EXHIBIT A

3

TIM PATERSON; January 18, 2007

Page 1

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON

AT SEATTLE

_____

TIM and PENNY PATERSON,   )
husband and wife and the   )
marital community thereof,   )
)
              Plaintiffs,   )
)
     vs.   ) No. 2:05-CV-01719-TSZ
)
LITTLE, BROWN AND COMPANY, a   )
Massachusetts state   )
corporation, TIME WARNER   )
BOOK GROUP, a Delaware state   )
corporation, HAROLD EVANS   )
ASSOCIATES LLC, a New York   )
state limited liability   )
company, HAROLD EVANS and   )
DAVID LEFER,   )
)
              Defendants.   )
_____

DEPOSITION UPON ORAL EXAMINATION OF

TIM PATERSON

_____

9:41 A.M.

JANUARY 18, 2007

8420 DAYTON AVENUE NORTH

SEATTLE, WASHINGTON

REPORTED BY: CHERYL J. HAMMER, CCR License No. 2512

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TIM PATERSON; January 18, 2007

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1   Place, The Right Time, in some version?

2   A.   No, other than my wife, maybe. Whether

3   anybody would be interested in seeing it published was

4   the question.

5   Q.   But you haven't made any effort in that

6   regard?

7   A.   No.

8   Q.   Who have you distributed to?

9   A.   No one, other than at your request.

10   Q.   You say you started work in the mid 1980s.

11   How long have you -- strike that.

12   You started work on this in the mid 1980s.

13   What is the most recent editing that you have done to

14   it and when?

15   A.   I don't remember. It's probably been quite

16   a long time.

17   Q.   Take a look at page 47 of Exhibit 1 --

18   excuse me -- 48. It indicates on June 16, 1980, more

19   or less, you were doing some editing on MicroPro's

20   Wordmaster full-screen editor running under Z80 under

21   the CP/M look-alike C-DOS. You see that?

22   A.   Yes.

23   Q.   Now as I understand it, again what do you

24   mean by the term look-alike?

25   A.   You just asked me that earlier, right?

5

TIM PATERSON; January 18, 2007

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1   Q.   Does this change your testimony in any way?

2   A.   No. I am surprised and satisfied to see I

3   used exactly the same terminology when I wrote that as

4   I did just a minute ago without having reviewed this.

5   Q.   What I'd like to do is actually ask you

6   about a different term, clone, and see how that

7   relates to the term look-alike as you understand it.

8   What does the term -- what would the term clone mean

9   in the context of software development?

10   A.   Clone is typically to produce a

11   functionally identical copy, usually in a way that

12   does not infringe on intellectual property. It was

13   the term was used extensively for computers that

14   operated the same as the IBM personal computer, so

15   it's been applied extensively to hardware and far less

16   to software.

17   Q.   That would have been beginning in the mid

18   1980s with regard to the so-called IBM clones,

19   correct?

20   A.   Early '80s.

21   Q.   Is a look-alike similar to clone or is

22   there some difference between the two terms regarding

23   software?

24   A.   I used the term look-alike because I don't

25   know to what extent they have attempted to make

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TIM PATERSON; January 18, 2007

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1   everything the same and how they did it. I know that

2   it looks alike. You could say a clone is definitely a

3   look-alike, you know, a look-alike is a less, maybe

4   less stringent. It could also -- as I said, normally

5   you use -- when you clone something, you're attempting

6   to -- I guess you're at least attempting to not

7   violate someone's intellectual property rights and by

8   making -- when I say look-alike I'm making no such

9   judgment. For all I know, it was CP/M and I didn't

10   know it. It was licensed, it was -- you know, I

11   wouldn't have known its relationship.

12   Q.   But in terms of using the terms look-alike

13   and clone, are those terms that you would commonly use

14   in describing at least the appearance of a particular

15   operating system or other software program?

16   A.   I'm not sure I understood the question.

17   Q.   I guess I'm asking whether this is a

18   subjective term or an objective term from your

19   standpoint?

20   A.   I'll use look-alike as a subjective term.

21   Q.   How about clone?

22   A.   Clone is a little more objective, and that

23   is an intentional choice of words, because I don't

24   know the background of the relationship of C-DOS to

25   CP/M.

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TIM PATERSON; January 18, 2007

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1   Q.   Do you know, I think you testified that
2 C-DOS was written to run on the Z80 chip?
3   A.   I didn't say that. It did run on a Z80
4 chip. I believe that it probably wouldn't have run on
5 an 8080.
6   Q.   That was my next question. So as far as
7 you know, it probably would not have run on an Intel
8 8080?
9   A.   Yeah, I can't recall if I ever looked --
10 what reason I have to think that, if I ever looked
11 inside some piece of it or why I would suspect that,
12 but that's the impression I came away with.
13   Q.   Do you know whether the Z80 chip provided
14 functionality that was not present in the 8080 chip?
15   A.   Yes.
16   Q.   What were these?
17   A.   What was the additional functionality? I
18 hardly recall.
19   Q.   So were the Z80 functions a superset of the
20 8080 functions?
21   A.   The Z80 was intended to be a significant
22 improvement on the 8080 and be completely compatible.
23 We did actually find at least one thing that wasn't --
24 when they designed the Z80, they thought they could
25 change and it wouldn't hurt anything and it actually

8

TIM PATERSON; January 18, 2007

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1   Q.   Then when you returned to Microsoft in 1990

2   through 1998, what were your duties, generally

3   speaking?

4   A.   I spent most of that period working on

5   Visual Basic. I had other assignments in parallel.

6   In some occasions I used my extra day a week to

7   consult back to Microsoft instead, because generally

8   it would be something that I thought they should be

9   doing, but they said they didn't have time to fit it

10 into the schedule. So I'd say, well, I'll get it

11 done, and so I would act as a consultant and get a

12 little more work done.

13   I also in the later -- toward the end of

14 that worked on other projects besides Visual Basic. I

15 worked on the Java compiler, I think, for the last

16 year.

17   Q.   Any other projects?

18   A.   Well, so like I worked -- the project I did

19 as a consultant were mathematics. There were two of

20 those. Visual VB script would be considered part of

21 Visual Basic, but it was really separate. I think

22 that's mostly it.

23   Q.   Does Paterson Technology have any

24 employees?

25   A.   No, not yet.

9

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TIM PATERSON; January 18, 2007

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1   Q.   Mr. Paterson, I'm showing you a document.

2   We just made a copy of a document from the Wayback

3   Machine. Do you know what the Wayback Machine is?

4   A.   No.

5   Q.   Never heard of it before?

6   A.   No, I haven't.

7   Q.   When did you first begin discussing the

8   origins of DOS on your website? I guess that's really

9   the purpose of this exhibit. I'm trying to find out

10   how long ago you had that website up to discuss the

11   origins of DOS or predecessor.

12   A.   I don't remember.

13   Q.   Take a look at Exhibit 6. Do you have that

14   in front of you? There you go. This is from your

15   Paterson Technology website and you mention that --

16   I'm assuming you wrote the language on the upper left

17   -- why do we have the early history of Microsoft

18   MS-DOS here. Is that you?

19   A.   Yes.

20   Q.   It just says because our founder Tim

21   Paterson knows it better than anyone. He wrote the

22   first version.

23   Do you have any knowledge about when you

24   started to discuss again the origins of DOS, based

25   upon looking at this document?

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TIM PATERSON; January 18, 2007

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1   A.   No, I don't recall when. I have no idea

2   when this page -- this isn't the current page, so I

3   know this is older, but I have no idea when it was

4   used. It would have been before. I came out with a

5   new product in 2004 that headlined my home page, so I

6   know it was before that.

7   Q.   So some time prior to January 1, 2004?

8   A.   Yeah. I would have guessed that I might

9   have had DOS on my website very early on. It's always

10   been a point of pride for me, but I don't recall.

11   Q.   Let's show you Exhibit 7. These are the

12   documents which I have identified as the origins of

13   MS-DOS that are on your website. Does any of this

14   refresh your recollection as to when you would have

15   put these documents up on your website?

16   A.   Not as to when I put them there, no. This

17   could be what it looks like today. Well, there's more

18   now, I guess.

19   Q.   Can you describe these particular

20   documents, just briefly, what they are?

21   A.   The Seattle Times article was an article

22   primarily about my involvement with Battle Bots, which

23   was combat robot activity that was shown on Comedy

24   Central TV, a cable channel, but it was -- you know,

25   it took a slant of being DOS related as well.

11

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TIM PATERSON; January 18, 2007

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1   MicroNews was an article in the company

2   newsletter.   Forbes ASAP was an article that Forbes

3   ran and Softalk was an article run in Softalk magazine

4   about me and DOS.

5   Q.   Now, do you remember what the thrust of the

6   Forbes article was, the Dross of the DOS?

7   A.   Thrust of it.

8   Q.   What was it about?   I'm just asking for

9   your recollection.

10   A.   I haven't looked at it in a long time.   I

11   remember not actually liking it that much because it

12   presented itself in first person, with words that I

13   never would have used, and so it was -- I found it

14   very annoying.   But it was one of the few websites out

15   there that had -- that I knew of that had otherwise

16   accurate information, so I linked to it.

17   Q.   Were you interviewed by Forbes prior to

18   that?

19   A.   Yes, I was interviewed by Forbes while at

20   Microsoft.

21   Q.   Do you recall what the Roots of DOS was

22   about?

23   A.   The article?

24   Q.   Correct.

25   A.   I haven't looked at that article in a long

12

13

EXHIBIT B

PATERSON TECHNOLOGY

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<u>Origins of DOS</u> **If you develop or test software, you should be using**

Why do we have the early history of Microsoft MS-DOS here? Because our founder, Tim Paterson, knows it better than anyone -- he wrote the first version.

Test Coverage

<u>Find out more!</u>

☒ Get
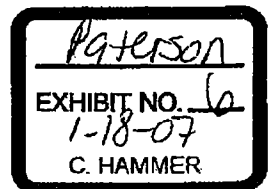
This site looks much better with Internet Explorer!

15

EXHIBIT C

PATERSON TECHNOLOGY

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Origins of MS-DOS

Articles about MS-DOS and Tim Paterson

Seattle Times - *Garage warriors: Computer pioneer makes a name on geek TV*, 5/6/02.

Microsoft MicroNews - *Father of DOS Still Having Fun at Microsoft*, 4/10/98.

Forbes ASAP - *The Dross of the DOS*, 12/1/97.

Softalk - *The Roots of DOS*, March, 1983.

Articles by Tim Paterson, original author of DOS

Encyclopedia of Computers and Computer History (Raul Rojas, editor) - *DOS* , April 2001.

Byte Magazine - *A Short History of MS-DOS*, June, 1983.

Byte Magazine - *An Inside Look at MS-DOS*, June, 1983.

Additional Bibliography

Manes, Stephen, and Paul Andrews. *Gates: How Microsoft's Mogul Reinvented an Industry - and Made Himself the Richest Man in America*. Doubleday, 1993.

Wallace, James, and Jim Erickson. *Hard Drive: Bill Gates and the Making of the Microsoft Empire*. John Wiley & Sons, Inc., 1992.

Duncan, Ray, editor. *The MS-DOS Encyclopedia*. Microsoft Press, 1988.
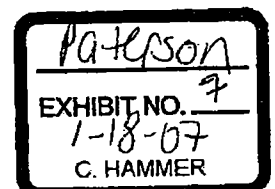
EXHIBIT D

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UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF SEATTLE AT WASHINGTON

-- x

TIM and PENNY PATERSON, husband and wife and
the marital community thereof,

                 Plaintiffs,
                    No.: 2:05-CV-01719-TSZ
     -against-

LITTLE, BROWN and COMPANY, a Massachusetts
& State Corporation, TIME WARNER BOOK GROUP,
a Delaware Corporation, HAROLD EVANS
ASSOCIATES, LLC, a New York State Limited
Liability Company, HAROLD EVANS and
DAVID LEFER,

                 Defendants.

-- x

       DEPOSITION of Defendant, HAROLD M. EVANS,

taken by the Plaintiffs pursuant to Notice, held at

the offices of Davis Wright Tremaine, LLP, 1633

Broadway, New York, New York, on February 6, 2007,

at 10:00 a.m., before a Notary Public of the State

of New York.

****
    BARRISTER REPORTING SERVICE, INC.
          120 Broadway
        New York, N.Y. 10271
         212-732-8066

19

1   Evans

2   A.   The purpose was to introduce myself

3   and say I was writing a history of

4   innovation of 200 years.

5   And I was interested in -- having

6   read "The Silicon Boys" by Mr. Kaplan, I

7   was interested in his reference to

8   Mr. Kildall's unpublished memoirs, and if

9   she agreed, I would like her to meet my

10   research people and also introduce me to

11   Mr. Tom Rolander.

12   Q.   In the year 2000, did you know of

13   Mr. Kildall's existence?

14   A.   In the year 2000?

15   Q.   Yes.

16   A.   Yes.

17   Q.   Do you recall when you knew of his

18   existence?

19   A.   When I read "The Silicon Boys" by

20   David Kaplan.

21   Q.   When do you believe that meeting

22   took place?

23   A.   I did not meet Mr. Kaplan. I read

24   his book.

25   Q.   When did the reading?

20

1   Evans

2   A.   Oh, I would think 1998, 1999.

3   Q.   Just before beginning your quest to

4   write the book?

5   A.   I had begun to do -- the book

6   required research of 200 years of many

7   different innovators, and the first year

8   entirely was spent trying to define which

9   areas and which individuals.

10   Q.   Did you ever talk to Mr. Paterson

11   about anything?

12   A.   No.

13   Q.   Was there any reason that you chose

14   not to speak to him during the five-year

15   process of writing the book?

16   A.   Yes.

17   Q.   And what is that?

18   A.   Mr. Paterson was on the public

19   record in many places and nothing seemed

20   to go further. Each statement seemed to

21   be very similar. There seemed to be no

22   advance.

23   Q.   Did anybody, any of your

24   consultants, publishers, editors, agents,

25   lawyers suggest to you that you pick up

21

1   Evans

2   the phone and call Mr. Paterson?

3   A.   No.

4   MR. JOHNSON: I'm going to

5   object to the question to the

6   extent you're asking for lawyer's

7   advice.

8   MR. TOMKINS: Strike the

9   lawyer's advice.

10   THE WITNESS: The answer is

11   still no.

12   Q.   I'm just paraphrasing. So I'm

13   clear, you thought that Mr. Paterson's

14   record was clear enough that no

15   clarification was needed by Mr. Paterson

16   relative to any issues that you wrote

17   about in the Kildall chapter?

18   A.   Yes.

19   Q.   Did any of the people mentioned in

20   the Kildall chapter suggest that you call

21   Mr. Paterson for his side of the story,

22   clarification, confirmation, whatever that

23   looked like?

24   A.   No.

25   Q.   Would you agree that the chapter on

22

1   Evans

2   Mr. Kildall put Mr. Paterson in an

3   unflattering light?

4   A.   No.

5   Q.   Did Mrs. Kildall have any insights

6   that you used in the book?

7   A.   No.

8   Q.   Did she give you a copy of the

9   manuscript?

10   A.   No.

11   Q.   Did you ever have a copy of the

12   manuscript?

13   A.   Yes.

14   Q.   How did you get the copy of the

15   manuscript?

16   A.   From Mr. Kildall's daughter.

17   Q.   Excuse me?

18   A.   Mr. Kildall's daughter.

19   Q.   And her name?

20   A.   Kristin. K-R-I-S-T-I-N.

21   Q.   Do you think that the chapter on

22   the Kildall matter is consistent with

23   Mr. Tim Paterson's position as stated in

24   that chapter?

25   A.   Can you rephrase that?

23

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1   Evans

2   Q.   Do you think that Mr. Paterson's

3   position as stated in the chapter is

4   consistent with Mr. Paterson's position?

5   A.   Yes.

6   Q.   So you think what you said about

7   Mr. Paterson in the chapter, good, bad or

8   indifferent, is what Mr. Paterson thinks

9   and has thought for some time?

10   A.   Well, I would say yes. He might

11   take a different view.

12   Q.   So it might not be consistent?

13   A.   I think it is.

14   Q.   But if he was going to take a

15   different position, wouldn't you want to

16   know that?

17   A.   I didn't think he would take. In

18   fact, as of today, and your statement is

19   exactly the same as it was when I wrote

20   the book. I understand Mr. Paterson's

21   position perfectly well.

22   Q.   Could you articulate that?

23   A.   Yes.

24   Q.   Would you?

25   A.   I did, and I will, and it's in the

24

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1   Evans

2   Q.   Did your advance cover that as

3   well?

4   A.   Yes.

5   Q.   Were there any changes in that book

6   from the hardback book?

7   A.   Yes.

8   Q.   Who made those changes?

9   A.   I did.

10   Q.   Did you have any assistance in

11   making those changes?

12   A.   No.

13   Q.   Did you have any input in making

14   those changes from others?

15   A.   From others? Well, the changes

16   reflect -- let me explain. The changes

17   reflect more of the research I did

18   originally.

19   Q.   Do you think you changed anything

20   significant about Mr. Paterson's

21   involvement, character, appropriation,

22   misappropriation from one softback book

23   from the hardback book?

24   A.   Yes.

25   Q.   Do you think you changed anything

25

1   Evans

2   significant?

3   A.   Yes.

4   Q.   Can you point out those changes?

5   A.   Most important changes I included

6   in Mr. Paterson's statement of claim.

7   Q.   In the lawsuit?

8   A.   In the lawsuit.

9   Q.   Anything else of significance in

10   your opinion?

11   A.   Well, I have to go through it in

12   detail. I mean, the drift of the chapter

13   is exactly the same as it was in the

14   hardback, but I gave more space to various

15   people.

16   When I did the original book, I

17   didn't want to go on to say this person,

18   this person, this person, this person,

19   this person, this person says it's a

20   clone, that Q DOS is a clone. I got so

21   tired of reading clone, clone, clone,

22   clone, clone, but I did put three or four

23   more of those in the paperback, right, and

24   I acknowledged the vehemence of the

25   arguments between Mr. Wharton and

26

1   Evans

2   Mr. Paterson in -- I think it's Microsoft

3   News.

4   And I did also include in the paper

5   something I excluded for a variety of

6   reasons for the hardback, the particular

7   interesting statement of Mr. Paterson when

8   he was asked in MicroNews Contributor was

9   he proud of being called "Father of DOS,"

10   Mr. Paterson has a very good sense of

11   humor and he replied, he said, "I prefer

12   `original author.'" I don't like the word

13   `inventor' because it implies a certain

14   level of creativity that wasn't really the

15   case. Besides,' he laughs, `there's

16   enough people who think it's nothing to be

17   proud of. If I say `I invented DOS,' they

18   say, `Well, good for you, sucker.'"

19   I thought that was very

20   interesting. That showed a man with a

21   great sense of humor, and I thought it was

22   a very fair statement of the situation as

23   I'd seen it in the hardback but I didn't

24   choose to include it, although Mr. Tom

25   Rolander drew that to my attention almost

27

1   Evans

2   on the very first meeting. There are a

3   few more examples of that.

4   Q.   So you have somewhere and maybe,

5   for all I know, you provided it the

6   changes made from one edition to the

7   other?

8   A.   Yes.

9   Q.   Would that be in a CD form or in a

10   paper form from one version to the other?

11   A.   It actually reflects it -- it goes

12   through so many changes for space, length,

13   languages, so many people reading it.

14   It's reflected in the actual paperback

15   itself. I may be the only man alive who

16   can identify them all, so I think I've

17   answered that question.

18   Q.   What were the discussions leading

19   up to the second edition?

20   A.   The paperback?

21   Q.   Yes.

22   A.   Well, I read all the reviews both

23   on-line or in print of the book. If we

24   confine ourselves to the Kildall

25   chapter -- is that what you want?

28

1   Evans

2   Q.   Sure.

3   A.   I read all the reviews and I

4   obvious read Mr. Paterson's public

5   statements to newspapers and others, and I

6   wanted always to be fair to him, so I took

7   great care in heeding what he said.

8   It didn't change my -- nothing that

9   has been said before or since changed the

10   judgments that I made in writing the

11   chapter. I've tried to give a very fair

12   and thorough as possible account of a

13   great public controversy.

14   Q.   A great public --

15   A.   Controversy.

16   Q.   Controversy.

17   A.   Yes, controversy. Excuse the

18   English.

19   Q.   What is your opinion of the

20   semantics of the word "clone"?

21   A.   Well, I looked in the Oxford

22   English Dictionary before I used it in my

23   book. I'm writing about the cloning of a

24   gene by encumbered DNA, and a clone is

25   pretty well an identical copy -- I mean,

29

1   Evans

2   the words I used in all these writings

3   about CP/M and Q DOS and some of these

4   give offenses to Mr. Paterson, mimicked,

5   imitated, clone, copied.

6   I didn't -- "The system was an

7   obvious CP/M knockoff," says Gary Rivlin

8   in "The Plot To Get Bill Gates."

9   The book in which Mr. Paterson's

10   colleagues of the first edition wrote

11   called "Undocumented," edited by

12   Mr. Andrew Schulman, S-C-H-U-L-M-A-N, says

13   there was no question of MS DOS

14   large-scale borrowing from CP/M. As Tim

15   Paterson would write sometime later,

16   primary design requirement of MS DOS was

17   CP/M translation compatibility.

18   "Translation compatibility" is a

19   term Mr. Paterson prefers, I understand,

20   from his point of view, but there is no

21   question that the overwhelming

22   predominance of all these references to

23   this dispute and this controversy used the

24   word clone, mimic, imitate, borrow.

25   I personally did not use some of

30

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1   Evans

2   the -- I did not reach the conclusion as

3   some people did that it was a conspiracy

4   between IBM and Microsoft. I didn't use

5   that, but I give you probably twenty, at

6   least, references by knowledge of

7   well-known commentators, and they don't

8   change. They're all the same.

9   Q.   Did you use in your book in the

10   first version or the second the word

11   "rip-off"?

12   A.   I didn't, but Mr. James Wallace, to

13   which Mr. Paterson referred, uses the word

14   "rip-off" quoting Gary Kildall. I quoted

15   Gary Kildall and Tom Rolander, both of who

16   used the word "rip-off."

17   Q.   How about the word "pirate"?

18   A.   I didn't use the word "pirate," but

19   I probably quoted it. I have to look

20   again at it.

21   Mr. Gary Rivlin is the man that

22   wrote and said in "The Plot To Get Bill

23   Gates" that the system was an obvious CP/M

24   knockoff. Mr. Paterson admitted he had

25   let Q DOS with a CP/M manual at his side

31

1   Evans

2   entirely mimicking key components.

3   There are very different variations

4   of this word. I think I used the less

5   colorful ones, probably.

6   Q.   Did you read the book "Hard Drive"

7   by James Wallace and Jim Erikson?

8   A.   Yes, I did.

9   Q.   Did you speak to James Wallace and

10   Jim Erikson?

11   A.   No. David Lefer may have done so,

12   but I did not.

13   Q.   If Mr. Lefer had done so, would he

14   have done, kept, produced, have in his

15   possession any notes of that conversation?

16   A.   Yes, but I'm not sure he did.

17   Yes, I did read "Hard Drive," and I

18   was very intrigued by this quote of

19   Mr. Paterson: "Kildall phones Paterson,"

20   and Mr. Paterson writes, "I didn't copy

21   anything." He tells Mr. Wallace, "I just

22   took his printed documentation and did

23   something that did the same thing. That's

24   not by any stretch violating any kind of

25   intellectual property laws. Making a

1   Evans

2   recipe in the book does not violate the

3   copyright on the recipe. I'd be happy to

4   debate this in front of anybody, any

5   judge. I never looked to Kildall's code,"

6   which I actually did state in the

7   hardback, "only his manual." And then in

8   the paperback I took issue with

9   Mr. Paterson's analogy.

10   Q.   Do you think in your own mind that

11   Mr. Paterson viewed the CP/M code that

12   Mr. Kildall invented versus making a

13   distinction between reading a manual and

14   the course code?

15   A.   I think Mr. Paterson is very frank

16   and candid in his statements of why he

17   used Mr. Kildall's API's. He makes it

18   absolutely clear here.

19   Q.   Do you know what source code is?

20   A.   Yes, I understand the difference

21   between, and I did reflect Mr. Paterson's

22   denial in the book that he borrowed

23   Kildall's source code. Kildall makes that

24   allegation and I reported that, and I also

25   reported Mr. Paterson's vehement denial of

33

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1   Evans

2   authorities. Kildall was no doubt a key

3   visionary but not likely to have been

4   alone."

5   Would you agree with that

6   statement?

7   A.   Yes.

8   Q.   Would you agree that one of those

9   other people that might stand tall in this

10   dispute would have been Tim Paterson?

11   A.   Yes.

12   Q.   And yet you didn't talk to him?

13   A.   No, I think I represented

14   Mr. Paterson's position very fairly.

15   I've acknowledged already the three

16   major, one of which is controversial,

17   which is the API's, the conversion of an

18   Intel 8086 chip, and I've acknowledged

19   Mr. Paterson's contributions.

20   The only area of argument seems to

21   be the cloning, mimicking. You keep using

22   the word "pirating," which I didn't use,

23   of Kildall's API's.

24   By the way, in answer to the point

25   about the general state, I did write a

1   Evans

2   chapter in the book on all the other

3   people in Silicon Valley. Bob Noyce and

4   Moore and Bardeen and so on made a major

5   contribution to the development. In fact,

6   in the book I go from the Edison's failure

7   to detect electrons to Fleming's success

8   and Armstrong's success and Jack Kilby,

9   and so on and so on.

10   MR. TOMKINS: Would you mark

11   this as Exhibit 58.

12   (Whereupon a document was

13   marked as Exhibit 58 for

14   identification, as of this date.)

15   Q.   Mr. Evans, did I hear you say

16   earlier that you had read "Hard Drive"?

17   A.   Yes.

18   Q.   Did you rely on this book as a

19   reference to and help you in writing your

20   chapter?

21   A.   At least ten books I read on this,

22   and this is just one of them.

23   Q.   The author suggests that the IBM --

24   that IBM requested that Mr. Kildall make a

25   16-bit version of CP/M, but he would not

35

1   Evans

2   agree to spend the money on it.

3   Do you agree with that statement?

4   A.   Say that again.

5   Q.   The author suggests that IBM --

6   A.   Mr. Wallace?

7   Q.   Yes -- requested that Gary Kildall

8   make a 16-bit version of CP/M, but Kildall

9   did not agree to spend the money on it.

10   A.   My reading of that history is that

11   Kildall made a mistake in not developing

12   an 86 system, and when he did another

13   program and came to the 86 system later

14   than he should have done, and I would

15   agree with that as a statement.

16   Q.   Did you rely on any of the passages

17   in the "Hard Drive" book in your chapter?

18   A.   Well, Mr. Wallace and Mr. Erikson

19   said pretty well like Andrew Manes and

20   other people that Mr. Paterson referred to

21   and all the other computer commentators,

22   it was a huge number about -- I thought it

23   particularly interesting. Mr. Wallace

24   said that Mr. Paterson -- and I sympathize

25   with Mr. Paterson here -- has had to read

36

1   Evans

2   over the years that he ripped off CP/M,

3   just as Gary Kildall had to read over the

4   years that he lost the deal because he

5   went flying. These two inventors were in

6   a similar position in that regard.

7   Q.   The authors seem to indicate, and

8   they even use the words, that Mr. Paterson

9   was the father of DOS. I take it you do

10 not agree with that?

11 A.   I do agree that he's the father of

12 DOS. Bill Gates says so.

13 Q.   So you agree that Paterson is the

14 father of DOS?

15 A.   Yes. The grandfather may be a

16 different question.

17 Q.   Were you aware in your research

18 that Gary Kildall had contacted

19 Mr. Paterson to ask for one of his CPU

20 boards and promised him that his new

21 version of CP/M would be readied by

22 December, but that never came about, but

23 by April of that next year Paterson built

24 his own?

25 A.   I'm aware of all the frustration of

37

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1   Evans

2   the people working for the 86.

3   Q.   Are you aware that Mr. Paterson's

4   position is not that he ripped off

5   Mr. Kildall in any way?

6   A.   Yes.

7   Q.   Do you agree or disagree?

8   A.   I wouldn't use the word "rip-off."

9   Q.   Didn't you use the word "rip-off"

10   in your book?

11   A.   No, I reported the use of the word

12   "rip-off." I prefer the word "cloned" or

13   "borrowed" or "mimicked," which

14   Mr. Paterson freely acknowledges.

15   He said it was like a recipe. He

16   took the recipe, and I criticized that

17   analogy in my paperback because I don't

18   think it's a fair analogy.

19   Q.   Do you know who Andrew Orlowski is,

20   O-R-L-O-W-S-K-I?

21   A.   No.

22   Q.   Do you know what The Register is, a

23   United Kingdom paper?

24   A.   It must be very obscure.

25   Q.   Who is Gail Buckland?

38

1   Evans

2   Q.   I think he's on page 522 of the

3   softback.

4   A.   I didn't include everybody I read

5   or talked to.

6   Oh, yes, I do remember him now,

7   yes.

8   Q.   Did he see the Kildall chapter?

9   A.   No, not to my knowledge.

10   Q.   Do you have a list of people in the

11   book that you sent a chapter to for

12   comment before the softback was published?

13   A.   Maybe, but I don't know. I can't

14   remember.

15   Q.   If there was such a list, you would

16   have produced it to your counsel?

17   A.   I don't think we annotated a list,

18   but we could research it if you'd like.

19   MR. TOMKINS: I might ask

20   you to do that.

21   MR. JOHNSON: My

22   understanding was your requests

23   were related to the hardback which

24   is what the subject of the lawsuit

25   is about. If we're talking about

1   Evans

2   the softback, that is a different

3   issue.

4   Please understand that the

5   lawsuit, and as I understand your

6   request for production, related to

7   the subject of the lawsuit.

8   Q.   Do you know who Al Fasoldt is?

9   F-A-S-O-L-D-T.

10   A.   Yes.

11   Q.   Who is he?

12   A.   He's a computer commentator.

13   Q.   Tell me how you met him.

14   A.   No.

15   Q.   Did you interview him?

16   A.   No. He wrote remarks saying a disk

17   operating system, a computer without a

18   disk operating system is too dumb to do

19   anything useful. I thought it was a nice

20   joke. He's not commenting on this issue.

21   Q.   You didn't have any discussions

22   with him?

23   A.   No. I would be here for a million

24   years having discussions with all the

25   people that commented on this issue. The

40

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1   Evans

2   public record is very clear on this.

3   Q.   What do you think it says?

4   A.   The public record is overwhelming,

5   overwhelming that Mr. Paterson cloned the

6   CP/M API's. Overwhelming.

7   MR. JOHNSON: Off the

8   record.

9   (Whereupon, a discussion was

10   held off the record.)

11   (Luncheon recess.)

12   (Time noted: 12:56 p.m.)

13

14   *   *   *

15

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

17   (Time noted: 1:37 p.m.)

18

19   EXAMINATION (CONTINUED)

20   BY MR. TOMKINS:

21   Q.   In preparation for this deposition,

22   did you have an opportunity to read

23   Mr. Paterson's deposition?

24   A.   I tell you the truth, I haven't

25   read it. It was sent to me and I haven't

Page 79

1   Evans

2   read it. I didn't want it to affect what

3   I had to say.

4   Q.   Ed Roberts, does that name ring a

5   bell with you having to do with the Altair

6   computers?

7   A.   Yes. I mentioned him, yes.

8   Q.   Do you recall if he was ever

9   consulted in any way about the chapter?

10   A.   No, not to my knowledge. David

11   Lefer may have, but not to my knowledge.

12   Q.   Glenn Ewing?

13   A.   I did not consult Glenn Ewing.

14   Q.   Do you know if he ever commented on

15   the chapter or was asked to have any

16   opinion?

17   A.   David Lefer spent months on this.

18   I don't know.

19   Q.   If I wanted to get in touch with

20   Mr. Lefer, where would he be?

21   A.   I think he's teaching at Stevens

22   Institute. He's a professor.

23   Q.   In what state?

24   A.   In New Jersey. I'm sure we can

25   help you with that.

42

1   Evans

2   MR. TOMKINS: Let's take a

3   break.

4   (Brief recess was taken.)

5   Q.   Would you consider Wikipedia a

6   reputable website that belongs as one of

7   the COG's in the public record?

8   MR. JOHNSON: Object to the

9   form.

10   You can answer it.

11 A.   Wikipedia is enormously variable.

12 Wikipedia can be also -- I can go on

13 Wikipedia tonight and enter, "Mr. Tomkins

14 is the greatest lawyer on this side of the

15 Rockies," or I can enter, "Mr. Evans is

16 the greatest computer expert in the

17 world." It would be false, right?

18   The next day Mr. Paterson can go on

19 and challenge that. The next day somebody

20 else will go on and challenge

21 Mr. Paterson.

22   So Wikipedia is not a fixed

23 encyclopedia. It's an evolving

24 encyclopedia liable to entry by parties

25 with vested interest. I like Wikipedia,

43

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1   Evans

2   but it's not in my view as reliable as,

3   for instance, the Oxford English

4   dictionary.

5   Q.   When we talk about the public

6   record which we've made reference to many

7   times today, about the record being clear

8   as to certain issues on the public record

9   because it is so well documented, you

10   would agree, would you not, sir, that the

11   public record can often be equally

12   misleading as Wikipedia, flat wrong in

13   some respects, just not accurate?

14   A.   History is a process of constant

15   revision.

16   Q.   And my question about why, when the

17   opportunity is there, Mr. Paterson is not

18   deceased, available in Seattle by phone

19   and e-mail, why Mr. Brock, not dead,

20   available by phone and e-mail, your

21   research team wouldn't want to contact

22   them about these events that are highly

23   contested, somewhat murky involving a

24   deceased major participant, and at least

25   in a couple of occasions Bill Gates and

44

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1   Evans

2   Paul Allen not wanting to add to the

3   record anecdotally or otherwise, why you

4   chose that research path.

5   A.   Well, the public statements of

6   Mr. Paterson were there, and what's

7   interesting to me is that even today in

8   2007, Mr. Paterson hasn't elaborated in

9   any way whatsoever.

10   In fact, the statement is exactly

11   what he was saying which proved

12   consistency, and I believe him. There is

13   no question of that. The question is was

14   anything to be gained by adding to it?

15   There doesn't seem to be. However, I

16   thought, at least to let a dead man have a

17   say.

18   Q.   Let me ask you this: Is there any

19   difference between cloning CP/M API and

20   cloning CP/M?

21   A.   I don't understand that.

22   Q.   API is found in both CP/M and MS

23   DOS?

24   A.   Yes, application programs, yes.

25   Q.   So if you clone the API in the CP/M

45

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1   Evans

2   arena, is that different than cloning the

3   entire CP/M program?

4   A.   I think the API is the crux of the

5   whole thing. We're not talking and the

6   book says Mr. Kildall accused Mr. Paterson

7   of debugging and taking his code, but what

8   I'm saying is that comparing the API's of

9   Q DOS, PC DOS and CP/M, as Mr. Paterson

10   fairly agrees, they're almost identical.

11   In fact, every single verb that's

12   used throughout this includes rip-off,

13   pirating, knockoff, clone, copy, mimic.

14   It's an opinion which words you use.

15   Q.   How are you using and understanding

16   the word, the phrase, the concept API?

17   A.   To enable -- I understand the

18   hardware is one thing, but I have a word

19   processing program or a balance sheet

20   program or whatever and need application

21   software, right? So I want to stick it in

22   there and I want it to work. And I want

23   it to work on this new IBM PC that I've

24   got, and it actually will work thanks to

25   Mr. Paterson's efforts.

1   Evans

2   generation of the operating system "nought

3   point one," which is 0.1.

4   MR. JOHNSON: It's

5   British/English for zero.

6   Q.   Does that sentence imply that the

7   CP/M system had no crashes?

8   A.   No.

9   Q.   Does that imply that the CP/M

10   system was superior?

11   A.   The CP/M 86 was superior. That's

12   the testimony I got from the experts is

13   that the CP/M 86 was superior.

14   Mr. Kildall, being a bit more

15   vigorous and had not wasted his time, he

16   would have gotten 86 out sooner. We

17   wouldn't be here today.

18   Q.   Continuing down on that same

19   column, I guess I'll put it in context.

20   "The story is propagated by Bill Gates and

21   others and swallowed whole by computer

22   historians. It is false. IBM tricked

23   Kildall. And in the end it was not

24   Kildall who missed an opportunity, but the

25   rest of us."

47

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1   Evans

2   What did you mean to say there?

3   A.   What I said in the next sentence

4   that Kildall had gotten 86 out -- if

5   Kildall had not been -- how can I put it?

6   Not focused as perhaps he should have

7   been, then the majority of computers would

8   have had multitask with Windows much

9   sooner. That's the testimony I get from

10   many people.

11   Q.   Why did you choose in the next

12   sentence -- I'll read it -- "By adopting

13   MS DOS which was based on Q DOS, a

14   slapdash clone," why did you choose to use

15   the phrase "slapdash"?

16   A.   I think I was influenced by

17   Mr. Paterson's own words, "Quick 'n

18   Dirty."

19   Q.   Is there one or more people that

20   you are relying on more than others to

21   conclude that Q DOS was inferior,

22   slapdash, easily crashable and --

23   A.   Well, Professor Sol Libes, said,

24   "Every PC owner owes Gary a debt of

25   gratitude. Bill Gates and Microsoft owe

48

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1   Evans

2   him more than anyone else. Tim quickly

3   created a simplified 8086 version of CP/M

4   which he called Q DOS since it did not

5   implement all of CP/M's features. There

6   is no doubt that Gary Kildall led the way

7   in microcomputer software development."

8   Q.   And you're reading from what, sir?

9   A.   I'm reading from Professor Sol

10   Libes' website.

11   Q.   So you're saying that Professor Sol

12   Libes was one of the main people that you

13   relied on to conclude --

14   A.   One of them. I'll give you another

15   one. Microsoft Disk Opera website.

16   "MS DOS is basically a clone of

17   CP/M. Its first version was put together

18   by Tim Paterson in about six weeks

19   (sources says he has regretted it ever

20   since). The first 36 DOS system calls

21   mirror their CPM counterparts with a

22   strange concurrence."

23   Now, I didn't use the next piece

24   which I'm going to read to you. There are

25   a lot of things I didn't use.

49

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1   Evans

2   "There were and still are rumors

3   that the original code of MS DOS 1.0 was

4   copied from CP/M by its designer, long

5   after the dust has settled Gary Kildall,"

6   had asked the question about a dollar

7   sign.

8   There are things in here saying the

9   code is copied. I didn't use that. There

10   is a lot more inflammatory opinions in the

11   literature than I used.

12   Q.   Would it have been helpful to you

13   to have called up Mr. Paterson and said,

14   "How long did it take you to do it? Is

15   six weeks an accurate on the public record

16   fact?

17   A.   I knew from what Mr. Paterson --

18   from what I had already read how much time

19   Mr. Paterson had spent on it. He's

20   part-time and full-time, as I understand

21   it. I didn't accept all these things. I

22   didn't put them in the book.

23   Q.   But the word "slapdash" came pretty

24   much from --

25   A.   Slapdash was the son of Quick 'n

1   Evans

2   Dirty.

3   Q.   Directing you to page 410, which is

4   on the third column with no pictures on

5   it, at the top of the page it begins with

6   the words, "System check to see," on the

7   top of the page -- on the top of the third

8   column. It's immediately after the

9   montage.

10   A.   Yes, I've got it.

11   Q.   Directing your attention to the

12   second full paragraph beginning with,

13   "Another participant" --

14   A.   Yes.

15   Q.   I'll just read it. "Another

16   participant in these little morality plays

17   were Rod Block, a neighbor of Bill Gates's

18   in Redmond. Brock, who owned a small

19   company called Seattle Computer Products,

20   was impatient for the CP/M-86 Kildall was

21   developing for the more powerful 8086

22   Intel chip. Brock's revenues were running

23   down, so he hired Tim Paterson to fill the

24   gap. Paterson did it by taking a ride on

25   Kildall's system with a program he

51

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1   Evans

2   A.   First of all, I wasn't convinced by

3   these other more colorful references.

4   Q.   Did Mr. Rolander indicate that

5   taking apart is unanimous with using

6   source code or getting into the real code

7   of the CP/M?

8   A.   I think I said that Mr. Paterson

9   denies using the code, denies borrowing

10 the code. Mr. Rolander, you have to ask

11 him.

12 Q.   You don't know what Mr. Rolander's

13 opinion is of that?

14 A.   Whatever he says in the book is

15 what I stand by.

16 Q.   Continuing, "Paterson has denied

17 using CP/M source code but admits making

18 the two systems similar to help translate

19 programs into Q DOS."

20   Do you think there is anything

21 morally wrong with doing that, assuming it

22 is true?

23   MR. JOHNSON: Object to the

24   form.

25   You can answer.

52

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1   Evans

2   A.   I think it would have been nice to

3   acknowledge that. Since it was a

4   competitive situation between Microsoft

5   and DRI, it should have been acknowledged.

6   Q.   How would you have Mr. Paterson

7   acknowledge that?

8   A.   I'm not a judge of anybody else's

9   morality, and so in my judgment, one of

10   the points about my writing this chapter

11   was to acknowledge the contribution of

12   Gary Kildall, who is dead and can no

13   longer speak for himself about what he

14   added to the industry.

15   In doing that I acknowledged

16   Mr. Paterson's contribution, but I felt it

17   was about time somebody documented

18   Mr. Kildall's contribution, which is what

19   I did.

20   Incidentally, you know, going back

21   to this point, when Mr. Paterson refers me

22   to Andrew Manes' book saying he spoke to

23   him, Mr. Manes says, "Q DOS mimicked every

24   last internal function call of CP/M," and

25   then he goes, on which I didn't use.

53

1   Evans

2   "There was suspicious similarities

3   between DOS and CP/M, similarities so

4   substantial," says Mr. Manes,

5   "similarities so substantial that they

6   skirted the edges and possibly even

7   breached the bounds of legality." I

8   didn't quote it.

9   "Under similar circumstances,

10   Digital Research had convinced earlier

11   CP/M clones, such as Cromemco's CDOS, to

12   acquire licenses."

13   So what I'm trying to get at is I

14   didn't invent this stuff. There it is in

15   the industry, a huge public controversy

16   with 97 percent, if you take a figure, all

17   say the same thing, that Q DOS is a clone

18   of CP/M.

19   Q.   Going on in that same section, you

20   use a quote from Mr. Paterson, "Because of

21   the completely different file storage

22   format, none of the internal workings has

23   any corresponding relation to anything

24   within CP/M."

25   Do you know where you got that

54

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1   Evans

2   quote?

3   A.   Did I leave it out?

4   Q.   Do you know where you got that

5   quote?

6   A.   I think I got it from the arguments

7   between Mr. Wharton and Mr. Paterson, that

8   was a printed document with the headline.

9   I think Mr. Paterson objected to the

10   obituary references to Mr. Kildall and

11   attacked and accused Mr. Wharton of being

12   something of an idiot.

13   Q.   So the quotes came from a document

14   that Mr. Paterson generated?

15   A.   Yes.

16   MR. JOHNSON: Is that a

17   microprocessor report?

18   A.   Yes.

19   Q.   Going on, starting with the word,

20   "But," "But for Mr. Paterson to cite the

21   unavailability of CP/M-86 as a

22   justification for appropriating the `look

23   and feel' of a competing operating system

24   and its utilities seems to me analogous to

25   telling a judge, 1I needed the car, your

55

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1   Evans

2   Honor, and the plaintiff wouldn't sell me

3   his so I was forced to take it.'" That's

4   in quotes.

5   Do you know who you were quoting

6   there?

7   A.   Mr. Wharton.

8   Q.   You are chronicling their argument?

9   A.   Yes, I gave Mr. Paterson's side,

10   and then I gave Mr. Wharton's side. And

11   Mr. Paterson was very rich in his

12   depictions of Mr. Wharton's competence.

13   I would like to add something. As

14   I said, the "Quick 'n Dirty" by Paul

15   Freiberger and Michael Swaine says,

16   "Mr. Paterson's SCP DOS operating system

17   was a closed book crude imitation of

18   CP/M."

19   I didn't use this quote. "It

20   needed a lot of work to make it fit the

21   bill for the IBM job."

22   I want you to be aware of the fact

23   that there is huge controversy in the

24   industry and I'm reporting it, but I'm not

25   taking every single quote I can to

56

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1   Evans

2   criticize Mr. Paterson. I'm trying to be

3   fair here.

4   I put Mr. Paterson's side of it, I

5   put Mr. Wharton's side of it. I didn't go

6   to many of these extreme quotes where on

7   the public record Mr. Paterson is accused

8   of using Mr. Kildall's code of creating

9   something that was unworkable, et cetera,

10   et cetera, et cetera.

11   Q.   Turning your attention to page 412,

12   which is above the area where we talk

13   about the DOS prompt.

14   A.   Yes.

15   Q.   I'd like to draw your attention to

16   a sentence halfway down that third column

17   beginning with, "What Paterson." Do you

18   have that in mind?

19   A.   Yes.

20   Q.   "What Paterson essentially had done

21   was rewrite the bottom part of the

22   software." Can you explain to me what you

23   mean by that?

24   A.   The API.

25   Q.   That's your understanding --

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1   Evans

2   A.   No, sorry. Wait a minute. Excuse

3   me. He improved the way files were stored

4   while accompanying most of the top part,

5   the commands that interface between the

6   applications and the hardware.

7   Q.   So you're not saying API?

8   A.   No, no. I was trying to get ahead

9   of you, which I shouldn't do.

10   Q.   I understand.

11   And then you go back to, "What had

12   Paterson essentially done is rewrite the

13   bottom part of the software," and that's

14   your command function, 26 command

15   function?

16   MR. JOHNSON: No.

17   A.   Adapting it for a 16-bit machine.

18   Q.   "Improving the way the files were

19   stored and adapting the program to a

20   16-bit machine while copying most of the

21   top part of Kildall's operating system."

22   What do you define as the top part?

23   A.   I'm using this -- I mean, you can

24   say bottom, top, side, whatever. I was

25   thinking of a pancake, you know.

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