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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

MENTOR GRAPHICS CORPORATION,)
an Oregon corporation,)

Plaintiff,)

vs.)

Case Nos. 3:10-cv-00954-MO
3:12-cv-01500-MO
3:13-cv-00579-MO

EVE-USA, INC., a Delaware)
corporation; and SYNOPSIS)
EMULATION S.A., formed under)
the laws of France,)

Defendants.)

September 26, 2014

Portland, Oregon

Pretrial Conference

TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE MICHAEL W. MOSMAN

UNITED STATES DISTRICT COURT JUDGE

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Continued pretrial conference

4

1 (September 26, 2014)

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

3 (Open court:)

4 THE CLERK: Your Honor, this is the time and
5 place set for final pretrial conference in lead case
6 3:10-cv-954-MO, Mentor Graphics Corporation versus EVE,
7 et al.

8 Counsel, can you introduce yourselves for the
9 record.

10 MR. MILLER: Good afternoon, Your Honor.

11 Mark Miller of the O'Melveny & Myers,
12 representing Mentor Graphics Corporation. With me are
13 Geoff Yost, George Riley, Jim Geringer of Klarquist
14 Sparkman is also present, and Tom Evans of Mentor Graphics
15 is with us here today as well.

16 MR. CHATTERJEE: Good afternoon, Your Honor.

17 Neel Chatterjee, Scott Lonardo, and Travis
18 Jensen of the Orrick firm for Synopsys.

19 MS. MARKLEY: Julia Markley from Perkins Coie
20 for Synopsys and EVE. With us is Dave Pursley of
21 Synopsys.

22 MR. CHATTERJEE: Mr. English wanted to let you
23 know he sends his regrets, but this is his nap time.

24 THE COURT: Thank you.

25 Several things to cover, and so let's start in.

1 I left at least partially open the question of
2 apportionment and the related concept of whether
3 Mentor Graphics would have to prove practicing the patent
4 on the issue of lost profits, and I'm relying principally
5 on the Rite-Hite Corporation decision, which states a
6 related concept from which I'm deriving the ruling I'm
7 making in this case today.

8 Rite-Hite, I think, accurately stands for the
9 proposition that if a party proves "but for" causation,
10 then nothing, as they say in statute, precedent, policy,
11 or logic limits the compensability of lost profits of a
12 patentee's device that directly compete with the
13 infringing device proving it by infringement; in other
14 words, proving "but for" causation is inclusive of proving
15 lost profits by infringement. Or put another way, that it
16 is a substantive method for apportionment.

17 Our concept is slightly different, but I think
18 also controlled by the absence of anything in statute,
19 precedent, policy, or logic to limit it differently. That
20 is, if Mentor Graphics is successful proving "but for"
21 causation, then I do not believe and therefore find that
22 Mentor Graphics is not obligated to show apportionment or
23 practice in the patent with its own devices.

24 Now, I'll say that, based on what I have seen in
25 front of me, I think Mentor Graphics has a difficult row

1 to hoe on proving "but for" causation, since in my view
2 that, at least, may include a number of things that have
3 to be knocked down before what's left standing is the
4 ineluctability of Intel buying Mentor's products if it
5 couldn't have purchased Synopsys' products. That's really
6 what we're talking about here.

7 The most obvious obstacle is to prove basically
8 a two-vendor market as to Intel since, if there are other
9 vendors, then there you go, you haven't shown "but for"
10 causation. But I'll leave that for trial.

11 I think others are in play. As I mentioned last
12 week, certainly the possibility of Intel, since price is a
13 significant difference among the two lines of products,
14 simply saying: Well, if we can't buy Synopsys' infringing
15 products, then we are not going to buy anything.

16 That's, I guess, a variation of another vendor
17 since that just means that there is another decision other
18 than buying Mentor's products in the absence of Synopsys'
19 infringing products. And if that's the case, then we
20 don't really have this substitute for practicing and
21 apportionment.

22 But if we get that far, if we get to a
23 two-vendor market and eliminating other options, then I'm
24 not requiring Mentor to show some of the things Synopsys
25 has insisted it must show, such that the products it

1 claims in this sort of hypothetical situation that Intel
2 would have bought from it needly practiced the patent or
3 even that that's the main driver for Intel's decision to
4 purchase the product, since I think that's included within
5 showing that the patented features were what drove Intel
6 to purchase Synopsys' products and no other option was
7 really pragmatically available to Intel if Synopsys'
8 infringing products are taken off the table.

9 So that's my decision on apportionment and
10 practicing the patent.

11 The second decision we sort of left open was
12 what to do about Mr. Degnan's baseline use of a 50/50
13 split. I am forgetting the fancy name for it. The
14 Nash-something solution --

15 MR. RILEY: Nash bargaining, named after
16 Dr. John Nash.

17 THE COURT: *A Beautiful Mind*.

18 MR. RILEY: *A Beautiful Mind*, that's correct.

19 THE COURT: So I disagree that VirnetX is a
20 per se ban to 50/50 split as a starting point for
21 calculations. It doesn't say that 50/50 splits are
22 illegitimate and cannot be used. I won't say it
23 disparages it, but rather says that it requires an
24 explanation in order to justify the use of a 50/50 split
25 as a sort of starting point.

1 So holding No. 1 is that there is no per se ban
2 on Mr. Degnan using 50/50 split as a starting point for
3 his analysis. What the parties didn't brief that I think
4 is, of course, the next question, is, well, then did he
5 justify it? This is all understandably happening late in
6 the day for everyone. VirnetX is a recent opinion. It is
7 clear to me that Synopsys raised the issue sufficiently
8 for me to consider it. But the issue raised, certainly
9 the issue argued last week, was a per se ban, and I reject
10 that as a reading of VirnetX.

11 So then I'm left with I guess two questions:
12 One, does Mr. Degnan justify it? And really he makes
13 only, as best I can tell, passing reference to a reason
14 for using it, which is that profits were high, and when
15 profits are high, a 50/50 split is appropriate. Then if
16 he insufficiently justifies it, wouldn't that be a waiver
17 issue anyway since the insufficiency of the explanation
18 rather than the impossibility of the explanation isn't the
19 issue Synopsys has raised?

20 I'll start with Mentor Graphics on what I ought
21 to do with Mr. Degnan.

22 MR. RILEY: Your Honor, we believe that he does
23 not begin with the 50/50 and that we in fact explained his
24 use of it with greater detail and robustness than the
25 Court has alluded to.

1 If I may, on the ELMO. Again, this is toward
2 the end of his opinion. He says: Another approach to
3 arriving at reasonable royalty.

4 His previous approach is a different approach,
5 where he talks about Schedule 20.0 informs us that for
6 every sale Mentor could have made but didn't, Mentor will
7 lose a 63.4 incremental profit. This isn't lost profits.
8 It is how it is computed in a reasonable world. When
9 coupled with Mentor's market share, and it goes through
10 this, one concludes that if Mentor Graphics was required
11 to license its three essential patents to EVE, the license
12 would have a running royalty adequate to compensate Mentor
13 losing about 26.1 percent of its net profits.

14 So if I had the license, what would I be giving
15 up? I would be giving up a portion of my profits. Then
16 he says the 26.1 percent would constitute the royalty
17 Mentor would hope to receive and the ceiling for the range
18 of negotiation.

19 So the starting point is what profits Mentor
20 would have lost. Then he proceeds from that to say
21 another approach is the Nash bargain of 50/50 split, and
22 he justifies it, Your Honor. He says: The reason the
23 parties would end in the split, those excess profits
24 between them generally with such a large excess profit,
25 the typical splitting would be 50/50, particularly when

1 the business risk of starting up a new product and selling
2 to new customers are not present where the business
3 already exists.

4 So it is saying, in the hypothetical situation,
5 Synopsys does not have a emulator. It doesn't. It is
6 coming to Mentor and licensing this key technology, and
7 they are saying: What would be the additional profits you
8 would make from that?

9 THE COURT: All right. Thank you, sir.

10 The first issue for Synopsys is whether that
11 explanation by Mr. Degnan of the use of the 50/50 split --
12 I'm not so much concerned about the prior theory as an
13 alternative, but just whether the 50/50 split is justified
14 on the opinion we have in front of us from him, in light
15 of what VirnetX requires.

16 What's your view?

17 MR. LONARDO: Your Honor, we don't believe that
18 it is. The language that Mr. Riley pointed to is not tied
19 to the facts of the case in the way that VirnetX would
20 require.

21 THE COURT: How is it not tied to the facts of
22 the case?

23 MR. LONARDO: Well, essentially all he has done
24 here is say there is a new business; therefore, we would
25 split 50/50. But there is nothing to support the fact

1 that when you have a new business, that's how it would be
2 done.

3 THE COURT: I see.

4 MR. LONARDO: So it is a blanket statement
5 without any support. We would view this as like the
6 VirnetX case, where there is simply a 50/50 split as a
7 baseline untethered to the facts of the case. We would
8 also point out that in our original notice, we didn't
9 argue that there is a per se ban, only that, here, that he
10 did not tie it to the facts of the case.

11 THE COURT: Well, oral argument was for a per se
12 ban. So I recognize that your written notice of this
13 issue talks about VirnetX in a 50/50 split. What
14 precisely does that written notice say?

15 MR. LONARDO: The written notice, Your Honor,
16 quotes the language from VirnetX and says: As in
17 VirnetX -- I don't have it with me. I apologize. As in
18 VirnetX, Dr. Degnan rendered an opinion that was not a
19 factor of the case, I believe, Your Honor. I need to
20 double-check.

21 MR. CHATTERJEE: To add to Mr. Lonardo's
22 comments, and I can pull up our original notice. Our
23 original notice actually raised a challenge to
24 Dr. Degnan's opinions on the reasonable royalty issue and
25 that they were too cursory, such that they amounted to

1 something that was speculative, which, of course, goes
2 hand in hand with this issue.

3 THE COURT: Thank you.

4 With that in mind, and I take you at your word
5 on what the notice says, I find no issue of waiver of this
6 argument here by Synopsys. I do find the explanation
7 sufficient to satisfy at least the minimum of what's
8 required by VirnetX, and so I'm not striking his testimony
9 in any way on the use of a 50/50 split as a portion of his
10 method for calculations here.

11 The last issue I want to bring up before we turn
12 to jury instructions is the issue of willfulness, which
13 the parties have briefed now before me, and we have talked
14 about at some length last week. The issue, I guess,
15 starts with the difference between pre-filing and
16 post-filing conduct and whether one can seek a willful
17 infringement on either or both; specifically whether
18 Mentor Graphics in this case can seek willful infringement
19 on either or both.

20 The parties agree that Mentor Graphics can seek
21 willful infringement on pre-filing conduct. The "disagree
22 on" is the relevant date for counting when filing is. It
23 is simply, I think, the difference between the filing of
24 the declaratory judgment action by Synopsys and the filing
25 of counterclaims by Mentor Graphics.

1 I recognize that there is case law that suggests
2 that there are instances where in sort of a -- I don't
3 want to be pejorative about it, but in sort of a rush to
4 the courthouse for a declaratory judgment action, one
5 might discount the filing of such an action as the filing
6 date. But the rationale of those cases, I think, gets
7 largely at whether that would come as a surprise and kind
8 of come out of nowhere and therefore not be adequate
9 notice of filing in order to seek an injunction to prevent
10 any post-filing harm. That's not our case.

11 So, for me, the relevant filing date based on
12 the facts of this case and the interplay among the parties
13 that predates either filing date, particularly the
14 declaratory judgment filing date, doesn't give rise to
15 anything other than that date, the earlier date as the
16 date on which I consider the filing to have occurred. So
17 with that in mind, there is no pre-filing willful
18 infringement in this case.

19 Then the second issue is whether a post-filing
20 claim for willful infringement can be had if there was no
21 seeking of an injunction. Once again, I recognize that
22 there are narrow possibilities where that can be the case,
23 where there was no injunction, and yet a party can seek to
24 show willful infringement, principally in two ways. One
25 not possible here; that is, that an injunction was sought

1 but not obtained, the idea being that one might show the
2 source of facts that show infringement but be unable to
3 show one of the other factors that justify an injunction
4 and therefore the lack of an injunction shouldn't be held
5 against the side who didn't get it when they later seek
6 willful infringement.

7 The second is even more narrow, and that is
8 where a party didn't even seek an injunction, but it was
9 on facts where the showing under the factors to get a
10 preliminary injunction on infringement might well have
11 been strong, but there was just, for example, clear
12 evidence that they were competing in different markets,
13 and so it would have been futile to seek an injunction.
14 Therefore, not seeking an injunction isn't held against
15 the party who couldn't have got one anyway. Also, not our
16 case.

17 Otherwise, I think Synopsys is right about what
18 we will call the Seagate rule, which is if you don't seek
19 an injunction, you can't seek willful infringement for
20 post-filing conduct. So my ruling here is that
21 Mentor Graphics cannot seek willful infringement for any
22 post-filing conduct and that "filing" means the earlier
23 date of the filing of the two that are present in our
24 case.

25 I want to go through a few other things before

1 we finally turn to jury instructions and verdict forms.

2 MR. CHATTERJEE: Your Honor?

3 THE COURT: Yes.

4 MR. CHATTERJEE: I understand you have made your
5 rulings. I have one question about the lost profits
6 ruling on the "but for" issue.

7 Is it your decision that -- it is just unclear
8 to me whether they can provide an apportioned theory, even
9 though their expert offered none, or that they have to go
10 under the framework that you just outlined with respect to
11 lost profits?

12 THE COURT: Well, what I do is resolve the
13 motions I have in front of me. The motion I had in front
14 of me, I thought, had one principal argument, which is
15 that they had to show apportionment, which I have held is
16 not the case. To the degree that there is another issue
17 here, as I understand you now, if they decide to try to
18 show apportionment anyway, they have not disclosed any
19 expert testimony timely that would back that up.

20 Is that what you are saying?

21 MR. CHATTERJEE: That's my request. We
22 actually -- some of this gets confused, because we have
23 the motion in limine and the Daubert motion, which were
24 related.

25 THE COURT: I'm not saying you didn't present it

1 early. I am trying to make sure what it is you are saying
2 now; that it is a disclosure issue basically.

3 MR. CHATTERJEE: It is a disclosure issue. If
4 we are faced with the situation of the "but for" situation
5 that Your Honor outlined, the Intel two-player market and
6 so forth and the reasonable royalty, and those are the
7 only two theories, I just want to make sure that's where
8 we are.

9 THE COURT: Is Mentor Graphics intending to try
10 to offer any apportionment theory?

11 MR. RILEY: Your Honor, we did submit evidence
12 on apportionment. Our principal theory is going to be
13 lost profits. That's where we believe the jury should end
14 up. But we do have testimony about the importance of this
15 patent, the main apportionment among the various patents
16 that were at issue.

17 THE COURT: So the issue may not specifically be
18 whether you have evidence of it, but whether it was
19 disclosed as expert testimony. Was it?

20 MR. RILEY: Yes. Mr. Degnan did discuss the
21 importance of the patent in driving sales. That goes to
22 both the lost profits as well as reasonable royalty. He
23 goes through an extensive Georgia-Pacific analysis that
24 goes on for several pages about the importance of this
25 particular patent to sales.

1 THE COURT: Does he reach a conclusion about
2 apportionment?

3 MR. RILEY: He doesn't put a percentage on
4 apportionment.

5 THE COURT: So how are you going to advocate for
6 that? Apportionment ultimately has to come to some
7 percentage, doesn't it? He can say it is very valuable,
8 but we can't just let the jury guess what that means.

9 MR. RILEY: Correct. He provided a supplemental
10 report that attempts to evaluate quantitatively the
11 importance of the '376 patent.

12 THE COURT: Quantitatively by a percentage or
13 dollar amount?

14 MR. RILEY: By a percentage amount, I believe.

15 THE COURT: What does he say?

16 MR. RILEY: I will defer to my colleague,
17 Mr. Yost.

18 MR. CHATTERJEE: Your Honor, that motion with
19 the supplementation, they moved to supplement after
20 Your Honor's orders came down. That motion is pending.
21 He has not been deposed on the issue. He has not been
22 disclosed as part of the report, nor was it disclosed at
23 any time prior to the summary judgment proceedings, the
24 rulings, and all the pretrial disclosures.

25 THE COURT: Do you agree that the supplemental

1 report is an adequate explanation of apportionment?

2 MR. CHATTERJEE: No, Your Honor.

3 THE COURT: In addition to that, you also say
4 that it is untimely?

5 MR. CHATTERJEE: It is untimely, and it doesn't
6 comply with the apportionment requirements.

7 Your Honor, I do want to respond to what
8 Mr. Riley said about referring to the Georgia-Pacific
9 factors in his apportionment.

10 Honestly, Your Honor, Georgia-Pacific factors
11 are about reasonable royalties; they aren't about lost
12 profits. If you look at his lost profits opinion, and we
13 submitted his entire report to you, there is absolutely no
14 statement in it making any effort whatsoever to do any
15 apportionment.

16 To the extent that he did apportionment, it was
17 a reasonable royalty analysis, when he moved from his
18 50/50 to push the numbers down, based upon the respective
19 importance of other features.

20 THE COURT: You are speaking now of his original
21 report or his supplemental report?

22 MR. CHATTERJEE: In his original report.

23 MR. RILEY: Your Honor --

24 THE COURT: Just a moment, please.

25 The supplemental report goes into apportionment

1 as a lost profits theory?

2 MR. CHATTERJEE: Yes, Your Honor.

3 THE COURT: But you object to it as inadequate
4 but, also, because it is too late in the game?

5 MR. CHATTERJEE: Yes, Your Honor.

6 THE COURT: Thank you.

7 MR. RILEY: Your Honor, we will withdraw the
8 supplemental report. We think the Court's instructions on
9 Panduit, which are covered in Mr. Degnan's principal
10 report, are sufficient to make the proof that we need to
11 make to satisfy Panduit.

12 THE COURT: Thank you. Just to be clear then,
13 you told me a minute ago that you were really going for
14 with this jury lost profits through "but for" causation
15 and then royalty.

16 Are you not seeking to put to the jury any
17 apportionment theory?

18 MR. RILEY: That is correct, but we will discuss
19 the importance of the patent to meet the lost profits "but
20 for" causation instruction.

21 THE COURT: Absolutely. I think that's
22 perfectly acceptable as a way of showing "but for"
23 causation.

24 MR. RILEY: Your Honor, may I be heard briefly
25 on Seagate? I'm not sure I understand the Court's ruling.

1 Are you saying that the operative date per the
2 application of that was when they filed their declaratory
3 judgment claims before we filed our infringement claims?
4 Before we did our due diligence on infringement?

5 THE COURT: That's exactly what I'm saying.

6 MR. RILEY: And the DataCore case that says,
7 under extraordinary circumstances, when the patent has
8 been put into a reexamine, Your Honor, they put that
9 patent through reexamine before they filed their reexamine
10 petition, before they even filed the declaratory relief
11 action. So we would have had to be seeking preliminary
12 injunction while the patent was before the Patent and
13 Trademark Office.

14 THE COURT: You should assume that my decision
15 was based on everything you briefed, and that was one of
16 the arguments that you made.

17 So a couple of small details then to work
18 through. Actually, one other thing from last week still:
19 I suggested that with the witness about manufacturing
20 capacity -- can you remind me of his name again?

21 MR. RILEY: Don Cantow.

22 THE COURT: The sales witness who will say that
23 you could have amped up manufacturing to meet the demand
24 that would have come if you hadn't had the infringing
25 product on the market.

1 MR. RILEY: Yes, Your Honor. He is more than a
2 salesperson.

3 THE COURT: I'm just trying to use it in a way
4 to get to his name. What's his name?

5 MR. RILEY: Don Cantow.

6 THE COURT: Right. We talked about him
7 briefly -- last week briefly.

8 I believe now that I misspoke in terms of what
9 the evidence law would say about him. I suggested that
10 there was a tension between the degree to which he was a
11 lay witness offering mere observations and the degree to
12 which he would use his lengthy experience in the industry,
13 in this particular industry, to know other things by
14 inference, for example, about manufacturing capacity,
15 which struck me as a form of expert testimony; and that
16 the more he knew by that method, the less he looked like a
17 lay witness, and the more he started to look like an
18 undisclosed expert witness.

19 I think that's incorrect now. I am relying
20 principally on In re: Kaypro, a Ninth Circuit case. It
21 is going to be 218 F.3d 1070, 2000. In fact, the judges
22 there do exactly what I said to you all last week. To the
23 degree I would claim it is just their opinion, they
24 essentially cite the Advisory Committee Notes and say:
25 No, that's just what the rule holds.

1 As I've reread the rule, in light of the
2 Advisory Committee Notes, in particular now, I'm of the
3 view that a witness who can learn things from years in the
4 industry and offer an opinion based on that is not viewed
5 by the rules as an expert but is, instead, offering lay
6 opinion testimony.

7 So I'm less concerned that this witness will be
8 doing anything other than offering lay opinion testimony.
9 I'm not ruling on anything right now at trial. I just
10 felt like I misspoke about what the governing law was as I
11 contemplated him reaching a point of an in-trial
12 objection. I wanted to cite that all to you.

13 MR. CHATTERJEE: Your Honor, that doesn't
14 resolve the disclosure issue, about the fact that they
15 never disclosed him as a person who could talk about
16 manufacturing capacity.

17 THE COURT: Lay or expert, you mean?

18 MR. CHATTERJEE: Either way.

19 THE COURT: It resolves whether he was disclosed
20 as an expert since it makes it more likely that his entire
21 testimony will be viewed by the FRE as lay opinion
22 testimony. But your concern is that on the topic he would
23 be discussing, he wasn't disclosed even as a lay witness?

24 MR. CHATTERJEE: That's right, Your Honor. He
25 was never identified as a witness to talk about capacity.

1 THE COURT: All right. So, once again, another
2 disclosure issue.

3 Can you help me with that?

4 MR. YOST: Yes, Your Honor. Exhibit 8 to their
5 motion in limine on this is disclosure for Mr. Cantow,
6 where he is disclosed as having knowledge of manufacture
7 of Veloce.

8 THE COURT: Well, depending on context, that's
9 not quite the same as manufacturing capacity. If he wants
10 to say how they are made, that's one thing. It is a
11 pretty important point: We had the capacity to amp up and
12 make what we could have received as invoices without the
13 infringing product on the market. What's your best
14 sentence in his statement that tells your opponent that
15 that is something he is going to testify about?

16 MR. YOST: In the witness disclosure?

17 THE COURT: Yes, or anywhere. Anywhere they
18 have learned that this is a witness you are going to call
19 on that point.

20 MR. YOST: His disclosure, I believe, is also
21 damages. He also gave a deposition in the California
22 action where he was questioned for several pages about
23 manufacturing capacity. His witness statement goes on at
24 length about Mentor Graphics' third-party manufacturer
25 strategy, the spikes and demands they have made over the

1 years, his sense of how they would meet increased demand.

2 THE COURT: He does this in his deposition or
3 witness statement?

4 MR. YOST: The last thing he does in his
5 deposition.

6 MR. CHATTERJEE: Your Honor, he wasn't deposed
7 in this case.

8 THE COURT: Just a moment, please.

9 I'm sorry. Go ahead.

10 MR. YOST: He gave a deposition in the
11 California action where he was asked specifically about
12 capacity constraints. In his witness statement he said
13 all those things about third-party manufacturing strategy,
14 meaning spikes in Intel demand, visiting a third-party
15 manufacturer, and the like.

16 THE COURT: Do you have his witness statement in
17 front of you now in this case?

18 MR. RILEY: Yes, Your Honor.

19 THE COURT: Can you put it on the screen for me,
20 the section of it that gets at manufacturing.

21 MR. CHATTERJEE: Your Honor, these are the
22 pretrial witness statements that are subject to
23 Your Honor's order for pretrial preparation, not anything
24 that was done prior to the close of discovery.

25 THE COURT: Thank you.

1 MR. RILEY: Part of the foundation is laid here.
2 He inspected the manufacturing facilities. If at any time
3 in the last eight years Mentor needed additional
4 emulators, it could have leveraged its manufacturing
5 strategy to increase the manufacturing build.

6 He discusses this as well in the deposition. It
7 goes on here: Mr. Cantow will testify with Intel, the
8 largest customer group, 50 percent of bookings and
9 revenues. He talks about how we met this demand even
10 though it increased --

11 THE COURT: All right. That's all I need to
12 see. Thank you.

13 So that's your pretrial disclosure. Then your
14 other concern is that you requested during discovery all
15 witnesses who would testify on certain subjects?

16 MR. CHATTERJEE: Your Honor, we did this in two
17 ways. One is obviously the Rule 26 disclosure, where they
18 identify witnesses. They never said anything about
19 manufacturer capacity there. We then asked them specific
20 interrogatories about witnesses they intend to call at
21 trial and why. It was interrogatory No. 9. They referred
22 us to the Rule 26 statement. We then asked --

23 THE COURT: Meaning did you ask for topics, or
24 did you say: Who are the witnesses you're calling at
25 trial and why are you going to call them?

1 MR. CHATTERJEE: The latter, Your Honor.

2 Then we asked specific interrogatories about
3 state your entire basis for damages, a pretty standard
4 request. What they did was they said it is premature, and
5 you have got to go to expert testimony, and here are a
6 bunch of spreadsheets. They never identified anything
7 about Mr. Cantow, they never identified anything about the
8 substance of his testimony, nothing.

9 THE COURT: Did they identify him in any
10 capacity as a trial witness?

11 MR. CHATTERJEE: They did identify him in the
12 capacity of a trial witness, Your Honor; they did.

13 THE COURT: For what purpose?

14 MR. CHATTERJEE: Sales. They had this general
15 reference to manufacturing, and that was primarily what it
16 was. We served the notice on them for this information.
17 They produced a separate witness, Jim Kenney. I do want
18 to point out, Your Honor, that on June 4th, they served a
19 supplemental witness disclosure on us identifying someone
20 named John Allmaraj. They specifically identified him as
21 testifying on the topic of capacity.

22 Because it was a late disclosure, Your Honor,
23 you struck that, because he had never been previously
24 identified as a witness in this case.

25 I think what is going on here, they failed to

1 disclose anything throughout the case. They tried to do
2 it by getting a last-minute introduction of Mr. Allmaraj.
3 And now that that has not worked out, they are trying to
4 come in the back door with Mr. Cantow, and he has the same
5 disclosure problems.

6 THE COURT: All right. Thank you.

7 MR. RILEY: Your Honor, they raised these
8 related issues during the summary judgment motion, because
9 we submitted a declaration from Mr. Cantow on capacity.
10 The Court denied their summary judgment motion. They were
11 seeking summary judgment that we couldn't prove lost
12 damages, because we didn't have the capacity to meet the
13 Intel demand. We put Mr. Cantow's declaration in
14 evidence. The Court accepted that as proof that we did
15 have the manufacturing capacity. Moreover --

16 THE COURT: The issue isn't whether Mr. Cantow
17 has the capacity to testify about manufacturing capacity;
18 that is, whether he knows enough. It is really all about
19 disclosure. So summary judgment often doesn't get at
20 disclosure issues.

21 Is it your contention that this disclosure issue
22 in terms of interrogatories and Rule 26 disclosures was
23 litigated at summary judgment?

24 MR. RILEY: My contention is their interrogatory
25 didn't ask for the identification of Mr. Cantow.

1 THE COURT: That wasn't the question I asked.

2 MR. RILEY: Sorry.

3 THE COURT: I understand that you contend that
4 the issue of whether you could prove manufacturing
5 capacity was litigated at summary judgment. That's true
6 as far as it goes. But we are not really talking about
7 whether, in the abstract, you have someone who can testify
8 about manufacturing capacity. You do. At some point in
9 time, at least, as late as the witness statement in this
10 case, you fully disclosed the nature of that testimony.
11 So the real question is, did you fail to disclose him
12 during Rule 26 disclosures or in response to
13 interrogatories as a witness who had testified about
14 manufacturing capacity?

15 MR. RILEY: The answer to that is, no, we did
16 properly disclose him as it relates to manufacture.

17 THE COURT: Well, there are two issues in play
18 here. One is manufacturing and one is manufacturing
19 capacity.

20 MR. RILEY: Manufacturing capacity is relevant
21 as it relates to damages in this case. We specifically --

22 THE COURT: Tell me how and when you disclosed
23 him prior to summary judgment in response to
24 interrogatories and through Rule 26 disclosures such that
25 he could be deposed on the subject of manufacturing

1 capacity.

2 MR. RILEY: He was disclosed specifically in
3 Rule 26 disclosures as they relate to damages with regard
4 to the manufacturing of Veloce. That's the only way in
5 which manufacture is important. It is important, did we
6 have the capacity to meet the demand of Intel if Intel
7 couldn't buy from EVE.

8 THE COURT: So your contention is it should have
9 at least have been inferentially clear to your opponents
10 that when you disclosed him as a damage witness, given
11 what they knew about him, they should have known he would
12 talk about manufacturing capacity?

13 MR. RILEY: No question. It wasn't an
14 inference. It was right there in the disclosure, and we
15 followed it up by a declaration.

16 THE COURT: Well, then I guess I'm not clear why
17 you are saying you disclosed him as a damage witness
18 instead of disclosed him as a manufacturing capacity
19 witness.

20 Did you tell them he was a witness that would
21 talk about manufacturing capacity?

22 MR. RILEY: We told them he was a witness that
23 would discuss manufacturing in the context of damages.

24 THE COURT: I see.

25 MR. RILEY: Manufacturing has only relevance in

1 the context of damages as it relates to capacity.
2 Moreover, our expert witness report specifically relies on
3 Mr. Cantow. That report was -- that part of the report
4 was not objected to at all, and he was deposed in the
5 California action, and he offered a declaration in this
6 case on capacity that went unobjected to on disclosure
7 grounds.

8 THE COURT: Thank you. I will think about this.
9 Did you all receive a motion from Intel?

10 MR. RILEY: Yes, Your Honor.

11 MR. CHATTERJEE: Yes, Your Honor.

12 THE COURT: What do you want me to do with that,
13 starting with Mentor Graphics?

14 MR. YOST: Your Honor, our thought was, rather
15 than engage in additional disclosure communications with
16 Intel, that we would make available to outside counsel any
17 exhibits that may contain confidential information so they
18 can then prove up their interest in confidentiality
19 concerns, as necessary, at the beginning of the case. I
20 understand they've submitted a pro hac vice application.
21 They are not here today. Perhaps they will be here Monday
22 morning. I am not sure.

23 THE COURT: Your suggestion?

24 MR. CHATTERJEE: Your Honor, we are not opposed
25 to that. The one issue is, if we need something for

1 impeachment, that sometimes cannot be foreseen. But we
2 are not opposed to the approach of Mentor Graphics.

3 THE COURT: Other than impeachment, that's the
4 approach we will take. What do you want to do about
5 impeachment?

6 MR. CHATTERJEE: We had a conversation with
7 Intel. We told them that's the only thing that is
8 reserved. We said if they wanted to, they could attend
9 the trial and make an objection, if they think it is
10 appropriate. If we think there is impeachment, we could
11 make a request to seal the courtroom.

12 THE COURT: You would or they would?

13 MR. CHATTERJEE: My preference is that they do
14 that, but we are willing to follow Your Honor's lead on
15 what you think is the appropriate process here.

16 THE COURT: Well, I hate to be blind in this. I
17 don't have a dog in this fight. You know, the jury and I
18 really don't have a dog in this fight. I will leave it to
19 the three of you, Intel not being here, to work this out.

20 MR. CHATTERJEE: Okay.

21 THE COURT: Did you talk to your clients about
22 juror pre-deliberation discussions?

23 MR. CHATTERJEE: Our preference is not to agree
24 to pre-deliberation discussions.

25 THE COURT: You may go either way. But I only

1 need one person to disagree in order not to do it, so we
2 won't do that.

3 We will have questions, but we won't have
4 pre-deliberation discussions.

5 MR. CHATTERJEE: We do have one request related
6 to that, Your Honor, which is I raised several days ago
7 the issue of Mr. Larzul's somewhat heavy accent.

8 THE COURT: Yes.

9 MR. CHATTERJEE: Our thought was that may be a
10 place that if the jurors are having difficulty
11 understanding him, we will have a translator available to
12 pull in and they can let you know if there is a problem
13 understanding him rather than just kind of defaulting to
14 providing one or not providing one.

15 THE COURT: That's fine.

16 MR. CHATTERJEE: Thank you, Your Honor.

17 MR. YOST: A follow-up issue from last time,
18 Your Honor, we spoke about our injunction irreparable harm
19 economist, Sue Stuckwisch, who has some opinions relevant
20 to lost profits. After today's rulings on lost profits,
21 especially the two-player market, we feel her testimony
22 would be extremely useful.

23 I don't know if Your Honor had considered the
24 submissions and would permit her to testify during the
25 jury trial. We also have a question whether Your Honor

1 would prefer that we reserve evidence related to a
2 potential request for a permanent injunction until after
3 the trial, such that we're not waiving the right to
4 present such evidence by not bringing it up in front of
5 the jury.

6 THE COURT: I'm sorry. I was thinking about
7 your first issue. I'm not sure I tracked your second
8 issue. Would you repeat it for me.

9 MR. YOST: The second issue is for issues solely
10 related to the elements that are necessary to obtain a
11 permanent injunction, whether those issues can be
12 preserved for post-trial proceedings and need not be
13 presented here while the jury is present.

14 THE COURT: What's your position on that?

15 MR. LONARDO: On the first or second point,
16 Your Honor?

17 THE COURT: Second one, the injunction issue.

18 MR. CHATTERJEE: Our view, Your Honor, the
19 injunction should be a Court issue. We shouldn't be
20 presenting any of that to the jury.

21 THE COURT: So you agree we can take it up
22 post-trial if an injunction becomes necessary?

23 MR. CHATTERJEE: Yes, Your Honor. I don't think
24 it is appropriate for the jury to hear any of that stuff.

25 THE COURT: All right. That's what we will do.

1 Let's turn briefly to jury instructions. I will
2 get you a draft. I don't believe that I'll have a final
3 set to give the jury on day one of trial, although we will
4 be shooting for during trial giving them the final jury
5 instructions.

6 I will try to amplify the claims and defenses
7 instruction, which I'm treating as a substitute for the
8 job of the jury instruction in light of our discussions so
9 far.

10 I guess I'm not certain what to do about the
11 entire market value rule. There is a disagreement about
12 whether that's a method merely of calculating damages or
13 whether it is a method of proving damages, if I have
14 understood that issue correctly. So that's something I
15 would like to nail down now, if I can.

16 I will start with Mentor Graphics.

17 MR. RILEY: Your Honor, we will pursue our lost
18 profits theory based on the Panduit/Rite-Hite instruction
19 that we have discussed. We will not be asking any for
20 market value.

21 THE COURT: So you will do royalty and Panduit?

22 MR. RILEY: Reasonable royalty and Panduit.

23 THE COURT: All right. Yes, sir.

24 MR. CHATTERJEE: So, Your Honor, on the jury
25 instructions, we did submit yesterday some proposed

1 alternate instructions. I think as to the lost profits
2 issue, just because the instructions have even created, I
3 think, a lot of discussion here as to what they mean, I
4 think outlining specifically the elements that Your Honor
5 suggested last Tuesday, that I believe Mentor agreed with
6 as to what Mentor must prove in order to meet the "but
7 for" test of Panduit, which is Intel being a two-player
8 market, all of these different criteria, that we actually
9 enumerate what they need to prove to be entitled to it. I
10 think, otherwise, the jury instructions are going to be
11 very confusing for people.

12 THE COURT: I'll take a look at that. Thank
13 you.

14 MR. CHATTERJEE: Thank you, Your Honor.

15 THE COURT: I think you have also suggested that
16 we ought to focus on the core features of infringement in
17 this case as opposed to just using the concept of
18 infringement generally. I'm likely to do something like
19 that in a jury instruction.

20 MR. MILLER: Your Honor, may I speak to that
21 issue?

22 THE COURT: Yes.

23 MR. MILLER: We believe it would be confusing,
24 particularly in the way that the proposed instructions
25 submitted by Synopsys are worded, to refer to flexible

1 probes or value change probes as what is accused of
2 infringement.

3 First of all, it is the ZeBu server that is
4 accused of infringing. That's the product that Synopsys
5 sells. That's what the statute provides is infringing
6 instrumentality. It is what they sell, it is what they
7 make, it is what the customers use.

8 A "flexible probe" is an ambiguous term, as it
9 comes up in this case, because there is a command that
10 will create flexible probes, and then there are flexible
11 probes that are called tracers that are circuitry that are
12 added to the design under test.

13 If you ask the jurors about flexible probes or
14 value change probes, we believe that that's leaving an
15 ambiguity; that we should be entitled to get a finding of
16 infringement on a particular product that we have accused.
17 It is the Veloce product -- I'm sorry -- the ZeBu product.
18 Excuse me.

19 The claims, our method claims -- two of the
20 claims are method claims. One is a claim to a computer
21 readable medium having instructions. The flexible probes
22 are a feature that perform some of the claim steps, but
23 all of the claim steps aren't necessarily performed by the
24 flexible probe instruction. There is user interaction
25 that is part of the infringement as well. So to say that

1 it is flexible probes that infringe, without considering
2 the options of the users, would be inappropriate.

3 THE COURT: Thank you.

4 We have talked briefly about a chess clock.

5 MR. RILEY: The parties have agreed to that
6 protocol.

7 THE COURT: Pardon me?

8 MR. RILEY: The parties have agreed to the use
9 of a chess clock.

10 THE COURT: Well, that's great. I am to hear
11 that since I was going to do it anyway.

12 MR. RILEY: It is good to be right once this
13 afternoon.

14 THE COURT: I'm sorry. I didn't know that I'd
15 asked for your agreement, but I'm grateful you agree.

16 We have approximately a 45 hours of in-the-box
17 jury time. So that's exclusive of jury selection and
18 closing instructions and closing argument. It is
19 basically direct and cross.

20 I have tried to think about this case in light
21 of burden of proof, and I have decided tentatively that a
22 60/40 split is appropriate, plaintiff to defendant, which
23 gives us 27 hours of in-the-box jury time for
24 Mentor Graphics and 18 hours for Synopsys.

25 I'm going to start with that as the operating

1 assumption. I have sometimes adjusted that during trial,
2 but I want you to assume that's the operating foundation
3 for the chess clock in this case.

4 I'll say this: The number one way a party can
5 acquire more time than they think they have is sharpening
6 cross-examination. That's where the most time gets
7 wasted. So I hesitate to say this, and I mean this in all
8 sincerity, I know I'm talking to a roomful of very
9 talented, very experienced lawyers. But I have talked to
10 150 juries over the last eleven years, and I have tried a
11 few different cases myself in federal court. I think
12 that's where you buy yourself more time. That's where the
13 jury tells me after trial that they think time got lost,
14 really in both, that is, both direct and cross, but cross
15 that re-does it is where time is lost.

16 So if the first words out of your mouth to one
17 of your main cross-examination witnesses is, "Hello, my
18 name is Mr. Chatterjee. We haven't met before, have we,"
19 Then I'll know that you are not going to be honed in on
20 cross. I want you to use your time well.

21 Now, when I say "adjusted," it may well become
22 clear that the focus of the case becomes something more
23 driven by what Synopsys has to prove than what
24 Mentor Graphics has to prove as the case goes along, but
25 it is not clear to me now. Of course, Mentor has the

1 burden of proof on the two main issues in the case,
2 infringement and damages.

3 The biggest problem for a chess clock and these
4 number of hours, which divides up the time we have among
5 you, minus essentially a half a day for jury -- more than
6 half a day -- up to two o'clock on day one for jury
7 selection and opening statements and then carves out the
8 entire last day for closing, jury instructions, and
9 deliberations.

10 The biggest obstacle squeezing it all into that
11 time is lengthy legal discussions during the case, where I
12 send the jury out of the room and then we debate something
13 for 40 minutes or so. I'll try to be truncated about that
14 during the jury day. Obviously, it is a bonus to us if
15 we're doing this at five o'clock instead of two o'clock,
16 because then nobody is eating up their jury time.

17 Yet if we have to do it in the middle of the
18 day, then I'll try to make it up by starting at 8:30 or
19 cutting lunch or other things, so we don't lose that time.
20 But I think it's in all of our interests not to have those
21 things go on and on.

22 One way in which this becomes a problem, the
23 reason I'm bringing it up now is, it is not unusual in
24 trials, and I just had a trial two weeks ago, I guess,
25 three maybe, and what happened repeatedly in that trial, I

1 would be sitting there at three minutes to 9:00, and then
2 I would get a note from Ms. Stephens saying, "The lawyers
3 have a matter for the Court."

4 I will just say I'm in typically by a quarter to
5 8:00 or something like that. Somebody is here to help get
6 things rolling certainly by 8:00. So if you have a matter
7 for the Court, and we can eat that time up before
8 9:00 o'clock, don't tell me at two minutes before
9 9:00 that you have a 20-minute discussion about something
10 that happened the day before. There are things we can do
11 after 5:00 and before 9:00 that helps.

12 Fair enough?

13 Then the last issue I have is I don't have
14 responses to Mentor Graphics' objections to Synopsys'
15 deposition designations.

16 MR. CHATTERJEE: Your Honor, we're putting them
17 together. We just got them the other night. There were
18 changes; there were some additions as well. I understand
19 today that they are going to be removing some additional
20 things. So we are putting those things together.

21 THE COURT: I shouldn't have said that like I
22 was complaining. I didn't mean for you to make sure that
23 I knew that this was hard, because I do know that. I'm
24 trying to get at, what do you want me to do between now
25 and Monday morning?

1 MR. CHATTERJEE: Your Honor, we intend to give
2 them counter-designations hopefully by the end of the day
3 today, under Your Honor's definition of "end of the day,"
4 which is midnight. But we will have some probably limited
5 objections to certain deposition testimony. There is one
6 particular deposition that we will probably object to its
7 entry. It is kind of an all-or-nothing issue.

8 THE COURT: When do we resolve that? Monday
9 morning before trial, or is it something that's going to
10 come up on day two so we resolve it on Monday afternoon?
11 I need to know the timing of that. I don't want to
12 interrupt the trial to argue deposition designations, if I
13 don't have to.

14 MR. YOST: The first point, Your Honor, is they
15 never submitted responses to begin with, irrespective of
16 them now submitting counters to our produced depositions.
17 Our position is that those objections should be sustained,
18 because they never responded to them to begin with, and
19 they shouldn't now be submitting for the first time a
20 response to our objections.

21 With regard to our claim deposition testimony,
22 we don't anticipate that happening before Tuesday, so we
23 can deal with it probably after the end of trial on
24 Monday.

25 THE COURT: Let's plan on that. Five o'clock

1 Monday, we will take up deposition designations.

2 MR. CHATTERJEE: Okay.

3 THE COURT: Okay. That's all I have.

4 Anything further from Mentor Graphics?

5 MR. RILEY: Yes, Your Honor. You raised the
6 issue of Intel employees serving on the jury. I think
7 this is highlighted for us as well by Intel's recent
8 pleadings. We think it would be inappropriate to have
9 Intel employees on the jury. The primacy in this case of
10 Intel as a two-supplier market and whether Intel would
11 have bought only from one supplier, the impact on Intel of
12 buying only from one supplier, the price charged to Intel,
13 I think raises a serious question about jurors who are
14 employees at Intel.

15 THE COURT: Well, I was surprised at your answer
16 before I got their motion, both sides' answers. So I
17 agree. So I am going to excuse for cause employees of
18 Intel. It won't come out of either side's peremptories.

19 MR. CHATTERJEE: Your Honor, I would like to
20 suggest that it is at least a case-by-case situation,
21 depending on what people do at Intel.

22 THE COURT: What sort of person at Intel
23 wouldn't be impacted by Intel's motion or Intel's interest
24 in the case?

25 MR. CHATTERJEE: Well, Your Honor, there is many

1 different ones. If we're talking about an engineer that
2 is working on chip design, I can understand the concern.

3 THE COURT: So an assistant HR director? What
4 about that?

5 MR. CHATTERJEE: An assistant HR director, I
6 don't know why that would influence things one way or
7 another. We are both suppliers to them.

8 THE COURT: Let's see if we get any first and
9 take it from there. As I said, it is anywhere from zero
10 to five in a typical jury.

11 Anything else from Mentor Graphics?

12 MR. YOST: Your Honor, we have a few remaining
13 trial exhibit issues. There were several that were not
14 accompanied by written briefing, objections by Synopsys to
15 Mentor Graphics' trial exhibits. They were not ruled
16 upon, presumably because Synopsys did not brief them.

17 Your Honor, may recall that in your conference
18 room that you had overruled Mentor Graphics's objection to
19 Synopsys' exhibits on the grounds that, A, they appeared
20 to be admissible, but in any event, we had not written
21 briefing as part of our objections.

22 THE COURT: If they are not briefed, they are in
23 for either side. That is, if the objection is not
24 briefed, the exhibit is in for either side, with this
25 caveat: I'm expecting you to eliminate from your exhibit

1 lists and witness testimony everything that is
2 inconsistent with my rulings on motions in limine or
3 Daubert motions.

4 I'm just not able, nor would I trust myself to
5 accurately do what you can do so much better, which is go
6 through your exhibits and witness statements and excise
7 what's inconsistent with those rulings. So there may be
8 an exhibit that was never objected to specifically but is
9 out of the case because of a motion in limine by Synopsys.

10 Does that make sense?

11 MR. YOST: Yes, it does.

12 THE COURT: You'll both do that?

13 MR. CHATTERJEE: Yes, Your Honor.

14 THE COURT: I don't know, I sometimes make
15 people re-submit their exhibit lists. Time is too short
16 now, but that's what I'll expect you to do.

17 MR. YOST: All right. With respect to the
18 machine in front of Your Honor, the ZeBu machine,
19 Exhibit 1070, we understand that has been removed from
20 Synopsys' trial exhibit list. They have offered it as a
21 demonstrative, which can be taken up between trial days.

22 THE COURT: Are you offering it as a
23 demonstrative?

24 MR. CHATTERJEE: We do intend to offer it as a
25 demonstrative, Your Honor.

1 THE COURT: Meaning that a witness is going to
2 use it to talk about things, but you are not going to
3 offer it as a trial exhibit?

4 MR. CHATTERJEE: That's right, Your Honor.
5 Right now, there is a very open question in our mind as to
6 whether it will actually be usable here. We are trying to
7 see if that is going to work. I'm skeptical that it will.
8 But to the extent we use it as a demonstrative, the likely
9 scenario is we just want to show people what one of these
10 things look like.

11 THE COURT: Will you object to that?

12 MR. GERINGER: Your Honor, we would not object
13 to showing what it looks like, as it sits there. There is
14 a lot of new data on that that we still haven't seen,
15 about 20 gigabytes' worth. We would object to it being
16 powered up and being used for some interactive demo,
17 because we don't know what is on that machine next to us.
18 That's all new to us and a mystery. So it is sitting
19 there inert, no problem.

20 THE COURT: Why is that your objection? If they
21 use it as a demonstrative to show how it works somehow,
22 you know how one works from the past. You just don't know
23 if this one matches the one from the past?

24 MR. GERINGER: They have a whole new set of test
25 data, Your Honor. I don't know what kind of data they

1 have got, what kind of demonstration they are running. It
2 is data we have never seen.

3 THE COURT: I'm trying to be clear then, there
4 is a ZeBu server somewhere that you have fully reviewed
5 and would be prepared to have powered up at trial. This
6 just isn't that?

7 MR. GERINGER: Yes, Your Honor. The ZeBu, as it
8 was given to us in the inspection, configured that way
9 with that data on it, we would not have an objection.

10 THE COURT: If you could figure out or be told
11 that any changes were minor and cosmetic and wouldn't
12 affect anything, that we could get that far, but with 20
13 gigabytes, you can't do that?

14 MR. GERINGER: Correct, Your Honor.

15 THE COURT: Your response, if any.

16 MR. CHATTERJEE: Your Honor, to the extent we
17 were going to use this in court, all we were going to do
18 is show what it looks like and how things can be used by
19 entering instructions; the same way that Dr. Sarrafzadeh
20 did.

21 THE COURT: All I'm requiring then is that this
22 demonstrative be substantially similar to the equipment
23 you provided for review during discovery. Any changes
24 have to be inconsequential to the issues in the case.

25 MR. CHATTERJEE: Okay, Your Honor.

1 THE COURT: All right. Anything else? We are
2 still on Mentor Graphics. I think I finished with you.
3 Do you have any other matters? I do have a two o'clock
4 criminal sentencing, so I would like to wrap this up.

5 MR. MILLER: I will be very quick, Your Honor.

6 We had a discussion about waveform viewers when
7 we were here on Tuesday. There seems to be some question
8 about the meaning of the ruling; the minute order ruling
9 that came down. Our understanding is that we can mention
10 waveform viewers as a generic tool as long as we don't
11 discuss the functional differences between those waveform
12 viewers and the one that was used by Dr. Sarrafzadeh.

13 THE COURT: That's right. I am going to say it
14 another way to make sure we are all clear. Any
15 substantive discussion of the impact or use of waveform
16 viewers and the whole process of debugging chips has to be
17 the waveform viewer discussed by Dr. Sarrafzadeh in his
18 expert report. But just an incidental mention of any
19 other waveform viewer, as long as its features or its
20 differences are not highlighted, can come up in the course
21 of trial. I don't know why that would be deliberate, but
22 it can come up.

23 MR. MILLER: Thank you, Your Honor.

24 MR. CHATTERJEE: Your Honor, we will try to meet
25 and confer. There are a couple of the deposition

1 designations where this is an issue, but we will try to
2 work that out.

3 THE COURT: Does that conclude what
4 Mentor Graphics has new before we start trial?

5 MR. YOST: One quick question. Does Your Honor
6 permit the use of pretrial witness statements at trial for
7 cross-examination purposes?

8 THE COURT: Meaning the trial statements that I
9 require by the trial management order?

10 MR. YOST: Yes.

11 THE COURT: As prior inconsistent statements?

12 MR. YOST: For example.

13 THE COURT: No.

14 MR. YOST: Thank you.

15 THE COURT: Anything else from Synopsys?

16 MR. CHATTERJEE: Two small things, Your Honor.

17 I would like to request that we get a 50/50
18 split instead of a 60/40 split on time. I understand that
19 Mentor bears the burden here, but given the lost profits
20 rulings, that introduces a whole layer of complexity
21 that's going to require more time.

22 THE COURT: Doesn't it require them to spend
23 more time than you in order to prove lost profits?

24 MR. CHATTERJEE: I think for us to respond to it
25 will also take an equal amount of time, because, at least

1 if you accept Mr. Riley's proposition, if they come in,
2 and they meet that "but for" test, the burden shifts to us
3 to explain why the entire value of the emulator doesn't
4 make sense. Then if they meet it, then we do have that
5 burden-shifting problem where we will have additional
6 time.

7 THE COURT: All right. Thank you.

8 MR. CHATTERJEE: Just on the other issue, we
9 would like to request a ruling on Mr. Cantow, the
10 disclosure issue, simply because that will likely be a
11 material issue in the case.

12 Thank you, Your Honor.

13 THE COURT: I will give you my answer on the two
14 witnesses who are still in play by the end of the day by
15 minute order, so be looking for that.

16 All right. Thank you. We will be in recess.

17 (Recess.)

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I certify, by signing below, that the foregoing is a correct transcript of the record of proceedings in the above-entitled cause. A transcript without an original signature, conformed signature, or digitally signed signature is not certified.

/s/ Dennis W. Apodaca
DENNIS W. APODACA, RDR, RMR, FCRR, CRR
Official Court Reporter

September 26, 2014
DATE