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Transcript of Ivan Peter Zatkovich

Date: July 8, 2020

Case: Resideo Technologies, Inc. -v- Ubiquitous Connectivity, LP

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Resideo Technologies, Inc. v. Ubiquitous Connectivity, LP

IPR2019-01335

Patent # 8,064,935

Exhibit # 1041

1 UNITED STATES PATENT AND TRADEMARK OFFICE

2
3 BEFORE THE PATENT TRIAL AND APPEAL BOARD

4
5 RESIDEO TECHNOLOGIES, INC. and
6 CENTRAL SECURITY GROUP - NATIONWIDE, INC.,

7 Petitioners

8 v.

9 UBIQUITOUS CONNECTIVITY, LP,

10 Patent Owner.

11
12 Case: IPR2019-01335 & IPR2019-01336

13 U.S. Patent No. 9,602,655

14 U.S. Patent No. 8,064,935

15
16 DEPOSITION OF IVAN PETER ZATKOVICH

17 Wednesday, July 8, 2020

18 Conducted Virtually

19 9:55 a.m. - 2:48 p.m.

20 Job #305279

21 Pages 1 - 142

22 April Reid, Stenographer & Notary Public

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Deposition of IVAN PETER ZATKOVICH,

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taken by and before April Reid, Notary Public in

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and for the State of North Carolina, pursuant to

5

Notice of Deposition, commencing at 9:55 a.m.,

6

Wednesday, July 8, 2020, via Video Conference -

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Zoom. All parties appearing remotely.

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* * *

1 (THEREUPON, the following proceedings
2 were had:)

3 THE VIDEO CONFERENCE TECHNICIAN: Thank
4 you to everyone for attending this proceeding
5 remotely, which we anticipate will run
6 smoothly.

7 Please, be aware that we are recording
8 this proceeding for backup purposes. Any
9 off-the-record discussion should be had away
10 from the computer. Please remember to mute
11 your mic for those conversations.

12 Please have your video enabled to help
13 the reporter identify who is speaking. If
14 you're unable to connect with the video and
15 are attending via phone, please identify
16 yourself each time before speaking.

17 We will provide a complimentary,
18 unedited recording of this deposition with
19 the purchase of the transcript, if you are
20 interested.

21 I apologize in advance for any
22 technical-related obstructions.

1 Thank you.

2 THEREUPON:

3 IVAN PETER ZATKOVICH

4 was called as a witness by the Petitioner and,
5 after having been first duly sworn, was examined
6 and testified upon his oath as follows:

7 MR. ALEXANDER: So, April, you had asked
8 about Mr. Shamoon. I -- I do think he will
9 be joining us probably shortly. So just to
10 let you know that I -- you may see somebody
11 else pop up and I think it may be him.

12 THE COURT REPORTER: Thank you.

13 MR. ALEXANDER: Sure.

14 EXAMINATION

15 BY MR. PLEUNE:

16 Q. Okay. Mr. Zatkovich, I'm not going to
17 go over the same intro material that I did
18 yesterday, but you understand that you are under
19 oath today?

20 A. I do.

21 Q. And -- and do you understand that I'll
22 be asking you questions associated with two IPRs

1 for which you provided declarations?

2 A. That's correct.

3 Q. And you understand that those are IPRs
4 2019-1335 and 2019-1336?

5 A. Yes.

6 Q. Okay. And that those are for the '655
7 and '935 patents, correct?

8 A. Correct.

9 Q. Okay. Mr. Zatkovich, what does it mean
10 to conserve energy?

11 A. Well, in the context of, for example,
12 appliances or environmental devices, it's -- could
13 potentially mean to put them into low power mode
14 or to, for example, turn down the temperature on
15 air conditioning. It could have many different
16 embodiments.

17 Q. Would you agree that if you turn an
18 appliance off that that conserves energy?

19 A. Sure.

20 Q. Got it.

21 So, for example, if you were going to
22 run a pool pump for 24 hours a day, that pool pump

1 would be using energy for 24 hours a day, right?

2 A. That's correct.

3 Q. And if you turn that pool pump off you
4 would be conserving energy, correct?

5 A. That's correct.

6 Q. And if you turned the pool pump off for
7 some portion of the day, that would also be
8 conserving energy, right?

9 A. Yes.

10 Q. Okay. And you also mentioned, I think,
11 HVAC systems; is that correct?

12 A. Yes. I'm aware of HVAC systems, yes.

13 Q. And you would agree that HVAC systems
14 have long been the target of energy conservation,
15 right?

16 A. Correct.

17 Q. And if, for example, an HVAC system is
18 turned off when no one is occupying a home, for
19 example, that would be conserving energy, right?

20 A. Certainly.

21 Again, the -- the most popular version
22 of conserving energy with air conditioning units

1 is to turn the temperature up, but you could also
2 turn it off.

3 Q. Right.

4 By turning the temperature up, it is
5 less likely that the, for example, air
6 conditioning is going to turn on, right?

7 A. Right.

8 Q. And that's a common way to exercise
9 energy conservation, is to manage the setpoints of
10 the HVAC; would you agree with that?

11 A. That would be one method.

12 Q. Let's turn to Exhibit 1001 of the '655
13 IPR.

14 (THEREUPON, Exhibit 1001 was marked for
15 identification).

16 Q. And that is U.S. Patent No. 9,602,655.

17 A. Okay. Where are we turning to?

18 Q. And -- and before we go there, do you
19 understand that when I say the "'655 patent" that
20 I'm referring to U.S. Patent No. 9,602,655?

21 A. I do.

22 Q. Okay. And let's turn to column 6 at

1 line -- I think about 63. It says, "For example,
2 a remote control unit can command a base control
3 unit, 16, to enter an energy conservation mode.
4 The user moves the cursor of the LCD screen, 38,
5 until the desired operation icon, 42, is
6 highlighted. The function associated with the
7 icon, 42, by the application software is triggered
8 by pressing the select button, 36. The
9 application software communicates the command to
10 the base control unit, 16, through the cellular
11 telephone network, 22. The command string so
12 transmitted is received and processed by the base
13 control unit, 16. Upon entering this mode, the
14 base control unit, 16, adjusts air handling
15 systems, open or closed dampers, open or closed
16 window coverings and adjusts operation of the hot
17 water heater to conserve power consumption of the
18 home."

19 Do you see that?

20 A. I do.

21 Q. Okay. So this portion of the
22 specification is addressing an energy conservation

1 mode, right?

2 A. Yes, that's correct.

3 Q. How is energy conserved in this mode?

4 A. Well, first, the base unit receives a
5 command and that translates into multiple
6 instructions to various appliances within the
7 home.

8 Q. Okay. And what -- what are those
9 instructions to the appliances in the home?

10 A. For example, for the air handling
11 systems, they make adjustments, I'm assuming
12 temperature setting adjustments, open and closing
13 dampening -- dampers, opening and closing window
14 covers or adjusting the operation of the hot water
15 heater.

16 Q. How would the operation of the hot water
17 heater be adjusted?

18 A. You can set the sub-point of a water
19 heater. That would be one example.

20 Q. So set it to a different setpoint so the
21 water does not need to get as hot?

22 A. Correct. The sub-point is what

1 temperature the water stays at within the -- the
2 tank. You can raise that or lower that.

3 Q. Okay. Can the operation of the energy
4 conservation mode include a utility company?

5 A. I'm not sure I understand.

6 Q. In your opinion, with respect to the
7 energy conservation mode disclosed in the '655
8 patent, could that include the participation of a
9 utility company?

10 MR. ALEXANDER: Object to form.

11 THE WITNESS: The only discussion of
12 energy conserva -- conservation within the
13 '655 involves the -- the base units and
14 instructions to the various environmental
15 devices. There's no discussion of utility
16 company.

17 Q. What about the situation where it was
18 the utility company that ultimately was
19 responsible for a message that turned a electronic
20 appliance off, would that be consistent with the
21 disclosure of the '655 patent?

22 A. The only context of receiving commands

1 for energy conversa -- con -- conservation mode
2 would be receiving commands from a cellular remote
3 unit.

4 Q. And what about -- let's turn to the
5 claims of the '655 patent.

6 And can you identify, for me, the claim
7 where we see the energy conservation mode?

8 A. One of the claims is claim 2.

9 Q. Okay. Is there another claim?

10 A. We have claim 9. And I believe we have
11 claim 11. Yes.

12 Q. So consistent with my previous question,
13 in the situation where the utility company that
14 ultimately was responsible for a message that
15 turned an electronic appliance off, would that be
16 consistent with the energy conservation mode
17 claimed in the '655 patent?

18 A. No.

19 MR. ALEXANDER: Object to form.

20 THE WITNESS: No. That was a "no."

21 Q. Okay. And -- and my example was
22 specific, but if there was a utility company that

1 was involved in the process, would that be
2 consistent with the energy conservation mode
3 claimed in '655 patent?

4 MR. ALEXANDER: Object to form.

5 THE WITNESS: Only if the utility
6 company operated a registered remote --
7 remote unit.

8 Q. What do you mean by a "registered remote
9 unit"?

10 A. A remote unit that was part of the claim
11 system.

12 Q. Okay. If you could turn to column 9,
13 lines 20 through 27 of the '655 patent.

14 A. 20 through 27?

15 Q. Yes.

16 A. I see that.

17 Q. Okay. So here the -- the specification
18 states, "Examples of events that could cause the
19 base control unit to initiate a communication
20 session with the remote control unit include fire
21 or burglar alarm activation, HVAC or freezer
22 temperature threshold exceeded, equipment

1 failures, an air filter change necessary, a change
2 in the home state vector (occupied, unoccupied)
3 Or a geographical boundary condition exceeded by
4 one of the other remote control units."

5 Do you see that?

6 A. I do.

7 Q. What is a "geographical boundary
8 condition"?

9 A. One term used to describe that would be
10 a geo-fence.

11 Q. Okay. Could that be just a distance
12 from the base unit?

13 A. A geo-fence could be simply a
14 circumference around a particular point, yes.

15 Q. Which would be a distance from the base
16 unit, correct?

17 A. Yes.

18 Q. Could that be based on location?

19 A. It would have to be based on location.

20 Q. It would have to be based on the
21 location of the remote unit, right?

22 A. Depending on which -- what the geo-fence

1 is around. The geo-fence is around the remote
2 unit, then, yes, it's -- would be based on the
3 location of the remote unit. If the geo-fence is
4 around the base unit, it would be relative to the
5 location of the base unit.

6 Q. So if the -- if the geo-fence is around
7 the base unit, the remote unit, the lo -- strike
8 that.

9 If the -- if the geo-fence was around
10 the base unit, then the relevant information would
11 be the location of the remote unit as compared to
12 the base unit, right?

13 A. If that's the scenario you're measuring.
14 You want to determine if the remote unit
15 is within or without the geo-fence centered on the
16 base unit, right?

17 Q. Right. Okay.

18 A. If that's your scenario, then, yes, then
19 you need the location of the base unit and the
20 location of the remote unit.

21 Q. And if we could go to column 8 at line
22 45.

1 A. I see that.

2 Q. Yes.

3 And this says, "For example, the base
4 control unit may adjust the water temperature and
5 thermostats when one of the remote control units
6 comes within a specific distance of the house.
7 The geographic information that is acquired by the
8 GPS subsystem hinder remote control unit, whether
9 it is a separate GPS unit or part of the module,
10 can be compared to setting stored at either the
11 remote control unit itself or the base control
12 unit to provide capabilities such as geo-fencing,
13 ASIC tracking and via location (knowing where a
14 living entity is located)."

15 Do you see that?

16 A. I do.

17 Q. And this is consistent with what we were
18 just talking about, the locations of, for example,
19 the remote unit, right?

20 A. Yes, that's correct.

21 Q. And -- and here the '935 patent teaches
22 that the remote unit compared the geographic

1 information to setting stored in the remote unit,
2 right?

3 A. I'm sorry. Could you say that again?

4 Q. Yeah.

5 Here we see that the '935 patent teaches
6 that the remote unit compares its geographic
7 information to settings stored in the remote unit?

8 MR. ALEXANDER: Object to form.

9 THE WITNESS: I -- I -- I'm sorry. I --
10 I need that one more time.

11 MR. PLEUNE: Can the court reporter read
12 back the question?

13 (Pending question read).

14 A. Yes. That's correct.

15 Q. Okay. And as an alternative it also
16 discloses that the remote unit compares its
17 geographic information to settings stored in the
18 base unit, right?

19 A. That's correct.

20 Q. And how does the base unit compare this
21 comparison?

22 A. The '935 -- I'm sorry.

1 The '655 discusses the scenario where
2 the remote unit can pass just raw location
3 information to the base unit and the base unit can
4 make the determination as to location of the
5 remote unit and whether it's within or without the
6 -- the geo-fence.

7 Q. And good catch there. I think I said
8 the '935 patent previously and I apologize.

9 So you said the '655 discusses a
10 scenario where the remote control can pass just
11 raw location information to the base unit. What
12 do you mean when you say "raw location
13 information"?

14 A. Most likely latitude and longitude
15 information, without any event notification or any
16 instructions.

17 Q. Does it have to be latitude, longitude?

18 A. No.

19 I am assuming anything that could be
20 used as coordinates, either absolute or relative
21 coordinates could be used.

22 Q. Anything that provides the location of

1 the remote unit, right?

2 A. Correct.

3 Q. And then if we turn to column 9 of the
4 '655 patent at line 6. And it says, "When the
5 remote unit" -- strike that.

6 "When the remote control unit travels a
7 distance that exceeds the program distance from
8 the base control unit, the remote control unit
9 reports this information to the base control
10 unit."

11 Do you see that?

12 A. I do.

13 Q. So this -- this information here,
14 that -- that could be a location, right?

15 MR. ALEXANDER: Object to form.

16 THE WITNESS: The information that needs
17 to be commuted to -- communicated is the
18 information that relays that it has exceeded
19 a particular distance, not -- not necessarily
20 the specific location of the remote unit.

21 Q. Okay. So this is a bit of a different
22 example, right?

1 We're just looking at how far the remote
2 unit is from the base unit, right?

3 A. Correct.

4 MR. ALEXANDER: Object to form.

5 THE WITNESS: When the distance exceeds
6 a particular distance, then the remote unit
7 has to convey the information that that
8 distance is exceeded.

9 Q. And then continuing on, the '655 patent
10 states, "The base control unit will then send this
11 information to the appropriate user or to a
12 predetermined class of users."

13 Do you see that?

14 A. I do.

15 Q. Okay. And so the base control unit then
16 passes that information on, right?

17 A. Yes. The information that distance has
18 exceeded a certain amount.

19 Q. So the base unit receives that
20 information from the remote unit, right?

21 A. Correct.

22 Q. And then -- as we see in column 9, then

1 that information is -- is passed along, correct?

2 A. Correct.

3 Q. Why is that information passed along?

4 A. Well, the infor -- the information is
5 being reported for a particular reason.

6 The system is -- we're -- we're
7 discussing a scenario where a distance is
8 exceeded. It must be reported to the base unit.
9 That's going to be of no value unless the base
10 unit does something with that information. And
11 that can then be sent to other users or class of
12 users.

13 One of the examples that they use is in
14 the next sentence of why they do that.

15 Q. If we could turn to claim 1 of the '655
16 patent. And here we see that, "The cellular
17 remote unit transmits a notification via a simple
18 message service responsive to determining that the
19 cellular remote unit is outside of the geo-fence."

20 Do you see that?

21 A. You're quoting from the middle of the
22 last claim element?

1 Q. That's right. In claim 1 of the '655
2 patent.

3 A. I see that.

4 Q. Okay. And that's a term that you
5 construe in your Declaration, Mr. Zatkovich?

6 A. Which -- which term is that?

7 Q. "Configure to transmit a notification
8 via a simple message service responsive to
9 determining that the cellular remote unit is
10 outside the geo-fence."

11 A. I -- yes, I believe I do.

12 Q. And your construction of that term is,
13 "The cellular remote unit is configured to
14 determine that the cellular remote unit is outside
15 of the geo-fence and to report this information
16 via a simple message service."

17 Correct?

18 A. Let me catch up with you.

19 Q. Sure.

20 A. Yes. That's correct.

21 Q. Can a notifi -- can a notification of
22 claim 1 include a command?

1 A. I believe the '655 specifically
2 distinguishes between notifications and commands.

3 Q. So -- so that is a no, the notification
4 cannot include a command, in your opinion?

5 A. I don't think a notif -- a notification
6 cannot be a command and a command cannot be a
7 notification.

8 Is it possible to put both a
9 notification and a command in one message? Don't
10 know. The -- the '655 does not discuss that
11 scenario.

12 Q. But -- but that's a possibility?

13 A. I don't know within the context of the
14 '655.

15 All messages discuss either passing
16 notification or passing the command or in some
17 cases passing a message.

18 Q. And is the notification of claim 1 sent
19 to the base station?

20 A. I'm sorry. Could you say that again?

21 Q. Sure.

22 Is the notification of claim 1 sent to

1 the base station?

2 A. I don't see a spec -- a reference to the
3 destination of the notification.

4 The configuration of the system is that
5 the remote unit communicates information to the
6 base unit. So I don't see who else the remote
7 unit could communicate the message to if not the
8 base unit.

9 Q. Okay. And in the circumstances where
10 the notification is sent to the base unit, what
11 would the base unit do with that notification?

12 A. There's no indication on this particular
13 -- in claim 1 as to what the base unit would do
14 with that information.

15 Q. So going back to your construction, Mr.
16 Zatkovich, that is that, "The cellular remote unit
17 is configured to determine that the cellular
18 remote unit is outside of the geo-fence and report
19 -- and to report this information via simple
20 message service" -- and -- and it's your opinion
21 that simple message service is distinct from short
22 message service, right?

1 A. Well, in some cases it could be the
2 same, but I think the -- the use of a different
3 term within the patent indicates that it has a
4 different meaning and my belief is that simple
5 message service indicates that it's more than just
6 sending SMS text messages, that it involves
7 programmatic control of SMS messages.

8 Q. So if you would -- I would like to move
9 to Exhibit 14 of the '655 IPR.

10 A. I'm sorry. What are we looking at?

11 Q. 1014.

12 A. Of? Oh, the Exhibit 1014. I got it.

13 Q. Yeah. Sorry.

14 (THEREUPON, Exhibit 1014 was marked for
15 identification).

16 THE WITNESS: I have that.

17 Q. Okay. And can you tell me what is
18 Exhibit 1014?

19 A. This is the Declaration that I submitted
20 specifically for -- regarding the '935 patent and
21 the '655 patents.

22 I think more simply, this is related to

1 101 opinions regarding both of those patents.

2 Q. Right.

3 And -- and if you could turn to page 5
4 of that document, Mr. Zatkovich.

5 A. I have that.

6 Q. Okay. And at page 5 -- and -- and I'm
7 looking in particular at, I think, approximately
8 the -- the fourth paragraph down. That's where
9 you state that "SMS can refer to short message
10 service messages, simple message services and
11 other digital communication."

12 Right?

13 A. Correct.

14 Q. And that is your opinion?

15 A. It is.

16 Q. Okay. And then if we go to page 51,
17 this is where you specifically address the
18 construction of the term simple messaging service;
19 is that correct?

20 A. That's correct.

21 Q. And it's your opinion that short message
22 service and simple message service are not

1 synonymous, right?

2 A. Correct.

3 Simple message service can incorporate
4 short message service, but I do not believe
5 they're exactly the -- exactly the same.

6 Q. Okay. And, in fact, it's your opinion
7 that within the context of the '935 and '655
8 patents, the term simple message service reflected
9 an enhanced form of simple message services; is
10 that right?

11 A. I'm not sure I would call it enhanced,
12 but it refers to not just the ability to send text
13 messages. It specifically refers to the ability
14 to programmatically control text messages. For
15 example, through port addresses.

16 Q. And I just want to refer you to the
17 fourth paragraph in the -- subsection A, simple
18 messaging service, on page 51 of Exhibit 1014.
19 And it says, "Within the context of the
20 patents-in-suit the term 'simple message service'
21 reflects an enhanced form of short message
22 service."

1 Do you see that?

2 A. I do.

3 Q. And -- and when you said
4 "patents-in-suit," you were referring to the '935
5 and the '655 patents, right?

6 A. That's correct.

7 Q. And that is your opinion, correct, Mr.
8 Zatkovich?

9 A. Yes.

10 Q. Okay. In the last paragraph of page 51
11 you state, "The patents-in-suit discuss simple
12 message service details in two ways. For example,
13 in some instances the patents-in-suits expressly
14 use the term 'simple message service' when
15 discussing a service capable of transmitting
16 control and command signals between network
17 interfaces."

18 And then this is followed by the portion
19 of the specification that discusses simple message
20 service; is that correct?

21 A. That's correct.

22 Q. And that's in column 7, lines 22 to 30

1 of the '655 patent; is that correct?

2 A. That's correct.

3 Q. Mr. Zatkovich, can you open Exhibit 1007
4 for me?

5 (THEREUPON, Exhibit 1007 was marked for
6 identification).

7 THE WITNESS: I have that.

8 Q. And can you tell me, what is this
9 document?

10 A. It looks like a -- an application or
11 file history for one of the patents-in-suit.

12 Q. And did you review this document in --
13 in preparation for your analysis and your
14 Declaration in this IPR?

15 A. Portions of it.

16 Q. Okay. And let's -- let's look at -- and
17 I will represent to you that this is the
18 prosecution history for U.S. Patent No. 7,257,397.

19 And why don't we quickly take a look at
20 the '655 patent. And you can see in the left
21 column on the first page there's a section titled
22 Related U.S. Application Data.

1 Do you see that?

2 A. I do.

3 Q. What would typically be in a -- in a
4 section titled related U.S. application data?

5 A. Generally, sister patents or -- or
6 continuation patents of or parent patents.

7 Q. And so if we look at this, we see that
8 this information starts on the left column of the
9 first page of the '655 patent.

10 And if you turn the next page, on the
11 second page of the '655 patent, you again see
12 related U.S. patent application data. And that
13 information continues, right?

14 A. Correct.

15 Q. And you can see application number
16 11/163,372 filed on October 17, 2005, now Patent
17 No. 7,257,397, right?

18 A. That's correct.

19 Q. So the '655 patent is a child to the
20 '397 patent, right?

21 A. I believe that's correct.

22 Q. And -- and those two patents share a

1 common specification?

2 A. It's a straight continuation, yes.

3 I have not reviewed the '397 patent and
4 details.

5 Q. Okay. And that would be the same if it
6 was a division, right?

7 A. That's my understanding.

8 Q. If you could turn to page 90 of Exhibit
9 2007.

10 A. 1007.

11 Q. Right. Excuse me. Thank you.

12 Page 90 of Exhibit 1007.

13 A. Got it.

14 Q. And this is an amendment.

15 What is an amendment, Mr. Zatkovich?

16 A. Amendment is generally making
17 alterations to the claims.

18 Q. And do you understand that amendments
19 could also be made to the specification of a
20 patent?

21 A. Yes.

22 I see that in this case, that is

1 correct, as well.

2 Q. Okay. And at the bottom of page 90 we
3 see -- well, we see that this document's titled
4 Amendment, as we know. And at the bottom of page
5 90 it says "in the specification."

6 Right?

7 A. I'm sorry. Where we looking?

8 Q. So at the bottom of page 90 of Exhibit
9 1007.

10 A. I see that.

11 Q. Okay. If you turn to the -- page 91 of
12 Exhibit 1007, it states at the top of page 91,
13 "Amend the specification as set forth in the
14 attached specification status."

15 Do you see that?

16 A. I do.

17 Q. Okay. And if we turn to page 92 of
18 Exhibit 1007 we see the specification status,
19 correct?

20 A. Correct.

21 Q. And can you describe for me the
22 amendment that we see on page 92 of Exhibit 1007?

1 A. Sure.

2 I want to peruse the paragraph just
3 briefly.

4 Q. Sure.

5 A. So at the bottom of page 92 we see one
6 change made, where it's changing the word "simple"
7 to the word "short."

8 Q. And let's turn to page 106 of Exhibit
9 1007.

10 A. Which -- which page?

11 Q. 106.

12 A. 106. I have that.

13 Q. And this is a page of 1007 that at the
14 top says Remarks, right?

15 A. That's correct.

16 Q. And there's also a section entitled
17 Amendment to the Specification.

18 Do you see that?

19 A. That's correct.

20 Q. And what does it say in the section
21 "Amendment to the Specification"?

22 A. The specification has been amended to

1 correct a typographical error. No new matter has
2 been added.

3 Q. So simple message service was a typo,
4 right, Mr. Zatkovich?

5 A. Well, if we look at page 92 -- yes.

6 In the context of this explanation, it's
7 possible that in this particular case "standard
8 text messages" would have been sufficient to
9 perform this function as opposed to in the
10 programmatic control.

11 In I it looks like the cellular -- the
12 user mainly disconnects the cellular network. In
13 other words, this is under user control at this
14 particular time.

15 Q. Oh.

16 A. So --

17 Q. Got it.

18 Why don't you turn to column 6, line 61
19 of the '655 patent.

20 A. Column 6. Which line?

21 Q. Sixty-one.

22 And I want you to look from column 6,

1 line 61 to column 7, line 40.

2 A. Okay.

3 Q. And I want you to confirm for me that
4 that portion of the '655 patent is identical to
5 the description that we see at pages 92 and 93 of
6 Exhibit 1007?

7 A. I believe they are identical except for,
8 of course, the correction --

9 Q. Right.

10 A. -- in the 1007.

11 Q. The failure to correct -- the failure to
12 correct the typo in the '655 patent, Mr.
13 Zatkovich?

14 MR. ALEXANDER: Object to form.

15 THE WITNESS: Again, I don't -- I --
16 they clearly had a purpose for correctly the
17 typo in the prosecution his -- history of the
18 -- what is it? The 372 history through 379.
19 I can't tell you why it -- a similar change
20 was not made in '655. It could have been
21 intentional or unintentional.

22 Q. So you understand that this amendment

1 was amended by the applicant, by the patent owner,
2 correct, Mr. Zatkovich?

3 A. Correct.

4 Q. Do you have any reason to disagree with
5 the patent owner that this was a typo in the
6 specification?

7 A. In the prosecution -- in the prosecution
8 history we're looking at? No, I have no reason to
9 disagree with that.

10 Q. And just so I'm perfectly clear on this:
11 So based on the prosecution of the '379 patent, is
12 it your opinion that the specification of the '655
13 patent should be interpreted differently?

14 MR. ALEXANDER: Object to form.

15 THE WITNESS: All I could tell you is
16 that the change was made specifically in the
17 application that we're looking at for the
18 prosecution history for the '397 patent but
19 not made for the '655. Was there a reason
20 for that? I could not tell you.

21 Q. Okay. And -- and in your construction
22 for simple message service, you don't point to any

1 support other than the specification of the
2 patent, right?

3 MR. ALEXANDER: Object to form, also to
4 scope.

5 (THEREUPON, Charles Shamoon entered the
6 deposition video conference room.)

7 THE WITNESS: So on page 55 of my
8 Declaration under Exhibit 1014, I identify
9 several other sites that I used for support.

10 Q. You're talking about the -- the
11 footnotes at the bottom of page 55?

12 A. Correct.

13 Q. Okay. Any other support that you cite,
14 Mr. Zatkovich?

15 A. Nothing that I cite explicitly aside
16 from my experience in the field.

17 Q. Is there any other mention in the
18 specification of the '655 patent of simple message
19 service?

20 A. I'm sorry. Could you repeat that?

21 MR. PLEUNE: Could the court reporter
22 please read back the question.

1 (Pending question read.)

2 THE WITNESS: We have simple message
3 service mentioned in claim 1 and in claim 16.

4 Q. In anywhere other than the claims?

5 A. And the passage that we just cited, no.

6 Q. Right.

7 In column 7, correct?

8 A. Correct.

9 Q. So this amendment that we just
10 discussed, Mr. Zatkovich, had you reviewed that
11 previously?

12 A. I don't recall reviewing that particular
13 section. I do recall reviewing the '372 -- the
14 '372 application and I do remember reviewing
15 discussions of SMS in that application.

16 Q. Okay. Let's put that aside, Mr.
17 Zatkovich.

18 I want to go back to the '655 patent.

19 A. Okay.

20 Q. Can you confirm for me that the term
21 "digital communications message" does not appear
22 anywhere in the specification of the '655 patent?

1 A. The term "digital communication" appears
2 but not digital communication message in the
3 specification.

4 Q. Okay. And what other types of digital
5 communications are disclosed in the specification
6 of the '655 patent besides SMS?

7 A. Well, I would say a significant number.
8 I can start listing them, if you wish.

9 Q. Sure.

10 A. Let's start with Fig. 3. We have USB
11 and Bluetooth communication. We have in Fig. 4
12 serial communication, ethernet, a box explicitly
13 identifying digital and, of course, USB and
14 Bluetooth, as well.

15 Q. And those are digital communication
16 mechanisms, Mr. Zatkovich. But does the '655
17 patent disclose specific digital communications
18 messages --

19 A. Well, I would say each --

20 Q. -- of the ethernet?

21 A. -- each of those methods that I'm
22 listing now would have their own form of message.

1 Q. What would be the name of -- of those
2 messages?

3 A. Well, let's start with USB.

4 Q. Okay.

5 A. Well, it's been awhile since I looked at
6 a USB specification. But USB has what's called
7 something equivalent to packets in which they
8 identify the start and end of a particular
9 message.

10 Q. Uh-huh.

11 A. Bluetooth also has addressable message
12 packets.

13 Serial communications, such as RS232,
14 has particular start and stop characters which can
15 signal the beginning and end of messages.

16 Ethernet has the same, packets which
17 identify the beginning and end of messages.

18 Digital 84, again, that can refer to a
19 wide variety, but any one of those could have
20 their versions of messages.

21 Those are going to be just some of the
22 examples that I believe are mentioned in '655.

1 Q. Okay. So you said USB packets,
2 addressable Bluetooth packets, RS232 packets and
3 then ethernet packets. Are those disclosed
4 anywhere in the '655 patents?

5 A. I think one of ordinary skill in the art
6 with communication experience, as stated in one of
7 ordinary skill in the art requiring, would
8 understand that.

9 Q. So one of ordinary skill in the art
10 would understand that but it's not explicitly
11 recited in the '655 patent, right?

12 A. That does -- protocols have messages,
13 yes. Absolutely.

14 MR. PLEUNE: Why don't we take a
15 ten-minute break.

16 THE WITNESS: Okay.

17 (Recess in Proceedings).

18 BY MR. PLEUNE:

19 Q. Okay. Mr. Zatkovich, I'm going to ask
20 you to pull up Exhibit 1019.

21 (THEREUPON, Exhibit 1019 was previously
22 marked for identification).

1 THE WITNESS: I have that.

2 Q. And can you identify this document for
3 me?

4 A. It's prior art labeled as Coon, C-O-O-N.

5 Q. So I want to look at paragraph 16 of
6 Exhibit 1019.

7 Do you see that?

8 A. I do.

9 Q. Okay. Paragraph 16, starting around the
10 fifth line says, "The mobile device, 120, includes
11 a processor, 102, that is coupled to a display,
12 106, a GPS receiver, 108, a memory subsystem, 104,
13 and a wireless transceiver, 110. The GPS
14 receiver, 108, receives various communications
15 from a plurality of GPS satellites, 150, through
16 an antenna, 114, and provides a location
17 indication to the processor, 102. The processor,
18 102, then provides the location of the mobile
19 device, 120, via a wireless transceiver, 110, and
20 antenna, 112, to a base station, 160, via antenna,
21 162."

22 Do you see that?

1 A. I do.

2 Q. So this is sending a notification of a
3 location to the base station, right?

4 MR. ALEXANDER: Object to form.

5 THE WITNESS: Yes. This section
6 discusses the control device communicating
7 the location information to the base station.

8 Q. Right.

9 And here the control device is described
10 as a mobile device, 120, right?

11 A. Correct.

12 Q. It goes on to say at paragraph 16,
13 "Alternatively, the processor, 102" -- and that's
14 the processor of the mobile unit, right?

15 A. That's correct.

16 Q. It says, "Alternatively, the processor,
17 102, may transmit a control message to the control
18 device, 140, based upon the location information."

19 Do you see that?

20 A. Yes.

21 Q. It says, "In this embodiment, upon
22 receiving the control message, the control device,

1 140, initiates performance of an appropriate
2 function or functions by at least one network
3 device."

4 Do you see that?

5 A. I do.

6 Q. So in this second embodiment we see a --
7 a control method?

8 A. Well, we see the -- the mobile device is
9 communicating directly with the control device
10 rather than going through the base station. And
11 in this particular case, it's -- as you say, it's
12 sending a control message.

13 Q. So now let's turn to paragraph 28.

14 A. I have that.

15 Q. So paragraph 28 is describing Fig. 3,
16 right?

17 A. That's my understanding, yes.

18 Q. And at paragraph 28 we see that it says
19 "Then in decision step, 310, the processor, 102,
20 determines whether the mobile device, 120, is
21 within a preprogrammed control range."

22 Do you see that?

1 A. I do.

2 Q. And -- and that processor, 102, is the
3 processor of the mobile device, 120, correct?

4 A. That's correct.

5 Q. Okay. It goes on to state, "If the
6 mobile device, 120, is within the pro --
7 preprogrammed control range, control transfers to
8 decision step, 312; otherwise, control transfers
9 from step 310 to step 304. In step 312, the
10 processor, 102, determines whether the mobile
11 device, 120, is moving toward or away from the
12 control device, 140. If the mobile device, 120,
13 is moving toward or away from the control device,
14 140, control transfers to step 314; otherwise,
15 control message tran -- otherwise, control
16 transfers from step 312 to step 304. In step 314,
17 the processor, 102, causes an appropriate message;
18 i.e., a message that corresponds to the location
19 of the mobile device, 120, with respect to the
20 control device, 140, to be sent to the control
21 device, 140, via wireless transceiver, 110,
22 antenna, 112, antenna, 162, and base station,

1 160."

2 Do you see that?

3 A. I do.

4 Q. Okay. Do you agree with that disclosure
5 of Exhibit 1019?

6 MR. ALEXANDER: Object to form.

7 THE WITNESS: I agree that you read that
8 passage correctly.

9 Q. Okay.

10 A. And that I do believe -- I believe it
11 accurately reflects what's displayed in Fig. 3.

12 Q. And so this discloses that a message is
13 sent from the mobile device to the base station
14 that corresponds to the location of the mobile
15 device with respect to the control device, right?

16 A. I'm trying to determine the routing of
17 this message here in this passage.

18 Yes, I believe this section is referring
19 to sending a message from the mobile device to the
20 base station.

21 Q. And we see towards the end of the
22 passage of paragraph 28 that the message

1 corresponds to the location of the mobile device,
2 120, right?

3 A. Correct.

4 Q. So we can put Exhibit 1019 aside for the
5 moment, Mr. Zatkovich.

6 And let's turn, if you would, to Exhibit
7 1020.

8 (THEREUPON, Exhibit 1020 was previously
9 marked for identification).

10 Q. Do you have Exhibit 1020, Mr. Zatkovich?

11 A. Almost.

12 Q. Okay. Sure.

13 A. Yes, I have that.

14 Q. Okay. Can you, please, turn to Fig. 1B
15 of Ellers.

16 A. I see that.

17 Q. And -- and Fig. 1B corresponds to at
18 least one of the embodiments disclosed in the
19 Ellers reference, correct?

20 A. Yes, I believe that's an accurate
21 statement.

22 Q. And here we see the customer, GUI, and

1 it's numbered 1.14, right?

2 A. Correct.

3 Q. And 1.14 is also described in the patent
4 as the user interface, correct?

5 A. Yes, that's correct.

6 Q. Can you, please, turn to paragraph 244
7 of the Ellers reference.

8 A. I see that.

9 Q. The paragraph 244 states, "In another
10 aspect of the present invention, the system, 3.08,
11 allows one or more occupancy modes to be defined
12 and/or modified and/or utilized by the user. The
13 use of different occupancy modes would assist in
14 achieving a reduced level of demand on the energy
15 delivery system as well as reduce the total cost
16 of operation site, 1.04. In one embodiment the
17 occupancy mode may be defined or modified through
18 the user interface, 1.14, (see below) and
19 activated through the thermostat, 1.30D, and/or
20 the user interface, 1.14. Examples of possible
21 occupancy modes include home, away, weekend,
22 weekday, holiday. Specific modes may also be

1 defined for different users."

2 Do you see that?

3 A. I do.

4 Q. So the -- these occupancy modes can be
5 set by the user through the user interface, 1.14,
6 right?

7 A. That would be my understanding.

8 Q. And then if we turn to paragraph 319,
9 319 describes an example of the occupancy mode for
10 a thermostat, right?

11 A. Yes.

12 Q. Okay. And so in particular it says,
13 with reference to Figs. 4B, 4E and 4F, "Selection
14 of the thermostat scheduling icon or the
15 thermostat menu item underneath the scheduling
16 menu item, 4.08B, displays an occupancy mode
17 screen, 4.24, within the control panel, 4.10. In
18 one embodiment, the system, 3.08, allows the
19 customer to define one or more occupancy modes,
20 see above. Within each occupancy mode the
21 customer may set one or more parameters which
22 control one or more devices, 1.08, such as the

1 HVAC systems while the occupancy mode is active."

2 Do you see that?

3 A. Right.

4 Q. And so here this describes that the
5 customer may set one or more parameters which
6 control one or more devices while the occupancy
7 mode is active, right?

8 A. During the period of the occupancy mode,
9 yes, that's correct.

10 Q. And then if we go down to paragraph 322
11 -- and this is towards the end of paragraph 322
12 that I'm looking, Mr. Zatkovich -- it states, "Any
13 changes made within the occupancy mode screen may"
14 --

15 A. I'm sorry.

16 Q. -- "require" --

17 A. I'm sorry.

18 Q. Sure.

19 A. Which paragraph are we in?

20 Q. This is paragraph 322.

21 A. Got it.

22 Q. Okay. I'm looking towards the bottom of

1 it. It's really the second-to-the-last sentence.
2 It says, "Any changes made within the occupancy
3 mode screen may be applied to the respective mode
4 through selection of an apply button, 4.30."

5 Do you see that?

6 A. I do.

7 Q. And that apply button is selected by the
8 user, right?

9 A. That would be my understanding, yes.

10 Q. And then why don't we take a look at
11 Figs. 4B, 4E and 4F of Exhibit 1020.

12 And this shows those occupancy modes or
13 -- strike that.

14 This shows the user interface for the
15 occupancy modes, correct, Mr. Zatkovich?

16 A. Yes.

17 Q. And you see the apply button, 4.30?

18 A. I do.

19 Q. And that apply button is selected by the
20 user, right?

21 A. That would be my understanding, yes.

22 Q. And when a user selects that apply

1 button, the occupancy mode will -- can be set for
2 devices in the home, correct?

3 A. Well, the occupancy -- occupancy mode
4 would be saved. I don't see any indication as to
5 how it would be applied.

6 But, yes, you -- you click the apply
7 button and that information would be saved in the
8 system in some fashion.

9 Q. Mr. Zatkovich, you can set aside the
10 Ellers reference for the moment.

11 A. Okay.

12 Q. Mr. Zatkovich, are you familiar with
13 standards in the mobile communications space?

14 A. Some standards, yes.

15 Q. Are you familiar with standards for
16 communication interfaces?

17 A. Yes.

18 Q. Do you use standards documents in your
19 work?

20 A. Yes, from time to time.

21 Q. Have you relied on standards documents
22 in your work?

1 A. Yes, I have.

2 Q. And how have you relied on standards
3 documents?

4 A. Well, in designing system software, the
5 standards dictate particular operations or
6 particular formats of data. And if you want to
7 communicate with other software that uses those
8 same standards you must follow those
9 specifications.

10 Q. Are you familiar with a V.24 standard?

11 A. Yes, to some degree.

12 Q. What is that, generally?

13 A. It's a serial interface, both pin out
14 and messaging for sending signally-transmitted
15 data; somewhat similar to the RS232.

16 Q. And -- and what is the V.24 standard
17 used for?

18 A. Used for determining the condition of
19 the pins at particular situations and how data
20 will be sent and timed on the serial line.

21 Q. And -- and I think you just mentioned
22 the RS232 standard; is that right?

1 A. Yes.

2 Q. And -- and what is the RS232 standard?

3 A. It's similar to the V.24. It defines
4 the pin outs of serial cables that will be
5 connected together to communicate and it also
6 discusses the type of signals that will appear on
7 that line, the timing of those signals and
8 characters that can be sent on that serial line.

9 Q. So if a document specified the V.24
10 standard, a person of ordinary skill in the art
11 would know that -- that they could go to these
12 standards documents and -- and be provided with
13 additional information as to how to implement a --
14 a V.24 communication, for example?

15 A. Yeah.

16 Again, in the abstract, they would be
17 able to look at that and understand what is
18 required of the protocol. In all cases, in order
19 to use the protocol, one would have to have
20 hardware capable of adhering to that, as well.

21 Q. And the standard discusses hardware, as
22 well, right?

1 A. Yes.

2 Q. And -- and same question for the RS232
3 standard, if -- if that was referenced in a
4 document, then a person of ordinary skill in the
5 art would know that they could go to that standard
6 to give additional implementation detail for that
7 type of connection, right?

8 A. Yes.

9 Q. Mr. Zatkovich, if we could turn back to
10 the '655 patent.

11 A. I have that.

12 Q. Okay. The term "subordinate" is not
13 found in the specification of this '655 patent,
14 correct?

15 A. The -- the concept of subordinate was
16 there, in this specification, but not necessarily
17 that particular language.

18 Q. What does the term subordinate mean?

19 A. Well...

20 I believe the concept of subordinate --
21 subordinate remote units would be reflected in
22 column 8 of the '655. It discusses the concepts.

1 One would be a simple concept of a
2 master control unit and slave control unit. Slave
3 control units would be subordinate to the master.
4 It also discusses -- that was in lines 13 through
5 20.

6 Lines 20 through 36 discusses that the
7 remote control units can be divided into classes,
8 a first class and a second class, and that would
9 identify that the second class remote units would
10 be subordinate to the first class remote units.

11 Q. So you pointed to column 8, lines 13
12 through 36 for two embodiments, correct, Mr. --
13 correct, Mr. Zatkovich?

14 A. That's correct.

15 Q. And -- and do you believe that that is
16 informative of the meaning of subordinate remote
17 unit?

18 A. I do.

19 Q. Okay. The term "subordinate remote
20 unit" does not appear anywhere in this portion
21 that you cited, column 8, lines 13 to 36, does it?

22 A. No.

1 Q. But it's your opinion that that term
2 should be limited to the disclosure that we see in
3 column 8, lines 13 to 36?

4 MR. ALEXANDER: Object to form.

5 THE WITNESS: I don't believe it should
6 be limited to that. I am just saying that
7 that is -- those are two embodiments of what
8 I consider examples of subordinate remote
9 unit.

10 Q. So if a -- a subordinate command and a
11 non-subordinate command are sent to a base unit,
12 what happens to each of those commands?

13 MR. ALEXANDER: Object to form.

14 THE WITNESS: Are you just saying in
15 general, a subord -- a non-subordinate
16 command gets sent at a particular time and at
17 a totally different time a subordinate
18 command gets sent to the base unit?

19 Are you just asking me what happens in
20 each of those situations?

21 Q. Yeah, let's start with that.

22 A. Okay.

1 My understanding is that if a sub -- a
2 non-subordinate command gets sent to the base
3 unit, the base unit will act on that.

4 And according to claim 24, when a
5 subordinate unit sends a subordinate command,
6 the -- the microcontroller within the base unit
7 will selectively send a control instruction based
8 on that subordinate command.

9 Q. What does that -- what does that mean,
10 "selectively"?

11 A. It's going to treat the subordinate
12 command differently than a non-subordinate
13 command.

14 It could mean it will choose to execute
15 that operation or will not choose to execute that
16 operation. It may selectively choose an
17 alternative control instruction to execute based
18 on the subordinate command that -- that it
19 receives.

20 In other words, it's implying that the
21 base unit is going to make a decision differently
22 for a subordinate command than it would for a

1 subordinate command.

2 Q. What if a subordinate command and a
3 non-subordinate command are sent at the same time?

4 MR. ALEXANDER: Object to form.

5 THE WITNESS: I don't believe there's
6 any particular arbitration that's discussed
7 in the '655 for that particular scenario.

8 Q. As a person of ordinary skill in the art
9 reviewing the '655 patent, do you have an opinion
10 as to what would happen in that particular
11 scenario?

12 A. Well, it's a misnomer that things can
13 happen at the exact same time. They cannot. We
14 live in an analog society, analog physical world.

15 There will always be an instance where
16 one command is detected before the other, okay,
17 either due to the communication protocol, the
18 particular electrons in the line at that
19 particular time.

20 So in general, my understanding would be
21 that the base unit would execute the commands in
22 the order that they are received.

1 Q. And how is the subordinate unit
2 different from the non-subordinate unit?

3 A. It is -- well, if we look at the
4 embodiments in column 8, the subordinate unit is
5 either any unit that's not the master unit or any
6 unit that's placed into a specific class,
7 different than a non-supported unit.

8 Q. Could the different class be that one
9 unit is given priority over another unit?

10 MR. ALEXANDER: Object to form.

11 THE WITNESS: Priority in terms of what?

12 Q. Priority in terms of essentially a -- a
13 ranking.

14 So you said that it -- it receives the
15 -- the -- the messages in time. So it receives
16 multiple messages and -- and it gives priority to
17 one of those over others.

18 A. I don't think the claims of the '655
19 discuss arbitration or priority based on multiple
20 commands being sent, received or processed at the
21 same time.

22 I think they refer to specifically, if a

1 remote unit is in a particular class it will
2 process that command accordingly, not -- not in
3 the terms of the timing of receiving that in
4 relationship to another command.

5 Q. How will it process that differently?

6 Is there any disclosure in the
7 specification about how that will be treated
8 differently?

9 A. Well, the specification discusses an
10 example where the first class remote unit would
11 represent remote units of the parents and the
12 second class remote units will be the remote units
13 of the children. In that particular case, any
14 information pertaining to the activities of the
15 children, presumably reported through their remote
16 unit, may be selectively reported to the base unit
17 of the parents.

18 In another scenario in column 8,
19 different classes of the remote units -- for
20 example, the non-subordinate units -- base unit
21 may only respond to certain commands from the
22 master unit or the non-subordinate units and would

1 not respond to certain commands from the
2 subordinate unit. Those would be two examples.

3 Q. So in that second example, you mean that
4 the base unit would never respond to the
5 subordinate remote units?

6 A. No. It wouldn't -- wouldn't respond to
7 certain commands from their subordinate units.

8 Q. So it would receive certain commands
9 from the subordinate unit and the base unit just
10 would not respond?

11 A. That would be one example, yes.

12 Q. Can selectively mean that a
13 non-subordinate unit can override a setting made
14 by a subordinate unit?

15 MR. ALEXANDER: Object.

16 THE WITNESS: I don't think that's
17 suggested anywhere in the '655 as a possible
18 example.

19 Q. You -- you say you don't see that in the
20 '655, but could that be an interpretation of
21 subordinate?

22 A. That would require additional

1 interactions which aren't even identified in claim
2 24. I don't -- I don't see that even as a
3 hypothetical in the '655. They don't provide the
4 structure for that type of communication.

5 Q. Okay. Just so I understand, Mr.
6 Zatkovich, let's say that there is a subordinate
7 user -- unit and a non-subordinate unit and, based
8 on your interpretation, there could be a
9 particular command and the system will respond to
10 the command of the non-subordinate unit but it
11 will not respond to the command of the subordinate
12 unit, right?

13 A. That would be one example, yes.

14 Q. Okay. Let's turn to Exhibit 1022.

15 (THEREUPON, Exhibit 1022 was previously
16 marked for identification).

17 THE WITNESS: I have that.

18 Q. Okay. Now, you would agree that -- and
19 -- and can you tell me what this document is, Mr.
20 Zatkovich?

21 A. It's what's referred to as the Lincoln
22 prior art.

1 Q. Okay. And you would agree that Lincoln
2 discloses systems that are designed to handle
3 multiple users and multiple messages, right?

4 MR. ALEXANDER: Object to form.

5 THE WITNESS: I'm sorry. Multiple users
6 and? Multiple messages?

7 Q. Right.

8 A. Yes, I would say so.

9 Q. Let's look at Lincoln at column 22. And
10 starting on the third line in column 22, it says,
11 "In further accordance with the present invention,
12 the controller identifies particular individuals
13 using an IR, RF or light source to communicate
14 with a sensor in the room and conform the
15 activation of the home appliance based on the
16 information stored in the controller regarding
17 previous time periods. For example, individual X
18 listens to new wave music in the morning but
19 listens to classical in the evening. Conflicts
20 between individuals are settled upon a priority
21 listing programmed in the system."

22 Do you see that?

1 A. I do.

2 Q. What would it mean that there are
3 conflicts between individuals?

4 A. I don't know specifically.

5 It could be any number of things. For
6 example, it could be conflicts with time periods.
7 Again, overlapping time periods. It could be
8 conflicts be -- between listening preferences.
9 They don't -- it doesn't identify specifically
10 what type of conflicts would be between
11 individuals.

12 Q. Is it fair to interpret this to mean
13 that it's conflicts based on the aspects of the
14 system relevant to one person or the other?

15 A. I think that's a reasonable
16 interpretation.

17 Q. And -- and what does a priority listing
18 mean to you, Mr. Zatkovich?

19 A. Lincoln does not specify in any way.

20 It could be, for example, priority of
21 genres. Jazz has a preference over classical, for
22 example.

1 Q. And -- and the sentence in particular
2 says, "Conflicts between individuals are settled
3 based on a priority listing programmed in the
4 system."

5 So this could also be priority based on
6 the priority of the users, right?

7 A. Lincoln does not discuss any structure
8 that would identify priority of users. And --

9 Q. Priority --

10 A. -- in the context -- in the context here
11 they're referring to genres, so I'm assuming
12 priority refers to genres of some kind.

13 Q. And you're referring back to the
14 sentence that precedes "conflicts between
15 individuals are settled based upon a priority
16 listing programmed within the system"?

17 A. Correct.

18 Q. Let's -- let's assume -- and -- and I
19 understand your -- your opinion as it relates to
20 Lincoln, but let's assume for a moment that
21 priority listing refers to priority of users.
22 Okay?

1 A. In what fashion? Again, there's no
2 structure describing how that would occur. So in
3 what fashion would it prioritize users?

4 Q. Yeah. Let's say there's a user that has
5 a priority of one and there's a user that has a
6 priority of two.

7 Are you able to understand that example?

8 A. Sure.

9 Q. Okay. Would it be fair to say that user
10 one is in a class of priority one and user two is
11 in a class of priority two?

12 A. Again, there's no structure for that in
13 Lincoln, but I -- I'm suppose -- I suppose we
14 could hypothesize on that, sure.

15 Q. And so using those two users as an
16 example, user one having a higher priority than
17 user two, wouldn't you agree that user two is
18 subordinate to user one?

19 A. In the hypothetical.

20 Again, that's not what Lincoln
21 discloses, but in this hypothetical that would be
22 reasonable.

1 MR. PLEUNE: Why don't we go ahead and
2 take a ten-minute break. I'm going to
3 organize myself a little bit further.

4 MR. ALEXANDER: Okay.

5 (A recess was taken).

6 Q. Sorry about that.

7 So Mr. Zatkovich can you please turn to
8 Exhibit 1012.

9 (THEREUPON, Exhibit 1012 was marked for
10 identification).

11 THE WITNESS: Okay. I have that.

12 Q. Can -- can you -- what is this document?

13 A. It is a FAQ, F-A-Q, regarding the Noki
14 software.

15 Q. And you cite this document in your
16 Declaration, correct?

17 A. That's correct.

18 Q. Did you find this document yourself?

19 A. Yes, I did.

20 Q. And are you familiar with this website,
21 www.Noki.org/FAQ?

22 A. Prior to searching for this document,

1 no. But, yes --

2 Q. Okay.

3 A. -- I am familiar with the site now.

4 Q. And -- and where did you find this web
5 page?

6 A. I believe, I did a Google search for it.

7 Q. Okay. And there's a date in the top
8 right corner of Exhibit 2012. What is that?

9 A. Oh, right.

10 This is from the internet archive. I
11 did a search through the internet archive for this
12 particular site.

13 This is identifying January 10th,
14 indicating that that's when this information was
15 scanned on that particular website.

16 Q. So is it your opinion that this web page
17 was publicly available as of January 10th, 2004?

18 A. That would be my understanding, yes.

19 Q. Okay. So let's take a look towards the
20 bottom of the first page. There's a section
21 titled What Models are Supported? And then below
22 that there's a statement that, "These models are

1 supported."

2 Do you see that?

3 A. I'm sorry. Where are we looking now?

4 Q. If you look towards the bottom of the
5 page, there is a section bold titled What Models
6 are Supported and then below that there's a
7 statement, "These models are supported."

8 Do you see that?

9 A. Right.

10 These are -- these -- again, they're
11 saying these models are supported by the Noki
12 software, not necessarily by Nokia.

13 Q. And we see that in that last bullet, the
14 -- there's listed some models that are supported
15 by the Noki software, right?

16 A. Correct.

17 Q. And we see AT mode compatible phones,
18 "(Namely, Nokia 62X0, Nokia 7110, Nokia 8210,
19 Nokia 6310, Nokia 6510, Ericsson T39, Sony
20 Ericsson T68I and a Siemens S29 are known to
21 work.)"

22 Do you see that?

1 A. Yes.

2 Q. So Noki would work with all those
3 devices, right?

4 A. Again, I -- this -- they would not.
5 They're not necessarily working in a supported
6 manner from the cell phone manufacturer. Noki
7 software itself is reporting that it supports
8 those models of phones.

9 Q. Right.

10 That software will operate on those
11 models of phones, correct?

12 A. According to the Noki software.

13 But again, not necessarily in the
14 supported fashion by the -- those -- manufacturers
15 of those phones.

16 Q. So according to this document, that
17 software will work on those phones, right?

18 A. Correct.

19 Q. And then further up there's another
20 section, What is Noki?

21 Do you see that?

22 A. I do.

1 Q. And the last sentence of that section
2 says, "Noki is designed to work on a variety of
3 operating systems (Linux 3BSB, et cetera) and
4 hardware platform, PPC, Intel, et cetera."

5 Do you see that?

6 A. I do.

7 Q. And so here you see that Noki is
8 designed such that it's not limited to any
9 particular system or platform, right?

10 A. It doesn't say it's not limited to any
11 particular. It just says it works on more than
12 one type of operation system.

13 Q. Right.

14 And we see that several operating
15 systems are limited -- are listed, right?

16 A. Correct.

17 Q. Okay. We've refreshed the folder with
18 another exhibit, Mr. Zatkovich, 1103. If you can
19 open that.

20 (THEREUPON, Exhibit 1103 was marked for
21 identification).

22 THE WITNESS: Did you say 1103?

1 Q. Yes.

2 It should just be in the main portion of
3 the file. So outside of the '655 folder.

4 A. I see that.

5 Q. Okay. Can you identify this document
6 for me?

7 A. It looks like the similar web page as
8 was in the exhibit we just looked at.

9 Q. Right.

10 And if you can look up in the top right
11 corner, there's a date there. Can you tell me
12 what that is?

13 A. September 16, 2004.

14 Q. Okay. So that's approximately eight
15 months after your Exhibit 2012?

16 A. Correct.

17 Q. And this is the -- also the -- the Nokia
18 FAQ?

19 A. Yes.

20 Q. Okay. So again, I want to look down at
21 the same section we did before and what models are
22 supported. And then after that it says, "These

1 models are supported." And then that last bullet
2 once again says, "AT mode compatible phones."

3 Do you see that?

4 A. Yes, I do.

5 Q. And here we see some of the same phones
6 as before and also several additional phones that
7 are supported, right?

8 A. Again, according to Noki, they -- they
9 purport that the software will run on those
10 phones.

11 Manufacturers themselves have not
12 indicated that they provided any supported of API
13 to -- to perform these functions.

14 Q. You cited this document in your
15 Declaration, right, Mr. Zatkovich?

16 A. I did.

17 Q. Yeah.

18 And this document says that the
19 software's supported on those phones, right?

20 A. This document says that Noki purports
21 that -- that software will operate on those
22 phones. But there's no indication that the phones

1 are providing an API for them to be used in a
2 supported fashion on those phones.

3 Q. Do you have any reason to doubt that
4 those phones would have an IP -- an API that would
5 support that software?

6 A. I note -- I noticed, scanning the Noki
7 software, that each phone required a different
8 configuration; indicating that the interfaces for
9 different phones, even within the same
10 manufacturer, had different interfaces; suggesting
11 that the manufacturer had not standardized an API
12 to be used by third-party software at that
13 particular time.

14 Q. So it would be different APIs?

15 A. Again, there -- there was not an API.
16 It was identifying its own methods of accessing
17 the functions.

18 Q. And you're saying in this situation that
19 that software can be accessed without an API?

20 A. I'm saying that this software reverse
21 engineered several devices and basically made up
22 its own API; that wasn't necessarily supported by

1 the manufacturer.

2 Q. So there was an API, but you're saying
3 it's not offered by the manufacturer; is that
4 right?

5 A. An API indicates a standard interface
6 that's provided and supported by the manufacturer
7 offering the interface.

8 These guys reverse engineered their own
9 made up -- we can call it an API. They made up
10 their own interface for communicating with
11 functions on the phone. That would not be sup --
12 necessarily be supported by the general public.

13 Q. There would have to be an API for this
14 software to be loaded on these devices, right?

15 A. API suggests a standardized interface
16 defined by the party supporting that interface and
17 that is -- I don't believe that's the case in this
18 particular situation.

19 MR. ALEXANDER: Ben, we lost at least
20 your video. I'm -- I'm not sure if you're
21 still with us.

22 MR. PLEUNE: Yeah. I'm having a -- a

1 connection difficulty at the moment. But
2 we're still connected via audio. But I'm
3 having a little bit of a video technical
4 issue.

5 There we go.

6 Q. So is it your opinion, Mr. Zatkovich,
7 that an API is only an API if it is a standard
8 offering from a mobile phone manufacturer?

9 A. An API is only a supported API if it's
10 supported by the manufacturer which is offering
11 those functions through, for example, third
12 parties.

13 So in this particular case it would
14 potentially be an unsupported API that they're
15 utilizing, which one of ordinary skill in the art
16 would understand. We would not necessarily
17 develop a product on an unsupported API.

18 Q. Okay. So there is an API, but it's just
19 your opinion that that in this circumstance would
20 be an unsupported API; is that right?

21 A. That's -- that's my belief, yes.

22 Q. Okay. There's technical difficulties

1 abound, but we are attempting to upload Exhibit
2 104. And we'll let you know when we get it up.

3 A. I'm -- I'm having problems accessing
4 that location, as well.

5 Q. Okay.

6 MR. ALEXANDER: Do you want to just
7 e-mail it to me, Ben?

8 MR. PLEUNE: Okay. We'll go ahead and
9 e-mail it.

10 Okay. We e-mailed that out so you'll
11 have it in a minute.

12 MR. ALEXANDER: Okay. I'm watching for
13 it.

14 Okay. I received it.

15 Ivan, I've forwarded it to you.

16 THE WITNESS: Okay.

17 Exhibit 1104, correct?

18 Q. Yes.

19 A. I see it.

20 (THEREUPON, Exhibit 1104 was marked for
21 identification).

22 Q. Okay. Can you tell me what Exhibit 1104

1 is?

2 A. It looks like a newsletter that they
3 publish on their website.

4 Q. And when you say "their website," what
5 are you referring to?

6 A. The Noki website.

7 Q. And this document also has a date on it,
8 right?

9 A. Yes; October 22nd, 2004.

10 Q. And it's your understanding that this
11 web page would be available as of October 2nd --
12 22nd, 2004?

13 A. That would be my understanding, yes.

14 Q. Okay. I want to look down to the second
15 page of this document. And it's the entry dated
16 July 10th, 2002. Or I guess, just to clarify for
17 our potential European colleagues, that is
18 2002-07-10.

19 A. I see that.

20 Q. Okay. So this states that not only
21 Nokia phones, but also AT-compatible phones are
22 supported.

1 Do you see that?

2 A. Yes.

3 Q. And "See the release notes for more
4 information on the download page for information
5 on getting Noki."

6 Do you see that?

7 A. Yes.

8 Q. And so we see that AT-compatible phones
9 were supported, correct?

10 A. Correct.

11 Q. And according to this date, that that
12 was occurring in the 2002 time frame, right?

13 A. That's correct.

14 Q. Okay. If we can put that document
15 aside.

16 A. Now, again, AT-compatible phones isn't
17 referring to AT&T phones. It's referring to
18 AT-command-compatible phones.

19 Q. Got it.

20 What are AT-command-compatible phones?

21 A. AT is a command language for modems. It
22 refers to how the phones will receive information

1 from like a PC, if it was connected to a PC or for
2 external device.

3 Q. Okay. Thank you.

4 So, Mr. Zatkovich, how would you go
5 about sending an SMS message?

6 MR. ALEXANDER: Object to form.

7 THE WITNESS: You mean today, with
8 supported API from the cell phone
9 manufacturer?

10 Q. Let's start about today between two
11 level phones.

12 A. Are you asking, if I had software
13 already on my phones how would I do it or how
14 would I develop software to do that?

15 Q. If you wanted to send a text message via
16 SMS to one of your friends, how would you do that?

17 A. Assuming software was already on the
18 phone to send text messages?

19 Q. Yes.

20 A. Okay. And what -- what time period are
21 we talking about?

22 Q. Let's talk about today.

1 A. Today.

2 All right. Today, there's any number of
3 utilities which can send text messages via SMS or
4 even binary data of the SMS because many
5 manufacturers today have provided APIs so that
6 third-party applications can send messages of that
7 type.

8 So let's assume one of the simplest
9 types of communication, which would be sending
10 text messages from a standard text message utility
11 on one phone to a standard text message utility on
12 another phone. In which case, all I would require
13 is the phone number of the destination phone. I
14 would type in a text message, address that to the
15 phone number of the destination phone and it would
16 automatically be transmitted to the -- again, the
17 default text utility provided most likely by the
18 cell phone manufacturer or the operating system
19 provider on the destination telephone.

20 Q. In that example, using a telephone
21 number, that -- that would absolutely apply to the
22 2004 time frame, right, Mr. Zatkovich?

1 A. It would only apply to the 2004 time
2 frame in this -- this scenario, if I were sending
3 a generic text message from a text message utility
4 to another text message utility on another phone.

5 Q. Right.

6 That -- that occurred frequently in
7 2004, right?

8 A. Correct.

9 Q. And when you were saying "telephone
10 number," that would be the same telephone number
11 that if you were going to dial a number to call
12 someone, correct?

13 A. That's correct.

14 Q. Okay. Could you please open exhibit
15 1017.

16 (THEREUPON, Exhibit 1017 was marked for
17 identification).

18 THE WITNESS: Is that on the same
19 storage facility?

20 Q. Yes. That should be under the '655
21 folder.

22 A. Okay. It seems to be working now.

1 1017?

2 Q. Yes.

3 A. I have that.

4 Q. I'd like to go to paragraph 63. And --
5 and as you're looking for that, can you identify
6 what Exhibit 1017 is?

7 A. 1017 is what's being referred to as the
8 Bielski prior art, B-I-E-L-S-K-I.

9 Q. Okay.

10 A. Now, which paragraph?

11 Q. Sixty-three.

12 A. I have that.

13 Q. Okay. Paragraph 63 states, "Using the
14 device represented in Fig. 1, the user of the
15 mobile terminal, 30, can be informed about the
16 operation conditions of the devices which are
17 important to them or to themselves influence the
18 devices by controlling or regulating them. For
19 this purpose, they enter the corresponding
20 commands, such as on-off conditions or
21 temperatures, et cetera, into the mobile terminal
22 and send this information. It is transferred to

1 the control and communication unit, 20, via the
2 telecommunication network of a network operator,
3 either with the help of the internet or directly."

4 Do you see that?

5 A. I do.

6 Q. So this is an example of a message being
7 sent from the mobile terminal to the base unit,
8 right?

9 A. Yes, that's correct.

10 Q. And this particular message has a
11 command, correct?

12 A. That's correct.

13 Q. And we know that Bielski discloses using
14 SMS messages, right?

15 A. Bielski is only identified using SMS for
16 sending notifications to the remote unit. We
17 can't -- but, again, without discussing or
18 describing how that would be performed. Without
19 an API, for example.

20 Q. And -- and what -- the section that we
21 just went over states that it is transferred --
22 "this command is transferred to the controller

1 communications unit, 20, via the telecommunication
2 network."

3 Do you see that?

4 A. I see that.

5 Q. A SMS message would be sent over a
6 telecommunication network, correct?

7 A. Well, Fig. 1 is very specific on the
8 types of communications. It says, "GSM, GTIS,
9 UMTS," and it also discusses internal
10 communications such as Bluetooth, cable and WiFi.
11 I see no specific reference to SMS.

12 Q. Would a person of ordinary skill in the
13 art in 2003 understand that an SMS message could
14 be sent over a telecommunications network?

15 A. Looking at Fig. 1, which actually
16 identifies two very specific protocols, GPRS and
17 UMTS, would be in a forum that this is discussing
18 two specific types of protocol and not SMS. But
19 one would still understand that SMS messages can
20 be sent over telecommunication networks.

21 Q. Can you point me to anywhere in Bielski
22 where it uses the acronym DTMF?

1 A. I don't see that, that specific acronym
2 mentioned other than conveying audio information
3 over the -- the phone channel.

4 Q. Can you point me to anywhere in Bielski
5 where it says dial tones?

6 A. I don't see that mentioned. Although,
7 it describes dialing a number. That would
8 indicate that the dial tone would have to be
9 required.

10 Q. Would you agree that a number is dialed
11 when sending a SMS text message, Mr. Zatkovich?

12 A. A number is not dialed by the user. A
13 destination number is transmitted along with the
14 SMS message. It's not -- not dialed.

15 Q. In order for that message to be sent,
16 the user has to first enter the phone number,
17 right, Mr. Zatkovich?

18 A. If -- an SMS message would never refer
19 to it as dialing number. It would refer to it as
20 a destination number.

21 Q. Oh.

22 A. Because, again, you don't dial the

1 number to send the SMS. You program that number
2 into the header of the SMS message to send.

3 Q. And do you think that that's how -- how
4 that would be described in common parlance in --
5 in 2004?

6 A. If you're wishing to convey a specific
7 type of communication, yes.

8 Q. Whether you call a person or send a text
9 message to a person, it's the same number, right,
10 Mr. Zatkovich?

11 A. Yes, that's correct.

12 Q. Let's turn to paragraph 37 of Exhibit
13 1017.

14 A. I have that.

15 Q. Okay. So 37 states that, "In an
16 embodiment of the present invention, the
17 communication system comprises a check unit which
18 is embodied of an embedded PC or web surface --
19 server on which one or more applications
20 concerning the monitoring, control and/or
21 regulation of one or more devices are stored,
22 wherein the mobile terminal has a browser and

1 wherein one or more devices can be controlled
2 and/or regulated and/or monitored by means of the
3 browser using the application or the application
4 in connection with network elements for a
5 telecommunications network."

6 Have you ever heard of the term
7 "embedded PC," Mr. Zatkovich?

8 A. Yes.

9 Q. And -- and what does that term mean to
10 you?

11 A. It means, basically, an off-the-shelf PC
12 that's dedicated for one specific function.
13 Basically, it's tied to a specific application.

14 Q. All right. Mr. Zatkovich, I'd like you
15 to turn to Exhibit 2004.

16 (THEREUPON, Exhibit 2004 was previously
17 marked for identification).

18 THE WITNESS: I have that.

19 Q. Okay. Can you identify this for me?

20 A. It's the Microsoft Computer Dictionary,
21 Fifth Edition. They're excerpts from that.

22 Q. And -- and this is a document that you

1 rely on in your Declaration; is that correct?

2 A. That's correct.

3 Q. And if we turn to the -- it looks like,
4 the fifth page of that document, which is numbered
5 337 at the bottom of that page, there is a
6 definition for microcontroller.

7 A. I see that.

8 Q. And this is your definition -- strike
9 that.

10 This is the definition of
11 microcontroller that you rely on for your
12 construction of microcontroller as it appears in
13 the claims of the '935 and '655 patents, right?

14 MR. ALEXANDER: Object to form.

15 THE WITNESS: This was one of the
16 definitions that I used to inform my opinion.

17 Q. Okay. If you look down towards the
18 bottom of that definition, it says, when part of a
19 larger piece of equipment, a microcontroller is an
20 embedded system.

21 Do you see that?

22 And I -- I -- I omitted a few words.

1 But, "When part of a larger piece of equipment,
2 such as a car or a home appliance, a
3 microcontroller is an embedded system."

4 A. Correct.

5 And it would be referred to as -- for
6 example, an embedded microcontroller.

7 Q. And -- and you agree with that
8 statement, right?

9 A. Yes.

10 Q. And you would agree that the
11 microcontrollers in, for example, the '655 patent
12 are part of a larger piece of equipment, right?

13 A. I would agree that the microcontrollers
14 are part of an embedded component within that
15 system, yes.

16 Q. Well, what do you mean by that?

17 A. When you -- when -- the term "embedded"
18 means it's linked explicitly to and for the --
19 almost the sole purpose of controlling an aspect
20 of that system.

21 So, for example, an embedded
22 microcontroller in a soldering machine, the only

1 purpose of that microcontroller would be to
2 control that soldering machine or a portion of
3 that soldering machine. So it is embedded for
4 that purpose. It is not an external or an
5 externally-accessed controller that you can use
6 for other purposes.

7 The term "embedded" means it's part of
8 that system and only used for that system.

9 Q. Okay. But you would agree that an
10 embedded microcontroller is a microcontroller,
11 right?

12 A. Yes.

13 Q. And that's described in your definition
14 of microcontroller as an embedded microcontroller,
15 right?

16 MR. ALEXANDER: Object to form.

17 THE WITNESS: Can you ask that question
18 again?

19 Q. Right.

20 I was just looking back at the
21 definition again of microcontroller that says, "A
22 microcontroller is an embedded system."

1 MR. ALEXANDER: Object to form.

2 THE WITNESS: Okay. Yeah.

3 Microcontrollers are generally used as a --
4 as part of embedded systems.

5 I'm not sure what the question is,
6 though.

7 Q. So I just want to confirm that a person
8 of ordinary skill in the art would understand that
9 an embedded system can be a microcontroller?

10 MR. ALEXANDER: Object to form.

11 THE WITNESS: An embedded system can
12 include a microcontroller, yes.

13 Q. And according to your definition, when
14 part of a larger piece of equipment, such as a car
15 or a home appliance, a microcontroller is an
16 embedded system, right?

17 MR. ALEXANDER: Object to form.

18 THE WITNESS: It's -- it -- the
19 definition is using this kind of as an
20 absolute.

21 A microcontroller in and of itself can
22 be an embedded system or it can be part of an

1 embedded system. So I would agree with the
2 fact that a microcontroller can be an
3 embedded system.

4 Q. Okay.

5 MR. PLEUNE: Why don't we break for
6 lunch.

7 MR. ALEXANDER: What time --

8 THE WITNESS: Would it be possible to go
9 for one more session and then go for lunch?

10 MR. PLEUNE: I actually need to gather a
11 few things for the next session, and I
12 apologize for that. But maybe come back at
13 -- at 1:30.

14 THE WITNESS: All right.

15 MR. PLEUNE: Okay.

16 (Luncheon Recess).

17 BY MR. PLEUNE:

18 Q. Mr. Zatkovich, would you agree that
19 conventional mobile phones in the 2004 time frame
20 had microcontrollers?

21 A. I don't know the specific chipsets that
22 were commonly used in cell phones at the time.

1 Q. But what about the mobile phones
2 disclosed in the '935 and the '655 patent?

3 A. It's -- it seems like a reasonable
4 configuration for a cell phone.

5 Q. To have a microcontroller?

6 A. Yes.

7 It would not -- let me put it this way:
8 I don't think it would be terribly unusual to --
9 to have a microcontroller within a cell phone.

10 Q. In the 2004 time frame?

11 A. Correct.

12 Q. If you could turn to the claims of the
13 '655 patent.

14 A. Okay.

15 Q. And if you look to claim 1, claim 1
16 includes the term microcontroller, right?

17 A. Yes.

18 Q. And the microcontroller is configured to
19 process the second message and then send the
20 control instruction to the environmental device,
21 right?

22 A. Correct.

1 Q. And then if we look to claim 24 of the
2 '655 patent, that claim also includes the term
3 microcontroller, right?

4 A. Yes.

5 Q. And, once again, the microcontroller is
6 configured to process the second message and to
7 send a control instruction to the environmental
8 device, right?

9 A. Yes.

10 Q. Mr. Zatkovich, could you please turn to
11 Exhibit 1016.

12 (THEREUPON, Exhibit 1016 was marked for
13 identification).

14 THE WITNESS: Sure. I have that.

15 Q. Okay. And in particular, can you turn
16 to Fig. 3?

17 A. Yes.

18 Q. And do you see there is a box label with
19 the number 1?

20 A. I do.

21 Q. And the letters MCU appear in that box,
22 right?

1 A. Right.

2 Q. What do the letters MCU stand for?

3 A. I don't know.

4 The specification refers to it as a
5 processor.

6 Q. Would a person of ordinary skill in the
7 art have a particular understanding of the meaning
8 of the letters MCU?

9 A. Again, all I can say is that the
10 specification refers to it as -- as a processor.

11 Q. You can put that one aside, Mr.
12 Zatkovich.

13 Are you familiar with a case captioned
14 CaptionCall, LLC and Sorenson Communications,
15 Inc., v. Ultratec, Inc.?

16 A. Yes.

17 Q. What is that case?

18 A. I believe that's an IPR or related to a
19 litigation for a client that I was retained for.

20 Q. Okay. You participated as an expert in
21 that IPR; is that right?

22 A. That's my understanding -- that's my

1 recollection, yes.

2 Q. And who did you work for in that case,
3 Mr. Zatkovich?

4 A. That was awhile back. Let me check.

5 I believe, I was retained by Ultratec.

6 Q. If you could pull up your CV, which is
7 Exhibit 1004.

8 A. That -- that's the CV for Kevin Jeffay?

9 Q. Yeah.

10 A. All right. I have that.

11 Q. It appears that this case is on page 13
12 of your CV; is that right?

13 A. Well, I'm looking at Exhibit 1004.

14 That's the CV of Kevin Jeffay, not myself.

15 Q. Oh. I apologize. I apologize. I'm
16 looking at the wrong list.

17 So I should have said Exhibit 2003. I
18 saw CV and grabbed the wrong number.

19 A. Actually, 2004 is the Microsoft Computer
20 Dictionary.

21 Q. 2003.

22 A. Got you.

1 So page 13?

2 Q. Yes.

3 A. Yes, I have that.

4 (THEREUPON, Exhibit 2003 was previously
5 marked for identification).

6 Q. And you see that -- that case listed
7 there on page 13?

8 A. I do.

9 Q. So the exhibit is being loaded on to the
10 FTP and you'll be able to access that in a moment.
11 It should be up. And it is Exhibit 1105.

12 (THEREUPON, Exhibit 1105 was marked for
13 identification).

14 THE WITNESS: I have that.

15 Q. Okay. Do you recognize this document?

16 A. It appears to be my Declaration in the
17 IPR matter for patent '838.

18 Q. And can you turn to page 109 of the
19 exhibit, 1105?

20 A. I see that.

21 Q. And is that your signature that appears
22 at page 109?

1 A. It is.

2 Q. If you could turn to page 45 or --
3 strike that, paragraph 45 of your Declaration,
4 Exhibit 1105.

5 A. I see that.

6 Q. Okay. Could you, please, read paragraph
7 45 of your Declaration?

8 A. Sure.

9 "Petitioner appears to argue without any
10 support from Mr. Ochiogroso (phonetic) that a
11 disclosure of a microcontroller could not provide
12 support for the claimed microprocessor. I
13 disagree. It is my opinion that the disclosure of
14 a microcontroller clearly provides support for the
15 claimed microprocessor. A POSA would understand
16 that a microcontroller is a single integrated
17 server which contains a microprocessor for and
18 memory. For purposes of the '838 patent and in
19 the context of how microcontroller and
20 microprocessor are used therein, these terms can
21 be accepted as essentially synonymous. In
22 practice, as of 2001, they're known to a POSA

1 particularly with respect to the types of
2 functions described in the patent and recited in
3 the claims that have been the same."

4 Q. So in this case you testified -- oh. Go
5 ahead.

6 A. I'm sorry. Finish your question.

7 Q. Sure.

8 And thank you for the reading.

9 In this case, you testified that the
10 terms microcontroller and microprocessor are
11 synonymous, right?

12 A. Correct, because the requirement -- the
13 limitation required a microprocessor. The
14 microcontroller contains a microprocessor;
15 therefore, in that particular context it would be
16 synonymous.

17 However, a microprocessor in and of
18 itself is not a microcontroller and could not be
19 substituted for microcontroller. So, therefore,
20 in that case, they would not be synonymous.

21 Q. If you could turn to page 47 --
22 paragraph 47. Again, I apologize.

1 A. I see that.

2 Q. So -- right.

3 So the term -- the relevant term was
4 microprocessor and in this situation the
5 microcontroller that you testified is synonymous
6 with a microprocessor would need to control data
7 packet transfer over the connection, right?

8 You see that at the end of paragraph 47?

9 A. I do.

10 Q. And you stand by your testimony,
11 correct?

12 A. Absolutely. Because, again, a
13 microcontroller contains a microprocessor. A
14 microprocessor does not contain a microcontroller.

15 Q. And let's look at that last par --
16 sentence of paragraph 145.

17 A. I see that.

18 Q. And this -- this is referring to
19 microprocessor and microcontroller, right?

20 A. Well, the last sentence refers to a
21 microcontroller.

22 Q. Okay.

1 MR. ALEXANDER: Counsel, I'm -- I'm a
2 little confused. Did you say 145? I wasn't
3 sure what you were referring to.

4 MR. PLEUNE: So paragraph 45 --

5 MR. ALEXANDER: Oh, 45.

6 Q. In the last --

7 A. Yes. Go ahead. I was looking at 47.

8 Q. The last sentence of paragraph 145 says,
9 "In practice, as of 2001, their known use to a
10 person of ordinary skill in the art" -- and
11 "their" is referring to a microcontroller and a
12 microprocessor, right?

13 A. Hang on. I'm catching up here.

14 So we're on paragraph 145?

15 Q. Paragraph 45.

16 A. Forty-five.

17 MR. ALEXANDER: I think there was a
18 little confusion in the question.

19 THE WITNESS: Okay.

20 Q. Just let me know when you get to
21 paragraph 45.

22 A. I'm in paragraph 45 now.

1 Q. All right. So the last sentence of
2 paragraph 45 says, "In practice, as of 2001 their
3 known use to a person of ordinary skill in the art
4 -- and the "their" in that sentence is referring
5 to microcontrollers and microprocessors, right?

6 A. Right.

7 Q. And it says, "Particularly with respect
8 to the types of functions described in the patent
9 and recited in the claims would have been the
10 same."

11 Right?

12 A. That's what it says.

13 Q. And you stand by that testimony,
14 correct, Dr. -- Mr. Zatkovich?

15 A. I do. With the types of functions
16 specifically requiring a microprocessor. A
17 microcontroller would fill the need of a
18 microprocessor. A microprocessor would not fill
19 the need of a microcontroller.

20 Q. Mr. Zatkovich, are you familiar with a
21 case captioned Square, Inc. v. 4361423 Canada,
22 Inc.?

1 A. I'm involved in a Square litigation at
2 the moment. Is this a recent matter?

3 Q. IPR2019-10649.

4 A. I believe that's a case for
5 AnywhereCommerce vs. Square.

6 Q. Why don't we go ahead and access another
7 exhibit. This is going to be 1106.

8 (THEREUPON, Exhibit 1106 was marked for
9 identification).

10 MR. ALEXANDER: I'm not seeing that in
11 the main directory. Is that where it should
12 be located?

13 MR. PLEUNE: Yeah. We can -- I'm
14 pulling it up now.

15 THE WITNESS: I did a refresh and it
16 appeared.

17 Yes, I have that.

18 Q. Can you tell me what that document is,
19 Mr. Zatkovich?

20 A. This is a Declaration that I did in the
21 matter that I described before. One of the
22 parties is listed as Canada, Inc., which I was

1 retained for as -- and I think the parent company
2 is AnywhereCommerce. So this is the same matter
3 that I just mentioned.

4 Q. So you were retained by the -- the
5 Canadian entity; is that correct?

6 A. That's correct.

7 Q. Okay. And if you could turn to
8 paragraph 19 of this Declaration.

9 A. I see that.

10 Q. Okay. Take a look at that paragraph,
11 Mr. Zatkovich. And then I'm going to ask you a
12 few questions about that.

13 A. I've reviewed that.

14 Q. Okay. So you -- you see in the first
15 sentence of paragraph 19 we're talking about a
16 provisional that disclosed a secure
17 microprocessor, right?

18 A. Correct.

19 Q. And that secure microprocessor was
20 capable of performing a conversion, it could
21 control the operation flow of the device, perform
22 necessary encryption and transmit those signals in

1 an analog form suitable for transmitting to the
2 jack of a cell phone, right?

3 A. Correct.

4 Q. Okay. And then if we look at the
5 sentence in paragraph 19 that flows from 8 to 9,
6 you see that we're going in the opposite direction
7 right, Mr. Zatkovich? Now it's the microprocessor
8 that's providing the support for the controller,
9 50, in the patent.

10 MR. ALEXANDER: Object to form.

11 THE WITNESS: The patent -- the patent
12 has a requirement for a controller. And as I
13 recall on that particular patent, it
14 specifies that the controller could be
15 performed either by a microcontroller or a
16 microprocessor.

17 Q. So you're -- it's your opinion that the
18 patent recited a microcontroller or a
19 microprocessor?

20 A. Yes.

21 I think I have it handy.

22 Q. Well, let's start with -- let's start

1 with the -- the -- paragraph 19. And we'll --
2 we'll get to the patent. But I just --

3 A. Okay.

4 Q. -- want to focus on this sentence that
5 goes from 8 to 9.

6 You're saying that the microprocessor,
7 that's from the provisional, and then that
8 supports the disclosure of a controller, 50, in
9 the patent, right?

10 A. Right.

11 If a controller is express -- expressly
12 identified as being able to be met by a
13 microprocessor or a microcontroller, that would be
14 a true statement.

15 Q. Would you agree that the controller, 50,
16 in paragraph 19 is a microcontroller?

17 MR. ALEXANDER: Object to form.

18 THE WITNESS: Again, my recollection is
19 that the '556 indicates that a controller
20 component can be met either by a
21 microprocessor or a microcontroller. And I
22 believe there's actually different

1 embodiments that indicate in one case it
2 might be a microcontroller, in one case it
3 might be a microprocessor. I'll have to take
4 a look at that.

5 Q. Sure. And -- absolutely. And -- and
6 we'll turn to that in a moment.

7 But you would agree that there are
8 certainly situations where a system could use a
9 microcontroller or a microprocessor, right?

10 A. Right, if that's what the requirements
11 call for.

12 Q. That -- that there are embedded devices
13 where either one of those would be perfectly
14 reasonable to use, right?

15 A. Again, depending on what the
16 requirements are for that particular device.

17 Q. And you would agree that there's
18 circumstances where the terms microprocessor and
19 microcontroller are synonymous?

20 MR. ALEXANDER: Object to form.

21 THE WITNESS: Well, I wouldn't use -- I
22 would never use the word synonymous unless a

1 -- the requirement is for a microprocessor.
2 And that need could be met with either a
3 microprocessor or a microcontroller. In that
4 particular case, it would be synonymous.

5 Q. Okay.

6 A. The reverse would not be true, though.

7 (THEREUPON, Exhibit 1107 was marked for
8 identification).

9 Q. If we could turn to Exhibit 1107. This
10 is the '566 patent.

11 A. I have that.

12 Q. I want to look at column 7, line 45.

13 A. I see that.

14 Q. And it says, "With reference to Fig. 5,
15 the transaction device, 12, includes a controller,
16 50."

17 And that was the controller, 50, that
18 you addressed in your Declaration, right, Mr.
19 Zatkovich?

20 A. Correct.

21 Q. And it says, in the control -- or "in
22 the form of a microcontroller unit (MCU)."

1 What is -- what does the term MCU stand
2 for, Mr. Zatkovich?

3 A. I -- I believe they're labeling
4 different phrases with acronyms in this particular
5 case. I'm assuming they were using the acronym
6 MCU to identify the microcontroller unit.

7 And then I also want to point out column
8 6, line 22 to 24 which says, "The controller
9 includes a secure microprocessor unit or
10 microcontroller unit."

11 Q. So here --

12 A. And --

13 Q. Sorry. Go ahead. I apologize.

14 A. Right.

15 And the sentence that we just discussed
16 in column 7 is indicating mic -- controller in the
17 form of. In other words, it can take multiple
18 forms. They're saying, for example, a
19 microcontroller in the form of a microcontroller.

20 Q. Right.

21 A. And the specification's very clear that
22 that can be performed by either a microprocessor

1 or a microcontroller.

2 Q. Right.

3 And here in column 6, line 23 to 24, the
4 term microprocessor and microcontroller are being
5 used interchangeably, right?

6 A. They're saying, for this particular
7 solution, for this particular system, the
8 controller can be performed by a microprocessor or
9 a microcontroller.

10 I'm assuming, the important aspect of
11 the controller would be the CPU, since both of
12 them contain the CPU.

13 Q. And we see here at column 6, line 24
14 that microprocessor unit is referred to as MPU,
15 right?

16 A. Yeah.

17 I'm now seeing a pattern throughout the
18 document that they're using acronyms to refer to
19 many of the terms.

20 So MPU for the microprocessor.

21 Q. And MCU for the microcontroller?

22 A. Correct.

1 Q. So, Mr. Zatkovich, I'd like to return to
2 Exhibit 1014.

3 A. What's the title of that one?

4 Q. This is your -- yeah, this is your --
5 your Declaration, your 101 Declaration.

6 A. Ah. I think I'll just download it again
7 rather than try to find out under which tab it's
8 on.

9 Did you say 1014?

10 Q. 1014, yes.

11 A. Okay. I have that.

12 Q. Okay. Let's turn to page 78.

13 Are you at page 78?

14 A. I am.

15 Q. And here we have a section of your
16 Declaration called Detailed Discussion of
17 Inventive Concepts.

18 Do you see that?

19 A. I do.

20 Q. And this is referred to the inventive
21 concepts described in the '935 and '655 patents,
22 right?

1 A. Yes.

2 Q. Okay. And if you turn to page 82,
3 there's a subsection entitled Shortcomings in the
4 Art.

5 A. I see that.

6 Q. And on the same page, a subsection
7 titled Land-Based Systems.

8 A. I see that.

9 Q. And if we could go to the next page of
10 your Declaration, page 83, this is in the
11 land-based sub -- system subsection, right?

12 A. Yes.

13 Q. Okay. In the middle of the page it
14 says, "Whether it's providing one-way or two-way
15 communications, telephone-based systems reflected
16 severe shortcomings. For example, many users
17 dislike automated phone systems and avoid their
18 use when possible because they are unpleasant to
19 use and can be difficult for some users to
20 navigate. These concerns are dramatically
21 magnified when the number of options presented to
22 users are large. For example, when a large number

1 of devices are monitored at a location. Because a
2 user typically lacks a predetermined
3 identification of which monitoring device
4 correspond to particular key selections, the user
5 is forced to listen to many options at each call.
6 These severe shortcomings are inherent and
7 unavoidable in monitoring control systems
8 employing audio-based communications."

9 So the point that you're making here is
10 that a shortcoming of a land -- shortcoming of a
11 landline-based system is that they don't work well
12 for systems when a large number of devices are
13 monitored at a location, right?

14 A. Correct.

15 Q. Okay. How did the '935 and '655 patent
16 overcome that shortcoming?

17 A. By utilizing an application-based system
18 where the user would provide commands or select
19 devices through, for example, a mobile device such
20 as a cell phone.

21 Q. And they could do so for multiple
22 devices, right?

1 A. Correct.

2 Q. Let's go to page 23 of Exhibit 1014.

3 A. I have that.

4 Q. Okay. And so at the top of page 23 you
5 state, "High-speed internet are typically
6 unavailable in remote areas because the costs for
7 running wires to those areas would be
8 prohibitive."

9 Right?

10 A. Right.

11 Q. And then you go on to say, a few lines
12 down, "Like cable and DSL technologies, stylus
13 internet requires the presence of telephone wiring
14 which can be problematic in remote locations."

15 Right?

16 A. Yes.

17 Q. And again, this was a problem that was
18 solved by the '935 and '655 patents, right?

19 A. That's one aspect, yes.

20 Q. And -- and it solved the problem of --
21 of getting internet to remote places?

22 MR. ALEXANDER: Object to form.

1 THE WITNESS: It solved the problem of
2 having to rely on internet. And one -- one
3 example of that would -- would have been in
4 remote locations.

5 Q. Let's turn to page 48.

6 A. I have that.

7 Q. Okay. I want to look at the top of page
8 48. You state, "Although the context of the
9 patents-in-suit invention is home or business
10 environmental monitoring and control, the
11 patents-in-suit are focused on only one aspect of
12 that industry and that is the integration of an
13 incompatible communication device, a cellular
14 phone, into that space."

15 Do you see that?

16 A. Yes.

17 Q. And when you said the "patents-in-suit,"
18 you're referring to the '935 and '655 patents?

19 A. That's correct.

20 Q. And when you say "integration," are you
21 referring to a device in the home that is capable
22 of communicating via cellular networks?

1 A. Yes.

2 I think I'm referring to the fact that a
3 cell phone is not typically used within the home
4 or business to communicate, at least not in 2004.

5 Q. And the invention of the patents-in-suit
6 is the integration of that incompatible device,
7 right?

8 MR. ALEXANDER: Object to form.

9 THE WITNESS: The -- the patents-in-suit
10 describe integrating a cellular communication
11 device which generally does not interface
12 directly with home-based appliances or
13 sensors or environmental devices. So from
14 that perspective, that is the
15 incompatibility.

16 MR. PLEUNE: Bear with us.

17 Q. If you could turn to page 78 of your
18 Declaration, Exhibit 1014.

19 A. I have that.

20 Q. Okay. And you see a section titled
21 Detailed Discussion of Inventive Concepts?

22 A. Yes.

1 Q. And the inventive concepts are for the
2 '935 and '655 patents?

3 A. That's correct.

4 Q. And if you turn to page 79, there's a
5 subsection titled Cellular Communications.

6 Do you see that?

7 A. I do.

8 Q. And the second paragraph of that
9 subsection says, "Within the context of the
10 patents-in-suit, a remote location is one in which
11 telephone, internet or cable TV service is not
12 available because the service provider for those
13 communication types do not offer service at that
14 location."

15 Right?

16 A. That's correct.

17 Q. And that's the meaning of remote
18 location within the context of the '935 and '655
19 patents, correct?

20 A. Yes.

21 Q. If you could turn to page 34.

22 A. I have that.

1 Q. Okay. And the last paragraph on page 34
2 states, "The patents-in-suit further disclose that
3 limited capabilities existed for interfacing a
4 cellular telephone with such systems, including an
5 ability to send a short message service, SMS
6 message to such systems."

7 And so this is describing that there
8 were limited capabilities to interface a cellular
9 telephone with these types of home automation
10 systems, correct?

11 A. Yes.

12 Q. And then, again, we see footnote 10.
13 And footnote ten says, "This disclosure reflects
14 that a SMS message could be sent from a cellular
15 phone through the cellular network to the internet
16 and ultimately to a monitored system if that
17 system had a connection to the internet."

18 And so that was the -- the prior art
19 system, right, Mr. Zatkovich?

20 A. Yes.

21 Basically, it's discussing that SMS
22 messaging could be -- an SMS-type message, not

1 necessarily using the SMS protocol, could be
2 delivered to the internet.

3 Because, again, at that particular time
4 the use of supported APIs by cellular phone
5 manufacturers was not available to third parties.
6 So they had to send SMS messages over a slightly
7 different protocol that can be sent through the
8 internet and received as, for them, IP messages.

9 Q. And that's contracted in the next
10 sentence where you say, "This disclosure does not
11 suggest that a SMS could be sent from a cellular
12 phone to a base unit in a remote location because
13 the remote location would not have access to an
14 internet connection."

15 And that's the -- the invention of the
16 '935 and the '655 patents, right?

17 MR. ALEXANDER: Object to form.

18 THE WITNESS: That's one as -- they're
19 saying -- this is saying that one aspect of
20 the prior art was if because the SMS
21 messaging in the prior art was limited to a
22 protocol that required it to be delivered

1 through the internet and the internet was not
2 available in certain remote locations, then
3 the prior art technology would be limited.

4 I wouldn't say that's the only objective
5 of the patents-in-suit.

6 Q. Fair.

7 But -- but just to -- to make sure that
8 we're clear: And then the invention of the '935
9 and the '655 patents made it possible so that an
10 SMS message could be sent from a cellular phone to
11 the base unit in a remote location, right?

12 A. Correct.

13 Q. Right.

14 And a remote location that did not have
15 access to the internet, right?

16 A. Correct.

17 In that particular scenario, this --
18 this is one of the advantages of the
19 patents-in-suit.

20 Q. Right.

21 And then the last sentence of that
22 footnote, I think, further clarifies that. It

1 says, "The Ubiquitous patents address this barrier
2 in part by integrating a cellular transmitter
3 receiver with the circuitry for the base unit."

4 Right?

5 A. That's correct.

6 MR. PLEUNE: Why don't we take a
7 ten-minute break. We're going to look at a
8 few things and see what else we have.

9 MR. ALEXANDER: Okay.

10 THE WITNESS: Okay.

11 (A recess was taken).

12 MR. PLEUNE: We don't have any
13 additional questions at this time.

14 MR. ALEXANDER: Okay. Well, sorry for a
15 double break, but let's go ahead and take
16 another ten minutes or so and I'll figure out
17 what I need to ask.

18 MR. PLEUNE: Okay. Thanks.

19 MR. ALEXANDER: Thanks.

20 (A recess was taken).

21 MR. ALEXANDER: Everybody ready?

22

1 EXAMINATION

2 BY MR. ALEXANDER:

3 Q. All right. Mr. Zatkovich, I have a few
4 questions for you.

5 MR. PLEUNE: And I'll just -- I'll just
6 note for the record real quick, as a
7 housekeeping matter, that I'll be objecting
8 on behalf of Resideo and CSG.

9 MR. ALEXANDER: Fair enough.

10 BY MR. ALEXANDER:

11 Q. Okay. Mr. Zatkovich, could you turn to
12 the Coon reference that Ubiquitous' counsel had
13 asked you some questions about.

14 A. Yes, I have that.

15 MR. PLEUNE: If you guys can just give
16 me one minute, I'm going to grab it.

17 MR. ALEXANDER: Sure.

18 MR. PLEUNE: All right. I've got it.

19 BY MR. ALEXANDER:

20 Q. I believe this is Exhibit 1019 to the
21 '655 petition.

22 MR. ALEXANDER: Counsel, if that's

1 wrong, correct me, but I believe that's
2 correct.

3 MR. PLEUNE: That's correct, according
4 to my records.

5 MR. ALEXANDER: All right.

6 Q. Okay. Mr. Zatkovich, could you turn to
7 paragraph 28 of the reference, please.

8 A. I have that.

9 Q. Okay. And in paragraph 28, petitioner's
10 counsel asked you about step 314. Can you look at
11 that portion of paragraph 28, please?

12 A. Yes, I see that.

13 Q. And do you see that this passage in
14 paragraph 28 -- it begins, "In step 314 the
15 processor, 102, causes an appropriate messaging
16 (i.e., a message that corresponds to the location
17 of the mobile device, 120, with respect to the
18 control device, 140) to be sent to the control
19 device, 140, via the wireless transceiver, 110,
20 antenna, 112, antenna, 162, and base station,
21 160"?

22 A. I see that.

1 Q. What do you understand that message
2 referred to in that sentence to be?

3 A. Well, in the paragraph the message is a
4 little ambiguous. It just says a message that
5 corresponds to the location of the mobile device.
6 But if we look at the actual language of the box
7 that it's referring to, which is Fig. 3, box 314,
8 it says, "Send message to control device to
9 initiate performance of appropriate functions by
10 the network devices."

11 So clearly, it's sending a message to
12 control a device, which would be command, as
13 opposed to sending a message to notify a device or
14 sending a message to provide status to a device.
15 So step 314 is sending a command from the mobile
16 device to the control device.

17 Q. All right. Is this step 314 consistent
18 with the discussion of Coon in your Declaration
19 that you submitted for the '655 patent?

20 MR. PLEUNE: Objection, leading.

21 THE WITNESS: Yes. I -- I expressed
22 that same opinion of Coon's regarding this

1 limitation of the -- the '655 patent.

2 Q. Do any of the passages of the Coon
3 reference that petitioner's counsel pointed to you
4 during your deposition change the opinions you
5 expressed in your Declaration with respect to the
6 Coon reference?

7 A. No, they do not.

8 Q. Does paragraph 28 of the Coon reference
9 disclose the notification element recited in claim
10 1 of the '655 patent?

11 A. No. In my opinion, there is nothing in
12 paragraph 28 corresponding to the notification
13 limitation in claim 1 of the '655.

14 Q. Mr. Zatkovich, could you pull up your
15 Declaration for the '655 patent.

16 A. I have that.

17 Q. Okay. Give me one second. I'm going to
18 point you to a particular paragraph.

19 All right. Could you turn to paragraph
20 48 of your Declaration, please.

21 A. Did you say paragraph 48?

22 Q. I did.

1 A. Yes, I have that.

2 Q. Does paragraph 48 state your opinion
3 regarding the meaning of the term microcontroller
4 that's recited in the claims of the '655 patent?

5 A. It does.

6 Q. Could you go ahead and read that
7 construction, please?

8 A. Sure.

9 "Microcontroller as it appears in the
10 '655 patent's claims to mean a special purpose
11 computing device, including at least a CPU, main
12 memory, timing circuits and ion circuitry designed
13 for minimal quantity of chips and then programmed
14 to handle a particular task."

15 Q. Okay. Could you turn to Exhibit 1016,
16 please, which is the Hoiniman reference.

17 A. Yes.

18 Q. Okay. And turn to Fig. 3, please.

19 A. I have that.

20 Q. Do you recall that petitioner's counsel
21 asked you about Fig. 3?

22 A. I do.

1 Q. In particular, do you recall that he
2 asked you about the element of Fig. 3 labeled as
3 element 1?

4 A. I do.

5 Q. Would a person of ordinary skill in the
6 art understand element 1 to satisfy your
7 understanding of the term microcontroller given
8 the full context provided by Fig. 3 in the
9 Hoiniman specification?

10 A. Given all the components contained in
11 Fig. 3, I do not believe that component 1 would
12 conform to a microcontroller.

13 Q. Why is that?

14 A. Well, first, when we have component 3
15 which is -- let's see. Column 2. Column 7. It
16 refers to a number of separate integration --
17 integrated circuits. Memory, 3, has a separate
18 integrated circuit. That's on line 20. On line
19 27 it's showing a separate circuit for serial
20 connection. It's showing component 6 which is a
21 separate circuit for wireless communication, so
22 it's a wireless transceiver. It's also showing

1 component 2 which is an ASIC.

2 At least for the reasons that it's
3 showing a separate IC for memory, a separate IC
4 for serial -- serial communications which, again,
5 is the V24 specification and -- as well as
6 wireless communications, all of those would
7 typically be in a microcontroller.

8 Well, the fact that all of those are
9 shown external to component 1 indicates that Simon
10 did not intend to use a microcontroller;
11 otherwise, those -- at least components 3 and 8
12 and most likely 6 and possibly portions of 2 would
13 be incorporated into a microcontroller. Because,
14 again, that's the intention of a microcontroller.

15 Q. Okay. Thank you.

16 One of the elements --

17 A. Excuse me.

18 Q. Go ahead. I'm sorry.

19 A. In -- in addition, that -- the
20 specification refers to that as a processor such
21 as a microprocessor, that would be consistent with
22 separate components that would be required in Fig.

1 3, which would normally be incorporated into a
2 single ISP if it were a microcontroller.

3 Q. You mentioned element 2 which is
4 referred to as an ASIC. Do you see element 2 in
5 Fig. 3?

6 A. I do.

7 Q. Would a person of ordinary skill in the
8 art understand that a microcontroller would
9 typically be paired with an ASIC?

10 A. Well, one of the purposes of a AS -- of
11 microcontroller would be to be designed for
12 specialized purposes. Typically, one would -- if
13 you are producing lower volumes, let's say,
14 several hundred to several thousands, you would
15 use a micro -- a specially programmed
16 microcontroller. Again, because of the pricing
17 issue.

18 If you were producing, let's say, tens
19 of thousands or hundreds of thousands of units,
20 you would normally use an ASIC.

21 Those components are generally used
22 interchangeably based on what the price point and

1 quantity you are seeking to produce.

2 It would be somewhat unusual to see both
3 of them side-by-side.

4 MS. NELSON: That's all the questions I
5 have. Thank you.

6 MR. PLEUNE: Just a -- just a couple
7 questions.

8 EXAMINATION

9 BY MR. PLEUNE:

10 Q. Mr. Zatkovich, did you talk with anyone
11 after I stopped asking -- asking you questions and
12 before Mr. Alexander asked you questions?

13 A. Yes. I spoke with Mr. Alexander on the
14 phone before this -- this final session.

15 Q. Okay. What did you speak with Mr.
16 Alexander about?

17 MR. ALEXANDER: I'll say, Counsel, I --
18 I don't mind you generally asking the
19 question, but, you know, I believe the rules
20 permit that sort of conversation after your
21 examination concluded. So I'm not going to
22 let you dive too deeply into specifics of

1 communications.

2 If you have a different understanding,
3 I'd be happy to talk with you about that.

4 MR. PLEUNE: I'm just asking the
5 question and if you have an objection or want
6 to instruct Mr. Zatkovich not to answer,
7 that's -- that's your prerogative.

8 MR. ALEXANDER: Sure.

9 Well, I will instruct the witness to not
10 reveal the contents of privileged
11 communications, which I think would be
12 typical.

13 MR. PLEUNE: Sure.

14 Q. Mr. Zatkovich, did you discuss your
15 Declaration with Mr. Alexander?

16 A. My Declaration, no.

17 Q. Did you discuss your testimony today?

18 A. We discussed -- we discussed some of the
19 prior art.

20 Q. You discussed prior art references with
21 Mr. Alexander?

22 A. Correct.

1 Q. Which prior art references did you
2 discuss with Mr. Alexander?

3 A. Several. Two of them were -- one of
4 them was Hoiniman and one of them was Coons.

5 Q. So you discussed Hoiniman and Coons with
6 Mr. Alexander?

7 A. Yes.

8 Q. Did you discuss the -- the disclosure of
9 those references with Mr. Alexander?

10 A. Yes, I'd say that's a -- a good
11 characteristic.

12 Q. And -- and some of that discussion was
13 also included in your responses to the questions
14 that Mr. Alexander asked you, right?

15 A. Indirectly, I guess. Some -- some --
16 there was some overlap in subject matter, yes.

17 Q. So you said that Coon was one of the
18 references that you discussed with Mr. Alexander?

19 A. Yes.

20 Q. Did you discuss paragraph 28 with Mr.
21 Alexander?

22 A. I believe that's one of the -- well, not

1 necessarily -- not necessarily the paragraph, but
2 information associated with that paragraph, yes.

3 Q. Okay. And then Hoiniman was one of the
4 references that you discussed with Mr. Alexander?

5 A. Yes.

6 Q. And was Fig. 3 one of the aspects of
7 Hoiniman that you discussed with Mr. Alexander?

8 A. I -- I do believe we discussed some
9 aspects of Fig. 3, yes.

10 Q. Okay. Let's look at Fig. 3. Am I
11 correct that it was your testimony that you
12 believe that the MCU in Fig. 3 of Hoiniman is not
13 a microcontroller because we see some external
14 memory? Right?

15 A. That would -- I don't believe component
16 1 of Fig. 3 is a microcontroller for many reasons,
17 one of which is that we have an external memory
18 circuit.

19 Q. There's also some -- I believe, some
20 interfaces that you pointed out that were external
21 to the MCU in Fig. 3; is that right?

22 A. Not -- not just interfaces but serial

1 connection circuitry, such as the component number
2 8 and separate circuitry for the wireless
3 transceiver in component 6.

4 Q. Let's turn to Fig. 3 of the '965
5 patent -- or the '655 patent. Excuse me, Mr.
6 Zatkovich.

7 A. I see that.

8 Q. What is depicted in Fig. 3?

9 A. This is a remote control unit.

10 Q. And what is 45 of Fig. 3?

11 A. Forty-five would be RAM that would be
12 shared between -- external RAM that would be
13 shared between the microcontroller and other
14 functions of the mobile device. Again, this is --

15 Q. Forty-five. 45, Mr. Zatkovich. What is
16 45?

17 A. Oh. I thought you said 44.

18 Forty-five is the microcontroller.

19 Q. Okay. And -- and would that
20 microcontroller have the same plain and ordinary
21 definition that you just went over with Mr.
22 Alexander in your Declaration?

1 A. Yes.

2 In this case it's the same type of
3 microcontroller, but used within the context of a
4 multi-function device as opposed to like the base
5 station which is a single-function device.

6 Q. And with the external memory in Fig. 3,
7 right?

8 A. Right.

9 The memory in Fig. 3 would have to be
10 external memory in the case of a multi-function
11 device since the cell phone capabilities would
12 have to access that separately.

13 MR. PLEUNE: Just give us a -- a few
14 minutes. We'll see if we have anything else
15 for Mr. Zatkovich.

16 MR. ALEXANDER: Sure.

17 THE WITNESS: Okay.

18 (A recess was taken).

19 MR. PLEUNE: Okay. No more questions
20 from petitioner.

21 MR. ALEXANDER: All right. Thank you.

22 MR. PLEUNE: All right. Thanks, guys.

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AND FURTHER THIS DEPONENT SAITH NOT.

SIGNATURE RIGHTS RESERVED.

(Deposition concluded)

* * * * *

1 C E R T I F I C A T E

2 I, April Reid, Court Reporter and Notary
3 Public in and for the State of North Carolina,
4 do hereby certify:

5 That IVAN PETER ZATKOVICH, the witness whose
6 deposition is hereinbefore set forth, was
7 duly sworn by me before the commencement of such
8 deposition and that such deposition was taken
9 before me and is a true record of the testimony
10 of such witness.

11 I further certify that the adverse party,
12 UBIQUITOUS CONNECTIVITY, LP, was represented by
13 counsel at the deposition.

14 I further certify that the deposition of IVAN
15 PETER ZATKOVICH, occurred virtually via mobile
16 videoconference on Wednesday, July 8, 2020,
17 commencing at 9:55 a.m. to 2:48 p.m.

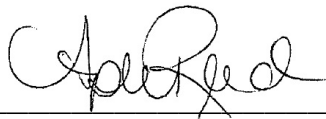
18 I further certify the inspection, reading
19 and signing of said deposition were not waived by
20 counsel for the respective parties and by the
21 witness.

22

1 I further certify that I am not related to
2 any of the parties to this action by blood or
3 marriage, I am not employed by or an attorney to any
4 of the parties to this action, and that I am in no way
5 interested, financially or otherwise, in the outcome
6 of this matter.

7
8 IN WITNESS WHEREOF, I have hereunto set my
9 hand this 19th day of July, 2020.

10
11 My commission expires:
12 March 4, 2025

13
14 
15 _____

16 NOTARY PUBLIC IN AND FOR THE
17 STATE OF NORTH CAROLINA
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