

1 UNITED STATES PATENT AND TRADEMARK OFFICE

2 BEFORE THE PATENT TRIAL AND APPEAL BOARD

3 TWITTER INC.,

4 Petitioner,

5 vs.

6 STI-ACQ, LLC,

7 Patent Owner.

)

) No. IPR2017-01131

) Patent No. 8,464,304

)

)

) No. IPR2017-01133

) Patent No. 8,601,506

)

)

8 ORAL DEPOSITION

9 SCOTT BENNETT, PH.D.,

10 June 21st, 2018

11
12
13 ORAL DEPOSITION OF SCOTT BENNETT, PH.D., produced as a
14 witness at the instance of the PATENT OWNER, and duly
15 sworn, was taken n the above-styled and numbered cause
16 on the 21st day of June, 2018, from 12:00 p.m. to
17 2:06 p.m., before Angela K. Patla, CSR, RPR in and for
18 the State of Illinois, reported by machine shorthand, at
19 the offices of 180 North LaSalle Street, Chicago,
20 Illinois, 60601, pursuant to the Texas Rules of Civil
21 Procedure and the provisions stated on the record or
22 attached hereto.

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24
25 Twitter, Inc. v. VidStream LLC
IPR2017-00830
VidStream | Ex. 2006

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A P P E A R A N C E S

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Descriptive Cataloging Manual

1 (Witness sworn.)

2 WHEREUPON:

3 SCOTT BENNETT, Ph.D.,
4 called as a witness herein, having been first duly
5 sworn, was examined and testified as follows:

6 EXAMINATION

7 BY MR. GREEN:

8 Q. Dr. Bennett, good morning.

9 A. Good morning.

10 Q. As you've heard a minute ago, my name is Eric
11 Green.

12 MR. GREEN: I'll state also for the record that I
13 represent patent owner VidStream, LLC.

14 Counsel, did you want to state your
15 appearance?

16 MR. SIEGEL: Todd Siegel from Klarquist Sparkman
17 for Twitter.

18 MR. GREEN: All right. Thank you.

19 BY MR. GREEN:

20 Q. Mr. Bennett, have you ever been deposed
21 before?

22 A. Yes, I have.

23 Q. And I apologize. I mean Dr. Bennett. I'll
24 try to not to do that anymore.

25 How many times have you been deposed?

1 A. I recall six depositions.

2 Q. When was the first one, just roughly?

3 A. Probably in 2016.

4 Q. Okay. Well, I'll give you some quick ground
5 rules. It sounds like you may already know them all,
6 but you are entitled to a break at any time. I do ask
7 that if there's a question pending, we go ahead and have
8 you answer that question before you take a break. Your
9 attorney may object to some of my questions today.
10 Unless he instructs you not to answer, you are to go
11 ahead and answer it. And you understand that your
12 testimony today is under oath; is that correct?

13 A. That is correct.

14 Q. What is your current employer?

15 A. I'm self-employed.

16 Q. And what's the name of your company?

17 A. Prior Art Documentation Services, LLC.

18 Q. And how long have you been self-employed by
19 Prior Art Documentation, LLC?

20 A. Just about three years.

21 Q. Okay. I went to your website yesterday and it
22 says, Thank you for your interest. This company is no
23 longer in business.

24 Is Prior Art Documentation still in business?

25 A. Yes, it is.

1 Q. Okay.

2 A. In the sense --

3 Q. Please continue. I didn't mean to interrupt.

4 A. In the sense that we still exist as a formal
5 partnership, we have not taken new business since
6 September of 2017, and are in the process of closing out
7 any legacy issues for our clients.

8 Q. Why did you decide to stop taking new
9 business?

10 A. The business was prospering. We felt we were
11 committing more time to it than was consistent with the
12 idea of being retired librarians.

13 Q. That sounds like a good reason.

14 A. We thought so.

15 Q. When you say, "we" who else are you referring
16 to?

17 A. There are three partners in the company. One
18 partner is Robert Berger (phonetic), the second partner
19 is Helen Sullivan, and I was the third partner -- am the
20 third partner.

21 Q. So when -- when new business comes in -- or
22 when you were still taking new business when it would
23 come in, how would you choose which partner to assign
24 business to?

25 A. We all dealt with each of our clients in the

1 roles that we discovered we were best at. So for
2 instance, Bob Berger was our business manager -- is our
3 business manager. Helen Sullivan is one of the best
4 reference librarians I've ever encountered. So she did
5 the bibliographic research for most of our work. I
6 wrote the declarations and stand for depositions. And I
7 did most of the other -- what shall I call it? -- client
8 relation work.

9 Q. Okay. And you have submitted a declaration --
10 actually, two declarations in connection with the matter
11 that your deposition is with today, right?

12 A. That is correct.

13 MR. GREEN: I would ask the court reporter to
14 please hand the witness one of those thick documents and
15 mark it as Exhibit 1.

16 (Deposition Exhibit No. 1 marked as
17 requested.)

18 BY MR. GREEN:

19 Q. Dr. Bennett, have you ever seen Exhibit 1
20 before?

21 A. Yes, I have.

22 Q. And what is Exhibit 1?

23 A. It is a declaration that I made on a matter
24 before the Patent Trial and Appeal Board concerning
25 Twitter Incorporated as the petitioner and Youtoo

1 Technologies as the patent owner.

2 Q. Okay. All right.

3 MR. GREEN: Can I please ask the court reporter to
4 mark the similar but different document Exhibit 2 that
5 is the patent number that ends in 506.

6 (Deposition Exhibit No. 2 marked as
7 requested.)

8 BY MR. GREEN:

9 Q. Dr. Bennett, what is Exhibit 2?

10 A. Exhibit 2, like Exhibit 1, is a declaration
11 that I wrote on a matter before the Patent Trial and
12 Appeal Board concerning Twitter Incorporated as the
13 petitioner and Youtoo Technologies, LLC, as the patent
14 owner.

15 Q. Other than differences on the very first page,
16 is -- are there any differences in the contents between
17 Exhibit 1 and Exhibit 2 that you're aware of?

18 A. None that I'm aware of.

19 Q. Okay. Today I'm going to ask you a series of
20 questions about Exhibit 1. If any of those questions
21 would have a different answer than we were talking about
22 Exhibit 2, would you please let me know?

23 A. I certainly will.

24 Q. Okay. Great.

25 MR. GREEN: I would also ask the court reporter to

1 please hand you a copy of the document titled A Mobile
2 Phone-based Context-aware Video Management Application
3 and mark it first as Exhibit 3.

4 (Deposition Exhibit No. 3 marked as
5 requested.)

6 BY MR. GREEN:

7 Q. Sir, have you ever seen Exhibit 3 before?

8 A. Yes, I have.

9 Q. And do you see in the bottom right-hand corner
10 it says, Twitter Incorporated, Exhibit 1006?

11 A. I do see that.

12 Q. Have you ever seen a version of this document
13 with that labeled in the bottom right-hand corner?

14 A. Not before this morning.

15 Q. Okay. All right. So moving back to
16 Exhibits 1 and 2. Who retained you to draft this
17 declaration?

18 A. You will see on page 3 of my declaration,
19 paragraph 3, the statement that I've been retained by
20 Klarquist Sparkman, LLP, to authenticate and establish
21 the dates of public accessibility of the certain
22 documents.

23 Q. Okay. Have you ever worked with Klarquist
24 Sparkman before this engagement?

25 A. I don't know.

1 Q. You don't recall ever drafting other
2 declarations regarding prior art with Klarquist
3 Sparkman?

4 A. We've had scores of clients and I do not have,
5 this morning, access to the information that I would
6 need in order to answer your question accurately.

7 Q. Okay. So my question -- I'm sorry. I'm
8 trying to remember my question, if it was how many times
9 or was it have you ever worked with them. Have you ever
10 worked with them on another matter other than this?

11 A. In the absence of the information I would need
12 to ask -- answer your question accurately, I can only
13 say I believe I have worked with Klarquist on more than
14 one matter, but I cannot state that with confidence.

15 Q. Okay. How many -- Roughly how many times have
16 you been engaged to substantiate a publication date for
17 a document?

18 A. We've been asked to do the sort of work we do
19 about 150 times.

20 Q. And of those 150 times, roughly how many of
21 them involved the submission of the declaration?

22 A. Well, we might distinguish between the
23 submission and the preparation. I would guess
24 90 percent of the time, we would prepare a declaration.
25 I cannot tell you, again, with any confidence, that in

1 every case we have prepared a declaration, that it was
2 submitted by our client.

3 Q. Okay. Are you aware of a Court or the Patent
4 Trial and Appeal Board ever relying on your opinion
5 expressed in the declaration?

6 A. Yes.

7 Q. How many times do you think that's happened?

8 A. Can you help me understand what you mean by
9 relying upon.

10 Q. Yeah. That was a bad -- Let me be clearer.
11 Let me ask what -- Let me rephrase it here.

12 Are you aware of the Patent Trial and Appeal
13 Board or a Court or anybody else reviewing your work,
14 deciding it was unreliable, and not relying on it?

15 A. No, I have no such knowledge.

16 Q. So in that context, are you aware of them ever
17 deciding that your work was reliable and using that to
18 definitively established a priority date?

19 A. Yes.

20 Q. Have you ever been unable to substantiate a
21 prior art date that one of your clients sought?

22 A. Not to the best of my recollection. Let me
23 amend that.

24 Q. Okay.

25 A. We would, in the normal course of events,

1 inform a client of our inability to find a document and
2 I suppose that that happened. So my prior answer really
3 had to do with engagements where we -- we did a
4 substantial amount of work for the client.

5 Q. Do you consider yourself to be an expert at
6 spotting alterations in printed publications?

7 A. Yes.

8 Q. What do you think qualifies you as an expert
9 in that?

10 A. Decades ago, when I was a professor of
11 English, I was a textual editor. And one of the central
12 tasks of a -- of a textual editor is to detect changes
13 in documents.

14 Q. What formal training did you receive to be
15 able to detect changes in documents?

16 A. With regard to formal training, I would say
17 that, by large, it was in a course called An
18 Introduction to Graduate Studies, in this case, in the
19 english department at Indiana University, where we dealt
20 primarily with bibliographic matters. Other courses,
21 say in Shakespeare, Chaucer, Milton, one would deal in
22 the normal course of graduate study with changes --
23 textual changes. And then -- So that response to your
24 question about formal training.

25 Then I was hired to be -- I no longer remember

1 my formal title -- an editor for the William Dean
2 Howells edition conducted at Bloomington -- at Indiana
3 University in Bloomington, Indiana. And I spent --
4 well, what, two years, perhaps, in the basement of the
5 Lilly Library with hundreds of copies of different --
6 well, with several copies of many different novels and
7 other publications by William Dean Howells, and my job
8 was to find, with the assistance of a Hinman Collator,
9 differences in the -- in the text of those.

10 I also -- Well, in my first publication -- my
11 very first publication as a graduate student had to do
12 with the changes in -- in the text of the periodical
13 publication of one of Howells's novels.

14 Q. Okay. So slightly different question. Do you
15 consider yourself to be an expert in spotting document
16 forgery?

17 A. Well, I consider myself to be reasonably well
18 informed on such matters, given that I've had this
19 long-standing interest in bibliographic matters and
20 given that, at Northwestern University, Johns Hopkins
21 University, and Yale University, I was directly
22 responsible for special collections and rare book units,
23 archival units, and indeed, now that I think of it, I
24 worked in the -- my home base at the University of
25 Illinois library was in the rare bookroom.

1 Q. Okay. Other than the training earlier that
2 you just discussed regarding spotting document
3 differences, have you ever received formal training to
4 help you identify document forgery?

5 A. Probably not.

6 Q. So do you consider yourself to be an expert in
7 the MARC standard?

8 A. I consider myself to be well informed about
9 those aspects of MARC practices that relate to the
10 authentication and dating of documents.

11 Q. Are you familiar with MARC field 955?

12 A. I would have to check whether I have worked
13 with MARC field 955.

14 MR. GREEN: If I could ask the court reporter to
15 please mark as Exhibit 4 -- what I think is our last
16 document -- the document that says in the top right-hand
17 corner, update information.

18 (Deposition Exhibit No. 4 marked as
19 requested.)

20 BY MR. GREEN:

21 Q. Dr. Bennett, have you ever seen Exhibit 4
22 before?

23 A. No.

24 Q. Well, I'll represent this to you, sir, that is
25 the document we obtained from the Library of Congress's

1 website. And if you turn to the third page of the
2 document, do you see at the top, it says Descriptive
3 Cataloging Manual?

4 A. I do see that.

5 Q. Have you ever seen a descriptive cataloging
6 manual before?

7 A. I do not recall having seen this document in
8 its entirety before.

9 Q. Okay. Earlier when I asked you if you could
10 recall what MARC field 955 was, you said you'd have to
11 refer to something else. What -- What were -- remind me
12 what you had to refer to?

13 A. My typical practice is to do a browser search
14 for MARC field whatever it is and find out what that
15 MARC field is about.

16 Q. Okay. So if you were to do that search and
17 this document was to come up, you would rely on this
18 document in forming your opinion?

19 MR. SIEGEL: Objection, form.

20 BY THE WITNESS:

21 A. Well, you should understand that the browser
22 search would get you to something called MARC field 955,
23 which might well be part of this document. So I was
24 careful to say that I don't recall seeing this document
25 in its entirety. I might well have seen parts of

1 that -- of this document before.

2 Q. Gotcha. Understood. Thank you for the
3 clarification.

4 If you could please turn to page 21 of
5 Exhibit 4 and let me know when you're there.

6 A. I'm on page 24.

7 Q. Have you ever seen the information on
8 page 24 -- sorry -- page 21. Have you ever seen the
9 information on page 21 before?

10 A. I don't recall seeing this before.

11 Q. Okay. Is this the type of record that you
12 would rely on when determining what a particular MARC
13 field meant?

14 MR. SIEGEL: Objection, form, lack of foundation.
15 BY THE WITNESS:

16 A. Having no recollection of having seen this
17 document in its entirety before, I don't think I can
18 answer your question with any confidence.

19 Q. Okay. But it's -- But have you ever seen the
20 information on page 21 before -- Strike that. I'm
21 sorry.

22 Do you have any reason to doubt that the
23 information on page 21 is an accurate description of
24 MARC field 955?

25 A. No.

1 Q. Do you see that it says at the top, 955:
2 local functional identifying information?

3 A. I do see that.

4 Q. Is that --

5 A. Sorry.

6 Q. And you see the list of subfields associated
7 with MARC field 955 listed?

8 A. I do see that.

9 Q. And do you see subfield W?

10 A. Yes, I do.

11 Q. Are you familiar with subfield W of MARC field
12 955?

13 A. If -- I am familiar with the Dewey Decimal
14 Classification System.

15 Q. Okay. Are you aware of what subfield W --
16 what information can be found in subfield W of MARC
17 field 955?

18 A. I presume that a local library could use MARC
19 field 955, subfield W to provide that library's Dewey
20 Decimal classification number.

21 Q. Okay. In your experience, would a library
22 typically make work available prior to being classified
23 under the Dewey Decimal System?

24 A. I'm sorry. Did you ask whether a library
25 would typically do that?

1 Q. Yes.

2 A. The answer, then, would be no, it would not
3 typically do that.

4 Q. Okay. So just to make sure I understand, if
5 there was a date associated with MARC field 955,
6 subfield W, it is unlikely that material associated with
7 that record was available to review at the library prior
8 to that date; is that accurate?

9 A. That is accurate with the proviso that we're
10 talking about a particular library, not about all
11 libraries.

12 Q. Got it. Okay. Thank you.

13 You can set Exhibit 4 aside. Back to
14 Exhibit 1. How long did Prior Art Documentation
15 Services, LLC, spend researching and putting together
16 Exhibit 1?

17 A. I have no recollection.

18 Q. Do you think it was more than three hours?

19 A. Yes.

20 Q. Do you think it was more than ten hours?

21 A. Possibly.

22 Q. Do you know how much you were paid in
23 connection with drafting Exhibit 1?

24 A. I know what is said in paragraph 3 on page 3,
25 that is that we were paid our usual hourly fee of \$88 an

1 hour. Not remembering how many hours we spent on this
2 particular task, I do not know how much we were paid.

3 Q. Okay. Are you being paid for your time here
4 today?

5 A. I expect to be paid.

6 Q. Okay. Is your rate still \$88 an hour?

7 A. No, no, it is not.

8 Q. Okay. What is your rate for today?

9 A. \$91 an hour.

10 Q. Sir, you don't -- Well, let me strike that.

11 If I referred to Janne Lahti, do you know what
12 I'm talking about? Strike that.

13 Let me take a step back and ask a cleaner
14 question for you. In your report, on -- trying to find
15 the paragraph number -- sorry. Adobe is failing me
16 today. Okay. Here we go. On page 11 of your report,
17 you identify document 1. Do you see that?

18 A. I see the heading Roman Numeral 4. Is that
19 what you're referring to?

20 Q. Just below that, you see it says document 1?

21 A. Yes.

22 Q. And then it says -- I'm going to butcher the
23 pronunciation here -- but it says Janne Lahti, et al., a
24 Mobile Phone-based Context-aware video management
25 application. Do you see that?

1 A. All right. Yes, I believe we're looking at
2 the same thing.

3 Q. Okay. Great.

4 And my question to you is, what is document 1?

5 A. If you'll look at paragraph 32, document 1 is
6 a conference paper by Janne Lahti and others presented
7 at a conference on multimedia and mobile devices,
8 sponsored by the Society for Imaging Science and
9 Technology and the International Society For Optical
10 Engineering.

11 Q. Okay. Thank you.

12 To the extent I refer to Lahti today, I am
13 referring to that document. Can we agree to use that
14 shorthand?

15 A. Yes, we can.

16 Q. Okay. Great.

17 Do you contend that Lahti is a printed
18 publication?

19 MR. SIEGEL: Objection to the extent it calls for a
20 legal conclusion.

21 BY THE WITNESS:

22 A. If you'll look at page 5, paragraph 7, I there
23 assert that I am not a lawyer and am not rendering
24 opinion on the legal question of whether any particular
25 document is or is not a printed publication under the

1 law.

2 Q. All right. You do contend in paragraph 8 that
3 you are offering opinions on when and how each of these
4 documents -- skimming a little bit -- was made available
5 to the extent the person interested and ordinarily
6 skilled in the subject matter or art exercising
7 reasonable, diligent -- could have located the document
8 before 25, January 2010. Do you see that?

9 A. I do see that.

10 Q. How did you determine what someone ordinarily
11 skilled in the subject matter of art, what level of
12 skill did they have in connection with document 1?

13 A. If you'll look at page 6, please,
14 paragraphs 10, 11, 12, and 13 are relevant to answering
15 your question. I could read those paragraphs in their
16 entirety if that would help.

17 Q. That's all right. I have those paragraphs.

18 So focusing on paragraph 12, it says, I am
19 informed the persons of ordinary skill in this subject
20 matter or art would have possessed a bachelor's degree
21 in computer science, electrical and computer
22 engineering, or equivalent training and approximately
23 two years of experience in network architecture and
24 multimedia systems, including creating and distributing
25 multimedia. How were you informed of that statement?

1 A. My client informed me of this.

2 Q. Okay. But you didn't form any independent
3 opinion on what someone with ordinary skill, what their
4 background would be?

5 A. That is correct.

6 Q. What -- Well, moving -- moving on to the next
7 paragraph, you state it is your opinion that by at least
8 the 1990s, such a person would have had access to a vast
9 array of long-established print resources in
10 electrical/computer engineering and computer science, as
11 well as to enrich a fast-changing set of online
12 resources providing indexing information, abstract and
13 full tech services for electrical/computer engineering
14 and computer science. Do you see that?

15 A. I do.

16 Q. What is the foundation for that opinion?

17 A. About 30 years of working in four different
18 university libraries, including --

19 Q. Okay. Do you have -- Sorry. I didn't mean to
20 interrupt. Please continue.

21 A. -- including responsibility at two of them for
22 collection development matters.

23 Q. Okay. Do you have any formal training as an
24 electrical engineer?

25 A. No.

1 Q. Do you have any formal training as a computer
2 scientist?

3 A. No.

4 Q. Do you have any formal training in computer
5 engineering?

6 A. No.

7 Q. So skipping up to paragraph 9, the last
8 partial paragraph on page 9. Would you please let me
9 know when you're there.

10 A. I'm there.

11 Q. Okay. This paragraph is titled materials
12 considered. Do you see that?

13 A. I do.

14 Q. Okay. And the materials considered are the
15 attachments to this document; is that correct?

16 A. That is correct.

17 Q. And you state here that these materials are
18 records created in the ordinary course by business --
19 Strike that. I'm sorry.

20 You state that these materials are records
21 created in the ordinary course of business by
22 publishers, libraries, indexing services, and others.
23 Do you see that?

24 A. I do see that.

25 Q. What analysis did you undertake for each of

1 the documents that are attached to each of your
2 declarations to confirm that they were created in the
3 ordinary course of business?

4 A. The exhibits include copies of document 1. As
5 indicated in my declaration, those copies were secured
6 from libraries. It is the ordinary business of
7 publishers to provide copies of their publications for
8 libraries. It is the ordinary business of libraries to
9 provide public access to these documents. We secured
10 our copies in that way. Does that answer your question?

11 Q. I think so.

12 So do you have any firsthand knowledge about
13 how the information underlying the attached document was
14 created?

15 A. Please define firsthand.

16 Q. You know what? Maybe it would be easier if we
17 talk about them individually when we get there instead
18 of trying to be so general here. And just skip with me,
19 please, to paragraph 22 of your report on page 9.

20 A. I'm there.

21 Q. Do you see in paragraph 2, you state, When a
22 book has been cataloged, it will normally be made
23 available to readers soon thereafter. Normally, within
24 a few days or, at most, within a few weeks of
25 cataloging. Do you see that?

1 A. I do see that.

2 Q. And my question is about the word "normally"
3 in that sentence. Is it a fair statement to say that
4 that means that it is not always true that when a book
5 has been cataloged, it is made available to readers soon
6 thereafter?

7 A. I'm sorry. There were too many negatives in
8 that question for me to follow you.

9 Q. I'll try it again.
10 Is it true that when a book is cataloged, it
11 is not always made available to readers soon thereafter?

12 A. You'll have to define "always" for me.

13 Q. Well, in your experience, have you -- are you
14 ever aware of a single instance where a book, after it
15 was cataloged, was not made available to readers soon
16 thereafter?

17 A. No.

18 Q. Okay. But you can't say that definitively for
19 every instance of a book ever being cataloged, right?
20 That's a silly question. Let me see if I can get a
21 better question for you here.

22 It is reasonable to assume that sometimes
23 books are not made available immediately or soon after
24 they are cataloged; is that correct?

25 MR. SIEGEL: Objection, form.

1 BY THE WITNESS:

2 A. If you said it was reasonable to assume
3 that -- I'm sorry. I'll need to ask the court reporter
4 to repeat your question.

5 Q. Let me try one more time to get a little
6 cleaner. See if I can move us along.

7 A. Good. Let's do that.

8 Q. Okay. Do you think it is reasonable to assume
9 that when a book is cataloged, it is not always made
10 available to readers soon thereafter in every instance?

11 MR. SIEGEL: Objection, form.

12 BY THE WITNESS:

13 A. I'm going to ask the court reporter to repeat
14 the question.

15 MR. GREEN: Please do.

16 (Record read as requested.)

17 BY THE WITNESS:

18 A. To the extent that I understand that question,
19 the answer would be no, that is not a reasonable
20 assumption.

21 Q. Okay. Well, let's look back at paragraph 22.
22 What do you mean by the word "normally" in paragraph 22?

23 A. The word "normally" draws upon my experience
24 as a library user in countless libraries and as a
25 library staff member in four different research

1 libraries, as a collection officer that is someone
2 directly involved in building collections and getting
3 them into the hands of users in one of those libraries,
4 and as a library-wide administrator at two of those
5 libraries where it's quite likely that I would be on the
6 receiving end of complaints were books not made
7 available to readers reasonably promptly. So that's one
8 thing that "normally" means. It's a word that describes
9 decades of experience of libraries and engagement in
10 library operations and engagement with library users.

11 Q. Okay. Let's move on to paragraph 23. Do you
12 see Internet Archive?

13 A. I do see paragraph 23.

14 Q. Are you affiliated with the Internet Archive?

15 A. No.

16 Q. Have you ever worked there?

17 A. No.

18 Q. Have you ever -- Strike that.

19 Did you help develop their systems that
20 collect and store records?

21 A. No.

22 Q. Do you have any firsthand knowledge of how
23 their systems collect and store records?

24 A. Would you please define firsthand?

25 Q. Personal. Do you have any personal knowledge

1 of how their systems collect and store records?

2 A. Well, sure.

3 Q. Let me ask a more narrowly focused question.

4 Do you have any personal knowledge of the technical
5 systems they use to collect and store records?

6 A. Well, I'm trying to answer as accurately as I
7 can. And when you use the word "personal," I understand
8 that to mean is it knowledge that I have as a person.
9 It may not -- that may not be what you mean. And so I'm
10 going to ask you to --

11 Q. Okay. Then --

12 A. -- tell me again what you mean by personal.

13 Q. Let me -- Let me ask a different question
14 then.

15 Have you ever heard the phrase firsthand
16 knowledge?

17 A. You have just used it about five minutes ago.

18 Q. Okay. Great.

19 What do you understand firsthand knowledge to
20 mean?

21 A. I can imagine it meaning a number of things.
22 I asked you to tell me what you mean by it and I don't
23 recall that you answered.

24 Q. That's fine, sir.

25 But do you have a personal understanding of

1 what firsthand knowledge means yourself?

2 A. I'm hesitating only because I'm trying to
3 imagine some of the varieties of meaning that I would
4 attach to "firsthand." And it goes from anything
5 that -- I'm refinishing a table at home now. I have
6 firsthand knowledge of that. Okay?

7 Q. Okay. Why is that?

8 A. Because I've done it myself.

9 Q. Okay. Let's use that definition. Firsthand
10 knowledge pertaining to something you have done
11 yourself. Is that fair?

12 A. It certainly is useful in some contexts.

13 Q. Okay. Great.

14 So to the extent that I use the phrase
15 firsthand knowledge today, that is what I'm referring
16 to, is that you have done something yourself.

17 Now, your declaration includes attachment 1G,
18 which is the very last page in the declaration.

19 A. I'm there.

20 Q. What is Exhibit 1G -- or Attachment 1G?

21 A. Attachment 1G bears a label identifying it as
22 an Internet Archive capture of an announcement of the
23 CD-Rom publication of the January 2006 SPIE -- well,
24 SPIE/IS&T Conference in San Jose.

25 Q. All right. And do you know when this record

1 was -- Strike that.

2 Where did Exhibit -- or where did
3 attachment 1G come from?

4 A. As the label suggests, it came from the
5 Internet Archive.

6 Q. Did you generate attachment 1G?

7 A. Probably not.

8 Q. Do you know who generated attachment 1G?

9 A. Probably, it was my partner Helen Sullivan.

10 Q. But you're not sure?

11 A. If being sure means a hundred percent
12 confidence, the only thing I can say is either she or I
13 did it.

14 Q. Okay. Why did you include attachment 1G in
15 your declaration?

16 A. Part of our task was to identify when
17 document 1 was publicly available. Attachment 1G speaks
18 to the question of when the CD-Rom publication of
19 document 1 was publicly available.

20 Q. Okay. So do you have any firsthand knowledge
21 of when the CD-Rom with publication 1 was publicly
22 available?

23 A. Well, sure.

24 Q. Okay. What is your firsthand knowledge, sir?

25 A. As I said before, probably my partner, Helen

1 Sullivan, put document 1G in my hands.

2 Q. So your opinion is based on the information in
3 document 1G; is that correct?

4 A. Yes.

5 Q. So to the extent that there's any inaccuracies
6 in document 1G, that would lead to inaccuracies in your
7 opinion; is that correct?

8 A. Yes, that is correct.

9 Q. Okay. You refer in your declaration to
10 attachment 1G of a prepublication notice. Do you recall
11 that? I'll see if I can help you narrow it down. It's
12 right there in the middle of the page on document 1G --
13 well, the first time you refer to it -- let me find --

14 A. Well, your question was what did I say about
15 1G. And on page 14, paragraph 44, I describe
16 attachment 1G as a true and correct copy of an Internet
17 Archive capture, dated 18, June 26 -- 2006 of a
18 prepublication notice of availability of the proceedings
19 of the January 2006 SPIE/IS&T Conference in San Jose on
20 CD-Rom. That's what I said.

21 Q. Okay. What is a prepublication notice?

22 A. Are you asking me what is a prepublication
23 notice?

24 Q. Yes.

25 A. Publishers quite often announce the

1 availability of their publications prior to the formal
2 publication of the document. That's -- That is a
3 prepublication notice.

4 Q. So is it fair to say that a prepublication --
5 sorry. Are you still -- were you done?

6 A. Yes.

7 Q. Okay. Is it fair to say that a prepublication
8 notice would occur before publication?

9 A. Very likely.

10 Q. Okay. So back to the Internet Archive and
11 attachment 1G. What is -- When did you believe
12 attachment 1G was captured by the Internet Archive?

13 A. If you will look up in the upper right-hand
14 corner, you will see in a little black box the date
15 June 18th, 2006. That is the date of this particular
16 capture. There are other captures prior to and
17 subsequent to that, but that's when this document was
18 captured.

19 Q. Your opinion that this is how the depicted web
20 page appeared on June 18th, 2006, is based on the
21 information in the top right-hand corner of this
22 document; is that right?

23 A. I'm sorry. Would you mind repeating the
24 question.

25 Q. Sure.

1 Is it your opinion that this document was on
2 the internet as it appears on June 18th, 2006?

3 A. That is my opinion.

4 Q. And is the basis of that opinion solely the
5 date in the black box in the top right-hand corner?

6 A. That is the basis of my opinion that it was
7 available on the 16th of June, 2006.

8 Q. Did you do anything to confirm with the
9 Internet Archive that that information was accurate?

10 A. No.

11 Q. All right. If you will please turn to
12 attachment 1E. And that begins on -- you've got page
13 numbers in the bottom right-hand corner, it begins on
14 page 59.

15 A. I'm there.

16 Q. All right. What is attachment 1E?

17 A. The label for attachment 1E identifies it as
18 an Internet Archive capture of the program for the
19 January 2006 SPIE/IS&T conference in San Jose.

20 Q. Okay. Do you know whether this is a true and
21 accurate representation of the program from that
22 conference?

23 A. If you will look in the declaration, page 13,
24 paragraph 37. What I assert there is that
25 attachment 1E, which is what we're talking about, is a

1 true and correct copy of Internet Archive capture of 6,
2 January 2006, of parts of the program for the 15/19
3 January 2006 SPIE/IS&T conference in San Jose
4 California, available at, and then I provide a URL.

5 Q. Okay. Do you know whether this Internet
6 Archive capture accurately reflects any document that
7 was published in connection with that conference?

8 A. Well, you're going to have to define "know"
9 for me.

10 Q. Did you attend the SPIE/IS&T conference in San
11 Jose, California, in January of 2006?

12 A. No, I did not.

13 Q. Did you -- Were you ever provided by anyone
14 associated with that conference a copy of the program
15 from the conference?

16 A. No.

17 Q. So -- Strike that.

18 Is the only copy of this program you have the
19 one that you obtained from the Internet Archive?

20 A. Yes.

21 Q. You say in paragraph 37, attachment 1E is a
22 true and correct copy of an Internet Archive capture of
23 6 January 2006. Do you see that?

24 A. I do see that.

25 Q. How do you know that the capture was performed

1 on that date?

2 A. Would you please look on pages 9 and 10 --

3 Q. Okay.

4 A. -- at paragraph 26. Many Internet Archive
5 captures made by the Wayback Machine have a banner at
6 the top. That was true, for instance, of attachment 1G.
7 We were just discussing that banner.

8 Q. That's right.

9 A. Then on page 10, the first full paragraph --
10 first full sentence. Some captures may lack this
11 banner. In these latter cases, the URL for the capture
12 begins with the identification of the Internet Archive
13 page, followed by information, the dates and time
14 stamps, the capture, in a way that's described in the
15 rest of this paragraph.

16 Q. Okay.

17 A. Now, if you will look back at paragraph 37,
18 you will see that I provide a URL there. You will
19 see -- I'm -- yes. You will see that that URL conforms
20 in its format to the format described generically on
21 page 10, paragraph 26. And it includes data elements.
22 Specifically, a date -- well, specifically, it includes
23 the dates 2006, 01/06. If you look at the explanation
24 of that part of the URL on page 10, you will see that
25 those are dates and they are properly understood to be

1 the 6th of January, 2006.

2 Q. Okay. And so is the entire basis of your
3 opinion that attachment 1E is a correct copy of the
4 document that was on the internet on January 6th, 2006,
5 based on the date in that URL?

6 A. That is correct.

7 Q. You did not participate in the capture of this
8 document on January 6th, 2006, did you?

9 A. Probably not.

10 Q. Okay. If you'll skip back up, sir, please, to
11 paragraph 27.

12 A. I'm there.

13 Q. The paragraph is titled indexing. You see
14 there -- beginning on the sixth line, sometimes the date
15 of the document's public accessibility will involve both
16 indexing and library date information. Date information
17 for indexing entries is, however, also unavailable. Do
18 you see that?

19 A. I do.

20 Q. Can you explain what you meant by that?

21 A. In a large number of cases when one is dealing
22 with an online index entry, there is no information in
23 that entry that tells you when the index record was
24 created. Does that answer your question?

25 Q. I think it does.

1 Did you offer an opinion on any other
2 documents other than document 1 that we've agreed to
3 refer to Lahti as shorthand?

4 A. For this client in this proceeding, no.

5 Q. Above paragraph 32, would you include the
6 word -- or it says 1. Authentication. Do you see that?

7 A. I do see that.

8 Q. What is meant by authentication in that
9 context?

10 A. It means that this -- document 1 in this case,
11 is what it appears to be, and that one can rely upon it
12 to be what it appears to be.

13 Q. I believe earlier you testified that you did
14 not attend the January 2006 SPIE/IS&T conference; is
15 that correct?

16 A. That is correct.

17 Q. So you did not have firsthand knowledge
18 whether the Lahti paper was actually presented at that
19 conference, do you?

20 A. Well, we are once more up against this
21 definition problem of firsthand.

22 Q. All right. Let me ask a different question.

23 You did not -- Strike that.

24 You were not in the audience when the Lahti
25 paper was presented at the January 2006 conference, were

1 you?

2 A. I was not in the audience.

3 Q. So your basis -- Well, strike that.

4 So you believe the paper was actually
5 presented at that conference; is that correct?

6 A. That is correct.

7 Q. And your basis for that opinion is solely the
8 documents attached to your declaration; is that correct?

9 MR. SIEGEL: Objection, form.

10 BY THE WITNESS:

11 A. My opinion certainly is based on the documents
12 presented -- the attachment specifically -- in the
13 attachment. My understanding -- I'm sorry. The
14 attachments -- my -- I have thoroughly confused my
15 statement, so I'm going to start over.

16 My opinion is certainly based on the
17 evidentiary attachments to my declaration. My
18 understanding of those documents is based on my
19 experience of some decades of research scholarship, of
20 attending conferences, of being a scholar, of having
21 papers published, speaking at conferences, and alike.

22 Q. Okay. But you can't state definitively,
23 100 percent that this paper was actually presented at
24 that conference, can you?

25 A. What I can say definitively, 100 percent is

1 that all the evidence available to any reasonable review
2 of the evidence suggests that the paper was presented at
3 the conference.

4 Q. Okay. But for example, you don't know whether
5 the presenters missed their flight and thus missed the
6 conference. Do you know that?

7 A. No, I don't know that.

8 Q. Okay. Before you were engaged by Klarquist in
9 connection with this matter, had you ever seen the Lahti
10 paper?

11 A. No.

12 Q. Before you were engaged by Klarquist in this
13 matter, had you ever heard of the SPIE/IS&T conference?

14 A. Possibly.

15 Q. Do you have any specific recollection of that
16 conference prior to your engagement?

17 A. No.

18 Q. And I'm -- I noticed that we've been going for
19 about an hour and 15 minutes. I certainly don't want to
20 be a taskmaster here. If you would like a break, please
21 let me know.

22 A. I will. I'm fine. Thank you very much.

23 Q. Thank you.

24 If you will please turn to attachment 1A of
25 your declaration. And at the bottom right-hand corner

1 it has page 25.

2 A. Page 25?

3 Q. Yes, please.

4 A. I'm there.

5 Q. What is page 25?

6 A. Page 25, there's the label attachment 1A, copy
7 of document 1 from the Linda Hall Library. And
8 specifically, page 25, as distinguished from the
9 following pages, is a cover sheet provided by the Linda
10 Hall Library documenting our request for a copy of
11 document 1 and providing some indication of their
12 processing of our request.

13 Q. All right. Have you ever been employed by the
14 Linda Hall Library?

15 A. No, I have not.

16 Q. Have you ever personally indexed materials at
17 the Linda Hall Library?

18 A. No, I have not.

19 Q. Have you ever spoken with anybody employed by
20 the Linda Hall Library after their indexing practices?

21 A. Would you define indexing for me, please.

22 Q. I believe you define it in your declaration.
23 Let me check. Yes. In paragraph 27, sir, you purport
24 to discuss indexings.

25 A. Uh-huh.

1 Q. When I'm asking about indexing, I'm asking
2 about it in the context that you intended in
3 paragraph 27.

4 A. Uh-huh. So far as I know, no one at the Linda
5 Hall Library does the kind of indexing that's described
6 in paragraph 27. So I'm most unlikely to have asked
7 them about it. And had I asked them, they would have
8 said, We don't do that.

9 Q. Have you ever heard of the context of indexing
10 in connection with your work as a librarian?

11 A. Yes.

12 Q. Are materials indexed in a library?

13 A. Now, almost never.

14 Q. And why is that?

15 A. Because early in the 20th century, libraries
16 got out of the business of indexing their periodicals
17 because they found they could depend upon commercial
18 suppliers of indexing services.

19 Q. Okay. And what -- Are those commercial
20 suppliers the ones identified in your declaration?

21 A. Paragraph 31, which describes the SPIE digital
22 library, describes one such indexing service. There are
23 scores of indexing services.

24 Q. Would you consider WorldCat to be an indexing
25 service?

1 A. No.

2 Q. Okay. So then let me -- let me change the
3 vernacular. I think I'm maybe using the wrong terms
4 here.

5 What is a library catalog?

6 A. It is a database that allows readers to find
7 the material in the library. Usually by -- Well,
8 usually by author or title or subject matter, library
9 catalogs provide for periodical publications. Library
10 catalog entries provide only the broadest subject matter
11 terms. So you would -- you would never find in a
12 library catalog subject terms or anything else, indeed,
13 that would guide you to individual articles within a
14 periodical publication.

15 Q. Okay.

16 A. But if you were looking for periodicals
17 relevant to digital imaging, you might well find a
18 subject term in a catalog on digital imaging, and find a
19 host of periodicals that you might then investigate
20 further.

21 Q. Okay. Do you know when the document attached
22 to the index 1A was first available for review at the
23 Linda Hall Library?

24 A. Would you please look on page 14 at
25 paragraph 43?

1 Q. Okay.

2 A. The paragraph reads attachment 1B -- which
3 obviously follows attachment 1A about which we're now
4 speaking -- a Linda Hall Library catalog record for
5 proceedings of the conference under discussion indicates
6 that the MARC field 040, that the -- indicates in the
7 MARC field that this record was first created at the
8 Linda Hall Library as evidence by the LCLC code for the
9 Linda Hall Library, which is LHL. The MARC field, 008,
10 indicates this catalog record was created on the 28th of
11 March, 2006. So it is my opinion that the proceedings
12 of the conference in which document 1 appeared was
13 cataloged at the Linda Hall Library on the 28th of
14 March, 2006. Does that answer your question?

15 Q. Do you know when the proceedings were first
16 available for the public to review at the Linda Hall
17 Library?

18 A. Please look on page 9, paragraph 22. When a
19 book -- in this case, of course, it's the conference
20 proceedings -- has been cataloged, it will normally be
21 made available to readers soon thereafter, normally
22 within a few days, or, at most, within a few days of
23 cataloging. Does that answer your question?

24 Q. No. I believe the answer is you do not have
25 firsthand knowledge of when document 1 was available to

1 the public at the Linda Hall Library; is that correct?

2 MR. SIEGEL: Objection, form, mischaracterizes
3 testimony.

4 BY THE WITNESS:

5 A. We are, again, up against your preference for
6 the word "firsthand." And my assertion, for instance,
7 that decades of experience in four academic libraries
8 quite similar, in many respects, to the Linda Hall
9 Library constitutes firsthand knowledge. So I cannot
10 answer your question using your definition because --

11 Q. Did you not create the catalog -- I'm sorry,
12 sir. Were you done?

13 A. I'm done.

14 Q. You did not create the catalog record at the
15 Linda Hall Library that's reflected in attachment 1B,
16 did you?

17 A. No, I did not.

18 Q. And do you know the normal practice of the
19 Linda Hall Library when it comes to -- when materials
20 are made available after the catalog record is created?

21 A. I know that the Linda Hall Library is similar
22 to other academic libraries. I know that as a private
23 library, it has a direct interest in processing material
24 promptly. So I have every reason to believe and to
25 opine, as I do in paragraph 22, that material cataloged

1 at the Linda Hall Library would normally be made
2 available to readers soon after cataloging.

3 Q. In connection with this project, did you speak
4 with anybody employed by the Linda Hall Library?

5 A. No, I did not.

6 Q. Did you create record 1B -- Strike that.
7 Did you create attachment 1B personally?

8 A. Attachment 1B would not be in this declaration
9 if I had not put it there. Does that answer your
10 question?

11 Q. No, sir, it does not.

12 I understand that you put it in the
13 declaration, but I want to know if you created
14 attachment 1B in the first declaration.

15 A. I'm trying to find 1B.

16 Q. Oh. I'm sorry. It is page 44. I'm sorry. I
17 should have mentioned that.

18 A. Well, attachment 1B is labeled Linda Hall
19 Library catalog record for the January 2006 conference
20 that we've been talking about. The record itself was of
21 course created at the Linda Hall Library, made publicly
22 available online, captured -- not created -- captured
23 by -- most probably by my colleague Helen Sullivan,
24 transferred to me digitally, and included in the
25 declaration by me.

1 Q. Okay. I think I follow.

2 So just to make sure that I've got it
3 straight, you did not personally capture the material in
4 attachment 1B, did you?

5 A. I think what I said is that my partner, Helen
6 Sullivan, probably did it. You're asking me to remember
7 who did what more than a year ago out of 150
8 declarations. I can only answer with probabilities.

9 Q. Okay. So you don't remember capturing
10 attachment 1B personally; is that fair?

11 A. That is fair.

12 Q. Do you remember personally capturing
13 attachment 1A? And again, that starts on page 25.
14 Actually, let me ask a different question. I think
15 that's not a -- that might be a nonsensical question.

16 Is it correct that attachment 1A was received
17 from the Linda Hall Library?

18 A. That is correct.

19 Q. So you did not make the copy of the document
20 in attachment 1A that is included in your report. You
21 received it from the Linda Hall Library; is that
22 correct?

23 A. That is correct.

24 Q. Did you personally request a copy of this
25 record from the Linda Hall Library?

1 A. If you'll look on page 25 toward the top on
2 the left-hand side, it says shipped to: Attention Helen
3 Sullivan, that suggests to me that Helen Sullivan made
4 the request to the Linda Hall Library and received it
5 from them.

6 Q. But you did not personally make this request
7 from the Linda Hall Library or receive the document from
8 them; is that correct?

9 A. That is correct. That is what the evidence
10 suggests.

11 Q. Is it true that the creation of a MARC record
12 does not occur -- Strike that.

13 Is it true that the creation of a MARC record
14 does not necessarily occur on the day that the
15 corresponding materials are made available to the
16 public?

17 A. I believe you asked me whether the creation of
18 a record and the -- and the public availability of the
19 document represented by that record are simultaneous
20 events. Is that what you asked? I mean, I --

21 Q. I --

22 A. I'm sorry. Go ahead.

23 Q. Yes. Assuming that's a question.

24 A. It would really help if you would avoid
25 negatives in your question and phrase your question

1 in -- simply as possible in positive terms, rather than
2 having me farce your, you know -- your questions and
3 have us do this routine, did you ask this, did I ask
4 that? Come on.

5 Q. Sir, I'm not trying to be confusing, sir.

6 A. Perhaps I'm just easily confused.

7 Q. I'll ask it differently.

8 Are materials normally made available to the
9 public on the same day that their MARC records are
10 created?

11 A. Well, everything in that question turns on the
12 question -- on the meaning of "normally." What I would
13 say is that normally -- for instance, if the MARC record
14 were created late in the day, normally you would not
15 expect the thing to get its way through the other
16 processes that happened before an item is made publicly
17 available. For instance, ownership marks might be
18 applied, call numbers might be applied. So there's some
19 processing the physical document that would often occur
20 after the catalog record was created. So normally, if
21 the catalog record were created late in the day, those
22 processes probably wouldn't make it possible for the
23 thing to get under the shelf the same day.

24 Q. Okay. If you could please, sir, turn to
25 page 45 of your declaration.

1 A. I'm there.

2 Q. What is page 45?

3 A. 45 bears the label attachment 1C, SPIE digital
4 library index record for document 1.

5 Q. Did you personally capture attachment 1C?

6 A. My partner, Helen Sullivan, probably captured
7 this index record.

8 Q. When you say probably, you're not 100 percent
9 sure whether she did or not?

10 A. I'm a hundred percent sure that either she or
11 I did, and the probabilities are that she did it.

12 Q. But you don't recall personally capturing
13 attachment 1C; is that correct?

14 A. I personally do not recall it.

15 Q. And what are you demonstrating as to the
16 availability of document 1 by the inclusion of
17 attachment 1C in your declaration?

18 A. Attachment --

19 Q. Attachment 1 is discussed in paragraph 35 of
20 your declaration, if that's what you're looking for.

21 A. Yes. Thank you.

22 Q. Okay.

23 A. This is the first of two places where
24 attachment 1C figures in my declaration. And in
25 paragraph 35 and 36, I express the opinion that -- that

1 because attachment 1C is indexed in the SPIE digital
2 library and available from the SPIE digital library,
3 that document 1 is -- I'm sorry -- attachment 1C is an
4 authentic copy of document 1.

5 Q. Is it your position that attachment 1C
6 reflects when document 1 was available to the public?

7 A. It is my opinion that attachment 1C provides
8 information relevant to the question of when document 1
9 was available to the public.

10 Q. Okay. And looking at attachment 1C, can you
11 please identify the relevant information? And again,
12 attachment 1C is on page 45.

13 A. If you will look on page 14, paragraph 42.
14 This is the second place in which attachment 1C figures
15 in my declaration. And there, I offer the opinion that
16 attachment 1C, the SPIE digital library index record for
17 document 1, indicates that the proceedings of the
18 January 2006 conference in San Diego -- I'm sorry -- San
19 Jose was published on the 10th, February 2006, a date
20 you will observe in attachment 1C about a third of the
21 way down.

22 Q. Okay. So your opinion is that because that
23 date appears on this page, that date necessarily
24 indicates when document 1 was available to the public;
25 is that correct?

1 A. What is correct is what I assert in
2 paragraph 42, which is that this record, the record in
3 attachment 1C -- indicates is the verb I use -- that the
4 proceedings were published on the 10th of February,
5 2006. That is my opinion.

6 Q. Okay. Now, how do you know, looking at
7 attachment 1C, that that date is the date of publication
8 as opposed to some other date?

9 A. The information on attachment 1C that we're
10 looking at, which begins Prog., P R O G., SPIE/ -- no --
11 SPIE 6074 and so on has the appearance of a
12 bibliographic citation. The date, February 10th, 2006,
13 has the appearance of a publication date that one would
14 expect in a bibliographic citation.

15 Q. Okay.

16 MR. SIEGEL: Counsel and Dr. Bennett, I apologize,
17 but I'm going to really need to use one of those short
18 breaks.

19 MR. GREEN: That's not a problem. We probably all
20 could. You want to do five minutes?

21 (A short break was had.)

22 BY MR. GREEN:

23 Q. Dr. Bennett, welcome back.

24 Did you discuss the subject matter of your
25 testimony with anybody over the break?

1 A. No.

2 Q. Okay. Great.

3 Turning back again, please, to attachment 1C
4 which, again, is page 45. Please let me know when
5 you're there.

6 A. I'm there.

7 Q. Okay. Great.

8 Earlier, you drew a distinction between
9 creating and capturing a record. Do you recall that?

10 A. I do.

11 Q. You did not create attachment 1C, did you?

12 A. No, I did not.

13 Q. Do you know who personally created
14 attachment 1C?

15 A. Do I know who the person was or do I know
16 personally?

17 Q. Sorry.

18 Do you know who the person was that created
19 attachment 1C?

20 A. No, I do not.

21 Q. And you did not speak with the person that
22 created attachment 1C; is that right?

23 A. That is correct.

24 Q. All right, sir. If you'll please turn to
25 attachment 1D. What is attachment 1D?

1 A. Attachment 1D carries the label, which I
2 created, copy of document 1 from the SPIE digital
3 library.

4 Q. Okay. And so is this the document that was
5 reflected in attachment 1C?

6 A. Yes.

7 Q. And attachment 1D is a copy of document 1.
8 Attachment 1A is also a copy of document 1; is that
9 correct?

10 A. That is correct.

11 Q. Have you ever compared attachment 1A and
12 attachment 1D to each other word-for-word? And I'm not
13 asking you to do it now. I'm just asking if you've --

14 A. Yeah. I understand your question. I
15 understand that you asked for a word-for-word
16 comparison. And the answer to that question is no.

17 Q. Okay. Going back to attachment 1E, which
18 again, begins on page 59.

19 A. I'm there.

20 Q. And -- Now -- And I'll represent to you, as
21 you may recall from earlier, you testified that
22 attachment 1E, as described in paragraph 37, is part of
23 the program for the conference. Do you recall that?

24 A. I do.

25 Q. Why did you not attach the entire program to

1 your declaration?

2 A. At this point in time, fully a year after I
3 created the declaration, I do not recall.

4 Q. Okay. If you will -- Well, I got it wrong
5 here. Okay.

6 If you will please turn to page 127, as you
7 have numbers to the pages in the bottom right-hand
8 corner.

9 A. I've done so.

10 Q. Okay. Do you see that this is page 67 of the
11 proceedings?

12 A. I see that.

13 Q. And then if you look on the next page of your
14 declaration, that's page 268 of the proceedings. Do you
15 see that?

16 A. I'm sorry. Next page, do you mean -- this is
17 127. Do you mean page 128?

18 Q. Yes. Do you see that page 128 of your
19 declaration corresponds to page 268 of the proceedings?

20 A. I do see that.

21 Q. And so you would agree that your declaration
22 does not include pages 68 through 267 of the
23 proceedings?

24 A. I would agree.

25 Q. Do you know if those pages were in the record

1 that you downloaded from the Internet Archive?

2 A. Well, everything, again, turns on what you
3 mean by "know."

4 Q. Sir, I'm not trying to be --

5 A. Well --

6 Q. What was -- Go ahead.

7 A. I mean, you're asking me to remember what
8 happened more than a year ago. And by saying do I know
9 something I -- and given that I'm testifying under oath,
10 I mean, I can only understand your question do I know
11 with a reasonable degree of certitude what happened a
12 year ago. And the answer has to be no, I do not
13 remember with certitude what happened more than a year
14 ago.

15 Q. Okay. So is it fair to say that you cannot
16 remember whether pages 67 through 267 were in the file
17 as you originally have stated?

18 A. That would be fair to say, yes.

19 Q. If you, sir, would please turn to paragraph 39
20 of your declaration.

21 A. 39?

22 Q. Paragraph 39 is page 13.

23 A. Thank you.

24 Q. You're welcome.

25 A. I'm there.

1 Q. Paragraph 39 reads, I am informed by counsel
2 of the January 2006 STIE/IS&T conference in San Jose was
3 a well-known conference among the multimedia on mobile
4 device community. Do you see that?

5 A. I do.

6 Q. So aside from being informed by counsel that
7 that is a well-known conference, do you have any other
8 basis to believe that that is a well-known conference?

9 A. Only the prima facie evidence of the
10 conference program, suggesting that several thousand
11 people partic- -- well, close to 3,000 people
12 participated in it, and some hundreds of presentations
13 were made. Generally, in my experience, conferences of
14 that size, scope, tend to be well known within the
15 community interest in such matters. All of that, I
16 emphasize, is prima facie evidence.

17 Q. All right. And do you know the full name of
18 the conference?

19 A. If you look on page 60, this is part of
20 attachment 1E, the program.

21 Q. I'm with you.

22 A. Yeah.

23 Q. I'm with you.

24 A. Okay. It would appear that what attachment 1E
25 is, is the technical program for -- and then the

1 conference, which is identified as the IS&T/SPIE
2 18th annual symposium, electronic imaging, science and
3 technology. And it occurred on the 15th through the
4 19th of January, 2006, in San Jose, California. Does
5 that answer your question?

6 Q. Okay. So your -- your opinion -- I'm at the
7 wrong page. Let's try that again.

8 Your opinion expressed in paragraph 39 was
9 that individuals who are interested in multimedia on
10 mobile devices would have been independently aware of
11 the conference that was titled Electronic Imaging; is
12 that correct?

13 A. What is correct is that I -- I say it is my
14 understanding. And therefore, you might reasonably say
15 also it is my opinion. But the word I use is it's my
16 understanding that a person of ordinary skill in the
17 art -- ordinary skill interested in multimedia would
18 have been independently aware of this conference.

19 Q. Okay. And you're basing that understanding on
20 the information that is provided to you by Counsel; is
21 that correct?

22 A. That is correct.

23 Q. Okay. If you would turn, please, sir, to
24 attachment 1F, which is page 144.

25 A. I'm there.

1 Q. Okay. Did you create attachment 1F?

2 A. No. I did not create attachment -- well --

3 Q. Did you --

4 A. I did not create the record that is
5 represented in attachment 1F.

6 Q. And that is how I intended it. I'm trying to
7 learn something from you today. You're -- You have
8 taught me the difference between create and capture and
9 I'm going with that.

10 A. Good.

11 Q. So you did not create it. Did you capture the
12 item in attachment 1F?

13 A. Either Helen Sullivan or I captured it, and
14 probably Helen Sullivan captured it.

15 Q. Okay. So it's fair to say that you don't
16 recall personally capturing attachment 1F?

17 A. Yes.

18 Q. What does attachment 1F show in regards to
19 document 1 generally?

20 A. Well, the label for attachment 1F is that it's
21 the statewide Illinois library catalog record for the
22 January 2006 conference that we've been talking about.
23 So this is a library catalog record for the conference.
24 This particular view of the record starts off with a
25 number of libraries that hold it. And you will see

1 about a third a way -- third of the way up in the
2 record, a statement saying libraries worldwide that
3 hold -- that own item, there are 24 of them.

4 Q. Okay.

5 A. Okay. So that's one thing that it says about
6 this document. The record says many other things, too.
7 If you have questions about other items in this record,
8 I'd be glad to respond to them.

9 Q. Absolutely.

10 So the -- the listing of libraries on the
11 first page of attachment 1F, the listing of libraries
12 that hold the conference proceedings; is that correct?

13 A. Yes. These libraries hold copies of the
14 conference proceedings, that is correct.

15 Q. Okay. Are you able to tell from attachment 1F
16 alone when any of these libraries made their copies of
17 the conference proceedings publicly available?

18 A. If you're asking can I tell from this record
19 alone when, for instance, the University of Maryland at
20 College Park made their copy available, the answer would
21 be no, if that's the question you're asking.

22 Q. That was the question. Thank you.

23 I'm sure this is going to seem like a silly
24 question, but do you know the individual that created
25 attachment 1F?

1 A. No.

2 Q. And have you ever -- Strike that.

3 MR. GREEN: Okay. I think guys that's all I have.

4 Give me just a quick minute to skim through my notes.

5 THE WITNESS: Absolutely.

6 BY MR. GREEN:

7 Q. All right. Just a little bit more.

8 A. Certainly.

9 Q. Having now independently -- or individually
10 gone through each of the attachments on your
11 declaration, is it fair to say that you do not recall
12 capturing any of the materials attached to your
13 declaration personally?

14 A. Yes, that would be fair.

15 Q. Okay.

16 MR. GREEN: All right. I pass the witness.

17 MR. SIEGEL: Just one question.

18 EXAMINATION

19 BY MR. SIEGEL:

20 Q. Following that up, Dr. Bennett, is it your
21 testimony that you are certain that either -- that your
22 business, either yourself or Ms. Sullivan, captured the
23 attachments to the declaration?

24 A. It is my testimony that either Helen Sullivan
25 or I captured these materials. And the working

1 relationship between Ms. Sullivan and myself is
2 described on -- in paragraphs 47 and 48, and concludes
3 in paragraph 48 with my statement that in all cases, I
4 have carefully reviewed the bibliographic documentation
5 used in my declaration. My signature on the declaration
6 indicates my full confidence in the authenticity,
7 accuracy, and reliability of the bibliographic
8 documentation used.

9 MR. SIEGEL: Thank you.

10 I don't have anything else.

11 MR. GREEN: A couple quick follow-ups.

12 FURTHER EXAMINATION

13 BY MR. GREEN:

14 Q. Did you -- Do you recall actually watching
15 Ms. Sullivan when she captured any of the attachments to
16 your declaration?

17 A. No.

18 Q. Did you specifically tell Ms. Sullivan what
19 work to perform to identify records to attach to your
20 declaration?

21 A. In paragraph 47 at the very top of page 16, I
22 assert that one of her -- that is Ms. Sullivan's primary
23 responsibility in our partnership is to secure the
24 bibliographic documentation used in attachments to our
25 declarations. You may recall that early in this

1 deposition, I described Ms. Sullivan as one of the very
2 best reference librarians I have ever encountered in
3 decades of library service. She is just extraordinarily
4 skilled. And it rarely was necessary for me to give her
5 specific directions in searching out bibliographic
6 information. We collaborated early in the partnership
7 in setting up search templates that she used.

8 In paragraph 48, you will see that I go on to
9 say that Ms. Sullivan and I work in close collaboration
10 on the bibliographic documentation needed in each
11 declaration. I will sometimes request specific
12 bibliographic documents or more rarely secure them for
13 myself. So that last sentence is intended to cover the
14 rare, infrequent occasions when I did the work that
15 Helen Sullivan typically does.

16 Q. Okay. And so to make sure I understand your
17 testimony, is it correct that you did not identify the
18 specific records that you wanted Ms. Sullivan to
19 capture?

20 A. As I say in page -- in paragraph 48, I will
21 sometimes request specific documentation. Well,
22 that's -- that's as close as I can get to a confident
23 answer about what happened more than a year ago in this
24 particular declaration, one of 150 that we wrote,
25 dealing with upward to a thousand documents.

1 Q. So is it fair to say that you do not remember
2 requesting Ms. Sullivan to obtain specific documents?

3 A. That would be fair, yes.

4 Q. Okay.

5 MR. GREEN: I have no additional questions. Thank
6 you very much. Unless Counsel has another.

7 MR. SIEGEL: Nothing. Thank you.

8 We're going to read and sign.

9 (Witness excused.)

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	CHANGES AND SIGNATURE		
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1 I, SCOTT BENNETT, Ph.D., have read the
2 foregoing deposition and hereby affix my signature that
3 same is true and correct, except as noted above.

4
5 _____
6 SCOTT BENNETT, Ph.D.

7 THE STATE OF ILLINOIS)
8 COUNTY OF COOK)

9
10 Before me, _____, on this day
11 personally appeared SCOTT BENNETT, Ph.D., known to me
12 (or proved to me under oath or through
13 _____) (description of identity card or
14 other document) to be the person whose name is subscribed
15 to the foregoing instrument and acknowledged to me that
16 they executed the same for the purposes and
17 consideration therein expressed.

18 Given under my hand and seal of office this
19 _____ day of _____, ____.

20 _____
21 NOTARY PUBLIC IN AND FOR
22 THE STATE OF _____
23 MY COMMISSION EXPIRES:
24 _____
25

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

Twitter INC.,)
Petitioner,) No. IPR2017-01131
vs.) Patent No. 8,464,304
STI-ACQ, LLC,) No. IPR2017-01133
Patent Owner.) Patent No. 8,601,506

REPORTER'S CERTIFICATION
DEPOSITION OF SCOTT BENNETT, Ph.D.,
June 21st, 2018

I, Angela K. Patla, Certified Shorthand
Reporter, Registered Professional Reporter in and for
the State of Illinois, hereby certify to the following:

That the witness, SCOTT BENNETT, Ph.D., was
duly sworn by the officer and that the transcript of the
oral deposition is a true record of the testimony given
by the witness;

That the deposition transcript was submitted
on _____, to the witness or to the
attorney for the witness for examination, signature and
return to me by _____;

That the amount of time used by each party the
at the deposition as follows:

Mr. Green - 2:03

Mr. Siegel - 00:02

That pursuant to information given to the
deposition officer at the time said testimony was taken,

1 the following includes counsel for all parties of
2 record:

3 FOR THE PETITIONER:

4 Mr. Todd Siegel
5 KLARQUIST SPARKMAN, LLP
6 121 Southwest Salmon Street, Suite 1600
7 Portland, Oregon 97204
8 (503) 595-5300

9 FOR THE PATENT OWNER, VID STREAM LLC:

10 Mr. Eric Green (via video conference)
11 NORTON, ROSE, FULBRIGHT
12 98 San Jacinto Boulevard, Suite 1100
13 Texas, Illinois 78701
14 (512) 474-5201

15 I further certify that I am neither counsel
16 for, related to, nor employed by any of the parties or
17 attorneys in the action in which this proceeding was
18 taken, and further that I am not financially or
19 otherwise interested in the outcome of the action.

20 Certified to by me this 25th day of June,
21 2018.



22 Angela K. Patla, CSR, RPR
23 084.004877
24 Expires 5/31/2019
25