IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

APEX BEAM TECHNOLOGIES LLC, Plaintiff, v. SAMSUNG ELECTRONICS CO., LTD., Defendant.	CASE NO. 2:22-CV-00031-JRG-RSP (LEAD CASE)
APEX BEAM TECHNOLOGIES LLC, Plaintiff, v. SAMSUNG ELECTRONICS CO., LTD., and SAMSUNG ELECTRONICS AMERICA, INC., Defendants.	CASE NO. 2:22-CV-00188-JRG (MEMBER CASE)

REMOTE DEPOSITION OF

MIGUEL GOMEZ

November 1, 2023

9:04 a.m. PST

Reported by:

Janice M. Kocek, CSR, CLR

Job No. 54576

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The deposition of MIGUEL GOMEZ, via Zoom videoconferencing, called by the Defendants for examination, reported stenographically by Janice M. Kocek, License No. 084-002871, Certified Shorthand Reporter, Certified LiveNote Reporter, and Notary Public for the State of Illinois, commencing at the hour of 9:04 a.m. PST, on the 1st day of November, 2023.

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** ALL PARTIES APPEARING REMOTELY **

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REPORTER'S NOTE: All quotations are used for clarity and are reflected in the manner in which they were read into the record and do not necessarily indicate an exact quote from the document.

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(Witness remotely sworn.)
MIGUEL GOMEZ,
called as a witness herein, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. HIGH:
Q. Good morning. My name is Bob High. I'm here on behalf of the Samsung defendants. And joining me today listening in is my colleague, also from Finnegan, Christopher Blackford. 09:04
So can you please state your name and address for the record?
A. Miguel Gomez. The address is 2178 Sirah Court. That's in Livermore, California, 94450. 09:05
Q. And is that where you are today?
A. That is.
Q. Is there anyone else in the room with you today? 09:05
A. No.
Q. Do you have any papers or notes with you?
A. Not on this desk. Obviously I'm in a 09:05

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small office that does have other equipment but I have set up a special desk just for this purpose.

Q. Do you understand that you are under oath, meaning you must testify truthfully today as if you were in court before the judge? 09:05

A. I do.

Q. Is there any reason that would prevent from you testifying truthfully today?

A. No. 09:05

Q. I'm sure your counsel probably gave you some general ground rules but I'm going to go over a few of them for the record. Okay?

A. Okay.

Q. So we have a court reporter who will be recording your answers as if you were giving them in court. So I ask that you answer the questions truthfully and to the best of your knowledge. Okay? 09:06

A. Yes. 09:06

Q. Please respond in an audible answer, not a gesture or a nod.

A. Yes.

Q. If you do not understand any of the questions I ask today, please tell me. If you 09:06

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answer a question, I will assume that you understand my question.

Do you agree?

A. Yes.

Q. If you need a break, please let me know. I'll try and take a break every hour or so. 09:06

But if you need a break and a question is pending, I just ask that you finish answering my question before we take a break. Okay? 09:06

A. Okay.

Q. Do you have a phone with you today that you need to place on silent or do not disturb or anything like that? 09:07

A. Yeah. Let me do that. Thank you for that.

Okay.

Q. Do you have any email or instant messenger applications that you're using on the computer for this deposition? 09:07

A. No, they're not.

Q. Aside from the Zoom window, what other screens do you have open on your computer?

A. The only other screen I had open 09:07

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right at this moment was the -- an editor so I could copy the link to this screen. But I'll close that right now.

Q. Okay.

A. Don't need that anymore. 09:08

Q. So no -- no documents open on your computer that you're using --

A. Nope.

Q. -- for the deposition?

A. Nope. Not at all. 09:08

Q. Okay. When did you first become involved in this case?

A. I believe it was late August of this year.

Q. Is that when you were first retained? 09:08

A. I'd have to go look at that. I don't recall off the top of my head.

Do you want me to check?

Q. Do you just have like a rough kind of guess? 09:08

A. It would have been late September, early -- I mean, excuse me, late July or August from my recollection.

Q. Have you reviewed the patents that are at issue in this case? 09:08

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A. I have.

Q. How many of the patents have you reviewed?

A. I believe there's five of them.

Q. And you reviewed all five? 09:09

A. Yes.

Q. When did you first review each of the patents?

A. Well, shortly after I was retained so, again, somewhere between late July and August. 09:09

Q. How many hours have you spent on this case thus far?

A. I don't have an exact number. I'd hazard a guess. I could pull that up for you if you want. 09:09

Q. Sure.

A. Okay. This might take a minute.

Do you want me to get that to you afterwards or do you want me to do that now? 09:10

Q. If you have like an estimate of the hours. I don't need an exact figure. But if you want to...

A. It's between 30 and 50 hours.

Q. Okay. And that's everything from the 09:10

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time you were first retained leading up to right now?
A. Yeah. I believe it's probably closer to 50 hours. But yes.
Q. How much time did you spend preparing your declaration? 09:10
A. After reading the patents and reading the supplemental information I was given, at least three-quarters of that time. I'm thinking two-thirds, three-quarters of that time. 09:10
Q. So between two-thirds and three-quarters of roughly 50 hours?
A. Thereabouts. Like I said, I don't have exact numbers.
Q. And you mentioned supplemental information that you were given. 09:10
What's that referring to?
A. That was referring -- I can pull it up. Give me a second here while I get to it.
That had to do with -- defendant's patent local rules disclosures of the preliminary constructions. I can get back to that again. That had to do with the terms that were -- that were originally asked -- or originally proposed. That had to do with the 09:11 09:12

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patents, prosecution histories. That also had to do with preliminary claim constructions and identification of extrinsic evidence.
Those -- that's generally the information that I was given. 09:12
Q. Do you know, a rough estimate of the between two-thirds and three-quarters of the time you spent thus far in this case, does that time estimate include that time you spent reviewing those supplemental materials? 09:12
A. In part or in whole, sure.
Q. Okay. So when you said that you spent roughly two-thirds to three-quarters of the hours that you've spent on this case thus far preparing your declaration, that number could include the time you spent reviewing that supplemental information? 09:13
A. Yes.
MR. PYMENTO: Objection. Form.
BY MR. HIGH: 09:13
Q. Of the time that you spent preparing your declaration, how much of that time was for -- well, sorry. Let me back up.
So you mentioned that there's five patents at issue in this case. 09:13

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Do you understand that, you know, sometimes us patent attorneys refer to the patent by the last three numbers of the patent?
A. Yes.
Q. So if I mention the '767 patent, you would know what I was talking about? 09:14
A. I know which patent you're talking about and which one to refer to, yes.
Q. Okay. If I use a number that you don't recognize, just let me know. 09:14
But how much of that time that you spent preparing your declaration was for the '767 patent?
A. Well, I don't know that I could break it down like that. You know, I looked at them all in the aggregate and worked on each of them individually. But I didn't track how much time I spent on each individual patent. 09:14
Q. Did you spend roughly equal time on each patent would you say? 09:14
A. No, not necessarily. But like I said, I just didn't keep track of how much time I spent on each individual patent.
Q. So of the five patents, which one did you spend the most time on? 09:15

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MR. PYMENTO: Objection.
THE WITNESS: I don't know if I could answer that. I mean I did spend a fair amount of time on the '767 patent. It is the first one that came up in discussion. 09:15
But like I said, I just don't -- I didn't track that.
BY MR. HIGH:
Q. Can you -- sorry. Strike that.
Of the five patents, do you know which one you spent the least amount of time on? 09:15
A. Same answer.
MR. PYMENTO: Objection.
THE WITNESS: Whoops.
Same answer. 09:15
BY MR. HIGH:
Q. So you might not have spent roughly equal time on each of the patents but you can't recall, you know, the relative amount of time that you spent working on your declaration with respect to each patent? 09:15
MR. PYMENTO: Objection.
THE WITNESS: I -- I think that, you know, they were generally approximately the same amount of time. Sure. There's going 09:16

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to be one that I spent more time on and I would hazard to guess it might have been the '767 patent. But I didn't track the amount of time that I spent on each individual patents. 09:16

You know, I'm not sure I could really answer your question specifically or -- or accurately.

BY MR. HIGH:

Q. Did you write the declaration yourself? 09:16

A. I had help with the declaration. But those are my opinions in the declaration, that is -- that is correct.

Q. Did you write any of the sections of your declaration by yourself? 09:16

A. I wrote -- like I said, I had help with the declaration. Those are my opinions. I did not write any of the legal sections but I did help -- I did write the -- in conjunction with the attorneys the -- the technical sections. 09:16

Q. Is there any section that you wrote without the help of your attorneys?

MR. PYMENTO: Objection. 09:17

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THE WITNESS: Well, like I said, I did -- you know, those are my opinions. I did review all of the documentation. I did write the technical aspects. I gave them the first draft and that's -- so I would say, yes, I did. 09:17

BY MR. HIGH:

Q. Which section did you write without the help of your attorneys?

A. I did not say that. 09:17

Q. But you -- you answered the last question with "yes, I did" so I thought you were saying that you did?

A. Well, like I said, I gave them a draft and we went back and forth and worked on the draft until we were happy with it. 09:17

Q. Okay. So let me ask my question again.

Is there any section of your declaration that you wrote without the help of your attorneys? 09:18

MR. PYMENTO: Objection.

THE WITNESS: As I said, you know, those are my opinions. I -- I wrote a draft and then we worked on the draft 09:18

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together until we were both happy. I wasn't requesting to allow them to put anything in that I wouldn't agree with.

MR. HIGH: Objection. Nonresponsive.

BY MR. HIGH: 09:18

Q. Mr. Gomez, I'd like you to answer the question that I'm asking you, please, rather than, you know, changing what my question is.

MR. PYMENTO: With all due respect, counsel, he is answering the question. I would appreciate -- 09:18

BY MR. HIGH:

Q. So my question is --

MR. PYMENTO: If you reask the question, that's fine. 09:18

BY MR. HIGH:

Q. Is there any section of your declaration that you wrote without the help of your attorneys?

A. I think I answered it thoroughly. I think I answered your question. The way we wrote the declaration is that I reviewed the materials, I came up with my opinions, submitted the draft, and then that's the one we worked on until we were both happy. And I wouldn't allow 09:18 09:19

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them to put anything in unless I was agreeing with that information.

Q. So is the answer no?

A. I'm sorry?

Q. Is the answer no? 09:19

A. No. The answer is --

MR. PYMENTO: Objection.

THE WITNESS: -- the one that I gave you.

BY MR. HIGH: 09:19

Q. It's a yes-or-no question and I haven't heard a yes or a no.

A. I don't believe it is a yes-or-no question. You've asked me a question that I explained how the process worked. And I don't believe -- I -- I -- I can't answer that in a yes or no although I'd like to. The truth is I'm giving you the way that it worked. 09:19

Q. What's preventing you from answering it with a yes or a no? 09:19

MR. PYMENTO: Objection. Argumentative.

THE WITNESS: I'm just trying to be honest with you the way it worked and what we did. 09:19

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BY MR. HIGH:
Q. So going back to I think your explanation of the process, I think you mentioned that you submitted a first draft; is that right? 09:20
A. Yes.
Q. Which portion of the declaration did you draft the first draft of?
A. That would be the technical sections.
Q. So you wrote the first draft of the technical sections and then worked with your attorneys after that to finalize things? 09:20
A. Yes.
MR. PYMENTO: Objection.
BY MR. HIGH: 09:20
Q. Is there any other section of your declaration that you wrote the first draft of?
MR. PYMENTO: Objection.
THE WITNESS: I did not write the legal sections. 09:20
BY MR. HIGH:
Q. And just to be clear, when you're referring to the technical section, you're referring to the section with the heading Claim Construction where each of the terms are listed? 09:21

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A. I'd have to go back and look at the -- at the section that you're referring to.
Do you want me to -- should you -- I can look at it if you give me the -- I'm not quite sure what you're -- what you're -- what you're question actually is with regard to which section. 09:21
Q. Yeah. I guess I just wanted to make sure I understood which section you were referring to when you say the "technical section." 09:21
A. That would be the sections that include technical information.
Q. Did you draft the first draft of the materials considered section? 09:22
A. That was the materials that I considered. I don't recall that. But you know, if it had to do with the technical aspects, I certainly was involved or I -- it was part of the first draft. 09:22
Q. So you don't -- you don't recall whether you drafted the first draft of the materials considered section?
A. Oh, I looked at a number of different pieces of information provided to me. And so 09:22

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that would have been included in the report, in the declaration, that's correct.
Q. So it's included in the declaration.
But I guess I'm asking if you were the one that drafted the first draft of it. 09:22
MR. PYMENTO: Objection.
THE WITNESS: You know, I was given a number of different pieces of material to consider. And I'm sure I would have suggested that they need to be in the report. 09:23
BY MR. HIGH:
Q. But you can't recall whether you were the one that physically typed out the first draft of that section? 09:23
A. They -- you know, I've written a number of reports in the past and I always include those sections.
So yes, I probably would have suggested which ones to put in and then there would have been a negotiation back and forth and we would have reviewed to make sure that everything that I considered was in there. 09:23
Q. Did you physically draft up the first draft of the level of ordinary skill in the arts 09:23

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section?
A. No. I did not physically draft that one.
Q. Did you draft the first draft of the qualifications and background information section? 09:24
A. I believe I did. I'd have to go back and review that.
Q. And you've been deposed before?
A. Yes. 09:24
Q. About how many times?
A. I think it's been 14 times.
Q. Were all those patent cases?
A. All but one. I think the one case that -- that wasn't a patent case was a trade secrets case. 09:24
Q. How many times have you been deposed in connection with a claim construction declaration or report?
A. Three or four times. 09:25
Q. Three or four times.
Is that about how many times you have submitted a declaration or a report regarding claim construction?
A. That would probably be the case. 09:25

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There was one case where I was deposed on my report. And then based on some legal maneuverings, they were able to depose me a second time on the same report so that makes the account a little confusing. But it's approximately the same time. 09:26

Q. So I guess another way of asking that, maybe to just eliminate some of the confusion, prior to this case, about how many times have you been drafted a declaration or a report regarding claim construction? 09:26

A. Again, I'm -- I don't recall all of them but it's three or four times. In that -- in that ballpark.

Q. Of those three or four times, how many of those involved whether a claim term was indefinite? 09:26

A. I'm going to guess probably almost every single one of them involved at least one term that was indefinite or claimed to be indefinite. Whether or not it survived to the final report is what I don't fully recall. 09:27

In other words, there was proposals that certain terms were indefinite in each and every one of those cases. But some of those got 09:27

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settled before we actually submitted the final report and I just don't recall all the specifics sitting here.

Q. So you can't recall about how many of the three or four times you've been deposed regarding claim construction actually involved an issue where you were opining on whether a claim term was indefinite? 09:27

MR. PYMENTO: Objection.

THE WITNESS: In each and every one of the cases there was a claim made that a certain term was indefinite. And in each and every one of those cases I did work to resolve whether it was or was not indefinite. 09:28

What I don't recall is whether or not each and every one of those cases required me to actually submit a declaration in which a term was indefinite. 09:28

BY MR. HIGH:

Q. Have you ever opined on a claim term and reached the conclusion that it was indefinite? 09:28

MR. PYMENTO: Objection.

THE WITNESS: That I don't recall. 09:28

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Yeah. Some of these -- some of these -- some of these matters date back seven, eight years. So it's difficult for me to remember those. If you want, I can review them and get back to you on that. 09:29

BY MR. HIGH:

Q. Do you have them -- do you have access to them?

A. Not here, no. Not sitting here.

Q. So when you opine on what a claim term means, how do you form your opinion? 09:29

MR. PYMENTO: Objection.

THE WITNESS: Well, the first thing I do is I look at the claims and try to understand the meaning imparted by the claims themselves, you know. 09:29

And then of course as required I'll look at specifications in the file history. In addition to those items, I'll also use my own experience in trying to understand how terms were used in that time frame of the patent. 09:30

BY MR. HIGH:

Q. So when you ultimately form your opinion on what a claim term means, are you ways 09:30

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basing that on your own expertise?

A. No, not necessarily. If it's clear from the claims themselves or the specification, I'll try to understand what the author of the patent had intended. 09:30

But having been in this industry now for 45 years, there's often inside information or just industry information that I might have that may help shed light on the meaning if it's not perfectly clear from the claims or the specification or the file histories. 09:31

Q. So you're able to use your 45 years of industry experience to, you know, rely on that inside information to shed light on the meaning of a term when it might not be perfectly clear? 09:31

A. As a person of ordinary skill in the art, I think that's what I'm often required to do if it's not clear from the specifications. Or even if it is, if -- if there's some extra insight I can help for a judge, the jury, or the other side to understand what -- what the meaning of the claims are, I certainly will provide that. 09:31

Q. What's your understanding of what a 09:32

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person of ordinary skill in the art means in the abstract?
A. A person --
MR. PYMENTO: Objection.
(Stenographer clarification.) 09:32
MR. HIGH: In the abstract.
THE WITNESS: Well, a person of ordinary skill in the art is a concept of an ideal person who would have been able to have an understanding and be able to 09:32 practice the invention at the time.
BY MR. HIGH:
Q. So when you submit your claim construction declarations, are you doing so from the perspective of a person of ordinary skill in 09:32 the art?
A. I try to understand what a person of ordinary skill in the art at the time would have -- what their understanding of the technology would have been at that time. 09:33
Q. In the declarations regarding claim construction that you provided in the past, have your opinions on what a person of ordinary skill in the art would understand the claim terms to mean always match the positions of the party 09:33

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that retained you?
MR. PYMENTO: Objection.
THE WITNESS: No, not at all. I have my experiences that I rely on in understanding what a person of ordinary 09:33 skill in the art would have been. If I don't agree with the -- with the definition that sometimes is often decided before I arrive but sometimes -- on the -- on the case. 09:34
But sometimes I have the opportunity -- many times I have the opportunity to inform the counsel I'm working with on what would be a person of ordinary skill in the art. 09:34
BY MR. HIGH:
Q. So in the past you've submitted a declaration containing an opinion that differed from the position of the party that retained you? 09:34
MR. PYMENTO: Objection.
THE WITNESS: Yeah. I've always made sure that we are in agreement on my declarations of what the contents are. And that includes the person of ordinary skill 09:34

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in the art.
BY MR. HIGH:
Q. So by the time you finalize your declaration, your opinions are the same as the party that retained you? 09:34
A. That's the goal.
Q. Has it always worked out that way in the past?
MR. PYMENTO: Objection.
THE WITNESS: If I disagree, I'll 09:35 disagree loudly.
BY MR. HIGH:
Q. Have you ever testified at trial before?
A. Yes. 09:35
Q. About how many times?
A. I believe it's five now. Well, let me rephrase that. I think it's five times in district court and there's two times at the ITC.
Q. Do you recall whether your testimony 09:35 at trial has ever been limited in any way by the judge?
A. Do you mean -- I don't understand the question. Perhaps you can give me an example of what you mean. 09:35

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Q. Have you ever had opinions excluded by the judge?
A. No.
Q. Have you ever been found lacking the credentials of an expert by a judge? 09:36
A. No.
MR. PYMENTO: Objection.
MR. HIGH: I'm going to introduce your CV as an exhibit. I'll call it Deposition Exhibit 1. I have uploaded that 09:36 into the chat. You should see it.
(Gomez Deposition Exhibit 1 was marked for identification.)
BY MR. HIGH:
Q. Let me know when you have that open. 09:37
A. Yeah. I'm clicking on it. It's opening all right. I have it open.
Q. And this is a copy of your CV that you submitted in this case?
A. That's correct. 09:37
Q. You currently work for a company called Rockslide Analytics, LLC; is that right?
A. Yes, that's correct. It's been changed to a corporation but generally still the same name. 09:37

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Q. What is Rockslide Analytic -- Rockslide Analytics?
A. Rockslide Analytics is my consulting company.
Q. And your CV says that you're working on developing and hopefully to eventually sell a depth-sensing camera? 09:38
A. That is correct.
Q. Is that still correct?
A. Yes. 09:38
Q. And so I guess when you say it's your consulting company, is it also doing other things as well?
A. Yes, it is.
Q. How many employees does Rockslide Analytics have? 09:38
A. Rockslide Analytics has just me as an employee but we have a number of contractors. We tend to focus more on contracting than -- than employees. 09:38
Q. And you have been working there since April of 2013?
A. That's correct.
Q. Aside from your work on the depth-sensing camera, what kind of work do you 09:39

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do at Rockslide Analytics?
A. I do general engineering consulting, also software design, a lot of embedded applications or sometimes some web-based applications, and then of course this expert work. 09:39
Q. Is your engineering consulting that you do for Rockslide Analytics included anywhere in your CV?
A. Not it's not. Most of what I'm focusing on right now is some product development. And I'd like to get this startup moving along here. But if you look at my CV, my history is starting and running startups. And of course, that's what I focus -- I'd like to focus Rockslide on as well. 09:39 09:40
Q. So in terms of a percentage of your time, about how much of your time for Rockslide Analytics is spent as an expert consulting versus as an engineer consulting? 09:40
MR. PYMENTO: Objection.
THE WITNESS: There's three parts to Rockslide. There's, you know, engineering -- engineering services, there's product development, and then there's expert work. 09:40

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Lately most of this focus has been on the product development and also some of the expert work. But you know, I just got back yesterday from India where we have a consulting team down there for the product side. And I was there for three weeks. 09:41
So you know, you can see that the focus here is on product development.
BY MR. HIGH: 09:41
Q. And the product development you're referring to is the depth-sensing camera?
A. There's several products, one of which is the depth-sensing camera. And the other is the software surrounding some of the web-based applications we're building. 09:41
Q. Are the web-based applications associated with the depth-sensing camera?
A. One of them is. One of them is not.
Q. So about how much of your time is dedicated to consulting as an expert as a percentage? 09:41
A. Approximately one-third to half. Depends on the time of year and what's going on at that particular moment. When I get an 09:42

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important expert project, I'll tend to focus on that through its completion and then I'll take time off to go work on the product development.
Q. Prior to Rockslide Analytics, you worked for a company called ActSolar; is that correct? 09:42
A. That's correct. That's another startup I started.
Q. And you were there from August of 2006 to March of 2009? 09:42
A. Yeah. We sold it to National Semiconductors in March of 2009 and I elected not to go with the company.
Q. What did you do between March 2009 and April 2013? 09:43
A. That was a fair amount of expert work in that time frame.
Q. What is ActSolar?
A. That was a company that was designed to build instrumentation for solar panels. The idea -- at the time frame -- at that time solar panels didn't have any way of telling you whether they were working well or not. So we built an instrumentation package that would be added to solar panels that could -- that could 09:43 09:43

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transmit the performance of the solar panels to a server.
So we had application bits -- you know, web-based software that would present the -- the findings of the performance of the solar 09:44
panel, along with the instrumentation package that went up on the roof.
We also built as part of that system a shading compensator. And the shading compensator would be a -- was a piece of 09:44
technology that would detect whether clouds were passing overhead. And when the cloud shadows passed overhead, it would protect the solar panels from inrush of current that occurs when you get shading. 09:44
And that total system we sold to National Semiconductors in that time frame.
Q. And you worked as an engineer to help develop that technology?
A. I was vice president of the 09:44
engineering department at ActSolar.
Q. As vice president, what were your responsibilities?
A. I was tasked with coming up with the initial architecture and then hiring the team 09:44

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that would carry out the actual implementation and then working with that team to make sure that the implementation happened in a way that was appropriate.
Kind of a side responsibility also 09:45
was that the first concept that we came up with wasn't necessarily marketable. So we had to continually innovate and come up with new ways of making the product more marketable. For example, what happened was the first idea was an 09:45
instrumentation package. But by itself, we didn't think that there was a market for it.
So we combined it with an inverter. And I built the -- I built the architecture of the inverter and also laid out the process that 09:45
the engineers would use to implement it. And then -- and then that -- that evolved into the shading compensator. The shading compensator is essentially an inverter running in reverse.
So you can see the evolution of how 09:45
-- how the product model changed over time. And that was also part of my responsibility, was to align the product with what the market needed.
Q. Before ActSolar you were at BridgeWave as a consultant; is that right? 09:46

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A. That's correct. BridgeWave was a microwave corporation for backhaul communications and -- mostly for overseas -- over overseas implementations.
So my goal there -- my job there was 09:46
to build a series of test platforms that would ensure that the backhaul communications was first built properly and then -- and then installed properly.
Q. What's the word that you're saying, 09:46
backhold?
A. Backhaul. It means that it's the backbone of the network that transmits all the communications from various users.
Q. Before that you were a consultant for 09:47
PA Consulting Group?
A. Yeah. That was a group that was interested in understanding how they could put their product into FPGAs, field programmable logic chips. And I had quite a bit of 09:47
experience in that technology as well.
Q. What did you do for them?
A. I advised them in the approaches that they needed to take.
Q. Before that you were at Santel 09:47

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Networks?
A. That's correct. At Santel I built a 10-gigabit-per-second fiber-optic link that would -- that basically used what they called optical dual-binary compression. And it would 09:48
allow us to get better throughput on the fiber channel. And they needed a test platform to be able to prove out the concept and then be able to implement it. I did both.
Q. Before that you were director of 09:48
hardware content -- sorry.
Before that you were director of hardware and content networking division of Extreme Networks?
A. Yeah. There were two companies, 09:48
first Webstacks and then Extreme. Webstacks was where we built the server load balancer that was one of the fastest throughput machines around. It was intended to be the fastest. And Extreme Networks came to us early on and said that if we 09:49
could build it, they would buy it -- they would buy us. So that's -- the two companies were working around the same product line.
Q. I see. So you were at Webstacks kind of January 2000 and then Extreme Networks 09:49

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March 2001?
A. That's correct. Yeah, that's when the sale occurred, was in March of 2001.
(Stenographer clarification.)
THE WITNESS: The sale of the company. 09:49
BY MR. HIGH:
Q. What's a server load balancer?
A. A server load balancer is a device that determines how to issue information requests to redundance array of servers. So for example, if Yahoo! had football information on one server -- on let's say five servers, a server load balancer would balance the requests for that information across those five servers in an intelligent way. 09:49 09:50
Q. Before that you were a consultant for Philips Semiconductor?
A. That's correct.
Q. What did you do there? 09:50
A. We did a number of different things there. The original and primary product was that they built a handheld computing system. And Microsoft had an operating system that Philips wanted to use with their handheld 09:50

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computing system. It was Windows CE. Windows CE was used in various -- various types of handheld platforms including cell phones, some of the early cell phones -- or smartphones I should say. 09:50
And my role there was to ensure that the certification process, as well as the implementation of some of the peripherals, met Microsoft's certification requirements.
Q. So you helped to develop the technology used to verify that the Microsoft operating system was running properly on the handheld device? 09:51
A. It was more of the reverse. I advised Philips on the requirements for the Microsoft certification and helped modify their designs mostly around the peripherals, which included things like storage elements for PCMCIA or for Microsoft's interface to their -- to various radio links and to -- just to ensure that those peripherals would work properly with my Windows CE. 09:51 09:51
And then I had to build the in-test environment to prove to Microsoft that those things were working properly with Windows CE. 09:52

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Q. Before that you were president and founder of Minden Group?
A. That's correct.
Q. What did you do there?
A. Well, Minden, I was the founder. I came up with the initial idea and developed the company around a memory trellis for personal computers. So that people who owned computers in the day and wanted to expand, they were often out of slots. There wasn't just physically enough slots in the computers for that time frame. 09:52 09:52
And so this allowed them to reuse their memory by placing them on a -- on a memory trellis and then have extra slots available then to -- to add in additional memory. And we sold that through, gosh, like 1,500 stores across the United States. Fry's Electronics, CompUSA, Future Shop, Best Buy, they were all some of our customers. 09:52 09:53
Q. So the memory trellis was kind of like -- it provided extra memory slots for a computer?
A. Yeah. Memory slots often were fairly limited in those days. There might have been 09:53

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like four memory slots. And if somebody had purchased in those days 4 megabytes of memory, there would be 1 megabyte on each slot. If they needed to expand on that, there just weren't any more slots. So they could buy a memory trellis to populate the first and second slot with the existing memory and then have the next two memory slots available for expansion. Memory was pretty expensive in those days so it was a good economic decision for them to buy these. 09:53 09:54
Q. Before that you were founder/president of Spectrum Analysis?
A. That's correct.
Q. What did you do there?
A. Spectrum Analysis was a company I started for -- a consulting company. And we built a number of different products for various customers. We also supported them in the engineering design of various products. 09:54
The primary focus there was to work with customers on implementing designs into FPGAs as a test suite before moving them to ASIC. FPGAs are programmable integrated circuits that look a lot like an ASIC, which is an application-specific physical circuit. But 09:54 09:54

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1 **PFPGAs are reprogrammable so you can continue to**
2 **iterate on your design provided that you had a**
3 **-- a -- a circuit board that had FPGAs on them.**
4 **So it was basically an emulator and it would**
5 **emulate the ASIC.** 09:55
6 Q. Is that more of a hardware focus?
7 **A. Yeah, that was very much a hardware**
8 **focus.**
9 Q. Before that you were applications
10 manager for Quickturn Systems? 09:55
11 **A. Yes. So Quickturn --**
12 Q. What did you do --
13 **A. So Quickturn was a company designed**
14 **to build some of the world's first emulators --**
15 **or hardware emulators. And again, they had a** 09:55
16 **completely automated system that would allow a**
17 **user to input their -- their ASIC design and the**
18 **emulator would then reprogram the FPGAs to**
19 **perform that emulation.**
20 **The work I did there was to support** 09:55
21 **the customers in making sure that their designs**
22 **actually worked on the emulator. Even though it**
23 **was billed as an automated emulator, it didn't**
24 **always work fully automatic. And then based on**
25 **that knowledge that I acquired at Quickturn** 09:56

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1 **design, that's what I used at Spectrum Analysis.**
2 Q. Before that you were applications
3 engineer for Telestream?
4 **A. That's correct.**
5 Q. What did you do there? 09:56
6 **A. Telestream was a startup that built**
7 **telecommunication -- a programmable**
8 **telecommunication platform. And at that time**
9 **frame in 1989 -- let's see. That would be 1987**
10 **actually, the bulk of the telecom products were** 09:56
11 **physically implemented in that they weren't**
12 **programmable or barely programmable.**
13 **And the Telestream platform was**
14 **designed to be almost 100 percent programmable**
15 **so that customers could use this product to test** 09:57
16 **out their telecom -- telecom hardware before**
17 **they actually went to a full chip or to a full**
18 **fixed product line.**
19 Q. And before that you were design
20 engineer for StrataCom? 09:57
21 **A. That's correct.**
22 Q. What did you do there?
23 **A. StrataCom is a company that built**
24 **literally the first packet-based**
25 **telecommunications product. The idea was that** 09:57

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1 **-- we were a bunch of engineers out of ROLM**
2 **Communications. And ROLM was a telecom company**
3 **that was building computerized branch exchanges,**
4 **which are basically telephone equipment for**
5 **businesses. And we realized that there was a** 09:58
6 **market for building telecommunications over**
7 **using packets, which seems obvious today but**
8 **wasn't at that time frame.**
9 **Originally we were asked to build a**
10 **voice communication system to go over cable** 09:58
11 **networks. And that's what we started building.**
12 **That was a company called PacketDAX. And**
13 **PacketDAX was looking to build voice and video**
14 **over cable networks. But unfortunately the**
15 **video aspect was more difficult at the time than** 09:58
16 **they expected.**
17 **So PacketDAX became Packet**
18 **Technologies. And we ended up repositioning the**
19 **voice element on to long-haul T1 lines. And**
20 **that's what became the -- the IPX, which is the** 09:58
21 **product that Packet Technologies developed.**
22 **That was later sold to Cisco in I think 1994,**
23 **including some of data elements that came later.**
24 **Data -- some of that data stuff became -- was**
25 **what was known at the time as frame relay.** 09:59

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1 Q. Finally, before that you were design
2 engineer for R-O-L-M?
3 **A. Yeah. That's ROLM Communications.**
4 **ROLM stood for the acronym -- first letter of**
5 **each founder's name, last name. And they built** 09:59
6 **computerized branch exchanges. Like I said,**
7 **it's business equipment for telecommunications.**
8 Q. And that takes us back to when you
9 got your undergrad engineering degree, right?
10 **A. That's correct. Quite a while back.** 09:59
11 **That was in 1983.**
12 Q. So just going through that
13 engineering experience, would you agree that the
14 bulk of your engineering experience thus far has
15 been on the hardware side of thing as opposed to 10:00
16 software?
17 MR. PYMENTO: Objection.
18 THE WITNESS: My early days was in
19 hardware for sure. That might be a step
20 away from Yale in 1983. Went to go work 10:00
21 ROLM Communications and we built circuit
22 cards for the computerized branch
23 exchanges.
24 Over time by the late mid --
25 late '80s or early to mid 1990s, most of 10:00

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the hardware was becoming more software oriented. Computer chips were, you know, getting the necessary processing power that you could start doing software-defined radios. You could do -- move quite a bit 10:00 of the hardware -- physical hardware and more into software and still get the processing times that you needed.

So -- and then of course everything became more -- simulation became 10:01 a very big part of my career because whenever you build an expensive product that's going to be pumped out in millions, you need to be able to ensure that it's working properly. 10:01

And so, you know, originally it was emulators, then it became -- simulators became more powerful and became the dominant method of ensuring that the product worked. And then of course more of 10:01 the physical layers. Circuitry became embedded more of the software -- into software programming environments. And so my career took a twist and ended up becoming more of a software engineer than a 10:01

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hardware engineer.

MR. HIGH: We've been going about an hour. Do we want to take a quick break?

THE WITNESS: Yeah. I think that would be good. I need to go refill my 10:01 water.

THE STENOGRAPHER: We are off the record at 10:01 a.m.

(Whereupon, a recess was taken from 10:01 a.m. to 10:07 a.m.) 10:08

THE STENOGRAPHER: The time is 10:07 a.m. and we're back on the record.

BY MR. HIGH:

Q. So before the break we just went through the engineering experiences listed on 10:08 your CV.

Which of those engineering experiences involved wireless networking?

A. There was quite a few that involved wireless networking. The Philips environment 10:08 required wireless local area networking, as well as working with Microsoft, to understand their early smartphone implementations that they were coming out with on CE.

Also the ActSolar required 10:09

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transmission of data from the rooftops down to the -- down to the receivers. And so we were using a protocol called Zigbee. I think it was 802.11.15 was the underlying technology to that -- to that -- to Zigbee. And so, you know, I 10:09 built a number of radio systems over the years related to transmitting various types of data.

Q. Are there any others besides those that you just called out?

A. Those are the two primary ones that I 10:10 -- that I recall.

Q. What kind of protocol did the wireless communications with Philips rely on?

A. That was a lot of second -- 2G and technologies for working with some of the 10:10 integrated circuits that we were implementing in the Philips products.

Q. So 2G, that's cellular network communication?

A. Yeah, it was cellular as well as 10:11 local-area-network-type technologies embedded in that -- in that product line.

Q. Which of the engineering experiences involved work on telecommunication systems?

A. Well, all of them pretty much. I 10:11

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mean, you start back in ROLM Communications, that's telecom right there. And then StrataCom was a combination of telecom and datacom.

And you know, each one of these technologies, whether it be datacom or telecom, 10:11 required understanding the protocols that would do the communications.

Then of course at Telestream, we were building programmable telecom platforms. At Philips I was working on linking our handheld 10:12 computer system with various other networks as part of the peripheral work that I did there. Then of course at -- at Santel, I built that 10-gigabit-per-second fiber-optic transmitter for telecom environments. And then of course at 10:12 -- at ActSolar, we were building communications to transport the data off the rooftops down to the -- down to the receivers. So that was, you know, low -- low-bit-rate communications.

I think at least half to two-thirds 10:12 of my work I've done during my years -- during my career has been based on telecom of various types. Oh, of course then there's Webstacks. We built the server load balancer for, you know, network-based communications distributing the 10:13

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various types of requests out to various places.
Q. Did any of the engineering experiences listed on your CV involve 4G cellular network communications?
A. From the engineering experiences, most of the work was done either on the -- on the 2G or the local area network protocols like 802.11a and some of the other protocols that had to do with technology similar to 4G. 10:13
Q. But none of them directly involved 4G? 10:13
A. (Witness indicating.)
MR. PYMENTO: Objection.
THE STENOGRAPHER: I didn't get an answer. I'm sorry. 10:14
THE WITNESS: Like I said, the technologies included some of the same elements of the 4G, like, you know, the OFDM -- OF -- the orthogonal frequency-division multiplexing. 10:14
(Stenographer clarification.)
THE WITNESS: Orthogonal frequency-division multiplexing.
Some of the same technologies.

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BY MR. HIGH:
Q. But none of them directly involved 4G?
MR. PYMENTO: Objection.
THE WITNESS: No. 10:14
BY MR. HIGH:
Q. Did any of the engineering experiences involve 5G?
A. No.
Q. Are you familiar with multiple-input/multiple-output technologies? 10:14
A. MIMO, yes.
Q. What's your understanding of MIMO?
A. MIMO is a way to provide various different services, including diversity, as well as beamforming so that, you know, you can get either -- you can get a more reliable signal to the receiver that you're intending to target. 10:14
Q. Which of the engineering experiences listed on your CV involved MIMO? 10:15
A. Well, I have a fair amount of experience developing antenna systems in general and, you know, I'm very familiar with all of the technologies involved in MIMO, mostly on the receiver side when I was looking at building a 10:15

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phased array antenna. But I haven't actually specifically built a product related to those technologies.
Q. Are you familiar with the third generation partnership project or 3GPP? 10:15
A. Yes, I am. I've read the specification but it's been quite a while.
Q. Have you ever been a part of the development of the specifications for 3GPP?
A. No, I haven't. 10:16
Q. Have you ever worked on implementing any specifications developed by 3GPP?
A. I'm sorry. Say that -- I didn't quite catch that.
Q. Have you ever worked on implementing any specifications developed by 3GPP in telecommunications devices? 10:16
A. I'd have to go back and look. I don't believe so but I'd have to go back and see. You know, I did a fair amount of consulting work for Spectrum Analysis that also included some radio work on pagers and other types of products. We had probably 40 projects in there and I don't recall off the top of my head if that included any of them. 10:16

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Q. Spectrum Analysis was late '80s, early '90s, right?
A. Yeah, correct.
Q. Do you recall when 3GPP was formed?
A. Not off the top of my head. 10:17
Q. You have a section in your CV called Consulting Areas.
A. Yes.
Q. One of those sort of subsections is labeled Communications and under that you have LTE listed. 10:17
Do you see that?
A. Yes.
Q. What consulting work have you done related to LTE? 10:17
A. These are areas that I have consulted in more on the legal side than on the -- on the engineering side. I have supported litigation in a number of different matters concerning LTE for -- that would be in -- under -- let me go back down there and look at it. 10:18
That would be under the Wi-LAN cases. And that was work I did for McKool Smith back in -- let's see. That would be 2000 -- where's the date on that -- 2009 to 2011. 10:18

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Q. So your consulting work related to LTE has been more so focused on the legal side than the engineering side?
A. Well, as I said, I understand the technology very well. I've studied it and I've supported litigation on -- on -- on LTE. 10:18
Q. What about ODFM, what -- what consulting work have you done related to ODFM?
A. Well, ODFM is the underlying technology used in LTE to transmit the -- the information. 10:19
Q. Okay. So similar answer?
A. Yes. And by the way it's OFDM, I think.
Q. I see. I was just reading what was in your CV. 10:19
A. Did I get it backwards in my CV?
Q. Yeah. Looks like there's a typo in your CV on page 2 there.
A. I'll change that. Thank you for that. 10:20
Q. I knew that didn't sound right coming out of my mouth.
A. Oh, yes I see it. Okay. Thank you.
Q. So earlier we were talking about your 10:20

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past claim construction declarations.
And I think you mentioned that you've opined on whether a claim term is indefinite in the past; is that right?
A. Yes. 10:20
Q. And remind me, have you ever opined on a claim term and come to the conclusion that it is indefinite?
A. I don't recall sitting here. I can get back to you on that. The -- there were several different cases that I did opine on claim terms. The -- one of the ones that I recall is for VIA versus Asus, which started off as a claim -- as a patent matter, also included the intellectual property matter. And I opined on a large number of terms in that case. But you know, that's already coming up on eight years ago so I don't recall the details of them. 10:21 10:21
Q. Do you recall prior to this case whether you have opined whether a term is indefinite and come to the conclusion that it is in fact definite? 10:21
MR. PYMENTO: Objection.
THE WITNESS: Again, it's the same answer. You know, it's been -- it's not 10:21

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something I focused on trying to remember after the case. So I'd have to go back and look at what I might have said -- you know, what my opinions were at that time.
BY MR. HIGH: 10:22
Q. So you just remember that indefiniteness was at issue but you can't remember one way or the other which side your opinion fell on?
A. Not sitting here right now. I didn't prepare to answer that question. And these have been eight years ago. 10:22
Q. Do you recall whether any court has ever found a claim term indefinite despite you providing testimony that the claim was definite? 10:22
MR. PYMENTO: Okay.
THE WITNESS: Again, same answer. I can't recall just sitting here. It's not that I prepared for that type of a question. So I'd have to go back and look at the reports, even if I have them. 10:22
BY MR. HIGH:
Q. Are you aware that a claim can be indefinite if it covers both an apparatus and a method of use of that apparatus? 10:23

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MR. PYMENTO: Objection.
THE WITNESS: Can you restate the question, please?
BY MR. HIGH:
Q. Are you aware that a claim can be indefinite if it covers both an apparatus and a method of use of that apparatus? 10:23
MR. PYMENTO: Objection.
THE WITNESS: I'm not sure I understand all the legal aspects. But I understand that a claim can be -- or a claim term can be indefinite if it's not properly supported by the specification or -- or obvious within the claims, the use of the way it's being used in the claims. 10:23 10:23
BY MR. HIGH:
Q. Are you aware of how to assess whether an element in a claim is a method element or a structural element?
MR. PYMENTO: Objection. 10:24
THE WITNESS: So if a claim is a structural element, it's often cited by the claim itself as a system or an apparatus. If it's a method, it's often identified as a method and the language within the claim 10:24

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is structured as a method.
BY MR. HIGH:
Q. Are you aware of any claims that purport to be a system but have been found to be indefinite because they claim -- sorry. Let me back up and make this question better. 10:25
Are you aware of any claims that purport to be a system but are indefinite because they include method steps?
MR. PYMENTO: Objection. 10:25
THE WITNESS: This is for any claim that I've ever seen or -- I'm not sure I understand the scope of the question.
BY MR. HIGH:
Q. Just in general in terms of assessing indefiniteness. 10:25
MR. PYMENTO: Objection.
THE WITNESS: I don't understand the question then.
Can you restate it or break it down. 10:25
BY MR. HIGH:
Q. Sure. Are you aware that a claim can be found to be indefinite if it recites a system in the preamble but it includes a method step in 10:26

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the body of the claim?
MR. PYMENTO: Objection.
THE WITNESS: I think that the usage of the term -- again, as a person of ordinary skill in the art, if the usage of 10:26 the term is either defined in the specification or it's clear from the specification or it's clear from the claims themselves, I would -- I would know how to interpret that -- that term. 10:26
What I'm -- whether or not it's a legal issue, I'd have to work with the attorneys to try to understand if that's an issue that needs to be addressed.
MR. HIGH: I'm going to drop another 10:27 exhibit into the chat and we'll call this Deposition Exhibit 2.
(Gomez Deposition Exhibit 2 was marked for identification.)
BY MR. HIGH: 10:27
Q. Let me know when you have that open.
A. Right. I just got it.
All right. I have it open.
Q. So this exhibit just includes some sample claims that I wanted to -- to go over 10:27

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with you and ask you a few questions about them.
A. Okay. Sure.
Q. So we can just start with the one on the first page that's identified as Sample Claim 1. 10:28
Do you see that?
A. Yes.
Q. Do you agree that Sample Claim 1 is a system claim?
A. It says "a computer system for redirecting internet communications." 10:28
Q. So you agree?
A. That's what the preamble says. And the -- I'm reading through the rest of it. The "first processor," "second processor," "third processor," "fourth processor," "fifth processor." And so these things do various things so there is a structure here that seems like it would fit with the system. 10:28
Q. Feel free to read through this claim if you need to. 10:29
As you pointed out, this system comprises multiple processors, right?
A. Yes.
Q. So for example, this claim recites 10:29

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"a first processor that receives information from a computer at a point of origin."
Do you see that?
A. Can I ask where this -- this is a sample claim? 10:29
Q. Yeah, this is a sample claim.
A. Okay. And this doesn't come from any of the patents that I analyzed or that I provided an opinion on?
Q. Right. This does not come from any of the five patents that are asserted in this case. 10:29
A. So I didn't prepare anything in my report on this particular claim so you're just using this as an example to test my knowledge on system claims at this point? 10:30
Q. Let me just ask the questions and I think it will be pretty apparent.
A. All right. I just want to make sure that you know that I'm not prepared to answer stuff that I haven't actually considered. And if -- you know, to the best of my ability, I'll -- I'll try to answer a question but I don't want to be put on the record for something -- having to make decisions or having to analyze 10:30

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information on the fly because, you know, I -- as an expert, I need to be more considered in my opinions.

Q. All I'm asking is that you answer the questions to the best of your ability. 10:30

All right. So you see that first processor limitation that -- that I read out, right?

A. Yes.

Q. So in this limitation, do you agree that "receives information from a computer at a point of origin" is a function? 10:30

MR. PYMENTO: Objection.

THE WITNESS: Again, I'd have to analyze this more -- in the context of the entire claim. And since there's no other information other than what you're giving me here, I am reluctant to answer this because I just haven't considered it. 10:31

BY MR. HIGH: 10:31

Q. Do you want to -- do you want me to upload the patent that this came from into the chat?

A. You can. And then I'll have to read the whole patent. 10:31

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Q. Okay. You should have access to the patent now.

THE STENOGRAPHER: Do you want this marked as Exhibit 3?

MR. HIGH: Yes. 10:32

(Gomez Deposition Exhibit 3 was marked for identification.)

THE WITNESS: All right. I got a patent here. There's a lot of redactions in the patent. The patent is -- looks like it's 14 pages. I can start reading it now. 10:32

BY MR. HIGH:

Q. I don't -- I don't think that the questions that I'm asking require any knowledge of what this patent is actually discussing. I think it's just more so basic questions about how you're reading the claim structure. But if you feel like you need to review any portions of the patent, feel free. 10:32

A. So your first question, can you restate that again about the first element? 10:33

Q. Sure. Would you agree that "receives information from a computer at a point of origin" is a function that's performed by the first processor? 10:33

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MR. PYMENTO: Objection.

THE WITNESS: Can you explain what a function is in the context of this patent?

BY MR. HIGH:

Q. I'm just using that word in normal, everyday parlance. 10:33

A. Okay. But the function is a loaded word. There could be lots of different meanings to the word "function." I need to understand what you mean by that. 10:33

Q. I don't know if I can think of another word other than function.

Do you agree that the first processor in this claim should receive information from a computer at a point of origin? 10:33

MR. PYMENTO: Objection.

THE WITNESS: What do you mean by "should"?

BY MR. HIGH:

Q. Well, I guess what do you understand the first processor to do just based on this line in this claim? 10:34

A. Well, I would say "a first processor that receives information from a computer at a point of origin," I'd have to go back and look 10:34

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at what they -- what the patent means by "point of origin" or --

(Simultaneous speaking.)

THE STENOGRAPHER: I'm sorry. I missed the end of that. "What the patent means by 'point of origin' or"? 10:34

THE WITNESS: I think that's where I got to and then I was -- and then the attorney stepped in.

BY MR. HIGH: 10:34

Q. Let me see if I can just ask this a different way. I want to get -- I don't want to get hung up on the word "function."

For this limitation to be met by a computer system, would the computer system have to possess a first processor that is capable of receiving information from a computer at a point of origin or would the computer system have to be used such that a first processor of the computer system receives information from a computer at a point of origin? 10:34 10:35

MR. PYMENTO: Objection.

THE WITNESS: I'm sorry. I lost you on that one.

Can you start over again? 10:35

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BY MR. HIGH:
Q. Sure. Let me -- I'll just repeat my question.
For this limitation to be met by a computer system, would the computer system have to possess a first processor that is capable of receiving information from a computer at a point of origin or would the computer system have to be used such that a first processor of the computer system receives information from a computer at a point of origin? 10:35 10:35
MR. PYMENTO: Objection.
THE WITNESS: Well, you know, the -- the language in the element is "a first processor that receives information from a computer at a point of origin." 10:36
I'm sure there's some support in the specification for that. And it would be -- the correct analysis would be to go look and see if there's some -- if that's supported in the specification. 10:36
Do you want me to do that?
BY MR. HIGH:
Q. So I'm not so much asking whether there's support in the specification. You're 10:36

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welcome to -- to look through it if you'd like. But I think my question is more so focused on does the first processor -- sorry.
For there to be infringement, would the first processor have to be just capable of receiving the information that's listed or would the first processor have to actually be used to receive the information? 10:36
MR. PYMENTO: Objection.
I'm going to object to the whole line of questioning in general for asking an expert for legal conclusions essentially. 10:36
THE WITNESS: Yeah. Now I lost track of the question. I'm sorry. 10:37
BY MR. HIGH:
Q. I'll repeat my question.
A. Okay.
Q. You've analyzed infringement in the past, right? 10:37
A. When I analyze infringement, it's usually not on the fly like this. But yes.
Q. You understand generally what the word "infringement" means?
A. Yeah, I think so. But you know, I'm 10:37

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not a lawyer so I have to be careful when I answer these things.
But I think the problem I'm having with this is that when you restate this element you're using words that aren't in the element. And so I have to be careful to make sure that I understand that context. 10:37
Q. Right.
A. For example, the word "function" has many meanings in engineering. 10:37
Q. I'm not using the word "function" right now. So let me just repeat my question.
A. Okay.
Q. For there to be infringement, would the first processor have to be just capable of receiving the information or would the first processor have to actually be used to receive the information? 10:38
MR. PYMENTO: Same objection.
THE WITNESS: Well, the first processor receives the information from a computer at the point of -- a point of origin. 10:38
So is the first processor capable? Is it capable always? There's a 10:38

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whole bunch of questions that come to my mind as to, you know, what else would it require to answer your question other than that first processor -- the first processor receives information from a computer. And that's where I would want to go back and look at the specification. 10:38
BY MR. HIGH:
Q. Let me ask this a different way then.
So you've run several startups in the past and you've been involved in product development, right? 10:38
A. Correct.
Q. So if you wanted to know -- so let's assume that you make a computer system and you want to sell it. 10:39
A. Okay.
Q. If you wanted to know whether your computer system infringes claim, you could read this claim, would your computer system -- all right. Let me back up again. Let me set it up. 10:39
Let's assume that you have a computer system that has a first processor and that first processor is capable of receiving information from a computer at a point of origin. 10:39

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A. What does "capable" mean?
Q. When you sell it, it possesses the ability to do so.
MR. PYMENTO: Objection.
I'm confused where the question started and ended, to be honest. 10:40
BY MR. HIGH:
Q. When you sell your computer system -- I'm sorry. Let me -- let me back up again.
Will your computer system satisfy this limitation when you sell the computer system or would your computer system have to actually be used such that the first processor physically receives information from a computer at a point of origin? 10:40
MR. PYMENTO: Objection.
THE WITNESS: That sounds like a legal question.
Is that a technical question? I'm not quite sure I followed that. 10:40
BY MR. HIGH:
Q. You've opined on whether -- well, it's just a question. If you can answer it --
A. So the question --
Q. -- please do so. 10:41

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A. The question I believe was when I sold the computer, it would infringe -- it could infringe or whether it just had the capability in that it would infringe. And -- and I'm not a lawyer so it's difficult for me to answer that because I haven't studied case law. 10:41
But if I had a computer and it had a first processor that receives information from a computer at a point of origin, you know, that's what it would -- that's -- that's what it would do. 10:41
Q. Let me skip down to the last part of this claim, the very last sort of portion where it says "wherein the system further comprises."
Do you see that? 10:42
A. Uh-huh.
Q. It says "wherein the system further comprises maintaining a list of bit strings or character sets..."
A. Okay. 10:42
Q. Is that a structural element or a method element, the "maintaining a list"?
MR. PYMENTO: Objection.
THE WITNESS: You know, to me that means that there's structure, there would 10:42

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be some storage or there would be some element of -- of tracking state.
BY MR. HIGH:
Q. So in your opinion, "the system further comprises maintaining a list of bit strings or character sets" is describing structure of the system? 10:43
A. A big part of the system --
MR. PYMENTO: Objection.
THE WITNESS: Sorry. 10:43
A big part of any system is to maintain state. And that's what this is describing to me. And that's definitely a structure.
BY MR. HIGH: 10:43
Q. Let's -- let's jump now to the second page, Sample Claim 2.
A. Okay.
Q. This claim starts with "Apparatus comprising:" 10:44
Do you see that?
A. Yes.
Q. So do you agree that this is an apparatus claim?
MR. PYMENTO: Objection. 10:44

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THE WITNESS: That's what it says.
BY MR. HIGH:
Q. If you skip down, let's see, to the sixth line where it says "an input device supported by the portable housing." 10:44
Do you see that?
A. Yes.
Q. Do you agree that the input device is a structural element of the apparatus?
MR. PYMENTO: Objection. 10:45
THE WITNESS: It says "device."
BY MR. HIGH:
Q. Sorry. I missed it.
Is that a yes or no?
A. Well, it says "input device." And I consider device to be -- could be -- could be an apparatus. 10:45
Q. Okay. So -- so you agree that an input device, at least in this claim, it -- it purports to be a structural element of the apparatus? 10:45
MR. PYMENTO: Objection.
THE WITNESS: All I know at this point is that it says "an input device supported by the portable housing." 10:46

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BY MR. HIGH:
Q. And that's one of the elements underneath "Apparatus comprising:", right?
A. That is underneath "Apparatus comprising:" 10:46
Q. And then the very next element it says "operation of the input device by the user enabling the memory to retain the visual image data in digital format."
A. Okay. 10:46
Q. So for there to be infringement of this claim, does a user have to operate the input device in this way or is there infringement if a product is just sold that allows a user to operate the input device in this way? 10:47
MR. PYMENTO: Objection.
THE WITNESS: You're asking me to make a -- a legal claim here -- or a legal statement. And I'm not sure I'm prepared to do that. I haven't analyzed this thoroughly. I'd need to go back and, like I said, read the specification and then also any other supporting material. 10:47

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BY MR. HIGH:
Q. So just by reading this claim you can't say whether --
(Simultaneous speaking.)
THE WITNESS: I'm sorry. Go ahead and finish your question. 10:47
BY MR. HIGH:
Q. Just by reading this claim, you can't say one way or another whether there has to be actual operation by the user of the input device for there to be infringement? 10:47
MR. PYMENTO: Objection.
THE WITNESS: Well, it says "operation of the input device by the user enabling memory." 10:48
Is user enabling memory or is the user -- or is the user controlling the operation of the device? I'd have to go back and look at the specification to know which way to interpret that, maybe even the file history. 10:48
There's a lot of issues that I have with the way that this particular claim element is structured. And I'd have to study that more thoroughly. 10:48

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BY MR. HIGH:
Q. Let's skip down to the last limitation, the "movement by the user of the portable housing commonly moving the display."
Do you see that? 10:49
A. Oh, the very last line?
Q. Yes.
A. Uh-huh.
Q. By reading this claim, can you say one way or another whether the portable housing has to be actually moved by the user or whether the portable housing could just be capable of being moved for there to be infringement? 10:49
MR. PYMENTO: Objection.
THE WITNESS: I couldn't say because I haven't read all the rest of the material here. There's a lot of other claim elements. This is a kind of a sentence fragment, "movement of the user by the portable housing commonly moving the display." That's not even a complete sentence. 10:49
BY MR. HIGH:
Q. Feel free to take some time to read the full claim if that would help. 10:49

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(Witness reviewing document.)
BY MR. HIGH:
Q. Just let me know when you're finished reviewing the claim and ready to discuss again.
A. Yeah. I have more questions now that I've read the claim than I -- than I did before. 10:54
You know, it's things like this is saying that a portable housing -- a portable housing being wireless is the first element. And to me as a person of ordinary skill in the art, without having read the specification or any of the -- you know, the -- the rest of the patent documentation, a housing to me is usually a piece of plastic or a piece of metal. 10:55
I'm not sure how a housing by itself could be wireless so I have to go back and look at that. And then this "movement of the user of portable housing commonly moving the display," what does that mean, "commonly moving the display"? I'd have to go back and study the specification to understand that even better. 10:55
One interpretation might be that the movement of the user and of the housing moving -- when you move the housing, it moves the display. But it's not clear what the housing is 10:55

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because the housing is wireless. So I have more questions now than I did before. I'm sorry.
Q. Right. So I guess I'm not so much asking you to -- to say what any of these terms individually mean. 10:56
But I'm more so asking, you know, that last limitation, "movement by the user of the portable housing," is that a structural limitation or is that a method step?
A. Well, without understanding the words -- 10:56
MR. PYMENTO: Objection.
THE WITNESS: You asked me not to focus on the words. But without understanding the words, I don't know if I can answer that question. 10:56
BY MR. HIGH:
Q. So you're not able to answer whether it's a structural limitation or a method step?
A. I think -- 10:56
MR. PYMENTO: Objection.
THE WITNESS: I'd have to go study the entire patent. Just from not understanding the words makes it difficult to answer that question. 10:57

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BY MR. HIGH:
Q. Let's jump ahead now to Sample Claim 5. It's on page 5.
A. Okay.
Q. Feel free to take a moment to read the whole claim. 10:57
A. Okay.
(Witness reviewing document.)
THE WITNESS: All right.
BY MR. HIGH: 10:59
Q. Do you recall whether you've seen this claim before?
A. I don't recall.
Q. This claim starts off with "a data transmitting device..." 10:59
Do you see that?
A. This is from -- is this claim from any of the five patents that we are investigating?
Q. I'll stipulate that it's not one of the -- it doesn't come from one of the five -- 10:59
A. Okay.
Q. -- patents that are asserted in this case.
I can -- I'll go ahead and just place 11:00

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the patent that it's from into the chat. So you should have access to the patent now.
And we can call this Deposition Exhibit 4?
(Gomez Deposition Exhibit 4 was marked for identification.) 11:00
BY MR. HIGH:
Q. Okay. So do you see that the claim starts off with "a data transmitting device"?
A. Yes. 11:00
Q. Do you agree that this claim is to a device as opposed to a method?
MR. PYMENTO: Objection.
THE WITNESS: It says "device."
BY MR. HIGH: 11:01
Q. And then -- so "the device for transmitting signals corresponding to an incoming stream of bits, comprising" and then it lists several limitations.
Do you see that? 11:01
A. Yes.
Q. So the first one is "first buffer means."
Would you agree that the "first buffer means" is a structural limitation? 11:01

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MR. PYMENTO: Objection.
THE WITNESS: My understanding is that the word "means," "means for" may imply that it's a means plus function. But that also depends on whether or not the claim element is functional in nature or if it also includes structure. So that's up for interpretation. 11:02
I would say that this particular element includes a stream into frames of unequal bits, number of bits, and four separating bits of each frame into a first group and a second group of bits. There's significant structure defined in this first element. 11:02
(Stenographer clarification.) 11:02
THE WITNESS: There's significant structure defined in this first element.
BY MR. HIGH:
Q. So if you were opining on whether a data transmitting device satisfied this claim, could you make that decision -- well, let me strike that. 11:02
Do you see the last limitation, "transmitting the trellis encoded frames"? 11:03

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A. **Yes.**
Q. Is that a structural limitation or a method step?
MR. PYMENTO: Objection.
THE WITNESS: You want me to analyze that just in isolation? 11:03
BY MR. HIGH:
Q. I'm asking your understanding of -- of that limitation, just in terms of whether it's a structural limitation or a method step. 11:03
MR. PYMENTO: Objection.
THE WITNESS: You know, it's -- again, it's a -- it's a fragment sentence. It's -- it has structure. There's trellis encoded frames. There's, you know, other elements before that help define what that is. 11:04
So I would -- you know, reading this, I would see that there -- that it's structural because it's supporting a -- a claim that is structural in nature throughout the claim -- throughout all the other elements. And then the fact that it's sending trellis encoded frames, it's defining what it's actually sending. And 11:04 11:04

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the frames to me is a structural element. It's a -- it's a -- it's a -- it's an object.
BY MR. HIGH:
Q. Is there a requirement as to what has to transmit the trellis encoded frames? 11:05
MR. PYMENTO: Objection.
(Witness reviewing document.)
THE WITNESS: Well, it would be the device -- the transmitting device. I have to be careful about the logic here. But I'm going to go ahead and hazard to show that the "transmitting device for transmitting signals corresponding to incoming bit streams, comprising: first buffer means for partitioning said stream" -- and you don't see -- stream here isn't defined. But I'm assuming that it's implying -- it's -- it's "said stream." It doesn't say what the said stream was. 11:06 11:06 11:06
I'm going to assume that it was in the preamble. So if that's the case -- and like I said, I need to, you know, analyze this a lot more deeply. If that's the case, then it's sending -- it's "said 11:07

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streams into frames" and the stream would be sent by the transmitting device.
But you know, I've only had like a minute -- or a few minutes to look at this. So I'd be very careful and very -- very careful to go through this logic more in detail and make sure that the "transmitting the trellis encoded frames" is the same frames that's in the "second element" and that "the said stream" is referring to the preamble. I'd have to go through and check all that very carefully. 11:07 11:07
BY MR. HIGH:
Q. Feel free to reread the claim if you need to. 11:07
(Witness reviewing document.)
THE WITNESS: It -- you know, it -- with this quick read, it appears that it is structural because we're sending the trellis encoded frames, frames being an object, frames is defined, when you're putting the streams into frames in the second element. 11:08
So if you follow back through the -- through the definition of what a 11:09

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frame is and where frames are being used and what the streams are, except for the fact it's -- "said stream" is not defined anywhere in here, it -- it all appears to be a structural element -- claim. 11:09
MR. HIGH: Let's go ahead and take another break.
THE WITNESS: Okay. Can I get ten minutes this time?
MR. HIGH: Sure. 11:09
THE WITNESS: Okay. Thank you.
THE STENOGRAPHER: We're off the record at 11:09 a.m.
(Whereupon, a recess was taken from 11:09 a.m. to 11:18 a.m.) 11:10
THE STENOGRAPHER: We're back on the record at 11:18 a.m.
MR. HIGH: At this time I'm going to pass the witness.
MR. PYMENTO: I have no further questions. 11:19
MR. HIGH: Thank you very much, Mr. Gomez.
THE WITNESS: Thank you.
(Time concluded: 11:18 a.m.)

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STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

I, Janice M. Kocek, CSR, CLR, No. 084-002871, do hereby certify:

That the foregoing remote deposition of MIGUEL GOMEZ, was taken at the time and place therein set forth, at which time the witness was put under oath remotely by me;

That the testimony of the witness and all objections made at the time of the examination were recorded stenographically by me, were thereafter transcribed under my direction and supervision, and that the foregoing is a true record of same.

I further certify that I am neither counsel for nor related to any party to said action, nor in any way interested in the outcome thereof.

IN WITNESS WHEREOF, I have subscribed my name this 7th day of November, 2023.

_____
JANICE M. KOCEK, CSR, CLR
CSR NO. 084-002871.

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ACKNOWLEDGMENT OF DEPONENT

I, _____, 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)

NOTARIZATION (If Required)
State of _____
County of _____
Subscribed and sworn to (or affirmed) before me on this _____ day of _____, 2023, by _____, proved to me on the basis of satisfactory evidence to be the person who appeared before me.

Signature: _____
(SEAL)

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