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1 STATE OF ILLINOIS)
 2) SS:
 3 COUNTY OF COOK)
 4 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
 5 COUNTY DEPARTMENT - LAW DIVISION
 6
 7 LINKCO, INC.,)
 8 Plaintiff,)
 9 vs.) No. 04 L 1794
 10 BOWNE & CO., INC.,)
 11 Defendant.)
 12
 13 January 27, 2006
 14 10:05 a.m.
 15
 16 The videotaped deposition of DAVID
 17 ISREAL-ROSEN resumed pursuant to adjournment at
 18 Suite 8300, 233 South Wacker Drive, Chicago,
 19 Illinois.
 20
 21
 22
 23
 24

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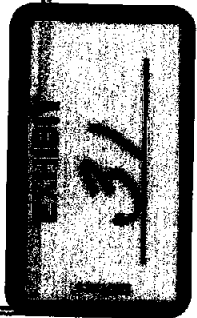
1 THE VIDEOGRAPHER: Good morning. We are going
 2 on the video record at 10:05 a.m.
 3 My name is Wes France, and I'm a legal
 4 videographer with Esquire Deposition Services. Our
 5 address is 155 North Wacker Drive, Chicago,
 6 Illinois.
 7 The court reporter today is Vicki
 8 Christiansen of Esquire Deposition Services.
 9 Here begins the videotaped deposition of
 10 David Israel-Rosen, taking place at 233 South
 11 Wacker Drive, Chicago, Illinois.
 12 Today's date is January 27, 2006.
 13 The deposi- -- this deposition is being
 14 taken in the matter of LinkCo vs. Bowne -- Bowne &
 15 Company in the Circuit Court of Cook County,
 16 Illinois, County Department, Law Division, Case
 17 No. 04 L 1794.
 18 Will counsel please state their names
 19 for the record.
 20 MR. KOSKI: John Koski on behalf of Defendant
 21 Bowne & Company, Inc.
 22 MR. DREHKOFF: Dennis Drehkoff on behalf of
 23 LinkCo.
 24 THE VIDEOGRAPHER: Will the reporter now swear

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1 PRESENT:
 2 RYNDAK & SURI,
 3 (200 West Madison Street, Suite 2100,
 4 Chicago, Illinois 60606,
 5 312-214-7770), by:
 6 MR. W. DENNIS DREHKOFF,
 7 appeared on behalf of the Plaintiff;
 8
 9 SONNENSCHN NATH & ROSENTHAL,
 10 (233 South Wacker Drive, Suite 7800,
 11 Chicago, Illinois 60606,
 12 312-876-7934), by:
 13 MR. JOHN C. KOSKI,
 14 appeared on behalf of the Defendant.
 15
 16
 17
 18
 19
 20 VIDEOTAPED BY: WES FRANCE, Legal Videographer,
 21 Esquire Deposition Services;
 22
 23 REPORTED BY: VICTORIA C. CHRISTIANSEN, RPR, CRR,
 24 Illinois CSR No. 84-3192.

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1 in the witness, please.
 2 (WHEREUPON, the witness was duly
 3 sworn.)
 4 (WHEREUPON, a certain document
 5 was marked Israel-Rosen Deposition
 6 Exhibit No. 48, for
 7 identification, as of 1-27-06.)
 8 DAVID ISREAL-ROSEN,
 9 called as a witness herein, having been previously
 10 duly sworn and having testified, was examined and
 11 testified further as follows:
 12 EXAMINATION (Resumed)
 13 BY MR. KOSKI:
 14 Q. Mr. Rosen, I'll show you what has been
 15 marked as Exhibit 48, which is an amended notice of
 16 deposition.
 17 Have you seen this notice before --
 18 A. No.
 19 Q. -- today?
 20 Regardless of the fact that you haven't
 21 seen this particular notice before, you've seen a
 22 notice similar to that?
 23 A. In the past.
 24 Q. Okay. And you understand you are here



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1 Q. Okay. Paragraph 53 states that in March
 2 of 1999, Bowne offered Mr. Kanda a consulting
 3 position in recognition of his efforts he had
 4 demonstrated over the past year.
 5 A. Right.
 6 Q. And what is -- your understanding that
 7 he was offered a consulting position because of
 8 those efforts, what's the basis for that knowledge?
 9 A. You have to repeat that just --
 10 Q. Sure.
 11 What's -- what facts are you aware of
 12 that support your assertion that Mr. Kanda was
 13 altered -- was offered a consultant position because
 14 of the efforts he had demonstrated in the year
 15 prior to March of 1999?
 16 A. I read the discovery that you gave
 17 Piper, so I read this document that said that, "We
 18 are thanking you --" maybe even months earlier than
 19 March of '99, it says, "In recognition of your
 20 contribution over the last year, here is the
 21 contract."
 22 So -- and oddly enough, when I went
 23 through the discovery, I didn't see a single shred
 24 of paper. From all these documents you produced

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1 now, they were not produced then.
 2 Q. Can you explain that last part of your
 3 answer? I don't understand.
 4 A. Yes.
 5 Before the documents had been
 6 destroyed -- according to the protective order, the
 7 Bowne documents were supposed to be destroyed under
 8 the protective order that you entered into with
 9 Piper because your agreement with them by discovery
 10 says that whatever condition covers the
 11 Fujitsu/LinkCo discovery covers the Bowne
 12 discovery, so before they were -- before they were
 13 destroyed by Piper, I sat in the Piper's offices
 14 and I read every single piece of paper that was
 15 there, and the person who gave it to me was a
 16 keeper of the records, and there was not a shred of
 17 paper that relates to documents produced now.
 18 I just want to be clear on that.
 19 Q. So is it your belief that Piper Rudnick
 20 shredded documents at the conclusion of the Fujitsu
 21 case?
 22 A. I believe that Piper Rudnick shredded
 23 documents whenever they were supposed to.
 24 Q. Okay. And what documents did they

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1 shred?
 2 A. Everything you gave them.
 3 Q. Okay. And --
 4 A. They didn't give it to me. I couldn't
 5 take it out of there. I could read it, but I
 6 couldn't take it out of there.
 7 You see, I basically went -- I spent --
 8 I spent a full day in their offices, and I read
 9 every single document.
 10 Q. Do you believe -- strike that.
 11 So Piper Rudnick shredded all the
 12 documents produced by Bowne in the Fujitsu case,
 13 correct?
 14 A. I -- that's my belief. I don't know
 15 that.
 16 Q. Okay. Do you have any belief that Piper
 17 Rudnick shredded other documents produced in the
 18 Fujitsu litigation?
 19 A. By Bowne?
 20 Q. By anybody.
 21 A. I don't know anything about anybody
 22 else, but I know that I had the Bowne box, and the
 23 documents that were produced now were not there
 24 then, and these are damning documents.

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1 And mind you, I also want to enter into
 2 the record, you are the person on record for that
 3 discovery.
 4 Q. Do you have any belief that LinkCo --
 5 excuse me.
 6 Do you have any belief that Piper
 7 Rudnick shredded any documents belonging to LinkCo?
 8 A. Most of the documents belonging to
 9 LinkCo -- all of the documents or the bulk of the
 10 documents belonging to LinkCo, anyway, were given
 11 to us.
 12 Do I have -- a lot of the people, the
 13 personnel there changed, so do I -- is there a
 14 possibility that they have LinkCo documents? I
 15 doubt it. It wouldn't hurt me.
 16 Q. Paragraph 54 of the amended complaint
 17 states, "Bowne's client-centric communications and
 18 single-source file relates to a service utilizing
 19 personalized communications with documents tailored
 20 for each selected participant."
 21 Do you see that?
 22 A. Yes.
 23 Q. Okay. And what do you understand
 24 "Bowne's client-centric communications" to mean?

1 A. I'm still trying to figure it out in
2 details. Our discovery is forthcoming, so they --

3 Q. Isn't that the --

4 A. These are marketing concepts, and
5 marketing concepts have infrastructure situated
6 behind them and technology deployed behind them.

7 If you were responsive to us, we
8 actually would have gotten the infrastructure
9 associated with supporting these endeavors so I
10 could have answered you -- I would have given you a
11 better que- -- answer.

12 Q. Okay. And would your answer be the same
13 thing with respect to Bowne's, quote,
14 "single-source file"?

15 A. Yes.

16 Q. Paragraph 66 of the complaint states
17 that, "In violation of their non-disclosure
18 agreements, Mr. Kanda, Professor Kambil and Fujitsu
19 agreed to and did divulge LinkCo's trade secret and
20 confidential information to Bowne. Bowne in turn
21 used improper means to obtain LinkCo's trade secret
22 and confidential information, allowing it to create
23 and market the client-centric communications and
24 single-source file programs."

1 officer of the company knew that Kanda is accused
2 of wrongdoing.

3 Q. Okay. Any other facts you're aware of
4 indicating that Bowne knew that Mr. Kanda had a
5 confidentiality undertaking with LinkCo?

6 A. No, but if you give us all the
7 discovery, maybe we will know.

8 Q. What facts are you aware of indicating
9 that Bowne knew that Professor Kambil had a
10 confidentiality undertaking with LinkCo?

11 A. If -- if Bowne didn't know, why did
12 Bowne not produce the documents?

13 See, Bowne didn't produce in the first
14 half of 1998 -- they didn't produce documents that
15 had five entities of people with non-disclosures
16 with LinkCo on them dealing with LinkCo-like
17 business, and by mystery, you yourself, being
18 responsible for Bowne as their representative, you
19 failed to produce those.

20 Q. Are you going to apologize to me, sir --

21 A. No, I would not.

22 Q. You didn't let me finish my question,
23 but I will not press it.

24 Are you aware of any other facts that

1 Do you see that?

2 A. Uh-huh.

3 Q. Is that a yes?

4 A. Yes.

5 Q. Okay. What knowledge are you aware of
6 that would indicate that Bowne knew Mr. Kan- --
7 Kanda had any confidentiality obligation to LinkCo?

8 A. They knew or should have known that the
9 person who is an officer of a company -- and he was
10 presented that way by Bill Federer, whatever his
11 name is, the head of international, in a memo in
12 the beginning of 1998, another memo that you failed
13 to produce in the first case.

14 They knew that Kanda was employed by a
15 different entity, and therefore, as is the case, a
16 Bowne employee should have expected that such an
17 employee has legal obligation to their employer,
18 number one.

19 Number two, I was very intrig- --
20 intrigued to read in a discovery a note from head
21 of international to Kanda asking him about LinkCo's
22 suit against Nichimen and against himself, and I
23 didn't see -- Bowne was very interested why he's
24 being sued and that sort of thing, so a corporate

1 Bowne had knowledge that Professor Kambil had a
2 confidentiality undertaking with LinkCo?

3 A. I do not recall at the moment.

4 Q. Did Fujitsu ever sign a
5 non-disclosure --

6 A. No --

7 Q. -- and confidential --

8 A. -- that's a mistake.

9 Q. Okay. Let me just finish my question so
10 the record's clear.

11 It's correct, then, that Fujitsu never
12 had a confidentiality or non-disclosure agreement
13 with LinkCo, correct?

14 A. Correct, but I would like to just
15 supplement my answer.

16 What it doesn't say here, it doesn't say
17 the word "Nichimen," yet another document with the
18 two people -- mentioning the two people from
19 Nichimen who were responsible for the LinkCo
20 investment that came to LinkCo and vacuumed all its
21 know-how. By mystery, you failed to produce it,
22 and it's two more people that were conduits to the
23 knowledge transfer.

24 Q. I have no idea what you're talking

1 about.

2 Who are these two people?

3 A. Mr. Sato and Mr. Saito from Nichimen.

4 You produced a document now that you
5 forgot, by mysterious way, to produce last time,
6 and I'm stat -- speaking here on the record and
7 under the penalty of perjury, sir.

8 Q. Yes, you are.

9 A. Yes, I am, and you failed to produce
10 that, because I examined these documents myself,
11 and they were not there, and they were not there
12 because there were five entities with
13 non-disclosure agreements with LinkCo with --
14 basically the case against Fujitsu was crippled by
15 your conduct and the case -- or by your client's
16 conduct and the case against Nichimen was dismissed
17 because of your conduct, and you didn't produce it.

18 You didn't produce e-mails from -- from
19 Ajit Kambil, you didn't produce e-mails from Kiyoto
20 Kanda that showed that the entire basis for
21 Fujitsu's information that its domestic business
22 was an absolute lie.

23 I wonder why?

24 Q. Why document are you referring to?

1 against Fujitsu, and you know that.

2 Q. I certainly do not.

3 Is --

4 A. You knew it all along, sir.

5 Q. I'm not going to argue with you.

6 A. I know you're not going to argue with
7 me.

8 Q. If I understand your testimony, the sole
9 reason you believe that I didn't produce this
10 document is because you don't recall seeing it when
11 you spent a day in Piper Rudnick's office reviewing
12 documents?

13 A. Sir, I examined this document, and you
14 did not produce them.

15 You also forgot to tell the court that
16 you knew this business well enough five years ago
17 to be responsive to a -- to a -- to a discovery
18 request from Piper and suddenly developed senility
19 in this case. Your understanding of the subject
20 matter went backward. You forgot to tell the court
21 that you had five years of experience with the
22 subject matter.

23 Don't talk to me about apologizing to
24 you. Your conduct is what you have to apologize to

1 A. I'm worrying -- I'm talking about the
2 March 12 document, sir.

3 Q. March 12 of what year?

4 A. 1998.

5 Q. Okay. And what does this document say?
6 Who is this document from?

7 A. The document is from Kiyoto Kanda.

8 Q. And who is it to?

9 A. Among other people, Crosetto; among
10 other people, the head of international; among
11 other people, Lisa.

12 It has Lisa's printing. You guys -- she
13 printed out everything she had, and you guys
14 decided that it's too damages to give us.

15 Q. And what does this document say?

16 A. It says that he arranged for a visit by
17 Bowne to Fujitsu and Takara or Nichimen, I don't
18 remember, and that he's coming to Bowne to discuss
19 how Bowne is going to take advantage of the fact
20 that Fujitsu is taking the business into Asia with
21 the first stop Hong Kong, and you didn't produce
22 it, and had we had this document, we would have
23 produced it to Judge Scheindlin and it would have
24 been a -- a serious consequence of misconduct

1 me.

2 Q. So if I take the deposition of Mindy
3 Nam, a former attorney -- maybe a present
4 attorney -- at Piper Rudnick, and she testifies
5 that I produced this document to her, then will you
6 apologize to me?

7 A. No.

8 Q. Okay.

9 A. Are you going to?

10 Q. Is there any other basis -- I might.

11 Is there --

12 A. Go ahead.

13 Q. -- any other basis for your belief that
14 Bowne failed to produce documents in the Fujitsu
15 case other than your recollection about reviewing
16 documents at Piper Rudnick's office?

17 A. Sir, if these documents were in our
18 possession and we didn't act on it, if it was Mindy
19 or anybody else, that's a gross malpractice,
20 because these documents would have turned the case
21 and would have turned this case.

22 Q. Is it --

23 A. Because in -- because, for example, the
24 June -- the June documents that you suddenly don't

1 have would have been available to us today.
2 You did not produce this document.
3 That's all there is to it. Why don't you produce
4 Mindy Nam and depose her? Let's see what happens.
5 Q. So it's equally possible that perhaps
6 Piper Rudnick committed malpractice? Is that what
7 I understand you to say?
8 A. No. I said that I cannot -- I cannot
9 believe that professionals of that stature will go
10 see these documents and ignore them. It just
11 doesn't make any sense.
12 You file the litigation that you spend
13 millions and millions of dollars on and you have a
14 document that basically shows the entire motion of
15 Fujitsu on the first case here in the Northern
16 District of Illinois was based on fraud, and you
17 don't use it?
18 Q. Have you ever seen a cover letter
19 written by me to an attorney at Piper Rudnick
20 enclosing documents produced by Bowne in the
21 Fujitsu litigation?
22 A. No.
23 Q. And if I showed you a copy of the cover
24 letter, would that change your belief?

1 A. That says that these documents were
2 included?
3 Q. Yes.
4 A. Why don't you produce this document?
5 Q. Would it change your belief?
6 A. I don't think you'll produce this
7 document.
8 Q. So you don't know if it would change
9 your belief?
10 A. I'll have to see it.
11 Q. Okay.
12 A. It's very hard for me to believe
13 anything you say, sir.
14 Q. Apparently.
15 A. Your conduct so far suggests that you
16 will stop at nothing.
17 MR. KOSKI: I'll move to strike that as
18 non-responsive.
19 BY THE WITNESS:
20 A. Of course.
21 BY MR. KOSKI:
22 Q. Did Nichimen have a confidentiality
23 undertaking with LinkCo?
24 A. Yes.

1 Q. Okay. And do you believe Nichimen
2 provided information to my client, Bowne, that was
3 subject to that undertaking?
4 A. Must be.
5 Q. And what information do you believe
6 Nichimen provided to Bowne in violation of that
7 obligation?
8 A. Everything they knew.
9 Q. And who did Nichimen provide that
10 information to at Bowne?
11 A. Whoever was there, Mr. Saito or Sato.
12 Q. And Mr. Saito and Mr. --
13 A. Sato.
14 Q. -- Sato, they were the ones at Nichimen
15 you believe provided this information to Bowne?
16 A. Correct.
17 Q. Okay. Do you know when this took place?
18 A. According to your newly discovered
19 documents, in the first quarter of '98.
20 Q. And are you aware of any information
21 indicating that Bowne knew about a confidentiality
22 agreement between Nichimen and LinkCo?
23 A. They must have, otherwise why would --
24 why'd they suppress this?

1 Q. But you'd admit that's a logical
2 inference and not based on any firsthand knowledge
3 on your part.
4 A. Of course not.
5 Q. Paragraph 80 of the complaint states,
6 "In bad faith, Bowne exploited and misappropriated
7 LinkCo's proprietary and exclusive technology, its
8 trade secrets and its confidential information to
9 compete in the very markets LinkCo intended to
10 compete in at LinkCo's expense."
11 Do you see that allegation?
12 A. 80?
13 Q. 80.
14 A. Yes.
15 Q. And -- and what markets are you
16 referring to in Paragraph 80?
17 A. The markets for this technology.
18 Q. And what are those markets?
19 A. Any application requiring repurposing.
20 (WHEREUPON, a certain document
21 was marked Israel-Rosen Deposition
22 Exhibit No. 54, for
23 identification, as of 1-27-06.)
24 BY MR. KOSKI: