

In The Matter Of:

SAMSUNG

v.

BLACK HILLS MEDIA, LLC

KEVIN JEFFAY, Ph.D. - Vol. 1

January 15, 2015

MERRILL CORPORATION

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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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2 ON BEHALF OF PLAINTIFF SAMSUNG:

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5

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11

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

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1 THE VIDEOGRAPHER: Starting of Number
2 1 on the record at 8:34 a.m. This is the videotaped
3 deposition of Kevin Jeffay. This is in the United
4 States Patent Trial Board two patent numbers. Case
5 Number IPR 2014-00737, Patent Number 8,050,652. The
6 second one is Case Number IPR 2014-00740. Patent
7 Number 8,045,952. Today's date and time are
8 indicated on the video screen. We're located today
9 at 1001 South Hamilton Road in Chapel Hill, North
10 Carolina. The court reporter today is Audra Smith.
11 My name is Scott Swing. I'm the videographer.
12 We're both here on behalf of Merrill Corporation,
13 Boston in Boston, Massachusetts.

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

17 MR. ENGELLENTER: Thomas Engellenner,
18 Pepper Hamilton representing the patent owner in
19 both instances.

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

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

25 THE VIDEOGRAPHER: At this time, our

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

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

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

8 THE WITNESS: I do.

9 THE VIDEOGRAPHER: We may proceed,
10 counselors.

11 * * * * *

12 KEVIN JEFFAY, Ph.D.,
13 was called as a witness, having been first duly sworn,
14 testified as follows:

15 EXAMINATION

16 BY MR. ENGELLENER:

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

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

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

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

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

6 MR. ENGELLENER: My plan is to mark
7 them sequentially and attach them to the deposition
8 and file it.

9 MS. REISTER: Okay.

10 BY MR. ENGELLENER:

11 Q. So you have before you two exhibits marked
12 1 and 2, and they are deposition notices. You
13 received these notices?

14 A. I did not.

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

17 A. Yes.

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

20 A. Yes.

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

23 A. Perfect.

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

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

3 A. Sure. Thank you.

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

6 A. None that I know of.

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

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

11 MR. ENGELLENER: Sure.

12 (Exhibit No. 3 was marked for
13 identification.)

14 BY MR. ENGELLENER:

15 Q. The court reporter has marked as Exhibit
16 3, U.S. Patent 8,050,652. Do you recognize this
17 patent, Professor Jeffay?

18 A. I do.

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

21 A. It appears to be, yes.

22 Q. And would you agree it is the patent at
23 issue in the inter parte's review proceeding
24 2014-00737?

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

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

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

9 A. Yes, I understand that.

10 Q. And you have before you also a second U.S.
11 Patent, Exhibit Label 4. It's U.S. patented
12 8,055 -- excuse me '045,952; is that correct?

13 (Exhibit No. 4 was marked for
14 identification.)

15 A. Yes.

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

18 A. Yes.

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

23 A. That is my understanding.

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

1 three?

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

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

5 (Exhibit No. 5 was marked for
6 identification.)

7 A. Yes, that's correct.

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

11 A. That's my understanding.

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

15 A. That's correct.

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

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

21 Q. And so you submit your bills to Covington?

22 A. Yes.

23 Q. What is your hourly rate?

24 A. I think -- for this matter, I think it's
25 \$550 an hour.

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

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

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

9 MS. REISTER: Objection. Compound.

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

12 BY MR. ENGELLENER:

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

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

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

19 A. Okay.

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

24 A. Yes, that's correct.

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

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

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

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

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

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

12 THE COURT REPORTER: In connection
13 with your what?

14 BY MR. ENGELLENER:

15 Q. Your role as an expert in patent
16 litigation.

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

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

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

25 Q. And did you testify during trials in these

1 matters also?

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

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

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

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

10 MS. REISTER: Objection. Vague.

11 BY MR. ENGELLENER:

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

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

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

23 A. Yes, absolutely.

24 Q. Anything on this list that comes to mind?

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

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

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

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

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

13 MS. REISTER: Objection. Form.
14 Mischaracterizes testimony.

15 A. No, I would not agree with that.

16 BY MR. ENGELLENER:

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

22 A. No.

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

25 A. The answer is still no.

1 Q. And why is that?

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

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

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

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

23 A. Perfectly fine.

24 Q. And do you recall that proceeding?

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

1 Q. The first one.

2 A. Okay.

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

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

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

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

19 Q. And who paid your bills in these
20 proceedings?

21 A. The law firm of Finnegan Henderson.

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

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

1 I have no idea.

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

4 MS. REISTER: Objection to form.

5 A. In theory, yes.

6 BY MR. ENGELLENER:

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

10 A. That's my recollection, yes.

11 Q. And were the same issues raised?

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

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

21 MS. REISTER: Objection. Form.
22 Compound.

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

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

5 BY MR. ENGELLENER:

6 Q. So in the ITC proceedings, did you draw
7 any conclusions as to the obviousness of the '652 or
8 '952 patents?

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

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

22 A. Yes, I understand that.

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

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

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

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

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

10 MS. REISTER: Objection.
11 Mischaracterizes testimony.

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

21 BY MR. ENGELLENER:

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

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

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

4 Q. You said "meetings" plural?

5 A. Yes.

6 Q. Did you have more than one meeting?

7 A. I did.

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

10 A. Correct.

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

13 A. I did not.

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

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

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

23 BY MR. ENGELLENER:

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

1 A. Correct.

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

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

6 MS. REISTER: Objection. Outside the
7 scope.

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

17 BY MR. ENGELLENER:

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

20 A. I --

21 MS. REISTER: Objection. Scope.

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

1 present.

2 BY MR. ENGELLENER:

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

8 A. Yes.

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

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

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

22 A. No.

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

1 A. No.

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

4 MS. REISTER: Objection. Relevance.

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

14 BY MR. ENGELLENER:

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

17 MS. REISTER: Objection. Relevance.
18 Scope.

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

20 BY MR. ENGELLENER:

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

23 MS. REISTER: Objection. Relevance.
24 Scope.

25 A. That's my understanding.

1 BY MR. ENGELLENER:

2 Q. And what was your role in that proceeding?

3 MS. REISTER: Objection. Relevance.
4 Scope.

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

7 BY MR. ENGELLENER:

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

10 MS. REISTER: Objection. Relevance.
11 Scope.

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

13 BY MR. ENGELLENER:

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

17 MS. REISTER: Objection. Relevance.
18 Scope.

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

21 BY MR. ENGELLENER:

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

24 MS. REISTER: Objection. Relevance.
25 Scope.

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

4 BY MR. ENGELLENER:

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

8 MS. REISTER: Objection. Relevance.
9 Scope.

10 A. Sorry. Correct.

11 BY MR. ENGELLENER:

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

14 MS. REISTER: Objection. Relevance
15 and scope.

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

18 BY MR. ENGELLENER:

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

21 MS. REISTER: Same objection.

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

1 BY MR. ENGELLENER:

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

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

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

10 BY MR. ENGELLENER:

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

13 MS. REISTER: Objection. Relevance.
14 Scope.

15 A. It is.

16 BY MR. ENGELLENER:

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

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

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

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

3 Q. Did you write these expert declarations
4 yourself?

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

7 Q. What was the process for drafting these
8 declarations?

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

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

19 A. No.

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

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

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

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

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

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

10 A. Correct.

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

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

16 Q. Expert declarations.

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

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

22 A. Absolutely.

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

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

3 MS. REISTER: Objection. Form.
4 Vague.

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

9 BY MR. ENGELLENER:

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

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

16 Q. And just to make sure the record is clear,
17 I'm referring to U.S. Patent 7,187,847 issued to
18 White, and it's identified on page -- excuse me --
19 '947, and it's identified on page 2 of your
20 declaration, Exhibit 6.

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

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

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

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

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

10 A. Yes, that is correct.

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

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

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

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

19 Q. '740, sorry.

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

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

25 Q. Yes. In the '740 proceeding, your

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

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

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

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

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

15 MS. REISTER: Objection. Asked and
16 answered.

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

21 BY MR. ENGELLENER:

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

1 the declarations for the present proceedings?

2 A. No, I would not agree with that.

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

6 MS. REISTER: Objection. Asked and
7 answered.

8 BY MR. ENGELLENER:

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

12 A. What I specifically said, I believe I
13 specifically said is I started with a document, one
14 document, and that was the invalidity expert report,
15 and that was used to generate some significant
16 fraction of this -- of each of these declarations as
17 a first draft.

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

21 MS. REISTER: Objection. Asked and
22 answered.

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

25 BY MR. ENGELLENER:

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

4 MS. REISTER: Objection. Vague.

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

7 MR. ENGELLENER: Mark that as
8 Exhibit 8, please.

9 (Exhibit No. 8 was marked for
10 identification.)

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

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

25 MS. REISTER: And you will represent

1 on the record that you have authority to use it?

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

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

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

11 MS. REISTER: That would be fine.

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

14 (A recess was taken at 9:17 a.m. to
15 9:22 a.m.)

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

18 BY MR. ENGELLENTER:

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

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

4 MR. ENGELLENER: Is that
5 satisfactory, counsel?

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

10 BY MR. ENGELLENER:

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

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

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

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

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

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

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

14 A. 72.

15 Q. And is your opinions -- I believe it's
16 your opinions on the White patent on behalf of the
17 '652 patent that was asserted in the ITC action; is
18 that correct?

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

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

1 discussion of the White patent, and you are indeed
2 correct that when you get to the page between 71 and
3 73, it has no number.

4 A. And there are some other pages --

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

7 A. There you go.

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

11 MS. REISTER: Objection. Scope.

12 A. Yes, that's correct.

13 BY MR. ENGELLENER:

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

17 MS. REISTER: Objection. Scope.

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

20 BY MR. ENGELLENER:

21 Q. And to be even more specific, on the
22 second sentence -- third sentence of that paragraph
23 180, I believe it says, "Therefore, it's my opinion
24 that the asserted claims 109 of the '952 patent are
25 invalid as anticipated by White."

1 MS. REISTER: Objection. Scope.

2 BY MR. ENGELLENER:

3 Q. Is that correct?

4 A. That's exactly what the document says.

5 Q. And was that your opinion at the time?

6 A. Yes.

7 Q. And is that still your opinion?

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

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

17 MS. REISTER: Objection. Form.

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

20 BY MR. ENGELLENER:

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

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

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

7 Is that correct?

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

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

13 BY MR. ENGELLENER:

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

18 MS. REISTER: Objection. Scope.

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

21 BY MR. ENGELLENER:

22 Q. And is -- has your opinion changed?

23 MS. REISTER: Objection. Scope.

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

1 None of my opinions about the ITC proceedings have
2 changed.

3 BY MR. ENGELLENER:

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

7 MS. REISTER: Objection. Form.
8 Vague.

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

13 BY MR. ENGELLENER:

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

19 A. Okay. Just give me one second.

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

21 A. No, I'm there now.

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

1 A. Yes, that is correct.

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

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

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

18 BY MR. ENGELLENER:

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

22 A. Okay.

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

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

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

8 MS. REISTER: Objection. Scope.

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

13 BY MR. ENGELLENER:

14 Q. And on the last page of the document, page
15 148, that is your signature; is that not correct?

16 MS. REISTER: Objection. Scope.

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

18 BY MR. ENGELLENER:

19 Q. So I'd like to now refer you to Exhibit 7,
20 which is your declaration in the '740 proceeding.
21 And in particular, starting on page 22, paragraphs
22 41 through 51 contain a description -- excuse me --
23 41 through 48 contain a description of the Logan
24 patent. And for the record, that's U.S. Patent
25 6199076. Is that correct?

1 A. That's correct.

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

5 MS. REISTER: Objection. Scope.

6 A. Yes.

7 BY MR. ENGELLENER:

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

15 MS. REISTER: Objection. Scope.

16 Relevance.

17 BY MR. ENGELLENER:

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

19 A. Thank you.

20 Q. And it's the third sentence.

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

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

25 A. There is.

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

3 A. It's footnote 7 --

4 MS. REISTER: Objection. Scope.

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

10 BY MR. ENGELLENER:

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

17 MS. REISTER: Objection. Scope.

18 A. I mean, I think the documents speak for
19 themselves as to what's being -- what I'm opining
20 on. It's a different analysis. The analysis in
21 Exhibit 6 and 7 is a different analysis from the
22 analysis that was performed for Exhibit 8.
23 Paragraphs that we've been speaking of -- paragraphs
24 42 -- 42 through 48 of Exhibit 7 -- are merely
25 describing features that are found -- it's opining

1 on the disclosures of the Logan reference.

2 BY MR. ENGELLENER:

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

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

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

15 BY MR. ENGELLENER:

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

18 MS. REISTER: Objection. Form.

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

22 BY MR. ENGELLENER:

23 Q. And where would that be?

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

1 titled "Obviousness in View of the White Patent".

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

4 A. That's all right.

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

7 A. Oh, sorry.

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

17 MS. REISTER: Objection.
18 Mischaracterizes the testimony.

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

23 BY MR. ENGELLENER:

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

1 attorney arguments in the petitions?

2 MS. REISTER: Objection.

3 A. I don't know.

4 MS. REISTER: Form.

5 A. I don't know.

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

8 A. It's --

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

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

13 BY MR. ENGELLENER:

14 Q. You want to continue?

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

16 MR. ENGELLENER: Okay. Mark this as
17 Exhibit 9.

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

20 BY MR. ENGELLENER:

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

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

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

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

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

10 A. Okay. I do not know the sequence of
11 events, but I know this is clearly related to the
12 IPR of Exhibit -- Exhibit 9 is clearly related to
13 the IPR of the '652 patent and the same for Exhibit
14 10.

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

17 A. Yes, that's my understanding.

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

20 MS. REISTER: Objection. Relevance.

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

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

25 BY MR. ENGELLENER:

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

3 MS. REISTER: Objection.
4 Mischaracterizes the testimony.

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

10 BY MR. ENGELLENER:

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

13 A. Okay.

14 Q. -- and continuing through page 41.

15 A. I'm sorry. You said -- 29 and going to
16 41?

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

20 A. Yes, yes, I'm familiar.

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

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

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

3 A. Sure.

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

8 A. 26.

9 Q. 26. Congratulations.

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

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

14 A. BS, that was '82.

15 Q. And your MS in computer science?

16 A. Technically, I have two. The one that I
17 list here for the University of Toronto, that was
18 '84.

19 THE COURT REPORTER: The what? The
20 University --

21 THE WITNESS: Toronto was 1984.

22 BY MR. ENGELLENER:

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

25 A. That was conferred in 1989.

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

3 A. I did.

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

9 MS. REISTER: Objection. Vague.
10 Compound.

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

14 BY MR. ENGELLENER:

15 Q. I'll withdraw the question.

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

19 A. A music company?

20 MS. REISTER: Objection. Vague.

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

24 BY MR. ENGELLENER:

25 Q. A company that disseminates music.

1 A. Okay.

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

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

7 BY MR. ENGELLENER:

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

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

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

18 A. Yes.

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

22 A. I have.

23 Q. Can you describe what that was?

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

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

6 Q. What is an internet radio station?

7 MS. REISTER: Objection.

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

20 BY MR. ENGELLENER:

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

23 MS. REISTER: Objection. Relevance.

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

1 systems based on peer to peer networks --

2 THE COURT REPORTER: To what?

3 THE WITNESS: Peer-to-peer networks.

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

10 BY MR. ENGELLENER:

11 Q. When did you work for AOL?

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

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

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

7 A. Sure.

8 MS. REISTER: Objection. Vague.
9 Form.

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

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

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

11 BY MR. ENGELLENER:

12 Q. Is the term playlist used in your field?

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

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

23 MS. REISTER: Objection. Scope.
24 Relevance.

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

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

5 BY MR. ENGELLENER:

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

9 MS. REISTER: Objection. Scope.
10 Relevance.

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

15 BY MR. ENGELLENER:

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

17 A. Okay. Just give me a minute.

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

20 A. Correct.

21 Q. And on page 54, beginning about the sixth
22 line down at the end of the line, there's a sentence
23 that says, "A person of ordinary skill in the art in
24 2000 would understand the '652 patent reference to
25 the web or internet as the source of a radio

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

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

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

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

13 BY MR. ENGELLENER:

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

16 A. Sure.

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

19 MS. REISTER: Objection. Scope.
20 Relevance.

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

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

3 BY MR. ENGELLENER:

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

6 A. Okay.

7 Q. And in particular paragraph 115.

8 A. Okay.

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

11 MS. REISTER: Objection. Scope.
12 Relevance.

13 A. Yes.

14 BY MR. ENGELLENER:

15 Q. And what was your opinion there?

16 MS. REISTER: Objection. Scope.
17 Relevance.

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

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

6 BY MR. ENGELLENER:

7 Q. And what was that construction?

8 A. The construction --

9 MS. REISTER: Objection. Scope.
10 Relevance.

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

14 BY MR. ENGELLENER:

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

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

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

25 BY MR. ENGELLENER:

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

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

7 A. Not necessarily.

8 BY MR. ENGELLENER:

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

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

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

25 BY MR. ENGELLENER:

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

3 MS. REISTER: Objection. Scope.
4 Relevance.

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

8 BY MR. ENGELLENER:

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

15 MS. REISTER: Objection. Scope.
16 Hypothetical.

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

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

22 MS. REISTER: Objection. Scope.

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

25 MR. ENGELLENER: I think I would

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

3 THE VIDEOGRAPHER: Off the record.

4 End of Number 1 at 10:10 a.m.

5 (A recess was taken at 10:10 a.m. To
6 10:24 a.m.)

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

9 BY MR. ENGELLENER:

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

13 A. Okay.

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

17 A. Okay.

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

21 A. Okay.

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

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

1 Q. Yes.

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

4 Q. There are no opinions there, are there?

5 A. I'd agree.

6 Q. And in paragraph 3, you do offer an
7 opinion of sorts beginning on page 4, the fourth
8 line down. You say that your opinion is that the
9 '652 patent is not entitled to a claim priority to
10 each of the earlier applications that you reference
11 above.

12 MS. REISTER: Objection. Vague.

13 BY MR. ENGELLENER:

14 Q. Do you see that opinion?

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

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

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

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

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

9 MS. REISTER: Objection. Vague.

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

13 BY MR. ENGELLENER:

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

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

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

1 MS. REISTER: Objection.

2 Mischaracterizes the testimony.

3 A. Could you ask that question again, please?

4 BY MR. ENGELLENER:

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

11 A. Yes, that's correct.

12 MS. REISTER: Objection. Foundation.
13 Vague.

14 A. That's correct.

15 BY MR. ENGELLENER:

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

20 A. Yes, it does.

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

1 A. I would say credentials and experience,
2 yes.

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

6 A. Past tense.

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

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

11 Q. So this would have been before college?

12 A. This was, indeed, before college.

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

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

1 operating the transmitter.

2 Q. And paragraph 16 says you developed
3 playlists?

4 A. I did.

5 Q. Can you describe what that entailed?

6 MS. REISTER: Objection. Relevance.

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

13 BY MR. ENGELLENER:

14 Q. And were you the disk jockey also?

15 MS. REISTER: Objection. Scope.
16 Relevance.

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

19 BY MR. ENGELLENER:

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

23 MS. REISTER: Objection. Scope.
24 Relevance.

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

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

8 BY MR. ENGELLENER:

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

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

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

19 BY MR. ENGELLENER:

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

22 MS. REISTER: Objection. Scope.
23 Relevance.

24 A. Yes.

25 BY MR. ENGELLENER:

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

3 MS. REISTER: Objection. Scope.
4 Relevance.

5 A. At that time, yes.

6 BY MR. ENGELLENER:

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

10 MS. REISTER: Objection. Scope.
11 Relevance.

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

17 BY MR. ENGELLENER:

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

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

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

1 BY MR. ENGELLENER:

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

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

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

10 BY MR. ENGELLENER:

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

13 A. Yes.

14 MS. REISTER: Objection. Scope.
15 Relevance.

16 BY MR. ENGELLENER:

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

20 MS. REISTER: Objection. Scope.
21 Relevance.

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

24 BY MR. ENGELLENER:

25 Q. So you would play the whole side of an

1 album?

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

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

6 A. Yes.

7 MS. REISTER: Objection. Scope.
8 Relevance.

9 A. Sorry. Yes.

10 BY MR. ENGELLENER:

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

15 A. Yes.

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

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

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

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

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

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

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

7 Q. Okay.

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

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

16 MS. REISTER: Objection. Scope.
17 Relevance.

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

1 the broadcasts and insertions of ads and all that
2 stuff.

3 BY MR. ENGELLENER:

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

12 MS. REISTER: Objection. Scope.
13 Relevance.

14 A. I would say, yes.

15 BY MR. ENGELLENER:

16 Q. How so?

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

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

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

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

14 BY MR. ENGELLENER:

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

17 MS. REISTER: Same objections.

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

20 BY MR. ENGELLENER:

21 Q. Songs?

22 A. We had songs.

23 Q. It identified songs?

24 A. We were very primitive.

25 Q. So Culbertson identified songs in his

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

3 MS. REISTER: Objection. Scope.
4 Relevance.

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

7 BY MR. ENGELLENER:

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

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

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

20 BY MR. ENGELLENER:

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

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

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

4 (Exhibit No. 11 was marked for
5 identification.)

6 MR. ENGELLENER: Could you mark this
7 Exhibit 11?

8 THE WITNESS: Thank you.

9 BY MR. ENGELLENER:

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

13 A. Sure.

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

18 A. That's certainly what it says.

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

23 MS. REISTER: Objection. Foundation.

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

1 BY MR. ENGELLENER:

2 Q. Column 1, lines 15 through 18?

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

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

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

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

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

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

23 MS. REISTER: Objection. Scope.
24 Relevance.

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

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

5 BY MR. ENGELLENER:

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

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

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

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

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

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

9 BY MR. ENGELLENER:

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

15 MS. REISTER: Objection. Document
16 speaks for itself.

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

22 BY MR. ENGELLENER:

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

25 MS. REISTER: Objection. Vague.

1 BY MR. ENGELLENER:

2 Q. The start and stop signs --

3 A. Times.

4 Q. -- times determine the order?

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

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

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

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

1 audio materials that are being broadcast?

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

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

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

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

12 MS. REISTER: Objection. Vague.

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

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

10 BY MR. ENGELLENER:

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

19 MS. REISTER: Objection. Form.

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

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

13 BY MR. ENGELLENER:

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

17 MS. REISTER: Objection. Foundation.
18 Vague.

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

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

4 BY MR. ENGELLENER:

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

7 MS. REISTER: Objection.
8 Mischaracterizes his testimony.

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

13 BY MR. ENGELLENER:

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

19 A. Okay.

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

25 So in Culbertson's system, does he not use

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

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

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

18 MS. REISTER: Objection. Vague.
19 Foundation.

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

1 going to be played.

2 BY MR. ENGELLENER:

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

5 A. Sure.

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

11 A. Sorry. I have been working from Exhibit
12 6?

13 Q. Yes.

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

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

23 A. Yes, that's correct.

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

1 has a heading, "The overview of the '652 patent."

2 Is that correct?

3 A. That's correct.

4 Q. These paragraphs seem to be identical word
5 for word with a section in Samsung's petition with
6 the same heading. That would be in Exhibit 9, pages
7 8 through 11; is that correct?

8 MS. REISTER: Objection. Relevance.

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

11 BY MR. ENGELLENER:

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

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

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

19 A. Okay.

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

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

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

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

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

13 A. Tell me the paragraph number.

14 Q. Paragraph 83 through 86 -- or 85.

15 A. Right. That was -- as I say, I did not
16 check if -- how the text was related. But as I say,
17 my understanding was that was the genesis of the
18 section that is in Exhibit 6, paragraphs 22 through
19 25, that's what the genesis was.

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

24 MS. REISTER: Objection. Scope.
25 Relevance.

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

8 BY MR. ENGELLENER:

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

15 MS. REISTER: Objection. Foundation.

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

25 BY MR. ENGELLENER:

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

6 A. I believe they contain a single opinion,
7 and that would be the opinion stated in paragraph
8 32.

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

14 MS. REISTER: Objection. Misstates
15 the testimony.

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

19 BY MR. ENGELLENER:

20 Q. Sorry about that.

21 A. No. Maybe I heard it wrong.

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

1 A. Yes.

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

6 A. Correct.

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

10 MS. REISTER: Objection. Foundation.

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

14 BY MR. ENGELLENER:

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

20 A. Yes.

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

1 MS. REISTER: Objection. Misstates
2 the testimony.

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

5 BY MR. ENGELLENER:

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

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

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

15 MS. REISTER: Objection. Scope.
16 Relevance.

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

22 BY MR. ENGELLENER:

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

1 22 -- you described the White patent, do you not?

2 A. I do.

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

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

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

18 MS. REISTER: Objection. Document
19 speaks for itself.

20 A. That is what it says here, yes.

21 BY MR. ENGELLENER:

22 Q. And is that your understanding of
23 obviousness?

24 MS. REISTER: Objection. Scope.
25 Relevance.

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

12 BY MR. ENGELLENER:

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

19 A. Can you read the question back?

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

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

3 BY MR. ENGELLENER:

4 Q. And what does obviousness mean to you?

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

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

13 BY MR. ENGELLENER:

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

17 MS. REISTER: Objection. Scope.
18 Relevance.

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

23 BY MR. ENGELLENER:

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

1 you're referring to the White patent --

2 A. Uh-huh.

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

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

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

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

1 experimentation to make a combination.

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

6 MS. REISTER: Objection. Vague.

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

18 BY MR. ENGELLENER:

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

23 MS. REISTER: Objection. Vague.

24 A. I think -- so the sections -- paragraphs
25 34 through 41 are describing disclosures of the

1 various embodiments, and the point that paragraph 67
2 is trying to make is that there are a significant
3 number of embodiments in White. The embodiments
4 collectively disclose all the features. The
5 embodiments themselves are different mixes and
6 matches of functions. And that at best, the -- the
7 '652 patent is arguably a different combination of
8 these elements, and that given the diversity of the
9 embodiments that are disclosed in White, a person of
10 ordinary skill would understand that you're just
11 taking -- White describes four or five ways to
12 combine. Arguably, the '652 is, you know, a sixth
13 way to combine. So I think the basis for the
14 statement is disclosures of writing embodiments that
15 have all the pieces. The fact that there's no
16 discussion that any particular combination that
17 wasn't considered is impossible. You know, a person
18 of skill would understand there are numerous other
19 embodiments you could make of White even beyond the
20 '652 patent.

21 BY MR. ENGELLENER:

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

1 experimentation. But if it was routine to combine
2 the features, is there anything in these paragraphs
3 38 through 41 that would explain why it would be
4 routine?

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

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

1 BY MR. ENGELLENER:

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

8 A. Yes, that's fair.

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

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

14 A. Yes. That's true.

15 BY MR. ENGELLENER:

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

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

24 A. The answer is yes.

25 BY MR. ENGELLENER:

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

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

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

8 (Exhibit No. 12 was marked for
9 identification.)

10 BY MR. ENGELLENER:

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

14 A. Okay.

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

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

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

21 BY MR. ENGELLENER:

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

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

25 A. So this is a statement about the

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

11 BY MR. ENGELLENER:

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

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

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

19 BY MR. ENGELLENER:

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

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

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

5 A. Sure.

6 Q. -- to figure out where the opinions are.
7 I think we already agreed paragraphs 1 and
8 2 have no opinions.

9 A. Sure, correct.

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

17 A. That's correct.

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

21 A. Okay.

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

24 A. Credentials and experience, yes.

25 Q. Sorry.

1 A. That's fine.

2 Q. Credentials and experience.

3 And 18 through 22 in this instance
4 describe the prior art, and I believe that the only
5 difference between this and the declaration that we
6 discussed before is simply the paragraph numbering,
7 some of the paragraphs in this text were separated
8 and hence the numbers went to paragraphs -- I mean,
9 18 through 26 in the declaration we submitted
10 before.

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

13 MS. REISTER: Objection. Vague.

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

19 BY MR. ENGELLENER:

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

24 MS. REISTER: Objection. Vague.
25 Foundation.

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

9 BY MR. ENGELLENER:

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

12 A. Yes.

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

18 A. Yes.

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

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

22 BY MR. ENGELLENER:

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

25 A. That's correct.

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

3 A. I don't believe we have.

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

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

7 A. That's correct.

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

12 A. Okay.

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

15 Would you like to take a brief break?

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

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

18 MS. REISTER: Okay.

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

22 (A recess was taken at 11:36 a.m. to
23 11:51 a.m.)

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

1 BY MR. ENGELLENER:

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

6 A. Okay.

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

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

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

18 A. That's correct.

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

21 MS. REISTER: Objection. Scope.
22 Relevance.

23 BY MR. ENGELLENER:

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

1 A. 104.

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

4 A. Okay.

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

14 MS. REISTER: Objection. Scope.
15 Relevance.

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

21 BY MR. ENGELLENER:

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

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

4 MS. REISTER: Objection. Vague.

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

7 BY MR. ENGELLENER:

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

10 A. 26 years on the faculty.

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

13 A. Sure.

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

17 A. Sure.

18 MS. REISTER: Objection. Vague.

19 BY MR. ENGELLENER:

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

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

4 MS. REISTER: Objection. Vague.
5 Foundation.

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

12 BY MR. ENGELLENER:

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

16 MS. REISTER: Objection. Vague.

17 BY MR. ENGELLENER:

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

22 MS. REISTER: Objection. Vague.

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

1 BY MR. ENGELLENER:

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

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

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

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

10 BY MR. ENGELLENER:

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

14 A. Okay.

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

19 A. Yeah, I have --

20 Q. It's Exhibit 4?

21 A. I have a 3 and 4.

22 Q. Liked to direct your attention to column
23 24, lines 38 through 44.

24 A. 24 you said?

25 Q. Uh-huh.

1 A. Lines 28 through --

2 Q. 44?

3 A. 28, 28...

4 Q. Does that paragraph describe a shuffle
5 function?

6 MS. REISTER: Objection. Vague.

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

12 BY MR. ENGELLENER:

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

15 MS. REISTER: Objection. Form.
16 Scope.

17 A. Sure.

18 BY MR. ENGELLENER:

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

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

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

4 MS. REISTER: Objection. Form.
5 Relevance.

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

11 BY MR. ENGELLENER:

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

15 MS. REISTER: Objection. Form.
16 Relevance.

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

19 BY MR. ENGELLENER:

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

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

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

4 MS. REISTER: Objection. Foundation.

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

9 BY MR. ENGELLENER:

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

12 A. Okay.

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

17 MS. REISTER: Objection. Relevance.

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

22 BY MR. ENGELLENER:

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

1 order?

2 MS. REISTER: Objection. Foundation.
3 Form.

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

7 BY MR. ENGELLENER:

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

11 A. Uh-huh.

12 MS. REISTER: Objection. Vague.
13 Foundation.

14 BY MR. ENGELLENER:

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

17 MS. REISTER: Objection. Form.

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

25 BY MR. ENGELLENER:

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

4 A. That's --

5 MS. REISTER: Objection. Document
6 speaks for itself.

7 A. That's exactly what it says.

8 BY MR. ENGELLENER:

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

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

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

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

4 BY MR. ENGELLENER:

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

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

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

14 BY MR. ENGELLENER:

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

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

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

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

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

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

12 BY MR. ENGELLENER:

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

17 A. Okay.

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

20 A. Okay. 31. I have it.

21 Q. And compare that with Exhibit 8.

22 A. Eight. Okay.

23 Q. At paragraph 115.

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

1 115?

2 Q. Yes.

3 A. Okay.

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

6 MS. REISTER: Objection. Scope.
7 Relevance.

8 A. Well, I mean, it's clearly a different --
9 so Exhibit 6, the declaration in the present matter
10 has adopted a construction from a previous PTAB
11 action, PTAB decision, and that construction is
12 slightly different than the constructions that were
13 proposed in the ITC matter, so they're not the same.
14 BY MR. ENGELLENER:

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

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

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

24 MS. REISTER: Objection. Scope.
25 Relevance.

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

11 BY MR. ENGELLENER:

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

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

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

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

3 BY MR. ENGELLENER:

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

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

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

15 BY MR. ENGELLENER:

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

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

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

1 that construction.

2 BY MR. ENGELLENER:

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

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

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

16 BY MR. ENGELLENER:

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

21 A. So --

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

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

1 skill in the art. That's what I'm saying here. I'm
2 saying this is what I believe a person of ordinary
3 skill in the art would say that it accurately
4 describes the meaning. That is not to say that
5 there are other ways that would also accurately
6 describe the meaning. So of these three, in Exhibit
7 8 on page 46, what I'm saying is the person of
8 ordinary skill would understand that the respondent
9 and intervenors accurately describes the meaning.
10 It's not saying that anything else is completely
11 wrong. These -- of these three choices, that one
12 accurately describes the meaning.

13 BY MR. ENGELLENER:

14 Q. Including the words "for playback"?

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

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

20 BY MR. ENGELLENER:

21 Q. So what does playback mean to you?

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

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

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

3 BY MR. ENGELLENER:

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

7 MS. REISTER: Objection. Scope.
8 Relevance.

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

17 BY MR. ENGELLENER:

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

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

22 A. I don't know.

23 BY MR. ENGELLENER:

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

1 list?

2 A. It's certainly formed of two words.

3 Whether or not it's considered a compound word, I
4 don't know.

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

7 MS. REISTER: Objection. Foundation.
8 Relevance.

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

11 BY MR. ENGELLENER:

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

14 MS. REISTER: Objection. Foundation.
15 Relevance.

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

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

20 BY MR. ENGELLENER:

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

25 MS. REISTER: Objection. Vague.

1 Misstates his testimony. Relevance.

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

9 BY MR. ENGELLENER:

10 Q. A list of audio files for playback?

11 A. Well --

12 MS. REISTER: Objection. Misstates
13 his testimony.

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

20 BY MR. ENGELLENER:

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

24 A. Just need you to hold up a bit.

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

1 7?

2 Q. Exhibit 6.

3 A. Okay. Exhibit 6.

4 Q. Okay. Paragraph 23.

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

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

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

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

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

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

21 You don't happen to have a copy of Exhibit
22 1020?

23 BY MR. ENGELLENER:

24 Q. 1020?

25 A. Yeah, that's Hacker. Sorry.

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

4 A. Sure.

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

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

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

16 BY MR. ENGELLENER:

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

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

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

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

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

5 BY MR. ENGELLENER:

6 Q. I'd like to mark this as the next exhibit.
7 (Exhibit No. 13 was marked for
8 identification.)

9 BY MR. ENGELLENER:

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

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

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

20 MS. REISTER: Objection. Vague.
21 Scope.

22 A. So I'm not -- as I said, I don't believe
23 I've ever seen this document. It appears to be a
24 56-page document. I will attempt to answer your
25 questions, but having not seen it, I don't believe

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

12 BY MR. ENGELLENER:

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

16 A. I did note that.

17 Q. And is it fair from just looking at page
18 49 to conclude, that at least as of the year 2000,
19 Windows Media Player was using something called
20 playlists?

21 MS. REISTER: Objection. Scope.
22 Relevance.

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

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

4 BY MR. ENGELLENER:

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

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

13 MS. REISTER: Objection. Scope.
14 Relevance.

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

19 BY MR. ENGELLENER:

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

23 MS. REISTER: Objection. Scope.
24 Relevance.

25 A. Generically, yes.

1 BY MR. ENGELLENER:

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

4 MS. REISTER: Objection. Scope.
5 Relevance.

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

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

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

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

25 BY MR. ENGELLENER:

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

6 MS. REISTER: Objection. Scope.
7 Relevance.

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

12 BY MR. ENGELLENER:

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

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

18 A. I would say no.

19 BY MR. ENGELLENER:

20 Q. And why not?

21 MS. REISTER: Same objection.

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

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

4 (Exhibit No. 14 was marked for
5 identification.)

6 BY MR. ENGELLENER:

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

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

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

17 A. Okay.

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

20 A. Okay.

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

23 A. I do.

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

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

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

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

7 MS. REISTER: Objection. Document
8 speaks for itself.

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

12 BY MR. ENGELLENER:

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

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

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

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

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

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

4 BY MR. ENGELLENER:

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

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

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

13 BY MR. ENGELLENER:

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

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

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

21 BY MR. ENGELLENER:

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

1 may be?

2 MS. REISTER: Objection. Vague.

3 Incomplete hypothetical. Relevance.

4 BY MR. ENGELLENER:

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

7 MS. REISTER: I repeat the objection.

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

18 BY MR. ENGELLENER:

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

22 MS. REISTER: Objection. Vague.

23 Misstates the testimony.

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

1 BY MR. ENGELLENER:

2 Q. Yes.

3 A. So a specific media player at a specific
4 point in time, I have not studied the Windows Media
5 7 Player 7. So to the extent that I knew or didn't
6 know how it worked, I don't know, because as I say,
7 I -- I haven't done anything to recollect -- to
8 refresh my memory as to what interaction, if any, I
9 had with that piece of software and what I did with
10 it and how deep I went into it. I haven't given any
11 thought to Windows Media 7 Player in many years.

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

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

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

19 BY MR. ENGELLENER:

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

22 MS. REISTER: Objection. Misstates
23 the testimony.

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

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

3 BY MR. ENGELLENER:

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

7 MS. REISTER: Objection. Vague.

8 A. Sorry.

9 MS. REISTER: Scope. Relevance.

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

12 BY MR. ENGELLENER:

13 Q. The URL.

14 A. Perhaps --

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

17 A. Right.

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

21 MS. REISTER: Objection. Vague.

22 A. No, no.

23 MS. REISTER: Scope. Relevance.

24 Misstates the testimony.

25 BY MR. ENGELLENER:

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

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

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

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

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

16 BY MR. ENGELLENER:

17 Q. Why?

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

23 Q. So is it smaller than a data file?

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

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

4 BY MR. ENGELLENER:

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

8 A. Claim 1 of the '652.

9 Q. In particular, Claim 1 section C --

10 A. Okay.

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

17 A. Okay.

18 Q. Do you interpret that to mean URLs?

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

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

1 BY MR. ENGELLENER:

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

4 MS. REISTER: Objection. Form.
5 Vague.

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

7 BY MR. ENGELLENER:

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

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

15 Q. Right.

16 MS. REISTER: Objection. Relevance.

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

20 BY MR. ENGELLENER:

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

23 MS. REISTER: Objection. Relevance.
24 Foundation.

25 A. Well, one reason is because you can

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

15 BY MR. ENGELLENER:

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

21 A. Okay.

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

24 A. Okay.

25 Q. So we'll mark the White patent.

1 (Exhibit No. 15 was marked for
2 identification.)

3 BY MR. ENGELLENER:

4 Q. Do you recall opining on the White patent?

5 A. I do.

6 Q. Did you study the White patent?

7 A. I did.

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

10 MS. REISTER: Objection. Vague.

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

14 BY MR. ENGELLENER:

15 Q. Now, you do refer to the paragraph 34 --
16 you do refer to the White patent and also paragraph
17 35 in which you describe figure 4 of the patent.

18 A. Correct.

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

21 MS. REISTER: Objection. Vague.

22 A. So figure 4 is a GUI, a Graphical User
23 Interface, that White says is for displaying
24 selectable audio information, so it's a GUI for
25 display of selectable audio information.

1 BY MR. ENGELLENER:

2 Q. And that selected audio information, I
3 believe you said in the paragraph before, included
4 songs, online radio stations, broadcasts, streaming
5 audio and other selected information; is that
6 correct?

7 A. That's correct.

8 Q. And you state on paragraph 35 that this
9 GUI or interface allows users to view a radio dial
10 412; do you see that?

11 A. I do.

12 Q. And so is that an embodiment of what we
13 talked about earlier today, the internet radio?

14 MS. REISTER: Objection. Scope.
15 Relevance. Misstates the testimony.

16 A. Well, I think 412 is just a GUI, so
17 possibly I'm not understanding what exactly you're
18 asking.

19 BY MR. ENGELLENER:

20 Q. Well, we talked about internet radio this
21 morning, and we talked about, I believe, obtaining
22 songs and other audio content streaming via an
23 internet radio; is that an accurate assessment?

24 MS. REISTER: Objection. Vague.
25 Mischaracterizes the testimony.

1 A. I mean, the transcript will show exactly
2 what -- what we talked about. But generally we
3 talked about internet radio being a simulcast or
4 rebroadcast of traditional radio or a station that
5 generates content that you don't typically interact
6 with and you just listen to it.

7 BY MR. ENGELLENER:

8 Q. So does figure 4, which you reproduced in
9 your declaration, show an internet radio receiver?

10 MS. REISTER: Objection. Vague.
11 Form.

12 A. So, again, figure 4 is just the GUI,
13 right? So it's just trying to give you a sense of
14 what's available to the -- to the user, and in
15 White, they describe 412 as the radio dial, and this
16 is all within the tab of the user interface that's
17 called radio.

18 BY MR. ENGELLENER:

19 Q. You also say that this GUI allows users to
20 view either the radio dial or a current playlist
21 selected by the user; isn't that correct?

22 MS. REISTER: Objection. Document
23 speaks for itself.

24 A. Yes. That's the -- you're right. That's
25 what the interface of figure 4 allows.

1 BY MR. ENGELLENER:

2 Q. And how would one do that with this GUI
3 here?

4 MS. REISTER: Objection. Form.

5 A. I don't recall. I mean, refresh my
6 memory.

7 So I don't think that figure 4 is
8 illustrating that particular function, but the
9 specification says in column 11 around line 30 that
10 in a different embodiment of the interface, the
11 user would want to view a current playlist selected
12 by the user. So you can select and view a playlist,
13 but I don't think that function is exactly
14 illustrated in figure 4.

15 BY MR. ENGELLENER:

16 Q. Paragraph 35 of your declaration says,
17 "The interface allows users to view a current
18 playlist," and you make reference to the patent
19 itself, column 12, lines 29 through 36.

20 A. Actually, I don't believe that's correct.

21 Q. So does figure 4 show a playlist?

22 A. So figure 4 is showing, as I said, the
23 radio tab of the interface being selected, so I
24 think figure 4 is illustrating one aspect of -- just
25 one aspect of the interface.

1 Q. But the question was, does it show a
2 playlist?

3 MS. REISTER: Objection. Asked and
4 answered.

5 A. It's a little unclear. The description of
6 the figure doesn't go into detail as to what every
7 element is, but it certainly talks about -- for
8 example, top ten lists being provided to the user,
9 and generally the specification does describe the
10 existence of playlists and manipulations of
11 playlists. Whether those are illustrated in figure
12 4 is a little unclear.

13 BY MR. ENGELLENER:

14 Q. Is it fair to say figure 4 does not show a
15 playlist identifying plurality of songs?

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

18 A. I believe I've answered that question.
19 The figure itself, it's a little unclear. It's a
20 little unclear what's going to happen, for example,
21 when you select the top 10 lists. This level of the
22 interface, there certainly is no list of songs, and
23 when you drill down to other components of the
24 interface, the spec describes the ability to, as I
25 said, view and manipulate playlists.

1 BY MR. ENGELLENER:

2 Q. Am I correct that radio dial includes
3 buttons that says user selected playlist and group
4 playlist?

5 A. Why am I looking at the bad copy. Here we
6 go.

7 Yes. It does include those buttons.

8 Q. We looked at claim 1 in the '652 patent a
9 little while ago, and I referred you to -- this is,
10 again, Exhibit 3.

11 A. Okay.

12 Q. And I referred you to Romanette iii. And
13 the first of the three steps in that function
14 described in Romanette iii is receiving a playlist
15 assigned to an electrical device from the central
16 system, the playlist identifying a plurality of
17 songs. Are there any songs identified on that
18 figure 4?

19 A. I mean, I don't think we can tell. Figure
20 4 isn't described at that level of detail.

21 Q. So can we say one way or another it has
22 received a playlist?

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

25 A. That's a completely different issue, and

1 that's not what your previous questions were about.

2 I mean, I'm happy to drill into that issue, but

3 that's not an issue of this interface.

4 BY MR. ENGELLENER:

5 Q. I'd like to refer you to paragraph 39 of
6 your declaration in which you described the elements
7 of the claim 1 and where they might be present in
8 the White patent.

9 And --

10 A. Okay.

11 Q. You identify several figures from the
12 patent in this paragraph, figures 3, 4 and 8. I'd
13 like you to look at 3, 4 and 8 and tell me where in
14 White's system is any of his embodiments receiving a
15 playlist identifying a plurality of songs?

16 MS. REISTER: Objection. Vague.

17 A. So paragraph 39, I don't believe, is
18 addressing that particular issue. We can talk about
19 that issue, but just so that the questions are
20 clear, the citations to the figures in paragraph 39
21 are for different elements.

22 BY MR. ENGELLENER:

23 Q. So is there somewhere else we should be
24 looking at your declaration for White's disclosure
25 of this step of receiving a playlist identifying a

1 plurality of songs?

2 A. I think the confusion is, the analysis is
3 trying to track the claim language a little more
4 closely than your question was.

5 Q. So let's start with -- we can start with
6 the disclosures in paragraph 39 -- or the citations
7 in paragraph 39.

8 A. So I think figure 8 probably shows it
9 best, and the descriptions in figure 8 that are in
10 the spec as well starting at the bottom of column 15
11 and going through most of column 16 where the user
12 will select audio information and the top of column
13 16 says, for example, "The user may select a song, a
14 plurality of different songs, an entire album," and
15 then skipping a little bit to line 6 of column 16,
16 "Upon selecting the reference to audio information,
17 the method may proceed to step 802 where a playlist
18 is created to represent the users-selected audio
19 information. So line 4 says you can select a
20 plurality of different songs and create a playlist
21 corresponding to those selections. And then we can
22 go into the text in column 8 that further describes
23 it, but it's also easy to see in figure 8 that you
24 create the playlist in box 802 and, ultimately, you
25 sent the playlist to the device in box 813.

1 Q. Box 800, 801, 802, are all occurring on
2 the server, are they not?

3 MS. REISTER: Objection. Foundation.
4 Form.

5 A. So it's just simply described as it's
6 occurring on a web page, so a server certainly is
7 one possibility, but the description doesn't
8 actually explicitly reference a server.

9 BY MR. ENGELLENER:

10 Q. But whether you call it a web page via the
11 internet or you call it a server, it's -- these
12 functions are occurring outside of the playback
13 unit, are they not?

14 MS. REISTER: Objection. Vague.
15 Foundation. Misstates the testimony.

16 A. It's -- I'm trying to think, what is their
17 device, so we can get more specific there?

18 Yes. So these steps are occurring outside
19 of -- so you have a variety of options where the
20 playlist gets sent, so whatever that destination is,
21 these steps are not occurring at that destination.

22 BY MR. ENGELLENER:

23 Q. And so is it fair that the boxes that
24 follow 804 where user-prompted for destination
25 device are -- those steps are being carried out at

1 the destination device, I think he calls it a player
2 device?

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

5 A. I think beyond 804, some of this is a
6 little ambiguous as to where it occurs. Some of
7 this is occurring beyond 804s. It's certainly
8 occurring at the destination device. Others are --
9 depending on which branch you go, are being
10 performed at the same entity that was performing
11 boxes 800 through 804.

12 BY MR. ENGELLENER:

13 Q. Okay. To say it in converse, is it fair
14 to say that boxes 800 through 804 are not occurring
15 on the destination device?

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

18 A. I think that's fair.

19 BY MR. ENGELLENER:

20 Q. Okay.

21 A. Can we do a quick break when you get to a
22 stopping point?

23 Q. This would be a good stopping point, and I
24 propose having a really quick lunch if you're
25 hungry.

1 THE VIDEOGRAPHER: Off the record

2 1:17 p.m. to 1:54.

3 (A recess was taken from 1:17 p.m. to
4 1:54 p.m.)

5 THE VIDEOGRAPHER: Starting of Number
6 4. Back on the record at 1:55 p.m.

7 BY MR. ENGELLENNER:

8 Q. I'd just like to ask you a couple more
9 questions about the White patent.

10 A. Okay.

11 Q. Again, that's Exhibit 15, and I'd like to
12 direct your attention to figure 8.

13 A. Okay.

14 Q. Now, we had talked a little bit about the
15 server side and the player side. In the boxes
16 labeled 812 and 814, the term Execute Playlist
17 appears; is that correct?

18 A. It does.

19 Q. And what do you interpret that to mean?

20 (Off the record for court reporter to
21 adjust realtime.)

22 THE VIDEOGRAPHER: Off the record at
23 1:55.

24 (A recess was taken from 1:55 to 1:57
25 p.m.)

1 THE VIDEOGRAPHER: Back on the record
2 at 1:57 p.m.

3 BY MR. ENGELLENER:

4 Q. So it looks like my question was captured
5 by the court reporter, but let me just repeat it
6 anyway for your benefit.

7 A. That would be fine.

8 Q. We talked a little bit about figure 8
9 already and the server side and the player side.
10 There's two boxes on the player side, boxes 812 and
11 814 that contain the legend, Execute Playlist. I'd
12 like to know what you interpret that to mean?

13 A. I think given both, according to the plain
14 text here, but more importantly based on the
15 disclosures of the playlist and execute playlist in
16 the spec, I would say a person in the skill would
17 understand that means that the system plays the
18 content indicated on the playlist.

19 Q. Okay. So now I'd like to turn to the
20 Berman patent. We'll have to mark that as an
21 exhibit.

22 A. Okay.

23 (Exhibit No. 16 was marked for
24 identification.)

25 A. Oh, sorry.

1 Q. Now, the Berman patent was one on which
2 you opined in the '952 patent proceeding which would
3 be the '740 proceeding; do you recall this patent?

4 A. I do.

5 Q. And if I could direct your attention to
6 figure 1. I'd like to ask you, what is your
7 understanding of figure 1?

8 MS. REISTER: Objection. Vague.

9 A. So the Berman describes figure 1 as a
10 block diagram of the playback unit, in particular
11 showing the connections to the home audio system on
12 the left and the network on the right.

13 BY MR. ENGELLENER:

14 Q. So everything in the box labeled 100 is
15 the network -- can we call it remote server or host?

16 MS. REISTER: Objection. Vague.
17 Mischaracterizes the testimony.

18 A. Sorry. I'm losing you with remote server
19 and the host.

20 BY MR. ENGELLENER:

21 Q. I'm sorry. Let me just withdraw that
22 question. So I misspoke.

23 The box labeled 100 in figure 1, it's
24 referred to in the patent text, I believe, as the
25 playback unit; is that your understanding?

1 A. Yes.

2 Q. And the box labeled 107 and 104 are
3 connected to the playback unit via the internet,
4 which is shown in the figure, which is symbolized by
5 102; is that correct?

6 MS. REISTER: Objection. Form.

7 A. Yeah, I think they more generally say it's
8 a network and the internet is an example.

9 BY MR. ENGELLENER:

10 Q. Yes, you're correct. Thank you. Now,
11 with regard to the '952 patent in which the Berman
12 patent is a reference, I'd like to refer you to
13 Claim 1.

14 A. Okay.

15 Q. And there's a recitation in Claim 1 as an
16 electronic device; do you see that at the beginning
17 of the claim repeated throughout the claim, the
18 electronic device?

19 A. I see that.

20 Q. Is it your understanding that the box
21 labeled 100 in the Berman patent and called Playback
22 Unit performs the functions of the electronic device
23 in the 58 -- excuse me -- '952 patent?

24 MS. REISTER: Objection. Form.

25 Relevance.

1 A. I would think if one was making an
2 invalidity argument based on Berman for the '952
3 patent, they would point to box 100 as the playback
4 unit as being the electronic device of the '952.

5 BY MR. ENGELLENER:

6 Q. And is that how you approached it, your
7 analysis of the Berman patent in your declaration
8 Exhibit 7?

9 MS. REISTER: Objection. Vague.

10 A. Essentially, yes.

11 BY MR. ENGELLENER:

12 Q. Now, I'd like to refer you to paragraph 33
13 of your declaration and figure 3 of the '952 patent,
14 which might be a little clearer if you look at the
15 figure itself.

16 A. Sure.

17 Q. You indicate that in paragraph 33 that the
18 operation of the playback unit is illustrated in
19 this figure and in figure 4; is that correct?

20 MS. REISTER: Objection. The
21 document speaks for itself.

22 A. Yeah, that's what I state in paragraph 33.

23 BY MR. ENGELLENER:

24 Q. And where in the -- in figure 3 -- figure
25 4, for that matter, is a playlist assigned to an

1 electronic device identifying a plurality of songs?

2 MS. REISTER: Objection. Vague.

3 A. Well, in light of the disclosures in
4 Berman, if you just look at figure 3, that would be
5 step 308 -- or box 308.

6 BY MR. ENGELLENER:

7 Q. And so is it your opinion that Berman's
8 song list is a playlist within the meaning of the
9 Qureshey claims?

10 MS. REISTER: Objection. Form.
11 Misstates the testimony.

12 A. Yes.

13 BY MR. ENGELLENER:

14 Q. So you basically equate it -- song list in
15 Berman with playlist in the patent claims; is that
16 correct?

17 A. Yes.

18 Q. Now, why is Berman's device shown as
19 needing a song list?

20 MS. REISTER: Objection. Form.
21 Vague.

22 A. I guess I don't understand the question.

23 BY MR. ENGELLENER:

24 Q. Okay. What is the function of the song
25 list in Berman's device?

1 A. The song list is -- let's see exactly what
2 Berman says.

3 So the song list is representing the
4 content that the user could play.

5 Q. Would it be fair to call it a catalog of
6 all the songs that the user has rights to?

7 MS. REISTER: Objection. Misstates
8 the testimony.

9 A. It certainly is the case that after box
10 308, the song list is supposed to represent the
11 songs that the user is able to access on this
12 device.

13 BY MR. ENGELLENER:

14 Q. So is it fair to call it a catalog of
15 songs?

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

18 A. Unless that's what Berman calls it, and
19 I'm not finding any specific place where he refers
20 to it as the catalog, I would say, no.

21 BY MR. ENGELLENER:

22 Q. Okay. So it's a list of all available
23 songs, then?

24 MS. REISTER: Objection.

25 BY MR. ENGELLENER:

1 Q. Is that correct?

2 MS. REISTER: Misstates the
3 testimony.

4 A. Well, again, as we discussed, and I
5 thought you were clarifying my previous answer, it's
6 the songs that the user has access to on this
7 device.

8 BY MR. ENGELLENER:

9 Q. And in your opinion, is it a playlist?

10 MS. REISTER: Objection. Scope.
11 Relevance.

12 A. I believe it meets the board's
13 construction of playlist.

14 BY MR. ENGELLENER:

15 Q. Is it a list in which media items or songs
16 are arranged to be played in the sequence?

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

19 A. I don't believe that Berman discloses that
20 they're arranged to be played in a sequence.

21 BY MR. ENGELLENER:

22 Q. Now, boxes 304 and 30- -- excuse me --
23 304, 306 and 308, appear to be a synchronization
24 function; is that a fair characterization?

25 MS. REISTER: Objection. Foundation.

1 Form.

2 A. I wouldn't describe it that way. Perhaps
3 you have a different notion of synchronization than
4 I do.

5 BY MR. ENGELLENER:

6 Q. Well, box 306 is a decision box, I
7 believe, in the parlance of flow diagrams; is that
8 correct?

9 A. Yes.

10 Q. And the question that's asked there, Is
11 the song list current? Is that correct?

12 A. Yes.

13 Q. And if it -- and the input to this is the
14 song list that is resident on the player device; is
15 that correct?

16 MS. REISTER: Objection. Foundation.
17 Form.

18 A. Original, yes, that's what the song list
19 is.

20 BY MR. ENGELLENER:

21 Q. So the playback unit sends its current
22 song list version to the DUL server in box 304, and
23 if it is current, according to the DUL server, the
24 flow diagram continues to box 310; is that correct?

25 MS. REISTER: Objection. Form.

1 Compound.

2 A. I mean, that's certainly what it's showing
3 in the flowchart. I mean, I think there's a more
4 fulsome description of what is happening in the
5 spec.

6 BY MR. ENGELLENER:

7 Q. So the -- what is the player device
8 sending to the DUL server when it sends a song list
9 version?

10 MS. REISTER: Objection. Foundation.
11 Form.

12 A. I'm sorry. Could you repeat the question?

13 THE COURT REPORTER: Sure. "what is
14 the player device sending to the DUL server when it
15 sends a song list version?"

16 A. When it sends a song list version...

17 Okay. So it's not specifically specified,
18 so it's just sending a song list. I don't think
19 it's necessarily sending the song list because it
20 has the song list. I think the point of box 306 is
21 that there is some communication with the DUTL
22 server.

23 THE COURT REPORTER: With the what?

24 THE WITNESS: DUTL, all caps.

25 A. Information is sent to the server such

1 that the server can determine whether or not the
2 song list is current. And if it's not current, then
3 clearly you get another song list -- a new, updated
4 song list is sent back. So I think the person in
5 the skill would understand between box 306 and 308,
6 what's being sent is information -- sorry. I think
7 you asked me between 304 and 306?

8 BY MR. ENGELLENER:

9 Q. Yes.

10 A. Thank you. So what is actually sent -- so
11 the flowchart says, "Send song list version to the
12 chart," and the description of this is, doesn't
13 really add much --

14 Q. Maybe I can help you out by referring you
15 to column 9, line 60 through column 10, first
16 paragraph.

17 A. I think this -- these disclosures here are
18 just referring to the communication between the
19 server back to the playback unit, or perhaps I'm
20 missing what you're pointing to. You said column 9.

21 Q. Column 9, line 62, column 10, line 5. And
22 the sentence that bridges those two columns is
23 probably the most important one. It reads, "The
24 next two bytes comprise a song list version field
25 that provides the version number of the song list

1 currently stored in the memory of the playback
2 unit."

3 So with that in mind -- maybe I'll just
4 withdraw my question and just ask you: Is it a fair
5 characterization to say that in box 304 the playback
6 unit is sending a data packet with the version
7 number of its song list to be compared with the
8 DUL's most current song list?

9 MS. REISTER: Objection. Form.
10 Foundation.

11 A. Right. So this is describing the user
12 request data packet, which is what's used by the
13 playback device to validate the user's
14 authorization. And the song list -- says here -- is
15 identified by a version field -- by, essentially, a
16 version number.

17 BY MR. ENGELLENER:

18 Q. So if the playback unit, for example,
19 sends a two-byte packet of data that is encoded for
20 a number, and let's say, for example, it's, you
21 know, version 3.0, and if that matches the current
22 song list version number on the DUL, the process
23 continues to box 310; is that correct?

24 MS. REISTER: Objection. Incomplete
25 hypothetical. Form.

1 A. Yes. I think that's fair.

2 BY MR. ENGELLENER:

3 Q. And if the number doesn't match, then what
4 happens?

5 MS. REISTER: Objection. Incomplete
6 hypothetical. Form.

7 A. Well, it says that the server will send an
8 updated song list.

9 BY MR. ENGELLENER:

10 Q. And that song list is all of the songs
11 that the user's -- that are currently available to
12 the user; is that correct?

13 MS. REISTER: Objection. Foundation.
14 Misstates the testimony.

15 A. Yeah, I think it's the -- the songs that
16 this user is able to access on this device.

17 BY MR. ENGELLENER:

18 Q. And so collectively boxes 304, 305 (sic)
19 and 308 are performing a synchronization function to
20 ensure that the player device's song list is the
21 current list of songs that are available to that
22 player device; is that correct?

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

25 A. Unfortunately, I think I fell offtrack. I

1 think there was a bug in your recitation of the
2 flowchart.

3 BY MR. ENGELLENER:

4 Q. The question was, and so collectively
5 boxes 304, 305 and 308 are performing a -- excuse
6 me -- 304, 306 and 308 are performing a
7 synchronization function to ensure that the player
8 device's song list is the current list of song list
9 that are available to the player device; is that
10 correct?

11 A. Again, I wouldn't characterize -- you
12 know, I don't think it's -- to me, I wouldn't -- I
13 don't think it's best -- synchronization, I don't
14 think is the word that best describes this.

15 Q. Is there another word that comes to mind?

16 A. I would just say update.

17 Q. Okay. But if there is -- if there's a
18 mismatch of the version numbers, then the DUL sends
19 an updated list of all the songs available to the
20 user on that playback device; is that correct?

21 MS. REISTER: Objection. Vague.

22 Asked and answered.

23 A. I believe that's correct.

24 BY MR. ENGELLENER:

25 Q. And the song list, is it a range to be

1 played in an order?

2 MS. REISTER: Objection. Foundation.

3 Vague.

4 A. I think you've asked that question. And I
5 believe what I said is there's no -- I don't believe
6 there are disclosures in Berman of it being played
7 in an order. I think this is a more interactive
8 system, so the user gets to specify order.

9 BY MR. ENGELLENER:

10 Q. And at that point, the song list is not
11 arranged for playback. The user then has to select
12 the song, isn't that correct? Or a multitude of
13 songs?

14 MS. REISTER: Objection. Compound.
15 Vague. Foundation.

16 A. No, I wouldn't -- I would disagree. I
17 mean, I think you're -- I think you're reading too
18 much in your use of the word playback.

19 BY MR. ENGELLENER:

20 Q. Well, I'm reading box 308 that says, "DUL
21 sends updated song list to playback unit," and then
22 the very next box is 310 in which the user selects
23 artist and song title -- artist and song title.

24 A. Right.

25 Q. So at the point that the song list is

1 being sent to the playback unit, there are no
2 pending instructions to play anything, is there?

3 MS. REISTER: Objection. Vague.
4 Foundation.

5 A. Sure. The playlist has just been created.
6 BY MR. ENGELLENER:

7 Q. "Song list"?

8 A. Thank you. The song list has -- has just
9 been created, so it's been created on a different
10 device, and when it comes down to the playback
11 device, anything on there can be played.

12 Q. It can be played but only after the user
13 selects a song, artist, title?

14 MS. REISTER: Objection. Vague.
15 Foundation. Asked and answered.

16 A. It's an interactive system, and this is
17 sort of equivalent -- the user has to do something
18 for the system to start playing, at least in the
19 embodiment that's described in figure 3.

20 BY MR. ENGELLENER:

21 Q. So is it fair to say, though, the song
22 list that's sent by the DUL to the playback unit is
23 not arranged for automatic playback?

24 MS. REISTER: Objection. Foundation.
25 Vague. Misstates the testimony.

1 A. So figure 3 is -- is a specific functional
2 view through the playback device. It's not
3 describing all of the modes of operating the device,
4 and in figure 3, the user -- more the mode that's
5 being described in figure 3, this interactive mode,
6 the user does have to select an artist, as it -- has
7 to make a selection. The selection, in this case,
8 illustrated in box 310.

9 BY MR. ENGELLENER:

10 Q. So just to be clear, my question was, is
11 that song list arranged for automatic playback? If
12 you could just answer that yes or no.

13 A. You can't tell from just figure 3, the use
14 of it in figure 3. The user has to select. I
15 believe there's other disclosures of noninteractive
16 playback of songs.

17 Q. I'd like to mark one more patent as an
18 exhibit.

19 (Exhibit No. 17 was marked for
20 identification.)

21 Q. Now, Exhibit 17 you have before you is
22 U.S. Patent 6,199,076. It's also a patent that you
23 opine upon in your declaration in the '952 patent
24 proceeding; is that correct?

25 A. That's correct.

1 Q. Can you summarize what Logan is teaching?

2 MS. REISTER: Objection. Vague.

3 A. I have a summary of it in the declaration
4 starting at paragraph 41.

5 BY MR. ENGELLENER:

6 Q. The title of the Logan patent is Audio
7 Program Player Including a Dynamic Program Selection
8 Controller. Do you have an opinion or do you know
9 what the word "dynamic" means in that contents?

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

12 A. I haven't considered that question.

13 BY MR. ENGELLENER:

14 Q. I have to admit I'm a bit confused by all
15 the file descriptions in this patent. For example,
16 in the abstract it states that "The host organizes
17 program segments by subject matter and scheduled
18 programming in accordance with preferences
19 associated with each subscriber."

20 Do you see that?

21 A. Yes.

22 Q. And then on column 6, lines 51 through 59,
23 it says, "The host periodically transmits a download
24 compilation file upon receiving a request from the
25 player."

1 Is it your understanding that the download
2 compilation file is the same as the program segments
3 that are being referred to in the abstract?

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

6 A. No, I don't think those are the same
7 things.

8 BY MR. ENGELLENER:

9 Q. And how are they different?

10 MS. REISTER: Objection. Vague.

11 A. So the program segments are the actual --
12 I believe are the actual media. And I think the
13 download -- the compilation file is some collection
14 of segments.

15 BY MR. ENGELLENER:

16 Q. Okay. Maybe this will get clearer as we
17 go on. Maybe not. On figure 1, it shows a
18 schematic diagram of a host and a player; is that
19 correct? I believe the host is labeled 101 and the
20 player is labeled 103.

21 A. So the host is 103, and --

22 Q. The other way around, I think.

23 A. Sorry. Thank you. The host is 101 and
24 the player device is 103, correct.

25 Q. Now, the player device 103 has a box

1 labeled Program Data. Is that where the download
2 compilation file is stored?

3 MS. REISTER: Objection. Scope.

4 A. Yes.

5 BY MR. ENGELLENER:

6 Q. Now, if I could direct your attention to
7 figure 5. Figure 5 illustrates something called
8 Selection File 351.

9 A. Right.

10 Q. Is that the same as either the download
11 compilation file or the program segments?

12 MS. REISTER: Objection. Form.

13 Vague.

14 A. I think -- no, I think they're different.

15 BY MR. ENGELLENER:

16 Q. So what is selection file 351 and how does
17 it relate to the rest of the disclosures?

18 A. I think 351 is the actual collection of
19 sequence -- of programming sequences that are going
20 to be played out.

21 Q. Wouldn't this be in the download
22 compilation file?

23 MS. REISTER: Objection. Foundation.

24 A. Sure. All or part of it certainly could
25 be.

1 BY MR. ENGELLENER:

2 Q. Okay. Now, figure 4 shows something
3 labeled Programs 303.

4 A. Right.

5 Q. Is that -- are the little boxes within
6 that the larger box program segments?

7 MS. REISTER: Objection. Vague.
8 Foundation.

9 A. Sorry. This isn't numbered, but maybe you
10 can point to let me know what you're referring to.

11 BY MR. ENGELLENER:

12 Q. Is the box that's labeled program --

13 A. Right.

14 Q. -- is it your understanding that it
15 contains one or more program segments?

16 A. Let me see the terminology that they use.

17 MS. REISTER: Objection. Scope.
18 Relevance.

19 A. Right. So Program in 303, just to be
20 clear, isn't referring to software. It's to the
21 segments, and I think that -- so what's representing
22 are a list of program segments, a collection of
23 program segments.

24 BY MR. ENGELLENER:

25 Q. Now, the patent also refers to Programs

1 Table on column 18, lines 51 through 55 -- excuse
2 me -- 41 through 45. Is that the same as the box
3 Programs 303 in figure 5 -- I mean, figure 4?

4 A. I think so. That's what they say. I
5 think Programs is maybe in figure 4 is a shorthand
6 for Program Table because I think all the references
7 to 303 are Programs, plural, Table.

8 Q. And what is a session schedule file that's
9 described in column 7, lines 4 through 10?

10 MS. REISTER: Objection. Vague.
11 Form.

12 A. So it's a way of -- it's -- I believe this
13 is essentially the -- right. So this is the list
14 that's going to contain the indications of the
15 content to be played, so it has a list of these
16 program identifiers -- each program identifier
17 corresponding to this program segment that's going
18 to be played.

19 BY MR. ENGELLENER:

20 Q. So you need both of them, the program
21 segments and the session schedule file to construct
22 a --

23 A. Sure. It's the same distinction between a
24 playlist and the content to be played itself.

25 MS. REISTER: Objection. Form.

1 Foundation.

2 BY MR. ENGELLENER:

3 Q. So the content is in the program segments,
4 and the session schedule file is just the list of
5 that content?

6 MS. REISTER: Objection. Compound.
7 Vague.

8 A. It's -- at a high level, yes. It's --
9 it's a little more complicated than that.

10 BY MR. ENGELLENER:

11 Q. So if the session schedule file is
12 analogous to a playlist, is -- is that what -- is
13 that what you just suggested? I'm sorry. I wasn't
14 paying attention.

15 MS. REISTER: Objection. Misstates
16 the testimony. Foundation.

17 BY MR. ENGELLENER:

18 Q. Did you say that the Program Segments
19 correspond to Content and Program Schedule File
20 corresponds in some general way to the playlist?

21 MS. REISTER: Objection. Asked and
22 answered.

23 A. Yes. So the schedule file is the analog
24 of the playlist, and the program segment identifiers
25 are -- is what identifies the songs, if you will.

1 BY MR. ENGELLENER:

2 Q. In columns 12, lines 3 through 5, they
3 make reference to the schedule file as consisting of
4 a sequence of program segment identification numbers
5 which are used to compile a sequencing file and --
6 or sequencing file called the selections file. Do
7 you see that?

8 A. I do.

9 Q. So what is the sequencing file and how is
10 that different than the schedule file?

11 MS. REISTER: Objection. Vague.

12 Asked and answered. My screen just went entirely
13 white. Now, it's back. Can we go off the record?

14 THE VIDEOGRAPHER: Off the record at
15 2:47 p.m.

16 (Off the record from 2:47 to 2:48
17 p.m.)

18 THE VIDEOGRAPHER: Back on the record
19 at 2:48 p.m.

20 BY MR. ENGELLENER:

21 Q. Before we went off the record, we were
22 talking about column 12, lines 3 through 5, of the
23 Logan patent, and the discussion there of sequencing
24 files and selection files, and the question I had
25 posed to you is, what is the sequencing file and how

1 does it differ from the schedule file?

2 MS. REISTER: Vague. Asked and
3 answered.

4 A. So the sequencing file is this
5 intermediate structure that's created that's going
6 to be used more directly in the playout of the
7 content. So it's not something that a user sees or
8 interacts with.

9 BY MR. ENGELLENER:

10 Q. Which file is that?

11 A. The sequencing file.

12 Q. The sequence file?

13 A. Or -- which they also call the selections
14 file.

15 Q. And would the user see the session
16 schedule file?

17 MS. REISTER: Objection. Vague.

18 A. I don't recall.

19 BY MR. ENGELLENER:

20 Q. I believe you testified that the session
21 schedule file dictates what program segments are
22 actually broadcast to the user. You may not have
23 used the word broadcast; is that accurate?

24 MS. REISTER: Objection. Form.
25 Mischaracterizes testimony.

1 A. No.

2 MS. REISTER: Counselor, is there a
3 pending question?

4 MR. ENGELLENER: Yes. I'm sorry.

5 MS. REISTER: I believe he answered
6 your last question.

7 BY MR. ENGELLENER:

8 Q. I asked -- I believe you testified that
9 the session schedule file dictates what program
10 segments are actually broadcast to the user; is that
11 accurate?

12 MS. REISTER: I believe his answer
13 was no.

14 BY MR. ENGELLENER:

15 Q. And why would that be?

16 MS. REISTER: Objection. Vague.

17 A. Because that's not what I testified.

18 BY MR. ENGELLENER:

19 Q. So what does the session schedule file do?

20 MS. REISTER: Objection. Form.
21 Vague.

22 A. So the schedule file is going to indicate
23 what is going to contain data that will be used to
24 ultimately generate the playout, so it's an
25 identification, these program segment identifiers

1 that are identifying media content that's to be
2 played.

3 BY MR. ENGELLENER:

4 Q. I believe you said that the sequencing
5 file -- or the selections files occur, you know,
6 deep down in the structure of this system and the
7 user does not need to see them; is that correct?

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

10 A. Yeah, so I was just now talking about the
11 schedule file and now you're talking about a
12 different file?

13 BY MR. ENGELLENER:

14 Q. Right. But does the -- would a user need
15 to see the session schedule file?

16 MS. REISTER: Objection. Vague.

17 A. The schedule file, I believe, is what's
18 created based on user's user selections.

19 BY MR. ENGELLENER:

20 Q. But the user receives a broadcast of the
21 program segments; is that a fair characterization of
22 how the system works?

23 MS. REISTER: Objection. Foundation.

24 A. I would say, no.

25 BY MR. ENGELLENER:

1 Q. And why not?

2 A. The word broadcast is not appropriate in
3 this context. It's not receiving a broadcast.

4 Q. Do you recall what word they used, what
5 the verb was, if it's not broadcast, that describes
6 the transfer of audio information in Logan's system?

7 A. I believe they just say download. So you
8 download program segments.

9 Q. So the session schedule file controls the
10 download of program segments?

11 A. It indicates what is -- what is to be
12 played and part of it is a system that determines
13 that, given that schedule file, what needs to be
14 downloaded.

15 Q. So I'm having a hard time understanding
16 why you need both a session schedule file and a
17 sequencing or selections file?

18 A. I think it's just the way -- the way in
19 which the playout system works; that they build an
20 intermediate structure that's used to direct the
21 actual playout.

22 Q. And which one is the intermediate
23 structure?

24 MS. REISTER: Objection. Asked and
25 answered.

1 A. Now, I've forgotten. All this -- you're
2 reminding me of your first comment of too many
3 files.

4 BY MR. ENGELLENER:

5 Q. Well, regardless of which one is
6 intermediate, is it fair to say that both the
7 session schedule file and the sequencing file are
8 operating as intermediaries for the download of
9 program segments to the user?

10 MS. REISTER: Objection. Form.
11 Vague.

12 A. Can you read it back?

13 BY MR. ENGELLENER:

14 Q. Let me rephrase it.

15 A. Okay.

16 Q. Is it fair to say both the session segment
17 file and the sequencing file are operating in the
18 background and that the -- what the user gets is a
19 download of a program segment or segments?

20 A. I wouldn't agree with that
21 characterization.

22 Q. Okay. Why not?

23 A. I just don't think it's accurate.

24 Q. Which part of it is not accurate?

25 A. Well, your use of the words background.

1 You're contemplating an implementation of this, and
2 I don't think that that's warranted, given the
3 disclosures here.

4 Q. Would it be fair to characterize the Logan
5 system as internet radio?

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

8 A. I think the content that -- can be
9 downloaded in Logan is general, all right. There's
10 disclosures of songs, but also saying that it can be
11 other content, and I don't recall if there's a
12 specific disclosure of radio in here. But because
13 the disclosures are so general -- I mean, that in
14 the sense of what the content is doesn't seem to
15 matter to Logan, therefore -- it's certainly not
16 excluded, but I don't recall if it uses the word
17 radio in here when it's describing the program
18 segments, but I can look.

19 BY MR. ENGELLENER:

20 Q. Well, it's disclosing audio content and
21 advertising; is that correct?

22 MS. REISTER: Objection. Foundation.
23 Vague.

24 A. Yes. Internet radio is part of an
25 application they're trying to support here so I -- I

1 mean, given what they talk about in the background
2 of the invention, I think a word skilled would
3 understand you can use the Logan system for an
4 internet radio application, and I just don't recall
5 if it specifically says that or not. In particular
6 because they're so general in their treatment of
7 what program segments are.

8 BY MR. ENGELLENER:

9 Q. If I could refer you again to figure 5.
10 There seems to be a hierarchy in this selections
11 file in that the second box, which is labeled S
12 Program ID. I believe when you look at the text of
13 the patent, it describes a data packet that
14 describes the subject of a particular program; is
15 that your understanding?

16 A. I lost you --

17 MS. REISTER: Objection. Vague.

18 A. -- to what specifically you're referring
19 to.

20 BY MR. ENGELLENER:

21 Q. The second box from the top --

22 A. Are you talking about in the left-hand
23 side, 351?

24 Q. Says, S Program ID?

25 A. S Program ID. I'm sorry. I just don't

1 see that. Oh, oh, I see.

2 Q. Two boxes.

3 A. Two boxes. Thank you.

4 Q. S Program ID.

5 A. Yes, I see.

6 Q. It is it your understanding that that's a
7 portion of the -- what are we going to call this? --
8 program segment that describes what the subject is?

9 MS. REISTER: Objection. Form.

10 Vague.

11 BY MR. ENGELLENER:

12 Q. To help you out, maybe I can refer you to
13 column 32 in the table that's there, which seems to
14 decode all these letters in figure 5.

15 So maybe I'll just withdraw the question
16 and ask you, is this -- what's being shown in figure
17 5 is a program -- is the selection that's shown in
18 figure 5 and labeled 355, is it one or more program
19 segments that include all these subsets of data
20 fields described on page -- or column 32?

21 MS. REISTER: Objection. Form.

22 Vague. Compound.

23 A. That question was too long. Maybe we
24 could break it up.

25 BY MR. ENGELLENER:

1 Q. Okay. What do you take away from figure
2 5? What is being shown here? What are they trying
3 to illustrate here?

4 MS. REISTER: Objection. Form.
5 Vague.

6 A. I think this is -- I believe -- let's go
7 back to figure 5. This -- so I believe this is
8 ultimately the selections file that -- which is a
9 sequencing file, and this is more detailed about the
10 sequence of events during playback, so this is
11 actually what's going to occur -- this is what's
12 going to be played -- this is information that's
13 going to be used to drive the actual payout.

14 BY MR. ENGELLENER:

15 Q. Okay. As I said, I found this patent very
16 confusing, but my takeaway from this was that this
17 first -- the second box from the top, S -- S Program
18 ID, is that portion of the download that's going to
19 tell you what the subject matter is that follows, is
20 that your understanding also?

21 A. No.

22 MS. REISTER: Objection. Vague.

23 BY MR. ENGELLENER:

24 Q. Okay. So what is that portion called, S
25 Program ID, conveying to the user of Logan's system?

1 A. So this is a sequencing --

2 MS. REISTER: Objection. Foundation.

3 A. So this is a sequencing file that has the
4 information about the events that are going to occur
5 during playback. The event types, I think, are
6 listed in the first column by the single letter, and
7 I think that's explained in column 32, the various
8 types, and the indication of the actual content is
9 given in the second column. And so not all of these
10 are playable because remember you're doing the
11 schedule here, so there's a synchronization aspect.
12 So, for example, you have these offset components,
13 but in the second case, I think that would indicate
14 is that's an announcement that's going to be made,
15 and the content will actually be heard is indicated
16 by the program ID. The program ID number is a
17 reference to consent to a song, to a recording, to
18 the whatever.

19 BY MR. ENGELLENER:

20 Q. So in your analysis of the Logan patent
21 for your declaration, can you tell me what element
22 in Logan corresponds to a play list?

23 MS. REISTER: Objection. Vague.

24 A. I think what that's described in
25 paragraph -- well, first in paragraph 41, what I'll

1 point to is the schedule file.

2 BY MR. ENGELLENER:

3 Q. So what element corresponds to a song?

4 A. Schedule file consists of these program
5 segment identification numbers and those can be
6 songs or indications of songs.

7 Q. You mentioned earlier that songs were one
8 of the things that Logan describes as being
9 downloadable; is that correct?

10 MS. REISTER: Objection. Vague.
11 Miss characterizes the testimony.

12 A. I don't know that I -- we covered that
13 ground, but I believe that's true.

14 BY MR. ENGELLENER:

15 Q. Well, would it surprise you if I told you
16 the term song does not appear anywhere in the Logan
17 patent?

18 MS. REISTER: Objection. Form.
19 Relevance.

20 A. I think -- if the word song doesn't
21 actually appear here, I think the -- you know, a
22 person of ordinary skill in the art would understand
23 that songs are clearly comprised in here. It talks
24 about audio recordings. I think it talks about
25 music in someplace, so it may not use the word

1 S-O-N-G, but I think the most common -- the fact
2 that it pervasively uses audio recordings, for
3 example, I think a person of ordinary skill in the
4 art would say, Gee, that could be a song. They
5 certainly would not understand that songs were
6 excluded or not contemplated.

7 THE COURT REPORTER: I'm sorry. They
8 what?

9 THE WITNESS: They certainly would
10 not understand that songs were excluded or not
11 contemplated.

12 BY MR. ENGELLENER:

13 Q. The term -- would it surprise you the term
14 playlist does not appear anywhere in the Logan
15 patent?

16 MS. REISTER: Objection. Form.
17 Relevance.

18 A. That, I believe is true.

19 BY MR. ENGELLENER:

20 Q. And if the Logan system did download songs
21 for the user to listen to, would there be any need
22 to identify those songs?

23 MS. REISTER: Objection. Vague.
24 Incomplete hypothetical.

25 A. I don't understand your question.

1 BY MR. ENGELLENER:

2 Q. I mean, it strikes me the function -- the
3 way the Logan system functions you tell it the type
4 of genres you like -- I think they give examples of
5 country music and classical music, and then based on
6 that, it sends you a bunch of program segments, and
7 they may have a subject that says, This is classical
8 music, but there's no reason to assume, in my mind,
9 that they have -- they're also identifying the songs
10 that are being played; would you agree with that?

11 MS. REISTER: Objection. Form.
12 Foundation. Vague.

13 A. I think generally if you're going to be
14 identifying genres, this thing -- I believe it does
15 indicate that you get information about what is
16 being played and, moreover, it does specifically
17 talk about -- at least internally -- to being able
18 to identify content for purposes of being able to
19 download.

20 MR. ENGELLENER: Can we take a quick
21 break? I think we're about done. I just want to
22 confer with my associate.

23 MS. REISTER: Certainly.

24 THE VIDEOGRAPHER: One moment. Off
25 the record at the end of Number 4 at 3:11 p.m.

1 (A recess was taken from 3:11 to 3:21
2 p.m.)

3 THE VIDEOGRAPHER: Starting of Number
4 5. Back on the record at 3:21 p.m.

5 MR. ENGELLENER: Counsel, I'm all
6 done with cross-examination. The witness is yours.

7 MS. REISTER: Thank you. I just have
8 a couple of redirect questions for Dr. Jeffay.

9 EXAMINATION

10 BY MS. REISTER:

11 Q. Dr. Jeffay, I believe earlier this
12 morning, counsel asked you a number of questions
13 about the process of preparing your declaration for
14 the IPR proceedings; do you recall that?

15 A. Sure.

16 Q. And I believe that you testified that the
17 only people you consulted with in preparing the IPR
18 declarations were counsel from Covington & Burling;
19 is that correct?

20 A. Yes.

21 Q. And in preparing your declaration for the
22 IPR proceedings and consulting with Covington &
23 Burling, did you have a number of telephone calls
24 with counsel at Covington?

25 A. Yes, yes.

1 Q. In preparing your declarations for the
2 IPR, did you conduct Webex-type webinars with
3 counsel at Covington & Burling?

4 A. Yes, yes, quite a few.

5 Q. And in the process of the Webex, were you
6 able to look at the actual text of the declarations
7 for the IPR proceedings?

8 A. Yes. Look at them, edit them, yes.

9 Q. Is there any material that -- for the
10 declarations for the IPR proceeding -- is there any
11 material that you wanted to include in the
12 declarations that's not there?

13 A. Nothing that I can think of.

14 Q. In preparing the declarations for the IPR
15 proceeding, is there anything that ended up in the
16 final declaration for which you disagree?

17 A. No.

18 Q. In preparing the IPR declarations, were
19 there any instances where you wanted to change some
20 text in the declaration and counsel disagreed or
21 said no?

22 A. I think there's some disagreements, but I
23 won.

24 Q. In the preparation of the declarations for
25 the IPR proceeding, is it correct to say that you

1 read the entire declaration before you signed it?

2 A. Yes. Yes. Absolutely.

3 Q. And is there -- in the preparation of the
4 declarations for the IPR proceeding, you agree with
5 everything that's in the declaration, correct?

6 A. Yes.

7 Q. And you adopted it as your own, correct?

8 A. I view it as it is my own, yes. I guess
9 the answer is yes.

10 MS. REISTER: I have no further
11 questions.

12 MR. ENGELLENER: And I have no
13 redirect.

14 THE VIDEOGRAPHER: One moment. Off
15 the record. End of the videotaped deposition at
16 3:24 p.m.

17 (The deposition concluded at 3:24
18 p.m.)

19 (Reserved signature.)
20
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1 STATE OF NORTH CAROLINA)

2 FORSYTH COUNTY)

3 REPORTER'S CERTIFICATE

4 I, Audra Smith, Registered

5 Professional Reporter in and for the above county and
6 state, do hereby certify that the deposition of the
7 person hereinbefore named was taken before me at the time
8 and place hereinbefore set forth; that the witness was by
9 me first duly sworn to testify to the truth, the whole
10 truth and nothing but the truth; that thereupon the
11 foregoing questions were asked and the foregoing answers
12 made by the witness which were duly recorded by me by
13 means of stenotype; which is reduced to written form
14 under my direction and supervision, and that this is, to
15 the best of my knowledge and belief, a true and correct
16 transcript.

17 I further certify that I am neither
18 of counsel to either party nor interested in the events
19 of this case.

20 IN WITNESS WHEREOF, I have hereto set
21 my hand this 22nd day of January, 2015.

22

23 _____
Audra Smith, RPR, FCRR
Notary Number: 201329000033

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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:

1

(Page 1 of 2)

2

3

E R R A T A S H E E T

4

Re: Samsung v Black Hills Media LLC

5

Deposition of: KEVIN JEFFAY

6

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