In the Matter Of:

COMCAST CABLE COMMUNICATIONS, LLC

vs

PROMPTU SYSTEMS CORPORATION

JOHN TINSMAN

November 29, 2018

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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COMCAST CABLE COMMUNICATIONS, LLC,

Petitioner,

vs.

PROMPTU SYSTEMS CORPORATION,

Patent Owner

Case IPR2018-00340
Case IPR2018-00341
Case IPR2018-00344
Case IPR2018-00345
Patent No. 7,047,196
Patent No. 7,260,538

EXAMINATION OF

JOHN TINSMAN

THURSDAY, NOVEMBER 29, 2018

REPORTED BY: HOLLY THUMAN, CSR No. 6834, RMR, CRR

(WDC-201116)

I N D E X

INDEX OF EXAMINATIONS

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EXHIBITS MARKED FOR IDENTIFICATION

(Exhibits, cont'd)

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Examination of JOHN TINSMAN, taken by the Petitioner, at FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER, LLP, 3300 Hillview Avenue, Palo Alto, California 94304-1203, commencing at 9:30 A.M., on THURSDAY, NOVEMBER 29, 2018, before me, HOLLY THUMAN, CSR, RMR, CRR.

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PALO ALTO, CALIFORNIA; THURSDAY, NOVEMBER 29, 2018

9:30 A.M.

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JOHN TINSMAN,

called as a witness, who, having been first duly sworn, was examined and testified as follows:

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EXAMINATION BY MR. DAY

BY MR. DAY:

Q. Could you state your name, please?

A. John Edward Tinsman.

MR. DAY: And, I guess for the record, deposition notices were served in several different matters, and I'll read those into the record.

There's IPR2018-00340, -341, -344, -345.

Q. Mr. Tinsman, can you tell me if you've ever had your deposition taken before?

A. Yes.

Q. And how long ago was that?

A. 25 years?

Q. What kind of dispute was that?

A. It was a patent case.

Q. And were you -- were you retained as an expert in that case?

A. No.
Q. You were a fact witness. Is that right?
A. Yeah. I was an employee at a company involved.
Q. Okay. Which -- who were you working for at the time?
A. Radius.
Q. Okay. Have you ever acted -- have you ever been retained as an expert witness for a litigation before this matter?
A. I'm involved in one other matter. I couldn't tell you exactly what the date was, but yes.
Q. Okay. It's fairly recent. Is that fair?
A. Yes. It's fairly recent.
Q. And let me hand you your declaration.
For the record, what I'd like to do is, there are multiple different exhibits in the records for these IPRs to have the same exhibit number, and I think that may be confusing. So what I'm going to do is ask the reporter to mark this as Exhibit 1 for the purposes of this deposition --
A. Okay.
Q. -- if that's okay with you.
A. Yes, it's fine.
(Deposition Exhibit 1 was marked for

identification.)

BY MR. DAY:

Q. Okay. Mr. Tinsman, I've handed you your declaration in the IPR that ends in the number 340. Right?

A. Yes. I see that.

Q. And this one relates to U.S. Patent 7,260,538. Right?

A. Yes.

Q. Okay.

A. It says that.

Q. And I'll show you more, but you prepared two declarations related to the '538 patent. Is that right?

A. Yes.

Q. And then -- again, I'll show you these later, but there's another patent where you prepared two more declarations, the '196 patent. Right?

A. Yes. That sounds right.

Q. Total of four declarations.

A. Yes.

Q. Okay. Now, had you -- before you signed those four declarations, had you ever signed an expert declaration before that?

A. I believe I did. Again, I don't remember the

exact date. It was fairly recent, so --

Q. Okay. So you've got another case ongoing. You're not sure which one of the declarations got signed first.

A. I think that's right.

Q. Can you -- what kind of case are you engaged as an expert in other than this one?

MR. KLODOWSKI: Object to form.

BY MR. DAY:

Q. What's the other case about?

A. It -- it's between two companies about patents related to, broadly speaking, audio.

Q. Okay. Is it -- so it's a patent infringement lawsuit, or is it an IPR?

A. It's an IPR.

Q. An IPR. Okay.

A. Yeah.

Q. And who's your client?

A. Lectrosonics.

Q. Who's the opposing party?

A. Zaxcom.

Q. Okay. And are you on the patent-holder side or the challenger side?

A. I am on the challenger side.

Q. And you recall that -- do you recall that you

have signed a declaration in that matter?

A. That's my recollection.

Q. Okay. Is it one or more than one?

MR. KLODOWSKI: Object to form.

THE WITNESS: You know, I -- with all of these things flying around, I -- it was at least one.

BY MR. DAY:

Q. Okay. Fair enough.

So in front of you, you have one of the declarations you prepared in this matter. Right?

A. Yes.

Q. How much time did you spend in connection with this declaration?

MR. KLODOWSKI: Object to form.

THE WITNESS: When you mean time, what would you count in that? What number are you asking for?

BY MR. DAY:

Q. Okay. I assume that you're being compensated for your time in connection with this matter. Is that true?

A. It is true.

Q. Okay. And you bill Promptu for your time in connection with this matter. Right?

A. I bill in connection with this matter, yes.

Q. Okay. And so what I'm wondering is, how many

hours did you bill for in connection with this declaration?

A. So all in, all the time I've ever billed to Promptu related to this declaration, or these declarations in general, or --

Q. Well, can you answer with regard to one declaration or only with regard to all four?

MR. KLODOWSKI: Object to form.

THE WITNESS: Yeah, I couldn't -- it would be with -- I could give you a number, kind of, for all four.

BY MR. DAY:

Q. Okay. How much time have you billed Promptu in connection with this matter -- let me just stop.

How much have you billed so far for this matter?

A. I think total hours spent on this set of matters --

Q. Yeah.

A. -- you know, it's more than a hundred, but I think less than 150 hours.

Q. Okay. And then if we just focus in on the declarations you provided, can you give me statement of how much time you had for those?

A. Broadly speaking, just -- kind of the way I

think of it is there's the matter as a whole, and then there's sort of the time spent recently kind of preparing for our conversation today.

Is that an okay breakdown? Does that answer your question?

Q. So I think it will. So you said somewhere between 100 and 150 through today.

A. Yeah.

Q. What if you stop at the point where you signed these declarations. About how much time did you have in at that point?

A. Stop at -- boy, that would be difficult to estimate. I actually -- I don't remember.

Q. Have you -- okay. How about this:

Can you give me an estimate how much time you put in getting ready for your deposition today?

A. Oh, that's more recent. That's easy to remember.

Sort of between 20 and 30 hours, of the order of. Yeah.

Q. Okay. Let me ask you some questions that are based on this declaration.

So if you don't mind, take a look at paragraph 1.

A. 1. Okay.

Q. Okay. And I understand that you've been retained as an expert in several fields, but including cable television control technologies and voice recognition technologies. Right?

A. Yes. That's what it says in paragraph 1.

Q. And so let me -- what do you mean by voice recognition technologies?

A. Broadly speaking, technologies related to processing and recognizing voice.

Q. So do you draw any distinction between voice control technologies and voice recognition technologies?

MR. KLODOWSKI: Object to form.

THE WITNESS: Do I draw the distinction between voice recognition and voice control -- they're related. I -- I sort of organize my thoughts about myself a little differently, since I spent a lot of time on control systems in general. There are control systems, and there are the ways you communicated with control systems. Voice recognition is clearly one way you can communicate with a control system.

BY MR. DAY:

Q. Okay. Let me ask a little bit differently.

So one way to think of voice recognition would be the algorithm that converts a spoken word to text or

some other signal. Is that fair?

A. Sure. You can -- if you want to go with that definition.

Q. Okay. Is that what you mean by -- when you say that you're an expert in voice recognition technologies? Are you talking about the algorithms that actually perform that transformation?

MR. KLODOWSKI: Object to form.

THE WITNESS: That -- that's part of it. You talked in this case about, you know, recognizing a word.

Voice recognition broadly can include many nuances with respect to that.

BY MR. DAY:

Q. So have you -- well, let me do this.

I think your experience with voice recognition was primarily at Albert Incorporated?

A. Working with Albert, correct.

Q. Okay. And in connection with that, did you write an algorithm that converted voice to text?

A. I worked on an algorithm that recognized essentially speech phonemes. Right? So the elements of speech being processed, yeah. And that's a prerequisite in the actual recognition.

Q. So you worked on it. Was it something that

Albert Inc. had developed from the ground up, or was it some other technologies that they licensed?

MR. KLODOWSKI: Object to form.

THE WITNESS: It was a ground-up effort to enable Albert to understand -- they had a -- a unique way of doing searches, and there was the hypothesis that the way that they were to break a query down to do a search might work well with speech recognition.

BY MR. DAY:

Q. And so they started from blank slate and wrote their own speech recognition software. Is that the way it went?

A. That's part of what they did. I mean, it was a bigger question than -- in general, you would rather use something off the shelf if you can, but -- yeah.

Q. But they could not. Is that right?

A. They chose to explore off-the-shelf and custom.

Q. Okay. And what did they explore in the off-the-shelf options?

A. I wasn't involved directly in the off-the-shelf stuff, so I -- I know they looked at commercially available packages. I wasn't -- it wasn't my bailiwick.

Q. Yeah. Do you know which ones?

A. You know, I can't -- I can't remember right off the bat.
Q. Okay.
A. They were well known, but I couldn't tell you --
Q. Well, but the names are not coming to you now. Is that right?
A. Not right off the bat, that's right.
Q. In paragraph 4, you mention that you've published some papers and presented at conferences.
Do you see what I'm referring to?
A. This is the page marked 4 of 80, paragraph 4?
Q. Paragraph 4, yeah, at the bottom. "I have published a number of papers" --
A. Yes, I see that.
Q. Any of those papers related to voice recognition?
A. No.
Q. And have any of your presentations at professional conferences been focused on voice recognition?
A. They have not.
Q. Oh, a couple more questions on the work at Albert Inc.
It sounds like what you were working on was

software. Is that fair?

A. I considered two problems. Certainly software, the front end and the phoneme parsing and feeding into the high-level speech recognition.

I also worried about basic issues. Because it was in an automotive environment, obviously, it's then as now not good form to break out a keyboard and a screen and start typing away while you're driving.

And so one of the challenges in an automotive environment is how do you collect speech in a -- you know, as a garbage in, garbage out kind of thing. If you have a really noisy signal coming in, whatever package you're using will not perform well. So I worried about microphones and microphone placement also.

Q. Was your focus on the front end and preparing information to feed to a voice recognition algorithm?

A. No. Well, certainly that's a lot of what I did. I was working with some other people, and some of them spent more time on the high-level, the semantic processing. But it was a research project, because I was looking at what the right place to put the boundary was, how much -- you know, where you do what and at what point can you feed it.

Like I said, Albert had a unique search

recognition algorithm, and so the question is what was the right level of recognition. You could certainly go all the way to speech, but you might not have to.

So we looked at those options.

Q. How long did you spend on this project for Albert?

A. It was on the order of 14 months.

Q. And were you full time there during that period?

A. No.

Q. Can you give me an estimate of about how much of your time over that 14-month period was at Albert as opposed to other clients?

A. It was probably about half. On average. Over the -- yeah.

Q. Okay. Fair enough.

Okay. If you'll jump ahead, paragraph 15, it starts on page 9 of 80 and goes to page 10 of 80.

A. 9 of 80 to 10 of 80, paragraph 15, you said.

Q. That's right.

A. Okay.

Q. Okay. And in this paragraph, you talk about meeting with AgileTV in 2004. Right?

A. Yes.

Q. Okay. And if you look at the bottom of the

page, it says, "I met with Mr." -- sorry. I'm going to paraphrase.

I met with Mr. Printz, and he explained both their system architecture and a number of aspects of their speech recognition system.

Do you see that?

A. I do.

Q. And then you say he demonstrated a functional system and included the -- that included the voice remote, set-top box, a local head end, and the Agile speech recognition platform.

Do you see that?

MR. KLODOWSKI: Object to form.

BY MR. DAY:

Q. Do you see the sentence I'm referring to?

A. I do see the sentence, yes.

Q. Okay. What's a local head end?

A. Because it was a test setup, they had created a set of equipment that for the purposes of demonstrating the speech behaved like a head end.

Q. But it was in the same room, so it was local? The same building?

A. It was certainly in the same building. I don't recall if it was literally in the same room.

Q. So was this -- this was like a prototype?

A. It was a demonstration system. I -- I don't know how they would characterize it as -- yeah. You'd have to ask them.

Q. Okay. Fair enough.

So is it fair to say that system did not have the head-end unit that's claimed or discussed in the claims of the '538 patent. Right?

A. That system -- so what that system had was the -- sorry, I don't -- I don't think it's in this, but it had a set of servers that represented the Agile product offering.

Q. Okay. Let me -- I'll -- let me show you -- let me just give you the '538 patent. So we'll mark this as Exhibit 2.

(Deposition Exhibit 2 was marked for identification.)

BY MR. DAY:

Q. If you go to -- for instance, go to Claim 1. Let me know when you're there.

A. Yeah, just -- my fingers are -- sticky pages.

Okay. I'm there.

Q. Are you there?

A. Yeah.

Q. Okay. And, I mean, take your time if you want to look over Claim 1. But what I want to focus you in

on is the element that starts "Said cable set-top box."

Do you see what I'm referring to?

A. That -- is there a particular -- I'm sorry, line number?

Q. It's 31. Column 9, line 31.

A. So it says -- oh, I see. So there's a part -- a line that ends "set-top box;" and then you're talking about the thing that comes immediately after that? "Said cable set-top box." Okay. I'm there.

Q. And you'll see it refers to a set-top box that transmits a signal via the cable television link, and then I'll quote, "to a remotely located head-end unit."

Do you see that?

A. Yes, I see this.

Q. And I think in your declaration you note that the claims recite a remotely located head-end unit. Do you recall that?

A. I'd have to double-check, but it rings a bell.

Q. Fair enough. And so my question is, when you saw this system with a local head-end at AgileTV, that would not satisfy Claim 1 of the '538 patent. Right?

MR. KLODOWSKI: Object to scope.

BY MR. DAY:

Q. It didn't have a remotely located head-end unit, did it?

A. When you say "remotely," what do you mean?
Q. Okay. Fair question.
I would like you to use whatever your understanding of Claim 1 is in answering my question. So when you saw -- when you were -- sorry. Let me start over.
Is that fair? Can you use your understanding of the claim language to answer the question?
A. So to be clear, as part of this exercise I wasn't asked to construe precisely the claims in the patent.
Q. Okay.
A. Right? So it sounds like you're asking me to do that, and that's not something that I did for the purposes of my declaration.
Q. Okay. Then try to answer the question; and if you just can't, tell me you just can't.
Did the AgileTV demo system that you saw have a remotely located -- remotely located head-end unit, as recited in Claim 1 of the '538 patent?
MR. KLODOWSKI: Objection. Scope. Form.
MR. DAY: And what's the scope objection?
MR. KLODOWSKI: He didn't offer an opinion on whether that prototype was covered by the claims.
MR. DAY: Okay. I understand.

Q. If you can answer, please do.

A. So the purpose of my visit -- I'll try to answer completely -- was AgileTV had a product suite that they were offering, as I explained there. And my boss at the time said, "Please go see them."

It's clearly impractical to, you know, recreate an entire set of a hundred thousand subscribers or whatever, so you would set up a system with all of the functional units in a setting which reasonably simulated what it would be like in the real world. For practical reasons, things might not be a wide distance apart. Like I said, the head-end could have been in the next room. I actually don't remember -- it was a typical Silicon Valley industrial building.

So the purpose of the visit and the demonstration was for me to see its behavior. It appeared to implement what their product claimed to implement, yeah, and work the way they claimed.

And I use the word "claim" in the sense of marketing, not in the sense of patents.

Q. I appreciate that clarification. That word can be confusing sometimes in these cases.

Let me try this: If you go -- focusing back on Exhibit 1, your declaration, if you go to page 20 of

80, I'm going to focus you on paragraph 35.

A. 20 of 80. Paragraph 35. Okay.

Q. And first, just to follow-up on something you said earlier, did you -- in forming your opinions expressed in this declaration, did you attempt to construe the phrase "head-end unit"?

A. No.

Q. Okay. And now, if you'll look at paragraph 35, it says -- and I'll paraphrase -- the -- a number of the claims recited head-end unit and then, quote, "located remotely from a cable set-top box (Claims 1 and 19) or television controller (Claims 2 and 18)," et cetera.

Do you see that?

A. Yes. You're talking about sort of the second and third lines of paragraph 35?

Q. Yeah.

A. Okay.

Q. And so, I mean, in your declaration, you noted that the head-end unit is located remotely from the set-top box or controller. Right?

A. I repeated what the claim language is, yes.

Q. Okay. But you weren't trying to figure out what that language meant. Is that true?

A. I was not trying to precisely construe those

terms, that's correct.

Q. Did you have some understanding of what "head-end" meant?

A. Yes.

Q. What was that?

A. Broadly speaking, and again without attempting to construe what a head-end is, but just speaking as an engineer and someone familiar with systems, a head-end is a -- typically a place -- as an example, a place where a cable system might get all of their contribution feeds, networks and so on, where they're assembled to create the final television signals delivered to households.

Q. And did you have some -- strike that. I'll just move on.

Let me ask this question one more time. And again, if you can't answer it, just tell me you can't answer it. But this question relates to the demonstration of the AgileTV system that you saw in 2004. Okay?

A. Okay.

Q. And was the local head-end unit in that demonstration system a remotely located head-end unit as required in Claim 1 of the '538 patent?

MR. KLODOWSKI: Objection. Scope.

THE WITNESS: Again, it would depend on the meaning of the word "remotely" in this case. The goal of my visit was to see if they had the functional components, and did they appear to exercise and do what they claimed to be able to do commercially, because OpenTV was considering partnering with them.

BY MR. DAY:

Q. And did that head-end unit receive feeds from content providers?

A. There were -- there was some content being received and displayed. Otherwise, it's a very boring demonstration.

I -- I don't know where those feeds were coming from. There are a variety of technical ways, and you see it at trade shows all the time, where you can demonstrate your products and their functionality without necessarily subscribing to a cable provider.

Q. So --

A. So I don't know the answer to your question, whether they -- you know, exactly how the content they were displaying was sourced.

Q. Okay. We can agree that that local head-end was not located at a head-end provided by some commercial cable system. Right?

A. I -- you've characterized it at local. It was

just a head-end. But it was not a commercial -- it was not -- there were not -- as far as I know, you know, someone hooked in with one of the local commercial providers for the purposes of the demo.

Q. Okay. Well, you refer to it as a local head-end, and so I'm just trying to make sure I understand what you meant by that.

But you're comfortable calling it a head-end. Right?

A. It was sufficient for the purposes of demonstrating the functionality of Agile's equipment.

Q. All right. Now, let's go back to paragraph 15, where you were discussing your visit to AgileTV.

A. You said 15?

Q. Yeah. And it's in the second half of the paragraph, which is on page 10 of 80.

A. Okay. Great. I was going to ask you which page we were talking about. So page 10 of 80, paragraph 15. Okay.

Q. And the third line down, you say:

"Adding speech recognition capabilities to existing set-top box applications, such as a program guide, required careful thought and integration."

Do you see that?

A. I do see that.

Q. And so you didn't work on the AgileTV system personally, did you?

A. I did not.

Q. And so that sentence I just read, are you reporting what Mr. Printz told you?

A. I don't recall if Mr. Printz made that assertion. That is an observation of mine, basically.

Q. What's the observation based on?

A. It's based on my experience.

Q. Do you have any experience adding recognition capabilities to existing set-top box applications?

A. At the time of the visit, I had a lot of experience with middleware and with set-top box applications and generally the effort required to integrate really anything new into them. Even a new remote is certainly part of the effort.

Q. So based on your experience, you imagine it would be -- it would require careful thought and -- sorry. Let me ask it a different way.

Based on your experience, you assume or you imagine that it would have required careful thought and integration to do what AgileTV had done?

MR. KLODOWSKI: Object to form.

THE WITNESS: I don't think the word "imagine" is, sort of, a good word.

You can -- if you have experience doing things or -- if you have experience remodeling, you might be able to look at a remodeling job and get some sense. So my experience at the time, I had done speech recognition work with Albert, so, for example, getting the right placement of the microphone. It's important.

In terms of software systems, I had had a lot of prior experience with user interface, user interfaces. And so between the speech recognition experience that I had and my experience with set-top box middleware and applications and discussion broadly with Mr. Printz, it was pretty clear they had spent time thinking about the right way to do this.

BY MR. DAY:

Q. How long was the demonstration?

A. I think the visit was 90 minutes to two hours. I couldn't tell you exactly, but it wasn't a -- it wasn't a meet and greet.

Q. Okay. And did he show you any design documents or that -- or source code, things like that, during the presentation?

A. I don't remember. I'm sure we looked at some documents, but I couldn't tell you exactly what they

were.

Q. In the next sentence in the paragraph 15, you say:

"AgileTV's system was technologically advanced and demonstrated thoughtful adaptation to the cable TV environment."

Do you see that?

A. Yes, I see that.

Q. What about it was technologically advanced?

A. My recollection is there were a couple things.

First, they had thought about speech processing -- and I mean that in the signal processing sense, the signal processing of speech -- before sending it up to the engine, and they had managed to integrate that into their system.

The other thing is, my overall impression of the demo was it was a pretty seamless experience between using speech and then using the remote normally.

There were, to my recollection, no other systems on the market that had done that. And anyone can make it look hard; it typically requires thought and care to make it look easy.

Q. Can you help me with the signal processing piece? What do you mean by that?

A. My recollection of the demonstration is that there was some speech coding going on, some signal coding going on. And I couldn't tell you which component, but it was ahead of the set-top box.

Q. So what do you mean by signal coding?

A. The speech was processed, and it was compressed.

Q. Before it was sent to the voice recognition algorithm? Is that what you mean?

A. Before it was sent to the set-top box, yeah.

Q. And why do you call that technologically advanced?

A. The set-top box environment in general is a -- for all of the great experiences it provides, even today, but certainly then, it's a pretty low-budget environment. And so being able to implement things like signal processing in a system like that in a way that works well and looks like it'll be cost-effective, that's -- that's work.

Q. All right. In the sentence where you refer to thoughtful adaptation of the cable TV environment, is that -- is that the seamless integration you're talking about, making it look easy?

A. Yes. And there -- yes. It would -- making it look easy and making it feel natural to use the

different, you know, options.

Q. Did OpenTV end up licensing or buying from AgileTV?

MR. KLODOWSKI: Objection. Scope.

THE WITNESS: I -- I couldn't tell you. That -- I didn't worry about licensing or purchasing. I just got sent there to provide a status report.

BY MR. DAY:

Q. Let me ask it another way.

Did you have any other contact with AgileTV following that demonstration?

A. I vaguely remember conversations, but I couldn't tell you. Again, my principal mission was to -- my boss was busy. Go check it out.

Q. I guess what I'm getting at is, that didn't lead to some collaboration with AgileTV. Right?

You reported back, and then maybe other than a few phone calls, there wasn't --

A. I couldn't characterize what happened after it, but I was not -- I was not involved in any collaboration with AgileTV, yeah.

Q. And are you aware of any collaboration with AgileTV?

A. No.

Q. Do you recall if Mr. Printz told you what

speech recognition technology the demo system was using?

A. He may have described it to me. I couldn't tell you. I don't recall what he said precisely in that conversation.

Q. Now, you said earlier that you hadn't tried to construe the term "head-end unit." Right?

A. Yes.

Q. Are there any terms in the '538 patent that you tried to construe in connection with your opinions expressed in your declaration, Exhibit 1?

A. Yeah. The assignment that I was given was to look at Comcast's arguments that it would have been obvious. So it was about looking at how they explained the terms and connected things up.

Q. Okay. So did you -- as part of your analysis, did you construe any of the terms?

A. No.

Q. And we'll talk a little bit more about the '196 patent. But in connection with your analysis of the '196 patent, did you try to construe any of the terms in that patent?

A. For the same reasons I just stated for the '538, my assignment was to look at the Comcast arguments.

Q. And so did you construe any terms in the '196 patent?
A. No.
Q. Thank you.
Let me ask you to have a look at the Julia prior art patent, which we'll mark as Exhibit 3.
(Deposition Exhibit 3 was marked for identification.)
BY MR. DAY:
Q. You're familiar with this patent?
A. I am familiar with this patent.
Q. Okay. Let's take a look at Figure 1.
A. There's more than one Figure 1. I think there's a 1a and a 1b.
Q. I appreciate that. Let's take a look at Figure 1a.
A. Okay.
Q. Okay. And what I want to ask you is if element 108, that's remote server 108 -- do you see that?
A. I see a box marked -- well, there's a -- you mean 108 and not 108n, to be clear.
Q. That's correct. I mean 108.
A. Okay.
Q. Do you see the box I'm referring to?

A. I do see the box.
Q. And do you recall that Julia refers to that as remote server 108?
A. Just give me a second to --
Q. Sure.
A. -- double-check.
Yes. It -- the description of the patent says it refers to a remote server or servers 108.
Q. Okay. And if you look in the upper left quadrant of Figure 1a, do you see a television, a person using some device to communicate with box 104 sitting on top of the television?
A. Yes, I see that in Figure 1a.
Q. Okay. And you understand that the network in Figure 1a could be a cable television network. Is that right?
A. And when you mean network, you mean the puffy thing labeled 106, just to be clear?
Q. Yes.
A. My recollection is Julia enumerated a number of things that the number could be, yes.
Q. Okay. Why don't you take a look at Column 4, line 31.
A. Column 4, line 31. Okay. I see that line.
Q. And I just want to confirm that you would

agree that at least at that point in the specification, Julia says that network 106 can be a coaxial cable television network.

MR. KLODOWSKI: Object to form.

THE WITNESS: Yeah. It says it's a network, and it could be embodied in DSL -- hang on -- coaxial cable television lines and fiberoptic traditional wire, like twisted pair, yes.

BY MR. DAY:

Q. Okay. So now if we go back to Figure 1a, if you -- if Figure 1a is describing a cable network, then do you understand that the box 104 is a set-top box or a television controller?

A. So to be clear about your question, assuming the network is a coaxial network --

Q. Yes.

A. -- could box 104 be a set-top box?

Q. Well, what do you understand it as if it's that implementation -- sorry. Let me ask the question differently.

If you assume that Figure 1a is describing a cable coaxial network implementation of Julia, then do you agree that the box 104 would be a set-top box or a television controller?

MR. KLODOWSKI: Object to form.

THE WITNESS: It could be. Yes.
BY MR. DAY:
Q. What else could it be?
A. I -- it appears that Julia is articulating something that receives or connects to the network. It -- set-top boxes weren't always required at the time of the invention.
So you're saying if somebody's -- this guy is watching TV, or one might assume that from the diagram. And if he's watching cable TV, there could be a box, but there might not be.
Q. Okay. If you assume with me that Figure 1a is showing a cable network implementation, would you agree with me that remote server 108 is remotely located from the television controller set-top box?
A. Yes, I would agree that it's not drawn next to the TV. There's an interposing network.
Q. Well, does that mean that it's remotely located?
A. It -- it's not -- it does not appear to be in the same place as the television. It's not in their home.
Q. Okay. Maybe the problem here is that I'm trying to use the word "remotely" as it's used in the claims of the '538 patent.

Are you uncomfortable doing that?

A. Uncomfortable -- I'm just trying to be clear on what you're asking me to respond to.

Q. Okay. Then let me ask it again.

If you -- well, let me withdraw that.

Let's mark the next exhibit, which will be Number 4.

A. I appreciate you independently numbering them.

(Deposition Exhibit 4 was marked for identification.)

BY MR. DAY:

Q. Okay. So what I've handed you is a document that on the front -- first page says "Plaintiff's Opening Claim Construction Brief."

Do you see that?

A. "Plaintiff's Opening Claim Construction Brief." Yes. I see that. Got it.

Q. And the case is Promptu Systems versus Comcast. Right?

MR. KLODOWSKI: Object to form.

BY MR. DAY:

Q. Sorry. If you look at the upper part of the page, you'll see --

A. Oh, sorry. Thank you.

Q. -- that it's Promptu Systems versus Comcast.

Do you agree with that?

A. Promptu Systems, Plaintiff, versus Comcast Corporation, Comcast Communications, LLC, Defendants. That's what you're referring to?

Q. Yeah.

A. Okay.

Q. Okay. So if you'll go to page 6 of 26. Do you see there's a --

A. 6 of 26. Sorry. Oh, right. You -- there's the bold numbers and there's the little numbers --

Q. It's also page 2. This one in the middle of the page says "Analysis," and under that it says "head-end unit."

Do you see that?

A. This is the section labeled Section 2, titled "Analysis"? That's the one you're referring to?

Q. That's correct.

A. Okay.

Q. So let me just represent, this is a document that was filed in a District Court case between the same two parties that are involved in these IPRs. Okay?

A. Okay.

Q. And now let me ask this question.

In the -- there's a table in the middle of the

page. Do you see that?

A. This is the table right under the section heading "A. Head-end unit." That's the table?

Q. That's the table I'm referring to.

A. Okay.

Q. You see on the left side it says "Claim Phrase," and under that, it's "head-end unit." Right?

A. I see that in the left column.

Q. Okay. And then immediately to the right there's a column with the heading "Promptu's Proposed Construction."

Do you see that?

A. I see that column.

Q. Okay. And it's -- underneath that heading it says, quote, "component of a cable system that is remote from the television controller or receiver," end quote. Do you see that?

A. No quotes, but yes. There's text in the box. I understand.

Q. I was quoting from the box. I quoted accurately?

A. I believe you did.

Q. Now, if I asked you to adopt that construction of "head-end unit," the term "head-end unit" as it's used in the '538 patent claims, would you agree with me

that Figure 1a of Julia discloses a head-end unit?

MR. KLODOWSKI: Objection. Scope.

THE WITNESS: I mean, I've not seen this document before; and therefore, I have not studied this document before. I am reluctant to draw any conclusions based on a document that I haven't studied and understood.

BY MR. DAY:

Q. I understand. If you cannot answer, I need you to tell me you can't answer. If you can answer, I need you to answer.

A. I can't answer your question based on just receiving this document.

Q. Okay. And I'm not trying to beat a dead horse, but I want to try to clarify one point.

You said earlier that you had not attempted to construe terms in the '538 patent. Right?

A. Right. I was not asked to construe them --

Q. Okay.

A. -- for the purposes of my analysis.

Q. Okay. Were you given any claim constructions that you were instructed to assume?

A. I was not provided with any claim constructions.

Q. Okay. So, for instance, you were not provided

this claim construction in Exhibit 4 that I've just read a minute ago as input for your analysis. Right?

A. For instance, I was not given a document with the claim construction like this.

Q. Let me ask you this: If -- so if you go to Exhibit 1 --

A. Exhibit 1. All right.

Q. Yeah. And go to page 20 of 80.

A. Is that page also originally numbered 18?

Q. Correct.

A. Okay.

Q. And the heading for Section VIII.A says, "Neither Julia nor Murdock teaches a head-end unit."

Do you see that?

A. Bullet point A. I see that.

Q. Does that -- is that your opinion, that neither Julia nor Murdock teaches a head-end unit?

A. My opinion is that Comcast didn't explain how Julia and Murdock taught a head-end unit.

Q. Okay. Did you reach any independent conclusion about whether Julia teaches a head-end unit?

MR. KLODOWSKI: Objection. Scope.

THE WITNESS: Independent -- and by "independent," you mean -- just to be clear, what do you mean by "independent"?

BY MR. DAY:

Q. I mean, I know you know the answer -- did you attempt to compare Julia to the claims of the '538 patent and conclude from that analysis that Julia does not disclose a head-end unit?

MR. KLODOWSKI: Objection. Scope.

THE WITNESS: That -- the work assignment I received was to consider Comcast's arguments as to whether they taught an argumentation that Julia or Murdock taught a head-end unit.

BY MR. DAY:

Q. So I think what that means is, you didn't do any independent analysis of Julia. Would you agree with that?

A. I didn't do any analysis other than what I just articulated.

Q. Okay. Sorry. Same questions with regard to Murdock.

Did you independently analyze Murdock and reach the opinion that it does not teach a head-end unit?

MR. KLODOWSKI: Objection. Scope.

THE WITNESS: As with Julia, my assignment was to consider Comcast's arguments. I -- that's all I did.

BY MR. DAY:

Q. Okay. You --

A. Whether they taught, or they demonstrated, that Murdock taught a head-end unit.

Q. When you say "they," whether Comcast taught --

A. Sorry, yes. Whether Comcast --

Q. That's fine.

A. Thank you.

Q. I just want to make sure we have a clear record. That's all.

Okay. I think you expressed the opinion -- sorry. Strike that. Let's back it up.

If you look at Julia, Figure 1a, it's Exhibit 3.

A. Exhibit 3. Thank you. Exhibit 3, you said Julia?

Q. Yeah.

A. Yes.

Q. And, I mean, to the extent you need to look at your declaration or anything else, that's fine. Just tell me. But my question is about Julia.

And why don't we go back to Figure 1a.

A. Yes.

Q. Okay. And --

A. Figure 1a.

Q. And again, let me focus your attention on element 108, the lower right quadrant.

Do you see that?

A. 108, yes.

Q. And I think that you expressed in your declaration the opinion that Comcast had not shown that the remote server 108 must be located at a head-end. Is that a fair -- is that fair?

MR. KLODOWSKI: Object to form.

THE WITNESS: Just to be accurate, is there a particular passage that we can talk about in the declaration?

BY MR. DAY:

Q. I'm sure there is. Hold on.

A. Fair enough.

Q. Okay. If you look at Exhibit 1, your declaration, and go to page 21 of 80, it has -- also has the number 19 at the bottom.

A. Right. Thank you.

Q. And if you go to about line 4 on that page, there's a sentence that starts on the right-hand side, "This disclosure, without more, is not enough to suggest a head-end unit to a POSITA," P-O-S-I-T-A, "because a remote server is not necessarily a 'head-end server,' even on a cable network."

Do you see that?

A. Yes, I see that.

Q. And so am I right that your opinion -- the opinion you formed was that Comcast did not prove that Julia requires the remote server to be a head-end?

MR. KLODOWSKI: Object to form.

THE WITNESS: Yes. The -- as it says, the disclosure without more doesn't suggest that -- the head-end unit to a person of ordinary skill with respect to a remote server, because a remote server isn't necessarily a cable head-end server.

BY MR. DAY:

Q. Okay. So the question is: Does Julia permit the remote server to be at the head-end?

A. So my assignment was to read and understand Comcast's arguments and determine if they proved that essentially the construction that they were -- that they were stating.

And my assignment wasn't to speculate on what it could be, but rather, what Comcast argued that it was, and was there sufficient support for that argument.

Q. Okay. So am I right that you're not offering the opinion that -- independent of Comcast's arguments, you're not offering the opinion that a person of

ordinary skill would pick up Julia and think that the remote server 108 is not located at the head-end?

A. The opinion I offered is about the analysis that I did, which is about Comcast's arguments.

Q. Okay. And you have no opinion one way or the other whether Julia -- the Julia system would permit remote server 108 to be at the end?

MR. KLODOWSKI: Objection --

THE WITNESS: I wasn't -- sorry. I wasn't asked to form such an opinion.

BY MR. DAY:

Q. And you haven't formed such an opinion. Right?

A. I --

MR. KLODOWSKI: Objection. Scope.

THE WITNESS: Yeah, I'm not articulating any opinion on that.

BY MR. DAY:

Q. Have you formed some opinion that you're not articulating?

A. Have I formed an opinion --

MR. KLODOWSKI: Objection. Scope and form.

THE WITNESS: I have not done any analysis that would support the formation of an informed opinion.

BY MR. DAY:

Q. Let me hand you Murdock, which we'll mark as Exhibit 5.

(Deposition Exhibit 5 was marked for identification.)

BY MR. DAY:

Q. And --

A. Yes, sorry.

Q. That's fine. And I'm just going to ask you a couple of questions basically to confirm similar things with regard to Murdock. Okay?

A. Okay.

Q. So if you take a look at Figure 1 of Murdock.

A. Exhibit 5, Figure 1. Okay.

Q. So in your declaration, I believe you expressed the opinion that Comcast has not shown that Murdock requires remote server computer 130 to be at a head-end. Is that fair?

A. Again, it would be helpful on this paperwork, point to the part of the declaration that you're referring to so there's no confusion.

Q. The same part. Page 21 of 80. It's also numbered page 19.

A. 21 of 80.

Q. And in particular, the language is -- line 4,

right-hand side, "This disclosure."

Do you see what I'm referring to?

A. Kind of on the right-hand side again --

Q. Yeah.

A. "This disclosure, without more, is not enough to suggest a head-end unit to a person of ordinary skill in the art." Yeah.

Q. Okay. So if I understand correctly, you assessed Comcast's argument and said, based on that, I'm not convinced that Murdock teaches putting remote server computer 130 at a head-end. Is that fair?

A. The conclusion was, yeah, that Comcast did not teach that a remote server is necessarily a head-end server.

True for -- true for Murdock or Julia.

Q. Okay. Your opinion is the same with regard to both of them. Is that fair?

A. That's correct.

Q. Okay. And then again, with regard to Murdock, you didn't analyze it in comparison to the claim terms and come up with some independent opinion about whether remote server 130 is at the head-end or not. Is that fair?

MR. KLODOWSKI: Objection. Scope.

THE WITNESS: So as with Julia, the assignment

was to look at the Comcast arguments and see what they -- what conclusion they came to. Did they make sense or did they prove their point. That was what I did.

BY MR. DAY:

Q. Okay. So you did not do what I asked --

A. So just to be clear --

MR. KLODOWSKI: Objection. Form.

THE WITNESS: -- repeat what you said?

BY MR. DAY:

Q. Sure. Did you analyze Murdock in light of the claims of the '538 patent and come to some independent opinion as to whether remote server computer 130 was either at the head-end or not?

MR. KLODOWSKI: Objection. Scope. Form.

THE WITNESS: I was not asked to do so, and I didn't.

BY MR. DAY:

Q. "I did not"?

A. I did not. Yes.

Q. Again, just trying to make sure it's all clear.

A. Understood.

MR. DAY: Do you want to take a break?

THE WITNESS: Yeah, I was going to say, it

would be great --

MR. DAY: We can go off the record.

(Recess from 10:32 A.M. to 10:40 A.M.)

BY MR. DAY:

Q. Okay. Let's go back on the record, and we'll mark another exhibit, which is going to be Number 6.

(Deposition Exhibit 6 was marked for identification.)

BY MR. DAY:

Q. And if you would, take a look at Exhibit 6. This is your declaration regarding the '538 patent in the other IPR, the one ending in 341. Right?

A. I see IPR ending in 00341.

Q. Okay. And this is your declaration. Right?

A. Yes. It's -- it appears to be my declaration. I'm sorry. Let me just get organized here.

Q. Sure.

A. So much paper. Okay.

Q. Okay. If you wouldn't mind, turn to page 20 of 81 in Exhibit 6. You'll also see that that's page number 18 of the declaration.

A. Page 20 of 81, marked 18 also. Okay.

Q. Okay. And if you look at the heading for Section XIII.A, it says, "Neither Julia nor Murdock Teaches a Centralized Processing Station."

Do you see that?

A. Under heading A just above line 35 -- or paragraph 35, excuse me.

Q. Correct.

A. Yes, I see.

Q. Okay. Now what I want to ask is, in conducting your analysis, did you assume that a centralized processing station must be at the head-end?

A. For my analysis, I looked at whether Comcast demonstrated that Julia or Murdock taught the centralized processing station.

Q. Okay. If you look at paragraph 36, it's on the next page.

A. The page marked 21 of 81, paragraph 36.

Q. Correct. And again, there's similar language we've seen before. The last sentence of that paragraph begins, "This disclosure, without more, is not enough to suggest a centralized processing station to a POSITA," et cetera.

Do you see that?

A. I see that, yes. I see the sentence you quoted, yes.

Q. So I guess what I'm -- what's the relevance of the head-end server? What difference does it make if it's a head-end server or not?

MR. KLODOWSKI: Object to form.
THE WITNESS: What difference does it make if it's a head-end server? That's your question?
BY MR. DAY:
Q. Yeah.
A. I would have to -- may I look at another document before I answer?
Q. Yeah. Which one?
A. I'm -- I think I'll just -- I'm just looking for Julia. Julia is Exhibit --
Q. It's Exhibit 3.
A. Just -- as I said, so much paper. Looking at Exhibit 3.
Oh, I'm sorry. I picked up the wrong one. I'm going to change exhibits here, and I'm going to switch to Exhibit 2.
Q. Okay.
A. Which is the '538 patent.
Q. Got it.
A. (Examining document.)
Okay. Just to be clear, I'm misremembering your question. Could you ask it again just so I'm clear on the question?
MR. DAY: Actually, you could read it back? Remind me, too.

(Record read as follows:
QUESTION: So I guess what I'm -- what's the relevance of the head-end server? What difference does it make if it's a head-end server or not?)
BY MR. DAY:
Q. Okay. Let me ask one question instead of several all at once.
In the section that I pointed you to in your declaration that begins with the heading "Neither Julia nor Murdock Teaches a Centralized Processing Station," in the analysis provided there, what difference does it make if the remote server is at the head-end or not?
A. You're asking me what difference does it make whether the server is at the head-end or not. Is that --
Q. That's the question.
A. Is that an accurate -- I wasn't asked to consider where a server could be in general or imagine different configurations of the system. I was asked to consider Comcast's argumentation with respect to the mapping of the '538 to Julia and Murdock. The connection -- the argumentation between those.
Q. Okay. And so I think, if I understand, the opinion you expressed here is that Comcast's argument

did not convince you that the remote server 108 of Julia is a centralized processing station. Is that fair?

A. Yes. The -- I said the disclosure without more is not enough to suggest a centralized processing station to a -- how do you say it? POSITA? Is that -- I've heard it three different ways.

Q. So have I.

A. Okay, fine.

Q. Okay. And just so we have it clear, did you adopt a construction of the claim term "centralized processing station" that requires that element to be located at the head-end?

A. I did not, and nor was I asked to construe specifically the term "centralized processing station."

Q. Okay. If you go to page -- go to page 22 of 81. It's also in your declaration, Exhibit 6. So page 22 of 81. And you'll see there's a section heading that says, "Neither Julia nor Murdock Teaches the 'Set-Top-Box-Compatible Instructions to Carry Out the Identified Voice Commands' Claim Feature."

Do you see that?

A. I see that heading.

Q. Okay. And then the following paragraphs in that section express your opinions. Right?

A. There are opinions expressed, yes, in that paragraph.

Q. And again, these opinions are essentially your assessment of Comcast's arguments. Is that fair?

MR. KLODOWSKI: Object to form.

THE WITNESS: You've made a fairly broad, sweeping statement. So with a specific -- is there a more -- more specificity to your question, just so there's no misunderstanding?

BY MR. DAY:

Q. Okay. Let's just focus on the section heading.

And is it your opinion that neither Julia nor Murdock teaches the "set-top-box-compatible instructions to carry out the identified voice commands" claim feature of the '538 patent?

Or is it your opinion that Comcast has not sufficiently proven that?

MR. KLODOWSKI: Object to form.

THE WITNESS: Paragraph 39, yes, I think some -- states that -- I believe Comcast fails to explain how either Julia or Murdock teaches deriving claimed set-top-box-compatible instructions, which are analogous to a command function. I --

BY MR. DAY:

Q. Okay. And so your -- the opinion expressed in that -- in paragraph 39 is Comcast did not convince you that Julia and Murdock disclose that claim element. Is that fair?

A. In my capacity as an expert in this, yes, they didn't explain how. As it says Julia -- either Julia or Murdock teaches --

(Reporter requested clarification.)

So to be clear, I believe that Comcast fails to explain how Julia or Murdock teaches deriving the claimed set-top-box-compatible instructions.

Q. Let's go to paragraph 43.

A. Same document.

Q. Yeah, same document. So this is page number 24 of 81.

A. Page number 24 of 81 in Exhibit 6.

Q. Correct. and there's a sentence in that paragraph --

A. I'm sorry. Can you please remind me of the paragraph? I got the page right, but --

Q. All right. Let me ask the question again, and I'll include that.

In paragraph 43 of Exhibit 6, there's a sentence seven lines down in the paragraph that begins with the word "Instead." Can you find that for me?

A. "Instead, the video decoder in the set-top box"?

Q. Correct.

A. That's the sentence you're referring to?

Q. That's right. And the sentence says that the video decoder in the set-top box automatically decodes the incoming data for display on the television. Right? And then it goes on from there?

A. Yes. It says the video decoder in the set-top box automatically decodes the incoming data for display on a television.

Q. So in the context you were writing about in that sentence, would you agree with me that by sending the data -- by sending the incoming data to the set-top box, that data causes the set-top box to display the data on the television?

MR. KLODOWSKI: Object to form.

THE WITNESS: The data causes -- could you be more clear about what you mean by "causes"?

BY MR. DAY:

Q. No. If -- if you can't answer it, tell me you can't answer it, and I'll understand that's the problem you're having. But if you can answer it, please do.

A. It would be helpful if you could be more specific about what you mean by "causes."

Q. Do you have some understanding of, you know, what "causes" means?

A. The comment made in paragraph 43 was that the box will automatically decode upon receipt of data. So that -- I think that's clear.

Q. Okay. So in that case, does the receipt of data cause the set-top box to display the video?

A. The set-top box will display the data after it arrives. I -- since I don't know what you mean precisely by "cause," I can't answer the question.

Q. Okay. Why is -- why is it that sending data that the set-top box automatically decodes in order to display the video is not an instruction to do so?

A. Instruction --

MR. KLODOWSKI: Object to form.

THE WITNESS: I -- so you're asking me -- so you've used the word "instruction," so unfortunately -- what's -- I have to ask you the question again.

When you say "instruction," what do you mean?

BY MR. DAY:

Q. That one I can definitely help you with.

You used the word "instructions" in that sentence. And what I'm trying to get at is, you're drawing a distinction between data being sent to the set-top box and the set-top box displays data, versus

an instruction being sent to the set-top box. Right?

A. The point I'm trying to make is that the box will automatically on receipt of data display it. There's, for example, no set-top-box-compatible command function that's given to the box that causes it to display.

Q. Well, what's your understanding of a set-top-compatible command function?

A. As with other terms, I wasn't asked specifically to construe it. But I think to a person of ordinary skill, certainly to myself, a set-top-box-compatible command function would include at least an instruction to the box to take action.

Q. Okay. And so why is it that sending data to the set-top box that causes it to display video is not an instruction?

A. I just don't -- I don't equate and I don't think a person of ordinary skill would equate the mere receipt of data with being an instruction.

Q. Why not? What's the difference?

If data causes the set-top box to display video, why is that not an instruction?

MR. KLODOWSKI: Object to form.

THE WITNESS: So to be clear, the -- take a step back.

The main focus of my analysis was, did Comcast explain how there was an instruction that -- a set-top-box-compatible instruction derived from speech that caused the box to perform a function. So that was the focus of my work.

BY MR. DAY:

Q. Okay. Let me give you another exhibit and ask you a few questions.

(Deposition Exhibit 7 was marked for identification.)

BY MR. DAY:

Q. Okay. Exhibit Number 7 is the Houser patent. Do you see that?

A. This is the 5,774,859, Houser et al., Exhibit 7. That's what you're referring to?

Q. Yeah.

A. The 5,774,859, yeah.

Q. Yeah. Sorry.

A. Again, so much paper, I'm just trying to be --

Q. Yeah, no. I appreciate --

A. Make sure that we're synchronized.

Q. Now, did you review this patent as part of your work on this case?

A. Yes. I looked at it as part of this case.

Q. Let me -- just to orient a question, let me

point out a few things in the Houser patent.

If you would, turn to Column 15.

A. 15, one five?

Q. One five --

A. One five.

Q. -- in Exhibit 7, which is the Houser patent.

A. Column 15, you said?

Q. Column 15.

A. I have it.

Q. And I just -- I want to -- I want to direct your attention to line 8, and there's a sentence that begins over on the right-hand side with the word "Main."

Do you see that?

A. Column 15 --

Q. Line 8.

A. It's -- you're talking about the word "Main" on the right-hand side of the column?

Q. Correct.

A. I see the word "Main" on the right-hand side of the column.

Q. Okay. And it tells you the main processor 200 of subscriber terminal unit 160 executes a speech recognition algorithm, and it goes on from there.

Do you see that?

A. I see that.
Q. Okay. And then in the next sentence, it says:
"One particularly suitable speech recognition algorithm is VProFlex, available from VPC."
Do you see that?
A. Yes.
Q. Are you familiar with VProFlex?
MR. KLODOWSKI: Objection. Scope.
THE WITNESS: I -- I don't know the -- yes, I'm not familiar with it.
BY MR. DAY:
Q. Are you familiar with the company VPC?
MR. KLODOWSKI: Objection. Scope.
THE WITNESS: I am not familiar with that company.
BY MR. DAY:
Q. Okay. In the next sentence, it says:
"Other suitable speech recognition algorithms are available from IBM, Lernout & Hauspie, Verbex, and Dragon."
Do you see that?
A. I see that.
Q. Okay. The -- were you familiar with speech recognition algorithms available from IBM in the '90s?

A. I -- I couldn't tell you the source of which algorithms that I had been exposed to, whether they were IBM or -- yeah.
Q. That's fine.
A. But -- I don't remember --
Q. Okay.
A. -- which company they could have come from.
Q. That's fine.
Were you aware that IBM offered speech recognition algorithms in the '90s?
A. I was -- I was aware IBM did speech work. I -- I couldn't tell you what their products were.
Q. Okay. I -- I'm going to show you a couple of documents, a few product names, and when we get to it, you can tell me if you remember them or not.
A. Okay.
Q. But just while we're on this, I'll just ask a couple more questions.
This company, Lernout & Hauspie, have you heard of them?
A. I remember the name.
Q. And do you remember that they were doing speech recognition work in the '90s?
A. I believe that's correct.
Q. Okay. And how about Verbex? Have you heard

of them?

A. I don't recall Verbex.

Q. Okay. And what about Dragon? Do you recall them doing speech recognition work in the '90s?

A. I recall -- I recall them doing speech recognition work. Exactly when, I couldn't tell you.

Q. Fair enough. And then in the next sentence, it talks about "recognized utterances may include commands used to control devices," and then it goes on from there.

Do you see that?

A. I see a phrase, yes.

Q. Okay.

A. You're talking about line, just to be clear, 16 -- well, it starts on 15, sort of "recognized" with a hyphen?

Q. That's correct.

A. Yes, okay.

Q. And do you understand that recognized utterances, those are statements that have been recognized and converted to a command. Is that fair?

A. If I go by the text, it says a recognized utterance could include a command, yes. "May include" is actually what it says.

Q. I guess what I mean, recognized utterance,

what Houser is talking about is, you speak something, a voice recognition processor recognizes it, and then it's a recognized utterance. Does that sound right?

A. I -- I didn't try to specifically construe the details. The patent says -- Houser says a recognized utterance may include commands used to control devices.

Q. If you'll go to Column 29 of Houser.

A. Exhibit 7, Column 29. Yes?

Q. Correct. And if you go down to line 20, it says:

"For example, a user may navigate the electronic programming guide of Figure 11 by saying 'go to ESPN' to move to the row specified by ESPN."

Do you see that?

A. "Programming guide of Figure 11 by saying 'Go to ESPN.'"

Q. Right.

A. I see that.

Q. So in that sentence, would you agree that the instruction "go to ESPN" is a set-top-box-compatible command function --

MR. KLODOWSKI: Objection.

BY MR. DAY:

Q. -- as that term is used in the '538 patent?

MR. KLODOWSKI: Objection. Scope.
THE WITNESS: When you say as that term is used in the '538, you mean in which context in the '538?
BY MR. DAY:
Q. Okay. As used -- let me get that patent -- I'm losing track of my own exhibits.
So in the context of independent claims -- well -- okay. In the context of Claim 1 of the '538 patent. That's the context.
And the question is: If you look at the sentence I've pointed you to in Exhibit 7, the Houser patent, Column 29, line 20, is the instruction "go to ESPN" -- does that constitute a command function as that term is used in Claim 1?
MR. KLODOWSKI: Objection. Scope.
THE WITNESS: So you're -- so you're asking me to map a claim term in '538 to the Houser patent?
BY MR. DAY:
Q. Correct.
A. I didn't do any construction of claim terms in the '538, so I -- I'm not prepared to do that. It wasn't what I was asked to do. I'm not prepared to do that today.
Q. Okay. Setting aside the '538, is -- do you

think a person of ordinary skill in the art would say that "go to ESPN," if spoken as a command to a set-top box, is a set-top-box command function?

MR. KLODOWSKI: Objection. Form.

THE WITNESS: So just so I'm clear on your question, you're saying if a person speaks "go to ESPN" and it goes to the row specified by ESPN. Right?

BY MR. DAY:

Q. Right.

A. And so your question on that scenario is?

Q. Does a person of ordinary skill in the art -- would a person of ordinary skill in the art understand that to be a command -- a set-top-box-compatible command function?

A. Again, it sounds like you're asking me to map it to the '538. Since I didn't construe the terms in the '538, I can't -- I don't think I can answer your question precisely.

Q. Okay. Earlier, you -- we were talking about a sentence where you drew a distinction between just sending data and sending an instruction.

Do you remember generally that discussion?

A. Generally I remember that discussion.

Q. Okay. And you said something like, a person of ordinary skill in the art would understand that

those are different.

Do you generally remember that?

A. Generally -- and again, without dragging out the reference -- I will if you like. But I think generally what I said was, Comcast had argued that the mere receipt of data constituted a command. I -- can I look to my declaration?

Q. Yeah, sure.

So if you look at Exhibit 6 and go to page 24 of 81.

A. Oh, shoot. I looked at the wrong 24. Excuse me.

Q. Sorry. It's also Number 22.

A. Yes. 24 of 81. Thank you.

Q. And in paragraph 43, seven lines down, it's the sentence that starts "Instead."

A. "Instead, the video decoder." That's the one you're referring to. Right?

Q. Yes. That's the sentence we were talking about. And I think you were drawing a distinction between sending data and sending an instruction. Is that fair?

MR. KLODOWSKI: Object to form.

THE WITNESS: To be clear, I was drawing a distinction between the receipt of data. It talks

about decoding incoming data. The word "send" doesn't explicitly appear in that sentence.

BY MR. DAY:

Q. Okay. And I think in that context you said that a person of ordinary skill in the art would draw a distinction between sending data and sending an instruction.

Is that right?

A. What I said in paragraph 43 is that a person of ordinary skill in the art would know that a set-top box does not need to receive specific instructions to perform a function every time it receives content data.

Q. Okay. Using the word "instruction" as you used it in that sentence, would you agree that the "go to ESPN" command in paragraph -- sorry, in Column 29 of the Houser patent, "go to ESPN" is a command function?

MR. KLODOWSKI: Objection. Scope. Form.

BY MR. DAY:

Q. Sorry. Let me ask a different -- let me ask it again, because I screwed up the way I said that.

Using the word "instruction" as you do in your declaration in paragraph 43, would you agree that the sentence in Houser that refers to "go to ESPN" is discussing an instruction?

MR. KLODOWSKI: Objection. Scope. Form.

THE WITNESS: So two things. One is that in the context of my declaration, the -- the statements are with respect to a set-top-box-compatible command function derived from speech commands sent to the -- I'm paraphrasing, but I think you understand what I mean.

You're asking me to take part of that and speculate on whether that applies to this sentence in Houser? I just want to be clear.

BY MR. DAY:

Q. No. I don't want you to speculate. You used the word "instruction," and I think you were equating that with a command function --

A. Set-top-box-compatible -- I mean, there's -- we -- there's -- there's a lot of rest of it to the word "instruction."

Q. Okay. But I think you were equating the word "instruction" as you used it in paragraph 43 with a set-top-box-compatible command function. Is that fair?

A. Derived -- yes, derived from speech -- sent to a head-end -- and again, this is in the context of the '538 patent.

Q. Okay.

A. If you're asking me to construe a term or -- precisely in the Houser patent, the '859, that was not

the exercise I was asked to do.

Q. Okay. And so let me cut this short.

Can you -- you can't tell me whether "go to ESPN" as recited in the Houser patent is a set-top-box-compatible command function. Right?

MR. KLODOWSKI: Objection to form.

THE WITNESS: On the assumption you mean, as you discussed earlier in the context of the '538 patent, no, I have not -- I have not done the work to do that mapping.

BY MR. DAY:

Q. Okay. And so you don't have an opinion one way or another whether it is or is not a set-top box command -- set-top-box-compatible command function as the term is used in the patent. Right?

A. I did not form such an opinion.

Q. Okay. All right. Let's go back to your declaration. Which one do you have there in front of you? Which exhibit?

A. It's the one that says 24 of -- it's 00341?

Q. Exhibit 6.

A. Exhibit 6, sorry. Yes.

Q. And let's jump to paragraph 45, which will be on page 25 of 81. It also says page 23 in the middle.

A. And you said paragraph 45 or 44? I'm sorry.

Q. 45.
A. 45. I'm at paragraph 45.
Q. Okay. And if you need to, read the paragraph or -- to refresh your memory. But generally what you say there is, premium channels such as HBO may be encrypted, and you talk about that. Right?
A. There are some -- there are some text that follows that statement, yes.
Q. Yeah. And actually, let me focus you in on paragraph 46, which is on the next page.
A. To be clear, with all this numbering, paragraph 46, page 26 of 81?
Q. Correct. And in the second sentence, you refer to a -- "when a user first subscribes to HBO, the cable company sends the set-top box information allowing it to display HBO on the television."
Do you see that?
A. Yes, I see that.
Q. Okay. And in the next sentence you say that -- basically, I'll paraphrase -- that that just happens once. It doesn't happen every time after you're subscribed. Right?
MR. KLODOWSKI: Object to form.
THE WITNESS: The statement there says:
"Once the set-top box is configured to

enable a user to access a particular channel, the cable company does not need to send authorization information to the set-top box every time the user asks to play the channel."

BY MR. DAY:

Q. Okay. Will the cable company send authorization information sometimes?

A. Just to be clear on what we're talking about, is there a particular definition of "authorization information" that you're using?

Q. Just as you used it in the sentence we're looking at.

A. So the question is, does the cable company sometimes send authorization information? Is that an accurate representation of your question?

Q. That's my question.

A. It is possible that a cable company sends authorization information at another time.

Q. Okay. Well, you know how cable -- cable networks work. Right?

A. Generally, yes.

Q. Okay. And in your experience, do cable networks send authorization information frequently?

MR. KLODOWSKI: Object to form.

THE WITNESS: What do you mean by

"frequently," just, again, to be clear?
BY MR. DAY:
Q. How often do you think cable companies send authorization information for a premium channel?
A. It depends upon --
MR. KLODOWSKI: Object to form.
THE WITNESS: It -- yes, broadly speaking, it would depend on the cable company and the channel.
BY MR. DAY:
Q. Are you familiar with how frequently any cable company sends authorization information?
A. I'm familiar that there are a range of numbers, so I just want to be clear. Yes.
Q. Okay. What's the range of numbers?
A. So because we sort of have been talking without definitions, authorization information, the information that authorizes a user to view a channel, broadly speaking, is a thing that could be sent once a month. That wouldn't be out of the question.
Q. What's the range, though?
A. I have seen them do it occasionally on a weekly basis.
Q. Okay. If we go back to your declaration, I think the point you're trying to make is, you would set up HBO, and in doing that, authorization information

would be sent, but it may not be thereafter. Right?

A. So you're referring back to paragraph forty --

Q. No, 46?

A. 46, sorry.

Q. That's all right.

A. Sort of -- there are five paragraphs that cover this, so --

Q. Let me orient you again.

A. Okay.

Q. So in paragraph 46, second sentence --

A. Yes.

Q. -- you provide an example.

A. Yes.

Q. And the example is, a user subscribes to HBO and some authorization information is sent to the set-top box that allows the user to see HBO. Right?

A. Yes. Allow, broadly speaking. Yeah.

Q. Okay. And the next sentence says, but that may not happen the next time you watch HBO. Is that the point you're trying to make?

A. It -- the point I'm -- specifically -- specifically, pardon me, that I was trying to make is that a company does not need to send authorization information every time a user watches, you know, for example, HBO.

Q. Okay. So when the user subscribes to HBO and the cable company sends the set-top box information allowing it to display HBO on the television, is that information a set-top-box-compatible command function?

A. The authorization information -- as it states in paragraph 45, this sort of security information is, broadly speaking, in the form of digital key data. It's data. It's just data. It's a key. And it's -- as the example says in 45, the keys are not instructions. They provide data which can be used in the process of viewing.

So they're, as it says, like keys to a door. They provide the ability, but they don't provide any kind of affirmative instruction to unlock the content.

Q. Okay. Well, going back to my question about 46, the sentence says, "When the user first subscribes to HBO, the cable company sends the set-top box information allowing it to display HBO on the television."

And my question is, is that information that you refer to in the sentence, is that a set-top-box-compatible command function?

A. As I said in paragraph 45, it's just key data to decrypt. It's data.

Q. Okay.

A. I --
Q. That's what you meant by the word "information" in that sentence I just read through?
A. When HBO sends -- you're talking about this, again, as an example sentence in 46?
Q. Right. That's correct.
A. Yeah. It sends the box information. Yes. Information. As in data. As in, for example, a decryption key or a key required for decryption, descrambling.
Q. That's what you meant by "information," is that the cable company sends the set-top box --
A. Information. Keys. Data.
Q. Whatever it is, it's not a set-top-box-compatible command function. Is that right?
A. I did not state that it was a set-top-box-compatible command function. Correct. I did not conclude that in this passage.
Q. Okay. All right.
Let's go back to -- well, let's go back to Exhibit 1, which is your other declaration.
A. Yes, I have Exhibit 1.
Q. All right. And if we go to paragraph 24 of your declaration, it's on page 14 of 80. It also has

the number 12 at the bottom.

A. To be clear, you're talking about paragraph 24?

Q. Correct.

A. Okay.

Q. And if you want to orient yourself, if you turn back one page, this section is entitled "Definition of a Person of Ordinary Skill in the Art."

And then --

A. Okay.

Q. And then I want to focus you on paragraph 24. All right?

A. Okay.

Q. And you -- you're aware that the Board adopted a definition of the person of ordinary skill in the art in its institution decision. Right? You refer to it there in paragraph 24.

A. Yes. That the Board accepted Comcast's proposed level of skill.

Q. With minor modifications. Right?

A. With minor modifications, yes.

Q. And so the question is, is it your opinion that the Board was wrong?

A. Let me just refresh my memory.

Q. Sure.

A. I believe I opined on this.

What I said in my declaration -- hang on just a second.

What I said in paragraph 26 was that voice recognition is at the heart of the '538 -- what the '538 patent discloses and claims. And in my opinion, a person lacking knowledge of voice recognition technology would not be qualified to opine on what a POSITA would understand regarding this technology.

Q. Okay. So does that mean that the Board's definition is wrong?

MR. KLODOWSKI: Object to form.

THE WITNESS: I did not draw any kind of conclusion about wrong. I'm not quite sure what that means for the Board. I just state that I believed, in my opinion with respect to a person of ordinary skill in the art, that someone who lacked knowledge of voice recognition technology would not be qualified to opine as a person of ordinary skill.

BY MR. DAY:

Q. Right. So I understand that opinion you expressed.

What I'm trying to figure out is, do you think the Board has to change its mind and not use the definition that it adopted in the institution decision

and use a different definition instead?

MR. KLODOWSKI: Object to form.

THE WITNESS: I suggest, as it says in paragraph 26, that a person who lacked voice recognition technology experience would not be qualified to opine. I wasn't attempting to draw a legal conclusion of rightness or wrongness of the Board.

BY MR. DAY:

Q. So when you read the Board's definition, do you believe that that excludes a person with knowledge you think is necessary?

A. The -- as I said in paragraph 25, I just noted that Comcast proposed a different level in another proceeding that included some experience in the field of multimedia systems, and in particular, voice recognition and control technologies.

My opinion is that's a more appropriate definition of a person of ordinary skill for the subject matter being discussed.

Q. Okay. And I think you said in your declaration that your opinions wouldn't change one way or the other, right, depending on what definition of person of ordinary skill is used?

MR. KLODOWSKI: Object to form.

BY MR. DAY:

Q. If you want to look at paragraph 29.

A. Yes. So to be clear, what I said in paragraph 29 is that, "While I believe Comcast's proposed level of person of ordinary skill in the art requiring voice recognition experience is more appropriate to this matter, because my opinions largely concern the insufficiency of Comcast's evidence to prove its assertions," and it goes on and then concludes, "my analysis and opinions are substantially the same regardless of whether the Board adopts Comcast's initial proposed level of ordinary skill in the art or the aforementioned" -- "aforementioned more stringent standard that Comcast proposed in the other Promptu IPRs."

Q. So but do your opinions change under the Board's definition of a POSITA versus your proposed definition of a POSITA?

MR. KLODOWSKI: Object to form.

THE WITNESS: As I stated in paragraph 29, my analysis and opinions are substantially the same.

BY MR. DAY:

Q. Right. So is there a difference?

A. What do you mean by "difference"?

Q. What does "substantially" mean in that

sentence? Why are they not just the same?

A. I would not come to a different conclusion on Comcast's failure to demonstrate based on their argumentation that the '538 would have been obvious in light of the evidence that they provide and the arguments that they make.

Q. All right. Well, what you propose in paragraph 25 is using the definition in a different IPR that relates to U.S. Patent Number RE/44,326. Right?

A. Yes. That's where it says the definition came from.

Q. Okay. You didn't provide any declaration in that IPR. Right?

A. I did not provide a declaration in that IPR.

Q. And have you reviewed and studied the '326 patent?

MR. KLODOWSKI: Objection. Scope.

THE WITNESS: So to be clear, what do you mean by review and study?

BY MR. DAY:

Q. Have you read the '326 patent?

MR. KLODOWSKI: Objection. Scope.

THE WITNESS: I've looked at the '326 patent.

BY MR. DAY:

Q. Okay. What is it about the '326 patent that

makes you think the exact same definition of a person of ordinary skill in the art for that patent should apply to the '538 patent?

A. So you're asking me -- sorry. Restate the question. I just want to be clear.

Q. Okay. What is it about the '326 patent that makes you think the definition of a POSITA for that patent is identical to the definition of a POSITA for the '538 patent?

MR. KLODOWSKI: Objection to form.

THE WITNESS: I didn't consider the '326 patent. Rather, it's about the language associated with that proceeding.

BY MR. DAY:

Q. Why did you read the '326 patent?

MR. KLODOWSKI: Objection. Scope.

THE WITNESS: I -- I don't recall. There were -- when the project started, there were a number of things that I read. I recall reading or looking at it at some point.

BY MR. DAY:

Q. Is it fair to say you didn't read it and analyze it as part of the opinions you expressed in the declarations on the '196 patent and the '538 patent?

MR. KLODOWSKI: Objection. Form.

THE WITNESS: I did not analyze or construe anything in the '326 patent, yes.

BY MR. DAY:

Q. If you back up a page and take a look at paragraph 23, this is on page 14 of 80 in Exhibit 1.

Do you see that?

A. Yes. Paragraph 23. I see it.

Q. Okay. And it says that you understand that Comcast proposed that a POSITA for the '538 patent would have been familiar with interactive cable television network architectures and the availability and implementation of speech recognition and voice control technologies.

Do you see that?

A. And the availability and implementation --

(Reporter requested clarification.)

Yes, I see that. I'll save you the trouble.

Q. Now, do you disagree with that part of the definition?

A. So to be clear, do I disagree with the passage that you've cited, would I have been familiar with interactive cable network architectures and the availability and implementation of speech recognition and voice control technologies?

Q. Correct.

A. I don't disagree with that.
Q. Okay. Now, let me show you a few documents that refer to some speech recognition applications that were available in the '90s, early 2000s. Okay? And I'm just going to ask if you are aware of them or not. So that's where we're heading, and I don't think it'll take very long.
So with that lead in, let me ask the reporter to mark as the next exhibit this document.
(Deposition Exhibit 8 was marked for identification.)
MR. KLODOWSKI: I'm going to object on the basis of authentication of this exhibit and scope.
What is this being labeled as, for the record?
MR. DAY: It's Exhibit 8.
Q. Okay. Mr. Tinsman, do you see this is an excerpt from PC Magazine? At the top of the first page, it says June 15th, 1993.
Do you see that?
A. Yes, I -- yes.
Q. Okay. And then I'm going to ask you to look on the next page, which is a particular article from that magazine.
Do you see what I'm referring to?
A. You're talking about -- I guess it's labeled

page 49 at the bottom?

Q. Yeah.

A. And that -- the title is "Listen for Windows Lets Your PC Understand What You Say"? That's the part your talking about?

Q. That's the page I'm talking about.

A. Okay.

Q. And if you look down, the second sentence of the article begins, "Verbex Voice Systems' Listen for Windows, the latest PC-based voice recognition package," and it goes on from there.

Do you see that?

A. I see the mention of Verbex Voice Systems on the first paragraph, yes.

Q. Okay. The question is, were you familiar with or you were aware of Verbex and the product Listen for Windows in the '90s?

A. I think as I said earlier, I don't recall Verbex or their products.

Q. So I'm showing you this to see if it refreshes your memory.

A. Thank you.

Q. If it doesn't, that's fine.

A. It does not.

Q. Okay. Let's go to the next one. We'll --

A. Is that something we're coming back to, or can I set it a little farther away from me?
Q. You can put it far away. That's fine.
Let's mark the next as Exhibit 9.
(Deposition Exhibit 9 was marked for identification.)
MR. KLODOWSKI: I'm going to object on the basis of authentication and scope to Exhibit 9.
BY MR. DAY:
Q. So Mr. Tinsman, this is an excerpt from Info World. The top of the first page in the upper left, it says June 16th, 1997.
Do you see that?
A. Yes.
Q. Okay. This one's not easy --
A. The print quality is not great.
Q. Agreed. If you turn to the second page, there's an article from the magazine entitled "IBM dictation software package gives computers a voice."
Do you see that?
A. I see that title.
Q. Okay.
A. Thankfully, it's large.
Q. Yeah. If you look at the third paragraph, which starts at the bottom of the second column, "The

program also provides command and control functions." Do you see what I'm referring to?

A. So there's -- it's got horizontal and vertical columns, so -- okay.

Q. To the second --

A. To be clear, starting from the left, it's the second column of print above the ad.

Q. Correct.

A. Yes. I see it.

Q. And so this article is talking about some IBM dictation software, and it says:

"The program also provides commands and control functions so that Windows 95 or Windows NT 4.0 users can verbally tell their systems what to do."

Do you see that?

A. Yes. I think so.

Q. Okay. The question is, were you aware that IBM provided software that allowed users to verbally tell their systems what to do in the late '90s?

MR. KLODOWSKI: Objection. Scope.

THE WITNESS: I don't remember the specific products or its details.

BY MR. DAY:

Q. Do you remember that IBM had software that

allowed users to interact with Windows in the late '90s?

MR. KLODOWSKI: Objection. Scope.

THE WITNESS: I -- no. I remember IBM did a lot of research into speech recognition. I didn't worry about their product line.

BY MR. DAY:

MR. DAY: Let's mark the next exhibit.

(Deposition Exhibit 10 was marked for identification.)

THE WITNESS: I think this exhibit can be --

BY MR. DAY:

Q. Yes. And we're almost done with these.

If you take a look at Exhibit 10, this is from the New York Times. There's an article that starts with the word "Technology," and I think the title is "Dragon Systems, a Former Little Guy, Gets Ready for Market." And the date next to the author's name is March 1, 1999.

Do you see all that?

A. And the author -- you're referring, just to be clear, to the Diana B. Henriques, and next to it there's a date --

Q. Yeah.

A. -- March 1st, 1999. I see that.

Q. And this is an article about Dragon Systems. Right? Sorry --

A. I haven't read the whole article, but --

Q. Strike that question. That was poor.

This is an article about Dragon Systems, and I think you told me earlier that you had heard of them, at least, in the '90s. Right?

A. That's my recollection, that I had heard of them in the '90s.

Q. Now, what I want to do is focus your attention on a particular part of this and ask a few questions.

So if you wouldn't mind going to page 3 of Exhibit 10. The very first word on the page is "Nevertheless." Right?

A. Nevertheless, comma -- page 3 -- yes, I see that.

Q. And if you'll go down to the fourth paragraph, the first two words are "The result"?

A. I see that.

Q. Okay. And there was -- in that paragraph, there is some reference to Dragon introducing in 1997 a product called Naturally Speaking.

Do you see that?

A. I see that.

Q. Were you aware of that product in the late

'90s?

MR. KLODOWSKI: Objection. Scope.

THE WITNESS: I was aware there was a company called Dragon, and I believe -- it's hard to keep all these guys straight -- that they had a product called Naturally Speaking. I -- yeah. This is going from memory. Obviously, I haven't read this article to get more context.

BY MR. DAY:

Q. And then focusing on the same sentence, it says that product would recognize continuous human speech with remarkable speed and accuracy.

Does your recollection --

A. I'm sorry. Which part -- just point me to -- the marketing claim?

Q. Sorry. Yeah. Well, I'll focus you in even more.

Just to be clear, this Dragon product, Naturally Speaking, you are aware that it was a voice recognition package. Right?

MR. KLODOWSKI: Object to scope.

THE WITNESS: Broadly speaking, that's my recollection, that it was some kind of voice recognition package.

BY MR. DAY:

Q. Yeah, okay. And if you go to the next paragraph, the author in the second sentence -- so this paragraph starts with the word "But it was only."

Do you see that?

A. I see that.

Q. And then the second sentence, it says, "Even as Naturally Speaking, with an initial retail price of $695, was still taking its bows" -- right? Do you see that?

A. I do.

Q. And the next thing, it says IBM introduced its own lower-cost rival called Via Voice.

The question is, were you aware of Via Voice in the late '90s?

MR. KLODOWSKI: Objection. Scope.

THE WITNESS: So with these others, when you say "aware," do I have -- what do you mean by "aware," just to be clear?

BY MR. DAY:

Q. Did you know about it in the late '90s?

MR. KLODOWSKI: Objection. Scope.

THE WITNESS: I -- I think I recall the name Via Voice. I couldn't tell you who the maker was, so I --

BY MR. DAY:

Q. Okay.
A. I can't agree to everything in that sentence, because I just don't remember.
Q. You don't recall if it was an IBM product or not?
A. I don't.
Q. But were you aware of it as some sort of voice recognition product?
MR. KLODOWSKI: Objection. Form. Scope.
THE WITNESS: Yes.
BY MR. DAY:
Q. And then just right next to that, in the next sentence, it says "Lernout & Hauspie followed with Voice Xpress."
And the question is, were you aware of that product in the late '90s or early 2000s?
MR. KLODOWSKI: Objection. Scope.
THE WITNESS: I don't recall the product name.
BY MR. DAY:
Q. Do you -- I can't remember what you said earlier. Do you recall that company?
A. I recall the name Lernout & Hauspie. I recall that company name.
Q. And were you aware they were offering voice recognition products in the late '90s, early 2000s?

MR. KLODOWSKI: Objection. Scope.
THE WITNESS: I'm not sure in what time period they offered voice products.
BY MR. DAY:
Q. But some -- but you're aware that at some point they offered voice recognition products. Just not sure when?
A. It's my --
MR. KLODOWSKI: Objection.
THE WITNESS: Sorry, go ahead.
MR. KLODOWSKI: Scope.
THE WITNESS: Yes. It's my recollection that they offered a voice product at some point.
BY MR. DAY:
Q. Okay. One more.
A. One more. Okay.
Q. One more memory test.
I will mark this as the next exhibit.
(Deposition Exhibit 11 was marked for identification.)
MR. KLODOWSKI: I'm going to object to this on the basis of authentication and scope.
BY MR. DAY:
Q. Okay. Exhibit 11 is an article from EE Times. It's called "Nuance 7.0". And below that, it refers to

the date August 5, 2000.

Do you see all that?

A. EE times, 8/5/2000, 4:00 AM EDT? That's what you're talking to?

Q. Yes, that's what I'm referring to.

And this article generally talks about Nuance Version 7.0. Okay?

A. Oh. I haven't read it.

Q. Yeah. And it refers to Nuance's speaker-independent speech recognition software there in the first sentence. Do you see that?

A. Yes, in the format of a press release, speaker-independent speech recognition software. Yes.

Q. The second paragraph says, "Nuance 7.8 recognizes hundreds of thousands of words and phrases," and it goes on from there.

Do you see that?

A. Yes, I see the "Nuance 7.8 recognizes hundreds of thousands of words and phrases," yeah.

Q. Okay. Are you familiar with the company Nuance?

MR. KLODOWSKI: Objection. Scope.

THE WITNESS: Generally speaking, yes.

BY MR. DAY:

Q. More particularly, were you aware in the late

'90s, early 2000s, that Nuance offered speech recognition software?

MR. KLODOWSKI: Objection. Scope.

THE WITNESS: I recall the company Nuance offering speech technologies. I -- again, I didn't keep track of a particular product names or product number releases.

BY MR. DAY:

Q. Okay. And were you aware that Nuance was a spinoff from SRI?

MR. KLODOWSKI: Objection to form. Scope.

THE WITNESS: That sounds right. I -- you know, I'm going from memory.

BY MR. DAY:

Q. Yeah. All I'm curious about is what you remember and what you were aware of at the time. And then we can move on.

MR. GOLDBERG: Jim, if you're going to a new topic, this might be a good time to break for lunch. We've got some food out there.

MR. DAY: That sounds great. Let's go off the record.

(Lunch recess from 11:53 A.M. to 12:33 P.M.)

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AFTERNOON SESSION

MR. DAY: Let's go back on the record.

And I'm going to ask the reporter to mark as the next exhibit in order, which is Number 12, one of your declarations with regard to the '196 patent.

(Deposition Exhibit 12 was marked for identification.)

BY MR. DAY:

Q. Okay. Mr. Tinsman, this is your declaration in the IPR ending in the number 344 that has to do with the '196 patent. Right?

A. That's what it looks like, yes.

Q. Okay. Let me direct your attention to paragraph 36, which is on page 20 of 30. And it also has the page number 18 on the bottom. And that's paragraph 36.

A. Okay. I see it.

Q. Okay. And I have -- feel free to read the paragraph, but I have a specific question that really relates to the sentence six lines down on the right-hand side. It starts with "Schmandt abandons the."

Do you see that?

A. You're talking about it starts -- the sentence you're referring to starts on the right side of --

Q. That's correct.

A. Okay. I think I found the right spot.
Q. Okay. And it says, "Schmandt abandons the petition's assertion." It continues, and then after a comment, says, "and instead maps 'a received back channel' to 'the data coming in from the multiple network users from via network 106,'" and then there's a cite.
Do you see what I'm referring to?
A. Received back channel -- to get the data coming from the multiple network users from via network 106.
Q. Okay. So as I understand this sentence, you are criticizing Dr. Schmandt for mapping the received back channel to the data coming in from the user.
Is that a fair way to characterize what's happening in this paragraph?
A. Give me just a second.
Q. Sure.
A. Yeah. The specific thing I stated was that "Schmandt abandons the petition's assertion that the words 'back channel' mean an 'upstream communication channel delivering signals from multiple user sites to central wireline node,'" and there's a citation to the petition, and then "instead maps 'a received back channel' to 'the data coming from the multiple users

from via network 106.'"

Q. Okay. And so is it your opinion that the received back channel in the challenged claims is not the data coming in from the multiple network users?

A. The point of the paragraph was to point out that there was a difference between what the petition was saying and what the Schmandt declaration said.

Q. Okay. So my question is a little bit different. And given some of your earlier testimony, it may be that you just can't answer.

But is it -- with that preface, is it your opinion that the received back channel in the claims of the '196 patent does not refer to the underlying data coming in from the multiple network users?

MR. KLODOWSKI: Objection. Scope.

THE WITNESS: I did not specifically construe the terms of the '196 claims. My task was to look at Comcast documents and argumentation, as I mentioned earlier, with the '538.

So I was not asked to construe terms or decide what specifically they were or they weren't.

BY MR. DAY:

Q. Okay. And so in particular, you didn't come up with a particular construction for the term "received back channel." Is that right?

A. I did not construe the term "back channel."
Q. Okay. Similarly, you did not construe the term -- I'm sorry. Let me strike that and back up.
I said "received back channel," and you said "back channel."
A. That was a misunderstanding on my part. I apologize.
Q. No, let me just ask it again. And that way your answer will match my question.
A. Okay.
Q. So am I right that you did not attempt to construe the term "received back channel" in the '196 patent claims?
A. I did not construe the term "received back channel" --
Q. Okay.
A. -- to make sure -- for the '196.
Q. Okay. And then similarly, you didn't attempt to construe the term "back channel" for the '196 patent. Right?
A. I did not attempt to construe the term "back channel" for the '196 patent.
Q. Okay. Let's go back to Exhibit 1, which is your declaration in the IPR ending in the number -340.
A. Exhibit 1. Yes.

Q. Exhibit 1. And if you wouldn't mind, turn to -- let me get you to the page -- page 29 of 80. It also has the number 27 at the bottom.

A. Okay. I think I'm there. 29 of 80. Yes.

Q. This is where a chart begins.

A. Yes.

Q. Okay. And if you wouldn't mind also take a look at Exhibit 6, which is your other declaration related to the '538 patent.

A. Exhibit 6. Okay.

Q. And if you turn to page 29 of 80, it also has the number 27 at the bottom. That's also the beginning of a claim chart.

A. Sorry. The pages are sticking together.

Q. That's all right.

A. Okay. So to be clear, 29 of 80 for Exhibit 1.

Q. Yep.

A. 29 of 81 for Exhibit 6.

Q. You're right. I misspoke.

I think that these two charts are the same. Is that right?

A. I'd have to read them carefully to confirm that. Would you like me to do that?

Q. No. I appreciate the offer, though.

Do you recall developing two separate charts

for these two separate declarations?

A. I recall doing some analysis work over the course of a number of weeks. I -- I couldn't talk about the exact segregation of tasks.

Q. Okay. Let me ask some different questions, and we'll see what comes of it. Let's focus on Exhibit 1.

A. Exhibit 1. Okay.

Q. Yeah. And in particular, paragraph 53 says: My charts below highlight representative evidence and demonstrate how the AgileTV system embodied every claim limitation in the independent claims.

I paraphrased, but do you see what I'm referring to?

A. I understand. This is the text after the paragraph number 53.

Q. Yeah. And then following that is one or more charts that goes on for a fair number of pages. Right?

A. Yes. That go on for some pages.

Q. Okay. So what I want to ask is -- let me preface. What I want to ask is sort of the process for putting this together, the process you went through. That's what I want to get at. But let me start with a specific question. Okay?

And that is: Who created the first draft of

this chart?

A. So just to be clear on your question, what do you mean by "draft"?

Q. Okay. Who created -- well, did you create the chart that begins on page 29 of 80 in Exhibit 1?

MR. KLODOWSKI: Object to form.

THE WITNESS: So again, to be clear, when you are say "create," help me understand specifically what you mean so I can give you a specific answer.

BY MR. DAY:

Q. Okay. So what I'm trying to get at is process. Okay?

I could imagine that you sat down at a Word document, created a table, started putting in information, and that's how this document -- this chart started.

I could also imagine that people you were working with provided you with a chart that was something like this and then you edited it. And so what I'm trying to get at is process here. So with that lead-in, let me ask it again.

Did you create the very first draft of what ended up as the chart that starts on page 29 of 80 in Exhibit 1?

A. So based on what I thought you -- I heard you

say, you're asking, was I involved in the creation of this chart.

Is that -- does that accurately reflect your question?

Q. That's fine.

A. Yes, I was involved in the creation of this chart.

Q. Okay. Is it your recollection, though, that somebody else actually typed the initial first version, and then you were involved in adding to it, subtracting from it, updating it? Is that the way this went?

A. There were a series of discussions. There was typing. I -- I can't tell you for sure who typed the very first representation of this chart. I can tell you that I was involved, and it reflects my opinions and my conclusions.

Q. Yep. Okay. Yeah, and -- I mean, that's a fair point. I appreciate it.

And so again, what -- I'm more interested in process, and I understand that, as it sits today, that these are your opinions. And it's more of how did you get to them.

So you said you don't know, or you can't say, who did the initial typing. Was it you, and you -- sorry.

Was it you?

A. I -- this was a -- I think as is common, these documents are practically a collaborative effort. It's certainly true that I -- when I say typed, I mean generally wrote stuff, whatever form that took -- including information that appears actually throughout this declaration.

I -- I honestly don't remember who created what I think you're referring to as the first draft.

Q. And just to be clear, I'm just talking about the chart, not the whole declaration.

A. Okay.

Q. So somebody some day in Word said "insert table," and the chart was born. And then they started putting in claim language.

Was that you, or was that somebody else?

A. Started --

MR. KLODOWSKI: Objection. Form.

THE WITNESS: Started putting in claim language. You mean, for example, what's in the left column?

BY MR. DAY:

Q. Correct.

A. Claim element? I'm -- boy, I don't remember.

Q. Okay. And then at some point, somebody

started citing evidence on the -- in the right-hand column. Right?

A. Somebody started citing evidence --

MR. KLODOWSKI: Objection. Form.

BY MR. DAY:

Q. On page 27, somebody typed in that first paragraph in the right-hand column. Right?

A. It's -- it's a true statement somebody typed it in.

Q. Okay. And do you recall whether you typed that in or somebody else?

A. Typed it into this table as it appears today.

Q. No. The first version of it.

A. Boy. I just can't tell you exactly where the -- I mean, I -- as I said, I certainly read the stuff that -- I agree with everything that's here. I read the documents and looked at what the correspondence would be. But I just couldn't tell you exactly who typed what.

Q. Okay. So there are different documents cited on the right-hand column throughout this chart. Right?

A. There is more than one document cited, yes.

Q. Okay. Where do those documents come from, from your perspective? Did someone send them to you -- well, stop.

Did someone send them to you?
MR. KLODOWSKI: Objection. Form.
THE WITNESS: The documents that I reviewed were provided to me by counsel.
BY MR. DAY:
Q. Okay. And are -- were the documents provided to you before you saw this chart or after you saw this chart?
Sorry. Strike that.
Were the documents provided to you before you saw the first draft of this chart or after you saw the first draft of the chart?
MR. KLODOWSKI: Objection. Form.
THE WITNESS: They were provided to me before to the best of my recollection, yes.
BY MR. DAY:
Q. Okay. And then -- all right. That's fine.
I've got one more document.
A. Can I set Exhibit 1 aside just for the moment?
Q. Yeah.
A. Okay.
MR. DAY: We'll mark this Exhibit 13.
(Deposition Exhibit 13 was marked for identification.)
BY MR. DAY:

Q. Okay. Mr. Tinsman, this is a US patent that issued in 2002 assigned to OpenTV, Incorporated.

Do you see that?

A. You're talking about the part that has the 73 in parentheses next to it and says "Assignee: OpenTV"?

Q. That's right.

A. Okay.

Q. You were at OpenTV at the time this issued, 2002. Is that right?

A. Yes. I was at OpenTV.

Q. Okay. And did you know Vincent Dureau?

A. Yes.

MR. KLODOWSKI: Objection. Scope.

THE WITNESS: Sorry. Yes.

BY MR. DAY:

Q. Okay. And I'll just point out that this -- the application that led to this patent was filed in 1998.

Do you see that?

A. Yes. Two numbers, the 22 in parentheses and then "Filed."

Q. Yes.

A. Yes.

Q. And it issued in 2002. That's while you were at OpenTV. Right?

A. Yes.
Q. Okay. If you -- are you familiar with this patent?
A. What do you mean by "familiar"?
Q. Have you ever seen it before today?
A. Yes.
Q. And if you look in the abstract, the last two -- the last three sentences, it begins with, "In another embodiment, a microphone is coupled to a set-top box."
A. "A microphone is coupled to a set-top box." I see this.
Q. Okay. And then it goes on to say:
"The microphone allows the user to input voice information which is digitized and conveyed to the server for conversion into textual information."
Do you see that?
A. I see that.
Q. Now, you were at OpenTV at this time, and then later you went to the Kudelski Group. Right?
A. Yes.
Q. All right. And then in -- when was it -- 2016, OpenTV and Kudelski sued Comcast based on this and some other patents. Right?

MR. KLODOWSKI: Objection. Form. Scope.
THE WITNESS: I think there was a lawsuit. I believe that -- I don't remember all the details of what patents were in that suit.
BY MR. DAY:
Q. Fair. You're aware there was a lawsuit. Right?
A. I'm aware.
MR. KLODOWSKI: Objection. Scope.
BY MR. DAY:
Q. You just can't remember if this patent was involved in the lawsuit. Right?
MR. KLODOWSKI: Objection. Scope.
THE WITNESS: I can't be certain sitting here.
BY MR. DAY:
Q. I'll represent to you that it was, but I appreciate it was a couple years ago and you don't remember.
Now, what was your involvement in that lawsuit, if any, while you were at Kudelski?
MR. KLODOWSKI: Objection. Scope.
THE WITNESS: You're asking me about my involvement in the lawsuit --
BY MR. DAY:
Q. Correct.

A. -- to be clear. I don't believe I can answer that question.

Q. Because it would be privileged or work product or something? Is that --

A. Yes. And I'm bound by nondisclosure agreements about any private activities I was involved in at the Kudelski Group.

Q. Let me -- I appreciate that, and I don't want you to tell me privileged information, and I don't want you to breach any contracts. But I'm going to ask you a couple of questions. And if you can tell me, tell me; and if you can't, tell me you can't. Okay?

A. Okay.

Q. All right. Now -- well, do you remember, did you review this patent issued to Dureau in connection with that lawsuit?

MR. KLODOWSKI: Objection. Form. Scope.

THE WITNESS: I -- I just don't believe I can discuss anything I did for the Kudelski Group involving their litigation in the past.

BY MR. DAY:

Q. Okay. And that's fine. I appreciate that. I am going to ask you a couple of questions, but just keep telling me that if it's always the answer. Okay?

A. Okay.

Q. All right. But if you can answer these, that's what I want you to do.

A. If I can, I will.

Q. Fair enough. Okay.

Now, did you -- did you participate in any pre-litigation meetings with Comcast?

MR. KLODOWSKI: Objection. Form. Scope.

THE WITNESS: I don't believe I can discuss any commercial or other activities that I would have undertaken for the Kudelski Group that isn't otherwise a matter of public knowledge.

BY MR. DAY:

Q. Okay. And let me just parse a little bit. And if you --

A. And I'm paraphrasing what I think my commitment is. I know I have a nondisclosure agreement. I couldn't tell you the exact terms of when I could talk about it anyway, but I'm very sure that, in general, I couldn't talk about any of Kudelski's negotiations or litigation.

Q. Okay. And do you think you could tell me whether you were involved and stop there, or not even that?

A. I don't --

MR. KLODOWSKI: Objection. Form. Scope.

THE WITNESS: I don't think I can discuss anything that I did for the Kudelski Group with respect to negotiations or litigation or anything -- you know, commercial discussions, any of that.

BY MR. DAY:

Q. Okay. I understand -- let me be very specific, and then just answer the best you can.

Can you -- can you tell -- so I'll ask a very specific question that I think can either be a "yes" or a "no."

But can you -- subject to whatever contractual obligations you have, can you tell me whether or not you were involved in negotiations with Comcast?

MR. KLODOWSKI: Objection. Form. Scope.

THE WITNESS: I can't disclose anything I would have done with respect to Kudelski activities, commercial negotiations, litigation, or any of that. I think all of that is subject to nondisclosure.

BY MR. DAY:

Q. Yeah. I think I know what you're saying, but what I want to get at is -- I'm not going to ask you what the content of a communication was. It's just -- it would be, were you involved, "yes" or "no."

And with that clarification, is your answer any different?

A. It -- my answer is --
MR. KLODOWSKI: Objection.
THE WITNESS: Sorry.
MR. KLODOWSKI: Form. Scope.
THE WITNESS: Sorry about that. No, my answer is no different.
BY MR. DAY:
Q. Okay. And what you're telling me is you have contractual obligations that just completely prevent you from talking about anything you might have done at Kudelski that's not publicly available. Is that fair?
A. That's --
MR. KLODOWSKI: Objection. Form. Scope.
THE WITNESS: My understanding is that I can't disclose anything that Kudelski did -- the Kudelski Group did or who they talked to that's not otherwise public information. That's my understanding.
BY MR. DAY:
Q. Okay.
A. And before I would -- if I were to answer this question, of course, I would want to consult that agreement.
Q. Let me direct your attention back to Exhibit 13.
A. 13. Okay.

Q. So this is a patent -- this is the OpenTV patent. The abstract talks about using a microphone to -- paraphrase. You have a microphone. The user can speak words that are sent to a server to convert and sent back in the form of text.

That's essentially what the last three sentences of the abstract are talking about. Is that fair?

MR. KLODOWSKI: Objection to form.

THE WITNESS: "The microphone allows" -- you're referring to "The microphone allows the user to input voice information which is digitized and conveyed to the server for conversion into textual information." I see that.

BY MR. DAY:

Q. That's what I'm referring to.

Now, are you aware that OpenTV was investigating voice recognition in connection with television systems in the late '90s, early 2000s?

MR. KLODOWSKI: Objection. Form. Scope.

THE WITNESS: As it says in my declaration, I specifically visited AgileTV -- I'm paraphrasing, but I believe it was in 2004 -- for the purposes of providing a specific evaluation. I -- I can't comment on anything else.

BY MR. DAY:

Q. I guess my question is different.

I mean, it looks like Mr. Dureau was at least investigating voice recognition in connection with television systems.

Is that a fair a way to understand what this patent is talking about?

MR. KLODOWSKI: Objection to form. Scope.

THE WITNESS: This patent is about an invention by Mr. Dureau. I -- I can't speak to whether Mr. Dureau was -- what else he was doing besides this. You used the word "investigate." I -- you know, I have the patent. It's clear he worked on it.

BY MR. DAY:

Q. Were you aware he was working on this in the late '90s, early 2000s?

MR. KLODOWSKI: Objection to form. Scope.

THE WITNESS: Was I aware. I -- I couldn't say what Mr. Dureau was working on or wasn't working on. What do you mean by "working on," just to be clear on the question?

BY MR. DAY:

Q. Well, were you aware of what he was working on in the late '90s, early 2000s, as part of your job at OpenTV?

MR. KLODOWSKI: Objection. Scope.
THE WITNESS: I was aware of what I was asked to work on. I couldn't speak to Mr. Dureau's activities in detail.
BY MR. DAY:
Q. I understand that. I mean, you're not him.
But were you aware of what he was working on at the time? Did you have some information about what he was working on at the time?
MR. KLODOWSKI: Objection to form and scope.
THE WITNESS: I -- he -- he would ask me questions sometimes, and one of them was, "Can you please go visit AgileTV?"
So that would be my awareness of what he asked me to undertake on his behalf.
BY MR. DAY:
Q. That's -- I appreciate that.
I think in your declaration you say the CTO asked you to go to AgileTV -- let me find it. Let me not try to do this from memory. Right.
Which are you --
A. I'm on Exhibit 1, if that's helpful.
Q. It is. Let's both look at the same document. Of course, now I can't find it.
A. Oh, if you'd rather do the other exhibit,

that's okay.

Q. That's fine. Take a look at paragraph -- I think it's 15.

A. So to be clear, we're talking about 00340. You said paragraph 15? Am I getting that right?

Q. Yes.

A. So that would be the page marked 9 of 80?

Q. Oh, sorry. That's right. And in the first sentence it refers to the CTO of OpenTV. Was that Mr. Dureau?

A. It was Mr. Dureau.

Q. Okay. And so your awareness that he was working on something somehow touching on voice recognition is based on him asking you to go investigate AgileTV. Is that fair?

MR. KLODOWSKI: Objection. Form. Scope.

THE WITNESS: Oh, that -- your question is quite vague, so it makes it difficult to provide a good answer.

BY MR. DAY:

Q. I'm trying to make sure I understand what you were saying. Let me ask it a different way.

Did you work with Mr. Dureau on any voice recognition functionality while you were at OpenTV?

A. I'm not sure I know how to answer that

question. It's very broad, did I work on. So could you be more specific? Is there a specific kind of voice knowledge or anything --

Q. Okay. The --

A. Because that could include yelling at his secretary. So --

Q. That's not what I'm talking about.

Did you work with Mr. Dureau on any projects at OpenTV that involved algorithms for converting voice to text?

MR. KLODOWSKI: Objection scope.

THE WITNESS: I don't know if I could answer that question. I would have to again look at previous employment -- right? At the time, I was employed under Swiss law, so it's not the same.

BY MR. DAY:

Q. Okay. Did OpenTV or Kudelski ever commercialize the invention disclosed in the patent that is Exhibit 13?

MR. KLODOWSKI: Objection to form. Scope.

BY MR. DAY:

Q. As far as you know.

MR. KLODOWSKI: Same objection.

THE WITNESS: So to be clear, what do you mean by "commercialize"?

BY MR. DAY:

Q. Well, let me start with this: Did OpenTV or Kudelski develop a voice control feature for televisions that you're aware of?

MR. KLODOWSKI: Objection to form. Scope.

THE WITNESS: So you're asking me, any time in my memory could I -- I -- and you said "commercialize," right, in your first question?

Are you sticking with that, or did the question change, just to be clear?

BY MR. DAY:

Q. The question changed. I want to ask -- I'll probably ask it a couple different ways to make sure I get it.

But are you aware of OpenTV or Kudelski developing a voice recognition feature for televisions?

MR. KLODOWSKI: Objection to form. Scope.

THE WITNESS: It was a while ago. I can't off the top of my head recall anything specific. I --

BY MR. DAY:

Q. Okay.

A. I just caveat that with, it was a while ago.

Q. Sure. And then -- well, when did you leave Kudelski?

A. I left -- well, you're -- so let's be clear.

Are you -- I thought you were talking about Mr. Dureau. Did I misconstrue your question?

Q. Yeah. So let me --

A. Oh, sorry.

Q. I want to start broad and then try to figure out if there's specific things you can tell me or not.

So just broadly, are you aware of OpenTV or Kudelski developing voice control functionality for televisions?

MR. KLODOWSKI: Objection to form. Scope.

THE WITNESS: Broadly, I don't think I can speak to you on any development they would have done internally. I just -- I just can't.

BY MR. DAY:

Q. Because of --

A. Of agreements that I -- my employment agreements.

Q. Okay. Then let's limit it to products that were made publicly available.

Were there any -- did OpenTV or Kudelski offer any products or services that provided voice recognition functionality for a television that were made known to the public?

MR. KLODOWSKI: Objection to form. Scope.

THE WITNESS: The -- I think the Kudelski

Group has about 3500 employees, I'm guessing, and is far-flung. So I just don't -- I can't represent whether they -- what they did and they didn't do in any specific domain.

BY MR. DAY:

Q. I'm not asking you to represent on behalf of Kudelski. I'm just asking what you know about them.

A. I --

MR. KLODOWSKI: Same objections.

THE WITNESS: Off the top of my head, I can't --

BY MR. DAY:

Q. You can't --

A. I cannot recall a specific product.

Q. Okay.

A. Publicly disclosed. I don't keep track of what public products they've disclosed, so it's a -- it's a constraint on my answer.

Q. Okay. Maybe it's asking the same question, but let me ask it a slightly different way.

Did OpenTV or Kudelski offer for sale a product or service providing voice recognition functionality for televisions?

MR. KLODOWSKI: Objection to form. Scope.

THE WITNESS: I -- I can't answer that

question for two reasons. One is -- well, I -- yeah, I cannot sitting here name one for you, either because of contractual agreements or because I just don't remember.

Again, it was large company; lots of people working on lots of stuff. I certainly did not possess complete knowledge of Kudelski or OpenTV's activities.

BY MR. DAY:

Q. Yeah, it's a -- I understand that. And I'm not asking you to represent on behalf of Kudelski.

It's really just, do you know whether or not, based on your own personal experience working at OpenTV and Kudelski, whether either company offered for sale a product or system that provided voice recognition technology for televisions?

If you don't know, you can tell me you don't know.

A. I don't know.

Q. Okay.

MR. KLODOWSKI: Let me object.

THE WITNESS: Yes.

MR. KLODOWSKI: Go ahead.

MR. DAY: Did you want to state an objection?

MR. KLODOWSKI: Okay. I'll state an objection to the previous question: Form and scope.

BY MR. DAY:

Q. And at this point we are beating a dead horse, I think.

But am I right that you don't know whether the functionality described in Exhibit 13, that patent, was ever offered for sale by OpenTV or Kudelski? Is that right?

MR. KLODOWSKI: Objection. Form. Scope.

THE WITNESS: As I've said previously, I can't comment on things I can't comment on. So I -- I can't say anything about activities covered by nondisclosure agreements.

BY MR. DAY:

Q. Right. And so I want to limit this to things that were made available for sale.

Does that change what you can talk about?

MR. KLODOWSKI: Objection. Form. Scope.

THE WITNESS: So to be clear, when you say offered for sale, you mean -- what do you -- just precisely what do you mean?

BY MR. DAY:

Q. What I mean is offered for sale to third parties. Sale or license to third parties outside of either OpenTV or the Kudelski Group.

A. I cannot --

MR. KLODOWSKI: Same objection.
THE WITNESS: Yeah, I can't discuss that.
BY MR. DAY:
Q. Because of contractual obligations?
A. I --
MR. KLODOWSKI: Same objection.
BY MR. DAY:
Q. Or because you don't know, I guess?
A. I don't know that I can tell you which of those two it is.
Q. I don't think I understand. Can you help me understand why you can't answer the question?
A. I can't comment on any private discussions that they had. So I -- I can't give you an answer on anything that could have involved a discussion that might be covered by my nondisclosure agreement. I just can't.
Q. Okay. And you can't think of any product that was made known to the public that provided the functionality we're talking about. Is that right?
MR. KLODOWSKI: Objection to form. Scope.
THE WITNESS: As I stated earlier, I did not keep track of which products were made public or not. And so for that reason, I -- I can't answer that question.

I understand the predicate you're adding. Because I don't know which products were made public, I can't -- I can't answer.

MR. DAY: All right. Those are all the questions I have.

MR. KLODOWSKI: Okay. Let's go off the record. Take a short break.

(Recess from 1:12 P.M. to 1:15 P.M.)

MR. KLODOWSKI: We can go on the record. We have no further questions.

MR. DAY: All right. That's it. We're done.

(Time noted, 1:16 P.M.)

--o0o--

I declare under penalty of perjury that the foregoing is true and correct. Subscribed at _____, California, this ____ day of _____ 2018.

_____

JOHN TINSMAN

CERTIFICATE OF DEPOSITION OFFICER

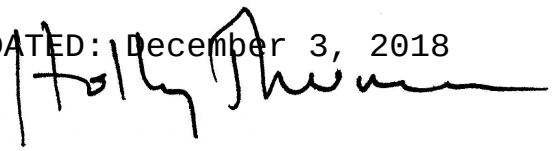
I, HOLLY THUMAN, a Certified Shorthand Reporter, California CSR License No. 6834, hereby certify:

That, prior to being examined, the witness in the foregoing deposition, to wit JOHN TINSMAN, was by me duly sworn to tell the truth, the whole truth, and nothing but the truth;

That said examination was taken in shorthand by me, a disinterested person, on THURSDAY, NOVEMBER 29, 2018, at 9:30 A.M., before the following adverse parties: Farella, Braun & Martel, representing the petitioner and Finnegan, Henderson, Farabow, Garrett & Dunner, LLP, representing the patent owner, and was thereafter reduced to typewriting, by computer, under my direction and supervision;

I certify that I have not been disqualified as specified under Rule 28 of the Federal Rules of Civil Procedure. I further certify that I am not in any way interested in the event of this cause, and that I am not related to any of the parties thereto.

DATED: December 3, 2018



HOLLY THUMAN, CSR No. 6834

John Tinsman Deposition - November 29, 2018
Deposition Exhibit Nos. Cross Referenced to IPR Exhibit Nos.

Dep. Ex. No.	Description	IPR / IPR Exhibit No.
1	Declaration of John Tinsman, Case No. IPR2018-00340	IPR2018-00340 - Exhibit 2033
2	U.S. Patent 7,260,538, Calderone et al.	IPR2018-00340 - Exhibit 1001 IPR2018-00341 - Exhibit 1001
3	U.S. Patent 6,513,063, Julia et al.	IPR2018-00340 - Exhibit 1017 IPR2018-00341 - Exhibit 1017 IPR2018-00342 - Exhibit 1015 IPR2018-00343 - Exhibit 1015 IPR2018-00344 - Exhibit 1012 IPR2018-00345 - Exhibit 1012
4	Plaintiff's Opening Claim Construction Brief, Promptu Systems Corporation v. Comcast, United States District Court	IPR2018-00342 - Exhibit 2037 IPR2018-00343 - Exhibit 2037 IPR2018-00344 - Exhibit 2037 IPR2018-00345 - Exhibit 2037
5	U.S. Patent 7,013,283, Murdock et al.	IPR2018-00340 - Exhibit 1018 IPR2018-00341 - Exhibit 1018 IPR2018-00342 - Exhibit 1013 IPR2018-00343 - Exhibit 1013 IPR2018-00344 - Exhibit 1010 IPR2018-00345 - Exhibit 1010
6	Declaration of John Tinsman, Case No. IPR2018-00341, U.S. Patent 7,260,538	IPR2018-00341 - Exhibit 2033
7	U.S. Patent 5,774,859, Houser et al.	IPR2018-00340 - Exhibit 1019 IPR2018-00341 - Exhibit 1019 IPR2018-00342 - Exhibit 1012 IPR2018-00343 - Exhibit 1012
8	Excerpt from PC Magazine, June 15, 1993, "Listen for Windows Lets Your PC Understand What You Say"	IPR2018-00340 - Exhibit 1007 IPR2018-00341 - Exhibit 1007
9	Excerpt from Info World, June 16, 1997, "IBM dictation software package gives computers a voice"	IPR2018-00340 - Exhibit 1010 IPR2018-00341 - Exhibit 1010

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10	Web printout from the New York Times, "Technology: Market Place; Dragon Systems, a Former Little Guy, Gets Ready for Market," Diana B. Henriques, March 1, 1999	IPR2018-00340 - Exhibit 1008 IPR2018-00341 - Exhibit 1008
11	Web Printout, EE Times, 8/5/2000, Nuance 7.0	IPR2018-00340 - Exhibit 1011 IPR2018-00341 - Exhibit 1011
12	Declaration of John Tinsman, Case No. IPR2018-00344, U.S. Patent 7,047,196	IPR2018-00344 - Exhibit 2033
13	U.S. Patent 6,345,389, Dureau	IPR2018-00340 - Exhibit 1014 IPR2018-00341 - Exhibit 1014 IPR2018-00342 - Exhibit 1011 IPR2018-00343 - Exhibit 1011 IPR2018-00344 - Exhibit 1009 IPR2018-00345 - Exhibit 1009