IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PROMPTU SYSTEMS CORPORATION, Plaintiff, v. COMCAST CORPORATION and COMCAST CABLE COMMUNICATIONS, LLC, Defendants.) Civil Action No. 2:16-cv-06516-JRS

Deposition of
PAUL MAXWELL COOK
Volume I, Pages 1-121
Tuesday, October 30, 2018

REPORTED BY: JOHN WISSENBACH, RDR, CRR, CRC,
CSR 6862

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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COMCAST CABLE COMMUNICATIONS, LLC,
Petitioner,

v.

PROMPTU SYSTEMS CORPORATION,
Patent Owner.

_____

Case IPR2018-00340 (Patent 7,260,538)
Case IPR2018-00341 (Patent 7,260,538)
Case IPR2018-00342 (Patent RE44,326)
Case IPR2018-00343 (Patent RE44,326)
Case IPR2018-00344 (Patent 7,047,196)
Case IPR2018-00345 (Patent 7,047,196)

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BE IT REMEMBERED that, pursuant to the laws governing the taking and use of depositions, on Tuesday, October 30, 2018, commencing at 10:08 a.m. thereof, at the law offices of Finnegan, Henderson, Farabow, Garrett & Dunner, LLP, Stanford Research Park, 3300 Hillview Avenue, Palo Alto, California, before me, JOHN WISSENBACH, CSR 6862, of San Francisco, California, personally appeared PAUL MAXWELL COOK, called as a witness by the Plaintiff, Defendants, and Petitioner, who, being by me first duly sworn, was thereupon examined as a witness in said action.

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ALSO PRESENT: TAIS DESCHAMPS, Videographer

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THE VIDEOGRAPHER: Here begins video number 1, volume I, in the deposition of Paul Cook, testifying in the matter of Promptu Systems Corporation vs. Comcast Corporation and Comcast Cable Communications, LLC.

Today's date is October 30th, 2018. The time is 10:08 a.m. This deposition is being taken at Finnegan, Henderson, at 3300 Hillview Avenue, in Palo Alto, California, and was made at the request of both parties. I'm David Manzo, the videographer, and the court reporter is John Wissenbach, from GregoryEdwards LLC, in Washington, D.C.

Counsel, please identify yourselves and state whom you represent.

MR. MOSKO: Good morning. I'm Scott Mosko. I represent Promptu Systems Corporation and the witness, Paul Cook.

MR. YORIO: Robert Yorio, Carr & Ferrell, for the plaintiff and Mr. Cook.

MR. SCHROEDER: Jacob Schroeder, on behalf of Promptu Systems Corporation.

MR. LAM: Leo Lam and Maya Karwande, from Keker, Van Nest & Peters, for the Comcast parties. We should also state a telephone appearance.

Dan, will you introduce yourself, please.

MR. CALLAWAY: Dan Callaway, from Farella Braun + Martel, representing the Comcast entities in IPR2018-00340, dash --

(Discussion off the record.)

MR. CALLAWAY: Yeah. I'm representing the Comcast entities in IPR2018-00340 and -00341 and -00342 and -00343 and -00344 and -00345. Thank you.

THE VIDEOGRAPHER: Will the court reporter please swear in the witness.

PAUL MAXWELL COOK,

having been first duly sworn, testified as follows:

EXAMINATION BY MR. MOSKO

Q. Good morning. May we start by having you tell us your full name, please.

A. Paul Maxwell Cook.

Q. Okay. Mr. Cook, this is a deposition in the Promptu against Comcast case. You know that, correct?

A. Yes, I do.

Q. And Promptu is also -- was also previously known as AgileTV. Is that your understanding?

A. That's correct.

Q. So if I use the phrase "AgileTV," will you understand that to also mean Promptu in this deposition?

A. I will.
Q. And if you use "Agile" -- the phrase "AgileTV," should I also understand that to mean Promptu?
A. Yes.
Q. All right. I notice you're wearing hearing aids today. How long have you worn them?
A. About ten years.
Q. Okay. And can you hear me clearly today?
A. Yes, I can hear you clearly.
Q. Okay. If you don't hear a question or you don't understand a question, will you please ask me to repeat or rephrase it, and I'll be happy to do so. Fair enough?
A. Fair enough. I will do so.
Q. And I'm sure that goes for Mr. Lam, the Comcast lawyer, whom you've been introduced to, when he asks questions. If you don't understand a question or you don't hear him, ask him to repeat or rephrase. Fair enough?
A. Good.
Q. All right. Can you please tell us how old you are.
A. I am 94 years and about six months.
Q. Okay. And do you still drive?

A. I still drive.
Q. Generally, can you describe -- can you describe your health for us today.
A. Describe what?
Q. Your health.
A. My health is excellent.
Q. Okay. Are you currently on any medications?
A. I'm on several medications.
Q. What medications are you on, please?
A. Well, there's a cholesterol reducer that I'm on. I forget the name of it. I'm on pain relievers. That's about it.
Q. Okay.
A. And once in a while, I use a cold medicine.
Q. A cold medicine? Is that --
A. Yes.
Q. -- what you said?
A. A medicine for colds.
Q. Okay. And are you on any of those medications -- have you taken any of those medications within the past 24 hours?
A. Yes. I took a half of a Percocet early this morning.
Q. Okay. And do any of those medications, as

far as you know, affect your memory or your ability to remember things?

A. Not at the quantities that I take.

Q. Okay. And do you believe you have any problems with memory?

A. Not -- not any different than anybody who's 95 years old.

Q. Okay. Do you have trouble reading, Mr. Cook?

A. I -- it's slower than it was ten years ago, but, no, I don't have a problem.

Q. Okay. Are there any limitations that you believe you have that would prevent you from giving your best testimony here this afternoon or here this morning? Any limitations, please.

A. None that I think of.

Q. Okay. I want to start the deposition, the formal part of the deposition, if I can, by showing you a document.

(Deposition Exhibit 83 was marked for identification.)

BY MR. MOSKO:

Q. Mr. Cook, this document has been marked number 83.

Take a brief glance at the first several

pages of that document, if you will, please. I don't need you to read the whole document, but just take a brief glance at it, if you would, please.

A. Okay.

Q. Okay. Now, let me tell you that this document, like all of the other documents that I'm going to show you today, were found in the Promptu files, either on a computer or on a server. And you'll know that because on the bottom right-hand corner, there's what lawyers call a Bates number. That Bates number indicates that it was produced by Promptu, and the first page has the number on it of 275188.

Now, that first page makes reference to "AgileTV Board of Directors." Do you see that?

A. Yes, I do.

Q. Were you a founder of AgileTV?

A. Yes.

Q. And take a look, please, at the third page of that document, that's entitled "Management Team." And the Bates number on that is 275190.

A. Yes.

Q. That first part of the -- that page indicates "Founders" and has "Paul Cook." As far as you know, is that you?

A. That's me.
Q. Okay. And it says "Chairman and Chief Executive Officer." Is that consistent with your recollection?
A. Yes, it is.
Q. It also, towards the bottom third of the page, identifies "Mark Foster, Senior" -- "Senior Vice President, Strategy." Can you tell us who Mark Foster was, please.
A. He was a technologist that I hired as one of the first employees of the company.
Q. You hired while you were CEO at AgileTV?
A. Yes.
Q. And generally what were Mr. Foster's responsibilities at AgileTV?
A. He was responsible for the -- the technical strategy that the company was based upon.
Q. Okay. If you'll turn the page, please, the page that has a Bates stamp on it of 275191, about five lines down, identifies a "David Hanson, Senior Vice President, Business Development." Do you see that?
A. Yes.
Q. Did you hire Mr. Hanson?
A. Yes, I did.

Q. And what were Mr. Hanson's responsibilities generally at AgileTV, please?
A. Primarily he was head of sales.
Q. And was Mr. Foster and Mr. Hanson -- were they both founders of AgileTV, along with you?
A. Yes. I -- I baptized them as -- as founders, even though they weren't initial stockholders of the company.
Q. Okay. About the middle of the page, there's a phrase that reads "Senior Management." Do you see that?
A. Yes, I see that.
Q. And it identifies "Don Anderson, Senior Vice President, Corporate Development." Is -- was that Don Anderson's position at AgileTV?
A. That's what we titled him.
Q. And generally, can you tell us what Mr. Anderson's responsibilities were at Agile?
A. He had sales responsibility for portions of the United States and MSOs who -- who were potential customers of ours.
Q. Okay. And at the very bottom of that page, it identifies "David Chaiken," C-H-A-I-K-E-N, "Chief Technology Officer and Vice President," Systems "Architecture." Was that Mr. Chaiken's position at

AgileTV?

A. Yes.

Q. And generally what were Mr. Chaiken's responsibilities, please?

A. He had a wide group of responsibilities, that got him into all phases of the technology.

Q. Okay. Let's turn the page, please. The page that has the Bates stamp on it 275192, about, well, just maybe halfway down, there's a entry by the name of "Jim Grohn," G-R-O-H-N, "General Manager, Australia." Can you tell us who Mr. Grohn was, please.

A. In order to speed the growth and activity of our company, we had the opportunity to acquire about 12 employees, Aussies, that were expert in the area that we intended to go into and -- and so did. We hired him. And Jim Grohn was the head of that group of 12 employees.

Q. All right. Several -- several lines down, there's an entry, "Jay Kistler," K-I-S-T-L-E-R, "Vice President, Engineering." Is that consistent with your recollection?

A. Yes, it is.

Q. And what were Mr. Kistler's responsibilities at AgileTV, please?

A. He was responsible for the -- for much of the technical developments that were done in the United States.

Q. Okay. And at the very bottom of the page, there's an entry, "Scott Maddux," M-A-D-D-U-X, "Vice President, Product Marketing." Is that entry consistent with your recollection of what Mr. Maddux was?

A. Yes, it is.

Q. And, generally, what were Mr. Maddux's responsibilities?

A. He was responsible for the presentation and control of the software being used to -- to identify the programs that the customer wanted to display on the television set.

Q. Okay. And very good. I don't think I'll ask you about the other people that are indicated on that document, but if you'll turn back to the third page, that says "Management Team," please.

Okay. That document indicates that you got a chemical engineering degree from MIT; is that right?

A. That's correct.

Q. And before you received your engineering degree from MIT, were you involved in any

businesses?

A. Several.

Q. Can you start and give us a general background of the businesses you were involved with before you actually went to MIT.

A. Before I went to MIT, I had several businesses that I was active in, in order to raise money as a kid. And it went all the way from newspaper routes to distributing milk to a whole series of things that kids do, pumped gas, was a soda jerk, did many things that my schedule allowed, and was able to collect a decent amount of money for a kid.

Q. And did those activities advance to more formal-type involvement with business, please?

A. I've always been very inclined towards businesses that -- that I could excel in.

Q. Okay. And, again, before you started -- before you went to MIT, can you tell us about what some of those businesses were, please.

A. Well, my father was in the -- in the wire and cable business, for electrically insulated wire, and I worked for him summers before I was of age and worked as a draftsman and as a machinist, as a lathe operator, as a series of different things that --

that my father and his reports handled and taught me. And I -- I was very fortunate in getting this extra education, because it was used in all manufacturing businesses at that time of --

Q. Okay.

A. -- development.

Q. And -- and you went to MIT. Before you went to MIT, did you attend any other college?

A. No.

Q. Did you do anything at Stanford University?

A. The Army -- I enlisted in the Army in nineteen eighty -- in 1943, and the Army sent me to basic infantry training. And then after completing that, as a PFC, I was sent to Stanford to study, and did so.

Q. And did you attend Stanford in that program before you went to MIT or afterwards?

A. I attended Stanford after I had first originally gone to MIT, and then I followed up with MIT again after I had been in the war and got out and went to MIT again to finish up my degree, and did so.

Q. Okay. So Exhibit 83, page 275190, makes reference to "Raychem," R-A-Y-C-H-E-M. Can you tell us what your involvement was with Raychem, please.

A. Raychem was a company that I started while I was at the Stanford Research Institute. Let me give you the background. The -- how much detail do you want?

Q. Well, tell us generally first what Raychem was.

A. Raychem was a company that was based on making products like by exposing high-energy radiation, radioactive materials. Well, that was it. I mean --

Q. Okay. And --

A. -- that's -- that's what we did.

Q. Exhibit 83 indicates you started there in 1957. Is that correct?

A. '57, the first of January, is when it started.

Q. Okay. And did you actually found Raychem?

A. I did in fact found Raychem.

Q. And Exhibit 83 indicates you stayed as the CEO until 1990. Is that accurate, to your --

A. That's --

Q. -- recollection?

A. That's accurate.

Q. And did you stay on as chairman after you left as the CEO of Raychem?

A. For a short time.
Q. All right. Exhibit 83 also makes refers to DIVA, D-I-V-A, Systems. Can you tell us what DIVA, or "DIVA," Systems is, please.
A. That was another company that I started after I retired from Raychem and after I became 62 years old -- 66 -- excuse me, 66 years old. I -- I did -- I did -- I did found the company, as I'd previously described.
Q. Okay. And Exhibit 83 makes reference to DIVA providing video-on-demand services to cable -- to the cable industry; is that correct?
A. That's correct.
Q. All right. Now, you mentioned some involvement with Stanford Institute Research. Can you explain to us what Stanford Institute Research is, please.
A. Stanford University started a -- an organization called the Stanford Research Institute along about the end of World War II. And the -- the group of people who started it were people from engineering at Stanford and hires from outside. A good friend of mine who was associate director of the radiation laboratory at MIT became the -- the -- he became the associate director of research for

Stanford Research Institute. And he -- I had gotten to know, at -- when I'm at -- when I was at MIT, finishing up my courses, I got to know Ralph Krause quite well. And he offered me a job at SRI, and I accepted that and joined it on election day of 1948, when the Chicago Tribune announced that they had defeated the -- defeated the -- Dewey, and -- which turned out to be wrong.

Q. Okay. And how long were you at Stanford Research Institute, or SRA -- SRI, please?

A. Which time? I was there in -- as a member of the Army. I was there later as a employee. And I was there later as the chairman of the board of -- of SRI.

Q. Okay. So let's start backwards. When did you become the chairman of the board of SRI?

A. Oh. I don't know that I'd remember exactly when I did. But it was after I retired from Raychem.

Q. Okay. Well, that's good enough. And --

A. We could figure it out if you need to know.

Q. Generally what were your responsibilities as chairman of the board at SRI?

A. To make it make a profit.

Q. Okay. And what specifically were the types

of things that you did in order to accomplish that goal?

A. I think the company had been in bad straits, because it did not make money, and it was in difficulty when the -- one of the directors and the -- the previous -- the previous head chairman, George Keller, who was the -- the head of Standard Oil of California, asked if -- asked me if I would please take over and become the chairman and get this company going into a profitable basis. And I was delighted to take that opportunity, because I had good feelings about SRI.

We started a policy of starting little companies that originated from technology that had been developed by SRI and had commercial applications and an opportunity to make a profit. And I'm proud to say that we had very excellent returns, good profits, and good -- good -- good activities with -- with the policies that I brought to the company.

Q. Was Nuance Communications one of those companies?

A. Yes, Nuance was one of the ones. And that was the speech-to-text technology that had been developed by the STAR Laboratories then, which was

one of the laboratories at -- at SRI.
Q. And what did STAR Laboratories do?
A. It was a laboratory that developed a -- a technology to convert speech to text. So you could use your microphone and talk into it, and it would come out as a typewritten -- typewritten -- can't think of the right word. But anyhow, it -- it did that. It made text out of the -- out of the speech.
Q. Okay. I meant to ask you about Raychem. Did Raychem ever go public?
A. Yeah. It's -- the third year of our history, it went public. And we had a very successful financial history.
Q. Okay. And was it at one time one of the Fortune 500 companies?
A. Yes, it was. And we -- we had 11,000 people at the time that I retired. I retired because of a promise I made when I started the company that -- that all CEOs of Raychem would have to retire when they were 65, my believing that -- that older people are in general not -- not quick enough to -- to stay up to the technologies that -- that were being used.
Q. Okay.
A. I couldn't have been more wrong.

Q. Exhibit 83 makes reference to "Sarnoff," S-A-R-N-O-F-F, Labs. Can you tell us what Sarnoff Labs was, please.

A. Sarnoff was the research laboratories for the General Electric Company. And when -- when Jack Welch took over as the head of GE, he made a gift of the research laboratories of -- of RCA and made that gift to SRI. He did that because he felt they were redundant, that the two research laboratories were chasing the same secrets. And so he made a gift of the Sarnoff Laboratory in Princeton, New Jersey, made a gift to SRI. Webb -- Welch, having known the head of SRI and having good friendship there, he -- he felt that that was an appropriate place to -- to -- to put Sarnoff Laboratories.

Q. Okay. Thank you for that.

Exhibit 83 also makes reference to some awards that you received. One, in 1988, was the National Medal of Technology, from President Reagan. Is that consistent with your recollection?

A. Yes. The United States makes a gift -- well, a -- a presentation of a -- of a -- a token of -- a medal, and -- and I was fortunate in 1988 to have been one of nine Americans who -- who received, in -- in that year received the medal for that.

Q. Okay. Exhibit 83 also makes reference to the Winthrop-Sears Medal, from "chemical industry" group. Do you recall that?

A. Yes, I do.

Q. And Exhibit 83 also makes reference to the Golden Omega Award from "Electrical" and "Electronics Insulation Conference." Do you recall that?

A. Yes, I do.

Q. Were you also elected to the Bay Area Business Hall of Fame?

A. Yes. The Bay Area Council has a -- an award they give every year, and I was fortunate in being elected the -- the one for the year you identified.

Q. Okay. So all of that activity, and then you also founded and started AgileTV; is that right?

A. That's correct.

Q. And were you still at SRI when you started that process?

A. Yes, I was.

Q. Okay. Tell us about how AgileTV got started, please.

A. AgileTV got started because there was a need for -- for recording and playing back

television. And this -- this was a successful ploy, for SRI to deal with others, and -- and -- and with much success, Sarnoff, part of SRI, developed and -- and sold rights to those -- those capabilities for -- for -- for the commercial use. And they won many awards because of that, being the first ones in the United States that had done such a thing.

Q. Okay. And did AgileTV initially involve speech to text, the concept that you had been working on at previous companies?

A. Not exactly. They were -- they were initially used for making stock quotes automatically, and to present them on a -- a board showing the -- the results of the stock markets minute-by-minute in Wall Street, and that was then, in turn, broadcast throughout the United States. And that's how we see today our -- our stock prices.

Q. What was the inspiration that caused you to start AgileTV?

A. The fact that SRI and its laboratories had the capability of putting together the technical capability, I thought -- I thought that they would have the capability of sewing together the needs that you had to make the -- the speech come through and -- and be accurate, fast, up to date, and on

time.
Q. That --
A. And it -- and it worked.
Q. Please.
So what was speech supposed to do with respect to the idea you initially had at AgileTV?
A. Excuse me. Repeat.
Q. What was -- sorry. Let me rephrase it.
What was -- how did you expect to use speech for television when you started AgileTV?
A. When I started AgileTV, we -- we expected that the -- the television platform, including the head-end, would -- would -- would deliver to the television capability the instructions that the customer wanted delivered.
Q. And the instructions would be by speech, by talking, correct?
A. By speech, yes.
Q. Okay. And you held the position of CEO at AgileTV for five years or so?
A. Yeah, I don't remember exactly how much, but something on that order.
Q. All right.
(Deposition Exhibit 84 was marked for identification.)

BY MR. MOSKO:

Q. I'm going to show you -- you can just keep that one document right in front of you. I'm going to show you what we've marked as Exhibit 84 to this deposition. At least the first page of Exhibit 84 appears to be a copy of an email. Do you see that?

A. Yes, I do.

Q. And can you identify the "From" entry in Exhibit 84? It says, "Paul Cook" and then pcook@agile.tv." Was that your email address while you were at AgileTV?

A. Yes, it was.

Q. And it's dated September 19th, 2003. Do you see that?

A. Yes.

Q. And it's -- the "To" line says, "To: sschwartz@comcast.com" and "dhorowitz@comcast.com." Do you see that?

A. Yes.

Q. And it says the subject matter is "AgileTV." Do you see that?

A. Where's that?

Q. The subject matter, "AgileTV," on the very top, Mr. Cook.

A. Oh, oh, oh, oh. Okay.

Q. All right. So do you recognize this exhibit generally as the form that a printed email would take while you were at AgileTV?
A. Yes, I did.
Q. Okay. Now, while you were at AgileTV, did you have the habit and custom of using emails to record important business events?
A. Absolutely.
Q. Okay. Can you explain what that habit and custom was.
A. When you create new products or technologies, it requires an understanding of how those things work in real depth. And I believed that -- to have successful research and development for such things as we're talking about, I felt that it was necessary to educate everybody working on it to the best of our ability and therefore send around memoranda that would detail the information about how this was working and how it should work and what the results have been.
Q. And when you'd send this memoranda, was that in the form of an email?
A. It was frequently in, but not only, the form of an email.
Q. And was this a regular practice that you

implemented at AgileTV?
A. Yes. In fact, I used to have weekly meetings of everybody in the company, if people were there, and would have the people who did the work actually reveal to the rest of the employees what would -- what had been done.
Q. And was that exchange of information -- did you use email for that?
A. I also used email for that.
Q. Okay. And was it the habit and custom at AgileTV for the employees at AgileTV to use email similarly to the way you've just described?
A. Very much so.
Q. And you talked about weekly meetings. Was that a habit and custom that you had created and observed while you were at AgileTV?
A. Yes.
Q. Regular practice at AgileTV?
A. Yes, regular practice.
Q. And was it a regular practice to use emails that shared or identified the sum and substance of the weekly meetings --
A. Yes.
Q. -- at AgileTV?
A. Yes.

Q. Okay. When you created an email -- well, strike that.

When an important communication from a customer or potential customer occurred, did you use email to memorialize that?

A. Yes.

Q. And was that a habit and custom, to memorialize important communications from customers?

A. It became a custom throughout the whole company.

Q. Okay. And were the employees at AgileTV directed to use email to record important communications from customers or potential customers?

A. Yes, with some questions, that those things that we wanted to keep secret we would have to keep secret and did not reveal.

Q. Was email used to share communications among the employees at AgileTV when those communications occurred?

A. Yes.

Q. And was that a habit and custom that AgileTV developed?

A. Yes. It was standard practice.

Q. And did you -- were you the one who

implemented that practice?
A. Yes, I was.
Q. When something exciting or good happened at AgileTV, was it your habit and custom to memorialize that activity through email?
A. Yes, absolutely.
Q. All right. So taking a look, please, at Exhibit 84, as we indicated, it has a date of September 19, 2003. Do you have any reason to believe that that was not the date that this particular email was sent?
A. No.
Q. And I notice on Exhibit 84, there's some highlights. Do you see those?
A. On page -- yes, I see the highlights.
Q. Okay. Turn, if you would, please, to the next two pages. I want you to look at the page that on the bottom is marked 24816.
A. Okay.
Q. And 24816, does that appear to be a PowerPoint presentation or a copy of a PowerPoint presentation?
A. Yes, it does.
Q. All right. And that page, 24816, reads, "The mission of AgileTV is to be the global leader

in voice-controlled television for the Cable Industry." Do you see that?

A. Yes, I do.

Q. In fact, was that the mission of AgileTV, as you recall?

A. Very much so.

Q. Okay. And are those your highlights on that particular page, 24816?

A. Yes.

Q. All right. Did AgileTV create a goal of introducing its technology to Comcast?

A. Create a what?

Q. A goal --

A. A goal?

Q. -- of introducing its technology to Comcast.

A. We, early on, went to Comcast to try to convince them that we had something that was important to them.

Q. And as a result of that, did you begin having meetings with Comcast people?

A. Yes, we did.

(Deposition Exhibit 85 was marked for identification.)

BY MR. MOSKO:

Q. All right. We're marking as Exhibit 85 this document. And let me hand it to you.

Mr. Cook, do you recognize this as a document that you have most recently reviewed? Have you seen this before?

A. Yes, I have.

Q. Okay. And the document has a number of highlights. Are those your highlights?

A. Yes, they are.

Q. Okay. The document is -- is from you; is that right?

A. Excuse me?

Q. This document is a -- is a copy of an email that was sent from you?

A. From me, yes.

Q. Okay. And it's dated June 29th, 2001. Do you see that?

A. Yes, I do.

Q. And it's to a "steve_silva," S-I-L-V-A, "@comcast" -- sorry, "steve_silva" --

A. Right --

Q. -- "@cable.comcast.com."

Can you tell us who Steve Silva was, please.

A. He was an executive who worked for Comcast,

who previously had worked for another cable company and had joined Comcast to put into action some of the things that we were interested in.

Q. Okay. You wrote this email?

Did you write this email?

A. Did I?

Q. Write this email.

A. Yes, I did.

Q. Okay. The email reads as follows: "Steve: Thanks for your time yesterday - seeing our demo and listening to our plans. We have taken your advise, are setting up meetings with the technical people you've suggested and will use the information gained to create an accurate and dependable time line for you as you've requested. This will be with a DCT 2000 platform and either a TV Guide or TVGateway IPG plus DIVA VOD and including Wink" and "all without Middleware."

Does this document refresh your recollection as to when the earlier meetings at -- with Comcast personnel occurred?

A. Yes.

Q. And that's dated June 2001, correct?

A. Correct.

Q. Okay. And by that time, Mr. Cook, June

2001, had AgileTV already begun applying for patents and intellectual property protection?

A. Yes.

Q. And that would be on its voice recognition technology for television; is that right?

A. That's correct.

(Deposition Exhibit 86 was marked for identification.)

BY MR. MOSKO:

Q. Marking as Exhibit 86 this document. Let me show you it to you.

This document, on the front page, is entitled "Confidentiality Agreement." You've seen this document recently; is that right?

A. That's correct.

Q. That's your highlight on the document; is that right?

A. That's correct.

Q. And is this one of the confidentiality agreements between AgileTV and Comcast that were signed?

A. Yes.

Q. Okay. And can you flip to the very back page of this agreement.

That page, which is -- has a Bates stamp on

it of 218486, is signed by Agile -- AgileTV Corporation by Jim Jervis, J-E-R-V-I-S. Can you tell us who Jim Jervis was, please?

A. He was an employee of -- of the company and had previously been an employee of Raychem Corporation. And I first hired him -- first hired him when he graduated from high school. And he had stuck with me at all my different companies through history.

Q. Okay. And under the phrase "Comcast Corporation," does that appear to be the signature of Mark A. Coblitz, C-O-B-L-I-T-Z?

A. Yes.

Q. Who was Mr. Coblitz?

A. Coblitz was a technologist and executive who worked for Comcast and in particular was interested in the television side of the business.

(Deposition Exhibit 87 was marked for identification.)

BY MR. MOSKO:

Q. Let me show you what's been marked as Exhibit 87, as -- if I can, please. This is another confidentiality agreement between AgileTV and Comcast; is that right?

A. Yes.

Q. And this one's dated August of 2003, if you'll look at the back page; is that right?
A. Right.
Q. On the -- on the very last back -- on the very last page, Mr. Cook, can you identify that as your signature?
A. That's my signature.
Q. And next to the Comcast -- or under the Comcast name, does that appear to be Mr. Coblitz's signature?
A. That's Coblitz's signature.
Q. I have just a few more confidentiality agreements that I'd like to show you.
(Deposition Exhibit 88 was marked for identification.)
BY MR. MOSKO:
Q. Take a look at Exhibit 88, please.
This is a document -- if you'll look at the back page of this confidentiality agreement, it's dated by you August 21st, 2003. Is that your signature?
A. That's my signature.
Q. And does that appear to be -- right under -- underneath the "Comcast New Media Development, Inc.," does that appear to be the

signature of Charlie Cerino as the vice president of engineering at that --

A. It does.

Q. -- company?

Thank you.

I think I want to show you one more. This one will be marked Exhibit 89.

(Deposition Exhibit 89 was marked for identification.)

BY MR. MOSKO:

Q. Mr. Cook, this -- Exhibit 89 is identified -- the first page reads "Amendment to Confidentiality Agreement Between AgileTV Corporation and Comcast Corporation." I'd like you to turn to the last page of Exhibit 89. Can you identify your signature, please?

A. Yes, I can.

Q. And under the Comcast Corporation signature, does that appear to be the signature of Mark A. Coblitz?

A. Yes.

Q. And his title appears to be "SVP" -- do you understand that to mean "senior vice president"?

A. Yes.

Q. -- "of Strategic Planning." Do you see

that?
A. Yes.
Q. So that's -- that was signed by you in June '04 and by Mr. Coblitz in May of 2004; is that right?
A. Yes.
(Deposition Exhibit 90 was marked for identification.)
BY MR. MOSKO:
Q. Okay. Next let me show you as -- what we've marked as Exhibit 90. Exhibit 90 appears to be a email from a Carol Parker. Do you see that?
A. Yes.
Q. Can you tell us who Carol Parker --
A. She was --
Q. -- was, please?
A. -- my office manager for AgileTV.
Q. So an earlier exhibit, we saw a -- we saw a -- indication of a meeting between you and Mr. Silva in 2001. Were there additional meetings between Comcast and AgileTV after that initial meeting?
A. Dozens and dozens.
Q. Okay. So if you look at Exhibit 90, starting on the second page, please. That second

page makes -- the first part of that second page reads "Comcast Meetings/Phone Conferences." Do you see that?

A. I see that.

Q. And there are six additional meetings in 2001. Is that consistent generally with your recollection of the dozens and dozens of meetings that occurred --

A. Yes.

Q. -- between Comcast?

A. Absolutely.

Q. Okay. And then on two thousand -- in 2002, that exhibit indicates there were eight either phone conferences or meetings between Promptu, or AgileTV, and Comcast. Is that consistent generally with your recollection?

A. Yes, it is.

Q. Was Mark Hess, H-E-S-S, one of the people at Comcast with whom AgileTV met on a regular basis?

A. He was a high executive and very interested in the work that we were doing and was adopting his -- his own interest in it for Comcast.

Q. Okay. And how about Joe Donnelly, D-O-N-N-E-L-L-Y? Was he one of the people at Comcast that you met with?

A. Absolutely.

(Deposition Exhibit 91 was marked for identification.)

BY MR. MOSKO:

Q. I'm going to show you what we're marking as Exhibit 91, please.

Exhibit 91, can you identify that as a copy of an email that you sent?

A. Yes, I can.

Q. On -- and that one was sent on or about January 9th, 2002; is that right?

A. Right. Correct.

Q. Okay. And the -- I won't read it all into the record, but let me start. It's to "All employees." You earlier testified about a habit and custom of sending periodic communications to the employees. Is this an example of that?

A. This is an example of that.

Q. All right. So the first paragraph in part reads, "All employees: Today, as most of you well know, we were visited by three key executives and technologists from Comcast to do further due diligence on our AgileTV system. They spent two plus hours with us and went through a comprehensive presentation and demonstration. The presentations

and demonstrations could not have been better - everything worked well and they were attentive and receptive to everything we presented and showed them. They were certainly convinced by the time they left that we do have an application for television that will have a profound effect."

Is that consistent with what you recall occurred in this early meeting on or about January 9th, 2002?

A. Very much so.

Q. All right. The second paragraph makes reference to Mark Hess. It reads "Mark Hess who was the senior" executive -- "exec here."

Do you have any reason to believe that Mr. Hess wasn't present at this meeting in January 2002?

A. No reason.

Q. And one of the highlights that you have on this document reads as follows: "Mark Hess has continued to talk about a 1st Quarter deployment in Baltimore using Liberate middleware, DCT 2000s, SeaChange VOD, and a new Java based TV Guide IPG." Do you see that?

A. I do.

Q. And to the best of your recollection, is

that consistent with what Mr. Hess said on or about January 9th, 2002?

A. Yes, it is.

Q. Now, Mr. Cook, these emails to all employees, or the "all hands" emails, would you be the one who would actually type them?

A. Rarely would I type them. I'm not the best typist in the world. And Parker would be the one that would do the typing.

Q. That would be Carol Parker?

A. Carol Parker.

(Deposition Exhibit 92 was marked for identification.)

BY MR. MOSKO:

Q. Okay. Let's mark this next document, please, as Number 92.

This appears to be an email from Dave Hanson, dhanson@agile.tv. You indicated earlier that Mr. Hanson was one of the employees of AgileTV that you initially hired; is that right?

A. That's correct.

Q. Okay. And the subject matter of this document is "Questions Asked By Comcast." Do you see that?

A. Yes, I do.

Q. Okay. Now, this is dated a bit after the Exhibit 91. Again, this is dated February 12th, 2002. And did -- have you highlighted some -- some of the writing on Exhibit 92?

A. Yes, I did.

Q. And it reads -- the part that you've highlighted reads as follows: "Hess was again our champion during the meeting. The turning point for Joe was when Mark explained that he felt he could drive substantial revenue with AgileTV and compared the potential revenue from AgileTV against what revenue they are driving with their digital box."

Do you have any reason to believe that this email is not -- did not accurately reflect what Mr. Hess said during this meeting?

A. No reason at all.

Q. Okay. We looked at a email that listed several of the meetings between AgileTV and Comcast in 2001 and 2002. Did the meetings continue after 2002?

A. Yes, they did.

(Deposition Exhibit 93 was marked for identification.)

BY MR. MOSKO:

Q. Let's mark, as this next document, Exhibit

93.

Does Exhibit 93 appear to be a copy of -- does Exhibit 93 appear to be a copy of an email that was sent by Dave Hanson?

A. Correct.

Q. And you've highlighted several lines on this exhibit; is that right?

A. That's correct.

Q. Okay. Do you have any reason to believe that this email is not accurate, does not accurately reflect what was -- what occurred in February of 2003?

A. No reason.

Q. Okay. And the email reads, at least in part, as follows: "I wanted you to be aware that we had a scheduled 2 hour meeting that last for 4 hours at Comcast on Tuesday hosted by Mark Coblitz and Mark Hess to show our voice enable product to senior management including Steve Burke and Ralph Roberts. The meeting went extremely well with them showing real strong interest in us. Burke quickly recognized the importance of voice as...strong offense/defense against DBS. He is also very aware of the problems their subs are having finding all the additional programs now being offered and sees

us as a true solution to easing navigation. Burke was very serious about us quickly implementing, within 9-12 months, an initial deployment of 10,000 voice enabled subs to determine if the voice product could really increase VOD buy rates, reduce churn and drive digital. After we presented to him, he went out and rounded up many of his" senior -- "many of his key senior managers and 'strongly requested' that they sit in for the demo as well. Always nice to have someone show up and say 'I am only here because Steve told me to be here now.'"

Can you tell us who Steve Burke was, please.

A. Steve Burke was perhaps the number three man in the company, a top executive, one that was involved in most major decisions in the company.

Q. And you're talking about Comcast, correct?

A. I'm talking about Comcast.

Q. Okay. The -- this Exhibit 93 also makes reference to Ralph Roberts. Can you tell us who Ralph Roberts was, please.

A. He's the -- Ralph Roberts was the -- the originator of the company and the principal owner of Comcast.

Q. Again, any reason to believe that this

document does not accurately depict what was said during that meeting that occurred on or about February 7, 2003?

A. No reason at all.

Q. The email made reference to "DBS." Do you understand that to mean "direct broadcast satellite"?

Yes?

A. Yes.

Q. Okay. And is your understanding of DBS to mean that that is a company that receives signals directly from satellites?

A. Correct.

Q. Television signals, correct?

A. Sir?

Q. Television signals directly from satellite?

A. Yes.

(Deposition Exhibit 94 was marked for identification.)

BY MR. MOSKO:

Q. Okay. Let's mark as Exhibit 94, if we can, this next document.

Now, do you recognize this document as an email that you sent?

A. Yes, it is.

Q. Okay. And, again, this is an "All" -- "To All Employees" email, consistent with your earlier testimony about your habit of making everyone aware about what was going on?

A. Correct.

Q. All right. And you've highlighted a number of lines on this email as well; is that right?

A. Yes.

Q. And let me read into the record those highlights.

"To sum up" -- sorry. Let me -- let me do this: It's dated February 7, 2003, correct?

A. Correct.

Q. And the highlights that you've added to this document read as follows: "To sum up, it was very rewarding for all of us who attended the Comcast meetings to see them enthusiastic about our" -- "about our system and its many attractions and advantageous. They do believe that it can be the differentiator to DBS as well as helping their own digital roll out by reducing churn, providing lift from analog to digital and increasing their VOD buy rates."

First, did you create this email shortly after this visit with the Comcast personnel that's

referenced in it?
A. I believe I did.
Q. And were you excited to hear about their interest in the AgileTV system?
A. I certainly was.
Q. And do you have any reason to believe that this email does not accurately depict what the people from Comcast said?
A. None.
Q. It makes reference to "churn"; that is, that they believe that it, the AgileTV system, can help reduce churn. What is your understanding of churn, please?
A. Churn is the turnover of customers that did -- that were a customer and -- and then gave it up and -- and left being a customer.
Q. Okay. So by this time, that is, the beginning of 2003, AgileTV and Comcast had had several meetings about AgileTV's technology; is that right?
A. Yes.
Q. And did AgileTV disclose the detailed documents that it had created about its system to Comcast?
A. Yes.

Q. Okay. And did you direct the technical staff to send Comcast all of the technical documents and details concerning the AgileTV voice recognition system?

A. I believe so.

Q. And this direction was done pursuant to the confidentiality agreements that were signed; is that right?

A. Yes.

Q. All right. Thank you.

A. Can I make a request?

Q. You may.

A. We've been going a little more than an hour now, I guess. I'd like to take a five-minute break and walk around the table, or something. It's getting a little tiresome.

Q. I think that's a reasonable request. Why don't we do that.

Let's go off the record, please.

THE VIDEOGRAPHER: Okay. Stand by.

This ends tape number 1 in the deposition of Paul Cook. We are off the record at 11:20 a.m.

(Recess taken.)

THE VIDEOGRAPHER: We are back on the record at 11:35 a.m. This marks the beginning of

disk number 2.
BY MR. MOSKO:
Q. Mr. Cook, can I ask you, please, to take a look again at Exhibit 92, that's in front of you, please. We read into the record the highlighted portions concerning statements that Mr. Mark Hess made. To the best of your recollection, Mr. Cook, were you present at this meeting that is referenced in Exhibit 92?
A. I believe I was.
Q. And Exhibit 93 -- thank you. I'm sorry.
Mr. Cook, do you have Exhibit Number 93 in front of you?
A. Yep. Here it is right here.
Q. Exhibit 93. Thank you very much. We also -- thank you.
No, let me have you take a look at Exhibit 93, please.
We read into the record certain portions of Exhibit 93 that made reference to a meeting at Comcast that was hosted by Mr. Coblitz and Mr. Hess, where Mr. Burke and Mr. Roberts were present. To the best of your recollection, were you present at that meeting?
A. I believe I was.

MR. LAM: Mr. Mosko, I need to say something for the record. I --

MR. MOSKO: Please.

MR. LAM: -- have not posed any form objections so far to counsel's questions. By not doing so, Comcast does not waive any hearsay or other substantive objections, which we're not required to make at the deposition itself under the rules.

MR. MOSKO: I understand. If you have objections, of course, you're entitled to make them.

(Deposition Exhibit 95 was marked for identification.)

BY MR. MOSKO:

Q. Okay. The next exhibit is Exhibit Number 95. Let me show you what we've marked as Number 95, Mr. Cook.

Is Exhibit Number -- does Exhibit Number 95 appear to be a copy of one of those all -- all-employee emails that you had a habit and custom of sending at AgileTV?

A. Yes, I did.

Q. And this one is dated May 13, 2013. Again, it's to all Agile employees. And did you have an opportunity to review and make highlights to this

document?
A. Yes.
Q. Okay. So the part that you highlighted let me read into the record. It says "in a telephone conversation with Mark Coblitz of Comcast he told me that Dave Watson, their top marketing executive, is excited by our system, is supportive of our deployment and would first make our service available to their Platinum digital tier subscribers free. Mark said that would constitute something like 50,000 subs in the Philadelphia area. Further it would be on DCT 2000 boxes. Since Comcast has well over 6,000,000 digital subs now, their Platinum package subs would total something like 500,000. That would be a great beginning for us."
Can you tell us, please, again, who Mark Coblitz is?
A. He's one of the senior Comcast executives who were heavily involved in the television part of the business.
Q. Okay. And when Mr. Coblitz -- are the statements that I just read into the record -- to the best of your recollection, do they accurately reflect what Mr. Coblitz said?
A. Yes, I think quite well.

Q. And that occurred during a telephone conversation that you were present on?
A. Yes.
Q. And was this telephone conversation -- strike that.
Was the substance of this telephone conversation exciting to hear?
A. Very much so.
Q. All right. Now, it makes reference to the DCT 2000 box. Do you recall what that is?
A. Yeah. It was the most common set-top box that -- that Comcast and many other MSOs were using in those days.
Q. Okay. And was it your understanding that the deployment that was anticipated by Comcast of the AgileTV boxes -- of the AgileTV system was to be on the DCT 2000?
A. Yes.
Q. Did Comcast ever explain why it wanted the initial deployment on the DCT 2000 boxes?
A. I think they did.
Q. What did they say, please?
A. I think they said that it was the most common box, and since it was the most common box out there, they wanted our system to be able to be

played on the most prevalent box.

(Deposition Exhibit 96 was marked for identification.)

BY MR. MOSKO:

Q. Okay. This next exhibit is being -- has been marked as Number 96.

And this -- is this another one of your emails that you used to memorialize important events and conversations?

A. Yes.

Q. And are these your highlights on this email?

A. Yes, they are.

Q. This is an email, or a copy of an email, that you wrote or directed; is that correct?

A. That's correct.

Q. And it's -- it's dated August 26, 2004; is that right?

A. That's correct.

Q. And the subject matter is "Comcast Meeting"?

A. "Comcast Meeting," right.

Q. All right. And the first portion of that email reads, "To All Employees: Dave Hanson and I had excellent meetings with Comcast yesterday."

Does that accurately depict your recollection as to whether you had a meeting with Comcast on or about August 25, 2004?

A. Yes.

Q. And the highlights read as follows: "They have not defined the project yet other than to say that it will include making our system robust and scalable, to include GuideWorks, without saying how, to improve speech recognition accuracy, VOD with SeaChange and several set-top boxes: DCT 2000, 2500, 6412, 700C, 700D, and the NGNA box."

Is that consistent with your recollection of what was said during this meeting on or about August 25th, 2004?

A. Yes.

Q. And were you excited to hear their statements that are reflected in this email?

A. We were excited and delighted.

Q. Okay. It makes reference to a number of other set-top boxes. To the best of your recollection, what were these other set-top boxes?

A. They were all variations on the original and were more elegant in many of the applications that it allowed on the -- on the -- on the setup.

Q. Was it AgileTV's intention to deploy its

technology on set-top boxes in addition to the DCT 2000?

A. Absolutely.

Q. And were plans being made to do so?

A. Yes.

Q. Who was generally tasked with the responsibility of performing the technical details at AgileTV for these -- for this technology?

A. David Chaiken was the primary person.

Q. So if I have technical questions regarding this technology, I should direct them to Mr. Chaiken?

A. He would be -- yes.

Scratching everything, it's just yes.

(Deposition Exhibit 97 was marked for identification.)

BY MR. MOSKO:

Q. Let's mark the next exhibit.

Mr. Cook, this is an exhibit that's marked Number 97. Does this appear to be an email that you either wrote or directed on July 27, 2005?

A. Yes.

Q. And the subject matter of this email is "Meeting with Silva"?

A. Correct.

Q. To the best of your understanding, is that the Steve Silva who you met with earlier in 2001?
A. Yes.
Q. Okay. And was Mr. Silva your primary contact with Comcast as it concerned Comcast deployment of the AgileTV technology into the Comcast cable system?
A. He was certainly a key contact, but I wouldn't say he was the main one.
Q. Okay. To the best of your recollection, is this Exhibit 97 accurate?
A. Yes.
Q. So Exhibit 97 in part -- well, it starts with "A great meeting," and then at the bottom of the first paragraph, it says, "Brian Roberts has said he wants a significant test deployment of our service, not a research project. And soon."
Does this refresh your recollection as to whether Mr. Roberts was present at this meeting?
A. Yes, it does.
Q. Okay. And then you've highlighted the following sentences, or I guess it's one sentence. Let me read this. It's in the second paragraph.
"It'll be done on the 6412s. I told him we would hope to get into Acadia in March or April. He

would like to see two months testing after Acadia approval and then major roll out to measure customer acceptance and price point results. That will lead to system wide roll out with OCAP in 2007 or when possible."

To the best of your recollection, is this statement that I just read into the record -- does it accurately reflect what Mr. Silva said during this meeting in or about July of 2005?

A. I believe so.

Q. And were you excited to hear Mr. Silva say what was just read into the record?

A. Yes. It was good news.

Q. Now, it makes reference to "system wide roll out with OCAP." You'd previously indicated Mr. Chaiken was the person to whom I should address technical questions. Is this one of those topics, OCAP, that I should ask Mr. Chaiken about?

A. It would be.

(Deposition Exhibit 98 was marked for identification.)

BY MR. MOSKO:

Q. Okay. Let's mark the next exhibit as Number 98, please.

Mr. Cook, Exhibit 98 is an earlier email.

First of all, let me ask you, is this consistent with your recollection as to whether it is an email that you wrote in or about March 6th of 2002?

A. Yes, this is.

Q. Okay. And that's your email address on the top?

A. Yes.

Q. And the subject matter is "News from Comcast"; is that correct?

A. Correct.

Q. And the first sentence of this document makes reference to "two short informal meetings with Mark Hess." Do you see that?

A. Yes.

Q. And then the next sentence reads, "The feed back from Mark is totally positive as he has told us...he and Joe Donnelly are in favor of and are pushing hard for a $2 million investment to be made ASAP." Do you see that?

A. Yes, I see that.

Q. Does this email accurately depict what was said during these meetings in or about March of 2002?

A. I think it does.

Q. Okay. And were you excited to hear

Mr. Hess and Mr. Donnelly indicate that they'd be pushing hard for a 2 -- $2 million investment into AgileTV?

A. It was certainly good news.

Q. Okay. And with respect to Mr. Hess, the additional highlights in this document read as follows: "When asked what he would tell them" -- are you talking about investors, possible investors, when you make reference to "them" in this sentence?

A. Yes.

Q. "When asked what he would tell them he could honestly say: We like what Agile is doing. Agile's system is an excellent application for cable TV. They have some really smart people. We like their business model. We expect to deploy the system."

Is this what Mr. Hess said on or about March 6, 2002, to you?

A. It's my belief.

Q. And were you excited to hear these words from Mr. Hess?

A. Yes, I was.

(Deposition Exhibit 99 was marked for identification.)

BY MR. MOSKO:

Q. Let's go to the next exhibit, which is Exhibit 99, please.

So Exhibit 99 is dated just a little bit less than a year from the previous exhibit. Does this appear to be a copy of an email that you sent to all employees at Agile?

A. Yes.

Q. And this is consistent with the habit and custom of your sending emails --

A. It is.

Q. -- with -- when important events occurred? Yes?

A. Yes.

Q. All right. So Exhibit 99, the subject matter is "Update," correct?

A. Yes.

Q. And it reads -- the first part of it reads, "Here's an update for you on many items. First, five of us went to Philadelphia on cheap or free tickets and met with a VC, Motorola and Comcast." Do you see that?

A. Yes.

Q. Does this refresh your recollection as to whether you and four other people at AgileTV actually went to Comcast in or about August of 2003?

A. Yes.
Q. The second -- or the third paragraph of this document you've highlighted, correct?
A. Yes.
Q. And your highlights read as follows: "The meetings" at -- "with Comcast were excellent."
"They suggested that we get a one sub system in their lab quickly so that for a couple of weeks they can use it and kick the tires. That would be followed quickly by an installation at their Philadelphia super head end with just a few friendly subs."
Is that -- does that accurately reflect the communications that occurred at Comcast in or about August of 2003?
A. I think so.
Q. Okay. Then let me read on.
"Then when we're ready that would be ramped up to perhaps 50 or 100 friendlies -- some employees, some not -- which is the limit this group would handle. We would then be handed off to Operations to ramp" up "to the" first -- "to the 1,000 for the initial deployment."
Now, you had mentioned Mr. Chaiken as responsible for the technical details at AgileTV.

Was he also responsible for the deployment and installations of the technology into the Comcast system?

A. Yes, he was.

Q. So I should ask Mr. Chaiken about specifics about the installations; is that right?

A. Absolutely.

Q. Okay. And does this Exhibit 99, that portion that I just read -- does it correctly and accurately depict what was said at Comcast during the meeting in or about August of 2003?

A. I believe it was.

Q. And were you, as the CEO at AgileTV, excited to hear that Comcast was expecting a phased deployment of its technology into the Comcast system?

A. Yes, we -- I was.

(Deposition Exhibit 100 was marked for identification.)

BY MR. MOSKO:

Q. Okay. Let's mark as the next exhibit, Number 100, this document, please.

This is a document from you to all employees, dated September 25, 2003; is that correct?

A. Yes.
Q. And it appears that you are forwarding an email from Mr. Chaiken. Is that right?
A. Yes.
Q. Can you tell us what the Comcast NMD living room was, please?
A. It was a place for demonstrating the deployment of Comcast's products. And quite a substantial display was made of our stuff.
Q. Okay. So Exhibit 100, that is, that portion of -- that was written by Mr. Chaiken, which is dated, again, the same date, September 25, 2003, reads as follows:
"Our demo is now in the Comcast NMD living room. Check out this karma.
"Charlie Cerino, VP, head of NMD, walks in and says, 'Is it working?'
"Mark Francisco, NMD manager, says 'yes,' and does a few successful utterances.
"Charlie picks up the remote, does 'scan cooking' and 'scan sports.' Both work. Charlie then says, 'I could fall in love with this.'
"Just then, Mark Coblitz, Sr. VP of Strategy, walks" in "the living room and says to Charlie, 'What's that?'

"Charlie says, 'AgileTV.'

"Mark says, 'Oh, yes. I know you can fall in love with that.

"One minute later, in the hallway, Mark says, 'Everybody loves this toy. The only question is the economics.'

"Jim Poder, my primary NMD contact, just came in to say that the timing could not have been better. Jim says that Sam Schwartz is coming in next week to see the demo, because he's looking to make an investment in AgileTV. Jim also says that Mark Hess plans to stop by next week."

Is this consistent with your understanding of what occurred with respect to the initial installations at Comcast in or about September of 2003?

A. Yes.

(Deposition Exhibit 101 was marked for identification.)

BY MR. MOSKO:

Q. Let's mark as Exhibit Number 101 this document.

Oh. Give me that back.

Mr. Cook, do you know if the AgileTV voice recognition system was ever deployed in Brian

Roberts' office?
A. I believe it was.
Q. Exhibit Number 101 is an email from Mr. Chaiken to Jim Poder, jpoder@comcastnmd.com, and the subject matter is "exec sighting." Do you see that?
A. Yes, I do.
Q. And the -- and the email reads, "I just gave Brian Roberts an update on our progress in the elevator. He asked about getting AgileTV installed in the East Tower. Of course, I said 'yes, we can do that,' but recommended that he wait for version 2.1. He'll be expecting his voice TV in about a month, and said that he would talk to Mark Coblitz about getting it installed."
Did Mr. Roberts ever speak with you about the system that was installed in his office?
A. In his office?
Q. Yes.
A. Rephrase the question, please.
Q. Okay. This document makes reference to installation of the AgileTV system into Mark -- into Brian Roberts' office. Is that your understanding of what occurred?
A. That is correct.

Q. And did Mr. Roberts ever talk to you about the way he felt about the AgileTV technology?
A. Yes, he did.
Q. What did Mr. Roberts tell you?
A. Very favorable comments.
Q. Can you be more specific?
A. Thought it would make a big difference to the -- the deployment of the -- of the Agile system.
Q. Okay. Let's mark --
MR. LAM: Would you read back the response, please.
(The record was read by the reporter.)
MR. LAM: One more time. "It would make a...difference"?
(The record was read by the reporter.)
MR. LAM: Thank you.
(Deposition Exhibit 102 was marked for identification.)
BY MR. MOSKO:
Q. We'll talk more about Mr. Roberts with this exhibit, which is marked as Exhibit 102.
This exhibit appears to be an email that you either wrote or directed; is that correct?
A. That's correct.
Q. And it's dated August 19, 2005, right?

A. August 2005. Right.
Q. And number -- you've highlighted number 2 in this email.
By the way, was this one of those emails that you sent to the employees at AgileTV as a result of activities that were occurring between AgileTV and Comcast?
A. Yes.
Q. All right. And you've highlighted number 2. Number 2 reads, "Brian Roberts, Comcast CEO, has been using our Agile system in his office and continues to talk about our service publicly. He has told his management that he wants a substantial deployment of our system to 50,000 subs in at least one metropolitan area ASAP. This is to be done with our iGuide. Again, this is a huge plus for us."
Is this, what's -- what's referenced in Exhibit 102, consistent with what Mr. Roberts said to you about the AgileTV system?
A. It is consistent.
Q. And did Mr. Roberts tell you that he wanted a substantial deployment of the AgileTV technology into the Comcast television network?
A. Yes, he did.
Q. And did he tell you that more than once?

A. Yes, indeed.
Q. Did he tell you that a number of times?
A. He told me a number of times.
Q. And did you believe it?
A. Absolutely I believed it. He was the chief cook and bottle washer of the whole corporation.
Q. And did you rely upon Mr. Roberts in moving forward with developing the technology based on Mr. Roberts' representations?
A. Yes, plus everybody who was supporting him.
(Deposition Exhibit 103 was marked for identification.)
BY MR. MOSKO:
Q. Let's mark this exhibit as 103, please.
Mr. Cook, do you know if the AgileTV voice recognition control system was ever installed in Steve Silva's office?
A. I believe it was. I was told that it was. I'm not sure that I saw it in his office. But I do know he was claiming to have it.
Q. Okay. And Exhibit 103 is an actual email from Jim Poder, jpoder@comcastnmd.com, to Jay -- to David Chaiken, with a cc to Jay Kistler. Do you see that?
A. I see that.

Q. And you've highlighted, I guess, the third paragraph of Exhibit 103, which reads, "Regarding the box we put in Steve Silva's office: The feedback I got from Steve Silva's guy was that his experience with the 2.0 system was positive. In fact, I'm having a hard time getting it back from him! I'm not sure if" that's "a good or a bad thing."

Does that refresh your recollection as to whether the technology, AgileTV technology, was installed in Steve Silva's office at Comcast?

A. Yes, it does.

Q. Okay. And do you have any reason to believe that the technology had not -- was not installed in Steve Silva's office by July 2004?

A. Repeat the question.

Q. It was a badly worded question. Let me rephrase.

This document is dated July 26, 2004. Does it refresh your recollection as to when the technology was installed into Mr. Silva's office?

A. Yes, it does.

Q. And when was that?

A. I don't pick it up right quickly.

Q. So the document's dated July 2004; is that

correct?
A. July 2004 is correct.
Q. Okay.
A. Is that close enough?
Q. Sure. Thank you.
Let's mark this next document, please.
(Deposition Exhibit 104 was marked for identification.)
BY MR. MOSKO:
Q. Mr. Cook, Exhibit 104 appears to be a weekly update that you prepared on or about February 13, 2004. Is that consistent with your understanding?
A. Yes, it is.
Q. And, again, this is a update that you regularly sent to the employees when important events occurred; is that right?
A. That's correct.
Q. And in this document, you start off by saying, "It's clear that the environment has changed at Comcast and now they are not only supportive and enthusiastic but becoming active and aggressive to get us deployed as early as possible." Do you see that?
A. I see that.

Q. And you've highlighted the following sentences: "In a meeting with Steve Silva he stated he'd be pushing hard for us to have a ubiquitous deployment ultimately reaching their entire 21,000,000 subscribers. Obviously that's dependent on their all being" -- "on their all being digital. He also said it was important to the company that they be the first commercial deployer of our speech reco system." Do you see that?

A. Right. I see it.

Q. And do you -- is -- is -- does this email accurately reflect a conversation or a meeting in which Steve Silva was present in or about February of 2004?

A. I think so.

Q. And does it accurately reflect what Mr. Silva said about his desire to have a ubiquitous deployment of the AgileTV technology?

A. Yes.

Q. And were you excited as a result of Mr. Silva's statement to you in or about February 2004?

A. Very much so.

Q. And did you rely upon Mr. Silva's statement in pursuing a relationship with Comcast?

A. Repeat, please.
Q. Did you rely on Mr. Silva's statement that he wanted a ubiquitous deployment in pursuing a relationship with Comcast?
A. Certainly. We depended on it.
Q. Would you have moved forward with deployment without assurances from Comcast that Comcast intended to ubiquitously deploy the technology?
A. No, we would not.
Q. Why not?
A. Because it -- it meant the -- meant the commitment of a fair amount of money, and it took a lot of our expert help, which is critical and very rare.
(Deposition Exhibit 105 was marked for identification.)
BY MR. MOSKO:
Q. Here's Exhibit 105.
Is Exhibit 105 -- does it appear to be an email that you created or directed in or about March 11, 2004?
A. That's what it appears.
Q. And it went to Mr. Hanson, Mr. Foster, Mr. Maddux, and Mr. Kistler; is that right?

A. That's correct.
Q. The subject matter is "Comcast"?
A. Yes.
Q. And you've highlighted a couple of sentences in the first part of this email; is that right?
A. That's correct.
Q. Okay. And you've highlighted the following sentences: "I had quite a long telephone conversation with Mark Coblitz today. Important things he said included: Comcast is strongly behind Agile with general agreement now throughout top management. Everyone believes we have an excellent system that Comcast should have soon."
Does this accurately reflect a conversation that you had with Mr. Coblitz --
A. Yes, it --
Q. -- in or about -- excuse me -- in or about March of 2004?
A. Yes, it does.
Q. And were you excited to hear Mr. Coblitz' comments about the fact that Agile -- that Comcast was "behind Agile with general agreement now throughout" the "top management"?
A. Yes; again, very much so.

Q. And does this email accurately depict what Mr. Coblitz said to you during that telephone conversation --

A. I believe it did.

Q. -- in March of 2004?

A. I believe it does.

Oh, shoot.

(Deposition Exhibit 106 was marked for identification.)

BY MR. MOSKO:

Q. This has been marked as Exhibit 106, Mr. Cook.

This one is dated about a month after Mr. Silva told you that Comcast would -- his goal was to fully deploy the system into 21 million subscribers.

Does this email reflect -- is Exhibit 106 an email that you wrote on or about March 26, 2004?

A. Yes, it is.

Q. And you've highlighted some language in this email. Let me read your highlights initially. You highlighted, "Regarding our meeting yesterday with Comcast -- Steve Silva and others -- we have been told that Comcast has decided to make speech control part of their core technology." Do you see

that?
A. Yes.
Q. Does that email accurately depict what Mr. Silva explained to you in or about March of 2004?
A. What's the question?
Q. Does this email accurately depict what Mr. Silva told you in March of 2004, that Comcast expected to make speech control part of its core technology?
A. I believe it does.
Q. And were you excited to hear that Comcast expected to make speech part of its core technology?
A. Very much so.
Q. The email goes on to read as follows: "Comcast" -- it says "that they want to shoot for going commercial by next summer, 2005, that they want to start negotiating a deal right away, that they want to be sure there is no IP in the way and that the trial this summer is really to test the technology, not to get consumer reaction - they already know that or can learn from focus groups." Do you see that?
A. Yes, I do.
Q. Does this email accurately depict what

Mr. Silva explained during a meeting in or about March 2004 to you at Promptu?

A. Yes, it does.

Q. And were you excited to hear Mr. Silva say these things?

A. Very much so.

(Deposition Exhibit 107 was marked for identification.)

BY MR. MOSKO:

Q. This next exhibit is marked Number 107.

Mr. Cook, is this an email that you wrote in or about March 2004?

A. Yes.

Q. And it goes to Mr. Steve Silva?

A. Yes.

Q. And the subject matter is "AgileTV"?

A. Right.

Q. Okay. And the first part of this email reads as follows: "Steve: Thanks for taking your time to discuss AgileTV last Thursday. We are preceding rapidly with your requests. We have met with our Outside Patent Counsel and instructed him to extend our prior art search for all" issues "or laid open U.S. patent applications that our Speech Recognition control system might infringe."

Does this email, that portion of it, accurately reflect the communication that you had with Mr. Silva in or about March 2004?

A. I think it does.

Q. You highlighted the following sentence in Exhibit 107. You highlighted, "We are very excited about Comcast's decision to move forward with Speech" control -- "Speech Recognition control of the TV set and believe we can become an important vendor for you. We are confident we can achieve the schedule for deployment that you suggested."

Were you excited to hear Mr. Silva tell you that they intended to deploy speech recognition control system in the Comcast television network?

A. Absolutely.

Q. Does this email accurately depict the communication that you had with Mr. Silva in or about March of 2004?

A. Yes, it does.

MR. MOSKO: This actually might be a good time for a lunch break. I'm going to suggest we go off the record and have lunch now.

MR. LAM: Do you plan to resume after lunch?

MR. MOSKO: I do.

MR. LAM: We can go off the record.
THE VIDEOGRAPHER: Okay. We're going off the record at 12:20 p.m.
(Whereupon, a lunch recess was taken.)

AFTERNOON PROCEEDINGS

(Deposition Exhibit 108 was marked for identification.)
THE VIDEOGRAPHER: We are back on the record at 1:05 p.m.
BY MR. MOSKO:
Q. Good afternoon, Mr. Cook. I've put in front of you what we're marking as Exhibit Number 108, ask you to take a look at that.
Do you recognize Exhibit 108 as an email that you sent on June 8th, 2004?
A. Yes.
Q. And the subject matter of this email is "Quick impressions on our meeting." Do you see that?
A. Yes.
Q. And you've had a chance to see this document before today; isn't that right?
A. That's correct.
Q. And you've made some highlights on that

document; is that right?
A. That's correct.
Q. And the first set of highlights, you write as follows: "They have said...our Voice recognition technology will become part of their core business." Do you see that?
A. I do.
Q. And this is -- is this in relation to that earlier meeting in which Mr. Silva had indicated something similar about Agile's -- Agile's technology becoming part of Comcast's core business?
A. Yes, absolutely.
Q. Okay. And when you wrote this email about that comment about the technology, the Agile technology, becoming part of Comcast's core business, were you excited to hear that?
A. Very much.
Q. And does this email accurately reflect what was said during --
A. I --
Q. -- these meetings?
A. I believe it does.
Q. And was this email created shortly after Comcast told you that it intended to make AgileTV's voice recognition technology part of its core

business?
A. Yes.
Q. Okay. Later on in that email, you've highlighted a couple of other lines. Let me read it.
"Steve Silva, for one, has said...he believes that our service should be a ubiquitous deployment getting to all digital subs in 2 years."
Did you write that, Mr. Cook?
A. I did.
Q. And is this something that Mr. Silva told you?
A. Yes, it is.
Q. And did Mr. Silva tell you this shortly before you actually prepared Exhibit Number 108?
A. Repeat.
Q. Did Mr. Silva tell you this, that is, that he believes that the Agile service should be a ubiquitous deployment --
A. Yes.
Q. -- getting to all subs, did he tell you this --
A. Yes.
Q. -- shortly -- hold on. Did he tell you this shortly before you actually created this email?

A. Before, yes.
Q. Okay. And you were excited to hear this?
A. Very much so.
Q. And were -- is what's represented in this email an accurate statement of what Mr. Silva told you about AgileTV's technology becoming part -- a ubiquitous part of the Comcast television network?
A. It is indeed.
Q. And did Mr. Silva tell you this more than one time?
A. More than one time, yes.
Q. Okay. I want to direct your attention to the actual deployment trials that occurred with the AgileTV technology into the Comcast television network. Who at AgileTV was primarily responsible for the deployment of the Agile technology into Comcast?
A. David Chaiken.
(Deposition Exhibit 109 was marked for identification.)
BY MR. MOSKO:
Q. This next exhibit is Number 109, please.
Mr. Cook, do you recognize this as a copy of an email that you sent to Steve Silva on or about December 13, 2004?

A. Yes, I do.
Q. And the email -- the subject is "Short Meeting Requested." Do you see that?
A. I do.
Q. In about the middle of the first paragraph, you're writing to Mr. Silva, "You have said consistently that it's the technology trial that's critical, not the marketing trial." Do you see that?
A. I do.
Q. And then you write, "You have been confident as are we that the results from" the "subscribers will be very positive and the important thing" is to learn -- "and the important thing to learn is whether our system is robust, stable, and scalable." Do you see that?
A. I see it.
Q. Do you recall Mr. Silva telling you that the important thing of the trials of the AgileTV technology into the Comcast system was to find whether it was robust, stable, and scalable?
A. Yes.
Q. And do you know if, shortly after this email was written -- that is, December 13, 2004 -- whether trials of the AgileTV technology were

actually -- actually occurred in the Comcast television network?

A. Repeat the question, please.

Q. Did trials occur after this email was written in December of 2004?

A. I believe they did.

(Deposition Exhibit 110 was marked for identification.)

BY MR. MOSKO:

Q. This is Exhibit 110, Mr. Cook.

Does -- does Exhibit 110, Mr. Cook, appear to be an email that you wrote or directed to Mr. Foster?

A. Yes.

Q. And it's dated March 26, 2004, correct?

A. Right.

Q. And in the middle of that longer paragraph, you write, "At Comcast, we had several meetings that were...significant for us." Do you see that?

A. I see it.

Q. And then you highlight, "They said they didn't have any question that the consumer would want our service and...they could determine how to price it with focus groups. Therefore the purpose of the trial" was -- sorry -- "the purpose of the

trial will be to prove the technology. That's entirely different than we've heard before and I'm not sure all of their top executives agree. Regardless we will still proceed as quickly as can to the trial."

All right. So there's a lot. Let's see if we can unpack that.

During your communications with Comcast, does this document refresh your recollection that Comcast told you that they didn't have any question that the consumer would want the AgileTV technology?

A. Yes, it does.

Q. Okay. And was this email written shortly after Comcast told you about that?

A. It does indeed.

Q. Okay. And does this refresh your recollection that Comcast intended to use the trials to determine how much to charge the subscribers once it was fully deployed?

A. What's the question?

Q. Okay. Let me rephrase it.

Does this email, which reads "they could determine how to price it with focus groups," does that refresh your recollection as to the purpose of these trials and focus groups?

A. Yes.
Q. And then -- and then you write "the purpose of the trial will be to prove the technology." Do you remember if that's what Comcast told you in or about March of 2004?
A. I'm confused as to what question I'm answering.
Q. Okay. Let me -- let me back up.
If you take a look at the middle of Exhibit 110, there's some highlights. And those are your highlights, correct?
A. Right. They are.
Q. And part of the highlights read "the purpose of the trial will be to prove the technology." And so my question is, does that phrase correctly and adequately represent what Comcast told you as to what the purpose of the trials would be?
A. The answer to that question is yes.
Q. All right. Let's look at the next exhibit, please.
(Deposition Exhibit 111 was marked for identification.)
BY MR. MOSKO:
Q. This is Exhibit 111. Mr. Cook, is this an

email that you created on or about March 26, 2004?
A. Yes, it is.
Q. And have you highlighted certain writings on this email?
A. I don't -- excuse me. I didn't hear.
Q. Did you highlight certain --
A. Yes.
Q. -- words on this email?
A. Yes.
Q. And the words that you highlighted said "the trial this summer is really to test the technology, not to get consumer reaction - they already know that or can learn from focus groups." Do you see that?
A. I see that.
Q. And did you understand from Comcast in or about March of 2004 that the purpose of the trials was to in fact test the AgileTV technology? Is that the way -- is that what you understood from Comcast?
A. I'm sorry. I need to have you ask it one more --
Q. Okay.
A. -- time.
Q. You write "the trial this summer is...to" really "test the technology." Is that -- that was

your writing, correct?
A. That's correct.
Q. And that's something that you wrote in an email dated March 26, 2004?
A. Right.
Q. Does that adequately and correctly represent what Comcast told you about its purpose for the trials; that is, the purpose being to test the technology?
A. That was certainly one of the purposes.
Q. Were there other purposes that Comcast expressed?
A. I think there were.
Q. What do you remember the other purposes to be?
A. To test the economics.
Q. Okay. Anything else?
A. That's what comes to mind.
Q. Okay. We'll talk about the economics a bit later.
Do you know if in fact trials of the AgileTV technology occurred in the Philadelphia area in or about 2005?
A. I believe they did.
Q. Okay.

(Deposition Exhibit 112 was marked for identification.)

BY MR. MOSKO:

Q. Let me show you what we've marked as Exhibit 112, please.

Mr. Cook, Exhibit 112 appears to be an email from Scott Maddux to a number of people at AgileTV, including you. Do you see your name on the "To" line on the right side? It says to "Paul Cook"?

A. Yes.

Q. Okay. And the name of this -- the subject matter of this email is "Comcast, Willow Grove, Research Report."

Do you understand where Willow Grove is?

A. Yes, I do.

Q. Where is Willow Grove?

A. It's outside of Philadelphia.

Q. And was Willow Grove the area in which the test of the AgileTV technology took place?

A. It's where a test took place.

Q. Okay. And do you recall ever receiving the responses or the conclusions as to whether that test in Willow Grove was successful?

A. Yes, I do remember that.

Q. What is your recollection about whether the test was successful?
A. Recollection was it was a stunning success.
Q. Okay.
Okay. I want to move forward, if I can, please, to the formal writings that were exchanged between AgileTV and Comcast. Let's start with Exhibit 113, please.
(Deposition Exhibit 113 was marked for identification.)
BY MR. MOSKO:
Q. Mr. Cook, do you recognize Exhibit 113?
A. Did I do what?
Q. Do you recognize it? It's entitled "Duplicate of Comcast/AgileTV Memorandum of Understanding, MOU." Do you recognize this document?
A. Yes, I do.
Q. Okay. And is that your highlights on this document?
A. Yes, it is.
Q. And looking at the second page of that, this document, are those the electronic signatures for you and Mr. Coblitz?
A. I don't have a signature on this one.

Q. Do you recognize the electronic signatures?
A. I do indeed.
Q. And it indicates your name; is that right? Your name is on there?
A. Yes, my name is on.
Q. And so is Mr. Coblitz'?
A. Yes.
Q. All right. And these are -- on the first page, you've highlighted a number of sentences on the -- on this document, is that right, Exhibit 113, on the first page?
A. Oh, yes.
Q. So the first page, the initial highlights read, "Comcast believes that AgileTV's speech recognition technology enabling the control and navigation of cable services on the television via voice commands has the potential to be an attractive service that could have a significant benefit to cable subscribers." Do you see that?
A. Right. Yep.
Q. Did Comcast say words to the effect that are consistent with what I just read?
A. Yes, they did.
Q. Okay. And did they say that more than one time?

A. They did more than one time.
Q. And did they say that -- well, let's look at the -- the date of this document is May 6, 2003. Did Comcast make that statement or say words to that effect shortly before you received a copy of what's been marked as Exhibit 113?
A. I'm sorry. I've got to --
Q. Okay.
A. -- ask you to ask again.
Q. Exhibit 13 is dated May 2003 --
A. Right.
Q. -- correct?
Did Comcast tell you, shortly before May of 2003, that they believed "that AgileTV's speech recognition technology enabling the control and navigation of" television -- "of cable services on the television via voice commands has the potential to be an attractive service that could have a significant benefit to cable survivors"?
A. Yes.
Q. And the next set of highlights that you write reads as follows: "Any decision regarding a broader deployment must wait for the results of Phase I. If all goes well, Comcast will work with AgileTV to commercially deploy the service in

Comcast Systems as quickly as possible."

Is this document, what I just read, is that consistent with statements that Comcast had made to you before May 2003?

A. I'm not sure I followed that question --

Q. Okay.

A. -- line.

Q. Before May 2003, had Comcast told you that they intended to work with you to commercially deploy the AgileTV service --

A. Yes.

Q. -- into the Comcast system?

A. Yes.

Q. And shortly after they made that statement, you received a copy of what's Exhibit 113?

A. Correct.

Q. And were you excited about that statement that Comcast was making in May of 2003?

A. Yes.

Q. And did they continue to make that statement after May of 2003?

A. Did they do what?

Q. Did they continue to tell you that they -- that --

A. They --

Q. -- Comcast intended to commercially deploy the AgileTV system?
A. They continued to tell us that.
Q. All right. Let's mark as the next exhibit, which is 114, the following document, please.
(Deposition Exhibit 114 was marked for identification.)
BY MR. MOSKO:
Q. Mr. Cook, 114 appears to be an email from Joseph Donnelly, D-O-N-N-E-L-L-Y, from Comcast.com, to you, dated October 18, 2004. Is that your understanding?
A. Yes.
Q. Okay. And who was Mr. Joseph Donnelly at Comcast, if you recall?
A. He's an executive with Comcast.
Q. Okay. And in this email, the first sentence, that you highlight, is, "Here is the first draft of the license agreement." Do you see that?
A. Yes, I do.
Q. And this is dated October 2004, and the following pages appear to be a Comcast draft with that same date, October 14, 2004. Let me ask you, was a License and Development Agreement eventually signed between Comcast and AgileTV.

Did -- let me rephrase it.

Did AgileTV eventually sign a license agreement with Comcast?

A. Yes, they did.

Q. Okay. This is dated October 2004, which appear -- to the best of your knowledge, is this the first draft that you received from Comcast?

A. The first?

Q. Draft of the license --

A. Draft.

Q. -- agreement.

A. I don't know.

Q. Okay. Do you recall how long it was between October 2004, when this draft was received, to the actual date of the signing of the License and Development Agreement between Comcast and AgileTV? Do you recall how long it took?

A. Yes.

Q. How long did it take between October, when you first -- when you received this draft?

A. I don't know in months or days, but a long time.

Q. Okay. Was it more than five or six months?

A. I would think it was more than that.

Q. Okay.

Let me show you what we're going to mark as Exhibit 115, please.

(Deposition Exhibit 115 was marked for identification.)

BY MR. MOSKO:

Q. Mr. Cook, Exhibit 115 is a document entitled "License and Development Agreement dated as of May 11, 2005 among Comcast IP Holdings I, LLC, Comcast Corporation, and AgileTV Corporation." Do you see that?

A. I do.

Q. This is dated May of 2005. The previous agreement that you had received was dated October of 2004, correct?

A. Correct.

Q. All right. Turn to, if you would, please, the page on the right which has the page number 331 on the bottom right-hand corner. Page 331. That's the last three digits.

331, please.

MR. LAM: Mr. Mosko, our -- our copy only has the even-numbered pages.

MR. MOSKO: We will get that fixed. Thank you for telling me.

Here's what we'll do.

THE WITNESS: 331 is missing from mine.
BY MR. MOSKO:
Q. Yeah. That's -- that -- let's go off the record for a moment, please.
THE VIDEOGRAPHER: We're going off the record at 1:32 p.m.
(Recess taken.)
THE VIDEOGRAPHER: We are back on the record at 1:40 p.m.
BY MR. MOSKO:
Q. Mr. Cook, we were talking about the License and Development Agreement dated May -- May 11th, 2005. Mr. Lam was good enough to point out that the copies that I had made did not include all of the pages, so the original document that we marked has been replaced with a document which I now believe includes all pages that correspond to this agreement. And we're calling it the same number, 115. Now, if you would, please, turn to page 331 of Exhibit 115. Page 331.
There you go. You just turned it. Page 331.
A. Yep.
Q. Okay. Can you identify the signature that's on that page?

A. Yeah. That's mine.
Q. All right. And turning to page 330 and 329, does it appear as though there are signatures on behalf of Comcast IP Holdings and Comcast Corporation?
A. Well, we've got signatures for James McCue, Comcast II -- or IP Holdings, and we've got Comcast Corporation over here for Arthur Block.
Q. All right. Perfect. And is it your understanding, Mr. Cook, that simultaneously with this License and Development Agreement came a marketing trial agreement between Comcast and AgileTV?
Was a marketing trial agreement also signed on the same day that the License and Development Agreement was signed?
(Deposition Exhibit 116 was marked for identification.)
THE WITNESS: Okay. Now, what do you want me to do?
BY MR. MOSKO:
Q. Okay. I've given you Exhibit 116 --
A. Right.
Q. -- which is entitled "Marketing Trial Agreement for Voice Activated Television Control

Service."
A. Right.
Q. Do you see that?
And if you flip to page 383 of this document, can you identify your signature? Page 383.
A. 383. My signature's on there.
Q. Okay. And this document was signed on -- also signed on May 11th, 2005, correct, according to the first page of the document?
A. Correct.
Q. Let's mark as Exhibit 117 the following document.
(Deposition Exhibit 117 was marked for identification.)
BY MR. MOSKO:
Q. 117, please.
Mr. Cook, the -- the top portion of this document appears to be written by Gary Lauder, L-A-U-D-E-R. Do you see that?
A. Yes, I do.
Q. Who's Mr. Lauder, please?
A. He's a stockholder in the company and a -- a wealthy resident of Atherton, California.
Q. Okay. And when you say "stockholder of the

company," you mean AgileTV?
A. AgileTV.
Q. And below Mr. Lauder's email, there's an email from a Robin Opie, "Robin_Opie" --
A. Yep.
Q. -- "@cable.comcast.com."
Do you know who Robin Opie is?
A. Yes, I do.
Q. Who is Robin Opie?
A. He was a technician and technologist who assisted us in some of the activities on this project.
Q. Okay. And Mr. Opie worked at that time for Comcast; is that right? Is that correct, to your understanding?
A. He worked for who; for Comcast?
Q. Is it your understanding that Mr. Opie worked for Comcast?
A. I don't know that.
Q. Okay. Take a look at this document, which has been marked as 117. About -- in the top third, it says, "On 5/17/05 7:44 AM," Robin Opie "wrote." It says -- and the -- the address for Mr. Opie is Robin_Opie@cable.comcast.com. Does that refresh your recollection as to whether Mr. Opie was

previously an employee of Comcast?
A. Well, yeah. I'm -- I'm now aware of it.
Q. Okay. And Mr. Opie writes, "Hopefully, this will give you the funding you need to 'wait out' the cable companies until it is impossible for them to ignore the value that your product creates. Hopefully, the deal with Insight is a sign of even better things to come for you. You have a wonderful product, incredibly capable and loyal team, and" a "very exciting set of capabilities. You deserve this!" Do you see that?
A. Yes, I see that.
Q. And this document -- this email from Mr. Opie was written six days after the License and Development Agreement was signed.
A. Yes, I see that.
Q. Do you have any reason to believe that this is not an accurate email sent by Robin -- Robin --
A. No, I don't.
Q. -- Opie?
All right. Now, going back to the License and Development Agreement, which is the large document that you have open in front of your table -- the large document, that one there. Yes.
Mr. Cook, I appreciate that this has been

several years since this document was signed, but did you have an understanding about whether this document includes a set of options for Comcast?

A. I don't have a recollection on that.

Q. Okay. Do you know whether Comcast had the right to -- strike that.

Do you -- did you have an understanding that this document made reference to a statement of work that was tied to a project where AgileTV would deploy its technology into the Comcast cable network?

A. Was I aware of that?

Q. Yes.

A. I'm sorry. I'm not sure.

Q. Okay. Do you understand what a statement of work is?

A. Yes, I do.

Q. Have you heard that phrase before?

A. Yes. An SOW.

Q. Did you understand that there was a statement of work that was included -- that was referenced in this License and Development Agreement, a statement of work?

A. I think I did recognize that.

Q. Okay. And was the -- was the statement of

work designed for Comcast to hire Promptu, or AgileTV, to deploy its technology into the cable -- into a cable -- Comcast cable network system?

A. Yes.

Q. All right.

And did Comcast ever sign the statement of work referred to in the License and Development Agreement?

A. I don't believe they did.

Q. All right. I want to address the next set of questions to the statements Comcast made about whether it was going to sign the statement of work corresponding to the License and Development Agreement.

(Deposition Exhibit 118 was marked for identification.)

BY MR. MOSKO:

Q. This is Exhibit 118.

Take a look at Exhibit 118, if you will, please. 118 is an update from you; is that correct?

A. That's correct.

Q. And it's dated August 1st, 2005, correct?

A. Correct.

Q. So this is about three months after the License and Development Agreement between Comcast

and AgileTV was signed, correct?

A. That's correct.

Q. And this agreement -- or this document, this Exhibit 118, at -- on the second paragraph reads as follows: "In a meeting with Comcast Executive VP Steve Silva, we were told that they want to proceed with a major trial of 50,000 subscribers in at least one metropolitan area as quickly as we can - using our guide. This would be Callisto and they're willing to deploy it. This is great news."

Do you see that?

A. Yes.

Q. Do you know if this corresponded to the terms in the statement of work that was referred to in the License and Development Agreement?

A. Did I do what?

Q. Do you know if this statement by Mr. Silva corresponded to the statement of work that was referenced into the License -- in the License and Development Agreement?

A. Okay.

Q. Is that true? Was this correlated to it?

A. I think so.

Yes. Let me change -- let me --

(Deposition Exhibit 119 was marked for identification.)

BY MR. MOSKO:

Q. Okay. We'll mark this next exhibit as Number 119, please.

Okay. 119 is -- appears to be an email from Bob Greiner to a number of people, including you, dated August 12, 2005. Do you see that?

A. I see that.

Q. And the subject matter is "Comcast Update." Do you see that?

A. I see that.

Q. Now, in the middle of this -- strike that.

Who was Bob Greiner, please?

A. He was the salesman for -- for us for Philadelphia and New York, the Northeastern area.

Q. Okay. So Mr. --

MR. LAM: Excuse me. Will you read that answer back, please.

(The record was read by the reporter.)

MR. LAM: Thank you.

BY MR. MOSKO:

Q. Okay. So Mr. Greiner writes, "We decided with Hess to keep the SOW we" were "trying to sign by September 10, '05 to 1 year worth of work, which"

[redacted]
them with the development required for an early" Q3 "deployment to 50,000 subs."

Do you see that?

A. Yes.

Q. Okay. And then later on in this -- in this email from Mr. Greiner on August 12, you've highlighted the following language: "In private discussions with Mark, I asked if" we'd "get this SOW signed by the 10th, he said he thought so, at least there is hope of getting it done." Do you see that?

A. Yes, I see it.

Q. Does this document refresh your recollection as to whether Comcast represented it intended to sign the SOW, the statement of work --

A. Yes, it --

Q. -- by September 10, 2005?

A. Yes, it does.

Q. Do you have any reason to believe that this document, as to what is attributed to Mr. Hess, is not accurate?

A. Is not what?

Q. Is not accurate. Do you have any reason to believe it's not accurate?

A. No, I -- I have no reason to believe that.
Q. And did Comcast ever represent to you that it intended to sign the statement of work, the SOW, by September 10, 2005?
A. Not that I remember.
Q. Okay.
(Deposition Exhibit 120 was marked for identification.)
BY MR. MOSKO:
Q. Let's mark the next document, please. This is Exhibit 120.
Take a look at this document, please. Does this appear to be an email from you, Mr. Cook?
A. Yes, it is.
Q. Dated October 7, 2005. Do you see that?
A. Yes.
Q. And is this consistent with the periodic updates that you talked about earlier in your deposition about keeping the employees --
A. Yes. And --
Q. -- advised?
A. And it's entitled "Subject: Update."
Q. Okay. Now, the language that you highlight in this email reads as follows: "I talked to Steve Silva Tuesday and got the good news from him that

our Comcast Development project' SOW should be approved by the Project Development Committee within three weeks. He told me that he SOW" -- must be "the SOW" -- "has been created and approved by those necessary including the business people, the technical people and Mark Hess himself. Silva anticipated no further delays or holdups. Once this approval is received we should receive a check for [redacted] Capital." Do you see this?

A. Yes.

Q. And does this email accurately represent what Mr. Silva told you the Tuesday before October 7, 2005?

A. Yes, it does.

Q. And were you excited to hear that Mr. Silva expected the -- that Comcast was going to sign this SOW?

A. I certainly was.

Q. And does this SOW accurately reflect what Mr. Silva stated to you?

A. I believe it does.

Q. So this is dated October 7. The previous email indicated that the expectation was for Comcast to sign the statement of work on September 10. Do

you recall that?
A. I remember that.
Q. So Comcast missed the represented September 10 date. Is that your recollection?
A. Yes.
Q. But did you understand as a result of this conversation with Mr. Silva that Comcast would in fact sign the SOW within a short period of time?
A. I certainly thought so.
Q. Okay. And were you pleased and excited about that?
A. I was indeed.
Q. Okay. Let's mark this next -- next exhibit, please. This is 120.
(Deposition Exhibit 121 was marked for identification.)
BY MR. MOSKO:
Q. Sorry. Excuse me.
A. 121?
Q. I misstated. This next exhibit is marked 121.
A. That's better. Yeah.
Q. I'm glad you're keeping tracks on me, Paul.
121.
All right. This exhibit appears to be an

email from you to Steve Silva. Is that your understanding?

A. That's my understanding.

Q. And it's dated November 2, 2005?

A. Yes.

Q. Okay. And in it, you've highlighted the following sentence: "We are running out of money and I need to know if Comcast intends to sign the SOW and start the Development Program. If not, I need to know now so...I can raise money from another source." Do you see that?

A. I see that.

Q. So despite the previous email, where Mr. Silva had indicated that he -- that the SOW would be signed -- and that email was dated October 7, 2005 -- by November 2nd had you received any signed SOW from Comcast?

A. We had not.

Q. And were you upset or worried about that?

A. Very much so.

Q. Did you -- is that the reason why you wrote the email that's identified as Exhibit 121?

A. Exactly.

(Deposition Exhibit 122 was marked for identification.)

BY MR. MOSKO:

Q. Okay. Let's mark this next exhibit as 122.

Do you recognize Exhibit 122 as an email from Promptu employee Bob Greiner?

A. What's the question?

Q. Is this an -- do you recognize this as an email from Bob Greiner, a Promptu employee?

A. Yes, to Steve -- Steve Silva.

Q. Okay.

A. With copies to me and Dave Hanson and Mark Hess.

Q. And the subject matter is "Comcast-AgileTV con call"?

A. Yes.

Q. And in it, Mr. Greiner writes, "Hi Steve. The attached document is what Mark Hess and I discussed yesterday, and what will guide our conversation on Friday." Do you see that?

A. I see it.

Q. And is this document consistent with the habit and practice that you developed at Comcast where your employees were directed to memorialize all important communications and activities via email?

A. What's the question?

Q. Is this document consistent with your habit and practice directing the employees at AgileTV to memorialize all important conversations and activities?

A. Doesn't appear that it does.

Q. Okay. Now, do you have any reason to believe that this email is not accurate?

A. Whether what's --

Q. Is this email accurate? That's all I'm asking.

A. It doesn't sound like it, unless I'm misreading it.

Q. Okay. Why don't you take a look at 122. It reads "Hi Steve," at least the first page.

A. Yeah.

Q. "The attached document is what Mark Hess and I discussed yesterday, and what will guide our conversations on Friday." Do you see that?

A. Yes, I do.

Q. Okay. To the best of your understanding, is this email accurate?

A. Okay. Then the answer is yes.

Q. All right. Take a look at the next page of this Exhibit 122. Now, this exhibit -- or this page is titled "Comcast and AgileTV, December 6, 2005."

You see that?

A. I see it.

Q. So this is just over about a month after the prior exhibit, when you asked Mr. Silva whether Comcast is going to sign the SOW --

A. Right.

Q. -- right?

And you've highlighted several lines in a subsection titled "Potential Solution." Do you see that?

A. I see it.

Q. All right. So let me read the potential solution.

"Comcast to purchase a prepaid patent [redacted] instead of an expense. AgileTV will continue development and funding of the voice enabled iGuide as described in the SOW, if Comcast will commit to: Signing a slightly modified SOW; Selecting, committing and announcing a 50,000 digital subscriber system to be a Promptu" employment, "at no CapEx cost to Comcast"; next, "Agreeing to support the deployment from a marketing and operations standpoint, with AgileTV picking up the cost of the creative. AgileTV will share the

consumer research and marketing techniques from the Sunflower deployment."

To the best of your understanding, Mr. Cook, is what I just read the proposal that AgileTV made to Comcast on or about December 6, 2005?

A. Yes. It does.

MR. MOSKO: I need to go off the record, please.

THE VIDEOGRAPHER: We're going off the record at 2:07 p.m. This will mark the end of disk number 2.

(Whereupon, the deposition session ended at 2:07 p.m.)

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CERTIFICATE OF REPORTER

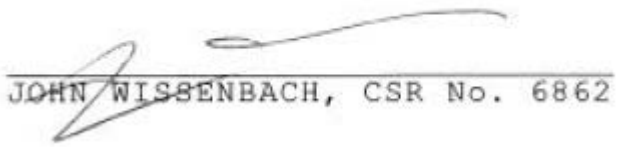
I, JOHN WISSENBACH, a Certified Shorthand Reporter, hereby certify that the witness in the foregoing deposition was by me duly sworn to tell the truth, the whole truth, and nothing but the truth in the within-entitled cause;

That said deposition was taken down in shorthand by me, a disinterested person, at the time and place therein stated, and that the testimony was thereafter reduced to typewriting by computer under my direction and supervision and is a true record of the testimony given by the witness;

That before completion of the deposition, review of the transcript [ ] was [X] was not requested. If requested, any changes made by the deponent (and provided to the reporter) during the period allowed are appended hereto.

I further certify that I am not of counsel or attorney for either or any of the parties to the said deposition, nor in any way interested in the event of this cause, and that I am not related to any of the parties thereto.

DATED: OCTOBER 30, 2018



JOHN WISSENBACH, CSR No. 6862

---o0o---

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

_____

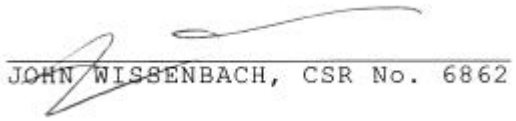
Signature of the witness

CERTIFICATE OF REPORTER

I, JOHN WISSENBACH, hereby certify that the witness was duly sworn by me, before commencement of testimony by the witness, to testify the truth, the whole truth, and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and place therein stated, in the presence of the above-noted people; that the testimony of said witness was reported by me, a Certified Shorthand Reporter and disinterested person, and was thereafter transcribed into typewriting and is a true record of the testimony given by the witness, and that the pertinent provisions of the applicable code or rules of civil procedure relating to the notification of the witness and counsel for the parties hereto of the availability of the transcript of the deposition for reading and signing have been met.

And I further certify that I am not a relative or employee of a party or of an employee of an attorney or agent of a party, or interested, directly or indirectly, in the proceeding either as counsel, attorney, agent, or otherwise.

DATED: OCTOBER 30, 2018



JOHN WISSENBACH, CSR No. 6862

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PROMPTU SYSTEMS CORPORATION, Plaintiff, v. COMCAST CORPORATION and COMCAST CABLE COMMUNICATIONS, LLC, Defendants.) Civil Action No. 2:16-cv-06516-JRS

Deposition of
PAUL MAXWELL COOK
Volume II, Pages 122-270
Wednesday, October 31, 2018

REPORTED BY: JOHN WISSENBACH, RDR, CRR, CRC,
CSR 6862

UNITED STATES PATENT AND TRADEMARK OFFICE

_____

BEFORE THE PATENT TRIAL AND APPEAL BOARD

_____

COMCAST CABLE COMMUNICATIONS, LLC,
Petitioner,

v.

PROMPTU SYSTEMS CORPORATION,
Patent Owner.

_____

Case IPR2018-00340 (Patent 7,260,538)
Case IPR2018-00341 (Patent 7,260,538)
Case IPR2018-00342 (Patent RE44,326)
Case IPR2018-00343 (Patent RE44,326)
Case IPR2018-00344 (Patent 7,047,196)
Case IPR2018-00345 (Patent 7,047,196)

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Deposition of

PAUL MAXWELL COOK

Volume II, Pages 122-270

Wednesday, October 31, 2018

REPORTED BY: JOHN WISSENBACH, RDR, CRR, CRC

CSR 6862

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BE IT REMEMBERED that, pursuant to the laws governing the taking and use of depositions, on Wednesday, October 31, 2018, commencing at 9:56 a.m. thereof, at the law offices of Finnegan, Henderson, Farabow, Garrett & Dunner, LLP, Stanford Research Park, 3300 Hillview Avenue, Palo Alto, California, before me, JOHN WISSENBACH, CSR 6862, of San Francisco, California, personally appeared PAUL MAXWELL COOK, called as a witness by the Plaintiff, Defendants, and Petitioner, who, being by me first duly sworn, was thereupon examined as a witness in said action.

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ALSO PRESENT: TAIS DESCHAMPS, Videographer

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THE VIDEOGRAPHER: Here begins videotape number 1 of volume number II in the deposition of Paul Cook, testifying in the matter of Promptu Systems Corporation vs. Comcast Corporation and Comcast Cable Communications, LLC.

Today's date is October 31st, 2018, and the time is 9:56 a.m. This deposition is being taken today at Finnegan, Henderson, 3300 Hillview Avenue, in Palo Alto, California, and was made at the request of both parties.

All parties present today are the same as yesterday, except a personal appearance is now with Dan Callaway. I'm David Manzo, the videographer, and the court reporter is John Wissenbach, from GregoryEdwards LLC, in Washington, D.C. And the deponent is still under oath. Please proceed, sir.

MR. MOSKO: So good morning. Just so the record is clear, we ended yesterday's deposition without any kind of formal indication of end, and, with my understanding, we have an agreement among counsel that today we'll start the second day of deposition of Paul Cook. And we will proceed.

PAUL MAXWELL COOK,

having been previously duly sworn, testified further as follows:

EXAMINATION BY MR. MOSKO

Q. Mr. Cook, I have put in front of you a document that we had previously marked as Exhibit 115. It's the License and Development Agreement of May 11, 2005. If you -- you had previously testified that on page 331, that was your signature. I just want to make sure that you have that document in front of you. Do you, Mr. Cook?

A. I do.

Q. Okay. Now, I want to ask you a couple of questions about the statement of work that's referred to in Exhibit 115. Would you kindly turn to -- the Bates number 300, which is on the bottom right-hand corner of the page of the document. That's the last three numbers. I'm looking for you to find page 300, please.

And just for the record, the full what we refer to as Bates stamp number is COM-PROMPTU10568300.

Are you at page 300?

A. I am at page 300.

Q. And that's at the -- that's actually page 7 of the agreement. Is that your understanding, sir?

A. Correct.

Q. All right. So beginning at section 2 of

this agreement, Mr. Cook, I want to read a couple of sentences, beginning at "Section 2. Development Project." It says: "(a) Project Purpose. Comcast desires to develop and build a Commercially Deployable architecture, including all technologies, hardware, software, interfaces and protocols, for voice control of Comcast Products, which utilizes AgileTV Technology, including any Updates thereto and New Features based thereon created on or before the Project Commencement Date, and is integrated with one or more Platforms as designed by Comcast, collectively, the 'Architecture.' The development and building of the Architecture by Comcast in collaboration with AgileTV, as set forth in the Statement of Work, is referred to herein as the 'Project.'"

Do you see that, Mr. Cook?

A. I'm not sure exactly where you are on the page.

Q. I read -- sorry. I can't do two -- what I did, Mr. Cook, was I read from the section 2, "Deployment Project," and I read about the first half of this sentence that starts with the subparagraph (a).

A. Okay.

Q. All right.
THE VIDEOGRAPHER: Some slack.
MR. LAM: Thank you.
THE WITNESS: I'd like to make the same plea I made yesterday, and that is that I'm hard of hearing, and I may have to ask you one or two times to please repeat what you've said. But at my age, it's not uncommon to have a little problem in hearing.
BY MR. MOSKO:
Q. Fair enough. I'll certainly do my best, and I'll lean forward. And I suspect the Comcast lawyers, if they choose to ask questions, will accommodate you.
So with respect to that portion of the agreement that I read, it makes reference to a statement of work. Do you recall that statement of work being part of this License and Development Agreement?
A. Yes, I do.
Q. All right. Now, I'm going to read from paragraph (b) on that form right there. It says: "(b) Project Statement of Work. Following the Effective Date, Comcast shall, with AgileTV's reasonable cooperation, define in greater detail the

scope of the Project and the features and functionality required for the Architecture, all of which shall be subject to...reasonable approval of AgileTV and shall be set forth in a mutually acceptable statement of work for the Project," and then in parens it reads "the 'Statement of Work,'" closed parens. Do you see that?

A. Yes, I do.

Q. After looking at this page, does this refresh your recollection about Comcast's desire to deploy AgileTV's voice recognition technology into its cable television network?

A. Yes, it does.

Q. And does this portion of the License and Development Agreement refresh your recollection that the deployment would be pursuant to a statement of work that Comcast and AgileTV would prepare and sign?

A. Yes.

Q. All right. Yesterday we left off with your testimony regarding Comcast's representations regarding its intention to sign a statement of work. Do you recall that testimony?

A. Yes, I do.

Q. Okay. If you look at Exhibit 119, please.

I put that in front of you. That was an email from Mr. Greiner to several people at AgileTV, including you. Do you remember talking about that document yesterday?

A. Yes, I do.

Q. And that document makes reference to a statement by Mr. Hess, who told Mr. Greiner about Comcast's intent to sign the statement of work. Do you remember that testimony?

A. I'm sorry. What was the question?

Q. Let me rephrase.

Do you remember -- well, let me read Exhibit -- part of Exhibit 119, part of the portion that you highlighted. Again, I believe the record shows that this is an email from Mr. Greiner about a conversation that he had with Mr. Hess. Is that your understanding?

A. Yes, it is.

Q. All right. And the bottom part of that email reads, "In private discussions with Mark, I asked if we'll get this SOW signed by the 10th, he said he thought so, at least there's hope of getting it done."

Do you recall discussing that testimony yesterday?

A. Yes, I do.
Q. All right. And if I may remind you, I want to show you what we marked yesterday as Exhibit 120, please. Do you recall talking about this exhibit yesterday?
A. Yes, I do.
Q. Okay. And this exhibit is an email from you to "all@agile.tv," regarding -- it's -- the subject is an "Update," correct?
A. Yes.
Q. And you write, in this email, "I talked to Steve Silva Tuesday and got the good news from him that our Comcast Development project' SOW should be approved by the Project Development Committee within three weeks. He told me that he" -- and I believe it's "the" -- "SOW has been created and approved by those necessary including the business people, the technical people and Mark Hess himself. Silva anticipated no further delays or holdups. Once" the "approval is received we should receive a check for [redacted] Capital."
Do you remember talking about this testimony -- this exhibit yesterday?
A. Yes, I do.

Q. And this email is written on -- in the first half of October 2005, right?
A. Right.
Q. Did Comcast ever sign an SOW at any time?
A. Not to my knowledge.
Q. It never -- it certainly never signed it within three weeks of October 7, 2005, correct?
A. Yes, correct.
(Deposition Exhibit 123 was marked for identification.)
BY MR. MOSKO:
Q. All right. I want to show you what we've marked as Exhibit 123, please.
Mr. Cook, does this document appear to be an email from you on 12/6/2005?
A. Yes, it does.
Q. And it was sent to Mr. Hess and Mr. Greiner; is that right?
A. That's correct.
Q. And it's concerning a meeting with Mr. Greiner; is that right?
A. Yes.
Q. All right. And the email reads, quote, "Mark: I want to thank you for listening to Bob Greiner about our urgent situation and need for

action. My Board of Directors has set a time requirement of the end of the year to get a conclusion with Comcast or to go in a different direction with a much reduced staff. I was encouraged by your response and hope that you can convince Silva to see me in the next" week. "After five years of pioneering work with very good response from many cable companies including especially Comcast, it would be a shame to have" -- sorry -- "it would be a shame to have to let it lapse for a few years. I appreciate your efforts on our behalf."

Does this document refresh your recollection, Mr. Cook, about a conversation -- about an email that you sent to Mr. Hess on or about December 6, 2005?

A. Yes, it does.

Q. And did you understand Mark Hess was responsive to Mr. Greiner with respect to a communication that they had previously had?

A. Yes.

(Deposition Exhibit 124 was marked for identification.)

BY MR. MOSKO:

Q. All right. Let's mark, as the next

exhibit, Number 124.

Mr. Cook, does Exhibit 124 appear to be an email from you sent on December 9th, 2005?

A. Yes, it does.

Q. And is this consistent with your habit and custom of sending announcements about important events at AgileTV to all of the employees at Agile?

A. Yes, it does.

Q. Okay. This email -- by the way, it's -- certain -- this entire email is actually highlighted. Did you highlight this email?

A. Yes, I did.

Q. Okay. The email reads, "We've been put off by Comcast repeatedly on signing the SOW and paying [redacted] recollection --

A. Yes.

Q. -- Mr. Cook?

A. Yes, it is.

Q. Had Comcast on more than one occasion promised to sign the SOW, the statement of work?

A. Yes, on more than one occasion.

Q. And was it your under -- what was your understanding about what was to happen with respect to any sort of payment after Comcast was to sign the

SOW?

A. Please restate the question.

Q. Sure.

A. I didn't --

Q. Let me ask it this way: The email says, "We've been put off by Comcast repeatedly on signing [redacted]

A. Yes, it did.

Q. And the email goes on to read, "I told them today that our Board has decided we" have "to have their sign-off by the end of the year or we'd assign our resources to other markets." It goes on to say, "We got immediate response that it would be taken for approval to the President and the CEO quickly and we'd get a response next week. They continue to say" that "they will do it, want our system, and need it for competitive reasons. The time has come for them to finalize."

Is that consistent with the communications that you had with Comcast in or about December 9, 2006?

A. Yes, it is.

Q. What did Comcast tell you in or about December 9, 2006 about its -- excuse me.

What did Comcast tell you in or about December 9, 2005 about its intentions to sign the SOW?

A. That they were willing and interested in signing the SOW.

Q. And did they tell you anything about their [redacted]

A. Yes, they did.

Q. What did they tell you about that?

A. That they would pay that money.

(Deposition Exhibit 125 was marked for identification.)

BY MR. MOSKO:

Q. Here we've marked Exhibit 125, Mr. Cook.

Mr. Cook, does Exhibit 125 appear to be an email from you?

A. Yes, it does.

Q. And it's dated December 9, 2005, correct?

A. Correct.

Q. And who is this email to, please?

A. This was sent to Steve Silva.

Q. Okay. And what's the subject matter of this email, please?

A. "Information Requested."

Q. So by looking at this document, does this

refresh your recollection about a conversation that you had on or about December 9 with Mr. Silva?

A. Yes, it does.

Q. So you write in this email, "Steve, as you've requested, I'm attaching: 1. A description of the Phase I SOW. Of the total cost of Phase I, [redacted] Do you see that?

A. Yes, I do.

Q. Does this refresh your recollection about the conversation that you previously had with Mr. Silva before you sent this email?

A. Quite well.

Q. Okay. And the email goes on to say, "2. A list of our patents and patent applications, with a brief description and indication of status of each."

Do you see that?

A. I see it.

Q. And did you in fact send Mr. Silva a copy of an SOW and a copy of Agile's patent and patent applications as of December 9, 2005?

A. Yes.

(Deposition Exhibit 126 was marked for identification.)

BY MR. MOSKO:

Q. I'm marking as 126 the next exhibit.

Mr. Cook, I'd like you to take a look at the -- well, the top third -- well, the bottom of the top third of this document. The bottom of the top third is an email from you dated Tuesday, December 13th, 2005. Do you see that?

A. Yes, I do.

Q. And that email went to Steve Silva; is that correct?

A. Yes.

Q. And you write, "I'm resending the information I sent last Friday with a copy to Alison. Perhaps she could print it out for you. Thanks, Paul."

Does this refresh your recollection as to whether you sent Mr. Silva another copy of the SOW and the patent information that you sent a few days previously?

A. Yes.

Q. And you re-sent this on December 13, 2005, right?

A. I'm sorry. I'm looking for the date on

here.
Q. Let me direct your attention to the middle of the page, where you can see the words, "Steve: I'm resending the information I sent last Friday."
A. Where is it?
Q. Let me see if I can help you, Mr. Cook.
I'm asking if this email -- I'm asking if this email that you sent to Mr. Silva was sent on December 13, 2005.
A. Okay.
Q. Does that --
A. I see that.
Q. Does that appear to be when you sent it?
A. Yes. Uh-huh.
Q. Do you have any reason to believe that you did not send that email?
A. No.
Q. All right. I've given you Exhibit 126. We're going to mark as next in order Exhibit 127.
(Deposition Exhibit 127 was marked for identification.)
BY MR. MOSKO:
Q. So the previous exhibit was dated December 13, 2005. I'd like to direct your attention, Mr. Cook, to the middle of Exhibit 127, which

appears to be an email written to the board. Do you see that?

A. I see it.

Q. Okay. And this email from -- is from you; is that correct?

A. Yes, it is.

Q. And it's also dated December 13, 2005?

A. Correct.

Q. And you've underlined some of the words here. Let me read it into the record.

MR. LAM: Highlighted.

MR. MOSKO: Thank you very much. I apologize.

BY MR. MOSKO:

Q. You've highlighted some of the -- some of the words here. I'm going to read the -- a portion of the December 13 email to the board into the record. It says, "To the Board: It seems we have precipitated a major meeting at Comcast which will take place Friday from 9:00 a.m. to noon Eastern Standard Time. Roberts, Burke, and Scott, co-CFO, will attend this meeting among others. Silva says we are at the top of the list for projects under consideration. In addition, he has a meeting tomorrow with Scott to look at what pockets the

$6 million paid up patent license can come from. Silva sounded optimistic about getting us" improved.

Does this document accurately reflect a communication that you had with Mr. Silva about the [redacted] payment to --

A. I believe it does.

Q. And I was going to say to AgileTV.

And your answer, please?

A. I believe it does.

Q. And were you excited to hear about this statement from Mr. Silva?

A. I should say so.

Q. Is it consistent with your habit to record important events and communications in email? Is this document consistent with that?

A. Yes.

Q. Was this email prepared shortly after you heard Mr. Silva about proposing -- about the proposed meeting?

A. Yes.

Q. And is this email, to the best of your understanding, accurate and correct?

A. Yes.

Q. Okay. So that conversation occurred on or

about December 13, 2005. Let me show you the next exhibit.

(Deposition Exhibit 128 was marked for identification.)

BY MR. MOSKO:

Q. This is marked Exhibit 128, please.

And Mr. Cook, is this a copy of an email that was sent by you?

A. Yes, it is.

Q. It's sent the following day from the previous email, December 14, 2005. Is that your understanding?

A. That's it.

Q. And who did you send this email to?

A. To Steve Silva.

Q. Okay. And the subject is "Friday Meeting," correct?

A. Yes.

Q. Now, the first portion of this email reads, "Steve: I thought it might be helpful if I provided a few summary points to refresh your memory in preparation for the meeting Friday." Do you see that?

A. I see it.

Q. Okay. Does this refresh your recollection

of whether -- of whether you sent Mr. -- Mr. Silva an email to prepare him for this meeting?

A. Yes.

Q. And upon reading this email, does this refresh your recollection as to what you reminded Mr. Silva in preparation for this meeting?

A. Yes.

Q. Now, I'm not going to read the entire email, but I want to direct your attention to the last portion of it. You write, "Agile has proposed that an acceptable alternate to supporting the development project would be for Comcast to procure a paid up license for all Agile Patents and future Patents resulting from current applications for [redacted] more acceptable accounting treatment in its cost reduction campaign."

Does that accurately reflect what you told Mr. Silva, or what you sent to Mr. Silva on or about December 14, 2005?

A. Yes, it does.

[redacted] Comcast would trigger an additional investment in Agile of $3 million from an existing VC investor."

Do you recall telling Mr. Silva that?

A. Yes, I do.
Q. It also states, "The receipt of this money would enable Agile to finish its commercial development and conduct the 50,000 subscriber trial requested by Comcast. This could be done on a profitable basis for Comcast."
Do you recall telling Mr. Silva that?
A. Yes.
Q. And does this refresh your recollection about the conditions AgileTV was willing to proceed with as it concerned Comcast?
A. Yes.
Q. And were the conditions AgileTV was willing to proceed with dependent upon Mr. Silva's previous statements about a ubiquitous deployment of the AgileTV technology into the Comcast system?
MR. LAM: Objection; vague, and leading.
BY MR. MOSKO:
Q. You -- do you understand the question?
A. I didn't understand the comment.
Q. Okay. Well -- okay. From time to time Mr. Lam, or Comcast, has the right to object. And that's what he just did. I'm going to reask the question. So you can forget what I said earlier.
I want to ask you, does Exhibit 128, which

is in front of you -- does this refresh your recollection of the conditions that AgileTV was willing to proceed with, with respect to deploying the AgileTV technology into Comcast?

A. Yes, it does.

Q. And earlier you testified about Mr. Silva representing that he intended the deployment to be a ubiquitous one in the Comcast network. Do you remember that testimony?

A. Yes, I do.

Q. Was that a condition that AgileTV insisted upon if it were to go forward with Comcast?

MR. LAM: Objection; leading.

BY MR. MOSKO:

Q. You can answer the question.

A. Would you repeat the question, please?

Q. Was -- do you recall your testimony yesterday where you talked about Mr. Silva's representation that the deployment of the AgileTV technology would be ubiquitous in the Comcast system? Do you recall that testimony?

A. Yes, I remember that.

Q. Was that a condition of -- of AgileTV moving forward with proceeding with the Comcast arrangement?

A. Yes, it was.
MR. LAM: Objection; leading.
BY MR. MOSKO:
Q. Okay.
(Deposition Exhibit 129 was marked for identification.)
BY MR. MOSKO:
Q. Mr. Cook, I'm giving you what we've marked as Exhibit 129. Is 129 a copy of an email from you?
A. Yes, it is.
Q. And it was sent December 21st, 2005; is that correct?
A. Correct.
Q. And is this consistent with your habit and custom of advising the employees at AgileTV of important events that were going on?
A. Yes, it is.
Q. The first paragraph reads, "To All Employees: As I communicated to you on December 9th and updated on December 13th, we made a strong" statement" -- "a strong request to Comcast to finalize their support of us by the end of the year or we'd have to assign resources to other markets. As the result a major meeting was held on December 16 which included the CEO, COO, co-CFO and others.

A lot of time was spent on AgileTV with much support for us. Three questions were posed that they want answers to before they move ahead. They have asked us to please be patient until the end of January."

Now, is this consistent with your understanding of what AgileTV -- strike that.

Is this consistent with your understanding of what Comcast had said to AgileTV as of December 21st, 2005?

A. Yes, it is.

Q. "They have asked us to please be patient until the end of January." Is that what they said to you?

A. That's what they said.

Q. And what was your understanding of their request to be patient with them?

A. That they were begging for more time.

Q. Okay. More time to do what?

A. To -- to sign off on it.

Q. Okay. And did that also include to pay the [redacted]

A. Absolutely.

Q. And did in fact AgileTV as of the end of December 2005 agree to give Comcast additional time [redacted]

A. Yes.

(Deposition Exhibit 130 was marked for identification.)

BY MR. MOSKO:

Q. Let's mark, as this next exhibit, Number 130, please.

Exhibit 130 appears to be an email from Bob Greiner, who you earlier told us was in charge of East Coast sales for AgileTV. Is that accurate?

A. That's accurate.

Q. And it was sent the next day after that previous email, which is December 20, 2005; is that right?

A. That's right.

Q. And it was sent to you, correct?

A. Correct.

Q. And Mr. Greiner writes, "Hess and I just connected. He thinks Silva probably has an idea that he can get something done" to -- "done in January or he wouldn't have asked for the time."

Do you have any reason to believe that this email does not accurately state what Mr. Hess told to Mr. Greiner?

A. No, no indication it is not accurate.

Q. Okay. And is this consistent with your

discussion with Mr. Silva earlier about Comcast requesting additional time?

A. Yes.

(Deposition Exhibit 131 was marked for identification.)

BY MR. MOSKO:

Q. Let's mark the next exhibit, 131, please.

Now, Mr. Cook, I'd like to address that portion of the email in the middle of this page. The middle of this page reads, "Paul Cook wrote," and then "To All Employees." And let me just read the first couple of sentences.

There's some highlights there. Are those your highlights, Mr. Cook?

A. Yes.

Q. And it's dated January 4th, 2006?

A. Yes.

Q. Okay. So the first portion reads, "We just finished a meeting with Comcast in Las Vegas -- I attended by phone -- and they...want to proceed with us quickly. They want a short term plan and a long term plan including what it now appears will be the economic" significances -- "significance to Comcast - costs, revenues, capital investment," operation "burden, et cetera."

So does this refresh your recollection as to whether as a result of an early January 2006 meeting Comcast asked AgileTV to prepare a written plan?

A. Yeah.

Q. And then you write, later on in that first paragraph, "They have asked for and we have okayed [redacted] the end of the month." Do you see that?

A. Yes.

Q. And is that consistent with your recollection as to the arrangement that AgileTV had made with Comcast concerning the SOW and the payment?

A. Yes, it does.

Q. And are those your highlights, Mr. Cook?

A. Those are.

Q. And the bottom part of this email, there's some additional highlights. They read, "Silva mentioned this was Brian Roberts' favorite project and would personally review and approve the plan." Do you see that?

A. Yes.

Q. Does that refresh your recollection as to what Mr. Silva had said during a meeting early in

January 2006?
A. Yes.
Q. And was this something that you were pleased to hear by Mr. Silva?
A. Yeah. Well, it meant a ubiquitous deployment of the -- of the system.
Q. Okay. And was this email that was prepared, Exhibit 131, shortly after Mr. Silva made the comments to you that are reflected in this email?
A. Yes.
Q. Do you have any reason to believe that this email is not accurate?
A. No.
(Deposition Exhibit 132 was marked for identification.)
BY MR. MOSKO:
Q. Mr. Cook, this is a fairly thick exhibit that we've marked as 132.
Mr. Cook, do you recall if in fact AgileTV forwarded a plan, consistent with the previous emails, to Comcast?
A. I'm sorry. Would you repeat that?
Q. Sure. Earlier emails indicated that Comcast wanted a plan from AgileTV to move forward,

right?
A. Right.
Q. And do you recall whether AgileTV in fact forwarded a plan to Comcast?
A. I believe they did.
Q. Okay. And this email is from Bob Greiner to Jim Henderson at Comcast -- excuse me. Strike that.
This email is from Bob Greiner to jim_henderson@cable.comcast.com. Do you see that?
A. Yes, I do.
Q. Is it your understanding that Mr. Henderson was an employee of Comcast?
A. Yes. But I don't remember him.
Q. Okay. And it's dated January 20th, 2006. Do you see that?
A. Yes.
Q. As you flip through this document, does it appear to be the plan that AgileTV had prepared for Mr. Silva?
A. Excuse me.
Yes.
Q. Do you know if this plan actually got to Mr. Silva?
A. I believe it did.

Q. All right. Now, shortly after Comcast signed the May 2005 License and Development Agreement, did Comcast make a payment -- strike that.

Shortly after Comcast signed the License and Development Agreement of May 11, 2005, did Comcast make a payment to AgileTV of approximately [redacted].

(Deposition Exhibit 133 was marked for identification.)

BY MR. MOSKO:

Q. I'll mark this document as next in order, which is 133.

Mr. Cook, do you have Exhibit 133 in front of you?

A. I do.

Q. And does this appear to be an email from

you?
A. It does.
Q. And it's dated February 1st, 2006. Do you see that?
A. Yes.
Q. So approximately just over a week after this plan was sent to Comcast through Mr. Henderson; is that accurate?
A. That's accurate.
Q. All right. So this is an email from you to the board of directors; is that correct?
A. Yes.
Q. At --
A. That's correct.
Q. Is this the board of directors of AgileTV?
A. I didn't check whether they all are there; but, yes, it is.
Q. Okay. And you're looking at the "To" line in Exhibit 133?
When you look at the "To" line of Exhibit 133, when you said you didn't check if they were all there, is that what you were referring to?
A. Yes, that's what I was referring to.
Q. It makes reference to --
A. Yes.

Q. -- Gary Lauder, correct?
A. Yes.
Q. And Guy Sucharczuk, correct?
A. Yes.
Q. And "a" -- I believe that's Alan Chernig (phonetic). Is that right?
A. Yes.
Q. And Roy Sardina; is that correct?
A. That's correct.
Q. "Ckemper"; is that correct?
A. That's correct.
Q. And there's a number of additional people. Were those, to the best of your recollection, at least some of the board of directors of AgileTV that existed in the first part of the year 2006?
A. I don't see that anybody's missing; so, yes, it does.
Q. All right. Okay. So you write in this email to the board of directors, "I just returned from a trip to Comcast where we had quite successful meetings." Do you see that?
A. Yes, I do.
Q. Does that refresh your recollection as to whether you went to Comcast in Philadelphia in late

January of 2006?

A. Yes, it does.

Q. Okay. The email goes on. You've highlighted a number of lines here. I want to jump to those portions where you've highlighted.

Those are your highlights; is that right?

A. That's correct.

Q. The email goes on to read, "Our Board was very concerned with Brian Roberts' comments questioning whether Agile would be around five years from now." Do you see that?

A. Yes, I do.

Q. Had Mr. Roberts earlier explained that he was concerned whether AgileTV would be around in five years?

A. I don't remember that he had.

Q. Does it refresh your recollection by reading this document about Mr. Roberts' concern about whether AgileTV would be around in a few years?

A. Yes.

Q. And do you know if Mr. Roberts was concerned about paying additional monies to AgileTV in the event -- as a result of the signing of the SOW?

MR. LAM: Objection; calls for speculation.
BY MR. MOSKO:
Q. You can answer the question.
A. Would you repeat the question, please.
Q. Do you know if Mr. Roberts was concerned about giving AgileTV additional money if Comcast were to sign the SOW?
MR. LAM: Same objection.
THE WITNESS: Yes.
BY MR. MOSKO:
Q. What did Mr. Roberts say to you, if anything, about his concern with respect to giving AgileTV additional money?
A. His concern was, was the company going to be around five years from now.
Q. And did you have a chance to speak with the board of -- the board of directors of AgileTV about that concern?
A. Yes, I did.
Q. Do you know if AgileTV paid back to Comcast [redacted]
A. Yes, I did.
Q. Why did -- strike that.
[redacted]
loan?

A. To prove to Roberts that we had the wherewithal to -- to finance this business.

Q. Okay. The statement of work called for [redacted] forward with the project; is that correct?

A. That's correct.

Q. Okay. Let's read the next portion of your highlights on Exhibit 133. It reads, "Our stepping [redacted] enabled by our current investors putting in another substantial equity round should convince them that we have deep pocket investors strongly supportive of seeing" AgileTV -- "seeing Agile become successful. They were really impressed that we would take such steps." Do you see that?

A. Yes, I do.

Q. Is that consistent with what you told Mr. Roberts?

A. Yes, it is.

Q. Okay. So why did AgileTV agree to do -- to [redacted] to that?

A. To prove to them that we had the wherewithal to keep the business going.

Q. And did you tell AgileTV -- strike that.
Did you tell Comcast that you would go forward, that is, AgileTV would go forward, with a [redacted] payment?
A. We did.
Q. Why did AgileTV agree to do this large deployment without a -- without money from Comcast?
A. We thought that that would be a leadership deployment in the industry and that everybody in the world would know what we were doing, and we would be very conscious of letting the world know that it worked well and -- and was -- was effective.
Q. Okay. And did Comcast, during this meeting, explain that they were willing to go forward with a ubiquitous deployment of the AgileTV technology?
A. Yes.
Q. This communication -- this meeting with -- with Comcast occurred in the latter part of January 2006; is that your recollection?
A. Correct.
Q. And sometime after February of 2006, you stepped down from the CEO position at AgileTV; is that correct?

A. That's correct.

(Deposition Exhibit 134 was marked for identification.)

BY MR. MOSKO:

Q. I want to show you what's -- what we're marking as Exhibit 134, please.

Mr. Cook, you just testified that sometime after this late January meeting, you stepped down from the CEO position at AgileTV. Did you maintain any responsibility or contact with AgileTV after you stepped down from being the CEO?

A. Yes. I maintained a constant contact with them, and still do to today.

Q. And do you have some kind of formal relationship with AgileTV, or what -- what now is Promptu Corporation, please?

A. Yes, I do. I get paid a thousand dollars a month and have ever since I left.

Q. Okay. Looking at Exhibit 134, this is an email from you to a "gstaffaroni," S-T-A-F-F-A-R-O-N-I. And it starts with "Giuseppe." Could you tell us who Giuseppe Staffaroni is, please?

A. He was my successor as the CEO of the company.

Q. All right. And it's dated several months after your last communication with Mr. Silva. It's dated June 9th, 2006. Do you see that?
A. Yes, I do.
Q. I want to address -- I want you to take a look at number 5. Well, strike that.
Before we do that, the subject matter of this email is "Questions for Brad Dusto." Do you see that?
A. Yes.
Q. And who was Mr. Dusto?
A. He was an executive of Comcast covering the Western part of the United States.
Q. Okay. And we've been talking about a potential deployment of 50,000 subscribers. Was this deployment intended for the Western division at Comcast?
A. Yes, it was.
Q. And this was the division that Mr. Dusto was responsible for?
A. That's correct.
Q. And so the subject matter is "Questions for Brad Dusto." And then you write, "Giuseppe: These are...questions I'd suggest." And then I'm going to skip several. I want -- want you to take a look at

number 5, which reads, "Would other Divisions deploy it and would headquarters approve it?" Do you see that?

A. Yes.

Q. Was that, in your mind -- that is, other divisions deploying the AgileTV system -- was that an important condition, in your mind, for AgileTV, or Promptu, to go forward with any kind of relationship with Comcast?

MR. LAM: Objection; leading.

THE WITNESS: Yes.

BY MR. MOSKO:

Q. Was that always, in your mind? Was that always a condition?

MR. LAM: Same objection.

BY MR. MOSKO:

Q. You can answer the question.

A. Please restate --

Q. Sure.

A. -- the question.

Q. Were there any conditions in 2006 that AgileTV required of Comcast to go forward with the deployment of the AgileTV technology? Were there any conditions?

A. I don't know.

Q. Okay. Was -- fair enough.
The -- Exhibit 134 says, "Would other Divisions deploy it and would headquarters approve it?" Is that one of the things that you told Mr. Staffaroni?
A. Yes, it was.
Q. And why was that important to tell Mr. Staffaroni?
A. Since he was new man on the block, it was important that he knew the conditions that the company was operating under.
Q. Okay. And was that one of the conditions, that headquarters would approve it?
A. Abs --
MR. LAM: Objection; vague.
BY MR. MOSKO:
Q. And headquarter --
(Discussion off the record.)
THE WITNESS: Say again.
(Discussion off the record.)
MR. MOSKO: You're going to have to give us the context. Can you please read back the past couple of lines, please.
(The record was read by the reporter.)
MR. LAM: Objection; vague.

MR. MOSKO: All right. Let me -- let me strike that question.

Q. Line 5 of Exhibit 134 reads, "Would other Divisions deploy it and would headquarters approve it?"

As you sit here today, Mr. Cook, do you know what you were referring to when you wrote "would headquarters approve it"?

A. Did I know what --

Q. Can you tell us what you were referring to when you wrote "would headquarters approve it?"

A. I'm not sure that I can.

MR. MOSKO: Okay. Very good. Let's take a break, if we can, please.

THE VIDEOGRAPHER: Okay. We're going off the record at 10:52 a.m.

(Recess taken.)

THE VIDEOGRAPHER: We are back on the record at 11:04 a.m.

BY MR. MOSKO:

Q. Mr. Cook?

A. Sir.

MR. MOSKO: Thank you very much.

On behalf of Promptu, I have no more questions.

EXAMINATION BY MR. LAM

Q. Mr. Cook, good morning.

A. Good morning.

Q. My name is Leo Lam. I'm representing Comcast. I have a few points I'd like you to clarify based on your testimony both yesterday and earlier this morning.

First, I'd like to ask, is all the highlighting in the exhibits that you have in front of you your own highlighting?

A. Was it what?

Q. You see the exhibits that you have in front of you, the documents you have in front of you. I believe nearly all of them have highlighting on them. Do you see that?

A. A good number of them, that is; no question.

Q. Did you make all those highlights?

A. The ones in the color green I did.

Q. Okay.

A. The ones in the color yellow I didn't do.

Q. Who did the highlighting in yellow?

A. I think that -- I think you did (indicating). I'm not sure.

Q. So there are -- there are different color

highlights on those documents. You believe --
A. There are two different colors in there --
Q. Right.
A. -- as far as I know.
Q. What are the two different colors?
A. Green and yellow.
Q. You did the highlighting in green; is that correct?
A. I did the highlighting in green.
Q. You did not do the highlighting in yellow?
A. I did not do the yellow highlighting.
Q. Somebody else highlighted those documents in yellow?
A. Correct.
Q. Was the yellow highlighting on those documents before you did the green highlighting?
A. For most of them, yes.
Q. So by the time you received the documents that you have in front of you, there was already yellow highlighting on them; is that correct?
A. Most likely.
Q. And you don't know who did the yellow highlighting?
A. I -- I think that my attorney did.
Q. How did you -- how did you get the

documents that you did highlight yourself?
A. He gave them to me.
Q. Your attorney did?
A. Yes.
Q. Are the documents in front of you -- do they represent all the documents that your attorney gave you or just some of the documents?
A. Some of them.
Q. Besides the documents that your attorney gave you, did you review any other documents to prepare for your deposition which started yesterday?
A. Again, would you repeat the question.
Q. Yes. Before your deposition started yesterday morning, did you review any other documents to prepare for the deposition besides what your attorney gave you?
A. My recollection is that, yes, I did review some others.
Q. Do you remember which other documents you reviewed besides what your attorney gave you?
A. No, I couldn't recall that.
Q. Why did you review other documents besides what your attorney gave you?
A. Excuse me?
Q. Why did you review other documents in

addition to what your attorney gave you?
A. In addition to what the attorney gave me?
Q. Let me start over, Mr. Cook.
I believe you just testified that you reviewed documents that your attorney gave you, which were prehighlighted, right?
A. Yes.
Q. You added your own highlighting. Is that correct?
A. I added my highlighting, right.
Q. Right. Did you review any other documents to prepare for your deposition besides the documents that the attorney gave -- that your attorney gave you?
A. I think there were a few.
Q. You think you reviewed other documents?
A. I think there were a few.
Q. In addition to what your attorney gave you?
A. Yes.
Q. Why did you review those additional documents?
A. Well, I'm not getting my point across. I reviewed other documents than here, that my attorney gave me, but I don't think I reviewed any that was not given to me by my attorney.

Q. I see. Thank you for your clarification.
How much time did you spend preparing for your deposition?
A. Probably a good part of five days.
Q. Five days, including time that you spent reviewing and highlighting documents; is that right?
A. Yes.
Q. Do those five -- approximately five days' worth of time include meeting with your attorneys?
A. Yes.
Q. What --
A. Uh-huh.
Q. Besides Mr. Mosko, did you meet with any other attorneys to prepare for your deposition?
A. I don't think so.
Well, Joe was with -- was present at one of the meetings.
Q. Did you say Joe?
A. Joe.
Q. Yorio. Bob Yorio?
A. Excuse me?
Q. You were gesturing towards the -- your -- your right -- your right-hand side, but you were saying the name Joe. Were you referring to Bob Yorio?

A. He is the man I'm talking about.
Q. The man next to Scott Mosko?
A. Yes, exactly.
Q. All right. The -- did you meet with Jacob Schroeder, who's the man next to the man sitting next to Scott Mosko?
A. For a short, very short, time. He was part of it.
Q. Was the testimony that you've given so far, a few hours yesterday and approximately an hour today, all based on memory that you had refreshed by either meeting with attorneys or reviewing the documents that you were presented with by your attorneys?
A. What's the question you want me to answer?
Q. Again, I'll -- I'll -- I'll say it a different way.
So far you've given several hours of deposition testimony, right?
A. Yes.
Q. A few hours yesterday and roughly one hour today.
A. Yes.
Q. The testimony that you gave so far in your deposition, was it all based on memory that was

refreshed by the documents that you reviewed or by the meetings that you had with your attorneys?

MR. MOSKO: I'll object to the question as overbroad.

THE WITNESS: Am I supposed to answer or not?

BY MR. LAM:

Q. You may answer if you can. If you're unclear, you should let me know, and I'll try to clarify my question.

A. Let's do the latter.

Q. Okay. You testified about a lot of information over the course of a few hours yesterday and today, right?

A. Yes.

Q. Was any of the information that you provided us in your testimony based on memory that you have independent of reviewing the documents that your attorney presented you and independent of meetings that you had with your attorneys?

A. Yes. It was recalled memory.

Q. Recalled memory in addition to discussions you had with your lawyers and in addition to what you saw in the documents you reviewed; is that --

A. Yes.

Q. -- correct?
A. Absolutely. I was the CEO of this company for, what, six years and spent most of my time working on the company and making it successful.
Q. All right. Do you refer to -- today, do you typically refer to your company that you were formerly the CEO of as AgileTV or as Promptu? Do you use those two terms interchangeably?
A. It was -- most of the time I was the CEO, it was referred to as Agile.
Q. Agile?
A. Agile.
Q. Do you --
A. Promptu came along when the company was changing direction after the Comcast contract fell through.
Q. And do you prefer -- do you have any preference whether we use the term "Agile" as opposed to "Promptu"?
A. I don't care.
Q. Thank you.
Yesterday you referred to deployments. You also used a different term, "trial." Do you remember that?
A. No, I don't know what you were talking

about.
Q. I'm talking about in the context of product development and perhaps demonstration, in your testimony you variously sometimes used the word "deployment." Sometimes you used the word "trial." And what I'm asking is whether there's a difference between the two.
A. Between --
Q. Deployment and trial.
A. Trial and -- what was the other word?
Q. Trial and deployment.
A. And deployment?
Q. Yes.
A. Well, they're for two different purposes.
Q. Will you please explain the different purposes between deployment and trial.
A. The trial was testing whether or not the system was working properly. And what's the other word?
Q. "Deployment."
A. Deployment is, you're serving a customer by deploying the system in his household. Not a very clear explanation, but it's the best I can do.
Q. So trial is to test whether the system is operational; is that right?

A. Trial is to check whether the system is operational, yes.
Q. And deployment means actually providing the system to a customer; is that right?
A. Not necessarily. The deployment is installing the system in any number of houses, offices, or whatever. For example, there were several installations made in executives' offices at Comcast, and that -- that would be an installation. That wouldn't be a trial.
Q. That would be an installation that you would also call a deployment?
A. Of course.
Q. Does deployment necessarily come after trial?
A. Not necessarily.
Q. So you could deploy an Agile system in either a corporate office or in a residential customer home before conducting a trial to test whether it's operational?
A. I don't know the answer to that question. I'm not sure I understand what the question is.
Q. It's --
A. Try it again.
Q. I'll take it from the top. I asked you

whether deployment necessarily comes after trial. I believe you said not -- not necessarily.

A. Not necessarily.

Q. So could you -- or did Agile ever deploy Agile systems in a corporate office or in a customer residence before actually conducting the trial to see whether such a system was operational?

A. We installed the system to trial at -- in many public -- in any number of -- of customers that Comcast obtained or we obtained by a solicitation and door to door.

Q. In those installation instances -- which you would call deployment; is that correct?

A. Yes.

Q. Those installations were performed for the purpose of testing whether the system was operational; is that right?

A. Some were for testing. Some were for determining what the value was of the installation, how much the customer liked what was being installed, and -- and we got a record of how it was used.

Q. In those instances in which the installation was conducted for purpose of testing the system, is it fair to say that those were

deployments for trial purposes?

A. You could say that, but the trialling was done more in our own laboratories than they were at Comcast laboratories. We tested and tried new approaches to improve the system that we did in our labs, and then once it was proved in our labs, we had no question about the success of deploying that in the public facilities.

Q. So testing was typically done in-house at Agile, is that right, trial testing?

A. You have to repeat that again. I -- I'm having trouble following what your line of thought is.

Q. I'm going by your previous response in which you said trialling was done more in Agile's own laboratories. So I'm following up on that part of your response, to see if you can confirm or clarify whether or not testing or trials were mostly done in-house at AgileTV.

A. Yes. Testing of the system was done mostly in our laboratories, as opposed to deploying them at the customers. By the time I got to the installation in a customer, in -- or -- or executives of the -- of the customers, it was already pretty well proven. And we didn't have --

we couldn't afford to have something to not work that we would install.

Q. By the time Agile deployed any system outside of Agile's own labs, Agile had already tested such systems; is that right?

A. That's correct.

Q. Do you currently have a stake in AgileTV, now known as Promptu?

A. I do not.

Q. Do you have a stake in this lawsuit filed by Promptu against Comcast?

A. I do not.

Q. Do you have any stake in the patents on which you're a named inventor -- let me reask the question. Do you have any stakes -- excuse me.

Do you have any stake in the patents on which you're a named inventor?

A. No, I do not.

Q. When was the -- for purposes of discussing the substance of your testimony, when was the last time you met with any of your attorneys?

A. This morning on the car ride up here from my home.

Q. So sometime after you testified yesterday --

A. Yes.
Q. -- right?
In between the time you testified yesterday and the time you started testifying this morning, you met with your attorneys to discuss the substance of your testimony?
A. No, not at all.
Q. Oh. When was the last time you met with your attorneys to discuss the substance of your testimony?
A. I don't remember, but about a week ago.
Q. Have you met with your attorneys to discuss the substance of your testimony between yesterday's deposition session and the start of today's deposition session?
A. What about it?
Q. Have you met with any of your attorneys to discuss the substance of your testimony --
A. No, I have not.
Q. -- between -- between the time we adjourned yesterday and the time we started yesterday?
A. Correct. We did not.
Q. Have you reviewed any documents to refresh your memory about your testimony between the time we adjourned yesterday and the time we started this

morning?
A. Only what you saw happens here during the testimony.
Q. Right. We saw a lot happen during the testimony. I'm asking whether you reviewed any of the documents that your attorney gave you between the end of yesterday's session and the beginning of today's session.
A. Absolutely not.
Q. If I -- if I use the term "Promptu," I also mean to include the company known as Agile -- or formerly known as AgileTV. Is that okay with you?
A. That's fine with me.
Q. We've gone through, or at least Mr. Moscow has gone through, quite a few email messages, that -- that are in front of you, that describe discussions that either you or somebody else at AgileTV had with people at Comcast, and has -- and Mr. Mosko has variously asked you whether those email descriptions are accurate. And I believe almost to a T you've said they are. Do you remember that?
A. I do.
Q. Not all of the email messages that we've seen so far are actually direct communications with

Comcast, right?

A. Some of them are direct communications with Comcast.

Q. Not all of them?

A. Not all of them.

Q. Some of them are email messages between you or others at AgileTV with other individuals at AgileTV describing communications with Comcast; is that right?

A. Correct.

Q. In those emails where the message was not actually a direct communication with Comcast, did you ever portray the Comcast relationship in a way that you believe was too optimistic?

MR. MOSKO: The question's overbroad.

THE WITNESS: It was too optimistic? What do you mean?

BY MR. LAM:

Q. I mean did you ever paint too rosy a picture about the dealings that AgileTV was having with Comcast compared to what was actually happening?

A. In -- my job is running the company. It was important that I conveyed to the directors as accurate and not swayed to be too rosy or too

persuasive; and so, no, I don't think so.
Q. What about in your update emails to all Agile employees? Did you ever paint a rosier picture than what was actually happening?
A. Well, I don't like your -- your vocabulary. But it certainly is true that when discussing progress with all employees, it's unimportant that they have a good view of what could happen and what -- what -- what's positive, and it will keep them stimulated, working hard, doing an intelligent job of -- especially of development, research and development. Hard to keep people going at a high clip if they don't have some stimulus. So I'd -- I'd say -- I wouldn't use your words, but I'd say that it is probable that it sound -- it would sound to some people as though this was a rosy view of -- of what we were doing.
Q. Of the -- a rosier view of the company dealings?
A. Yeah, and I --
Q. Right.
A. -- wouldn't use the word -- or I shouldn't use the word "rosy," because that's a -- that puts a color on it which is unfair.
Q. All right. I don't mean to be unfair. I

tried the word -- the adjective "optimistic." Are you comfortable with that? Did you sometimes paint a more optimistic picture of the company's dealings in order to motivate the Agile employees?

A. You have to remember that we were serving many different people, not just Comcast. We were talking to many well-receptive companies, that -- and starting at the very top, the second largest MSO was Time Warner. And Time Warner was a very close follower of everything we were doing. And then there was Charter. And there were a whole series of customers that we had that were following the work that we were doing with -- with Comcast and stayed close to it constantly. And we didn't want to have to trial the -- the system in front of many different companies. We wanted to have one company that everybody would look to. And Comcast was our selection because they were the largest. They were the biggest.

Q. Time Warner was the second largest, you said?

A. Yes.

Q. Did you consider Time Warner to be an important business partner target?

A. Yes.

Q. Let's talk about Time Warner.
Next in order.
(Deposition Exhibit 135 was marked for identification.)
BY MR. LAM:
Q. Dr. Cook, the court reporter has handed you what's been marked as Exhibit 135, which appears to be an email from you to all AgileTV employees dated May 27, 2005. Do you see that?
A. Yes, I do.
Q. This is an --
A. I -- incidentally, I'm not a Ph.D., so please don't call me "Dr."
Q. Excuse me. Thank you. Thank you.
"Mr. Cook."
Mr. Cook, the email subject line reads "Progress Report." Do you see that?
The email --
A. Say that again.
Q. -- subject line, the heading --
A. Yes.
Q. -- reads "Progress Report." Do you see that?
A. Yes.
Q. Is "Progress Report" a term that you used

similarly with "Update"?
A. Yes.
Q. We saw quite a few emails that were simply entitled "Update," and I'm wondering whether the -- your email that's entitled "Progress Report" serves the same type of purpose to all Agile employees.
A. I don't remember way back to 20 years ago, 15, 20 years ago, which word I used for what particular occasion. So -- I don't think there's anything significant between one and the other.
Q. Right. In your first line -- your first statement in the email to all employees, you say, quote, "It's time for an update on what's going on in the company." Do you see that statement?
A. Yep. I see it.
Q. So is it fair to say that this email was intended to provide all employees with an update of company dealings?
A. Okay. I -- I see it.
Q. Do you agree that your email was intended to update all Agile employees about the company's dealings with other potential --
A. Well, you'll notice --
Q. -- business partners?
A. -- that there's a difference between this

one and -- and others, in that the board of directors was included here. Usually it was directed to employees. But this was including the -- the board.

Q. How do you know that this email included the board?

A. How do I know this is -- is including the board?

Q. Yes. How do you know that the email included the board?

A. Because their name's here.

Q. Where?

A. Chris Larson, Guy Lauder, myself, two others.

Q. Well, we might not be looking at the same exhibit. May I take a look at what you have in your hand, Mr. Cook?

I see.

Here. You can have it back.

You mean in the body of the email, you refer to Chris Larson, Gary Lauder, and others; is that right?

A. Yes, correct.

Q. I understand.

The email provides an update on not only

Agile's dealings with Comcast but also Agile's dealings with Time Warner; is that -- is that right?

A. What was the comment about Time Warner's --

Q. I'm asking whether the email that you sent to all employees updates employees on the company's dealings with Time Warner.

A. Well, this one may not have, but we did update employees on Time Warner.

Q. Will you take a look at the fourth paragraph, that begins with the phrase "In the meantime." Do you see the phrase "In the meantime"?

A. Yes, I do.

Q. In that paragraph --

A. There's where we visited Time Warner. Uh-huh.

Q. Correct. I'll read it. That paragraph reads, "In the meantime, Hanson, Anderson and I visited Time Warner Cable and they said they'd like to start making a plan to include Promptu as a feature of their cable services. They also said that they'd try to move quickly to provide us a $3 million convertible loan by the end of July. We'll see whether or not they can move" that "quickly!" Do you see that paragraph?

A. Yeah, I see that.

Q. When you wrote this email to all employees, did you believe your description of the dealings with Time Warner to be accurate?

A. Absolutely I believed it was accurate.

Q. Did Time Warner represent to you or anyone at AgileTV as of May of 2005 that they would move quickly to provide AgileTV with a $3 million convertible loan?

A. You're asking if I thought that Time Warner was a legitimate customer?

Q. No. I'm asking whether your statement that Time Warner said they would try to move quickly to provide a $3 million convertible loan is accurate.

A. Okay. I don't remember that.

Q. Let's take a look.

A. I wrote it, but -- and it's certainly my writing. But I don't remember it.

MR. LAM: Next in order.

(Deposition Exhibit 136 was marked for identification.)

BY MR. LAM:

Q. Mr. Cook, the court reporter has handed you what we've marked as Exhibit 136, which appears to be an email from a person named Peter Stern at Time Warner Cable to you, Dave Hanson, and Anderson, and

somebody named Julie Simon, also at Time Warner Cable. And this email is dated May 20th, 2005. Do you see that?

A. Yes, I see that.

Q. So this is a message from Time Warner Cable to you, right?

A. Uh-huh.

Q. Do you have any reason to believe you did not receive this email around May 20, 2005?

A. Do I think what?

Q. Do you have any reason to think you did not in fact receive this email in May 2005?

A. No, I suspect I did receive it.

Q. Okay. The first statement simply says, "Paul, it was a pleasure meeting you, Paul, as well, and your team." Do you see that?

A. Yes, I see that.

Q. Now, the second paragraph below that begins with the phrase "For the sake." Do you see that?

A. "For the sake of" --

Q. Yes.

A. -- "being crystal clear"?

Q. Yes.

A. Yes. Uh-huh.

Q. That paragraph -- or that statement reads,

"For the sake of being crystal clear, with regard to the $3 million loan/investment, I am not averse to what you proposed, but I did not yesterday nor am I prepared today to make such a commitment." Do you see that statement?

A. Yes. I'm trying to find it on the paper here, however.

Q. It's the paragraph that begins with the phrase "For the sake."

A. Yes. I got that.

Q. I'm reading that sentence, or I was reading that sentence.

A. Okay. I read it.

Q. You read it? So here Time Warner Cable was telling you and others at Agile that it was not prepared to make a commitment of the $3 million loan, right?

A. That's correct.

Q. That was dated seven days before Exhibit 135, in which you told all Agile employees that Time Warner said they'd try to move quickly to provide you with the $3 million loan, right?

A. Right.

Q. So isn't it fair to say that your statement to all Agile employees was not accurate?

MR. MOSKO: Misstates the record.
BY MR. LAM:
Q. You may answer.
A. Would you restate it, then, please?
Q. Yes. Do you see any contradiction between what Time Warner Cable told you on May 20, 2005 and what you told all Agile employees on May 27, 2005?
A. 27th, 2005?
Q. I'm comparing Exhibits 135 and 136. 135 was the one that we previously handed you, your email entitled "Progress Report," to all Agile employees.
A. Okay. Now I understand.
Q. You see that on May 20 --
A. Okay. I now understand what -- what you're putting in front of me. What would you like to know.
Q. I would like to know whether you would acknowledge that on May 20, 2005, Time Warner told you and others at Agile it was not prepared to make a $3 million loan commitment. Do you see that?
A. Yes, I do see that.
Q. A few days later, you told all Agile employees that Time Warner was trying to move quickly to provide you with a $3 million loan,

right?

A. It seems to be right.

Q. Do you not see any contradiction between those two propositions?

A. Dealing with Time Warner and trying to get money out of them is a very difficult thing to do. And they're typical of the -- of the whole world of -- of television, where people have difficulty getting money out of anybody. It doesn't surprise me at all that there's a discrepancy here.

Q. So you do see a discrepancy --

A. I --

Q. -- between --

A. I see, certainly, a discrepancy. The -- Time Warner, with their technical people, were really stimulated by the system that we presented to them. They liked it. They thought it was a winner in terms of what they could do with it and what their customers would like and made some suggestions, as a matter of fact, of -- of things that might be of interest to them.

They wanted to get a free ride on the work that Comcast was doing. And we were aware of that. And that's kind of what the discrepancy is that you see between these two MOUs.

Q. So let me get back to my question, Mr. Cook. You do see a discrepancy between what Time Warner told you and what you told all Agile employees a few days later; is that fair?

A. I don't know whether it's fair or not. But -- it's -- it's what was happening.

Q. You were telling Agile employees something different from what Time Warner told you a few days earlier?

A. We had good reason to think that -- that Time Warner in particular, but Lenfest, Charter, several of them wanted to get a free ride and -- and get the benefits without having the expenditures of a new -- new -- what will I call it? -- a new presentation for the -- the customers of the MSOs.

Q. They all wanted to get a free ride from Comcast?

A. Sir?

They all wanted to line up with -- having said that, in fact, Lenfest, who had -- was north -- north of Philadelphia, where their deployment -- had a deployment, was receiving money, and was making a profit on it before Comcast and Time Warner and anybody else. So Comcast was not first. They were the largest, but they weren't first. It was our

opinion that Comcast would be the best to get, because they're the largest, and everybody would acknowledge that, but -- well, I don't need to say more, but -- but there were a lot of others that were seriously interested in deploying this system. They liked it. They -- they wanted to deploy it, and they worked hard to -- to get it in their -- in their plant.

Q. You said that Comcast was not the first.

A. Comcast was not the first.

Q. Comcast was not the first to do what?

A. To deploy, for pay, our system.

Q. Who was the first to deploy for pay AgileTV's system?

A. Who was?

Q. Who was?

A. Lenfest.

Q. You -- Lenfest actually charged subscribers for AgileTV's speech recognition?

A. Say again.

Q. Did Lenfest -- by the way, how do you spell Lenfest?

A. L-E-N-F-E-S-T.

Unfortunately, the owner passed away about two years ago, so he's not with us now.

Q. Did you mean to testify that Lenfest actually charged subscribers for AgileTV's --
A. Absolutely.
Q. -- speech recognition --
A. Yes.
Q. -- functionality?
When did -- when did Lenfest do so? When did that happen?
A. When did that happen? It was back -- well, I don't know. I don't have that good a recollection. But it was somewhere in the -- in the two thousand and -- well, it was as early as 2003.
(Discussion off the record.)
THE WITNESS: There were some others as well. But Lenfest is the one that was the first.
BY MR. LAM:
Q. Lenfest was a small cable operator?
A. Very small.
Q. Do you know what the acronym "MSO" means?
A. What does "MSO" mean?
Q. Yes.
A. I forget what "MSO" stands for.
Q. It stands for -- I'll tell you. It stands for "multi-service operator." Have you ever --
A. Okay.

Q. -- used that acronym before?
A. Thank you.
Q. Yeah. Have you ever used the acronym "MSO" before?
A. Sir?
Q. Before today, have you ever used the acronym "MSO"?
A. I've used it all the time.
Q. I will use it to loosely refer to cable companies. Is that okay with you?
A. Uh-huh.
Q. So Lenfest was a small MSO; is that right?
A. A small cable company. Yes.
Q. Small cable company. You believe that Lenfest actually charged Lenfest's subscribers for AgileTV's speech recognition service; is that correct?
A. Yes, that's correct.
Q. You think that might have happened as early as 2003; is that right?
A. Say again.
Q. You think that the Lenfest -- you think that Lenfest might have charged its subscribers for AgileTV's speech recognition functionality as early as 2003; is that right?

A. They could order specific programs that they would be interested in, and they'd pay $2, $2.50, something like that, for a specific one-hour, two-hour movie, or something like that. It was a little different approach than Comcast was interested in.

Q. What part of Lenfest's service involved AgileTV's technology?

A. Ask again, please.

Q. Yes. You think -- or you testified that Lenfest deployed AgileTV technology to Lenfest's subscribers and charged its subscribers for it; is that right?

A. Yeah, that's correct.

Q. What -- what part of Lenfest's offerings involved AgileTV technology?

A. What part?

Q. Yeah. What feature of Lenfest used AgileTV --

A. Movies.

Q. -- technology?

Movies?

A. Yeah, almost --

Q. Movies --

A. -- entirely.

Q. Movies that were requested by speech commands? Is that what you're telling us?
A. Yes.
Q. Did Lenfest in turn pay AgileTV in order to use AgileTV's speech recognition technology?
A. Lenfest did pay.
Q. How much did Lenfest pay Agile?
A. I don't have the slightest idea. I don't have the numbers in front of me. I --
Q. Were there agreements --
A. All I know is that they -- they sold and paid us the money for it.
Q. Were there agreements between Agile and Lenfest that required Lenfest to pay for Agile's technology?
A. Absolutely.
Q. Have you -- did -- were those agreements, agreements that you would have negotiated?
A. Say again.
Q. You said absolutely there were agreements between Lenfest and AgileTV. I'm asking whether such agreements would have been negotiated by you personally.
A. Yes, they were personally.
Q. But you don't --

A. I -- I knew Gerry Lenfest personally very well.

Q. But you don't remember how much Lenfest paid AgileTV; is that right?

A. It was relatively small amounts of money, but it was -- it established a value for the -- the use of -- of voice to establish a -- a -- I'm sorry. I'm getting confused with what I'm saying. But anyhow, they -- they did establish a value for the movies. And we were very pleased with that, because we could try different -- with Lenfest's approval and then -- and then support, we did try different approaches to programming.

Q. Mr. Cook, are you sure that the Lenfest relationship was with Agile, as opposed to a -- an earlier company?

A. Yes, of course I'm sure.

Q. Did Lenfest have any relationship with DIVA?

A. With who?

Q. DIVA. D-I-V-A.

A. I don't remember whether we had anything going with DIVA and Lenfest. I -- we must have, because I knew him before -- I was head of DIVA, you know.

Q. Right.
A. Yeah, I -- I just don't remember it. I hadn't thought about it in 20 years. But --
Q. So what I'm asking is whether you're certain that the relationship, the business relationship you've been describing between Lenfest and your company --
A. Yeah, we --
Q. -- might have been DIVA instead of AgileTV.
A. Say again.
Q. You're -- you've been describing for the past few minutes a relationship between Lenfest and one of your companies. I'm wondering whether you might be thinking about DIVA instead of AgileTV.
A. No, no. I was talking about AgileTV.
Q. But you did have a relationship at DIVA -- while you were at DIVA, while you were still heading DIVA, you did have a relationship with Lenfest, right?
A. Yes. I did have a -- I believe I had a relationship with Lenfest before --
Q. AgileTV?
A. -- before Agile came along.
Q. All right.
MR. MOSKO: I wonder -- are you done with

that area? I wonder if we should take a break at this point.

MR. LAM: We -- we can. Do you want this to be our lunch break?

MR. MOSKO: Why don't we go off the record, and let's find out.

MR. LAM: All right.

THE VIDEOGRAPHER: We're going off the record at 11:54 a.m. This will mark the end of media number 1.

(Recess taken.)

(Deposition Exhibit 137 was marked for identification.)

THE VIDEOGRAPHER: We're back on the record at 12:02 p.m. This marks the beginning of disk number 2.

BY MR. LAM:

Q. Mr. Cook, hi. The court reporter has handed you what's been marked as Exhibit 137. Do you have Exhibit 137 in front of you?

A. I do, right in front of me.

Q. Now, as you're going through some of these documents perhaps for the first time today, if you need to make any marks or highlighting on them to help you review or to help you reference back to any

part of the document, you should feel free to do so. I have extra highlighters and pens if you -- if you want to -- if you want to do so. If you don't mind, I'll just hand you a highlighter and a pen, and you feel free to use them or not. Is that okay with you?

Here you go.

Mr. Cook, do you see that Exhibit 137 is an email from an individual named Guy -- I'm not sure how to pronounce the last name, but it's spelled S-U-C-H-A-R-C-Z-U-K.

A. Sucharczuk.

Q. Sucharczuk?

A. Yes.

Q. To Gary Lauder and Roy Sardina at Valence Capital.

Oh, who was Mr. Sucharczuk?

A. A member of the board of directors of the company.

Q. Of the company? By "company" you mean AgileTV?

A. AgileTV.

Q. Was Mr. Roy Sardina also on the board?

A. Roy Sardina was also a director.

Q. And so was Gary Lauder; is that correct?

A. That's correct.
Q. Have you seen this email before today; do you know?
A. I don't think so.
Q. I -- I'll note, to be fair, that your name does not show up on the sender field or the recipient field; however, we understand from Promptu's lawyers that this -- a copy -- this copy of the email came from your computer drive.
A. From my computer?
Q. Yes, from your hard drive, or --
A. Okay.
Q. -- hard drives. I don't know how many hard drives there -- you had, but came from one of your hard drives --
A. Okay.
Q. -- at least. But you don't remember seeing it before today --
MR. MOSKO: I will --
BY MR. LAM:
Q. -- is that right?
MR. MOSKO: -- object to the question as assuming facts not in evidence.
BY MR. LAM:
Q. You don't remember seeing it before today?

A. I do not remember seeing it before today.
Q. The top line of the email I believe reads, "Expect no revenue" until "July 2006." Do you see that?
A. Yeah, I do.
Q. Did AgileTV, to your memory, receive any revenue in July 2006?
A. What's the question?
Q. The question was whether, to your memory, AgileTV received any revenue in July 2006.
A. I don't remember.
Q. Do you remember whether AgileTV ever received any revenue?
A. Whether Agile received any money -- any revenue?
Q. Yes. That's my question.
A. Yes, relatively small amounts of revenue, but we received some from -- from Lenfest, as I mentioned a little bit ago. We received some from a company whose name I can't remember at the moment but who was deployed in the -- well, they had headquarters in New York City, and the deployment of their plant was in the Ohio Valley. And I just don't remember the name of the company. They were in -- very strong, enthusiastic buyers, and they --

they paid us a fair amount of money to -- to get our system going in their plant. But I can't -- I can't remember names and numbers, and I have nothing to recall to satisfy you.

Q. Looking down past the first line of the email, do you see the subject line that reads, "Paul Cook's Optimism and Overconfidence"?

A. Yes, I see that.

Q. You see that?

Below that is a message from someone whose initials are "GML." Do you recognize that to be Gary Lauder's initials?

A. Gary Lauder, right.

Q. Gary Lauder.

Mr. Lauder's message says to Mr. Sardina and Mr. Sucharczuk, "In case you have not noticed, everything is great at AgileTV. I wonder why we even have board meetings? I look forward to seeing y'all" -- Y, apostrophe, A-L-L -- "this aft," A-F-T. Do you see that?

A. I see that.

Q. Below the initials "GML," there's a heading, that's underlined, which reads "Company Overview, August 24, 2005." Do you see that?

A. I see that.

Q. And then following that heading, there are nine numbered points.
A. There are what?
Q. Nine numbered points under the heading "Company Overview."
A. Yes, I see them. Uh-huh.
Q. Will you read those to yourself, and let us know when you're done, please.
A. Okay.
Q. You've read all nine points?
A. I -- I read it, rapidly.
Q. Do you know whether the part of the email in Exhibit 137 that begins with the heading "Company Overview" and includes the nine points that you just read come from a message or email that you wrote?
A. No, I didn't know that.
Q. So you don't know as you sit here today reading these nine points whether the nine points under the heading "Company Overview," dated August 24, 2005, come from either an email or message that you wrote?
A. I'm sorry. I couldn't understand you.
Q. I'm -- let me ask it a different way.
Do you know whether the email that Gary Lauder sent to Roy Sardina and Guy Sucharczuk was

reproducing at least part of a message that you wrote regarding a company overview --

A. No, I didn't --

Q. -- dated August --

A. -- know that.

Q. So reading those nine points, you don't know whether those nine statements were statements you made in a -- in a different message or email to someone else?

A. I'm sorry. I'm having trouble understanding you. Could you enunciate a little more clearly, please?

Q. Yes. The email is entitled -- the subject line of Gary Lauder's email is "Paul Cook's Optimism and Overconfidence." You --

A. Right.

Q. -- see that, right?

So I'm asking you whether you understand the body of the email to be reproducing something that you wrote.

A. I understand that's what this is now.

Q. Okay. So you understand that the nine points were something that you wrote?

A. Apparently. I don't remember it, but I'll believe that that's what you did.

Q. Point number 1 -- well, let's talk in general terms about the nine points.

The nine points all pertain to the target business partners that AgileTV was dealing with around August of 2005, right?

A. Apparently. Yes.

Q. Point number 1 refers to Comcast. Point number 2 refers to Comcast, right?

A. Right.

Q. Point number 3 refers to Time Warner Cable --

A. Right.

Q. -- right?

Point 4 relates to Charter?

A. Charter.

Q. Point 5 relates to Insight, right?

A. Now we're talking. Now, that -- that's what I was looking for before. Insight. Lexington, Kentucky.

Q. Insight, in Lexington, Kentucky?

A. Okay. Good.

Q. Is that a cable company?

A. Yeah. Yes, Insight is a cable company.

Q. Point number 6 refers to Sunflower Broadband, in Lawrence, Kansas. Do you see that?

A. I see that.
Q. Was that also a cable company?
A. I believe it is.
Q. Point number 7 refers to TV Guide. Do you see that?
A. I see that.
Q. That's not a cable company?
A. Well, it's a guide.
Q. It's a guide company, right?
A. Yes.
Q. Point number 8 refers to Sprint and Nextel.
A. Yes.
Q. Those are not cable companies; is that right?
A. Correct.
Q. So does rereviewing at least the first eight out of the nine points in the company overview dated August 24, 2005 refresh your memory as to whether or not AgileTV was having business dealings with all of these parties, or all of these companies?
A. Is that a question for me?
Q. Yes.
A. What's the question?
Q. Do you recall from reading -- do you

remember, now that you've read these points in the company overview, whether or not AgileTV had dealings with the companies mentioned in the points?

A. The answer is, yes, we did. I did dealings with all of them.

Q. Some of them were cable companies; some of them were not? Is that right?

A. That's -- that's correct.

Q. What type of business dealings was AgileTV having with Sprint and Nextel?

A. Which point is that?

Q. That's number 8. Number 8 refers to Sprint and Nextel.

A. "Sprint and Nextel have merged and our champions have been placed in key positions."

Yeah. Now, what's your question?

Q. Do you remember what kinds of business dealings AgileTV was having with either Sprint or Nextel, which are not cable companies?

A. No, I don't remember.

Q. Do you remember whether it had anything to do with speech recognition technology?

A. I don't remember.

Q. All right. So going back up to point 1, it states, "Comcast has decided to deploy AgileTV

service in an initial deployment to 50,000 subscribers ASAP in at least one metropolitan area using the AgileTV guide." Do you see that?

A. I see that.

Q. As of late August of 2005, Comcast had yet to approve or sign off on any SOW with AgileTV; is that right?

A. I don't know.

Q. Well, let's look at point 2. Point 2 says, "Agile" -- excuse me, "Comcast and AgileTV are finalizing Phase I of the SOW for AgileTV development project and hopes to sign it by September 10, 2005." Do you see that?

A. Yes, I see it.

Q. So at that time, Comcast had not signed off on any SOW with AgileTV, right?

A. I'm having trouble understanding what your -- what your point is here.

Q. Well, let me get to the bottom line. I believe you testified earlier today that Comcast in fact never signed an SOW with AgileTV; is that correct?

A. I think that's correct.

Q. So --

A. It is correct I testified to that.

Q. Do you know whether that's factually true, that Comcast never signed an SOW with AgileTV?
A. What's the question?
Q. Is it the case that AgileTV and Comcast never actually signed an SOW?
A. Well, we signed it, I know.
Q. Comcast --
A. I signed it myself personally.
Q. Comcast did not; is that right?
A. As far as I know. I have not ever seen a signed copy on their part.
Q. Was the -- as far as you know, was the SOW that you signed for the purpose of deploying AgileTV's service to 50,000 subscribers?
A. I haven't reviewed the SOW, and I can't agree or disagree.
Q. So you don't know just based on memory?
A. I don't.
Q. Mr. Cook, besides preparing for a few days for your deposition, do you have any other role in this lawsuit?
A. Another role?
Q. Yes. Do you -- besides sitting here testifying at your deposition and spending the time to prepare for it, have you participated in the

lawsuit in any other way?
A. Absolutely no other way. I was cautioned that that would not be allowed. And I followed that to the letter.
Q. Did you have any involvement in Promptu's decision to file this lawsuit against Comcast?
A. I had no -- nothing to do with it.
Q. Do you know whose decision it was --
A. I --
Q. -- to sue Comcast?
A. I don't even know that. I could guess, but I don't know.
Q. Did there ever come a time while you were at Agile where you realized and understood that Comcast would not sign the SOW that AgileTV proposed?
A. There's some other things that haven't come up yet that perhaps need to be put on the table. Because at the annual television show in 2006, Steve Burke and I had a chat in Las Vegas at the show, in front of the Comcast booth. He had been the chairman of the show the year before. I forget the name of the show, but I'm sure several people do. And I talked to Burke. Burke was the, in essence, chief operating vice president or executive vice

president of -- of Comcast. And he and I had about a five-minute chat, just the two of us. And I had met Burke a couple times before. And one of these identifies that -- that meeting, or a couple of the meetings.

And Burke said to me, "Cook, we're not going to be able to go through with this. My triple play program takes precedence over what we're doing," or "what you're doing," I mean. "And for that reason, we're going to have to dump what we do with you."

Now, this was in January of 2006. And you've seen and have the evidence of what happened leading up to that. But it's the first time that anybody had ever said to me that we weren't going to go through with the deal that everybody's been telling you about.

And he mentioned both the -- the owners of the company, so that the discouragement that that had for me was very powerful. And it left me in a very difficult position. And I called the biggest investor in the company and advised him as to what I had learned and -- and took it on from there. But it was the first time that Comcast had said, from anybody, that we weren't going to do business with

you.

And that was a very disturbing bit of news for me, and I had to take it to the people that owned the company, so -- I -- I tell you that because it influenced everything from that date on and led to a change in course for the company in what it did.

Q. The discussion you just described happened sometime in 2006 at a Las Vegas show?

A. Yes.

Q. Who was the biggest investor in the company that you took the news to?

A. Chris Larson.

Q. What was Mr. Larson's reaction to your delivery of that news?

A. That he would back us and see to it that we were properly funded.

Q. Mr. Larson said he would continue to back AgileTV?

A. Yes, he said he would continue to support us.

Q. Would you explain for us what change in course for the company you were referring to. What was the change in course?

A. It led to the company's search for a

different application of the technology that it had developed and led to a large investment and a remarkable, disturbing series of events, and it led to my departure from the company. It's in essence immediately thereafter.

Q. What was the different application of technology that you referred to?

A. The one that they chose was -- and I -- I was not part of the decision making. I was opposed to it. And we disagreed. And that's why I left. But the -- the chosen application was for the use of voice to control automobiles. And that's what they've been doing the last 15 years, ten years.

Q. Who are you describing as the "they" in your response?

A. Excuse me?

Q. You said "that's what they've been doing" for "the last 15 years."

A. Yes.

Q. Voice control of automobiles.

You were -- you were explaining that --

A. I can't hear you.

Q. I'll try to speak more loudly and more clearly.

You responded that voice control of

automobiles --
A. Right.
Q. -- was -- is what they've been doing for the last 15 years.
A. That's what they've been working at for the last -- well, since 2006. I guess that's a little less than ten -- 15 years, so --
Q. I'm asking you who you're calling the "they." Who's "they"?
A. You're asking me what?
Q. Who's -- yeah. Who's "they"?
A. Who's "they"?
Q. Yes.
A. The board of directors of the company.
Q. Of Promptu?
A. Of Promptu. Yeah. That's when the company changed its name and started to pursue a different objective.
Q. When you told the -- Chris Larson of Comcast's decision to no longer pursue business with Promptu, who else did you tell besides Mr. Larson?
A. I -- I told Larson. I told Lauder, Sucharczuk, Herzig. I told essentially all of the board of directors.
Q. You told the board of directors?

A. Yeah, one at a time.
Q. When you were delivering this message to the board of directors --
A. Sir?
Q. When -- I'm referring you back to the time in 2006 when you were delivering this message about Comcast's decision to the board of directors. Did you think at the time that Comcast violated an -- any obligation it had to Promptu?
MR. MOSKO: Let me object --
THE WITNESS: Absolutely.
MR. MOSKO: Hold on. One second.
Let me object to --
THE WITNESS: Whoops.
MR. MOSKO: -- the question as calling for a legal conclusion.
You may ask -- answer the question if you understand it.
THE WITNESS: Okay.
BY MR. LAM:
Q. So let me reask it. And your attorney can state his objection again, or we can just say, "Same objection."
When you delivered the message to the board of directors, including Mr. Louder, Mr. Sucharczuk,

Mr. Larson, when you were giving them this message that Comcast decided to no longer pursue business with Promptu, did you believe that Comcast violated any obligation that it had to Promptu?

MR. MOSKO: Same objection.

BY MR. LAM:

Q. You may answer.

A. Absolutely. I thought that -- that Comcast violated an obligation they had. They had the chairman of the board, they had the president of the company, they had the largest owner of the company, and they absolutely told me that they were going to deploy this, deploy it to all the 21 million subscribers that they had, Comcast. And they told me, and each one of them told me, the -- each of the -- each of the key executives knew exactly what they told me. And they had their display in their own offices, both of them, Ralph and -- what's the other one's name? Anyhow, the two, father and son. And they had said they were going to do an -- an adoption of our technology as -- as a key part of the whole deployment of our system for their plant. And we believed it and developed product in order to -- to fulfill that. I'm not sure that -- I'm not sure what I ought to be telling you, but that's what

happened.
Q. Mr. Cook --
MR. MOSKO: Are we at a good time? Can I suggest a break?
MR. LAM: In two minutes.
MR. MOSKO: Sure.
BY MR. LAM:
Q. Mr. Cook, did you tell any of the board of directors or anyone that you conveyed the message that Comcast decided no longer to work with Promptu that -- that Comcast violated some obligation it had to Promptu?
A. I made a trip to Philadelphia after this settled down for a couple weeks and went and discussed this with both -- both the heads of the company. And I didn't get anywhere.
Q. You're talking about a discussion with Comcast?
A. Yes. I'm --
Q. I'm --
A. -- talking about my personal discussion with the -- the executives, the top executives of the company, excluding Steve Burke, who was not included with -- what's the name of the executives?
Q. Mr. Cook, I'm asking you a different

question. I'm asking whether you told anyone at Promptu that you believed Comcast violated an obligation to Promptu back in 2006.

A. Oh. I -- everybody in the company knew it, that --

Q. Did --

A. -- I was leaving and that I believed -- I -- I believe that the company should have stayed in the TV business and exploited the contacts it had with these other companies.

Q. Mr. Cook, did anyone at Promptu agree with you, with your belief that Comcast violated an obligation to Promptu?

A. Yes, several people agreed with me.

Q. Who agreed with you?

A. I -- I'm sorry. I don't want to answer that -- answer that question. And I don't want to start a fight to -- at this stage of the game.

Q. You don't want to answer the question?

A. I don't want to answer the question.

Q. Why not?

A. Because I don't think it's a proper thing to add to this display that we're having right now.

Q. I will ask that you answer that question, because we need to know who agreed with you that

Comcast violated some obligation that it owed to Promptu back in 2006.

MR. MOSKO: Lacks foundation.

THE WITNESS: The -- every top executive of -- of -- of Agile agreed with me in terms of what course should be taken. And that course included deploying the system for the Western division of Comcast and also -- also -- well, I'm losing my track here. I'm not sure what question I ought to be answering.

BY MR. LAM:

Q. I'll go back to my question, Mr. Cook.

A. Yeah. What's your question?

Q. In 2006 --

A. Well, yeah. I was about to explain that every executive in the company agreed with me that we should stay and -- and use the -- the technology we had developed to take care of these other companies that we'd started a good beginning with, including Comcast in the West, where we had good assurance that -- that they would want and could immediately deploy the 50,000 subscribers that had been discussed. And every executive believed that we should stay in the television business and should not go into other ones. But Larson in particular

was emphasizing that we did such a good job of developing the system, it was good -- good to put an investment in and make it -- and make it a -- a successful business. And he did. He's funded the continuation of the business for these last ten years, 12 years.

Q. Mr. Cook, I'm going to go back to my question, which I'd like you to answer before we can all take a break.

In 2006, after you realized Comcast decided not to pursue business with Promptu, who at Promptu agreed with your belief that Comcast violated an obligation to Promptu?

A. Comcast --

MR. MOSKO: Assumes fact.

THE WITNESS: -- never -- to my knowledge, Comcast never gave a straight answer to us in terms of -- of what -- what they were proposing to do with -- with us. They didn't -- to my knowledge, they did not let us know that they were not going to deploy our system. And the informal comment of a private individual at a TV show doesn't constitute a -- in my opinion doesn't constitute a specific order from Comcast to -- to our company in order to stop the -- we -- we were in production. We were in

production on the remote control that controls the -- the -- the plan, the -- I lack the words right at the moment. But Comcast never, to my knowledge, gave us a "No, we're not going to go forward with this." And we'd been told all along that we were going to be deployed. And we've shown you today and yesterday something like 25 different emails that proves well the lack of -- lack of the things necessary to run a company properly -- properly.

BY MR. LAM:

Q. Mr. Cook, I'm going to have to go back to my question. And I'll take it in smaller steps.

Sometime in 2006, after the Las Vegas television show in 2006, you realized that Comcast was no longer interested in doing business with Promptu; is that right?

A. I realized.

Q. You realized?

A. I realized it. Yes.

Q. You at that time -- I believe you said this. Now, correct me if I'm wrong. You at that time believed that Comcast violated an obligation that it owed to Promptu; is that correct?

A. That's correct. I believed that.

Q. My question is, who at Promptu agreed with your belief that Comcast violated an obligation to Promptu?

MR. MOSKO: Question lacks foundation.

THE WITNESS: And I said the executive --

BY MR. LAM:

Q. If anybody?

A. I said that every executive in the company believed in that. The thing I didn't say is the board of directors -- none of the board of directors thought that that was the right thing.

Q. Understood.

A. They thought that the -- that the board should take the action and -- and do what they did. And they got a new president. And that's -- that's what the change was. I was not part of that.

Q. Is it your testimony that aside from the board of directors at Promptu, every executive at Promptu agreed -- shared your belief in 2006 that Comcast had violated some obligation to Promptu?

A. The ones that I would say specifically, since you're pushing me, Hanson; Anderson; Greiner; Chaiken; Maddux, Scott Maddux; all of them were in favor of doing everything they could to stay in the TV business and to really make something out of it.

Q. I'm asking a different question, Mr. Cook. Is it your testimony that in 2006, all of those individuals you just named --

A. I --

Q. All of those individuals that you just named, is it your testimony that in 2006 they shared your belief that Comcast somehow violated an obligation that Comcast owed to Promptu?

A. Those privy to the documents, the answer is yes. And you have copies of those who were privy to those, because it was sent to everybody in the company.

Q. Did anyone back then among the individuals that you mentioned talk about suing Comcast back then, 12 years ago?

A. I don't know. I left.

Q. You didn't talk about it?

A. I didn't -- I -- no, I didn't talk about it. I got out of -- got out of there and thought it was none of my business and somebody was going to have to take over. And that's when the board came along and hired Giuseppe.

Q. So even though you believe that at least certain individuals, executives at Promptu, shared your belief that Comcast violated an obligation that

it owed to Promptu back in 2006, nobody talked about suing Comcast back then, to your knowledge; is that right?

A. Now you're putting words in my mouth. So --

Q. I'm asking you whether it's correct.

A. Okay. All I can tell you is that the executives I named and some others were in favor of continuing with the television deployment, believed strongly in it. And we were in production on it at that time, and we had to go out and cancel it. A lot of it was being made in China and, you know, it was well done, was well done.

Q. To your knowledge, Mr. Cook, did anyone at Promptu talk about suing Comcast back in 2006?

A. I wasn't there to know.

Q. You don't know?

A. So I -- I can't answer the question.

Q. You personally did not discuss suing -- the possibility of suing Comcast back then; is that right?

A. I -- that's correct. I did not want to stir up trouble with those that agreed with me. But I happened to know that they all did agree with me.

Q. But nobody, to your knowledge, talked about

suing Comcast back then, even though they agreed with you?

A. I don't know. I mean, I wasn't in charge of the company anymore, so it wasn't up to me to sue Comcast.

Q. Right. I'm asking whether you heard any such discussion. I believe the answer is no. Am I correct?

A. Say it again, please. I --

Q. Did you hear, back in 2006, anyone talk about suing Comcast for violating an obligation to Promptu?

A. I didn't talk to anybody who -- well, maybe Alan Herzig I did talk to about it, who was one of the directors. I did talk to him about it. He was a confidential friend and director.

Q. A director of Promptu?

A. Excuse me?

Q. Alan Herzig was a director of Promptu?

A. Yes.

MR. LAM: All right. Let's take a lunch break.

THE VIDEOGRAPHER: We're going off the record at 12:48 p.m.

(Whereupon, a lunch recess was taken.)

AFTERNOON PROCEEDINGS

THE VIDEOGRAPHER: We are back on the record at 1:27 p.m.

BY MR. LAM:

Q. Mr. Cook --

A. Sir.

Q. -- are you ready?

A. I'm ready.

Q. If you could refer back to Exhibit 137, please. This was the email from Gary Lauder to Roy Sardina and Guy Sucharczuk.

A. Could you speak toward me, please?

Q. Yes.

Will you refer back to Exhibit 137, the email from Gary Lauder.

A. Yeah, got it right here.

Q. While you were at AgileTV, did you hear anyone ever express that your views were either too optimistic or overconfident?

A. Frequently.

Q. Frequently. Who -- who expressed that view?

A. Oh, gee, I don't remember. But it was not an uncommon comment. And I challenge everybody to

accomplish more than they were used to, and -- and it -- it's reflected on their opinions, without question. I'm aware of that.

Q. In point number 1 in that email, there's reference to "initial deployment to 50,000 subscribers." Do you see that?

A. Yes.

Q. Do you remember whether AgileTV was prepared to proceed with initial deployment to 50,000 subscribers?

A. Yes, we were, indeed. In fact, we had made special arrangements with China, an -- a company in China, to produce the -- the important hardware.

Q. Earlier today and also yesterday, you made multiple references to the phrase "ubiquitous deployment." Do you remember that?

A. Yes, I remember on some of the emails.

Q. What do you mean by "ubiquitous"?

A. Universal, cover the waterfront, to be present in every opportunity.

Q. For all 21 million customers of Comcast?

A. Yes, to make it available to all 21 million. Doesn't mean they'll be installed at 21 million, but to be -- have -- to have the capability to connect it if the -- if the customer

wants it.

Q. You, several times earlier today, and yesterday, testified that ubiquitous deployment was a condition for AgileTV to proceed. Do you remember that?

A. I don't remember it that way. But I know what you're talking about.

Q. Well, what way do you remember it? Was ubiquitous deployment a condition for AgileTV to proceed with a deployment with Comcast?

A. That was one of the conditions, yes.

Q. Is 50,000 subscribers, in your view, a ubiquitous deployment?

A. 50,000 would not be ubiquitous.

Q. But AgileTV was prepared to proceed with a deployment to 50,000 subscribers?

A. Yes. We reduced our demands.

Q. So the ubiquitous deployment that you had been describing earlier was not a -- was not a firm condition on whether or not AgileTV proceeded with Comcast; is that right?

A. I'm not sure I understand what you were saying. But --

Q. That might be in part because I was trying -- I am trying to understand what you were

saying earlier by describing "ubiquitous" as a condition for proceeding to deploy with Comcast.

A. Certainly the original demands were ubiquitous, meaning cover the whole waterfront of Comcast, all -- to be available for all subscribers.

Q. That initial demand of ubiquity in deployment did not stick, correct?

A. I think that's right.

Q. All right. Was the -- was your concept of ubiquitous deployment captured in any written agreement between AgileTV and Comcast?

A. Excuse me?

Q. We've gone through -- at least you've been shown, during the testimony that you gave to your own attorney, various signed written agreements between Comcast on one hand and AgileTV on the other. Do you recall that?

A. Yes, I do.

Q. One of them was a License and Development Agreement, that we refer to as the LDA. Do you recall that?

A. As the?

Q. LDA, the abbreviation for "License and Development Agreement."

A. Okay. Okay.

Q. Do you know what I'm referring to, the License and Development Agreement?
A. Yes.
Q. We -- you also saw other written agreements between Comcast and AgileTV, that were confidentiality agreements. Do you recall that?
A. Yes.
Q. So my question is, in any of the written agreements, was the condition of ubiquitous deployment written or memorialized in any of those written agreements?
A. I don't know. I haven't --
Q. You don't know?
A. -- searched all the documents.
Q. Do you understand that the written agreements between Comcast and AgileTV define various rights and obligations between the two parties in their relationship with each other?
A. I wouldn't -- no, I'm not a lawyer or -- I don't -- I don't get involved. I'm mostly a technologist, and I concentrate on that, so I -- I don't know that I have any -- I don't have a good answer for your question.
Q. What do you think the purpose of the written agreements between AgileTV and Comcast are?

What's the point?
MR. MOSKO: Calls for a legal conclusion.
You can answer the question.
THE WITNESS: Now, what's your question?
BY MR. LAM:
Q. Why have any written agreement between Comcast and AgileTV?
A. There were several agreements between us.
Q. Yes. I'm asking you why -- why did you sign any of the written agreements? What was the purpose of them?
MR. LAM: The question's overbroad.
THE WITNESS: I don't know how to answer your question. As I say, that's a -- to me, that's a legal question, and I'm not a lawyer.
BY MR. LAM:
Q. Why did you sign them?
A. Why did I --
MR. MOSKO: Same objection.
BY MR. LAM:
Q. Why did you sign the agreements that you signed?
A. Because I was advised that that's the thing that we ought to do.
Q. What did you understand the License and

Development Agreement to be about?
A. Well, that's an awfully broad question. I'm not sure I know how to answer it.
Q. Did you have any idea what you were signing when you signed the License and Development Agreement?
A. Sure.
Q. What did you think you were signing?
A. I thought I was signing a -- a contract with Comcast that would take our product and deploy it universally on their system.
Q. What did you think to be the point of that contract that you signed?
A. What was the point of it?
Q. Yes.
A. Was to give us -- give each side a responsibility that they would fulfill.
Q. So at least as far as the License and Development Agreement is concerned, you thought that that agreement defined responsibilities for each side; is that correct?
A. Far as I know.
Q. Do you know how many agreements you signed between Comcast and AgileTV?
A. Do I know how many agreements were signed?

Q. Yes, how many in number.
A. I have no idea.
Q. You signed more than one; is that right?
A. I know one that I signed, sure.
Q. There were some number of written agreements that both Comcast and AgileTV signed; is that correct?
A. Far as I know.
Q. Other than what's actually captured in those written agreements, what's actually said in the written agreements, did you believe that Comcast had any other responsibilities to Promptu?
A. Yeah, I think they had a number of responsibilities, both sides.
Q. What responsibilities did you believe Comcast had to Promptu besides what's actually stated in the agreements?
A. To be prepared to do a universal deployment of our system for their 21 million subscribers.
Q. Why do you think Comcast had that responsibility to Promptu?
A. Because the president of the company and the chairman of the board of the company and the -- the head technologist all had said to me that they were going to universally deploy it.

Q. They told you that, outside of the written agreements; is that right?
A. That's correct.
Q. They told you that orally?
A. They told me that orally, and -- and, as you see from my emails, it was repeated, but -- many times, by several of them.
Q. You -- you repeated what you heard them tell you orally, right?
A. I'm not sure how to answer that, because it -- it's not what I think about, and I'm not sure where to steer this.
Q. I'm -- I'm asking you the questions. I'm trying to steer it to -- to -- to a direction. If you want to take it in a different direction, that's your prerogative. I do have a direction, though.
I'm asking you whether anyone at Comcast ever told you in writing that Comcast had a responsibility to deploy AgileTV ubiquitously to 21 million subscribers.
A. There was a document that was prepared that was the result of almost a year's long amount of work of drafting an agreement between Comcast and Agile. And I sat in on those meetings time after time after time. We had a lawyer who sat in on

those. Steve Silva was present for all of it. And a Comcast lawyer was part of all of them. And we came up with what was finally agreed by both sides. And I signed it, and I thought that Comcast was going to sign it. And as far as I know, they never did. But I --

Q. Did --

A. -- don't know that they didn't.

Q. Fair enough. You don't know.

A. I don't know.

Q. I'm asking you whether Comcast ever told -- anyone at Comcast ever told you in writing that Comcast had a responsibility to deploy AgileTV to 21 million subscribers?

A. Well, it's a question of whether somebody's word is honest and right or whether it isn't. And I'm critical that a large company like Comcast would go back on what their word was that they had given to us. That was disturbing to me.

Q. Can you answer my question?

A. I'm not sure that I know what your question was.

Q. I'll repeat it.

Did anyone at Comcast ever tell you in writing that Comcast had a responsibility to deploy

AgileTV to 21 million subscribers?
A. Probably no. But I'm not sure what they signed and what they didn't sign, because they were documents that I signed in their presence, and they had said that -- they'd indicated to me that they were going to sign it. But they didn't, apparently.
Q. Mr. Cook, before you founded AgileTV, how many other companies did you lead?
A. Did I what?
Q. Lead, did you lead, that you were the head of.
A. I still didn't hear your question. I'm sorry.
Q. You were the leader at other companies before AgileTV, right?
A. I started and built a company called Raychem Corporation.
Q. Right.
A. Yes, that --
Q. Any others before AgileTV?
A. Yes.
Q. How many others?
A. Probably two.
Q. Two? So two plus Raychem you think you founded, and led three companies before AgileTV?

A. Yes.
Q. In the course of your pre-AgileTV experience, did you sign agreements on behalf of any other of the companies that you headed?
A. Probably all of them.
Q. All of them.
In any of those experiences, did you rely on oral statements that other companies made to you that were not in the written agreements?
A. You know, I've been in business for a lot of years, as you just indicated, started probably a total of ten, many -- most of which were successful. And I don't think there was one company that I didn't have at least one critical agreement, oral agreement, that I counted on more so than any written document ever would be. So I bring you no comfort in terms of what an oral agreement should be and has to be to do business properly.
Q. Were you counting on any oral agreement with Comcast outside of what is in writing?
A. Would I?
Q. Were you? When you were at AgileTV, were you counting on some oral representation outside of written agreements that were signed by AgileTV and Comcast?

A. Don't know how to answer that question. And you'd have to take me back and -- and tell me the history, what you want me to agree to. But -- can you take a shot at that?

Q. Yes. I'll take a shot at what we've been talking about, this concept of ubiquitous deployment. Do you feel like Comcast had a responsibility to conduct ubiquitous deployment of AgileTV even if it wasn't in a written agreement?

MR. MOSKO: Misstates testimony, lacks foundation.

THE WITNESS: The reputation of a company and what it stands for is pretty critical for business in the United States as far as I've been exposed. And I believe that you can and should have oral agreements, that you can't put in writing everything that you want to have memorialized, and -- and no matter how much you try and how long you spend at making a document, you're still not going to get it covered properly. So I think an oral agreement is fundamental to what's behind a deal between two important companies. You may not agree with that, but I feel that, strongly.

BY MR. LAM:

Q. So is it fair to say that you thought

Comcast had a responsibility to --

A. I did, indeed.

Q. You thought that Comcast had a responsibility to perform ubiquitous deployment of AgileTV even though that responsibility is not written in a signed agreement?

A. Yes, because the -- the people were so important that made the promise. They were the ones that controlled the company.

Q. Besides ubiquitous deployment, besides --

A. That's --

Q. Besides ubiquitous deployment, Mr. Cook --

A. Yeah, they -- they were promising more than just a ubiquitous deployment. You could say that ubiquitous deployment means that you only have to have 10 percent of the people covered, whereas in our concept, a ubiquitous deployment would have meant something like 50 percent or more of the people would subscribe to what you -- what we were offering. And that never came up. It was discussed with Steve Silva in the negotiation, and -- it was discussed at that time, but never did the Robertses ever talk about that. They talked about --

(Discussion off the record.)

THE WITNESS: Didn't talk about that.

MR. LAM: "Robertses."
MR. MOSKO: I believe that's --
THE WITNESS: The -- oh.
MR. MOSKO: -- what he said, "Robertses."
BY MR. LAM:
Q. Mr. Cook, you just gave us an example of a potential inconsistency in understanding what it means to be ubiquitous: more than 50 percent; may be just 10 percent. That was your example, right?
A. That's correct.
Q. So without it being written down, how do you know what the oral representation is talking about?
A. Well, as I said, Steve Silva, in our negotiating sessions, and -- and I and the two lawyers discussed it and decided we wouldn't even face up to that.
Q. Face up to what?
A. What was going to be agreement on -- on terms of the written deal between us.
Q. I think you variously testified that people at Comcast were quite enthusiastic about AgileTV's product offering. Is that right?
A. Yes, it is right.
Q. Did you treat that enthusiasm the same as

what you're now describing as basically an oral agreement?

A. There was a change in the weather at one point. And I don't understand what it was, but Comcast and -- and we, together, had a long session, lasting almost a year, as I mentioned. And we talked about great detail of what was going to be in the contract. And then -- then we'd have changes every time we'd meet. And we probably met once a month for a year. But nothing was as important as the president of the company saying we believed in a -- not only a ubiquitous deployment but a deployment that would allow anybody at any time to have the type of service that you guys are offering us.

And the oral agreement to do that I think was critical to what we wanted and what they wanted. But then along came a different wind, and -- and all of a sudden for some reason they didn't seem to be interested anymore in any kind of a deal with us. And I never accepted, and I won't today -- never accepted the fact that -- that Comcast changed their mind and decided that they'd try to develop their own system after waiting a while and letting the potential deal with us go bye-bye.

Q. Mr. Cook, what you've been describing as a potential oral agreement is different from what's written in the License and Development Agreement, right?

A. That may be.

Q. I want to get back to my earlier question. Did you view any enthusiasm expressed by Comcast as an oral agreement or oral commitment to deploy AgileTV?

A. Yes. And -- and it might have been overreaching, and -- and maybe it was, as said on this memo, maybe -- this talks about my optimism and overconfidence. As I said before, and I'll say it again, overconfidence in -- in what we were doing was necessary to achieve a difficult technical problem. And my concern has always been to get a product that works, and that works well and does more than you claim it's going to do. And there is a place where I'm not overconfident. I make sure that the product is better than we even claim it, and that we can serve that. And that, to me, is more important than the business deal that was written on a piece of paper and signed.

And I was told that our agreement was going to be signed, and apparently it never has been. I

don't know. Maybe there's a copy of it signed in the vaults at Comcast and we just never knew about it. But I'd hate to think that.

Q. Mr. Cook, in the paper that was signed by both sides, the License and Development Agreement, there were multiple options that could be pursued, right?

A. Yeah, that -- by the time that came up, yes.

Q. One of those options involved an SOW, right?

A. Yep.

Q. What were the -- what were the other options, if you -- if you know?

A. Say again.

Q. One of the options under the License and Development -- and Agreement -- excuse me. Let me start over.

One of the options under the License and Development Agreement was to proceed with a -- with an SOW; is that right?

A. Yes, that's right.

Q. To your understanding, what were the other options?

A. I don't remember what the other options

were. But they're written here somewhere.
Q. They're written in the license and development agreement --
A. Yeah.
Q. -- right?
I want to take a few steps back to your time at DIVA, before AgileTV. Did DIVA offer any speech recognition technology?
A. No.
Q. What was DIVA's business?
A. They were a set-top box business.
Q. A cable -- a cable set-top box?
A. Cable set-top box business.
Q. Did DIVA offer video on demand?
A. Video on demand? Yes, we did.
Q. Did DIVA offer pay-per-view functionality?
A. Yes.
Q. But no speech recognition; is that right?
A. No speech recognition.
Q. Now, forwarding to the time that you spent at AgileTV, I believe -- I'm not sure whether you testified clearly about this, but I believe there was some relationship between AgileTV and SRI. Is that correct?
A. Yes.

Q. Will you explain what that relationship was.

A. I was chairman of the board of SRI. And when I took over, SRI was in financial difficulties. And I started a program of spinning out technologies into businesses that would make a profit and have a positive cash flow for -- for the -- the spin-outs. And one of them was the speech technology. We started a company that ended up being called Nuance, which is a several-billion-dollar-a-year company today, and a good one.

Q. Did you --

A. It also was the basis for the original spin-outs with -- with Comcast.

Q. Do you know whether there were any agreements between AgileTV and SRI about patents or other intellectual property?

A. Yes, there were.

Q. Well, what kinds of agreements?

A. Well, one agreement was with -- with Agile, where they would use the SRI system of speech to text. And -- and that was -- that resulted in a part ownership of the company by SRI.

Q. So AgileTV used an SRI patent on speech to text? Is that correct?

A. It's not that simple; but, yes, in general, yes.

Q. Well, I'd like to refer you to the License and Development Agreement. That's Exhibit 115. Do you still have that in front of you? I think it's right above your phone.

A. 115?

Q. Yes, 115. Look above your phone.

A. 133. 15 -- 1 -- yeah, here it is.

Q. Yes. If you go to the back -- just turn all the way back to the last page of the document. Are you at the last page?

A. Exhibit A?

Q. Well, I was going to ask you to look at the back page first, but that's -- do you see a -- there's a big table on the last page. You see that table?

A. Yep.

Q. Yep. Okay. So the page before the table. Go to the page before the table, please.

A. The page before the table?

Q. Yes. It should be a page where, in the upper right-hand corner, it says "Exhibit E."

A. "AgileTV" Patent "and Patent Applications"?

Q. Yes.

A. Okay.
Q. So you see that in the upper right-hand corner it says "Exhibit E"?
A. Yes.
Q. All right. And I'll just read the first couple of paragraphs. The first paragraph is one sentence, that says, "The table on the following page lists all AgileTV patents, comprising both pending and issued Utility Patents." Do you see that statement?
A. Yes.
Q. So that statement is referring to the table on the last page, right?
A. Okay.
Q. The next -- the next statement in Exhibit E reads, "As of the Effective Date of this Agreement, the only third-party patents licensed by AgileTV are four SRI patents related to speech recognition." Do you see that sentence?
A. I see it.
Q. I'm not going to read the next sentence, but then there's a list of four patents after that. Do you see the list of four patent numbers?
A. I do.
Q. Do you know why these four patent numbers

were licensed by AgileTV from SRI?
A. To have the speech basis for running the -- the system.
Q. Who made the decision to license these four patents on behalf of AgileTV from SRI?
A. The board of directors of SRI.
Q. Well, let me try the question in a different way.
Who on AgileTV's side decided to pay for licenses to these four SRI patents?
A. I suspect that I did, along with the board of directors.
Q. Do you remember why you did?
A. Because we needed it for the system.
Q. How did you become aware of these four SRI patents?
A. How did I become aware of them?
Q. Yes.
A. They're public information.
Q. Did you know about them through your own work at SRI?
A. Probably.
Q. Mr. Cook, how are you feeling? Are you okay to --
A. Yeah, I'm --

Q. -- go on?
A. I'm okay. I -- as long as we get home by Halloween.
Q. Sure. We will. I -- I suspect it will be much before you have to distribute any candy. But I want to go with your comfort level. If you feel like stopping at any point -- and obviously let me know whenever you want to take a break.
A. I'm fine at the moment.
Q. Okay. I appreciate that.
Did AgileTV -- you can put Exhibit 115 to the side.
Did AgileTV also have a relationship with Sarnoff?
A. With who?
Q. Sarnoff, S-A-R-N-O-F-F. Sarnoff.
A. Sarnoff?
Yes. Now, what is that connection? What -- can you help me? What do they do?
Q. I can't. I can't help you. I wish I could. I -- I am asking -- well, if you don't remember, we don't have to belabor this point.
A. Okay.
Q. Did you -- were you a founder of Nuance?
A. Nuance was the SRI spin-out, who had a

different name when it was formed, changed it to Nuance, was then acquired by a company in Boston, whose name I forget at the moment, and those two merged, forming the -- the today's Nuance, which is a pretty big company. It's a -- it's a 2, 3 million -- billion-dollar-per-year company.

Q. Did you found the spin-off from SRI --

A. Yes.

Q. -- that became Nuance?

A. Yes.

Q. How long were you involved with that spin-off?

A. I was the chairman of the spin-off for about a year or year and a half after we started it.

Q. And then you -- and then you left the company?

A. And then what?

Q. Then you left the company?

A. I -- I resigned from the company, yeah.

Q. You resigned as chairman of the company?

A. Yes.

Q. You don't remember the company's name?

A. I'm talking about Nuance.

Q. Right. But you said it had a different name before Nuance.

A. Oh, yeah. I don't remember their name now, no.
Q. Okay. Well, I'll just loosely refer to it as Nuance, in --
A. That's fine.
Q. Even before it was named Nuance. Is that okay?
A. That's fine.
Q. Did AgileTV have a relationship with Nuance --
A. Yeah. It had a --
Q. -- whatever its name was before Nuance?
A. It had a deal with them.
Q. What kind of deal?
A. Licenses, licensing of a patent or patents, maybe these four.
Q. The four that we just looked at were SRI patents.
A. Yeah.
Q. Did --
A. Well, the --
Q. I'm asking --
A. -- SRI patents were part -- became part of Nuance.
Q. I see. Did AgileTV have any other

relationship with Nuance?

A. We had deals with several people. Are you -- is that what you're asking?

Q. I'm asking specifically about Nuance. I'm asking -- trying to ask about AgileTV's relationship with Nuance, and, if there was one, to ask that you describe what it was.

A. Well, I don't remember very clearly, but I remember Croen was the president of Nuance. And we had several SRI directors as directors of the Nuance company, including Alan Herzig. Alan Herzig I hired to bring in to do spin-outs. That was his sole purpose, is to finance spin-outs and get them started out of the company. And it made a ton of money for us. We made close to a billion dollars and put it in the bank. And it supported a lot of SRI activities for some time. But I'm getting off the chart here.

Q. Mr. Cook, let me ask a different question. What was Nuance's business?

A. Nuance's business?

Q. Yes. What was Nuance's business?

A. Developing a speech-to-text automated system.

Q. Did AgileTV use Nuance's automated

speech-to-text system?
A. Yes, it did.
Q. Do you know if any others besides AgileTV used Nuance's automated speech-to-text system?
A. Oh, there are literally dozens of companies that use it. I don't -- I haven't seen a list in a long time, but I'm sure there's at least 15 licensees of Nuance technology.
Q. Did AgileTV itself provide an automated speech-to-text system?
A. It was developed initially by SRI in their speech department, which developed the technology.
Q. I'm asking whether AgileTV had developed its own speech-to-text system.
A. No. No, that -- no.
Q. AgileTV relied on someone else's speech-to-text system --
A. Yes.
Q. -- right?
In particular Nuance's?
A. Exactly.
Q. Mr. Cook, in your stack of exhibits in front of you, will you see if you can locate Exhibit 84. 84.
A. Did you find it?

(Discussion off the record.)
BY MR. LAM:
Q. Do you have Exhibit 84?
A. 84, right.
Q. 84 is a copy of an email from you to Sam Schwartz and dhorowitz@comcast. This is dated September 19, 2003. Do you see that?
A. I see it.
Q. Exhibit 84 has highlighting that's in yellow on it. Do you see the highlighting in yellow?
A. I do.
Q. That's not your highlighting, right?
A. No, it isn't.
Q. It's -- that highlighting was there when you were presented Exhibit 84 by your attorneys; is that right?
A. What was your comment?
Q. My comment is that when you first saw Exhibit 84, when you were preparing for your deposition, you saw it already highlighted in yellow, right?
A. Yeah, I never saw this before yesterday.
Q. You never saw it before yesterday?
A. I don't think so. No.

Q. All right.
A. Because it's not -- that's not the color I was using.
Q. That's not the color that you used. You used green or blue, something like green or blue?
A. Yeah, I used green. Yeah.
Q. Yeah.
A. I think.
Q. Mr. Cook, Exhibit 84 includes a PowerPoint presentation. Do you see that?
A. Yes, I did see that.
Q. I want to turn to a couple of pages in the PowerPoint presentation.
A. Right.
Q. First of all, what was the purpose of you sending the PowerPoint presentation to Comcast?
A. What was what?
Q. What was the purpose of you sending the PowerPoint presentation to Comcast?
A. I think to show them part of the list of intellectual property that we had under our control for our -- to put -- for deploying our equipment and software for -- for our deal.
Q. The PowerPoint presentation is an AgileTV PowerPoint, right? It's an AgileTV presentation?

A. That's what it looks like.
Q. Will you go -- the cover sheet says "AgileTV, Voice Control For Everything On Your TV," right? That's what the cover sheet -- the cover title says?
A. Right.
Q. If you go three pages in, it would be the page that ends in the numbers 818. Do you see page number 24818? 24818, on the bottom right-hand corner?
A. 24818.
Q. Yes.
A. I got it.
Q. If you look at the picture of the slide itself, it should say slide number 4 in the bottom right-hand corner of the slide.
A. It does, yes.
Q. Yes, slide 4. So slide 4 in the AgileTV presentation has a number of points on it. The first one says, "Create software to solve the complex problem of server centric voice control for cable TV." Do you see that?
A. Yes.
Q. What does "server centric voice control" refer to?

A. Which number are you?
Q. The first one, "server centric" --
A. The first one: "Create" the "software to solve the complex problem"? Is that what you're referring to?
Q. Yes, "the complex problem of server centric voice control." Do you see that?
A. Yes, I see that.
Q. What does it mean to be server-centric?
A. That it's dependent upon a server. Pretty much that's the summary. It's dependent on a server in a head -- head -- a TV head -- I can't think of the word.
Q. Well, let's see if we can -- but dependent on a server as opposed to what?
A. As opposed to an independent system.
Q. Okay. Will you flip forward to slide number 10.
A. All right.
Q. If you're at slide number 10, the page number on the bottom right-hand corner should say 24824. Is that what you see?
A. That's what I got.
Q. Okay. So at slide 10, where the title is "Centralized Control," there is a caption that

reads, "The Agile Solution provides server centric, headend control over all services." Do you see that?

A. I do.

Q. Was "head-end" the term that you were looking for?

MR. MOSKO: Objection; vague.

THE WITNESS: Yeah, that -- yes, it is.

BY MR. LAM:

Q. In the picture itself, on the right-hand side of the picture, there's a label of -- there's a -- there's a label that reads "Cable Head End." Do you see that?

A. "Cable Head End."

Q. Right. In my copy, it's actually highlighted. Is your copy highlighted?

A. The title -- the top is highlighted --

Q. Right. Right.

A. -- in blue.

Q. Okay. That's your color?

A. That's not my color.

Q. It's not your color?

A. No. No. Mine is a green color.

Q. What you see in your copy is blue?

A. What I see is blue, yeah.

Q. Blue is not the color that you used?
A. I don't think so. Is it?
Well, maybe blue's my color. I don't know. Looks like it up here.
Q. Okay. Well, we know -- we know that yellow was not your color. Is that right?
A. We know yellow's not my color.
Q. Oh, got it. Got it. So --
A. And I also know that yellow mixed with whatever I was using changes the color on the thing.
Q. To green. Yes.
A. So it's a poor combination.
Q. Right. So when you overlay blue on top of yellow, it looks like green --
A. Yeah.
Q. -- sometimes?
A. Exactly. And I --
Q. Yeah.
A. -- think that's what happened.
Q. Yeah.
A. I was using blue, and it made a -- and it made green.
Q. Right. Okay. So when you highlighted over yellow, sometimes it would look like green.
The -- Mr. Cook, "Cable Head End" in that

picture, do you see that, that label?
A. Yep.
Q. What is that referring to?
MR. MOSKO: Calls for a legal conclusion.
You can answer, Paul.
THE WITNESS: What are you looking at?
BY MR. LAM:
Q. I'm looking at the -- the part of the picture that -- that is labeled "Cable Head End."
A. Okay.
Q. What is that? What is a cable head-end?
MR. MOSKO: Same objection.
THE WITNESS: "Cable Head End," and then there's "Home." "Return path receiver."
Well, that's just a schematic of the sequence of the -- of the path of the electrons as they -- as they control the system, starting at the head, the head meaning the -- the center of the -- the center of the electronics. That is the center of the electronics.
BY MR. LAM:
Q. The cable's center of electronics --
A. Yes.
Q. -- right?
Is that where the cable company distributes

TV programming?

MR. MOSKO: Lacks foundation, calls for speculation.

THE WITNESS: Can be.

BY MR. LAM:

Q. Will you turn forward to slide 19, please.

Oh, by the way, let's stay on slide 10 for the moment.

A. Can I interrupt for a second --

Q. Yes.

A. -- and -- it's 20 after 2:00. We've got to leave here within less than an hour in order to get in the hubbub with Valentine's Day, that my family's involved in, and I suspect some of yours are also. So let's anticipate what happens from here on.

MR. MOSKO: You know what, Paul? Thanks. We can go off the record for that. Why don't we take a break, unless Mr. Lam is in the middle of a question or area of questions, and then we can talk about schedules.

THE WITNESS: How -- how much more is there to go as far as your part's --

BY MR. LAM:

Q. We will end whenever you want to end for today. And I think most likely we will come back

tomorrow. If you want to end now, we can end now. If you want to end in a half an hour, we can end in a half an hour. You said at most an hour. I'm happy to do that as well.

MR. MOSKO: Can -- Leo, can we go off the record?

MR. LAM: Sure.

MR. MOSKO: This is not necessary for the record.

THE VIDEOGRAPHER: I've got to change tape. We're going off the record at 2:20 p.m. This will mark the end of disk number 2.

(Whereupon, the deposition session ended at 2:20 p.m.)

---o0o---

CERTIFICATE OF REPORTER

I, JOHN WISSENBACH, a Certified Shorthand Reporter, hereby certify that the witness in the foregoing deposition was by me duly sworn to tell the truth, the whole truth, and nothing but the truth in the within-entitled cause;

That said deposition was taken down in shorthand by me, a disinterested person, at the time and place therein stated, and that the testimony was thereafter reduced to typewriting by computer under my direction and supervision and is a true record of the testimony given by the witness;

That before completion of the deposition, review of the transcript [ ] was [X] was not requested. If requested, any changes made by the deponent (and provided to the reporter) during the period allowed are appended hereto.

I further certify that I am not of counsel or attorney for either or any of the parties to the said deposition, nor in any way interested in the event of this cause, and that I am not related to any of the parties thereto.

DATED: OCTOBER 31, 2018

JOHN WISSENBACH, CSR No. 6862

---o0o---

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

_____

Signature of the witness

CERTIFICATE OF REPORTER

I, JOHN WISSENBACH, hereby certify that the witness was duly sworn by me, before commencement of testimony by the witness, to testify the truth, the whole truth, and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and place therein stated, in the presence of the above-noted people; that the testimony of said witness was reported by me, a Certified Shorthand Reporter and disinterested person, and was thereafter transcribed into typewriting and is a true record of the testimony given by the witness, and that the pertinent provisions of the applicable code or rules of civil procedure relating to the notification of the witness and counsel for the parties hereto of the availability of the transcript of the deposition for reading and signing have been met.

And I further certify that I am not a relative or employee of a party or of an employee of an attorney or agent of a party, or interested, directly or indirectly, in the proceeding either as counsel, attorney, agent, or otherwise.

DATED: OCTOBER 31, 2018

JOHN WISSENBACH, CSR No. 6862

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PROMPTU SYSTEMS CORPORATION, Plaintiff, v. COMCAST CORPORATION and COMCAST CABLE COMMUNICATIONS, LLC, Defendants.) Civil Action No. 2:16-cv-06516-JRS

Deposition of
PAUL MAXWELL COOK
Volume III, Pages 271-458
Thursday, November 1, 2018

REPORTED BY: JOHN WISSENBACH, RDR, CRR, CRC,
CSR 6862

UNITED STATES PATENT AND TRADEMARK OFFICE

_____

BEFORE THE PATENT TRIAL AND APPEAL BOARD

_____

COMCAST CABLE COMMUNICATIONS, LLC,
Petitioner,

v.

PROMPTU SYSTEMS CORPORATION,
Patent Owner.

_____

Case IPR2018-00340 (Patent 7,260,538)
Case IPR2018-00341 (Patent 7,260,538)
Case IPR2018-00342 (Patent RE44,326)
Case IPR2018-00343 (Patent RE44,326)
Case IPR2018-00344 (Patent 7,047,196)
Case IPR2018-00345 (Patent 7,047,196)

_____

Deposition of

PAUL MAXWELL COOK

Volume III, Pages 271-458

Thursday, November 1, 2018

REPORTED BY: JOHN WISSENBACH, RDR, CRR, CRC

CSR 6862

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BE IT REMEMBERED that, pursuant to the laws governing the taking and use of depositions, on Thursday, November 1, 2018, commencing at 9:20 a.m. thereof, at the law offices of Finnegan, Henderson, Farabow, Garrett & Dunner, LLP, Stanford Research Park, 3300 Hillview Avenue, Palo Alto, California, before me, JOHN WISSENBACH, CSR 6862, of San Francisco, California, personally appeared PAUL MAXWELL COOK, called as a witness by the Plaintiff, Defendants, and Petitioner, who, being by me first duly sworn, was thereupon examined as a witness in said action.

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ALSO PRESENT: TAIS DESCHAMPS, Videographer

---o0o---

THE VIDEOGRAPHER: Here begins videotape number 1, volume III, in the deposition of Paul Cook, in the United States United States District Court for the Eastern District of Pennsylvania, in the matter of Promptu Systems Corporation vs. Comcast, Case Number 2:16-cv-06516-JRS.

Today's date is November 1st, 2018. The time on the video monitor is 9:20 a.m. My name is Tais Deschamps, and I am the videographer, and the court reporter is John Wissenbach. And this was made at the request of the parties.

Will counsel please introduce yourselves.

MR. LAM: Leo Lam and Maya Karwande, from Keker, Van Nest & Peters, for the Comcast parties.

MR. MOSKO: Scott Mosko, for Promptu Systems Corporation and the witness, Paul Cook.

MR. YORIO: Robert Yorio, for Promptu and the witness.

MR. SCHROEDER: Jacob Schroeder, from Finnegan, Henderson, on behalf of Promptu.

MR. LAM: We have to state a telephone --

MR. CALLAWAY: On the phone is --

MR. LAM: -- appearance, too.

MR. CALLAWAY: On the phone is Dan Callaway, of Farella Braun + Martel LLP, for the

Comcast parties.

THE VIDEOGRAPHER: The witness has been sworn previously, so you may begin.

PAUL MAXWELL COOK,

having been previously duly sworn, testified further as follows:

EXAMINATION BY MR. LAM

Q. Good morning, Mr. Cook.

A. Good morning.

Q. Do you understand that you're still testifying under oath?

A. I do.

Q. At any point after we adjourned yesterday, have you spoken with your attorneys about the substance of your deposition?

A. No, I have not.

Q. Thank you. Yesterday I began questioning you on behalf of Comcast. We call that part of the questioning cross-examination. Do you -- are you familiar with the term "cross-examination"?

A. Excuse me?

Q. Are you familiar with the term "cross-examination"?

A. Not the technical term, but I know what the English words mean.

Q. I'm simply using the term "cross-exam" to describe the questions that I'm posing to you on behalf of Comcast. Okay?
A. Okay.
Q. The portion of your deposition that involved your own lawyer, Mr. Mosko, who also represents Promptu, the portion of the deposition can where he posed questions to you on behalf of Promptu I'll refer to as direct exam. Do you understand that?
A. Okay.
Q. So direct exam versus cross-exam.
During direct exam by Mr. Mosko, who represents you and who represents Promptu, he showed you a stack of document exhibits. You remember that, right?
A. Yes, I do.
Q. You remember that he also referred to highlighting in those documents? You remember that?
A. I remember that.
Q. He asked you multiple times whether or not you remember making highlighting on those deposition exhibit documents. Do you remember that?
A. Yes, I do.
Q. Now, I took a look at the highlighting

after we adjourned yesterday, and I noticed that the color that you used, which I think was blue -- right? Do you remember that?

You may look at the exhibits --

A. Yeah, I think it was --

Q. -- if you want to.

A. He had used yellow, and I guess I used blue, and it made it look green.

Q. Right.

A. Okay.

Q. Blue on top of yellow combined --

A. Yes.

Q. -- made some of the highlighting look green.

A. Okay.

Q. Do you remember that?

A. Yes.

Q. What I noticed when I looked at all -- when I looked for the blue highlighting on the exhibits that were used during your direct exam was that under the blue highlighting, everywhere there was blue highlighting, there was already yellow prehighlighting. Does that -- is that consistent with -- with your understanding?

A. Yes.

Q. You can confirm that if you wish with -- the deposition exhibits are still in front of you.
A. No, that's okay.
Q. Okay. So when Mr. Mosko asked you about highlights that you made in the documents, where you responded, yes, you highlighted the documents, the portions that you highlighted in blue had already been prehighlighted in yellow. Do you understand that?
A. Yes, I do.
Q. So everything that you testified about from those documents was already prehighlighted for you?
A. Yes.
Q. We didn't realize that during your direct examination, because we did not know that there was already highlighting in the documents that were presented to you for review in preparation for your deposition. But that's the case, right?
A. Okay. Yes.
Q. With that understanding, I have to make an objection to the questions that Mr. Mosko posed to you on direct examination using the highlighted documents, because they were already prehighlighted. I would object to those questions as leading. And in a way, I felt like I was misled when you said

that you made all the highlighting. In fact, you only made the blue highlighting; is that correct?

A. Yes. I made the blue highlighting.

Q. All right. You highlighted blue over some of the highlighting that was in yellow?

A. Yes.

Q. I want to walk through a couple of those documents that were used as exhibits during your direct examination. You have the entire set of exhibits in front of you. They are numbered -- they are in reverse numerical order, so the highest is on top; the lowest is on the bottom.

If you could find Exhibit 130, please.

A. 10?

Q. 130.

A. 130?

Q. 130.

A. I have 130.

Q. This is an email from Bob Greiner to you and Dave Hanson dated December 20, 2005; is that right?

A. Yes.

Q. In the email, Bob Greiner refers to Stephen Silva, at Comcast; is that correct?

A. Yes. That's correct.

Q. I'll read the part that's highlighted in blue, which also shows up in yellow, prehighlighted in yellow. It reads, from the start of the email, "Hess and I just connected. He thinks Silva probably has an idea that he can get something done in January or he wouldn't have asked for the time." Do you see that? The first two sentences in the email.

A. Yes. Okay.

Q. Okay. It's the part that you highlighted in blue over what was already previously highlighted in yellow.

A. Right.

Q. Do you actually have any independent memory of the exchange that Mr. Greiner is describing with Mark Hess, other than what's highlighted?

A. Did I have -- would you repeat the question, please.

Q. Yes. You see the statements that are highlighted in the email, right?

A. Yes.

Q. The statement is referring to a connection that Mr. Greiner said he just had with Mr. Hess.

A. Yes.

Q. "Hess and I just connected."

Mr. Greiner then reports something about Mr. Silva, saying that "He thinks Silva probably has an idea that he can get something done in January" -- "in Jan"; it's abbreviated: J-A-N -- "or he wouldn't have asked for the time."

What I'm asking you is, other than what's already highlighted in the document, do you have any other memory or knowledge about the discussion that is being described here in the email?

A. I don't know.

Q. You don't know.

Let's take a look at another example. Will you turn to Exhibit 123. 123, please.

A. 124. 123.

Yes, I have 123.

Q. All right. 123 is another email. It's highlighted in blue. Everywhere where it's highlighted in blue, there's underlying highlighting in yellow. This appears to be an email from you, Mr. Cook, dated December 6, 2005, to Mark Hess at Comcast and also includes on the copy list Bob Greiner. Do you see that?

A. I see that.

Q. In your email, the highlighted sentences begin with a sentence towards the end of the first

paragraph that reads, "I was encouraged by your response and hope that you can convince Silva to see me in the next few days." Do you see that?

A. I see that.

Q. And then you also highlighted, and what was prehighlighted, the last sentence in your email, which reads, "I appreciate your efforts on our behalf." Do you see that, Mr. Cook?

A. I see that.

Q. So I have a similar question about this email. This is a communication between you and Mr. Hess at Comcast from 2005, the end of 2005. My question is, do you remember anything about these -- this exchange with Mr. -- Mr. Hess?

A. I had many discussions with Mr. Hess, and I can't -- I couldn't distinguish one from another at this stage of the game.

Q. You can't distinguish one from another. Can you remember anything about your discussions with Mr. Hess other than what is highlighted in this email?

A. I remember many discussions from -- with Hess. I had many exchanges with him. And which -- which was here included, I can't tell.

Q. What do you remember about your discussions

with Mr. Hess other than what's highlighted in the deposition exhibits?

A. The enthusiasm that he had for our product line.

Q. Did you see that in the deposition exhibits?

A. In the deposition exhibits?

Q. Yes, the -- the documents that you have in front of you that Mr. Mosko asked you about during direct examination.

MR. MOSKO: The question's overbroad.

THE WITNESS: I don't know what that -- would you ask me the question again.

BY MR. LAM:

Q. Yes. I'll ask you a different question, Mr. Cook.

What else do you remember besides what's highlighted on the email in Exhibit 123 about your discussions with Mr. Hess besides enthusiasm?

A. Well, it seems to me that this exhibit is clear. It was a memo from me to Mark Hess, and it undoubtedly was one of many that went from me to Hess, and vice versa. We had a lot of exchange.

Q. Right. I understand you had a lot of exchanges with Mr. Hess and others at Comcast. Is

that correct?
A. And others at Comcast.
Q. What I'm asking you is, besides what's on the email, what do you remember about those conversations? Now, you did mention enthusiasm. So besides enthusiasm, do you remember anything else about your discussions with Mr. Hess other than what shows up in the email?
A. Yeah, I remember the statements that Hess had made to me in terms of wanting to have our system on -- deployed on their plant.
Q. He made statements to that effect?
A. Yes.
Q. What else do you remember about statements that Mr. Hess made to you or that you made to Mr. Hess?
A. Gee, I hadn't thought much about it, and I'm not sure that I'd -- do you want me to try to think of some more?
Q. I would like you to if it's not too much trouble, yes.
MR. MOSKO: Question's overbroad.
THE WITNESS: Hess was a good technical man, and he talked about technical things frequently. And so without knowing specific what --

what statements he made, all I can state for sure is that he had many statements about the quality and use -- utility of the -- of the -- of the statements that came from Mark Hess.

BY MR. LAM:

Q. The quality and use and utility of what?

A. Our product.

Q. You remember statements that Mr. Hess made about those -- about those features of AgileTV's product?

A. Yes.

Q. Do you remember anything more specific?

A. Not at this time.

Q. Will you take a look at Exhibit 125, please. 125.

A. 125. I found it.

Q. Yes. 125. Exhibit 125 is another email around the same time frame, dated December 9, 2005, from you to Steve Silva at Comcast. Do you see that?

A. I see that.

Q. This particular email is an example of a deposition exhibit where, during your direct examination by Mr. Mosko, you testified that the email refreshed your recollection of a conversation,

and in particular it was a conversation that, at least according to your testimony, happened around December 9, 2005. Is that your understanding?

A. Yes, it is.

Q. So my question is, besides what's stated in the email itself, do you remember anything else about the discussion that you had with Mr. Silva around December 9, 2005?

A. You're asking about Mr. Silva now?

Q. Yes.

A. Not -- not Mr. Hess?

Q. Yes.

A. There are many memories I have of Mr. Silva.

Q. Right.

A. And what would you like to know?

Q. I'll start over.

During your direct examination, you were shown Exhibit 125, the copy of the email that you're looking at right now. You testified that the email refreshed your memory about a conversation that you had with Mr. Silva around the date of the email, December 9, 2005. My question to you is, referring to that conversation, for which you testified this email refreshed your memory, can you tell us

anything else about the conversation other than what shows up in this email?

A. My recollection is that I had many, many conversations with Silva, probably met with him monthly for two or three years. So I -- I would have difficulty distinguishing one conversation from another and putting a date on it. I couldn't do that.

Q. Is it fair to say that you don't remember anything additional about a conversation that you had with Mr. Silva around December 9, 2005 other than the words stated in this email?

A. I can't distinguish one from another. I'm afraid that's got to be the answer that I give you.

Q. Thank you. This email is an email that you highlighted in --

A. Excuse me.

Sorry.

Q. Would you like to take a break?

A. Okay. Hmm?

Q. Would you like to take a break?

A. No.

Q. Would you like a glass of water?

A. Yeah, I'd like a glass of water.

MS. KARWANDE: I'll get it.

MR. LAM: Thank you.
MR. MOSKO: Why don't we take -- why don't we go off the record.
THE VIDEOGRAPHER: The time on the video monitor is 9:40 a.m., and we're going off the record.
(Discussion off the record.)
THE VIDEOGRAPHER: The time on the video monitor is 9:41 a.m., and this is the continuation of media number 1, volume III, and we're back on the record.
BY MR. LAM:
Q. Mr. Cook, the question I was about to ask you before we took a break was, if you take a look at Exhibit 125 again, that -- that is an example of another email that you highlighted in blue over what was previously prehighlighted for you in yellow, right?
A. Right.
Q. So some of the coloring appears to be green as a result of the color combination?
A. Right.
Q. Mr. Cook, will you look at the -- the previous exhibit in order, Exhibit 124, right under 125.

A. Got it.
Q. Now, that's an example of an email that was prehighlighted in yellow that you did not further highlight in blue. Do you --
A. That's --
Q. -- see that?
A. That's correct.
Q. Will you describe for us the -- the process or your thoughts in deciding what to further highlight in blue.
A. The process of what?
Q. Yes. Will you explain the reasons why you went through certain deposition exhibits and further highlighted it -- highlighted them in blue.
A. My attorney highlighted those that he thought I should take a look at, and I did so.
Q. What was your purpose in adding further highlighting?
A. Just to emphasize the fact that I had in fact read that comment, that line.
Q. So --
A. The sentence.
Q. Understood. So for Exhibit 124, where the document does not have any blue highlighting over the yellow, does that mean you did not read the

yellow highlighting?
A. Not necessarily.
Q. Did you read the yellow highlighted excerpts of Exhibit 124 before we started your deposition on Tuesday morning?
A. I believe I did.
Q. The highlight, the yellow highlight, not blue, reads, "I told them...that our Board has decided we had to have their sign-off by the end of the year or we'd assign our resources to other markets." I'll stop there for now. Do you see that statement?
A. Is this on 124?
Q. Yes, the highlighted part, the -- the part that's yellow, but not blue, highlighted.
A. Okay.
Q. Do you see the statement, "I told them today that our Board has decided we had to have their sign-off by the end of the year or we'd assign our resources to" the "other markets"?
A. Yes.
Q. Do you see that statement?
A. I see that.
Q. This is in reference to you telling somebody that your board has made a decision, right?

A. Right.
Q. Who's the "them" in your statement?
A. Who's the what?
Q. Identify who you were telling. Your statement reads, "I told them." I want to know who the "them" is.
A. Where are we reading here?
Q. The first line of the email, in the yellow highlighting, begins with the phrase --
A. "I told them today"?
Q. -- "I told them today." Yes. Let's stop right there. "I told them today."
A. Okay.
Q. Who did you tell?
A. It looks like it's our board.
Q. The word "them" refers to the board?
A. Well, that doesn't make sense, does it?
Q. I don't think so. But I'm asking you.
A. "We've been put off by Comcast repeatedly [redacted] told them today" -- "I told them today that our board."
"Told them today" must have been Comcast. It certainly must have been Comcast, then, I told.
Q. Who at Comcast?

A. I don't know.
Q. The next sentence that's highlighted in yellow reads, "We got immediate response that it would be taken for approval to the President and the CEO quickly and we'd get a response next week." Do you see that sentence?
A. Yes, I do.
Q. In that sentence, who's "we"?
A. Tell me which sentence you're talking about now.
Q. The part that's highlighted in yellow has three sentences. I'm referring to the middle sentence, "We got" -- that begins with the phrase "We got immediate response." Do you see that?
A. "Immediate" responses.
"To the President and the CEO quickly and we'd" -- yeah, I'm very confused about what this is.
Q. All right. The last sentence states -- the last sentence that's highlighted states, "They continued to say they will do it, want our system, and need it for competitive reasons." Do you see that?
A. "They continue to say they will do it, want our system, and need it for competitive reasons. The time has come for them to finalize it."

Well, that part makes sense. I understand that.

Q. I take it that the words "they" and "them" continue to refer to somebody at Comcast. Is that correct?

A. I think so.

Q. But you don't remember whom?

A. I don't remember.

Q. So you don't remember who you were talking to at Comcast in this description provided by your email?

A. I don't remember who this -- who the "them" was in this particular letter.

Q. Okay. We can set Exhibit 124 aside.

Mr. Cook, you -- you can go ahead and put away Exhibit 124.

Yesterday, when we adjourned, we were in the middle of going through a document that is one of the early exhibits used in your direct examination. It was Exhibit 84. Will you find that, please.

A. Got it.

Q. Do you remember Exhibit 84 includes an AgileTV PowerPoint?

A. Yes, I do, now that you mention it.

Q. Will you turn to slide 10 on -- in the PowerPoint. Slide 10.

A. "Centralized Control."

Q. That's right. The -- just to make sure we're on the same slide, the page number on the bottom right-hand corner should end with the digits 24824.

A. That's what it is.

Q. Slide 10.

Yesterday I asked you whether you understood what a cable head-end is in the picture. There's a label that reads "Cable Head End." Do you see that on the right-hand side of the picture?

A. Yes.

Q. Can you describe whether you understand what a cable head-end is?

MR. MOSKO: Calls for a legal conclusion.

BY MR. LAM:

Q. Are you able to explain your understanding of a cable head-end?

MR. MOSKO: Same objection.

THE WITNESS: It's the -- the cable end is the head of the -- is -- is the -- it's the head of the electronics package developed and deployed for the centralized control.

BY MR. LAM:
Q. Centralized control of what?
A. Centralized control of the television broadcast.
Q. Mr. Cook, what is slide 10 showing us?
MR. MOSKO: The question lacks foundation.
THE WITNESS: Well, the slide is -- is certainly showing the cable head-end and its participation in the system.
BY MR. LAM:
Q. In what kind of system?
A. In the Agile system, the Agile solution, as it says on the slide.
Q. As you look at slide 10, Mr. Cook, is there any information presented on -- on that slide, whether it's in pictures or words, that you think is confidential?
A. Is there anything --
Q. Is there any information that you see shown in slide 10 that you believe to be confidential?
MR. MOSKO: The question calls for a legal conclusion.
THE WITNESS: I wouldn't know what the -- which part is confidential and which is not. It would be the technologists that would know that.

BY MR. LAM:
Q. Do you know whether Comcast today has a voice-enabled remote control feature?
A. Yes, I know they have one.
Q. How do you know that?
A. I have three in my house.
Q. You're a Comcast subscriber?
A. Yes.
Q. Thank you. Thank you very much for being one.
Do you know when Comcast first launched its voice-enabled remote control feature?
A. No, I do not.
Q. As you sit here today, do you believe that Comcast's voice-enabled remote control functions incorporate any confidential Promptu technology?
A. I don't know.
Q. You don't know.
Yesterday you -- I believe you testified you did not have any role in Promptu's decision to bring a lawsuit against Comcast. Is that correct?
A. That's correct.
Q. Did you have any role in assessing -- and I mean ever -- whether Comcast ever took any technology that you believed to be confidential to

Promptu?

A. Well, I certainly know of employees of Comcast observing and taking notes and -- and discussing what we provided to Comcast.

Q. Right. Do you know whether anybody -- for the purpose of implementing Comcast's voice recognition features today, whether anybody at Comcast has used information that you consider to be confidential of Promptu's?

A. No, I don't know.

Q. Will you turn forward to slide 19 in that same exhibit, please.

A. Got it.

Q. If we're on the same slide, Mr. Cook, the bottom right-hand corner page number should bear the digits 24833. Do you see 24833?

A. I do.

Q. I take it, based on your previous responses regarding slide 10, that you would not be able to say whether any information shown on slide 19 is considered confidential of Promptu's. Is that correct?

A. That's correct.

Q. Let's move on.

Mr. Cook, have you ever reviewed any

patents?
A. By the thousands.
Q. When was the last time you looked at a patent?
A. Two days ago.
Q. Was that a patent of your own?
A. Well, it was both my own and some others.
Q. Do you remember the patent numbers that you reviewed --
A. No.
Q. -- two days ago?
A. Remember a number?
Q. Correct.
A. No.
Q. I'll try to find the three patents that are being asserted in this lawsuit.
Mr. Cook, I just handed you a copy of a patent that was already marked as a deposition exhibit earlier in the case. It should bear a copy of a sticker near the top of the cover page that -- that reads "Exhibit No. 8." Do you see the words "Exhibit No. 8" on a -- on a copy of a sticker at the top?
A. Yeah. I see that.
Q. All right. So this is Deposition Exhibit

Number 8, that was first used at somebody else's deposition in this same case.

A. Sorry. Your voice is fading a little.

Q. This -- Exhibit Number 8 was used in an earlier witness's deposition in this same case.

A. Okay.

Q. So we won't put a -- we will not put a new sticker on it. We'll just use the old -- we'll just use the old --

A. Okay.

Q. -- existing deposition exhibit number.

Does Deposition Exhibit 8 look like a copy of a patent that you reviewed two days ago?

A. I didn't -- I didn't review this patent two days ago.

Q. You did not?

A. I did not.

Q. Do you know what Exhibit 8 is?

A. It's a Calderone, Cook, Foster U.S. patent.

Q. Right. I'll refer to the last three digits of the issued patent number, which you can find on the top right-hand corner, which reads "Patent No. US 7,047,196 B2." Do you see that?

A. Yes, I do.

Q. I'll call this the '196 patent. Okay?

A. Okay.
Q. Have -- do you think you've ever seen the '196 patent before today?
A. Oh, sure.
Q. When do you think you last looked at the '196 patent?
A. Certainly in the last six months.
Q. Do you know what the '196 patent is about?
A. Yes, I do.
Q. Please describe your understanding of the '196 patent.
A. It's the application for a patent that allows the use of speech to control the system.
Q. The cable TV system?
A. The -- yes, the cable TV system, the speech-controlling; yeah, the speech-controlling the -- the system.
Q. Mr. Cook, do you see that you're named as an inventor on the '196 patent?
A. Yes.
Q. What was your contribution to the invention of the '196?
A. The broad concept was mine.
Q. Did you say the broad concept was yours?
A. Yes.

Q. The broad concept of what? What was the broad concept?
A. The use of speech to control a television broadcast.
Q. Do you believe that you were the first to have thought of the broad concept of using speech to control a TV broadcast?
A. No.
Q. Were you aware of other entities that attempted to use speech to control TV broadcast before you thought of the concept?
A. No.
Q. When -- do you remember when you thought -- when you first conceived of this broad concept of using speech to control a TV broadcast?
A. What's the question?
Q. Do you -- do you know when you first conceived the broad idea of using speech to control a TV broadcast?
A. Sometime after I became the chairman of the board of SRI.
Q. Was that before you founded AgileTV?
A. Yes.
Q. Was it before you headed the company known as DIVA?

A. Say again.
Q. Was it before you were the head of the company known as DIVA?
A. I don't know the answer to that now. I'd have to check calendars.
Q. Yesterday I asked you questions -- or I tried to ask you questions about an organization called Sarnoff, S-A-R-N-O-F-F. Do you remember that?
A. Yes.
Q. I believe you testified that you did not remember what Sarnoff did. Is that -- is that -- first, am I describing what -- your testimony correctly?
A. I know what Sarnoff did.
Q. Please tell us what Sarnoff did.
A. They were a -- a laboratory that was part of the General Electric Company, and -- when they bought RCA. And -- and I happened to be the chairman of the board of Sarnoff after it was made as a gift to SRI by GE under Jack Welch.
Q. At some point in time, Jack Welch gave SRI the -- the spin-off that was Sarnoff, right?
A. That's correct. It -- the laboratory; not the manufacturing facilities, but the -- the

research and development laboratory.
Q. At -- at that time, when GE gifted the research laboratory known as Sarnoff to SRI, were you already the head of SRI?
A. Was I what?
Q. Was -- were you already the -- were you -- were you already the head of SRI?
A. Yes.
No, wait a minute.
No, I think the gift by GE to SRI was made just before I became chairman of SRI.
Q. At some point in time, you became Sarnoff -- chairman of Sarnoff, right?
A. Yes.
Q. Was that before or after you were chairman of SRI?
A. Oh, that was after.
Q. When you testified that you thought of the broad concept of using voice to control a TV broadcast, you said you'd thought of that when you were chairman of SRI.
A. That's correct.
Q. Did you think of it before you became chairman of Sarnoff?
A. I believe that the sequence was I became

chairman of -- of SRI -- well, first I became a director of SRI. And when I was a director, the gift was made from GE to SRI. And I was a director, not a -- not a chairman. Then I became chairman of the board when the directors asked me if I would take over. And I did. And it was then that I began to become familiar with the -- the laboratory that had the speech capability in it at SRI, not at Sarnoff. Yeah.

Q. So you thought of the broad concept of using voice to control a TV broadcast before you became chairman of Sarnoff?

A. I didn't say that. And I don't know the answer to the question, because I don't have -- they -- they were -- one was -- one followed the other pretty closely, but -- and I don't know which one came first.

Q. Do you remember when you became chairman of Sarnoff?

A. You mean do I remember a date?

Q. A year.

A. A year?

No, I don't remember. That was quite a long time ago.

Q. Does 1993 sound about right to you?

A. There in about -- about, yes.
Q. Mr. Cook, will you go to the bottom of your exhibit stack, please, and pull out what was already marked --
A. Pull out what?
Q. -- what was already marked during your direct examination as Exhibit 83. So I think it was the first exhibit ever in your deposition.
A. Got it.
Q. Please turn to the page that -- it's the third page in the document, the page that has the -- the -- the number with the digits 275190. 275190.
A. 275190.
Q. Yep.
A. I have it.
Q. You should be on a page that describes the management team. Do you see the heading "Management Team"?
A. Yes.
Q. The first person -- the first individual described there is you, "Paul Cook" --
A. Yes.
Q. -- "chairman and Chief Executive Officer." Do you see that?
A. I see that.

Q. So maybe the description of your own background will help us apply some dates to the SRI and Sarnoff-related questions that I'm asking you.

And in this summary of your bio, the second paragraph refers to your tenure at Raychem. Do you see that?

A. Yes.

Q. The second paragraph concludes with the statement that you "retired from Raychem as CEO in 1990 and as Chairman of the Board in 1995." Do you see that?

A. Yes, I do.

Q. So I was asking you if you remember which year you became chairman of Sarnoff. Do you remember whether becoming chairman of Sarnoff was sometime after you retired from Raychem?

A. Yes, it was after.

Q. Do you think that it was after you retired as chairman of Raychem?

A. I think it's most likely that it was after. I'd have to check the detailed records.

Q. What about your tenure at SRI? Did it happen in parallel with your tenure as -- as CEO at Raychem?

A. Repeat the question, please.

Q. Yes. You did a long stint at SRI, right?
A. A long stint?
Q. A long tenure at SRI. You had a long tenure at SRI?
A. Not particularly.
Q. How many years were you at SRI?
A. I joined SRI in 1948. I started Raychem in -- it was only two or three years.
Q. Two or three years at SRI?
A. At SRI. I started a company called Sequoia Wire Company and left SRI. I continued a consulting arrangement with them and operated as head of the radiation laboratory.
Q. Let's go to the fourth paragraph in that description of your bio.
A. Okay.
Q. Do you see the statement which starts with the phrase, "Mr. Cook also served as chairman of the board of SRI International"?
A. I see that.
Q. So can you approximate the time frame that this particular part of your bio is describing, chairman of the board of SRI?
A. I became chairman of SRI -- well, I don't have the information in front of me, and I can't

remember it.
Q. Is there -- forgive me for asking. Do you -- do you maintain any sort of a biography, a professional biography, that we could consult to -- to see when and where you spent various -- various experiences in your professional career? Do you have a CV?
A. Yeah, I do.
Q. Is it available online?
A. Yeah. Matter of fact, it is available online.
Q. Well -- well, we'll look for it.
Would your CV say when you became chair of SRI, when you became chair of Sarnoff, and when you held other --
A. Yes, it --
Q. -- positions?
A. -- should have all that information.
Q. Okay. We'll do that.
Let's go back to the '196 patent. You can -- you can put away Exhibit 84, or 83. 83.
Do you have the patent in front of you?
A. I do.
Q. In addition to you, the patent names Theodore Calderone as an inventor. Do you see that?

A. Yes.
Q. Do you remember what his contribution to the invention was?
A. He was the technician who actually soldered the wires together and -- and worked together with -- with Mark Foster in terms of making the electronics work. And --
Q. What was Mr. Foster's contribution?
A. Foster was the technical brains of the strategy.
Q. So you had the high-level concept?
A. So --
Q. You, Mr. Cook -- you -- had the high-level concept?
A. I had the high-level concept.
Q. Mr. Foster had the technical brains?
A. Yes.
Q. Technical strategy.
A. Right.
Q. Mr. Calderone did the technical low-level implementation?
A. He glued the wires together.
Q. All right. On the cover page, Mr. Cook, in the right-hand side, do you see the -- the heading "Abstract"?

A. Where am I --
Q. On the cover. Stay on the cover page, the first page.
A. Okay.
Q. In the right-hand column, do you see an abstract, on the right-hand column?
A. I do.
Q. All right. There's a pretty significant -- a substantial paragraph that follows the "Abstract." Will you read that paragraph to yourself and let us know when you're done, the "Abstract" paragraph.
A. I've read it.
Q. Do you understand what the abstract is saying?
A. Not really.
Q. The first sentence refers to a back channel. Do you see that?
A. I see that.
Q. Do you have any idea what the back channel is that the first sentence is describing?
MR. MOSKO: Calls for a legal conclusion.
THE WITNESS: No, I -- I'm not sure that I understand what the back channel is.
BY MR. LAM:
Q. Towards the middle of the abstract, there's

reference to a phrase called "wireline node." Let me know if you can find that. It's in the middle of the abstract paragraph.

A. And what does it say?

Q. "Wireline node," N-O-D-E.

A. How many lines down should I be looking at?

Q. Eight.

A. Okay. I see it.

Q. Do you have any idea what a wireline node is?

MR. MOSKO: Same objection.

THE WITNESS: I should explain that I'm a -- a chemist, a chemical engineer and a radiation chemist, but I'm not an electronics engineer. So I -- I cannot give an elegant definition of what that means.

BY MR. LAM:

Q. You're not a telecommunications engineer?

A. No, I am not.

Q. Are you a cable TV system engineer?

A. No. I would not qualify.

Q. You're also not a speech recognition developer; is that right?

A. I know quite a bit about speech recognition.

Q. Have you developed speech recognition algorithms?
A. I wouldn't go that far.
Q. At AgileTV, your team used Nuance's speech recognition system, right?
A. Yes.
Q. Many other companies also used Nuance's speech recognition system, right?
A. Didn't in those days but do today.
Q. Do today.
MR. YORIO: We've going about an hour.
MR. LAM: Okay.
MR. YORIO: Counsel, is this a good time for a break?
MR. LAM: Momentarily. This won't take -- I suspect this will not take more than a couple minutes.
MR. YORIO: Sure.
MR. MOSKO: "Hide the exhibit."
MS. KARWANDE: Yeah.
MR. MOSKO: Thanks.
BY MR. LAM:
Q. Mr. Cook, I've just handed you another copy of a patent, which was already used in someone else's deposition earlier in this case. It's been

marked in the bottom right-hand corner as Exhibit Number 9. Do you see that?

A. I see Exhibit Number 9.

Q. I will -- if you look at the top right-hand corner, you see that the patent number identified is US RE44,326 E. Do you see that?

A. I see that.

Q. I'll refer to this patent as the '326 patent.

A. Okay.

Q. I'll also tell you that the '326 patent is based off of the same chain of applications that led to the patent we just looked at, the '196 patent. Do you understand what I'm describing to you?

A. I hear what you're saying.

Q. Do you remember whether you were involved in filing for this '326 patent?

A. The '326 patent is one I'm unfamiliar with.

(Discussion off the record.)

THE WITNESS: Wait a minute now. Let me just get this straight.

Okay. This is a refiling, then. Is that right?

BY MR. LAM:

Q. Yes. If you look at the left-hand corner,

at the top, it reads, "United States Reissued Patent." Do you see that?

A. Yes. Okay.

Q. Yes. So I think you understood that correctly. Mr. Cook, my basic question is, do you have any idea why Promptu filed for this reissue?

A. No, I do not.

Q. Were you involved in the filing for this reissue?

A. No, I was not.

MR. LAM: Let's take a break.

THE VIDEOGRAPHER: The time on the video monitor is 10:25 a.m. This is the -- we're going off the record.

(Recess taken.)

THE VIDEOGRAPHER: The time on the video monitor is 10:41 a.m. This is the continuation of media number 1, volume III. We are back on the record.

(Deposition Exhibit 138 was marked for identification.)

BY MR. LAM:

Q. Mr. Cook, the court reporter has just handed you Exhibit 138, which is a copy of a biography page we found online during the break.

Oh, I'm sorry. This was produced by Promptu.

Would you read this description of your professional biography, and just let us know whether you think that any corrections need to be made.

A. I'd be delighted to.

It seems to be accurate.

Q. The description of your biography in Exhibit 138 seems to be correct?

A. That's correct.

Q. I'm handing you a copy of a third patent in this lawsuit, which was previously marked as Exhibit -- Deposition Exhibit Number 4, which I'll refer to as the '538 patent.

Mr. Cook, have you ever seen Exhibit 4 before today, the '538 patent?

A. I don't know that I have. I doubt that I have.

Q. Will you read the "Abstract" paragraph to yourself, and let us know when you're done. It's also, similarly, in the right-hand column of the cover page.

A. Now, what question am I addressing?

Q. I've -- I've not asked you a question yet, other than to make sure that you've read the -- the

one-paragraph abstract. Have you read that?
A. I did.
Q. Do you see on the left-hand column a list of several inventors in the left-hand column?
A. Yes, I do.
Q. Including Theodore Calderone. Do you see that?
A. See who? Calderone?
Q. Theodore Calderone, yes. Including Calderone?
A. Yes.
Q. Including Foster?
A. Yes. Harry Printz.
Q. And James J. Kistler?
A. And Kistler, right.
Q. Right. That list does not include you.
A. I see it does not.
Q. Do you know why you were not named as an inventor on the --
A. No, I do not.
Q. -- on the '538 patent?
After reviewing the abstract and the list of inventors, does that help you clarify whether or not you've seen the '538 patent before today?
A. It doesn't help me. I don't see that I --

I don't think that I've seen it before. But I'm not sure.

Q. All right. Let's put that aside.

Exhibit next in order.

(Deposition Exhibit 139 was marked for identification.)

BY MR. LAM:

Q. Mr. Cook, the court reporter has handed you Exhibit 139, which appears to be an email dated September 5, 2000 from you to an addressee whose email address is crisla@microsoft.com (sic). Do you see that?

MR. MOSKO: Mr. Lam, you might want to reread that. I think you made a mistake.

MR. LAM: Sorry about that.

Q. Mr. Cook, do you see that the email appears to be from you, dated September 5, 2000?

A. Yes, I do.

Q. The addressee is crisla@microsoft.com (sic), the "To" address.

A. Yes. I don't know what that is.

Q. Do you know -- do you know a person by the name of Chris Larson?

A. Yes, I do.

Q. Do you think that the -- the recipient in

the "To" line is Chris Larson?

A. I think it probably is.

Q. If you go to the body of the email, where you say, "Hi Chris," the body of the email starts with "Hi Chris: I understand you're back and in the saddle. Hope you had a great trip to Europe. Rufus said you'd like to know the origin of AgileTV and I'll give you a short summary of how this all came about." Do you see those first two sentences?

A. Yes, I do.

Q. First couple of sentences.

You then state, "When I became a director of SRI in 1987 I learned about the STAR Lab and its activity." Do you see that?

A. Yes, I do.

Q. What was the STAR Lab?

A. It was the speech technology laboratory that SRI had.

Q. What was the activity that you were referring to?

A. The activity was discovering the work that the STAR Laboratory was doing.

Q. Okay. Go to the next paragraph, please, that begins with the phrase "Watching the development of speech technology."

A. Got it.
Q. Do you see -- are you with me at that paragraph?
A. Yeah.
Q. The first statement -- the first sentence reads, "Watching the development of speech technology and seeing the rapidly developing Video on Demand world, it became apparent to me that a combination of the two technologies made perfect partners and we demonstrated a crude system in front of our employees three years ago." Do you see that?
A. I do.
Q. What demonstration were you referring to of a crude system there?
A. A demonstration of what the speech -- speech-to-text could do in terms of controlling a television production.
Q. You're referring to a demonstration that was, quote-unquote, "three years ago." Would that have been while you were at DIVA?
A. While I was at what?
Q. DIVA, D-I-V-A.
A. I can't tell by just looking at this.
Q. If you look at the date of the email, it's September of 2000, and you're referring in the email

to a demonstration of "a crude system...three years ago." Would that have preceded AgileTV?

A. That would have preceded Agile.

Q. I'll read on, starting where I left off.

A. Hmm?

Q. Your email states, "We didn't have the resources to pursue this combination because of the need for DIVA to focus on VOD." Do you -- are you with me?

A. Yes, I'm with you.

Q. "When Zucker took over 18 months ago I soon had more time and began to pursue the idea I'd been cultivating for three or four years."

You with us, Mr. Cook? Are you with me?

A. Yes.

Q. "I began to scope out the patent potential." Do you see that statement?

A. Yep.

Q. What did you mean by beginning to scope out patent potential?

MR. MOSKO: The question lacks foundation.

BY MR. LAM:

Q. Mr. Cook, can you explain what you meant when you referred to scoping out patent potential?

MR. MOSKO: Same objection.

THE WITNESS: I don't know what I was thinking of. And this is quite some time ago.
BY MR. LAM:
Q. I'll finish reading that -- that sentence and the next.
"I began to scope out...patent potential, looked for a founding staff, considered the time and money requirements and talked to some venture capitalists to test the water. I also checked with several MSOs to get their feedback and to check if anyone else was active in the field."
Do you see that?
A. Yes. I --
Q. You then state, "I got very favorable feedback from" cable companies -- "from the Cable companies and learned that no one else had contemplated a headend centric system with a powerful supercomputer to handle large vocabulary natural language requirements." I'll stop there for now.
Do you see the sentence I just read, Mr. Cook?
A. Yes, I do.
Q. The "powerful supercomputer" that is referred to in that sentence was AgileTV's speech

engine; is that correct?
A. I --
MR. MOSKO: Objection.
THE WITNESS: -- think so.
BY MR. LAM:
Q. I'm sorry. What was your answer?
A. I believe so.
Q. What does "natural language requirements" refer to?
A. I'm not sure what the proper definition is of that term.
Q. All right. We might get to that later on.
You then state, "Our entire system approach has been to take advantage of the rapidly evolving HFC plant with strong two way capability that DIVA's system is also based on." Do you see that?
A. No. Where is that?
Q. I'm picking up where I left off, after the phrase "natural language requirements."
A. How far down is that?
Q. About -- just over halfway down the email.
A. Okay.
Q. Maybe two-thirds. Do you see the phrase "natural language requirements"?
A. No, I don't. That's what's the trouble.

Q. Okay. If you look at the -- if you look at -- the paragraph I'm referring to begins with the phrase "Watching the development of speech technology." If you look at the beginning of the paragraph, it should say, "Watching the development."

A. Yes, I see that.

Q. Okay. Towards the end of the paragraph, three lines above the end of that paragraph --

A. Okay, got that.

Q. -- the phrase is "natural language requirements." Do you --

A. Yeah.

Q. -- see that?

A. Okay.

Q. I read the next sentence after the phrase "natural language requirements." And feel free to read that to yourself again if you prefer.

My question is, what was the "rapidly evolving HFC plant" that you were referring to in that sentence?

MR. MOSKO: Lacks foundation.

THE WITNESS: I don't know what's meant by that.

BY MR. LAM:

Q. Do you know what the abbreviation "HFC" stands for?
A. I don't remember at the moment, no.
Q. And you don't know what an HFC plant was as of September 2000?
MR. MOSKO: Misstates testimony and lacks foundation.
BY MR. LAM:
Q. Is that -- is that right, Mr. Cook?
A. Yes.
Q. I'm going to jump one paragraph, to the paragraph that begins with the two words "The search." Do you see "The search" at the beginning of --
A. "The search of the patent"?
Q. Yes. It's the beginning of the third paragraph from the bottom. So "The search of the patent literature," do you see that?
A. Yes. Okay.
Q. I'll read that sentence. "The search of the patent literature was important and it showed that nothing had issued that would prevent our getting a strong patent position from our ideas." You see that, Mr. Cook?
A. Yes, I do.

Q. Will you explain what you were describing by that sentence.

MR. MOSKO: Question lacks foundation.

THE WITNESS: So we were -- I was explaining to Larson what we thought we could do from a patent standpoint. I think that's clear.

BY MR. LAM:

Q. Your statement refers to "search of the patent literature."

A. Uh-huh.

Q. Do you know what type of patent literature you or anyone at AgileTV searched in order to assess your patent position?

A. They were looking for prior art.

Q. Looking for prior art. Did you find any prior art?

A. I don't know. I assume, from this, we did not.

Q. Do you remember whether anyone at AgileTV found relevant prior art in the search of patent literature?

A. I don't know.

Q. Who conducted the prior art search or patent literature search for AgileTV?

A. Well, I --

MR. MOSKO: I just want to interpose an objection.

Mr. Cook, if you -- in the answer to any of Mr. Lam's questions, if the information that you would use to answer those questions came from attorneys, Mr. Lam is not entitled to that information. So if the information that he's asking -- if you know the answer to the question, if that information came only from attorneys, Mr. Lam is not entitled to that information, and I would object on that basis. If you can answer the question without referring to information that came from attorneys, you may do so.

THE WITNESS: Okay. I can't -- I can't answer it without revealing the name of an attorney.

BY MR. LAM:

Q. You cannot answer -- well, let me restate a question, and then you can -- you can pose the same answer.

My question is simply, who searched the patent literature for AgileTV?

A. An attorney.

Q. The "favorable feedback" that you referred to from cable companies, Mr. Cook -- in your email you said you got "very favorable feedback from

the Cable companies." I'm moving backwards a little bit. It was a sentence that I already read. But do you remember -- if you go to the -- if you go to the paragraph that begins with the words "Watching the development." It's the third or fourth paragraph down in your email.

A. Yes, I see it.

Q. "Watching the development." Two-thirds of the way through that paragraph, you state you "got very" -- "I got very favorable feedback from the Cable companies," and so forth. Do you see that?

A. Yes, I do.

Q. As of September 2000, which cable companies did you get "very favorable feedback" from?

A. I'm sorry. I have no recollection of who we got the feedback from.

Q. Do you have any idea whether Comcast was such a cable company that you were referring to?

A. I don't remember.

Q. What about Time Warner?

A. No, I don't remember that, either.

I do know that we contacted -- I contacted, with the assistance of our -- our people, several companies.

Q. All right. Do you remember whether, as of

September 2000, any cable company had demonstrated a voice recognition feature to control cable TV programming?

A. No.

Q. Have you ever heard of a system called Full Service Network, by Time Warner?

A. Full Service Network? No, I don't remember it.

Q. Do you remember ever hearing of a company formerly known as BB Hark, H-A-R-K? BB Hark.

A. No. That's a new name to me.

Q. I'm sorry. BBN. BBN ring a bell?

A. BBN?

Q. Yes.

(Discussion off the record.)

MR. LAM: "Nancy." BBN, as in "Nancy."

THE WITNESS: No, I don't remember.

BY MR. LAM:

Q. If you go to the bottom of that email, Mr. Cook, the second-to-the-last -- the last paragraph simply states: Simply -- excuse me, "Hopefully this will give you a quick review of the origin." Do you see that?

A. Yes.

Q. Right above it is a sentence that states,

"No one sees any flaw in the architectural approach." Do you see that?

A. I see that.

Q. Do you have any idea what architectural approach you were describing?

A. No, I do not.

MR. LAM: Next in order.

(Deposition Exhibit 140 was marked for identification.)

BY MR. LAM:

Q. Mr. Cook, the court reporter has handed you Exhibit 140.

A. Say again.

Q. The court reporter has handed you Exhibit 140 --

A. Yes.

Q. -- which -- which appears to be an email thread between Dave Hanson, H-A-N-S-O-N, and you. The subject line of the email thread is "Chiddix," C-H-I-D-D-I-X, "Report From Rose." Do you see that?

A. Yes, I do.

Q. Who's Chiddix?

A. I'm trying to remember.

It slips my memory right at the moment who Chiddix is.

Q. Do you know who Rose is or was?
A. No. I don't remember who Rose is.
Q. If you go about a quarter of the way down that page, do you see the header, the time stamp and date header, that reads, "At 05:54 PM" --
A. Yes, I see that.
Q. -- "1/15/02," which I take to mean January 15, '02 -- do you see that?
A. I see that.
Q. -- "-0800, Dave Hanson wrote." And then the email reads, "I had a lengthy conversation with Rose late this afternoon regarding the TW meeting." Do you see that sentence?
A. Yes, I do.
Q. Do you know whether "TW" refers to Time Warner?
MR. MOSKO: Calls for speculation. The question also lacks foundation.
THE WITNESS: I can't remember that far back.
BY MR. LAM:
Q. Mr. Cook, do you have any reason to believe you did not receive the email that's shown in Exhibit 140?
A. Did I -- would you repeat that.

Q. Yes. Do you have any reason to believe that you did not receive the email that's shown in Exhibit 140, the email thread that we're talking about?

A. No, I have no information about that.

Q. The top email is one that was written by you in response to Mr. Hanson.

A. Yeah, I see that was --

Q. Right?

A. -- to -- to Hanson from me.

Q. Right. The email that I'm reading from is from Hanson, because it says -- the email reads, "Dave Hanson wrote."

A. Yes.

Q. So I take it your -- your response that you do not know what the abbreviation "TW" stands for remains the case. You don't know what "TW" stands for?

A. No. But most likely it is Time Warner.

Q. Most likely.

Does reading that paragraph about the "lengthy conversation with Rose," and then it also references Chiddix again in that same paragraph, help you identify who either Rose or Chiddix was at the time?

A. Yeah, I -- I don't remember who Chiddix is.
Q. Okay. Then let's jump forward. After that paragraph, Dave Hanson continues to write, quote, "In a nutshell." Do you see that phrase, "In a nutshell"?
A. Yes, I -- I see it.
Q. "Jim is skeptical about the value of voice in the television environment." Do you see that?
A. Yes.
Q. Do you know who "Jim" is referring -- who the "Jim" is there in that sentence?
A. Well, I think it must be Jim Chiddix. And I can't remember who he is.
Q. Jim Chiddix. So Jim is the first name for Chiddix?
A. That's my guess.
Q. The next sentence reads, "Although they tried it in Orlando, he was not a strong proponent of its viability." Do you see that?
A. Yes.
Q. Do you know what Mr. Hanson was referring to as being tried in Orlando?
MR. MOSKO: Calls for speculation, and lacks foundation.
THE WITNESS: No, I don't know.

BY MR. LAM:

Q. Do you -- feel free to read as much of this email as you want. Does any part of this email help refresh your memory as to whether or not Time Warner tried or trialled a voice recognition system in Orlando?

A. Not to my recollection.

Q. When you were testifying about the contribution that you made to the two patents that name you as an inventor, Mr. Cook --

A. Yes.

Q. -- I believe you testified that you contributed the broad concept of using voice to control a TV broadcast.

A. Yes.

Q. Do you remember that?

A. Yes.

Q. When -- when you came up with that concept, did you think you were the first one to come up with such a concept?

A. I have no recollection whether I did or did not.

Q. Do you know whether or not such a concept of voice control of a TV broadcast was ever attempted as of the mid-1990s?

A. What kind of control?
Q. The broad concept of voice control of a TV broadcast.
A. "Voice control." I'm sorry.
Q. Voice control.
A. I think I couldn't pick up the word.
Q. I'm sorry. Voice control of a TV broadcast.
A. Okay.
Q. Do you know whether anyone tried to do that as of the mid-1990s?
A. Not that I know of.
Q. We talked earlier today and yesterday about AgileTV's architecture being, quote, "server centric." Do you remember that?
A. Yes.
Q. Do you know whether any other company tried to implement a server-centric voice control of TV broadcast system before AgileTV did?
MR. MOSKO: I'll object to the question as lacking in foundation and potentially calling for a legal conclusion.
You can answer.
THE WITNESS: I know of no -- I know of no one that was earlier than -- than our thought.

MR. LAM: Next in order.
(Deposition Exhibit 141 was marked for identification.)
BY MR. LAM:
Q. Mr. Cook, the court reporter has handed you a copy of what's been marked as Exhibit 141. I will represent to you that it's a copy of an application for a patent by someone other than AgileTV. Specifically, it's what's called a provisional application. And just looking at the cover sheet -- first of all, do you see the -- the title or the heading "Provisional Application Cover Sheet" on the first page?
A. Yes.
Q. There are three names listed in the left-hand side, near the top of the cover sheet, the first of which is "Murdock, Michael." Do you -- have you ever heard of a person named Michael Murdock?
A. Michael Murdock. The name doesn't ring a bell.
Q. How about John Pearson?
A. No.
Q. Paul Sajda? I'm pronouncing it "Sajda." It's spelled S-A-J-D-A. Paul "Sajda."

A. None of the three.
Q. None of the three.
If you go towards the middle of that cover sheet, Mr. Cook, do you see that under the list -- under the listed heading "Correspondence Address," the cover sheet identifies Sarnoff Corporation? Do you see that?
A. Yes.
Q. The date of this cover sheet -- I'm going towards the bottom right-hand corner -- is 11/17/99. Do you --
A. Right.
Q. -- see that?
A. I see that.
Q. As of November 1999, did you personally have any employment capacity or hold a title at Sarnoff Corporation?
A. Did I have any what?
Q. Did you -- were you -- were you chairman of Sarnoff as of November 1999?
A. I think we can refer to this.
Q. Sure. You can refer to whatever you need to answer the question.
A. And what's the date we're after?
Q. The date on the lower right-hand corner of

that cover sheet is 11/17/99. And my question is whether you still held a position with Sarnoff as of that date, November 1999.

A. Unfortunately, I don't have the information available here.

Q. Who succeeded you as chairman of Sarnoff; do you remember?

A. Chairman of Sarnoff? "Yes" is -- can't remember his name at the moment, but he's --

Q. Well, we'll see -- we'll see if we can help.

Next in order I believe is 142.

(Deposition Exhibit 142 was marked for identification.)

THE WITNESS: That's it. Henry Kressel.

BY MR. LAM:

Q. Mr. Cook, we've handed you --

A. He -- he succeeded me.

Q. Okay. So let me identify Exhibit 142 for the record. Exhibit 142 is a -- a -- a piece we printed from the Internet that is entitled "Dr. Henry Kressel," K-R-E-S-S-E-L, "Elected Chairman Of Sarnoff Corporation Board of Directors." Do you see that title?

A. Yes.

Q. This -- this piece is dated July 24, 2001. Do you see that, right under the title?
A. Yes.
Q. One, two, three -- four paragraphs down on the first page, right near the middle of the page, it refers to, quote, "The outgoing Chairman, Paul M. Cook." Do you see that?
A. Yeah, I do.
Q. All right. So as of 1999, November, you were still chairman of Sarnoff, right?
MR. MOSKO: Lacks foundation, misstates the record.
THE WITNESS: Yes.
BY MR. LAM:
Q. In 2001, you were succeeded by Dr. Henry Kressel?
A. Right.
Q. Okay. So going back to Exhibit 141, which is the provisional patent application, that listed three names you're not currently familiar with and attributes them to Sarnoff Corporation. You were -- you were chairman of Sarnoff when the provisional application was filed in November of 1999; is that correct?
A. I believe it is correct.

Q. Will you briefly thumb through the provisional application. I believe -- it's -- it looks like it's six or seven pages long. Six pages, including a diagram.

A. What am I looking at?

Q. Just -- just take a -- just take a brief look at it to -- enough to -- to let us know whether you remember ever seeing this provisional application before today.

A. Are we talking about 141?

Q. We are talking about 141. You are correct.

A. And what's the question I'm answering?

Q. Let us know -- you can review as much or as little of it as you want. But if you can, please tell us whether you know whether you -- whether you reviewed this provisional patent application at any point in time before today.

A. I have no recollection of remembering any of these.

Q. Okay. We'll try a different one.

Next in order is 144 -- 3.

(Deposition Exhibit 143 was marked for identification.)

BY MR. LAM:

Q. Mr. Cook, the court reporter handed you

Exhibit 143, which I'll represent to you is a copy of a U.S. patent which I'll refer to as the '389 patent. The inventor listed on the cover sheet of the patent is a guy by the name of Vincent Dureau, D-U-R-E-A-U. Have you ever heard of Vincent Dureau?

A. No, I don't believe I have.

Q. Right under his inventor name, there is a company name that's listed in the "Assignee" field called OpenTV, Inc. Do you see that?

A. Yes, I do.

Q. Have you ever heard of OpenTV?

A. I never have, that I remember.

Q. Do you know whether you've ever seen Exhibit 143, the '389 patent, before today?

A. No, I don't, don't believe I have.

Q. And you don't think you've -- you don't think you know who OpenTV is as you sit here today --

A. Yeah.

Q. -- is that correct?

A. I do not.

Q. Do you know whether you've ever had any dealings with OpenTV?

A. Did I personally?

Q. Yes. Did you personally?

A. Not that I remember.
Q. Do you know whether AgileTV had ever had any dealings with OpenTV?
A. Not that I remember.
MR. LAM: Next in order, please.
(Deposition Exhibit 144 was marked for identification.)
BY MR. LAM:
Q. Mr. Cook, the court reporter has handed you Exhibit 144 -- 144 -- which appears to be a copy of an email thread between you and Mr. Dave Hanson dated March 20 -- oh, excuse me, March 15, 2001. Do you see that?
A. I do.
Q. Do you have any reason to believe that this email thread was not sent to you on or around March 15, 2001?
A. I have no knowledge whether it was or was not.
Q. The subject line reads, "OpenTV Strategic Investment." Do you see that?
A. I see that.
Q. Again, feel free to read as much or as little of this email as you want. My question is simply whether or not anything in Exhibit 144

refreshes your memory as to whether you -- and by "you" I mean you personally or AgileTV -- had any dealings with OpenTV.

A. OpenTV?

I have no recollection of OpenTV.

Q. Not even as you read that email thread; is that correct?

A. Yeah, in spite of the fact that I've read it.

MR. LAM: Okay. Last one before we take a break to change tape.

(Deposition Exhibit 145 was marked for identification.)

BY MR. LAM:

Q. Mr. Cook, the court reporter has handed you Exhibit 145, which appears to be an email thread that involves at least the following persons: Gary Lauder; yourself, Paul Cook; Bill Keating, K-E-A-T-I-N-G; and Mark Foster. Do you see that towards the top of Exhibit 145?

A. Yes, I do.

Q. The Exhibit 145, the top date is Friday, January 30, 2004. Do you see that?

A. I see it.

Q. January 30, 2004.

A. Yeah.
Q. Do you have any reason to believe that you did not receive this email thread on or around January 30, 2004?
A. I do not.
Q. Do you know who Bill Keating is?
A. I -- yes.
Q. Who's Bill Keating?
A. He was a technologist who -- who interfaced with me and several people in DIVA.
Q. Who did he work for?
A. Hmm?
Q. Mr. Keating. Who did Mr. Keating work for?
A. I think for himself. I think he was a personal investor and -- and -- I don't think he worked for anybody else. I don't remember that.
Q. Was he an AgileTV employee?
A. No, I don't think so.
Q. Okay. The top email is a one or two-line message from "GML," which are the initials for Gary Lauder; is that correct?
A. Yes.
Q. So the top email is from GML to you, Mr. Cook. The next email after that, do you see the heading "On 1/30/04 1:27 PM --

A. I see it.
Q. -- "'Paul Cook'...wrote: Hi Gary: Let me" -- "Hi Gary: Let me interject in here for a couple of thoughts. We don't have the resources to do much of a prior art search." You see that?
A. I see that.
Q. Do you remember telling Mr. Gary Lauder that AgileTV did not have the resources to do a prior art search?
A. To do a what?
Q. A prior art search.
A. Prior art search? No, I don't remember that.
Q. This email is dated in January of 2004. Do you know if, as of 2004, someone on behalf of AgileTV was still searching for prior art?
A. Do I know that?
Q. Yes. I'm asking whether you know or remember that.
A. No, I do not.
Q. Whatever search was conducted for AgileTV for prior art would have been conducted by an attorney; is that correct?
A. That's -- to the best of my knowledge, it is.

MR. LAM: We have to change tape.
THE VIDEOGRAPHER: The time on the video monitor is 11:33 a.m. This ends media number 1, volume III, and we are going off the record.
(Deposition Exhibit 146 was marked for identification.)
(Recess taken.)
THE VIDEOGRAPHER: The time on the video monitor is 11:44 a.m. This is the beginning of media number 2, volume III. We are back on the record.
BY MR. LAM:
Q. Mr. Cook, the court reporter has handed you Exhibit 146, which appears to be a copy of an email thread between Harry Printz, P-R-I-N-T-Z, and you. The top email does not bear a date that I can see. The next email in the thread reads, "At 12:17 PM 1/25/02." Do you see that?
A. I see that.
Q. Do you have any reason to believe you did not receive a copy of this email thread --
A. No, I do not.
Q. -- on or -- on or around January 25, 2002?
A. No, I do not.
Q. In the -- in the email message that follows

the January 25, 2002 header, the message reads, "Paul, thanks for your praise and comments. I will shortly send you a suitably revised version," paren, "actually, I'll give you a number of choices," closed paren. "However, one thing you should know is that the words 'natural language,'" in internal quotes, "have a" special "technical meaning in the world of speech recognition, and we are not, repeat not implementing such a system." Do you see that?

Do you see that statement? Yes?

A. I see that.

Q. The email then goes on to say, "Specifically, a 'natural language' system is one in which a user can couch a command in any suitable sequence of words, and is not constrained to phrases that fall within a particular grammar." Do you see that?

A. I see that.

Q. So in your view, Mr. Cook, upon reading at least that much of the email, is it true that the speech recognition system that AgileTV was developing was not an actual natural language system?

MR. MOSKO: I'll object to the question as lacking in foundation.

THE WITNESS: I don't think there's sufficient information to make that decision. So I'd -- I'd have to say I don't know that -- that that's true or not.

BY MR. LAM:

Q. Do you understand what this email is describing by way of "a 'natural language' system"?

A. I see what he says.

Q. Harry Printz was one of the inventors on at least one of the three patents in this lawsuit; is that right?

A. Yes. He was the head technologist of -- of the company for the last five or six years.

Q. At AgileTV?

A. At AgileTV.

Q. So in this email, Mr. Printz was explaining the difference between a natural language system and the AgileTV system --

MR. MOSKO: I'm going to --

BY MR. LAM:

Q. -- is that correct?

MR. MOSKO: I'm going to --

THE WITNESS: As --

MR. MOSKO: Hold on one second.

Let me object to the question as lacking in

foundation, and the document speaks for itself, calls for speculation.

You can answer if you understand the question.

THE WITNESS: What question am I answering?

BY MR. LAM:

Q. I'm asking you whether you read this email to be Harry Printz's attempt to explain the difference between a natural language system and AgileTV's system.

MR. MOSKO: Same objections.

THE WITNESS: I believe that Harry Printz's comments are those that would be made by a technologist but not necessarily by -- by a business executive.

BY MR. LAM:

Q. But by a technologist?

A. But by a technologist, yes.

(Deposition Exhibit 147 was marked for identification.)

BY MR. LAM:

Q. Mr. Cook, the court reporter has handed you Exhibit 147, which appears to be a copy of an email between you and Mr. Steve Silva at Comcast dated December 9, 2005. I believe we might have marked

this already. But it's okay. We just wasted one exhibit number.

This --

MR. MOSKO: Just for the record, Mr. Lam, I believe we have.

BY MR. LAM:

Q. I have a specific question about this particular exhibit. And maybe -- maybe we can use the one that you previously reviewed and highlighted. Let's use that exhibit if we can find it.

(Discussion off the record.)

MR. LAM: You don't have to. I -- it's entirely up to you.

MR. MOSKO: Try 125.

MR. LAM: 125. Thank you.

MR. MOSKO: Yeah, it's 125.

It's not in this stack. I think it's probably in that previous stack.

(Discussion off the record.)

MR. MOSKO: Okay.

MR. LAM: It's right there.

MR. MOSKO: Ah. There you go.

THE WITNESS: Good shot.

BY MR. LAM:

Q. Okay. Mr. Cook, referring you back to Exhibit 125, the email thread between you and Mr. Silva dated January -- excuse me, December 9, 2005, on -- if you will turn to the page that bears the numbers -- I think it's -- 63514. 63514. So it's the third or fourth page into the exhibit.

A. I got it.

Q. Do you see the heading "AgileTV Patent Portfolio Summary"?

A. That's what I'm looking at.

Q. The first application listed under that summary heading -- and it -- and it bears number 1 -- refers to a utility application. Do you see that?

A. Yes.

Q. Which is entitled "System & Method of Voice Recognition Near a Wireline Node of a Network Supporting Cable Television and/or Video Delivery." Do you see that?

A. I see that.

Q. There is an italicized description of that application right underneath the title I just read, and it states, "Key patent protecting AgileTV's server-centric speech architecture, with a focus on applications to cable television." Do you see that?

A. No. Where is that?
Q. I'm reading the italicized text right under the boldfaced title, the boldfaced title which says "System & Method of Voice Recognition," and so forth.
A. Okay.
Okay.
Q. Do you see the title "System & Method of Voice Recognition Near a Wireline Node of a Network Supporting Cable Television and/or Video Delivery"? Do you see that title?
A. I see that.
Q. Directly underneath that, right underneath that, there's italicized text that refers to it being "Key patent protecting AgileTV's server-centric speech architecture." And I won't read the rest of that italicized text.
Do you see that description?
A. I see that.
Q. Do you have any idea why this particular application, as opposed to any other of the applications in the same list, is identified as a key patent protecting AgileTV's server-centric speech architecture?
A. No.

MR. MOSKO: The question lacks foundation.
THE WITNESS: No, I do not.
BY MR. LAM:
Q. What was the purpose of your sending this portfolio summary to Mr. Silva at Comcast?
A. I have no recollection of why I sent it to him.
Q. Do you remember personally ever conducting any review of AgileTV patents and assessing which patents were more -- more important to AgileTV than others?
A. I'm sorry. Would you repeat the question?
Q. Yes. Have you ever personally reviewed a portfolio of AgileTV patents in order to identify which ones are more key than others?
A. I believe I have.
Q. Why did you do so?
A. To evaluate the importance to a business of a patent portfolio.
Q. Do you remember the results of any such review in terms of identifying which patents of AgileTV's might be more important than others?
A. No. It was too long ago.
Q. Did anyone else besides you personally, Mr. Cook, conduct the same type of exercise of

reviewing AgileTV patents to assess whether some are more important than others?

A. We had an attorney evaluate it.

Q. Well, besides an attorney and besides you, anyone else at AgileTV?

A. I'm not sure.

Q. Do you know whether any of your coinventors listed on the '196 patent or the '326 patent ever did so?

A. Do I know what?

Q. Do you know whether Mr. Foster ever reviewed AgileTV patents to identify which might be most important?

A. I believe he did.

Q. Was that at your direction?

A. At his instruction from perhaps myself.

Q. Was -- was the purpose of such an instruction to assess how to monetize AgileTV's patent portfolio?

A. I don't know the answer to that question.

Q. Why would you have instructed Mr. Foster to review the portfolio to identify the most important patents?

A. I think to evaluate the value of the company.

Q. Was it in part to evaluate the amount of money to charge in order to license any of the patents?
A. No. I don't think so.
Q. Yesterday and the day before, we looked at the License and Development Agreement between AgileTV and Comcast. Do you remember that?
A. Are you talking about yesterday?
Q. Yesterday, as well as the day before yesterday. We looked at the License and Development Agreement between Comcast and AgileTV. It's one of the exhibits in -- in the stack.
A. Okay.
Q. Well, I want to make sure that you still have it in case you need to refer to it in the context of answering my questions about the next exhibit. So let me see if I can find that for you.
MR. YORIO: 115.
MR. LAM: 115. Thank you.
(Discussion off the record.)
MR. LAM: Mr. Yorio.
THE WITNESS: 117.
MR. MOSKO: It's one of the thick ones.
THE WITNESS: 116. 115.
BY MR. LAM:

Q. Yes.
A. Okay.
Q. Okay. So you have Exhibit 115 in front of you. Feel free to refer to that if you need to, Mr. -- Mr. Cook. I'll hand you what we'll mark next in order.
(Deposition Exhibit 148 was marked for identification.)
MR. LAM: 148.
MR. MOSKO: Thank you.
BY MR. LAM:
Q. Mr. Cook, Exhibit 148 appears to be an email dated January 23, 2006, from you to many, if not all, the board members of AgileTV. Do you see that?
A. I see that.
Q. Do you have any reason to believe you did not send such an email on or around January 23, 2006?
A. I have no reason to not believe it.
Q. The subject line of your email reads, "More Detailed Summary." Do you see that?
A. "More Detailed Summary." Yes, I see it.
Q. And then your message to the board reads, "To the Board," colon. "For those of you interested

in more detail, here's a four page summary of the License and Development Agreement. Paul." Do you see that?

A. I see that.

Q. What follows, sure enough, bears the heading "Summary of License & Development Agreement," dated January 23, 2006. Do you see the following page?

MR. MOSKO: Just for the record, Mr. Lam, it appears that this exhibit has dual page numbers. It looks like you've got two pages of number 1 copied, two pages of number 2 copied, two pages of number 3 copied, and two pages of number 4 copied.

MR. LAM: Understood. I believe this is the way it was produced, as you can tell from the litigation production page numbers. But that's duly noted.

Q. Mr. Cook, the first page following your email, do you see the heading "Summary of License & Development Agreement"?

A. Yes. I got it right here.

Q. 23 January, 2006. Now --

A. Correct.

Q. If you -- if you flip through, as Mr. Mosko noted, there are consecutive page 1s, and then there

are what appears to be duplicate copies of page 2 after duplicate copies of page 1 and then duplicate copies of page 3, and so forth, up through page 4.

A. Okay.

Q. Okay. So each -- each page of the summary is reproduced twice, or reproduced once if I have my logic and math correct. Reproduced once.

So this was a four-page summary, that you referred to in your cover email to the board; is that correct?

A. That is.

Q. Did you prepare the summary yourself?

A. I doubt it. But I don't know.

Q. Do you know or remember, sitting here today, whether anyone else participated in preparing this summary of the License and Development Agreement?

A. I'm sorry. I just don't know.

Q. Do you remember the purpose of your sending the summary to the AgileTV board?

A. To give them evidence of the proprietary position that the company had.

Q. Do you remember whether this summary was intended to accurately reflect the actual License and Development Agreement that is Exhibit 115, that

you also have in front of you?
A. No, I don't.
Q. You don't? If you look at the summary, the first page of the summary, you'll see in the first section, which is enumerated number 1 -- do you see "Overview"? Page 1 of the summary, near the top, do you see the heading "Overview"?
A. Yep.
Q. Right under that are three numbered items, the third of which refers to "The IP License Option." Do you see that?
A. Yes.
Q. Number 2 is "The Development Project Option." Do you see that?
A. Yes.
Q. So do you have any idea what these two options are referring to?
A. Well, I have a general overview of what it's about.
Q. Will you explain what your general understanding is.
A. Well, it's -- the easiest thing is to just read off the summary. It's a "Summary of License and Development Agreement," dated 2006.
Q. What do you think an option refers to?

A. The right to obtain a license.
Q. That would be number 3, "The IP License Option," right?
A. Right.
Q. What about the -- number 2, "The Development Project Option"?
A. There must have been an option to -- to develop a project.
Q. Let's turn to page 3. Excuse me. Let's stay on page 1. I want to go to the bottom of the page, Mr. Cook.
A. Bottom of page 3?
Q. Bottom of page 1. I wanted to stay on page 1.
A. Okay.
Q. Bottom of page 1 reads, "In what follows, Sections 3 and 4 describe the IP License and Development Project Options as if they were independent." I'll stop there for now. You can read on if you like.
Do you have any idea what it means by the phrase "as if they were independent"?
MR. MOSKO: The question lacks foundation and calls for speculation.
THE WITNESS: No, I don't have an idea.

BY MR. LAM:

Q. Okay. The sentence goes on to read, dash, [redacted] two pages to see that last word, "exercised," because we have two copies of page 1. Do you see that?

Yes?

A. Yes. Excuse me.

Q. Moving forward to page 3 of this summary, the first page 3 bears the production numbers 248437. Are you on that page? 248437.

A. I'm -- yes. The 37 I've got. And I've also got 38 here.

Q. Right, which is a duplicate copy of page 3.

A. Yeah.

Q. So looking at page 3, under the heading number 4, "The IP License" -- first, do you see the heading number 4, "The IP License"?

A. Yes.

Q. In the second paragraph under that heading, [redacted]

A. I see that.

Q. Was it AgileTV's intent to offer Comcast a

license to all AgileTV patents for $23 million?
A. I have --
MR. MOSKO: The question -- hold on.
The question lacks foundation.
You can answer it if you understand it.
THE WITNESS: I have no recollection of that.
BY MR. LAM:
Q. Do you have any recollection of the amount of money that AgileTV considered having Comcast pay in order to exercise an option of licensing the AgileTV patents?
A. We had several different numbers in mind, as I remember.
[redacted]
A. That's one of them that I don't remember.
Q. Oh. What several numbers do you remember?
A. I don't.
Q. You don't remember any of the several numbers?
[redacted]
I know we bounced around. But I don't know which one we ended up with.
[redacted]

ring a bell for you?
A. Is what?
Q. Does not -- does not refresh your memory in any way as to --
A. No. That's a new number to me.
Q. Okay. Let's go back one page, to page 2 of the summary. Near the top of page 2, you'll see a heading that is number 3, "The Development Project." Do you see that?
A. Yes.
Q. Under that heading, this summary reads, "Within a mutually agreeable time period, the parties may initiate a Development Project by signing a negotiated Statement of Work," paren, "SOW." Do you see that?
A. I do.
Q. "The basic goals of the Project are to integrate the AgileTV voice control technology with the GuideWorks IPG, to support multiple" -- "to support multiple Motorola set-top boxes, and to harden AgileTV's underlying technology in terms of robustness and scalability." Do you see that?
A. I see that.
Q. What was the -- what was the GuideWorks IPG?

A. What was --
MR. MOSKO: Lacks foundation.
THE WITNESS: What was the what?
BY MR. LAM:
Q. What does the -- what does the term "GuideWorks IPG" refer to?
A. I'm sorry. I don't know.
Q. Do you know whether the abbreviation "IPG" stands for --
A. I don't -- I --
MR. MOSKO: Let him finish his question before you answer.
BY MR. LAM:
Q. I'll finish my question.
A. Sorry.
Q. Do you know whether the abbreviation "IPG" stands for "interactive program guide"?
A. I didn't know. But now I know.
Q. Have you ever heard of a company called GuideWorks?
Have you ever heard of GuideWorks?
A. GuideWorks?
Q. Yes, company named GuideWorks.
A. Not that I remember.
Q. Do you remember working -- AgileTV working

on Motorola set-top boxes?
A. Sure.
Q. In particular the DCT 2000; is that right?
A. Yes.
(Deposition Exhibit 149 was marked for identification.)
MR. MOSKO: Thank you.
BY MR. LAM:
Q. Mr. Cook, the court reporter has handed you Exhibit 149. It's a copy of -- it's a thick document. It is entitled "Note Purchase Agreement." The date on the first line of the cover sheet is May 11, 2005.
Do you recognize Exhibit 149?
A. I have some recognition of it.
Q. If you go to the page on the bottom right-hand corner that ends in the numbers 463, 177463.
Mr. Cook?
A. Here it is.
Q. Yes. I apologize. I gave you the wrong page number.
A. I'm now in 177463.
Q. Yes. I'd like you to go to a different page number. And I apologize for --

A. Okay.
Q. -- making you go to that page. I should have said 177438.
A. 438.
Q. So you've gone past that page.
A. Yeah, I have. Yeah.
MR. MOSKO: There you go.
BY MR. LAM:
Q. Are you at --
A. Okay.
Q. -- page 177438?
A. Yes.
Q. Is that your signature on page 177438?
A. That's my signature.
Q. Do you remember negotiating this agreement that's called a Note Purchase Agreement?
A. I do indeed.
Q. What was the purpose of this Note Purchase Agreement?
A. To provide us money.
Q. Was this the agreement by which Comcast [redacted]
A. That was one option.
Q. That was one option under this agreement; is that your testimony?

A. It -- yes. It was one of the ways that we had figured out we could get some money.
Q. From Comcast in particular --
A. From Comcast --
Q. -- right?
A. -- to pay us.
[redacted]
Comcast later; is that right?
A. That's correct.
MR. LAM: Next in order will be Number 150.
(Deposition Exhibit 150 was marked for identification.)
BY MR. LAM:
Q. Mr. Cook, the court reporter has handed you Exhibit 150 -- 150 -- which appears to be a copy of an email from you to -- I'm not sure who is on this distribution list -- pcook@agile.tv, dated January 25, 2006. Do you see that?
A. I see that.
Q. The embedded message on that first page is an email dated January 23, 2006, to board of directors, from Paul Cook. Do you see that?
A. Yes, I do.
Q. In that message to the board of directors, which is a bit hard to read, because there are caret

signs in the left-hand column of that -- of that email, do you see a number 4, which reads "A Summary of the terms of the Note held by Comcast as background for a discussion of," internal quotes, "'should we pay off the note,'" question mark.

A. Yeah, I see that.

Q. Do you see that?

The following page of that exhibit has a heading "Note Purchase Agreement, Summary of Conditions."

A. Yes.

Q. You see that?

Do you know -- do you remember whether your email to the board was intended to summarize the terms of the Note Purchase Agreement that we just looked at in Exhibit 149?

A. Yes.

Q. Yes? It was intended to summarize the Note Purchase Agreement?

A. Oh, I don't know whether -- what --

Q. My question is --

A. Reask my -- reask the question, please.

Q. Yes. Do you know whether the email in Exhibit 150 was intended to summarize the terms of the Note Purchase Agreement that's Exhibit 149?

A. Well, it says "Summary of Conditions."
Q. Of Exhibit 149? Is that correct?
A. It appears to be so, yes.
Q. Okay. So just as you sent -- whether you -- whether you personally prepared the summary or not, you sent the board at AgileTV a summary of the License and Development Agreement?
MR. MOSKO: Misstates his testimony.
BY MR. LAM:
Q. Is that correct?
A. Yes.
Q. You also sent a summary of the Note Purchase Agreement, correct?
A. Yes.
Q. Did you routinely summarize agreements for the board by way of email messages to the board members?
A. Routinely?
Q. Was that part of your ordinary --
A. I don't know that we had that many, but I used that technique.
Q. To inform the board --
A. To inform the board.
Q. -- about the terms of agreements that AgileTV entered into; is that correct?

A. Yes.
Q. Okay. So let's go back to that summary that you sent the board about the License and Development Agreement, the LDA. I think that was Exhibit 1 -- I lost the cover page.
MR. YORIO: 48.
BY MR. LAM:
Q. 148.
Mr. Cook, do you have Exhibit 148?
A. 149.
Q. I believe that's 148 that you're holding now.
A. 148.
Q. In Exhibit 148, on page 2 of the summary -- 148. It's in your right hand. There. You're holding it now. 148.
A. Okay.
Q. On page 2 of the summary -- I think you're on the first page of the summary.
A. Yeah. Go to page 2?
Q. Look at page 2 of the summary.
A. Yep.
Q. We previously read from the first paragraph under the heading number 3, "The Development Project."

A. Right.
Q. Okay. The next paragraph states, "The License and Development Agreement does not set a fixed period for exercise of the Development Project option, but since the SOW is to be" bound "by mutual agreement, either party may decline to continue work on defining an SOW." Do you see that?
A. I see it.
Q. Now, it's not clear whether you prepared the summary or this part of the summary, but do you have any understanding what's being described by that paragraph I just read?
A. Do I have any idea?
Q. Do you have any understanding what's being described in the paragraph that I just read?
A. I'm not sure.
Q. Okay. This is part of a summary that you sent to the board. This part of the summary is talking about the SOW. Will you read that sentence to yourself again, that I just read into the record: "The License and Development Agreement does not set a fixed period."
MR. MOSKO: Okay. I'm not sure --
BY MR. LAM:
Q. And --

MR. MOSKO: Is there a question?
MR. LAM: Yes.
Q. Let us know when you're able to read that entire sentence to yourself.
A. Which sentence now are you talking?
Q. The sentence that begins with the words "The License and Development Agreement." It's the second paragraph --
A. Yep.
Q. -- under the heading "The Development Project."
Just go ahead and read that to yourself, and let us know when you're finished.
A. Okay.
Q. That sentence references an SOW. Do you see that?
A. Yes.
Q. Is that the same as the SOW you testified about yesterday?
A. I believe so.
Q. Do you have any understanding what that sentence is describing?
MR. MOSKO: Lacks foundation.
THE WITNESS: It's describing a License and Development Agreement.

BY MR. LAM:

Q. Do you have any understanding what it means by that last phrase, "either party may decline to continue work on defining an SOW"?

A. Well, that -- I admit, that's confusing. I don't understand that.

Q. You don't understand that? But you sent this to the board.

A. Yeah, I understand.

Q. Okay. And when you sent this summary to the board, you were not intending to give an inaccurate description of the License and Development Agreement; is that correct?

A. That's correct.

MR. LAM: Let's take our lunch break.

THE VIDEOGRAPHER: Time on the video monitor is 12:28 p.m., and we're going off the record.

(Recess taken.)

(Deposition Exhibit 151 was marked for identification.)

THE VIDEOGRAPHER: The time on the video monitor is 12:36 p.m., and this is the continuation of media number 2, volume III. We are back on the record.

BY MR. LAM:

Q. Mr. Cook, the court reporter has handed you what's been marked as Exhibit 151, which appears to be a copy of an email thread between Dave Hanson and you where the top email on the front page bears a date of January 23, 2006. Do you see that?

A. Yes.

Q. The subject line is "Comcast." Do you have any reason to believe you did not receive this email thread on or around January 23 --

A. No, I do not.

Q. -- 2006?

The third email down on that front page, Mr. Cook, reads, "Paul Cook wrote: Bob: There is no question we'll support the trial whether or not they fund the SOW." Do you see that?

A. Yeah, I see that.

Q. Do you know which trial you were referring to there?

A. The trial outside of Philadelphia.

Q. Outside of Philadelphia?

A. Yeah.

Q. Okay. The top of the first page refers to "the Western Division." Do you see the top line of the email?

A. Yes.
Q. What is -- do you have any idea what "Western Division" refers to there?
A. It's the Western portion of Comcast. And it had a plan to deploy 50,000 subscribers.
Q. Do you know whether AgileTV in fact carried out the Western Division deployment without Comcast funding the SOW?
A. Did I know that it didn't, or did not?
Q. Did AgileTV actually carry out the Western Division deployment with --
A. For 50,000 subscribers? No.
Q. AgileTV never did carry out the Western Division deployment?
A. No. We did not.
Q. Why not?
A. Because we couldn't get the signed SOW.
Q. Well, your email states, "There is no question we'll support the trial whether or not they fund the SOW."
A. I don't know what that means.
Q. Well, do you know whether you believed your statement to be true as of January of 2006?
MR. MOSKO: Calls for speculation.
THE WITNESS: Don't know.

BY MR. LAM:
Q. Mr. Cook, can you remind us when you left AgileTV. You said it was sometime in 2006, but I'm not sure which month or which season.
A. What's the question?
Q. When you left AgileTV, when you stepped down from AgileTV.
A. I don't have that information in front of me. I'm sorry. No, I don't have it.
MR. LAM: Mr. Mosko, I'm about to have the court reporter mark something which I, frankly, don't remember whether you had already used in your direct examination. Do you want to see if we --
MR. MOSKO: Do you want to show it to me first?
MR. LAM: Sure.
Oh, Maya found it. We're good.
Q. Mr. Cook, this might be a burden. I'm going to ask you to locate a copy of a -- an exhibit that was used during your direct examination by Mr. Mosko. It's number 133.
MR. MOSKO: If I can lean over you, Paul. Let me see if I can --
THE WITNESS: You may indeed.
MR. MOSKO: -- be a little bit faster.

It wasn't such a burden.

THE WITNESS: Good find.

MR. MOSKO: He has it in front of him now.

MR. LAM: Thank you.

Q. Now, Exhibit 133, I believe you testified yesterday, Mr. Cook, is a copy of a February 1, 2006 email from you to the AgileTV board. Do you remember that?

A. Yes, I remember that.

Q. There are parts of that email that you highlighted that was already prehighlighted. I want to refer you to a statement right above the highlighting, that reads, "This eliminated our previous urgent request for signing the SOW." Do you see that statement?

A. I see it.

Q. Do you know what you were referring to by describing to the board that --

A. "This eliminated" --

Q. -- "This eliminated our previous urgent request for signing the SOW"?

A. "This eliminated our previous urgent request."

Yeah. Now, what's the question?

Q. What were you referring to by that -- what

were you -- explain what you meant by that statement, "This eliminated our previous urgent request for signing the SOW."

A. As long as we were guaranteed 50,000 subscribers, we were -- we were willing to compromise on this solution.

Q. What are you calling "this solution"?

A. The deployment of 50,000 subscribers.

Q. The deployment of 50,000 subscribers was --

A. It was a --

Q. -- was an activity that, in your previous email that we just saw, Exhibit 151 -- Exhibit 151, which is dated roughly a week -- eight days before Exhibit 133, you wrote to "Bob," "There is no question we'll support the trial whether or not they fund the SOW." That -- that was in reference to a 50,000-subscriber deployment; is that correct?

A. That's correct.

Q. So I'm asking you now, in reference to Exhibit 133, eight days later, you told the board "This eliminated our previous urgent request for signing the SOW." Would you explain again what you meant by telling the board that.

A. I'm not sure that I understand it myself. This was quite a few years ago, and I have not been

part of this for a long time. So -- I guess I just can't answer the question.

Q. Okay. Let's go to another email, that I'll preview for your lawyer to ask him whether he remembers using this in your direct examination. I personally don't.

MR. MOSKO: I don't believe so.

MR. LAM: Okay. You can keep that copy.

Next in order, please.

(Deposition Exhibit 152 was marked for identification.)

BY MR. LAM:

Q. Mr. Cook, please take a look at what's been marked as Exhibit 152, which appears to be a copy of an email from you to chris@laurelgroup, L-A-U-R-E-L, group.org, dated February 9, 2006.

Do you see that?

A. I see it.

Q. Do you have any reason to believe you did not send this email on or around February 9, 2006?

A. No reason.

Q. Do you know who chris@laurelgroup.org is?

A. This must have been Larson.

Q. Chris Larson?

A. Chris Larson.

Q. The subject line of the email is "Letter to Brian Roberts." Do you see that?
A. I see that.
Q. If you flip over the page, there is a copy of a letter that has the heading "DRAFTv2," draft version 2. Do you know what the purpose of your sending this draft letter to Chris Larson was?
A. I think this was getting into the convincing of Brian Roberts the financial stability of our company.
Q. Do you know if Chris Larson sent the draft letter?
A. I don't remember.
Q. When you sent Chris Larson this draft letter, were you, yourself, convinced of the financial viability of -- were you, yourself, personally convinced of the financial viability of AgileTV?
A. Yeah, as long as Larson was available and supportive and believed in it, the answer is yes.
Q. Was Chris Larson in fact supportive?
A. Very. He's got something like a hundred million dollars in the company now.
Q. You say "now." You mean as of today?
A. Yeah, that's what his investment has been

so far.
Q. Into Promptu?
A. In Promptu.
Q. How do you know?
A. Hmm?
Q. How do you know that? How do you know that amount?
A. I heard him say so.
MR. LAM: Next in order.
(Deposition Exhibit 153 was marked for identification.)
BY MR. LAM:
Q. Mr. Cook, Exhibit 153 is a copy of a document that is entitled "Cable Update," dated June 1, 2006. Have you ever seen Exhibit 153 before today?
A. What's the question?
Q. Have you ever seen Exhibit 153 before?
A. I don't -- I don't know. I don't think so.
Q. Do you know whether you were still at AgileTV as of June 2006?
A. What was that?
Q. As of June 2006, were you still at AgileTV?
A. I don't think so. But I'm not sure.
Q. Do you have any idea what the purpose of

Exhibit 153 is?

MR. MOSKO: Calls for speculation and lacks foundation.

THE WITNESS: What's the question at hand?

BY MR. LAM:

Q. Do you know the purpose of Exhibit 153?

MR. MOSKO: Same objections.

THE WITNESS: This opens up a lot of doors for me, and it explains a lot of things that I haven't had answers to up until now; Jim Chiddix, for example.

BY MR. LAM:

Q. How does this help you remember anything more about Jim Chiddix?

A. He was the CEO of OpenTV, and OpenTV was doing a remarkable, complex set-top box at this time. And we had exchanges with him.

Q. By "we," you mean AgileTV?

A. AgileTV, yes.

Q. Had exchanges with OpenTV?

A. We had with their people. We were considering doing something together with them. I don't believe we ever did.

Q. So, once again, do you know what the purpose of Exhibit 153 is?

A. The purpose of -- what am I looking for?
Q. I'm just asking you whether you know what the purpose of this document is.
A. Of the communication?
Q. Yes, of this cable update.
A. To inform the board of what's going on and possible activities.
Q. On the second page of this cable update, there's a -- there's a description -- a descriptive blurb about Comcast. Do you see that towards the bottom of the page?
A. Yes.
Q. It starts with the statement, "Business Development is totally focused on meeting our deployment schedule with Comcast in Tucson." Do you see that?
A. Yes.
Q. While you were still at AgileTV, did you work on any -- a potential deployment activity in Tucson?
A. After what?
Q. While you were still at AgileTV --
A. While I was still at AgileTV?
Q. -- did you work on any potential deployment in Tucson?

A. In Tucson?
Q. Tucson, yes. I'm going by the description that's attributed to Comcast in this cable update.
MR. MOSKO: Lacks foundation, calls for speculation.
THE WITNESS: Well, I'm confused, because I thought that -- I thought that the Western Division of Comcast was headquartered in Denver. But that may not be true. So I don't know.
BY MR. LAM:
Q. Do you know whether AgileTV in fact ever did such an installation in Tucson? Did that ever happen?
A. I don't know.
Q. Towards the end of that paragraph describing Comcast, there's reference to a deployment contract. And it -- and the paragraph says, "Mark Hess will sign once the agreement once a VP of finance has approved it." Do you see that?
A. Yes, I do.
Q. Do you know whether such a deployment agreement or contract was ever signed between --
A. I don't --
Q. -- AgileTV and Comcast?
A. I don't know.

Q. Do you know -- in the last line -- or the second-to-last line of that paragraph about Comcast is reference to an acronym, "CPE." Do you see "CPE"?

A. Oh, I know what CPE is.

Q. I was about to ask you that question, whether you know what "CPE" refers to. Do you know?

A. I can't remember what "CPE" is.

Q. Do you think it refers to "customer premises equipment"?

A. I can't put it together. No. Sorry.

Q. Now, after you stepped down at AgileTV, Mr. Cook, you remained a board member; is that correct?

A. Oh, I don't know. If I did, it wasn't for long, because I was at odds with the board about what to do.

Q. Do you have any rough approximation of the -- of the time frame --

A. Of when I left?

Q. -- by -- by -- yeah, by -- by which you disassociated yourself from AgileTV?

MR. MOSKO: Misstates the record.

THE WITNESS: Let me see if I can put my hands on it here.

BY MR. LAM:

Q. And, Mr. Cook, I'll also explain why I'm asking you the question. I don't want to waste our time showing you documents you've never had any reason to see. And I just don't know. I'm not clear on when you left AgileTV.

A. Okay.

No, I don't have an answer.

Q. Do you believe it was actually sometime in the year 2006?

A. Oh, I think it must have been 2006.

Q. Yesterday you testified, I believe, that even after you left AgileTV, you remained in contact with those at AgileTV. Is that correct?

A. I -- I consulted with Giuseppe Staffaroni at least once or twice a month. And I was the extra signee on the checks for, say, anything over $25,000, as protection. And -- then for that I got a thousand dollars and still do get a thousand dollars a month.

Q. Did -- correct us if we're wrong. Did -- did Giuseppe Staffaroni become CEO in 2006?

A. Must have, yes.

Q. Do you remember which month?

A. No, I don't. Probably June, July.

Q. In your continuing role to have communications or activity with AgileTV after you personally stepped down, did your activity include reviewing the company's business documents, like development documents or emails, for instance?

A. No. I was not part of the strategic outlook or -- or -- no.

Q. So looking at Exhibit 153, which is this cable update dated June 1, 2006, not knowing whether you stepped down from AgileTV by that time, if we assume you did step down by that time, would there be any reason why such a cable update would have been shared with you in --

MR. MOSKO: Calls for speculation.

BY MR. LAM:

Q. Based on your continuing consultation with AgileTV and Mr. Staffaroni in particular?

A. I don't have a calendar that shows all these things, so I can't help.

Q. Can you help place an approximate time frame for us for how long it was either before or after Mr. Staffaroni became CEO, how long it was that you left the company. Was it before he became CEO?

A. Well, I -- you can make the case that I

never left the company.
Q. Well, when you -- when you stepped down as -- as -- as --
A. Stepped down as CEO.
Q. As CEO, correct.
A. It certainly was in the six-month period between January 1 and June 30 of 2006.
Q. He -- Mr. Staffaroni succeeded you as the CEO, right?
A. That's correct.
Q. There was nobody else in between?
A. Nobody else in between.
Q. Mr. Staffaroni remains CEO today; is that correct?
A. That's correct.
Q. So how long after Mr. Staffaroni succeeded you as CEO did you continue to have approximately twice-a-month consultations with him about AgileTV?
A. Oh, right -- starting the minute I left all the way until today.
Q. I see. So even today?
A. Oh, yes.
Q. Does your consultation with Mr. Staffaroni involve reviewing any company engineering documents?
A. Say again.

Q. Does your consultation with Mr. Staffaroni involve reviewing any company technical documents?

A. Yes. In fact, I brought a couple of opportunities to Staffaroni and introduced him and let him carry on from -- from there.

Q. Okay. Well, I'll simply have to ask you document by document, then, whether you think you've ever seen it, notwithstanding being succeeded as CEO by Mr. Staffaroni. And -- and maybe that's just the best way to proceed.

The -- the next one in order will be --

(Deposition Exhibit 154 was marked for identification.)

BY MR. LAM:

Q. That's 154, that you've just been handed by the court reporter, Mr. Cook.

A. Yes.

Q. Before we focus on that -- before we focus on Exhibit 154, the -- the -- on the list of cable operators in that cable update that was Exhibit 153 -- on your right --

A. Here?

Q. -- hand. Yes.

A. Okay.

Q. There's a whole list of cable operators,

that includes Comcast, on that second -- starting on the second page.

A. Yes. And what about it?

Q. It begins with "Advance/Newhouse." It ends with "Time Warner." You see that?

A. Yes.

Q. Are you familiar with all these cable operator names?

A. Okay.

Q. Are you familiar with these cable operator names?

A. Most of them.

Q. Most of them. Are there any that you don't know as you look at the name today?

A. I don't recognize Sunflower.

Q. You don't recognize Sunflower?

A. I don't remember them.

Q. For the rest of the ones that you do recognize, Mr. Cook, do you know whether any of the cable operators listed in this cable update dated June 1, 2006 ever commercially deployed AgileTV technology?

A. I think several were under contract to deploy, and -- and we stopped the business when I left, and the -- the company went out of the

business. They stopped offering the product. And that's when Staffaroni came in and when they selected what to do with the staff that they had. And they elected to go into the voice-controlled automobile business.

Q. So none of these cable operators commercially deployed AgileTV; is that correct?

A. Yes.

Q. Has any cable operator ever commercially deployed AgileTV, to your knowledge?

A. The only one was Comcast, and I think Lenfest.

Q. Lenfest?

A. That I mentioned yesterday.

Q. Okay. Let's -- let's look at Exhibit 154. It's to your left. Exhibit 154.

A. 154?

Q. Yes.

A. Okay.

Q. It appears to be a copy of an email dated June 6, 2006 --

A. Yep.

Q. -- from David Chaiken to Giuseppe Staffaroni.

A. Yep.

Q. Copying Jay Kistler.
A. Right.
Q. Subject line is "Callisto."
Now, although you're not on the distribution list for this email, do you know whether you've ever seen it before today?
A. No, I -- I'm sure I haven't.
Q. Do you know what "Callisto" refers to?
A. Hmm?
Q. Do you know which a -- the subject line says "callisto: executive summary." Do you know what "Callisto" refers to?
A. No, I still don't understand Callisto.
Q. You've never heard it used as a project name at AgileTV while you were still CEO?
A. Not that I remember.
Q. I'm going to jump ahead to July 2006, next in order.
(Deposition Exhibit 155 was marked for identification.)
BY MR. LAM:
Q. Mr. Cook, Exhibit 155 appears to be a copy of an email thread between Brad Dusto at Comcast and Giuseppe Staffaroni at Promptu.
A. Right.

Q. I take it that by the time of the date of this email, July 18, 2006, you were no longer CEO at AgileTV. Is that correct?

A. In my -- yes, I believe that to be true.

Q. Okay. Do you know whether you've ever seen this email before today?

A. I don't think so.

MR. MOSKO: Sorry.

THE WITNESS: I doubt it.

BY MR. LAM:

Q. In the -- in the bottom message of this email -- this is -- there's only one page, but the -- the first page, the bottom message is from Mr. Staffaroni to Mr. Dusto. I'm going to read one sentence. It's the second paragraph, which states, "Promptu has decided to shift all of its focus and resources into the company's Mobile initiatives, and put its Cable activities on the back burner for now." Do you see that?

A. Yep.

Q. Is that consistent with your understanding that you testified about in terms of the company's change in direction from cable TV to I believe what you described yesterday was a platform for controlling automobiles?

A. Yeah. They had already started going into the mobile business, as they call it. And the date, the 18th of July, ties in also with all the other things that we just reviewed. So -- so I -- I must have departed somewhere in March or April, along -- along about that time.

Q. Of 2006?

A. Of 2006.

Q. Okay. Well, let's go over a couple of documents that -- that we believe you did have access to. The --

(Deposition Exhibit 156 was marked for identification.)

MR. MOSKO: Leo, maybe seven or eight minutes --

MR. LAM: Okay.

MR. MOSKO: -- please.

BY MR. LAM:

Q. The next -- the next in order is Exhibit 156, Mr. Cook, which appears to be an email between you and Gary Lauder -- a thread between you and Gary Lauder dated June 4, 2004, as of the top email. Do you see that?

A. Uh-huh.

Q. Yes?

A. Yes.
Q. The subject is "Comcast Negotiation." In that top email, the last sentence refers to "our," O-U-R -- "our Multiple MSO plan."
Do you see that?
A. "Multiple MSO plan." Okay. There it is.
Q. What did you --
A. Okay. That's my note.
Q. What did you mean by "Multiple MSO plan"?
A. I have no recollection of that at all. I'm sorry.
Q. In the message below that, which is signed by "GML," the -- the --
A. That obviously is Lauder.
Q. Yes. The last sentence reads, "And most of all, have alternatives." Do you see that, right before the initials "GML"?
A. Where are you?
Q. In the first quarter of the -- of the only page of this exhibit, do you see the initials "GML"?
A. Yes. Uh-huh.
Q. And right above that, the -- the last -- the sentence right above that reads, "And most of all, have alternatives." Do you see that?
A. Okay. Okay.

Q. Do you see that, Mr. Cook, "have alternatives"?
"Have alternatives" is what GML wrote?
A. Yeah. That's what he's telling Giuseppe to do, is to have alternatives.
Q. You mean he -- that's what he's telling you to do, right? This is June of 2004.
A. Yeah. He's telling me. Okay. Right.
Q. Do you understand that to mean have alternatives to Comcast?
A. I think it's alternatives to -- to the business.
Q. Alternatives to the cable business?
A. Yeah, exactly.
Q. As opposed to alternative cable companies to Comcast?
A. Yeah, it -- perhaps both. Perhaps both.
MR. LAM: Okay. If you'd like, we can take our lunch break now.
MR. MOSKO: If this is a good --
MR. LAM: Yes, it is for me.
MR. MOSKO: -- time to break. Okay.
THE VIDEOGRAPHER: The time on the video monitor is 1:16 p.m. This ends media number 2, volume III, and we're going off the record.

(Whereupon, a lunch recess was taken.)

AFTERNOON PROCEEDINGS

THE VIDEOGRAPHER: The time on the video monitor is 2:02 p.m. This is the beginning of DVD number 3, volume III. We are back on the record.

BY MR. LAM:

Q. Good afternoon, Mr. Cook. I'm going to have the court reporter hand you --

(Discussion off the record.)

BY MR. LAM:

Q. -- 157, we'll mark next in order.

(Deposition Exhibit 157 was marked for identification.)

BY MR. LAM:

Q. Mr. Cook, Exhibit 157 appears to be an email from you dated December 21, 2001, to "All Employees" at AgileTV. Do you see that?

A. I see that.

Q. Do you have any reason to believe you did not send this email on or around December 21, 2001?

A. No reason.

Q. Now, you founded AgileTV in the year 2000; is that correct?

A. That's correct.

Q. Is it the case that ever since you founded AgileTV, the company pursued potential business opportunities with cable operators?
A. That's correct.
Q. Dating back to the very beginning of AgileTV; is that correct?
A. That's correct.
Q. And in this 2001 email, the third-to-the-last paragraph reads, "With Insight, Comcast, Time Warner and Charter we now have U.S. MSOs representing 41.5 million cable subscribers saying they're seriously interested in our service." Do you see that statement?
A. I see that.
Q. So as of 2001, AgileTV had already reached out to at least those cable companies identified in your email to all employees; is that right?
A. Correct.
Q. When you left AgileTV in 2006, as of that time, other than your testimony about, I believe, potentially Lenfest and, of course, Comcast, is it true that in all those years between the founding of AgileTV and the time you left AgileTV, that no cable operator commercially deployed AgileTV's technology?
A. Only tests and trials.

Q. Only tests and trials.

While you were at AgileTV, Mr. Cook, did you ever perceive any issues or problems of employee morale?

A. Not that I know of.

Q. Did you have perceive any issues or problems of lack -- lack of or limitations on company resources?

A. Would you restate that.

Q. It would be better if I refer you to a specific document let's mark as the next in order.

(Deposition Exhibit 158 was marked for identification.)

BY MR. LAM:

Q. 158.

Mr. Cook, the court reporter has handed you Exhibit 158, which appears to be an email thread between Jay Kistler and yourself. The top email in the thread is dated November 10, 2004. Do you see that?

A. I see that.

Q. Do you have any reason to believe you did not receive this email thread on or around November 10, 2004?

A. No, I do not.

Q. I -- in reference to the issue of employee morale, I wanted to direct your attention to the -- the -- you can go ahead and read the top email. It's a one or two-liner from you to Mr. Kistler. The next email in the chain is from Chris Lehner -- is that how you pronounce it; it's spelled L-E-H-N-E-R -- to you. Do you see Chris Lehner's name?

A. Chris Lehner?

Q. "Lehner."

A. Uh-huh.

Q. Is it "Lehner"?

A. It's "Lehner," isn't it?

Q. "Lehner."

A. Yeah.

Q. Who's Chris Lehner?

A. I don't know who Chris Lehner is, "Lehner" is.

I don't remember a Chris Lehner. "Lehner." "Lehner."

Q. At the bottom of the first page, Mr. Cook, do you see the statement, "Recently we passed the date for Milestone #2"? Do you see that?

A. Where?

Q. The bottom of the front page. "Recently we

passed the date for Milestone #2." Do you see that statement?

A. I'm looking for it.

Q. All the way at the bottom, about three lines above the --

A. Oh, okay.

Q. -- bottom-of-page footer.

A. Here we are. "Milestone #2."

Q. "Recently we passed the date for Milestone #2." That email goes on to read, "The Executive Committee has reviewed the status of Promptu 2.1," paren, "CMS4," closed paren, "as of October 31 and determined that we did not meet this milestone."

Do you know what "Promptu 2.1" refers to?

A. No, I do not.

Q. The email goes on to read, "We also expect to" meet -- "miss," expect me. "We also expect to miss Milestone #4 due to delays related to Milestone #2. While some of the delay in the launch was due to external factors," paren, "such as Acadia schedule slips," closed paren, "some of the delay must be attributed to AgileTV. We," dash, "as a company," dash, "did not put in the extraordinary effort that would have been required to maximize our chances of hitting our goal."

Do you see the statements that I'm reading from the email?
A. Yeah, I see them.
Q. It carries on to the next page, the top of the next page, Mr. Cook.
While you were in -- running AgileTV, did you often have reported problems of missed milestones?
A. Not that I remember at all.
Q. Did you ever have to lay off or let go any employees because of lack of funding?
A. No. We never ran out of money that I know of.
Q. Are you okay?
A. Yeah, I'm fine, just a little hoarse.
Q. Do you remember ever offering any incentives to help boost employee morale?
A. We always had small incentives to stimulate activities, but nothing of -- major, principal.
Q. If you look at the -- the bottom of this email, on the second page, the bottom of the email, before your signature, that portion of the email refers to "remaining milestones and...related bonus percentages." Do you see that?
A. Where is it, near the bottom of the page?

Q. Well, near the bottom of the message. Near the end of the message, I should say.
A. I see --
Q. Do you see the line --
A. -- milestone 2, 3 --
Q. Yes.
A. -- 5.
Q. Right above "Milestone #2." Right above "Milestone #2," do you see the statement, "So the revised remaining milestones and their related bonus percentages are as follows"?
A. Yep. I see it now.
Q. And then it lists -- the email lists "Milestone #2" and concludes with the sum $900, right?
A. Yep. Uh-huh.
Q. And then lists "Milestone #3" and concludes with the sum of $600; then, finally, "Milestone #5," concluding with the sum of $300.
A. I see those.
Q. Do you see that?
A. Uh-huh.
Q. And the last statement before your thank you in -- in the email states, "This equates to a total remaining potential bonus of $1,800." Do you

see that?
A. I see it.
Q. Do you recall offering these types of bonus percentages for AgileTV employees to help them try to meet milestones?
A. I'm surprised I don't remember these.
Q. You don't remember?
A. Oh, I believe they happened, but I don't remember them.
Q. Fair enough. The cable industry standard that is abbreviated DOCSIS, which we pronounce "DOCSIS," have you ever --
A. DOCSIS.
Q. -- heard of that? Have you ever heard of DOCSIS?
A. Yes, I have heard of DOCSIS.
Q. What is -- what is your understanding of what DOCSIS is?
A. I don't remember what DOCSIS is.
Q. Do you know whether it pertains to telecommunications in -- in the -- in cable TV networks?
A. I don't -- I just don't remember what "DOCSIS" stands for.
Q. Do you remember ever investigating a

DOCSIS-based solution at AgileTV?

A. No, I don't remember that.

MR. LAM: You don't need to re-mark this.

Bob?

MR. YORIO: Thank you.

BY MR. LAM:

Q. Mr. Cook, I'm handing you what was previously marked as Deposition Exhibit 28 for an earlier witness in this case. This appears to be a copy of an email dated -- or the top email in the thread is. This is a copy of an email thread where the top email is dated April 16, 2002, from Peter Sheedy, S-H-E-E-D-Y, to Mark Foster, Dave Hanson, Paul Cook, copying Paul Braun, B-R-A-U-N, and Louis Mastrocola, M-A-S-T-R-O-C-O-L-A.

(Automated conference phone announcement.)

MR. LAM: Excuse us one moment.

Q. Mr. Cook, do you have any reason to believe you did not receive a copy of this email thread that is labeled Deposition Exhibit Number 28 --

A. No.

Q. -- on or around April 16, 2002?

A. No.

Q. Do you know who Peter Sheedy is?

A. No.

Q. Do you know who Paul Braun is?
A. Paul Braun? No.
Q. The email domain on their email address is GI.com. Do you know whether that stands for "General Instruments"?
A. It may well stand for "General Instruments."
Q. Did AgileTV have any business dealings with General Instruments while you were the head of the company?
A. I believe they did.
Q. Do you remember personally being involved in any business dealings with General Instruments while you were --
A. I don't --
Q. -- running --
A. -- have a recollection of doing so.
Q. Let me just finish my question. While you were running AgileTV?
A. Yes, and SRI. I was also the chairman of the board of SRI at that time.
Q. Understood. You just don't remember as you sit here right now --
A. Yeah.
Q. -- having any dealings with General

Instruments; is that correct?
A. That -- exactly.
Q. In the third email in the thread -- just -- you'll have to go to the second page, Mr. Cook. The third email on the -- in the thread is from Peter Sheedy, dated April 16, 2002, to Mark Foster, copying Paul Braun, Christopher Brown, Louis Mastrocola, William Garrison, and you, Paul Cook, and Dave Hanson. Do you see that?
A. Yes, I do.
Q. Do you see that?
A. Uh-huh.
Q. The subject line reads "Agile TV Dense," D-E-N-S-E, "RPD Solution." Do you know or have any understanding what the "Agile TV Dense RPD Solution" refers to?
A. No, I -- I can't -- can't figure it out.
Q. All right.
A. "TV Dense RPD."
"Agile TV Dense RPD Solution."
Q. Let me --
A. Sorry.
Q. That's all right. Let me point you to the third paragraph down in that message. It's the biggest paragraph. It begins with the words "Our

recommendation."

A. "Our recommendation."

Q. Do you see that?

A. Yep.

Q. That statement reads, "Our recommendation however is that you look seriously at implementing a DOCSIS upstream in your Voice Module so you can gain all the benefits inherent with DOCSIS and you can still deploy this product alongside the DCT 2000."

Now, you testified earlier about the DCT 2000. Does reading that statement help refresh your memory as to what DOCSIS is?

A. No. I'm sorry. It doesn't help clarify for me at all.

Q. Regardless of whether you understand what DOCSIS is, does reading this exhibit email thread help refresh your memory as to whether or not AgileTV in fact looked at or considered any DOCSIS-based solution?

A. I'm afraid not.

Q. Mr. Cook, now I'll hand you what's been previously marked as Deposition Exhibit 80 -- eight zero -- for an earlier witness in this same case. This email appears to be a copy of -- excuse me. This exhibit used to -- appears to be a copy of an

email thread where the top email is dated July 29, 2002, from Dave Hanson to you, Paul Cook, and others at AgileTV, including the last cc recipient, someone whose email address is paul@mercuryntwks -- mercuryntwks.com. Do you know who that email address belongs to?

A. What was that last address?

Q. Do you see the last address? They're all AgileTV addresses in the cc lines except for the last one, which reads "paul," P-A-U-L, "@mercuryntwks.com."

A. Okay. I see it.

Q. Is that you -- is that an email address that you used to maintain?

A. Say again.

Q. Is that an email address that you -- you, yourself, used to maintain?

A. Not that I remember.

Q. Do you know whose email address is paul@mercuryntwks.com?

A. Paul@mercury? Don't have any idea.

Q. The email, though, is -- indicates that it was sent to you, the direct recipient, on or around July 29, 2002. Do you have any reason to believe you did not receive a copy of this email thread at

that time?
A. No.
Q. If you look -- let's stay on the first page. Moving towards the bottom of the first page, there's an email in this thread that is attributed to Jay Kistler. Do you see the heading, "At 11:23 PM 7/27/2002..., Jay Kistler wrote"? Do you see that?
A. Yes. Okay.
Q. Move -- just past halfway down that page.
A. Yeah.
Q. An email that Jay Kistler wrote.
A. Yeah. Got it.
Q. There are a few paragraphs in that email. The -- depending on how you count the paragraphs, either the second or third paragraph begins with the statement, "An alternative way to get voice bits upstream is to put a DOCSIS modem on the VoiceLink." Do you see that?
A. Yes, I see that.
Q. All right. Does that help refresh your memory as to what DOCSIS is?
A. Well, I see what's written here. I don't have the time to plumb it. But -- but I see what it is.

Q. Does it help refresh your memory as to any understanding of what DOCSIS is?
A. Not really.
Q. The bottom paragraph of -- of that page starts with the sentence, "A DOCSIS upstream is much higher bandwidth than what we can get out of the DCT 2000." Do you see that?
A. I see that.
Q. Does that help with your understanding or your memory as to what DOCSIS is?
A. Not really.
Q. Do you read that statement to suggest that DOCSIS upstream is an alternative to the DCT 2000?
A. I don't see how. But -- but I hear what you're saying.
Q. Well, would it be fair to say, based on the -- the two email threads that we just looked at, that at least somebody, maybe not you personally, but at least somebody at AgileTV, had investigated DOCSIS during your time running the company?
A. I'm sure. I'm sure.
MR. LAM: Next in order.
Oh, actually, no; no need.
Q. Mr. Cook, I'll hand you what's again been previously marked as a deposition exhibit. It's

Number 31. The -- the front page, the cover -- Mr. Cook, the cover page of Exhibit 31 has a title called "Plan B." Do you see that?

A. I see it.

Q. And it's dated April 22, 2003. Will you take a quick look at this exhibit and let us know whether you believe you've ever seen this document before today.

A. Well, I see what it says, and I skimmed it. But I don't understand, really, what the purpose of the "Plan B" was.

Q. Do you see the footer on each page -- and it looks like a slide presentation, but there's a footer at the bottom of each box on each page that might be a little difficult to read, but I make it out to say "AgileTV Confidential." Do you see that?

A. Yes, I see that.

Q. Does Exhibit 31 appear similar to the form of presentations that were put together during your time running AgileTV?

A. Would you repeat the end of that again one more time?

Q. Yeah. That was -- that was a little bit muddled.

Does Exhibit 31 look like a presentation

that was prepared during the ordinary course of business during your time running the company?

A. I think so.

Q. If you'd turn to -- I'm going to call it a slide. It's slide number 5. The bottom right-hand corner would have page number 190914. Will you turn to that page, please, 190914.

A. Okay.

Q. Okay. Do you see the slide designation number 5?

A. I do.

Q. The very bottom of that slide, the bottom bullet point, reads, "No HD-RPR required." Do you know what HD-RPR is?

A. No, I don't. It's got to be "high density" something.

Q. There's a subpoint under that bullet point. The second one reads, "DOCSIS used for all application traffic." Do you see that?

A. I see it.

Q. Does this particular exhibit help refresh your memory or understanding of what DOCSIS is?

A. I'm afraid not.

Q. Let's shift gears.

This will be the next in order.

(Deposition Exhibit 159 was marked for identification.)

BY MR. LAM:

Q. Mr. Cook, the court reporter has handed you what's been marked Deposition Exhibit Number 159, which appears to be a copy of a -- an email thread between David Chaiken and you. The top email in the thread does not bear a date that I can see, but the next email in the thread reads, "At 3:08 PM" July 31, 2001, "you wrote." Do you see that?

A. I do.

Q. Do you have any reason to believe you did not receive a copy of this thread in -- on or around July 31, 2001?

A. No reason.

Q. All right. That message at July -- at 3:08 p.m. reads, "Hi Paul. I did some checking into Verascape, the VoiceXML platform company that just announced a reseller agreement with Motorola's Internet Software and Content Group." Do you see that?

A. I see that.

Q. Do you -- have you ever heard of the company Verascape?

A. I have not heard of Verascape before that I

remember.
Q. Do you know whether Verascape was a competitor of AgileTV's?
A. I don't remember them as a competitor.
Q. Do you remember whether Aris -- excuse me, Verascape -- I'll start over.
Do you remember whether Verascape offered any voice recognition system for controlling TV broadcasts?
A. Not that I remember.
MR. LAM: Next in order.
(Deposition Exhibit 160 was marked for identification.)
BY MR. LAM:
Q. Mr. Cook, you've been handed Exhibit 160, which appears to be a copy of an email thread between you and Sam Schwartz at Comcast --
A. Right.
Q. -- where the top email in the thread is dated September 17, 2003. Do you see that?
A. Right.
Q. Do you have any reason to believe you did not send or receive this email thread around September 17, 2003?
A. No, I did not.

(Discussion off the record.)
THE WITNESS: I had no reason to think that I didn't receive this.
BY MR. LAM:
Q. Mr. Cook, in the top email, the first -- the first part, the very top of it, of the email, reads, "We can accommodate the no NDA." Do you see that?
A. Yes, I do.
Q. Do you remember whether Comcast requested that there be no NDA with AgileTV?
A. No, I don't remember that.
Q. The next sentence in the top email reads, "I doubt...you'll want to look deeply into some parts of the technology that we're protective of anyhow." Do you see that?
A. I see it.
Q. What parts of Promptu or AgileTV technology were you protective of?
A. What question do you want me to answer?
Q. The sentence I just read refers to "parts of...technology that we're protective of." That's at the top of the email. Do you see that?
A. I think so. What's the beginning of the sentence?

Q. The beginning is "I doubt."
"I doubt that you'll want to look deeply into some parts of the technology that we're protective of anyhow." Do you see that statement?
A. Where is it on the page?
Q. Yeah. Let's start over.
Starting with the very top of the email --
A. Okay.
Q. -- you stated, "We can accommodate the no NDA." Do you see that?
A. Oh, okay. Yes.
Q. Then you said, "I doubt that you'll want to look deeply into some parts of the technology that we're protective of anyhow." You see that?
A. Okay.
Q. Can you describe for us what parts of technology you were protective of?
A. No, I could not do that. Again, you'd have to go to the technology people in the company, not myself.
Q. But this is your statement to Sam Schwartz at Comcast, correct?
A. This is. Yes, it is to Sam Schwartz.
Q. So, for context, if you go -- you move a little bit down in this email thread, do you see the

heading that reads, "At 9:04 PM 9/16" 2003 -- or "9/16/03," which I take to mean September 16, 2003? Do you see that?

A. I see that.

Q. It looks like a statement that Sam Schwartz was writing to you that begins with, "We're not going to be able to sign an NDA from my group." Do you see that statement?

Right under that time and date stamp that I just -- that I just read --

A. Uh-huh.

Q. -- do you see the statement, "We're not going to be able to sign an NDA from my group"?

A. Yes, now I see it.

Q. Yes. So that's Mr. Schwartz talking to you, right?

A. Yes. And that's in September.

Q. Yes, September 16 --

A. It's in --

Q. -- 2003?

A. '03. Okay.

Q. Okay. So September 16, 2003, Mr. Schwartz says, "We're not going to be able to sign an NDA from my group." And then on September 17, 2003, you responded, "We can accommodate the no NDA." Do you

see that now?
A. Now I see it.
Q. And then you say, "I doubt...you'll want to look deeply into some parts of the technology that we're protective of anyhow."
So as you sit here today, are you aware of any parts of the technology that you were referencing as of September 2003 that you were protective of?
A. No. But I wasn't expert in that area at all.
Q. Did AgileTV ever write its own source code for its voice recognition system?
A. For its what system?
Q. For its voice recognition system.
A. We had sizable additions to what we used from SRI.
Q. So you used some source code from SRI? Is that correct?
A. Oh, yes.
Q. And then somebody at AgileTV added to that source code; is that right?
A. That's correct.
Q. Who was the -- or who were the computer programmers at AgileTV who added to the source code

that you used?
A. Well, there were about ten of them in Australia, and then there was Harry Printz, who was the head of it, in Menlo Park.
Q. So Harry Printz was a coder at AgileTV?
A. Yes.
Q. Do you know whether AgileTV ever shared any source code with Comcast?
A. No, I don't know.
Q. Do you know --
A. They -- they used it, and it was available on their property.
Q. You're saying "they" meaning Comcast; is that correct?
A. Yes.
Q. So they ran the source code at some point --
A. Yes.
Q. -- during testing and trial?
A. Yes. They -- we had quite a few deployments in the different offices of executives before we went out to the Willow Grove deployment. That was another one. But we had quite a few deployments of our system in customers or executives and employees of Comcast.

Q. Do you know whether Comcast ever had access to AgileTV's raw source code that was either programmed by Mr. Printz or somebody in Australia or previously programmed by SRI?

MR. YORIO: Objection.

THE WITNESS: No, I -- I --

MR. YORIO: Objection; lacks foundation.

You can answer.

BY MR. LAM:

Q. You may answer if you can.

A. I can't answer that question, because I don't know.

Q. During your testimony on direct examination by Mr. Mosko, you mentioned that Steve Silva at Comcast -- or Steve Silva was a key contact of yours at Comcast. Do you remember that?

A. Correct. Yes.

Q. You also qualified that he was not your main contact at Comcast, even though he was a key contact. Do you remember that?

A. Yes.

Q. Who would you consider to be your main contact at Comcast?

A. Well, it depends upon for what purpose. Silva was the main contact on negotiating a deal

with them. And he had a couple of lawyers that worked with him. I'd have to say that Mark Hess was probably the principal and most important person to carry our system to the details of getting it deployed.

Q. So Mark Hess and Steve Silva. And did you say a couple of lawyers?

A. Couple lawyers --

Q. Couple of lawyers?

A. -- worked with Silva.

Q. A couple of lawyers for Comcast?

A. Yes.

Q. You said you currently personally have three Comcast voice remotes; is that right?

A. Say again.

Q. You're currently a Comcast subscriber; is that correct?

A. I still didn't understand you.

Q. Do you currently subscribe to Comcast?

A. Oh, I have three in the house.

Q. You have three in the house?

A. At home, yeah.

Q. Yeah, that -- that you have because you're a subscriber; is that correct?

A. Yes. I'm one of their 21 million

subscribers.
Q. You don't know when Comcast first launched its voice remote feature; is that correct?
A. I didn't --
Q. Do you know when Comcast first -- first launched its voice remote?
A. No, I don't know exactly when they first deployed it.
Q. Do you remember when you first received any of your three voice remotes?
A. It's got to be two years now.
Q. Do you have any idea how Comcast's current voice recognition system works?
A. Yeah, I have a pretty good idea.
Q. Do you know where the speech translation occurs in the cable network?
MR. YORIO: Objection; lacks foundation.
THE WITNESS: At the head-end.
BY MR. LAM:
Q. You believe it occurs at the head-end?
A. Yes.
Q. You believe it occurs at the center of electronic processing for TV broadcast?
A. Yes.
MR. YORIO: Objection to the form of the

question.
BY MR. LAM:
Q. Are you familiar with the phrase "Internet cloud"?
A. Sure.
Q. What does that mean to you?
A. It's the collection of storage capability for huge number of people that could use it for storage on their computers.
Q. Based on your understanding of "Internet cloud" and your understanding of Comcast's cable network that offers voice recognition, would -- do you consider Comcast's system to be a cloud-based system?
A. Oh, that's an interesting question. I've not thought about that before, and therefore I really would not have a meaningful opinion.
Q. Do you consider the system that you were trying to help develop at AgileTV for cable TV purposes a cloud-based system?
A. I'd have to say yes.
Q. Why do you say that?
A. Because it has such large quantities of storage, there's no other way they could economically afford it.

Q. Otherwise who could not economically afford it?
A. Sir?
Q. You said that -- your response was, "Because it has such large quantities of storage, there's no other way they could economically afford it."
A. Yeah.
Q. Who were you describing by the word "they"?
A. The people running the Comcast plant.
Q. I was asking you about AgileTV. I was asking you whether you considered an -- whether you considered the AgileTV system you were trying to develop for cable a cloud-based system.
A. We were trying to reduce the amount of storage necessary, and did -- had done a pretty good job at doing that.
Q. Did you consider the AgileTV solution to be a cloud-based solution?
MR. YORIO: Objection. It's been asked and answered.
THE WITNESS: I -- I'm not that familiar with computers and storage to give you an important answer to that question.
BY MR. LAM:

Q. I'm going to help you find the exhibit that I would like to focus on next. It would be Exhibit Number 131.

MR. YORIO: 131?

BY MR. LAM:

Q. Here it is.

(Phone ringing.)

THE WITNESS: Hello?

MR. MOSKO: Let's go off the record, please.

THE VIDEOGRAPHER: The time on the video monitor is 2:48 p.m., and we are going off the record.

(Discussion off the record.)

THE VIDEOGRAPHER: The time on the video monitor is 2:49 p.m. This is the continuation of media number 3, volume III. We are back on the record.

BY MR. LAM:

Q. Mr. Cook, do you remember testifying yesterday about a discussion you had with Steve Burke at Comcast --

A. Yes, I do.

Q. -- near the beginning of 2006? I believe you mentioned it was in the context of a Las Vegas

TV trade show.

A. Exactly.

Q. Is that right?

At which time Mr. Burke told you -- and I understand it was disappointing news for you, but Mr. Burke told you that Comcast was no longer interested in pursuing business with Promptu because it was focusing its priorities on triple play. Do you remember that?

A. Yes, I do.

Q. You testified yesterday that you found that disturbing; is that right?

A. Absolutely.

Q. You testified yesterday that you in turn told others at AgileTV, including executives and board members, about what you thought was disappointing news. Is that right?

A. Yes.

Q. That event gradually led to a transition that AgileTV adopted, in the form of Promptu, moving away from the cable business to the mobile business; is that right?

A. That's what the board of directors directed the company to do over six, eight months' period.

Q. Do you feel like you remember that

conversation that you had with Mr. Steve Burke well?
A. Very well.
Q. Do you think that you remember that conversation with Mr. Burke accurately?
Do you feel like you remember that conversation with Mr. Burke accurately?
A. Accurate?
Q. Correctly.
Do you feel like you have a good memory of that conversation with Mr. Burke?
A. Yes, I do.
Q. You found it disappointing; is that right?
A. Of course.
Q. And you -- you attribute it to a discussion you had during a Las Vegas trade show.
A. Yes.
Q. Do you remember that well?
A. I remember it very well.
Q. If you look at Exhibit 131 -- it's right in front of you. It's an exhibit that was used during your direct examination by Mr. Mosko, which was prehighlighted and then rehighlighted by you. There is an email from you "To All Employees" in the middle of that page. Do you see "Paul Cook wrote: To All Employees"? Do you see that?

A. Yeah, I see that.
Q. All right. You stated at the time, "We just finished a meeting with Comcast in Las Vegas," I think it's in parentheses, "I attended by phone," closed paren, "and they do want to proceed with us quickly. They want a short term plan and a long term plan including" what now -- "what it now appears will be the economic significance to Comcast - costs, revenues, capital investment, operating burden et cetera."
Do you see that?
A. I see that.
Q. So is this an accurate account that you wrote to all employees at AgileTV of a conversation you had with Mr. Burke in connection with an early 2006 Las Vegas trade show?
A. What's your question?
Q. My question is, you just described a conversation that included you and -- in -- during a Las Vegas meeting with Comcast, where you reported to all employees that Comcast want to proceed with AgileTV quickly. I'm asking you whether that's an accurate account that you were giving to all employees at AgileTV.
A. No, it wasn't an accurate account.

Q. So is there any reason why you told all employees at AgileTV that Comcast wanted to proceed with you quickly?

A. I was buying some time to be able to figure out a story and what we're going to do with all the employees.

Q. So in order to achieve that purpose, you were not accurately representing the disappointing discussion that you had with Mr. Burke; is that --

A. Well --

Q. -- correct?

A. I didn't say that. The story that Burke told me was after that meeting had been held that I attended. There were two different meetings with Burke. One was the private one, with just me. And then this was the other one, that you'd seen described here.

Q. The -- the -- the conversation that you had with Steve Burke that you, yesterday, described as disappointing, was that the private conversation that you had?

A. It was just the two of us.

Q. Just the two of you?

A. Only the two.

Q. Before you wrote this email?

A. Before? It must have been.
I don't have a calendar that showed what happened when, and what time, but I do remember what -- what the sequence was.
MR. LAM: Mr. Cook, I have no further questions for you for purposes of the court case. I do have some questions for you for purposes of a different proceeding, that shouldn't take more than ten, 15 minutes. I don't know whether Mr. Yorio -- I assume if there's any redirect, it will be by Mr. Yorio, or if not then Mr. Mosko, but that's -- that's for your lawyers to decide. If they don't, I'm happy to bridge right into the IPR.
If you do, then you should do that now, before we bridge into the IPR.
MR. YORIO: Let's take a break, and we'll decide that and then move on.
THE WITNESS: Thank you. The schedule you're proposing is okay with me as long as I can get home by 4:00.
MR. LAM: Sure.
THE WITNESS: I have an important engagement.
MR. MOSKO: It's going to happen.
THE VIDEOGRAPHER: The time on the video

monitor is 2:56 p.m. This ends media number 3, volume III. We are going off the record.

(Recess taken.)

THE VIDEOGRAPHER: The time on the video monitor is 3:18 p.m. This is still the continuation of media number 3, volume II -- volume III. We are back on the record.

EXAMINATION BY MR. MOSKO

Q. Okay. Mr. Cook, Mr. Lam is finished with asking you questions about the district court case, and I'm going to do some follow-up questions on behalf of Promptu. I'm just going to ask you a few questions. I was concerned with a statement that Mr. Lam had made about the deposition exhibits that you and I talked about when I was asking you questions and the highlights. So my questions are going to be directed toward the highlighting activity. Okay?

A. Okay.

Q. All right. Now, you had earlier testified that we had met, I think you said five or so times, in preparation for the deposition. Is that -- am I accurate in your --

A. Exactly.

Q. -- in -- in recalling your testimony?

Okay. And during those initial meetings, were you shown a number of different documents that concerned Promptu and Comcast during those initial meetings?

A. Yes.

Q. And at the initial time when you saw those documents, did they have any highlights on them at all?

A. No. They did not.

Q. Okay. And during those initial meetings, did you and I spend a lot of time actually reading together many of those documents?

A. Quite a lot of time.

Q. And did we talk about the contents of many of those documents?

A. Yes, we did.

Q. And as a result of what you and I talked about, did I add highlights to the documents so we could see them and talk about them?

A. Yes, you did.

Q. And I added those highlights in yellow; is that right?

A. That's right.

Q. And after I added those highlights in yellow, did I present to you a binder, a white

binder, that had all of the documents that we had talked about?

A. That thick.

Q. Okay. And you're indicating about three or four inches. Am I right?

A. Exactly.

Q. And did you then have an opportunity to review and read all of those documents at your leisure?

A. Yes, and at your encouragement to make changes if appropriate.

Q. Okay. And when you say "make changes," did I present to you a blue highlighter?

A. Yes, you did.

Q. And did you have the opportunity to read the entire document that you were reviewing?

A. Yes, I did.

Q. And did you at that time highlight those portions of the documents that you felt were important?

A. Yes. I --

Q. All right. And I will represent to you that the documents that you -- that we talked about, you and I talked about, are exactly the ones that were highlighted and that have now been made part of

the record. Do you understand that?
A. Yes, I do.
Q. When you reviewed the documents, did you see any document that was highlighted in a way that you had not actually performed the blue highlights?
A. None.
MR. MOSKO: Okay. Very good.
I don't have any more questions of Mr. Cook. Thank you.
MR. LAM: I do have recross as a result of that.

EXAMINATION BY MR. LAM

Q. Mr. Cook, before Mr. Mosko did what we call a redirect, so direct-examining you again, did you discuss your testimony with Mr. Mosko?
A. No.
Q. You didn't?
A. Did not.
Q. What did you do to prepare for your deposition besides reviewing documents with Mr. Mosko?
A. What's the question?
Q. Besides reviewing documents with Mr. Mosko, what did you do to prepare for your deposition?
A. I read through a good portion of the -- of

the four inches of text.
Q. By yourself?
A. By myself.
Q. By yourself, after Mr. Mosko had already yellow highlighted them; is that correct?
A. I'm not sure that -- when the yellow highlighting came in.
You left a book with me with the yellow highlighting in --
Q. Mr. Cook --
A. -- later.
Q. Mr. Cook --
MR. MOSKO: You have to ask -- you have to answer --
THE WITNESS: I'm sorry.
MR. MOSKO: -- Mr. Lam's questions.
BY MR. LAM:
Q. Mr. Cook, you personally did not perform the yellow highlighting, correct?
A. No, I did not.
Q. Mr. Mosko did?
A. Yes.
Q. By the time you read the four -- or three or four-inch stack of documents, they were yellow highlighted, right, by Mr. Mosko?

A. They were.
Q. And then you proceeded sometimes to add further blue highlighting, correct?
A. I -- yes. And I had the chance in pencil, not in -- well, highlight, but in pencil, to make changes in the -- and then the pages would get retyped, that I could then sign.
Q. That you could -- did you make any pencil changes?
A. Yes, I did.
Q. What do you mean by retype documents that you could sign?
A. I -- the few things that I changed, which included some typos and a couple of missing pages and some other things, those things were corrected and re-presented to me for signature.
Q. We're talking about documents that were used --
A. I'm talking about --
Q. -- as exhibits in your deposition. These are documents that have been maintained since, oh, 2000, 2001 or so. You're not talking about any alterations you made to those documents beside highlighting, are you?
A. No, just -- there were copies that were

made that I reviewed, and if -- and not -- not -- not -- and I'm confused.

Q. Mr. Cook, you did sign a statement.

A. Yes, I did.

Q. A statement that was -- I'm not sure whether you know where that statement went, but you did sign a statement, right?

A. Yes, I did.

Q. We haven't shown you that statement yet in this deposition, have we?

A. I don't know.

Q. Okay.

A. Today, you mean?

Q. At all in the past three days, during your deposition.

A. I don't know.

Q. I'm asking you about documents like the ones in front of you, that are besides the statement that you signed. The statement that you recently signed is not what I'm asking you about. I'm asking you whether the documents that have been marked as exhibits in this deposition were part of the three or four-inch stack of documents that you reviewed to prepare for the deposition.

A. Okay.

Q. Do you understand my question?
A. Yeah. I --
Q. So leaving aside --
A. I think I did now.
Q. Leaving aside a recent statement that you might have signed --
A. Sir?
Q. Leaving that aside -- you recently signed a statement, right?
A. Recently?
Q. Well, recently as in within the past month or two.
A. Yeah, absolutely.
Q. Yes. Leaving that statement aside, the stack of documents that you have in front of you right now --
A. Yes.
Q. -- is part of a bigger stack of documents that you might have reviewed to prepare for this deposition; is that correct?
A. That's correct.
Q. When you reviewed that stack of documents, it had already been highlighted by Mr. Mosko in yellow; is that right?
A. That is correct.

Q. And then sometimes you would add further highlighting in blue, right?
A. That's correct also.
Q. So -- and when you -- when you overlaid the highlighting, sometimes it could look green. Is that right?
A. Yeah, the yellow highlighting that he did was never a complete one. It might be one or two sentences at the beginning of a paragraph, or it might be a whole paragraph.
Q. Understood.
A. And -- and I had the opportunity to go in and -- and highlight whatever I wanted to, depending on how I reacted to what it was highlighting. So I think it was taken care of that way.
MR. LAM: All right. I have no further questions. I'd like to ask you a different set of questions. I don't know what counsel and the court reporter think they need to --
MR. MOSKO: I'd actually like to do some follow-up questions based on your questions before we go off the record, please.
MR. LAM: You mean a reredirect?
MR. MOSKO: Yes.
MR. LAM: I don't think you're entitled to

that.

MR. MOSKO: Well, I'm going to ask him --

MR. LAM: Okay.

MR. MOSKO: -- some questions.

MR. LAM: Well, I'm going to object to this entire line of questions by Mr. Mosko.

MR. MOSKO: Okay.

EXAMINATION BY MR. MOSKO

Q. Mr. Cook, we met at least five times for your -- for your deposition preparation, right?

A. Yes, at least.

MR. LAM: Will you note the standing objection, John.

BY MR. MOSKO:

Q. When we met, you were shown a number of documents, right?

A. Yes.

Q. Were any of those documents highlighted when you first saw them?

A. When I first saw them, no.

Q. Okay. And during the time we met, you and I read the documents together; is that right?

A. That's correct.

Q. And then the highlighting, the yellow highlighting, was placed on the documents; is that

correct?
A. That's correct.
Q. And then you were presented with a binder of those highlighted documents to review, correct?
A. Yes.
Q. After you were presented with those highlighted documents, you took a blue highlighter and did whatever blue highlighting you wanted to do; isn't that correct?
A. Correct.
MR. MOSKO: Very good. I have no more questions of the witness.
MR. LAM: I'm about to ask some other questions. I don't know whether the court reporter and counsel feel like they need to change media. I don't think that's necessary. I can just go through them right now. But -- and, in fact, I would prefer to. So I'm not sure how to resolve this.
(Discussion off the record.)
MR. LAM: I propose that we agree that excerpts can be used, subject to negotiations between counsel, for either purpose. Nobody but the lawyers in their right mind is going to read the entire transcript.
(Discussion off the record.)

MR. LAM: Mr. Schroeder, can we just proceed? If we can -- I think the court reporter is suggesting that if we can stipulate to that, we can -- we can proceed.

MR. SCHROEDER: Yeah, that's fair.

MR. LAM: Okay.

MR. CALLAWAY: No original transcript is needed for the PTAB. We just file and stipulate to it. It's not going to --

MR. LAM: You -- Mr. Callaway and Mr. Schroeder will know better than I, but I think it's sensible for us to just march through and let you go, Mr. Cook.

THE WITNESS: Excuse me?

MR. LAM: I think it would be sensible for us to proceed right now and --

THE WITNESS: Okay.

MR. LAM: -- let you go as soon as we --

THE WITNESS: That's --

MR. LAM: -- possibly can.

THE WITNESS: That's fine.

MR. LAM: Thank you.

EXAMINATION BY MR. LAM

Q. Mr. Cook, I will hand you what's already been marked as an exhibit. It bears Number 1012.

It's a copy of a patent -- yeah, it's a -- marked as an exhibit for -- well, it -- it -- you see at the bottom it says "Exhibit 1012"?

A. Yes, I do.

Q. Have you ever seen this -- this exhibit before today?

A. I don't believe so.

Q. I'll refer to it as the -- I'll refer to it as the '063 patent. Is that all right with you, the last three digits, numerical digits, on the top right-hand corner?

A. Okay. '063.

Q. '063. Now, if you pull out -- and I'll help you, Mr. Cook -- Exhibit 115 from your deposition.

A. 115?

Q. Yes.

A. There's 113.

Q. 115 is right here.

A. Good.

Q. Turn to the back page of 1 -- Exhibit 115.

One page before the back page is Exhibit E. Do you see that?

You just -- you just passed it.

A. Exhibit D?

Q. The second -- Exhibit E.
A. Exhibit E.
Q. Second-to-the-last page.
A. E. Okay.
Q. All right. It's a list of patent numbers. Do you see that? There are four patent numbers.
A. Okay.
Q. Do you see the four patent numbers?
A. Yep.
Q. Now, the '063 patent, which you have on your right, I will represent to you that the numbers match one of the four that are listed in Exhibit E to the License and Development Agreement.
A. Okay.
Q. And let's just confirm that. Mr. Cook, do you see on --
A. That's D.
Q. E.
A. E.
Q. On E, there are four numbers listed. Do you see the four numbers?
A. Yep.
Q. The second of the four numbers --
A. Yep.
Q. -- is 6,513,063.

A. Yep.
Q. Do you see that? That's also the number of the '063 patent, that you have on your right. The -- the separate document, Mr. Cook.
A. Okay.
Q. Below the page you're looking at.
MR. SCHROEDER: And, Counsel, I'm going to object to this being beyond the scope of Mr. Cook's testimony in the PTAB matters. This is not relevant to the scope of his declaration.
BY MR. LAM:
Q. Mr. Cook, will you -- will you -- will you take a look at the copy of the patent itself. That's right.
Do you see the first name listed, Luc Julia; L-U-C, Julia?
A. Luc Julia?
Q. Yes. Do you know who Luc Julia is?
A. I think I remember him.
Q. How do you remember him?
MR. SCHROEDER: Objection; beyond the scope.
THE WITNESS: I don't know. I just remember the name.
BY MR. LAM:

Q. Do you remember him from SRI?
A. I don't know where I remember him from.
Q. Do you remember Dimitris Voutsas, spelled V-O-U-T-S-A-S?
A. No, I don't.
Q. Do you remember Adam Cheyer, C-H-E-Y-E-R?
MR. SCHROEDER: And I'm going to object and -- and lodge a running objection to all of this being beyond the scope of Mr. Cook's testimony in the PTAB matters.
BY MR. LAM:
Q. Mr. Cook, do you remember Adam Cheyer, subject to counsel's objection?
A. I may have reminded -- remembered him, but not Voutsas.
(Discussion off the record.)
THE WITNESS: But I also think I remember Luc Julia.
BY MR. LAM:
Q. You do remember the company name that appears after those individuals, named SRI International --
A. Of course.
Q. -- correct?
Okay. Now, turning back to Exhibit E in

the License and Development Agreement, that listing of four patent numbers -- all the way in the back.

A. Way in the back?

Q. Yes, all the way in the back, second-to-the-last page.

That's it. You have it right there.

A. There it is. Okay.

Q. That's a listing of four SRI patents that were licensed to AgileTV; is that correct?

A. Okay.

MR. SCHROEDER: Objection; lacks foundation, beyond the scope.

BY MR. LAM:

Q. Is that correct?

A. Yeah. I don't remember it by heart, but that's reasonable.

Q. Do you remember reviewing any of these four patents before AgileTV took a license to them?

A. I can't --

MR. SCHROEDER: Objection; beyond the scope.

THE WITNESS: -- remember the number of patents that I've reviewed. That's crazy.

BY MR. LAM:

Q. Do you know whether there was a written

agreement between AgileTV and SRI to license these?
A. Yes, I do remember that.
Q. Were -- did you sign such an agreement?
A. I'm almost sure that I did.
Q. Why did AgileTV license these four patents from SRI?
MR. SCHROEDER: Objection; beyond the scope.
Counsel, this is far beyond the scope of Mr. Cook's testimony in his PTAB declaration, and I'd like to request that you limit your questions to that scope.
BY MR. LAM:
Q. Why did AgileTV license these four patents from SRI?
MR. SCHROEDER: Objection; beyond the scope.
THE WITNESS: Because we wanted to use the technology in its deployment.
BY MR. LAM:
Q. So the technology described in these four SRI patents was relevant to your work at AgileTV?
A. Yes.
MR. SCHROEDER: Objection.
BY MR. LAM:

Q. Did AgileTV pay for a license to these four patents?
A. They had --
MR. SCHROEDER: Objection; form.
THE WITNESS: -- an agreement of -- of compensation for it, not necessarily paid for it, but they had a deal where, if Agile was successful, then some -- some revenue would come to SRI, handsome revenue.
(Discussion off the record.)
MR. LAM: "Handsome."
Q. "Handsome revenue." Is that what you said?
A. Handsome revenue. Yes.
MR. YORIO: Excuse me. Mr. Reporter, could you read the answer back so we can hear it clearly.
(The record was read by the reporter.)
BY MR. LAM:
Q. Do you know whether in fact AgileTV paid any such revenue to SRI for its license to these four patents?
MR. SCHROEDER: Objection. Counsel, you've already closed your deposition in the district court litigation, and this is far beyond the scope of Mr. Cook's declaration in the PTAB matters.
BY MR. LAM:

Q. Will you answer, Mr. Cook.
A. Yeah. I -- I don't have a recollection of whether they paid anything or not.
Q. Do you remember considering whether to cite any of the four patents listed in front of you to the U.S. patent office for purposes of your own patent applications?
MR. SCHROEDER: Objection. This -- this is far beyond. We're going to have to stop this deposition if you don't pull this within the scope of his declaration in the PTAB matters. And you can call the board to ask for permission to continue, because this is well beyond the scope of his testimony in the PTAB cases.
BY MR. LAM:
Q. Mr. Cook, you may answer if you know.
Did you ever consider citing any of these patents to the U.S. patent office for purposes of your own applications?
A. Not as far as I know.
MR. LAM: Thank you very much.
I have no further questions.
MR. SCHROEDER: I have nothing further.
THE VIDEOGRAPHER: The time on the video monitor is 3:40 p.m. This concludes the deposition

of Mr. Paul Cook, and we are off the record. This is the end of media number 3, volume III.

(Whereupon, the deposition session ended at 3:40 p.m.)

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CERTIFICATE OF REPORTER

I, JOHN WISSENBACH, a Certified Shorthand Reporter, hereby certify that the witness in the foregoing deposition was by me duly sworn to tell the truth, the whole truth, and nothing but the truth in the within-entitled cause;

That said deposition was taken down in shorthand by me, a disinterested person, at the time and place therein stated, and that the testimony was thereafter reduced to typewriting by computer under my direction and supervision and is a true record of the testimony given by the witness;

That before completion of the deposition, review of the transcript [ ] was [X] was not requested. If requested, any changes made by the deponent (and provided to the reporter) during the period allowed are appended hereto.

I further certify that I am not of counsel or attorney for either or any of the parties to the said deposition, nor in any way interested in the event of this cause, and that I am not related to any of the parties thereto.

DATED: NOVEMBER 01, 2018

JOHN WISSENBACH, CSR No. 6862

---o0o---

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

_____

Signature of the witness

CERTIFICATE OF REPORTER

I, JOHN WISSENBACH, hereby certify that the witness was duly sworn by me, before commencement of testimony by the witness, to testify the truth, the whole truth, and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and place therein stated, in the presence of the above-noted people; that the testimony of said witness was reported by me, a Certified Shorthand Reporter and disinterested person, and was thereafter transcribed into typewriting and is a true record of the testimony given by the witness, and that the pertinent provisions of the applicable code or rules of civil procedure relating to the notification of the witness and counsel for the parties hereto of the availability of the transcript of the deposition for reading and signing have been met.

And I further certify that I am not a relative or employee of a party or of an employee of an attorney or agent of a party, or interested, directly or indirectly, in the proceeding either as counsel, attorney, agent, or otherwise.

DATED: NOVEMBER 01, 2018

JOHN WISSENBACH, CSR No. 6862