

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Intel Corporation

Opposer,

v.

Mr. Stephen Emeny

Applicant.

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Opposition No. 123,312

Application No. 75/825,218

**MOTION FOR LEAVE TO USE TESTIMONY FROM ANOTHER  
RELATED PROCEEDING**

Pursuant to TBMP § 531 and 37 CFR § 2.122(f), Opposer, Intel Corporation, hereby moves the Board for leave to file excerpts from the deposition of Mr. Emeny, Applicant in the above-opposition, taken in conjunction with a co-pending proceeding in Canada involving the identical mark, IDEAS INSIDE.

The testimony sought to be produced relates to Mr. Emeny's prior knowledge of Opposer's marks and rights, and his lack of intent to use the IDEAS INSIDE mark. These issues are germane to the instant opposition proceeding.

Accompanying this motion is a copy of the subject testimony, previously introduced with Opposer's Notice of Reliance filed November 29, 2002. Pursuant to 37 CFR § 2.119(a), copies of the instant motion and attachments will be served on Applicant.

Respectfully submitted,

INTEL CORPORATION

Date: 5/14/03

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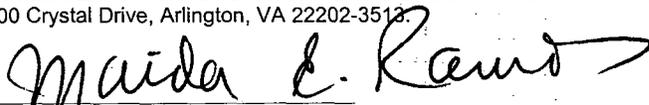
Attorneys for Opposer

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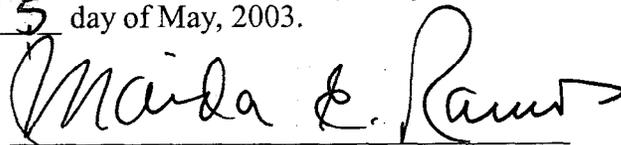
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Maida E. Ramos

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing "Motion for Leave to Use Testimony from Another Related Proceeding" was served on Mr. Brian Hall, 1973 South East 15<sup>th</sup> Court, Pompano Beach, FL 33062 by First Class mail, postage prepaid, this 15 day of May, 2003.



Maida E. Ramos

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TRADE-MARKS ACT  
STATEMENT OF OPPOSITION

To: The Registrar of Trademarks Opposition Board,  
Canadian Intellectual Property Office,  
Hull, Canada.

IN THE MATTER OF an Opposition by Intel Corporation  
to Application number 887,057, IDEAS INSIDE

--- This is the cross-examination of STEVEN EMENY, on an  
affidavit sworn the 1st day of March 2002, taken at the  
offices of Atchison & Denman Court Reporting Services  
Limited, 155 University Avenue, Suite 302, Toronto,  
Ontario, M5H 3B7, on Thursday, the 8th day of August 2002.

APPEARANCES:

Brian P. Isaac For Intel Corporation  
Mark G. Biernacki  
Steven Emeny On his own behalf

ALSO PRESENT:

Darlene Emeny

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INDEX OF REFUSALS

Refusals are noted by R/F and are found on the following pages: 12, 39, 42, 47-50, 52, 58, 61, 70, 72

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1 ---UPON COMMENCING AT 9:50 A.M.

2 STEVEN EMENY; Sworn.  
3 CROSS-EXAMINATION BY MR. ISAAC:

4 1. Q. Good morning, Mr. Emeny.

5 A. Good morning.

6 2. Q. Could you please state your full name  
7 and address for the record?

8 A. My name is Steven Emeny. I live at 121  
9 Day Avenue, Toronto.

10 3. Q. And you have been sworn in this  
11 proceeding; is that correct?

12 A. Yes.

13 4. Q. And you understand that we are here  
14 today for me to undertake a cross-examination on the  
15 affidavit you filed in the opposition by Intel to your  
16 registration of Ideas Inside, correct?

17 A. That's correct.

18 5. Q. Now, do you have a copy of your  
19 affidavit with you?

20 A. Yes.

21 6. Q. And you will agree with me it is an  
22 affidavit you swore March 1, 2002, correct?

23 A. That's correct.

24 7. Q. And that was filed in the Trademarks  
25 office correct?

1 A. Correct.

2 8. Q. The opposition has to do with your  
3 application to register Ideas Inside. I have got a copy  
4 of particulars of that application. Can you take a look  
5 at this and confirm for me that that's true particulars of  
6 your application?

7 A. That's correct.

8 9. Q. We will mark that as Exhibit 1 to the  
9 cross-examination.

10 EXHIBIT NO. 1: Copy of particulars of  
11 application.

12 BY MR. ISAAC:

13 10. Q. Do you have copies of that application  
14 with you?

15 A. I have a copy of it, yes.

16 11. Q. You may want to pull it out, because  
17 we'll be referring to it intermittently through the  
18 proceeding.

19 A. Okay.

20 12. Q. Now, can you confirm for me, Mr. Emeny,  
21 that you applied to register the trade-mark Ideas Inside  
22 in your own name?

23 A. Yes.

24 13. Q. And can you tell me whether or not  
25 you're incorporated?

1 A. I'm not incorporated.

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14. Q. Are you employed, sir?  
A. This is my full-time job.

15. Q. This, being what?  
A. Well, being an entrepreneur and developing new businesses for the Internet, e-commerce.

16. Q. And where do you undertake that employment?  
A. I run a home office.

17. Q. Home office. And that's an ongoing business, is it?  
A. Yes.

18. Q. And do you earn --  
MS. EMENY: Excuse me, can I just interrupt for a moment? We are here to answer questions particularly related to his affidavit.

MR. ISAAC: No. You're here to answer questions that are relevant to the proceedings in respect of which the affidavit was filed. I'll correct you on that. There is a lot of case law on that point. So I'm able to ask any question that's relevant to the proceedings, as opposed to limited to the four corners of the affidavit.

THE DEPONENT: In the letter that we received from the Canadian Intellectual Property Office,

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1 it states that:  
2 "In accordance with your request dated  
3 March 2nd, 2002 and pursuant to rule 44(2) of the  
4 Trademarks' regulations, notice is hereby given of an

5 order for the cross-examination of Steven Emeny on his  
6 affidavit dated March 1st, 2002."

7 BY MR. ISAAC:

8 19. Q. That's fine. There's a whole bunch of  
9 case law, including a decision by Justice Huggeson, who  
10 was at that time in the Trial Division of the Federal  
11 Court, dealing with this exact question as to what  
12 cross-examination is limited to. And as I said, it's not  
13 limited to the four corners of the affidavit. It's a  
14 question of whether or not it is relevant to the issues in  
15 the proceeding.

16 And just for the record, can you give your  
17 name, ma'am?

18 MS. EMENY: Darlene Emeny.

19 MR. ISAAC: Darlene Emeny. Are you a  
20 lawyer?

21 MS. EMENY: No.

22 MR. ISAAC: Are you trained in any way in  
23 the legal profession?

24 MS. EMENY: No.

25 BY MR. ISAAC:

12

1 20. Q. So I think we had a question on the  
2 record. If you want to object to answering it, go ahead,  
3 but I'm going to put my questions on the record. So I  
4 think what I'd asked was -- I'm not quite sure how I  
5 worded it, but do you make a living through your business?

6 A. This is the business that I'm pursuing.

7 21. Q. The business that you are pursuing out

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of a home office?

A. That is correct.

22. Q. And what names do you use in association with that business?

A. Baced Communications.

23. Q. Anything else?

A. In terms of the business, that's the primary name of it.

24. Q. And just from a ballpark point of view, what are your annual earnings through your home business?

R/F A. That's irrelevant.

25. Q. I don't think it's irrelevant. We've got allegations clearly made in the proceeding that you're not capable of using the trade-mark in association with all the wares that are listed in the application, and of course part of that is your sources of income, et cetera. That's why I am asking the question.

A. I don't see how sources of income are

13

relevant.

26. Q. Are you independently wealthy?

A. No.

27. Q. Do you have any other sources of income aside from your home business?

A. At the moment, no.

28. Q. In paragraph 2 of your affidavit you indicate that:

"Ideas Inside was created to establish a strong business presence that would pioneer the Internet

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revolution and the idea economy."

Do you see that?

A. Yes.

29. Q. You mention that Ideas Inside was created. Who created it?

A. I did.

30. Q. And when was that created?

A. During the year prior to the trade-mark application.

31. Q. So 1997?

A. Yes.

32. Q. And what were the circumstances of the creation? Why did you create it?

A. Well, I was really excited about the opportunities provided by the Internet and the brand new

14

1 arena of business that was becoming available to  
2 entrepreneurs, and basically as we were moving into the  
3 idea economy, I thought that the Internet was a great  
4 store or well or repository of ideas and information that  
5 people would be accessing, and so I thought that the term  
6 "Ideas Inside" boiled down, in essence, what the Internet  
7 really is, and that's ideas inside. So I thought that it  
8 was a great name and I could make a terrific business out  
9 of it.

10 33. Q. Was your plan to use it in association  
11 with the same business you're running now?

12 A. This is one of the businesses that I --  
13 this is a business that I was hoping -- that I'm pursuing.



17 39. Q. And from what you've said, you have  
18 done quite a lot of research on the Internet or in respect  
19 of the Internet; is that correct?

20 A. Umm hmm.

21 40. Q. And so do you consider yourself  
22 Internet savvy?

23 A. Yes.

24 41. Q. Do you have a computer background?

25 A. Yes.

16

1 42. Q. What is that background?

2 A. I've worked for 20 years in the  
3 information technology arena. I have a certificate in  
4 multi-media development, and I have spent the latter four  
5 to five years researching the Internet and following its  
6 growth.

7 43. Q. And that research and following the  
8 growth was on your own behalf, was it?

9 A. Yes.

10 44. Q. And not for a company or anything like  
11 that?

12 A. Yes.

13 45. Q. Now, you said you worked 20 years in  
14 the information technology arena. Who did you work for?

15 A. I worked for American Express.

16 46. Q. And what did you do for them?

17 A. I was a network -- over the course of  
18 that time, I held several positions, lastly network  
19 analyst.

20 47. Q. What would that entail, a network

21 analyst?

22 A. A network analyst would entail the  
23 installation and maintenance of local area networks, the  
24 maintenance of the controllers that operate all the PCs,  
25 and terminals throughout the building, and monitoring

17

1 networks across Canada.

2 48. Q. Do you have any post-secondary  
3 education in the computer field, aside from the  
4 certificate you mentioned?

5 A. I'm not sure exactly what you're  
6 referring to.

7 -49. Q. Do you have any computer courses? Do  
8 you have any university level computer courses?

9 A. No.

10 50. Q. Any college level computer courses?

11 A. I have taken some college courses, yes.

12 51. Q. And have you taken professional  
13 development courses in the computer area, that sort of  
14 thing?

15 A. No.

16 52. Q. No. So you learned on the job,  
17 essentially?

18 A. Essentially, or took courses that were  
19 provided by American Express.

20 53. Q. And you said that you worked for 20  
21 years in that area. Was that all for American Express?

22 A. Yes.

23 54. Q. What years were those?

24 A. Approximately starting part time in  
25 '76, and then commencing full time approximately '80, and

18

1 leaving American Express approximately 1997.

2 55. Q. Why did you leave American Express?

3 A. They were looking at re-engineering the  
4 company, and at the same time I was looking forward to  
5 starting my own business.

6 56. Q. So when you left American Express, did  
7 you commence your own business?

8 A. I started to seriously consider  
9 operating my own business and taking the steps necessary  
10 to do that.

11 57. Q. And when did you start operating your  
12 own business?

13 A. Well, I guess essentially as soon as I  
14 left American Express, I started researching the Internet  
15 and trying to get a handle on how it would grow and how  
16 the growth would impact society as a whole.

17 58. Q. And do you offer services for money  
18 through your business?

19 A. Right now?

20 59. Q. Yes.

21 A. No. We're in the development stage.  
22 Well, we have developed it. We're just getting ready to  
23 launch our business.

24 60. Q. I see. So am I correct, then, that you  
25 would not have had any income from that business to date?

- 1 A. That's correct.
- 2 61. Q. When did you get your first computer?  
3 A. I think it was in 1993.
- 4 62. Q. And prior to that, you would have had  
5 exposure to computers at Amex obviously?  
6 A. Yes.
- 7 63. Q. And the first computer that you got,  
8 did it have an Intel processor in it?  
9 A. I'm not sure.
- 10 64. Q. What kind of computer was it?  
11 A. It was a clone.
- 12 65. Q. It was a PC clone type of thing?  
13 A. Yes.
- 14 66. Q. It was an IBM clone?  
15 A. It wasn't an IBM. It was just a no-  
16 name generic type --
- 17 67. Q. A clone of an IBM is a better way to  
18 put it?  
19 A. I guess it could have been.
- 20 68. Q. And during your time at Amex, did the  
21 computers that you utilized or worked with have Intel  
22 microprocessors?  
23 A. I'm not sure. I didn't deal with  
24 computers at that level.
- 25 69. Q. You dealt with them at a maintenance

1 level, then?

2 A. Well, more support level.

3 70. Q. Supporting the users?

4 A. Basically the software, and basically  
5 like the network, the cabling and the software that was  
6 necessary to communicate between controllers and  
7 terminals.

8 71. Q. Did you use any Intel products in  
9 respect of those interfaces?

10 A. Not that I can recollect.

11 72. Q. When did you first hear of Intel  
12 Corporation?

13 A. I don't recall the exact date.

14 73. Q. Twenty years ago?

15 A. It was never a conscious awakening to  
16 the fact that Intel -- I never said, Oh, there's Intel.  
17 Basically, the focus of Intel was brought to my attention  
18 with the commencement of their opposition to the trade-  
19 mark Ideas Inside.

20 74. Q. But you were aware of there being a  
21 company called Intel Corporation prior to that?

22 A. Yes.

23 75. Q. Do you agree with me that Intel  
24 Corporation is a well-known corporation?

25 A. Yes.

1 76. Q. And do you agree with me that it is a  
2 well-respected corporation?

3 A. Yes.

4 77. Q. You had your -- you mentioned that you  
5 got your first computer, and this would be your first home  
6 computer, in 1993?

7 A. Right.

8 78. Q. Have you had other computers since  
9 then?

10 A. I just recently bought a new computer  
11 in, I believe it was, December last year.

12 79. Q. So your 1993 computer had a good long  
13 life?

14 A. Well, it did. There were some upgrades  
15 to it over the course of time but ...

16 80. Q. The computer that you obtained in  
17 December 2001, does it have an Intel processor?

18 A. Yes.

19 81. Q. What kind of processor?

20 A. I'm not ...

21 82. Q. Is it a Pentium?

22 A. Yes.

23 83. Q. And do you know whether or not that  
24 computer has the "Intel Inside" logo on it?

25 A. I don't think that the logo is on the

22

1 actual case of the computer.

2 84. Q. You don't -- well, I'm sorry, is it  
3 anywhere on the computer?

4 A. I think that there's an Intel logo once  
5 you commence boot-up of the system on the monitor via the  
6 software.

7 85. Q. Would you undertake to take a look at  
8 your computer when you go home and tell me subsequently,  
9 in writing, whether or not you see the Intel logo on that  
10 computer?

11 U/T A. Sure. If you like, you can put  
12 together a list of any type of requests that you may have  
13 during the course of this examination and forward that to  
14 me, and I'll be happy to follow them up.

15 86. Q. Just to let you know, the procedure is  
16 generally -- that's generally the procedure we follow, so  
17 that you will get a copy of the transcript and I'll follow  
18 up with a list of outstanding matters. We will have a  
19 timing issue, also, so we'll probably have to be fairly  
20 quick, but there shouldn't be much to do.

21 A. Okay.

22 87. Q. Now, with your knowledge of computers  
23 and the Internet and the drivers of the Internet and that  
24 sort of thing, do you agree that there are many computers  
25 in the market, in business and in people's homes that

23

1 include the "Intel Inside" logo on them?

2 A. I would assume so.

3 88. Q. You don't disagree with that, in any  
4 event?

5 A. No.

6 89. Q. You don't know or do you agree with it?  
7 You said you assume so. Do you know or not?

8 A. I don't know if there's Apple  
9 computers, which I don't think have Intel logos on them,

10 and there's a number of clones in the marketplace that I  
11 don't think have Intel markings on them. So to say what  
12 percentage of the marketplace has an Intel logo on it, I  
13 really couldn't say. But I'm sure that they have their  
14 fair share.

15 90. Q. A significant percentage, you'd agree  
16 with that?

17 A. I would say so.

18 91. Q. Have you ever seen any advertisements  
19 that include the "Intel Inside" logo?

20 A. Well, yes.

21 92. Q. Have you seen those types of  
22 advertisements on the Internet?

23 A. I don't recall seeing them on the  
24 Internet.

25 93. Q. What about on the Intel web site?

24

1 A. Actually, that's a very good question.  
2 I went there yesterday to look at their web site, and on  
3 the main home page there was no marking of any kind  
4 indicating "Intel Inside".

5 94. Q. On the main page?

6 A. Yes.

7 95. Q. Did you go through the database at all  
8 or the web page at all?

9 A. I looked at some. I don't recall  
10 exactly which ones.

11 96. Q. Do you agree that the Intel Inside logo  
12 appears on some pages?

13 A. Some pages, yes, some pages, but not  
14 the home page.  
15 97. Q. Have you ever seen advertisements  
16 displaying the "Intel Inside" logo on television?  
17 A. I'm sure I may have in the past.  
18 98. Q. You're not sure of when or where?  
19 A. No.  
20 99. Q. What about magazines, newspapers,  
21 flyers, that sort of thing, print advertisement? Have you  
22 seen that?  
23 A. Yes, I've seen that in the last while.  
24 100. Q. What about billboards or other outdoor  
25 advertisements? Have you seen it on those?

25

1 A. I don't recall seeing billboard  
2 advertising.  
3 101. Q. What about at point of sale? Have you  
4 ever noticed the "Intel Inside" logo in a retail store?  
5 A. At point of sale? I can't say that I  
6 have.  
7 102. Q. Do you spend much time in computer  
8 stores or computer-related stores?  
9 A. I pop into them to see, whenever I need  
10 something, you know, if I need any office supplies or if  
11 there's something particularly that I'm investigating,  
12 like hand-held computers or something.  
13 103. Q. You've never noted the "Intel Inside"  
14 logo during those --  
15 A. Not at the point of sale.

16 Reporter: Can you speak one at a time,  
17 please?

18 BY MR. ISAAC:

19 104. Q. You have never noted advertisements  
20 having the "Intel Inside" logo inside those stores?

21 A. Not at the point of sale.

22 105. Q. I'm broadening it now. Inside the  
23 stores?

24 A. The actual logo doesn't -- I couldn't  
25 tell you exactly where I saw it.

26

1 106. Q. Okay, fair enough. Do you agree with  
2 me that the "Intel Inside" trade-mark is an extremely  
3 well-known trade-mark in Canada?

4 A. I would say that I believe that it's --  
5 to the business community and heavy computer users, that  
6 it's well known.

7 107. Q. Now, during your time at Amex, did you  
8 have any experience in trade shows?

9 A. Some. Just, in essence, basically  
10 attending trade shows.

11 108. Q. And during that time, did you have any  
12 experience in web page design?

13 A. Basically, the web didn't really exist  
14 at that time during the course -- basically, in my  
15 opinion, the Internet really started to take off around  
16 1996, 1997, and web page design was a relatively new  
17 field.

18 109. Q. Have you jumped into that field now?

19 A. Well, as I said earlier, I do have a  
20 certificate in multi-media design, basically web page  
21 design and graphic animation software knowledge, but in  
22 terms of actually doing work like that for others, that's  
23 not what I do.

24 110. Q. You mentioned the multi-media  
25 certificate again. Multi-media I don't usually associate

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1 with the Internet, per se. Am I wrong in that?

2 A. I would say so.

3 111. Q. I'm usually looking at it as the games  
4 I get for my kids and that sort of thing as being  
5 multi-media.

6 A. No, I would say that, you know,  
7 multi-media is a combination of sound, graphics, motion,  
8 as in animation, video, and it's the combination of all  
9 these elements that basically make up the Internet. And  
10 so basically it's made up of multi-media.

11 112. Q. Paragraph 2, you go on to state that  
12 the Ideas Inside business would be one where IP in various  
13 forms is bought and sold and discussed, but you go on to  
14 say that you've delayed due to the present opposition, and  
15 I think you have already confirmed that today; is that  
16 correct?

17 A. Yes.

18 113. Q. So you would go ahead but for this  
19 opposition and the one in the States; is that correct?

20 A. That's correct.

21 114. Q. And can you confirm for me the truth of

22 the statements in paragraph 2 in its entirety?

23 A. Can I confirm for you?

24 115. Q. Yes.

25 A. How would you like me to do that?

28

1 116. Q. You stand by everything you've said  
2 here; is that correct?

3 A. Yes.

4 117. Q. Do you have any experience in trade-  
5 mark matters, Mr. Emeny?

6 A. As I said, once I commenced looking at  
7 starting my own business, I embarked on -- I realized that  
8 trade-marks were an important part of any business moving  
9 forward, and so I commenced learning about trade-marks at  
10 that stage.

11 118. Q. And what did you do to try and learn  
12 about trade-marks?

13 A. Well, basically I accessed the Canadian  
14 Intellectual Property Office and read the materials that  
15 they had. I ordered documents from the Canadian  
16 Intellectual Property Office outlining what trade-marks  
17 were and the application procedures that were in use, and  
18 essentially continued to learn more as I proceeded in my  
19 business endeavours.

20 119. Q. So you were -- you didn't have any  
21 formal training; You trained yourself; is that correct?

22 A. Yes.

23 120. Q. Self study sort of thing?

24 A. Yes.

25

121.

Q. And through the learning process, did

29

1 you also pick up any knowledge regarding trade-mark  
2 searching?

3

A. Yes.

4

122. Q. So you have a basic understanding of  
5 how to search trade-marks; is that correct?

6

A. Yes.

7

123. Q. And obviously you picked up some  
8 knowledge regarding the procedure for filing trade-marks?

9

A. Yes.

10

124. Q. And also for prosecuting trade-marks  
11 through the Trademarks Office, presumably?

12

A. As I said, I've been learning as I go  
13 and getting the information that I need to deal with  
14 things as they come up.

15

125. Q. Have you ever assisted anyone else in  
16 respect of trade-mark matters?

17

A. Not really.

18

126. Q. Not really, so just sort of?

19

A. Well, I don't know what you mean

20

assisted --

21

127. Q. Have you done any work for anyone --

22

A. No.

23

128. Q. -- in respect of filing trade-mark --

24

A. No.

25

129. Q. -- applications, searching trade-mark

1 applications?

2 A: No.

3 130. Q: And do you have any training relating  
4 to domain name searching or filing?

5 A: Well, I have registered domain names.

6 131. Q: So it's only on your own behalf?

7 A: Yes.

8 132. Q: You've never done that as a service for  
9 anybody else?

10 A: No.

11 133. Q: And how did you learn how to do that?

12 A: Well, as I said, when I started on  
13 the -- on my way to starting up my own business, domain  
14 names were a big part of establishing a business presence  
15 on the Internet, and so I looked at Internet service  
16 providers and got information on how -- who the registrars  
17 were. I believe it was Network Solutions at the time.  
18 They were the primary domain.

19 134. Q: Top level domain holders, in a sense?

20 A: Exactly, at the time. And so I went to  
21 them and I read the instructions on how to submit a domain  
22 name and ...

23 135. Q: And proceeded to do so?

24 A: And proceeded to do so.

25 136. Q: And do you have any experience or

1 training with respect to searching and filing trade name

2 applications?

3 A. When you say -- can you clarify that  
4 for me? I'm not sure what you mean, filing trade names.

5 137. Q. Trade names are -- for instance, I  
6 think you have Internet Surfwear as a registered business  
7 name, business names?

8 A. Right.

9 138. Q. Maybe you understand that.

10 A. Well, some. I researched the names  
11 that I had.

12 139. Q. How did you do that?

13 A. Essentially I went up to Yonge Street.  
14 They have business registration service and you can pay, I  
15 believe -- I'm not quite sure on the fee, but fill out  
16 some forms and submit your business and essentially  
17 establish a business identity.

18 140. Q. Now, will you agree with me, sir, that  
19 you filed numerous U.S. and Canadian trade-mark  
20 applications and domain name applications since 1987?

21 A. Since 1987?

22 141. Q. '97, sorry.

23 A. 1997 --

24 142. Q. I'm always a decade behind.

25 A. I think that, you know, "a lot" is a

32

1 relative term, but I have submitted some, yes.

2 143. Q. And you don't have any registrations  
3 yet, is that correct -- trade-mark, I'm sorry,

4 registrations?

5 A. Actual trade-mark registrations, no.  
6 144. Q. But you do have some domain names  
7 registered in Canada and elsewhere, correct?  
8 A. Yes. Sorry, if I may follow up on  
9 that?  
10 145. Q. Sure.  
11 A. You mentioned Internet Surfwear. That  
12 is one of the businesses that we do operate, and we have  
13 generated revenue from that business and we're continuing  
14 to develop that once -- when we're ready, we will register  
15 that. It is ready to be registered.  
16 146. Q. You said that you generate some revenue  
17 from that business. Is it significant revenue?  
18 A. No. As I said it's just -- no, it's  
19 not significant.  
20 147. Q. So it's starting up, is it?  
21 A. Yes. But it shows great potential.  
22 148. Q. Now, do you have any domain name  
23 registrations other than .ca or .com registrations?  
24 A. Yes.  
25 149. Q. What do you have?

33

1 A. I have ideasinside.net.  
2 150. Q. Anything else?  
3 A. At the moment, I don't believe I have  
4 any others.  
5 151. Q. And you've filed trade-mark  
6 applications in Canada and in the United States. Anywhere  
7 else?

8

A. No.

9

152. Q. Now, I've got copies of particulars of the various Canadian trade-mark applications that you've filed, and I would like to run through them. We have already marked the Ideas Inside application, so I think probably the best way to do this is I'm just going to show them to you, the particulars, as we get to them. And if you can confirm for me that it's an application you've filed, we will mark it as an exhibit and we will go through in an organized fashion.

10

11

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14

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18

19

20

21

22

Now, my understanding, based on our conversation to date and also the particulars that I have of the trade-mark applications that we located, is that you first filed applications in February of 1997; is that correct?

23

A. Which one was that?

24

153. Q. Internet Surfwear.

25

A. Yes.

34

1

154. Q. And Rookiesaurus?

2

A. Yes.

3

155. Q. I'm going to show you the Internet surfwear particulars. Will you confirm for me that that's true particular of the application you filed?

4

5

6

A. It looks like it.

7

156. Q. We'll mark that as Exhibit 2.

8

EXHIBIT NO. 2: Internet Surfwear

9

particulars.

10

BY MR. ISAAC:

11 157. Q: And I'll show you the Rookiesaurus,  
12 also. Can you confirm again that that's true particulars?  
13 A. It looks like it.  
14 158. Q. And I gather, since you've accessed the  
15 CIPO web site, that you're used to this form of  
16 particulars of applications; is that fair? You've  
17 probably see them electronically. This is a printout --  
18 A. Yes.  
19 159. Q. -- from that. And we'll mark that as  
20 Exhibit 3, the Rookiesaurus.  
21 EXHIBIT NO. 3: Rookiesaurus particulars.  
22 BY MR. ISAAC:  
23 160. Q. Now, both of those applications,  
24 Internet Surfwear and Rookiesaurus, were filed based on  
25 proposed use in Canada, correct?

35

1 A. They were filed on proposed use, yes.  
2 161. Q. And we've already confirmed you don't  
3 have any registrations, but both of those applications  
4 were actually allowed in 1998; is that correct?  
5 A. I believe so.  
6 162. Q. If you want to look at it, we can --  
7 A. No, I ...  
8 163. Q. And, essentially, since the  
9 applications were allowed, is it a correct  
10 characterization that you've been getting extensions of  
11 time in order to allow you time to file a declaration of  
12 use?  
13 A. With the Internet Surfwear, yes.

14 164. Q. Rookiesaurus was actually abandoned  
15 effective March 2002; is that correct?

16 A. I don't have the document in front of  
17 me, but I'll assume that's correct.

18 165. Q. Any time you want to see it, just let  
19 us know.

20 A. Okay. Just to touch on that point,  
21 Rookiesaurus was based on a children's story and cartoon  
22 idea, and a book was written regarding Rookiesaurus, and  
23 it was fully illustrated and it was sold as a book over  
24 the Internet.

25 166. Q. Can I just clarify? Did you write that

36

1 book?

2 A. Yes, I wrote that book.

3 167. Q. And illustrated it?

4 A. I didn't illustrate it. I hired a  
5 professional illustrator.

6 168. Q. I see. And did you offer it for sale  
7 over the Internet?

8 A. I had it offered for sale through a  
9 company called "e-matter", which was in association with a  
10 company called "Fat Brain."

11 169. Q. Did you sell a lot of copies?

12 A. No.

13 170. Q. How many?

14 A. I believe one. The company shortly  
15 thereafter changed their model of business and didn't  
16 accept new authors. They were moving into more

17 established authors to sell on their web site.

18 171. Q. Do you have any continuing intent to  
19 use the Rookiesaurus mark?  
20

A. Yes.

21 172. Q. Okay. Now, Internet Surfwear, my  
22 understanding from the particulars is that the application  
23 actually went abandoned twice; is that correct?

24 A. I'm not quite sure.

25 173. Q. If you look at the end, it has a

37

1 listing of the various steps.

2 A. Okay.

3 174. Q. Do you agree with that?

4 A. Yes.

5 175. Q. And you reinstated it twice and you  
6 currently have an extension of time to respond to the  
7 notice of allowance; is that correct?

8 A. Well, I'm allotted that time in order  
9 to continue to develop the business, so I'm taking  
10 advantage of that.

11 176. Q. And do you still intend to use the  
12 Internet Surfwear trade-mark for the wares listed in the  
13 application; is that correct?

14 A. As best I can, yes.

15 177. Q. What do you mean as best you can?

16 A. Well, yes, we intend to use them, but  
17 it may take more time to develop certain aspects of the  
18 wares than others.

19 178. Q. What do you mean?

20 A. Well, I mean that certain wares will be

21 developed and promoted and registered as in use.

22 179. Q. And other wares will not?

23 A. Initially that may be the case.

24 180. Q. why?

25 A. Well, as you know, I'm a small business

38

1 and I'm starting this up, and there may be certain aspects  
2 of this that would be -- that I'll be unable to launch  
3 immediately.

4 181. Q. Now, do you agree with me the wares  
5 that are covered in the Internet Surfwear application are  
6 also covered in your Ideas Inside application?

7 A. Have you looked at them? Are they  
8 identical?

9 182. Q. They're not identical. I think -- my  
10 reading of it, and it's a pretty long list so it's not  
11 that easy to identify quickly, is that the Ideas Inside  
12 application includes some additional wares, but otherwise  
13 essentially covers the same ambit as is in the Internet  
14 surfwear.

15 A. Yes. I believe that, as I mentioned  
16 before, I have been learning about the trade-mark process,  
17 and in order to protect the marks that I had, I wanted to  
18 make sure that nobody else could take advantage of those  
19 marks. So there was a long list of wares implemented into  
20 the trade-mark applications at the time of submission.

21 183. Q. The primary intent of the long list was  
22 to prevent other people from using those trade-marks for  
23 those wares; is that correct?

24

A. Yes.

25

184.

Q. Let's take a quick look at the clothing

39

1

wares. You can look at either Internet surfwear or Ideas

2

Inside.

3

A. Okay.

4

185.

Q. Will you confirm for me that you're not currently manufacturing any of those wares?

5

6

A. Yes.

7

186.

Q. And you are not currently having any of those wares manufactured; is that correct?

8

9

A. With regards to Ideas Inside or

10

Internet surfwear?

11

187.

Q. I'm talking about the wares, not the trade-marks right now. Are you having any wares of those types manufactured?

12

13

14

A. I am in negotiations with a large

15

clothing manufacturer right now to have clothes

16

manufactured for the Internet surfwear brand.

17

188.

Q. What manufacturer?

18

R/F

A. I don't wish to disclose that at this

19

time.

20

189.

Q. Have you reached an agreement with

21

them?

22

A. No, we are in discussion.

23

190.

Q. What type of manufacturer?

24

A. A large clothing manufacturer.

25

191.

Q. What type of clothing do they

1 manufacture?

2 A. They manufacture T-shirts, sweat  
3 shirts, track pants, hoodies and a number of other types  
4 of clothing, but those are the primary ones. They also  
5 manufacture a women's line, a baby's line.

6 192. Q. What's an "anorak"?

7 A. An anorak?

8 193. Q. It's the first ware. I may be  
9 misreading it.

10 A. I believe it is an Eskimo-type parka.

11 194. Q. Does this company you're negotiating  
12 with manufacture those?

13 A. No.

14 195. Q. And you won't tell me the name of the  
15 company; is that correct?

16 A. Yes.

17 196. Q. Is that the first company that you have  
18 negotiated with?

19 A. No.

20 197. Q. Do you have any other ongoing  
21 negotiations?

22 A. No.

23 198. Q. For production of clothing?

24 A. No.

25 199. Q. For production of anything else?

1 A. Not at this time.

2 200. Q. And I think you told me that you're  
3 currently using Internet Surfwear. Is that what you said?

4 A. Yes.

5 201. Q. And how are you using it?

6 A. Well, essentially the web site is  
7 completed and it's ready to be launched as a business. We  
8 are, as I mentioned, in negotiations with a manufacturer.  
9 we have sold this line of clothing in the past at the  
10 Hudson Bay Company over the Christmas season in 1999, when  
11 we dealt with another clothing company, and basically  
12 that's it.

13 202. Q. You said the web site is completed and  
14 ready to be launched, but it's still under construction if  
15 I try and access it on the web, correct?

16 A. Yes. Basically I've just held off the  
17 launch of the web site, because we're looking at the  
18 inventory issue. And so once we've straightened that out,  
19 then we'll launch it, which we hope to do by the end of  
20 this month.

21 203. Q. Now, you said you sold the line of  
22 clothing at the Hudson Bay Company; is that correct?

23 A. Yes.

24 204. Q. It was Christmas '99?

25 A. I believe so.

1 205. Q. And you said you had another company  
2 manufacturing. What company was that?

3 R/F A. I don't wish to say.

- 4 206. Q. what volume did you sell?  
5 R/F A. I don't think that -- I'm not -- I  
6 don't wish to say.  
7 207. Q. was it for the one short season, was  
8 it, the Christmas season?  
9 A. Yes.  
10 208. Q. what was the nature of the wares?  
11 A. Essentially it was T-shirts.  
12 209. Q. were they Fruit Of The Loom T-shirts?  
13 A. No.  
14 210. Q. And was the trade-mark affixed to the  
15 T-shirt?  
16 A. Yes.  
17 211. Q. How?  
18 A. It was sewn in as a label on the collar  
19 as our own brand of clothing.  
20 212. Q. Do you have a CA number?  
21 A. For clothing?  
22 213. Q. Yes.  
23 A. Yes.  
24 214. Q. what is it?  
25 U/T A. I don't have that. You can put that it

43

- 1 in your set of requests and I can forward that to you.  
2 215. Q. okay. Could you please provide me with  
3 the CA number? what name is it registered under?  
4 A. The CA number?  
5 216. Q. Yes.  
6 U/T A. I will have to verify that for you.

7 217. Q. Okay, I would appreciate that. Now,  
8 you have a business name registration for Internet  
9 surfwear. I think we've already mentioned that. Do you  
10 agree with that?

11 A. Yes.

12 218. Q. I think I have over-organized myself  
13 here. I'm showing you a document right now which is a  
14 business names report. Do you agree that this correctly  
15 sets out the particulars of your Internet surfwear  
16 business name registration? Is it a complete copy?

17 A. No, it's cut off there.

18 219. Q. Let me give you a complete copy. I'm  
19 sorry, I had that copied this morning and didn't check it  
20 before I came over here. I notice that other one isn't  
21 complete...

22 A. That's correct.

23 220. Q. Do you agree with me that the business  
24 name report lists the activity of Internet surfwear as  
25 being retailing clothes over the Internet, correct?

1 A. Yes.

2 221. Q. But you've never done so with that  
3 name; is that correct?

4 A. Well, essentially -- as I said, we are  
5 looking at starting up a business, and, of course,  
6 everybody can attest to the difficulty of starting up a  
7 business. There's a big learning curve. There's lots to  
8 learn and you're learning every day while you're in the  
9 trenches. And so when that was filed, that was the name

10 that was tested, and a web site was launched shortly  
11 thereafter and it was basically testing the concept of  
12 Internet surfwear and the clothing line that we had at the  
13 time and the marketing idea that we had at the time. And  
14 then after approximately a year, that site was removed so  
15 that we could modify the line of clothing and relaunch it  
16 with much more vibrant, cool multi-media graphics and  
17 styles that fit the market that we learned was out there.

18 222. Q: And you are still in progress with that  
19 endeavour?  
20

21 A: Yes.

22 223. Q: I want to mark the business name  
23 registration for Internet surfwear as the next exhibit,  
24 Exhibit 4.

25 EXHIBIT NO. 4: Business name registration  
for Internet Surfwear.

45

1 BY MR. ISAAC:

2 224. Q: You also have a business name  
3 registration for Baced Communications, correct?

4 A: That's correct.

5 225. Q: And I'm showing you a copy of a  
6 business name report. Will you confirm for me that gives  
7 the particulars of your Baced Communications business name  
8 registration?

9 A: Yes. Essentially, the term Baced  
10 Communications, that was -- we were looking at that being  
11 -- you know, moving forward, incorporating that name and  
12 making that the parent company of the other endeavours and

13 businesses that we were going to pursue. So that is the  
14 reason why we had that registered.

15 226. Q. Are you currently using Baced  
16 Communications? I think you said that's the company name  
17 you're operating under.

18 A. Yes.

19 227. Q. Are you currently using it?  
20 A. Well, it's the company that we're  
21 operating under.

22 228. Q. Are you offering any wares or services  
23 through that company?

24 A. Well, as I say, Internet Surfwear was  
25 launched and we are about to relaunch it.

46

1 229. Q. You said Internet Surfwear was  
2 launched, and I think you talked about having some kind of  
3 web site. I've got a bisnetmaximizer.com/baced printout.  
4 Is this what you were talking about?

5 A. I'm not sure. I can't see it. This  
6 was in relation to Internet Surfwear. As I've said, as a  
7 young entrepreneur starting out and getting our feet wet  
8 in the business, we were looking at increasing our  
9 revenue. Because Internet Surfwear was a brand new line  
10 of clothing that would take time to develop, we were going  
11 to support that with a promotional clothing business, as  
12 well, and that's how we put this together. And so that's  
13 how you have this information, this web site.

14 This web site was an endeavour to promote a  
15 promotional clothing business on the Internet.

16 230. Q. I see. And did that business ever get  
17 operating?

18 A. No. Shortly thereafter we realized  
19 that we were more interested in pursuing the Internet  
20 Surfwear line of clothing than the promotional line of  
21 clothing, so we concentrated our efforts in that area.

22 231. Q. So you decided you'd rather do a line  
23 of clothing under a brand name as opposed to doing  
24 promotional clothing; is that correct?

25 A. Yes.

47

1 232. Q. And promotional clothing, that would be  
2 where you put people's stuff on --

3 A. Yes. Essentially, putting Smart &  
4 Biggar on a golf shirt and that type of clothing, golf  
5 caps and so on.

6 233. Q. But you never did that?

7 A. I did some work in that area, yes.

8 234. Q. How did you apply the promotional  
9 material to the clothing?

10 A. Essentially, I spoke to companies and  
11 told them I was in that business and that I could do  
12 T-shirts and caps for them, and then I fulfilled several  
13 jobs in that arena.

14 235. Q. And how did you fulfil the jobs? Did  
15 you have a silk screening operation of your own?

16 A. No, not of my own. I hired those  
17 services.

18 236. Q. You hired those services. And did you

19 put logos on shirts for various companies?  
20 A. Yes.  
21 237. Q. Logos on hats, that sort of thing?  
22 A. Yes.  
23 238. Q. Was that a fair sized business for you?  
24 R/F A. If you care to just clarify it for me.  
25 I don't see how all this discussion has anything to do

48

1 with the opposition proceeding here or the affidavit  
2 information.  
3 239. Q. Did you ever apply any Intel -- let's  
4 say the "Intel Inside" logo to any clothing?  
5 A. No.  
6 240. Q. Any Intel logo?  
7 A. No.  
8 241. Q. Did you ever have any requests for the  
9 application of an Intel logo?  
10 A. No.  
11 242. Q. Now, looking at again at the Intel  
12 Inside application, have you got that -- sorry, Ideas  
13 Inside application. I think, based on what you've already  
14 said and what we discussed, you will agree with me that  
15 this list of clothing wares is essentially designed to run  
16 the gamut of possible clothing; is that correct?  
17 A. It's a list of a number of wares  
18 designed to protect the trade-mark.  
19 243. Q. How did you come up with that list?  
20 R/F A. I don't wish to tell you.  
21 244. Q. Why do you not wish to tell me?

22 A. Because I don't see how it's -- how is  
23 it relevant to the proceedings here today?

24 245. Q. You've got a huge list of wares that  
25 you've come up with from somewhere --

49

1 A. Right.

2 246. Q. -- and there's allegations in this  
3 opposition that you don't have a true intent to or  
4 capability to use all those wares. So I think it's very  
5 relevant.

6 A. Well, as I stated, they were listed  
7 there to protect the trade-mark.

8 247. Q. How did you come up with it?

9 R/F A. I don't wish to answer that question.

10 248. Q. From what you've already said, you'll  
11 agree with me that you don't have contacts at this time  
12 with manufacturers who would be capable of manufacturing  
13 all those types of clothing; is that correct?

14 A. Not at this time.

15 249. Q. And from what you've said, am I correct  
16 in assuming that you don't have any experience in the  
17 manufacture of clothing?

18 A. The actual manufacturing of it, the  
19 actual sewing of it, putting it together is -- is not the  
20 direct business that I'm in, the manufacturing end of it.  
21 I'm in the development and the promotion of it.

22 250. Q. But you don't have any experience in  
23 the manufacturing side; is that correct?

24 A. Well, as I said, I started on this

1 as I go and I'm gaining more experience with each passing  
2 year and gaining the confidence to take on more as I go  
3 forward, but at this point -- and to that end, I have  
4 developed relationships with several manufacturers, and so  
5 that type of activity would be outsourced.

6 251. Q. Who are those manufacturers?

7 R/F A. I don't wish to tell you.

8 252. Q. Aside from what we have discussed so  
9 far about your self-learning and your brief forays into  
10 the clothing industry, am I correct in assuming that you  
11 don't have any experience in marketing clothing?

12 A. Well, as I said, we had line of  
13 clothing in the Hudson Bay Company and have done some  
14 promotional clothing, and so to what degree you would say  
15 experience, I'm not quite sure.

16 253. Q. That's the extent of your experience,  
17 though, what you've talked about today? You don't have  
18 any other experience?

19 A. Well, I'm very close to completing a  
20 marketing certificate at the University of Toronto, which  
21 gives me the basis for doing market evaluations, swat  
22 analysis.

23 254. Q. Are you attending a course full time at  
24 the University of Toronto?

25 A. No, I'm not.

1 255. Q. You said you're close to completing a  
2 marketing certificate; is that correct?

3 A. Yes.

4 256. Q. What is that?

5 A. That means that I believe I have  
6 completed five or six of the eight credits required.

7 257. Q. And you're doing that part time; is  
8 that correct?

9 A. Yes..

10 258. Q. Now, you keep referring, Ms. Emeny, to  
11 a piece of paper that's apparently in front of your  
12 husband. Anything that's on the table I'm actually  
13 entitled to see, so can I see it, please?

14 MS. EMENY: Yes, of course. It's our  
15 statement of why we're here today, to answer questions in  
16 regard to the affidavit, and this is not related to the  
17 affidavit here. And if it's not related, he's not in the  
18 position to give you his business plans or the other  
19 information that you're asking for, as we're not business  
20 partners with Intel.

21 BY MR. ISAAC:

22 259. Q. Now, in the Ideas Inside application, I  
23 believe the next general category of wares after the  
24 clothing wares is cosmetic and related items. Do you  
25 agree with that?

1 A. Yes.

2 260. Q: And, again, that list essentially runs  
3 a fairly broad gamut of those types of wares; is that  
4 correct?

5 A. That's correct.

6 261. Q: How did you come up with that list?

7 A. Basically, just to help you along with  
8 this, all the wares that were put in here, as I said  
9 earlier, we have very ambitious plans for businesses, and  
10 as businesses evolve over time, we were looking at making  
11 sure that we protected our trade-mark in all areas and  
12 provide ourselves with sufficient time to get the business  
13 up and running, that we protected ourselves with a number  
14 of wares in the trade-mark.

15 262. Q: Do you have any contacts in the  
16 cosmetic and related items industry?

17 R/F A. I don't see how it's related.

18 263. Q: Do you have any experience in respect  
19 of the manufacturer of cosmetics and related items as  
20 listed in the application?

21 R/F A. I don't see how that's related.

22 264. Q: Are you going to take the same position  
23 in respect of all the other types of wares and services  
24 that are listed here?

25 A. Well, I believe I answered your

53

1 question, that there's a long list of wares there in order  
2 to protect the development of the trade-mark name.  
3 265. Q: You answered that question. I'm now  
4 asking you specific questions about the specific types of

5 wares and whether you have any contacts in those areas,  
6 and whether you have the capability or experience in  
7 respect of manufacturing those types of wares?

8 A. Well, I think that -- you know, that is  
9 part of the plan that we would have, and I don't really  
10 think that there's anything related to that information  
11 you are looking for in regard to the proceedings here  
12 today.

13 266. Q. Well, we've already had a couple of  
14 discussions over why I'm asking these types of questions.  
15 It is the same basis. I want to know what your experience  
16 is in respect of these various types of wares?

17 A. And as I said, we've been developing  
18 our business over time and we're learning things as we go.  
19 And as I said, I do have marketing knowledge, Internet  
20 knowledge, and we are very ambitious in our plans for our  
21 business. And so these wares were listed to protect the  
22 name of the trade-mark or the trade-mark name.

23 267. Q. What about the services, restaurant  
24 services?

25 A. The same would apply.

54

1 268. Q. Same thing?

2 A. Yes.

3 269. Q. And it would apply with respect to all  
4 of the services; is that correct?

5 A. What specifically?

6 270. Q. I just asked a question. Does the same  
7 concept, that you'd listed those in order to try and

8 protect the trade-mark for use by other people, apply in  
9 respect of all the services that you have listed in the  
10 application?

11 A. well, essentially we have our business  
12 plan, and we have listed wares and services to protect the  
13 trade-mark names so that we can take the steps necessary  
14 to launch our plan.

15 271. Q. Your plan I think -- in fact, the list  
16 of wares has progressed, in a sense, over time; do you  
17 agree with that? You had a somewhat shorter list of wares  
18 in the Internet Surfwear application, for instance, than  
19 you have in your Ideas Inside application. Do you agree  
20 with that?

21 A. I didn't count the words.

22 272. Q. Do you have a recollection of whether  
23 or not this long list of wares changed?

24 A. No, I do not.

25 273. Q. Take a look at the Ideas Inside

55

1 application.

2 A. I've got it right here.

3 274. Q. Again, from a brief review of the  
4 various applications, led me to believe that you added the  
5 entirety of number 13, toys, et cetera, and I believe  
6 number 14, over and above what was listed in the Internet  
7 surfwear application. Is it possible?

8 A. If it's there, I guess it's possible.

9 275. Q. You also added some services; is that  
10 correct?

11 A. I don't have the Internet Surfwear  
12 trade-mark in front of me so the --

13 276. Q. It's right beside you.

14 A. Yes. Some of the services would have  
15 been modified -- have been added, because Ideas Inside is  
16 a different type of business and it holds tremendous  
17 potential, so we added several various services.

18 277. Q. Again, trying to protect the mark so  
19 that no one else could use those wares and services;  
20 that's the basic idea?

21 A. Yes. In essence, until we got -- yes,  
22 until we developed -- until we put our plan, launched our  
23 business.

24 278. Q. Okay. Now, my understanding is,  
25 subsequent to the filing of the Internet Surfwear and

56

1 Rookiesaurus mark, you on August 19th of 1997 filed to  
2 register the trade-mark "Hatglove." I'm showing you  
3 particulars of that. Do you agree that those are true  
4 particulars in an application you filed?

5 A. Yes.

6 279. Q. And the same day, you filed an  
7 application to register what's referred to as an SI  
8 design. I'm showing you particulars of that. Do you  
9 agree that that's true?

10 A. The SI design is the logo for Internet  
11 Surfwear.

12 280. Q. It's referred to as "SI design," isn't  
13 it?



17 286. Q. On May 22nd I understand from the  
18 particulars that I'm going to show you that you filed to  
19 register "Cyberspace Essentials"; is that correct?

20 A. Yes.

21 287. Q. And you agree that those are true  
22 particulars of the application filed?

23 A. I'm not investigating every line and  
24 every paragraph of these --

25 288. Q. Yes, fair enough.

58

1 A. -- documents that you give to me.

2 289. Q. It generally accords to your  
3 recollection of --

4 A. Yes.

5 290. Q. Okay. And that mark was held up by an  
6 opposition by Head Sports Aktiengesellschaft; is that  
7 correct?

8 A. Yes.

9 291. Q. And did the opposition proceed?

10 A. No.

11 292. Q. What happened?

12 A. They asked me to remove some wares that  
13 they felt conflicted with their client's mark, and I did.

14 293. Q. And what were those wares?

15 A. I don't recall.

16 294. Q. Did you enter into a formal settlement  
17 agreement with that company?

18 R/F A. I don't believe that's relevant.

19 295. Q. I would like a copy of that settlement  
20 agreement, if there is one. You can say "refused" if you

21 want.

22 R/F A. Refused.

23 296. Q. Did any money change hands as a result  
24 of that settlement --

25 R/F A. Refused.

59

1 297. Q. -- if there was one? Okay. I believe  
2 you have filed an application to register "wacky web wear"  
3 on the same date, May 22nd, 1998, and I'm showing you  
4 particulars of that application. Does this accord with  
5 your recollection of same?

6 A. Yes.

7 298. Q. That mark was ultimately abandoned; is  
8 that correct?

9 A. I believe that it was not allowed,  
10 because they found it to be confusing with another name.  
11 I know they are very diligent at the Canadian Intellectual  
12 Property Office, and they found this to be in conflict  
13 with another trade-mark. And so I believe they told me  
14 that it wouldn't be allowed proceed.

15 299. Q. They refused to register it and you  
16 decided to let it go; is that correct?

17 A. Yes.

18 300. Q. we will mark the Cyberspace Essentials  
19 as Exhibit 8 and wacky web wear as Exhibit 9.  
20 EXHIBIT NO. 8: Particulars of Cyberspace  
21 Essentials application.

22 EXHIBIT NO. 9: Particulars of wacky web  
23 wear application.

24

BY MR. ISAAC:

25

301. Q. Now, on May 25, 1998, which I guess is

60

1 three days after the other two filings that we just  
2 discussed, my understanding is that you filed an  
3 application to register the trade-mark "Byte Size  
4 Clothing"?

5 A. Right.

6 302. Q. I'm showing you particulars of that.  
7 Does that accord with your recollection, sir?

8 A. Yes.

9 303. Q. Let's mark that as Exhibit 10.  
10 EXHIBIT NO. 10: Particulars of Byte Size  
11 Clothing application.

12 BY MR. ISAAC:

13 304. Q. And that application is still pending  
14 at this time, correct?

15 A. Yes.

16 305. Q. And you've been getting extensions of  
17 time to file a declaration of use? Is that what's going  
18 on?

19 A. Yes.

20 306. Q. The next application in my file is an  
21 application which was filed on July 10, 1998 to register  
22 the trade-mark "Brain Buzz." Do you recall filing that  
23 mark?

24 A. Yes.

25 307. Q. And do you agree that these particulars

1 accord with your recollection of that matter?

2 A: It looks like it.

3 308. Q: And I gather from the particulars that  
4 the trade-mark is in opposition. The application is in  
5 opposition; is that correct?

6 A: Yes.

7 309. Q: Is it currently in opposition?

8 A: Yes.

9 310. Q: What is the status of that opposition  
10 proceeding?

11 R/F A: I don't believe it's related to this.

12 311. Q: There was an opposition brought by two  
13 different companies, correct, the Yomega Corporation and  
14 Fossil, Inc.?

15 A: Yes.

16 312. Q: Are both oppositions still proceeding?

17 R/F A: It is not related.

18 313. Q: Have you had any negotiations with  
19 either of those opponents to try and settle the matter?  
20 A: No.

21 314. Q: Exhibit 11 is the particulars of the  
22 Brain Buzz application.

23 EXHIBIT NO. 11: Particulars of Brain Buzz  
24 application.

25 BY MR. ISAAC:

1 315. Q. You also filed an application on July  
2 10, 1998 to register the trade-mark "Virus Hunter", I  
3 believe, and I'm showing you particulars. Does that  
4 accord with your recollection?

5 A. Yes.

6 316. Q. And that application has been allowed  
7 and is currently waiting for a declaration of use; is that  
8 correct? Do you want to see it again?

9 A. Yes. Yes.

10 317. Q. We'll mark that as the next exhibit,  
11 Exhibit 12.

12 EXHIBIT NO. 12: Particulars of Virus  
13 Hunter application.

14 BY MR. ISAAC:

15 318. Q. Now, on July 10, 1998 you filed an  
16 application to register the trade-mark "Millenniumaire."  
17 Maybe you want to pronounce that for me better?

18 A. Millenniumaire.

19 319. Q. Is that correct? I'll show you the  
20 particulars and you can determine that it accords with  
21 your recollection.

22 A. As I have said, I haven't really looked  
23 at them, but it looks to be the case.

24 320. Q. And I understand -- we will mark that  
25 as the next exhibit, which is 13.

1 EXHIBIT NO. 13: Particulars of  
2 Millenniumaire application

3 BY MR. ISAAC:

4 321. Q. I understand that on August 12th of the  
5 same year, 1998, you filed an application to register  
6 Millenniumaire with a slightly different spelling; is that  
7 correct?

8 A. That's correct.

9 Q. And I'm showing you particulars, and  
10 that accords with your recollection?

11 A. Yes.

12 322. Q. Now, both of those applications were  
13 opposed; do you agree with that?

14 A. Opposed?

15 323. Q. Yes.

16 A. Yes.

17 324. Q. And you ultimately abandoned both  
18 applications; is that correct?

19 A. Yes.

20 325. Q. Was the abandonment as a result of the  
21 oppositions?

22 A. Essentially, no. The termination  
23 "Millenniumaire" was a combination of the Millennium, the  
24 year 2000, and "aire", a millionaire, and so once the  
25 Millennium passed, the opportunity to use that mark was

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1 not available.

2 --- Recess at 11:15 a.m.

3 --- Upon resuming at 11:30 a.m.

4 BY MR. ISAAC:

5 326. Q. We were talking about the

6 Millenniumaire applications. We marked the first one. I

7 would like to mark the second one as Exhibit 14.

8 EXHIBIT NO. 14: Particulars of  
9 Millenniumaire application.

10 BY MR. ISAAC:

11 327. Q. And we discussed the applications, and  
12 I gather you essentially lost interest as a result of the  
13 timing. I just wanted to make sure that there was no  
14 agreement with the opponents in those oppositions between  
15 you and the owners?

16 A. That's correct.

17 328. Q. I've got another application filed  
18 August 12, 1998, "Internet Surf Suit." I'll show you the  
19 particulars, and you can confirm that accords with your  
20 recollection?

21 A. Yes.

22 329. Q. And that's another allowed application  
23 that is waiting for a declaration of use; is that correct?

24 A. Yes. That trade-mark relates to the  
25 Internet surfwear line clothing.

65

1 330. Q. And you filed another application on  
2 August 12th, 1998 to register "Just For Fun." I'm showing  
3 you the particulars of that does. Does that accord with  
4 your recollection?

5 A. Yes.

6 331. Q. And that mark is now abandoned; is that  
7 correct?

8 A. No. I believe that had a corresponding  
9 conflict with other trade-marks at the Intellectual

10 Property Office, and so they denied the --

11 332. Q. They refused registration and you let  
12 it go?

13 A. Yes.

14 333. Q. We will mark the Internet surf suit  
15 application as Exhibit 15 and the Just For Fun application  
16 as Exhibit 16.

17 EXHIBIT NO. 15: Particulars of Internet  
18 surf suit application.

19 EXHIBIT NO. 16: Particulars of Just For  
20 Fun application.

21 BY MR. ISAAC:

22 334. Q. I've got particulars of an application  
23 apparently filed on January 10, 2000 for the trade-mark  
24 "Multimedia Pocket." Will you confirm that the  
25 particulars accord with your recollection of that

66

1 application?

2 A. Yes.

3 335. Q. And we'll mark -- and, again, that one  
4 is waiting for a declaration of use; is that correct?

5 A. Yes. That Multimedia Pocket trade-mark  
6 is part of the marketing program for the Internet Surfwear  
7 line of clothing.

8 336. Q. We'll mark that as Exhibit 17, I  
9 believe it is.

10 EXHIBIT NO. 17: Particulars of Multimedia  
11 Pocket application.

12 BY MR. ISAAC:

13 337. Q. I'm showing you now an application  
14 apparently filed August 10 of 2000 for the trade-mark  
15 "Fake Headlines." Do the particulars accord with your  
16 recollection of that one?

17 A. Yes.

18 338. Q. We will mark that as Exhibit 18.

19 EXHIBIT NO. 18: Particulars of Fake  
20 Headlines application.

21 BY MR. ISAAC:

22 339. Q. And that application was just recently  
23 advertised; is that correct?

24 A. Advertised June 12th, 2002.

25 340. Q. Have you used that trade-mark yet?

67

1 A. No.

2 341. Q. Another application was apparently  
3 filed on November 21 of 2000 to register the trade-mark  
4 "Email Me!" And I'm showing you the particulars of that  
5 one. Does that accord with your recollection?

6 A. Yes. In addition to that is another  
7 marketing trade-mark for the line, clothing line Internet  
8 surfwear.

9 342. Q. We will mark that as Exhibit 19.

10 EXHIBIT NO. 19: Particulars of Email Me!  
11 application.

12 BY MR. ISAAC:

13 343. Q. And there's an application filed  
14 January 26th, 2001 for the trade-mark "Vood." I'm showing  
15 you the particulars. Does that accord with your

16 recollection?

17 A. Yes.

18 344. Q. We will mark that as Exhibit 20.

19 EXHIBIT NO. 20: Particulars of Vood  
20 application.

21 BY MR. ISAAC:

22 345. Q. And I'm showing you an application  
23 apparently filed January 26th, 2001 for the trade-mark  
24 "Vigarette." I'm showing you the particulars of that.  
25 Does that accord with your recollection?

68

1 A. Yes.

2 346. Q. And we will mark that as Exhibit 21.  
3 EXHIBIT NO. 21: Particulars of Vigarette  
4 application.

5 BY MR. ISAAC:

6 347. Q. And, finally, I have an application  
7 currently filed on March 18, 2002 for the trade-mark  
8 "2wrist." I'll show you particulars of that, and can you  
9 confirm that that accords with your recollection of the  
10 application?

11 A. Yes.

12 348. Q. That will be Exhibit 22.

13 EXHIBIT NO. 22: Particulars of 2wrist  
14 application.

15 BY MR. ISAAC:

16 349. Q. We've identified 21 applications that  
17 you've filed in Canada, and we've just run through them.  
18 To your recollection, are there any others that you have

19 filed in Canada?  
20 A. I have filed one more recently.  
21 350. Q. And what's that?  
22 A. VEWS, Virtual News Network.  
23 351. Q. That is part of the mark?  
24 A. Yes.  
25 352. Q. VEWS, Virtual News Network?

69

1 A. It's just underneath it, the virtual  
2 News Network.  
3 353. Q. would you provide me particulars of  
4 that filing, please?  
5 U/T A. Sure.  
6 354. Q. And since you recently filed it,  
7 presumably it's just pending in the office, is it?  
8 A. I assume so.  
9 355. Q. There's been no action yet. Now, I  
10 understand that you've also applied for a number of trade-  
11 marks in the United States; is that correct?  
12 A. Some.  
13 356. Q. I've located five, and I guess we'll  
14 just identify them. First, there's the IS Design. Do  
15 these particulars accord with your recollection of that  
16 application that you filed?  
17 A. Yes, that's Internet Surfwear logo  
18 filed in the U.S. for growth into the U.S. market.  
19 357. Q. We will mark that as Exhibit 23.  
20 EXHIBIT NO. 23: Particulars of IS Design  
21 application for U.S. market.

22

23

358. Q. And the next one I'm showing you is an application to register the trade-mark Ideas Inside. Will you confirm that that accords with your recollection of

24

25

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1

that filing?

2

A. It appears to.

3

359. Q. We will mark that as Exhibit 24.

4

EXHIBIT NO. 24: Particulars of Ideas

5

Inside application for U.S. market.

6

BY MR. ISAAC:

7

360. Q. Now, when you look at the -- well, let

8

me just ask you directly. Have you claimed use of that

9

mark in the United States?

10

A. Which mark?

11

361. Q. Ideas Inside.

12

A. No.

13

362. Q. There's reference to an individual who

14

is the domestic representative named Brian Hall. Do you

15

know who Brian Hall is?

16

A. Yes.

17

363. Q. Who is he?

18

R/F A. It's not related to this.

19

364. Q. Is he a trade-mark agent?

20

R/F A. It's not related to this.

21

365. Q. I'm showing you another printout of

22

particulars regarding a filing for Internet Surf Suit.

23

Does that accord with your recollection of your filing for

24

that application?

25

A. It appears to.

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1 366. Q. And we will mark Internet surf suit as  
2 Exhibit 25.

3 EXHIBIT NO. 25: Particulars of Internet  
4 surf suit application for U.S. market.

5 BY MR. ISAAC:

6 367. Q. And you've also got Internet Surfwear.  
7 If you can confirm that for me, we will mark it as Exhibit  
8 26.

9 A. Yes.

10 EXHIBIT NO. 26: Particulars of Internet  
11 surfwear application for U.S. market.

12 BY MR. ISAAC:

13 368. Q. And, finally, an application for When  
14 You're -- what is it, when You're Going There?

15 A. It appears to be.

16 369. Q. We'll mark that as Exhibit 27.

17 A. It's When You're Going Places.

18 370. Q. When You're Going Places, thank you.

19 EXHIBIT NO. 27: Particulars of When You're  
20 Going Places application for U.S. market.

21 BY MR. ISAAC:

22 371. Q. Now, on a number of these applications,  
23 you're up to your third or fourth extension; is that  
24 correct?

25 A. Yes.

1 372. Q. And that's an extension of what? what  
2 does that mean, fourth extension?

3 A. Time.

4 373. Q. Are you getting extensions pending  
5 filing proof of use; is that what it is?

6 A. It's an extension of time.

7 374. Q. For what?

8 R/F A. I don't believe that's related to this.  
9 which trade-mark are you talking about?

10 375. Q. Let's look at Internet surfwear, which  
11 is whatever exhibit number.

12 A. Is there a question pending?

13 376. Q. Yes. What is the fourth extension an  
14 extension of? what time period? what requirement?

15 A. Essentially it's an extension of time  
16 to fulfil the launch of the Internet surfwear line of  
17 clothing.

18 377. Q. So it's similar to the Canadian  
19 situation. You continue to get extensions of time pending  
20 commencement of use?

21 A. Yes. As I said earlier, as we've been  
22 learning the business as we go along, we realize things  
23 take longer than we anticipated. Therefore, obviously the  
24 trade-mark law realizes this, as well, by providing these  
25 opportunities to get extensions of time.

1 378. Q. Does it cost you anything to get those  
Page 64

2 extensions in the United States?  
3 A. Yes.

4 379. Q. How much?  
5 A. I believe it's \$150 per class.

6 380. Q. U.S. dollars?  
7 A. U.S. dollars, yes.

8 381. Q. It could to start to add up fairly  
9 quickly?  
10 A. Pardon?

11 382. Q. I would say it could start to add up  
12 fairly quickly.  
13 A. Yes, yes, it's a substantial amount of  
14 money.

15 383. Q. Do you know how many extensions you can  
16 get on those applications?  
17 A. I believe six.

18 384. Q. And have you made any use of any of the  
19 trade-marks we just run through in the United States?  
20 A. To date, no.

21 385. Q. Do you have any other applications to  
22 register trade-marks in the United States?  
23 A. Off the top of my head, no.

24 386. Q. Do you have any applications to  
25 register trade-marks other than in Canada and the United

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1 States?

2 A. No.

3 387. Q. Now, you also own a number of domain  
4 names; is that correct?



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8 requests, yes. Off the record.

9 --- off-the-record discussion.

10 BY MR. ISAAC:

11 395. Q. Now, I have also got a bundle of nine  
12 .com domain names that appear to be in your name or either  
13 in your name, or I guess they're all through Baced  
14 Communications. These are Tucows Open SRS reports. Can  
15 you take a flip through there and confirm that those are  
16 all your domain names?

17 A. Yes, they all appear to be mine.

18 396. Q. We will mark that as Exhibit 29.

19 EXHIBIT NO. 29: Nine domain names, Tucows  
20 Open SRS reports.

21 BY MR. ISAAC:

22 397. Q. And to your recollection, sir, do you  
23 have any other .com domain names?

24 A. As I said before, off the top of my  
25 head I can't say yes or no. Those look to be all mine.

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1 398. Q. Okay. If there are any others, I guess  
2 part of the other request would be to get a complete  
3 listing of all the domain names.

4 u/T A. Okay.

5 399. Q. And what we'll do is I'll give you a  
6 copy of those two exhibits so you have something to  
7 compare it to when we send you the request.

8 And you mentioned that you had an  
9 ideasinside.net domain name registration, also?

10 A. I believe so, yes.

11 400. Q. And I think you said that was the only  
12 one other than your .ca and .com?

13 A. I believe so.

14 401. Q. Just to be entirely clear, what I'm  
15 looking for is a complete list of all your domain name  
16 registrations. My understanding is that none of those  
17 domain names lead to an active web site; is that correct?

18 A. Those businesses are based on exciting  
19 new business ideas that we have for the Internet arena and  
20 the Internet being so new, these ideas are being secured  
21 so that we can develop those for future uses.

22 402. Q. With the intention is to develop each  
23 of those domains or web sites under each of those domain  
24 names?

25 A. Yes.

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1 403. Q. Now, in paragraph 5 of your affidavit,  
2 you talk about the Internet and the world revolving around  
3 it, and that sort of stuff, and you have also indicated  
4 that you've done quite a lot of research in respect of the  
5 Internet. Based on your knowledge, would you agree with  
6 me, sir, that Intel was one of the pioneers of the  
7 Internet?

8 A. I don't really -- to be honest, I don't  
9 really see how Intel is a pioneer of the Internet, because  
10 in my opinion they are a computer component manufacturer  
11 and they've provided parts to computers. But, in essence,  
12 the architecture and the spirit of developing the  
13 Internet, I don't believe they've had any real influence

14 on it.

15 404. Q. Do you understand that Intel products  
16 are used extensively in Internet applications?

17 A. There are a number of applications, I'm  
18 sure, of which Intel is not part of, software applications  
19 that run on systems throughout the world that I'm sure do  
20 not have any connection to Intel.

21 405. Q. Okay. But you will agree with me,  
22 then, that in fact Intel products are used extensively in  
23 the Internet? I'm not saying with every application, but  
24 in Internet application?

25 A. I don't see how they're used at all.

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1 Basically, they're used to run computers.

2 406. Q. Do you know who the world's largest  
3 e-commerce business is?

4 A. No, I do not.

5 407. Q. Do you have any knowledge of the size  
6 of Intel's e-commerce business?

7 A. No, I do not.

8 408. Q. In paragraph 7 of your affidavit, you  
9 refer to [www.intelinside.com](http://www.intelinside.com) and the fact that I guess  
10 it's owned by somebody other than Intel. And will you  
11 confirm for me that there's no active web site at that web  
12 page?

13 A. Yes.

14 409. Q. In paragraph 9 of your affidavit, you  
15 list a bunch of domain names; is that correct?

16 A. Yes.

17 410. Q. And have you updated the status of  
18 those domain names recently?

19 A. No, I have not.

20 411. Q. Based on your previous research, it was  
21 your understanding that all of those domain names were  
22 registered; is that correct?

23 A. Yes.

24 412. Q. I'm showing you a Verisign domain name  
25 report. Are you aware of who Verisign is?

79

1 A. Yes. They own Network Solutions, among  
2 other companies.

3 413. Q. And they provide services with respect  
4 to registering domain names; is that correct?

5 A. Yes. They're one of a number of  
6 companies that provide that service.

7 414. Q. Sure. They provide the service in  
8 respect of .com domain names, for instance, correct?

9 A. Among other people. There are a number  
10 of other registrars throughout the world that are -- well,  
11 in North America, primarily, I guess, for the .com. There  
12 are other companies that do that service.

13 415. Q. And how do the companies know whether  
14 the domain names are available? You apply to Verisign to  
15 register domain names, correct?

16 A. Yes.

17 416. Q. And they're going to say either the domain  
18 name is available or not, correct?

19 A. That's correct.

20 417. Q. How do they know whether it's  
Page 70

21 available?

22 A. Well, I guess they have a central  
23 database that houses all the names that are in use and are  
24 available.

25 418. Q. And they're correct when they say

80

1 whether something is available, generally?

2 A. Generally.

3 419. Q. I'm showing you now a report that was  
4 printed out from the Verisign web page or as a result of a  
5 request from the Verisign web page. Do you see that? Do  
6 you agree that that's what that is? Mr. Emeny, I'll be  
7 marking that as an exhibit and you will get a copy  
8 ultimately, just to let you know.

9 A. Okay. Yes.

10 420. Q. We will mark that as Exhibit 30.

11 EXHIBIT NO. 30: Report from Verisign web  
12 page.

13 BY MR. ISAAC:

14 421. Q. And do you agree with me, sir, that the  
15 results that are shown on Exhibit 30 confirm that, in  
16 fact, a number of the domain names that you have listed in  
17 paragraph 9 of your affidavit are, in fact, not  
18 registered?

19 A. Yes. I'd just like to say, though,  
20 that list is less than half of the domain names that I  
21 provided in my affidavit.

22 422. Q. Do you agree with me, sir, that many of  
23 the domain names are registered but, ultimately, not used

24 by the registrant?

25 A. Some are.

81

1 423. Q. It's fairly common; you agree with  
2 that?

3 A. I don't know how common it is.

4 424. Q. Do you agree that domain names, sir, in  
5 a sense are fairly fluid? They're changing hands quite  
6 often, that sort of thing?

7 A. I really couldn't say.

8 425. Q. We'll just take five minutes.

9 --- off-the-record discussion.

10 THE DEPONENT: Can we go back to that last,  
11 that listing? The domain name list that you got, that you  
12 have, that you've provided here with the domain names that  
13 are available, that's a current list as of August 7,  
14 2002 --

15 426. Q. Yes, that's plain on its face.

16 A. -- which is yesterday, and these ones  
17 all here were valid at the time when I submitted the  
18 affidavit.

19 427. Q. Okay. Subject to the outstanding  
20 questions and any proper follow-up on any answers  
21 provided, this examination is concluded.

22 A. Okay.

23 --- WHEREUPON THE PROCEEDINGS ADJOURNED AT 12:00 P.M.

I HEREBY CERTIFY THE FOREGOING  
to be a true and accurate  
transcription of my shorthand notes  
to the best of my skill and ability.

CATHERINE SOUTHWORTH  
Computer-Aided Transcription