

# Transcript of the Testimony of **Mark N. Horenstein**

**Date:** June 28, 2016

**Case:** Microsoft Corporation and Microsoft Mobile, Inc. v. Global Touch Solutions, LLC.



Global Touch Solutions, LLC  
Exhibit 2007  
Microsoft Corporation and Microsoft Mobile, Inc.  
v. Global Touch Solutions, LLC  
IPR2015-01148

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD  
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MICROSOFT CORPORATION AND MICROSOFT MOBILE, INC.

Petitioners

vs.

GLOBAL TOUCH SOLUTIONS, LLC

Patent Owner

CASE IPRs 2015-01147, 01148, 01149, 01150, 01151

PATENT NUMBERS 7,994,726

7,498,749 B2

7,329,970 B2

7,781,980

8,288,952

7,994,726

DEPOSITION OF MARK N. HORENSTEIN, Ph.D.

Tuesday, June 28, 2016

Commencing at 10:05 a.m.

- - -

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Page 3

1 I N D E X

2 - - - - -

3 WITNESS: PAGE:

4 MARK N. HORNSTEIN, Ph.D.

5 By Mr. Kelber 4

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7 - - -

8 E X H I B I T S

9 NUMBER PAGE:

10 Exhibit 2007 Four pages of second 13

11 declaration of Mark

12 Hornstein regarding

13 U.S. Patent No. 7,498,749

14 Exhibit 2008 Five pages of second 27

15 declaration of Mark

16 Hornstein regarding

17 U.S. Patent No. 7,329,970

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1 — — —

2 MARK N. HORENSTEIN, Ph.D., after  
3 having been duly sworn, was examined and testified as  
4 follows:

5 - - -

6 BY MR. KELBER:

7 Q Good morning, Dr. Hornstein.

8      A      Good morning.

9 Q Is it Hornstein? Do I have that right?

10 A Yes.

11 Q You may recall the last deposition in this series of  
12 interparty reviews. But just to reflect the ground rules.  
13 My job is to ask you questions that are sufficiently clear  
14 and precise that you can formulate an answer to them, and  
15 your job is to provide an oral response to those questions  
16 as complete and proper as you can. Is that satisfactory?

17 A Yes.

18 Q If you need a break for any reason, at any time, as  
19 long as there is not a question outstanding, just say let's  
20 take a break. You don't need to be in more detail than  
21 that. It is not supposed to be an endurance contest. And  
22 the caution I would offer because there are documents

1 involved is if you need to read from a document, read it  
2 aloud and read more slowly than you would otherwise be  
3 inclined to so the court reporter can get your words down.  
4 We tend to read more quickly than we would ordinarily speak.  
5 Is that okay?

6 A Just to make sure I understand what you're saying, if  
7 you ask me to read a document, you want me to read it out  
8 loud, or if you are saying if I am reading out loud, read  
9 more slowly.

10 Q The latter. Thank you, sir.

11 And the last item on rules of  
12 procedures is any time I hand you a document, whether I  
13 direct you to a particular part of the document or just ask  
14 you to consider it generally, feel free to read all of the  
15 document or any part of that document. Okay?

16 A Okay.

17 Q Good enough?

18 MR. MURPHY: Counsel, before you get  
19 going, I would just like to place an objection on the  
20 record. My understanding is that counsel, Mr. Kelber, is  
21 counsel of record in IPRs number 1148 and 1149, but is not  
22 counsel of record in IPRs 1147, 1150 or 51. So Microsoft

1 objects to the use of this transcript in IPRs 1147, 50 and  
2 51 because counsel in those cases is not present.

3 MR. KELBER: I'm simply going to  
4 respond. We note your objection. The last time we did this  
5 deposition we shipped two people to California. We will  
6 rely on whatever Dr. Hornstein has to say, wherever he has  
7 sworn his offered sworn testimony or otherwise. But  
8 understood your objection.

9 BY MR. KELBER:

10 Q Dr. Hornstein, have you ever been an expert in an  
11 interparties proceeding prior to having been retained in  
12 connection with these five proceedings?

13 A Yes.

14 Q What was the nature of those earlier retentions?

15 A You mean what was the subject matter of the IPRs?

16 Q No. I'm sorry. Were they IPRs?

17 A I thought that's what your question was.

18 Q Well, any kind of interparty proceeding? Litigation?  
19 IPRs? Re-examination? What types of practices were you  
20 involved in?

21 A Are you talking about litigations in civil court as  
22 well?

1 Q Yes, sir.

2 A Most of them relate to intellectual property. A  
3 couple of them relate to personal injury.

4 Q When you served as an expert witness, was it your  
5 custom to prepare either an expert report or a declaration  
6 reflecting your opinions?

7 A Yes.

8 Q In those prior procedures, did your report or  
9 declaration conclude with what lawyers like to refer to as  
10 jurat, a paragraph or two, reflecting your statement that  
11 what you were telling was either the truth or what you  
12 believed to be true?

13 A I don't remember one way or the other if there was  
14 such a passage. It would generally have been appended to my  
15 report or declaration by the attorneys.

16 Q If it was so appended by the attorneys, would you read  
17 it?

18 A Of course.

19 Q Do you make an effort to understand it?

20 A Yes.

21 Q Did you ever testify in a proceeding, either civil  
22 litigation or a hearing, before the board or something like

1     that?

2     A       I never testified at all civil litigation or before  
3     the board.

4     Q       Okay.

5     A       That's your question?

6     Q       Yes.

7     A       Yes, I have.

8     Q       You have. Okay. When you testified, were you sworn  
9     in?

10    A       Generally, yes.

11    Q       Do you understand why you were sworn in?

12    A       I assume it's part of court procedure. I never really  
13    thought about it. I verify what I'm going to say is  
14    truthful. I assume that's the purpose of it.

15    Q       And when you were sworn in by the reporter this  
16    morning, did you think about what you were saying?

17    A       Of course.

18                               MR. MURPHY: Objection. Lack of  
19    foundation.

20    BY MR. KELBER:

21    Q       I apologize, Doctor. Let me just take a minute and  
22    see if I can find the right exhibit. So I apologize for

1     that delay. I will show you a document that's been  
2     previously marked in IPR 01147 as Exhibit 1018 and ask you  
3     if you recall preparing that document?

4                     MR. MURPHY: I object to the  
5     introduction of this exhibit for the reasons I stated at the  
6     beginning of the deposition.

7                     MR. KELBER: While you review, I got  
8     to ask you, what reasons do you have for objecting to the  
9     exhibit, wherever it is used?

10                    MR. MURPHY: This declaration  
11    pertains to IPR number 726, so I object to the relevance to  
12    this deposition.

13                    MR. KELBER: Noted.

14    BY MR. KELBER:

15    Q       Did you have an opportunity to review that document,  
16    sir?

17    A       I have.

18    Q       I'm going to hand you yet another document.  
19    Depositions are like that. This one is marked Exhibit 1019  
20    in IPR 2015-01148. What I would like to ask you to do is to  
21    review the two documents that are before you. Have you had  
22    a chance to review those two documents, Exhibit 1018 in

1 proceeding IPR 2015-001147 and Exhibit 1019 in IPR  
2 2015-01148?

3 A Yes.

4 Q Other than the caption, are they substantially  
5 identical, sir?

6 A No.

7 Q In what way are they different?

8 A Exhibit 1018 has a paragraph that does not appear in  
9 Exhibit 1019.

10 Q And which paragraph is that, sir?

11 A It would be paragraph number seven in Exhibit 1018.

12 Q Great. Now, did you prepare both the documents that  
13 are before you?

14 A Yes.

15 Q Did you sign both of them?

16 A This is my signature on page three of both documents.

17 Q Is that your signature or the affixation of an  
18 electronic text representation?

19 A I'm not sure I understand your question.

20 Q Did you physically sign it, or did you have appended  
21 to the document an electronic signature, a text or graphic  
22 reflecting a stored signature?

1 A I'm not sure I understand your question.

2 Q Did you sign it with a pen?

3 A I signed this signature with a pen, and then in order  
4 to facilitate transmitting it electronically to the  
5 attorneys from Microsoft, I took a facsimile of that  
6 signature and put it on the page, but I did the action of  
7 imprinting this signature facsimile on page three of each of  
8 these documents.

9 MR. KELBER: Can I hear that answer  
10 back, please?

11 (The Court Reporter read back the  
12 last answer.)

13 BY MR. KELBER:

14 Q How did you take the facsimile of your signature?

15 A With my cell phone.

16 Q So, if I understand you correctly, you took a photo of  
17 your signature placed somewhere with your cell phone and  
18 then applied that image to the bottom of the page that is  
19 Exhibit 1019; is that accurate?

20 A That would be -- that would be a pretty good  
21 representation of what happened.

22 Q Is there more? I know, it is not a story, but is

1     there more to the way your signature became affixed to the  
2     end of let's just take Exhibit 1019, beyond that?

3                     MR. MURPHY:   Object to form.

4                     THE WITNESS:   I have no idea what  
5     you're talking about.   In my view, I signed these documents  
6     and then transmitted them.

7     BY MR. KELBER:

8     Q         I understand your view, sir.

9     A         That's my view.

10    Q         But your view is not the same as the question.   Your  
11    view is not responsive to the question I asked.

12    A         You asked me if there is some other story.   There is  
13    no other story.

14    Q         What I asked you, and you said that was an accurate  
15    representation, what I was asking you is there any  
16    additional information I should have included in my  
17    description of the events that went forward so that your  
18    signature was affixed to the bottom of these pages?

19                     MR. MURPHY:   Object to form.

20                     THE WITNESS:   You are asking me if  
21    there are any other questions, so I say to you, do you have  
22    any other questions?

1 BY MR. KELBER:

2 Q Well, I do have another question.

3 A Okay.

4 Q Your signature on Exhibit 1019 of IPR 201501148 and  
5 IPR 20151147, Exhibit 1018 look remarkably similar.

6 A Okay.

7 Q Did you take a -- I will use your term -- your  
8 words -- did you prepare a different facsimile for each  
9 declaration and affix your signature one by one, or did you  
10 prepare one facsimile of your signature and apply that same  
11 facsimile to each of your declarations in these five IPRs?

12 MR. MURPHY: Objection. Foundation.

13 THE WITNESS: I don't recall. It  
14 could have been a mixture.

15 BY MR. KELBER:

16 Q Let's see if we can refresh your testimony -- refresh  
17 your recollection. Sorry.

18 MR. KELBER: I'm going to ask the  
19 reporter to mark a new document in IPR 201501148 as Exhibit  
20 2007.

21 (Four pages of second declaration of  
22 Mark Hornstein regarding U.S. Patent No. 7,498,749 marked

1 Exhibit 2007, for identification.)

2 BY MR. KELBER:

3 Q Have you seen Exhibit 2007 before, Dr. Hornstein?

4 A Yes.

5 Q And that has your signature affixed to the last page  
6 as well, doesn't it?

7 A That's correct.

8 Q And it looks remarkably similar to the signature that  
9 you applied to the exhibit we had been discussing  
10 previously, Exhibit 1019; correct?

11 A Yes, sir.

12 Q It was, in fact, applied with the exact same facsimile  
13 that you prepared in connection with Exhibit 1019 in IPR  
14 2015-01148, wasn't it?

15 A No.

16 Q You made a fresh one?

17 A No.

18 Q How did it come to be signed, sir, if that's Exhibit  
19 2007?

20 A Exhibit 2007 was signed by a pen.

21 Q Why sign one 2007 with a pen and the previous one with  
22 a facsimile signature?

1     A       Very simple. The one that was signed with a facsimile  
2     of my signature I signed back in Boston and sent them to the  
3     attorneys by e-mail attachment. Whereas, this document I  
4     signed on the physical page here.

5     Q       You signed them in Philadelphia?

6     A       That's correct.

7     Q       And handed them. When was the facsimile that you  
8     affixed to Exhibit 1019 prepared?

9     A       Well, whenever I signed it. The date that it  
10    indicated.

11    Q       Are you sure?

12    A       That or thereabouts. I usually am -- I usually  
13    sign -- I usually add the date to the signature, add the  
14    date on the day I impress the facsimile signature.

15    Q       What do you do when you are not doing it in your usual  
16    fashion?

17    A       I don't understand the question.

18    Q       You said you -- you are not sure you said. You  
19    usually do it in the fashion you recited. What do you do at  
20    other times?

21    A       If there is already a date on the document, then I  
22    might not change it.

1 Q Who affixed the date on the document that, for  
2 instance, is before you as Exhibit 1019 in IPR 2015-01148?

3 A I don't recall.

4 Q You don't recall. And yet you prepared the rest of  
5 that document, did you not?

6 A That's right.

7 Q In fact, the attorney that provided you this document  
8 that is Exhibit 1019 in IPR 2015-01148 affixed or provided  
9 or inserted or somehow typed that date, didn't he?

10 A I don't recall. It could have been me. It could have  
11 already been on the most recent draft of the document that  
12 we had been working with. I don't recall.

13 Q Is it possible that you affixed your facsimile of your  
14 signature prior to the date that's reflected on that  
15 document?

16 A I would highly doubt it.

17 Q Why?

18 A Because I'm always aware that a date has to accompany  
19 the signature.

20 Q Why is that important?

21 A I don't know, but any time you sign any document that  
22 has any legal bearing in life, it needs a date, so I assume

1     this document needs a date. I don't really know.

2     Q       Why was the final paragraph in Exhibit 2017 --  
3     sorry -- 2007 added beyond the text of the corresponding  
4     document which is Exhibit 1019 in IPR 2015-0001148?

5     A       The way it was presented to me after the original  
6     version without I assume you are talking about paragraph  
7     eight, declaration of information I believe are true -- the  
8     way it was presented to me was that that last paragraph  
9     needed to be on the document for legal reasons and,  
10    therefore, this particular declaration had to be redone with  
11    that paragraph added.

12   Q       Do you know what legal reasons there were?

13                               MR. MURPHY: Objection. Calls for  
14   legal conclusion.

15   BY MR. KELBER:

16   Q       I'm not asking you for any conclusion, sir. You said  
17   that you were told it was provided for legal reasons. To  
18   the best of your knowledge, what are those legal reasons?

19                               MR. MURPHY: Same objection.

20                               THE WITNESS: Well, it would certify  
21   that I declare that all statements made herein of my own  
22   knowledge are true and that all statements made upon

1 information and belief are true and further that the  
2 statements were made with the knowledge that willful false  
3 statements and the like so made are punishable by fine or  
4 imprisonment or both under Section 1101 of Title 18 of the  
5 United States Code.

6 BY MR. KELBER:

7 Q Was that not true of your earlier declaration?

8 A Of course, it was true. I wouldn't sign a document  
9 that I didn't testify before or stand behind.

10 Q Let me ask you to read just -- you don't have to read  
11 it aloud. You did a fine job of that. But read that first  
12 clause. It's a single sentence that you read, but there is  
13 a semicolon. Do you see that?

14 A No.

15 Q Paragraph eight after the word true.

16 A There is a semicolon after true.

17 Q So just read from the beginning of that paragraph to  
18 the semicolon, please, and let me know when your done.

19 A Okay.

20 Q Does that clause make any sense to you?

21 MR. MURPHY: Object to form.

22 THE WITNESS: The clause says that I

1 am declaring that all statements made herein of my own  
2 knowledge are true and that all statements made on  
3 information and belief are true. That's what it says.

4 BY MR. KELBER:

5 Q If you made those statements on information and  
6 belief, information and belief, not your own knowledge, how  
7 on earth can you testify that they are true?

8 MR. MURPHY: Object to foundation.  
9 Calls for legal conclusion. Form.

10 BY MR. KELBER:

11 Q How on earth can you do that, sir?

12 MR. MURPHY: Objection.

13 THE WITNESS: I don't understand  
14 your question.

15 BY MR. KELBER:

16 Q Well, understand that you swear that the statements  
17 made of your own knowledge in this Exhibit 01148. Sorry.  
18 My apologies. Exhibit 2007 in IPR 2015-01148. The  
19 statements made of your own knowledge are true. But how on  
20 earth can you warrant the statements that you're making on  
21 information are true?

22 MR. MURPHY: Same objections.

1 THE WITNESS: I don't understand  
2 your question.

3 BY MR. KELBER:

4 Q Well, you hear something on the internet. That's  
5 information. Can you warrant that it's true?

6 MR. MURPHY: Objection. Form and  
7 lack of foundation.

8 THE WITNESS: But I didn't quote any  
9 statement on the internet in this declaration.

10 BY MR. KELBER:

11 Q Did you make any statements in this declaration that  
12 were made not of your only personal knowledge, but on the  
13 basis of information?

14 MR. MURPHY: Object to form.

15 BY MR. KELBER:

16 Q Do you not understand that question, sir, because your  
17 attorney has trouble with it. So I'm going to ask it again.  
18 You say in paragraph eight of your declaration that all  
19 statements made in the declaration of your own knowledge are  
20 true and that all statements made on information and belief  
21 are true. Are there any statements in Exhibit 1007 of  
22 IPR -- I apologize -- Exhibit 2007 of IPR 2015-01148 that

1 are made on information and belief?

2 MR. MURPHY: Same objections.

3 THE WITNESS: You have to tell me  
4 what you mean by information and belief.

5 BY MR. KELBER:

6 Q Whatever you meant, sir, when you signed, according to  
7 your testimony, Exhibit 2007 on June 9, 2016?

8 A Well, any statements in the declaration that are made  
9 on information and belief I stand behind. That's what that  
10 means.

11 Q What does it mean to stand behind?

12 A Means I didn't make any false statements. I didn't  
13 lie, and I didn't commit perjury in declaring this document.  
14 As far as I'm concerned, that's what that statement says.

15 Q Well, what's the difference between your declaration,  
16 a statement made of your own knowledge and one made on  
17 information and belief?

18 MR. MURPHY: Same objections.

19 THE WITNESS: Well, the best I can  
20 answer your question is I made statements based on my own  
21 knowledge and opinion, and I made statements based on  
22 documents prepared by others. For example, patent owners'

1 response, Dr. Morley's declaration and his deposition. So  
2 to the extent that information in those documents does not  
3 reflect my own opinion or I can't testify that those  
4 documents were prepared truthfully, I have to -- I have to  
5 assume that the information in those documents is true in  
6 making my own declaration.

7 BY MR. KELBER:

8 Q You refer to statements and opinions. Is there a  
9 difference between the two?

10 MR. MURPHY: Object to form.

11 Foundation.

12 THE WITNESS: Don't know.

13 BY MR. KELBER:

14 Q You don't know. If you used the word, sir, who would  
15 know?

16 MR. MURPHY: Same objection.

17 THE WITNESS: You have to expand  
18 your question. I don't understand it.

19 BY MR. KELBER:

20 Q Let me try it again from the top because perhaps I  
21 misheard you.

22 A Okay.

1 Q Are there statements made in this Exhibit 2007 that  
2 were made of your own knowledge, not your opinion, just your  
3 own knowledge?

4 A Some of the statements are opinions and some are  
5 knowledge, and I would have to go through each statement one  
6 by one to identify them.

7 Q Could you identify one of each for me, please?

8 A Let's start at the beginning. My name is Mark  
9 Hornstein. That's knowledge. I'm the same Mark Hornstein  
10 who signed and submitted a declaration on May 12, 2015.  
11 That's knowledge. I reviewed patent owners' response and  
12 related exhibits, deposition transcript. That's knowledge.  
13 And then an opinion is nothing expressed in any of these  
14 documents changes my opinion.

15 Q Thank you. Appreciate that. Now, you said you signed  
16 and submitted a declaration on May 12, 2015, and that was  
17 knowledge. But, in fact, you did not sign that. You  
18 affixed a facsimile; is that correct?

19 A That's signing.

20 MR. MURPHY: Excuse me, Dr.  
21 Hornstein. Please let me assert my objections. Objection  
22 to form and foundation. And you can answer the question, if

1     you haven't.

2                                 MR. KELBER:   He did answer.

3                                 THE WITNESS:   That is signing it in  
4     my -- in my view as a legal expert.   I'm sorry.   As a  
5     technical expert that is signing it.

6     BY MR. KELBER:

7     Q         Could anybody equipped with the same cell phone that  
8     you used have captured your signature on some document and  
9     affixed it to Exhibit 2007?

10                                MR. MURPHY:   Objection.   Form and  
11     foundation.

12                                THE WITNESS:   No more so than a  
13     person could forge my signature with a pen.   Same situation.

14     BY MR. KELBER:

15     Q         Same situation?

16     A         The fact is I signed these documents.

17     Q         Is that your legal opinion, sir?

18     A         No.

19                                MR. MURPHY:   Objection.

20                                THE WITNESS:   No.   It's my opinion  
21     as a technical expert.

22     BY MR. KELBER:

1 Q And what is the nature of your -- let's take it one at  
2 a time. What's the nature of your education that leads you  
3 to conclude that affixing an electronic text rather than  
4 actually signing a document is for legal purposes signing  
5 that document?

6 MR. MURPHY: Objection. Form.  
7 Foundation.

8 THE WITNESS: You are asking for a  
9 legal conclusion.

10 BY MR. KELBER:

11 Q No, sir. You said that's your opinion as a technical  
12 expert. I'm asking you as a technical expert, what is the  
13 background or education or other source of knowledge that  
14 you're relying on for your technical opinion?

15 MR. MURPHY: Same objection.

16 THE WITNESS: Anyone can sign a PDF  
17 document using an Adobe PDF signature and anyone can sign an  
18 Adobe document with a facsimile signature. In my lengthy  
19 experience in signing all sorts of things, that's a very  
20 common practice. If it does not meet some very strict  
21 narrow legal requirement, then I don't have an opinion about  
22 that. My opinion is I sign these documents and attest to

1 the fact that they are my true opinions.

2 BY MR. KELBER:

3 Q Ever sign a document before a notary?

4 A Yes, sir.

5 Q Do you know why there is a requirement for signing  
6 before a notary on some documents?

7 A I would only be speculating.

8 Q I don't ask you to speculate, sir, not outside of your  
9 technical expertise. But are you familiar with the  
10 notarization that says this person actually appeared before  
11 me?

12 A Yes, sir.

13 Q Now, you couldn't comply with that notarization and at  
14 the same time affix an electronic signature before or after  
15 the date on the document, could you?

16 MR. MURPHY: Object to form,  
17 foundation.

18 THE WITNESS: Ask that question  
19 again.

20 BY MR. KELBER:

21 Q Sure. If the notary, an independent certified notary,  
22 affixes the notary signature to a statement that you, Mark

1     Hornstein, physically appeared before the notary and signed  
2     it, that's a little bit different than affixing your  
3     signature via an electronic image, isn't it?

4                     MR. MURPHY:   Same objections.

5                     THE WITNESS:   That's true.

6     BY MR. KELBER:

7     Q         Okay.   Your attorney has some concerns about the form  
8     and foundation.   I want to address those.   Is that last  
9     question I asked you unclear?

10    A         You mean signing before a notary is different from  
11    affixing an electronic facsimile?

12    Q         Yes, sir.

13    A         That question is clear.

14    Q         And you had indicated that you are familiar with both  
15    the process of affixing an electronic signature in to a  
16    document and signing before a notary; correct?

17    A         That's correct.

18    Q         Because we have multiple documents in multiple  
19    proceedings, and there is an objection to relying on one for  
20    all, I'm going to ask the reporter to mark Exhibit 2008.

21                     (Five pages of second declaration of  
22    Mark Hornstein regarding U.S. Patent No. 7,329,970 marked

1 Exhibit 2008, for identification.)

2 BY MR. KELBER:

3 Q I'm handing you Exhibit 2008. Now, I want to make it  
4 clear that 2008 bears the caption IPR 2015-01149 and  
5 references U.S. patent 7329970, which is not true of Exhibit  
6 2007. So I don't want to make it appear that they are in  
7 somehow some kind of sequential order. But you've seen  
8 Exhibit 2008, as well as 2007; correct?

9 A Yes.

10 Q And you signed 2008 as well; correct?

11 A Yes.

12 Q And that signature was affixed in counsel's office;  
13 correct?

14 A Actually I think it was not, and I'm not sure that the  
15 signature on 2007 was affixed in counsel's office either.  
16 I'm thinking back and I think they were both also affixed as  
17 facsimile signatures.

18 Q Okay. So I just want to be clear. The signatures  
19 that appear at the end of 2007 and 2008 were prepared and  
20 affixed to the end of the documents in the same fashion that  
21 you explained earlier with respect to Exhibit 1019 in IPR  
22 2015-01148; correct?

1 A Well, that's correct.

2 Q Did something jog your memory to suggest to you that  
3 they weren't signed by hand, but rather reflected an  
4 affixation of an electronic text?

5 A What do you mean by affectation?

6 Q I'm sorry. I mean to say affixation?

7 A Affixation.

8 Q They were put on the document by electronic text?

9 A That's correct. Something did.

10 Q Can you tell me what that was?

11 A Yes. I heard from the attorneys from Microsoft on or  
12 before June 9th that they realized that this last disclaimer  
13 paragraph beginning with "I declare" and ending in "United  
14 States Code" should have been appended to these documents,  
15 and would I sign revised versions with that appendix, that  
16 extra paragraph appended, and so I did that also by e-mail.

17 Q Without telling me what it was, was there a discussion  
18 between you and the attorneys at Microsoft or for Microsoft  
19 as to the meaning or substance of that additional paragraph?

20 MR. MURPHY: Objection on the  
21 grounds of privilege, but I believe that's a yes-or-no  
22 question which you may answer.

1 THE WITNESS: Could you read his  
2 question back?

3 (The Court Reporter read back the  
4 last question.)

5 THE WITNESS: Yes.

6 BY MR. KELBER:

7 Q Did that discussion help you to understand what is  
8 meant by all statements made on information and belief are  
9 true?

10 MR. MURPHY: Objection to privilege.  
11 Yes-or-no question or a yes-or-no answer is acceptable.

12 THE WITNESS: No.

13 BY MR. KELBER:

14 Q In fact, you did not discuss that aspect of your  
15 appended declaration paragraph at all with the Microsoft  
16 counsel, did you?

17 MR. MURPHY: Same objection. Asked  
18 and answered. Yes or no is acceptable.

19 THE WITNESS: I'm sorry. What do  
20 you mean at all?

21 BY MR. KELBER:

22 Q You didn't talk about it with them?

1 A I'm sorry. What's it?

2 Q The meaning -- let me be more expansive. The meaning  
3 of that first clause of paragraph ten of Exhibit 2008?

4 MR. MURPHY: Objection. Because  
5 there is a privilege issue at stake, I just want to make  
6 sure it is clear what the question is so I know how to make  
7 my objection. If you would like the reporter to read it  
8 back, that's fine, or rephrase it.

9 THE WITNESS: I am unclear on the  
10 question.

11 BY MR. KELBER:

12 Q I'll rephrase. I'm going to read the statement that  
13 I'm most concerned about, and then I will ask you a question  
14 about it. Fair enough?

15 A Okay.

16 Q Paragraph ten, first clause reads, I declare that all  
17 statements made herein of my own knowledge are true, and  
18 that all statements made on information and belief are true.  
19 Did you have a discussion with the Microsoft counsel as to  
20 the meaning of that clause?

21 MR. MURPHY: Objection. Privilege.  
22 Yes-or-no answer only, please.

1 THE WITNESS: I'm not sure.

2 BY MR. KELBER:

3 Q Are you not sure because you're uncertain whether you  
4 can answer, or are you not sure because your memory is not  
5 precise on that?

6 A None of the above.

7 Q Can you describe for me without revealing any  
8 discussion with counsel at this point in time why you are  
9 unsure?

10 MR. MURPHY: Privilege objection.

11 THE WITNESS: I've seen this clause  
12 previous to these IPR proceedings and other expert reports.  
13 So was my understanding that it was paragraph I had seen  
14 before and as to whether the attorneys and I talked about it  
15 in detail, I don't recall.

16 BY MR. KELBER:

17 Q And you don't recall -- sorry. Strike that.

18 You don't recall whether you had a  
19 discussion with the attorneys with respect to that statement  
20 that appears on a declaration dated June 9, 2016; is that  
21 correct?

22 A Sorry.

1 Q You don't recall whether you had a discussion with  
2 Microsoft's counsel regarding that first clause that I read  
3 aloud in paragraph ten as it appears in your declaration  
4 dated June 9, 2016?

5 A It is not the same question you asked before.

6 Q I'm asking that question now.

7 A So your question is: Did we have a discussion about  
8 that clause? That's your question?

9 Q Let's go back and reconstruct because, yes, I asked  
10 that question and I thought your response was you don't  
11 recall?

12 A You asked a different question just now than you did  
13 before.

14 Q I did, Doctor. Let me start over.

15 A Perhaps I misunderstood the first and second question.

16 Q Well, I don't want any misunderstandings.

17 A Okay.

18 Q That first clause that reads, I declare that all  
19 statements made herein of my own knowledge are true, and  
20 that all statements made on information and belief are true,  
21 that's the clause I'm talking about in this question. Okay?

22 A Okay.

1 Q Did you have a discussion with counsel for Microsoft  
2 as to the meaning of that statement in connection with your  
3 execution of documents 2007 and 2008?

4 MR. MURPHY: Objection. Privilege.  
5 Yes-or-no answer, please.

6 THE WITNESS: I'll say yes.

7 BY MR. KELBER:

8 Q So your answer is yes. Do you recall who you spoke  
9 with?

10 MR. MURPHY: Objection. Privilege.  
11 Yes-or-no answer, please.

12 MR. KELBER: Whoa. Whoa. Whoa.  
13 Let's back up for a second, counsel. The identity of the  
14 counsel that he might have spoken with is privileged?

15 MR. MURPHY: Well, your question was  
16 if he remembered the identity, and I am just lodging the  
17 objection and permitting him to answer.

18 MR. KELBER: Okay.

19 BY MR. KELBER:

20 Q Let me make my question clear.

21 A Okay.

22 Q Do you remember the name of the counsel that you

1 discussed the meaning of that first sentence of paragraph  
2 ten that appears on your declaration dated June 9, 2016, in  
3 Exhibits 2007 and 2008?

4 MR. MURPHY: Same objection.

5 THE WITNESS: Yes.

6 BY MR. KELBER:

7 Q Who was this counsel?

8 MR. MURPHY: Same objection. Give  
9 the name, if you remember.

10 THE WITNESS: Ms. Dukmen.

11 BY MR. KELBER:

12 Q What did you ask her?

13 MR. MURPHY: Objection. Privileged.

14 The substance of the conversation they had is definitely  
15 protected by attorney-client privilege or work product  
16 protection. I'm not going to let you go in to the substance  
17 of the conversation as far as what words were actually said.

18 MR. KELBER: Are you directing the  
19 witness not to answer?

20 MR. MURPHY: Let me hear the  
21 question again before you answer that. Would you mind  
22 reading the question back?

1 (The Court Reporter read back the  
2 last question.)

3 MR. MURPHY: Yes. I'm directing him  
4 not to answer that.

5 BY MR. KELBER:

6 Q Are you going to follow counsel's direction?

7 A Yes.

8 Q You have seen this so many times before. You said so  
9 yourself, that clause. What could you possibly have to ask?

10 MR. MURPHY: Objection to form.

11 THE WITNESS: My understanding is  
12 any conversations I had with counsel are privileged work  
13 product.

14 BY MR. KELBER:

15 Q That's not what I asked you, sir.

16 A That's what I'm answering.

17 Q Your understanding is incorrect, as a matter of law.  
18 But you're not here as a legal expert, are you?

19 A Well, you are asking me a legal question, so  
20 apparently you are asking me to be a legal expert.

21 Q You changed your declaration in IPR 2015-01148 and IPR  
22 2015-01149; right?

1 MR. MURPHY: Objection. Foundation.

2 THE WITNESS: Correct.

3 BY MR. KELBER:

4 Q And we know that that is true because we can compare  
5 Exhibits 2007 and 2008 with Exhibit 1019 and Exhibit 1020;  
6 right?

7 MR. MURPHY: Same objection.

8 THE WITNESS: That's correct.

9 BY MR. KELBER:

10 Q So why did you change it? The declarations?

11 A I was informed that this -- to me what appears to be a  
12 standard boiler plate paragraph, that it had to be appended  
13 because it had not been put on the original declaration.

14 Q I'm sorry, sir, the very last part of what you said?

15 THE WITNESS: Could you read back my  
16 answer to him?

17 (The Court Reporter read back the  
18 last answer.)

19 BY MR. KELBER:

20 Q You made the determination that the first clause of  
21 the last paragraph of each of these two declarations dated  
22 June 9, 2016, is boiler plate; is that correct?

1 MR. MURPHY: Objection. Foundation.

2 THE WITNESS: I said it appears to  
3 me to be boiler plate.

4 BY MR. KELBER:

5 Q And you acted in accordance with your understanding;  
6 correct? You just signed it?

7 MR. MURPHY: Object to form.

8 THE WITNESS: Sorry. My  
9 understanding of what?

10 BY MR. KELBER:

11 Q That it appeared to be boiler plate?

12 A That's not what I said.

13 Q You said that it appeared to you to be boiler plate;  
14 correct?

15 MR. MURPHY: Object to foundation.

16 THE WITNESS: That is what I said.

17 BY MR. KELBER:

18 Q Is that your opinion?

19 MR. MURPHY: Object to form.

20 THE WITNESS: My opinion is that I  
21 have seen this disclaimer clause before, particular  
22 reference to Section 1011 of Title 18, et cetera.

1 BY MR. KELBER:

2 Q You have seen this exact clause before?

3 A I don't recall if it was the exact clause.

4 Q In fact, Doctor, this clause that I have been asking  
5 you about, that very first portion to this semicolon, you  
6 have never seen before in your life, have you?

7 MR. MURPHY: Object to form.

8 THE WITNESS: Well, I would not be  
9 able to answer that, Counselor.

10 BY MR. KELBER:

11 Q Okay. Why is that?

12 A Because I don't recall. If you want to produce all  
13 the expert reports I have ever written, I could answer your  
14 question.

15 Q You really want to do that, or did you pay attention  
16 and look and know that?

17 MR. MURPHY: Objection. Form and  
18 foundation.

19 BY MR. KELBER:

20 Q You have never seen a clause that concludes all  
21 statements made on information and belief are true, have  
22 you?

1 MR. MURPHY: Object to form.

2 BY MR. KELBER:

3 Q Never ever in your life?

4 MR. MURPHY: Object to form. There  
5 are four questions on the record now.

6 BY MR. KELBER:

7 Q You can answer that one?

8 A Well, counsel informed me there is four questions.  
9 Maybe we can take them one by one.

10 Q You have never ever seen ever in your life a statement  
11 that concludes all statements made on information and belief  
12 are true in the same fashion that the statements appear in  
13 Exhibits 2008 and 20007, have you?

14 A I cannot say that I have not.

15 Q Can you say that you have seen that formulation  
16 before?

17 A I simply don't recall one way or the other. I may  
18 have. I may have not.

19 Q When you see a statement in a declaration that you are  
20 being asked to sign that you are uncertain as to whether you  
21 have seen before, do you ask -- is it your practice to ask  
22 questions about such a statement?

1 A Sometimes.

2 Q Sometimes not; is that correct?

3 A Right.

4 Q I'm sorry?

5 A Yes.

6 Q And your execution of Exhibits 2007 and 2008 on  
7 June 9, 2016, was a time when you did not ask about the  
8 content of that additional paragraph; correct?

9 MR. MURPHY: Object to form.

10 THE WITNESS: That's not true.

11 BY MR. KELBER:

12 Q What did you ask?

13 A I was told not to reveal conversations with attorneys.

14 Q What did you ask, sir?

15 MR. MURPHY: Objection on the  
16 grounds of privilege and work product.

17 Dr. Hornstein, please don't relate  
18 the substance of the conversations you had with counsel.

19 MR. KELBER: Are you now asserting  
20 that the question Dr. Hornstein asked his counsel is  
21 privileged?

22 MR. MURPHY: It is either privileged

1 or it is work product, but I'm not going to let him testify  
2 as to questions that he asked counsel about that paragraph.

3 MR. KELBER: Really? Okay. Note  
4 our objection.

5 BY MR. KELBER:

6 Q What's the difference between -- if all statements --  
7 strike that.

8 If you are in a position to warrant  
9 that all statements made in Exhibit 2007 and 2008 are true  
10 that are made of your own knowledge, and all statements made  
11 on information and belief are also similarly true, what's  
12 the difference between those two statements?

13 MR. MURPHY: Object to form and  
14 foundation.

15 BY MR. KELBER:

16 Q Let me try and clean that up. I apologize for my lack  
17 of clarity.

18 If you are in a position to warrant  
19 that all statements made of your own knowledge are true, and  
20 that all statements made on information and belief are true,  
21 how would someone reading your declaration distinguish  
22 between the truth of one or the other?

1 MR. MURPHY: And the objection is to  
2 form and foundation.

3 THE WITNESS: I think we have been  
4 through this before. Some of the statements in these  
5 declarations are my opinions and others are statements based  
6 on what others have said.

7 BY MR. KELBER:

8 Q And you know that the statement that you assert based  
9 on what others have said are true?

10 MR. MURPHY: Same objections.

11 THE WITNESS: What I am saying is to  
12 the best of my knowledge what I have put in to the  
13 declaration is true. That's what I'm saying.

14 BY MR. KELBER:

15 Q Doesn't say to the best of your knowledge, does it? I  
16 mean, it's straight out there. This is true; isn't that  
17 correct?

18 A I'm not sure I understand your question.

19 Q Well, I'm no legal expert, sir, not often anyway. But  
20 you said what you're saying is, to the best of my knowledge  
21 these things are true. Isn't that what you just told me?

22 A That's what an opinion is.

1 Q Does your declaration reflect opinions?

2 A Some of them.

3 Q 2007 and 2008?

4 A Some of them. Some of the statements made in these  
5 declarations are opinions.

6 Q And as to those, you're saying they're only true to  
7 the best of your knowledge?

8 MR. MURPHY: Objection. Form.

9 THE WITNESS: I'm not sure I  
10 understand your question.

11 BY MR. KELBER:

12 Q You prefaced your answer by saying, no, I'm saying to  
13 the best of my knowledge. Isn't that what you were saying?

14 A You know full well that's a parenthetical, and you are  
15 trying to narrow it in to a legal term. I'll retract that  
16 parenthetical.

17 Q Spare me your anger, Doctor. It was you, Mark  
18 Hornstein, who made the decision to change your declaration  
19 by adding paragraph ten to Exhibit 2008 and adding paragraph  
20 eight to Exhibit 2007; isn't that correct?

21 A No.

22 MR. MURPHY: Objection. Foundation.

1 BY MR. KELBER:

2 Q Who made that decision?

3 A The decision that the paragraphs needed to be added  
4 was made by counsel.

5 Q And you did what counsel asked you to; is that  
6 correct?

7 A Counsel asked me to add the last disclaimer paragraph,  
8 that's correct.

9 Q And the choice was not yours to change your  
10 declaration; is that correct?

11 MR. MURPHY: Object to form.

12 THE WITNESS: Of course, the choice  
13 was mine.

14 BY MR. KELBER:

15 Q So you are the one, the individual, who made the final  
16 decision to change your declaration on June 9, 2016;  
17 correct?

18 MR. MURPHY: Object to form,  
19 foundation.

20 THE WITNESS: That would be true.

21 BY MR. KELBER:

22 Q So I appreciate, but you're angry about being asked

1 for the reason?

2 A Oh, I'm not angry.

3 Q You seemed angry, sir. I'm glad you are not angry.

4 MR. MURPHY: Dr. Hornstein, allow  
5 counsel to ask questions and allow him to answer the  
6 question.

7 BY MR. KELBER:

8 Q I'm glad you are not angry. I didn't want you to be  
9 angry, but I have never seen -- these are referred to as  
10 jurats. I had never seen a jurat that said that all  
11 statements made on information and belief are true, and I  
12 don't think you have either and I'm asking, have you ever  
13 seen such a jurat?

14 MR. MURPHY: Objection. Foundation.  
15 Form.

16 THE WITNESS: I think I already  
17 answered that question. I may have or I may have not. I  
18 don't recall.

19 BY MR. KELBER:

20 Q Did you ever actually recall seeing words not to that  
21 effect, but those words?

22 MR. MURPHY: Same objection.

1 THE WITNESS: I just said, I don't  
2 recall one way or the other.

3 BY MR. KELBER:

4 Q Well, if you don't recall -- my question to you is not  
5 so complicated. My question is: Do you recall ever seeing  
6 a document of any type with those exact words?

7 MR. MURPHY: Objection to form and  
8 foundation. Asked and answered.

9 THE WITNESS: I could not name the  
10 specific document, but I'm sure I have seen this clause.

11 BY MR. KELBER:

12 Q You are sure you have seen this exact clause; is that  
13 right?

14 A If I had to answer yes or no, I would say I have seen  
15 it somewhere, but I could not identify the document.

16 Q Would it had been in an IPR, this document that you  
17 can't identify, but you do recall?

18 MR. MURPHY: Objection. Form.

19 THE WITNESS: Don't remember.

20 BY MR. KELBER:

21 Q But you know you've seen it?

22 MR. MURPHY: Objection to form.

1 THE WITNESS: I think what I said is  
2 I recall having seen it.

3 BY MR. KELBER:

4 Q Is there a difference between what I asked you and  
5 your formulation?

6 A Yes.

7 Q What is the difference, sir?

8 A You're asking me if I remember, and what I'm saying is  
9 it's more likely than not that I remember seeing it, but I  
10 cannot identify the document.

11 Q Some people say depositions are supposed to be  
12 precision conversations. Some people say otherwise. I'm  
13 trying to be precise here, Doctor, because it makes a  
14 difference. You made the final decision on June 9, 2016, or  
15 thereabouts to change your declaration to adopt the language  
16 that you say you have seen before. My belief, Doctor -- but  
17 I don't share your memories, my belief says you have never  
18 seen a clause structured quite that way, and I think as a  
19 technical expert, you can look at this and say, well, if all  
20 statements made herein of my own knowledge are true, and all  
21 statements made herein on information and belief are true,  
22 why distinguish between those two sets of statements?

1 MR. MURPHY: Object to form and  
2 foundation.

3 THE WITNESS: I'm not sure I  
4 understand your question.

5 BY MR. KELBER:

6 Q Well, if it is all true, why not just say so?

7 MR. MURPHY: Object to form.

8 THE WITNESS: Not sure.

9 BY MR. KELBER:

10 Q You are not sure and yet you signed this because it  
11 was important to make it a legal document?

12 MR. MURPHY: Object to form.

13 THE WITNESS: That's my  
14 understanding.

15 BY MR. KELBER:

16 Q So you accepted the representation from counsel that  
17 you needed to append this final paragraph without  
18 questioning that; is that accurate?

19 MR. MURPHY: Objection to form and  
20 foundation.

21 THE WITNESS: No.

22 BY MR. KELBER:

1 Q I'm going to ask again please wait for your counsel to  
2 make an objection.

3 What did you ask about it?

4 MR. MURPHY: Objection. I'm going  
5 to exercise my right to take a recess to discuss that  
6 privilege objection.

7 MR. KELBER: That's great. Going to  
8 be about time for a recess anyway.

9 MR. MURPHY: Hold that question.

10 - - -

11 (Recess taken from 11:06 to 11:26 a.m.)

12 - - -

13 MR. MURPHY: I think there is a  
14 pending question, so if you may re-read it.

15 (The Court Reporter read back the  
16 last two questions.)

17 BY MR. KELBER:

18 Q Is it correct, Dr. Hornstein, that you accepted the  
19 representation from Microsoft's counsel that you needed to  
20 append the final paragraph to each of Exhibits 2007 and 2008  
21 without discussing the significance of those paragraphs?  
22 Yes or no?

1     A       No.

2     Q       What did you ask Microsoft's counsel with respect to  
3     those two final paragraphs?

4                   MR. MURPHY:  Objection on grounds of  
5     privilege and work product.  Instruct the witness not to  
6     answer any questions that would reveal the substance of our  
7     conversations.

8                   However, having had the opportunity  
9     during the break to discuss the privilege issue with the  
10    witness, I would be okay allowing the witness to answer this  
11    yes-or-no question if it is of interest.  And that is:  Does  
12    the witness remember any of the questions, if there were  
13    any, that he asked counsel for Microsoft?

14                  MR. KELBER:  That's not as  
15    interesting as the other question.

16   BY MR. KELBER:

17   Q       But please answer the question that counsel for  
18    Microsoft has framed.

19   A       I don't remember.

20   Q       If there were any such conversations, Dr. Hornstein,  
21    would they have likely occurred on or about June 9, 2016?

22                  MR. MURPHY:  Objection.  Foundation.

1 THE WITNESS: Probably. Yes.

2 BY MR. KELBER:

3 Q Have you signed any legal documents between June 9,  
4 2016, and today?

5 A Yes.

6 Q Can you tell me without disclosing the content the  
7 nature of those documents?

8 A They were declarations.

9 Q But they were not prepared in connection with IPRs  
10 01147 through 1151; is that correct?

11 A I don't remember.

12 Q Do you take any medication, Doctor, that might affect  
13 your short-term memory?

14 A No.

15 Q At any time prior to June 9, 2016, have you ever been  
16 asked by counsel to re-sign a substantially-identical  
17 declaration, but simply adding a paragraph similar to the  
18 final paragraph of Exhibits 2007 and 2008?

19 A Yes.

20 Q What happened in connection with that, generally? Why  
21 did that happen?

22 MR. MURPHY: Object to form.

1 THE WITNESS: The paragraph had not  
2 been appended to the original declaration.

3 BY MR. KELBER:

4 Q And that happened before the events that occurred in  
5 connection with 2007 and 2008; is that correct?

6 A That's correct.

7 MR. MURPHY: Object to form.

8 THE WITNESS: That's right.

9 BY MR. KELBER:

10 Q Is it really your position, Doctor, that the plain and  
11 ordinary meaning of the term luminous visible location  
12 indicator is a visible indicator that helps the user locate  
13 a particular part of the device in which that visible  
14 location indicator is found?

15 MR. MURPHY: Object to foundation.

16 THE WITNESS: I have to look at the  
17 exact wording in my declaration.

18 BY MR. KELBER:

19 Q That we can do. Take a look at paragraph three of  
20 Exhibit 2008?

21 THE WITNESS: Can you read back his  
22 question?

1 MR. KELBER: I'll rephrase it.

2 BY MR. KELBER:

3 Q Is it true that your opinion as a technical expert,  
4 Doctor, that the plain and ordinary meaning of the term  
5 luminous visible location indicator is a visible indicator  
6 that helps the user locate a particular part of the device  
7 in which the location indicator is found?

8 MR. MURPHY: Objection. Foundation.

9 THE WITNESS: Yes.

10 BY MR. KELBER:

11 Q So it could -- that luminous indicator could identify  
12 a piece of the device and satisfy that term visible luminous  
13 or -- I'm sorry -- luminous visible location indicator; is  
14 that correct?

15 MR. MURPHY: Object to form.

16 THE WITNESS: Yes.

17 BY MR. KELBER:

18 Q The cell phone that you used to capture your signature  
19 as a graphic image and then affix it to the declarations  
20 that we have been discussing, does that cell phone have more  
21 than one luminous visible location indicator?

22 MR. MURPHY: Objection. Foundation.

1     Relevance.

2                                 THE WITNESS:   Yes.

3     BY MR. KELBER:

4     Q       Is each icon on the display of your cell phone a  
5     visible location indicator that is illuminated?

6                                 MR. MURPHY:   Object to form and  
7     relevance.

8                                 THE WITNESS:   You mean each icon  
9     separately?

10    BY MR. KELBER:

11    Q       Yes, sir.

12    A       Well, that would depend.

13    Q       On what?

14    A       Well, an icon is just graphic.  It is composed of  
15    luminous elements on the screen.

16    Q       So is an icon not -- since you used it -- your cell  
17    has a camera, your cell phone has a camera of some type;  
18    right?

19    A       Yes.

20    Q       And on the display of your cell phone there is an icon  
21    that reflects the camera function; correct?

22                                 MR. MURPHY:   Objection to form.

1 Relevance.

2 MR. KELBER: I'll take your  
3 continuing objection on relevance.

4 MR. MURPHY: Thank you.

5 THE WITNESS: Okay. Yes. That's  
6 true.

7 BY MR. KELBER:

8 Q Is that icon a luminous visible location indicator, in  
9 your opinion?

10 MR. MURPHY: Object to form.

11 THE WITNESS: The question really  
12 makes no sense.

13 BY MR. KELBER:

14 Q Well, you said a luminous visible location indicator  
15 is a visible indicator that helps the user locate a  
16 particular part of a device; correct?

17 A That's correct. That's what I say in paragraph three.

18 Q And to locate that part of the camera that  
19 activates -- I'm sorry -- that matter of the cell phone that  
20 activates the camera, you have to know where that icon is;  
21 correct?

22 MR. MURPHY: Objection. Foundation,

1 form.

2 THE WITNESS: That's true.

3 BY MR. KELBER:

4 Q And so is the icon that appears on your display in  
5 that respect a visible location indicator that is luminous  
6 when the screen is illuminated?

7 MR. MURPHY: Same objections.

8 THE WITNESS: The icon itself?

9 BY MR. KELBER:

10 Q Yes. Let's start there?

11 A The icon in and of itself is not a luminous indicator.

12 Q Why not, sir, if a visible location indicator which is  
13 luminous can identify a particular part of the device,  
14 according to your opinion, why isn't the camera icon such a  
15 visible location indicator?

16 A The icon is a virtual image. It's not a real thing.

17 Q In what way is it distinguishable from the image of a  
18 caller's telephone number?

19 MR. MURPHY: Object to form.

20 THE WITNESS: They're both virtual  
21 images. So other than one is alpha numeric and the other is  
22 graphic.

1 BY MR. KELBER:

2 Q But you would say the telephone number display is, in  
3 fact, a luminous visible location indicator, wouldn't you?

4 MR. MURPHY: Objection to  
5 foundation.

6 THE WITNESS: I don't think so.

7 BY MR. KELBER:

8 Q I'm going to hand you a document that's been  
9 previously identified as Microsoft Exhibit 1004. Take the  
10 time you need to review this document. I think you have  
11 seen it before. But take a look through it, and then I will  
12 have some questions when you are done reviewing it. Is  
13 there a luminous visible location indicator in Microsoft  
14 Exhibit 1004?

15 A Well, as I have indicated in my declaration, the  
16 luminous visible indicator is located in the area identified  
17 in figure one as display area 130.

18 Q And that's a telephone number; correct?

19 A No.

20 Q Take a look at figure two. Doesn't area 130 identify  
21 a telephone number? Actually, Doctor, I know you are going  
22 to read ahead to other things, but the question really is

1 take a look at figure two. Doesn't the reference character  
2 you identified, reference character 130, identify a display  
3 of a telephone number?

4 A No.

5 Q What does it identify?

6 A It's just called a display area.

7 Q I asked you to look at figure two, sir?

8 A I'm looking at figure two.

9 Q And you do not see a telephone number identified in  
10 the display area that is figure 130?

11 A There is a telephone number that is depicted in the  
12 display area. Display area 130, I'll point out that the  
13 numeral 130 does not point to the telephone number.

14 Q Is the area provided with the telephone number a  
15 luminous visible location indicator?

16 A I'm not sure I can answer the question as you've posed  
17 it.

18 Q What additional information do you require?

19 A You said display area with the telephone number which  
20 implies that the telephone number is the luminous indicator.

21 Q That's not what I asked you, sir, so I will ask the  
22 question again.

1 A Okay.

2 Q Is display area 130, as shown in figure two, of U.S.  
3 patent 6125286 a luminous visible location indicator?

4 A Is the display area a luminous visible location  
5 indicator. That's your question?

6 Q Try again. Is the display area, as shown in figure  
7 two, of U.S. patent 6125286 a luminous visible location  
8 indicator?

9 A I have to answer your question by noting that that  
10 same area 130 is depicted in one -- figure one without the  
11 telephone number. So I conclude the telephone number is  
12 just for informational purposes and merely has no bearing on  
13 the question.

14 Q Can you answer it anyway, sir?

15 A And then the second part is, is that display area, is  
16 it a visible luminous indicator? The answer is that each of  
17 the individual segments that comprise that display can serve  
18 as a visible luminous indicator.

19 Q Let me back up to a conversation we had at the  
20 beginning of this deposition. I appreciate that you have  
21 many opinions and many important facts to import. Your  
22 attorney will ask you for them at the appropriate time.

1 Your job now is to ask -- sorry -- answer questions that I  
2 ask that you can understand.

3 A Uh-hum.

4 Q Can you understand the question that I asked as  
5 follows: Is reference -- sorry -- is display area 130, as  
6 shown in figure two, a luminous visible location indicator,  
7 as you use the term in your declaration?

8 A Just the question as you just asked it?

9 Q Yes, sir.

10 THE WITNESS: Can you read back the  
11 question?

12 (The Court Reporter read back the  
13 last question.)

14 THE WITNESS: Same answer I just  
15 gave. Individual segments that comprise the display are any  
16 one of them can be a luminous indicator.

17 BY MR. KELBER:

18 Q Is the answer to my question then no?

19 A I think I just said that the answer is yes.

20 Q Same question with regard to display area 130 as shown  
21 in figure one.

22 MR. MURPHY: Objection to form.

1 THE WITNESS: Same answer.

2 BY MR. KELBER:

3 Q That answer is yes, it is a luminous visible location  
4 indicator, in your opinion; correct?

5 A That's not what I said. I said that any one of the  
6 segments that comprise the display area can be a luminous  
7 visible indicator.

8 Q How many segments comprise the display area of display  
9 130 as shown in figure one?

10 A At least 84.

11 Q And what -- are any of those 84 elements illuminated  
12 in field 130 as shown in figure one?

13 A Hard to say.

14 Q What else would you need to know?

15 A Need more -- actually based on my count of 84,  
16 counting every segment of each alpha numeric character in a  
17 seven-second display, then 130 I would conclude that no  
18 elements are illuminated.

19 Q So is it then a luminous visible location indicator?

20 A I think I already answered your question.

21 Q Answer it again, sir.

22 A Any one of the segments in the display can serve as --

1 Q But none of the segments are illuminated in figure  
2 one; correct?

3 A But they are illuminated in figure two.

4 Q Dr. Hornstein, would it trouble you terribly to answer  
5 my question rather than the question you would like to  
6 formulate?

7 A I think I did answer your question, but --

8 Q I don't think you did, sir. Are any -- let me try it  
9 a different way. It's your testimony that there are  
10 multiple luminous visible location indicators as reflected  
11 in field 130 of figure two; right?

12 A What I said was any one of the segments could serve as  
13 the visible indicator if a bunch of them are on, for  
14 example, to form the telephone number shown in figure two,  
15 then that collection of segments can serve as the visible  
16 luminous indicator.

17 Q So the answer to my questions would be yes; correct?

18 A What was the question?

19 Q Is it, in fact, true that as shown in figure two,  
20 field 130 comprises some luminous elements that according to  
21 your opinion constitute luminous visible location indicators  
22 as the term is used in your declaration?

1     A       That's true.

2     Q       Are any shown in figure one?

3     A       No.

4     Q       So does figure one have the same -- sorry. Does the  
5     phone shown in figure one have the same number of luminous  
6     visible location indicator as the phone shown in figure two?

7     A       Are you talking about ones that are on or capable of  
8     being on?

9     Q       Your declaration does not refer to them being on or  
10    off, Doctor, so I'm asking you. The field shown in figure  
11    one, 130, which is what you referenced me to, as shown, is  
12    it a luminous visible location indicator?

13    A       Well, I think I said that the segments that comprise  
14    that display can serve as the visible luminous indicator.

15    Q       Are there any that serve as a visible location  
16    indicator in figure one?

17    A       Yes.

18    Q       Which one? What -- which ones?

19    A       They're not on.

20    Q       So they can't be visible -- sorry -- luminous visible  
21    location indicators when they are not on; is that correct?

22    A       Sure they can.

1 Q Okay. So which ones are on?

2 A None of them.

3 Q Which ones are luminous visible location indicators?

4 A All of them.

5 Q Okay. What location are they indicating when they are  
6 not on?

7 A It does not.

8 Q Isn't that the function of a visible location  
9 indicator, according to your testimony, to identify the  
10 location of a particular part of the device?

11 A That's right.

12 Q So in figure one, what part of the device is being  
13 located by field 130?

14 A On figure one the segments are off.

15 Q And so the answer to my question is what? Again, it  
16 is kind of important that we have a conversation about my  
17 questions.

18 A Uh-hum.

19 Q John will get a chance to ask you the questions you  
20 want to answer.

21 A Okay.

22 Q What part of the device that is the cell phone shown

1 in figure one is the location being indicated by figure 130?

2 Sorry. By reference character 130?

3 A Again, the segments that comprise that display area.

4 Q And they're not identifying the location of anything  
5 as shown in figure one, are they?

6 A That's right.

7 Q Now, let's go back to the question that I asked you.  
8 The icon on the display of your cell phone is illuminated.

9 A The icon is illuminated.

10 Q It is illuminated?

11 A Okay.

12 Q Is it a, quote, luminous visible location indicator?

13 MR. MURPHY: Objection to foundation  
14 and relevance.

15 THE WITNESS: The icon itself?

16 BY MR. KELBER:

17 Q Yes, sir.

18 A No.

19 Q Why not?

20 A The icon is made up by illuminated segments.

21 Q Are the segments that go together to form that icon  
22 that is illuminated, are those segments collectively a

1 luminous visible location indicator?

2 A Sure.

3 MR. MURPHY: Same objection.

4 THE WITNESS: Sure.

5 BY MR. KELBER:

6 Q I'm going to hand you a document. Again, I think you  
7 have seen this before. It's been previously marked as  
8 Microsoft Exhibit 1001. Again, take as much time as you  
9 need to familiarize yourself with this document and when you  
10 so advise me, then I will have some questions about it.

11 A Okay.

12 Q Where in the specifications of Exhibit 1001 does the  
13 patent indicate that a luminous visible location indicator  
14 is satisfied by illuminated elements that identify a  
15 particular part of the device?

16 MR. MURPHY: Objection. Foundation  
17 and form.

18 THE WITNESS: Well, one reference to  
19 a part, column nine, paragraph starting with 48 where it  
20 talks about an output provided to indicated condition, for  
21 example, a battery that is in good or bad condition. And it  
22 may also be suitable to assist in locating a device not

1     limited to a flashlight in the dark. This may be a separate  
2     output pin, and there may be according to another embodiment  
3     shared with the MMI switch. This output or indicator may be  
4     an LED.

5                     So, in that particular reference to  
6     the visible indicator, the LED, it is located in the switch.  
7     So that when it is illuminated, it tells the user where the  
8     switch is that needs to be presumably pressed to turn on the  
9     flashlight.

10    BY MR. KELBER:

11    Q       But that's not what the specification you just read to  
12    me, though, is it? It says, it may be -- it may also be  
13    suitable to assist in locating a device. E.G., but not  
14    limited to a flashlight. It does not saying anything about  
15    a part of the device, does it?

16    A       Yes, it does. It referring to -- the output is the  
17    it. According to another embodiment, an output may be  
18    provided to indicate a condition. It, meaning the output,  
19    may also be suitable to assist in locating a device, but not  
20    limited to a flashlight.

21    Q       So where --

22    A       I'm still answering. It can be a separate output pin,

1     and this is the thing that allows you to locate the device  
2     or shared with the MMI switch. So it could be one of two  
3     switches, and the output may be an LED.

4     Q       Right. And where does it say this may be suitable to  
5     assist in locating a switch?

6                     MR. MURPHY: Objection. Foundation.

7                     THE WITNESS: It says it right  
8     there. It says a separate output pin or according to  
9     another embodiment shared with the MMI switch input. So the  
10    visible location indicator is part of the MMI switch.

11    BY MR. KELBER:

12    Q       It is. But is it useful, according to this patent, in  
13    locating that switch as opposed to the device?

14    A       Of course.

15    Q       Where does it say that, sir?

16    A       I just read the passage.

17    Q       What you read to me is that the visible luminous  
18    indicator can be a separate output pin or shared with the  
19    MMI switch input; correct? That's the part you are  
20    referring me to?

21    A       That's right.

22    Q       Where are the words that indicate that this may be

1     useful, suitable or some other similar term in locating the  
2     switch?

3     A       Because it says it right there.

4     Q       Read me the words, sir.

5     A       This may be a separate output pin or may be, according  
6     to another embodiment, shared with the MMI switch input.  
7     The outputter indicator may be an LED. If you look at  
8     figure 11 --

9     Q       Before we go to --

10    A       I'm still answering your question. Do you want me to  
11    answer your question?

12    Q       You are not answering my question. You, again, are  
13    answering the questions you want to answer, but go right  
14    ahead, sir.

15    A       No. No. Go ahead.

16    Q       I asked you in the text. By the way, before we go  
17    there, do you know the difference between a specification  
18    and claims of a patent?

19    A       Yeah.

20    Q       Why did you spend so much time reviewing the claims of  
21    the patent prior to answering my question right now?

22                                   MR. MURPHY: Objection. Foundation.

1 THE WITNESS: Because you told me if  
2 you gave me a document, I should read through the whole  
3 thing, and I did.

4 BY MR. KELBER:

5 Q And you did that before I asked you the question, did  
6 you not?

7 MR. MURPHY: Same objection.

8 THE WITNESS: I'm sorry?

9 BY MR. KELBER:

10 Q Never mind, sir. Without referring to the figure, is  
11 there any text in this Exhibit 1001 which is U.S. patent  
12 732970 that states that the visible location indicator is  
13 useful in locating a part of the device as opposed to the  
14 device itself?

15 MR. MURPHY: Object to form.

16 THE WITNESS: I think I read the  
17 passage three times.

18 BY MR. KELBER:

19 Q That's it?

20 A I think your own expert said the same thing.

21 Q Well, I'm asking you, sir. And I asked you very  
22 nicely twice. Is there anything else? And I think the

1     answer to that question is no, but could you answer it?  Is  
2     there anything else, sir?

3     A       There is something else.

4                               MR. MURPHY:  I'm sorry, Mark.

5     Object to form.

6                               THE WITNESS:  There is something  
7     else.

8     BY MR. KELBER:

9     Q       Please direct me to the next aspect or portion of the  
10    text of the 970 patent that you refer to as something else?

11    A       The text says, this outputter indicator may be an LED,  
12    referring to figure 11 indicator/output device 1104 may, for  
13    example, be an LED.

14    Q       Anything else, sir?

15                               MR. MURPHY:  Object to form.

16                               THE WITNESS:  For this specific  
17    passage, no.

18    BY MR. KELBER:

19    Q       Anything else that you would point me to in the  
20    specifications of the 970 patent which is Exhibit 1001  
21    before you that indicates that the visible location  
22    indicator may be useful in locating a part of the device as

1     opposed to the device itself?

2     A       If you look now, this is the next one, column 11,  
3     paragraph starting with 55 down to 64.

4     Q       Okay.

5     A       Focuses on the last sentence. The microchip may be  
6     adopted as in a specific flashlight embodiment to provide a  
7     location emergency signal for lighting, flashing and LED.  
8     And that is in the context of using the claimed invention  
9     for a wall switch, so that lighting flashing LED would  
10    indicate a part of the room where the switch was located.  
11    That given that entire section talks about a room being  
12    filled with the MMI device that is claimed and wiring.

13    Q       And you think it's indicating a particular location in  
14    the room in that embodiment?

15    A       Yes.

16    Q       What location?

17    A       The location where the wall switch is placed. I think  
18    there was one more.

19    Q       Go ahead.

20    A       Oh, my last question is the very fact that the visible  
21    indicator is an LED, which is separate from the main energy  
22    consuming bulb, the flashlight bulb will indicate the part

1 of the flashlight where the LED is located.

2 Q But that's not taught in the 970 patent that is  
3 Exhibit 1001 or is it, sir?

4 A Sure. It is based on what any person remotely skilled  
5 in the art would understand about an LED.

6 Q Have you exhausted the references to the specification  
7 which you say teach this feature?

8 A Those are the ones I can find right now.

9 Q What did you do to prepare for this deposition, sir?

10 A Read documents, conferred with the two attorneys on my  
11 right.

12 Q When did you do this? This conference?

13 A When did I talk with the two attorneys?

14 Q Yes, sir.

15 A Yesterday.

16 Q Did you discuss Exhibit 1001, which is the 970 patent  
17 at that time?

18 MR. MURPHY: Objection. Yes-or-no  
19 answer, please, on the grounds of privilege.

20 THE WITNESS: Yes.

21 BY MR. KELBER:

22 Q Did you review the 970 patent yesterday?

1 A No.

2 Q What are the provisions of Section 1101 of Title 18 of  
3 the United States Code?

4 A I would need to see a copy of it.

5 Q Did you have a copy before you on June 9, 2016?

6 A I did not.

7 Q Did you ever ever ever see that you recall seeing the  
8 provisions of Section 1101 of Title 18?

9 A I believe I have.

10 Q Do you recall ever being informed by counsel in any  
11 proceeding that you have been part of as to the meaning of  
12 the provisions of Section 1101 of Title 18?

13 A I believe that is true.

14 Q That you have been informed by counsel of the meaning  
15 of the provisions of Title 1101 -- sorry -- Section 1101 of  
16 Title 18?

17 A That's right.

18 Q When did that happen?

19 A I do not remember.

20 Q But you remember being told about it?

21 A I have a recollection of that happening. I cannot  
22 tell you when or where.

1 Q Would it alter your opinion if I told you that there  
2 are no provisions in Section 1101 of Title 18 that pertain  
3 to punishment by fine or imprisonment?

4 MR. MURPHY: Objection. Foundation.

5 THE WITNESS: I would have no  
6 opinion one way or the other. Everyone knows you can't make  
7 false statements on a legal document.

8 BY MR. KELBER:

9 Q Everyone knows that?

10 A Uh-hum.

11 Q Take a look at paragraph seven of Exhibit 200 -- 2008,  
12 if you would, please?

13 MR. MURPHY: Dr. Hornstein, any time  
14 your blood sugar runs low, let us know.

15 MR. KELBER: Did you want a break?

16 MR. MURPHY: I'm fine. The witness'  
17 stomach --

18 THE WITNESS: I'm good for now.

19 BY MR. KELBER:

20 Q Take a look at paragraph seven, if you would, sir. Is  
21 that written precisely as you intended it to be?

22 A No.

1 Q In what way would you have intended it to be read?

2 MR. MURPHY: Objection. Foundation.

3 THE WITNESS: The third --

4 MR. KELBER: What foundation is  
5 lacking, counsel? He just said no.

6 MR. MURPHY: The question includes  
7 the implicit assumption that he intended it to read a  
8 certain way.

9 MR. KELBER: I think I asked him  
10 that question, and he said it did not read the way he  
11 intended it.

12 BY MR. KELBER:

13 Q Didn't I ask you that question? I'll ask it again  
14 because there seems to be some confusion. Take a look at  
15 paragraph seven of Exhibit 2008?

16 A Yes, sir.

17 Q Does that paragraph read the way you intended it to  
18 read?

19 MR. MURPHY: Object to form.

20 THE WITNESS: No.

21 BY MR. KELBER:

22 Q Is it possible for you to restate paragraph seven to

1 reflect what you intended it to read?

2 A Indeed, it is.

3 Q Would you do so, please?

4 A Do you want me to read the whole thing, or just tell  
5 you what the change would be?

6 Q Let's go with what the change would be. That is  
7 probably easier.

8 A The third line down should be disclosed the activation  
9 of display element 516 at the same time that display element  
10 520 was not activated.

11 Q Now, Exhibit 2008 and Exhibit 2007 where the same  
12 language appears, does not reflect the first time that you  
13 signed a declaration that reflected that exact language;  
14 correct?

15 MR. MURPHY: Object to form.

16 THE WITNESS: Sorry. Ask that  
17 again.

18 BY MR. KELBER:

19 Q You presented the exact same statement word for word  
20 identical in an earlier declaration submitted in this case;  
21 correct?

22 A Well, you're saying word for word. We're talking

1     about a typo of a number.

2     Q       I'm saying word for word?

3     A       I wouldn't call a number a word.

4     Q       Word for word alpha numeric character, alpha numeric  
5     character, the statements you presented in two different  
6     declarations each on two separate occasions are identical;  
7     correct?

8                               MR. MURPHY:  Object to form.

9                               THE WITNESS:  The statements are  
10    identical, and they include the same typographical error for  
11    that number.

12   BY MR. KELBER:

13   Q       Well, that error changes the meaning of this  
14    paragraph, doesn't it?

15   A       Not really.

16   Q       Well, as it reads it's a tautology, isn't it?

17   A       What's a tautology?

18   Q       You don't know the word tautology?

19   A       Not off the top of my head.

20   Q       Isn't it true, Doctor, that to activate display  
21    element 520, display element 520 could not have been  
22    activated?

1 MR. MURPHY: Object to form.

2 THE WITNESS: Well, you know, if you  
3 go back to the paragraph before it talks about display  
4 element 516 changing from a blank screen to displaying  
5 information, and I think it would be obvious to anyone  
6 reading paragraph seven that the first instance of number  
7 520 is a typo and should be 516.

8 BY MR. KELBER:

9 Q Obvious the way you use the language --

10 A It's a typo.

11 Q -- in your declaration that you made twice?

12 A Right. It's a typo.

13 Q In each case?

14 A It's a typo.

15 Q That you made twice in each case, even though the  
16 second time for each case the only reason you were signing  
17 that declaration was to convert it from hearsay to a legal  
18 document; correct?

19 MR. MURPHY: Objection to foundation  
20 and form.

21 BY MR. KELBER:

22 Q Isn't that what you told me earlier?

1 MR. MURPHY: Same objection.

2 THE WITNESS: It was a typo. I  
3 don't know how else to answer your question.

4 BY MR. KELBER:

5 Q Can you answer my question?

6 A No.

7 Q Did you read Exhibit 2007 before you signed it?

8 A Of course.

9 Q Did you read Exhibit 2008 before you signed it?

10 A Of course.

11 Q Did you read the corresponding declaration executed  
12 June 1, 2016 -- that's June 1, 2016 -- in IPR 2015-01149  
13 before you signed it?

14 A Yes.

15 Q And you did not see the error either time?

16 A I did not catch the typographical error.

17 Q Isn't that because you really weren't paying close  
18 attention?

19 MR. MURPHY: Objection. Form.  
20 Foundation. Argumentative.

21 THE WITNESS: No.

22 BY MR. KELBER:

1 Q So you read these carefully, and you came up with the  
2 same wrong formulation each time?

3 MR. MURPHY: Objection. Asked and  
4 answered.

5 THE WITNESS: Your question is not  
6 correct.

7 BY MR. KELBER:

8 Q You mean the answer is no?

9 A I did not come up with the same wrong formulation each  
10 time.

11 Q So I think you have before you Exhibit 1020 in IPR  
12 2015-01149, don't you?

13 A No.

14 MR. KELBER: Do you have it,  
15 counsel, because I know I handed it out.

16 MR. MURPHY: Remind me what I'm  
17 looking for.

18 MR. KELBER: 1020 in 1149. It is  
19 his declaration dated June 1.

20 MR. MURPHY: This is the 1149  
21 document you gave me. Is that what you are looking for?

22 MR. KELBER: No.

1 MR. MURPHY: That's the only one I  
2 have.

3 MR. KELBER: All right. And you are  
4 not going to let me use documents in 1147 or 1150 or 1151 to  
5 put before the witness without objection; correct?

6 MR. MURPHY: Right. I'll just  
7 state --

8 MR. KELBER: Let's break for lunch  
9 right now, and I'll try to satisfy your requirement.

10 MR. MURPHY: Okay. Off the record.

11 MR. KELBER: Off the record.

12 - - -

13 (Lunch recess taken from 12:26 to 1:07 p.m.)

14 - - -

15 MR. KELBER: Go back on the record.

16 BY MR. KELBER:

17 Q Dr. Hornstein, you understand that you remain under  
18 oath?

19 A Yes, sir.

20 Q What did you talk about at lunch?

21 A Oh, let's see. The food upstairs is pretty good.

22 Philadelphia is a nice city. Kayaking. Trials and

1     tribulations of others cases, not this one. That's pretty  
2     much it.

3     Q       I'm not sure there's much kayaking for Philadelphians,  
4     but if there is, got to be good.

5                     I hand you a document that's been  
6     previously marked in IPR 2015-01151 as Microsoft Exhibit  
7     1022. I'm also going to hand you a document -- just keep  
8     these in a different pile -- Microsoft Exhibit 1021 in IPR  
9     2015-01150. And more goodies. I'm going to hand you a  
10    document Microsoft Exhibit 1020 filed in IPR 210-0114.

11                    MR. MURPHY: For the record, I  
12    object to the introduction of Exhibits 1021 and 1022.

13                    MR. KELBER: There is lots of 1021s  
14    and 1022s. Which ones?

15                    MR. MURPHY: I object to the  
16    introduction of Exhibit 1022 in IPR number 1151, Exhibit  
17    1021 in IPR number 1150.

18                    MR. KELBER: Got you.

19    BY MR. KELBER:

20    Q       And there is one more to do. I'm going to hand you a  
21    document previously marked as Microsoft Exhibit 1018 and  
22    Exhibit 2015-01147.

1 MR. MURPHY: I object to the  
2 introduction of Exhibit 1018 in IPR 1147.

3 BY MR. KELBER:

4 Q And I believe you also have in front of you Microsoft  
5 Exhibit 1019 in IPR 2015-01148. I will ask you some  
6 questions about these individually, but you wrote all of  
7 these; correct?

8 A I wrote the final draft.

9 Q Did you write the initial draft?

10 A No.

11 Q How many drafts were there, approximately?

12 A I couldn't say.

13 Q How many weeks before June 1, 2016, did you begin  
14 receiving -- did you begin receiving the initial drafts for  
15 these five documents?

16 A I don't know. I would have to check.

17 Q Can you give me an approximate idea?

18 A A week.

19 Q A week. So is it correct that you received the drafts  
20 from counsel?

21 A That's correct.

22 Q What did you do when you received the drafts?

1 A What did I do?

2 Q Uh-hum.

3 A I went over them word for word, made any changes that  
4 I thought needed to be made, made any additions that I  
5 thought needed to be included, et cetera.

6 Q In Exhibit 1019 in IPR 2015-01148, did you make any  
7 changes to the initial draft that you received before  
8 executing the final draft?

9 A I don't remember.

10 Q You don't remember what you made any changes?

11 A This specific document, I don't know.

12 Q Did you read the paragraph in the initial draft that  
13 corresponds to paragraph six in what appears to be the  
14 executed final draft?

15 A Yes.

16 Q And at the time you read it you saw nothing wrong with  
17 it?

18 A I did not catch the typo when I --

19 Q That's not what I asked you, sir.

20 A That's what I'm answering.

21 Q You did not see anything wrong?

22 A That's what I'm answering. I did not catch the typo.

1 Q Can you answer my question? Was there something wrong  
2 with the declaration that you saw in paragraph six?

3 A Was there something wrong?

4 Q Yes.

5 A Yes.

6 Q Did you see that it was wrong at the time you read a  
7 draft prior to the final draft?

8 A No.

9 Q When did you first notice in paragraph six of  
10 Microsoft Exhibit 1019 in IPR 201501148 had an error?

11 A It want to say somewhere between one and two weeks  
12 ago.

13 Q Did you draw that error to counsel's attention?

14 A I don't remember if I made a note to bring it to their  
15 attention later or if I sent a note identifying the error.  
16 One of the two. I can't remember.

17 Q So you can't remember that two weeks ago?

18 A I mean, whether I just made a note of it or told them?

19 Q Correct.

20 A I don't remember.

21 Q How many depositions have you attended as the witness  
22 being deposed in the last two weeks?

1 A In the last two weeks?

2 Q Yes, sir.

3 A None before this one.

4 Q Let me have you turn to Exhibit 1020 in IPR  
5 2015-01149. And I'm going to ask you with respect to  
6 paragraph seven of that exhibit when did you first notice  
7 there was an error in paragraph seven?

8 A Same time frame.

9 Q By "time frame," we have identified one to two weeks.  
10 Is that the same time frame you are talking about?

11 A I think that is what same time frame means, but yes.

12 Q Well, I didn't know which time frame you were  
13 referring to, sir, but you noticed the error that's in  
14 paragraph seven of U.S. patent -- sorry -- IPR -- try again.  
15 Strike that.

16 You noticed the error in paragraph  
17 seven of Exhibit 1020 in IPR 2015-01149 at the same time  
18 that you noticed the error in paragraph seven of Exhibit  
19 1019 in the 01148?

20 A I can't answer the question the way you posed it.

21 Q And what is preventing you from answering that  
22 question?

1 A Well, as you can tell, the same paragraph appears in  
2 the two declarations and elsewhere, and it's clearly a cut  
3 and paste paragraph, so the typographical error propagated.  
4 So if I noticed it in one of the declarations, the  
5 implication was that that pasted paragraph that the  
6 typographical error propagated.

7 Q So these declarations were not prepared declaration by  
8 declaration, but as a group; is that accurate?

9 A No.

10 Q Well, you knew immediately in seeing an error in one  
11 that all of them had the same error; right?

12 MR. MURPHY: Objection to  
13 foundation.

14 THE WITNESS: Not true.

15 BY MR. KELBER:

16 Q So was there a time delay between recognizing the  
17 error in document Exhibit 1020 in IPR 20150001149 and  
18 Exhibit 1019 in IPR 201501148?

19 A No. I just don't remember.

20 Q Well, this is less than two weeks ago, isn't it?

21 A Yeah.

22 Q And you don't remember?

1     A       When I noticed the error and if I noticed it in all  
2     the declarations?

3     Q       Yeah.   Within the last two weeks?

4     A       Yeah.   I don't remember.   I told you when I noticed  
5     it, but you asked me if I immediately told counsel or made a  
6     note to mention it to counsel, and I don't remember.

7     Q       Don't remember whether you noted it to counsel  
8     directly or in a note to tell counsel.   I remember that.   I  
9     remember your testimony on that part.   The question is not  
10    quite the same.   My question is:   Did you notice the error  
11    in the paragraph that we have been discussing which is  
12    paragraph six of Exhibit 1019 IPR 2015-01148 and Exhibit  
13    1020 in IPR 2015-01149 at the same time period?

14   A       I don't remember.   I noticed it in one of the  
15    declarations.   I couldn't tell you which one because that  
16    paragraph appears in several of the declarations.

17   Q       Well, that's my question to you, though, sir.   You  
18    recognize the error in one of these five declarations at  
19    some point in time within the last two weeks; right?

20   A       I think so.

21   Q       Are you confident of that?

22   A       Well, you're asking me as best I can remember, and I'm

1 giving you my best recollection.

2 Q Are you confident of that recollection that it's  
3 accurate?

4 A More confident than not.

5 Q When you saw the error was present in one declaration,  
6 whichever one you found it in, you immediately recognized  
7 that it would be in each of these five declaration, didn't  
8 you?

9 A That particular aspect of it did not come to my mind  
10 immediately.

11 Q So that's why I'm asking you and I say a question of  
12 some importance to me and my client, even though it is of no  
13 importance to you. What is the span of time between the  
14 time you first recognized this error in one of the five  
15 declarations and the time you last recognized the error in  
16 the fifth of the declarations you recognized it in?

17 A I don't remember.

18 Q Would it had been as recent as one week ago?

19 A Like I said, I don't remember.

20 Q Well, you don't remember precisely. But do you not  
21 have a fairly focused memory of what you did in connection  
22 with these proceedings in the last two weeks?

1     A       Well, I can tell you what my focus memory is, if you  
2     will let me answer the question.

3     Q       Go ahead.

4     A       Okay. In my mind, this is in context, it is an  
5     obvious typographical error that anyone could identify upon  
6     reading the document, and I've never been in a deposition  
7     before today where the attorney questioning me did not start  
8     by saying are there any changes you would like to make us  
9     aware of. So I came in to this deposition prepared to point  
10    out the typographical error for the record, but that did not  
11    happen and now we are focusing on it ad infinitum, and I  
12    don't know what else I can say about it, other than it was a  
13    typo.

14   Q       How does that impact the answer to the question that I  
15   asked you? I mean, you made your speech that it's a typo.  
16   I get your opinion. Does your technical expertise extend to  
17   determining when it's a typographical error as opposed to a  
18   failure to pay attention to the document?

19   A       I can't answer that question. It doesn't make any  
20   sense to me.

21   Q       Well, errors can occur through a number of sources;  
22   right? You can have a deliberate mistake. You can have an

1 accidental mistake. You can have a typographical error.

2 Those are three different kinds of errors; right?

3 MR. MURPHY: Object to form.

4 THE WITNESS: Well, certainly I

5 divide them in to intentional and unintentional.

6 BY MR. KELBER:

7 Q Well, Exhibit 1021 in IPR 2015-01150, do you recall if

8 you received the initial draft of this declaration with

9 paragraph six reading as it does right now?

10 A I don't recall one way or the other.

11 Q Really, it didn't make a difference to you what it

12 read? You were going to sign it if it seemed okay

13 otherwise; correct?

14 MR. MURPHY: Objection to form,

15 foundation. Argumentative.

16 THE WITNESS: That's not true.

17 BY MR. KELBER:

18 Q That's not true?

19 A No.

20 Q What would you point to to disinterested bystander to

21 reassure that bystander that you paid close attention not to

22 just what you got from counsel, but to ensure your own

1 opinion was reflected in these documents?

2 MR. MURPHY: Object to form.

3 THE WITNESS: What would I point to?

4 BY MR. KELBER:

5 Q Yeah. What would you direct to the person of ordinary  
6 skill in reading declarations; that is, a disinterested  
7 bystander who was able to deal with the technical level,  
8 technical detail of these declarations? You don't have what  
9 we have discussed as a jurat. You don't have a statement  
10 that these are reliable. They are -- they are -- they do  
11 reflect an error that changes the meaning, however trivial,  
12 of a paragraph, so what would you point to to convince  
13 somebody disinterested that, in fact, despite their virtual  
14 identity in content, you actually reviewed each one  
15 separately?

16 MR. MURPHY: Object to form and  
17 foundation.

18 THE WITNESS: Your question has two  
19 factual errors, so I cannot answer it.

20 BY MR. KELBER:

21 Q Does each of the five declarations that you originally  
22 submitted, executed in these five IPRs have the exact same

1 error that you instructed me on just before lunch; that is,  
2 display element 520 should read display element 516?

3 A That's correct.

4 Q You didn't catch it in either -- any one of the five;  
5 is that correct?

6 A I think I told you earlier that I did catch it.

7 Q At the time you executed the declarations?

8 A What does execute me? Sign?

9 Q That was your word. You said -- you said I executed  
10 the declaration.

11 A You just said it.

12 Q When you affixed your electronic signature to the  
13 document on or about June 1, 2016?

14 A Sorry. Was there a question in there?

15 Q You, sir. You asked what I meant by executed?

16 A The one before I meant. Read back his previous  
17 question that had the word executed.

18 Q We are now two questions back. Let me try it again.  
19 Were you aware of the error that we have been discussing  
20 where the pertinent paragraph reads 520 and should read 516,  
21 were you aware of that error when you caused each of these  
22 declarations to be executed?

1 MR. MURPHY: Objection to  
2 foundation.

3 THE WITNESS: I was not.

4 BY MR. KELBER:

5 Q And I know that I -- I am confident that I am  
6 repeating, but you detected that error that you have  
7 characterized as a typographical error sometime in the last  
8 two weeks; is that correct?

9 A I said that was the best of my recollection. I don't  
10 recall precisely. You asked me for an estimate, so I gave  
11 you one.

12 Q Well, I didn't ask you for an estimate, but that is  
13 the best you can give me; right?

14 A Sure.

15 Q Can you do better?

16 MR. MURPHY: Object to form.

17 THE WITNESS: No.

18 BY MR. KELBER:

19 Q Did you know about it before June 9th? It being the  
20 typographical error?

21 A I don't think so.

22 Q So what were you doing in connection with these IPRs

1     that brought that error to your attention after June 9?

2     A       Most likely reviewing for or preparing for this  
3     deposition.

4     Q       When did you start preparing for this deposition, sir?

5     A       A week ago.

6     Q       I'm sorry?

7     A       A week ago.

8     Q       So you wouldn't have detected the error as much as two  
9     weeks ago. You would have detected the error about a week  
10    ago; is that right?

11    A       I don't remember.

12    Q       Well, did you start preparing for this deposition  
13    before it was noticed?

14    A       I don't remember. Oh, certainly not before it was  
15    noticed.

16    Q       We are square on that?

17    A       Absolutely.

18    Q       All right. So you did know about the error by June 9;  
19    correct?

20                                   MR. MURPHY: Objection. Foundation.

21                                   THE WITNESS: Apparently not because

22    I signed the documents on June 9th with the boiler plate

1 clause added.

2 BY MR. KELBER:

3 Q Well, the deposition wasn't noticed until June 15,  
4 sir, so what were you doing reviewing it before the notice  
5 of the deposition?

6 A Who knows?

7 Q I would like to know. You are the only one who can  
8 answer. What were you doing that led you to detect the  
9 error before June 15? I'm sorry. Scratch that.

10 What were you doing that led you to  
11 detect the error in each of these five declarations with  
12 respect to the numeral of the display element when you first  
13 detected that error in one of the declarations? What were  
14 you doing?

15 MR. MURPHY: Object to form,  
16 foundation.

17 THE WITNESS: Reading the document.

18 BY MR. KELBER:

19 Q And to what purpose? Why?

20 A I don't recall.

21 Q This happened less than a week ago?

22 A I don't recall.

1 Q When did you read the document?

2 A Well, now, today is the 28th, and you say the  
3 deposition was served on the 15th. One of the two attorneys  
4 to my right let me know, so that's about two weeks away.

5 Q When did they let you know, sir?

6 A I would have to check my e-mail trail. I don't  
7 recall.

8 Q Approximately, Dr. Hornstein? When did they let you  
9 know?

10 A Well, it would be about two weeks or less.

11 Q Or less?

12 A Yes.

13 Q So let's take June 15?

14 A Okay.

15 Q What were you doing after June 15th, but before you  
16 began preparing for the deposition?

17 A Have that question back?

18 (The Court Reporter read back the  
19 last question.)

20 MR. MURPHY: Object to form.

21 BY MR. KELBER:

22 Q Did you not understand anything about that question?

1 A What was I doing -- if I read anything after the  
2 notice of deposition that was to prepare for the deposition.

3 Q Okay. So you had no idea that the error in these  
4 declarations substituting the numeral 520 for the numeral  
5 516 was there until you began preparing for the declaration;  
6 is that correct?

7 A You mean the deposition?

8 Q Sorry. The deposition. I do mean that.

9 A That is more likely true than not.

10 Q I think you said, but I'm going to ask you to confirm  
11 that you began preparing for this deposition about a week  
12 ago; is that right?

13 A In earnest.

14 Q What did you do before you were preparing in earnest?

15 A I started reading some of the documents here and  
16 there.

17 Q Which documents?

18 A I don't recall.

19 Q I got to ask this again, Doctor, if it is not  
20 medication, is there anything else in your life, physical  
21 issue, an emotional issue, too much work, that impairs your  
22 short-term memory?

1 A No.

2 Q But you can't recall what you were doing that led you  
3 to detect this change somewhere between June 15 and a week  
4 ago?

5 MR. MURPHY: Objection.

6 BY MR. KELBER:

7 Q Is that accurate?

8 MR. MURPHY: Objection. Foundation.

9 THE WITNESS: Not accurate.

10 BY MR. KELBER:

11 Q What's not accurate about that?

12 A I told you what I was doing.

13 Q Well, you were reviewing some documents here and  
14 there; correct?

15 A I was reviewing the document, at least one of the  
16 documents with the error.

17 Q Which one?

18 A I don't remember.

19 Q Did you review them all when you detected the error?

20 A I don't remember.

21 Q You just really didn't care very much, did you?

22 MR. MURPHY: Objection.

1 Argumentative. Foundation.

2 THE WITNESS: Not true at all. As I  
3 said, I was expecting to be able to come to the deposition  
4 and identify the typographical error, for the record. I  
5 didn't think anything of it beyond that. Clearly a typo,  
6 anyone reading the document and knowing anything about the  
7 technology and what is being discussed in the context of the  
8 Jahagirdar pattern would recognize that it's a simple typo.

9 BY MR. KELBER:

10 Q You got a three or four-page declaration?

11 A Yes.

12 Q Seven or eight paragraphs, two of which are  
13 introductory, and you don't think the changes in the  
14 document that you want to prepare are worthy of notifying  
15 opposing counsel. Is that your testimony?

16 A No.

17 MR. MURPHY: Objection to form.

18 BY MR. KELBER:

19 Q Well, you didn't notify me or anybody else  
20 representing Global Tech Solutions before today, did you, of  
21 that error?

22 MR. MURPHY: Objection.

1 THE WITNESS: That wouldn't be my  
2 job.

3 BY MR. KELBER:

4 Q Did you tell Microsoft's counsel before yesterday  
5 about the error?

6 MR. MURPHY: Objection. Yes-or-no  
7 answer to privilege concerns.

8 MR. KELBER: That is not privileged.  
9 What you might have said to him and what he might have said  
10 to you in response might be privileged, but that is not  
11 privilege.

12 MR. MURPHY: The yes-or-no answer is  
13 not privileged. I agree.

14 THE WITNESS: I answered this  
15 question earlier, and I seem to recall having done so.

16 BY MR. KELBER:

17 Q When would you have done so?

18 A I don't remember.

19 Q But it would had been sometime after June 15?

20 A Probably.

21 Q Would your e-mail -- would you have communicated this  
22 issue to counsel the first time via e-mail?

1 A I don't remember.

2 Q Would you have called him by phone or her?

3 A Possibly.

4 MR. KELBER: We would like all of  
5 the relevant e-mails pertaining to this issue, counsel.

6 BY MR. KELBER:

7 Q When you read the declarations that were prepared for  
8 you by counsel that had the additional paragraph that you  
9 have referred to several times as, quote, boiler plate,  
10 closed quote, did you read them carefully?

11 A So, first of all, couple of errors in your question.  
12 Counsel did not prepare a new declaration. Counsel appended  
13 the boiler plate paragraph to my existing declaration.

14 Q Isn't the result a new declaration, sir?

15 A That's right.

16 Q And you had to execute that declaration all over  
17 again; right?

18 A Well, I signed the new version of the declaration with  
19 the boiler plate paragraph added.

20 Q That's not quite what you testified to before. You  
21 testified before that you affixed your facsimile signature  
22 to the new declarations; is that correct?

1 A To me that's signing.

2 Q I understand that, but I've asked you a specific  
3 question?

4 A My specific question is, I signed it.

5 Q No, sir. That's actually a specific answer. My  
6 specific question is: Did you sign it with a pen and not  
7 further modify the document that is Exhibit 2007 and the  
8 document that is 2008 without the affixation of what you  
9 have referred to as a facsimile signature?

10 MR. MURPHY: Object to form.

11 THE WITNESS: Where is 2007? So you  
12 are asking me if -- I'm sorry. These questions are similar.  
13 I've just lost track of where we are going. Can we read  
14 back?

15 BY MR. KELBER:

16 Q Let's try and focus. Let's take one document since  
17 there is so many pieces of paper floating around. Exhibit  
18 2007?

19 A Okay.

20 Q When you executed or caused this document to be  
21 executed, were you aware of the error in paragraph six?

22 A When I signed the declaration with the boiler plate

1 paragraph appended --

2 Q I don't know what that means, so I am really asking  
3 you to respond to my question.

4 A Would you like me to tell you what it means?

5 Q No, sir. I don't really want to know what it means.

6 A Then I have no question to answer if you won't let me  
7 answer.

8 Q You can't answer my question? When you caused a  
9 signature that you say corresponds to your execution of the  
10 document on Exhibit 2007 for the first time, were you aware  
11 of the error in paragraph six?

12 MR. MURPHY: Object to form.

13 THE WITNESS: What was the first  
14 time? Something for the first time? What was the --

15 BY MR. KELBER:

16 Q That you stuck your signature on the document that is  
17 Exhibit 2007?

18 A So on June 9th I had not detected the error yet.

19 Q Good. And sometime after that you detected the error,  
20 and you may or may not have told counsel for Microsoft about  
21 it; is that right?

22 A That's best of my recollection.

1 Q In the words of the 970 patent which you have before  
2 you, I think, what does it mean to activate?

3 A Is there a specific passage that you would like me to  
4 focus on?

5 Q Not really.

6 A Okay.

7 Q Is the word activate used consistently throughout the  
8 970 patent?

9 A No.

10 Q Okay. Then we will take them one piece at a time. In  
11 claim 52, which appears in column 16 just above line 40. It  
12 is probably line 39. The word activation is the last word  
13 in the line. Do you see that?

14 A Yes, sir.

15 Q What does that mean?

16 A It's activating the indicator.

17 Q What does that mean? Is there any other way to  
18 express that term?

19 MR. MURPHY: Object to form.

20 THE WITNESS: It is causing the  
21 indicator to indicate.

22 BY MR. KELBER:

1 Q Does it mean turning off the indicator?

2 A Well, actually the next part of the claim that informs  
3 what it means to activate the indicator to show at least one  
4 of the following.

5 Q Does that mean to turn the indicator off?

6 A Sorry. It means to show one of the following:  
7 Condition, activation of the switch, power level of the  
8 power source. So to activate the indicator means to cause  
9 it to show information regarding one of those three  
10 attributes.

11 Q Does that mean to turn it on?

12 A I think it means to cause the indicator to indicate  
13 information.

14 Q You keep on using the same term to answer the  
15 question. Is activation in the -- I'm sorry -- going to  
16 hand you a document that's been previously marked as  
17 Microsoft Exhibit 1001. Is the term activate used  
18 differently in the patent that is labeled only in the  
19 document that is U.S. patent 7498749, is it used differently  
20 than the word activate in the 970 patent that we are looking  
21 at?

22 A Is there a particular instance you would like to call

1 my attention to?

2 Q Same one, sir.

3 A Well, you called my attention to a claim, and I  
4 suspect the claim of the 749 are different.

5 Q Well, they are, but does the word -- I suppose I can  
6 find an example. The second patent I handed to you, the 749  
7 patent, activation is a word that appears or activated. You  
8 can take your pick. In claim one which you can find in  
9 column 12 under Section C let's use the indication at  
10 subparagraph I?

11 A So column 1 about line 32?

12 Q No, sir. Claim one.

13 A Which is column 12.

14 Q Column 12. Yeah.

15 A Says the indicator is activated to indicate conditions  
16 of the product.

17 Q Does activated mean turn on?

18 A It means to indicate conditions of the product.

19 Q Is that equivalent to saying turning it on?

20 A Well, it's hard to say because many point in the  
21 patent and in specification activate is used to refer to  
22 what a user does to a switch. For example, claim 3, column

1 12, line 30. I'm sorry. Line 49. The user interface  
2 output in response to user activation.

3 Q And it's your testimony that the term activation in  
4 claim three is being used to mean something different than  
5 the term activation in claim one?

6 A Well, I use that as an example I could find quickly,  
7 but as I recall reading the specification, the reason the  
8 meaning -- intended meaning of activation means something  
9 more than turning on is because at least in one point in the  
10 specification, activation is used to refer to what the user  
11 does to a switch.

12 Q Can you go back and answer my question now? You  
13 pointed me to claims 1 and 3 of the 749 patent. So I asked  
14 you, is it viewed the same way, the word activation in those  
15 two claims? I really didn't ask you as a pretext so you  
16 could give a different answer to a different question.  
17 That's my only question.

18 A I just expanded because --

19 Q Great.

20 A -- what claim three talks about is the user activating  
21 the interface.

22 Q Great. So can you answer my question now?

1 A I think I just did.

2 Q So you are saying they are used in a different sense?

3 A Well, in claim one, Roman Sub -- sub-section Roman  
4 numeral two the indicator is activated to indicate  
5 conditions and in claim three, it's the user interface  
6 that's activated by the user.

7 Q Independent of what is being activated, sir -- that's  
8 not my question to you. Does the term activate or  
9 activation, does it have the same meaning in both claims is  
10 really the question I've asked you three times now, and you  
11 can say yes, no or something else.

12 A If you are asking for claim -- an answer that pertains  
13 to claim construction.

14 Q I'm not, sir. I'm not. You are not a legal expert;  
15 correct?

16 A So this is not in respect to claim construction.

17 Q The term claim construction was not in my question. I  
18 never will ask you that. I'm tired of the speeches, sir. I  
19 would like an answer to my question, not the question you  
20 want to answer.

21 MR. MURPHY: I'm sorry. What's the  
22 question?

1 BY MR. KELBER:

2 Q Do you know what the question is, sir?

3 A No.

4 Q Is the term activate or activation used in the same  
5 sense in claims one and three of the 749 patent? Those are  
6 the claims you directed me to?

7 A Well, in the sub -- in the Roman -- sub-section Roman  
8 numeral two, the actual word is activated, past tense verb.  
9 In three, it is a gerund user activation used as a noun. So  
10 I do say they refer to different things, but it is not the  
11 same word.

12 Q Can it be used in the same sense, or can you not  
13 answer that question?

14 A I can't answer the question the way you posed it.

15 Q What is the problem with the question?

16 A I don't know what it means.

17 Q Do you know what the question means?

18 A No.

19 Q You don't have an understanding of sense, the same  
20 sense?

21 A Not the way you have posed the question.

22 Q So, if I ask you is the term activation as used in

1 claim one and claim three of Exhibit 1001, indicate the same  
2 meaning, can you answer that?

3 A You are talking about all of claim one or just section  
4 Roman numeral two?

5 Q Activation. So is the word activation used to mean  
6 different things each time it appears in claim one?

7 A The word activation appears one time in claim one.

8 Q And it appears twice in claim one and three times in  
9 claim one.

10 A I'm sorry. You are right. Two times, and I don't see  
11 the third time.

12 Q Well, let's just go with the first two, sir. Is it  
13 used in the same sense in those two instances?

14 MR. MURPHY: Object to form.

15 BY MR. KELBER:

16 Q Is there anything about that question that's unclear,  
17 sir?

18 A I don't think so. Well, the word activation is used  
19 in the common context, but that context is not turning on.  
20 It is performing something or doing something.

21 Q What's it doing?

22 A Well, the first time it is used is in paragraph B, the

1 my microchip provides an indicator activation function and  
2 then -- let's see. In C sub Roman numeral one it talks  
3 about the function that was activated with an activation  
4 command. So activation --

5 Q What does it mean?

6 A Activation responds to -- corresponds to a command,  
7 and then I can't find the third one that you claim is there.  
8 Activation in all of these context refers to causing  
9 something to happen.

10 Q And it's causing something to turn on; correct?

11 A Not necessarily.

12 Q When did you change your mind about what the term  
13 activation means?

14 MR. MURPHY: Object to form and  
15 foundation.

16 THE WITNESS: Are you referring to  
17 something specific where I --

18 BY MR. KELBER:

19 Q Remember your deposition being taken before in this  
20 case?

21 A Yes, sir.

22 Q And do you remember testifying about what activation

1     meant to you?

2     A       I think I would have to see that excerpt from the  
3     deposition.

4     Q       But do you remember you testified about that?

5     A       I remember testifying in this room. If you are going  
6     to ask me about the deposition, I have to see a copy of it.

7     Q       I'm just asking you: Do you remember testifying about  
8     the meaning of the term activation?

9     A       As I said, I would need to see a copy of the  
10    deposition to answer your question.

11    Q       You can't answer that question without reviewing the  
12    deposition transcript?

13    A       Not in the way you are asking it.

14    Q       What's special with the way I'm asking it?

15    A       Because it implies that I evoked an on-off meaning to  
16    activation. And taken out of context, I can't answer your  
17    question.

18    Q       I think maybe the problem is you are not listening to  
19    my question as much as I'm listening to your answer. I  
20    appreciate that this is a triviality to you, sir. I  
21    appreciate that you could not care less about the questions  
22    that I'm asking. But to me, it's relatively important. To

1 my client it is relatively important, so I'm going to ask  
2 you again.

3 Do you recall being asked about the  
4 meaning of the term activation as a claim term in your  
5 deposition back on February -- back in February of this  
6 year?

7 A Well, A, the first part of your question, much factual  
8 falsehood that I think it is trivial, and I don't care about  
9 it. I would like to make sure it is on the record that I  
10 consider this procedure to be a very serious one, and I'm  
11 answering the questions to the best of my ability.

12 Q Good.

13 A And I extend my apologies to the attorney for Global  
14 Touch if he thinks that I'm not taking it seriously.

15 But the second part of your  
16 question, I recall there being a reference to activation on  
17 and off somewhere in the deposition. I don't recall it  
18 pertaining specifically to claim construction.

19 Q There is that term again. I think I know what I mean  
20 when I say claim construction. I don't know what you mean  
21 when you say claim construction. So maybe you could help me  
22 out by explaining what that term means.

1 A You want me to explain what claim construction is?

2 Q To you. You said and I'll quote your earlier  
3 testimony. I'm not a legal expert. To me claim  
4 construction is an exercise reserved for the fact finder,  
5 sometimes the court, sometimes the board. You have possibly  
6 the same, possibly a different meaning, but you offered that  
7 answer or offered that phrase in your answer several times  
8 now. So it is important for me to understand what you mean  
9 by claim construction.

10 MR. MURPHY: Objection. Foundation.  
11 Form.

12 THE WITNESS: Beg your pardon, but  
13 your last question included the word claim construction in  
14 the question. You asked me if I remember testifying on  
15 activation on off with respect to claim construction.

16 BY MR. KELBER:

17 Q You think so.

18 A You were the one who brought up claim construction as  
19 I recall.

20 Q I know definitely what the problem is. You're not  
21 hearing what I'm saying or I'm not saying what you seem to  
22 be hearing.

1 A Could you read back his question, please?

2 Q It is five questions back.

3 A Could you read it back, please?

4 Q Why don't we just go to the new question, which is  
5 what do you mean when you say claim construction?

6 A Claim construction is the purview of either the court  
7 or whatever entity oversees the proceeding that construes  
8 claims to give clarity to you to what they mean in the  
9 context of the patent claims.

10 Q Construes claiming is kind of like using the phrase to  
11 answer what you mean by the phrase. You used the term  
12 several times. What do you mean when you say claim  
13 construction?

14 A I think I just answered your question.

15 Q Well, it is not something you do; is that correct?

16 A From time to time I have been asked to offer technical  
17 opinions that relate to the exercise of claim construction.

18 Q When you are asked to offer technical opinions that  
19 relate to the question of claim construction, what do you  
20 do?

21 A I offer opinions that relate to claim construction.

22 Q How do you do that, sir?

1     A       How do I do that?

2     Q       Yeah.  What is it you consult, refer to, describe to  
3     arrive at advice or opinions, if you will, on claim  
4     construction?

5                               MR. MURPHY:  Object to form and  
6     relevance.

7                               THE WITNESS:  There is a  
8     procedure -- I'm not sure I can recite it off the top of my  
9     head -- as to what one considers in rendering opinions  
10    relative to claim construction.  One looks to the claim.  
11    One looks to the specification.  You know, one considers  
12    plain and ordinary meaning and things of that nature.  I'm  
13    not sure I can recite the exact procedure without referring  
14    to a document in which I gave an opinion on claim  
15    construction.

16    BY MR. KELBER:

17    Q       I was really referring to what you do, sir, not a  
18    person of particular skill and claim construction.  What do  
19    you do?

20                               MR. MURPHY:  Object to form.

21                               THE WITNESS:  I give my opinions.

22    BY MR. KELBER:

1 Q What do you consult, what resources do you consult to  
2 arrive at what you're calling claim construction?

3 MR. MURPHY: Object to form and  
4 relevance.

5 THE WITNESS: I think I have said I  
6 understand there is a procedure that one follows, and I  
7 follow that procedure.

8 BY MR. KELBER:

9 Q What procedure do you follow, sir?

10 A Like I said --

11 MR. MURPHY: Object to form.

12 THE WITNESS: -- I would need to  
13 refer to the prescription for looking at claim construction  
14 issues and I can't recite it off the top of my head. I gave  
15 you some flavor for what's involved, but I can't recite it  
16 off the top of my head.

17 BY MR. KELBER:

18 Q I'm not sure what the flavor was, other than you do  
19 some things. What is that flavor?

20 MR. MURPHY: Objection. Foundation.  
21 Form. Relevance.

22 BY MR. KELBER:

1 Q Can't answer better than that?

2 A I think I have answered it three times. There is a  
3 procedure that one follows, and I'm advised by the attorneys  
4 with whom I am working what procedure to follow, and I gave  
5 you some elements of the procedure, but I don't know if I've  
6 got them all or in the order of priority. That's what I do.  
7 I follow the procedure that I'm told to follow in terms of  
8 what I look at and give priority to other things I look  
9 like. They involve such things as the claim terms  
10 themselves, the plain and ordinary meaning of the claims,  
11 what's in the specification, extrinsic evidence, knowledge  
12 of a person's skill in the art, et cetera.

13 Q Great. Have you ever seen in any document anywhere  
14 that substituting touch sensor switches or push button  
15 switches would decrease accidental activation of those  
16 switches?

17 MR. MURPHY: Objection to  
18 foundation.

19 THE WITNESS: You are asking me if I  
20 have seen it in a document?

21 BY MR. KELBER:

22 Q Yes, sir.

1 A Yes.

2 Q Do you know what document that is?

3 A It is discussed in the context of the Schultz  
4 reference that I know I cited in my declarations.

5 Q Is this the document you have been referring to that's  
6 been marked as Microsoft Exhibit 1005? I asked a question.

7 A I'm sorry. Can you read back the question?

8 (The Court Reporter read back the  
9 last question.)

10 THE WITNESS: Yes.

11 BY MR. KELBER:

12 Q And is it your opinion that in this document -- this  
13 is Exhibit 1005 the document indicates somehow that  
14 replacing the push button switches, replacing -- sorry --  
15 push button switches with touch sensor switches would reduce  
16 accidental activation?

17 MR. MURPHY: Object to form.

18 THE WITNESS: Yes.

19 BY MR. KELBER:

20 Q Please take me to that portion, if you can, sir.

21 A Well, if you just look at the background of invention,  
22 section column one, starting with line seven talks about

1 different types of switch systems that include conventional  
2 electric contact devices.

3 Q That's not descriptive of push button switches?

4 A Of course it is.

5 Q You think so?

6 A Absolutely.

7 Q So this reference is discussing in that background of  
8 the invention of push button switch, that's your testimony?

9 A Conventional electric contact device, absolutely.

10 Q Does a push button switch respond to the proximity of  
11 an animal or the shunting of the animal's body resistance  
12 across an electric current?

13 A On push button?

14 Q Yes.

15 A It does not.

16 Q Is a push button switch responsive to either  
17 capacitive coupling? I'm sorry. That's the question.

18 MR. MURPHY: Object to form.

19 THE WITNESS: If it's just a push  
20 button switch with no other circuitry to implement proximity  
21 or touch sensing of any kind, then does not. Does not  
22 respond to proximity.

1 BY MR. KELBER:

2 Q Do the push button switches of the reference that is  
3 Microsoft Exhibit 1004, I think we refer to as Jahagirdar,  
4 do those push button switches respond to electric capacity?

5 A Can we just define what you mean by push button switch  
6 before we -- I answer that question?

7 Q Push button switch -- it would be -- let me make a  
8 concrete reference. Push button switches would be keys 144  
9 of Jahagirdar?

10 MR. MURPHY: Object to foundation.

11 THE WITNESS: Jahagirdar only uses  
12 the word key. They never identified what type of key it is.

13 BY MR. KELBER:

14 Q Does Schultz Exhibit 1005 that we are discussing, does  
15 it describe an improvement that would be obtained by  
16 replacing the keys of Jahagirdar with a touch sensor?

17 A It does.

18 Q And what portion of the reference describes those  
19 keys?

20 MR. MURPHY: Objection. Foundation.

21 THE WITNESS: Well, the reasons to  
22 substitute are outlined in the background, and the -- and

1 the whole pattern that talks about a circuit that the  
2 inventor describes that makes the switch sensitive at the  
3 same time to resistive touching and passive touching at the  
4 same time.

5 BY MR. KELBER:

6 Q I'm sorry. Resistive touching and what?

7 A Capacitive touching at the same time.

8 Q Describe any other type of touching over which an  
9 advantage is secured by using the touch sensors of Schultz?

10 MR. MURPHY: Object to form.

11 THE WITNESS: Only touching by  
12 animate -- objects is the wrong word. Animate entities like  
13 a person's finger.

14 BY MR. KELBER:

15 Q Okay. Does Schultz discuss adjusting the sensitivity  
16 of its touch sensors? Let me withdraw that question and ask  
17 you something that might be more easily responded to.

18 Does Schultz set forth a method by  
19 which the sensitivity of its touch sensor may be adjusted?

20 A So to answer your question, does Schultz disclose a  
21 method for adjusting the sensitivity?

22 Q That's a rough rendering, yes, sir.

1     A       It is not explicitly stated, but the operation of the  
2     bleeder capacitor resistor circuit shown in the lower part  
3     of figure one in the context of a skilled person one would  
4     simply know to adjust resistor 40 to adjust the sensitivity  
5     of the sensor.

6     Q       Let me ask you a question: Paragraph four of your  
7     declaration in 1148, Exhibit 2007, let's go with that  
8     because that's easier, you knew that you could -- that you  
9     could make that adjustment when you filed your initial  
10    declaration in this case in 2015; right?

11   A       Okay.

12   Q       Well, kind of; is that correct?

13   A       I would have to see my declaration.

14   Q       You don't know?

15   A       If you are going to ask me questions about it, I need  
16   to see it, but I did talk about Schultz in that declaration.

17   Q       And nothing has changed since 2015 with regard to the  
18   ability of one of skill in the art to adjust the sensitivity  
19   of the touch sensor of Schultz; correct?

20   A       Skilled person would still have that ability.

21   Q       Why put it in now rather than back in 2015 when you  
22   originally addressed this issue?

1 MR. MURPHY: Object to form.

2 THE WITNESS: You are telling me I  
3 didn't put it in the original declaration, and I'm saying I  
4 need to -- I need to see it. I need to see the declaration.

5 BY MR. KELBER:

6 Q If it was in your original declaration, sir, why put  
7 it in Exhibit 2007 and 2008?

8 MR. MURPHY: Object to form.

9 THE WITNESS: I can't answer the  
10 question without seeing the declaration. Sorry.

11 BY MR. KELBER:

12 Q Well, it was either in the declaration or it wasn't in  
13 this declaration; is that fair?

14 A I can't answer a question without seeing the  
15 declaration.

16 Q You can't answer that question, sir?

17 A I need to see the declaration.

18 Q You can't tell me that you agree that it is one of two  
19 possibilities. It was in your declaration, or it was not in  
20 your declaration?

21 A I feel you are bullying me in to an answer where I  
22 asked you three times to see the declaration to answer your

1 question.

2 Q I know what you want to do, sir. I'm asking you why  
3 did you elect to put this discussion of inadvertent  
4 actuation, paragraph four of Exhibit 1021 in IPR 2015-01150,  
5 and the parallel declaration, the other four IPRs, why did  
6 you elect to put it in that one?

7 A Well, as you know, these second declarations are filed  
8 in response to patent owners' response and/or declarations  
9 of my counterpart Dr. Morley. So at least in the second  
10 declarations, I was answering a position about inadvertent  
11 actuation that would allegedly occur when incorporating the  
12 touch sensor of Schultz in to Jahagirdar.

13 Q Well, that's clearly what you discuss in paragraph  
14 three of this Exhibit 1021?

15 A You mean 1027?

16 Q Depends on which one we are talking about, but it's  
17 the same substance. But that's not what you discuss in the  
18 next paragraph, is it?

19 MR. MURPHY: Objection. Foundation.

20 THE WITNESS: What exhibit are we on  
21 just to be clear?

22 BY MR. KELBER:

1 Q What exhibit do you have before you, and I'll adjust?

2 A 1027. I'm sorry. 2007.

3 Q So you refer to Dr. Morley's discussion of touch  
4 sensors in paragraph four of this document; right?

5 A Can you read back his question or ask it again?

6 Q You refer to Dr. Morley's discussion of touch sensors  
7 and decreased accidental actuation in paragraph four; right?

8 A In the last sentences of paragraph four?

9 Q Well, in fact, it's also in the first sentence of  
10 paragraph four, isn't it?

11 A The first part of the sentence is much more generic  
12 than talking about inadvertent actuation. It simply talks  
13 about any design engineer designing a telephone or a cell  
14 phone or any such product similar to a mobile phone would  
15 consider many different types of switches that would be  
16 incorporated in to the product. An engineer would be  
17 compelled to consider many different types of switches and  
18 then decided the advantages and disadvantages of each.

19 Q That is two different paragraphs is part of the  
20 problem. Could I see your -- so let me redirect your  
21 attention to paragraph three of 2007?

22 A Okay.

1 Q And there you are discussing Dr. Morley's declaration  
2 and deposition that addresses, among other things, decreased  
3 accidental actuation; correct?

4 A That's right.

5 Q Now, paragraph four of that declaration that is 2007,  
6 that does not talk about anything that Dr. Morley had to  
7 say, does it?

8 A Well, that paragraph offers my opinions that relate to  
9 assertions made by Dr. Morley.

10 Q In what way does it relate to assertions made by  
11 Dr. Morley?

12 A Well, Dr. Morley said that sensors such as those  
13 taught by Schultz would have decreased accidental actuation  
14 by inanimate objects. And I say I agree with that. But  
15 then I say that I disagree with his assessment that someone  
16 designing a phone would be disinclined to use a touch sensor  
17 because of accidental actuation by animate objects. And  
18 then in the next paragraph I talk about how a designer would  
19 consider both those types of switches and take in to account  
20 the issue of inadvertent actuation in making a decision  
21 about what switch to use. And then in the last sentence I  
22 do talk about adjusting the sensitively one remedy for

1     inadvertent actuation by animate objects would be to adjust  
2     the sensitivity of the touch sensor.

3     Q       And Dr. Morley did not talk at all about adjusting the  
4     sensitivity, did he?

5     A       Well, he talks about the fact that there could be  
6     inadvertent actuation by inanimate objects.

7     Q       He did not talk at all about adjusting the sensitivity  
8     of a touch sensor, did he?

9     A       He infers the fact that the sensitivity is too high.

10    Q       Did he talk about adjusting the sensitivity of the  
11    touch sensor in any fashion?

12                               MR. MURPHY:   Object to form.

13                               THE WITNESS:   No.   In paragraph four  
14    I offer the remedy of adjusting the sensitivity.

15    BY MR. KELBER:

16    Q       This is your remedy for any accidental actuation that  
17    might occur from using the touch sensor of Schultz in the  
18    device of Jahagirdar; correct?

19    A       It is one of the remedies.   In the last sentence I  
20    identify others, such as putting the touch sensor at the  
21    bottom of a fingertip-size indent or putting it on a  
22    different location of the phone where inadvertent actuation

1 would be less likely to occur. So the sensitivity is one of  
2 three possible remedies that addresses the issue brought up  
3 by Dr. Morley.

4 Q And you were aware of these three remedies when you  
5 prepared your original declaration in 2015, were you not?

6 MR. MURPHY: Object to form.

7 THE WITNESS: Like I said, I would  
8 have to see the report to answer your question.

9 BY MR. KELBER:

10 Q Whether it's there or not, sir, you were aware of  
11 these three remedies?

12 MR. MURPHY: Same objection.

13 THE WITNESS: A, I would have to see  
14 my report to remember what I put in it. And, B, I don't  
15 remember when I conceived of these remedies. They are  
16 pretty boiler plate for any skilled person in the art. They  
17 don't require a lot of thought by a technical person, and  
18 they are relatively simple remedies, so it was not like I  
19 invented something new by coming up with those three  
20 remedies.

21 BY MR. KELBER:

22 Q Then why did it matter to you what you conceived of

1     it?

2                                   MR. MURPHY:  Objection.  Foundation.

3                                   THE WITNESS:  I was addressing  
4     something asserted by Dr. Morley.

5     BY MR. KELBER:

6     Q       And what was it you were addressing that you think was  
7     asserted by Dr. Morley?

8     A       Inadvertent actuation by animate objects.

9                                   MR. KELBER:  I'm going to object to  
10    paragraph four of this declaration as belatedly presented.

11    BY MR. KELBER:

12    Q       Does either Schultz or Jahagirdar talk about providing  
13    a finger tipped-sized indent for the touch sensor?  You know  
14    the answer to this.  Do you really need to review it?

15    A       Schultz ends with a sentence that talks about the  
16    exact configuration and utilization as left to the skill of  
17    the inventor of the person working in the art.

18    Q       Can you answer my question?

19    A       What was the question?

20    Q       Does either Schultz or Jahagirdar talk about, quote,  
21    putting it -- and it being the touch sensor -- at the bottom  
22    of a fingertip-sized indent, closed quote.  Paragraph four

1 of your declaration.

2 A Not in those specific words, no.

3 Q Does Schultz discuss moving the touch sensor to a,  
4 quote, in your declaration, to a location on the phone where  
5 inadvertent actuation would have been less likely, closed  
6 quote?

7 A Well, Jahagirdar talks about moving keys to different  
8 places on the phone.

9 Q Where inadvertent activation would have been less  
10 likely?

11 A Sure.

12 Q And where is that discussion?

13 A If you look at the embodiment of figure nine, how all  
14 the keys are on the face of the phone.

15 Q And does Jahagirdar indicate that that configuration  
16 makes it less likely to have accidental actuation?

17 A Not explicitly, no.

18 Q Does Schultz discuss that at all?

19 A Schultz does not talk about phones.

20 Q In fact, he does not talk about phones at all, does  
21 he?

22 A No. He's talking about a sensor, touch sensor.

1 Q You spent some time this morning discussing with  
2 counsel the question of privilege, and the net result was  
3 you could not recall the discussion you had with counsel  
4 that Microsoft was prepared to exercise privilege with  
5 respect to. What did you talk about for the remaining 25  
6 minutes?

7 A I'm sorry. I don't know what you are talking about.

8 Q You took a break for 25 minutes this morning, sir, in  
9 response to Mr. Murphy's request to exercise his privilege,  
10 exercise his right to review a question of privilege.

11 A Okay.

12 Q The outcome of that discussion 25 minutes later was  
13 Mr. Murphy said you don't recall the conversation. You  
14 echoed that conclusion; is that accurate?

15 MR. MURPHY: Objection. Foundation.

16 THE WITNESS: Is which part  
17 accurate?

18 BY MR. KELBER:

19 Q That you don't recall the conversation with sufficient  
20 clarity to recall what was said?

21 A Which conversation are we talking about?

22 Q The one you had with counsel where you discussed the

1 impact or import, whichever one you prefer, of the addition  
2 of the final paragraph in Exhibits 2007 and 2008?

3 A I'm not sure what you're talking about, but if I  
4 answered it before, then my answer is still the same.

5 Q Do you recall that conversation that you had with  
6 counsel? Don't tell me what it was.

7 A During the break?

8 Q No, sir. Whenever you had that discussion with  
9 counsel?

10 A Not during the break. During the break?

11 Q No, sir. When counsel originally asked you to execute  
12 or somehow put in to effectuation Exhibit 2007 and 2008, you  
13 had a discussion with counsel; correct?

14 A You mean today or back then?

15 Q When you executed or affixed the facsimile of your  
16 signature?

17 A We had conversations.

18 Q What was the substance of those discussions?

19 MR. MURPHY: Objection. For reasons  
20 of privilege and work product, don't relate the substance of  
21 those conversations, if you remember them.

22 BY MR. KELBER:

1 Q What was the subjects you talked about?

2 MR. MURPHY: Same objection.

3 THE WITNESS: Certainly related to  
4 boiler plate paragraph. I don't remember my --

5 BY MR. KELBER:

6 Q What about it?

7 MR. MURPHY: Same objection.

8 MR. KELBER: I'm not asking him for  
9 his discussion. I'm asking him for the subject that he  
10 inquired about.

11 MR. MURPHY: It really depends what  
12 you mean by subjects as to whether the response is going to  
13 be privileged or not. We can take a quick break.

14 MR. KELBER: Go ahead. Take another  
15 break, and we can discuss the same question. It seems to me  
16 you came back and informed this table that he did not recall  
17 the conversation with sufficient clarity to be able to  
18 respond.

19 MR. MURPHY: That was the response  
20 to the question that was posed to him.

21 MR. KELBER: If you need to ask him  
22 again, ask him again.

1                   MR. MURPHY: You had asked about the  
2     subject of the discussion. Can you elaborate what you are  
3     looking for as far as with regard to subjects?

4                   MR. KELBER: What aspects of the  
5     final paragraph of 2007 and 2008 did he talk about?

6                   MR. MURPHY: Can you give me  
7     specific examples because I need to know exactly kind of  
8     what you want so I can tell him if it's appropriate to  
9     answer or not.

10                  MR. KELBER: What did counsel tell  
11    him was meant by all statements made and information and  
12    belief are true. What did counsel tell him is provided for  
13    in Section 1101 of Title 18 and why was the addition of the  
14    jurat necessary? Those are the three subjects I would like  
15    to inquire about with him.

16                  MR. MURPHY: All right. We will be  
17    right back.

18                  MR. KELBER: Thank you.

19                                 - - -

20                   (Recess taken from 2:26 p.m. until 2:33 p.m.)

21                                 - - -

22                  MR. MURPHY: The instruction of the

1 witness is to not disclose the substance of any of the  
2 conversations that you had with counsel on this topic,  
3 whether that be questions that you asked or the answers that  
4 you received, to the extent that you remember them.

5 However, you are free to answer questions on the previous  
6 line of questioning about your understanding of the language  
7 in the declarations, and you're free to answer questions as  
8 to whether or not you remember the conversations between  
9 yourself and counsel.

10 BY MR. KELBER:

11 Q Do you remember the conversations between yourself and  
12 counsel on the substance of paragraph eight of 2007?

13 A You are talking about the ones before today?

14 Q Whenever you had the ones before, sir?

15 A So you are not asking about the conversations during  
16 the break?

17 Q No, sir.

18 A I don't remember the substance, other than they need  
19 to put the paragraph in for obvious reasons.

20 Q What are the obvious reasons?

21 A It's a boiler plate paragraph that appears in many  
22 documents.

1 Q I realize this seems repetitive. It is in many  
2 respects. But you have seen reference to Section 1101 of  
3 Title 18 of the United States Code in some other document?

4 A I have.

5 Q Other than the ones involved in this proceeding?

6 A Yes, sir.

7 Q Are they publicly-available documents?

8 A I'm not sure.

9 Q Where would I look for such a document because I don't  
10 think Title 18 has a Section 1101 so I would be fascinated  
11 to know?

12 A I don't know. I don't know.

13 Q You don't know?

14 A I don't know where I have seen it.

15 Q You just know you have seen it?

16 A Uh-hum.

17 Q And that's based on what?

18 A As I think back to documents I've seen in other  
19 litigations and/or IPRs, I remember the paragraph. Perhaps  
20 the specific section number might have been different, but  
21 1101, Title 18 as I thought about it, that rings a bell, and  
22 certainly the phrase about information and belief as I

1     thought about it, I have seen that before.

2     Q       With respect to information and belief, where have you  
3     seen information and belief as statements made on  
4     information and belief are true? Where have you seen that  
5     before outside of these five proceedings?

6     A       Well, like I said, I recall a paragraph of that nature  
7     showing up on other legally-signed documents.

8     Q       Maybe --

9     A       Expert reports of others or maybe translations of  
10    foreign documents. If you are fixating on the word true --

11    Q       Isn't that the import of your paragraph, sir, that  
12    these statements are true?

13    A       That is the import of my paragraph. But you are  
14    asking me where I have seen it before, and I am telling you  
15    I -- after thinking about it since the last time you asked,  
16    I have a better recollection of having seen that paragraph  
17    in a previous document.

18    Q       So you have been an expert witness in previous IPRs;  
19    correct?

20    A       That's right.

21    Q       Did you file -- was a declaration reflecting your  
22    signature filed in any of those?

1 A Yes.

2 Q Stretching along, do you remember the number of any of  
3 those IPRs?

4 A No, sir.

5 Q Do you know when any of those earlier IPRs on behalf  
6 of your declaration submitted on behalf of Microsoft?

7 A I'm sorry?

8 Q Was your declaration submitted in those earlier IPRs  
9 where this language are true was that submitted on behalf of  
10 Microsoft?

11 MR. MURPHY: Object to form.

12 THE WITNESS: Outside of the IPRs  
13 involved in the current -- the IPRs owned by Global Touch,  
14 you are talking about other IPRs?

15 BY MR. KELBER:

16 Q Other IPRs, yes.

17 A To the best I recall, I have not worked on an IPR on  
18 behalf of Microsoft before.

19 Q Fair enough. You discuss in paragraph five of Exhibit  
20 2007 the -- I think your word is embodiment. I'm sorry.  
21 That's not your word, but you refer to an alternative  
22 configuration where key 150 is pressed to display, quote,

1 new visual information, closed quote. Do you see that?

2 MR. MURPHY: Objection to

3 foundation.

4 THE WITNESS: I see that.

5 BY MR. KELBER:

6 Q Well, when that happens, when what you described  
7 happens; that is, new visual information is presented, does  
8 that show a condition of the product that is involved?

9 A When Jahagirdar talks about what the new visual  
10 information may contain, if I refer to the patent, I can  
11 answer your question.

12 Q Don't you know one way or the other? Does it indicate  
13 the condition of the product? Does it indicate the  
14 condition of the phone?

15 MR. MURPHY: Object to form.

16 THE WITNESS: I believe your  
17 question was, does the new information contained --

18 BY MR. KELBER:

19 Q The presentation of -- this is your term of  
20 declaration. New visual information provide information on  
21 the condition of the phone?

22 A Yes.

1 Q And what condition is it providing information with  
2 respect to?

3 A It's discussed in column five starting with line 57.  
4 New visual information includes information different from  
5 or in addition to the status information may include date  
6 and time information. That's not about the phone. Battery  
7 status information. That's about the condition of the  
8 phone. Low battery warning indication. That's about the  
9 condition of the phone. Communication status emission,  
10 status information such as in use and/or roam indication.  
11 Combination of the above. And those indications that  
12 comprise, in part, the new information describe conditions  
13 of the phone, status about the phone.

14 Q And when those indications -- appreciate the answer --  
15 when those indications are provided, what's the load of the  
16 Jahagirdar phone?

17 A I'm sorry. The energy-consuming load?

18 Q Yes, sir.

19 A I believe I discussed that the energy-consuming load  
20 is displayed on the face of the phone which is element 520  
21 in figure five.

22 Q The display on the face of the phone that is element

1 520 in figure five, is that turned on when the new visual  
2 information is displayed?

3 MR. MURPHY: Object to form.

4 THE WITNESS: According to the flow  
5 chart of figure 8A in Jahagirdar, the second display, as it  
6 is called 520, is off.

7 BY MR. KELBER:

8 Q Is off. When this information is displayed, this new  
9 visual information is displayed?

10 A That's right.

11 MR. KELBER: Thank you. I have got  
12 nothing further.

13 MR. MURPHY: Off the record for one  
14 second.

15 - - -

16 (Discussion off the record.)

17 - - -

18 MR. MURPHY: No redirect. We would  
19 like to reserve the right to read and sign, and we dispense  
20 with the formalities, like we did before.

21 MR. KELBER: That's great. For that  
22 dispense with the requirement for notary and the rest?

1 MR. MURPHY: Correct.

2 MR. KELBER: Terrific.

3 (At 2:45 p.m. proceedings were

4 concluded.)

5 - - -

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1 I HEREBY CERTIFY that I have read this transcript of  
2 my deposition and that this transcript accurately  
3 states the testimony given by me, with the changes  
4 of corrections, if an, as noted.

5

6

7 X \_\_\_\_\_

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9 Subscribed and sworn to be before this day of  
10 2016

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