

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

3 -----
4 COX COMMUNICATIONS, INC.,
5 Petitioner,

6 v.

7 AT&T INTELLECTUAL PROPERTY II, L.P.,

8 Patent Owner

9 Case IPR2015-01227

10 Patent 7,907,714
11
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13
14

15 DEPOSITION OF NADER MIR, Ph.D.

16 Palo Alto, California

17 Monday, July 18, 2016
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24 REPORTED BY: JANIS JENNINGS, CSR, CLR, CCRR

25 ASSIGNMENT NO. 110228A

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9 DEPOSITION OF NADER MIR, Ph.D., taken on
10 behalf of the Patent Owner, at HAYNES AND BOONE, LLP,
11 525 University Avenue, Suite 400, Palo Alto, California,
12 beginning at 9:20 a.m. on Monday, July 18, 2016, before
13 Janis Jennings, Certified Shorthand Reporter No. 3942,
14 CLR, CCRR.
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I N D E X

WITNESS

EXAMINATION

NADER MIR, Ph.D.

BY MR. SHIMOTA

6

E X H I B I T S

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1 PALO ALTO, CALIFORNIA; MONDAY, JULY 18, 2016;

2 9:20 A.M.

3
4 NADIR MIR,

5 The witness herein, was sworn and
6 testified as follows:

7
8 EXAMINATION

9 BY MR. SHIMOTA:

10 Q. Good morning, Dr. Mir.

11 A. Good morning.

12 Q. Would you please state your full name and
13 address for the record.

14 A. Sure. Nader, the last name is Mir, Mir, and
15 it's 6492 Crystal Springs Drive, San Jose,
16 California, 95120.

17 Q. I'm pretty sure I will be asking you that
18 question quite a -- I think at least four times over
19 the next two days, so just be ready for it.

20 A. Okay. Sure.

21 Q. So you have been deposed before; correct?

22 A. Yes.

23 Q. On numerous occasions?

24 A. In this particular matter, you mean?

25 Q. Well, I mean just in general, you have been

1 deposed, you know. You know, can you estimate --

2 A. Yeah. Numerous times.

3 Q. Numerous times. Fair enough.

4 And you understand that you're under oath;
5 correct?

6 A. Yes.

7 Q. And that would be the same as if you were
8 testifying in court?

9 A. Yes.

10 Q. Okay. And you also understand that the
11 testimony, your deposition testimony may be used in
12 these proceedings; correct?

13 A. Yes, I do. Yeah.

14 Q. And I'm sure you've heard these ground rules
15 before. But during the course of the day, you
16 understand that I'll be asking you some questions
17 and you will answer them to the extent that you can;
18 correct?

19 A. Correct.

20 Q. And as much as possible, if you could wait
21 for me to finish my questions, I will also try not
22 to talk over you when you're giving an answer.

23 Is that fair?

24 A. That's fair enough.

25 Q. And if during the course of the day today,

1 you ever come -- there comes a time where you don't
2 understand any of my questions, would you please ask
3 me to either repeat it, rephrase it, or clarify it?

4 A. Sure.

5 Q. Thanks. And is there any reason that you
6 can think of today that you are unable to testify
7 truthfully and accurately to the best of your
8 ability?

9 A. No.

10 Q. Okay. And as always, you know, to the
11 extent you need a break, at any time during the
12 course of the deposition, just ask me and we can
13 take them, and, you know, every hour or so
14 presumably.

15 A. Sure. Thanks.

16 Q. Can you tell me, what did you do to prepare
17 for your deposition today? Let me take a step back.

18 You understand that you're testifying in
19 connection with IPR2015-01227 this morning? The
20 declaration you submitted in connection with that?

21 A. If you let me know which patent number it
22 is, that would be better for me --

23 Q. Sure.

24 A. -- to remember.

25 Q. Yeah. Fair enough.

1 And so an easier way to do it, so you
2 prepared a declaration in connection with United
3 States Patent No. 7,907,714?

4 A. '714, the last three numbers, yes.

5 Q. Sure. So is it fair enough if we call that,
6 if we use the shorthand '714 patent for that today?

7 A. Absolutely, yes.

8 Q. Okay. And you prepared a reply declaration
9 in support of your opinion that the claims of the
10 '714 patent are invalid; correct?

11 A. Yes, I did.

12 Q. And you understand that I'm going to be
13 asking you questions this morning about that, that
14 '714 reply declaration; right?

15 A. Yes.

16 Q. And so I'm going to ask you just what you
17 did to prepare for your deposition today with
18 respect to the '714 patent reply declaration.

19 A. Yes. I reviewed my own reply report, the
20 patent '714, and its prior art, plus the Dr. Akl's
21 testimony or deposition transcript. And a few other
22 things I don't remember. If I have my report in
23 front of me, I have listed the documents I used
24 to -- for my opinion, and I just reviewed those too.

25 Q. Sure. You said you reviewed Dr. Akl's

1 deposition testimony. Did you also review his
2 declaration in connection with the '714 patent?

3 A. Yes, I did.

4 Q. And did you meet with counsel in preparation
5 for your deposition?

6 A. I met virtually on the phone.

7 Q. Okay. And when was that virtual meeting?

8 A. That was on Friday, last week.

9 Q. And was that the only day upon which you met
10 to prepare for your deposition in connection with
11 the reply declaration?

12 A. Yeah. As a prep session, that's the only
13 one for this deposition, yeah.

14 Q. Okay. And how long did the virtual meeting
15 take place?

16 A. I don't recall exactly, but I guess it was
17 about one and a half hours to two hours maximum.

18 Q. And was that 1.5 hours devoted to the
19 preparation for the '714 patent reply declaration or
20 were there other subjects covered?

21 A. No. The entire telephone conversation was
22 about we covered all the four patents.

23 Q. And you just mentioned that in preparation
24 for your deposition, you reviewed several documents,
25 including, I believe, your reply, the '714 patent,

1 certain prior art, and Dr. Akl's deposition
2 transcript.

3 Upon what day or days did you perform the
4 review of those documents?

5 A. Ever since my counsel informed me that there
6 is a deposition coming up, I started to prepare. I
7 don't remember which day reviewed what document,
8 but, you know, just any time I had a couple of hours
9 or some time, I reviewed the one that I wanted to
10 review.

11 Q. And just focusing on the '714 patent review,
12 how many hours did you spend? Now, putting aside
13 the virtual meeting, how many hours did you spend
14 preparing for your deposition approximately?

15 A. I don't think that it would be more than a
16 few hours, maybe four or five hours maximum.

17 Q. Okay. Let's go over some quick
18 vocabulary --

19 A. Sure.

20 Q. -- so we can talk to each other today.

21 If I refer to Cox's '714 petition in this
22 matter, do you know what I'm referring to?

23 A. Yeah. That's the petition of '714.

24 Q. Okay. The petition asking the Patent Trial
25 and Appeal Board to cancel the claims of the '714

1 patent?

2 A. That's right.

3 Q. Okay. And I think we already established
4 that we can agree that the '714 patent refers to
5 U.S. Patent No. 7,907,714; correct?

6 A. Correct.

7 Q. Okay. And in general, for prior art
8 references that you've relied upon in your '714
9 declaration, if I refer to them by the first
10 inventor's name, will you understand what I'm
11 referring to?

12 A. I would appreciate it, yeah.

13 Q. Sure.

14 A. Yeah.

15 Q. Absolutely.

16 You know, to the extent there's any
17 confusion, I think there's, you know, some patents
18 and some provisionals, just ask -- and I slip, just
19 please ask me to clarify.

20 A. I'll try.

21 Q. And you submitted an original declaration in
22 connection with your opinions regarding the '714
23 patent; is that right?

24 A. That is correct.

25 Q. And if I can call that your first

1 declaration or your original declaration, is that
2 okay?

3 A. That's fair, yeah.

4 Q. Okay. And do you understand that that is --
5 that your original declaration is an Exhibit 1014 in
6 this matter?

7 A. I don't remember the exhibit number.

8 Q. Okay. We'll get that to you. We don't need
9 to at the moment.

10 And do you understand the fact that the
11 Patent Trial and Appeal Board decided to -- granted
12 Cox's petition and had an institution decision; is
13 that correct?

14 A. Yes. I'm aware of it.

15 Q. All right. And have you reviewed that
16 institution decision?

17 A. Briefly, yes, a long time ago.

18 Q. Okay. If I refer to it as an institution
19 decision, will you understand what I'm referring to?

20 A. Yeah. Yes.

21 Q. Okay. And do you understand that Cox has
22 submitted a reply to AT&T's papers in connection
23 with this matter?

24 A. Yes.

25 Q. And have you reviewed the petitioner's

1 reply?

2 A. I don't recall if I reviewed it. I might
3 have, yeah.

4 Q. And I think you've already testified you
5 submitted a reply declaration in connection with
6 these proceedings; correct?

7 A. Correct.

8 Q. Is it okay if I call that your reply
9 declaration?

10 A. Yes.

11 Q. And do you know that's -- and is your reply
12 declaration Exhibit 1027?

13 A. I don't remember the exhibit number.

14 Q. Do you recall, if I refer to the Buhrmann
15 prior art reference, do you recall that reference?

16 A. I do recall it.

17 Q. And is it correct that you do not address
18 the Buhrmann reference in your reply declaration?

19 A. That is correct.

20 Q. And did you -- before submitting your reply
21 declaration, did you have occasion to review
22 Dr. Akl's conclusions with respect to the Buhrmann
23 reference?

24 A. I reviewed Dr. Akl's declarations.

25 Q. Okay.

1 A. I must have reviewed that too.

2 Q. Do you agree with Dr. Akl's conclusions with
3 respect to the Buhrmann reference?

4 MR. BERTULLI: Objection. Outside the
5 scope.

6 THE WITNESS: I don't recall what the
7 conclusion was. I need to see it to make it my
8 opinion.

9 BY MR. SHIMOTA:

10 Q. So sitting here today, you don't know
11 whether you agree or disagree with Dr. Akl's
12 conclusions with respect to the Buhrmann reference?

13 A. Overall, I disagree with most of the
14 opinions of Dr. Akl, that could be part of my
15 disagreements. I need to see exactly what his
16 conclusion is and I will let you know.

17 Q. Well, you understand that your opinions need
18 to appear in your declaration; correct?

19 A. Correct.

20 Q. And if you had any bases for disagreeing
21 with Dr. Akl with respect to the Buhrmann reference,
22 you would have put them in your reply declaration;
23 right?

24 A. Right. But you're confusing me now again.
25 So you're asking me a question that there's nothing

1 in front of me, and I cannot answer the question
2 unless I see the document, see what exactly you're
3 referring to.

4 Q. Okay. Well, let me ask it more directly,
5 then. Fair enough.

6 So I think you just testified that you don't
7 address Buhrmann in your reply declaration; is that
8 right?

9 A. That is correct.

10 Q. Can you tell me the reason why you don't
11 address Buhrmann in your reply declaration?

12 MR. BERTULLI: Objection. Outside the
13 scope.

14 THE WITNESS: Because the counsel did not
15 ask me to.

16 BY MR. SHIMOTA:

17 Q. So is it fair to say with respect to your
18 reply declaration that you were instructed to
19 respond to specific topics by counsel and you just
20 addressed those topics?

21 MR. BERTULLI: Objection. Mischaracterizes
22 testimony.

23 THE WITNESS: When I started my reply draft,
24 that was -- I didn't know the start of the idea so
25 the counsel called me and asked me to have the reply

1 and they mentioned exactly which areas are the ones
2 that I need to reply.

3 BY MR. SHIMOTA:

4 Q. Okay.

5 A. My original opinion about Buhrmann or other,
6 you know, patents or prior arts still unchanged, it
7 still is unchanged, and I still agree with all the
8 things that I opined on in my original report.

9 MR. SHIMOTA: Okay. Will you get the report
10 for me. Or the declaration, excuse me.

11 BY MR. SHIMOTA:

12 Q. So my colleague is handing you what has been
13 previously marked as Cox Exhibit 1027.

14 My first question is -- and take your time
15 to, you know, like make sure it's an accurate
16 document. Is this your reply declaration?

17 A. It looks like it.

18 Q. Okay. And just for the sake of
19 completeness, I had asked you earlier if your reply
20 declaration was Cox Exhibit 1027. Is your reply
21 declaration Cox Exhibit 1027?

22 A. I'm seeing the Exhibit 1027 indicated on the
23 report, yes.

24 Q. If you could direct your attention to
25 paragraph 11 of your reply declaration.

1 A. Sure, I'm on it.

2 Q. Okay. And you state at paragraph 11 that
3 you "...previously expressed my opinion that the An
4 Provisional fully describes the substance of the
5 subject matter claimed in An." And you point to
6 paragraph 101 of your original declaration.

7 Do you see that?

8 A. I'm seeing it, yeah.

9 Q. And do you see there that your original
10 declaration is referred to as Exhibit 1014?

11 A. Yes. I'm seeing that there.

12 Q. So based on this, what you state there, am I
13 correct in understanding that paragraph 101 of
14 Exhibit 1014 contains all the citations necessary to
15 show that the An Provisional fully describes the
16 substance of the subject matter claimed in An?

17 A. It should be.

18 Q. What do you mean by -- can you explain to me
19 what you mean by "it should be"?

20 A. So by just putting a reference 101,
21 paragraph 101, that means that it should be, in my
22 opinion should be expressed in 101 related to this.
23 I need to see the paragraph 101 and see the --

24 Q. Sure.

25 A. -- exactly what it is.

1 MR. SHIMOTA: Fair enough.

2 MR. SHIMOTA: Well, I'll just kind of...

3 BY MR. SHIMOTA:

4 Q. So I think, just for the record, I'll say
5 that you have been handed Exhibit 1014 which was
6 your original declaration in connection with the
7 '714 patent.

8 And are you at paragraph 101?

9 A. Yes.

10 Q. And my question -- I'll just repeat it so
11 you've got it in front of you. Is it your
12 understanding that paragraph 101 in your original
13 declaration -- well, let me take one step back.

14 So you see in paragraph 101 you have a
15 number of citations to Exhibit 1006; correct?

16 A. Yes. I am seeing some -- there's citations.

17 Q. Okay. And are those citations to the An
18 Provisional?

19 A. One of them on the fifth line is
20 Exhibit 1006. I need to check which one it is.
21 1006, according to your original declaration, is the
22 An Provisional.

23 Q. Okay. And then so in paragraph 101, you'd
24 agree with me that you're citing to various pages in
25 the An Provisional; correct?

1 A. Yes.

2 Q. And are the citations in paragraph 101 all
3 that is necessary to show that the An Provisional
4 fully describes the substance of the subject matter
5 claimed in An?

6 A. So in the reply declaration, I am trying to
7 say that my opinion that An Provisional fully
8 describes has been mentioned in the previous draft,
9 previous declaration, in paragraph 101. So this is
10 what I'm trying to express in the reply declaration.

11 Q. Well, when you say it had been mentioned,
12 was it your position that your opinion in paragraph
13 101 of your original report was a complete
14 discussion of why the An Provisional fully describes
15 the substance of the subject matter claimed in An?

16 A. It may not be the complete discussion, but
17 if you notice the first sentence of the paragraph
18 101, it clearly says my review of An Provisional
19 shows that it fully describes the substance of the
20 subject matter claimed in An. So these two actually
21 are kind of complimentary to each other. I refer to
22 101, paragraph 101, and 101 says that the An
23 Provisional fully describes the substance of the
24 subject matter.

25 Q. So you just testified that it may not be the

1 complete discussion in paragraph 101; correct?

2 A. Yes. But I need to explain that, to what
3 extent do we need to have the details of the subject
4 matter. So 101 is the summary of the opinion with
5 some references. For example, the reference page
6 numbers 16 through 25, page number 38, page number
7 49 through 51. So these are the ones that in An I
8 have referred to so the details are there. So in
9 this paragraph itself, the discussion may not --
10 they may not be there. But it has been referred to.

11 Q. So you said that you need to look at the
12 reply declaration and paragraph 1 together; correct?
13 They're complimentary to one another?

14 A. Yes. Of course they're complimentary to one
15 another.

16 Q. Okay. And so the paragraph from Exhibit 104
17 is not the complete discussion of how the An
18 Provisional fully describes the subject matter
19 claimed in An?

20 A. 104?

21 Q. Well, 1014. Excuse me.

22 A. Oh.

23 Q. Pardon me.

24 A. 101 summarizes my opinion again, and then it
25 shows the details of the reference. For example,

1 the page numbers are there in various places. You
2 can see various page numbers of the An Provisional
3 are referred to.

4 Q. Okay. And those page numbers are all the
5 pages you need to show that the claims of An are
6 supported by the An Provisional; correct?

7 A. Well, there are maybe a few other things
8 such as figures, figure numbers in paragraph 99 and
9 100. Paragraph 98, 99, and 100 also give the
10 details.

11 Q. Do paragraphs 98, 99, and 100 cite to
12 Exhibit 1006?

13 A. As far as I see, paragraphs 98, 99, and 100
14 are under the title that is related to anticipation
15 by An, so I don't see any reason that those are not
16 part of the evidences.

17 Q. Well, and my question is: So do you
18 understand that in your reply declaration you've
19 offered an opinion that claims of the An patent are
20 supported by the An Provisional; right?

21 A. Right.

22 Q. And when you were doing that analysis, were
23 you considering the An Provisional by itself or were
24 you considering the An Provisional and also
25 disclosures in the An patent?

1 A. Oh, I see. I didn't -- so I misunderstood
2 your question. So the An Provisional clearly is in
3 paragraph 101. So it's under paragraph 101, I
4 guess, since we actually started talking about An
5 reference as well, so I brought up the paragraphs 98
6 through 100 as well. So 101 is the one that
7 actually recites the details of the An Provisional.

8 Q. Okay. And that's the only one; correct?

9 A. Apparently, yes.

10 Q. And I'll just, you know, step back.

11 So in paragraph 101, the citations to the
12 pages of the An Provisional are all that you need to
13 show that the An Provisional fully describes the
14 substance of the subject matter claimed in An;
15 correct?

16 A. For your information, I have presented a
17 detailed claim chart in my reply declaration and
18 that gives the absolute detail of my opinion about
19 the An Provisional.

20 Q. So just so I think I can understand there.
21 So the citations to pages in paragraph 101 of
22 Exhibit 1014 are not enough to show that the An
23 Provisional fully describes the substance of the
24 subject matter claimed in An; right?

25 A. I have to check. I cannot say yes or no. I

1 have to check if the entire paragraph 101 covers
2 everything about the An Provisional. However, if
3 you want to know my opinion about the An
4 Provisional, I just said, and I'll repeat it, I have
5 a detailed claim chart that follows the -- exactly
6 paragraph 11 that we are discussing.

7 Q. Well, actually, I'd like you to check. So
8 I'd like you to check to see if the pages cited in
9 paragraph 101 are enough to show that the An
10 Provisional fully describes the substance of the
11 subject matter claimed in An.

12 A. Okay. Sure. If you give me time and the
13 provisional and to make sure that, you know,
14 everything is there.

15 Q. Sure.

16 A. So I hope that you don't mind about the time
17 because it may take a real long time. The reason is
18 that, you know, I'm going to check the -- those
19 citations and then those citations need to be
20 contrasted with my claim chart to see if the claim
21 chart covers those. If this is what you want, then
22 I can start doing it.

23 Q. Well, I think it's important. So how long
24 do you think it's going to take you to do this?

25 A. I need to go over the entire An Provisional,

1 contrast with those references in 101, and then
2 re-contrast with the ones in the claim chart that,
3 you know, you can estimate, you know, maybe half an
4 hour, maybe one hour. Something like that.

5 Q. But I'm not asking you about your claim
6 chart. I'm asking you about the citations in
7 Exhibit 101 -- or excuse me -- Exhibit 1014, if
8 those are sufficient to -- are all that are
9 necessary to show that the An Provisional fully
10 describes the substance of the subject matter
11 claimed in An.

12 A. That still takes time because I need to go
13 over the entire document of An Provisional to make
14 sure that, you know, that is covered by this
15 paragraph to make sure. The easiest way to find out
16 about my opinion about the An Provisional is the
17 claim chart.

18 Q. You -- can you first check the pages you
19 cited in paragraph 101?

20 A. Yeah. Let's do this. Let's do this.

21 Q. And then you tell me if they're enough.

22 A. Yeah. Okay.

23 Q. Sitting here today.

24 A. Okay. That's fair enough. Let's just do
25 that.

1 Q. Can I ask you one question before you start?

2 A. Sure.

3 Q. Okay. So without the claim chart, you can't
4 say for sure that the An Provisional fully describes
5 the substance of the subject matter claimed in An;
6 correct?

7 A. It could be a -- the little error in the
8 paragraph that I'm not aware of and then you are
9 catching that error or the entire opinion follows
10 the paragraph 101. So we are seeing something
11 really small could be an error, or it could be. I
12 mean, I'm not even sure that there is an error. If
13 there is an error, then the entire opinion is --
14 actually it's following up after this paragraph and
15 then we are not actually focusing on that part, so
16 that's what my concern is.

17 Q. Well, I tell you what. So why don't you
18 look at the paragraphs -- go into Exhibit 1006 and
19 look at the pages that you've cited in paragraph
20 101, and you see if you can tell me today if those
21 pages are enough to support your opinion that the
22 paragraph 101 contains all the citations necessary
23 to show that the An Provisional fully describes the
24 substance of the subject matter claimed in An.

25 A. I do my best. I'm not sure how long it's

1 going to take.

2 Q. Okay. So I'll just state for the record,
3 it's 9:52. Take your time.

4 A. Can I write on it?

5 Q. You are allowed to write on it. I think for
6 the record, we probably will have to remark it as a
7 different exhibit, but please do.

8 A. Actually I don't want to do that, yeah.
9 Yeah, I don't want to do that. Actually, I just
10 take it back.

11 Okay. Well, just to shorten the time for
12 this task. I can see that there are some pages that
13 are not mentioned in paragraph 101. For example,
14 page 31 having Figure 5 that I have used it in my
15 claim chart, for example, on page 19 of my claim
16 chart, Figure 5 is missing. So just because of
17 this, I can say that, you know, paragraph 101 does
18 not contain all the references or page numbers that
19 I used to form my opinion in the claim chart of my
20 reply declaration.

21 However, you are seeing the sentence in
22 paragraph 101, I put a quote here, "My review of the
23 An Provisional shows that it fully describes the
24 substance of the subject matter claimed in An. In
25 particular," that's the distinct phrase that I

1 wanted to just emphasize, "In particular, the An
2 provision discloses that the subscriber," and then
3 continues.

4 So in particular, I have expressed several
5 pages or showed several pages or referred to several
6 pages that An Provisional shows it describes the
7 substance of the subject matter. So there may be
8 the other -- there are other pages of An
9 Provisional.

10 Again, for a full list of all pages of An
11 Provisional, you would need to go to my claim charts
12 that follows paragraph -- the paragraph 11 of my
13 reply declaration.

14 Q. And so when you say that, "paragraph 101
15 does not contain all the references or page numbers
16 that I used to form my opinion in the claim chart of
17 my reply declaration," you're referring to your
18 opinion that the An Provisional fully describes the
19 substance of the subject matter claimed in An;
20 correct?

21 A. Could you repeat your question.

22 Q. Sure. So when you testified that "paragraph
23 101 does not contain all the references or page
24 numbers that I used to form my opinion in the claim
25 chart of my reply declaration," you were referring

1 to your opinion that the An Provisional fully
2 describes the substance of the subject matter
3 claimed in An; correct?

4 A. Correct.

5 Q. And you directed me to, as an example of
6 something in -- well, you refer to the claim chart,
7 and the claim chart is just for the purpose, to
8 clarify the record, it is, I believe it's Table 1;
9 is that correct? Just so we're clear on the record.

10 A. Starting on page 14.

11 Q. Sure. I'm just -- just to make your
12 testimony clear, you referred to a claim chart in
13 your reply declaration, the claim chart is Table 1,
14 which starts at page 14; correct?

15 A. The answer is the claim chart I refer to, it
16 is actually Table 1 of my reply declaration which
17 appears after paragraph 26, page 14. And then it
18 continues for about 26 pages, the chart is really
19 long. That covers everything about An Provisional.

20 Q. Yeah. I mean, it's a lot longer than
21 paragraph 101; right?

22 A. Of course, yes.

23 Q. And you -- as one example, you directed me
24 to a citation to page 31 and Figure 5; correct? And
25 that was in paragraph 101; right?

1 A. That's right. So page 31 of Exhibit 1006,
2 Figure 5, is the one that I used in the Table 1 we
3 just discussed and that is on page 19 as the same
4 figure I used. So that figure was missed in
5 paragraph 101.

6 Q. Why was it missed in paragraph 101?

7 A. As -- as an example.

8 Q. Yeah. Just as a question, you know, why
9 wasn't, just this one, for example, why wasn't page
10 31 included in paragraph 101?

11 A. Again, again, paragraph 101 clearly says
12 that in particular, the An Provisional discloses
13 that a subscriber query for service provided is
14 received by, and then it continues the discussion on
15 a certain portion of the An Provisional. So this
16 may not contain all the portions of An Provisional
17 for my purpose.

18 Q. Let's just -- for the sake of the exercise
19 here, let's just look at this element 108 that
20 you've directed. We were looking at 1e for purposes
21 of the record; right?

22 A. The same figure?

23 Q. Yeah, yeah. That's what we were talking
24 about paragraph -- or 31.

25 A. Sure. Uh-huh.

1 Q. And so let's see which, let's walk through
2 this 1e paragraph. So in paragraph 1e, you cite to
3 page 11; is that right? Of Exhibit 1006, the An
4 Provisional?

5 A. Right.

6 Q. And it looks to be here like you cite to
7 page 29; is that right?

8 A. Page 29 of?

9 Q. Oh, the An Provisional.

10 A. That's page 31 of the An Provisional. Well,
11 the figure is in page 31, sorry.

12 Q. Well, I don't want to put words in your
13 mouth. Can you tell me just for 1e, what pages do
14 you cite to support -- what pages of the An
15 Provisional do you cite to to show that claim
16 element 1e is supported by the An Provisional?

17 A. There are several pages.

18 Q. Can you tell me what they are?

19 A. Sure. So, for example, page 11 is the one.
20 Actually this one is just page 11, and then shows
21 the Figure 5.

22 Q. I mean, if you could direct your -- let me
23 just count down. So you start at the parenthetical
24 where page 11 is. Let count down lines here...

25 One, two, three, four -- six, seven, eight,

1 nine, ten.

2 I think, unless I miscounted there, if you
3 count down 12 lines, I think you see a "29" there.

4 A. Yes.

5 Q. Is 29, is that a page of the An Provisional
6 that you rely upon to show that 1e is supported by
7 the An Provisional?

8 A. Yes, these are pages numbers.

9 Q. Okay.

10 A. 29 is the page number and 31 through 35 are
11 page numbers as well. So there are pages 11, 29, 31
12 through 35 for this particular case.

13 Q. Do you want to flip the pages, just in
14 fairness I think that you could cite some more on
15 the next page.

16 A. Yes. I found another one, 46 as well.

17 Q. Do you see a "55" on there too?

18 A. 55, yes.

19 Q. Okay. And so for element 1e, you cite to --
20 just so I make sure I got this right for the record,
21 is 11, 29, 31 to 35, 46, and 55; is that right?

22 A. That is correct.

23 Q. And if you could look back to paragraph 101
24 of your declaration.

25 A. Yes.

1 Q. Can you confirm for me that page numbers 11,
2 29, 31 to 35, 46, and 55 are not cited in paragraph
3 101 of Exhibit 1014; correct?

4 A. 11 is not cited. 29 is not cited. 31
5 through 35, not cited. 46, also not cited. And 55,
6 also not cited, yeah.

7 Q. Okay. Can you describe for me the process
8 by which -- well, strike that question.

9 Who prepared the chart contained in Table 1
10 of Exhibit 1027?

11 A. So all of our work, all of my work that you
12 see in my declaration and the reply declaration are
13 actually done by me and with the help of the
14 counsel. So I just -- the counsel had the
15 opportunity to look over my writing and then to make
16 some feedback, and then the feedback to me reading
17 back their feedback, and then incorporating some new
18 ideas. The ideas are all mine and we finalized it.

19 Q. Okay. So did you prepare the first draft of
20 Table 1 or did counsel prepare the first draft of
21 Table 1?

22 A. The very first version of the -- their
23 table, we call it a claim chart, before I put it in
24 my declaration, that was a different version so the
25 counsel did it, sent it to me for opinions. I made

1 some edits, made some changes, and then sent back.

2 So that was the -- basically the claim chart.

3 Then I used the final claim chart that was
4 finalized in my declaration.

5 Q. Okay. Can you tell me, so you referred to a
6 version prepared by counsel which was sent to you;
7 correct?

8 A. (Witness nods.)

9 Q. Can you tell me when was the version
10 prepared by counsel sent to you?

11 A. I don't recall. It was a long time ago.

12 Q. Was the version prepared by counsel sent to
13 you before you prepared your original declaration?

14 A. That was before the declaration, yes. That
15 was the -- before the declaration preparation.
16 Because we were working on the claim chart before
17 even the declaration started. We wanted to make
18 sure that we have a solid claim chart, and once I
19 agreed on the claim chart, then we -- I decided to
20 use it in my declaration.

21 Q. Yeah. And when you refer to your
22 declaration, I just want to be clear on this --

23 A. Reply declaration.

24 Q. Reply declaration, so --

25 A. Yeah.

1 Q. Okay. And so there was no version of the --
2 there was no version of Table 1 prepared before your
3 original declaration was submitted in connection
4 with this proceeding; right?

5 A. Repeat your question, please.

6 Q. Sure. Was there any version of what became
7 Table 1 -- or let's strike that question.

8 Did any version of what became Table 1 exist
9 before you submitted your reply declaration? No,
10 strike that. No, no, let me --

11 A. I already answered the question.

12 Q. No, let me withdraw that question. Strike
13 that. Let me try one more time.

14 Did any version of what became Table 1 exist
15 before you submitted your original declaration?

16 A. Not at all, no. That was a draft claim
17 chart we wanted to work on, we wanted to agree on,
18 and I agreed finally after several changes I made
19 and I agreed on the content of the claim chart, then
20 I used the claim chart as Table 1 in my declaration.

21 Q. Got you.

22 And could you have prepared Table 1 before
23 you submitted your original declaration?

24 A. Could you rephrase your question? What do
25 you mean by "could you have"?

1 Q. Yeah. Was there anything that prevented you
2 from submitting Table 1 in connection with your
3 first declaration?

4 A. Oh, I see. Yes, I could. No, there was no
5 reason. Because this claim chart pretty much
6 reflects the ideas of An as well. It's pretty much
7 the same.

8 Q. But, you know, just to be clear, you didn't
9 submit a table -- you didn't submit anything like
10 the claim chart in Table 1 with respect to your
11 original declaration; right?

12 A. No. There was no need for it because this
13 is, again, the repeat of An and then I asked the
14 counsel to form the initial claim charts, but that
15 was a draft. We made several changes on it and then
16 I used it in my reply declaration.

17 Q. I got it.

18 Well, I think you just said there was no
19 need for it in the original declaration; is that
20 right?

21 A. There was no need for...

22 Q. Yeah. So I believe your testimony was just
23 that there was no need for Table 1 in the original
24 declaration. Is that your testimony?

25 A. I'm sorry. Just strike it. I didn't mean

1 anything like that. I do not recall what the
2 question was. If you ask the question of that
3 answer, I would rephrase the answer.

4 Q. Sure. Let me just re-ask the question,
5 then. You didn't submit anything like the claim
6 chart of Table 1 in your original declaration; is
7 that right?

8 A. That is correct, yes.

9 Q. And is it fair to say that you felt the need
10 to include the claim chart in Table 1 in your reply
11 declaration?

12 A. I felt that if it could make a table of
13 the -- on the An Provisional, that would make my --
14 it makes my expression of the opinion easier in the
15 declaration, so -- in the reply declaration. So we
16 decided to have the original -- I decided to have
17 the original claim chart as a table in my reply
18 declaration.

19 Q. And that was the original table that came to
20 be after your original declaration; correct?

21 A. After we made some edits, I did after we
22 edit it. Again, the very first step before the
23 reply declaration was the claim chart. There was no
24 table at that point. The claim chart was finalized.
25 Once it was finalized, then I decided to use it as

1 Table 1 in my reply declaration.

2 Q. So the choice was left up to you whether or
3 not to use Table 1 in your reply declaration?

4 A. Whether or not?

5 Q. Yeah. You said you made -- you first made
6 the claim chart, and then once it was finalized, you
7 decided to use it in your reply declaration;
8 correct?

9 A. Okay. What I meant was whether to use as a
10 chart or just text. I could have used the text
11 instead and I found that the chart is really clear
12 and helpful so I used the chart.

13 Q. Okay. So when you say you could have used
14 it as text, like you could have written --

15 A. Written.

16 Q. -- more paragraphs like paragraph 101;
17 right?

18 A. Yeah. Yes.

19 Q. So if I could direct your attention to
20 paragraph 12 of your expert declaration. Reply.
21 I'm sorry. I keep messing that up.

22 A. Sorry.

23 Q. So let me clarify the record. Raghav is
24 going to keep me honest today so I don't screw up
25 the transcript.

1 So can you direct your attention to
2 paragraph 12 of your reply declaration?

3 A. Okay.

4 Q. And at paragraph 12 there, let me direct
5 your attention to the statement, "During my initial
6 review of An in preparing my first declaration, I
7 found no reason to interpret the claim language
8 'wherein the server performs a protocol conversion
9 dependent on the type of the service manager node,'
10 or similar language appearing in other the claims."

11 Do you see that?

12 A. Yes.

13 Q. And take whatever time you need to check
14 this, but it's a fact that in your original
15 declaration you didn't cite to any claims of An; is
16 that right?

17 A. For original declaration, I did not cite to
18 any?

19 Q. Yeah. And so I believe in paragraph 12 you
20 state that you didn't find it necessary to
21 construe -- to interpret any claim language; right?

22 A. That's right.

23 Q. And so my question is that, it's a fact that
24 in your original declaration you didn't cite or
25 reference any claims of An; correct?

1 A. In my original document -- declaration, I
2 did cite An. Why not?

3 Q. No. Did you cite the claims of An?

4 A. Oh, I don't remember if I didn't or did. If
5 I didn't, I didn't.

6 Q. Did you -- did you review your original
7 declaration in preparation for your deposition
8 today?

9 A. Very briefly, because I was told that the
10 scope of the deposition today is within the reply
11 declaration. So I don't recall whether I did or
12 not. You need to refer me to all the point -- all
13 the paragraphs of my original document to verify.

14 Q. Well, what I'm trying to understand is
15 paragraph 12. So you said you found no reason to
16 interpret this particular claim languages, wherein
17 the server performs a protocol conversion dependent
18 on the type of service manager node; right?

19 A. That's right. Yes. Correct.

20 Q. And putting aside any language, any claim
21 language of An, did you construe or interpret any
22 claim language of An in your original declaration?

23 A. As I said, I don't recall that just because
24 I -- my focus for today was the reply declaration.
25 We can check. We can verify that.

1 Q. Well, why did you find a reason to interpret
2 the claim language, "wherein the server performs a
3 protocol conversion dependent of the" -- "on the
4 type of the service manager node" in your reply
5 declaration?

6 A. I didn't say I found any reason.

7 Q. Is there any reason for your opinion? Well,
8 what is the purpose of -- in your own words, can you
9 tell me what is the purpose of paragraph 12 --

10 A. I must have --

11 Q. -- of your reply declaration?

12 A. Yeah, I must have reviewed my original
13 declaration and I found no reason to interpret the
14 claim language.

15 Q. And I think my question, then, is: But when
16 you came to prepare your reply declaration, did you
17 find a reason to interpret any of the claim language
18 of An?

19 A. No.

20 Q. Did you discuss the proper interpretation of
21 any element of the An claims with counsel?

22 MR. BERTULLI: I would caution the witness
23 that you can answer to the extent that it's a "yes"
24 or a "no," but please do not share the substance of
25 any conversations with counsel.

1 THE WITNESS: I don't remember if I did.

2 BY MR. SHIMOTA:

3 Q. In your reply declaration, do you offer any
4 opinions as to the proper interpretation of any
5 claim language in the claims of An?

6 A. I don't think so. My focus was An
7 Provisional.

8 DEPOSITION REPORTER: On, o-n, or An?

9 THE WITNESS: A-n.

10 MR. SHIMOTA: A-n.

11 BY MR. SHIMOTA:

12 Q. Can you tell me where is in your original
13 declaration that there is identification of support
14 in the An Provisional for the language you quote in
15 paragraph 12?

16 A. I have to review the declaration.

17 Q. Sure.

18 A. I don't know if I did. Wait a second.

19 So repeat your question.

20 Q. Yeah. Can you point me to where it is in
21 your original declaration that you provide
22 identification of support in the An Provisional for
23 the language you quote in paragraph 12 of your reply
24 declaration?

25 A. So I did mention the An Provisional in my

1 original declaration on page 12 as one of the
2 references I reviewed to form my opinion.

3 Q. Well, let me just try it. So I understand
4 that you reference the An Provisional in your
5 original declaration, but my question is a little
6 more specific than that. My question is: In your
7 original declaration, where do you provide
8 identification of support in the An Provisional for
9 the language you quote in paragraph 12 of your reply
10 declaration?

11 A. I can't really find anything like that in my
12 original. I may need time to go over every word of
13 this document to verify it. But I just glanced
14 through those pages that I thought I could find, but
15 there was nothing like that.

16 Q. After doing the review that you performed
17 now, you can't identify anything for me; correct?

18 A. Yeah. For the time I spent, I can't find
19 it, yeah.

20 Q. Do you have any -- so you're not a lawyer;
21 right?

22 A. Right.

23 Q. Do you have a general understanding that in
24 order to claim priority to a provisional
25 application, the claim of the patent must be --

1 there must be at least one claim which is supported
2 by the provisional application?

3 A. I think I've heard this from the lawyers.

4 Q. Yeah. And when did you hear that?

5 A. I don't remember.

6 Q. Do you recall if you would have heard it
7 before you submitted your original declaration?

8 A. Yeah. Again, I'm not a lawyer. I don't
9 know the law. If that's the case, that's the case.

10 Q. Sure. That's fine. I'm just -- I'm asking,
11 so it sounds like someone has told you something
12 like that; correct?

13 A. It may not be the case in this case. It may
14 be another case, in another case.

15 Q. Okay. Well, would you have -- do you know
16 if you would have had -- so do you have a general
17 understanding that that's the law?

18 A. I guess so.

19 Q. Okay. And did you have that general
20 understanding before or after you submitted your
21 original declaration?

22 A. I think I had a general understanding of it
23 before I formed my opinion, yeah.

24 Q. And before you formed your opinion in your
25 original declaration; correct?

1 A. Yeah.

2 MR. SHIMOTA: We've been going for a little
3 bit over an hour. Do you want to take a break?

4 MR. BERTULLI: Yeah. Sure.

5 (Off the record.)

6 BY MR. SHIMOTA:

7 Q. Welcome back.

8 A. Thank you.

9 Q. So if you could direct your attention to
10 paragraph 13 of your reply declaration.

11 A. Sure.

12 Q. And in the second sentence you state, "As
13 such, it is my opinion that Dr. Akl's interpretation
14 is both unnecessary and inappropriately limiting."

15 Do you see that?

16 A. Yes, I do.

17 Q. Can you tell me how his opinion is
18 inappropriately limiting?

19 A. Well, I need to read the sentence above and
20 after to understand what you're talking about.

21 Q. Sure. Fair enough.

22 A. Okay. This statement actually refers to the
23 preceding discussion. For example, I did state that
24 I understand that Dr. Akl interprets An's claims to
25 require support for protocol conversion performed by

1 a server dependent on a type of service manager
2 node.

3 Also, Dr. Akl appears to interpret the claim
4 language as requiring support for multiple types of
5 service manager nodes. So for that, it is -- it was
6 my opinion that Dr. Akl's interpretation is both
7 unnecessary and inappropriately limiting. There was
8 no need for limiting the interpretations.

9 Q. Well, what is limited? Which interpretation
10 is unnecessarily limiting?

11 A. I just mentioned that the support for
12 protocol conversion performed by a server dependent
13 on a type of service manager node.

14 Q. Why is it inappropriately limiting, in your
15 opinion?

16 A. I don't see any reason for that to --
17 limiting the term.

18 Q. Which term?

19 A. So examples are -- there are other examples
20 besides these that I just mentioned. I can -- for
21 example, protocol conversion in paragraph 14 that is
22 interpreted as encapsulation by Dr. Akl, this is
23 inappropriate; and, in fact, in some cases in
24 computer networking is wrong. The protocol
25 conversion cannot be limited to encapsulation.

1 Q. Let me -- we'll get there.

2 So do you offer an opinion as to what would
3 be the proper interpretation of the words "a type"
4 or "the type" in the claims of the An patent?

5 A. I have rendered my opinion in paragraph 13
6 related to "a type" or "the type." One
7 consideration is that An's claim language references
8 merely "a type" or "the type" of service manager
9 node which would not be understood by a person of
10 ordinary skill in the art to require multiple types
11 of service manager nodes as Dr. Akl contends. I
12 think this is the summary of my opinion.

13 Q. So is it your opinion that the reference
14 to "a type" means it could be one -- a single
15 service manager node?

16 A. It could.

17 Q. Okay. And what's the basis for your opinion
18 that the claim would?

19 A. That's how a person of ordinary skill in the
20 art would understand the word "a type" or "the type"
21 in the critical date, year.

22 Q. Well, is there anything -- let me just take
23 a step back. Is there anything technical about the
24 words "a type" in isolation?

25 A. There may not be, no.

1 Q. And at the top of paragraph -- well, have
2 you interpreted claim language before? Before your
3 declaration -- let me strike that question.

4 Have you ever offered opinions regarding the
5 proper interpretation of claim language before your
6 reply declaration?

7 A. Which claim?

8 Q. Any claims. Just have you offered opinions
9 on claim construction?

10 A. Yes.

11 Q. And do you understand that when you --
12 when you construe, when you offer -- when construing
13 claims, it's important to look at the claim language
14 as a whole; right?

15 A. This is a legal aspect of it. I'm not sure.
16 I use my own knowledge and experience. But it is
17 common to look over the claim, the entire claim.

18 Q. Sure. And did you also -- did you also
19 understand that you should look at the specification
20 as well in construing -- you know, to see in form
21 the proper interpretation of claim language?

22 A. In general, yes. But sometimes if the word
23 is very common, no need to do so.

24 Q. And did you look at the -- in connection
25 with your opinions regarding the words "a type" or

1 "the type," did you read the claim language as a
2 whole?

3 A. Yes, I did.

4 Q. And did you -- and when you were forming
5 your opinions regarding the words "a type" or
6 "the type," did you review the An specification to
7 confirm whether or not your opinion was consistent
8 with the specification?

9 A. I did. I did review the entire An
10 Provisional, yes.

11 Q. So let me ask you a hypothetical question.
12 So if I told you to dress depending on
13 the type of weather, would you understand the words
14 "the type" as a matter of common English to refer to
15 one type of weather or multiple types of weather?

16 A. Either interpretation.

17 Q. Let me make sure I'm clear on that. So
18 if I told you to dress depending on the type of
19 weather, you might think I was telling you to dress
20 depending on only one type of weather; right?

21 A. So give me an example.

22 Q. Well, just as -- I think both ordinary
23 artisans and lay people alike would know there's
24 rain, there's snow, there's sun, there's heat,
25 there's cold. And so if I told you to dress

1 depending on the type of weather, would you think
2 that I'm telling you to dress depending on a single
3 type of weather or whatever weather was prevailing
4 on that day?

5 A. Again, either way. It really depends on how
6 you stress your sentence or your words. It could be
7 one type; it could be multiple types.

8 Q. So just finishing up this hypothetical.
9 So based on the language depending on the type of
10 weather, you would be unsure whether there could be
11 one type of weather or multiple types of weather?

12 A. Well, sometimes you are -- you just form
13 your sentence as the type of a weather -- the type
14 of weather you're discussing. Then I'm referring to
15 one type; right?

16 Q. Well, let me just finish this one up then.
17 One more time, hypothetically speaking.

18 So if I told you -- let's put aside
19 California because it's sunny here. I want you to
20 come visit me in Chicago and so I want you -- and
21 the weather changes there. It can be windy, it can
22 rain, it can be really, really hot, it can be cold.
23 And so if I told you, "Prepare. I want you to bring
24 clothes to dress depending upon the weather on a
25 day," would you think that I'm referring to a single

1 type of weather or multiple types of weather?

2 A. Well, you didn't mention the word "type"
3 in your original sentence in Chicago. I didn't hear
4 anything like that. So you need to rephrase --
5 rephrase your sentence then.

6 Q. Okay. Let's skip the hypotheticals then.
7 Let's just look at the claim language at issue, the
8 claim language at issue in 12.

9 Instead of "type," what's your -- and you
10 can just tell me your opinion from the standpoint of
11 an ordinary artisan or just common English.

12 Do you see the word "dependent" in that
13 claim?

14 A. Where is it? I'm sorry.

15 Q. Let's go to paragraph 12, this is where you
16 reference it. You can also look at the claim if you
17 want.

18 A. Paragraph 12.

19 Q. Paragraph 12 of your reply declaration.

20 A. And where is "dependent" -- oh, yeah, I see
21 that.

22 Q. "Dependent." So what's your understanding
23 of what the word "dependent" means there?

24 A. Okay. So "dependent" is dependent. And I
25 just go to the dictionary and find out exactly the

1 synonym.

2 What do mean by "dependent"? Is this a
3 technical word that you want me to --

4 Q. Do you have any understanding of what
5 the word "dependent" means in the context of the
6 language you quoted in paragraph 12?

7 A. Yeah. It is related to or based upon
8 something like that. Yeah, I don't -- I can't
9 really find the synonym for "dependent" in this
10 case, but I understand clearly what you're talking
11 about, the "dependent."

12 Q. So when you were -- if you can look at
13 Exhibit 1005 of An. And if I could direct your
14 attention to Column 7, starting at 55 to
15 approximately 88.

16 A. Okay.

17 Q. Actually, let me withdraw the question.

18 A. Okay.

19 Q. And just to close this out. So when you're
20 referring to the claim which it says it depends on
21 the type of service manager node, you would agree
22 with me that it could include multiple types of
23 service manager nodes; right?

24 A. Yes, it could be. Yeah.

25 Q. In this paragraph you also -- in

1 paragraph 13 of the reply declaration again, you
2 comment on Dr. Akl's opinions concerning the term
3 "protocol conversion"; correct?

4 A. Yeah.

5 Q. Okay. So without regard to Dr. Akl's
6 opinions, in your own words, can you tell me how you
7 would interpret the words "protocol conversion" as
8 they are used in the An patent?

9 A. Yeah. "Protocol conversion" in my opinion
10 is really plain and ordinary. That's converting a
11 protocol or changing the protocol, something like
12 that, and modifying the protocol.

13 Q. And how does that differ from what Dr. Akl
14 has opined?

15 A. I agree with Dr. Akl to this point that I
16 just mentioned, that the protocol conversion could
17 mean anything like converting a protocol or changing
18 the protocol or modifying the protocol. But when it
19 comes to encapsulation, protocol encapsulation, then
20 I disagree with Dr. Akl.

21 Q. Okay. And can you tell me if the
22 An Provisional uses the word "conversion" at all?

23 A. I can't really tell. I don't remember. I
24 have to check.

25 Q. Did you ever check?

1 A. I don't recall if I did. It could be -- I
2 mean, it could be there. I mean, it's a very common
3 term in computer networking.

4 Q. If the An Provisional had used the term
5 "conversion," would you have cited it in your
6 original declaration or your reply declaration?

7 A. As far as I remember, let me -- just give me
8 a second.

9 As far as I remember, An uses formatting
10 for conversion. I have -- side by side I have
11 contrasted Claim 1e, for example, with the
12 An Provisional that conversion dependent on the type
13 of the service manager node, the An Provisional
14 is equivalent to receive transactions from a
15 dispatcher, formats them in a service manager
16 specific protocol. That clearly to me is the
17 conversion of a protocol by formatting it.

18 Q. Okay.

19 A. So there is no need for -- for me to
20 look for any conversion when I clearly see that
21 formatting the protocol is equivalent to the
22 protocol conversion.

23 Q. Sorry. So are you telling me that when
24 you saw the word "formatting," you felt that there
25 was no need to look for instances of the term

1 "conversion" or "protocol conversion"?

2 A. No. I mean, I refer -- just I'm back to
3 your question originally; if I have looked for the
4 word "conversion" in the An Provisional. So when
5 I see that clearly the An Provisional recites
6 the -- this mechanism of changing the protocol by
7 formatting them, then it satisfies me. There
8 could be the term "conversion" as well in the
9 An Provisional.

10 Q. So sitting here today, you don't know
11 whether the word "conversion" or "protocol
12 conversion" appears in the An Provisional; correct?

13 A. No, that's not correct. I said that the
14 equivalent to "protocol conversion" is clearly in
15 the An Provisional.

16 Q. Okay. So we'll get to that. But do you
17 know -- can you tell me one way or the other whether
18 the word "conversion" literally appears in the
19 An Provisional?

20 A. I don't recall that. I don't recall that.

21 Q. And can you -- sitting here today, can you
22 tell me whether the words "protocol conversion"
23 literally appears in the An Provisional?

24 A. The same thing. "Protocol conversion" or
25 "conversion," I don't recall if I came across with

1 these two or not. But I came across with the exact
2 equivalent to "protocol conversion" or the
3 "conversion."

4 Q. And I think you just testified earlier that
5 you don't -- that you can agree with Dr. Akl that in
6 general, protocol conversion would be understood to
7 mean changing or modifying a protocol; correct?

8 A. That's correct.

9 Q. And if the An Provisional used the phrase
10 "changing a protocol," you would have cited that in
11 your declaration; correct?

12 A. If it is related to certain claim language,
13 yes.

14 Q. Let me try this: Do you know if the phrase
15 "changing a protocol" appears in the An Provisional?

16 A. I don't recall that.

17 Q. And similarly, do you know if the
18 An Provisional uses the phrase "modifying a
19 protocol" anywhere?

20 A. I don't recall it.

21 Q. If you can look to paragraph 14.

22 A. Sure.

23 Q. I'm actually going to take you to the end of
24 14, although please review whatever you need to.

25 So you state there, "A person of ordinary

1 skill in the art would understand that the
2 'encapsulation' is separate from the 'formatting
3 them in a service manager specific protocol' which
4 is analogous to 'protocol conversion.'"

5 Do you see that?

6 A. Sorry. Which sentence is that?

7 Q. It's the last sentence of paragraph 14 of
8 your reply declaration.

9 A. Yes.

10 Q. What do you mean by "analogous"?

11 A. That means they have the same meaning.

12 Q. What has the same meaning?

13 A. "Protocol conversion" and the "protocol
14 formatting," in the context of service manager
15 specific protocol.

16 Q. And so is it your understanding that
17 "protocol conversion" and "formatting" are synonyms?

18 A. In the context of this recitation, yes,
19 of course. When you format in a service manager
20 system, yes, of course, you convert actually the
21 protocol.

22 Q. Outside -- just in general, as someone who
23 has much greater than ordinary skill in the art, do
24 you consider the words "formatting" and "protocol
25 conversion" to be synonymous?

1 A. Well, then, I need to just ask you where
2 would you use "format," and then I can answer it.
3 Formatting a disk, that's one way of doing it.
4 Formatting a hard disk, formatting certain software
5 for a microprocessor. So, it really depends where
6 you would use the word "format."

7 Q. Can you give me -- you know, can you
8 give me examples of situations in which "protocol
9 conversion" and "formatting" are synonyms?

10 A. This is the case.

11 Q. Any other examples?

12 A. Well, "formatting" has kind of an
13 implication of changing something. So whenever
14 you format a certain electronic signal, such as a
15 software, or just format a certain hardware, then
16 you are actually making some changes in it. That
17 includes a protocol.

18 Q. So you just said that "'formatting' has kind
19 of an implication"; correct?

20 A. I'm trying to find out the route of the
21 format that you asked me, what the exact meaning of
22 the format is. So I'm trying to explain what I mean
23 by my opinion about the formatting. Formatting has
24 a route in changing.

25 Q. Well, when you just testified that

1 "'formatting' has kind of an implication," what did
2 you mean by "an implication"?

3 A. I meant by that implies.

4 Q. And you'd agree with me then implication --
5 you'd agree with me that the implication of a word
6 means that it's sometimes the case but not always
7 the case; correct?

8 A. Well, then, I need to correct my sentence
9 then. I did already after that. So by saying that
10 formatting has a route in changing, that means that,
11 you know, "formatting" can mean changing in cases
12 something like here.

13 Q. Does "formatting" always mean changing?

14 A. I haven't rendered any opinion on whether
15 "formatting" always means changing or not. I need
16 to do so. That is beyond the discussion now because
17 I have to spend time; go to dictionaries, go to
18 technical dictionaries, and then find out about it.

19 But I think if you ask me as an expert, you
20 know, when you say, "Does format change things?" I
21 say "Yes."

22 Q. Okay. So sitting here today, can you
23 tell me as an expert whether the word "formatting"
24 necessarily implies protocol conversion?

25 A. Again, I need to correct you because, you

1 know, you said "formatting" without anything after
2 "formatting." You should have said "formatting a
3 protocol." Is this what you mean? Or you're
4 outside the scope of the -- because you went out
5 of the scope of the patent then.

6 Q. Okay. So --

7 A. I didn't want to --

8 Q. Well, does the patent say "formatting a
9 protocol"?

10 A. No. But you are talking about --
11 you're asking me a question: As an expert, does
12 "formatting" in general have a meaning other than
13 changing, is what you asked?

14 Q. That's one question. Let me ask you that
15 question.

16 A. Well, that's outside the scope of the patent
17 then.

18 Q. Well, I'm just asking you what your
19 understanding of the word "formatting" is in its
20 broadest, plain and ordinary meaning then.

21 A. Yeah. Again, so I have to do some research
22 on it to see if "format" means something other than
23 changing. I cannot really tell now.

24 Q. You didn't consider whether "formatting"
25 might mean something other than changing when

1 you rendered your opinions concerning the
2 An Provisional; correct?

3 A. If you are asking me now, I would say
4 formatting does change. Formatting things does
5 change things. However, if you're asking formatting
6 in the critical year, I need time to render my
7 opinion to go and do research before I answer.
8 "Formatting" could mean other things. I don't know.

9 Q. Do you have any idea what other things it
10 might mean?

11 A. I did answer your question. I said: I
12 need time to form my opinion. And that time
13 requires references in front of me to form my
14 opinion and render it.

15 Q. So that's -- you haven't considered that
16 question before today; correct?

17 A. That -- the term "formatting" in the context
18 of the patent is clear to me: It's changing. If
19 this is the answer you want to hear.

20 Q. Well, no. So my question is: Have you
21 considered before today that all formatting means
22 changing?

23 A. No. For the critical year, no.
24 "Formatting" in the context of the patent in the
25 critical year, yes, that's changing.

1 Q. So what you can tell me today is that what
2 you know for sure is that all "formatting" means is
3 changing; correct?

4 A. When you ask me -- if a student asks
5 me, for example, today, "Professor, what is
6 "formatting?" I'd say that "It has a route in
7 changing."

8 So if you format something, you actually
9 change that. Then "format" has other operational
10 meanings; how exactly the formatting is done. For
11 example, if you format a disk, then you change it
12 for sure, but how exactly the change is achieved,
13 then we need to explain.

14 Q. Well, so, you'd agree with me that
15 "formatting" in the context of the An patent only
16 requires changing; correct?

17 A. Yes. Changing the protocol actually.

18 Q. Okay. So if you could look at page 7 of
19 paragraph 14 of your report.

20 A. Yes.

21 Q. And you quote from Exhibit 105 at the end,
22 "It receives transactions from the dispatcher 132,
23 formats them in a service manager specific protocol,
24 and sends them to the service manager."

25 Do you see that?

1 A. Yes.

2 Q. And the italicized text reads "formats them
3 in a service manager specific protocol." Correct?

4 A. Correct.

5 Q. And so you'd agree with me that that
6 can't mean that the service manager adapter formats
7 transactions in a single service manager protocol;
8 right?

9 A. I didn't understand your question.

10 Q. Yeah. Let me just ask it again one more
11 time.

12 So you'd agree with me that the italicized
13 language can't mean that the service manager adapter
14 formats transactions in a single service manager
15 protocol?

16 A. Cannot mean?

17 Q. Yeah, that's right.

18 A. Why so?

19 Q. So you disagree with me; right?

20 A. Yeah. This is what I said, "formats them in
21 a service manager specific protocol."

22 Q. Okay. So I'm wrong. And so it's your
23 opinion that that italicized language could
24 mean that the service manager adapter formats
25 transactions in a single service manager protocol;

1 correct?

2 A. Single?

3 Q. Yes.

4 A. That's what the sentence says, "a...service
5 manager protocol," yeah.

6 Q. So the answer to my question is, yes; right?

7 A. Yes, of course.

8 Q. So could you direct your attention to
9 paragraph 16.

10 A. Okay.

11 Q. And kind of midway through the -- actually,
12 towards the end you make reference to the fact that
13 "the An Provisional refers to ServiceManagers in the
14 plural."

15 Do you see that?

16 A. "Other description"?

17 Q. Yes. It says here, "Other description in
18 the An Provisional refers to ServiceManagers in the
19 plural, further supporting the conclusion that there
20 can be multiple ServiceManagers."

21 Do you see that?

22 A. Yes, I do.

23 Q. Why would a person of ordinary skill in
24 the art understand a service manager to be the same
25 thing as a service manager node?

1 A. Which node are you referring to? I need
2 to...

3 Q. Yeah. So I'm referring to your declaration
4 where in the preceding sentence you state, "A person
5 of ordinary skill in the art would understand these
6 ServiceManagers to be the 'service manager node'
7 recited in An's claims."

8 Do you see that?

9 A. Right.

10 Q. So let me just repeat my question then.
11 Why would a person of ordinary skill in the art
12 understand a service manager to be the same thing
13 as a service manager node?

14 A. Okay. So to answer your question, I refer
15 you to Figure 5 on page 28 of my declaration.

16 Q. Will you repeat -- what page are you at?

17 A. Page 28.

18 Q. 28. Thank you.

19 A. Figure 5.

20 Q. Uh-huh.

21 A. So in Figure 5 please notice here,
22 "The service management node," there's a box that's
23 annotated, and then you're seeing the service
24 manager inside. So that box is simply the service
25 management node. So the node is a physical entity

1 of the service manager. They're pretty much the
2 same.

3 Q. Could there be more than one service manager
4 in a service manager node?

5 A. I don't know the answer. It could be.
6 I wouldn't be surprised to see multiple parallel
7 ServiceManagers.

8 Q. So you'd agree with me that one service
9 manager node could have multiple ServiceManagers;
10 correct?

11 A. I mean, it could. I don't know if this is
12 the case.

13 Q. And if you could look at the last sentence
14 of paragraph 16.

15 A. It goes back to the next page?

16 Q. It's on page 9 of your report. It's the
17 last full sentence. So I'll just read it to you and
18 you can get there when you're there.

19 It says, "A 'ServiceManager specific
20 protocol' would be understood to be a protocol which
21 is appropriate for a type of service manager node."

22 Do you see that?

23 A. No, not yet.

24 Q. Okay. Take your time.

25 A. Where is it?

1 Q. It's right before 17, paragraph 17, on
2 page 9 of Exhibit 1027.

3 A. Okay. I found it.

4 Q. Why would a service manager specific
5 protocol be understood to be a protocol which is
6 appropriate for a type of service manager node?

7 A. Well, I see this as an instance of computer
8 communication systems or a communication system in
9 general, when you have a protocol that is designed
10 to be appropriate for a type of a service that the
11 node can carry. So this is the same situation
12 there. So the protocol is actually designed for the
13 node.

14 And I don't know if there is anything else
15 you are asking other than this very common and
16 simple concept in a communication system.

17 Q. Well, couldn't there be a single service
18 manager specific protocol that is appropriate for
19 all types of service manager nodes?

20 A. I do not know if there is. The design
21 and the innovation that is disclosed in the
22 An Provisional is this way. I don't know if what
23 you just said could fit into the innovation that the
24 An Provisional recites.

25 Q. So you reviewed a number of documents in

1 preparation of your reply declaration; correct?

2 A. Correct.

3 Q. And one of those documents is the '714
4 patent; correct?

5 A. The '714 patent, yes.

6 Q. Are you confused by the '714 patent?

7 A. Confused on what part? In what part?

8 Q. Just anything. Is there anything confusing
9 to you about the '714 patent?

10 A. Overall the patent was not a good patent.
11 I had to review several parts of it several times
12 to understand what they said. You know, I don't
13 remember what exactly -- where exactly those -- if I
14 have a chance to review the patent, I can tell you.

15 The patents -- all the four patents are
16 not good patents to me. You will see an example in
17 the next deposition; non-networking packets, for
18 example. This is the wrong terminology. We'll see
19 in the next deposition as an example. So to me it
20 is not a professional term used in the patent so
21 it's confusing to me.

22 Q. So the non-networking patent is an example
23 of something confusing to you; correct?

24 A. It is a non-existing term in our
25 area. I have never heard such a thing before,

1 "non-networking packets." The packet is networking.
2 It is the element of networking.

3 Q. And are you -- let's take a step back to
4 this proceeding. Are you confused at all by the
5 An patent?

6 A. The An patent? No.

7 Q. Is the An patent a good patent, in your
8 opinion?

9 A. Yes, a very good one.

10 Q. What makes a patent a good patent, in your
11 opinion?

12 A. The patent that clearly states the novelty
13 and does not confuse the reader when it reads the
14 claims. And the novelty itself is important, that
15 it should not have prior art, significant prior art.

16 Q. So do you believe that the An -- does the
17 An patent have any confusing terms in it?

18 A. Not that I know.

19 Q. If you could just look at paragraph 17 of
20 your declaration.

21 A. Sure.

22 Q. It's at page 9. And in paragraph 17 you
23 state that you previously opined regarding the
24 An Provisional support for An; correct?

25 A. Yes.

1 Q. And in your original declaration you didn't
2 consider the An provisional's enablement of the
3 claims of An; right?

4 A. As far as I remember, yes.

5 Q. You could have performed that analysis in
6 your original declaration; correct?

7 A. Correct. And I did not see any reason to do
8 so.

9 Q. And just circling back. You could have
10 provided Table 1 to your reply -- let me rephrase.

11 And you could have provided Table 1 to
12 your reply declaration as part of your original
13 declaration; correct?

14 MR. BERTULLI: Objection. Asked and
15 answered.

16 THE WITNESS: Before I answer the question,
17 I want to clarify that. In my opinion, An and the
18 An Provisional are pretty much the same, and they
19 are disclosing the same things. So the answer to
20 the question is, yes, but there is no need for it.
21 There was no need for it.

22 MR. SHIMOTA: Why don't we take a quick
23 break.

24 (Off the record.)

25 / / /

1 BY MR. SHIMOTA:

2 Q. Welcome back.

3 A. Thank you.

4 Q. So you reviewed AT&T's patent owner
5 response; correct?

6 A. Yes, I did.

7 Q. And you also reviewed Dr. Akl's declaration
8 in this proceeding; correct?

9 A. Yes, I did.

10 Q. And did you review the exhibits cited in the
11 patent owner response?

12 A. I'm not sure if I have gone over those or
13 not. I should have because it was a long time ago.
14 It wasn't recent. It was maybe a few months ago.

15 Q. Did you review the exhibits cited in
16 Dr. Akl's declaration?

17 A. I don't remember specifically if I have gone
18 over all the exhibits of Dr. Akl. I could have, you
19 know, skipped from one. With no intention, of
20 course, just...

21 Q. So I'll go to a specific one then. So
22 AT&T's Exhibit 2044 is not cited in the list of
23 materials you reviewed in your reply declaration;
24 correct?

25 A. Let me check.

1 Q. Sure. Please do.

2 A. Could you tell me again?

3 Q. Sure. It's Exhibit 2044.

4 A. That is correct, I did not review that.

5 Q. Okay. Did you review AT&T's Exhibit 2044?

6 MR. BERTULLI: Objection. Asked and
7 answered.

8 THE WITNESS: Exhibit 2044 of AT&T you mean?
9 BY MR. SHIMOTA:

10 Q. Correct, yeah.

11 A. Can you tell me what the name of that
12 exhibit is?

13 Q. Well, let me just ask this question then:
14 So in your reply declaration you offer no opinions
15 regarding Exhibit 2044; is that right?

16 A. I don't know what Exhibit 2044 is. Can you
17 tell me what that is?

18 Q. Here you go (indicating).

19 A. It doesn't click and it doesn't seem to be
20 the one I reviewed.

21 Q. Okay.

22 A. The answer is no.

23 Q. Okay. So let's make sure we get the
24 question right. So you have no opinions regarding
25 Exhibit 2044; correct?

1 A. That is correct.

2 MR. SHIMOTA: Okay. Thanks.

3 Why don't we take a lunch break --

4 MR. BERTULLI: Well, Let's go off the
5 record.

6 MR. BAJAJ: Redirect.

7 MR. SHIMOTA: Oh, sorry, sorry.

8 MR. BERTULLI: That's okay. I know you're
9 excited. We're all excited too.

10 MR. SHIMOTA: My bad. Sorry.

11 MR. BERTULLI: That's okay. So that implies
12 that you're all set for this matter?

13 MR. SHIMOTA: Yeah.

14 MR. BERTULLI: We have no redirect.

15 MR. SHIMOTA: Thanks.

16 (Ending time: 11:36 a.m.)

17 --o0o--

1 I, JANIS JENNINGS, CSR No. 3942, Certified
2 Shorthand Reporter, certify:

3 That the foregoing proceedings were taken
4 before me at the time and place therein set forth, at
5 which time the witness was duly sworn by me;

6 That the testimony of the witness, the
7 questions propounded, and all objections and statements
8 made at the time of the examination were recorded
9 stenographically by me and were thereafter transcribed;

10 That the foregoing pages contain a full, true
11 and accurate record of all proceedings and testimony.

12 Pursuant to F.R.C.P. 30(e)(2) before
13 completion of the proceedings, review of the transcript
14 [] was [X] was not requested.

15 I further certify that I am not a relative or
16 employee of any attorney of the parties, nor financially
17 interested in the action.

18 I declare under penalty of perjury under the
19 laws of California that the foregoing is true and
20 correct.

21 Dated this 19th day of July, 2016.
22
23

24 JANIS JENNINGS, CSR NO. 3942

25 CLR, CCRR

DEPOSITION ERRATA SHEET

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Intellectual Property II, L.P.
Case IPR2015-01227

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corrections, if any, as indicated by me on the
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that I offer these changes as if still under oath.

Signed on the _____ day of _____, 20____.

NADER MIR, Ph.D.

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