the committee.

23 Q. There was a hand vote in May 1992?

24 A. Yes.

25 Q. At JC-42.3?

1 A. And JC-16, yes.

2 Q. And there was a question presented that people
3 voted on; right?

4 A. Yes.

5 Q. And that must be recorded in the minutes;
6 right?

7 A. I don't believe it was, no.

8 Q. So we will look in vain in the minutes of
9 JC-16 and 42.3 for any reference to this hand vote;
10 right?

11 A. Yes.

12 Q. Didn't you think it was important to put that
13 in the minutes?

14 A. Yes. We thought it was so important that prior
15 to that meeting we had taken it to JEDEC council, which
16 was the highest level of importance in the JEDEC
17 organization.

18 Q. Didn't you think it was important to put it in
19 the minutes of JC-42.3 that this vote had occurred and
20 that this policy change had occurred?

21 A. I don't know why it didn't make the minutes.

22 Q. Did you look at the minutes when you got them
23 to make sure it was in there?

24 A. I did not.

25 Q. What was the vote? Did everybody vote

1 unanimous?

2 A. It was unanimous, yes.

3 Q. Richard Crisp raised his hand and said it was a
4 good --

5 A. I don't remember if Richard raised his hand.

6 Q. How many companies voted? What was the vote?
7 14? 15? 16?

8 A. I remember it as being two-thirds to
9 three-quarters of the room and there was probably
10 60-70 people in the room.

11 Q. Were you leading the meeting at that point?

12 A. No. Jim Townsend was.

13 Q. How did he describe what the new requirement
14 was?

15 A. He had a presentation that included the items
16 on the presentation.

17 Q. He had a PowerPoint? Vugraphs? An overhead
18 projector?

19 A. No. It was Vugraphs, yes.

20 Q. And those weren't attached to the meeting
21 minutes either, were they?

22 A. I don't remember if they were or not.

23 Q. Were they distributed to everybody?

24 A. They were included in many meeting minutes
25 after that meeting, so I don't remember if they were in

1 that meeting, but they were in many meetings.

2 Q. Why do you say they were included in many
3 meeting minutes after that meeting?

4 A. Because I remember them being in the minutes.

5 Q. Well, let's look at something and see if we can
6 identify what it is that he showed to the meeting when
7 he was asking for this vote.

8 I'll be right with you, Mr. Kelley, in just a
9 second.

10 And let's pull up JX-18. I'll just ask you to
11 look at it on the screen. At -- well, you see this is
12 the 42.3 meeting minutes for December 1993 in
13 San Diego. Do you see that?

14 A. Yes.

15 Q. I think you looked at these today or yesterday.
16 Let's look at JX-18, page 14.

17 Now, was that attachment -- that page of that
18 attachment, is that something that was shown as a
19 Vugraph at the time that Mr. Townsend was asking people
20 to vote on the requirement to disclose patent
21 applications in the May '92 meeting?

22 A. I believe it was, yes.

23 Q. And how about the next page, 15? It says
24 "Patent Tracking" and it has a quote from EP-7-A. Do
25 you see that? Was that up on the Vugraph?

1 A. Yes.

2 Q. And how about the next page? Was that up on
3 the Vugraph, JX-18-16?

4 A. Yes.

5 Q. And was there also the then current version of
6 the patent tracking list shown on the Vugraphs in that
7 May '92 meeting?

8 A. May I see it?

9 Q. It's the next pages.

10 A. I don't have the document in front of me.

11 Q. You should have it on the screen. I'm sorry.
12 Page 17. This is just a patent tracking list. You've
13 seen it quite a few times I suspect.

14 A. The reason I asked to see it is this tracking
15 list at this point includes pending patents which had
16 not been required previously.

17 Q. All right. Was there some version, earlier
18 version of a patent tracking list that was up on the
19 Vugraphs at the May '92 meeting?

20 A. Jim presented the concept of the tracking list
21 at the meeting before this which was in February of
22 this year and I don't remember the details of that list
23 and I don't remember if that was in the minutes, but I
24 remember him showing a concept of a list, yes.

25 Q. And other than the Vugraphs that I've just

1 shown you, were there any other Vugraphs that were
2 shown by Mr. Townsend in the May 1992 meeting when he
3 was supposedly asking for a vote on whether or not
4 patent applications would now be required to be
5 disclosed?

6 MR. OLIVER: Your Honor, if he wants to
7 establish what was shown in the May 1992 meeting, I
8 suggest we look at those minutes.

9 MR. PERRY: Your Honor, I'm entitled to an
10 answer to my question. The fact that Mr. Oliver could
11 ask a better question is not an objection.

12 JUDGE McGUIRE: Let's see here. I didn't
13 quite hear him; that's why I have to look at the
14 question.

15 "What was shown in the May 1992 meeting, I
16 suggest we look at those minutes."

17 Well, I'll let you do that on cross if you
18 would, Mr. Oliver.

19 Otherwise, you may proceed, Mr. Perry.

20 BY MR. PERRY:

21 Q. Other than the Vugraphs I've shown you, do you
22 remember any other Vugraphs or materials being shown to
23 JC-42 members at the time Mr. Townsend was asking them
24 to vote?

25 A. Yes. My memory is confused because I saw Jim's

1 presentation several hundred times over a period of
2 years and I don't remember exactly what was shown at
3 this meeting. The pages that I'm referring to in my
4 memory have not been shown to me, but I know that Jim
5 showed them several times.

6 Q. Other than what I've shown you --

7 JUDGE McGUIRE: I'm sorry. I said just a
8 minute ago "on cross." It certainly wouldn't be cross;
9 it would be redirect. So I apologize for any
10 confusion.

11 MR. OLIVER: Thank you, Your Honor.

12 JUDGE McGUIRE: But I'm sure that at the time
13 that you weren't confused.

14 BY MR. PERRY:

15 Q. Do you remember anything else than what I've
16 just shown you being shown to the members of JC-42 in
17 the May 1992 when Mr. Townsend was supposedly asking
18 for a vote on this new requirement?

19 A. I don't.

20 Q. Have you seen anyone's trip report from any
21 company for that meeting that describes this vote on
22 this new requirement?

23 A. No.

24 Q. It's not in your trip report for that meeting,
25 is it?

1 A. No.

2 Q. Let's look at your trip report for that
3 meeting. I'm going to pull that out.

4 MR. OLIVER: Your Honor, we've been going for
5 an hour and fifteen minutes, if we could ask for at an
6 appropriate point if we could take a break.

7 BY MR. PERRY:

8 Q. Would you like a break, Mr. Kelley?

9 A. I don't need one right now.

10 Q. Can we wait ten minutes?

11 I'll find that at the break, but let's keep
12 going.

13 Now, the vote that you're describing was just
14 for 42.3 or was it for all 42?

15 A. All of 42 and JC-16.

16 Q. So the vote that was taken at that time also
17 included the application to JC-16 or was there a
18 separate vote in JC-16?

19 A. I believe there was a separate vote in JC-16.

20 Q. And is it in the JC-16 minutes for the meeting
21 that a vote was taken to add this new requirement?

22 A. I don't remember.

23 Q. Now, was there a written request to the JEDEC
24 council to change the policy with respect to JC-42.3 in
25 this manner?

1 A. No. The request to council was to change the
2 document that governed all of the committees in this
3 manner.

4 Q. And that's what eventually got published as
5 21-I; correct?

6 A. Yes.

7 Q. Well, let's look if we could at some of those
8 council minutes that you looked at yesterday. Let's
9 look at CX-46.

10 Now, the -- let's use the screen. You were
11 shown this yesterday.

12 If you look at page 9, this is the January 1993
13 council meeting. You recognize that, don't you?

14 A. Yes.

15 Q. Let's look at page 9. Paragraph sub-2 down at
16 the bottom is entitled Patent Issues and Procedures.
17 Do you see that?

18 A. Yes.

19 Q. You talked about this yesterday; right?

20 A. Yes.

21 Q. And you told us yesterday that this language,
22 "Consensus was expressed that more strength is needed
23 in our policy; however, under existing laws, it seemed
24 difficult to do," you talked about that language
25 yesterday?

1 A. Yes.

2 Q. And you said your understanding of what seemed
3 difficult to do under existing laws was to add the
4 language about patent applications to the proposed 21-I
5 manual; correct?

6 A. Yes.

7 Q. Well, we now agree, don't we, that, in your
8 understanding, only 42 and 16 were practicing the
9 disclosure of patent applications before 21-I was
10 published; right?

11 A. As I understood it, yes.

12 Q. Don't you agree that what was difficult to do,
13 as expressed in this document, that what was difficult
14 to do was to add a new disclosure obligation for all of
15 the JEDEC committees?

16 A. Is that a question?

17 Q. Yeah.

18 A. We recognized that the process takes time to
19 get through council and in the committee we had an
20 agreement that took much less time.

21 Q. Well, one of the reasons why that process takes
22 time is there's a lot of different constituencies that
23 need to express their views; right?

24 A. Yes.

25 Q. There are more constituencies and different

1 points of view in all of JEDEC than there are in just
2 the 42 committee; right?

3 A. Yes.

4 Q. And the existing laws that are referred to in
5 that paragraph I read to you that presented this
6 obstacle, that was the EIA legal guides?

7 A. Yes. And ANSI.

8 Q. And the ANSI legal guides?

9 A. Yes.

10 Q. And at the time in 1993 you understood that the
11 EIA patent policy did not require the disclosure of
12 patent applications by anyone; right?

13 A. It depends on your definition of "patent,"
14 whether "patent" includes patent application.

15 Q. Let me ask it again.

16 It was your understanding in 1993 that the EIA
17 patent policy did not require the disclosure of patent
18 applications that had not issued by anyone?

19 A. The reason I'm struggling is that I understood
20 after the beginning of 1991 that the concept of patent
21 included material that might become published patents
22 and that changing the document to include patent
23 applications was just a clarification but not a change
24 in the policy, whether it was JEDEC, EIA or ANSI.

25 Q. You testified in your deposition in the Micron

1 case that the EIA patent policy did not require
2 disclosure of patent applications, didn't you?

3 A. By its wording, yes.

4 Q. That's not what you said in the deposition.
5 Let's look at it. It's the Micron deposition of
6 April 25, 2001.

7 That's the one with the Micron heading and it's
8 April 25, 2001, page 97.

9 And if you'll look at -- the question is at
10 line 14 and the answer is at line 17 on page 97.

11 A. Do I have this document?

12 Q. Oh, I'm sorry. I thought you had all of your
13 deposition transcripts and I didn't look up. I thought
14 I had asked you to look at it.

15 A. What's the date?

16 Q. Micron, April 25.

17 A. Okay. What's the page number?

18 Q. 97.

19 A. Okay.

20 Q. Didn't you testify that manual 21-I added
21 several requirements that were not in the previous
22 release that were now unique to JEDEC and they were
23 additions to the requirements that had been in place
24 from EIA and ANSI requirements? Didn't you testify to
25 that?

1 A. Yes, I did.

2 Q. And was that a true statement at the time?

3 A. The reason I'm struggling --

4 Q. Let me ask it this way because there were two
5 things in that question, so let me break it up.

6 When you testified that 21-I added requirements
7 that were not in 21-H and that were unique to JEDEC,
8 you meant to include the requirement to disclose patent
9 applications, didn't you?

10 A. In the wording, yes.

11 Q. So what you meant to say in that deposition was
12 there was already a requirement throughout EIA in 1993,
13 before the publication of this document 21-I, and that
14 only the wording was changed when JEDEC adopted 21-I?
15 Is that what you meant to say?

16 MR. OLIVER: Point of clarification,
17 Your Honor. This witness' understanding?

18 JUDGE McGUIRE: Let's have a --

19 MR. PERRY:

20 Q. I'm asking what you meant to say when you were
21 answering the question in the Micron deposition and
22 were sworn to tell the truth.

23 A. When I gave that deposition, I was speaking to
24 the wording of the EIA document, but that was not
25 completely my mental understanding of that wording.

1 Q. So when you say that the requirement was added
2 to disclose patent applications and that that
3 requirement was unique to JEDEC and was not in ANSI and
4 EIA policies, you meant to say that the words were
5 unique to JEDEC?

6 A. Yes. By the wording of the document, yes.

7 MR. PERRY: May we take a break?

8 JUDGE McGUIRE: All right. Let's take a break
9 for ten minutes and then we'll reconvene.

10 Off the record.

11 (Recess)

12 JUDGE McGUIRE: At this time you may proceed,
13 Mr. Perry.

14 BY MR. PERRY:

15 Q. You talked about the EIA legal guides
16 yesterday. Do you remember that?

17 A. Yes.

18 Q. Let's look at those again. It's CX-204.

19 And if you'll look, please, at page 4, and
20 let's pull up the heading on the right side, the first
21 paragraph and the heading.

22 The first paragraph and the heading, please.

23 And you see that these EIA legal guides say on
24 page 4 that all engineering standardization programs
25 are required to be conducted in accordance with the

1 rules set forth in Part I of the legal guides. Do you
2 see that?

3 A. Yes.

4 Q. And that was your understanding at the time of
5 these legal guides?

6 A. Yes.

7 Q. And let's look further down the page to the
8 statement of policy.

9 Pull that up.

10 And it says, "The following statement of
11 policy reflecting the basic objectives of all
12 standardization programs shall be included in all EIA
13 standards."

14 Do you see that?

15 A. Yes.

16 Q. And then the second paragraph under that says,
17 "Standards are proposed or adopted by EIA without
18 regard to whether their proposal or adoption may in any
19 way involve patents on articles, materials, or
20 processes."

21 Do you see that?

22 A. Yes.

23 Q. And that language that I just read appears in
24 21-H, JEDEC manual 21-H, as well; correct?

25 A. I believe it does, yes.

1 Q. And you told us yesterday that JEDEC was bound
2 by the EIA legal guides. Do you remember that?

3 A. Yes.

4 Q. And in fact, the only mention of patents in the
5 entire manual 21-H is the statement I just read to you;
6 right?

7 A. No. I believe that there's a whole section on
8 the issue of patents within the document besides just
9 the legal guides.

10 Q. In 21-H?

11 A. Yes.

12 Q. Let's look at 21-H, CX-205-A.

13 I'm going to take a minute and find that,
14 Your Honor. I didn't think I would need it, but I want
15 to be able to show it to the witness.

16 CX-205-A, a copy for Mr. Oliver.

17 May I approach?

18 JUDGE McGUIRE: You may.

19 BY MR. PERRY:

20 Q. Now, this is 21-H dated July 1998. Do you have
21 that in front of you?

22 A. Yes.

23 Q. Please confirm for me that the only reference
24 to -- or find for me all the references, explicit
25 references to patents in this entire manual.

1 (Pause in the proceedings.)

2 A. I remembered the section in this document that
3 must have been a draft of this document before it
4 became 21-I. I do not find that section that I spoke
5 of. It's not.

6 Q. So it's correct that the only reference in
7 21-H as published to patents is on the very last page
8 in the notice where it says, "JEDEC standards are
9 adopted without regard to whether or not their adoption
10 may involve patents or articles, materials or
11 processes." Do you see that?

12 A. Yes.

13 Q. And that was the only -- strike that.

14 Now, going back to the EIA policy which we were
15 talking about before the break, is it your present
16 testimony that your understanding of the EIA patent
17 policy in 1992 and 1993 is that the word "patents"
18 wherever it appeared in the EIA manual included patents
19 and patent applications?

20 A. My understanding during this period is that the
21 JC-42 committee along with JC-16, which was a sister
22 committee, had raised the issue of patents including
23 the concept that it was patentable material, which also
24 includes patent applications, and that the wording of
25 our document which became manual JEP-21-I clarified

1 that understanding. We did not believe that we were in
2 violation of EIA requirements.

3 MR. PERRY: Your Honor, I'd like to move to
4 strike as nonresponsive.

5 JUDGE McGUIRE: Overruled. I think that he did
6 answer the question, and it may not have been quite
7 like you wanted to hear, Mr. Perry, but I'm not going
8 to strike that.

9 MR. OLIVER: Thank you, Your Honor.

10 BY MR. PERRY:

11 Q. Was it your understanding in April 1992, before
12 the hand vote was taken at the May 1992 meetings that
13 you described, was it your understanding in April 1992
14 that under the EIA patent policy JEDEC members were
15 required to disclose patent applications that related
16 to the work of JEDEC?

17 A. In April of 1992, we -- I had been through two
18 meetings where the committee had raised the issue of
19 including patentable material in the concept of dealing
20 with patents in good faith, and by April of 1992 it was
21 pretty clear that this was an issue before the
22 committee that had to be dealt with and was dealt with
23 one month later.

24 Q. In 1991, was it your understanding that the
25 EIA patent policy required JEDEC members to disclose

1 patent applications that were related to the work of
2 JEDEC?

3 A. No.

4 Q. Between January 1992 and this hand vote at the
5 May '92 meeting, did you come to believe that the EIA
6 patent policy required the disclosure by JEDEC members
7 of patent applications that related to the work of
8 JEDEC?

9 MR. OLIVER: Your Honor -- excuse me. If I
10 could interrupt briefly.

11 I apologize to interrupt this line of
12 questioning, but I believe that the witness may be
13 mistaken over the year. I believe I have documents
14 that could refresh the recollection of the witness, and
15 rather than continuing a line of questions now, having
16 a line of redirect followed by another line of cross, I
17 would simply ask if there would be some way that we
18 might be able to refresh the witness' recollection at
19 this time.

20 JUDGE McGUIRE: Mr. Perry?

21 MR. PERRY: Your Honor, I've sat here and had
22 lots of witnesses on the stand here where I thought I
23 could get a different story out of them.

24 JUDGE McGUIRE: You can take it up when you go
25 back on your redirect, Mr. Oliver.

1 Proceed, Mr. Perry.

2 MR. OLIVER: Thank you, Your Honor.

3 MR. PERRY: There was a question pending and
4 I'd like it to be read back.

5 (The record was read as follows:)

6 "QUESTION: Between January 1992 and this hand
7 vote at the May '92 meeting, did you come to believe
8 that the EIA patent policy required the disclosure by
9 JEDEC members of patent applications that related to
10 the work of JEDEC?"

11 THE WITNESS: I did not have involvement with
12 any EIA committee and I did not know, other than the
13 guides that were before us, what their requirements
14 were. I knew that JEDEC was dealing with the issue of
15 changing the concept of patents to include patentable
16 material, and that was my understanding from the period
17 that you're speaking of.

18 BY MR. PERRY:

19 Q. Didn't you testify in the Infineon case that
20 when you were drafting portions of 21-I you understood
21 that the EIA patent policy did not require the
22 disclosure of patent applications?

23 A. Yes. I believe that was part of the difficulty
24 that was mentioned in the council minutes that we've
25 addressed, and in my mind it was the question of

1 defining what is meant by "patent."

2 Q. Was it your view at the time when you were
3 revising 21-I and you were turning 21-H into 21-I, was
4 it your view at the time that the word "patent"
5 standing alone did not on its face signal to an
6 engineer sitting in a meeting that it meant patent and
7 patent applications?

8 A. If that engineer was witness to the many patent
9 application information that we saw, it was pretty
10 clear that our operating procedures had changed to
11 include patent applications.

12 Q. How about a new member that had been to one or
13 two meetings? Do you think that it's possible that the
14 word "patent" standing alone didn't signal that the
15 intent was to say "patent and patent applications"?

16 A. I would have thought that that new member would
17 understand that it included patent applications from
18 the beginning because we were dealing with patent
19 applications from that new member's beginning and was
20 clearly an issue at my meetings.

21 Q. Well, let's look at the minutes of the May 1992
22 JC-16.

23 You've said there was a hand vote within JC-16;
24 correct?

25 A. I remember the JC-16 agreed with the policy.

1 Q. Was there a hand vote within JC-16?

2 A. I'm not sure if there was a hand vote in JC-16.

3 It was the same membership, so...

4 Q. Was there a hand vote in the JC-42 meeting?

5 A. Yes.

6 Q. Now, you've been deposed on five separate
7 occasions; correct?

8 A. Yes.

9 Q. In this series of Rambus cases.

10 Have you ever in any of those meetings
11 mentioned this hand vote that took place in May 1992,
12 in any of those depositions?

13 A. I believe that I was asked in one deposition if
14 the policy of the committee had been approved and I
15 mentioned that it had been approved, yes.

16 Q. Did you mention that there was a hand vote at
17 the May 1992 meeting?

18 A. I don't remember being asked.

19 Q. Did you tell counsel for the FTC at any point
20 in time prior to today that you remembered a hand vote
21 at the May 1992 meeting where a new requirement was
22 added to disclose patent applications within that
23 committee?

24 A. Again, I don't remember being asked.

25 Q. If it was a requirement prior to that meeting

1 that JEDEC members disclose patent applications, why
2 was a hand vote required?

3 A. I don't believe that it was a requirement at
4 that meeting. I believe that at the meeting prior to
5 that in February 1991 Jim Townsend had suggested that
6 we begin to include patent applications in the concept
7 of a patent and that was brought to the committee in
8 May of 1991 and the vote was taken to agree that the
9 committee would work to that new definition of
10 patents.

11 Q. Now you're talking about 1991. Is that because
12 of what Mr. Oliver just mentioned?

13 A. Yes. He has reminded me that that occurred
14 in '91, not '92.

15 Q. So all your testimony about Mr. Crisp being in
16 the room, that was just a mistake?

17 A. No. I believe that Mr. Crisp being in the
18 room in May of 1992 witnessed the inclusion of patents
19 on the tracking -- or pending patents on the tracking
20 list and witnessed the inclusion of patent applications
21 in the discussions of the committee at his first
22 meeting.

23 Q. Your testimony this afternoon that Mr. Crisp
24 was present for a hand vote on changing the policy
25 within 42.3, was that a mistake on your part?

1 MR. OLIVER: Objection, Your Honor.
2 Mischaracterizes the testimony.

3 JUDGE McGUIRE: Overruled.

4 THE WITNESS: No. I believe you asked me if
5 Mr. Crisp voted no or -- yes, you asked me if Mr. Crisp
6 voted no and I told you I didn't remember.

7 BY MR. PERRY:

8 Q. You said you'd look to see.

9 A. Okay. I didn't look to see.

10 Q. Your current testimony, having been corrected
11 as to the date, is that the hand vote you've been
12 referring to this afternoon did not occur in
13 Mr. Crisp's presence; correct?

14 A. Yes.

15 Q. He wasn't at the May 1991 meeting; correct?

16 A. Correct.

17 Q. Does the May 1991 meeting minutes -- do they
18 show a vote being taken within that committee?

19 A. I don't remember if they do.

20 Q. Well, let's back up.

21 Prior to May 1991, was it your understanding
22 that JEDEC members were required by the EIA patent
23 policy to disclose patent applications that related to
24 the work of the committee?

25 A. No.

1 Q. And when you were working on the revision of
2 21-H that became 21-I, isn't it correct that at the
3 time 21-I was published in October 1993 it was your
4 belief that the EIA patent policy did not require the
5 disclosure of patent applications?

6 A. I believe that they do not mention patent
7 applications in their guides.

8 Q. I'm not asking about words now; I'm asking
9 about requirements.

10 At the time that 21-I was published -- you
11 worked on 21-I; right?

12 A. Yes.

13 Q. At the time it was published, was it --

14 JUDGE McGUIRE: Just so I'm clear, give me the
15 time frame that you're referring to.

16 MR. PERRY: It was published in October 1993,
17 Your Honor.

18 JUDGE McGUIRE: Okay.

19 BY MR. PERRY:

20 Q. And I'll put that into the question.

21 When 21-I, manual 21-I that you worked on, was
22 published in October 1993, was it your belief that the
23 EIA patent policy required the disclosure of patent
24 applications that related to the work of the
25 committee?

1 A. I believe that the EIA patent policy only
2 specified the word "patent material."

3 Q. And was it your understanding -- did you have
4 an understanding in October 1993 one way or the other
5 of whether the word "patent" as used in the EIA patent
6 policy and the EIA manuals meant issued patents or
7 issued patents and patent applications and even other
8 stuff?

9 A. Before February of 1991, that was my
10 understanding of what was intended. What changed was
11 the committee began to recognize that the issue of
12 patent material wasn't just an issue of issued patents;
13 it was an issue of material that might become issued
14 patents.

15 Q. Let me try again. I'm talking now about --
16 JUDGE McGUIRE: Yeah, I'm confused now with the
17 testimony. It seems like you're saying two different
18 things. I'm not trying to impugn your testimony, sir.
19 I'm just -- I guess, at what point in time are you
20 saying that it became at least your understanding that
21 the term "patents" would include patent applications?
22 Was that before 1991 or was that after October of 1993
23 or somewhere in between?

24 THE WITNESS: Your Honor, what happened with
25 me is my definition of "patents" changed. Patents in

1 the JEDEC manual as -- I'm sorry -- the patent policy
2 in the JEDEC manuals, EIA manuals and ANSI manuals
3 only specified "patents," which in my mind before
4 1991 meant issued patents. However, beginning in
5 early 1991, it was very clear on the committee that
6 the committee considered the issue of patents to be
7 issued patents as well as material that might become
8 issued patents.

9 JUDGE McGUIRE: Okay. Mr. Perry, proceed.

10 BY MR. PERRY:

11 Q. I want to focus you on October 1993 when 21-I
12 was published, on October 1993.

13 As of October 1993, what was your understanding
14 of what was intended by the word "patent" in the EIA
15 policy manuals?

16 A. Okay. My understanding of the EIA policy is
17 that they never, at least at that point, had changed
18 the word "patent" to include applications.

19 Q. Was it your --

20 JUDGE McGUIRE: Now, wait a minute. I'm real
21 confused because I think what he's asking you -- and I
22 don't mean to ask your question -- is what was your
23 understanding of the term or the word "patent." Was it
24 your understanding that that term would embrace patent
25 applications as well?

1 I don't think he's asked you the exact wording
2 in the policy at the time for EIA, but what was your
3 understanding as to what the term "patent" included or
4 did not include?

5 Is that a fair assessment of what you're
6 asking?

7 MR. PERRY: That's fair, Your Honor.

8 THE WITNESS: At the JEDEC council, which was
9 struggling with the change in wording of the JEDEC
10 policy, we discussed the conflict between the EIA
11 wording of their patent policy and the change that we
12 were making, which was patents and patent applications,
13 and we believed as a group that the concept of patents
14 includes patent applications, that the concept of
15 patents is a concept which says avoid patents or
16 material that could become patents, and if you can't
17 avoid them, then you must deal with the RAND
18 requirements.

19 JUDGE McGUIRE: All right, Mr. Perry.

20 BY MR. PERRY:

21 Q. I understand your point, but I'm asking now
22 about the EIA policy manuals and not about what
23 happened in JEDEC at this point with the JEDEC
24 manuals.

25 In October 1993, when JEDEC manual 21-I was

1 published, did you have an understanding of what the
2 intent was of the word "patent" in the EIA policy
3 manuals and whether that included applications or not?

4 A. My understanding was that EIA intended issued
5 patents; however, my understanding of "patent" was much
6 more broad at that point.

7 Q. Did you ever come to understand that EIA had
8 changed what it intended with respect to the word
9 "patent" so that now it intended the word "patent" to
10 include applications in its manuals, the EIA manuals?

11 A. There's another happening that's going on which
12 would have impacted that decision. Up until, I believe
13 it was, 1996, JEDEC was a subsidiary of EIA, and then I
14 believe in 1997 JEDEC became separated from EIA and it
15 became part of the associations in EIA and was more
16 autonomous.

17 So I don't know what EIA did with regard to
18 their policy, and because JEDEC wasn't a part of EIA
19 anymore in the same way, I'm not sure that it mattered.

20 Q. But up until late 1996, did your understanding
21 of EIA's intent with respect to what was included in
22 the word "patent" in its own patent policy change?

23 A. I don't think that it changed for EIA.

24 Q. Well, let's change the subject just a bit.

25 Let me talk about -- with you about the amount

1 of information that in your understanding needed to be
2 disclosed under the JEDEC patent policy, the amount of
3 information.

4 If what was being disclosed by the member was
5 an issued U.S. patent, was it your understanding that
6 giving the committee the patent number would be enough
7 to satisfy the disclosure obligation?

8 A. What I expected was for the company that was
9 giving the patent number to describe the claims of the
10 patent, probably paraphrased, sometimes handed out as
11 a handout the published patent but more often
12 paraphrased so that the committee understood why the
13 issues of that patent material applied to the
14 discussion in JEDEC.

15 JUDGE McGUIRE: So is that answer to that
16 question a no?

17 See, that's what you've got to keep in mind, if
18 you could, Mr. Kelley. Try to answer his questions as
19 they're asked, and he can expound on them if he wants
20 to follow up.

21 I assume based on that answer that his answer
22 to your question was no.

23 MR. PERRY: I needed to get a no so that I
24 could point him to some deposition testimony, so I'm
25 going to ask it again.

1 JUDGE McGUIRE: Okay. Ask it again.

2 BY MR. PERRY:

3 Q. Was it your understanding in the '93 to '96
4 time period that if what was being disclosed was an
5 issued United States patent, it was enough to satisfy
6 the disclosure obligation to give the committee the
7 patent number and nothing else?

8 A. No.

9 Q. Let's look, please, at the Micron transcript,
10 April 25, 2001, page 58.

11 A. Excuse me. The date of this?

12 Q. April 25, 2001. Page 58.

13 Look at line 8. The question begins at line 8.

14 Oh, I'm sorry. Do you need some assistance in
15 finding the transcript?

16 A. I haven't found April 25.

17 Q. April 25, 2001 in Micron?

18 A. April 26. I have an April 26, not an April 25.

19 Q. 2001?

20 A. Yes.

21 MR. PERRY: May I approach?

22 JUDGE McGUIRE: Yes.

23 BY MR. PERRY:

24 Q. This is April 25.

25 Page 58. I think I said page 58.

1 Starting -- the question starts at line 8.

2 (Pause in the proceedings.)

3 A. Yes. I understand what I said then.

4 Q. Did you testify that you believed the giving of
5 the patent number would be enough and that that would
6 give you the information that you needed to go back and
7 research the details on the patent?

8 A. The patent number would be enough.

9 Q. Now, let's talk about whose knowledge of the
10 patent and patent application was involved here.
11 That's the issue in this question.

12 The disclosure obligation that you understood
13 under the JEDEC patent policy was based on what was
14 known by the representative at the time of the JEDEC
15 meeting; correct?

16 A. The manual uses the words "all those present."

17 Q. That's fair.

18 Was the disclosure obligation as you understood
19 it under the JEDEC patent policy based on what was
20 known to the person present in the room at the time of
21 the JEDEC meeting?

22 A. Yes.

23 Q. And after a company left JEDEC, as you
24 understood, it had no duty to disclose anything to
25 JEDEC; right?

1 A. I agree with that.

2 Q. All right. Let's turn to a slightly different
3 subject, and that would be when a disclosure, the
4 timing of the disclosure, was required as you
5 understood the JEDEC patent policy.

6 And let's start with survey ballots. You're
7 familiar with survey ballots; correct?

8 A. Yes, I am.

9 Q. Within JEDEC. And we've heard testimony about
10 those from others.

11 And as you understood survey ballots, those
12 requested voluntary information from companies but did
13 not propose anything to be standardized; right?

14 A. Yes.

15 Q. And as you understood it, there was no need for
16 the committee to be assured in connection with a survey
17 ballot about patent issues; right?

18 A. Only if it addressed an issue that was an
19 active item on the committee. Yes.

20 Q. And let me talk about a different issue then.
21 I want to talk now about in the process there's going
22 to be a disclosure and the question is when the
23 disclosure has to come.

24 And you know there's stuff called first
25 presentations, right, and second presentations and then

1 there's ballots and votes and it goes up to the council
2 and we've heard that description, but let me be more
3 specific.

4 As you understood it, in, let's say, '92
5 through '96, when a patent or a patent application had
6 to be disclosed to JEDEC, as you understood it, it
7 needed to be disclosed -- I'm sorry. I've lost my
8 thread here. Let me back up. Let me back up and make
9 sure this is clear.

10 I want to talk now about what was it about the
11 patent or patent application that caused the need to
12 disclose, that caused the obligation to disclose it.
13 Do you have that in mind?

14 A. Yes. I understand.

15 Q. Let me ask a question about that.

16 As you understood it, a patent or patent
17 application needed to be disclosed if when a company
18 exercised the design or produced the component that was
19 being standardized you would be required to use the
20 patent; right?

21 A. The policy at JEDEC was that the disclosure
22 should occur as soon as possible in the discussion of
23 the material and certainly by the time it was
24 balloted.

25 Q. Okay. That's actually a separate thing that

1 I'll get to. I'm asking now about what was it about
2 the patent or application that meant it needed to be
3 disclosed under your understanding, so let me ask
4 that.

5 As you understood it, a patent or application
6 needed to be disclosed, was required to be disclosed
7 under the policy, if when you exercised the design or
8 produced the component that was being standardized you
9 would be required to use the patent; right?

10 A. No. Because there were several instances
11 where another company would disclose a second
12 company's patent material and that is not necessarily
13 a situation where they would be installing it in a
14 product.

15 Q. I'm -- I think we're not connecting. Let me
16 try it again. But I appreciate your effort.

17 I'm asking now about what it is about the
18 patent, about the claims of the patent or the subject
19 matter of the patent or application, what it is about
20 the contents of that intellectual property that means
21 that it needs to be disclosed to JEDEC under the patent
22 policy.

23 And my question to you is: As you understood
24 it, a patent or patent application was required to be
25 disclosed if a company that wanted to design the

1 product or produce the component according to the
2 standard was required to use the patent?

3 A. I believe that the responsibility falls on the
4 person who is aware of the patent claim and that it
5 might apply to the discussion of JEDEC, regardless of
6 what they did with the patent claim.

7 Q. Well, I'm not sure we're connecting still.

8 My question is: What is it about the patent
9 that means the committee thinks it ought to know about
10 that patent and therefore they've put this requirement
11 in to make the member tell them about the patent?

12 And let me give you some examples of some
13 descriptions that have been proposed.

14 If what's described in the patent relates to
15 the work that's going on. If it's involved -- if
16 what's in the patent is involved in some way with
17 what's going on.

18 And then there's something I wanted you to
19 answer quite specifically, and the question is: As you
20 understood it, a patent or application was required to
21 be disclosed under the patent policy if a company that
22 wanted to build the product in accordance with the
23 standard had to use the patent?

24 A. I agree with that as long as you include your
25 two conditions prior to that.

1 Q. What two conditions?

2 A. That it might apply and --

3 Q. I wasn't -- those were alternatives. I want to
4 know your understanding of what triggered the
5 obligation to disclose.

6 And what I wanted to see if you agreed with was
7 the disclosure obligation is triggered when in order to
8 build the product in conformance with the standard you
9 had to use the patent and not if you didn't have to use
10 the patent. There was no disclosure obligation if you
11 didn't have to use the patent.

12 Do you agree with that?

13 A. What I'm struggling with is that there were
14 many work items that occurred on the committee that did
15 not become standards and your definition implies that
16 they had become standards and that just wasn't the case
17 often. My definition says that any claim that might
18 apply to the work of the committee it was required to
19 disclose.

20 Q. Well, I'll ask you now to look at the Infineon
21 testimony that you gave on January 26, 2001, page 90.
22 January 26.

23 A. Do you have a page number?

24 Q. Page 90, 9-0.

25 (Pause in the proceedings.)

1 Have you had a chance to read page 90 starting
2 at line 4?

3 A. How far down do you want me to read?

4 Q. To line 16.

5 A. Would you let me do that.

6 Q. Sure.

7 (Pause in the proceedings.)

8 A. Okay.

9 Q. And you were asked in that deposition in the
10 Infineon case, "Under what circumstances would a patent
11 need to be disclosed to JEDEC?" Correct?

12 A. Yes.

13 Q. And you said, "If a member representing a
14 company, which is a roomful of people because they are
15 members representing companies, is aware of a patent
16 that their company holds that reads to or applies to a
17 patent or patent claims or an application of patent or
18 patent claims, then it is the obligation of that member
19 to bring that information to the committee."

20 Do you see that?

21 A. Yes.

22 Q. And then you were asked, "And what do you mean
23 by reads to or applies to?" And you said, "That the
24 patent -- that if you exercise the design or production
25 of the component that was being standardized would

1 require the use of that patent."

2 Do you see that?

3 A. Yes, I do.

4 Q. And did I read that correctly?

5 A. Yes, you did.

6 Q. Now, I wanted to change the subject slightly
7 and talk about the point-in-time issue that you tried
8 to speak to and I want to give you a chance to get back
9 to that.

10 A. Okay.

11 Q. Let's talk about the point in time during that
12 JEDEC process that disclosure was required as you
13 understood the JEDEC patent policy.

14 As you understood it, disclosure was required
15 at the time of balloting if the representative had
16 knowledge of a patent or patent application, but it was
17 encouraged and in your case practiced to disclose as
18 soon as possible; is that true?

19 A. Yes.

20 Q. Now, I want to change the subject and talk very
21 briefly about programmable CAS latency.

22 Mr. Oliver asked you some questions this
23 morning about programmable CAS latency. Do you
24 remember that?

25 A. Yes.

1 Q. And he asked you some questions about
2 programmable burst as well; right?

3 A. Yes.

4 Q. And he asked you about some other options that
5 you said were being considered at the time that
6 programmable latency and burst were included in the
7 SDRAM standard; right?

8 A. Yes.

9 Q. And I'm not going to ask any questions about
10 that stuff because I'm not the right guy to do that.

11 But was it your understanding from being part
12 of that standardization process that after discussing
13 all of the options, the committee pursued what it felt
14 was the best option available to it based on the
15 information it had?

16 A. Yes.

17 Q. And in your experience at JEDEC 42.3 meetings,
18 in circumstances where a JEDEC representative had said,
19 My company has a patent application covering that
20 feature and my company will agree to license on
21 reasonable and nondiscriminatory terms in accordance
22 with the JEDEC patent policy, in your experience, was
23 there any instance in which there was an effort made at
24 that point to try to standardize around that feature to
25 go to an alternative?

1 A. I don't remember an instance of that
2 occurring.

3 Q. And you do remember several instances where as
4 soon as the letter was received agreeing to the
5 reasonable and nondiscriminatory licensing policy that
6 all consideration of other options was terminated?

7 A. Is that a question?

8 Q. Yes.

9 A. Yes.

10 Q. And that was because you thought in those cases
11 we had pursued, we, the JEDEC committee, had pursued
12 the best option and as long as there were no
13 impediments to licensing you would continue to pursue
14 that option?

15 A. As selected by the consensus of the committee,
16 yes.

17 Q. Now, you also testified some this morning about
18 a toggle mode DRAM that IBM had proposed at JEDEC;
19 correct?

20 A. Yes.

21 Q. And we saw your notes from an April 19, '92
22 special task group meeting in Dallas; right?

23 A. Yes.

24 Q. And Mr. Hardell had made the presentation of
25 toggle mode at that meeting; correct?

1 A. Yes.

2 Q. And at that Dallas meeting in April 1992 was a
3 very short time before you attended the meeting at IBM
4 with the Rambus people; right?

5 A. Yes.

6 Q. So we're in that same time period, April 1992;
7 right?

8 A. Yes.

9 Q. And you testified this morning, I think, that
10 after you saw that technology presentation by Rambus,
11 you did not believe in your own mind that any patents
12 Rambus might hold with respect to the technology you
13 had seen might apply to the work that was going on at
14 JEDEC. Do you remember that?

15 A. Yes.

16 Q. And you had seen in the Rambus technology
17 presentation in April 1992 that they were using the
18 dual-edge clocking; right?

19 A. Yes.

20 Q. So it must follow that -- well, let me not ask
21 it that way.

22 Why didn't you think that Rambus' use of
23 dual-edged clocking might relate in somehow -- might
24 relate somehow to the presentation that had been made
25 by Mr. Hardell that included dual-edge clocking?

1 A. For a few reasons.

2 Q. Go ahead.

3 A. The first reason is that Richard Crisp had not
4 mentioned in the April meeting when he saw the
5 discussion on high-speed toggle that Rambus had
6 intellectual property that might apply to that
7 proposal.

8 Secondly, although I had requested the claims
9 of Rambus patents, with the warning that I was going
10 to have to sign a nondisclosure agreement if I was
11 going to receive any confidential Rambus information,
12 I decided not to pursue knowing any Rambus
13 information.

14 And then thirdly, I believe that the issue of
15 Rambus' use of a double-edge clock was not well enough
16 known to me through that presentation I saw in April,
17 on April 23rd of 1992, was enough information to make
18 that decision seeing I had not seen any claims.

19 Q. Didn't you also think that IBM had invented the
20 use of dual-edged clocking in a memory device?

21 A. Yes, I did think that.

22 Q. And you thought that that had happened back in
23 1986; isn't that what you told us?

24 A. Yes.

25 JUDGE McGUIRE: I want it clear, Mr. Perry, you

1 used the word that IBM had invented.

2 MR. PERRY: That was his testimony this
3 morning, Your Honor.

4 JUDGE McGUIRE: Are you saying his implication
5 that he held a patent on that technology or -- I want
6 to be clear for the record what we're talking about
7 when you say "invented" -- or is that just an idea
8 that they had at the time that they were playing
9 with?

10 THE WITNESS: No. We had applied for and
11 obtained an invention patent on that concept and
12 installed it in practice.

13 JUDGE McGUIRE: Okay. Good.

14 BY MR. PERRY:

15 Q. On what concept?

16 A. Of the use of a dual-edge clock.

17 Q. And so when SyncLink in 1995 came to JEDEC and
18 you saw that SyncLink was talking about using a
19 dual-edged clock, you told us this morning that that
20 triggered a disclosure obligation on behalf of JEDEC
21 members to raise their hands and say, My company might
22 have intellectual property with respect to that
23 feature; right? You said that?

24 A. Yes.

25 Q. And IBM didn't raise -- nobody from IBM raised

1 their hands and said that at that SyncLink meeting;
2 right?

3 A. Said what, sir?

4 Q. IBM has a patent that might relate to the use
5 of dual-edged clocking in this memory device.

6 A. I didn't believe we needed to do that for two
7 reasons.

8 Q. Can I first establish that didn't happen? That
9 was the question to you.

10 Did anybody from IBM raise their hand at the
11 meeting where SyncLink was shown in 1995 and say, IBM
12 has intellectual property that might relate to the use
13 of dual-edged clocking in the SyncLink device that's
14 being shown?

15 A. No.

16 Q. Or words to that effect?

17 A. No.

18 Q. And there's nothing on the patent tracking list
19 about a dual-edged clocking; right?

20 A. No.

21 Q. For IBM; right?

22 A. That's correct.

23 Q. All right. So did you think about disclosing
24 the IBM intellectual property claims with respect to
25 dual-edged clocking at the SyncLink meeting?

1 A. No. Because I had disclosed it earlier.

2 Q. Can we first establish that you didn't think
3 about it?

4 Did you think about disclosing it during the
5 meeting?

6 A. No.

7 Q. Okay. It didn't occur to you; right?

8 A. No.

9 Q. Right, it didn't occur to you; right?

10 A. It didn't occur to me.

11 Q. And you now think, it's your current testimony,
12 that there was no need for IBM to disclose its
13 intellectual property claims with respect to the use of
14 dual-edged clocking when the SyncLink presentation was
15 made at the JEDEC meeting in 1995 because you had
16 disclosed in 1988 that IBM had some intellectual
17 property with respect to the toggle mode device; is
18 that your testimony?

19 A. Yes. And I have a reason.

20 Q. And members that had joined JEDEC after 1988 --
21 and there were quite a few of them, weren't there?

22 A. Yes.

23 Q. And they wouldn't have seen your presentation
24 back in 1988; right?

25 A. That's correct.

1 Q. And the toggle mode patents weren't on the
2 patent tracking list; right?

3 A. That's correct.

4 Q. So why do you think that the disclosure in
5 1988 was sufficient to satisfy whatever obligations
6 you've now testified existed in 1995?

7 A. I had disclosed the IBM patent in 1988. It did
8 not appear on the tracking list because we didn't have
9 a tracking list in 1998. In 1990 --

10 JUDGE McGUIRE: In '88 you mean.

11 THE WITNESS: In '88. I'm sorry, sir.

12 JUDGE McGUIRE: That's all right.

13 BY MR. PERRY:

14 Q. That's okay.

15 A. In 1990 we again proposed the high-speed toggle
16 mode and that inspired several toggle mode
17 presentations from several other companies, and in
18 1991 several companies were asked if they had patent --
19 patents that applied to toggle mode and they said no,
20 they did not, and I was not asked if IBM had toggle
21 mode patents and I believed that that happened because
22 the committee knew that IBM had a patent on toggle
23 mode.

24 Q. Now, the other companies that you're referring
25 to that you say were asked if they had patents on

1 toggle mode, they were being asked if they had patents
2 on synchronous DRAM, that's what they were asked;
3 right?

4 A. No. I believe the words were "toggle mode."

5 Q. Well, that will be in the minutes, won't it?

6 A. Yes.

7 Q. Well, your view was that some of the Japanese
8 companies had taken your ideas for toggle mode and
9 started calling it synchronous DRAM; right?

10 A. Actually, yes.

11 Q. And you didn't stand up and say, Hey, you're
12 taking our stuff, did you?

13 A. No.

14 Q. And that was because it was obvious what they
15 were doing?

16 A. No. We were prepared to meet the requirements
17 of the JEDEC committee.

18 Q. And that was what was important, was that you
19 were willing to license on reasonable and
20 nondiscriminatory terms?

21 A. Yes.

22 Q. Well, moving forward into the later 1990s when
23 DDR SDRAM was going through a whole lot of ballots, a
24 lot of different features of DDR SDRAM were going
25 through a fairly intensive period being balloted for

1 standardization at JEDEC, at any point during that
2 process, say, between 1996 and 1999 did you or any
3 other IBM representative in your presence alert JEDEC
4 that you had intellectual property claims, you, IBM,
5 had intellectual property claims with respect to the
6 use of dual-edged clocking?

7 A. I wasn't there for that whole period and I
8 don't -- I don't remember that happening in the period
9 that I was there for.

10 Q. Now, I want to look at some of the documents
11 that you were shown yesterday, but more briefly. And
12 in this next time period I'm going to be talking about
13 IBM's application of the JEDEC patent policy in
14 practice, and you were shown a lot of this stuff
15 yesterday, but I had some different questions I think.

16 If we could look at JX-15.

17 A. Do I have this document?

18 Q. It's the March '93 minutes and you had it
19 yesterday and I think some nice person is about to hand
20 it to you, if you could. Or hand it to me.

21 (Pause in the proceedings.)

22 These appear to you to be the March 1993
23 JC-42.3 meeting minutes; right?

24 A. Yes.

25 Q. You were shown these yesterday.

1 And why don't you look on page 6, which is what
2 you were shown yesterday. And at the top of the -- you
3 can confirm this from looking on the prior page, but at
4 the top of the page, that's a discussion of synchronous
5 DRAM. If you'll look on the prior page, the heading is
6 Synchronous DRAM Ballots.

7 A. Yes.

8 Q. And this paragraph up at the top -- let's pull
9 that up -- that paragraph says: "The committee was
10 aware of the Hitachi patent. It was noted that
11 Motorola has already noted they have a patent. IBM
12 noted that their view has been to ignore patent
13 disclosure rule because their attorneys have advised
14 them that if they do, then a listing may be construed
15 as complete"; correct?

16 A. Yes.

17 Q. And you talked about what your understanding
18 was of that sentence yesterday.

19 Let me ask this question. Under the JEDEC
20 patent policy, was there ever a time when members were
21 required to go search back at their home office
22 through patents? Was that part of the policy
23 requirement?

24 A. I did not believe that it was, no.

25 Q. And why was it do you think that IBM was asked

1 several times, in your testimony, to go back and
2 search and come up with a list of all their patents
3 and not just the ones that were in your personal
4 knowledge or personal knowledge of the other IBM
5 representatives?

6 A. I believe that the audience understood that
7 IBM was the largest patent-generating company in the
8 room, and therefore they continually asked me for
9 lists.

10 Q. And you continually refused to provide lists;
11 right?

12 A. I continually provided them with individual
13 patents that I was aware of, but I only offered a list
14 when I had the 5,000 patents that applied to a topic.

15 Q. Now, you just said that IBM was the largest
16 what?

17 A. Patent-producing.

18 Q. Patent-producing?

19 A. Yes.

20 Q. And that means that -- you've seen rankings
21 every year of what company gets the most issued patents
22 that year from the U.S. Patent Office; right?

23 A. Yes.

24 Q. And IBM is usually up there in the top one or
25 two or three; right?

1 A. Yes.

2 Q. And IBM you think probably holds more issued
3 U.S. patents than any other U.S. company; right?

4 A. That, I don't know. I just know that in our
5 business we are the -- we're routinely at the top of
6 the list, yes.

7 Q. What do you mean by "our business"?

8 A. Well, I don't know about the drug business and
9 the automobile business and --

10 Q. Right. But what do you mean by your business?
11 What business is that?

12 A. The work of the committee, the integrated
13 circuit memory business.

14 Q. And --

15 A. And the rest of IBM's involvement.

16 Q. And if -- what I'd like to show you are a
17 couple of patent tracking lists to see how many of that
18 enormous number of patents that IBM owns showed up on
19 the patent tracking lists.

20 If you'll look at -- and we can just go to the
21 screen for this -- JX-18.

22 A. Do I have this document?

23 Q. No. If you could just look on the screen?

24 A. Okay.

25 Q. I just want to show you one page within the

1 document.

2 A. Yes.

3 Q. And that's the December 8, 1993 JC-42 minutes.

4 Do you see that?

5 A. Yes.

6 Q. And let's pull up JX-18-17. Page 17.

7 And do you see that looks like a patent
8 tracking list?

9 A. Yes, I do.

10 Q. I can represent that it's attached to the
11 minutes.

12 And do you see that as of this patent tracking
13 list that's dated September 8, 1993, there's one IBM
14 patent listed that has a patent number; right? Do you
15 see that?

16 A. Yes.

17 Q. And there's one IBM something that's listed as
18 pending; right?

19 A. Yes.

20 Q. And then there's IBM with a question mark;
21 right, and it says "BGA"?

22 A. Yes.

23 Q. And it doesn't say pending and it doesn't have
24 a number next to it?

25 A. Yes.

1 Q. So let's call that three.

2 And now if we could look at the December 1995
3 minutes, so two years later, we'll pull up JX-28.

4 Do you see that this is a December 1995 JC-42.3
5 meeting?

6 A. Yes.

7 Q. And if you'll look at JX-28-15, page 15 of the
8 document, you'll see this patent tracking list two
9 years later.

10 Do you see that the IBM information is
11 identical two years later, we've got the one issued IBM
12 patent listed, the one that says "pending" and the
13 "IBM?" Do you see that?

14 A. Is this the complete list for this tracking?

15 Q. Well, it's alphabetical. That's the first page
16 and --

17 A. So there are more on the tracking list?

18 Q. Yeah. We can look at the other pages, but it's
19 alphabetical.

20 A. Oh.

21 Q. Let's look at the next, page 16 and page 17 and
22 page 18. Let me show you a hard copy, sir, so you can
23 look at it.

24 May I?

25 JUDGE McGUIRE: Go ahead.

1 BY MR. PERRY:

2 Q. It's at the tab.

3 A. Okay.

4 (Pause in the proceedings.)

5 Okay.

6 Q. Is it correct that the patent tracking list
7 that was attached to the December 1995 minutes has the
8 same three IBM entries as were in the December 1993
9 minutes?

10 A. Yes.

11 Q. And is it your testimony -- well, let me get
12 there a different way.

13 Going back to that December 1993 meeting
14 minutes, which was JX-18 -- let's look at that.

15 Do you see that's on the screen? That's the
16 December 1993 minutes? Do you see that?

17 A. I can't read it yet.

18 Q. Do you see that?

19 A. Yes.

20 Q. And let's look at page 8, which is what you
21 looked at yesterday, and the third paragraph from the
22 bottom, and that says: "As a side issue, IBM noted
23 that in the future they will not come to the committee
24 with a list of applicable patents on standards
25 proposals. It is up to the user of the standard to

1 discover which patents apply."

2 Do you see that?

3 A. Yes.

4 Q. And you told us that related to lists of
5 patents; right?

6 A. Yes.

7 Q. Is it your testimony that in the two years
8 between the December 1993 and the December 1995 JEDEC
9 meetings that there were no other IBM-owned patents or
10 patent applications that related to the ongoing work of
11 JEDEC that were known to you or any of the many other
12 IBM participants who came to those meetings in that
13 time period?

14 A. There were others that were in the minutes that
15 were not on this list.

16 Q. So you think --

17 JUDGE McGUIRE: There were others in terms of
18 what, patents or representatives?

19 THE WITNESS: No. In terms of patents.

20 JUDGE McGUIRE: Patents. Okay.

21 BY MR. PERRY:

22 Q. So IBM disclosed in those two years more
23 patents or patent applications than ended up on the
24 patent tracking list?

25 A. Yes.

1 Q. Didn't you testify yesterday that you thought
2 the patent tracking list was accurate?

3 A. No.

4 Q. Okay. You now think it was incomplete?

5 A. I know it was incomplete.

6 Q. And you knew that at the time because you saw
7 that the IBM patents weren't showing up on the patent
8 tracking list?

9 A. Yes.

10 Q. And you were getting that memo from
11 Mr. Townsend every few months that said, Please let me
12 know if there's anything to add to this list; right?

13 A. Yes.

14 Q. And were you writing him back or calling him up
15 and saying there's more IBM patents that ought to be on
16 the list?

17 A. Sometimes I did, yes.

18 Q. And did you ever fill in the number for that
19 one that didn't have a number?

20 A. That was 5,000 numbers. I didn't think he
21 wanted to burden the list with those numbers.

22 Q. I wasn't talking about the BGA; I was talking
23 about the other one that was on the list that didn't
24 have a number, but we can pass that.

25 How many IBM patents -- let's talk about issued

1 patents.

2 In the two years between 1993 and 1995, how
3 many issued IBM-owned patents were disclosed to JEDEC
4 committees? JEDEC 42.

5 A. If you include the presentation that I made
6 before the committee on the 5,000 list, then it's
7 going to be a large number, but the committee agreed
8 that that didn't apply to the work, so if you don't
9 include that, then I believe the number is something
10 like five.

11 Q. Now, did you take any steps at any time to
12 correct the minutes and their reference to IBM not
13 coming to the committee with a list of applicable
14 patents?

15 A. No.

16 Q. Did you correct at any time the reference that
17 appears several times that it's up to the user to
18 determine what patents apply?

19 A. I believe it appears twice and I did not.

20 Q. Did you think about correcting that?

21 A. No. Because I had told the committee that I
22 promised them that I would disclose when I was aware.

23 Q. You wanted that to appear in the minutes to
24 satisfy IBM's lawyers; right?

25 A. Well, what is "that"?

1 Q. The reference to it being up to the members --
2 to it being up to the users to decide whether patents
3 applied.

4 A. I suppose you could say that.

5 Q. You had said in some of your e-mails that
6 intellectual property lawyers at IBM had told me to do
7 XYZ; is that right?

8 A. Yes.

9 Q. And you took the minutes back and showed it to
10 the lawyers; right?

11 MR. WEBER: Counsel --

12 JUDGE McGUIRE: Okay. Just a second. Again,
13 sir, I want to be sure I get again your name and who
14 you're with for the record so that I have this on my
15 transcript rather than a voice emanating from the
16 wilderness, so go ahead and identify yourself.

17 MR. WEBER: My name is Howard Weber from
18 Hogan & Hartson representing IBM.

19 And I'll object to the extent to which the
20 questions solicit conversation with counsel or legal
21 advice.

22 JUDGE McGUIRE: Okay. So noted.

23 MR. WEBER: To the extent -- obviously I know
24 what counsel is looking at and that document is -- that
25 document is a document that we produced, but beyond

1 that, I would ask that counsel refrain from inquiring
2 as to conversation with counsel.

3 JUDGE McGUIRE: Mr. Perry?

4 MR. PERRY: The document that he's referring to
5 is RX-420, which was used with the witness yesterday
6 without objection, and it says: "IBM intellectual
7 property law attorneys have informed me that we will
8 not use JEDEC as a forum for discussing this subject.
9 It is the responsibility of the producer."

10 JUDGE McGUIRE: I will allow him to go into it,
11 sir, to the extent that it came out on the direct
12 examination yesterday.

13 MR. WEBER: Well, very well, Your Honor, but I
14 would just point out that the reason I didn't object
15 was because I believe that this document was part of
16 the JEDEC records as it were and that -- but beyond
17 that, I would object to further inquiry with regard to
18 any conversation with counsel.

19 MR. PERRY: I actually wasn't going to ask
20 about conversations with counsel.

21 JUDGE McGUIRE: Okay. Then don't ask about
22 conversation with counsel and I'll take his concern.

23 MR. WEBER: Thank you very much, Your Honor.

24 MR. PERRY: I think I could, but I'm not going
25 to.

1 JUDGE McGUIRE: Okay. Good. And that calls
2 for speculation, so...

3 MR. PERRY: Can I say "overruled" here?

4 BY MR. PERRY:

5 Q. You took the minutes and the references in the
6 minutes to your statements about -- strike that.

7 You took the minutes that describe the
8 statements you had made with respect to the disclosures
9 you were not going to make and you took those minutes
10 and sent them to the lawyers who had asked you to send
11 this stuff; right?

12 A. I took the requirement that the committee had
13 asked for information to the lawyers, and they
14 generated this statement for me, yes.

15 Q. And then you showed the lawyers that the
16 statement was in the minutes; right?

17 A. I don't remember doing that, no.

18 Q. Now, talking again about the 1995 SyncLink
19 meeting -- I don't mean to say SyncLink meeting.

20 Talking again about the 1995 JEDEC meeting
21 where there was a SyncLink presentation, and we talked
22 about that a little bit, and when Mr. Oliver was
23 asking you just before the break about whether or not
24 the disclosure obligation under the JEDEC patent
25 policy was triggered if a JEDEC member had

1 intellectual property claims with respect to
2 dual-edged clocking and you said, "I specifically
3 remember 1995" -- I wrote that down -- were you
4 referring to the SyncLink presentation when you were
5 referring to dual-edged clocking and you said, "I
6 specifically remember 1995"?

7 A. That's the only topic that comes to my mind
8 now, yes.

9 Q. And we also saw this morning that Rambus had
10 given a "no comment" response when asked whether it had
11 intellectual property with respect to SyncLink;
12 correct?

13 A. This was September 1995?

14 Q. Yes.

15 A. Yes.

16 Q. And you talked about the fact that you had been
17 to a SyncLink meeting; right? One?

18 A. Earlier, yes.

19 Q. And by that I mean a SyncLink consortium
20 meeting.

21 A. Yes. I'm sorry. I misspoke. It was later
22 than this period. Yes.

23 Q. Later. Was it in 1996 or late '95?

24 A. It was '96.

25 Q. Do you remember which month?

1 A. I can't be sure. If I were to guess, it would
2 be February.

3 Q. And you said you were in the neighborhood?

4 A. Yes.

5 Q. What neighborhood?

6 A. It was Santa Clara University.

7 Q. Now, let's back up a little bit, and I think
8 you may have talked about what SyncLink was, but help
9 me again.

10 What was the SyncLink consortium as you
11 understood it in late '95 or early '96?

12 A. I'm not a good one to ask about the SyncLink
13 consortium because, as I've already stated, I avoided
14 Rambus information. I likewise avoided SyncLink
15 information.

16 Q. Let me see if I can get general.

17 You generally understood that this consortium
18 was trying to develop a future DRAM device; right?

19 A. Yes.

20 Q. And they had come to the JEDEC and were trying
21 to standardize the pinout for the SyncLink device;
22 right?

23 A. Three companies, three JEDEC companies, had
24 come to JEDEC and presented SyncLink presentations,
25 yes.

1 Q. Let me show you a couple of memos that relate
2 to SyncLink, the first one you wrote, and it's dated
3 February 1, 1996, RX-674.

4 May I?

5 JUDGE McGUIRE: Go ahead.

6 BY MR. PERRY:

7 Q. Is this a memo you wrote in February 1996?

8 A. Yes.

9 Q. And did you intend to describe a JEDEC meeting
10 that had occurred in January of 1996?

11 A. It was a special meeting. Yes.

12 Q. Right. And I want to focus your attention down
13 at the bottom of the page under General.

14 Let's pull all that up.

15 And item 3 says: "I have gotten latest
16 SCI/RamLink/SyncLink meeting report. IBMers at
17 Rochester, Austin and Poughkeepsie show interest in
18 joining this group. Bill Hovis (Roch) will attend next
19 meeting."

20 Do you see that?

21 A. Yes.

22 Q. Now, having seen that memo that you wrote in
23 February '96, do you think that you went to that one
24 SyncLink consortium meeting before or after February 1,
25 1996?

1 A. I believe that this trip combined my attending
2 the JEDEC special meeting and also attending the
3 SyncLink meeting because it was nearby.

4 Q. Okay. Well, let me show you some SyncLink
5 consortium meeting minutes that were produced to us by
6 IBM. This is RX-592.

7 May I?

8 JUDGE McGUIRE: All right.

9 BY MR. PERRY:

10 Q. Now, these minutes are dated August 22, 1995.
11 Do you see that?

12 A. Yes.

13 Q. And I know you're not listed as being there,
14 but since these minutes were produced from IBM's files,
15 I wanted to see if you remember seeing them.

16 Let me point you in particular to page 2.

17 And let's go to the paragraph that starts
18 "Richard Crisp" and pull that up.

19 And these August 1995 SyncLink minutes say:
20 "Richard Crisp of Rambus informed us that in their
21 opinion both RamLink and SyncLink may violate Rambus
22 patents that date back as far as 1989. Others
23 commented that the RamLink work was public early
24 enough to avoid problems and thus might invalidate
25 such patents to the same extent that they appear to

1 be violated. However, the resolution of these
2 questions is not a feasible task for this committee,
3 so it must continue with the technical work at hand."

4 Do you see that?

5 A. Yes, I do.

6 Q. Now, were these meeting minutes, these
7 August 25 meeting minutes, available to you by the
8 time you wrote this February 19, 1996 memo where you
9 talked about people showing interest in joining
10 SyncLink?

11 A. I don't remember seeing this August 26,
12 1995 memo, but I do remember someone discussing with me
13 Richard Crisp's comment.

14 Q. The comment that's described in the meeting
15 minutes that I just read to you?

16 A. Yes.

17 Q. And who was it who discussed those comments
18 with you?

19 A. I don't remember specifically, but I believe it
20 was probably Art Kilmer.

21 Q. And when was it that you and Mr. Kilmer talked
22 about Mr. Crisp's comments?

23 A. I believe it was in the fall of 1995 because it
24 upset me greatly.

25 Q. Was it before or after you saw Mr. Crisp give

1 the "no comment" response about SyncLink at the JEDEC
2 meeting?

3 A. It was after Richard's no comment, which is why
4 it upset me.

5 Q. Were you aware that there were numerous JEDEC
6 representatives in the room when Mr. Crisp made that
7 comment at the SyncLink meeting as depicted on the
8 August 22, 1995 SyncLink minutes?

9 A. I was aware that there were several JEDEC
10 companies that were a part of the SyncLink consortium.
11 I wasn't sure who their representatives were at this
12 point.

13 Q. Well, look back at the August 1995 minutes.

14 Do you see under Attendees it says "consortium
15 founding members"? Do you see that?

16 A. Yes, I do.

17 Q. Mr. Tabrizi from Hyundai, you knew him
18 certainly to be a JEDEC member at the time?

19 A. I did.

20 Q. And he had in fact presented some SyncLink
21 presentation at that June 1995 meeting; right?

22 A. That's correct.

23 Q. And Mr. Chen was Mitsubishi's SyncLink -- JEDEC
24 representative at the time; right?

25 A. Yes.

1 Q. Did either Mr. Tabrizi or Mr. Chen ever tell
2 you that Mr. Crisp had made these remarks about
3 SyncLink?

4 A. I don't remember this coming from them. I
5 thought I'd heard it internal to IBM.

6 Q. Well, let me show you just one more set of
7 SyncLink minutes, and what I'm trying to do is, you say
8 in this February 1, 1996 memo that you have gotten the
9 latest SyncLink meeting report. Let me show you one
10 that's dated a couple of weeks before your February 1
11 memo and see if you got that, RX-663.

12 May I?

13 JUDGE McGUIRE: Go ahead.

14 BY MR. PERRY:

15 Q. Are these a set of SyncLink consortium minutes
16 that you received at IBM?

17 A. That's what the paper says, yes.

18 Q. I'm sorry?

19 A. I didn't see this, so I don't know. That's
20 what the paper says.

21 Q. What paper says that?

22 A. The one I'm holding in my hand.

23 Q. My question was whether you remember receiving
24 this at IBM.

25 A. I don't remember seeing this document, no.

1 Q. And if you'll look on page 2, let me just make
2 sure about this part. Under the list of names, do you
3 see where it says "Rambus"?

4 Under the list of names? Under?

5 Do you see where it says: "Rambus has
6 16 patents already, with more pending. Rambus says
7 their patents may cover our SyncLink approach even
8 though our method came out of early RamLink work."

9 Do you remember seeing that language at IBM in
10 the early '96 time period?

11 A. I don't remember seeing that language, no.

12 Q. And did any of the JEDEC representatives for
13 other companies tell you about that statement?

14 A. The reason I don't think so is I don't remember
15 knowing that there were 16 patents involved.

16 MR. PERRY: Your Honor, could I take just a
17 short break to consult with my colleague about timing?

18 JUDGE McGUIRE: Go ahead.

19 MR. PERRY: Or even to consult with this
20 gentleman (indicating).

21 (Pause in the proceedings.)

22 Your Honor, it's still my goal to finish
23 tonight. If I could have five minutes to get organized
24 and --

25 JUDGE McGUIRE: All right. Let's take a break

1 for five minutes.

2 MR. PERRY: Thank you.

3 (Recess)

4 JUDGE McGUIRE: Mr. Perry, you may proceed with
5 your examination.

6 MR. PERRY: Thank you, Your Honor. I would
7 estimate 10 to 15 minutes for me to finish up here.
8 And I do appreciate the break.

9 BY MR. PERRY:

10 Q. Mr. Kelley, are you good to go?

11 A. Yes. My voice is getting weaker, so I'll have
12 to get closer to the mike.

13 Q. I have to go back and talk about programmable
14 latency for just a moment. But it will just take a
15 moment.

16 In 1991, Howard Kalter was your boss -- your
17 immediate supervisor at IBM; is that right?

18 A. Yes.

19 Q. What was his position?

20 A. He was an IBM fellow. He was first-level
21 manager, my manager.

22 Q. And was he involved in DRAM development?

23 A. Yes. He was a design manager of our group.

24 Q. I want to show you and pull up on the screen --
25 and I apologize. I only have one copy -- RX-199, which

1 is a memo produced to us by Toshiba dated December 10,
2 1991, RX-199.

3 May I?

4 JUDGE McGUIRE: Go ahead.

5 BY MR. PERRY:

6 Q. Now, it's four or five pages long. You're free
7 to read the whole thing. I only have one question
8 about a particular comment that refers to Mr. Kalter,
9 so what I'd like to do is just point you to that
10 comment.

11 A. Yes.

12 Q. This appears to be a memo from Jim Townsend.
13 It says "Subject: JEDEC DRAM meeting minutes
14 December '91," and if you'll look down to item 5 all
15 the way at the bottom, and pull up "SDRAM ad hoc
16 meeting."

17 Do you see that?

18 A. Yes.

19 Q. And you remember there was a meeting in
20 Portland in the fall or late fall of 1991 where there
21 was a discussion about SDRAM development; right?

22 A. Yes.

23 Q. Was that referred to as a Sussman special?
24 Have you ever heard that?

25 A. The Portland meeting?

1 Q. Yeah.

2 A. If this was a JEDEC meeting, it wasn't referred
3 to as a Sussman meeting, and if it was a Sussman
4 meeting, then it wasn't a JEDEC meeting.

5 Q. Have you ever heard the phrase "Sussman
6 special"?

7 A. Howard is very special.

8 Q. We've seen him actually.

9 All right. If we can go to the next page in
10 this memo, and pull up the rest of that paragraph, and
11 here's the reference to Howard Kalter.

12 It says, "Kalter of IBM said programmable
13 latency was the cleverest item Toshiba ever created."

14 Do you see that?

15 A. I do.

16 Q. Did Howard Kalter in your presence ever say
17 anything about Toshiba coming up with the idea of
18 programmable latency on a DRAM?

19 A. No.

20 Q. Did you ever hear anybody say that Toshiba had
21 come up with a very clever idea and that's putting
22 programmable latency on a DRAM?

23 A. I don't remember that ever happening.

24 Q. Okay. Well, let's jump forward then in time
25 and no more questions about anything with the word

1 "programmable" in it. And I want to talk about a time
2 period now after Rambus has left JEDEC. And I know I
3 asked you at your deposition about a memo you had
4 written in March of '98 that has a reference to Rambus
5 in it. It's RX-1133.

6 May I?

7 JUDGE McGUIRE: Yes.

8 BY MR. PERRY:

9 Q. And let's pull up the top and we can just look
10 at the heading.

11 This is a memo you wrote in March of '98 to
12 another IBM person named Jim Rogers; right?

13 A. Yes.

14 Q. And it's about a JEDEC strategic task group
15 that was being formed; right?

16 A. Yes.

17 Q. And you were giving Mr. Rogers some advice
18 because he was going to be involved in leading this
19 task group?

20 A. Yes. He was the vice chairman of this task
21 group.

22 Q. And down at the bottom -- let's pull up the
23 bottom two paragraphs, and those say: "I wouldn't try
24 to limit participation in this first meeting, neither
25 by IBM or by others."

1 And then in the next paragraph, in the very
2 last paragraph, it says: "Inviting Rambus is
3 dangerous. They are not a member company. They will
4 take the group's ideas and use them for their own
5 future ideas, as will all participating companies; but
6 they will try to charge everyone for future use of
7 their own ideas."

8 Do you see that?

9 A. Yes.

10 Q. Now, I'll talk about the Rambus part in a
11 minute, but why did you say that all participating
12 companies were going to take the group's ideas and use
13 them for their own future ideas?

14 A. I don't remember why I said that part of it.

15 Q. Okay. Well, why did you say Rambus was going
16 to take the group's ideas, use them for their own
17 future ideas and try to charge everyone to use those
18 ideas?

19 A. I believe it was the reaction to my comment
20 earlier about being very upset at what had transpired
21 about the SyncLink proposal.

22 Q. What was it about the SyncLink proposal that
23 caused you to believe that Rambus was going to take
24 other people's ideas and charge them royalties for
25 using those ideas?

1 A. I experienced Richard Crisp being asked
2 directly at an earlier meeting than the September '95
3 meeting if he was aware that Rambus owned intellectual
4 property on the ideas that or the material that JEDEC
5 had seen on SyncLink at the September -- or at the
6 earlier meeting, and then at the September '95 meeting
7 he came and basically said, No comment, and then I
8 learned that right after this he attended a SyncLink
9 meeting and in fact told the SyncLink membership that
10 they in fact had intellectual property that they
11 thought applied to the presentations, and to me that
12 was -- that was not the kind of treatment, fair
13 treatment, that I expected under the requirements of
14 good faith and open standards.

15 Q. Why did you think that Rambus was going to
16 steal somebody else's ideas, though?

17 A. I believe that's probably a very poor wording
18 of mine. It was just an upset reaction at what I
19 believe Richard had done, which I believe Richard had
20 lied to us.

21 Now, I understand that "no comment" is not a
22 lie, but he certainly must have been aware of
23 intellectual property on the topics of the committee
24 and then made others aware of that right after.

25 Q. You wanted Richard Crisp to give you honest

1 answers to questions; right?

2 A. Yes.

3 Q. And if Mr. Crisp had done a search and had
4 reviewed Rambus' pending applications and had found
5 nothing that if issued as a patent SyncLink would have
6 infringed, would you want him to come to JEDEC and
7 say, SyncLink infringes our patents, if that wasn't
8 true?

9 MR. OLIVER: Objection, Your Honor. Calls for
10 speculation.

11 JUDGE McGUIRE: Sustained.

12 BY MR. PERRY:

13 Q. I want to know about your expectations of
14 Mr. Crisp's conduct because you just said you thought
15 he had lied to you.

16 If in fact it was his belief based upon a
17 review of Rambus pending applications that nothing in
18 those applications would be infringed by SyncLink, did
19 he lie to you?

20 A. If he told the JEDEC committee in September of
21 1995 that he had no comment on any intellectual
22 property that Rambus held pertaining to the SyncLink
23 proposals that had been disclosed at the prior meeting
24 and then later told members of SyncLink that that in
25 fact was not true, that he was aware of intellectual

1 property that applied to SyncLink proposals, then I
2 believe, yes, that he lied to the JEDEC committee by
3 saying, No comment.

4 Q. You had known Mr. Crisp for years at that
5 point. Did you call him up and ask him what he meant,
6 which was right?

7 A. I said I had very little opportunity to do that
8 because he only attended one more meeting and I did not
9 believe that it was an issue before the committee until
10 Rambus disclosed.

11 JUDGE McGUIRE: When was that?

12 THE WITNESS: The letter from Richard Crisp was
13 September of '95. His last meeting was December
14 of '95.

15 BY MR. PERRY:

16 Q. Now, Rambus' phone number was available at the
17 JEDEC office; right? You knew how to reach Mr. Crisp,
18 didn't you?

19 A. Yes. And I believe he knew how to reach me.

20 Q. If you thought he had lied to you about JEDEC
21 business and you were the chairman of the committee,
22 you knew how to reach him, didn't you?

23 A. Richard had been put on the spot at the
24 September '95 meeting and I believe that that was
25 adequate pressure, shall we say, on Richard to

1 disclose.

2 Q. Let me ask you this again.

3 If he had done a review of Rambus' pending
4 patent applications and had determined in his own mind
5 that nothing in those applications if those
6 applications issued as a patent would mean that
7 SyncLink infringed, did he lie to you?

8 A. Technically he did not lie to me, but I believe
9 he was not dealing in good faith with me.

10 Q. Well, let me change the subject slightly.
11 Let's talk about the Micron representatives.

12 You're quite familiar with Terry Lee,
13 Terry Walther, Kevin Ryan as some of Micron's JEDEC
14 representatives over the years.

15 A. I knew Terry Walther very well, Terry Lee less
16 well, and the third person you mentioned I don't
17 remember much about at all.

18 Q. Terry Walther was at JEDEC meetings, JEDEC
19 council meetings with you; is that correct?

20 A. Yes.

21 Q. And that was in the '96 and '97 time period; is
22 that correct?

23 A. I believe that that period was included in his
24 attendance, yes.

25 Q. Let me show you RX-920, which is dated

1 April 1997. It was produced to us by Micron.

2 May I?

3 JUDGE McGUIRE: Go ahead.

4 BY MR. PERRY:

5 Q. Now, this is a few pages of e-mails. What I
6 really want to know is whether or not you learned any
7 of the information that I'm going to point you to from
8 any of the Micron representatives at JEDEC meetings, so
9 let's look, if we could, on the very first page of the
10 document to the second e-mail and pull up that whole
11 e-mail.

12 Do you see that this appears to be e-mail from
13 someone named Keith Weinstock to six or seven other
14 people?

15 A. Yes.

16 Q. And it appears to be to Terry Lee, Kevin Ryan
17 and Terry Walther, among others. Do you see that?

18 A. Yes.

19 Q. And it says: "Terry, Yes, Rambus feels DDR for
20 any memory is under their patent coverage. James said
21 that Rambus has more IP than Intel has seen. He
22 further stated that the determining factor would be
23 whether the courts take a broad or a narrow view of the
24 patents."

25 Do you see that?

1 A. Yes.

2 Q. Now, I can show you the board of directors
3 meetings and the 42.3 minutes that follow that
4 April 1997 e-mail to show that you were in the room
5 with Terry Walther and Kevin Ryan and Terry Lee, but I
6 just want to cut through it, because those are all in
7 evidence, and ask you, did Terry Walther ever tell you
8 that he had learned that Rambus felt that DDR for any
9 memory was under their patent coverage?

10 A. I don't remember that.

11 Q. Did Terry Lee or Kevin Ryan ever tell you that
12 they had learned that Rambus felt that DDR for any
13 memory was under their patent coverage?

14 A. I don't remember that either.

15 Q. And if in April 1997 Terry Walther had
16 disclosed to you at a JEDEC board of directors or JEDEC
17 council meeting that he had learned that Rambus felt
18 DDR for any memory device was under their patent
19 coverage, can you tell us what steps you,
20 Gordon Kelley, would have of taken?

21 MR. OLIVER: Objection, Your Honor. It calls
22 for speculation.

23 MR. PERRY: Your Honor, my objection on the
24 but-for world was overruled.

25 JUDGE McGUIRE: Overruled. I will hear the

1 question.

2 THE WITNESS: I believe that the people that
3 you have talked about were all present in the JC-42
4 meeting. If I learned this at a JEDEC council meeting,
5 then I don't remember it. If these people were aware
6 of it, they also were at the JC-42 meeting. As
7 chairman, I was up front and often there were times
8 when I was so busy doing other things that I didn't get
9 involved in some of the details of the meeting.

10 BY MR. PERRY:

11 Q. As you understood the JEDEC patent policy at
12 the time in April 1997, were any of those gentlemen
13 that I just listed obligated to tell JC-42 that they
14 had learned Rambus felt DDR for any memory device fell
15 under Rambus' patent coverage?

16 A. I believe that they were.

17 MR. OLIVER: Objection, Your Honor.
18 Hypothetical question.

19 MR. PERRY: I asked for his understanding at
20 the time.

21 MR. OLIVER: Objection, Your Honor. It's an
22 incomplete factual record here, so the witness has been
23 handed a document he has not seen before, he has no
24 idea of what factual background he's being asked to
25 speculate about.

1 MR. PERRY: That's for redirect.

2 JUDGE McGUIRE: I'll entertain the question.

3 MR. PERRY: I think we had an answer.

4 Would you read the answer, ma'am.

5 (The record was read as follows:)

6 "ANSWER: I believe that they were."

7 BY MR. PERRY:

8 Q. And if, based on your experience of going to
9 JC-42 meetings over these many years, if Micron had
10 informed JC-42 that they had learned in April 1997
11 that Rambus felt DDR for any memory was under their
12 patent coverage, is it your experience that what JC-42
13 would have done is ask Rambus for an assurance of
14 reasonable and nondiscriminatory licensing at that
15 point?

16 MR. OLIVER: Objection, Your Honor. Once
17 again, this witness is being asked a hypothetical
18 question with no factual basis in terms of whether it's
19 solid, concrete knowledge as to a Rambus patent or
20 rumor heard in the marketplace.

21 MR. PERRY: This is directly responsive to
22 questions he was allowed to ask of this witness over my
23 objection.

24 MR. OLIVER: Your Honor, it's a completely
25 different --

1 JUDGE MCGUIRE: You're overruled again. I'll
2 let you take it up on redirect.

3 But there's only so much of this that I'm going
4 to receive, Mr. Perry.

5 MR. PERRY: Yes. Thank you.

6 BY MR. PERRY:

7 Q. Do you need the question read back?

8 A. Yes, please.

9 MR. PERRY: Would you, ma'am.

10 (The record was read as follows:)

11 "QUESTION: And if, based on your experience of
12 going to JC-42 meetings over these many years, if
13 Micron had informed JC-42 that they had learned in
14 April 1997 that Rambus felt DDR for any memory was
15 under their patent coverage, is it your experience that
16 what JC-42 would have done is ask Rambus for an
17 assurance of reasonable and nondiscriminatory licensing
18 at that point?"

19 THE WITNESS: My answer is that the first
20 request from JEDEC would have been to supply JEDEC with
21 a disclosure. And then with the disclosure, JEDEC --
22 the committee would have requested a RAND statement as
23 you suggest, yes.

24 MR. PERRY: Thank you.

25 I have nothing further, Your Honor.

1 JUDGE McGUIRE: I thank you, Mr. Perry.

2 Okay. Mr. Oliver, do you want to proceed?

3 MR. OLIVER: Yes. I just have a few questions,
4 Your Honor.

5 JUDGE McGUIRE: Go ahead.

6 REDIRECT EXAMINATION

7 BY MR. OLIVER:

8 Q. Good afternoon, Mr. Kelley.

9 A. Good afternoon.

10 Q. First, I just wanted to clarify one issue of
11 timing if I could.

12 Do you recall that during this afternoon you
13 were being asked some questions by Mr. Perry with
14 respect to an event within the JC-42 committee when a
15 hand vote was taken?

16 A. Yes.

17 Q. Do you recall those questions?

18 A. Yes.

19 MR. OLIVER: Your Honor, may I approach?

20 JUDGE McGUIRE: Yes.

21 BY MR. OLIVER:

22 Q. Mr. Kelley, I've handed you a document that's
23 been marked as JX-5 for identification.

24 Do you recognize this document?

25 A. Yes, I do.

1 Q. And what is this document?

2 A. This is the minutes of JC-42.3 committee in May
3 of 1991.

4 Q. And were you present at this meeting?

5 A. Yes.

6 Q. If I could ask you to turn, please, to page 3.
7 And if I could -- if I could direct your attention to
8 the bottom paragraph, number 8 with the caption
9 Intellectual Property.

10 Do you see that?

11 A. Yes, I do.

12 Q. I'll -- the document is a bit difficult to
13 read. I'll try to read it as best I can.

14 It reads: "Toshiba noted that some of the
15 procedure documents have been issued a long time ago,
16 but because of high committee turnover, many reps don't
17 know what the policies are. Toshiba recommended that
18 at each meeting a showing be made to explain what the
19 intellectual property policies are. Toshiba would also
20 like to have a note" -- I believe that's "on each
21 ballot before it goes to council from the company
22 lawyer. It was a council issue, but Toshiba wanted the
23 committee to deal with it".

24 Do you see that?

25 A. Yes, I do.

1 Q. And if I could ask you to continue to look at
2 the top of the next page, it's the top of page 4, it
3 continues: "The important thing is disclosure. If it
4 is known that a company has a patent on a proposal,
5 then the committee will be reluctant to approve it as a
6 standard."

7 Do you see that?

8 A. Yes.

9 Q. Then I'd like to show you one more document
10 before I ask you the follow-up question.

11 May I approach?

12 JUDGE McGUIRE: Yes, go ahead.

13 BY MR. OLIVER:

14 Q. Mr. Kelley, I've handed you a document that's
15 been marked as JX-6 for identification. I believe this
16 is a document we discussed yesterday. It's the minutes
17 of the council meeting from June of 1991.

18 A. Yes.

19 Q. And do you recall discussing this document
20 yesterday?

21 A. Yes, I do.

22 Q. If I could ask you to turn, please, to page 5.

23 A. Document page 5?

24 Q. The page in the lower right-hand corner. The
25 internal page would be page number 10.

1 A. Okay.

2 Q. And there's a paragraph at the bottom of that
3 page at number 5, Patent Issues and Procedures.

4 Do you see that?

5 A. Yes.

6 Q. It says: "Mr. J. Townsend presented an
7 overview of the current situation, especially as
8 pertaining to JC-42, and recommended steps council
9 should (sic) take. A presentation should be made at
10 each committee meeting to discuss patent implications
11 during the work cycle of a product committee."

12 And do you see that?

13 A. Yes.

14 Q. And again, that's from the June 1991 council
15 minutes?

16 A. Yes.

17 Q. Mr. Kelley, do those two documents refresh your
18 recollection as to the date of the hand vote that you
19 testified to this afternoon?

20 A. Yes. I remember that the agreement was reached
21 by hand vote in the May meeting of 1991.

22 Q. Mr. Kelley, this afternoon Mr. Perry asked you
23 a number of questions with respect to EIA policy. Do
24 you recall that?

25 A. Yes.

1 Q. Let me begin by asking, focusing again on the
2 1991 to 1996 time frame, did you have an understanding,
3 just approximately, of approximately how many
4 committees there were within JEDEC?

5 A. Approximately 20.

6 Q. And how many of those committees did you
7 participate in?

8 A. Two.

9 Q. Did you have any understanding of the
10 procedures that were followed in the other
11 18 committees of JEDEC?

12 A. Only as the information on those committees
13 came to council.

14 Q. Apart from your activities within JEDEC, did
15 you have any active role in EIA at that time?

16 A. No.

17 Q. Now, at that time did you understand EIA to
18 have an official administration?

19 A. I believe they had an official administration,
20 yes.

21 Q. Focusing now again on the time frame from
22 1991 to 1996, if you had had any questions at that time
23 concerning the EIA policies, to whom would you have
24 turned for guidance?

25 A. I would have turned to the JEDEC council, and

1 Jack Kinn was the secretary for the JEDEC council, who
2 was an EIA vice president.

3 Q. And after Mr. Kinn left that position, who then
4 took over that position?

5 A. I believe it was Dan Bart.

6 Q. What was the position of Mr. John Kelley?

7 A. John Kelley at that time was general counsel.

8 Q. General counsel of?

9 A. EIA.

10 Q. Then finally, Mr. Kelley, Mr. Perry asked you
11 actually quite a number of questions with respect to
12 your understanding of the JEDEC disclosure policy. I'd
13 like to follow up with just one point if I could.

14 Based on your understanding of the JEDEC
15 disclosure policy between 1991 and 1996, if a company
16 observed a presentation by a member and then chose to
17 withdraw before the matter came to ballot, would the
18 member's withdrawal relieve it of any obligation to
19 disclose relevant patents or patent applications?

20 MR. PERRY: It's vague as to when the
21 disclosure would supposedly occur, before or after the
22 departure.

23 JUDGE MCGUIRE: Restate it if you would,
24 Mr. Oliver.

25 BY MR. OLIVER:

1 Q. Yes.

2 Again, Mr. Kelley, based on your understanding
3 of the disclosure policy between 1991 and 1996, if a
4 company observed a presentation while that company was
5 a member and then chose to withdraw before the matter
6 came to ballot, would the member's withdrawal relieve
7 it of any obligation to disclose relevant patents or
8 patent applications?

9 A. No.

10 MR. OLIVER: Thank you, Mr. Kelley.

11 RE-CROSS-EXAMINATION

12 BY MR. PERRY:

13 Q. I just have two questions on each of these two
14 minutes that you were shown, Mr. Kelley.

15 Let's start with the JX-5, which is the May 9,
16 1991 JC-42.3. Do you have that?

17 A. Yes.

18 Q. And Mr. Oliver pointed you to paragraph 8 on
19 page 3 entitled Intellectual Property; correct?

20 A. Yes.

21 Q. There's no reference in that section 8 to a
22 vote; right?

23 A. Yes.

24 Q. Correct, there's no reference to a vote?

25 A. Correct, there's no reference.

1 Q. And there's no -- and the words "patent
2 application" don't appear; correct?

3 A. I don't see them.

4 Q. And let's look at the JEDEC council minutes
5 that you were shown, June of 1991, JX-6.

6 A. Okay.

7 Q. And you were shown page 5 down at the bottom
8 right.

9 Let's pull up item 5, Patent Issues and
10 Procedures.

11 And Mr. Oliver didn't read that last sentence,
12 so let me ask you about that.

13 It says, "Council agreed that product
14 committees should follow the procedure of reminding
15 committee members at the beginning of each meeting that
16 any known patents that might be implicated in the
17 committee work should be disclosed."

18 Do you see that?

19 A. Yes.

20 Q. It says "known patents"; correct?

21 A. Yes.

22 Q. There's no reference to patent applications in
23 that paragraph either, is there?

24 A. No.

25 MR. PERRY: Nothing further.

1 JUDGE McGUIRE: Okay. Thank you very much.

2 MR. OLIVER: Nothing further, Your Honor.

3 JUDGE McGUIRE: Okay. Mr. Kelley, I do
4 appreciate you appearing and we appreciate your
5 testimony. You're excused.

6 Mr. Oliver, what's on tap for Thursday?

7 MR. OLIVER: Your Honor, tomorrow we're going
8 to hear from Mr. Ilan Krashinsky, a representative of
9 Hewlett-Packard, and then if we can make the
10 arrangements in time, we are also going to attempt to
11 play and read in portions of the deposition testimony
12 of Mr. Willi Meyer of Infineon.

13 JUDGE McGUIRE: Okay. All right. Very good.
14 Then we'll reconvene tomorrow morning at 9:30 a.m.
15 Have a good evening.

16 (Time noted: 5:23 p.m.)

17

18

19

20

21

22

23

24

25

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: May 21, 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: May 21, 2003

13

14

15

16 JOSETT F. HALL, RMR-CRR

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

For The Record, Inc.
Waldorf, Maryland
(301) 870-8025