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| <p>Page 873</p> <p>1 Exhibit 55..... 943 E-mail Dated December 2, 2008, from 2 Terri Mascherin, to Anton Valukas and Others, Bates NO. JBPB 00052231</p> <p>3 Exhibit 56..... 946 4 Series of E-mails, Bates Nos. JBPB 00052232 to JBPB 00052233</p> <p>5 Exhibit 59..... 949 6 Series of E-mails, with Attachment, Bates Nos. JBPB 0015531 to JBPB 00015539</p> <p>7 Exhibit 60..... 954 8 Series of E-mails, Bates Nos. JBPB 00095542 to JBPB 00095546</p> <p>9 Exhibit 62..... 962 10 Series of E-mails, Bates Nos. JBPB 00095397 to JBPB 00095401</p> <p>11 Exhibit 67..... 965 12 Series of E-mails, Bates Nos. JBPB 00095522 to JBPB 00095523</p> <p>13 Exhibit 68..... 966 14 Series of E-mails, Bates Nos. JBPB 00052268 to 00052270</p> <p>15 Exhibit 69..... 968 16 Series of E-mails, Bates Nos. JBPB 00048706 to JBPB 00048707</p> <p>17 Exhibit 70..... 975 18 Series of E-mails, Bates No. JBPB 00095514</p> <p>19 Exhibit 71..... 976 20 E-mail Dated December 22, 2008, from Terri Mascherin, to Susan Levy and Others, Bates No. JBPB 00048941</p> <p>21 Exhibit 73..... 977 22 Series of E-mails, Bates Nos. JBPB 00048987 to JBPB 00048988</p> <p>23 Exhibit 80..... 980 24 Series of E-mails, Bates Nos. JBPB 00049064 to JBPB 00049065</p> <p>25</p> | <p>Page 875</p> <p>1 PROCEEDINGS</p> <p>2 (On the record at 9:04 a.m.)</p> <p>3 ARBITRATOR GRISSOM: All right. Good morning.</p> <p>4 I think we're on Day 4 of our arbitration. We've had a brief</p> <p>5 discussion off the record. I understand that there is a</p> <p>6 pending objection to some testimony of this witness for which a</p> <p>7 brief has been filed and which another is about to be tendered.</p> <p>8 And even though I don't have it in my hands yet, I'm going to</p> <p>9 say that it has been tendered. And counsel have -- now</p> <p>10 actually it has been tendered to me.</p> <p>11 And counsel have agreed that we will take a</p> <p>12 brief recess for me to review the briefs that both sides have</p> <p>13 submitted, and then we will resume for further -- further</p> <p>14 limited discussion, if any, and then we will resume the</p> <p>15 testimony of Ms. Mascherin.</p> <p>16 Anybody have anything you need to add at this</p> <p>17 point?</p> <p>18 MR. ALIBHAI: No, sir.</p> <p>19 MR. PELZ: No, sir. That's agreed.</p> <p>20 ARBITRATOR GRISSOM: All right. Then we'll be</p> <p>21 back off the record. Thank you.</p> <p>22 (Break was taken at 9:06 a.m. to 9:28 a.m.)</p> <p>23 ARBITRATOR GRISSOM: We're back on the record.</p> <p>24 Thank you for giving me a little bit of time to review what you</p> <p>25 have submitted. I think I might have taken more than my 15</p> |
| <p>Page 874</p> <p>1 Exhibit 82..... 981 E-mail Dated December 31, 2008, from 2 Terri Mascherin, to Susan Levy and Others, with Attachment, Bates Nos. JBPB 00049067 3 to JBPB 00049070</p> <p>4 Exhibit 87..... 993 5 Letter Dated January 2, 2009, Addressed to Terry Fokas, from Paul Margolis, Re: 6 Termination of Representation, Bates No. PARALLEL-001645</p> <p>7 Exhibit 95..... 1005 8 Series of E-mails, Bates No. JBPB 00095716</p> <p>9 Exhibit 100..... 1013 10 Series of E-mails, with Attachment, Bates Nos. JBPB 00049429 to JBPB 00049436</p> <p>11 Exhibit 101..... 1014 12 E-mail Dated February 4, 2009, from Terri Mascherin, to Paul Smith and Others, Bates No. JBPB 00049450</p> <p>13 Exhibit 103..... 1018 14 Series of E-mails, Bates No. JBPB 00098349 to JBPB 00098350</p> <p>15 Exhibit 112..... 1046 16 Letter Dated June 17, 2011, Addressed to David R. Bennett, George S. Bosy and Bosy and Bennett, from Russell J. Hoover</p> <p>17 Exhibit 115..... 1048 18 Demand for Arbitration Before JAMS</p> <p>19 Exhibit 117..... 1021 20 Letter Dated September 14, 2012, Addressed to Jamil N. Alibhai, Esq., from Paul M. Koning</p> <p>21</p> <p>22 REPORTER'S NOTE: Pursuant to all Parties' requests, copies of</p> <p>23 exhibits are not included with this transcript.</p> <p>24</p> <p>25</p> | <p>Page 876</p> <p>1 minutes, but I'm going to try to get it back later.</p> <p>2 The context in which the testimony and the</p> <p>3 objection appear is -- it's really kind of a horse of a</p> <p>4 slightly different color from anything I think that's been</p> <p>5 suggested by the authorities on either side. I understand what</p> <p>6 the rules are and you-all clearly presented those. But I think</p> <p>7 in the context of this case and the testimony we have already</p> <p>8 had, that the objection is going to be overruled, and we can</p> <p>9 proceed with the testimony of Ms. Mascherin.</p> <p>10 MR. ALIBHAI: Arbitrator Grissom, for clarity, I</p> <p>11 don't need to object again to the continued times we would</p> <p>12 bring up this issue. I've preserved this issue as something</p> <p>13 that we have an objection to.</p> <p>14 ARBITRATOR GRISSOM: I mean, you can if you wish</p> <p>15 to. I mean, in the arbitration context, I don't see much point</p> <p>16 in it. But, I mean, I think you have -- you have made the</p> <p>17 motion and I've ruled on it, and I think it would probably be</p> <p>18 at the cost of taking up time that we need to actually hear</p> <p>19 testimony from this and other witnesses, so...</p> <p>20 THE WITNESS: Good morning.</p> <p>21 ARBITRATOR GRISSOM: Good morning. Welcome</p> <p>22 back.</p> <p>23 Are you ready?</p> <p>24 MR. PELZ: Yes, sir.</p> <p>25 ARBITRATOR GRISSOM: Please proceed.</p> |

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1 DIRECT EXAMINATION (continued)

2 BY MR. PELZ:

3 Q. Ms. Mascherin, I believe you had Claimant's Exhibit

4 303 in front of you. I'm handing that to you again.

5 A. Thank you.

6 MR. PELZ: 303, Claimant's.

7 ARBITRATOR GRISSOM: I know. I'm just trying to

8 find it.

9 MR. PELZ: I believe it's right here.

10 Q. (BY MR. PELZ) And to briefly put us back in context,

11 I believe the previous exhibit you'd seen was 302, which was

12 your memo about a conference call you had on January 12th.

13 A. Yes.

14 Q. Following the January 12th call, did you then have

15 another call with Ms. Steinberg the next day?

16 A. Yes. We talked again on the 13th.

17 Q. What was discussed with Ms. Steinberg on the 13th of

18 January 2009?

19 A. The topic on the 13th was her request that Jenner &

20 Block stay in the case and represent Parallel Networks. She

21 told us that the client was very interested in Jenner & Block

22 remaining in the case. She -- she contested a couple of the

23 things that we had said about why Jenner & Block had decided to

24 send the notice of termination, and we got into a bit of a

25 discussion about when the judge had announced the bifurcation

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1 of the damages from a liability phase, and -- but we got past

2 that pretty quickly. And she said that she had -- that she

3 understood that we had a concern about the client's failure to

4 live up to its responsibilities to keep current on the expenses

5 and asked whether we'd considered staying in the case if we

6 were to amend the fee agreement to provide for a retainer to

7 cover the expenses through the appeal.

8 And then she made a --

9 Q. So after these preliminaries, then did she present a

10 proposal to you?

11 A. She did present a proposal.

12 Q. And what was the proposal that she presented to you

13 on January 13th?

14 A. The proposal was that Parallel Networks would get a

15 cash retainer -- first of all, the agreement -- the existing

16 contingency fee agreement would be amended, that the -- for

17 purposes of the appeal, Parallel Networks would pay a cash

18 retainer. I don't believe in this call that she suggested a

19 particular amount for a retainer.

20 She proposed that Parallel Networks and Jenner &

21 Block agree at that time on a recommended settlement value for

22 the Oracle case in the event of an -- of a successful appeal

23 and that we amend the fee agreement essentially to cap Jenner &

24 Block's contingent recovery -- or recovery of any fees for the

25 case to a percentage of whatever that agreed value was.

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1 And she suggested and agreed settlement value at

2 that time of 40 million, which she said broke down into 20

3 million for settlement of claims related to the Oracle products

4 and 20 million related to claims for the BEA products.

5 Q. So that's -- that's the suggestion with respect to

6 the Oracle case, correct?

7 A. Correct.

8 Q. Was there a suggestion with respect to the QuinStreet

9 case?

10 A. With respect to the QuinStreet case, she said that

11 she wanted Jenner & Block to stay in the QuinStreet case,

12 quote, in a low-key way. And I said, what does that mean, to

13 be counsel for a client in a low-key way? If you've appeared

14 in the case, you're counsel in the case. And, you know, what

15 do you mean by that? And she said, well, we don't want you to

16 do very much. We want you to try to, you know, just sort of

17 keep the case inactive, try to put things off, and -- and we

18 think that -- that, you know, eventually, it will make sense

19 for you to try to negotiate a settlement and -- at the

20 QuinStreet portion of it. And meanwhile, Parallel Networks

21 will try to get somebody else to take the Microsoft aspect. In

22 other words, to take over from us and to take the Microsoft

23 part of the case forward.

24 Q. Did you discuss that proposal with firm management,

25 particularly Ms. Levy?

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1 A. Yes, I did.

2 Q. Now, with respect to the Microsoft pleading --

3 microsoft case, was there some -- something coming up that

4 needed to be done in mid to late January 2009?

5 A. Yes. There was a deadline to answer or otherwise

6 plead to their -- whatever their complaint was called. It was

7 a third-party complaint, or I forget exactly what it was, their

8 counterclaim.

9 Q. Let me hand you what we have marked as Claimant's

10 Exhibit 311.

11 A. Yes.

12 Q. Now, Were you talking with other lawyers at Jenner &

13 Block with respect to how we -- what might be done with respect

14 to responding to Microsoft?

15 A. Yes.

16 Q. What were you -- had you learned from other general

17 lawyers and whom were those lawyers?

18 A. I had heard from Paul Margolis that he -- we were

19 trying to figure out what the client wanted us to do, whether

20 the client wanted Jenner & Block to -- to file a response to

21 that complaint, whether the client had plans for other counsel

22 to come in and draft that response, whether the client wanted

23 local counsel to draft the response. And the deadline was

24 approaching.

25 I don't remember at this time exactly what the

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1 deadline was, but it was coming up. And we were counsel of
2 record in the case, so I was concerned about making sure
3 that -- that someone was preparing a responsive pleading. And
4 so we were having difficulty getting an answer about what we
5 were supposed to be doing, and Paul Margolis reported to me
6 that he spoke with Mr. Fokas on the 20th of January and that
7 Mr. Fokas told Paul that Mr. Fokas did not want Jenner & Block
8 to prepare a responsive pleading, that Mr. Fokas was going to
9 draft the answer himself and wanted us to simply take the
10 answer that he drafted and file it.

11 This was contrary to what Ms. Steinberg had told
12 me in a conversation shortly before that where she had said
13 that she wanted Jenner & Block to prepare the responsive
14 pleading. So I was trying to get clear direction from her, are
15 we supposed to be listening to you, or are we supposed to be
16 listening to Mr. Fokas?

17 Q. Let me show you what's been marked as Claimant's
18 Exhibit 313. 313. Let me ask, Did you speak with Ms.
19 Steinberg again on or about January 20th, 2009?

20 A. Yes, I did.

21 Q. Can you tell us what discussions occurred on that
22 day.

23 A. Yes. I gave Ms. Steinberg a counterproposal for
24 amending the fee agreement. I believe, at this point, her
25 we had had another discussion in between, and she had suggested

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1 specifically that -- I think I have the timing on this correct.
2 I think she had suggested a retainer of 250,000, but I may
3 have -- that might have been in response to this one. I'm not
4 certain of her dates. Perhaps you have another e-mail on that.

5 But, in any event, I conveyed a counterproposal
6 that -- proposing a retainer of \$500,000 for the appeal, making
7 it clear that Jenner & Block needed to retain the right to
8 withdraw from the representation to terminate the fee agreement
9 in the future should any -- you know, should need for that
10 arise either because the client didn't live up to the agreement
11 or for any other reason, such as, for example, ethical
12 concerns.

13 I told her that with regard to the QuinStreet
14 case, that we were recommending that the client settle the case
15 for \$750,000 and requested authority to negotiate a
16 settlement -- indicated our willingness to stay in that case to
17 negotiate a settlement, requesting authority to negotiate a
18 settlement of \$750,000 or more, with Jenner & Block to be paid
19 the regular contingent fee that would apply under the existing
20 agreement for that settlement.

21 And I believe at this point in time, I also
22 suggested -- made counterproposal with regard to how to deal
23 with the Oracle issue, but I don't recall exactly what the --
24 what my proposal was on that.

25 Q. Was there some discussion about what to do in terms

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1 of this responsive pleading to Microsoft?

2 A. Yes, there was discussion about the Microsoft
3 pleading and --

4 Q. And in advance of this discussion, had there been
5 discussions with local counsel with respect to the Microsoft --

6 A. Yes.

7 Q. -- response?

8 A. Yes. There had been a further discussion with Mr.
9 Fokas, where Mr. Fokas had said, well, he changed his mind
10 again and that he'd asked local counsel to prepare the
11 pleading. And then Paul Margolis had gotten a call from local
12 counsel that he was concerned about signing an answer -- you
13 know, about preparing it himself, that he didn't feel qualified
14 to do it, he wasn't comfortable signing something that the
15 client prepared. He wanted Jenner & Block involved in
16 preparing any responsive pleading that was prepared because
17 Jenner & Block was really the firm that had done the
18 investigation in the case and was most familiar with what
19 should be said at this point in time we were talking about
20 filing an answer to the complaint.

21 Q. Let me show you what's been marked as Claimant's
22 Exhibit 315. And my first question is, did you speak with Ms.
23 Steinberg again on January 21st, 2009?

24 A. Yes, I did.

25 Q. Did you discuss a counterproposal with respect to

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1 Jenner & Block's future involvement during that phone call?

2 A. Yes. Laura, in that phone call, responded to the
3 proposal that I had made the day before and made a -- made
4 another proposal about amending the fee agreement.

5 Q. Okay. With respect -- let's start, first, with
6 respect to Microsoft, what was her proposal?

7 A. Laura suggested -- proposed that Jenner & Block would
8 file the answer to Microsoft's complaint, which at this point
9 was due the next day, January the 22nd, and would, you know,
10 sign that answer as counsel for Parallel Networks. She --

11 Q. What was --

12 A. I'm sorry.

13 Q. What was the discussion about -- what was the
14 proposal with respect to the QuinStreet case?

15 A. With respect to QuinStreet, she, you know, agreed
16 with the portion of my proposal that Jenner & Block would be
17 authorized to negotiate and enter into a settlement on behalf
18 of Parallel Networks of \$750,000 or more and that Jenner & Block
19 would receive its regular contingent fee from that settlement.

20 And then what she wanted us to do was -- her
21 proposal was that once we settled the QuinStreet portion of the
22 case, that Jenner & Block should try then to get the Microsoft
23 portion of the case stayed to give Parallel Networks sufficient
24 time to bring in different counsel to replace us as counsel in
25 that litigation with Microsoft.

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| <p style="text-align: right;">Page 885</p> <p>1 Q. And if the stay wasn't permissible, what was the 2 proposal from Ms. Steinberg?</p> <p>3 A. She proposed that if Microsoft would not agree to 4 with stay, that then we could file a motion seeking to withdraw 5 from the case. She didn't specifically say that Parallel 6 Networks would agree that we could withdraw from the case. She 7 said we could file a motion and ask the Court to let us out.</p> <p>8 Q. Now, on the Oracle case, what was the proposal as of 9 January 21st, 2009?</p> <p>10 A. This refreshes my memory of when she made the 11 \$250,000 proposal. I had proposed -- as to the first element, 12 the retainer, I had proposed a retainer of \$500,000 for the 13 appeal, but my proposal had been that that would be to cover 14 expenses and that our fees would come from a contingent 15 recovery. And we had had some discussion about what the 16 converse of that -- whether there would be any changes to the 17 converse of that.</p> <p>18 But under the existing fee agreement, she made a 19 counterproposal that rather than paying a retainer for expenses 20 and allowing us a contingent recovery for the appeal, that 21 Parallel Networks would agree to pay a retainer of \$250,000 for 22 the fees for appeal, that Jenner & Block would bill its fees at 23 half rate, half normal rates, and that the \$250,000 would have 24 to come from Parallel Networks' share of the QuinStreet 25 settlement once the QuinStreet case got settled. And if we --</p> | <p style="text-align: right;">Page 887</p> <p>1 A. Yes, I did.</p> <p>2 Q. With respect to January 23rd, what's happening with 3 respect to the Microsoft responsive pleading?</p> <p>4 A. At this point in time, we had had a lot of 5 discussions internally about what the most prudent type of 6 responsive pleading would be to file in that case, and we came 7 to the opinion that -- we, the Jenner & Block team, came to the 8 opinion that the best type of responsive pleading actually to 9 file in that case would not be the answer that the client had 10 been planning to prepare, but rather, a motion to dismiss that 11 action for lack of personal jurisdiction because of the fact 12 that the -- we had done additional research and determined that 13 there had to be an independent basis for jurisdiction for that 14 claim by Microsoft against Parallel Networks in the case, and 15 we believed there was a very strong argument that there was no 16 basis for personal jurisdiction.</p> <p>17 Q. Did that motion, in fact, get filed?</p> <p>18 A. Yes, we did prepare and file that motion.</p> <p>19 Q. Now, let me show you what we've marked as Claimant's 20 Exhibit 323 and ask you, did you -- subsequent to the 23rd, did 21 you receive an additional -- or a new proposal from Ms. 22 Steinberg on or about January 26th?</p> <p>23 A. Yes, I did. She called me again that day and had 24 another proposal.</p> <p>25 Q. What was the proposal on January 26th?</p> |
| <p style="text-align: right;">Page 886</p> <p>1 if our fees -- if half of our fees for the appeal were less 2 than 250,000, we would have to refund the different -- you 3 know, remainder of the retainer to Parallel Networks.</p> <p>4 ARBITRATOR GRISSOM: What was the number 200 or 5 250?</p> <p>6 THE WITNESS: 250,000.</p> <p>7 ARBITRATOR GRISSOM: Okay.</p> <p>8 A. And then she also proposed that we could negotiate -- 9 we could attempt to negotiate a settlement with Oracle at any 10 point in time, but that Parallel Networks retained discretion 11 to approve or reject the settlement no matter what the amount 12 was at any time. But in the event we did achieve a settlement 13 of \$10 million or more, and Parallel Networks agreed to it, 14 that our -- that Jenner & Block's fee recovery would be capped 15 at one-third of the amount recovered in settlement, net of fees 16 paid for the appeal and any costs --</p> <p>17 Q. (BY MR. PELZ) Now --</p> <p>18 A. -- which is kind of a complicated proposal.</p> <p>19 And she also said we couldn't terminate -- she 20 also proposed that we could not terminate the engagement or the 21 fee agreement for any reason until the appeal was completely 22 concluded.</p> <p>23 Q. I'm showing you Claimant's Exhibit 320, and 24 specifically, I'm going to ask you, did you speak with Ms. 25 Steinberg again on the 23rd of January 2009?</p> | <p style="text-align: right;">Page 888</p> <p>1 A. The proposal on January 26th was -- remained the same 2 with regard to QuinStreet, which is that we could settle for 3 that -- that Parallel Networks would authorize Jenner & Block 4 to settle in the amount of 750,000 or more and Jenner & Block 5 would receive its normal contingent recovery, which would have 6 been, under the existing fee agreement, one-third net of costs 7 from that settlement. And that Jenner & Block could -- once it 8 had -- once Jenner & Block had achieved that settlement with 9 QuinStreet, that Parallel Networks would agree that Jenner & 10 Block could withdraw from that whole case, the 11 QuinStreet/Microsoft case.</p> <p>12 But in any event, if we had not achieved the 13 settlement by February the 17th, we could withdraw -- we could 14 file a motion to withdraw on February 17th. So that was the 15 QuinStreet portion of it.</p> <p>16 Q. And by this time, on that motion to withdraw, was 17 there -- was Parallel Networks going to agree to that motion to 18 withdraw?</p> <p>19 A. My recollection is that Parallel Networks was 20 proposing they would agree that we could withdraw at the latest 21 by February the 17th.</p> <p>22 Q. Now, on the Oracle appeal, what is the proposal that 23 was presented as of January 26, 2009?</p> <p>24 A. You'll recall her last proposal was a retainer of 25 250,000 for half and we would bill our fees at half rates. I</p> |

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| <p style="text-align: right;">Page 889</p> <p>1 had countered with a proposal for a retainer of 500,000 and we 2 would bill our fees at full rates. 3 She then countered again, accepting the idea of 4 a retainer of \$500,000 for fees and expenses, but offering that 5 Parallel Networks would pay that in two stages. They would pay 6 \$200,000 immediately upon execution of an amendment to the 7 contingent fee agreement, and then they would pay the remaining 8 \$300,000 within 30 days of the execution of the amendment. 9 And her proposal, again, was that in the event 10 that our actual fees and costs for the appeal were less than 11 the amount of the total retainer, at the conclusion of the 12 appeal, we would refund the difference to Parallel Networks. 13 Q. Was there discussion about Jenner & Block's ability 14 to withdraw in the Oracle case? 15 A. Yes. She agreed that Jenner & Block would be -- 16 would retain its right to withdraw and terminate the agreement 17 under the -- you know, consistent with the terms of the 18 existing fee agreement so that -- you know, that would have 19 allowed -- and consistent with ethical obligations. So that 20 would have allowed termination for -- you know, if we 21 determined that it wasn't in our economic interest to proceed, 22 as well as for breach and for, you know, other ethical reasons. 23 Q. Did you discuss what recovery -- what contingent 24 recovery Jenner & Block might obtain if it did withdraw? 25 A. Yes. She proposed that in the event -- actually, I</p> | <p style="text-align: right;">Page 891</p> <p>1 A. Yes. I got authority to accept certain portions of 2 it and to make counterproposals on certain portions of it. 3 Q. Showing you what's been marked as Claimant's Exhibit 4 324. Did you send this to Ms. Steinberg on or about January 5 27th, 2009? 6 A. Yes, I did. 7 Q. And let's just read the first sentence. 8 A. I said to Ms. Steinberg, Laurie, the terms that you 9 proposed yesterday are acceptable to us with a few minor 10 changes. And I told her I was going to put them in writing 11 because I thought we were close enough to having a -- to be 12 able to start drafting an agreement that it made sense to make 13 sure that -- to put them in writing and make sure that we were 14 clear and everybody agreed. 15 Q. Was the bulk of her January 26th proposal accepted? 16 A. Yes. 17 Q. At least as you understood it? 18 A. Yes. 19 Q. And are the terms that you were proposing all set 20 forth there in Exhibit 324? 21 A. Yes, they are. 22 Q. Now -- and, specifically, was there a discussion of 23 an amount to be paid to Jenner & Block in the event that the 24 agreement was terminated? 25 A. Yes. Our agreement at this point in time was that in</p> |
| <p style="text-align: right;">Page 890</p> <p>1 think this proposal was regardless whether we withdrew or not. 2 She was proposing that our -- that Jenner & Block's recovery -- 3 in the event Parallel Networks obtained a recovery either in 4 settlement or by verdict, would be an agreed-upon amount of \$3 5 million. 6 Q. Was there still further discussion about how the fees 7 paid on appeal, how that would be handled? 8 A. Right. There was one additional term that she added 9 in this proposal that we hadn't discussed before, which was how 10 to handle the -- or I guess she had discussed it in her last -- 11 as I said, she continued to take the position that if there -- 12 that if and when there -- Parallel Networks ultimately 13 recovered by verdict or by settlement, the agreed-upon amount 14 that Jenner & Block would be paid would be \$3 million, but it 15 would be net of any amounts that Jenner & Block had been paid 16 in fees and costs for the appeal up to that time. 17 So, for example, if Jenner & Block had done the 18 appeal and our fees were \$300,000, say, and we had refunded 19 200,000 of the retainer to Parallel Networks, that 300,000 that 20 Jenner & Block had received in fees would be deducted from the 21 \$3 million. 22 Q. Did you discuss this proposal with Ms. Levy? 23 A. Yes, I did. 24 Q. And did you get any authority with respect to this 25 proposal?</p> | <p style="text-align: right;">Page 892</p> <p>1 the event Jenner & Block terminated the agreement and Parallel 2 Networks later obtained a recovery through settlement or 3 verdict, that Jenner & Block's fee would be \$3 million. 4 And then there was still a dispute between us 5 about how to deal with the question whether amounts paid for 6 the appeal should be deducted from that or not. In our 7 discussion, she had proposed that we agree to arbitrate that, 8 and I accepted that proposal and suggested that while that 9 arbitration was being -- to try to conclude that arbitration 10 quickly and that the amount in dispute, in the meantime, be 11 escrowed. 12 Q. Okay. Now, in all of these discussions in January of 13 2009, was there ever any discussion or suggestion that Jenner & 14 Block's fee for its past work, any fee for the past work, would 15 be paid even if Parallel Networks didn't recover? 16 A. No. She never -- she never brought that up and I 17 never requested that. 18 Q. So you never indicated that any of Jenner & Block's 19 fee would be -- for past work would be owed unless there was a 20 future recovery? 21 A. Absolutely correct. 22 Q. Let me show you what has been marked as Claimant's 23 324. Is this a letter that you received from Ms. Steinberg on 24 January 28, 2009? 25 A. Yes, and she's responding to the proposal that we</p> |

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| <p style="text-align: right;">Page 893</p> <p>1 just looked at in my e-mail.</p> <p>2 MR. ALIBHAI: I don't think 324 is a letter.</p> <p>3 THE WITNESS: The second page is.</p> <p>4 MR. PELZ: The letter is attached to the e-mail.</p> <p>5 ARBITRATOR GRISSOM: I'm looking at 324, and</p> <p>6 there is no --</p> <p>7 THE WITNESS: Oh, 327.</p> <p>8 A. I think you read the Bates number.</p> <p>9 MR. PELZ: Oh, I read the wrong -- sorry.</p> <p>10 A. You read the Bates number.</p> <p>11 MR. Pelz: It's 327. My apologies. It should</p> <p>12 be a letter attached to an e-mail, if we'll get to the right --</p> <p>13 thanks, Jamil.</p> <p>14 Q. (BY MR. PELZ) Can you just read the second sentence</p> <p>15 in Ms. Steinberg's January 28th letter.</p> <p>16 A. Yes. She said, I believe that what you have set</p> <p>17 forth is generally in accordance with what we have discussed.</p> <p>18 Q. Now, when you got this letter and reviewed this</p> <p>19 letter, where did you think these -- what did you think the</p> <p>20 status of these negotiations was?</p> <p>21 A. We had reached an agreement on terms to amend the</p> <p>22 contingent fee agreement, and I asked my partner, Russ Hoover,</p> <p>23 to draft an amendment on those things.</p> <p>24 Q. Now, in all of these discussions in January of 2009, ---</p> <p>25 did Ms. Steinberg ever suggest or say that Jenner & Block's</p> | <p style="text-align: right;">Page 895</p> <p>1 A. Yes, it did.</p> <p>2 Q. Did you -- did Ms. Steinberg ever tell you that this</p> <p>3 agreement wasn't essentially the terms that had been agreed to</p> <p>4 between you and her?</p> <p>5 A. No.</p> <p>6 Q. On or about February 4th, did you get a letter from</p> <p>7 Mr. Harvey Bines?</p> <p>8 A. Yes, I did.</p> <p>9 Q. And I'm going to hand you Claimant's Exhibit 331.</p> <p>10 Did you get that on or about February 4th, 2009?</p> <p>11 A. Yes.</p> <p>12 Q. Is that the first sort of response that you got with</p> <p>13 respect to the draft first amendment that you had sent?</p> <p>14 A. Yes.</p> <p>15 Q. Now, what was -- what was your reaction when you got</p> <p>16 this response?</p> <p>17 A. I was frustrated. I was angry.</p> <p>18 Q. Why was that?</p> <p>19 A. Because Laura and I had talked through the terms that</p> <p>20 were reflected in the draft amendment. She had specifically</p> <p>21 agreed to them. Many of them, in fact, were terms that</p> <p>22 Parallel Networks itself had initially proposed and Jenner &</p> <p>23 Block had consented to.</p> <p>24 And Mr. Bines' letter, after all of that</p> <p>25 discussion, said, in essence, the client -- the client now is</p> |
| <p style="text-align: right;">Page 894</p> <p>1 notice of termination was in any way improper?</p> <p>2 A. No.</p> <p>3 Q. Did she ever suggest or say that Jenner & Block</p> <p>4 didn't have the right to terminate under the agreement?</p> <p>5 A. No.</p> <p>6 Q. Did she ever say or suggest that Jenner & Block would</p> <p>7 not be entitled to some -- some payment in the event there was</p> <p>8 a recovery by Parallel Networks?</p> <p>9 A. No.</p> <p>10 Q. Did she ever say or suggest that the agreement was in</p> <p>11 any way unenforceable or unconscionable?</p> <p>12 A. No.</p> <p>13 Q. You said -- you indicated that you had Mr. Hoover</p> <p>14 draft something, and I quote -- asked you to look at Claimant's</p> <p>15 Exhibit 328. Is that an e-mail that you sent to Ms. Steinberg</p> <p>16 on February 1st, 2009?</p> <p>17 A. Yes.</p> <p>18 Q. And what is attached to the e-mail?</p> <p>19 A. The draft amendment to the contingent fee agreement</p> <p>20 that Russ Hoover prepared.</p> <p>21 Q. What is the document entitled?</p> <p>22 A. "First Amendment to Contingent Fee Agreement."</p> <p>23 Q. Was this -- did this first amendment contain what you</p> <p>24 believed were the terms that had been discussed and essentially</p> <p>25 agreed to between you and Ms. Steinberg?</p> | <p style="text-align: right;">Page 896</p> <p>1 not willing to agree to paying the terms for payment of a</p> <p>2 retainer for the appeal. The -- the client can pay you</p> <p>3 \$200,000 now, but the only thing Mr. Fokas will commit to with</p> <p>4 regard to paying the rest of the retainer that's been agreed to</p> <p>5 is a best-efforts obligation.</p> <p>6 And my reaction to that was it would be</p> <p>7 irresponsible for me to agree to a best-efforts obligation with</p> <p>8 a man who was in perpetual breach of a binding obligation to</p> <p>9 pay. This is a client who, time after time, seemed to have</p> <p>10 told us, you'll get your money at the end of the month, you'll</p> <p>11 get your money at the end of the year. And then we hear the</p> <p>12 next week, oh, actually, I can't pay that, I can only pay you,</p> <p>13 you know, some smaller amount of money, and had strung us along</p> <p>14 for the better part of a year accumulating a debt -- you know,</p> <p>15 unpaid debt to us of half a million dollars.</p> <p>16 Q. And did you discuss the situation with Ms. Levy?</p> <p>17 A. Oh, yes.</p> <p>18 Q. And what was the determination of what response to</p> <p>19 send to this letter? And I will show you Claimant's Exhibit</p> <p>20 330.</p> <p>21 A. This is the response that I sent to Mr. Bines'</p> <p>22 letter. Susan and I were both in agreement that it was time to</p> <p>23 simply act on the notice of termination, that Mr. Fokas had</p> <p>24 shown an unwillingness to live up to terms that he had just</p> <p>25 authorized his counsel to agree to, and that it would not be</p> |

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| <p style="text-align: right;">Page 897</p> <p>1 prudent or fruitful to continue to try to work out some sort of 2 arrangement for Jenner & Block to stay in the case. 3 Q. Now, when you -- after you sent this letter to Mr. 4 Bines and Ms. Steinberg, did Mr. Bines and Ms. Steinberg ever 5 say or suggest that Jenner & Block couldn't go forward with 6 termination? 7 A. No. 8 Q. Did they ever say or suggest that you wouldn't have a 9 right to receive payment if Parallel Networks recovered? 10 A. No. 11 Q. Did they ever say or suggest that the agreement was 12 unenforceable? 13 A. No. 14 Q. Did you send proposed papers with respect to 15 withdrawal from the QuinStreet matter? 16 A. Yes, I did. 17 Q. In fact, did you do that several times to Ms. 18 Steinberg and Mr. Bines? 19 A. Yes. I believe I had already sent some drafts 20 because we had agreement about an ultimate withdrawal date for 21 the QuinStreet case when I thought we had reached an agreement 22 on amendment to the contingent fee agreement. And I believe I 23 had already sent one set of drafts to Ms. Steinberg before I 24 received Mr. Bines's letter, and then I continued to send 25 drafts as the documents were prepared for all -- for</p> | <p style="text-align: right;">Page 899</p> <p>1 Bines, Baker Botts, local counsel in Delaware, did any of them 2 ever indicate that Parallel Networks was not consenting and 3 agreeing to the withdrawal? 4 A. No. 5 Q. Did any of them ever advise the Court that Parallel 6 Networks was not consenting and agreeing to the withdrawal? 7 A. No. They indicated that they mutually agreed to it. 8 Q. Did the Court enter an order with respect to Jenner & 9 Block's withdrawal? 10 A. Yes. It entered an order allowing us to withdraw our 11 appearances. 12 Q. Now, did you have further discussions with Ms. 13 Steinberg with respect to replacement counsel? 14 A. Yes. I had at least one pretty extensive discussion 15 with her about procedures for new counsel coming in, about the 16 procedures for new counsel to be able to have access to 17 materials under the protective order. 18 She told me the new counsel would be Baker and 19 Botts. I exchanged with her drafts of a letter notifying the 20 Federal Circuit that Baker and Botts would be new counsel so 21 that any communications from the Federal Circuit would go to 22 them as counsel. 23 She requested copies of all of the -- she wanted 24 to know whether the engagement letters with the experts were 25 between -- or engagement agreements with the experts were</p> |
| <p style="text-align: right;">Page 898</p> <p>1 withdrawal -- Jenner & Block's withdrawal from all of the 2 cases. 3 Q. Did you discuss with Ms. Steinberg, specifically, the 4 withdrawal? 5 A. Yes. She agreed to it. 6 Q. After February 4th, she -- 7 A. Yes. 8 Q. -- agreed to the withdrawal? 9 A. Yes. She approved the papers. 10 Q. Were withdrawal papers filed with the Court? 11 A. Yes. We filed an agreed motion stating that the 12 client and Jenner & Block agreed to Jenner & Block's 13 withdrawal. 14 Q. Were those papers sent to Ms. Steinberg and 15 Mr. Bines? 16 A. Yes. They were sent to Ms. Steinberg and Mr. Bines 17 ahead of time. They approved them. After we filed them, I 18 sent them as-filed copies, and they went out on the automatic 19 docket system. And Mr. Fokas also was counsel of record in the 20 case, and he received copies that way as well. 21 Q. And is what you just testified to reflected in 22 Claimant's Exhibit 334? 23 A. Yes. 24 Q. Did Parallel Networks -- any of the counsel for 25 Parallel Networks, including Mr. Fokas, Ms. Steinberg, Mr.</p> | <p style="text-align: right;">Page 900</p> <p>1 between Jenner & Block and the experts or the clients and the 2 experts. I looked into it, determined they were between Jenner 3 & Block and the experts, so I sent her copies of all of those 4 agreements so that Baker and Botts could deal with whatever 5 needed to be done to handle those agreements with the experts. 6 The same with regard to a consulting expert, who had an 7 agreement with Jenner & Block. 8 Q. Show you what's been marked as Claimant's Exhibit 9 341. 10 A. Right. This is the whole package that I sent her. 11 Q. Can you, for the record, identify the date of this 12 transmission and to whom it was sent? 13 A. This is an e-mail from me to Mr. Bines and Ms. 14 Steinberg on Friday, February the 6th, 2009. 15 Q. Can you just go through some of the materials that 16 were sent to her? And I believe they're also attached to this 17 exhibit. 18 A. Sure. I sent her a copy of the protective order in 19 the case, or it looks like maybe David Nelson forwarded the 20 protective order, and pointed out that once counsel substituted 21 in for us, because all counsel of record were automatically 22 covered, that they would be -- that new counsel would be 23 automatically covered. I told her I was collecting the expert 24 engagement letters and would send those. She had asked whether 25 we had retained local counsel or whether Mr. Fokas had retained</p> |

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| <p>Page 901</p> <p>1 local counsel directly. I investigated and determined that Mr.</p> <p>2 Fokas had retained them, so I let her know about that.</p> <p>3 And then we had had a discussion about what to</p> <p>4 do with regard to notifying the Federal Circuit about new</p> <p>5 counsel. We were, at this point in time, waiting for the</p> <p>6 appeal to the docketed in the Federal Circuit because the clerk</p> <p>7 had informed us that until the appeal was docketed, there was</p> <p>8 no need to file appearances, but that the clerk of court wanted</p> <p>9 to know who counsel of record would be so that the clerk could</p> <p>10 direct communications to them.</p> <p>11 And we had just learned -- or I guess as of this</p> <p>12 date, the appeal hadn't been docketed yet. She asked to us</p> <p>13 hold off sending any notice to the Federal Circuit, that we</p> <p>14 wouldn't be counsel until the following Friday. And I was</p> <p>15 saying, well, if the appeal gets docketed in the meantime --</p> <p>16 we're happy to hold off, but if the appeal gets docketed in the</p> <p>17 meantime, you need to be aware that the rule in the circuit</p> <p>18 says that counsel must file their appearance promptly, so you</p> <p>19 need to make sure that whoever is coming in on this case files</p> <p>20 their appearance promptly.</p> <p>21 Q. Now, when you sent the motions and draft orders --</p> <p>22 the motion to withdraw and the draft order with respect to the</p> <p>23 motion to withdraw to Ms. Steinberg -- let me show you</p> <p>24 Claimant's Exhibit 346. What was Ms. Steinberg's response when</p> <p>25 you sent her the motion to withdraw?</p> | <p>Page 903</p> <p>1 A. Yes. Ms. Steinberg told me on February 10th that</p> <p>2 Baker Botts would be substituting in as counsel in both the</p> <p>3 Oracle appeal and the QuinStreet/Microsoft case.</p> <p>4 Q. Did -- what did Jenner & Block do when it learned</p> <p>5 that Baker Botts was coming in to take over the lead of the</p> <p>6 Oracle and QuinStreet cases?</p> <p>7 A. We talked with -- with Baker Botts pretty much right</p> <p>8 away. In fact, I think by the time I got Laura's message, Paul</p> <p>9 had already received a call from someone at Baker Botts, and</p> <p>10 we --</p> <p>11 Q. Well, let's --</p> <p>12 A. -- gave them whatever they needed.</p> <p>13 Q. Yes. Let's look at Claimant's Exhibit 124.</p> <p>14 A. Right. Now, Mr. --</p> <p>15 ARBITRATOR GRISSOM: If you'll wait for a</p> <p>16 second.</p> <p>17 MR. PELZ: Yes, sir.</p> <p>18 ARBITRATOR GRISSOM: Thank you.</p> <p>19 Q. (BY MR. PELZ) You were talking about Mr. Margolis</p> <p>20 having had a call?</p> <p>21 A. Yes. Yes. And this was Mr. Margolis's e-mail to me</p> <p>22 and others on the team letting us know that before he had even</p> <p>23 received Ms. Steinberg's e-mail, which I had forwarded to</p> <p>24 him -- or I guess she had copied him -- he had already received</p> <p>25 a call from a lawyer at Baker Botts, Kevin Meek, informing him</p> |
| <p>Page 902</p> <p>1 A. She said, thank you.</p> <p>2 Q. And that's all, correct?</p> <p>3 A. Yes.</p> <p>4 Q. Did Jenner & Block then have to reach out to the</p> <p>5 other counsel in the case with respect to the motion?</p> <p>6 A. I think at this point in time we had had to -- we</p> <p>7 wanted to -- there was a local rule that required us to</p> <p>8 determine whether counsel consented to the motion or not, and</p> <p>9 so we had to have a communication with QuinStreet's counsel and</p> <p>10 with Microsoft's counsel to make sure that we could represent</p> <p>11 that -- that no one opposed the motion to withdraw. And we</p> <p>12 were also seeking an -- at Ms. Steinberg's request, we were</p> <p>13 seeking an extension of time to reply to a motion to dismiss --</p> <p>14 I'm sorry. I guess it was Microsoft wanted an extension of</p> <p>15 time to respond to the motion to dismiss that we had filed, and</p> <p>16 so we had to communicate with Microsoft's counsel about</p> <p>17 Parallel Networks' position that it would not oppose that</p> <p>18 extension. So we had some discussions with that.</p> <p>19 Q. Now, the date the motion to withdraw is filed is what</p> <p>20 date?</p> <p>21 A. February 9th, 2009.</p> <p>22 Q. Now, on the very next day, were you advised that</p> <p>23 Parallel Networks had new counsel with respect to its cases?</p> <p>24 And I show you Claimant's Exhibit 352.</p> <p>25 Why don't we wait a second.</p> | <p>Page 904</p> <p>1 that Baker Botts would be coming into the cases.</p> <p>2 Q. Did you -- with respect to the appeal, were you in</p> <p>3 immediate communications with Baker Botts? And I show you</p> <p>4 Claimant's Exhibit 354.</p> <p>5 A. Yes.</p> <p>6 ARBITRATOR GRISSOM: Hang on, please.</p> <p>7 Would you mind reading back the question for me?</p> <p>8 (The reporter read the requested portion.)</p> <p>9 A. The answer is, yes. Shortly after I got Ms.</p> <p>10 Steinberg's e-mail, I got an e-mail from Ryan Bangert at Baker</p> <p>11 Botts making contact with me. He was asking for some</p> <p>12 materials, and I responded right away that we had just learned</p> <p>13 that morning that the Oracle appeal had been docketed, and that</p> <p>14 under the Circuit's rules, Baker Botts needed to file their</p> <p>15 appearances promptly.</p> <p>16 Q. (BY MR. PELZ) And did you work with Mr. Bangert to</p> <p>17 prepare what needed to be submitted to the Federal Circuit?</p> <p>18 I'll show you Claimant's Exhibit 105.</p> <p>19 A. Yes. I sent him --</p> <p>20 ARBITRATOR GRISSOM: It takes me a little bit</p> <p>21 longer --</p> <p>22 MR. PELZ: We keep bouncing --</p> <p>23 THE WITNESS: I'm sorry.</p> <p>24 ARBITRATOR GRISSOM: -- to go through these</p> <p>25 numbers, so you need to just wait a little, if you don't mind.</p> |

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| <p>Page 905</p> <p>1 THE WITNESS: Sorry about that.</p> <p>2 ARBITRATOR GRISSOM: Thank you.</p> <p>3 A. I sent -- we had sometime before this prepared a</p> <p>4 letter to go to the Federal Circuit to advise the Federal</p> <p>5 Circuit clerk who would be counsel of record for the appeal.</p> <p>6 And we had just left the name part of it blank and I filled in</p> <p>7 the names of the lawyers who we had been told were going to be</p> <p>8 appearing, and I sent that as a draft to Mr. Bangert, letting</p> <p>9 him know that he needed to notify the court.</p> <p>10 Q. (BY MR. PELZ) Was that letter shortly thereafter</p> <p>11 transmitted to the Federal Circuit?</p> <p>12 A. Yes.</p> <p>13 Q. To the best of your knowledge, did the appeal proceed</p> <p>14 in accord with procedures and rules in the Federal Circuit?</p> <p>15 A. Yes.</p> <p>16 Q. Did you play any personal role in terms of the</p> <p>17 transmission of all the files and information to Baker Botts?</p> <p>18 A. I received a couple of requests, which I responded</p> <p>19 to, you know, when people contacted me. But I think pretty</p> <p>20 quickly things were turned over to Mr. Margolis and to David</p> <p>21 Nelson, who Mr. Nelson is a paralegal and had all of the</p> <p>22 materials. And I was copied on a number of communications</p> <p>23 where he was sending things to them.</p> <p>24 Q. To your knowledge, was there ever any complaint about</p> <p>25 the transmission and transfer of the files to Baker and Botts?</p> | <p>Page 907</p> <p>1 owed to Jenner & Block?</p> <p>2 A. Yes.</p> <p>3 Q. And do you participate in those discussions?</p> <p>4 A. Yes, I do.</p> <p>5 Q. And with whom do you participate?</p> <p>6 A. Ms. Steinberg.</p> <p>7 Q. I show you what has been marked as Claimant's Exhibit</p> <p>8 419.</p> <p>9 A. We must have spoken approximately in June of 2011.</p> <p>10 Q. According to this letter, what date do you believe</p> <p>11 you spoke to Ms. Steinberg?</p> <p>12 A. June 28th of 2011.</p> <p>13 Q. Was this any kind of lengthy, substantive discussion,</p> <p>14 or do you have any recollection of this discussion?</p> <p>15 A. My recollection is that it was a very short call. I</p> <p>16 think I had called her and asked to discuss Jenner & Block's</p> <p>17 request for payment of a contingent fee from the settlement of</p> <p>18 the Oracle case. And she said she didn't have time to talk,</p> <p>19 but that she would send me a letter.</p> <p>20 Q. And she's also indicating that she's going to respond</p> <p>21 to a letter from Mr. Hoover?</p> <p>22 A. Right. And I think we had -- she and I had</p> <p>23 tentatively set up a time to talk the next month because she</p> <p>24 said she was going to be too busy for the next couple of weeks.</p> <p>25 Q. I'll show you what's been marked as Claimant's</p> |
| <p>Page 906</p> <p>1 A. No.</p> <p>2 Q. Now, after the transfer of the files -- in February</p> <p>3 '09 when the transfer of the files was occurring, does Jenner &</p> <p>4 Block make any claim for any immediate payment from Parallel</p> <p>5 Networks?</p> <p>6 A. No, we didn't.</p> <p>7 Q. And when you're doing this file transfer, does</p> <p>8 Parallel Networks ever indicate that Jenner & Block does not</p> <p>9 still have a contingent right to recover?</p> <p>10 A. No.</p> <p>11 Q. Do -- when is -- after February of 2009, when is the</p> <p>12 next time you speak with Ms. Steinberg?</p> <p>13 A. I believe the next time we spoke was July of 2011.</p> <p>14 THE REPORTER: 2008?</p> <p>15 THE WITNESS: '11.</p> <p>16 THE REPORTER: '11. Sorry.</p> <p>17 Q. (BY MR. PELZ) In June or July -- in June of 2011,</p> <p>18 does Jenner & Block become aware of any things that have</p> <p>19 happened with respect to the Oracle case?</p> <p>20 A. Yes.</p> <p>21 Q. What does Jenner & Block learn?</p> <p>22 A. We learned that there had been a settlement of the</p> <p>23 Oracle case.</p> <p>24 Q. Does Jenner & Block thereafter ask Parallel Networks</p> <p>25 to engage in communications with respect to a fee that would be</p> | <p>Page 908</p> <p>1 Exhibit 420. Is this a letter from Ms. Steinberg on July 21st,</p> <p>2 2011?</p> <p>3 A. Yes, it is.</p> <p>4 Q. And it indicates you had a phone call. When was that</p> <p>5 phone call with her?</p> <p>6 A. That call was on July 13th.</p> <p>7 Q. And what did -- did she tell you who was representing</p> <p>8 Parallel Networks with respect to Jenner & Block's inquiry</p> <p>9 about receipt of a fee?</p> <p>10 A. She said that she was representing Parallel Networks</p> <p>11 in that regard and that we should not communicate with David</p> <p>12 Bennett and George Bosy.</p> <p>13 THE REPORTER: I can't hear you. I'm sorry.</p> <p>14 THE WITNESS: I'm sorry. That we should not</p> <p>15 communicate with David Bennett and George Bosy.</p> <p>16 Q. (BY MR. PELZ) Now, in the second paragraph, she</p> <p>17 raises issues with respect to the withdrawal and with respect</p> <p>18 to compensation and with respect to the enforceability of the</p> <p>19 agreement.</p> <p>20 Had any of those issues that are in the second</p> <p>21 paragraph of this letter ever been raised in January of 2009?</p> <p>22 A. No.</p> <p>23 Q. To your knowledge, had they been raised any time</p> <p>24 between January of 2009 and July of 2011?</p> <p>25 A. No. The first time they were raised was on the call</p> |

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| <p>Page 909</p> <p>1 on July the 13th.</p> <p>2 Q. In the third paragraph, she makes a reference to</p> <p>3 ethical violation and contractual breaches.</p> <p>4 Had any of those issues been raised in January</p> <p>5 of 2009?</p> <p>6 A. No.</p> <p>7 Q. Had any of those issues been raised at any time</p> <p>8 between January of 2009 and July of 2011?</p> <p>9 A. No.</p> <p>10 Q. Is that the first time -- the call the first time you</p> <p>11 heard those the call on July 13th?</p> <p>12 A. Yes.</p> <p>13 Q. Now --</p> <p>14 A. And even then, she couldn't really tell us what she</p> <p>15 thought they were.</p> <p>16 Q. Did she identify any ethical provision?</p> <p>17 A. No. She kept saying, your conduct caused us harm,</p> <p>18 you acted unethically. I said, what did we do? Well, I don't</p> <p>19 have to tell you. Your conduct caused us harm.</p> <p>20 Q. Did -- did you thereafter make a request from Ms.</p> <p>21 Steinberg for information pursuant to the terms of the</p> <p>22 contract, the CFA?</p> <p>23 A. Yes, I did. I sent her a letter.</p> <p>24 Q. Showing you what's been marked as Claimant's Exhibit</p> <p>25 422.</p> | <p>Page 911</p> <p>1 insubstantial, then, you know, that would affect whether it</p> <p>2 made any sense for us to be having any further discussions</p> <p>3 about the client paying Jenner & Block a fee. But in the other</p> <p>4 hand, if the settlement was -- you know, was substantial and</p> <p>5 there were funds available to pay Jenner & Block, that we were</p> <p>6 entitled to that under the contingent fee agreement.</p> <p>7 Q. The -- not withstanding the -- withdrawn.</p> <p>8 Let me show you what's been marked as Claimant's</p> <p>9 424.</p> <p>10 ARBITRATOR GRISSOM: While you're looking at</p> <p>11 that, let me inquire. Are we almost within like a few minutes</p> <p>12 of being done?</p> <p>13 MR. PELZ: Yes, sir, very few minutes.</p> <p>14 ARBITRATOR GRISSOM: Thank you.</p> <p>15 A. Yes.</p> <p>16 Q. (BY MR. PELZ) Did you -- well, let's look at the</p> <p>17 bottom e-mail. Did you need to prompt Ms. Steinberg with</p> <p>18 respect to responding to your letter?</p> <p>19 A. Yes. It had been ten days or more since I sent my</p> <p>20 letter, and I had not heard any response from her, so I sent</p> <p>21 her an -- I called her, got her voicemail. And then when I was</p> <p>22 not able to reach her by phone, sent her an e-mail asking her</p> <p>23 when she planned to respond to a request for information about</p> <p>24 the amount of the settlement.</p> <p>25 Q. And what was the response from Parallel Networks with</p> |
| <p>Page 910</p> <p>1 A. Yes. This is the letter that I sent her.</p> <p>2 Q. What were you asking Parallel Networks to provide to</p> <p>3 Jenner & Block?</p> <p>4 A. I was asking her to provide information that Jenner &</p> <p>5 Block was entitled to under the fee agreement. There was a</p> <p>6 provision, 6a, of the contingent fee agreement that required</p> <p>7 Parallel Networks to provide regular accountings of all gross</p> <p>8 revenues arising out of or relating to any enforcement</p> <p>9 activities in which Jenner & Block has represented Parallel</p> <p>10 Networks.</p> <p>11 And so I sent her a letter because we had -- we</p> <p>12 had asked Ms. Steinberg, in the two phone calls that we had</p> <p>13 with her, what the amount of the settlement of the Oracle case</p> <p>14 was, and she refused to tell us. And so I sent her a -- you</p> <p>15 know, sort of a formal request in this letter under the</p> <p>16 provision of the fee agreement that requires Parallel Networks</p> <p>17 to report any recoveries to Jenner & Block and requested that</p> <p>18 information.</p> <p>19 Q. And did you believe that this information would be</p> <p>20 helpful in trying to reach some kind of agreement with Parallel</p> <p>21 Networks with respect to a resolution of the dispute?</p> <p>22 A. No. I thought that it would. I -- and I -- I</p> <p>23 believe I told her on the phone call -- or on the phone calls I</p> <p>24 had with her that summer that it would be helpful to know what</p> <p>25 the amount of the settlement was, because if the settlement was</p> | <p>Page 912</p> <p>1 respect to providing that information?</p> <p>2 A. First of all, she said, once again, she'd been very</p> <p>3 busy and had not had time to respond to my request. Then she</p> <p>4 said, I have carefully considered your letter request and</p> <p>5 discussed it with Parallel Networks. Our view is that Jenner</p> <p>6 is not entitled to the requested information, Best, Laura.</p> <p>7 Q. Did she raise any issue with respect to</p> <p>8 confidentiality as a basis for not providing this information?</p> <p>9 A. No. I asked her why she thought we weren't entitled</p> <p>10 to it.</p> <p>11 Q. Okay. Let's go to Claimant's Exhibit 425.</p> <p>12 A. This is my response to Laura -- to Laura's e-mail of</p> <p>13 September 9th. I said, what's the basis for Parallel</p> <p>14 Networks's position that Jenner & Block is not entitled to that</p> <p>15 information?</p> <p>16 Q. And what was her response?</p> <p>17 A. She said, as previously noted, Paragraph 9b of the</p> <p>18 contingent fee agreement is either inapplicable, or if</p> <p>19 applicable, unenforceable under the governing law. It does not</p> <p>20 seem plausible that Jenner has a right to information under</p> <p>21 Paragraph 6a in such circumstances.</p> <p>22 Q. Now, notwithstanding the fact that Parallel Networks</p> <p>23 would not provide any information with respect to the</p> <p>24 settlement, did you, nonetheless, have a call with Ms.</p> <p>25 Steinberg in which you made a proposal with respect to how to</p> |

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| <p style="text-align: right;">Page 913</p> <p>1 resolve the matter?</p> <p>2 A. Yes, I did.</p> <p>3 Q. Do you have a recollection of when that occurred?</p> <p>4 A. I believe that call was in August of 2011.</p> <p>5 Q. Did -- what did you offer to resolve the matter for</p> <p>6 her?</p> <p>7 MR. ALIBHAI: Objection. Arbitrator Grissom,</p> <p>8 this is a new discussion. This is not the contract negotiation</p> <p>9 anymore. Now there's a dispute. They've put a litigation hold</p> <p>10 in place, and he's specifically asking for an offer of</p> <p>11 compromise from this witness, exactly what Rule 408 prohibits.</p> <p>12 MR. PELZ: Just briefly, Arbitrator Grissom, I</p> <p>13 think I have to elicit this testimony. This is a demand. In</p> <p>14 order to obtain our attorneys' fees in this case, I need to</p> <p>15 make -- provide evidence that we made a demand. They're</p> <p>16 raising, as a defense, excessive demand. I have to put in the</p> <p>17 evidence with respect to what the demand was made. If I don't</p> <p>18 put this in, they'll argue -- they'll continue to argue this</p> <p>19 excessive demand provision, insisting that we never gave them</p> <p>20 any reasonable compromise.</p> <p>21 You know, not only am I entitled to, I have to</p> <p>22 under the rules in order to rebut the affirmative defense that</p> <p>23 they're raising to our contractual right to obtain fees in this</p> <p>24 arbitration.</p> <p>25 MR. ALIBHAI: Arbitrator Grissom, he didn't say</p> | <p style="text-align: right;">Page 915</p> <p>1 of the pending demand that's there. He's calling it a demand</p> <p>2 when he knows it's an offer of settlement to say the \$10</p> <p>3 million we requested in June, we'll take less.</p> <p>4 MR. PELZ: Arbitrator Grissom, I am sure you</p> <p>5 have participated in many mediations. You start with an</p> <p>6 initial demand, you start with an initial offer, you make</p> <p>7 another demand. Those are all demands. When you change your</p> <p>8 number, that doesn't make it not a demand. It's a new demand.</p> <p>9 There's nothing that says you are bound and you can only make</p> <p>10 one demand. Any time you make a demand, it's a new demand.</p> <p>11 There could be hundreds of demands in a case.</p> <p>12 MR. ALIBHAI: And all those offers of compromise</p> <p>13 in a mediation would never be admissible in any court of law,</p> <p>14 both by Texas law, which prohibits mediation statements from</p> <p>15 being confidential, and because of Texas Rule 408 and Federal</p> <p>16 Rule 408.</p> <p>17 ARBITRATOR GRISSOM: Well, I think the rule on</p> <p>18 settlement negotiations is premised on their usual</p> <p>19 considerations of those maybe in a mediation context or</p> <p>20 otherwise. But here, apparently, one of the issues in the case</p> <p>21 is whether or not a demand that Jenner & Block has made was</p> <p>22 inappropriate or unconscionable or some other -- some other</p> <p>23 like description. Since that issue is apparently in the case,</p> <p>24 and if I'm wrong, please educate me, then I think the question</p> <p>25 is permissible, so I'll overrule the objection.</p> |
| <p style="text-align: right;">Page 914</p> <p>1 that it was a demand. He said it was offer of compromise to</p> <p>2 the amount to resolve. I think the question can be read back.</p> <p>3 The demand was made on June 17th, 2011, by Mr.</p> <p>4 Hoover. It's in the record. A demand was made by Mr. Koning</p> <p>5 in September of 2012, which is in the record. The demands are</p> <p>6 on the record. He's asking for the offer of compromise that</p> <p>7 was made to resolve the demand that had been made in June 2011.</p> <p>8 And I'd like the question read back so it's</p> <p>9 clear what the information --</p> <p>10 MR. PELZ: I'll be happy to ensure that --</p> <p>11 Q. (BY MR. PELZ) Did you make a demand of Parallel</p> <p>12 Networks with respect --</p> <p>13 MR. ALIBHAI: I have a pending objection.</p> <p>14 MR. PELZ: I'll withdraw the question rather</p> <p>15 than deal with that problem.</p> <p>16 ARBITRATOR GRISSOM: If the question is</p> <p>17 withdrawn, then it's a (inaudible).</p> <p>18 Q. (BY MR. PELZ) Did you make a demand of Parallel</p> <p>19 Networks for an amount to pay for the claim Jenner & Block was</p> <p>20 asserting?</p> <p>21 A. Yes.</p> <p>22 ARBITRATOR GRISSOM: Stop for just one second.</p> <p>23 Are you objecting to that?</p> <p>24 MR. ALIBHAI: Yes, because he's just rephrased</p> <p>25 it as demand. It's not a demand. It's an offer of compromise</p> | <p style="text-align: right;">Page 916</p> <p>1 A. \$3 million.</p> <p>2 Q. (BY MR. PELZ) Did you get -- what was Ms.</p> <p>3 Steinberg's response?</p> <p>4 A. Her response was, the fee agreement is unenforceable,</p> <p>5 we won't pay you anything.</p> <p>6 Q. Did Ms. Steinberg ever suggest -- tell you anything</p> <p>7 also with respect to whether she had authority?</p> <p>8 A. She said she didn't have authority to offer any</p> <p>9 amount.</p> <p>10 Q. Did you inquire whether there was anybody else you</p> <p>11 could talk to?</p> <p>12 A. I did.</p> <p>13 Q. And what did --</p> <p>14 A. She said, no, you need to talk to me. I said, you</p> <p>15 mean to tell me I need talk to you, but you don't have</p> <p>16 authority to -- to make any kind of agreement? And she said,</p> <p>17 yes, that's right.</p> <p>18 MR. PELZ: Arbitrator Grissom, I'm looking for</p> <p>19 one document. We'll take a break. If I find it, I'll have</p> <p>20 questions on that one document. If I don't find it, I don't</p> <p>21 believe I'll have any further questions.</p> <p>22 ARBITRATOR GRISSOM: All right. Very good.</p> <p>23 Let's take a break for ten minutes.</p> <p>24 (Break was taken at 10:43 a.m. to 10:57 a.m.)</p> <p>25 ARBITRATOR GRISSOM: All right. We're back on</p> |

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| <p style="text-align: right;">Page 917</p> <p>1 the record.</p> <p>2 MR. PELZ: I have no further questions of this</p> <p>3 witness at this time.</p> <p>4 ARBITRATOR GRISSOM: All right. Mr. Alibhai?</p> <p>5 CROSS-EXAMINATION</p> <p>6 BY MR. ALIBHAI:</p> <p>7 Q. Good morning, Ms. Mascherin.</p> <p>8 A. Good morning.</p> <p>9 Q. You and I met at your deposition taken in this</p> <p>10 arbitration, correct?</p> <p>11 A. Yes, we did.</p> <p>12 Q. And I'm the one who took that deposition?</p> <p>13 A. Yes.</p> <p>14 Q. I want to talk about, first, your involvement in the</p> <p>15 QuinStreet and Oracle cases.</p> <p>16 A. Yes.</p> <p>17 Q. That started in August of 2008, correct?</p> <p>18 A. Yes.</p> <p>19 Q. And you weren't working on the QuinStreet matter?</p> <p>20 A. I didn't do anything precisely on the QuinStreet</p> <p>21 matter for sometime after August.</p> <p>22 Q. You were looking at the damages issues in the Oracle</p> <p>23 matter?</p> <p>24 A. Yes.</p> <p>25 Q. That's the one that was going to trial in January of</p> | <p style="text-align: right;">Page 919</p> <p>1 Parallel Networks's damage expert, Mr. Wagner?</p> <p>2 A. Right. I think it was a Daubert motion.</p> <p>3 Q. And the other motion was a motion by Parallel</p> <p>4 Networks to exclude oracle's damages expert, Mr. Musika?</p> <p>5 A. Yes, right. Also a Daubert motion.</p> <p>6 Q. And that briefing was then to be completed the</p> <p>7 following week, according to Mr. Bennett?</p> <p>8 A. Yes.</p> <p>9 Q. And so, at that time, you were sent the expert</p> <p>10 reports and depositions, and then later on, you were sent the</p> <p>11 briefing on the motions?</p> <p>12 A. Yeah, I don't remember exactly what order I got</p> <p>13 things in, but, yes, I did receive all of that.</p> <p>14 Q. Between August 28th and the hearing in October 3rd,</p> <p>15 what work did you perform on the damages side of the case?</p> <p>16 A. At that point, all I was doing was reading some</p> <p>17 materials and starting to get up to speed, and I had some</p> <p>18 discussions with David Bennett and Harry Roper and others on</p> <p>19 the team --</p> <p>20 Q. And you mentioned --</p> <p>21 A. -- about the case.</p> <p>22 Q. Sorry.</p> <p>23 Now, you mentioned that there was a hearing on</p> <p>24 October 3rd in Delaware. Do you recall that?</p> <p>25 A. Yes.</p> |
| <p style="text-align: right;">Page 918</p> <p>1 2009?</p> <p>2 A. That's right.</p> <p>3 Q. So let's look at Respondent's Exhibit 38, which we</p> <p>4 previously have looked at.</p> <p>5 A. Yes.</p> <p>6 MR. ALIBHAI: Arbitrator Grissom, it's</p> <p>7 Respondent's. The green notebook.</p> <p>8 ARBITRATOR GRISSOM: I'm sorry. Thank you.</p> <p>9 Thank you.</p> <p>10 Q. (BY MR. ALIBHAI) And Respondent's Exhibit 38 is an</p> <p>11 exchange of e-mails between you and Mr. Bennett about you</p> <p>12 coming onto the case?</p> <p>13 A. And Mr. Roper, yes.</p> <p>14 Q. And at the time that you come into the case, the</p> <p>15 expert reports for both experts have been served?</p> <p>16 A. That's right.</p> <p>17 Q. The depositions have been taken?</p> <p>18 A. Yes.</p> <p>19 Q. And the parties were in the process of briefing</p> <p>20 several motions related to damages?</p> <p>21 A. That's correct.</p> <p>22 Q. One of those motions was Oracle's motion to exclude</p> <p>23 foreign sales?</p> <p>24 A. Yes.</p> <p>25 Q. Another motion was Oracle's motion to exclude</p> | <p style="text-align: right;">Page 920</p> <p>1 Q. At that hearing, one of the issues that was planned</p> <p>2 to be discussed was all this damages-related motion practice</p> <p>3 that we've just gone through, right?</p> <p>4 A. Correct. They were -- our understanding was they</p> <p>5 would all be on the agenda.</p> <p>6 Q. But you didn't go to that hearing?</p> <p>7 A. I did not go to the hearing. I believe I was in</p> <p>8 London for a -- I had a trip as an officer of the Bar</p> <p>9 Association at the time and, we had two conferences back to</p> <p>10 back that we were doing in London. And I left in the end of</p> <p>11 September and returned sometime in early -- it was about a -- I</p> <p>12 was there about a week. So I believe I was actually out of the</p> <p>13 country the date of that first hearing that took place after I</p> <p>14 joined the case.</p> <p>15 Q. So you didn't go to the hearing?</p> <p>16 A. Correct.</p> <p>17 Q. Now, you mentioned yesterday that the first you'd</p> <p>18 ever heard that the case was going to be bifurcated was after</p> <p>19 the hearing occurred?</p> <p>20 A. Right. But when I got the report of what had</p> <p>21 happened at the hearing, that's right.</p> <p>22 Q. But you recall that we discussed this issue at your</p> <p>23 deposition, right?</p> <p>24 A. I remember you asked me whether I knew about it</p> <p>25 before then, and I said that I didn't.</p> |

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| <p>Page 921</p> <p>1 Q. And I showed you that there had been a hearing in 2 March where the issue had been discussed by Judge Robinson in 3 the QuinStreet case?</p> <p>4 A. You showed me a document. It's contrary to my 5 recollection of what David Bennett and George Bosy and Harry 6 Roper told me about what was going to happen. When I first met 7 with them, the first I heard of bifurcation was early October.</p> <p>8 Q. Take a look at Respondent's Exhibit 31. This is an 9 e-mail from Mr. Bennett to the members of the then-trial team, 10 correct?</p> <p>11 A. Yes, in March of 2008.</p> <p>12 Q. March 17th, 2008?</p> <p>13 A. Yes.</p> <p>14 Q. And he's recounting a hearing that had occurred with 15 Judge Robinson?</p> <p>16 A. That appears to be the case, yes.</p> <p>17 Q. And turn to the bottom, in the last page -- I'm 18 sorry -- last paragraph.</p> <p>19 A. Right.</p> <p>20 Q. And he tells the team that, the worst news is that, 21 apparently, Judge Robinson has recently taken the position of 22 bifurcating damages from the case until the Federal Circuit has 23 resolved all the other issues in the case. So I would expect a 24 motion from Oracle to bifurcate damages.</p> <p>25 A. Right. He's saying that he expects Oracle will move</p> | <p>Page 923</p> <p>1 Mr. Bennett told me when I got involved in the case, was that 2 the whole case was going to trial in January of 2009.</p> <p>3 Q. (BY MR. ALIBHAI) And you weren't copied on 4 Respondent's Exhibit 31, correct?</p> <p>5 A. Correct.</p> <p>6 Q. And that's because you weren't working on that case 7 at that time?</p> <p>8 A. Correct.</p> <p>9 Q. The damages motions that were scheduled for hearing 10 on October 3rd were denied without prejudice, correct?</p> <p>11 A. That's correct.</p> <p>12 Q. And then, after the hearing on October 3rd, there was 13 a mediation that occurred on October 8th in the Oracle case?</p> <p>14 A. Correct.</p> <p>15 Q. And you didn't attend that either?</p> <p>16 A. That's right.</p> <p>17 Q. Let me show you what's been marked as Exhibit 46.</p> <p>18 ARBITRATOR GRISSOM: Respondent's?</p> <p>19 MR. ALIBHAI: Respondent's Exhibit 46.</p> <p>20 Q. (BY MR. ALIBHAI) It's a memorandum that you 21 discussed with Mr. Pelz yesterday, correct?</p> <p>22 A. Yes.</p> <p>23 Q. And this is your memorandum to the chairman of the 24 firm and to the managing partner of the firm regarding 25 settlement strategy in the Oracle case?</p> |
| <p>Page 922</p> <p>1 to bifurcate.</p> <p>2 Q. So Jenner & Block had some knowledge that there was a 3 possibility of bifurcation going back to March 2008?</p> <p>4 A. I can't --</p> <p>5 MR. PELZ: Object to the form of the question.</p> <p>6 A. I can't tell you that --</p> <p>7 ARBITRATOR GRISSOM: Let me stop you for just a 8 second. When there's a pending objection, I need for you to 9 stop.</p> <p>10 THE WITNESS: I'm sorry.</p> <p>11 ARBITRATOR GRISSOM: I probably don't need to 12 tell you that --</p> <p>13 THE WITNESS: I should know that. Sorry.</p> <p>14 ARBITRATOR GRISSOM: -- but I do need to remind 15 you.</p> <p>16 The objection was?</p> <p>17 MR. PELZ: I object to the form of the question 18 with respect to Jenner & Block knowing. I'm not sure if he 19 wants to talk about individuals, the people knowing, and those 20 people are members of Jenner & Block, but I'm not sure what he 21 means -- if he's meaning to imply something beyond that.</p> <p>22 ARBITRATOR GRISSOM: Overruled. You can answer.</p> <p>23 A. I don't know what people believed based on what was 24 apparently said at that hearing. I wasn't there. All I can 25 tell you is that my understanding, based on what Mr. Roper and</p> | <p>Page 924</p> <p>1 A. Yes.</p> <p>2 Q. And you make a number of recommendations in this 3 memorandum, correct?</p> <p>4 A. Yes.</p> <p>5 Q. And the first one, which is on Page 1, marked 6 Paragraph 1, is that mediation should be reconvened with the 7 goal of settling before trial and, if possible, before the 8 pretrial conference?</p> <p>9 A. Yes.</p> <p>10 Q. And the amount should be \$30 million or more?</p> <p>11 A. That was my opinion.</p> <p>12 Q. That was your opinion that that was a reasonable 13 settlement in light of the risks and opportunity in the case?</p> <p>14 A. Yes.</p> <p>15 Q. And the risks and opportunity in the case that you're 16 looking at to make that determination are what possible damages 17 are being sought and what's the likely amount that could be 18 recovered?</p> <p>19 A. Those are among the risks and opportunities that I 20 was looking at. I was also looking at the time to judgment -- 21 time to ultimate damages judgment. I was looking at the -- 22 because there had been a change in circumstance by this point, 23 that we'd be informed that the judge was going to bifurcate the 24 damages. So there's -- you know, there's a time value of money 25 issue.</p> |

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| <p>Page 925</p> <p>1 I was also considering the fact that, separate 2 and apart from whatever happened in the Oracle trial and -- 3 itself, there was this re-exam proceeding that was pending, and 4 there had been a disadvantageous office action in that re-exam, 5 which, particularly given that it now appeared that the -- it 6 would take longer to complete the Oracle case if -- all the way 7 to a judgment -- final judgment on damages in the case that we 8 had originally anticipated, it seemed there was a greater 9 likelihood that the re-exam proceeding might get ahead of the 10 Oracle case. And if there were negative results from the 11 re-exam proceeding, that could torpedo the whole case. 12 So there were risks that don't have anything 13 directly to do with the damages cases that's been presented, 14 that came into play, some of which were new risks because of 15 the bifurcation of the case and relatively new risks because of 16 the office action. 17 Q. So with respect to the bifurcation of the case, the 18 delay in getting to a final judgment that included a damages 19 award factored into your calculations? 20 A. Yes, it did. 21 Q. Now, if you turn to Page 2, you discuss under point 3 22 the contingent fee committee should consider whether the firm 23 should continue its contingent fee agreement with epicRealm, 24 right? 25 A. Correct.</p> | <p>Page 927</p> <p>1 with the client being in breach in case the contingent fee 2 committee was going to be acting on any of those requests to 3 take on new cases. 4 MR. ALIBHAI: Arbitrator Grissom, I'm going to 5 object to that answer as nonresponsive. 6 ARBITRATOR GRISSOM: You're going to have to 7 read the question back to me. 8 (The reporter read the requested portion.) 9 ARBITRATOR GRISSOM: I think it may be more. 10 You need ask the question you want answered again, then we'll 11 deal with it. 12 Q. (BY MR. ALIBHAI) Okay. Paragraph 3 contains two 13 different concepts. One, whether to continue the fee agreement 14 with epicRealm based on the cases that already exist; and, two, 15 whether to pursue other lawsuits to enforce patents that 16 Parallel Networks owns. 17 A. That's not how I intended it. That's not what I was 18 intending to convey. 19 Q. So with respect to the opportunity to represent 20 Parallel Networks in other matters, you were not considering 21 that separate and apart? 22 A. I think that was part of -- I saw this as one -- I 23 saw three as one issue, focusing not on whether we should 24 terminate that agreement with regard to the existing cases, but 25 rather whether we should terminate the agreement to the extent</p> |
| <p>Page 926</p> <p>1 Q. And whether we should pursue other lawsuits to 2 enforce the patents that it owns? 3 A. Correct. 4 Q. So that's two different thoughts, correct? 5 A. I don't think so, really. At this point in time, my 6 focus was -- with regard to Point 3 was whether it meant -- 7 whether it made sense to continue this relationship beyond the 8 case -- the Oracle case that we were already counsel of record 9 in, and then, you know, what to do about the -- the QuinStreet 10 case, which was, at the time, the smaller of the two cases. I 11 don't think at this point we had yet -- I don't believe at this 12 point there had been a Microsoft pleading. 13 But I was -- my intent in Point 3 was really 14 focusing on, we had an agreement that, by its terms, was 15 broader than QuinStreet and Oracle. And I thought that the 16 contingent fee agreement ought to look at the whole 17 relationship with this client in view of the fact that the 18 client was in breach, and was in breach to a significant dollar 19 amount, and determine whether it made sense to continue with -- 20 you know, with that broad agreement. 21 And there were some -- I didn't have a lot of 22 information at this time, but I understood there were some 23 other cases the client wanted the firm to consider. And I 24 wanted to make sure that someone in management was aware that 25 this -- that there was this -- you know, we had these issues</p> | <p>Page 928</p> <p>1 that it went beyond the cases we were already counsel of record 2 in. That's what -- that's what I was thinking. 3 Q. And terminate the agreement with respect to the cases 4 in which you were counsel of record? 5 A. No. I don't think I was making any recommendation 6 about terminating with regard -- at this time about -- about 7 terminating with regard to the Oracle and QuinStreet cases, 8 making recommendations about trying to settle those cases. 9 Q. If you turn to the bottom of Page 2, you talk about a 10 case that was tried in Texas against a single Web site 11 defendant? 12 A. Yes. 13 Q. Oracle was not a single Web site defendant, right? 14 A. Oracle -- the Oracle case was a much bigger case than 15 the Texas case. I don't remember exactly how many Web sites 16 were involved. I think the answer to your question is they 17 weren't, but I'm not certain. 18 Q. How did Oracle infringe the patents in suit? 19 A. I don't remember the detail of the infringement 20 analysis. I'm sorry. 21 Q. What did Oracle sell that it was accused of 22 infringement? 23 A. Either software or processors. I don't recall. 24 Q. Whatever it is that they did is how you determined 25 the royalty base that was an issue in the damages report,</p> |

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| <p style="text-align: right;">Page 929</p> <p>1 right?</p> <p>2 A. Yes.</p> <p>3 Q. It was based on their sales of the accused products?</p> <p>4 A. Yes.</p> <p>5 Q. So turning to Page 3, you talk about the damages in</p> <p>6 the case, correct?</p> <p>7 A. Right, the damages claims.</p> <p>8 Q. And you start with, on the first full paragraph on</p> <p>9 Page 3, with the concept that the total damages claim was</p> <p>10 approximately \$400 million?</p> <p>11 A. Correct.</p> <p>12 Q. That's from Dr. Wagner's report?</p> <p>13 A. Mr. Wagner, yes.</p> <p>14 Q. Mr. Wagner's report.</p> <p>15 And he had used a certain royalty rate to come</p> <p>16 up with that amount?</p> <p>17 A. Two different royalty rates, yes.</p> <p>18 Q. And he had also included foreign sales that he</p> <p>19 thought should be included in the royalty base?</p> <p>20 A. He'd included foreign sales. I don't remember</p> <p>21 whether he made a specific -- whether he made an independent</p> <p>22 assessment that they should be recoverable or whether he was</p> <p>23 asked to assume that they would be recoverable and calculate</p> <p>24 what they would be. But, yes, he did include foreign sales.</p> <p>25 Q. And that report was written in conjunction with</p> | <p style="text-align: right;">Page 931</p> <p>1 -- the trial team thought it was likely that Parallel Networks</p> <p>2 would recover damages for foreign sales. Don disagreed that it</p> <p>3 was likely.</p> <p>4 Q. In coming up with what was likely to be the case</p> <p>5 worth, did you have a discussion with Mr. Roper and others</p> <p>6 about their experience in the Union Carbide case?</p> <p>7 A. I don't remember if we talked about the Union Carbide</p> <p>8 case. I did have several discussions with Mr. Roper and Mr.</p> <p>9 Bosy and Mr. Bennett.</p> <p>10 Q. And I'm asking you whether you had a discussion with</p> <p>11 them about the Union Carbide case.</p> <p>12 A. I don't remember whether we talked about that case.</p> <p>13 Q. Did they tell about a case in which Judge Robinson</p> <p>14 had eliminated out foreign sales and that they went to the</p> <p>15 Federal Circuit and got her reversed on that very issue?</p> <p>16 A. We may have talked about that. I don't remember.</p> <p>17 Q. But you didn't note that here?</p> <p>18 A. No. I didn't note it here.</p> <p>19 Q. You didn't note that the trial team has previously</p> <p>20 litigated this issue in front of Judge Robinson and got it</p> <p>21 reversed on this very issue?</p> <p>22 A. I don't remember if we talked about that case. And</p> <p>23 if we -- and regardless of whether we talked about that case or</p> <p>24 not, I did not refer to it in here.</p> <p>25 Q. And so the maximum award, based upon an application</p> |
| <p style="text-align: right;">Page 930</p> <p>1 Jenner & Block lawyers working with them?</p> <p>2 A. Yes.</p> <p>3 Q. And so, presumably, they either approved it or</p> <p>4 instructed him to do so, include the foreign sales?</p> <p>5 A. Yes.</p> <p>6 Q. And you then had conversations with Mr. Harris</p> <p>7 regarding what is a more likely damages award?</p> <p>8 A. In Mr. Harris' view, yes.</p> <p>9 Q. And Mr. Harris had disagreed with the trial team?</p> <p>10 A. I don't think he disagreed. I think it was a matter</p> <p>11 of assigning different likelihoods of success. I think</p> <p>12 reasonable minds could differ with regard to both -- you know,</p> <p>13 reasonable minds could differ with regard to what -- which</p> <p>14 was the -- which royalty rate was more likely to be persuasive</p> <p>15 to the judge or jury and how the judge would come out on the</p> <p>16 legal issue, whether the foreign sales could be included or</p> <p>17 couldn't be included. I would say it was -- he had a different</p> <p>18 view of the strengths and weaknesses.</p> <p>19 Q. Well, if you look at the paragraph that begins, Don</p> <p>20 Harris --</p> <p>21 A. Yes.</p> <p>22 Q. -- and you look four lines in, doesn't it say, Don</p> <p>23 disagrees with the trial team's view that we are likely to</p> <p>24 recover damages for foreign sales?</p> <p>25 A. Correct. He thought it was less likely -- the team</p> | <p style="text-align: right;">Page 932</p> <p>1 of a 3 percent royalty on domestic sales only, would be \$90</p> <p>2 million?</p> <p>3 A. Approximately.</p> <p>4 Q. Much less than the 400 million that Mr. Wagner had</p> <p>5 put in his report?</p> <p>6 A. Well, much less than the total amount, given all the</p> <p>7 permeations in Mr. Wagner's report, yes.</p> <p>8 Q. And so assuming all those risks, Mr. Harris thought</p> <p>9 that the case was worth less than \$100 million?</p> <p>10 A. Correct.</p> <p>11 Q. And his gut estimate is that it's probably worth more</p> <p>12 than 25 to \$30 million if tried successfully?</p> <p>13 A. That's what he told me, yes.</p> <p>14 Q. Had you been told what the offer had been made to</p> <p>15 Oracle to settle the case at mediation that had been held a few</p> <p>16 weeks before this?</p> <p>17 A. An offer by Parallel Networks?</p> <p>18 Q. Yes, ma'am.</p> <p>19 A. I believe I had, but I don't remember now what it</p> <p>20 was.</p> <p>21 Q. It was \$90 million wasn't it?</p> <p>22 A. I don't remember. That could be right.</p> <p>23 Q. Mr. Harris had written a memo about the mediation</p> <p>24 that you had seen, correct?</p> <p>25 A. Correct.</p> |

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1 Q. You mentioned then, after the damages issue, about
2 this re-examination?
3 A. That's right.
4 Q. How many re-examinations have you handled at the PTO?
5 A. I don't practice before the PTO. I'm not admitted to
6 Patent Bar.
7 Q. And Mr. Harris is not admitted before the Patent Bar
8 either, is he?
9 A. I don't believe he is, no.
10 Q. And how many re-examinations has he ever handled?
11 A. Well, if he's not admitted before the Patent Bar, he
12 can't handle a re-examination, which you have to be admitted to
13 the Patent Bar.
14 Q. It's a separate bar that you have to get admitted to?
15 A. Correct.
16 Q. And what was the defendant's damages expert number
17 that they were proposing if infringement had been found?
18 A. It was much smaller. I don't remember exactly what
19 it was.
20 Q. Smaller than Mr. Wagner's?
21 A. Yes.
22 Q. And somewhere between zero and 400 million?
23 A. Yeah. I just don't remember what the amount was.
24 Q. Was it less than the -- was it more than the amount
25 that was Mr. Harris' gut estimate?

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1 A. No. My recollection is it was smaller than that. It
2 was more like in the tens of millions
3 Q. And Mr. Harris' gut estimate is in the tens of
4 millions too, right?
5 A. Actually, here it is. Oracle's damages expert sets
6 damages at a range of 12 million to 15 million
7 I'm sorry. Your question?
8 Q. I think you answered it.
9 If you turn to Page 4, you discuss the
10 settlement conference that the federal magistrate judge had
11 handled, correct, at the bottom there?
12 A. Yes.
13 Q. And the magistrate judge thought that, possibly,
14 there'd be a 30 to 50 million settlement, but, quote, those
15 numbers would be a stretch, unquote?
16 A. That's what Mr. Bosy reported, yes.
17 Q. And that Oracle had never paid more than 20 million
18 to settle a patent infringement lawsuit, according to what had
19 been heard about that?
20 A. That's what the magistrate told Mr. Bosy Oracle's
21 counsel had said, yes.
22 Q. And the federal magistrate judge, as you note on the
23 top of Page 5, was willing to reconvene the mediation?
24 A. Yes.
25 Q. And you end on Page 7 with the recommendation that

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1 the contingent fee committee re-examine the contingent fee
2 agreement with epicRealm and determine whether it is in the
3 firm's strategic and financial interest to continue its
4 engagement with epicRealm and to pursue additional lawsuits?
5 A. Yes.
6 Q. And you sent this memorandum, I think we said, to Mr.
7 Valukas and Ms. Levy?
8 A. Yes. Also Mr. Roper, Mr. Bosy, and Mr. Bricker.
9 Q. And Ms. Levy responded to you --
10 A. Yes.
11 Q. -- by e-mail?
12 A. Yes, she did.
13 Q. Did you send a copy of this memo to the client?
14 A. I did not send a copy of the memo to the client.
15 Q. You billed the client for working on this memo,
16 right?
17 A. For some of the work, for the settlement analysis,
18 and my -- which included several discussions with Mr. Roper,
19 Mr. Bosy and Mr. Harris, yes.
20 Q. What the case was worth, based upon what you and Mr.
21 Harris had discussed, was a factor in your analysis to
22 reconvene the mediation?
23 A. Yes.
24 Q. And to try to now settle it in the 30 to 50 million
25 range?

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1 A. It was a factor in my recommendation to try to do
2 that, yes.
3 Q. And so the -- if the number that had been given to
4 the client about what range to settle in was different than the
5 analysis that you and Mr. Harris had now done, wasn't that
6 information that would have been important to a client?
7 A. It may well have been. And I talked to Mr. Roper and
8 Mr. Bosy about that at some length when we were preparing this.
9 They worked on the memo with me. They reviewed it.
10 My understanding was that Mr. Bosy was talking
11 to the client about this whole analysis that we were going
12 through, about what the case was worth and whether it made
13 sense or didn't make sense to try to settle the case -- to make
14 another effort to settle the case after the mediation.
15 Q. You're now the partner in charge of damages on this
16 case?
17 A. I wouldn't say I was the partner in charge of damages
18 in the case. I would say I was brought in to help try the
19 case, and I was asked to work on the damages part of the case.
20 Q. You're going to try the damages part of this case?
21 A. That was the plan, yes.
22 Q. And the only other partner working on the damages
23 part of the case was Mr. Bennett?
24 A. No. I think it was several people who had been
25 working on it. Mr. Bennett --

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| <p style="text-align: right;">Page 937</p> <p>1 Q. Primarily working on it.</p> <p>2 A. -- would have certainly been leading the effort.</p> <p>3 Q. Yes, I meant primarily.</p> <p>4 A. Yes.</p> <p>5 Q. Certainly all the people on the team worked on</p> <p>6 different parts of the case?</p> <p>7 A. Right.</p> <p>8 Q. But primarily, it was Mr. Bennett?</p> <p>9 A. That was my understanding.</p> <p>10 Q. Who was -- recently had become a partner in the firm?</p> <p>11 A. He was a relatively junior partner, right.</p> <p>12 Q. And so you had been working on the case approximately</p> <p>13 two months?</p> <p>14 A. Yes.</p> <p>15 Q. August 28th to around the end of October, two months?</p> <p>16 A. Right.</p> <p>17 Q. And you've had no communications with the client yet?</p> <p>18 A. That's correct.</p> <p>19 Q. You personally.</p> <p>20 A. That's correct.</p> <p>21 Q. Let me show you what's Respondent's Exhibit 50.</p> <p>22 Respondent's Exhibit 50, the bottom e-mail, is the e-mail from</p> <p>23 you to Mr. Levy and -- Ms. Levy and Mr. Valukas, copying</p> <p>24 others, attaching the memo that we just discussed in</p> <p>25 Respondent's Exhibit 46.</p> | <p style="text-align: right;">Page 939</p> <p>1 I knew that there'd been discussions about the advice that had</p> <p>2 been given to the client of the mediation. But as I sit here</p> <p>3 today, I don't remember.</p> <p>4 Q. Did you call Parallel Networks and tell them that</p> <p>5 this was the recommendation of the managing partner of the</p> <p>6 firm?</p> <p>7 A. No.</p> <p>8 Q. Did you instruct anyone at Jenner & Block to call</p> <p>9 Parallel Networks and tell them that this was the instruction</p> <p>10 of the managing partner of the firm?</p> <p>11 A. No. I didn't -- I didn't instruct anybody to tell</p> <p>12 the client that this was the managing partner's instruction. I</p> <p>13 gave -- I talked to Harry and George following Susan's e-mail,</p> <p>14 and we talked about, you know, what made the most sense</p> <p>15 strategically with regard to proceeding with the mediation and</p> <p>16 got into, then, a discussion about getting back to the BEA</p> <p>17 aspect of the case, which I hadn't previously appreciated.</p> <p>18 Q. Did you contact opposing counsel to try to reconvene</p> <p>19 mediation?</p> <p>20 A. No.</p> <p>21 Q. Do you know if anyone contacted opposing counsel --</p> <p>22 counsel for Oracle -- to try to reconvene mediation?</p> <p>23 A. I know that there were discussions between folks on</p> <p>24 our trial team and Oracle's counsel about continuing, you know,</p> <p>25 discussion from the mediation during this time period because</p> |
| <p style="text-align: right;">Page 938</p> <p>1 A. That's correct.</p> <p>2 Q. And the top e-mail is Ms. Levy's response to you and</p> <p>3 others?</p> <p>4 A. Yes.</p> <p>5 Q. And she directs the response to Mr. Roper, to you and</p> <p>6 to Mr. Bosy?</p> <p>7 A. That's right. Well, the first part of it, yes.</p> <p>8 Q. And she says that, we agree with the recommendations</p> <p>9 in the memorandum?</p> <p>10 A. Correct.</p> <p>11 Q. And then she says, please -- and continues on, right?</p> <p>12 A. Yes.</p> <p>13 Q. And she copies the language from Paragraph 1 of your</p> <p>14 memorandum, Exhibit 46 -- Respondent's Exhibit 46, word for</p> <p>15 word?</p> <p>16 A. Part of it, yes.</p> <p>17 Q. Reconvene mediation in epicRealm v. Oracle with the</p> <p>18 goal of achieving a settlement before trial and, if possible,</p> <p>19 before the pretrial conference, in an amount of \$30 million or</p> <p>20 more?</p> <p>21 A. Yes.</p> <p>22 Q. Were you aware that at the mediation the trial team</p> <p>23 had told Parallel Networks not to go below \$60 million?</p> <p>24 A. I knew that there had been discussions. I don't</p> <p>25 remember, as I sit here today, exactly what I knew at the time.</p> | <p style="text-align: right;">Page 940</p> <p>1 there had been this promise to provide information about the</p> <p>2 BEA products. And I received report -- I remember hearing</p> <p>3 reports from someone on the team -- I don't remember who it</p> <p>4 was -- that was communicating with Oracle's counsel about that.</p> <p>5 Q. Did you contact Magistrate Judge Thyng to try to</p> <p>6 reconvene the mediation?</p> <p>7 A. No. We didn't have agreement to reconvene the</p> <p>8 mediation.</p> <p>9 Q. Did you contact Magistrate Judge Thyng to see if she</p> <p>10 could pursue reconvening the mediation?</p> <p>11 A. I did not.</p> <p>12 Q. Do you know if anyone from Jenner & Block did?</p> <p>13 A. I don't know. I don't believe so.</p> <p>14 Q. And she had offered, right, at the end of the</p> <p>15 mediation, keep me in the loop, I will be happy to continue to</p> <p>16 help?</p> <p>17 A. Yes.</p> <p>18 Q. Let me show you what's been marked as Respondent's</p> <p>19 Exhibit 49. Is this a memorandum from Mr. Bosy to the</p> <p>20 contingent fee committee regarding the additional contingency</p> <p>21 fee cases that had been offered by Parallel Networks?</p> <p>22 A. Yes.</p> <p>23 Q. And one of the things it talks about is BEA, which</p> <p>24 had been acquired by Oracle?</p> <p>25 A. That's right.</p> |

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1 Q. Did you see a copy of this memorandum at the time
2 that it was sent to the contingency fee committee?
3 A. I saw it at some point. I -- George did not copy me
4 on it, but I don't remember how long after he transmitted it to
5 the committee I saw it.
6 Q. He mentions in the second paragraph, last sentence,
7 that the issues in the QuinStreet and Oracle case were recently
8 addressed in a memo from Terri Mascherin and will not be
9 repeated here. Do you see that? Second paragraph.
10 A. Oh, I'm sorry. I was looking at the wrong paragraph.
11 Yes.
12 Q. And that's a reference to your October 21 memorandum,
13 Respondent's Exhibit 46?
14 A. Yes.
15 Q. Now, you mentioned this issue about BEA. That's one
16 of the issues addressed in Mr. Bosy's memorandum?
17 A. Yes, although he sort of -- he's sort of addressing
18 it here as a separate case.
19 Q. And it's not a separate case, is it?
20 A. That was a point of dispute at this time between
21 Parallel Networks and Oracle. Oracle was trying to bring it
22 into the case that was already pending. Parallel Networks was
23 taking the position that discovery had already closed, you
24 know, this case had been prepared with regard to a particular
25 set of products, and the BEA products that Oracle had come to

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1 own by virtue of this acquisition that took place while the
2 case was pending should be dealt with in a separate lawsuit.
3 MR. ALIBHAI: Arbitrator Grissom, we're going to
4 switch to Claimant's Exhibit 68.
5 Q. (BY MR. ALIBHAI) This is an e-mail from you to Ms.
6 Levy, copying others, regarding settlement strategy about
7 Oracle?
8 A. Yes.
9 Q. And you note that BEA was a company that Oracle had
10 acquired this past summer?
11 A. Yes.
12 Q. And you further note at the end of the paragraph that
13 the team believed, based on publicly-available information,
14 that BEA's products infringed?
15 A. That's right.
16 Q. And one of the issues that had come up at the
17 mediation in October was Oracle was taking the position that
18 BEA's products didn't infringe?
19 A. I think that that's right. This was the first time
20 that I was told about any discussion about BEA at the
21 mediation, so I'm not certain -- I don't remember exactly what
22 George told me at this point.
23 I think they were taking the position -- I think
24 Oracle was taking the position they didn't infringe, and they
25 had information they could show us that would prove it -- they

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1 would prove it to us or something.
2 Q. And a month after the mediation, they still haven't
3 provided that information, right?
4 A. It's like three weeks or so, correct.
5 Q. Between October 8th and November 2nd, they hadn't
6 provided the information?
7 A. Right.
8 Q. As we've discussed, December 4th, Judge Robinson
9 finds that as a matter of law the Oracle products do not
10 infringe the patents in suit?
11 A. That's right.
12 Q. Let me show you what's been marked as Respondent's
13 Exhibit 55. This is an e-mail from you to Mr. Valukas and Ms.
14 Levy, copying others?
15 A. Yes.
16 Q. And there was a pretrial conference scheduled the
17 next day in Wilmington, Delaware?
18 A. Right.
19 Q. The day after the summary judgment ruling was
20 announced?
21 A. That's right.
22 Q. And the position that Jenner & Block lawyers were
23 going to take at the hearing was that there was no longer a
24 need for the January trial on invalidity or on unenforceability
25 issues because there's no case of controversy?

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1 A. Right, but in essence, those claims had been mooted
2 by her summary judgment decision. That was one that was a
3 possible strategy, right.
4 Q. And then there was a discussion where you were
5 considering whether to file a motion for reconsideration?
6 A. Right.
7 Q. And then turn to the third paragraph.
8 A. Yes.
9 Q. You said, once we know what happens tomorrow, we will
10 have a decision to make regarding how much longer Jenner &
11 Block will continue the representation?
12 A. Right.
13 Q. And you're talking about the representation in the
14 Oracle case?
15 A. The representation of Parallel Networks.
16 Q. In the Oracle case?
17 A. And in the other matters, yes.
18 Q. Oracle, as well as others?
19 A. Yes.
20 Q. Then you say, our contingent fee agreement allows us
21 to terminate the engagement for any reason?
22 A. Right.
23 Q. On 30 days' notice, right?
24 A. Right.
25 Q. And so long as it is consistent with our ethical

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| <p>Page 945</p> <p>1 obligations?</p> <p>2 A. Right.</p> <p>3 Q. And this was based on your reading of the contingent</p> <p>4 fee agreement?</p> <p>5 A. Right.</p> <p>6 Q. And your view was that, if Jenner & Block terminated</p> <p>7 and the client recovered money, either by judgment or</p> <p>8 settlement, that Jenner & Block remained entitled to be</p> <p>9 compensated at a minimum for our fees incurred based upon our</p> <p>10 regular hourly rates?</p> <p>11 A. Right.</p> <p>12 Q. So that the floor for any recovery by Jenner & Block</p> <p>13 was the hourly rates that had been expended thus far?</p> <p>14 A. I'm not certain that's what I meant to convey, but I</p> <p>15 certainly meant to convey we'd be entitled to our hourly rates</p> <p>16 as of the date of withdrawal.</p> <p>17 Q. So if as of, let's take, for example, January 2nd,</p> <p>18 2009, Jenner & Block has put in \$10.2 million worth of time at</p> <p>19 regular hourly rates in the QuinStreet/Oracle cases, that's the</p> <p>20 amount that it's entitled to recover?</p> <p>21 A. If there was a successful recovery and a judgment or</p> <p>22 a settlement, that's how I read 9b, that we'd be compensated</p> <p>23 for our actual effort based on actual hourly rates up to the</p> <p>24 date of withdrawal with the caveats that, you know, minus,</p> <p>25 transition costs.</p> | <p>Page 947</p> <p>1 A. I'm sorry. I'm not understand -- you mean that --</p> <p>2 Ms. Levy's question was whether there was --</p> <p>3 Q. No. There's two things going on, right? One is, you</p> <p>4 have -- Jenner & Block, on behalf of Parallel Networks, has not</p> <p>5 accused a BEA product of infringement?</p> <p>6 A. That's right.</p> <p>7 Q. There's not a technical expert report that says</p> <p>8 here's the product and here's how it meets all the limitations</p> <p>9 of the claims?</p> <p>10 A. Right.</p> <p>11 Q. But the position that Oracle was taking is, because</p> <p>12 we own BEA now, we still have to argue about the validity of</p> <p>13 these patents because they could be asserted against BEA</p> <p>14 products?</p> <p>15 A. Okay. I see where you're going. Yes, you're</p> <p>16 correct.</p> <p>17 Q. And that was because they had acquired BEA this past</p> <p>18 summer, as you note in your e-mail to Ms. Levy --</p> <p>19 A. Right.</p> <p>20 Q. -- dated December 5th?</p> <p>21 A. Right.</p> <p>22 Q. Do you know what products it was that Oracle had</p> <p>23 acquired of BEA's that potentially infringed?</p> <p>24 A. No, I don't remember. And I don't know if we ever</p> <p>25 really discussed that in detail back at this time.</p> |
| <p>Page 946</p> <p>1 Q. And Ms. Levy responded to your e-mail in Respondent's</p> <p>2 Exhibit 56?</p> <p>3 A. Yes.</p> <p>4 Q. And she asked whether -- in the e-mail second from</p> <p>5 the bottom, whether there were any claims against BEA that were</p> <p>6 pending?</p> <p>7 A. Right.</p> <p>8 Q. There had never been claims brought against BEA?</p> <p>9 A. I think she misunderstood my prior -- she evidently</p> <p>10 misunderstood my prior e-mail and thought there was already a</p> <p>11 separate set of claims against BEA. And so I corrected her and</p> <p>12 tried to remind her of what I had said in my prior e-mail.</p> <p>13 Q. And so there were not any claims pending against BEA?</p> <p>14 A. That was our view. I've already explained what</p> <p>15 Oracle's view was, that they should be somehow swept into that</p> <p>16 case.</p> <p>17 Q. There had not been any accusations of infringement</p> <p>18 alleged in the case with respect to BEA products?</p> <p>19 A. Absolutely. That was our position.</p> <p>20 Q. Well, that was true, right?</p> <p>21 A. That was absolutely true. I think Oracle was wrong.</p> <p>22 Q. But the question wasn't whether you'd asserted</p> <p>23 anything. It's whether the case or controversy was still</p> <p>24 there, whether the Court had Article III jurisdiction over this</p> <p>25 case.</p> | <p>Page 948</p> <p>1 Q. And so you weren't able to ever form an opinion as to</p> <p>2 whether the summary judgment order of noninfringement applied</p> <p>3 to the BEA products or not?</p> <p>4 A. Right. That was still a -- I think that that was an</p> <p>5 issue that our trial team, those who knew more about the BEA</p> <p>6 products based on the public info than I did, and Oracle's</p> <p>7 counsel were still not in agreement about -- at the -- you</p> <p>8 know, in December of 2008. We didn't have the information.</p> <p>9 Q. My question was more specific.</p> <p>10 A. Yes.</p> <p>11 Q. There's a dispute between Oracle counsel and Parallel</p> <p>12 Networks' counsel, as there often is in patent infringement</p> <p>13 cases, about whether certain products infringed, right?</p> <p>14 A. Right.</p> <p>15 Q. Specifically whether the BEA products infringed?</p> <p>16 A. Yes, with the caveat that we didn't have much</p> <p>17 information about the BEA products. All we had was whatever</p> <p>18 product information was available publicly.</p> <p>19 Q. And my question was, had you formed an opinion as to</p> <p>20 whether the district court's summary judgment opinion regarding</p> <p>21 noninfringement of Oracle products would or would not apply to</p> <p>22 the BEA products?</p> <p>23 A. No. I don't think we were at a point to have been</p> <p>24 able to form any -- had formed kind of informed opinion about</p> <p>25 that yet.</p> |

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| <p>Page 949</p> <p>1 Q. Let me show you what's been marked as Respondent's</p> <p>2 Exhibit 59. And you can look at whatever you need to look at,</p> <p>3 but I want to ask you about the e-mail on December 11th from</p> <p>4 you, last paragraph. So it's the second page of the document.</p> <p>5 ARBITRATOR GRISSOM: Which document are we on?</p> <p>6 MR. ALIBHAI: Respondent's 59, sir.</p> <p>7 ARBITRATOR GRISSOM: Thank you.</p> <p>8 Q. (BY MR. ALIBHAI) Do you see the e-mail we're</p> <p>9 referring to here?</p> <p>10 A. Yeah. Let me read my e-mail.</p> <p>11 Q. Sure.</p> <p>12 A. Okay. And you're directing me to the last paragraph</p> <p>13 of mine?</p> <p>14 Q. Yes, ma'am.</p> <p>15 A. Okay.</p> <p>16 Q. And this is in connection with a discussion about a</p> <p>17 motion to reconsider that you're preparing?</p> <p>18 A. That's right.</p> <p>19 Q. Ms. Chen informs me that there are more pages to it</p> <p>20 and didn't have them all.</p> <p>21 A. Yes.</p> <p>22 Q. All right. So back to this e-mail.</p> <p>23 A. Yes.</p> <p>24 Q. Based upon your review of the summary judgment</p> <p>25 papers, you thought that part of Judge Robinson's decision was</p> | <p>Page 951</p> <p>1 part of Judge Robinson's decision was based upon her perception</p> <p>2 that Oracle's expert's declaration was detailed and cited</p> <p>3 sources, whereas Parallel Networks' expert's declaration was</p> <p>4 short and conclusory and didn't cite sources?</p> <p>5 A. Yes, I was concerned about that.</p> <p>6 Q. And so one of the things that you wanted to do was to</p> <p>7 make sure and go through the entire summary judgment record and</p> <p>8 find all the facts that created the fact issue that should have</p> <p>9 precluded summary judgment?</p> <p>10 A. Right. I thought we needed to really muster all the</p> <p>11 factual information that we could from the record to show her</p> <p>12 that she was wrong, that there weren't -- you know, that there</p> <p>13 weren't disputed facts on this point of how the releasing</p> <p>14 worked.</p> <p>15 Q. And so I think you testified yesterday that people</p> <p>16 were excited when the Markman order came in?</p> <p>17 A. Right. When the claim construction -- my</p> <p>18 recollection is the claim construction ruling came over the</p> <p>19 wires first, followed by, you know, some amount of time by the</p> <p>20 summary judgment ruling. And the claim construction people</p> <p>21 were pleased with because she had largely accepted Parallel</p> <p>22 Networks's claim construction, as I recall. And then the</p> <p>23 summary judgment ruling came in.</p> <p>24 Q. So there were a few factors that made Jenner & Block</p> <p>25 think that the Court's -- District Court's summary judgment</p> |
| <p>Page 950</p> <p>1 based upon her perception that Clark's declaration -- that's</p> <p>2 the Oracle's expert, right --</p> <p>3 A. Yes.</p> <p>4 Q. -- was detailing and citing sources; whereas Finkel,</p> <p>5 Parallel Networks' expert, declaration was conclusory and short</p> <p>6 and didn't cite sources?</p> <p>7 ARBITRATOR GRISSOM: I'm sorry to interrupt you</p> <p>8 here, but I can't tell where you are based on what I'm looking</p> <p>9 at.</p> <p>10 MR. ALIBHAI: Sir, Respondent's Exhibit 59, is a</p> <p>11 chain of e-mails --</p> <p>12 ARBITRATOR GRISSOM: I'm on the exhibit, but you</p> <p>13 didn't give me the right, you know, trail of crumbs to find</p> <p>14 where you are. There's a lot of stuff on here.</p> <p>15 MR. ALIBHAI: All right. So it's the second</p> <p>16 page, which looks like that. And then we're going to towards</p> <p>17 the bottom of it, which is the e-mail from Ms. Mascherin dated</p> <p>18 December 11th, 2008, at 11:10 p.m.</p> <p>19 ARBITRATOR GRISSOM: Okay. Thank you.</p> <p>20 MR. ALIBHAI: And then it's the last paragraph.</p> <p>21 ARBITRATOR GRISSOM: Okay.</p> <p>22 Q. (BY MR. ALIBHAI) Was that your impression?</p> <p>23 ARBITRATOR GRISSOM: I'm sorry. I have no idea</p> <p>24 what the question was.</p> <p>25 Q. (BY MR. ALIBHAI) Was it your impression that a large</p> | <p>Page 952</p> <p>1 order was erroneous, correct? And I want to go through some of</p> <p>2 them.</p> <p>3 A. Well, I don't remember how many different things</p> <p>4 there were, but we thought that the decision was erroneous, and</p> <p>5 we thought we had a good motion to reconsider.</p> <p>6 Q. One of the reasons that you thought the decision was</p> <p>7 erroneous was because it was inconsistent with the Markman</p> <p>8 order that she had just entered the same day, just prior?</p> <p>9 A. That could be. I don't recall that specifically.</p> <p>10 Q. A second reason that Jenner & Block thought that the</p> <p>11 District Court's order was erroneous was that there were</p> <p>12 conflicts between what the experts were saying, and that alone</p> <p>13 should have created a fact question?</p> <p>14 A. Yeah, that was an argument that I thought we needed</p> <p>15 to develop, yes.</p> <p>16 Q. And that there -- as you work on this in December,</p> <p>17 you had found specifically where she had discussed the</p> <p>18 conflicts between fact -- excuse me -- conflicts between</p> <p>19 experts can create a fact question?</p> <p>20 A. We had -- we were aware of cases like that. Mr.</p> <p>21 Fokas had found one himself, and I had an associate produce</p> <p>22 one, too.</p> <p>23 Q. And then the third and simplest reason why the</p> <p>24 Court's summary judgment of noninfringement was erroneous was</p> <p>25 that this was not an issue capable of determination as a matter</p> |

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| <p style="text-align: right;">Page 953</p> <p>1 of law? It was a factually-driven issue on which there was 2 disputed facts? 3 A. Right. I don't know that I'd call that the simplest 4 issue, but, yes, that was a big issue. 5 Q. Well, you can't have summary judgment as a matter of 6 law if there's a fact dispute? 7 A. Correct. And we thought there was a fact -- evidence 8 of a fact dispute. 9 Q. And infringement is a question for the jury to 10 determine? 11 A. Correct. 12 Q. It was not -- 13 A. So long as there's a disputed fact, yes. 14 Q. This was not an issue of law she was ruling on. She 15 was ruling on a fact issue? 16 A. Correct. 17 Q. And so you discussed yesterday that a number of hours 18 were spent by the various people working on the case, including 19 some appellate team counsel that are brought in to help, 20 correct? 21 A. Yes. 22 Q. And a motion for reconsideration is actually filed? 23 A. That's right. 24 Q. But Jenner & Block decided to withdraw the motion for 25 reconsideration as part of its stipulation that it entered into</p> | <p style="text-align: right;">Page 955</p> <p>1 e-mails, but I want to start with your e-mail on the bottom 2 dated Friday, December 12th. 3 A. Okay. 4 Q. And this is an e-mail from you to Ms. Levy? 5 A. Right. 6 Q. If you turn to the second page, you're talking about 7 the possibility of settlement of the Oracle case after the 8 summary judgment ruling? 9 A. Right. 10 Q. So it's a summary judgment ruling, right? 11 A. Yes. 12 Q. And this e-mail is dated December 12th? 13 A. Yes. 14 Q. And you have a section or a header called, 15 Possibility of Settlement? 16 A. Yes. 17 Q. And you had become informed that Oracle's counsel was 18 interested at this point in reconvening the mediation? 19 A. That's right. 20 Q. And that they thought that they would not pay <u>eight</u> 21 <u>figures</u>? 22 A. That's what he had told Mr. Bosy. 23 Q. That he would not pay <u>tens of millions of dollars</u>? 24 A. Right. 25 Q. And the question was whether Parallel Networks would</p> |
| <p style="text-align: right;">Page 954</p> <p>1 with Oracle's counsel? 2 A. Right, as part of the whole agreement that was 3 reached with Oracle's counsel. 4 Q. Which then meant that Judge Robinson didn't have to 5 go back and look at all the issues that you raised in the 6 motion for reconsideration? 7 A. That's right. 8 Q. And you were then putting it in the hands of the 9 Federal Circuit to go back and do that? 10 A. Correct. 11 Q. Did you think that you had a higher likelihood of 12 success on appeal to the Federal Circuit versus a motion for 13 reconsideration with Judge Robinson? 14 A. Me personally? 15 Q. Yes, ma'am. 16 A. Yes, because in my experience, judges find it 17 difficult to reconsider a decision that they've just made. 18 Q. But you had good grounds for those motions for 19 reconsideration, right? 20 A. Well, I thought that we did, but it wouldn't be the 21 first time. 22 Q. That you and a judge disagreed? 23 A. Right. 24 Q. I'm going to show you what's marked as Respondent's 25 Exhibit 60. And if we look at the document, it's a chain of</p> | <p style="text-align: right;">Page 956</p> <p>1 be interested in a <u>seven-figure</u> settlement now that Parallel 2 Networks faces the need to appeal the noninfringement judgment? 3 A. Right. 4 Q. In that same page, you have a header called, 5 Possibility of Payment of Outstanding Expenses? 6 A. Right. 7 Q. And the back expenses that are owed at this time are 8 about \$550,000? 9 A. That's correct. 10 Q. And there were two settlements that were pending in 11 the Texas cases? 12 A. That's what we understood at the time, yes. 13 Q. This is from Mr. Roper that you understood that? 14 A. Right, from what others had -- from what either the 15 client or other counsel had told Mr. Roper, yes. 16 Q. And -- 17 A. We weren't directly involved in those cases at this 18 time. 19 Q. You were counsel of record in those cases, weren't 20 you? 21 A. I don't think -- I was not counsel of record. I know 22 Mr. Margolis had gone down and observed the trial in one of 23 them. I don't recall Jenner & Block being counsel of record in 24 those cases. You may be able to correct me if I'm wrong, but I 25 don't recall that being the case.</p> |

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1 We certainly were not lead counsel. We hadn't
2 tried the case that was tried in the summer, and we weren't
3 handling the other case that Mr. Roper was talking about.
4 Q. And the estimate was that the client would net about
5 **1.8 million** for both settlements?
6 A. That's what we were being told.
7 Q. But it wasn't just what you were being told. It was
8 based upon the draft agreements that you had seen?
9 A. I had not seen draft agreements.
10 Q. If you'll look at --
11 A. My understanding is some of my colleagues may have.
12 Q. You reference, based upon the draft agreements in the
13 middle of that paragraph, right?
14 A. Right.
15 Q. And you thought that if those settlements did go
16 through, the client should have enough money to pay us a
17 retainer to cover the expenses for the trial, if that trial has
18 to proceed in January?
19 A. Yes.
20 Q. This is the trial that Oracle is pushing on its
21 invalidity defenses?
22 A. Correct.
23 Q. And then Mr. Bosy and Mr. Margolis have estimated the
24 expenses for you?
25 A. Yes.

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1 Q. And you've summarized them below?
2 A. Yes.
3 Q. And if the trial was held only on the validity issues
4 that Oracle was raising, the projected cost was \$157,000?
5 A. I think that's right.
6 Q. And if the trial was on all issues, because the
7 motion to reconsider was granted, then the projected cost was
8 \$365,000?
9 A. Correct.
10 Q. And it would be \$50,000 less if you weren't able to
11 do a jury focus group?
12 A. Correct. These are all estimates, obviously.
13 Q. These are estimates provided to you by Mr. Margolis?
14 A. Yes, uh-huh. And --
15 Q. And Mr. Bosy?
16 A. Yes.
17 Q. That you're sending to Ms. Levy?
18 A. Yes.
19 Q. And then if you turn to Page 3, the last bullet point
20 at the top of the page, you say, if trial does proceed in
21 January, we'll have to decide after trial whether to terminate
22 the engagement?
23 A. Right.
24 Q. You knew that you wouldn't have been able to withdraw
25 from Judge Robinson's court a few weeks before trial?

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1 A. That was my belief.
2 Q. And then you talk about the QuinStreet case next?
3 A. Yes.
4 Q. That whole discussion was about Oracle, right?
5 A. Yeah, what came before was federal.
6 Q. So Section B is about QuinStreet?
7 A. Yes.
8 Q. And you talk about the possibility of settlement,
9 that you thought a settlement could be achieved in the amount
10 of **\$750,000**?
11 A. Yes.
12 Q. And you hadn't been involved in any of these
13 settlement discussions?
14 A. That's right.
15 Q. In fact, as we sit here today, you've never been
16 involved in any settlement discussions with QuinStreet or
17 Oracle counsel?
18 A. I may have been in one discussion with Mr. Bosy and
19 Oracle's counsel when we were talking about Proposal A and
20 Proposal B in December, but substantially, you're right. I
21 wasn't the lawyer involved directly in the settlement
22 negotiations.
23 Q. And based upon information you received from others,
24 you say in the Possibility of Settlement paragraph, to date,
25 our client has not been willing to accept a settlement in that

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1 amount?
2 A. Correct.
3 Q. Then you talk about the background of that case?
4 A. Right.
5 Q. The investment of the firm in that case was \$1
6 million at that time?
7 A. Yes, approximately.
8 Q. If you go down to the fourth bullet point, you say,
9 if only QuinStreet is a defendant in the case, we anticipate
10 the damages range from a few million, in which case we would
11 not recoup our investment in the case, to approximately 20 to
12 30 million, at which level we would probably recoup our
13 investment, perhaps plus a small bonus.
14 A. Yes.
15 Q. And you had not done an independent damages analysis
16 in the QuinStreet case?
17 A. No. The case was not far enough along for there to
18 be a really robust analysis of what the damages were. This was
19 more of a back-of-the-envelope estimate that the team had given
20 me when I asked how much the damages would likely be.
21 Q. And as of December 12th, you say in the last bullet
22 on that page, we've told the client that we wish to terminate
23 our engagement on this case?
24 A. In the QuinStreet case, because of the Microsoft
25 aspects, yes.

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| <p>Page 961</p> <p>1 Q. And as you say, beginning in the last sentence on</p> <p>2 that page, continuing over, the firm was waiting to see what</p> <p>3 would happen with Oracle before deciding to finally terminate</p> <p>4 the engagement of QuinStreet?</p> <p>5 A. Right.</p> <p>6 Q. Now, you also discuss at the end of this e-mail the</p> <p>7 firm's right to terminate.</p> <p>8 A. Yes.</p> <p>9 Q. And you say, we may terminate on 30 days' notice --</p> <p>10 A. Right.</p> <p>11 Q. -- consistent with our ethical obligations?</p> <p>12 A. Right.</p> <p>13 Q. And if you terminate and Parallel Networks succeeds</p> <p>14 in recovering damages, the firm remained entitled to be paid,</p> <p>15 one, fees incurred up to the time of termination at our</p> <p>16 regular hourly rate --</p> <p>17 A. Yes.</p> <p>18 Q. -- regular hourly rates?</p> <p>19 A. Yes. That's a typo.</p> <p>20 Q. Any expenses that aren't paid?</p> <p>21 A. Right.</p> <p>22 Q. And, three, a fair portion of the contingent fee</p> <p>23 award based upon our contribution and the result achieved as of</p> <p>24 the time of termination, to the extent that we had not yet been</p> <p>25 paid for all our fees incurred.</p> | <p>Page 963</p> <p>1 Q. That's what Mr. Pelz was asking about yesterday,</p> <p>2 right, that no outside counsel would agree to a settlement</p> <p>3 where they would then be sued for a different product because</p> <p>4 you'd have problems with the GC and CEO?</p> <p>5 MR. PELZ: Object to the form of the question.</p> <p>6 MR. ALIBHAI: Object to the form of your</p> <p>7 question?</p> <p>8 MR. PELZ: No.</p> <p>9 ARBITRATOR GRISSOM: What is your specific</p> <p>10 objection?</p> <p>11 MR. PELZ: I'm not even sure that was a question</p> <p>12 I asked this witness. I could be wrong, but I believe that's a</p> <p>13 question I asked a different witness. And of course Ms.</p> <p>14 Mascherin couldn't have -- wasn't in the room and couldn't have</p> <p>15 been told about those questions and those answers.</p> <p>16 ARBITRATOR GRISSOM: Would you like to rephrase</p> <p>17 your question?</p> <p>18 Q. (BY MR. ALIBHAI) Did you and Mr. Pelz discuss</p> <p>19 yesterday a settlement of certain product lines and not other</p> <p>20 product lines?</p> <p>21 A. We talked -- Mr. Pelz asked me some questions about</p> <p>22 the -- about Oracle's desire to wrap the BEA products into this</p> <p>23 settlement and not Oracle's position that it didn't want those</p> <p>24 products to be subject to a later suit, yes.</p> <p>25 Q. And that, if somebody did that, that they'd have a</p> |
| <p>Page 962</p> <p>1 A. Correct.</p> <p>2 Q. Let me show you what's been marked as Respondent's</p> <p>3 Exhibit 62. And I want to start at the very back at Exhibit</p> <p>4 62 --</p> <p>5 A. Okay. Give me a second.</p> <p>6 Q. -- which will be the first e-mail in the chain.</p> <p>7 A. Okay.</p> <p>8 Q. And that's an e-mail from Mr. Gilliland, who is</p> <p>9 counsel for Oracle, right?</p> <p>10 A. Yes.</p> <p>11 Q. And he is proposing Option A and Option B that we've</p> <p>12 been talking about?</p> <p>13 A. Yes.</p> <p>14 Q. Option A is how to get the summary judgment order</p> <p>15 final and appealable?</p> <p>16 A. Right. Doing away with the trial in January so that</p> <p>17 the case can go on directly to appeal.</p> <p>18 Q. And then there's an Option B, which is a final</p> <p>19 settlement payment by Oracle of significantly less than eight</p> <p>20 figures which would include the leases and licenses for all</p> <p>21 Oracle and BEA products?</p> <p>22 A. Right.</p> <p>23 Q. So the settlement that Oracle wanted was to cover the</p> <p>24 BEA products that had not been accused yet?</p> <p>25 A. That's what he was saying in this e-mail, yes.</p> | <p>Page 964</p> <p>1 problem with their general counsel that they report to?</p> <p>2 A. I don't recall if he asked me that, but I would</p> <p>3 imagine it would be the case if Oracle's counsel were to leave</p> <p>4 the possibility of a second suit, that it would be Oracle's</p> <p>5 desire to get rid of that.</p> <p>6 Q. And then if you turn to Page 2 of this e-mail chain,</p> <p>7 the e-mail from the bottom is from you to Mr. Bosy, copying</p> <p>8 Mr. Roper and Ms. Levy, dated December 16th, 2008, 10:34 a.m.?</p> <p>9 A. Correct.</p> <p>10 Q. Do you see where I am?</p> <p>11 A. The "Why doesn't the client want to pursue a monetary</p> <p>12 settlement?"</p> <p>13 Q. Yes. That was your question?</p> <p>14 A. Right. Right. I wanted to know why because George</p> <p>15 had said the client wanted to pursue A but not B, so I said,</p> <p>16 why?</p> <p>17 Q. And what was Mr. Bosy's response through his</p> <p>18 assistant to you?</p> <p>19 A. He said, the client isn't interested in a settlement</p> <p>20 along those monetary lines.</p> <p>21 Q. Tim Willette is Mr. Bosy's assistant, right?</p> <p>22 A. He was, yes.</p> <p>23 Q. And Mr. Bosy didn't send e-mails, correct?</p> <p>24 A. I don't remember if he ever -- well, the one before</p> <p>25 that was directly from Mr. Bosy. Looks like he did sometimeS</p> |

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1 send them himself and sometimes Tim sent them for him. But I
2 knew who Tim was, and I knew if it was coming from Tim that
3 that was Mr. Bosy.
4 Q. Who is Jim -- oh, we talked about Jim Gilliland.
5 That's Oracle's counsel, right?
6 A. Yes.
7 Q. Let's talk about Respondent's Exhibit 67. And I want
8 to start with the e-mail on the bottom from Mr. Gilliland.
9 A. Okay. Give me a second. Okay.
10 Q. And so this is further discussion about this Option
11 A/Option B concept?
12 A. That's right.
13 Q. Option A is how to make the trial go away, make the
14 order final and appealable?
15 A. Yes.
16 Q. Option B is settle for single digits millions of
17 dollars which covers Oracle and BEA's products?
18 A. Yes.
19 Q. And when you get to Option A, the requirements that
20 Oracle is requiring are dismissal of the invalidity case
21 without prejudice, right?
22 A. Right.
23 Q. That all their invalidity defenses be preserved?
24 A. Right.
25 Q. The noninfringement ruling would be immediately

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1 appealable?
2 A. Right.
3 Q. And that all cases against Oracle and BEA customers
4 would be stayed, pending appeal?
5 A. Right, that's what he says.
6 Q. And then, finally, that if the summary judgment order
7 of noninfringement regarding Oracle products is affirmed on
8 appeal, that it covers BEA, too, and can't sue for BEA products
9 anymore?
10 A. Right.
11 Q. The motion for reconsideration being decided by Judge
12 Robinson didn't have that risk, right? If she denied the
13 motion for reconsideration, it wouldn't mean that BEA's
14 products couldn't be sued for noninfringement?
15 A. Yeah, that's right. Oracle was asking for something
16 more in exchange for giving up the trial, you know, that was
17 scheduled in January and allowing Parallel Networks to be able
18 to take immediate appeal with the federal circuit of the
19 summary judgment ruling.
20 Q. Let me show you what's been marked as Exhibit 68,
21 which, if you'll confirm for me, the bottom of 68 is a
22 discussion that we just looked at with Mr. Gilliland's
23 conditions for Option A as to how to make this final appeal.
24 That's on the bottom of Page 2, right?
25 A. Yes.

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1 Q. And then the first e-mail -- I guess actually it's
2 the second e-mail. The first e-mail is from Mr. Willette on
3 behalf of Mr. Bosy forwarding the entire chain to you, right?
4 A. And others, yes.
5 Q. On 68?
6 A. The first e-mail at the bottom?
7 Q. I'm sorry. I flipped back to the first page.
8 A. Oh, okay. Sorry.
9 Q. Not at all.
10 A. Yes.
11 Q. He's forwarding the entire chain to you?
12 A. Yes.
13 Q. And the e-mail below is an e-mail from Mr. Fokas to
14 Mr. Bosy?
15 A. That's right.
16 Q. And he says, if you want my personal opinion, we
17 should not agree to anything. File the motion for
18 reconsideration, try the case on invalidity and inequitable
19 conduct if that's what Oracle wants to do, and take up an
20 appeal if she won't reverse herself on noninfringement.
21 A. Yeah, that's what he was saying at this point in
22 time. I think there's an e-mail from him a couple of days
23 before saying, why don't we get the trial and invalidity
24 dismissed and make the summary judgment final and take it up on
25 appeal.

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1 Q. Did you respond to this e-mail from Mr. Fokas?
2 A. I did not respond to the e-mail from Mr. Fokas, but
3 we spoke shortly after this, on the 18th, with Mr. Fokas. I
4 didn't respond to him by e-mail. We talked about these issues
5 on the call on the 18th.
6 Q. That was the only time you ever spoke with Mr. Fokas
7 yourself, correct --
8 A. That's correct.
9 Q. -- was this call you referenced?
10 A. Correct.
11 Q. Let me show you what's been marked as Respondent's
12 Exhibit 69. Respondent's Exhibit 69, if you turn to pages 2
13 and 3 of it, is, again, Mr. Gilliland's e-mail?
14 A. Right.
15 Q. Option A and Option B?
16 A. Right.
17 Q. And then you take that e-mail and you forward it to
18 Ms. Levy and Mr. Bricker?
19 A. Well, there was the e-mail from Mr. Gilliland, and
20 then there was an e-mail from George Bosy about a discussion he
21 had with Gilliland, all of which I was copied on that second
22 one. And I just -- I forwarded that, along with my discussion
23 to Ms. Levy, Mr. Bricker, and I think the same people who had
24 been copied on the prior -- or at least some of the ones who
25 were copied on the prior.

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| <p style="text-align: right;">Page 969</p> <p>1 Q. And it's an update regarding resolution of Parallel 2 Networks' cases and how to get Jenner & Block paid? 3 A. Right. 4 Q. And that was one of the goals that you were trying to 5 accomplish, was to get Jenner & Block paid for outstanding 6 expenses? 7 A. Constantly, yes. 8 Q. And the other goal was to deal with the summary 9 judgment order and either get it reconsidered or appealed? 10 A. That was another thing that we had to do, yes. 11 Q. And then, on December 18th, an agreement is reached 12 with Oracle and the papers are being drafted? 13 A. Right. 14 Q. That's what Paragraph 1 is about? 15 A. Right. 16 Q. And then you say, in the second paragraph of Section 17 1, that once that agreement is done, we have to consider 18 whether the client would pursue a monetary settlement with 19 Oracle as outlined in "B" below? 20 A. Right, whether they want to pursue settlement 21 discussions or not. 22 Q. And the "B" below, you're referring to Mr. 23 Gilliland's Option B? 24 A. Yeah, his suggestion that we discuss settlement, 25 right.</p> | <p style="text-align: right;">Page 971</p> <p>1 A. Right. And find out what they'll offer. 2 Q. And depending on whether the client decides to pursue 3 settlement to prosecute the appeal -- 4 A. Right. 5 Q. -- the firm needed to decide whether to terminate our 6 engagement with the client -- 7 A. Right. 8 Q. -- which we have the right to do on 30 days' notice? 9 A. Right. 10 Q. And then if you'll flip down to Section 2, you 11 discuss the prospects for the client bringing in money 12 necessary to pay the firm? 13 A. Right. 14 Q. One was the settlement of Herbalife case in Texas? 15 A. Right. That's what the client was telling us. 16 Q. And you were told that the parties were obtaining 17 signatures on the final settlement agreement? 18 A. That's what we were told, yes. 19 Q. And that the settlement of the FriendFinder case in 20 Texas was another option? 21 A. That was another possible source of funds, yes. 22 Q. And then the third source of funds would be the 23 settlement of the QuinStreet case? 24 A. Right. 25 Q. Which you thought could get settled for close to</p> |
| <p style="text-align: right;">Page 970</p> <p>1 Q. Complete/final settlement for payment by Oracle of 2 <u>significantly less than eight figures</u> which would include the 3 releases and licenses for all Oracle and BEA products? 4 A. That was his initial demand, yes. The concept was, 5 once we get this agreement done, to finalize the district court 6 proceedings in the Oracle case so that Mr. Fokas can take that 7 up on appeal immediately, does Mr. Fokas want to pursue trying 8 to settle the Oracle case or not. I wasn't meaning to refer 9 specifically to, you know, exactly on the terms that Gilliland 10 suggested, but does it make sense, once we've got this piece of 11 it wrapped up, to -- you know, shouldn't we talk to the client 12 about whether he wants to pursue settlement with Oracle. 13 Q. Because doing Option A didn't preclude settlements? 14 A. Sure. You can always settle. 15 Q. And you say, in the second sentence, that you had 16 discussed the risks and costs associated with continuing to 17 pursue the case, meaning the appeal? 18 A. Yes. 19 Q. And have -- 20 A. And subsequent proceedings. 21 Q. Appeal and further proceedings if the appeal is 22 successful? 23 A. Right. 24 Q. And have recommended that the client discuss 25 settlement with Oracle?</p> | <p style="text-align: right;">Page 972</p> <p>1 <u>700</u> -- or I guess Mr. Margolis thought could get settled for 2 close to <u>\$750,000</u>? 3 A. Right. He was the one who had had the discussions 4 with their counsel. 5 Q. And then you note in this parenthetical that this 6 contingency fee award was 33 percent of net proceeds, right? 7 A. Under the agreement, yes. 8 Q. But net proceeds was not a defined term? 9 A. Right. Net revenues is a defined term, net proceeds 10 isn't. 11 Q. And so you thought it was unclear whether the firm 12 would get 33 percent of <u>\$750,000</u> or 33 percent of the net 13 settlement after the expenses were paid? 14 A. Yes. 15 MR. ALIBHAI: Arbitrator Grissom, that's a good 16 stopping point if you want to take a lunch. 17 MR. PELZ: Yes. They knocked at the door about 18 ten minutes ago -- I didn't interrupt -- while we were talking 19 about this exhibit. But they did knock on the door about ten 20 minutes ago. 21 ARBITRATOR GRISSOM: I know. I know. I was 22 trying not to interrupt our flow. 23 All right. If there's no objection, why don't 24 we have lunch now, and we'll resume in an hour unless you have 25 something else you need to bring up.</p> |

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1 MR. PELZ: We have one -- Mr. Jimenez-Ekman has
2 something he wants to present.
3 MR. JIMENEZ-EKMAN: Mr. Grissom, just very
4 briefly --
5 ARBITRATOR GRISSOM: Just wait a minute. Okay.
6 MR. JIMENEZ-EKMAN: Mr. Grissom, we're not sure
7 yet who they're planning to call tomorrow, but we do have a
8 short brief regarding an issue that we expect to be presented
9 by Mr. Lowery's testimony. And it is crystallized into
10 something we would like to raise with the Court based on the
11 failure of Parallel Networks to raise it with other issues that
12 they said -- I'm sorry -- with other witnesses that they said
13 they might do. So it's a short brief. I have a copy for you
14 and for Parallel Networks' counsel, and I just wanted to hand
15 it out and get that process going.
16 ARBITRATOR GRISSOM: So this has to do with
17 Mr. Lowery's testimony and whether or not other witnesses have
18 testified about certain issues?
19 MR. JIMENEZ-EKMAN: Well, specifically, as we've
20 visited about many times in this case, this has to do with some
21 of the QuinStreet documents. As you may recall, you ordered
22 Parallel Networks to specify which QuinStreet documents they
23 were going to use. On October 2nd, they did narrow the
24 universe of documents. And then, on October 4th, we
25 received -- I'm sorry -- on October 2nd, we received a copy of

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1 them.
2 In connection with the briefing on that issue,
3 you may recall that in addition to the discovery violation, we
4 had grave concerns that they hadn't identified any expert
5 witness to testify about these obviously highly-technical
6 documents. Mr. Alibhai told you during that hearing, well, I
7 might use these documents with Mr. Margolis, I might use them
8 with Mr. Roper, I might use them with Mr. Lowery. Well, Mr.
9 Margolis and Mr. Roper have been up and down off the stand now,
10 and there was nary a question about any of those documents.
11 Now, we're about to get into their case, and our
12 suspicion is that Mr. Lowery, who has not been identified as an
13 expert and who's not provided an expert report, will be asked
14 to comment on these documents, which I think you will see are,
15 to the mere mortal, gibberish. And to the extent -- and the
16 law is very clear that if you are going to give an opinion
17 about patent infringement, you need an expert to do that unless
18 the technology is obvious. And so we put together a short
19 brief that collects those issues into one place. And rather
20 than take it up when Mr. Lowery is called to the stand and
21 asked to look at the first of these highly-technical documents,
22 we'd like to have -- to raise this beforehand, give Parallel
23 Networks an opportunity to respond, and have that dealt with
24 before he gets on the stand. That's the gist of the paper.
25 ARBITRATOR GRISSOM: All right.

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1 MR. JIMENEZ-EKMAN: Thank you.
2 ARBITRATOR GRISSOM: All right. All right.
3 Subject to that, may we please have lunch? We're off the
4 record.
5 (Lunch break was taken at 12:23 p.m. to 1:28
6 p.m.)
7 ARBITRATOR GRISSOM: We're back on the record.
8 I think we have everyone back, and we can then resume our
9 afternoon hearing with the testimony that was just before lunch
10 with Ms. Mascherin.
11 MR. ALIBHAI: Thank you, Arbitrator Grissom.
12 Q. (BY MR. ALIBHAI) Before the break, we were talking
13 about Respondent's 69.
14 A. Yes.
15 Q. And you were talking about a number of different
16 settlements that could occur in which the monies could be used
17 to pay expenses that were owed to the firm?
18 A. Right. This is based on things that Mr. Fokas told
19 Mr. Bosy.
20 Q. Let's look at Exhibit -- Respondent's Exhibit 70.
21 The bottom portion is an e-mail from Mr. Margolis to you, among
22 others, saying that both FriendFinder and Herbalife had both
23 settled, right?
24 A. Yes.
25 Q. And those are the -- two of the settlements that are

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1 referred to your Respondent's Exhibit 69?
2 A. Yes.
3 Q. And then Mr. Margolis thought that, therefore, there
4 will be money to pay all of the outstanding expenses?
5 A. Right.
6 Q. And the first part of your response was, great?
7 A. Yes.
8 Q. Because that was one of the things that you were
9 hoping to get done was collect the expenses that were past due?
10 A. Correct.
11 Q. And that's one of the things that Ms. Levy had asked
12 you to accomplish, was getting the outstanding expenses paid?
13 A. Yes, since August.
14 Q. Since you came onto the case?
15 A. Yes.
16 Q. Let me show you what's Exhibit 71. You then relay
17 the information about the settlements, Herbalife and
18 FriendFinder, to Ms. Levy?
19 A. Yes.
20 Q. And you had previously been told that when the
21 Herbalife case settled, that \$250,000 of it was going to be
22 paid to Jenner & Block?
23 A. Mr. Fokas had told us earlier that it would be
24 something between 200 and 250 from that case.
25 Q. And what you said to Ms. Levy was the Herbalife case,

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| <p>Page 977</p> <p>1 the one from which we'll receive about \$250,000?</p> <p>2 A. Right.</p> <p>3 Q. Let me show you what's been marked as Respondent's</p> <p>4 Exhibit 73.</p> <p>5 A. Yes.</p> <p>6 Q. This is a chain of e-mails between you and Ms. Levy,</p> <p>7 among others?</p> <p>8 A. Yes.</p> <p>9 Q. And you had previously said in Respondent's Exhibit</p> <p>10 69, if you that have in front of you, that the agreement with</p> <p>11 Oracle's counsel about the stipulation had already been</p> <p>12 reached?</p> <p>13 A. Right.</p> <p>14 Q. And it had to be papered up?</p> <p>15 A. Right.</p> <p>16 Q. And then in this e-mail, Respondent's Exhibit 73,</p> <p>17 you're saying that the agreement's been reached and describing</p> <p>18 the terms of it?</p> <p>19 A. In the bottom e-mail, yes.</p> <p>20 Q. And then looking at the third paragraph -- the</p> <p>21 stipulation had to be approved by the Court, right?</p> <p>22 A. Yes.</p> <p>23 Q. And so in the third paragraph, you're referencing</p> <p>24 that once the order approving the stipulation has been entered,</p> <p>25 the client has the right to appeal and the firm needs to decide</p> | <p>Page 979</p> <p>1 Q. -- the summary judgment ruling final?</p> <p>2 A. That's right.</p> <p>3 Q. And then you respond on the settlement point that you</p> <p>4 intend to continue to try to persuade Mr. Fokas to discuss an</p> <p>5 overall settlement with Oracle?</p> <p>6 A. Right. Because he had said that he would talk to us</p> <p>7 about it once we got the Oracle deal done.</p> <p>8 Q. But you thought that he was more interested in the</p> <p>9 appeal rather than settling?</p> <p>10 A. That seemed -- based on my -- based on the discussion</p> <p>11 that I had been part of with Mr. Fokas the week before, that</p> <p>12 was my impression, that he seemed to be very interested in</p> <p>13 pursuing the appeal but not terribly interested in pursuing</p> <p>14 settlement. But he did agree that he would talk to us again</p> <p>15 about whether it made sense to pursue settlement once we'd</p> <p>16 gotten everything done with Oracle.</p> <p>17 Q. As you were finalizing the stipulation to make the</p> <p>18 summary judgment order final, you had already worked with Mr.</p> <p>19 Goldman and Mr. Smith from the appellate group, right?</p> <p>20 A. On the motion to reconsider?</p> <p>21 Q. Yes, ma'am.</p> <p>22 A. Yes.</p> <p>23 Q. And you asked them to prepare a budget for what a</p> <p>24 potential appeal to the Federal Circuit would like look like?</p> <p>25 A. Yes.</p> |
| <p>Page 978</p> <p>1 whether to terminate the representation now or whether to agree</p> <p>2 to handle the appeal?</p> <p>3 A. Once the order -- there were -- there was at least</p> <p>4 an -- there were a couple of orders, I think, that had to be</p> <p>5 entered. There was -- there were orders involved -- I don't</p> <p>6 remember exactly how many different ones we had to draft. But</p> <p>7 there were orders involving getting rid of the trial, you know,</p> <p>8 recording the -- memorializing the terms of the stipulation</p> <p>9 about dismissing the counterclaims without prejudice,</p> <p>10 withdrawing the motion to reconsider. And then you have to</p> <p>11 have -- you can't file a notice of appeal until there's a</p> <p>12 judgment that's entered. So we had to get all of that done,</p> <p>13 and then the client would have the right to appeal.</p> <p>14 Q. And the firm needed to decide whether to terminate</p> <p>15 the representation at that point or whether to agree to handle</p> <p>16 the appeal?</p> <p>17 A. Yes.</p> <p>18 Q. And then Ms. Levy asked what happened to the motion</p> <p>19 to reconsider, right?</p> <p>20 A. Yes.</p> <p>21 Q. And she asked about the settlement meeting?</p> <p>22 A. Yes.</p> <p>23 Q. The motion to reconsider had been withdrawn as part</p> <p>24 of the stipulation to make the judgment final --</p> <p>25 A. Yes.</p> | <p>Page 980</p> <p>1 Q. Is Respondent's Exhibit 80 their budget that they</p> <p>2 provided to you?</p> <p>3 A. Yes.</p> <p>4 Q. And looking at the top e-mail, they were estimating</p> <p>5 \$400,000 of lawyer time for two briefs in the Federal Circuit</p> <p>6 and the oral argument?</p> <p>7 A. Yes.</p> <p>8 Q. And then they say out-of-pocket expenses would be</p> <p>9 relatively minimal?</p> <p>10 A. Yes.</p> <p>11 Q. The expenses would be also -- they were in D.C., both</p> <p>12 of them?</p> <p>13 A. Yes.</p> <p>14 Q. So there was a meeting with D.C. folks for</p> <p>15 potentially them to come to Chicago where the Jenner & Block</p> <p>16 lawyers working on the case were? That was one type of</p> <p>17 expense?</p> <p>18 A. That's one thing they were noting.</p> <p>19 Q. And then there would be the cost of printing and</p> <p>20 binding of briefs?</p> <p>21 A. Right.</p> <p>22 Q. And then Ms. Levy, at the end of the year, requested</p> <p>23 a memorandum about what the status was of whether to terminate</p> <p>24 the engagement or continue on?</p> <p>25 A. She requested a memorandum about summarizing the</p> |

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| <p style="text-align: right;">Page 981</p> <p>1 discussions that various of us had had and our -- the consensus</p> <p>2 that we'd reached about sending Notice of Termination. In</p> <p>3 other words, she wanted me to sort of put it all in one place</p> <p>4 to memorialize what had happened.</p> <p>5 Q. Is Respondent's Exhibit 82 the memorandum you</p> <p>6 prepared?</p> <p>7 A. Yes, it is.</p> <p>8 Q. Turn, if you would, to the second page the exhibit,</p> <p>9 which is the beginning of the memorandum, and turn to the</p> <p>10 second paragraph.</p> <p>11 A. Yes.</p> <p>12 Q. Under the contingent fee agreement that's referenced</p> <p>13 there, the client did not have to pay for hourly fees, correct?</p> <p>14 A. Assuming that we were still in the -- in a</p> <p>15 pre-termination phase, yes. That's what this paragraph</p> <p>16 addresses. But the basic agreement is a contingent agreement,</p> <p>17 contingent upon recovery in the case.</p> <p>18 Q. And so under the contingent fee agreement that was in</p> <p>19 place at that time, there was no obligation by the client to</p> <p>20 pay hourly fees?</p> <p>21 A. As things existed -- the current state of affairs at</p> <p>22 that time, yes.</p> <p>23 Q. You say that the agreement provides the client is to</p> <p>24 pay expenses on 30-day terms?</p> <p>25 A. Yes, that's what I say.</p> | <p style="text-align: right;">Page 983</p> <p>1 Q. That was Mr. Gilliland?</p> <p>2 A. Yes, the e-mail that we've looked at.</p> <p>3 Q. Turning to the next page, you say at the top, until</p> <p>4 recently, the client was several months in arrears on its</p> <p>5 obligation to pay expenses?</p> <p>6 A. Yes.</p> <p>7 Q. So those settlements that we had discuss had closed</p> <p>8 and funded?</p> <p>9 A. As of the time I wrote this memo, the client had paid</p> <p>10 the past-due expenses. I assume that came from the proceeds of</p> <p>11 the settlement. That's what he told us.</p> <p>12 Q. And that's what you said, right, looking at the</p> <p>13 next page?</p> <p>14 A. Yes. That was my understanding based on what the</p> <p>15 client was telling us.</p> <p>16 Q. The client paid the past-due expenses totaling about</p> <p>17 \$550,000 last week with proceeds from the settlement of two</p> <p>18 other cases that had been handled by other law firms?</p> <p>19 A. Right. That's what he told us the source was.</p> <p>20 Q. Turning to the next paragraph, "the second case</p> <p>21 QuinStreet" is how it begins --</p> <p>22 A. Yes.</p> <p>23 Q. -- that's talking about the QuinStreet case now?</p> <p>24 A. Yes, along with Microsoft.</p> <p>25 Q. And if you look down about halfway into that</p> |
| <p style="text-align: right;">Page 982</p> <p>1 Q. And then you also say in the fifth line of that</p> <p>2 paragraph, the agreement permits us to terminate the</p> <p>3 representation at any time?</p> <p>4 A. Yes.</p> <p>5 Q. Consistent with our ethical obligations?</p> <p>6 A. Yes.</p> <p>7 Q. And that if Jenner & Block terminated and the client</p> <p>8 recovered, the firm was entitled to be paid all unpaid</p> <p>9 expenses, as well as to be compensated for the time they</p> <p>10 devoted to the representation through termination at our</p> <p>11 regular hourly rates?</p> <p>12 A. Yes.</p> <p>13 Q. And in the bottom paragraph on that page, it</p> <p>14 discusses the Oracle case, correct?</p> <p>15 A. Yes.</p> <p>16 Q. And it says that in connection with working on</p> <p>17 converting the summary judgment order to a final judgment, that</p> <p>18 Jenner & Block advised Parallel Networks that it would be in</p> <p>19 the client's best interest to accept Oracle's invitation to</p> <p>20 reconvene settlement discussions?</p> <p>21 A. Right, to find out what they were willing to offer.</p> <p>22 Q. And at that time, Oracle's counsel was interested in</p> <p>23 settling but that in his view, the settlement would not reach</p> <p>24 <u>eight figures</u>?</p> <p>25 A. Right. That's what he said.</p> | <p style="text-align: right;">Page 984</p> <p>1 paragraph, it starts with "based upon those discussions."</p> <p>2 You thought that the QuinStreet case could be</p> <p>3 settled for approximately <u>\$750,000</u>?</p> <p>4 A. Based on the discussions with QuinStreet's lawyers,</p> <p>5 right, prior to Microsoft filing.</p> <p>6 Q. Which is discussions that Mr. Margolis was having</p> <p>7 with QuinStreet's counsel?</p> <p>8 A. Yes.</p> <p>9 Q. And you said, two weeks ago we recommended to the</p> <p>10 client that he continue settlement discussions with</p> <p>11 QuinStreet?</p> <p>12 A. Right.</p> <p>13 Q. That was actually a conversation that you're</p> <p>14 referring to that you were a part of?</p> <p>15 A. Right. That was the December 18th, discussion.</p> <p>16 Q. And then it goes, at the fourth paragraph, to a</p> <p>17 discussion about a conversation that Mr. Roper and Mr. Margolis</p> <p>18 had with the client?</p> <p>19 A. Yes.</p> <p>20 Q. And I think you testified about this on direct, and I</p> <p>21 want to make sure I understand this. The suggestion was that</p> <p>22 Jenner & Block stay in both cases, right? It's a multifaceted</p> <p>23 proposal, so I want to break it down a little bit.</p> <p>24 A. Well, I can't agree "yes" or "no" with the way you've</p> <p>25 just phrased that question because there was a very significant</p> |

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| <p style="text-align: right;">Page 985</p> <p>1 limitation on our willingness to stay in the QuinStreet case.</p> <p>2 Q. Stay in QuinStreet but not Microsoft?</p> <p>3 A. Stay in QuinStreet and try to achieve a settlement,</p> <p>4 if that could be achieved, you know, relatively promptly.</p> <p>5 Q. Okay. So with respect to the QuinStreet, not</p> <p>6 terminate the representation, continue on for the limited</p> <p>7 purpose of trying to settle it?</p> <p>8 A. Yes.</p> <p>9 Q. With respect to the Oracle case, Jenner & Block would</p> <p>10 handle the appeal?</p> <p>11 A. Yes.</p> <p>12 Q. And would not agree to do any further work if there</p> <p>13 was successful appeal and there was a remand thereafter to the</p> <p>14 district court?</p> <p>15 A. Well, what we wanted -- what we proposed -- what</p> <p>16 Harry and Paul proposed was that we would handle the appeal</p> <p>17 under the current agreement and that we -- we, at that point,</p> <p>18 recommended that, you know, assuming the appeal was handled</p> <p>19 successfully and that there was -- you know, there was a</p> <p>20 positive result, that the client then authorized us to attempt</p> <p>21 to negotiate a settlement with Oracle. I don't think the -- we</p> <p>22 certainly didn't propose that we would stay in the case all the</p> <p>23 way through, you know, subsequent trial, appeal, you know,</p> <p>24 trial, and all of that. But we did -- we did offer to stay in</p> <p>25 the case under the current structure through the appeal and</p> | <p style="text-align: right;">Page 987</p> <p>1 you know, the plan would be that Paul Smith and Marc Goldman</p> <p>2 would be lead counsel.</p> <p>3 Q. And in the next paragraph you say that the proposal</p> <p>4 that the client has made was not attractive?</p> <p>5 A. Right. He didn't want us -- he wanted us to stay in</p> <p>6 QuinStreet and Microsoft and Oracle. He said that if we -- you</p> <p>7 know, that he wouldn't be able to get anybody to take the</p> <p>8 QuinStreet case if he couldn't offer them the Oracle case,</p> <p>9 too.</p> <p>10 Q. And you discussed that proposal, and you, Mr.</p> <p>11 Margolis and Mr. Roper and Ms. Levy agreed that it was not an</p> <p>12 attractive proposal?</p> <p>13 A. Right, and Mr. Smith. I guess Paul meant --</p> <p>14 Q. We don't know who Paul refers to?</p> <p>15 A. Yeah, I -- you know, I'm not sure which Paul it was.</p> <p>16 Q. Okay. And there are two reasons that you list for</p> <p>17 why that proposal was not attractive, correct?</p> <p>18 A. Yes.</p> <p>19 Q. And one is the size of the existing -- given the size</p> <p>20 of the existing investment. Do you see that?</p> <p>21 A. Right. Under his proposal -- his proposal was</p> <p>22 economically unattractive compared to the one we had made to</p> <p>23 him.</p> <p>24 Q. For Jenner & Block?</p> <p>25 A. Right.</p> |
| <p style="text-align: right;">Page 986</p> <p>1 then try to get them a good settlement.</p> <p>2 Q. So the proposal was that Jenner & Block would</p> <p>3 represent Parallel Networks in an appeal to the Federal Circuit</p> <p>4 regarding summary judgment finding of noninfringement, and if</p> <p>5 it was successful --</p> <p>6 A. Try to get them a good settlement.</p> <p>7 Q. And if the settlement wasn't achieved?</p> <p>8 A. We didn't really -- we didn't address what would</p> <p>9 happen after that. We were still very concerned about the</p> <p>10 economic disadvantages to the firm from the lengthy additional</p> <p>11 proceedings that might be necessary.</p> <p>12 Q. Because it'd be a trial, a potential appeal, and</p> <p>13 then --</p> <p>14 A. Another trial.</p> <p>15 Q. -- trial and damages?</p> <p>16 A. Yes.</p> <p>17 Q. And then maybe even another appeal?</p> <p>18 A. And then possibly another appeal, right. But we</p> <p>19 did -- we told them we'd be willing to stay in through the</p> <p>20 appeal because, you know, we thought there was a good appeal</p> <p>21 and try to get him a good settlement coming out of the</p> <p>22 (inaudible).</p> <p>23 Q. "We," meaning the people that have been working on</p> <p>24 the motion for reconsideration?</p> <p>25 A. "We," meaning the Jenner & Block team, including --</p> | <p style="text-align: right;">Page 988</p> <p>1 Q. And one part of it is based upon the size of the</p> <p>2 existing investment?</p> <p>3 A. Yes.</p> <p>4 Q. And that is -- if you look at the very first line on</p> <p>5 Page 2, the outstanding fee investment for Oracle is</p> <p>6 approximately \$10 million?</p> <p>7 A. Right. As compared to the way he was proposing that</p> <p>8 we limit our fee.</p> <p>9 Q. Because if you limited your fee to based upon an</p> <p>10 amount that was discussed right now, the settlement number, in</p> <p>11 order recoup the 10 million, would have to be at least \$30</p> <p>12 million?</p> <p>13 A. Thereabouts. I think it gets a little more</p> <p>14 complicated than that because there's a declining percentage.</p> <p>15 Q. Because at some point it goes down from a third to 28</p> <p>16 percent?</p> <p>17 A. Yeah. I don't remember where that break point was.</p> <p>18 Q. Around \$15 million, right?</p> <p>19 A. Yeah, I think so, and so it's probably not --</p> <p>20 Q. So a little bit over 30 million?</p> <p>21 A. It's not going to -- it's going to be more than 30</p> <p>22 million. I don't remember -- I don't remember what the math</p> <p>23 would be that you'd have to do to figure out what the</p> <p>24 (inaudible).</p> <p>25 Q. And then on the flipside, if you terminated under the</p> |

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| <p style="text-align: right;">Page 989</p> <p>1 existing fee agreement, you had the right to recoup the full 2 investment? 3 A. Assuming a successful recovery, yes. 4 Q. And, number two, that you were not interested in 5 prosecuting the QuinStreet case at trial? 6 A. Right. 7 Q. And during these discussions that you had or that 8 Jenner & Block lawyers had with Mr. Fokas at the end of 9 December, did anyone encourage him to seek outside counsel at 10 that time? 11 A. Did anybody encourage him to seek outside counsel? I 12 don't think we explicitly encouraged him to seek outside 13 counsel. 14 Q. If I remember correctly, when you were looking at the 15 fee agreement in October, one of the things that you were 16 considering was whether the fee agreement should be modified 17 and the percentage should be increased in favor of Jenner & 18 Block to account for the fact that you had been fronting the 19 expenses? 20 A. That's one thing that we were considering. Mr. Fokas 21 was the one who had suggested that. 22 Q. Mr. Fokas had suggested that in connection with the 23 111 cases, correct? 24 A. I was told by Mr. Bosy he had suggested it as a 25 global matter, and then we got the e-mail suggesting it with</p> | <p style="text-align: right;">Page 991</p> <p>1 was an issue, and I also remember it never went anywhere at 2 that time. 3 Q. You testified yesterday that you thought it made 4 sense to settle the QuinStreet case, right? 5 A. Yes. 6 Q. And that you could get rid of the QuinStreet part of 7 it and then maybe the Microsoft part would get transferred 8 because there wouldn't be jurisdiction in Texas? It'd get 9 dismissed there, wouldn't it? 10 A. There would be jurisdiction in Delaware. 11 Q. I may have said that wrong. 12 A. But, yes, other than -- 13 Q. I'm still here in Texas. 14 A. -- other than that, I agree. 15 Q. So if the QuinStreet portion of the case -- it's one 16 case, right? 17 A. It was -- it was one case at that time, yes. 18 Q. So if the QuinStreet portion of that case was settled 19 and dismissed, then there may not be personal jurisdiction over 20 Parallel Networks in Delaware for the Microsoft portion of the 21 case? 22 A. Correct. We believed there was a good argument that 23 Microsoft had to demonstrate an independent basis for 24 jurisdiction. 25 Q. You had prepared the memorandum that we looked at the</p> |
| <p style="text-align: right;">Page 990</p> <p>1 respect to the cases he wanted to bring in the other patent as 2 well. 3 Q. You've never seen any documents where that suggestion 4 was made with respect to the existing figure? 5 A. From Mr. Fokas, no. I'm relying on what Mr. Bosy 6 told me. 7 Q. And so when you were considering the modification of 8 the fee agreement, you personally looked at articles from ALAS 9 (phonetic) about mid-representation fee agreement changes? 10 A. I looked at some articles, yes. 11 Q. And there was concern that's stated in those articles 12 about how the lawyer could have taken advantage of the client 13 in the middle of the relationship, trying to change the fee 14 agreement? 15 A. I don't remember exactly what the articles addressed. 16 I do recall that there was reason to be concerned about 17 mid-agreement modification. 18 Q. And what ALAS (phonetic) recommends is that if a law 19 firm and the client are going to enter into a mid-engagement 20 modification, that the lawyer tell the client, you need to go 21 get outside counsel to advise you in this situation? 22 A. I don't remember. If you represent that's what the 23 article said, then I don't have any reason to -- 24 Q. Do you have that recollection? 25 A. I don't remember the articles. I remember that there</p> | <p style="text-align: right;">Page 992</p> <p>1 beginning of your testimony today, which is Respondent's 2 Exhibit 46, regarding the damages in the Oracle case, right? 3 A. Yes. 4 Q. Had you ever prepared such a memorandum regarding the 5 QuinStreet case? 6 A. Like this? 7 Q. Yes. 8 A. No, not this extensive. 9 Q. Had you analyzed what the accused products were and 10 the potential royalty base involved? 11 A. I had not personally. I relied upon the information 12 that the other members of the team provided about what they'd 13 been able to do to date based on what the -- what information 14 they had. The case was still in the pleading stages and 15 were -- you know, was far from being fully developed. 16 Q. On January 2nd, 2009, a termination letter was sent 17 to Parallel Networks, correct? 18 A. A Notice of Termination, yes. 19 Q. And that was from Mr. Margolis? 20 A. It was signed by Mr. Margolis. It was from the firm. 21 Q. And there was a call that preceded the sending of the 22 January 2nd letter? 23 A. A call between -- you mean the call between Mr. 24 Margolis and Mr. Fokas? 25 Q. Yes. Thank you.</p> |

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| <p style="text-align: right;">Page 993</p> <p>1 A. Yes.</p> <p>2 Q. And the firm had told Mr. Margolis to call first?</p> <p>3 A. I believe that's true.</p> <p>4 Q. And the termination of representation letter</p> <p>5 references Paragraph 9a of the agreement, right?</p> <p>6 A. I believe it's 9b.</p> <p>7 Q. This is Respondent's Exhibit 87.</p> <p>8 A. I believe it's 9b.</p> <p>9 Q. Take a look at it, in the last paragraph.</p> <p>10 A. Oh, there's a typo. Oh, it is in 9a because 9b</p> <p>11 refers to 9a.</p> <p>12 Q. What's in 9a?</p> <p>13 A. 9a is a paragraph that deals with Parallel Networks'</p> <p>14 right to terminate. 9b deals with Jenner & Block's right to</p> <p>15 terminate. And at the end of 9b, it says to -- you know, to</p> <p>16 determine what Jenner & Block is entitled to be paid in this</p> <p>17 circumstance, you go back to 9a.</p> <p>18 Q. And then you were testifying yesterday, we were</p> <p>19 discussing the Oracle and the QuinStreet cases and you said, as</p> <p>20 to QuinStreet, Jenner & Block was recommending to settle that</p> <p>21 case at that time in December 2008?</p> <p>22 A. Yes.</p> <p>23 Q. And you'd been after the client for many months to</p> <p>24 settle QuinStreet?</p> <p>25 A. Right. And it made all the sense in the world. If</p> | <p style="text-align: right;">Page 995</p> <p>1 Q. It's the exhibit that you discussed with Mr. Pelz</p> <p>2 this morning, right?</p> <p>3 A. That's one of them, yes.</p> <p>4 Q. And it recounts a conversation that you had with Ms.</p> <p>5 Steinberg, who was outside corporate counsel for Parallel</p> <p>6 Networks?</p> <p>7 A. Yes.</p> <p>8 Q. One of the issues that Ms. Steinberg raised was that</p> <p>9 with respect to the Oracle appeal, to give Jenner & Block peace</p> <p>10 of mind with respect to expenses, that Parallel Networks would</p> <p>11 give Jenner & Block a retainer sufficient to cover the expenses</p> <p>12 on appeal?</p> <p>13 A. Yes, that's one thing she said.</p> <p>14 Q. And the expenses on appeal, according to the</p> <p>15 appellate team, were going to be relatively minimal?</p> <p>16 A. Based on the back-of-the-envelope estimate that Paul</p> <p>17 and Marc had done, yes.</p> <p>18 Q. Well, you've handled appeals?</p> <p>19 A. Yes.</p> <p>20 Q. And to a Federal Circuit court?</p> <p>21 A. Yes.</p> <p>22 Q. The biggest expense is the copying and binding and</p> <p>23 putting together the briefs and the appendix, right?</p> <p>24 A. That and any, you know, travel that might be</p> <p>25 involved. But we didn't talk about it in December. It's</p> |
| <p style="text-align: right;">Page 994</p> <p>1 the client was saying he wanted 950,000 you know, we had a</p> <p>2 very good indication that there was at least 750,000 It</p> <p>3 didn't seem that we were very far apart. It seemed the case</p> <p>4 could easily be settled for an amount the client would accept.</p> <p>5 Q. All right. That brings me to the testimony that you</p> <p>6 gave this morning. And the easiest thing to do would be to put</p> <p>7 aside the exhibits that we've talked about so far.</p> <p>8 A. Okay.</p> <p>9 Q. We're going to go through some of the exhibits that</p> <p>10 Mr. Pelz showed you today. I don't know if the stacks are</p> <p>11 divided up that way.</p> <p>12 A. From January?</p> <p>13 Q. No. I want to talk about Claimant's Exhibit 303,</p> <p>14 which is your conversation with Ms. Steinberg.</p> <p>15 A. Okay. Give me a second.</p> <p>16 Q. Sure. And for a frame of reference, it's an e-mail</p> <p>17 that's redacted at the top of it, if that's easier to find.</p> <p>18 ARBITRATOR GRISSOM: If we're going to go</p> <p>19 binder-hopping again, if y'all, you know, will give me a moment</p> <p>20 to find everything before you ask questions and answer them?</p> <p>21 MR. ALIBHAI: Certainly.</p> <p>22 Q. (BY MR. ALIBHAI) Ms. Mascherin, to make it easier</p> <p>23 for you, I'll give you another copy.</p> <p>24 A. That'd be great because I don't know where it is in</p> <p>25 this stack. Thank you. Okay.</p> | <p style="text-align: right;">Page 996</p> <p>1 conceivable that there would be consultation with some of the</p> <p>2 experts or that sort of thing. There could be -- I don't want</p> <p>3 to quibble, you know. I just want to point out there might</p> <p>4 have been some expenses that Paul and Marc might not have taken</p> <p>5 into account, but they certainly would not have been expenses</p> <p>6 to the level that you get preparing for a trial.</p> <p>7 Q. Tens of thousands of dollars?</p> <p>8 A. One would hope.</p> <p>9 Q. And you explained to Ms. Steinberg that the expense</p> <p>10 issue, in the third full paragraph on Page 2, was just one of</p> <p>11 the issues that had caused Jenner & Block to terminate the</p> <p>12 relationship?</p> <p>13 A. Yes.</p> <p>14 Q. That the other issues were the client's reluctance to</p> <p>15 consider settlement?</p> <p>16 A. Yes.</p> <p>17 Q. And that's in both the QuinStreet and the Oracle</p> <p>18 cases?</p> <p>19 A. Yes.</p> <p>20 Q. And then the fact that the Oracle case changed</p> <p>21 because of the bifurcation and the addition of Microsoft?</p> <p>22 A. Oracle because of the bifurcation and Microsoft to</p> <p>23 the QuinStreet case, yes.</p> <p>24 Q. Which would create a longer schedule in both of those</p> <p>25 cases?</p> |

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| <p>Page 997</p> <p>1 A. Yes, and with regard to Microsoft, would greatly 2 expand the scope of the case. 3 Q. But Jenner & Block wasn't going to handle the 4 Microsoft case no matter what, right? 5 A. That's what we told the client. 6 Q. I'm not talking about what you told client. You had 7 never agreed to undertake that representation? 8 A. That's correct. However, as I explained yesterday, 9 we were counsel of record in the case in which that claim was 10 pending. And unless and until we withdrew from that case where 11 that claim was pending or somebody else came in as lead counsel 12 to handle it, we were in that case. 13 Q. And then you reminded Ms. Steinberg that either side 14 had the right to terminate the relationship at any time for any 15 reason? 16 A. Yes. 17 Q. Subject only to the notice period, which is 30 18 days? 19 A. Correct. 20 Q. And Jenner & Block complied with that ethical 21 obligation? 22 A. Correct. 23 Q. Let me show you Claimant's Exhibit 313. This is an 24 e-mail from you to Jenner & Block lawyers? 25 A. Yes.</p> | <p>Page 999</p> <p>1 A. He was firm counsel, yeah. We have several firm 2 counsel. 3 Q. Right. And so in 2009, Mr. Markowski is no longer at 4 the firm. At some point he leaves and goes to be in-house 5 counsel, right? 6 A. At some point after this. 7 Q. So why do you switch from talking to Mr. Markowski 8 and now you're talking to Mr. Heinz and Mr. Hoover? 9 A. I think that -- I think that Mr. Markowski at some 10 point along the way had consulted with Mr. Heinz and Mr. Hoover 11 about something, and he started copying them. 12 Q. And so the proposal that's outlined below is what you 13 told Ms. Steinberg, except that you proposed a retainer of 14 \$500,000 for the appeal? 15 A. Right. 16 Q. What was the proposal below? 17 A. It was a proposal that we would -- that -- that they 18 would -- Parallel Networks would pay a retainer for the appeal, 19 not just for expenses, but to cover fees as well for the appeal 20 that we -- and that we'd record fees against that retainer; 21 that the client would then authorize -- would also agree that 22 assuming that the appeal was successfully completed, that the 23 client would authorize us to engage in settlement negotiations 24 in the Oracle case and attempt to achieve a -- you know, an 25 acceptable settlement; that the client would authorize us to</p> |
| <p>Page 998</p> <p>1 Q. Who is William Heinz? 2 A. He's one of our firm counsel. 3 Q. And Mr. Hoover is also firm counsel? 4 A. Yes. 5 Q. And you start with saying, I spoke with Laura 6 Steinberg today and conveyed the proposal outlined below except 7 that I proposed a retainer of \$500,000 for the appeal. 8 A. Yes. 9 Q. The proposal that you're referring to, is that 10 redacted? 11 A. From this document, yes. 12 Q. It's information that you conveyed to Ms. Steinberg? 13 A. The information that I conveyed to Ms. Steinberg 14 was -- I can tell you what that information was. It's redacted 15 from this document, I suspect, because it was laid out in an 16 e-mail that I sent to firm counsel asking for their review -- 17 you know, this whole group's review, but including firm 18 counsel, of the terms that I -- that I had, you know, developed 19 that I was proposing that I offered to Ms. Steinberg. 20 Q. In 2008, were you working with Mr. Markowski as firm 21 counsel on issues related to the Jenner & Block and Parallel 22 Networks relationship? 23 A. 2008? The only person I remember consulting with at 24 any point in 2008 regarding this client was Mr. Markowski. 25 Q. Who's firm counsel?</p> | <p>Page 1000</p> <p>1 negotiate a settlement of the QuinStreet case for at least 2 \$750,000 and that the fee -- that Jenner & Block's fee, if that 3 settlement could be achieved in QuinStreet, would be based on 4 the regular contingent fee agreement. So it would be a 33 and 5 one-third percent fee. But that failing ability to achieve a 6 settlement with QuinStreet, that Jenner & Block would withdraw 7 from that case and the client would hire substitute counsel to 8 litigate the case against QuinStreet and Microsoft. 9 Q. So with respect to the QuinStreet case, Jenner & 10 Block was not going to do anything with the Microsoft line? 11 A. Right. We were requesting authority to attempt to 12 negotiate a settlement with QuinStreet only. 13 Q. And act only as settlement counsel? 14 A. Well, I don't think we put that fine a point on it. 15 At this point in time, I don't think I did when I talked to 16 Laura about it. 17 Q. You're not going to litigate that case? 18 A. Right. The idea was that we would try to settle the 19 case, which we thought could be done relatively soon. There 20 was, as we've discussed, a mediation already scheduled in that 21 case for January. We thought if not before, that a settlement 22 could be negotiated at that mediation if we had the authority 23 that we thought was reasonable authority to go negotiate the 24 settlement. 25 Q. And if the settlement could not be achieved at</p> |

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| <p style="text-align: right;">Page 1001</p> <p>1 <u>\$750,000</u> or higher --</p> <p>2 A. We'd withdraw and Parallel Networks would hire</p> <p>3 somebody else to take that case and whatever is left of it and</p> <p>4 litigate it.</p> <p>5 Q. And with respect to handling the Oracle appeal, the</p> <p>6 fee agreement in place would be amended and the client would</p> <p>7 now pay hourly for the work done?</p> <p>8 A. Up to a retainer.</p> <p>9 Q. Capped at \$500,000?</p> <p>10 A. Uh-huh.</p> <p>11 Q. And this was in response to Ms. Steinberg's "we'll</p> <p>12 give you a retainer for the expenses"?</p> <p>13 A. Right. I said, well, how about a retainer for -- you</p> <p>14 know, instead of a retainer for expenses, how about retainer</p> <p>15 for fees?</p> <p>16 Q. And what was the amount that you had been discussing</p> <p>17 that you'd changed to \$500,000?</p> <p>18 A. I think somebody in this dialogue had suggested</p> <p>19 750,000, and I thought that was high.</p> <p>20 Q. Based upon?</p> <p>21 A. Based upon the budget.</p> <p>22 Q. That Mr. Smith had prepared for you?</p> <p>23 A. Right. I thought 500 would cover the fees and</p> <p>24 expenses.</p> <p>25 Q. Turn to Claimant's Exhibit 315, if you will.</p> | <p style="text-align: right;">Page 1003</p> <p>1 A. Yeah. It was the next conversation, I believe, after</p> <p>2 the one that's recapped in the prior e-mail.</p> <p>3 Q. Flip to Claimant's Exhibit 320, if you would. This</p> <p>4 is recounting another conversation that you had with Ms.</p> <p>5 Steinberg?</p> <p>6 A. Yes.</p> <p>7 Q. And the proposal regarding QuinStreet still at this</p> <p>8 time is that Jenner & Block would stay in the case only until</p> <p>9 February 9th for purposes of negotiating the settlement with</p> <p>10 QuinStreet?</p> <p>11 A. Yes.</p> <p>12 Q. And so, again, that's all that Jenner & Block is</p> <p>13 willing to commit to do with respect to QuinStreet case between</p> <p>14 January 23rd and February 9th?</p> <p>15 A. That's what we -- no, I don't think that's right. We</p> <p>16 were preparing the responsive pleading. We were dealing with</p> <p>17 the other things that had to happen in the case, but we didn't</p> <p>18 want to continue in the case past February the 9th because</p> <p>19 deadlines were -- you know, there was deadlines impending after</p> <p>20 that for other things that needed to be done to move forward in</p> <p>21 the case. But we were willing still to try to get that</p> <p>22 settlement which we thought could be done. We were offering to</p> <p>23 do that.</p> <p>24 Q. So the QuinStreet case involves deadlines related to</p> <p>25 Microsoft and deadlines related to QuinStreet.</p> |
| <p style="text-align: right;">Page 1002</p> <p>1 A. Okay.</p> <p>2 Q. This is an e-mail from you to Ms. Levy, Mr. Roper,</p> <p>3 Mr. Markowski and Mr. Heinz and Mr. Hoover, copying Mr. Smith</p> <p>4 and Mr. Margolis, correct?</p> <p>5 A. Yes.</p> <p>6 Q. And on the "To" line, Mr. Markowski and Mr. Heinz and</p> <p>7 Mr. Hoover are firm counsel?</p> <p>8 A. Yes.</p> <p>9 Q. And you start this e-mail with "Privileged and</p> <p>10 Confidential"?</p> <p>11 A. Right.</p> <p>12 Q. Why is it privileged and confidential?</p> <p>13 A. It's just a habit that I have whenever I -- I try to.</p> <p>14 Maybe I didn't on the last one. If I'm copying firm counsel, I</p> <p>15 try to say that. Looks like I didn't on that one.</p> <p>16 Q. So when you're writing to the firm counsel, you try</p> <p>17 to mark the e-mails that are privileged and confidential as to</p> <p>18 Jenner & Block?</p> <p>19 A. Yes. It's a -- it's a --</p> <p>20 Q. You're a litigator.</p> <p>21 A. It's something I -- yeah. It's just something I do.</p> <p>22 Q. So it's a knee-jerk reaction?</p> <p>23 A. Yes.</p> <p>24 Q. So this is a recap of the conversation that you had</p> <p>25 with Ms. Steinberg?</p> | <p style="text-align: right;">Page 1004</p> <p>1 A. Correct.</p> <p>2 Q. With respect to the party QuinStreet, not the case --</p> <p>3 A. Yes.</p> <p>4 Q. -- the activity that Jenner & Block was going to</p> <p>5 handle between January 23rd and February 9th was achieve a</p> <p>6 settlement?</p> <p>7 A. That's what we were proposing to do. We were never</p> <p>8 authorized to do it, right.</p> <p>9 Q. Or withdraw --</p> <p>10 A. Right.</p> <p>11 Q. -- if the settlement doesn't happen?</p> <p>12 A. Right.</p> <p>13 Q. And so maybe attending the mediation would have been</p> <p>14 part of the work?</p> <p>15 A. Oh, sure, sure. If the mediation had happened, we</p> <p>16 would have participated. But as things were, everybody agreed</p> <p>17 to put off the mediation because Mr. Fokas didn't want to talk</p> <p>18 settlement with QuinStreet.</p> <p>19 Q. And if the QuinStreet case had been settled for</p> <p>20 <u>\$750,000</u> Jenner & Block's fee would have been what?</p> <p>21 A. Approximately <u>250,000</u> I don't know if there were</p> <p>22 expenses outstanding.</p> <p>23 Q. You're not aware of any expenses that were</p> <p>24 outstanding?</p> <p>25 A. I don't remember if there were or there weren't.</p> |

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| <p style="text-align: right;">Page 1005</p> <p>1 There had been work done in the case. There were probably at 2 least some incidental expenses. 3 Q. Let me show you Respondent's Exhibit 95. 4 MR. ALIBHAI: Switching to Respondent's, 5 Arbitrator Grissom. 6 A. Yes. 7 Q. (BY MR. ALIBHAI) So around this time, you were 8 discussing the fact that there was a call and that you needed 9 to be on the call, and you were trying to work out an agreement 10 which would allow the firm to finalize a settlement with 11 QuinStreet? 12 A. To attempt to finalize a settlement, yes. 13 Q. And Mr. Margolis remarks that, hopefully, QuinStreet 14 will still want to settle? 15 A. Right. 16 Q. And your response was that if they don't, the firm 17 will withdraw? 18 A. Right. 19 Q. And that's consistent with the discussions that 20 you've been having with Ms. Steinberg about the scope of the 21 representation that Jenner & Block was willing to do with 22 respect to QuinStreet? 23 A. Yeah. That's right. That's right. And this was the 24 point where we had -- where she and I had reached agreement on 25 all the terms.</p> | <p style="text-align: right;">Page 1007</p> <p>1 Q. Because that would mean a higher recovery for Jenner 2 & Block? 3 A. Correct. 4 Q. And she, on behalf the Parallel Networks, wanted it 5 to count? 6 A. Correct. 7 Q. Because that would reduce the amount to Parallel 8 Networks? 9 A. Right. 10 Q. And because you couldn't agree, the thing that you 11 guys were discussing was, let's put it in the arbitration 12 provision and have an arbitrator decide whether that should 13 count or not count? 14 A. That's what she had proposed, yes. And I said, okay, 15 would you draft a provision and let's take a look at it. 16 Q. And whatever different things you discussed with Ms. 17 Steinberg and a contingent fee agreement that was drafted, it 18 was never signed by either party, right? 19 A. That's correct. 20 Q. And firm counsel had to draft that agreement, 21 correct? 22 A. I asked Mr. Hoover to draft it, yes. 23 Q. Let me show you Respondent's 100. Briefly looking at 24 the e-mail, it's from you to Ms. Steinberg and you're copying 25 Mr. Hoover?</p> |
| <p style="text-align: right;">Page 1006</p> <p>1 Q. Not all the terms, right? 2 A. The only thing that was still outstanding between Ms. 3 Steinberg and me was this question of how to draft an 4 arbitration provision. Because we had -- because we were -- we 5 had different views about if -- if there was ultimately a 6 recovery in the case after Jenner & Block had terminated the 7 fee agreement as amended, we'd agreed that Jenner & Block's fee 8 would be \$3 million if there was a positive recovery. And she 9 was saying any amounts paid toward the appeal should be 10 deducted from the three, and I was saying that the three should 11 be separate from any amounts paid for the appeal. And we 12 had -- she had proposed, why don't we agree to arbitrate that? 13 And I had said, okay, that's acceptable, you know, would you 14 please draft arbitration language that you think would work for 15 this. 16 Q. So before we talk about the discussion about the 17 arbitration language, the first issue was whether the hourly 18 fees paid by Parallel Networks for Jenner & Block to handle the 19 appeal under an amended contingent fee agreement would count 20 against the amount that Jenner & Block was entitled to 21 receive? 22 A. Against the 3 million, yes. That was the issue. 23 Q. And you, on behalf of Jenner & Block, who were 24 negotiating with her wanted it to not to count? 25 A. Correct.</p> | <p style="text-align: right;">Page 1008</p> <p>1 A. That's correct. 2 Q. And he's firm counsel? 3 A. Yes. 4 Q. And he's the one that created this draft? 5 A. Yes. 6 Q. And so attached is the draft that he prepared that 7 you're forwarding? 8 A. Yes. 9 Q. And turning to Page 2, where it says "now, 10 therefore," and there's numbered paragraphs that follow, Page 2 11 of the agreement itself. 12 A. Okay. I'm with you. 13 Q. Paragraph 1, you are asking Ms. Steinberg to agree as 14 part of this agreement that Parallel Networks consents to 15 Jenner & Block seeking leave to withdraw from the 16 QuinStreet/Microsoft case? 17 A. Yes. 18 Q. And then Paragraph 4, which is on Pages 2 and 3, 19 you're requiring the client to consent to a settlement of at 20 least \$750,000? 21 A. We're -- we were asking for authority to enter into a 22 settlement of at least 750 23 Q. And the client was supposed to approve that number in 24 advance? 25 A. Yes, as I've been discussing all along.</p> |

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1 Q. Right. Turning to Paragraph 6.
2 A. Yes.
3 Q. Sorry. Paragraph 5.
4 And if Jenner & Block did not withdraw from
5 either the QuinStreet or the Oracle cases, the contingent fee
6 agreement governed -- the existing contingent fee agreement
7 governed the fee?
8 A. Right.
9 Q. And in Paragraph 6, it discusses the terms under
10 which Jenner & Block would handle the appeal?
11 A. Correct.
12 Q. And this is an amendment of the contingency fee
13 agreement that's in place?
14 A. Yes, it would have been an amendment.
15 Q. Because now it's an hourly fee arrangement that's
16 capped at \$500,000?
17 A. Correct.
18 Q. And in Subparagraph E, Jenner & Block is reserving
19 the right to withdraw from the Oracle case after the decision
20 of the Court of Appeals?
21 A. Yes.
22 Q. So Jenner & Block is not signing up for further
23 proceedings in the district court if the case is remanded?
24 A. Right. Jenner & Block may withdraw.
25 Q. And then in Paragraph 8 on Page 4 of the draft

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1 amendment, there's an attempt to determine what the fees
2 calculated on the quantum meruit basis would be?
3 A. (No audible response.)
4 Q. Let me rephrase the question.
5 Paragraph 8 discusses the amounts that Jenner &
6 Block would be entitled to receive if Parallel Networks
7 receives revenues from those cases after Jenner & Block has
8 withdrawn?
9 A. Yes.
10 Q. And with respect to the QuinStreet/Microsoft case,
11 Jenner & Block was limiting it to \$330,000?
12 A. Yes.
13 Q. And you thought the settlement that could be reached
14 at that time was \$750,000?
15 A. Yes. But the area of disagreement was basically
16 between 750 and 950,000. The client wanted something closer to
17 a million. We thought it could be settled for at least 750.
18 We figured if the client wasn't going to authorize us to settle
19 the case for 750 that must mean the client thought we could
20 get more out of the case than 750 and, therefore, it would be
21 reasonable that the quantum meruit fee would be, you know, a
22 comparable percentage of what he thought the case was worth,
23 and taking roughly 750 and million said 333.
24 Q. So this is based upon the upper end of what the
25 client was negotiating in terms of amount at that time?

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1 A. Right, because this is all on the theory that we've
2 withdrawn from the case before there's been a settlement, which
3 means, you know, we haven't gotten a settlement at -- you know,
4 we haven't done the settlement at 750. So, therefore, he must
5 be holding out for more money than 750.
6 Q. And then with respect to the Oracle case, it's \$3
7 million?
8 A. That's right.
9 Q. And that's based upon Mr. Gilliland's, we're not
10 talking eight figures, it's less than that?
11 A. Conceptually, that's how we started talking about
12 this number. Like we were saying what we thought Mr. Fokas
13 should have been willing to have a serious settlement
14 discussion now, and we're willing to put our money where our
15 mouth is and say if we terminate, we'll stick by, you know,
16 what we're saying now, which is, we think you ought to be
17 finding out what they'll offering. And if that's
18 approximately -- call it \$10 million or \$9 million, then you
19 should willing to pay us -- to agree to pay us 3.
20 Q. And you say this is what you're talking about, but
21 you, on behalf of Jenner & Block, had agreed to this?
22 A. Yes, with Susan's approval.
23 Q. And then Paragraph 9 is that arbitration provision
24 that had to be proposed regarding the Oracle appeal?
25 A. Yes.

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1 Q. And just so I'm clear, this quantum meruit of \$3
2 million in the Oracle case, that presumes that Jenner & Block
3 has handled the appeal all the way through, a decision has been
4 made at the Federal Circuit, and that the decision was
5 favorable and remanded the case back down?
6 A. It presumes that the case has -- that there's been a
7 favorable recovery in the case. It doesn't presume anything
8 else, because the agreement permitted us to withdraw from the
9 case following the Court of Appeals decision. It also
10 permitted us to seek leave to withdraw before a Court of
11 Appeals decision if we believed there was good cause to
12 withdraw, which could include an ethical reason. It could also
13 include, for example, the client's breach of the fee agreement,
14 which I, for one, was very concerned about reserving the right
15 to withdraw for it because he'd been in breach perpetually the
16 prior year.
17 So I didn't want to get -- I didn't want -- so
18 there could have -- had this agreement been entered into, there
19 could have been a scenario where we withdrew in the middle of
20 the appeal, say, for example, because Mr. Fokas didn't pay the
21 amounts that he committed to pay. Somebody else came in, did
22 the appeal, there was ultimately success, then Paragraph 8
23 would -- would cover what our -- what Jenner & Block's fee
24 would be.
25 Q. Let me break it up for you. If Jenner & Block is

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| <p style="text-align: right;">Page 1013</p> <p>1 representing Parallel Networks in connection with the appeal</p> <p>2 under this amended fee agreement, which is proposed in</p> <p>3 Respondent's Exhibit 100 --</p> <p>4 A. Yes.</p> <p>5 Q. -- and the case settled on appeal --</p> <p>6 A. Yes.</p> <p>7 Q. -- or the day after the Federal Circuit announced its</p> <p>8 decision, right?</p> <p>9 A. Before we withdrew. We're still counsel --</p> <p>10 Q. There's no withdrawal. You're counsel of record.</p> <p>11 A. We're still counsel on the case.</p> <p>12 Q. You've agreed to handle the appeal, right? You have</p> <p>13 to answer "yes" or "no."</p> <p>14 A. I'm sorry. Yes.</p> <p>15 Q. And so then in that situation, the fee is not</p> <p>16 governed by this agreement, it's governed by the contingent fee</p> <p>17 agreement that's already in place?</p> <p>18 A. Yes, that's correct.</p> <p>19 Q. Okay.</p> <p>20 A. And I may have misunderstood your prior question.</p> <p>21 Q. And that's what I wanted to clear up.</p> <p>22 A. Yes.</p> <p>23 Q. The way that Paragraph 8 comes into place is that</p> <p>24 Jenner & Block is handling the appeal and then withdraws and</p> <p>25 then there's a successful recovery, right?</p> | <p style="text-align: right;">Page 1015</p> <p>1 your e-mail.</p> <p>2 As part of the negotiations with Ms. Steinberg,</p> <p>3 you had already asked for her to consent to Jenner & Block's</p> <p>4 withdrawal from the QuinStreet case?</p> <p>5 A. Yes.</p> <p>6 Q. And --</p> <p>7 A. And she had agreed.</p> <p>8 Q. And so you were here, saying, I need to check with</p> <p>9 Ms. Steinberg to see if Parallel Networks still consents to us</p> <p>10 withdrawing?</p> <p>11 A. Right. After I got -- after the letter from Mr.</p> <p>12 Bines, I wasn't sure what they were thinking.</p> <p>13 Q. And you said, if they don't, then you need to beef up</p> <p>14 the current draft?</p> <p>15 A. Right.</p> <p>16 Q. And the ground for withdrawing is that Jenner & Block</p> <p>17 had terminated the existing fee agreement and that Jenner &</p> <p>18 Block and Parallel Networks had not been able to reach a</p> <p>19 mutually agreeable fee agreement?</p> <p>20 A. Right.</p> <p>21 Q. And eventually a motion to withdraw was filed --</p> <p>22 A. That's correct.</p> <p>23 Q. -- in the QuinStreet case?</p> <p>24 A. Yes.</p> <p>25 Q. And a draft of it was sent to Ms. Steinberg?</p> |
| <p style="text-align: right;">Page 1014</p> <p>1 A. There's a successful recovery after we withdraw,</p> <p>2 yes.</p> <p>3 Q. Right.</p> <p>4 A. Yes. The key is not whether the appeal is done or</p> <p>5 not, the key is whether Jenner & Block has withdrawn or not.</p> <p>6 Q. And Jenner & Block's only looking for, with respect</p> <p>7 to unfettered right to terminate, that it be following the</p> <p>8 decision of the Court of Appeals?</p> <p>9 A. Right. It was our -- we anticipated -- we</p> <p>10 anticipated, barring something like a breach or an ethical</p> <p>11 issue, that we would handle the appeal through the decision.</p> <p>12 Q. And that's reflected in Paragraph 6e?</p> <p>13 A. Yes.</p> <p>14 Q. Jenner & Block never made an appearance in the</p> <p>15 Federal Circuit, correct?</p> <p>16 A. Correct.</p> <p>17 Q. And so it just sent a letter to the Federal Circuit</p> <p>18 telling it -- telling the Court that, we're not going to be</p> <p>19 counsel of record, we just filed the notice of appeal?</p> <p>20 A. Right. Because the deadline to file the appearance</p> <p>21 doesn't come until they docket the appeal, which ended up</p> <p>22 happening right at the time we were withdrawing and Baker Botts</p> <p>23 was coming in.</p> <p>24 Q. Let me have you look at Respondent's Exhibit 101.</p> <p>25 And I want to focus your attention on the third paragraph of</p> | <p style="text-align: right;">Page 1016</p> <p>1 A. Yes.</p> <p>2 Q. You have that look.</p> <p>3 Claimant's Exhibit 337 --</p> <p>4 A. Do you need this?</p> <p>5 Q. No. You can use that.</p> <p>6 A. Claimant's?</p> <p>7 Q. 337.</p> <p>8 A. Okay. Yes. Sorry.</p> <p>9 ARBITRATOR GRISSOM: You need to wait on me.</p> <p>10 All right.</p> <p>11 Q. (BY MR. ALIBHAI) That's an e-mail from you</p> <p>12 transmitting the draft of the motion to withdraw?</p> <p>13 A. Yes. And I note I'd already sent her copies</p> <p>14 earlier -- the same draft earlier in the week.</p> <p>15 Q. And if we turn to the next page, that's the draft</p> <p>16 motion to withdraw?</p> <p>17 A. Yes.</p> <p>18 Q. And Paragraph 3 of the draft says, Parallel Networks</p> <p>19 consents to Jenner & Block's withdrawal as counsel in this</p> <p>20 case?</p> <p>21 A. Yes.</p> <p>22 Q. And she changed that?</p> <p>23 A. She may have. I don't know.</p> <p>24 Q. And that's reflected in Claimant's Exhibit 344. Just</p> <p>25 keep those together.</p> |

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| <p style="text-align: right;">Page 1017</p> <p>1 ARBITRATOR GRISSOM: What's the other exhibit?</p> <p>2 MR. ALIBHAI: 344 is the filed version.</p> <p>3 Q. (BY MR. ALIBHAI) If you turn into the third page of</p> <p>4 that exhibit and you look at Paragraph 3, rather than saying</p> <p>5 that Parallel Networks consented, it was only that Parallel</p> <p>6 Networks did not object?</p> <p>7 A. Right. Although I note she doesn't change 2, where</p> <p>8 we said Parallel Networks and Jenner & Block have mutually</p> <p>9 agreed. So I don't know why she changed 3. The point was she</p> <p>10 never -- you know, she always agreed. She never raised any</p> <p>11 issue about Parallel Networks not agreeing, not consenting,</p> <p>12 objecting in any way.</p> <p>13 Q. Well, you didn't have the call with her, did you,</p> <p>14 about this motion?</p> <p>15 A. I talked to Laura Steinberg dozens of times between</p> <p>16 January and this time, and she never expressed any disagreement</p> <p>17 or ever indicated that they wouldn't consent to Jenner & Block</p> <p>18 withdrawing. The only negotiation was whether it would be</p> <p>19 February the 9th or February the 17th.</p> <p>20 Q. In connection with filing the motion to withdraw, you</p> <p>21 sent Ms. Steinberg a draft of the motion?</p> <p>22 A. Yes.</p> <p>23 Q. And in fact, according to you, you sent it to her</p> <p>24 twice based on that e-mail?</p> <p>25 A. Yes.</p> | <p style="text-align: right;">Page 1019</p> <p>1 A. We heard that the Oracle case had settled. We</p> <p>2 checked the docket and confirmed that that was the case and</p> <p>3 sent her a letter sent -- not sent her a letter. We contacted</p> <p>4 David Bennett, who we knew had been counsel of record in the</p> <p>5 trial. We inquired about the settlement, said that we were</p> <p>6 interested in having a discussion with Parallel Networks about</p> <p>7 their fee under the contingent fee agreement. Mr. Bennett</p> <p>8 said, send me a letter.</p> <p>9 So my partner, Russ Hoover, sent a letter. And</p> <p>10 then either Laura left me a message or I -- I don't remember</p> <p>11 how we decided that we should communicate with Laura Steinberg.</p> <p>12 Either she left me a message and I returned her call, or I</p> <p>13 suggested, why don't I put in a call to Laura because she had</p> <p>14 been outside counsel. But in any event, she and I ended up</p> <p>15 talking in June.</p> <p>16 Q. So after Mr. Hoover's letter to Mr. Bennett -- which</p> <p>17 is the demand letter, right?</p> <p>18 A. Yes.</p> <p>19 Q. -- either you called Ms. Steinberg or she called you?</p> <p>20 A. Yes.</p> <p>21 Q. And at that time, Jenner & Block was asking for</p> <p>22 copies of your fee agreement -- I'm sorry -- the settlement</p> <p>23 agreement?</p> <p>24 A. We asked for information about the settlement. We</p> <p>25 certainly asked what the amount of the settlement was. I don't</p> |
| <p style="text-align: right;">Page 1018</p> <p>1 Q. And then Mr. Margolis conferred with her?</p> <p>2 A. I don't remember. He may have.</p> <p>3 Q. I'm sorry. It's not -- you conferred with her on the</p> <p>4 motion, didn't you?</p> <p>5 A. It's -- it's much more likely that I talked to her</p> <p>6 about it than Paul talked to her.</p> <p>7 Q. Let me show you Respondent's Exhibit 103.</p> <p>8 A. Okay.</p> <p>9 ARBITRATOR GRISSOM: Not yet.</p> <p>10 Q. (BY MR. ALIBHAI) Mr. Margolis spoke to counsel for</p> <p>11 Microsoft and QuinStreet about the motion to withdraw?</p> <p>12 A. That's correct.</p> <p>13 Q. And you spoke to Ms. Steinberg?</p> <p>14 A. Yes.</p> <p>15 Q. And in Paragraph 2, you reflect that she authorized</p> <p>16 us, Jenner & Block, to say that Parallel Networks does not</p> <p>17 object to the motion?</p> <p>18 A. Correct.</p> <p>19 Q. And then during -- sorry -- after -- you're done with</p> <p>20 that.</p> <p>21 After February 2009, you don't communicate with</p> <p>22 Ms. Steinberg until June 2011?</p> <p>23 A. That's right.</p> <p>24 Q. What precipitated having conversations with Ms.</p> <p>25 Steinberg in June 2011?</p> | <p style="text-align: right;">Page 1020</p> <p>1 recall if we asked for copies of the settlement agreement or</p> <p>2 not. We may have.</p> <p>3 Q. Have you personally now seen the settlement</p> <p>4 agreements?</p> <p>5 A. I have not.</p> <p>6 Q. Do you understand that they have confidentiality</p> <p>7 provisions which preclude certain people from seeing them?</p> <p>8 A. I don't know what they say because I haven't seen</p> <p>9 them. I haven't been told anything about them. I assume</p> <p>10 settlement agreements exist because people usually draft them,</p> <p>11 but that's really all I know.</p> <p>12 Q. So you don't know what the settlement amounts are?</p> <p>13 A. I do not.</p> <p>14 Q. And then you had a conversation with Ms. Steinberg</p> <p>15 later in 2011 where you offered to settle the outstanding \$10</p> <p>16 million demand for \$3 million?</p> <p>17 A. I asked -- I requested that Parallel Networks pay 3</p> <p>18 million. Told her that Jenner & Block would accept 3 million</p> <p>19 because that was the amount that she and I, after much</p> <p>20 discussion in January of '09, had agreed would be an</p> <p>21 appropriate fee post-withdrawal for the Oracle case.</p> <p>22 Q. And have you remained -- have you reviewed the demand</p> <p>23 for arbitration that was ultimately filed in this case?</p> <p>24 A. I did back when it was filed. I haven't looked at it</p> <p>25 recently.</p> |

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| <p style="text-align: right;">Page 1021</p> <p>1 Q. And was the fee that was being sought in there the \$3 2 million that you discussed with Ms. Steinberg? 3 A. I'm sorry -- 4 MR. PELZ: Object to the form of the question; 5 misstates the demand. 6 A. I don't remember what the demand -- 7 MR. ALIBHAI: You have to let the arbitrator 8 rule on the objections. 9 THE WITNESS: Oh, I'm sorry. 10 ARBITRATOR GRISSOM: Unless it's been waived. 11 MR. PELZ: If she doesn't remember, it's not 12 going to change the answer. 13 THE WITNESS: I don't remember. Sorry. 14 ARBITRATOR GRISSOM: All right. 15 Q. (BY MR. ALIBHAI) And are you aware that a new demand 16 was sent by Jenner & Block in September of 2012 in this case? 17 A. I know that Joel had communications with Laura 18 Steinberg after I did. I don't remember exactly -- 19 Q. You may be wrong on the timing. September of 2012. 20 A. 2012? 21 Q. Last month. 22 A. No, I'm not aware of that. 23 Q. You've never seen Respondent's Exhibit 117 before? 24 A. I have not. 25 Q. Did you have discussions with anyone about the amount</p> | <p style="text-align: right;">Page 1023</p> <p>1 Q. You're referring to Paragraph 6 of that agreement? 2 Is that what you're referring to? 3 A. Yes. 6a I believe it is. 4 Q. And did 6a survive termination? 5 A. I think so. 6 Q. Does it say it does? 7 A. I don't think it says it doesn't. 8 Q. And that agreement that you're referring to about 9 Paragraph 6, that's the contingency fee agreement that was 10 terminated by Jenner & Block in February of 2009? 11 A. Correct. 12 Q. And the Notice of Termination was sent January of 13 2009? 14 A. Correct. 15 MR. ALIBHAI: Can we take a five-minute break, 16 Arbitrator Grissom? 17 ARBITRATOR GRISSOM: Yes. We're off the record. 18 (Break was taken at 2:49 p.m. to 2:58 p.m.) 19 ARBITRATOR GRISSOM: Okay. We are back on the 20 record. 21 MR. ALIBHAI: Arbitrator Grissom, we pass the 22 witness. 23 ARBITRATOR GRISSOM: All right. Mr. Pelz? 24 MR. PELZ: Thank you, Arbitrator Grissom. 25 REDIRECT EXAMINATION</p> |
| <p style="text-align: right;">Page 1022</p> <p>1 that should be demanded from Parallel Networks in connection 2 with this arbitration? 3 A. At what time? 4 Q. Around the time that Respondent's Exhibit 117 was 5 sent? 6 A. No. 7 Q. And with respect to the request that you made for the 8 settlement agreements in 2011 -- 9 A. I didn't make a request for settlement agreements. 10 Q. You wanted to know the amount? 11 A. Yes. 12 Q. As a litigator, you're well aware that the amount is 13 usually one of the most important things that's meant to be 14 kept confidential? 15 A. That may or may not be. What I knew was that we had 16 a contract with Parallel Networks which required Parallel 17 Networks to report to us, I believe, on a biannual basis any 18 amounts received on -- you know, as a result of the actions 19 that Jenner & Block -- in which Jenner & Block had acted as 20 counsel for Parallel Networks. So whatever confidentiality 21 provisions there might be to a settlement number or a 22 settlement agreement, I felt that Jenner & Block had a 23 contractual right and Parallel Networks had a contractual 24 obligation give us the information about how much was 25 recovered.</p> | <p style="text-align: right;">Page 1024</p> <p>1 BY MR. PELZ: 2 Q. Ms. Mascherin, can I get you to look at Claimant's 3 Exhibit 253? 4 A. Yes. 5 Q. You were asked questions about this memo that was 6 sent to you from Ms. Levy with respect to recommending 7 reinstituting mediation. Can you please give us the date of 8 that memo? 9 A. Her memo is October 28th. 10 Q. What year? 11 A. 2008. 12 Q. And now can you please look at Claimant's Exhibit 68. 13 A. Yes. 14 MR. PELZ: Give Arbitrator Grissom a chance. 15 ARBITRATOR GRISSOM: I'm there. 16 Q. (BY MR. PELZ) Okay. Is Claimant's Exhibit 68 your 17 response to Ms. Levy with respect to her suggestion that 18 mediation be looked into? 19 A. Yes. 20 Q. And what date is that? 21 A. November the 2nd. 22 Q. So that's how many days from Ms. Levy's memo to your 23 memo? 24 A. Five days. 25 Q. And what do you tell Ms. Levy about the present</p> |

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| <p style="text-align: right;">Page 1025</p> <p>1 practical availability of mediation discussions?</p> <p>2 A. I explained to her that based upon what was going on</p> <p>3 with respect to Oracle's request to include the BEA products in</p> <p>4 any settlement, that as a practical matter, we couldn't do</p> <p>5 anything to advance settlement discussions until we had the</p> <p>6 information that Oracle had agreed to provide so that we could</p> <p>7 assess whether those products were infringing or not, and if</p> <p>8 they were, what we thought, you know, the value of a settlement</p> <p>9 with respect to those products would be.</p> <p>10 Q. In light of that situation, did it make any sense to</p> <p>11 call up Magistrate Judge Thyng at this time to try to start</p> <p>12 mediation again?</p> <p>13 A. No, it didn't, because she had specifically --</p> <p>14 apparently there'd been a specific discussion with the mediator</p> <p>15 about Oracle's need to produce that information before the</p> <p>16 parties could reconvene with her.</p> <p>17 Q. And following this, Ms. Levy didn't ask you to do</p> <p>18 anything further with the mediation at that time, did she?</p> <p>19 A. No.</p> <p>20 Q. Now, with respect to the questions that Mr. Alibhai</p> <p>21 was just asking you about the notice of withdrawal with respect</p> <p>22 to the QuinStreet case that was submitted to Judge Robinson --</p> <p>23 A. Yes.</p> <p>24 Q. -- at any time did any of the lawyers for Parallel</p> <p>25 Networks in the Delaware action -- and that included Baker</p> | <p style="text-align: right;">Page 1027</p> <p>1 as to what Ms. Steinberg knew and understood.</p> <p>2 MR. PELZ: Let me withdraw it and restate the</p> <p>3 question.</p> <p>4 Q. (BY MR. PELZ) In February of 2009, did Ms. Steinberg</p> <p>5 say to you things that indicated that she was aware that Jenner</p> <p>6 & Block would be requesting fees in the event that Parallel</p> <p>7 Networks recovered monies in the cases in which Jenner & Block</p> <p>8 had served as counsel?</p> <p>9 MR. ALIBHAI: Same objection. He's still asking</p> <p>10 her to testify as to what Ms. Steinberg's awareness was.</p> <p>11 ARBITRATOR GRISSOM: Overruled.</p> <p>12 A. Yes. The -- specifically in this discussion what she</p> <p>13 was -- what she was asking -- or what this is a summary of is</p> <p>14 that she was saying, you know, we know you have this -- she</p> <p>15 said to me, I know you have this -- the contingent fee</p> <p>16 agreement. I understand that. Are you going to be asserting</p> <p>17 an attorney's lien? Are you going to be refusing to turn over</p> <p>18 the file until you get paid? And I said, no, we'll cooperate</p> <p>19 with transitioning to new counsel as we're required to do under</p> <p>20 the agreement.</p> <p>21 The premise of all of the discussions that Laura</p> <p>22 and I had had from the first time she contacted me in January</p> <p>23 of 2009 was that Jenner & Block, you know, post-termination of</p> <p>24 the contingent fee agreement, had a right ultimately to recover</p> <p>25 something in the event of a -- of a positive recovery by the</p> |
| <p style="text-align: right;">Page 1026</p> <p>1 Botts, that included the local counsel, that included Mr. Fokas</p> <p>2 himself -- did any of those lawyers ever make any</p> <p>3 representation to Judge Robinson that Parallel Networks did not</p> <p>4 fully consent and agree to the withdrawal of Jenner & Block?</p> <p>5 A. No.</p> <p>6 Q. Did Ms. Steinberg or Mr. Bines ever suggest that they</p> <p>7 didn't fully agree to -- consent and agree to the withdrawal of</p> <p>8 Jenner & Block?</p> <p>9 A. No. Ms. Steinberg told us that she did agree.</p> <p>10 Q. I want to show you -- well, when you looked at it</p> <p>11 with Mr. Alibhai, it was Respondent's 103. If you could direct</p> <p>12 your attention to the second page of that exhibit.</p> <p>13 A. Yes.</p> <p>14 Q. Can you read the first two sentences?</p> <p>15 A. On the second page?</p> <p>16 Q. Yes, on the second page.</p> <p>17 A. Laura then began discussing transition to new</p> <p>18 counsel. She asked whether we would agree to turn over our</p> <p>19 files and assist new counsel despite our situation regarding</p> <p>20 our fee agreement with Parallel Networks.</p> <p>21 Q. At this time, in February of 2009, did Ms. Steinberg</p> <p>22 know and understand that Jenner & Block was going to -- was</p> <p>23 making a request to recover some fees in the event that</p> <p>24 Parallel Networks obtained recovery?</p> <p>25 MR. ALIBHAI: Objection. Calls for speculation</p> | <p style="text-align: right;">Page 1028</p> <p>1 client by way of litigation or settlement. And all of our</p> <p>2 discussions were in that context. And here she's saying --</p> <p>3 she's asking me, you're not going to file an attorney's lien</p> <p>4 and assert, you know, a right to keep the file on account of</p> <p>5 what you're owed, are you? And I said, no, we'll transition to</p> <p>6 new counsel.</p> <p>7 MR. PELZ: Nothing further at this time.</p> <p>8 MR. ALIBHAI: Nothing further.</p> <p>9 ARBITRATOR GRISSOM: All right. Counsel, may</p> <p>10 this witness be excused?</p> <p>11 MR. PELZ: Yes, sir.</p> <p>12 ARBITRATOR GRISSOM: Assuming she is so</p> <p>13 inclined?</p> <p>14 THE WITNESS: I am so inclined. Thank you.</p> <p>15 ARBITRATOR GRISSOM: Okay. You are excused.</p> <p>16 Thank you, Ms. Mascherin.</p> <p>17 (Pause in proceedings.)</p> <p>18 Counsel, is this Ms. Levy?</p> <p>19 THE WITNESS: Yes.</p> <p>20 MR. PELZ: It is.</p> <p>21 ARBITRATOR GRISSOM: All right. How are you?</p> <p>22 I'm Jerry Grissom. I'm the arbitrator.</p> <p>23 THE WITNESS: Nice to meet you.</p> <p>24 ARBITRATOR GRISSOM: Welcome to the party.</p> <p>25 THE WITNESS: Thank you.</p> |