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UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD
CASE NO. IPR2023-01196
PATENT NO. 11,126,966
BEFORE KAREN I. SWEENEY, TRIAL PARALEGAL

BRYCER, LLC, AND BRYCER MANAGEMENT, INC.,
Petitioners

V.

TEGRIS, INC.,
Patent Owner

DEPONENT: RICHARD MACINNES
DATE: MARCH 27, 2024
REPORTER: LINDSEY N. JOHNSON

APPEARANCES

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(Appeared via videoconference)

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(Appeared via videoconference)

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Ex. 1004 - Curriculum Vitae of Richard MacInnes

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Ex. 1005 - United States Patent Application

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75

Ex. 1006 - United States Patent Application

Publication Sweeney

88

Ex. 1016 - International Publication Number W0

2004/104891 AI, Chauhan

42

Ex. 1020 - United States Patent Application

Publication McKinney et al.

42

Ex. 2012 - Patent Owner's Notice of Deposition
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STIPULATION

The deposition of RICHARD MACINNES was taken at KENTUCKIANA COURT REPORTERS, 730 WEST MAIN STREET, SUITE 101, LOUISVILLE, KENTUCKY, 40202, via videoconference in which all participants attended remotely, on WEDNESDAY the 27th day of MARCH 2024 at approximately 9:41 a.m. (ET); said deposition was taken pursuant to the United States Patent and Trademark Office Rules of Procedure. The above-referenced notarial act involved the use of communication technology. Specifically, the court reporter appeared by videoconference pursuant to KRS 423.455 and complied with all statutory requirements.

It is agreed that Lindsey N. Johnson, being a Notary Public and Court Reporter for the State of Kentucky, may swear the witness.

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PROCEEDINGS

THE REPORTER: We are now on the record. Will all parties present please state your appearance, how you are attending, and the location you are attending from?

MR. PERQUE: Chris Perque, counsel for the patent Tegris, and I'm attending from Gulfport, Mississippi.

MR. COLSHER: Patrick Colsher for the petitioners Brycer, LLC, and Brycer Management, Inc., and I am currently in Hermosa Beach, California.

THE WITNESS: Rich MacInnes representing myself and my company, New Results, Inc. I'm in Louisville, Kentucky.

THE REPORTER: And, Mr. MacInnes, will you please hold your driver's license up to the camera and wait until it is focused? Do all parties present agree that the witness is, in fact, Richard MacInnes?

MR. PERQUE: Yes.

MR. COLSHER: Yes.

THE REPORTER: Thank you. You can put that down, sir. And if you will, please raise your right hand. Do you swear or affirm that the testimony you

1 are about to give will be the truth, the whole
2 truth, and nothing but the truth?

3 THE WITNESS: I do.

4 THE REPORTER: Thank you. Mr. Perque.

5 DIRECT EXAMINATION

6 BY MR. PERQUE:

7 Q. Good morning, Mr. MacInnes. You understand
8 that you're appearing today in, and in a party review
9 proceeding, and we've marked the notice of deposition as
10 Exhibit 2012 in this proceeding.

11 (EXHIBIT 2012 MARKED FOR IDENTIFICATION)

12 A. Yes.

13 BY MR. PERQUE:

14 Q. Mr. MacInnes, today I'm going to be asking you
15 questions. I'll try to keep them, you know, as clear as
16 possible, but if you have any questions about my
17 question, or if you think they're vague, I'm happy to
18 rephrase. Does that make sense?

19 A. Yes.

20 Q. When I'm asking you questions today, I would
21 like for you to answer the questions without reading
22 materials, because I want to know what your
23 understanding is, or the support for your opinions, not
24 necessarily your ability to read documents; is that
25 fair?

1 A. Yes.

2 Q. And if you feel you need to review a document
3 to respond to a question, that's okay. I may ask you --
4 I may allow that. I may move on to something else. The
5 way the deposition works, if you haven't been involved
6 in a deposition before, is I'll have an opportunity to
7 question you. Counsel from Brycer will then have an
8 opportunity to question you. If there's anything that
9 needs to be cleared up, he can clear it up at that time.
10 Make sense?

11 A. Yes.

12 Q. So as you -- from the location where you are
13 testifying, do you have any materials out on the desk
14 before you for review during the deposition?

15 A. I have two binders of the exhibits.

16 Q. Okay. Do you have any personal notes, other
17 than the binders and exhibits?

18 A. No.

19 Q. And are those binders opened or are they
20 closed at present?

21 A. They're closed.

22 Q. And on the computer that you're working from,
23 is there anything on the screen, or that's open and
24 available for you to review, other than the exhibits
25 that have been marked in this deposition?

1 A. No.

2 Q. And I'll note for the record that we premarked
3 in the deposition a few of the exhibits from the IPR,
4 and then the notice of deposition that I just referred
5 to. Mr. MacInnes, you mentioned in your declaration
6 that you're providing services at your standard hourly
7 rate. What is that rate?

8 A. My services for standard hourly rate?

9 Q. What rate are you charging?

10 A. \$250 an hour. And for deposition, 350.

11 Q. When were you first contacted about this case?

12 A. I don't recall specifically.

13 Q. Do you recall who contacted you about this
14 case?

15 A. Patrick Colsher.

16 Q. Had you worked with Patrick Colsher in a prior
17 case?

18 A. No.

19 Q. Did you work with anyone from Patrick
20 Colsher's law firm in a prior case?

21 A. No.

22 Q. Have you ever done any work for Brycer?

23 A. No.

24 Q. Have you done any work for -- when I refer to
25 Brycer, I'm referring to both of the petitioners. There

1 are two Brycer entities that are identified as
2 petitioners. Have you done any work for either of the
3 petitioners in this IPR?

4 A. No.

5 Q. Have you done any work for Tegriss before?

6 A. No.

7 Q. Before this IPR, had you heard of Tegriss or
8 the petitioners, the Brycer entities?

9 A. No.

10 Q. Have you ever been retained as an expert in
11 another IPR proceeding?

12 A. No.

13 Q. Have you ever been retained as an expert in
14 any type of legal proceeding relating to patents?

15 A. No.

16 Q. Have you ever provided expert testimony in
17 connection with any civil legal proceeding?

18 A. Yes.

19 Q. How many civil cases have you provided --
20 strike that. In how many civil cases have you provided
21 expert testimony?

22 A. In terms of a deposition, or in terms of a
23 declaration?

24 Q. Let's start with terms of a declaration.

25 A. One.

1 Q. And what was that case?

2 A. It was a case for a gasoline nozzle.

3 Q. Do you remember the parties to that case?

4 A. Huck's Gas Station. And I can't recall the
5 plaintiffs' side.

6 Q. And which entity retained you in that case?

7 A. Huck's.

8 Q. And so are there any other civil cases, other
9 than that case, where you provided expert testimony?

10 A. No.

11 Q. Now you mentioned that that was related to a
12 nozzle. Is it fair to say that that case didn't involve
13 any issues regarding patents related to gasoline
14 nozzles?

15 A. Well, I did review the patents for the nozzle
16 designs.

17 Q. Okay. Were those patents at issue in the
18 case?

19 A. There were engineering design changes, but
20 those weren't explicit in the patents.

21 Q. You did not provide in that case any opinions
22 regarding the validity of the claims in those patents?

23 A. That's correct.

24 Q. Is this proceeding the first proceeding where
25 you have been asked to opine on the validity of patent

1 claims?

2 A. Yes.

3 Q. Now, there was a declaration that you signed
4 that was submitted in this case as Exhibit 103. Did you
5 review that declaration in connection with your
6 preparation for deposition?

7 A. Yes.

8 Q. And as you sit here today, does that
9 declaration accurately set forth your credentials,
10 experience, and opinions in this case?

11 A. Yes. Minus a couple of typos.

12 Q. Okay. Do you recall as you sit here what
13 those typos are?

14 A. No.

15 Q. Your declaration submitted -- strike that.
16 Your declaration referenced a CV that's been marked as
17 Exhibit 104, and that's your curriculum vitae; correct?

18 A. That's correct.

19 Q. And does that curriculum vitae accurately and
20 completely represent your experience and other
21 credentials as they are related or pertinent to this
22 case?

23 A. Yes.

24 Q. So in your CV, it mentions that you attended
25 the Naval Academy from 1976 to 1980, and you studied

1 general engineering, correct?

2 A. That's correct.

3 Q. Did you earn a degree from the Naval Academy?

4 A. Yes, I did.

5 Q. And what was that degree?

6 A. BS, Bachelor of Science.

7 Q. In general engineering?

8 A. In engineering.

9 Q. Now, at the time you attended the Naval
10 Academy, it's fair to say that you did not take any
11 classes on programming regarding to web-based
12 registries, right?

13 A. Not at that time, no. It's fair to say, yes.

14 Q. And during your coursework at the Naval
15 Academy, did you take any computer programming courses?

16 A. Yes.

17 Q. Which ones?

18 A. Basic language, Fortran.

19 Q. Now my engineering degree is of a similar
20 vintage. When you were doing programming, did you-all
21 use the programming cards that were then run through a
22 mainframe?

23 A. The answer at that time was no, but I was
24 aware of the cards.

25 Q. So did you-all use a CRT terminal in

1 connection with your programming class?

2 A. Yes.

3 Q. And that CRT terminal was connected to the
4 mainframe, essentially?

5 A. Correct.

6 Q. And the -- do you remember anything about
7 those programming courses as to, you know, that programs
8 you prepared at that time?

9 A. Not right off the top of my head, no.

10 Q. Now your CV also refers to attending North
11 Dakota State University from 1983 to 1985, and it refers
12 to graduate studies. Did you earn a degree from North
13 Dakota State University?

14 A. No, I did not.

15 Q. And then your CV also refers to attending the
16 University of Phoenix from 2001 to 2004. Was the
17 University of Phoenix in-person classes, or was that
18 online?

19 A. That was online.

20 Q. And the University of Phoenix is not an
21 accredited university for issuing MBAs, at least it
22 wasn't at that time, correct?

23 A. Not to my knowledge.

24 Q. Going back to your graduate studies in
25 industrial engineering, in connection with that degree,

1 did you take any programming classes?

2 A. Yes.

3 Q. What programming classes did you take at that
4 time?

5 A. It was in what they call a machine language.

6 Q. Any other classes?

7 A. Machine language was principally it. We
8 combined that with Fortran.

9 Q. And do you recall the -- the device that you
10 were programming using the machine language?

11 A. Yes.

12 Q. Was it like an 88 processor, or something like
13 that?

14 A. You're pretty good. It was an 8088
15 microprocessor. It was used for doing analysis of optic
16 RAMS for machine vision systems so that we could detect
17 edges of objects and use that to instruct robots.

18 Q. And then with regard to the online courses at
19 the University of Phoenix, it's referred to as an MBA
20 program. Did you actually receive that degree from the
21 University of Phoenix?

22 A. Yes.

23 Q. And were there any programming courses that
24 were taken in connection with that --

25 A. No.

1 Q. -- program? Okay.

2 I can't recall if I asked you this: Have any
3 patents been issued with you identified as the named
4 inventor?

5 A. No.

6 Q. Have you ever applied for a U.S. patent?

7 A. No.

8 Q. To the extent your LinkedIn page says, "Rich
9 has patented Demand Supply Compression (DSC) Framework,"
10 that's inaccurate?

11 A. It should say trademarked or registered.

12 Q. And to the extent your LinkedIn page refers to
13 you obtaining a master's degree in engineering, that's
14 also not accurate, correct?

15 A. I don't know where it says I obtained a
16 master's degree in engineering. I attended graduate
17 studies.

18 Q. Okay. We'll come back to that.

19 Before your work on this case, had you
20 performed any other work as a business consultant, or
21 otherwise related to monitoring the inspections of fire
22 hydrants or related equipment?

23 A. No.

24 Q. Before your work on this case, had you
25 provided any services related to software regarding

1 monitoring for the inspections of hydrants and other
2 life safety systems?

3 A. Yes.

4 Q. In what instance?

5 A. We conducted studies of multiple operations,
6 both public and private sector, where water delivery
7 systems were used, including facilities which would have
8 sprinklers, for example, or for refineries, it would
9 have chemical plants that would have water systems or
10 fire hydrants on those locations from waste water
11 management treatment facilities, which would also have
12 those kind of assets on board. So essentially the asset
13 management software would -- would include those type of
14 assets within our recommendations for them to put into
15 the system.

16 Q. Now you've used a couple of pronouns, "we" and
17 "our." I want to be clear that when I'm asking you
18 about your experience --

19 A. Yes.

20 Q. -- I'm asking you for things that you worked
21 on. I understand that you have a company. So

22 I want to drill down and ask you, you know:
23 What systems in particular did you work on? So you said
24 you worked on systems for public entities related to
25 water systems, right?

1 A. Correct.

2 Q. What public entity are you referring to?

3 A. Primarily U.S. Army bases. Like Fort Knox,
4 Aberdeen proving grounds, et cetera, that were using the
5 U.S. Army forces deployed to Iraq and Kosovo where we
6 managed -- where I developed through my assessment
7 process strategies for managing what we call a facility
8 or infrastructure-related assets.

9 Q. Okay. So for U.S. Army bases, you provided
10 services where you provided strategies for managing
11 assets at U.S. Army bases, right?

12 A. Right. Using specific technologies.

13 Q. Okay. You did not write software for the
14 U.S. Army to perform that task, correct?

15 A. That's correct.

16 Q. And to the extent the U.S. Army used the
17 software to perform that task, that was conducted by the
18 U.S. Army, correct?

19 A. Correct.

20 Q. And to the extent you were providing services
21 related to strategies for managing those assets, the
22 actual implementations was performed by the U.S. Army,
23 correct?

24 A. In combination with consulting or engineering
25 resources, of which I was part of that team.

1 Q. Okay. And when you say you were part of that
2 team, what are you referring to?

3 A. It's a team like, for example, total resource
4 management, where we would -- we were asked to help them
5 deploy what is commonly referred to as commercial
6 off-the-shelf technology to help them put in the system
7 for managing their assets.

8 Q. What commercial off-the-shelf technology did
9 you or that group recommend?

10 A. MAXIMO technology.

11 Q. That's MAXIMO, right?

12 A. MAXIMO. M-A-X-I-M-O.

13 Q. And that's a system that was developed, at
14 least initially, by individuals in the UK; is that
15 correct?

16 A. I don't know the exact history of that, where
17 it was developed specifically, but the parent company
18 that started it was PSDI, Project Software Development,
19 Inc. That was out of Massachusetts.

20 Q. Right. But the point being, when you refer to
21 it as off-the-shelf technology, it's off- the-shelf
22 technology provided by a third-party vender, not you or
23 the company that you owned, right?

24 A. That's correct.

25 Q. You referred to the U.S. Army bases as an

1 example the public sector experience. Any other public
2 sector experience related to managing water- related
3 assets?

4 A. Just -- I can only talk generally for the
5 companies that I was with. I was specifically involved
6 with those projects.

7 Q. All I want is your personal involvement.

8 A. Right, exactly.

9 Q. Okay. Now going to the private sector, you --
10 can you identify any systems in the private sector where
11 you provided services related to systems that included -
12 - I think you described water sprinklers and fire
13 hydrants?

14 A. Those would be any of those listed in my CV
15 that are refineries, chemical plants, mining operations,
16 et cetera.

17 Q. Let's focus on the period prior to 2007.

18 Identify any one of the instances that you can
19 recall where you, individually, provided services
20 regarding assets that include water sprinklers and fire
21 hydrants, as you referred to it?

22 A. I would have to look at my CV and see. I
23 don't think it's dated in my CV.

24 Q. Well your CV is marked as Exhibit 1004, and if
25 you go to the exhibit share, you should be able to open

1 it up.

2 (EXHIBIT 1004 MARKED FOR IDENTIFICATION)

3 A. Oilexco, North Sea -- Oilexco, North Sea would
4 have had a water system on it for fire prevention.

5 That's an off-shore drilling platform.

6 BY MR. PERQUE:

7 Q. Sir, I don't want to interrupt your answer,
8 but I just want to understand, Oilexco, that's
9 O-I-L-E-X-C-O, correct?

10 A. Right.

11 Q. And that was a project that was before 2007?

12 A. I don't have the date specifically, so I can't
13 recall specific dates.

14 Q. Okay. With regard to any of the items that
15 are listed on your CV, can you identify any of them that
16 represents a project that you personally worked on, that
17 predated 2007, that involved water sprinklers and/or
18 hydrants?

19 A. So I would suggest that the public utilities
20 for southwest -- Southeast Water in the UK, so that was
21 a maximum value impact assessment, and the Trinity
22 River Authority, which was waste water management.

23 Q. Okay. Let's take those separately. So the --
24 where is the first one that you identified? What page
25 is that on?

1 A. That's Page 3 of 5.

2 Q. So is that under, "Power Generation," the
3 third bullet point that says --

4 A. That would be under, "Public Utilities."

5 Q. Okay. So under, "Public Utilities," that's
6 the, "Trinity River" project?

7 A. Yes.

8 Q. You mentioned one before the Trinity River
9 project?

10 A. That's right below that one.

11 Q. Okay. So Southwest Water, UK --

12 A. Southeast Water.

13 Q. Thank you. I apologize. I'm going to put my
14 glasses on.

15 So let's start with the, "Trinity River
16 Authority" in Dallas, Texas. And it looks like there's
17 a reference in your CV that says, "Conducted MAXIMO
18 Value Impact Assessment," correct?

19 A. Yes.

20 Q. And "MAXIMO" is a reference to the software
21 that was discussed earlier, that's a third- party vender
22 software, correct?

23 A. That's correct.

24 Q. So it's described here, is that your company,
25 and you participated in this project, conducted an

1 evaluation using that software, right?

2 A. Evaluation of their asset management
3 strategies that informed the software, meaning informed
4 the software on how to deploy that software.

5 Q. And when you said, "how to deploy that
6 software," what are you referring to?

7 A. Basic configuration of the software, any
8 conductivities to third party applications of third
9 party technologies that would allow them to conduct
10 their acquisition of assets, initial provisioning of
11 spares, the initial programming and practices for
12 maintaining those assets, and inspecting those assets,
13 ultimately conducting condition based monitoring of
14 those assets, and then making decisions whether to
15 repair, replace, or over haul those assets, and then
16 ultimately to what spare parts and what their supply
17 chain would look like for those parts. And so it
18 included everything from the entirety of the asset life
19 cycle, including all phases of acquisition to maintain,
20 to disposal of assets, to the entire work management of
21 the resources necessary to maintain those assets.

22 MR. PERQUE: Objection. Nonresponsive.

23 BY MR. PERQUE:

24 Q. I was asking a fairly specific question. You
25 referred to that software. Were you referring to the

1 MAXIMO software?

2 A. MAXIMO would be the core software of which
3 things would integrate to as well.

4 Q. So with respect to we were talking about the
5 Trinity River Authority in Dallas, Texas, and I think
6 you mentioned that your recollection is that would have
7 included water-related systems?

8 A. That's correct.

9 Q. Do you recall what software, other than
10 MAXIMO, was used by the Trinity River Authority, either
11 as a result of that analysis, or before that analysis?

12 A. I think in Trinity Rivers Authority's case,
13 they would have been using a SCADA system, which
14 monitors the system.

15 Q. And did they develop the SCADA system
16 in-house?

17 A. No.

18 Q. Do you recall who the vender was that
19 developed the SCADA system?

20 A. No.

21 Q. For clarity, it wasn't you or your company
22 that developed the SCADA system, right?

23 A. That's correct.

24 Q. And similarly, with regard to Southwest Water
25 UK, it states essentially the same thing?

1 A. That's correct.

2 Q. That your company conducted a MAXIMO -- so you
3 gave a fairly long answer about what your recollection
4 of what that involved. Would those two projects
5 essentially involve the same service?

6 A. That's correct.

7 Q. Now needless to say, given that these projects
8 -- strike that.

9 In connection with the Trinity River
10 Authority, you referred to the software that was used as
11 a SCADA system. That is not a web-based registry,
12 correct?

13 MR. COLSHER: Objection to form.

14 THE WITNESS: I would not classify it as a web-
15 based registry, no.

16 BY MR. PERQUE:

17 Q. And do you recall what software was used by
18 Southeast Water, UK, in connection with the oversight of
19 assets relating to sprinkler systems and related
20 devices?

21 A. The system that we were proposing was MAXIMO
22 to do that.

23 Q. Right. But I think you testified earlier that
24 MAXIMO is used as a software, used in conjunction with
25 other software. So setting aside the MAXIMO software,

1 do you recall any other software that was used by
2 Southeast Water UK to manage assets related to sprinkler
3 systems?

4 A. No, I don't recall.

5 Q. And the same question, to the extent that the
6 Southwest Water, UK managed hydrants, do you remember
7 what, if any, software they used to manage fire
8 hydrants?

9 A. I don't recall.

10 Q. Referring to your CV generally, it does not
11 describe any instance where your company provided
12 services managing the inspections of fire hydrants,
13 right?

14 A. That's correct.

15 Q. And you don't have any personal experience
16 with that, at least nothing prior to this case, right?

17 A. I had no personal experience managing fire
18 hydrants, correct.

19 Q. Right. And/or using software in connection
20 with the management of fire hydrants?

21 A. I did not personally use the software that was
22 used to manage fire hydrants.

23 Q. There's a list of considered materials in your
24 declaration that you identify as items that you
25 relied upon in forming your opinions in this case,

1 right?

2 A. That's correct.

3 Q. Now it does not include the six provisional
4 applications that are referenced in the patent at issue
5 in this case, the 966 patent. Did you review those
6 provisional applications?

7 MR. COLSHER: Objection to form.

8 THE WITNESS: I thought there was the listing
9 of the provisional applications in the list.

10 BY MR. PERQUE:

11 Q. Well let me ask you a different question.

12 As you sit here today, do you recall
13 downloading and reviewing the provisional applications
14 that are identified in the 966 patent?

15 Sir, you are reading. What are you reading?

16 A. I'm just looking at an outline from my binder.

17 Q. So is that the list of materials that you are
18 referring to?

19 A. Yes. It's in the three-ring binder.

20 Q. You can review the list of materials. My
21 question was more specific: Do you recall --

22 A. Are you talking about the provisional patents
23 of, like, 269, 870? The ones that were provisional
24 before the issuance of the 966 patent?

25 Q. Yes. I'll clarify the record. You should

1 have Exhibit 101 as an exhibit that has been premarked.

2 If you will open that.

3 A. Yes.

4 Q. Now if you're just looking at the front page
5 of that exhibit, and you're looking at the Item 60,
6 which is right below --

7 A. Yes.

8 Q. -- heading, "Related U.S. Application Data,"
9 do you see that?

10 A. Yes.

11 Q. That provides a list of several, and I think
12 there are six. There are several provisional
13 applications.

14 A. Yes.

15 Q. Did you review each of those provisional
16 applications?

17 A. Yes.

18 Q. And previously you testified that your list of
19 considered materials is complete, right?

20 MR. COLSHER: Objection to form.

21 BY MR. PERQUE:

22 Q. Well, I'll state it another way. Previously
23 you testified your declaration is complete and
24 accurately identifies the materials you considered,
25 correct?

1 MR. COLSHER: Objection to form.

2 BY MR. PERQUE:

3 Q. Sir, you can answer subject to his objection.

4 A. Okay. I believe those are listed in the
5 declaration that I considered those.

6 Q. Okay. So let's state it another way. To the
7 extent that the provisional applications were
8 considered, they're listed in the materials considered,
9 right?

10 A. I don't have it right in front of me, so I
11 can't answer that question.

12 Q. Well I'll ask it a different way. You
13 reviewed your declaration before this deposition.

14 A. That's correct.

15 Q. You testified earlier that it's accurate.
16 Your declaration identifies the materials you
17 considered. To the extent that you considered the
18 provisional applications, they're listed in the
19 declaration, correct?

20 A. Listed or cited.

21 Q. Well there's a table of materials considered
22 that identifies the materials that are considered,
23 correct?

24 A. Yes.

25 Q. Is it complete? And you are welcome to look

1 at it if you would like.

2 A. I believe that I have a statement in there
3 that says that I can update this at some point based on
4 information that is discovered, or information that
5 comes out of this.

6 Q. Sir, I think my question was fairly
7 straightforward. I'll ask it again: For the opinions
8 that are set forth in your declaration, you identified
9 in your declaration a table of materials considered for
10 the opinions set forth in that declaration --

11 A. Yes.

12 Q. -- is that table complete?

13 Please let me finish my question before you
14 answer, otherwise the testimony is garbled.

15 A. Yes, it's complete.

16 Q. Thank you.

17 Now, before preparing -- well, strike that.

18 What did you do to prepare for your deposition
19 today?

20 MR. COLSHER: Objection to the extent that it
21 calls for protected work product.

22 But you can generally answer as to what you did
23 to prepare without divulging the work product.

24 THE WITNESS: I reviewed all documents.

25 BY MR. PERQUE:

1 Q. And when you refer to, "all documents," what
2 are you referring to?

3 A. The exhibits.

4 Q. And when you are referring to, "the exhibits,"
5 are you referring to the exhibits to the IPR petition?

6 A. I'm referring to the exhibits that we cited.

7 Q. And when you refer to, "we" -- I'm trying to
8 get a clear record. When you are referring to --

9 A. That I cited, yes.

10 Q. -- the materials that were cited in your
11 declaration, correct?

12 A. That's correct.

13 Q. And did you meet with counsel before attending
14 the deposition today?

15 A. Yes.

16 Q. How many times?

17 A. Two or three.

18 Q. Okay. Approximately how many hours?

19 A. Six.

20 Q. And did you-all discuss the testimony that you
21 would be providing today?

22 MR. COLSHER: Objection to the extent that it
23 asks for work product, or the substance of any
24 discussions. But you can answer yes or no.

25 A. Yes.

1 BY MR. PERQUE:

2 Q. And did counsel advise you on how to respond
3 to questions regarding, by way of example, the
4 construction of the challenge claims at issue in this
5 proceeding?

6 A. No.

7 Q. And as part of those discussions -- strike
8 that.

9 Did you prepare any notes in connection with
10 your meeting with counsel?

11 A. Yes.

12 Q. And do you have those notes with you today?

13 A. No.

14 Q. Where are those notes?

15 A. They have been discarded.

16 Q. Why were they discarded?

17 A. Because I -- that's what I normally do.

18 Q. Well this appears to be maybe the second case
19 that you have testified in --

20 A. Right.

21 Q. -- so is it your testimony that your standard
22 operating procedure is that you destroy your notes after
23 conferring with counsel?

24 A. No.

25 MR. COLSHER: Objection to form.

1 A. No.

2 MR. COLSHER: Misstates testimony.

3 A. My approach is that I make notes, and I
4 present those in my declaration, and that's it.

5 BY MR. PERQUE:

6 Q. Well my question was different, and I
7 apologize if that was confusing.

8 A. Right.

9 Q. This is all part of a set of questions about
10 what did you do to prepare for your deposition today,
11 and I think you mentioned that you had a handful of
12 meetings with counsel. And my question was: Did you
13 take any notes from your meetings with counsel?

14 A. Right.

15 Q. Did you?

16 A. Yes.

17 Q. And so the notes that you took in connection
18 with your meeting with counsel in preparation for this
19 deposition today --

20 A. Yes.

21 Q. -- you destroyed?

22 A. That's correct.

23 Q. Did you destroy them on advice of counsel?

24 A. No. So I have -- I have previous experience
25 with this, but not related to that was where I was

1 basically advised in my past to not hold onto this type
2 of information, so that's been my rule.

3 MR. PERQUE: Objection. Nonresponsive.

4 There's no question pending.

5 BY MR. PERQUE:

6 Q. Okay. Mr. MacInnes, focusing on the period
7 now before you signed the declaration that is
8 Exhibit 103 in these proceedings --

9 A. Right.

10 Q. -- there's a list of materials considered
11 that's referenced in the declaration -- pardon me --
12 were those provided to you by counsel for petitioners?

13 A. Yes.

14 Q. Outside of the documents that were provided to
15 you by counsel for petitioners, did you conduct any
16 other investigation on your own?

17 A. No.

18 Q. Did you have any discussions with any
19 representatives of the petitioners?

20 A. No.

21 Q. Were you provided any information other than
22 what's referenced in the considered materials about the
23 software that's used by the petitioners?

24 A. No.

25 Q. And when I refer to the software, I'm talking

1 about the software that they use in connection with
2 managing the inspections of fire hydrants. Do you
3 understand that?

4 A. I do.

5 Q. Do you know the name of the software that the
6 petitioners used for that?

7 A. They have diagrams in their patents, and they
8 have various names for it.

9 Q. Well I'm referring to the petitioners, not the
10 patent owners, so the Brycer entities. Do you know what
11 software the Brycer entities used in connection with
12 managing the inspections?

13 A. The answer would be no.

14 Q. So it's fair to say that you did not conduct
15 any investigation regarding the similarities between the
16 patent owner's software and Brycer's software for
17 managing the inspections of fire hydrants?

18 A. The only --

19 MR. COLSHER: Objection to form. Sorry,
20 Mr. MacInnes. Let me -- let's try not to talk over each
21 other. I know it's exciting to rush, but objection to
22 form. You can answer the question.

23 THE WITNESS: The only insight I have about
24 Brycer technology is from the complaint for patent
25 infringement.

1 BY MR. PERQUE:

2 Q. Right. And the same would be the case with
3 regard to the Tegriss software for managing the
4 inspections of fire hydrants?

5 A. Other than the patent.

6 Q. Fair. Now the complaint, as you refer to it,
7 is the patent litigation that was filed by the patent
8 owner Tegriss against one of the Brycer entities,
9 correct?

10 A. Correct.

11 Q. And that's one of the -- a copy of that
12 complaint and the exhibits there, too, is one of the
13 items listed in your materials considered, right?

14 A. Correct.

15 Q. And you just testified that you reviewed that
16 complaint and the exhibits to it, I assume, correct?

17 A. That's correct.

18 Q. One of the allegations in that complaint by
19 Tegriss is that Brycer copied its software, that Brycer
20 copied Tegriss's software, with regard to managing the
21 inspections of fire hydrants. You understand that?

22 A. Yes.

23 Q. And as part of your work in connection with
24 this IPR proceeding, you did not ask Brycer whether
25 they, in fact, copied any aspect of the Tegriss software?

1 A. I had no communication with Brycer.

2 Q. And you didn't conduct any other investigation
3 to determine whether or not there was, in fact, copying
4 as alleged by Tegriss?

5 A. That's correct.

6 Q. You could have asked counsel or Brycer about
7 that, you just didn't do so, correct?

8 A. I was not asked to consider that.

9 Q. I know you mentioned you didn't have any
10 conversations with Brycer, but also you did not ask for
11 any financial information from Brycer that might
12 demonstrate the extent to which they've had commercial
13 success in connection with their software or monitoring
14 the inspection of fire hydrants?

15 MR. COLSHER: Objection to form.

16 THE WITNESS: I did not have access to the
17 financials.

18 BY MR. PERQUE:

19 Q. Well, you didn't ask for it either, correct?

20 A. I didn't ask for it either, right.

21 Q. You could have asked for it, you just didn't
22 do so?

23 A. I wasn't -- I wasn't asked to review their
24 financials. I was asked to review the claims of the
25 patent.

1 Q. I'm just saying, there was no instance where
2 Brycer, or counsel for Brycer said, "No, you can't see
3 our financials," right?

4 MR. COLSHER: Objection to form.

5 THE WITNESS: I was not asked to review
6 Brycer's technology or financials.

7 BY MR. PERQUE:

8 Q. Now, in 2007, I want you to focus on that
9 period, in connection with preparing your declaration,
10 did you ask anyone for information on systems or
11 processes that were used by fire marshals and other
12 regulatory authorities in connection with the inspection
13 of fire hydrants?

14 MR. COLSHER: Objection to form.

15 THE WITNESS: No, no.

16 BY MR. PERQUE:

17 Q. And aside from what's listed in the materials
18 considered, you don't have any other knowledge of what
19 fire marshals and other regulatory authorities were
20 using to manage the inspections of fire hydrants?

21 MR. COLSHER: Objection to form.

22 THE WITNESS: When deploying strategies, or
23 very specific workflows, of which those types of
24 assets would be considered around NFPA, or other
25 codes would have been identified relative to those

1 assets, and those would have been part of the
2 process for setting up the system.

3 So when considering assets like Southeast
4 Water, like -- what was the other one I referring
5 to, that essentially those codes would have been
6 known by the organizations themselves, and those
7 would have been -- provisions would have been have
8 made for the forms, et cetera, et cetera, to be part
9 of the system.

10 MR. PERQUE: Objection. Nonresponsive.

11 BY MR. PERQUE:

12 Q. My question was pretty specific. I'll reask
13 it. In connection with preparing your declaration,
14 other than the materials considered in the declaration,
15 you have no other knowledge, personal knowledge you
16 have, of how fire marshals or other approval authorities
17 were managing the inspection of fire hydrants prior to
18 2007?

19 A. That's correct.

20 MR. COLSHER: Objection to form.

21 MR. PERQUE: I'm going to introduce an exhibit.
22 Bear with me for a moment.

23 MR. COLSHER: Chris, I'm not sure where you
24 are, but would now be a good time for a break while
25 you are loading?

1 MR. PERQUE: Yeah, we certainly can. You want
2 to take a 20-minute break. We've been going for an
3 hour.

4 MR. COLSHER: Yeah, 20 minutes, whatever you
5 need.

6 MR. PERQUE: Oh, I don't need -- I'm ready to
7 introduce. I'm just asking you. How long of a
8 break would you need?

9 MR. COLSHER: Let's say ten minutes, maybe.

10 MR. PERQUE: Ten minutes is fine.

11 THE REPORTER: Off the record.

12 (OFF THE RECORD)

13 BY MR. PERQUE:

14 Q. Mr. MacInnes, I want to talk about the -- your
15 declaration that's marked as Exhibit
16 1003.

17 (EXHIBIT 1003 MARKED FOR IDENTIFICATION)

18 A. Okay.

19 BY MR. PERQUE:

20 Q. Before we get into the details of that, did
21 you type that declaration?

22 A. I edited and typed, yes.

23 Q. Okay. So with regard to the process for the
24 declaration that you submitted, is it correct that
25 counsel provided to you a draft of the declaration that

1 you then edited?

2 A. It was a combination of drafting on both
3 sides.

4 Q. Okay. Let's focus on the first draft. Was
5 the first draft of the declaration sent to you by
6 counsel for petitioners?

7 A. Yes.

8 Q. And then is it correct that after that, you
9 had video conferences with counsel where you-all
10 discussed the declaration, and changes were made?

11 A. Not correct.

12 Q. Okay. So after counsel for petitioners sent
13 you the draft declaration, what did you do?

14 A. I reviewed the documentation that I was using
15 and then made decisions of whether or not those would be
16 useful for the examples of the claims, and then reword
17 it or re-referenced.

18 Q. Okay. So let's break that down a little bit.
19 When you refer to the documents that you were using, are
20 you referring to the materials identified in the list of
21 materials considered?

22 A. Correct.

23 Q. And your testimony is you reviewed the draft
24 declaration, you reviewed those materials, and then you
25 made some edits to the declaration, right?

1 A. Correct.

2 MR. COLSHER: Objection to form.

3 BY MR. PERQUE:

4 Q. Do you recall what edits you made?

5 MR. COLSHER: Objection.

6 THE WITNESS: Not specifically. But in
7 general, the notion of regulated assets versus
8 nonregulated assets. Those assets that are
9 monitored for compliance.

10 BY MR. PERQUE:

11 Q. Would that be in the background section where
12 it discussed your --

13 A. It would be throughout.

14 Q. Please let me finish my question.

15 A. I apologize.

16 Q. That's okay. I know you are trying to be
17 helpful, but you have to let me finish, because the
18 transcript is not very readable. So to the aspect you
19 edited it, what aspect of it do you recall editing?

20 A. The general nature of how we describe assets,
21 the general nature of which we describe asset management
22 systems, and then the very specific notations around
23 general practices that one of a person of obviousness,
24 in terms of what would have been normal practices of
25 which these documents would reinforce.

1 Q. Okay. With regard to any of the analysis of
2 the prior art, do you recall making any changes, by way
3 of example, the analyses related to Key, which is
4 Exhibit 105?

5 MR. COLSHER: Objection to form.

6 THE WITNESS: I can't recall specific changes
7 to Key.

8 BY MR. PERQUE:

9 Q. And then similarly with regard to Sweeney, do
10 you recall making any changes to the analysis that was
11 provided to you by counsel regarding the Sweeney
12 reference, which is Exhibit 106?

13 MR. COLSHER: Objection to form.

14 THE WITNESS: I can't recall specific examples
15 of corrections.

16 BY MR. PERQUE:

17 Q. Okay. And would you have the same answer as
18 it relates to Chauhan Exhibit 1016 and
19 McKinney Exhibit 1020?

20 MR. COLSHER: Objection to form.

21 A. I would have the same response, correct.

22 BY MR. PERQUE:

23 Q. I marked and introduced Exhibit 2013, which
24 you should see, which is the claim aid in a format
25 that's hopefully a little more readable, and the claim

1 as marked includes along the left-hand margin references
2 8A, 8B, 8C. Do you see that?

3 (EXHIBIT 2013 MARKED FOR IDENTIFICATION)

4 A. Which document is that?

5 BY MR. PERQUE:

6 Q. Oh, this should be Exhibit 2013.

7 If you would open that up via the exhibit
8 share.

9 A. I don't have an Exhibit 2013.

10 MR. COLSHER: You may have to refresh.

11 THE WITNESS: Do I need to refresh, too?

12 MR. PERQUE: Yes.

13 THE WITNESS: Okay. I'll open. I see it.

14 BY MR. PERQUE:

15 Q. Okay. And this is a reproduction of Claim A
16 as it's written in the 966 patent, and there are
17 notations on the left-hand margin 8A, 8B, 8C, 8D. Do
18 you see that?

19 A. Yes.

20 Q. And do you recognize that as notation, that is
21 consistent with the notation used in your declaration
22 and in the petition, as it relates to, or refers to
23 paragraphs of Claim 8?

24 A. It appears to be consistent.

25 Q. And when you -- your declaration includes

1 analysis that you signed on to that was extensively done
2 from the point of view of a person of ordinary skill in
3 the art, correct?

4 A. That would be correct.

5 Q. And part of that analysis is how a person of
6 ordinary skill in the art would construe or understand
7 the meaning of the challenge claim, including Claim 8,
8 right?

9 A. That's my understanding, yes.

10 Q. So looking at Claim 8, the first paragraph,
11 which is the commonly referred to as the preamble,
12 states, "A computer-implemented method for using a fire
13 hydrant management software." Do you see that?

14 A. I do.

15 Q. How did you -- or what was your construction
16 for fire hydrant management software that you used in
17 connection with either stated opinions in the
18 declaration that is Exhibit 1003?

19 MR. COLSHER: Objection to form.

20 THE WITNESS: My experience would be that a
21 fire hydrant management system software would manage
22 the acquisition installation, use maintenance repair
23 overhaul, and replacement of a fire hydrant system
24 of fire hydrants.

25 So -- versus fire hydrant management software

1 that would act as a to-do list when inspections are
2 due.

3 BY MR. PERQUE:

4 Q. Now, I want to make sure I understand your
5 answer. So in the declaration, your analysis is
6 supposed to be done from the point of view of a person
7 of ordinary skill in the art, correct?

8 A. Yes.

9 Q. So when you refer to, "my experience," were
10 you referring to year personal experience or the
11 experience of a person of ordinary skill in the art?

12 A. Ordinary skill in the art.

13 Q. And Claim 8 also refers to a web registry.

14 ?

15 How did you construe that claim from the point
16 of view of a person of ordinary skill in the art?

17 MR. COLSHER: Objection to form.

18 THE WITNESS: A database that was available
19 through web connectivity.

20 BY MR. PERQUE:

21 Q. And then the last part of claim -- of the
22 preamble of Claim A refers to, "tract requisite
23 inspection of an owned asset." Do you see that?

24 A. I do.

25 Q. And when you consider the term "tract

1 requisite inspection," how did you construe that?

2 MR. COLSHER: Objection to form.

3 THE WITNESS: For a person of the ordinary
4 skill of the art, is that you have both inspections
5 that are required based on the code, based on
6 manufacturers' recommendations, based on the
7 performance of the asset itself in the field,
8 meaning we have known failures and known points of
9 failures, and so that combination of practical
10 experience with the asset code, and any other
11 regulations around that, would set up the requisite
12 inspections.

13 BY MR. PERQUE:

14 Q. Okay. Now, referring to the paragraph that's
15 noted as claim -- that's noted with reference 8A, and
16 begins with, "Granting remote access." Do you see that?

17 A. I do.

18 Q. And it basically states that the web-based
19 registry system is configured to run a fire hydrant
20 management software. That's referring to the fire
21 hydrant management software that's recited in the
22 preamble, right?

23 MR. COLSHER: Objection to form. Foundation.

24 THE WITNESS: That would be my understanding.

25 BY MR. PERQUE:

1 Q. And then it refers to at least three classes
2 of users, and here it refers to owner of an asset, and
3 approval authority, and an inspector, right?

4 A. That's what it states, yes.

5 Q. And the approval authority in this context
6 would be some type of public entity like a fire marshal,
7 or some other authority that's responsible for
8 monitoring the inspection of these assets, right?

9 MR. COLSHER: Objection to form.

10 THE WITNESS: Not necessarily.

11 BY MR. PERQUE:

12 Q. So as you read approval authority, and with
13 the understanding that this claim is construed in
14 accordance with the specification of the 966 patent, is
15 it your testimony that the approval authority does not
16 refer to a public entity?

17 MR. COLSHER: Objection to form.

18 THE WITNESS: The approval authority can be
19 generically as a person of ordinary skill in the
20 art, belong to those who authorize the inspection
21 itself, and not all fire hydrants are publicly
22 owned.

23 BY MR. PERQUE:

24 Q. Well they may not be publicly owned, but the
25 fire hydrants are subject to regulation, correct?

1 A. The answer is, all fire hydrants are probably
2 -- installed fire hydrants are probably subject to
3 regulations, as well as the design of the fire hydrant
4 are subject to some sort of regulation.

5 Q. And the regulations in this instance, at least
6 it relates to fire hydrants, typically requires a
7 certain periodic inspection of the hydrant and related
8 systems, right?

9 A. That would be the recommendation of the
10 manufacturer of the fire hydrant. It would also be the
11 recommendation of those who have installed it, and it
12 would also be the recommendation of those who use the
13 fire hydrant in their system.

14 Q. Well that wasn't my question. I was referring
15 to the regulations themselves. Are you familiar with
16 the regulations that apply to fire hydrants, and whether
17 they require periodic inspection?

18 A. I'm generally familiar with fire -- the NFPA
19 regulations, as I studied those under the gasoline
20 nozzle case, and that there is a fundamental
21 understanding of the inspection for a designated period.

22 Q. Well I mean the regulations that apply to a
23 fire hydrant would be different than the regulations
24 that apply to a gas nozzle, right?

25 A. Well National Fire Prevention Association

1 would have multiple applications, in terms of the type
2 of valve that's being used.

3 Q. So going back to my question. Are you, as you
4 sit here, familiar with the regulations that would be
5 applicable to a fire hydrant that require periodic
6 inspections?

7 A. I did not review the specific NFPA regulations
8 that apply to fire hydrants.

9 Q. So in your analysis of this case, and opinions
10 rendered, how did you construe the term, "Approval
11 authority" from the perspective of a person of ordinary
12 skill in the art?

13 MR. COLSHER: Object to form.

14 THE WITNESS: It would be the person who
15 authorizes the execution of the inspection, and that
16 the inspector would somehow provide proof
17 certification that they are qualified to conduct the
18 inspection.

19 BY MR. PERQUE:

20 Q. Well let's use a hypothetical. Assume for the
21 sake of discussion that there's an inspection company
22 that has independent contractors who are inspectors, and
23 the inspection company hires an independent contractor
24 inspector to inspect a fire hydrant. Under your
25 definition of approval authority, would the inspection

1 company be the approval authority?

2 MR. COLSHER: Objection to form.

3 THE WITNESS: No. The owner of the asset
4 would be the approving authority, but the inspecting
5 company would have to provide proof of certification
6 that their inspectors are qualified to conduct the
7 inspection.

8 BY MR. PERQUE:

9 Q. So if there's an instance where an inspection
10 company hires a contractor to perform an inspection,
11 under that scenario, your opinion is that the approval
12 authority would actually be the owner of the asset?

13 MR. COLSHER: Objection to form.

14 THE WITNESS: Ultimately, the approval
15 authority has to be the ones who say that, "I
16 authorize this inspection to take place," and
17 therefore, with that authorization, they have the
18 obligation to pay for that inspection to be
19 conducted, in essence.

20 BY MR. PERQUE:

21 Q. Okay. Referring to 8B, it refers to
22 retrieving by a computer-based fire hydrant management
23 software system. Do you see that?

24 A. I do.

25 Q. And what was your construction of

1 computer-based fire hydrant management software system?

2 MR. COLSHER: Objection to form.

3 THE WITNESS: As I just described earlier,
4 what a person of ordinary skill in the art would
5 assume it meant, the management of a fire hydrant
6 system versus the management of the -- a code
7 inspection, which is a portion of the overall fire
8 management system, but certainly not the entirety of
9 fire management -- fire hydrant management system.

10 BY MR. PERQUE:

11 Q. And so is it your testimony then that the
12 computer-based fire hydrant management system includes,
13 but is not the same as, the web registry and fire
14 hydrant management software referenced in the preamble?

15 MR. COLSHER: Objection to form.

16 THE WITNESS: It depends on what the content
17 of the database is in the web registry.

18 BY MR. PERQUE:

19 Q. Sir, I'm not asking you about a specific
20 implementation. I'm asking: What is the claim
21 construction that you applied in connection with
22 rendering your opinions in this case? And so based on
23 your review of whatever materials you reviewed, and came
24 to a conclusion about the construction of the aspects of
25 Claim 8, in referring to this particular item computer-

1 based fire hydrant management software system, is it
2 your testimony that that item is not the same as the web
3 registry and fire hydrant management software operating
4 together?

5 MR. COLSHER: Objection to form.

6 THE WITNESS: I don't understand the question.

7 The web registry is simply accessed through the
8 web to the database, and the database is designed --
9 the design of the database is determined by the
10 extent of the capabilities of the fire hydrant
11 management software.

12 So if I restrict the capabilities of the fire
13 hydrant management software to simply a calendar
14 date to do an inspection, then that would be the
15 extent of the web registry. If I expanded the web
16 registry to include a database that was more
17 encompassing of a normal fire hydrant management
18 system, then that would be the extent of the
19 database that you could access through the web
20 registry.

21 BY MR. PERQUE:

22 ?

23 Q. I'm merely trying to understand how you
24 construed the term, "Computer-based fire hydrant
25 management software system." So please explain, or

1 indicate, your construction for that term.

2 MR. COLSHER: Objection to form. Asked and
3 answered.

4 THE WITNESS: I just -- it's how you construct
5 the database in the use of those databases within a
6 software system that's accessible through the web.

7 BY MR. PERQUE:

8 Q. So now looking at Claim 8 more wholistically,
9 you have the preamble that describes a web registry and
10 a fire hydrant management software. And then in element
11 8A, it says, "The web registry is configured to run a
12 fire hydrant management software." Do you see that?

13 A. I do.

14 Q. And then 8B says, "Retrieving by a
15 computer-based fire hydrant management software system
16 realtime records of assets from a database." Do you see
17 that?

18 A. I do.

19 Q. And then 8C says, "Analyzing the records of
20 assets from the database to identify notification." Do
21 you see that?

22 A. I do.

23 Q. And the reference to the records in element 8C
24 is a reference back to 8B, which referred to retrieving
25 realtime records, right?

1 A. Correct.

2 Q. Then 8D says, "Based on the analysis," and the
3 reference to the analysis in 8D refers back to the
4 analysis in 8C, right?

5 A. Yes.

6 Q. And similarly with 8E, where it says, "Based
7 upon the analysis," it's referring back to the analysis
8 in 8C, right?

9 A. Right.

10 Q. Okay. Now 8D says, "Based on the analysis
11 notifying the owner of an asset of a notification
12 event." Do you see that?

13 A. I do.

14 Q. And in connection with a hydrant, or a fire
15 hydrant, what would the owner of an asset refer to?

16 MR. COLSHER: Objection to form.

17 THE WITNESS: I don't quite understand the
18 question.

19 BY MR. PERQUE:

20 Q. Well you provided a declaration where you have
21 opined on Claim 8 from the perspective of a person of
22 ordinary skill in the art, and I'm asking you: What
23 construction did you use in connection with your
24 analysis for the term, "Owner of an asset"?

25 A. The owner of the asset owns the asset. It's

1 responsible for the asset.

2 Q. And then the -- well, let me ask the question
3 here.

4 So let's assume that there's a company that
5 owns a building, and the building has got 20 fire
6 hydrants in it, and, you know, the building is insured,
7 and the insurance company on occasion hires inspectors
8 to inspect the hydrants. In the context of that
9 scenario, the owner of the asset would be the owner of
10 the building, correct?

11 MR. COLSHER: Objection to form.

12 THE WITNESS: It's a very confused question in
13 my mind. I don't -- I see sand pipes within
14 buildings, which are extension of the water system.
15 I don't see fire hydrants within a building.

16 BY MR. PERQUE:

17 Q. Well I'll expand then. Instead of it being a
18 building, let's refer to it as a piece property, and on
19 this piece of property there are fire hydrants, and the
20 owner of the property, and that owner has insurance, and
21 the insurance company on occasion hires inspectors --

22 A. Yes.

23 Q. -- to inspect the hydrants. Under that
24 scenario, the owner of the assets would be the property
25 owner, not the insurer, correct?

1 A. That's correct.

2 Q. And then referring back to element 8D of
3 Claim A, it continues after a notice of application.

4 It says, "Wherein the notice," and the
5 reference to the notice there is the -- referring back
6 to notifying an owner of an asset, right?

7 MR. COLSHER: Objection to form.

8 THE WITNESS: That's what they're claiming.

9 BY MR. PERQUE:

10 Q. Right. That's how you construed the claims
11 when you opined on them, correct?

12 A. Yes. Notifying the owner of an asset is
13 notifying the owner of an asset, yes.

14 Q. All right. And the notice that's recited in
15 8D as a standard format description, do you see that
16 reference?

17 A. I do.

18 Q. How did you construe that term from the point
19 of view of a person of ordinary in the skill in the art?

20 A. My understanding and interpretation is that
21 he's referring to -- meaning Tegriss -- am I saying that
22 correctly? Is it Tegriss or Tegriss?

23 Q. I think either works for this.

24 A. Okay. Tegriss is referring to inspections
25 required by code. A person of ordinary skill in the art

1 would also say you get notified of other types of
2 inspections that might be inspections that are required,
3 or recommended by the -- again, I'll go back to the
4 original equipment manufacturer or inspections deemed by
5 the organization, based on experience with that
6 particular item in use. So for example, if I have --
7 not everything happens on a time-based failure. So a
8 hydrant can get hit by a car, a hydrant could be turned
9 on by neighborhood children wanting to play, they could
10 be in certain areas where we have high levels of
11 saltwater and corrosion, for example. And so the
12 experience with the asset would determine when those
13 inspections should take place, or how often those
14 inspections should take place. In this one, I believe
15 Tegriss is referring to -- Tegriss -- excuse me, simply
16 referring to the inspections required by code.

17 Q. Okay. So where it says, "Includes standard
18 format description of the type of inspection" --

19 A. Yes.

20 Q. -- your construction of standard format
21 description of the type of inspection is?

22 A. That there's -- that he was trying to attempt
23 to achieve a standard where there was not -- there was
24 inconsistent inspection report structures across the
25 industry, so across jurisdictions. He thought the

1 benefited this patent would be to -- essentially to
2 attempt to standardize across jurisdictions those forms.

3 Q. Okay. I want to make sure we're clear on what
4 forms we're referring to. In this instance, we're talks
5 about notifying an owner, and 8D refers to the notice,
6 and the standard format description of the notice,
7 right?

8 A. Yes. And that could vary by jurisdiction.

9 Q. Okay. And so again, tell me your construction
10 of standard format description of the type of
11 inspection?

12 MR. COLSHER: Objection to form.

13 THE WITNESS: So as a person of ordinary
14 skill, there's various types of inspection that is
15 performed on the piece of equipment, depending on
16 the functionality of their equipment. In almost all
17 cases, there's a visual inspection. And in most
18 cases there's a functional inspections. And in some
19 cases, there's other types of metrics that are used
20 to diagnose potential discrepancies or -- with that
21 particular asset.

22 BY MR. PERQUE:

23 Q. And then the claim continues on in addition to
24 -- in describing the notice -- strike that.

25 The claims continues in describing the notice

1 and says that it includes a cost associated with the
2 type of inspection, correct?

3 A. Yes.

4 Q. And then it further states, "Wherein the
5 notification event compromises a designated interval in
6 advance of impending deadline for the inspection,"
7 right?

8 A. Correct.

9 Q. So this notice that we've been discussing is a
10 notice that's sent out in advance of a deadline for an
11 inspection, right?

12 A. That's what it states, yes.

13 Q. And that's how you construed it in doing your
14 analysis, right?

15 A. Again, in my analysis, I looked for multiple
16 deadlines, not just one deadline set by a jurisdiction.

17 So there could be deadlines set by the asset
18 owner themselves as I want this inspected every six
19 months rather than every year. I want this one
20 inspected now because we just installed it. I want to
21 do a -- so they can have control over installation,
22 maintenance, and ultimately repair or overhaul disposal
23 of that asset, and through the whole life cycle, they
24 can designate points of inspection that they want to
25 accomplish. This one here refers to those intervals

1 associated with some jurisdictional code to remind them
2 they have an obligation to inspect something according
3 to code.

4 MR. PERQUE: Objection. Nonresponsive.

5 BY MR. PERQUE:

6 Q. I wasn't asking you about the designatable
7 interval. I was just confirming that the notice that
8 we're talking about here is a notice that's sent to the
9 asset owner in advance of an impending deadline for
10 inspection.

11 A. That's correct.

12 Q. And that's how you construed it for purposes
13 of your analysis?

14 A. Correct.

15 MR. COLSHER: Objection to form.

16 BY MR. PERQUE:

17 Q. Now going to 8E, the next element, it says,
18 "Based upon the analysis, sending a standard format
19 notice to the approval authority of the status of the
20 asset assigned to the approval authority." Do you see
21 that?

22 A. I do.

23 Q. And here, how did you construe the term,
24 "Standard format notes"?

25 A. That Tegriss would send out a notice that would

1 be consistently formatted.

2 Q. And when you refer to Tegris, are you
3 referring to the method that's described in Claim 8,
4 that this method calls for sending a consistently
5 formatted notice to the approval authority of the status
6 of the assets?

7 A. That the fire hydrant management software
8 would produce a standard format to provide that notice.

9 Q. Thank you. I'm just trying to keep a clear
10 record, that's all.

11 A. Right.

12 Q. And in this instance, Element 8E is referring
13 to sending a standard format notice to the approval
14 authority, right?

15 A. That's correct.

16 Q. And so the way the claim is structured is in
17 8B they retrieve records. In 8C they analyze records to
18 identify notification events, and when they identify a
19 notification event, they send out notices to the
20 property owner and to the approval authority, right?

21 MR. COLSHER: Objection to form.

22 THE WITNESS: The answer is, yes, they could
23 send that to those two as you described, but those
24 two also could be one.

25 BY MR. PERQUE:

1 Q. Okay. Setting that aside, let's assume for
2 the sake of this question that the two are not one.

3 And so in the instance where the approval
4 authority and the asset owner are different entities,
5 they would essentially be sent the notice at the same
6 time, and the notice would have the elements that are
7 recited in 8D and 8E, right?

8 MR. COLSHER: Objection to form.

9 THE WITNESS: In general, the elements aren't
10 well described, what those -- what's on those forms,
11 what the notification is.

12 BY MR. PERQUE:

13 Q. Well I'm asking a bit of a different question.
14 This is a web-based process where it's retrieving
15 records to identify a notification event, and based on
16 the analysis of those records, it recites sending a
17 notice to the owner and a notice to the approval
18 authority, right?

19 A. Yes.

20 Q. And a person skilled in the art reading this
21 claim element and recognizing that this is a
22 computer-based system would understand that those
23 notices are essentially sent at the same time to the
24 owner and to the approval authority, assuming they're
25 different entities?

1 A. Yes.

2 MR. COLSHER: Objection to form.

3 BY MR. PERQUE:

4 Q. And then going down to 8F, it refers to, "Upon
5 logging onto a password-controlled web configured to
6 provide access through the fire hydrant management
7 software." Do you see that?

8 A. I do.

9 Q. And then it says, "Providing to an inspector,
10 the owner selects." Do you see that?

11 A. I do.

12 Q. And so what 8F is referring to there is that
13 the inspector is logging into the system, correct?

14 MR. COLSHER: Objection to form.

15 THE WITNESS: Yes.

16 BY MR. PERQUE:

17 Q. And basically skipping the part right after
18 the owner selects to, "A web-based template configured
19 to describe the asset and each of the steps of the
20 inspection," that web-based template is provided to the
21 inspector upon logging in to the fire hydrant management
22 software, right?

23 A. Yes.

24 Q. Now focusing on the section of 8F where it
25 says, "Providing to an inspector the owner selects," it

1 then refers to the selection based upon a list of
2 qualified inspectors. Do you see that?

3 A. I do.

4 Q. And that's referring to the owner's selection
5 of the inspector based upon a list of qualified
6 inspectors, right?

7 A. By this definition, yes.

8 Q. And when you're referring to, "this
9 definition," you are referring to the words in Claim 8,
10 correct?

11 A. Yes.

12 Q. So what's recited here is that this fire
13 hydrant management software operating in connection with
14 the web-based registry makes available to the asset
15 owner a list of qualified inspectors from which the
16 asset owner may select and inspect?

17 MR. COLSHER: Objection to form.

18 BY MR. PERQUE:

19 Q. Right?

20 A. That's what it states, yes.

21 Q. And that's how you construed it in performing
22 your analysis that's set forth in the declaration that's
23 Exhibit 103, right?

24 A. Not necessarily, no. There's other
25 alternatives, which is they could select an organization

1 that has a list of qualified inspectors, and they -- and
2 those inspectors are selected by that organization based
3 on inspector availability. So there could be someone
4 between the individual inspector called an organization,
5 and that organization can make available a qualified
6 inspector.

7 Q. Right. And I just want to make sure I
8 understand your question. You are saying in the real
9 world, even if the web-based system provides a list of
10 inspectors, the asset owner may or may not choose from
11 that list. The asset owner may choose someone else and
12 ignore the list that's provided by the software, right?

13 A. I believe they have that option, yes.

14 Q. Okay. And referring back to 8F, the web-based
15 system that's recited in Claim A, it provides a list of
16 inspectors that are available, right?

17 A. That's what it states it's capable of doing,
18 yes.

19 Q. Right. And it also includes attributes such
20 as the proximity to the asset, right?

21 A. Yes.

22 Q. Now 8G refers to, "Receiving from the
23 inspector inspection information and specific response
24 to the web-based template." Do you see that?

25 A. I do.

1 Q. And the reference to the web-based template is
2 referring back to the portion of 8F that refers to a
3 web-based template, right?

4 A. State that again?

5 Q. Sure. Looking at 8G, there's a reference to
6 the web-based template. Do you see that?

7 A. I do.

8 Q. And that's referring back to the portion of
9 8F --

10 A. Yes.

11 Q. -- which -- you've got to let me finish the
12 question. That recites that the inspector is provided a
13 web-based template, right?

14 A. Yes.

15 Q. Thank you. And then 8I refers transmitting to
16 the inspection authority. The reference to the
17 inspection authority there refers back -- sorry, strike
18 that.

19 8I refers to transmitting to the approval
20 authority, and the reference to the approval authority
21 there is the same approval authority that's referenced
22 in 8A, correct?

23 A. Yes.

24 Q. And then it continues. It says, "A standard
25 format compliance report." Do you see that?

1 A. I do.

2 Q. How did you construe standard format
3 compliance report?

4 A. That the fire hydrant management software had
5 standardized the report format for indicating whether or
6 not those inspections were performed or not.

7 Q. And then it also -- Claim 8I continues,
8 "Including noting compliance," right?

9 A. Yes.

10 Q. And so in this circumstance, the Element 8I
11 recites the standard format that at least as one portion
12 of it, the inspector indicates whether or not the asset
13 is in compliance, right?

14 MR. COLSHER: Objection to form.

15 THE WITNESS: Yes.

16 BY MR. PERQUE:

17 Q. And then it continues. It includes noting
18 deficiencies in the asset, and so there what's referring
19 to is to the standard format reports includes at least
20 noting where the assets are deficient?

21 MR. COLSHER: Objection to form.

22 THE WITNESS: As the point of clarification,
23 the asset is the fire hydrant --

24 BY MR. PERQUE:

25 Q. For this question, yes.

1 A. -- because the standard reporting format also
2 includes data about the water system itself. So the
3 water system could be out of compliance, but the hydrant
4 is in compliance.

5 Q. So what we're focusing on for present purposes
6 is how did you construe Claim 8 in the context of the
7 analysis provided in your report?

8 A. I construed it to be both the hydrant. And
9 per the description within the patent, they also
10 included elements around the water system of which the
11 hydrant was connected to. So to me, as a person of
12 ordinary skill in the art, my question would be: What
13 is the deficiency pointing to? Is it pointing to the
14 water system or pointing to the fire hydrant in this
15 case? And so both of those things would be reported,
16 and those would be noted deficiencies.

17 Q. So by way of example, just so am certain I
18 understand your question, assuming for the sake of a
19 hypothetical that it is a fire hydrant that's being
20 inspected, the inspector looks at the hydrant, and he
21 says, "Well, the hydrant is fine, but there's low water
22 pressure." And that's not a defect in the fire hydrant,
23 that's a problem in the water that's being piped to the
24 fire hydrant, right?

25 A. That's correct.

1 Q. So in your answer, one point that you're
2 making is that even if it's a fire hydrant inspection,
3 it may be that a deficiency relates to the system around
4 the hydrant and not just the hydrant itself?

5 A. That's correct.

6 Q. And for the sake of my question, and in the
7 focus of our discussion, I'm just trying to confirm what
8 has to be included in the standard format compliance
9 report, and it includes noting compliance and noting
10 deficiencies in the asset, right?

11 MR. COLSHER: Objection to form.

12 THE WITNESS: That's correct.

13 BY MR. PERQUE:

14 Q. And then also it recites, "Storing the noted
15 deficiencies in association with the asset," right?

16 A. Yes.

17 Q. Directing your attention to your declaration,
18 which is Exhibit 103, you can -- I understand that you
19 have a binder in front of you that includes your
20 declaration. Does it just include the exhibits?

21 A. It includes my declaration.

22 Q. Okay. You can pull up the declaration. It's
23 already marked and introduced as an exhibit if you would
24 like, or if you want to use the paper copy in front of
25 you that's okay too. But I want to direct your

1 attention to Paragraph 13 of Exhibit
2 1003.

3 A. Yes.

4 Q. And the last -- no, not the last -- yeah, it
5 is. The last complete sentence says, "Net Results'
6 licensed MRO software." Do you see that?

7 A. Yes.

8 Q. Net Results is a company you own; is that
9 correct?

10 A. As of the -- yes. I'm a owner now. I used to
11 be the sole owner. As of the third of -- excuse me, the
12 3rd of February, the company has -- was a stock sell,
13 and now I'm a minority owner of the company. I was the
14 founder of Net Results.

15 Q. And when you refer to Net Results' licensed
16 MOR software, that's referring to the MAXIMO software
17 that we discussed previously, right?

18 A. That's referring to the company that provided
19 that as an offering.

20 Q. Right. But I mean, the company Net Result
21 didn't create the MRO software. It was a reseller, it
22 had the right to license that software, which was
23 developed by another entity?

24 A. That's a -- let me attempt to explain. MRO
25 Software, formally Project Software Development BSDI,

1 changed its name to MRO Software. It produced the
2 product software called MAXIMO. That company was
3 acquired by IBM. The --

4 Q. IU understand -- sorry. Didn't mean to
5 interrupt your answer.

6 A. No.

7 Q. Were you finished answering?

8 A. The DSE framework was a methodology that I
9 used, I developed, to assess asset management practices
10 across the asset life cycle to include materials and
11 labor, tools, methods, et cetera --

12 Q. And so --

13 A. -- software license that framework for use
14 within its organization.

15 Q. Right. And the only point I was making was
16 the MRO software is third party software that Net
17 Results used under a license, right?

18 A. We did not use that software, no.

19 Q. Or you licensed it others under a license.
20 Your company did not --

21 A. I did -- I did not resell the software either.

22 Q. Okay. Let me ask it a different way. Net
23 Results did not write the source code for MRO Software
24 as its referenced here?

25 A. That's correct.

1 Q. Now there's a book that's referenced in your
2 resume, which may also be referenced in your
3 declaration, and I think the title is

4 "Strategic MRO: A Roadmap For Transforming
5 Assets Into Competitive Advantage." And I think you are
6 a co-author on that book, correct?

7 A. That's correct.

8 Q. I reviewed that book, and I could only find
9 one paragraph in that book that discusses regulatory
10 compliance. Would that be consistent with your
11 recollection?

12 A. I don't have a recollection on how many times
13 I talked about regulatory compliance. We used multiple
14 examples in the book of different -- of different types
15 of organizations where you would apply a framework.

16 Q. Now in Paragraph 18, is the list of materials
17 considered that we've been talking about, and again,
18 I'm referring to Paragraph 18 of Exhibit 103. And there
19 is exhibit -- one of these exhibits includes a
20 comparison. I thought it was 1029. But it's not listed
21 here. There was a comparison or two of the provisional
22 applications, which is Exhibit 1029. Was that prepared
23 for you by counsel for petitioners?

24 A. I was given that comparison, yes.

25 Q. And did you check that comparison against the

1 actual provisionals to see if it was correct?

2 A. No.

3 Q. Referring to Exhibit 1001, which is the 966
4 patent, and I would direct your attention to
5 Figure 5 of that patent.

6 (EXHIBIT 1001 MARKED FOR IDENTIFICATION)

7 A. Can I click back to that?

8 BY MR. PERQUE:

9 Q. Yeah. You can either open it on the --

10 A. Okay.

11 Q. -- software. And I think it's Page 8 of 34 of
12 Exhibit 101, as is marked on the exhibit. The
13 notification block in 510, that's -- well, first of all,
14 this is a flow chart of the inspection process, right?

15 MR. COLSHER: Objection to form.

16 THE WITNESS: Of the inspection process,
17 yes.

18 THE REPORTER: I'm sorry. Could you repeat your
19 answer, it was cut off.

20 THE WITNESS: Yes. That is a flow chart of
21 their description of the process.

22 BY MR. PERQUE:

23 Q. Right. It's a flow chart of the description
24 of the inspection process as is described in the 966
25 patent, correct?

1 MR. COLSHER: Objection to form.

2 THE WITNESS: Correct.

3 BY MR. PERQUE:

4 Q. And the Box 510 that refers to notification,
5 that refers to the notification that's sent out to the
6 owner of the asset in the approval authority when they
7 analyze the records and determine that an inspection
8 deadline is upcoming, correct?

9 MR. COLSHER: Objection to form.

10 THE WITNESS: By their definition, correct.

11 BY MR. PERQUE:

12 Q. I want to make sure I understand your answer.

13 I'm asking you for your understanding of the
14 '966 patent, and when you say "By their definition" --

15 A. Right.

16 Q. -- you're basically stating that that's your
17 understanding of the 966 patent, correct?

18 A. There's -- yes. But there are multiple ways
19 of which an individual may be notified, not just through
20 the system. So notification has a lot of connotations
21 of how someone can be notified. And the person of
22 ordinary skill in the art understands notifications can
23 come in through a 311 system. It could come in through
24 a phone call from a customer. It could come in from a
25 police officer reporting a fire hydrant had just been

1 struck by a truck. There's multiple ways the
2 notification could come in to somebody to conduct an
3 inspection. In this particular system, the notification
4 comes from its system.

5 Q. Right. And I'm only asking you about what's
6 described in the patent --

7 A. Right.

8 Q. -- not what other possibilities may happen in
9 the real world. Do you understand that?

10 A. I understand that this is how they describe it
11 in their system, yes.

12 Q. In the 966 patent?

13 A. Yes.

14 Q. Now there's a file history that was provided
15 as exhibits, and I think it's Exhibit 102, Parts 1 and
16 2. Did you read the file history?

17 A. File history? Exhibits 102.

18 Q. 1002?

19 A. No.

20 BY MR. PERQUE:

21 Q. Okay. All right. Directing your attention to
22 Exhibit 1005, which is the Key reference.

23 (EXHIBIT 1005 MARKED FOR IDENTIFICATION)

24 A. I have it open.

25 BY MR. PERQUE:

1 Q. Now Key generally describes a system where
2 there's an online jurisdictional manager. I think they
3 have -- jurisdictional online manager. Jurisdiction
4 online manager, correct?

5 A. Correct.

6 Q. And the jurisdiction online manager is
7 actually referring to software, right, or a system?

8 MR. COLSHER: Objection to form. Foundation.

9 THE WITNESS: It's a -- it's a big
10 construction of activities of which software appears
11 to be at the heart of it, software and hardware.

12 BY MR. PERQUE:

13 Q. It's not a person, is my point?

14 A. No.

15 Q. And what's described in Key is when there's an
16 upcoming inspection, the insurance company is notified
17 of the upcoming inspection -- well, strike that.

18 What's described in Key is that the insurance
19 company performs inspections as needed, right?

20 MR. COLSHER: Objection to form.

21 THE WITNESS: The insurance company directs
22 inspections, it doesn't perform the inspections.

23 BY MR. PERQUE:

24 Q. The insurance company is responsible for
25 hiring the inspection company, or inspection individual

1 who inspects the asset, correct?

2 A. In this scenario, they talk about the
3 insurance companies directing their inspectors per their
4 requirements as an insurance company.

5 Q. Right. But Key doesn't tell the insurance
6 company how to perform the inspections per se, it's
7 delegated to the insurance company to perform the
8 inspection?

9 MR. COLSHER: Objection to form.

10 THE WITNESS: So a person of ordinary skill in
11 the art would assume that the insurance companies
12 are conducting inspections according to code.

13 BY MR. PERQUE:

14 Q. Okay. My only point is, is that the insurance
15 company is responsible for having the inspection
16 performed and not the asset owner, correct?

17 MR. COLSHER: Objection to form.

18 THE WITNESS: The insurance company is only
19 conducting inspections that meet the insurance
20 requirements.

21 It's not the -- they're not assuming ownership
22 responsibilities.

23 BY MR. PERQUE:

24 Q. Right. My question was a little different.

25 In this instance, if there's an upcoming

1 inspection, he describes putting a task in a listing for
2 the insurance company, right?

3 A. Yes.

4 Q. And the insurance company is then responsible
5 to have the inspection performed?

6 MR. COLSHER: Objection. Form.

7 THE WITNESS: Again, the jurisdictional online
8 manager would be informing the asset owner as well
9 of the upcoming inspection --

10 BY MR. PERQUE:

11 Q. Well --

12 A. -- and the owner of the asset can also know
13 that the insurance company was also notified, and the
14 owner of the asset can still make the determination as a
15 personal -- person of ordinary skill in the art to
16 determine whether the asset owner wants to conduct their
17 own inspection.

18 MR. PERQUE: Objection. Nonresponsive.

19 BY MR. PERQUE:

20 Q. We'll review the disclosure of Key
21 specifically.

22 MR. COLSHER: Chris, we've been going about an
23 hour. I don't know if you're coming up on a decent
24 break?

25 MR. PERQUE: Yeah, we can take a break now.

1 You want to break for -- I mean at some point
2 we can break for lunch. I'm on a different time
3 zone than you guys are.

4 THE REPORTER: Off the record.

5 (OFF THE RECORD)

6 THE REPORTER: Back on the record.

7 BY MR. PERQUE:

8 Q. Okay. Mr. MacInnes, I probably should have
9 mentioned this at the outset of the deposition, but have
10 you had any communications with counsel for petitioners
11 during the deposition?

12 A. No.

13 Q. No text exchange?

14 A. No.

15 Q. Okay. Under the IPR rules, you're not allowed
16 to consult with counsel for petitioners while the
17 cross-examination is pending. So I should have
18 explained that rule at the outset.

19 But okay. We were talking about
20 Key Exhibit 1005 before the break, and I want to focus
21 your attention on Figure 2 of G to start with.

22 A. Yes.

23 Q. I'm getting there myself. So Okay. In Figure
24 2 is the -- Figure 2 of Key is entitled, "The Object
25 Inspection Life Cycle." Do you see that?

1 A. I do see that.

2 Q. And there's a start of the cycle, and there's
3 a number of iterations about the inspection and whether
4 there's recommendations based on the inspection or
5 violations. Do you see that?

6 A. I do.

7 Q. And then there's a question of whether or not
8 they're repairs that are required, and whether or not
9 the repairs have been completed, and then there's a
10 jurisdictional review at Item 240, right?

11 A. Yes.

12 Q. And then if the repairs have been accepted,
13 and it looks like the item is in compliance, then at
14 that point, at 250, the owner is contacted regarding
15 payment for any fees so that a certificate can issue a
16 255, right?

17 A. Correct.

18 Q. Okay. Now, this -- while we're in the
19 figures, I'll assume cover that, too. Going to
20 Figure 16.

21 A. 16. Okay.

22 Q. 1-6. Figure 16 of Exhibit 1005, And it also
23 has Page 17 of 39 on the bottom. This is a screenshot
24 of a UI, a user interface, right?

25 A. Correct.

1 Q. And this is the user interface that would be
2 used by the insurance company, and it would indicate
3 when there are required inspections, right?

4 MR. COLSHER: Objection to form.

5 THE WITNESS: I don't know if the insurance
6 company or the owner is the only user of this
7 screen.

8 BY MR. PERQUE:

9 Q. So previously, we talked about he providing a
10 task on a list. That list would be accessed via this
11 screen, right?

12 MR. COLSHER: Objection to form.

13 THE WITNESS: My assumption would be yes.

14 BY MR. PERQUE:

15 Q. We'll go through the details of Key in a
16 minute. And then Figure 17 is the screen for the
17 regulatory authority, or the jurisdiction, that would
18 indicate inspections that have been performed and the
19 status of inspections, right?

20 MR. COLSHER: Objection to form.

21 THE WITNESS: It indicates the object, and
22 indicates the current status of inspections to be
23 performed on that object.

24 BY MR. PERQUE:

25 Q. Well I'm trying to -- one user interface that

1 we referred to previously was for the insurance company.

2 I'm drawing a distinction that this Figure 17
3 shows the user interface for the regulatory authority,
4 correct?

5 MR. COLSHER: Objection to form.

6 THE WITNESS: I can't tell you with
7 specificity who's all -- who all has access to this
8 screen.

9 BY MR. PERQUE:

10 Q. Okay. So scrolling into the body of Key, and
11 I would direct your attention Paragraph 0048.

12 MR. COLSHER: Chris, in the version that was
13 uploaded, there was some highlighting in there. Was
14 that intentional by you?

15 MR. PERQUE: No, that wasn't intentional.
16 Let's go off the record for a second.

17 THE REPORTER: Off the record.

18 (OFF THE RECORD)

19 THE REPORTER: Back on the record.

20 MR. PERQUE: It's been -- after reviewing
21 Exhibit 1005, there appears to be highlighting in
22 various portions of it, and that was highlighting that
23 was added by counsel for patent owner, and so otherwise
24 it should be consistent with the
25 Exhibit 1005 that was submitted by petitioners.

1 BY MR. PERQUE:

2 Q. And I was directing the witness's attention to
3 -- let me go back to my version The witness's attention
4 to Exhibit 1005, Paragraph 48.

5 A. Yes.

6 Q. Okay. So in that Paragraph 48, in the middle
7 of the paragraph, "I already provided the inspectors in
8 135 that physically travel to the objects' location and
9 perform the required inspections," right?

10 A. Yes.

11 Q. And so in the context of Key, the regulatory
12 authority have delegated the responsibility for
13 inspecting the objects to the insurer, right?

14 MR. COLSHER: Objection to form.

15 THE WITNESS: The person of ordinary skill in
16 the art would assume that this is one source they
17 could go to within that system.

18 BY MR. PERQUE:

19 Q. Mr. MacInnes, I'm not asking you about what a
20 person of ordinary skill in the art would necessarily
21 say. I'm just asking for what's expressively provided
22 in Key, and there's a sentence right above the one that
23 we just referred to that says, "Since the insurance
24 companies have a vested interest in ensuring safe
25 performance, the jurisdictions have delegated the

1 responsibility of the inspecting those objects to the
2 insurer." Do you see that?

3 A. I do.

4 Q. So it's fair to say that Key's teaching is
5 that the responsibility for the inspection of objects is
6 delegated to the insurer, right?

7 MR. COLSHER: Objection to form.

8 A. A person of ordinary skill in the art would
9 use this as an example of what delegation might be.

10 BY MR. PERQUE:

11 Q. Mr. MacInnes, do you understand the difference
12 between a question where I ask you, "What does
13 Key expressively disclose," as opposed to what a person
14 of ordinary skill in the art might do?

15 MR. COLSHER: Objection to form.

16 THE WITNESS: I understand what your -- the
17 differences in the type of questions. My
18 interpretation is that this is an example of a
19 notification system, and that the example shows that
20 the insurance companies provide notification to the
21 inspectors, and that the insurance companies are the
22 ones that assigning the inspectors.

23 BY MR. PERQUE:

24 Q. Right. And the only thing I'm asking you
25 about right now is the example that is expressly

1 disclosed in Key. I am not asking you what a person of
2 ordinary skill in the art might do otherwise. Do you
3 understand that for this line of questioning?

4 A. I do.

5 Q. Okay. Now going to Paragraph 76.

6 A. 6.

7 Q. Page 0076 of Key, which is Exhibit 1005. Are
8 you there?

9 A. Yes.

10 Q. Now that paragraph refers to the assignment
11 unit, and generally this is the portion of the system in
12 Key that assigns responsibility for an inspection to be
13 performed, right?

14 A. Can you restate your question?

15 Q. Sure. Directing your attention to the
16 sentence in the middle of that paragraph. It says, "The
17 scheduled work assignment is operate to generate and
18 place the task in the insurance company scheduled
19 inspection listing." Do you see that?

20 A. Yes.

21 Q. And that refers to Key determining that an
22 inspection is due, and then assigning that inspection to
23 an insurance company by placing a task in the insurance
24 company's scheduled inspection listing, right?

25 A. It doesn't say specifically the insurance

1 company.

2 Q. It says, "Task in the insurance company's
3 scheduled inspection listing," does it not?

4 A. Right. But the assignment can be reviewed by
5 others besides just the insurance company.

6 Q. Sir. Again, I am not asking you what may
7 happen in the real world. All I am asking you is what
8 is expressly disclosed in Key. Do you understand that?

9 MR. COLSHER: Objection. Form.

10 THE WITNESS: Yes.

11 BY MR. PERQUE:

12 Q. Okay.

13 A. Yes, it does state that.

14 Q. Okay. And then it states, "Upon completion of
15 an inspection or repair, request for variance, or other
16 actions requiring jurisdictional review, the work
17 assignment Unit 440 is operative to place the task in a
18 review changes listing in the jurisdiction item task
19 listing." Do you see that?

20 A. I do.

21 Q. And so what's described there is once the
22 inspector does his or her work, if there is a review to
23 be performed, Key describes putting a task listing in
24 the jurisdiction item task list, right?

25 A. Correct.

1 Q. And then if you go to Paragraph 183 of Key, it
2 begins with, "FIG. 16 illustrates a screenshot of a home
3 page generated by the JOM." Let me know when you are
4 there.

5 A. Paragraph 183?

6 Q. Yes, sir.

7 A. Yes, I see it.

8 Q. And in the middle of that paragraph, it says,
9 "The homepage 160 has a task listing 1612 listing task
10 needed to be performed," right?

11 A. Correct.

12 Q. And then in 0184, it refers to, "The task
13 listing 1612 also has a schedule inspection hot link
14 1622." Do you see that?

15 A. I do.

16 Q. And then it said, "This hot link 1622 would
17 cause the generation display of the schedule inspection
18 web page." Do you see that?

19 A. I do.

20 Q. And what's generally described in this
21 paragraph, is that is the user interface that an insurer
22 would review to determine if they have inspections in
23 their inspection listing, right?

24 MR. COLSHER: Objection to form.

25 THE WITNESS: The insurer amongst others.

1 BY MR. PERQUE:

2 Q. Well in this instance, Key describes the
3 insurer as being the party to which the responsibility
4 for inspection has been delegated, right?

5 MR. COLSHER: Objection to form.

6 THE WITNESS: It indicates what's happening on
7 the home page. It doesn't indicate who's reviewing
8 the home page.

9 (EXHIBIT 1006 MARKED FOR IDENTIFICATION)

10 BY MR. PERQUE:

11 Q. Directing the witness's attention to Sweeney,
12 which is Exhibit 1006.

13 A. I have it in front of me.

14 Q. And directing the witness's attention to
15 Figure 1, and Figure 1 shows the contents of a
16 Database 10 that's described in Sweeney, correct?

17 A. Correct.

18 Q. And the inspection reports 12, 12A, and 12B,
19 do you see those?

20 A. I do.

21 Q. Those inspection reports are for inspections
22 that have already been performed, and those reports
23 include the results of the inspection, correct?

24 MR. COLSHER: Objection to form.

25 THE WITNESS: I can't answer that directly,

1 meaning I don't know if they've been completed or
2 not.

3 BY MR. PERQUE:

4 Q. Well --

5 A. The inspection report may not be complete,
6 meaning -- so I don't know if they're complete
7 inspection reports, partial, or incomplete inspection
8 reports.

9 Q. All right. Well the inspection reports would
10 be for inspections that are either started and not
11 complete, and the results of the beginning of the
12 inspection, or of a completed inspection, correct?

13 A. Typically, yes, correct.

14 Q. And so what's not disclosed in Sweeney is
15 providing notice to the asset owner of inspections that
16 are upcoming, but rather which disclosed in this
17 Figure 1, is the results of inspections that are either
18 completed or ongoing, correct?

19 MR. COLSHER: Objection to form.

20 THE WITNESS: I can't answer that directly,
21 because I don't know how the -- without reviewing
22 specifically what's in this document, how that
23 inspection report is triggered.

24 BY MR. PERQUE:

25 Q. All right.

1 A. It might be in one of the flow charts.

2 Person of ordinary skill in the art would not
3 just assume that anybody would go inspect on their own
4 schedule or their own time. Something is driving the
5 inspection activity.

6 MR. PERQUE: Objection. There's no current
7 question pending. And also nonresponsive. I'm only
8 asking you what's disclosed in Sweeney, not what a
9 person of ordinary skill in the art might think.

10 BY MR. PERQUE:

11 Q. Okay. I want to direct your attention your
12 declaration, which should be Exhibit 103.

13 A. I have it.

14 Q. Pardon me for a minute while I scroll through
15 it. Okay. Directing your attention to Paragraph 21 of
16 your declaration, which should be at the top of Page 8.

17 A. Yes.

18 Q. And there's a paragraph that begins with, "I
19 have been informed and understand that the objective
20 condition of nonobviousness," and it continues on.

21 That's the paragraph I'm referring to. Is
22 that what you're reviewing?

23 A. Yes.

24 Q. And then it identifies several different
25 criteria that would provide objective indications of

1 nonobviousness, including commercial success, long felt
2 but unresolved needs, copying of the invention by others
3 in the field, correct?

4 A. Yes.

5 Q. And then at the bottom of that paragraph, it
6 states, "I am not aware of any objective indicia of
7 nonobviousness relevant to the claims of the 966
8 patent." Do you see that?

9 A. Yes.

10 Q. Was that statement written by counsel and
11 approved by you, or did you write that statement?

12 A. It was a combination of me and the counsel.

13 Q. Well, what was your contribution to it?

14 A. That I'm not aware of any objective indicia of
15 nonobviousness.

16 Q. So is it your testimony today that you wrote
17 that, or was it something that was presented to you as a
18 draft by counsel for petitioners?

19 MR. COLSHER: Objection to form.

20 THE WITNESS: It was a draft that I reviewed
21 and agreed to.

22 BY MR. PERQUE:

23 Q. Okay. Now with regard to commercial success,
24 you understand that one aspect of commercial success
25 would be Brycer's commercial success using a system if

1 that system is coextensive with the claim limitations in
2 the challenged claims, correct?

3 MR. COLSHER: Objection to form.

4 THE WITNESS: My definition for commercial
5 success was that there was many commercial
6 off-the-shelf software that were commercially
7 successful in the marketplace. This was not
8 unusual.

9 BY MR. PERQUE:

10 Q. Well, did you ask -- strike that.

11 First of all, backing up -- never mind.

12 And with regard to copying of the invention by
13 others in the field, you were aware that Tegriss alleged
14 that Brycer, one of the petitioners, copied the
15 invention recited in the challenged claims, correct?

16 MR. COLSHER: Objection to form.

17 THE WITNESS: I was aware that that was what
18 was claimed.

19 BY MR. PERQUE:

20 Q. Right. And -- sorry. I didn't realize you
21 were still -- finish your answer, please.

22 A. But it was not obvious to me, because that
23 workflow, the work method, the asset management
24 structure of the notification process, all of the things
25 described in the patent were readily available in the

1 marketplace.

2 Q. The point I was going to make is, I think you
3 confirmed earlier that you did not conduct any
4 investigation as to whether Brycer, in fact, copied
5 aspects of the product that Tegriss created for managing
6 the inspection of fire hydrants?

7 MR. COLSHER: Objection to form.

8 THE WITNESS: I was not asked to compare the
9 products.

10 BY MR. PERQUE:

11 Q. And you did not do so?

12 A. Nor did I do so.

13 Q. And to the extent --

14 A. But the complaint --

15 BY MR. PERQUE:

16 Q. -- that you made the assertion that the
17 aspects of the invention are readily available in the
18 field identify what other software applications you're
19 referring to for monitoring the inspection of fire
20 hydrants?

21 MR. COLSHER: Objection to form.

22 THE WITNESS: The only review that I have done
23 between Brycer and Tegriss, let's see if I am
24 correctly stating the question, was that the review
25 was in the materials provided in the complaint,

1 which had to do with sprinkler systems and not with
2 fire hydrants.

3 BY MR. PERQUE:

4 Q. So I'm referring back to your prior answer
5 that you seem to be asserting that you concluded there
6 was no copying because the invention is readily
7 available off-the-shelf, right?

8 MR. COLSHER: Objection to form. Misstates
9 testimony.

10 BY MR. PERQUE:

11 Q. Isn't that what you said?

12 A. My testimony is that those capabilities
13 existed in commercial off-the-shelf software, that this
14 was not unique capabilities --

15 Q. Well --

16 A. -- meaning that the competitors -- and that is
17 that the Brycer documentation provided in the claims
18 talk nothing about fire hydrants at all.

19 So I'm not sure of why you would be asking me
20 about Brycer and fire hydrants.

21 BY MR. PERQUE:

22 Q. Well, let's set aside the word, "fire
23 hydrants." I don't agree that that's what the complaint
24 says, but the complaint will speak for itself. You have
25 already testified about the issue of no comparison. But

1 I want to focus on -- you seem to have just said that
2 the claimed invention is readily available in
3 off-the-shelf products, and I want you to identify for
4 me an off-the-shelf product that includes hydrant
5 software management for monitoring the inspection of
6 fire hydrants.

7 A. I believe we cited -- we -- I cited two, the
8 Trident one with -- and also Cityworks. So Cityworks in
9 -- I can't remember the other one, which was an essay
10 derivative. So there was already available in the
11 marketplace the ability to identify the location of a
12 fire hydrant and notify people -- I think this was in
13 Chauhan -- to notify people that, in fact, a fire
14 hydrant needed inspection.

15 Q. Well -- and Mr. MacInnes, I want you to
16 understand the context of this question. When I refer
17 to copying, the copying has to be by a product that
18 meets all of the elements of Claim 8. Do you understand
19 that?

20 A. I understand that's how you define it.

21 Q. Okay. Now with regard to Chauhan, it's your
22 testimony now that Chauhan discloses all of the elements
23 of Claim 8, correct?

24 MR. COLSHER: Objection to form.

25 THE WITNESS: Incorrect. I said it dispossess

1 capabilities that are within Claim 8, and that I
2 reference exactly where in Claim 8, which paragraph
3 of Claim 8, the way we described 8A, 8B, 8C exactly
4 where the Chauhan capabilities match that of Tegriss.

5 BY MR. PERQUE:

6 Q. I understand that you are breaking up Claim 8
7 into parts. And I'm asking you for the sake of this
8 question that if one system has to meet all of the
9 limitations for the purposes of copying, now you're
10 saying Chauhan only satisfies some of the elements.

11 So let's take that off the table. Identify a
12 system that you found in your investigation prior to
13 signing this declaration that satisfies all of the
14 elements of the challenged claims?

15 MR. COLSHER: Objection to form.

16 THE WITNESS: Like a person of ordinary skill
17 in the art, this particular system can be crafted by
18 combining multiple custom off-the-shelf software to
19 perform the exact task as described.

20 MR. PERQUE: Objection. Nonresponsive.

21 BY MR. PERQUE:

22 Q. Sir, the indicia of nonobviousness is copying
23 of the invention by others in the field for the purposes
24 of your investigation that you did to prepare this
25 declaration, and to conclude that you're not aware of

1 any indicia of nonobviousness relevant to the claims of
2 the 966 patent, did you look for and find any inventions
3 in the field that copied all of the elements of Claim 8?

4 A. My response was that Key satisfied most of the
5 requirements as defined in the patent and that we --
6 that we -- that I also found evidence of similar
7 capabilities that a person of ordinary skill in the art
8 would seem as reasonable for this process, like Key
9 process, the jurisdictional online management system
10 performed those similar tasks.

11 MR. PERQUE: Objection. Nonresponsive. Okay.

12 THE REPORTER: Mr. Perque, would you mind if we
13 go off the record real quick to fix the deponent's
14 audio?

15 MR. PERQUE: Yes.

16 THE REPORTER: Okay.

17 MR. PERQUE: No, I don't.

18 (OFF THE RECORD)

19 THE REPORTER: Back on the record.

20 BY MR. PERQUE:

21 Q. Okay. Directing your attention to
22 Paragraph 175 of your declaration, which is
23 Exhibit 1003, let me know when you're there.

24 A. 175.

25 Q. Yeah.

1 A. Okay. I'm there.

2 Q. Okay. And that -- in that paragraph, it
3 states, "As I discussed for limitation [8C] above, Key
4 discloses a "notification system" to notify users of
5 notification events including a designated interval in
6 advance of an upcoming inspection deadline," where the
7 asset owner wherein, "notifications are sent, for
8 example, "in a known manner usually via e-mail,"
9 including automatic notification to owners, based on
10 database record analysis." Do you see that?

11 A. I do.

12 Q. Now we previously discussed that Key delegates
13 the inspections to the insurer, correct?

14 MR. COLSHER: Objection to form.

15 THE WITNESS: We agreed -- I stated that
16 insurers are one of the people that they can
17 delegate it to. That's what they use as their
18 example.

19 BY MR. PERQUE:

20 Q. When you say, "that's their example," you're
21 basically saying that's what Key says, right?

22 MR. COLSHER: Objection to form.

23 THE WITNESS: Yes.

24 BY MR. PERQUE:

25 Q. And the way that Key manages informing

1 insurers of upcoming inspections is it has a task list
2 for insurers where it places a new task for an upcoming
3 inspection, correct?

4 A. Correct.

5 Q. It does not disclose notifying the asset owner
6 of an upcoming inspection via e-mail or otherwise,
7 correct?

8 MR. COLSHER: Objection to form.

9 THE WITNESS: It doesn't -- it doesn't say
10 that the person who is the asset owner doesn't have
11 access to that information.

12 BY MR. PERQUE:

13 Q. It doesn't say that, but it also doesn't say
14 that the system provides the asset owner notification of
15 upcoming inspections, correct?

16 A. It says that it provides information that
17 indicates the -- the notification of that inspection.

18 The fact that it's sending an e-mail to the
19 insurer doesn't mean that the asset owner is not aware
20 of that inspection.

21 MR. PERQUE: Objection. Nonresponsive.

22 BY MR. PERQUE:

23 Q. First of all, Key discloses informing the
24 insurer of an upcoming inspection by placing a task in a
25 list, correct?

1 MR. COLSHER: Objection to form.

2 THE WITNESS: That's part of the notification
3 to the insurer. What it's not saying is a person of
4 ordinary skill in the art would assume, and assert
5 with that -- asserts, excuse me, that the owner of
6 the asset would also be aware of pending
7 inspections.

8 BY MR. PERQUE:

9 Q. Well sir, I'm not asking you what a person of
10 ordinary skill in the art would assume. Again, I'm only
11 asking you about what's expressly disclosed in Key.

12 Do you understand that?

13 A. Yes.

14 Q. Great. Now Key does disclose notifying an
15 owner when a payment is due, right?

16 A. Yes.

17 Q. And if you recall our discussion about
18 Claim 8, where there's an analysis of records and a
19 notification is sent to the owner of the asset about the
20 upcoming inspection, and a notification is sent to the
21 approval authority about the upcoming inspection,
22 Key does not disclose that either, correct?

23 MR. COLSHER: Objection to form.

24 THE WITNESS: So the way you premised the
25 question was that the payment is made by a person or

1 an entity other than the insurer; is that correct?

2 BY MR. PERQUE:

3 Q. I'm not asking you about --

4 A. I know you're asking me to ask that question,
5 so the answer is --

6 Q. No, you --

7 A. -- you can't pay something that you're not
8 aware of. You have to be aware that the activity that
9 was -- you can't -- you can't give somebody a person of
10 ordinary skill in the art would say, "Okay, just go
11 ahead and charge me at any point for anything that I'm
12 unaware of." That doesn't make sense.

13 MR. PERQUE: Objection. Nonresponsive.

14 BY MR. PERQUE:

15 Q. I wasn't asking you on about the payments at
16 this point. I've asked about that, and I have moved on
17 to the different question.

18 A. Okay.

19 Q. The point is when we are talking about
20 Claim 8 before, we walked through the elements
21 A, B, C, D, E, and Claim A recites, "Analyzing records
22 to identify an inspection event and then sending notice
23 to the asset owner and to the approval authority of that
24 upcoming deadline for the inspection," right?

25 A. Correct.

1 Q. And Key does not disclose sending a notice to
2 the jurisdiction and the asset owner of an upcoming
3 inspection, correct?

4 MR. COLSHER: Objection to form.

5 THE WITNESS: I can't state that with
6 certainty.

7 I would state that the asset owner also gets
8 notified by my interpretation.

9 BY MR. PERQUE:

10 Q. What portion of Key are you referring to when
11 you say, "by my interpretation"?

12 A. The notification.

13 Q. I'm not asking you how a person of ordinary
14 skill in the art would construe it. What express
15 language in Key are you referring to?

16 MR. COLSHER: Objection to form.

17 THE WITNESS: My opinion is in Paragraph 174.

18 Looking at the first Key discloses claims,
19 "Based on analysis notifying an owner of an asset of
20 notification event where the notice includes a
21 standard format description of the type of
22 inspection, the cost associated with the type of
23 inspection, and where in the notification
24 compromises a designatable interval in advance of
25 impending deadline for inspection."

1 BY MR. PERQUE:

2 Q. And what aspect of Key is that opinion based
3 on?

4 A. It's based on the structure of the system, of
5 the jurisdiction online management.

6 Q. Point to the --

7 A. And that the asset owner in this case has
8 access to that information, and can at any given time
9 look at it and see what's pending and what's not
10 pending.

11 Q. What figure, or written disclosure, in Key are
12 you referring to as supporting that statement?

13 A. It's in the database structure figure. I can
14 go to that if you would like.

15 Q. Let's go to that.

16 A. Key is Exhibit 105 [sic]. So if you look at
17 the Figure 1, it shows you the jurisdiction. It shows
18 you the computers that are used in 125 for the owners,
19 as well as the insurance companies in 130, and that that
20 -- that's all tying into 199, which is the online web
21 system, the software, so they all have access to the
22 same information. And then it shows the assignment
23 units in the system database on Figure 400. That's what
24 I based my opinion on.

25 Q. So your opinion is that that claim limitation

1 requiring notice to be sent to the owner is met by the
2 description in Key that you believe Key discloses that
3 the owner has access to information?

4 A. I believe that's a reasonable interpretation -
5 -

6 MR. COLSHER: Objection to form.

7 THE WITNESS: I believe that's a reasonable
8 interpretation of that construct of the jurisdiction
9 online manager.

10 BY MR. PERQUE:

11 Q. Just confirming that that's your opinion?

12 A. That's my opinion.

13 MR. COLSHER: Objection to form. Asked.

14 BY MR. PERQUE:

15 Q. Now...

16 A. Do you want me to go back to my --

17 Q. Sir, I'm going to pose a question. Just give
18 me a minute.

19 A. Okay.

20 Q. Going back to the marked exhibit, Claim 8.

21 A. Claim 8.

22 Q. Let me know when you are there.

23 A. Got it.

24 Q. Now, 8D not only requires that notification is
25 sent to the owner, but the notice includes standard

1 format description of the type of inspection, and cost
2 associated with the type of inspection. Do you see
3 that?

4 A. Yes.

5 Q. And it's your opinion that Key expressly
6 discloses that notice because the asset owner merely has
7 access, allegedly, to the database; right?

8 MR. COLSHER: Objection to form. Misstates
9 testimony.

10 THE WITNESS: The jurisdiction online manager
11 references multiple forms depending on the asset
12 being inspected, and those forms are made available
13 in the system.

14 So this is one form for one system, and this
15 happened to be the form for the fire hydrant that
16 Tegriss, or Tegriss -- excuse me, has constructed. It
17 doesn't say that form is accepted across
18 jurisdictions. It's simply saying that's the form
19 that's used within their system. Key says that they
20 use the forms used by -- in varied forms used by the
21 various insurance companies or and/or jurisdictions.

22 BY MR. PERQUE:

23 Q. Are you done? Because I don't want to speak
24 over your answer. Okay.

25 A. Done.

1 MR. PERQUE: Objection. Nonresponsive.

2 BY MR. PERQUE:

3 ?

4 Q. I'm asking you a question about the notice
5 that's sent to the owner. Claim 8D says the owner is
6 sent a notice including the type of inspection, and the
7 cost of the type of inspection, and the notice is sent
8 in advance of the deadline for the inspection. Do you
9 see that?

10 A. Yes.

11 Q. Where in Key does it disclose providing a
12 notice to the owner of the type of inspection, the cost
13 of inspection, and that notice is sent to the owner in
14 advance of the impending deadline for an inspection?

15 A. Person of ordinary skill in the art would say
16 they have realtime access to a database, and they can
17 see without question the status of all inspection
18 activities, and whether they're given notice or not is
19 whether or not they're prompted to look at the system.

20 I can't say specifically where it says in
21 there Key where it says you are prompted to go look at
22 the system.

23 Q. Mr. MacInnes, for this entire line of
24 questioning I am not asking you about what a person of
25 ordinary skill in the art would believe. Again, for the

1 several time, I am asking you about the express
2 disclosure, the written word of Key. And I'm asking you
3 where in the written words are figures of Key does it
4 disclose sending a notice to an owner of an up coming
5 inspection where that notice includes the type of
6 inspection and the cost of inspection. Please identify
7 that portion of Key.

8 MR. COLSHER: Objection to form. Asked and
9 answered.

10 THE WITNESS: I've given you my answer.

11 BY MR. PERQUE:

12 Q. Sir, you have not. Are you refusing to answer
13 the question?

14 A. I said I have given my answer, that I don't
15 know where in the system in that discussion where in the
16 declaration that it says it prompts the user to go look
17 at the screen. And If you're considering a prompt a
18 notification, then I'm not sure where in the system it
19 gives them a prompting of an impending inspection and
20 the cost.

21 Q. Going back to your declaration, and
22 specifically Paragraph 176.

23 A. 176. Okay.

24 Q. Yes, sir.

25 A. I'm there.

1 Q. Great. And in Paragraph 176, the declaration
2 states, "Key also discloses "receiving an inspection
3 notification; and scheduling an inspection date,"" and
4 it cites to Key Claim 19. Do you see that?

5 A. I do.

6 Q. Let's go to Key Claim 19.

7 A. Yes, I have it.

8 Q. Okay. Now, you understand that, you know --
9 strike that.

10 You understand that the claims of Key are
11 construed in the same manner as other patent claims, in
12 that the meaning of those claims is construed in part
13 based on the disclosure, a specification of Key;
14 correct?

15 A. Correct.

16 Q. And so it refers to method Claim 12, "Further
17 compromising the steps of receiving an inspection
18 notification and scheduling an inspection." Do you see
19 that?

20 A. I do.

21 Q. That does not recite the patent owner
22 receiving an inspection notification and scheduling an
23 inspection, correct? Strike that. Sorry.

24 That does not recite the asset owner receiving
25 an inspection notification and scheduling an inspection

1 date, correct?

2 A. In my declaration, I stated that a person of
3 the art would make the reasonable assumption that this
4 is -- the notification would go to the asset owner.

5 Q. Well, and I'm not asking you necessarily what
6 a person of ordinary skill in the art would believe.
7 I'm asking you what is -- well, strike that.

8 Let's go to Claim 12.

9 A. I have it.

10 Q. Okay. So Claim 12 recites, "A method for
11 managing required inspections for a plurality of
12 different jurisdiction by central computer system
13 compromising steps of." Do you see that?

14 A. I do.

15 Q. And it refers to, "Receiving customized
16 template information based on the controlling
17 jurisdiction from the central computer system, managing
18 the required inspections of an object from a black
19 plurality of jurisdictions via a global network." Do
20 you see that?

21 A. I do.

22 Q. And then that refers to dispatching an
23 inspector by nongovernmental inspection entity, correct?

24 A. Yes.

25 Q. And we referred earlier to the portion of Key

1 where it referred to the jurisdiction delegating that
2 responsibility to insurers, correct?

3 A. That's what it states, yes.

4 Q. And so in this instance where dispatching an
5 inspector by nongovernmental inspection entity would
6 refer to the insurers that are delegated the
7 responsibility, correct?

8 A. By this description, correct.

9 Q. Okay. Going to Paragraph 177 of your
10 declaration.

11 A. Okay. 177?

12 Q. Yes, sir.

13 A. Okay. I'm there.

14 Q. Okay. You provide in 177 -- or the
15 declaration states in 177, "I note that Key provides
16 certain details about its notices, as well as discloses
17 various relevant information that is provided and made
18 available to the relevant users." What are you
19 referring to when you state, "I note that Key provides
20 certain details about its notices"? What portion of
21 Key are you referring to there?

22 A. Its descriptions of the database end users.

23 Q. So is it correct that your construction of the
24 term "notice" that you are applying in your declaration,
25 and the term, "notice," as it appears in

1 Claim 8, includes not only sending an e-mail, or a text,
2 or a fax, but would also include merely posting a task
3 in a listing as described in Key?

4 A. Key describes doing analysis in providing
5 reports of that analysis of task completions --

6 Q. Sir, my question --

7 A. -- a user then would then be able to determine
8 whether or not those events have taken place or not
9 notices.

10 MR. PERQUE: Objection. Nonresponsive.

11 BY MR. PERQUE:

12 Q. I'm asking you a claims construction question,
13 and I'm going to try to make it as clear as possible.

14 The Claim 8 recites, "Providing a notice to
15 the asset owner and a notice to the approval authority
16 of upcoming inspections," correct?

17 A. Correct.

18 Q. And notifying, or providing a notice, as
19 recited in Claim 8, the construction of that term that
20 you used in this declaration would include not only
21 sending e-mails, or a fax, or some direct message to the
22 asset owner, but it would also include placing a task in
23 a list as is described in Key?

24 A. That's one of the methods for which the owner
25 would be able to determine whether or not an event is to

1 take place.

2 Q. Sir, I am not asking you about what happens in
3 the world, or what an owner might do, or what an insurer
4 might do. I'm asking you a question that's a legal
5 question, that's about claims construction. How did you
6 construe Claim 8 in connection with the opinions you
7 provided in this case? Claim 8 includes notifying as an
8 element. And my question to you, sir, is: Does your
9 construction of notifying, as it's used in Claim 8,
10 include placing a task in a list that's available to an
11 end user if they access software?

12 A. Yes.

13 Q. Thank you. Directing your attention to
14 Paragraph 181 of your declaration, which is
15 Exhibit 1003.

16 A. I have it in front of me.

17 Q. Okay. And I'm focusing on your statement that
18 -- it's in the middle of the paragraph. It is, "A
19 POSITA would have" -- POSITA is P-O-S-I-T-A in caps --
20 would have understood that the disclosed notifications
21 would logically and advantageously be in a particular
22 standard format description and include relevant details
23 for the owner (inspection type needed, inspection due
24 date, cost due, etc.) sent based on a notification event
25 at a particular time in advance." And it continues on,

1 but I want to focus on the assertion that the notice
2 would necessarily include the inspection type, the
3 inspection due date, and cost due. Do you see that?

4 A. I do.

5 Q. Now for the purposes of that statement, you're
6 including in the notice placing a task in a listing as
7 described in Key, correct?

8 A. Placing a task? I'm repeating. By placing a
9 task as listed in Key.

10 Q. As described in Key.

11 A. This is more than just task. This is also
12 additional information.

13 Q. Right. But it includes -- this is all -- this
14 is the portion of your declaration that's related to
15 Key. You see the 181 begins with --

16 A. Right.

17 Q. -- "Consistent with the above discussed
18 disclosure in Key." Then you go on to say things, and
19 you say that, you know, "It would be obvious that the
20 notice to the owner would include the inspection type
21 needed, inspection due date, cost due, etc." Do you see
22 that?

23 A. I do.

24 Q. Where does Key disclose providing notice to
25 the owner where the notice includes those details?

1 MR. COLSHER: Objection to form.

2 THE WITNESS: There's no explicit statement of
3 notification to the owner of that information.

4 BY MR. PERQUE:

5 Q. Okay. And then there's a statement in exhibit
6 -- if you look down that same paragraph, there's a
7 reference to "Ex. 1024 at 4." I think I'm going to have
8 to introduce an exhibit, but it basically states,
9 "Disclosing inspection types and sample reports for
10 users including asset owners." You said you have the
11 exhibits in front of you. Do you have Exhibit 1024 in
12 front of you?

13 (EXHIBIT 1014 MARKED FOR IDENTIFICATION)

14 A. That's the BuildingsReport.Com?

15 BY MR. PERQUE:

16 Q. I think that's the web-based inspection report
17 website.

18 A. Yes. I can pull that one out. It's in my
19 binder.

20 Q. At Page 4, is that's what referred to is at 4,
21 is it Page 4?

22 A. Yes.

23 Q. It does not disclose the inspection types for
24 the users including the asset owners, right?

25 A. Let me get my stronger reading glasses. I

1 apologize. It describes the building and the inspection
2 ID, and it describes the building name for the sample
3 report.

4 Q. Okay. I am going to Paragraph 204 of your
5 declaration. Are you there? You state in -- I note
6 that E also -- pardon me -- strike that.

7 In your declaration, Exhibit 1003 at
8 Paragraph 4 -- at Paragraph 204, you state, "I note that
9 Key also visually depicts web-pages for reviewers
10 (approval authority) which includes a standard layout
11 and provides for -- provides further confirmation of the
12 standard formatting." Do you see that?

13 A. I do.

14 Q. It's not correct, is it, to refer to a user
15 interface, which in software there's going to be
16 consistency in user interfaces, with the standardization
17 of inspection reports, right?

18 MR. COLSHER: Objection to form.

19 THE WITNESS: Correct.

20 BY MR. PERQUE:

21 Q. I'm sorry. Did you respond?

22 A. I said, "Correct."

23 Q. And then going to Paragraph 184 --

24 A. I'm there.

25 Q. -- and in 184, you state, "I further note that

1 the Patent Owner in the district court case took a
2 broader interpretation of this limitation, asserting
3 that "cost" can be effectively any information provided
4 to the owner and that notice can be satisfied by e-mail
5 or a phone call." Do you see that?

6 A. I do.

7 Q. Then as support for that statement, you cite
8 "Ex. 1030 at 59-60." Exhibit 1030 is actually a motion
9 filed by Brycer. Are you aware of that?

10 A. Yes.

11 Q. And that particular page of that motion
12 doesn't support the assertion that's made there,
13 correct?

14 MR. COLSHER: Objection to form.

15 THE WITNESS: That might be one of the typos.
16 Can we take a quick three-minute break?

17 MR. PERQUE: Sure. We can take a longer break.
18 Do you-all want to break?

19 MR. COLSHER: Let's go off the record.

20 THE REPORTER: Off the record.

21 (OFF THE RECORD)

22 THE REPORTER: Back on the record.

23 BY MR. PERQUE:

24 Q. Okay. So I think the last question was about
25 a reference -- you mentioned it may be a typo. I have --

1 I want to clarify something. In this
2 instance, the IPR petition was granted based on a
3 combination of four references. To the extent you refer
4 to -- generally to typos in your declaration, it would
5 not include the manner in which the prior references are
6 applied to the claims, correct?

7 A. I'm not exactly sure where the typos are, just
8 whether there are typos.

9 Q. Okay. Well, I just -- I wanted to confirm,
10 and I can go through various paragraphs of your
11 declaration, but --

12 A. So --

13 Q. -- in your declaration, you assert that, "Key,
14 either alone or in combination with Sweeney,
15 Chauhan, or McKinney render obvious the challenged
16 claims." And to the extent you've noticed typos in your
17 declaration, it doesn't relate to the manner in which
18 you applied or relied upon those prior references,
19 correct?

20 A. That would be correct.

21 Q. Directing the witness's attention to
22 Paragraph 219 of your declaration.

23 A. Okay. Yes, I see it.

24 Q. Okay. And I have to get there. Okay.

25 There's a reference there to -- it really is

1 towards the end of the paragraph. There's a sentence
2 that has an Item C in parenthesis, and it says, "Service
3 personnel that are in a particular area may be able to
4 log in or have the service company log into the
5 scheduler to determine if efficiencies can be achieved."
6 Do you see that?

7 A. Yes.

8 Q. And you cite there to McKinney, and there's a
9 number of paragraphs. So let's pull up McKinney. I'll
10 direct the witness's attention to McKinney, which is
11 Exhibit 1020. And if you open that up, I would direct
12 the witness's attention to Paragraph 80, which is on
13 Page 10 of McKinney.

14 (EXHIBIT 1020 MARKED FOR IDENTIFICATION)

15 A. Okay.

16 BY MR. PERQUE:

17 Q. And let me know when you are there.

18 A. I'm there.

19 Q. I'm looking at the right-hand column. It's
20 the first paragraph, starts about -- the sentence I'm
21 referring to starts about ten lines down and begins
22 with, "In one embodiment, service personnel that are in
23 the particular area for other reasons such as repairs
24 may be able to log into or have the service company log
25 into the scheduler to determine if efficiencies can be

1 achieved by performing inspections while the service
2 personnel is already in that area." Do you see that?

3 A. Yes.

4 Q. And what's referred to there is the a use of a
5 scheduler to -- for a service company to help coordinate
6 its personnel so that they're efficiently used in that
7 if they repair, a person is in a location and there's an
8 inspection to be done, that person might log into the
9 scheduler and perform that inspection, because they're
10 in the proximity; is that fair?

11 A. Yes.

12 Q. It does not describe selecting an inspection
13 company per se, based on that inspection company's
14 proximity to the asset to be inspected?

15 MR. COLSHER: Objection to form.

16 THE WITNESS: The service company is
17 conducting the repair, and then the service company
18 who's scheduling it can also schedule other
19 resources, is what we call opportunity maintenance
20 from a person of ordinary skill, so that's how I
21 read that.

22 BY MR. PERQUE:

23 Q. Right. The claim element at issue here is the
24 element in Claim 8, where the asset owner can select an
25 inspector based on in part, the inspector's availability

1 and his, or her, or its proximity to the asset. Do you
2 recall that?

3 A. Because the asset owner is the one who makes a
4 decision whether to pay for an additional resource or
5 not, not the service provider.

6 Q. Right. I was just setting the context for the
7 question. So the patent element is that the patent
8 owner selects the inspector in part, based on the
9 inspector's availability, and based on the inspector's
10 proximity to the asset. Do you recall that aspect of
11 Claim 8?

12 A. Yes.

13 Q. And what's described in Sweeney in -- with
14 regard to the scheduler is not selecting the inspection
15 company by the asset owner, but rather the inspection
16 company or service company efficiently using its
17 personnel to perform inspections if its personnel are in
18 the proximity of an asset that needs to be inspected?

19 A. I think that's one interpretation.

20 Q. Well is that what's expressly provided in
21 McKinney? I'm not asking you to interpret it per se.

22 I'm asking: Is that your understanding of
23 what's disclosed in McKinney?

24 A. My understanding is that when you bring on an
25 additional resource on to the cite, it has to be

1 approved, and somebody has to approve that.

2 Q. And I'm really just asking you about what's
3 written in McKinney. So I'm not asking about --

4 A. I --

5 Q. -- what a person of ordinary skill in the art
6 would understand. With regard to the scheduler that's
7 described in McKinney, it relates to a service company
8 efficiently using its personnel to perform inspections
9 when the personnel are in the vicinity of an inspection,
10 correct?

11 A. I think the description -- my opinion is I
12 think the description is describing a benefit but not a
13 practice.

14 Q. Right. But to the extent it describes a
15 benefit, is that benefit consistent with what I just
16 said in the prior question?

17 MR. COLSHER: Objection to form.

18 THE WITNESS: Somebody's -- I don't understand
19 the question. Can you restate the question?

20 BY MR. PERQUE:

21 Q. I'll restate the question. McKinney describes
22 a scheduler, right?

23 A. Yes.

24 Q. And that section of McKinney that we just
25 discussed, which is on Page 10 in the right- hand

1 column, it describes the scheduler being used by a
2 service company to efficiently use its personnel to
3 perform inspections when personnel are in the area of an
4 asset that needs to be inspected?

5 A. Correct. Correct.

6 Q. Okay. Okay. I want to go back to our
7 discussion about your preparation of the declaration
8 that is Exhibit 1003. I think you mentioned earlier
9 that counsel for petitioners prepared an initial draft
10 that you reviewed. Was that draft sent to you by
11 e-mail?

12 A. I'm not exactly sure.

13 Q. Well, do you recall what lawyer or attorney
14 representing petitioner sent you the first draft of the
15 declaration that's marked as 1003?

16 A. Patrick Colsher.

17 Q. And did Patrick Colsher give you access to the
18 declaration via a storage space in the cloud that you
19 could then review, or did Patrick Colsher send it to you
20 by e-mail?

21 MR. COLSHER: Objection to form. And also, you
22 know, drafts are work product are not discoverable
23 in this situation. I'll give a little bit of
24 leeway, but I'm not really sure where we're going
25 with this.

1 A. I don't recall.

2 BY MR. PERQUE:

3 Q. Do you recall how many hours you spent
4 reviewing and editing the draft that was sent by counsel
5 for petitioners?

6 A. Not specifically but many.

7 Q. More than three?

8 A. Yes.

9 Q. More than five?

10 A. Yes.

11 Q. And do you recall whether there were multiple
12 drafts of the declaration that were exchanged between
13 you and Mr. Colsher?

14 A. Yes.

15 Q. Now earlier you testified that when you were
16 reviewing materials, you made hand notes relating to the
17 materials, right?

18 A. Correct.

19 Q. And you also testified that your hand notes
20 related to those materials were destroyed, correct?

21 A. (No verbal response.)

22 MR. COLSHER: I think we missed that answer --

23 THE WITNESS: Correct.

24 MR. COLSHER: -- for the record.

25 BY MR. PERQUE:

1 Q. I want to direct the witness's attention to
2 Exhibit 1016, Chauhan, and I'll give you a paragraph
3 number in a minute here.

4 (EXHIBIT 1016 MARKED FOR IDENTIFICATION)

5 A. I have it in front of me.

6 BY MR. PERQUE:

7 ?

8 Q. And I want to direct your attention to
9 Page 46. It's paragraph 207, which wraps over from the
10 prior page.

11 A. Paragraph 207?

12 Q. Yes, sir.

13 A. Okay. I see it.

14 Q. And let's start at the top of 207. So it
15 says, "The second version includes new features not
16 available in the first version, such as Sketch and
17 sketch manager, Multiple work order types, MasterSQL,
18 Security Manager, Custom Edit and Custom Report
19 interfaces, and AVL interfaces," and it continues on;
20 right?

21 A. Yeah.

22 Q. And then in the next sentence it says, "The
23 new Security Manager allows administrators to allow/
24 deny access to function within the application, to set
25 permissions for who can view/edit certain database

1 tables."

2 Do you see that?

3 A. I do.

4 Q. And then in that context, it says, "For
5 example, a contractor hired to do fire hydrant
6 inspections could be given a laptop with UtilityCenter
7 loaded on it and assigned a user name that only allows
8 him to edit and view the inspection fields on the
9 HYDRANT theme." Do you see that?

10 A. I do.

11 Q. Now, this is the only reference in Chauhan to
12 the, "HYDRANT theme"; correct?

13 A. It's the only -- it's not the reference --
14 there's also diagrams in there that reference the GIS
15 system where hydrants might be located. I believe
16 that's in there as well.

17 Q. Well --

18 A. Reference to the actual theme, HYDRANT theme,
19 yes.

20 Q. Right. So there's no description within
21 Chauhan of the user interface or form, that would be
22 available to an inspector in connection with the HYDRANT
23 theme; right?

24 A. That's correct.

25 Q. Now Mr. MacInnes, you testified earlier that

1 you had offered expert opinions in a prior case. Do you
2 recall whether your prior opinions in that case were
3 excluded by the court?

4 A. They were not.

5 Q. Do you recall whether your opinions in the
6 prior case were excluded in whole or part?

7 A. I think there was one portion that was
8 excluded.

9 BY MR. PERQUE:

10 Q. I've introduced Exhibit 2014, which is an
11 opinion. If you hit refresh, you should be able to see
12 that.

13 (EXHIBIT 2014 MARKED FOR IDENTIFICATION)

14 A. Okay.

15 BY MR. PERQUE:

16 Q. Let me know when you are able to --

17 A. They're going to apply for some --

18 Q. Let me know when you have it open.

19 A. I have it open.

20 Q. Okay. Now do you recognize the caption of
21 this case, "Potts v. Martin & Bailey, Inc."?

22 A. I do.

23 Q. And this is an opinion that's dated -- it's
24 decided on October 4, 2011. Do you recall that being
25 around the time when the court excluded a portion of

1 your opinions offered in that case?

2 A. I think it's around that time, correct.

3 Q. And I would direct your attention to the
4 fourth page of that opinion. There's a highlighted
5 section that discusses the portions of your opinion that
6 were excluded in that case because you were not
7 qualified to testify about the subject matter. Do you
8 see that?

9 A. I do.

10 Q. Do you recall that as being consistent with
11 your opinions that were excluded at that time?

12 A. Yes.

13 MR. PERQUE: No further questions at this time.

14 MR. COLSHER: Let's go off the record.

15 THE REPORTER: Off the record.

16 (OFF THE RECORD)

17 THE REPORTER: Back on the record.

18 MR. COLSHER: I have no questions. Thank you.

19 THE REPORTER: And Mr. Perque, no further
20 questions, correct?

21 MR. PERQUE: No further questions.

22 THE REPORTER: All right. Off the record.

23 (DEPOSITION CONCLUDED AT 2:24 P
24
25

CERTIFICATE OF REPORTER

COMMONWEALTH OF KENTUCKY AT LARGE

I do hereby certify that the witness in the foregoing transcript was taken on the date, and at the time and place set out on the Title page here of by me after first being duly sworn to testify the truth, the whole truth, and nothing but the truth; and that the said matter was recorded stenographically by me and then reduced to type written form under my direction, and constitutes a true record of the transcript as taken, all to the best of my skill and ability. I certify that I am not a relative or employee of either counsel, and that I am in no way interested financially, directly or indirectly, in this action.



LINDSEY N. JOHNSON,

COURT REPORTER / NOTARY

MY COMMISSION EXPIRES ON: 05/29/2026

SUBMITTED ON: 04/05/2024

1 Brycer, LLC, Et Al v. Tegriss, Inc.
2 Richard MacInnes Job No. 6594302
3 E R R A T A S H E E T
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22 _____
23 _____
24 Richard MacInnes Date
25

1 Brycer, LLC, Et Al v. Tegriss, Inc.

2 Richard MacInnes 6594302

3 ACKNOWLEDGEMENT OF DEPONENT

4 I, Richard MacInnes, do hereby declare that I
5 have read the foregoing transcript, I have made any
6 corrections, additions, or changes I deemed necessary as
7 noted above to be appended hereto, and that the same is
8 a true, correct and complete transcript of the testimony
9 given by me.

10

11

12 Richard MacInnes

Date

13 *If notary is required

14 SUBSCRIBED AND SWORN TO BEFORE ME THIS
15 _____ DAY OF _____, 20____.

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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.

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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.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

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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