In the Matter Of:

MOM ENTERPRISES V. VIETH

2023-00726

DAVID J. SHERMAN

December 05, 2023

Vieth Ex 2024 - IPR2023-00726

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CASE IPR 2023-00726
Patent 9,066,958

MOM ENTERPRISES, LLC	§
	§
Petitioner	§
	§
vs.	§
	§
ELAINE AND REINHOLD W. VIETH	§
	§
Patent Owner	§

REMOTE ORAL DEPOSITION

DAVID JOSHUA SHERMAN

December 5, 2023

(Reported Remotely)

REMOTE ORAL DEPOSITION of JOSHUA SHERMAN, produced as a witness at the instance of the Patent Owners and duly sworn, was taken in the above-styled and numbered cause on December 5, 2023, from 1:32 p.m. to 3:42 p.m., (Central Time) before Annette E. Escobar, Texas Certified Shorthand Reporter Number 5475, in and for the State of Texas, reported by computerized stenotype machine, reported remotely via zoom, pursuant to the Patent Trial and Appeal Board and the provisions stated on the record or attached hereto.

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REPORTER NOTE: Please note that I was not physically present for said proceedings in making the stenographic record; therefore, due to the poor quality of the zoom videoconference, i.e., audio distortions, Internet connections freezing, extraneous room noises, et cetera, unintelligibles or inaudibles may have created inaccuracies in the reporter's stenographic record.

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

Whereupon,

1:32 p.m.

THE COURT REPORTER: Mr. Sherman, would you please raise your right hand?

(Witness sworn at 1:32 p.m.)

THE COURT REPORTER: Thank you.

Counsel, would you please state your appearances starting with -- is this petitioner? I'm not sure -- plaintiff?

MS. PATEL: I would be petitioner.

Sarika Patel on behalf of petitioner, MOM Enterprises.

MR. ANDERSON: Alan M. Anderson appearing on behalf of patent owners, Reinhold and Elaine Vieth.

MS. DUGUAY: Elaine Duguay appearing on behalf of Mr. Sherman. We're with RWS.

MR. UNGERMAN: Mark Ungerman --

MS. FLORENCE: Oh, sorry.

MR. UNGERMAN: Mark Ungerman --

MS. FLORENCE: Go ahead, Mark.

MR. UNGERMAN: Mark Ungerman of Ungerman IP PLLC appearing on behalf of patent owners.

MS. FLORENCE: L. Reagan Florence on

behalf of the patent owners as well.

THE COURT REPORTER: Okay, counsel.

MR. ANDERSON: Thank you.

DAVID JOSHUA SHERMAN,

having been first duly sworn, testified as follows:

EXAMINATION

BY MR. ANDERSON:

Q. Mr. Sherman, could you please state your full name and present home address for the record?

A. Yes. David Joshua Sherman, and my home address is 4 Autumn Close, Reading, RG4 8UL, and based in the United Kingdom.

Q. Mr. Sherman, this deposition -- this trial testimony is being taken virtually via Zoom, so I want to ask you, where are you physically located at this time?

A. I'm in an office in the garden on my property, my house.

Q. In Reading?

A. In Reading, yeah.

Q. All right. Is there anyone else in the room with you?

A. No.

Q. Do you have a personal communication device such as a cellphone or something of that nature with

you?

A. Yes.

Q. Could you kindly turn it off or mute it?

A. Yeah. Yep. Yeah, it's already muted.

Q. Okay. And my understanding is that you are represent by Ms. Duguay in-house counsel for RWS this afternoon; is that correct?

A. Yes.

Q. Have you given testimony previously in any U.S. proceeding?

A. Yes, I think I have.

Q. Okay. When you -- what are you thinking of when you say you think -- "I think I have"?

A. Well, it was another deposition proceeding about five or six years ago.

Q. Do you recall the general context of it? Was it with regard to a translation that you had prepared?

A. Yes, it was. Yeah.

Q. All right. Do you recall whether it was in a court proceeding in a United States court or whether it was in a proceeding before the United States Patent and Trademark Office?

A. I don't remember at all. Sorry. It was several years ago.

Q. All right. You do understand that you are

under oath here today the same as you would be if you were in court testifying?

A. Yes, I do.

Q. All right. I neglected to mention a couple of ground rules. Please answer audibly for the benefit of the court reporter. This is not being videotaped, so we can't take down nods of the head or other common, what I'll call, inaudible or unclear responses such as uh-huh or huh-uh which would show up looking the same on the transcript.

So could you agree to do that, sir?

A. Yes.

Q. Also, since this is being taken virtually, please pause before you begin your answer. It is important that we try to make sure that there are not -- there is not more than one of us speaking at once.

If any objections are made by any counsel, you know, so pause so that if there are any objections, they can be made. But unless you are instructed not to answer, you can go ahead then and answer the question, okay?

A. Yes.

Q. All right. Have you spoken with Dr. Benyunes about his testimony taken earlier today?

A. Not about his testimony, but I spoke to him

very briefly to check he was okay earlier this evening.
Q. What did he say?
A. He said it was intense.
Q. Anything else?
A. No. No. He was asking me how I felt. It was very quick.
Q. Okay. What did you say in response to his question?
A. Nervous and trying to eat very quickly with my family I think was my answer.
Q. All right. Did you speak with your counsel Ms. Duguay prior -- immediately provider to your -- to this testimony starting a few minutes ago?
A. No.
Q. All right. Prior -- did you do anything to prepare for your testifying here today?
A. What do you mean by preparing? Sorry.
Q. Fair question.
Did you review any documents in preparation for testifying here today?
A. Yes.
Q. What did you review, sir?
A. Just my declarations that I've made.
Q. Okay. Two declarations?
A. Yes.

Q. Okay. Do you recall when you reviewed those?
A. This afternoon about 2:00 o'clock.
Q. About how long did you take to review them?
A. Half an hour.
Q. Did you review the attachments to your declarations?
A. Not today, no.
Q. Okay. So just reviewed the declaration text itself; is that correct?
A. Yes.
Q. Did you speak with anyone or have any virtual meetings with anyone in preparation for your testifying here today?
A. Do you mean today or at any point?
Q. No, it's in preparation for testifying here today.

So at any point in time, did you have any sort of conversation or virtual meeting with anyone in preparation?
A. Yes, I did. Yes. Yes.
Q. How many such meetings did you have?
A. Two.
Q. And were these virtual meetings?
A. Yes.
Q. Via Teams?

A. Yes.
Q. Do you recall when the first one was?
A. First one was on Friday.
Q. December 1st?
A. Yes, it was. Yeah.
Q. And who all was on that Teams meeting?
A. I believe it was Sarika Patel, and I think that was it as far as I can recall.
Q. All right. Then did you have -- how long did that Zoom meeting last?
A. Or, actually -- sorry. I think Elaine was on that call on Friday, I think.
Q. You can't recall for certain?
A. Not for certain, no. No.
Q. All right. And when you say "Elaine," you're referring to Ms. Duguay?
A. Yes.
Q. All right. About how long did this meeting last?
A. It was -- I think it was scheduled for half an hour.
Q. Did it take that long or was it less?
A. I can't remember.
Q. All right. And then you had a second virtual meeting; is that correct?

A. Yes.
Q. When was the second one?
A. That was on Monday, the 4th, yesterday.
Q. And who all was involved in that meeting?
A. So that was Elaine Duguay and someone else internally within IP Services --
Q. Do you recall --
A. -- and -- and Erica Gatland.
Q. Do you know what her position is?
A. Yes. She is head of -- oh, no, she's vice president of IP Operations.
Q. Why did you have a Zoom with Ms. Gatland and Ms. Duguay yesterday?
A. I think it was just to prepare us. I've been through it before, but it's not something we're used to, so it was just to make sure that we are okay and ready for the -- ready for the deposition.
Q. About how long did that Teams meeting last?
A. That was also scheduled -- I think that was half an hour.
Q. Okay. With regard to the first Teams meeting on last Friday with yourself, Ms. Duguay, and Ms. Patel, as best you can recall, what did Ms. -- what were you asked by Ms. Patel and what did you say in response?
A. I -- I can't remember the exact questions from

that call.

Q. Do you recall generally what you were asked and what you said in response?

A. No. I can't -- well, again, it's just, you know, are you ready, are you happy with the declarations you have made, and do you have any questions, I think would have been the general questioning.

Q. Okay. Do you recall what you responded to when you were asked if you were happy with your declarations?

A. No. To be honest, no, not exactly.

Q. All right. How about generally?

A. Generally, yes.

Q. Okay. Do you recall any questions that you had regarding this process?

A. No, I don't.

Q. Were you told any questions that you might be asked during this testimonial --

A. No.

Q. -- deposition?

All right. Did you ask any questions of Ms. Patel?

A. Not that I can remember.

Q. Okay. Does that mean that you asked some but you don't remember what they were?

A. I -- I can't remember whether I asked any

questions at all.

Q. All right. Is there anything that you do recall being said or asked during this Teams call last Friday that you haven't related to us?

A. Not specifically, no.

Q. All right. What's your current position at RWS?

A. I'm head of translation operations in the United Kingdom.

Q. What are your duties and responsibilities as head of translation operations in the United Kingdom?

A. So I oversee our translation operations department which includes line management of our staff translators and overall management of the rest of our production staff.

Q. And this is just for the translators or translation operations located in the United Kingdom?

A. That's correct.

Q. Are you responsible for sales and marketing of your translation operations in the United Kingdom?

A. No.

Q. Is there someone who reports to you that's responsible for the sales and marketing aspect of --

A. No.

Q. -- your translation operations in the United

Kingdom?

No?

A. No.

Q. Do you attend conventions or gatherings to promote your translation services?

MS. DUGUAY: Objection, relevance.

Q. (By Mr. Anderson) Sir?

A. Sorry. I didn't know if I need to answer.

Q. Yes. As I said before, there may be objections, but unless you are told, don't answer this, which would only come from Ms. Duguay, you go ahead and answer.

A. Okay. Sorry. Can you repeat the question again? Sorry.

MR. ANDERSON: Could I ask the court reporter to please read back the question?

(Court reporter read the last question.)

MS. DUGUAY: Same objection.

A. Can -- sorry. Can you clarify? Does that mean externally or internally within the business?

Q. (By Mr. Anderson) Well, let's first take external.

A. No.

Q. All right. What about internal?

A. Yes.

Q. All right. As the head of translation operations -- or strike that.

When did you become head of translation operations for the UK?

A. My current -- the role I'm in currently was June 2020.

Q. Okay. When did you stop performing -- doing translations yourself?

A. Before that, so --

Q. Okay. March --

A. -- I would be guessing --

Q. -- of 2019 sound about right?

A. I couldn't give you an exact date, to be honest.

Q. Okay. Well, would you have -- do you have any reason to disagree if I told you that according to information from -- transmitted from your colleagues at RWS you stopped translating in about March of 2019?

A. No, I don't know a reason to object.

Q. All right. And the fact is that since that time you do not do translations, correct?

MS. DUGUAY: Objection, form.

A. Yes.

Q. (By Mr. Anderson) Do you understand my question, sir?

A. Yes, I do. Yes. Sorry. The answer is yes.
Q. All right. And with regard to -- we're going to get them, there's two declarations that you have signed in 2023, you did not perform a new translation for either of those declarations, correct?
A. Yes.
MS. DUGUAY: Objection, form.
A. Yes.
Q. (By Mr. Anderson) Yes, that is correct?
MS. DUGUAY: Same objection.
A. Yes.
Q. (By Mr. Anderson) Thank you.
Do you have a certificate from MITI as a translator?
A. No.
Q. You know what that is, an MITI certificate?
A. Yes. I can guess. It's a member of interpreter of translations --
Q. Okay.
A. -- something like that.
Q. All right. Do you have any specific certification or qualification as a translator, sir?
A. No.
Q. Is there -- during the time -- strike that.
When did you first start doing any

translations?

A. 2000 -- I'm guessing. 2009 -- 2008, 2009.

Q. And when did you receive your bachelor of science degree from Aston University, sir?

A. 2001.

Q. All right. What did you -- so about seven years after you were graduated you started doing translations; is that correct?

A. Yes.

Q. And what made you decide to start to do translations?

A. Well, I -- I worked for RWS before I translated for them, so it was a natural career progression with the business.

Q. Okay. What kind of work did you do for RWS before you started translating for them in about 2008?

A. I was a -- a checker, so I was linguistic revisor, proofreader, so word-for-words linguistic checking.

Q. Okay. And do you know who Amy Tin -- Amy -- Rebecca Amy Tinworth is?

A. Yes, I do.

Q. Do you know her personally outside of work?

A. I used to, yes.

Q. Okay. She's no longer employed at RWS?

A. She is employed at RWS but in a different division to me.
Q. Okay. What division are you employed in?
A. So I'm IP Services.
Q. And IP means intellectual property?
A. It does, yeah.
Q. All right. What division is Ms. Tinworth in?
A. She's in something called LXD.
Q. And what does LXD mean?
A. It's language excellence delivery.
Q. What does that refer to or connote?
A. I'm sorry. I don't understand.
Q. Well, you've referenced that she's in this LXD division.
A. Yep. Yes.
Q. Do you know what that division does?
A. No, not really.
Q. Okay. All right. We heard testimony earlier today that as a matter of standard practice translations prepared by individuals at RWS are reviewed or quality checked by another translator. Do you agree with that?
A. Translator or linguistic revisor, yes.
Q. All right. Have you spoken with Ms. Tinworth regarding a translation that she prepared in 2017 since she prepared it in about April of 2017?

A. No.
Q. You've not spoken with her regarding your testimony here today?
A. She knows she's being called for deposition, that's something I told her, but nothing else.
Q. When did you tell her that she was being called to testify?
A. I don't remember the exact date.
Q. Was this a verbal communication or one that was sent by e-mail or text message?
A. Via work systems electronically.
Q. Did she have any response?
A. I would think so, yes.
Q. Do you recall what it was?
A. No, not exactly. No.
Q. How about generally?
A. Generally, nervousness again, I expect.
Q. Okay. My understanding, sir, is that in April, May, and June of 2017 your position was that of senior translator at RWS; is that true?
A. Yes.
Q. You seemed to hesitate a bit when you said that. Why, sir?
A. Yeah. I'm trying to think back on the timing of everything, but that sounds about the right time,

yes, April 2017.

Q. All right. At that time, did your responsibilities change from being, what I'll call, a translator to senior translator?

A. Yes.

Q. How did they change, sir?

A. In separate ways; one was to become line manager for staff translators and more responsibility with client feedback, translation quality.

Q. Can you explain what you mean by you were a line manager for staff translators?

A. It means I -- I managed a team of translators, so, I think, supervisor is the word that's used elsewhere.

Q. All right. It's not like you were -- you weren't reviewing their work, would that be true?

A. No. No, I was their manager.

Q. Okay. So you were not reviewing their work; is that correct?

A. Not on a regular basis, no.

Q. All right. And what do you mean by you got more responsibility for client feedback?

A. Yeah, so on quality of translations. When we had a -- clients ask us why we translated something in a certain way, quite often it came to me to address any

questions with the staff translators.

Q. Did you have a typical response or procedure that you would then follow?

A. No, it's very much based on individual case.

Q. All right. Are you aware that in about April of 2017 Ms. Tinworth prepared a translation and signed a declaration as to its accuracy?

A. Yes.

Q. At that time -- or prior to her signing that, did you review her translation for accuracy?

A. No.

Q. Would it be fair to say that someone either a -- what would you call it, a linguistic checker or another translator would have reviewed it?

A. Yes, that's correct.

Q. So before she signed and submitted her declaration and -- and translation, at least two sets of qualified eyes would have reviewed it and said, yep, this is good, hers --

MS. PATEL: Objection, foundation.

Q. (By Mr. Anderson) -- hers -- hers and then the other person?

MS. PATEL: Same objection.

A. Yes. Yes.

Q. (By Mr. Anderson) Okay. All right.

Mr. Sherman, I'm going to start showing you some documents on my screen from screen sharing. How big of a screen do you have to look at there? Is it a monitor or is it just a screen from a laptop?

A. I can put you on a monitor.

Q. All right.

A. I have two screens.

Q. All right. I'm going to share a screen and ask if you can see what I'm now sharing you -- sharing.

A. Yes, I can.

Q. All right. Is this a good size or if I reduce it down, will it -- can you still see it?

A. Yep, that's fine.

Q. Okay. How about that?

A. Yep, that's fine.

Q. Okay. Good.

All right. So I'm going to put up on the screen what will be marked as Exhibit 9.

(Exhibit marked for identification as Deposition Exhibit Number 9.)

Q. (By Mr. Anderson) It has production numbers MOM_006094 through 6104. I will tell you that the first two pages are an e-mail thread and you don't appear to have been copied on them. But I'd just like to ask you, first off, sir, whether you recall having seen any of

these e-mails that may have been forwarded to you, and I will let you -- tell me when you're ready for me to scroll to the next page.

A. You can scroll to the next page.

Yep, I can see I'm in the copy of the one at the bottom.

Q. All right. So the one at the bottom is an e-mail from Ms. Patel to you dated February 14th of 2023, correct?

A. Yes, it looks like it. Yep.

Q. All right. And when you received this e-mail, what did you do?

A. I can't remember.

Q. All right. If you look at the e-mail above, it is from Andrea Turner to Ms. Patel a day later on February 15th. Do you see that, sir?

A. Yes.

Q. And it says that it has been forward to Ms. Turner. Do you see that?

A. Yes.

Q. All right. First off, who is Ms. Turner at RWS?

A. Well, at the moment, no one. She's left the business.

Q. All right. Back in February of this year, what

was her position?
A. The account manager.
Q. Okay. And it appears from her e-mail that she was the key account manager for Fish & Richardson. Do you see that?
A. Yes.
Q. Okay. Is Fish & Richardson a key account for RWS IP Services?
MS. DUGUAY: Objection, relevance.
A. Honestly, I don't know. I'm not on the customer side.
Q. (By Mr. Anderson) All right. Okay. Do you recall forwarding Ms. Patel's e-mail of February 14th to Ms. Turner?
A. No, I don't remember at all.
Q. If we scroll up to the e-mail from Ms. Patel to Ms. Turner also dated February 15th, it's on Bates numbered page 6094, it references an -- it says that -- that David Joshua Sherman at RWS prepared this declaration for us in the past, which I have attached to this e-mail (see attachment at page 1). Do you see that?
A. Yes.
Q. Okay. And if we then scroll to the attachments, there is a declaration of accuracy of

translation, it has a date of June 8th of 2017. Do you recognize that declaration, sir?

A. Yes.

Q. Is that your signature that appears on that page which is 6097?

A. Yes.

Q. And this references a translation prepared by Ms. Tinworth. Do you see that in the first paragraph?

A. Yes, I do.

Q. And the attachment to your declaration, there's a -- appears to be a translation in English. Is that the translation that you are referring to?

And if I'm going too fast with my scrolling, just let me know, and I'll slow it down for you.

A. Yes.

Q. Yes, that is the translation you're referring to?

A. In the declaration, yes.

Q. Okay. And Ms. Tinworth was competent to perform the translation, correct?

A. Yes.

Q. And, indeed, in her declaration she said that it was a true, full, and accurate translation. Do you recall that, sir?

MS. DUGUAY: Objection, foundation.

A. No, I don't recall at all.

Q. (By Mr. Anderson) All right. Well, let's just -- I'm sharing now what has or will be marked as Exhibit 2. It is the declaration of translator, and it appears to be signed by RA Tinworth, dated April 3 of 2017. Have you seen this declaration previously, sir?

A. Yes.

Q. All right. And in the second paragraph Ms. Tinworth says that the attached translation is a true, full, and accurate translation of the attached German document. Do you see that, sir?

A. Yes, to the -- to the best of my knowledge being included in there too.

Q. Yep.

And you would agree that Ms. Tinworth was qualified to provide a true, full, and accurate translation of the attached German document, correct?

A. Yes.

Q. Going back now to your translation. Can you tell me what you looked at when you did your review of Ms. Tinworth's declaration -- or Ms. Tinworth's translation?

A. It was purely the one sentence that I've mentioned on this declaration here and the other

declaration I've signed.

Q. Okay. So you looked at one sentence, correct, sir?

A. Yes.

Q. And do you recall why you looked at one sentence?

A. Yes.

Q. Why?

A. Because the client asked me to review a sentence and make sure it was accurate because they'd felt the English was not reflecting the German quite accurately enough.

Q. Okay. I am going to put up on the screen and share with you a document that will be marked as Exhibit 10, and I will state for the record it has production numbers MOM_0006032 through 6067.

(Exhibit marked for identification as Deposition Exhibit Number 10.)

Q. (By Mr. Anderson) Can you see my screen, sir?

A. Yes.

Q. All right. Thank you.

I'm going to refer you down to an e-mail from Andrea Turner to Ms. Patel copied to Elizabeth Daw, Andrea Romero Perez, dated July 26th of 2023. Please take a moment to read the text of that e-mail and tell

me when you're finished.
A. Yes.
Q. Okay. In this e-mail Ms. Turner tells Ms. Patel, "David was Rebecca's supervisor in the past, and at the time of the first correspondence (2017) he was a senior translator." Do you see that, sir?
A. Yes, I do.
Q. Okay. When it says that you were Rebecca, referring to Ms. Tinworth, supervisor in the past, were you her direct supervisor in April, May, June of 2017 or at some other time in the past?
A. I was her direct supervisor at that time.
Q. Which time?
A. April, May 2017.
Q. All right. And then it says, "The reason David reviewed the original translation was that will at the time Rebecca was unavailable but the review could not wait. As Rebecca's supervisor and English native speaker, with qualifications with German, David had a phone call with Martina Tyreus Hufnal and he was asked on the phone to review a certain passage as your colleagues believed RWS omitted some words from our translation." Do you see that?
A. Yes.
Q. Is that a -- is that true what's stated there?

A. I can't remember, but, yes, I would imagine so.
Q. Okay. Well, it would appear that you provided that information to Ms. Turner in July of 2023. Do you recall where you got that information?
MS. PATEL: Objection, form and foundation.
A. There's only one place I could have got that from, yes.
Q. (By Mr. Anderson) Okay. Which is what?
A. That's our internal archive for complaints log system which has all the correspondence.
Q. Okay. Have you reviewed that internal complaint log system in 2023?
A. I must have done if I've given this information.
Q. All right. In other words, as you -- reading what you see on this page of Exhibit 10, you believe -- that causes you to believe that you reviewed the internal complaint system at RWS, correct?
A. Yes.
Q. All right. And do you recall having a phone call with an individual by the name of Martina Tyreus Hufnal?
A. I don't recall the telephone conversation, no.
Q. Seeing this on this Exhibit 10, do you have any

reason -- and having reviewed your internal complaint log system, do you have any reason to believe that you did not have a telephone call with Martina Tyreus Hufnal?

A. No.

Q. Do you recall that Martina Tyreus Hufnal at that time was an attorney with Fish & Richardson?

A. No.

Q. Just don't recall one way or the other?

A. I would have known she was from Fish & Richardson but not what position she held.

Q. Okay. Do you know whether she had any German language speaking or understanding capability?

A. I don't know.

MS. PATEL: Objection, foundation.

A. I don't know.

Q. (By Mr. Anderson) All right. It indicates that you were asked on the phone to review a certain passage as your colleagues, referring to Ms. Patel's colleagues, believed RWS omitted some words. Do you see that, sir?

A. Yes.

Q. Do you recall more specifically what you were asked -- what passage you were asked to review?

A. I don't recall, no. I can only recall from the written correspondence.

Q. Do you recall why, more specifically, the person from Fish & Richardson asked you to review a certain passage?

MS. PATEL: Objection, foundation.

A. No. Again, I don't recall. It's only from reading the correspondence.

Q. (By Mr. Anderson) Okay. Would it be fair to say that but for -- or the phone call from Ms. Hufnal asking you to review a certain passage because Fish & Richardson believed some words had been omitted, there wouldn't have been -- you wouldn't have done any further review of Ms. Tinworth's translation?

MS. PATEL: Objection, foundation and form.

A. I don't know. I can't answer that question.

Q. (By Mr. Anderson) Well, your declaration is dated June of 2017, that is about two months after Ms. Tinworth signed her declaration that was submitted in court. After the passage of two months, would there be any reason for you or anyone else at RWS to review a -- a translation that had been reviewed through your quality controls process and signed off on?

MS. PATEL: Objection, foundation and form.

A. I don't know. I can't answer that question.

Q. (By Mr. Anderson) Well, as you sit here today, are you aware of any reason why you went and reviewed a single sentence in Ms. Tinworth's translation other than having been asked to do so by Martina Tyreus Hufnal of Fish & Richardson?

A. I can't recall any reason, no.

Q. So you can't recall any other reason other than the request from Ms. Hufnal from Fish & Richardson?

A. I can't recall that, no.

Q. Okay. And if there was some other reason, you would have noticed that in your complaint log, wouldn't you, sir?

MS. PATEL: Objection, foundation; form.

A. I'm sorry. I don't understand the question.

Q. (By Mr. Anderson) Sure.

A. Sorry.

Q. I mean, you testified that this information would have come from you reviewing your complaint log system, correct?

A. Yes.

MS. PATEL: Objection, form.

Q. (By Mr. Anderson) And if your complaint log system had provided some other reason for looking at one sentence, a certain passage, other than because of a request from Ms. Hufnal, it would be in there, wouldn't

it?

MS. PATEL: Objection, foundation; form.

A. I don't know if I'm misunderstanding the question, but I'm sorry I still don't understand --

Q. Sure.

A. -- which -- what you're asking exactly.

Q. Well, let me try to clarify it to make it clear.

You testified, and correct me if I'm wrong, that in providing this information to Ms. Turner to pass on to Ms. Patel you would have looked -- you looked at your complaint log, correct?

A. Yes.

Q. All right. When you looked in the complaint log, you would have provided all of the information to Ms. Turner, correct?

A. Yes.

MS. PATEL: Objection, foundation.

Q. (By Mr. Anderson) Your answer was, yes, sir?

A. Yes.

Q. Okay. I mean, you wouldn't have withheld one of the reasons for why you did the review in your communication to Ms. Patel, you wanted to be complete and accurate, didn't you, sir?

MS. PATEL: Objection, foundation; form.

A. Yes, I believe so.
Q. (By Mr. Anderson) All right. So as you sit here today, you are not aware of any reason that you ended up reviewing one sentence in Ms. Tinworth's certified translation other than the request from Ms. Hufnal at Fish & Richardson, correct?
A. Yes.
Q. Okay. I'm going to go back to Exhibit -- I think this is 8 -- no, 9. Sorry. Nope. Yeah, 9. Exhibit 9, this is the declaration that you signed in June of 2017. Do you see that?
A. Yes.
Q. And do you recall how long you took reviewing the one sentence in Ms. Tinworth's declaration -- or excuse me, translation?
A. No, I don't remember at all.
Q. Do you recall who you sent this declaration to?
A. No, I can't remember at all.
Q. Do you know whether your declaration was quality control reviewed prior to sending it off?
A. No, I don't remember that at all either.
Q. All right. Do you recall who drafted your declaration that you signed on June 8th of 2017?
A. No.
Q. After you signed your declaration on June 8th

of 2017, did you hear anything further regarding your declaration in 2017?

A. I can't remember.

Q. All right. Would it be fair to say that the next you heard about your -- anything about this declaration that you signed in 2017 was in -- some time in February of 2023 following Ms. Patel's e-mail to you?

MS. PATEL: Objection, foundation.

A. Again, I can't remember if there's anything between those two dates.

Q. (By Mr. Anderson) All right. I'm going to put up on the screen what will be marked as Exhibit 11. It has production numbers MOM_0006165 to 6170.

(Exhibit marked for identification as Deposition Exhibit Number 11.)

Q. (By Mr. Anderson) And this is an e-mail thread with an attached draft declaration. I want to first refer you, sir, to the e-mail from Ms. Patel to Ms. Turner dated February 16th, and it references, "I had something come up this morning. Would you be able to move this call to 10:00 a.m.?" Do you see that, sir?

A. Yes.

Q. All right. And do you -- did you have or participate in any sort of a Teams call or any other call involving Ms. Patel in February of 2016 -- 20 --

sorry, 2023?

A. Not that I can recall, no.

Q. All right. Then we have -- it says -- an e-mail from Ms. Patel to Ms. Turner saying, "As discussed, attached, please find a draft of the declaration we would like Mr. Sherman to review and potentially execute." Do you see that?

A. Yes.

Q. All right. I'm going to scroll down now to the attachment which appears to be a draft declaration for David Joshua Sherman, and there's a date on it of February 16th which corresponds to the date of Ms. Patel's e-mail, but it's unsigned. Do you see that?

A. Yes.

Q. All right. Do you recall having -- let me reduce this the down. Can you still see it all right, Mr. Sherman?

A. Yes, I can.

Q. All right. Do you recall having seen this draft declaration previously?

A. I don't remember at all. Sorry.

Q. You just don't remember one way or the other?

A. No.

Q. All right. Do you recall whether you agreed to sign that declaration?

A. I don't remember.
Q. I'm going to go back to what we've marked already as Exhibit 10. And we looked at this -- or the e-mail on July 26th. Do you recall that a few minutes ago, sir?
A. Yes, I do. Yep.
Q. All right. Now, I'm going to scroll down to 6035, and in it there is an e-mail from Ms. Turner to Ms. Patel on July 20th of 2023. Do you see that, sir?
A. I do, yes.
Q. Okay. And it says, "I have spoken to David this morning. His qualifications are." Do you see that?
A. Yep.
Q. And do you recall having a conversation with Ms. Turner regarding your qualifications?
A. I don't remember having these conversations, no.
Q. All right. Is the information contained in this e-mail from Ms. Turner to Ms. Patel true and accurate?
A. Which part of it? Do you mean the qualifications?
Q. Well, let's take first the -- yeah, the paragraph that begins with BSc (Hons), honors.

A. Yes, that's correct, the second paragraph.
Q. Okay. Is that a first-class honors? A 2.1 or a 1.1?
A. It's a 2.2.
Q. 2.2. All right. So that's -- what does that translate to, a second-class honors or second-level honors?
A. Yes.
Q. All right. And it says, "David is now head of UK -- is now the UK head of translation operations and does not translate anymore." Do you see that?
A. Yep.
Q. And that's true, you do not translate anymore, correct?
A. That's correct.
Q. Okay. And if we go up to the July 20th e-mail from Ms. Patel to Ms. Turner, there's a couple of other questions regarding your qualifications. Do you see that, sir?
A. I do, yes.
Q. All right. And then the second paragraph says, "Also, if David is not translating anymore, will he be able to provide us with a full translation of harder and not just verify Amy's translation? We may need a new certification -- new certified translation to fix these

issues." Do you see that, sir?
A. I do, yes.
Q. All right. Now, with regard to the first question, I am correct that you would -- you were not able or willing to provide a full translation of harder, correct?
A. I don't know what harder refers to.
Q. Okay.
A. Sorry.
Q. Have you -- you've never seen the -- or you've never seen the entire book which contains Section 15.9 which Ms. Tinworth translated, correct?
A. Yes.
Q. You've not seen even any other part of the book other than Section 15.9 that Ms. Tinworth translated, correct?
MS. PATEL: Objection, foundation; form.
A. Yes, correct.
Q. (By Mr. Anderson) Okay. And if we go up, then, to 6034, Ms. Turner -- or excuse me, Ms. Patel asks Ms. Turner, "Instead of" -- it says, "Instead of having David verify that the translation of Amy Tinsworth is correct, we would like him to prepare a separate full translation of the Harder reference Section 15.9, similar to what Amy did but this time preferred by

David. Essentially, we want David to be the declarant for his own translation instead of him approving someone else's translation. Is that possible?" Do you see that, sir?

A. Yes, I do.

Q. And do you recall whether you were asked whether you would provide a full translation of the Harder reference Section 15.9?

A. Yes, I was.

Q. And what was your response or answer?

A. No.

Q. No, you weren't willing to do that?

A. Yes.

Q. And why not?

A. Two reasons is, one, I haven't translated for four years, over four years; and, two, in my new role, I just don't have time to do it.

Q. I mean, are there any languages other than German that you translated when you were doing translation, sir?

A. Yes.

Q. What other languages?

A. I did Italian into English.

Q. Okay. You would agree that in doing translations context matters, correct?

MS. PATEL: Objection, form.
A. Sorry. I missed something, so reask it.
Q. (By Mr. Anderson) Yep. I just asked, my question was, you would agree that in doing translations context matters?
MS. PATEL: Objection, form.
A. Yes.
Q. And that is particularly true of German, the German language, correct?
MS. PATEL: Objection, form.
A. I don't think it's particularly true of German. It -- I would say it's the same for all languages.
Q. Okay. So just as with -- just as with any language but also with German context matters?
MS. PATEL: Objection, foundation; form.
A. Yes.
Q. Okay. Now, have you seen Mr. Benyunes's translation that he performed?
A. No, I have not.
Q. Okay. But do you know -- are you aware that he performed a translation?
A. Yes.
Q. Okay. And are you aware that his translation is slightly different from Ms. Tinworth's translation and also different from your translation?

MS. PATEL: Objection, foundation.

A. No, I didn't know.

Q. (By Mr. Anderson) All right. Would it surprise you that there are three varied translations of the same Section 15.9?

MS. PATEL: Objection, foundation and form.

A. Surprise me in -- in what way? Can you clarify the question?

Q. (By Mr. Anderson) Sure.

I mean, professional translators or translators, different translators can translate the same passage differently. Wouldn't you agree, sir?

A. Yes. On occasion, yes.

Q. All right. And here in this case there are -- there is Ms. Tinworth's translation which was certified as true and accurate, there's your change to a single sentence of her translation, and there's Mr. Benyunes's translation. That's certainly a reasonable outcome of having three different individuals look at something to translate, isn't that true, sir?

MS. PATEL: Objection, foundation; form.

A. It could be. Again, it depends on the translation, the context, the translator. People have different ways of doing things.

Q. (By Mr. Anderson) Sure.

I mean, you're not here saying that Ms. Tinworth's translation was inaccurate or erroneous, are you, sir?

MS. PATEL: Objection, form.

A. Sorry. I'm not quite sure what -- what you mean by the question.

Q. (By Mr. Anderson) Well, you're not here to testify under oath on behalf of RM -- RWS that Ms. Tinworth's translation was wrong?

MS. PATEL: Same objection.

A. I'm not sure how to -- how to answer that one. Sorry. I don't know what I'm here to testify, if that makes sense.

Q. (By Mr. Anderson) Well, is it your opinion that Ms. Tinworth's translation is wrong?

A. It needed to be clarified based on the German source.

Q. That's in your opinion, correct?

A. In my opinion, yes.

Q. Okay. Because Ms. Tinworth's -- Ms. Tinworth's translation was certified by her as true, full, and accurate in April of 2017, correct?

MS. PATEL: Objection, foundation.

A. To the best of her knowledge, yes.

Q. (By Mr. Anderson) Okay. And it was reviewed internally by your quality control people, correct?

MS. PATEL: Objection, foundation.

A. Correct.

Q. (By Mr. Anderson) Okay. And you were then asked by Fish & Richardson to look at a single sentence, correct?

MS. PATEL: Objection, hearsay; form.

A. Yeah, but -- what you showed me today, yes. Yep.

Q. (By Mr. Anderson) Okay. If you look at the next e-mail which begins at the bottom of 6033 dated July 21st of 2023 and continuing to the top of 6034, Ms. Patel indicates that she had received additional instruction of what they're looking for. Do you see that, sir?

A. Yes.

Q. And do you recall having any discussion with Ms. Turner regarding what Ms. Patel and her team wanted you to sign?

A. I don't remember any conversations, no, not particularly.

Q. All right. And then if we continue on up, we get to the -- an e-mail from Ms. Turner to Ms. Patel dated July 21st in which she states, "We think David's

original declaration covered the last part - which German words correspond to the word 'lick' and why we have agreed a translation should be inserted." Do you see that?

A. I do, yes.

Q. Okay. Do you recall any conversations with Ms. Turner with regard to your original declaration in July of 2021?

A. Do you mean July 2023?

Q. Sorry. 2023. July 21st of 2023, around that time.

A. No, I can't remember anything.

Q. All right. And then if we continue up to the first page of Exhibit 10, we get the e-mail that we've already looked at regarding how this all came about. See that?

A. Yes.

Q. All right. And then if we get up to the very top e-mail from Ms. Patel to Ms. Turner and others at RWS dated July 26th, it attaches a supplemental declaration as well as the corresponding exhibits. Do you see that?

A. Yes.

Q. And then if we go to the end of the document where there is an attachment -- oops. There is the -- I

believe, the draft declaration. Do you see that, sir?
A. Yes.
Q. All right. And it's dated July 26th. Do you recall having seen this draft supplemental declaration on or about July 26th?
A. I can't remember. Sorry.
Q. Okay. This draft declaration was drafted by Ms. Patel or someone at Fish & Richardson for you to sign, correct?
MS. PATEL: Objection, foundation.
A. I can't remember.
Q. (By Mr. Anderson) All right. Well, you didn't draft it, correct?
A. Yep, that's correct.
Q. All right. There is a reference here to an excerpt from the Cambridge Dictionary. Do you see that, sir, Footnote 1?
A. Yes, I do.
Q. Who found or attached this exhibit to this draft? Was it you?
A. I can't remember.
Q. Okay. Well, let's look at the exhibits. It references Exhibit C. Looks like a page from some online version of English Cambridge Dictionary, two pages, 6066 and 6067. Do you see that, sir?

A. Yes, I do.
Q. Do you recall having looked at or found this definition from the Cambridge German-English dictionary?
MS. PATEL: Objection, form.
A. I don't remember looking it up, no.
Q. (By Mr. Anderson) Okay. Given that it is attached to a draft declaration from Ms. Patel, do you have any reason to believe as you sit here today that Ms. Patel or someone from her office attached or found and located and attached those two pages from an online Cambridge German-English dictionary?
MS. PATEL: Objection, foundation; form.
A. I don't know.
Q. (By Mr. Anderson) Well, have you ever used the online German-English dictionary from Cambridge in your work as a translator, sir?
A. It was probably one of the resources I used when I translated, yes.
Q. Okay. Probably.
You don't recall?
A. Not 100 percent, no. It was four or five years ago. Sorry.
Q. All right. Well, do you recall -- and I'm going back up here where here -- where Ms. Patel sends you a supplemental declaration for your review as the

corresponding exhibits. Do you recall providing to Ms. Turner for use as an exhibit two pages from an online German-American Cambridge Dictionary?

A. I -- I don't remember. Sorry.

Q. Well, given that you had declined to retranslate Ms. Tinworth's work, what does that indicate to you about whether you went off and did some research and found a page from the Cambridge Online German-American Dictionary?

MS. PATEL: Objection, foundation; form.

A. Sorry. I don't understand that question.

Q. (By Mr. Anderson) Sure. I'm just trying to nail down here whether this suggests to you that you actually went off and found this exhibit that's attached to your draft declaration that Ms. Patel provided to you and then somehow sent it to her directly or indirectly or whether that was something that Ms. Patel or someone from Fish & Richardson found and attached to the draft -- the supplemental declaration that they had drafted for you?

A. I -- I don't know who attached that to the -- to the draft.

Q. Okay. As you sit here today, you don't recall attaching it to the draft, correct?

MS. PATEL: Objection, foundation; form.

A. I -- I don't recall who attached it to the draft.

Q. (By Mr. Anderson) You don't recall attaching it to the draft, correct?

MS. PATEL: Objection, foundation; form.

A. I -- I don't recall anything, no.

Q. No, you don't recall attaching that excerpt to your draft supplemental declaration, correct?

MS. PATEL: Objection, foundation; form.

A. Yeah, I don't recall.

Q. Thank you.

MS. PATEL: Alan, we've been going for about an hour. Is this a good time to take a break?

MR. ANDERSON: Absolutely.

And, Mr. Sherman, I neglected to tell you, that if you ever need to take a bathroom break or anything else, just let us know. And we will take a break here now both for your benefit and that of the court reporter, because the two of you are the two most important people on this Zoom. So let's take a break until, let's say -- let's just say five minutes to 3:00 central standard time which would be five minutes to 9:00 your time. Is that all right?

THE WITNESS: Okay. Yep.

MR. ANDERSON: Is that -- all right.

Thank you very much.

MS. PATEL: That's -- you said 2:55 Central?

MR. ANDERSON: Correct.

MS. PATEL: Okay.

MR. ANDERSON: Well, wait. Let's -- 2:55. Yeah, that's right, 2:55. Yep.

MS. PATEL: Okay.

MR. ANDERSON: Thank you.

THE COURT REPORTER: We're off the record.

(Short break taken at 2:42 p.m.)

(Proceedings resumed at 2:56 p.m.)

Q. (By Mr. Anderson) Mr. Sherman, you understand that you're still under oath?

A. Yes.

Q. During the short break, did you speak with anyone regarding your testimony thus far?

A. No.

Q. Did you have any communications such as text messages or e-mails with anyone concerning your --

A. No.

Q. -- testimony thus far?

A. No.

Q. And is there still no one else in the room

where you are located?

A. No, there's still no one here.

Q. All right. Thank you.

I am going to show you next what will be marked as Exhibit 12. It has production numbers MOM_0005941 through 5980. Can you see my screen, sir?

A. Yes, I can.

(Exhibit marked for identification as Deposition Exhibit Number 12.)

Q. (By Mr. Anderson) All right. And this is an e-mail thread and the first or oldest or most recent e-mail -- sorry, most recent e-mail in the thread is from Ms. Patel to Ms. Perez, Ms. Turner, with a copy to Ms. Daw at RWS, and it's dated August 2nd, 2023. Do you see that, sir?

A. Yes.

Q. All right. The -- the e-mail from Ms. Patel to Ms. Perez says that they would like you to sign the, "original updated declaration attached which does not require him to perform a new translation. Please let us know if Mr. Sherman has any proposed edits to this attached document or when we can expect a signed version." Do you see that, sir?

A. I do, yes.

Q. Okay. And you have not seen this exhibit

previously, correct?
A. Which exhibit? Sorry.
Q. This e-mail. Sorry. This e-mail.
A. Not that I can remember.
Q. All right. By the way, in the attachments to this e-mail, it references a declaration, an Exhibit A and Exhibit B and then Exhibit C. Do you see that, sir?
A. Yes.
Q. Do you have any recollection of providing those three exhibits to Ms. Patel?
A. I don't remember, no.
Q. Okay. If we then scroll down to the draft declaration referenced here which begins on Bates numbered page 5953, it appears to be a draft supplemental declaration of accuracy of translation for you. Do you see that, sir?
A. Yeah. Can you make it a bit smaller?
Q. Yep. How is that?
A. Thank you. That's better.
Q. All right.
A. Yep.
Q. All right. And then if we scroll to the second page, it goes on, and then there is a date of August 2nd, and then a blank for your signature. Do you see that?

A. I do, yes.
Q. Do you have any recollection reviewing this draft?
A. No.
Q. Does seeing this draft cause you to recall that the Exhibit C, the excerpt from the Cambridge Dictionary online, came from Ms. Patel?
MS. PATEL: Objection, foundation; form.
A. The answer is still the same. I still don't recall.
Q. (By Mr. Anderson) Do you see in the footnote it says, "Last visited July 25, 2023"? Do you see that, sir?
A. Yes.
Q. Do you recall in July visiting this website?
A. No, I don't remember.
Q. Okay. If we go back to what's been marked as Exhibit 10 and we go to the e-mail dated July 26th, there are four attachments; a draft declaration, and then three exhibits, A, B, and C. Do you see that, sir?
A. Yes.
Q. And it's dated July 26th of 2023. Do you see that?
A. Yep.
Q. And if we then go down to the -- oops, draft

declaration -- so you can see it better. Here we go. And, again, you'll see that attached as Exhibit C is this dictionary last visited July 25th of 2023. Do you see that?

A. Yep.

Q. Okay. Since you don't do translations now anymore, would you have any reason to go to the Cambridge Dictionary online on July 25th of 2023 in connection with your supplemental declaration?

MS. PATEL: Objection, foundation; form.

A. I'm sorry. I don't understand the question again.

Q. (By Mr. Anderson) Sure.

Well, you don't do translations anymore, right?

MS. PATEL: Objection, foundation; form.

A. Correct.

Q. (By Mr. Anderson) And you refused to do a new translation of anything that Ms. Tinworth had done in connection with the request from Ms. Patel and Fish & Richardson in 2023, correct?

MS. PATEL: Objection, form.

A. Yes.

Q. (By Mr. Anderson) So given that and given that there is an attached dictionary excerpt of two pages --

or three pages from the Cambridge online dictionary, would you have any reason to have visited that dictionary on July 25th of 2023?

MS. PATEL: Objection, foundation; form.

A. I still don't understand the question. Sorry.

Q. (By Mr. Anderson) Sure.

A. I don't know how to answer it.

Q. All right. I'm just trying to understand whether seeing this reference -- this footnote reference and the last visited July 25th of 2023, whether that causes you to remember, oh, yeah, I did go to that web page and come up with this exhibit or given that you weren't translating and aren't translating that you had no reason to go to that page?

MS. PATEL: Objection, foundation; form.

A. I -- I don't remember, like I said --

Q. (By Mr. Anderson) All right.

A. -- this dictionary web pages.

Q. Okay. Well, given that this has a last visited date of July 25th of 2023 and Ms. Patel's e-mail attaching it is dated July 26th of 2023, does that cause you to refresh your recollection that, in fact, you did not visit that website on July 25th of 2023?

MS. PATEL: Objection, foundation; form.

A. I still don't remember. I'm sorry.

Q. All right. Are you aware of any communication that you had internally where you sent to Ms. Turner or Ms. Perez the excerpt from that website?

MS. PATEL: Objection, foundation.

A. I'm still not aware, no. Can't remember.

Q. All right. Well, isn't it true -- isn't it your best recollection, sir, that, in fact, you did not visit that website on July 25th of 2023?

MS. PATEL: Objection, foundation; form.

A. I -- I don't recall at all. Sorry.

Q. Isn't it true, sir, that those -- that that website page that was attached to your declaration as Exhibit C was obtained by Ms. Patel or someone working with her at Fish & Richardson and attached to your declaration?

MS. PATEL: Objection, foundation; form.

A. I -- I don't know where that came from. I can't --

Q. (By Mr. Anderson) All right.

A. -- recall.

Q. All right. Going back to Exhibit 20 -- or excuse me, 12 that we just looked at, sir, and the draft declaration. Do you recall reviewing it?

MS. PATEL: I'm sorry, Alan. Can you repeat that question?

MR. ANDERSON: Sure.

Q. (By Mr. Anderson) The draft declaration that's attached to the e-mail from Ms. Patel dated August 2nd of 2023, do you recall reviewing this draft?

A. I don't remember doing it, no.

Q. Okay. Do you recall having some -- or having some problems or things that you wanted changed in the draft?

A. Yes.

Q. As you sit here now, do you recall what they were?

A. Without seeing it on screen, I can't remember the exact parts.

Q. All right. Well, let's see if we can't help you there.

I'm going to put up on the screen a document that's going to be Exhibit 13. It has production numbers MOM_0005678 to 5693.

(Exhibit marked for identification as Deposition Exhibit Number 13.)

Q. (By Mr. Anderson) And it is an e-mail from Ms. Perez to Ms. Patel dated August 3 of 2023, it's the first e-mail on the exhibit, and it references some comments from you. Do you see that, sir?

A. I do, yes.

Q. All right. And do you recall making those comments to Ms. Perez to pass on to Ms. Patel on or about August 3 of 2023?

A. I don't recall making them, but I can see I -- I did make them here.

Q. Okay. Do you have any reason to believe that that is not an accurate summary of the comments that you passed on to Ms. Perez on or about August 3 of 2023?

A. No, no reason.

Q. All right. If we go to the draft that's attached, you can see that there are -- are -- there's some highlighting in paragraphs one and four. Do you see that, sir?

A. Yes.

Q. Do you recall whether you made that highlighting?

A. I don't remember, no.

Q. Do you recall objecting to the wording that's highlighted in this draft prepared by Ms. Patel or someone at Fish & Richardson?

MS. PATEL: Objection, foundation; form.

A. I don't recall objecting, but from the e-mail you showed me a minute ago, I can see I did.

Q. (By Mr. Anderson) All right. Now, I'm going to show you what we've marked as Exhibit 14 as production

numbers MOM_0005873 to 5887.

(Exhibit marked for identification as Deposition Exhibit Number 14.)

Q. (By Mr. Anderson) Do you see that on the screen, sir?

A. Yes.

Q. All right. And the first e-mail on the page which immediately follows the comments e-mail from you says that Ms. Patel has now attached a redlined version of your declaration which she says she believes, "addresses Mr. Sherman's concerns." Do you see that, sir?

A. Yes.

Q. Do you recall reviewing a redlined version that Ms. Patel sent?

A. No, I don't recall doing it, no.

Q. All right. If we scroll down to the attachment, we see a revision with a different part of the draft highlighted. Do you see that?

A. Yes.

Q. All right. Did you add that highlighting?

A. I don't remember.

Q. Do you recall objecting to the portion that says, "I have reviewed portions of the translation prepared by Rebecca Amy Tinworth in 2017"?

A. I don't remember objecting to it, no.
Q. Do you recall making changes -- or making a change to that?
A. I don't remember making a change, no, but I think I probably did.
Q. I'm going to show you what will be marked as Exhibit 15, it has production numbers MOM_0006593 to 6598. Can you see the screen, sir?
(Exhibit marked for identification as Deposition Exhibit Number 15.)
A. I can, yes.
Q. All right. I'm going to go down a little bit because there is an e-mail from Ms. Patel to Ms. Turner dated October 30th. Do you see that?
A. Yep.
Q. Do you recall being told some time in early August of 2023 to -- that the project was off or you weren't going to be working any further on the project?
A. No, I can't remember at all.
Q. All right. All right. Well, in Exhibit 14, the last e-mail was dated August 3rd, and then the next e-mail relating to a draft declaration is this one dated October 30th. Do you recall there being a gap of several months between when you were working on this draft declaration and then having it come back up again?

A. No, I don't recall --
Q. All right.
A. -- what would have happened between those dates.
Q. All right. All right. On November 1st Ms. Patel asked Ms. Perez for a follow-up on the status of your review of the declaration. Do you see that?
A. Yes.
Q. All right. And then if we go to the next e-mail, which is sent by Ms. Perez to Ms. Patel on November 1st, Ms. Turner said, "I was waiting for David to reply with his comments on the declaration. He has said the following," and then there's some italicized stuff. Do you see that?
A. Yes.
Q. Take a moment to read through that and tell me whether that would appear to you to be an accurate summary or summary of your comments or concerns regarding the draft declaration from back in early August?
A. Yeah, I've read that. Yep.
Q. All right. In the end of paragraph that -- the bigger paragraph that references what you said on August 1st, the last sentence says, "The end of that paragraph repeats, 'Therefore, Ms. Tinworth's English

translation is true, full, and accurate with the inclusion of the phrase, 'to be licked off,' internal quote, as reflected in Exhibit B. I cannot attest to that as I have reviewed one sentence only. I believe that if they want the certificate as is they will need to task another translator at RWS for a full review." Do you see that?

A. Yep.

Q. Okay. And that was your position, that you could not attest to Ms. Tinworth's English translation as true, full, and accurate with the inclusion of the phrase "to be licked off" because, "I have reviewed one sentence only," correct?

MS. PATEL: Objection, form.

A. Can you rephrase that question so I can understand what exactly you're asking?

Q. Sure. You objected to the end of paragraph four which Ms. Patel or someone in her firm had drafted that said, "Therefore, Ms. Tinworth's English translation is true, full, and accurate with the inclusion of the phrase 'to be licked off' as reflected in Exhibit B." And you said, "I cannot attest to that as I have reviewed one sentence only," correct?

MS. PATEL: Objection, foundation; form.

A. Yep, that's what it says in the e-mail.

Q. Okay. And that was your position, correct?
MS. PATEL: Objection, foundation; form.
A. I'm referring to the entire translation as being truthful and accurate, but, yes.
Q. (By Mr. Anderson) Yeah. And you couldn't make any sort of statement about that with true, full, and accurate with the inclusion of the phrase "to be licked off," because, as you stated here, "I have reviewed one sentence only," correct?
MS. PATEL: Objection, foundation; form.
A. Yes, but I'm saying there is -- the translation is true, full, and accurate, all I can attest to that in that one sentence only.
Q. (By Mr. Anderson) Right.
And then you say, "I think this still stands. Section 3 has not been changed as far as I can tell." Do you see that, sir?
A. Yes.
Q. All right. And then if we go up on November 1st, also, Ms. Patel responds to Ms. Perez and says -- asks you to make proposed revisions. Do you see that?
A. Yes.
Q. Do you recall doing that?
A. No, I don't remember doing it, no.

Q. All right. If we go up to the first e-mail on the page, Bates numbered 6593, it's an e-mail from Ms. Perez to Ms. Patel dated November 2nd attaching a declaration. Do you see that?

A. Yes, I do. Yep.

Q. And it says, "Attached -- please find attached Mr. Sherman's proposed revision." Do you see that?

A. Yeah.

Q. And, again, it says -- Ms. Turner tells Ms.-- excuse me, Ms. Perez tells Ms. Patel, "Therefore, Ms. Tinworth's English" -- if you want the -- let me start over.

In the e-mail Ms. Perez tells Ms. Patel, "I'd like to reiterate that if you'd like the document to say, 'Therefore, Ms. Tinworth's English translation is true, full, and accurate with the inclusion of the phrase 'to be licked off' as reflected in Exhibit B,' we would require another translator to conduct a full review of the translation." Do you see that, sir?

A. I do, yes.

Q. Do you recall communicating that position to Ms. Perez?

A. I don't recall it, but I can see in my comments further down that's what I said.

Q. All right. And then if we go to the

attachment, there's no redlining, but if we look at this translation, you can see that in paragraph three, and I can pull it up if you want to see it, from the previous translation what now has changed is that in paragraph three it only references that you reviewed one sentence. Do you recall making that changes?

A. I don't recall it, but, no, I expect I must have done.

Q. Okay. In paragraph three on the second page, you say that -- that the change of the one sentence provides, "a fuller and more accurate reflection of the German text." Do you see that?

A. Yes, I do. Yep.

Q. Okay. Were those your words or were those the words of Ms. Patel or someone in her office?

MS. PATEL: Objection, foundation; form.

A. They were words provided to me on the declaration which I reviewed.

Q. (By Mr. Anderson) And you didn't draft this declaration in its entirety, correct?

MS. PATEL: Objection, form.

A. Yes, that's correct.

Q. (By Mr. Anderson) Okay. Just so we're clear, if we go back to what we marked Exhibit 12. And this is the draft supplemental declaration that Ms. Patel

provided back in August. Do you see that for clarification?

A. Yeah, I can see that.

Q. All right. And then there's an attached document. And if we scroll down -- oops, let me see -- and we go to, what is in this draft, paragraph four, you see the phrase "a fuller and more accurate reflection of the German text." Do you see that?

A. Yeah.

Q. Okay. Would the fact that this appears in a draft provided by Ms. Patel or someone in her office confirm to you that that language was provided by Ms. Patel or someone in her office and not you?

MS. PATEL: Objection, foundation; form.

A. Yes, but I would have reviewed that and agreed with it.

Q. (By Mr. Anderson) Okay. At least in the first instance it was someone from Fish & Richardson, so their words, correct?

MS. PATEL: Objection, foundation; form.

A. Yes.

Q. (By Mr. Anderson) Yeah.

It wasn't your words in the first instance, correct?

MS. PATEL: Objection, foundation; form.

A. Yes.
Q. And you weren't saying that Ms. Tinworth's translation was wrong. You were just saying that with your change to one sentence in your opinion it provided, "a fuller and more accurate reflection of the German text," correct?
MS. PATEL: Objection, foundation; form.
A. Yes, the two words that needed to be reflected into the English.
Q. (By Mr. Anderson) Yeah. In your opinion, correct?
A. Yes.
Q. Okay. I'm now going to put up what will be marked as Exhibit 16. It has production numbers MOM_0006309 to 6337.
(Exhibit marked for identification as Deposition Exhibit Number 16.)
Q. (By Mr. Anderson) Can you see the screen, sir? Sir? Can't talk.
Can you see the screen, sir?
A. Yes, I can.
Q. A bit of a tongue twister there.
All right. In the e-mail from Ms. Patel to Ms. Perez dated November 2nd, it says, "Thank you, Andrea. Could you please ask Mr. Sherman to accept his

redlines and to send us an executed copy of his supplemental declaration with the exhibits attached." Do you see that?

A. Yep.

Q. Do you recall doing that at some point in time?

A. I don't recall doing it, but I know I did it, if that makes sense.

Q. Yep. And if we go to the attachment and to the declaration part which, actually, is the last two -- three pages of the exhibit, there's a supplemental declaration, and it has a November date and a blank and it's unsigned by you. Do you see that?

A. Yep.

Q. Do you recall reviewing this supplemental declaration before you signed it?

A. I would have done it, yes.

Q. No one else reviewed it for quality control, correct?

A. I don't know.

Q. You don't recall that?

A. No.

Q. This was only -- barely a month ago.

A. I know. I was ill with Covid at the time, so I don't recall.

Q. I'm sorry to hear that.

A. That's fine.
Q. What period of time were you ill with Covid?
A. A little while around that time, just before.
Q. Okay. That affected your -- your work abilities, correct?
MS. PATEL: Objection, form.
A. No, it didn't.
Q. (By Mr. Anderson) All right. So you were just working the same as you were before you got Covid?
A. Yes.
MS. PATEL: Objection, foundation; form; relevance.
Q. (By Mr. Anderson) Go ahead, sir.
A. Sorry. Yes. Yep.
Q. All right. Okay. I'm going to show you what has been marked previously as Exhibit 4. This is a -- your supplemental declaration, and it does have your signature. Do you see that?
A. I can't see anything at the moment.
Q. Oh, I guess I didn't hit share. There we go. How's that?
MS. PATEL: Did you say "Exhibit 4," Alan?
MR. ANDERSON: Yes, previously marked as Exhibit 4.

A. I can only see your desktop, no documents.
Q. (By Mr. Anderson) Let's see here now. How about now?
A. Yes. Okay.
Q. All right. There we go.
This is previously marked or what will be marked as Exhibit 4. It has production numbers MOM_0006255 to 6285. And if you look at the third page of the exhibit, is that your signature?
A. Yes.
Q. And you recall signing this on or about November 6th, 2023?
A. I -- I don't recall signing it, but the evidence is that I did, yes.
Q. All right. I'm going to show you what's been marked previously as Exhibit 2. This is -- has MOM -- has production numbers MOM_0006188 to 6201. And it is Ms. Tinworth's declaration dated April 3rd of 2017. Do you see that, sir?
A. Yes.
Q. Okay. And you haven't seen this previously, correct?
A. Yep.
Q. And you know Ms. Tinworth to be competent to do a translation of German to English, correct?

A. Yes, correct.
Q. Okay. And this was the translation that you looked at one sentence to change after being asked to do so by an individual from Fish & Richardson, correct?
A. Yes, that's correct.
Q. Now I'm going to show you what has been marked previously as Exhibit 3. And this is a declaration of accuracy of translation that is labeled MOM_1007, and on the second page, there is a date of February 28th of 2023 and your signature. Do you see that, sir?
A. Yes, I do.
Q. And do you recognize that as your signature?
A. Yes.
Q. Okay. And if you look at -- and attached to it is Ms. Tinworth's translation with a change to one sentence, correct?
A. Yes.
Q. Okay. In paragraph three you state that the insertion or the addition that you reference, "makes the translation a more accurate reflection of the German text." Do you see that?
A. Yes.
Q. Are those your words in the first instance, or were those words provided to you by somebody at Fish & Richardson?

MS. PATEL: Objection, foundation; form.
A. They're not my words.
Q. (By Mr. Anderson) Okay. Do you know how much business Fish & Richardson sends to RWS?
MS. PATEL: Objection, relevance.
A. I have no idea.
Q. (By Mr. Anderson) All right. I'm going to show you has been marked previously as Exhibit 1. It's the declaration by Mr. Benyunes. Do you see that, sir, on my screen?
A. I can, yes.
Q. Okay. And I think you testified previously that you've never seen this translation; is that correct?
A. Yes, that's correct.
Q. All right.
MR. ANDERSON: Thank you. I have no further questions for you at this time.
Your witness, counsel.
MS. PATEL: Has it been another hour? No?
MR. ANDERSON: No.
MS. PATEL: Well, can we take a break anyway?
MR. ANDERSON: Thirty minutes. Sure, we

can take a break, if that's all right with the witness and the court reporter.

I see a nod from the court reporter.

Mr. Sherman?

THE WITNESS: Yeah, that's fine.

MR. ANDERSON: All right.

MS. PATEL: It is 9:30 p.m. in the UK, so.

MR. ANDERSON: Yeah. Yes, it is. So if you don't want to -- I mean, it's your call, sir. If you don't want to take a break and want to press forward, it's up to you.

MS. PATEL: I can make it quick. Let's do five minutes.

MR. ANDERSON: All right. Five minutes then. So 3:36 p.m., 9:36 p.m. in the UK. Thank you very much.

(Short break taken at 3:31 p.m.)

(Deposition resumed at 3:38 p.m.)

EXAMINATION

BY MS. PATEL:

Q. Mr. Sherman, did you review your supplemental declaration that was previously marked as, I believe it was, Exhibit 4 before signing it on November 6th, 2023?

A. Yes, I would have done, yes.

Q. And did you review the exhibits to your supplemental declaration as well?
A. Yes, I would have done.
Q. Okay. Sitting here today, do you believe the statements in your supplemental declaration are true?
A. Yes, I do.
Q. Okay. Did you make revisions to Ms. Tinworth's 2017 translation of Section 15.9 of the reference at issue?
MR. ANDERSON: Object to the form of the question.
Q. (By Ms. Patel) Sorry. Just to clarify that.
When I say "reference at issue," I'm referring to the German text that was attached to Ms. Tinworth's declaration that I've been referring to as the Harder reference. Are you okay with me referring to that reference as Harder? Do you understand what I'm referring to?
A. Yes, I do now. Yes.
Yes, I made the changes, the addition of those four words that we've already discussed that are in the -- in the declaration.
Q. And to be clear, can you tell us what revisions exactly were made?
MR. ANDERSON: Object to the question.

A. So we -- I did. I think it's "to be licked off" into the sentence to better reflect the German which was "zum Ablecken."

Q. (By Ms. Patel) Sitting here today, do you believe that adding the language "to be licked off" where you added it to Ms. Tinworth's 2017 translation makes Ms. Tinworth's 2017 translation more accurate?

MR. ANDERSON: Object to the form of the question.

A. Yes, I do.

Q. (By Ms. Patel) And why is that?

A. It just reflects the German source more accurately. It's a better reflection of my interpreted meaning of the German source text.

MS. PATEL: No further questions from us.

MR. ANDERSON: Just one or two.

REEXAMINATION

BY MR. ANDERSON:

Q. Mr. Sherman, you said in response to one of the questions of Ms. Patel when she asked if you reviewed the exhibits attached to your November 6th declaration, you said, "I would have."

A. Yes.

Q. Do you recall, as you sit here today, actually reviewing them?

A. I reviewed them, yes. I wouldn't sign the declaration without reviewing them.

Q. All right. So you're confident that you reviewed those -- those exhibits, correct?

A. Yep.

Q. All right. And just to be clear, the four words that you added to Ms. Tinworth's 2017 declaration were solely to make, in your opinion, her translation, as you said in your declaration, "more accurate?"

A. Yes.

MR. ANDERSON: Nothing further.

MS. PATEL: No further questions from us.

MR. ANDERSON: That concludes your testimony. Thank you very much, Mr. Sherman.

We can go off the record.

(Deposition concluded at 3:43 p.m.)

THE STATE OF TEXAS §
COUNTY OF HIDALGO §

COURT REPORTER CERTIFICATE

I, ANNETTE E. ESCOBAR, Certified Shorthand Reporter in and for the State of Texas, do hereby certify that the facts as stated by me in the caption hereto are true; that there came before me the aforementioned named person, who was by me duly sworn to testify the truth concerning the matters in controversy in this cause; and that the examination was reduced to writing by computer transcription under my supervision; that the deposition is a true record of the testimony given by the witness.

I further certify that I am neither attorney or counsel for, related to or employed by, any of the parties to the action in which this deposition is taken, and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, or financially or otherwise interested in the action.

_____Reading and Signing was requested.

_____Reading and Signing was waived.

_XX_ Reading and signing was not requested.

Given under my hand and seal of office on this 10th day of December, 2023.



ANNETTE E. ESCOBAR, CSR

TX CSR#5475, Exp: 1/31/24

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that Patent Owners Exhibits 2023-2066 are being served on February 8, 2024, by filing Patent Owners Exhibits 2023-2066 through the Patent Trial and Appeal Case Tracking System (P-TACTS) and by electronic mail as directed by Petitioner upon the following counsel of record for Petitioners:

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