

In The Matter Of:

SAMSUNG ELECTRONICS CO. LTD., et al.

v.

BLACK HILLS MEDIA, LLC

KEVIN C. ALMEROOTH, Ph.D. - Vol. 1

January 9, 2015

MERRILL CORPORATION

LegalLink, Inc.

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

SAMSUNG ELECTRONICS CO. LTD.;
SAMSUNG ELECTRONICS AMERICA,
INC.; AND SAMSUNG
TELECOMMUNICATIONS AMERICA,
LLC,

Petitioner,

-vs-

BLACK HILLS MEDIA, LLC,

Patent Owner.

No. IPR2014-00709
IPR2014-00711
IPR2014-00723

/

VIDEOTAPED DEPOSITION OF

KEVIN C. ALMEROOTH, Ph.D.

January 9, 2015

Reported by: WENDY E. ARLEN, CSR #4355, RMR, CRR

Job No: BO-021379

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6 --oOo--

7

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1 Deposition of KEVIN C. ALMEROTH, Ph.D., taken
2 by the petitioner, at Covington & Burling LLP, One
3 Front Street, 35th Floor, San Francisco, California,
4 commencing at 8:38 a.m., Friday, January 9, 2015
5 before me, WENDY E. ARLEN, CSR, RMR, CRR.

6 A P P E A R A N C E S.

7
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32 ALSO PRESENT:

33 Gareth Loy, Ph.D.

34 Ted Hoppe, Videographer

1 San Francisco, California

2 Friday, January 9, 2015

3 8:38 a.m.

4 --oOo--

07:57:53

5 VIDEOGRAPHER: Here begins video one in the
6 deposition of Kevin Almeroth in the matter of Samsung
7 versus Black Hills Media in the United States Patent
8 and Trademark Office, Patent Trial and Appeal Board.

07:57:53

08:37:54

08:37:57

08:38:02

9 Today's date is January 9th, 2015. The time
10 on the video monitor is 8:38. The video operator
11 today is Ted Hoppe of Merrill Legal Solutions.

08:38:11

08:38:18

08:38:24

12 Counsel, could you please voice identify
13 yourselves and state whom you represent.

08:38:26

08:38:28

14 MS. GLADSTEIN: Lana Gladstein on behalf of
15 Pepper Hamilton, and here with me is George Haight
16 and Dr. Loy, who is an expert in the set of cases
17 that are at issue here.

08:38:31

08:38:33

08:38:35

08:38:41

18 MR. DISCHER: Gregory Discher with Covington
19 & Burling representing Samsung Electronics, the
20 petitioner, and with me I have counsel Christine
21 Haskett, also from Covington & Burling.

08:38:43

08:38:47

08:38:51

08:38:55

22 VIDEOGRAPHER: Wendy, could you please swear
23 the witness in.

08:38:57

08:39:00

24

25

1 KEVIN C. ALMEROTH, Ph.D.,
2 having been first duly sworn, was
3 examined and testified as follows:

4 VIDEOGRAPHER: Please proceed.

08:39:08

5 EXAMINATION BY MS. GLADSTEIN

08:39:08

6 Q. Dr. Almeroth, thank you for coming.

08:39:11

7 Please state for the record where do you
8 reside.

08:39:14

08:39:17

9 A. At 1300 Barger Canyon Road, B-a-r-g-e-r, in
10 Santa Barbara, California.

08:39:17

08:39:25

11 Q. Thank you. What's your current job title?

08:39:27

12 A. Professor.

08:39:29

13 Q. And where are you a professor?

08:39:30

14 A. At UC Santa Barbara.

08:39:33

15 Q. Are you familiar with the deposition process?

08:39:37

16 A. Yes, ma'am.

08:39:41

17 Q. Great. So if you need to take a break, just
18 let me know. And to the extent that there is no
19 question pending, we will take a break. And if any
20 of my questions are unclear, feel free to ask me to
21 clarify.

08:39:42

08:39:47

08:39:49

08:39:53

08:39:57

22 Now, is there anything that would preclude
23 you from providing full and truthful answers to my
24 questions here today?

08:39:58

08:40:03

08:40:07

25 A. No.

08:40:08

1	Q.	Great.	08:40:09
2		(Deposition Exhibit 1 marked for	08:40:20
3		identification.)	08:40:20
4		(Deposition Exhibit 2 marked for	08:40:20
5		identification.)	08:40:20
6		(Deposition Exhibit 3 marked for	08:40:20
7		identification.)	08:40:21
8	Q.	MS. GLADSTEIN: Let me hand you what has been	08:40:21
9		marked as Exhibit 1 as well as Exhibit 2, and	08:40:23
10		Exhibit 3.	08:40:34
11		Do you know what these documents are?	08:40:44
12	A.	I do.	08:40:46
13	Q.	What are they?	08:40:47
14	A.	They're the deposition notices for the three	08:40:52
15		IPR cases that I understand we will be discussing	08:40:56
16		today.	08:40:59
17	Q.	So it's your understanding that you are	08:40:59
18		appearing here today as an expert witness in the	08:41:02
19		IPR2014-00709 as listed on the Exhibit 1,	08:41:06
20		IPR2014-00711 as listed in Exhibit 2, and	08:41:14
21		IPR2014-00723 as listed in the Exhibit 3?	08:41:21
22	A.	That's correct.	08:41:27
23		(Deposition Exhibit 4 marked for	08:41:43
24		identification.)	08:41:43
25	Q.	MS. GLADSTEIN: I am handing you what has	08:41:43

1	been marked as Exhibit 4. Do you know what this	08:41:50
2	document is?	08:41:52
3	A. It is my CV.	08:41:53
4	Q. So you recognize this document.	08:41:56
5	A. I do.	08:41:59
6	Q. Did you prepare this document?	08:42:00
7	A. Yes.	08:42:02
8	Q. Do you know how long ago this document was	08:42:03
9	prepared?	08:42:06
10	A. I do not.	08:42:07
11	Q. Okay. Is the information contained in the	08:42:09
12	document that is Exhibit 4 accurate?	08:42:17
13	A. To the best of my knowledge.	08:42:21
14	Q. Are there any changes that you would want to	08:42:26
15	make to the document?	08:42:30
16	A. I don't believe there are any changes. There	08:42:31
17	might be some additions based on things that I've	08:42:40
18	done since this exhibit was -- was created.	08:42:43
19	Q. And what are the things that you've done	08:42:49
20	since the exhibit was created?	08:42:51
21	A. There would be a lot of things. I've been	08:42:53
22	fairly active in my research since this was created,	08:43:01
23	but I can sort of start and go through some of them	08:43:07
24	to give you a sense of what those would be.	08:43:10
25	On page 3 under courses taught in fall of	08:43:13

1 2014, I've taught CS 176A again, I'm currently 08:43:20
2 teaching CS 176B. So I would add winter 2015 there. 08:43:26
3 Usually I add it when I'm done teaching, but it's 08:43:35
4 something that could be added now. 08:43:40

5 Under Ph.D. students advised, Lara Deek, 08:43:42
6 number 13, has since graduated. 08:43:48

7 There would be additional research 08:43:52
8 publications. For example, number 61 on page 6 has 08:43:55
9 appeared, I believe, and there might be one or two 08:43:59
10 other ones that need to be added there. 08:44:04

11 Q. And could you pause right there? With 08:44:06
12 respect to the one or two others that may need to be 08:44:09
13 added here, do you recall what those titles are? 08:44:11

14 A. I don't. 08:44:14

15 Q. Are they relevant at all to the technology at 08:44:17
16 issue in the proceedings that we are here today? 08:44:21

17 A. Unlikely. I think to the extent there are 08:44:27
18 any, they would be from Lara, and her research was 08:44:32
19 primarily in the area of network design for wireless 08:44:36
20 networks using 802.11n and AC. So they'd be in line 08:44:43
21 with the other kinds of publications where she is 08:44:50
22 listed as author, for example, number 61. 08:44:53

23 Q. Okay. Please continue with the updates. 08:44:56

24 A. And then on page 10 under conference papers, 08:45:01
25 similarly I might have one or two other papers to 08:45:07

1	include, and they're in reverse chronological order.	08:45:10
2	So the papers I've published since June 2013 would	08:45:16
3	need to be added to the list.	08:45:20
4	Q. And how many approximately?	08:45:21
5	A. I don't recall. Anywhere from one to five.	08:45:22
6	On page 15 under workshop papers, I don't	08:45:32
7	think I have any other workshop papers, but I'd have	08:45:36
8	to go back and double-check. Again, to the extent	08:45:43
9	that Lara or Daniel were continuing to publish,	08:45:46
10	whether they were workshop or conference or journal	08:45:50
11	papers, there might be two or three other papers to	08:45:53
12	add to my publication list.	08:45:55
13	Q. Okay.	08:45:58
14	A. Page 23 under research funding, there is an	08:46:02
15	additional grant from Cisco that's not on this list.	08:46:14
16	Q. Okay.	08:46:19
17	A. Under the conference committee activities on	08:46:21
18	page 27, I'm not sure there are any under the	08:46:34
19	organizing committees which is page 27. Oh,	08:46:50
20	there's -- there is one. I'm a track chair for ICCCN	08:46:54
21	this year. That should go somewhere on this list,	08:47:00
22	probably under program chair. And then when you get	08:47:03
23	to page 28 and 29 under technical program committees,	08:47:06
24	the ones for 2015 and probably late into 2014 aren't	08:47:12
25	on this list, but as you can see from the structure	08:47:19

1 here, there's -- there's a whole bunch of conferences 08:47:22
2 and a list of years, and it's not necessarily 08:47:26
3 completely up to date, but all the ones from 2014 or 08:47:30
4 2015 are included there. 08:47:35

5 Q. Is ICCCN an acronym for the International 08:47:36
6 Conference on Communications and Computer Networks? 08:47:40

7 A. Yes, I think that's right. 08:47:42

8 Q. Anything else? 08:47:43

9 A. Page 30 and 31 on department of computer 08:47:49
10 science committees and university committees, I think 08:47:56
11 all of the 2013-2014 committees are there, but I 08:47:58
12 don't think the 2014-2015 committees are there. So 08:48:03
13 there would be a couple to add. 08:48:09

14 Q. Anything else? 08:48:11

15 A. I think that's it. Just thumbing through 08:48:13
16 what's there, I think that's -- that's all the 08:48:17
17 updates. 08:48:19

18 MS. GLADSTEIN: Okay. Counsel, I would like 08:48:23
19 to request an updated copy of Dr. Almeroth's CV. 08:48:25

20 MR. DISCHER: We'll take that under 08:48:30
21 advisement. 08:48:33

22 Q. MS. GLADSTEIN: Are you an inventor on any 08:48:34
23 U.S. patents? 08:48:39

24 A. I am listed on one, and that is listed in my 08:48:40
25 CV on page 18. It's listed as number 8. I think 08:48:46

1	that's the -- the only patent application where I'm	08:48:59
2	listed as an inventor.	08:49:02
3	Q. Has it issued?	08:49:04
4	A. No.	08:49:06
5	Q. Why not?	08:49:08
6	A. I have no idea.	08:49:09
7	Q. In very general terms, what was this	08:49:11
8	application directed to?	08:49:28
9	MR. DISCHER: Objection, form.	08:49:29
10	THE WITNESS: Very generally, infrastructure	08:49:30
11	mesh networks. I believe it had to do with	08:49:36
12	developing routing algorithms for use within	08:49:39
13	infrastructure mesh networks.	08:49:44
14	Q. MS. GLADSTEIN: And what is mesh networks?	08:49:46
15	A. Fairly nontechnically speaking, it's networks	08:49:49
16	that can communicate using nodes that are acting as	08:49:54
17	relays within a network. So you don't need every	08:50:01
18	device to be directly connected to the Internet	08:50:05
19	infrastructure, that some of the devices in the	08:50:08
20	network can act as relays.	08:50:13
21	So, for example, I might try and send traffic	08:50:17
22	from a device that I have. For some reason it's not	08:50:25
23	connecting to the Internet. So I could relay through	08:50:27
24	somebody else's device in this room, and that device	08:50:31
25	might relay to another device, and then ultimately	08:50:35

1 that device might be connected to a network. 08:50:38

2 Within the concept of mesh networks, there's 08:50:41

3 also ad hoc networks, and some of these you could 08:50:43

4 have mobile networks. So it's a concept that's used, 08:50:47

5 for example, in the military. On the battlefield you 08:50:50

6 have self-organizing networks. Those might be ad hoc 08:50:53

7 networks or using existing infrastructure, you know, 08:50:57

8 might make them characteristic of a mesh network. 08:51:03

9 Q. Thank you. Are there any other patent 08:51:06

10 applications that are pending that have your name on 08:51:08

11 them? 08:51:10

12 A. I don't believe so. 08:51:10

13 Q. Your CV does not appear to list any 08:51:12

14 consulting engagements. Is that on purpose or is it 08:51:20

15 just maybe a page missing or so? 08:51:28

16 A. Well, I have some consulting on page 2. It 08:51:30

17 doesn't list the legal consulting that I do. I don't 08:51:40

18 include that in my academic CV. 08:51:46

19 Q. I see. Do you have another CV where you have 08:51:51

20 the legal consulting listing? 08:51:54

21 A. I don't. 08:52:00

22 Q. Let's talk about your legal consulting for a 08:52:01

23 second then. And just focusing on the last five 08:52:04

24 years. Well, actually, strike that. 08:52:09

25 When did you start consulting in the legal 08:52:12

1	context, as you put it?	08:52:16
2	A. I would say at least 2001. I doubt it went	08:52:18
3	as far back into 2000, but certainly late 2001 I was	08:52:29
4	working on a case.	08:52:35
5	Q. And what case was that?	08:52:36
6	A. It was ACTV versus Disney.	08:52:38
7	Q. Was it a patent case?	08:52:43
8	A. It was. In the Southern District of New	08:52:45
9	York.	08:52:49
10	Q. Generally the technology involved in that	08:52:49
11	case?	08:52:53
12	MR. DISCHER: Objection to form.	08:52:54
13	THE WITNESS: The technology at issue --	08:52:55
14	again, it's sort of very nontechnically.	08:53:00
15	Q. MS. GLADSTEIN: High level.	08:53:04
16	A. High level and nontechnically, the -- the	08:53:05
17	transmission and access of Web pages in	08:53:10
18	synchronization with a TV broadcast. So, for	08:53:17
19	example, if somebody was watching Jeopardy, they	08:53:21
20	could be sent URL's where they would access the	08:53:25
21	content of that URL, for example, answer the	08:53:28
22	questions or ask the questions in rough synchrony	08:53:31
23	with the TV show.	08:53:37
24	Q. And in this ACTV versus Disney, did you	08:53:39
25	represent the patent owner or the accused party?	08:53:43

1	A.	In that case it was the accused party,	08:53:46
2		Disney.	08:53:51
3	Q.	Okay. And what was the next consulting	08:53:51
4		engagement since 2001?	08:53:56
5	A.	The next one, at least the next one I	08:53:58
6		remember was a company called Two-Way Media, and they	08:54:05
7		sued a company at the time AOL.	08:54:13
8	Q.	And you worked on behalf of Two-Way Media?	08:54:16
9	A.	Yes.	08:54:22
10	Q.	And what was the technology at issue there?	08:54:22
11		MR. DISCHER: Objection, form.	08:54:28
12		THE WITNESS: The technology there was audio	08:54:29
13		and video streaming to users, and there was an aspect	08:54:37
14		of it that had to do with the selection of a	08:54:45
15		particular content server. There was really a whole	08:54:47
16		architecture involved, but it was really streaming	08:54:51
17		media from a number of different available content	08:54:53
18		servers. Again, very high level and very generic.	08:54:57
19	Q.	MS. GLADSTEIN: And approximately when was	08:55:01
20		that?	08:55:03
21	A.	Sometime after 2001. I'm not sure when.	08:55:04
22		Probably within a few years after 2001.	08:55:12
23	Q.	Okay. And so Two-Way Media was the patent	08:55:14
24		holder.	08:55:18
25	A.	Yes.	08:55:19

1 Q. And what was the next consulting engagement 08:55:20
2 after the Two-Way Media? 08:55:25
3 A. So after that, there were probably several 08:55:26
4 that were ongoing at the same time. At that point I 08:55:29
5 started to do a bit more legal consulting. Those 08:55:36
6 first couple stand out just because they were the 08:55:47
7 first couple and fairly memorable. 08:55:49
8 From there, it -- it gets to be a fairly 08:55:57
9 lengthy list. Not sure any really comes specifically 08:56:01
10 to mind, at least chronologically. 08:56:07
11 Q. Okay. Let's put this topic aside for a 08:56:10
12 second. Besides consulting in legal matters, do you 08:56:15
13 consult on nonlegal matters? 08:56:18
14 A. I do. 08:56:19
15 Q. Okay. And is that listed in your CV? 08:56:20
16 A. It is. 08:56:23
17 MR. DISCHER: Objection to form and scope. 08:56:24
18 THE WITNESS: I do some additional consulting 08:56:27
19 in what's also listed under industry technical 08:56:31
20 advising on page 2. 08:56:35
21 Q. MS. GLADSTEIN: So are you currently 08:56:36
22 consulting on technical issues -- strike that. 08:56:49
23 Are you currently consulting on nonlegal 08:56:53
24 issues and, if so, could you identify those companies 08:56:58
25 that you're consulting for? 08:57:03

1	MR. DISCHER: Objection, form and scope.	08:57:05
2	THE WITNESS: The one that's on the list here	08:57:07
3	is -- I'm on the board of directors for the New Media	08:57:09
4	Studio.	08:57:15
5	Q. MS. GLADSTEIN: And as a board of directors	08:57:16
6	member, are you consulting on technical issues?	08:57:19
7	MR. DISCHER: Objection, form and scope.	08:57:21
8	THE WITNESS: Generally I think I am. I work	08:57:23
9	with other people on the board and we discuss	08:57:28
10	technical matters, both strategy and individual	08:57:32
11	projects.	08:57:38
12	Q. MS. GLADSTEIN: Any other current consulting	08:57:38
13	engagements?	08:57:41
14	MR. DISCHER: Objection, form.	08:57:43
15	THE WITNESS: I don't believe so.	08:57:44
16	Q. MS. GLADSTEIN: So what would you say, since	08:57:45
17	2001, what percentage of your time is devoted to	08:57:53
18	consulting on patent cases?	08:57:56
19	MR. DISCHER: Objection, form and scope.	08:58:00
20	THE WITNESS: It would be hard to answer that	08:58:01
21	question for at least the reason that it varies by	08:58:14
22	month, by year.	08:58:19
23	Q. MS. GLADSTEIN: How about 2014?	08:58:22
24	MR. DISCHER: Objection, form and scope.	08:58:26
25	THE WITNESS: I'm not sure I can answer the	08:58:28

1 question. It depends on what the denominator should 08:58:44
2 be. So whether it includes just consulting, just 08:58:49
3 consulting and UCSB work or other things that I do 08:58:56
4 that derive a source of income, investing, farming, 08:59:02
5 working on rental properties. 08:59:08

6 Q. MS. GLADSTEIN: Let me clarify. By comparing 08:59:14
7 to your activities as a professor at UCSB, what 08:59:16
8 percentage of your time is occupied in the consulting 08:59:24
9 engagements? 08:59:29

10 MR. DISCHER: Objection, form and scope. 08:59:30

11 THE WITNESS: As a very rough number, I'd say 08:59:32
12 in the ballpark of 25 percent. 08:59:40

13 Q. MS. GLADSTEIN: Typically in the context of 08:59:42
14 legal consulting, do you provide assistance on the 08:59:48
15 infringement analysis or on the invalidity analysis 08:59:53
16 or it's a mix of both? 08:59:57

17 MR. DISCHER: Objection, scope. 08:59:59

18 THE WITNESS: Mix of both. 09:00:00

19 Q. MS. GLADSTEIN: Would you say it's an equal 09:00:01
20 mix? 09:00:03

21 MR. DISCHER: Objection, scope. 09:00:05

22 THE WITNESS: I would say over time it's 09:00:06
23 roughly equal. In some cases I'll have a few 09:00:11
24 engagements in a row that will be for infringement, 09:00:17
25 some will be just for invalidity, some will be for 09:00:22

1	both, but I think by and large it's about 50/50.	09:00:26
2	Q. MS. GLADSTEIN: How many times have you been	09:00:30
3	deposed overall?	09:00:32
4	MR. DISCHER: Objection, scope.	09:00:34
5	THE WITNESS: Since 2001, probably about 20	09:00:35
6	times.	09:00:41
7	Q. MS. GLADSTEIN: And have you testified at	09:00:41
8	trial?	09:00:46
9	A. I have.	09:00:47
10	MR. DISCHER: Objection, scope.	09:00:48
11	Q. MS. GLADSTEIN: How many times?	09:00:49
12	A. I would say between five and ten times.	09:00:50
13	Q. With respect to the testimony at trial, do	09:01:01
14	you recall whether that testimony was in a district	09:01:13
15	court versus at the ITC versus somewhere else?	09:01:15
16	MR. DISCHER: Objection, scope.	09:01:22
17	THE WITNESS: Yes.	09:01:23
18	Q. MS. GLADSTEIN: So out of those five to ten	09:01:25
19	times, could you break them down into how many times	09:01:29
20	you testified in a district court versus an ITC	09:01:32
21	proceeding?	09:01:36
22	MR. DISCHER: Objection, scope.	09:01:36
23	THE WITNESS: I think I have only testified	09:01:37
24	in the ITC twice, and everything else would have been	09:01:43
25	in the district court.	09:01:52

1	Q.	MS. GLADSTEIN: And you don't happen to have	09:01:53
2		a listing of your professional consulting activities	09:02:04
3		in the legal context that would list all of your	09:02:11
4		especially -- that would list all of your engagements	09:02:16
5		where you testified as a witness.	09:02:20
6		MR. DISCHER: Objection, form and scope.	09:02:22
7		THE WITNESS: I do have a list I included,	09:02:24
8		for example, in expert reports in district cases. So	09:02:27
9		I do have a list.	09:02:36
10		MS. GLADSTEIN: Counsel, we would request	09:02:37
11		that that list be provided here.	09:02:44
12		MR. DISCHER: We'll take that under	09:02:47
13		advisement.	09:02:48
14	Q.	MS. GLADSTEIN: Now, prior to today, have you	09:02:49
15		testified on behalf of Samsung?	09:02:54
16	A.	I have.	09:02:57
17		MR. DISCHER: Objection, scope.	09:02:59
18	Q.	MS. GLADSTEIN: How many times?	09:03:00
19		MR. DISCHER: Objection, scope.	09:03:03
20		THE WITNESS: And to be clear, testified, do	09:03:04
21		you want by deposition or by trial, both?	09:03:14
22	Q.	MS. GLADSTEIN: Both.	09:03:20
23	A.	Okay.	09:03:21
24	Q.	If you'd like to start with depositions and	09:03:22
25		then move on to trial, that would be great.	09:03:24

1 MR. DISCHER: Objection, scope. 09:03:26

2 THE WITNESS: I have testified by deposition 09:03:27

3 for Samsung in a series of IPR proceedings that they 09:03:37

4 initiated against a company called VIS. And I'm not 09:03:46

5 sure how many depositions I've done. It might have 09:03:55

6 just been two. There might have been another one 09:03:59

7 that I'm forgetting, but it sort of falls within the 09:04:02

8 group of patents that Samsung has brought to the IPR 09:04:06

9 for evaluation. 09:04:10

10 I've also testified for Samsung at the ITC, 09:04:14

11 defending them against an action brought by Black 09:04:24

12 Hills Media. And I don't recall any other 09:04:30

13 depositions or testimony on behalf of Samsung other 09:04:34

14 than right now. 09:04:41

15 Q. MS. GLADSTEIN: Okay. And the testimony that 09:04:42

16 you gave in the ITC proceeding brought by Black 09:04:46

17 Hills, that was a deposition testimony or both? 09:04:50

18 A. That was -- 09:04:54

19 MR. DISCHER: Objection, scope. 09:04:55

20 THE WITNESS: -- both deposition testimony 09:04:56

21 and at an ITC hearing. 09:04:58

22 Q. MS. GLADSTEIN: Have you ever testified on 09:05:00

23 behalf of Yamaha? 09:05:07

24 MR. DISCHER: Objection, scope. 09:05:11

25 THE WITNESS: No. 09:05:12

1	Q.	MS. GLADSTEIN: How about against Yamaha?	09:05:15
2		MR. DISCHER: Objection, scope.	09:05:18
3		THE WITNESS: No.	09:05:20
4	Q.	MS. GLADSTEIN: What about LG? Have you ever	09:05:20
5		testified either on behalf or against LG?	09:05:23
6		MR. DISCHER: Objection, scope.	09:05:25
7		THE WITNESS: I might have. I would have to	09:05:26
8		double-check. The confusion I have is or the lack of	09:05:42
9		specific recollection is, for example, in the ITC	09:05:49
10		matter it was a joint defense group, and I think I	09:05:52
11		was representing a set of defendants against Black	09:05:55
12		Hills Media, and I think LG might have been one of	09:06:00
13		those.	09:06:03
14		There -- there might have been other cases I	09:06:04
15		was involved in where LG was named as a defendant but	09:06:06
16		they might have settled out before, you know, I	09:06:11
17		really did any work on the case. So there might be	09:06:15
18		some other instances like that.	09:06:22
19	Q.	MS. GLADSTEIN: And in the ITC proceeding,	09:06:24
20		what types of opinions did you provide on behalf of	09:06:27
21		Samsung and LG?	09:06:30
22		MR. DISCHER: Objection, form and scope.	09:06:33
23		THE WITNESS: They were invalidity opinions	09:06:35
24		about the Black Hills Media patents. I believe that	09:06:42
25		the same three that were at issue or that are at	09:06:47

1 issue in these IPR's were at issue in the ITC. I 09:06:52
2 think one of the patents, the '099 patent, was 09:06:57
3 dropped fairly early in the case. So I'm not sure I 09:07:05
4 wrote a report that included anything around the '099 09:07:08
5 patent. 09:07:13

6 And then I have a vague recollection that the 09:07:13
7 '323 was dropped before the hearing. So I don't know 09:07:15
8 if the '323 is the subject of reports or witness 09:07:18
9 statements, but I think at least at the beginning all 09:07:26
10 three of the same patents were at issue in that ITC 09:07:28
11 proceeding. 09:07:33

12 Q. MS. GLADSTEIN: Did you opine only on 09:07:33
13 invalidity? 09:07:35

14 MR. DISCHER: Objection, form and scope. 09:07:36

15 THE WITNESS: That was primarily the focus of 09:07:38
16 my opinions. There might have been -- I don't know 09:07:40
17 if you include, for example, opinions with respect to 09:07:43
18 claim construction as part of invalidity or whether 09:07:46
19 it's something separate, but primarily it was 09:07:50
20 opinions around invalidity. 09:07:52

21 Q. MS. GLADSTEIN: How about infringement? Did 09:07:54
22 you provide any opinions on infringement? 09:07:56

23 MR. DISCHER: Objection, scope. 09:07:58

24 THE WITNESS: Generally speaking, I don't 09:08:00
25 think I dealt with the issue of infringement at all. 09:08:05

1	Q.	MS. GLADSTEIN: Have you ever directly	09:08:09
2		consulted for Samsung?	09:08:25
3		MR. DISCHER: Objection, scope.	09:08:27
4		THE WITNESS: I don't believe so.	09:08:30
5	Q.	MS. GLADSTEIN: Aside from -- let me take a	09:08:32
6		step back.	09:08:42
7		In the ITC, was Covington & Burling the law	09:08:43
8		firm with which you worked?	09:08:51
9		MR. DISCHER: Objection, form.	09:08:52
10		THE WITNESS: They were one of the law firms.	09:08:53
11	Q.	MS. GLADSTEIN: Were they the primary law	09:08:55
12		firm with respect to Samsung's positions?	09:08:57
13		MR. DISCHER: Objection, form and scope.	09:09:01
14		THE WITNESS: Yes, I believe that's correct.	09:09:03
15	Q.	MS. GLADSTEIN: So they were the primary law	09:09:05
16		firm with whom you have had contact with in	09:09:07
17		connection with, for example, preparing any reports	09:09:10
18		and giving testimony.	09:09:13
19		MR. DISCHER: Objection, form and scope.	09:09:14
20		THE WITNESS: I think generally that's true.	09:09:16
21		I mean, there were lots of law firms involved. LG	09:09:18
22		was one. I think there were other defendants that	09:09:24
23		were part of the joint defense group. I recall	09:09:26
24		meetings where there might have been five or seven	09:09:28
25		lawyers in the room all representing different	09:09:32

1 defense parties, but I think primarily -- sort of 09:09:35
2 primarily I worked with Covington. 09:09:43

3 I think in some of the other instances -- you 09:09:46
4 know, I have a recollection that the '099 wasn't 09:09:51
5 asserted against some of the parties. So they may 09:09:54
6 not have been involved in discussions about the '099 09:09:57
7 patent. But I think primarily Covington. 09:10:02

8 Q. MS. GLADSTEIN: Would it be fair to say that 09:10:07
9 you are -- or you have been engaged by Covington & 09:10:09
10 Burling in connection with your assignment here in 09:10:18
11 the IPR's? 09:10:19

12 MR. DISCHER: Objection, form and scope. 09:10:20

13 THE WITNESS: In these IPR's, it's primarily 09:10:22
14 Covington. As for the engagement, it's through a 09:10:25
15 consulting group. I think they've changed their 09:10:30
16 name. They used to be the Silicon Valley Expert 09:10:33
17 Witness Group, but I think they were the ones that 09:10:36
18 facilitated the connection back in the ITC matter. 09:10:39

19 So I think my engagement is technically 09:10:43
20 through them. Actually, I think they're now Thompson 09:10:45
21 Reuters. So that's the firm that I have the contract 09:10:51
22 with. 09:10:55

23 Q. MS. GLADSTEIN: Okay. So do you bill 09:10:56
24 Thompson or do you bill Covington? 09:10:58

25 MR. DISCHER: Objection, form and scope. 09:11:00

1	THE WITNESS: I bill -- I send my invoices to	09:11:04
2	Thompson.	09:11:07
3	Q. MS. GLADSTEIN: All right. So just to not	09:11:07
4	compromise whatever obligations you have with	09:11:11
5	Thompson versus Covington, do the Covington lawyers	09:11:15
6	know what your hourly rate is?	09:11:23
7	MR. DISCHER: Objection, form and scope.	09:11:24
8	THE WITNESS: I don't know what they know.	09:11:26
9	Q. MS. GLADSTEIN: Are you allowed to disclose	09:11:27
10	what your hourly rate is with respect to Thompson?	09:11:37
11	MR. DISCHER: Objection, form and scope.	09:11:40
12	THE WITNESS: I believe so.	09:11:42
13	Q. MS. GLADSTEIN: What is your hourly rate for	09:11:43
14	the IPR engagements?	09:11:46
15	MR. DISCHER: Objection, form and scope.	09:11:48
16	THE WITNESS: For the IPR, it's \$500 an hour.	09:11:50
17	Q. MS. GLADSTEIN: Have you worked with	09:11:53
18	Covington & Burling prior to the Black Hills Media	09:11:56
19	lawsuit?	09:12:00
20	MR. DISCHER: Objection, form and scope.	09:12:00
21	THE WITNESS: I have.	09:12:02
22	Q. MS. GLADSTEIN: And when was that?	09:12:04
23	MR. DISCHER: Objection, scope.	09:12:07
24	THE WITNESS: I'm not sure when. It was a	09:12:08
25	fair number of years ago. I don't know if I could be	09:12:18

1	any more specific than that.	09:12:27
2	Q. MS. GLADSTEIN: Do you remember counsel's	09:12:28
3	name that you worked with?	09:12:30
4	MR. DISCHER: Objection, scope.	09:12:31
5	THE WITNESS: I don't. I just remember he's	09:12:32
6	no longer with Covington. He's now a judge.	09:12:35
7	Q. MS. GLADSTEIN: Just a matter of	09:12:39
8	housekeeping, have you consulted directly for Yamaha	09:12:51
9	on technical issues?	09:12:55
10	MR. DISCHER: Objection, form and scope.	09:12:56
11	THE WITNESS: No.	09:12:58
12	Q. MS. GLADSTEIN: And have you consulted	09:12:58
13	directly for LG on technical issues?	09:13:00
14	MR. DISCHER: Objection, form and scope.	09:13:03
15	THE WITNESS: No.	09:13:06
16	Q. MS. GLADSTEIN: When were you first contacted	09:13:06
17	in connection with the IPR's --	09:13:12
18	MR. DISCHER: Objection.	09:13:17
19	Q. MS. GLADSTEIN: -- that we're here today?	09:13:17
20	MR. DISCHER: Objection, form and scope.	09:13:20
21	THE WITNESS: I'm not sure I could tell you	09:13:22
22	specifically.	09:13:24
23	Q. MS. GLADSTEIN: Approximately.	09:13:24
24	MR. DISCHER: Objection, form and scope.	09:13:27
25	THE WITNESS: Approximately probably in 2013	09:13:28

1	or 2014. The best I can tell you is when I really	09:13:40
2	started working on the IPR, when it was mentioned to	09:13:45
3	me or brought to my attention or I was asked about	09:13:48
4	it, it could be days or months in advance of when I	09:13:54
5	started working.	09:13:59
6	Q. MS. GLADSTEIN: And when was that?	09:14:00
7	MR. DISCHER: Objection, form and scope.	09:14:02
8	THE WITNESS: When I started working was	09:14:04
9	probably in early 2014.	09:14:06
10	Q. MS. GLADSTEIN: Do you remember who contacted	09:14:08
11	you in connection with these IPR's?	09:14:19
12	MR. DISCHER: Objection, scope.	09:14:22
13	THE WITNESS: No.	09:14:24
14	Q. MS. GLADSTEIN: And do you recall how you	09:14:25
15	were contacted?	09:14:27
16	MR. DISCHER: Objection, form and scope.	09:14:29
17	THE WITNESS: No.	09:14:31
18	Q. MS. GLADSTEIN: When you were asked to assist	09:14:31
19	with these IPR's, what was your understanding of the	09:14:41
20	assignment?	09:14:48
21	MR. DISCHER: Objection, form and scope.	09:14:49
22	Q. MS. GLADSTEIN: Let me take a step back.	09:14:54
23	We'll come back to this question. So strike that	09:14:56
24	question. I'll re-ask it.	09:14:59
25	Was an assignment communicated to you in	09:15:00

1	connection with these IPR's?	09:15:05
2	MR. DISCHER: Objection, form and scope.	09:15:07
3	THE WITNESS: I don't recall.	09:15:08
4	Q. MS. GLADSTEIN: Nothing whatsoever?	09:15:09
5	A. Nothing.	09:15:13
6	Q. Okay.	09:15:14
7	MR. DISCHER: Objection, scope.	09:15:15
8	Q. MS. GLADSTEIN: Do you have an understanding	09:15:16
9	of your assignment in connection with these IPR's?	09:15:17
10	MR. DISCHER: Objection, form and scope.	09:15:21
11	THE WITNESS: I can only really reconstruct	09:15:23
12	it based on what's in the declarations, and it's a	09:15:34
13	little bit circular, I think. My assignment was to	09:15:40
14	provide opinions on topics as they're included in my	09:15:46
15	declarations.	09:15:50
16	In other words, I don't think I was asked to	09:15:59
17	do something that I didn't do, and I don't think I	09:16:01
18	was asked to do something and I did something more	09:16:04
19	than that. And so if you look at the declarations,	09:16:07
20	in my mind, that's what I was asked to provide	09:16:10
21	opinion about.	09:16:12
22	Q. MS. GLADSTEIN: So how did you go about	09:16:13
23	preparing your declarations?	09:16:17
24	MR. DISCHER: Objection, form and scope.	09:16:19
25	THE WITNESS: It depends on the sections. I	09:16:20

1 mean, I have my own background section. In other
2 expert reports and declarations, I use something
3 similar. So I would have worked on that section
4 based on material I've used before.

5 With respect to opinions in the other
6 sections, I certainly would have gathered materials
7 that are identified at the beginning of the
8 declaration and listed throughout the declaration, or
9 declarations plural.

10 As I recall, there's -- in some of the
11 declarations, there's opinions related to
12 construction of terms or the meaning of terms. I'm
13 not sure if you want to get into detail of how I
14 prepared and formed opinions in each of those
15 sections, but generally asked to provide opinions,
16 gather relevant materials, start to form opinions,
17 write them into a declaration and that sort of thing.

18 Q. MS. GLADSTEIN: Okay. Thank you. I would
19 like to get into the details of how you went about
20 preparing your opinions.

21 (Deposition Exhibit 5 marked for
22 identification.)

23 Q. MS. GLADSTEIN: To that end, I'm handing you
24 what has been marked as Exhibit 5.

25 Do you recognize this document?

09:16:30

09:16:37

09:16:40

09:16:47

09:16:57

09:16:59

09:17:02

09:17:03

09:17:06

09:17:11

09:17:16

09:17:20

09:17:28

09:17:31

09:17:33

09:17:39

09:17:43

09:17:55

09:17:57

09:18:00

09:18:01

09:18:02

09:18:02

09:18:05

09:18:08

1	A.	I do.	09:18:08
2	Q.	What is this document?	09:18:09
3	A.	It's the declaration I provided for the '099,	09:18:09
4		at least the body of the declaration.	09:18:15
5	Q.	And that would be in the IPR2014-00711. I'm	09:18:17
6		just stating it for the record.	09:18:24
7		Your CV does not reflect the IP -- strike	09:18:26
8		that.	09:18:29
9		Your declaration does not reflect the IPR	09:18:30
10		number. So I'm stating the IPR on the '099 copy for	09:18:33
11		the record.	09:18:39
12		And if you look at the last page, which is	09:18:39
13		page 33, is that your signature on that page?	09:18:42
14	A.	Yes, it is.	09:18:46
15	Q.	And when was the last time that you have seen	09:18:47
16		this document?	09:18:51
17		MR. DISCHER: Objection, scope.	09:18:52
18		THE WITNESS: This morning.	09:18:54
19	Q.	MS. GLADSTEIN: And prior to this morning,	09:19:00
20		when was the last time?	09:19:01
21	A.	Yesterday.	09:19:03
22	Q.	And did you review this document yesterday in	09:19:04
23		its entirety?	09:19:11
24		MR. DISCHER: Objection, scope.	09:19:13
25		THE WITNESS: Yes.	09:19:15

1	Q.	MS. GLADSTEIN: And what about today? Did	09:19:15
2		you look at any particular section?	09:19:17
3		MR. DISCHER: Objection, scope.	09:19:18
4		THE WITNESS: No, not any particular section.	09:19:20
5	Q.	MS. GLADSTEIN: Why did you review this	09:19:26
6		document this morning?	09:19:27
7		MR. DISCHER: Objection, scope.	09:19:28
8		THE WITNESS: Just a last look. No	09:19:29
9		particular reason.	09:19:33
10	Q.	MS. GLADSTEIN: And no particular section	09:19:33
11		either?	09:19:35
12	A.	No.	09:19:36
13		MR. DISCHER: Objection, scope.	09:19:37
14	Q.	MS. GLADSTEIN: So your declaration in the	09:19:38
15		'099 provides certain opinions on prior art, and	09:19:48
16		specifically Bi, Champion, and Encarnacion. Is that	09:19:58
17		how you would pronounce that reference?	09:20:09
18	A.	I would pronounce it Encarnacion.	09:20:10
19	Q.	Exhibit 5, your declaration in the '099, sets	09:20:14
20		out some opinions on prior art references by Bi,	09:20:17
21		Champion, and Encarnacion, correct?	09:20:24
22	A.	That's correct.	09:20:25
23		MR. DISCHER: Objection, form.	09:20:26
24		THE WITNESS: That's one of the things it	09:20:29
25		does.	09:20:30

1	Q.	MS. GLADSTEIN: How did these three	09:20:30
2		references come to be the subject of your	09:20:32
3		declaration?	09:20:36
4		MR. DISCHER: Objection, form and scope.	09:20:36
5		THE WITNESS: I don't recall.	09:20:38
6	Q.	MS. GLADSTEIN: Did you conduct any prior art	09:20:40
7		search in connection with preparing your declaration?	09:20:44
8		MR. DISCHER: Objection, form and scope.	09:20:47
9		THE WITNESS: That's a hard question to	09:20:49
10		answer. There is certainly this declaration and it's	09:20:56
11		hard to separate at least some of the opinions in	09:21:00
12		this declaration from similar opinions that I offered	09:21:04
13		in the ITC.	09:21:09
14		As part of my investigation in the ITC, I	09:21:14
15		became aware of lots of specific documents that I	09:21:17
16		hadn't necessarily seen before the ITC hearing. But	09:21:22
17		when it came to doing this declaration, like I said,	09:21:28
18		it's hard to separate any work, for example, a	09:21:35
19		search, from what I did in the ITC.	09:21:42
20		So I don't think I did a new, separate,	09:21:46
21		independent search for references as part of this	09:21:50
22		declaration but relied on everything that I knew and	09:21:53
23		had learned in the ITC and before the ITC.	09:21:58
24	Q.	MS. GLADSTEIN: Would it be fair to say that	09:22:01
25		the references of Bi, Champion, and Encarnacion were	09:22:04

1 provided to you by counsel?

09:22:10

2 MR. DISCHER: Objection, form and scope.

09:22:11

3 THE WITNESS: It might be. Again, I think I

09:22:13

4 had these -- for the -- for the purposes of the

09:22:27

5 declaration, I already had the references, but going

09:22:29

6 back to before the ITC, listening to your question

09:22:33

7 very carefully, I think counsel would have provided

09:22:37

8 the references to me at that time. So I would have

09:22:40

9 gotten those references from counsel at some point in

09:22:44

10 time but not necessarily specifically with respect to

09:22:46

11 this proceeding.

09:22:51

12 Q. MS. GLADSTEIN: I see. But you have --

09:22:51

13 strike that.

09:22:56

14 Would it be fair to say that you have no

09:22:57

15 recollection of conducting a prior art search where

09:22:59

16 you would have identified yourself the references of

09:23:03

17 Bi, Champion, and Encarnacion?

09:23:07

18 MR. DISCHER: Objection, form and scope.

09:23:11

19 Q. MS. GLADSTEIN: In connection with the

09:23:13

20 invalidity analysis.

09:23:16

21 A. I don't recall ever doing a prior art search

09:23:19

22 and specifically coming on these three references in

09:23:26

23 any of my work.

09:23:30

24 Q. What about conducting a prior art search and

09:23:33

25 coming up with references of Weast and Encarnacion?

09:23:37

1 MR. DISCHER: Objection, form and scope. 09:23:43

2 THE WITNESS: I think it would be a similar 09:23:45

3 answer. I don't recall ever doing a prior art search 09:23:54

4 and independently coming up with Weast as a result, 09:23:58

5 and this is sort of ever in the context of work on 09:24:04

6 this IPR or on the same patents in the ITC. 09:24:09

7 Q. MS. GLADSTEIN: Okay. So would it be fair to 09:24:13

8 say that the prior art search -- strike that. 09:24:20

9 Would it be fair to say that the prior art 09:24:22

10 that is -- strike that. 09:24:25

11 Would it be fair to say that the prior art 09:24:28

12 discussed in your reports, specifically Bi, Champion, 09:24:32

13 and Encarnacion with respect to the '099 patent and 09:24:37

14 Weast and Encarnacion with respect to the '873 and 09:24:42

15 '323 patents, were provided to you by counsel? 09:24:46

16 MR. DISCHER: Objection, form and scope. 09:24:52

17 THE WITNESS: As I recall, I don't think I 09:24:59

18 ever did a prior art search where any of those 09:25:01

19 references were things that I found or that I had 09:25:04

20 previously known about, but that would -- again, that 09:25:10

21 would go back to sort of before the ITC proceeding. 09:25:16

22 Q. MS. GLADSTEIN: So let's take a look at the 09:25:20

23 Exhibit 5, which is your declaration for the '099 09:25:27

24 patent. So there is a section that precedes the 09:25:32

25 section titled Professional Qualifications and 09:25:43

1	Background on page 3.	09:25:46
2	A. There is.	09:25:49
3	Q. Did you draft that section? And these would	09:25:50
4	be paragraphs 1 through 4.	09:25:55
5	MR. DISCHER: Objection, form.	09:25:56
6	THE WITNESS: I don't recall specifically.	09:25:59
7	Certainly I reviewed them and they represent my	09:26:08
8	opinions.	09:26:12
9	Q. MS. GLADSTEIN: Did you actually type any	09:26:12
10	portion of this report, of Exhibit 5?	09:26:16
11	MR. DISCHER: Objection, form and scope.	09:26:20
12	THE WITNESS: I believe much of it, if not	09:26:21
13	most of it at some point.	09:26:31
14	Q. MS. GLADSTEIN: So in paragraph 2, you list	09:26:34
15	certain documents that -- well, paragraph 2 states:	09:26:45
16	"I have reviewed each of the following," and it lists	09:26:50
17	four documents; is that correct?	09:26:54
18	A. No.	09:26:56
19	Q. Why not?	09:27:10
20	A. Well, a. is the patent and the prosecution	09:27:11
21	history. So Exhibits 1001 and 1002 would be	09:27:15
22	presumably separate documents, and then b., c., and	09:27:21
23	d. I believe are individual documents.	09:27:25
24	Maybe it's more fair to state I reviewed	09:27:27
25	everything that's listed in paragraph 2, at least	09:27:30

1 everything listed in paragraph 2.

09:27:32

2 Q. Thank you for the correction. I overlooked
3 that part.

09:27:34

09:27:37

4 And you reviewed these documents in
5 connection with preparing the report of Exhibit 5.

09:27:37

09:27:39

6 MR. DISCHER: Objection, form.

09:27:45

7 THE WITNESS: I did look at these documents
8 in connection with this declaration. I've looked at
9 them in other contexts as well.

09:27:47

09:27:50

09:27:53

10 Q. MS. GLADSTEIN: And in connection with this
11 declaration, did you consider any other documents
12 that are not listed in section 2?

09:27:55

09:27:57

09:28:02

13 MR. DISCHER: Objection, form and scope.

09:28:05

14 THE WITNESS: I did. In fact, if you read
15 through the rest of the declaration, there are
16 references to additional documents, some of which are
17 identified as exhibits, and then certainly when it
18 comes to discussing the state of the art at the time,
19 you know, my knowledge is based on another set of
20 documents less specific in nature, but certainly my
21 accumulated knowledge.

09:28:07

09:28:10

09:28:13

09:28:16

09:28:20

09:28:27

09:28:31

09:28:36

22 Q. MS. GLADSTEIN: And besides those documents
23 that are cited in support of your description of the
24 state of the prior art later in your declaration
25 beginning at paragraph 15 through paragraph 31, did

09:28:37

09:28:43

09:28:47

09:28:53

1 you review any other document that isn't cited in 09:29:07
2 this report? 09:29:13

3 MR. DISCHER: Objection, form and scope. 09:29:14

4 THE WITNESS: I'm not sure I understand the 09:29:16
5 question. I mean, I have reviewed a lot of documents 09:29:22
6 that are relevant to -- particularly for Exhibit 5 09:29:28
7 and the '099 patent. Again, it's a little bit hard 09:29:36
8 to separate what those documents are that were the 09:29:43
9 focus of this proceeding as opposed to, for example, 09:29:45
10 documents that I considered in the ITC, all of which 09:29:48
11 have contributed to my understanding in the state of 09:29:52
12 the art and the background on the motivation to 09:29:59
13 combine. 09:30:03

14 I've identified some specific examples within 09:30:04
15 the entire declaration. In some cases even beyond, I 09:30:07
16 think it was paragraph 31, there might be additional 09:30:11
17 documents that are referenced. 09:30:13

18 I'm not sure for the '099, but I think, for 09:30:15
19 example, in the '323 and the '873 declarations, 09:30:20
20 there's additional, for example, UPnP documents that 09:30:23
21 are identified. So, I mean, I think if it's listed 09:30:27
22 within -- if it's a document specifically listed 09:30:32
23 within the declaration that is Exhibit 5, I certainly 09:30:35
24 reviewed and considered it, and then there's a fairly 09:30:38
25 broad swath of material that I think encompasses in 09:30:44

1 my qualifications and background and sort of one tier 09:30:48
2 removed from the documents I describe in the state of 09:30:52
3 the art, again based on my knowledge. 09:30:55

4 Q. MS. GLADSTEIN: Would it be fair to say that 09:30:57
5 if a document were to be relevant to your analysis of 09:31:00
6 the '099 patent it would have been referenced or 09:31:04
7 cited somewhere in this report? 09:31:09

8 MR. DISCHER: Objection, form and scope. 09:31:11

9 THE WITNESS: I'm not sure that's the case. 09:31:13
10 Certainly the ones that were the most relevant are 09:31:16
11 cited, but as I understand your question, I think any 09:31:18
12 of the -- the other materials that I was aware of and 09:31:23
13 that I think a person of skill in the art would have 09:31:27
14 been aware of, at least the subject matter of, could 09:31:30
15 potentially bear on -- on what a person of skill in 09:31:34
16 the art at the time would have understood. 09:31:39

17 Q. MS. GLADSTEIN: You said that the ones that 09:31:41
18 were the most relevant to the report were cited. Can 09:31:55
19 you think of others that may not have been the most 09:32:01
20 relevant but that are relevant that are not cited? 09:32:05
21 And just to remove any mystery, I'm just trying to 09:32:08
22 ascertain whether there is anything else besides what 09:32:12
23 is referenced in your report that bears on the issue 09:32:17
24 of -- on the issues that you discuss here. 09:32:21

25 MR. DISCHER: Objection, form and scope. 09:32:25

1 THE WITNESS: Sure, I understand. And 09:32:27
2 that's -- maybe the way to present it is sort of a 09:32:29
3 set of concentric circles. The ones that I think are 09:32:32
4 most relevant are identified within the declaration. 09:32:37
5 For example, the fact that a person of skill 09:32:41
6 in the art who had a bachelor's degree would 09:32:44
7 understand how HTTP worked I think might be relevant 09:32:48
8 information which falls under what a person of skill 09:32:53
9 in the art would know, whether they knew about XML. 09:32:57
10 So there's textbooks at the undergraduate 09:33:02
11 level that I might be thinking about that define data 09:33:04
12 structures and just sort of general knowledge. 09:33:10
13 I'm not sure -- I certainly in this 09:33:12
14 declaration haven't gone to the level of detail of 09:33:15
15 saying, well, a person of skill in the art would have 09:33:18
16 known about XML because here's a textbook that's used 09:33:21
17 in XML courses and here's a syllabus from 2003 that 09:33:24
18 shows that this textbook was used. 09:33:30
19 So those kinds of documents I'm not referring 09:33:32
20 to or citing to. They just sort of fall under the 09:33:34
21 general umbrella of information that I'm aware of in 09:33:37
22 my head that -- that bears on what a person of skill 09:33:40
23 in the art might generally know based on their 09:33:44
24 background. 09:33:46
25 Q. MS. GLADSTEIN: Are there any other relevant 09:33:48

1 documents that bear on the invalidity of the '099 09:33:50
2 patent that are not referenced in your report? 09:33:55

3 MR. DISCHER: Objection, form and scope. 09:33:59

4 THE WITNESS: I'm not sure you meant ask the 09:34:01
5 question this way, but the way I understand it, 09:34:10
6 certainly there are lots of other documents that bear 09:34:13
7 on the invalidity of the '099 patent. Not within the 09:34:15
8 context of what I've offered as opinions in this 09:34:19
9 declaration, but, say, if you go back to the ITC 09:34:22
10 proceeding, there were additional references that 09:34:26
11 were identified as invalidating the '099 patent that, 09:34:28
12 you know, relate to the invalidity of the '099 09:34:32
13 patent. 09:34:38

14 What I focused on in my declaration is really 09:34:38
15 the opinions and the references that are contained 09:34:42
16 and discussed in there. 09:34:44

17 Q. MS. GLADSTEIN: So why did you focus on -- 09:34:45
18 why did you focus specifically on Bi, Champion, and 09:34:48
19 Encarnacion? 09:34:54

20 MR. DISCHER: Objection, form and scope. 09:34:55

21 MR. DISCHER: I suspect because I was asked 09:34:56
22 to. I don't recall that specifically, but it's -- 09:35:00
23 it's in the declaration. It's my practice. I don't 09:35:05
24 write opinions in declarations on topics that I have 09:35:09
25 not been asked to opine on or that I've been given 09:35:13

1	feedback on things that I should try and address.	09:35:17
2	Q. MS. GLADSTEIN: So the next section in your	09:35:20
3	report which starts at paragraph 5 is a heading that	09:35:32
4	states Professional Qualifications and Background.	09:35:38
5	Did you write this section?	09:35:43
6	MR. DISCHER: Objection, form and scope.	09:35:45
7	Q. MS. GLADSTEIN: And goes through paragraph	09:35:47
8	14.	09:35:50
9	MR. DISCHER: Objection, form and scope.	09:35:51
10	THE WITNESS: I believe so.	09:35:52
11	Q. MS. GLADSTEIN: And that takes us -- oh, is	09:35:53
12	everything that is stated through paragraph 14, from	09:36:00
13	1 to 14, is everything that is stated in those	09:36:08
14	paragraphs accurate, or is there anything that you	09:36:12
15	would like to correct?	09:36:15
16	MR. DISCHER: Objection, form.	09:36:16
17	THE WITNESS: I believe it's accurate.	09:36:18
18	Q. MS. GLADSTEIN: Let's keep going. Paragraph	09:36:22
19	15 is preceded by a section heading of State of the	09:36:29
20	Art Through May 2004. Why did you pick the date of	09:36:32
21	May 2004? Let me take a step back. Strike that.	09:36:39
22	Did you author the heading of State of Art	09:36:44
23	Through May 2004?	09:36:52
24	MR. DISCHER: Objection, form and scope.	09:36:53
25	THE WITNESS: I'm not sure what you mean by	09:36:55

1	author.	09:36:59
2	Q. MS. GLADSTEIN: Was this a heading that you	09:37:00
3	yourself put down on paper or on the computer?	09:37:05
4	MR. DISCHER: Objection, form and scope.	09:37:11
5	THE WITNESS: I don't remember.	09:37:13
6	Q. MS. GLADSTEIN: Do you have an understanding	09:37:14
7	as to why this -- the title says State of the Art	09:37:15
8	Through May 2004? I'm focusing on the through	09:37:22
9	May 2004 date.	09:37:28
10	MR. DISCHER: Objection, form.	09:37:29
11	THE WITNESS: I have one potential theory.	09:37:31
12	Q. MS. GLADSTEIN: Could you share that, please?	09:37:33
13	A. Sure. I think if you look at the '099	09:37:35
14	patent -- and this is described in paragraph 3 --	09:37:40
15	that there was a nonprovisional application --	09:37:45
16	sorry -- a divisional of application -- of an	09:37:52
17	application filed on May 5th, 2004. So that's where	09:37:56
18	the May 2004 date would likely come from.	09:38:00
19	Q. But in that paragraph 3, if you continue	09:38:04
20	reading after May 5, 2004, it says: For purposes of	09:38:07
21	my analysis, I assumed the time of the purported	09:38:12
22	invention to be May 2003.	09:38:15
23	A. Right. One year before then.	09:38:19
24	Q. Okay. Yet you go through May 2004 in the	09:38:22
25	state of the art section.	09:38:26

1	A.	I do.	09:38:28
2	Q.	Okay. Do you have an understanding as to	09:38:30
3		why?	09:38:32
4		MR. DISCHER: Objection, form.	09:38:33
5		THE WITNESS: As I said, it was really just	09:38:34
6		based on the date of the divisional application. It	09:38:37
7		likely was one I was asked to use. I'm not sure if	09:38:41
8		your question was asking why I didn't use May 2003.	09:38:49
9		I used May 2004 likely because I was asked and my	09:38:54
10		theory is that it's -- it's the date of the	09:38:59
11		divisional.	09:39:02
12	Q.	MS. GLADSTEIN: Okay. Now, in preparation of	09:39:03
13		this report, did you have any disagreement with	09:39:14
14		counsel about what you were asked to do?	09:39:20
15		MR. DISCHER: Objection, form and scope.	09:39:29
16		THE WITNESS: I don't think I would have had	09:39:30
17		any disagreement about what I was asked to do.	09:39:34
18	Q.	MS. GLADSTEIN: So would it be fair to say	09:39:37
19		that you typically agree with counsel when you're	09:39:39
20		asked to perform a certain task?	09:39:44
21		MR. DISCHER: Objection, form and scope.	09:39:47
22		THE WITNESS: I think that's too broad of a	09:39:49
23		generalization to be accurate.	09:39:56
24	Q.	MS. GLADSTEIN: Do you recall any instances	09:39:58
25		when you did not agree with counsel's assignment?	09:40:00

1 MR. DISCHER: Objection, form and scope. 09:40:07

2 THE WITNESS: Well, typically on the 09:40:08

3 assignment front, I don't typically have 09:40:13

4 disagreements. If counsel asks me to provide 09:40:19

5 opinions on a particular topic, I usually don't 09:40:24

6 disagree with that. But certainly I believe that 09:40:27

7 it's the case that in the time that I've been working 09:40:39

8 on patent consulting I've had disagreements with 09:40:43

9 lawyers. I don't recall any specifically with 09:40:49

10 respect to -- especially with respect to the task in 09:40:52

11 this case. 09:40:57

12 Q. MS. GLADSTEIN: Okay. So back to the state 09:40:58

13 of the art, would it be fair to say that the section 09:41:02

14 on the state of the art that we see in the '099 09:41:06

15 patent is substantially similar to the sections that 09:41:12

16 are also titled State of the Art Through May 2004 09:41:16

17 with respect to the '873 and the '323 patents? 09:41:19

18 MR. DISCHER: Objection, form. 09:41:25

19 THE WITNESS: I think they're similar. 09:41:26

20 They -- they may even be identical, but I think that 09:41:29

21 the different sections in the different declarations 09:41:34

22 speak for themselves. I don't recall any specific 09:41:37

23 differences as I sit here. So I think that generally 09:41:43

24 they're pretty similar, but I think it would be easy 09:41:45

25 enough with an electronic version go through and 09:41:50

1 determine any differences at all.

09:41:53

2 Q. MS. GLADSTEIN: Just to remove any mystery,
3 the reason for my question is so that when we talk
4 about the state of the art, would it be fair to say
5 that the state of the art is the same for purposes of
6 each of the three patents?

09:41:54

09:41:59

09:42:03

09:42:06

09:42:09

7 MR. DISCHER: Objection, form.

09:42:11

8 THE WITNESS: I think generally speaking the
9 state of the art would be the same across the
10 three -- the three declarations of the subject matter
11 at that time, I think it would be the same.

09:42:13

09:42:15

09:42:17

09:42:24

12 Q. MS. GLADSTEIN: So when we talk about the
13 state of the art, would it be fair to say that it
14 would apply equally with respect to the '873, the
15 '323, and the '099 patents?

09:42:26

09:42:27

09:42:31

09:42:37

16 MR. DISCHER: Objection, form.

09:42:41

17 THE WITNESS: I think generally speaking
18 that's true.

09:42:42

09:42:42

19 Q. MS. GLADSTEIN: Okay. And if there is
20 anything about the state of the art as relates to any
21 one of these three patents, would you point them out
22 to me as we talk about the state of the art?

09:42:42

09:42:44

09:42:46

09:42:49

23 A. Sure, I'll point them out. I'll also say
24 that, you know, the extent to which there are
25 differences between the declarations, then those

09:42:52

09:42:56

09:42:58

1	differences will speak for themselves. I just don't	09:43:00
2	have all the sections memorized and whether they're	09:43:03
3	the same or different.	09:43:05
4	Q. So let's look at paragraph 20 of Exhibit 5.	09:43:07
5	If could you read it to yourself while I prepare	09:43:32
6	other exhibits.	09:43:36
7	A. Okay.	09:44:10
8	Q. So if I understand this paragraph 20	09:44:11
9	correctly, to me it says that the wireless set-top	09:44:15
10	boxes and/or music servers that could stream video to	09:44:20
11	a TV or audio to a stereo system from various	09:44:23
12	computing devices bridged the gap between computers	09:44:27
13	and the home entertainment system. Would that be	09:44:32
14	fair to say? Strike that.	09:44:36
15	Would that be a fair characterization of what	09:44:37
16	paragraph 20 conveys?	09:44:41
17	MR. DISCHER: Objection, form.	09:44:44
18	THE WITNESS: I think it's more than that. I	09:44:45
19	mean, it's certainly one way of summarizing one of	09:44:48
20	the points that's in this paragraph, but I think it	09:44:53
21	pretty much says what it says. I'm not sure how to	09:45:00
22	reinterpret it differently.	09:45:04
23	Q. MS. GLADSTEIN: What are the points that I	09:45:06
24	omitted?	09:45:09
25	MR. DISCHER: Objection, form.	09:45:10

1	THE WITNESS: The observation of the	09:45:11
2	increasing popularity of digital media and potential	09:45:13
3	of streaming platforms, the role of manufacturers in	09:45:18
4	enabling those kinds of services, the different kinds	09:45:22
5	of services beyond just the wireless set-top boxes	09:45:29
6	and/or music servers and computers in home	09:45:33
7	entertainment and then examples of wireless set-top	09:45:40
8	boxes and music servers that were developed in the	09:45:44
9	early 2000's.	09:45:47
10	Q. MS. GLADSTEIN: So how did the wireless	09:45:48
11	set-top boxes and music servers stream media --	09:45:50
12	MR. DISCHER: Objection, form, scope.	09:45:54
13	Q. MS. GLADSTEIN: -- at the time referenced in	09:45:58
14	paragraph 20?	09:46:00
15	A. I'm not sure what you mean by how. Do you	09:46:02
16	mean a particular protocol? Or, I mean, it streamed	09:46:05
17	media, and depending on the different manufacturers	09:46:10
18	of devices, there are a bunch listed here. They	09:46:13
19	would have operated different -- differently.	09:46:20
20	Q. What were some of the protocols by which	09:46:26
21	streaming of media was being accomplished in the 2000	09:46:29
22	time frame?	09:46:34
23	MR. DISCHER: Objection, scope.	09:46:35
24	THE WITNESS: I believe one of them might	09:46:36
25	have been RTP as an encapsulation of UDP that could	09:46:42

1 be used for -- for streaming different kinds of 09:46:48
2 media. I'm not sure that HTTP for streaming media 09:46:52
3 was used as early as the early 2000's. I'd have to 09:46:56
4 go back and review some of the specific technical 09:47:00
5 material about some of the devices that are listed 09:47:04
6 here. 09:47:08

7 I think it's also the case that some of these 09:47:09
8 devices are -- I mean, all of these devices that are 09:47:14
9 listed are proprietary. So it may not have been 09:47:18
10 specifically known what techniques and protocols they 09:47:21
11 used, but certainly within the standards groups, for 09:47:24
12 example, where RTP came from, which is the IETF 09:47:29
13 working group AVT, you know, the details of some of 09:47:33
14 those protocols were published in open standards at 09:47:38
15 the time. 09:47:43

16 Q. MS. GLADSTEIN: Okay. So are any of the 09:47:43
17 streaming protocols prior to 2003 allow -- strike 09:47:46
18 that. 09:47:54

19 Did any of the streaming protocols prior to 09:47:54
20 2003 allow consumers to play media on personal 09:47:57
21 devices -- 09:48:03

22 MR. DISCHER: Objection. 09:48:03

23 Q. MS. GLADSTEIN: -- as opposed to top boxes 09:48:04
24 and desktop computers? 09:48:08

25 MR. DISCHER: Objection, form and scope. 09:48:09

1	THE WITNESS: I'm not sure if I understand	09:48:13
2	the question. Part of it is, you know, personal	09:48:16
3	devices as a term might overlap with a desktop	09:48:19
4	computer, depending on the context. Protocols that	09:48:23
5	I'm thinking of like RTP, RTSP were device agnostic	09:48:28
6	in the sense that as long as you had code or hardware	09:48:39
7	or some capability within a device to receive the	09:48:43
8	data that was encapsulated in that streaming	09:48:49
9	protocol, it would have the capability to -- to	09:48:54
10	receive that data.	09:49:01
11	Now, there's probably the second question of	09:49:03
12	beyond receiving the data with the streaming protocol	09:49:05
13	whether it could decompress it and render it. That's	09:49:08
14	a separate question.	09:49:12
15	Q. MS. GLADSTEIN: Could it decompress and	09:49:14
16	render it on a portable personal device?	09:49:18
17	MR. DISCHER: Objection, form and scope.	09:49:25
18	THE WITNESS: I'm not sure I understand the	09:49:27
19	question. Could it. Certainly there were personal	09:49:30
20	portable devices, laptops, for example, in the early	09:49:33
21	2000's that could receive streamed video, decode it	09:49:40
22	and play it.	09:49:45
23	Q. MS. GLADSTEIN: How about audio on an MP3	09:49:45
24	player?	09:49:48
25	MR. DISCHER: Objection, form.	09:49:49

1 Q. MS. GLADSTEIN: In the same time frame. 09:49:50

2 MR. DISCHER: Objection, form and scope. 09:49:53

3 THE WITNESS: I would have to go back and 09:49:55
4 check for that specific device. I know that there 09:50:00
5 were MP3 players, you know, NOMAD. I don't think 09:50:05
6 that they had the capability to receive 09:50:18
7 communications or streamed media over the Internet in 09:50:21
8 their early instances. But as one example of a set 09:50:23
9 of devices -- again, I would really have to go back 09:50:30
10 and check. 09:50:40

11 So, I mean, also, I guess part of the 09:50:41
12 question is if you mean an MP3 player like just a 09:50:43
13 NOMAD, certainly personal computers or laptops have 09:50:47
14 MP3 players. You know, certainly they were capable 09:50:49
15 of receiving streamed audio and playing it. So the 09:50:55
16 question is a little bit broad. There's a bunch of 09:50:59
17 different things I could potentially point to. 09:51:03

18 Q. MS. GLADSTEIN: Okay. Let me ask you a 09:51:05
19 couple more questions and then we should probably 09:51:07
20 take a break because we've been on the record for a 09:51:09
21 little over an hour. 09:51:12

22 Those questions are with respect to paragraph 09:51:13
23 22. If you look at the second sentence, it says: 09:51:16
24 "The first UPnP device standard was published in 09:51:22
25 November 2001..." 09:51:27

1	I just want to know, how do you know?	09:51:28
2	MR. DISCHER: Objection, scope.	09:51:30
3	THE WITNESS: Based on reviewing a bunch of	09:51:32
4	documents and my knowledge about UPnP in general.	09:51:39
5	There might be some of the documents that I pointed	09:51:44
6	to that identify that date specifically. I think you	09:51:47
7	could go to the UPnP Web site and look at the device	09:51:54
8	standard, and I think that there is a description of	09:51:59
9	when it was published.	09:52:01
10	If you look at the table at the end of	09:52:05
11	paragraph 22, 11/1. It mentions 11/1.	09:52:09
12	November 2001. So that's where the first UPnP device	09:52:25
13	standard was published, and that table comes from	09:52:28
14	Exhibit 1009 from the UPnP Design by Example book.	09:52:37
15	Q. MS. GLADSTEIN: You read my mind. That was	09:52:44
16	one of the questions I wanted to ask you. What was	09:52:46
17	the source of Table 1.1?	09:52:51
18	MR. DISCHER: Objection.	09:52:53
19	THE WITNESS: Exhibit 1009.	09:52:54
20	MS. GLADSTEIN: If there is no objection from	09:52:58
21	you, would you like to take a break?	09:53:00
22	THE WITNESS: A break would be great.	09:53:02
23	MS. GLADSTEIN: Okay. Let's do that.	09:53:04
24	VIDEOGRAPHER: Going off the record, the time	09:53:06
25	now is 9:53.	09:53:08

1	(Deposition recess taken.)	09:53:42
2	VIDEOGRAPHER: The time now is 10:03. We are	10:03:12
3	back on video record. This also marks the beginning	10:03:23
4	of video two. Please proceed.	10:03:26
5	Q. MS. GLADSTEIN: Dr. Almeroth, during the	10:03:28
6	break, did you have any discussions with counsel	10:03:32
7	about this deposition?	10:03:36
8	A. No.	10:03:38
9	Q. So if we continue on to paragraph 23 of	10:03:39
10	Exhibit 5, the first sentence says. "The UPnP forum	10:03:56
11	finalized the UPnP Device Architecture, Version 1.0	10:04:04
12	specification in June of 2000."	10:04:09
13	Is this the basis or the source for the	10:04:11
14	statement from the same Table 1.1 which you testified	10:04:13
15	earlier comes from Exhibit 1009?	10:04:20
16	MR. DISCHER: Objection, form.	10:04:24
17	THE WITNESS: That's one place. Certainly	10:04:25
18	it's my understanding based on looking at the	10:04:31
19	different documents, the device architecture	10:04:34
20	document, I think it might say when it was finalized.	10:04:38
21	So probably not limited to just that table.	10:04:41
22	Q. MS. GLADSTEIN: So which architecture	10:04:44
23	document may specify when it was finalized?	10:05:17
24	A. The device architecture might. That's	10:05:20
25	basically what I was referring to. Certainly the	10:05:26

1 first sentence of paragraph 23 I think is also 10:05:28
2 described in that table, but my knowledge and 10:05:31
3 understanding of the process and dates for these 10:05:37
4 documents was not just based on that table in 10:05:41
5 Exhibit 1009. 10:05:46

6 I mean, I guess really the point is the way 10:05:49
7 you asked the question was whether that first 10:05:52
8 sentence is true because of what was in the table, 10:05:54
9 and what I'm really saying is it's not just that date 10:05:59
10 in the table. It's my basic understanding of UPnP. 10:06:02

11 Q. So what other documents would I need to go to 10:06:08
12 in order to understand the basis for this first 10:06:11
13 sentence in paragraph 23? 10:06:15

14 MR. DISCHER: Objection, scope. 10:06:17

15 THE WITNESS: Well, I think the first thing 10:06:18
16 you could do is you could use Exhibit 1009 and the 10:06:22
17 table in there as one source of information. Trying 10:06:25
18 to determine where this fact in my head came from 10:06:32
19 would be difficult to identify all the potential 10:06:40
20 documents that I've seen that relate to this point. 10:06:43

21 I think you could pretty much go and look at 10:06:47
22 the UPnP forum Web site, you could look at the 10:06:55
23 minutes from the meeting, you could look at an 10:06:57
24 announcement, you could look in the textbook and see 10:07:01
25 if they cited to any UPnP examples. There would 10:07:05

1	probably be lots of different ways to confirm that	10:07:09
2	that date was accurate.	10:07:11
3	Q. MS. GLADSTEIN: Okay. Thank you. The second	10:07:14
4	sentence of 23 says: "The UPnP Device Architecture	10:07:45
5	defines the protocols for communication between UPnP	10:07:52
6	control points and devices according to six	10:07:55
7	well-defined phases."	10:07:58
8	Do you see that?	10:08:01
9	A. I do.	10:08:01
10	Q. What type of a network architecture that the	10:08:03
11	UPnP control point and devices exist on?	10:08:16
12	MR. DISCHER: Objection, form and scope.	10:08:23
13	THE WITNESS: I'm not sure I understand the	10:08:25
14	question. It seemed to be a hypothetical but then	10:08:28
15	when you say what do they exist on, it seemed less	10:08:36
16	hypothetical and more factual.	10:08:40
17	Q. MS. GLADSTEIN: How many kinds of networks	10:08:45
18	are there?	10:08:48
19	MR. DISCHER: Objection, form and scope.	10:08:50
20	Q. MS. GLADSTEIN: Can we start, you know, at	10:08:57
21	the very high level and if you need it, we can go	10:09:00
22	deep?	10:09:02
23	MR. DISCHER: Objection, form and scope.	10:09:02
24	THE WITNESS: It depends what you mean by	10:09:04
25	types. On the one hand, you could have something	10:09:06

1 like a star -- star topology, you could talk about 10:09:08
2 topology types, a bus, you could talk about types of 10:09:14
3 networks where if the Internet is a type. You know, 10:09:17
4 there's lots of different kinds of internetworks, 10:09:21
5 lower case i. There's the capital I Internet as a 10:09:25
6 proper noun. 10:09:28

7 Q. MS. GLADSTEIN: Are you familiar with the 10:09:29
8 local area networks? 10:09:32

9 A. Yes. 10:09:33

10 Q. And what are those networks? 10:09:34

11 MR. DISCHER: Objection, form. 10:09:36

12 THE WITNESS: Networks that are usually 10:09:37
13 confined to a local area. Well, some local area 10:09:42
14 network protocols can extend to a kilometer or more 10:09:49
15 in their specifications. Usually, you know, an 10:09:53
16 example of a local area network might be like a home 10:09:56
17 network, you know, a single access point. It could 10:09:59
18 be wireless, it could be wired. 10:10:02

19 I mean, there's a fair amount of flexibility 10:10:06
20 in what the definition of a local area network could 10:10:09
21 be and how many different protocols qualify as LAN 10:10:12
22 protocols. It's a fairly broad term. 10:10:16

23 Q. MS. GLADSTEIN: So when you say in the last 10:10:20
24 sentence of paragraph 23 that the UPnP Device 10:10:24
25 Architecture describes a networking architecture 10:10:27

1 enabling peer-to-peer network connectivity of 10:10:32
2 intelligent appliances, wireless devices, personal 10:10:35
3 computers and other devices with communication 10:10:39
4 capabilities, are you talking about a local area 10:10:42
5 network? 10:10:44

6 MR. DISCHER: Objection, scope. 10:10:45

7 THE WITNESS: No. It's -- no. 10:10:48

8 Q. MS. GLADSTEIN: What are you talking about in 10:10:51
9 that sentence? 10:10:53

10 MR. DISCHER: Objection, form. 10:10:54

11 THE WITNESS: The device architecture here, 10:10:55
12 the kind of architecture, network architecture, is 10:11:02
13 more of an application layer virtual network in the 10:11:06
14 sense of the devices being able to communicate with 10:11:08
15 each other directly. So the idea of having a 10:11:12
16 peer-to-peer network connectivity between intelligent 10:11:16
17 appliances, wireless devices and then to also have 10:11:20
18 that communication facilitated through something like 10:11:22
19 a control point. 10:11:26

20 So the network architecture that it's 10:11:27
21 describing here is not a local area network or a 10:11:30
22 particular lower layer technology like DSL or dial-up 10:11:33
23 or cable modems or 802.11. It's describing more of 10:11:40
24 the logical or virtual connectedness for the purposes 10:11:47
25 of exchanging information that's facilitated through 10:11:51

1 the use of UPnP. 10:11:54

2 Q. MS. GLADSTEIN: Okay. But it is -- is the 10:11:59

3 networking in the context of the UPnP architecture a 10:12:02

4 local area network? 10:12:09

5 MR. DISCHER: Objection, scope. 10:12:12

6 THE WITNESS: It's not limited to a local 10:12:13

7 area network. UPnP is agnostic with respect to 10:12:19

8 whether it's a local area network, a wide area 10:12:23

9 network, a wireless network. I mean, the place in 10:12:26

10 the protocol stack that UPnP exists is above any of 10:12:29

11 the details of the specific transmission technology 10:12:33

12 or physical organization of devices or nodes or 10:12:37

13 routers within that network. 10:12:41

14 UPnP can operate on top of different 10:12:45

15 transport layer protocols like TCP or UDP, and 10:12:49

16 whether it's IEP below it or what kind of routing is 10:12:55

17 used or what kinds of access technology are used are 10:13:00

18 all irrelevant to UPnP and its capabilities. 10:13:04

19 Q. MS. GLADSTEIN: What is your understanding of 10:13:10

20 the intent behind the UPnP protocol? 10:13:12

21 MR. DISCHER: Objection, form and scope. 10:13:19

22 THE WITNESS: Well, I'm not sure I'd 10:13:20

23 characterize UPnP as a protocol. As to its intent -- 10:13:24

24 go ahead. 10:13:29

25 Q. MS. GLADSTEIN: I apologize for interrupting. 10:13:30

3	A.	I would characterize UPnP as a set of	10:13:35
4		standards that describe the different capabilities of	10:13:43
5		devices that fit within the architecture, within the	10:13:50
6		UPnP architecture. In some cases it does define	10:13:54
7		specific protocols. In other cases it provides use	10:13:57
8		scenarios. In other cases it provides terminology	10:14:02
9		and classification for types of devices.	10:14:05

15	Q.	Is the interoperability amongst devices one	10:14:28
16		of the intents of the UPnP standard?	10:14:39

18	THE WITNESS: Ultimately I think it is. In	10:14:46
19	fact, I think there are paragraphs in this	10:14:54
20	declaration that go to the need for interoperability,	10:14:57
21	and that's part of why the forum was formed in the	10:15:01
22	first place.	10:15:04

23	I think maybe what's not stated specifically	10:15:05
24	in the declaration but what's the supporting basis or	10:15:09
25	at least the understanding for why the forum was	10:15:15

1 created in the first place was to create
2 interoperability.

3 If you look at sort of the evolution of the
4 technology from the mid to the late '90's, it was
5 very clear that all the members of the forum were
6 very much interested in defining standards that would
7 allow the products that they were making to
8 interoperate with products that other companies were
9 making.

10 So, for example, if you -- in some of the
11 scenarios that are listed in the declaration
12 specifically or any of the other scenarios that are
13 listed throughout all of the UPnP documents, you
14 know, the idea that you could have, say, a personal
15 computer running Microsoft be able to interface with
16 a refrigerator made by Fridgidaire, in order for that
17 to happen, there has to be some sort of standard or
18 agreed-upon mechanism for communication and exchange
19 of information, and that's naturally why you have
20 groups like UPnP or the IETF or the IEEE that
21 standardize programs -- or the protocols.

22 Q. MS. GLADSTEIN: Okay. I just wanted to make
23 sure that when you utilize a technical term that I
24 have an understanding of the meaning that it takes
25 for you.

1 A. Sure. Absolutely. 10:16:42

2 Q. Okay? So when you refer to a network, what 10:16:43
3 does the term network means to you? 10:16:49

4 MR. DISCHER: Objection, scope. 10:16:51

5 THE WITNESS: It depends. It depends on the 10:16:53
6 context. I could be referring to a specific network 10:16:56
7 like the Internet. I would call the Internet a 10:16:59
8 network. I could refer to something like a local 10:17:02
9 area network that's something a little bit more 10:17:04
10 generic. 10:17:09

11 Within that kind of system there's local area 10:17:10
12 networks, metropolitan area networks, wide area 10:17:12
13 networks. There are network topologies which have to 10:17:17
14 do more with the kinds of connectedness of devices. 10:17:20
15 So the term network independent of any context could 10:17:24
16 have literally dozens of different meanings. Maybe 10:17:28
17 not dozens, but maybe a dozen. 10:17:34

18 I'm sorry. You could have like a social 10:17:43
19 network. So lots of uses of the term networking. 10:17:46
20 Social networking is very popular within computer 10:17:50
21 science, so it's one of the things we think about. 10:17:53

22 Q. MS. GLADSTEIN: So when you refer to network 10:17:56
23 topologies which have to do more with the kind of 10:17:59
24 connectedness of devices, what does network topology 10:18:04
25 mean to you? 10:18:12

1 MR. DISCHER: Objection, scope. 10:18:12

2 THE WITNESS: Network topology generally 10:18:13

3 means the way in which devices are connected 10:18:17

4 together. In some cases they follow certain 10:18:19

5 identified categories. In some cases they're hybrids 10:18:25

6 of those categories. So you could have something I 10:18:29

7 mentioned earlier like a star topology where you have 10:18:32

8 some central device in the middle and then you have 10:18:36

9 radiating devices that all connect through that 10:18:38

10 central device. 10:18:41

11 You can have a bus topology where there is 10:18:42

12 one virtual or even physical cable that devices 10:18:47

13 connect into. You can have a hub topology where it's 10:18:52

14 similar logically but just has a different physical 10:18:58

15 structure. 10:19:01

16 If you think about the Internet as a 10:19:02

17 combination of a set of different internetworks 10:19:08

18 connected together in a sort of hub and spoke model 10:19:11

19 or a cloud model, there can be lots of different 10:19:16

20 topology types. 10:19:23

21 Q. MS. GLADSTEIN: So would it be fair to say 10:19:24

22 that when you refer to network topology you are 10:19:25

23 speaking more specifically as to the characterization 10:19:31

24 of the network? 10:19:35

25 MR. DISCHER: Objection, form, scope. 10:19:36

1 THE WITNESS: More specifically than what? 10:19:39

2 Q. MS. GLADSTEIN: Than just referring to it as 10:19:41

3 a, you know, a local area network or a wide area 10:19:44

4 network. 10:19:48

5 MR. DISCHER: Objection, form, scope. 10:19:49

6 THE WITNESS: Not necessarily. I mean, the 10:19:51

7 concept of a local area network versus its topology 10:19:55

8 are somewhat orthogonal concepts. You could have a 10:20:00

9 local area network that was a bus network. You could 10:20:05

10 have a local area network that was a ring network. 10:20:08

11 That's one of the ones I hadn't mentioned before. 10:20:15

12 Token ring, for example, is typically referred to as 10:20:18

13 a local area network protocol that operates in a ring 10:20:21

14 topology. 10:20:24

15 Ethernet is usually a hub topology, though in 10:20:26

16 more recent versions it's a hub or switched or 10:20:32

17 something like that. 10:20:36

18 So the concept of the topology and the 10:20:38

19 structure is somewhat different than other 10:20:42

20 characteristics of the network. 10:20:44

21 Q. MS. GLADSTEIN: Would a LAN have -- or could 10:20:48

22 a LAN have a star topology? 10:20:58

23 A. Yes. 10:21:00

24 MR. DISCHER: Objection, scope. 10:21:01

25 Q. MS. GLADSTEIN: And is that what UPnP is 10:21:03

1 about? 10:21:06

2 MR. DISCHER: Objection, scope. 10:21:08

3 THE WITNESS: No. Again, these are sort of 10:21:09
4 orthogonal concepts. UPnP is designed to work on any 10:21:14
5 network where there's connectivity among the devices. 10:21:20
6 UPnP defines a server, a control point and a 10:21:34
7 renderer, and within a star topology or a local area 10:21:39
8 network or a wide area network, you can have any of 10:21:45
9 those three devices; and as long as you have the 10:21:49
10 underlying connectivity, those devices can 10:21:53
11 communicate. 10:21:55

12 So there's -- there's the two scenarios that 10:21:56
13 are described that I've sort of cut and pasted into 10:21:59
14 the declaration, but you can imagine, for example, 10:22:04
15 using UPnP where I'm sitting in this room and I have 10:22:07
16 my PC or laptop and I'm able to adjust the 10:22:11
17 temperature in my house in Santa Barbara using UPnP. 10:22:16
18 Or I can play a song in my house in Santa Barbara 10:22:21
19 based on controlling it from here. 10:22:26

20 So in that sense, UPnP isn't limited to a 10:22:29
21 geographical region or a particular underlying 10:22:35
22 network topology. It's more designed to work on top 10:22:38
23 of a network where you have any kind of connectivity 10:22:42
24 among the devices of the architecture. 10:22:47

25 Q. MS. GLADSTEIN: So when you said that you can 10:22:50

1 play a song in your house in Santa Barbara based on 10:22:53
2 controlling it from here, do you mean that you can do 10:22:56
3 so today right now? 10:23:02

4 MR. DISCHER: Objection, scope. 10:23:04

5 THE WITNESS: Hypothetically today, yes. And 10:23:05
6 I can almost do it with the software I've got on my 10:23:15
7 devices now. 10:23:19

8 Q. MS. GLADSTEIN: How about in 2003? Could you 10:23:21
9 have done that? 10:23:24

10 MR. DISCHER: Objection, scope. 10:23:25

11 THE WITNESS: Could I have done it? 10:23:26
12 Absolutely. 10:23:29

13 Q. MS. GLADSTEIN: How? 10:23:29

14 MR. DISCHER: Objection, scope. 10:23:31

15 THE WITNESS: In 2003, I could have used 10:23:32
16 something like UPnP or I could have designed my own 10:23:36
17 set of protocols for the coordination. You really 10:23:40
18 could have done either kinds of things. It's really 10:23:48
19 just remote control of a particular device, and 10:23:50
20 there's lots of different design features, you know, 10:23:53
21 I could think of doing it at the time. I could log 10:23:59
22 on to a machine in my house and tell it to retrieve a 10:24:03
23 particular file and play it. Certainly I think it 10:24:06
24 would have been possible before 2003. 10:24:14

25 Q. MS. GLADSTEIN: Is it your understanding that 10:24:16

1 the specification of the UPnP was able in the time 10:24:29
2 frame of 2003 to remotely control across a wide area 10:24:35
3 network? 10:24:46

4 MR. DISCHER: Objection, scope. 10:24:46

5 THE WITNESS: Could you repeat the question 10:24:47
6 or even read it back? 10:24:48

7 MS. GLADSTEIN: Would you read the question 10:24:50
8 back, please. 10:24:52

9 (Record read: Q. Is it your understanding 10:25:07
10 that the specification of the UPnP was able in the 10:24:29
11 time frame of 2003 to remotely control across a wide 10:24:35
12 area network?) 10:25:08

13 THE WITNESS: The disconnect I have in 10:25:08
14 answering that question is was the specification able 10:25:10
15 to do something. 10:25:13

16 Q. MS. GLADSTEIN: Let me rephrase. Was the 10:25:20
17 UPnP protocol in the 2003 time frame able to -- 10:25:25
18 strike that. 10:25:36

19 Was the UPnP protocol in 2003 providing a 10:25:36
20 remote control capability via a wide area network? 10:25:51

21 MR. DISCHER: Objection, form, scope. 10:25:57

22 THE WITNESS: I'm going to have the same 10:25:59
23 problem with that question. The UPnP -- first of 10:26:01
24 all, it's not just the UPnP protocol. There are 10:26:05
25 various UPnP protocols described as part of the 10:26:07

1 architecture. 10:26:11

2 But those protocols didn't provide or do 10:26:13
3 anything themselves. They were required to be 10:26:20
4 implemented within a particular system, and that's 10:26:23
5 why, for example, UPnP contemplated a variety of 10:26:27
6 scenarios in which they could be used. 10:26:32

7 And you have other instances, for example, 10:26:35
8 like Weast or Encarnacion that provided services like 10:26:37
9 what were described as scenarios within the UPnP 10:26:44
10 architecture. 10:26:48

11 With respect to whether UPnP could be used 10:26:51
12 within the wide area, I don't recall any technical 10:26:56
13 limitations why it couldn't be. It really was then 10:26:59
14 whether or not a scenario was contemplated as to 10:27:08
15 whether it could be used in the wide area network. 10:27:11

16 I'd have to go back and see if there was a 10:27:14
17 UPnP scenario within the UPnP architecture from some 10:27:18
18 document that was published by UPnP or whether, for 10:27:21
19 example, Weast or Encarnacion described the use of 10:27:26
20 UPnP over the wide area; but as I sit here right now, 10:27:32
21 I don't recall any technical limitation as to why 10:27:37
22 UPnP could not be used in the wide area. 10:27:40

23 And let me just add. In fact, I think there 10:27:56
24 are references that would have contemplated the use 10:27:58
25 of UPnP in the wide area. It might even be in Weast 10:28:01

1 or Encarnacion. I'd have to go back and look in 10:28:06
2 these references. 10:28:11

3 Q. MS. GLADSTEIN: So if we were in the 2003 10:28:12
4 time frame, under the UPnP architecture, within the 10:28:23
5 UPnP architecture, what would need to have happened 10:28:36
6 for you to be able to play a song in your house in 10:28:39
7 Santa Barbara while you're physically located here in 10:28:46
8 San Francisco? 10:28:49

9 MR. DISCHER: Objection, form, scope. 10:28:50

10 THE WITNESS: What would be needed would be 10:28:53
11 control software on a device here in San Francisco 10:29:07
12 that would be able to send a UPnP protocol message to 10:29:12
13 a device in Santa Barbara capable of receiving it and 10:29:17
14 then properly executing that message. 10:29:20

15 So, for example, I think the UPnP AV 10:29:23
16 architecture document that's cited in my declaration 10:29:27
17 has some figures and message flow that describe 10:29:32
18 something very similar, at least conceptually, to the 10:29:38
19 scenario that you just asked about. 10:29:41

20 So the UPnP architecture provides the 10:29:43
21 messages to facilitate the communication of the 10:29:47
22 instruction between the control point that would 10:29:51
23 exist here and the media renderer that would exist in 10:29:54
24 my house. Now, that media renderer could also be a 10:29:58
25 hybrid device where the content is also located on 10:30:02

1 that device. So a simplified scenario where I 10:30:06
2 instruct a device in Santa Barbara to play a song 10:30:10
3 that's stored on the hard drive. 10:30:13

4 UPnP contemplates that the separation of the 10:30:14
5 functionality and capability of that media renderer 10:30:19
6 into a separate server and then the server could be 10:30:24
7 remote. So either I could instruct the renderer to 10:30:26
8 go and get the content from the server and play it or 10:30:30
9 I could tell the server to deliver the content to the 10:30:33
10 renderer within the UPnP architecture. 10:30:36

11 That server could be located on the renderer, 10:30:41
12 which was in the simplified scenario, right next to 10:30:44
13 the renderer connected by a local area network, or it 10:30:48
14 could be a renderer -- or sorry -- a server located 10:30:52
15 somewhere in the Internet. 10:30:57

16 As long as there was, for example, a URI, a 10:30:59
17 uniform resource identifier, that the renderer could 10:31:03
18 use to access the content, the retrieval of that 10:31:05
19 content is something that would be -- that's 10:31:08
20 described within the UPnP architecture; and I'm 10:31:12
21 specifically thinking of the UPnP AV architecture 10:31:16
22 document. 10:31:21

23 Q. MS. GLADSTEIN: So in 2003, is it your 10:31:25
24 position that the UPnP specified a way for a control 10:31:37
25 point not on a local area network to control devices 10:31:43

1 that are on a local area network? 10:31:50

2 MR. DISCHER: Objection, form, scope. 10:31:54

3 THE WITNESS: As I recall, I didn't -- I 10:31:55
4 don't remember any prohibitions in the UPnP 10:32:02
5 architecture documents, including the UPnP AV 10:32:04
6 architecture document, that prohibited the use of 10:32:07
7 UPnP within a wide area network. There might be some 10:32:12
8 scenarios that were within a local area network, but 10:32:16
9 I think that there were also scenarios described that 10:32:21
10 were beyond the limitations of a local area network, 10:32:24
11 that were in a wider area. 10:32:31

12 In fact, if you -- if you show me that UPnP 10:32:33
13 AV architecture document -- I think it's one of the 10:32:38
14 exhibits I've identified -- you know, we can go 10:32:41
15 through that and we can see if there are any protocol 10:32:45
16 limitations that constrain it to a local area 10:32:48
17 network. 10:32:52

18 Q. MS. GLADSTEIN: Why don't we do that. 10:32:53

19 (Deposition Exhibit 8 marked for 10:32:56
20 identification.) 10:32:57

21 Q. MS. GLADSTEIN: I'm handing you what has been 10:32:57
22 marked Exhibit 8. Is that the document that you were 10:33:00
23 referring to just now? 10:33:25

24 A. It is. This is -- this is one of the 10:33:25
25 documents that I would look to to see if there are 10:33:28

1 any limitations in the architecture or specifically 10:33:31
2 the AV protocol that's used that would limit -- limit 10:33:35
3 it to a local area network. 10:33:40

4 I also mentioned in answering your question 10:33:45
5 that you would also look to other documents, for 10:33:47
6 example, Weast and Encarnacion, that use UPnP, or 10:33:50
7 even the UPnP scenarios that were published by the 10:33:54
8 UPnP forum to see if there are wide area network 10:33:58
9 scenarios described or if there were any suggestion 10:34:03
10 that there were a prohibition against the use of UPnP 10:34:06
11 in the wide area network. 10:34:10

12 Q. Are there any downsides to employing the UPnP 10:34:12
13 standard in the crossover from the wide area network 10:34:18
14 to the local area network? 10:34:26

15 MR. DISCHER: Objection, form, scope. 10:34:27

16 THE WITNESS: It's a complex question. I'd 10:34:30
17 probably have to think about it a little bit more. 10:34:37
18 One of the often identified concerns is of privacy 10:34:39
19 and control, right? So in designing a particular 10:34:46
20 system, you can use a firewall at your house so that 10:34:49
21 somebody outside your house can't turn on the heat in 10:34:54
22 the middle of summer and cause your bill to go up, 10:34:58
23 but certainly security was a contemplated service at 10:35:07
24 the time; and as long as you're using proper 10:35:09
25 encryption, it becomes much more difficult to sort 10:35:11

1 of, quote/unquote, hack into somebody's house from a 10:35:15
2 remote location. 10:35:22

3 But I think, you know, generally speaking, 10:35:24
4 there probably -- I think sort of the wide area 10:35:28
5 network functionality was something that was 10:35:32
6 contemplated at the time. I mean, certainly we were 10:35:34
7 thinking about it in the late '90's when we were 10:35:37
8 designing sort of light weight protocols for 10:35:40
9 controlling devices in a home. 10:35:44

10 Q. MS. GLADSTEIN: And by we, who are you 10:35:47
11 referring to? 10:35:50

12 A. Myself and my collaborators. 10:35:50

13 MR. DISCHER: Objection, scope. 10:35:53

14 Q. MS. GLADSTEIN: Were you affiliated with any 10:35:55
15 particular employer? 10:35:59

16 MR. DISCHER: Objection, form, scope. 10:36:02

17 THE WITNESS: UC Santa Barbara. 10:36:04

18 Q. MS. GLADSTEIN: Okay. 10:36:07

19 A. I mean the research that we were doing and 10:36:08
20 the students who were working on it and I was 10:36:10
21 collaborating with people at -- I think they were at 10:36:13
22 ISI at the time. It's one of the papers that's 10:36:17
23 mentioned specifically in the background 10:36:20
24 qualifications in the declaration. 10:36:24

25 Q. Stepping back, you were going to go through 10:36:26

1 Exhibit 8 to see if you could identify a disclosure 10:36:30
2 of this wide area to local area communication. 10:36:40
3 A. Actually, what I was going to do was look 10:36:44
4 through Exhibit 8 to see if there were any 10:36:47
5 prohibitions against the use of UPnP across a wide 10:36:49
6 area. And everything that I'm seeing in the types of 10:36:53
7 communications in the models, Figures 1 and 2, it's 10:36:57
8 as I expected it would be. 10:37:04
9 The functionality of the protocols are 10:37:08
10 agnostic with respect to whether the underlying 10:37:10
11 network was a local area network or a wide area 10:37:13
12 network. 10:37:16
13 Figures 1 and 2, Figure 3, and then even the 10:37:16
14 specific examples on page 11, 13, 15, 17, 18, 19 10:37:24
15 don't describe -- 20, 21 -- don't describe the 10:37:38
16 devices as having any sort of network or geographical 10:37:44
17 relationship. In fact, the kinds of messages that 10:37:47
18 they're using, for example, HTTP GET, are all 10:37:50
19 protocols that were designed to be fully capable 10:37:55
20 within the wide area network. 10:37:59
21 If you go back to the introduction on page 3, 10:38:02
22 it talks about at the end of the first paragraph the 10:38:05
23 multiple types of transfer protocols. 1394, IEEE 10:38:09
24 1394 is a local area network protocol. HTTP GET is 10:38:17
25 wide area or isn't limited to wide area or local 10:38:23

1 area. 10:38:27

2 RTP is agnostic with respect to whether it's 10:38:27
3 wide area, local area, metropolitan. HTTP, again, 10:38:33
4 TCP/IP, those are all examples of protocols that are 10:38:41
5 used every day and have been since the late '80's in 10:38:44
6 both the wide area and local area network. 10:38:48

7 And that's just one example of where the fact 10:38:51
8 that UPnP is supporting transfer protocols that exist 10:38:53
9 in the wide area as to why UPnP wouldn't be limited 10:38:59
10 to a local area network. And I think pretty much 10:39:04
11 every section in here describes functionality that's 10:39:09
12 independent of exactly where these devices are 10:39:14
13 located. 10:39:17

14 Q. Can you find any where in Exhibit 8 a 10:39:20
15 description that the UPnP architecture provides for 10:39:38
16 wide area network access? 10:39:48

17 MR. DISCHER: Objection, form, scope. 10:39:50

18 THE WITNESS: I'm not sure I understand the 10:39:52
19 question. A person of skill in the art looking at 10:39:54
20 this document in 2003 wouldn't need to see examples 10:39:57
21 of support in the wide area network. I mean, 10:40:01
22 everything about the protocols and the architecture 10:40:05
23 of UPnP suggests that it's not limited to the local 10:40:07
24 area network. 10:40:12

25 To have some sort of explicit description of 10:40:14

1 why these protocols could be used in the wide area 10:40:21
2 network or that they would be allowed to be used 10:40:25
3 is -- is redundant because it's so widely understood. 10:40:30

4 Q. MS. GLADSTEIN: Well, how does -- how is 10:40:39
5 device discovery done using the UPnP standard? 10:40:42

6 MR. DISCHER: Objection, form, scope. 10:40:49

7 THE WITNESS: I don't recall the details 10:40:51
8 specifically. I mean, just looking in Exhibit 8 on 10:41:00
9 page 9 it has a description of discover AV devices, 10:41:02
10 and it says: "Using UPnP's Discovery mechanism, 10:41:08
11 MediaServers and MediaRenderers in the home network 10:41:13
12 are discovered." 10:41:17

13 So that's looking at it from a particular 10:41:18
14 example. Certainly I think we could look at whatever 10:41:21
15 document describes the discovery protocol to see 10:41:27
16 what's listed there or if it has any prohibitions 10:41:31
17 against the use of UPnP in a wide area. 10:41:35

18 Q. MS. GLADSTEIN: Would the reference to the 10:41:38
19 home network or discovery devices within the home 10:41:40
20 network imply that this is a discovery of devices 10:41:44
21 located on the local area network? 10:41:50

22 MR. DISCHER: Objection, form, scope. 10:41:53

23 THE WITNESS: I think it says what it says. 10:41:55
24 I don't think that there is an implication here that 10:42:01
25 UPnP is limited to a home network. It's really 10:42:03

1 talking about the discovery mechanism and what it can 10:42:08
2 be used for in a particular scenario. 10:42:12

3 But the whole basis of UPnP is it's sort of 10:42:15
4 the raw building blocks that can be used to implement 10:42:20
5 a variety of scenarios. If you look at the state of 10:42:23
6 the art and the variety of documents that exist 10:42:27
7 describing the flexibility of UPnP and how it can 10:42:30
8 support a whole range of different scenarios, those 10:42:34
9 scenarios don't limit what UPnP is capable of doing. 10:42:39
10 It more describes an instance of how UPnP can be 10:42:45
11 used. 10:42:49

12 Q. MS. GLADSTEIN: Okay. But with respect to 10:42:49
13 the reference to a home network in that paragraph 10:42:51
14 that you pointed to on page 9, is home network 10:42:55
15 synonymous with a local area network? 10:43:02

16 MR. DISCHER: Objection, scope. 10:43:05

17 THE WITNESS: No. 10:43:07

18 Q. MS. GLADSTEIN: It's not. 10:43:07

19 A. It's not. 10:43:08

20 Q. Why not? 10:43:09

21 MR. DISCHER: Objection, scope. 10:43:12

22 THE WITNESS: It's not synonymous in both 10:43:13
23 directions. I can think of local area networks that 10:43:16
24 are not home networks. I can envision in this office 10:43:18
25 building there's a local area network. I wouldn't 10:43:22

1 consider that a home network. 10:43:23

2 I think also in home networks may not be 10:43:27

3 limited to local area networks. 10:43:30

4 Q. MS. GLADSTEIN: Okay. Let's check here just 10:43:33

5 a little bit. Are you aware of any system developed 10:43:38

6 using the UPnP into 2003 that was designed for a wide 10:43:41

7 area network operation? 10:43:52

8 MR. DISCHER: Objection, form, scope. 10:43:54

9 THE WITNESS: I haven't tried to go off and 10:43:55

10 look at whether or not systems were specifically 10:43:58

11 implemented for the purpose of providing 10:44:01

12 functionality over a wide area network. I -- as I 10:44:03

13 sit here today, if I was asked to find some examples, 10:44:09

14 I don't think it would be difficult to do. 10:44:13

15 In fact, if you look at some of the documents 10:44:16

16 that are referenced towards the end of this 10:44:18

17 declaration, as they get into specific examples of 10:44:28

18 where people were using UPnP, within those documents 10:44:32

19 there might be descriptions of how you could use 10:44:43

20 their implementations over a network not limited to 10:44:47

21 the home or not limited to a local area network. 10:44:52

22 And I think certainly the scenarios that were 10:44:56

23 contemplated by UPnP, some of them identify scenarios 10:44:58

24 where it could be implemented over a wide area 10:45:03

25 network. And there's also -- I think the other issue 10:45:06

1 I had with your question was you described systems 10:45:11
2 implementing over the wide area network, where their 10:45:14
3 intent or their goal or they were designed to work 10:45:20
4 over the wide area network. 10:45:24

5 Certainly I think that there were references 10:45:24
6 that contemplate the possibility of operating over a 10:45:28
7 wide area network. Whether they were implemented or 10:45:33
8 whether it was specifically their intent or design is 10:45:36
9 a different question. 10:45:41

10 Q. MS. GLADSTEIN: So do you know when was the 10:45:43
11 first usage of UPnP within the wide area network? 10:45:48

12 MR. DISCHER: Objection, form, scope. 10:45:55

13 THE WITNESS: Did you say whether the first 10:45:56
14 usage was in a wide area network or not? 10:46:00

15 Q. MS. GLADSTEIN: When was the first time that 10:46:02
16 UPnP was used in the context of the wide area 10:46:08
17 network? 10:46:12

18 A. I don't know when it was specifically used. 10:46:12
19 Whether there was an instance -- or when it was 10:46:18
20 specifically used as opposed to when it was 10:46:21
21 contemplated through scenarios or some publication, I 10:46:23
22 mean, I'm sure the contemplation came much earlier. 10:46:26

23 Q. But sitting here today, you do not know -- 10:46:30

24 MR. DISCHER: Objection, form, scope. 10:46:33

25 Q. MS. GLADSTEIN: -- the date. 10:46:35

1 A. I don't. I don't have the specific date. It 10:46:37
2 wasn't a question I tried to answer. If I had some 10:46:39
3 time, I could easily go off and do some research and 10:46:44
4 try and discover something. At least maybe not the 10:46:47
5 first, but certainly identify a date by which UPnP 10:46:51
6 was used in an actual wide area setting. 10:46:54

7 Q. Would you agree that the UPnP AV 10:46:59
8 Architecture:1 document of Exhibit 8 contemplated 10:47:10
9 that the -- that all interactions in the UPnP 10:47:15
10 protocol that would occur between the control point 10:47:23
11 and the devices would occur in isolation between the 10:47:28
12 control point and each device? 10:47:32

13 MR. DISCHER: Objection, form, scope. 10:47:34

14 THE WITNESS: I'm not aware of where 10:47:36
15 something like that is said in Exhibit 8. If 10:47:43
16 you're -- if you have something in mind, you can 10:47:47
17 point it out and I can certainly look at it. 10:47:49

18 Q. MS. GLADSTEIN: Would you disagree with the 10:47:51
19 statement that I made, that all interactions in the 10:48:00
20 UPnP protocol occur in isolation between the control 10:48:09
21 point and each device? 10:48:13

22 MR. DISCHER: Objection, form, scope. 10:48:15

23 THE WITNESS: I'm not even sure I understand 10:48:17
24 the question. 10:48:27

25 Q. MS. GLADSTEIN: Let me -- let me try to 10:48:28

1 clarify it. Would it be fair to say that the UPnP AV 10:48:32
2 architecture envisioned the individual devices as not 10:48:37
3 interacting directly with each other but, instead, 10:48:44
4 interacting only with the control point? 10:48:50

5 MR. DISCHER: Objection, form, scope. 10:48:53

6 THE WITNESS: When you say individual 10:48:55
7 devices, do you mean the media renderers? 10:49:00

8 Q. MS. GLADSTEIN: Yes. 10:49:03

9 A. So you're saying -- well, let me put it this 10:49:04
10 way. I don't think -- or I don't recall there being 10:49:12
11 anyplace in the AV architecture document where it 10:49:15
12 contemplates media renderers communicating with other 10:49:19
13 media renderers directly. 10:49:24

14 Q. And why is that? 10:49:25

15 A. Well, it -- 10:49:26

16 MR. DISCHER: Objection, scope. 10:49:29

17 THE WITNESS: Two reasons. One, it's a 10:49:30
18 protocol document. So it's really describing the 10:49:33
19 protocol messages that are possible. The whole 10:49:35
20 flexibility of UPnP was the ability of somebody to 10:49:39
21 take UPnP and easily implement a particular service 10:49:43
22 using those protocol messages. 10:49:48

23 So the protocol specification doesn't say 10:49:50
24 every way in which the protocol should be used or 10:49:59
25 allowed to be used. It describes what those messages 10:50:03

1 are, provides some scenarios to describe the 10:50:06
2 capabilities and features of the protocol and the 10:50:11
3 messages and then relies on somebody's creativity to 10:50:14
4 use those protocols in a way that's consistent with 10:50:18
5 the specification to build a service. So, you know, 10:50:22
6 exactly the example of how you go from the UPnP spec 10:50:26
7 to something like Weast or Encarnacion. 10:50:28

8 In that vein, Exhibit 8 describes, for 10:50:32
9 example, on page 11 general interactions and then 10:50:39
10 starting on page 12 it describes example playback 10:50:45
11 scenarios. They're meant to be exemplary. They're 10:50:50
12 not meant to define the limits or identify or create 10:50:55
13 prohibitions of the use of the protocol. They're 10:50:58
14 meant to be exemplary. 10:51:01

15 And there aren't examples or I'm not aware of 10:51:05
16 examples where two media renderers talks to each 10:51:07
17 other, but it's not the case that the protocol 10:51:10
18 prohibits that, or at least I don't recall that it 10:51:13
19 does. 10:51:16

20 Q. MS. GLADSTEIN: Let me direct your attention 10:51:17
21 to page 3 of Exhibit 8. Look at section 4, Overview, 10:51:19
22 and specifically look at the second to last sentence 10:51:27
23 in that paragraph. It says: "The individual devices 10:51:31
24 do not interact directly with each other." 10:51:35

25 A. I see that. 10:51:39

1 Q. Would you say that this document is -- that 10:51:41
2 the statement in this document is incorrect? 10:51:49

3 MR. DISCHER: Objection, scope. 10:51:50

4 THE WITNESS: I don't think the statement is 10:51:52
5 incorrect. I think there's the possibility that it's 10:51:53
6 overly broad and prone to misinterpretation. For 10:52:00
7 example, if you look at 6.4, which is on page 18 of 10:52:07
8 the document, it's describing instances where you 10:52:14
9 have a media renderer and a control point that are 10:52:17
10 combined together. 10:52:21

11 So certainly in an architecture where there 10:52:23
12 aren't distinctive devices, then it's possible for 10:52:29
13 media renderers to communicate directly with each 10:52:35
14 other. So, for example, if you have a device that's 10:52:38
15 capable and is acting as both a control point and a 10:52:40
16 media renderer and it communicates with another 10:52:47
17 device that is acting as both a control point and a 10:52:50
18 media renderer, then the statement in section 4 that 10:52:53
19 you read would not be a hundred percent accurate. 10:52:58

20 That said, if you look at the examples, 10:53:03
21 especially in the context of servers, control points 10:53:08
22 and devices as separate entities, the expectation is 10:53:13
23 most of the scenarios will be covered in a way where 10:53:21
24 there will not be a need for communication among 10:53:26
25 media renderers directly. 10:53:29

1 Q. MS. GLADSTEIN: So would you say that in the 10:53:38
2 context of the UPnP AV architecture the interaction 10:53:57
3 between individual devices is beyond the scope? 10:54:06

4 MR. DISCHER: Objection, form, scope. 10:54:14

5 THE WITNESS: Again, when you say individual 10:54:16
6 devices, do you mean media renderers? 10:54:19

7 Q. MS. GLADSTEIN: I mean devices that are 10:54:22
8 capable of being controlled by the control point. 10:54:25

9 MR. DISCHER: Objection, form, scope. 10:54:28

10 Q. MS. GLADSTEIN: Media renderer being, you 10:54:30
11 know, an example of such a device. And just to 10:54:33
12 qualify, I'm referring to the individual devices in 10:54:36
13 the context of Exhibit 8 using that term. And I 10:54:40
14 think if you read the entirety of section 4, it is 10:54:47
15 referring to devices other than control point 10:54:51
16 devices. 10:54:55

17 MR. DISCHER: Objection, form, scope. 10:54:57

18 THE WITNESS: Okay. Well, there's a first 10:54:58
19 paragraph of section 4 and it starts off with: "In 10:55:34
20 most (non-AV) UPnP scenarios," and then it continues 10:55:40
21 with a description. 10:55:47

22 So two observations. First of all, it's 10:55:49
23 talking about non-AV UPnP scenarios, and second of 10:55:51
24 all, it says most. So the fact that it says most 10:55:54
25 means it's not a prohibition and it's not outside the 10:55:57

1 scope of UPnP that there is device-to-device 10:56:01
2 communication. 10:56:04

3 If you look at the second paragraph which is 10:56:04
4 on the next page, it says: 10:56:07

5 "Most AV scenarios involve the flow of 10:56:10
6 (entertainment) content...from one device to 10:56:13
7 another. As shown in Figure 2, an AV Control 10:56:17
8 Point interacts with two or more UPnP devices 10:56:20
9 acting as source and sink, respectively." 10:56:25

10 So Figure 2 shows direct communication 10:56:30
11 between AV Device 1 and AV Device 2. 10:56:33

12 So, again from the way you ask the question, 10:56:36
13 it's clearly not beyond the scope. In fact, it's 10:56:39
14 specifically contemplated that devices will 10:56:44
15 communicate with each other. 10:56:46

16 Q. MS. GLADSTEIN: So what does that first 10:56:47
17 paragraph of section 4 mean? 10:56:50

18 A. Well, first of all, it says in most -- 10:56:51

19 MR. DISCHER: Objection, form, scope. 10:56:56

20 THE WITNESS: Sorry. In most non-AV UPnP 10:56:57
21 scenarios. So, I mean, I haven't really been focused 10:57:00
22 heavily on other uses of UPnP other than in AV 10:57:07
23 scenarios, but certainly I am aware of scenarios that 10:57:11
24 are not related to audio and video transport, and in 10:57:15
25 those instances it may be the case that the control 10:57:20

1 point is doing something with a single device 10:57:23
2 directly. 10:57:26

3 But since a lot of -- this is -- a lot of 10:57:27
4 this, but this I mean this IPR action, is in the 10:57:32
5 context of audio video transport, then that second 10:57:36
6 paragraph on page 4 and Figures 1 and 2, in 10:57:40
7 particular Figure 2, pretty much contemplates direct 10:57:44
8 device-to-device communication. 10:57:48

9 Q. MS. GLADSTEIN: The first sentence that you 10:57:49
10 were just referring to of paragraph 4 where it says 10:57:56
11 in most (non-AV) UPnP scenarios, non-AV is in 10:57:59
12 parentheses. So that's optional, isn't it? 10:58:06

13 MR. DISCHER: Objection, form, scope. 10:58:09

14 THE WITNESS: I mean, now you're sort of in 10:58:11
15 the grammatical realm. I think if you're trying to 10:58:13
16 parse out this first paragraph to obtain some meaning 10:58:17
17 about the scope of UPnP while ignoring the rest of 10:58:21
18 the document, including the second paragraph, is -- 10:58:24
19 is a mistake in assessing the reference. 10:58:26

20 Q. MS. GLADSTEIN: Oh, then I'm actually trying 10:58:31
21 to understand what that first sentence actually 10:58:34
22 means, right? It clearly places non-AV in 10:58:37
23 parentheses. So I want to know what that means to 10:58:42
24 you. 10:58:46

25 If there is a word that is in parentheses, 10:58:47

1	right? It doesn't say in most non-AV UPnP scenarios.	10:58:50
2	It says in most (non-AV) UPnP scenarios. So it's not	10:58:54
3	just talking about non-AV scenarios. It's talking	10:59:01
4	about in most UPnP scenarios.	10:59:04
5	MR. DISCHER: Objection, form, scope.	10:59:09
6	THE WITNESS: I disagree. I think if you	10:59:10
7	look at that first sentence and you were to separate	10:59:12
8	it out from the document, you may be able to try and	10:59:15
9	interpret it in a particular way; but when you	10:59:17
10	consider in the context of this paragraph, the next	10:59:20
11	paragraph, all of section 4 and the whole document,	10:59:23
12	its context and its intent is clear and what the	10:59:28
13	purpose of this document is also very clear.	10:59:32
14	I don't think you can read this sentence and	10:59:34
15	somehow argue that there is not a contemplation	10:59:36
16	within UPnP of devices talking to each other.	10:59:40
17	Q. MS. GLADSTEIN: Okay. And by non-AV	10:59:44
18	scenario, would an image, you know, like a picture	10:59:50
19	sharing scenario be a non-AV scenario?	10:59:57
20	MR. DISCHER: Objection, form, scope.	11:00:00
21	THE WITNESS: I mean, it -- it might be.	11:00:02
22	Q. MS. GLADSTEIN: What does non-AV mean to you?	11:00:06
23	MR. DISCHER: Objection, scope.	11:00:09
24	Q. MS. GLADSTEIN: Let me qualify this. What	11:00:12
25	does non-AV UPnP scenario mean to you?	11:00:15

1	MR. DISCHER: Objection, form, scope.	11:00:18
2	THE WITNESS: A UPnP scenario that doesn't	11:00:19
3	use audio video.	11:00:27
4	Q. MS. GLADSTEIN: Could you give an example --	11:00:33
5	MR. DISCHER: Objection, scope.	11:00:36
6	Q. MS. GLADSTEIN: -- of such a scenario?	11:00:37
7	A. I'm not sure that I could. Maybe controlling	11:00:40
8	the temperature on a refrigerator would be an example	11:00:43
9	of a non-AV scenario.	11:00:46
10	Q. So going back to Figure 2, isn't Figure 2	11:00:49
11	showing an out-of-band communication and not the UPnP	11:01:03
12	specified communication between the AV Device 1 and	11:01:09
13	AV Device 2?	11:01:16
14	MR. DISCHER: Objection, form, scope.	11:01:17
15	THE WITNESS: I'm not sure I understand the	11:01:18
16	question. I mean, it's an out-of-band transfer	11:01:23
17	protocol, and the kind of transfer mechanisms that	11:01:26
18	are contemplated need not be encapsulated in UPnP	11:01:31
19	messages, the whole point of which is back to the	11:01:35
20	introduction where it describes the different kinds	11:01:38
21	of transfer protocols.	11:01:39
22	Out of band means, in the context of Figure 2	11:01:41
23	when you compare it to Figure 1 where there isn't a	11:01:44
24	specific transfer that has to go through the control	11:01:48
25	point. It's still part of the playback architecture.	11:01:51

1 In fact, if you then get into Figure 3, it 11:01:58
2 doesn't -- I mean, it provides more description about 11:02:01
3 what that kind of communication might be, and then 11:02:06
4 there are specific examples as you get into page 11 11:02:10
5 where what the content flow could be and the kinds of 11:02:13
6 protocols that could be used. 11:02:19

7 Q. MS. GLADSTEIN: Would you not agree that an 11:02:20
8 out-of-band transfer protocol is not part of the UPnP 11:02:22
9 architecture? 11:02:28

10 MR. DISCHER: Objection, form, scope. 11:02:28

11 THE WITNESS: I would think -- I'm not sure 11:02:30
12 if you had multiple negatives. I think that the 11:02:35
13 out-of-band transfer would be part of the UPnP 11:02:37
14 architecture. 11:02:40

15 Q. MS. GLADSTEIN: Where is the out-of-band 11:02:40
16 transfer protocol described in the UPnP AV 11:02:42
17 architecture? 11:02:49

18 MR. DISCHER: Objection, form, scope. 11:02:49

19 THE WITNESS: Well, there's examples given in 11:02:50
20 the introduction. There is additional description or 11:02:53
21 an example given within the figure on page 11. There 11:03:00
22 might be some description associated with page 11. 11:03:06

23 I mean, I don't have this document memorized. 11:03:15
24 So there might be multiple places where it's -- where 11:03:18
25 it's discussed. 11:03:21

1 Q. MS. GLADSTEIN: Oh, there is a reference to 11:03:22
2 an out-of-band content transfer, but where is the 11:03:24
3 specifics of this out-of-band content transfer 11:03:28
4 discussed? 11:03:32

5 MR. DISCHER: Objection, form, scope. 11:03:34

6 THE WITNESS: I'm not sure I understand the 11:03:35
7 question. First of all, you have to look at this 11:03:38
8 through the eyes of a person of skill in the art. 11:03:40
9 Those details need not necessarily be included here. 11:03:43
10 I'm not sure what level of detail you think there 11:03:47
11 should be that I -- that's not here. 11:03:50

12 I've mentioned a couple of places where it's 11:03:54
13 described, including the introduction which lists 11:03:57
14 some specific protocols that a person reading this 11:04:01
15 document would understand as examples for what could 11:04:03
16 be used for that transfer. 11:04:10

17 Q. MS. GLADSTEIN: Okay. Could you tell me what 11:04:13
18 is the difference between -- in the illustration of 11:04:15
19 Figure 1 versus the illustration of Figure 2 on page 11:04:18
20 4 of Exhibit 8? 11:04:24

21 MR. DISCHER: Objection, form, scope. 11:04:26

22 THE WITNESS: The differences are the caption 11:04:27
23 and the addition of the out-of-band transfer protocol 11:04:37
24 line in Figure 2. 11:04:42

25 Q. MS. GLADSTEIN: And by the caption, which 11:04:43

1 caption are you referring to? 11:04:46

2 A. Well, Figure 1 is referred to as the typical 11:04:47
3 UPnP device interaction model, and Figure 2 is the 11:04:50
4 UPnP AV device interaction model. 11:04:54

5 Q. So would it be fair to say that Figure 1 is 11:04:58
6 the generic illustration of the UPnP device 11:05:00
7 interaction model? 11:05:07

8 MR. DISCHER: Objection, form, scope. 11:05:09

9 THE WITNESS: I mean, you're substituting the 11:05:11
10 word typical for generic. They have different 11:05:13
11 meanings. I mean, roughly it's -- it's what in this 11:05:17
12 document is described as a typical interaction. 11:05:22
13 Whether it's generic or not, I don't think I have an 11:05:25
14 opinion one way or the other whether it -- I would 11:05:34
15 characterize Figure 1 as being generic, and these are 11:05:37
16 both pretty high level diagrams contemplating 11:05:41
17 different types of interaction and capabilities 11:05:44
18 within UPnP. 11:05:48

19 Q. MS. GLADSTEIN: Okay. Let's go back to 11:05:49
20 Exhibit 5, which is your declaration on the '099 11:06:26
21 patent. 11:06:30

22 A. And just to go back to a point you mentioned 11:06:53
23 earlier, paragraph 25 lists a wide area network 11:06:57
24 scenario, and that's quoted from Exhibit 1008, home 11:07:00
25 networking with universal plug and play. 11:07:08

1 Q. So let's look at that example. So when it 11:07:14
2 says in that paragraph 25 of Exhibit 5: 11:07:43

3 "'Paula visits the recording label's Web 11:07:51
4 site, purchases a copy of one of the songs 11:08:11
5 and initiates a download of the song to her 11:08:13
6 new audio player in the family room.'" 11:08:16

7 So what type of communication is the download 11:08:25
8 of the song to the audio player? 11:08:30

9 MR. DISCHER: Objection, form, scope. 11:08:34

10 THE WITNESS: At least based on this 11:08:35
11 paragraph, it doesn't say. I think within the UPnP 11:08:39
12 architecture it would be characterized as the 11:08:42
13 out-of-band transfer mechanism. 11:08:45

14 Q. MS. GLADSTEIN: So this is -- well, tell me 11:08:50
15 how that would happen within the UPnP architecture. 11:08:53

16 MR. DISCHER: Objection, form, scope. 11:08:57

17 THE WITNESS: I mean, there's lots of ways 11:08:59
18 that it could potentially happen. 11:09:01

19 Q. MS. GLADSTEIN: A typical way. 11:09:03

20 MR. DISCHER: Objection, form, scope. 11:09:05

21 THE WITNESS: There's lots of typical ways. 11:09:07
22 I mean, this is exactly the flexibility of UPnP, that 11:09:10
23 there are in this case literally dozens of use cases 11:09:12
24 for how UPnP can be used, and to the effect of having 11:09:18
25 a media server as being a type of device where 11:09:23

1 content is available using UPnP to facilitate the 11:09:28
2 transfer of that content between the media server and 11:09:32
3 the media renderer is exactly what's contemplated by 11:09:39
4 UPnP. 11:09:43

5 In fact, this -- this gets into the 11:09:44
6 distinctiveness between Figure 1 and Figure 2 in the 11:09:50
7 AV spec. While it's contemplated in one scenario 11:09:53
8 where the content goes through the control point, 11:09:56
9 Figure 1, UPnP -- the UPnP forum also recognized that 11:09:59
10 if AV is high bandwidth or a significant amount of 11:10:05
11 data, then the control point getting out of the way 11:10:08
12 so that you can have direct communication between the 11:10:12
13 two devices, the sender and the sink, is something 11:10:15
14 that was also contemplated by UPnP. 11:10:21

15 So paragraph 25 is exactly that. You've got 11:10:26
16 a server that has the content. This is at the 11:10:29
17 recording label's Web site. And then, you know, it 11:10:32
18 initiates a download to the home entertainment system 11:10:36
19 and then is played from there. 11:10:42

20 Q. MS. GLADSTEIN: But the server on the Web 11:10:46
21 site is not a media server within the UPnP 11:10:49
22 architecture, is it? 11:10:53

23 MR. DISCHER: Objection, form, scope. 11:10:54

24 THE WITNESS: I disagree. It certainly could 11:10:56
25 be. I mean, there's no prohibition against it and it 11:10:58

1 certainly fits within the context of the capabilities 11:11:10
2 of UPnP. 11:11:14

3 Q. MS. GLADSTEIN: So in the same example -- and 11:11:16
4 let's call it the Paula example -- can the audio 11:11:31
5 player be on another network, meaning not in Paula's 11:11:34
6 home network, within a UPnP architecture of 2003? 11:11:42

7 MR. DISCHER: Objection, form, scope. 11:11:50

8 THE WITNESS: Could you repeat the question? 11:11:52

9 MS. GLADSTEIN: Would you read the question 11:11:55
10 back, please? 11:11:57

11 (Record read: Q. So in the same example -- 11:11:26
12 and let's call it the Paula example -- can the audio 11:11:30
13 player be on another network, meaning not in Paula's 11:11:34
14 home network, within a UPnP architecture of 2003?) 11:11:42

15 THE WITNESS: So I'm not sure I exactly 11:12:19
16 understand the details of the scenario, but the 11:12:21
17 question was can it be, and I am not aware of any 11:12:23
18 constraints within UPnP that would prevent the player 11:12:30
19 not being on the local area network within the house 11:12:38
20 or the requirement. The player could be anywhere. 11:12:41
21 It says here in the Paula example that it's her home 11:12:45
22 entertainment system. So presumably it's in her 11:12:48
23 home. 11:12:52

24 Could it be somewhere else? Sure. You could 11:12:53
25 have Tom's home entertainment system. You can -- you 11:12:56

1 mean, that's really again the whole point of UPnP, to 11:13:01
2 have the flexibility to operate under different 11:13:04
3 network scenarios as to where control points, media 11:13:08
4 servers and media renderers are located. 11:13:13

5 Q. MS. GLADSTEIN: Could she have downloaded the 11:13:18
6 song from a Web site to her audio player that, for 11:13:22
7 example, she left in Palo Alto? 11:13:29

8 MR. DISCHER: Object, form, scope, 11:13:35
9 hypothetical. 11:13:38

10 THE WITNESS: Could she? I could envision a 11:13:39
11 scenario or a system with that capability. 11:13:45

12 Q. MS. GLADSTEIN: In 2003 -- 11:13:48

13 A. Sure. 11:13:50

14 Q. -- could you envision that scenario? 11:13:50

15 A. Absolutely. The mechanism that's described 11:13:53
16 within UPnP for identifying the locations of devices 11:13:55
17 are based on URI's, uniform resource identifiers, 11:13:57
18 which are similar to uniform resource locators in the 11:14:03
19 sense they provide a host name or an IP address or a 11:14:08
20 location for a particular device. 11:14:11

21 So, you know, based on going to the Web site 11:14:13
22 and obtaining a copy of the song -- and in this case 11:14:16
23 it's not that we're -- Paula is visiting the Web site 11:14:20
24 from and buying the song from is the thing that 11:14:25
25 receives the download. It says that the download 11:14:29

1 goes to somewhere else, her new audio player in the 11:14:31
2 family room. 11:14:34

3 And using the UPnP mechanism where the 11:14:36
4 identification of a media renderer is based on a URI, 11:14:38
5 once you select that URI, that device can be located 11:14:46
6 essentially anywhere as long as it's reachable within 11:14:51
7 the Internet. Again, that's the power and 11:14:53
8 flexibility of UPnP. 11:14:56

9 Q. Okay. So let's go back to -- well, we are in 11:14:59
10 Exhibit 5. So I take that back. 11:15:05

11 Let's look at paragraph 30, and in that 11:15:07
12 paragraph you are providing a quote from Mediabolic's 11:15:10
13 press release; isn't that right? 11:15:18

14 A. I believe that's part of what's included in 11:15:20
15 that paragraph. 11:15:23

16 Q. What else is included in that paragraph? 11:15:23

17 A. The description of what's part of the press 11:15:25
18 release or the reference. 11:15:30

19 Q. Okay. If I could direct your attention to 11:15:33
20 the first full sentence that appears at the top of 11:15:39
21 page 17, starts with: "UPnP technology is an 11:15:45
22 industry standard for interoperability of digital 11:15:50
23 devices on a home network..." 11:15:54

24 A. I see that. 11:16:06

25 Q. Is that a reference to a wide area network? 11:16:07

1 MR. DISCHER: Objection, form, scope. 11:16:14

2 THE WITNESS: Well, it's a reference to a 11:16:16

3 home network, and as we described earlier, home 11:16:18

4 network may or may not be a wide area or a local area 11:16:22

5 network. I think also that the citation in this 11:16:25

6 particular sentence is out of context with the entire 11:16:29

7 document. So we're really just focused on this 11:16:32

8 particular quote. You'd either have to give me the 11:16:35

9 document so that I could look at the rest of it to 11:16:41

10 see what else it's saying, but -- 11:16:43

11 Q. MS. GLADSTEIN: Well, but what does the 11:16:48

12 sentence that you quote in this paragraph mean to you 11:16:49

13 that starts off "UPnP technology is an industry 11:16:53

14 standard"? 11:16:57

15 MR. DISCHER: Objection, form, scope. 11:16:58

16 THE WITNESS: I think it's saying it's a 11:16:59

17 standard for interoperability of digital devices on a 11:17:02

18 home network. That that's one of the things it's 11:17:06

19 capable of doing. I think as we've looked at in 11:17:09

20 other scenarios and other documents, other 11:17:12

21 characterizations of UPnP that it has many other 11:17:14

22 features, functions, and capabilities; and looking at 11:17:21

23 this one particular sentence as an attempt to 11:17:26

24 characterize and limit UPnP to a home network would 11:17:28

25 be incorrect. 11:17:32

1 What it means to me is it's describing one of 11:17:41
2 the features of UPnP and certainly not describing a 11:17:44
3 home network as a limitation of UPnP. 11:17:48

4 Q. MS. GLADSTEIN: If you read the remainder of 11:17:52
5 the quote that you provide in your paragraph 30, does 11:18:13
6 that description contain any references to consumers 11:18:18
7 being able to play video clips or view family photos 11:18:31
8 of the content that is located other than within the 11:18:39
9 consumer's home? 11:18:45

10 MR. DISCHER: Objection, form. 11:18:47

11 THE WITNESS: I think that's a fairly narrow 11:18:50
12 question. Again, you haven't provided me with the 11:18:54
13 whole document. You focused me on just a couple of 11:18:57
14 the sentences I've used and included in my exemplary 11:18:59
15 quote. 11:19:04

16 Just one sentence that pops out is: 11:19:04

17 "The Mediabolic ONE platform and UPnP 11:19:07
18 technology enable a world in which music and 11:19:12
19 other digital entertainment content can be 11:19:16
20 accessed from various devices in the home 11:19:19
21 without regard for where the media is 11:19:21
22 stored." 11:19:24

23 So what that's saying is the access to the 11:19:26
24 music, the playing of the music can be within devices 11:19:30
25 in the home, but where the media is stored can be 11:19:34

1 anywhere. 11:19:38

2 Even within the sentences that I've 11:19:41

3 identified in response to your question, it is 11:19:43

4 describing a scenario that is a wide area network 11:19:46

5 scenario. Your playing devices, your media renderers 11:19:48

6 are in the home, but like the Paula scenario, the 11:19:53

7 content is retrieved from a device that can be 11:19:57

8 stored -- is stored on a device where that device can 11:20:02

9 be located anywhere without regard for its location. 11:20:05

10 Q. MS. GLADSTEIN: Okay. Let's move on to 11:20:10

11 paragraph 32, which is the first of the two 11:20:16

12 paragraphs where you provide an overview of the '099 11:20:22

13 patent; isn't that right? 11:20:27

14 A. It is two paragraphs where I provided a very 11:20:28

15 high level overview of the '099 patent. 11:20:33

16 I don't know if we're starting a line of 11:20:37

17 questioning, if we're done with that section, good 11:20:39

18 time for a break? 11:20:42

19 MS. GLADSTEIN: Sure. 11:20:44

20 THE WITNESS: Or if you've got five minutes 11:20:45

21 on these two, then I can certainly do that. 11:20:47

22 MS. GLADSTEIN: No, let's take a break. 11:20:50

23 VIDEOGRAPHER: Going off the record, the time 11:20:51

24 now is 11:20. 11:20:53

25 (Deposition recess taken.) 11:37:26

1	VIDEOGRAPHER: The time now is 11:37. We're	11:37:26
2	back on the video record. This also marks the	11:37:29
3	beginning of video three. Please continue.	11:37:32
4	Q. MS. GLADSTEIN: Let's go back to the context	11:37:52
5	of UPnP for a moment. In 2003, does the UPnP	11:37:54
6	architecture envision the media renderers being	11:38:04
7	outside the home?	11:38:12
8	MR. DISCHER: Objection, form, scope.	11:38:13
9	THE WITNESS: Just to clarify the question,	11:38:14
10	you said the media renderers. Does it envision media	11:38:30
11	renderers outside the home.	11:38:33
12	Q. MS. GLADSTEIN: Yes.	11:38:37
13	A. I'm not sure. So let me say this. The	11:38:38
14	architecture itself is agnostic as to where any of	11:38:47
15	the devices are. Whether the servers are in the home	11:38:53
16	or not, whether the whole context of the system is in	11:38:58
17	the home or whether it could be used in an office,	11:39:01
18	for example. The architecture itself, the protocols	11:39:04
19	themselves are not limited to a particular	11:39:08
20	geographical location or constraint.	11:39:13
21	There are some scenarios where the home	11:39:16
22	network is what's being used as exemplary, but part	11:39:23
23	of what was happening in the state of the art at the	11:39:31
24	time was there was lots of work being done to develop	11:39:34
25	these kinds of protocols and there were lots and lots	11:39:37

1 of different scenarios. 11:39:40

2 So the point is there might even be UPnP 11:39:42
3 documents, documents produced by the UPnP forum that 11:39:47
4 contemplate specific scenarios where renderers are 11:39:51
5 not included in the home. I haven't tried to answer 11:39:55
6 that question. You know, there's a lot of documents 11:39:58
7 that the UPnP forum produced as part of this 11:40:01
8 architecture. 11:40:04

9 I would go back and review those to see if 11:40:06
10 there is any description of services where, in the AV 11:40:08
11 setting, renderers are not limited to just home 11:40:13
12 environments, but the architecture itself I don't 11:40:18
13 believe limits it to a home environment. 11:40:21

14 Q. Does the AV architecture of the UPnP limit 11:40:24
15 the control point to the home environment? 11:40:31

16 MR. DISCHER: Objection, form, scope. 11:40:36

17 THE WITNESS: I don't think the AV 11:40:38
18 architecture limits the control point to a particular 11:40:40
19 location. Certainly it describes scenarios where the 11:40:43
20 control point is in the home, but it is -- from a 11:40:47
21 technical perspective there is nothing about the 11:40:54
22 messages or the protocols or the use of those 11:40:58
23 protocols that requires the control point to be 11:41:01
24 within the home. 11:41:03

25 Q. MS. GLADSTEIN: Okay. So let's -- during the 11:41:04

1 break, did you have any substantive discussions with 11:41:12
2 counsel regarding this deposition? 11:41:15

3 A. No. 11:41:16

4 Q. So let's go back to Exhibit 5, which is your 11:41:17
5 declaration for the '099 patent. 11:41:23

6 A. Okay. 11:41:27

7 Q. In paragraph 32, you state that -- I'm going 11:41:28
8 to read the whole paragraph so that it's complete on 11:41:42
9 the record. 11:41:47

10 "The '099 patent is directed to a method 11:41:47
11 for presenting a playlist, e.g., a playlist 11:41:52
12 of songs, on a wireless handheld remote 11:41:57
13 control and enabling a user to select an item 11:42:00
14 on the wireless handheld remote control for 11:42:04
15 playback on a media player device which is 11:42:08
16 associated with, but separate from, the 11:42:11
17 remote control." 11:42:14

18 In the context of the '099 patent, what did 11:42:18
19 you mean by "a media player device which is 11:42:25
20 associated with, but separate from, the remote 11:42:30
21 control"? 11:42:34

22 MR. DISCHER: Objection, scope. 11:42:36

23 THE WITNESS: I'm not sure I understand the 11:42:37
24 question. I mean exactly what it says, a media 11:42:41
25 player device which is associated with, but separate 11:42:50

1 from, the remote control. I'm not sure how to 11:42:52
2 explain that any differently than the words that are 11:42:55
3 there. 11:42:58

4 Q. MS. GLADSTEIN: Well, how is a media player 11:42:58
5 device separate from the remote control yet 11:43:01
6 associated with it? 11:43:09

7 MR. DISCHER: Objection, scope. 11:43:10

8 THE WITNESS: I mean, I can think of a couple 11:43:13
9 of different examples. One potentially is it's a 11:43:14
10 separate physical form factor, but it's still 11:43:18
11 associated with -- the media player is a separate 11:43:22
12 form factor from the remote control, but the remote 11:43:27
13 control has the ability to interact with or execute 11:43:30
14 instructions on the media player device. 11:43:34

15 Q. MS. GLADSTEIN: Are there specific actions 11:43:36
16 that the '099 patent describes that a media player 11:43:47
17 device can do that the remote control cannot do? 11:43:53

18 MR. DISCHER: Objection, scope. 11:43:59

19 THE WITNESS: I don't know. I haven't tried 11:44:01
20 to answer that question before. 11:44:03

21 Q. MS. GLADSTEIN: When was the last time you 11:44:05
22 saw the '099 patent? 11:44:08

23 MR. DISCHER: Objection, scope. 11:44:10

24 THE WITNESS: I probably saw it this morning. 11:44:11

25 Q. MS. GLADSTEIN: And when did you see it prior 11:44:14

1	to this morning?	11:44:24
2	MR. DISCHER: Objection, scope.	11:44:25
3	THE WITNESS: Yesterday.	11:44:26
4	Q. MS. GLADSTEIN: Did you review it yesterday?	11:44:28
5	A. I did.	11:44:30
6	MR. DISCHER: Objection, scope.	11:44:31
7	Q. MS. GLADSTEIN: In its entirety?	11:44:33
8	MR. DISCHER: Objection, scope.	11:44:35
9	THE WITNESS: Yes.	11:44:36
10	Q. MS. GLADSTEIN: So you have a fairly good	11:44:36
11	appreciation of the contents of the document?	11:44:38
12	MR. DISCHER: Objection, form, scope.	11:44:40
13	THE WITNESS: I think I would have a general	11:44:42
14	understanding. It's not something I have memorized	11:44:44
15	in all of its disclosures to be able to answer	11:44:49
16	technical questions about what's there or what's not	11:44:53
17	off the top of my head.	11:44:56
18	(Deposition Exhibit 9 marked for	11:44:59
19	identification.)	11:44:59
20	Q. MS. GLADSTEIN: So let me show you what has	11:44:59
21	been marked Exhibit 9. Do you recognize this	11:45:04
22	document?	11:45:09
23	A. I do.	11:45:10
24	Q. What is this?	11:45:11
25	A. It's the '099 patent.	11:45:12

1 Q. And can you tell me whether there is any 11:45:15
2 disclosure in the '099 specifying that a media player 11:45:21
3 device can do -- 11:45:27

4 MR. DISCHER: Objection. 11:45:31

5 Q. MS. GLADSTEIN: -- certain actions but the 11:45:31
6 remote control cannot do those actions? 11:45:34

7 MR. DISCHER: Objection, form, scope. 11:45:36

8 THE WITNESS: It's a fairly technical and 11:45:38
9 detailed question. I would have to go through and 11:45:41
10 look at the specification and try and answer that 11:45:43
11 question. I don't have the details of what's 11:45:46
12 disclosed in the specification memorized to the point 11:45:50
13 that I can answer that question. 11:45:54

14 Q. MS. GLADSTEIN: Okay. There are no tricks 11:45:56
15 here. All I'm trying to do is understand what you 11:45:59
16 meant by "a media player device which is associated 11:46:04
17 with, but separate from, the remote control." 11:46:08

18 And so to that end I'm asking you to tell me 11:46:10
19 whether the remote control in the media player of the 11:46:15
20 '099 patent can independently perform -- are 11:46:29
21 independent stand-alone devices that could, for 11:46:38
22 example, go out to the Internet and obtain content. 11:46:40

23 MR. DISCHER: Objection, form, scope. 11:46:43

24 THE WITNESS: I understand where you're 11:46:45
25 coming from and trying to understand what's in this 11:46:48

1 paragraph, but you've moved on from what's described 11:46:50
2 at a high level in this paragraph into a very 11:46:54
3 technical capability, and I would have to go back and 11:46:58
4 review the disclosure in the '099 patent to see if 11:47:01
5 there is some functionality the media player device 11:47:06
6 could implement independent of a remote control. 11:47:09

7 There might be something in there. It might 11:47:15
8 be in the preferred embodiment or in an alternate 11:47:18
9 embodiment. It's something I would have to study. 11:47:21

10 Q. MS. GLADSTEIN: You mean you haven't studied 11:47:24
11 prior to your putting that down, that sentence down 11:47:27
12 about being associated with, but separate from, the 11:47:30
13 remote control? 11:47:37

14 A. No, I -- 11:47:37

15 MR. DISCHER: Objection, form, scope. 11:47:39

16 THE WITNESS: I understood the patent at a 11:47:41
17 high level and what it was describing, but the 11:47:42
18 question you're asking is very specific. 11:47:45

19 Q. MS. GLADSTEIN: Well, it's still a high level 11:47:46
20 question. I'm trying to determine what you meant by 11:47:49
21 the statement that a media player device of the '099 11:47:54
22 patent is associated with, but separate from, the 11:47:59
23 remote control. 11:48:02

24 MR. DISCHER: Objection, scope. 11:48:03

25 THE WITNESS: As I answered earlier, the idea 11:48:05

1 of separation as one example would be a separate form
2 factor. So you would have two different devices
3 where they're not part of the same physical
4 structure. So that's the separate from.

5 But then with respect to the association, I
6 gave you an example of where a device could issue
7 some instructions or some actions for -- or, sorry --
8 the remote control could issue some actions for the
9 device to perform. That's really the extent of what
10 I'm describing in paragraph 32.

11 Q. MS. GLADSTEIN: Okay. Let me direct your
12 attention to column 9 of Exhibit 9, which is the '099
13 patent.

14 A. Okay.

15 Q. So at the very top, line 1, it says:

16 "Referring now to [Figure] 2, rather than
17 communicating a playlist to the dedicated
18 media player...the playlist may alternatively
19 be communicated to a remote control...for the
20 dedicated media player."

21 Would this paragraph be consistent with the
22 statement in paragraph 32 of Exhibit 5 that a media
23 player device is an associated with, but separate
24 from, the remote control?

25 MR. DISCHER: Objection, scope.

1 THE WITNESS: I don't think there's any 11:49:33
2 inconsistency there. I think that in the embodiment 11:49:38
3 that's described in that paragraph at column 9 of 11:49:42
4 Exhibit 9, the media player and the remote control 11:49:45
5 could still be separate physical devices and yet 11:49:52
6 still -- there still be an association between the 11:49:56
7 two. 11:49:59

8 Q. MS. GLADSTEIN: Okay. And in that paragraph 11:49:59
9 is it your understanding that it is saying that the 11:50:05
10 playlist can be communicated to either the dedicated 11:50:09
11 media player or the remote control? 11:50:13

12 MR. DISCHER: Objection, scope. 11:50:17

13 THE WITNESS: In columns 1 through 4 -- or, 11:50:18
14 sorry -- lines 1 through 4 of column 9? 11:50:27

15 Q. MS. GLADSTEIN: Yes. 11:50:29

16 A. The words say rather than communicating a 11:50:30
17 playlist to the dedicated media player, the playlist 11:50:32
18 may alternatively be communicated to a remote control 11:50:36
19 for the dedicated media player. 11:50:39

20 So it seems to be suggesting that earlier it 11:50:41
21 contemplated the playlist going to the dedicated 11:50:47
22 media player first, but in this alternative the 11:50:49
23 playlist is communicated to the remote control; and 11:50:54
24 then presumably some additional action takes place 11:50:59
25 beyond that. 11:51:02

1 Given that this is -- seems to be in the 11:51:03
2 context of other paragraphs, this paragraph 11:51:07
3 specifically seems to be just contemplating the 11:51:14
4 playlist communicated to the remote control. 11:51:16

5 Q. Would it be fair to say that the '099 11:51:20
6 contemplates that the media player as well as the 11:51:26
7 remote control have the capability to receive 11:51:31
8 playlists? 11:51:36

9 MR. DISCHER: Objection, scope. 11:51:37

10 THE WITNESS: That would be a hard question 11:51:39
11 to answer. I'd have to go back and see if there is a 11:51:56
12 disclosure earlier that describes all of the steps of 11:51:59
13 where the playlist goes to the remote control first 11:52:04
14 and then the media player or then the media player 11:52:08
15 and then the remote control. 11:52:11

16 From a -- they're sort of contemplating 11:52:15
17 whether it's somewhere in the specification versus, 11:52:19
18 for example, what's claimed. Since we've really just 11:52:23
19 looked at this one paragraph at column 9, lines 1 11:52:25
20 through 4, that by itself, I'm not sure -- I'd 11:52:29
21 probably think about it a little bit more -- whether 11:52:32
22 that contemplates sort of both kinds of embodiments. 11:52:34

23 Q. MS. GLADSTEIN: Look at column 8 beginning at 11:52:38
24 line 52. 11:52:43

25 A. Okay. For the rest of the -- because line 52 11:52:56

1 just says examples of dedicated media players. 11:53:02

2 Q. For purposes of providing context, which it 11:53:05

3 sounded like you wanted more context, I'm suggesting 11:53:07

4 that you look at lines 52 to the end of column 8. 11:53:11

5 A. I see. Okay. What's the question? 11:53:17

6 Q. The question is would it be fair to 11:54:00

7 understand the '099 patent disclosing that both the 11:54:06

8 media player device and the remote control have the 11:54:13

9 capability of receiving play lists -- 11:54:17

10 MR. DISCHER: Objection, scope. 11:54:21

11 Q. MS. GLADSTEIN: -- via a network? 11:54:27

12 MR. DISCHER: Objection, scope. 11:54:32

13 THE WITNESS: The best I can say is if you -- 11:54:33

14 if you read at line 58 it says: "According to one 11:54:37

15 aspect of the present invention, playlists are 11:54:41

16 communicated via the network to a dedicated media 11:54:44

17 player..." 11:54:47

18 So, I mean, this is talking about a dedicated 11:54:48

19 media player. I don't think you were talking 11:54:52

20 specifically about dedicated media players, and it 11:54:55

21 says the dedicated media player is not a general 11:54:59

22 purpose computer. So it seems to be contemplating 11:55:03

23 that via the network, the dedicated media player is 11:55:06

24 the target of a communication. 11:55:13

25 The best I can do is sort of read the 11:55:17

1 specification as it's listed here, and your question 11:55:21
2 seemed to be a little bit different. So it's not 11:55:27
3 clear without looking a little more deeply that the 11:55:29
4 answer to your question is yes or no. 11:55:33

5 Q. MS. GLADSTEIN: All I'm trying to establish 11:55:35
6 is whether it is your understanding that the '099 11:55:36
7 patent discloses that a media player device, 11:55:42
8 regardless of whether it is a dedicated media player 11:55:46
9 or just a media player device, is capable of 11:55:49
10 receiving a playlist, that's part one, and the second 11:55:53
11 part is that the '099 patent discloses that the 11:55:57
12 remote control is also capable of receiving a 11:56:00
13 playlist. That's all I'm trying to establish. 11:56:04

14 MR. DISCHER: Objection, form, scope. 11:56:09

15 THE WITNESS: As to the playlist being 11:56:10
16 communicated to a remote control, I think that that's 11:56:18
17 described at column 9, lines 1 through 4. As to 11:56:22
18 whether -- the best I can say is it describes a 11:56:31
19 playlist that's communicated via the network to a 11:56:34
20 dedicated media player and the dedicated media player 11:56:36
21 is not a general purpose computer. 11:56:39

22 Q. MS. GLADSTEIN: And how would a dedicated 11:56:41
23 media player be different from just a media player? 11:56:43

24 A. The description here says a dedicated media 11:56:47
25 player is not a general purpose computer. I can 11:56:55

1	think of instances where general purpose computers	11:56:58
2	can be media players. So that's one difference.	11:57:03
3	Q. Okay. Does it also say somewhere here in the	11:57:09
4	'099 that a media player can be a general purpose	11:57:17
5	computer?	11:57:21
6	A. I don't recall if it says that somewhere in	11:57:22
7	here.	11:57:24
8	Q. Okay. But at least for purposes of column 8	11:57:24
9	that we've been referring to, that particular section	11:57:28
10	from lines 52 on to the end, it says that a dedicated	11:57:31
11	media player can receive playlists.	11:57:36
12	A. It says playlists are communicated via the	11:57:42
13	network to a dedicated media player. That's what it	11:57:46
14	says.	11:57:50
15	Q. Okay. And communicated to a dedicated media	11:57:50
16	player means what to you?	11:57:55
17	MR. DISCHER: Objection, scope.	11:57:58
18	THE WITNESS: Sent to.	11:58:00
19	Q. MS. GLADSTEIN: Okay. And then what happens	11:58:10
20	after a playlist is sent to a device?	11:58:12
21	MR. DISCHER: Objection, form, scope.	11:58:18
22	THE WITNESS: At least in this part of the	11:58:21
23	specification it says at line 65:	11:58:24
24	"After the playlist has been communicated	11:58:29
25	to the dedicated media player...the playlist	11:58:31

1 may be displayed thereon and thus used to 11:58:33
2 choose which selection therefrom is to be 11:58:37
3 played." 11:58:40

4 Q. MS. GLADSTEIN: So what happens according to 11:58:41
5 the '099 patent when a playlist is communicated to 11:58:43
6 the dedicated media player? 11:58:46

7 A. At least in this part of the specification at 11:58:47
8 column 8, line 66 it says: "...the playlist may be 11:58:51
9 displayed thereon and thus used to choose which 11:58:54
10 selection therefrom is to be played." 11:59:01

11 Q. So it would be fair to say that the media 11:59:03
12 player receives a playlist? 11:59:06

13 A. It would seem to suggest that the media 11:59:07
14 player did receive the playlist if it's displaying 11:59:10
15 it. 11:59:15

16 Q. So what does the term playlist mean to you? 11:59:18

17 A. I think I -- 11:59:26

18 Q. Generally. Not in the context of the '099 11:59:28
19 patent. When you hear the term playlist, what is the 11:59:31
20 meaning that you take from it? 11:59:34

21 MR. DISCHER: Objection, scope. 11:59:38

22 THE WITNESS: Well, I think generally it's -- 11:59:40
23 I mean, that's part of the analysis that I did within 11:59:45
24 my declaration. I mean, you look at playlist in 11:59:48
25 terms of how it's ordinarily used by a person of 11:59:51

1	skill in the art at the time and then you continue to	11:59:54
2	look at the context of the specification.	11:59:59
3	I mean, generally I think that the definition	12:00:02
4	I've provided as it relates to the '099 patent is	12:00:05
5	typically what a person would think even not	12:00:11
6	necessarily limited to the '099 patent.	12:00:14
7	But the one caveat is without any context	12:00:17
8	whatsoever, the term playlist can be interpreted to	12:00:24
9	be somewhat vague. Sometimes the context gives it	12:00:27
10	slightly different meanings, but not wholly different	12:00:33
11	meanings.	12:00:35
12	Q. MS. GLADSTEIN: Have you ever generated a	12:00:37
13	playlist?	12:00:48
14	MR. DISCHER: Objection, scope.	12:00:49
15	THE WITNESS: What kind of playlist?	12:00:50
16	Electronic? Something --	12:01:03
17	Q. MS. GLADSTEIN: Let's take a step back.	12:01:07
18	Would it be fair to say that the term playlist is a	12:01:12
19	term in the -- with the connotation that it is to be	12:01:20
20	played on an electronic device? Otherwise, it would	12:01:27
21	just be a list as opposed to a playlist.	12:01:31
22	A. No.	12:01:34
23	MR. DISCHER: Objection, form, scope.	12:01:35
24	THE WITNESS: I don't think that connotation	12:01:37
25	is necessarily a part of what a person would consider	12:01:38

1	a playlist.	12:01:42
2	Q. MS. GLADSTEIN: What would a person consider	12:01:43
3	to be a playlist?	12:01:47
4	A. As I said, I think that the idea of a	12:01:48
5	playlist depends on context. I think that the	12:01:52
6	definition I've advocated in my declarations, a list	12:01:58
7	of media items, is something that I think a person	12:02:04
8	would consider a playlist generally.	12:02:07
9	Q. Okay. Let's kind of separate the next	12:02:10
10	sequence of questions that I'm about to ask you from	12:02:18
11	the opinions that you set out in the claim	12:02:22
12	construction section of your declaration.	12:02:24
13	A. Can I just be clear? So you're asking me	12:02:29
14	about things -- my opinions outside the scope of what	12:02:32
15	I've offered in this declaration.	12:02:34
16	Q. No.	12:02:37
17	A. Okay.	12:02:39
18	Q. But listen to my questions. Okay?	12:02:41
19	A. Okay.	12:02:43
20	Q. So from your personal experience as somebody	12:02:44
21	who states that he has had -- that one of the major	12:02:49
22	concentrations of your research has been the delivery	12:02:57
23	of multimedia content and data between computing	12:03:01
24	devices, for instance -- and I read that from	12:03:05
25	paragraph 8 of your declaration.	12:03:16

1	A.	Okay.	12:03:18
2	Q.	I would like to know whether you have ever	12:03:19
3		compiled a playlist of songs.	12:03:22
4		MR. DISCHER: Objection, scope.	12:03:26
5		THE WITNESS: Yes.	12:03:28
6	Q.	MS. GLADSTEIN: Okay. And how did you go	12:03:29
7		about doing that?	12:03:32
8		MR. DISCHER: Objection, scope.	12:03:34
9		THE WITNESS: It depends on which instance	12:03:36
10		you're talking about. I mean, I've put together lots	12:03:39
11		of playlists of songs, lots of playlists generally.	12:03:41
12		You'll probably have to be more specific on the	12:03:47
13		particular instance or I can give you an instance.	12:03:50
14	Q.	MS. GLADSTEIN: Have you ever used the	12:03:52
15		Windows Media Player to put together a playlist of	12:03:55
16		songs?	12:03:58
17		MR. DISCHER: Objection, scope.	12:03:58
18		THE WITNESS: I'm not sure within Windows	12:04:00
19		Media Player. No, I take that back. Sorry. I'm	12:04:13
20		thinking. There's lots of different versions of	12:04:25
21		Windows Media Player over the years, and I've done it	12:04:27
22		in the context of prior art analysis in other cases	12:04:29
23		and I might have even done it more recently. So I	12:04:32
24		can tell you the specific instance I'm thinking of if	12:04:38
25		you want.	12:04:46

1	Q.	MS. GLADSTEIN: Yes, please.	12:04:47
2	A.	So I think it's in the --	12:04:48
3		MR. DISCHER: Objection, scope.	12:04:51
4		THE WITNESS: -- modern version of Windows	12:04:51
5		Media Player you can create a playlist and it allows	12:04:54
6		you to select items to put into that playlist and	12:04:58
7		then you can store it and then retrieve it later and	12:05:02
8		it's called a playlist within Windows Media Player.	12:05:08
9	Q.	MS. GLADSTEIN: And what does that playlist	12:05:12
10		within Windows Media Player look like --	12:05:14
11		MR. DISCHER: Objection, form, scope.	12:05:17
12	Q.	MS. GLADSTEIN: -- on the user interface?	12:05:18
13		MR. DISCHER: Objection, form, scope.	12:05:24
14		THE WITNESS: I don't recall specifically	12:05:25
15		what fields are included, how much detail about each	12:05:26
16		item is included.	12:05:31
17	Q.	MS. GLADSTEIN: That's not what I'm asking.	12:05:35
18		So when you click on a playlist in a Windows Media	12:05:37
19		Player, what's the next thing you see?	12:05:41
20	A.	I don't recall.	12:05:43
21		MR. DISCHER: Objection, scope.	12:05:43
22	Q.	MS. GLADSTEIN: Okay. So tell me about an	12:05:45
23		electronic playlist that you compiled that you	12:05:49
24		recall.	12:05:53
25		MR. DISCHER: Objection.	12:05:53

1 Q. MS. GLADSTEIN: How did you go about 12:05:54
2 compiling it? 12:05:56

3 MR. DISCHER: Objection, form, scope. 12:05:58

4 THE WITNESS: It's not a question of whether 12:06:00
5 I recall it. It's what the user interface in Windows 12:06:02
6 Media Player shows. I mean, another example might be 12:06:06
7 within iTunes, and what I recall -- I think this is 12:06:10
8 correct -- is, you know, clicking on something -- on 12:06:17
9 one entry, you know, list of songs and then moving 12:06:21
10 down and five or six items below it clicking on 12:06:26
11 something else. So you've selected five or six 12:06:29
12 items, I think you can right click and then say add 12:06:33
13 to a playlist and then you can name the playlist, 12:06:36
14 store it, retrieve it. 12:06:40

15 Q. MS. GLADSTEIN: So once you name the 12:06:42
16 playlist, you created your playlist and you wanted to 12:06:47
17 play it, what would you do to play your playlist? 12:06:51

18 MR. DISCHER: Objection, scope. 12:06:54

19 THE WITNESS: There's a little bit of a 12:06:55
20 distinction here. If I wanted to play the playlist, 12:06:58
21 I could do it in a couple of different ways. I could 12:07:00
22 either select the playlist named and hit play or open 12:07:03
23 up the entries of the playlist and pick one entry in 12:07:09
24 particular and play it. 12:07:13

25 Depending on the user interface, it might 12:07:17

1 then go to the next song in the playlist or it might 12:07:20
2 just play the one song in the playlist. I've used 12:07:23
3 lots of different media players, and I think over the 12:07:28
4 years they've implemented playlists in different 12:07:31
5 ways. 12:07:36

6 Q. MS. GLADSTEIN: Okay. So in the scenario 12:07:36
7 that you referred to where you could select the 12:07:38
8 playlist name and hit play, what happens in that 12:07:46
9 scenario? 12:07:51

10 MR. DISCHER: Objection, form, scope. 12:07:52

11 THE WITNESS: It depends. I mean, like I 12:07:54
12 said, there's lots of different devices, lots of 12:07:57
13 different media players. It varies based on 12:08:00
14 implementation, version, device. 12:08:04

15 Q. MS. GLADSTEIN: Okay. We're still in the 12:08:08
16 same kind of context that you were just describing to 12:08:11
17 me, the iTunes context. Okay? So in the iTunes you 12:08:15
18 created your playlist and in the scenario that you 12:08:22
19 just referred to where you select the playlist name 12:08:25
20 and hit play, what happens next? 12:08:29

21 A. It depends. 12:08:34

22 MR. DISCHER: Objection, form, scope. 12:08:35

23 THE WITNESS: It depends on the version of 12:08:36
24 iTunes, it depends on whether you're running it on an 12:08:38
25 iPhone or an iPod or a Mini or a Nano. I mean, the 12:08:43

1 functionality varies based on the type of player. 12:08:49

2 Q. MS. GLADSTEIN: So when you hit the playlist 12:08:53

3 name -- when you hit play on the playlist name or you 12:08:57

4 select the playlist name to play, does it play the 12:09:04

5 entire playlist? If all you do is you created your 12:09:07

6 playlist and you -- you select the playlist name and 12:09:13

7 hit play, does it play all of the items in the 12:09:21

8 playlist in sequence? 12:09:30

9 MR. DISCHER: Objection, form, scope. 12:09:35

10 THE WITNESS: It depends. It depends on so 12:09:37

11 many different things, and even within a particular 12:09:44

12 product or version, whether you've got shuffle turned 12:09:47

13 on or random or -- I mean, there's lots of different 12:09:50

14 features involved. 12:09:54

15 As to when you click on the playlist whether 12:09:57

16 it opens up the list and then you can select a song 12:10:00

17 or whether it automatically plays the first song or 12:10:03

18 whether it plays a randomly selected song, it 12:10:06

19 completely depends on what the -- what the player 12:10:13

20 software does. 12:10:16

21 Q. MS. GLADSTEIN: Okay. Assume no shuffling or 12:10:17

22 random features have been activated. Assume the 12:10:19

23 precise scenario you articulated. You compiled a 12:10:23

24 playlist in iTunes, you selected the playlist name 12:10:28

25 and you hit play. 12:10:32

1 My question to you is quite limited. All I'm 12:10:33
2 asking is in this scenario where you created your 12:10:39
3 playlist, you selected the playlist name and you hit 12:10:43
4 play without further elaborating that you want your 12:10:46
5 playlist to be shuffled or randomized or what have 12:10:51
6 you, in the situation where you just hit play, is it 12:10:55
7 going to go through the list of items? Is the player 12:10:59
8 going to render the items on the list or not? 12:11:03

9 MR. DISCHER: Objection, form, scope. 12:11:05

10 THE WITNESS: It depends. You said in the 12:11:07
11 specific scenario I identified. I didn't identify a 12:11:10
12 specific scenario. I didn't pick a version of iTunes 12:11:14
13 or a particular device. I mean, I didn't say. 12:11:17

14 And so what I will answer to your question is 12:11:22
15 it depends. Depends on the media player software and 12:11:24
16 how it executes. There are some instances where if 12:11:30
17 you click on a playlist, it will go through and play 12:11:33
18 all of the songs in the sequence of the way the 12:11:37
19 playlist was stored. In other instances, and again 12:11:39
20 setting aside random and shuffle, there are other 12:11:45
21 instances where just clicking on the playlist will 12:11:47
22 expand that playlist into the items that are on the 12:11:50
23 playlist. 12:11:55

24 If you -- if you just click play on a 12:11:56
25 playlist, in at least, if not many, but not 12:11:58

1 necessarily all instances, it may do exactly what you 12:12:02
2 described. It will play the first song in the 12:12:05
3 playlist and then go to the next one, but it's -- 12:12:07
4 it's very much dependent on the device, the software, 12:12:11
5 how it's configured. I mean, it just depends. 12:12:15

6 Q. MS. GLADSTEIN: Do you know the version of 12:12:20
7 iTunes that you are currently using, say, on your 12:12:24
8 P -- well -- PC? Would you call Apple a PC, right? 12:12:31
9 Should fall into the PC category. So do you happen 12:12:37
10 to know the version of iTunes that is resident on 12:12:41
11 your PC or your smartphone? 12:12:43

12 MR. DISCHER: Objection, scope. 12:12:46

13 THE WITNESS: I don't have a PC with iTunes 12:12:47
14 on it now. The playlist you were asking, I was sort 12:12:49
15 of projecting back four or five years when I did have 12:12:55
16 iTunes on a PC running Windows, and I don't remember 12:12:59
17 what version that was. 12:13:03

18 Q. MS. GLADSTEIN: So would the default behavior 12:13:04
19 of that four- or five-year-old iTunes application 12:13:08
20 been to play the playlist in sequence when all you do 12:13:14
21 is highlight the name of the playlist and hit play? 12:13:19

22 MR. DISCHER: Objection, form, scope. 12:13:23

23 THE WITNESS: I'm -- I'm not sure. I mean, 12:13:25
24 the problem is I've used a lot of different players 12:13:29
25 on a lot of different platforms, a lot of different 12:13:32

1 versions of iTunes. It's very possible that there is 12:13:35
2 functionality within a particular version where if 12:13:41
3 you click on a playlist or right click and hit play 12:13:43
4 once you've selected it that it will -- it will do 12:13:50
5 that behavior, that is, start at the first song and 12:13:55
6 play through all the songs in the list; but I 12:13:58
7 wouldn't characterize that as a default behavior even 12:14:00
8 within a particular version of particular software on 12:14:05
9 particular platform. 12:14:10

10 The functionality of how playlists are dealt 12:14:11
11 with across different devices and software is 12:14:13
12 extremely variable. 12:14:18

13 Q. MS. GLADSTEIN: Okay. What is your 12:14:20
14 understanding of playing media items in a sequence? 12:14:21
15 What does it mean that the items are played in a 12:14:27
16 sequence? 12:14:29

17 MR. DISCHER: Objection, scope. 12:14:30

18 THE WITNESS: I'm not sure I understand the 12:14:32
19 question. So a set of media items played in a 12:14:46
20 sequence. Is that -- 12:14:50

21 Q. MS. GLADSTEIN: I'm trying to use the 12:14:52
22 terminology in the same way that you're using it. So 12:14:54
23 I want to know what sequence or playing something in 12:14:58
24 sequence means to you. Because I feel like there may 12:15:03
25 be -- I'm operating under one definition, you may be 12:15:07

1 operating under an entirely different one. So I want 12:15:11
2 to be on the same footing with you. 12:15:15

3 So when somebody says, let's play the items 12:15:17
4 in sequence, what does that mean to you, with the 12:15:20
5 emphasis on the word sequence? 12:15:23

6 MR. DISCHER: Objection, scope. 12:15:25

7 THE WITNESS: If someone says to me, let's 12:15:27
8 play the items in sequence, presumably there is some 12:15:31
9 context. If the context is we're talking about a 12:15:34
10 playlist, a list of media items, potentially even a 12:15:38
11 list of songs and they say, well, let's play this 12:15:42
12 list in sequence, in a sequence, that implies it has 12:15:46
13 to have some order to it. 12:15:50

14 You can say in the sequence, which would 12:15:51
15 imply like the sequence of the list. If somebody 12:15:54
16 said, play a list in a sequence, it would suggest 12:15:59
17 there could be a different kind of sequence. But at 12:16:02
18 some level if there's a list and it has multiple 12:16:08
19 items, you finish playing one item and then play 12:16:11
20 another item after it, either from a sequence or the 12:16:16
21 sequence. 12:16:22

22 Q. MS. GLADSTEIN: So if I understood you, and 12:16:23
23 correct me if I'm wrong, are you saying that a 12:16:25
24 sequence means -- to play something in a sequence 12:16:27
25 means playing one item after another? 12:16:33

1 MR. DISCHER: Objection, scope. 12:16:37

2 THE WITNESS: I think that's one example of 12:16:39

3 playing something in a sequence. Playing a list of 12:16:44

4 items or a set of items in a sequence could mean you 12:16:48

5 play one item after the other. 12:16:51

6 Q. MS. GLADSTEIN: Would the meaning of sequence 12:16:53

7 change if you are playing a playlist in a shuffle -- 12:16:57

8 with a shuffle function? The meaning of the term 12:17:06

9 sequence. That's the focus here. 12:17:11

10 MR. DISCHER: Objection, form, scope. 12:17:13

11 THE WITNESS: It depends. If you're saying 12:17:15

12 it's a sequence or the sequence, whether it's a 12:17:18

13 reference -- you can have different sequences. You 12:17:24

14 can say you can have like a list sequence, the 12:17:27

15 sequence in which something is listed. You can have 12:17:32

16 a play sequence, which is the sequence in which 12:17:35

17 things are played, and the two can be different. You 12:17:38

18 can have a list sequence and then something is 12:17:41

19 randomized and so you have the -- the sequence is the 12:17:43

20 result of randomization. 12:17:47

21 Q. MS. GLADSTEIN: If you were writing a 12:17:52

22 definition for the noun sequence, what would you 12:17:54

23 define it as? 12:17:58

24 MR. DISCHER: Objection, scope. 12:18:00

25 THE WITNESS: I would go look it up in a 12:18:03

1 dictionary -- 12:18:05

2 Q. MS. GLADSTEIN: If you are the dictionary, 12:18:06
3 what would you define it as? 12:18:08

4 MR. DISCHER: Objection, scope. 12:18:09

5 THE WITNESS: I would go look into a 12:18:10
6 dictionary. Asking somebody to define a term without 12:18:12
7 the ability to use a dictionary and look at it is 12:18:16
8 imprecise at best. I don't think I can sit here and 12:18:19
9 give you a dictionary definition of the word 12:18:23
10 sequence. I can give you examples of what a sequence 12:18:26
11 might be, but I don't think I can act as somebody who 12:18:28
12 can spout a dictionary definition off the top of my 12:18:31
13 head. 12:18:35

14 Q. MS. GLADSTEIN: Okay. So back to how you 12:18:35
15 play a playlist scenario. Regardless of whether you 12:18:40
16 activated a random function or a shuffle function or 12:18:47
17 just plain and ordinary play the list function, 12:18:51
18 wouldn't the items in a playlist be played one after 12:18:56
19 another regardless? 12:19:03

20 A. No, absolutely not. 12:19:05

21 MR. DISCHER: Objection, scope. 12:19:08

22 THE WITNESS: It would completely depend on 12:19:09
23 the software. I can envision a scenario where you've 12:19:12
24 got software and you play a playlist and it plays one 12:19:15
25 song and stops. There is no -- there is no 12:19:19

1 requirement in the handling of a playlist that if you 12:19:22
2 select a playlist that every item in the playlist has 12:19:27
3 to be played. 12:19:30

4 I mean, there is -- that's not a necessary 12:19:31
5 part of the definition of what a playlist is. 12:19:34

6 Q. MS. GLADSTEIN: I'm not asking you to define 12:19:36
7 a playlist. I'm asking you to describe the operation 12:19:38
8 of the play function when you would like to listen to 12:19:42
9 the playlist that you compiled, and you are avoiding 12:19:47
10 answering that question. 12:19:52

11 A. I am absolutely not. 12:19:53

12 MR. DISCHER: Objection, scope. 12:19:54

13 THE WITNESS: You've asked me a hypothetical 12:19:55
14 question about how a playlist would be handled in a 12:19:57
15 particular piece of software without telling me what 12:20:00
16 the software is or how it operates. It's circular. 12:20:02
17 If you tell me that the software when you click on a 12:20:06
18 play -- playlist plays every song in the playlist in 12:20:10
19 sequence, then that's fine. That's one example of 12:20:14
20 what that software can do. 12:20:17

21 But it's perfectly reasonable to have a piece 12:20:20
22 of software that where you click on play on the 12:20:22
23 playlist that it plays one song and stops. You can 12:20:25
24 click play on a playlist and just about anything can 12:20:29
25 happen. Whether something is a playlist is 12:20:33

1 dissociated with how the device -- a hypothetical 12:20:36
2 device acts on that playlist. 12:20:40

3 So I don't have any context for answering 12:20:43
4 your question unless you tell me the functionality is 12:20:47
5 of the player that's playing that playlist. 12:20:52

6 Q. MS. GLADSTEIN: Your personal computer using 12:20:55
7 iTunes which you yourself picked out as an example of 12:20:57
8 an application in which you have compiled a playlist 12:21:01
9 in the past. 12:21:05

10 MR. DISCHER: Objection, scope. 12:21:06

11 THE WITNESS: And, as I said, there's 12:21:07
12 different verses of the software. It may be the case 12:21:08
13 that in the versions that I was using that I'm 12:21:11
14 thinking about in forming a playlist, that particular 12:21:13
15 version if you click on a playlist, it plays the 12:21:16
16 first song through to the last long; but that's one 12:21:19
17 piece of software among many that I've used, and it's 12:21:23
18 not a necessary part of the definition of a playlist 12:21:28
19 that -- how that software acts on that playlist is 12:21:33
20 what defines it as a playlist. 12:21:37

21 Q. MS. GLADSTEIN: Can you tell me of a version 12:21:40
22 of iTunes -- still using iTunes as it appears to be 12:22:27
23 the preferred application -- where you would hit the 12:22:32
24 play -- you would select the playlist name and hit 12:22:37
25 the play button and it would not play the items in 12:22:41

1 the order that they appear on the list? 12:22:45

2 MR. DISCHER: Objection, scope. 12:22:49

3 THE WITNESS: First of all, iTunes is not a 12:22:50

4 preferred player. It's just the ones that we seemed 12:22:52

5 to select for the particular hypothetical. The 12:22:55

6 second thing I'd say is I -- to the extent I 12:22:58

7 understand the versions of iTunes, I don't have it 12:23:01

8 mapped in my head what versions and what play 12:23:03

9 functionality each one necessarily had. 12:23:07

10 And really the point I'm trying to make is 12:23:13

11 whether -- the different player that you use will 12:23:16

12 have different semantics associated with how the user 12:23:21

13 interface handles an action on that playlist. 12:23:25

14 I'd also point out the distinction of where 12:23:35

15 we've been talking about in these questions of 12:23:39

16 selecting a playlist versus, for example, what the 12:23:42

17 claims are, which is selecting an item within a 12:23:45

18 playlist or a song within a playlist. And, again, 12:23:48

19 depending on the software, those have two very 12:23:51

20 different kinds of semantics for what should happen, 12:23:56

21 or could happen. 12:24:00

22 MS. GLADSTEIN: I move to strike the last 12:24:11

23 paragraph of the answer as nonresponsive. 12:24:30

24 MR. DISCHER: I object to that motion. 12:24:41

25 Q. MS. GLADSTEIN: I would like to direct your 12:25:15

1	attention to Exhibit 9, which is the '099 patent.	12:25:17
2	A. Okay.	12:25:21
3	Q. And specifically to line 48 through 53.	12:25:22
4	A. What column?	12:25:45
5	Q. I'm so sorry. Column 1, line 48 through 53.	12:25:47
6	A. Yes.	12:26:14
7	Q. You're done reading?	12:26:14
8	A. Yes.	12:26:16
9	Q. Great. If you would look to the second to	12:26:16
10	last sentence of that paragraph that states: "The	12:26:20
11	selections of a playlist may then be automatically	12:26:26
12	played sequentially from the playlist."	12:26:33
13	Would that be consistent with your experience	12:26:40
14	of playing a playlist?	12:26:43
15	MR. DISCHER: Objection, scope.	12:26:47
16	THE WITNESS: I think it would be.	12:26:48
17	Especially the qualifier may. I think that in my	12:26:52
18	experience there are certainly some software that	12:26:56
19	when selecting the playlist will then automatically	12:27:06
20	play the selections on the playlist.	12:27:09
21	There are other instances where selecting a	12:27:13
22	playlist or selecting a song in a playlist does not	12:27:16
23	result in the selections being automatically played	12:27:21
24	sequentially from the playlist. So the qualifier may	12:27:26
25	I think helps make it consistent with my experience.	12:27:32

1	Q.	MS. GLADSTEIN: What is your understanding of	12:27:37
2		the broadest reasonable construction that you have	12:27:45
3		employed in your analysis of how to construe the term	12:27:51
4		playlist?	12:27:57
5	A.	So that broadest reasonable construction is a	12:27:57
6		list of media selections.	12:28:04
7	Q.	That's not the question. The question is	12:28:08
8		what is your understanding of the concept that you've	12:28:10
9		utilized to construe the term playlist, the concept	12:28:14
10		of broadest reasonable construction.	12:28:19
11		MR. DISCHER: Objection.	12:28:22
12	Q.	MS. GLADSTEIN: What does that mean to you?	12:28:22
13	A.	I see.	12:28:24
14		MR. DISCHER: Objection, form, scope.	12:28:25
15		THE WITNESS: At a high level, I think it's	12:28:26
16		the ordinary use of the term in the context of the	12:28:29
17		entire specification.	12:28:32
18	Q.	MS. GLADSTEIN: Okay. And is the part of	12:28:33
19		column 1 that I just asked you to look at at lines 48	12:28:40
20		through 53, is that part of the specification?	12:28:48
21	A.	Yes, I think so.	12:28:51
22	Q.	Okay. If I could direct you to the middle of	12:28:54
23		column -- the middle of paragraph 36 of Exhibit 5,	12:29:00
24		which is your declaration on the '099, where you	12:29:07
25		state --	12:29:15

1	A.	I'm sorry. Where are you reading from?	12:29:17
2	Q.	So I'm directing your attention to paragraph	12:29:20
3	36.		12:29:23
4	A.	Okay.	12:29:24
5	Q.	And you're welcome to read the entirety of	12:29:24
6	it.	I'll ask you a question in a moment.	12:29:27
7	A.	Okay.	12:29:31
8	Q.	So you state that the specification -- so I'm	12:29:32
9	reading from page 20,	the second full sentence that	12:29:42
10	starts -- that states the following:	"The	12:29:47
11	specification and claims thus described	playing songs	12:29:50
12	selected from a playlist,	rather than playing all of	12:29:55
13	the songs on a playlist."	And then you say: "This	12:29:58
14	is contrary to the concept that the	playlist be	12:30:04
15	arranged to be played in a sequence."		12:30:07
16	A.	Uh-huh. Yes.	12:30:12
17	Q.	In view of the passage that we looked at of	12:30:13
18	the '099 patent at column 1,	lines 48 through 53,	12:30:19
19	isn't there a contradiction in your	conclusion?	12:30:25
20	A.	No.	12:30:30
21		MR. DISCHER: Objection, form, scope.	12:30:31
22		THE WITNESS: No, because what I'm saying in	12:30:33
23	this part is the fact that you have	claims that talk	12:30:39
24	about selecting items to be played --	for example,	12:30:44
25	claims 1, 10, 11, and 12 of the '099	patent --	12:30:48

1 selecting at least one item from the playlist for 12:30:54
2 playback. 12:30:56

3 So the idea that you can select specific 12:30:59
4 items from the playlist means that it's not a 12:31:01
5 requirement of the definition of a playlist that the 12:31:06
6 songs necessarily be arranged to be played in a 12:31:12
7 sequence, that it isn't a test of the concept of a 12:31:16
8 playlist that you must have arranged to be played in 12:31:21
9 a sequence. 12:31:28

10 It's certainly possible that a playlist can 12:31:29
11 be constructed such that it is arranged to be played 12:31:33
12 in a playlist. That's certainly true. But it's also 12:31:36
13 possible that you can have a playlist without it 12:31:40
14 being arranged to be played in a sequence. 12:31:42

15 Q. MS. GLADSTEIN: Okay. A couple of follow-up 12:31:45
16 questions on your answer. One is you've just told me 12:31:47
17 that broadest reasonable construction, according to 12:31:52
18 your understanding of it, has to be consistent with 12:31:55
19 the specification, right? And you have also just 12:32:04
20 told me that the section at column 1, lines 48 12:32:07
21 through 53 is part of the specification. 12:32:12

22 But your conclusion that we were just looking 12:32:17
23 at, those two sentences from column 36 at page 20, 12:32:22
24 appears to only focus on a portion of the 12:32:27
25 specification but ignore other portions of the 12:32:32

1	specification.	12:32:37
2	A. I disagree.	12:32:40
3	MR. DISCHER: Objection, form, scope,	12:32:41
4	mischaracterizes testimony.	12:32:43
5	Q. MS. GLADSTEIN: Okay. So how is the fact	12:32:45
6	that the claims impose a certain requirement,	12:32:48
7	specifically that at least one media item be selected	12:32:53
8	from a playlist, alter the fundamental meaning of the	12:33:00
9	playlist? How does the limitation of having to	12:33:06
10	select something, the act of a requirement of doing	12:33:10
11	something with a playlist changes the very nature of	12:33:14
12	the playlist? Explain it to me because I'm totally	12:33:18
13	lost.	12:33:22
14	MR. DISCHER: Objection, form, scope.	12:33:23
15	THE WITNESS: Let me explain it this way.	12:33:25
16	It's a question of whether the term playlist should	12:33:27
17	just be a list of media items or whether it should	12:33:30
18	have some additional restriction. So the idea -- and	12:33:35
19	it's this idea of there being an additional	12:33:40
20	restriction on the playlist that's been advocated by	12:33:43
21	Black Hills Media. The idea that -- I believe	12:33:46
22	it's -- I forget the exact construction, but the idea	12:33:49
23	that it has to be arranged to be played in a	12:33:56
24	sequence.	12:33:59
25	And here's the difference. The specification	12:33:59

1 contemplates both playlists that aren't arranged to 12:34:02
2 be played in a sequence and the fact that you can 12:34:06
3 select particular items in a playlist and play it, 12:34:08
4 and it also contemplates having playlists where you 12:34:12
5 can play the whole playlist. 12:34:16

6 So the broadest reasonable construction would 12:34:18
7 be incorrect to take a definition that excludes a 12:34:22
8 playlist where the playlist is just a list of media 12:34:28
9 items regardless of whether it was arranged to be 12:34:31
10 played in a particular sequence or not, because if 12:34:34
11 you had a playlist that was -- must be arranged to be 12:34:38
12 played in a particular sequence, it would be much 12:34:42
13 narrower than what's contemplated by the patent, both 12:34:45
14 because the sequences can change and it contemplates 12:34:51
15 the idea of only selecting one item off of the 12:34:54
16 playlist. 12:34:58

17 So it's immaterial, and, in fact, it doesn't 12:34:58
18 make a lot of sense to argue that a playlist has to 12:35:02
19 be arranged in a particular sequence because -- I 12:35:06
20 mean, are you talking about the intent of the person 12:35:08
21 who created the playlist? Are you talking about the 12:35:11
22 list sequence -- the sequence in the list or the 12:35:15
23 sequence that it's to be played by? 12:35:19

24 And you can't really make a determination as 12:35:22
25 to whether something is a playlist if arranged to be 12:35:24

1 played in an order means you have to look at what the 12:35:28
2 player does or the intent and what's in the mind of 12:35:33
3 the person who created the playlist. 12:35:37

4 The fact that a playlist being a list of 12:35:39
5 media selections encompasses the different uses of 12:35:44
6 the playlist and doesn't -- isn't so narrow as to 12:35:47
7 exclude how the playlist is used is really the 12:35:52
8 rationale for how I came to believe that that's the 12:35:55
9 broadest reasonable construction. 12:35:58

10 And I'll say one other thing, that the 12:36:01
11 requirements of what's done with the playlist once 12:36:06
12 you're reading a particular claim are defining the 12:36:11
13 requirements of the claim. You don't have to have 12:36:18
14 something in the definition of playlist because 12:36:21
15 playlists can be used in lots of different ways. You 12:36:23
16 can have a playlist that's -- if you go to a concert 12:36:26
17 and the band is going to play a set of songs, they've 12:36:30
18 got a playlist in advance of the concert, and that's 12:36:33
19 a perfectly fine definition for a playlist. 12:36:37

20 When you get into the claims and what's 12:36:41
21 required with the claims and what you do with the 12:36:43
22 playlist and how it's communicated or displayed, 12:36:45
23 that's where you have additional requirements of the 12:36:48
24 claim, but those don't project themselves back on to 12:36:51
25 what a playlist needs to be. 12:36:55

1	Q.	MS. GLADSTEIN: That's a long answer.	12:36:58
2	A.	You asked for an explanation.	12:36:59
3	Q.	Let's look at -- strike that.	12:37:02
4		Let's look at the claims.	12:37:07
5	A.	Okay.	12:37:09
6	Q.	So what happens when -- when the user in the	12:37:10
7		context of the '099 -- let's carry out the claims.	12:37:28
8	A.	Sorry. Which claim are you looking at?	12:37:33
9	Q.	10, 11, or 12. Any one of them. The	12:37:36
10		language is the same. So when a user selects at	12:37:40
11		least one item from the playlist for playback by a	12:37:44
12		media player device and assume in this scenario that	12:37:48
13		the user selects three items from the playlist for	12:37:53
14		playback by a media player device, what happens at	12:37:59
15		the media player device? How will those three items	12:38:09
16		selected by a user be played?	12:38:13
17		MR. DISCHER: Objection, form, scope,	12:38:18
18		hypothetical.	12:38:20
19		THE WITNESS: The claim doesn't say.	12:38:21
20	Q.	MS. GLADSTEIN: As an expert in the case and	12:38:23
21		somebody who has represented that he is one of	12:38:31
22		ordinary skill in the art, reading this claim, what	12:38:34
23		would be your understanding of how the media player	12:38:37
24		would play the items selected by the user?	12:38:41
25		MR. DISCHER: Objection, form, scope,	12:38:45

1 hypothetical. 12:38:46

2 THE WITNESS: It's an incomplete 12:38:47

3 hypothetical. The media player could do anything. 12:38:49

4 The media player could play them in the order in 12:38:53

5 which they are listed, assuming that there's a 12:38:57

6 sequential list communicated to the player device. 12:39:05

7 The media player device could have a shuffle setting 12:39:08

8 on it. The media player device could be programmed 12:39:12

9 to play one song and then stop. 12:39:16

10 I'm not sure if it played one song and 12:39:20

11 stopped whether it would be within the scope of the 12:39:23

12 claims, but the claim doesn't describe what the media 12:39:25

13 player device has to do. 12:39:33

14 Q. MS. GLADSTEIN: In the context of the 12:39:35

15 hypothetical where the user selects three items from 12:39:37

16 the playlist, would those three items as transmitted 12:39:41

17 to the handheld -- hold on. 12:39:47

18 A. Media player device. 12:39:52

19 Q. Media player device. Would those three items 12:39:53

20 comprise a new playlist? 12:39:57

21 MR. DISCHER: Objection, form, scope, 12:39:59

22 hypothetical. 12:40:01

23 THE WITNESS: If -- under which construction? 12:40:02

24 As a list of media items? I think depending on how 12:40:12

25 it communicated, if it's communicated as a list of 12:40:18

1 media items, then using what I think is the broadest 12:40:21
2 reasonable construction, that would be a playlist 12:40:26
3 from -- 12:40:32
4 Q. MS. GLADSTEIN: But it would not be a list of 12:40:33
5 items arranged to be played in a sequence. 12:40:35
6 A. Without knowing the intent -- 12:40:38
7 MR. DISCHER: Objection, form, scope, 12:40:38
8 hypothetical. 12:40:40
9 THE WITNESS: Without knowing the intent of 12:40:40
10 the wireless handheld remote control, which, of 12:40:50
11 course, doesn't really have intent, so without 12:40:54
12 knowing the intent of the user, whether the user 12:40:57
13 intended them to be played in the sequence, whether 12:41:02
14 it was selecting them just to be loaded -- I mean, 12:41:08
15 this is part of the confusion and ambiguity in the 12:41:12
16 construction advocated by Black Hills Media, that 12:41:15
17 there is something else, some other piece of 12:41:18
18 information that you need in order to determine 12:41:20
19 what's transmitted to the device, whether it's a 12:41:22
20 playlist or not. 12:41:25
21 Q. MS. GLADSTEIN: Does a playlist have an 12:41:26
22 organizational structure? 12:41:29
23 MR. DISCHER: Objection, form, scope. 12:41:30
24 THE WITNESS: Under whose construction? 12:41:32
25 Q. MS. GLADSTEIN: Generally does a playlist 12:41:39

1 have an organizational structure? 12:41:50

2 MR. DISCHER: Objection, form, scope. 12:41:53

3 THE WITNESS: What do you mean by 12:41:54

4 organizational structure? I can't answer the 12:41:55

5 question because I'm not sure what you mean by 12:42:01

6 organizational structure. 12:42:03

7 Q. MS. GLADSTEIN: Is a playlist organized? 12:42:04

8 MR. DISCHER: Objection, form, scope. 12:42:07

9 THE WITNESS: Not necessarily. 12:42:09

10 Q. MS. GLADSTEIN: Why do you say that? 12:42:15

11 A. Organized implies -- 12:42:17

12 MR. DISCHER: Objection, form, scope. 12:42:20

13 THE WITNESS: -- some sort of organization. 12:42:21

14 I would say a playlist has an order to it, but 12:42:24

15 whether it's organized -- for example, here's an 12:42:27

16 example that gets at the ambiguity. 12:42:31

17 If you have a playlist that was randomized, 12:42:34

18 would it be organized? I'm not sure -- probably the 12:42:38

19 answer to that question would be no, but it would 12:42:43

20 still have an order to it. 12:42:47

21 Q. MS. GLADSTEIN: So when you said that a 12:42:48

22 playlist is organized -- sorry. I take that back. 12:42:50

23 When you said that a playlist has an order to 12:42:54

24 it, what did you mean by that? 12:43:10

25 A. A playlist is a set of items, a set of media 12:43:12

1 items, has an inherent order to it. It has a list 12:43:20
2 order. If you look at a list, whether it was 12:43:27
3 intended or not, it has a list associated with it. 12:43:30
4 I'm sorry. It has an order associated with it. 12:43:34

5 Now, that might be different than the play 12:43:39
6 order and there can be different orders associated 12:43:42
7 with it. Or if you give somebody a list and say, 12:43:45
8 here's a list and it's not ordered, there's no order 12:43:49
9 to the list, a person can still look at that list and 12:43:53
10 say, yes, but there's a first item and there's a 12:43:57
11 second item and there's a third item. There's an 12:44:00
12 inherent list order in the list. 12:44:02

13 MR. DISCHER: Objection based on scope to the 12:44:06
14 previous question. 12:44:09

15 (Deposition Exhibit 10 marked for 12:44:34
16 identification.) 12:44:34

17 Q. MS. GLADSTEIN: Let me show you what has been 12:44:34
18 marked as Exhibit 10. Do you recognize this 12:44:43
19 document? 12:44:47

20 A. I believe it's the same one I've looked at. 12:44:47

21 MR. DISCHER: Do you have a plan for breaking 12:45:01
22 for lunch? Do you have a line of questioning? 12:45:02

23 MS. GLADSTEIN: Just one or two questions. 12:45:06

24 THE WITNESS: Yes, it's the same Champion 12:45:08
25 patent application that I've used as a part of a 12:45:11

1	combination in my '099 declaration.	12:45:15
2	Q. MS. GLADSTEIN: And when was the last time	12:45:17
3	you saw it?	12:45:19
4	A. Probably saw it this morning.	12:45:19
5	MR. DISCHER: Objection, scope.	12:45:20
6	Q. MS. GLADSTEIN: When was the last time you	12:45:22
7	reviewed it?	12:45:23
8	MR. DISCHER: Objection, scope.	12:45:25
9	THE WITNESS: Yesterday.	12:45:26
10	Q. MS. GLADSTEIN: I'd like to direct your	12:45:26
11	attention to column 3 at paragraph 44. If you could	12:45:30
12	read the first sentence into the record, please.	12:45:42
13	A. Sure. "Additionally, the user may want to	12:45:45
14	create a listing of several audio files to be	12:45:48
15	retrieved and output in a specified order, i.e., a	12:45:50
16	play-list."	12:45:55
17	Q. Do you disagree with the authors of this	12:45:57
18	reference's usage of the term playlist?	12:46:04
19	MR. DISCHER: Objection, scope.	12:46:08
20	THE WITNESS: I think that's one example of	12:46:10
21	what a playlist can be. I don't think that this is	12:46:12
22	the definition of what a playlist is. I think a	12:46:19
23	person of skill in the art would consider a playlist	12:46:23
24	to be something broader than exactly what's	12:46:25
25	identified here.	12:46:28

1 Q. MS. GLADSTEIN: Is there anything wrong with 12:46:29
2 this definition? 12:46:31

3 MR. DISCHER: Objection, scope. 12:46:32

4 THE WITNESS: If it's the only definition or 12:46:34
5 the only -- let me say it this way. If the 12:46:40
6 requirement of the playlist is that it contain audio 12:46:44
7 files that are intended to be retrieved and output in 12:46:53
8 a specified order, then I think that that would be 12:46:57
9 too narrow of a definition of a playlist and I think 12:47:00
10 it would be inconsistent with the '099 patent's use 12:47:03
11 of the term playlist. 12:47:07

12 Q. MS. GLADSTEIN: It states in a specified 12:47:09
13 order. 12:47:24

14 A. It does. And if you keep reading, it say -- 12:47:24

15 MR. DISCHER: Objection, scope. 12:47:27

16 THE WITNESS: It does, and if you keep 12:47:29
17 reading, it says: 12:47:32

18 "The audio files are preferably retrieved 12:47:33
19 and output in the same order they were 12:47:36
20 designated in the play-list. Alternatively, 12:47:38
21 the computer...may be instructed to output by 12:47:41
22 files in a random order by actuation of the 12:47:44
23 'random' key...on the remote control..." 12:47:49

24 In that sense, the inventors of the Champion 12:47:52
25 patent application were describing a playlist. 12:47:57

1 Whether it's in the order intended by the user or 12:48:02
2 whether it's a random order, it's still considered a 12:48:07
3 playlist. 12:48:10

4 Q. MS. GLADSTEIN: But the sentences that you 12:48:11
5 just read do not contradict the first sentence where 12:48:12
6 the user may want to create a listing of several 12:48:18
7 audio files to be retrieved and output in a specified 12:48:22
8 order, i.e., a playlist. The fact that they can be 12:48:26
9 organized in a random order or can be retrieved in 12:48:30
10 the same order doesn't defeat the fact that they can 12:48:35
11 be output or retrieved in a specified order. 12:48:40

12 A. I think -- 12:48:43

13 MR. DISCHER: Objection. 12:48:45

14 Q. MS. GLADSTEIN: Is that right? 12:48:45

15 MR. DISCHER: Objection, form, scope. 12:48:46

16 THE WITNESS: I think you're making the point 12:48:49
17 for me that if you were to interpret the definition 12:48:52
18 of playlist to be narrow and to say that a playlist 12:48:54
19 is something that has to be retrieved and output in a 12:48:58
20 specified order, there would be a contradiction, 12:49:02
21 because it contemplates that same list given an 12:49:05
22 alternative order by a computer. 12:49:07

23 Therefore, a playlist is really just a list 12:49:10
24 of media items, and there isn't some specified order 12:49:12
25 that need be there. You can still have a playlist if 12:49:16

1 the items are randomized. You can have a situation 12:49:20
2 where a user created a playlist, organized it, had 12:49:24
3 the intent that they were played out in the order of 12:49:29
4 the playlist, and, yes, that is a playlist, but 12:49:32
5 that's not the only kind of playlist that fits within 12:49:36
6 the definition of playlist as it's used in the term 12:49:38
7 in the patents at issue in the IPR. 12:49:43

8 Q. MS. GLADSTEIN: You testified earlier that a 12:49:46
9 playlist has an inherent order to it, did you not? 12:49:49

10 A. I did, and that's perfectly consistent with 12:49:52
11 what I've said. 12:49:58

12 MS. GLADSTEIN: Okay. Let's take a break. 12:49:59

13 VIDEOGRAPHER: Going off the record, the time 12:50:01
14 now is 12:50. 12:50:04

15 (Deposition recess taken.) 13:57:13

16 VIDEOGRAPHER: The time now is 1:57. We're 13:57:13
17 back on the video record. This also marks the 13:57:17
18 beginning of video four. Please continue. 13:57:19

19 MR. DISCHER: Counsel, just want to make one 13:57:21
20 point. Before our break, I did not have an 13:57:24
21 opportunity to lodge an objection to the last 13:57:26
22 question based on scope. I'd like to put that on the 13:57:28
23 record at this time. 13:57:31

24 Q. MS. GLADSTEIN: Dr. Almeroth, during the 13:57:34
25 break, did you have any substantive discussion about 13:58:15

1	the deposition --	13:58:19
2	A. No.	13:58:21
3	Q. -- with counsel?	13:58:21
4	Before the break, we talked about the meaning	13:58:25
5	of the term playlist according to the broadest	13:58:29
6	reasonable construction. Would you agree that	13:58:35
7	playlist is a list of items designed to be played?	13:59:15
8	MR. DISCHER: Objection, scope.	13:59:23
9	THE WITNESS: Sorry. Could you repeat the	13:59:53
10	question?	13:59:54
11	Q. MS. GLADSTEIN: Sure. I'll repeat the	13:59:57
12	question. Would you agree that the playlist is a	14:00:01
13	list of items designed to be played? Designed to be	14:00:03
14	played.	14:00:12
15	MR. DISCHER: Objection, scope.	14:00:12
16	THE WITNESS: I think that that would be	14:00:13
17	ambiguous in the sense of what designed to be played	14:00:20
18	meant. I mean, again, from the perspective of is it	14:00:28
19	designed by the person who created the list, is it in	14:00:33
20	the eye of the person looking at the playlist.	14:00:40
21	Q. MS. GLADSTEIN: Let me rephrase. Is the	14:00:43
22	purpose of a playlist to play the list? I take that	14:00:45
23	back.	14:00:49
24	Is the purpose of the playlist to be played?	14:00:50
25	MR. DISCHER: Objection, form, scope.	14:00:58

1	THE WITNESS: Not necessarily.	14:01:00
2	Q. MS. GLADSTEIN: What would a purpose of a	14:01:02
3	playlist be?	14:01:04
4	MR. DISCHER: Objection, scope.	14:01:06
5	THE WITNESS: To codify a list of media	14:01:07
6	items.	14:01:15
7	Q. MS. GLADSTEIN: For what purpose?	14:01:15
8	MR. DISCHER: Objection, scope.	14:01:18
9	THE WITNESS: It -- it -- I mean, I could	14:01:19
10	think of some examples. I mean, just to identify a	14:01:23
11	list of songs by a particular artist. It might be	14:01:26
12	intended to be played, it might not. I mean, it	14:01:31
13	just -- I don't think that it's necessarily the case	14:01:39
14	that a playlist needs to be played or designed to be	14:01:42
15	played.	14:01:46
16	Q. MS. GLADSTEIN: If you compile a list of	14:01:46
17	items that you never intended to play, would it still	14:01:49
18	be a playlist?	14:01:52
19	MR. DISCHER: Objection, form, scope,	14:01:53
20	hypothetical.	14:01:55
21	THE WITNESS: I think from the perspective of	14:01:55
22	the claims, if it was a list of media items, it would	14:01:58
23	be a list. Whether you have to consider the intent	14:02:01
24	of some party, the designer, the conveyor, the	14:02:06
25	receiver, the player, I think introduces additional	14:02:10

1	requirements that are beyond the scope of what's	14:02:17
2	required.	14:02:20
3	Q. MS. GLADSTEIN: What's required of what?	14:02:20
4	MR. DISCHER: Objection, form.	14:02:24
5	THE WITNESS: It would just be a list of	14:02:25
6	media items.	14:02:27
7	Q. MS. GLADSTEIN: Help me understand what you	14:02:28
8	meant when you said, and it's a quote from your	14:02:58
9	answer just now: "I think from the perspective of	14:03:02
10	the claims, if it was a list of media items, it would	14:03:06
11	be a list." Is that what you meant to say and, if	14:03:10
12	so, what did it mean?	14:03:16
13	MR. DISCHER: Objection, scope.	14:03:17
14	THE WITNESS: Sorry. Would you repeat what I	14:03:19
15	said?	14:03:22
16	Q. MS. GLADSTEIN: You said: "I think from the	14:03:22
17	perspective of the claims, if it was a list of media	14:03:25
18	items, it would be a list."	14:03:28
19	MR. DISCHER: Objection, scope.	14:03:33
20	THE WITNESS: Sure. It essentially becomes	14:03:34
21	circular at that point. That if you define something	14:03:36
22	as a playlist being a list of media items, if it's a	14:03:40
23	list and it contains media items, then it's a	14:03:46
24	playlist. But if you try to inject some additional	14:03:50
25	requirement about intent, that it was designed to be	14:03:52

1 played, that it was actually played, now you get into 14:03:54
2 something that's ambiguous and difficult to evaluate, 14:03:58
3 especially from the perspective of, you know, what I 14:04:01
4 understand patents are supposed to be about, to 14:04:07
5 inform the public about what's covered in this 14:04:09
6 particular invention. 14:04:12

7 And if you have some term that's ambiguous or 14:04:14
8 vague as to you have to determine the intent of what 14:04:18
9 the list was designed for or how it's used in a 14:04:23
10 particular setting, you know, that can create 14:04:26
11 confusion for somebody who's looking at a patent. 14:04:29

12 MS. GLADSTEIN: I move to strike the entire 14:04:34
13 answer as nonresponsive to the question asking the 14:04:40
14 witness to clarify a prior statement. 14:04:44

15 MR. DISCHER: Objection to the motion. 14:04:49

16 Q. MS. GLADSTEIN: So what differentiates a list 14:04:50
17 from a playlist? 14:04:57

18 MR. DISCHER: Objection, scope. 14:04:59

19 THE WITNESS: The playlist is a list of media 14:05:00
20 items. So it's a particular kind of list, and they 14:05:05
21 are items that are playable, media items. 14:05:10

22 Q. MS. GLADSTEIN: Necessarily playable? 14:05:14

23 MR. DISCHER: Objection, scope. 14:05:20

24 THE WITNESS: I'm not sure I understand the 14:05:21
25 question. Do they have to be media items? Do 14:05:36

1 they -- do they have to be playable? I mean, is it 14:05:40
2 necessarily the case that for an item to be on a 14:05:45
3 playlist it has to be playable? If that's what the 14:05:49
4 list is of, then it's a playlist. I'm not sure how 14:05:52
5 to answer the question. 14:06:01

6 Q. MS. GLADSTEIN: And it's playable. 14:06:02

7 MR. DISCHER: Objection, scope. 14:06:05

8 THE WITNESS: I can't think of instances -- I 14:06:07
9 don't know if there are corner cases, but I can't 14:06:11
10 think of instances where you would have items on a 14:06:14
11 playlist and the items would not be playable. But I 14:06:16
12 haven't really tried to answer that question before. 14:06:20
13 I don't know if there is some conceivable scenario 14:06:24
14 where an item on a playlist is not playable under 14:06:28
15 some definition of playability. 14:06:31

16 (Deposition Exhibit 11 marked for 14:06:44
17 identification.) 14:06:45

18 Q. MS. GLADSTEIN: Let me show you what has been 14:06:45
19 marked as Exhibit 11. Do you recognize this 14:06:48
20 document? 14:06:54

21 A. I do. 14:06:54

22 Q. What is it? 14:06:57

23 A. It looks -- I mean, it's the content 14:07:04
24 directory service template. It's version 1.01. I 14:07:08
25 think it's the same version as the one that I have 14:07:13

1	referenced in my declaration. Not in the '099	14:07:16
2	declaration. I think it's referenced in the '323 and	14:07:22
3	the '873 declaration, but I'd have to go back and	14:07:25
4	double-check the version numbers to make sure that	14:07:29
5	it's correct.	14:07:31
6	Q. Do you see a stamp on the lower right-hand	14:07:32
7	corner that says Samsung Exhibit 1017?	14:07:36
8	A. Yes.	14:07:40
9	Q. Does that help you be confident that this is	14:07:41
10	indeed a document that was submitted along with one	14:07:49
11	of your declarations?	14:07:58
12	A. It does enhance that understanding. To be	14:07:59
13	absolutely sure, I'd just go back and confirm that	14:08:08
14	that's the exhibit that's referenced in my	14:08:12
15	declaration.	14:08:14
16	(Deposition Exhibit 7 marked for	14:08:17
17	identification.)	14:08:17
18	Q. MS. GLADSTEIN: So to that end, let me show	14:08:17
19	you what has been marked as Exhibit 7. Do you	14:08:20
20	recognize that document?	14:08:23
21	A. This is my declaration for the '873 patent.	14:08:24
22	Q. Actually, if you could set it aside for a	14:08:35
23	second, let me also show you what has been marked as	14:08:38
24	Exhibit 6.	14:08:44
25	///	14:08:55

1	(Deposition Exhibit 6 marked for	14:08:55
2	identification.)	14:08:56
3	Q. MS. GLADSTEIN: So that the record is clear,	14:08:56
4	I would just state that Exhibit 7 is the declaration	14:09:21
5	of Kevin Almeroth submitted in IPR2014-00723, and	14:09:24
6	Exhibit 6 states it's a declaration of Kevin Almeroth	14:09:34
7	that was submitted in IPR2014-00709.	14:09:39
8	So if I ask you to look at exhibit -- first	14:09:54
9	of all, are you familiar with Exhibit 6, which is	14:09:57
10	your declaration for the '323 patent?	14:10:01
11	A. Yes.	14:10:03
12	Q. Okay. And if you look to the last page and	14:10:04
13	confirm for me whether there is your signature?	14:10:06
14	A. On the last page, it is my signature.	14:10:08
15	Q. On page 32. And if I can ask you to turn --	14:10:12
16	actually, strike that.	14:10:50
17	Let's do the same exercise with Exhibit 7.	14:10:51
18	A. I think you want page 27.	14:10:59
19	Q. Sorry?	14:11:01
20	A. I think you want page 27 of Exhibit 7.	14:11:02
21	That's where it's referenced as Exhibit 1017.	14:11:05
22	Q. Right, but I was referring to Exhibit 6.	14:11:07
23	A. So Exhibit 6, this document is 1016. This	14:11:12
24	is -- Exhibit 1016 is this document, but it's in	14:11:22
25	Exhibit 7 that it's 1017.	14:11:28

1 Q. That's right. That's right. So I wanted 14:11:30
2 to -- strike the question where I asked you to turn 14:11:34
3 to a specific page because that document doesn't have 14:11:37
4 1017 which I'm showing you. 14:11:44
5 So let's turn to Exhibit 7. Do you recognize 14:11:47
6 this document? 14:11:50
7 A. Yes, Exhibit 7 is my declaration in this 14:11:50
8 IPR -- or in the IPR for the '873 patent. 14:11:55
9 Q. And does the last page bear your signature? 14:11:58
10 A. Yes. 14:12:00
11 Q. Okay. And so if you turn to page -- 14:12:01
12 A. 27. 14:12:11
13 Q. Thank you. Does it reference Exhibit 1017? 14:12:11
14 A. It does, and that's the content directory 14:12:16
15 service template. 14:12:20
16 Q. The same document that has been marked as 14:12:22
17 Exhibit 11 that I handed you earlier. 14:12:27
18 A. Yes. 14:12:29
19 Q. Okay. So if you could take Exhibit 11 and 14:12:30
20 turn it to pages 52-53. The real interest at the 14:12:37
21 moment is page 52. 14:12:46
22 A. Okay. 14:12:49
23 Q. Okay. And specifically if you could look at 14:12:50
24 section that starts with 2.8.9.2 entitled Playlist 14:12:58
25 file generation from container derived object 14:13:10

1	resources.	14:13:12
2	A. Yes.	14:13:13
3	Q. If you could just read the first two	14:13:13
4	paragraphs and let me know when you're done.	14:13:17
5	A. Okay.	14:13:20
6	Q. Do you see the last sentence of the first	14:13:47
7	paragraph in that section that states: "The content	14:13:50
8	of the playlist file is a list of all the items in	14:13:53
9	the container."	14:13:58
10	A. I do see that.	14:13:59
11	Q. Okay. And then the next paragraph states:	14:14:00
12	"Note: The order of the items in the	14:14:03
13	playlist file is defined by the generator of	14:14:06
14	the playlist, but should match the order of	14:14:10
15	the items as returned from the Browse()	14:14:13
16	action on that container."	14:14:16
17	A. I do see that.	14:14:19
18	Q. What is your understanding of this note	14:14:20
19	statement?	14:14:27
20	MR. DISCHER: Objection, scope.	14:14:29
21	THE WITNESS: What it's describing is that	14:14:31
22	there should be a consistency in the order of the way	14:14:38
23	that items are returned as part of the XML object and	14:14:43
24	the way that they were created in the object that's	14:14:48
25	being interrogated by the browse action.	14:14:54

1 Q. MS. GLADSTEIN: And this statement is 14:14:57
2 consistent with your prior testimony when you said 14:14:59
3 that there is an inherent order to the items in a 14:15:04
4 playlist, correct? 14:15:10

5 MR. DISCHER: Objection, scope. 14:15:11

6 THE WITNESS: It is consistent, and it's 14:15:12
7 consistent in the sense that my discussion of 14:15:18
8 playlist is a list of data items, and it has an 14:15:21
9 inherent order, but there isn't any additional 14:15:28
10 requirement as to what that order is that should be 14:15:32
11 part of the broadest reasonable interpretation. 14:15:37

12 Q. MS. GLADSTEIN: Now, you said the playlist is 14:15:40
13 a list of data items. Is there a difference between 14:16:09
14 a list of data items and a list of media items? 14:16:12

15 MR. DISCHER: Objection, scope. 14:16:16

16 THE WITNESS: I misspoke. It should have 14:16:17
17 been media items. 14:16:19

18 Q. MS. GLADSTEIN: Okay. If you could -- strike 14:16:20
19 that. 14:16:35

20 Counsel, I just want to put on the record 14:16:35
21 with respect to many of your objections based on 14:16:38
22 scope, but particularly the one that was made a 14:16:42
23 question ago or so, the pages or the page that I'm 14:16:48
24 asking the witness about is exactly the page that is 14:16:52
25 cited in his report. I just want to note it for the 14:16:55

1	record.	14:16:58
2	MR. DISCHER: Understand. The questions	14:16:58
3	you're asking he did not address in his declaration.	14:17:00
4	MS. GLADSTEIN: Okay.	14:17:03
5	Q. If I could ask you to turn to page 84 and	14:17:04
6	specifically section 7.4. And if you could read the	14:17:14
7	paragraph that precedes the table, and you're welcome	14:17:21
8	to look at the table as well, and let me know when	14:17:25
9	you're done.	14:17:30
10	A. Okay.	14:17:49
11	Q. Do you see the first sentence that states:	14:17:49
12	"A 'playlistItem' represents a playable sequence of	14:17:54
13	resources."	14:17:59
14	A. I do see that.	14:18:02
15	Q. Doesn't this statement -- what does that	14:18:03
16	statement mean to you?	14:18:18
17	MR. DISCHER: Objection, scope.	14:18:19
18	THE WITNESS: I'm not sure I can parse it any	14:18:20
19	more specifically than what's said there. It's	14:18:26
20	talking about the playlist item container and an	14:18:29
21	instance of a playlist item. And so that's an	14:18:35
22	instance of a playlist. It represents a playable	14:18:39
23	sequence of resources.	14:18:41
24	Q. MS. GLADSTEIN: Is that consistent with your	14:18:44
25	understanding of what a playlist is?	14:18:47

1	MR. DISCHER: Objection, scope.	14:18:51
2	THE WITNESS: I think it is consistent with	14:18:53
3	my understanding, and I think it's consistent with	14:18:54
4	the understanding I've offered for the broadest	14:18:57
5	reasonable interpretation of the term playlist.	14:19:00
6	Q. MS. GLADSTEIN: Does this sentence also mean	14:19:03
7	that a playlist item can be rendered by a rendering	14:19:12
8	device in a sequence, meaning that the -- strike	14:19:19
9	that.	14:19:30
10	Okay. Let's go to the next sentence. The	14:19:31
11	next sentence appears to differentiate between a	14:19:54
12	music album in the sense that a playlist item may	14:19:58
13	contain a mix of audio, video and images and is	14:20:03
14	typically created by a user while an album is	14:20:08
15	typically a fixed published sequence of songs.	14:20:13
16	A. I see that.	14:20:18
17	Q. What does that sentence mean to you?	14:20:19
18	MR. DISCHER: Objection, scope.	14:20:23
19	THE WITNESS: I think it's drawing a semantic	14:20:24
20	difference between the music album container type and	14:20:33
21	a playlist item container type. What I would	14:20:44
22	recognize here is that ultimately whether it's a	14:20:48
23	music album or a playlist album, it's composed of a	14:20:53
24	playable sequence of resources.	14:20:59
25	So it appears to be describing a conceptual	14:21:01

1 difference between the two, though not necessarily an 14:21:08
2 implementation distinction. And that -- that really 14:21:11
3 goes into the rest of the paragraph there. 14:21:17

4 Q. MS. GLADSTEIN: Is there any conflict between 14:21:18
5 the meaning of the term album versus playlist? 14:21:20

6 MR. DISCHER: Objection, scope. 14:21:26

7 THE WITNESS: No, I don't think there's a 14:21:27
8 conflict. I think the way to understand these terms 14:21:30
9 is really with a Venn diagram. So you can have 14:21:33
10 something like a playlist, and a subcomponent of a 14:21:39
11 playlist is a playlist where it's created by a user. 14:21:48

12 And I say that because it says may contain 14:21:51
13 mix of audio, video and images. So there's a 14:21:55
14 qualifier there, and it's typically created by a 14:22:00
15 user. Typically means not necessarily. So you can 14:22:03
16 have a playlist as it's described in this paragraph 14:22:05
17 where it's not created by a user, but it's saying 14:22:08
18 generally you can then draw the distinction between 14:22:11
19 something that's created by a user and an album which 14:22:13
20 has a fixed published sequence of songs, which I 14:22:16
21 think is correct. You have an album. In some cases 14:22:20
22 the sequence is determined or is the result of the 14:22:24
23 way that the items are physically stored on the 14:22:27
24 device, for example, tracks on a CD or tracks on a 14:22:31
25 cassette tape or record, and in that sense there's a 14:22:35

1 fixed published sequence of songs. It's part of 14:22:41
2 publishing that media. 14:22:44

3 That's an example of a playlist, but it's not 14:22:45
4 one that's necessarily definitive for how a playlist 14:22:49
5 should be defined. 14:22:57

6 Q. MS. GLADSTEIN: Now, is there anything odd 14:23:06
7 about the usage of the term sequence in the 14:23:23
8 definition that is provided on the first sentence of 14:23:30
9 section 7.4 of Exhibit 11? 14:23:34

10 MR. DISCHER: Objection, form, scope. 14:23:38

11 THE WITNESS: I don't think there's anything 14:23:39
12 odd. I'm not sure what might qualify as being odd in 14:23:45
13 the question, but I don't -- 14:23:49

14 Q. MS. GLADSTEIN: Did you find it 14:23:50
15 objectionable? 14:23:52

16 A. No. 14:23:53

17 MR. DISCHER: Objection, form, scope. 14:23:53

18 Q. MS. GLADSTEIN: Let's turn to paragraph 42 of 14:23:55
19 Exhibit 5, which is your declaration in the '099. 14:25:57

20 A. Okay. 14:26:05

21 Q. So paragraph 42 is the beginning of the 14:26:06
22 section entitled The Bi Publication, and this is 14:26:21
23 where you discuss the Bi publication, correct? 14:26:27

24 A. Yes, I think that's generally correct. 14:26:31

25 Q. Does Bi operate according to a UPnP protocol? 14:26:38

1	MR. DISCHER: Objection, scope.	14:26:50
2	THE WITNESS: Do you have the reference for	14:26:51
3	me to look at?	14:26:53
4	MS. GLADSTEIN: Sure.	14:26:55
5	(Deposition Exhibit 12 marked for	14:27:16
6	identification.)	14:27:17
7	Q. MS. GLADSTEIN: Handing you a document marked	14:27:17
8	as Exhibit 12.	14:27:19
9	A. I don't think that the Bi publication goes	14:27:47
10	into the level of detail specifying one underlying	14:27:52
11	protocol versus another. So it's not described one	14:27:55
12	way or the other as using a protocol -- a specific	14:27:59
13	protocol like UPnP or another protocol generally.	14:28:04
14	Q. In order for you to determine whether a	14:28:14
15	reference operates according to a UPnP protocol, you	14:28:20
16	need to explicitly see the reference to the protocol?	14:28:25
17	MR. DISCHER: Objection, scope.	14:28:29
18	THE WITNESS: Not necessarily.	14:28:31
19	Q. MS. GLADSTEIN: So what is it that you would	14:28:34
20	have liked to see here to conclusively state one way	14:28:38
21	or the other whether the Bi reference operates	14:28:42
22	according to a UPnP protocol?	14:28:47
23	MR. DISCHER: Objection, scope.	14:28:49
24	THE WITNESS: Well, I'm not sure I understand	14:28:51
25	the question. I disagree that Bi does or does not	14:28:57

1 operate according to the UPnP protocol. It doesn't 14:29:01
2 provide that level of specificity. It would lead to 14:29:03
3 the understanding of a person of skill in the art how 14:29:09
4 to implement such a system. So I can't really answer 14:29:15
5 your question as phrased. 14:29:18

6 Q. MS. GLADSTEIN: Would you say that the 14:29:19
7 computing platform 100 of Bi operates like a control 14:29:20
8 point of a UPnP system? 14:29:26

9 MR. DISCHER: Objection, scope. 14:29:31

10 THE WITNESS: It's not a question I've tried 14:29:39
11 to answer specifically. Looking at at least the 14:29:46
12 functionality of the computing platform in the Figure 14:29:52
13 1, it includes an audio or video player application 14:29:59
14 151, which would be more in line with a renderer, and 14:30:04
15 it's also got a local storage component. 14:30:09

16 So it might have some characteristics of a 14:30:12
17 server, but also within the UPnP context it 14:30:17
18 contemplates devices that can have a mix of 14:30:24
19 functionality. You can have a combination. There's, 14:30:27
20 for example, one that's shown in the AV architecture 14:30:30
21 document that's a combination. 14:30:33

22 Q. MS. GLADSTEIN: So the answer to my question 14:30:36
23 is, the question being does the computing platform 14:30:43
24 operate analogous to a control point of a UPnP 14:30:48
25 system. 14:30:53

1 A. Maybe the better way to answer it -- 14:30:54

2 MR. DISCHER: Objection, scope. 14:30:57

3 THE WITNESS: -- for your question is it 14:30:58

4 might have some functionality that's indicative of a 14:31:01

5 control point, but at least the functionality of 14:31:04

6 storage and audio or video player application are not 14:31:07

7 typically what one would associate with the control 14:31:15

8 point in UPnP architecture. 14:31:18

9 There might be other functionality that's 14:31:25

10 described as part of the computing platform that's 14:31:27

11 more in line with it, but I'd have to dig into Bi to 14:31:30

12 determine what all that functionality of computing 14:31:34

13 platform 100 is. 14:31:38

14 Q. MS. GLADSTEIN: Now, the computing platform 14:31:40

15 of Bi does not play music, does it? 14:31:44

16 MR. DISCHER: Objection, scope. 14:31:50

17 THE WITNESS: Off the top of my head, I don't 14:31:52

18 know the answer to that question. It seems the 14:31:57

19 answer is that it does based on box 151 being an 14:32:00

20 audio or video player application, but I'd have to 14:32:07

21 dig into the reference to see that that's actually 14:32:14

22 what box 151 does. 14:32:17

23 Q. MS. GLADSTEIN: Could you take a look at 14:32:19

24 Figure 2 and tell me if it helps you in answering the 14:32:21

25 question. 14:32:29

1 A. Well, Figure 2 also has an audio or video 14:32:30
2 player application 151. That would seem to suggest 14:32:36
3 that it has the capability to play audio or video and 14:32:41
4 also has box 156, which are audio or video playback 14:32:45
5 drivers, and box 119, audio or video playback 14:32:52
6 hardware. It has a connection 109 to analog audio or 14:32:58
7 video. 14:33:02

8 So I would have to look at the functions of 14:33:02
9 those boxes to determine whether or not the computing 14:33:05
10 platform can render the media or whether it's 14:33:09
11 rendered on an attached device, but I think that's -- 14:33:12
12 that's the place I would look with respect to Figure 14:33:18
13 2 to answer that question. 14:33:21

14 Q. Okay. And looking at Figure 1 of Bi, the 14:33:27
15 navigator 260 doesn't directly access the data server 14:33:53
16 102 or the Internet or other network 101; is that 14:33:59
17 right? 14:34:11

18 MR. DISCHER: Objection, form, scope. 14:34:11

19 THE WITNESS: At least in Figure 1 what's 14:34:13
20 shown is a connection to the computing platform. It 14:34:19
21 depends on how you define directly connecting to. I 14:34:22
22 think Figure 1 shows the navigator having a wireless 14:34:28
23 communication with the computing platform. I would 14:34:34
24 have to look at Bi in more detail to see if there is 14:34:38
25 some disclosure somewhere else that provides 14:34:41

1	additional disclosure.	14:34:44
2	Q. MS. GLADSTEIN: Does Figure 1 show that the	14:34:45
3	navigator 260 is capable of reaching out directly to	14:34:49
4	the data server 102?	14:34:55
5	MR. DISCHER: Objection, form, scope.	14:34:57
6	Q. MS. GLADSTEIN: Bypassing the computing	14:35:00
7	platform 100?	14:35:02
8	MR. DISCHER: Objection, form, scope.	14:35:04
9	THE WITNESS: I'm -- Figure 1 doesn't go into	14:35:06
10	that level of detail. I don't think that I can	14:35:14
11	answer that question yes or no solely based on	14:35:17
12	reviewing Exhibit 1.	14:35:23
13	Q. MS. GLADSTEIN: When was the last time you	14:35:24
14	reviewed the Bi reference?	14:35:26
15	MR. DISCHER: Objection, scope.	14:35:27
16	THE WITNESS: Probably yesterday.	14:35:28
17	Q. MS. GLADSTEIN: Did you review any specific	14:35:29
18	portion of it?	14:35:31
19	MR. DISCHER: Objection, scope.	14:35:32
20	THE WITNESS: No, I think I reviewed it all.	14:35:34
21	Q. MS. GLADSTEIN: The entirety of it?	14:35:36
22	A. Yes.	14:35:38
23	MR. DISCHER: Objection, scope.	14:35:39
24	Q. MS. GLADSTEIN: And you say you cannot recall	14:35:40
25	today whether Bi provides for the navigator to --	14:35:42

1 strike that. 14:35:52

2 You cannot recall sitting here today whether 14:35:52

3 the navigator can access the data server 102 without 14:35:57

4 going through the computing platform 100? 14:36:04

5 MR. DISCHER: Objection, scope. 14:36:07

6 THE WITNESS: That's correct. I don't have 14:36:08

7 Bi memorized. I don't have all of its capabilities 14:36:09

8 of the different devices within the reference 14:36:13

9 memorized. I would have to go through and look at 14:36:15

10 the reference to make sure that there weren't 14:36:19

11 alternative embodiments or capabilities that were 14:36:21

12 described beyond Figure 1. 14:36:25

13 Q. MS. GLADSTEIN: Do you recall what type of 14:36:26

14 communication is between the navigator and the 14:36:30

15 computing platform 100? 14:36:36

16 MR. DISCHER: Objection, scope. 14:36:38

17 THE WITNESS: I'm not sure what you mean. 14:36:39

18 Specific protocol or -- 14:36:42

19 Q. MS. GLADSTEIN: Yes, what type of 14:36:44

20 communication is employed for the navigator to talk 14:36:45

21 to the computing platform? 14:36:49

22 MR. DISCHER: Objection, scope. 14:36:51

23 THE WITNESS: I have a recollection it might 14:36:53

24 be 802.11, but I've reviewed lots of documents. I'm 14:36:55

25 not sure if that's one of the protocol examples that 14:36:58

1 are used or described as an example of the kinds of 14:37:02
2 communication protocol that can be used between the 14:37:06
3 platform and the navigator. 14:37:10

4 Q. MS. GLADSTEIN: And the 802.11 is a local 14:37:12
5 area network communication protocol? 14:37:17

6 MR. DISCHER: Objection, scope. 14:37:18

7 THE WITNESS: I think generally it's 14:37:19
8 characterized as a LAN protocol. 14:37:21

9 Q. MS. GLADSTEIN: Would looking at paragraph 44 14:37:24
10 of your report help you refresh your recollection 14:37:26
11 with respect to the disclosure of Bi? 14:37:28

12 A. It does. In particular in paragraph 44 it 14:37:43
13 references paragraph 20 which cites as an example 14:37:46
14 802.11, and if you look at paragraph 20 in the Bi 14:37:50
15 reference, Exhibit 12, it says audio or video player 14:37:55
16 application running on the computing platform may 14:38:03
17 interact with the navigator through a wireless data 14:38:07
18 communications interface. That interface can be, for 14:38:10
19 example, Bluetooth, HomeRF, IEEE 802.11 or an 14:38:15
20 infrared interface. 14:38:21

21 Q. Does it disclose any type of communication 14:38:26
22 that would enable the navigator 260 to go out to data 14:38:29
23 server 102 through the Internet? 14:38:33

24 MR. DISCHER: Objection, scope. 14:38:38

25 THE WITNESS: In this particular part, I 14:38:40

1 don't see it. I would have to go back and look at 14:38:47
2 the entire specification to see if there is some 14:38:49
3 additional description or alternate embodiment that 14:38:51
4 says that it's possible. 14:38:58

5 Q. MS. GLADSTEIN: In paragraph 42, which is the 14:38:59
6 first paragraph of the Bi publication in Exhibit 5, 14:39:03
7 your last sentence of that paragraph says -- 14:39:12
8 actually, second to last. Let me just -- for 14:39:18
9 purposes of context, let me read it in. 14:39:20

10 "Bi is entitled 'Interactive Remote 14:39:24
11 Control of Audio or Video Playback and 14:39:27
12 Selection.' It is directed to a system with 14:39:30
13 an interactive remote control, which may be 14:39:32
14 wired to wireless, that is used to control a 14:39:34
15 player application running on a personal 14:39:37
16 computer or set-top box." 14:39:39

17 And you cite to paragraphs 7 and 18 of Bi. 14:39:42
18 Is there a reason why this paragraph doesn't 14:39:46
19 say that the navigator 260 of Bi is capable of 14:40:01
20 obtaining data through the Internet from a data 14:40:08
21 server 102 in addition to the capabilities that you 14:40:11
22 cited to the system? 14:40:17

23 MR. DISCHER: Objection, scope. 14:40:19

24 THE WITNESS: Is there a reason it's not 14:40:20
25 there? 14:40:21

1	Q.	MS. GLADSTEIN: Uh-huh.	14:40:22
2	A.	No.	14:40:23
3	Q.	Because if it were there, you would have	14:40:25
4		listed it, right?	14:40:27
5	A.	Not necessarily.	14:40:29
6		MR. DISCHER: Objection, scope.	14:40:30
7		THE WITNESS: It might come in a later	14:40:31
8		paragraph. It might not have been relevant for the	14:40:33
9		level I was describing the Bi publication at.	14:40:38
10	Q.	MS. GLADSTEIN: Okay. Is there any figure in	14:40:42
11		Bi that would show that the navigator 260 of Bi is	14:40:45
12		capable of communicating with the data server 102	14:40:50
13		without the computing platform 100?	14:40:55
14		MR. DISCHER: Objection, scope.	14:40:58
15		THE WITNESS: I don't know if there is or	14:41:00
16		there might be. I mean, I've looked through. I	14:41:07
17		don't see one specifically, but I think I'd really	14:41:10
18		have to read the entire publication to see how the	14:41:13
19		figures are described.	14:41:16
20		It certainly might have that capability. Bi	14:41:20
21		may not care whether it's disclosed or not. I mean,	14:41:23
22		if you're using 802.11, other devices other than your	14:41:29
23		intended destination can receive the communication.	14:41:35
24		I don't see where the way that Bi is describing that	14:41:39
25		connection is it's necessarily limited to only	14:41:44

1 communication through the computing platform. 14:41:48

2 And I suppose you focused your questions on 14:41:56

3 whether there's communications to the Internet or to 14:41:59

4 the data server not through the computing platform. 14:42:04

5 It's also important to point out that Bi describes 14:42:08

6 communicating to the data server through the Internet 14:42:10

7 through the computing platform potentially. 14:42:13

8 So just to make clear, I understand your 14:42:16

9 question so far to be directed at communication not 14:42:18

10 through the computing platform. 14:42:21

11 Q. MS. GLADSTEIN: That is correct. 14:42:23

12 A. Okay. 14:42:25

13 Q. But sitting here today, you do not know 14:42:25

14 whether Bi discloses such communication, direct 14:42:28

15 communication without the computing platform between 14:42:31

16 the navigator 260 and the data server 102 via the 14:42:34

17 Internet 101. 14:42:39

18 A. I -- 14:42:41

19 MR. DISCHER: Objection, scope. 14:42:41

20 THE WITNESS: I haven't tried to answer that 14:42:42

21 question primarily for the reason that direct 14:42:45

22 communication isn't a requirement on any of the '099 14:42:47

23 claims at issue here. 14:42:51

24 Q. MS. GLADSTEIN: You reviewed the Bi reference 14:42:53

25 as recently as yesterday in its entirety and you 14:42:59

1 provided about eight or nine paragraphs discussing Bi 14:43:05
2 in your expert report, yet you don't know sitting 14:43:10
3 here today whether the navigator is capable of 14:43:15
4 communicating with the data server without the 14:43:18
5 computing platform. 14:43:21

6 MR. DISCHER: Objection, scope. 14:43:23

7 THE WITNESS: That's correct, because that's 14:43:24
8 not a requirement of the claims at issue in the '099 14:43:26
9 patent. There's nothing in those claims that say 14:43:31
10 that communication has to take place without the 14:43:34
11 computing platform between the navigator and the data 14:43:36
12 server. If that had been a requirement, then I might 14:43:39
13 have focused on it more in my analysis. 14:43:43

14 So in answering your question, since I 14:43:49
15 haven't thought about it from that perspective, I 14:43:51
16 would have to spend some time with Bi and see if 14:43:54
17 there is some disclosure that contemplates that as a 14:43:56
18 possibility. 14:43:59

19 Q. MS. GLADSTEIN: Okay. So sitting here today, 14:44:00
20 you also wouldn't know whether Bi's navigator is 14:44:04
21 capable of receiving a playlist or other content data 14:44:08
22 from the data server 102 without the computing 14:44:20
23 platform 151? 14:44:25

24 MR. DISCHER: Objection, scope, 14:44:26
25 mischaracterizes testimony. 14:44:27

1 MS. GLADSTEIN: It's a question, Counsel. 14:44:33

2 THE WITNESS: I haven't looked at the 14:44:37

3 question of whether or not Bi discloses communication 14:44:39

4 between the data server and the navigator with or 14:44:45

5 without transmitting through the computing platform. 14:44:51

6 Since I don't think that transmitting or bypassing 14:44:55

7 the computing platform as part of the communication 14:44:58

8 between the data server and the navigator is a 14:45:03

9 requirement of the claim, it's not something that I 14:45:06

10 focused on in my analysis. 14:45:09

11 MS. GLADSTEIN: I'm looking for the Champion 14:45:52

12 reference. I thought I marked it. 14:45:55

13 THE WITNESS: Ten. 14:45:58

14 Q. MS. GLADSTEIN: Thank you so much. So 14:45:58

15 looking at Exhibit 10, can you tell whether the 14:46:01

16 system described in Champion operates according to 14:46:08

17 the UPnP protocol? 14:46:14

18 MR. DISCHER: Objection, scope, form. 14:46:17

19 THE WITNESS: I don't see any disclosure in 14:46:19

20 Exhibit 10, the Champion publication, saying one way 14:46:44

21 or the other what the underlying communication 14:46:49

22 primitives are, the messages and the protocol, 14:46:52

23 whether they're UPnP or something else. 14:46:56

24 I think that the way that Champion is 14:47:00

25 described, it could be implemented with UPnP but not 14:47:05

1 a necessary part of the invention as it's disclosed. 14:47:07

2 Q. MS. GLADSTEIN: Can you tell me in your own 14:47:11

3 words what the Encarnacion patent is about which is 14:48:18

4 described at paragraphs 52 through 54 of your 14:48:28

5 declaration of Exhibit 5? 14:48:33

6 MR. DISCHER: Objection, form. 14:48:35

7 THE WITNESS: I'm a little bit hesitant to 14:48:36

8 give a short description of Encarnacion, largely 14:48:56

9 because I don't have the reference. I think the 14:49:01

10 reference speaks for itself and covers a variety of 14:49:03

11 functionality and embodiments. 14:49:07

12 I think paragraph 52 which has the sentence 14:49:11

13 "Encarnacion is directed to the operation of the UPnP 14:49:17

14 network configured to allow media from a server 14:49:21

15 configured to be played on a renderer device" is one 14:49:25

16 fairly high level characterization of what 14:49:28

17 Encarnacion describes. 14:49:31

18 Q. MS. GLADSTEIN: What are the problems in the 14:49:33

19 art that Encarnacion identifies in the specification? 14:49:35

20 MR. DISCHER: Objection, scope. 14:49:41

21 THE WITNESS: I don't have those memorized, 14:49:43

22 and I don't have the reference in front of me. 14:49:49

23 Q. MS. GLADSTEIN: Would it help you to have the 14:49:52

24 reference? 14:49:54

25 A. Well, it's not a question I specifically 14:49:54

1 tried to answer, but I could certainly look at the 14:49:57
2 reference and maybe in the background section it has 14:50:00
3 some aspect of what it's trying to address, or 14:50:02
4 throughout the specification. 14:50:06

5 (Deposition Exhibit 13 marked for 14:50:06
6 identification.) 14:50:22

7 Q. MS. GLADSTEIN: I'm showing you what has been 14:50:22
8 marked as Exhibit 13. Have you seen this document 14:50:23
9 before? 14:50:37

10 A. I have. 14:50:38

11 Q. What is the document? 14:50:39

12 A. It's the Encarnacion patent. 14:51:05

13 Q. Can you tell me what are the problems that 14:51:07
14 Encarnacion endeavors to overcome with his patent? 14:51:15

15 MR. DISCHER: Objection, form, scope. 14:51:22

16 THE WITNESS: Well, one place where some of 14:51:23
17 those problems are typically described is in the 14:52:07
18 background. So I'll go through some paragraphs here, 14:52:09
19 but I would also point out that often cases as part 14:52:13
20 of describing the implementation of the system there 14:52:17
21 are additional features of the system that become 14:52:21
22 relevant, for example, or become relevant in solving 14:52:24
23 problems not necessarily identified at the beginning 14:52:30
24 of the reference. 14:52:32

25 So maybe the place to start is at the top of 14:52:33

1 column 4, line 1 when Encarnacion says:

14:52:38

2 "Accordingly, there is an exemplary need
3 in the art for a technique for controlling
4 the dissemination of resource information in
5 a network environment, and, in a more
6 particular implementation, there is a need
7 for a technique for controlling the routing
8 of resource information in a network
9 including UPnP devices."

14:52:47

14:52:49

14:52:51

14:52:53

14:52:55

14:52:57

14:52:59

14:53:03

10 So I think as part of the description, and if
11 you look at the paragraphs before that, it goes into
12 some of the deficiencies, some of which are around
13 security, the ability to control the dissemination of
14 information and really the ability to efficiently
15 disseminate information in the first place, which is
16 why through the rest of the specification Encarnacion
17 describes the use of UPnP and its protocol messages
18 to implement what I have described in paragraph 52 as
19 media delivery and rendering within the UPnP types of
20 devices.

14:53:06

14:53:09

14:53:11

14:53:16

14:53:21

14:53:25

14:53:28

14:53:32

14:53:40

14:53:48

14:53:57

21 Q. MS. GLADSTEIN: Would it be fair to say that
22 Encarnacion attempts to provide a means to control
23 access, content, and digital rights management that
24 the UPnP Av Architecture:1 as, you know, shown on the
25 Exhibit 8 specifically did not enable?

14:53:59

14:54:01

14:54:12

14:54:20

14:54:28

1 MR. DISCHER: Objection, form, scope. 14:54:34

2 THE WITNESS: I don't think that's entirely 14:54:36

3 accurate. It might be one of the aspects of what 14:54:38

4 Encarnacion is focused on, but I think in the 14:54:41

5 execution of addressing that challenge there are a 14:54:44

6 number of subproblems that need to be solved, and 14:54:49

7 it's some of those particular subproblems that become 14:54:54

8 relevant in teaching a person of skill in the art 14:54:57

9 ways of building a distribution architecture within 14:55:01

10 UPnP. 14:55:05

11 Q. MS. GLADSTEIN: You mentioned that one of the 14:55:08

12 problems that Encarnacion tried to address was 14:55:23

13 security. 14:55:28

14 A. That's correct, and to be very clear, I think 14:55:29

15 that's one of the problems. There are other problems 14:55:31

16 that Encarnacion attempted to solve. 14:55:35

17 Q. Right. And so focusing on the security 14:55:38

18 aspect of Encarnacion's disclosure, what security 14:55:41

19 concerns specifically did Encarnacion try to address? 14:55:50

20 MR. DISCHER: Objection, scope. 14:55:57

21 THE WITNESS: I don't have those concerns 14:55:58

22 memorized, and I'm not even sure where specifically 14:56:00

23 in the reference he goes through and enumerates them. 14:56:04

24 So if you've got a place you want to point me to, I 14:56:08

25 can agree or disagree. 14:56:13

1 Q. MS. GLADSTEIN: Sure. Why don't you look at 14:56:14
2 column 32. There is a header b. titled MAC Address 14:56:16
3 Authentication. So that section starts there, but 14:56:27
4 the more relevant discussion to the questions that 14:56:31
5 I'm asking you start at column 33, line 1. 14:56:35

6 A. Okay. So to be clear, this section b. that 14:56:41
7 you mentioned, there is also section a. ,which is all 14:56:45
8 part of section a.5 on additional security 14:56:50
9 provisions. So there's other security provisions 14:56:55
10 described. 14:56:58

11 I can certainly look at the particular parts 14:57:00
12 you're talking about, but it's in the context of a 14:57:03
13 larger list of techniques for implementing additional 14:57:06
14 security provisions. 14:57:10

15 Q. Right. And as I mentioned, this is just one 14:57:12
16 of them. You've asked me to point you, so I'm 14:57:16
17 pointing you to a place. 14:57:20

18 So if you could look at the description at 14:57:21
19 column 33 and tell me what do you understand this MAC 14:57:27
20 address authentication feature to do. 14:57:37

21 MR. DISCHER: Objection, scope. 14:57:43

22 THE WITNESS: Generally speaking, MAC 14:57:44
23 authentication is the idea that you have the layer 2 14:57:51
24 addresses, the MAC addresses of a particular set of 14:57:55
25 destinations, and there is an access list of 14:57:58

1 authorization that allows particular MAC addresses to 14:58:02
2 access particular content or perform certain actions; 14:58:06
3 and as part of the communication, one of the things 14:58:10
4 that can be done is to compare the MAC address of a 14:58:12
5 request, for example, against the permissions to 14:58:18
6 determine whether or not the application running on 14:58:21
7 that MAC address is able to access or has the 14:58:24
8 permission to perform certain functions. 14:58:29

9 Q. MS. GLADSTEIN: And would Figure 7 be 14:58:32
10 illustrative of what Encarnacion is discussing in the 14:58:41
11 section of MAC address authentication? 14:58:46

12 MR. DISCHER: Objection, scope. 14:58:49

13 THE WITNESS: Probably. There are certainly 14:58:53
14 aspects of it that jump out that are potentially 14:58:57
15 relevant, but there's a lot -- there's a lot going on 14:59:00
16 in Figure 7. So there might be other aspects that 14:59:04
17 are relevant to this question as well as other 14:59:07
18 features described in Encarnacion. 14:59:09

19 Q. MS. GLADSTEIN: Sure. Do you have an 14:59:13
20 understanding of what Figure 7 illustrates? 14:59:14

21 A. Not without double-checking. As I said, 14:59:18
22 there's really one -- one part that jumps out, but 14:59:22
23 there is a -- there is a lot more boxes and things 14:59:30
24 going on in the figure than what initially jumps out 14:59:34
25 at me. 14:59:38

1	Q.	Figure 7 is described at column 4 in the	14:59:39
2		brief description of the drawings as showing	14:59:42
3		exemplary mechanisms used to prevent unauthorized	14:59:47
4		individuals from gaining access to resources in the	14:59:50
5		context of the application shown in Figure 4.	14:59:53
6	A.	Okay.	14:59:57
7	Q.	What type of communication would be occurring	14:59:58
8		between, for example, an unauthorized external entity	15:00:13
9		726 and the router 720?	15:00:21
10		MR. DISCHER: Objection, scope.	15:00:27
11		THE WITNESS: Did you say 726?	15:00:28
12	Q.	MS. GLADSTEIN: Yes. So if you look at the	15:00:30
13		box --	15:00:33
14	A.	Okay, 726. Okay. What kind -- as to	15:00:34
15		specifically what kind, I'd probably have to look in	15:00:48
16		the specification to see where it's talking about	15:00:51
17		what happens across that line.	15:00:54
18	Q.	Sure.	15:00:58
19	A.	And -- so it says at column 31, line 50 (As	15:00:59
20		read):	15:01:23
21		...entity 726 is using a device 734 to	15:01:24
22		attempt to interact with the UPnP network via	15:01:27
23		the router 720. These unauthorized entries	15:01:31
24		and devices -- sorry -- entities and devices	15:01:35
25		are merely illustrative of a wide range of	15:01:40

1 different types of intruders that may attempt 15:01:45
2 to gain access to the resources of the UPnP 15:01:48
3 network 314. 15:01:51

4 That's the first place I landed. I don't 15:01:55
5 know if there's something else in all these pages 15:01:57
6 that describe a specific scenario for the kinds of 15:02:00
7 messages that are exchanged or what kind of 15:02:08
8 communication is taking place over that link. 15:02:12

9 Q. Looking at Figure 7, do you see that there is 15:02:14
10 a box that contains various devices, routers, a media 15:02:17
11 server and the modem? 15:02:23

12 A. Yes, I do see the box. 15:02:24

13 Q. And then -- 15:02:30

14 A. Going back to Figure 4, presumably it's the 15:02:32
15 same box. Is that the box 402? I guess in Figure 7 15:02:34
16 it's 702? Is that the box you're talking about? 15:02:38

17 Q. Yes. 15:02:41

18 A. Okay. Yes, I see that box. 15:02:42

19 Q. And then there are smaller boxes that are 15:02:45
20 three smaller boxes that are entitled unauthorized 15:02:54
21 external entity 722, 724, and 726. 15:02:57

22 A. Yes. 15:03:02

23 Q. So is it your understanding that the box 702 15:03:03
24 comprises a specific local network? 15:03:14

25 MR. DISCHER: Objection, scope. 15:03:20

1	THE WITNESS: No.	15:03:22
2	Q. MS. GLADSTEIN: Why not?	15:03:28
3	MR. DISCHER: Objection, scope.	15:03:30
4	THE WITNESS: Well, usually in the context of	15:03:31
5	a local area network it's a single layer 2 network	15:03:33
6	and if you think about Ethernet as an example of a	15:03:38
7	layer 2 network. In that instance you don't go	15:03:42
8	through a router.	15:03:46
9	So when you look at 702 and there are	15:03:48
10	multiple routers involved, it's no longer a single	15:03:51
11	local area network, but multiple local area networks.	15:03:55
12	So this is a much more sophisticated kind of home	15:03:59
13	network. That is an example of a home network that	15:04:04
14	is not a local area network because it involves	15:04:07
15	multiple kind of networks.	15:04:09
16	Q. MS. GLADSTEIN: But what kind of networks	15:04:11
17	does it involve?	15:04:13
18	MR. DISCHER: Objection, scope.	15:04:14
19	THE WITNESS: Well, it could have multiple	15:04:15
20	local area networks. The key distinction here, at	15:04:18
21	least just looking at Figure 7, is the existence of	15:04:20
22	routers within box 702. That, by definition, means	15:04:24
23	that there is not a single local area network within	15:04:31
24	the box 702.	15:04:33
25	Q. MS. GLADSTEIN: Help me understand. So when	15:04:35

1 we have multiple local area networks, it is no longer 15:04:37
2 a local area network as a category or what's 15:04:42
3 happening where there are multiple local area 15:04:49
4 networks? 15:04:53

5 MR. DISCHER: Objection, scope. 15:04:53

6 THE WITNESS: Well, local area network is -- 15:04:54
7 a LAN is usually a layer 2 construct that defines all 15:04:54
8 of the devices within that particular local area and 15:04:58
9 it uses a particular layer 2 protocol, for example, 15:05:01
10 Ethernet 802.11. 15:05:05

11 So when you go to an environment where 15:05:10
12 there's multiple local area networks and you have 15:05:13
13 routing involved and you have multiple layer 2 15:05:15
14 protocols, it ceases to be characterizable as a local 15:05:19
15 area network. 15:05:25

16 It can -- it might be called a home network 15:05:25
17 or you could have these same kinds of devices located 15:05:29
18 in a business. For example, in a -- in a firm like 15:05:33
19 this one where there's multiple routers, I think it 15:05:38
20 would be improper to characterize the firm's network 15:05:42
21 as a local area network. Usually there's a layer 2 15:05:46
22 single protocol association with it. 15:05:50

23 I think you asked what would you call it. 15:05:52
24 You wouldn't call it a LAN anymore. You would call 15:05:57
25 it a small network. 15:05:59

1	Q.	MS. GLADSTEIN: Of multiple LAN's?	15:06:01
2	A.	Sure, that would be accurate.	15:06:04
3	Q.	Okay. What do you make of that cross between	15:06:07
4		router 720 on the line that goes to router 718?	15:06:09
5		MR. DISCHER: Objection, scope.	15:06:17
6	Q.	MS. GLADSTEIN: Is router 720 communicating	15:06:18
7		with router 718?	15:06:23
8		MR. DISCHER: Objection, scope.	15:06:26
9		THE WITNESS: Let me see what it says about	15:06:27
10		738 and that cross. That's the cross you're pointing	15:06:31
11		to, 738?	15:06:36
12	Q.	MS. GLADSTEIN: Yes.	15:06:38
13	A.	I don't see where that's mentioned. I can	15:06:39
14		either look for it, or if you've got a preindexed	15:06:54
15		citation you can tell me about, that might	15:06:59
16		short-circuit this.	15:07:02
17	Q.	I do not at the moment. Oh, actually, if you	15:07:04
18		look at 34, paragraph that starts right after line	15:07:07
19		25.	15:07:11
20	A.	Okay. So what it's describing is in a	15:07:12
21		particular example the use of the IP header field,	15:07:29
22		the time to live field, the TTL field, can be used to	15:07:34
23		ensure that communications between devices are not	15:07:38
24		allowed based on whether or not messages have a TTL	15:07:45
25		set low enough to be blocked or high enough to make	15:07:51

1 it across that link.

15:07:56

2 So that maybe the best sentence to summarize
3 this from the patent is column 34, line 33.

15:08:01

15:08:04

4 "Setting the TTL parameter to a low value
5 will also prohibit dissemination of resource
6 information over the Internet 732 because
7 such a broadband transmission will be subject
8 to many intermediate routers en route to its
9 final destination."

15:08:09

15:08:13

15:08:16

15:08:19

15:08:22

15:08:27

10 So the idea that you can use the TTL value to
11 control the scope of a transmission is what's being
12 described in association with 738.

15:08:28

15:08:31

15:08:34

13 Q. So would it be fair to say that Figure 7
14 depicts an embodiment where, based on the TTL
15 parameter, communication with the wide area network
16 such as the network outside of the box would be
17 prohibited?

15:08:38

15:08:46

15:08:53

15:08:59

15:09:07

18 MR. DISCHER: Objection, form, scope.

15:09:08

19 Q. MS. GLADSTEIN: Or precluded.

15:09:09

20 A. I think what Figure 7 is saying and what it's
21 describing about Figure 7 is that certain
22 communications, not all, but certain communications
23 can use a lower TTL value and it will prevent those
24 TTL -- those communications from reaching the wide
25 area network.

15:09:12

15:09:16

15:09:18

15:09:21

15:09:25

15:09:28

1 But it is also teaching that if you use a 15:09:28
2 larger TTL those communications will be able to reach 15:09:32
3 into the Internet. And I think that that's described 15:09:36
4 starting at column 33, line 64. There is a whole 15:09:53
5 subsection on TTL limiting. So it's described under 15:09:57
6 these additional measures that can be taken to make 15:10:00
7 sure that communications within this particular 15:10:03
8 example network don't unnecessarily bleed over into 15:10:08
9 the Internet, but it's saying that that's useful for 15:10:18
10 some of the communications. 15:10:24
11 I think if you continue looking on to the top 15:10:41
12 of 34, the example it's talking about is in the 15:10:44
13 service discovery context, but again not all 15:10:47
14 contexts. 15:10:50
15 (Deposition Exhibit 14 marked for 15:10:50
16 identification.) 15:11:08
17 Q. MS. GLADSTEIN: Dr. Almeroth, I am handing 15:11:08
18 you what has been marked as Exhibit 14. Do you 15:11:10
19 recognize this document? 15:11:21
20 A. I do. 15:11:22
21 Q. And what is it? 15:11:23
22 A. It's the Weast patent. It's been referenced 15:11:25
23 and described in at least two of the declarations 15:11:35
24 I've written. 15:11:38
25 Q. What is your understanding of what Weast is 15:11:39

1	directed to?	15:12:23
2	MR. DISCHER: Objection, form.	15:12:24
3	Q. MS. GLADSTEIN: Which exhibit are you looking	15:12:57
4	at?	15:13:00
5	A. It's Exhibit 7 for the '873. We can do that	15:13:00
6	one or the '323.	15:13:04
7	Q. Whatever works.	15:13:07
8	A. So this is Exhibit 7. I think there's	15:13:08
9	several paragraphs that talk about the Weast patent.	15:13:14
10	The one that I'll read is that second sentence of 37.	15:13:17
11	"...Weast describes the user interface of	15:13:22
12	the computing device used to control other	15:13:25
13	devices in the network, which is called the	15:13:28
14	'control point' device in UPnP. Weast also	15:13:30
15	describes the interaction between the control	15:13:36
16	point, media server, and media rendering	15:13:38
17	devices."	15:13:43
18	At least one aspect of Weast is focused on	15:13:44
19	the user interface and what that would look like. In	15:13:47
20	fact, I think there's a part of Weast at the	15:13:52
21	beginning that says it's looking at user interface	15:13:54
22	issues within the context of UPnP at least is one	15:13:59
23	part of what it does.	15:14:02
24	Q. Does Weast describe receiving playlists?	15:14:04
25	MR. DISCHER: Objection, form.	15:14:13

1 THE WITNESS: I'm not sure I understand the 15:14:22
2 question. I think from the perspective of how it 15:14:24
3 applies to the '873 that there are playlists received 15:14:26
4 and displayed, for example, on the control point 15:14:39
5 shown in the user interface. And some of the 15:14:41
6 paragraphs in this section more towards the middle 15:14:52
7 and end of paragraph 37 into 38 describe that 15:14:55
8 functionality. 15:14:59

9 Q. MS. GLADSTEIN: So your answer is -- I'm 15:15:01
10 sorry. I'm asking you because I didn't quite 15:15:19
11 understand your answer. 15:15:21

12 But is your answer that Weast is describing 15:15:22
13 receiving playlists? 15:15:27

14 MR. DISCHER: Objection, form. 15:15:30

15 THE WITNESS: I think it is describing 15:15:32
16 receiving playlists, and the way that it's described 15:15:34
17 is receiving media content that can be displayed on 15:15:42
18 the control point and then selected and causes the 15:15:48
19 media renderer to play that content. 15:15:54

20 Q. MS. GLADSTEIN: And how do you know that the 15:15:58
21 media content includes playlists? 15:16:00

22 A. There are figures, and I think in the 15:16:03
23 description of Weast there are lists of media items, 15:16:10
24 and those I think are playlists under what I believe 15:16:17
25 is the broadest reasonable interpretation. 15:16:23

1 Q. Does Weast ever reference the term playlist? 15:16:26

2 A. I don't know if it ever includes the term 15:16:29

3 playlist. I mean, presumably you could do a search 15:16:33

4 of an OCR'd version of the patent and see if that 15:16:40

5 term is ever used. I don't recall if it appears 15:16:46

6 anywhere in the specification. 15:16:48

7 Q. Does Weast describe displaying lists? 15:16:50

8 A. Not to nitpick your question. I think it 15:17:17

9 shows lists. I don't know if in the -- 15:17:35

10 Q. Where does it show lists? 15:17:38

11 A. So, for example, Figure 6B is the first one 15:17:39

12 that you turned to. I mean, there's a list of songs. 15:17:44

13 It's got title one, title two up to title N. They're 15:17:49

14 identified as music. Figure 7 has something similar, 15:17:55

15 as does Figure 5B, 5A, 4C has a list, 4A. Those are 15:18:01

16 lists of music. 15:18:16

17 And just to be clear, those are -- those are 15:18:40

18 just the figures. I haven't looked at the text of 15:18:43

19 the specification to see if it characterizes those as 15:18:46

20 lists specifically, but certainly we could look there 15:18:49

21 next if you wanted. 15:18:53

22 MS. GLADSTEIN: Why don't we take a break. 15:19:52

23 VIDEOGRAPHER: Going off the record, the time 15:19:55

24 now is 3:19. 15:19:57

25 (Deposition recess taken.) 15:37:29

1	VIDEOGRAPHER: The time now is 3:38. We're	15:37:29
2	back on the record. This also marks the beginning of	15:38:12
3	video five. Please proceed.	15:38:14
4	Q. MS. GLADSTEIN: Dr. Almeroth, during the	15:38:16
5	break, did you have any substantive discussions with	15:38:21
6	counsel regarding the subject matter of this	15:38:23
7	deposition?	15:38:25
8	A. No.	15:38:25
9	Q. With respect to Exhibit 5, which is your	15:38:26
10	declaration on the '099 patent --	15:38:32
11	A. Yes.	15:38:39
12	Q. -- do you need to make any changes to	15:38:39
13	anything that is set out in this declaration?	15:38:46
14	A. Not that I am aware of as I sit here right	15:38:51
15	now.	15:39:00
16	Q. Okay. And with respect to the Exhibit 6,	15:39:01
17	which is your declaration on the '323 patent --	15:39:06
18	A. Yes.	15:39:18
19	Q. -- do you need to make any changes to	15:39:18
20	anything that is set out in this document?	15:39:20
21	A. I am not aware of any as I sit here today.	15:39:23
22	Q. And with respect to Exhibit 7, which is your	15:39:28
23	declaration on the '873 patent, do you need to make	15:39:36
24	any changes to anything that is stated in this	15:39:41
25	document?	15:39:43

1	A.	As I sit here today, none that I'm aware of.	15:39:44
2	Q.	With respect to -- strike that.	15:39:51
3		Did you prepare for this deposition?	15:40:11
4	A.	I did.	15:40:14
5	Q.	And how did you go about preparing?	15:40:15
6		MR. DISCHER: Objection, scope.	15:40:19
7		THE WITNESS: At a high level it was to	15:40:20
8		review my declarations, the documents cited in each	15:40:27
9		of those early paragraphs which were essentially the	15:40:33
10		patents and the key prior art references, and then	15:40:37
11		also to review all the other documents that were	15:40:42
12		cited in the body of the declarations.	15:40:46
13	Q.	MS. GLADSTEIN: Did you meet with anybody in	15:40:51
14		connection with preparing for the depositions?	15:40:53
15		MR. DISCHER: Objection, scope.	15:40:56
16		THE WITNESS: I did.	15:40:57
17	Q.	MS. GLADSTEIN: And who did you meet with?	15:40:58
18	A.	I'm bad with last names, but with Greg and	15:41:00
19		Christine.	15:41:04
20	Q.	Anybody else?	15:41:05
21		MR. DISCHER: Objection, scope.	15:41:06
22		THE WITNESS: No.	15:41:07
23	Q.	MS. GLADSTEIN: Did you have any	15:41:08
24		conversations about the substance of the opinions	15:41:10
25		that you have expressed in each of the three	15:41:13

1 declarations that are Exhibits 5, 6, and 7 with 15:41:15
2 people other than lawyers of Covington & Burling? 15:41:23

3 MR. DISCHER: Objection, scope. 15:41:29

4 THE WITNESS: No. 15:41:31

5 Q. MS. GLADSTEIN: When did you begin preparing 15:41:33
6 for the deposition? 15:41:35

7 MR. DISCHER: Objection, scope. 15:41:37

8 THE WITNESS: I would say in a very limited 15:41:39
9 way probably in mid-December maybe. I think that's 15:41:50
10 when I found out that we were going to do a 15:41:56
11 deposition and that it was going to be scheduled. So 15:42:00
12 I made sure I had copies of the exhibits and that 15:42:02
13 sort of thing. 15:42:06

14 Q. MS. GLADSTEIN: Was that on your own or was 15:42:07
15 that with counsel? 15:42:10

16 MR. DISCHER: Objection, scope. 15:42:11

17 THE WITNESS: That was on my own. 15:42:12

18 Q. MS. GLADSTEIN: How many hours approximately 15:42:16
19 did you spend working on the '323, '099 and the '873 15:42:41
20 patents that are subject of these IPR proceedings? 15:42:52

21 MR. DISCHER: Objection, form, scope. 15:42:54

22 THE WITNESS: Sorry. Can you mention the 15:42:56
23 first part of the question again or just read it 15:42:58
24 back? 15:43:02

25 Q. MS. GLADSTEIN: How many hours approximately 15:43:02

1 did you spend working on the '099, '323, and '873 15:43:04
2 patents that are subject to these proceedings? And 15:43:11
3 I'm talking only about these proceedings. 15:43:14

4 A. Sure. I mean, that's part of the problem. 15:43:17
5 I've spent time with these patents and references 15:43:20
6 before. The second problem I have is just as part of 15:43:23
7 this proceeding I haven't distinguished or separated 15:43:28
8 out hours I've worked on for these three IPR 15:43:31
9 proceedings versus the other three for the other 15:43:37
10 three patents. 15:43:39

11 So it would be -- so let me sort of put it 15:43:41
12 this way. I think approximately sort of in the 15:43:45
13 ballpark range of about 50 hours total. It's divided 15:43:48
14 somewhere between these three patents and then the 15:43:55
15 other three patents. 15:43:58

16 Q. Aside from the documents that are cited in 15:44:03
17 your reports that are Exhibits 5, 6, and 7, are there 15:44:09
18 any other documents that you reviewed in 15:44:15
19 connection -- and by documents, let me qualify. Are 15:44:20
20 there any other prior art documents that you reviewed 15:44:23
21 in connection with your preparation for the 15:44:27
22 deposition? 15:44:30

23 MR. DISCHER: Objection, scope. 15:44:30

24 THE WITNESS: Just I'm a little confused by 15:44:33
25 the question. You mean the prior art references? 15:44:42

1 Because the things I'm thinking about are with 15:44:45
2 respect to the state of the art, the things that I've 15:44:48
3 listed in the state of the art section. Some of 15:44:50
4 those could have been prior art references. For 15:44:53
5 example, UPnP. UPnP was not a prior art reference 15:44:55
6 that was identified as one of the references that 15:44:59
7 would invalidate before the board. It wasn't one of 15:45:06
8 the bases, but it, you know, it was in the old 15:45:11
9 proceedings. 15:45:15

10 So I'm not sure if you mean like UPnP as a 15:45:15
11 prior art reference. 15:45:18

12 Q. MS. GLADSTEIN: What does prior art reference 15:45:19
13 mean to you? 15:45:21

14 MR. DISCHER: Objection, scope. 15:45:22

15 THE WITNESS: Well, it could mean a couple of 15:45:23
16 different things. The specific prior art references 15:45:25
17 here, Weast, Encarnacion, Bi, Champion, those as 15:45:28
18 prior art references. I considered other materials 15:45:38
19 and documents. Those are listed in the declarations 15:45:40
20 themselves. And then I had mentioned sort of this 15:45:43
21 morning right out of the gate on the concentric 15:45:45
22 circle thing that there is also other documents that 15:45:48
23 I've seen and looked at that have informed my 15:45:51
24 opinions just about generally what the state of the 15:45:53
25 art is, what a person of skill in the art, what kind 15:45:57

1 of expertise they would have just over the last 15:46:01
2 30 years, but everything sort of specific is in the 15:46:05
3 declaration somewhere. 15:46:08

4 Q. MS. GLADSTEIN: Okay. Let me ask you this. 15:46:10
5 Since preparing your report and today, did you 15:46:12
6 receive or find on your own any -- strike that. 15:46:16

7 Since the preparation or submission of your 15:46:21
8 report and today, did counsel provide you with any 15:46:25
9 additional documents that would inform or contradict 15:46:32
10 or otherwise alter the opinions that you set out in 15:46:37
11 your declarations? 15:46:42

12 MR. DISCHER: Objection, scope. 15:46:44

13 THE WITNESS: Nothing that would alter the 15:46:45
14 opinions that I've set out in the declarations. 15:46:51

15 Q. MS. GLADSTEIN: The question was whether you 15:46:53
16 received any documents from counsel since finalizing 15:46:57
17 your reports and today. 15:47:01

18 A. Okay. Sure. Documents, yes. 15:47:03

19 MR. DISCHER: Objection, scope. 15:47:05

20 Q. MS. GLADSTEIN: Did you receive any documents 15:47:06
21 that predate the earliest date for purposes of prior 15:47:13
22 art analysis of the patents at issue in the 15:47:23
23 proceedings that we are here about today? 15:47:28

24 MR. DISCHER: Objection, scope. 15:47:31

25 THE WITNESS: No. 15:47:32

1	Q.	MS. GLADSTEIN: Okay. What type of documents	15:47:33
2		did you receive from counsel?	15:47:38
3		MR. DISCHER: Objection, scope.	15:47:39
4		THE WITNESS: IPR proceeding documents.	15:47:40
5	Q.	MS. GLADSTEIN: And then did you yourself	15:47:43
6		locate any documents since finalizing your report and	15:47:47
7		before today that may impact in any way the opinions	15:47:51
8		that you set out in your reports?	15:47:55
9		MR. DISCHER: Objection, scope.	15:47:57
10		THE WITNESS: No.	15:47:58
11	Q.	MS. GLADSTEIN: In the context of your work	15:48:01
12		at UCSB, have you worked on the architecture or	15:48:12
13		design of a cell phone?	15:48:18
14		MR. DISCHER: Objection, scope.	15:48:20
15		THE WITNESS: I think in general terms the	15:48:21
16		answer is yes.	15:48:40
17	Q.	MS. GLADSTEIN: What do you mean by general	15:48:43
18		terms?	15:48:46
19		MR. DISCHER: Objection, scope.	15:48:47
20		THE WITNESS: Well, I haven't specifically	15:48:49
21		worked on, say, a particular cell phone design, but	15:48:50
22		I've worked on aspects of components that go into a	15:48:54
23		cell phone. For example, 802.11 protocol features	15:49:00
24		that could be incorporated into cell phones. I've	15:49:08
25		worked on a wide variety of 802.11 protocol	15:49:10

1 mechanisms, some of which are incorporated into cell 15:49:16
2 phones. I've worked on projects that look at 15:49:19
3 performance and functionality of cell phones. So 15:49:23
4 that's why I'm sort of saying generally yes. 15:49:33

5 MS. GLADSTEIN: Okay. Dr. Almeroth, I have 15:49:36
6 no further questions for today. Thank you for your 15:49:39
7 time. 15:49:41

8 THE WITNESS: Thank you. 15:49:42

9 MR. DISCHER: I have no further questions, no 15:49:52
10 redirect today. 15:49:56

11 VIDEOGRAPHER: Going off the record, the time 15:49:58
12 now is 3:49. This is also the conclusion of video 15:50:00
13 five. 15:50:04

14 --o0o--

15 (Whereupon, the deposition was adjourned at
16 3:49 p.m.)

17

18 --o0o--

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25

1 I declare under penalty of perjury that
2 the foregoing is true and correct. Subscribed at
3 _____, California, this ____ day of
4 _____, 2015.

5

6

_____Date_____

7

Deponent's Signature

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1 REPORTER'S CERTIFICATE

2

3 I certify that the witness in the foregoing
4 deposition, was by me duly sworn to testify in the
5 within-entitled cause; that said deposition was taken
6 at the time and place therein named; that the
7 testimony of said witness was reported by me, a duly
8 Certified Shorthand Reporter of the State of
9 California authorized to administer oaths and
10 affirmations, and said testimony was thereafter
11 transcribed into typewriting.

12 I further certify that I am not of counsel or
13 attorney for either or any of the parties to said
14 deposition, nor in any way interested in the outcome
15 of the cause named in said deposition.

16 IN WITNESS WHEREOF, I have hereunto set my
17 hand this _____ day of _____, 2015.

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WENDY E. ARLEN
Certified shorthand Reporter
State of California
Certificate No. 4355

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