In The Matter Of:

SAMSUNG

v.

BLACK HILLS MEDIA, LLC

KEVIN JEFFAY, Ph.D. - Vol. 1

January 15, 2015

MERRILL CORPORATION

LegaLink, Inc.

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UNITED STATES PATENT TRIAL BOARD

IN THE MATTER OF:

SAMSUNG,

Plaintiff,

v.

BLACK HILLS MEDIA, LLC,

Defendant.

Patent Number 8,050,652 Case Number IPR 2014-00737

Patent Number 8,050,952 Case Number IPR 2014-00740

VIDEOTAPED DEPOSITION OF KEVIN JEFFAY, Ph.D.

Taken by the Defendant
Chapel Hill, North Carolina

January 15, 2015

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Videotaped deposition of KEVIN JEFFAY, Ph.D., taken by the defendant at Aloft, 1001 South Hamilton Road in Chapel Hill, North Carolina, January 15, 2015 at 8:34 a.m., before Audra M. Smith, RPR, FCRR, Stenographic Reporter, and Scott Swing, Videographer.

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THE VIDEOGRAPHER: Starting of Number 1 on the record at 8:34 a.m. This is the videotaped deposition of Kevin Jeffay. This is in the United States Patent Trial Board two patent numbers. Case Number IPR 2014-00737, Patent Number 8,050,652. The second one is Case Number IPR 2014-00740. Patent Number 8,045,952. Today's date and time are indicated on the video screen. We're located today at 1001 South Hamilton Road in Chapel Hill, North Carolina. The court reporter today is Audra Smith. My name is Scott Swing. I'm the videographer. We're both here on behalf of Merrill Corporation, Boston in Boston, Massachusetts.

At this time, counsel will verbally introduce themselves starting with the noticing attorney first, please.

MR. ENGELLENNER: Thomas Engellenner, Pepper Hamilton representing the patent owner in both instances.

MR. SCHULTZ: Andrew Schultz with Pepper Hamilton on behalf of the patent owner.

MS. REISTER: Andrea Reister with Covington Burling representing the petitioner Samsung in both cases.

THE VIDEOGRAPHER: At this time, our

court reporter will swear the witness for the record, please.

THE COURT REPORTER: Would you please raise your right hand please.

Do you swear or affirm the testimony you're about to give is the truth, the whole truth and nothing but the truth?

THE WITNESS: I do.

THE VIDEOGRAPHER: We may proceed, counselors.

* * * * *

KEVIN JEFFAY, Ph.D.,

was called as a witness, having been first duly sworn, testified as follows:

EXAMINATION

BY MR. ENGELLENNER:

Q. Thank you for coming, Professor Jeffay. Could you state your full name and residential address.

A. My full name is just Kevin Jeffay, and my address is 207 Faison in Chapel Hill, North Carolina.

Q. I'm going to mark a few exhibits. I'd ask the court reporter to mark a few exhibits and question you on them, if you don't mind.

(Exhibit No. 1 and 2 were marked for identification.)

MS. REISTER: Are you going to mark these sequentially? Are we going to use any of the exhibits from the --

MR. ENGELLENNER: My plan is to mark them sequentially and attach them to the deposition and file it.

MS. REISTER: Okay.

BY MR. ENGELLENNER:

Q. So you have before you two exhibits marked 1 and 2, and they are deposition notices. You received these notices?

A. I did not.

Q. Were you told by counsel that you -- that they have been served with these notices?

A. Yes.

Q. You understand you're appearing here today pursuant to these notices?

A. Yes.

Q. I'm going to take a break every hour or so if that's okay with you?

A. Perfect.

Q. But if you need a break at any point in time, please feel free to let me know. I'll be

happy to break. I only ask you to answer any question that's been posed before we break.

A. Sure. Thank you.

Q. Is there any reason why you cannot testify fully and accurately today?

A. None that I know of.

Q. Two more documents I'm going to ask the court reporter to mark.

MS. REISTER: Could you please let me know which patent is which exhibit number?

MR. ENGELLENNER: Sure.

(Exhibit No. 3 was marked for identification.)

BY MR. ENGELLENNER:

Q. The court reporter has marked as Exhibit 3, U.S. Patent 8,050,652. Do you recognize this patent, Professor Jeffay?

A. I do.

Q. And is it a patent on which you have opined?

A. It appears to be, yes.

Q. And would you agree it is the patent at issue in the inter parte's review proceeding 2014-00737?

A. If you'll forgive me, but I haven't

internalized that number, but I understand this is one of the patents for one of the proceedings.

Q. To make it a little easier, I'm going to take the proceedings one at a time. The first proceeding I'll just refer to as the last three digits of the numbers, so the '737. And just for the record, it does concern the patent that I will also refer to simply by its last three digits '652.

A. Yes, I understand that.

Q. And you have before you also a second U.S. Patent, Exhibit Label 4. It's U.S. patented 8,055 -- excuse me '045,952; is that correct?

(Exhibit No. 4 was marked for identification.)

A. Yes.

Q. And do you recall also opining on this patent?

A. Yes.

Q. And this patent is the patent at issue in the other proceeding that we're going to be examining you on today, the '740 proceeding; is that your understanding?

A. That is my understanding.

Q. Thank you. One more document and then we'll get started in earnest. Did I give you all

three?

A. No, this one is just one, I think.

Q. Exhibit 5 that the court reporter has just marked is your CV; is that not correct?

(Exhibit No. 5 was marked for identification.)

A. Yes, that's correct.

Q. And this CV was attached to -- or submitted with each of your declarations in these two proceedings; is that correct?

A. That's my understanding.

Q. Okay. You've been retained by Samsung or counsel as an expert in these '737 and '740 proceedings; is that correct?

A. That's correct.

Q. Were you retained by Samsung directly or were you retained by counsel?

A. I would say my understanding is my agreement is with Covington, so I think that's through counsel.

Q. And so you submit your bills to Covington?

A. Yes.

Q. What is your hourly rate?

A. I think -- for this matter, I think it's $550 an hour.

Q. And do you have any sense as to how many hours you've worked on this project up until the point where your declarations were submitted?

A. That's certainly a noble -- there's a noble answer there, and I keep track of the hours. I don't have a number in my head.

Q. I'm just looking for a ballpark number. Was it several days, several weeks?

MS. REISTER: Objection. Compound.

A. My recollection is it's certainly far closer to several days than several weeks.

BY MR. ENGELLENNER:

Q. Thank you. And I believe your declaration states you served as an expert in patent proceedings before; is that correct?

A. I don't recall if the declaration states that, but that is a true statement.

Q. Okay. Your CV -- Exhibit Number 5 --

A. Okay.

Q. -- includes -- starting on page 2 and continuing to most of page 3 -- a list of patent proceedings of one sort or another in which you have served as an expert; is that correct?

A. Yes, that's correct.

Q. And it appears that you've served as an

expert witness or testifying witness in at least 16 different engagements during the past four years; is that correct?

A. If you're representing that -- if you count these it's 16, then, yes, that's correct.

Q. I believe it's 16. I could be off by one or two.

A. I -- the sense of your question is yes.

Q. How many times have you been deposed in the past in connection with your role as an expert in patent litigation?

THE COURT REPORTER: In connection with your what?

BY MR. ENGELLENNER:

Q. Your role as an expert in patent litigation.

A. If you're referring to just patent litigation, unfortunately that's a number I don't retain in my head.

Q. Ballpark figure, if there were 15 or 16 proceedings, were you deposed 16 times?

A. I've certainly -- on all of these matters I was deposed on, and I've been deposed in other matters as well.

Q. And did you testify during trials in these

matters also?

A. By "these matters," you're referring to --

Q. On 16 on page 2 and 3 of Exhibit 5.

A. Sure. My understanding is that testifying is understood to include both deposition and trial, then the answer is yes. In all of these cases on pages 2 and 3, I provided testimony.

Q. Are you normally on one side of patent disputes?

MS. REISTER: Objection. Vague.

BY MR. ENGELLENNER:

Q. By that I mean, do you typically -- are you typically engaged to represent the defendant in a patent infringement suit?

A. I don't know that there is a typical. I certainly have worked for patent owners, is the way I think of it, and people who have having patents asserted against them.

Q. Uh-huh. Those would typically be the two options. I'm just wondering if you can recall any instances where you represented -- where -- were you retained by the patent owner?

A. Yes, absolutely.

Q. Anything on this list that comes to mind?

A. If we look on page 3, the fourth full

entry that is Extreme Networks v. Enterasys, in that matter, Enterasys was the patent owner, and I provided expert services on behalf of Enterasys.

The one right below that, Alcatel Lucent. Alcatel -- Alcatel Lucent was the patent owner, and I provided testimony on behalf of Alcatel Lucent.

The next one F5 versus A10, I provided expert testimony on behalf of A10, and A10 was the patent owner, and I believe that is it.

Q. So the majority of the time you've been asked to serve as an expert, it's been on behalf of the defendant or respondent in patent litigation?

MS. REISTER: Objection. Form. Mischaracterizes testimony.

A. No, I would not agree with that.

BY MR. ENGELLENNER:

Q. Well, you've just identified three on this list of 16. It seems the remainder of the 13 is greater than three, so the majority of the time, did you represent the defendant or respondent in the patent litigation?

A. No.

Q. Excuse me. Not represent, were you engaged by the --

A. The answer is still no.

Q. And why is that?

A. I would just simply point out on page 2 that this is an excerpt of a longer vitae. This is providing the experience within the last four years, and over the course of my career doing this sort of consulting, I'm pretty sure it's probably close to half and half, between patent owners and folks that have had patents asserted against them.

Q. Okay. But during the past four years, would you agree with me that you have been predominantly representing the defendants in patent litigation, patent infringement litigation or respondents in ITC actions?

A. I would have to go check some alternate documents to confirm. Again, this is -- these are just simply matters in which I provided testimony. These are not all the matters in which I have consulted in.

Q. Okay. Now, one of the matters that's listed here is in a proceeding before the International Trade Commission, which I may refer to throughout this as ITC; is that okay with you?

A. Perfectly fine.

Q. And do you recall that proceeding?

A. Well, I think there's a couple on here.

Q. The first one.

A. Okay.

Q. In that proceeding, did you -- were you engaged by Samsung?

A. I don't believe -- I would have to check. What I can say I was initially retained by LG, and then later there was a desire for other defendants to retain me. Some of them actually had formal agreements and some did not, and I don't remember which bucket Samsung was in.

Q. So in addition to LG, can you remember any of the others that utilized your testimony in this ITC action?

A. I believe I listed them. In terms of using my testimony, I listed them on page 2 of the vitae, so all of the Samsung companies, the LG companies that were in the proceedings, Panasonic companies, Toshiba and Google.

Q. And who paid your bills in these proceedings?

A. The law firm of Finnegan Henderson.

Q. Do you have a sense who they then billed your services to?

A. I had some understanding they were working it out amongst the parties here. How that was done,

I have no idea.

Q. So it could have been LG, it could have been Samsung, it could have been Google?

MS. REISTER: Objection to form.

A. In theory, yes.

BY MR. ENGELLENNER:

Q. Now, this ITC proceeding, it involved the same patents that we're going to be examining you on today; is that correct?

A. That's my recollection, yes.

Q. And were the same issues raised?

A. I'm not sure I understand what you're -- exactly what you're referring to when you say "the same issues."

Q. In your declarations -- which we haven't made a record yet, I'm sorry you opine on the invalidity of both of the patents here, the '652 and the '952. Just wondering if those opinions were also presented to the International Trade Commission?

MS. REISTER: Objection. Form. Compound.

A. So I would say that my view is that I'm not opining on the ultimate question of validity here in these declarations; that my task was

narrower to just simply opine on some of the disclosures in these references. So in my mind, the analysis that was done in the ITC case was quite different from what was done for these declarations.

BY MR. ENGELLENNER:

Q. So in the ITC proceedings, did you draw any conclusions as to the obviousness of the '652 or '952 patents?

A. My recollection is I absolutely drew opinions about the validity of these two patents. I don't -- there were a larger number of references, a larger number of issues at stake, and I don't recall precisely which claims were -- whether -- I don't recall precisely all the conclusions in that analysis as to which claims, which patents were anticipated or rendered obvious by which reference.

Q. Do you understand that there is an overlap between the claims that are at issue in these proceedings before the Patent Office and the claims that were asserted by the complainant in the ITC action?

A. Yes, I understand that.

Q. And on those claims where there was an overlap, did you form an opinion of obviousness as to at least some of those claims?

A. Again, I recall rendering opinions on all the claims that were asserted there, and I just don't recall which ones netted out as being obvious and which ones were anticipated.

Q. What did you mean by "netted out"?

A. The final conclusion of the analysis, of my analysis.

Q. So you may have concluded that some of the claims in the ITC action were not obvious?

MS. REISTER: Objection. Mischaracterizes testimony.

A. What I'm saying is I don't recall which claims were anticipated -- where my conclusion was. For each claim, I can't -- sitting here today without having reviewed that, I can't tell you precisely which claims I rendered an opinion as to anticipation or obviousness. I remember rendering a conclusion with respect to references that I used and to all the claims. I just don't know which ones were anticipated and which ones were obvious.

BY MR. ENGELLENNER:

Q. What did you do to prepare for your testimony here today?

A. I reviewed the declarations, I reviewed the -- whatever it's called, the preliminary

decision, the board's ruling, reviewed the prior art references at issue, and had meetings with Samsung's counsel.

Q. You said "meetings" plural?

A. Yes.

Q. Did you have more than one meeting?

A. I did.

Q. In preparation for this deposition, you had more than one meeting?

A. Correct.

Q. Did you review your expert report in the ITC case in preparation for this deposition?

A. I did not.

Q. Do you recall who you consulted with in preparing your expert report in the ITC action?

MS. REISTER: Objection. Outside the scope of the proceeding.

A. I can certainly recall several of the individuals. I can -- I can start with the primary and work my way down, but there will certainly be others that were involved and names I'm not going to remember.

BY MR. ENGELLENNER:

Q. I believe you testified that you were working with the Finnegan law firm at the time.

A. Correct.

Q. So -- thank you. Sorry to speak over you.

So apart from the Finnegan attorneys, was there anyone else that you can recall in the ITC action that you consulted with?

MS. REISTER: Objection. Outside the scope.

A. So in the ITC proceedings, I believe each one of the entities -- each one of the collections of entities -- all the Samsungs being one entity, all the LGs being one entity -- that are listed on page two of my vitae, each one of them had their own attorney except for Google, and so I did meet -- or was -- participated in meetings where there was an attorney present for each of the defendants, each one of the collection of defendants.

BY MR. ENGELLENNER:

Q. And Google did not have its own attorney? Was it relying upon the Finnegan firm?

A. I --

MS. REISTER: Objection. Scope.

A. So -- so I won't actually say for certain Google -- my recollection is that Google did not have an attorney. In the meetings I was involved with, I don't believe there was a Google attorney

present.

BY MR. ENGELLENNER:

Q. Now, in connection with this -- the two proceedings that we're talking about today in which you were engaged by the Covington & Burling firm, was it your understanding that this engagement was on behalf of Samsung?

A. Yes.

Q. And by the word "Samsung," when I use it, I'm referring to the collection of entities that are listed in the proceedings. For the record, I could recite all their names, but if you understand what I'm talking about, I'll just continue to refer to the petitioner here as Samsung, if that's okay with you.

A. I'm perfectly comfortable with you referring to them collectively as Samsung.

Q. And apart from the attorneys at Covington & Burling, did you meet with anyone from Samsung in the preparation of your declaration testimony in these two proceedings?

A. No.

Q. Did you meet with anyone else or consult with anyone else in connection with your expert report for these proceedings?

A. No.

Q. What other engagements have you had on behalf of Samsung? I guess on behalf of Samsung.

MS. REISTER: Objection. Relevance.

A. The one that comes to mind most clearly is the second entry on the list of testifying experience and page 2 of my vitae, and beyond that entry, I'd have to go back and consult all of the other matters that I worked on where there was no testimony. But I believe -- I believe it's a fair statement that I think there's just been that Apple, Samsung litigation and this -- this patent proceedings.

BY MR. ENGELLENNER:

Q. Okay. And this Apple versus Samsung case, that didn't turn out that well for Samsung, did it?

MS. REISTER: Objection. Relevance. Scope.

A. I don't believe I'm at liberty to say.

BY MR. ENGELLENNER:

Q. But there was a judgment of infringement and damage awards, correct?

MS. REISTER: Objection. Relevance. Scope.

A. That's my understanding.

BY MR. ENGELLENNER:

Q. And what was your role in that proceeding?

MS. REISTER: Objection. Relevance. Scope.

A. I was an expert on behalf of Samsung for one patent in that case.

BY MR. ENGELLENNER:

Q. And did you opine that the patent was anticipated or obvious?

MS. REISTER: Objection. Relevance. Scope.

A. I did -- or some claims of patent were.

BY MR. ENGELLENNER:

Q. And what was the outcome in that regard? Did the court find your opinions persuasive or were the Samsung defendants found to be infringers?

MS. REISTER: Objection. Relevance. Scope.

A. I don't believe the court opined on the persuasiveness of my testimony.

BY MR. ENGELLENNER:

Q. Well, the court must have ruled that the patent was either invalid or not invalid?

MS. REISTER: Objection. Relevance. Scope.

A. Perhaps. I'm just not fully understanding your question, but my understanding is that it's -- the ruling entity is the jury.

BY MR. ENGELLENNER:

Q. Okay. So the jury must have found that the patent that you opined on was either valid or invalid; is that correct?

MS. REISTER: Objection. Relevance. Scope.

A. Sorry. Correct.

BY MR. ENGELLENNER:

Q. And in that particular instance, did they find that the patent was valid?

MS. REISTER: Objection. Relevance and scope.

A. For the claims at issue, they found that they were valid.

BY MR. ENGELLENNER:

Q. I should correct myself, they probably found they were not invalid?

MS. REISTER: Same objection.

A. I'm going to -- I'm going to clip my mic back on. You obviously would know better than I what the -- what a typical charge would be to the jury. I just responded the way I internalized it.

BY MR. ENGELLENNER:

Q. And you internalized it just -- again, to be perhaps say in layman's terms, the jury didn't accept your views?

MS. REISTER: Objection. Relevance. Scope. Mischaracterizes the testimony.

A. You know, the way I always view these things is the jury -- it's not about me. They're not being asked to opine on me or my views.

BY MR. ENGELLENNER:

Q. But you're presenting testimony as an expert; isn't that correct?

MS. REISTER: Objection. Relevance. Scope.

A. It is.

BY MR. ENGELLENNER:

Q. I've asked the court reporter to mark as Exhibits 6 and 7, two documents that are entitled Declaration of Kevin Jeffay, Ph.D. Could you identify these documents for us?

(Exhibit No. 6 and 7 were marked for identification.)

A. Sure. Exhibit 6 is a declaration that was submitted with regard to the inter parte's review of the '652 patent, and Exhibit 7 is a declaration that

was submitted in regards to the inter parte's review of the '952 patent.

Q. Did you write these expert declarations yourself?

A. What I would say is the text in here is my text. I did not put the text into this document.

Q. What was the process for drafting these declarations?

A. I worked with attorneys at Covington to draft the declaration. The starting point, I believe, was documents that I had generated in the -- that were public that were generated in the ITC matter, and that was used to make a first draft of the declaration, and from there we iterated on the contents.

Q. I'm not sure I understood you there. Did you say that you started from your opinions in the ITC expert report?

A. No.

Q. Maybe we could just read back that question and answer.

I believe your answer was, The starting point, I believe, was the documents that I had generated in the -- that were public that were generated in the ITC matter, and that was used to

make a first draft of the declaration and from there we iterated on the contents.

What documents are you referring to that you used that were generated in the ITC matter?

A. My recollection is that it was some form of the invalidity report that had been used in the ITC matter that I authored.

Q. So the invalidity report drew conclusions based on certain prior art documents, correct?

A. Correct.

Q. And your expert reports in these two proceedings also draw conclusions as to invalidity based on prior art documents; is that correct?

A. Sorry. You used the word expert report. You're referring to --

Q. Expert declarations.

A. So, again, these declarations, strictly speaking, are not offering ultimate conclusions on the validity or invalidity of particular claims.

Q. But you are offering testimony as an expert, are you not?

A. Absolutely.

Q. So to the extent that there were prior art documents that you relied upon when you offered testimony as an expert in the ITC, and there are

prior art documents that you offered testimony on in these proceedings, was there an overlap?

MS. REISTER: Objection. Form. Vague.

A. There is an overlap -- overlap -- there certainly is an overlap of documents considered between the expert report in the ITC matter and the declarations in the present matter.

BY MR. ENGELLENNER:

Q. Well, let's take one example. In the declaration that's marked as Exhibit 6, there is an extensive discussion of the White patent; is there not?

A. There certainly is discussion of the White patent in Exhibit 6.

Q. And just to make sure the record is clear, I'm referring to U.S. Patent 7,187,847 issued to White, and it's identified on page -- excuse me -- '947, and it's identified on page 2 of your declaration, Exhibit 6.

A. Yeah. I think you corrected the number correctly, so I think, yes -- I think the answer is yes.

Q. And so did you also provide expert opinions in the ITC on the White patent and its

relevance to the -- relevance to the claims at issue in the ITC action?

A. I don't recall precisely whether White was there or not.

Q. And in connection with the other declaration, which we've marked as Exhibit 7, there was extensive discussion of the patent to Berman, which is 6,502,194, and the patent to Logan, which is 6,199,076; is that correct?

A. Yes, that is correct.

Q. And you concluded that the claims at issue in the '747 (sic) proceeding were obvious over both of these references independently?

A. I don't -- as I said, I don't recall the terminal conclusions in the ITC proceedings.

Q. No, it's referring to these proceedings?

A. Okay. So '704 then -- I'm sorry. You said '704?

Q. '740, sorry.

A. I still would have thought that was the ITC.

All right. 740 is the -- got it. Got it. It's the '952. I'm sorry. Can we ask the question anew?

Q. Yes. In the '740 proceeding, your

declaration has an extensive discussion of the Berman and Logan patents; is that not correct?

A. It certainly has a discussion of the Berman and Logan patents, yes.

Q. And you concluded that the claims at issue were obvious in light of each of those patents independently?

A. Again, my recollection is that I'm not offering an opinion as to a terminal conclusion of an entire claim of the '952 patent in the -- the declaration, Exhibit 7.

Q. Okay. But do you recall at least the Logan patent also having been of issue in the ITC proceeding?

MS. REISTER: Objection. Asked and answered.

A. I believe I do have a recollection of Logan being in the ITC proceedings, and that was a reference, I believe, I considered in the ITC proceedings.

BY MR. ENGELLENNER:

Q. So would it be fair to say that Logan was one of the starting materials that you were referring to when you said you started from materials in the ITC proceeding in order to prepare

the declarations for the present proceedings?

A. No, I would not agree with that.

Q. Maybe we need to go back and -- I need to ask you to, again, explain how you prepared your declarations in these proceedings.

MS. REISTER: Objection. Asked and answered.

BY MR. ENGELLENNER:

Q. I believe you said you started from some starting materials from an earlier proceeding, the ITC proceeding; is that correct?

A. What I specifically said, I believe I specifically said is I started with a document, one document, and that was used to generate some significant fraction of this -- of each of these declarations as a first draft.

Q. And your expert report in the ITC proceeding, then, was the starting material, correct?

MS. REISTER: Objection. Asked and answered.

A. It was the starting point for the construction of the first draft.

BY MR. ENGELLENNER:

Q. And you don't recall whether the expert report included a discussion of any particular patents, the expert report in the ITC action?

MS. REISTER: Objection. Vague.

A. I do, I just don't recall all of the patents that were in there.

MR. ENGELLENNER: Mark that as Exhibit 8, please.

(Exhibit No. 8 was marked for identification.)

MS. REISTER: Counsel, I wish to remind you there is no protective order in this case. So I would like a representation on the record that this document contains no confidential business information and is not in any violation of the ITC protective order and that you have the authority to use this document in -- outside of the ITC proceeding in this IPR proceeding.

MR. ENGELLENNER: You're welcome to review it, and if there is anything of confidential nature, I would be happy to discuss how to redact it, but this document was downloaded from the ITC, and it is stamped as the public version of his expert report.

MS. REISTER: And you will represent

on the record that you have authority to use it?

MR. ENGELLENNER: I don't think I need to make any representations on the record, other than it was downloaded from the ITC site and it's marked as the public version.

MS. REISTER: And there's no restriction that you know of that would impair your use of this document in this proceeding?

MR. ENGELLENNER: Maybe we should go off the record and talk a little bit about this?

MS. REISTER: That would be fine.

THE VIDEOGRAPHER: One moment. Off the record at 9:17 a.m.

(A recess was taken at 9:17 a.m. to 9:22 a.m.)

THE VIDEOGRAPHER: Back on the record at 9:23 a.m.

BY MR. ENGELLENNER:

Q. Before we continue, Professor Jeffay, I just want to make a statement for the record that I misspoke that I said the document you had before you, Exhibit 8, was obtained directly from the ITC public website. It was obtained by our client from their counsel in the ITC proceedings, and it's my understanding before any document like this is

disseminated to the -- a client and stamped public version, both sides have to agree it's been redacted of any confidential information.

MR. ENGELLENNER: Is that satisfactory, counsel?

MS. REISTER: Yes. And as you said previously, if we find anything to the contrary, we'll reserve the right to review the document fully.

BY MR. ENGELLENNER:

Q. So a few moments ago we were talking about the starting materials for your declarations in the present proceedings, and I believe you mentioned that one starting material was an expert report that you prepared for the ITC proceeding, and I'd like to know if that expert report is, indeed, what I've marked as Exhibit 8.

A. I can't say because I didn't see the actual document that was used as the starting point. I mean, some version of this is what I assumed was that starting point, but I don't -- I never saw the document.

Q. So are you saying that the -- your -- Samsung's counsel started from this document?

A. I'm saying it's my understanding that what

they did to come up with the first several pages of this declaration was they used -- my understanding, it was some version of this document to come up -- you know, with the first -- whatever fraction it is of this document.

I believe you'll recognize text in the declarations that's -- in particular, in the first several sections of the declaration that's either identical or substantially identical to background text in Exhibit 8 or some other version that's equivalent to Exhibit 8.

Q. Okay. I'd like to refer you to page 72 of Exhibit 8.

A. 72.

Q. And is your opinions -- I believe it's your opinions on the White patent on behalf of the '652 patent that was asserted in the ITC action; is that correct?

A. Very strangely, certain pages of Exhibit 8 are not numbered and others are, so I'm at a page that's between numbered page 71 and numbered page 73. If you have a number on your version, maybe we can confirm that I have page 72.

Q. I agree the page 72 I was referencing to is identified in the table of contents as the

discussion of the White patent, and you are indeed correct that when you get to the page between 71 and 73, it has no number.

A. And there are some other pages --

Q. Perhaps we can just refer to it as paragraphs.

A. There you go.

Q. In paragraph 178 -- beginning with 178 and continuing on to 181, you offer opinions on the White patent; is that correct?

MS. REISTER: Objection. Scope.

A. Yes, that's correct.

BY MR. ENGELLENNER:

Q. And in particular, paragraph 180, you offer opinions as to the asserted claims of the '952 patent relative to White?

MS. REISTER: Objection. Scope.

A. Yes, I offer opinions about the claims of the '952 in view of White.

BY MR. ENGELLENNER:

Q. And to be even more specific, on the second sentence -- third sentence of that paragraph 180, I believe it says, "Therefore, it's my opinion that the asserted claims 109 of the '952 patent are invalid as anticipated by White."

MS. REISTER: Objection. Scope.

BY MR. ENGELLENNER:

Q. Is that correct?

A. That's exactly what the document says.

Q. And was that your opinion at the time?

A. Yes.

Q. And is that still your opinion?

A. Well, for -- with regard to the analysis in the ITC proceedings, yes. This is only a statement -- yeah, this is just a statement about the analysis that was done for the ITC proceedings.

Q. Would it matter whether it was done for the ITC proceedings or the present proceedings in terms -- would it change your opinion as to whether or not White anticipates Claim 109 of the '952 patent?

MS. REISTER: Objection. Form.

A. That's not an exercise that I've performed, so I can't say.

BY MR. ENGELLENNER:

Q. But it's the same patent in the same reference in both instances, correct?

A. Sure -- sure, same patent, same reference in this one case, but my view is that it's -- it's a different analysis.

Q. Okay. Now, just continuing on to paragraph 181, again, the third sentence of that paragraph says, "Therefore, it's my opinion that the asserted claims" -- and then it lists a large number of claims -- "of the '652 patent are invalid as anticipated by White."

Is that correct?

MS. REISTER: Objection. Scope. Document speaks for itself.

A. It is -- that's exactly -- that's exactly what the document says with the caveat that I agree it's a long list of claims.

BY MR. ENGELLENNER:

Q. So let's just narrow it down to one claim. Claim 1 of the '652 patent, was it your opinion at the time that Claim 1 of the '652 patent was invalid as anticipated by White?

MS. REISTER: Objection. Scope.

A. At the time of the ITC proceedings, that was my opinion.

BY MR. ENGELLENNER:

Q. And is -- has your opinion changed?

MS. REISTER: Objection. Scope.

A. Nothing about the ITC proceedings -- my opinion -- nothing about -- how can I say this?

None of my opinions about the ITC proceedings have changed.

BY MR. ENGELLENNER:

Q. About what -- what about your opinions as to the validity of Claim 1 of the '652 patent in light of White?

MS. REISTER: Objection. Form. Vague.

A. As I say, I stand by the analysis done in the ITC proceedings and in the current proceedings. I'm not offering a terminal opinion on the validity or invalidity of Claim 1 in view of White.

BY MR. ENGELLENNER:

Q. I'd like to call your attention back to Exhibit 6, which is your declaration in the current proceedings regarding the '652 patent. And in particular, I'd like to refer you to paragraph 67 on page 34.

A. Okay. Just give me one second.

Q. Take your time, please, to read it.

A. No, I'm there now.

Q. Now, on paragraph 67 it appears that you are opining that White discloses all of the claimed features of -- at least Claim 1 -- of the '652 patent; is that correct?

A. Yes, that is correct.

Q. So, again, I ask you, has your opinion of the relevance of the White patent to the Claim 1 of the '652 patent changed from the time you offered an opinion testimony -- expert opinion testimony in the ITC and when you offered the opinions that are found in Exhibit 6?

MS. REISTER: Objection. Scope. Asked and answered and vague.

A. My view is that I'm performing a different -- that the analysis in the declaration is different than the analysis -- I've done a different analysis in the declaration than was performed for the ITC, and as such, those two analyses are not directly comparable. And in the IT -- in the declaration, I'm simply opining about the features of the claims and how they're disclosed in White.

BY MR. ENGELLENNER:

Q. So if we go back to Exhibit 8. And, again, I'd like to ask you to look at a portion of Exhibit 8.

A. Okay.

Q. And that would be found on page 74 -- it's actually numbered 74, and I refer you to page -- or paragraph 184, and sentences 2 and 3, which I

believe say that it's your opinion that, Each and every element of asserted claims 1 and 9 of the '952 patent is shown by Logan, therefore it is my opinion that the asserted claims 1 and 9 of the '952 patent are anticipated by Logan.

Do you recall making that -- or rendering that opinion?

MS. REISTER: Objection. Scope.

A. I don't recall it, but reading this document, I have every reason to believe that was -- that was my opinion at the time this document was submitted.

BY MR. ENGELLENNER:

Q. And on the last page of the document, page 148, that is your signature; is that not correct?

MS. REISTER: Objection. Scope.

A. Yes, that is my signature on page 148.

BY MR. ENGELLENNER:

Q. So I'd like to now refer you to Exhibit 7, which is your declaration in the '740 proceeding. And in particular, starting on page 22, paragraphs 41 through 51 contain a description -- excuse me -- 41 through 48 contain a description of the Logan patent. And for the record, that's U.S. Patent 6199076. Is that correct?

A. That's correct.

Q. And is that the same patent that you opined on in the ITC expert report that we just referred to, Exhibit 8?

MS. REISTER: Objection. Scope.

A. Yes.

BY MR. ENGELLENNER:

Q. So I'm trying to understand the difference in your engagement in the ITC action and in the current action, and if we could do that in the context of Logan. In the ITC action, it appears that you draw an ultimate conclusion of anticipation of claims 1 and 9 of the patent, the '952 patent; is that not correct?

MS. REISTER: Objection. Scope. Relevance.

BY MR. ENGELLENNER:

Q. Again, I'm referring to paragraph 184.

A. Thank you.

Q. And it's the third sentence.

A. That -- that is what the third sentence of paragraph 184 says.

Q. There's a footnote there also, is there not?

A. There is.

Q. And could you read that footnote into the record?

A. It's footnote 7 --

MS. REISTER: Objection. Scope.

A. It's footnote 7, and footnote 7 says, "To the extent that it is found that an element of these claims is not expressly disclosed by Logan, it is my opinion that the claims are nonetheless obvious to a person of ordinary skill in the art."

BY MR. ENGELLENNER:

Q. And referring back to your Exhibit 7 in this proceeding and the paragraphs that we discussed, paragraphs 41 through 48, that discuss Logan, are you forming a different opinion in the current proceeding than that which you presented in the ITC?

MS. REISTER: Objection. Scope.

A. I mean, I think the documents speak for themselves as to what's being -- what I'm opining on. It's a different analysis. The analysis in Exhibit 6 and 7 is a different analysis from the analysis that was performed for Exhibit 8. Paragraphs that we've been speaking of -- paragraphs 42 -- 42 through 48 of Exhibit 7 -- are merely describing features that are found -- it's opining

on the disclosures of the Logan reference.

BY MR. ENGELLENNER:

Q. So in the current proceeding -- and specifically in proceeding '740 -- am I correct that you are offering no opinions on the anticipation or the obviousness of the claims at issue in light of Logan?

MS. REISTER: Objection. Form. Mischaracterizes the testimony.

A. I mean, the report I think speaks for itself, and I think -- what you see is I offer -- for example, I think the words "validity or invalidity" don't appear anywhere in Exhibit 7 or Exhibit 6, I believe, also.

BY MR. ENGELLENNER:

Q. Nor do the words "anticipation or obviousness," is that correct?

MS. REISTER: Objection. Form.

A. I believe that is true for the word anticipation. The word obvious and maybe obviousness certainly do appear.

BY MR. ENGELLENNER:

Q. And where would that be?

A. In Exhibit 6, which is the declaration of the '652, there is a page 34 and the section is

titled "Obviousness in View of the White Patent".

Q. Okay. I'm sorry to make you go through both documents.

A. That's all right.

Q. I was simply referring to the description of the --

A. Oh, sorry.

Q. -- Logan patent in the Exhibit 7, which was paragraphs 41 through 48. And maybe I can phrase the question in a different way. Is it correct -- do I have the correct understanding here that in your opinions submitted in these proceedings, this '737 and the '740, you have opined on features of the various references, but not -- have not drawn any conclusions as to anticipation or obviousness?

MS. REISTER: Objection. Mischaracterizes the testimony.

A. If I understand the question, I believe that's a fair statement that I have not drawn any terminal conclusion about obviousness or anticipation with represent to any individual claim.

BY MR. ENGELLENNER:

Q. And to find the arguments on these terminal conclusions, we would have to look to the

attorney arguments in the petitions?

MS. REISTER: Objection.

A. I don't know.

MS. REISTER: Form.

A. I don't know.

Q. Okay. Would this be a good time to take a break, if that's good for you? Are you happy?

A. It's --

Q. Maybe taking a break every hour or so, we've gone past an hour.

MS. REISTER: We had a little bit of a break.

BY MR. ENGELLENNER:

Q. You want to continue?

A. I'm focused on this, so you --

MR. ENGELLENNER: Okay. Mark this as Exhibit 9.

(Exhibit No. 9 and 10 were marked for identification.)

BY MR. ENGELLENNER:

Q. Professor Jeffay, I've asked the reporter to mark as Exhibits 9 and 10 two documents that are entitled Petition for Inter Parte's Review.

Exhibit 9 is the Petition for Inter Parte's Review of the U.S. Patent 8,050,652, which

ultimately resulted in the proceeding that we've been referring to today as the '737 proceeding. Is that your understanding as well?

A. I guess -- yeah, I think so. There's no proceedings when this is submitted, and the result of submitting this, the proceedings comes into existence. That's the way it works.

Q. Well, it's given a number and a trial is initiated.

A. Okay. I do not know the sequence of events, but I know this is clearly related to the IPR of Exhibit -- Exhibit 9 is clearly related to the IPR of the '652 patent and the same for Exhibit 10.

Q. And Exhibit 10 is likewise related to the IPR on the '952 patent?

A. Yes, that's my understanding.

Q. Now, did you review these petitions at any point before they were filed by Samsung's attorneys?

MS. REISTER: Objection. Relevance.

A. No, I certainly don't -- let me check. Exhibit 10.

No, I don't believe I've seen either document.

BY MR. ENGELLENNER:

Q. So you don't recall working with them and drafting these documents?

MS. REISTER: Objection. Mischaracterizes the testimony.

A. I was speaking of the documents. I don't believe I've ever seen these, and I -- I have -- I don't believe -- I don't believe I did -- my focus of my engagement was working on the declarations. I don't believe I worked on these documents.

BY MR. ENGELLENNER:

Q. And in particular, perhaps we could just look at Exhibit 9, starting on page 29 --

A. Okay.

Q. -- and continuing through page 41.

A. I'm sorry. You said -- 29 and going to 41?

Q. 29 through 41 is a section of the petition that is typically called a Claims Chart. Are you familiar with the term "Claims Chart"?

A. Yes, yes, I'm familiar.

Q. And did you -- do you have any recollection of assisting Samsung's counsel in preparing this Claims Chart?

A. I'm fairly certain that I played no role -- no direct role in this.

Q. Okay. Thank you. I'd like to return to your CV that we've marked as Exhibit 5.

A. Sure.

Q. And it seems to indicate that you have been full-time employed at the University of North Carolina, UNC, for the past 20 years; is that a fair characterization?

A. 26.

Q. 26. Congratulations.

A. Well, we're getting into the condolences stage.

Q. When did you graduate from college with your BS in mathematics?

A. BS, that was '82.

Q. And your MS in computer science?

A. Technically, I have two. The one that I list here for the University of Toronto, that was '84.

THE COURT REPORTER: The what? The University --

THE WITNESS: Toronto was 1984.

BY MR. ENGELLENNER:

Q. And your Ph.D. from the University of Washington, computer science, when was that awarded?

A. That was conferred in 1989.

Q. So in 1989, you also began as an assistant professor here at UNC?

A. I did.

Q. Can you give me a description of what industrial -- industry experience you have in the fields that we've identified -- fields that you've identified in your declaration -- I believe it's media networking, for example.

MS. REISTER: Objection. Vague. Compound.

A. So I believe you're referring to two multimedia networkings is, I believe, the way I phrased it.

BY MR. ENGELLENNER:

Q. I'll withdraw the question.

Have you worked or consulted for a music company in the area of networks media ever in your career?

A. A music company?

MS. REISTER: Objection. Vague.

A. Help me understand what you're contemplating about music company. A record company, for example? A Sony, a company like that?

BY MR. ENGELLENNER:

Q. A company that disseminates music.

A. Okay.

MS. REISTER: Objection. Relevance. Scope. Vague.

A. I have consulted for companies that I believe would meet your definition of disseminating music.

BY MR. ENGELLENNER:

Q. And did you consult -- was your consultation in the area of network media?

A. So you'll forgive me, but network media is not a term that I personally use, so perhaps you could give me a sense of what that term means to you.

Q. Okay. I stand corrected. The term, I think, you used in describing your expertise was in the fields of computer networking and multimedia technologies.

A. Yes.

Q. And so have you ever consulted or worked for a music company in the area of computer networking and multimedia technologies?

A. I have.

Q. Can you describe what that was?

A. Sure. A couple instances -- probably the best one was work that I did for AOL. AOL had a

number of -- what today we would call streaming -- streaming media sites for music, and they also -- as I recall, they had some of their own radio stations, and I think they rebroadcasted some radio stations over the internet.

Q. What is an internet radio station?

MS. REISTER: Objection.

A. You know, a great question. I don't think it's one of these things that has a super precise definition. The two forms that -- when I say "internet radio station," what I mean is essentially either an entity that we're referring to as a radio station, but that delivers its content, streams its content over the internet where they are in control of the content. It's sort of fixed programming, and they may or may not be doing it over the air, and also companies that are over the air, traditional radio stations who then have a rebroadcast or simulcast of their content over the internet.

BY MR. ENGELLENNER:

Q. And have you ever worked in -- or consulted in the field of music file sharing?

MS. REISTER: Objection. Relevance.

A. Just so we're on the same page, file sharing to me is referring to those classes of

systems based on peer to peer networks --

THE COURT REPORTER: To what?

THE WITNESS: Peer-to-peer networks.

A. -- and variations thereof, so this would be the Napsters of the world, back in the timeframe or close to the timeframe we're talking about here. So with that understanding of how I'm using the term, the answer is no, I have not consulted with any of those NAPSTER-like companies.

BY MR. ENGELLENNER:

Q. When did you work for AOL?

A. So the reason I don't have AOL listed -- you'll, of course, note that AOL was not listed in the industry experience section of my vitae on the bottom of page 3 and the top of page 4, and that's because I was not paid by AOL. So the industry experience that I list here is where I was -- if I was an employee, I received checks from these entities. The work with AOL was done mainly under the guise of a research collaboration, and I think it -- the best guess is -- because there's nothing unfortunately that's in the vitae that's going to trigger my memory, but I want to say it was the -- it was fairly early on in AOL's existence of internet company before they were -- after the

dial-up existence of it, so I want to say maybe the late '90s, '96, '97 and it continued for a couple of years.

Q. So can you explain the difference between internet radio and what you call peer-to-peer file sharing?

A. Sure.

MS. REISTER: Objection. Vague. Form.

A. Internet radio, as I use the term and I think is commonly understood is a streaming service where somebody puts content online and, typically, you know, they control the content -- they control the programming, and it's just offered as a singleton entity, either you select it or don't select it, and there's no selections typically within, and it can be either prerecorded or live, and you stream it. It's meant to replicate the analog of analog radio in the digital -- digital environment.

File sharing to me, as a technologist, is very different. So file sharing is not about the playing, it's not about streaming. File sharing, as the term is used in my field, refers to essentially a set of file transfer protocols. The goal is to

actually obtain the content with or without any notion that you're going to play -- or consume the content as you are acquiring it. So file sharing actually started out as a -- as a means to actually share the physical files, not as a means to play the files. Ultimately, you would do whatever you wanted to do with the files, but file sharing was all about getting an actual copy of the file on your local system, and the notion of a file, at least to a user, doesn't appear in internet radio.

BY MR. ENGELLENNER:

Q. Is the term playlist used in your field?

A. In the fields that I work in, a playlist is not used because I'm -- my research and scholarship and much of the attention that's given to these things is typically below the interface. We're all about how do you make these things work, so I don't -- there undoubtedly are playlists that undoubtedly appears in technical papers, but I'm not -- I can't think of any off the top of my head.

Q. Do you have any opinion as to the opinion of playlist?

MS. REISTER: Objection. Scope. Relevance.

A. I mean, for purposes of this matter, I

just was using the definition of playlist that was presented by the board in the previous Yamaha IPR proceedings, and beyond that, I haven't offered an independent opinion.

BY MR. ENGELLENNER:

Q. Now, I'd like to return to the ITC proceeding and ask if you recall offering an opinion on the meaning of playlist in that proceeding?

MS. REISTER: Objection. Scope. Relevance.

A. I certainly remember using constructions. I don't recall if they were constructions that I argued for or if they were just constructions that I adopted.

BY MR. ENGELLENNER:

Q. I'd like to refer you again to Exhibit 8.

A. Okay. Just give me a minute.

Q. And starting on page 53, you have a discussion of internet radio broadcast.

A. Correct.

Q. And on page 54, beginning about the sixth line down at the end of the line, there's a sentence that says, "A person of ordinary skill in the art in 2000 would understand the '652 patent reference to the web or internet as the source of a radio

broadcast, means the term internet radio broadcast, simply refers to content, e.g., radio programming that was streamed from a web server to a web client, e.g., via web browser rather than means by which data was transmitted."

Do you recall making that opinion -- rendering that opinion?

MS. REISTER: Objection. Scope. Relevance. Document speaks for itself.

A. So, again, I haven't reviewed this document in these proceedings. I remember writing it.

BY MR. ENGELLENNER:

Q. Well, just looking at it today, do you have --

A. Sure.

Q. -- any reason to think that that opinion was incorrect?

MS. REISTER: Objection. Scope. Relevance.

A. So to make sure we're on the same page, if you're asking me about the opinion that I offered in paragraph 133 of Exhibit 8, the -- I believe it's the last sentence that says -- starts with, A person of ordinary skill in the art in 2000 would

understand, I think that's a discreet enough opinion that I would say, yes, that's true.

BY MR. ENGELLENNER:

Q. Okay. And now if I could refer you to page 46.

A. Okay.

Q. And in particular paragraph 115.

A. Okay.

Q. There you give an opinion as to the playlist, do you not?

MS. REISTER: Objection. Scope. Relevance.

A. Yes.

BY MR. ENGELLENNER:

Q. And what was your opinion there?

MS. REISTER: Objection. Scope. Relevance.

A. So my opinion here was I was asked -- my recollection my task here with regard to claim constructions was to consider three possibilities. My understanding was that Black Hills Media had a construction, respondents and intervenors had a construction, and staff had a construction, and these were put in place before I worked on the case, and given these three choices, my task was to opine

on which of the three would be the most appropriate, and so what I'm opining on in paragraph 115 is that of these three choices, my opinion was that respondents' and intervenors' construction was the most appropriate.

BY MR. ENGELLENNER:

Q. And what was that construction?

A. The construction --

MS. REISTER: Objection. Scope. Relevance.

A. The constructions that the respondents and intervenors had proposed was a list of one or more audio files for playback.

BY MR. ENGELLENNER:

Q. And in paragraph 115, you seem to go further than simply picking one of three possibilities. I believe you say that the respondents' proposed construction for the term playlist accurately describes the meaning of this claim term in the '952 and '652 patents.

MS. REISTER: Objection. Scope. Relevance. Mischaracterizes the testimony.

A. I mean, those are certainly the words here.

BY MR. ENGELLENNER:

Q. So the definition, a list of one or more audio files for playback is a definition that you would adopt for purposes of these claim terms in these two patents?

MS. REISTER: Objection. Scope. Relevance. Form. Vague.

A. Not necessarily.

BY MR. ENGELLENNER:

Q. So, again, what is your definition of the term playlist in the context of these patents?

MS. REISTER: Objection. Scope. Relevance. Vague.

A. I was never asked to come up with my own independent definition. In both the ITC case and the PTO matters -- well, it's slightly different. So one case, as I say, these constructions were just provided to me, and I was asked to opine on these existing constructions, in -- and then do an analysis, and I believe I did an analysis under each of them, but I don't recall for certain. And in the case of these -- this IPR, again, I was not asked to opine on the appropriateness of the construction or playlist, but rather to use a construction that I understood came from a -- related IPR.

BY MR. ENGELLENNER:

Q. Do you have any personal opinion as to what the meaning of playlist is?

MS. REISTER: Objection. Scope. Relevance.

A. I haven't done a sufficient analysis to come up with at this point of an independent conclusion as to a construction for playlist.

BY MR. ENGELLENNER:

Q. So if the board were to ultimately conclude that playlist had a different meaning than was -- than the way the term was construed in each of these proceedings at the time that you prepared your declarations, would that affect your conclusions?

MS. REISTER: Objection. Scope. Hypothetical.

A. I don't think I can answer that. I mean, clearly it's going to depend on what the actual construction is.

Q. Is there a plain and ordinary meaning for the term playlist?

MS. REISTER: Objection. Scope.

A. I haven't done that analysis to determine that.

MR. ENGELLENNER: I think I would

like to take a break at this point, if it's all right with you.

THE VIDEOGRAPHER: Off the record. End of Number 1 at 10:10 a.m.

(A recess was taken at 10:10 a.m. To 10:24 a.m.)

THE VIDEOGRAPHER: Starting of Number 2. Back on the record at 10:24 a.m.

BY MR. ENGELLENNER:

Q. Professor Jeffay, I'd like to walk through your declarations and perhaps we'll take the one on the '652 patent first. That's Exhibit 6.

A. Okay.

Q. I'd like to ask you to review it in conjunction with Samsung's petition in that same proceeding, which is Exhibit 9.

A. Okay.

Q. I'd like you to help me identify the portions of your declaration that represent your opinions.

A. Okay.

Q. It appears to me that paragraphs 1 and 2 are pretty much facts. They --

A. I'm just a tiny bit behind, '652 of Exhibit 6?

Q. Yes.

A. Great. No. No. Problem. Paragraph 1 and 2 --

Q. There are no opinions there, are there?

A. I'd agree.

Q. And in paragraph 3, you do offer an opinion of sorts beginning on page 4, the fourth line down. You say that your opinion is that the '652 patent is not entitled to a claim priority to each of the earlier applications that you reference above.

MS. REISTER: Objection. Vague.

BY MR. ENGELLENNER:

Q. Do you see that opinion?

A. I guess what I'd say, the opinion to my way of thinking was the previous sentence and -- yeah, so conclusion or -- yeah, so the last two sentences together, I think -- yeah, you can fairly say that's an opinion.

Q. It appears to be more than a legal opinion than a technical opinion; is that correct?

A. Well, that's why I say the way I view it is the opinion really is the previous sentence, and a better way to have worded this is that I understand that the earliest -- therefore, I

understand that the earliest possible -- that it's close to a legal opinion. I mean, I am opining about disclosures of the claims and just giving the date, but I'm not ultimately, for example, opining about like a priority date.

Q. Now, how did you come to the conclusion that the earlier priority documents did not recite a playlist identifying a plurality of songs?

MS. REISTER: Objection. Vague.

A. I don't recall. I don't recall if that was part of the analysis that I had done in the ITC proceedings, and that would be my expectation.

BY MR. ENGELLENNER:

Q. But at some point in time, you did look at all these provisional applications and came to the conclusion that they did not recite this term that you've identified, "a playlist identifying a plurality of songs" until 19- -- excuse me -- until 2000?

A. Yes, I believe at some point I have looked at all of these applications.

Q. And you did come to the conclusion that all but the one that was filed in November 8, 2000 lacked a reference to playlist identifying plurality of songs; is that correct?

MS. REISTER: Objection. Mischaracterizes the testimony.

A. Could you ask that question again, please?

BY MR. ENGELLENNER:

Q. At some point in time, you did look at all the provisional applications and came to the conclusion that they did not recite the term "a playlist identifying a plurality of songs" except for the what you refer to as the '842 provisional application which was filed on November 8, 2000?

A. Yes, that's correct.

MS. REISTER: Objection. Foundation. Vague.

A. That's correct.

BY MR. ENGELLENNER:

Q. Okay. The next paragraph recites an opinion, does it not, as to what someone of ordinary skill in the art at the time of the invention would be?

A. Yes, it does.

Q. We'll come back to that. Put that aside and we'll come back to that. Starting on page 5, paragraphs 5 through page -- I think paragraph 17, on page 9 are essentially a description of your credentials; is that correct?

A. I would say credentials and experience, yes.

Q. Paragraph 16 on page 9 indicates that you were -- or that you are, perhaps, still, an FCC-licensed radio engineer?

A. Past tense.

Q. Past tense. When did you work as a -- where did you work as a radio engineer?

A. This was a community FM radio station in the town where I grew up.

Q. So this would have been before college?

A. This was, indeed, before college.

Q. And you say that you worked there as a radio engineer. What did that entail?

A. To operate -- at that time, to operate an FM transmitter above a certain power level in wattage, you needed an FCC license, and the license is a telephone and telegraph operator, I think, is actually what it was called at the time. Basically, I was, you know, the DJ, but this was an incredibly small operation. So when an average show was going on, particularly in the evening, there was one person there. So in order to be the DJ at that time, I had to also -- I was responsible for the transmitter, and I needed the license to be there

operating the transmitter.

Q. And paragraph 16 says you developed playlists?

A. I did.

Q. Can you describe what that entailed?

MS. REISTER: Objection. Relevance.

A. It involved taking out a piece of paper and writing down a list of songs that -- I was in charge -- I was in charge of, you know, the youth portion of the programming, and I would write down songs that certain of, you know, the youth segments of the programming were supposed to play.

BY MR. ENGELLENNER:

Q. And were you the disk jockey also?

MS. REISTER: Objection. Scope. Relevance.

A. Yes, I was also -- sorry. For certain of the programs, I was also the DJ.

BY MR. ENGELLENNER:

Q. And at that period of time, did that, like, entail actually getting vinyl records and stacking them up to play?

MS. REISTER: Objection. Scope. Relevance.

A. So there was -- there were three types of

media. We had vinyl records. We had these things called carts, which -- I don't really remember. I think they were -- they were more a professional, higher-quality version of eight-tracks. Remember the eight-track cartridges? And then we had good-old wall-mounted reel-to-reel tapes, so the content would come from those three sources.

BY MR. ENGELLENNER:

Q. And did you assemble those sources beforehand, pulled the pertinent carts, as you called them, that had the songs you wanted to play, and stacked them up somewhere to be readily played?

MS. REISTER: Objection. Vague. Scope, relevance.

A. So for the shows that I actually DJ'd, you typically would organize materials so that you were several songs ahead in the playlist so that you were ready to go. I don't know stacked.

BY MR. ENGELLENNER:

Q. Of the list that you prepared, that was colloquially called a playlist?

MS. REISTER: Objection. Scope. Relevance.

A. Yes.

BY MR. ENGELLENNER:

Q. Was that, you believe, a common term in the industry?

MS. REISTER: Objection. Scope. Relevance.

A. At that time, yes.

BY MR. ENGELLENNER:

Q. And it was essentially the list of music that was arranged in the order that you were going to play it?

MS. REISTER: Objection. Scope. Relevance.

A. When I wrote it for myself, it was the order in which I wanted to play it. A continual battle when you developed a playlist for somebody else's show, what order would they play the tunes, songs.

BY MR. ENGELLENNER:

Q. In a larger radio station than a community radio station, would you say there would be even more of a battle between the sound engineer and the DJ if they wanted to deviate from the playlist?

MS. REISTER: Objection. Calls for speculation. Scope. Relevance.

A. I don't know. I never made the bigtime in radio.

BY MR. ENGELLENNER:

Q. So this list of songs on the playlist, was it basically just the titles of the songs or title and artist?

MS. REISTER: Objection. Foundation. Scope. Relevance.

A. I don't recall, but I mean there was supposed to be popular music, and my best recollection is it was just the titles.

BY MR. ENGELLENNER:

Q. That was enough to be able to retrieve it and play it?

A. Yes.

MS. REISTER: Objection. Scope. Relevance.

BY MR. ENGELLENNER:

Q. So in this timeframe, '76 to '81, most songs were rather short, were they not, maybe on the order of 2 or 3 minutes?

MS. REISTER: Objection. Scope. Relevance.

A. The actual songs were, but this was the dawn of album rock where we'd play long passages.

BY MR. ENGELLENNER:

Q. So you would play the whole side of an

album?

A. Yeah. You'd have to distinguish yourself from the big guys.

Q. But you would still write out a list of what albums you were going to play?

A. Yes.

MS. REISTER: Objection. Scope. Relevance.

A. Sorry. Yes.

BY MR. ENGELLENNER:

Q. Now, paragraphs 18 through 22 of this declaration appear to -- they're preceded by a heading called State of the Art through November 2000; is that correct?

A. Yes.

Q. A good deal of the discussion in these paragraphs 18 through 22 seems to center around the term "playlist," does it not?

A. I think that's a fair -- at a high level, that's a fair characterization.

Q. Are there any opinions in these paragraphs 18 through 22?

A. Well, you'll have to help me as to what's -- opinion, I think, is somewhat subjective, so these would be, for example, the first sentence

of paragraph 18, whether or not one would consider that an opinion.

Q. Okay. Anything else in these paragraphs that might constitute an opinion?

A. Along the same vein, I think the first sentence of 21 is similar.

Q. Okay.

A. Saying this is well known and, of course, giving the support for the opinion.

Q. Now, in paragraph 19, particularly you talk about Culbertson in the context of radio broadcast stations, and that seems to convey a very similar use of the term playlist as you had just described from your own personal experience as a radio engineer; would you agree with that?

MS. REISTER: Objection. Scope. Relevance.

A. I guess we'd have to go and look at the disclosure of Culbertson. The use of the playlist from my days as engineer, it was literally just a handwritten piece of paper with songs on it, and Culbertson is getting more sophisticated because there's the issue of timing, for example, that I had some understanding of the day was critical to radio stations to, you know, schedule -- the scheduling of

the broadcasts and insertions of ads and all that stuff.

BY MR. ENGELLENNER:

Q. But the second sentence of paragraph 19 says, Culbertson shows in the context of radio broadcast stations it was known to compile a scheduled playlist from various music selections and prerecorded materials having known durations and run-times. Is that any different from what you just previously described as your own personal experience in preparing playlists?

MS. REISTER: Objection. Scope. Relevance.

A. I would say, yes.

BY MR. ENGELLENNER:

Q. How so?

A. Since we were a noncommercial, nonprofit radio station, we did not pay a bunch of attention to timing of things, and I do have a recollection at that time you could get these pads of paper where you could write down the titles and the timing, so you could manage the times of the songs because the goal was that -- there are certain FCC requirements that, you know, within a five-minute window, you have to do station identification and ads and

commercial stations. My understanding was they're very precisely timed, so I think, you know, the element -- there was an element to playlists at that time for broadcast stations that I had some understanding of, which was this notion of scheduling, and for better or worse, we didn't pay any attention to that in our station.

Q. But on a more basic level, Culbert- -- the playlist that Culbertson is describing and the ones that you personally prepared had certain attributes in common; is that correct?

MS. REISTER: Objection. Scope. Relevance. Mischaracterizes the testimony.

BY MR. ENGELLENNER:

Q. To be more specific, they both identified media items, songs?

MS. REISTER: Same objections.

A. So back in my day, I don't think the notion of media item existed.

BY MR. ENGELLENNER:

Q. Songs?

A. We had songs.

Q. It identified songs?

A. We were very primitive.

Q. So Culbertson identified songs in his

playlist, and would you agree you likewise identified songs in your playlist?

MS. REISTER: Objection. Scope. Relevance.

A. I think Culbertson is more general than just songs.

BY MR. ENGELLENNER:

Q. Okay. So I think he uses the term music selections and prerecord materials, so perhaps we could -- in the 21st century refer to this as media items. Is there a commonality in terms of the playlist that Culbertson is talking about and the ones you compiled in terms of arranging media items or in your case songs in a sequence to be played?

MS. REISTER: Objection. Scope. Relevance. Vague.

A. I mean, again, in the things that we did, any notion of sequence was informal, and a playlist wasn't viewed as a specification.

BY MR. ENGELLENNER:

Q. Okay. But in Culbertson's systems, would you agree that it takes on -- playlist take on a much more ordered sequence?

MS. REISTER: Objection. Scope. Relevance. Foundation.

A. I guess to answer that, I'd like to review some of the disclosures in Culbertson. I just don't remember it at that level of detail.

(Exhibit No. 11 was marked for identification.)

MR. ENGELLENNER: Could you mark this Exhibit 11?

THE WITNESS: Thank you.

BY MR. ENGELLENNER:

Q. Perhaps it would be easier if I withdrew that question and directed you to a particular passage in Culbertson.

A. Sure.

Q. On column 2, lines 36 through 40, I believe Culbertson is teaching that a sequence of music and commercial selections to be played is determined by a playlist; is that correct?

A. That's certainly what it says.

Q. And column 1 lines 15 through 18 indicates that music selections and prerecorded materials, perhaps station announcement or commercials, were used to compile a scheduled playlist, does it not?

MS. REISTER: Objection. Foundation.

A. I'm sorry. I was actually reading -- I apologize. I was actually reading ahead.

BY MR. ENGELLENNER:

Q. Column 1, lines 15 through 18?

A. Okay. And the question again was...

Q. That Culbertson is teaching -- in fact, he's saying it's background -- that music selections and prerecorded materials are used to compile scheduled playlists.

A. Right. And this is all -- correct. And this is all within the context of a broadcast, traditional broadcast radio station.

Q. And his invention as I think he's describing it in the first sentence of the summary on column 1 is to provide an automated digital broadcast system capable of reliable operation for long periods of time without human assistance. Is that correct?

A. That's more or less what it says, yes.

Q. So unlike the community radio station where you were free to broadcast music sort of on the fly, Culbertson is directed to a system where a playlist is intended to operate without human assistance for long periods of time?

MS. REISTER: Objection. Scope. Relevance.

A. Right. And I think that, in fact, is the

key of Culbertson, that they're trying to get rid of my job that I had, get rid of the DJ. So it's a noninteractive -- it's a noninteractive system, so the system has to operate completely on its own.

BY MR. ENGELLENNER:

Q. So -- I'm sorry. I didn't mean to interrupt you.

A. No. So the system has to determine an order in which selections are played.

Q. So the playlist in the Culbertson system is arranged to be played in a sequence?

MS. REISTER: Objection. Scope. Relevance. Mischaracterizes his testimony.

A. I think what's Culbertson is describing is a schedule, and my recollection of reading this is the key thing they're trying to do here is ensure that selections are played on time and deal with the vagaries that you have in the various playback devices that there's going to be gaps inserted in them. There's gaps between both at the beginning -- that when you queue -- there's a notion of queuing in radio which is how you -- which is eliminating a gap before the content that you want to broadcast starts. And in my experience, this was a manual process, you mechanically rotated a tape until it

got to the first bit of audio. You actually held a record at the spot where the minute you let the record go on a spinning turntable, it would start. So in these automated systems, I think the focus of the playlist there is ensuring things start and stop on time. So, you know, what the actual sequence is, you know, isn't clear, but because it's an automated system, the system has to know the sequence.

BY MR. ENGELLENNER:

Q. And Culbertson, in fact, says that, does he not, in column 1, line 55 through 58, perhaps? It says it sends control signals to the audio playback devices to start and stop play of selections according to the playlist schedule?

MS. REISTER: Objection. Document speaks for itself.

A. Sure. But understand, the scheduling here, I think, a person still would understand this, in particular who had radio background as the schedule is defined by the start and stop times, not necessarily by any order in a playlist.

BY MR. ENGELLENNER:

Q. I'm not sure I understand that. Could you elaborate?

MS. REISTER: Objection. Vague.

BY MR. ENGELLENNER:

Q. The start and stop signs --

A. Times.

Q. -- times determine the order?

A. Right. That's what it means to have a schedule. You do this at this time, this at this time, this at this other time because as I mentioned --

Q. Okay. The intervals -- I'm sorry. I interrupted you.

A. No. That's fine. All I was going to add, because for broadcast radio you have various requirements that certain things must happen at fairly roughly precise points in time. There are certain things you must do on the half hour, there are certain things you must do at the top of the hour, and so you need to ensure that what you're playing, you know, can be played such that you can do these events at the time. So I would imagine for this automated system, the issue is scheduling the exact timing of this, play this selection at this time, play this selection at that -- this other time.

Q. And between the start and stop signals, that interval would be presumably songs or other

audio materials that are being broadcast?

A. Sure. It's -- that's the content, yeah.

Q. And so that entire schedule with the songs and the start and stops is arranged in a sequence; is it not, chronological sequence?

A. I mean, there are certainly going to be a list. And any list, of course, you know -- lists by themselves define a sequence. Things are before or after each other in the list.

Q. In the context of playlist, does that mean they would be played in that order?

MS. REISTER: Objection. Vague.

A. My read of Culbertson is that the order in the playlist -- I don't view Culbertson as saying anything about the order of the playlist. I think the focus on Culbertson is the notion that entries in the playlist are scheduled. So I think what a person in the skill would understand from Culbertson is schedule -- the start and stop times is what dictates when items get played, and how it relates or if it relates to any order in a playlist I don't think is addressed in Culbertson. And from my own experience, limited experience in broadcast radio, that makes perfect sense to me because playlist -- in addition to having the playlist, we would often

have sort of on the other half, if a playlist went down one column of a page and the other column of a page, you would have the reminders of the periodically scheduled broadcast that you had to do. The -- this must happen at the top hour, this must happen at the half hour, we do this on this quarter hour, this public service announcement, this thing and that. So the actual playback wasn't -- was really never strictly linear through a playlist.

BY MR. ENGELLENNER:

Q. How do you square that with column 1, lines -- again, I think it's 47 through 51 where Culbertson specifically summarizes his invention as a system in which a computer is controlling audio devices to play a predetermined list of musical selections and commercials or informational messages. Seems to me the term sequentially would say it all, does it not?

MS. REISTER: Objection. Form.

A. No. I think all sequentially means -- you have multiple devices, but this I think -- so now we're kind of getting into the realm of the computer system, and what this is saying to a person of ordinary skill in the art, when you have multiple devices, you're only playing them one at a time. So

you're going to play things -- you have multiple -- so for example, they talk about having multiple compact disk players. The point is, you're playing live from the compact disk players one at a time. You're playing in a sequence, one after another, and that's according to -- yeah. So I think this is -- this isn't -- you know, at the end of the day, what gets played obviously defines a sequence. I think the sequentiality that's referred to here is simply saying nothing more than you play one thing after another, which makes sense given that you have, you know, the multiple devices.

BY MR. ENGELLENNER:

Q. And so is it fair to say that Culbertson is using the term playlist to describe media items that are played one after another?

MS. REISTER: Objection. Foundation. Vague.

A. I think it's fair to say, yeah, the content is played. So in this particular sentence, musical selections are played one after another, but that's not to be more broadly construed to say that, you know, an ordering was or wasn't hardwired into a playlist, but things are -- musical selections are played one after another, along with commercial --

between the set of musical selections, commercials and informational messages, those are all played one after another.

BY MR. ENGELLENNER:

Q. And Culbertson uses the term playlist to describe that operation, does he not?

MS. REISTER: Objection. Mischaracterizes his testimony.

A. Perhaps you could point me to where you think that's disclosed? I mean, certainly the passage we were just looking at, playlist -- playlist is not used to describe that.

BY MR. ENGELLENNER:

Q. Okay. The two sentences later, I believe, in column 1, lines 53 to 55, it says, "The system control software reads from a data storage device into memory compiled list of selections for a given period of time, such as 24 hours."

A. Okay.

Q. Excuse me. I omitted -- let me read that again. "The system control software reads from a data storage device into memory a compiled playlist of selections for a given period of time, such as 24 hours."

So in Culbertson's system, does he not use

the term playlist to describe a sequence of media items arranged to be played in an order?

A. The sentence says what the sentence says, compiled playlist of selections. There's nothing in here about saying the playlist specifies the order. What is in here is saying that associated with the playlist are start and stop times for entries to be played, and a person of skill would understand that those start and stop times, whatever they are, that's what defines -- that there is independent of the playlist and possibly integrated within the playlist there is a schedule, and it is the schedule that is determining the order.

Q. Now, is it also -- is it true that playlist describes a -- set aside sequence or order for the moment, playlist describes a group of songs to be played?

MS. REISTER: Objection. Vague. Foundation.

A. I mean -- I'm sure you're not being that precise, with the understanding that -- you said "songs," but what Culbertson describes is the playlist comprises more than songs, there's the commercials and the informational messages and all of those, but, yes, what it describes is what is

going to be played.

BY MR. ENGELLENNER:

Q. Let's come back to that, if we could, later.

A. Sure.

Q. I'd like to go back to the declaration itself, and after the discussion of playlist in paragraphs 18 through 22, there's a description of the '652 patent, and that would be on paragraphs 23 to 26; do you see that?

A. Sorry. I have been working from Exhibit 6?

Q. Yes.

A. So our numbers, I think, are off. So, for example, the previous section you kept saying stopped at 22. I just thought you were limiting yourself to 22. It actually goes on to 25.

Q. You're right. I was looking at the wrong document. So just for the record, the playlist in the -- the discussion of playlist in the '737 declaration runs from paragraphs 18 through 25; is that correct?

A. Yes, that's correct.

Q. And beginning on paragraph 26, and continuing on paragraph 29 that ends on page 16, it

has a heading, "The overview of the '652 patent." Is that correct?

A. That's correct.

Q. These paragraphs seem to be identical word for word with a section in Samsung's petition with the same heading. That would be in Exhibit 9, pages 8 through 11; is that correct?

MS. REISTER: Objection. Relevance.

A. I'm sorry. Could you give me -- you said pages 8, you said?

BY MR. ENGELLENNER:

Q. Yes. Page 8 continuing through the bottom of page 10, actually.

A. The only way I have to confirm that is to go line by line and check.

Q. Well, let me just represent to you that I have looked at them both, and I do believe they're identical or practically identical.

A. Okay.

Q. My question is, did you draft this section or did Samsung's counsel since it appears in both documents?

A. Samsung's counsel drafted this. Whether this is excerpted in some form from my prior report, I don't recall.

Q. Just by the way, the section we had just been talking about on prior art also appears to be identical to a section of the Samsung petition. Do you recall if you drafted that section on prior art or whether it was drafted by Samsung's counsel?

A. I did not draft it, and my understanding was that this was coming from my previous expert report.

Q. You are, I believe, correct in that there's a similar discussion in your expert report in the ITC action, beginning on -- and on numbered page between 24 and 26.

A. Tell me the paragraph number.

Q. Paragraph 83 through 86 -- or 85.

A. Right. That was -- as I say, I did not check if -- how the text was related. But as I say, my understanding was that was the genesis of the section that is in Exhibit 6, paragraphs 22 through 25, that's what the genesis was.

Q. So the substance of these paragraphs that we're talking about that are in both the declaration and the Samsung petition were actually drafted by people at the Finnegan firm; is that correct?

MS. REISTER: Objection. Scope. Relevance.

A. I would have -- the ITC expert report was quite large, and it was a collaborative effort. I'm not going to be able to recall sitting here who did what. I mean, generally for state of the art stuff, that -- without -- just as a general matter, in terms of my mode of operation, typically that stuff I write.

BY MR. ENGELLENNER:

Q. So do you recall at some point in time, if not for this proceeding, perhaps for the ITC proceeding, doing a search of the state of the art and finding that Culbertson and the Kluts patents and the other literature references that are described in paragraphs 18 through 22?

MS. REISTER: Objection. Foundation.

A. If you're asking about the ITC proceedings, my recollection was everybody searched for relevant art. I came with my bag of art and others came with theirs, and over the course of many meetings, we narrowed it down to ultimately what appeared in Exhibit 8. And who contributed what at this point, I don't know. I think the more academic stuff, clearly I came up with that. For the patents, you know, I couldn't say.

BY MR. ENGELLENNER:

Q. So the next portion of your declarations beginning on page 16 at the bottom, paragraphs 31 through 33, preceded by the heading, Claim Construction, they do contain some opinions, do they not?

A. I believe they contain a single opinion, and that would be the opinion stated in paragraph 32.

Q. In particular on paragraph 31, this appears to be consistent with your prior testimony today that you didn't construe playlists, but you accepted a prior construction by the board in forming your other opinions on the claims.

MS. REISTER: Objection. Misstates the testimony.

A. Yeah, I lost sense of the -- I was having trouble viewing that as a question more as a statement, so...

BY MR. ENGELLENNER:

Q. Sorry about that.

A. No. Maybe I heard it wrong.

Q. Did you previously testify today that you have not offered an independent opinion on the meaning of playlist in this declaration or its companion, Exhibit 7?

A. Yes.

Q. And this paragraph 31 confirms your approach, does it not, that you accepted the board's definition of construction of playlist at face value?

A. Correct.

Q. To some extent, playlist was the -- the meaning of playlist influenced your decisions as to the prior art; did it not?

MS. REISTER: Objection. Foundation.

A. Influence my decision with respect to the prior art. I'm having trouble with the word "decision" there.

BY MR. ENGELLENNER:

Q. I'm sorry. Opinions. Perhaps the -- would you say it's a fair characterization to say that the claim construction adopted by the board in its initial decision, informed your analysis of the prior art?

A. Yes.

Q. So to the extent the claims in the patent talk about playlist and you looked at various prior art references for a playlist, you assumed that the board's construction of the term playlist was a fact?

MS. REISTER: Objection. Misstates the testimony.

A. The fact I have trouble -- I just assumed that was the definition.

BY MR. ENGELLENNER:

Q. That was the definition that you, worked from?

A. Right. I wasn't assessing or assuming the validity or the invalidity of the definition. I was just using the definition they provided and in performing the analysis, assuming that definition.

Q. As we sit here today, do you agree with the board's definition or do you have like no opinion?

MS. REISTER: Objection. Scope. Relevance.

A. As I said, I haven't done my own independent analysis. I've obviously seen lots of constructions, and I haven't come up with an independent opinion as to what the construction should be.

BY MR. ENGELLENNER:

Q. Okay. Continuing on in the declaration -- and this is, again, still in Exhibit 6, beginning on page 18, paragraph 34, through paragraph 41 on page

22 -- you described the White patent, do you not?

A. I do.

Q. And you also have a conclusory opinion in paragraph 67 on the White patent; do you not?

A. Conclusory often gets meant to be used in pejorative framework, to say you're stating something without evidence. So I would say there are opinions expressed in paragraph 67 and parts of the bases for those opinions are the recitation of the analysis of White that appears in paragraphs 34 through 41.

Q. So in paragraph 67, you app to be opining that all of the features in the claims can be found in different embodiments of the White patent, and that a person of ordinary skill in the art -- or a person skilled in the art would have reason to combine these features; is that correct?

MS. REISTER: Objection. Document speaks for itself.

A. That is what it says here, yes.

BY MR. ENGELLENNER:

Q. And is that your understanding of obviousness?

MS. REISTER: Objection. Scope. Relevance.

A. I don't believe I'm making a statement about obviousness here. The heading of this section is clearly obviousness, but I'm simply describing what a person with ordinary skill in the art would have done. I'm not -- I'm not making a statement about -- there's no, you know, pin site statement in here for obviousness. I'm simply describing what a person of ordinary skill would understand from White and what they would have done with these disclosures and what the results of certain combinations would be.

BY MR. ENGELLENNER:

Q. But the heading that precedes the paragraph 67 says, "Obviousness in view of the White patent." Is paragraph 67 intended as support for a conclusion that the claims at issue in the proceeding here are obvious in view of the White patent?

A. Can you read the question back?

THE COURT REPORTER: Sure. "But the heading that precedes the paragraph 67 says, "Obviousness in view of the White patent." Is paragraph 67 intended as support for a conclusion that the claims at issue in the proceeding here are obvious in view of the White patent?"

A. Yes. That's my understanding of why I was asked to opine in this manner on the White patent.

BY MR. ENGELLENNER:

Q. And what does obviousness mean to you?

MS. REISTER: Objection. Scope. Relevance. Calls for a legal conclusion.

A. Well, obviousness is a legal standard. I don't have a legal standard section in this -- in this declaration because I don't believe I'm offering legal opinions. Sitting here, I don't recall the fullness of the definition of legal standard of obviousness.

BY MR. ENGELLENNER:

Q. Well, do you have an opinion as to whether the White patent renders the claims in dispute in this case obvious?

MS. REISTER: Objection. Scope. Relevance.

A. For the IPR proceedings, I have not offered an opinion on obviousness of the White patent rendering the claims obviousness -- rendering the claims obviousness.

BY MR. ENGELLENNER:

Q. In paragraph 67, is one phrase that you mentioned, and that is the reference, I believe

you're referring to the White patent --

A. Uh-huh.

Q. -- does not teach against combining these features. What do you mean by does not teach against combining these features?

A. There's no disclosure in White that says, Don't do this or this won't work with that. There's -- there's nothing in White that would dissuade anyone from attempting to combine the various functions and features that are disclosed in White together.

Q. And the last sentence in that paragraph you say that combining them would not require undue experimentation. Why did you use the words "undue experimentation"?

A. Because I have some recollection that when one -- from a legal standard, when one talks about combining references, there's an issue whether or not references are combinable. There's issues of whether or not there's some other reference that says you shouldn't do that, and an element of it is that the feasibility of the combination; would it require -- I believe the legal term is -- "undue experimentation." But, you know, it wouldn't require extraordinary effort, trial and error,

experimentation to make a combination.

Q. And does -- where does one find the facts that support that conclusion that it would not require undue experimentation to combine the features of various embodiments in White?

MS. REISTER: Objection. Vague.

A. So I think it's sort of like proving a negative. This is based on the previous discussions of White and what persons of ordinary skill in the art would understand. But, you know, as I say, because we're saying "not require" something, it's difficult to definitively prove that something doesn't require something because typically that requires an existence proof. You go off and build it, and then you say did not require this, so these things, I think, are more argued indirectly and based on disclosures and experience.

BY MR. ENGELLENNER:

Q. Well, does -- is there anything in paragraphs 34 through 41 that addresses this issue of undue experimentation or -- in combining these features?

MS. REISTER: Objection. Vague.

A. I think -- so the sections -- paragraphs 34 through 41 are describing disclosures of the

various embodiments, and the point that paragraph 67 is trying to make is that there are a significant number of embodiments in White. The embodiments collectively disclose all the features. The embodiments themselves are different mixes and matches of functions. And that at best, the -- the '652 patent is arguably a different combination of these elements, and that given the diversity of the embodiments that are disclosed in White, a person of ordinary skill would understand that you're just taking -- White describes four or five ways to combine. Arguably, the '652 is, you know, a sixth way to combine. So I think the basis for the statement is disclosures of writing embodiments that have all the pieces. The fact that there's no discussion that any particular combination that wasn't considered is impossible. You know, a person of skill would understand there are numerous other embodiments you could make of White even beyond the '652 patent.

BY MR. ENGELLENNER:

Q. But getting back to paragraph 67 in that last sentence which seems to suggest that it would be routine to combine the features. You used the double negative form, would not require undue

experimentation. But if it was routine to combine the features, is there anything in these paragraphs 38 through 41 that would explain why it would be routine?

MS. REISTER: Objection. Form. Vague. Compound.

A. I think the explanation is three-fold, as I explained. There are numerous embodiments disclosed in White. Collectively, they have all of the features. The embodiments are just different combinations of these features because, you know, no patent is going to describe every embodiment. That's a cross-product. There's an exponential number of embodiments. A person of skill in the art would have -- would understand that there's lots of ways to combine the elements in White beyond the specific embodiments they have. So given that fact, and given that there's -- I think a person of skill in the art on its face would understand that all of these things are feasible. But just more to the point, there's nothing in there that would dissuade against doing that, that leads to my conclusion that the combination would produce expected results, and would be no harder than any of the other embodiments of White.

BY MR. ENGELLENNER:

Q. Let me come back to the patent later. Just to finish up this declaration, paragraphs 42 through 52, are a description of the Logan patent, and paragraphs 53 through 66 are a description of the Lipscomb patent. Is that a fair characterization?

A. Yes, that's fair.

Q. And you draw some conclusion, do you not, as to the combination of Logan and Lipscomb as prior art in paragraphs 68 through 70; is that correct?

MS. REISTER: Objection. Scope. The Logan and Lipscomb combination is not at trial.

A. Yes. That's true.

BY MR. ENGELLENNER:

Q. In paragraph 70, you appear to return to this question of motivation to combine whether it be undue experimentation, and you -- is it your conclusion that one skilled in the art would have been motivated to combine the features of Lipscomb with the features in Logan?

MS. REISTER: Objection. Scope. That ground is not at issue in the proceeding.

A. The answer is yes.

BY MR. ENGELLENNER:

Q. And are you aware that the patent trial appeal board rejected your opinion in this case?

MS. REISTER: Objection. Scope. This is outside the scope of the proceeding.

A. My understanding is that the -- the patent trial and appeal board did not opine on me and my opinion.

(Exhibit No. 12 was marked for identification.)

BY MR. ENGELLENNER:

Q. I'd like to refer you to page 22 of the decision, and the board's discussion that begins at the top of the page there.

A. Okay.

Q. So is it fair to say that the board rejected your opinion?

MS. REISTER: Objection. Scope. Asked and answered.

A. No, I wouldn't say that's a fair statement.

BY MR. ENGELLENNER:

Q. How do you read the board's opinion there?

MS. REISTER: Objection. Scope. Relevance. Outside the scope of the proceeding.

A. So this is a statement about the

petitioner's assertion, and they're claiming the petitioner's assertion are conclusory without proper explanation. So I think -- I think the best interpretation of this was that the explanation, as -- that the petitioner's explanation was not sufficient. I don't think it's making any absolute statement about overlapping intended use functionality and predictable results. It's just saying it was not -- it was missing proper explanation.

BY MR. ENGELLENNER:

Q. And wouldn't that have been found if it existed in your declaration?

MS. REISTER: Objection. Scope. Relevance. Calls for speculation. Outside the proceeding.

A. I don't know what the petitioner had at their disposal.

BY MR. ENGELLENNER:

Q. Well, it's really a question of what the board had at its disposal, and what it had was your declaration and the petition itself, which are documents 6 and 9?

A. Sure. But that's not what your question asked.

Q. Okay. I'll withdraw the question. Let's move on to the other declaration that you submitted. That would be Exhibit 7. And just, again, I'd like to do a brief run-through --

A. Sure.

Q. -- to figure out where the opinions are.

I think we already agreed paragraphs 1 and 2 have no opinions.

A. Sure, correct.

Q. And paragraph 3 is the opinion on the priority claim which we discussed before and since they all share common provisional applications, is it fair to say that in both instances you concluded that the term playlist did not appear in any earlier priority documents up until the '842 provisional application filed November 8, 2000; is that correct?

A. That's correct.

Q. Paragraph 4 goes to the issue of who is the person of ordinary skill in the art, and we'll discuss that later.

A. Okay.

Q. Paragraphs 5 through 17, again, appear to be your credentials?

A. Credentials and experience, yes.

Q. Sorry.

A. That's fine.

Q. Credentials and experience.

And 18 through 22 in this instance describe the prior art, and I believe that the only difference between this and the declaration that we discussed before is simply the paragraph numbering, some of the paragraphs in this text were separated and hence the numbers went to paragraphs -- I mean, 18 through 26 in the declaration we submitted before.

This, again, is a description of the prior art, correct?

MS. REISTER: Objection. Vague.

A. Yeah. The description of the state of the art, and I think there are actually some more substantive differences between -- in this section between the two versions -- sorry -- between the two declarations.

BY MR. ENGELLENNER:

Q. Okay. Is it fair to say, though, that this section has the same murky genesis that started by work among a bunch of collaborators in the ITC action?

MS. REISTER: Objection. Vague. Foundation.

A. It's hard to see murky as anything other than a pejorative term. I'm not going to agree this is murky. I think what I said is that I recognize this in a whole or in part as coming from the ITC report. If you want to dig into how the ITC report is generated, as I mentioned, I haven't reviewed that, so I'm a little bit cold on how exactly everything came together in the ITC report.

BY MR. ENGELLENNER:

Q. Okay. So paragraphs 27, 28 through 30 are, again, claim constructions; is that correct?

A. Yes.

Q. Am I correct that the gist of your position in these paragraphs is that you are accepting the board's definitions in each of the instances of the claims in performing your subsequent analysis?

A. Yes.

MS. REISTER: Objection. Vague. Document speaks for itself.

A. Yes. That's the gist of it.

BY MR. ENGELLENNER:

Q. Thanks. So paragraphs 31 through 40 are a discussion of the Berman patent, right?

A. That's correct.

Q. We haven't talked about the Berman patent, have we?

A. I don't believe we have.

Q. Okay. We'll come back to that.

And then 41 through 48 are a discussion of the Logan patent; is that correct?

A. That's correct.

Q. As for the rest of the declaration, I'm not going to examine you on that because I'll just say that the board did not declare a trial on those grounds.

A. Okay.

Q. So that leaves us with person of ordinary skill in the art, playlist, White, Berman and Logan.

Would you like to take a brief break?

A. If you'd like to, that's fine.

Q. I think we've been about an hour.

MS. REISTER: Okay.

THE VIDEOGRAPHER: One moment. Off the record. End of Number 2 at 11:36 a.m. One moment.

(A recess was taken at 11:36 a.m. to 11:51 a.m.)

THE VIDEOGRAPHER: Starting of Number 3. Back on the record at 11:52 a.m.

BY MR. ENGELLENNER:

Q. Professor Jeffay, I'd like to return to a couple of the terms that we discussed earlier today, and in particular, the person having ordinary skill in the art.

A. Okay.

Q. In your declarations in both of these proceedings, I believe you opined on that hypothetical person in paragraph 4; is that correct?

A. I'm looking at Exhibit 7 and Exhibit 7 happens to be paragraph 4.

Q. Now, the definition that you've given here is at least a bachelor's degree in electrical engineer, computer engineering and computer science, and approximately two years of professional experience with computer networking and multimedia technologies or the equivalent; is that correct?

A. That's correct.

Q. Now, that differs somewhat from your definition in the ITC proceeding.

MS. REISTER: Objection. Scope. Relevance.

BY MR. ENGELLENNER:

Q. And I'd like to direct you to Exhibit 8, and page 10, paragraph 34 and also paragraph 104.

A. 104.

Q. I'm sorry. Once again, I have to correct myself. It's paragraph 106.

A. Okay.

Q. And in paragraph 106, it appears that you have defined person of ordinary skill in the art as of the effective dates of the patent in dispute as having a bachelor's degree in electrical engineering, computer engineering, computer science or the equivalent and one to two years of experience with computer and multimedia technologies -- or multimedia networking. Can you tell me if there is a difference in these two definitions?

MS. REISTER: Objection. Scope. Relevance.

A. There was no intent to be a difference. In my mind, it's different ways of saying the same thing. Clearly the 106, the text declaration's definition is a little more fulsome. But there's no intent that they be -- that they differ.

BY MR. ENGELLENNER:

Q. Now, there is a little bit of difference in terms of the definition in the proceedings today, the '737 and '740 proceedings in that you say that a person of ordinary skill in the art would have at

least a bachelor's degree. And in your ITC opinion you said simply a bachelor's degree. Did you intend to be open-ended there?

MS. REISTER: Objection. Vague.

A. "Open-ended" there being what specifically?

BY MR. ENGELLENNER:

Q. Well, a person such as yourself with a Ph.D. and 26 years of experience --

A. 26 years on the faculty.

Q. -- would possess more than ordinary skill in the art, is that correct?

A. Sure.

Q. And would you agree that a person with superior knowledge and experience might find things obvious than someone of ordinary skill would not?

A. Sure.

MS. REISTER: Objection. Vague.

BY MR. ENGELLENNER:

Q. So if somebody -- just saying it's open-ended, at least a bachelor's degree, leaves open the possibility that someone would have a Ph.D. and multi years of experience, 25 years of experience. So if you agree that there is a class of people that are extraordinarily skilled in the

art, how do you guard when you -- against judging obviousness from the perspective of an expert rather than an ordinary artisan?

MS. REISTER: Objection. Vague. Foundation.

A. I'm not sure I understand the question. You say how do I guard? I mean, I do the analysis based on what I fairly believe a person of ordinary skill in the art would understand, and I limit my analysis to that understanding, to that as a person with ordinary skill in the art.

BY MR. ENGELLENNER:

Q. Okay. So is there a ceiling that you would put on a person with ordinary skill in the art --

MS. REISTER: Objection. Vague.

BY MR. ENGELLENNER:

Q. -- than someone with five years of experience in the field, or someone with a Ph.D. and five years of experience be considered more of an expert than an ordinary, skilled artisan?

MS. REISTER: Objection. Vague.

A. If you're asking when does one transition from being ordinary to extraordinary, I'm not opining on such a boundary.

BY MR. ENGELLENNER:

Q. Well, in terms of experience, you seem to be -- since you say approximately two years of professional experience, I'm wondering if someone has five years of professional experience, does that now make them someone with extraordinary skill in the art?

MS. REISTER: Objection. Vague. Calls for speculation.

A. If your concern is with the word approximately or at least, I think all that I'm trying to convey in paragraph 4 is that, you know -- my understanding is that a person of ordinary skill in the art is not one person, one specific background; that if you say you have two years of experience, we would all understand that if you had two years and one month, that doesn't take you out of the ordinary experience. So this is just setting -- I hope this isn't too technical a term -- but what we call a lower bound. So this is -- this is the -- how can I say this? -- the least amount of training and experience that a person of ordinary skill in the art could have, and that's the basis that I'm using for my analysis. You clearly can have more and be a person of ordinary skill in the

art. If you have more still, at some point you'll cross some threshold, but I'm not crossing that threshold, and I'm not considering where that threshold is. I'm just focusing on someone who has a BS degree and approximately two years of experience, and for purposes of doing it specifically, I would say I was basically doing it with two years of experience. Just not being dogmatic it had to be 2.00 years of experience.

BY MR. ENGELLENNER:

Q. Okay. I'd like to -- I'd like to talk a little more -- I'd like to examine you a little more on the term playlist.

A. Okay.

Q. And I'd like you to look at the '952 patent, which is Exhibit 5, one of the two patents that's being challenged here in these proceedings. I may have a misnumbered the exhibit.

A. Yeah, I have --

Q. It's Exhibit 4?

A. I have a 3 and 4.

Q. Liked to direct your attention to column 24, lines 38 through 44.

A. 24 you said?

Q. Uh-huh.

A. Lines 28 through --

Q. 44?

A. 28, 28...

Q. Does that paragraph describe a shuffle function?

MS. REISTER: Objection. Vague.

A. Sure. In column 24, it's describing -- all the paragraph is describing, a window that appears on the interface of the audio player and on that interface, there is a shuffle button that the user can click on.

BY MR. ENGELLENNER:

Q. And are you familiar with the function of shuffling songs on a playlist?

MS. REISTER: Objection. Form. Scope.

A. Sure.

BY MR. ENGELLENNER:

Q. So does this passage describe quote/unquote "randomizing a playlist" as opposed to playing a playlist in an order?

A. Sure. The sentence says that the user can click the shuffle button, 1796, to randomize the playlist as opposed to playing the playlist in the same order.

Q. And is that a reasonable definition of randomizing -- the randomizing function -- excuse me the. The shuffle function in playlist?

MS. REISTER: Objection. Form. Relevance.

A. I don't view this as defining it outside of this -- in any broader scope outside of this patent. I think they're just saying for their particular embodiment, that's what the shuffle button does.

BY MR. ENGELLENNER:

Q. So do you have an understanding of what a shuffle function is in the context of playing playlists?

MS. REISTER: Objection. Form. Relevance.

A. Certainly with regard to the '952 patent, yes.

BY MR. ENGELLENNER:

Q. And does -- does your -- what is your understanding of the shuffle function?

A. In the '952 patent, it's a button the user can click on to randomize the playlist, in particular randomize it for purposes of playing it in a different order, randomized order.

Q. So wouldn't that necessarily mean that the playlist had to be arranged in an order to begin with?

MS. REISTER: Objection. Foundation.

A. Well, again, any list. A list fundamentally defines an order, right? So there's nothing -- there's nothing unusual there. Or perhaps I'm missing the sense of your question.

BY MR. ENGELLENNER:

Q. Well, I'm trying to ascertain how the term playlist was used in the patent by the inventor.

A. Okay.

Q. And it seems to me that the playlist had to have an order to begin with if you had a button that could shuffle the order. Would you agree with that?

MS. REISTER: Objection. Relevance.

A. I think my answer is the same; that any list defines an order and so, you know, playlist is a linear collection of songs, inherently defines an order.

BY MR. ENGELLENNER:

Q. And would you agree that in the context of Qureshey systems if you don't push the shuffle button, the songs are arranged to be played in an

order?

MS. REISTER: Objection. Foundation. Form.

A. I don't know that that's uniquely defined as an aspect of the playlist or that that's stated as a requirement of the playlist.

BY MR. ENGELLENNER:

Q. Well, the last two sentences in that passage indicate that there is another function called continuous play.

A. Uh-huh.

MS. REISTER: Objection. Vague. Foundation.

BY MR. ENGELLENNER:

Q. What is your -- what is your understanding of continuous play?

MS. REISTER: Objection. Form.

A. Well, I think they give a sense of it later on in the sentence. They say that there's a repeat button to have continuous play as opposed to the playlist stopping when it runs out of songs to play, so I think continuous play just means you keep playing songs on the playlist, even if you've already played them.

BY MR. ENGELLENNER:

Q. And the sentence before that -- excuse me right after that says the playlist would typically start from the beginning; is that correct?

A. That's --

MS. REISTER: Objection. Document speaks for itself.

A. That's exactly what it says.

BY MR. ENGELLENNER:

Q. So putting those two sentences together, isn't a reasonable definition or understanding of continuous play a function of playing the playlist from the beginning until it runs out of songs to play?

MS. REISTER: Objection. Foundation. Misstates his testimony.

A. I don't think that -- so this passage here starting at line 40 of column 24, I don't believe is really saying anything about the order. For example, it says, The playlist will typically start from the beginning, right? So "typically" means not required to. It could start anywhere. So I think, you know, it's -- it's saying that the issue here is not ordering, the issue here is where you stop. And in the case of continuous, apparently, you don't stop. But I don't think it's saying anything about

the order in which you play things. And, in fact, it's sort of disclosing the order maybe isn't important because you can start anywhere you like.

BY MR. ENGELLENNER:

Q. Even if you were to start in the middle of the list, which I'm not sure is described in the Qureshey patent, the playlist under the continuous play function would continue from that point in a prearranged order; would it not?

MS. REISTER: Objection. Form. Misstates his testimony.

A. I don't see anything in here that's speaking to the prearranged order in your question.

BY MR. ENGELLENNER:

Q. So what does continuous play -- what is the order of continuous play, then?

A. I don't think it's -- I don't think it's defined here. I mean, again, I don't think the passage starting at line 40 is addressing the issue of order. I think it's just simply saying that you can play the contents of a playlist over and over in a continuous -- in a continuous fashion, so I think it's really dealing with more the issue of duration rather than the issue of order. And, again, I actually do think that a person of skill would

understand the last sentence to say that in a sense, the order -- order doesn't really matter or the order isn't the issue.

Q. I think you testified earlier today that in your engagement in the ITC proceeding, you adopted a different definition of playlist; is that correct?

MS. REISTER: Objection. Form. Misstates his testimony.

A. Yeah, I don't think that's exactly correct.

BY MR. ENGELLENNER:

Q. Okay. So I'd like to refer you to paragraph 31 of the declaration in the '737 proceeding which involves the '652 patent that's Exhibit 6.

A. Okay.

Q. Paragraph 31, and I'd like you to compare that with --

A. Okay. 31. I have it.

Q. And compare that with Exhibit 8.

A. Eight. Okay.

Q. At paragraph 115.

A. Paragraph 115. Okay. You want me to compare paragraph 31 of Exhibit 6 is to paragraph

115?

Q. Yes.

A. Okay.

Q. Is the term playlist defined differently in these two paragraphs?

MS. REISTER: Objection. Scope. Relevance.

A. Well, I mean, it's clearly a different -- so Exhibit 6, the declaration in the present matter has adopted a construction from a previous PTAB action, PTAB decision, and that construction is slightly different than the constructions that were proposed in the ITC matter, so they're not the same.

BY MR. ENGELLENNER:

Q. And in figure -- excuse me. In Exhibit 6, paragraph 31, is it correct that you are adopting the PTAB's definition of playlist for your analysis?

A. Correct. From the board's -- right -- decision from the matter that's cited in here, in paragraph 31.

Q. And so how is that different than the definition that you opined on in paragraph 115 in the expert report in the ITC action?

MS. REISTER: Objection. Scope. Relevance.

A. Well, I mean, I can just tell you in terms of, you know, the words that are there that in the ITC action, none of the parties went so far as to associate audio files and URLs. To say a playlist could be one or the other, so the PTAB board included audio files or URLs, and of the -- so that's one difference. And the other difference is that in the ITC, seems like all of the parties had an additional restriction on playlist that does not appear in the PTAB's decision.

BY MR. ENGELLENNER:

Q. And what was that additional aspect or construction of the playlist in the ITC action? What was the difference?

MS. REISTER: Objection. Vague. Scope. Relevance.

A. I don't know that I can exactly pin it down. I mean, the Black Hills construction is quite different, so it's difficult to succinctly differentiate the two. Black Hills had nothing to do with files and required a sequence, and the PTABs' construction doesn't require a sequence, and the respondents and intervenors, they indicated that the files were for playback. That doesn't appear -- and I guess the staff as well also said that the

files were for playback, and that aspect doesn't appear in the board's construction.

BY MR. ENGELLENNER:

Q. In paragraph 115, did you not go so far as to say it was your opinion as well that the term playlist, as described by the respondents and intervenors accurately described the meaning of the term playlist as used in the patents?

MS. REISTER: Objection. Scope. Relevance. The document speaks for itself.

A. That's what's said here and all the explanation I gave was that my task here was to the opine on that which I thought was the best of these three.

BY MR. ENGELLENNER:

Q. So your assumption in preparing these declarations was that the board's definition was correct; was that your assumption?

MS. REISTER: Objection. Vague. Misstates his testimony.

A. So I think we've covered that ground previously, and I believe what I testified that was I'm not opining on the accuracy or the inaccuracy of anything the board has done, I am simply adopting their construction and performing my analysis, given

that construction.

BY MR. ENGELLENNER:

Q. But in paragraph 115, you had a personal opinion as to what the term playlist meant, and that included the words for playback, a list of one or more audio files for playback; is that correct?

MS. REISTER: Objection. Vague. Scope. Relevance. Misstates his testimony.

A. So, again, I had a different task in the analysis that led up to the creation of Exhibit 8, and the domain of discourse for the task on page 46 of Exhibit 8 was, given these three constructions, opine on the appropriateness of, you know -- pick one and opine on that construction, and that's what I did.

BY MR. ENGELLENNER:

Q. To the extent you say it accurately describes the means and includes the word "for playback," isn't that your expert opinion as to what the term playlist means?

A. So --

MS. REISTER: Objection. Vague. Scope. Relevance. Misstates the testimony.

A. I mean, what paragraph 115 is literally saying is my opinion about a person of ordinary

skill in the art. That's what I'm saying here. I'm saying this is what I believe a person of ordinary skill in the art would say that it accurately describes the meaning. That is not to say that there are other ways that would also accurately describe the meaning. So of these three, in Exhibit 8 on page 46, what I'm saying is the person of ordinary skill would understand that the respondent and intervenors accurately describes the meaning. It's not saying that anything else is completely wrong. These -- of these three choices, that one accurately describes the meaning.

BY MR. ENGELLENNER:

Q. Including the words "for playback"?

MS. REISTER: Objection. Scope. Relevance. Asked and answered.

A. Yes. Including the words "for playback", that a person of ordinary skill would say that accurately describes the meaning.

BY MR. ENGELLENNER:

Q. So what does playback mean to you?

MS. REISTER: Objection. Vague. Scope. Relevance.

A. I don't recall to what extent playback is a term in the specification, so to answer that

question, I would want to refresh my memory as to if or how playback is used in the specification.

BY MR. ENGELLENNER:

Q. Well, what is your sense of the ordinary and plain meaning to someone skilled in the art to the words "for playback"?

MS. REISTER: Objection. Scope. Relevance.

A. So if we're talking about outside -- outside of the patents, "for playback" would be understood as that -- whatever it's referring to is going to be -- the two terms often used were playout and playback, and the idea is that ultimately you're going to process the media and have it, you know -- send it to a speaker, and send it to the DA converter and have it come out as sound.

BY MR. ENGELLENNER:

Q. So the word playlist is a compound word; is it not?

MS. REISTER: Objection. Foundation. Scope. Relevance.

A. I don't know.

BY MR. ENGELLENNER:

Q. In the sense -- I mean, in the sense it's formative to commonly understood words play and

list?

A. It's certainly formed of two words. Whether or not it's considered a compound word, I don't know.

Q. So a playlist is different from list; is it not?

MS. REISTER: Objection. Foundation. Relevance.

A. Well, sure. List is a far more general concept. Playlist would be an instance of a list.

BY MR. ENGELLENNER:

Q. And the word "play" by itself denotes a function, does it not?

MS. REISTER: Objection. Foundation. Relevance.

A. I'm sure if we look at the dictionary -- sorry, counselor. I shouldn't have interrupted you.

I'm sure if we look in the dictionary we'll see lots of functional definitions of play.

BY MR. ENGELLENNER:

Q. So the function you just described for playout or playback of ultimately creating sound in speakers, isn't that what the "play" part of playlist means?

MS. REISTER: Objection. Vague.

Misstates his testimony. Relevance.

A. You know, I don't think people think -- I think playlist is compound or not is a word, I don't think people deconstruct it further than that, so I don't think people read anything deep into the use of "play" in playlist. I think playlist is now considered and has been for a long time. It's an atom, it's fundamentally referring to a list.

BY MR. ENGELLENNER:

Q. A list of audio files for playback?

A. Well --

MS. REISTER: Objection. Misstates his testimony.

A. Well, in the '952 patent, that was certainly one of the constructions and of the three -- so within the disclosures of the patent, of the three that were given in the ITC, that's the one that I opined would best match a person of ordinary skill in the art's understanding.

BY MR. ENGELLENNER:

Q. If I could refer you to paragraph 23 of your declaration on the '652 patent where you cite publication by Hacker.

A. Just need you to hold up a bit.

I'm sorry. Are we in Exhibit 6 or Exhibit

7?

Q. Exhibit 6.

A. Okay. Exhibit 6.

Q. Okay. Paragraph 23.

A. Thank you. Okay. I'm there.

Q. Now, it appears to me that you cite Hacker as explaining that, Behind the scenes, a playlist is just a plan text file. I think you probably meant "plain text file." I'm not sure what "plan text file" is. But do you see that passage there in the middle of the paragraph?

A. I do, and I would agree that plan is undoubtedly a typo and should be plain.

Q. So is it fair to say that a playlist is text file?

MS. REISTER: Objection. Vague. Misstates his testimony.

A. I mean, within the context of Hacker, that's -- for Hacker's view of the world, that's -- let me just refresh my memory on one little point.

You don't happen to have a copy of Exhibit 1020?

BY MR. ENGELLENNER:

Q. 1020?

A. Yeah, that's Hacker. Sorry.

Q. I only have excerpts of it. But why don't I -- I'll withdraw the question and just ask you more generally.

A. Sure.

Q. Is it your understanding that playlists are text files?

MS. REISTER: Objection. Vague. Scope. Relevance.

A. I would said the word playlist doesn't connote -- inherently connote the form of the playlist text files. So, again, back in the '70s, text -- a playlist was a piece of paper. In the computer age, it could be a text file. There's -- there's lots of embodiments of playlists inside a computer.

BY MR. ENGELLENNER:

Q. So around 2000, Windows Media Player was around; isn't that correct?

A. I'm sure Microsoft had some player. I don't recall who the media player or for the WMP, who it was, but I'm happy to believe it existed.

Q. So you're happy to agree that playlists existed in Windows Media Players?

MS. REISTER: Objection. Vague. Misstates his testimony. Form.

A. What I said, I'm happy to believe Windows Media Player existed or Microsoft had some media player that existed. I just don't recall the dates of the product.

BY MR. ENGELLENNER:

Q. I'd like to mark this as the next exhibit.

(Exhibit No. 13 was marked for identification.)

BY MR. ENGELLENNER:

Q. I've given you Exhibit 13, and I believe it's title is the Microsoft Windows Media Player 7 handbook. Is that a document that you are familiar with?

A. Off the top of my head, I have no idea if I have ever seen this document before. I don't recognize it. How's that?

Q. And so I'd like to call your attention to page 49 and ask you does it describe playlists there?

MS. REISTER: Objection. Vague. Scope.

A. So I'm not -- as I said, I don't believe I've ever seen this document. It appears to be a 56-page document. I will attempt to answer your questions, but having not seen it, I don't believe

it's fair to ask me to analyze the document in realtime. Typically, before I would opine on a document like this, I would want some time to read it from front to back. Maybe consult related documents before I start interpreting things. I think to do so -- that's the most appropriate manner to operate in as an expert. I'll attempt to answer your question, but I may need to basically read the entire document to understand the document and all the disclosures and the context. So sorry for that speech. But now ask your question again.

BY MR. ENGELLENNER:

Q. Don't worry. I'll try not to dive deep into this document, except to ask you to note the second page copyright notice of 2000?

A. I did note that.

Q. And is it fair from just looking at page 49 to conclude, that at least as of the year 2000, Windows Media Player was using something called playlists?

MS. REISTER: Objection. Scope. Relevance.

A. I can't opine on that. A word is appearing on page 49, and I would want to know more about how this system worked, what it called

playlist, the whole 9 yards. All I see is the word playlist on page 49, and I don't think I can offer any substantive opinion just based on that.

BY MR. ENGELLENNER:

Q. Okay. The second sentence under the heading Using Playlist says the term comes from the radio industry and refers to a list of songs that a disk jockey plays on a particular radio program.

Without reading this entire document, is that one sentence consistent with what we discussed about earlier today your understanding of the use of playlists in the radio industry?

MS. REISTER: Objection. Scope. Relevance.

A. My understanding is that's the ultimate genesis of the word playlist; that it starts from the broadcast radio industry of long before the digital world.

BY MR. ENGELLENNER:

Q. Now, physically, when a music player, like Windows music player or -- let me back up. Are you familiar with media players?

MS. REISTER: Objection. Scope. Relevance.

A. Generically, yes.

BY MR. ENGELLENNER:

Q. And are you familiar with playlists as used in media players?

MS. REISTER: Objection. Scope. Relevance.

A. I am not so familiar that I can think of concrete uses of them in specific players. Or said another way, I would want to go and refresh my memory of various iconical music players. Just to further make it clear, the issue in my head, these things have evolved fantastically over time, and without doing a little research, I know I don't have clear in my head is any player that I might talk about, you know, when that -- at what point in time did that player exist.

Q. But we know from Exhibit 13 that Windows Media Player did exist in 2000, and that it used playlists; isn't that correct?

MS. REISTER: Objection. Vague. Misstates the testimony.

A. I'm only agreeing that this document, Exhibit 13, existed as a copyright date of 2000. Beyond that, as I said, I'm not willing to offer an opinion until I study what's in here.

BY MR. ENGELLENNER:

Q. Okay. But more generally, regarding playlists and media players, even if you want to draw on present-day technology -- do you have an understanding what a playlist is in the media player?

MS. REISTER: Objection. Scope. Relevance.

A. I mean, I know of examples of playlists. You know, playlists are different in different players, but I certainly know how some applications use playlists today.

BY MR. ENGELLENNER:

Q. For an application to use a playlist today, the playlist would have to be a file, a data file; is that correct?

MS. REISTER: Objection. Foundation. Scope. Relevance.

A. I would say no.

BY MR. ENGELLENNER:

Q. And why not?

MS. REISTER: Same objection.

A. I don't know how to answer it other than to say there's no requirement that it be in the order. I would say why would one think there would be? I mean, there's -- you know, today, you have a

tremendous number of options for representing data. A file is certainly one of them, and it's probably the simplest, but it's not exclusive.

(Exhibit No. 14 was marked for identification.)

BY MR. ENGELLENNER:

Q. As I mentioned before, we do not have the full copy of the Hacker publication that Samsung submitted as Exhibit 1020 in these proceedings, but I've given you and marked as Exhibit 14 an excerpt from that. Does this document look familiar?

A. Yes, it does -- or, yeah. I would agree it looks like some excerpts from Exhibit 1020.

Q. So I'd like to refer you to page 372, which is actually the last document -- last page in this document.

A. Okay.

Q. And it's a glossary of terms that are used.

A. Okay.

Q. And do you see that the term playlist appears there?

A. I do.

Q. And how does Hacker re -- refer to it?

A. If you're asking me what Hacker's

definition of it, so in his text, he was using the definition, a text file referencing one or more paths to MP3 files on a system, and then he gives some properties of playlists.

Q. Does it say that the playlist allows users to create custom playback sequences?

MS. REISTER: Objection. Document speaks for itself.

A. Sure. The next sentence is, "Playlists allow users to create custom playback sequences on a hard drive without physically rearranging files."

BY MR. ENGELLENNER:

Q. So your own exhibit Hacker refers to playlist as a text file. Would you agree with that assessment?

A. If you're asking me does Hacker -- Hacker's use of playlist say it's a text file? Yes, that's what Hacker says.

Q. Is that a conventional structure for a playlist, a text file?

MS. REISTER: Objection. Form. Scope. Relevance.

A. Sure. I would say it's the simplest, and I guess a book like this has no need to go into any detail for the myriad of ways you could represent a

playlist. So as I said, a text file is certainly the simplest way to represent one and that appears what he's using.

BY MR. ENGELLENNER:

Q. So have you ever worked with playlists as text files?

MS. REISTER: Objection. Vague. Scope. Relevance.

A. Me personally? No, I don't think I've ever worked with playlists as text files. I think all the playlists I've had have been somewhat more sophisticated.

BY MR. ENGELLENNER:

Q. When a playlist is resident on a media player as a text file, do you have any sense as to how big it might be?

MS. REISTER: Objection. Vague. Scope. Relevance.

A. You're going to have to be more specific. What player are we talking about here?

BY MR. ENGELLENNER:

Q. Well, just generically let's talk about the Windows Media Player that does use playlists and let's generalize it to a playlist with ten songs and it's a text file, any sense as to how big that file

may be?

MS. REISTER: Objection. Vague. Incomplete hypothetical. Relevance.

BY MR. ENGELLENNER:

Q. Would it be less than 1,000 data bits or a couple thousand kilobits?

MS. REISTER: I repeat the objection.

A. So you're going way too far off in a hypothetical. We're talking Windows Media Player and text files. There's nothing what I've seen and what you've shown me in Exhibit 13 that suggests that they even use text files. So I think how playlists are used and represented is going to be specific to every system, and as such, one would need to study the operation of that system to answer your question, and I haven't done that for the Windows Media Player.

BY MR. ENGELLENNER:

Q. So just to be clear, you're not familiar with the structure of playlists as text files on the Windows Media Player?

MS. REISTER: Objection. Vague. Misstates the testimony.

A. So I assume you're referencing the Windows Media Player 7?

BY MR. ENGELLENNER:

Q. Yes.

A. So a specific media player at a specific point in time, I have not studied the Windows Media 7 Player 7. So to the extent that I knew or didn't know how it worked, I don't know, because as I say, I -- I haven't done anything to recollect -- to refresh my memory as to what interaction, if any, I had with that piece of software and what I did with it and how deep I went into it. I haven't given any thought to Windows Media 7 Player in many years.

Q. How big is a URL -- or what is a URL?

MS. REISTER: Objection. Foundation. Scope. Relevance.

A. URL stands for Universal Resource Locator and is colloquially understood to be a web address as something you can put in a browser to access content or services on the web.

BY MR. ENGELLENNER:

Q. Would it be fair to characterize it as data?

MS. REISTER: Objection. Misstates the testimony.

A. I don't think most people look at it that way. If you view it from the standpoint of the

browser as something the browser inputs and processes from the browser standpoint, it's data.

BY MR. ENGELLENNER:

Q. And, again, any sense as to how big a data structure it would be, is it -- are we talking kilobits or --

MS. REISTER: Objection. Vague.

A. Sorry.

MS. REISTER: Scope. Relevance.

A. You said data structure? I'm not sure what you're referring to.

BY MR. ENGELLENNER:

Q. The URL.

A. Perhaps --

Q. The data, I think you just testified it's data?

A. Right.

Q. I'm trying to get a sense, it's digital data. Ultimately, it's a file with some discrete size?

MS. REISTER: Objection. Vague.

A. No, no.

MS. REISTER: Scope. Relevance. Misstates the testimony.

BY MR. ENGELLENNER:

Q. No? And if you could, please, enlighten me as to what a URL is?

A. A URL is a string, it's not a file, and it's a string that is used to represent the address of -- so URL can be a zillion things. And without going into the RFC for URL that defines what they are, I'm assuming you're using the colloquial notion of URL. It's a text string that indicates the address of content or services on the web.

Q. And any sense as to how big -- how many bits are in this string?

MS. REISTER: Objection. Scope. Relevance. Foundation.

A. I assure you you do not mean bits. That's -- that's -- I can't answer that question.

BY MR. ENGELLENNER:

Q. Why?

A. You know, I don't know what you mean -- bits in that context makes no sense. We'd have to go into all kinds of things that I'm certain you don't want to go into if you want to try to assess how many bits are in a URL.

Q. So is it smaller than a data file?

MS. REISTER: Objection. Vague. Form. Scope. Relevance.

A. This is total apples and oranges. I don't have any meaningful comparison between a URL and a file.

BY MR. ENGELLENNER:

Q. Okay. Let's look at one of the patents in this suit, perhaps the Qureshey '652 patent, and I'd like to refer you to Claim 1.

A. Claim 1 of the '652.

Q. In particular, Claim 1 section C --

A. Okay.

Q. -- Romanette triple i -- Romanette iii, it talks about receiving information in the second paragraph -- receiving information from the central system enabling the electronic device to obtain the one -- plurality of songs from at least one remote source.

A. Okay.

Q. Do you interpret that to mean URLs?

MS. REISTER: Objection. Scope. Relevance. Calls for a legal conclusion.

A. If you're asking for a claim construction, I haven't offered opinions on claim construction. But I believe in the specification, there are disclosures of the use of URLs to obtain songs from a remote source.

BY MR. ENGELLENNER:

Q. And that would -- that would be one use of URLs to obtain songs from remote sources?

MS. REISTER: Objection. Form. Vague.

A. I'm not following your question. One use.

BY MR. ENGELLENNER:

Q. Is that a common use of URLs in this field of multimedia networking to obtain songs from remote sources?

A. Sorry. Just so we're clear, so you're not asking me a question about the patent, you're saying in the multimedia field, was it common to use URL to obtain songs?

Q. Right.

MS. REISTER: Objection. Relevance.

A. It certainly was at one point. And I believe with high likelihood, as of 2000, that was -- that certainly was a use of URLs.

BY MR. ENGELLENNER:

Q. And why would one use a URL rather than just obtaining a song?

MS. REISTER: Objection. Relevance. Foundation.

A. Well, one reason is because you can

leverage all of the existing infrastructure that you would have if you're doing -- if you're doing this on a personal computer, you can leverage the existing infrastructure on that personal computer to obtain the contents. You don't have to write your own software, so you can leverage the fact that that browser will retrieve whatever is pointed -- whatever is at the destination -- whatever a server returns when provided with that URL. So you're -- yeah, I mean, the most reason people do this is because the web is the most -- today -- is the most common content-delivery mechanism. And if you use URLs, you just have to write less software to do it because there's a good infrastructure you can use.

BY MR. ENGELLENNER:

Q. Okay. I'd like to turn to the subject of the Berman patent, and that is in connection with your declaration in the '652 patent. That would be Exhibit 6. Excuse me. Let me back up and say I'd like to discuss the White patent.

A. Okay.

Q. And that would be in connection with your testimony in the declaration marked as Exhibit 6.

A. Okay.

Q. So we'll mark the White patent.

(Exhibit No. 15 was marked for identification.)

BY MR. ENGELLENNER:

Q. Do you recall opining on the White patent?

A. I do.

Q. Did you study the White patent?

A. I did.

Q. Can you summarize what you believe the White patent teaches?

MS. REISTER: Objection. Vague.

A. I mean, I have a summary in the declaration starting at paragraph 34, and I would just refer you to that summary.

BY MR. ENGELLENNER:

Q. Now, you do refer to the paragraph 34 -- you do refer to the White patent and also paragraph 35 in which you describe figure 4 of the patent.

A. Correct.

Q. What does figure 4 of the White patent show?

MS. REISTER: Objection. Vague.

A. So figure 4 is a GUI, a Graphical User Interface, that White says is for displaying selectable audio information, so it's a GUI for display of selectable audio information.

BY MR. ENGELLENNER:

Q. And that selected audio information, I believe you said in the paragraph before, included songs, online radio stations, broadcasts, streaming audio and other selected information; is that correct?

A. That's correct.

Q. And you state on paragraph 35 that this GUI or interface allows users to view a radio dial 412; do you see that?

A. I do.

Q. And so is that an embodiment of what we talked about earlier today, the internet radio?

MS. REISTER: Objection. Scope. Relevance. Misstates the testimony.

A. Well, I think 412 is just a GUI, so possibly I'm not understanding what exactly you're asking.

BY MR. ENGELLENNER:

Q. Well, we talked about internet radio this morning, and we talked about, I believe, obtaining songs and other audio content streaming via an internet radio; is that an accurate assessment?

MS. REISTER: Objection. Vague. Mischaracterizes the testimony.

A. I mean, the transcript will show exactly what -- what we talked about. But generally we talked about internet radio being a simulcast or rebroadcast of traditional radio or a station that generates content that you don't typically interact with and you just listen to it.

BY MR. ENGELLENNER:

Q. So does figure 4, which you reproduced in your declaration, show an internet radio receiver?

MS. REISTER: Objection. Vague. Form.

A. So, again, figure 4 is just the GUI, right? So it's just trying to give you a sense of what's available to the -- to the user, and in White, they describe 412 as the radio dial, and this is all within the tab of the user interface that's called radio.

BY MR. ENGELLENNER:

Q. You also say that this GUI allows users to view either the radio dial or a current playlist selected by the user; isn't that correct?

MS. REISTER: Objection. Document speaks for itself.

A. Yes. That's the -- you're right. That's what the interface of figure 4 allows.

BY MR. ENGELLENNER:

Q. And how would one do that with this GUI here?

MS. REISTER: Objection. Form.

A. I don't recall. I mean, refresh my memory.

So I don't think that figure 4 is illustrating that particular function, but the specification says in column 11 around line 30 that in a different embodiment of the interface, the user would want to view a current playlist selected by the user. So you can select and view a playlist, but I don't think that function is exactly illustrated in figure 4.

BY MR. ENGELLENNER:

Q. Paragraph 35 of your declaration says, "The interface allows users to view a current playlist," and you make reference to the patent itself, column 12, lines 29 through 36.

A. Actually, I don't believe that's correct.

Q. So does figure 4 show a playlist?

A. So figure 4 is showing, as I said, the radio tab of the interface being selected, so I think figure 4 is illustrating one aspect of -- just one aspect of the interface.

Q. But the question was, does it show a playlist?

MS. REISTER: Objection. Asked and answered.

A. It's a little unclear. The description of the figure doesn't go into detail as to what every element is, but it certainly talks about -- for example, top ten lists being provided to the user, and generally the specification does describe the existence of playlists and manipulations of playlists. Whether those are illustrated in figure 4 is a little unclear.

BY MR. ENGELLENNER:

Q. Is it fair to say figure 4 does not show a playlist identifying plurality of songs?

MS. REISTER: Objection. Vague. Misstates the testimony.

A. I believe I've answered that question. The figure itself, it's a little unclear. It's a little unclear what's going to happen, for example, when you select the top 10 lists. This level of the interface, there certainly is no list of songs, and when you drill down to other components of the interface, the spec describes the ability to, as I said, view and manipulate playlists.

BY MR. ENGELLENNER:

Q. Am I correct that radio dial includes buttons that says user selected playlist and group playlist?

A. Why am I looking at the bad copy. Here we go.

Yes. It does include those buttons.

Q. We looked at claim 1 in the '652 patent a little while ago, and I referred you to -- this is, again, Exhibit 3.

A. Okay.

Q. And I referred you to Romanette iii. And the first of the three steps in that function described in Romanette iii is receiving a playlist assigned to an electrical device from the central system, the playlist identifying a plurality of songs. Are there any songs identified on that figure 4?

A. I mean, I don't think we can tell. Figure 4 isn't described at that level of detail.

Q. So can we say one way or another it has received a playlist?

MS. REISTER: Objection. Vague. Misstates the testimony.

A. That's a completely different issue, and

that's not what your previous questions were about. I mean, I'm happy to drill into that issue, but that's not an issue of this interface.

BY MR. ENGELLENNER:

Q. I'd like to refer you to paragraph 39 of your declaration in which you described the elements of the claim 1 and where they might be present in the White patent.

And --

A. Okay.

Q. You identify several figures from the patent in this paragraph, figures 3, 4 and 8. I'd like you to look at 3, 4 and 8 and tell me where in White's system is any of his embodiments receiving a playlist identifying a plurality of songs?

MS. REISTER: Objection. Vague.

A. So paragraph 39, I don't believe, is addressing that particular issue. We can talk about that issue, but just so that the questions are clear, the citations to the figures in paragraph 39 are for different elements.

BY MR. ENGELLENNER:

Q. So is there somewhere else we should be looking at your declaration for White's disclosure of this step of receiving a playlist identifying a

plurality of songs?

A. I think the confusion is, the analysis is trying to track the claim language a little more closely than your question was.

Q. So let's start with -- we can start with the disclosures in paragraph 39 -- or the citations in paragraph 39.

A. So I think figure 8 probably shows it best, and the descriptions in figure 8 that are in the spec as well starting at the bottom of column 15 and going through most of column 16 where the user will select audio information and the top of column 16 says, for example, "The user may select a song, a plurality of different songs, an entire album," and then skipping a little bit to line 6 of column 16, "Upon selecting the reference to audio information, the method may proceed to step 802 where a playlist is created to represent the users-selected audio information. So line 4 says you can select a plurality of different songs and create a playlist corresponding to those selections. And then we can go into the text in column 8 that further describes it, but it's also easy to see in figure 8 that you create the playlist in box 802 and, ultimately, you sent the playlist to the device in box 813.

Q. Box 800, 801, 802, are all occurring on the server, are they not?

MS. REISTER: Objection. Foundation. Form.

A. So it's just simply described as it's occurring on a web page, so a server certainly is one possibility, but the description doesn't actually explicitly reference a server.

BY MR. ENGELLENNER:

Q. But whether you call it a web page via the internet or you call it a server, it's -- these functions are occurring outside of the playback unit, are they not?

MS. REISTER: Objection. Vague. Foundation. Misstates the testimony.

A. It's -- I'm trying to think, what is their device, so we can get more specific there?

Yes. So these steps are occurring outside of -- so you have a variety of options where the playlist gets sent, so whatever that destination is, these steps are not occurring at that destination.

BY MR. ENGELLENNER:

Q. And so is it fair that the boxes that follow 804 where user-prompted for destination device are -- those steps are being carried out at

the destination device, I think he calls it a player device?

MS. REISTER: Objection. Vague. Misstates the testimony.

A. I think beyond 804, some of this is a little ambiguous as to where it occurs. Some of this is occurring beyond 804s. It's certainly occurring at the destination device. Others are -- depending on which branch you go, are being performed at the same entity that was performing boxes 800 through 804.

BY MR. ENGELLENNER:

Q. Okay. To say it in converse, is it fair to say that boxes 800 through 804 are not occurring on the destination device?

MS. REISTER: Objection. Vague. Misstates the testimony.

A. I think that's fair.

BY MR. ENGELLENNER:

Q. Okay.

A. Can we do a quick break when you get to a stopping point?

Q. This would be a good stopping point, and I propose having a really quick lunch if you're hungry.

THE VIDEOGRAPHER: Off the record 1:17 p.m. to 1:54.

(A recess was taken from 1:17 p.m. to 1:54 p.m.)

THE VIDEOGRAPHER: Starting of Number 4. Back on the record at 1:55 p.m.

BY MR. ENGELLENNER:

Q. I'd just like to ask you a couple more questions about the White patent.

A. Okay.

Q. Again, that's Exhibit 15, and I'd like to direct your attention to figure 8.

A. Okay.

Q. Now, we had talked a little bit about the server side and the player side. In the boxes labeled 812 and 814, the term Execute Playlist appears; is that correct?

A. It does.

Q. And what do you interpret that to mean?

(Off the record for court reporter to adjust realtime.)

THE VIDEOGRAPHER: Off the record at 1:55.

(A recess was taken from 1:55 to 1:57 p.m.)

THE VIDEOGRAPHER: Back on the record at 1:57 p.m.

BY MR. ENGELLENNER:

Q. So it looks like my question was captured by the court reporter, but let me just repeat it anyway for your benefit.

A. That would be fine.

Q. We talked a little bit about figure 8 already and the server side and the player side. There's two boxes on the player side, boxes 812 and 814 that contain the legend, Execute Playlist. I'd like to know what you interpret that to mean?

A. I think given both, according to the plain text here, but more importantly based on the disclosures of the playlist and execute playlist in the spec, I would say a person in the skill would understand that means that the system plays the content indicated on the playlist.

Q. Okay. So now I'd like to turn to the Berman patent. We'll have to mark that as an exhibit.

A. Okay.

(Exhibit No. 16 was marked for identification.)

A. Oh, sorry.

Q. Now, the Berman patent was one on which you opined in the '952 patent proceeding which would be the '740 proceeding; do you recall this patent?

A. I do.

Q. And if I could direct your attention to figure 1. I'd like to ask you, what is your understanding of figure 1?

MS. REISTER: Objection. Vague.

A. So the Berman describes figure 1 as a block diagram of the playback unit, in particular showing the connections to the home audio system on the left and the network on the right.

BY MR. ENGELLENNER:

Q. So everything in the box labeled 100 is the network -- can we call it remote server or host?

MS. REISTER: Objection. Vague. Mischaracterizes the testimony.

A. Sorry. I'm losing you with remote server and the host.

BY MR. ENGELLENNER:

Q. I'm sorry. Let me just withdraw that question. So I misspoke.

The box labeled 100 in figure 1, it's referred to in the patent text, I believe, as the playback unit; is that your understanding?

A. Yes.

Q. And the box labeled 107 and 104 are connected to the playback unit via the internet, which is shown in the figure, which is symbolized by 102; is that correct?

MS. REISTER: Objection. Form.

A. Yeah, I think they more generally say it's a network and the internet is an example.

BY MR. ENGELLENNER:

Q. Yes, you're correct. Thank you. Now, with regard to the '952 patent in which the Berman patent is a reference, I'd like to refer you to Claim 1.

A. Okay.

Q. And there's a recitation in Claim 1 as an electronic device; do you see that at the beginning of the claim repeated throughout the claim, the electronic device?

A. I see that.

Q. Is it your understanding that the box labeled 100 in the Berman patent and called Playback Unit performs the functions of the electronic device in the 58 -- excuse me -- '952 patent?

MS. REISTER: Objection. Form. Relevance.

A. I would think if one was making an invalidity argument based on Berman for the '952 patent, they would point to box 100 as the playback unit as being the electronic device of the '952.

BY MR. ENGELLENNER:

Q. And is that how you approached it, your analysis of the Berman patent in your declaration Exhibit 7?

MS. REISTER: Objection. Vague.

A. Essentially, yes.

BY MR. ENGELLENNER:

Q. Now, I'd like to refer you to paragraph 33 of your declaration and figure 3 of the '952 patent, which might be a little clearer if you look at the figure itself.

A. Sure.

Q. You indicate that in paragraph 33 that the operation of the playback unit is illustrated in this figure and in figure 4; is that correct?

MS. REISTER: Objection. The document speaks for itself.

A. Yeah, that's what I state in paragraph 33.

BY MR. ENGELLENNER:

Q. And where in the -- in figure 3 -- figure 4, for that matter, is a playlist assigned to an

electronic device identifying a plurality of songs?

MS. REISTER: Objection. Vague.

A. Well, in light of the disclosures in Berman, if you just look at figure 3, that would be step 308 -- or box 308.

BY MR. ENGELLENNER:

Q. And so is it your opinion that Berman's song list is a playlist within the meaning of the Qureshey claims?

MS. REISTER: Objection. Form. Misstates the testimony.

A. Yes.

BY MR. ENGELLENNER:

Q. So you basically equate it -- song list in Berman with playlist in the patent claims; is that correct?

A. Yes.

Q. Now, why is Berman's device shown as needing a song list?

MS. REISTER: Objection. Form. Vague.

A. I guess I don't understand the question.

BY MR. ENGELLENNER:

Q. Okay. What is the function of the song list in Berman's device?

A. The song list is -- let's see exactly what Berman says.

So the song list is representing the content that the user could play.

Q. Would it be fair to call it a catalog of all the songs that the user has rights to?

MS. REISTER: Objection. Misstates the testimony.

A. It certainly is the case that after box 308, the song list is supposed to represent the songs that the user is able to access on this device.

BY MR. ENGELLENNER:

Q. So is it fair to call it a catalog of songs?

MS. REISTER: Objection. Form. Mischaracterizes the testimony.

A. Unless that's what Berman calls it, and I'm not finding any specific place where he refers to it as the catalog, I would say, no.

BY MR. ENGELLENNER:

Q. Okay. So it's a list of all available songs, then?

MS. REISTER: Objection.

BY MR. ENGELLENNER:

Q. Is that correct?

MS. REISTER: Misstates the testimony.

A. Well, again, as we discussed, and I thought you were clarifying my previous answer, it's the songs that the user has access to on this device.

BY MR. ENGELLENNER:

Q. And in your opinion, is it a playlist?

MS. REISTER: Objection. Scope. Relevance.

A. I believe it meets the board's construction of playlist.

BY MR. ENGELLENNER:

Q. Is it a list in which media items or songs are arranged to be played in the sequence?

MS. REISTER: Objection. Form. Scope. Relevance.

A. I don't believe that Berman discloses that they're arranged to be played in a sequence.

BY MR. ENGELLENNER:

Q. Now, boxes 304 and 30- -- excuse me -- 304, 306 and 308, appear to be a synchronization function; is that a fair characterization?

MS. REISTER: Objection. Foundation.

Form.

A. I wouldn't describe it that way. Perhaps you have a different notion of synchronization than I do.

BY MR. ENGELLENNER:

Q. Well, box 306 is a decision box, I believe, in the parlance of flow diagrams; is that correct?

A. Yes.

Q. And the question that's asked there, Is the song list current? Is that correct?

A. Yes.

Q. And if it -- and the input to this is the song list that is resident on the player device; is that correct?

MS. REISTER: Objection. Foundation. Form.

A. Original, yes, that's what the song list is.

BY MR. ENGELLENNER:

Q. So the playback unit sends its current song list version to the DUL server in box 304, and if it is current, according to the DUL server, the flow diagram continues to box 310; is that correct?

MS. REISTER: Objection. Form.

Compound.

A. I mean, that's certainly what it's showing in the flowchart. I mean, I think there's a more fulsome description of what is happening in the spec.

BY MR. ENGELLENNER:

Q. So the -- what is the player device sending to the DUL server when it sends a song list version?

MS. REISTER: Objection. Foundation. Form.

A. I'm sorry. Could you repeat the question?

THE COURT REPORTER: Sure. "what is the player device sending to the DUL server when it sends a song list version?"

A. When it sends a song list version...

Okay. So it's not specifically specified, so it's just sending a song list. I don't think it's necessarily sending the song list because it has the song list. I think the point of box 306 is that there is some communication with the DUTL server.

THE COURT REPORTER: With the what?

THE WITNESS: DUTL, all caps.

A. Information is sent to the server such

that the server can determine whether or not the song list is current. And if it's not current, then clearly you get another song list -- a new, updated song list is sent back. So I think the person in the skill would understand between box 306 and 308, what's being sent is information -- sorry. I think you asked me between 304 and 306?

BY MR. ENGELLENNER:

Q. Yes.

A. Thank you. So what is actually sent -- so the flowchart says, "Send song list version to the chart," and the description of this is, doesn't really add much --

Q. Maybe I can help you out by referring you to column 9, line 60 through column 10, first paragraph.

A. I think this -- these disclosures here are just referring to the communication between the server back to the playback unit, or perhaps I'm missing what you're pointing to. You said column 9.

Q. Column 9, line 62, column 10, line 5. And the sentence that bridges those two columns is probably the most important one. It reads, "The next two bytes comprise a song list version field that provides the version number of the song list

currently stored in the memory of the playback unit."

So with that in mind -- maybe I'll just withdraw my question and just ask you: Is it a fair characterization to say that in box 304 the playback unit is sending a data packet with the version number of its song list to be compared with the DUL's most current song list?

MS. REISTER: Objection. Form. Foundation.

A. Right. So this is describing the user request data packet, which is what's used by the playback device to validate the user's authorization. And the song list -- says here -- is identified by a version field -- by, essentially, a version number.

BY MR. ENGELLENNER:

Q. So if the playback unit, for example, sends a two-byte packet of data that is encoded for a number, and let's say, for example, it's, you know, version 3.0, and if that matches the current song list version number on the DUL, the process continues to box 310; is that correct?

MS. REISTER: Objection. Incomplete hypothetical. Form.

A. Yes. I think that's fair.

BY MR. ENGELLENNER:

Q. And if the number doesn't match, then what happens?

MS. REISTER: Objection. Incomplete hypothetical. Form.

A. Well, it says that the server will send an updated song list.

BY MR. ENGELLENNER:

Q. And that song list is all of the songs that the user's -- that are currently available to the user; is that correct?

MS. REISTER: Objection. Foundation. Misstates the testimony.

A. Yeah, I think it's the -- the songs that this user is able to access on this device.

BY MR. ENGELLENNER:

Q. And so collectively boxes 304, 305 (sic) and 308 are performing a synchronization function to ensure that the player device's song list is the current list of songs that are available to that player device; is that correct?

MS. REISTER: Objection. Form. Mischaracterizes the testimony.

A. Unfortunately, I think I fell offtrack. I

think there was a bug in your recitation of the flowchart.

BY MR. ENGELLENNER:

Q. The question was, and so collectively boxes 304, 305 and 308 are performing a -- excuse me -- 304, 306 and 308 are performing a synchronization function to ensure that the player device's song list is the current list of song list that are available to the player device; is that correct?

A. Again, I wouldn't characterize -- you know, I don't think it's -- to me, I wouldn't -- I don't think it's best -- synchronization, I don't think is the word that best describes this.

Q. Is there another word that comes to mind?

A. I would just say update.

Q. Okay. But if there is -- if there's a mismatch of the version numbers, then the DUL sends an updated list of all the songs available to the user on that playback device; is that correct?

MS. REISTER: Objection. Vague. Asked and answered.

A. I believe that's correct.

BY MR. ENGELLENNER:

Q. And the song list, is it a range to be

played in an order?

MS. REISTER: Objection. Foundation. Vague.

A. I think you've asked that question. And I believe what I said is there's no -- I don't believe there are disclosures in Berman of it being played in an order. I think this is a more interactive system, so the user gets to specify order.

BY MR. ENGELLENNER:

Q. And at that point, the song list is not arranged for playback. The user then has to select the song, isn't that correct? Or a multitude of songs?

MS. REISTER: Objection. Compound. Vague. Foundation.

A. No, I wouldn't -- I would disagree. I mean, I think you're -- I think you're reading too much in your use of the word playback.

BY MR. ENGELLENNER:

Q. Well, I'm reading box 308 that says, "DUL sends updated song list to playback unit," and then the very next box is 310 in which the user selects artist and song title -- artist and song title.

A. Right.

Q. So at the point that the song list is

being sent to the playback unit, there are no pending instructions to play anything, is there?

MS. REISTER: Objection. Vague. Foundation.

A. Sure. The playlist has just been created.

BY MR. ENGELLENNER:

Q. "Song list"?

A. Thank you. The song list has -- has just been created, so it's been created on a different device, and when it comes down to the playback device, anything on there can be played.

Q. It can be played but only after the user selects a song, artist, title?

MS. REISTER: Objection. Vague. Foundation. Asked and answered.

A. It's an interactive system, and this is sort of equivalent -- the user has to do something for the system to start playing, at least in the embodiment that's described in figure 3.

BY MR. ENGELLENNER:

Q. So is it fair to say, though, the song list that's sent by the DUL to the playback unit is not arranged for automatic playback?

MS. REISTER: Objection. Foundation. Vague. Misstates the testimony.

A. So figure 3 is -- is a specific functional view through the playback device. It's not describing all of the modes of operating the device, and in figure 3, the user -- more the mode that's being described in figure 3, this interactive mode, the user does have to select an artist, as it -- has to make a selection. The selection, in this case, illustrated in box 310.

BY MR. ENGELLENNER:

Q. So just to be clear, my question was, is that song list arranged for automatic playback? If you could just answer that yes or no.

A. You can't tell from just figure 3, the use of it in figure 3. The user has to select. I believe there's other disclosures of noninteractive playback of songs.

Q. I'd like to mark one more patent as an exhibit.

(Exhibit No. 17 was marked for identification.)

Q. Now, Exhibit 17 you have before you is U.S. Patent 6,199,076. It's also a patent that you opine upon in your declaration in the '952 patent proceeding; is that correct?

A. That's correct.

Q. Can you summarize what Logan is teaching?

MS. REISTER: Objection. Vague.

A. I have a summary of it in the declaration starting at paragraph 41.

BY MR. ENGELLENNER:

Q. The title of the Logan patent is Audio Program Player Including a Dynamic Program Selection Controller. Do you have an opinion or do you know what the word "dynamic" means in that contents?

MS. REISTER: Objection. Vague. Scope. Relevance.

A. I haven't considered that question.

BY MR. ENGELLENNER:

Q. I have to admit I'm a bit confused by all the file descriptions in this patent. For example, in the abstract it states that "The host organizes program segments by subject matter and scheduled programming in accordance with preferences associated with each subscriber."

Do you see that?

A. Yes.

Q. And then on column 6, lines 51 through 59, it says, "The host periodically transmits a download compilation file upon receiving a request from the player."

Is it your understanding that the download compilation file is the same as the program segments that are being referred to in the abstract?

MS. REISTER: Objection. Form. Scope. Relevance.

A. No, I don't think those are the same things.

BY MR. ENGELLENNER:

Q. And how are they different?

MS. REISTER: Objection. Vague.

A. So the program segments are the actual -- I believe are the actual media. And I think the download -- the compilation file is some collection of segments.

BY MR. ENGELLENNER:

Q. Okay. Maybe this will get clearer as we go on. Maybe not. On figure 1, it shows a schematic diagram of a host and a player; is that correct? I believe the host is labeled 101 and the player is labeled 103.

A. So the host is 103, and --

Q. The other way around, I think.

A. Sorry. Thank you. The host is 101 and the player device is 103, correct.

Q. Now, the player device 103 has a box

labeled Program Data. Is that where the download compilation file is stored?

MS. REISTER: Objection. Scope.

A. Yes.

BY MR. ENGELLENNER:

Q. Now, if I could direct your attention to figure 5. Figure 5 illustrates something called Selection File 351.

A. Right.

Q. Is that the same as either the download compilation file or the program segments?

MS. REISTER: Objection. Form. Vague.

A. I think -- no, I think they're different.

BY MR. ENGELLENNER:

Q. So what is selection file 351 and how does it relate to the rest of the disclosures?

A. I think 351 is the actual collection of sequence -- of programming sequences that are going to be played out.

Q. Wouldn't this be in the download compilation file?

MS. REISTER: Objection. Foundation.

A. Sure. All or part of it certainly could be.

BY MR. ENGELLENNER:

Q. Okay. Now, figure 4 shows something labeled Programs 303.

A. Right.

Q. Is that -- are the little boxes within that the larger box program segments?

MS. REISTER: Objection. Vague. Foundation.

A. Sorry. This isn't numbered, but maybe you can point to let me know what you're referring to.

BY MR. ENGELLENNER:

Q. Is the box that's labeled program --

A. Right.

Q. -- is it your understanding that it contains one or more program segments?

A. Let me see the terminology that they use.

MS. REISTER: Objection. Scope. Relevance.

A. Right. So Program in 303, just to be clear, isn't referring to software. It's to the segments, and I think that -- so what's representing are a list of program segments, a collection of program segments.

BY MR. ENGELLENNER:

Q. Now, the patent also refers to Programs

Table on column 18, lines 51 through 55 -- excuse me -- 41 through 45. Is that the same as the box Programs 303 in figure 5 -- I mean, figure 4?

A. I think so. That's what they say. I think Programs is maybe in figure 4 is a shorthand for Program Table because I think all the references to 303 are Programs, plural, Table.

Q. And what is a session schedule file that's described in column 7, lines 4 through 10?

MS. REISTER: Objection. Vague. Form.

A. So it's a way of -- it's -- I believe this is essentially the -- right. So this is the list that's going to contain the indications of the content to be played, so it has a list of these program identifiers -- each program identifier corresponding to this program segment that's going to be played.

BY MR. ENGELLENNER:

Q. So you need both of them, the program segments and the session schedule file to construct a --

A. Sure. It's the same distinction between a playlist and the content to be played itself.

MS. REISTER: Objection. Form.

Foundation.

BY MR. ENGELLENNER:

Q. So the content is in the program segments, and the session schedule file is just the list of that content?

MS. REISTER: Objection. Compound. Vague.

A. It's -- at a high level, yes. It's -- it's a little more complicated than that.

BY MR. ENGELLENNER:

Q. So if the session schedule file is analogous to a playlist, is -- is that what -- is that what you just suggested? I'm sorry. I wasn't paying attention.

MS. REISTER: Objection. Misstates the testimony. Foundation.

BY MR. ENGELLENNER:

Q. Did you say that the Program Segments correspond to Content and Program Schedule File corresponds in some general way to the playlist?

MS. REISTER: Objection. Asked and answered.

A. Yes. So the schedule file is the analog of the playlist, and the program segment identifiers are -- is what identifies the songs, if you will.

BY MR. ENGELLENNER:

Q. In columns 12, lines 3 through 5, they make reference to the schedule file as consisting of a sequence of program segment identification numbers which are used to compile a sequencing file and -- or sequencing file called the selections file. Do you see that?

A. I do.

Q. So what is the sequencing file and how is that different than the schedule file?

MS. REISTER: Objection. Vague. Asked and answered. My screen just went entirely white. Now, it's back. Can we go off the record?

THE VIDEOGRAPHER: Off the record at 2:47 p.m.

(Off the record from 2:47 to 2:48 p.m.)

THE VIDEOGRAPHER: Back on the record at 2:48 p.m.

BY MR. ENGELLENNER:

Q. Before we went off the record, we were talking about column 12, lines 3 through 5, of the Logan patent, and the discussion there of sequencing files and selection files, and the question I had posed to you is, what is the sequencing file and how

does it differ from the schedule file?

MS. REISTER: Vague. Asked and answered.

A. So the sequencing file is this intermediate structure that's created that's going to be used more directly in the playout of the content. So it's not something that a user sees or interacts with.

BY MR. ENGELLENNER:

Q. Which file is that?

A. The sequencing file.

Q. The sequence file?

A. Or -- which they also call the selections file.

Q. And would the user see the session schedule file?

MS. REISTER: Objection. Vague.

A. I don't recall.

BY MR. ENGELLENNER:

Q. I believe you testified that the session schedule file dictates what program segments are actually broadcast to the user. You may not have used the word broadcast; is that accurate?

MS. REISTER: Objection. Form. Mischaracterizes testimony.

A. No.

MS. REISTER: Counselor, is there a pending question?

MR. ENGELLENNER: Yes. I'm sorry.

MS. REISTER: I believe he answered your last question.

BY MR. ENGELLENNER:

Q. I asked -- I believe you testified that the session schedule file dictates what program segments are actually broadcast to the user; is that accurate?

MS. REISTER: I believe his answer was no.

BY MR. ENGELLENNER:

Q. And why would that be?

MS. REISTER: Objection. Vague.

A. Because that's not what I testified.

BY MR. ENGELLENNER:

Q. So what does the session schedule file do?

MS. REISTER: Objection. Form. Vague.

A. So the schedule file is going to indicate what is going to contain data that will be used to ultimately generate the playout, so it's an identification, these program segment identifiers

that are identifying media content that's to be played.

BY MR. ENGELLENNER:

Q. I believe you said that the sequencing file -- or the selections files occur, you know, deep down in the structure of this system and the user does not need to see them; is that correct?

MS. REISTER: Objection. Vague. Misstates the testimony.

A. Yeah, so I was just now talking about the schedule file and now you're talking about a different file?

BY MR. ENGELLENNER:

Q. Right. But does the -- would a user need to see the session schedule file?

MS. REISTER: Objection. Vague.

A. The schedule file, I believe, is what's created based on user's user selections.

BY MR. ENGELLENNER:

Q. But the user receives a broadcast of the program segments; is that a fair characterization of how the system works?

MS. REISTER: Objection. Foundation.

A. I would say, no.

BY MR. ENGELLENNER:

Q. And why not?

A. The word broadcast is not appropriate in this context. It's not receiving a broadcast.

Q. Do you recall what word they used, what the verb was, if it's not broadcast, that describes the transfer of audio information in Logan's system?

A. I believe they just say download. So you download program segments.

Q. So the session schedule file controls the download of program segments?

A. It indicates what is -- what is to be played and part of it is a system that determines that, given that schedule file, what needs to be downloaded.

Q. So I'm having a hard time understanding why you need both a session schedule file and a sequencing or selections file?

A. I think it's just the way -- the way in which the playout system works; that they build an intermediate structure that's used to direct the actual playout.

Q. And which one is the intermediate structure?

MS. REISTER: Objection. Asked and answered.

A. Now, I've forgotten. All this -- you're reminding me of your first comment of too many files.

BY MR. ENGELLENNER:

Q. Well, regardless of which one is intermediate, is it fair to say that both the session schedule file and the sequencing file are operating as intermediaries for the download of program segments to the user?

MS. REISTER: Objection. Form. Vague.

A. Can you read it back?

BY MR. ENGELLENNER:

Q. Let me rephrase it.

A. Okay.

Q. Is it fair to say both the session segment file and the sequencing file are operating in the background and that the -- what the user gets is a download of a program segment or segments?

A. I wouldn't agree with that characterization.

Q. Okay. Why not?

A. I just don't think it's accurate.

Q. Which part of it is not accurate?

A. Well, your use of the words background.

You're contemplating an implementation of this, and I don't think that that's warranted, given the disclosures here.

Q. Would it be fair to characterize the Logan system as internet radio?

MS. REISTER: Objection. Form. Scope. Relevance.

A. I think the content that -- can be downloaded in Logan is general, all right. There's disclosures of songs, but also saying that it can be other content, and I don't recall if there's a specific disclosure of radio in here. But because the disclosures are so general -- I mean, that in the sense of what the content is doesn't seem to matter to Logan, therefore -- it's certainly not excluded, but I don't recall if it uses the word radio in here when it's describing the program segments, but I can look.

BY MR. ENGELLENNER:

Q. Well, it's disclosing audio content and advertising; is that correct?

MS. REISTER: Objection. Foundation. Vague.

A. Yes. Internet radio is part of an application they're trying to support here so I -- I

mean, given what they talk about in the background of the invention, I think a word skilled would understand you can use the Logan system for an internet radio application, and I just don't recall if it specifically says that or not. In particular because they're so general in their treatment of what program segments are.

BY MR. ENGELLENNER:

Q. If I could refer you again to figure 5. There seems to be a hierarchy in this selections file in that the second box, which is labeled S Program ID. I believe when you look at the text of the patent, it describes a data packet that describes the subject of a particular program; is that your understanding?

A. I lost you --

MS. REISTER: Objection. Vague.

A. -- to what specifically you're referring to.

BY MR. ENGELLENNER:

Q. The second box from the top --

A. Are you talking about in the left-hand side, 351?

Q. Says, S Program ID?

A. S Program ID. I'm sorry. I just don't

see that. Oh, oh, I see.

Q. Two boxes.

A. Two boxes. Thank you.

Q. S Program ID.

A. Yes, I see.

Q. It is it your understanding that that's a portion of the -- what are we going to call this? -- program segment that describes what the subject is?

MS. REISTER: Objection. Form. Vague.

BY MR. ENGELLENNER:

Q. To help you out, maybe I can refer you to column 32 in the table that's there, which seems to decode all these letters in figure 5.

So maybe I'll just withdraw the question and ask you, is this -- what's being shown in figure 5 is a program -- is the selection that's shown in figure 5 and labeled 355, is it one or more program segments that include all these subsets of data fields described on page -- or column 32?

MS. REISTER: Objection. Form. Vague. Compound.

A. That question was too long. Maybe we could break it up.

BY MR. ENGELLENNER:

Q. Okay. What do you take away from figure 5? What is being shown here? What are they trying to illustrate here?

MS. REISTER: Objection. Form. Vague.

A. I think this is -- I believe -- let's go back to figure 5. This -- so I believe this is ultimately the selections file that -- which is a sequencing file, and this is more detailed about the sequence of events during playback, so this is actually what's going to occur -- this is what's going to be played -- this is information that's going to be used to drive the actual playout.

BY MR. ENGELLENNER:

Q. Okay. As I said, I found this patent very confusing, but my takeaway from this was that this first -- the second box from the top, S -- S Program ID, is that portion of the download that's going to tell you what the subject matter is that follows, is that your understanding also?

A. No.

MS. REISTER: Objection. Vague.

BY MR. ENGELLENNER:

Q. Okay. So what is that portion called, S Program ID, conveying to the user of Logan's system?

A. So this is a sequencing --

MS. REISTER: Objection. Foundation.

A. So this is a sequencing file that has the information about the events that are going to occur during playback. The event types, I think, are listed in the first column by the single letter, and I think that's explained in column 32, the various types, and the indication of the actual content is given in the second column. And so not all of these are playable because remember you're doing the schedule here, so there's a synchronization aspect. So, for example, you have these offset components, but in the second case, I think that would indicate is that's an announcement that's going to be made, and the content will actually be heard is indicated by the program ID. The program ID number is a reference to consent to a song, to a recording, to the whatever.

BY MR. ENGELLENNER:

Q. So in your analysis of the Logan patent for your declaration, can you tell me what element in Logan corresponds to a play list?

MS. REISTER: Objection. Vague.

A. I think what that's described in paragraph -- well, first in paragraph 41, what I'll

point to is the schedule file.

BY MR. ENGELLENNER:

Q. So what element corresponds to a song?

A. Schedule file consists of these program segment identification numbers and those can be songs or indications of songs.

Q. You mentioned earlier that songs were one of the things that Logan describes as being downloadable; is that correct?

MS. REISTER: Objection. Vague. Miss characterizes the testimony.

A. I don't know that I -- we covered that ground, but I believe that's true.

BY MR. ENGELLENNER:

Q. Well, would it surprise you if I told you the term song does not appear anywhere in the Logan patent?

MS. REISTER: Objection. Form. Relevance.

A. I think -- if the word song doesn't actually appear here, I think the -- you know, a person of ordinary skill in the art would understand that songs are clearly comprised in here. It talks about audio recordings. I think it talks about music in someplace, so it may not use the word

S-O-N-G, but I think the most common -- the fact that it pervasively uses audio recordings, for example, I think a person of ordinary skill in the art would say, Gee, that could be a song. They certainly would not understand that songs were excluded or not contemplated.

THE COURT REPORTER: I'm sorry. They what?

THE WITNESS: They certainly would not understand that songs were excluded or not contemplated.

BY MR. ENGELLENNER:

Q. The term -- would it surprise you the term playlist does not appear anywhere in the Logan patent?

MS. REISTER: Objection. Form. Relevance.

A. That, I believe is true.

BY MR. ENGELLENNER:

Q. And if the Logan system did download songs for the user to listen to, would there be any need to identify those songs?

MS. REISTER: Objection. Vague. Incomplete hypothetical.

A. I don't understand your question.

BY MR. ENGELLENNER:

Q. I mean, it strikes me the function -- the way the Logan system functions you tell it the type of genres you like -- I think they give examples of country music and classical music, and then based on that, it sends you a bunch of program segments, and they may have a subject that says, This is classical music, but there's no reason to assume, in my mind, that they have -- they're also identifying the songs that are being played; would you agree with that?

MS. REISTER: Objection. Form. Foundation. Vague.

A. I think generally if you're going to be identifying genres, this thing -- I believe it does indicate that you get information about what is being played and, moreover, it does specifically talk about -- at least internally -- to being able to identify content for purposes of being able to download.

MR. ENGELLENNER: Can we take a quick break? I think we're about done. I just want to confer with my associate.

MS. REISTER: Certainly.

THE VIDEOGRAPHER: One moment. Off the record at the end of Number 4 at 3:11 p.m.

(A recess was taken from 3:11 to 3:21 p.m.)

THE VIDEOGRAPHER: Starting of Number 5. Back on the record at 3:21 p.m.

MR. ENGELLENNER: Counsel, I'm all done with cross-examination. The witness is yours.

MS. REISTER: Thank you. I just have a couple of redirect questions for Dr. Jeffay.

EXAMINATION

BY MS. REISTER:

Q. Dr. Jeffay, I believe earlier this morning, counsel asked you a number of questions about the process of preparing your declaration for the IPR proceedings; do you recall that?

A. Sure.

Q. And I believe that you testified that the only people you consulted with in preparing the IPR declarations were counsel from Covington & Burling; is that correct?

A. Yes.

Q. And in preparing your declaration for the IPR proceedings and consulting with Covington & Burling, did you have a number of telephone calls with counsel at Covington?

A. Yes, yes.

Q. In preparing your declarations for the IPR, did you conduct Webex-type webinars with counsel at Covington & Burling?

A. Yes, yes, quite a few.

Q. And in the process of the Webex, were you able to look at the actual text of the declarations for the IPR proceedings?

A. Yes. Look at them, edit them, yes.

Q. Is there any material that -- for the declarations for the IPR proceeding -- is there any material that you wanted to include in the declarations that's not there?

A. Nothing that I can think of.

Q. In preparing the declarations for the IPR proceeding, is there anything that ended up in the final declaration for which you disagree?

A. No.

Q. In preparing the IPR declarations, were there any instances where you wanted to change some text in the declaration and counsel disagreed or said no?

A. I think there's some disagreements, but I won.

Q. In the preparation of the declarations for the IPR proceeding, is it correct to say that you

read the entire declaration before you signed it?

A. Yes. Yes. Absolutely.

Q. And is there -- in the preparation of the declarations for the IPR proceeding, you agree with everything that's in the declaration, correct?

A. Yes.

Q. And you adopted it as your own, correct?

A. I view it as it is my own, yes. I guess the answer is yes.

MS. REISTER: I have no further questions.

MR. ENGELLENNER: And I have no redirect.

THE VIDEOGRAPHER: One moment. Off the record. End of the videotaped deposition at 3:24 p.m.

(The deposition concluded at 3:24 p.m.)

(Reserved signature.)

STATE OF NORTH CAROLINA)

FORSYTH COUNTY)

REPORTER'S CERTIFICATE

I, Audra Smith, Registered Professional Reporter in and for the above county and state, do hereby certify that the deposition of the person hereinbefore named was taken before me at the time and place hereinbefore set forth; that the witness was by me first duly sworn to testify to the truth, the whole truth and nothing but the truth; that thereupon the foregoing questions were asked and the foregoing answers made by the witness which were duly recorded by me by means of stenotype; which is reduced to written form under my direction and supervision, and that this is, to the best of my knowledge and belief, a true and correct transcript.

I further certify that I am neither of counsel to either party nor interested in the events of this case.

IN WITNESS WHEREOF, I have hereto set my hand this 22nd day of January, 2015.

_____

Audra Smith, RPR, FCRR
Notary Number: 201329000033

WITNESS'S CERTIFICATE

I, KEVIN JEFFAY, do hereby certify that I have read and understand the foregoing transcript and believe it to be a true, accurate, and complete transcript of my testimony, subject to the attached list of changes, if any.

_____
KEVIN JEFFAY

This deposition was signed in my presence by _____, on the _____ day of _____, 2015.

_____
Notary Public

My commission expires:

(Page 1 of 2)

E R R A T A S H E E T

Re: Samsung v Black Hills Media LLC

Deposition of: KEVIN JEFFAY

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Page _____ Line _____ should

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