

COPY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE MARILYN HALL PATEL, JUDGE

E.I. DU PONT DE NEMOURS & CO.,)

PLAINTIFF,)

VS.)

NO. C 89-2860 MHP)

CETUS CORPORATION, A DELAWARE)
CORPORATION,)

DEFENDANT.)

SAN FRANCISCO, CALIFORNIA
MONDAY, FEBRUARY 25, 1991

APPEARANCES:

FOR PLAINTIFF:

ROTHWELL, FIGG, ERNST & KURZ
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LEGAL DEPARTMENT
WILMINGTON, DELAWARE 19898

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FEB 25 '91
Dates Entered <i>SV</i>
By: <i>SV</i>
The attorney, whose initials appear below, has reviewed the applicable court rules, and has verified that the above dates are correct.
Atty: _____

(APPEARANCES CONTINUED ON NEXT PAGE)

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BY: PETER D. STAPLE, ESQ.

1 RIGHT NOW THEY'RE ALL RIGHT, BUT IF THERE SHOULD BE A SITUATION
2 WHERE THEY REALLY ARE SHORT-HANDED, IT SEEMS TO ME THIS IS SORT
3 OF LOW ON THE PRIORITY OF WHERE THEY NEED THEM.

4 WOULD YOU HAVE ANY OBJECTION, WITH APPROPRIATE
5 INSTRUCTIONS TO THE JURY, THAT THE MARSHAL'S PRESENCE BE
6 EXCUSED?

7 MR. FIGG: WE HAVE NO PROBLEM.

8 MR. PASAHOW: NONE, YOUR HONOR.

9 THE COURT: OKAY. FINE.

10 WHAT WE'LL DO IS JUST MAKE SURE THE FOREPERSON OF THE
11 JURY THEN JUST COMES OUT AND SEES MY SECRETARY OR ONE OF MY LAW
12 CLERKS IF THERE'S A PROBLEM AND LET US KNOW IN THAT RESPECT AND
13 COMMUNICATE IN THE SAME FASHION, BUT INSTEAD OF WITH A MARSHAL.
14 OKAY.

15 FINE. IT MAY BE BECAUSE I WAS ON THE BERKELEY CAMPUS
16 YESTERDAY AND I SAW A COUPLE OF SIGNS THAT SAID A DEMONSTRATION
17 WAS GOING TO BE AT 6:30 A.M. AND I CHANGED THE "A" TO A "P" AND
18 MAYBE THEY'LL SHOW UP TONIGHT WHEN I SAW THEY WERE TO BE
19 CONGREGATING IN THE FEDERAL BUILDING. BUT, AT ANY RATE, I DON'T
20 KNOW IF THAT'S AN OFFENSE TO DEFACE SOMEBODY ELSE'S SIGN, SO
21 MAYBE THEY'LL SHOW UP TONIGHT.

22
23
24
25 (CONTINUED ON NEXT PAGE, NOTHING OMITTED)

1 THE COURT: WE'VE GOT NEW CONCLUDING INSTRUCTIONS. I
2 ALWAYS LIKE THE WAY THIS ONE STARTS BECAUSE THIS IS WHEN YOUR
3 WORK BEGINS, BUT IT'S SORT OF AN OLD, I THINK, INSTRUCTION
4 THAT'S BEEN WITH US FOR YEARS AND IT'S REFERRED TO WHEN YOU
5 RETIRE FOR YOUR DELIBERATIONS.

6 IT'S HARDLY RETIREMENT. YOU'VE BEEN WORKING VERY HARD.
7 YOU'VE BEEN VERY DELIGENT HERETOFORE AND I KNOW YOU WILL
8 CONTINUE TO BE, BUT THIS IS REALLY WHEN YOUR HARD WORK BEGINS.

9 THE FIRST THING YOU SHOULD DO, IN ANY EVENT, WHEN YOU
10 GO BACK TO THE JURY ROOM TO BEGIN YOUR DELIBERATIONS, IS TO
11 SELECT ONE OF YOUR NUMBER TO ACT AS THE FOREPERSON OF THE JURY.
12 AND THAT PERSON WILL ACT AS YOUR SPOKESPERSON HERE IN COURT AND
13 PRESIDE OVER YOUR DELIBERATIONS.

14 YOU WILL THEN DISCUSS THE CASE WITH YOUR FELLOW JURORS
15 TO REACH AGREEMENT IF YOU CAN DO SO. YOUR VERDICT MUST BE
16 UNANIMOUS.

17 NOW, LET ME TELL YOU ABOUT THAT IN JUST A MOMENT. YOU
18 HAVE BEEN A VERY CONSCIENTIOUS JURY. YOU'VE ALL BEEN VERY
19 DILIGENT ABOUT SHOWING UP, BEING ATTENTIVE AND ALL OF THAT.

20 IN ACTUALITY WHAT A JURY CONSISTS OF IN FEDERAL COURT
21 IN A CIVIL CASE IS SIX PERSONS, AND WE HAVE SELECTED, BECAUSE OF
22 THE LENGTH OF THIS CASE, THREE EXTRA PEOPLE, THREE ALTERNATES,
23 SO THAT IF ONE OF YOU -- ONE OF THE REGULAR JURORS HAD BECOME
24 ILL OR SOMETHING LIKE THAT OR HAD A SERIOUS FAMILY EMERGENCY, WE
25 WOULD HAVE BEEN ABLE TO CONTINUE BY JUST REPLACING THAT JUROR

1 WITH ONE OF THE ALTERNATES.

2 SOMETIMES WE SELECT ONLY ONE IF IT'S A VERY SHORT TRIAL
3 OR TWO. IN THIS CASE BECAUSE OF THE LENGTH WE SELECTED THREE,
4 SO WE HAVE THREE ALTERNATE JURORS.

5 COUNSEL HAVE AGREED TO THE FOLLOWING BECAUSE YOU'VE ALL
6 BEEN SO . . . CONSCIENTIOUS ABOUT BEING HERE AND SO FORTH:

7 THAT, AFTER HEARING ALL OF THIS, TO EXCLUDE THE THREE
8 ALTERNATE JURORS, WHO ARE MR. GRAYSON, MR. HERNANDEZ AND MS.
9 FERRIS, THAT WE WOULD HAVE YOU PARTICIPATE IN THE DELIBERATIONS,
10 IN THE DISCUSSION, BUT ULTIMATELY THE VOTE MUST BE AMONG THE SIX
11 ALTERNATE, BECAUSE -- I MEAN, THE SIX REGULAR JURORS WHO WOULD
12 BE THE REST OF YOU.

13 MR. GRAYSON, MR. HERNANDEZ AND MS. FERRIS WOULD NOT
14 VOTE BUT WOULD PARTICIPATE IN THE DELIBERATIONS, DISCUSS THE
15 EVIDENCE, HAVE YOUR INPUT AND SO FORTH.

16 SO IT IS THE SIX REGULAR JURORS WHOSE VOTES MUST BE THE
17 SAME; IN OTHER WORDS, UNANIMOUS ON EACH OF THE CLAIMS. AND I'M
18 GOING TO GO OVER THE VERDICT FORM WITH YOU ON EACH OF THOSE IN
19 ORDER FOR YOU TO REACH A VERDICT ON THOSE CLAIMS.

20 NOW, IF SOMETHING SHOULD HAPPEN THAT -- UNFORESEEN
21 CIRCUMSTANCE OCCURS THAT I JUST MENTIONED DURING THE COURSE OF
22 YOUR DELIBERATIONS, THEN ONE OF THE ALTERNATES WILL BE SEATED TO
23 TAKE THE PLACE OF THAT REGULAR JUROR.

24 BUT IF THAT DOES NOT HAPPEN, THEN YOU WILL JUST DISCUSS
25 THE CASE AND HAVE YOUR INPUT BUT NOT TO VOTE.

2 1 AGAIN, AS I SAY, AMONGST THE SIX REGULAR JURORS, YOUR
2 VERDICT MUST BE UNANIMOUS AS TO EACH OF THE CLAIMS. EACH OF YOU
3 MUST DECIDE THE CASE FOR YOURSELF, BUT YOU SHOULD DO SO ONLY
4 AFTER YOU'VE CONSIDERED ALL THE EVIDENCE AND DISCUSSED IT FULLY
5 WITH THE OTHER JURORS; LISTENED TO THE VIEWS OF YOUR FELLOW
6 JURORS; THEN COME TO YOUR CONCLUSIONS BASED UPON THE EVIDENCE
7 AND THE INSTRUCTIONS THAT I HAVE GIVEN TO YOU.

8 DO NOT BE AFRAID TO CHANGE YOUR OPINION IF THE
9 DISCUSSION PERSUADES YOU THAT YOU SHOULD. BUT DO NOT COME TO A
10 DECISION SIMPLY BECAUSE OTHER JURORS THINK IT IS RIGHT.

11 IT IS IMPORTANT THAT YOU ATTEMPT TO REACH A UNANIMOUS
12 VERDICT BUT, OF COURSE, ONLY IF YOU CAN DO SO AFTER CAREFUL
13 CONSIDERATION AND HAVING MADE YOUR OWN CONSCIENTIOUS DECISION.

14 DO NOT CHANGE AN HONEST BELIEF ABOUT THE WEIGHT AND
15 EFFECT OF THE EVIDENCE SIMPLY TO REACH A VERDICT.

16 YOUR VERDICT MUST BE BASED SOLELY ON THE EVIDENCE AND
17 ON THE LAW AS IT HAS BEEN GIVEN TO YOU IN THE INSTRUCTIONS.
18 HOWEVER, NOTHING THAT I HAVE SAID OR DONE IS INTENDED TO SUGGEST
19 TO YOU WHAT YOUR VERDICT SHOULD BE, SO LONG AS YOU APPLY THE LAW
20 THAT HAS BEEN GIVEN TO YOU AND DO NOT TRY TO CHANGE THAT IN ANY
21 RESPECT.

22 YOU MUST FOLLOW THE INSTRUCTIONS, BUT WITH RESPECT TO
23 THE FACTS IT IS UP TO YOU TO DECIDE AND NOT TO TRY TO GUESS AS
24 TO WHAT MY DECISION WOULD BE IF, IN FACT, YOU WOULD EVEN BE
25 INFLUENCED BY THAT. BUT, IN ANY EVENT, YOU ARE NOT TO BE THE

2 1 MATTER IS ENTIRELY FOR YOU TO DECIDE.

2 REMEMBER THE STATEMENTS AND ARGUMENT OF COUNSEL ARE NOT
3 EVIDENCE. AND ALSO IF YOU REMEMBER THE FACTS DIFFERENTLY THAN
4 HOW THEY WERE STATED BY COUNSEL IN THEIR ARGUMENTS, YOU SHOULD
5 BASE YOUR DECISION ON WHAT YOU REMEMBER.

6 IF YOU'VE TAKEN NOTES DURING THE COURSE OF THE TRIAL,
7 THOSE ARE FOR YOUR OWN PERSONAL USE. THEY ARE NOT A RECORD OF
8 THE PROCEEDINGS. YOU SHOULD NOT BE READING THEM TO THE OTHER
9 JURORS AND SAYING THIS IS WHAT WAS TESTIFIED TO.

10 THEREFORE, THEY'RE FOR YOUR OWN RECOLLECTION AND
11 REFRESHING YOUR OWN RECOLLECTION AND THEN WILL ASSIST YOU, OF
12 COURSE, IN PARTICIPATING IN THE DELIBERATIONS.

13 COUNSEL, IT'S CERTAINLY NOT MY INTENTION AT THIS POINT
14 TO GIVE J133. I DON'T THINK THAT'S APPROPRIATE. IT'S
15 REPETITIVE AND ESSENTIALLY AN ALLEN CHARGE, WHICH IS NOT
16 APPROPRIATE AT THIS TIME. AT LEAST, I WON'T GIVE IT AT THIS
17 TIME.

18 NOW, WITH RESPECT TO COMMUNICATING WITH THE COURT. YOU
19 WILL BE GIVEN A FOLDER THAT HAS, FIRST OF ALL, SOME FORMS THAT
20 SAY "NOTES FROM THE JURY" AND I TRUST I WON'T GET TOO MANY OF
21 THESE, BUT SOMETIMES IT'S NECESSARY FOR YOU TO COMMUNICATE WITH
22 THE COURT.

23 OBVIOUSLY, IF IT HAS SOMETHING DOING TO DO WITH YOUR
24 OWN PERSONAL CONVENIENCE -- YOU WANT TO TAKE A RECESS, OR BREAK,
25 OR YOU NEED MORE COFFEE BACK THERE, OR WHATEVER IT MAY BE -- YOU

1 DON'T HAVE TO WRITE US A NOTE ABOUT THAT. YOU CAN TALK TO THE
2 MARSHAL OR, IF THE MARSHAL HAS BEEN EXCUSED, THEN YOU MAY COME
3 BACK AND SEE MY SECRETARY AND THEN WE'LL TAKE CARE OF THAT.

4 BUT ANYTHING AT ALL, IF THERE'S A QUESTION ABOUT
5 WHETHER IT RELATES TO THE CASE OR A MATTER OF PERSONAL
6 CONVENIENCE, THEN ERROR ON THE SIDE OF CAUTION. ANYTHING AT ALL
7 RELATING TO THE CASE YOU MUST COMMUNICATE WITH THE COURT OR
8 COURT PERSONNEL ONLY IN WRITING AND NOT IN ANY OTHER FASHION,
9 AND YOU USE THESE NOTES FOR THAT PURPOSE.

10 THERE'S A PLACE FOR YOU TO DATE AND TIME IT AND FOR THE
11 FOREPERSON TO SIGN IT.

12 THIS IS ALSO THE FORM BY WHICH YOU COMMUNICATE WITH THE
13 COURT WHEN YOU HAVE REACHED A VERDICT. WHEN YOU HAVE REACHED A
14 VERDICT AS TO ALL OF THE CLAIMS, THEN THE FOREPERSON OF THE JURY
15 SHOULD SIGN THAT VERDICT FORM AND DATE IT, MAKE SURE IT'S
16 COMPLETELY FILLED OUT AND PUT IT IN THE ENVELOPE THAT YOU'LL BE
17 GIVEN AND SEAL IT AND YOU DELIVER IT TO US HERE IN COURT.

18 YOU WON'T GIVE THAT ENVELOPE TO THE MARSHAL. WHAT YOU
19 WILL GIVE TO THE MARSHAL OR TO THE COURT PERSONNEL WILL BE THIS
20 FORM THAT SAYS, "THE JURY HAS REACHED UNANIMOUS VERDICT." IT'S
21 DATED AND SIGNED AND THAT WAY WE COME BACK INTO THE COURTROOM
22 AND RECEIVE YOUR VERDICT.

23 NOW, WITH RESPECT TO THE VERDICT FORM, IT IS A SPECIAL
24 VERDICT FORM AND I REVIEWED IT WITH YOU THE OTHER DAY, BUT LET
25 ME JUST REFRESH YOUR RECOLLECTION.

3 1 IT'S DIVIDED INTO TWO MAJOR PARTS, WITH MANY SUB-PARTS.
2 THE TWO MAJOR PARTS RELATE TO THE TWO PATENTS. THE '202 PATENT,
3 AS YOU WILL RECALL, IS CHALLENGED AS BEING INVALID ON TWO BASES:
4 ONE, ANTICIPATION, AND THE OTHER OBVIOUSNESS. THE '195,
5 VALIDITY OF THAT PATENT IS CHALLENGED ONLY ON OBVIOUSNESS.

6 SO UNDER THE '202 PATENT SECTION YOU ARE ASKED TO DO
7 THE FOLLOWING:

8 "FOR EACH OF THE FOLLOWING CLAIMS OF THE '202 PATENT,
9 IS THE CLAIM INVALID UNDER THE INSTRUCTIONS YOU'VE BEEN GIVEN
10 BECAUSE ANY PROCESS COVERED BY THE CLAIM IS ANTICIPATED BY A
11 PRINTED PUBLICATION?" IS THE FIRST QUESTION, BY PRINTED
12 PUBLICATION.

13 AND THEN THERE'S A PLACE FOR YOU TO GO THROUGH EACH OF
14 THE CLAIMS THAT IS IN ISSUE, AND EACH ONE OF THEM HAS BEEN
15 ENUMERATED, AND CHECK YES OR NO.

16 THEN YOU ARE ASKED, "FOR EACH OF THE FOLLOWING CLAIMS,"
17 AND AGAIN SAME CLAIMS, "IS THE CLAIM INVALID UNDER THE
18 INSTRUCTIONS YOU'VE BEEN GIVEN BECAUSE ANY PROCESS COVERED BY
19 THE CLAIM WAS KNOWN OR USED BY OTHERS IN THE UNITED STATES
20 BEFORE THE INVENTION THEREOF BY DOCTOR KARY B. MULLIS?" THEN
21 AGAIN A PLACE TO ANSWER YES OR NO AS TO EACH.

22 THE SAME QUESTION IS ASKED WITH REGARD TO THE '202
23 PATENT AND THE QUESTION OF ANTICIPATION, "WHETHER OR NOT ANY
24 PROCESS COVERED BY THE CLAIM WAS INVENTED IN THE UNITED STATES
25 BY ANOTHER WHO HAD NOT ABANDONED, SUPPRESSED OR CONCEALED IT

3 1 PRIOR TO ITS INVENTION BY KARY B. MULLIS."

2 AND SO YOU SEE THERE ARE THE THREE DIFFERENT TYPES OF
3 PRIOR WORKS THAT -- OR PRIOR ART THAT MAY CONSTITUTE
4 ANTICIPATION AND YOU'RE ASKED TO ANSWER EACH ONE OF THOSE
5 SEPARATELY: PRINTED PUBLICATIONS, ANY PROCESS THAT WAS KNOWN OR
6 USED BY OTHERS IN THE UNITED STATES, AND ANY PRIOR INVENTION NOT
7 ABANDONED, SUPPRESSED OR CONCEALED. AND KEEP IN MIND THAT'S
8 TWO-PRONGED.

9 YOU HAVE TO, FIRST OF ALL, DECIDE WHETHER THERE WAS
10 PRIOR INVENTION AND ALSO THEN WHETHER -- IF SO, WHETHER IT WAS
11 ABANDONED, SUPPRESSED OR CONCEALED, AND ALL OF THOSE THINGS ARE
12 EXPLAINED IN THE INSTRUCTIONS WHICH YOU ALL STUDIED OVER THE
13 WEEKEND AND YOU KNOW THOROUGHLY WELL.

14 THEN THE SECOND PART OF THIS, AND REGARDLESS OF HOW YOU
15 ANSWER THESE QUESTIONS YOU GO ON TO PART B WHICH IS OBVIOUSNESS
16 AND WHETHER OR NOT THE PATENT IS INVALID BY REASON OF
17 OBVIOUSNESS BECAUSE ANY PROCESS COVERED BY THE CLAIM WOULD HAVE
18 BEEN OBVIOUS. AND AGAIN BASED ON THE INSTRUCTIONS GIVEN ON
19 OBVIOUSNESS, THEN THE CLAIMS ARE LISTED THERE, TO ANSWER YES OR
20 NO.

21 THEN FINALLY THE '195, WHETHER -- IT'S JUST ONE SET OF
22 QUESTIONS, AND THAT IS WHETHER OR NOT UNDER THE INSTRUCTIONS
23 YOU'VE BEEN GIVEN ANY OF THE CLAIMS LISTED BELOW ARE INVALID
24 BECAUSE OF OBVIOUSNESS. AND AGAIN YOU CHECK OFF YES OR NO.

25 AND THAT IS THEN TO BE SIGNED BY THE FOREPERSON OF THE

3 1 JURY AND DATED AND THAT WILL CONSTITUTE YOUR VERDICT FORM.

2 AND YOUR JOB WILL REALLY ONLY BE DONE WHEN YOU HAVE
3 CHECKED THEM OFF EITHER YES OR NO AS TO EACH OF THE QUESTIONS ON
4 THE FORM UNLESS, IN ACCORDANCE WITH THE INSTRUCTIONS, YOU IN
5 GOOD CONSCIENCE CANNOT ARRIVE AT A VERDICT FOR SOME REASON.

6 AGAIN, TO REMIND YOU, THE FOREPERSON OF THE JURY SHOULD
7 WRITE INTO THE FORM THE UNANIMOUS ANSWER; IN OTHER WORDS, YOU
8 MUST BE UNANIMOUS AS TO EACH OF THESE ANSWERS. YOU'RE HUNG IF
9 YOU DON'T.

10 IF YOU HAVE ONE PERSON WHO SAYS NO AND FIVE PEOPLE WHO
11 SAY YES, OBVIOUSLY YOU SHOULD ATTEMPT TO TRY TO RESOLVE THAT, IF
12 YOU CAN DO SO, IN ACCORDANCE WITH THE INSTRUCTIONS THAT I'VE
13 GIVEN YOU.

14 AS YOU WILL NOTE FROM THE WORDING OF SOME OF THE
15 QUESTIONS . . . WELL, ACTUALLY ALL OF THEM HAVE TO BE ANSWERED.
16 WE'VE GIVEN YOU A FORM WHERE EACH OF THE QUESTIONS HAVE TO BE
17 ANSWERED. THERE'S NOTHING IN HERE THAT CAN BE LEFT UNANSWERED,
18 RIGHT, WITHOUT BEING ESSENTIALLY A HUNG JURY.

19 OKAY. SO WHEN YOU FILL IT OUT, IF YOU COMPLETED IT,
20 WHEN THAT OCCURS, THEN FILL OUT THE OTHER FORM I DESCRIBED TO
21 YOU. GIVE IT TO THE MARSHAL OR THE COURT PERSONNEL TELLING US
22 YOU'VE REACHED A UNANIMOUS VERDICT AND WE WILL RETURN HERE TO
23 COURT TO TAKE YOUR VERDICT.

24 KEEP IN MIND AGAIN THAT WHEN THE MARSHAL IS SWORN IN,
25 YOU WILL SEE THAT HE'S SWORN TO KEEP YOU IN SOME SECURE PLACE

4 1 AND FOR NO ONE -- ALLOWING NO ONE TO TALK TO YOU AND SO FORTH,
2 AND HE IS NOT TO COMMUNICATE WITH YOU OTHER THAN IN WRITING AS
3 WELL EXCEPT FOR SOME MATTER OF PERSONAL CONVENIENCE AS I'VE
4 DISCUSSED BEFORE.

5 NO MEMBER OF THE JURY SHOULD ATTEMPT TO COMMUNICATE
6 WITH ANY COURT PERSONNEL OR MYSELF IN ANY OTHER MANNER THAN
7 WRITING. IF YOU DO SEND OUT A NOTE, YOU'VE GOT SOME PROBLEM, DO
8 NOT TELL US YOUR NUMERICAL BREAKDOWN. DON'T SAY YOU'VE GOT AN
9 ANSWER TO EVERYTHING EXCEPT FOR ONE SECTION, YOU'VE GOT PROBLEMS
10 THERE AND WE THINK WE'RE HUNG.

11 WHAT WE'LL DO IS HAVE YOU COME BACK IN AND TRY TO SEE
12 IF WE CAN ANSWER SOME OF THE QUESTIONS REGARDING THE
13 INSTRUCTIONS OR WHATEVER TO ASSIST YOU. BUT, IN ANY EVENT, DO
14 NOT TELL US WHAT YOUR NUMERICAL BREAKDOWN IS, FOR EXAMPLE, WE'RE
15 FOUR TO TWO OR WHATEVER, THAT IS INAPPROPRIATE.

16 ANY QUESTIONS?

17 WELL, YOU'VE GOT A LOT OF SLOGGING AHEAD OF YOU.

18 PLEASE KEEP THE FOLLOWING IN MIND: THAT YOU'RE GOING
19 TO BE PRETTY MUCH ON YOUR OWN NOW IN TERMS OF THE TIME YOU WANT
20 TO KEEP, WHEN YOU WISH TO TAKE LUNCH AND SO FORTH. JUST LET US
21 KNOW SO THAT THE ATTORNEYS AND I CAN BE MAKE SURE WE'RE
22 AVAILABLE DURING THE TIME THAT YOU'RE GOING TO BE IN SESSION IN
23 CASE ANY QUESTIONS DO COME UP.

24 IF YOU COULD LET THE MARSHAL KNOW RELATIVELY EARLY ON
25 WHAT TIME YOU INTEND TO TAKE LUNCH AND THEN WHAT TIME YOU INTEND

4
1 TO RECESS. AS I UNDERSTAND YOU WERE PLANNING TO STAY UNTIL 2:00
2 MOST OF THESE DAYS, UNTIL YOU REACH A VERDICT. THAT'S FINE.

3 YOU MAY KEEP WHATEVER HOURS SEEM TO BE REASONABLE TO
4 YOU WITHIN REASON, OF COURSE, AND WE'LL WORK OUT THE BEST FOR
5 YOU.

6 BUT WHEN YOU RECESS KEEP IN MIND THE FOLLOWING:

7 THAT YOU'RE NOT TO DISCUSS THE CASE THEN BECAUSE THEN
8 THERE MAY BE TWO OR THREE OF YOU TOGETHER AND ALL DISCUSSIONS OF
9 THE CASE ARE TO CEASE WHEN YOU ARE NOT IN DELIBERATIONS, AND YOU
10 MUST NOT COMMENCE DISCUSSION OF THE CASE OR FURTHER DELIBERATION
11 UNTIL ALL OF THE JURORS ARE PRESENT AND THE FOREPERSON HAS
12 CALLED YOU BACK INTO SESSION.

13 SO THAT WAY WE DON'T HAVE PEOPLE GOING OUT TO LUNCH
14 TOGETHER AND DISCUSSING THE CASE SEPARATE AND APART FROM OTHER
15 JURORS. ALL OF YOU ARE TOGETHER AND THE FOREPERSON SAYS, WE'LL
16 CONTINUE OUR DELIBERATIONS OVER LUNCH, I GUESS YOU CAN DO THAT.
17 IT'S INAPPROPRIATE UNLESS ALL OF THE JURORS ARE PRESENT.

18 ANYTHING FURTHER, COUNSEL, YOU INTENDED I INSTRUCT THE
19 JURY ON?

20 MR. PASAHOW: (SHAKING HEAD.)

21 MR. FIGG: (SHAKING HEAD.)

22 THE COURT: OKAY. FINE. THEN GOOD LUCK AND WE'LL SEE
23 YOU WHEN NEXT YOU TELL US YOU WANT TO SEE US. OKAY.

24 WOULD YOU PLEASE STEP DOWN AND BE SWORN.

25 (OATH ADMINISTERED)

1 THE MARSHAL: I DO.

2 THE COURT: OKAY. FINE.

3 I NOTICE THERE ARE TWO COPIES OF WHAT IS CALLED
4 INTERROGATORIES TO THE JURY IN HERE. YOU ONLY NEED TO FILL OUT
5 ONE. I THINK ONE YOU CAN WORK AND USE AS A WORK SHEET, BUT IF
6 YOU MAKE ANY MISTAKES ON IT OR WHATEVER AT LEAST YOU'LL HAVE A
7 FORM THAT YOU CAN PUT YOUR FINAL ANSWERS ON. SORT OF LIKE A
8 DRAFT VERDICT FORM. THANK YOU.

9 THE CLERK: ALL RISE.

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5 1 (PROCEEDINGS HELD IN OPEN COURT, JURY NOT PRESENT:)

2 MR. FIGG: YOUR HONOR, THERE WAS ONE COMMENT I DIDN'T
3 WANT TO RAISE IN THE PRESENCE OF THE JURY, BUT THE INDICATION
4 THAT THEY HAVE TO REACH UNANIMOUS ON EVERY QUESTION OTHERWISE IT
5 WILL BE A HUNG JURY, I'M NOT SURE THAT'S EXACTLY RIGHT.

6 IF THEY FIND ANY CLAIM INVALID ON ANY BASIS, FOR
7 EXAMPLE, LET'S SAY THEY FIND A CLAIM INVALID BECAUSE IT'S
8 OBVIOUS, BUT THEY CAN'T REACH A DECISION WHETHER IT'S INVALID OR
9 NOT ON THE BASIS --

10 THE COURT: THEY'RE HUNG ON THAT CLAIM THEN OR THAT
11 ASPECT OF IT, THAT'S CORRECT.

12 MR. FIGG: RIGHT. OKAY.

13 THE COURT: THAT'S TRUE. WELL, THAT ENCOURAGES TO COME
14 TO ANSWERS MAYBE ON ALL OF THEM, IF THEY CAN DO SO. OKAY.

15 ANYTHING ELSE?

16 MR. FIGG: NO.

17 THE COURT: HAVE WE GOT ALL THE EXHIBITS SQUARED AWAY?

18 (PAUSE IN THE PROCEEDINGS)

19 THE COURT: ARE YOU GOING TO BE BACK AT YOUR OFFICES
20 WHERE MS. MORIYAMA WILL KNOW WHERE TO REACH YOU?

21 MR. FIGG: YES.

22 THE COURT: I SUSPECT THIS IS GOING TO TAKE SOME TIME.
23 CURIOUS TO FIND OUT. THANK YOU.

24
25 (RECESS TAKEN)


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CERTIFICATE OF REPORTERS

WE, THE UNDERSIGNED OFFICIAL REPORTERS FOR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 450 GOLDEN GATE AVENUE, SAN FRANCISCO, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, VOLUMES 1 THROUGH 22, PAGES NUMBERED 1 THROUGH 3170 INCLUSIVE, CONSTITUTES A TRUE, FULL AND CORRECT TRANSCRIPT OF OUR SHORTHAND NOTES TAKEN AS SUCH OFFICIAL REPORTERS OF THE PROCEEDINGS HEREINBEFORE ENTITLED, AND REDUCED TO TYPEWRITING THROUGH THE USE OF THE XSCRIBE COMPUTER SYSTEM TO THE BEST OF OUR ABILITIES.

DATED: FEBRUARY 25, 1991


CANDACE FRANCIS, CSR 2737
OFFICIAL USDC REPORTER


JAMES YEOMANS, CSR 4039
OFFICIAL USDC REPORTER