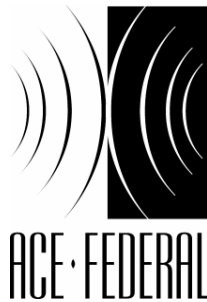


Transcript of the Testimony of **Andrew Lippman**

Date: September 28, 2020

Case: Apple Inc v. Maxell, Ltd.



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

3 APPLE INC. :
4 Petitioner :
5 VS. : CASE IPR2020-00200
6 MAXELL, LTD. :
7 Patent Owner :

8 *****

9 ORAL AND VIDEOTAPED DEPOSITION OF
10 ANDREW LIPPMAN, PH.D.
11 SEPTEMBER 28, 2020

12 *****

13
14 Called as a witness by the Patent Owner,
15 taken before Debbie Leonard, CSR, RDR, CRR, a
16 Certified Shorthand Reporter in and for the State
17 of Texas, reported by machine shorthand, on
18 September 28, 2020, from 10:45 a.m. to 12:59
19 p.m., proceeding conducted remotely.
20
21
22
23
24
25

1 A P P E A R A N C E S
2 (All appearing remotely)

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I N D E X

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1 E X H I B I T S I N D E X
2 ORAL AND VIDEOTAPED DEPOSITION OF
3 ANDREW LIPPMAN, PH.D.
4 September 28, 2020

5 NUMBER DESCRIPTION PAGE
6 (None marked.)

7
8 PREVIOUSLY MARKED EXHIBITS REFERENCED
9

10 NUMBER PAGE REFERENCED

11 Exhibit 1001 US Patent No. 10,084,991 8

12 Exhibit 1003 Declaration of Dr. Andrew 12
13 Lippman

14 Exhibit 1004 US Patent No. 7,565,680 15

15 Exhibit 1005 US Patent No. 7,584,255 15
16
17
18
19
20
21
22
23

24 REPORTER'S NOTE: All quotations from exhibits
25 are reflected in the manner in which they were
 read into the record and do not necessarily
 denote an exact quote from the document.

1 THE VIDEOGRAPHER: Good morning.
2 This is the deposition of Dr. Andrew
3 Lippman taken in the matter of United
4 States Patent and Trademark Office, before
5 the Patent Trial and Appeal Board, of
6 Apple, Inc., Petitioner, versus Maxell,
7 Limited, Patent Owner, case number
8 IPR2020-00200.

9 This deposition is being done
10 remotely via Cisco Webex. The time is
11 approximately 10:45 a.m., and today's date
12 is September 28th, 2020.

13 The court reporter is Debbie
14 Leonard. The video specialist is Vincent
15 Falcetano, both from Ace-Federal Reporters,
16 with offices in Washington, DC.

17 Will counsel please identify
18 themselves for the record.

19 MR. PLUTA: Robert Pluta from Mayer
20 Brown on behalf of Maxell, Limited. With
21 me also is Amanda Bonner from Mayer Brown.

22 MS. BAILEY: Jennifer Bailey from
23 Erise IP on behalf of petitioner, Apple,
24 Inc.

25 THE VIDEOGRAPHER: Will our court

1 reporter please swear in the doctor.

2 (The witness was placed under oath.)

3 THE VIDEOGRAPHER: You may proceed,
4 Counsel.

5 EXAMINATION

6 BY MR. PLUTA:

7 Q. Good morning, Dr. Lippman.

8 A. Good morning.

9 Q. Can you please just state your full
10 name for the record.

11 A. Sure. My name is Andrew Lippman,
12 L-I-P-P-M-A-N, and I live at 28 Chestnut Street
13 in Salem, Massachusetts.

14 Q. Thank you.

15 You've been deposed numerous times
16 before, correct?

17 A. I have.

18 Q. Okay. So I won't go over the
19 general rules, except to say that it's important
20 given this format specifically that we're
21 contending with here, the remote deposition, that
22 we attempt not to talk over each other. Do you
23 understand that?

24 A. I do.

25 Q. So I'll -- I'll try to wait until

1 you're complete with your answer before I ask the
2 next question, and I'd also ask that you wait
3 until I finish asking the question before
4 answering the question. Fair?

5 A. Okay.

6 Q. Great. And just one final thing
7 about IPR depositions in particular is that
8 you're not allowed to talk with counsel during
9 breaks. Do you understand that?

10 A. I'm sorry. Say that again. There
11 was a squeak on the line.

12 Q. Sure. One particular thing about
13 IPR depositions is that during any breaks you're
14 not allowed to talk with counsel about the
15 substance of your testimony. Do you understand
16 that?

17 A. Yes, I do. Can I make a comment?

18 Q. Yes.

19 A. Those who are not engaged in the
20 discourse might perhaps mute themselves so as to
21 not have spurious noises coming over the channel.

22 Not you.

23 Q. I had to cough, so --

24 All right. Good. Just -- yeah, if
25 you can't hear or you can't hear what I said, I

1 mean, feel free, please, to just speak up and
2 I'll restate the question or ask the court
3 reporter to repeat the question.

4 So let's, I guess, begin. You
5 understand you're here to testify in an IPR
6 proceeding today, correct?

7 A. Yes.

8 Q. And the proceeding is related to US
9 patent number 10,084,991, correct?

10 A. That sounds right.

11 Q. And that is or should be included in
12 your materials that you have in front of you and
13 designated Exhibit 1001; is that true?

14 (Previously marked Exhibit 1001 was
15 referred to the witness.)

16 THE WITNESS: '991.

17 Q. (BY MR. PLUTA) Great.

18 A. I have a clean copy of it. These
19 are not designated as exhibits -- oh, yes, it is.
20 Yeah. 1001, yeah.

21 Q. It should be -- most of the exhibit
22 numbers are in the lower right-hand corner there.

23 A. Understand.

24 Q. Is it okay if we refer to that as
25 the '991 patent today?

1 A. Yes, it is.

2 Q. Great.

3 Did you meet with anyone to prepare
4 for the deposition today?

5 A. I did.

6 Q. Who did you meet with?

7 A. I met with Jennifer Bailey.

8 Q. Anyone else?

9 A. I believe I might have met with one
10 other counsel, whose name I don't recall offhand,
11 briefly.

12 Q. And was that counsel with
13 Ms. Bailey's firm?

14 A. I don't think so.

15 Q. So you didn't -- you said you didn't
16 recall the counsel's name?

17 A. No, not offhand.

18 Q. Do you recall the firm that that
19 counsel was with?

20 A. It can be verified, but I believe
21 Piper.

22 Q. DLA Piper?

23 A. Probably, yeah.

24 Q. Okay. When did you meet with
25 Ms. Bailey and the attorney from DLA Piper?

1 A. Sometime last week.

2 Q. And did you meet via phone or Webex,
3 or did you meet in person?

4 A. No, we met remotely.

5 Q. About how long did you meet?

6 A. With who?

7 Q. I guess that's a fair question.

8 Did you meet with Ms. Bailey and the
9 attorney from DLA Piper together, or were they
10 separate meetings?

11 A. That was at the tail end of a
12 separate meeting.

13 Q. What do you mean by that answer?

14 A. The counsel -- the additional
15 counsel was only on a call briefly in the course
16 of one meeting.

17 Q. Okay. So you had one meeting with
18 Ms. Bailey, is that fair, to prepare for today's
19 deposition?

20 A. No. I'm sorry. I don't mean to be
21 unclear. No, I had more than one meeting with
22 Ms. Bailey. I thought you were asking about the
23 third person.

24 Q. Okay. So the attorney from DLA
25 Piper was only present for a portion of a meeting

1 that you had with Ms. Bailey to prepare for
2 today's deposition?

3 A. I think that's right.

4 Q. And about how long did you meet with
5 Ms. Bailey to prepare for today's deposition?

6 A. I don't recall precisely, but
7 several hours.

8 Q. Have you spoken to anyone from Apple
9 regarding this deposition?

10 A. No.

11 Q. Have you spoken to anyone else
12 regarding today's deposition and your preparation
13 of your report?

14 A. No.

15 Q. Are you familiar with an individual
16 named Benjamin Bederson?

17 A. I've met Benjamin Bederson.

18 Q. In what context?

19 A. In the context of a law case.

20 Q. Do you recall which law case that
21 was?

22 A. It was an ITC law case that involved
23 Comcast.

24 Q. Have you spoken with Dr. Bederson in
25 the context of the dispute between Apple and

1 Maxell?

2 A. No, I have not. I have not spoken
3 to him since that case, nor actually before, as I
4 can recall.

5 Q. Thank you.

6 Did you review any documents in prep
7 for this deposition today?

8 A. Yes.

9 Q. Do you recall which documents?

10 A. The ones that were sent.

11 Q. Okay. And the documents that were
12 sent, were all those documents labeled with
13 exhibit numbers or otherwise pleadings in this
14 proceeding, such as the petition?

15 A. I believe they are.

16 Q. Did you review any other documents
17 in preparation for your deposition today?

18 A. No.

19 Q. All right. If you could, turn in
20 your materials to your declaration, which is
21 Exhibit 1003.

22 (Previously marked Exhibit 1003 was
23 referred to the witness.)

24 Q. (BY MR. PLUTA) Just let me know
25 when you have that in front of you.

1 A. Exhibit 1003, yes.

2 Q. Great. When did you begin preparing
3 your declaration?

4 A. When did I begin preparing my
5 declaration? My God. Perhaps ten months ago.
6 I'm looking at the declaration. The declaration
7 is signed December 19th of 2019. So, sometime
8 before that.

9 Q. Do you recall when you were retained
10 for this matter to provide a declaration?

11 A. I don't recall precisely, but on the
12 order of a month, six weeks before that.

13 Q. Okay. So October, November of 2019?

14 A. October, November -- probably before
15 December, yeah.

16 Q. Did you draft your declaration
17 yourself?

18 A. The drafting was, in general, done
19 jointly, both over the phone and with my own
20 keyboard, and I'm sure with their keyboard. It's
21 obvious which parts I didn't write.

22 Q. But your declaration, Exhibit 1003,
23 contains all the opinions you intend to offer in
24 this matter, correct?

25 A. I think it says something about

1 that, that this contains my opinions as of that
2 time, but I believe I reserve the right to
3 supplement it as need be, or words to that
4 effect. Would you like me to check?

5 Q. Sure.

6 A. I'm not sure where it says it or
7 whether it even says that.

8 Q. Maybe we can get at it a different
9 way.

10 You said that your declaration,
11 Exhibit 1003 [indiscernible], correct?

12 THE REPORTER: I'm sorry --

13 THE WITNESS: I'm sorry. Say that
14 again.

15 Q. (BY MR. PLUTA) You stand by the
16 opinions expressed in your declaration, correct?

17 A. I do.

18 Q. In your declaration, you discuss
19 various pieces of what we call prior art,
20 correct?

21 A. Yes.

22 Q. Did counsel provide that prior art
23 to you for your consideration prior to signing
24 your declaration?

25 A. I believe that's correct.

1 Q. So are you familiar with the
2 Asmussen reference, Exhibit 1004, you've offered
3 opinions on?

4 (Previously marked Exhibit 1004 was
5 referred to the witness.)

6 THE WITNESS: Yes.

7 Q. (BY MR. PLUTA) Is that a reference
8 that was provided to you by counsel?

9 A. I believe it was.

10 Q. And what about Exhibit 1005, the
11 Bear reference, is that an exhibit that was -- a
12 reference that was provided to you by counsel?

13 (Previously marked Exhibit 1005 was
14 referred to the witness.)

15 THE WITNESS: I believe that's true
16 as well.

17 Q. (BY MR. PLUTA) Would that be true
18 for all the references in which you rely on the
19 grounds set forth in your declaration, that
20 counsel provided you all those references?

21 A. That's 11 months ago. I can't be
22 sure, but I don't think there were any that I
23 provided myself.

24 Q. Thank you.

25 Take a look at paragraph 16, please,

1 of your declaration, which is on page 89.

2 A. Okay.

3 Q. This appears to be a list of the
4 documents you considered in forming your opinion;
5 is that fair?

6 A. It is such a list.

7 Q. And were these the only documents
8 you reviewed in preparation for your declaration?

9 A. I don't recall reviewing anything
10 that's not in that list.

11 Q. Have you reviewed any other
12 documents since signing your declaration,
13 relating to this matter?

14 A. No, I have not.

15 Q. Okay. For example, are you aware
16 that the district court in the underlying
17 litigation issued a claim construction order
18 since you issued this declaration?

19 A. Wait a minute. I'm sorry. I might
20 have misunderstood your question. Ask me that
21 question again, because I think I might have
22 misunderstood it.

23 Q. Sure. So the listing at
24 paragraph 16 of your declaration, you indicated
25 that those are the documents you reviewed in

1 preparation for your declaration; is that right?

2 A. Yes.

3 Q. And then I asked whether you've
4 reviewed any other documents related to this
5 matter since the signing of your declaration.

6 A. Right. And I guess I misunderstood,
7 because I have a couple of other documents before
8 me that include the patent owner's preliminary
9 response to the petition, and I believe I have
10 the decision-granting institution from the patent
11 office. And those did -- I don't believe
12 those -- I didn't -- I didn't see the decision
13 before the declaration, for sure, and I don't
14 think I saw the response before the declaration.

15 So I'm sorry. I misunderstood your
16 question.

17 Q. No, that's fine. Thank you.

18 Any other documents that you
19 reviewed that postdate your declaration in
20 December of 2019?

21 A. Other than those two? No, I don't
22 think so.

23 Q. About how much time did you spend
24 drafting your report?

25 A. Drafting my declaration?

1 Q. Yes.

2 A. I don't recall.

3 Q. Okay. Dr. Lippman, are you familiar
4 in the context of the '911 patent with the term
5 "communication apparatus"?

6 A. Yes, I believe that's used in the
7 claim.

8 Q. That's correct. And do you recall
9 that the petition construes the term
10 "communication apparatus" as used in the claims
11 as a videophone function-added TV receiver?

12 A. Sorry. Which petition?

13 Q. The petition filed by Apple against
14 the '991 patent.

15 A. Okay. So that's -- I don't believe
16 that's marked as an exhibit.

17 Q. It is not, correct. It would -- it
18 would be perhaps one of the first documents in
19 your stack, although I haven't seen the documents
20 in front of you, but it's -- it forms the basis
21 of why we're here today.

22 A. Yeah, I can understand that. The
23 stack is rather disorderly. What -- where are
24 you referring in that?

25 Q. Starting at page 8.

1 A. Page 8 of the petition for inter
2 partes review?

3 Q. Correct.

4 A. I see page 8.

5 Q. Okay. And then on page 9 there's a
6 discussion of the term "communication apparatus."
7 Do you see that?

8 A. Yes.

9 Q. And Apple contends "A proper
10 construction for 'communication apparatus' is a
11 'videophone function-added TV receiver.'"

12 Do you see that?

13 A. Yes, I do.

14 Q. Did you consider Apple's proper
15 construction of "communication apparatus" when
16 offering your opinions in this case?

17 A. I'm not even sure that I saw that
18 before I prepared my declaration, but do I
19 address that in my report or my declaration?

20 Q. Feel free look at Exhibit 1003,
21 which is your declaration.

22 A. Right.

23 (Court reporter clarification.)

24 THE REPORTER: Can we just go off
25 the record real quick?

1 MR. PLUTA: Sure.

2 THE VIDEOGRAPHER: Going off the
3 record, 11:06 a.m.

4 (Recess from 11:06 a.m. to
5 11:08 a.m.)

6 THE VIDEOGRAPHER: We are back on
7 the record, 11:08 a.m.

8 Q. (BY MR. PLUTA) I think there was a
9 question pending. Do you have that in mind, or
10 would you like it read back?

11 A. I suppose it wouldn't hurt to have
12 it read back. I will cease shuffling papers
13 while you're doing that.

14 (The court reporter read the
15 referred-to portion of the record.)

16 MR. PLUTA: That's fine. I guess
17 that really isn't a question.

18 Q. (BY MR. PLUTA) Let me ask the
19 question. We were just discussing Apple's
20 construction of "communication apparatus" set
21 forth in the petition, and the question is, do
22 you address that at all in your declaration and
23 in your analysis of the '991 patent?

24 A. I'm not sure I address it in those
25 terms or precisely, but I -- it would help if you

1 would tell me what you want me to look at.

2 Q. Well, did you -- did you apply a
3 construction to the term "communication
4 apparatus" in your analysis of the claims?

5 A. That's a -- that's a difficult
6 question to answer because of the word
7 "construction." And construction of a claim is a
8 term of art in the legal profession, so I don't
9 generally make a construction. I rely on the
10 courts to do that.

11 Q. Okay. But you understand Apple
12 construed the term "communication apparatus" as
13 used in the claims as a videophone function-added
14 TV receiver, right?

15 A. You're talking about page 9?

16 Q. Correct.

17 A. It reads that "A proper construction
18 for 'communication apparatus' is a 'videophone
19 function-added TV receiver.'"

20 Q. And you understand that's Apple's
21 position, correct?

22 A. I understand that they asserted
23 that, yes.

24 Q. And my question is, do you agree
25 with their assertion there when you --

1 MS. BAILEY: Objection. Scope.

2 MR. PLUTA: Sorry. Let me get my
3 question out first.

4 Q. (BY MR. PLUTA) My question is, did
5 you agree with Apple's assertion with respect to
6 that claim construction when you were drafting
7 your declaration?

8 A. I don't believe -- I'm not sure that
9 I -- I don't believe that I disputed it. I'm not
10 sure that I said anything about it.

11 Did I -- the entire document is in
12 front of me, and it was drafted 11 months ago and
13 reviewed in the last week, so I apologize for not
14 being able to instantly quote chapter and verse.
15 But if you want to point me at a section where I
16 address that, I'd be happy to look.

17 Q. I understand. What I'm trying to
18 understand, Dr. Lippman, is when you came across
19 the term "communication apparatus" in the claims
20 of the '991 patent, whether you were interpreting
21 the claims in light of the prior art in view of
22 Apple's construction offered in its petition or
23 some other type of construction?

24 A. I -- I don't believe that I created
25 any other construction. I'm not sure I created

1 any construction. As I say, "construction" is a
2 loaded word that I avoid using.

3 Q. Okay. Please turn to Exhibit 1001,
4 which is the '991 patent.

5 A. Excuse me while I shuffle papers.
6 Somewhere here I've got the '991.
7 There we go. This is Exhibit -- apologies --
8 Exhibit 1001.

9 Q. Correct. Thank you.
10 Would you agree that the '991 patent
11 generally relates to an apparatus that allows a
12 user to seamlessly and automatically switch
13 between watching video content and participating
14 in a video call in a single device?

15 A. That's a mouthful. If I look at my
16 report, I believe I have a summary of '991.

17 Q. Can you answer the question as I
18 posed it?

19 A. I'm just going to -- I mean, if it's
20 okay, I'm going to refer to what I said in the
21 report as an answer to the question, because I
22 just want to make sure that I -- what I said in
23 the report, because you asked if that was what
24 I -- I believed, or whatever.

25 Q. Let me -- let me re-ask the question

1 because it was a little different than that. I
2 asked if you agreed if the patent -- the '991
3 patent generally relates to an apparatus that
4 allows for a user to seamlessly and automatically
5 switch between watching video content and
6 participating in a video call in a single device.

7 A. Well, what I say is that the patent
8 describes an improved TV receiver that's capable
9 of receiving both traditional over-the-air
10 digital television signals and video on demand,
11 as well as providing functionality for making and
12 receiving video telephone calls.

13 Q. Okay. So when you state that, it
14 sounds like you're agreeing with me, that the
15 '991 patent generally relates to seamlessly
16 switching between video content and participating
17 in a video call within the context of a single
18 device; is that true?

19 A. It says that -- that -- in the
20 background, the patent describes that those were
21 generally separate devices, so the patent's
22 solution is to combine the independent
23 technologies of the videophone and that of the TV
24 receiver in a device that can handle both
25 reception and TV programming and videophone

1 calls.

2 Q. And you agree that's what the '991
3 patent teaches?

4 A. That's what I say. That's what I
5 said, yes.

6 Q. Okay. Take a look at claim 1,
7 please, of the '991 patent.

8 A. I'm there.

9 Q. Claim 1 recites a network
10 interface -- among other things, a "network
11 interface configured to receive first digital
12 information which is received from a contents
13 server which is coupled to the communication
14 apparatus via the network interface and second
15 digital information from another communication
16 apparatus."

17 Did I read that correctly?

18 A. Sounds good to me.

19 Q. And you've designated this claim
20 element as element 1(a) in your declaration,
21 correct?

22 A. I believe it's designated 1(a)
23 consistently in most documents.

24 Q. Okay. So if I refer to element
25 1(a), you're going to know what I'm talking

1 about; it's the network interface element?

2 A. Yes.

3 Q. Okay. Thank you.

4 And in the '991 patent, the network
5 interface is illustrated by element 15, correct?

6 A. Again, where is element -- you said
7 element 15?

8 Q. Correct. Let me point you to
9 Figure 2, if that would help.

10 A. Yes, I see Figure 2.

11 Q. Okay. So as described in the '991
12 patent, the network interface is illustrated by
13 element 15, the network I/F15. Do you agree with
14 that?

15 A. I'm checking my report, but that
16 sounds, offhand -- I believe I refer to it as
17 that.

18 If I'm shuffling papers, please
19 interrupt and yell.

20 Q. I'm sorry. I'm not sure if I'm --
21 I'm waiting for your answer, so -- or you're
22 still looking, but the question was, as described
23 in the '991 patent, the network interface is
24 illustrated by element 15; is that correct?

25 A. A network interface is shown as

1 element 15.

2 Q. Okay. Thank you.

3 And network interface 15 in the '991
4 patent serves as both a receiver and sender of
5 information, correct?

6 A. I believe that's right. It's two
7 ways.

8 Q. And you acknowledge that in your
9 annotation to Figure 2 on page 47 of your
10 declaration, correct?

11 A. I do.

12 Q. Now, looking back to element 1(a) of
13 Exhibit 1001, the '991 patent, according to that
14 claim, the network interface must both receive
15 the first digital information and the second
16 information, digital information, correct?

17 A. I'm sorry. Say that again.

18 Q. Sure. According to claim 1,
19 specifically element 1(a), the network interface
20 must both receive the first digital information
21 and the second digital information, correct?

22 A. I'm not sure that that's complete or
23 therefore fully correct, because there's also
24 digital information that comes in via the
25 broadcast tuner, number 10.

1 Q. Okay. But focusing on element
2 1(a) -- do you have that in mind or in front of
3 you?

4 A. I do.

5 Q. According to that element, the
6 network interface must both receive the first
7 digital information and the second digital
8 information; is that right?

9 A. I think that's roughly the same
10 question, and the answer is "not necessarily."
11 First digital information could likewise come
12 from the broadcast tuner.

13 Q. I'm sorry. You said the first
14 digital information could come from the broadcast
15 tuner?

16 A. Yeah, I think that's right. That
17 could be digital information as well.

18 Q. And can you point me to your report
19 where you opine on that?

20 A. I'm not sure I can in realtime.

21 Q. I don't recall that as being an
22 opinion that you've offered in Exhibit 1003.

23 MS. BAILEY: Objection. Form.

24 THE WITNESS: Who said what?

25 MS. BAILEY: I stated, "Objection."

1 Form." There's not a question. That was a
2 statement.

3 Q. (BY MR. PLUTA) I don't recall that
4 you opined in your declaration that the broadcast
5 tuner could receive first digital information.
6 Can you please point me to the location in
7 Exhibit 1003 where you made that opinion?

8 A. I can point you to paragraph 88,
9 where it says, "When in a TV program viewing mode
10 [sic], the function-added TV receiver is
11 'receiving an over the air digital broadcast
12 program signal by the antenna 9.'" "

13 So paragraph 88 addresses receiving
14 digital broadcasting via the tuner, and
15 paragraph 89 traces receiving digital information
16 for the case of video on demand.

17 Before you ask a question, can I
18 just ask a status check, if everybody is okay,
19 because I've got a panel here that says, "We're
20 detecting background noise from your microphone."
21 This is an offline comment. Is the audio okay
22 for everybody?

23 (Discussion off the record.)

24 Q. (BY MR. PLUTA) Okay. Going back --
25 so you pointed to paragraph 88 with respect to

1 reception of an over-the-air digital broadcast
2 program signal by the antenna 9, correct?

3 A. A broadcast -- digital broadcast
4 program signal, yes.

5 Q. So with that in mind, I'm going to
6 ask my original question: According to claim
7 element 1(a), the network interface of the '991
8 patent must both receive the first digital
9 information and the second digital information.
10 Do you agree with that?

11 A. Well, again, in paragraph 89, I
12 state that in video on demand mode, the request
13 for video on demand goes through the network
14 interface. Is that an answer to your question?

15 Q. I'm -- I'm putting the question in
16 the context of the claim language. Do you
17 understand element 1(a) to have claim language
18 that recites first digital information and second
19 digital information?

20 A. Yes.

21 Q. And do you understand that claim
22 language to require the network interface must
23 both receive the first digital information and
24 the second digital information?

25 A. Yeah -- well, there has to be first

1 digital information and second digital
2 information that come through a network
3 interface.

4 Q. Okay. Thank you.

5 And the network interface of element
6 1(a) must receive both the first and second
7 digital information?

8 A. Well, I think I've said that you can
9 also have first digital information coming via
10 the tuner.

11 Q. I understand that's your position.
12 But regardless of whether it's received by the
13 tuner 10 through the antenna 9, do you agree that
14 the network interface is receiving both the first
15 digital information and the second digital
16 information, according to element 1(a) of the
17 '991 patent, claim 1?

18 A. Well, I'm not sure I understand the
19 question. The patent describes a video
20 television receiver that can do videophones and
21 it can receive digital information. The patent
22 describes digital information as a television
23 program. That could be one. It also describes
24 video on demand as another mode of operation.
25 That can be two. So those can come in via

1 network interfaces.

2 Q. So you would agree that the network
3 interface element in the '991 patent receives
4 both first digital information and second digital
5 information?

6 A. There are occasions where it can,
7 but you can also receive first digital
8 information via tuner.

9 Q. I'm talking specifically about
10 claim 1, element 1(a).

11 A. I thought I was being responsive to
12 that.

13 Q. Take a look at what you've
14 designated element 1(e) in the '991 patent. If
15 you could take a look at claim 1, 1(e) states
16 "wherein when the processor receives an inbound
17 videophone call notice while displaying the first
18 digital information on the display, the processor
19 pauses the displaying of the first digital
20 information and renders the camera operative."

21 Did I read that correctly?

22 A. Yes, you did.

23 Q. And that is what you designate or
24 denote as element 1(a) -- 1(e) in your
25 declaration?

1 A. Yeah, element 1(e), I believe that's
2 correct.

3 Q. Okay. I'd like to explore your
4 opinions with respect to that element. Okay?

5 When you look at element 1(e) of
6 claim 1, that element does not simply require
7 that the camera is rendered operative, correct?

8 MS. BAILEY: Objection to form.

9 THE WITNESS: I'm sorry. Say that
10 again.

11 Q. (BY MR. PLUTA) Yes. If you look at
12 element 1(e) of claim 1, that element does not
13 simply require that the camera is rendered
14 operative, correct?

15 MS. BAILEY: Same objection.

16 THE WITNESS: The claim has several
17 phrases in it, and it says when the
18 processor receives an inbound video call --
19 sorry -- videophone call notice while
20 displaying the first digital information,
21 the processor pauses the displaying of the
22 first digital information and renders the
23 camera operative.

24 So claim 1 includes more than just
25 rendering the camera operative. Was that

1 what your question was?

2 Q. (BY MR. PLUTA) Correct. Thank you.

3 And you agree that the camera must
4 be rendered operative by the processor, correct?

5 A. I think I -- yes.

6 Q. And you agree that the camera must
7 be rendered operative by the processor when the
8 processor receives an inbound videophone call
9 notice?

10 A. I'm not sure that it has to be
11 solely rendered by the processor, but ultimately
12 what has to happen is that the camera is rendered
13 operative.

14 Q. If it's not rendered operative by
15 the processor, how else is it rendered operative,
16 in your opinion? And please point me to your
17 declaration.

18 A. Excuse me while I shuffle things. I
19 can actually do that more quietly, can't I?

20 I know that I discuss this in the
21 context of Asmussen.

22 Q. Sorry. Were you done?

23 A. Yes.

24 Q. Okay. Thanks. I didn't want to cut
25 you off.

1 A. I apologize for not signaling that,
2 yes.

3 Q. I understand you discuss it in the
4 context of Asmussen, but what I'm asking in this
5 specific question relates to looking at the claim
6 language of claim 1 in the '991 patent, and my
7 question is whether you agree that the camera
8 must be rendered operative by the processor when
9 the processor receives an inbound videophone call
10 notice.

11 A. The -- ultimately the processor is
12 in control of the operation of the camera, but
13 the agency by which it executes that control can
14 be a variety of things.

15 Q. Well, claim 1 doesn't say anything
16 about that the claim -- the camera can be
17 rendered operative by an agency of various
18 things, right?

19 A. Well, I guess the point is the
20 processor is executing a program, and so if
21 there's a wire from the processor to the camera
22 to energize it, then in some sense the camera is
23 energized by the processor, but that
24 determination of energizing is -- is what I mean
25 by the agency of it.

1 Q. Okay. Would you agree that the
2 claim element 1(e) requires that the camera is
3 rendered operative by the processor when the
4 processor pauses the displaying of the first
5 digital information?

6 A. I'm sorry. Say that again. I'm
7 looking at the claim language while you say that.

8 Q. Sure. And it should look familiar,
9 but I'm asking if you agree that the claim
10 requires that the camera is rendered operative by
11 the processor when the processor pauses the
12 displaying of the first digital information?

13 MS. BAILEY: Objection. Form.

14 THE WITNESS: I'm not sure in my
15 report that I step through the sequence of
16 elements in quite that way.

17 Q. (BY MR. PLUTA) So are you
18 disagreeing with the statement that the claim
19 requires that the camera is rendered operative by
20 the processor when the processor pauses the
21 displaying of the first digital information?

22 MS. BAILEY: Objection. Form.

23 THE WITNESS: I'm not sure I
24 understand the question that I'm -- am I
25 disagreeing with what?

1 Q. (BY MR. PLUTA) Take a look at claim
2 element 1(e). Do you have that language in front
3 of you there?

4 A. I do.

5 Q. Do you see that it says, towards the
6 last clause of the element, "the processor pauses
7 the displaying of the first digital information
8 and renders the camera operative"?

9 Do you see that?

10 A. I do.

11 Q. So do you agree that the claim
12 requires that the camera is rendered operative by
13 the processor when the processor pauses the
14 displaying of the first digital information?

15 MS. BAILEY: Objection. Form.

16 THE WITNESS: I'm not sure I
17 understand the difference between what
18 you're asking and what the claim language
19 is. The claim language says the processor
20 pauses the displaying of the first digital
21 information and renders the camera
22 operative.

23 Q. (BY MR. PLUTA) Okay.

24 A. I understand that, but I'm having
25 trouble understanding the difference between what

1 you're asking and what the claim language is.

2 Q. I don't see any difference,
3 actually, other than maybe I'm just phrasing it a
4 little differently, but let me just get your
5 agreement.

6 So you agree that the processor
7 pauses the displaying of the first digital
8 information and then renders the camera
9 operative?

10 A. I agree that that's in the claim;
11 the processor pauses the displaying of the first
12 digital information and renders the camera
13 operative.

14 Q. Okay. And you don't have any other
15 reading of the claim that would be different,
16 right?

17 MS. BAILEY: Objection. Form.

18 THE WITNESS: To the extent that
19 that sentence says what it says, it says
20 the processor pauses the displaying and
21 renders the camera operative. But, again,
22 the question is whether -- I mean the --
23 not the question but the -- as far as it
24 goes, I understand that sentence, and I
25 don't disagree with it, only as far as it

1 goes.

2 Q. (BY MR. PLUTA) Okay. Staying on
3 element 1(e), claim element 1(e), would you
4 agree, does not recite that the camera is
5 rendered operative by the processor when a user
6 accepts a videophone call?

7 MS. BAILEY: Objection. Form.

8 THE WITNESS: That language is not
9 in the claim.

10 Q. (BY MR. PLUTA) So element 1(e)
11 requires that the camera is rendered operative by
12 the processor without [indiscernible] --

13 (Court reporter clarification.)

14 Q. (BY MR. PLUTA) Claim 1(e) requires,
15 then, that the camera is rendered operative by
16 the processor without user input; is that
17 correct?

18 MS. BAILEY: Objection. Form.

19 THE WITNESS: I'm not sure that the
20 claim is definitive on that.

21 Q. (BY MR. PLUTA) What do you mean?

22 A. All that it says is those two things
23 must happen, but recall I used the word "agency"
24 before. It doesn't preclude or eliminate that
25 there be user intervention as a possibility.

1 Q. Okay. So when you gave an example
2 of agency before, you gave the example of, for
3 example, an intermittent wire between the
4 processor and the camera to render it operative.
5 Are you including other types of agency that
6 allow the processor to render the camera
7 operative?

8 A. I'm not sure. I don't believe I
9 said what you just said. And if I did, I didn't
10 mean to.

11 If there's a wire between the camera
12 and the processor, then in some way the processor
13 is causing the camera to be operative or not.
14 But the agency has to do with what programming in
15 the processor causes it to make the camera
16 active, not the existence of the wire but rather
17 the programming in the processor.

18 Q. Okay. Sorry. I wasn't trying to
19 mischaracterize your testimony. I think I just
20 misunderstood it.

21 So --

22 A. I apologize for being unclear.

23 Q. The agency that you were discussing
24 earlier, then, has to do with the programming of
25 the processor? Is that a fair summary?

1 A. Yes.

2 Q. Okay. Are there any other types of
3 agency that come into play that allows the
4 processor to act how it's supposed to act?

5 A. Well, I -- I think the gist of what
6 you're trying to ask is that the processor is
7 executing a program, and it is the programming
8 that actually causes the processor to render the
9 camera operative or not.

10 Q. Okay. And in the context of my
11 question earlier -- let me just go back to that
12 and then we can pick up on this discussion -- I
13 asked whether you agreed that claim element 1(e)
14 renders -- or requires that the camera is
15 rendered operative by the processor without user
16 input, and then you, I think, disagreed with
17 that. And then you referenced your terminology
18 of "agency." I'd like to know what you meant by
19 that in the context of that clause of element
20 1(e).

21 MS. BAILEY: Objection. Form.

22 THE WITNESS: Claim element 1(e)
23 does not preclude that there be user
24 intervention nor does it require it.

25 Q. (BY MR. PLUTA) Okay. So when you

1 reference an "agency," for lack of a better term,
2 that acts on the processor, you're also including
3 user input as that agency?

4 A. I think you could probably
5 substitute the word "programming" for "agency" so
6 as not to confuse things by adding some new
7 hard-to-define term.

8 If the processor renders the camera
9 operative, the processor renders the camera
10 operative by dint of the program running in the
11 processor. That program could be responsive to
12 user input. It could be responsive to many other
13 things.

14 Q. Okay. Thank you.

15 A. Is this a convenient time to take a
16 break?

17 Q. Sure. Yes.

18 A. Not a particularly long break.

19 Q. Ten minutes? Is that fine?

20 MS. BAILEY: I'm fine with five
21 minutes, if that works for you.

22 MR. PLUTA: Five minutes is great.

23 MS. BAILEY: Dr. Lippman, does that
24 work for you?

25 THE WITNESS: Five minutes.

1 THE VIDEOGRAPHER: Going off the
2 record, 11:45 a.m. This ends media file
3 number 1 in the deposition of Dr. Andrew
4 Lippman.

5 (Recess from 11:45 a.m. to
6 11:53 a.m.)

7 THE VIDEOGRAPHER: We are on the
8 record at 11:53 a.m. This begins media
9 file number 2 in the deposition of
10 Dr. Andrew Lippman.

11 Q. (BY MR. PLUTA) Mr. Lippman, please
12 take a look at Exhibit 1004, which is the patent
13 to Asmussen.

14 Asmussen is one of the references
15 you utilized to express your opinion that the
16 claims of the '991 patent are unpatentable,
17 correct?

18 A. Yes. Rendered obvious, yes.

19 Q. You don't offer an opinion, however,
20 that Asmussen alone renders the challenged claims
21 obvious; is that right?

22 A. I believe that's correct.

23 Q. Asmussen discloses, would you agree,
24 a set top converter box or terminal for a
25 television program delivery system that provides

1 both a menu generation capability as well as a
2 number of advanced features and functional
3 capabilities?

4 A. I think you're quoting from
5 Asmussen.

6 Q. I am. Column 3, line 21 through 30.

7 A. "More specifically, the present
8 invention is an advanced set top converter box
9 that acts as a terminal in the viewer's home."
10 Is that what you were referring to?

11 Q. I was referring to column 3,
12 lines 21 through 30. But is that your general
13 understanding of what Asmussen discloses?

14 A. I understand that to be the summary.
15 I accept that.

16 Q. The set top terminal, according to
17 Asmussen and as set forth in column 3, lines 31
18 through 41, is achieved through a set of hardware
19 upgrades which provide additional advanced
20 features and functional capabilities. Do you
21 agree with that?

22 A. It addresses upgrades to set top
23 boxes.

24 Q. Take a look at column 4, lines 31
25 through 54, please. If you can, just read those

1 to yourself before I ask the next question.

2 A. 31 through --

3 Q. 54.

4 A. I think I'm with you.

5 Q. Okay. Do you agree that the objects
6 of Asmussen's invention are directed primarily
7 towards menus and interfaces allowing users to
8 access television programs and program options?

9 A. I believe that it is at least a
10 suite of things as listed there.

11 Q. Okay. Let's, in the context of
12 Asmussen, discuss your opinions relating to the
13 network interface element of claim 1. Okay?

14 A. Yes.

15 Q. It's your contention that the claim
16 network interface of the '991 patent is met in
17 Asmussen collectively by the tuner 603 and the
18 receiver 750; is that right?

19 A. You changed gears. You were talking
20 about claim element 1(e), and now I believe
21 you're talking about claim element 1(a)?

22 Q. Correct.

23 A. Give me a moment to return to my
24 report to where I address that.

25 Q. Sure. I would suggest -- and maybe

1 I can point to paragraph 82.

2 A. Okay.

3 Q. I'll restate my question.

4 It is your contention that the claim
5 network interface of the '991 patent is met in
6 Asmussen collectively by the tuner 603 and
7 receiver 750 of Asmussen?

8 A. You're referring to my chart?

9 Q. I am.

10 A. The chart says that the collective
11 tuner and receiver 750 are the network interface.

12 Q. And that's your opinion today,
13 correct?

14 A. I still agree with what I said in my
15 report.

16 Q. Okay. Now, if you could, take a
17 look at Figure 4 of Asmussen, Exhibit 1004. And
18 can you find the tuner 603 in the upper left-hand
19 corner of Figure 4?

20 A. Yes.

21 Q. So the tuner 603 serves only as a
22 receiver of cable TV input, correct?

23 A. In Figure 4, it's shown as receiving
24 CATV input.

25 Q. Okay. Take a look at Figure 11 as

1 well. And if you could, find the tuner 603 in
2 that figure -- below the figure.

3 A. I see it, yes.

4 Q. And tuner 603 in Figure 11 serves as
5 a receiver of the cable in signal from the
6 headend. Would you agree with that?

7 A. The tuner 603 is receiving a cable
8 signal.

9 Q. From the headend, correct?

10 A. Figure 11 says from the headend.

11 Q. Okay. Take a look at Figures 12a
12 and 12b on the next pages.

13 A. Okay. Figure 12a and 12b, yeah.

14 Q. Figure 12a shows the components,
15 according to Asmussen, of the level A, B, and C
16 hardware upgrades; is that correct?

17 A. That -- [indiscernible] -- in 12a.
18 (Court reporter clarification.)

19 THE WITNESS: That's depicted in
20 12a.

21 Q. (BY MR. PLUTA) And then 12b shows
22 the components of the level D hardware upgrades;
23 is that correct?

24 A. That's what it says in 12b, yes.

25 Q. Now, in both Figure 12a and 12b, the

1 cable TV signals are input to the set top
2 terminal 220 through the tuner 603; is that
3 right?

4 A. I'm sorry. What are you referring
5 to?

6 Q. Take a look at 12a and 12b, or else
7 I could just break up the question if you want to
8 look at them separately.

9 A. I guess I'm ready for your question.

10 Q. Okay. In both Figures 12a and 12b,
11 the cable TV signals shown there are input to the
12 set top terminal 220 through the tuner 603. Do
13 you agree with that?

14 A. Not exactly. It says that cable
15 television input signals are going to the tuner.

16 Q. Okay. So I'm having a hard time
17 distinguishing why you disagree with my question.
18 You said "not exactly." What did I get wrong?

19 MS. BAILEY: Objection. Form.

20 THE WITNESS: What's shown in Figure
21 12a is that a cable input signal goes to
22 the tuner.

23 Q. (BY MR. PLUTA) Okay. And would you
24 agree the same is shown in Figure 12b?

25 A. That a --

1 Q. That the cable TV input is going
2 into the tuner?

3 A. A cable -- an input from the cable
4 is going into the tuner. Well, actually, 12b,
5 it's kind of funny, isn't it? It shows the arrow
6 going the other way.

7 Q. Right. And would you agree that
8 that's likely a mistake, that it's supposed to be
9 going into the tuner 603, the cable TV input in
10 Figure 12b?

11 A. I don't know. I'd have to look at
12 it.

13 Q. Go ahead.

14 A. I don't know. Might be.

15 Q. Let's take a look at Asmussen at
16 column 28, 7 through 12.

17 A. Column 28.

18 Q. Lines 7 through 12. Are you there?

19 A. I'm there. I'm looking at it, yes.

20 Q. Okay. So it says, "Figure 12b
21 diagrams the intersection between the set top
22 terminal 220 and the Level D hardware upgrade,
23 indicated generally at 130. As shown in the
24 figure, the cable TV [sic] signals are input to
25 the set top terminal 220 through its tuner 603

1 and receiver component 601."

2 Do you see that?

3 A. Yes, sir.

4 Q. So would you agree that in Figure
5 12b the cable TV signals are input to the set top
6 terminal 220 through the terminal?

7 A. TV signals are input into there,
8 yes.

9 Q. Okay. Thank you.

10 Now, you also, we discussed, contend
11 that Asmussen's receiver, element 750, is part of
12 the network interface of claim 1, correct?

13 A. I believe I do in the chart, yes.

14 Q. Okay. Can you take a look at
15 Figure 30, please, of Asmussen.

16 A. Okay.

17 Q. And you'll see on the far right is
18 receiver 750?

19 A. Yes.

20 Q. And the receiver 750 is shown by the
21 arrow to receive an input, correct?

22 A. Yes.

23 Q. In fact, if we look at column 50,
24 lines 44 through 49 of Asmussen, would you agree
25 that the receiver 750 is described as receiving

1 an incoming, i.e., downstream video conferencing
2 signal?

3 A. I'm turning to Asmussen column 50.
4 Sorry. Which --

5 Q. Line 44, please.

6 A. Column 50, lines 44 --

7 Q. Through 49.

8 A. Yeah, line 44, he says, "In regards
9 to reception, an incoming [sic] video
10 conferencing signal is received by receiver 750."

11 Q. Okay. So are you aware of any other
12 disclosure in Asmussen other than Figure 30 in
13 column 50 that discuss the receiver 750?

14 A. That's asking me to look at a
15 negative. I can't assert definitively that there
16 are no other references to 750, but that's a
17 reference to 750 in column 50.

18 Sorry if that was a complicated
19 sentence.

20 Q. That's okay.

21 If you refer to paragraph 15 of
22 your -- I'm sorry -- 115 of your declaration,
23 you're discussing the receiver 750. Would you
24 agree that the receiver 750 is part of Asmussen's
25 upgraded components?

1 A. I'm sorry. Say that again. I was
2 looking at -- I turned to paragraph 115.

3 Q. 115.

4 A. I was glancing at 115 while you
5 asked your question. I apologize.

6 Q. No problem.

7 Okay. So my question is, do you
8 agree that receiver 750 is part of Asmussen's
9 upgraded components?

10 A. I hadn't used the word "upgrade," I
11 guess, but they are part of the system that is
12 used for transmitting and receiving data on a
13 video call.

14 Q. Now, does receiver 715 -- I'm sorry.
15 Strike that.

16 Does Asmussen's receiver 750 discuss
17 anything about transmission?

18 A. I'm not sure I understand the
19 question.

20 Q. You just testified that Asmussen
21 discusses reception and transmission in the
22 discussion of paragraph 115. Is that a fair
23 summary of what we were just discussing?

24 A. I'm not sure, but paragraph 115 does
25 say the upgraded capabilities include video

1 calling and that video calling requires an
2 upstream or reverse pass -- path or transmission
3 communication capability.

4 Q. Okay. And my question is does
5 receiver 750 provide that transmission
6 capability?

7 A. The receiver provides the reception
8 capability. The receiver is the component that
9 receives incoming downstream video conferencing
10 signals.

11 Q. Okay. Take a look at paragraph 116,
12 please.

13 A. Paragraph 116 in my declaration?

14 Q. Correct. Thank you.

15 A. Yes.

16 Q. You state here that "Figure 12a is
17 an exemplary embodiment of how the receiver 750
18 and the transmitter 730 would be integrated into
19 the set top terminal"; is that correct?

20 A. Yes.

21 Q. And that's still your opinion today?

22 A. Unless you misstated what I wrote,
23 what I wrote is my opinion.

24 Q. Okay. And, again, Figure 12a is
25 generally referred to by Asmussen as showing the

1 level A, B, and C hardware upgrades, correct?

2 A. It's so labeled.

3 Q. Asmussen does not disclose receiver
4 750 or the transmitter 730 as being included in
5 the level A, B, and C hardware upgrades, does it?

6 A. I'll take your word for that.

7 Q. But your opinion today is that the
8 receiver 750 and the transmitter 730 can be
9 integrated into the level A, B, and C hardware
10 upgrades shown in Figure 12a?

11 MS. BAILEY: Objection. Form.

12 (Court reporter clarification.)

13 THE WITNESS: Are you back to me?

14 Apologies.

15 What I say is they are integrated
16 into the set top terminal.

17 Q. (BY MR. PLUTA) Why do you point to
18 Figure 12a as an exemplary embodiment of how the
19 receiver 750 and transmitter 730 would be
20 integrated into the set top terminal?

21 A. Hold that one second while I shuffle
22 papers.

23 Because these figures are showing
24 aspects of the set top box or set top terminal
25 where there exists upstream RF data as well as

1 downstream data.

2 Q. Okay. And your opinion is that you
3 could just incorporate receiver 750 into the
4 hardware upgrades A, B, and C of Asmussen?

5 A. I'm not sure that I said it exactly
6 that way. One can incorporate 750 and 730 into
7 the set top terminal to interface to the cable
8 television network.

9 Q. Is receiver 750 not integrated by
10 Asmussen into the set top terminal?

11 A. I'm --

12 MS. BAILEY: Objection. Form.

13 THE WITNESS: I think I'm getting
14 confused. What -- what are you asking?

15 Q. (BY MR. PLUTA) I believe you said
16 Figure 12a is an example of how receiver 750
17 would be integrated into the set top terminal.
18 But my question is, isn't receiver 715 [sic]
19 already part of the set top terminal in Asmussen?

20 THE REPORTER: I'm sorry. Did you
21 say 750 or 715?

22 MR. PLUTA: 7-5-0.

23 THE WITNESS: I think I heard 7-1-5
24 as well. It's probably a slip of the
25 tongue.

1 Receiver 750 and transmitter 730 are
2 integrated into the set top terminal. What
3 I say is that it could be upgraded to
4 insert -- to include certain functionality
5 and associated hardware, such as receiver
6 component 601, and Figure 12a illustrates a
7 way that they would be integrated into the
8 set top terminal.

9 Q. (BY MR. PLUTA) Okay. But you would
10 agree that receiver 750 and transmitter 730 are
11 not shown in Asmussen as being incorporated into
12 Figure 12a, the hardware upgrades A, B, and C,
13 correct?

14 A. I'm not sure that Asmussen has a
15 depiction of that, but that's not necessary.

16 Q. Let's take a look at paragraph 128
17 of your declaration.

18 A. I'm at paragraph 128.

19 Q. Okay. Here is one of the paragraphs
20 that you contend that Asmussen teaches the
21 microprocessor rendering the camera operative
22 [sic] when the processor receives an inbound
23 videophone call notice; is that right?

24 A. I'm sorry. Are we changing contexts
25 from claim 1(a) to claim element 1(e)?

1 Q. We are.

2 A. Thank you. Okay. I'm at
3 paragraph 128.

4 Q. Okay. So your contention is that
5 Asmussen teaches the microprocessor rendering a
6 camera operative when the processor receives an
7 inbound videophone call notice; is that right?

8 A. 128 says, "Asmussen teaches the
9 microprocessor rendering the camera operating" --
10 you can use "operative" if you want -- "when the
11 processor receives an inbound videophone call
12 notice."

13 Q. Okay. And as support for that, you
14 cite Asmussen column 34 -- sorry -- column 21,
15 lines 34 through 42; is that right?

16 A. That is cited. I'm turning to
17 column 21.

18 Q. I'd like to focus on first the
19 second-to-last sentence of paragraph 128. There
20 you state that "no reasonable skilled person
21 would design a video calling system to always
22 leave the camera on (regardless of whether an
23 incoming call is detected or is active)."

24 Do you see that?

25 A. Yes.

1 Q. And is that still your opinion
2 today?

3 A. Yes.

4 Q. Okay. Could a camera be on but not
5 operative?

6 MS. BAILEY: Objection to form.

7 THE WITNESS: That's an interesting
8 question. So if I modified that to say "no
9 reasonable skilled person would design a
10 video calling system to leave the camera
11 operative because a camera that's operative
12 has the potential to violate the user's
13 privacy," I would agree with that too.

14 Q. (BY MR. PLUTA) Well, I'm focusing
15 on what you wrote in your declaration.

16 You said that "no reasonable skilled
17 person would design a video calling system to
18 always leave the camera on (regardless of whether
19 an incoming call is detected or active)."

20 So I -- I'm wondering whether a
21 camera could be on but not operative.

22 MS. BAILEY: Objection. Form.

23 THE WITNESS: I don't think that I
24 teased it apart to the point of making that
25 distinction.

1 Q. (BY MR. PLUTA) Well, do you agree
2 that no reasonable skilled person would design a
3 video calling system to always leave the camera
4 on?

5 A. To -- no one would design a video
6 calling system to leave the camera on
7 continuously when -- when there was no video call
8 going on. That seems to me to be relatively
9 plain English, but I'm not sure why -- the
10 distinction you're trying to draw.

11 Q. Well, I go back to my original
12 question: Could a camera be on but not
13 operative?

14 MS. BAILEY: Objection. Form.

15 THE WITNESS: As I say, I don't
16 think I teased those apart, so I suppose
17 I'd have to consider what "on" would mean
18 when it's not operative.

19 Q. (BY MR. PLUTA) Well, you agree that
20 the claim language of the '991 patent discusses
21 rendering the camera operative, correct?

22 A. The claim language, I believe, uses
23 the word "operative."

24 Q. And you haven't considered any
25 differences between a camera, for example, being

1 operative versus being on?

2 A. Independent of any of those things,
3 when there is a camera that's aimed at you, it
4 has the potential to violate your privacy and
5 waste power. So that camera would be disabled
6 when it was not being used for its application.

7 Q. Would camera being disabled be the
8 same thing as or equivalent to the camera being
9 off?

10 MS. BAILEY: Objection. Form. And
11 scope.

12 THE WITNESS: I suspect there are
13 ways of disabling the camera without having
14 it off. One could put a lens cap on it.

15 Q. (BY MR. PLUTA) Well, have you ever
16 considered a camera, or any device, really,
17 having, for example, a wake-up function?

18 MS. BAILEY: Objection. Form. And
19 scope.

20 THE WITNESS: I'm not sure I
21 understand what a wake-up function is.

22 Q. (BY MR. PLUTA) You don't have an
23 understanding of what a wake-up function is for
24 an electronic device?

25 A. I don't understand what you're

1 asking as a wake-up function.

2 Q. I'm trying to get at the question
3 which I originally asked, whether a camera could
4 be on but not operative. And I'm asking whether
5 you considered a device such as a camera
6 incorporating a wake-up function, in other words,
7 that the camera is on but not operative and is
8 only operative when the wake-up function is
9 implemented?

10 MS. BAILEY: Objection. Form. And
11 scope.

12 THE WITNESS: I don't believe I
13 considered a wake-up function. I don't
14 think I used those terms in my report.

15 Q. (BY MR. PLUTA) In the context of
16 your experience, have you ever heard the term
17 "wake-up function" in the context of electronic
18 devices?

19 MS. BAILEY: Objection. Scope.

20 THE WITNESS: I'm not sure I
21 understand what you mean by "wake-up
22 function."

23 Q. (BY MR. PLUTA) In the last sentence
24 of paragraph 128, you state that "A camera that
25 is always 'on' has the potential to violate the

1 user's privacy and also would unnecessarily waste
2 power and computational resources."

3 How would a camera that's always on
4 unnecessarily waste power in the context of the
5 '991 patent?

6 A. Well, an electronic device that's on
7 uses power.

8 Q. Okay. Is -- is power a concern in
9 set top boxes?

10 A. [Indiscernible.]

11 THE REPORTER: I'm sorry. Did you
12 answer? I missed it.

13 THE WITNESS: I didn't answer, no.
14 I'm thinking about that concept.

15 Power is a concern in -- what does
16 "concern" mean? Power -- what does
17 "concern" mean?

18 Q. (BY MR. PLUTA) Well, I'm trying to
19 get at your -- your statement, that you state
20 that a camera that is always on would
21 unnecessarily waste power. Okay?

22 And my question is, is power and, I
23 guess, the wasting of power a concern in set top
24 box design?

25 A. Power is a concern in the design of

1 any electronic system.

2 Q. Would you agree that most set top
3 boxes are plugged into a power source?

4 A. Yes.

5 Q. So how, if a camera is always on,
6 would it unnecessarily waste power?

7 A. Because it's using power when it's
8 on.

9 (Court reporter clarification.)

10 Q. (BY MR. PLUTA) So why is power
11 consumption a concern for devices that are
12 plugged in?

13 A. Power is a concern for many reasons,
14 including heat dissipation, design of the power
15 supply, design of the overall system. One always
16 keeps a system -- the complete operation of a
17 system in mind, and its power consumption is part
18 of that.

19 Q. And has that been the case and
20 consideration for engineers going back 20 years?

21 A. That power has been a concern of
22 designing anything?

23 Q. Yes.

24 A. I would say so.

25 Q. In the latter half of that last

1 sentence of paragraph 128, you also state that a
2 camera that is always on has -- would
3 unnecessarily waste computational resources.
4 What do you mean by that?

5 A. Well, if the camera is in any way
6 active or processing any information, then it
7 would be using computational resources.

8 Q. So is it your opinion that a camera
9 that's always on is using computational resources
10 regardless of whether it's processing video
11 signals?

12 MS. BAILEY: Objection. Form.

13 THE WITNESS: A camera that's on is
14 processing something. If the lens cap is
15 on, for example, then it's processing a
16 scene that's dark, but a -- an electronic
17 device that is on is at least doing
18 something.

19 Q. (BY MR. PLUTA) Let's go back up to
20 the middle of paragraph 128, still on page 82 of
21 your declaration.

22 A. Okay.

23 Q. You state that "Additionally,
24 Asmussen teaches the setting for the default
25 state of the camera is selectively enabled as on

1 or off to support video calling, thus indicating
2 that at least in some instances (when the user
3 sets the default state to 'on'), the camera is
4 rendered on when there is an inbound video call."

5 Did I read that correctly?

6 A. Yes, I believe you did.

7 That wasn't me shuffling papers.

8 Q. That was me.

9 Is that still your opinion today?

10 A. Yes.

11 Q. And in a default "off" state in
12 Asmussen, the camera would not be rendered
13 operative until the user manually activates the
14 camera, correct?

15 A. Something would have to activate it.

16 Q. Okay. And Asmussen discloses the
17 user doing that, correct?

18 A. Does Asmussen specifically say that?
19 That may be implied.

20 Q. Right. And take a look at
21 paragraph 129 in your declaration. At the very
22 end of that paragraph, you state, "...I further
23 note that in a default 'off' state, it is my
24 opinion the camera would not be rendered
25 operative until the user manually activated the

1 camera."

2 Is that your opinion?

3 A. That's my opinion.

4 Q. You also state that the "on" state
5 of the camera occurs in response to an inbound
6 video call because Asmussen teaches setting the
7 default state to support video calling; is that
8 right?

9 A. He allows the default state of the
10 camera to be on and the camera is used for video
11 calling.

12 Q. Well, in Asmussen the "on" state of
13 the camera can only occur if the user manually
14 activates the camera into an "on" state; isn't
15 that correct?

16 MS. BAILEY: Objection. Form.

17 THE WITNESS: I'm not sure I
18 understood the question, but I don't
19 believe so.

20 Q. (BY MR. PLUTA) You don't believe
21 that in Asmussen, the "on" state of the camera
22 can only occur if the user manually activates the
23 camera into an "on" state?

24 MS. BAILEY: Objection. Form.

25 THE WITNESS: I believe I say

1 something different in paragraph 128.

2 Q. (BY MR. PLUTA) You state, "In my
3 opinion the 'on' state of the camera occurs in
4 response to an inbound video call because
5 Asmussen teaches setting the default state 'to
6 support video calling.'"

7 Is that the section you're pointing
8 to?

9 A. Yes.

10 Q. And how is the state of the camera
11 set by Asmussen?

12 A. Well, Asmussen provides the ability
13 for the user to set a default where the default
14 is that the camera be on.

15 Q. So the user would set that default
16 state?

17 A. At some point in time. Not at the
18 time of an incoming call, but at some point in
19 time. It's a default state. It's a setting.
20 Yes.

21 Q. So when you state that "the 'on'
22 state of the camera occurs in response to an
23 inbound video call," you're assuming the user
24 already manually activated the camera into an
25 "on" state?

1 MS. BAILEY: Objection. Form.

2 THE WITNESS: No, merely that the
3 default state of the camera has been set to
4 on.

5 Q. (BY MR. PLUTA) By the user?

6 A. At some time.

7 Q. The next sentence in paragraph 128,
8 you state, "Additionally, rendering the camera
9 operative when the processor receives an inbound
10 video call -- videophone call notice would be the
11 most logical and straightforward design."

12 Do you see that?

13 A. Yes.

14 Q. Asmussen doesn't expressly disclose
15 that rendering the camera operative occurs when
16 the processor receives inbound video call notice.
17 Do you agree with that?

18 A. I'm sorry. Say that again, because
19 that's a negative. That's a hard question to
20 answer.

21 Q. Asmussen does not expressly disclose
22 that rendering the camera operative occurs when
23 the processor receives an inbound videophone call
24 notice. Would you agree with that?

25 A. Asmussen states that the user can

1 set the system up so as to have a default of the
2 camera being on. And my assertion in
3 paragraph 128 is that the camera therefore
4 becoming on is in response to an inbound video
5 call because it's there to support video calling.

6 Q. But there's nothing in Asmussen that
7 expressly discloses that; that's an assumption
8 you're making and an opinion you're rendering.
9 Correct?

10 MS. BAILEY: Objection. Form.

11 THE WITNESS: I state it as my
12 opinion, and I refer to 21, 34. So let me
13 just see if I can check that.

14 So let me refer you to Asmussen
15 column 21, line 34, which is what I've
16 referred to there. Have you got that?

17 Q. (BY MR. PLUTA) Yes.

18 A. So it says to support video calling,
19 the user can set up such things as the default
20 state of the video camera on or off.

21 Q. Through the video call options menu
22 1022, correct?

23 A. Sorry. Yes.

24 So that's my reference in Asmussen
25 for -- for that conclusion or paragraph.

1 Q. And the column 21, line 34 through
2 42, for that matter, does not disclose anything
3 about rendering the camera operative when the
4 processor receives an inbound video call notice.
5 Would you agree with that?

6 A. Well, it says that the default state
7 of the camera is on, which what I say is the
8 logical and straightforward design.

9 Q. I understand what you wrote in your
10 report. What I'm getting at is the citation in
11 Asmussen column 21, line 34 through 42, does not
12 state that the camera is rendered operative when
13 the processor receives an inbound video call --
14 videophone call notice. Do you agree with that?

15 A. That language is not in the
16 citation?

17 Q. Can you please turn your attention
18 to Exhibit 1005, which is the Bear reference.

19 A. Excuse me for a moment. You're
20 going to hear shuffling.

21 Q. Sure.

22 A. Before we turn to Bear, can I take a
23 two-minute break?

24 Q. Absolutely.

25 A. What's our agreed time for this

1 break?

2 Q. Just 11 -- or 12:50, in your case.

3 A. Twelve five zero?

4 Q. Yes.

5 A. Roger.

6 THE VIDEOGRAPHER: Going off the
7 record, 12:44 p.m. This ends media file
8 number 2 in the deposition of Dr. Andrew
9 Lippman.

10 (Recess from 12:44 p.m. to
11 12:52 a.m.)

12 THE VIDEOGRAPHER: We are back on
13 the record at 12:52 p.m. This begins media
14 file number 3 in the deposition of
15 Dr. Andrew Lippman.

16 Q. (BY MR. PLUTA) All right.

17 Dr. Lippman, let's take a look at Bear, which is
18 Exhibit 1005, and your opinions with respect to
19 that. So, find Bear and then also turn to
20 paragraph 134 of your declaration.

21 A. I have Bear with no extra paper
22 shuffling needed, and I have paragraph 134.

23 Q. Great. If you could just review
24 paragraph 134 and your opinions on Bear related
25 to element 1(e), and I'll have a couple

1 questions.

2 A. Okay.

3 Q. Okay. And please now turn to Bear
4 Exhibit 1005 at column 10, line 38. If you could
5 read to yourself Bear at column 10, line 38 to
6 51, and let me know when you're done.

7 A. Okay.

8 I think I've read it. You're
9 talking about column 10, line 38 through 64?

10 Q. Yeah. I was going to refer to up to
11 51, but if you read a little bit more, that's
12 perfectly fine.

13 Bear, in that area, refers to lens
14 cover 310, correct?

15 A. It does.

16 Q. And did you consider lens cover 310
17 in forming your opinions in paragraph 134 of your
18 declaration?

19 A. I'll check 134, but I don't believe
20 that I did.

21 Q. Bear discloses in column 10,
22 lines 38 through 51 that the lens cover must be
23 removed in order to capture video; is that
24 correct?

25 A. He states that that is one way that

1 you could do it.

2 Q. And one way Bear discloses removing
3 the lens cover is for the user [indiscernible];
4 is that right?

5 (Court reporter clarification.)

6 Q. (BY MR. PLUTA) One way Bear
7 discloses removing the lens cover is for the user
8 to do it manually; is that right?

9 A. He says, "In one embodiment, the
10 shutter may only be opened by the user for
11 privacy reasons."

12 Q. And another way Bear discloses for
13 removing a lens cover is for the processor to
14 remove the lens cover; is that right?

15 A. Does it really state that? He says
16 the cover "may be automatically opened when a
17 capture event occurs."

18 Q. Okay. And would you understand a
19 processor to be doing that, from the disclosure
20 in Bear, or is that not clear?

21 A. I'm not sure. But when you say it's
22 automatically opened, it says when it's opened,
23 when an event occurs, that the processor detects.
24 That might be a reasonable leap.

25 Q. Well, is it your opinion that the

1 processor in Bear renders the camera operative
2 when a call is received even if lens cover 310 is
3 not removed?

4 A. I don't believe I address the lens
5 cover in my report. It is not required that the
6 lens cover be on in Bear.

7 Q. Okay. With respect to your opinions
8 in Bear -- regarding Bear, you're not providing
9 any opinions that Bear discloses rendering the
10 camera operative while first information is being
11 displayed; is that correct?

12 MS. BAILEY: Objection. Form.

13 THE WITNESS: I don't think I
14 analyzed Bear with respect to first
15 information.

16 MR. PLUTA: I don't have any further
17 questions right now. I pass the witness.

18 MS. BAILEY: I don't have any
19 questions.

20 MR. PLUTA: Dr. Lippman, thanks for
21 your time this afternoon.

22 THE WITNESS: That's it?

23 (Discussion off the record.)

24 THE VIDEOGRAPHER: This is the
25 end -- I'm sorry. This is the end of the

1 deposition. The time is 12:59 p.m., and we
2 are off the record.

3 (Off the record at 12:59 p.m.)
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1	ORAL AND VIDEOTAPED DEPOSITION OF			
	ANDREW LIPPMAN, PH.D.			
2	SEPTEMBER 28, 2020			
3	CHANGES AND SIGNATURE			
4	PAGE	LINE	CHANGE	REASON
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1 CHANGES AND SIGNATURE
ANDREW LIPPMAN, PH.D.

2 Page 2

3	PAGE	LINE	CHANGE	REASON
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10 I, ANDREW LIPPMAN, PH.D., have read
the foregoing deposition and hereby affix my
11 signature that same is true and correct, except
as noted above.

12

13 _____
ANDREW LIPPMAN, PH.D.

14 THE STATE OF _____:

15 COUNTY OF _____:

16

BEFORE ME, _____, on
16 this day personally appeared ANDREW LIPPMAN,
PH.D., known to me or proved to me on the oath of
17 _____ or through
_____ [description of identity
18 card or other document] to be the person whose
name is subscribed to the foregoing instrument
19 and acknowledged to me that he/she executed the
same for purposes and consideration therein
20 expressed.

21 Given under my hand and seal of office this
_____ day of _____, 2020.

22

23

24 _____
Notary Public in and for the
State of _____
My commission expires: _____

25

1 THE STATE OF TEXAS :
2 COUNTY OF HARRIS :
3

4 I, Debbie Leonard, CSR, RDR, CRR, a
5 Certified Shorthand Reporter in and for the State
6 of Texas, do hereby certify that the facts as
7 stated by me in the caption hereto are true; that
8 the above and foregoing answers of the witness,
9 ANDREW LIPPMAN, PH.D., to the interrogatories as
10 indicated were made before me by the said witness
11 after being first duly sworn to testify the
12 truth, and same were reduced to typewriting under
13 my direction; that the above and foregoing
14 deposition as set forth in typewriting is a full,
15 true, and correct transcript of the proceedings
16 had at the time of taking of said deposition.

17
18 I further certify that I am not, in any
19 capacity, a regular employee of the party in
20 whose behalf this deposition is taken, nor in the
21 regular employ of his attorney; and I certify
22 that I am not interested in the cause, nor of kin
23 or counsel to either of the parties.

24 Certified by me on this 5th of
25 October, 2020.

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Debbie Leonard, CSR, RDR, CRR
Texas CSR No.: 8190
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