

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

TIKTOK INC.

Petitioner,

v.

ADVANCED CODING TECHNOLOGIES, LLC

Patent Owner.

IPR2022-01548

Patent No. 9,445,041

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The Zoom Deposition of DAVID LETT,
Taken at Undisclosed Residence,
Duluth, Georgia,
Commencing at 9:01 a.m.,
Friday, June 16, 2023,
Before Viola Kay Newman, CSR-4320, RPR, CRR.

Job no: 7327

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20 ALSO PRESENT:

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DAVID LETT

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1 Duluth, Georgia

2 Friday, June 16, 2023

3 9:01 a.m.

4

5 THE COURT REPORTER: My name is Viola
6 Newman. I am a certified stenographer, realtime
7 reporter, and notary public in the state of Michigan.

8 This deposition is being held via
9 videoconferencing equipment, and all parties present
10 are here via the Zoom app.

11 I am located in Franklin, Michigan, and the
12 witness, David Lett, is located in Duluth, Georgia.
13 Therefore, the witness will be sworn in remotely
14 pursuant to agreement of the parties.

15 Mr. Lett, please raise your right hand.

16 DAVID LETT

17 was thereupon called as a witness herein and, after
18 having first been duly sworn to testify to the truth,
19 the whole truth, and nothing but the truth, was
20 examined and testified as follows:

21 THE COURT REPORTER: Okay. Thank you.

22 All right. Mr. Mercadante, we're ready.

23 MR. MERCADANTE: Thank you.

24 ///

25 ///

EXAMINATION

BY MR. MERCADANTE:

Q. Good morning, Mr. Lett.

How are you?

A. Good morning. I'm good.

And you?

Q. I'm good. Thank you.

So the first part of this deposition is going to be very similar to the deposition that you and I conducted last week. There are certain things that we just need to get on the record here, but I hope that we can move a little bit quicker and save some time.

Is that okay?

A. Sounds good to me.

Q. All right. Do you remember some of the ground rules that we discussed last week about how to conduct the deposition?

A. Yes, I do.

Q. Okay. I'm going to run over those briefly again.

The first is, I'm going to be asking you questions and you will be giving me full answers.

Do you understand that?

A. Yes.

Q. If you don't understand my question, please ask me to

1 clarify it; is that clear?

2 A. Yes.

3 Q. If you give me an answer to my question, I'll presume
4 that you understood my question; is that fair?

5 A. Yes.

6 Q. From time to time, your attorney, Mr. Katz, may
7 object. Even if he does object, you must still answer
8 the question.

9 Is that clear?

10 A. Okay. That's clear.

11 Q. Mr. Lett, have you taken any medication or anything
12 else that could prevent your truthful testimony today?

13 A. Not that I'm aware of.

14 Q. Mr. Lett, what apps do you have or programs do you
15 have running on your computer right now aside from
16 Zoom?

17 A. Just like the last time when we had the deposition
18 last week, I've got Microsoft Word open and I've got
19 my declaration up in case I want to review the
20 electronic copy.

21 And then, let's see. That's the only apps
22 I have open other than Zoom.

23 Q. Okay. So to confirm, you have no communications
24 program open, like an email program or a chat program?

25 A. I don't have an email or chat program open at this

1 point, no.

2 Q. Okay. I'll ask that you refrain from opening any sort
3 of communications program on your computer during the
4 deposition.

5 Is that fair?

6 A. That's fair.

7 Q. Mr. Lett, is there anyone in the room with you right
8 now?

9 A. No.

10 Q. If that changes, could you please let us know?

11 A. I will.

12 Q. And, Mr. Lett, have you communicated with anyone
13 except for your attorneys about today's deposition?

14 A. I told my wife I'm going to have a deposition in the
15 basement, and try to be quiet.

16 Q. Other than that, other than your wife and your
17 attorneys, have you spoken to anybody else?

18 A. No.

19 Q. Have you spoken to Mr. Chen, who was on the deposition
20 last week and is on the deposition today?

21 A. I have not.

22 Q. Okay. Have you spoken to anyone else at TikTok?

23 A. I'm not aware that I've ever talked to anyone at
24 TikTok. I may have, but I'm not -- I don't recall.

25 Q. Okay. And we spent a little bit of time on your

1 background and work history last week.

2 Do you remember that?

3 A. Yes.

4 Q. In the eight days since we've -- since your last
5 deposition, have you acquired any new, relevant
6 experience that we need to discuss?

7 A. Well, I'm always trying to learn new things. So I'm
8 not sure I know how to answer the question.

9 Q. All right. Have you changed jobs in the last eight
10 days?

11 A. So I have other clients that I talk to. So I'm not
12 sure if that's considering changing jobs, but, in
13 general, what I'm doing now is serving as an expert
14 witness, as a consultant, and so, in that regard, I'm
15 in that same job.

16 Q. Okay. Have you updated your CV since the last time we
17 spoke?

18 A. No, I don't think so.

19 Q. Okay. Mr. Lett, I'm now going to do the same thing
20 that I did last time, which is -- one thing -- strike
21 that.

22 I still intend to take a break about once
23 an hour. I may call the first break a little bit
24 early because I had a whole lot of coffee this
25 morning, but, as last time, if you need a break at any

1 time, just let me know. The only thing I'll request
2 is that if there's a pending question, that we get an
3 answer before we take a break.

4 Is that fair?

5 A. That seems fair, yes.

6 Q. Okay. So I'm going to do the same thing we did last
7 time, which is put exhibits into the chat. I'm going
8 to do it all at once, which may be a little bit boring
9 right now, but it will help the rest of the deposition
10 go smoother.

11 Is that okay?

12 A. Yes.

13 MARKED BY THE REPORTER:

14 DEPOSITION EXHIBIT 1001

15 9:06 a.m.

16 MR. MERCADANTE: The first exhibit that I'm
17 putting into the chat is the patent that we're going
18 to be talking about today, which is U.S. Patent Number
19 9,445,041, which is Exhibit 1001, to this IPR and
20 should be Exhibit 1001 to the deposition.

21 MARKED BY THE REPORTER:

22 DEPOSITION EXHIBIT 1001

23 9:07 a.m.

24 THE WITNESS: Yes. Is it okay if I refer
25 to my printed paper copy of that document?

1 MR. MERCADANTE: Absolutely. That will
2 make things go faster.

3 THE WITNESS: It's a little easier for me
4 to see.

5 MR. MERCADANTE: I have printed copies as
6 well, but the court reporter doesn't. So I want to
7 make sure that we're clear.

8 THE WITNESS: Okay.

9 MR. MERCADANTE: The next document I'm
10 putting into the chat is Exhibit 1002, which is
11 Excerpts From the Prosecution History of '041 Patent.

12 MARKED BY THE REPORTER:

13 DEPOSITION EXHIBIT 1002

14 9:07 a.m.

15 MR. MERCADANTE: I will mark Exhibit 1003,
16 which is your declaration, Mr. Lett.

17 MARKED BY THE REPORTER:

18 DEPOSITION EXHIBIT 1003

19 9:07 a.m.

20 MR. MERCADANTE: I'll mark Exhibit 1004,
21 which is U.S. Patent Publication 2010/0226622 to
22 Morikawa.

23 MARKED BY THE REPORTER:

24 DEPOSITION EXHIBIT 1004

25 9:08 a.m.

1 MR. MERCADANTE: Exhibit 5 [sic] is a
2 certified translation of PCT Publication Number
3 W0-2004-090703.

4 MARKED BY THE REPORTER:

5 DEPOSITION EXHIBIT 1005

6 9:08 a.m.

7 MR. MERCADANTE: Exhibit 1006 is an article
8 titled A Player for Adaptive MPEG Video Streaming Over
9 the Internet, which we've been referring to as
10 Walpole, W-a-l-p-o-l-e.

11 MARKED BY THE REPORTER:

12 DEPOSITION EXHIBIT 1006

13 9:08 a.m.

14 MR. MERCADANTE: Exhibit 1007 is U.S.
15 Patent Publication Number 2012-0314967 to Suzuki.

16 MARKED BY THE REPORTER:

17 DEPOSITION EXHIBIT 1007

18 9:09 a.m.

19 MR. MERCADANTE: Exhibit 1008 is U.S.
20 Patent Publication Number 2011-0097059 to Sekiguchi.

21 MARKED BY THE REPORTER:

22 DEPOSITION EXHIBIT 1008

23 9:09 a.m.

24 MR. MERCADANTE: And Exhibit 2001 is U.S.
25 Patent -- strike that.

1 Exhibit 2001 is U.S. Patent Publication
2 Number 2010-0310229 to Iwata.

3 MARKED BY THE REPORTER:

4 DEPOSITION EXHIBIT 2001

5 9:09 a.m.

6 MR. MERCADANTE: Madam Court Reporter, do
7 you have all of those documents in the chat?

8 THE COURT REPORTER: Okay. I see them all
9 in the chat. I haven't downloaded them all yet.

10 MR. MERCADANTE: Okay. We'll be going
11 through them one at a time, so I don't think we need
12 to absolutely download them all now.

13 MR. KATZ: I don't know if it's important,
14 but, just for the record, when you were talking about
15 Exhibit 1005, you said Exhibit 5.

16 MR. MERCADANTE: Oh, thank you. I
17 appreciate that.

18 MR. KATZ: I think you meant Exhibit 1005.

19 MR. MERCADANTE: I would like to keep the
20 exhibit numbers in the deposition the same as the
21 exhibit numbers from the IPR to save everybody the
22 headache.

23 BY MR. MERCADANTE:

24 Q. All right. So, Mr. Lett, just like last time, I'd
25 like you to start with your declaration, which is

1 marked as 1003.

2 Let me know when you have that open.

3 A. I've got it.

4 Q. Mr. Lett, about how much time did you spend preparing
5 this declaration?

6 A. I'm just recalling from memory approximately in the
7 ballpark of maybe 20 hours.

8 Q. Okay. Could you turn to paragraph 16 of your
9 declaration. It's on page 9.

10 A. Yes.

11 Yes, I have it.

12 Q. Okay. In here, you have your list of materials that
13 you considered in forming your opinions.

14 Do you see that?

15 A. Yes.

16 Q. All right. Is that list complete, sir?

17 A. I tried to make it complete. I believe that it is
18 complete.

19 Q. Okay.

20 A. Maybe there's something missing, but I'm not aware
21 that there is anything missing.

22 Q. Okay. So sitting here today, you can't think of
23 anything that you considered in forming your opinions
24 that is not on the materials considered list; is that
25 correct?

1 A. Well, of course, I considered, based on my experience
2 and from the perspective of a person of ordinary skill
3 in the art, you know, those considerations in forming
4 my opinions.

5 Q. Okay. But aside from background information and
6 information in your experience -- information from
7 your experience, you did not rely on any documents in
8 forming your opinion aside from those listed in the
9 materials considered list; is that correct?

10 A. I don't recall using any other documents in forming my
11 opinions.

12 Q. Okay. And just like last time, I'd like to start and
13 ask a few questions about the legal standards that are
14 at the back of your declaration. They start in
15 paragraph 121, which is on page 59.

16 A. I have it.

17 Q. Are you there, Mr. Lett?

18 A. Yes.

19 Q. Okay. And just like your other declaration, you have
20 a few paragraphs here on the law of anticipation.

21 Do you see that?

22 A. Yes.

23 Q. Can you confirm for me that there is no opinion in
24 this declaration that the claims are anticipated by
25 any prior art reference?

1 A. I'm not aware of that. There might be, but I do not
2 recall any.

3 Q. Okay. And then I have a few questions about the
4 obviousness section.

5 Can you turn to paragraph 126, which is on
6 page 61?

7 A. Yes.

8 Q. And in that paragraph, you say that a court must
9 determine whether there was an apparent reason to
10 combine the known elements in the fashion claimed by
11 the patent at issue by considering the teachings of
12 prior art references, the effects of demands known to
13 people working in the field or present in the
14 marketplace, and the background knowledge possessed by
15 a person having ordinary skill in the art.

16 Do you see that?

17 A. Yes.

18 Q. And is there anywhere in your declaration where you
19 consider the effects of demands known to people
20 working in the field or present in the marketplace?

21 A. I'm not aware that I rendered an opinion that used the
22 effects of the marketplace or the effects of demand
23 known to people working in the field in my
24 declaration.

25 Q. And then the last part of that sentence is, the

1 background knowledge possessed by a person having
2 ordinary skill in the art.

3 Do you see that?

4 A. I'm sorry. What paragraph is that?

5 Q. The same paragraph, the sentence that I read, just the
6 last clause, and the background knowledge possessed by
7 a person having ordinary skill in the art.

8 A. I see that.

9 Q. And is there anywhere in your declaration that you
10 specifically referred to the background knowledge of
11 the person having ordinary skill in the art?

12 A. There might be. I do not recall if there are any
13 places where I cited the background knowledge
14 possessed by a person of ordinary skill in the art.
15 However, there is a section where we identified the
16 experience level that someone of -- a person of
17 ordinary skill in the art would need to understand the
18 materials.

19 Q. And could you please turn to paragraph 128, which
20 starts on the same page and then breaks over to the
21 next page.

22 You state that an obviousness inquiry
23 requires consideration of four factors in this
24 paragraph.

25 Do you see that?

1 A. Yes.

2 Q. The fourth factor is any objective indicia of
3 nonobviousness, and then you list some, such as
4 commercial success, long-felt but unresolved need,
5 failure of others, industry recognition, copying, and
6 unexpected results.

7 Do you see that?

8 A. Yes.

9 Q. Is there anywhere in your declaration where you refer
10 to any secondary considerations of nonobviousness?

11 A. I'm not aware of any cases where I did that in my
12 declaration. There might be, but I do not recall.

13 Q. And then in paragraph 129, the last sentence says,
14 I've been informed by counsel and understand that
15 obviousness analysis recognizes that market demand,
16 rather than scientific literature, often drives
17 innovation and that a motivation to combine references
18 may be supplied by the direction of the marketplace.

19 Do you see that?

20 A. Yes.

21 Q. Is there anywhere in your declaration that you rely on
22 the market demand and/or the direction of the
23 marketplace for a motivation to combine prior art
24 references?

25 A. I'm not aware of any in my declaration.

1 Q. Okay. I'd now like to talk about the file history a
2 little bit. The prosecution history, rather.

3 Could you turn to page 12 of your
4 declaration where you refer to the prosecution
5 history.

6 Let me know when you're there.

7 A. Okay. I'm there.

8 Q. Okay. So you have three paragraphs about the
9 prosecution history that I'd like to ask you a few
10 questions about.

11 The prosecution history is marked as
12 Exhibit 1002 to this deposition, if you'd like to
13 refer to it directly, but you cite to an office
14 action.

15 Do you know what an office action is,
16 Mr. Lett?

17 A. Well, I'm not an attorney, but I think I have a pretty
18 good idea what that means.

19 Q. Okay. What is an office action?

20 A. Again, I'm not an attorney and I don't -- I'm not here
21 to define the term, but my understanding is it's
22 basically some kind of directive or answer given by a
23 court or authority to basically answer a question or
24 provide a directive.

25 Q. Okay. So the office action that you're referring to

1 in paragraph 23 of your declaration was issued by the
2 patent office in rejecting the claims of what would
3 later become the '041 patent; is that fair?

4 A. I'm sorry. Can you repeat that?

5 Q. Sure.

6 So you state, during prosecution of the
7 application that eventually issued as the '041 patent,
8 the patent office issued a single office action
9 rejecting all pending claims.

10 Do you see that --

11 A. Yes.

12 Q. -- the first sentence of paragraph 23?

13 A. Yes.

14 Q. Okay. So is it your understanding that the office
15 action that you refer to in paragraph 23 was issued by
16 the U.S. Patent Office?

17 A. Yes. It says the patent office issued a single office
18 action.

19 Q. Okay. And in that office action, the patent office
20 rejected the claims of what would later become the
21 '041 patent that we're talking about today; is that
22 correct?

23 A. I think it says it rejected all claims anticipated by
24 the Application Publication Number 2010/0310229.

25 Q. Yeah. That's the Iwata patent which we'll talk about

1 later, but right now I want to make sure we're on the
2 same page of what was rejected.

3 So my question, Mr. Lett, is it your
4 understanding that the claims of the '041 patent or
5 what would later issue as the '041 patent were
6 rejected by the patent office?

7 A. I'm not clear. I'm not clear.

8 Can you please restate that question?

9 Q. Sure.

10 The office action issued by the patent
11 office, which you're discussing in paragraph 23 of
12 your declaration, rejected all pending claims of what?

13 A. Is that a question?

14 Q. Yes.

15 A. Perhaps I didn't understand the last part.

16 Q. The office action that was issued by the patent office
17 that you were referring to in paragraph 23 rejected
18 all pending claims of what?

19 A. Are you saying what, w-h-a-t?

20 Q. Yes.

21 What was rejected?

22 A. I mean, it says, rejecting all pending claims as
23 anticipated by U.S. Patent Application Publication
24 Number 2010/0310229.

25 Q. So all pending claims of what was rejected?

1 A. I don't understand the question.

2 Q. Okay. I understand.

3 So the patent office used the Iwata prior
4 art to reject all pending claims of the '041 patent;
5 is that correct?

6 A. Let me read that section of the Exhibit 1002.

7 You know, I'm not an attorney. I don't
8 understand this. I'm sorry.

9 Q. Okay. In paragraph 24, you say, curiously, these
10 arguments appear to contradict the specification of
11 the '041 patent, which as discussed above, states the
12 output frame rate can be specified based on a, quote,
13 based on the setting of an external device being an
14 output destination.

15 Do you see that in paragraph 24 of your
16 declaration?

17 A. Yes.

18 Q. What is curious about what you consider to be a
19 contradiction?

20 A. So, as I stated here, the playback speed refers to how
21 fast or slow the playback time is compared to the
22 shooting time, and, thus, does not refer to the
23 playback frame rate, which in Iwata is apparently
24 determined by the display device.

25 In other words, while the playback frame

1 rate of Iwata is a factor of the playback speed
2 relationship discussed above, the playback frame rate
3 is fixed and only playback speed and decimation or
4 interpolation are changed for a given shooting frame
5 rate.

6 Q. Okay. So your interpretation of Iwata is that the
7 playback frame rate is fixed and only playback speed
8 and decimation or interpolation are changed for a
9 given shooting frame rate?

10 A. So I noted an inconsistency here where it seemed to
11 say two different things.

12 Q. What seemed to say two different things?

13 A. So the reference here, which is the prosecution
14 history, I believe, right?

15 So what's quoted here is something from
16 page 70 of Exhibit 1002, where it says, Iwata fails to
17 disclose an output frame rate specification unit
18 configured to specify output frame rate.

19 And then, further down, where it's, because
20 the playback frame rate in Iwata is fixed.

21 And you can see that on page 71 of the
22 Exhibit 1002.

23 Q. So, Mr. Lett, is it your opinion that Iwata contains
24 inconsistent statements?

25 A. So I don't think I've ever looked at Iwata. I looked

1 at the prosecution history and the prosecution history
2 talks about Iwata. I may have looked at Iwata, but I
3 do not recall looking at Iwata ever. So I'm basically
4 quoting sections from the Exhibit 1002.

5 Q. I actually had some questions about that which you may
6 have answered, but just so we're clear, could you open
7 up Exhibit 2001, which is the last document in the
8 chat? It's Iwata itself. It was not in your
9 materials considered list, so you may not have it
10 printed out.

11 A. No, I do not have it printed out.

12 Let me see if I can figure out how to view
13 the document.

14 You said it's 2001; is that right?

15 Q. That is right. It's the last document in the chat.

16 A. Okay. Oh, it wants me to download it. I'm sorry. I
17 haven't been through this before.

18 So let me download it. And now it's going
19 to open up my File Explorer to get that document out
20 of downloads. I'm going to open up my File Explorer,
21 I should say.

22 Okay. I have the document in front of me
23 on my computer.

24 Q. Okay. So this is the Iwata patent publication. The
25 inventor is Takuya Iwata.

1 Mr. Lett, my first question is, do you
2 recall seeing this document before?

3 A. I do not recall seeing this document.

4 Q. Mr. Lett, do you have an opinion on what Iwata
5 discloses or does not disclose?

6 A. At this time, I do not, and I have not rendered an
7 opinion that I'm aware of on that in my declaration.

8 Q. Okay.

9 A. So I do not have an opinion at this time.

10 Q. Okay. Thanks. You can close that. Those were the
11 only questions I had planned to ask about Iwata.

12 A. Okay.

13 Q. So going back to paragraphs 23 and 24 of your
14 declaration -- let me know when you're ready. I don't
15 want to interrupt you.

16 A. All right. Paragraph 24 you said?

17 Q. 23 and 24, the ones we were talking about before we
18 got sidetracked with Iwata.

19 A. Okay.

20 Q. What, in your opinion, are the contradictory
21 statements that you have pointed out in paragraphs 23
22 and 24?

23 A. I think I answered that question, and it's stated in
24 my declaration.

25 Q. I don't think it's clear in your declaration. So if

1 you could help me out and let me know what you think
2 are the contrary statements, that would be
3 appreciated.

4 A. The main statement is the last one in paragraph 23
5 that kind of summarizes the inconsistency, and it
6 says, while the playback frame rate of Iwata is a
7 factor in the playback speed relationship discussed
8 above, the playback frame rate is fixed and only
9 playback speed and decimation or interpolation are
10 changed for a given shooting frame rate.

11 Q. So do you have an opinion on -- as to whether the
12 playback frame rate is fixed in Iwata?

13 A. I do not have an opinion.

14 Q. And do you have an opinion on whether a fixed output
15 frame rate would infringe the claims of the '041
16 patent or not?

17 A. I do not have an opinion on that.

18 Q. And now I'd like to talk about the '041 patent itself
19 for a few minutes. It's Exhibit 1001.

20 A. By the way, I'll say I do not have an opinion on that
21 at this time.

22 Q. Let me know when you have Exhibit 1001 open.

23 A. Yes, I do.

24 Q. Okay. When was the first time you reviewed the '041
25 patent, Mr. Lett?

1 A. I don't recall, but it was associated with this
2 project.

3 Q. Okay. So prior to your engagement for preparing your
4 declaration in this action, you had not seen the '041
5 patent; is that correct?

6 A. I do not recall seeing the '041 patent before working
7 on this project.

8 Q. Okay. And, Mr. Lett, do you see that the inventor of
9 the '041 patent is a fellow from Japan named Akiyoshi
10 Jin?

11 A. I'm not sure he's from Japan, but I see his name.

12 Q. It says Yokohama, Japan, right next to it.

13 A. Oh, I'm sorry. I see the JP next to there now.

14 Q. Okay. Do you know of or have you heard of Mr. Jin?

15 A. Not that I'm aware of.

16 Q. Okay. And like the patent that we discussed last
17 week, this patent was originally assigned to JVC
18 Kenwood.

19 Do you see that?

20 A. I do see that JVC Kenwood Corporation was the
21 applicant.

22 Q. And similar to last week, you don't have --

23 Well, strike that.

24 What is your opinion of JVC Kenwood in the
25 audiovisual products field?

1 A. I have no reason to express an opinion one way or the
2 other. I mean, I've had Kenwood audio components and
3 they seem to work fine and I have no reason to dispute
4 their capabilities or -- their capabilities, period.

5 MR. MERCADANTE: And then I know we've only
6 been going for 35 minutes, but if everyone wouldn't
7 mind, I'd like to take a five-minute break.

8 (Recess taken at 9:36 a.m.)

9 (Back on the record at 9:45 a.m.)

10 BY MR. MERCADANTE:

11 Q. Welcome back, Mr. Lett.

12 Do you understand you are still under oath?

13 A. Yes.

14 Q. I'd like to turn to Claim 1 of the '041 patent,
15 please. It's Exhibit 1001.

16 A. Okay.

17 Q. Okay. And I noticed in your declaration when you were
18 referring to particular claim elements, you had
19 appended some numbers to them to keep it clear, and I
20 like that idea. So I'm just going to go through the
21 patent.

22 I've actually marked it up with your
23 numbers, and I'm going to ask you about some
24 particular claim elements.

25 Is that okay?

1 A. Yes.

2 Q. So what you labeled as Element 1.1 is the moving data
3 image input unit; is that correct?

4 A. I think I need to look at my declaration to see
5 exactly which segments were marked with what numbers,
6 and I will do that.

7 1.0, a moving image data processing
8 apparatus comprising?

9 Q. I started with 1.1, but it probably makes sense to
10 start at the beginning.

11 A. Okay.

12 Q. So I'll strike that last question.

13 And my question, Mr. Lett, Element 1.0 is a
14 moving image data processing apparatus; is that
15 correct?

16 A. Yes. That's the nomenclature that was used in my
17 declaration.

18 Q. And then Element 1.1 is a moving image data input
19 unit; is that correct?

20 A. I think 1.1 is more than that. It's a moving image
21 data input unit configured to be input, a first moving
22 image data generated at a first frame rate, and second
23 image data generated at a second frame rate that is
24 different from the first frame rate.

25 Q. Okay. I was trying to shorten it up so that we

1 weren't reading the entire claim into the record. But
 2 you agree that that element, a moving image data input
 3 unit, through to the semicolon, was labeled as 1.1?

4 A. I think that's correct. Yes.

5 Q. Okay. And 1.2 is an input frame rate specification
 6 unit, which the element goes through to the first --
 7 to the next semicolon?

8 A. I'm going to go ahead and mark my copy with those, if
 9 that's okay with you.

10 Q. I did the same thing.

11 A. Okay.

12 And I'm sorry. The question was?

13 Q. 1.2, you labeled the input frame rate specification
 14 unit through -- to that element -- through to the next
 15 semicolon as 1.2; is that correct?

16 A. Yes. That is correct.

17 Q. And then you labeled as 1.3 the output frame rate
 18 specification unit through to the following semicolon;
 19 is that correct?

20 A. I think it's an output frame rate --

21 Q. Yes.

22 A. -- specification unit, down through image data input
 23 unit, semicolon.

24 No, wait.

25 Okay. 1.3.

1 Q. And then 1.4 is a playback speed specification unit
2 through to the following semicolon; is that correct?

3 A. Yes. That's correct.

4 Q. And then 1.5 is a frame rate conversion unit through
5 to the next semicolon; is that correct?

6 A. Actually, I mean, just to be technical, the 1.5, I
7 included the word and also, which is after the
8 semicolon.

9 Q. Okay. So 1.5 is a frame rate conversion unit through
10 to the next semicolon and including the word and,
11 correct?

12 A. Yes.

13 Q. And then 1.6 is a moving image data output unit
14 through to the period at the end of the claim; is that
15 correct?

16 A. Yes.

17 Q. Okay. So moving to Element 1.1, I have some questions
18 about the moving data input unit. Let me know when
19 you're back there.

20 A. Okay. I'm there.

21 Q. Okay. Mr. Lett, is a moving image data input unit the
22 name of a specific structure?

23 A. I'm not aware of -- that it's the name of anything
24 specific. I'm not really rendering opinions on
25 structures, I do not think, in my declaration.

1 Q. And in 1.2, is an input frame rate specification unit
2 the name of a specific structure?

3 A. I don't know. I mean, I don't know what you mean by
4 structure. I don't have an opinion on that.

5 Q. All right. So going back to the moving image data
6 input unit, I think you said it was not the name of
7 anything specific; is that correct?

8 A. I don't recall if that's exactly what I said.

9 Q. Can you turn to paragraph 31 of your declaration.
10 It's on page 15.

11 So for this claim element, the moving image
12 data input unit, you state, Morikawa provides that its
13 video playing apparatus includes an input unit for
14 inputting video data of the video context, such as the
15 input unit 102 shown in Figure 1.

16 Do you see that?

17 A. Yes.

18 Q. And then, on the following page, you cite to Figure 1
19 of Morikawa where you have the input unit highlighted.

20 Do you see that?

21 A. Hang on just a second.

22 Okay. What was your question again?

23 Q. My question is, in paragraph 31, after the line that I
24 just read on page 16 of your declaration, you cite to
25 Figure 1 of Morikawa with the input unit highlighted.

1 Do you see that?

2 A. Yes, I see that.

3 Q. Okay. Is that input unit in Morikawa a specific
4 structure?

5 A. I'm not sure what you mean by specific structure.

6 Q. Is an input unit a known object?

7 Strike that.

8 Is an input unit something that you can buy
9 at a store?

10 A. I don't think so. They might be, but I cannot recall
11 ever seeing an input unit at a store.

12 Q. So if I asked the person of ordinary skill in the art
13 what is an input unit, they would not have a specific
14 structure in mind; is that correct?

15 A. I don't think a specific structure is what we're
16 talking about. I mean, anybody -- a person of
17 normal -- a POSITA would know that there -- an input
18 unit inputs something, right? And so the something in
19 this case is video.

20 Q. But that's its function, right, not its structure?

21 A. I think that's correct, yes.

22 Q. There are multiple different structures that one could
23 use to achieve the function of inputting video,
24 correct?

25 A. I'm not sure what you mean by structures, but there's

1 a lot of different ways to build, that a POSITA would
2 know how to build his input unit, a number of
3 different ways he would know to build it.

4 Q. Okay. And I'm going to ask these same questions for
5 each of the units in the claims, okay?

6 So for Element 1.2, we've got an input
7 frame rate specification unit.

8 Do you see that?

9 A. I see in 1.2 it says, an input frame rate
10 specification unit.

11 Q. Okay. And would the person of ordinary skill in the
12 art understand an input frame rate specification unit
13 to be a specific structure?

14 A. Again, I'm not sure what you mean by specific
15 structure. I understand the functionality, that a
16 person of ordinary skill in the art would understand
17 the functionality that is being referred to here.

18 Q. Okay. But there are any number of structures that a
19 person of ordinary skill in the art would be able to
20 use to create that functionality, correct?

21 A. There's a number of different ways to build this
22 functionality, and a person of ordinary skill in the
23 art would understand those.

24 Q. And now for Element 1.3, the output frame rate
25 specification.

1 Do you see that?

2 A. I do.

3 Q. Is an output frame rate specification unit the name of
4 a specific structure to a person of ordinary skill in
5 the art?

6 A. Again, I'm not sure what you mean by structure, but a
7 person of ordinary skill in the art would understand
8 how to build the functionality that's described.

9 Q. Using a number of different potential structures,
10 correct?

11 A. Well, again, I'm not sure what you mean by structure,
12 but they would know, you know, how to build it, and
13 multiple ways on how to build it.

14 Q. Okay. Instead of structure, would it make more sense
15 to you if I said a specific set of physical
16 components?

17 A. I don't know. Let's give it a try --

18 Q. Okay.

19 A. -- and see how it goes.

20 Q. So staying on 1.3, is an output frame rate
21 specification unit a specific set of physical
22 components?

23 Strike that. I forgot the person of skill
24 in the art.

25 Would the output frame rate specification

1 unit in Element 1.3 be known to be a specific set of
2 physical components to a person of skill in the art?

3 A. I would say there's multiple ways to -- multiple
4 components, multiple ways to build this functionality.

5 Q. We have three more elements of the claim.

6 1.4 is a playback speed specification unit.

7 Do you see that?

8 A. Yes.

9 Q. Would the person of skill in the art understand a
10 playback speed specification unit to be a particular
11 set of physical components?

12 A. There are multiple ways to build this functionality of
13 a playback speed specification unit that a POSITA
14 would understand.

15 Q. Okay. And so it's not a specific set of physical
16 components, correct?

17 A. I don't quite understand that question.

18 Q. A person of -- your opinion is that a person of skill
19 in the art would understand that there are multiple
20 different physical sets of components that they could
21 use to build a playback speed specification unit,
22 correct?

23 A. As I stated, I believe that a POSITA would understand
24 multiple ways to build this functionality.

25 Q. Okay. And excuse me.

1 Element 1.5 is a frame rate conversion
2 unit.

3 Do you see that?

4 A. Yes.

5 Q. And same question, Mr. Lett, which is, would the
6 person of skill in the art understand a frame rate
7 conversion unit to be a specific set of physical
8 components?

9 A. A person of normally -- of ordinary skill in the art
10 would understand multiple ways to build this
11 functionality.

12 Q. And Element 1.6, a moving image data output unit.
13 Do you see that?

14 A. Yes.

15 Q. Would the person of ordinary skill in the art
16 understand a moving image data output unit to be a
17 particular set of physical structures?

18 A. A person of ordinary skill in the art would understand
19 multiple ways to build this functionality.

20 Q. Okay. And so, for the prior art that you've cited,
21 Morikawa and Suzuki that you claim render these claims
22 obvious, if the prior art performs the function, is it
23 your opinion that any structure that the prior art
24 uses to perform that function would render the claims
25 invalid?

1 A. I don't understand the question.

2 Can you break it down a bit?

3 Q. Sure. Let's just talk about Morikawa for a second,
4 and I'll start -- we'll go back to just Element 1.1.

5 So could you look at pages 15 and 16 of
6 your declaration where you talk about Element 1.1 and
7 Morikawa.

8 A. Okay.

9 Q. So, in paragraph 31, you claim that Morikawa's input
10 unit 102 is the moving image data input unit in the
11 claim; is that correct?

12 A. I don't think that's what it says.

13 Q. What part of Morikawa other than the input unit 102 do
14 you rely on for this claim element?

15 A. So there's paragraphs 31, 32, 33, and 34.

16 Q. Yes. And in those three or four paragraphs, do you
17 see any other structure that you refer to aside from
18 input unit 102?

19 A. Again, I'm not sure what you mean by structure.

20 Q. Aside from the functionality referred to in Morikawa,
21 is there any physical component that you rely on in
22 Morikawa aside from input unit 102 for this claim
23 element?

24 A. (No verbal response.)

25 (Pause in proceedings at 10:04 a.m.)

1 (Back on the record at 10:06 a.m.)

2 THE WITNESS: Can you read back the
3 question?

4 MR. MERCADANTE: Madam Court Reporter, can
5 you please read back the question.

6 (The following requested portion of the
7 record was read by the reporter at
8 10:06 a.m.):

9 Q. Aside from the functionality referred
10 to in Morikawa, is there any physical
11 component that you rely on in Morikawa
12 aside from input unit 102 for this claim
13 element?)

14 THE WITNESS: What I'm trying to convey in
15 this section of my declaration is that this claim
16 element is in Morikawa, it's the same thing, and I'm
17 referring to multiple sections in Morikawa, including
18 Figure 8, Figure 2, discussion of that.

19 So the functionality is disclosed in
20 Morikawa of this claim element.

21 BY MR. MERCADANTE:

22 Q. Right. And my question to you, Mr. Lett, is, as long
23 as the functionality required by this claim is
24 disclosed in Morikawa, the specific structure that
25 Morikawa uses to accomplish that functionality is not

1 relevant to your opinion, right?

2 A. I don't think I rendered an opinion on the structure
3 of the elements in my argument.

4 Q. So I think that means the answer to my question is
5 yes, right? You contend that the functionality
6 required by this claim is present in Morikawa,
7 correct?

8 MR. KATZ: Just objection to form.

9 THE WITNESS: Can you repeat that, please?

10 BY MR. MERCADANTE:

11 Q. Sure. You contend -- strike that.

12 It's your opinion, Dr. Lett -- strike that
13 again.

14 A. I'm not a doctor.

15 Q. I already pulled it back.

16 It's your opinion, Mr. Lett, that the
17 functionality required by Claim Element 1.1 is present
18 in Morikawa, correct?

19 A. That's right.

20 Q. And the specific structure -- strike that.

21 And the specific set of physical components
22 that Morikawa does or does not use to accomplish that
23 function is not germane to your opinion, correct?

24 MR. KATZ: Objection to form.

25 THE WITNESS: I'm sorry. I don't

1 understand the question.

2 BY MR. MERCADANTE:

3 Q. Okay. So let's say, instead of input unit 102,
4 Morikawa disclosed a connector for a connection to a
5 camera.

6 Are you with me so far?

7 A. I think so.

8 Q. Okay. So if instead of input unit there was a box in
9 Morikawa that said connector, and all of the
10 functionality of Morikawa was the same, would that
11 change your opinion as to Element 1.1?

12 MR. KATZ: Objection to form.

13 THE WITNESS: I mean, I didn't really
14 consider your scenario in forming my opinion. I would
15 need to think about that to render an opinion on that.

16 BY MR. MERCADANTE:

17 Q. So you cannot tell me whether the specific structure
18 used in the prior art is relevant to your opinion or
19 not?

20 MR. KATZ: Objection to form.

21 THE WITNESS: So in my declaration, I
22 didn't render any opinions in this section that I'm
23 aware of about specific structures or components.

24 BY MR. MERCADANTE:

25 Q. Okay. I have another set of questions about this

1 claim element, but as they relate to Suzuki, and I'd
2 like to go to that now.

3 I will give you a page and paragraph cite
4 in your declaration as soon as I find it.

5 It's paragraph 80 of your declaration,
6 which is on page 41.

7 Let me know when you're there.

8 A. I'm there.

9 Q. So paragraph 80 or Claim Element 1.1, you say, Suzuki
10 describes an image capturing unit 101, captures an
11 image of an object, and generates and outputs moving
12 image data corresponding to the object.

13 And then you cite to Suzuki at paragraph
14 25.

15 Do you see that?

16 A. Yes.

17 Q. Could you please turn to paragraph 25 of Suzuki, and
18 Suzuki is marked as Exhibit 1007 to this deposition.

19 A. Okay. I have it.

20 Q. So in paragraph 25 of Suzuki, which you cite in your
21 declaration, it states, in Figure 1, an image
22 capturing unit 101 captures an image of an object and
23 generates and outputs moving image data corresponding
24 to the object.

25 That's the sentence you quote in your

1 declaration.

2 Do you see that?

3 A. Yes.

4 Q. Okay. And then the next sentence in paragraph 25 of
5 Suzuki states, the image capturing unit 101 includes
6 an optical system, such as a zoom lens and a focus
7 lens, a complementary metal oxide silicone, CMOS,
8 sensor or the like, an iris, an AD converter for
9 converting captured moving data -- moving image data
10 into digital data, and a processing circuit for
11 applying necessary processing to captured moving image
12 data.

13 Did I read that correctly, and do you see
14 that?

15 A. Yes.

16 Q. Okay. So is it fair to say that the image capturing
17 unit 101 in Suzuki is a camera?

18 MR. KATZ: Objection to form.

19 THE WITNESS: I don't know. It could be.
20 I'm not sure. It's describing the input capturing
21 unit 101 in that paragraph.

22 BY MR. MERCADANTE:

23 Q. And would a person of skill in the art understand the
24 image capturing 101 in Suzuki, including a lens, an
25 image sensor, an Iris, an AD converter, and a

1 processing circuit, to be a camera?

2 A. That's one example maybe of what it could comprise.
3 It could be other things also, but, I mean, it seems
4 reasonable that those are elements of a camera.

5 Q. Okay. And if the image capturing unit 101 in Suzuki
6 was simply a terminal in which a camera could be
7 connected, would that change your opinion as to the
8 functionality disclosed in Suzuki?

9 A. I didn't address that opinion. I'm not sure. That
10 might be a new opinion that I would need to think
11 about.

12 Q. I'm sorry, Mr. Lett. Were you finished with your
13 answer? You said I would need to think about, and
14 then you stopped. Were you done?

15 A. I'm done.

16 Q. Okay. So you would need to think about what?

17 A. The new opinion that you asked me to render just a
18 minute ago that I did not render in my declaration.

19 Q. Okay. So similar to Morikawa -- strike that.

20 As long as Suzuki discloses the function
21 required by the claim, is the specific camera that's
22 disclosed in Suzuki relevant to your opinion?

23 A. I'm not sure if he discloses a specific camera.

24 Q. What other structure do you see disclosed in Suzuki,
25 aside from a camera, as the image capturing unit 101?

1 MR. KATZ: Objection to form.

2 THE WITNESS: The quote I was trying to
3 convey is that the prior art includes the elements of
4 the claim as a whole for the patent.

5 MR. MERCADANTE: I object to that answer as
6 nonresponsive, and I will ask the question again.

7 BY MR. MERCADANTE:

8 Q. Mr. Lett, what other structure do you see in Suzuki
9 for the image capturing unit 101 aside from a camera?

10 MR. KATZ: Objection to form.
11 Misrepresents the document and misrepresents his prior
12 answer.

13 And I'm not sure, actually, you can object
14 to an answer in a deposition. So I object to that.

15 You may answer, Mr. Lett.

16 THE WITNESS: Can you read back that
17 question, please?

18 (The following requested portion of the
19 record was read by the reporter at
20 a.m.

21 Q. Mr. Lett, what other structure do you
22 see in Suzuki for the image capturing unit
23 101 aside from a camera?)

24 THE WITNESS: I don't remember rendering an
25 opinion that Suzuki is a camera.

1 BY MR. MERCADANTE:

2 Q. Well, Mr. Lett, in paragraph 80 of your declaration,
3 you quote the same two sentences that we read out of
4 paragraph 25 of Suzuki, correct?

5 A. I see one sentence. Let's see.

6 Can you repeat your question?

7 Q. Sure. Paragraph 80 of your declaration states, Suzuki
8 describes an image capturing unit 101, captures an
9 image of an object, and generates and outputs moving
10 image data corresponding to the object.

11 Did I read that correctly, and do you see
12 that?

13 A. Yes.

14 Q. Then you have another quote.

15 The image capturing unit 101 includes an
16 optical system, such as a zoom lens and a focus lens,
17 a CMOS sensor or the like, an iris, an AD converter
18 for converting captured moving image data into digital
19 data, and a processing circuit for applying necessary
20 processing to capturing moving image data.

21 Do you see that?

22 A. Yes.

23 Q. And then you cite, a memory 103 stores moving image
24 data\output from the image capturing unit 101.

25 Do you see that?

1 A. Yes.

2 Q. And that cites to paragraph 26 of Suzuki; is that
3 correct?

4 A. Yes.

5 Q. So my question, Mr. Lett, is if Suzuki did not have an
6 image capturing unit 101, but still had a memory 103
7 that stored moving image data from a separate camera,
8 would that change your opinion?

9 MR. KATZ: Objection to form.

10 THE WITNESS: I don't understand the
11 question.

12 MR. MERCADANTE: Madam Court Reporter,
13 could you please read back the question.

14 THE COURT REPORTER: Yes.

15 (The following requested portion of the
16 record was read by the reporter at
17 10:21 a.m.):

18 Q. So my question, Mr. Lett, is if Suzuki
19 did not have an image capturing unit 101,
20 but still had a memory 103 that stored --
21 what is the brief I used? -- image
22 capturing data from a separate camera,
23 would that change your opinion?)

24 THE COURT REPORTER: Hang on one second.

25 Let me just make sure that brief I used was

1 correct.

2 MR. MERCADANTE: I can rephrase it if you
3 don't have it.

4 THE COURT REPORTER: No, I do. I just have
5 to verify the brief form.

6 MR. MERCADANTE: I can rephrase it.

7 BY MR. MERCADANTE:

8 Q. Mr. Lett, would your opinion change if Suzuki did not
9 describe an image capturing unit 101, but, instead,
10 only described a memory 103 that received image data
11 from a separate camera?

12 A. So I did not consider the scenario you're describing
13 and, thus, I did not generate an opinion on that
14 scenario.

15 I'm really not comfortable coming up with
16 new opinions in this testimony without significant
17 thought about that at this time.

18 Q. Mr. Lett, do you have -- strike that.

19 Mr. Lett, have you rendered any opinion in
20 your declaration regarding the proper construction of
21 any claim term in the '041 patent?

22 A. That sounds like a lawyer saying something that I
23 don't quite understand.

24 Q. Mr. Lett, you don't have any opinions on claim
25 construction, correct?

1 A. I'm not sure in my declaration that I rendered any
2 opinions on claim construction. I may have. I just
3 don't recall.

4 Q. Could you please turn to paragraph 27 of your
5 declaration. It's on page 13. Let me know when
6 you're there.

7 A. I'm there.

8 Q. It states that you've been informed that claim terms
9 in IPR should be interpreted according to the Phillips
10 standard.

11 Do you see that?

12 A. Yes.

13 Q. Do you know what the Phillips standard is?

14 A. I've never read the Phillips standard, but I was told
15 it should be interpreted according to the Phillips
16 standard.

17 Q. And then it also states, in the next sentence, that
18 you've been informed that claim terms need only be
19 construed to the extent necessary to resolve the
20 controversy.

21 Do you see that?

22 A. Yes.

23 Q. Do you know what type of controversy would require a
24 claim construction?

25 A. I am not an attorney, and I do not understand that.

1 I'm a technical guy. So I can't really offer an
2 opinion on that at this time.

3 Q. And then, the final sentence says, based on the
4 evidence presented herein and the prior art's
5 description of the claimed elements being similar to
6 that of the '041 patent specification, in my opinion,
7 no formal claim constructions are necessary in this
8 proceeding.

9 Do you see that?

10 A. Yes.

11 Q. So to reask my prior question, you do not have any
12 prior opinions on claim construction in this case,
13 correct?

14 A. I think, as stated here, in my opinion no formal claim
15 constructions are necessary in this proceeding.

16 Q. Okay. And you base that on the fact that the, quote,
17 prior arts description of the claimed elements being
18 similar to that of the '041 patent specification
19 requires no claim construction; is that correct?

20 That was a terrible question. Strike that.
21 I'll ask that again.

22 You elected not to present a formal claim
23 construction because the prior art's description of
24 the claimed elements are similar to that of the '041
25 patent specification; is that correct?

1 A. I mean, as stated in my opinion, no formal claim
2 constructions are necessary in this proceeding.

3 Q. And that's because the prior arts description of the
4 claimed elements are similar to that of the '041
5 patent specification, correct?

6 A. You know, again, I'm not an attorney. I'm getting a
7 little bit confused by the language there.

8 Q. Well, I'm just --

9 A. So I'm just not comfortable, you know, answering --
10 you know, rendering another opinion. I would like to
11 stick to the opinions that are in the declaration.

12 Q. Well, I'm reading directly out of your declaration.

13 A. Okay.

14 Q. You stated that no formal claim construction is
15 necessary because, quote, the prior arts description
16 of claimed elements being similar to that of the '041
17 patent specification, end quote.

18 And my question --

19 MR. KATZ: Actually, I'll lodge an
20 objection. You misread the document.

21 What that says is, based on the evidence
22 presented herein and the prior arts description of the
23 claimed elements being similar to that of the '041
24 patent specification, in my opinion, no formal claim
25 constructions are necessary in this proceeding.

1 That is the quote in the document.

2 MR. MERCADANTE: Mr. Katz, another speaking
3 objection like that and we'll call the PTAB.
4 Understood?

5 MR. KATZ: Call the PTAB right now, sir.
6 You misrepresented -- you told him you read his
7 document. You misread it. I corrected on the record.
8 I'd be happy to talk to PTAB, and we'll see who is
9 violating the deposition rules here, sir.

10 MR. MERCADANTE: You can object as to form,
11 and speaking objections are not allowed, Mr. Katz. Is
12 that understood?

13 MR. KATZ: Actually, that's not correct.
14 You should read the PTAB trial manual. You are
15 incorrect.

16 BY MR. MERCADANTE:

17 Q. Mr. Lett, you have no formal claim construction
18 opinion in this case; is that correct?

19 A. As stated in my document, in my opinion, no formal
20 claim constructions are necessary in this proceeding.

21 Q. And that is because of the first half of that sentence
22 in your declaration; is that correct?

23 A. Based on the evidence presented herein and the prior
24 arts description of the claimed elements being similar
25 to that of the '041 patent specification, in my

1 opinion, no formal claim constructions are necessary
2 in this proceeding.

3 MR. MERCADANTE: Okay. Thank you,
4 Mr. Lett.

5 We've been going a little bit less than an
6 hour. I'm about to change gears, so I think now is
7 another good time for a break, if that's okay with
8 everyone.

9 (Recess taken at 10:28 a.m.)

10 (Back on the record at 10:39 a.m.)

11 BY MR. MERCADANTE:

12 Q. Welcome back, Mr. Lett.

13 A. Thank you.

14 Q. So I don't have much more. I'm hoping that we can
15 finish before the next break, but let's see how it
16 goes. I just wanted to give you an idea of my
17 timeline.

18 I'd like to talk about Morikawa for a few
19 more minutes. We've already covered a lot, and,
20 unfortunately, I've lost my copy of Morikawa.

21 Here it is. Okay.

22 Can you turn to paragraph 9 of Morikawa,
23 Mr. Lett?

24 THE WITNESS: Okay. I have it.

25 ///

1 BY MR. MERCADANTE:

2 Q. And the paragraph is long, and I'm not going to read
3 the whole thing into the record, but would you agree
4 with me that paragraph 9 of Exhibit 1004 describes a
5 decimating process?

6 A. It mentions a frame decimating process. I'm not sure
7 it describes what is involved in decimating in this
8 paragraph.

9 Q. Would a person of ordinary skill in the art know what
10 is involved in decimating a digital video?

11 A. Yes. I think they would, and there's a number of ways
12 to do that, of which one is decimating frames or frame
13 rate conversion.

14 Q. I think there are probably a couple of different
15 definitions of decimating, and I want to make sure
16 that we're all on the same page, okay?

17 What would the person of ordinary skill in
18 the art understand decimating to mean?

19 A. Well, I'm not here to define decimating, but I can
20 give you some examples.

21 Q. That would be great. Give me some examples of
22 decimating that would be understood by a person of
23 ordinary skill in the art in this field.

24 A. Yeah.

25 So if I wanted to change the bit rate of,

1 let's say, an audio or video transmission, I might
2 want to reduce the bit rate, and, thus -- and one way
3 to do that is essentially to reduce the amount of bits
4 that are required to represent that content by
5 compressing the content and/or, let's say, removing
6 information from that content so that it essentially
7 requires a lower bit rate. That's one example.

8 Q. So in the digital video context, one way that you
9 could decimate video would be to simply remove a
10 certain number of frames, correct?

11 A. Yes, you can decimate video by removing frames.

12 Q. Does decimation require the removal of a certain
13 number of frames?

14 A. There's a number of different ways to decimate other
15 than removing frames. So I would say that doesn't
16 require removing frames.

17 Q. Okay. Decimation, in the narrow context, involves a
18 base 10 calculation, right? If an army is decimated,
19 that means that 9 out of 10 soldiers are not combat
20 effective; is that correct?

21 A. I'm sorry. I've never heard that in my life. You
22 just taught me something that I've never heard before.

23 Q. Okay. But in this field, you can decimate by a
24 different factor other than 10, correct?

25 A. So let me make sure I understand what we're talking

1 about.

2 Can you provide the context again of
3 exactly what you're --

4 Q. Sure. So there's a narrow view of the term
5 decimation, which requires it to always involve base
6 10, right? The narrow view of decimation is that you
7 would decimate video by removing 9 out of 10 frames.
8 But my understanding, and I think your understanding
9 and I think the understanding of the person of
10 ordinary skill in the art in this field, is that you
11 can decimate video by any factor, correct?

12 A. You can certainly decimate video by more than -- I
13 think you said a factor of 10.

14 I mean, there are -- I can't think of all
15 the ways that you could decimate, right, but it's
16 certainly more than just the very narrow by 10
17 definition that -- or explanation that you just
18 offered.

19 Q. Okay. So I think we're on the same page.

20 Can you turn to paragraph 47 of your
21 declaration. It's on page 27.

22 Let me know when you're there.

23 A. I'm there.

24 Q. So, in this paragraph, you're characterizing Morikawa
25 and saying, in the normal playback mode, the 300 FPS

1 encoded portion is decimated by a factor of 1/5th, so
2 that one out of every five frames is played back, as
3 previously discussed and shown in Figure 7A and 7C of
4 Morikawa.

5 Did I read that correctly?

6 A. Yes.

7 Q. And so, in Morikawa, and in your opinion, removing --
8 removing four out of every five frames is still
9 decimation; is that correct?

10 A. That's right.

11 Q. Okay. That's all that I wanted to confirm, that
12 nobody here is using the narrow definition of
13 decimation to refer to only a 90 percent reduction.

14 Can you please turn to paragraph 49 of your
15 declaration, which is on the next page.

16 A. Okay.

17 Q. And this cites to Morikawa at paragraphs 25 to 29.

18 Do you see that?

19 A. Yes.

20 Q. Can you please turn to paragraphs 25 through 29 of
21 Morikawa. That's Exhibit 1004.

22 And in paragraph 26, the last sentence,
23 Morikawa says, the playback time of the entire
24 contents as a result of decimating out the frames is
25 calculated as a playback time of the normal playback

1 mode.

2 Do you see that?

3 A. Yes.

4 Q. Did Morikawa only decimate the entire contents?

5 A. So as you can see in Figure 2 beside it, there are --
6 Scene 2 and Scene 4 are decimated, and this is talking
7 about the total playback time. But, essentially, the
8 process we were just talking about is applying to more
9 than just the whole content. It's talking about two
10 scenes -- two contents of the video.

11 Did that answer your question?

12 Q. I think so. Let me try asking it a different way.

13 Scene 2 and Scene 4 of Morikawa are
14 decimated at the same rate; is that correct?

15 A. No, not at the same rate.

16 Q. Where do you see Morikawa applying different
17 decimation factors to Scene 2 and Scene 4?

18 A. Okay. So --

19 (Pause in proceedings at 10:50 a.m.)

20 (Back on the record at 10:52 a.m.)

21 THE WITNESS: So, previously, we were
22 talking about Scene 2 that had an input frame rate of
23 300 frames per second, and in this section of
24 paragraph 49 of my declaration, I'm talking about
25 Scene 4, which has an input frame rate of 120 frames

1 per second.

2 So it's describing what a POSITA would
3 understand as decimating at a factor of one-half for
4 Scene 4 and one-fifth for Scene 2.

5 Q. So, in your opinion, Morikawa applies decimation of a
6 different factor to Scene 2 versus Scene 4?

7 A. That's right.

8 Q. Does Morikawa disclose whether a user can select the
9 output frame rate?

10 A. I do not recall.

11 Can you point me to my section of my
12 declaration where I say that or otherwise?

13 Q. Sure.

14 Let's talk about the output frame rate
15 specification unit, which is Element 1.3, which is on
16 page 20 of your declaration.

17 A. Excuse me. What page?

18 Q. 20.

19 A. Thank you.

20 Q. But, in paragraph 37, you state, in the third
21 sentence, Morikawa explains that this playback frame
22 rate is set based on a display frame rate of a display
23 device.

24 Do you see that?

25 A. Yes.

1 Q. And the next sentence is a quote. It says, more
2 specifically, when the display frame rate is 60 hertz,
3 the playback frame rate is set to 60 hertz.

4 Do you see that?

5 A. Yes. And that's referring to -- yes -- paragraph 26.

6 Q. So is it correct that Morikawa sets the output frame
7 rate to the output frame rate that is required by the
8 display device?

9 A. Yes. It says the playback frame rate is set based on
10 the display frame rate of the display device.

11 Q. Do you rely on any other disclosure in Morikawa that
12 shows a user being able to select an output frame
13 rate?

14 A. I do not recall.

15 Is there a section you want me to look at
16 to refresh my memory?

17 Q. Sitting here today, you do not recall whether Morikawa
18 allows a user to set an output frame rate; is that
19 correct?

20 A. I can read my whole declaration and decide -- and
21 answer that question, but, currently, I do not recall.

22 Q. Okay. And now could you please turn to Suzuki --

23 A. Yes.

24 Q. -- which is Exhibit 1007.

25 A. Okay.

1 Q. And now my notes say paragraph 84, but I'm not sure if
2 I should refer to 84 of Suzuki or 84 of your
3 declaration. So just give me a minute here.

4 84 of your declaration. I'm sorry.
5 Paragraph 84, which is on page 43.

6 Let me know when you're there.

7 A. Yes, I'm here.

8 Q. Okay. And, in this section, we're talking about the
9 input frame rate specification unit; would you agree?

10 A. We're talking about the claim element that has more to
11 it than that. We're talking about Claim Element 1.2.

12 Q. Okay. And so for Claim Element 1.2, you say that, as
13 previously discussed, Suzuki teaches capturing first
14 and second moving image data having different frame
15 rates; is that correct?

16 A. Yes.

17 Q. And then you state that, Suzuki further describes
18 that, after capturing the moving image data, the
19 control unit 107 instructs the recording and
20 reproduction unit 109 to generate additional
21 information, including information on the frame rate
22 of the moving image data and record the generated
23 additional information on the recorded medium 110 as
24 additional information of a moving image file.

25 Do you see that?

1 A. Yes.

2 Q. My question is, how does the control unit 107 and the
3 recording and reproduction unit 109 in Suzuki specify
4 the first and second frame rates?

5 And you can feel free to refer to paragraph
6 42 of Suzuki which is what you cite in this paragraph.

7 A. So I think instructs is a way to specify. So the
8 control unit 107 instructs the recording and
9 reproduction unit 109 to generate additional
10 information, including information on the frame rate
11 of moving image data.

12 Did that answer your question?

13 Q. A little bit. I think I'm more concerned about the
14 word generate.

15 So instructs the recording and reproduction
16 unit to generate additional information that includes
17 information on the frame rate, and I'm wondering how
18 that frame rate information is generated.

19 Is it just read? Is it understood from the
20 metadata? I just want to know if you have an
21 understanding as to how the frame rate information is
22 generated in Suzuki.

23 A. I do not remember. I don't recall how that is done.
24 If you like, I can read through Suzuki, and if I see
25 that or did I -- better yet, did I cite where I found

1 that?

2 Q. Well, you cite to paragraph 42 of Suzuki and Figure 8.

3 A. Okay. Let me look at that.

4 Q. So if you need to read paragraph 42 and review Figure
5 8, I'm fine with that.

6 (Pause in proceedings at 11:00 a.m.)

7 (Back on the record at 11:02 a.m.)

8 THE WITNESS: I do not see in that section
9 where it describes how it generates additional
10 information. It might be in the document. I just do
11 not recall.

12 BY MR. MERCADANTE:

13 Q. Okay. So would reading a frame rate from metadata
14 count as generating information on the frame rate?

15 A. Yeah. One could read the frame rate from the
16 metadata. Yes. That's one way. There are a number
17 of ways to do that.

18 Q. And if the metadata -- if there is no metadata, would
19 analyzing the video itself to determine the frame rate
20 count as generating information on a frame rate?

21 A. I think a POSITA could and would be able to look at
22 incoming video to determine the -- to determine the
23 frame rate.

24 Is that what you mean?

25 Q. Yes. I think that's what I meant.

1 So analyzing the incoming video to
2 determine the frame rate would count as generating
3 information on the frame rate, correct?

4 A. It's kind of odd terminology, you know, that I
5 wouldn't necessarily use, but I think that what's
6 going on here is that you're figuring out what the
7 frame rate is of the video that's coming in.

8 Q. And so, as long as the system figures out the frame
9 rate of the information coming in, that frame rate
10 information is generated according to the person of
11 ordinary skill in the art, correct?

12 A. I think that's kind of odd terminology. So I really
13 wouldn't use those words.

14 But I think figuring it out -- figuring out
15 the frame rate is a more straightforward way to say
16 what's going on.

17 MR. MERCADANTE: Okay. I have no further
18 questions, subject to any redirect by Mr. Katz.

19 MR. KATZ: Yep. No redirect here.

20 Thank you.

21 MR. MERCADANTE: I don't see any reason to
22 mark the transcript confidential, unless, Mr. Lett,
23 you would like us to seal the contents of your
24 conversation with your wife.

25 THE WITNESS: That might need to be

1 confidential, and I am kidding.

2 MR. MERCADANTE: All right. We'll keep the
3 transcript public unless we hear otherwise.

4 Thank you for your time, Mr. Lett.

5 THE COURT REPORTER: Are you ordering,
6 Mr. Mercadante?

7 MR. MERCADANTE: I would like a rough
8 today, and a full transcript on your standard terms,
9 which I think is two weeks.

10 THE COURT REPORTER: Okay. No problem.
11 And what about you, Mr. Katz?

12 MR. KATZ: No. We won't be ordering
13 anything on this. Sitting through it once was enough.

14 THE COURT REPORTER: Okay. Thank you very
15 much.

16 You all have a great evening.

17 (The deposition was concluded at 11:06 a.m.
18 Signature of the witness was not requested by
19 counsel for the respective parties hereto.)
20
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CERTIFICATE OF NOTARY

STATE OF MICHIGAN)

) SS

COUNTY OF OAKLAND)

I, VIOLA KAY NEWMAN, certify that this deposition was taken before me on the date hereinbefore set forth; that the foregoing questions and answers were recorded by me stenographically and reduced to computer transcription; that this is a true, full, and correct transcript of my stenographic notes so taken; and that I am not related to nor of counsel to either party nor interested in the event of this cause.

VIOLA KAY NEWMAN, CSR 4320, RPR, CRR
Notary Public,
Oakland County, Michigan.

My commission expires: December 4, 2025

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CASE: TIKTOK INC. vs. ADVANCED CODING TECHNOLOGIES, LLC
 DATE: JUNE 16, 2023
 WITNESS: DAVID LETT REF: 7327

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 DAVID LETT

Subscribed and sworn to before me
 this ____ day of _____, 20__.

 Notary Public

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