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UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.

)
In the Matter of)
CERTAIN INTEGRATED) Inv. No.
CIRCUITS, COMPONENTS) 337-TA-1350
THEREOF, AND PRODUCTS)
CONTAINING THE SAME)

ZOOM DEPOSITION OF SYLVIA HALL ELLIS
Denver, Colorado
Thursday, August 10, 2023
Volume I

Reported by:
LORI M. BARKLEY
CSR No. 6426
Job No. 6046508
PAGES 1 - 96

1 UNITED STATES INTERNATIONAL TRADE COMMISSION 2 WASHINGTON, D.C. 3 4 5) In the Matter of) 6 CERTAIN INTEGRATED) Inv. No. CIRCUITS, COMPONENTS) 337-TA-1350 7 THEREOF, AND PRODUCTS) CONTAINING THE SAME) 8 9 10 Deposition of SYLVIA HALL ELLIS, Volume I, 11 Denver, Colorado, beginning at 10:37 a.m. Mountain 12 Daylight Time, and ending at 1:34 p.m. on Thursday, 13 August 10, 2023, before LORI M. BARKLEY, Certified 14 Shorthand Reporter No. 6426. 15 16 17 18 19 20 21 22 23 24 25 Page 2	1 I N D E X 2 WITNESS 3 SYLVIA HALL ELLIS 4 PAGE 5 Examination by Mr. Halverson 6 6 Cross-Examination by Mr. Vlasis 91 7 8 EXHIBITS 9 NUMBER DESCRIPTION PAGE 10 Exhibit 1 Hall Ellis Report 9 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 Page 4
1 APPEARANCES: 2 3 K&L GATES LLP 4 BY: Erik Halverson 5 Attorney at Law 6 4 Embarcadero Center, Suite 1200 7 San Francisco, CA 94111 8 312-807-4240 9 Erik.halverson@klgates.com 10 11 WINSTON & STRAWN, LLP 12 BY: Robert Vlasis 13 Attorney at Law 14 1901 L Street NW 15 Washington, D.C. 20036 16 202-282-5276 17 Rvlasis@winston.com 18 19 Video Operator: Scott Slater 20 21 22 23 24 25 Page 3	1 Denver, Colorado; Thursday, August 10, 2023 2 10:37 a.m. Mountain Daylight Time 3 4 5 VIDEO OPERATOR: Good morning. We are on the 09:36:57 6 record at 10:37 a.m. Mountain Daylight Time on August 09:36:59 7 10th, 2023. 09:37:05 8 Please note that this deposition is being 09:37:06 9 conducted remotely. The quality of the recording 09:37:09 10 depends on the quality of camera and internet connection 09:37:12 11 of participants. 09:37:15 12 Audio and video recording will continue to take 09:37:16 13 place unless all parties agree to go off the record. 09:37:20 14 This is media unit one of the video-recorded 09:37:23 15 deposition of Sylvia Hall Ellis, Ph.D., In the Matter of 09:37:27 16 Certain Integrated Circuits Components Thereof and 09:37:32 17 Products Containing the Same, filed in the United States 09:37:35 18 International Trade Commission, Washington DC, Inv. No. 09:37:39 19 337-TA-1350. 09:37:52 20 This deposition is being conducted remotely with 09:37:52 21 the witness located in Denver, Colorado. 09:37:54 22 My name is Scott Slater representing Veritext 09:37:56 23 Legal Solutions, and I am the videographer. The court 09:37:59 24 reporter is Lori Barkley from the firm Veritext Legal 09:38:02 25 Solutions. 09:38:06 Page 5

1 I am not related to any party in this action; 09:38:06 2 nor am I financially interested in the outcome. 09:38:09 3 If there are any objections to proceeding, 09:38:12 4 please state them at the time of your appearance, 09:38:14 5 beginning with the noticing attorney. 09:38:16 6 MR. HALVERSON: Erik Halverson from K&L Gates on 09:38:18 7 behalf of Complainant Realtek. 09:38:27 8 MR. VLASIS: Robert Vlaslis with Winston & Strawn 09:38:30 9 on behalf of the Respondent Advanced Micro Devices. 09:38:32 10 11 SYLVIA HALL ELLIS, 09:38:59 12 having been administered an oath, was examined and 13 testified as follows: 14 THE WITNESS: I affirm. 09:38:51 15 09:38:52 16 EXAMINATION 17 18 BY MR. HALVERSON: 19 Q. Please state your name for the record. 09:38:54 20 A. My name is Sylvia Hall Ellis. 09:38:58 21 Q. And my understanding is you have a Ph.D.; is 09:39:05 22 that right, Dr. Ellis? 09:39:09 23 A. Yes, I do. 09:39:10 24 Q. And where did you earn that Ph.D.? 09:39:14 25 A. University of Pittsburgh. 09:39:16 Page 6	1 A. Yes. 09:40:21 2 Q. From time to time, we may take some breaks. I 09:40:23 3 don't expect today to go very long. But I try to do 09:40:25 4 that about once an hour. 09:40:28 5 If you need a break before then or shortly after 09:40:29 6 we take one, by all means speak up, and I'm happy to 09:40:33 7 accommodate. 09:40:36 8 One caveat is that if there's a question 09:40:37 9 pending, I'd appreciate it if you could give an answer 09:40:41 10 to that question before we go off the record and take 09:40:44 11 that break; is that fair? 09:40:46 12 A. Yes. 09:40:47 13 Q. Is there any reason today why you can't give 09:40:47 14 truthful and accurate testimony regarding your report? 09:40:53 15 A. No. 09:40:56 16 Q. All right, so you've provided a report in this 09:40:59 17 matter; is that right? 09:41:02 18 A. I have. 09:41:03 19 Q. Do you have a copy of it in front of you? 09:41:03 20 A. I do. 09:41:09 21 Q. Are there any markings or notes in that copy? 09:41:10 22 A. No, absolutely nothing. 09:41:12 23 Q. Is that copy approximately 952 pages long? 09:41:19 24 A. I have only printed out the text without the 09:41:22 25 attachments so it is only about 72 pages long. 09:41:26 Page 8
1 Q. I understand you've been deposed before. 09:39:17 2 Approximately how many times have you been deposed? 09:39:21 3 A. More than 30. 09:39:23 4 Q. You're an old pro but we'll go over a couple 09:39:24 5 ground rules before we get into the meat of today. 09:39:31 6 First off, because we are remote and doing this 09:39:34 7 over Zoom, it's particularly important that we do our 09:39:36 8 best not to talk over each other. 09:39:39 9 So I will try very, very hard to not say 09:39:40 10 anything while you're speaking. If you could wait until 09:39:43 11 I finish the question to both give your attorney a 09:39:47 12 chance to object as well as to make sure that my 09:39:51 13 question is complete and on the record before you start 09:39:53 14 to answer. 09:39:55 15 Is that all right? 09:39:55 16 A. Yes. 09:39:56 17 Q. From time to time your attorney may object. 09:39:56 18 You're still obligated to answer that question unless 09:40:04 19 you're told otherwise. 09:40:07 20 Do you understand that? 09:40:08 21 A. Yes. 09:40:11 22 Q. And that oath that you took is the same oath 09:40:13 23 that you would take if you were in a courtroom in front 09:40:15 24 of a judge and a jury. 09:40:18 25 Do you understand that? 09:40:21 Page 7	1 Q. So if you look at the last page of what you have 09:41:32 2 in front of you. 09:41:35 3 A. Yes. 09:41:42 4 Q. I want to share something on the screen real 09:41:42 5 quick. Sharing what's been previously marked as Exhibit 09:41:44 6 1. 09:42:15 7 (Exhibit 1 was marked for identification by the 8 court reporter and is attached hereto.) 9 BY MR. HALVERSON: 10 Q. Go back to the front page in just a second. But 09:42:15 11 I'll represent to you that this is your report. 09:42:18 12 Does the signature that you see on the shared 09:42:21 13 screen, correspond with the signature that you see in 09:42:24 14 the copy of your report that you have in front of you? 09:42:27 15 A. Yes. 09:42:29 16 Q. And the rest of that last page reflects exhibits 09:42:35 17 11 through 16 in your summary table; is that right? 09:42:39 18 A. No, when I printed it out the last page is only 09:42:42 19 15 and 16 but that's it. 09:42:45 20 Q. So if we go back to the first page of the report 09:42:57 21 you've got in front of you. 09:42:59 22 A. Yes. 09:43:00 23 Q. Does the cover -- I'm going to zoom out a little 09:43:01 24 bit so you can see the whole cover, that's the -- sorry. 09:43:04 25 With the exception of the yellow sticker on the 09:43:08 Page 9

1 bottom, is that has been marked as Exhibit 1 the same 09:43:10 2 cover as what you have? 09:43:14 3 A. Yes. 09:43:15 4 Q. And I'll show you the second page, which is 09:43:18 5 where the text begins and there's a preamble in the 09:43:20 6 beginning and a bold Roman numeral introduction, then 09:43:25 7 some paragraphs there, paragraphs 1 through 5. 09:43:29 8 Is that what you see on the second page of what 09:43:31 9 you have? 09:43:33 10 A. Yes. 09:43:34 11 Q. All right, so I'm going to go back to the last 09:43:40 12 page and figure out where the deviation begins between 09:43:42 13 what you have and what I have. 09:43:45 14 So you said your last page only has 15 and 16 on 09:43:47 15 it? 09:43:50 16 A. That's correct. 09:43:51 17 Q. So if you go to your second-to-last page, what 09:43:55 18 do you see on it? 09:43:57 19 A. It starts with the third and forth lines on 09:43:59 20 exhibit 4 description and goes through exhibit 14 09:44:07 21 listing. 09:44:12 22 Q. If we go back one more page in the version you 09:44:17 23 have, what paragraphs do you see at the very top of that 09:44:23 24 page? 09:44:26 25 A. 149, 150, summary of opinions beginning with 09:44:27 Page 10	1 provided her the final version, which is what you have, 10:11:47 2 counsel, and she has printed that for the deposition. 10:11:52 3 MR. HALVERSON: Just so we're all on the same 10:11:59 4 page, the draft is work-product or protected work, we're 10:12:01 5 not delving into that. 10:12:05 6 And if that prior version is not the full scope 10:12:08 7 of the opinions that Dr. Ellis is going to advance, the 10:12:12 8 served report is the scope of the opinions that Dr. 10:12:18 9 Ellis intends to advance, correct? 10:12:20 10 A. Yes. 10:12:26 11 MR. HALVERSON: Robert, would you agree, too? 10:12:27 12 MR. VLASIS: Yes, I do. 10:12:30 13 MR. HALVERSON: Splendid. 10:12:31 14 Q. So let's set aside everything else we talked 10:12:36 15 about, Dr. Ellis. If you could go back to the last page 10:12:38 16 of what you now have in front of you. 10:12:41 17 A. Yes. 10:12:44 18 Q. That last page, page 69; is that right? 10:12:44 19 A. Yes, it is. 10:12:48 20 Q. Let me share this again so that you can compare 10:12:53 21 it and make sure we've got the same. 10:12:56 22 A. Okay. 10:12:58 23 Q. Pardon me one second. So does your page 69 10:12:58 24 match this page 69? 10:13:07 25 A. Yes. 10:13:08 Page 12
1 paragraph 51. 09:44:32 2 Q. Can you read to me what paragraph 149 says. 09:44:39 3 A. The whole thing? 09:44:41 4 Q. How about -- 09:44:42 5 MR. VLASIS: Let me just object for a second. 09:44:45 6 It sounds like, Dr. Ellis, you may be reading from a 09:44:47 7 draft; is that right? 09:44:50 8 THE WITNESS: I am not. I am reading from the 09:44:51 9 copy that I received this week from your office to be 09:44:52 10 sure I have the right one, and I printed it out. 09:44:59 11 So that's what I have. I do not have a draft. 09:45:02 12 MR. VLASIS: Erik, I think we may need to take a 09:45:07 13 quick break just so I can verify that. 09:45:10 14 MR. HALVERSON: Sounds good, let's go off the 09:45:11 15 record. 09:45:14 16 VIDEO OPERATOR: We are off the record. The 09:45:14 17 time is 10:45 a.m. 09:45:15 18 09:48:50 19 (Whereupon a discussion was held off 20 the record.) 21 10:08:49 22 VIDEO OPERATOR: We are back on the record. The 10:08:49 23 time is 11:11 a.m. 10:11:38 24 MR. VLASIS: So on a break I confirmed that Dr. 10:11:43 25 Ellis was reviewing a draft of her report. And I have 10:11:46 Page 11	1 Q. Beautiful, we'll go back one page just to make 10:13:14 2 sure. Your page 68 matches this page 68? 10:13:17 3 A. Yes. 10:13:20 4 Q. And your page 1, notwithstanding the exhibit 10:13:23 5 stamp, the yellow stamp in the bottom corner -- or your 10:13:25 6 cover page, excuse me -- 10:13:29 7 Let me start over. And the cover page of what 10:13:30 8 you have in front of you, notwithstanding the exhibit 10:13:32 9 stamp, the yellow stamp Exhibit 1 in the bottom right 10:13:37 10 corner of what's on the screen, matches what's on the 10:13:40 11 screen? 10:13:44 12 A. Yes. 10:13:44 13 Q. And your first page or page number 2 matches 10:13:45 14 what you see here, too? 10:13:48 15 A. Yes, sir. 10:13:57 16 Q. All right, if at any point today during a 10:13:57 17 question if you want to look at the report that you have 10:14:02 18 in front of you, by all means go ahead. 10:14:06 19 A. Okay. 10:14:09 20 Q. If you're reading something it would be helpful 10:14:09 21 if you were to explain where it was that you were 10:14:11 22 looking or reading, just for clarity of the record. 10:14:13 23 I will try to navigate through the PDF on the 10:14:16 24 shared report up on the screen for the record. 10:14:19 25 A. Okay. 10:14:23 Page 13

1 Q. But you're welcome to look wherever you would 10:14:23 2 like, whatever is easier for you to read. 10:14:25 3 A. Okay, thank you. 10:14:28 4 Q. So if we go right back to that last page, that's 10:14:36 5 your signature on the bottom? 10:14:39 6 A. Yes, it is. 10:14:41 7 Q. And you signed that report on approximately July 10:14:43 8 10th, 2023; is that right? 10:14:46 9 A. Yes, that's what it says. 10:14:48 10 Q. Do you recall signing this report in July of 10:14:52 11 this summer? 10:14:54 12 A. I recall finishing this report and signing it, 10:14:56 13 yes. 10:15:04 14 Q. Do you recall finishing this report and signing 10:15:04 15 it earlier than July? 10:15:06 16 A. No, no. 10:15:08 17 Q. Do you have to any reason to think that you 10:15:11 18 finished this report and signed it after July 10th? 10:15:12 19 A. No. 10:15:16 20 Q. You have no reason to doubt that you signed it 10:15:19 21 on or about July 10th, 2023? 10:15:21 22 A. I believe the date I indicated is the date I 10:15:24 23 signed the report. 10:15:26 24 Q. Dr. Hall Ellis, are you currently employed? 10:15:40 25 A. Are you -- what are you really asking me? Can 10:15:47 Page 14	1 graduate degrees at the masters level. 10:17:05 2 Q. Do you have any doctoral students in those 10:17:11 3 classes? 10:17:13 4 A. San Jose does not confer doctoral degrees so, 10:17:14 5 no, I don't. 10:17:17 6 Q. And how long have you been an adjunct at San 10:17:19 7 Jose State? 10:17:23 8 A. Since about 2000. 10:17:23 9 Q. And is there a -- strike that. Let me start 10:17:40 10 over. 11 At San Jose State, there is a School of 10:17:40 12 Information. How does that differ from, for example, a 10:17:43 13 library sciences school or college? 10:17:46 14 A. That's an interesting question. The reason that 10:17:58 15 the name is now the School of Information is 10:18:00 16 multi-faceted. 10:18:03 17 They are accredited and there are a number of 10:18:05 18 them now in the US, accredited by the American Library 10:18:08 19 Association for the conferring of the master of library 10:18:11 20 information science degree. 10:18:14 21 Library information science programs are 10:18:16 22 extremely expensive to host and to offer. And for the 10:18:18 23 need to be economically viable, many of the library and 10:18:25 24 information science programs have joined with schools of 10:18:31 25 computer science and together are able to offer a 10:18:35 Page 16
1 you unpack that a little bit? 10:15:50 2 Q. You have to a full-time job right now? 10:15:53 3 A. No. 10:15:56 4 Q. And so you're doing some consulting work for AMD 10:15:59 5 right now, at least today -- 10:16:02 6 A. Yes. 10:16:05 7 Q. -- and that's the preparation of your report; is 10:16:06 8 that right? 10:16:09 9 A. Yes. 10:16:09 10 Q. And so beyond consulting work for AMD, do you 10:16:09 11 have any other source of income right now? 10:16:17 12 A. I do teach part time for San Jose State 10:16:18 13 University School of Information. I do not teach in the 10:16:20 14 summer. 10:16:30 15 Q. And what subjects do you teach at San Jose 10:16:30 16 State? 10:16:34 17 A. I teach in the School of Information a course on 10:16:35 18 serials, a course on classification, a course on the 10:16:37 19 rules for transcribing bibliographic data, and a course 10:16:42 20 on subject analysis. 10:16:47 21 Q. And are those undergraduate courses? 10:16:55 22 A. No. 10:16:57 23 Q. Are those masters-level courses? 10:16:57 24 A. They can be taken -- they must be taken at the 10:17:00 25 graduate level. San Jose does confer a number of 10:17:02 Page 15	1 broader array of courses and degrees that are of 10:18:40 2 interest to students. 10:18:44 3 Q. And when you say computer science there, what 10:18:50 4 does that mean? 10:18:54 5 A. It's everything but the engineering aspects of 10:18:55 6 computer science although some schools include that as 10:18:59 7 well. 10:19:02 8 So the use and creation of databases, managing 10:19:04 9 them, working with the internet, learning to program in 10:19:07 10 a number of languages that are useful for internet 10:19:10 11 resident programs and applications, things of that 10:19:18 12 nature. 10:19:21 13 And now artificial intelligence coming into the 10:19:23 14 arena. These are far beyond the scope of what library 10:19:25 15 information science programs started out doing. 10:19:31 16 I think it reflects society's need for 10:19:33 17 information, the management of information and the 10:19:35 18 response by the academic community to prepare people to 10:19:40 19 work in those environments. 10:19:43 20 Q. And when you said everything but the engineering 10:19:46 21 aspects, what does that mean in your mind? 10:19:48 22 A. In my mind, it means people who actually sit and 10:19:50 23 build computing devices, people who solder, people who 10:19:56 24 work down at the mother board level, that sort of thing, 10:19:59 25 generally will not find affiliated with the School of 10:20:03 Page 17

1 Information and it's partners in computer science. 10:20:07 2 Q. So beyond San Jose State are you familiar with 10:20:12 3 any other universities that have combined a 10:20:15 4 non-engineering aspect of computer science with their 10:20:18 5 library science programs? 10:20:21 6 A. Yes, I have. 10:20:22 7 Q. Where? 10:20:25 8 A. Yes, the University of Pittsburgh. I know this 10:20:39 9 because I have met on more than one occasion with the 10:20:41 10 dean of that school and the head of the library 10:20:43 11 information science program. 10:20:48 12 And I have also had conversations at the 10:20:49 13 university with the provost. 10:20:51 14 Q. And all of those were with the University of 10:20:59 15 Pittsburgh specifically? 10:21:01 16 A. Yes. 10:21:03 17 Q. So you list out a handful of depositions in your 10:21:24 18 report. I'm showing paragraph 9 right now, which spans 10:21:26 19 a couple of pages. 10:21:31 20 I'm not going to ask you anything specific about 10:21:32 21 any of them. So paragraph 9 goes from page 4 through 10:21:34 22 page 5, and ends on page 6. 10:21:38 23 A. That is true. 10:21:44 24 Q. Is that approximately a current list of your 10:21:45 25 prior deposition work? 10:21:48 Page 18	1 combined to make this final report. 10:23:53 2 Q. So I'm familiar with the three IPR declarations 10:24:00 3 that have been submitted from earlier this year. 10:24:03 4 A. Okay. 10:24:04 5 Q. Are you saying that there is a subset of 10:24:05 6 those -- the information contained in those that is 10:24:08 7 contained in this report here? 10:24:13 8 A. Yes, this report does not include all of the 10:24:17 9 documents in the three IPRs that have been filed. 10:24:23 10 Q. And do you know, are there any documents that 10:24:29 11 you offer an opinion on in this report that are not 10:24:31 12 contained in any of those IPR declarations? 10:24:34 13 A. All of the items listed in this report were in 10:24:43 14 at least one of the declarations for an IPR. 10:24:46 15 Q. And to best of your knowledge, has your opinion 10:24:51 16 changed at all between when you prepared the IPR 10:24:56 17 declarations for the documents and when you prepared 10:24:58 18 this report? 10:25:00 19 A. No. 10:25:05 20 Q. So they are the same or essentially the same as 10:25:05 21 what's in those IPR declarations? 10:25:08 22 A. Yes. 10:25:13 23 Q. And so is it fair to say that the time it took 10:25:18 24 to prepare this report is comparatively shorter than the 10:25:22 25 time it took to prepare the IPR report? 10:25:26 Page 20
1 A. No. 10:21:51 2 Q. What's missing? 10:21:51 3 A. As you'll see in paragraph 9 starting on page 4, 10:21:54 4 the number is 27. I've been deposed 27 times, no, 10:22:00 5 that's more like 32 now. 10:22:10 6 You know, it keeps happening. 10:22:13 7 Q. Got to pay the bills somehow. 10:22:17 8 A. Got to answer questions. 10:22:20 9 Q. So 33, those last five depositions, is it fair 10:22:25 10 to say that they happened after the CommScope versus TQ 10:22:29 11 Delta IPR deposition, the last one on this list? 10:22:34 12 A. Yes, it is accurate to say that it was after 10:22:41 13 this last listing. 10:22:44 14 Q. And as far as you know, has your testimony ever 10:22:48 15 been excluded for any reason? 10:22:50 16 A. I am not aware of that. If it has happened, it 10:22:55 17 is not something I know. 10:23:00 18 Q. Can you walk me through at a high level the 10:23:25 19 process you went through to create your report? 10:23:27 20 A. This particular report? 10:23:30 21 Q. Correct. 10:23:32 22 A. This report is a very interesting one because it 10:23:34 23 is a combination of documents I wrote for three separate 10:23:38 24 IPR filings. 10:23:45 25 And different references were selected and 10:23:48 Page 19	1 A. Yes, that's fair. 10:25:29 2 Q. And that's because this report is effectively a 10:25:35 3 copy, paste and delete from the other report. 10:25:38 4 A. It is effectively a weaving together of the 10:25:41 5 documents that were deemed appropriate to include in the 10:25:44 6 report. So yes, some from one, some from another, and 10:25:47 7 some from a third. 10:25:52 8 Q. But your opinions about any given document are 10:25:57 9 the same across this declaration and your IPR 10:25:59 10 declarations? 10:26:04 11 A. That is correct. 10:26:04 12 Q. And forgive me, I used declaration there to 10:26:07 13 refer to this report. I may slip up. 10:26:09 14 If I ever say declaration to refer to this 10:26:11 15 report, will you understand that I'm referring to this 10:26:13 16 report? 10:26:16 17 A. Yes, because we're focused on this report, is my 10:26:17 18 understanding today. 10:26:20 19 Q. That's my goal. 10:26:20 20 A. Okay, that's good. 10:26:26 21 Q. And so I guess taking one step further back, can 10:26:33 22 you walk me through at a high level the process that you 10:26:36 23 went through to create the IPR declarations from which 10:26:38 24 this report is based upon? 10:26:42 25 A. Well, my process is quite well known. And I've 10:26:46 Page 21

1 worked with a number of people in that situation. 10:26:49 2 My process is the same whether it is a report or 10:26:57 3 a declaration for an IPR, basically follows the research 10:26:59 4 analysis method of content analysis. 10:27:05 5 First, requiring the verification of the 10:27:09 6 citation to determine what type of document it is and 10:27:12 7 where in fact it was published. 10:27:19 8 And then to obtain a copy from a library that 10:27:20 9 has one unless it is an item that is only published 10:27:26 10 online, which we do see occasionally of federal 10:27:34 11 documents, state documents, and some journals that come 10:27:36 12 out only online. 10:27:39 13 Following that, an identification of the MARC 10:27:41 14 record of metadata if MARC is not available from the 10:27:45 15 library that supplies me the copy. 10:27:50 16 Harvesting a MARC record from OCLC's 10:27:55 17 bibliographic database, doing the analysis, writing the 10:27:58 18 analysis, and attaching any other documents that I deem 10:28:03 19 to be insightful or appropriate, things like subject 10:28:08 20 headings, things like documentation from the US 10:28:12 21 Copyright Office. 10:28:17 22 Q. And did anybody beyond yourself participate in 10:28:26 23 that process or assist you in that process? 10:28:28 24 A. No one helps me write. I do have someone who 10:28:29 25 sometimes will help me order documents because I do use 10:28:35 Page 22	1 gone and requested the document at the time. 10:30:13 2 Q. So my original question was what do you mean by 10:30:16 3 the authenticity of the document. And you gave a 10:30:32 4 helpful answer about the reason why you looked for 10:30:35 5 documents from the source. 10:30:38 6 But when you used the word authenticity in that 10:30:39 7 sentence, what do you mean by authenticity? 10:30:41 8 A. It is the real document. There is no variation. 10:30:45 9 It's not a draft. It's not a different version. It's 10:30:47 10 not from somewhere else. 10:30:51 11 It is the document as close as I can get to what 10:30:54 12 was actually available at the time that I deemed to be 10:31:00 13 the correct date. 10:31:03 14 Q. And you then know that it's a real document and 10:31:10 15 not a different version because you were the one that 10:31:13 16 found that document? 10:31:14 17 A. Yes, I have identified what it is. I have 10:31:15 18 identified it usually by author, title, journal title 10:31:22 19 ISBN, ISSN. 10:31:26 20 I know exactly what I'm looking for, and I need 10:31:27 21 it to match. 10:31:32 22 Q. What do you need you need it to match, match 10:31:37 23 what? 10:31:41 24 A. All of the data elements that I can identify in 10:31:41 25 establishing a correct and full citation need to match 10:31:44 Page 24
1 services to do that for me. 10:28:39 2 But no, I do all the writing, all the drafting, 10:28:41 3 all the editing. 10:28:47 4 Q. So in paragraph 10 of your report, you say 10:28:57 5 you're offering your expert opinion on the authenticity 10:28:59 6 of documents referenced herein. 10:29:04 7 Do you see that at the very bottom of page 6? 10:29:05 8 A. I do. 10:29:08 9 Q. What do you mean the authenticity of the 10:29:08 10 documents? 10:29:11 11 A. I need to get copies of documents from a source 10:29:11 12 that I can trust. 10:29:16 13 So I need them to come from the actual book in 10:29:17 14 the case of a conference proceeding or a book itself. 10:29:23 15 Or I need to get a copy of a journal article from an 10:29:25 16 institution that actually received the journal at the 10:29:31 17 time and can scan for me the relevant pages. 10:29:35 18 So it's not by happenstance that I get these 10:29:39 19 copies. But deliberately seek to get them from places 10:29:45 20 that I know have authentic copies that they added to 10:29:49 21 their collections and have continued to keep in them. 10:29:55 22 Q. Why is that important? 10:30:00 23 A. It's important to me, because these are the same 10:30:01 24 documents that a person of -- who is interested in the 10:30:05 25 art contained in the work would have gotten had they 10:30:08 Page 23	1 the item itself. 10:31:51 2 So if it is by a certain person, I need to see 10:31:52 3 that person's name on the document. I need it to be the 10:31:54 4 length that I expect it to me. 10:31:59 5 I need the conference paper to appear on the 10:32:00 6 pages that the citation tells me they should be. I need 10:32:03 7 all those data elements to be consistent because if they 10:32:07 8 aren't we may have a problem. 10:32:17 9 Q. So how do you figure out the length that you 10:32:18 10 would expect a document to be? 10:32:21 11 A. Well, thankfully, we have a number of 10:32:22 12 authoritative databases that help us out with that kind 10:32:26 13 of information. 10:32:29 14 Those that are known in the fields and that are 10:32:31 15 trusted. So we trust, for example, IEEE, and their 10:32:35 16 internet -- their IEEE Xplore database. 10:32:42 17 We trust ACM's digital library. We trust MARC 10:32:45 18 records completed at places like the Library of Congress 10:32:50 19 and the British library. 10:32:53 20 We know from the way that the library business 10:32:54 21 is conducted that the descriptions are correct. 10:32:58 22 We have indices published by large companies 10:33:02 23 like EBSCO and Springer and Wiley that give us that 10:33:06 24 information from the publishers. 10:33:16 25 We know citations, and citations are critical in 10:33:19 Page 25

1 this work to say this is the document, this is where it 10:33:24 2 was, this is when it was, this is how long it was. 10:33:28 3 Those data elements are critical in determining 10:33:32 4 is this really what I think it is. We can't use 10:33:36 5 something that there might be a question. 10:33:41 6 Q. And so there are three dates in paragraph 10. 10:33:48 7 Do you see those at the very end of paragraph 10? 10:33:52 8 A. Yes, I do see those. 10:33:55 9 Q. Where did those dates come from? 10:34:00 10 A. The lawyers tell me the critical dates and I 10:34:02 11 will say I don't always know them when I start the work 10:34:06 12 because they do not influence me. 10:34:09 13 Those are dates that are important. But to me 10:34:14 14 it's the date associated with each individual document 10:34:18 15 that is important. 10:34:22 16 And so independent of those dates, which I am 10:34:24 17 provided, I set out to do my tasks. 10:34:28 18 Q. So is it fair to say that you do your analysis 10:34:31 19 on a document regardless of whatever date you're given 10:34:36 20 by the lawyer. And then the date of that document and 10:34:40 21 the public availability of that document is determined 10:34:44 22 outside of the context of whatever date the lawyer is 10:34:47 23 using? 10:34:50 24 A. That is correct. 10:34:51 25 Q. Just so we're all on the same page, it's my 10:34:59 Page 26	1 15, and 16 on page 8. 10:36:36 2 So we have a description here of the education 10:36:40 3 that is typical or expected from a person who would be 10:36:44 4 interested in the general topics that these documents 10:36:50 5 describe in some way. 10:36:55 6 Q. And just for clarity of the record, I think it 10:36:58 7 also includes some information in paragraph 17; is that 10:37:01 8 right? 10:37:06 9 A. Yes, yes. So this is a little bit longer 10:37:06 10 description than I sometimes have. But it lays out the 10:37:11 11 expectations of persons interested in the topic, which 10:37:17 12 is described in paragraph 14. 10:37:22 13 Q. And so in paragraph 14, screen share version, in 10:37:31 14 paragraph 14, there's enumerated or letter lists of 10:37:39 15 contexts there, you see that, A, B, and C? 10:37:45 16 A. I do. 10:37:49 17 Q. A is an integrated circuit conductor. B is an 10:37:50 18 inductor capacitor resonant circuit. And C is a power 10:37:54 19 routing structure in an integrated circuit. 10:38:00 20 Do you see that? 21 A. I do see that. 10:38:02 22 Q. And those subject matters were also provided to 10:38:03 23 you, those are not things that you originated; is that 10:38:06 24 right? 10:38:16 25 A. That is correct, I did not. 10:38:17 Page 28
1 understanding that those three dates have to do with the 10:35:01 2 priority dates of certain patents. 10:35:04 3 Are you familiar with that general content? 10:35:05 4 A. Yes, that is my understanding as well. 10:35:09 5 Q. And have you looked at the patents that are 10:35:11 6 associated with these three priority dates at all? 10:35:13 7 A. No, I have no -- 10:35:16 8 Q. Is that because -- I was going to ask is that 10:35:20 9 because there was no reason to do that for what your 10:35:23 10 opinions are? 10:35:26 11 A. No, it doesn't influence me. And I don't see a 10:35:26 12 need to look at the patents. It's an independent piece 10:35:32 13 of information to me. 10:35:40 14 Q. So in paragraph 11, you have a single sentence 10:35:42 15 but in the middle of it, it says, "a person interested 10:35:56 16 in and ordinarily skilled in the relevant subject 10:35:59 17 matter." 10:36:03 18 Do you see that? 10:36:04 19 A. I do. 10:36:05 20 Q. What is the relevant subject matter? 10:36:08 21 A. Well, interesting you should ask me that. 10:36:11 22 That's another piece of information that I don't know, 10:36:13 23 and lawyers have to tell me. It is a person who has a 10:36:18 24 particular educational background and works in a field 10:36:23 25 of endeavor, described in this case, in paragraphs 14, 10:36:26 Page 27	1 (Technology discussion.) 10:38:45 2 BY MR. HALVERSON: 10:38:56 3 Q. So we were chatting about A, B and C in this 10:38:56 4 paragraph 14. Do you have any experience, Dr. Ellis, 10:39:00 5 with integrated circuit inductors? 10:39:02 6 A. Have no idea what they are. Don't know -- 10:39:05 7 Q. How about inductor capacitor resonant circuits? 10:39:07 8 A. I can't tell you a thing about that. 10:39:11 9 Q. How about power routing structure in an 10:39:14 10 integrated circuit? 10:39:19 11 A. Nope, I have no idea. 10:39:20 12 Q. Then if you could flip forward or follow along 10:39:29 13 on the screen to paragraph 16. 10:39:31 14 A. I see that. 10:39:33 15 Q. In paragraph 16, there is a certain description 10:39:34 16 about educational or experiential milestones for subject 10:39:41 17 matters A and B that we were just talking about that a 10:39:48 18 "person of ordinary skill in the art" would have had. 10:39:53 19 Do you see that? 10:39:56 20 A. I do see that. 10:39:57 21 Q. So the first one is a BS in electrical 10:40:02 22 engineering and three to four years of integrated 10:40:04 23 circuit design experience, right? 10:40:07 24 A. Yes. 10:40:11 25 Q. Then it goes on to talk about a masters degree 10:40:14 Page 29

1 and a little bit less design experience or a Ph.D. with 10:40:16	1 other appropriate terms that help someone seeking a 10:42:37
2 no design experience. 10:40:19	2 resource either knowing it or wanting something on the 10:42:40
3 Do you see that? 10:40:20	3 topic to be successful in that searching and discovery 10:42:45
4 A. I do. 10:40:21	4 process. 10:42:49
5 Q. Do you have any of those degrees? 10:40:24	5 Q. You said the number on the back of that label. 10:42:57
6 A. No. 10:40:26	6 A. Yep.
7 Q. Then if we go to 17. 10:40:39	7 Q. What exactly were you referring to there? 10:42:58
8 A. Okay. 10:40:41	8 A. The classification number on the back of the 10:43:00
9 Q. We see the "level of ordinary skill in the art" 10:40:41	9 book. So when you go in the library and you're walking 10:43:03
10 for subpart C of what we were talking about in paragraph 10:40:45	10 down the rows, all the books have numbers on the back, 10:43:06
11 14. 10:40:50	11 no matter what kind of library you're in. 10:43:10
12 A. Yes. 10:40:51	12 Those numbers are meaningful to us and we assign 10:43:13
13 Q. That's (as read): 10:40:51	13 them so that topics that are related sit near each 10:43:19
14	14 other, and we move from general to specific in terms of 10:43:24
15 A bachelor's degree in computer 10:40:51	15 the assignment of those numbers. 10:43:29
16 science, electrical engineering, 10:40:53	16 Q. Bear with me, I'm clicking through the exhibits 10:43:31
17 computer engineering or related field, 10:40:56	17 real quick, I want to see if we have a back. 10:43:40
18 and approximately two years of 10:40:59	18 Do you happen to know off the top of your head 10:43:43
19 experience in the design, development, 10:41:00	19 whether or not any of the work that you offered an 10:43:45
20 and/or testing of power distribution 10:41:03	20 opinion about had a back on it? 10:43:48
21 networks related to integrated circuits 10:41:05	21 A. I don't know. Let me look at the list and I'll 10:43:53
22 with multiple power domains or the 10:41:09	22 tell you. I think not because most of these are 10:43:55
23 equivalent with additional education 10:41:12	23 conference papers, not all of them, but most of them 10:44:00
24 and or research substituting for 10:41:14	24 are. 10:44:02
25 experience and vice versa. 10:41:17	25 And if you did have that, it would be exhibit 3 10:44:04
Page 30	Page 32
1	1 possibly. 10:44:08
2 Do you see that? 10:41:22	2 Q. I think I've got one. Let's go take a look. 10:44:19
3 A. I do. 10:41:22	3 A. There would not be many I can tell you because 10:44:21
4 Q. Do you have that? 10:41:23	4 you have mostly conference papers here, and would 10:44:23
5 A. No. 10:41:23	5 usually get the outside for those. 10:44:27
6 Q. All right, let's set aside the things that you 10:41:25	6 So show me what you have here. 10:44:29
7 don't have, and let's dive back into the things that you 10:41:33	7 I'm looking at this -- 10:44:35
8 do have. 10:41:37	8 Q. This is a back, hang on. I'm going to show you 10:44:36
9 A. Okay. 10:41:37	9 the front so that you know what it is that we're talking 10:44:39
10 Q. Back in paragraph 12, we've got some 10:41:40	10 about -- 10:44:44
11 descriptions about cataloging and indexing. 10:41:42	11 A. This is the back cover -- 10:44:44
12 Do you see those? 10:41:44	12 Q. Move the screen real quick. Okay, this is 10:44:45
13 A. Let me get -- 10:41:45	13 exhibit 14 in your report. 10:45:14
14 Q. What does -- 10:41:47	14 A. Okay, so this is a book and the book was 14. 10:45:16
15 A. Paragraph 12, yes, I am there, okay. 10:41:48	15 Okay, I have the list, so show me here. 10:45:21
16 Q. What does it mean to catalog as it's used in 10:41:51	16 Q. So this is the front cover up on the screen now. 10:45:26
17 paragraph 12? 10:41:54	17 A. Yes, very nice. 10:45:29
18 A. That's such a broad term that we use in my field 10:42:01	18 Q. That is at page 809 of exhibit 1. And we're 10:45:30
19 of endeavor. It basically means everything from an 10:42:04	19 going to go to the back cover, which is at page 903 of 10:45:34
20 item, which we call resource, being acquired by a 10:42:07	20 exhibit 1.
21 library and bibliographically described, labeled, these 10:42:12	21 And so are you referring to these numbers here? 10:45:40
22 days barcoded, spine label, property stamped, all of 10:42:20	22 A. No, I'm not. The spine -- if you set the book 10:45:43
23 that process, including classification, so the number on 10:42:25	23 up on the table and the narrow part, which shows how 10:45:50
24 the back on that label, has meaning. 10:42:29	24 many pages, that's where the number appears. 10:45:53
25 And then the assignment of subject headings and 10:42:33	25 What you have here on the back page is very 10:45:56
Page 31	Page 33

1 interesting, however. That's the international standard 10:45:59 2 book number, 13-digit version, which tells me exactly 10:46:02 3 what I'm looking for. 10:46:09 4 So that to me is a valuable piece of 10:46:11 5 information. But what I was describing is the 10:46:12 6 classification number or the call number some people 10:46:17 7 determine that to be known as. 10:46:19 8 And that's the number that cataloguers 10:46:24 9 assignment. This ISBN is assigned by the publisher. 10:46:26 10 Q. So when you were talking about the catalog 10:46:30 11 numbers, you meant something like the Dewey decimal 10:46:32 12 number that was applied to a sticker on the spine of the 10:46:37 13 book? 10:46:39 14 A. Yes, something like Dewey decimal that we all 10:46:44 15 learned in elementary school. And then as we went to 10:46:46 16 university for our undergraduate and graduate studies, 10:46:49 17 we probably went somewhere that used the Library of 10:46:51 18 Congress, which is a different system but has the same 10:46:54 19 purpose: Where do I arrange things, how do I gather 10:47:02 20 them together, how I do find them, shelf location device 10:47:05 21 if you will. 10:47:09 22 Q. Understood. 10:47:12 23 A. So this is interesting, it -- 'cause I don't 10:47:14 24 think we have the spine for this one. It would be like 10:47:18 25 that label that's on the back if we had it. 10:47:24 Page 34	1 the headings and sometimes they are predefined as we 10:48:48 2 want to use them. 10:48:54 3 And other times we have to construct them or 10:48:55 4 build them so that we get exactly the terminology that 10:48:58 5 we want an information seeker to be able to use. 10:49:04 6 The other feature of using these standardized 10:49:09 7 terms is that if an individual puts in a term we don't 10:49:12 8 really use but it's related to the term in the form we 10:49:16 9 use, you automatically go to the correct term. 10:49:19 10 So it's a powerful way to provide access by 10:49:23 11 subjects for resources in the library. 10:49:29 12 Q. All right, I want to break that down. There 10:49:34 13 were a couple points in there that we'll circle back to. 10:49:38 14 But before we do, I want to put up what I think 10:49:41 15 is an example of what you were referring to. 10:49:44 16 A. Okay. 10:49:50 17 Q. So if we go to -- 10:49:50 18 A. Ah, that's -- 10:49:53 19 Q. -- attachment 3B. 10:49:54 20 A. Okay, yeah, that's a MARC record from OCLC. 10:49:58 21 Q. And so you were talking about subject headings 10:50:05 22 that were necessary to find an item if, in fact, it is 10:50:10 23 done by a subject search. 10:50:14 24 A. They're useful. Come down a little further on 10:50:18 25 the screen if you would, please. 10:50:20 Page 36
1 Q. So that was all about cataloging. 10:47:39 2 A. Okay. 3 Q. And also on paragraph 12 -- and I'll go back to 10:47:40 4 paragraph 12 on the screen, hang on one second -- 10:47:43 5 A. Okay. 6 Q. Also in paragraph 12, you refer to a concept 10:47:46 7 called indexing. 10:47:49 8 A. I do. 10:47:51 9 Q. I've highlighted indexing there. 10:47:51 10 Do you see that? 10:47:54 11 A. I do. 10:47:55 12 Q. What is indexing? 10:47:55 13 A. Indexing from our point of view is the 10:47:58 14 assignment of subject headings that are necessary to 10:48:01 15 find the item if, in fact, it is done by a subject 10:48:06 16 search. 10:48:11 17 So I know a topic of interest, but I don't 10:48:12 18 necessarily know which materials might be present that 10:48:15 19 contain information about the topic of interest. 10:48:20 20 And so we assign subject headings, and there's a 10:48:24 21 pretty detailed explanation of how that process works, 10:48:30 22 from an authenticated list, maintained at the Library of 10:48:34 23 Congress. 10:48:40 24 And we all use it. There are, I don't know, 10:48:40 25 about a thousand pages of rules of how that works, and 10:48:44 Page 35	1 There we go. Look how many we've got. We 10:50:22 2 have -- in English, we have six. Then we have a bunch 10:50:27 3 in French and a bunch in German. 10:50:31 4 I don't see any -- I don't see any Spanish ones 10:50:37 5 here. But we have a multiplicity of languages, which is 10:50:41 6 not uncommon and they all serve that purpose. 10:50:45 7 Q. And so what you're talking about now are the 10:50:53 8 entries in the MARC field in entry number 650, and there 10:50:55 9 are a number of words that appear after a single digit 10:51:00 10 the number; is that right? 10:51:03 11 A. Right, that zero is in the second indicator 10:51:06 12 position and that zero means this heading is from the 10:51:12 13 Library of Congress' authenticated list. 10:51:15 14 I know that -- 10:51:20 15 Q. What is -- 10:51:21 16 A. Hmm. 10:51:22 17 Q. What does 6 mean? 10:51:23 18 A. These are French from the list, primarily 10:51:24 19 maintained in Canada that we use from the National 10:51:29 20 Library of Canada. 10:51:33 21 Q. And how about 7? 10:51:38 22 A. 7, those are faceted subject headings that are 10:51:39 23 added, because of libraries are planning to eventually 10:51:42 24 move to putting their catalogs in the semantic web. 10:51:46 25 And those terms are going to be more useful for 10:51:51 Page 37

1 us because we'll have the ability to manipulate them. 10:51:55	1 science, frequently a second masters degree in the 10:54:47
2 So they're added in addition and so you'll see 10:51:58	2 discipline in which they work, engineering, literature, 10:54:53
3 they're added in OCLC at this point. 10:52:03	3 whatever. 10:54:56
4 Now, the other 7, starting about where your blue 10:52:06	4 And people with a great deal of experience. At 10:55:00
5 cursor is, those are from the National Library of 10:52:09	5 the Library of Congress, for example, you can't make a 10:55:04
6 Germany, and they have yet their own list and their own 10:52:13	6 record on your own until you've been there at least five 10:55:06
7 way of doing things. 10:52:20	7 years. 10:55:09
8 So they've added those. And then further down, 10:52:20	8 Because if you make an error, indexing doesn't 10:55:12
9 we have a couple in Spanish for reasons I don't know 10:52:22	9 work properly, the item is not as findable and we can't 10:55:15
10 because we don't see those very often in this type of 10:52:27	10 have that. 10:55:18
11 material but we certainly can. 10:52:30	11 And because we only create these once they must 10:55:19
12 So different libraries, if you look in the 040, 10:52:32	12 be perfect. So it takes a very long time to get the 10:55:22
13 have had a chance to add to this record because -- see 10:52:38	13 skill level and the expertise to be able to create these 10:55:30
14 all the libraries in 040, everybody's had a chance to 10:52:41	14 records and work with colleagues who are less 10:55:32
15 add something because they are authorized to do so. 10:52:46	15 experienced. 10:55:37
16 We don't always see that but we do in this case. 10:52:51	16 It's very much a learning community. And it 10:55:39
17 So this is quite a robust record. You could find by any 10:52:56	17 takes a number of years to gain that proficiency. 10:55:42
18 or all of those subject headings that they're indexed in 10:53:00	18 Q. And so are those typically employees of the 10:55:50
19 the catalog. 10:53:04	19 library or the organization that has received the work? 10:55:53
20 Libraries have the option to say we won't show 10:53:05	20 A. Yes, they are highly paid, usually second only 10:55:56
21 French or we won't show German or they can just say 10:53:10	21 to the director because they're hard to get. There 10:56:00
22 we'll show them all, we don't worry about it. 10:53:13	22 aren't many schools that offers a sufficient amount of 10:56:08
23 So it's library choice. 10:53:15	23 coursework to even prepare someone to enter this type of 10:56:10
24 Q. So there are a number of dollar signs that 10:53:20	24 activity as their professional endeavor. 10:56:14
25 proceeds a single digit, dollar zero, a dollar two, a 10:53:23	25 Q. Have you ever been a cataloguer? 10:56:23
Page 38	Page 40
1 lot of dollar twos. 10:53:27	1 A. Absolutely. 10:56:25
2 A. Yep. 10:53:29	2 Q. Where were you cataloging? 10:56:25
3 Q. What does that mean? 10:53:30	3 A. In my resume you'll see, I've catalogued a whole 10:56:28
4 A. We use dollar two because we use the lower half 10:53:33	4 lot of places over the years, special projects. 10:56:30
5 of the ASCII 256 character set. And so we use this in 10:53:36	5 Starting at about page 50, I think, of my 10:56:35
6 lieu of using the delimiter, which is in the upper 10:53:41	6 resume, I have worked in academic libraries, I have 10:56:40
7 register that we don't have on our typical keyboards. 10:53:44	7 worked for public libraries, special libraries, school 10:56:46
8 And so we use dollar signs because it's easier 10:53:49	8 libraries, university libraries, a cataloged in a law 10:56:50
9 to type in. 10:53:52	9 library for a while.
10 Q. Got it. 10:53:57	10 I have catalogued for, I started in the 10:56:57
11 A. Interesting -- oh, I lost of the bottom there. 10:53:58	11 seventies and so maybe 35 years, maybe. 10:57:02
12 Interesting that you would ask me that. The 10:54:00	12 Q. And I may be able to find it online but I don't 10:57:13
13 delimiters tell the software what type of data come 10:54:02	13 know that a copy of your resume or your C.V. was 10:57:16
14 next. 10:54:08	14 submitted with the report. 10:57:18
15 And so all of those dollar sign with a 10:54:08	15 Where should I go to find that? 10:57:20
16 character, the character has meaning and the fact that 10:54:12	16 A. Oh. I believe it is attached to the IPRs as 10:57:23
17 it's a delimiter has meaning. And the fact that there 10:54:15	17 they were filed. 10:57:34
18 may or may not be punctuation has meaning. 10:54:18	18 My lawyer can tell you that because of the 10:57:34
19 Q. All right, so a couple of minutes ago you gave 10:54:25	19 assembly of the package is not something I typically do. 10:57:37
20 an answer that referred to individuals who put in terms. 10:54:27	20 But I believe it's generally attached to an IPR, I know 10:57:52
21 Do you remember that? 10:54:34	21 that. 10:57:54
22 A. Yeah, those are called cataloguers, um-hmm, yes. 10:54:35	22 Q. That's okay, I can look it up. 10:57:55
23 Q. And who are the cataloguer? 10:54:38	23 A. Yeah, there is a citation here in paragraph 8, 10:57:59
24 A. At a place like this, cataloguers are people 10:54:42	24 page 3, and there's a -- looks like Bates number, could 10:58:03
25 with at least one masters degree in library information 10:54:44	25 that be? AMD-ITC, that's it, that's where it is. 10:58:09
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1 Q. Sounds good. 10:58:18	1 phrase "we" a number of times. And you've done that in 11:01:00
2 A. Okay, because I know -- I hand out my resume 10:58:20	2 a few different answers that I presume is the library 11:01:02
3 frequently so it can be included. I just don't know how 10:58:23	3 industry. 11:01:05
4 it's identified every time. 10:58:27	4 What are you referring to when you say we? 11:01:06
5 Q. It was -- I'm sure it was submitted with the 10:58:30	5 A. Yeah, we because we are a community of practice. 11:01:07
6 expert process in the case. I'm not saying that it was 10:58:33	6 And some libraries have only one cataloguer, some have 11:01:10
7 done incorrectly. 10:58:38	7 entire teams, and for me it is we because we all 11:01:14
8 I was just noting that it's not attached. So 10:58:38	8 basically do our work in the same way, using the same 11:01:20
9 it's not something that you and I could look at right 10:58:41	9 resources. 11:01:24
10 now. 10:58:43	10 And we generally -- here I did it again, we 11:01:26
11 But we could if we pulled that Bates number so 10:58:44	11 generally have colleagues on whom we can call on for 11:01:30
12 we're just fine. 10:58:46	12 advice or we give advice or we mentor people. 11:01:33
13 A. Yeah, no it's around. 10:58:48	13 It is not, it is not as independent a task as it 11:01:37
14 Q. And so you had said that you cataloged for a 10:58:50	14 might appear to be. So it's a very broad representation 11:01:43
15 number of libraries, academic libraries, public 10:58:54	15 of individuals who contribute and make records, which, 11:01:49
16 libraries, special libraries, and the list went on a 10:58:57	16 in fact, come together in things like WorldCat. You 11:01:57
17 little bit. 10:59:00	17 know, those records from all over the world, in all 11:02:01
18 A. Yeah. 10:59:02	18 kinds of languages. 11:02:04
19 Q. Earlier you said that in order to catalog, you 10:59:02	19 And I guess that's why I call it we because I've 11:02:04
20 typically would have a masters degree in library 10:59:05	20 been in this profession so long that to me those are the 11:02:07
21 sciences and also a masters degree in this field in 10:59:07	21 people that I work with. 11:02:10
22 which the cataloging was happening. 10:59:11	22 Q. So if you could open your report to paragraph 11:02:18
23 Do you recall that? 10:59:13	23 34, and it's up on the screen if you'd rather read it on 11:02:20
24 A. Yes, I do. 10:59:21	24 a computer.
25 Q. What are your other masters degrees in? 10:59:22	25 A. 34, okay, I see 34 -- 11:02:22
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1 A. Business Administration and I also -- I'm sorry, 10:59:24	1 Q. On page 16. 11:02:24
2 I was going to say I also have graduate work in 10:59:27	2 A. Okay, 16, that helps me, here, 16. Okay, 34, 11:02:25
3 sociolinguistics. 10:59:32	3 very interesting, okay, I'm there. 11:02:29
4 Q. And so what types of works were you cataloging 10:59:33	4 Q. So third sentence here begins with the word 11:02:33
5 when you were -- in the course of your career? 10:59:36	5 upwards on the third line. 11:02:36
6 A. Mostly I cataloged things other people didn't 10:59:42	6 You see it? 11:02:37
7 want to describe. So I would do sound recordings, 10:59:44	7 A. Yes, yes, I see that. 11:02:39
8 projected media, DVDs, 16 millimeter films, CDs, things 10:59:52	8 Q. What is a jobber? 11:02:41
9 of that might nature. 10:59:57	9 A. It's a book wholesaler. It's somebody who gets 11:02:44
10 And materials that were not in English. I did a 11:00:00	10 materials from publishers. 11:02:49
11 great deal of cataloging in Spanish, materials that were 11:00:03	11 You know, we have so many publishers producing 11:02:52
12 in Spanish that have bilingual records, English and 11:00:05	12 works that libraries can't really invest, I don't think, 11:02:55
13 Spanish. 11:00:10	13 the time to work with individual publishers if they can 11:03:00
14 And so I've done a lot of that work, a lot of 11:00:10	14 avoid it. 11:03:05
15 work with maps, cartographic materials, general 11:00:12	15 So these jobbers get works and items published 11:03:06
16 treatises in the law library, general materials in 11:00:21	16 by a multitude of different places and offer them for 11:03:14
17 public libraries. 11:00:27	17 sale so that we can get materials from different 11:03:17
18 They're somewhat easier, they're not usually 11:00:28	18 publishers all from the same source. 11:03:20
19 quite as complex. But my major work is in handling 11:00:30	19 So there's one place to pay the bill, there's 11:03:25
20 materials that other people are not comfortable with or 11:00:36	20 one place to put the order in, there's one place to talk 11:03:27
21 don't have experience handling. 11:00:39	21 about you sent me this but it was defective or I ordered 11:03:29
22 Q. Back in the same answer when we talked about 11:00:50	22 this and it didn't show up can you help me get it. 11:03:32
23 individuals putting in terms, which -- 11:00:53	23 That kind of thing, it saves us time and money. 11:03:35
24 A. Yes -- 11:00:56	24 And, of course, because the institution -- 11:03:39
25 Q. Got us on the cataloging kick, you used the 11:00:57	25 libraries are not independent, they're all part of 11:03:42
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1 something else for the most part. 11:03:44	1 But there is an expediency that is assumed in a number 11:06:40
2 Because of city regulations, university 11:03:46	2 of cases. 11:06:45
3 regulations, whatever, the fewer vendors you have to 11:03:50	3 Q. Other than Harry Potter where people were lined 11:06:56
4 work with, the easier it is for all the budget people to 11:03:54	4 up at midnight to get that book right away are you 11:07:00
5 say yes, we see what you're doing, yes, we approve this, 11:03:57	5 familiar with any other instances of books being at the 11:07:05
6 yes, we can pay it. 11:04:00	6 bookstore on or before the formal date of publishing I 11:07:10
7 And so we use jobbers a great deal, have for as 11:04:02	7 guess? 11:07:18
8 long as I've been around and before that I know. 11:04:06	8 A. I know that it's possible because I got a book 11:07:18
9 Q. So is a jobber like a distributor? 11:04:08	9 yesterday that was published last week. I preordered 11:07:20
10 A. In some ways, yes. I think you could equate 11:04:14	10 and it showed up. 11:07:23
11 that either with a wholesaler or a distributor or an 11:04:16	11 So I know that's very possible for individuals 11:07:24
12 agent, sort of. 11:04:21	12 and libraries. And please note libraries buy things 11:07:28
13 I don't know, maybe agent's not quite right. 11:04:23	13 from places like Amazon. They sell used books there and 11:07:32
14 But yeah, they gather things up in they say oh, you want 11:04:26	14 they buy books there. 11:07:38
15 50 things, we'll put them in these four boxes and send 11:04:31	15 And the book I wanted was recently published 11:07:39
16 them to your place, and rather than you have go to eight 11:04:34	16 within I guess the last week. I paid for it weeks ago 11:07:43
17 or ten other places to get them. 11:04:38	17 knowing it was coming saying I want to book as soon as I 11:07:46
18 Q. Have you ever worked for a jobber? 11:04:40	18 can get it. 11:07:50
19 A. I don't think so, no. 11:04:44	19 So yeah that does happen. And things that are 11:07:50
20 Q. But you've worked with a lot of jobbers? 11:04:46	20 likely to hit the bestseller list or the author is on 11:07:52
21 A. Oh, yes, 'cause there aren't that many. I mean, 11:04:48	21 the talk show circuit, that kind of thing, we'll see. 11:07:56
22 there really are maybe half a dozen. And then there are 11:04:52	22 Scientific books maybe not in the same level of 11:08:02
23 other people that specialize in magazine subscriptions. 11:04:55	23 activity. But I am convinced that there are libraries 11:08:09
24 So they don't sell books with they sell you magazines. 11:05:01	24 preordering a lot of things from places like ACM and 11:08:12
25 And so yeah I've worked with jobbers over the 11:05:07	25 IEEE. 11:08:16
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1 years. 11:05:08	1 Q. And how did you become aware of this book that 11:08:21
2 Q. The last sentence of this paragraph says books 11:05:16	2 you had preordered before it was published? 11:08:24
3 are then -- sorry, let me be true as to what it says. 11:05:19	3 A. I've read a lot of books by that author. And 11:08:26
4 "Thus, books are generally available at libraries across 11:05:23	4 there's a series and I want the next one. 11:08:30
5 the country just a few days after publication." 11:05:25	5 Q. Like Harry Potter? 11:08:35
6 Do you see that? 11:05:33	6 A. Like Harry Potter or, you know, any author who 11:08:36
7 A. Yeah, I do. 11:05:34	7 is very prominent, whose books always get on the 11:08:39
8 Q. So the basis for that statement is when the book 11:05:34	8 bestseller list, they're in demand and people buy them 11:08:42
9 is first published, it then gets sent out to the jobbers 11:05:36	9 or preorder them because we need them. 11:08:47
10 or the distributors throughout the country. 11:05:40	10 Libraries, I've been in places where we order 11:08:49
11 And then shortly thereafter it's sent on to the 11:05:47	11 100 copies of John Grisham, they'll put them out, 11:08:53
12 individual libraries who take it in, catalog it, and 11:05:50	12 they'll keep one back to catalogue. 11:08:56
13 index it, and then put it on the shelves; is that right? 11:05:53	13 Those are out because we've got 500 people 11:08:58
14 A. Yes, because we also have cases -- and dare I 11:05:56	14 waiting for this, we've got to get them out there. 11:09:00
15 say Harry Potter was a good example. The books actually 11:05:58	15 Q. Shifting gears a little bit, your report goes on 11:09:06
16 were in places like jobbers and bookstores before being 11:06:01	16 to talk about journals and serial publications and how 11:09:10
17 released to the public. 11:06:05	17 MARC records relate to a publication. 11:09:13
18 So they would be there the minute they were to 11:06:06	18 A. Yes. 11:09:16
19 be available. Also, it is possible that a library can 11:06:09	19 Q. It does a pretty good job of relating what MARC 11:09:16
20 preorder something, say I know this is coming out. 11:06:15	20 records are so I don't need to get into that with you. 11:09:20
21 Please send it to us the first day we can have it, 11:06:20	21 But it goes onto describe -- 11:09:23
22 because it's critically important or there's some other 11:06:23	22 A. Okay, you're in 37? 11:09:32
23 prevailing reason that we need it right way, so there is 11:06:27	23 Q. I'm ultimately going to end up back in 11:09:33
24 an effort to get things out quickly. 11:06:33	24 paragraph, the top of 37, yes. 11:09:41
25 Depends what kind of library, what kind of item. 11:06:36	25 So here you're talking about your own 11:09:44
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1 experiences and the process of standard library 11:09:46 2 practices that have been around longer than you've been 11:09:50 3 in the profession. 11:09:52 4 Do you see that? 11:09:53 5 A. Yes, there are some that have been longer than I 11:09:54 6 have, that's true. 11:09:58 7 Q. And are there also some that have started after 11:10:02 8 you began in the profession? 11:10:05 9 A. Yes, there are somethings that we don't do 11:10:06 10 anymore and things we do differently. I would suggest 11:10:08 11 that the majority of those changes have been driven by 11:10:13 12 technology of one type or another. 11:10:17 13 Q. Has the internet been a big driver in that? 11:10:20 14 A. It has been to some extent. I think the 11:10:25 15 automation of library processes was probably more 11:10:36 16 important than the internet. 11:10:38 17 Q. When you say automation of processes, are you 11:10:40 18 referring to things like barcode scanning? 11:10:44 19 A. When I started, we checked everything out by 11:10:46 20 hand and you wrote your name on a card. And now, you 11:10:49 21 scan your library card with its barcode, it matches the 11:10:57 22 barcode of the item that you want to take home. 11:10:59 23 And you may have found it through the catalog 11:11:03 24 online. When I started, we were still flipping through 11:11:12 25 three-by-five cards and checking things out with a 11:11:16 Page 50	1 in rules was in 2013. 11:12:56 2 So how we transcribe and the framework has 11:12:58 3 really changed since they started in the '60s. But 11:13:04 4 basically, MARC records were found only in dare I say 11:13:08 5 many computers that libraries had to purchase in the 70s 11:13:13 6 and into the 80s. 11:13:19 7 We didn't have all these desktop ideas. We had 11:13:23 8 dumb VT 100 terminals and they hooked to a mainframe or 11:13:26 9 a mini computer. 11:13:30 10 And every library that had an online catalog had 11:13:31 11 to promise the company they'd hire a person who was 11:13:34 12 literally the computer person who wore a white coat and 11:13:37 13 ran around taking care of the equipment. 11:13:41 14 So the MARC records were there and not -- only 11:13:46 15 the larger libraries could afford automation at that 11:13:51 16 time. 11:13:57 17 Over the years the number of companies that 11:13:58 18 manufactured the software has decreased. The market 11:14:00 19 share that each one has is pretty measurable. 11:14:03 20 But the MARC records as they became more 11:14:06 21 sophisticated so did the software that manipulated the 11:14:11 22 data. 11:14:14 23 And now only the smallest private libraries or 11:14:14 24 some small schools would not have MARC records of some 11:14:22 25 sort in even the most rudimentary of integrated systems 11:14:26 Page 52
1 rubber stamp and an ink pad. 11:11:23 2 So things have really changed. The internet 11:11:25 3 from my perspective is just one more way that we package 11:11:29 4 content. 11:11:33 5 It is not replacement for anything but an 11:11:37 6 add-on. So streaming videos, streaming books that you 11:11:39 7 can hear in your car, that sort of thing, to me is a 11:11:45 8 packaging issue rather than a content issue. 11:11:48 9 Q. So how did MARC records work before the 11:11:55 10 internet? 11:11:59 11 A. They worked fine, except that they weren't as 11:11:59 12 well-known. And they were pretty much contained within 11:12:02 13 the library arena only. 11:12:08 14 The earliest automation started at the Library 11:12:14 15 of Congress after World War Two when people from the 11:12:17 16 Department of Defense were on the government payroll and 11:12:20 17 had to have something to do. 11:12:22 18 So they sent them over to the Library of 11:12:24 19 Congress and said we've got a lot of data, we need to 11:12:27 20 manage it better. 11:12:29 21 And MARC grew out of that. I think I cite the 11:12:32 22 document in my report because it was so dramatic that 11:12:38 23 MARC records came into being. 11:12:44 24 They've evolved over the years, more fields, 11:12:46 25 more opportunities to record data. The last major shift 11:12:51 Page 51	1 that runs on some kind of computing device. 11:14:34 2 MR. HALVERSON: So we've been going a little 11:14:38 3 over an hour. Are you holding up all right, you want to 11:14:40 4 take a quick break, do you want us to keep going? 11:14:43 5 MR. VLASIS: Take at a quick break. 11:14:45 6 THE WITNESS: Let's take a break because this is 11:14:47 7 way too fun. 11:14:49 8 MR. HALVERSON: Sounds good, you want to take 11:14:53 9 ten minutes? 11:14:54 10 THE WITNESS: That would be great. 11:14:56 11 MR. HALVERSON: All right, we'll be back in ten 11:14:57 12 minutes. 11:14:58 13 VIDEO OPERATOR: We are off the record. The 11:14:59 14 time is 12:15 p.m. 11:15:02 15 11:29:40 16 (Recess taken.) 17 11:29:58 18 VIDEO OPERATOR: We are back on the record. The 11:30:08 19 time is 12:30 p.m. 11:30:11 20 BY MR. HALVERSON: 11:30:15 21 Q. Dr. Ellis, I'm going to share this back up again 11:30:16 22 so that you still have it on the screen. 11:30:18 23 A. Okay. 11:30:23 24 Q. Do you still see your report, which has been 11:30:23 25 marked as Exhibit 1? 11:30:27 Page 53

1 A. I do. I'm on page 18, paragraph 37 is what I 11:30:33 2 see. 11:30:36 3 Q. Okay, so we'll move a little bit forward to 11:30:40 4 publication 1. 11:30:42 5 A. Oh, my goodness, okay. 11:30:44 6 Q. We're moving in a blistering pace. 11:30:48 7 A. Well, there's only 13, so we're in good shape. 11:30:51 8 Q. So you had given a rough outline of how you go 11:30:56 9 about doing this. And forgive me for paraphrasing if I 11:30:59 10 miss anything here. And please do correct me. 11:31:03 11 But in general, it was first you verified a 11:31:07 12 citation, then you obtained a copy from a library, then 11:31:09 13 you do some analysis, identification of MARC record, and 11:31:13 14 then you may look for other information. And one of the 11:31:18 15 examples you gave was copyright date, for example. 11:31:21 16 Do you recall this? 11:31:30 17 A. Yes. 11:31:30 18 Q. Did I miss anything or mischaracterize anything 11:31:32 19 there? 11:31:35 20 A. No. At a really high level, this is it. 11:31:36 21 Q. So those are the steps that you applied for all 11:31:47 22 of the publications that you analyzed in your report, 11:31:50 23 right? 11:31:52 24 A. Yes. 11:31:52 25 Q. So the first step of citation verification, 11:31:57 Page 54	1 more. 11:33:17 2 Q. So how did you find that it was found in the New 11:33:17 3 York Public Library? 11:33:20 4 A. Well, I can find where things are located by 11:33:21 5 using OCLC's bibliographic database. I can tell that or 11:33:24 6 I can tell in WorldCat. 11:33:29 7 But I don't go to these places. And I use an 11:33:30 8 agent to procure copies for me. 11:33:35 9 Q. And who is that agent? 11:33:42 10 A. I used for this one -- and please note there may 11:33:43 11 be some in here I didn't use the same one. 11:33:46 12 For this one, I used the Wisconsin Tech Search 11:33:50 13 Service out of the University of Wisconsin. 11:33:54 14 Q. And so what does that mean, what happened? 11:33:59 15 A. They run a service for professionals. And I 11:34:04 16 have met these people, I have been there actually in 11:34:07 17 person. 11:34:10 18 I will send a citation and say can you please 11:34:10 19 obtain for me this document, and for a fee they will do 11:34:16 20 that. 11:34:22 21 Q. And so do you know, does the person at Wisconsin 11:34:23 22 library go to New York City to pull that or do they have 11:34:34 23 a copy already that has been digitized and they send you 11:34:39 24 a copy of that digitized version? 11:34:42 25 A. Both are good ideas. Neither of which is what 11:34:45 Page 56
1 where did that original citation come from? 11:31:59 2 A. I get a list of documents from the lawyer saying 11:32:04 3 these are the items we would like to you look at. 11:32:10 4 Q. Do you get a copy of the item, or do you just 11:32:16 5 get like the title or the author or something? 11:32:18 6 A. It varies depending on who it is and what firm 11:32:20 7 it is. But it doesn't matter to me because I don't use 11:32:24 8 their copies. 11:32:28 9 Q. Here -- 11:32:33 10 A. Yeah. 11:32:34 11 Q. Go ahead. 11:32:34 12 A. I was going to say sometimes I get them and 11:32:36 13 sometimes I don't get them. But whether or not I get 11:32:38 14 them isn't very important to me because I have to get my 11:32:43 15 own. 11:32:49 16 Q. So for publication one, it says that the 11:32:50 17 Burghartz 1998 article was published, then you give the 11:32:57 18 journal that it was published in and the volume number. 11:33:02 19 It goes on to say it was found in the New York 11:33:04 20 Public Library. 11:33:06 21 Do you see that? 11:33:07 22 A. I do. 11:33:08 23 Q. Did you go to the New York Public Library to 11:33:08 24 find it? 11:33:11 25 A. No, no, I don't do that sort of anything any 11:33:12 Page 55	1 happens. They will inquire on my behalf to get a copy 11:34:48 2 that is made specifically for me because I requested it. 11:34:58 3 So there aren't copies sitting around, no. 11:35:02 4 Q. So this person at the University of Wisconsin 11:35:07 5 Library gets a phone call or an e-mail from you saying I 11:35:09 6 need a copy of the Burghartz 1998 reference and you 11:35:12 7 provide them the information about that reference. 11:35:17 8 They then call the New York Public Library and 11:35:18 9 get a photocopy made of the journal article and send you 11:35:22 10 that photocopy back? 11:35:28 11 A. Right, and then they charge me a fee, which I'm 11:35:33 12 happy to pay. 11:35:38 13 Q. So if we go to page 335, which you don't have? 11:35:48 14 A. Let me see it, it will be exciting. 11:35:50 15 Q. You got it up there? 11:35:53 16 A. I see exhibit 1, the cover sheet. Okay, this is 11:35:54 17 it. 11:36:04 18 Q. So this is exhibit 1, which is your 11:36:04 19 understanding it was a copy that was made at the New 11:36:06 20 York City Library for this person in Wisconsin? 11:36:08 21 A. Yes. 11:36:12 22 Q. Looking at this, is there anyway to tell who it 11:36:22 23 is who made that copy? 11:36:24 24 A. Well, no it doesn't matter who made it. If they 11:36:25 25 work at the library, they're empowered to make copies on 11:36:28 Page 57

1 demand. 11:36:31 2 So could have been -- it likely was not a 11:36:31 3 librarian, I will tell you that. 11:36:36 4 But it does not say person X, no. 11:36:37 5 Q. And is there anything on this sticker -- and I'm 11:36:43 6 happy to go and see if there's a sticker on the back 11:36:45 7 cover as well. 11:36:47 8 But is there anything on this sticker that 11:36:48 9 indicates this is found in the New York Public Library? 11:36:50 10 A. I don't think that we can really read that on 11:36:57 11 this one. And sometimes we can and sometimes we can't. 11:36:59 12 And when we cannot, I ask where did it come 11:37:04 13 from? And they're very accustomed to my saying which 11:37:10 14 library supplied this if I can't tell by looking at it. 11:37:16 15 They know I want to know. 11:37:18 16 Q. Which raises another question: Do you tell the 11:37:21 17 University of Wisconsin folks where you want them to 11:37:24 18 look or do they just find a copy of it for you? 11:37:26 19 A. Very rarely do I say it's only in a particular 11:37:31 20 location. I don't really worry about where it comes 11:37:37 21 from because the method that they use to acquire it is 11:37:42 22 global. 11:37:45 23 And a copy is a copy to me as long as it comes 11:37:47 24 from the library that owns the document. I don't really 11:37:52 25 get involved with that unless there is a mitigating 11:37:56 Page 58	1 Q. So if we go back to your report, and we look at 11:39:38 2 page 19 of your report. 11:39:41 3 A. Right, I'm there. 11:39:43 4 Q. We're looking at a couple of paragraphs 11:39:44 5 describing attachments. 11:39:47 6 A. Um-hmm, 1A. 11:39:50 7 Q. 1A and 1B? 11:39:52 8 A. Um-hmm. 11:39:54 9 Q. So are any of those attachments able to 11:39:58 10 establish to you the date that this journal was received 11:40:00 11 into the New York Public Library? 11:40:05 12 A. No, no, that's a problem with journals. And so 11:40:08 13 I had to go on into paragraph 41 to describe what I had 11:40:13 14 to do because I can't read black on black. 11:40:16 15 Q. And so in paragraph 41, you're describing the 11:40:23 16 MARC data in 1C, 1D, 1E, 1F for this publication; is 11:40:34 17 that right? 11:40:43 18 A. Yes, I did do that, yes. 11:40:43 19 Q. And you also earlier in this same paragraph 11:40:49 20 describe what you called the metadata record from the 11:40:51 21 New York Public Library; is that right? 11:40:53 22 A. Yes, yes. 11:40:55 23 Q. So if we go to 1B -- bear with me I'll get it up 11:41:01 24 on the screen. 11:41:08 25 A. Okay, 1 -- 11:41:10 Page 60
1 circumstance that I must have it from a certain place. 11:38:01 2 Q. In the interest of full disclosure, I don't know 11:38:06 3 if you can see on the screen or not, but it does look 11:38:08 4 like there might be a stamp here in this region. 11:38:11 5 Can you see my mouse? 11:38:15 6 A. I can see the mouse but not the stamp. 11:38:16 7 Q. So I'll represent that it looks like it is black 11:38:20 8 on black and it may say N-Y-P-L with some numbers that I 11:38:22 9 can't read and then a couple of partial characters. 11:38:29 10 Is that what you would expect to see on the 11:38:34 11 cover of a book that has been received by a library? 11:38:36 12 A. I would expect a magazine to have that, yes, and 11:38:39 13 I would have expected the person doing the stamping to 11:38:43 14 have opened it and gone to a page that you could read 11:38:48 15 it, 'cause this is, it's not very helpful. 11:38:51 16 I mean, the fact that it's there is wonderful. 11:38:58 17 But I can't read it and so I would not base my opinion 11:39:00 18 on that because I can't read it. 11:39:07 19 And if I can't read it, I am not convinced 11:39:09 20 anyone else could read it. 11:39:11 21 So great that you can but I couldn't. So I am 11:39:15 22 saying good idea, I know it's from that library, I know 11:39:17 23 it's an accurate copy of the article I want. 11:39:23 24 But I have to go a little bit further to get a 11:39:26 25 date because I can't read that. 11:39:29 Page 59	1 Q. You see the attachment 1B here, right? 11:41:12 2 A. I do, yes. 11:41:14 3 Q. So what do you see here -- and I'm happy to 11:41:20 4 scroll anywhere else, what do you see here that tells 11:41:22 5 you when publication 1 was received into the New York 11:41:25 6 Public Library? 11:41:29 7 A. It doesn't. And that's one of the difficulties 11:41:30 8 we have with serials. 11:41:36 9 There is an online system that allows an 11:41:37 10 indication to be recorded of an issue receipt but that 11:41:43 11 isn't visible to the public. 11:41:50 12 And therefore what this tells me is a lot of 11:41:51 13 great information but not the date that any individual 11:41:56 14 issue arrived. 11:41:59 15 Q. With this same publication, I want to go into 11:42:38 16 another of the attachments where we talk about what I 11:42:41 17 believe you were referring to as indexing? 11:42:44 18 A. Paragraph 44. 11:42:51 19 Q. Yep, spot on. 11:42:52 20 A. Okay. 11:43:02 21 Q. So pull up 1G. See 1G of Exhibit 1 on the 11:43:02 22 screen now? 11:43:18 23 A. I do, yes. Okay, I see it. 11:43:19 24 Q. So is there anything in attachment 1G of Exhibit 11:43:27 25 1 that explains when the New York Public Library 11:43:33 Page 61

1 received that edition of that publication? 11:43:36	1 A. Any library. 11:47:11
2 A. No, because you're asking MARC records to do 11:43:40	2 Q. So if I walked in -- I'm in Washington DC today 11:47:13
3 something they don't do. 11:43:43	3 and it's not a good example because I don't know any 11:47:18
4 Q. Okay, and so what we do see in those MARC 11:43:47	4 libraries in DC.
5 records are more of those subject matter 11:43:50	5 But let's say I was in New York today and I 11:47:23
6 classifications; is that right? 11:43:53	6 walked into the New York Public Library and I used their 11:47:24
7 A. Yes, we do see subject headings and this time we 11:43:53	7 search function and I put in microwave devices, \$X, 11:47:26
8 only see a few. 11:43:56	8 computer-aided design, \$V, periodicals, into their 11:47:31
9 Q. We talked about zero and 7 earlier. What is 17? 11:44:01	9 search term analysis, what would I get? 11:47:35
10 A. 17 is assigned not at the Library of Congress 11:44:05	10 A. It would be great except don't put in the dollar 11:47:40
11 and these are from the Getty. So the Getty in 11:44:09	11 sign with delimiters because that would just confuse the 11:47:42
12 California has a number of authenticated lists of terms. 11:44:15	12 issue and they would only find the first one. 11:47:45
13 And they can be used as subject headings if 11:44:22	13 So put in microwave devices computer-aided 11:47:47
14 someone chooses to do that as long as in subfield 2, 11:44:24	14 design periodicals, you would get a list of magazines 11:47:51
15 they say that's where they came from. And they have 11:44:29	15 and this magazine will be among them now. 11:47:53
16 done that. 11:44:32	16 Now I don't know how many -- 11:47:56
17 Q. And so what you're looking at there is the -- 11:44:35	17 Q. You have -- that was my next question but do you 11:47:56
18 after the \$2, the GTT? 11:44:39	18 have a sense of how many may be returned with those -- 11:47:59
19 A. Right. 11:44:42	19 A. No. I imagine a few but I wouldn't begin to 11:48:02
20 Q. And you in your experience in the industry for 11:44:45	20 guess. I would say that probably more than one. 11:48:08
21 as long as you've been in the industry know that GTT 11:44:47	21 But I don't know that. It depends on what 11:48:14
22 means Getty? 11:44:51	22 library you are querying, how many results you'll get, 11:48:25
23 A. Yes. 11:44:54	23 because if you type that same search string into a 11:48:28
24 Q. And those descriptor terms that we were just 11:45:30	24 library, say, in California, you get a whole lot more. 11:48:34
25 looking at and that are described in a little bit more 11:45:32	25 So -- 11:48:41
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1 detail on page 44 of your report, one example of them, 11:45:34	1 Q. Why is that? 11:48:41
2 the example that you include in paragraph 44 first, is 11:45:39	2 A. Because this type of work tends to happen out 11:48:42
3 microwave devices, \$X, computer aided design, \$V, 11:45:42	3 there. And libraries in many ways reflect the 11:48:48
4 periodicals, right? 11:45:49	4 anticipated information needs of its clientele. 11:48:55
5 A. Yes, it says that. 11:45:53	5 So if people -- if the industry is near the 11:48:59
6 Q. What does that mean? 11:45:54	6 library, people who work in that industry, there will 11:49:03
7 A. What does that mean. In general terms, it tells 11:45:57	7 tend to be more resources for that topic. 11:49:08
8 me two things. One is the subject heading had to be 11:46:01	8 If it's university and graduate degrees are 11:49:11
9 constructed by the cataloguer who created the record 11:46:04	9 offered in a discipline, there will be more magazines 11:49:15
10 because that string of terms was put together for this. 11:46:07	10 about that discipline than disciplines where no degree 11:49:19
11 So it doesn't always occur in this order. It 11:46:16	11 is granted. 11:49:22
12 also means the main topic is microwave devices, with a 11:46:18	12 It's granted at some other place. So there 11:49:24
13 subset of the computer-aided design of them, and only 11:46:22	13 is -- 11:49:29
14 journals. 11:46:28	14 Q. So will that -- I'm sorry, go ahead. I'm sorry. 11:49:29
15 So if you put in that term the way it appears 11:46:30	15 A. No, I was going to say there is that difference. 11:49:31
16 there, you're only going to get a list of magazines, no 11:46:34	16 But the terms are the same and they're used across the, 11:49:33
17 books because you have subfield V, which is a form 11:46:38	17 I guess, the greater body of information there. 11:49:48
18 subdivision saying I only want journals or magazines. 11:46:45	18 So if you go to WorldCat, you'll get even more. 11:49:51
19 Q. When you say put in the terms, to where do you 11:46:51	19 So you need to be, I think, cognizant of what kind of 11:49:56
20 put those terms in? 11:46:54	20 clientele use the library where you're making that 11:50:00
21 A. If you were in the online catalog of the 11:46:55	21 search. 11:50:03
22 library, you have an option to search by subject, type 11:46:59	22 But it does not mean the search won't work. 11:50:04
23 in those words. 11:47:05	23 Just means the results will vary based on where you're 11:50:06
24 Q. When you say the library, which library are you 11:47:09	24 making the query. 11:50:12
25 referring to there? 11:47:11	25 Q. And so will the results be limited to the 11:50:12
Page 63	Page 65

1 periodicals in this case the journals that are within 11:50:17 2 that library in which I'm doing the search? 11:50:21 3 A. It will be unless -- as we have in a lot of 11:50:24 4 places, libraries belong to groups or consortia. 11:50:27 5 And in New York, they have regional service 11:50:30 6 centers, which are conglomerates of numbers of counties 11:50:35 7 of libraries of all types. 11:50:39 8 And you may well see an option search in our 11:50:41 9 area, which expands it to other libraries, which means 11:50:48 10 you will get more results, and that's very common. 11:50:51 11 In New York, I don't remember how many there are 11:50:55 12 but 14, 12, I don't know, some good sized number of 11:50:57 13 consortia allow you to search. You may also have other 11:51:04 14 options: Search everywhere or search WorldCat or 11:51:09 15 search, you know, the State of New York, who knows. 11:51:14 16 So that will vary. 11:51:15 17 Q. And so for those consortia, does the library 11:51:21 18 have to opt in to be part of the consortia? 11:51:28 19 A. You have to -- it depends on the state. You 11:51:29 20 have to opt in to say we'll loan things or we'll supply 11:51:32 21 materials if someone makes a request because you can opt 11:51:39 22 out, libraries can opt in or out. 11:51:44 23 But the default is opt in. 11:51:47 24 Q. So if the default is opting in, why are the 11:51:58 25 search results different across which library I'm 11:52:05 Page 66	1 It does -- because every issue of the magazine 11:53:51 2 no matter where it's received looks the same. So to me, 11:53:53 3 New York Public is just fine. 11:53:57 4 Q. I'm going to jump ahead a little bit to page 33 11:54:10 5 of your declaration -- or, I'm sorry, of your report? 11:54:14 6 A. Okay, 33, I'm on page 33, paragraph -- the 11:54:21 7 bottom of 66, 67, and 68; is that right? 11:54:25 8 Q. That is correct. 11:54:31 9 A. Okay, just want to be sure I'm in the right 11:54:33 10 place. 11:54:37 11 Q. So paragraph 68 talks a little bit about the 11:54:37 12 Copyright Office. 11:54:40 13 Do you see that? 11:54:40 14 A. I do. 11:54:41 15 Q. When does the Copyright Office decide -- sorry. 11:54:42 16 How does the Copyright Office decide the date to 11:54:50 17 apply for the registration date? 11:54:55 18 A. They don't decide that. The process requires 11:54:58 19 the agent of the author, generally the publisher, to 11:55:03 20 file an application to register copyright. 11:55:07 21 And that is another department of the Library of 11:55:11 22 Congress. The agent must supply at least two copies of 11:55:14 23 the document itself, make an application, fill out all 11:55:20 24 the required information, and then deposit that, waiting 11:55:24 25 for a copyright reviewer to do the work involved to say, 11:55:29 Page 68
1 searching from? 11:52:07 2 A. Because search -- ideally the way things are 11:52:09 3 generally set up, it initially will search only the 11:52:13 4 collection of that institution. 11:52:17 5 So you have to expand the number of institutions 11:52:23 6 searched in order to expand the results. 11:52:25 7 Q. So your section here goes on to talk about how 11:52:29 8 this publication, exhibit 16 your Exhibit 1 report that 11:52:41 9 we're talking about today, is cataloged in the Library 11:52:47 10 of Congress. 11:52:51 11 Can I go into the Library of Congress and type 11:52:51 12 in those character strings and find this? 11:52:53 13 A. Yes, yes. 11:52:56 14 Q. So how did you come to decide to use the New 11:53:08 15 York Public Library as opposed to the copy in the 11:53:12 16 Library of Congress for your report? 11:53:15 17 A. The Library of Congress primarily is not 11:53:16 18 designed as a public library but rather to serve the 11:53:22 19 needs of people who serve in Congress or in the federal 11:53:25 20 government. 11:53:28 21 So I get things from them occasionally because 11:53:30 22 they do hold some resources that others don't have. But 11:53:32 23 generally there is some time element, and if getting a 11:53:36 24 copy of something from another institution is quicker, 11:53:43 25 that's fine with me. 11:53:47 Page 67	1 yes, we will issue a copyright. 11:55:36 2 So unfortunately for us, the number of copyright 11:55:38 3 reviewers is not enough to keep up with the demand so 11:55:44 4 there is usually a lag. These days can run three to six 11:55:49 5 months. 6 And at some point, an individual who works in 11:55:54 7 the copyright office reviews everything and says, yes, 11:55:58 8 indeed, we are registering this document or this book 11:56:02 9 with a copyright. 11:56:08 10 And here's the number we've assigned and this is 11:56:09 11 the date we did that. And the publisher tells us all 11:56:13 12 about the work, so who wrote it, what it's called, when 11:56:17 13 it was published, where it was published, that sort of 11:56:20 14 information becomes part of a public database that 11:56:25 15 anyone can search, which is part of the services of the 11:56:29 16 Copyright Office. 11:56:33 17 Q. This July 2nd, 1999 date, you see that? 11:56:39 18 A. Yes. 11:56:44 19 Q. Is that the date that the application was made 11:56:44 20 or is that a different date? 11:56:49 21 A. No, that's the date the copyright was issued. 11:56:51 22 So the application predated that. 11:56:55 23 Don't know by how much. Probably not too much, 11:56:59 24 because the publication date is within 30 days. So it 11:57:04 25 was a fairly quick review this time. 11:57:10 Page 69

1 Q. And so what is the relationship between the 11:57:18 2 publication date and the copyright date that allows you 11:57:20 3 to say it was a fairly quick review time? 11:57:22 4 A. Because the publisher has to say we published 11:57:24 5 the book on whatever date. And here they're saying June 11:57:30 6 13th, and this is an attachment to my report, said June 11:57:34 7 13th, well, okay, fine. 11:57:39 8 The copyright registration and the assignment of 11:57:44 9 the number was July 2nd. That's not terribly long later 11:57:47 10 so that was a pretty expedient review. 11:57:51 11 Q. So the process is the publisher picks the 11:57:58 12 publication date and then prints the book or the paper 11:58:02 13 in this case I guess it was a four-volume set? 11:58:04 14 A. Right. 11:58:07 15 Q. -- four volume set, the publisher's agent takes 11:58:08 16 that four-volume set, sends it to the Copyright Office 11:58:10 17 to apply for a copyright registration, the Copyright 11:58:14 18 Office receives that, processes that, and then on July 11:58:18 19 2nd, 1999, conferred the copyright on the work? 11:58:22 20 A. Yes. 11:58:28 21 Q. Can you search the Copyright Office for works 11:58:33 22 that have been registered? 11:58:37 23 A. You can search for any kind of work that was 11:58:44 24 published in the US. I will tell you my experience, 11:58:46 25 suggests you will not find everything. But you can 11:58:49 Page 70	1 Q. Is there a relationship between the cataloging 12:00:20 2 and index data that we were looking at earlier and the 12:00:23 3 copyright process? 12:00:26 4 A. There is -- oh, hang on, someone's at my door. 12:00:32 5 Can you give me two seconds. 12:00:36 6 MR. HALVERSON: Sure, let's go off the record 12:00:39 7 real quick. 12:00:40 8 VIDEO OPERATOR: We are off the record. The 12:00:41 9 time is 1 o'clock p.m. 12:00:42 10 12:01:44 11 (Whereupon a discussion was held off 12 the record.) 13 12:01:46 14 VIDEO OPERATOR: We are back on the record. The 12:01:49 15 time is 1:01 p.m. 12:01:51 16 BY MR. HALVERSON: 12:01:54 17 Q. Dr. Ellis, can you still see Exhibit 1, your 12:01:55 18 report, up on the screen? 12:01:57 19 A. Yes, I see paragraphs 67 and 68 primarily. 12:01:59 20 Q. So the question just before UPS showed up was is 12:02:03 21 there a relationship between the cataloging and index 12:02:08 22 data that we were looking at earlier and the copyright 12:02:13 23 process that we're talking about right now? 12:02:15 24 A. That's an interesting question. There is 12:02:17 25 relationship in that the author and the title need to 12:02:27 Page 72
1 certainly look. 11:58:50 2 Q. What experience are you -- can you give a little 11:58:58 3 bit more context for that? 11:59:00 4 A. I look for every book because if I can find that 11:59:01 5 information to me that's further evidence that the item 11:59:03 6 actually existed on a certain date. 11:59:07 7 So I will look generally by title. You can also 11:59:10 8 search by author, you can search by secondary authors. 11:59:15 9 But generally it's either title or one of the 11:59:25 10 authors. There are, I think, five different ways to 11:59:27 11 search the copyright office. 11:59:30 12 And if they have a record, a single record it 11:59:32 13 will pop up. Otherwise if it's some prolific author, 11:59:36 14 you'll get a list and you have to pick the book that you 11:59:42 15 want to see the record for. 11:59:45 16 And sometimes there's no record at all. So it 11:59:46 17 depends but to me it's worth a look. 11:59:51 18 Q. And if there's no record at all does that 11:59:54 19 necessarily mean that the book was not submitted to the 11:59:56 20 Copyright Office or is that some sort of reflection on 11:59:59 21 the recordkeeping within the Copyright Office? 12:00:01 22 A. No, I think it means they didn't apply, they 12:00:07 23 just said it's copy written and that's good enough. 12:00:09 24 And that happens. But to say they're sloppy, I 12:00:12 25 don't -- I don't think so. 12:00:17 Page 71	1 match. And the publisher needs to match. 12:02:30 2 So there is that relationship. And there is the 12:02:32 3 practice of many items deposited in the Copyright Office 12:02:36 4 find their way into the collection at the Library of 12:02:41 5 Congress. 6 But direct relationship in terms of work flow, 12:02:48 7 no. 12:02:49 8 Q. So the Copyright Office does not create a MARC 12:02:54 9 record? 12:02:56 10 A. No, that's an independent function. They happen 12:02:56 11 to be under the umbrella of the Library of Congress, but 12:02:58 12 no, the copyright people aren't out there making marked 12:03:03 13 records. 12:03:06 14 Q. And do you know, can I walk into the Copyright 12:03:11 15 Office and obtain a copy of something that has been 12:03:13 16 submitted to the Copyright Office for copyright 12:03:16 17 registration? 12:03:18 18 A. I believe you can get a copy of the application. 12:03:19 19 I've seen them occasionally but not very often. But I 12:03:22 20 have seen them. 12:03:29 21 Q. Do you know can you get the underlying work or 12:03:30 22 just a copy of the application? 12:03:32 23 A. I don't know. I know that the work tends to get 12:03:34 24 into the collection. 12:03:39 25 So you might be told we have it but now it's 12:03:41 Page 73

1 upstairs in the library. And that's okay, but I've 12:03:45 2 never tried to do that. 12:03:52 3 Q. So you mention in your four-step process of 12:04:00 4 citation verification: Get a copy, look at the I. D. 12:04:02 5 Stuff and then look at the other information. 12:04:08 6 Copyright Office was one thing that you looked 12:04:10 7 at for that other information. Was there other sources 12:04:12 8 that you would look at for that fourth step? 12:04:16 9 A. Besides the copyright? I'd scan around to see 12:04:19 10 particularly for conference papers and journal articles 12:04:27 11 if I can find a copy in another location. 12:04:29 12 And generally that's going to be a digital 12:04:36 13 repository. And if I can find it, I oftentimes will 12:04:38 14 note that in my reports or my declarations. 12:04:41 15 Not because I'm relying on the dates but because 12:04:46 16 to me it gives evidence that this is not an obscure 12:04:49 17 document, it's easily found. 12:04:53 18 And I think it's okay to say, well, I used this 12:05:00 19 copy because I know it's authentic from this location. 12:05:04 20 But if you're a more casual seeker of this document you 12:05:06 21 might find it somewhere else, and I'll tell you at least 12:05:10 22 a little bit about where else I found it? 12:05:14 23 Q. So I know there's an example of in this here. 12:05:22 24 Give me just a second and I'll find it. If you know of 12:05:24 25 one off the off the top of my head, maybe you can short 12:05:31 Page 74	1 exhibit 4, you're talking about the red Linda Hall 12:07:10 2 Library stamp there? 12:07:13 3 A. Yes, and you can see it. It's a little smudgy, 12:07:14 4 I grant you. Because it is important to remember, I 12:07:17 5 think, that the people who do the stamping are usually 12:07:21 6 clerical helpers, sometimes student helpers, and they 12:07:24 7 are not stamping for our benefit. 12:07:28 8 So they don't worry about it. They're stamping 12:07:33 9 to say it belongs to the library and you the reader of 12:07:35 10 in the library may not take it home. 12:07:38 11 I mean, we don't want the copies because some of 12:07:42 12 these journals are incredibly expensive and we want them 12:07:44 13 to continue to be available in the library. 12:07:49 14 So the library wants to assure everyone, we, 12:07:51 15 yes, we received it, we've paid for it, we've received 12:07:58 16 it and we've retained it. 12:08:00 17 And that's an important process. So this stamp 12:08:01 18 says this is the day it showed up so I describe that. 12:08:03 19 Q. So on this stamp we see June 10th, 2003, or June 12:08:11 20 16th or maybe 18th, 2003? 12:08:16 21 A. Yeah, I think it's the 16th from my expanding it 12:08:19 22 to like 250 percent, and that was my best estimate was 12:08:21 23 it was the 16th. 12:08:29 24 I know it's hard to read. But my little eyes 12:08:30 25 said the 16th. If it's the 18th its -- 12:08:34 Page 76
1 circuit my -- 12:05:34 2 A. If you want to see it if we look at publication 12:05:35 3 number 4, starting on page 29. We're talking about a 12:05:39 4 journal article. 12:05:49 5 And if you scan down to near the bottom of 12:05:49 6 paragraph 59, I'll tell you where else I found it. 12:05:53 7 Q. So here you're saying, the Burghartz 2003 12:05:59 8 article is also available on IEEE Xplore as well as 12:06:03 9 ResearchGate, and Semantic Scholar. 12:06:09 10 So you're using those other sources of 12:06:12 11 information as examples of why it is your opinion that 12:06:16 12 the Burghartz 2003 article was available to the relevant 12:06:18 13 population, right? 12:06:23 14 A. Right, right. And if you read further in this 12:06:24 15 you'll see I talk about the stamp. And in this case the 12:06:36 16 stamp put on the document by the library is legible. 12:06:38 17 And that's described in paragraph 61. So I tend 12:06:41 18 to do that if I can read it and it's present. 12:06:44 19 But when I can't, I don't say the stamp is there 12:06:51 20 and I can't read it, generally I don't talk about the 12:06:54 21 stamp. 12:06:56 22 If I can't read it, I don't worry about it. 12:06:57 23 Because if I can't see it, I don't expect others to see 12:07:01 24 it. 12:07:04 25 Q. So here we're looking at the cover of that 12:07:09 Page 75	1 Q. It's two days. So the publication date on the 12:08:40 2 cover of this electronic device that's exhibit 4 to your 12:08:43 3 report is March 2003, right? 12:08:47 4 A. That's true. Well, it might be the 10th. Well, 12:08:52 5 okay, that 10th is easier to read than the 16th. But 12:09:10 6 we're within a week and I know it was there. 12:09:14 7 They stamped this so much times, too many 12:09:19 8 times -- 12:09:25 9 Q. This last copy -- 12:09:25 10 A. -- is better. 12:09:26 11 Q. On page 245 is on the face of 245 and the paper 12:09:27 12 itself is probably pretty thin and we see the reverse 12:09:32 13 image on 246? 12:09:36 14 A. Yes, we do, okay. I would concede that the 10th 12:09:41 15 is probably more clear and the cover is smudgy, I grant 12:09:44 16 you, it's pretty smudgy. 12:09:48 17 Q. So for this exhibit, exhibit 4, go back to your 12:10:00 18 report, page 29, paragraph 59? 12:10:07 19 A. Okay, I'm there. 12:10:12 20 Q. So Burghartz 2003 is an article that was found 12:10:13 21 in a Linda Hall Science and Engineering Technology 12:10:19 22 Library, right? 12:10:25 23 A. Right. 12:10:25 24 Q. That's in Kansas City? 12:10:29 25 A. Yes, it is. 12:10:31 Page 77

1 Q. And so was the same process used where just -- 12:10:32 2 you contacted University of Wisconsin. Walk me through 12:10:40 3 how this one worked. 12:10:44 4 A. Nope. Linda Hall is a private endowed library 12:10:45 5 that has very rich holdings in the sciences and 12:10:51 6 engineering. 7 And a lot of times, they have items that other 12:10:58 8 libraries don't have. They do a great deal of 12:11:00 9 cataloging and they're particularly skilled at that 12:11:03 10 there. 12:11:08 11 If I want something from the Linda Hall Library, 12:11:09 12 I have an account there and I can ask them directly 12:11:11 13 please make me a copy of fill in the blank, whatever I 12:11:13 14 want, and send it to me electronically. 12:11:17 15 And they do so. They charge me the copyright 12:11:19 16 fee and the copying fee, I'm happy to pay. 12:11:23 17 Q. I don't have an account at the Linda Hall 12:11:26 18 Library. Could I do the same thing? 12:11:30 19 A. If you have a Mastercard or American Express you 12:11:32 20 too can have an account. They're very easy to setup and 12:11:36 21 they deliver things electronically. 12:11:42 22 They will loan books, although I tend to ask for 12:11:46 23 scans more than for books. But, yeah, you too could 12:11:51 24 have an account if you wanted one. 12:11:54 25 Q. And what is the fee that Linda Hall charges you 12:11:59 Page 78	1 A. I don't think so, 'cause remember, libraries 12:14:16 2 license their database with incredibly complex 12:14:18 3 contracts. And the price for the license is based on 12:14:22 4 the size of the potential user community so they don't 12:14:26 5 want interlopers necessarily because that would raise 12:14:33 6 the price. 12:14:38 7 Q. I want to go back two pages to 38, if you don't 12:14:55 8 mind. 12:14:56 9 A. Okay, I'm there, yeah, this is a thesis, okay. 12:14:59 10 Q. And paragraph 77, you say exhibit 7 what's found 12:15:03 11 within the custody of the custodian to whom the author 12:15:08 12 granted permission to make copies and reproductions. 12:15:12 13 Do you see that? 12:15:16 14 A. Yes, yes, I do. 12:15:17 15 Q. How do you know that? 12:15:18 16 A. Because a thesis is a paper that is the 12:15:25 17 intellectual property of the student based on secondary 12:15:29 18 research, which is a requirement for the awarding of the 12:15:32 19 degree. 12:15:38 20 And so the student, by the submitting that to 12:15:38 21 the graduate program, knows and agrees that copies can 12:15:42 22 be made by the institution if asked. 12:15:51 23 Q. Who is the custodian in that sentence? 12:15:55 24 A. I believe it to be the University of California 12:15:58 25 Berkeley. 12:16:05 Page 80
1 for the copyright fee and the counting -- excuse me, the 12:12:01 2 copying? 12:12:04 3 A. The most common copyright fee is \$32.50 and that 12:12:04 4 is for virtually everything published by IEEE, that is 12:12:10 5 their baseline, this is what we charge you. 12:12:16 6 So articles generally will cost between \$50 and 12:12:18 7 \$60 and that includes the copyright fee. 12:12:22 8 Q. So in your report at page 40, publication 8, let 12:13:05 9 me know when you get there. 12:13:11 10 A. Page 40. Oh, my goodness. Okay, page 40, 12:13:13 11 number 8, it's a book. Okay, I'm there, paragraph 83, 12:13:24 12 yes, I'm there. 12:13:32 13 Q. So is this the same as San Jose State that you 12:13:34 14 work at? 12:13:38 15 A. Yes. 12:13:39 16 Q. So did you need anything special to obtain this 12:13:42 17 copying of publication 8? 12:13:46 18 A. No. Because they let me use the library as much 12:13:48 19 as I choose and I have a library card and I get to do 12:13:52 20 that so I did. 12:13:56 21 Q. Could I get a library card at the San Jose 12:13:58 22 library? 12:14:03 23 A. I don't think so. You didn't go to school 12:14:03 24 there, you don't live there, probably not. 12:14:08 25 Q. Not even with a Mastercard or American Express? 12:14:13 Page 79	1 Q. And how do you know that exhibit 7 was found at 12:16:05 2 the University of California Berkeley? 12:16:08 3 A. I found it there. 12:16:09 4 Q. Two sentences earlier you say you received the 12:16:15 5 thesis from counsel? 12:16:18 6 A. I also got a copy from them because there's no, 12:16:19 7 I guess I have to say I think a thesis or a dissertation 12:16:24 8 is a more challenging document for lawyers to describe 12:16:29 9 initially. 12:16:39 10 And they get confused thesis and dissertation 12:16:40 11 sometimes and that's okay because the process varies a 12:16:43 12 little but not substantially once we figure out we've 12:16:48 13 got a graduate piece of work by a student. 12:16:54 14 Q. So the process for publication 7 was you got a 12:16:59 15 PDF of this thesis from the lawyers and then you went to 12:17:01 16 or otherwise contacted UC Berkeley library? 12:17:08 17 A. Yes, and got my own. 12:17:11 18 Q. And so did you do this or did you go through UW 12:17:13 19 Madison to do that? 12:17:19 20 A. No, they don't do that for me as a general rule 12:17:20 21 because they know I can do it myself. And this document 12:17:23 22 is online and it's easy to find this document. 12:17:26 23 This is not a hard document to find. And so 12:17:29 24 there was no reason to get terribly involved in that, 12:17:34 25 because it's very straight forward. 12:17:39 Page 81

1 Q. What did you do to find it? 12:17:42 2 A. Find this? If you go to your Google search 12:17:44 3 engine and go to Google Scholar and put in things like 12:17:48 4 FinFET and static frequency divider or VCO, this pops 12:17:53 5 right up. 12:17:59 6 Q. How many of those things do I have to put in the 12:18:03 7 search window of Google to get it to pop right up? 12:18:05 8 A. I don't know because FinFET is really -- you 12:18:09 9 want as many unique terms as you can get. And FinFET is 12:18:19 10 one, VCO is one. Those would be the first two I would 12:18:21 11 put in. 12:18:25 12 I don't know that the name of the person is that 12:18:26 13 necessary, it won't hurt, but this young man did not 12:18:32 14 write a lot after he got his degree as far as I can 12:18:35 15 determine. 12:18:38 16 Q. And you have been that because you've done some 12:18:43 17 poking into who Matthew Muh is-- 12:18:45 18 A. Yes, I poke into who everybody is if they're an 12:18:47 19 author because sometimes identifying the exact incident 12:18:50 20 of publication is a little more challenging. 12:19:03 21 And so I want to see did you right other things 12:19:06 22 or where is this individual working, am I sure I have 12:19:08 23 the right person. 12:19:11 24 So, yeah, but he hasn't been particularly 12:19:11 25 prolific as far as I can tell. 12:19:14 Page 82	1 A. I use Google Scholar on occasion but it is not a 12:20:40 2 primarily reference for me. When I'm using Google 12:20:46 3 Scholar, I'm getting a little frantic. 12:20:50 4 So I don't use it much but I have used it on and 12:20:53 5 off over the years. 12:20:55 6 Q. When you say frantic, what do you mean there? 12:21:03 7 A. I have used it in instances where I find 12:21:10 8 multiple instances of publication of a paper in two 12:21:11 9 versions in two places and I need to sort that out. 12:21:17 10 Or if I have an author who is more obscure and I 12:21:22 11 need to verify form of name, I will be in there looking 12:21:27 12 for that. 12:21:30 13 But generally Google Scholar, unless I need to 12:21:33 14 say something like this document of interest to me was 12:21:36 15 cited by this many other people before a certain date, 12:21:41 16 it's useful for that, if I need to do that. 12:21:45 17 But otherwise it's not a primary tool for me. 12:21:49 18 It's a very nice product, but you know, I only need so 12:21:54 19 much things and its purpose is different than mine 12:22:00 20 usually. 12:22:02 21 Q. Keep your finger on paragraph 79 for me and I'm 12:22:06 22 going to bring up 7-a on the screen. And we can do 12:22:09 23 this -- 12:22:17 24 A. Yeah, it's not a very long, it's a pretty short 12:22:18 25 record unfortunately. 12:22:20 Page 84
1 Q. Do you know him? 12:19:16 2 A. No. 12:19:18 3 Q. Have you talked to him? 12:19:19 4 A. Never. 12:19:21 5 Q. Have you talked to any of the authors in your 12:19:22 6 report? 12:19:26 7 A. No. 12:19:29 8 Q. So would it surprise you to learn that VCO and 12:19:29 9 FinFET return about 1,800 results on his Google Scholar? 12:19:35 10 A. It wouldn't bother me but I also know that you 12:19:39 11 can delimit by the date 2005 because his thesis has a 12:19:45 12 date on it. And so that will help cut that down 12:19:52 13 considerably because it's an old document now and it's 12:19:57 14 easier to find I think if you would use the date. 12:20:03 15 Q. So if you had these phrases from the title of 12:20:05 16 the document and you knew when the document was 12:20:09 17 published, you'd be able to find this document on Google 12:20:12 18 Scholar pretty easily? 12:20:15 19 A. Yes. 12:20:16 20 Q. Do you know when Google Scholar started? 12:20:19 21 A. I believe it was 1998. 12:20:21 22 Q. Do you recall using Google Scholar approximately 12:20:30 23 at the turn of the century? 12:20:33 24 A. Turn of the century, that sounds terrible. 12:20:36 25 Q. Sorry. 12:20:38 Page 83	1 Q. So this looks different than the MARC records we 12:22:24 2 were looking at before. What is this? 12:22:28 3 A. This is the MARC record from the University of 12:22:29 4 California Berkeley libraries for this thesis. And it 12:22:33 5 looks different because of two things. 12:22:36 6 One is MARC is a framework and depending on the 12:22:38 7 system from which the record is produced, the appearance 12:22:41 8 will differ slightly. 12:22:45 9 But you know it's a MARC record because it's got 12:22:47 10 the tag on the left, those three digit numbers. And so 12:22:49 11 you know it's a MARC record. It just looks different 12:22:54 12 because it comes the catalogue at Berkeley. 12:23:01 13 Q. Got it, and so Berkeley receives this thesis 12:23:11 14 into its library and it indices and catalogs and it's 12:23:14 15 now available, right? 12:23:17 16 A. It is, it is, because everyone who does a 12:23:19 17 graduate paper at the masters or the doctoral level has 12:23:24 18 to give a copy to the institution for the library. 12:23:26 19 Q. So what is this cataloged by? 12:23:31 20 You want me to make it bigger? 12:23:37 21 A. No. I don't understand the question. "By," 12:23:39 22 what does by mean. 12:23:43 23 Q. So we talked earlier today about cataloging in 12:23:44 24 the context of applying certain numbers, for example, to 12:23:49 25 the spine, the sticker on the spine, so you can find it? 12:23:53 Page 85

1 A. Yeah, this has one. 12:23:57 2 Q. Which one is it? 12:24:02 3 A. It's 090 and then it is -- because that's a 12:24:04 4 locally assigned classification number, Library of 12:24:07 5 Congress doesn't have this and they don't get involved 12:24:10 6 with this. 12:24:13 7 And it says it's in technology and this is the 12:24:14 8 number we've assigned. And then it's cuttered by the 12:24:17 9 young man's name, M84, and subfield 09 means this is a 12:24:23 10 local record and that's okay. 12:24:32 11 Q. What is cuttered? 12:24:34 12 A. Cuttered that's a process we use, yeah, we use, 12:24:41 13 in libraries to separate items that all have the same 12:24:43 14 classification number. 12:24:46 15 So we want to arrange them alphabetically by 12:24:51 16 something like the surname of the first author. So we 12:24:54 17 have these giant tables, maybe 16 inches tall, spiral 12:24:57 18 bound, that delineates consonants and vowels and tells 12:25:03 19 us what number to use. 12:25:12 20 So he's M84 and that says somebody whose last 12:25:14 21 name started with N would come later and someone with a 12:25:19 22 last name starting with M, say MI or MA would come 12:25:26 23 before. 12:25:31 24 And it helps us be more granular in the 12:25:31 25 assignment of that classification number. 12:25:32 Page 86	1 And then title C is the statement of 12:27:32 2 responsibility, which is, well, who created this? And 12:27:36 3 there's the young man's name and you'll see that version 12:27:40 4 of his name appears in the 100 saying this is his name, 12:27:45 5 so I can look up in the catalog under his name and this 12:27:48 6 will pop up. 12:27:52 7 Q. And so you said subfield A -- 12:27:56 8 A. Yep, goes that far. 12:28:01 9 Q. -- was cataloged. But subfield B probably was 12:28:02 10 not; is that right? 12:28:06 11 A. Right, because it's a subtitle and if it were to 12:28:08 12 be indexed, which would be not very helpful in this case 12:28:11 13 because research project is likely on a lot of these 12:28:15 14 thesis at the university, there would be a 246 field 12:28:20 15 with a 3 something, and we don't have that. 12:28:25 16 So it means you can't look back up -- research 12:28:29 17 project will not necessarily get you this work or any 12:28:33 18 other work or maybe too many works. 12:28:37 19 But we don't index that. 12:28:41 20 Q. Got it -- 12:28:44 21 A. It's there -- because it is present on the title 12:28:45 22 page, we must transcribe it. But that doesn't mean we 12:28:47 23 do anything with it. 12:28:50 24 Q. 968, what does that mean? 12:28:57 25 A. That's a local field and it helps to craft the 12:28:58 Page 88
1 Q. And we need that because this number here 12:25:37 2 applies to multiple work? 12:25:40 3 A. It could, it could. It may not but it could and 12:25:41 4 so we want to be sure that there is a unique number 12:25:49 5 assigned to this document -- or this is going to be a 12:25:53 6 fairly thin book, it's not very long. 12:25:57 7 Q. And then so and 245, we see three fields, A, B, 12:26:03 8 C, right? 12:26:19 9 A. Yes. 12:26:20 10 Q. What does 245 correspond to? 12:26:22 11 A. 245 is the main title as it appears on the work. 12:26:25 12 Q. And so in this record for UC Berkeley's holdings 12:26:31 13 of this thesis in the title field -- where does the 12:26:39 14 title field start? Would it be between the A and the D 12:26:44 15 here? 12:26:51 16 A. The title, this tells me, tells all of us, that 12:26:51 17 245 is index, that's what the 1 means so you could look 12:26:55 18 it up in the index file and no characters are skipped, 12:26:58 19 which means it's alphabetized under the first character 12:27:01 20 this subfield A, which is the capital D for design. 12:27:04 21 The main title is subfield A, design of a FinFET 12:27:08 22 static blah, blah, push dash push VCO. And the colon 12:27:15 23 says there is a subtitle, this is probably not indexed, 12:27:25 24 it's research project and that appears on the work on 12:27:28 25 the title page that the young man made. 12:27:30 Page 87	1 process of this item as it goes through. 12:29:06 2 So lots of libraries use the 9XX fields for 12:29:09 3 recording local information. And when the records are 12:29:14 4 shared with others if that were to be the case, those 12:29:20 5 fields are applicable to another institution, but only 12:29:23 6 the one that created the record. 12:29:27 7 MR. VLASIS: It's been about an hour if it's a 12:29:38 8 good time to take another break soon. 12:29:40 9 MR. HALVERSON: Yeah, that's fine. That's fine. 12:29:43 10 We can take a quick break. Would you like another 12:29:47 11 ten-minute break, Dr. Ellis? 12:29:49 12 THE WITNESS: We can or we can finish talking 12:29:51 13 about this particular document 'cause that's what you've 12:29:53 14 got on the screen. 12:29:56 15 MR. HALVERSON: If you've got five or ten more 12:29:58 16 minutes, I'd rather keep going unless Robert really 12:30:00 17 wants to take a quick break. 12:30:02 18 It's up to you guys. 12:30:04 19 THE WITNESS: Well, to me it would be okay if 12:30:05 20 it's all right with everyone to finish up the discussion 12:30:08 21 of this document because you may have other documents 12:30:11 22 you want to highlight later or not. 12:30:14 23 MR. VLASIS: That's fine. 12:30:18 24 BY MR. HALVERSON: 12:30:24 25 Q. So you I believe in the report itself said that 12:30:24 Page 89

1 this publication, the thesis, was in two libraries; is 12:30:28 2 that right? 12:30:30 3 A. It is, yes. 12:30:31 4 Q. Do you know what the second one is? 12:30:35 5 A. No. 12:30:36 6 Q. I'm sorry? 12:30:44 7 A. I'm sorry what was your question. 12:30:45 8 Q. I said do you know what the second one is and 12:30:46 9 you said no. And then I was going to ask how would you 12:30:48 10 find out? 12:30:51 11 A. I could go to WorldCat and I could type in the 12:30:51 12 title of this thesis and it would tell me which places 12:30:54 13 had it, and it would also tell me how many miles they 12:31:03 14 were from where I was located. 12:31:05 15 Q. And very, very, very briefly -- so you used the 12:31:21 16 same process, the four-step process for all of the 12:31:24 17 publications that you analyzed, right? 12:31:27 18 A. Yes, I don't know how else to do it. 12:31:29 19 Q. And did we talk about anything today that was, 12:31:36 20 other than the specific numbers or entries, that was 12:31:39 21 unique for any given entry as far as what your process 12:31:42 22 was? 12:31:45 23 A. No, there's nothing unique in that way for any 12:31:46 24 of these. The majority of these documents are 12:31:51 25 conference papers, there are some journal articles, a 12:31:54 Page 90	1 one of the declarations? 12:33:25 2 A. My opinion -- my opinion is the same, but my 12:33:29 3 description of the document is different. There is one 12:33:35 4 in which that happened. 12:33:40 5 Q. Do you remember which publication that was? 12:33:41 6 A. Publication 5. 12:33:46 7 Q. Publication 5 to the expert report? 12:33:48 8 A. Yes, sir. 12:33:50 9 MR. VLASIS: Okay, that's all I had. 12:33:55 10 MR. HALVERSON: Okay, nothing for me. We can 12:33:57 11 close. 12:33:59 12 THE WITNESS: Okay, thank you. It's been good. 12:34:03 13 VIDEO OPERATOR: We are off the record, the time 12:34:04 14 is 1:34 p.m. on August 10th, 2023. 12:34:06 15 This concludes today's testimony given by 12:34:10 16 Dr. Sylvia Hall Ellis. The total number of media units 12:34:13 17 used was four and will be retained by Veritext Legal 12:34:17 18 Solutions. 12:34:20 19 20 21 22 23 24 25 Page 92
1 couple of books, and a thesis. 12:31:59 2 So nothing outside the realm of pretty normal 12:32:01 3 for this type of investigation on my part. 12:32:03 4 MR. HALVERSON: Perfect, I have no other 12:32:12 5 questions subject to anything from your counsel. So if 12:32:12 6 you've got anything, we can do it now. 12:32:14 7 Otherwise we can take a break. It's up to you 12:32:17 8 guys. 12:32:19 9 MR. VLASIS: I just have one follow up question, 12:32:19 10 but we can take a break or not? 12:32:22 11 THE WITNESS: It's okay with me whichever way 12:32:24 12 you want to do it, I am here to answer many questions. 12:32:26 13 (Technology discussion.) 12:32:46 14 15 CROSS-EXAMINATION 16 12:32:56 17 BY MR. VLASIS: 12:32:56 18 Q. Dr. Ellis, earlier in the deposition you were 12:33:01 19 asked if your opinions about the publications are the 12:33:04 20 same as between your IPR declarations and the expert 12:33:08 21 report. 12:33:13 22 Do you recall that? 12:33:13 23 A. Yes. 12:33:14 24 Q. Do you recall if there was one publication where 12:33:17 25 your opinions in the expert report are different from 12:33:21 Page 91	1 I declare under penalty of perjury under the laws of the 2 State of California that the foregoing is true and 3 correct. 4 Executed on _____, 2023, at 5 _____. 6 7 8 9 _____ 10 SIGNATURE OF WITNESS 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 Page 93

1 STATE OF CALIFORNIA) ss. 2 COUNTY OF LOS ANGELES) 3 4 I, Lori M. Barkley, CSR No. 6426, do hereby 5 certify: 6 That the foregoing deposition proceedings were 7 taken before me at the time and place therein set forth 8 and were recorded stenographically by me, and were 9 thereafter transcribed under my direction and 10 supervision, and that the foregoing pages contain a 11 full, true and accurate record of all proceedings and 12 testimony to the best of my skill and ability. 13 I further certify that I am neither counsel for 14 any party to said action, nor am I related to any party 15 to said action, nor am I in any way interested in the 16 outcome thereof. 17 IN WITNESS WHEREOF, I have subscribed my name 18 this 14th day of August, 2023. 19 20  21 22 LORI M. BARKLEY, CSR No. 6426 23 24 25 Page 94	1 ___ Federal R&S Requested (FRCP 30(e)(1)(B)) – Locked .PDF 2 Transcript - The witness should review the transcript and 3 make any necessary corrections on the errata pages included 4 below, notating the page and line number of the corrections. 5 The witness should then sign and date the errata and penalty 6 of perjury pages and return the completed pages to all 7 appearing counsel within the period of time determined at 8 the deposition or provided by the Federal Rules. 9 <u>X</u> Federal R&S Not Requested - Reading & Signature was not 10 requested before the completion of the deposition. 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 Page 96
1 Erik Halverson 2 Erik.halverson@klgates.com 3 August 14, 2023 4 RE: CERTAIN INTEGRATED CIRCUITS, COMPONENTS THEREOF 5 August 10, 2023, SYLVIA HALL ELLIS, JOB NO. 6046508 6 The above-referenced transcript has been 7 completed by Veritext Legal Solutions and 8 review of the transcript is being handled as follows: 9 ___ Per CA State Code (CCP 2025.520 (a)-(e)) – Contact Veritext 10 to schedule a time to review the original transcript at 11 a Veritext office. 12 ___ Per CA State Code (CCP 2025.520 (a)-(e)) – Locked .PDF 13 Transcript - The witness should review the transcript and 14 make any necessary corrections on the errata pages included 15 below, notating the page and line number of the corrections. 16 The witness should then sign and date the errata and penalty 17 of perjury pages and return the completed pages to all 18 appearing counsel within the period of time determined at 19 the deposition or provided by the Code of Civil Procedure. 20 ___ Waiving the CA Code of Civil Procedure per Stipulation of 21 Counsel - Original transcript to be released for signature 22 as determined at the deposition. 23 ___ Signature Waived – Reading & Signature was waived at the 24 time of the deposition. 25 Page 95	

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

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Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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