

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

BRYCER, LLC, BRYCER MANAGEMENT INC.,)

PETITIONERS) CASE: IPR2023-01196

V.) U.S. PATENT NO. 11,126,966

TEGRIS, INC.,)

PATENT OWNER)

)

REMOTE DEPOSITION OF

LEROY MCNULTY

Zoom Videoconference

06/06/2024

12:00 p.m. (EDT)

REPORTED BY: MONIQUE CABRERA

DIGITAL EVIDENCE GROUP

1730 M Street, NW, Suite 812

Washington, D.C. 20036

(202) 232-0646

1 06/06/2024

2 12:00 p.m. (EDT)

3

4 REMOTE DEPOSITION OF LEROY MCNULTY, held
5 virtually via Zoom Videoconferencing, before
6 Monique Cabrera, Shorthand Reporter, and Notary
7 Public of the State of New York.

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1 A P P E A R A N C E S

2 (Via Zoom Videoconferencing):

3 ON BEHALF OF PETITIONERS:

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8

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1 I N D E X

2 WITNESS EXAMINATION BY PAGE

3 LEROY MCNULTY MR. COLSHER 5

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5

6 E X H I B I T S

7 EXHIBIT DESCRIPTION PAGE

8 Exhibit 1001 U.S. patent number 11,126,966..... 38

9 Exhibit 2016 Declaration of LeRoy McNulty..... 34

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1 LEROY MCNULTY, called as a witness, having been
2 first duly sworn by a Notary Public of the State
3 of New York, was examined and testified as
4 follows:

5 THE WITNESS: Yes.

6 COURT REPORTER: Can you state your
7 name and address for the record?

8 THE WITNESS: My name is LeRoy
9 McNulty, L-E-R-O-Y, M-C-N-U-L-T-Y.

10 MR. COLSHER: Also, I don't think my
11 realtime is working.

12 (Whereupon, there was a discussion
13 off the record.)

14 MR. COLSHER: Good morning,
15 Mr. McNulty. My name's Patrick Colsher, and
16 I'm representing the petitioners in this
17 case.

18 MR. LEHRER: My name's Richard
19 Lehrer. I'm from Fisher Broyles; and we're
20 representing the patent owner, Tegriss Inc.,
21 and the witness.

22 EXAMINATION

1 BY MR. COLSHER:

2 Q. Mr. McNulty, you understand that
3 you're here today to provide deposition testimony
4 in connection with the declaration you submitted
5 on behalf of the patent owner, Tegris, in what's
6 referred to as an inter partes review proceeding
7 involving Brycer and Tegris's U.S. patent number
8 11,126,966; is that correct?

9 A. That's correct.

10 Q. Okay. I know we're going to go
11 through probably lots of acronyms today, some of
12 which I'm going to learn from you. Is it okay if
13 I refer to the patent as the '966 patent? You'll
14 understand what I mean?

15 A. Yes.

16 Q. Okay. Is there any reason that
17 would impair your ability to give your best and
18 truthful testimony today?

19 A. No.

20 Q. Are you on any medications?

21 A. Well, I'm old. I'm always on
22 medication, but nothing that will prohibit me

1 from speaking to you.

2 Q. And giving true and accurate
3 testimony?

4 A. Sure. Nothing that I'm taking will
5 prohibit me from doing that.

6 Q. Thank you.

7 Do you have any materials with you
8 today?

9 A. By "materials," what do you mean?

10 Q. Are there any documents with you in
11 your room today?

12 A. I have only documents that were sent
13 to me by Rick.

14 Q. And you have those documents with
15 you today in your room?

16 A. Well, I have them on my computer
17 screen. I don't have any hard copies at all.

18 Q. And what documents do you currently
19 have open on your computer screen?

20 A. I only have -- let me see. It's
21 titled -- let me see. I'm sorry. I'm at the
22 bottom, and I probably need to be at the top.

1 So it's titled -- oh, there it is --
2 "Patent Owner's Response." That's all I've got
3 in front of me.

4 Q. So you don't have any other
5 documents open on your screen right now?

6 A. I do not.

7 Q. Okay. So I'm going ask you just so
8 it's easier, can we close that down?

9 A. Sure.

10 Q. Okay. And do you have any other --
11 other than the Zoom application open on your
12 screen that we are using for this remote
13 deposition, do you have any other application
14 open on your computer?

15 A. I do not.

16 Q. Okay. So your e-mail Outlook is
17 closed?

18 A. Yes.

19 Q. And I just ask during this
20 deposition that we keep everything closed and
21 don't start typing e-mails and all the rest
22 during the deposition.

1 A. Sure.

2 Q. Mr. McNulty, have you ever been
3 deposed before?

4 A. I was deposed for a fire
5 investigation, and that was about it.

6 Q. When was that -- when did that
7 deposition take place?

8 A. Probably 2005 or '6.

9 Q. Let me go through just some ground
10 rules in depositions in a remote context a little
11 bit. It can be challenging at times, but that
12 way we'll be on the same page and the court
13 reporter can get a clear record.

14 A. Okay.

15 Q. So first off, your answers need to
16 be spoken. The court reporter can't take down
17 nods or other gestures.

18 A. Yes.

19 Q. Is that okay?

20 A. Yes.

21 Q. It's important that we try not to
22 speak over each other. I will try to finish my

1 question. You try to finish -- I'll try to let
2 you finish your answer. That way the court
3 reporter can get a clear record that can be used
4 in this case.

5 Is that okay?

6 A. Yes.

7 Q. So we will try to take a break about
8 every hour to stretch your legs, et cetera; but
9 if you ever need breaks in between, I am happy
10 to -- happy to go off, if you just need to get up
11 and do something. The one caveat is if I've
12 asked a question, I'd like the answer before we
13 go off the record.

14 Does that work for you?

15 A. Yes, it does.

16 Q. And your attorney may issue some
17 objections; but unless your attorney instructs
18 you not to answer and you follow that, you still
19 have to answer my question despite your attorney
20 objecting.

21 Does that make sense to you?

22 A. Yes, it does.

1 Q. Okay. If at any point a question of
2 mine is confusing, please ask me for
3 clarification and I will do my best. If you
4 don't ask for clarification, I will assume that
5 you have understood the question; is that fair?

6 A. Yes.

7 Q. Mr. McNulty -- I am pronouncing that
8 right, right?

9 A. You are. That's correct.

10 Q. Good, good. Sometimes I have a
11 tendency to butcher names.

12 Mr. McNulty, what did you do to prepare
13 for your deposition today?

14 A. I met with Rick yesterday. We
15 talked about things that may come up. That's
16 about it.

17 MR. LEHRER: And I'm just going to
18 caution the witness not to divulge
19 attorney-client conversations.

20 THE WITNESS: Exactly.

21 BY MR. COLSHER:

22 Q. Other than your conversation with

1 your attorney yesterday, did you speak to anyone
2 else in preparation for your deposition?

3 A. No.

4 Q. How long did you speak with your
5 attorney yesterday?

6 A. Two and a half hours.

7 Q. Did you take any notes during your
8 deposition --

9 A. No.

10 Q. -- or excuse me, strike that.
11 Did you take any notes during any of
12 your preparations?

13 A. I did not.

14 Q. In preparation for your deposition,
15 did you review any documents?

16 A. A few, yes.

17 Q. Do you recall what those documents
18 were?

19 A. Well, my declaration and I reviewed
20 the original patent, but I didn't -- I didn't
21 memorize what the patent is. I am just familiar
22 with what it's about.

1 Q. And when you refer to the "original
2 patent," you are referring to the '966 patent; is
3 that correct?

4 A. That's correct.

5 Q. Okay. And other than reviewing the
6 '966 patent and your declaration, did you do
7 anything else to prepare for your deposition
8 today?

9 A. I did not.

10 Q. And talking to your attorney?

11 A. Yes. Yeah, I talked to the attorney
12 yesterday for two and a half hours. That was it.

13 Q. Mr. McNulty, when did you first
14 learn of the inter partes review that is the
15 subject of your declaration in this deposition?

16 A. When did I learn of it?

17 Q. Yes.

18 A. I can't tell you that. It was this
19 year sometime.

20 Q. Do you recall how you learned about
21 this proceeding?

22 A. I got an e-mail from Jim Rabail.

1 And Jim --

2 (Reporter clarification.)

3 A. Rabail. R-A-B-A-I-L.

4 BY MR. COLSHER:

5 Q. And who is Jim Rabail?

6 A. He is vice president of marketing of
7 Tegris.

8 Q. Do you still have the e-mail that
9 Mr. Rabail sent you?

10 A. I probably do.

11 Q. Do you recall what that e-mail said?

12 A. He just asked me if I would -- if I
13 would give a deposition for this particular
14 concern.

15 Q. Other than the original e-mail that
16 Mr. Rabail sent you, did you have any
17 communications with Mr. Rabail?

18 A. I did, but it didn't concern this.

19 Q. And when you say "it didn't concern
20 this," what is the "this" you are referring to?

21 A. It didn't concern the -- this
22 deposition or this case. It was -- it was about

1 one of his -- one or two of his customers.

2 Q. Did you respond to Mr. Rabail by
3 e-mail?

4 A. Yes, I did.

5 Q. Do you have a copy of that e-mail
6 that you responded with?

7 A. Yes, I do.

8 Q. Do you recall what that e-mail said?

9 A. I do not. I just read through his
10 question, but I don't know what the rest of the
11 e-mail was.

12 Q. And after you responded to
13 Mr. Rabail, what did you do next related to this
14 proceeding?

15 MR. LEHRER: Objection. Form.

16 A. Pardon me. You talked over each
17 other.

18 MR. LEHRER: Sorry. I just objected
19 to form. You can answer the question.

20 THE WITNESS: Oh, okay.

21 A. Can you repeat the question please?

22 BY MR. COLSHER:

1 Q. Sure.

2 After you responded to Mr. Rabail,
3 what did you do next related to this proceeding?

4 A. I did nothing. I just waited until
5 I was notified that I needed to fill out a
6 declaration, which I did.

7 Q. And who notified you that you needed
8 to fill out a declaration?

9 A. I honestly don't remember who it
10 was. I believe it was Rick, but it might have
11 been Jim Rabail.

12 Q. And what was the declaration that
13 you were asked to provide?

14 MR. LEHRER: Objection. Form.

15 A. I'm sorry. I'm sorry. You kind of
16 covered each other up again. Can you repeat the
17 question?

18 BY MR. COLSHER:

19 Q. Of course.

20 What was declaration that you were
21 asked to provide?

22 A. What my involvement has been with

1 Tegris and also how I also used the electronic
2 format that Brycer has evolved.

3 Q. And are you aware that Tegris has
4 filed a patent infringement lawsuit in District
5 Court alleging that Brycer infringes the '966
6 patent?

7 MR. LEHRER: Objection. Form.

8 A. I was told -- I'm sorry. Again?

9 BY MR. COLSHER:

10 Q. Are you aware that Tegris filed a
11 patent infringement lawsuit alleging that Brycer
12 infringed the '966 patent?

13 A. Yes, I am.

14 Q. And how did you become aware of that
15 lawsuit?

16 MR. LEHRER: Objection. Form.

17 A. I became aware -- Jim Rabail and I,
18 I believe, went to lunch some time in the last
19 year; and he mentioned it to me then.

20 BY MR. COLSHER:

21 Q. And what did you and Mr. Rabail
22 discuss about the lawsuit?

1 MR. LEHRER: Objection. Form.

2 A. He did not get into any detail at
3 all, only that there had been a lawsuit filed.
4 That was it.

5 BY MR. COLSHER:

6 Q. Did you write the first draft of
7 your declaration?

8 A. I don't understand the question.
9 Did I write it?

10 Q. You told me you authored a
11 declaration for this --

12 A. I did.

13 Q. -- proceeding, correct?

14 A. Correct. And I followed the format
15 that I was given.

16 Q. So you did not write the first draft
17 of your declaration. You had a team; is that
18 correct?

19 MR. LEHRER: Objection.

20 Mischaracterizes the testimony.

21 A. I'm sorry. I don't know how to
22 answer that. I -- again, I was given a format;

1 and I completed that format. There was some
2 legalese that was in the format that has been
3 exchanged back and forth a few times.

4 BY MR. COLSHER:

5 Q. And who was that exchange occurred
6 with?

7 MR. LEHRER: Objection to form.

8 A. I believe it was Rick.

9 BY MR. COLSHER:

10 Q. And you mentioned that you studied
11 the '966 patent; is that correct?

12 MR. LEHRER: Objection to form.

13 A. I said I read it. I did not study
14 it.

15 (Reporter clarification.)

16 A. My answer was I read it, but I did
17 not study it to memorize.

18 BY MR. COLSHER:

19 Q. Do you recall when you first learned
20 of the '966 patent?

21 A. I'm confused by the question. I
22 know that in 2011, there have -- there was a

1 patent pending at that time. But I am not sure
2 when the patent was actually issued.

3 Q. Do you recall how you first learned
4 of a patent pending application?

5 A. I was told by Andrew Moren that
6 there was a patent pending.

7 Q. Do you recall whether you had any
8 discussions concerning the substance of the
9 patent pending application with Mr. Moren?

10 A. No, that was all I knew about it.
11 He told me that there was a patent pending, and I
12 accepted that.

13 Q. Mr. McNulty, what is the highest
14 level of education that you have?

15 A. I have a degree in business
16 management from the University of Phoenix.

17 (Reporter clarification.)

18 A. University of Phoenix and my degree
19 is in business management.

20 MR. LEHRER: So I guess we should do
21 a sound check. Can everybody hear me?

22 MR. COLSHER: Yeah, I can hear you

1 okay. How about me?

2 MR. LEHRER: I can hear you fine.

3 (Whereupon, there was a discussion
4 off the record.)

5 BY MR. COLSHER:

6 Q. Mr. McNulty, when did you receive
7 the degree in business management from the
8 University of Phoenix?

9 A. I -- I believe it was 2002, but it
10 could have been 2003.

11 Q. So the early 2000s?

12 A. Yes.

13 Q. Okay. Other than your degree in
14 business management from the University of
15 Phoenix, do you have any other -- I'll call it
16 post-high school education?

17 A. Well, I started the master's degree
18 program in international marketing; but I did not
19 finish it. I've got three -- three degrees in
20 fire service training, one from fire services
21 management, one in fire investigation, and one in
22 fire service administration. They're all AA

1 degrees, so.

2 Q. You said A -- you said AA degree?

3 A. Associate degree.

4 Q. Associate degree?

5 A. Associate degree, yes.

6 Q. In connection with any of your
7 education, have you ever taken any computer
8 coding courses?

9 A. I have not.

10 Q. Have you taken any computer
11 networking courses?

12 A. If I have, it was a long time ago.

13 Q. Have you ever programmed any
14 software before?

15 A. I never have.

16 Q. Okay. Have you ever designed a
17 database?

18 A. No.

19 Q. Are you currently employed,
20 Mr. McNulty?

21 A. I'm retired.

22 Q. And when did you retire?

1 A. Oh, gosh. I knew that question was
2 going to come up. I've retired like eight times.
3 So my first time retiring was in 2011. Then I
4 retired again in 2014, again in '17 and '19 and
5 '22. And I had a cardiac incident in '24 -- no,
6 '23. And I've done my best not to work anymore.

7 Q. Okay. Good for you. Hopefully -- I
8 hope this retirement sticks.

9 A. Me too.

10 Q. Prior to your most recent
11 retirement, what -- can you describe generally
12 your employment?

13 A. I was an assistant chief/fire
14 marshal for the Snohomish County -- North
15 Snohomish County Regional Fire Authority.

16 Q. And is that in Washington -- the
17 state of Washington?

18 MR. LEHRER: Objection. Form.

19 A. It is. It is in the state of
20 Washington.

21 BY MR. COLSHER:

22 Q. And can you generally describe your

1 role for the North Snohomish County that you were
2 doing?

3 MR. LEHRER: Objection. Form.

4 A. I was the -- I was primarily the
5 fire marshal. My -- my position was assistant
6 chief; and the fire marshal does plan reviews,
7 does inspections, runs -- coordinates the
8 inspections with company -- the guys who drive
9 the big red trucks.

10 And so they don't usually have any
11 training on -- on codes and ordinances. So that
12 was my job to -- to coordinate all of the things
13 that they did, plus all the things that I did,
14 which was pretty much what we just talked about.

15 BY MR. COLSHER:

16 Q. And when you refer to codes and
17 ordinances, what are you referring to?

18 MR. LEHRER: Objection. Form.

19 A. I am referring to state codes,
20 national codes, local codes. And by codes, I
21 mean life safety codes. So most of those codes
22 are based from information that is published by

1 the National Fire Protection Association or NFPA.

2 BY MR. COLSHER:

3 Q. Can you give me an example of a life
4 safety code that you refer to?

5 A. Exit door shall remain in an
6 operational positions at all times on commercial
7 businesses, that would be a life safety code.

8 Q. And you said exit door, correct?

9 A. Yes.

10 MR. LEHRER: Objection to form.

11 BY MR. COLSHER:

12 Q. Prior to your work at the North
13 Snohomish County, do you recall what you were
14 doing before then?

15 A. I worked at the City of Everett Fire
16 Department in Washington state.

17 Q. And what was your role at the City
18 of Everett Fire Department state --

19 A. I was the fire marshal, and I was an
20 assistant chief.

21 Q. Was your role as the fire marshal
22 and assistant chief the same type of role that

1 you had at North Snohomish?

2 A. Yes, it was. I had a larger staff,
3 but it was the relatively the same thing.

4 Q. And prior to your role for Everett,
5 what were you doing?

6 MR. LEHRER: Objection. Form.

7 A. I was the fire marshal for the City
8 of Mukilteo.

9 THE WITNESS: Would you -- would you
10 like the spelling for the City of Mukilteo?

11 COURT REPORTER: Sure. Sure.

12 MR. LEHRER: Yeah, you can spell it.

13 THE WITNESS: Okay. M-U-K-I-L, T as
14 in Tom, E-O.

15 BY MR. COLSHER:

16 Q. And what were you doing in that
17 role?

18 A. I was --

19 MR. LEHRER: Objection to form.

20 A. I was the fire marshal.

21 BY MR. COLSHER:

22 Q. And was the role of the fire marshal

1 for Mukilteo --

2 A. Very close. Very close.

3 Q. -- approximately the same as the
4 other role -- fire marshal roles you've been
5 describing?

6 A. Exactly. I worked a little more
7 with the building professional for other codes as
8 well. But that -- that was pretty much what I
9 did at every jurisdiction, but we had to
10 coordinate even more there.

11 Q. And prior to your role there, did
12 you have any other -- any other professional
13 jobs?

14 A. I worked as the fire marshal in the
15 city of Lynnwood, Washington. You spell Lynnwood
16 with two Ns.

17 Q. And approximately how long did you
18 work as the fire marshal in the city of Lynnwood?

19 MR. LEHRER: Objection. Form.

20 A. I was there -- I was the fire
21 marshal for six years. I was the assistant fire
22 marshal for ten years. I was an inspector for

1 probably five years in the fire prevention
2 division in Lynnwood.

3 BY MR. COLSHER:

4 Q. Other than your roles for the
5 various fire departments that we have been
6 discussing, do you have any other professional
7 job experience?

8 A. Yes.

9 Q. And what would that professional job
10 experience be?

11 A. I was an instructor for multiple
12 community colleges in the Seattle area.

13 Q. And in what subject or subjects were
14 you an instructor for these community colleges?

15 MR. LEHRER: Objection. Form.

16 A. Fire service, mostly. I did fire
17 investigations, fire inspections. I did
18 administration, fire services administration.

19 BY MR. COLSHER:

20 Q. Outside the fire service,
21 investigation, administration roles that you've
22 been describing, do you have any non-fire

1 professional experience?

2 A. I do.

3 Q. And what would that be?

4 A. I was a contractor, small business
5 owner. Before that, I worked in the fishing
6 industry. Before that, I was in the grocery
7 business for 15 years. Before that, I was --

8 (Reporter clarification.)

9 A. I was in the grocery business for
10 15 years. And before that I did -- I was a young
11 man in my teens, and I delivered papers. I mowed
12 lawns, and I babysat for families in my
13 community.

14 I just didn't know how far back you
15 wanted to go, so.

16 BY MR. COLSHER:

17 Q. Have you ever been employed by
18 Tegriss?

19 A. Yes, I have.

20 Q. What were you employed by Tegriss as?

21 A. I was their marketing person and
22 salesperson.

1 Q. When did you begin the role as the
2 marketing and salesperson for Tegriss?

3 A. Probably 2011. I want to say April
4 of 2011.

5 Q. And approximately how long did you
6 have the role of marketing and salesperson for
7 Tegriss?

8 A. About three years.

9 Q. Did Tegriss compensate you for your
10 role as marketing and salesperson?

11 A. Yes.

12 Q. And how were you compensated,
13 generally?

14 A. I -- I was paid a weekly -- weekly
15 wage.

16 Q. And in your role -- what, generally,
17 did you do in your role as marketing and
18 salesperson for Tegriss?

19 A. Well, at the beginning of this
20 journey, I met with -- I met with contractors, I
21 met with property owners, and I met with
22 jurisdictional authorities.

1 Q. When you refer to jurisdictional
2 authorities, what are you referring to?

3 A. Typically, they were fire marshals.
4 Oftentimes, they were fire chiefs. And other
5 times, they were -- they were like city managers.

6 Q. And what would you do when you met
7 with these individuals or entities?

8 MR. LEHRER: Objection. Form.

9 A. I would try to show them the -- the
10 benefits of having a database, a web-based
11 database for all of their life safety equipment.

12 BY MR. COLSHER:

13 Q. When you refer to web-based
14 database, what did you mean?

15 A. The -- the program that was Tegriss
16 at the time. So it sent -- it collected -- it
17 collected the life safety equipment -- the
18 information on the life safety equipment in the
19 jurisdiction. Then it would send notes to the --
20 the inspectors that actually performed the
21 maintenance on the system.

22 And then we had to show the

1 authorities how to -- how to use it. Typically,
2 that was the fire marshal in that jurisdiction.

3 Q. Are you being compensated for your
4 time in connection with this proceeding?

5 A. Yes.

6 Q. How are you being compensated?

7 A. Paid by the hour.

8 Q. And what is that hourly rate?

9 A. \$300.

10 Q. Approximately how much time have you
11 spent so far in connection with this proceeding?

12 A. I would say ten hours.

13 Q. And that includes the drafting of
14 your declaration?

15 MR. LEHRER: Objection. Form.

16 A. Yes.

17 BY MR. COLSHER:

18 Q. That includes the two and a half
19 hours of preparation that you --

20 A. Yes.

21 Q. -- described?

22 A. Yes.

1 MR. LEHRER: Objection. Objection

2 to form.

3 Give me a chance to object.

4 THE WITNESS: Sorry.

5 BY MR. COLSHER:

6 Q. I know it's especially hard in an
7 remote proceedings to -- to get the timing right.
8 We'll get there. We'll get there.

9 The Tegrис program that you
10 mentioned a little while ago, you didn't create
11 that system, did you?

12 A. I did not.

13 Q. And you didn't design the system,
14 correct?

15 MR. LEHRER: Objection. Form.

16 A. I did not.

17 BY MR. COLSHER:

18 Q. And you didn't write any code for
19 the Tegrис system, correct?

20 MR. LEHRER: Objection. Form.

21 A. I did not.

22 BY MR. COLSHER:

1 Q. Have you ever seen the code for the
2 Tegriss system?

3 A. I have not.

4 Q. I'm going to put into the chat an
5 exhibit that has been premarked as Exhibit 2016
6 which is titled "Declaration of LeRoy McNulty."

7 Can you let me know if you're able
8 to access that, Mr. McNulty?

9 (Whereupon, Exhibit 2016,
10 Declaration of LeRoy McNulty, was marked for
11 identification.)

12 A. I can see it, but I can't see the...

13 BY MR. COLSHER:

14 Q. Are you able to download it from
15 there? There's a little icon.

16 A. There it goes. It's downloading
17 now.

18 Q. Let me know when you're able to
19 access it. I'm going to ask some questions
20 concerning this exhibit.

21 A. It's downloading.

22 MR. LEHRER: You have to remember

1 where you downloaded it to.

2 THE WITNESS: Yeah.

3 A. Okay, I've got it open now.

4 BY MR. COLSHER:

5 Q. Let's turn to page 5 of your
6 declaration, in particular section 4 which is
7 entitled "Legal Understanding."

8 Can you let me know when you're
9 there?

10 A. Okay.

11 Q. And you're not a lawyer, right,
12 Mr. McNulty?

13 MR. LEHRER: Objection to form.

14 A. I am not, no.

15 BY MR. COLSHER:

16 Q. And you do not have any legal
17 training; is that correct?

18 MR. LEHRER: Objection to form.

19 A. I do not.

20 BY MR. COLSHER:

21 Q. And you were informed by Tegriss's
22 legal counsel about the legal standards to be

1 used for this proceeding; is that correct?

2 MR. LEHRER: Objection. Form.

3 A. Yes.

4 BY MR. COLSHER:

5 Q. And are those the standards that are
6 set out in section 4 of Exhibit 2016, in
7 particular in paragraphs 15 through 20?

8 MR. LEHRER: Objection. Form.

9 BY MR. COLSHER:

10 Q. Do you need more time, Mr. McNulty?

11 A. You said between 15 and 20. I'm at
12 18 now.

13 Q. Okay, great.

14 A. Okay, I finished that.

15 Q. My question was: Are the standards
16 that are set out in section 4 of Exhibit 2016, in
17 particular in paragraphs 15 through 20?

18 A. Can you repeat the question again?

19 Q. Of course.

20 Are the standards that you relied
21 upon set out in paragraphs 15 through 20 in
22 section 4 of Exhibit 2016?

1 A. Yes.

2 Q. Do you have an understanding of what
3 a database is, Mr. McNulty?

4 A. I'm sorry. You broke up just a
5 little bit. Can you repeat?

6 Q. Of course.
7 Do you have an understanding of what
8 a database is?

9 A. Oh, yes. Yes I do.

10 Q. And what is your understanding of
11 what a database is?

12 MR. LEHRER: Objection to form.

13 A. A database in the terms of my use of
14 the database is it's a searchable record that you
15 can keep and maintain to gather information about
16 a certain subject.

17 BY MR. COLSHER:

18 Q. I'm going put another exhibit into
19 the chat which has been marked in this proceeding
20 as Exhibit 1001 which is U.S. patent number
21 11,126,966.

22 Can you let me know when you're able

1 to access that, Mr. McNulty?

2 (Whereupon, Exhibit 1001, U.S.
3 patent number 11,126,966, was identified.)

4 A. Well, so far not.

5 Okay, I can hear you; but I cannot
6 see you, so.

7 MR. COLSHER: Let's just go off the
8 record for a second then.

9 (Whereupon, a brief recess was
10 taken.)

11 BY MR. COLSHER:

12 Q. Mr. McNulty, were you able to access
13 Exhibit 1001, U.S. patent number 11,126,966?

14 A. Yes.

15 Q. Is this the '966 that you reviewed
16 in preparation for your deposition?

17 MR. LEHRER: Objection. Form.

18 A. Yes, it is.

19 BY MR. COLSHER:

20 Q. Other than in preparation for your
21 deposition, have you ever reviewed the '966
22 patent?

1 A. No.

2 Q. So yesterday was first time that you
3 reviewed it?

4 A. I'm sorry. You broke up. Try it
5 again.

6 Q. Strike that.
7 When you reviewed the '966 patent,
8 did you review the claims of the patent?

9 A. I read through it; but I don't
10 recall paying any attention to the claims, no.

11 Q. Mr. McNulty, do you have an
12 understanding of what a patent claim is?

13 A. I have, very vaguely.

14 Q. And what is the understanding of
15 what a patent claim is, Mr. McNulty?

16 MR. LEHRER: Objection. Form.

17 A. My understanding of what a patent
18 claim is -- well, I guess I should say that I
19 understand a patent. Someone has an idea,
20 develops a product or a process. But I don't
21 know what a claim is, no.

22 BY MR. COLSHER:

1 Q. Can we look to the last page of
2 Exhibit 1001, which is page 34 of the exhibit.
3 And in particular, I'm going to direct you to
4 column 15 on the left-hand side. Can you let
5 know when you're there?

6 A. I'm there now.

7 Q. And if you go down, the number's
8 kind of hard to see, but at line 16 of column 15
9 in Exhibit 1001, do you see where it says the
10 number 8?

11 A. Yes.

12 Q. Okay. Have you previously reviewed
13 this claim number 8?

14 A. As I stated, yes, I reviewed it.

15 Q. And when did you review this claim
16 number 8?

17 MR. LEHRER: Objection. Form.

18 A. When I spoke to Rick yesterday.
19 That was the first time that I'd seen it.

20 BY MR. COLSHER:

21 Q. Do you have an understanding of what
22 claim 8 claims?

1 A. Maybe. I understand the process,
2 what it is claiming, yes.

3 Q. What is your understanding of the
4 process?

5 A. Well, I understand that there --
6 it's a web-based design -- web-based database
7 that is available to the owner of an asset and
8 the authority and the inspector. And each have
9 to have a path to access the database or their
10 portion of the database.

11 Q. Other than the understanding you
12 just described, do you have any additional
13 understanding of claim 8?

14 A. I do not.

15 Q. Is there anything novel about claim
16 8?

17 A. You were mostly broken up in that
18 statement. Can you say it again?

19 Q. Of course.
20 Is there anything novel about claim
21 8?

22 MR. LEHRER: Objection. Calls for a

1 legal conclusion.

2 A. So for me to -- can you repeat the
3 last thing that you said?

4 BY MR. COLSHER:

5 Q. Yes. I'll repeat the question.

6 Is there anything novel about claim
7 8 of the '966 patent?

8 MR. LEHRER: Objection. Calls for a
9 legal conclusion.

10 A. I guess I don't understand the term
11 "novel." It was a -- when I started using
12 Tegriss, probably in 2009, there was nothing like
13 it. It was the only computer-based program on
14 the market at the time.

15 BY MR. COLSHER:

16 Q. There were no other computer-based
17 programs on the market?

18 A. Well, not that did this.

19 Q. And what is "this" that you're
20 referring to?

21 MR. LEHRER: Objection. Form.

22 A. What I'm talking about is what it

1 says in 8. There was no web-based database that
2 provided access to the property owner at the
3 outset, the authority having jurisdiction, and
4 the company that did the inspection.

5 Q. Do you have an understanding of what
6 prior art is, Mr. McNulty?

7 A. I do not.

8 Q. And so it's fair to say you didn't
9 review any prior art in forming the opinions in
10 your declaration?

11 MR. LEHRER: Objection. Form.

12 A. I did not.

13 BY MR. COLSHER:

14 Q. Are you providing expert testimony
15 in this proceeding, Mr. McNulty?

16 A. Yes.

17 Q. All right. Let's switch to
18 Exhibit 2016 which is your declaration. Let me
19 know when you are there.

20 A. Okay. I am there.

21 Q. And can you turn to page 7,
22 paragraph 18 of Exhibit 2016?

1 A. Paragraph 18; is that correct?

2 Q. Correct.

3 A. Okay. Now, what was your question
4 again?

5 Q. I haven't asked a question. I just
6 wanted to make sure we were there.

7 A. Okay. I am there.

8 Q. And the third sentence of
9 paragraph 18, which is -- begins five lines down,
10 it states: To be afforded substantial weight,
11 the objective indicia of nonobvious must be tied
12 to the novel elements of the claims at issue.

13 Do you see that?

14 MR. LEHRER: Objection. Form.

15 A. Yes.

16 BY MR. COLSHER:

17 Q. Do you have an understanding of what
18 the novel elements of claim 8 are?

19 A. I guess I do not.

20 Q. And in connection with the opinion
21 that you provided in Exhibit 2016, your
22 declaration, did you offer any claim

1 constructions as to the meanings of the terms in
2 the claims of the patent?

3 MR. LEHRER: Objection. The
4 document speaks for itself.

5 A. Can I answer the question?

6 MR. LEHRER: Unless I tell you not
7 to answer, you can answer the question.

8 A. That doesn't make any sense. So
9 what was the question?

10 BY MR. COLSHER:

11 Q. I'll read the question back.

12 In connection with the opinion that
13 you provided in Exhibit 2016 for declaration, did
14 you offer any claim constructions as to the
15 meanings of the terms in the claims of the '966
16 patent?

17 MR. LEHRER: The same objection.
18 The document speaks for itself.

19 A. I did not.

20 BY MR. COLSHER:

21 Q. Do you have any understanding of the
22 field of technology of the '966 patent?

1 A. Okay. I'm sorry. You have to say
2 that one more time.

3 Q. Of course. Do you have any
4 understanding of the field of technology of the
5 '966 patent?

6 A. I do not.

7 Q. Okay. Let's look at Exhibit 2016
8 again, and in particular I want to direct you to
9 the section that begins on page 12. It's called
10 section 6, entitled "Secondary Considerations as
11 Indicia of Nonobviousness."

12 Let me know when you are there.

13 A. Page 12?

14 Q. Page 12 of your declaration,
15 Exhibit 2016, yes.

16 A. Okay. And which section? Which
17 paragraph?

18 Q. Let's start with paragraph 24. And
19 it states: I have personal knowledge and
20 experience with Tegriss fire hydrant management
21 system and Brycer's competing offer at TC.

22 Do you see that?

1 A. Yes, I can.

2 Q. Okay. And how did you gain personal
3 knowledge and experience with respect to Tegris's
4 fire hydrant management system?

5 MR. LEHRER: Objection. Form.

6 A. I used the Tegris management system
7 as part of my job in the city of Lynnwood.

8 (Reporter clarification.)

9 A. I said, I used the Tegris management
10 system while performing my duties in the city of
11 Lynnwood.

12 BY MR. COLSHER:

13 Q. Let's go down to page 14, which is
14 paragraph 27. Can you let me know when you are
15 there.

16 Okay. And do you see paragraph 27
17 states that: Tegris computer-based fire hydrant
18 management software system retrieves realtime
19 records of assets from a database. Each of the
20 classes of users -- sorry. Each of the class of
21 users may access and update the database.

22 Do you see that paragraph?

1 A. You said page 14. I have it on --

2 Q. At paragraph 27, in particular.

3 A. 27. Okay. I finally have it.

4 Q. And you make the statement, in
5 paragraph 27, that: The Tegriss computer-based
6 fire hydrant management software system retrieves
7 realtime records of assets from a database.

8 Do you see that?

9 MR. LEHRER: Objection. Form.

10 A. Yes, I do. Sorry.

11 BY MR. COLSHER:

12 Q. Have you ever -- strike that.

13 What is the basis for your statement
14 that: The system retrieves realtime records of
15 assets from a database?

16 A. Because I've used that database in
17 performance of my job duties --

18 (Reporter clarification.)

19 A. -- my job duties in the city of
20 Lynnwood and elsewhere.

21 BY MR. COLSHER:

22 Q. And when you say "use that

1 database," what is the database that you are
2 referring to?

3 MR. LEHRER: Objection to form.

4 A. I used Tegriss to manage my life
5 safety equipment in Lynnwood city.

6 BY MR. COLSHER:

7 Q. Is it your opinion that the Brycer
8 TCE and Tegriss systems operate the same way?

9 A. They are very similar.

10 Q. Can you describe any differences
11 relative to the analysis that you provided in
12 preparing Exhibit 2016, your declaration, in this
13 proceeding?

14 A. Okay. You broke up a little bit.
15 Can you say that one more time?

16 Q. Of course.

17 Can you describe the differences
18 relative to the analysis that you provided in
19 preparing Exhibit 2016, your declaration, in this
20 proceeding?

21 A. They are similar in the fact that
22 they have three separate sets of users access the

1 system. Brycer has added some user abilities
2 that at time when I was using Tegriss, they did
3 not have. I don't know if they have it now.

4 Q. You have never reviewed Brycer's
5 source code, correct?

6 A. I have never reviewed --

7 Q. And you never had --

8 A. Never reviewed it, no.

9 Q. And you have never had access to how
10 Brycer's TCE database functions, right?

11 MR. LEHRER: Objection to form.

12 A. I do not know, and I never had
13 access to it.

14 BY MR. COLSHER:

15 Q. And Brycer's TCE tracks assets other
16 than fire hydrants, right?

17 MR. LEHRER: Objection to form.

18 A. Yes, they both do.

19 BY MR. COLSHER:

20 Q. And when you say "they both do,"
21 what are you referring to?

22 MR. LEHRER: Objection. Form.

1 A. They both have other systems other
2 than fire hydrants that they manage.

3 BY MR. COLSHER:

4 Q. What other systems does the Tegriss
5 system manage?

6 A. You broke up. One more time please.

7 Q. What other systems does the Tegriss
8 system manage?

9 A. Gosh, I can't tell you all of them
10 that they do but they -- as an example, both of
11 them manage the maintenance and testing on
12 sprinkler systems, fire alarm systems, commercial
13 hoods, private fire hydrants. They probably both
14 do backflow preventers.

15 I know they -- I should say I assume
16 they do -- they do fire dormers, as they used to,
17 and a number of other life safety systems.

18 Q. Does claim 8 of the '966 patent
19 cover those other systems that are not fire
20 hydrants?

21 MR. LEHRER: Objection. Calls for a
22 legal conclusion. Beyond the scope.

1 A. So you're going to have to ask me
2 again because you broke up just a little bit.

3 BY MR. COLSHER:

4 Q. Does claim 8 of the '966 patent
5 cover those other systems you described that are
6 not fire hydrants?

7 MR. LEHRER: The same objection.

8 A. Primarily, yes.

9 BY MR. COLSHER:

10 Q. When you say "primarily," what do
11 you mean?

12 A. They are designed to cover the same
13 life safety system.

14 Q. Are all the examples that you
15 provided to me life safety systems?

16 A. I'm sorry. Once again, you broke up
17 right in the middle of your statement.

18 Q. Are all examples that you provided
19 to me life safety systems?

20 A. Yes, all the examples I gave you are
21 life safety systems. Yes.

22 Q. Earlier I think we were talking

1 about an emergency exit door; is that right?

2 A. I talked about any exit door, but
3 yes.

4 Q. Sorry, let me get this right. I
5 just -- I don't want to -- I don't want to
6 misstate what you said earlier.

7 We were talking about exit doors
8 earlier, right?

9 A. Yes, I talked about exit doors. I
10 think you specifically asked the question about
11 emergency exit doors. Any door that gets someone
12 from the inside to the outside is an exit door.

13 Q. Understood.

14 And the code example that you
15 provided earlier, that was in the context of an
16 exit door; is that correct?

17 A. That is correct.

18 Q. And would that exit door be an
19 example of a life safety system?

20 MR. LEHRER: Objection. Form.

21 A. It can be, yes.

22 BY MR. COLSHER:

1 Q. What would make it a life safety
2 system?

3 A. If there was -- if there were a --
4 an emergent -- a -- let me think now. I have to
5 think about how it says this in the code. If
6 there are delayed devices on certain exit doors
7 to prohibit people from stealing product, for
8 example, out of a grocery store or a hardware
9 store, that particular bar is connected to a
10 sprinkler system or a fire alarm system or a
11 smoke detector that delays the egress from inside
12 to get to the outside, those have to be part of
13 the -- of a life safety database.

14 Q. Let's take a look at Exhibit 1001.
15 If you could go to that for me. And that's the
16 '966 patent. And in particular, when --

17 A. You want me to go to the '966?

18 Q. Yes, Exhibit 1001, the '966 patent.

19 A. Okay.

20 Q. And in particular, let's go to page
21 number 27 of the exhibit, and let's look at
22 column 1 when you're there. Let me know when

1 you're there, and we can keep going.

2 A. Okay. Column 1.

3 Q. Beginning around line 16, 17, it
4 says, "BACKGROUND OF THE INVENTION."

5 Do you see that section?

6 A. I guess don't. But can you tell me
7 what you want me to look at? Maybe I can find it
8 that way.

9 Q. It's a section in the '966 patent on
10 page -- PDF page 27, which is also labeled in the
11 lower right-hand corner. And it says:
12 "BACKGROUND OF THE INVENTION." It's about 16, 17
13 lines down in column number 1.

14 Do you see that on the left-hand
15 side?

16 A. I'm sorry. I was looking for
17 lines 16 or 17, but okay. I'm in the area.

18 Q. Okay. And if you go, it's -- it
19 begins at column 1, line 19 in Exhibit 1001. And
20 it says, "There are many assets that are owned
21 around the world that require compliance with
22 code, local rule, state law, or federal law."

1 Do you see that?

2 A. I'm sorry, I do not. But let me
3 start near the top again.

4 MR. LEHRER: So you should be on the
5 first page after figure 23.

6 THE WITNESS: That's exactly where I
7 am, but I do not see it.

8 MR. LEHRER: On the left-hand side
9 the page --

10 THE WITNESS: Yeah.

11 MR. LEHRER: -- you see there's a
12 number one at the top of the page?

13 THE WITNESS: Yeah.

14 MR. COLSHER: Okay. And there's a
15 bolded heading and then right behind -- below
16 that there's an all caps that says "PRIORITY
17 CLAIM."

18 THE WITNESS: Yes.

19 MR. LEHRER: And then right below
20 that paragraph, there's an all caps that
21 says, "BACKGROUND OF THE INVENTION."

22 THE WITNESS: Yes.

1 MR. LEHRER: Okay. Go ahead,
2 Patrick. You can go from there.

3 BY MR. COLSHER:

4 Q. All right. Let's -- let's restart
5 this. So at the column 1, beginning at line 19
6 of Exhibit 1001, there's a sentence that begins,
7 "There are many assets that are owned around the
8 world that require compliance with a code, local
9 rule, state law, or federal law."

10 Do you see that, Mr. McNulty?

11 A. Yes, I do see it.

12 Q. And the assets that require
13 compliance, are those the types of assets that
14 you've been describing during our discussions
15 today?

16 MR. LEHRER: Objection. Form.

17 A. Yes, those are the -- those are
18 examples of what I was speaking of.

19 BY MR. COLSHER:

20 Q. Okay. And then the next sentence
21 says, "Compliance in most of these cases requires
22 a periodic inspection of the owned asset."

1 Do you see that sentence beginning
2 at line 21, column 1?

3 MR. LEHRER: Objection. Form.

4 A. 21, yes.

5 BY MR. COLSHER:

6 Q. Do you agree with that sentence?

7 A. Yes.

8 Q. And then the next sentence, which is
9 pretty long, beginning at line 22 of column 1,
10 starts providing examples.

11 Do you see that sentence?

12 A. Yes.

13 Q. And these are examples of owned
14 assets that require compliance; is that right?

15 A. Yes.

16 Q. Okay. And these include life safety
17 systems; is that right?

18 A. Yes.

19 Q. Would a kitchen hood system be an
20 example of a life safety system?

21 A. Yes. Let me see. I think it's on
22 there. I did read that.

1 Q. And I'm looking at line 24 in
2 particular.

3 A. Yes. Kitchen hood system, yes.
4 That's exactly it, yeah.

5 Q. So that would be an example of a
6 life safety system?

7 A. Yes.

8 Q. Okay. And then line 25 to 26 talks
9 about backflow preventer.

10 Would that also be an example of a
11 life safety system?

12 A. Yes.

13 Q. What about line 27, electrical
14 systems, is that a life safety system?

15 A. A fire alarm system is an electrical
16 system, so yes.

17 Q. What about a heating/venting/air
18 conditioning system, would that qualify as a life
19 safety system? And that's on line 27 to 28 of
20 column 1.

21 A. Heating, venting and, air
22 conditioning systems typically come with the -- a

1 detector, a smoke detector. And those are the --
2 that's the part that you would -- you would keep
3 track of, yes.

4 Q. And how about plumbing systems, are
5 those life safety systems?

6 MR. LEHRER: Objection to form.

7 BY MR. COLSHER:

8 Q. And that's at -- strike that. Let
9 me ask the question again.

10 At column 1, line 28, there's an
11 example of plumbing systems. Do you have an
12 opinion on whether those plumbing systems qualify
13 as a life safety system?

14 A. Yes, they are.

15 Q. And at column 20 -- excuse me,
16 strike that.

17 At column 1, line 28, the next
18 example is an aircraft. Do you an opinion as
19 whether an aircraft is a life safety system?

20 A. Well, it's a -- it's a
21 transportation vehicle, so, yes, it can be.

22 Q. At line number 30, we see an example

1 in column 1 of industrial sites.

2 In your opinion, would that be a
3 life safety system?

4 A. It can. It could be worker safety,
5 yes. Industrial sites usually have exits; and so
6 those exits would go into this particular system,
7 sure.

8 Q. And line 30, it also says:
9 Environmental interests.

10 Do you have an understanding of what
11 environment interests are in the context of
12 compliance regulation?

13 A. Yes. They could part of that.

14 Q. And what is your understanding of an
15 environmental interest in this context?

16 MR. LEHRER: Objection to form.

17 A. Well, it could --

18 THE WITNESS: I'm sorry. Did you
19 object?

20 MR. LEHRER: Yes, sorry.

21 Objection. Form.

22 A. Okay. So an environmental site

1 would be like a detention pond that would keep
2 storm water. So that site could be a life safety
3 system.

4 BY MR. COLSHER:

5 Q. And line number 31, there's -- in
6 column 1 in Exhibit 1001, there's an example of
7 boilers.

8 In your opinion, would boilers
9 qualify as a life safety system?

10 A. Absolutely.

11 Q. And why is that?

12 A. Because they're a pressurized
13 vessel.

14 (Reporter clarification.)

15 A. It's a pressurized vessel.

16 Typically a tank, but they call them vessels.

17 So, yeah, when they -- when the
18 pressurization on the vessel gets too high, it
19 needs to have an alarm on it. So that would be a
20 life safety system.

21 BY MR. COLSHER:

22 Q. And in each of these examples in

1 this sentence beginning at column 1, line 27 --
2 strike that.

3 And fire hydrants are also an
4 example of a life safety system?

5 MR. LEHRER: Objection. Form.

6 A. Yes.

7 BY MR. COLSHER:

8 Q. Okay. And each of these life safety
9 systems that we've been talking about, do you
10 have an opinion of whether it's important to
11 accurately monitor and inspect for compliance?

12 MR. LEHRER: Objection. Form.

13 A. I think you're asking me from my
14 opinion on whether any of these things that are
15 listed in here could be a life safety issue. Is
16 that what you're saying?

17 BY MR. COLSHER:

18 Q. No. This question is a little bit
19 different. Let me -- let me try it again.

20 In the systems that we have been
21 talking about, do you have an opinion whether
22 it's important to adequately monitor and inspect

1 for compliance of those systems?

2 A. The fire -- the fire department
3 probably would not be involved in some of these
4 things, but there are jurisdictions that have to
5 have some kind of recordkeeping.

6 For instance, your -- your example
7 of a -- of an environmental site. They could use
8 that, but I haven't used it in my -- in my
9 professional career for those -- for those
10 examples.

11 Q. Are you aware of whether there are
12 any systems or literature that provide web-based
13 database similar to Tegriss's system for non-fire
14 hydrant systems?

15 A. Yes.

16 Q. And what are those other systems
17 that you're aware of?

18 A. I guess I don't -- I don't
19 understand the question. Can you repeat or
20 restate?

21 Q. Let me -- let me start over to make
22 sure that we have a clear record because it may

1 have been my first question that threw us off.

2 Are you aware of whether there are
3 systems that provide web-based database similar
4 to Tegriss system for non-fire hydrant systems?

5 A. Yes.

6 MR. LEHRER: Objection. Form.

7 THE WITNESS: Sorry.

8 BY MR. COLSHER:

9 Q. And what is your awareness of those
10 similar systems for non-fire hydrant systems?

11 MR. LEHRER: Objection. Form.

12 A. There is a -- there is a company
13 called BuildingReports.com, and they cover all
14 the things that fire departments don't typically
15 cover.

16 BY MR. COLSHER:

17 Q. And of -- other than the coverage of
18 the things that fire departments typically don't
19 cover, does BuildingReports provide the same
20 functionality for those other things that the
21 Tegriss system does?

22 MR. LEHRER: Objection. Form.

1 A. No, not really. They don't -- they
2 don't -- they don't keep information such as
3 extinguishing systems and so forth.

4 BY MR. COLSHER:

5 Q. Other than them not -- strike that.
6 Other than BuildingReports.com not
7 keeping information concerning extinguishing
8 systems and so forth, is the functionality of the
9 databases between BuildingReports.com and Tegris
10 the same?

11 A. I don't think so, no.

12 Q. What makes them different?

13 A. I honestly have never used them.
14 I've never used it, so I don't know. I know how
15 it functions. I just don't know if they keep a
16 web-accessible database that can be accessed by
17 the authority having jurisdiction. Usually,
18 those are kept by building engineers and not the
19 authority having jurisdiction on that.

20 Q. Let's go back to Exhibit 1001. I
21 think it's what we've been talking about, but
22 let's go to the final page of it, page 34, and

1 let's look at column 15. Again, we're going to
2 go to claim 8.

3 A. Okay.

4 Q. Okay. And beginning at line
5 number 33, it says -- it's an element that begins
6 "based on the analysis."

7 Do you see that?

8 A. Yes.

9 Q. And it says, "based on the analysis,
10 notifying an owner of an asset of a notification
11 event."

12 Do you see that?

13 A. Yes.

14 Q. Do you have an understanding of what
15 a notification event is in the context of
16 claim 8?

17 A. Yes.

18 Q. What is your understanding of what a
19 notification event is in the context of claim 8
20 of the '966 patent?

21 MR. LEHRER: Objection. Form.

22 THE WITNESS: I'm sorry, Rick. Can

1 you cover again? I couldn't hear him.

2 MR. LEHRER: I said, objection.

3 Form.

4 THE WITNESS: Okay. I'm sorry.

5 A. So notifying an owner is usually a
6 letter or an e-mail that's sent to the owner of
7 the asset.

8 BY MR. COLSHER:

9 Q. Can it be anything other than a
10 letter or e-mail?

11 A. Yeah. Sometimes it's a phone call.

12 Q. And continuing in this claim, the
13 next clause says "wherein the notice includes a
14 standard format description of the type of
15 inspection, and a cost associated with the type
16 of inspection."

17 Do you see that?

18 A. Yes.

19 Q. Do you have an understanding of what
20 "cost" means in the context of claim 8 of the
21 '966 patent?

22 A. I'm thinking it's the cost for

1 maintaining the database, but I'm just guessing
2 that. I don't think that it covers the actual
3 cost of the service person performing the
4 service.

5 Q. Is the cost here referring to money?

6 A. Yes.

7 Q. And back up to line 33, it says,
8 "notifying an owner of an asset."

9 Who is the owner of an asset in this
10 claim?

11 A. The owner of the asset would be the
12 property owner that is responsible for the asset.
13 Well --

14 Q. And if we keep -- no, sorry, if
15 you're not done.

16 A. -- it could also be an owner's
17 manager such as I mentioned earlier, that a
18 building engineer would take care of -- would be
19 responsible for maintaining the life safety
20 equipment in a larger building. So the owner of
21 the building wouldn't get the notification.
22 Usually it's the building engineer.

1 Q. So a third party could be acting on
2 behalf of the owner of an asset in the context of
3 the performance of claim 8 of the '966 patent?

4 A. Yes.

5 Q. Does it matter what third party is
6 acting on behalf of that owner in order to meet
7 claim 8?

8 A. It's usually an employee of the
9 owner, so I guess you're right, it wouldn't
10 matter. Whoever the owner of the property
11 designates as the person to contact.

12 Q. Let's go down to line number 49 of
13 column 15 of Exhibit 1001. It's the limitation
14 beginning "upon logging on to a password
15 controlled website."

16 Do you see that?

17 A. Yes.

18 Q. That "password controlled website
19 configured to provide access to the fire hydrant
20 management software, providing to an inspector
21 the owner selects, the selection based upon a
22 list of qualified inspectors that are available

1 to inspect the asset based upon attributes
2 including proximity to the asset."

3 Do you see that?

4 MR. LEHRER: Objection to form.

5 A. Yes. Sorry.

6 BY MR. COLSHER:

7 Q. At line 50, what's the fire hydrant
8 management software referring to in the claim?

9 A. Can you repeat that?

10 Q. At line 50 of column 15 in the '966
11 patent, Exhibit 1001, what is the fire hydrant
12 management software?

13 A. I believe it's the software that was
14 developed by Tegriss.

15 Q. And what is the software developed
16 by Tegriss?

17 MR. LEHRER: Objection. Form.

18 A. What is the software what?

19 BY MR. COLSHER:

20 Q. I'm sorry. What is the software
21 developed by Tegriss that you referred to?

22 A. I don't understand the question.

1 Q. Let's back up a little bit. In
2 claim 8, column 15, line 50, there's reference to
3 the fire hydrant management software, correct?

4 A. Yes.

5 Q. And I believe, but I just want to
6 try to get a clear record here, that you told me
7 that that software in the claim means the
8 software developed by Tegriss; is that correct?

9 A. Yes.

10 Q. Is that software the same thing as
11 the database that you've been talking about?

12 A. Yes.

13 Q. And if we go up to line number 43 in
14 column 15, still talking about claim 8, it's a
15 limitation that begins "based upon the analysis,
16 sending a standard format notice to the approval
17 authority of the status of the assets assigned to
18 the approval authority."

19 A. Okay. Can you tell me where we're
20 looking again?

21 Q. Yes. We are going up a little bit.
22 It's to column -- still in the same column, 15.

1 And it's line number 43 that begins with "based
2 upon the analysis, sending a standard format
3 notice to the approval authority."

4 A. Oh -- oh, okay. I'm sorry. All
5 right. I'm back on -- I was looking on the other
6 column. Okay.

7 Q. Do you have an understanding of what
8 "sending" means in the context of "sending a
9 standard format notice to the approval authority"
10 in claim 8 of the '966 patent?

11 A. Yes.

12 Q. And what is your understanding?

13 A. My understanding is it's a format
14 that is developed by the owner of the software in
15 conjunction with the authority having
16 jurisdiction so that they can read the format.

17 Q. And what does "sending" mean in the
18 context of claim 8 of the '966 patent?

19 MR. LEHRER: Objection. Form.

20 A. Sending means it's on the website.

21 BY MR. COLSHER:

22 Q. What do you mean by "it's on the

1 website"?

2 A. So it's posted on the website
3 usually when -- when anything is posted on the
4 website, a notification, typically an e-mail, is
5 sent to the authority having jurisdiction. And
6 they have easy access to the report that has been
7 posted.

8 Q. And so the report that was posted is
9 the standard format notice that we're talking
10 about?

11 A. Yes.

12 Q. We can put that one to the side for
13 the minute. Let's go back to your declaration,
14 Exhibit 2016. And in particular I'm going to
15 direct you to page number 21 of your declaration,
16 Exhibit 2016, at the paragraph number 55.

17 If you can let me know when you get
18 there, Mr. McNulty.

19 A. Paragraph 55 on page 21?

20 Q. Yes.

21 A. Okay.

22 Q. Are you there?

1 A. Yes, I am.

2 Q. Okay, great. And in paragraph 55,
3 you posit a question: During an emergency
4 situation, firefighters can access realtime
5 information regarding which units are operating
6 correctly and which are not. Because of
7 web-based formats of Tegriss, emergency response
8 personnel can get realtime information on life
9 safety systems during an emergency. As long as
10 emergency response vehicles have Internet access,
11 property information can be access with a few
12 keystrokes.

13 Do you see that?

14 A. Yes.

15 Q. And so you would agree that the key
16 feature of Tegriss's fire hydrant management
17 system is for use in emergency situations, so
18 that the firefighters can determine which units
19 are operating correctly and which are not?

20 MR. LEHRER: Objection. Form.

21 Objection. Assumes facts not in evidence.

22 A. I'm sorry. You're going to have it

1 say one more time. I think I got lost in your
2 question.

3 BY MR. COLSHER:

4 Q. Of course, of course.

5 So referencing to paragraph 55 of
6 your declaration, Exhibit 2016, you would agree
7 that the key feature of Tegriss's fire hydrant
8 management system of for use in emergency
9 situations so that firefighters can determine
10 which units are operated correctly and which are
11 not?

12 MR. LEHRER: The same objections.

13 A. You say it's a key feature. It's a
14 key feature. It's not a key -- it's just one of
15 the features that can be used in the field, yes.

16 BY MR. COLSHER:

17 Q. So you agree it's a key feature?

18 A. Yes. It's a feature, yes.

19 Q. Did you prepare any claim charts for
20 this proceeding?

21 A. Did I prepare a what?

22 Q. Any claim charts for this

1 proceeding?

2 A. No.

3 MR. COLSHER: All right. Let's take
4 a -- we've been going for about an hour.
5 Let's take another -- let's go off the
6 record.

7 (Whereupon, a brief recess was
8 taken.)

9 MR. COLSHER: We can go back on the
10 record.

11 Thank you, Mr. McNulty.

12 I have no further questions.

13 MR. LEHRER: I have no questions.

14 Thank you very much for your time,
15 LeRoy.

16 COURT REPORTER: Standing order?
17 You both want the rough tonight and regular
18 delivery for the final?

19 MR. LEHRER: Yes, please.

20 MR. COLSHER: Yes.

21 (Time noted: 2:08 p.m. EDT.)

22

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7 Date of deposition: June 6, 2024

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