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Transcript of Henry H. Houh, Ph.D.

Date: August 10, 2023

Case: Google LLC -v- Wildseed Mobile LLC (PTAB)

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Wildseed Mobile EX2009
Google v. Wildseed Mobile
IPR2023-00244

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

- - - - - x
GOOGLE LLC, : IPR2023-00244, 2023-00245,
Petitioner, : and 2023-00246
v. :
WILDSEED MOBILE LLC, : U.S. Patent Nos. 10,251,021,
Patent Owner. : 10,959,040, and 9,141,960
- - - - - X

Deposition of HENRY H. HOUH, Ph.D.
Conducted Virtually
Thursday, August 10, 2023
12:03 p.m. EDT

Job No.: 503230
Pages 1 - 201
Reported by: Debra A. Whitehead

1 Deposition of HENRY H. HOUH, Ph.D., conducted
2 virtually.

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5 Pursuant to notice, before Debra Ann Whitehead,
6 E-Notary Public in and for the State of Maryland.

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(Attached to the Transcript)

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1 P R O C E E D I N G S

2 HENRY H. HOUH, Ph.D.,

3 having been duly sworn, testified as follows:

4 EXAMINATION BY COUNSEL FOR PATENT OWNER

5 BY MR. HAMILL:

6 Q Dr. Houh, can you please state your name
7 and address, for the record.

8 A My name is Henry Houh. Last name is
9 spelled H-O-U-H. And I live at 15 Ballard
10 Terrace, B-A-L-L-A-R-D, in Lexington,
11 Massachusetts.

12 Q And have you ever been deposed before?

13 A Yes.

14 Q How many times?

15 A I'm not really counting, but probably a
16 hundred times or more.

17 Q I think you probably know the sort of
18 ground rules for depositions, but I will go over
19 them anyway just so we're clear.

20 So I'll be asking questions today. Those
21 questions along with your answers will be recorded
22 by the court reporter. So you will need to answer

1 the questions orally since the court reporter
2 cannot record a nod or a shake of the head.

3 Do you understand?

4 A Yes.

5 Q If you don't understand any question,
6 please let me know that you don't understand it,
7 and I'll do my best to rephrase.

8 Is that fair?

9 A Sure.

10 Q If at any point today you need to take a
11 break, please let me know. I only ask that if a
12 question is pending, that you answer the question
13 before we take a break.

14 Is that fair?

15 A Yes.

16 Q Do you understand that you are under oath
17 and sworn to tell the truth as if you were in a
18 court before a judge?

19 A Yes.

20 Q And is there any reason you can think of
21 why you're not able to answer my questions fully
22 and truthfully today?

1 A No.

2 Q All right. And, Dr. Houh, where are you
3 located today?

4 A I am in Lexington, Mass, in my home.

5 Q And who's in the room with you?

6 A No one. Just me.

7 Q Are you using any computer messaging
8 software to communicate with your attorneys?

9 A No.

10 Q And do you have any documents or papers
11 in front of you that you plan to refer to in
12 today's deposition?

13 A I do.

14 Q And what are those?

15 A I have three of the petitions, of my
16 petitions for the three cases today. I have the
17 three patents. And I have a number of the prior
18 art references.

19 Q And if you're referring to a document in
20 one of your answers other than the exhibit that I
21 am referring to, please let me know so that we're
22 clear.

1 A Sure.

2 Q And what did you do to prepare for
3 today's deposition?

4 A I reviewed a number of documents and I
5 met with attorneys.

6 Q And what documents did you review?

7 A I'm not sure I can remember everything.
8 But I reviewed my declarations. I reviewed the
9 patents. I reviewed the prior art references.
10 And I reviewed the patent owner preliminary
11 responses and the institution decisions.

12 Q And have you worked as an expert witness
13 before?

14 A Yes.

15 Q In how many cases?

16 A I don't know. I'm not really counting
17 anymore. Probably on the order of 150 to 200
18 cases or more.

19 Q And how many of those, approximately, are
20 PTAB cases?

21 A I would say most of them; you know, maybe
22 80 percent of them are, or around there. You

1 know, maybe almost 200 PTAB cases.

2 Q And in what areas of technology have you
3 provided expert testimony?

4 A It's mostly related to computer science
5 and networking. So, I mean, it's computers,
6 mobile devices, websites, video streaming, voice
7 over IP. I mean, it's hard to remember every
8 area, but they're generally related to computer
9 science and networking.

10 Q And in your PTAB cases, have you done
11 more work for either petitioners or patent owners,
12 or the other way around?

13 A I do work for both. I have done work for
14 both. In IPRs, both the petitioner and the patent
15 owner.

16 Q And can you approximate what percentage
17 for patent owners versus petitioners?

18 A It's mostly for petitioners, probably 90
19 percent-ish, around there, of my PTAB cases are
20 for the petitioner.

21 Q Has the PTAB ever determined that you
22 were not qualified as an expert witness?

1 A Not to my knowledge.

2 Q And how about a court?

3 A Not to my knowledge.

4 Q Have you ever had an opinion excluded by
5 the PTAB?

6 A Not that I'm aware of.

7 Q And so for today's deposition we served
8 three notices corresponding to three different
9 matters. So the three matters are, one is IPR
10 2023-246 for U.S. Patent Number 9,141,960; another
11 is IPR2023-244 for U.S. Patent Number 10,251,021;
12 and the third for IPR2023-245 for U.S. Patent
13 Number 10,959,040. And I'm going to introduce the
14 three deposition notices for the record.

15 (Houh Deposition Exhibit 1 marked for
16 identification and is attached to the transcript.)

17 MR. HAMILL: Matter 244 is already in the
18 chat.

19 Q Do you have that one open?

20 A Are you asking me?

21 Q Yes.

22 A I do now, yeah.

1 Q And on the second page it says,

2 Declarant's Name, Henry H. Houh, Ph.D.

3 Is that your name?

4 A Yes.

5 Q Let me put the next one in the chat.

6 The next one is in the chat, so this will
7 be Exhibit 2. This is the notice of deposition in
8 Matter 245 for the '040 patent.

9 (Houh Deposition Exhibit 2 marked for
10 identification and is attached to the transcript.)

11 Q Do you see that, Dr. Houh, Exhibit 2?

12 A Yes, I have that open now.

13 Q And on the second page it says

14 Declarant's Name, Henry H. Houh, Ph.D.

15 Is that you?

16 A Yes.

17 MR. HAMILL: I will upload the third one
18 now for Exhibit 3. It is in the chat.

19 (Houh Deposition Exhibit 3 marked for
20 identification and is attached to the transcript.)

21 Q That's the notice of deposition for
22 Matter 246.

1 Please let me know once you have that one
2 open, Dr. Houh.

3 A Okay, I have it open now.

4 Q And the second page says, Declarant's
5 Name.

6 Is that your name?

7 A Yes, it is.

8 Q And do you understand that today's
9 deposition applies to all three matters?

10 A Yes.

11 Q And there are three asserted patents
12 across the three matters. Are you comfortable if
13 we call them by the last three digits, so the
14 '960, the '021, and the '040?

15 A Yes.

16 Q And collectively if we call them "the
17 challenged patents," do you understand that?

18 A Sure.

19 Q And did you provide any opinions in these
20 three cases?

21 A I did.

22 Q Are all of your opinions set forth in

1 your declarations?

2 A Those contain the -- all of my written
3 opinions.

4 Q And do you have any other opinions you've
5 provided?

6 A There's no other supplemental report that
7 I'm aware of at this point. So all my written
8 opinions would be in the three declarations for
9 the respective cases.

10 Q Are the bases for all of your opinions in
11 those declarations?

12 A I try to do that, yes. So I try to say
13 why my opinions are what they are and cite my
14 bases.

15 Q Were there any other investigations you
16 wanted to complete?

17 MR. CLEMENTS: Objection. Form.

18 A I mean, not that I can think of now.

19 Q And have you reviewed your declarations
20 since submitting them?

21 A Yes.

22 Q Are there any errors in your

1 declarations?

2 A Not that I can recall seeing at the
3 moment.

4 Q And you've been retained as an expert
5 witness in these three matters?

6 A That's right.

7 Q Who is your retention agreement with?

8 A I believe it's with the law firm of
9 Haynes & Boone.

10 Q And how many matter -- how many hours
11 have you billed on these three matters,
12 approximately?

13 A I don't know how -- I don't know off the
14 top of my head.

15 Q Can you give an approximation?

16 A I mean, it's hard to because there are
17 also a few other matters involved, and I can't
18 easily separate. I can't really -- it's hard to
19 kind of separate all those other matters out of
20 these three.

21 Q When you say "other matters," are you
22 referring to the other patents from the Wildseed

1 litigation?

2 A Yes.

3 Q Do you have an approximation for how many
4 hours you've billed across all five of those
5 matters?

6 A I just wouldn't know that off the top of
7 my head.

8 Q And what rate are you charging for this
9 matter, for these matters?

10 A Can I look at my declarations?

11 Q Sure.

12 A Are you aware if I said what the -- you
13 know, are you aware, is there someplace in my
14 declarations that you could direct me to, if you
15 know that it's in there?

16 Q I don't believe you provided the actual
17 rate in the declarations.

18 A Yeah, I -- it could be a number of
19 different rates, depending on the year I was
20 retained in and some other factors.

21 Q What other factors go into determining
22 the rate that you charge?

1 A Sometimes if I --

2 MR. CLEMENTS: Objection.

3 A Sometimes I -- if it's -- sometimes I use
4 a rate for a client based on an existing rate the
5 client already has, or they have special
6 provisions in the retainer agreement.

7 Q Do you give special rates to certain
8 clients?

9 A Well, they're different. But it would
10 have been at some rate, you know, that was my
11 standard rate at one point that -- if I've raised
12 the rate, sometimes I use an older rate. I don't
13 remember in this case. It's --

14 Q Sorry. I thought you were done. I
15 didn't mean to cut you off.

16 A Oh, sorry. I was just going to say it's
17 likely somewhere between 620 and probably 680 or
18 720.

19 Q And when did you become involved in these
20 cases?

21 A I don't recall the exact date offhand.

22 Q Do you remember approximately?

1 A It was probably sometime in fall of 2022,
2 you know, before I submitted these declarations,
3 obviously.

4 Q And who contacted you to bring you into
5 these matters?

6 A I don't recall exactly who might have
7 first reached out to me.

8 Q It was some one at Haynes & Boone?

9 A Yes, that probably would have been the
10 case.

11 Q Have you worked with Haynes & Boone
12 before?

13 A Yes.

14 Q And on how many matters have you worked
15 with Haynes & Boone, approximately?

16 A Maybe 15, 20 different cases previously.
17 Maybe a little more than that.

18 Q And have you been retained previously in
19 matters where Google was the party to the matter?

20 A Yes, I have.

21 Q And on behalf of Google?

22 A Yes.

1 Q How many times, approximately?

2 A Can I take a quick look through my CV
3 that's attached to -- actually, it's not. I don't
4 seem to have them.

5 I don't know. Maybe five to ten matters.

6 I don't recall exactly.

7 Q Do you want to take a look at your CV?

8 A If you have a copy.

9 Q Sure. Let me put that in the chat.

10 (IPR2023-00244 Exhibit 1019, previously
11 marked, not attached.)

12 Q Okay, I've uploaded Exhibit 1019 from the
13 244 matter, which is your CV.

14 A Well, I see -- I see four matters
15 explicitly listed in my CV, previous matters. And
16 I think there's -- there's at least a fifth that I
17 don't see on here.

18 Q So about five matters for Google?

19 A I mean, that's certainly in the ballpark
20 that I was thinking of.

21 Q Ballpark is good enough.

22 A Yeah, aside from this matter.

1 Q So it's about five in addition to the
2 Wildseed-related matters?

3 A Yeah, that's about the right ballpark.

4 MR. HAMILL: Okay, I am going to
5 introduce the next exhibit. This is your
6 declaration from the 244 matter, Exhibit 1003.

7 (IPR2023-00244 Exhibit 1003, previously
8 marked, not attached.)

9 Q Please let me know once you have it open.

10 A Okay, I have it open now.

11 Q And this document is your declaration
12 from the '021 patent IPR matter. Correct?

13 A Yes, that looks right.

14 Q Please turn to the claim construction
15 section, which is Section 6, starting on Page 19.

16 A So is it okay if I take out my printed
17 version in addition? Sometimes it's easier to
18 have both.

19 Q Sure.

20 A Okay, I'm on Page 19.

21 Q And you see the claim construction
22 section, which is Paragraph 36?

1 A Yes.

2 Q And about halfway through that paragraph
3 there's a sentence that states, "For the purposes
4 of this declaration, it is my opinion that none of
5 the claim terms requires a specific construction,
6 and all will be given their plain and ordinary
7 meaning."

8 Do you see that?

9 A Yes.

10 Q What is your understanding of "plain and
11 ordinary meaning"?

12 A So my understanding, that would be the
13 plain and ordinary meaning from the perspective of
14 a person of ordinary skill in the art at the time
15 of the invention, in the context of the
16 specification and prosecution history.

17 Q And further down in this paragraph it
18 states that there are -- you refer to the district
19 court litigation. And you state, "Below, I
20 identify the constructions proposed in the
21 district court litigation by petitioner and other
22 defendants."

1 Do you see that?

2 A Yes.

3 Q Can you point me to the part of your
4 declaration that identifies these proposed
5 constructions?

6 A I'm not finding a section outlining it at
7 the moment. I've searched for some obvious terms,
8 but it's not pointing me anywhere.

9 Q Okay. I wasn't able to find it either.
10 Did you draft this paragraph, Dr. Houh?

11 A I mean, I've certainly, you know,
12 reviewed the declaration as a whole, and these are
13 my opinions. I think that's this -- it just must
14 be an error of some sort that the constructions
15 were omitted, the district court ones.

16 Q Please turn your attention to your
17 discussion of Claim 2 of the '021 patent which
18 starts on Page 67. Let me know once you're there.

19 A I am there on Page 67 now.

20 Q And Paragraph 115 starts at the bottom of
21 the page, it goes onto the next one?

22 A Yeah, I see that.

1 Q In this paragraph you state, "A POSITA
2 would recognize that a radio show broadcast via
3 the internet, as disclosed in Ellis, corresponds
4 to a podcast media."

5 Do you see that?

6 A Yes.

7 Q And then you quote the Lim reference,
8 Paragraph 2, which states, "A podcast is a digital
9 recording of a radio broadcast or similar program,
10 made available on the internet in a number of
11 separate files for downloading to a personal audio
12 player."

13 Do you see that?

14 A I do.

15 Q And do you agree with this definition of
16 the term "podcast"?

17 A Well, I mean, I cited it to support my
18 statements about Ellis is -- a POSITA would
19 recognize that Ellis is -- would recognize that
20 radio shows broadcast over the internet correspond
21 to podcast media.

22 And so I'm not saying it's definitional,

1 I'm just providing these citations as other
2 support to show that -- what a person of ordinary
3 skill in the art and how it was supported by
4 others at the time.

5 Q But do you agree or not with this
6 definition of the term "podcast"?

7 A Again, I'm not saying that the reason I
8 said it was to provide a definition. The reason I
9 said it was to provide the support that for what
10 the person of ordinary skill in the art at the
11 time would have thought, citing a number of other
12 references including the Jellison, that indicated
13 that radio programs can be published as podcasts
14 or can be streamed, or that digital recordings of
15 radio broadcasts are -- or similar programs on the
16 internet can be downloaded to player, and
17 that's -- they're calling that a podcast.

18 So I'm not saying that that's the exact
19 strict definition. What I'm saying is that that
20 supports my statement about what a POSITA would
21 have understood with respect to the radio programs
22 broadcast over the internet in Ellis.

1 Q And what is the plain and ordinary
2 meaning of "podcast" in Claim 2?

3 A So the plain and -- a person of ordinary
4 skill would have recognized that what's discussed
5 in Ellis, which is that we have these radio shows
6 broadcast via the internet, which Ellis does
7 disclose, that would have been within the scope of
8 what a podcast -- that's an example of what a
9 podcast would have been as claimed. So that would
10 be within the scope of Claim 2's use of the word
11 "podcast."

12 Q Do you disagree with the meaning of the
13 term "podcast" provided in the Lim reference?

14 A Well, I'm not saying I adopted that as a
15 strict definition. What I said was, I'm using
16 what Lim said about podcasts to support the
17 statement that a person of ordinary skill -- was
18 one of two different citations to support why a
19 person of ordinary skill would have recognized
20 that a radio show broadcast by the internet as
21 discussed in Ellis corresponds to a podcast media.
22 Which is just an example of something that would

1 fall within the scope of the claims for podcast
2 media. And I'm just supporting that as support.

3 I'm not -- I don't have an opinion about
4 whether that's the exact correct definition. But
5 it certainly supports my statement about a person
6 of ordinary skill recognizing that the radio show
7 broadcast over the internet as disclosed in Ellis
8 would be considered a podcast.

9 Q So you don't have an opinion as to
10 whether the definition of podcast provided in Lim
11 that you've quoted in Paragraph 115 is correct?

12 MR. CLEMENTS: Objection. Form.

13 A As I said earlier, I don't have in the
14 claim construction section every -- I can tell you
15 exactly what I said. That it was my understanding
16 for the purposes of this IPR the claims are to be
17 construed under the Phillips standard, under which
18 claim terms are given their ordinary and customary
19 meaning as would have been understood by one of
20 ordinary skill in the art in light of the
21 specification and prosecution history, unless the
22 inventor has set forth a special meaning for the

1 term.

2 And that for the purposes of this
3 declaration -- and I'm reading from the '021 case
4 declaration -- "It is my opinion that none of the
5 claim terms require a specific construction and
6 all will be given their plain and ordinary
7 meaning."

8 And so that's the basis. So I'm not --
9 I'm not -- I don't have an opinion about the
10 constructions of these terms. What I'm saying is
11 that I'm merely citing a number of references in
12 support of my opinion that a person of ordinary
13 skill would recognize that a radio show broadcast
14 via the internet as disclosed in Ellis corresponds
15 to a pocket -- sorry, a podcast media, which is a
16 claim term.

17 But I'm using these citations to support
18 my statement about what a person of ordinary skill
19 would have recognized as a podcast, or as podcast
20 media.

21 Q And is the definition that you've quoted
22 from Lim, do you consider that to be a special

1 meaning of podcast, or is that consistent with the
2 plain and ordinary meaning of podcast?

3 A I mean, I think that's generally --
4 generally consistent with the plain and ordinary
5 meaning I applied.

6 That's why -- well, I cited a number of
7 references that support this plain and ordinary
8 meaning interpretation, that a person of ordinary
9 skill in the art at the time of the invention
10 would have recognized that the radio shows
11 broadcast over the internet as disclosed in Ellis
12 do correspond to the claim term used in Claim 2,
13 "podcast media."

14 Q Let's turn to a different exhibit now.

15 MR. HAMILL: I have put the next exhibit
16 in the chat. This is Exhibit 1001 from the 244
17 matter. It's a copy of the '021 patent.

18 (IPR2023-00244 Exhibit 1001, previously
19 marked, not attached.)

20 Q Please let me know when you have that
21 open, Dr. Houh.

22 A I am opening it now. And I also have a

1 printed copy. May I also use that printed copy?

2 Q Okay. Go ahead.

3 And this document that I've introduced is
4 the '021 patent. Correct?

5 A Yes, that's right.

6 Q Please turn to Page 10. I would like to
7 ask some questions about Claim 1.

8 A Okay.

9 Q And starting at around Line 28 do you see
10 the term, "infer one or more entertainment
11 preferences of a user of the portable media player
12 device"?

13 A Yes.

14 Q And what is the plain and ordinary
15 meaning of the term "infer"?

16 A Well, what I did was, I looked in the
17 prior art. And the examples that I cited in the
18 challenged claim analysis for Claim 1 would be an
19 example of something that's within the scope of
20 the word "infer" there.

21 Q But what is the plain and ordinary
22 meaning of "infer"?

1 A Well, if you look at the -- the analysis
2 I did was looking at the prior art and finding
3 things that a person of ordinary skill would have
4 understood were disclosing this claim element.
5 And what I pointed to are examples that would have
6 fallen within the plain and ordinary meaning of
7 the -- of the word "infer."

8 And so we can look at my declaration, I
9 can point you to disclosures within I think in
10 this -- in Ellis or Sasaki that -- that are
11 examples of things that are within the scope of
12 this claim element.

13 Q When you were determining what the scope
14 of the claim term "infer" is, did you rely on any
15 part of the '021 patent specification?

16 A Well, I would have considered the
17 specification to help inform. You know, because
18 it's plain and ordinary meaning of the words, the
19 claim phrases or words, in the context of the
20 specification and prosecution history. So I did
21 consider the specification in my review.

22 Q And can you point to any specific part of

1 the specification to support your interpretation?

2 A No; I did consider the whole of the
3 specification. I can point you to a few examples
4 in the specification.

5 For example, if you look at Column 2,
6 Line 55, it talks about the -- it says, "The
7 entertainment interest is inferred based at least
8 in part on the media files or content stored in
9 and/or accessed using the portable media player
10 device."

11 And then there's another similar passage
12 at the top of Column 3. A portable media -- well,
13 I won't -- if you go back to the bottom of Column
14 2, Line 66, "A server may generate a
15 recommendation for a nearby concert by an
16 alternative rock band for a user of a portable"
17 media device -- "media player device that has
18 inferred interest in alternative rock, inferred
19 based at least in part on media of an alternative
20 rock or like genre stored on and/or accessed via
21 his portable media player device."

22 So those are a few. There may be a few

1 more in there. But those phrases, you know, in
2 the context of the whole spec, help -- help inform
3 my analysis about what a person of ordinary view
4 would have understood the meaning of "infer" to
5 be.

6 Q Is the claim limitation "infer" satisfied
7 by a user providing entertainment preferences?

8 A That's not what I pointed to as examples
9 of disclosing "infer" in the prior art, I don't
10 believe. I'm not -- there are packages that are
11 very similar in the prior art to these passages I
12 just provided as examples in the '021 patent that
13 would help inform the meaning of "infer."

14 Q And so you used you said -- when I asked
15 if the claim limitation of "infer" is satisfied by
16 a user providing entertainment preferences, you
17 said, That's not what I pointed to as examples of
18 disclosing "infer" in the prior art.

19 That statement refers to your opinions in
20 your declaration?

21 A Yeah, I have done some analysis mapping
22 the prior art to various claim limitations,

1 including what I'm calling the "infer" Step 1.1.2.

2 So if you look at Page 55 on Exhibit 1003
3 to the '021 patent, which is my declaration,
4 that's where I start talking about the prior art
5 with respect to how it discloses and/or renders
6 obvious this claim element.

7 Q So is it fair to say in your declaration
8 you have not provided the opinion that the claim
9 limitation "infer" is satisfied by a user
10 providing entertainment preferences?

11 A So in my analysis in this section, what
12 I'm really pointing to as to the combination of
13 Ellis and Sasaki is for this disclosing or
14 rendering obvious this claim element, which is
15 Ellis has several techniques, discloses several
16 techniques for inferring entertainment preferences
17 of user. And I go through them all. Or I go
18 through a number of them.

19 Ellis automatically determines the groups
20 liked and disliked by the user by monitoring the
21 media, content listened to by the user on her
22 portable media device player.

1 And if you look at the part of the '021
2 spec that we were just looking at, that's
3 basically the same as based on media accessed via
4 his portable media device player.

5 And we looked at a few passages there
6 that all talk about what did the user access, and
7 that's how the entertainment preferences of the
8 user are inferred.

9 And that's pretty much the same
10 disclosure. It's an example, the same example as
11 given in the patent specification of an example of
12 an inferring entertainment preferences.

13 So I gave the specific example in
14 Paragraph 91. There's another example I give in
15 Paragraph 92. And then -- and there's another
16 example in 93, for example.

17 Q Is it your opinion that Sasaki discloses
18 the "infer" limitation?

19 A Well, in the combination, what I've been
20 using in this combination of Ellis and Sasaki,
21 Sasaki is talking about various media; so such as
22 music, still pictures, video, and text. It talks

1 about those different content types where -- oh,
2 sorry. Paragraph 94, for example.

3 So I'm referring to Paragraph 74 of
4 Sasaki. And that Sasaki discloses that its
5 recommendation system collects information about
6 different media content types, such as music,
7 still pictures, video, and text. And in the
8 combination the POSITA would have used this
9 monitoring methods applied to the same media
10 and -- that Sasaki discloses. And that's part of
11 the combination.

12 And so that's what Sasaki, the discussion
13 of Sasaki, is saying.

14 Q But I want to make sure I understand what
15 you're relying on here and what your opinions are.

16 So is it your opinion that Sasaki
17 discloses the "infer" limitation?

18 A I'm using Ellis as the reference in this
19 combination that provides the disclosure for
20 "inferring one or more entertainment preferences
21 of a user of the portable media player device
22 based at least in part on the retrieved media."

1 Because it's Ellis that discusses
2 monitoring the content listened to by the user and
3 automatically determine the groups liked and
4 disliked by the user.

5 And then it's Ellis teaching about
6 determining the user preferences that really is
7 what's bringing in that in the prior art, that
8 renders this claim element obvious.

9 Q So it's fair to say that in your
10 declaration it's Ellis you're relying on, not
11 Sasaki, for the "infer" limitation?

12 MR. CLEMENTS: Objection to form.

13 A Yeah, in combination --

14 THE WITNESS: I'm sorry. I didn't mean
15 to speak over anyone. Was it Calmann?

16 MR. CLEMENTS: Yeah. Just a form
17 objection. But continue, Henry.

18 A So it's the combination -- it's the
19 combination of Ellis and Sasaki that I'm
20 discussing renders this claim limitation obvious.
21 And in the combination the automatically
22 determining the likes and dislikes of the -- of

1 the user based on what they listen to is disclosed
2 in Ellis by, you know, being monitored the
3 listening -- the listening -- the system of Ellis
4 monitors the content listened to by the user and
5 automatically determines the groups liked and
6 disliked by the user.

7 So that's the part that really is a very
8 similar -- it's analogous to what the '021
9 specification discloses in examples of inferring
10 the entertainment preferences of a user by -- I
11 forget the exact words the '021 patent uses. But
12 we looked at those passages earlier, by basically
13 monitoring what the user listens to on their
14 portable media device player.

15 Q And does Sasaki -- in Sasaki, is there a
16 teaching that the server obtains information about
17 a user's entertainment preferences?

18 A Could I look at a copy of Sasaki?

19 Q We'll turn to that in a minute. I want
20 you to focus on your opinions.

21 Are you providing an opinion that Sasaki
22 infers a user's entertainment preferences?

1 MR. CLEMENTS: Objection. Form.

2 A I mean, my opinion is based on the
3 combination of Ellis and Sasaki. And that in the
4 analysis section we were just looking at, it's
5 the -- it's the inferring the preferences of the
6 user determining the preference of the user based
7 on the content.

8 You know, the system is monitoring what
9 is listened to and determines the likes and
10 dislikes of the user. And the examples provided
11 within Ellis are the examples for -- that I'm
12 using for support how the combination of Ellis and
13 Sasaki discloses the inferring part of the claim
14 element. And --

15 Q And -- sorry. I thought you were done.
16 Please continue.

17 A And I'm not pointing to Sasaki
18 specifically for support in this section that
19 we're looking at. It's really the -- my opinions
20 are based on the fact that a person of ordinary
21 skill would have been motivated to combine Ellis
22 with Sasaki. And I give those reasons I think

1 elsewhere in my declaration. And they would have
2 been successful. It's, you know -- at being able
3 to do so, for example. I discuss that elsewhere,
4 too.

5 But in that combination what I am relying
6 for for the inferring the entertainment
7 preferences part of the element is the disclosures
8 in Ellis of monitoring the user's listening to
9 determine their likes and dislikes, for example.
10 And I haven't explicitly pointed to anything in
11 Sasaki for that part of it.

12 But what renders the claim element
13 obvious is the combination of Ellis and Sasaki.

14 Q Let's turn back to Claim 1 of the '021
15 patent. It's Exhibit 1001 from the 244 matter.

16 So we were looking at the clause in the
17 patent, in Claim 1, starting on Line 28 of Column
18 8. "Infer one or more entertainment preferences
19 of a user of the portable media player device."

20 What is the plain and ordinary meaning of
21 "one or more entertainment preferences of a user"?

22 A Well, again, that would be interpreted by

1 a person of ordinary skill at the time of the
2 invention as, you know, plain and ordinary
3 meaning.

4 So they would have considered the context
5 of the specification in order to inform that plain
6 and ordinary meaning.

7 And if you look back at -- again, I'll
8 give you examples. And these aren't all the
9 examples, but they're I think enough examples
10 to -- for the purpose for discussion here.

11 For example, if you look at Column 3,
12 Line 23 at the end. "In these embodiments, the
13 recommendation for the proximally located event or
14 venue may be based on a subject preference of the
15 user determined by podcast media stored in and/or
16 accessed via the portable media player device."

17 And there's other similar ones. For
18 example, Column 5, Line 29. And this is different
19 than what we looked at earlier, but it's a very
20 similar or the same example when we were
21 discussing infer. It's talking about a flow chart
22 I think in Figure 2.

1 At the next block -- sorry. Column 5,
2 Line 29. "At a next block 207, the server may
3 determine one or more media preferences or
4 interest for the user based in part upon the media
5 and/or information about the media stored on or
6 accessed using the portable media player device."

7 And so, you know, in my analysis I found
8 very similar disclosures within the prior art, and
9 in particular in Ellis, that line up with these
10 very examples given as one or more entertainment
11 preferences. And that would be kind of the --
12 it's just as we discussed and I laid out in the
13 section starting on Page 55 of my declaration.

14 Q Would categorizing a particular song as
15 being within a certain genre of music such as rock
16 satisfy this limitation?

17 MR. CLEMENTS: Objection. Scope.

18 A I mean, the example I'm providing isn't
19 as -- isn't that exact example you asked about.
20 But if you look at Paragraph 89, I say that, "As
21 discussed in 1.1.1, Ellis automatically determines
22 the groups liked and disliked by the user," which

1 is what I'm -- you know, in paren, "inferring one
2 or more entertainment preferences of the user."

3 And we can go back and look at the
4 analysis in 1.1.1, if you'd like.

5 Q Well, before we do that, let's stay on
6 the '021 patent.

7 So earlier in our discussion of the
8 "infer" limitation, you pointed me to the bottom
9 of Column 2, top of Column 3, where the
10 specification states, "For example, a server may
11 generate a recommendation for a nearby concert by
12 an alternative rock band for a user of a portable
13 media player device that has inferred interest in
14 alternative rock, inferred based at least in part
15 on media of an alternative rock or like genre
16 stored on and/or accessed via his portable media
17 player device."

18 Do you see that?

19 A Yes, I do.

20 Q And that was an example that you pointed
21 out relating to the "infer" limitation. Right?

22 A Yeah, that was to help -- this is part of

1 the context of the specification in which the
2 POSITA is able to kind of use as to inform them of
3 the plain and ordinary meaning of the word
4 "infer."

5 Q And does this passage help inform your
6 understanding of the plain and ordinary meaning of
7 "entertainment preferences"?

8 A I mean, certainly being part of the
9 overall spec, this overall spec is the context in
10 which the POSITA uses.

11 This particular place actually -- this is
12 the bottom of 2? It uses the word "inferred," but
13 doesn't use the word "entertainment" or
14 "preferences." Other places do. But still, this
15 is part of the context of the -- of the spec.

16 And there are other places that use the
17 word "preferences." I'm not sure that the word
18 "entertainment preference" -- phrase
19 "entertainment preference," that may show up --
20 well, I can take a look, but ...

21 Q Well, let me ask you a question, though,
22 about, you know, you've read the specification.

1 Right?

2 A Yes.

3 Q So in the context of the term in Claim 1,
4 "one or more entertainment preferences of a user,"
5 would a genre of music such as rock satisfy that
6 limitation?

7 A I mean, if you look at Paragraph 91, I'm
8 discussing Ellis, and an example of Ellis. And
9 I'm saying that -- and this is with respect to
10 really teaching the monitoring the content the
11 user listens to so it can determine user
12 information automatically.

13 And part of the information I'm saying
14 here is the user's preference for a song, artist,
15 genre, or grouping based on the monitoring of the
16 user's listening. And that's the context this is
17 with respect to.

18 And so I am saying here that the
19 system -- that Ellis is disclosing, and it says --
20 and I'll read from a block quote 221 of Ellis,
21 "The system may determine user information
22 automatically by monitoring the content the user

1 listens to. For example, the system may add
2 points to a specific song, artist, genre, or other
3 type of item or grouping based on the user
4 listening to an entire item."

5 So I think with respect to the discussion
6 of the inferring the entertainment preferences, I
7 am saying that Ellis is disclosing that. Because
8 the Ellis teaching of monitoring the listening of
9 the user, and then, you know, adding points to --
10 for a song, artist, or genre, or other type of
11 item or grouping, that is disclosing inferring one
12 or more entertainment preferences of a user. And
13 I think that's part of the evidence out of Ellis
14 that I'm using to support why the combination of
15 Ellis and Sasaki renders obvious that claim
16 element.

17 But in this case the genre information is
18 automatically generated, and Ellis talks about
19 that in this way we were just looking, where it's
20 going to monitor the listening and add points to
21 artists or genres.

22 Q So is it fair to say, then, in your

1 opinion, that a genre of music would satisfy the
2 "one or more entertainment preferences of a user"
3 limitation?

4 A Well, I think that's very parallel to the
5 disclosures in the '021, where it's talking about,
6 you know, alternative rock. And that would -- I
7 think I would -- a person of ordinary skill
8 recognize that's yet another genre of music.

9 And so the disclosure in Ellis with
10 respect to the automatic determination and
11 inferring of the user's entertainment preferences,
12 does explicitly talk about using their user's
13 listening habits to -- to help determine their
14 preferences on a, you know, for example, songs,
15 artists, genres of music, by adding points, you
16 know, when -- you know, based on the user's
17 listening and the content that users -- the
18 content the user listens to.

19 Q Okay.

20 MR. CLEMENTS: Counsel, we've been
21 going --

22 Q I think you started answering my

1 question, but then you went into a discussion of
2 Ellis.

3 But my question is, in your opinion, does
4 a genre of music such as rock satisfy the "one or
5 more entertainment preferences of a user"
6 limitation.

7 Can you just answer that question?

8 A I mean, I think that's -- that's a more
9 specific example of what's disclosed in Ellis.
10 And Ellis does disclose that the user -- the
11 system of Ellis automatically monitors what the
12 user's listening to to kind of add points with
13 respect to songs, artists, and genres.

14 So I think what you're asking is a
15 specific genre. Ellis doesn't address specific
16 genres but talks about how it determines genres
17 based on points that user may prefer. And how it
18 automatically does that.

19 Q I'm not asking about Ellis. I'm asking
20 if, in your opinion, under the plain and ordinary
21 of "one or more entertainment preferences of a
22 user," does a genre of music satisfy that

1 limitation?

2 MR. CLEMENTS: Objection. Scope.

3 A Well, I mean, you're talking -- there are
4 various parts of the limitation. So if you're
5 omitting the inferring step from this discussion,
6 then I wouldn't -- I wouldn't disagree with that.

7 But the claim requires an inferring step,
8 which I did do the analysis for and show how there
9 is this automatic inference done about the user's
10 entertainment preferences.

11 And the example I give is kind of a broad
12 example that covers the example given in the
13 specification of, for example, the -- you know,
14 the alternative rock reference that we looked at
15 in the '021. And I don't see how rock is any
16 different.

17 But with respect to my analysis for
18 Ellis, it's kind of broader than that one phrase,
19 because it's disclosing this automatic monitoring
20 inferring based on the user's listening habits,
21 which includes genres.

22 Q Okay. So I think we're almost there.

1 You said, so you're omitting the
2 inferring step from the discussion. And so my
3 question was, in fact, omitting the inferring
4 step. I was just asking about the "one or more
5 entertainment preferences of a user" term.

6 And based on your answer, I think that
7 you were agreeing that a genre of music such as
8 rock does satisfy that limitation.

9 Is that right?

10 MR. CLEMENTS: Objection. Form.

11 A I mean, the '021 spec itself does talk
12 about genres of user preferences for a particular
13 genre of music. For example, that's in seven,
14 Line 40 to 41. That I think goes back to 37,
15 which is, "The server may analyze the metadata
16 associated with a wide variety of media stored on
17 or accessed using the portable media player
18 device, such as music, podcast, books, or audio
19 books, video, photos, or other images for various
20 trends that can be translated into user
21 preferences for a particular genre of music, film,
22 video, or art."

1 So, I mean, in the '021 spec does talk
2 about genres all over the place. But that's the
3 exact same language that Ellis uses in determining
4 information automatically by monitoring the user's
5 content the user listens to, and giving points to
6 artists, songs, and genres.

7 And so I wouldn't dispute that rock is a
8 particular genre of music, for example.

9 MR. HAMILL: Okay. I think we've been
10 going a little over an hour. So why don't we go
11 ahead and take a break here. How about ten
12 minutes. Does that work for everyone?

13 THE WITNESS: Yes. That's great.

14 (A recess was taken.)

15 BY MR. HAMILL:

16 Q Dr. Houh, before the break we were
17 talking about a couple of claim terms, and I am
18 trying to get a sense for how you determined the
19 plain and ordinary meaning of these terms.

20 So, for example, the "infer" limitation,
21 how would a person of ordinary skill know what is
22 or isn't within the scope of that term?

1 MR. CLEMENTS: Objection. Scope.

2 A Well, a person of ordinary skill would
3 interpret that using the plain and ordinary
4 meaning in light of the specification and the
5 prosecution history.

6 So one way is that they read the spec and
7 find examples that are clearly being what's, you
8 know -- using the claim language. Like -- or, you
9 know, different verb tenses of "infer" or
10 "inferred," for example. And they see examples
11 that are -- they would consider examples of what
12 the patents are claiming. Then those are examples
13 of things that would clearly be within the scope
14 of the claim terms as used. So that's one way.

15 And I did perform an analysis with
16 respect to reviewing the specification so that --
17 because, you know, that's the context of the claim
18 terms, looking at it from the perspective of a
19 person of ordinary skill.

20 So in my analysis I found, you know, very
21 similar items in or analogous or almost completely
22 analogous items within the prior art that were the

1 same examples given in the spec that a person of
2 ordinary skill would have recognized as to what
3 the claims are covering.

4 And so that's -- that's one way a person
5 of ordinary skill would determine what's within
6 the scope of the claims.

7 Q Are there any other ways besides looking
8 at examples in the specification?

9 A With respect to the analysis, some of the
10 analysis I did, that's the one way, for example,
11 in the section we were looking at in Ellis, I
12 found analogous items.

13 I mean, there may be other ways. For
14 example, if there aren't clear examples, then
15 sometimes, you know -- well, I mean, for the
16 purposes of that element we're looking at,
17 that's -- that is -- I performed that kind of
18 analysis.

19 Q What if the claim element does not appear
20 in the specification; how would you determine the
21 plain meaning of that term, if it doesn't appear
22 in the specification?

1 MR. CLEMENTS: Objection. Scope.

2 A Well, I mean, in the examples that
3 we're -- is there an example where -- you know, in
4 my declaration you want to ask about where that
5 was the case? Because I don't know that that was
6 the case for the purposes of my analysis of the
7 prior art in these proceedings.

8 Q We can turn back to your declaration
9 later. Let's continue our discussion of Claim 1
10 of the '021. So that's Exhibit 1001.

11 A Okay.

12 Q So in that same clause starting on Line
13 28 of Column 8, it goes on to say, "Based at least
14 in part on the retrieved media, the retrieved
15 information about the media, and a plurality of
16 media content types of the media stored on or
17 accessed by the portable media player device,
18 wherein the plurality of media content types
19 comprises textual media, image media, audio media,
20 and video media."

21 Do you see that phrase?

22 A Yes.

1 Q One of the terms in that phrase is
2 "information about the media."

3 Do you see that?

4 A Yes.

5 Q What is the plain and ordinary meaning of
6 "information about the media"?

7 A So if you look at the spec, it talks
8 about many places in the '021 that talk about the
9 media or information about the media stored on the
10 device. And I think we can -- I can point you to
11 a few examples.

12 For example, five, Column 11. That
13 the -- starting -- yeah, "The inference may
14 include retrieving media or information about
15 media stored on and/or accessed using the user's
16 portable media player device."

17 And it talks about, it goes on to say at
18 Line 14, "This media or information about media
19 stored on or accessed using the portable media
20 player device may be retrieved by the server by
21 various methods," and then it goes on.

22 And that's not the only example about

1 information about the media given.

2 Q Can I just ask a clarifying question.

3 You're referring to Column 5, Line 11?

4 A Yes. Sorry. Did not say Column 5.

5 Column 5, around Line 11. That was one example of
6 the use.

7 There's numerous more that I saw just
8 reviewing, in looking to see what information
9 about the media, how it's used there.

10 And so, you know, that helps inform the
11 person of ordinary skill, that information about
12 the media, for example, is what I referenced in
13 Ellis. The user, if you look at Column -- sorry,
14 Paragraph 93 of my '021 report or declaration, I
15 talk about, "The system may also monitor the
16 content listened to by the user and automatically
17 determine the groups liked and disliked by the
18 user."

19 So, for example, the media itself would
20 be the actual music listened to. But information
21 about that media would include, well, what group
22 is it? So that's an example from the Ellis.

1 And information about the media might be,
2 you know, what's the name of the song, what artist
3 is it, what's the genre, for example. And so I
4 think that would be examples of what a person of
5 ordinary skill would understand to be included in
6 the scope of information about media.

7 Now, the information about the media has
8 to meet all the further requirements of the claim
9 element, of the claim as a whole. And so I do
10 discuss those in various portions of my analysis
11 where applicable.

12 Q And in the context of Claim 1, what is
13 the difference between the user's entertainment
14 preferences and the information about the media?

15 A Well, I mean, Claim 1 is talking about
16 inferring one or more entertainment preferences of
17 the user -- and then I'm going to skip some
18 words -- based at least in part on the information
19 about the media.

20 So, I mean, the claim lays out the
21 requirements of those phrases, which is that the
22 preference of the user have to be at least based

1 in part on -- or at least in part on a number of
2 things, I think separated by an "or." Oh, sorry,
3 a number of things. It uses "or," but not in the
4 sense that I'm thinking of right now.

5 But at least based in part on the
6 retrieved information about the media. And so
7 those are different in the sense that the user
8 preference -- that the information about the media
9 is something which helps inform the preference of
10 the user, you know, as the claim requires that
11 it's based in part on.

12 Q So is it fair to say that the information
13 about the media is used to infer the user's
14 entertainment preferences?

15 MR. CLEMENTS: Objection. Form.

16 A Well, I mean, the claim says what it --
17 sorry, could you repeat your question again,
18 please?

19 Q Is the information about the media used
20 to infer the entertainment preferences of a user
21 in Claim 1?

22 A I mean, claim requires inferring one or

1 more entertainment preferences of a user based at
2 least in part on the retrieved media, the
3 retrieved information about the media, and the
4 plurality of media content types of the media
5 stored on or accessed by the portable media player
6 device, wherein the plurality of media content
7 types comprises textual media, image media, audio
8 media, and video media.

9 That's what whole element. So, I mean,
10 the claim requires what it requires. You're kind
11 of paraphrasing a little bit, but the claim says
12 what it says.

13 Q Are the entertainment preferences of a
14 user distinct from the information about the
15 media?

16 A I mean, I think the claim is pretty clear
17 with respect to those words, which is you -- the
18 computer server has to be caused to infer one or
19 more entertainment preferences of a user. And
20 that would be what the user actually prefers. But
21 it's based in part on the retrieved media, the
22 retrieved information about the media, and a

1 plurality of media content types of the media
2 stored, and it goes on.

3 What that's saying is that the computer
4 server must be -- must infer this, infer the
5 entertainment preferences of a user based on the
6 information about the media.

7 Now, the information about the media,
8 maybe I happen to have, like, some sampling I got
9 for free on my device, which is a variety of
10 genres, and I never listen to one. I mean,
11 regardless of whether I listen to it or not, the
12 types of things that a person of ordinary skill
13 recognized would be in the scope of information
14 about media. It's still there about the media.
15 But if I never listen to a track, then it's -- the
16 '021 spec is inferring the entertainment
17 preference of the user based on the content that
18 the user accesses or listens to.

19 And we looked at that earlier. I can't
20 remember the exact language. But in that sense,
21 if the user never accesses some of the sampler
22 music that happens to be on a device, then I don't

1 see how that information about the media would
2 be -- it would not become part of the user
3 preferences.

4 The user preferences are inferred based
5 on certain things, including this information
6 about the media. But that doesn't mean that
7 there's a one-to-one correspondence between the
8 two; that all information about media are user
9 preferences. No, that's not what the claim
10 requires.

11 Q And did you -- I believe you mentioned
12 that your understanding of the plain and ordinary
13 meaning of the term "information about the media"
14 was informed by the spec and examples in the spec.

15 Is that correct?

16 A Well, it would be the context of the spec
17 that informs the user -- sorry, the POSITA of the
18 plain and ordinary meaning.

19 Q And with respect to the term "information
20 about the media," did you rely on examples in the
21 specification?

22 A Well, I mean, are we -- we looked at

1 various portions in the spec that talk about the
2 media or information about the media. I'm not --
3 but, you know, that the genre of some media might
4 be alternative rock seems pretty consistent with
5 plain and ordinary meaning as the type of
6 information about media, for example.

7 It never expressed -- like, I didn't find
8 a passage that expressly gave that example. It
9 could be there. But certainly that is within --
10 it's consistent with the plain and ordinary
11 meaning.

12 And the spec doesn't really change or
13 provide some unconventional meaning about -- to
14 the phrase "information" about media -- "about the
15 media."

16 Q And was there anything in the file
17 history that informed your understanding of the
18 term "information about the media"?

19 A I mean, I don't recall, sitting here at
20 the moment. File history is usually very long
21 and -- long, and I don't have it memorized.

22 Q Let's go to the -- to another term within

1 this clause that we've been looking at and you've
2 referred to it a couple of times now.

3 So another term is "wherein the plurality
4 of media content types comprises textual media,
5 image media, audio media, and video media."

6 What is the plain and ordinary meaning of
7 this term "wherein the plurality of media content
8 types comprises textual media, image media, audio
9 media, and video media"?

10 A Well, I think you could look in the spec
11 at the background section right at the beginning.
12 It talks about portable media player devices, and
13 that they played things, one or more media file
14 types -- sorry, this is Column 1, Line 26 --
15 "including text, audio, video, graphics,
16 interactive, and other media file types."

17 And I think a person of ordinary skill
18 would recognize "graphics" in this usage in the
19 spec, and can line up with image, image media.

20 So these are examples. And again, this
21 doesn't deviate from just the plain and ordinary
22 meaning of, you know, textual media, image media,

1 audio media, and video media. This is perfectly
2 consistent with what a plain and ordinary -- a
3 person of ordinary skill would have understood to
4 start with.

5 And if you look at what I did for the
6 analysis, Sasaki actually calls out these exact --
7 these media types. And I discuss that in my
8 declaration at around Paragraph 95 and 94.

9 Q This term requires each of the four
10 recited media content types. Correct?

11 A Well, I mean, I certainly provide an
12 example of -- in Sasaki which does provide all
13 four of those media types. So with respect to the
14 prior art analysis, since the -- I have an example
15 that provides all four, I -- kind of a boundary
16 issue, didn't really have to talk about that.

17 Q But in your opinion, this term requires
18 each of the four recited media content types.

19 Correct?

20 A Oh, that's not exactly what I said.

21 What I said was that in Sasaki, Sasaki
22 explicitly went through all those four media types

1 as the types of -- and I'll just refer you to my
2 analysis in 94 and 95.

3 And because Sasaki listed all four, it
4 wasn't a situation where the prior art only
5 disclosed two of them and you had to decide -- you
6 know, make an argument about the -- about the
7 requirements of the claim. The claim lists four
8 using an "and." I'm not disputing the language
9 used by the claims.

10 But because I found in the combination of
11 Sasaki and Ellis that Sasaki is teaching those
12 four elements, it wasn't necessary to address the
13 exact question that you asked.

14 Q But I'm asking about the plain and
15 ordinary meaning.

16 Does the plain and ordinary meaning of
17 this term require each of the four recited media
18 types?

19 A Again, because in the analysis in the
20 prior art references they disclosed for me the
21 types, it wasn't necessary to address this kind of
22 boundary condition you're asking about with

1 respect to the exact metes and bounds as you're
2 asking.

3 Sasaki discloses the four media types.
4 You know, Ellis has disclosed automatically
5 inferring entertainment preferences of a user.
6 And in the combination it's -- it's using those
7 recommendations for all the media types disclosed
8 in Sasaki, which discloses all four of those media
9 types.

10 Q So you don't know whether the plain and
11 ordinary meaning of this claim term requires the
12 four recited media types?

13 A My point here is in my declaration. It
14 was not necessary to address that particular claim
15 construction issue. I understand that could be
16 addressed in claim construction. I'm saying
17 regardless of, you know -- of the question you're
18 asking, Sasaki already discloses all four of those
19 media types. And it would be obvious to combine
20 Ellis with Sasaki for the reasons that I said.

21 So for purposes of my declaration it's
22 not necessary to dress that particular issue with

1 respect to claim construction because Sasaki is
2 disclosing all four of those media types listed.

3 Q Now, in your declaration you said that
4 the claim terms were not entitled to any kind of
5 special meaning. Right?

6 A Well, I think I said that they were to be
7 interpreted as plain and ordinary meaning.

8 Q Right. So since we're not figuring out,
9 you know, what special meaning applies here, we're
10 looking at plain and ordinary meaning, as we did
11 in your declaration, does the plain and ordinary
12 meaning of this claim term require all four
13 recited media types?

14 A So with respect to --

15 MR. CLEMENTS: Objection.

16 A With respect to the analysis I did, it's
17 not -- Sasaki already discloses all four media
18 types. So I don't think there's a dispute whether
19 that's true or not in this -- in this case with
20 respect to these references. Because Sasaki
21 already discloses all four.

22 So there's no dispute that I would

1 understand that could -- that should be raised
2 about whether the claims require all four or only
3 a subset, because Sasaki already discloses all
4 four.

5 So regardless of whether -- where that
6 issue comes out, if it's raised in front of the
7 PTAB, I don't think it matters. It doesn't change
8 my opinion. Because Sasaki already discloses all
9 four items listed.

10 Q But I'm asking about your understanding
11 of the claim term. And so you're not going to
12 tell me if the plain and ordinary meaning of this
13 term requires all four media types?

14 MR. CLEMENTS: Objection. Form.

15 A My point is it's not necessary to
16 consider. And I'm not a lawyer. But in the
17 analysis that I did, Sasaki discloses all four of
18 those media types. And so it's -- wouldn't be
19 necessary to consider -- and I know there's a lot
20 of legalities about a lot of case law about
21 and/or. But I'm not a lawyer. I -- but I don't
22 think it matters in this case with respect to my

1 analysis. Because Sasaki already discloses all
2 four media types.

3 And so in the combination of Ellis and
4 Sasaki, it discloses the claim element, regardless
5 of what, you know, the legal system may determine
6 would be the proper claim construction. Because
7 already disclose all four.

8 So, you know, either the construction
9 would be -- it requires all four, it doesn't
10 require all four. But it doesn't matter, because
11 Sasaki already -- it doesn't matter with respect
12 to my analysis that I did in the declaration,
13 because Sasaki discloses all four.

14 So I don't see how that claim
15 construction issue would be raised that would
16 impact the analysis here at all. Because Sasaki
17 already discloses all four.

18 Q So for your analysis, your understanding
19 of the claim terms and the interpretation of claim
20 terms is that only a lawyer can determine the
21 plain and ordinary meaning of a claim term?

22 A No, that's not what I'm saying. That I'm

1 saying often there are disputes about claim
2 phrases and what their meaning is.

3 So if the dispute here is it requires all
4 four or it doesn't require all four, if that's --
5 if that could be a dispute in this case, it
6 doesn't matter for the purposes of my analysis,
7 because Sasaki already discloses all four.

8 So if the lawyers fight about this and
9 the PTAB decides one way or the other, it doesn't
10 impact my analysis. Because if the PTAB decides
11 all four are required, Sasaki discloses all four.
12 And if the PTAB decides it doesn't require all
13 four, it discloses four.

14 So it -- so I don't see why the PTAB,
15 with respect to these particular references in my
16 analysis, would even consider this to be an area
17 of dispute.

18 Claim construction, as I understand, is
19 to resolve a disputed issue. But I don't think it
20 can be disputed that Sasaki already discloses all
21 four.

22 Q So you think that my question is so

1 irrelevant that you're refusing to answer it?

2 A What I told you was, I didn't have to
3 determine the metes and bounds of that particular
4 question you're asking, because Sasaki discloses
5 all four. It doesn't --

6 Q That's --

7 A It doesn't impact my analysis either way.
8 It doesn't impact my analysis either way, because
9 Sasaki already discloses all four. So it was not
10 necessary to give an analysis about whether it
11 does or not require all four, because Sasaki
12 already discloses all four.

13 Q So you haven't thought about whether the
14 plain and ordinary meaning of this term requires
15 all four recited media types?

16 A I considered the claims. But -- and the
17 claim listed four items there explicitly. So I
18 found in my analysis that Sasaki disclosed all
19 four of the media types. And so it's not
20 necessary to consider the exact question you're
21 asking, because Sasaki already discloses all four
22 media types.

1 And so under -- under either
2 interpretation -- and again, I'm not a lawyer. I
3 can read the plain and ordinary meaning. It does
4 use the word "and." But, you know, I understand
5 there often are disputes about these types of
6 things in various cases.

7 But it doesn't matter for the analysis
8 with respect to Sasaki and Ellis, because Sasaki
9 already discloses all four. The only issue that
10 could come up, if the claim construction came out
11 that required some sort of media type that wasn't
12 even listed, that Sasaki doesn't provide, I'm not
13 sure under what circumstances that would happen,
14 to include in plain and ordinary meaning something
15 that's not even there.

16 But Sasaki already discloses the four --
17 all the four types of media types claimed in the
18 language of that element we're looking at.

19 Q You said a couple of times that this
20 claim term uses the word "and." What is the
21 implication of the word "and" in this claim term
22 to you?

1 A In my analysis I found a reference that
2 included all four of those references. So it
3 doesn't matter with respect to my analysis the
4 question you're asking. Because in my analysis
5 Sasaki already discloses all four media types.

6 So if you're asking about that question,
7 it's -- I don't think it's necessary to consider
8 with respect to that because Sasaki already
9 discloses all four of the explicitly listed media
10 types claimed in this claim element.

11 Q And what is the implication of the word
12 "and" in that claim term?

13 A With respect --

14 MR. CLEMENTS: Objection to form.

15 A -- to my analysis --

16 THE WITNESS: Sorry, Calmann. I spoke
17 over you.

18 MR. CLEMENTS: It's just a form
19 objection.

20 A With respect to my analysis, because
21 Sasaki disclosed four media types, all four
22 listed, it -- I didn't really have to think about

1 the legalities of these types of groups when
2 they're listed in the claim. Because Sasaki
3 explicitly -- and I show -- just as I show,
4 discusses all four of the media types.

5 And the combination of Ellis and Sasaki,
6 at the recommendation -- sorry, the user
7 preference automatic generation would be applied
8 to all of those media types. And so -- as I
9 discuss in my declaration.

10 And so Sasaki already discloses all four
11 media types.

12 Q Let's turn to our next exhibit. That's
13 Exhibit 1002 from the 244 matter. This is the
14 '021 patent file history.

15 (IPR2023-00244 Exhibit 1002, previously
16 marked, not attached.)

17 Q Please let me know once you have that
18 exhibit open, Dr. Houh.

19 A Okay.

20 Q And can you confirm that the exhibit I
21 provided is the '021 patent file history?

22 A This does appear to be the '021 patent

1 file history.

2 Q Can you please turn to the page 65?

3 A Okay.

4 Q And this is the beginning of an office
5 action dated June 4, 2018. And it goes on for the
6 next several pages.

7 Do you see that?

8 A I see the date. I haven't flipped
9 through the next several pages yet, but ...

10 Q Go ahead and flip through the next
11 several pages.

12 A Okay.

13 Q Does this refresh your recollection about
14 the file history of the '021 patent?

15 A Sure, yes.

16 Q You've reviewed the '021 patent file
17 history. Right?

18 A I have.

19 Q I would actually like to turn to an
20 earlier document in the file history. If you can
21 turn to Page 92.

22 So this is the May 16, 2008, filing from

1 the applicant?

2 A Sorry. I'm on -- did you say Page 92?

3 Q Correct.

4 A And what are you saying this is?

5 Q It's a response in support of request for
6 continued examination.

7 Do you see that?

8 A I see it.

9 Q And it says there that amendments to the
10 claims begin on Page 2?

11 A Yes.

12 Q And if we turn to the next page, 93, it
13 says, Amendments to the claims.

14 Do you see that?

15 A I do.

16 Q And can you look at Claim 22.

17 A Okay.

18 Q And do you see in this claim it includes
19 the clause, "wherein the plurality of media
20 content types comprises textual media, image
21 media, music media, podcast media, and video
22 media"?

1 A Yes.

2 Q And this is refers to Claim 21, the
3 independent claim. Right?

4 A Sorry, I didn't hear the whole question.

5 Q Claim 22 depends from Claim 21. Right?

6 A Yes, I see that.

7 Q Now let's turn back to the June 4 office
8 action, starting on Page 65.

9 A Okay.

10 Q And can you turn to Page 74, the
11 discussion regarding Claim 22.

12 Do you see that discussion?

13 A Yeah. It goes onto the next page.

14 Q Correct. And here the examiner states
15 that the combination Spiegelman and bow dean owe
16 does not disclose -- sorry, let me repeat that.
17 At the bottom of Page 74 it says, "The combination
18 of Spiegelman and Baudino further discloses
19 wherein the plurality of media types comprises
20 music media, podcast media, and video media."

21 Do you see that?

22 A Yes.

1 Q And then it goes on to say, "The
2 combination of Spiegelman and Baudino does not
3 disclose textual media and image media. However,
4 Martin further discloses textual media and image
5 media."

6 Do you see that?

7 A Yes.

8 Q And then below there is a discussion
9 about the motivation to combine Spiegelman,
10 Baudino and Martin. Right?

11 A Yes.

12 Q In light of this discussion, is it your
13 understanding that Claim 22 here requires all of
14 the recited media types?

15 A Well, again, in my analysis, whether this
16 issue comes out as you're suggesting or not
17 doesn't impact my opinion, which is that Sasaki
18 discloses all four media types.

19 So again, it's, you know, not necessary
20 to consider the question you ask about the
21 requirements, whether it requires four or less
22 than four. I think that's the sense of your

1 question. Because Sasaki already discloses all
2 four.

3 So I see the rejections here. But again,
4 that's not an issue that, with respect to the
5 analysis I did for the declaration, that mattered.
6 I didn't provide a reference in combination only
7 talked about two. There was a reference that
8 Sasaki discloses all four media types.

9 Q Okay. But my question was, in light of
10 this discussion that we just looked at in the file
11 history, does Claim 22 here require all of the
12 recited media types?

13 MR. CLEMENTS: Objection. Form.

14 A Again, with respect to my declaration, as
15 I've submitted it, Sasaki already discloses all
16 four. So again, I didn't have to consider the
17 question you're asking. And I would -- you're
18 just showing me a portion of this file history,
19 which I did review, but I don't remember all the
20 arguments back and forth and every office action
21 reply, and every office action.

22 So my point here is that it really is not

1 necessary to consider that question one way or the
2 other with respect to the analysis I provided in
3 my declaration, because Sasaki already discloses
4 all four.

5 Q So you wouldn't --

6 A This office action didn't say the prior,
7 you know -- the prior -- you know, before this
8 step, say the prior art did disclose all four,
9 that this doesn't require, you know, Z media. It
10 doesn't have Z media. Let's talk about whether it
11 requires Z media. Well, it didn't say Z media.
12 So Sasaki discloses already all four media types
13 required by Claim 1, that element.

14 And then when we -- we already looked at
15 Claim 2 about podcast media. And we discussed
16 that both with respect to -- with respect to
17 Ellis, I think, that Claim 1 requires four media
18 types. My analysis with respect to the
19 combination of Ellis and Sasaki disclosed four
20 media types.

21 So, you know, it -- it's, again,
22 unnecessary to consider that issue with respect to

1 what you're asking. And it wasn't necessary for
2 me to do that full analysis, because Sasaki
3 already discloses all four media types.

4 Q Regarding your -- okay. You mentioned
5 your opinions. In your opinion, does Ellis
6 disclose all four media types?

7 A I'm not relying on Ellis alone for the --
8 for the media types. It's -- what I'm relying on
9 is Sasaki that discloses four media types. And
10 the combination of Ellis and Sasaki, the
11 monitoring and whatnot, would have been applied to
12 the four media types. So that it -- in the
13 combination, the combination of Ellis and Sasaki
14 together disclose this claim element. I think
15 it's 1.1.2 or something, that we're talking about,
16 the inferring stuff.

17 Q Ellis does not disclose inferring a
18 user's entertainment preferences based on video
19 media. Right?

20 A I haven't -- I don't think I rely on
21 Ellis alone for that -- what you're asking. It's
22 the combination of Ellis and Sasaki.

1 Sasaki discloses four media types. And
2 Ellis discloses automatically monitoring content
3 listened to to determine listening preferences.

4 But in the combination, that
5 recommendation monitoring system would be applied
6 to all four media types, for the reasons I give I
7 think elsewhere in my declaration. We can take a
8 look at those, if you want.

9 But I think it's -- I'll just direct you
10 there. It's the combination of Ellis and Sasaki
11 that renders the claim element obvious.

12 Q But neither Sasaki nor Ellis discloses
13 inferring a user's entertainment preferences based
14 on video media. Right?

15 A I mean, the analysis with respect to this
16 claim element is with respect to the combination
17 of Ellis and saki. Sorry, Ellis and Sasaki.

18 And I've given my reasons why a person of
19 ordinary skill would have combined the two
20 references and how they could have done it
21 successfully. And it's -- I'll point you there in
22 my -- I don't remember exactly which paragraph

1 that discussion is in. I think there's a whole
2 section on it.

3 But it's the combination. And so Sasaki
4 discloses certain parts, Ellis discloses certain
5 parts, and a person of ordinary skill would have
6 been motivated to apply techniques in one to the
7 other reference in the way that I discuss in my
8 other sections that we can look at.

9 So it's the combination of the two that
10 renders obvious. If Ellis provided and disclosed
11 everything, I would have written it up as an
12 anticipation section. But it's the combination.
13 Because people of ordinary skill can be motivated
14 to put things together because it provides
15 benefits, and for the reasons I've listed in my
16 declaration.

17 Q Let's turn to Claim 9 of the '021 patent.
18 So turning back to Exhibit 1001 in the 244 matter.
19 Claim 9 is on Page 11.

20 A Okay.

21 Q And Claim 9 further limits Claim 1.
22 Correct?

1 A It's dependent on Claim 1, that's
2 correct.

3 Q And Claim 9 reads in part, "Obtain the
4 media or the information about the media from a
5 storage within the computer server; or control
6 receipt of the media or the information about the
7 media from a remote storage device."

8 Right?

9 A Yeah, I see that.

10 Q What is the plain and ordinary meaning of
11 "information about the media" in Claim 9?

12 A I mean, it's the same as we discussed in
13 Claim 1, because this -- it's referring to the
14 same information about media in Claim 1.

15 Q And what is the plain and ordinary
16 meaning of "a storage within the computer server"?

17 A Well, I think, looking at the spec, you
18 know, it's really consistent with what -- it means
19 what it says. It's -- it means storage within the
20 computer server.

21 Q And what is storage within the computer
22 server?

1 A Well, I think -- I think a person of
2 ordinary skill in the art would recognize that,
3 for example, the hard drive that Sasaki discloses
4 within the server is storage within a computer
5 server.

6 And so that's clearly an example that
7 would -- a person of ordinary skill would
8 recognize was -- would be within the scope of
9 storage within a computer server.

10 Q What are you basing that determination
11 on, that that's how a person of ordinary skill
12 would understand the claim term to mean?

13 A I mean, it's pretty clear that a hard
14 drive within a computer server is a place to store
15 items. And it's clearly within the bounds of
16 storage within a computer server.

17 And Sasaki says, preference information
18 is stored in the hard HDD4 of the server. HDD
19 stands for hard disk drive. And that's -- that's
20 clearly within the bounds of storage within a
21 computer server. That's Paragraph 133 in my
22 discussion.

1 And I go on in the rest of it to show how
2 the prior art discloses all of this claim as
3 required by Claim 9. Or what is required by Claim
4 9.

5 MR. HAMILL: Okay. We've been going
6 about an hour. Why don't we take another ten
7 minutes.

8 (A recess was taken.)

9 BY MR. HAMILL:

10 Q So let's continue our discussion of the
11 '021 patent, Exhibit 1001 in the 244 matter.

12 Can you turn to Claim 10.

13 A Okay.

14 Q So at Column 9, Line 55, do you see the
15 limitation that reads, "Control transmission, to
16 the server, of location information associated
17 with the portable media player device to
18 facilitate the server in inferring a current
19 location of a user of the portable media player
20 device"?

21 A I think you read that correctly.

22 Q What is the plain and ordinary meaning of

1 this limitation?

2 A So for part of this, if you look at the
3 spec at Column 4, Line 41. It talks about this
4 method begins at Block 204, "Wherein an embodiment
5 a server such as server 20 of Figure 1 infers a
6 current location of the user. The inference may
7 include receiving or determining the current
8 location or a successively receiving a series of
9 locations of a portable media player device
10 associated with the user."

11 So one example of what the "infer the
12 current location" the spec explicitly gives is,
13 includes receiving a current location of the
14 portable media player device. And so that helps
15 inform the -- what's within the scope of this
16 claim element really with respect to the
17 "inferring a current location of a user of the
18 portable media player device."

19 And I give examples from the prior art
20 that are exactly this. Which is that the -- if
21 you look at my report around Paragraph 150, that
22 Sasaki teaches that information representing the

1 latitude and longitude detected by the GPS of the
2 place of transmission which indicate the present
3 position can be directly transmitted. And I go
4 on. Ellis also teaches using multiple methods to
5 determine the portable media player device's
6 current location, including using the global --
7 global positioning system monitor 160 to
8 determine -- to determine the user's location.

9 And then, The portable media device uses
10 communication circuitry to transmit location
11 information to a server so that the server can
12 determine the user of the portable media player
13 device's location, or infer. But "infer" in the
14 spec includes just transmitting or receiving the
15 location from a portable media device.

16 So I think the examples that I have given
17 with respect to this whole claim element, and I
18 know I'm discussing the "infer" part here, but
19 really the whole, the whole of this 10.3 element,
20 as I call it, is discussed in my declaration.

21 Q And then focusing on the part of this
22 that said "control transmission, to the server, of

1 location information associated with the portable
2 media player device," does that require the
3 portable media player device to transmit location
4 information to the server?

5 A Well, I mean, ten is about, if you look
6 at the preamble, it's about how the one or more
7 processors of a portable media device -- portable
8 media player device caused the portable media
9 player device to, and then it lists these things.

10 And so that's the processor running
11 instructions. That when executed cause the
12 controlling of the transmission, to the server, of
13 location information. And so if you look at what
14 I've discussed in Sasaki, first of all, I discuss
15 another claim element, The communication circuitry
16 in the portable media player establishes a network
17 connection with the server. And that Sasaki
18 teaches then that the information representing the
19 latitude and longitude detected by the GPS of the
20 place of transmission, which indicate the present
21 position can be directly transmitted. And I cite
22 to Sasaki.

1 And we can go look at those passages from
2 Sasaki. But what I cite here are examples of the
3 player sending the location. And, you know, I
4 discuss controlling the transmission with respect
5 to the communication circuitry and the media
6 player establishing a network connection with the
7 server, which I think is required by an earlier
8 claim.

9 So it's really putting that all together
10 in my discussion of this claim element, referring
11 to other previous discussions, is an example of
12 what a person of ordinary skill at the time of the
13 invention would have understood is what -- is
14 within the scope of this claim element.

15 Q This claim element requires the portable
16 media player device to transmit location
17 information to the server. Right?

18 A Well, it's the processor has to control
19 transmission, to the server, of location
20 information associated with the portable media
21 player. I mean, if we're going to talk about the
22 claim, we might as well use the actual language of

1 the claim. That's what I analyzed, not your
2 paraphrase.

3 Q Can you answer my question?

4 A I mean, I analyzed the phrases and the
5 words that the claim actually used, and you didn't
6 use those same words. So I don't have opinion,
7 you know, about the words you're using to
8 paraphrase it. My opinions are with respect to
9 the actual claim language.

10 Q The preamble is, "One or more
11 nontransitory computer reasonable media comprising
12 instructions that when executed by one or more
13 processors of a portable media player device,
14 cause the portable media player device to."

15 Okay?

16 So this is about causing the portable
17 media player device to do something. Right?
18 Claim 10.

19 A That's what I said earlier, I think. I
20 quoted the preamble.

21 Q Then one of the things that the portable
22 media player device does is control transmission,

1 to the server, of location information associated
2 with the portable media player device.

3 So does this claim element require the
4 portable media player device to send location
5 information, to the server?

6 A I mean, this claim element requires
7 computer instructions that, when executed, do
8 certain things. It's not disclosing a method;
9 it's disclosing computer instructions.

10 But again I'll use the words of the
11 claims, not some paraphrase. So it's -- you know,
12 the computer -- it's -- it required -- well, the
13 preamble says, "One or more nontransitory
14 computer-readable media" -- it gives an acronym --
15 "comprising instructions that, when executed by
16 one or more processors of a portable media player
17 device, cause the portable media player device to,
18 control transmission, to the server, of location
19 information associated with the portable media
20 player device to facilitate the server in
21 inferring a current location of a user of the
22 portable media player device."

1 And I think that was the element you were
2 asking about.

3 And what I have discussed within my
4 declaration, how the prior art discloses the
5 various elements. And that, for example, Sasaki
6 has a portable media player device that has a CPU
7 in Figure 1 of Sasaki that executes programs
8 stored in the ROM of the portable media device
9 player. And then furthermore, how Sasaki then --
10 that's in Paragraph 136.

11 And that Ellis also talks about a
12 portable media player device. And it's the
13 combination of Ellis and Sasaki -- for this, let
14 me just look at it.

15 Q Doctor, let me stop you right there. I
16 really want to focus on the claims here, not your
17 report right now. So let's stay focused.

18 The term "control transmission, to the
19 server, of location information associated with
20 the portable media player device," what is the
21 plain meaning of that?

22 A So you're -- could -- I wasn't looking at

1 what you're reading when you read that. Could
2 you -- where are you reading from again, please?

3 Q Line 55, Column 9.

4 A How much did you read?

5 Q I'll read it again. "Control
6 transmission, to the server, of location
7 information associated with the portable media
8 player device."

9 What is the plain and ordinary meaning of
10 that?

11 A I mean, it's just what it says. That the
12 computer media has instructions that, when
13 executed, cause the media player to control
14 transmission, to the server, of location
15 information associated with the portable media
16 player device.

17 I mean, I think it's pretty clear from
18 the plain -- the words that are there what --

19 Q I don't think -- I'm confused. I don't
20 know what "control transmission, to the server"
21 means. What does that mean to a POSITA?

22 A I mean, it means what it says, that the

1 instructions when executed control transmission,
2 to the server, of location information associated
3 with the portable media player device.

4 What's your point of confusion here?

5 Q So you can't give any explanation of the
6 plain and ordinary meaning of this term other than
7 reading a document?

8 A Well, it means what it says. I'm not
9 really sure what your point of confusion is. What
10 word are you confused about that you think maybe
11 what POSITA would also be confused about?

12 Q So if the portable media player device
13 does not send location information, to the server,
14 is it performing this requirement to control
15 transmission, to the server, of location
16 information?

17 A I mean, this is a computer-readable media
18 claim that has instructions that when executed
19 cause actions. So --

20 Q So I'm asking about these actions.

21 A -- claim are the computer-readable
22 instructions that cause certain actions.

1 Q I'm asking about one of these actions.
2 That's what I'm asking about. "Control
3 transmission, to the server, of location
4 information."

5 A So you're confused as to what --

6 Q What is that action?

7 A Sorry, what was the question again? I'm
8 sorry I interrupted you.

9 Q What is that action? I just read it to
10 you.

11 A It's instructions that cause certain
12 actions, and in this case it's control
13 transmission, to the server, of location
14 information associated with the portable media
15 player device.

16 So you're asking if "to the server"
17 doesn't mean to the server?

18 Q If the portable media player device --
19 can a portable media player device do this action
20 without sending location information, to the
21 server?

22 A The Claim 10 requires a memory calling

1 computer instructions that, when executed, do
2 these -- these things listed. That's all the
3 claim requires. And so if there are instructions
4 that can cause this to occur in the
5 computer-readable memory, that's what this claim
6 is covering.

7 This is not a method step.

8 Q I'm not asking about method steps. I'm
9 trying to understand what "control transmission,
10 to the server, of location information associated
11 with the portable media player device" means to a
12 POSITA.

13 A I'm trying to understand your point of
14 confusion. It seems like you don't know what "to
15 a server" means. Is that what --

16 Q I don't know what "control transmission,
17 to the server," means. What does that mean?

18 A It's -- they're instructions that, when
19 executed, control the transmission of information.
20 And that information is -- the transmission is
21 controlled to be to a server.

22 Q What is controlling transmission of

1 information?

2 A You have computer instructions, and the
3 instructions basically dictate to a processor.
4 This is an example of what a person of ordinary
5 skill would understand.

6 It's the instructions that are
7 controlling transmission. So if the instructions
8 in the memory of access by a computer to execute a
9 program control the processor to transmit data to
10 a server, that's clearly within the scope of what
11 this is claiming.

12 I mean, it seems pretty clear from the
13 language. I'm not really sure what -- now, the
14 instructions themselves, sitting there, they don't
15 do anything. They're just bits of data in memory.
16 But when executed on a CPU, cause the CPU to
17 perform certain actions. And if one of those
18 actions is, you know, that the instructions when
19 used by the CPU, cause the CPU to transmit data to
20 a server, specific data as claimed, I think that's
21 well within the scope of the plain and ordinary
22 meaning of this claim language.

1 Q How would a CPU transmit data to a
2 server?

3 A You're asking how does a CPU transmit
4 data to a server?

5 Q Yeah. You just said that the
6 instructions, when used by the CPU, cause the CPU
7 to transmit data to a server.

8 How does the CPU transmit data to a
9 server?

10 A I mean, if you look at the specification,
11 it talks about Figure 3. And it says Column 7,
12 starting around Line 6, that in the embodiment
13 shown in Figure 3, the handheld portable media
14 player device includes a processor coupled to user
15 interfaces, storage medium, and
16 transmitter/receiver, (TX/RX) (transceiver).

17 And that later the transceiver may be --
18 this is Line 15. "The transceiver may be a
19 radiofrequency transceiver that in various
20 embodiments may support WiFi, WiMAX, or other
21 wireless local area network access. In some
22 embodiments, the RF transceiver may support EDGE,

1 (Enhanced Data GSM environment) or G3
2 communication protocols."

3 That's an example of the devices are a
4 part of the media player.

5 If you're asking whether the spec
6 contains an algorithm of how it uses these to do
7 it, I'm not sure I see that within the spec. But,
8 clearly, this media player device has a CPU. A
9 CPU can run computer programs, and it's got a
10 transceiver. So I'm not sure what the confusion
11 is about this.

12 I mean, this doesn't say, at least in
13 this section I don't see it providing further
14 details in the -- in the '021 spec about how the
15 CPU actually causes the data to be -- controls the
16 transmission of data occurs.

17 So, you know, if I look in the prior art
18 and I find the similar things, which I think I
19 have, I have shown in earlier part of the analysis
20 for Claim 10, a CPU and a transceiver, then it's
21 disclosing the same thing as -- as the '021
22 specification does.

1 And I think that's partly how I
2 approached the analysis for this section.

3 Q There's a clause starting at Line 59. It
4 reads, "Control receipt, from the server, of a
5 recommendation indicating an event or venue of
6 interest that is proximate to the inferred current
7 location of the user."

8 A Yeah. In Column 9, I was -- that, I see
9 that.

10 Q And then after that it says, "And wherein
11 the recommendation is based on one or more
12 inferred preferences of the user and the location
13 information."

14 And so I want to focus on the term "the
15 recommendation is based on one or more inferred
16 preferences of the user."

17 What is the plain and ordinary meaning of
18 that?

19 A So you're talking about Line 63 and 64,
20 of Column 9?

21 Q Correct.

22 A Well, was there a question? I do see it.

1 Q What is the plain and ordinary meaning of
2 that?

3 A I mean, I think this builds on
4 everything -- many of the things we've already
5 talked about.

6 But if you look at the specification, for
7 example, at Column 7, Line 23, it says here, "The
8 recommendation (or information) may be generated
9 by the server based at least in part on an
10 inferred current location of the user, and
11 inferred entertainment interest of the user,
12 based, e.g., on media stored in the storage unit
13 304, and/or accessed using the portable media
14 player device 300."

15 And so this is saying, this claim that
16 we're looking at, first of all, it's instructions
17 in the computer-readable media when executed cause
18 the media player device, so this is -- this is
19 instructions on a portable media player device, to
20 control receipt from a server of a recommendation.

21 And the recommendation that's received
22 from the server, or which is -- which the CPU

1 causes to be received from the server, when
2 executing instructions. The recommendation
3 received from the server is based on one or more
4 inferred preferences of the user and the location
5 information.

6 So I think we already talked about these
7 inferred preferences of the user, and we've
8 already talked about location information. And
9 so, so long as the recommendation is based on
10 those two items, that would be what -- what this
11 means.

12 Q I think -- let's see. You said, We've
13 already talked about these inferred preferences of
14 the user.

15 So in your opinion, does the -- do the
16 inferred preferences of the user in Claim 10 have
17 the same meaning as the corresponding limitation
18 in Claim 1?

19 A Well, with respect to inferred
20 preferences of the user, what -- what would be
21 recognized by a person of ordinary skill, it's
22 still in the spec. The same examples that use

1 "infer." I mean, I think the verb tense was
2 slightly different in one. But I think the -- I
3 think the examples we looked at were I think
4 actually this tense in ten. But I think a person
5 of ordinary skill recognize that those are the
6 passages supporting, you know -- that provide
7 context for this very similar term. Inferred
8 preferences of the user.

9 I think it was slightly different. I
10 mean, maybe it was infer one or more entertainment
11 preferences of the user in Claim 1. But I think
12 the same passages apply, so to the inferred
13 preferences of the user. And, similarly, the same
14 items that I've analyzed for Claim 1 apply, too.
15 And I do refer back to the analysis in Claim 1 for
16 part of the analysis for Claim 10 in my
17 declaration.

18 Q Then at Line 65, the claim continues,
19 "The inferred preferences are based at least in
20 part on the accessed media, media content types of
21 the access media from among a plurality of media
22 content types, and information about the accessed

1 media, wherein the plurality of media content
2 types comprises textual media, image media, audio
3 media, and video media."

4 Do you see that?

5 A Yes.

6 Q And so is the plain and ordinary meaning
7 of the term "information about the accessed media"
8 the same as the corresponding limitation in Claim
9 1?

10 A Well, I mean, it's slightly different
11 wording. So, you know, Claim 1 uses the phrase
12 "information about media." Here it uses the
13 phrase "information about the accessed media." So
14 I think it's not all the same, that media here for
15 which there's information about is accessed media.

16 But other -- other things still apply
17 about the -- you know, about the information and
18 the media.

19 Q And how does the word "accessed" in Claim
20 10 here change the scope of information about the
21 media compared to Claim 1?

22 A Well, I mean, just looking at the

1 phrases, you know, in -- I'd have to consider that
2 in the whole context of the claims. But just
3 looking at those phrases, certainly one -- one is
4 information about -- about the media. So just
5 looking at them without the other limitations,
6 because the other limitations may also introduce
7 limitations. Right? Right?

8 So one -- this information about the
9 media used in Claim 1 would -- would, you know,
10 seem to be broader than information about the
11 accessed media. Not that the information would be
12 broader. The information is still the
13 information. But that the media about which the
14 information is about is a narrower set.

15 And in my analysis we talked about
16 monitoring the media that was played. And in that
17 sense that also applies, because that is accessed,
18 in one sense accessed media.

19 So I think the phrases are slightly
20 different. Notwithstanding the other limitations
21 placed on the information about the media with the
22 rest of the claims, the phrases are different.

1 And I think accessed media has to be just that,
2 media that has been accessed. But the information
3 about that media would -- seems, you know --
4 wouldn't necessarily be any different. It's just
5 as the information about the media. It's just
6 that one uses accessed media and the other uses
7 media.

8 Q Let's then turn to the term, "wherein the
9 plurality of media content types comprises textual
10 media, image media, audio media, and video media."

11 What is the plain and ordinary meaning of
12 that term?

13 A Well, we've had this discussion I think
14 with respect to the same phrase in a different
15 element.

16 With respect to the analysis that I did,
17 I believe I still point to Sasaki for my analysis
18 in 1.1.2, which is what we were looking at
19 earlier. And in that analysis that I did, Sasaki
20 already clearly discloses all four of those
21 elements.

22 And so if you -- and we've already had

1 this discussion about the possible meanings and
2 all that. But for the purposes of my analysis, it
3 doesn't really matter. Sasaki already discloses
4 all four of those media types.

5 Q So in your opinion, the plain and
6 ordinary meaning of this term is the same as the
7 corresponding term in Claim 1?

8 A I mean, that's not exactly what I said.

9 I mean, the -- the analysis in Claim 1
10 with respect to Sasaki and Ellis in combination
11 still applies to this claim element. I mean, this
12 claim element is slightly different. This whole
13 claim element is slightly different.

14 But with respect to parts of the claim
15 analysis, the analysis that I performed is really
16 the same analysis. It's still within the scope of
17 Claim 1 and Claim 10. And that's the analysis
18 that I did; not necessarily with respect to the
19 question you asked.

20 Q When you state "not necessarily with
21 respect to the question you asked," what do you
22 mean?

1 Are you not taking a position as to
2 whether this means the same thing as the
3 corresponding element in Claim 1?

4 A I mean -- I mean, that's not --

5 MR. CLEMENTS: Objection. Form.

6 THE WITNESS: I'm sorry, was that the end
7 of that question?

8 MR. CLEMENTS: I just made an objection
9 to form.

10 THE WITNESS: Oh, sorry.

11 A I mean -- I mean, clearly the scope of
12 Claim 10 and Claim 1 are different as a whole,
13 otherwise I don't think you can get claims
14 covering the exact same thing.

15 And certainly because -- well, so, but I
16 haven't -- I haven't done a claim by --
17 element-by-element comparison about the scope
18 between Claim 1 and Claim 10.

19 What I'm saying is that the analysis
20 for -- that was performed in Claim -- for 1.1.2
21 applies here in the case. It would still fall
22 within the scope of this phrase we're talking

1 about, because Sasaki is disclosing all four of
2 those, of media content types, already.

3 I'm saying the analysis is the same.
4 With respect to what you asked about have I gone
5 and compared those claim scope between the
6 elements, I mean, we already know that the scope
7 of the overall claims should be different.

8 Q Let's turn to Claim 16. It starts at the
9 bottom of Column 10 and then it goes onto the next
10 page. At Column 11, Line 4, do you see the term,
11 "infer one or more preferences of the user of the
12 portable media player device based at least in
13 part on the received media or the information
14 about the media and media content types of the
15 media accessed by the portable media player device
16 from among a plurality of media content types
17 wherein the plurality of media content types
18 comprises textual media, image media, audio media,
19 and video media"?

20 Do you see that?

21 A Yes.

22 Q What is the plain and ordinary meaning of

1 "infer" in this clause?

2 A I mean, this is still the -- I just want
3 to point out that the language is "infer," and not
4 "inferring." So you're asking about the actual
5 language, not a different language.

6 Is that what you're asking about?

7 Q My question was, what is the plain and
8 ordinary meaning of "infer" in this clause?

9 A Oh, okay. Infer. And I misheard that,
10 then.

11 I mean, so reviewing this part of the
12 phrase "infer," the same kind of specification,
13 you know. A POSITA viewing it in the concept of
14 the spec would see the same examples we talked
15 about earlier.

16 You know, I can go back and find them
17 again, if you want. I'm just going to refer you
18 back to, you know -- it's really the same
19 discussion.

20 Those are examples in the specification
21 that a POSITA would recognize would be examples
22 of, infer one or more preferences of the user.

1 And there may be other examples that apply here as
2 well. But so I think it's the same, same kind of
3 way a POSITA would look at this to determine what
4 falls within the scope.

5 And certainly examples provided in the
6 spec that I pointed to earlier fall -- I think a
7 person of ordinary skill would recognize those are
8 the examples that are intended to be covered at
9 least in part by this claim language.

10 Q So the term "infer" has the same meaning
11 as it does in Claim 1?

12 A Well, in this case I think the same
13 examples for my analysis in the prior art would
14 apply, you know. You're asking a slightly
15 different question. That's not the analysis that
16 I did. But I did -- I did point to the same
17 analysis, which -- we can look at the exact
18 section. In 16.2.1, I think that's what I'm
19 calling this, on Page 92, I point back to 1.1.2.

20 So my point here is, the analysis that I
21 did overlaps. But I didn't consider the question
22 whether -- you know, the claims -- like, if the --

1 the claim scope of the whole claim as a whole was
2 the same as the other claims, I don't think
3 that's -- my understanding is that that's -- you
4 can't patent the same invention twice or claim
5 multiple claims.

6 So I think we already understand, a
7 POSITA would already understand the scope of the
8 overall claim was different. I didn't do the
9 analysis element by element about the -- about the
10 question you're asking. What I pointed to was the
11 same analysis for the person of ordinary skill,
12 recognizing that the same types of examples as
13 disclosed in the spec as would be understood this
14 language in the claim element of 16 covers, this
15 is also still found in the prior art, is in the
16 prior art as disclosed.

17 And I refer back to the analysis of
18 Limitation 1.1.2 for this 16.2.1 claim element.

19 Q Also in this clause is the term "one or
20 more preferences of a user."

21 What is the plain and ordinary meaning of
22 this term?

1 A Again, so we talked about this earlier
2 with respect to entertainment preferences. Those
3 at least still apply. And a preference versus an
4 entertainment preference would be broader. So
5 those examples still apply that we talked about
6 earlier with respect to entertainment preferences.

7 And the analysis is really with respect
8 to, you know -- the same analysis for Sasaki and
9 Ellis, the combination thereof applies that I did
10 in 1.1.2. In the section for 1.1.2 of my
11 declaration, that is.

12 Q And this clause also contains the term
13 "information about the media."

14 What is the plain and ordinary meaning of
15 this term?

16 A I can't remember. I think -- I mean, we
17 discussed this similar phrasing of information
18 about media, about the media, before. And, you
19 know, with respect to the analysis, it's really
20 the same as in 1.1.2 with respect to the examples.

21 But the way I approached this was still
22 the same as we discussed earlier. So I don't

1 know -- I don't remember everything I said, but I
2 think, you know, if you're looking about what
3 information about the media is, that's interpreted
4 in the -- in the -- as plain and ordinary meaning
5 in the context of the spec.

6 I don't recall what examples I pointed
7 to. But regardless of what examples, the analysis
8 I did for this, I do show that it's information
9 about the media.

10 And we talked about, like, the song, the
11 artist, the genre of the song. It's not the song
12 itself; it's information about the media. The
13 name of the song, that is. Right? The song is
14 the song. Or the media is the media. Information
15 about the media is -- might be, as we already
16 discussed and I talk about in 1.1.2, these things
17 like what's the genre of the media, what's the
18 artist that performs the media.

19 So those are examples of things that
20 would fall within the scope of information about
21 the media.

22 Q And in the context of Claim 16, is there

1 a difference in the meaning of "information about
2 the media" and "one or more preferences of a
3 user"?

4 A Well, with respect to my analysis, I
5 don't -- I don't think the analysis would have
6 gone differently. The claims don't somehow have
7 other limitations that contort what the -- what
8 the meaning would be in a way that -- you know,
9 that same analysis wouldn't apply.

10 So really, I'm relying on the same
11 analysis to disclose the various parts of this
12 claim element we're discussing here.

13 Q When you say "the same analysis," you're
14 saying the same analysis as in Claim 1?

15 A As in the limitation. I refer back to
16 that analysis. I think the same analysis applies
17 to 16.2.1, for example.

18 Q My question was, is there a difference in
19 the meaning of the term "information about the
20 media" versus the term "one or more preferences of
21 a user" in Claim 16?

22 A Well --

1 Q I wasn't asking about Claim 1.

2 A I think --

3 Q I didn't follow your answer. I'm not
4 sure you were answering my question.

5 A So I think we had this discussion earlier
6 as well with respect to another claim. I think it
7 would be the similar kind of analysis.

8 That the user preferences -- you know,
9 information about media is information about the
10 media. The user preferences, and example --
11 examples I give from the prior art, are determined
12 based on, you know, what the user is listening to,
13 what they actually listen to.

14 So there might be content that is not
15 media that the user doesn't listen to, that may
16 not -- the information about which does not become
17 part of the user preferences. But it still could
18 be information about media, for example.

19 Q Then another term in this clause is, "A
20 plurality of media content types, wherein the
21 plurality of media content types comprises textual
22 media, image media, audio media, and video media."

1 Does this determine have the same plain
2 and ordinary meaning as the corresponding term in
3 Claim 1?

4 A I think we've had this discussion
5 previously, which is the analysis I did for Sasaki
6 still applies. I refer back to that analysis for
7 this claim element.

8 And Sasaki already shows that it's
9 disclosing all four media content types. And so
10 with respect to this claim element, we had this
11 discussion about what the "and" and all that
12 meaning. But it really isn't applicable --
13 doesn't really matter for -- with respect to the
14 analysis I actually did, which showed that Sasaki
15 already discloses all four of the media content
16 types listed here in Claim 16.

17 It's the same four media types explicitly
18 called out in one, and then -- and so the same
19 analysis applies. The same discussion we had
20 about the same question I think is really the same
21 answer.

22 Q Let's turn to the next exhibit.

1 MR. HAMILL: I'm going to upload your
2 declaration from the '960 patent IPR.

3 (IPR2023-00246 Exhibit 1003, previously
4 marked, not attached.)

5 A I also have a paper copy. May I refer to
6 that as well?

7 Q Sure. Thanks for letting me know.

8 A Oh, I don't see it in the chat yet. Oh,
9 did you upload all three already?

10 Q No.

11 A No.

12 Q It should be -- it's in the process of
13 uploading still.

14 A Oh, I see it now.

15 Q Okay. So this is Exhibit 1003 from the
16 246 matter.

17 And is this your declaration from the 246
18 matter?

19 A Yes, it is.

20 Q And please turn to the claim construction
21 section, which starts on Page 19, Paragraph 36.

22 A Okay, I'm there.

1 Q And in the last sentence of this
2 paragraph you state, "For the purposes of this
3 declaration, it is my opinion that none of the
4 claim terms requires a specific construction, and
5 all will be given their plain and ordinary
6 meaning."

7 Do you see that?

8 A I do.

9 Q And did you apply the same understanding
10 of plain and ordinary meaning in the -- with
11 respect to the '960 patent as you did for the
12 '021?

13 A Well, the plain and ordinary meaning
14 would be that of a person of ordinary skill in the
15 art at the time of the invention in the context of
16 the specification and the prosecution history of
17 the '960 patent.

18 Q Let's introduce the '960 patent as an
19 exhibit.

20 A I have a paper copy of that. May I also
21 refer to that as well?

22 Q Of course.

1 A Thank you.

2 (IPR2023-00246 Exhibit 1001, previously
3 marked, not attached.)

4 Q Okay, I have uploaded into the chat
5 Exhibit 1001 from the 246 proceeding. This is a
6 copy of the '960 patent.

7 Once you have it open, can you confirm
8 this is, in fact, the '960 patent?

9 A Yes, this is the '960 patent.

10 Q Please turn to Claim 1, which starts on
11 Page 9. Let me know once you're there.

12 A Okay, I'm there.

13 Q So at Column 8, Line 9, the claim has a
14 clause that reads, "Inferring, by the server,
15 based at least in part on the retrieved plurality
16 of media or the retrieved information about said
17 plurality of media, one or more entertainment
18 preferences of a user of the portable media player
19 device."

20 Do you see that?

21 A Yes.

22 Q And what is the plain and ordinary

1 meaning of the term "infer" in Claim 1?

2 Let me rephrase my question. The term in
3 Claim 1 is "inferring." So what is the plain and
4 ordinary meaning of the term "inferring" in Claim
5 1?

6 A I mean, I think, really, the spec is very
7 similar to the '021. And it's got the same
8 passages, for example. The bottom of Column 4,
9 where the spec is describing entertainment
10 interest of the user, it says,
11 the server may infer an entertainment interest of
12 a user" -- sorry, I started at Line 66.

13 "The server may infer an entertainment
14 interest of the user at the next blocks 206/207.
15 The inference may include retrieving media or
16 information about media stored on and/or accessed
17 using the user's portable media player device at a
18 next box 206."

19 So it would at least include these
20 examples. And the analysis I did with respect to
21 the prior art is really similar, that Ellis does
22 teach the monitoring the content listened to by

1 the user and automatically determine the groups
2 liked and disliked by the user. So I think that's
3 a very analogous example to one that's disclosed
4 in the prior art -- sorry, in the specification
5 itself, that a POSITA would recognize is what the
6 claim element is talking about, so would be within
7 the scope.

8 And I think a person of ordinary skill
9 would recognize that the teachings of Ellis, as
10 used for the combination of Ellis and Sasaki in my
11 analysis, also teach the -- really the very same
12 thing as disclosed in this example in the '960
13 patent.

14 Q Okay. Please turn to Claim 6.

15 Okay. Claim 6 reads -- well, it depends
16 from Claim 1. And it states in part, "Inferring
17 by the server the current location of the user of
18 the portable media player device, including
19 receiving by the server a current location of the
20 portable media player device from the portable
21 media player device."

22 A Yeah, I see that.

1 Q The -- within this -- okay. I want to
2 focus on the term "receiving by the server a
3 current location of the portable media player
4 device from the portable media player device."

5 What is the plain and ordinary meaning of
6 that term?

7 A So again, if you look at the spec of the
8 '960 as the plain and ordinary meaning should be
9 interpreted in the context of, the spec, if you
10 look at Figure 2, there is a block that says, 204,
11 infer current location of portable media player.
12 And then I think if you look at the corresponding
13 description, which is around Column 4, Line about
14 32, it says, "The method begins at block 204,"
15 just where we were looking in Figure 2, "where, in
16 an embodiment, a server, such as server 20 of
17 Figure 1, infers a current location of the user.
18 The inference may include receiving or determining
19 a current location (or successively receiving a
20 series of locations) of a portable media player
21 device associated with the user."

22 So I think that's an example, as we

1 discussed earlier with respect to the '021, of
2 something that a POSITA would recognize is an
3 example of what the claim language is directed to.
4 And that would fall within the scope of the claim
5 element that we were looking at.

6 And then in the analysis I performed, I
7 found that very same example in the prior art. I
8 can direct you to my declaration. And very
9 similar to the previous discussion we had with
10 respect to the '021 case.

11 Q And then more specifically, the last part
12 of this term, "from the portable media player
13 device," what is the plain and ordinary meaning of
14 that specific term?

15 A I mean, it means -- it means what it
16 says. I mean, it's -- if you look at the action,
17 it's about receiving. Receiving what? Receiving
18 by whom? Receiving by the server. Receiving
19 what? The current location of the portable media
20 player device. Receiving from whom? Receiving
21 from the portable media player device.

22 So I'm not sure -- it means what it says.

1 I don't really think it's that unclear.

2 Is there some confusion of some sort?

3 Q So would this require the portable media
4 player device to have -- to transmit its location
5 to the server?

6 A Well, I mean, the claim requires
7 receiving by the server. So, you know, in the
8 data network you can transmit something and get
9 lost. So the claim requires receiving by a server
10 from the portable media device player.

11 Q So would this require the portable media
12 player device to transmit its location to the
13 server?

14 A I mean, what the claim requires is that
15 the server receive the required information from
16 the portable media player device. The claim is
17 directed to the receiving side, not the transmit
18 side. So long as the server receives the required
19 information from the portable media player device,
20 you know, that's what's required to meet the
21 language of the claims, the actual language of the
22 claims.

1 Q And can that be met if the portable media
2 player device does not send its location to the
3 server?

4 A Well, if nothing is ever sent -- if the
5 portable media player device can't send anything,
6 I don't see in this hypothetical how anyone could
7 receive anything from a device that can't
8 otherwise send anything.

9 Q Let's turn to Claim 11.

10 A Okay.

11 Q At Column 9, Line 17, there is a clause
12 that reads, "Providing to a server, by a portable
13 media player device, a current location of the
14 portable media player device to facilitate the
15 server in inferring a current location of a user
16 of the portable media player device."

17 Do you see that?

18 A I do.

19 Q Let me -- actually, I want to ask about a
20 different clause first. Okay. At the bottom,
21 Line 32, "Wherein the one or more entertainment
22 preferences are inferred by the server based at

1 least in part on an analysis by the server, of a
2 plurality of media stored on or accessed using the
3 portable media player device or information about
4 said plurality of media."

5 Okay. Do you see that clause?

6 A I do.

7 Q What is the plain and ordinary meaning of
8 the term "inferred" in this context?

9 A Again, so it's the plain and ordinary
10 meaning of that phrase, element, interpreted in
11 the context of the specification.

12 And if we look at the specification
13 around Column 7, Line 16, it talks about, "The
14 recommendation (or information) may be generated
15 by the server based at least in part on an
16 inferred current location of the user, and
17 inferred entertainment interest of user," based
18 for example -- or "based e.g. on media stored in
19 storage medium 304, and/or accessed using the
20 portable media player device 300."

21 And so that's an example of, you know,
22 one or more entertainment preferences inferred by

1 the server based at least in part on analysis by
2 the server of a plurality of media stored on or
3 accessed using the portable media player device
4 for information about said plurality of media.

5 And a person of ordinary skill would
6 recognize that this is an example from the
7 specification that the claim element is
8 discussing. And so this kind of example would be
9 within the scope of the -- of the claim element.
10 And that's an example from the -- from the
11 specification.

12 And in my analysis for this element I
13 have shown how I think Ellis and -- the
14 combination of Ellis and Sasaki -- I believe it's
15 that combination -- is rendering this claim
16 element obvious. Because it's using, really, the
17 analogous example as a person -- I would
18 understand as an example that's within the scope
19 of the claim element.

20 Q And so this, the plain and ordinary
21 meaning of "inferred" in Claim 11, is the same as
22 the meaning of "inferring" in Claim 1?

1 A I mean, it's the same spec that informs
2 the POSITA the context of the claim language,
3 whether it's in Claim 1 or 11.

4 But the -- I mean, like we've discussed
5 multiple times already, with respect to the
6 analysis that I did, it wasn't to determine
7 whether the scope of a claim element, you know, or
8 word in the same -- you know, 1 versus 11 were the
9 same. But it's with respect to the overall claim
10 and the analysis with respect to the claim, Claim
11 11.

12 And I did refer back to the analysis of
13 Claim 1 because it applies, not because it was my
14 opinion that the scope is the same. Because it's
15 the same -- the same analysis applies with respect
16 to the analysis for Claim -- this part of Claim
17 11, where I refer back to Limitation 1.2 in the
18 analysis I did in that section.

19 Q And also within this clause the term "one
20 or more entertainment preferences" appears.

21 What is the plain and ordinary meaning of
22 that term?

1 A Again, the specification provides
2 examples of what a person of ordinary skill would
3 recognize, which could be an example of an
4 inferred entertainment preference. And that
5 inference being made by the server.

6 So if you look at the bottom of Column 2
7 in the '960 patent, Line 61. It says, "A server
8 may generate a recommendation for a nearby concert
9 by an alternative rock band for a user of a
10 portable media player device" that has -- "that
11 has inferred interest in alternative rock,"
12 inferred based on -- "inferred based at least in
13 part on media of an alternative rock or like genre
14 stored on and/or accessed via his portable media
15 player device."

16 And I think we saw later that I think
17 Column 7, just in a recent discussion, how the
18 server actually performs this analysis. So I
19 think that this is an example of an inferred
20 entertainment preference. And an example here is
21 giving alternative -- inferring an interest in
22 alternative rock or like genre.

1 So that's an example of what's in the
2 spec that a person of ordinary skill would
3 recognize as within the scope of what you're
4 asking about. And in my analysis I provided
5 analogous examples to monitoring the listening of
6 a user by a server, where then can it, you know,
7 give points about the genre or song or artist and
8 determine what the user likes and dislikes.

9 And that's a combination of different
10 citations from the prior art. But, I mean, I can
11 point you to my declaration. It says what it
12 says. But I do discuss that in my declaration.

13 Q Let's turn to Claim 16.

14 A Okay.

15 Q At Column 10, Line 5, there is a clause
16 that reads, "Provide a server with a current
17 location of the portable media player device to
18 facilitate the server in inferring a current
19 location of a user of the portable media player
20 device."

21 What is the plain and ordinary meaning of
22 that term?

1 A Well, this term is part of what a
2 portable media player device comprises. And so
3 we -- I mean, it really means what it says. But
4 the example of how does the server infer a current
5 location of the user, I think we looked -- looked
6 at the spec in the '021. I think there's the same
7 passage here that I will look for right now.

8 Yeah, in Column 3, around Line 58, it
9 says, "In the illustrated embodiment, a server 20
10 may infer a current location of the user by
11 determining a current location of the portable
12 media player device 10 as well as receive and
13 transmit" -- oh, that's not what I was looking at.
14 I'm sorry.

15 You're asking specifically with respect
16 to Claim 1. Is that correct? Or, actually, I'm
17 not sure. I've lost which claim.

18 Q No. We were talking about Claim 16.

19 A Sixteen.

20 Q So at Column 10, Line 5 -- and let's get
21 more specific.

22 So we were talking about the clause that

1 generally refers to the device providing its
2 location to the server. So let's focus on the
3 term, "provide a server with a current location of
4 the portable media player device."

5 What does that mean? What is the plain
6 and ordinary meaning of that term?

7 A I mean, I think it means just what it
8 says. And it's to provide -- it's -- this is --
9 has to be that the portable media player
10 comprises. That there's a player coupled to a
11 storage medium. And this is the portable -- a
12 portable media device -- excuse me. A portable
13 media player device comprising. And it starts
14 out, "a storage medium configured to store one or
15 more of a plurality of media and information about
16 said plurality of media. And a player coupled to
17 the storage medium and endowed with executable
18 instructions operable upon execution to cause the
19 portable media player device to." And then we
20 skip a line, "provide a server with a current
21 location of the portable media player device."

22 So what I'm looking for in the spec is, I

1 think there's a passage that talks about the
2 player sending its location to the server. So
3 that's what I'm looking for, what I'm thinking of
4 as an example of, "provide a server with a current
5 location of the portable media player device."

6 MR. CLEMENTS: Andrew, we've been going
7 for about an hour and a half. If you want to take
8 a break when you're done with your line of
9 questioning.

10 MR. HAMILL: Sure, we can take a break
11 soon.

12 Q Dr. Houh, were you done with your answer?

13 A I wasn't. I'm sorry. I'm looking for a
14 specific passage that -- that provides an example.

15 MR. CLEMENTS: My apologies.

16 THE WITNESS: Sorry. I'm sorry.

17 A Yeah, here we go. Hold on. Yeah,
18 there's some discussion about block 204 both at
19 the bottom of -- well, in the middle here of
20 Column 4. It says, "The method begins at block
21 204, where, in an embodiment, a server such as a
22 server 20 of Figure 1 infers a current location of

1 the user. The inference may include receiving or
2 determining a current location (or successively
3 receiving a series of locations)" -- "(a series of
4 locations) of a portable media player device
5 associated with the user."

6 And then there's another section that
7 talks about -- I just saw it. I'm looking for the
8 cite about how the server in this process can send
9 data to or get data from the player device.

10 Q Dr. Houh, why don't we take a break here,
11 and then we can resume this discussion after the
12 break.

13 MR. HAMILL: So why don't we take ten
14 minutes.

15 THE WITNESS: Okay.

16 (A recess was taken.)

17 BY MR. HAMILL:

18 Q Let's turn to the next exhibit, the
19 Sasaki reference.

20 MR. HAMILL: I'm going to upload Exhibit
21 1004 from the '021 patent proceeding.

22 (IPR2023-000244 Exhibit 1004, previously

1 marked, not attached.)

2 A I also have a copy of that, and I also
3 refer to it.

4 Q Okay.

5 A Okay, I have it downloaded.

6 Q And can you confirm that the exhibit is
7 the Sasaki reference?

8 A Yes, this is the Sasaki reference.

9 Q And this is the same reference across all
10 three matters. Correct?

11 A Yes, that's correct.

12 Q Please turn to Page 9.

13 A Okay.

14 Q And at the top left of the page, do you
15 see the heading that reads, Number 1, First
16 Embodiment (Transmission and Reception of Content
17 Recommendation Information By Two Terminal
18 Devices)?

19 A Yes, I see that.

20 Q And let's scroll down in this section to
21 Paragraph 52. So this is on Page 10.

22 And there's a subheading a couple of

1 paragraphs above it 1-2, Operation of Terminal
2 Device.

3 Do you see that?

4 A Yes, I do.

5 Q And in Paragraph 52 it reads, "Under the
6 control of CPU 1, in each of terminal devices A
7 and B, a communication interface 12, a
8 communication circuit 13, and a communication
9 antenna 14, function to intermittently emit a
10 unique identifying signal."

11 Do you see that?

12 A Yes.

13 Q And so does this mean that the terminal
14 devices are continually sending these intermittent
15 identifying signals?

16 MR. CLEMENTS: Objection. Scope.

17 A Sorry, what was your question again,
18 please?

19 Q I asked, does this mean the terminal
20 devices are continually sending these intermittent
21 identifying signals?

22 A I mean, all it says here is, a

1 communication antenna, all these things function
2 together to intermittently emit the unique
3 identifying signal. And it goes on to say that --
4 at the end, timing for transmitting the
5 identifying signal differs depending on each
6 terminal, since it is determined for the terminal.

7 So you're using the word "continuous" in
8 your question, but that word is not used here.
9 These are intermittent transmissions, that it's
10 intermittently emitting a unique identifying
11 signal.

12 Q Let's turn to Paragraph 54 further down
13 the page and going on to the next page.

14 A Okay.

15 Q The last sentence reads, "As shown in
16 Figure 2, in Step S1, after terminal devices A and
17 B are close to each other and terminal device A
18 transmits an identifying signal, the identifying
19 signal is received by terminal device B."

20 Do you see that?

21 A I think so. Did you just finish with the
22 last sentence in 54?

1 Q Yes. I just read the last sentence of
2 Paragraph 54.

3 A Yeah, I mean, I see that.

4 Q And is the identifying signal here the
5 intermittent signal described above in Paragraph
6 52?

7 Dr. Houh, did you hear my question?

8 A I did hear it, but I have to review this,
9 this patent.

10 I mean, are you referring to something
11 that I specifically wrote in my declaration?

12 Q I am asking you about the patent, not
13 your declaration right now.

14 A Sure. So I have to review what the
15 patent is saying to try to answer your question,
16 and that's what I was doing.

17 Q Dr. Houh, your practice of taking five
18 minutes between, you know, my question and your
19 answer is really dragging things out here. So I
20 would appreciate if you didn't drag this out
21 longer than necessary.

22 A I'm trying to answer your question. You

1 asked me a question about the Sasaki reference,
2 and so I'm trying to answer it. I'm not trying to
3 drag it out. I'm reviewing documents to try to
4 answer your question as best as I can.

5 So I think it's a little unfair that you
6 won't give me time to try to answer your question
7 as best as I can.

8 Q Please answer the question, Dr. Houh.

9 A I think if you look at Figure 2, as
10 initially being described in Paragraph 54, it's
11 talking about this signal Step S1, which is
12 transmit identifying signal. And I think that the
13 previous discussion in 52 is an example of such an
14 identifying signal, and transmitted.

15 Q Let's go to Paragraph 56. This reads,
16 "If, in Step S2, it is determined that the
17 received identifying information has been
18 transmitted from the terminal device of the
19 identified model or from the terminal device
20 describing the identical service, in Step S3,
21 terminal device B transmits its identifying signal
22 as an ACK (acknowledge) signal in the terminal

1 device A."

2 What is an ACK or acknowledge signal in
3 this context?

4 MR. CLEMENTS: Objection. Scope.

5 A You read it incorrectly, which slightly
6 changed what it actually says.

7 Q Do you want to correct something I said?

8 A Yes. The third line down, it says,
9 "device of the identical model." And in your
10 reading back I think you said, "device of the
11 identified model." And identified is used later,
12 but I'm sure that you said device of the
13 identified model when you read it there. But it
14 says, "device of the identical model."

15 Q Okay. Well, the court reporter heard
16 identical, that's what's in the live note.

17 But okay, we're clear. I think we agree
18 that it "says identical." I agree it says
19 "identical model."

20 And so the question was, what is an ACK
21 or acknowledge signal in this context?

22 A So I just want -- you're not asking about

1 any analysis that I actually did in my
2 declaration, are you? Because I don't recall
3 really looking at the -- I don't remember if I
4 provided citations to this portion of Sasaki or
5 not.

6 Q I am not asking about your declaration
7 right now. We'll get to your declaration.

8 A So this particular signal, if you -- is
9 the signal that's sent in the case, the first
10 signal received by terminal B contains information
11 identifying terminal A as an identical model, or
12 subscribing to the identical service. And if
13 that's the case, then the ACK is described as the
14 signal that's sent back from device B, which
15 received the identifying information signal, back
16 to terminal device A in that case.

17 And if they're not, then, if you look at
18 Figure 2, there's no ACK signal sent. It just
19 goes back to await receiving identifying signal.

20 By the way, that ACK sent back also is --
21 contains identifying information. It's terminal
22 device B transmits its identifying signal as an

1 ACK signal to terminal device A.

2 Q Okay. Thank you for that clarification.

3 Turning to Paragraph 57. The second
4 sentence reads, "As described above, both terminal
5 devices A and B receive the ACK signals, whereby
6 connection (telecommunication) is established
7 between terminal devices A and B, so that terminal
8 devices A and B can communicate with each other."

9 What does it mean that the connection is
10 established between terminal devices A and B?

11 A I mean, this is a common example of
12 what's known as a three-way handshake, in which
13 oftentimes information is created with respect to
14 a connection, that future packets will be
15 recognized as from particular devices, other
16 devices. And depending on the protocol, they can
17 include information that can ensure that that data
18 is transmitted reliably and accurately.

19 But this is an example of such a
20 initialization of a connection between two
21 devices.

22 Q Then turning to Paragraph 59. Well,

1 let's go to 58 first. Here it says, "Connection
2 for the above connection may have forms used in
3 communication standards such as IEEE 802.11x and
4 Bluetooth, which are known as ad hoc network
5 specifications, whereby a form in which a
6 plurality of terminal devices connect to one
7 another without using any access point can be
8 realized."

9 What is an ad hoc network?

10 MR. CLEMENTS: Objection. Scope.

11 A By the way, we're talking about the
12 Sasaki, just generally. I want to point out if
13 I'm using any terms with respect to terms that are
14 actually used in the claims of the challenged
15 patents, that I'm not really talking -- I'm not
16 trying to provide any definitions about it. I
17 just --

18 Q I agree. We're talking about Sasaki.

19 A Okay.

20 The ad hoc networks refer -- can refer to
21 a wide variety of different types of networks.
22 And it sometimes can refer to specific modes of

1 usage of -- within existing communications
2 protocols to discuss the kind of type of transfer.

3 In this case, this paragraph in Sasaki is
4 consistent with an interpretation of that where ad
5 hoc mode is often used to describe using a --
6 communications between terminal device -- between
7 devices, it could be any two devices, of, you
8 know, end terminals, servers, direct terminals,
9 and whatnot, that are direct between the devices
10 without going through an intermediary access
11 point, as like a WiFi.

12 So WiFi has several modes of operation.
13 I think one is commonly known as infrastructure
14 mode, where a WiFi access point can connect -- can
15 allow many different types of devices to connect.
16 Phones, terminals, computers, servers can connect
17 to a WiFi access point.

18 But mainly the communications are
19 directed through the access point to other devices
20 connected to that access point, and certainly to
21 other devices that require, you know, traversal of
22 the internet.

1 So WiFi has an ad hoc mode, where devices
2 can be set up in ad hoc mode and communicate
3 directly to each other without going through an
4 access point. And this is a description that's
5 consistent with that type of usage of ad hoc
6 network.

7 Q Turning to Paragraph 59. It says, "In
8 Step S5, after the connection is established, from
9 pieces of content recommendation information
10 stored in a transmitting area of the HDD4 of
11 terminal device A, terminal device A selects a
12 piece of content recommendation information to be
13 transmitted. In Step S6, terminal device A
14 transmits the selected piece of content
15 recommendation information."

16 And it says, "In this case information
17 transmitted from terminal device A to terminal
18 device B is not only the piece of content
19 recommendation information."

20 And then it says, In addition, by adding,
21 and it lists several things, including a place of
22 transmission.

1 Do you see it says, "place of
2 transmission"?

3 A Did you skip over some words?

4 Q Yeah.

5 A Yeah, now I see "place of transmission"
6 near the end.

7 Q So is this describing one terminal device
8 after a connection is established, for example
9 using a three-way handshake, content
10 recommendation information and a place of
11 transmission to the other terminal device?

12 A So could you repeat the question, please?

13 Q Okay. So is this describing one terminal
14 device sending to the other terminal device, after
15 a connection is established, content
16 recommendation information and place of
17 transmission together in the same communication?

18 A In this particular example of the
19 communications between the devices, this is saying
20 here that in this particular example, that the
21 selected piece of content recommendation may be
22 included in a message with other information, such

1 as a recommender of content and the date and time
2 of transmission, and the place of transmission in
3 this example.

4 Q And then going down a little further in
5 this section, turn to Paragraph 69?

6 A Page 69?

7 Q Paragraph 69 on Page 12, the next page.

8 A Okay.

9 Q And this paragraph in the second
10 sentence, it states, "Regarding the place of
11 transmission, for example, if the terminal has a
12 built-in GPS (global positioning system), the GPS
13 information may be used to specify the place of
14 transmission, and the specifying information may
15 be used."

16 So is this discussing using GPS
17 information for the place of transmission
18 information discussed above with respect to Step
19 S6?

20 A So could you repeat the question? I'm
21 ready to answer. I just want to hear the question
22 again.

1 Q So the -- in Paragraph 69 it stays,
2 Regarding the place of transmission, for example,
3 if the terminal has a built-in GPS, the GPS
4 information may be used to specify the place of
5 transmission.

6 And so is this describing that GPS data
7 can be used for specifying place of transmission
8 as discussed above in the communications between
9 terminal devices A and B?

10 A So the Step S6, or the content
11 recommendation as we discussed above, in that
12 example could include additional information such
13 as the time and date of transmission and the place
14 of transmission. And 69 is providing an example
15 of one way the place of transmission can be
16 determined by terminal -- by the terminal.

17 So that's an example of how, using GPS,
18 the information with respect to the place of
19 transmission could be determined.

20 Q Let's please turn to Page 16 in Sasaki.
21 Let me know once you're there.

22 A Okay.

1 Q And do you see the heading near the top
2 of the left-hand column, it says 2, Second
3 Embodiment (Reception of Content Recommendation
4 Information from a Service Spot)?

5 Do you see that?

6 A I do.

7 Q Okay. And then going down to Paragraph
8 113, it says, "Specifically, the second embodiment
9 is realized such that, in the above-described
10 first embodiment, one terminal device (e.g.,
11 terminal device A) is replaced by a server at a
12 service spot, and communication is performed
13 between the server and the terminal device B."

14 Do you see that?

15 A Yes.

16 Q So in the second embodiment we have a
17 terminal device, for example, terminal device B,
18 communicating with the server instead of another
19 terminal device.

20 Is that right?

21 A That's -- that's what it's saying I think
22 in 113.

1 Q And then a few paragraphs down in
2 Paragraph 116 -- excuse me -- I guess I'm looking
3 at the top of the right-hand column. The sentence
4 beginning up there, it says, "In Step S21,
5 terminal device B intermittently transmits an
6 identifying signal unique to terminal device B.
7 Between transmission intervals, terminal device B
8 is in a state of awaiting receiving information
9 from the server."

10 Do you see that?

11 A Yes.

12 Q So here terminal device B is
13 intermittently transmitting an identifying signal.
14 And is this signal for purposes of establishing a
15 connection with the server?

16 MR. CLEMENTS: Objection. Scope.

17 A I mean, if you look down at Paragraph
18 118, this has a very parallel disclosure to the
19 previous figure we were talking about, in that
20 there's a signal and then transmitting an ACK and
21 then transmitting another ACK.

22 And I want to point out that in general

1 in these -- these three-way hand shakes, one of
2 the purposes of the three-way handshake is that
3 it's -- it allows communication to flow both
4 directions. But then it's really broken down into
5 establishment of a connection in one direction,
6 and then an establishment of the connection in the
7 other direction. And it takes two signals to
8 establish -- to exchange information for many
9 protocols, such as ones that use the familiar
10 three-way handshake, to exchange enough
11 information to set up a connection in one
12 direction.

13 And that the second leg of the three-way
14 handshake effectively requests an established
15 connection in the other direction, which the final
16 ACK establishes. In some protocols there's a
17 synchronized -- a synchronized an ACK, and then
18 finally an ACK and then a synchronized ACK.

19 And so there's a -- so there is a
20 three-way handshake here. And the net result
21 is -- of that is that the devices can talk to each
22 other because one device has established a

1 connection in one direction, the other device has
2 established a connection in the other direction,
3 thereby allowing in this example for bidirectional
4 communications.

5 Q Okay. Thanks for that explanation.

6 One point I wanted to follow up on in
7 Paragraph 117, it says at the beginning, "The
8 server is in a state of awaiting receiving an
9 identifying signal from a terminal device of a
10 member."

11 Does this mean that the server is not
12 sending an intermittent identifying signal the way
13 the terminal device is?

14 A So I'm looking kind of, you know, in
15 Sasaki around Paragraphs 116 and the couple of
16 following paragraphs. And it is talking about how
17 the terminal device B is intermittently
18 transmitting an identifying signal unique to
19 terminal device B.

20 It's not quite saying what you're
21 suggesting. It doesn't -- it's silent about
22 whether -- I didn't see anything about the server

1 transmitting an identifying signal. But I will
2 point out that in Figure 2, it's also silent about
3 Figure -- terminal B transmitting the identifying
4 signal.

5 And so -- but so in that example in 2,
6 it's the A transmitting identifying signal. And
7 it does disclose that the terminals transmit
8 identifying signals. So we know that terminal B
9 is. It's just that that particular example given
10 is where terminal -- terminal A's identifying
11 signal is first transmitted.

12 And so this is an example giving terminal
13 B's identifying signal being transmitted. It's
14 silent in this first three paragraphs about that.
15 So it's not disclosing that it's not; it's just
16 saying this is an example where terminal B first
17 sends this identifying signal.

18 Q Okay. Let's move to the next exhibit.

19 MR. HAMILL: I'm going to upload Ellis.

20 (IPR2023-00244 Exhibit 1005, previously
21 marked, not attached.)

22 Q And this is Ellis Exhibit 1005 from the

1 244 IPR matter for the '021 patent.

2 Once you have it open, please confirm
3 that this is in fact the Ellis reference.

4 A So I also have a printed copy. May I
5 also refer to that?

6 Q Sure.

7 A Thank you.

8 Yes, this is the Ellis reference.

9 Q And this is the same Ellis reference
10 across all three matters?

11 A Yes, I think that's right.

12 Q Please turn to Page 93 in Ellis, and I
13 want to ask you about Paragraph 214.

14 A Okay.

15 Q The second-to-last sentence reads, "In
16 Step 1930, a group may be based on a specific
17 radio show, and may contain all content broadcast
18 in that show."

19 Do you see that?

20 A Yes.

21 Q What does "broadcast" mean in this
22 context?

1 A So, I mean, a person of ordinary skill
2 would review the whole of the specification of
3 Ellis here to kind of see how Ellis uses the
4 phrase "broadcast."

5 And so here it's being used in the sense
6 of all content broadcast in that show, for a radio
7 show. It's talking about a group.

8 And if you look back to kind of 136, at
9 the bottom of that paragraph it says, "The
10 listener may pause and resume play. A listener
11 may skip back to earlier content, even content
12 that was broadcast prior to when the user started
13 listening to the station, and the listener may
14 skip forward over content that is not of
15 interest."

16 And then in Paragraph 274 it also kind of
17 uses the term "broadcast," in the sense that it
18 says, "The user may be allowed to scan across
19 multiple radio sources, e.g. both internet and
20 radiofrequency broadcasts."

21 So it's pretty clear that the type of
22 broadcasts that Sasaki is talking about, and even

1 in the context of the 214, refers to broadcast can
2 be over the internet or over radio frequency. But
3 it's pretty clear that, like, if you can back up
4 and play previously broadcast content, that's not
5 really available over the radio easily, without
6 extra -- you know, but that over the internet you
7 can retrieve, you know, previously broadcast
8 content, and it's talking about groups of radio
9 content that have -- that -- as that phrase we
10 were just looking at in the paragraph you were
11 asking about, which I seem to have lost now.

12 Which paragraph was that you were asking
13 about?

14 Q 214.

15 A 214? Oh, yeah. Here we are.

16 That that content -- all content
17 broadcast in a show, referring to a radio show,
18 just read in the context of Sasaki, is -- it could
19 have been internet broadcast, and then -- you
20 know, and then the group of all of it implies that
21 there's a source repository that you can retrieve
22 previously internet broadcast content from.

1 Q And we are talking about Ellis, right,
2 not Sasaki?

3 A This is in Ellis. Those paragraph
4 citations I pointed to you -- you to are within
5 Ellis.

6 And I guess the point is, Ellis is giving
7 examples of radio shows broadcast over the
8 internet and radio shows broadcast over radio
9 frequencies.

10 Q I'd like to turn back to Sasaki really
11 for just a moment. That's Exhibit 1004 from the
12 244 matter.

13 Do you have that one? We've already
14 introduced it.

15 A Yes, I have that.

16 Q And can you go back to Page 16, where we
17 were previously?

18 A Okay.

19 Q So in this section we're going to the
20 second embodiment. Is there a disclosure of the
21 terminal device B transmitting place of
22 transmission information to the server?

1 A (No response.)

2 Q We didn't lose the connection, did we?

3 A No; I'm still here.

4 Q Okay.

5 A I'm looking for some explicit disclosure
6 of what you asked. But I wanted to point out that
7 in the system of Sasaki, it talks about examples
8 of information that could be provided in the
9 identifying signal. And I think that's discussed
10 in Paragraph 52, as we were looking at earlier.

11 So it gives examples. So it says, about
12 the fourth line down in 52, "The identifying
13 signal is information, such as terminal ID and
14 personal ID, that is used to recognize and
15 identify each terminal device. Necessary
16 information, such as a code corresponding to a
17 model name and a code representing this service,
18 can be added to the identifying signal."

19 So it's really saying that the
20 identifying signal can have flexibility with
21 respect to the kind of information provided in it.

22 And then in my analysis with respect to

1 certain claim elements, I think in the '960, 1
2 dot -- 1.4, I talk about the various components.
3 So, you know -- so, for example, Sasaki and Ellis
4 teach a server that automatically determines the
5 user's entertainment preferences. And that
6 further Sasaki's server provides content
7 recommendation information to a user's terminal
8 device.

9 Q What paragraph are you at?

10 A Oh, sorry. This is Paragraph 97 in my
11 '960 declaration.

12 Q Okay.

13 A So that's where I'm discussing 1.4 in the
14 '960 patent.

15 And in -- I discuss in 1.3 how Sasaki
16 teaches receiving information representing the GPS
17 location of the user. And Ellis teaches a
18 technique that uses the geographic location of the
19 user to acquire a set of events and facilities
20 that are local to the user.

21 So even in this embodiment, this part of
22 what you directed me to where it's the server,

1 this terminal server, it -- you know, I give
2 reasons why it would be obvious to combine Sasaki
3 with Ellis. And it would have been obvious that
4 the GPS coordinates could be provided the other
5 way as well, to further refine, for example, the
6 type of recommendations provided by the server to
7 the -- to the terminal device.

8 You know, say you're on Bourbon Street at
9 one end, you know, and the local server is for all
10 of -- could be all of New Orleans or all of
11 Bourbon Street. The user would want -- it would
12 improve the experience for the user to receive
13 just recommendations that are more proximate to
14 the user than on the other side of -- or
15 far-reaching zones still within what the server's
16 local area would be considered.

17 So I think it's -- and the Sasaki
18 identifying signal provides a way for this
19 information to be transmitted from the terminal to
20 the server because it leaves open the kind of
21 information. And certainly the GPS information
22 would -- would be helpful to recognize and

1 identify the terminal.

2 Q So there's no explicit disclosure of the
3 terminal device B transmitting place of
4 transmission information to the server?

5 A I mean, I didn't see one as I was looking
6 through in that section. But my point is that
7 it's still obvious for the -- for the terminal to
8 transmit its GPS location, for the reasons I've
9 given. And I think I -- I think I discuss this to
10 a degree in the -- in my declaration.

11 But certainly because this identifying
12 signal is left open to describe what's in it, and
13 certainly the GPS information of the terminal is
14 something that would help the server to recognize
15 and identify the terminal.

16 And so it would be obvious -- it would
17 still be obvious to transmit the GPS information,
18 even in the identifying signal, for example.

19 Q You just referred to your declaration for
20 the '960 patent. Let's talk about that. Let's
21 see. At Page 37, starting at Paragraph 59, you
22 have a discussion on reasons to combine Sasaki and

1 Ellis.

2 A Sorry, what paragraph were you -- I
3 missed that. I was trying to arrange my papers.

4 Q Sure. Page 37, Paragraph 59.

5 A Yes, I'm here now.

6 Q And is it your opinion that it would have
7 been obvious to a POSITA to combine Sasaki and
8 Ellis?

9 A I mean, that's what this whole section
10 relates to, all the way to the end of Page 39.

11 Q And you included similar discussions in
12 your declarations in the other matters. Right?

13 A I did provide the reasons to combine
14 Sasaki and Ellis in all the declarations. That's
15 what I recall.

16 Q How would you combine Sasaki and Ellis?

17 A So if you look at Paragraph 61, I say
18 that Sasaki's system would benefit from
19 incorporating Ellis's techniques for providing
20 recommendations. Sasaki's system already teaches
21 providing recommendations based on the user's
22 preferences. Ellis provides enhanced features for

1 a recommendation system, such as monitoring the
2 content accessed by the user to automatically
3 determine user's preferences.

4 I mean, it goes on. I won't read it all.
5 I will let it stand for itself. But I want to
6 point out that in Paragraph 101 where I'm
7 direct -- another technique in Ellis is that the
8 server provides -- identifies events and
9 facilities that are local to the user. That by
10 using the GPS information -- well, I discuss this,
11 you know, getting the location information in
12 Ellis. But that's a technique that would be
13 applied.

14 So that now we're using Ellis's
15 recommendation technique about what's local to the
16 user. And that's another technique brought in to
17 Sasaki for providing recommendations. So in that
18 case they're very combinable. They're directed to
19 the same type of system. And, you know, Sasaki
20 already has a message in which the GPS signal
21 could be sent, the location information could be
22 sent. That's part of identifying information, as

1 Sasaki is already teaching.

2 And then you could leverage that, the
3 technique in Ellis, of further refining the events
4 to be more local to the user, as opposed to all
5 the events on the -- on the server, some of which
6 might actually not be that proximate, and many of
7 which would probably be closer. And using that
8 technique introducing Ellis. So that's an example
9 of part of the combination.

10 Another example, by the way, would be
11 using those automatically monitored content, you
12 know, what the user is listening to, but applying
13 that to the four different media types. You know,
14 not only for audio or music, audio media, but for
15 videos that Sasaki discloses, for textual
16 information, for audio, video, textual, and image
17 type, you know. So applying those techniques,
18 that's another benefit to help make that a
19 recommendations within -- and be recognized as a
20 benefit by a POSITA.

21 Q How does Ellis get information about the
22 audio media that the user listens to?

1 A So, for example, in Paragraph 185 of
2 Ellis. And I'm looking at Paragraph 86 of my '960
3 report where I block quote it.

4 But Ellis's system, is what Ellis says,
5 may also keep track of user radio preferences --
6 user radio preferences and may have the ability to
7 recognize specific content items, such as songs,
8 that the user may like.

9 In Step 1350, The system may monitor
10 favorite stations (for example preset stations and
11 recently tuned stations) for content of interest,
12 i.e., content that matches the user's preferences.

13 And then the last part, User preferences
14 may be loaded using communication device 155. But
15 really more importantly, The system may also
16 determine user preferences automatically by
17 monitoring what content the user listens to.

18 So in that way it's getting content about
19 the media.

20 That's just one example. I mean, there
21 are other examples that we can look at that talk
22 about monitoring the user's listening and adding

1 points for the artist or song or the genre. And
2 so it would get information about that.

3 Q How does Ellis know what song you're
4 listening to or band or genre?

5 A Well, in some radio systems, I don't
6 remember the cutoff date, but, you know, I
7 believe -- I'm not sure about the -- but many --
8 many radio systems transmit additional data along
9 with radio data. And certainly on the internet
10 there's additional information contained, for
11 example, in the file name itself, or the link to
12 the audio file. And so there are many ways.

13 You know, and audio files, particularly
14 MP3 files, have an ID3 tag embedded in it, that
15 oftentimes these information are stored within a
16 file. And so there are -- there are well-known
17 ways to obtain it. And that's how you know.

18 If every file that you downloaded were
19 just called audio.MP3 and had none of this data,
20 it would be very hard for anyone to figure out
21 what they wanted to listen to. So it's just known
22 that certainly data from the internet will -- will

1 have -- often have identifying information. And
2 even radio content.

3 And certainly, you know, you can tell
4 what station the user is listening to by the
5 presets. That's already there, and Ellis
6 discusses that explicitly. Ellis does talk about,
7 you know, monitoring the listening habits and
8 adding to, like, a song score or an artist score
9 or a genre score.

10 So there -- you know, there are some ways
11 that Ellis explicitly describes of getting this
12 information, and the others are just -- have been
13 embedded in many of the standards for quite some
14 time.

15 Q And it's your opinion that this
16 information was available at the time of the
17 invention of the challenged patents?

18 A I mean, the '960 patent itself does talk
19 about information about media. But I think it's
20 just well known that, you know, when you have
21 media, there is all -- there's been information
22 about the media along with the media for a long

1 time.

2 So it really -- but it doesn't -- I don't
3 see the disclosure explicitly of what type of
4 information is information about media in the
5 '960. So I think, you know, the type of
6 information about media is explicitly stated in I
7 think -- I think it's Ellis, with respect to
8 monitoring the usage and knowing song, artist, and
9 genre.

10 And those are actually labels that are
11 explicitly provided in ID3 tags. And that most
12 certainly was available by 2005, or whatever the,
13 you know, priority date of -- of the patents are.

14 I mean, I, personally, remember getting a
15 book about ID3 tags in the mid '90s and started to
16 tag my collection of music. That's when I had to
17 do that myself. But then all the music, you know,
18 that later became available, typically now today,
19 just includes that information within the
20 metadata.

21 So I think it's well known that that
22 information was often part of music files, for

1 example, you know, that you can -- that they are
2 often typically named in a particular descriptive
3 way, for example.

4 You know, when you rip the CD, oftentimes
5 what actually retrieve information that labeled
6 all the tracks with the album name, artist, you
7 know, track number, song title, for example. And
8 those were all well known, you know, by the late
9 '90s, I would say.

10 Q Now, turning to your proposed combination
11 of Sasaki and Ellis. How would this proposed
12 combination know what kind of images you're
13 looking at?

14 A I mean, if you look at the disclosure of
15 the '960, it talks here, it says, Column 3, Line
16 2. "For example, images of a modern or related
17 art painting stored in and/or accessed by the
18 portable media player" may be -- "may infer a
19 particular interest in art and influence a server
20 to generate recommendations for a Pablo Picasso
21 modern art exhibit."

22 So the spec doesn't tell you how. So

1 it's relying on whatever a person of ordinary
2 skill would know to fill -- you know, and so that
3 same person of ordinary skill, looking at this,
4 you'd use that same knowledge when it discloses
5 the images in Sasaki to do it the same way.

6 The '960 patent doesn't say how. It
7 simply says that it does that. So whatever is
8 necessary for the person of ordinary skill to know
9 and understand in the context of the '960 patent,
10 it's the same thing. The Sasaki discloses as
11 much. It doesn't give an example of a Pablo
12 Picasso painting, but that doesn't really matter
13 in terms of how do you -- how does the system know
14 it's Pablo Picasso.

15 So there are many ways, for example if
16 the image were labeled, you know, Pablo Picasso,
17 name of a painting, and that was the title of the
18 image. Again, the '960 doesn't say that
19 explicitly. So it's how would the person know in
20 Sasaki? The same way they know in the '960
21 patent.

22 Q But I'm asking you specifically how would

1 you do it in your proposed combination? You're
2 the one proposing the combination. Sasaki doesn't
3 propose a combination, nor does Ellis.

4 So how would -- are you saying that this
5 combination system would know what kind of images
6 you're looking at?

7 A Again --

8 MR. CLEMENTS: Objection. Form.

9 A -- the POSITA is a person in the -- you
10 know, as I've laid out, is the person that is
11 reviewing the '960 spec for its disclosures.

12 So, you know, if -- if the '960 patent is
13 sufficiently -- provides sufficient written
14 description for some of the claims, and if it
15 enables the person of ordinary skill to make and
16 use the invention of '960, then it's similar --
17 it's exactly congruent for Sasaki.

18 If Sasaki simply discloses using images
19 and the combination, you know, you could recommend
20 and recognize and use the images, it's in the same
21 way that same person of ordinary skill in the
22 '960, based on the disclosures within the '960

1 specification, it's the same person of ordinary
2 skill.

3 So if they can do it in the '960, they
4 can do it with the same disclosure in Sasaki.

5 Q Okay. But how would you do it? So you
6 proposed this. You're an expert, way beyond the
7 requirements of a POSITA. So how would you, in
8 your system that you've combined Ellis and Sasaki,
9 how does the system know what kind of images
10 you're looking at?

11 A So the analysis --

12 MR. CLEMENTS: Objection. Form.

13 THE WITNESS: I'm sorry. I'm sorry to
14 have stepped on I think it was Calmann's objection
15 to form?

16 MR. CLEMENTS: Yep. Go ahead.

17 A So the system is -- the person looking at
18 this is the POSITA. So there have been -- and
19 here's what the '960 says. The '960 talks about
20 images. And it -- it says, well, if you're
21 looking at images of modern or related art
22 paintings stored in or accessed by the portable

1 media player, and you can infer a particular
2 interest in art and influence the server to
3 generate a recommendation for a Pablo Picasso
4 modern art exhibit.

5 So if the '960 is enabled and provides
6 sufficient written description for this, the claim
7 elements that require those four elements, I think
8 most of the independent -- all of the independent
9 claims that we were looking at had that
10 requirement.

11 If the '960 is sufficiently enabled to
12 allow the person of ordinary skill in making this
13 invention, based on what's -- what the person of
14 ordinary skill looking at the specification sees,
15 and it provides sufficient written description,
16 then Sasaki does -- this combination of Ellis and
17 Sasaki does, too.

18 So that's the opinion -- that's what my
19 opinion in the declaration is based on. It's got
20 the Sasaki and Ellis at the same level of
21 disclosure pretty much as the disclosure of the
22 '960 patent with respect to the question you

1 asked, how does the system recognize an image.

2 The '960 really doesn't say. But if it's
3 enabled and if it provides sufficient written
4 description, then -- then -- for the full scope,
5 that is. Right? It has to be -- you have to
6 provide sufficient written description so that a
7 person of ordinary skill recognizes that the
8 inventor possessed the full scope of the
9 invention, that included basing recommendations on
10 images -- I'm paraphrasing that. It requires what
11 the claims require.

12 And that the person of ordinary skill was
13 enabled to make and use the full scope of the
14 invention, so I have to make that assumption. But
15 it's -- if it's -- if they are -- because we're
16 not -- my understanding is you're not able to
17 challenge the validity based on enablement and
18 written description in an IPR. But assuming the
19 '960 patent is fully enabled and provides
20 sufficient written description, the level -- what
21 I'm saying is the level of disclosure in the '960
22 patent is the same as the level of disclosure with

1 respect to images and how to do that in the
2 combination of Ellis and Sasaki.

3 So if the '960 -- so my point is, a
4 person of ordinary skill, looking at the '960 --
5 and this is the person -- they're actually the
6 ones that are supposed to be enabled to make and
7 use the invention. And that same level of person
8 of ordinary skill, reviewing the prior art, I do
9 my analysis from that person's point of view for
10 Sasaki and Ellis.

11 In that combination the -- that
12 disclosure is essentially the same as the how
13 disclosure within the '960 patent, which is -- I
14 don't see anything else other than the image. It
15 tells you that the image is of a modern art
16 painting. It doesn't say how it figures that out.

17 So whatever the how to figure it out that
18 the person of ordinary skill knows to make and use
19 the invention of the '960 is -- can be applied to
20 Sasaki and Ellis in the same way. And so in that
21 sense it's really an identical disclosure.

22 Q Dr. Houh, I'm not asking about the '960.

1 So let's -- I need an answer to the question.
2 It's important that you answer the question that I
3 ask. So you said it would be obvious to combine
4 Ellis and Sasaki and have a system that relies on
5 image media to determine user preferences.

6 So how would -- you said it's obvious.

7 So how would you do it?

8 A The POSITA would do it in the same way
9 they would do it in making and using the invention
10 of the '960. That's how they would do it. That's
11 the perspective.

12 So the analysis is all performed from the
13 person of ordinary skill's perspective at the time
14 of the invention. And in this '960 patent it's --
15 the '960 matters because that's the context I'm
16 applying in which the person is -- of ordinary
17 skill is analyzing Sasaki and Ellis. Okay?

18 So it matters. If you're talking about
19 no context, that is not proper. Right? If you're
20 talking about me doing something in Sasaki and
21 Ellis, that's not the right level of POSITA
22 analyzing Sasaki and Ellis.

1 So what I'm saying is that because,
2 really, the '960 patent doesn't tell you anything
3 about how it uses an image, it only tells you that
4 the image is of modern art, a painting, for
5 example. It doesn't tell you how it figures that
6 out.

7 So what I'm saying is that in a
8 combination, you know, as analyzed from the person
9 of ordinary skill, if they can make and use this
10 invention of the '960, and because there's a
11 little -- similar disclosure in Sasaki, you're
12 asking how do they do it. Well, they do it the
13 same way they make and use the invention as
14 disclosed by the '960 patent.

15 So that's how they do it. It's exactly
16 the same. If they can do it in the context of the
17 '960 patent to make and use the invention, it's
18 the same POSITA, then they can -- they can do it
19 the same way in the Sasaki and Ellis combination.
20 Because the '960 patent doesn't tell you how; it
21 tells you -- it tells you -- already it tells you
22 what the image is. It doesn't tell you how to --

1 how to recognize that that image is of a modern
2 art painting.

3 So, you know, again, as I said,
4 oftentimes, you know, files have -- have names.
5 And you might have -- it might be named Modern Art
6 Painting. So if this file was named Modern Art
7 Painting, and that's what the POSITA can see,
8 reading this, then they can see that the image in
9 Sasaki can have a name like Modern Art Painting.

10 So it's the same knowledge. Right?
11 Whatever they see as how they identify images in
12 the '960 is the same way they do it in the
13 combination of Sasaki and Ellis.

14 Q So you're saying that a POSITA would have
15 been motivated to combine Ellis and Sasaki and
16 would do things just in the way they're disclosed
17 in the '960. You don't think that would be
18 applying hindsight?

19 A No. You're missing my point. I'm not
20 using hindsight. I gave the motivations to
21 combine Sasaki and Ellis independent of '960.

22 My point here is that, if the '960 patent

1 is enabled to a POSITA, that same level of POSITA,
2 seeing the similar disclosures of how to recognize
3 the image -- and I think that's what you're asking
4 about -- which is in the '960 there's none. But
5 assuming it's enabled and there's sufficient
6 written description and, you know, to show to a
7 POSITA that that inventor possessed the full scope
8 of the invention, and that the patent enabled the
9 person of ordinary skill to make and use the
10 invention, then that knowledge is the same -- it's
11 the same POSITA who's motivated to make the
12 combination for the reasons that I outlined, which
13 are independent of the '960 patent itself.

14 But in order to apply the recommendation
15 system outlined in Ellis to the images of Sasaki,
16 the POSITA fills in the gaps the same way they
17 fill in the gaps in making and using the '960
18 patent. Because that's the same person of
19 ordinary skill.

20 So if they can do it in the '960 patent,
21 they can do it in the combination of Ellis and
22 Sasaki. Because the level of disclosure as to how

1 to recognize an image is the same. Which is to
2 say, nothing in the '960 describes how to
3 recognize the image; it tells you what the image
4 is. It doesn't tell you how it's recognized as
5 modern art.

6 The same level of POSITA, able to make
7 and use the invention with that disclosure, that
8 level of disclosure, can also -- would be able to
9 put together the system of Sasaki and Ellis using
10 the monitoring what the user's watching,
11 techniques taught in Ellis to decide what the
12 user -- infer user preferences on their media
13 preferences or entertainment preferences, to the
14 images disclosed by Sasaki.

15 Q Dr. Houh, you said it's obvious. I asked
16 you how you would do it, and you haven't told me.
17 So we'll go with that. Maybe it's not so obvious.

18 So let me ask you some more questions
19 about your combination.

20 Would there be a device, a handheld
21 device, resulting from your combination of Sasaki
22 and Ellis?

1 A I disagree with that characterization, by
2 the way. That's incorrect. That's not what I'm
3 saying. It's not that it -- you know, I mean
4 maybe you're making an argument yourself as to why
5 the claims with the image in them are not enabled
6 by the specification. I understand that that's
7 not a topic for an IPR declaration. It's not
8 permitted.

9 So my point is, if not that the
10 combination putting them together is obvious for
11 the reasons I stated. And you're asking, Well,
12 how does -- how does that recommendation system
13 work for images? I told you how. Exactly the
14 same way that a POSITA would be able to make it in
15 the '960 patent with that level of disclosure.

16 So it's the same level of disclosure.
17 Which is '960 doesn't say how you recognize an
18 image. It just tells you what that image is
19 already. And Sasaki tells you that there are
20 images that can be viewed on a media player. And
21 the recommendation system of -- of Ellis can be
22 applied to the images Sasaki.

1 And, you know, one example, as I already
2 said, could just be file names. But it -- it
3 doesn't say that in the '960. So whatever it
4 doesn't say in the '960, it doesn't have to say in
5 the combination of Sasaki or Ellis or either one
6 of them, for the person of ordinary skill to make
7 that combination and have it do the -- do
8 what's -- what's claimed.

9 But -- and that's why -- that's my
10 analysis, really.

11 Q Would your proposed combination of Ellis
12 and Sasaki result in a portable device?

13 A Well, I do -- if you look at Paragraph
14 76, this is a portion of my declaration that's
15 directed to this, I believe.

16 Q Which declaration are you talking about?

17 A Sorry. The '960 declaration, at
18 Paragraph 96. So this talks how Sasaki discloses
19 a portable media player device. Because it
20 teaches a terminal device that is portable for
21 playing various types of content, such as music
22 and images.

1 And then it goes on, I provide a citation
2 that -- where I emphasize that -- and this is from
3 Sasaki, Paragraph 21. "The terminal device has
4 reduced size and weight, can be carried." And
5 then this is not emphasized, but it's, with it put
6 in a location such as a pocket of the user's
7 clothes or a bag.

8 And that this terminal device is for -- I
9 mean, it says, "Accordingly, also in a place such
10 as a location where the user is out. Various
11 types of content, such as music and images, can be
12 played back for use."

13 So that's what this terminal device is
14 doing. It can play back the content, and it can
15 be carried and put in a pocket. So I think that's
16 one disclosure.

17 And certainly Ellis also discloses that a
18 portable media player device that accesses music
19 and other content can do so by whether -- by
20 storing the content on the portable media player
21 device or by accessing songs over internet and
22 radio frequencies.

1 So, yes, the combination does have a
2 portable media player.

3 Q So would the combined portable media
4 player then include all the features of Ellis and
5 all the features of Sasaki's terminal?

6 A No, I don't think that's what I'm saying.
7 I think it includes, you know -- I do talk
8 specifically, for example, the recommendation
9 system, the system of Ellis, which is monitoring
10 the content that the user is viewing, adding to
11 scores, tracking them, you know, to infer user
12 preferences. That information will be sent to the
13 server. And the server can make recommendations
14 based on that. And the user's location.

15 I mean, the combination is laid out in
16 various parts. When you combine references,
17 you're not mashing the whole references together
18 as a whole. There are reasons to take parts of
19 one reference that may be used to improve the
20 other reference, like make it better, faster,
21 cheaper. And those are the motivations I lay out
22 in the section earlier about the Sasaki and Ellis

1 and the reason a POSITA would combine.

2 But it's not -- it's not taking wholesale
3 both references and just mashing them together
4 wholesale. I think that's misinterpreting what
5 I -- what I -- what my declaration says.

6 MR. CLEMENTS: We've been going for
7 almost two hours now. I suggest we take a break.

8 MR. HAMILL: Sure. Let's go ahead and
9 take a -- should we take 15 minutes?

10 THE WITNESS: Yeah. At least 15. I'm
11 going to grab a quick bite to eat. I don't know
12 why no one has wanted a lunch break. I understand
13 it's way past lunchtime for California, but it's
14 dinner time here. So I'm just going to eat
15 quickly, just grab a quick snack so I can come
16 back.

17 (A recess was taken.)

18 BY MR. HAMILL:

19 Q Dr. Houh, I'm going to introduce the next
20 exhibit in the chat. It's the '960 patent's file
21 history. So this is Exhibit 1002 from the 246 IPR
22 matter.

1 (IPR2023-00246 Exhibit 1002, previously
2 marked, not attached.)

3 A Okay, I've got it open now.

4 Q Can you confirm that's the '960 patent's
5 file history?

6 A Okay. Yes, this does appear to be the
7 file history of the '960 patent.

8 Q Can you turn to Page 197, please. Let me
9 know once you're there.

10 A Okay, I'm there.

11 Q And these are amendments and remarks from
12 the applicant after the rejection. Correct?

13 A After the final rejection, I think. But
14 that's -- it says Amendments/Remarks After Final.

15 Q And please turn to Page 210 in the
16 document, which is -- it's the same response.
17 It's in the remarks section.

18 A Okay.

19 Q And on this page, the first paragraph
20 that starts on the previous page, the last
21 sentence begins, "Thus, Ng teaches that a user
22 preference is either entered by the user of the

1 device or is inferred based on the user's
2 location."

3 Do you see that?

4 A I see. I see that.

5 Q And have you looked at the '960 file
6 history previously?

7 A The '960 did you say? Yeah, I have. I
8 have reviewed it.

9 Q You've reviewed this document before.
10 Right?

11 A I mean, I review a lot of office actions
12 and replies. I mean, I have a specific
13 recollection, but I review the file histories when
14 I -- when I do these cases.

15 Q And this statement here explains that a
16 user entering preferences would not satisfy the
17 claim language. Right?

18 A I mean, as I understand it, this is what
19 the applicants are arguing, that a user entering
20 preferences. I mean, all it states here is that
21 Ng teaches that a user preference is either
22 entered by the user of the device, and it refers

1 to paragraphs in Ng, or is inferred based on the
2 user's location, which is in turn inferred from
3 the location of the local server.

4 So, I mean, with respect to my analysis,
5 this -- looking at this doesn't impact it.
6 Because in the combination of Ellis and Sasaki,
7 Ellis automatically determines the user
8 preferences based on monitoring the user's
9 listening -- well, it says what it says. But
10 we've been talking about this a lot today. And
11 that it automatically does that based on the
12 user -- monitoring the user's listening activity,
13 for example. And so whether or not the user
14 preferences are in or out is teaching this, it's
15 not what I relied on in my analysis. So I'm not
16 sure what -- why --

17 Q Doctor, can we just focus on this, the
18 '960. I'm not asking about your Sasaki and Ellis
19 analysis right now.

20 So here the applicant is distinguishing
21 the Ng prior art reference. Right?

22 A Well, I mean, you'll need to give me more

1 time to review this if you want me to answer your
2 question. Only because I -- you know, you're just
3 pointing me to one sentence. I don't think that
4 one sentence says what you're -- alone says what
5 you're inferring.

6 Q You don't think that this statement means
7 that an -- a user preference entered by the user
8 does not satisfy the claim language?

9 A I mean, if you're asking in the context
10 of the whole argument, I'd have to review it. But
11 I'm just saying that this sentence alone doesn't
12 say exactly what you're asking.

13 This sentence just says, Thus, Ng teaches
14 that a user, quote, preference, unquote, is either
15 entered by the user of the device (see e.g.
16 Paragraphs 0101 and 0144) or is inferred based on
17 the user's location, which is in turn inferred
18 from the location of the local server.

19 So I don't see an argument there one way
20 or the other about what this is teaching with
21 respect to the claim, the claim under prosecution
22 at this stage. Which I think is what you're

1 asking me about. I'm just saying that one
2 sentence, I don't see how you can infer that from
3 just that one sentence.

4 Q Well, the relevant passages of the claim
5 under prosecution are in the previous page.

6 Do you see that? Page 209 of this
7 document.

8 A I mean, I do see some amended claims that
9 appear to be amended on Page 209.

10 Q And then the last paragraph, Page 209,
11 the first sentence says, "Ng does not teach these
12 features of Amended Claim 1."

13 Right?

14 So the applicant is distinguishing Ng
15 from the limitations of Claim 1. Right?

16 A I'm not sure where you're referring to.
17 What page are you on that says that?

18 Q 209. The last paragraph.

19 A Okay. I see that the first sentence of
20 the last paragraph.

21 Q So given that the applicant said that the
22 prior art teaches that a user preference is either

1 entered by the user of the device or is inferred
2 based on the user's location, that would mean that
3 a user entering a preference does not satisfy the
4 claim language. Right?

5 A (No response.)

6 Q Dr. Houh, are you working on answering
7 the question?

8 A I mean, you're asking me to analyze this,
9 and so I'm trying to read it. So, I mean, this is
10 the kind of question if you're asking me to give
11 an opinion about something with respect to this
12 office action reply, I need to take the time to
13 review it. That's what I'm doing.

14 Q Please do so. Presumably you took this
15 into account already in your interpretation of the
16 claims. Right?

17 A In my analysis I cited to portions of
18 Ellis that talk about automatically determining
19 the preferences of the user or inferring those
20 preferences based on the monitoring and the
21 monitoring of the user's activity, such as what
22 they listened to.

1 I'll point you to -- we've been talking
2 about this much of the day. I'll point you to my
3 exact words, but I'm paraphrasing here. And so
4 whether or not the manually entered user
5 preferences are argued to be within or outside the
6 scope, that's not germane to the analysis I
7 actually did do in analyzing the prior art. Which
8 is that the references I cited and relied on in my
9 declarations show that there is an automatic
10 inference based on monitoring activity, which --
11 of what the users listen to. Which is exactly the
12 example from the specification about inferring
13 entertainment preferences of a user. We talked
14 about that earlier.

15 So whether or not, you know, any
16 reference that I cited may also talk about user
17 entering explicitly user preferences, that's not
18 what I'm relying on. What I'm relying on in the
19 analysis is the portions of the references in the
20 combination in Ellis that teaches explicitly
21 monitoring the activity and listening of the user,
22 and therefore determining the likes and dislikes

1 of the user, which are being used as user
2 preferences.

3 It's the same example as in the
4 specifications of all three that we looked at.
5 That a person of ordinary skill would have
6 recognized is within the scope of what the claim
7 term -- the corresponding claim term is.

8 And so -- I mean, so I don't know why
9 you're focused on this issue. It doesn't seem to
10 relate to my analysis. But I'm trying to answer
11 the question that you're asking me. And I need to
12 get the context of this. And I did review this.
13 But, again, this doesn't impact the analysis that
14 I actually did, which actually does talk about
15 inferring based on monitoring the -- what the
16 users listen to, and then to determine the likes
17 and dislikes. And to score the -- you know, the
18 song, artist, genre and determine things like
19 that.

20 And the Ellis reference actually does
21 use -- say that. I cite to it. And that's the
22 analysis that I did.

1 So I understand you want me to, like, you
2 know -- you're saying, you know, because I
3 considered the file history I should know all
4 this. But this is a huge thing. It's 333 pages.
5 I don't have it memorized.

6 And as you well know, there are many
7 portions of file histories that are just other
8 references or, you know, information -- IDSs that
9 I focus on reviewing the office actions and
10 replies.

11 But in this case, whether or not --
12 whatever this applicant is arguing about user
13 preferences entered by the user are within or
14 outside the scope of the claims at this stage in
15 prosecution, again it doesn't impact my analysis.

16 So while I have considered these things
17 from the file history, it's not -- I don't rely on
18 user-entered user preferences about what they like
19 and dislike. I'm relying on Ellis and the
20 automatically generated and inferred preferences
21 based on the user activity, which matched the
22 corresponding disclosures within all three of

1 these patent specifications that talk about --
2 about how it's inferring. That's an example that
3 would be recognized by a person of ordinary skill
4 in the art to be within the scope of the
5 inferring, you know, claims about inferring
6 entertainment preferences or -- preferences or
7 user preferences, or inferring preferences or
8 inferring entertainment preferences, whatever the
9 language of the three. They vary slightly.

10 So I can -- I can -- you can -- I can
11 look at the context some more. But I really want
12 to see what the examiner said, what the applicant
13 is now saying, and then what the examiner
14 responded to, and how the examiner responded in
15 this case to give you an answer.

16 Because you are asking about the scope,
17 what this is saying within the scope and what's
18 within the scope. But I'm not even seeing a
19 direct argument yet in my reading of -- of this as
20 to -- as to the exact question you're saying.

21 So that's what I'm going to have to
22 consider. I'm going to have to take some time to

1 consider it. And because it was not necessary
2 to -- because the references I already -- I mean,
3 the -- analyzing whether user preference or not is
4 within or not within the scope is -- wasn't
5 necessary for my analysis.

6 Because what was -- what I did show in
7 the prior art were examples from Ellis that showed
8 how this -- the system of Ellis monitored the
9 activity of the user to determine their likes and
10 dislikes. And that wasn't the only disclosure,
11 there were many disclosures, several disclosures
12 within Ellis, that were exactly the same example
13 that were within the patent specifications.

14 So if you really want me to continue on
15 this, I will. But I'm telling you, but I would
16 want to review is the proceeding office action,
17 this document which is -- this is Page 14. I'm
18 looking at office action --

19 Q Dr. Houh, let's -- I just want to just
20 make sure I understood something you just said.

21 That in doing your analysis for your
22 declaration, you didn't determine whether or not a

1 user entering preferences would be within the
2 scope of the claims of the patents. Right?

3 A I didn't have to determine one way or the
4 other because that was not what I was relying on
5 within the prior art.

6 I'm not relying on the user entering
7 preferences manually about what they like and
8 dislike from --

9 Q Okay. I think you answered the question.

10 A That wasn't my opinion.

11 Q Thank you.

12 MR. HAMILL: Okay. No further questions.

13 MR. CLEMENTS: Why don't we take a
14 five-minute break, and I'll determine if I have
15 any questions to ask on redirect.

16 (A recess was taken.)

17 MR. CLEMENTS: I have no further
18 questions.

19 Off the record at 7:29 p.m. EDT.)
20
21
22

ACKNOWLEDGMENT OF DEPONENT

I, HENRY H. HOUH, Ph.D., do hereby
acknowledge that I have read and examined the
foregoing testimony, and the same is a true,
correct and complete transcription of the
testimony given by me, and any corrections appear
on the attached Errata sheet signed by me.

(DATE)

(SIGNATURE)

C E R T I F I C A T E

I, Debra Ann Whitehead, E-Notary Public in and for
the State of Maryland, do hereby certify:

That HENRY H. HOUH, Ph.D., the witness
whose deposition is hereinbefore set forth, was duly
sworn by me before the commencement of such
deposition and that such deposition was taken
virtually and is a true record of the testimony
given by such witness.

I further certify that the adverse party,
GOOGLE LLC, was represented by counsel at the
deposition.

I further certify that the deposition of
HENRY H. HOUH, Ph.D., occurred virtually, on
Thursday, August 10th, 2023, from 12:03 p.m. to 7:29
p.m. EDT.

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
5 way interested, financially or otherwise, in the
6 outcome of this matter.

7

8 IN WITNESS WHEREOF, I have hereunto set my
9 hand this 14th day of August, 2023.

10

11 My commission expires:

12 April 30th, 2027

13

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