

1 UNITED STATES PATENT AND TRADEMARK OFFICE

2 -----
3 BEFORE THE PATENT TRIAL AND APPEAL BOARD
4 -----X

5 GOOGLE INC.,
6

7 Petitioner,

8 VS.

9 VISUAL REAL ESTATE, INC.,

10 Patent Owner,
11 -----

12 Cases IPR2014-01338, 01339,
13 013340, 01341
14 Patent 7,929,800B2.
15 -----X

16 DEPOSITION

17 OF

18 DR. JOHN R. GRINDON
19 Tuesday, September 15, 2015
20 601 Lexington Avenue
21 New York, New York
22

23
24 Reported by:

25 AYLETTE GONZALEZ, RPR, CLR, CCR
JOB NO. 97654

1
2 DATE: September 15, 2015

3 TIME: 9:00 a.m.
4
5

6 Deposition of DR. JOHN R. GRINDON, held
7 at the offices of FISH & RICHARDSON, P.C.,
8 601 Lexington Avenue, New York, New York,
9 before AYLETTE GONZALEZ, a Registered
10 Professional Reporter, Certified LiveNote
11 Reporter, Certified Court Reporter and
12 Notary Public of the States of New York and
13 New Jersey.
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A P P E A R A N C E S:

O'MELVENY & MYERS

Counsel for Petitioner and Witness

GOOGLE INC.

Two Embarcadero Center

San Francisco, California 94111

BY: DAVID ALMELING, ESQ.

-and-

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BY: RICK BISENIUS, ESQ.

A P P E A R A N C E S: (Continued)

AMSTER ROTHSTEIN & EBENSTEIN

Counsel for Patent Owner

VISUAL REAL ESTATE, INC.

90 Park Avenue

New York, New York 10016

BY: CHARLES MACEDO, ESQ.

ALSO PRESENT:

JOSEPH P. KINCART, IDEATION LAW

JAMES F. SHERWOOD, GOOGLE

CAMILLE HIGHAM

FERNANDO DUTRA

1 DR. JOHN R. GRINDON (9/15/15)
2 D R. J O H N R. G R I N D O N,
3 called as a witness, having been
4 duly sworn by a Notary Public,
5 was examined and testified as
6 follows:

7 (Grindon Exhibit 1, Responsive
8 Declaration of Dr. John R. Grindon was
9 premarked for identification, as of
10 this date.)

11 (Grindon Exhibit 2, Responsive
12 Declaration of Dr. John R. Grindon was
13 premarked for identification, as of
14 this date.)

15 (Grindon Exhibit 3, Responsive
16 Declaration of Dr. John R. Grindon was
17 premarked for identification, as of
18 this date.)

19 (Grindon Exhibit 4, Declaration of
20 Dr. John R. Grindon in Support of
21 Google's Opening Claim Construction
22 Brief was premarked for
23 identification, as of this date.)
24
25

1 DR. JOHN R. GRINDON (9/15/15)

2 EXAMINATION BY

3 MR. MACEDO:

4 Q. Good morning.

5 A. Good morning.

6 Q. Could you please state your name
7 and address for the PTAB.

8 A. Yes, John Grindon. John R.
9 Grindon, G-R-I-N-D-O-N. Home address is 853
10 Coachlight Lane, Hazelwood, Missouri.

11 MR. ALMELING: Counsel, before we
12 continue much further, perhaps it's
13 useful to have appearances on the
14 record itself for all the parties
15 attending the deposition.

16 MR. MACEDO: Sure. This is
17 Charles Macedo from Amster Rothstein &
18 Ebenstein. I am lead Counsel for the
19 patent owner and the four IPRs that
20 we'll be addressing.

21 I have with me Joe Kincart who is
22 backup Counsel from Ideation Law and
23 two of his associates, Camille Higham
24 and Fernando Dutra.

25 MR. ALMELING: David Almeling of

1 DR. JOHN R. GRINDON (9/15/15)

2 O'Melveny Myers representing Google.

3 With me from Fish & Richardson is Mike

4 Hawkins and Rick Bisenius.

5 Also with me from Google is Jim

6 Sherwood. Thank you, Counsel.

7 MR. MACEDO: Jim Sherwood is

8 in-house for Google?

9 MR. ALMELING: Correct.

10 BY MR. ALMELING:

11 Q. Good morning again.

12 A. Good morning.

13 Q. So you understand that you're here
14 to be deposed regarding testimony that you've
15 offered the PTAB in each of the four different
16 IPR proceedings, correct?

17 A. Yes.

18 Q. And you've been deposed before many
19 times, right?

20 A. Several times.

21 Q. So you understand how depositions
22 work?

23 A. Not so many times in an IPR, but I
24 think -- I think I have a basic understanding.

25 Q. So you understand you're testifying

1 DR. JOHN R. GRINDON (9/15/15)

2 under oath, right?

3 A. Yes.

4 Q. And that means that you're
5 promising to tell the truth, the whole truth
6 and nothing but the truth, right?

7 A. Yes.

8 Q. And you were sworn in by the court
9 reporter, right?

10 A. Yes, I was.

11 Q. And you understand if I ask you a
12 question, you need to provide the best answer
13 you can to the question I ask, right?

14 A. Yes.

15 Q. And you understand that if you
16 don't understand a question, you should ask me
17 to clarify that question before you answer it,
18 correct?

19 A. Yes.

20 Q. And since we're taking a written
21 transcript, you understand that you should
22 wait for me to finish before you speak, and I
23 should wait for you to finish before I speak,
24 right?

25 A. Yes.

1 DR. JOHN R. GRINDON (9/15/15)

2 Q. And you also understand that you
3 have to use words as your response, not merely
4 nodding your head or other physical reactions,
5 right?

6 A. Yes.

7 Q. And if you could, try to refrain
8 from using words like "um-hum" and "uh-huh,"
9 which are very difficult to distinguish on the
10 transcript and stick with things like yes and
11 no. That would be helpful, okay?

12 A. Okay.

13 Q. Do you think you can follow these
14 rules for the deposition today?

15 A. I will try.

16 Q. If you need a break at any time,
17 just ask me and after you answer the question,
18 we can take a break. Okay?

19 A. Yes.

20 Q. Is there any medications which you
21 are taking at this time which will impair your
22 ability to testify truthfully or accurately
23 today?

24 A. No.

25 Q. Is there any other reason why you

DR. JOHN R. GRINDON (9/15/15)

cannot testify truthfully or accurately today?

A. No.

Q. Now, before the deposition began, we marked three exhibits that I'm now going to read into the record and show to you. And these are the declarations that were presented on behalf of Google to the PTAB from the petitioner. Okay?

A. Okay.

Q. So the first one that we marked as Grindon Exhibit 1 is the responsive declaration of Dr. John R. Grindon. It was Google Exhibit 1010 from IPR2014-01338, and I will represent to you that the same exhibit was submitted in IPR2014-1339.

And I just want you to take a look and tell me if you recognize this.

A. Yes, I do.

Q. Are you the same Dr. John R. Grindon that is identified in this declaration?

A. Yes.

Q. And if you turn to the last page of the declaration before the exhibit, page 24 of

1 DR. JOHN R. GRINDON (9/15/15)

2 24, is that your signature?

3 A. Yes, it is.

4 Q. And that signature is as of
5 September 1, 2015?

6 A. That's correct.

7 Q. And you declared that these
8 statements were under perjury, correct?

9 A. I believe I did, yes.

10 Q. Do you have any reason to believe
11 that anything that you stated in what we
12 marked as Grindon Exhibit 1, Google
13 Exhibit 1010, from the 1338 and 1339 IPR, is
14 untrue?

15 A. No reason to believe so.

16 Q. Do you think that any information
17 in it needs to be updated, including your
18 resumé?

19 A. Let me take a look. I believe this
20 is current as of today.

21 Q. So now I'm going to show you
22 Grindon Exhibit 2, which is the responsive
23 declaration of Dr. John R. Grindon marked
24 Google Exhibit 1012 from IPR2014-01340 and ask
25 if you recognize this document.

1 DR. JOHN R. GRINDON (9/15/15)

2 A. Yes, I do.

3 Q. Now, are you the same Dr. John R.
4 Grindon that prepared this declaration?

5 A. Yes, I am.

6 Q. And on the last page of the
7 declaration, there's a signature by John
8 Grindon dated September 1, 2015. Is that you?

9 A. Yes, it is.

10 Q. And you indicate in paragraph 25
11 that you're making these statements under
12 oath. Is that true?

13 A. Yes.

14 Q. Is there anything that you think
15 needs to be updated or corrected in Grindon
16 Exhibit 2 as of right now?

17 A. As of right now, I'm not aware of
18 anything that needs updating.

19 Q. Including the CV?

20 A. I'm sorry; I didn't hear.

21 Q. Including the CV?

22 A. Including the CV. If I think of
23 anything later, I'll let you know.

24 Q. Now, I will show you Google
25 Exhibit 3, which is the responsive declaration

1 DR. JOHN R. GRINDON (9/15/15)
2 of Dr. John R. Grindon, Google Exhibit 1012,
3 from IPR2014-01341 and ask if you recognize
4 it.

5 MR. ALMELING: Counsel, I don't
6 mean to interject. The transcript is
7 somewhat ambiguous. It refers to a
8 Google Exhibit 3. I presume you mean
9 Grindon Exhibit 3?

10 MR. MACEDO: Yes. Let me rephrase
11 the question so that way we have it
12 correct. Thank you for your
13 clarification.

14 Q. You're now looking at Grindon
15 Exhibit 3, which is the responsive declaration
16 of Dr. John R. Grindon Google Exhibit 1012
17 from IPR2014-01341, and I would like to know
18 if you recognize it.

19 A. Yes, I do.

20 Q. And is this your declaration from
21 IPR2014-01341?

22 A. Yes.

23 Q. Are you the Dr. John R. Grindon who
24 is declaring this declaration?

25 A. I am.

1 DR. JOHN R. GRINDON (9/15/15)

2 Q. And if you turn to the last page
3 before the CV, is that your signature on page
4 14 of 14 dated September 1, 2015?

5 A. That's my signature.

6 Q. And you declared all the statements
7 contained in this declaration under penalty of
8 perjury; is that correct?

9 A. Yes.

10 Q. And is there any corrections or
11 updates you want to provide to this
12 declaration or the CV that is attached to it
13 what we marked as Grindon Exhibit 3?

14 A. Not that I'm aware of right now.

15 Q. So we're going to be referring to
16 these declarations throughout the deposition.
17 What I suggest you do is you keep all three of
18 them next to each other in front of you so
19 that way, you can go between them, okay,
20 because there's a lot of the same statements.
21 And rather than go through it five times, I
22 want to go through it once each time. You
23 understand?

24 A. Yes.

25 Q. Now, if you turn to Grindon 1 for a

1 DR. JOHN R. GRINDON (9/15/15)

2 second and you look at paragraph one, you're
3 referring to a declaration regarding Google's
4 "Open Claim Construction Brief for the Central
5 District of California case Vederi, LLC. v.
6 Google 2:10-cv-0774 (C.D. Cal)."

7 Do you see that?

8 A. I see it.

9 Q. And if you look at paragraph one of
10 Grindon Exhibit 2, you'll see you're making
11 reference to the same declaration and case.
12 Please confirm that.

13 A. That's correct.

14 Q. And if you look at Grindon
15 Exhibit 3, paragraph one, again, you make the
16 same reference to the same declaration and
17 case. If you could please confirm that.

18 A. That's correct.

19 Q. I'd like to show you what we marked
20 as Grindon Exhibit 4, which is the declaration
21 of Dr. John R. Grindon from case number
22 2:10-cv-07747-AK-CW, Document 50-1, and ask if
23 you recognize this document.

24 A. Yes, I do.

25 Q. Is that the same document that

1 DR. JOHN R. GRINDON (9/15/15)
2 you're referring to in paragraph one of your
3 declarations marked as Grindon Exhibits 1
4 through 3?

5 A. Yes.

6 MR. MACEDO: Counsel, I had
7 intended to mark the version 2002 that
8 had been submitted in the IPR, but my
9 secretary gave me the original.

10 Can we stipulate that this is the
11 same document as 2002?

12 MR. ALMELING: You can mark it and
13 refer to it as the witness testified.
14 I have not independently compared the
15 two documents. I don't think there
16 will be an issue, but I'm not prepared
17 to stipulate right now.

18 MR. MACEDO: Will you let he know
19 later whether you are?

20 MR. ALMELING: Yes.

21 MR. MACEDO: Okay; thank you.

22 Q. Now, in paragraph one of Grindon
23 Exhibit 1, you say that the Vederi case, you
24 analyzed the different patent filed, right?

25 A. Yes.

1 DR. JOHN R. GRINDON (9/15/15)

2 Q. Now, is it your understanding that
3 the text of the patents that you analyzed in
4 Grindon Exhibit 4 is the same texts as the
5 prior art that Google offered as Exhibit 1004
6 in the four IPRs? And there's two 1004s.

7 MR. ALMELING: Objection to form.

8 MR. MACEDO: Let's start again.

9 You could mark this as Exhibit 5.

10 (Grindon Exhibit 5, United States
11 Patent Application Publication, dated
12 April 25, 2002 was marked for
13 identification, as of this date.)

14 BY MR. MACEDO:

15 Q. You see we marked as Grindon
16 Exhibit 5 Google Exhibit 1005 which is U.S.
17 Publication Number 2002/0047895 A1. Do you
18 recognize Google Exhibit 1005?

19 A. Yes.

20 Q. How do you recognize it?

21 A. Without checking every page as I
22 sit here, the publication number appears to be
23 correct. The general appearance of the
24 document appears to be correct.

25 Q. And the question is: How do you

DR. JOHN R. GRINDON (9/15/15)

recognize it? What do you recognize it from?

A. This is a document that I reviewed during the preparation for these declarations of Exhibits 1, 2 and 3.

Q. Actually, Exhibits 1 and 2, correct, if you look at page 5 of Exhibit 1, it's listed on that page, right?

A. That's correct.

Q. And if you look at page 5 of Exhibit 2, it's also listed on that page, right?

A. That's correct.

Q. But if you look at page 5 of Exhibit 3, it is not listed on that page, correct?

A. That's correct.

Q. So did you consider Grindon Exhibit 5 when you were working on the declaration for Grindon Exhibit 3?

A. I considered a different document for declaration Exhibit 3.

Q. How did that document relate to Grindon Exhibit 5 to the best of your recollection?

1 DR. JOHN R. GRINDON (9/15/15)

2 MR. ALMELING: Objection to form.

3 You may answer.

4 A. When you say "that document," you
5 mean one that is listed in Exhibit 3?

6 Q. Yes. U.S. Patent No. 6,895,126 to
7 DiBernardo?

8 MR. ALMELING: Same objection.

9 Q. First of all, were you looking at
10 U.S. Patent No. 6,895,126 to DiBernardo when
11 you were referring to the document that you
12 considered for Grindon Exhibit 3?

13 A. I actually was, yes.

14 Q. And do you know how U.S. Patent No.
15 6,895,126 to DiBernardo compares to Grindon
16 Exhibit 5, U.S. publication number
17 2002/0047895 A1 to DiBernardo?

18 MR. ALMELING: Objection to form.

19 A. When you say compares, can you be
20 specific on what you're looking for? And also
21 may I have a copy of the patent '126?

22 Q. I will give that to you in a
23 second. I'm just curious if you have a
24 recollection.

25 So if your answer is I don't have

1 DR. JOHN R. GRINDON (9/15/15)

2 a recollection without seeing it, you can say,
3 "I don't have a recollection without seeing
4 it."

5 If you have a recollection as to
6 how the two documents compare, I'd like for
7 you to testify as to that recollection.

8 MR. ALMELING: Objection to form.

9 A. The previous document ending -- the
10 publication ending in '7895 is a publication
11 which was filed, according to the face, on
12 January 11, 2001, issued or published
13 April 25, 2002. The issue patent ending in
14 '126 is an issued patent. So that would be
15 the salient difference.

16 Q. Do you understand it's the same
17 basic specification?

18 MR. ALMELING: Objection; form.

19 A. When you say same basic
20 specification, could you clarify what you mean
21 there?

22 Q. Sure. Except for perhaps the
23 claims which may have been amended, are the
24 text of the specification and the figures
25 essentially the same?

1 DR. JOHN R. GRINDON (9/15/15)

2 MR. ALMELING: Objection; form.

3 A. When you say essentially the same,
4 the answer is, I believe so. But if you give
5 me the '126 document, I'll check to be sure.

6 MR. MACEDO: Okay. We'll mark as
7 Grindon Exhibit 6, U.S. Patent No.
8 6,895,126 B2 to DiBernardo. It was
9 previously marked as Google
10 Exhibit 1005.

11 (Grindon Exhibit 6, U.S. Patent
12 No. 6,895,126 B2 was marked for
13 identification, as of this date.)

14 MR. ALMELING: Counsel, is there a
15 question pending?

16 BY MR. MACEDO:

17 Q. I would like to know whether you
18 could check and tell me if Grindon Exhibit 6
19 and Grindon Exhibit 5, except for perhaps the
20 claims and the patent number information are
21 essentially the same figures and
22 specifications.

23 MR. ALMELING: Objection to form.

24 Q. Dr. Grindon, I appreciate you're
25 looking at each page, and I don't want to stop

1 DR. JOHN R. GRINDON (9/15/15)

2 you from doing that, so please take your time
3 and do whatever you need to do to make sure
4 you can answer this question truthfully and
5 honestly.

6 MR. ALMELING: Off the record.

7 (Whereupon, an off-the-record
8 discussion was held.)

9 BY MR. MACEDO:

10 Q. Did you finish your review?

11 A. Well, I can't compare them
12 word-for-word, but for the purposes of the
13 declarations, the text, excluding the claims,
14 is substantively similar, if not exactly the
15 same.

16 Q. You don't know of any differences
17 sitting here right now between the two?

18 A. Without comparing word-for-word
19 perhaps corrections that occurred between
20 publication and the issued patent, similar
21 things, I can't say that they're identical,
22 but substantively for purposes of my
23 declarations, they're essentially the same.

24 Q. So other than some potential typos
25 that get fixed, you're not aware of any

1 DR. JOHN R. GRINDON (9/15/15)

2 differences between the two of them
3 substantively --

4 MR. ALMELING: Objection to form.

5 Q. -- and the claims?

6 MR. ALMELING: Objection to form.

7 A. I'm sorry; you added a statement at
8 the end. Could you ask it again?

9 Q. And the claims. The claims may be
10 different.

11 A. Yes.

12 Q. Other than corrections as to typos
13 or perhaps the claims, the disclosures should
14 be essentially the same for purposes of your
15 declaration?

16 MR. ALMELING: Objection; form.

17 A. For purposes of my declaration, I
18 believe that's the case. I haven't compared
19 them word-for-word.

20 Q. Did you compare them word-for-word
21 before you did your declaration?

22 A. Not word-for-word, no. Each is
23 substantively adequate for its purposes.

24 Q. For purposes of the declarations,
25 you treated them as if they were substantively

1 DR. JOHN R. GRINDON (9/15/15)

2 the same; is that correct?

3 A. That's fair.

4 Q. Can you look at Grindon Exhibit 5
5 and keep those two in fronts of you, please.

6 Now, in Grindon Exhibit 4 are you
7 the same Dr. John R. Grindon as prepared this
8 declaration?

9 A. Yes.

10 Q. And if you look at the last page,
11 you'll see that there's a signature with the
12 date of October 4, 2011. Is that your
13 signature?

14 A. Yes, it is.

15 Q. And did you sign this October 4,
16 2011?

17 A. Yes.

18 Q. And at the time, did you declare,
19 under penalty of perjury and under the laws of
20 the United States, that the foregoing is true
21 and correct?

22 A. Yes.

23 Q. Did you ever learn that there was a
24 mistake in the declaration that we've marked
25 as Grindon Exhibit 4?

1 DR. JOHN R. GRINDON (9/15/15)

2 A. This goes back four years. I'm
3 trying to think if anyone pointed out
4 anything. And as I sit here right now, I'm
5 not aware of any mistake.

6 Q. And you didn't indicate that there
7 were any mistakes in the context of your new
8 declarations that we've marked as Exhibits 1
9 through 3, correct?

10 A. I didn't indicate any mistakes. I
11 reviewed it with regard to the issues at hand,
12 not in toto.

13 Q. But as of October 4, 2011 when you
14 executed the declaration that has been marked
15 as Grindon Exhibit 4, you believed that every
16 statement that was contained in Grindon
17 Exhibit 4 was truthful, complete and accurate;
18 is that correct?

19 A. That's a fair statement.

20 Q. And sitting here today, have you no
21 reason to believe that any statement in
22 Grindon Exhibit 4, as of today, is not
23 truthful, correct and accurate?

24 A. As I sit here now, I'm not aware of
25 anything.

1 DR. JOHN R. GRINDON (9/15/15)

2 Q. So if you turn to paragraph three,
3 you'll see that there are some patents listed.
4 You see that?

5 A. Yes, I do.

6 MR. MACEDO: I'm going to start
7 off by marking this as Grindon
8 Exhibit 7.

9 (Grindon Exhibit 7, U.S. Patent
10 No. 7,239,760 was marked for
11 identification, as of this date.)

12 BY MR. MACEDO:

13 Q. U.S. Patent No. 7,239,760 B2 to
14 DiBernardo.

15 Do you recognize Grindon Exhibit 7?

16 A. Yes.

17 Q. Is that one of the same patents
18 that you identified in paragraph three of your
19 October 4, 2011 declaration marked as Grindon
20 Exhibit 4?

21 A. Yes.

22 Q. If you look at it, it was filed on
23 May 16, 2005, correct? Look at the paragraph
24 marked 22. It says filed.

25 MR. MACEDO: Counsel, you can

1 DR. JOHN R. GRINDON (9/15/15)

2 point it to him if you need to.

3 A. You're asking the date of filing of
4 the '760 patent?

5 Q. Correct.

6 A. May 16, 2005.

7 Q. And it is claimed to be a division
8 of Application Number 09/758717 filed on
9 January 11, 2001, correct?

10 A. Yes.

11 Q. And that's the same serial number
12 as Grindon Exhibit 5, correct?

13 A. The numbers appear to be the same,
14 yes.

15 Q. And it's also the same serial
16 number as Grindon Exhibit 6, correct?

17 A. Yes.

18 Q. Now, in paragraph four of Grindon
19 Exhibit 4, you say, "I have reviewed the claim
20 specifications and file histories of the
21 patents in-suit."

22 And that includes Grindon
23 Exhibit 7, correct?

24 A. Yes.

25 Q. I understand these patents have a

1 DR. JOHN R. GRINDON (9/15/15)

2 common disclosure. That's referring to the
3 patents in-suit discussed in Grindon
4 Exhibit 4, correct?

5 A. Yes.

6 Q. And do you understand that the
7 patents identified in paragraph three of
8 Grindon Exhibit 4 have a common disclosure
9 with Grindon Exhibit 5?

10 A. Substantially, except perhaps as
11 discussed before.

12 Q. With respect to the claims you're
13 talking about?

14 A. As I sit here now, that's my
15 understanding.

16 Q. Would you say that the substantive
17 statements you make about the disclosure of
18 Exhibit 7 in your declaration marked Exhibit 4
19 are truthful and accurate with respect to
20 Grindon Exhibit 5 also?

21 MR. ALMELING: Objection; form.

22 A. As I sit here now, I know of no
23 reason why they would not be.

24 Q. And is the same true with respect
25 to Grindon Exhibit 6?

1 DR. JOHN R. GRINDON (9/15/15)

2 MR. ALMELING: Same objection.

3 A. The same answer.

4 Q. So for example, just picking
5 paragraph 19 of Grindon Exhibit 4, in
6 paragraph 19, you say, "the patents in-suit,"
7 and that's plural patents, "described in the
8 field of the convention as 'visual databases'
9 specifically the creation and utilization of
10 visual databases of geographic locations," and
11 then you cite to a common line number from the
12 '760 patent, right?

13 A. Let me check and make sure that
14 this is inferring to the '760 patent.

15 Q. Paragraph four, it says, "for ease
16 of reference, all citations and specification
17 are to the '760 patent, unless stated
18 otherwise."

19 A. So I don't see any stating
20 otherwise, so I'll assume this is the '760
21 patent citation.

22 Q. When you made that statement in
23 paragraph 19, you meant that to apply to all
24 the patents in-suit which had the common
25 specification, correct?

1 DR. JOHN R. GRINDON (9/15/15)

2 A. That's my understanding.

3 Q. And that statement would apply
4 equally except for the citation of the column
5 and line number to Grindon Exhibit 5, correct?

6 A. You're talking about the first
7 sentence in paragraph 19 of Exhibit 4?

8 Q. Correct.

9 A. Yes.

10 Q. And that would also apply to
11 Grindon Exhibit 6?

12 A. Without referencing that particular
13 citation and under the previous assumptions,
14 that would be correct.

15 Q. And you have no reason to believe
16 that those assumptions are wrong sitting here
17 today?

18 A. Not sitting here at the moment.

19 Q. And when you prepared your
20 declaration that we've marked as Grindon
21 Exhibit 1 through 3, you had no reason to
22 believe that that assumption was wrong,
23 correct?

24 A. When I prepared those exhibits, I
25 was considering the references that I listed

1 DR. JOHN R. GRINDON (9/15/15)

2 in those exhibits which I don't believe
3 included the '760 patent. However, at the
4 time, I was not aware of any contradiction.

5 Q. Counsel didn't point out to you any
6 contraindications between your declaration and
7 Exhibit 5?

8 MR. ALMELING: Objection. And I
9 don't want to provide instruction.
10 Perhaps you could revise your question
11 in a way that does not.

12 Q. Nobody pointed out to you any
13 errors in Grindon Exhibit 4 as it applied to
14 Grindon Exhibit 5?

15 MR. ALMELING: I caution you to
16 provide an answer that is consistent
17 with the previous objection.

18 A. I can only say that sitting here,
19 I'm not aware of any of any errors.

20 Q. And you're not aware of any errors
21 with respect to your declaration marked as
22 Grindon Exhibit 4 in being applied with
23 respect to Grindon Exhibit 6; is that correct?

24 A. I'm not.

25 Q. Now, if you look at Grindon

1 DR. JOHN R. GRINDON (9/15/15)

2 Exhibit 7, you see that it relies on the
3 provisional that was dated October 6, 2000,
4 correct?

5 A. Yes.

6 Q. And then there was a
7 non-provisional application filed January 1,
8 2001, correct?

9 A. Yes.

10 Q. Now, is it your recollection that
11 the provisional actually had different text
12 than the non-provisional?

13 A. Show me both, please.

14 Q. I don't have the provisional here,
15 but you do testify as to different language in
16 the provisional in you're the declaration, if
17 you want your declaration.

18 A. As I sit here, it's my
19 understanding that the text is different.

20 Q. So is it your understanding that
21 Grindon Exhibit 7 may not have been entitled
22 to the October 6th priority date?

23 MR. ALMELING: Objection; form.

24 Additionally, objection; outside the
25 scope.

1 DR. JOHN R. GRINDON (9/15/15)

2 A. I didn't consider that question.

3 You're asking for my judgment as to whether or
4 not the '760 patent is entitled to the
5 October 6, 2000 priority date?

6 Q. Well, take a look at paragraph 15
7 of Grindon Exhibit 4. In the first sentence,
8 you say, "I have not considered the issue
9 whether the asserted claims in the patent
10 in-suit are supported by the provisional
11 application filed on October 2000."

12 Correct?

13 A. That's the sentence, yes.

14 Q. And that was true then?

15 A. At the time I wrote this
16 declaration, Exhibit 4, I had not considered
17 whether or not the provisional as stated here
18 applied.

19 Q. And as you testified a minute ago,
20 you haven't really considered that issue
21 since; is that correct?

22 A. I haven't for the purpose of these
23 declarations.

24 Q. Which are these declarations?

25 A. Exhibits 1 through 3.

1 DR. JOHN R. GRINDON (9/15/15)

2 Q. Now, in the next sentence of
3 paragraph 15 you say, "my definition of level
4 of skill in the art would not substantively
5 change even if it were determined that the
6 patents in-suit are not supported by the
7 October 2000 provisional and are only entitled
8 to a later priority date."

9 Do you see that?

10 A. You didn't read it exactly as in
11 the declaration, but I do see the sentence
12 that you're referring to.

13 Q. Please reread it if misread it.
14 Why don't you read it into the record so make
15 sure it's correct.

16 A. Okay. The sentence that he's
17 referring to states, "my definition of the
18 level of skill in the art would not
19 substantively change even if it is determined
20 that the patents in-suit are not supported by
21 the October 2000 provisional and are only
22 entitled to a later priority date."

23 Q. Was that statement true when you
24 signed the declaration in October 4, 2011,
25 marked Grindon Exhibit 4?

1 DR. JOHN R. GRINDON (9/15/15)

2 A. Yes.

3 Q. Is that statement still true today
4 sitting here at this deposition?

5 MR. ALMELING: Objection; form.

6 Additionally, objection; outside the
7 scope.

8 A. I didn't consider that matter in
9 preparing these three declarations. So you're
10 asking me to consider that on-the-fly with
11 regard to these three declarations.

12 Q. No, that's not my question. My
13 question is: The statement that you wrote in
14 paragraph 15 of Grindon Exhibit 4, is it true
15 with respect to the subject matter of Grindon
16 Exhibit 4 sitting here today as of right now?

17 MR. ALMELING: Objection; form.

18 Additionally, outside the scope and
19 among other things, Federal Rule of
20 Evidence 611(d).

21 A. At the time I signed this
22 declaration, that was the case. You're asking
23 now in 2015 if I would have that same
24 statement?

25 Q. Yes, for purposes of Grindon

1 DR. JOHN R. GRINDON (9/15/15)

2 Exhibit 4.

3 A. If in --

4 MR. ALMELING: Before you answer,
5 Counsel, we both know the scope of
6 cross-examination is limited to --

7 MR. MACEDO: He specifically
8 offered opinions on this subject,
9 Counsel. So if you really want to go
10 down this, we can fight about that,
11 but I totally disagree it's outside
12 the scope.

13 He offered opinions as to what the
14 meaning of his testimony was, what the
15 time period of his testimony was and
16 paragraph 15 disagrees with that, with
17 his statements. It's totally within
18 the scope of his testimony, and I
19 totally disagree with you.

20 And I would appreciate if you'd
21 stop obstructing the deposition and
22 let the witness testify.

23 MR. ALMELING: Didn't mean to
24 obstruct at all. I just wanted to
25 clarify the scope of your question in

1 DR. JOHN R. GRINDON (9/15/15)
2 relation to my objection. My
3 objection still stands.

4 You can answer.

5 A. At the time I prepared this
6 declaration in 2004, I made that statement and
7 it would have been true at that time. At this
8 time in 2015, I would have to consider any
9 possible changes in definition of skill in the
10 art if this were being written now. I would
11 have to take that under consideration.

12 Q. So are you saying that your
13 testimony in paragraph 15 in the second
14 sentence of Grindon Exhibit 4 was true when
15 you signed it on October 4, 2011, but is no
16 longer true today?

17 A. No, I did not say that.

18 Q. Are you saying that your statement
19 in the second sentence of paragraph 15 of
20 Grindon Exhibit 4 was true on October 4th,
21 2011?

22 A. All I'm saying is when I signed
23 this in 2004 --

24 Q. You didn't sign it in 2004. You
25 signed it in 2011.

1 DR. JOHN R. GRINDON (9/15/15)

2 A. I'm sorry. That's right; 2011,
3 October 4th. So at that time, that was, in
4 applying the person of ordinary the skill,
5 that was my assessment.

6 Q. So the statement in the second
7 sentence of paragraph 15 of Grindon Exhibit 4
8 that says, "my definition of the level of
9 skill in the art would not substantively
10 change even if it was determined that the
11 patents in-suit are not supported by the
12 October 2000 provisional and are only entitled
13 to a later priority date" was true and correct
14 on October 4, 2011; is that correct?

15 A. Yes.

16 Q. Is that still true and correct
17 today?

18 MR. ALMELING: Objection to form.

19 A. It should still be true today. As
20 I sit here, I'm trying to think of a reason
21 why the rule might be different now than it
22 was in 2011, but I'm not thinking of any
23 difference.

24 MR. ALMELING: I'm sorry; Counsel,
25 I don't believe the witness is

1 DR. JOHN R. GRINDON (9/15/15)

2 finished answering.

3 Q. Please answer.

4 A. I was going to say that this was a
5 district litigation proceeding. Currently
6 we're talking about an IPR so I would have to
7 think about the differences. But you're
8 asking if this declaration were prepared today
9 in a district litigation case, would that
10 statement still be correct?

11 Q. I'm asking if Counsel for Google
12 asked you to again execute, under penalty of
13 perjury, today, Grindon Exhibit 4, would you
14 be able to execute it knowing that it includes
15 the second sentence of paragraph 15?

16 MR. ALMELING: Objection; form.

17 Objection; outside the scope.

18 A. To be clear, that would then be in
19 that same case CV-10-07747, except prepared
20 today?

21 Q. Yes.

22 MR. ALMELING: Same objections.

23 A. I don't see any reason why that
24 would change as I sit here.

25 Q. If you could look at Grindon

1 DR. JOHN R. GRINDON (9/15/15)

2 Exhibit 7. Which is the patent in-suit from
3 case 2:10-cv-07747 that we're referring to, do
4 have you that in front of you?

5 A. I have Exhibit 7, yes.

6 Q. If Exhibit 7 is not entitled to
7 October 6, 2000 priority date, what are the
8 choice of priority dates which it might be
9 entitled to otherwise?

10 MR. ALMELING: Objection; form.
11 Additionally, objection' outside the
12 scope.

13 A. This is not something I've
14 considered in my declarations, so this would
15 be just going on the face of the patent.

16 Q. Let me withdraw that and let's
17 think about what you did consider.

18 You talked about it are only
19 entitled to a later priority date. What are
20 the later priority dates which you're
21 referring to with respect to Grindon
22 Exhibit 7?

23 MR. ALMELING: Objection; form.
24 Objection; outside the scope.

25 A. I didn't say the later priority

1 DR. JOHN R. GRINDON (9/15/15)

2 date. I just say a later priority date. So I
3 didn't establish a particular later priority
4 date.

5 Q. Let me rephrase. In paragraph 15,
6 you're referring to "only entitled to a later
7 priority date," correct? That's the same
8 sentence we just confirmed you still stand by.

9 MR. ALMELING: Objection to form.

10 A. Again, I said, as I sit here, I'm
11 not thinking of any reason why that second
12 sentence would change in 2015 as compared to
13 2011. But assuming that it's the same, this
14 says "only entitled to a later priority date,"
15 not analyzing just what later priority date it
16 might be.

17 Q. And based upon your knowledge of
18 patents and everything that you've studied to
19 date and bringing your expertise that you're
20 offering to the PTAB to bearing here, do you
21 have an understanding of what the potential
22 later priority date could be with respect to
23 Grindon Exhibit 7 U.S. Patent No. 7,239,760 if
24 it is not entitled to October 6, 2000, as a
25 priority date?

1 DR. JOHN R. GRINDON (9/15/15)

2 MR. ALMELING: Objection; form.

3 Objection; outside the scope.

4 A. When you say could be, I would just
5 look at the face of the patent and very
6 simplistically look at the date of the
7 division of Application Number 09/758717 where
8 the division was filed on January 11, 2001.

9 Q. So one of the a later priority
10 dates that you would consider is January 11,
11 2001; is that correct?

12 MR. ALMELING: Objection to form.

13 Objection; outside the scope.

14 A. Again, this isn't something I
15 considered in my declaration, but if you're
16 just asking me now, that is a date that I
17 would look at as a possible later date, yes.

18 Q. And is it your testimony sitting
19 here today that your definition of the level
20 of skill in the art would not substantively
21 change even if it is determined that the '760
22 patent is not supported by the October 2000
23 provisional and is only entitled to a
24 January 11, 2001 priority date with respect to
25 the information that you testified to in

1 DR. JOHN R. GRINDON (9/15/15)
2 Grindon Exhibit 4 for purposes of the
3 litigation that was submitted?

4 MR. ALMELING: Counsel, for the
5 record, clarification. I'm not
6 objecting. Do you mean definition of
7 the level of skill in the art in the
8 Vederi litigation or these IPRs?

9 MR. MACEDO: I'm quoting what he
10 said in the dec and it's for the
11 purposes that he offered the dec.

12 MR. ALMELING: Objection; form.
13 Objection; outside the scope.

14 A. So my understanding then is that
15 you're referring to Exhibit 4 which is the
16 Vederi declaration?

17 Q. Correct.

18 A. And you're asking me to conjecture,
19 which I didn't in that declaration, you're
20 asking me now to conjecture what later
21 priority date there might be and given that
22 that --

23 Q. Dr. Grindon, that's not what I'm
24 asking. I'm withdrawing the question. That's
25 not what I'm asking.

1 DR. JOHN R. GRINDON (9/15/15)

2 You refer specifically to the fact
3 that you would not have changed your opinion
4 if a different priority date was being
5 provided with respect to the Vederi
6 declaration, correct?

7 A. I'm sorry, but I was in the middle
8 of answering your question.

9 Q. No, you changed my question in your
10 answer. That's why I stopped you and withdrew
11 it.

12 A. I didn't think I did change it.

13 Go ahead, please.

14 Q. That's why I'm trying to clarify
15 this, okay. You testified when you prepared
16 Grindon Exhibit 4 that you did not think that
17 the level of skill in the art would be
18 substantively different if the '760 patent was
19 not entitled to the October 2000 provisional
20 date, correct?

21 A. That's what it says, yes.

22 Q. And you still believe that to be
23 true?

24 MR. ALMELING: Objection; form.

25 A. As written as of the date of this

1 DR. JOHN R. GRINDON (9/15/15)

2 document, this was true.

3 Q. And sitting here today, it's still
4 true with respect to the Vederi litigation,
5 correct?

6 MR. ALMELING: Objection; form.

7 Objection; outside the scope.

8 A. A moment ago you suggested another
9 later priority date of 2001 and at that date,
10 as I sit here, I see no reason why there would
11 be a substantive change in the level of the
12 skill of the art over that year.

13 Q. Now, the Vederi patent in-suit,
14 Grindon-7, has a filing date of May 16, 2005,
15 correct?

16 A. Patent '760, which was considered
17 in the Vederi matter?

18 Q. Correct.

19 A. Has a filing date of
20 September 22nd. I'm sorry; May 16, 2005.

21 Q. Now, if the court had said that the
22 claims that were presented in the '760 patent
23 were not entitled to a priority date before
24 the filing date of the '760 patent, would your
25 opinions in Grindon Exhibit 4 have been

1 DR. JOHN R. GRINDON (9/15/15)

2 different?

3 MR. ALMELING: Objection; form.

4 Objection; outside the scope.

5 A. Again, I didn't consider in this
6 the declarations that we are here to talk
7 about today. But as I sit here, I am not
8 seeing a reason why there would be a
9 substantive difference in the level of skill
10 in the art even through 2005.

11 Q. Thank you very much.

12 We've been going for almost an
13 hour. Would you like to take a break at this
14 time?

15 A. Sure.

16 MR. ALMELING: Thank you.

17 (Whereupon, at this time, a short
18 break was taken.)

19 BY MR. MACEDO:

20 Q. If you could take a look at Grindon
21 Exhibit 1 and turn to paragraph 14.

22 A. I'm sorry; did you say 14.

23 Q. 14, one-four.

24 A. Yes, I have that.

25 Q. The very first sentence says, "I am

DR. JOHN R. GRINDON (9/15/15)

not and never was an employee of Google, Inc.," correct?

A. Yes.

Q. Is there any clarification you want to put on that sentence?

A. I can't think of any change to that sentence, no.

Q. Do you think it accurately reflects the relationship you have with Google, Inc.?

A. Yes, I do.

Q. Do you think it completely reflects the relationship you have with Google, Inc.?

A. Well, this sentence is very specific. It says, "I'm not an employee." An employee is a specific thing and, no, I'm not an employee.

MR. ALMELING: Let's go off the record.

(Whereupon, an off-the-record discussion was held.)

BY MR. MACEDO:

Q. Is there anything else the board should know about your relationship with Google, Inc. besides the fact that you are not

1 DR. JOHN R. GRINDON (9/15/15)

2 and never were an employee of Google, Inc.?

3 MR. ALMELING: Objection to form.

4 A. It's hard for me to guess what the
5 board might want to know. Can you be more
6 specific, please?

7 Q. Well, if someone wanted to
8 understand whether you had a relationship with
9 Google, Inc., how would you describe whether
10 you do have a relationship with Google, Inc.?

11 A. When you say a relationship, please
12 be more specific.

13 Q. Do you have any relationship at all
14 with Google, Inc. besides not being an
15 employee?

16 A. As is self-evident, I'm engaged in
17 a number of legal matters.

18 Q. How many legal matters are you
19 engaged by Google, Inc.?

20 A. Including this one, I believe four
21 as I sit here.

22 Q. You're sure it's not five?

23 A. Perhaps. No more than that.

24 Q. No more than that?

25 A. I'm almost sure it wouldn't be.

1 DR. JOHN R. GRINDON (9/15/15)

2 Q. So why don't you turn to your
3 resumé, which is attached to Grindon Exhibit 1
4 and let's look at your litigation support
5 experience. And while you're turning, do you
6 know how much you're being paid an hour for
7 purposes of this litigation for the four IPRs
8 involving visual real estate?

9 A. I believe 500 an hour.

10 Q. Do you know how much your hourly
11 rate was to prepare Grindon Exhibit 4 for the
12 Vederi litigation?

13 A. I don't recall right now.

14 Q. What's your best guess?

15 A. This is several years ago. I'm
16 going to guess no more than 400.

17 Q. Is there someplace where you have
18 records for that?

19 A. I could find records, yes.

20 Q. I'm going to request that you find
21 out that information and that you have Counsel
22 notify us as to what the rate you were paid in
23 the Vederi litigation was, okay? Do you
24 understand my request?

25 A. Yes.

1 DR. JOHN R. GRINDON (9/15/15)

2 Q. Now, in your declaration, it refers
3 to a litigation that involved Transcenic
4 versus Google, page 5 of 10 of your CV, page
5 29 of the exhibit that we marked as Grindon
6 Exhibit 1.

7 A. I see that.

8 Q. Now, were you engaged on behalf of
9 Google in that litigation?

10 A. Yes.

11 Q. Did you prepare any expert reports?

12 A. Yes.

13 Q. How many?

14 A. I don't recall.

15 Q. Was it one or more than one?

16 A. I believe more than one, but how
17 many, I don't know.

18 Q. Do you know the rate you charged
19 Google for that litigation was?

20 A. No, I don't recall. This was
21 several years ago.

22 Q. Actually, it's through 2015.

23 A. But the rate was established in
24 2012, and I don't remember what the rate was
25 at that time.

1 DR. JOHN R. GRINDON (9/15/15)

2 Q. Was it \$500?

3 A. I don't think so.

4 Q. Do you think it was as much as
5 \$400?

6 A. I don't know right now.

7 Q. Is there someplace where you keep
8 your rate card as to what you're charging per
9 case?

10 A. I can find out what the rate was.
11 On some of these cases I worked through
12 agencies and those are variable depending upon
13 the agency and the fee they charge.

14 Q. Well, did you work through an
15 agency for any of the Google cases?

16 A. I did.

17 Q. Which case?

18 A. I would have to check to be sure.
19 As I sit here right now, I think the
20 Transcenic case, I'm not sure, and I believe
21 the Vederi case.

22 Q. And what agency was that through?

23 A. When I check for the other matter
24 that you asked for, that would be a time I
25 could check for these things. The Vederi case

1 DR. JOHN R. GRINDON (9/15/15)

2 I believe was working with an agency called
3 N-E-W-N, National Expert Witness Network. But
4 to be sure of these things, I would like to
5 check and then perhaps let Counsel know.

6 Q. If you could provide us a list of
7 your rates for the various cases that you
8 worked for Google as well as whether you
9 worked through an agency and what agency, we
10 request that, okay?

11 A. Okay.

12 Q. You understand what I'm asking for?

13 A. I believe I do.

14 MR. ALMELING: Counsel, to be
15 clear to all the requests, the witness
16 can answer to his understanding of
17 them. We will consider them and if
18 they're commensurate with the rules,
19 we'll adhere to them and comply, but
20 otherwise not.

21 MR. MACEDO: Then we can go to the
22 board if necessary, okay?

23 Q. In any event, you certainly charged
24 less than \$400 for the Vederi case?

25 A. The Vederi case was initiated in

1 DR. JOHN R. GRINDON (9/15/15)

2 2011. I believe my rates were lower at that
3 time, yes.

4 Q. Would they be as low as \$300 an
5 hour?

6 A. Working through an agency, they
7 could be.

8 Q. They're lower when they're through
9 an agency?

10 A. Generally, yes.

11 Q. You testified in K-40 versus
12 Escort, correct? That's on the list on page
13 29 of 30?

14 A. Yes.

15 Q. And would you be surprised to learn
16 that a December 2, 2010 declaration listed
17 your rate at \$300 an hour?

18 A. No, I won't because I had worked
19 with that firm previously, and this was
20 basically a continuation of the same agreement
21 which was established some time earlier than
22 that.

23 Q. So some time in 2010, you were
24 charging \$300 an hour?

25 A. Again, I would have to check my

1 DR. JOHN R. GRINDON (9/15/15)

2 records, but that seems likely that I was
3 charging that in certain cases.

4 Q. Now when were you engaged in this
5 case?

6 A. I believe July of 2015.

7 Q. July?

8 A. And that's my recollection right
9 now. I'd have to, again, go back and check my
10 records.

11 Q. And about how much time have you
12 spent at \$500 an hour working on these four
13 IPRs?

14 A. When you say on these four IPRs,
15 are you talking about this matter that I'm
16 engaged in now?

17 Q. The four matters, since there are
18 four cases.

19 A. All of the cases together, how many
20 hours?

21 Q. Yes.

22 A. Going back through Vederi
23 Transcenic --

24 Q. No. You said you were engaged for
25 these four IPRs in July of 2015, correct?

1 DR. JOHN R. GRINDON (9/15/15)

2 A. My question is, is that what you
3 want to know, how many hours --

4 Q. That's what I asked.

5 A. -- I spent in this matter that I'm
6 engaged in?

7 Q. With respect to the four IPRs which
8 you submitted, Grindon Exhibits 1 through 3, I
9 want to know how much time have you spent at
10 \$500 an hour working for Google on those
11 matters?

12 A. Because we've also talked about the
13 Vederi expert report and that's not included
14 the time spent to prepare that years ago.

15 Q. Dr. Grindon, each question I ask
16 now is on itself, okay. So I want you to
17 focus on the question I'm asking and answer
18 the question I'm asking, okay?

19 So the question I'm asking is: You
20 testified that you were engaged for the four
21 IPRs involving visual real estate in July 2015
22 and that you're getting paid \$500 an hour; is
23 that correct?

24 A. With the caveats that I'm not
25 certain about the July as I remember, but I

1 DR. JOHN R. GRINDON (9/15/15)

2 think that's probably the engagement time.

3 Q. With respect to that engagement
4 relating to IPRs 2014-0133 -- 1338, '1339,
5 '1340 and '1341, how much time have you spent
6 working on just those four matters?

7 A. Something on the order of 55 hours.

8 Q. Fifty-five hours?

9 A. Yes.

10 Q. At \$500 an hour?

11 A. Yes.

12 Q. That's not including the time
13 sitting here today?

14 A. Up to now.

15 Q. How much time did you spend working
16 on the Vederi matter for Google?

17 A. I'm thinking, as I sit here, again,
18 I'll have to check these later, and if there's
19 substantial differences I'll let you know, but
20 something on the order of 160 hours is what I
21 can recall at the moment.

22 Q. At a rate of less than \$400 an
23 hour?

24 MR. ALMELING: Objection.

25 A. The Vederi matter, as I mentioned a

1 DR. JOHN R. GRINDON (9/15/15)

2 moment ago, was, I believe, through an agency
3 which charges a substantial fee. And I think
4 that would have been substantially less than
5 500, yes.

6 Q. I said 400?

7 A. Probably less than 400.

8 Q. Would it have been less than 300?

9 A. I don't think it would be less than
10 300, no.

11 Q. Do you think it would be less than
12 350?

13 A. Again, I'd like to check. Probably
14 in the range of three to four.

15 Q. You also list that you were engaged
16 by Google for the View 360 matter, right?

17 A. Yes.

18 Q. And in the View 360 matter, you
19 prepared expert declarations and inter-party
20 review?

21 A. Yes.

22 Q. And did you also testify or offer
23 testimony in that litigation, too?

24 A. I'm going to have to go back and
25 see just what the testimony was at that time.

1 DR. JOHN R. GRINDON (9/15/15)

2 I do remember IPRs.

3 Q. How much did you charge for that
4 matter?

5 A. The View 360, again, I'll have to
6 go back and check my records. But I'm
7 thinking on the order of \$25,000. Something
8 like that.

9 Q. Total?

10 A. That is my recollection now to be
11 checked.

12 Q. And do you know what your rate was?

13 A. Again, pending checking, I think
14 that was through an agency so it would have
15 been a lower rate of more than 300 or more I
16 would think, but probably less than 400.

17 Q. Is that the same or different than
18 Grandeye?

19 A. It's the same.

20 Q. So in August 2013, you submitted a
21 declaration that said you were being paid \$400
22 an hour. Does that sound right?

23 A. That sounds like it's very
24 probable.

25 Q. So that's not listed on your CV

1 DR. JOHN R. GRINDON (9/15/15)

2 because you listed View 360 instead?

3 A. It's basically the same thing.

4 Q. How come you're charging a
5 different rate to Google for the View 360
6 matter than you're charging in this matter?

7 A. The View 360 matter, it's shown on
8 my CV that it began in 2013. So I'm going to
9 assume that the agreement was 2013, which is a
10 couple years ago. So I charged less.

11 Q. Who, besides Google, has paid you
12 as much as \$500 an hour?

13 A. There are others now who also pay
14 me the \$500 an hour.

15 Q. Well, in February of 2015, you
16 submitted declarations for Stryker in the
17 Stryker versus Storz case, right? The very
18 first case listed on your CV, I'm sorry it's
19 the second case listed on your CV?

20 A. Your question regarding that again
21 is please.

22 Q. You submitted a declaration on
23 February 2015 in that case, right?

24 A. The date sounds right. Obviously
25 have it in front of you and I don't, but

1 DR. JOHN R. GRINDON (9/15/15)

2 assuming that's the correct date, I did submit
3 something.

4 Q. Do you know what your rate was?

5 A. That case began 2013. That would
6 have been less than \$500 at that time, and I
7 don't recall the exact amount.

8 Q. Does 375 sound correct?

9 A. I'm trying to think. I believe
10 that was through an agency, so it would have
11 been something like that. Perhaps I don't
12 recall which agency right now.

13 Q. So if your declaration said you
14 were being paid \$375 an hour does that mean
15 you took home less because the agency took a
16 piece of it?

17 A. No, that's my take home, so they
18 would have charged more to the client.

19 Q. So when you're saying your getting
20 paid 375 an hour, Google was actually being
21 charged more, but you only got 375 an hour.
22 Is that your testimony?

23 MR. ALMELING: Objection. I don't
24 mean to interrupt. You say Google was
25 charged. Aren't you discussing the

1 DR. JOHN R. GRINDON (9/15/15)

2 Stryker matter?

3 Q. Your client in that case was
4 charged more -- let me withdraw that.

5 MR. MACEDO: Let's go ahead and
6 mark, as Grindon Exhibit 8, your
7 declaration from Stryker versus Karl
8 Storz Endoscopy America Stryker
9 Exhibit 1009 Stryker Corp. KSEA, Inc.
10 IPR2015-00674, and ask if that is your
11 declaration.

12 (Grindon Exhibit 8, Declaration of
13 John R. Grindon was marked for
14 identification, as of this date.)

15 A. I believe this is.

16 BY MR. MACEDO:

17 Q. Do you see the rate you were being
18 paid?

19 A. I'll look for it. If you can point
20 me to the paragraph, that would save me from
21 looking for it.

22 Q. Take a look at paragraph 12.

23 A. Yes, I see that.

24 Q. Did I refresh your recollection as
25 to how much you were being paid for that

1 DR. JOHN R. GRINDON (9/15/15)

2 declaration?

3 A. This says 375 so that would have
4 been it.

5 Q. That's what you would have taken
6 home, not what the agency took?

7 A. Correct.

8 Q. And the client was being charged
9 more because there was an agency between you
10 and the client?

11 A. That's my recollection.

12 Q. When you say that you're charging
13 Google \$500, that's what you're taking home an
14 hour for this case, right?

15 A. Yes.

16 Q. Now, did anything happen in
17 response to this declaration for the Stryker
18 case?

19 MR. ALMELING: Objection; form.

20 A. When you say, did anything
21 happen --

22 Q. Yes. Did the PTAB rule?

23 A. I wasn't advised if they did, maybe
24 you know more than I do.

25 Q. Coincidentally on the same time you

1 DR. JOHN R. GRINDON (9/15/15)
2 signed your declaration, they ruled. You
3 didn't know about that?

4 On September 1, 2015, there was a
5 decision on the institution. Did you read
6 that?

7 A. I didn't, no.

8 MR. MACEDO: Why don't we mark, as
9 Grindon Exhibit 9, the PTAB decision
10 on institution on Stryker versus Karl
11 Storz. It's the September 1, 2015
12 decision paper number 9 and IPR
13 2015-0674.

14 (Grindon Exhibit 9, September 1,
15 2015 PTAB decision on institution on
16 Stryker v. Karl Storz was marked for
17 identification, as of this date.)

18 BY MR. MACEDO:

19 Q. Have you seen Grindon Exhibit 9
20 before?

21 A. No.

22 Q. I'd like for you to turn to page 9
23 of the decision. And by the way, I will tell
24 you it did not institute on any grounds. So
25 on page 9, there's a paragraph that begins,

1 DR. JOHN R. GRINDON (9/15/15)

2 "petitioner asserts."

3 Do you see that?

4 A. Yes.

5 Q. Could you read that paragraph into
6 the record, please?

7 A. "The petitioner asserts that claims
8 1-6 are unpatentable under 35 U.S.C. § 102 as
9 anticipated by Endsley. Pet. 8-24. To support
10 its contentions, Petitioner provides detailed
11 explanations as to how the prior art meets
12 each claim limitation. Id. at 8-25.

13 Petitioner also relies upon a Declaration of
14 Dr. John R. Grindon, who has been retained as
15 an expert witness by Petitioner for the
16 instant proceeding. Ex 1009. We are
17 unpersuaded that Petitioner's analysis and
18 supporting evidence have established a
19 reasonable likelihood of Petitioner prevailing
20 and showing unpatentability to the claims."

21 Q. So is it your understanding based
22 upon reading that sentence that despite your
23 declaration that we marked as Grindon
24 Exhibit 8, the PTAB did not find your
25 arguments persuasive?

1 DR. JOHN R. GRINDON (9/15/15)

2 MR. ALMELING: Objection to form.

3 A. It doesn't say that, but it says,
4 "We are unpersuaded that Petitioner's analysis
5 and supporting evidence have established
6 reasonable likelihood."

7 Q. And petitioner analysis included
8 your declaration, right, Exhibit 1009, the
9 previous sentence?

10 MR. ALMELING: Objection to form.

11 A. It says, "the Petitioner relies
12 upon a declaration."

13 Q. So the arguments that were being
14 made relied upon your declaration were
15 unpersuasive to the PTAB; is that correct?

16 MR. ALMELING: Objection; form.

17 A. All it's saying is that the
18 petitioner's analysis and supporting evidence
19 have established a reasonable likelihood and
20 petitioner prevailing unpersuaded event.

21 Q. And they read your declaration at
22 the time they reached that conclusion,
23 correct?

24 MR. ALMELING: Objection; form.

25 A. The declaration was part of the

DR. JOHN R. GRINDON (9/15/15)

petitioner's petition.

Q. Is that a yes or a no?

MR. ALMELING: Objection to form.

A. Can you ask it again, please?

Q. When the board reached it's conclusion that it was unpersuaded by petitioner's analysis and supporting evidence, it considered your Exhibit 1009; is that correct or incorrect?

MR. ALMELING: Objection; form.

A. It doesn't actually state that it could be, but it says the petitioner relied upon the declaration and they're unpersuaded by the petitioner's analysis. So that's all it says.

Q. No, it says "and supporting evidence," which is your declaration, right?

MR. ALMELING: Objection; form.

A. I don't know what all supporting evidence was included in the petitioner's analysis. The implication that at least part of that was the declaration.

Q. So at least part of the reason they were unpersuaded was whatever they read of

1 DR. JOHN R. GRINDON (9/15/15)

2 your declaration; is that correct?

3 MR. ALMELING: Objection; form.

4 A. I'm reading this for the first time
5 and all I can do is read what's said here in
6 this paragraph, which is out of context and I
7 haven't read the whole order.

8 Q. Well, you testified in Fleming
9 versus Escort and Beltronics, correct?

10 A. Yes.

11 Q. Do you recall how much you were
12 paid in that case?

13 A. I don't. That began in 2009 and I
14 believe that was also through an agency, so I
15 don't know right now.

16 Q. If you submitted a declaration on
17 December 2, 2010 saying \$300 an hour, does
18 that sound approximately correct?

19 A. That could be.

20 Q. Do you know whether the court in
21 Fleming versus Escort ever rejected any of
22 your opinions?

23 A. The -- let's see, there was both
24 invalidity and non-infringement reports. And
25 I believe initially the opposing Counsel moved

1 DR. JOHN R. GRINDON (9/15/15)

2 to exclude some of the -- some of the
3 testimony in the non-infringement report.

4 Q. And do you remember the court
5 rejecting all of Dr. Grindon's opinions except
6 his opinion that the Escort products do not
7 generate an alert based upon a predetermined
8 distance because of the distance of the
9 lockout varies?

10 A. I don't recall those exact words
11 right now, but initially the court did come
12 back agreeing with the opposing counsel's
13 motion to exclude.

14 Q. That was despite your declaration,
15 correct?

16 MR. ALMELING: Objection; form.

17 A. That was -- my recollection is that
18 later, though, the court did allow testimony.

19 Q. But not the testimony it struck?

20 MR. ALMELING: Objection; form.

21 A. This is back in 2012 or even before
22 and I'm not remembering exactly.

23 Q. We can mark, as Grindon Exhibit 10,
24 the decision dated December 14, 2011, and I
25 was looking at page 37.

1 DR. JOHN R. GRINDON (9/15/15)

2 (Grindon Exhibit 10, Memorandum
3 Decision and Order; Fleming v. Escort
4 was marked for identification, as of
5 this date.)

6 BY MR. MACEDO:

7 Q. This is Grindon-10, and I was
8 looking at page 37. On page 37 in the middle
9 of the paragraph, see "Infringement of Claims
10 3, 5, 6, 8, 26 & 27 of the '038 Patent. In
11 response, Escort points to the same opinions
12 expressed by Dr. Grindon as just discussed.
13 Once again, the Court rejects all of
14 Dr. Grindon's opinion except the opinion that
15 Escort products do not generate an alert based
16 on predetermined distance because the distance
17 from the lockout varies."

18 You see that?

19 A. I see that.

20 MR. ALMELING: Counsel, I don't
21 mean to interrupt. For clarification
22 of the record, Exhibit 10 contains
23 various redactions. Do you know what
24 those redactions are?

25 MR. MACEDO: No, that's just the

1 DR. JOHN R. GRINDON (9/15/15)

2 public copy of it.

3 MR. ALMELING: The redactions are
4 not the redactions that you made to
5 Exhibit 10?

6 MR. MACEDO: No, this is the
7 publically available opinion.

8 As Mr. Hawkins has repeatedly
9 pointed out to me, it's our job to
10 retain publicly available documents by
11 ourselves and that is what we did.

12 Q. Do you recall this ruling?

13 A. I don't recall seeing this document
14 before.

15 Q. By the way, if you notice at the
16 top of the page, it says, "Nevertheless, the
17 discussions above demonstrate that many of
18 Dr. Grindon's opinions are irrelevant."

19 Have you heard that criticism
20 before from courts?

21 A. No.

22 Q. Did you hear that criticism from
23 this court?

24 MR. ALMELING: Objection; form.

25 Q. This court being the Fleming court

1 DR. JOHN R. GRINDON (9/15/15)
2 in Grindon Exhibit 10.

3 A. Let me take a look and see what is
4 being referred to in these sections. These
5 are regarding the infringement.

6 MR. ALMELING: I'd like to
7 instruct the witness that based on
8 Exhibit 10, the publicly available
9 document, there is parts of his
10 testimony including, for example, on
11 page 35 where there's a redaction of
12 various Dr. Grindon's testimony. It
13 continues on page 36. That in
14 providing responses to counsel, that
15 you omit from your answer any
16 information that is protected by
17 protective order or other obligation
18 to keep information confidential. Do
19 you understand?

20 THE WITNESS: Yes.

21 MR. ALMELING: I'm sorry; Counsel,
22 I wanted to make sure that's clear.

23 MR. MACEDO: I would have done the
24 same thing. That's fine with me.

25 Q. I do not want you to violate

1 DR. JOHN R. GRINDON (9/15/15)

2 anyone's protective order.

3 A. Okay.

4 Q. Dr. Grindon, if you're ready, I'm
5 ready to move on unless there's something else
6 you wanted to say?

7 MR. ALMELING: Is there a pending
8 question?

9 Q. I asked whether you had heard that
10 criticism from this court and you hadn't
11 answered?

12 A. I believe I did.

13 Q. You did answer or you did hear that
14 criticism from this court?

15 A. May I have that question again?

16 Q. I had said, by the way, if you
17 notice at the top of the page, it says,
18 "Nevertheless, the discussions above
19 demonstrate that many of Dr. Grindon's
20 opinions are irrelevant." And I said, have
21 you heard that criticism before from a court
22 and you said no. And then I said did you hear
23 that criticism from this court, referring to
24 the Fleming court.

25 Had you heard that the Fleming

1 DR. JOHN R. GRINDON (9/15/15)

2 court had said that to you is what I wanted to
3 know or about you?

4 A. I had not seen this document
5 before.

6 Q. You've also provided declaration in
7 the CBS Interactive versus Helferich case,
8 right?

9 A. I believe so.

10 Q. And at this time, I believe Grindon
11 Exhibit 11 is the correct number.

12 MR. MACEDO: If you could, please
13 mark the declaration of John R.
14 Grindon, D.SC Wireless Science 2054
15 from Case Number 2013-00033(JYC), and
16 it is dated the 7th of June 2013.

17 (Grindon Exhibit 11, declaration
18 of John R. Grindon, D.SC Wireless
19 Science 2054 from Case Number
20 2013-00033(JYC) was marked for
21 identification, as of this date.)

22 BY MR. MACEDO:

23 Q. Are you the same John R. Grindon as
24 in Grindon Exhibit 11?

25 A. Yes.

1 DR. JOHN R. GRINDON (9/15/15)

2 Q. And in paragraph five, you said, "I
3 am compensated for my work in this matter \$300
4 an hour with reimbursement of actual
5 expenses."

6 Correct?

7 A. Yes.

8 Q. So you were being paid \$300 an hour
9 in June of 2013 when you were testifying on
10 behalf of the patent holder in the CBS case,
11 right?

12 A. Yes.

13 Q. The same time that you were
14 testifying for Helferich patent licensing in
15 the CBS case at \$300 an hour, you were
16 testifying for Google, a month later, at \$400
17 an hour in the Google versus -- or Google
18 versus as Grandeye, correct?

19 MR. ALMELING: Objection; form.

20 A. Can you show me the \$400 an hour in
21 that matter?

22 Q. Sure. You don't recall though?

23 A. I'm not recalling right now, no.

24 Q. I just want to say you asked me to
25 show this to you.

1 DR. JOHN R. GRINDON (9/15/15)

2 MR. MACEDO: We'll mark as Grindon
3 Exhibit 12, the declaration of John R.
4 Grindon, D.SC in support of Petition
5 for Inter Partes Review Of U.S. Patent
6 7,542,035, Google Exhibit 1005 dated
7 August 30, 2013, in Google versus
8 Grandeye.

9 (Grindon Exhibit 12, declaration
10 of John R. Grindon, D.SC in support of
11 Petition for Inter Partes Review Of
12 U.S. Patent 7,542,035 was marked for
13 identification, as of this date.)

14 BY MR. MACEDO:

15 Q. If you look at paragraph one of
16 Grindon Exhibit 12, it says, "I've been
17 retained by Google, Inc. (Petitioner) an as
18 independent expert consultant in this
19 proceeding." With a footnote saying you were
20 also evoked in other IPRs for them?

21 "I am being compensated at my
22 standard rate of \$400 an hour for the time I
23 spent on this matter."

24 You see that?

25 A. Yes.

1 DR. JOHN R. GRINDON (9/15/15)

2 Q. So on August 30, 2013, you
3 submitted a declaration for Google at your
4 standard rate of \$400 an hour, correct?

5 A. I think that's the date.

6 Q. That's the rate, right; is that
7 correct?

8 A. Yes.

9 Q. And on June 7, 2013, you submitted
10 a declaration where you were being compensated
11 \$300 an hour; is that correct?

12 A. No. What declaration are you
13 referring to there?

14 Q. We're referring to the CBS versus
15 Helferich declaration, Grindon 11; is that
16 correct?

17 A. I believe that is.

18 Q. How much better was your work for
19 Google than it was for Helferich?

20 MR. ALMELING: Objection; form.

21 A. I don't think I have to answer that
22 question, but I will say that these agreements
23 and relationships were established at
24 different times and the cases were initiated
25 at different times. Some were through various

1 DR. JOHN R. GRINDON (9/15/15)

2 agencies. So the rate varies.

3 Q. So is it your view that the work
4 that you did for Google was better, the same
5 or not as good as the work you did for
6 Helferich?

7 MR. ALMELING: Objection; form.

8 A. Can I ask the basis for that
9 question? I don't understand.

10 Q. They paid a hundred dollars more an
11 hour. That is a substantial difference a 300
12 versus \$400 rate. I'm trying to understand
13 the difference, whether there was a
14 difference, in the quality of the work to
15 justify the difference in rate.

16 A. There's no difference in the
17 quality of the work. My relationship with the
18 Helferich group went back some period of time.
19 There's no difference in the quality of work.

20 Q. Well, you charged \$400 in 2013 to
21 Google to testify in the Grandeye case, and
22 sitting here today, you're charging them \$500.
23 Your relationship to Google went back at least
24 to 2010, 2011. Why are you charging them more
25 now?

1 DR. JOHN R. GRINDON (9/15/15)

2 MR. ALMELING: Objection to form.

3 A. I believe I answered this some time
4 ago. In cases where I worked through
5 agencies, I actually take home less because
6 the agencies take a pretty big cut.

7 Q. Can you name any other case where
8 you're getting paid \$500 an hour?

9 A. My recollection right now is there
10 are at least two other cases.

11 Q. And which cases are those?

12 MR. ALMELING: Objection. Let's
13 go off the record.

14 (Whereupon, an off-the-record
15 discussion was held.)

16 BY MR. MACEDO:

17 Q. The two other cases that you're
18 referring to, have you already submitted
19 expert reports?

20 A. No.

21 Q. Have you already been publicly
22 disclosed that you're representing someone in
23 those cases?

24 A. No.

25 Q. Are you representing Google in

1 DR. JOHN R. GRINDON (9/15/15)

2 those cases?

3 A. No.

4 Q. Have you actually been paid \$500 an
5 hour yet?

6 A. Yes.

7 Q. And how many hours have you worked
8 on those cases to date?

9 A. I don't know.

10 Q. One hour, five hours, a hundred
11 hours?

12 A. I don't know.

13 Q. How long ago were you engaged on
14 those cases?

15 A. Recently.

16 Q. Last month?

17 A. Probably in this calendar year.
18 I'd have to go back and check.

19 Q. Before or after you were engaged by
20 Google for these IPRs?

21 A. I believe that would have been
22 before.

23 Q. Who engaged you for these IPRs?
24 Who physically engaged you, the person?

25 MR. ALMELING: Counsel, as we

DR. JOHN R. GRINDON (9/15/15)

discussed off the record, these are indeed governed by non-disclosure obligations.

Q. I'm talking about these IPRs, not those. I'm talking about the four IPRs that he's testifying today.

MR. ALMELING: I see.

Q. Who engaged you?

A. I would have to look at the signature on the agreement, which I can do later.

Q. Who contacted you?

A. My initial contact was from Google.

Q. Someone inside of Google or some outside lawyer?

A. Inside Google was the first mention.

Q. Do you remember who that was?

A. I believe Jim Sherwood.

Q. The same Jim Sherwood sitting here today?

A. Yes.

Q. Are you doing any consulting work that doesn't involve litigation at the present

1 DR. JOHN R. GRINDON (9/15/15)

2 time?

3 A. Not at the moment.

4 Q. Over the past two years, have you
5 done any consulting work that doesn't involve
6 litigation?

7 A. Two years, very little.

8 Q. When was the last time you did
9 consulting work that wasn't part of litigation
10 or IPR some legal dispute?

11 A. Perhaps around two years ago.

12 Q. So is it fair to say that since the
13 four IPRs were initiated, you have not earned
14 any income as a consultant other than in the
15 context of a litigation or legal dispute?

16 A. Since July, if that was the date
17 when these were instituted --

18 Q. No, that's when you were contacted.
19 These were instituted last year.

20 A. Since the agreement with Google in
21 this matter, I don't think I've had any other
22 consulting arrangements that were not
23 litigation related or IPR related or
24 prosecution related.

25 Q. You're working on prosecution?

1 DR. JOHN R. GRINDON (9/15/15)

2 A. Not since July, I don't think. I
3 don't think I have since July.

4 Q. By the way, when you found that
5 Google had instituted four IPRs, relying on
6 the same DiBernardo disclosure that you had
7 previously submitted the declaration in the
8 Vederi litigation for them, did you ask them
9 why they didn't engage you sooner?

10 A. No, I didn't.

11 Q. Didn't you know a lot about that
12 disclosure?

13 A. Didn't I know a lot about what
14 disclosure?

15 Q. The DiBernardo disclosure.

16 A. Yes.

17 Q. Wasn't Google happy with the work
18 you did in the Vederi litigation?

19 A. I can't comment on Google's
20 happiness.

21 Q. What do you know about Google's
22 happiness? Did they express to you their
23 happiness with your work?

24 A. As far as I know.

25 Q. Did they ever express to you that

1 DR. JOHN R. GRINDON (9/15/15)

2 they were unhappy with your work?

3 A. No, never did.

4 Q. They continued to engage you after
5 you did the Vederi declaration, right?

6 A. I've had engagements since, yes.

7 Q. And they've engaged you in the
8 Transcenic case, right?

9 A. Yes, they did.

10 Q. And they engaged you in the View
11 360/Grandeye case, right?

12 A. Yes.

13 Q. Weren't you wondering how come they
14 didn't engage you sooner here?

15 A. I didn't ask.

16 Q. Really, you never asked why you
17 didn't contact me before since I know so much
18 about this?

19 A. No.

20 Q. Do you know Dr. Fuchs?

21 A. I don't, no.

22 Q. Really, you've never met him?

23 A. Never met him, no.

24 Q. Ever speak to him?

25 A. Never did.

1 DR. JOHN R. GRINDON (9/15/15)

2 Q. Never look at any declaration or
3 testimony by him?

4 A. No, I haven't.

5 Q. Including his declaration submitted
6 in the present IPRs, correct?

7 A. Correct.

8 Q. And you didn't look at what
9 testimony he offered in the Transcenic case,
10 did you?

11 MR. ALMELING: Objection to form.

12 A. Now I need to recollect. No, I'm
13 not sure.

14 Q. You don't recall one way or the
15 other?

16 A. Yes, I'm not sure.

17 Q. By the way, do you know how much
18 he's getting paid by Google?

19 A. No idea.

20 Q. Do you know if he's getting paid
21 more, less or the same as you?

22 A. No idea.

23 Q. Would you think that he should be
24 paid more, less or the same?

25 A. No idea.

1 DR. JOHN R. GRINDON (9/15/15)

2 MR. ALMELING: Objection to form.

3 Q. Didn't you want to see Dr. Fuchs'
4 declaration in these IPRs so you could see
5 whether your opinions were the same or
6 different than his?

7 A. I was brought into this for a
8 limited purpose and my understanding and I was
9 aware that Dr. Fuchs had been an expert on
10 this, but my role was very limited and
11 specific.

12 Q. Well, aren't you offering opinions
13 about claim construction in 338 and 339 IPRs?

14 A. Not really claim construction.

15 Q. You're offering opinions as to what
16 server farm means?

17 MR. ALMELING: Objection to form.

18 Q. Correct or incorrect?

19 A. Not in the construing server farm,
20 only developing an understanding as far as the
21 declarations require it.

22 MR. ALMELING: Counsel, I have to
23 interrupt.

24 Q. To make it clear --

25 MR. ALMELING: I'm sorry we've

1 DR. JOHN R. GRINDON (9/15/15)

2 been going for about an hour.

3 MR. MACEDO: I'd like to finish
4 this line, and then I will take a
5 break.

6 MR. ALMELING: That sounds great.

7 Q. I just want to make it clear, the
8 PTAB should not be reading your declaration as
9 offering a construction of what the term
10 server farm means in the context of the '181
11 patent in-suit for the '1338 and '1339 IPRs;
12 is that correct?

13 A. In my declarations, I established
14 only certain aspects of the term, "server
15 farm" as it applies to the patents. But I
16 didn't attempt to develop a full construction
17 of the term, "server farm."

18 Q. So your analysis is not a proper
19 claim construction of what the term, "server
20 farm" means in claim one of the '181 patent in
21 dispute for IPRs 2014-01338 and '01340; is
22 that correct?

23 MR. ALMELING: Objection to form.

24 Q. I'm sorry. So your declaration is
25 not offering a proper claim construction what

1 DR. JOHN R. GRINDON (9/15/15)

2 the term server farm means for the '181 patent
3 in dispute for IPRs 2014 '0133 eight and
4 '01339; is that correct?

5 MR. ALMELING: Objection.

6 A. I didn't say that, and I believe
7 I've answered this already.

8 Q. No, you didn't. So are you
9 offering a claim construction of what the
10 term, "server farm" means in the '181 patent,
11 claim one, that's the subject of IPRs
12 2014-01338 and 2014-01339?

13 A. Again, as I answered a moment ago,
14 I'm not offering a formal construction. What
15 I am offering is an understanding of the term
16 as it applied at the time to show within the
17 requirements of the claim that you mentioned,
18 that there are certain aspects of the
19 understanding of that term of a person of
20 ordinary skill in the art that differ with the
21 contentions in the patent owners' response.
22 And that is not exactly the same thing as the
23 full and complete construction of the term
24 which would require substantial amount of
25 effort and research.

1 DR. JOHN R. GRINDON (9/15/15)

2 Q. Which you did not conduct that
3 efforts and research that is required to
4 properly construe that term?

5 A. I carried out sufficient effort and
6 research to establish the difference between
7 patent owner's response understanding of the
8 term, "server farm" and the understanding that
9 a person of ordinary skill would have under
10 the broadest reasonable interpretation.

11 Q. But you didn't do what would be
12 necessary to do a proper claim construction
13 for purposes of the IPR; is that correct or
14 incorrect?

15 MR. ALMELING: Objection; form.

16 A. Again, I think I've answered this
17 several times.

18 Q. It calls for yes or no.

19 MR. ALMELING: Counsel, he had not
20 finished answering your question.

21 MR. MACEDO: I'm going to withdraw
22 the question. I'm going to make it
23 very clear.

24 Q. I want you to answer yes, no, I
25 don't know I can't answer or I can't recall.

1 DR. JOHN R. GRINDON (9/15/15)

2 Did you do the work which you think
3 is necessary to conduct a proper claim
4 construction of the term, "server farm" as
5 used in claim 1 of the '181 patent for
6 purposes of the IPRs 2014-01338 and
7 2014-01339; yes or no?

8 MR. ALMELING: Objection; form.

9 A. I didn't offer a complete
10 construction. I did offer that portion of the
11 construction necessary to establish the
12 difference that I established. I didn't
13 explore the outer boundaries of the term,
14 "server farm."

15 Q. And do you think server farm means
16 something different today than it meant last
17 year?

18 A. Last year being 2014?

19 Q. Yes.

20 A. I didn't address that exact
21 question. The terms tends to change a little
22 bit in time, but I didn't explore the time
23 history of the term, "server farm" from the
24 dates that I looked at which were the dates
25 that are relevant to the current time.

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2 Q. What dates are relevant?

3 A. That would be the date of the
4 patent which you referenced.

5 Q. You don't have the '181 patent in
6 front of you. You have your declaration so
7 your declaration presumably will tell you what
8 date you think is relevant.

9 A. Yes.

10 MR. ALMELING: Counsel, about two
11 minutes ago you asked for a break and
12 you want to finish a line of
13 questioning. I wasn't sure if the
14 line was continuing.

15 MR. MACEDO: This is part of the
16 same line.

17 Q. You could look at paragraph 30.
18 That's where you discuss server farm.

19 MR. ALMELING: Counsel, is there a
20 question pending?

21 MR. MACEDO: Yes I asked him what
22 date he considered -- I asked him what
23 are the relevant dates.

24 A. That would be 2004.

25 Q. So do you think today that

1 DR. JOHN R. GRINDON (9/15/15)

2 definition of server farm is different than
3 the definition in 2004?

4 MR. ALMELING: Objection to form.

5 A. I didn't look at this question.

6 Q. You saw the dictionary definitions
7 that were put in by the patent owner that you
8 said are from today. Do you think those
9 definitions were correct as of today?

10 MR. ALMELING: Objection to form.

11 A. Those were not prior art. Those
12 were, as far as I could tell, 2015
13 definitions. I thought it was more relevant
14 to find the usage of the term back in the time
15 of the patent.

16 Q. That wasn't my question. My
17 question is the dictionary definitions that
18 the patent owner put in from 2015, did you
19 think those were correct representations of
20 what the term, "server farm" means in 2015?

21 MR. ALMELING: Objection; form.

22 A. I don't take those as
23 authoritative, and I don't take those as the
24 broadest reasonable interpretation of the
25 term, "server farm."

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2 Q. I'm going to ask you again, do you
3 think that the dictionary definitions that
4 were offered by the patent owner in IPRs
5 2014-1338 and 2014-1339 offer a correct
6 understanding of what the term, "server farm"
7 means in the year 2015; yes or no?

8 MR. ALMELING: Objection; form.

9 A. Again, I didn't look at the year
10 2015 because I thought that that was not
11 relevant to the year 2004. So I looked at the
12 year 2004 so you're asking something that I
13 didn't address, but I do not think that the
14 definitions that the patent owner found, the
15 2015 definitions, fully express the full
16 definition of the term, "server farm."

17 Q. And you think that Exhibit 1013
18 referenced on page 23 of Grindon Exhibit 1
19 does properly express the broadest reasonable
20 interpretation of server farm; is that
21 correct?

22 A. I believe that the combination of
23 at least these references that I've cited, you
24 mentioned 1013, I also cited 1012, and another
25 one somewhere here. I believe that in toto,

1 DR. JOHN R. GRINDON (9/15/15)

2 those indicate that at the time, 2004, that
3 the server farm had a broader understanding
4 than the limitations proposed by the patent
5 owner.

6 Q. And do you think that it still has
7 a broader understanding today? Did the
8 understanding of server farm get broader or
9 narrower or is it the same today as it was in
10 2004? That's what I'm trying to understand
11 from you.

12 MR. ALMELING: Objection; form.

13 A. That is something I didn't look at,
14 but as I sit here, I think that the same
15 considerations would apply that even today,
16 the term, "server farm" would not be limited
17 so much as the references that the patent
18 owner found for 2015.

19 Q. So you think that the five
20 references that the patent owner submitted
21 from different objective third-party
22 dictionaries from 2015 do not accurately
23 reflect what someone of ordinary skill in the
24 art today would understand a server farm to
25 be? Is that your testimony?

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2 MR. ALMELING: Objection; form.

3 A. Again, I'm looking at the broadest
4 reasonable interpretation. And under that
5 interpretation, the limitation that the patent
6 owner found in its 2015 references that it be
7 a single location. I don't see that as
8 necessary. Certainly not back in 2004 and
9 still not today.

10 MR. ALMELING: Counsel, I've been
11 asking for a break 20 minutes ago, and
12 then ten minutes ago. I understand
13 you're on the same line of
14 questioning. If this continues
15 forever, can I go to the restroom or
16 do you need to keep asking this before
17 I do?

18 MR. MACEDO: You know, I am trying
19 to get an answer, and it's kind of
20 hard and I apologize. If we need to
21 take a two-minute break for you to run
22 downstairs, let's do that, but I ask
23 that the witness not move unless he
24 has to go to the bathroom, which he
25 can go to the bathroom.

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2 MR. ALMELING: Let's go off the
3 record.

4 (Whereupon, at this time, a short
5 break was taken.)

6 BY MR. MACEDO:

7 Q. Welcome back, Dr. Grindon. Are you
8 feeling comfortable and competent to continue
9 testifying?

10 A. Sure.

11 Q. So we'll look at Grindon Exhibit 1.
12 All the other testimony you did for now, you
13 can put to the side. Keep the DiBernardo
14 patents and keep your three or four
15 declarations, okay?

16 A. Okay.

17 Q. So now we're looking at Grindon
18 Exhibit 1 and we're looking at paragraph 30
19 where you talk about the term, "server farm"
20 on page 22. Do you see that?

21 A. Yes, I do.

22 Q. So you start off by saying "VRE
23 argued that the claim term 'server farm' in
24 the '181 patent must be narrowly interpreted
25 to require network servers 'housed in one

1 DR. JOHN R. GRINDON (9/15/15)

2 location.'" "

3 You see that?

4 A. Yes.

5 Q. Now, do you know whether Google
6 offered any construction of the term, "server
7 farm" as it was used in the '181 patent as
8 part of the petition?

9 A. I don't know.

10 Q. Do you know whether Dr. Fuchs
11 offered any construction as to the term,
12 "server farm"?

13 A. I don't know.

14 Q. Now, if you were doing the
15 declaration and you had to show that the piece
16 of prior art had a server farm, would you have
17 offered a construction of that term in your
18 own declaration because you've done lots of
19 IPRs?

20 MR. ALMELING: Objection; form.

21 Q. You haven't answered yet.

22 A. Can you restate the question? It's
23 been a while.

24 Q. You've offered lots of IPR
25 declarations to date, right?

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2 A. I wouldn't say lots, but if you --

3 Q. A fair number. More than three?

4 A. Perhaps.

5 Q. And you understand that as the
6 petitioner, it's your burden to put forth
7 claim constructions that are of terms that are
8 relevant in that analysis, right?

9 MR. ALMELING: Objection; form.

10 A. When you say as the petitioner --

11 Q. The person like Google seeking to
12 invalidate a patent and IPR proceeding. You
13 understand that the petitioner has the burden
14 to put forth claim constructions of any
15 material terms, right?

16 MR. ALMELING: Objection to form.

17 A. I understand that often the
18 petitioner does propose claim constructions.

19 Q. Do you know why?

20 A. In order to clarify the meaning of
21 the terms.

22 Q. And you don't think that's required
23 under the rules that they put forth those
24 constructions?

25 MR. ALMELING: Objection; form.

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2 Additionally, objection; lacks
3 foundation.

4 Q. If you don't know, you can say you
5 don't know.

6 A. If you can show me the rule where
7 it's stated, then I can answer affirmatively.

8 Q. You can say you just don't know,
9 that's fine.

10 MR. ALMELING: Counsel, is there a
11 question pending?

12 Q. If you don't know, say, "I don't
13 know."

14 A. I haven't actually read the rule,
15 but it's my understanding that when there's
16 any ambiguity in a claim term, that the
17 petitioner does propose a construction.

18 Q. I'm going to show you what we
19 marked as Grindon Exhibit 13 the original
20 petition filed in IPR 2014-1338 and just let
21 your Counsel look at it to make sure that he
22 agrees that that's the right one. It's the
23 original one.

24 (Grindon Exhibit 13, Petition for
25 Inter Partes Review of U.S. Patent No.

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2 7,389,181 was marked for
3 identification, as of this date.)

4 MR. ALMELING: Counsel, do you
5 represent this is a true and correct
6 copy of the original petition in what
7 was Docket Number 19473-0323?

8 I'll believe you, but I have no
9 basis to say one way or another.

10 MR. MACEDO: Actually, I was
11 hoping if Fish & Richardson could tell
12 us if that's the right docket number
13 of attorney docket number. That's the
14 issue I had.

15 MR. ALMELING: Is there a reason
16 you believe it's not? Let's go off
17 the record.

18 (Whereupon, an off-the-record
19 discussion was held.)

20 BY MR. MACEDO:

21 Q. So have you ever seen Grindon 13
22 before?

23 A. No.

24 Q. So I'll represent to you that this
25 is the original petition, not the corrected

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2 petition, but the petition filed by Google at
3 the very beginning of the 1338 IPR; okay?

4 A. Okay.

5 Q. So you've never read this to see
6 whether it's right, wrong or indifferent,
7 right?

8 A. Correct.

9 Q. If you take a look at it, on page 8
10 you'll see various claim constructions being
11 offered. You see that?

12 A. I see beginning on page 8 claim
13 construction proposals.

14 Q. You see video drive-by data as one
15 claim construction?

16 A. Yes.

17 Q. You see video storage data, the
18 second?

19 A. Yes.

20 Q. Database server, the third?

21 A. Yes.

22 Q. Image processing server as the
23 fourth?

24 A. Yes.

25 Q. And you see means for blah, blah,

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blah from claim 7 as the next one?

A. Yes.

Q. And than you see means for blah, blah, blah from claim 8 as the next one?

A. Yes.

Q. And you see means for linking blah, blah, blah on page 12 as the next one?

A. Yes.

Q. And you see on page 14 means for calculating as the next one?

A. I do.

Q. On page 15, there's no more claim constructions being offered, correct?

A. Not in this document.

Q. And at least in what we reviewed, you didn't see server farm as one of those terms being construed, correct?

A. Correct.

Q. Now if you jump to the claim charts and I want you to look at page 32, you see a claim chart of anticipation by Yoichi, right?

A. Yes.

Q. And you see an element 1.P "A system including a video and data farm

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comprising," correct?

A. Yes.

Q. And then you see an assertion that Yoichi discloses a system including a video and data farm, correct?

A. I see this.

Q. And then you see an explanation of why Yoichi allegedly does that, right?

A. I see it. You want me to read it?

Q. No. Well, you could read it to yourself. You don't need to read it aloud. There is whatever explanation there is, right?

A. There is something here.

Q. And there's a markup of a figure on the next page?

A. There's a figure on the next page.

Q. With markups on it, the data server and image processing server and video storage servers?

A. Yes.

Q. Right. You see that?

A. The three markups are database server, video storage and image processing server.

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2 Q. There is no statement on page 32 or
3 33 suggesting that a system, including a video
4 and data server farm comprising is not a
5 limitation of the claims, is there?

6 A. Only looking at pages 32 and 33,
7 the parts that you pointed out, in those
8 charts, at least so far I'm not seeing a
9 statement one way or the other. It doesn't
10 seem to address that issue.

11 Q. You see a statement that you see
12 the assertion that Yoichi discloses one, but
13 you don't see the assertion that it's not a
14 required limitation; is that correct?

15 A. I don't see an assertion either
16 way, but it is or is not a limitation.

17 Q. It says, "Yoichi discloses a system
18 including the video and data server farm" and
19 then it cites to Google Exhibit 1001 at
20 paragraph 29.

21 A. Sure.

22 Q. So it's asserting that Yoichi meets
23 that limitation and it doesn't say that it's
24 not a limitation that needs to be met, right?

25 MR. ALMELING: Objection. I

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2 didn't know you were finishes. Were
3 you finished Counsel?

4 MR. MACEDO: After I said,
5 "right."

6 MR. ALMELING: Objection to form.
7 Additionally, outside the scope.

8 A. No, not right.

9 Q. Do you see that it's asserting that
10 Yoichi has a video and data server farm?

11 A. Yes.

12 Q. Do you see any assertions on pages
13 32 or 33 that a video and data server farm is
14 not a necessary element of claim one?

15 A. In these charts that you've pointed
16 out, I see no discussion of that issue either
17 way.

18 Q. Do you see an assertion that it is
19 not a necessary element of claim one that the
20 covered system have a video and data server
21 farm; yes or no?

22 A. I am not seeing an assertion for
23 that or the reverse.

24 Q. So you do not see an assertion that
25 a video and data server farm is not a

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necessary element of claim one of the '181 patent; is that correct?

A. I don't see that matter addressed here.

Q. I want you to answer my question. Very straightforward question.

Do you see an assertion on pages 32 and 33 of Grindon Exhibit 13 that a video and data server farm is not a necessary element of claim one of the '181 patent; yes or no?

A. I don't see a discussion of that. I don't see the assertion that you mention. I don't see an assertion that it is an element. I don't see that discussion here.

Q. But you see an assertion that Yoichi discloses a system including a video and data server farm?

A. That's another matter entirely, yes, it does talk about Yoichi. It does disclose that.

Q. That's what it asserts?

A. That is the subject of this chart at the point, yes.

Q. So I would like to understand from

1 DR. JOHN R. GRINDON (9/15/15)

2 you whether the definition of server farm is
3 the same or different in the time frame of
4 2004 compared to what it is today.

5 A. I didn't analyze that. I didn't
6 consider that to be relevant to my analysis.
7 So just sitting here thinking about it, I
8 don't see that the limitations that patent
9 owner proposed would apply either today or in
10 2004.

11 Q. I'm not asking whether the
12 limitations are correct or incorrect. I'm
13 asking whether there's a difference in meaning
14 today for server farm compared to 2004. Put
15 aside whatever that meaning is. Does it mean
16 the same thing or something different today
17 than it meant in 2004. That's all I want to
18 understand.

19 MR. ALMELING: Objection; form.

20 Additionally, objection to --

21 Q. In your opinion?

22 A. The term, "server farm" is fairly
23 broad. I looked at it only with regard to
24 this limitation. So you're asking me now to
25 think about something I didn't address in

1 DR. JOHN R. GRINDON (9/15/15)
2 preparing these declarations.

3 Q. Before you prepared these
4 declarations, did you have an understanding
5 what a server farm was?

6 A. Yes.

7 Q. What was your understanding?

8 A. As I described in the declaration,
9 so we can read this.

10 Q. I don't want to know what your
11 declaration said. I want to know what your
12 understanding was without the declaration.

13 In other words, before Google came
14 to you in 2015, did you understand what a
15 server farm was?

16 A. I did, and I believe I expressed it
17 in the declaration. Let's just take a look at
18 that.

19 Q. I don't want to know what your
20 declaration says. I want to know what your
21 understanding, independent of this litigation,
22 of what you understood the server farm to be
23 as of July of 2015 before you received that
24 faithful call from Mr. Sherwood.

25 A. Okay. Under the broadest

1 DR. JOHN R. GRINDON (9/15/15)

2 reasonable interpretation, the server farm
3 would consist of usually more than one
4 computer connected in some way by a network or
5 some means.

6 Q. That was what you just read from
7 the declaration, right?

8 A. Not exactly, but it's consistent
9 with my declaration.

10 Q. You're reading your declaration.
11 Whether you're reading verbatim or not, you're
12 looking at your declaration to tell me that
13 answer?

14 A. That's right.

15 Q. Before Google came to you, you
16 didn't have your declaration to look at,
17 correct?

18 A. I think I can answer that yes.

19 Q. Wasn't a hard question. Have you
20 ever looked at a dictionary definition from
21 the internet to figure out what terms of art
22 mean?

23 A. That's a pretty broad question. I
24 have.

25 Q. In fact, in IPRs you offered claim

1 DR. JOHN R. GRINDON (9/15/15)

2 constructions based upon such definitions,
3 correct?

4 A. I believe I have.

5 Q. And so when patent owners used such
6 definitions to find out what one of ordinary
7 skill in the art thought a server farm was,
8 that wasn't improper in your view, was it?

9 A. I believe.

10 Q. Is that the proper way of doing it?

11 A. I believe I addressed that earlier.
12 It's not the matter of just using extrinsic
13 definitions. It's a matter of how those are
14 applied and whether they're relevant. And in
15 this particular case, we're talking about a
16 2004 time frame and the proposed definitions
17 in the patent owner response were 2015. And
18 so I thought it was more relevant to go back
19 to the time whether or not there's been a
20 change in the meaning and felt that it was
21 better to go back to the time of the patent.

22 Q. So if you look, let's look at
23 Exhibit 2011 from IPR 1338. We'll mark it as
24 Grindon Exhibit 14.

25 (Grindon Exhibit 14, Visual Real

1 DR. JOHN R. GRINDON (9/15/15)

2 Estate 2011 was marked for
3 identification, as of this date.)

4 BY MR. MACEDO:

5 Q. Did you look at this definition of
6 server farm to see if it's an appropriate
7 definition of server farm?

8 A. I looked at a number of
9 definitions. I don't know -- I don't
10 recognize exactly whether I looked at this
11 very one.

12 Q. Well, it was one of the exhibits
13 that was offered by the patent owner to say
14 what a server farm meant. You didn't look at
15 those?

16 A. Then I likely did look at this.

17 Q. Do you think it's a correct
18 definition in 2015?

19 A. Let me take a look and see.

20 MR. ALMELING: I withheld the
21 verbalization of my objection to not
22 distract the witness from reading. I
23 will interpose it now. Objection to
24 form.

25 Q. So my question is: Looking at

1 DR. JOHN R. GRINDON (9/15/15)

2 Grindon Exhibit 14, which is Visual Real
3 Estate Exhibit 2011 from IPR 2014-01338,
4 WhatIs.com's definition of server farm, do you
5 believe that this is a fair and accurate
6 description of server farm as of June 3, 2015?

7 MR. ALMELING: Objection; form.

8 A. This could describe one kind of
9 server farm, but the requirement in the
10 definition that you found here that it be in a
11 single location is not the broadest reasonable
12 interpretation, even at this late date, which
13 doesn't really apply to 2004.

14 Q. Would you be surprised to learn
15 that this is the same definition that has been
16 on WhatIs.com with respect to requiring that
17 the group of servers be kept in a single
18 location since as early as May 13, 2007?

19 A. That wouldn't surprise me. As I
20 said, under the broadest reasonable
21 interpretations, there's no reason why they
22 have to be in a single location.

23 Q. But of someone in ordinary skill in
24 the art, if you heard the word, "server farm,"
25 would you understand that the meaning set

1 DR. JOHN R. GRINDON (9/15/15)

2 forth in Grindon Exhibit 14 is a fair and
3 accurate meaning of what that term means?

4 MR. ALMELING: Objection; form.

5 A. Again, this is one example of what
6 a server farm may be. And I'm not going to
7 argue that it couldn't be at a single
8 location. I'm just saying that under the
9 broadest reasonable interpretation at the
10 time, 2004, not everyone would have limited
11 the server farm to be at a single location
12 since there's not a technical reason that the
13 patent depends upon that it be so.

14 Q. And you reached that conclusion
15 because you looked at Google Exhibit 1013 from
16 IPR 2014-01338, correct?

17 A. Tell me again.

18 Q. Exhibit 1013, it's one of the ones
19 listed in your declaration.

20 A. Do you have that one?

21 Q. I will in a second. I want you to
22 look at your declaration and tell me if that's
23 what you looked at. On page 23 of Grindon
24 Exhibit 1, you cite Saboori Exhibit 1013?

25 A. All right. That was one of

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2 several.

3 Q. That's one of the ones which you
4 say was from 2004 and it accurately reflects
5 what someone of ordinary skill in art would
6 understand what a server farm to mean,
7 correct?

8 A. I didn't actually say that. What I
9 said is that these are several examples that
10 indicate that the server farm is not necessary
11 limited to a single location.

12 Q. Do you think this is an appropriate
13 reference that the PTAB should look at to
14 understand what a server farm meant in 2004;
15 yes or no?

16 A. In combination with the other
17 references that I have here, I think that
18 these lend insight into the broadest
19 reasonable interpretation of server farm.

20 Q. Well do you think the authors of
21 Exhibit 1013, that you offer in paragraph 30
22 of your declaration marked as Grindon
23 Exhibit 1, is an appropriate reference to
24 explain what a server farm meant in 2004; yes
25 or no?

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2 A. Again, I didn't offer that in
3 isolation, but I offered it in combination
4 with other references. So my answer would be
5 taken in combination with the other
6 references. It makes clear that the broadest
7 reasonable term of server farm is not limited
8 to a single location.

9 Q. I'm not asking you what it says.
10 I'm asking you is it a correct or incorrect
11 resource for the PTAB to look at to understand
12 what server farm meant in 2004. Either you
13 think it's correct, which is why you cited it,
14 or you think it's incorrect which means you
15 probably shouldn't have cited it.

16 So what do you think it is? Is it
17 a correct or incorrect reference for the PTAB
18 to look at to understand what the word "server
19 farm" meant to someone of ordinary skill in
20 the art in 2004? What is your testimony?

21 A. Again, I would not recommend that
22 this be in isolation. That this, by itself,
23 carry the weight of the server farm, but only
24 in combination with the other references that
25 I mentioned.

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2 Q. So is it appropriate for the PTAB
3 to look at it or not should the PTAB strike it
4 because it's inappropriate to look at it or
5 should the PTAB look at it in your opinion as
6 Google's expert offering a construction,
7 although be it not a proper and complete
8 construction, of what the term server farm
9 meant in 2004?

10 A. Again I'm not --

11 MR. ALMELING: Objection.

12 Although it's not reflected in the
13 record, albeit the tone has become a
14 little belligerent. I will remind
15 Counsel of the PTAB's instructions
16 about the courtesy in these
17 proceedings.

18 MR. MACEDO: Counsel, I really do
19 not resemble that remark. The tone
20 was not belligerent. I'm not going to
21 have to speak evenhanded, but the
22 witness has been asked a very
23 straightforward question. I want to
24 know if the PTAB should or should not
25 look at the exhibit offered in his

1 DR. JOHN R. GRINDON (9/15/15)

2 declaration. It's simple.

3 The answer is, I properly offered
4 the exhibit or I improperly offered
5 the exhibit. Whatever he wants, I
6 don't care. I just want to know the
7 right answer.

8 Q. So should the PTAB look at
9 Exhibit 1013 to understand what a server farm
10 meant in 2004 or not? That's what I want to
11 know. What's your testimony; is it
12 appropriate or inappropriate?

13 A. It is appropriate in combination
14 with the other references. Taken in isolation
15 by itself, I probably would not carry -- I
16 would not have it carry the full weight of the
17 argument.

18 Q. Now, did you select the excerpt
19 from Exhibit 1013 that is being quoted with an
20 ellipsis in your declaration in paragraph 30?

21 A. That's hard to say right now. This
22 was in concert with Counsel and I don't know
23 exactly how this particular excerpt arose.

24 Q. Did you find Exhibit 1013 to show
25 what server farm meant in 2004?

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2 A. I didn't initially find that
3 document.

4 Q. Did you read it?

5 A. I read it.

6 Q. Did you make sure that the quote
7 was an appropriate quote and an accurate quote
8 before you swore under perjury the facts that
9 are set forth in paragraph 30 of Grindon
10 Exhibit 1?

11 A. I did read it. Notice there's an
12 ellipsis here which, in my view, includes
13 other material and that this is just an
14 example from the exhibit. It's not meant to
15 be the only reference to that exhibit.

16 Q. In fact, the exhibit gives a very
17 clear definition of what a web server farm is,
18 correct?

19 A. We're talking about an exhibit that
20 you haven't shown me yet.

21 Q. No, one that you relied on and
22 cited and quoted in your declaration to offer
23 your opinion as to what it means. If you
24 don't recall, you can say you don't recall.
25 That's fine.

1 DR. JOHN R. GRINDON (9/15/15)

2 A. You're asking me to remember a
3 certain part of that exhibit so I think it
4 would be fair to show it to me.

5 Q. You're saying you don't remember
6 whether there was a definition that you didn't
7 quote that is set forth in Google Exhibit 1013
8 as submitted in IPR 2014-01338?

9 A. I do have a memory of that. I
10 would much prefer to have the document in
11 front of me. If you're asking me to go on
12 memory as I sit here, this appeared to be an
13 exception showing that in the broadest
14 reasonable interpretation that the servers do
15 not have to be co-located.

16 Q. But not servers in a server farm,
17 but servers in general, correct?

18 A. Again, we're getting into the weeds
19 on a document that you're not showing me.
20 Apparently you're finding something to argue
21 with and we're not having the document in
22 front of us.

23 Q. Let's go ahead and mark it as
24 Grindon Exhibit 15.

25 (Grindon Exhibit 15, document

DR. JOHN R. GRINDON (9/15/15)
entitled, "A new scheduling algorithm
for server farm load balancing" was
marked for identification, as of this
date.)

BY MR. MACEDO:

Q. Do you recognize Grindon
Exhibit 15?

MR. ALMELING: Counsel, before we
get to questions on this, you asked a
series of questions that may implicate
the privilege and the forwarded
termination of the instruction on
those questions. I would like to
confer with my colleagues, so can we
go off the record for a second?

(Whereupon, an off-the-record
discussion was held.)

MR. ALMELING: I have no objection
to the pending question.

BY MR. MACEDO:

Q. So we're looking at Grindon
Exhibit 15, correct?

A. Correct.

Q. While we had this little break you

1 DR. JOHN R. GRINDON (9/15/15)

2 spent sometime reading it?

3 A. I looked to find the excerpt, which
4 I found.

5 Q. What I want you to do is look at
6 the top of the second column, you see it has
7 Roman II, web server farms. You see that?

8 A. Yes.

9 Q. Can you read the first sentence
10 into the record?

11 A. Yes. "A Web server farm refers to
12 a website that uses two or more servers housed
13 together in a single location to handle user
14 requests."

15 Q. Do you think that is a fair and
16 accurate statement of what someone of ordinary
17 skill in the art, as of 2004, understood a web
18 server farm to mean?

19 A. I think that often the servers are
20 at a single location, just in the broadest
21 reasonable interpretation, they don't have to
22 be. There's a suggestion in the preceding
23 column that's cited here so that's all this
24 reference really does and I would not --

25 Q. Let's go back to the sentence you

1 DR. JOHN R. GRINDON (9/15/15)

2 just read.

3 MR. ALMELING: I'm sorry, Counsel,
4 I don't believe the witness had
5 finished answering the question.

6 Dr. Grindon, did you finish answer
7 the question?

8 A. I would not look upon this
9 reference alone, but rather in concert with
10 the others that I've cited.

11 Q. I want to go back, and I want you
12 to look at the first sentence of column two in
13 Grindon Exhibit 15 and it states, "A web
14 server farm refers to a website that uses two
15 or more servers housed together in a single
16 location to handle user requests and I want to
17 know if that is a fair and accurate
18 understanding of what a web server meant to
19 those skilled in the art as of 2004; yes or
20 no?

21 A. Again, we discussed this many
22 times. This is one example. Often they would
23 be housed in a single location, just not in
24 the broadest reasonable interpretation.

25 Q. But in this paper, it specifically

1 DR. JOHN R. GRINDON (9/15/15)

2 says that they're being housed in a single
3 location and it doesn't say often. It's
4 defining it pretty definitively, isn't it?

5 A. This paper is describing a certain
6 thing in that section II. In section I, it
7 gives a suggestion that servers can be
8 distributed over geographic locations.

9 Q. Absolutely. Let's go back to
10 section I. So what section I says is that one
11 way to figure out this problem is using server
12 farms, correct? You see where I'm starting
13 after 5?

14 A. Yes.

15 Q. And it says, "server farm is
16 consisting of a collection of many computers
17 also called host, server or node and front-end
18 high speed dispatcher, correct?

19 A. Yes.

20 Q. Is that a fair and correct
21 statement of what a server farm is?

22 A. It's a fair and correct reading of
23 this and --

24 MR. ALMELING: Objection; Counsel.

25 You continue to do this.

1 DR. JOHN R. GRINDON (9/15/15)

2 MR. MACEDO: He's not answering my
3 question.

4 MR. ALMELING: He was. Please
5 allow the witness to finish the
6 answer.

7 Q. I'll withdraw and ask it again. I
8 want you to answer yes, no, I don't know, I
9 can't answer that question, I don't recall. I
10 don't want a narrative. I'm entitled to a
11 simple answer to my question. If you can't
12 give a simple answer, just say, I can't answer
13 that question and then we'll talk. Okay. Do
14 you understand me?

15 A. Sure.

16 Q. So in Grindon Exhibit 15, it says
17 one way to figure out this problem is using
18 server farms. You see that?

19 A. Correct.

20 Q. That's a yes, you see it?

21 A. I see it.

22 Q. Then it says, "A server farm is
23 consisting of a collection of many computers
24 also called host, server or node and front-end
25 high speed dispatcher."

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Do you see that?

A. I see it.

Q. Do you think that is a correct understanding of what a server farm was in 2004?

A. This is an article which is addressing a particular example and particular problem with these. It is -- it seems generally fair at this point that that sentence you just read does apply to server farms.

Q. It says, "A server farm is consisting of." It's talking about server farm, right?

A. That's why I say it seems fair.

Q. Okay. And do you disagree with it at all?

A. This is what they are positing for the purpose of this paper.

Q. I'm sorry; I didn't mean to cut you off. Please continue.

A. It says a collection. It doesn't say a collection in one place or on what basis the collection is made, but this is certainly

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2 if you look at a server farm under this view,
3 then it sets up their analysis for load
4 balancing the discussions following in this
5 paper.

6 Q. Right. And the whole point of this
7 paper is that in contrast to server farms,
8 they have a new approach for load balancing,
9 right?

10 A. Well, it's not in contrast to
11 server farms, but it's scheduling algorithms
12 to help distribute the jobs in server farms.

13 Q. Right. And when it says what a
14 server farm is on the top of column two, it
15 says it's in a single location?

16 A. That's for the purpose of this
17 analysis and it often is, perhaps usually is,
18 but not in the broadest reasonable
19 interpretation.

20 Q. At the bottom of the paragraph that
21 you quoted with the ellipsis, it says, "for
22 loaded balancing web traffic there are several
23 approaches," right?

24 A. I see that.

25 Q. It goes, "for web serving, one

1 DR. JOHN R. GRINDON (9/15/15)

2 approach is to wrap each request in turn to a
3 different server," right?

4 A. Yes.

5 Q. "In some approaches, the servers
6 are distributed over different geographic
7 locations. That's the sentence you're
8 reading," right?

9 A. Yes.

10 Q. Does it say server farm is
11 distributed over different geographic
12 locations in that sentence?

13 A. It says "these servers." The title
14 of the paper regards server farms, so the
15 suggestion is here. And, again, I'm not
16 weighting it solely on the Saboori reference,
17 but the suggestion is here that the servers do
18 not have to be in the same geographic
19 location.

20 Q. Doesn't the title say "A new
21 scheduling algorithm for servers farms",
22 plural, "load balancing" suggesting it applies
23 to more than one server farm?

24 A. Certainly the algorithm would apply
25 to despaired server farms.

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2 Q. When it says that the servers are
3 distributed over different geographic
4 locations, it doesn't say the servers of a
5 single server farm are distributed over
6 different geographic locations, does it?

7 A. That sentence doesn't say the words
8 that you said, but in toto, the paper has that
9 suggestion.

10 Q. Actually, in toto, the paper says a
11 web server farm refers to a website that uses
12 two or more servers housed together in a
13 single location to handle user request,
14 correct?

15 A. That sentence is on the second
16 page, but in some approaches, the servers are
17 distributed over different geographic
18 locations. This is a suggestion then that the
19 simple model that they're using for their
20 analysis is not the broadest model.

21 Q. Well, isn't the suggestion that you
22 could use more than one server farm to help
23 balance the load, not that there are multiple
24 servers in different locations within the same
25 server farm?

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2 A. The sentence would not be necessary
3 if there was, say, a person in this country
4 who had a server farm and a totally separate
5 server farm somewhere else. This sentence
6 really would be extremely awkward to read it
7 the way that you said. Of course, we could
8 have a server farm here and someone else could
9 have a server farm there and that's not the
10 way I read this sentence.

11 Q. No, but this is talking about
12 distributing to the extent it says that
13 there's one approach distributed in different
14 locations. It doesn't say that a server farm
15 comprises computers in different locations,
16 does it?

17 MR. ALMELING: Objection; form.

18 A. We have to read the whole thing and
19 the suggestion the person of ordinary skill in
20 the art is that, hey, I don't have to have
21 everything in some approaches, we can have
22 different geographic locations.

23 Now, for the purpose of this
24 analysis, let's take one where they're in the
25 same location and make it simple, but just let

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2 the reader know it doesn't always have to be
3 that way.

4 Q. Is there any example where it says
5 a server farm has computers in different
6 locations in Exhibit Grindon Exhibit 15,
7 Google Exhibit 1013, from the '1338 IPR?

8 A. Well, we'd have to read this whole
9 paragraph, one. It says several lines down,
10 "server farm is consisting of a collection of
11 many computers," and you read this one
12 earlier, and so forth. And then within that
13 same paragraph is the cited text, "in some
14 approaches the servers are distributed over
15 different geographic locations."

16 So the suggestion is here to a
17 person of ordinary skill in the art, I don't
18 have to put them all at one location. Most of
19 the time I will, but I don't always have to.

20 Q. But it doesn't say that the servers
21 that it's referring to are the servers that
22 are for web serving throughout each request to
23 a different server; that is, the servers, not
24 the servers necessarily within a single server
25 farm.

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2 MR. ALMELING: Counsel, is there a
3 question?

4 Q. Is that correct?

5 A. Again, this is within the same
6 paragraph. This is in the introduction, same
7 paragraph as the sentences that we just read a
8 moment ago about server farms. And it says
9 for web server, one approach is to root each
10 request to a different server. In some
11 approaches, the servers are distributed over
12 different geographic locations. We are
13 talking about server farms. That's the title
14 of the paper. The term, "server farm" is used
15 in this paragraph.

16 So you're asking if your language
17 appears in the paragraph. Your language
18 doesn't, but other language does that's
19 adequate suggestion to a person of ordinary
20 skill in the art.

21 Q. Did you look at the Wikipedia
22 definition that was submitted by the patent
23 owners to what server farm is?

24 A. I think I did. If you can show me
25 again.

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2 Q. I apologize for how hard it is to
3 read. I'll show you what was previously
4 marked as Visual Real Estate Exhibit 2009, and
5 we will mark it as Grindon 16.

6 (Grindon Exhibit 16, Visual Real
7 Estate Exhibit 2009 was marked for
8 identification, as of this date.)

9 BY MR. MACEDO:

10 Q. To make it easier for you, I will
11 give you the 2004 version from the archive.org
12 of this page, which is a little easier to
13 read?

14 MR. MACEDO: Can we mark this as
15 Grindon 17, please.

16 (Grindon Exhibit 17, document from
17 archive.org was marked for
18 identification, as of this date.)

19 MR. ALMELING: I note for the
20 record that Exhibit 16, which was
21 filed with PTAB is not legible either
22 in the copy that was used for
23 Exhibit 16 that was provided to PTAB.
24 Exhibit 17 is legible. I do not know
25 if the content is the same between

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2 Exhibit 16 and 17 and am not able to
3 make that determination based on the
4 materials that were provided by
5 questioning Counsel.

6 MR. MACEDO: Counsel, if you're
7 objecting to the quality of Grindon
8 Exhibit 16, we will gladly put in a
9 new, better quality at the PTAB, since
10 this is the first time that you raised
11 that objection. We will be submitting
12 with our observations Grindon
13 Exhibit 17, in any event, and I would
14 like for Dr. Grindon to look at
15 Grindon Exhibit 17.

16 Q. You see at the bottom of Grindon
17 Exhibit 17 where it says, "web.archive.org" at
18 the very bottom of the page, Dr. Grindon, very
19 bottom of the page?

20 A. Yes, I do.

21 Q. And you see where it says 20040603
22 with a bunch of other numbers?

23 A. Yes, I do.

24 Q. That we'll represent to you
25 reflects that this was the archive.org page

1 DR. JOHN R. GRINDON (9/15/15)
2 for the Wikipedia definition of server farm
3 from June 3, 2004.

4 So now that you have this
5 definition in front of you, can you please
6 take a look and see whether it fairly and
7 accurately reflects what a server farm is.

8 MR. ALMELING: I object to form.

9 A. Okay, I've looked at it.

10 Q. So you see where it says that this
11 is a definition of server farm, correct?

12 A. I don't see those words, this is
13 the definition of server farm.

14 Q. Withdrawn.

15 Well, it's on the page,
16 "Terms/Server_farm" and says "server farm" at
17 the top. Do you see that?

18 A. At the very bottom, the printout of
19 the path to the web page is "term/S/server
20 farm." The article itself is merely titled,
21 "server farm."

22 Q. And it says, "e-mail this
23 definition to a colleague."

24 A. Where are you looking?

25 Q. (Indicating.)

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2 A. I see it now at the end of the --

3 MR. ALMELING: Let's go off the
4 record real quick.

5 (Whereupon, an off-the-record
6 discussion was held.)

7 BY MR. MACEDO:

8 Q. You see this is Webopedia, the
9 number one online encyclopedia dedicated to
10 computer technology, correct?

11 A. I see that.

12 Q. Server farm appears to be the word
13 that they're defining, doesn't it?

14 A. It appears to be. The authority of
15 this I can't vouch for.

16 Q. And you see it is also referred to
17 as server cluster, computer farm or ranch; is
18 that correct?

19 A. Yes.

20 MR. ALMELING: Just so the record
21 is clear, I want to provide an
22 objection in general to the
23 authenticity of this document. I'll
24 also provide an objection to various
25 questions regarding it. But all

1 DR. JOHN R. GRINDON (9/15/15)

2 questions regarding this document are
3 subject to, among others, 902 and 901
4 objections.

5 Counsel, you may continue.

6 Q. And you see it says, "last
7 modified, Thursday, January 8, 2004."

8 A. Show me where it says that.

9 Q. In red underneath, server farm.

10 A. Yes.

11 Q. And it says, "a server farm is a
12 group of network servers that are housed in
13 one location."

14 You see that?

15 A. I see where it says that.

16 Q. Now, is that a fair explanation of
17 one aspect of what a server farm is as of
18 2004?

19 A. Again, we've discussed this many
20 times over the last hour or so, but servers
21 can often be in one location, but this is not
22 the broadest reasonable interpretation.
23 There's no technical reason why they have to
24 be at one location.

25 Q. When you're talking about servers

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2 that are in different locations, are they
3 stationary in different locations or are they
4 moving?

5 A. They could be stationary or moving.
6 Normally, they would be stationary, but moving
7 is another option.

8 Q. Now, the idea of distributing load
9 to an assigned computer is so that way you can
10 access that computer, right?

11 A. I don't know that your statement is
12 precise, but basically load balancing is used
13 among computers in a server farm.

14 Q. And can you tell me of any server
15 farms that you have seen referred to as server
16 farms which are comprised of a plurality of
17 computers that are temporarily inside the
18 network and temporarily outside the network
19 via connectivity and comprise computers
20 located in moving cars?

21 MR. ALMELING: Objection; form.

22 Additionally, objection; lacks
23 foundation.

24 A. I didn't analyze this as part of my
25 declarations, so that's --

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2 Q. So you're not offering an opinion
3 that if you had a plurality of computers
4 located in automobiles, that those computers
5 in those automobiles go in different
6 directions at different times that may have
7 different levels of connectivity can
8 constitute a server farm, correct?

9 MR. ALMELING: Objection to form.

10 Additionally, objection; lacks
11 foundation. Also objection to scope.

12 A. So, again, that's something I
13 didn't consider in my declaration, that
14 particular situation that you're just
15 describing.

16 As I sit here, I'm not seeing why
17 that could not be done. I don't see why
18 computers -- moving computers could not be
19 networked and into a server farm, but, again,
20 that's just based sitting here. I didn't
21 consider it in my declaration.

22 Q. Is there any reference you're aware
23 of in 2004 that says a server farm comprises a
24 plurality of computers that are located in
25 cars going in different directions at

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different times with different levels of connectivity?

MR. ALMELING: Same objections.

A. I, right at the moment, am not recalling.

Q. In your declaration, do you refer to anything that would meet that definition? I think paragraph 30 is where you talk about server farms.

A. Yes. If you could show me the other references, that would be helpful right now.

Q. You don't cite anything in those references to support that, do you?

A. I don't think I cited that particular configuration of moving computers.

MR. MACEDO: Can we go off the record.

(Whereupon, an off-the-record discussion was held.)

MR. MACEDO: So we'll mark, as Grindon Exhibit 18, what was marked as Google-1011 in the IPR2014-1338 which is U.S. Publication No. 2004/0158474

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2 A1.

3 (Grindon Exhibit 18, U.S.
4 Publication No. 2004/0158474 A1 was
5 marked for identification, as of this
6 date.)

7 MR. MACEDO: We'll mark, as
8 Grindon Exhibit 19, what was marked as
9 Google Exhibit 1012 in IPR 2014-01338
10 entitled, "Monitoring and State
11 Transparency of Distributed Systems"
12 Martin J. Logan.

13 (Grindon Exhibit 19, document
14 entitled, "Monitoring and State
15 Transparency of Distributed Systems"
16 was marked for identification, as of
17 this date.)

18 BY MR. MACEDO:

19 Q. Those were the other two exhibits
20 that you identify in your declaration?

21 MR. ALMELING: Thank you, Counsel,
22 for marking these. May we take a
23 break for lunch or are you not
24 finished with whatever line of
25 questioning you have going on right

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2 now?

3 MR. MACEDO: I think he's looking
4 to see whether or not it will support
5 that construction.

6 MR. ALMELING: I don't see a
7 pending question. What is the pending
8 question?

9 MR. MACEDO: The question I asked
10 him was: "In your declaration, do you
11 refer to anything that would meet that
12 definition? I think paragraph 30 is
13 where you talk about the server farms.

14 Yes, if you could show me the
15 other references, that would be
16 helpful right now.

17 You don't site anything in those
18 references to support that.

19 I don't think I site a particular
20 configuration of moving computers."

21 And I gave him references to see
22 if there's anything else in those
23 references that support the
24 construction we were talking about.

25 MR. ALMELING: Could you just ask

1 DR. JOHN R. GRINDON (9/15/15)
2 a question that the witness can
3 answer?

4 MR. MACEDO: Yes.

5 BY MR. MACEDO:

6 Q. Is there anything else in Grindon
7 Exhibit 18 or 19 that would support a
8 construction which says that a server farm
9 comprises computers located in different
10 locations which are in cars moving in
11 different directions with different levels of
12 connectivity at different times?

13 MR. ALMELING: I note for the
14 record that that is a request that
15 asked the witness to read and provide
16 his analysis on 14 pages, 15 pages of
17 combined text after a pending request
18 for lunch has been outstanding for a
19 while and after the original request
20 for a break was denied because we're
21 on the same line of questioning of
22 server farm.

23 This does not seem to be so time
24 sensitive that we need to address this
25 now. Can we please take a long due

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2 break for lunch and then address
3 whatever question you have about that
4 and the follow-up questions after
5 that, or are you refusing the witness
6 to go have lunch like you refused him
7 to take the original break?

8 MR. MACEDO: I didn't refuse him
9 to take the original break. I refused
10 you, if anyone. The witness didn't
11 ask me for the break. You did. And I
12 gave you the break when you said you
13 needed to go to the bathroom, and I'm
14 happy to do that.

15 I have a pending question right
16 now I'd like the witness to answer.

17 If the witness tells me he's not
18 competent to testify right now because
19 he needs break, that's fine, we'll
20 take a break.

21 Q. Dr. Grindon, you asked for those
22 documents. I've given you those documents in
23 response. You didn't cite anything in
24 paragraph 30 to support the other definition.

25 Is there anything, sitting here

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right now, that you have identified in either Grindon Exhibit 18 or 19 that would support that expanded definition of server farm?

MR. ALMELING: Let's go off the record.

(Whereupon, an off-the-record discussion was held.)

BY MR. MACEDO:

Q. Dr. Grindon, I understand that you may want to go back and read this further. As we sit here right now, is there anything that you're aware of from Grindon Exhibit 18 or 19 that would support the broader definition we just discussed?

A. I don't see anything in my declaration that would not apply to the moving vehicle network that you just described. I'll take a look at these and see if there's anything to add to that after our lunch break.

Q. Right now the only thing that you referred to in your declaration is the quoted sections, correct?

MR. ALMELING: Counsel, you said we could take a break after that

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question. You continue to refuse to permit the parties to take a break.

A. These are examples, the three exhibits, 1011, 1012, 1013 there are some cites. These cites are very brief. The intent is to look at the exhibit in its entirety and these are just some highlights, not necessarily to be limited.

MR. ALMELING: Let's go off the record.

Q. Those are the only ones you gave the board; is that correct?

A. The board has this declaration as you see it.

MR. ALMELING: Objection. Counsel, are you seriously refusing to permit the parties to take a break because you just continue to ask questions over and over again.

MR. MACEDO: Counsel, he's not answering my question.

MR. ALMELING: He did.

MR. MACEDO: He isn't. He's not answering my question.

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2 MR. ALMELING: Let's go off the
3 record.

4 (Whereupon, an off-the-record
5 discussion was held.)

6 (Whereupon, at this time, a lunch
7 break was taken.)

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2 A F T E R N O O N S E S S I O N

3
4 (Time noted: 1:26 p.m.)

5
6 D R. J O H N R. G R I N D O N, resumed
7 and testified as follows:

8 EXAMINATION BY (Cont'd.)

9 MR. MACEDO:

10 Q. Welcome back, Dr. Grindon.

11 A. Thank you.

12 Q. Do you feel competent to continue
13 to testify?

14 A. Sure.

15 Q. I'd like for you to look in Grindon
16 Exhibit 1, and I would like for you to start
17 off with paragraph 12. Tell me when you're
18 there.

19 A. I have it.

20 Q. In paragraph 12 you describe who
21 you think a person of ordinary skill in the
22 art in this field relevant to the time frame
23 is, correct?

24 A. Yes.

25 Q. And I believe that you use the same

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2 definition of what someone of ordinary skill
3 in the art would be, although the time period
4 changes, for all three of your declarations,
5 Grindon 1, 2 and 3; is that correct?

6 A. I believe that's correct.

7 Q. How did you arrive at the
8 definition of what someone -- that's a person
9 of ordinary skill in the art would be?

10 A. Thinking back over my own
11 experience and the people I've worked with,
12 this fairly describes the skill level and the
13 background of people who work effectively in
14 this area. It's a fairly typical kind of
15 background to look at this through the eyes
16 of.

17 Q. You have what we marked as Grindon
18 Exhibit 8 in front of you, the Stryker
19 declaration. Looks like this.

20 A. I'm sure it's here. Okay; I have
21 that.

22 Q. Why don't you turn to paragraph 38?

23 A. I have that.

24 Q. In there, in paragraph 38, this is
25 what we previously marked as Grindon 8. You

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2 say, "I understand that a hypothetical person
3 of ordinary skilled in the art is considered
4 to have normal skill and knowledge of a person
5 in a certain technical field as of the time of
6 the invention at issue. I understand that the
7 factors that may be considered in determining
8 the level of ordinary skill in the art
9 include: (1) the education of the inventor;
10 (2) the types of problems encountered in the
11 art; (3) the prior art solutions to those
12 problems; (4) the rapidity with which
13 innovations are made; (5) the sophistication
14 of the technology; and (6) the education level
15 of active workers in the field."

16 Do you see that?

17 A. Yes, I do.

18 Q. Which, if any, of those factors did
19 you consider when you came up with the
20 definition of a person of ordinary skill in
21 the art for purposes of paragraph 12 of your
22 declaration that we've marked as Grindon
23 Exhibit 1?

24 A. General assessment of all of those
25 areas.

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Q. So what's the level of education of the inventor of the '181 patent?

A. The -- I don't know for sure. I'm thinking not meeting this, but I don't know his background.

Q. You didn't consider?

MR. ALMELING: I'm sorry, Counsel.

Q. Did you finish?

A. I considered it to the extent that looking at the '181 patent, I saw the general level of the patent, the technology involved, but as far as formal education of the inventor, I didn't know that.

Q. Do you know the name of the inventor?

A. This is Meadow.

Q. Do you know the name of the other inventor?

A. I'd have to refresh any memory on that.

Q. Did you try to look up what their level of education was?

A. No. I was looking at their education as it was reflected in the patents

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2 itself. That was the defining document.

3 Q. You were in an extensive litigation
4 which involved Mr. DiBernardo, right?

5 A. I don't know if you'd call it
6 extensive, but I was involved in a matter with
7 that, yes.

8 Q. Do you know what his level of
9 education was?

10 A. I don't think I looked at his
11 formal level of education, but, again, the
12 patent itself conveys a level that is
13 displayed and that's what was important at the
14 time.

15 Q. What about Mr. Goncalves,
16 G-O-N-C-A-L-V-E-S; did you look at his level
17 of education?

18 A. I think it's the same answer for
19 that.

20 Q. And Mr. Yoichi?

21 A. I think the same there.

22 Q. Do you know who Mr. Yoichi is?

23 A. Right now help my memory in that.

24 Q. Well, if you look in your
25 declaration on page 5, you cite to U.S. patent

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2 publication number 2003/0210806.

3 A. You're talking about Yoichi. Okay;
4 I misunderstood when you say Yoichi. Perhaps
5 I'm mispronouncing it wrong and you're
6 pronouncing it right.

7 Q. As long as we understand the same
8 thing. Do you know who Mr. Yoichi is?

9 A. He is the one of the inventors
10 listed on this patent publication that you
11 just mentioned.

12 Q. Do you know who Mr. Tomohisa;
13 T-O-M-O-H-I-S-A is?

14 A. If he is another inventor. I
15 didn't look at that carefully.

16 Q. You certainly didn't look up what
17 his education was?

18 A. No. Again, what I looked at is the
19 patent result, which the patents itself and
20 what's displayed there.

21 Q. And is it fair to say you didn't
22 look up the education of any of the people of
23 any of the art or patents in any of the four
24 IPRs?

25 A. You're referring to the Stryker

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2 declaration, which was not a matter that I
3 considered.

4 Q. I'm not referring to the Stryker
5 declaration. I'm asking whether you looked at
6 the level of education of any of the inventors
7 of the patents in-suit in the four IPRs that
8 you're offering declaration here today on?

9 A. Okay. You began your questioning
10 with reference to the Stryker declaration,
11 however.

12 Q. I began it with that just to go
13 through the factors that you had identified as
14 being relevant in the past.

15 A. With that declaration?

16 Q. Absolutely.

17 A. And now this question is divorced
18 from that.

19 Q. This question is with respect to
20 the current IPRs, the '1338, '1339, 1340,
21 1341. I want to know if you looked up the
22 level of education of any of the inventors or
23 authors on any of the patents at issue or
24 prior arts cited in those four IPRs.

25 A. No. Again, I looked at the

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2 documents themselves and that was reflecting
3 whatever level of expertise they had.

4 Q. Now, what was the type of problem
5 encountered in the '181 patent?

6 A. This had to do with collecting
7 imagery for later display.

8 Q. Anything else?

9 A. Without going through the whole
10 patent, that's top level summary.

11 Q. What did you consider about the
12 type of problem encountered in the '181 patent
13 to help you understand what the appropriate
14 level of ordinary skill in the art should be?

15 MR. ALMELING: Counsel, I don't
16 mean to interrupt. I'm looking for my
17 copy of the '181. Did you mark that
18 yet?

19 MR. MACEDO: No.

20 A. And, again, you're taking language
21 from the Stryker declaration, not from the
22 declaration in this matter. I didn't repeat
23 those statements in this matter.

24 Q. So is it fair to say that you
25 didn't use any of the five factors listed in

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2 the Stryker declaration paragraph 38, which
3 has been marked as Grindon Exhibit 8, to help
4 you determine what the level of ordinary skill
5 in the art should be for purposes of your
6 declarations in IPRs '1338, '1339, '1340 and
7 '1341?

8 MR. ALMELING: Objection to form.

9 A. That's not a correct representation
10 of what I said.

11 Q. So now, again, I'm asking you, did
12 you consider any type of problems encountered
13 in the context of the '181 patent to help you
14 understand what the level of ordinary skill in
15 the art should be with respect to the '181
16 patent?

17 A. That would be one way to look at
18 it. Certainly looking through the '181
19 patent, what it's trying to do, the technology
20 it provides is guidance in a decision on what
21 a person of ordinary skill in the art should
22 be.

23 Q. Did you do that?

24 A. Well, yes.

25 Q. Before you determined what the

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level of ordinary skill in the art should be?

A. Is that a question?

Q. Yes.

A. I'm sorry; I didn't hear the whole thing then.

Q. Did you identify what the problems that the '181 patent faced were in order to determine the level of ordinary skill in the art for purposes of paragraph 12 of your declaration marked as Grindon Exhibit 1?

A. When you say problems, the patents disclosure has certainly things that it's trying to accomplish, and that is part of the -- part of the assessment that I made in my determination.

Q. Are you finished?

A. Yes.

Q. What problems that you saw present in the '181 patent did you consider in order to determine what the appropriate person of ordinary skill in the art would be for purposes of paragraph 12 of Grindon Exhibit 1?

A. Then let me go back to earlier parts of the declaration. Let's see. Again,

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2 the declaration itself is addressing primarily
3 the VRE response contentions regarding my
4 earlier Vederi declaration and there are a
5 number of technical matters in association
6 with that that are identified throughout my
7 declaration.

8 (Grindon Exhibit 20, U.S. Patent
9 No. 7,389,181, marked for
10 identification, as of this date.)

11 BY MR. MACEDO:

12 Q. Now, I'm going to ask you the same
13 question, can the court reporter please read
14 it back; and if it will help you, I've marked
15 as Grindon Exhibit 20, the Meadows patent,
16 U.S. Patent 7,389,181, which you offer your
17 opinion about.

18 (Whereupon, the referred to
19 question was read back by the
20 Reporter.)

21 A. Again, as I just mentioned, my
22 declaration is addressing primarily the VRE.
23 It's limited scope. It's addressing the VRE
24 response. And in particular contentions
25 regarding my earlier Vederi proposal

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2 declaration. So throughout here, there are a
3 number of things that are raised and these
4 matters, for example, reconstruction of 3D
5 scene geometry, compositing images, collecting
6 images, processing images, so forth, this
7 informs the technology that needs to be
8 addressed and would inform the decision of
9 what the person of ordinary skill should be.

10 Q. But those things are in the
11 DiBernardo patent, not in the '181 patent,
12 right?

13 A. The person of ordinary skill is not
14 limited to the DiBernardo -- to the DiBernardo
15 patent, but also is a person who would look at
16 the issues that I've expressed in my
17 declaration and address those issues in
18 concert with the various references and
19 documentation that are at issue.

20 Q. You understand that paragraph 12 is
21 talking about a person of ordinary skill in
22 the art in the relevant time frame with
23 respect to the '181 patent, correct?

24 A. With respect to that time frame,
25 yes.

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2 Q. But with respect to the '181
3 patent, right?

4 MR. ALMELING: Objection; form.

5 A. This is with respect to the '181
6 patent, but not just the patent, also the
7 field of art at the time.

8 Q. But the reason why you're defining
9 a person of ordinary skill in the art in the
10 field is that we can interpret and understand
11 the '181 patent, right?

12 A. That is the --

13 MR. ALMELING: Objection to form.

14 A. Primary --

15 Q. I'm sorry; that's the primary what?

16 A. The primary application of the
17 person of ordinary skill in the art would be
18 with regard to the '181 patent. Also the
19 surrounding field.

20 Q. Now, when you look at the '181
21 patent, you see discussions with respect to
22 various open source software, correct?

23 A. There has been mention of several
24 open source software.

25 Q. Where did you see it mentioned?

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A. Well, in column nine, for example.

Q. Okay. You see the discussion of
MEncoder in column nine?

A. Yes.

Q. What is MEncoder?

A. This is -- the patent itself states
convert the compressed MPEG2 data into
lossless TIFF images.

Q. Is that something someone of
ordinary skill in the art would understand in
2004?

A. When you say that, are you
referring to the conversion of images?

Q. Using MEncoder software.

A. This is something a person of
ordinary skill would have known to do in 2004
in my estimation.

Q. And you don't have any reason to
believe that that's an inaccurate description
of the MEncoder software and what it does, do
you?

A. No.

Q. Up above, it talks about the GDAL,
you see that, as a programming tool?

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2 A. Yes.

3 Q. What does it describe the GDAL is
4 doing?

5 A. It says here that it "completes a
6 range calculation from latitude and longitude
7 positions encoded in the video segments."

8 Q. Is that a fair description of what
9 GDAL did in 2004?

10 A. I think it's a fair description of
11 one of the functions that it can perform that
12 was of interest to the patentees.

13 Q. Now, what type of experience would
14 someone using MEncoder to convert and compress
15 M2 MPEG2 data into lossless TIFF image files?

16 A. To do just that conversion?

17 Q. Yes. What type of background in
18 education or experience do you need in order
19 to do that?

20 A. If a person were tasked to use this
21 software tool and convert data as in these two
22 examples, it would require someone with enough
23 understanding to know what the -- what the
24 source and what the result needs to be and how
25 to use a computer and how to use these

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2 packages.

3 Q. So that would be someone with like
4 a computer science degree for example; is that
5 correct?

6 A. A person -- I'll put it a different
7 way; a person with a computer science degree,
8 as you pose, should be able to do this
9 provided they also have some understanding of
10 images and location and things of the sort.

11 Q. So the important concepts that you
12 draw out of that is that they should
13 understand computer science image and
14 location; is that correct?

15 A. That's not what I said. You asked
16 if a person with a computer science background
17 would be able to do this. Certainly they
18 would if they also had an understanding of
19 some of these engineering concepts that are
20 involved.

21 Q. What engineering concepts are you
22 talking about?

23 A. The ones I just mentioned; what's
24 longitude, what's latitude, what are image
25 files. Things of that sort.

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2 Q. What type of engineering is that?

3 A. That would be electrical
4 engineering.

5 Q. Electrical engineering teaches you
6 about latitude and longitude; is that your
7 testimony?

8 A. That is the type of background that
9 would be most useful in understanding not just
10 the mechanics of the process of using the
11 software packages, but also the meaning of the
12 results and what needs to be done.

13 Q. So, to you, it's important that in
14 order to competently understand how to do the
15 things described in the '181 patent like the
16 GDAL software -- I'm sorry; the MEncoder
17 software and the GDAL software, you should
18 have an electrical engineering background. Is
19 that what you're saying?

20 MR. ALMELING: Objection; form.

21 A. What I'm saying is my assessment
22 is, in paragraph 12 of my declaration, a
23 person of ordinary skill is someone with a
24 background that I mentioned here, such a
25 person would be a person of ordinary skill in

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2 the art and that's not to say that some other
3 people may also have adequate skill in the
4 art, but this is my assessment of the person
5 who would have the appropriate skills.

6 Q. So what quality of electrical
7 engineering are necessary, in your mind, to
8 understand the '181 patent as disclosed?

9 A. That's not at all what I just said.
10 Let me read this, for example. "In my
11 opinion, a person of ordinary skill in the art
12 in this field with the relevant time frame
13 (POSITA) would have had a combination of
14 experience and education in electrical
15 engineering, computer science, computer
16 graphics and/or imaging technology."

17 So this is a general grab bag of
18 scientific and engineering and technical
19 fields that would be suitable for
20 understanding this patent.

21 Q. What I want to focus on is you
22 included electrical engineering in that group,
23 correct?

24 A. Sure.

25 Q. So I want to understand what are

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2 the combination of experience and education
3 associated with the electrical engineering
4 aspects that you think you need to understand
5 in order to be a person of ordinary skill in
6 the art to read and understand the '181
7 patent?

8 A. All right. That doesn't fairly say
9 what I said. A person would not have to have
10 electrical engineering. A person could have
11 some of these other things and still develop
12 the expertise necessary. So I'm not saying
13 that electrical engineering is necessary or
14 computer science is necessary or computer
15 graphics is necessary. Only that these are
16 representative of technical disciplines that
17 would have the correct skills.

18 Q. Let me ask you a question: Without
19 some training in computer science, how would
20 you understand how MEncoder works?

21 MR. ALMELING: Objection; form.

22 A. Earlier you asked a different
23 question. You asked about using these things.
24 Actually, if we're limiting to this part,
25 column nine of the '181 patent, these

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2 activities of simply using these open source
3 software packages could be given to someone
4 with considerably lesser skill than what I
5 think is necessary for the purpose of my
6 declaration.

7 Q. So in order to understand the
8 software discussed on column nine, you think
9 someone could have a lower level of skill in
10 the art than you set forth in paragraph 12?
11 Is that what your testimony is?

12 A. No. What I said, in order to use
13 effectively, for example, converting from one
14 type of data to another type of data, using
15 the software that could be done without
16 understanding the inner workings of the
17 various software packages.

18 Q. By the way, in DiBernardo, does it
19 disclose any software that's being used?

20 A. DiBernardo?

21 Q. Yes.

22 A. When you say any software, that
23 is --

24 Q. Like the MEncoder software, the
25 GDAL software.

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2 A. Okay. So your question is in which
3 DiBernardo are you talking about?

4 Q. Pick one. They're all the same,
5 right, for these purposes.

6 A. Let's look at the '7895
7 publication.

8 Q. That's marked as what exhibit?

9 A. Exhibit 5. In light of your
10 previous question, are you asking about
11 pre-packaged software packages such as GDAL
12 and MEncoder? Is that what you mean by
13 software?

14 Q. I just want to know where in
15 DiBernardo it teaches any specific software,
16 whether it's the same or different as GDAL or
17 MEncoder, I don't care. I just want to know
18 how do you know what software to use with the
19 DiBernardo patents in order to make it work?

20 A. The DiBernardo patent -- give me a
21 moment and I'll find the references, but the
22 DiBernardo patent goes deeper than the '181
23 patent in that it provides the flow charts and
24 description of exactly what is done and then
25 the software would be written to accomplish

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2 that.

3 Q. So, for example, the '181 patent,
4 column nine, describes using the open source
5 programming tool MEncoder that converts the
6 compressed MPEG2 data into lossless TIFF
7 images. You see that?

8 A. I see that.

9 Q. Does DiBernardo disclose any
10 comparable software that operates in the same
11 way as the MEncoder software to convert MPEG
12 data into lossless TIFF images?

13 MR. ALMELING: Objection; form.

14 A. The DiBernardo describes how to
15 create the composite images sufficient for
16 someone with the skills that I've listed in
17 paragraph 12 of my declaration to be able to
18 right software. The '181 does it by simply
19 using existing packages to convert data.

20 Q. So in other words, someone reading
21 the '181 patent can just apply an
22 off-the-shelf package and figure out how it
23 works while someone reading DiBernardo would
24 have to have a higher level of skill in the
25 art in computer software because they'd have

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2 to write the software? Is that what you're
3 saying?

4 MR. ALMELING: Objection; form.

5 A. That's not a fair statement. We're
6 looking, first of all, in the '181 at column
7 nine, some fairly limited applications of
8 existing software packages.

9 Q. Well, for purposes of figuring out
10 how to convert the MPEG data into lossless
11 TIFF images, you said that you don't need to
12 know how to program the computer to do what
13 the '181 patent tells you, correct?

14 MR. ALMELING: Objection to form.

15 Additionally, I object to this line of
16 questioning as improper under 611(d)
17 as outside the scope.

18 Q. You may continue.

19 A. Again, you're asking about using
20 the MEncoder program as a means to convert
21 data. A person could use that MEncoder
22 program without fully understanding what's
23 going on inside. Simply knowing I put in this
24 data, I get out that data.

25 Q. So you don't need to know how to be

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2 trained in computer software in order to do
3 that?

4 A. In order to use the MEncoder
5 program. That's not the same as saying that
6 you could accomplish the full scope of the
7 '181 patent with no knowledge of computer
8 algorithms or developing software.

9 Q. But to convert from the one file
10 format to the other file format ascribed in
11 column nine of the '181 patent, they teach you
12 to go in the software, right? You don't need
13 it to do any programming to run that software;
14 is that correct?

15 A. To do the conversion at lines, what
16 is it, 24 something through 26, column nine of
17 the '181, a person would merely need to learn
18 how to use that software, the MEncoder
19 software and then apply it to the data.

20 Q. And if you wanted to implement the
21 flow charts that you referred to in Grindon
22 Exhibit 5, the DiBernardo publication, you'd
23 need to have computer training on how to
24 program the computer to accomplish that,
25 right?

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2 MR. ALMELING: I'm not currently
3 showing a current question, Counsel.
4 Will you repeat your question? I
5 apologize.

6 Q. If you wanted to implement the flow
7 charts that you referred to in Grindon
8 Exhibit 5, the DiBernardo publication, you'd
9 need to have computer training on how to
10 program the computer to accomplish that task;
11 is that correct?

12 MR. ALMELING: Objection; form.

13 A. The flow charts contain the logic
14 and the conversion of these to code to run on
15 a computer would be well-known in the art.

16 Q. Which art?

17 A. The art known by the POSITA as I
18 describe it in paragraph 12.

19 Q. If I had an electrical engineering
20 degree with no computer science background,
21 would I be able to implement those flow charts
22 into software as you just described?

23 MR. ALMELING: Objection; form.

24 And I will repeat, at the sake of not
25 distracting testimony, I will not

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2 repeat it again, but it should be
3 clear that my questions to these are
4 all outside the scope.

5 MR. MACEDO: Take a look at
6 paragraph 12, Counsel.

7 MR. ALMELING: I have.

8 MR. MACEDO: Okay.

9 Q. You may continue.

10 A. An engineer would be in a
11 particularly good position to implement
12 DiBernardo because it's basically an
13 engineering technology that is describing;
14 understanding images, the collection of
15 images, the location, position determination,
16 so on. These all are engineering discipline
17 functions. Conversion of those into code
18 would require code conversion which electrical
19 engineers, probably almost everyone now could
20 do.

21 Q. When you got your electrical
22 engineering degree, how many software
23 programming classes did you take?

24 A. Undergraduate, probably none.
25 Graduate, now of course it's part and parcel.

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Q. Wasn't my question. My question is you, when you got your degree, how many software programs -- how many software classes did you take?

A. Okay. Undergraduate, 1961 I believe so there was none at that time.

Q. So if you have to understand from your education how to do computer programming, would a person of ordinary skill in the art who has an electrical engineering degree comparable to your electrical engineering degree be able to implement DiBernardo?

MR. ALMELING: Objection to form.

Additionally, objection to lack of foundation.

A. I think there's a disconnect here because the POSITA that I'm postulating in paragraph 12 is as of 2004, not 1961.

Q. But you talk about the fact that you knew people that were POSITAs in 2004?

A. Sure.

Q. And you consider yourself a POSITA in 2004, correct?

MR. ALMELING: Objection to form.

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2 A. Yes.

3 Q. And your education is an electrical
4 engineering degree with no computer science
5 classes is what you testified to, correct?

6 A. Not at all. What I said was at the
7 time of my first engineering degree three,
8 1961, at that time, there were no computer
9 software classes, but the underground or
10 underpinnings of all of this technology, of
11 course, were taught, but the conversion from
12 these flow diagrams to code wasn't taught at
13 that time.

14 But this POSITA is defined as of
15 2004 and as of 2004, there was quite a few
16 advances in that ensuing time. My statement
17 here that this combination of experience in
18 these things applies as of 2004.

19 Q. Now, if you take a look in your
20 declaration to the paragraph that begins on
21 page 4, paragraph ten, you talk about your
22 personal experience that carries over on page
23 5. The experience you point to is the areas
24 of computer graphics, graphics hardware,
25 computer architecture and other subjects.

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2 Why did you leave electrical
3 engineering out there?

4 A. Well, I did say other subjects, but
5 if I were rewriting this, now I should put
6 electrical engineering in there.

7 Q. So in other words, the way it's
8 written, you don't think is the best way of
9 stating what you meant; is that correct?

10 MR. ALMELING: Objection; form.

11 A. The "and other subjects" covers it.

12 Q. Well, "and other subjects" could be
13 art. It could be music. It could be glazing
14 at windows, correct? Those are other
15 subjects.

16 A. Certainly other relevant subjects.

17 Q. Well, you point out engineering in
18 all the other paragraphs, but you leave it out
19 there. Is there a reason why you left it out
20 there?

21 A. No, that's an oversight.

22 Q. Well, did you think that your
23 electrical engineering degree that had no
24 training in computer science was relevant for
25 you to be able to offer your opinions in this

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2 matter?

3 A. When you say engineering degrees, I
4 have three degrees. You're talking before
5 about my first degree where they did not teach
6 software yet. I have more degrees, more
7 experience, more training, more studies
8 personally. But regarding electrical
9 engineering, that's probably the key
10 background to understanding these patents.

11 Q. So would you think that someone
12 that doesn't have training in electrical
13 engineering would not have a key background to
14 understanding the patents in-suit?

15 MR. ALMELING: Objection; form.

16 A. We went over this several times.
17 There is a great overlap between these
18 technologies. That's why I listed more than
19 one. These are examples of technologies. So
20 other subjects would include other things that
21 would overlap in this. In looking at this,
22 since you point it out, if I were editing
23 this, I would add electrical engineering to
24 the top of page 5 along with this list. But I
25 did cover it by saying and other subjects.

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2 And a person reading this would understand
3 that the other subjects would be other related
4 subjects.

5 MR. ALMELING: I would interpose
6 not an objection here, but a statement
7 before you begin, just to make it
8 clear, I agree with the witness that
9 he has answered this numerous times
10 and to the extent this deposition is
11 proceeding slowly, I think it's
12 because of the repetitive questioning.
13 So I encourage you in order to
14 expedite this, to move onto some new
15 lines that are not just reiterating
16 the current questions.

17 MR. MACEDO: I'm sorry, but until
18 the witness answers the question I
19 ask, it's kind of hard to move on.
20 Now I'm entitled to an answer to the
21 question I asked. I'll keep asking
22 until I get the answer. I don't think
23 I am improperly asking him questions
24 and they're all within the scope of
25 his testimony he offered.

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2 Q. Now, in your previous answer you
3 said, "and that's probably the key background
4 to understanding these patents," referring to
5 electrical engineering.

6 I want to understand whether
7 without that key background in electrical
8 engineering, is someone able to understand
9 appropriately these patents being the patents
10 in-suit in the four IPRs. Can you answer that
11 yes or no?

12 MR. ALMELING: Objection; form.

13 A. I think the declaration itself
14 answers that because I mentioned in several
15 areas of expertise so those areas would be
16 sufficient background and, of course, a person
17 would have to also study the technology of
18 these patents if they were not part of his
19 formal training.

20 Q. So if you had a computer science
21 background, you wouldn't need the electrical
22 engineering background? Is that your
23 testimony?

24 MR. ALMELING: Objection to form.

25 A. Again, with a computer science

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2 background, plus appropriate experience in the
3 technology of these patents.

4 Q. Which is what?

5 MR. ALMELING: Counsel, the
6 witness has not finished. Unless you
7 withdraw your question, please permit
8 him to finish.

9 Q. Finish your answer, please.

10 A. I'm sorry; I forget where I left
11 off.

12 Q. You said, again, a computer science
13 background was the appropriate experience in
14 the technologies of these patents, and I asked
15 you which is what, to understand what you're
16 referring to.

17 A. All right. So I'm picking up in
18 mid sentence here.

19 MR. ALMELING: Objection. The
20 record is not clear, and I don't
21 want --

22 Q. I will ask the question again and
23 maybe you'll answer it this time.

24 If you have a computer science
25 degree, you wouldn't need an electrical

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2 engineering background to understand these
3 patents; is that correct?

4 A. It is correct in that a person with
5 computer science degree and no electrical
6 engineering degree would be able to unmask the
7 additional expertise necessary to understand
8 these patents.

9 Q. We were looking at column nine,
10 lines 28 through 36. You see where it starts
11 off with "for a target parcel"?

12 A. Yes.

13 Q. So it says, "for a target parcel a
14 calculation using GDAL is made in a camera
15 centroid program position 0630 to determine
16 the exact latitude and longitude of a centroid
17 of the parcel which generally approximates the
18 location of the structure. Given the centroid
19 of the parcel, another simple geometry
20 calculation is made as to the orientation and
21 location of the camera view that is pointed
22 towards the centroid of the parcel. The
23 location of the centroid of the parcel and the
24 distance to the parcel is then calculated for
25 the frame."

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2 You see that?

3 A. Yes.

4 Q. Do you understand that as to be
5 describing a means for linking latitude and
6 longitude data with the video drive-by data?

7 MR. ALMELING: Counsel, I do not
8 want to provide an objection, perhaps
9 a brief confer between you and I can
10 do it. I'm happy to do it on the
11 record or off. I don't want to infect
12 the witness with my question.

13 MR. MACEDO: He offered testimony
14 that there were mistakes in the brief
15 on his declaration. He didn't make it
16 close ended.

17 MR. ALMELING: Let's go off the
18 record.

19 (Whereupon, an off-the-record
20 discussion was held.)

21 (Grindon Exhibit 21, Patent
22 Owner's Response to Petition
23 IPR2014-01338 was marked for
24 identification, as of this date.)

25 (Grindon Exhibit 22, Patent

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2 Owner's Response to Petition

3 IPR2014-0139 was marked for
4 identification, as of this date.)

5 BY MR. MACEDO:

6 Q. While we were on break, we marked
7 as Exhibit 21, Patent Owner's Response to
8 Petition in IPR2014-01338, and as Exhibit 22,
9 Patents Owner's Response to Petition in
10 IPR2014-0139?

11 And let's start with 21 and ask:
12 Have you ever seen Exhibit 21 before?

13 A. Yes.

14 Q. You reviewed Exhibit 21 to
15 determine if there were any inaccurate
16 statements made in it, correct?

17 MR. ALMELING: Objection; form.

18 A. That isn't exactly, but I'd rather
19 express it the way I did in my declaration.

20 So on paragraph two of the
21 declaration in this matter, that would be
22 Exhibit 1, I said, "I have been informed that
23 the Patent Owner in these current IPR
24 proceedings, VRE cited to portions of my
25 previous declarations from the unrelated

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2 Vederi litigation. Google, Inc., the
3 Petitioner in these proceedings, reached out
4 to me to address VRE's characterizations of my
5 earlier declaration, which I've done below."

6 Q. You go beyond the declaration you
7 also say, "I have noticed inaccuracies in
8 VRE's statements with regard to the patent at
9 issue in these proceedings, particular prior
10 art references mentioned in VRE's Response
11 documents and the state of the prior art in
12 2004."

13 You didn't limit it just your
14 comments on DiBernardo?

15 Are you waiting for me?

16 A. Is there a question pending?

17 Q. There was a question mark at the
18 end of that?

19 A. I didn't see the question mark.

20 Q. Take a look at paragraph 25. You
21 see it says, "In reviewing VRE's Patent Owner
22 Responses in both the '1338 and '1339 IPR
23 proceedings," and you're talking about
24 Exhibits 21 and 22, right?

25 A. Yes.

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2 Q. "I've noticed several other
3 inaccuracies or erroneous assumptions made by
4 VRE that, while not directly related to my
5 previous declaration, are clearly incorrect
6 and thus addressed here," right?

7 You didn't limit yourself to the
8 DiBernardo declaration?

9 A. In light of as explained by
10 paragraph 25, there's some additional items.

11 Q. Right, and to the extent that you
12 noticed something was inaccurate or erroneous,
13 did you identify it in your declaration?

14 MR. ALMELING: Objection; form.

15 A. As I went through the Patent Owner
16 Responses, I saw many places where I felt
17 there were inaccuracies. I didn't address
18 each and every paragraph and line, but what I
19 did do is address the substantive integration
20 of all of those inaccuracies and treated them
21 generally not necessarily line-by-line.

22 Q. So if you turn to page 43 of
23 Exhibit 21, did you review this section of the
24 brief?

25 A. This is page 43?

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2 Q. Yes.

3 A. My role in this, I understood to be
4 fairly limited primarily to address the patent
5 owner's comments regarding my earlier Vederi
6 declaration and then I noticed a couple of
7 extra things which you've pointed out in
8 paragraph 25. So I didn't address everything
9 that there is in the patent owner's response.

10 Q. That wasn't my question. My
11 question is: Did you read the section
12 starting on page 43 and going through page 51?
13 And we're looking at Grindon Exhibit 21.

14 I'm not asking you to read it now.
15 I'm asking did you read it before?

16 A. I'm not reading it now, but I'm
17 scanning it to see if there were parts of this
18 that I did read before. At most I had scanned
19 it. I didn't analyze it. I don't really have
20 opinions about those pages that you just
21 mentioned.

22 Q. You didn't reach any conclusions
23 that any statements in it were inaccurate?

24 MR. ALMELING: Objection; form.

25 A. In order to answer that precisely,

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2 I would have to take time to actually read
3 everything in here. Not having studied it
4 before, there may be some points in these
5 pages that are expressed elsewhere that I did
6 review and I can't comment on those, but
7 generally limiting to these pages, I am not
8 seeing anything that I commented on or had
9 opinions about regarding accuracy.

10 Q. Right. What I'm asking is when you
11 previously did whatever you did to prepare the
12 declaration, you did not reach any conclusions
13 that there were statements that you saw that
14 were inaccurate in Grindon Exhibit 21 on
15 pages 43 through 51?

16 MR. ALMELING: Objection.

17 Q. The question is: Is that true or
18 not true?

19 MR. ALMELING: Objection; form.

20 You're beginning to prolong this with
21 duplicative questions.

22 A. Again, if there are statements
23 embedded in those pages that I looked at
24 elsewhere, I treated them elsewhere. Without
25 reading every word now, I can't say that there

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2 is, in some statement in these pages that I
3 didn't address. But if I addressed them, it
4 wasn't through reading these pages, it was
5 through reading a statement on another page.

6 Q. So other than statements that you
7 otherwise addressed from other parts of the
8 brief, there were no portions of this section
9 of the brief from pages 43 through 51 that you
10 identified as having uniquely problematic or
11 inconsistent statements?

12 MR. ALMELING: Objection; form.

13 A. Just to clarify, unless the point
14 was raised elsewhere outside of these pages, I
15 don't recall addressing it in my declaration,
16 and I don't have an opinion on the accuracy.

17 Q. And if you look at Exhibit 22, and
18 you look at the section starting on page 43
19 going through page 51, is your testimony the
20 same starting on page 44?

21 A. 44. Are these corresponding pages
22 to the Exhibit 21 pages that you mentioned?

23 Q. I wouldn't swear to you that
24 they're verbatim identical, but they are the
25 corresponding sections.

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2 A. Then my answer would be the same.

3 Q. So let's jump to paragraph 27 in
4 Exhibit 1. You probably need Exhibit 20,
5 which is the '181 patent next to you.

6 Now in 2004, how big was a hard
7 drive?

8 A. Somewhere on the order of 50 to a
9 hundred gigabytes would be typical for a
10 general purpose home or office computer.

11 Q. What about a computer that you
12 would put in a car like the one that is
13 described in the '181 patent?

14 A. Could be of the same order. These
15 would be IDE type drives. They could be used
16 in the car.

17 Q. If you look at figure 4 of the '181
18 patent -- you see figure 4?

19 A. Yes, I do.

20 Q. So you see according to this flow
21 chart, you start with a blank hard disk drive
22 one and you return a full hard disk drive one.
23 You see that?

24 A. There are a number of paths
25 indicating full and blank. Can you point to a

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2 call out number?

3 Q. I was actually going to say that
4 you do this four times in this example. In
5 other words, what you understand the '181
6 patent teaching you is that they would send a
7 hard disk drive, people would drive around and
8 gather the neighborhood information, fill it
9 up, send it back and then start another hard
10 disk drive. Is that correct?

11 MR. ALMELING: Objection; form.

12 A. That is a summary of -- it's fair,
13 I think.

14 Q. You said that you would expect 50
15 to hundred gigabytes to be the size of these
16 hard disk drives at the time of the invention?

17 A. That's just as I sit here there's
18 nothing in my declaration that gives those
19 numbers.

20 Q. But as a person of ordinary skill
21 in the art who knows what the state-of-the-art
22 was in 2004, that's your understanding, right?

23 A. Yes, subject to POSITA, that's what
24 my memory serves at the moment.

25 Q. So when you're looking at these

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2 four hard disk drive images, you're looking at
3 something that is between 200 and 400
4 gigabytes of data images, right?

5 MR. ALMELING: Objection; form.

6 Q. Four hard disk drives at a hundred.
7 4 times 50 is 200. 4 times 100 is 400. So
8 since they are full, you're looking at
9 somewhere between 200 and 400 gigabytes of
10 data during weeks one through five according
11 to the '181 patent; is that correct?

12 A. When you say according to the '181
13 patent --

14 Q. The '181 patent is telling you, in
15 figure four, that they contemplate driving
16 around in weeks one through five and filling
17 up four hard disk drives, correct?

18 A. Figure four, they do. Before you
19 said the '181 patent, which is different than
20 just figure four, but we're looking at figure
21 four only.

22 Q. Certainly. If you look at figure
23 four, you understand that it is teaching
24 filling up four hard disk drives over four
25 weeks that you estimate would be somewhere

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2 between 200 and 400 gigabytes of data,
3 correct?

4 A. The '181 patent I can't recall
5 giving the number of gigabytes.

6 Q. Right now you just estimated that
7 for me.

8 A. But I don't see that in the '181
9 that was just as I sit here asking --
10 responding to your question about how big a
11 hard drive could be. I don't know that the
12 hard drives in contemplated in the '181 patent
13 were the size that I might guess would be
14 available at that time.

15 Q. How long do you think the cars will
16 drive around? How many hours before they fill
17 up one of those hard disk drives?

18 MR. ALMELING: Objection; form.

19 A. There are many variables there; the
20 size of the image, image rate, size of the
21 hard drive which we have not established,
22 despite what you said. So that is something
23 that doesn't have a ready answer.

24 Q. So you don't have an opinion as to
25 whether or not it would take one hour or 20

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2 hours or 40 hours to fill up a hard disk drive
3 as reflected in figure four of the '181
4 patent?

5 MR. ALMELING: Objection; form.

6 A. I could make some estimates. These
7 are outside the scope of what I reported in my
8 declaration. Unnecessary for the conclusions
9 in my declaration. If you'd like, I can make
10 some estimates.

11 Q. Well, you take issue in paragraph
12 27 saying that nowhere does the '181 patent
13 state or suggest that large amounts of data
14 are required to perform the described
15 processes. So I'm trying to figure out what
16 amount of data is necessary to perform the
17 processes set forth in figure four.

18 MR. ALMELING: Counsel, is there a
19 question?

20 MR. MACEDO: Yes.

21 Q. So do you have an understanding of
22 what amount of data was necessary to perform
23 the processes described in figure four which
24 involved driving around for a week filling up
25 a hard disk drive and then sending it back and

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2 doing the next one and doing that for five
3 weeks?

4 A. And you're looking only at the
5 example of figure four, not claims, not the
6 '181 patent in toto; is that correct?

7 Q. That's what we're talking about is
8 figure four.

9 A. So just to be clear, you're asking
10 the maximum amount really that could be
11 collected, not the minimum amount required by
12 the claims. Do I understand?

13 Q. You didn't say required by the
14 claims. You said nowhere does the '181 patent
15 state or suggest that large amount of data
16 required to perform the described processes.
17 Figure four is a described process. It is
18 talking about an amount of data.

19 I want to know what your
20 understanding of the amount of data that is
21 required to perform the processes described in
22 figure four which involves driving around over
23 four weeks and filling up at least four hard
24 disk drives full of image and location data.
25 So I want to know what you understand that to

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2 mean as of 2004.

3 MR. ALMELING: Objection; form.

4 A. Again, all I said here, required to
5 perform. So that doesn't say that you can't
6 collect a large amount of data. Figure four
7 shows that you can. All I'm saying in
8 paragraph 27 is that it's not required in
9 order to perform the described processes.

10 Q. So is it your testimony that figure
11 four describes a process which does collect
12 large amounts of data?

13 MR. ALMELING: Objection to form.

14 A. That's your statement of course,
15 not mine. I don't know that I would call that
16 large amounts, but certainly there would be
17 the capability in 2004 of collecting far more
18 data than necessary to support the claims.

19 Q. Your statement 27 doesn't say
20 claims in the first sentence, does it?

21 A. It says, required.

22 Q. Yes, for the described processes.
23 The processes there described include figure
24 four, correct?

25 A. I don't see that figure four says

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2 that we have to collect a certain amount of
3 data. So let's turn to the text surrounding
4 figure four and see what it says.

5 Q. To assist you, why don't you look
6 at the bottom of column eight starting at line
7 59 and read that sentence into the record?

8 A. Well, actually, I'm starting at
9 column seven, line 57 which begins discussion
10 of figure four.

11 Q. I understand, but I want you to
12 look at column eight, line 57 and just read
13 that sentence into the record and see if it
14 answers your question.

15 MR. ALMELING: Counsel, do you
16 withdraw the previous question that
17 required him to look at figure four?
18 Are you asking a new question and
19 withdrawing the previous one?

20 MR. MACEDO: Well, he didn't
21 answer my previous question.

22 MR. ALMELING: Well, he was trying
23 to. You told him to stop doing what
24 he was doing.

25 MR. MACEDO: Let's withdraw the

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2 last question since I'm not going to
3 get an answer to it anyhow and move
4 onto this question.

5 Q. Can you please look at column
6 eight, line 57 through 60 and read that into
7 the record out loud.

8 A. Okay. The line that you points to
9 is approximately one column past the beginning
10 of the discussion of figure four so it is out
11 of context. Would those be the words, "the
12 above-described"? Is that where you want me
13 to start?

14 Q. Yes.

15 A. "The above-described process
16 provides a simple yet efficient method of
17 moving large amounts of data from the field
18 drive back to the video and data server form."

19 Q. Again, all I asked you to do was
20 read it. That's what I asked you to do and
21 you did. I appreciate that. Now I'm going to
22 ask you a question about what that says.

23 What do you understand large
24 amounts of data to be referring to other than
25 large amounts of data as you quote on

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2 paragraph 27?

3 A. Again, as I mentioned several times
4 now on paragraph 27, I say nowhere does it
5 suggest that large amounts of data are
6 required in order to perform the described
7 processes. The text beginning at the bottom
8 of column seven, which you asked me to stop
9 reading says, "FIG 4 is a process flow diagram
10 illustrating a preferred efficient process,"
11 so that's one process by which data can be
12 collected. If you went to collect large
13 amounts of data, here's how you can do it.

14 But the point of paragraph 27 is
15 that it's not necessary to collect large
16 amounts of data in order to perform the
17 described processes.

18 Q. Is it fair to say that when the
19 response cites to the '181 patent as requiring
20 -- as enabling, restoring and processing of
21 large amounts of video drive-by data that at
22 column eight, lines 57 through 60, it's
23 discussing a method of enabling the storing
24 and processing of large amounts of video
25 drive-by data?

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2 MR. ALMELING: Objection to form.

3 A. So, again, the line at the bottom
4 of column eight that you asked me to read, in
5 the preceding column, it shows that if you
6 want to convey large amounts of data, that's
7 possible to do.

8 All I'm saying in paragraph 27 is
9 that the described processes; that is the
10 collection of images and a selection of images
11 for display and so forth, itself does not
12 require large amounts of data. If you want to
13 collect large amounts of data, you can. All
14 I'm saying is that you don't have to. It's
15 not a requirement.

16 Q. Does the '181 patent teach a system
17 that enables the storing and processing of
18 large amounts of video drive-by data?

19 A. I'm not sure how that question is
20 different. It does tell you if you want to
21 collect large amounts of data, you can do it.

22 Q. It tells you how to?

23 A. Well, it shows some suggestions on
24 how to do that. Not in great detail.

25 Q. What's an application in the sense

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2 of the '181 patent?

3 MR. ALMELING: I don't want to
4 object outside the scope, but perhaps
5 you can provide a little context.

6 MR. MACEDO: It's going to come up
7 in paragraph 28. Give me a second.

8 A. Can you point to a particular place
9 in my declaration that we're talking about?

10 Q. I'm talking about the '181 patent
11 right now. You read the '181 patent, correct?

12 A. Yes.

13 Q. And you understand the '181 patent,
14 right?

15 A. I believe I did.

16 Q. And in understanding the '181
17 patent, you read through it to figure out what
18 it says and what it means, right?

19 A. Basically.

20 Q. And did you see any discussion
21 about a particular application in the context
22 of the '181 patent with respect to the
23 materials that you read?

24 MR. MACEDO: Objection.

25 Q. If you don't recall, you can say

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2 you don't recall. That's fine.

3 A. Again, can you point to the word,
4 "application" either in the '181 or in my
5 declaration?

6 Q. Well, take a look at our brief
7 which you commented on, which is marked as
8 Exhibit 22. And on page 9, you see at the
9 bottom of the page where it says a particular
10 application quoting the '181 patent. Do you
11 see where I'm referring to?

12 A. Yes.

13 Q. So I'm trying to understand at
14 column six, lines 50 through 53 -- through 56
15 when it says, "The image processing servers
16 0115 convert the original video drive-by data
17 to one of many potential new image formats
18 (depending on the particular application)
19 which constitute Post-Processed Video Data
20 (PPVD) ."

21 I want to understand what your
22 understanding of an application is in that
23 sentence.

24 A. First, I didn't construe terms, but
25 you're asking for the understanding.

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2 Q. Well, you analyzed page 9 of
3 Grindon Exhibit 22 and said that it was wrong,
4 so I want to figure out how we made a mistake.
5 So we quoted there the sentence that I just
6 read to you and it uses the word,
7 "application."

8 I want to understand whether you
9 know what beer referring to in the '181 patent
10 when see say on the particular application?

11 A. This would be in reference, as I
12 understood it, to how you're going to use the
13 teaching of the patent. You might use it in
14 different ways and those different ways would
15 be different applications. So that's the
16 context that I would understand the word,
17 "application" to be used.

18 Q. You don't understand that to be the
19 particular software that's running it like the
20 difference between Word and PowerPoint as
21 being two different applications running on a
22 computer?

23 A. That's one, perhaps narrower,
24 interpretation of the word, "application."
25 There could be different software.

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2 Q. What are they talking about in the
3 '181 patent?

4 MR. ALMELING: Counsel, would you
5 like to rephrase your pending
6 question?

7 Q. What do you understand the word,
8 "application" to be referring to in the '181
9 patent in the excerpt quoted on page 9 of
10 Exhibit 22?

11 MR. ALMELING: Again, I don't want
12 to interrupt you, but that seems to be
13 exactly the same question you just
14 asked.

15 Are you asking a different
16 question or the same one?

17 MR. MACEDO: I'm trying to ask the
18 same question, but you didn't seem to
19 understand it so I restated it.

20 MR. ALMELING: Well, objection;
21 form.

22 A. Going back to column one of the
23 '181 patent, line 59 continuing, I'll just
24 read that. "The ability of the system to
25 provide data associated with the neighborhood,

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2 as well as a particular property in question,
3 would be extremely desirable in a number of
4 government and commercial applications."

5 So there is the use of the word,
6 "applications." Your use was much narrower,
7 the PowerPoint versus Word. I think the
8 application in this patent, the word,
9 "application" has a fairly vague and broad
10 meaning.

11 Q. Do you think that the use of the
12 word, "application" in terms of describing the
13 prior art systems that are available in column
14 one is the same use of application as set
15 forth in column six on lines 53 to 56 in terms
16 of converting image formats?

17 MR. ALMELING: Objection; form.

18 A. It certainly appears to be.
19 There's a reason that column one was written
20 into the patent and they're talking about a
21 number of government and commercial
22 applications. So these different
23 applications, whatever they might be might,
24 have somewhat different requirements.

25 Q. Well, if you turn to column nine,

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2 which is cited on page 10 of the brief and
3 look at lines 44 through 47.

4 A. I'm sorry.

5 Q. Column nine, lines 44 through 47.

6 A. Of the '181?

7 Q. Yes.

8 A. I'm looking at that.

9 Q. Isn't the '181 talking about
10 converting TIFF images into MPEG2 formats?

11 A. In these lines it says, in this
12 example implemented using an open source
13 programming tool to convert the -- so here,
14 they're giving an example.

15 Q. And the example is to convert TIFF
16 images into MPEG2 formats; is that correct?

17 A. For the particular -- for the
18 particular example, that would be a
19 conversion.

20 Q. And if you go further up in column
21 nine at approximately line 25, would the
22 MEncoder software that we talked about earlier
23 that was converting compressed MPEG2 format
24 and files, right?

25 A. So there's another example.

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2 Q. So at a minimum, you would agree
3 the '181 patent discloses examples of
4 converting from one image file format, TIFF,
5 to another image file format, MPEG2; is that
6 correct?

7 A. It's not saying -- it's saying
8 convert MPEG data. It's not saying convert
9 files, but some of the examples that they're
10 giving here do show converting MPEG and TIFF
11 files.

12 Q. Do you agree that MPEG2 is a kind
13 of image file format?

14 A. The MPEG2 is an image compression
15 format. It would describe the data comprising
16 image.

17 Q. So you would consider that an image
18 format?

19 A. That would be one example of an
20 image format.

21 Q. TIFF would be another example of an
22 image format?

23 A. Another example.

24 Q. Are there any other examples of
25 image formats described in the context of the

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2 '181 patent?

3 A. Regarding the claims, let me take a
4 look what the claim says.

5 Let's look at claim 1, line 16. It
6 says, "The image processing server converts
7 the video drive-by data to post-process" --
8 post-processed video data."

9 So this isn't talking about MPEG or
10 TIFF format so that the claim.

11 Q. I'm sorry; did you finish reading
12 that? It looks like you left off the rest of
13 the sentence.

14 A. This was just an excerpt from the
15 claim. The claim itself was much longer than
16 what I just read.

17 Q. But you left out corresponding to
18 the desired image format, which is the
19 language we're talking about.

20 A. The video data corresponding to a
21 desired image format.

22 Q. Right. So what we're talking about
23 is what does image format mean. And I was
24 asking you whether there were any examples of
25 image format that you saw on the patent other

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2 than MPEG2 or TIFF?

3 A. Well --

4 MR. ALMELING: Objection to form.
5 You can answer.

6 A. I don't want to read MPEG and TIFF
7 under the claim. I think the claim, if it
8 intended to be limited to that, would have
9 said MPEG and TIFF. I think those were merely
10 examples.

11 Q. And I want to know if there's any
12 other examples disclosed in the spec of the
13 image format other than MPEG2 and TIFF?

14 MR. ALMELING: Objection; form.

15 A. And I don't know that the examples
16 have to be exhaustive. Those are two
17 examples, and I don't think they were meant to
18 be exhaustive.

19 Q. I didn't say they were. I asked
20 you if there are any other examples in the
21 patent that you are aware of image format
22 other than MPEG2 and TIFF.

23 MR. ALMELING: Objection to form.

24 Q. If the answer is there aren't any,
25 you can say that. If the answer is I don't

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2 know, you can say I don't know, but I'd like
3 for you to answer the question that I am
4 asking.

5 A. Okay. I'm not aware of any at the
6 moment.

7 Q. Do the patents describe, as a
8 possible image format, adding a watermark to
9 the image file?

10 A. A person of ordinary skill would
11 know, especially in the broadest reasonable
12 interpretation, that there is more to an image
13 format than just the two examples that were
14 listed in the body of the patent, for example.

15 Q. I understand that you're asking
16 what someone of ordinary skill would
17 understand, but I want you to listen to what
18 my question was. You're not answering it.

19 I'll let you continue your answer,
20 but I want you to understand that what I'm
21 asking you about is does the patent describe
22 as a possible image format adding watermark to
23 the image file. I'm not asking you what a
24 person of ordinary skill in the art would
25 understand an image file to mean. I just want

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2 to know what's disclosed in the patent.

3 So please answer the question. You
4 can finish whatever you're saying, but try and
5 answer my question.

6 MR. ALMELING: So I will note out
7 of courtesy to the court reporter, I
8 did not try to speak louder to you, a
9 courtesy that you do not afford. Now
10 that you finished speaking, I will
11 speak.

12 I would like to repeat the
13 question that you have asked because
14 the witness did not finish answering
15 that question. So the question that
16 was pending that the witness was
17 answering, unless you'd like to
18 withdraw that question, the question
19 remains outstanding.

20 MR. MACEDO: I will withdraw that
21 question and restate it.

22 MR. ALMELING: I'll afford you the
23 courtesy of not speaking when you
24 speak and I would appreciate the
25 courtesy. Let me ask a clear question

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2 and then stop. Have you withdrawn the
3 previous question?

4 MR. MACEDO: I am withdrawing the
5 previous question.

6 MR. ALMELING: Please continue.

7 Q. I want you to listen carefully to
8 my question and answer the question that I'm
9 asking.

10 I'm not asking about what one of
11 ordinary skill in the art would understand an
12 image format is. You already offered that.
13 And if Mr. Almeling wants you to answer that
14 question, he'll ask that.

15 The question I'm asking you is
16 whether there's an example of adding a
17 watermark to a file disclosed in the '181
18 patent.

19 A. I don't see in the '181 patent an
20 exclusive example of the watermark.

21 Q. Is there any way to know, as of
22 2004, where a watermark could be added without
23 converting the file format into a desired
24 image format?

25 MR. ALMELING: Objection; form.

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2 A. You're talking about file formats.

3 Q. In other words, if I have a TIFF
4 image, is there a way for me to add some sort
5 of watermark to the TIFF image without
6 converting the image format?

7 MR. ALMELING: Objection; form.

8 A. A TIFF image can have a watermark
9 added to it and have it remain a TIFF image,
10 but now it is formatted with a watermark,
11 still a TIFF image but formatting the
12 watermark.

13 Q. Can you have a TIFF image that has
14 space for a watermark in its format that
15 doesn't include one?

16 MR. ALMELING: Objection; form.

17 Q. In 2004?

18 MR. ALMELING: Objection.

19 A. Your question I'm not parsing very
20 well. It seems too simple. You can take an
21 image that has space for a watermark to be
22 added and add a watermark to it and it's still
23 a TIFF image. Now it is reformatted with a
24 watermark.

25 Q. Well, is it reformatted or did they

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just add some data?

A. It now is of a watermarked format instead of an unwatermarked format.

Q. The format is the same. It just has extra data in it, right?

MR. ALMELING: Objection; form.

A. That is changing the format.

Q. Is it changing the image format or is it changing other aspects of the format beyond the image?

A. It's changing the image.

Q. The image looks different?

A. It looks different with the watermark.

Q. And that's inherent and necessary as of 2004, in your view?

MR. ALMELING: Objection to form.

A. That being what exactly now?

Q. That by definition if you add a watermark to an image file that it necessarily changes the image format rather than just adds extra data?

MR. ALMELING: Objection; form.

A. An image with a watermark is a

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2 different image that now is of a format with
3 the watermark instead of a format without a
4 watermark.

5 Q. So when you convert the video
6 drive-by data into video data corresponding a
7 desired image format, one example is
8 converting MPEG to GIF or to TIFF, right; MPEG
9 data to TIFF data, that's an example of doing
10 that, right?

11 A. That's one example.

12 Q. Now, when you're converting it to
13 the desired image format, what you're doing in
14 that example is that you're taking something
15 that was previously in the MPEG2 format and
16 now putting it into the TIFF format, correct?

17 A. That is, when you say the TIFF
18 format, there would be different TIFF formats.

19 Q. A particular TIFF?

20 A. A particular TIFF format.

21 Q. Sorry; a particular TIFF. So if I
22 have a Word document and I save it in .doc,
23 something you do all the time, right?

24 A. Right.

25 Q. And I add in a sentence to that

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2 document and save it again, have I converted
3 the format of that document?

4 MR. ALMELING: Objection; form.

5 A. That's a different question. There
6 you changed the amount of data in the Word
7 document, which is different than adding a
8 watermark on top of the data of an image.
9 We're talking about images in this context,
10 not word docs.

11 Q. I asked you a very specific
12 question. Let's go back to it. If I have a
13 file in Word, my brief for the PTAB, and it's
14 saved in a .doc format and I add a sentence to
15 it and save it again in the same .doc format,
16 did I convert the format of that document?
17 That's all I'm asking. I'm not asking about
18 anything else. Just that one simple question.

19 MR. ALMELING: Objection; form.

20 A. You may have, if adding the data --
21 if the format, for example, is considered to
22 be a single page format, and this is not in my
23 declaration, you're going far afield and just
24 winging it off of the moment here. If you,
25 let's say, had required a single page format

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2 in a Word document and you used that page, now
3 you're adding text that brings it into a
4 second page, now that's a two-page format.

5 So you, in that case, have changed
6 the format. Another way to look at it suppose
7 you change the layout. Let's say you want it
8 formatted in a certain way with numbers at the
9 bottom and change that with numbers at the
10 top. Now you have a different format for that
11 document.

12 Q. Is it possible to save a TIFF image
13 in a TIFF format by changing the data but not
14 converting the image format?

15 MR. ALMELING: Objection; form.

16 Q. In other words, TIFF1 to TIFF1.
17 I'm not trying to switch it to TIFF styles.

18 A. I understand.

19 MR. ALMELING: Objection.

20 A. The term, "format" is not so narrow
21 that when you say "the TIFF format," that it
22 has to apply only to the extension of that
23 image. The term, "format" in the broadest
24 reasonable interpretation goes beyond just
25 changing files, file representations. For

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2 example, you could have a wide image that's
3 not very tall, that would be a wide format,
4 but it could be a TIFF. You could have a
5 narrow image that's taller, that could be
6 another image format, still a TIFF.

7 Q. So let's assume for a second the
8 board were to conclude that converting
9 drive-by data to post video data corresponding
10 to a desired image format is talking about
11 changing the way the file format like MPEG2 to
12 TIFF or TIFF to GIF and not about the data
13 within the file. Do you understand my
14 question so far?

15 A. Continue.

16 Q. So can you add a watermark to a
17 TIFF image without changing the file format?

18 MR. ALMELING: Objection to form.

19 A. When you add the watermark, it's
20 going to change the format. If we use -- if
21 we don't narrow format to be just different
22 file extensions and I don't think here we want
23 to narrow it to different file extensions. So
24 if you take a broader interpretation as I was
25 trying to do in some of my previous answers,

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2 then adding a watermark, that's a different
3 situation than not having a watermark and that
4 could be a watermarked format, still TIFF,
5 still TIFF1, but now it's formatted with a
6 watermark versus the other one is not. So
7 have you changed the format without changing
8 the file extension.

9 Q. But you haven't changed the file
10 format, right?

11 A. It depends. This depends how
12 you're defining your term. If you're defining
13 your term, "file format" to be the extension,
14 the compatible extension, then the watermark
15 would not be that type of reformatting. It
16 wouldn't be reformatting the file in that way.
17 It would be reformatting the image contained
18 in the file.

19 Q. So if I have the file format or if
20 I have the desired image format to be talking
21 about a format that a particular application
22 like Windows Media Player can play; you
23 understand my question so far?

24 A. If you finish it, then I will let
25 you know if it makes sense to me.

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Q. So you understand what Windows Media Player is, right?

A. Yes.

Q. And there's certain file formats which a Windows Media Player can play and other file formats that it can't play, correct?

A. Again, my previous answer if by file format, you mean the particular extension of TIFF, JPEG, MPEG, then I'm following you.

Q. You agree there are some extensions that a Windows Media Player can play and other extensions that Windows Media Player can't play, correct?

MR. ALMELING: Objection; form.

A. That seems fair.

Q. Windows Media Player is a typical example of an image application that was available in 2004, correct?

A. That seems fair.

Q. I believe Apple had a player, probably Quick Time. Is that what it was called back then?

A. Quick Time.

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2 Q. And Quick Time had a different type
3 of file format that it could play that
4 sometimes overlapped with Windows Media Player
5 and sometimes didn't, correct?

6 A. Again, file format being extension,
7 the arrangement of the data in the file, that
8 would be correct.

9 Q. So, for example, when you refer to
10 MPEG2 that's capable of being played on some
11 video players but not others at the time,
12 correct?

13 A. I would have to go back and look at
14 the players then to see if MPEG was not
15 playable on some, but perhaps.

16 Q. If desired image format meant a
17 format that was capable of being played on a
18 desired player or application, would it be
19 fair to assume that it's talking about the
20 extension as you call it rather than the
21 content of the data?

22 MR. ALMELING: Objection; form.

23 A. Again, I don't want to narrow it to
24 just the extension because the content of the
25 data is what is eventually displayed to the

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2 user and that is important. Not only does the
3 player have to play it, but it has to be the
4 useful content for the application.

5 Q. But isn't the whole point in claim
6 one of converting the video drive-by data to
7 post-process video data correspond to a
8 desired image format to make it work in the
9 player that the user is going to see it, not
10 to add a security watermark feature?

11 MR. ALMELING: Objection; form.

12 A. I'm not prepared to narrow the
13 claim to that extent.

14 Q. Is it fair that that is the example
15 that the '181 patent gives?

16 A. I think that that is one example.

17 Q. Are there any other examples that
18 is set forth explicitly in the '181 patent?

19 MR. ALMELING: Objection; form.

20 A. I'm not importing the examples into
21 the claim. I'm looking at the claim and in
22 its broadest reasonable interpretation, I
23 don't think we can narrow it that much.

24 Q. I'm not asking you to interpret the
25 claim. I'm asking you what are the examples

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2 disclosed in the spec that are performed in
3 the claim. In the examples we have done so
4 far are changing the doc extension.

5 Is there any other examples
6 concerning converting video drive-by data to
7 post-processed video data corresponding to a
8 desired image format disclosed in the '181
9 patent besides changing the doc extension?

10 MR. ALMELING: Objection; form.

11 A. I don't see that, and I also don't
12 see the limitation in claim one as narrowing
13 to the file format of the doc extension.

14 Q. You see it would read on the doc
15 format, correct?

16 A. That would be one change of file
17 format it would be changing the doc extension.

18 Q. That would be changing an image
19 format, right?

20 A. Generally, yes, JPEG or MPEG to
21 TIFF would generally change that.

22 Q. By the way, in Yoichi -- you read
23 Yoichi?

24 A. Yes.

25 Q. You read the passage regarding the

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2 watermark features?

3 A. Yes.

4 Q. Does it describe how the
5 watermarking feature is done?

6 A. Let's look at Yoichi and see what
7 it says. Can you give that to me?

8 Q. Did you offer testimony about it?

9 MR. ALMELING: Counsel, again, in
10 the interest of expediting things, do
11 you want to point the witness to what
12 you're asking about or do you want
13 this to be where he searches through?

14 MR. MACEDO: I'm not aware of him
15 offering testimony on it. That's why
16 I'm asking if he offered testimony.
17 He offered testimony on Yoichi, but he
18 didn't describe any particular
19 watermarking software that was used or
20 the way the watermarking was done. If
21 you know otherwise, let me know. I'm
22 not aware of any?

23 MR. ALMELING: That's what I'm
24 looking at. Well, I'm looking at
25 something if you want to point it to

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2 him, great. I don't want to get in
3 the way of your questioning. You're
4 just making the witness --

5 MR. MACEDO: You can point to
6 whatever you want.

7 MR. ALMELING: I presume Counsel
8 is asking about paragraph 28, the
9 final sentence.

10 MR. MACEDO: He certainly talks
11 about Yoichi there, but I don't think
12 he describes the software absolutely.

13 MR. ALMELING: So what is the
14 pending question?

15 MR. MACEDO: I said does it
16 describe how the watermarking feature
17 is done. He said he wanted to see
18 Yoichi. And I asked him did he offer
19 testimony about how the watermarking
20 feature was done. That's the
21 question.

22 A. Is there a pending question?

23 Q. Yes. Did you offer any testimony
24 about how the watermarking feature in Yoichi
25 was performed?

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2 A. Well, I referenced Yoichi. That's
3 why I'm asking to see it to see if Yoichi to,
4 I guess, show you what Yoichi says about
5 watermarking.

6 Q. You're referring to the bottom of
7 page 20, top of 21 where you said, "For
8 example, DiBernardo's disclosure of generating
9 composite images from video image data and
10 Yoichi's disclosure of generating watermarked
11 images from unsecured images both satisfy the
12 claim recitation of 'convert[ing] the video
13 drive-by data to post processed video data
14 corresponding to a desired image format."

15 That's what you're referring to,
16 right?

17 A. Yes.

18 Q. You don't describe there how Yoichi
19 does the watermarking, just say that it does
20 it?

21 A. That's right.

22 MR. MACEDO: Do you want us to
23 break now or do you want to continue?
24 I don't want to interrupt this line of
25 questioning.

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2 MR. ALMELING: Let's take a break.

3 MR. MACEDO: We'll mark Yoichi in
4 the break.

5 (Whereupon, at this time, a short
6 break was taken.)

7 (Grindon Exhibit 23, U.S. Patent
8 No. 2003/0210806 A1 was marked for
9 identification, as of this date.)

10 BY MR. MACEDO:

11 Q. Dr. Grindon, who typed your
12 declaration, Grindon Exhibit 1?

13 A. This would be a collaborative
14 effort. The first draft would have been
15 prepared by someone associated with Counsel.

16 Q. How complete was that draft
17 compared to the final draft?

18 A. I didn't keep a record of that so
19 it's hard to say.

20 Q. Do you recall typing anything
21 yourself that is included in Grindon
22 Exhibit 1?

23 A. Yes.

24 Q. How much do you recall typing?

25 A. It's hard to say because it's a

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2 collaborative effort and who actually did the
3 typing, I don't know that I paid that much
4 attention.

5 Q. Well, where were you when the
6 typing was done?

7 A. I was in St. Louis.

8 Q. And where was Counsel?

9 A. Counsel was in their respective
10 offices.

11 Q. It's kind of easy to tell who did
12 the typing because you were in different
13 cities.

14 MR. ALMELING: Counsel, is there a
15 question pending? As you sort of
16 formulate questions, I remind you of
17 both Federal Rule of Civil Procedure
18 26(b)(3)(a) as well as the PTO
19 practice in this field including
20 Perrin against Flan, which encouraged
21 Counsel not to delve into how direct
22 testimony of declarations can be
23 prepared because it's not relevant.

24 So we've given you a bit of a
25 leash here and he's answered your

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2 questions. So I just encourage you to
3 ask any future questions recognizing
4 those rules.

5 MR. MACEDO: I'm just trying to
6 understand whether it's something that
7 he, himself drafted or just simply
8 reviewed and authorized.

9 And to the extent that he recalls
10 and can testify to that, that's all
11 I'm asking, and I'm not trying to
12 delve into attorney-client privilege.

13 MR. ALMELING: I think he's
14 answered your questions. Do you have
15 any additional ones.

16 MR. MACEDO: Yes, I do.

17 BY MR. MACEDO:

18 Q. Now, why don't you turn to page 14
19 of Grindon Exhibit 1. And you're talking
20 about the personal computers that you had that
21 were available in 2004, correct?

22 A. Correct.

23 Q. And you're talking about a
24 microprocessor that was a 2 gigahertz
25 processer, correct?

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2 A. Yes.

3 Q. That would be the equivalent of 200
4 megahertz, correct?

5 A. 2 gigahertz is 2,000 --

6 Q. 2,000 megahertz, right?

7 A. Correct.

8 Q. Now, your view is that even though
9 you haven't run any of the programs that are
10 taught about in DiBernardo, a 2 gigahertz
11 processor would be enough to perform the
12 computations required in DiBernardo; is that
13 correct?

14 A. When you say, computations
15 required.

16 Q. Well, you say it's "Well capable of
17 performing the functions described in
18 DiBernardo at satisfactorily levels of image
19 quality resolution and precision for practical
20 applications."

21 Can you explain what you mean?

22 A. I think it's pretty
23 self-explanatory. Is there a part of this
24 that you want me to elucidate?

25 Q. Yes. I don't understand what you

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2 mean. So why don't you try to explain to me
3 using different words?

4 A. The process laid out in DiBernardo
5 is expressed in the text and figures in the
6 patent and I'm talking about the application
7 here that was referenced or the publication in
8 order to generate the composite images he
9 describes the computer that I've described
10 here available in 2004 would be capable of.

11 Q. And in 2000, the computers weren't
12 capable of it?

13 MR. ALMELING: Objection; form.

14 Q. That's what your testimony is?

15 A. I'm sorry in 2000.

16 Q. 2000, yes. Is that your testimony?

17 A. Well, certainly in 2004 by the time
18 of the '181, a computer like this would be
19 capable of doing what DiBernardo lays out.

20 Q. But it would still be
21 computationally intensive as you described in
22 your declaration Exhibit 4, correct?

23 A. Not so computationally intensive in
24 2004. The Exhibit 4 was in the year 2000 and
25 in the year 2000, this particular computer was

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2 not available.

3 Q. But what's the difference is that
4 this is a 2 gigahertz processor and there were
5 not as powerful processors available in 2000?

6 A. The processors available in 2000 at
7 this level, this is an ordinary desktop
8 computer, not a high end type computer. That
9 comparable level in 2000, the computers were
10 less capable.

11 Q. And what was your understanding of
12 the capability of those computers in 2000 that
13 would be less capable than the 2 gigahertz
14 computer that cited available in 2004?

15 A. First, if we're comparing apples
16 and apples in, say, ordinary desktop computer
17 rather than a very expensive computer, the
18 computer that is available in 2000 can do
19 these things, but at the time, the cost of the
20 computer, the speed, the amount of memory and
21 so forth was more expensive and it was more
22 advantageous to have ways that didn't
23 necessarily require as much computation.

24 Q. We discussed earlier -- we
25 discussed the fact that your opinion also

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2 applied in 2001 since the patent in-suit in
3 the Vederi litigation may not be entitled to
4 the provisional priority date, right?

5 MR. ALMELING: Objection to form.

6 A. We discussed earlier -- can you
7 reread the testimony that we talked about
8 earlier when we were talking about that? That
9 was some hours ago.

10 Q. Well, you understand that the
11 Vederi patents in-suit claim priority to a
12 provisional in 2000 and non-provisional in
13 2001, correct? You have it in front of you if
14 you want to look at it?

15 A. Right.

16 Q. You said your testimony would apply
17 both to the 2000 time period as well as the
18 2001 time period, correct?

19 MR. ALMELING: Objection to form.

20 A. I don't think that's what my
21 testimony was.

22 MR. ALMELING: Counsel, I'm
23 talking here so I don't object to your
24 questioning. That was over an hour,
25 and there was a lot of things said.

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2 If you want it reiterate it, we can do
3 that, but that seems like a waste of
4 time. If you'd just like to move on
5 with whatever questions you have about
6 paragraph 21, that would probably be
7 advisable.

8 MR. MACEDO: I'm trying to get to
9 there.

10 Q. You understand that your level of
11 ordinary skill in the art didn't turn on
12 whether it was a 2000 priority date because it
13 could apply to the 2001 priority date that was
14 set forth with a non-provisional, right?

15 MR. ALMELING: Objection to form.

16 Q. With respect to the Vederi
17 litigation.

18 MR. ALMELING: Objection to form.

19 A. So that's a different question. My
20 recollection is what we were talking about at
21 this time was not the entirety of the
22 testimony, but the definition of a person of
23 ordinary skill in the art. That's why I asked
24 it to be reread.

25 Q. You understand that the person of

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2 ordinary skill in the art wouldn't change in
3 terms of what their skillset -- the skill they
4 had in 2000 or 2001 for purposes of the Vederi
5 litigation; is that correct?

6 MR. ALMELING: Objection; form.

7 A. A person of ordinary skill in the
8 art, as I expressed it in my declaration,
9 would apply to the later dates as well.

10 Q. Is it your understanding that the
11 computationally intensive processes which
12 Vederi was trying to get around was based on a
13 processor that was available as late as 2001?

14 A. Let me say, first of all, I was
15 assuming the 2000 October 6 time frame for the
16 processor since that is the priority date that
17 was assumed. In that time frame, there was a
18 tremendous advance in computing, as most
19 people are aware. So I'm not saying that it
20 could not be done in 2000 and I expressed in
21 my declaration words to that affect.

22 Q. Well, you understand that Intel had
23 a 1 gigahertz pentium 3 chip available in
24 2000, right?

25 A. The chips -- the 1 gigahertz chips

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2 were being sampled in 2000. They were
3 expensive so it still applies that it makes a
4 lot of sense to try to avoid computation
5 complexity.

6 Q. At what gigahertz do you transform
7 from trying to avoid computational intensity
8 to not caring?

9 MR. ALMELING: Objection; form.

10 A. It's a progressive thing. Even
11 when there is more computational complexity
12 available, it still makes sense to save a few
13 steps. It depends on the application. So it
14 could still make sense even later.

15 Q. Even in 2004 with the 2 gigahertz
16 chips available that you point to?

17 A. Depending on the application, it
18 could still make sense so I'm not saying that
19 DiBernardo has no applicability past 2000.

20 Q. You're offering opinions about
21 combining DiBernardo's processes with Yoichi's
22 processes, right? You're saying 2004 you
23 wouldn't be worried about computational
24 intensity?

25 MR. ALMELING: Objection to form.

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2 A. It's a progressive thing. There
3 was more impetus in the year 2000 to avoid
4 computational complexity. It's not that there
5 isn't any even now, but there's less. So
6 people would look less to saving computation
7 and more toward performance of the product and
8 accuracy and so forth.

9 Q. Would 500 gigahertz -- I'm sorry;
10 would 1 gigahertz be enough to not worry about
11 computational intensive processes?

12 A. Again, the predominant chips
13 available back in 2000, as I recall, were more
14 like 500 megahertz, but the 1 gigahertz now is
15 very expensive, very limited quantities. So
16 you would still worry about computational
17 complexity with those chips because they were
18 not so readily available and were very
19 expensive.

20 Q. So 500 megahertz would probably
21 inspire you to avoid computationally intensive
22 applications. Is that a fair statement?

23 MR. ALMELING: Objection; form.

24 A. I've answered twice. It's a
25 progressive thing. It's not a single answer

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2 all the time that there's a threshold.

3 Q. Well, the Yoichi system isn't
4 talking about using a server like the one
5 you're referring to in your declaration in
6 regard. He's talking about using like a car
7 system like you have with your NAV system,
8 right?

9 Ou need to have a computer in your
10 car for Yoichi to work, right?

11 A. It's my understanding.

12 Q. And the computer in the car, you
13 don't want this big, bulky IBM clone sitting
14 on your dashboard while you're driving to be
15 able to capture the video images and transmit
16 them, right?

17 MR. ALMELING: Objection; form.

18 Q. You want a built-in computer system
19 that was available in 2004, right?

20 A. I don't think that the way you're
21 expressing it, I don't think it's in the
22 patents. I think that's own your own idea,
23 sir.

24 Q. What do you think the patents are
25 describing? What's the computer system? Are

1 DR. JOHN R. GRINDON (9/15/15)

2 we talking about having a big, bulky computer
3 available in 2004 sitting on your dashboard or
4 are they talking about a computer embedded
5 into your system that was typically done by
6 computer -- by car makers back then?

7 A. Can you tell me about this big,
8 bulky computer you're referring to?

9 Q. How big the is skill graphics
10 computer that you had with 2 gigahertz
11 processing?

12 A. I think you're confusing a couple
13 of things here.

14 Q. I'm talking about the workstation
15 you referred to.

16 A. That's another one. There were a
17 couple of things here. The first computer
18 that you referred to, and the only one that
19 you referred to until now, was the 2 gigahertz
20 one and that's not the workstation.

21 Q. What is that?

22 A. That's just an ordinary desktop
23 computer. Fairly small, relatively
24 inexpensive.

25 Q. Is it bigger than the court

1 DR. JOHN R. GRINDON (9/15/15)

2 reporter's laptop?

3 A. The computer that I had is -- I
4 have it in a case along with other
5 peripherals. It's a lot of empty space
6 inside.

7 Q. What would you say is the
8 dimensions of it?

9 A. The case is maybe 8 inches by 18 by
10 18, something like that, 16. But that's --
11 it's just in a large case. It doesn't have to
12 be packaged for portability.

13 Q. And in 2004, what was the monitor
14 used with that computer?

15 A. The monitor was a CRT monitor.

16 Q. That's generally pretty big because
17 you have a cathode ray tube in it, right?

18 A. They don't have to be big. It can
19 be. On a desktop, there's no impetus for
20 making it smaller.

21 Q. But in a car, you really wouldn't
22 want to be using a monitor that you were using
23 in 2004 in your laptop. Is that a fair
24 statement?

25 A. You say my lab?

1 DR. JOHN R. GRINDON (9/15/15)

2 Q. That's where your computer was, in
3 your lab?

4 A. Yes.

5 Q. Whatever big CRT monitor that you
6 had in your big computer sitting in your lab
7 is not the same computer you would probably
8 use to implement Yoichi in a car in 2004. Is
9 that a fair statement?

10 A. The components would be repackaged
11 and I don't know that you'd use a CRT in a car
12 at that time. You might also use some other
13 form of monitor. Although could you use a
14 CRT. I think they may have been used in cars.

15 Q. Have you ever heard of a company
16 called QNX?

17 A. QNX, as I sit here right now, I'm
18 not recalling a company like that.

19 Q. It was a company that in 2004 made
20 state-of-the-art in car infotainment systems.
21 Does that refresh your recollection?

22 A. No it doesn't, but go ahead.

23 Q. Do you know what an infotainment
24 system would be for an in car infotainment
25 system?

1 DR. JOHN R. GRINDON (9/15/15)

2 MR. ALMELING: Objection to form.

3 Additionally, objection to the scope.

4 A. I'm not familiar with that
5 particular system, but I can look at it if you
6 want to show me the specs on it.

7 Q. I unfortunately don't have other
8 copies. It's only one page. Counsel can copy
9 it after we mark it.

10 Let's mark, as Grindon Exhibit 24,
11 a printout of QNX news release that is talking
12 about "QNX Turbocharges In-Car Infotainment
13 Systems With Support From Renesas SH-4A
14 Processors."

15 (Grindon Exhibit 24, QNX News
16 Release was marked for identification,
17 as of this date.)

18 MR. MACEDO: And this is from the
19 2004 period October 18, 2004, roughly
20 what you considered to be the time of
21 the invention of the '181 patent.

22 MR. ALMELING: Counsel, before you
23 ask a question just so it's clear, I'm
24 not objecting yet, and I don't want to
25 object as to scope if I don't have to,

1 DR. JOHN R. GRINDON (9/15/15)

2 can you explain the relevance of this
3 to his direct testimony.

4 MR. MACEDO: Goes to the paragraph
5 that we're discussing.

6 MR. ALMELING: How?

7 MR. MACEDO: He says that
8 computers like his workstation were
9 available in 2004 making it less
10 necessary to have computationally
11 intensive -- to avoid computationally
12 intensive processes as disclosed in
13 the DiBernardo and in Yoichi so it
14 would be okay to add complexity to the
15 Yoichi system. I'm trying to show
16 what Yoichi system would have been in
17 2004.

18 Counsel, maybe you want to get
19 someone to quickly copy that.

20 Let's go off the record for a
21 second.

22 (Whereupon, an off-the-record
23 discussion was held.)

24 BY MR. MACEDO:

25 Q. So in 2004, if your desktop could

1 DR. JOHN R. GRINDON (9/15/15)

2 have accomplished the goals of DiBernardo, you
3 used the server farm in 2000, could you have
4 achieved the same benefits?

5 MR. ALMELING: Objection; form.

6 A. Again, in 2000, I did not say that
7 you could not do what DiBernardo discloses.

8 Q. But in 2000, your view was that
9 DiBernardo taught a way to avoid
10 computationally complex processes involving
11 image formation, right?

12 A. Regarding image formation
13 DiBernardo had a disclosure which he purports
14 has less computational requirements than an
15 earlier method that he talks about.

16 Q. And the whole point of DiBernardo
17 was to teach a computationally less intensive
18 way because it thought that the computations
19 in the intensive ways were the wrong way to go
20 at the time, right?

21 MR. ALMELING: Objection; form.

22 A. DiBernardo has an alternative
23 approach for the applications that he
24 addresses which have -- for which his results
25 would be acceptably accurate that avoids the

1 DR. JOHN R. GRINDON (9/15/15)

2 dense image sampling and 3D reconstruction.
3 He points out prior art to DiBernardo that
4 does use those things which are more
5 computationally intensive. So one of the
6 advantages of his approach was, as he puts it,
7 was to reduce computational complexity of the
8 image, trading image quality.

9 Q. But it does more than that. He
10 also talks about the complex databases that
11 existed in the prior art and he was trying to
12 avoid that computational complexity too,
13 right?

14 A. That is a part of it. The
15 disclosure that he makes would have less
16 requirement for data storage than the 3D
17 intense sampling.

18 Q. Well, if you look at paragraph 24
19 of your declaration, you're talking about
20 prior art which was time consuming,
21 inefficient for creating large and
22 comprehensive databases covering geographic
23 areas such as an entire city or state, right?

24 A. Let me turn to paragraph 24.

25 Q. Looking at Grindon Exhibit 4.

1 DR. JOHN R. GRINDON (9/15/15)

2 A. Where in paragraph 24?

3 Q. Well, in paragraph 24, you talk
4 about "The patents in-suit state that 'the
5 prior art for creating visual images of
6 geographic locations' includes methods wherein
7 'individual photographs' and images derived
8 from video recordings are 'electronically
9 past[ed]... on a polygonal mesh that
10 provide[s] the frame for a three-dimensional
11 (3D) rendering of the location," right? You
12 signed column 1 through 30?

13 A. So this is Grindon Exhibit 1,
14 paragraph 24 and somehow I didn't sync up with
15 your reading.

16 Q. We're talking about Exhibit 4.

17 A. Exhibit 4.

18 Q. Talking about the Vederi
19 declaration.

20 A. All right.

21 Q. Maybe that's why you didn't sync
22 up.

23 You have the right exhibit in front
24 of you now?

25 A. I believe I do.

1 DR. JOHN R. GRINDON (9/15/15)

2 Q. We're talking about Grindon
3 Exhibit 4, which is your Vederi declaration,
4 right?

5 A. Right.

6 Q. And we're looking at paragraph 24,
7 right?

8 A. Correct.

9 Q. And we are talking about the
10 composite images that could be made by pasting
11 images onto a 3D model geographic location,
12 right?

13 A. Well, let me read it and see.
14 Okay.

15 Q. And in describing that technology,
16 you quote the patent as saying, "such methods,
17 according to the patents-in-suit are 'time
18 consuming and inefficient for creating large,
19 comprehensive databases covering a substantial
20 geographic area such as an entire city, state,
21 or country," right?

22 A. I believe you read that correctly.

23 Q. And the point of that sentence was
24 so that way a reader would understand, don't
25 do that, right? That's not what we're

1 DR. JOHN R. GRINDON (9/15/15)

2 teaching you to do. We're teaching you not to
3 do what is described in the first sentence of
4 24.

5 MR. ALMELING: Objection; form.

6 A. Is there a question?

7 Q. I'm asking is that your
8 understanding of what that sentence is saying?

9 A. Well, it's saying according to the
10 patent in-suit for large comprehensive
11 databases covering substantial geographic
12 areas such as an entire city or state, the
13 computation gets a bit complex and that's what
14 the patent is trying to address.

15 Q. And it's saying that that's a bad
16 thing. We want to do something that isn't
17 time consuming and inefficient for creating
18 large comprehensive data bases covering a
19 suggested geographic area such as an entire
20 city, state, or country, correct?

21 MR. ALMELING: Objection to form.

22 A. No, it isn't necessarily saying
23 that. It's saying that you can't use --

24 Q. If you look at Grindon Exhibit 5,
25 the published version, why don't you turn to

1 DR. JOHN R. GRINDON (9/15/15)

2 page 20 which is the first page of the dec.

3 You see under the background, the
4 invention, paragraph three?

5 A. I see paragraph three.

6 Q. It says, "There exist methods in
7 the prior art for creating visual databases of
8 geographic locations," right?

9 A. Yes.

10 Q. "However, such databases are of
11 limited use due to the method of acquiring
12 imagery as well as the kind of imagery
13 required," right?

14 A. That's what it says.

15 Q. And one particular method involves
16 taking of individual photographs of the
17 location and electronically pasting the photos
18 on a polygonal mesh that provides a framework
19 for three-dimensional rendering of the
20 location, correct?

21 A. Correct.

22 Q. Then it says, "This method,"
23 referring to what we just discussed, "however
24 is time consuming and inefficient for creating
25 large comprehensive databases covering a

1 DR. JOHN R. GRINDON (9/15/15)

2 substantial geographic area such as an entire,
3 city, state, or country," right?

4 A. Yes.

5 Q. And the reason it says that is it's
6 saying we're doing something different, right?

7 MR. ALMELING: Objection to form.

8 Q. Is that your understanding of
9 someone of ordinary skill in the art reading
10 this patents?

11 A. The patent is offering another
12 approach other than the three-dimensional
13 rendering.

14 Q. Right. It considers the time
15 consuming and inefficient method of creating
16 the large comprehensive database as disclosed
17 there as a deficiency associated with the
18 prior art, if you look at paragraph nine,
19 correct?

20 MR. ALMELING: Objection; form.

21 A. It says what it says, and you just
22 read it.

23 Q. And what I read is what it says,
24 right?

25 A. Right.

1 DR. JOHN R. GRINDON (9/15/15)

2 Q. Now, in paragraph seven, it also
3 talks about "dense sampling of images of an
4 object seems to provide different views of the
5 object seen." And it says, "the sampling is
6 generally done in two dimensions either with
7 the plane or on the surface of the image
8 sphere surrounding the object seen. Such
9 sampling, however, is computationally
10 intensive and is cumbersome and is inefficient
11 in terms of time and cost," right? That's
12 what it says?

13 A. I believe you read it correctly.

14 Q. And the reason why it's saying that
15 such sampling, however, is computationally
16 intensive and is cumbersome and inefficient in
17 terms of time and cost is because it considers
18 that method another deficiency in the prior
19 art, right?

20 MR. ALMELING: Object to form.

21 A. Again, it doesn't say deficiency.
22 It just says this is computationally intensive
23 and cumbersome.

24 Q. In paragraph nine, it says
25 deficiency and that's what it's referring to

1 DR. JOHN R. GRINDON (9/15/15)

2 is the computationally intensive and, hence,
3 cumbersome and inefficient in terms of time
4 and cost, right? That's the deficiency it's
5 referring to, correct?

6 MR. ALMELING: Objection; form.

7 A. Well, it says the above-mentioned
8 deficiencies, so...

9 Q. That's one of them?

10 A. This is setting up the disclosed
11 method, which is less computational intensive.

12 Q. In fact, isn't it fair to say that
13 the whole point of DiBernardo was to have a
14 computationally less intensive way of
15 generating images than existed in prior art?

16 MR. ALMELING: Objection; form.

17 A. DiBernardo is offering an
18 alternative which has some other deficiencies.
19 So he's offering a trade off which he says is
20 less complex, but nevertheless has other
21 deficiencies. So it may not be the total
22 solution all the time.

23 Q. Right. And, in fact, you talk
24 about, in paragraph 28 of Grindon Exhibit 4,
25 that the -- you call it Vederi but that's the

1 DR. JOHN R. GRINDON (9/15/15)

2 DiBernardo claims invention sacrifices image
3 quality in order to reduce computational
4 complexity. That's the point, right?

5 Paragraph 28 on page 27 of Exhibit 4.

6 A. Okay. You read that right.

7 Q. In other words, your understanding,
8 reading this in 2011, was that if you read
9 what Vederi says or DiBernardo says, it's
10 saying, I will accept a poor quality image in
11 exchange for avoiding computational intensity.
12 Is that a correct summary of your opinion?

13 MR. ALMELING: Objection; form.

14 You can answer.

15 A. As long as we're talking about
16 image quality, that seems fair.

17 Q. And when you read the next sentence
18 in paragraph 28, you're actually quoting the
19 provisional patent application there, correct?
20 That's what it says.

21 A. That probably is. Let me see. It
22 states it's a provisional, so, yes?

23 Q. And in that provisional
24 application, the present method is a
25 compromise between quality synthetic image and

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algorithmic complexity, right?

A. Yes, that's what it says.

Q. And what it's trying to reduce is a rhythmic complexity, correct?

MR. ALMELING: Objection; form.

A. That's what the statement says as a trade off.

Q. And your understanding is that the teaching in the pointing of the DiBernardo disclosure in Exhibits 4 and 5 is to sacrifice image quality in favor of reducing algorithmic complexity and computational intensity; is this correct?

MR. ALMELING: Objection; form.

A. So the DiBernardo is making that trade off.

Q. And you understood that in 2011, and you understand that today, right?

A. I'm not sure what you're saying, but this, of course, is referring to the DiBernardo dates of 2000.

Q. Whether you read it in 2011 or whether you read it today, what DiBernardo is teaching is that its making a trade off of

1 DR. JOHN R. GRINDON (9/15/15)

2 image quality for computational intensity.
3 Whether you need to do that in 2011 is another
4 story. What DiBernardo is teaching is to make
5 that trade off, right?

6 A. It seems right.

7 Q. That teaching is true today as it
8 was in 2000, as it was in 2011, as it was in
9 2004, correct?

10 A. The teaching referenced to 2000 in
11 DiBernardo.

12 Q. The teaching in DiBernardo which
13 was written in 2000 is the DiBernardo is
14 teaching you how to do a trade off between
15 image quality and algorithmic complexity.

16 A. At that time.

17 Q. Well at any time. But whether you
18 need to do that later on is another story, but
19 it's teaching this is how I trade off on image
20 quality to save on algorithmic complexity,
21 right?

22 A. If I'm understanding you, that's
23 right.

24 Q. And in paragraph 25, another thing
25 that it teaches against, according to you, is

1 DR. JOHN R. GRINDON (9/15/15)

2 to provide a 360 degree view; is that correct?

3 MR. ALMELING: Objection; form.

4 A. I wouldn't state it the way. You
5 did.

6 Q. Well, it's teaching the prior art
7 provide a 360 degree view using imagery
8 spheres surrounding the object seen and then
9 it says that it's computationally intensive
10 and, hence, cumbersome and inefficient in
11 terms of cost, right?

12 A. It says that.

13 Q. And the point of you including
14 paragraph 25 in the declaration was to say
15 that it would go against teaching of
16 DiBernardo to use that type of 360 degree
17 technology to create images, right?

18 A. You can't draw that conclusion.
19 DiBernardo's objection is not to the 360
20 degree view, but to the computational
21 complexity of the imagery.

22 Q. So your understanding is that
23 DiBernardo should be interpreted as reading on
24 the 360 degree view? Is that what you're
25 saying?

1 DR. JOHN R. GRINDON (9/15/15)

2 MR. ALMELING: Objection; form and
3 additionally, objection; outside the
4 scope.

5 A. No, I didn't say that.

6 Q. Why not?

7 MR. ALMELING: Objection.

8 Q. What about DiBernardo makes you
9 think that it wouldn't read on the 360 degree
10 view?

11 MR. ALMELING: Objection; form.
12 Also outside the scope and Counsel
13 seems way outside the scope.

14 MR. MACEDO: One of the pending
15 claims that's being challenged. As
16 opposed to the obviousness, it goes to
17 the obviousness of combining
18 DiBernardo processes with the other
19 processes in the Yoichi.

20 A. I didn't opine on that in my
21 declaration.

22 Q. You did in DiBernardo and Vederi,
23 right?

24 A. I didn't opine on the 360 degree
25 aspect that you're asking about now.

1 DR. JOHN R. GRINDON (9/15/15)

2 Q. And Vederi, did you opine on the
3 360 degree aspect?

4 A. I'm not sure what you're asking,
5 but in paragraph 25, there is discussion of
6 what was just described about the difference
7 of projecting image on the imaginary sphere
8 for 360 degrees whereas DiBernardo regards
9 that as computationally intensive.

10 In the current declaration,
11 Exhibit 1, I didn't address the 360 degree
12 aspect of DiBernardo.

13 MR. ALMELING: Let's go off,
14 Counsel. Before we go continue on
15 this line, I'd like to go off the
16 record real quick to meet and confer.

17 MR. MACEDO: Let me do one more
18 question and go off the record.

19 MR. ALMELING: Okay.

20 Q. You talk about the computational
21 intensive and hence cumbersome inefficient
22 aspects of DiBernardo in paragraph 25, right?

23 A. I talk about it in the way that we
24 just read earlier.

25 Q. You criticize our responsive brief

1 DR. JOHN R. GRINDON (9/15/15)
2 for misstating what you said was
3 computationally intensive and, hence,
4 cumbersome and inefficient, correct?

5 A. Can you show me the part of the
6 declaration that you're talking about.

7 MR. ALMELING: Again, I think it
8 was one more question. Now it's
9 turning into three. Can we go off the
10 record to have a quick meet and
11 confer?

12 MR. MACEDO: Sure.

13 (Whereupon, at this time, a short
14 break was taken.)

15 BY MR. MACEDO:

16 Q. Do you understand the concept of
17 teaches away?

18 A. I believe I do.

19 Q. In fact, you offered opinions about
20 teaches away, correct?

21 A. I have.

22 Q. You did that in the Helferich case,
23 right, right?

24 A. As I recall.

25 Q. What was your opinion in the

1 DR. JOHN R. GRINDON (9/15/15)

2 Helferich case regarding teaches away?

3 MR. ALMELING: We just had an
4 off-the-record discussion about the
5 impropriety of continuing this
6 deposition with outside the scope
7 questioning. Now you're asking for
8 his opinion in another case ostensibly
9 to the idea that he has opined on
10 teaching away before. You are wasting
11 time and you are wasting the witness'
12 time.

13 MR. MACEDO: What's wasting my
14 time is all these off-the-record
15 interpossessions. If you want to say
16 objection to scope, say, "objection to
17 scope."

18 I don't think it's beyond the
19 scope. He offers an opinion there was
20 no teaching away here. I want to
21 understand what he think teaching away
22 is. If he has contradicting testimony
23 in another case where he said that
24 teaches away under the same facts and
25 circumstances as he said doesn't teach

1 DR. JOHN R. GRINDON (9/15/15)

2 away here, that is perfectly relevant.
3 It is appropriate. It's within the
4 scope of any deposition, whether it's
5 PTAB or litigation.

6 And if you don't like it, you can
7 object. But I don't think it's
8 inappropriate.

9 So now I'm go back to my question

10 --

11 MR. ALMELING: So the CBS -- let's
12 be clear, the CBS interactive case is
13 the same facts and circumstances as
14 this case?

15 MR. MACEDO: I'm not going to get
16 into a legal debate with you. If you
17 have an objection, give an objection.
18 If you have an instruction, give an
19 instruction. If you want to make a
20 call, make a call. I'm trying to ask
21 my questions. You're wasting my time.

22 BY MR. MACEDO:

23 Q. Do you understand what is legally
24 required to teach away from a piece of prior
25 art?

1 DR. JOHN R. GRINDON (9/15/15)

2 MR. ALMELING: Objection to form.

3 A. I have an understanding of that.

4 Q. In the Helferich case, you actually
5 applied that understanding?

6 MR. ALMELING: Objection to form.

7 Objection outside the scope.

8 Q. Is that correct?

9 A. Can you she show me the Helferich
10 case.

11 Q. You have it in front of you.

12 A. Can you show me?

13 Q. Grindon 11.

14 A. Can you show me in there where
15 you're referring?

16 Q. Page 60, paragraph 120.

17 MR. ALMELING: Off the record.

18 (Whereupon, an off-the-record
19 discussion was held.)

20 BY MR. MACEDO:

21 Q. Look at Grindon Exhibit 4 and turn
22 to paragraph 38. It's on page 11.

23 A. Okay.

24 Q. This is where you're talking about
25 the two alternative embodiments for forming

1 DR. JOHN R. GRINDON (9/15/15)

2 composite images.

3 A. Okay; go ahead.

4 Q. You're describing the fact that
5 there's two alternative embodiments to
6 composite the embodiment image in paragraph
7 38, right?

8 A. Let me read it. Okay.

9 Q. The first embodiment that you're
10 describing in paragraph 37, you talk about the
11 post processing system which includes a
12 computer with a video acquisition card and a
13 processor programmed with instructions to take
14 the image and positional data and create one
15 more composite images for storing into an
16 image database, correct?

17 A. Essentially, right.

18 Q. And in the alternative, you talk
19 about the on-the-fly technique where it can go
20 directly from the camera into the image card
21 and done without any additional processing
22 after it's been formed, right?

23 A. Yes.

24 Q. And while in your new declaration
25 you say that you could have a hybrid system

1 DR. JOHN R. GRINDON (9/15/15)

2 which does both the on-the-fly, in some
3 instances, and the post processing in other
4 instances, you're not suggesting that
5 DiBernardo would teach that you should do both
6 on the same image, are you?

7 A. That wasn't the intent. Let's look
8 at the declaration. Can you point me to the
9 paragraph?

10 Q. I'm looking at paragraph 24 on page
11 17.

12 A. The intent was different images,
13 not the same image.

14 Q. So what you're trying to say is for
15 one image you could do the post processing
16 technique described in paragraph 37, but for a
17 different image you could do the on-the-fly
18 technique described in 38; is that correct?

19 MR. ALMELING: Objection to form.

20 A. Multiple images are collected.
21 Some could be processed one way, some the
22 other.

23 Q. But you never process the same
24 image both ways?

25 MR. ALMELING: Objection; form.

1 DR. JOHN R. GRINDON (9/15/15)

2 A. I didn't address that in the
3 declaration.

4 Q. But when the brief referred to the
5 two different ways as incompatible or mutually
6 exclusive, it was referring to that you won't
7 do it on the same image, right? That's what
8 you're commenting on?

9 A. Can you show me where it says that
10 it's the same image?

11 Q. Is it correct that for the same
12 image it is incompatible to use the post
13 processing system described in paragraph 37 of
14 Grindon Exhibit 4 and the on-the-fly system
15 described in paragraph 38 of Grindon
16 Exhibit 4?

17 MR. ALMELING: Objection to form.

18 A. I don't think that I commented on
19 that and in my declaration about the same
20 image. If I did that now, it would be outside
21 of the declaration and just as I sit here now.

22 Q. But when you did comment about the
23 use of both of these systems, it's on
24 different images, not the same image, correct?

25 A. That was the comment that I had

1 DR. JOHN R. GRINDON (9/15/15)

2 made in the declaration. And I'm not -- and I
3 don't think the declaration addressed the
4 matter of the same image.

5 Q. So if the board were to read
6 paragraph 24 of your declaration marked as
7 Grindon Exhibit 1, they shouldn't understand
8 that those two alternative embodiments could
9 be performed on the same image?

10 A. That's not what I said. I just
11 said that I didn't address that situation in
12 the declaration, not that it couldn't be done.

13 Q. Well, are you suggesting it could
14 be done?

15 MR. ALMELING: Objection to form.

16 A. Again, that's not addressed in the
17 declaration, so I wouldn't comment on that
18 right now.

19 Q. So you didn't offer an opinion that
20 it could be done on the same image?

21 A. Didn't offer it could or could not.

22 Q. But you did offer that it could be
23 done on different images?

24 A. Yes, and I didn't say that it
25 couldn't be done on the same image.

1 DR. JOHN R. GRINDON (9/15/15)

2 Q. So the composite image that's
3 created in DiBernardo, it includes more than
4 just image information, it includes positional
5 information?

6 A. The composite image, that's my
7 understanding, it includes --

8 Q. And what positional information
9 does it include?

10 A. Well, let's look and see.

11 Q. Take a look at paragraph 35 of your
12 dec. It may help you.

13 A. So I'm looking at --

14 Q. I mean Exhibit 4.

15 A. The Vederi declaration?

16 Q. Yes.

17 Did you find paragraph 35?

18 A. I'm reading it. All right I read
19 paragraph 35.

20 Q. What is the positional information
21 that's being recorded with the composite
22 information -- composite image; I'm sorry?

23 A. This paragraph doesn't actually
24 say. It says the information restored and
25 used by a post processing system to create the

1 DR. JOHN R. GRINDON (9/15/15)

2 composite images. It doesn't say that that
3 information is stored with the composite
4 image.

5 Q. Doesn't it say, "In the disclosed
6 system the location data is saved as images
7 are being required, the location data being
8 provided by GPS receiver and/or inertial
9 navigation system"?

10 A. Yes.

11 Q. Don't you understand that to be the
12 GPS coordinates?

13 A. That would be the data provided by
14 the GPS location, yes.

15 Q. That's being saved as the composite
16 image?

17 A. That's being saved with the images
18 as they're being acquired. This does not say
19 it's being saved with the composite image.

20 MR. ALMELING: Counsel, to avoid
21 another dispute regarding scope, could
22 you identify how this is relevant to
23 the direct testimony?

24 MR. MACEDO: He testified about
25 the four patents, not just '338. It's

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not just the '181.

Q. The composite image which is the location information that's being stored is the location of the camera, right?

A. You're talking now about the acquired image, not the composite images.

MR. ALMELING: Right, the acquired image.

A. That would be the location of the camera.

MR. ALMELING: I'm still -- I may still dispute whether this is outside the scope. What IPR proceeding is this responsive to the direct testimony of?

MR. MACEDO: Object if you want to object. If you want to cut me off, cut me off. Let me take my questions. You're wasting our time.

MR. ALMELING: To be clear, you're refusing to meet and confer on the objection?

MR. MACEDO: If you have an objection -- I'm trying to get the

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2 deposition done. If you keep
3 interrupting, I'm not going to be able
4 to get the deposition done, okay. You
5 wasted hours of my deposition by
6 asking for these meet and confers
7 without letting me actually ask the
8 questions of the witness. He
9 testifies about positional data so you
10 go look and you find it and if you
11 have an objection, you state it.

12 Q. So you understand that the acquired
13 image is giving you information of where the
14 camera is located, correct?

15 A. In paragraph 35, as we talked, the
16 information -- location information would be
17 the location of the camera.

18 Q. And when the composite image is
19 formed, whether it's through the on-the-fly
20 method or the alternative post processing
21 method, it's saved in the image data server,
22 right?

23 A. The composite image?

24 Q. Yes.

25 A. It's saved in --

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Q. The image database storage.

A. Yes.

Q. And then it's never converted or changed or modified thereafter before delivery to the person who receives it; is that correct?

A. When you say thereafter, it's been modified in order to create the composite image.

Q. But not after it has been created. Once it's been saved in the image database storage, there's no further modification of the composite image?

MR. ALMELING: Objection; scope.

Objection; form.

A. I can't say right now if there's no further change to the image once it's composited.

Q. Sitting here right now, you're not aware of any further changes to the image?

MR. ALMELING: Objection; form.

Objection; scope.

A. The change to the image occurs in the compositing process taking the acquired

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2 images and creating the composite image and
3 it's in the format of a composite image. As I
4 sit here right now, I'm not recalling
5 additional changes to the image format after
6 that.

7 Q. So you remember reading the '800
8 patent, right?

9 A. Yes.

10 Q. And you remember the ribbons that
11 were created from the street view images,
12 right?

13 MR. ALMELING: Objection to form.

14 Q. Ribbon views?

15 A. Yes. I don't see the '800 patent.
16 I don't think you marked it yet.

17 Q. No, I haven't marked it yet.

18 Do you have an understanding of how
19 that technology compares to the technology
20 disclosed in DiBernardo as being
21 computationally intensive and not desirable?

22 A. Can you parse that question for me,
23 please?

24 Q. There's a whole discussion about
25 creating 3D images by spreading the photos

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onto like a point cloud, for example, right?

A. Okay.

Q. That's described in the spec of the other two patents, right, using that type of technology?

A. When you say other two, which two?

Q. The '396 and the '800, the other two IPRs.

A. When you say described --

Q. The specification for those patents are the same specification and they're describing the technology where they can display the images onto a point cloud, right?

A. Show me exactly where you're talking right now.

Q. You don't recall without me showing you, which is fine, if that's the case?

A. I'd like you to show me.

Q. We'll move on and come back, okay?

MR. ALMELING: Counsel, to be clear, you're refusing the witness' request for a document?

MR. MACEDO: No, I'm just saying that I don't have it readily available

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so we'll come back to that.

MR. ALMELING: You don't have a copy of the '800 patent.

MR. MACEDO: In my hand this second, yes.

MR. ALMELING: Maybe one of your three colleagues with you can hand it to you.

MR. MACEDO: When I come back to it, I will pull it out.

Q. In paragraph 41, you discuss the method described in the Vederi patent as suffering from "attempting to combine images from different positions, which produce different prospective views. This is not possible to do with three-dimensional settings containing multiple, unaligned objects at different distances without distortion."

It's at the bottom of page 12?

A. I see that.

Q. Are you trying to say that the DiBernardo method is a bad way of generating 3D scenes?

MR. ALMELING: Objection; form.

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A. What I'm saying only is that there's a trade off in distortion and complexity and this is a source of the distortion.

Q. And you said it has limited use in practice, if you turn the page.

A. I am saying it has practice for flat or nearly flat displays.

Q. And you said it has limited use in practice. Those are your words, correct?

A. Let me read the surrounding.

All right. I wanted to read some of that surrounding. This is --

MR. ALMELING: Counsel, I had a copy of '800 printed out because you didn't have one in your hand. Would you mind if I hand that to the witness or do you not want me to do that?

MR. MACEDO: You can give him whatever your heart desires.

You can mark it as Grindon 25. Would you make a copy for everyone?

(Grindon Exhibit 25, U.S. Patent No. 7,929,800 B2 was marked for

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2 identification, as of this date.)

3 BY MR. MACEDO:

4 Q. Now, can you answer my question?

5 A. What I'm saying here, it's limited
6 in practice because there is some distortion
7 so you wouldn't use it for every application.
8 It does work without a problem for flat and
9 nearly flat surfaces such as document
10 scanning.

11 Q. But it doesn't work for, like,
12 Google Maps, right?

13 MR. ALMELING: Objection; form.

14 Objection; scope.

15 A. I didn't say it wouldn't work. I
16 said it has limited application because of
17 distortion. So I didn't say that you couldn't
18 use it for Google Maps, but it introduces
19 trade offs so Google Maps may choose not to
20 use it. In fact, it's not.

21 MR. ALMELING: I'm sorry, Counsel.

22 Dr. Grindon, are you finished?

23 THE WITNESS: I'm finished.

24 Q. In 2011, when you wrote this
25 declaration, you understood that it would not

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be a wise choice to follow the DiBernardo teaching of general composite images for systems such as taught in '181 patent; isn't that correct?

MR. ALMELING: Objection; form.

Could the court reporter read the question.

(Whereupon, the referred to question was read back by the Reporter.)

A. I would not say that.

Q. You certainly wouldn't use the DiBernardo system if you were building a system like the '181 patent?

A. I wouldn't?

Q. Take a look at Grindon Exhibit 24.

A. That was a question mark.

Q. Didn't come across as that.

MR. ALMELING: To be very clear on the record, the response, "I wouldn't" was, "I wouldn't?"

He was asking you to clarify your question, not that he was testifying in response to it. So perhaps you can

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2 repeat your question so we can have a
3 clean record.

4 Q. Did your testimony include a
5 question mark that didn't get transcribed?

6 A. Yes.

7 Q. Could you look at Grindon
8 Exhibit 24, please? Did you get to read it
9 before?

10 A. I have not read this, no.

11 Q. Why don't you spend a minute
12 reading it?

13 A. I'm sorry; I didn't hear you.

14 Q. Why don't you spend a minute
15 reading it, please. Let me know whenever
16 you're done reading it, please.

17 You'll let me know when you're
18 ready, right, Dr. Grindon?

19 A. Yes, I'll let you know.

20 Okay; I read it.

21 Q. Is it your understanding that the
22 system described in Grindon Exhibit 24 would
23 be the type of computer system that would have
24 had to have been used to make Yoichi work in
25 cars in 2004, not the exclusive system, but an

1 DR. JOHN R. GRINDON (9/15/15)
2 example system?

3 MR. ALMELING: Objection; form,
4 scope. Additionally, objection; lacks
5 authentication. And lacks
6 authentication referring to Exhibit 24
7 and all questions regarding
8 Exhibit 24.

9 MR. MACEDO: I will represent it
10 was printed out from the internet at
11 the address indicated at the bottom
12 and that this is a complete copy, as
13 far as I am aware, of this press
14 release and that it has a date of
15 October 18, 2004 on it.

16 Q. In any event, having read Grindon
17 Exhibit 24, is that consistent with your
18 understanding of the state-of-the-art of
19 in-car infotainment systems that were
20 available in 2004?

21 A. It looks like this is an example of
22 a system available then.

23 Q. And the system at least considered
24 itself the state-of-the-art from that
25 manufacturer's perspective?

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2 MR. ALMELING: Objection to form.

3 Objection to scope.

4 A. I don't see the word,
5 state-of-the-art used. Perhaps they were used
6 and you can point me to it. It's merely
7 saying it's a new high performance
8 microprocessor and it's offering an RTOS that
9 would support it.

10 Q. Don't they say that it runs
11 traditionally faster than CPUs traditionally
12 used in telematic systems? Second paragraph.

13 A. Yes, it says that.

14 Q. It's referring to a 400 megahertz
15 chip, right?

16 A. Yes.

17 Q. Which has substantially less
18 processing power than the 2 gigahertz chip you
19 were referring to in your declaration, right?

20 A. 400 is less than 2,000, so you're
21 offering a particular chip here -- information
22 on a particular chip in a particular RTOS.
23 That's not to say that someone else wouldn't
24 take another processor, another operating
25 system, and create another system for use in

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2 an automobile.

3 Q. Except that they're suggesting that
4 this is significantly faster than what's
5 otherwise being used in cars, right?

6 A. They're saying traditionally used.
7 They're not saying that you couldn't use a
8 faster processor in cars, they are just
9 comparing it with traditional CPUs used in
10 telematic systems.

11 Q. And you haven't identified any
12 other telematic system that uses a more
13 powerful processor at the time of the 2004
14 invention, have you?

15 MR. ALMELING: Objection; scope.

16 A. I've identified a number of other
17 processors which are traditional computer
18 processors which are faster and certainly
19 could be designed into vehicular systems.

20 Q. But you haven't identified any
21 vehicle systems which did, in fact, use those
22 processors as of 2004, correct?

23 MR. ALMELING: Same objection.

24 A. One would take the available
25 processors and design it into a system such as

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2 Yoichi. The difference that I see here is
3 that this QNX news release we would be for
4 mass distribution in this vehicle whereas the
5 Yoichi is not really so constrained to be
6 something offered at the corner auto dealer,
7 but rather could utilize more powerful
8 devices.

9 Q. Well, Yoichi doesn't work unless a
10 lot of cars have it. Is that a fair
11 statement?

12 MR. ALMELING: Objection to form;
13 scope.

14 A. Multiple vehicles would be equipped
15 with it.

16 Q. Unless the car is driving on a path
17 that you care about, you're not going to get
18 an image; is that correct?

19 MR. ALMELING: Objection; form,
20 scope.

21 A. If there's no image being collected
22 on a certain path, then no image would be
23 available from that path, if that's what your
24 question was.

25 Q. Not only does the image have to be

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2 collected, it has to then be shared with the
3 system, right?

4 MR. ALMELING: Objection; form,
5 scope.

6 A. So the image could be shared, yes.

7 Q. So if you don't have some sort of
8 wireless connection or a travel spot to unload
9 through the wireless connection, the image is
10 as if it was never taken in the Yoichi system,
11 right?

12 A. If the image were never shared,
13 then it wouldn't be available.

14 Q. What type of wireless networks were
15 available in 2004?

16 MR. ALMELING: Objection; form,
17 scope.

18 Q. Did you answer?

19 A. Yoichi is suggesting, on figure
20 one, internet connection.

21 Q. How many internet connections were
22 available in 2004 driving along Route 66, for
23 example?

24 MR. ALMELING: Objection; form,
25 scope.

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2 A. Right now I can't say.

3 (Grindon Exhibit 26, Cingular and
4 AT&T Coverage Map was marked for
5 identification, as of this date.)

6 BY MR. MACEDO:

7 Q. Let me show you Grindon 26, which
8 we took from AT&T submissions to the FCC in
9 2004 to show what would be the coverage for
10 the combination of Singular and AT&T. We took
11 this from the FCC website?

12 MR. ALMELING: Counsel, I don't
13 want to seek a protective order to
14 prevent questions that are outside the
15 scope if I don't have to.

16 Can you explain how Exhibit 26
17 relates to his direct testimony?

18 MR. MACEDO: It relates to whether
19 or not it would be obvious to make the
20 combination of DiBernardo and Yoichi,
21 which requires that Yoichi actually
22 work.

23 Q. So anyhow, looking at Exhibit 26
24 you see that even if you had the combination
25 of Singulair and AT&T, which we're in the

1 DR. JOHN R. GRINDON (9/15/15)

2 process of combining in 2004, there wasn't a
3 lot of coverage over large parts of the
4 country. Is that a fair statement?

5 MR. ALMELING: Objection to all
6 questions regarding Exhibit 26. Lacks
7 authentication. Additionally, it
8 lacks foundation.

9 A. I see very dense coverage in high
10 population areas. For example, the northeast
11 corridor appears to be very densely covered.

12 Q. Yet there's still white spots even
13 in that dense coverage, right?

14 MR. ALMELING: Objection; scope.

15 A. From the figure that you gave me as
16 Exhibit 26, the northeast corridor over a
17 range of, at least looks like north of
18 New York to at least D.C. appears to be pretty
19 solid. I don't see any white areas.

20 Q. You don't see --

21 A. -- in that corridor.

22 Q. You don't see large white areas in
23 New York?

24 A. Upstate New York, but not the
25 densely populated part.

1 DR. JOHN R. GRINDON (9/15/15)

2 Q. And do you see a lot of white areas
3 in Florida despite the large orange areas?

4 A. Florida appears to be almost
5 entirely covered.

6 Q. What's that blue stuff?

7 A. You tell me. This is not
8 intelligible. I can't read what it says.

9 Q. If you were in New Mexico, though,
10 you'd get no coverage or virtually no
11 coverage, right?

12 MR. ALMELING: Objection; scope.

13 A. I'm trying to read this. It's not
14 really readable. It's too blurry, too small.

15 Q. By the way, the example given in
16 the Yoichi was California, right?

17 A. California has also very dense
18 coverage over large areas.

19 Q. It also has a lot of white space,
20 right?

21 A. So you're suggesting that there may
22 be some places of very sparse population where
23 Yoichi may have limited or no operability.

24 Q. Sparse population or would it be
25 that there is limited cell coverage?

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2 MR. ALMELING: Objection; scope.

3 A. The two go together. The cell
4 coverage generally covers the high density
5 population areas and California looks like
6 it's well covered in the high population
7 density areas.

8 Q. We certainly can let the board make
9 their own decision looking at the map.

10 With respect to Exhibit 24, is that
11 the type of infotainment system that would be
12 used to implement Yoichi in 2004?

13 A. We, just a moment ago, discussed
14 the processor and RTOS disclosed in
15 Exhibit 24. Just sitting here not having
16 opined on this in my declaration, I would
17 think that Yoichi could be designed for a
18 higher end processor than this. Nevertheless,
19 this processor may well function to support
20 Yoichi.

21 Q. But you don't know sitting here
22 today?

23 MR. ALMELING: Objection; scope.

24 A. Looking at the document that you
25 gave me, again, I have not opined on it in my

1 DR. JOHN R. GRINDON (9/15/15)

2 declaration, it appears to be a pretty decent
3 processor, and I believe could support --
4 again, this is without any analysis which I
5 would want to do under normal situations.
6 Looks like it could support Yoichi. At least
7 cannot say that it couldn't.

8 Q. But you don't know, one way or the
9 other, because you haven't done the analysis
10 necessary; is that correct?

11 A. I'm saying that it looks promising
12 to support Yoichi.

13 Q. And you understand that one of the
14 concerns of the manufacturers of the
15 infotainment system in Grindon Exhibit 24 was
16 for low cost delivery of high end mapping?

17 MR. ALMELING: Objection; scope,
18 foundation.

19 A. Is there a question associated with
20 that statement?

21 Q. Yes. And do you understand that
22 one of the concerns of the manufacturers of
23 the infotainment system in Grindon Exhibit 24
24 was for low cost delivery of high end mapping?
25 And I direct you to the second paragraph of

1 DR. JOHN R. GRINDON (9/15/15)
2 the press release.

3 A. Yes.

4 MR. ALMELING: Same objection.

5 A. Yes, it does.

6 MR. MACEDO: Let's take a break.

7 MR. ALMELING: Yes.

8 (Whereupon, at this time, a short
9 break was taken.)

10 BY MR. MACEDO:

11 Q. If you can, look at Grindon
12 Exhibit 1, please.

13 A. All right.

14 Q. In paragraph 29, you are responding
15 to the description that Grindon may not be
16 accurate, for instance, if there's an unusual
17 wide structure. Do you see that?

18 In paragraph 29 of Grindon
19 Exhibit 1, you are responding to the statement
20 that DiBernardo, paragraph 76, explains
21 identification of a particular street address
22 in a composite image may not be accurate if,
23 for instance, there is an unusually wide
24 structure. Do you see that?

25 A. Yes, I do.

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Q. Do you recognize that statement is true, even if it's in an unusual circumstance?

A. Even if it's an unusual circumstance, an unusually wide structure may trigger this situation.

Q. As well as an unusually narrow structure?

A. It does not actually say that, just sitting here that would be probable.

Q. So to the extent that DiBernardo could give you the wrong result, it doesn't necessarily identify the correct address in those situations, right?

A. Wrong.

Q. So DiBernardo teaches how to address those unusual situations?

A. Yes.

Q. Does DiBernardo capture the direction of the camera that is capturing the image?

MR. ALMELING: Objection; form.

A. I believe I've -- if I didn't state that in my declaration, it still does.

Q. I'm sorry. I don't understand your

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2 answer.

3 A. Captures the direction of the
4 camera, yes.

5 Q. Can you show me where because in
6 your declaration, you talk about capturing
7 from the GPS. You don't say anything about
8 the direction of the camera.

9 A. Refer to figure two of DiBernardo.

10 Q. You're looking at Grindon 5?

11 A. That's right.

12 Q. Okay.

13 A. The direction of the camera needs
14 to be known relative to the path in order to
15 do the processing that DiBernardo discloses so
16 the camera can't be pointing in just any
17 direction. It needs to be -- in this example,
18 appears to be perpendicular to the direction.

19 Q. Well, isn't this example assuming
20 that you're going in a straight line and it
21 just takes the same images from the same
22 camera? It doesn't note whether it's pointing
23 north, south, east or west, does it?

24 A. No, but it knows where the
25 direction is relative to the path which is

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2 what's important here.

3 Q. Can you show me where it says that
4 in the description figure two? It starts on
5 paragraph 45?

6 Did you find anything yet?

7 A. Yes.

8 Q. What did you find?

9 A. For example, paragraph 40.

10 Q. What in paragraph 40?

11 A. Three lines down it says, "two side
12 cameras face each side of the path."

13 So that says that the cameras are
14 oriented relative to the vehicle and the path.
15 Then in the subsequent paragraphs, 42 is the
16 camera ten moves along the path and records
17 the objects. The GPS receiver computes the
18 latitude and longitude at the selected time
19 intervals.

20 Q. Latitude and longitude isn't
21 telling you which direction the camera is
22 pointing.

23 A. I'm not finished yet. Then
24 paragraph -- toward the end of paragraph 42,
25 the GPS receiver is preferably located on the

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2 vehicle transporting the camera. On the
3 camera, the GPS data with the position
4 sequences and the time information is then
5 transferred to the computers. So the path is
6 known from the position sequences in paragraph
7 42.

8 Then paragraph 43, in addition to
9 the position information provided by the GPS
10 43 in addition to the position and information
11 provided by the GPS system -- the inertial
12 navigation so it also has an inertial
13 navigation system. Also provides acceleration
14 information to the computer for independently
15 deriving the position sequence of the camera.

16 So there's considerably more
17 processing going on to determine the path and
18 the alignment of the camera is said to be side
19 looking relative to the vehicle. So all of
20 this and more that I am not taking time to
21 read.

22 Q. But none of that is recording the
23 directional information as to whether it's
24 going north, south, east or west. All it's
25 telling you is that a sideways camera is at

1 DR. JOHN R. GRINDON (9/15/15)

2 this GPS location?

3 A. No. Again, what I just read,
4 there's a GPS sequence of data. The sequence
5 of positions tells you the path. Then also it
6 has inertial navigation and acceleration data.

7 Q. That path is just telling you where
8 the car is, not whether the car is pointing
9 north, south, east or west?

10 A. Again, in paragraph 40 which we
11 read, the camera is facing to the side. The
12 other information in the other paragraphs I
13 read tell where the car is going so that all
14 tells you where the camera is facing; north,
15 south, east or west.

16 You don't see it.

17 Q. No I don't, but that's your
18 testimony.

19 A. The information that's divulged
20 here allows you to compute the information
21 that you're asking for.

22 Q. But it isn't teaching you to
23 compute the information?

24 MR. ALMELING: Objection; form.

25 A. Is that a statement or question.

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2 Q. Question.

3 A. It's telling a person of ordinary
4 skill in the art how to do it. That's what
5 these paragraphs will convey to a person of
6 ordinary skill in the art.

7 Q. It's saying that the computer
8 preferably combines the position derived from
9 the acceleration information with the GPS
10 position data to produce a more accurate
11 evaluation of the position of the camera at
12 the particular instance in time. It's talking
13 about the longitude and latitude, not the
14 direction of the camera, right?

15 A. The position of the camera is
16 evaluated. The information in the paragraphs
17 that I read, 40 through 43, also enable you to
18 determine the direction pointing of the
19 camera.

20 Q. But it's not telling you to
21 determine that. It's telling you to determine
22 the position of the camera, not the direction
23 of the camera, correct?

24 MR. ALMELING: Objection to form.

25 A. First, it's not telling you not to

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2 compute the direction. Secondly, position is
3 often taken to mean both coordinates and
4 direction.

5 Q. Where does it use the word,
6 "direction information" anywhere in DiBernardo
7 with respect to the camera?

8 Have you found it yet, Dr. Grindon?

9 A. Well, I did find one thing here and
10 to a person of ordinary skill in the art, the
11 information that I already gave you is
12 sufficient. But I'm looking for additional
13 material.

14 Paragraph 52 in the right-hand
15 column toward the top says, in step 84, "the
16 computer 28 measures the distance traveled
17 between the two points on the path that
18 correspond to the time instance and the image
19 sequence where the landmark is seen from the
20 two sides of the path."

21 So this is an indication that the
22 direction is taken into account.

23 Q. Isn't that the direction of the
24 light ray, not the direction of the camera?
25 In fact, at the beginning of the paragraph,

1 DR. JOHN R. GRINDON (9/15/15)

2 they say "a flow diagram of an alternative
3 embodiment for synchronizing image sequences
4 with GPS position information trying to locate
5 the longitude and latitude."

6 That's what the point of this
7 process is, isn't it?

8 A. So in order to know which side to
9 look, the direction, as well as position,
10 needs to be tracked. And, again, there's
11 sufficient information here I think in
12 paragraphs 40 through 43 to inform a person of
13 ordinary skill in the art that not only the
14 position, but the actual track direction is
15 determined.

16 Q. But you didn't see anyplace where
17 it actually calls out that it's saving the
18 directional data on anywhere, right?

19 MR. ALMELING: Objection; form.

20 Q. To clarify the question, you don't
21 see anyplace in DiBernardo where DiBernardo
22 actually calls out that information regarding
23 the directional data is being saved with
24 either the original image or the composite
25 image?

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2 MR. ALMELING: Objection to form.

3 Q. And directional data of the
4 direction of the camera.

5 MR. ALMELING: Objection to form.

6 Q. Did you find any yet, Dr. Grindon?

7 A. I am finding discussion of street
8 segments, trajectories, camera trajectories
9 and so forth. And so all of this requires
10 determining the trajectory. And I'm just
11 looking for a clean statement that would
12 satisfy you that says direction is stored.
13 But all of this processing requires that
14 knowledge of the trajectory of the vehicle,
15 the fact that the camera is looking at a
16 certain angle relative to the trajectory of
17 the vehicle.

18 And without reading the whole
19 patent, I'm not sure if I can quickly find
20 that clean statement that you're asking me
21 for.

22 MR. MACEDO: How would you like to
23 proceed, Counsel?

24 MR. ALMELING: Have you finished
25 cross-examination?

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2 MR. MACEDO: Except for the answer
3 to this question.

4 MR. ALMELING: Let's go off the
5 record.

6 (Whereupon, an off-the-record
7 discussion was held.)

8 BY MR. MACEDO:

9 Q. Dr. Grindon, have you found any
10 disclosure that uses either the word,
11 directional data or the equivalent type of
12 data showing that the system saves with the
13 composite image or the acquired image the
14 direction of the camera that is recorded?

15 A. As I sit here, I am not finding
16 that specific reference. I am finding the
17 disclosure though that would require that.

18 Q. Thank you very much, Dr. Grindon.
19 I appreciate your time and effort and thank
20 you for taking the time to travel to New York.
21 I hope you get to enjoy your evening here.

22 A. Thank you.

23 MR. MACEDO: Subject to any
24 redirect, I'm finished.

25 MR. ALMELING: Let's go off the

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record.

(Whereupon, an off-the-record discussion was held.)

EXAMINATION BY

MR. ALMELING:

Q. Can you please approximate the total number of times that you have been retained as an expert by any party throughout your entire career for any legal disputes?

MR. MACEDO: Objection; beyond the scope.

A. I don't have a number calculated and memorized. The CV has a record going back, I believe, to 2008 of matters in which I am on public record so we could count those, take us back to that time.

Q. To be clear, I wasn't limiting my question to matters of public record or going back to 2008. My question was during your entire career, approximately how many times have you been engaged as an expert on behalf of any party in any legal dispute?

MR. MACEDO: Objection; calls for confidential information. May invade

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other people's privilege and is beyond the scope and is irrelevant.

A. I would say probably no more than two dozen.

Q. Would it be more than 20, less than two dozen? Does that sound like a fair statement?

A. That's a fair estimate without actually going and checking.

MR. MACEDO: Objection; calls for speculation.

Q. I'd like to direct your attention to Grindon Exhibit 4. And in particular, paragraphs 15 and 16. Please read those and let me know when you're finished.

A. All right. I'm finished.

Q. Earlier today, Counsel for VRE asked you a series of questions about the definition of the level of skill in the art in both your Vederi declaration, Exhibit 4, as well as your VRE declarations, Exhibit 1 through 3. Do you recall those questions?

MR. MACEDO: Objection to form.

A. Yes, I do.

1 DR. JOHN R. GRINDON (9/15/15)

2 Q. The second sentence of paragraph 15
3 of Grindon Exhibit 4 refers to "my definition
4 of the level of 'skill in the art.'"

5 Do you see that?

6 A. Yes, I do.

7 Q. Paragraph 16 reads, "In my
8 definition, a person of ordinary" --

9 MR. MACEDO: Objection to form.

10 Doesn't say, "in my definition."

11 Q. Paragraph 16 reads, in part, "in my
12 opinion, a person of 'ordinary skill in the
13 art,'" and it continues. Do you see that?

14 A. I do.

15 Q. In paragraph 15, when you referred
16 to my definition of the level of skill in the
17 art, were you referring to the definition that
18 you provided in paragraph 16 or to something
19 else?

20 MR. MACEDO: Objection to form.

21 A. This would be paragraph 16.

22 Q. I direct your attention to
23 DiBernardo reference which is Grindon
24 Exhibit 5. I direct your attention in
25 particular to paragraph 88 and claim 44 of

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2 that reference. Please read those and let me
3 know when you're done.

4 MR. MACEDO: Paragraph 88 in claim
5 44; objection to scope.

6 A. All right. I've read those.

7 Q. Counsel for VRE asked a question
8 before you were finished reviewing the Vederi
9 reference which is Grindon Exhibit 5. "Have
10 you found any disclosure that uses either the
11 word directional data or the equivalent type
12 of data showing that the system saves the
13 composite image or the acquired image the
14 direction of the camera that is recorded?"

15 Your response was, "As I sit here,
16 I am not finding that specific reference. I
17 am finding disclosure though that would
18 require that."

19 My question to you, sir, is: Do
20 the disclosures provided in Exhibit 88 and/or
21 claim 44 of the DiBernardo reference assist
22 you in answering the question that opposing
23 Counsel asked before you had the chance to
24 review the entire reference?

25 A. Yes, they do.

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2 MR. MACEDO: Objection to form.

3 Q. Can you please describe how?

4 A. Yes, these -- this paragraph 88 and
5 the dependant claim 44 that you reference are
6 specific in disclosing viewing direction. I
7 guess that probably suffices, unless you want
8 me to read these into the record.

9 Q. I do not.

10 MR. ALMELING: And I have no
11 further questions.

12 EXAMINATION BY

13 MR. MACEDO:

14 Q. Let's go back to paragraph 15 of
15 Grindon Exhibit 4. It says, "My definition of
16 the level of 'skill in the art' would not
17 substantively change even if it were
18 determined that the patents in-suit are not
19 supported by the October 2000 provisional and
20 are only supported or only entitled to a later
21 priority date."

22 Correct?

23 A. You didn't read it exactly right,
24 but I think the differences are insubstantial,
25 so, go ahead.

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2 Q. And in paragraph 17 you say, "I
3 understand that a claim term has meaning that
4 would have to a person of ordinary skill in
5 the art as of the effective filing date of the
6 patent application," right?

7 A. I see that, yes.

8 Q. Would your testimony for paragraph
9 17 change if DiBernardo were not entitled to
10 the October 2000 priority date?

11 MR. ALMELING: Objection; form.

12 A. No.

13 Q. And, in fact, none of your
14 testimony in the declaration would change even
15 if DiBernardo were entitled to the later
16 effective priority dates; is that correct?

17 MR. ALMELING: Objection; form and
18 scope.

19 A. What later priority dates are you
20 referring to?

21 Q. Same ones we discussed earlier, the
22 2001 priority date, for example.

23 MR. ALMELING: Same objections.

24 A. The 2001 priority date, I don't
25 think there would be any reason to change the

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2 declaration.

3 Q. What about the 2005 priority date
4 that you testified earlier you wouldn't
5 change?

6 MR. ALMELING: Same objections.

7 A. The person of ordinary skill in the
8 art I said I wouldn't change.

9 Q. No, you said more than that. Would
10 any of your testimony set forth in the
11 declaration marked as Grindon Exhibit 4 change
12 if the '760 patent were only entitled to its
13 2005 filing date?

14 MR. ALMELING: Objection; form,
15 scope. Additionally, foundation.

16 A. First, I'm not aware that I said
17 more than that. Could you point to where I
18 did?

19 Q. Not at this point in time. So if
20 you don't recall, that's fine.

21 But my question is: Would any of
22 the testimony contained in Grindon Exhibit 4
23 change if DiBernardo's '760 patent were only
24 entitled to its 2005 filing date?

25 MR. ALMELING: Objection; form,

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2 scope, foundation.

3 A. I didn't consider that question
4 directly in the disclosure of Exhibit 1. If
5 you're asking me right now just as I sit here
6 to give you my thoughts on that, I would
7 really have to review this again to see if I
8 would make any changes if the date moved to
9 2005.

10 Q. You're not saying that any of the
11 testimony you provided earlier today was
12 wrong; is that correct? You stand by whatever
13 you testified to earlier today?

14 A. I am not aware as I sit here of any
15 mistakes.

16 Q. So whatever you testified earlier
17 today is still true tonight as it was whenever
18 you made the testimony?

19 A. I, again, am not aware of anything
20 that I would change. Just recalling the
21 testimony up to this point.

22 MR. MACEDO: That's all.

23 MR. ALMELING: I also have no
24 further questions. I note for the
25 record we began approximately 9. It

1 DR. JOHN R. GRINDON (9/15/15)
2 is now 6:40 p.m.

3 MR. MACEDO: I also note for the
4 record that we took a lot of breaks
5 and a lot of off the records from
6 Counsel at Google's request.

7 MR. ALMELING: I have nothing
8 further.

9 (Time noted: 6:41 p.m.)
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DR. JOHN R. GRINDON (9/15/15)

J U R A T

I, DR. JOHN R. GRINDON, do hereby
 certify under penalty of perjury that
 I have read the foregoing transcript
 of my deposition taken on
 September 15, 2015; that I have made
 such corrections as appear noted
 herein in ink, initialed by me; that
 my testimony as contained herein, as
 corrected, is true and correct.

 DR. JOHN R. GRINDON

Subscribed and sworn to before me

This _____ day of _____, 2015.

 NOTARY PUBLIC

DR. JOHN R. GRINDON (9/15/15)

-----I N D E X-----

WITNESS: DR. JOHN R. GRINDON

EXAMINATION BY	PAGE
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-----E X H I B I T S-----

GRINDON EXHIBIT	FOR I.D.
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Grindon Exhibit 1,	5
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Responsive Declaration of

Dr. John R. Grindon

Grindon Exhibit 2,	5
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Responsive Declaration of

Dr. John R. Grindon

Grindon Exhibit 3,	5
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Responsive Declaration of

Dr. John R. Grindon

Grindon Exhibit 4,	5
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Declaration of Dr. John R.

Grindon in Support of Google's

Opening Claim Construction Brief

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Grindon Exhibit 5, 17

United States Patent

Application Publication,

dated April 25, 2002

Grindon Exhibit 6, 21

U.S. Patent No. 6,895,126 B2

Grindon Exhibit 7, 26

U.S. Patent No. 7,239,760

Grindon Exhibit 8, 61

Declaration of John R. Grindon

Grindon Exhibit 9, 63

September 1, 2015 PTAB decision

on institution on Stryker v.

Karl Storz

Grindon Exhibit 10, 69

Memorandum Decision and Order;

Fleming v. Escort

Grindon Exhibit 11, 73

Declaration of John R. Grindon,

D.SC Wireless Science 2054 from

Case Number 2013-00033 (JYC)

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Grindon Exhibit 12,	75
Declaration of John R. Grindon,	
D.SC in support of Petition for	
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Patent 7,542,035	
Grindon Exhibit 13,	98
Petition for Inter Partes Review	
of U.S. Patent No. 7,389,181	
Grindon Exhibit 14,	109
Visual Real Estate 2011	
Grindon Exhibit 15,	118
Document entitled, "A new	
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Grindon Exhibit 16,	131
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Grindon Exhibit 17,	131
Document from archive.org	
Grindon Exhibit 18,	139
U.S. Publication No.	
2004/0158474 A1	

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Grindon Exhibit 19, 139

Document entitled, "Monitoring
and State Transparency of
Distributed Systems"

Grindon Exhibit 20, 156

U.S. Patent No. 7,389,181

Grindon Exhibit 21, 180

Patent Owner's Response to
Petition IPR2014-01338

Grindon Exhibit 22, 180

Patent Owner's Response to
Petition IPR2014-0139

Grindon Exhibit 23, 224

U.S. Patent No. 2003/0210806 A1

Grindon Exhibit 24, 239

QNX News Release

Grindon Exhibit 25, 272

U.S. Patent No. 7,929,800 B2

Grindon Exhibit 26, 281

Cingular and AT&T Coverage Map

(Original exhibits attached.)

DR. JOHN R. GRINDON (9/15/15)

C E R T I F I C A T E

STATE OF NEW YORK)
: SS.:
COUNTY OF RICHMOND)

I, AYLETTE GONZALEZ, a Notary Public
for and within the State of New York, do
hereby certify:

That the witness, DR. JOHN R.
GRINDON, whose examination is hereinbefore
set forth was duly sworn and that such
examination is a true record of the testimony
given by that witness.

I further certify that I am not
related to any of the parties to this action
by blood or by marriage and that I am in no
way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 17th day of September, 2015.

AYLETTE GONZALEZ

DR. JOHN R. GRINDON (9/15/15)

ERRATA SHEET FOR THE TRANSCRIPT OF:

Case Name: Google v. Visual Real Estate

Dep. Date: September 15, 2015

Deponent: Dr. John R. Grindon

Pg.	Ln.	Now Reads	Should Read	Reason
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DR. JOHN R. GRINDON

SUBSCRIBED AND SWORN BEFORE ME,

This ___ day of _____, 2015.

Notary Public

My Commission Expires: _____