

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

PORTSMOUTH NETWORK	)	
CORPORATION,	)	
	)	
Plaintiff,	)	Civil Action No.
	)	2:23-cv-00441-JRG
vs.	)	
	)	
CISCO SYSTEMS, INC.,	)	
	)	
Defendant.	)	

VIDEOTAPED DEPOSITION OF
JAMES OLIVIER
OCTOBER 17, 2024

VIDEOTAPED DEPOSITION OF JAMES OLIVIER,
produced as a witness at the instance of the
Defendant, and duly sworn, was taken in the
above-styled and numbered cause on the 17th day of
October, 2024, from 10:30 a.m. to 3:54 p.m., before
Karen L. Shelton, RDR, CRR, CSR in and for the State
of Texas, reported by machine shorthand at the Hyatt
Regency DFW, 2334 North International Parkway,
Dallas, Texas, pursuant to the Federal Rules of
Civil Procedure and any provisions stated on the
record or attached hereto.

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ALSO PRESENT:

Mr. Igor Stepczynski - Videographer

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PROCEEDINGS

THE VIDEOGRAPHER: We are now on the

record. This begins the deposition of Dr. James

Olivier in the matter of Portsmouth Network Corp.

versus Cisco Systems, Inc. Today is Thursday,

October 17th, 2024, and the time is 10:30 a.m. This

deposition is taking place at the Hyatt Regency DFW

Hotel in Dallas, Texas. My name is Igor

Stepczynski. I'm the videographer. The court

reporter today is Karen Shelton.

Will all parties present please state

their name for the record.

MS. OWENS: Jordan Owens from Desmarais

LLP on behalf of Cisco with Tamir Packin from

Desmarais as well.

MS. MISBAH: Sadaf Misbah from Steptoe LLP

on behalf of Portsmouth Network Corporation.

THE VIDEOGRAPHER: Will the court reporter

please swear in the witness.

(The witness was sworn by the reporter.)

JAMES OLIVIER,

having been first duly sworn, testified as follows:

E X A M I N A T I O N

BY MS. OWENS:

Q. Good morning, Dr. Olivier.

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Appearances

JAMES OLIVIER

Examination By Ms. Owens

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Exhibit 1 Declaration of Dr. James Olivier in Support of Portsmouth's Claim Construction Positions

Exhibit 2 U.S. Patent No. 6,917,986

Exhibit 3 U.S. Patent No. 7,035,279

Exhibit 4 U.S. Patent No. 8,014,394

Exhibit 5 U.S. Patent No. 8,199,637

Exhibit 6 Patent Owner's Preliminary Response re U.S. Patent No. 6,917,986

Exhibit 7 File History of U.S. Patent No. 7,035,279

Exhibit 8 Patent Owner's Preliminary Response re U.S. Patent No. 8,014,394

Exhibit 9 File History of U.S. Patent No. 8,199,637

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A. Good morning.

Q. Can you please state and spell your name for the record.

A. Sure. My name is James Olivier. It's O-L-I-V-I-E-R.

Q. And Dr. Olivier, where do you live?

A. I live in Dallas, Texas.

Q. Have you been deposed before?

A. Yes.

Q. How many times would you say?

A. More than 20.

Q. So you're familiar with how depositions work. Fair?

A. Yes.

Q. So Dr. Olivier, do you understand that you're under oath today?

A. Yes, I do.

Q. And being under oath requires you to tell the truth as if you were in front of a judge in a courtroom.

A. Absolutely.

Q. If at any point you don't understand my question, please feel free to let me know and explain what part you don't understand.

A. Okay.

<p style="text-align: right;">6</p> <p>1 Q. Your counsel might object to certain</p> <p>2 questions, but you should still answer those</p> <p>3 questions absent a privilege objection. Do you</p> <p>4 understand that?</p> <p>5 A. I don't know what a privilege objection</p> <p>6 is, but I'm sure she'll instruct me what I need to</p> <p>7 do.</p> <p>8 Q. Okay. Let me know if you need to take a</p> <p>9 break at any time, but I just ask that you finish</p> <p>10 the answer to my question before we do so.</p> <p>11 A. Okay.</p> <p>12 Q. Is there any reason you can't provide</p> <p>13 complete, truthful, and accurate responses to my</p> <p>14 questions today?</p> <p>15 A. No.</p> <p>16 Q. Dr. Olivier, you provided a declaration on</p> <p>17 claim construction in this case on behalf of</p> <p>18 Portsmouth Network Corporation, correct?</p> <p>19 A. Correct.</p> <p>20 Q. So I'm going to hand you your claim</p> <p>21 construction deposition -- sorry, declaration which</p> <p>22 will be marked as Olivier Exhibit 1.</p> <p>23 (Exhibit 1 marked)</p> <p>24 Q. Is this an accurate copy of the</p> <p>25 declaration you provided in this case?</p>	<p style="text-align: right;">8</p> <p>1 Q. And I will refer to Exhibit 2 using the</p> <p>2 last three digits of the patent number, so</p> <p>3 specifically the '986 patent. Okay?</p> <p>4 A. Okay.</p> <p>5 Q. Now I'm going to hand you Exhibit 3.</p> <p>6 (Exhibit 3 marked)</p> <p>7 Q. And Exhibit 3 is U.S. Patent No.</p> <p>8 7,035,279, correct?</p> <p>9 A. Correct.</p> <p>10 Q. And again, I will refer to Exhibit 3 using</p> <p>11 the last three digits of the patent number, so the</p> <p>12 '279 patent. Okay?</p> <p>13 A. Okay.</p> <p>14 Q. Next is Exhibit 4.</p> <p>15 (Exhibit 4 marked)</p> <p>16 Q. And Exhibit 4 is U.S. Patent No.</p> <p>17 8,014,394, correct?</p> <p>18 A. Correct.</p> <p>19 Q. I'm going to refer to Exhibit 4 using the</p> <p>20 last three digits of the patent number which would</p> <p>21 be the '394 patent. Fair?</p> <p>22 A. Fair.</p> <p>23 Q. And finally, I'm going to hand you</p> <p>24 Exhibit 5 which is U.S. Patent No. 8,199,637.</p> <p>25 (Exhibit 5 marked)</p>
<p style="text-align: right;">7</p> <p>1 A. It appears so.</p> <p>2 Q. And Olivier Exhibit 1 includes your</p> <p>3 complete claim construction opinions in this case?</p> <p>4 A. Up to this point, yes.</p> <p>5 Q. Do you agree with all of the opinions</p> <p>6 contained in Olivier Exhibit 1?</p> <p>7 A. These are my opinions on claim</p> <p>8 construction terms that are covered in here.</p> <p>9 Q. And so you maintain the opinions that are</p> <p>10 contained in your declaration, correct?</p> <p>11 A. Correct.</p> <p>12 Q. Do you have any corrections to make to</p> <p>13 your opinions?</p> <p>14 A. No, I do not.</p> <p>15 Q. And your declaration provided claim</p> <p>16 construction opinions on all four patents-in-suit in</p> <p>17 this case, correct?</p> <p>18 A. Correct.</p> <p>19 Q. So just for ease of reference, I'm going</p> <p>20 to hand you those four patents which will be marked</p> <p>21 as Exhibits 2, 3, 4, and 5.</p> <p>22 (Exhibit 2 marked)</p> <p>23 Q. So just starting with Exhibit 2, Exhibit 2</p> <p>24 is U.S. Patent No. 6,917,986, correct?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">9</p> <p>1 MS. OWENS: Counsel, I just want to note</p> <p>2 that we have not received a certified copy of the</p> <p>3 '637 patent.</p> <p>4 MS. MISBAH: Noted.</p> <p>5 Q. And again, I will refer to Exhibit 5 using</p> <p>6 the last three digits of the patent number which</p> <p>7 would be the '637 patent. Okay?</p> <p>8 A. Okay.</p> <p>9 Q. Now, going back to your declaration on</p> <p>10 claim construction in the Portsmouth case, when were</p> <p>11 you retained by Portsmouth in this case?</p> <p>12 A. By Portsmouth? A month, two months ago.</p> <p>13 I don't recall the exact date.</p> <p>14 Q. And when did you begin performing work on</p> <p>15 behalf of Portsmouth in this case?</p> <p>16 A. Very close to that time frame.</p> <p>17 Q. What issues have you been working on for</p> <p>18 Portsmouth in this case?</p> <p>19 MS. MISBAH: Objection, form.</p> <p>20 A. Well, I've been working on the declaration</p> <p>21 associated with this, and I've also been working on</p> <p>22 some responses to -- I think there was an IPR filed</p> <p>23 on some patents, and I've been working on those.</p> <p>24 Q. And what work have you been working on for</p> <p>25 the IPRs?</p>

<p style="text-align: right;">10</p> <p>1 A. Analyzing the patents in regards to, I 2 think, the petitioners, which is y'all, filed 3 something, so reading the petition and reading the 4 expert's declaration and what he said in the 5 expert's declaration and analyzing that. 6 Q. And which patents have you been working on 7 the IPRs for? 8 A. I would have to -- I don't have the 9 numbers memorized off the top of my head, but -- 10 Q. Is it all four patents-in-suit? 11 A. No, it's not all four patents-in-suit. 12 It's only two of them. If you give me one second, I 13 can find out which ones. So one of them is the 14 '279, I think. And the other one is the '986. 15 Q. So you are working on Portsmouth's 16 analysis and responses to the IPRs for the '279 and 17 the '986 patents, correct? 18 MS. MISBAH: Objection, form. 19 A. I'm working on my analysis. 20 Q. And what -- what work -- strike that. 21 What documents is your analysis going to 22 be produced in? 23 MS. MISBAH: Objection, form. 24 A. I'm sorry. I don't understand your 25 question.</p>	<p style="text-align: right;">12</p> <p>1 A. No, I looked over Cisco's petition, not in 2 great detail. I looked more in detail at what 3 the -- their expert said. I think they had two 4 different experts, one for the '271 (sic), one for 5 the '986. I don't recall their names. But I -- and 6 I'm still in the process of looking at their 7 declarations. 8 Q. Are you working on drafting any 9 declarations yourself in support of Portsmouth's 10 preliminary response for the '279 IPR filing? 11 A. Yes, I'm starting to put together a draft. 12 Q. Have any of your declarations in support 13 of the '279 IPR on behalf of Portsmouth been filed 14 as of yet? 15 A. Nothing's been even close to finalized 16 yet, as far as I know. So I don't think anything's 17 filed. I can only speak to myself and my 18 declaration. I don't know what else they may have 19 filed. But I haven't signed a declaration yet for 20 those two patents. I haven't even -- I've only 21 barely began a draft on one of them and maybe began 22 a draft on the second one. 23 Q. Are you aware that Portsmouth filed a 24 patent owner's preliminary response regarding the 25 '279 IPR?</p>
<p style="text-align: right;">11</p> <p>1 Q. When you performed your analysis on the 2 IPRs for the '279 and the '986 patents, is that work 3 intended to be part of any IPR-related filing? 4 A. I assume so. I don't know what the 5 decision of Portsmouth will be in any way regarding 6 their responses to the petition. 7 Q. Did you work on Portsmouth's patent owner 8 preliminary responses for the '279 and '986 patents? 9 A. No, I did not. 10 Q. Are you aware that Portsmouth filed patent 11 owner preliminary responses for the '279 and '986 12 IPRs? 13 A. Yes, I am. 14 Q. Did you review the '279 IPR? 15 A. What does that mean, "'279 IPR"? 16 Q. Did you review Cisco's IPR petition 17 regarding the '279 patent? 18 A. I'd say I reviewed their expert's 19 declaration in more detail. I probably did look 20 over their petition. I'm only really concerned 21 about what the experts -- the technical experts say. 22 Q. So is it fair to say that you only read 23 the expert's declaration in support of Cisco's '279 24 IPR position, petition? 25 MS. MISBAH: Objection, form.</p>	<p style="text-align: right;">13</p> <p>1 A. Yeah. I think you already asked that. 2 Q. Just want to clarify the record. 3 A. Okay. 4 Q. So you are aware that they filed -- 5 A. Yes. 6 Q. -- a preliminary response? 7 Turning to the '986 patent's IPR, what 8 work have you been doing on behalf of Portsmouth for 9 the '986 patent? 10 A. In regard to the '986 patent IPR? 11 Q. Correct. 12 A. You just said '986 patent. I wanted to 13 make sure I understood that question. 14 So, yeah, I think you already asked that 15 too, and my answer was I reviewed the -- Cisco's 16 petition and then started reviewing in detail the 17 expert's declaration associated with Cisco's 18 petition. And as I was going through there, I 19 started to make some notes and a draft. I keep a 20 skeleton outline of a declaration. Then I started 21 making some notes in there about things that I was 22 interested in. 23 Q. Do you plan on submitting a declaration? 24 A. Yeah. Like, you asked that before, but I 25 wouldn't say -- I don't know we're going to submit</p>

<p style="text-align: right;">14</p> <p>1 one. I imagine that's what happens. That's what 2 typically happens.</p> <p>3 Q. Did you review Portsmouth's patent owner's 4 preliminary response for the '986 patent's IPR?</p> <p>5 A. I may have. I'm not -- I wasn't part of 6 it, so I don't know it in any great detail. I may 7 have looked at it briefly. It was in the materials 8 that were sent to me for sure.</p> <p>9 Q. So you cannot remember exactly if you did 10 review?</p> <p>11 A. I know I didn't review it in any great 12 detail.</p> <p>13 Q. Okay. Has Portsmouth asked you to provide 14 opinions on any other issues besides claim 15 construction and your analysis on the '279 and '986 16 IPRs in this case?</p> <p>17 A. No.</p> <p>18 Q. Has Portsmouth asked you to submit any 19 expert reports in this case?</p> <p>20 A. No.</p> <p>21 Q. Has Portsmouth asked you to testify at 22 trial in this case?</p> <p>23 A. They haven't asked me to. It's part of 24 the -- I don't remember their retention agreement, 25 but it might have mentioned something in there, like</p>	<p style="text-align: right;">16</p> <p>1 A. I hope so. I haven't been paid yet, but I 2 hope to get paid.</p> <p>3 Q. And what is your typical hourly rate for 4 your retention?</p> <p>5 A. Right now, it was in my declaration, it's 6 685.</p> <p>7 Q. And is 685 per hour your typical rate?</p> <p>8 A. It is now. In the past it was less, but 9 with inflation it's gone up.</p> <p>10 Q. And how many hours, approximately, have 11 you worked so far on the Portsmouth case?</p> <p>12 A. I don't know, 15 to 25 maybe.</p> <p>13 Q. So you spent about 15 to 25 hours putting 14 together your claim construction opinions on this 15 case?</p> <p>16 MS. MISBAH: Objection, form.</p> <p>17 A. Yeah, I don't recall exactly how many 18 hours I put in there. It's not something I 19 typically track day by day how many hours I've got 20 on a client. So if I was to guesstimate, that would 21 be some guesstimation in there.</p> <p>22 Q. Okay. You're aware that Portsmouth did 23 not affirmatively propose any claims for 24 construction in this case, right?</p> <p>25 MS. MISBAH: Objection, form.</p>
<p style="text-align: right;">15</p> <p>1 "May be available for trial." I don't recall the 2 retention agreement I signed with Portsmouth in that 3 much detail, but that's typically something that's 4 in retention agreements. If you consider that being 5 asked at trial, then I would say yes, if you 6 consider that just part of a retention agreement. 7 And no one's specifically asked me if they want me 8 to testify at trial yet.</p> <p>9 Q. Okay. Based on the work you've performed 10 so far on behalf of Portsmouth, do you expect to be 11 asked affirmatively to testify at trial?</p> <p>12 MS. MISBAH: Objection, form.</p> <p>13 A. Yeah, I have no idea.</p> <p>14 Q. Have you spoken to anyone besides 15 Portsmouth's counsel regarding this case?</p> <p>16 A. I mean, my wife.</p> <p>17 Q. Anyone else?</p> <p>18 A. Maybe my sister during her wedding, 19 telling her I had a deposition when I got back, but 20 I don't recall anyone else.</p> <p>21 Q. Have you spoken to any of the inventors on 22 the four patents-in-suit?</p> <p>23 A. No.</p> <p>24 Q. You're being paid by Portsmouth as part of 25 your retention for this case. True?</p>	<p style="text-align: right;">17</p> <p>1 A. Yeah, could you repeat the question?</p> <p>2 Q. When the parties exchanged terms for 3 construction, Portsmouth did not propose any claim 4 terms themselves for construction in this case, 5 correct?</p> <p>6 A. I have no idea.</p> <p>7 Q. Were you involved in Portsmouth's 8 selection of claim terms for construction in this 9 case?</p> <p>10 A. No, I was not.</p> <p>11 Q. So at what point did you begin -- at what 12 point in the claim construction process were you 13 asked to provide opinions on claim construction?</p> <p>14 A. So what is -- what do you mean by "the 15 claim construction process"?</p> <p>16 Q. At the point you were asked to begin 17 working on claim construction issues in this case, 18 had the terms already been provided to you?</p> <p>19 A. The terms that the two sides had proposed 20 for construction were provided to me. I think it 21 was the 4-2, whatever that means, that I referenced 22 in my declaration.</p> <p>23 Q. And so the first -- the first information 24 you were provided on claim construction in this case 25 was the parties' 4-2 disclosure. Is that correct?</p>

<p style="text-align: right;">18</p> <p>1 MS. MISBAH: Objection, form.</p> <p>2 A. I believe that's one of the information I</p> <p>3 was -- the original information I was provided,</p> <p>4 correct.</p> <p>5 Q. You're aware that Cisco has proposed nine</p> <p>6 claim terms for construction in this case.</p> <p>7 Is that right?</p> <p>8 A. I don't have memorized how many terms</p> <p>9 Cisco proposed. If you represent that, I don't have</p> <p>10 any reason to disagree.</p> <p>11 Q. There are nine terms discussed in your</p> <p>12 declaration, correct?</p> <p>13 A. I never counted them. I'll take your word</p> <p>14 for it.</p> <p>15 Q. Were you involved at all in Portsmouth's</p> <p>16 proposed constructions for the nine terms in your</p> <p>17 declaration?</p> <p>18 MS. MISBAH: Objection, form.</p> <p>19 A. By -- you mean the proposed construction</p> <p>20 to put into 4-2?</p> <p>21 Q. Correct.</p> <p>22 A. No, I was not.</p> <p>23 Q. So you were not -- you didn't participate</p> <p>24 in any discussions regarding Portsmouth's proposed</p> <p>25 constructions?</p>	<p style="text-align: right;">20</p> <p>1 A. Corrigent, yes, that one.</p> <p>2 Q. And what is your role in that case?</p> <p>3 A. I think during COVID I provided some -- a</p> <p>4 declaration on claim construction. My role in that</p> <p>5 case is -- I don't even know if it's ongoing right</p> <p>6 now, so I haven't heard a lot from them regarding</p> <p>7 that case.</p> <p>8 Q. So your role in that case was exclusively</p> <p>9 on claim construction issues, would you say?</p> <p>10 A. They would ask me various technical</p> <p>11 questions throughout the years. I remember going to</p> <p>12 Cisco in North Carolina to look at a switch for</p> <p>13 them, to do -- check some provisioning commands. So</p> <p>14 I was -- am and probably still are a technical</p> <p>15 expert for them on that case.</p> <p>16 Q. So just to be clear, you're both</p> <p>17 Corrigent's claim construction expert and technical</p> <p>18 expert in the Corrigent case?</p> <p>19 A. I would say I'm a technical expert. I</p> <p>20 don't know a claim construction expert. Could be an</p> <p>21 engineer. I can only say what a person of ordinary</p> <p>22 skill would believe.</p> <p>23 Q. Well, you provided a declaration, you</p> <p>24 said --</p> <p>25 A. Correct.</p>
<p style="text-align: right;">19</p> <p>1 A. I don't think so.</p> <p>2 Q. So when Portsmouth approached you to</p> <p>3 provide claim construction opinions in this case,</p> <p>4 you were provided with the claim terms and the</p> <p>5 proposed constructions? Is that right?</p> <p>6 A. For both sides, yes.</p> <p>7 Q. Okay. Did you agree with every</p> <p>8 construction that Portsmouth provided you for the</p> <p>9 disputed claims?</p> <p>10 A. I -- in the -- to the extent that my</p> <p>11 opinion on what the terms mean mirrors Portsmouth,</p> <p>12 yes, I agreed with them.</p> <p>13 Q. And Portsmouth's counsel in this case is</p> <p>14 Steptoe LLP. Is that right?</p> <p>15 A. Correct.</p> <p>16 Q. Have you been retained by Portsmouth --</p> <p>17 Portsmouth's counsel, Steptoe, before?</p> <p>18 A. Yes, I have.</p> <p>19 Q. How many times?</p> <p>20 A. Once I can recall.</p> <p>21 Q. And in what matters were you retained by</p> <p>22 Steptoe on behalf of another party?</p> <p>23 A. Corrigent? Corrigent? Does that ring a</p> <p>24 bell?</p> <p>25 Q. Is it Corrigent?</p>	<p style="text-align: right;">21</p> <p>1 Q. -- on claim construction.</p> <p>2 A. Right. I don't know if that makes me a</p> <p>3 claim construction expert. I'm saying I'm a</p> <p>4 technical expert.</p> <p>5 Q. Okay. And what did you do to prepare for</p> <p>6 this deposition today?</p> <p>7 A. What did I do. I had a couple meetings</p> <p>8 with counsel to go over my declaration. I think it</p> <p>9 was two, maybe three, three meetings. I reviewed my</p> <p>10 declaration. I reviewed the patents. I think</p> <p>11 that's pretty much it.</p> <p>12 Q. And how long were those meetings with</p> <p>13 counsel?</p> <p>14 A. Some were less than a half hour. Some</p> <p>15 were an hour. I don't have --</p> <p>16 Q. So in total, how much -- how much time</p> <p>17 would you approximate you spent preparing for this</p> <p>18 deposition?</p> <p>19 A. How much time I spent preparing or in the</p> <p>20 meetings?</p> <p>21 Q. Let's do preparing.</p> <p>22 A. Preparing outside the meetings?</p> <p>23 Q. Correct.</p> <p>24 A. Thinking four to six hours maybe.</p> <p>25 Q. And besides your declaration and the four</p>

<p style="text-align: right;">22</p> <p>1 patents-in-suit, did you review any other documents?</p> <p>2 A. I may have looked at technical documents</p> <p>3 in my office.</p> <p>4 Q. What kind of technical documents?</p> <p>5 A. What kind of technical? Technical books,</p> <p>6 reference books.</p> <p>7 Q. Reference books that are --</p> <p>8 A. Technical.</p> <p>9 Q. -- related to the four patents-in-suit?</p> <p>10 A. Or related to technology in general,</p> <p>11 switching and routing technology. I may even have</p> <p>12 looked back at my class notes that I'm teaching</p> <p>13 right now.</p> <p>14 Q. Okay. Let's take a look at your</p> <p>15 declaration which was marked as Olivier Exhibit 1.</p> <p>16 Your CV is attached as Exhibit 1 to your</p> <p>17 declaration, correct?</p> <p>18 A. Correct.</p> <p>19 Q. And did you intend to make your CV as</p> <p>20 accurate as possible?</p> <p>21 A. I usually do, yes.</p> <p>22 Q. Do you have any corrections to make to</p> <p>23 your CV?</p> <p>24 A. The first part looks correct, the cases</p> <p>25 worked in the past five years. I endeavor to keep</p>	<p style="text-align: right;">24</p> <p>1 charge of the hypercube lab at that point, so a</p> <p>2 multiprocessor communication system.</p> <p>3 Anything else? Yeah, nearly 40 years ago,</p> <p>4 I don't remember that much about it.</p> <p>5 Q. So you mostly focused on robotics and</p> <p>6 artificial intelligence, correct?</p> <p>7 A. Well, like I said, I was in charge of the</p> <p>8 hypercube multiprocessor lab. So that was</p> <p>9 communication over Ethernet, connecting in a Intel</p> <p>10 hypercube, which is a multiprocessor system for</p> <p>11 doing -- gee, I guess the closest thing today to</p> <p>12 think about is how the Nvidia processor's GPUs work.</p> <p>13 So multiprocessor systems.</p> <p>14 Q. Okay. And then next you received a Ph.D.</p> <p>15 in electrical engineering from The Ohio State</p> <p>16 University in 1988, correct?</p> <p>17 A. Correct.</p> <p>18 Q. And what specific areas of study did you</p> <p>19 focus your Ph.D. on?</p> <p>20 A. Computer science, fault-tolerant</p> <p>21 computer -- computing in discrete mathematics.</p> <p>22 My adviser was in the field of fault-tolerant</p> <p>23 computing.</p> <p>24 (Reporter Clarification)</p> <p>25 A. It's probably hard to understand.</p>
<p style="text-align: right;">23</p> <p>1 that up to date. Sometimes I go beyond, past five</p> <p>2 years. Yeah, like in this case I went way beyond,</p> <p>3 so that's not accurate. But I'm not aware of any</p> <p>4 issues right now with my CV.</p> <p>5 Q. So let's start by taking a look at the</p> <p>6 first page of your CV beginning about halfway down</p> <p>7 the page at "Education Profile."</p> <p>8 So you received a bachelor's in science in</p> <p>9 electrical engineering from The Ohio State</p> <p>10 University in 1983, correct?</p> <p>11 A. Correct.</p> <p>12 Q. Did you have any specific areas of focus</p> <p>13 when you received your degree in electrical</p> <p>14 engineering?</p> <p>15 A. I would say I focused on the computer</p> <p>16 science aspects.</p> <p>17 Q. And then you received a master's of</p> <p>18 science in electrical engineering from The Ohio</p> <p>19 State University in 1985, correct?</p> <p>20 A. Correct.</p> <p>21 Q. What areas of study did you focus your</p> <p>22 master's program on?</p> <p>23 A. Robotics and artificial intelligence.</p> <p>24 Q. Anything else?</p> <p>25 A. Anything else from 1985? Well, I was in</p>	<p style="text-align: right;">25</p> <p>1 My adviser specialized in fault-tolerant</p> <p>2 computing.</p> <p>3 Q. Any other areas of focus?</p> <p>4 A. Not that I recall.</p> <p>5 Q. In what fields do you consider yourself an</p> <p>6 expert?</p> <p>7 A. Well, I teach graduate school in the</p> <p>8 network engineering program at SMU, and so I would</p> <p>9 consider myself to be an expert in networking,</p> <p>10 different aspects of networking. I would also</p> <p>11 consider myself an expert in telecommunications.</p> <p>12 I would consider myself an expert in software,</p> <p>13 multiprocessor systems. Those are what come to mind</p> <p>14 as I sit here.</p> <p>15 Q. Okay. So you just mentioned that you are</p> <p>16 a professor at SMU, correct?</p> <p>17 A. Correct.</p> <p>18 Q. And what classes do you teach in that</p> <p>19 role?</p> <p>20 A. I teach service provider networks, which</p> <p>21 is MPLS-enabled -- MPLS-enabled networks that the</p> <p>22 service providers such as AT&T or Verizon use in</p> <p>23 their large networks.</p> <p>24 Q. And how long have you been in that</p> <p>25 professor role?</p>

<p style="text-align: right;">26</p> <p>1 A. Since 2017.</p> <p>2 Q. How does your work as a professor relate</p> <p>3 to the subject matter of the patents in this case?</p> <p>4 MS. MISBAH: Objection, form.</p> <p>5 A. Oh, it relates a lot. I was -- I think I</p> <p>6 put a little bit of that in my declaration. For</p> <p>7 example, we haven't got to it yet this semester, but</p> <p>8 virtual private LAN system, VPLS, we're going to get</p> <p>9 to in the next couple weeks in my class. That's a</p> <p>10 service that the service providers provide over</p> <p>11 their network.</p> <p>12 Bridging, we teach how to do large MAC</p> <p>13 bridges in access networks. And we talk about the</p> <p>14 access network, the core network, the aggregation</p> <p>15 network, how all those things interplay in service</p> <p>16 provider networks.</p> <p>17 We talk about admission control. We just</p> <p>18 finished that section and they started their exam</p> <p>19 yesterday, which includes admission control and</p> <p>20 definitely routing, choosing paths, source routed</p> <p>21 versus destination routed. It's a big part of the</p> <p>22 advantages of using MPLS in a network.</p> <p>23 So there's a lot of overlap in these</p> <p>24 particular patents and what I teach in that class.</p> <p>25 Q. Have you had any other positions at SMU?</p>	<p style="text-align: right;">28</p> <p>1 Q. And what kind of consulting services do</p> <p>2 you provide?</p> <p>3 A. We provide both technical consulting and</p> <p>4 intellectual property consulting.</p> <p>5 Q. And what is involved in technical</p> <p>6 consulting?</p> <p>7 A. To give an example, Telstrat in Dallas</p> <p>8 needed help designing their brand-new switch and</p> <p>9 router, so they hired me to be a consultant. I</p> <p>10 worked with their VP of technologies to develop the</p> <p>11 system, which the reason they did it is because it</p> <p>12 wasn't unlike the systems we developed at Marconi.</p> <p>13 So, technical consulting on the actual design of the</p> <p>14 switches and routers.</p> <p>15 And also technical consulting, I did</p> <p>16 something for Crane Aerospace which was how to do</p> <p>17 the networking for a -- for a particular type of</p> <p>18 network, a sensor network, how the -- the IP</p> <p>19 addresses got assigned, how the routing took place.</p> <p>20 So we provide technical consulting and</p> <p>21 intellectual consulting and proba- -- the other</p> <p>22 thing we do is maybe analyze -- I've done some</p> <p>23 analyzing of patent portfolios to see what areas of</p> <p>24 technology they impact.</p> <p>25 Q. And that would be considered intellectual</p>
<p style="text-align: right;">27</p> <p>1 A. Yes, several. I was a research professor</p> <p>2 at the Hunt Institute. I was a program manager at</p> <p>3 the Hunt Institute. I think that's the only two</p> <p>4 I've had.</p> <p>5 Q. And did your work at the Hunt Institute</p> <p>6 relate to the subject matter of the patents-in-suit</p> <p>7 in this case?</p> <p>8 A. Not directly. It was more associated with</p> <p>9 IoT and some 5G stuff, artificial intelligence. The</p> <p>10 Hunt Institute is a institute that tries to take the</p> <p>11 advances in technology and apply them to underserved</p> <p>12 populations, so it's called Engineering for Humanity</p> <p>13 is the name of our -- subheading under us. So it's</p> <p>14 more applying the different aspects of technology to</p> <p>15 existing problems rather than investigating details</p> <p>16 of technical problems.</p> <p>17 Q. And so did you have any other positions in</p> <p>18 academia besides the ones you just described at SMU?</p> <p>19 A. No, I don't think so.</p> <p>20 Q. You're also the owner of Olivier</p> <p>21 Consulting, correct?</p> <p>22 A. Correct.</p> <p>23 Q. And how long have you had that Olivier</p> <p>24 Consulting business?</p> <p>25 A. Since 2004.</p>	<p style="text-align: right;">29</p> <p>1 property consulting?</p> <p>2 A. I'd consider it kind of halfway.</p> <p>3 Q. Does intellectual property consulting also</p> <p>4 involve being an expert in litigations?</p> <p>5 A. Yes, it does.</p> <p>6 Q. Now, if we turn to the next few sections</p> <p>7 of your CV, the section titled "Cases Worked Past</p> <p>8 Five Years."</p> <p>9 A. Gotcha, yeah.</p> <p>10 Q. Is this a complete list of all the cases</p> <p>11 you've worked on as an expert from the past five</p> <p>12 years?</p> <p>13 A. I believe so. I believe so. I try to</p> <p>14 keep it completely up to date, but I have been known</p> <p>15 to miss one or two of them, but I believe it's</p> <p>16 correct.</p> <p>17 Q. And have you been deposed in connection</p> <p>18 with any of these cases?</p> <p>19 A. Yes. Usually I write down when I've been</p> <p>20 deposed somewhere in here. So yes, I have.</p> <p>21 Q. Do you recall which ones?</p> <p>22 A. No, I don't.</p> <p>23 Q. And have you testified at trial before in</p> <p>24 connection with any of these cases?</p> <p>25 A. Yes, I have. Oh, these cases. So that's</p>

<p style="text-align: right;">30</p> <p>1 a little -- I've testified at trial three times. I</p> <p>2 don't know if those cases are in the last five years</p> <p>3 or not or in this particular one which is more than</p> <p>4 five years, so I just want to be clear on that.</p> <p>5 Q. So let's take those three times. So what</p> <p>6 are the cases that you've testified at trial for?</p> <p>7 A. Congestion control and packet switching,</p> <p>8 cellular high-speed packet access networks, and</p> <p>9 signaling protocols in cellular networks.</p> <p>10 Q. And what were your roles in each of those</p> <p>11 cases?</p> <p>12 A. What does "what are my roles" mean?</p> <p>13 Sorry.</p> <p>14 Q. Were you hired as an expert in each -- in</p> <p>15 any of those cases?</p> <p>16 A. Yes, I said I testified as an expert.</p> <p>17 Q. In all three cases?</p> <p>18 A. In all three cases.</p> <p>19 Q. Did any of those cases involve the same</p> <p>20 patents-in-suit as this case?</p> <p>21 A. No.</p> <p>22 Q. Have you ever been involved in proceedings</p> <p>23 in front of the PTAB?</p> <p>24 A. So I don't understand exactly what</p> <p>25 "proceedings in front of the PTAB" means.</p>	<p style="text-align: right;">32</p> <p>1 Q. So going back to the Corrigent case, if</p> <p>2 you go to the next page of your CV, the second entry</p> <p>3 on the page with 2021 at the bottom.</p> <p>4 A. Uh-huh.</p> <p>5 Q. And so the second entry on this page is</p> <p>6 the expert consulting that you've done for</p> <p>7 Corrigent, correct?</p> <p>8 A. Correct.</p> <p>9 Q. And as you said before, you wrote</p> <p>10 declarations on behalf of Corrigent in this case,</p> <p>11 correct?</p> <p>12 A. Correct.</p> <p>13 Q. And that was -- and those declarations</p> <p>14 were for claim construction issues?</p> <p>15 A. I don't recall every one of them, so -- I</p> <p>16 know one was for a claim construction issue. There</p> <p>17 may have been other ones. I don't recall.</p> <p>18 Q. Did you do any IPR work on behalf of</p> <p>19 Corrigent?</p> <p>20 A. I may have. I don't actually remember one</p> <p>21 way or -- it's been a couple years, but I may have</p> <p>22 done IPR work. I don't recall.</p> <p>23 Q. Are you still retained as an expert in the</p> <p>24 Corrigent case?</p> <p>25 A. They haven't told me I'm not. So I</p>
<p style="text-align: right;">31</p> <p>1 Do you mean was I at a PTAB trial or did I</p> <p>2 write a declaration that was used in a trial?</p> <p>3 Q. Have you ever been a witness at a PTAB</p> <p>4 trial?</p> <p>5 A. No, I have not.</p> <p>6 Q. Have you ever consulted for Cisco before?</p> <p>7 A. I don't think so.</p> <p>8 Q. Have you ever consulted for Portsmouth</p> <p>9 before?</p> <p>10 A. No.</p> <p>11 Q. Have you ever consulted for a party</p> <p>12 adverse to Cisco before?</p> <p>13 A. Yes.</p> <p>14 Q. And is that the Corrigent case you were</p> <p>15 discussing?</p> <p>16 A. No, there's another one that comes to</p> <p>17 mind, and I honestly don't have them all memorized</p> <p>18 for the last 20 years, but Arista versus Cisco in</p> <p>19 the ITC. I recall that one.</p> <p>20 Q. Any other cases where you were adverse to</p> <p>21 Cisco?</p> <p>22 A. I don't recall anymore as I sit here.</p> <p>23 Q. So from your memory, you have been adverse</p> <p>24 to Cisco in the Corrigent case and the Arista case?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">33</p> <p>1 haven't heard from them in regards to Corrigent for</p> <p>2 a while, and that's generally what lawyers do is</p> <p>3 they don't tell their experts when things end. You</p> <p>4 kind of find out on your own. But no, I have no way</p> <p>5 of knowing one way or another. I don't think the</p> <p>6 retention agreement has been terminated, if that</p> <p>7 helps answer it.</p> <p>8 Q. It does. And so when was the last time</p> <p>9 you did work on the Corrigent case?</p> <p>10 A. I don't remember.</p> <p>11 Q. Was it more than two years ago?</p> <p>12 A. No, because it was just -- how many months</p> <p>13 ago that I went to the Cisco Labs and RTI? Four</p> <p>14 months ago maybe.</p> <p>15 Q. So the last time you did work on the</p> <p>16 Corrigent case was about four months ago?</p> <p>17 A. They may have called and asked me</p> <p>18 questions on other things. The last recollection I</p> <p>19 have of it is -- or doing something substantial in</p> <p>20 my mind was that.</p> <p>21 Q. Okay. Have you ever worked at Portsmouth</p> <p>22 Network Corporation?</p> <p>23 A. No.</p> <p>24 Q. Are you aware of the corporate</p> <p>25 relationship between Corrigent and Portsmouth?</p>

<p style="text-align: right;">34</p> <p>1 MS. MISBAH: Objection, form.</p> <p>2 A. No. No, I am not, though curious.</p> <p>3 Q. Have you ever been involved with any</p> <p>4 standard-setting bodies?</p> <p>5 A. Yes, I have.</p> <p>6 Q. Which ones?</p> <p>7 A. The ATM Forum, the ITU, 3GPP. I think</p> <p>8 probably when ATM Forum went into MPLS, I was</p> <p>9 involved in that. And I'm on -- I'm on some IEEE</p> <p>10 committees that you can volunteer to be on standards</p> <p>11 for, mostly of those related to blockchain</p> <p>12 technology.</p> <p>13 Q. So does any of the work that you do as</p> <p>14 part of these standard-setting bodies or committees</p> <p>15 relate to the subject matter of the patents-in-suit</p> <p>16 in this case?</p> <p>17 A. Well, the ATM Forum, which I'm no longer</p> <p>18 part of, did a lot with connection control, and</p> <p>19 there's one patent that has a lot to do with</p> <p>20 connection control. So that one.</p> <p>21 I'd say that's probably the closest.</p> <p>22 Q. Do you have any patents?</p> <p>23 A. One.</p> <p>24 Q. And what is that patent about?</p> <p>25 A. It's an RFID system. Yeah, here it is.</p>	<p style="text-align: right;">36</p> <p>1 thereto, the parties' Patent Rule 4-2 disclosures,</p> <p>2 and the exhibits cited and all the documents</p> <p>3 mentioned in this declaration, correct?</p> <p>4 A. Correct.</p> <p>5 Q. Did you review or consider any other</p> <p>6 materials besides the ones I just listed?</p> <p>7 A. Like I said earlier, when you asked that</p> <p>8 question, I did look -- in preparing the</p> <p>9 declaration, no. In preparing for the deposition,</p> <p>10 yes.</p> <p>11 Q. So when you state that you reviewed the</p> <p>12 patents-in-suits and their respective prosecution</p> <p>13 histories, by "prosecution histories" you're</p> <p>14 referring to the back-and-forth with the examiner</p> <p>15 and the applicant, correct?</p> <p>16 A. The file history, yes.</p> <p>17 Q. And why do you review -- why did you</p> <p>18 review the patents' prosecution histories?</p> <p>19 A. To see if the patent owner had been his</p> <p>20 own lexicographer, if he had modified what the</p> <p>21 normal meaning of terms were, to get an</p> <p>22 understanding, a better understanding. I think it's</p> <p>23 part of what they call the intrinsic record. And so</p> <p>24 I always endeavor to review the file histories of</p> <p>25 everything when I do a claim construction</p>
<p style="text-align: right;">35</p> <p>1 An RFID-based asset security and tracking system.</p> <p>2 Q. Does that patent relate to the subject</p> <p>3 matter of the patents-in-suit in this case?</p> <p>4 A. Not so much. It's more -- I mean, there</p> <p>5 is some networking aspects of it that I helped out</p> <p>6 on, but no, not directly to these.</p> <p>7 Q. And has that patent been subject to any</p> <p>8 litigations?</p> <p>9 A. I don't believe so.</p> <p>10 Q. So let's turn back to the substance of</p> <p>11 your claim construction opinions. Does your</p> <p>12 declaration reflect all of your claim construction</p> <p>13 opinions you have in this case?</p> <p>14 A. At this time, yes.</p> <p>15 Q. Have you put together any other documents</p> <p>16 or materials reflecting your claim construction</p> <p>17 opinions other than your declaration?</p> <p>18 A. No, I have not.</p> <p>19 Q. So turning to page 4 of your declaration.</p> <p>20 Do you see Section 4 titled "Materials Considered"?</p> <p>21 A. Yes, I do.</p> <p>22 Q. And you declared that you reviewed the</p> <p>23 patents-in-suit and their respective prosecution</p> <p>24 histories, Portsmouth's complaints against defendant</p> <p>25 Cisco Systems, Inc., including all exhibits attached</p>	<p style="text-align: right;">37</p> <p>1 declaration.</p> <p>2 Q. So you'd agree that the prosecution</p> <p>3 histories can help explain what a person of ordinary</p> <p>4 skill in the art would have understood from the</p> <p>5 claims in the patents, correct?</p> <p>6 MS. MISBAH: Objection, form.</p> <p>7 A. They can help -- if the patent owner</p> <p>8 disclaimed or became his own lexicographer for</p> <p>9 certain terms, that -- it would help in that regard.</p> <p>10 Q. And you're aware that IPRs are part of</p> <p>11 prosecution histories?</p> <p>12 A. Yes.</p> <p>13 Q. And so did you review the IPR filings when</p> <p>14 preparing your declaration?</p> <p>15 A. I reviewed what the attorneys gave me as</p> <p>16 the file histories, and so I went through those.</p> <p>17 Q. And so did the file histories that the</p> <p>18 attorneys provided you include the IPR filings up to</p> <p>19 that point?</p> <p>20 A. I can't recall one way or another.</p> <p>21 Q. And so you mentioned that the patentee</p> <p>22 acting as his own lexicographer is helpful when</p> <p>23 developing your opinions. So you'd agree that a</p> <p>24 patent owner's response in an IPR would similarly</p> <p>25 help explain what the patentee intended to convey in</p>

<p style="text-align: right;">38</p> <p>1 the patent, correct?</p> <p>2 MS. MISBAH: Objection, form.</p> <p>3 A. I don't quite understand your question.</p> <p>4 The terms, as I do a claim construction brief,</p> <p>5 declaration, are based on a person of ordinary</p> <p>6 skill. So I don't know if they -- if they're their</p> <p>7 own lexicographer, I could understand that I don't</p> <p>8 think they can -- and I don't know under law, but</p> <p>9 that they can just say this term now means this.</p> <p>10 But that's the kind of thing I look for.</p> <p>11 Q. That's the kind of thing you look for</p> <p>12 in --</p> <p>13 A. When reviewing a file history.</p> <p>14 Q. Just to close the loop, you're aware that</p> <p>15 Cisco has filed IPR petitions on all four of the</p> <p>16 patents-in-suit in this case, correct?</p> <p>17 A. Correct. Well, I'm aware of two of them</p> <p>18 as I sit here because those are the two I was</p> <p>19 working on. They probably filed all four.</p> <p>20 Q. So before sitting here today, you weren't</p> <p>21 aware that Cisco had filed IPRs on the '394 and '637</p> <p>22 patents?</p> <p>23 A. I don't recall one way or another. They</p> <p>24 were probably in the file history I perused, but I</p> <p>25 don't -- as I sit here today, I don't recall one way</p>	<p style="text-align: right;">40</p> <p>1 take Cisco's opinion and say that's correct or say</p> <p>2 that's what it means, and I wouldn't take</p> <p>3 Portsmouth's opinion and say, oh, that's correct,</p> <p>4 that's what this means. I would develop my own</p> <p>5 opinion.</p> <p>6 Q. So is it fair to say, just to go off of</p> <p>7 what you just said, you did not base any of your</p> <p>8 opinions on Portsmouth's statements in their</p> <p>9 preliminary responses to Cisco's IPRs?</p> <p>10 A. Correct.</p> <p>11 MS. MISBAH: Objection, form.</p> <p>12 A. Neither Cisco's petition either.</p> <p>13 Q. Now, turning to the next section of your</p> <p>14 declaration, Section 5, titled "Person of Ordinary</p> <p>15 Skill in the Art." Do you see that?</p> <p>16 A. Yes, I do.</p> <p>17 Q. And does this section accurately reflect</p> <p>18 the standard that you applied to your analysis?</p> <p>19 A. Yes, it does.</p> <p>20 Q. And turning to paragraph 15 of your</p> <p>21 declaration, you state what constitutes a person of</p> <p>22 ordinary skill in the art, correct?</p> <p>23 A. Correct.</p> <p>24 Q. And so in your opinion, a person of</p> <p>25 ordinary skill in the art of the patents-in-suit</p>
<p style="text-align: right;">39</p> <p>1 or another.</p> <p>2 Q. Are you aware that Portsmouth has</p> <p>3 currently filed three out of four patent owner</p> <p>4 preliminary responses to Cisco's IPRs for the</p> <p>5 patents-in-suit in this case?</p> <p>6 A. No, I am not.</p> <p>7 Q. And so given that you were not aware that</p> <p>8 Cisco had filed IPRs on the '394 and '637 patents,</p> <p>9 is it fair to say that you did not review Cisco's</p> <p>10 IPR petitions for those two patents?</p> <p>11 A. No, I was just saying as I sit here today,</p> <p>12 if they were in the file history I got, I reviewed</p> <p>13 them, I went through them.</p> <p>14 Q. And similarly, have you reviewed the --</p> <p>15 all of the filed preliminary responses from</p> <p>16 Portsmouth on the Cisco IPRs?</p> <p>17 A. As I said, if they were in the file</p> <p>18 histories I reviewed, I would have reviewed them. I</p> <p>19 don't recall if they were in there or not. To be</p> <p>20 quite honest, those have no determination on my</p> <p>21 opinion on what terms mean, what Cisco says or</p> <p>22 really even what Portsmouth says.</p> <p>23 I develop my own opinion based on the</p> <p>24 information that I provided you here. So these</p> <p>25 were -- they wouldn't be determined -- I wouldn't</p>	<p style="text-align: right;">41</p> <p>1 would include someone who had a bachelor's or</p> <p>2 graduate degree in computer science, computer</p> <p>3 engineering, electrical engineering, or an</p> <p>4 equivalent training regarding network switching,</p> <p>5 configuration, protocols, and approximately two or</p> <p>6 three years of experience in the field relating to</p> <p>7 network configuration protocols and switching.</p> <p>8 Correct?</p> <p>9 A. Correct.</p> <p>10 Q. And in your view, when did a person have</p> <p>11 to complete the two to three years of experience in</p> <p>12 the field to qualify as a person of ordinary skill</p> <p>13 in the art?</p> <p>14 A. At the priority date of the patent.</p> <p>15 Q. And would that be the priority date of</p> <p>16 each individual patent?</p> <p>17 A. Correct.</p> <p>18 Q. Did you find that all four patents-in-suit</p> <p>19 have the same level of ordinary skill in the art?</p> <p>20 A. Basically, yes.</p> <p>21 Q. And each of the four patents-in-suit have</p> <p>22 different priority dates?</p> <p>23 A. Correct.</p> <p>24 Q. Did your understanding of what qualifies</p> <p>25 as a person of ordinary skill in the art change at</p>

<p style="text-align: right;">42</p> <p>1 all with respect to the patents' priority dates?</p> <p>2 A. No, not to -- not in any substantial way.</p> <p>3 Q. And so your understanding of what</p> <p>4 qualifies as a person of ordinary skill in the art</p> <p>5 did not change even though the patents have</p> <p>6 different priority dates?</p> <p>7 A. Correct.</p> <p>8 Q. So in your view, a person of ordinary</p> <p>9 skill in the art does not have to view the patent</p> <p>10 from the time period of the exact priority date of</p> <p>11 the patent?</p> <p>12 MS. MISBAH: Objection, form.</p> <p>13 A. They have to view it from the priority</p> <p>14 date of the patent, the exact priority date. But</p> <p>15 this knowledge level of someone in this area doesn't</p> <p>16 vary that much by year to year.</p> <p>17 Q. Are you aware of the priority dates of the</p> <p>18 patents-in-suit?</p> <p>19 A. In general, yeah.</p> <p>20 Q. And what is the range of years spanning</p> <p>21 the priority dates of the patents-in-suit?</p> <p>22 A. Let's see. So 2009, 2006, 2002, and 2001.</p> <p>23 Wait, they may have done the last one wrong. No,</p> <p>24 2002. So 2001 to 2009.</p> <p>25 Q. And so is it your opinion that the state</p>	<p style="text-align: right;">44</p> <p>1 record at 11:35 a.m.</p> <p>2 BY MS. OWENS:</p> <p>3 Q. Welcome back, Dr. Olivier.</p> <p>4 A. Thank you.</p> <p>5 Q. Did you discuss anything with your counsel</p> <p>6 while we took our break?</p> <p>7 A. No, I did not.</p> <p>8 Q. So where we left off was Section 6 of your</p> <p>9 declaration titled "Legal Standards."</p> <p>10 Do you see that?</p> <p>11 A. Yes, I do.</p> <p>12 Q. And does this section accurately reflect</p> <p>13 the standards that you applied to your analysis in</p> <p>14 your declaration?</p> <p>15 A. Yes.</p> <p>16 Q. And in paragraph 16, the second paragraph</p> <p>17 of paragraph 16 --</p> <p>18 A. Yeah, I made a mistake there.</p> <p>19 Q. -- you describe your understanding of</p> <p>20 intrinsic evidence. True?</p> <p>21 A. Correct.</p> <p>22 Q. And your understanding of intrinsic</p> <p>23 evidence is that it consists of the claims</p> <p>24 themselves, the specification, and the prosecution</p> <p>25 history.</p>
<p style="text-align: right;">43</p> <p>1 of the art between 2001 and 2009 did not change at</p> <p>2 all?</p> <p>3 MS. MISBAH: Objection, form.</p> <p>4 A. No, not "at all." It did change at all,</p> <p>5 but it didn't change substantially such that the</p> <p>6 understanding of what one of ordinary skill would</p> <p>7 understand at that time wouldn't have changed</p> <p>8 dramatically as far as understanding these patents.</p> <p>9 Q. And so you based your opinions in your</p> <p>10 declaration on the understanding that a person of</p> <p>11 ordinary skill in the art would have had relatively</p> <p>12 the same knowledge from 2001 to 2009?</p> <p>13 MS. MISBAH: Objection, form.</p> <p>14 A. No, I based each one on what the date was</p> <p>15 for the particular patent.</p> <p>16 Q. Okay. So turning to the next section of</p> <p>17 your declaration --</p> <p>18 A. Do you mind if we take a break?</p> <p>19 Q. Oh, sure, we'll take a break now for about</p> <p>20 five minutes?</p> <p>21 A. Sure.</p> <p>22 THE VIDEOGRAPHER: We are off the record</p> <p>23 at 11:28 a.m.</p> <p>24 (Recess from 11:28 to 11:35)</p> <p>25 THE VIDEOGRAPHER: We are back on the</p>	<p style="text-align: right;">45</p> <p>1 A. Correct.</p> <p>2 Q. You'd agree that IPRs are also included in</p> <p>3 what's considered intrinsic evidence. True?</p> <p>4 MS. MISBAH: Objection, form.</p> <p>5 A. I believe they're part of the prosecution</p> <p>6 history, yes.</p> <p>7 Q. And the full prosecution history is part</p> <p>8 of intrinsic evidence, correct?</p> <p>9 A. Correct.</p> <p>10 Q. And in paragraph 17 you describe what you</p> <p>11 understand extrinsic evidence to mean, correct?</p> <p>12 A. Correct.</p> <p>13 Q. And extrinsic evidence refers to sources</p> <p>14 of information besides those related to the patents</p> <p>15 themselves like dictionaries and such, right?</p> <p>16 A. Correct.</p> <p>17 Q. And turning onto page 6 and paragraph 17</p> <p>18 still, you state that you agree that intrinsic</p> <p>19 evidence is favored over extrinsic evidence</p> <p>20 generally, correct?</p> <p>21 A. Correct.</p> <p>22 Q. So moving to the next section, Section 7,</p> <p>23 which begins your opinions on the '986 patent, did</p> <p>24 you read the '986 patent?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">46</p> <p>1 Q. And did you understand the '986 patent?</p> <p>2 A. Yes.</p> <p>3 Q. What is the '986 patent about? It should</p> <p>4 be Exhibit 2.</p> <p>5 A. So the '986 patent is about a method for</p> <p>6 protection in a fault-tolerant network coupling an</p> <p>7 edge switch to one or more access switches.</p> <p>8 Q. And the '986 patent also discusses</p> <p>9 reconfiguring network topologies in the event of a</p> <p>10 link failure, correct?</p> <p>11 A. Correct. It basically talks about</p> <p>12 modifying the spanning tree protocol in order to</p> <p>13 more rapidly converge to a tree under a failure.</p> <p>14 Q. Are you familiar with the spanning tree</p> <p>15 protocol?</p> <p>16 A. Yes.</p> <p>17 Q. How so?</p> <p>18 A. It's a standard protocol that's taught in</p> <p>19 network protocol classes.</p> <p>20 Q. And have you done any work utilizing</p> <p>21 spanning tree protocol?</p> <p>22 A. Sure.</p> <p>23 MS. MISBAH: Objection, form.</p> <p>24 A. The switches and routers that I</p> <p>25 architected and design sometimes act as Layer 2</p>	<p style="text-align: right;">48</p> <p>1 column 1 to line 55 of column 3.</p> <p>2 Q. And in that discussion of the background</p> <p>3 of the '986 patent, the background talks about</p> <p>4 different prior art or systems that came before the</p> <p>5 '986 patent, right?</p> <p>6 A. Are you referring to 802.1D, spanning tree</p> <p>7 protocol?</p> <p>8 Q. Yes, that's one of them.</p> <p>9 A. Okay. Yes, it discusses the spanning tree</p> <p>10 protocol in 802.1D.</p> <p>11 Q. And then you look at column 3 beginning at</p> <p>12 line 15, the '986 patent also references another</p> <p>13 prior art reference in the U.S. Patent No.</p> <p>14 6,032,194. Do you see that?</p> <p>15 A. Yes, I do.</p> <p>16 Q. And so what I'll call the '194 patent was</p> <p>17 known prior to the '986 patent, right?</p> <p>18 A. It appears so, yes. It's easy to look up,</p> <p>19 I'm sure, too.</p> <p>20 Q. Did you read the '194 patent?</p> <p>21 A. I don't recall one way or another.</p> <p>22 Q. And so staying in column 3, the '986</p> <p>23 patent describes the '194 patent as a method for</p> <p>24 rapidly configuring a computer network based on</p> <p>25 certain modifications to the standard STP.</p>
<p style="text-align: right;">47</p> <p>1 access switches, which mean they had to perform</p> <p>2 spanning tree protocol. I teach spanning tree</p> <p>3 protocol in my class, especially when we're talking</p> <p>4 about doing an Ethernet VPN, which is an MPLS type</p> <p>5 of network that you have to get a -- make a tree out</p> <p>6 of the different remote locations.</p> <p>7 So, yes, I have a good understanding of</p> <p>8 spanning tree protocol.</p> <p>9 Q. Do you recall when spanning tree protocol</p> <p>10 was first published?</p> <p>11 A. I think it was 802.1D was the first time</p> <p>12 it came out, which I think is referenced in here.</p> <p>13 Q. And so that would be before the priority</p> <p>14 date of the '986 patent, right?</p> <p>15 A. If it's referenced in here, then it -- oh,</p> <p>16 yeah, it is, yeah. So we can check that. It says</p> <p>17 it's -- 802.1D is 1998, and then this patent was</p> <p>18 filed January 7th, 2002. So it was before the</p> <p>19 priority date.</p> <p>20 Q. So turning to the specification of the</p> <p>21 '986 patent itself, let's start in column 1.</p> <p>22 Columns 1 through 3 discuss the background of the</p> <p>23 invention, right?</p> <p>24 A. These are kind of printed pretty lightly</p> <p>25 and small for old eyes. The background goes from</p>	<p style="text-align: right;">49</p> <p>1 Do you see that?</p> <p>2 A. Yes, I do.</p> <p>3 Q. And then moving down to line 26, column 3,</p> <p>4 it states that, "Upon detection of failure at the</p> <p>5 active forwarding port, the switch immediately</p> <p>6 places one of the backup trunk ports in the</p> <p>7 forwarding state so that it becomes the new active</p> <p>8 port." Correct?</p> <p>9 A. Correct.</p> <p>10 Q. And so you would agree that failing over</p> <p>11 to a backup port was known prior to the '986 patent,</p> <p>12 right?</p> <p>13 MS. MISBAH: Objection, form.</p> <p>14 A. Correct.</p> <p>15 Q. So the '986 patent did not invent failing</p> <p>16 over to a backup port and turning the backup port</p> <p>17 into the new active port, right?</p> <p>18 MS. MISBAH: Objection, form.</p> <p>19 A. I'm sorry. What was your question?</p> <p>20 Q. So you agreed that failing over to a</p> <p>21 backup port was known prior to the '986 patent.</p> <p>22 A. Correct.</p> <p>23 Q. So you would agree that the '986 patent</p> <p>24 did not invent failing over to a backup port,</p> <p>25 correct?</p>

<p style="text-align: right;">50</p> <p>1 A. Correct.</p> <p>2 Q. Now moving on to the next sentence of that</p> <p>3 paragraph beginning with line 29, column 3, it also</p> <p>4 states that the '194 patent teaches that, "The</p> <p>5 switch then transmits dummy multicast messages</p> <p>6 toward the root (upstream) through the newly active</p> <p>7 trunk port."</p> <p>8 Do you see that?</p> <p>9 A. Yes, I do.</p> <p>10 Q. The '986 patent also makes use of dummy</p> <p>11 packets to update devices of the new active port,</p> <p>12 correct?</p> <p>13 A. Correct.</p> <p>14 Q. What is a dummy packet?</p> <p>15 A. It's a packet that wasn't generated by a</p> <p>16 client but was -- in the '986 patent it was</p> <p>17 generated by a switch instead of by a client. So</p> <p>18 it's a fake packet, called a dummy packet.</p> <p>19 Q. And by "fake," would you agree that a</p> <p>20 dummy packet includes empty fields or false fields?</p> <p>21 A. It's mimicking an actual packet by</p> <p>22 creating fields that weren't created as you</p> <p>23 typically would imagine it would be created.</p> <p>24 So in particular, the source address</p> <p>25 field, it didn't really come from that source</p>	<p style="text-align: right;">52</p> <p>1 a dummy packet because there's lots of packets</p> <p>2 there's no response to. If you're sending just a</p> <p>3 UDP packet through a network, there's no</p> <p>4 understanding of a response to it. So like I said,</p> <p>5 I could tell you what it means in the '986 patent.</p> <p>6 Q. So what does "dummy packet" mean?</p> <p>7 A. As I said, it's one that appears to be</p> <p>8 sending from a source and it's not really sent from</p> <p>9 that source is probably the highest level way of</p> <p>10 looking at it.</p> <p>11 Q. So is any packet that's sent from a switch</p> <p>12 considered a dummy packet?</p> <p>13 A. Is any packet -- no. There's lots of</p> <p>14 packets that are sent from a switch that aren't</p> <p>15 dummy packets.</p> <p>16 Q. And so in the context of the '986 patent,</p> <p>17 would you say that a packet generated from a switch</p> <p>18 that is meant to appear as if it's coming from a</p> <p>19 different device is a dummy packet?</p> <p>20 A. Yes.</p> <p>21 Q. And in the context of the '986 patent,</p> <p>22 what other network device is the packet meant to</p> <p>23 be -- meant to appear to be coming from?</p> <p>24 A. Let's see. What do they call it here?</p> <p>25 Generally you think of them as client devices, but</p>
<p style="text-align: right;">51</p> <p>1 address MAC, but it just created a field that made</p> <p>2 it look like it came from that source address MAC.</p> <p>3 Q. And so would you say the difference</p> <p>4 between a dummy packet and a real packet is the</p> <p>5 source address field?</p> <p>6 A. No. I gave that as an example.</p> <p>7 Q. Can you elaborate on what the difference</p> <p>8 between a dummy packet and a real packet is?</p> <p>9 A. As I said earlier, it's a packet that</p> <p>10 appears to be sent from somewhere where it wasn't</p> <p>11 actually sent from. It's not really a term of art,</p> <p>12 "dummy packet." So when you say elaborate on that</p> <p>13 means, I can tell you what it is in regards to the</p> <p>14 '986 patent which is mimicking a device in a way</p> <p>15 that makes it seem like that device had sent a</p> <p>16 packet.</p> <p>17 Q. Do you agree that if a packet is sent with</p> <p>18 the purpose of generating a reply, that type of</p> <p>19 packet is not a dummy packet?</p> <p>20 A. I don't understand your question. I could</p> <p>21 give you a concrete example.</p> <p>22 Q. Would you -- in other words, would you</p> <p>23 agree that there's no response or reply packet sent</p> <p>24 in response to a dummy packet?</p> <p>25 A. I don't know that that's a requirement of</p>	<p style="text-align: right;">53</p> <p>1 let's see what they would call them in -- I'm sorry.</p> <p>2 It's so hard to read.</p> <p>3 Here they call them "multiple users 22."</p> <p>4 Generally think of the users. Perhaps the user's</p> <p>5 computer would be a better accurate term in the way</p> <p>6 it's drawn in Figure 1.</p> <p>7 Q. So just to get clarity, you would agree</p> <p>8 that a packet sent from a switch that is meant to</p> <p>9 appear as if it's coming from a user's computer</p> <p>10 would be considered a dummy packet in the '986</p> <p>11 patent?</p> <p>12 A. Yes.</p> <p>13 Q. Have you ever heard of a bridge protocol</p> <p>14 data unit or a B- --</p> <p>15 A. BP- -- yes.</p> <p>16 Q. BPDU?</p> <p>17 A. Yes.</p> <p>18 Q. Is a BPDU a dummy packet?</p> <p>19 A. BPDUs are usually packets to perform the</p> <p>20 spanning tree protocol. So in the context of the</p> <p>21 '986, I wouldn't consider it a dummy packet.</p> <p>22 Q. How -- would you like a minute?</p> <p>23 A. No, unless someone has a napkin. That</p> <p>24 water was under pressure. Thank you so much.</p> <p>25 Q. So based on the '986 patent's description</p>

<p style="text-align: right;">54</p> <p>1 of the '194 patent, how is the '986 patent's use of 2 dummy packets different than the '194 patent's use 3 of dummy packets? 4 A. I don't know. That's not something I 5 considered in developing my opinions for this 6 declaration. 7 Q. Okay. Well, if we turn back to column 3 8 of the '986 patent and go to line 29, it says that 9 the '194 patent transmits dummy multicast messages 10 toward the root or upstream. Do you see that? 11 A. Yes, I do. 12 Q. And based on the '986 patent, would you 13 agree that dummy packets are sent in the '986 patent 14 from the edge switch to the access switches? 15 A. Yes. 16 Q. And that would be -- sending dummy packets 17 from the edge switch to the access switches would be 18 considered sending a packet downstream, right? 19 A. Correct. 20 Q. And so is sending packets upstream the 21 same as sending packets downstream? 22 A. No. 23 Q. What would you say is the difference 24 between that? 25 A. The direction the packets are going.</p>	<p style="text-align: right;">56</p> <p>1 enable the rapid reconfiguration and response of 2 network topology changes. 3 Q. And enabling rapid reconfiguration and 4 response to network topology changes was not known 5 prior to the '986 patent? 6 A. No, it was. 7 MS. MISBAH: Objection. 8 A. But it's a particular method of doing 9 this, which are covered in the claims. 10 Q. And what specifically about the method of 11 doing rapid reconfiguration was not known to people 12 skilled in the art at the time of the '986 patent? 13 MS. MISBAH: Objection, form. 14 A. I'm guessing the claims weren't known 15 (sic) because a person of ordinary skill in the art, 16 the examiner, said that they were allowed. 17 Q. And so what you consider to be not known 18 at the time of the '986 patent is solely based on 19 the allowance of the patent by the examiner? 20 MS. MISBAH: Objection, form. 21 A. So you're going to have to break down your 22 question a little bit there. 23 Q. So your opinion that aspects of the '986 24 patent were not known to a person of ordinary skill 25 in the art at the time of the '986 patent is based</p>
<p style="text-align: right;">55</p> <p>1 Q. If you know how to send a packet upstream, 2 would you agree that it's obvious to be able to send 3 a packet downstream? 4 A. I don't understand your question. What do 5 you mean it would be obvious? 6 Q. In other words, if you are aware of how to 7 send a packet upstream, changing the direction of 8 sending the packet to downstream would not be a 9 completely new or -- a new concept. 10 MS. MISBAH: Objection, form. 11 A. Well, sending packets upstream or 12 downstream is not a new concept. If it's -- if it 13 doesn't work -- if the system's incapable of sending 14 something upstream or incapable of sending something 15 downstream, then you couldn't say it would be 16 obvious to do it if it's incapable of it, or it 17 would break something fundamental in the system or 18 it would be impractical. 19 So that's why I was confused by your term 20 "obvious." I would say sending packets upstream and 21 downstream has been done for a long time. 22 Q. Okay. So in your view as Portsmouth's 23 expert who has read the '986 patent, how does the 24 '986 patent improve on the prior art? 25 A. It -- so the object of the invention is to</p>	<p style="text-align: right;">57</p> <p>1 on the examiner's allowance of the '986 patent? 2 A. So, I haven't done an invalidity analysis 3 of the '986 patent as I sit here today, so I can't 4 say in my opinion, you know, that there's not art 5 out there that invalidates it. 6 All I'm saying is it's assumed to be valid 7 because the examiner is assumed to be a person of 8 ordinary skill and he examined the art and he 9 determined to allow the claims. So that's why I'm 10 assuming, until shown something different, that 11 there -- the claims are what is not obvious. 12 Q. So you would agree that the '986 patent 13 describes a special way of doing rapid configuration 14 in response to network topology changes? 15 A. Correct. 16 Q. Now, being Portsmouth's technical expert 17 and an expert in the networking space, are you aware 18 of anyone ever using the inventions of the '986 19 patent? 20 MS. MISBAH: Objection, form. 21 A. Not at all. 22 Q. What other ways of doing rapid 23 reconfiguration and network topology changes were 24 you aware of before the '986 patent? 25 A. Well, there was a -- we use split horizon</p>

<p style="text-align: right;">58</p> <p>1 in MPLS. And there's a rapid spanning tree protocol</p> <p>2 that I'm not sure when it came out exactly. And so</p> <p>3 there's other ways of doing it that may or may not</p> <p>4 read on the claims of the '986 patent. I haven't</p> <p>5 done any infringement analysis in any way.</p> <p>6 Q. Okay. Now, let's turn back to page 6 of</p> <p>7 your declaration that discusses the '986 patent.</p> <p>8 And the first term in dispute from the</p> <p>9 '986 patent is "edge switch," correct?</p> <p>10 A. Correct.</p> <p>11 Q. And you propose that edge switch has a</p> <p>12 plain and ordinary meaning in the art, right?</p> <p>13 A. Correct.</p> <p>14 Q. And that plain and ordinary meaning that</p> <p>15 you propose is "a switch located at the edge of a</p> <p>16 network," right?</p> <p>17 A. Correct.</p> <p>18 Q. And turning to paragraph -- or the last</p> <p>19 sentence in paragraph 18, you state that your</p> <p>20 opinion is informed by the intrinsic record and your</p> <p>21 understanding as a person of ordinary skill in the</p> <p>22 art.</p> <p>23 A. Correct.</p> <p>24 Q. So you consider yourself a person of</p> <p>25 ordinary skill in the art as it pertains to the '986</p>	<p style="text-align: right;">60</p> <p>1 teach provider edge switches, customer edge switches</p> <p>2 that are not core switches directly connected.</p> <p>3 So if you take that statement and give it</p> <p>4 credence but then also look at the rest of the '986</p> <p>5 patent where they say that it's not particularly</p> <p>6 limited, though preferred embodiments are in</p> <p>7 reference to certain switches, it's not particularly</p> <p>8 limited to, "The principles of this invention are</p> <p>9 generally applicable to bridges and other types of</p> <p>10 network configurations."</p> <p>11 I think on the whole you would come out</p> <p>12 that the person of ordinary skill would say it just</p> <p>13 simply means it's on the edge of a network, because</p> <p>14 that is reinforced by his learning over his three or</p> <p>15 four years of experience in the field.</p> <p>16 Q. But in the context of the '986 patent</p> <p>17 itself, the patentee described core switches that</p> <p>18 are directly connected to access switches as edge</p> <p>19 switches, right?</p> <p>20 A. Yeah, they say that, but I would say a</p> <p>21 person of ordinary skill would say that as a type of</p> <p>22 edge switch. Even though he doesn't say that, based</p> <p>23 on his learning and based on the rest of the</p> <p>24 specification talking about it's not restricted to</p> <p>25 something, that in reading the whole thing, a POSITA</p>
<p style="text-align: right;">59</p> <p>1 patent?</p> <p>2 A. I consider myself above ordinary skill in</p> <p>3 the art as it pertains to the '986 patent.</p> <p>4 Q. Okay. And so the intrinsic record that</p> <p>5 you reviewed includes the '986 patent specification,</p> <p>6 right?</p> <p>7 A. Correct.</p> <p>8 Q. So if we turn back to the '986 patent, and</p> <p>9 we'll start column 1, the "Background of the</p> <p>10 Invention" section. So column 1, line 35 of the</p> <p>11 '986 patent reads, "Core switches that are directly</p> <p>12 connected to access switches are referred to herein</p> <p>13 as edge switches." Do you see that?</p> <p>14 A. Yes, I do.</p> <p>15 Q. And so column 1 starting at line 35 of the</p> <p>16 '986 patent means that where "edge switch" appears</p> <p>17 in the '986 patent, otherwise "herein," it should be</p> <p>18 understood as that definition, correct?</p> <p>19 A. Well, you have to take the entire '986</p> <p>20 patent and not pull things particularly out. So</p> <p>21 I've got to admit it's a hard -- it's a hard thing</p> <p>22 to understand. I was a little bit shocked when I</p> <p>23 read that in the '986 because it directly</p> <p>24 contradicts what we teach in class. That's not the</p> <p>25 definition of an edge switch. I mean, we have -- we</p>	<p style="text-align: right;">61</p> <p>1 would say an edge switch is simply a switch at the</p> <p>2 edge of a network.</p> <p>3 Q. So you mentioned that you were shocked</p> <p>4 when you saw how the '986 patent describes edge</p> <p>5 switch in column 1. Were you shocked because it</p> <p>6 contradicts what would otherwise be the plain and</p> <p>7 ordinary meaning of "edge switch"?</p> <p>8 A. Correct.</p> <p>9 Q. And so is it your view that the '986</p> <p>10 patent -- the '986 patent's use of the term "edge</p> <p>11 switch" contradicts how "edge switch" is used in the</p> <p>12 art?</p> <p>13 A. That particular statement does.</p> <p>14 Q. And that particular statement in column 1,</p> <p>15 line 35 is meant to inform how "edge switch" should</p> <p>16 be viewed throughout the rest of the '986 patent,</p> <p>17 correct?</p> <p>18 MS. MISBAH: Objection, form.</p> <p>19 A. It says "herein," yes.</p> <p>20 Q. And the same passage we're talking about,</p> <p>21 column 1, line 35, that's in the "Background of the</p> <p>22 Invention" section of the '986 patent, right?</p> <p>23 A. Correct.</p> <p>24 Q. And so that passage is not correlated to</p> <p>25 any particular embodiment, right?</p>

<p style="text-align: right;">62</p> <p>1 A. Correct. It's in the "Background of the 2 Invention." 3 Q. Now, I know we spent a little bit of time 4 talking about the -- Portsmouth's preliminary 5 response to the '986 patent's IPR. And the '986 6 patent's IPR is one of the two that you are working 7 on, correct? 8 A. Correct. 9 Q. So I'm going to hand you what will be 10 marked as Exhibit 6, which is Portsmouth's patent 11 owner's preliminary response for the '986 patent. 12 (Exhibit 6 marked) 13 Q. Is this an accurate copy of Portsmouth's 14 patent owner's preliminary response for the '986 15 patent? 16 A. I assume so. 17 Q. Do you recall if you reviewed the 18 preliminary response for the '986 patent? 19 A. I may have reviewed portions of it. I 20 don't know if I ever sat down and reviewed the whole 21 response at one point. 22 Q. And Portsmouth's preliminary response for 23 the '986 patent was filed by Steptoe, right? 24 A. Yes. 25 Q. Portsmouth's preliminary response for the</p>	<p style="text-align: right;">64</p> <p>1 "defines," but it states, as we've been over and 2 over again, that core switches, they state in the 3 background of the invention that core switches are 4 directly connected to access switches. 5 Q. And how would you distinguish "define" as 6 used by Portsmouth in page 12 of its preliminary 7 response? 8 MS. MISBAH: Objection, form. 9 A. Sorry. I don't quite understand your 10 question. How would I distinguish "defines"? 11 Q. So you just said that it depends what you 12 mean by the word "define." What are the different 13 ways of determining what "define" means? 14 A. They could say that it gives an example 15 of. Sometimes you define things by way of example. 16 So maybe by way of an example, they're saying '986 17 defines edge switches as being core switches that 18 are directly connected to access switches. 19 So there's different ways of looking at 20 the word "define." So I don't know what they were 21 trying to say here. Like I said, I didn't write it. 22 Q. But just based on the language used by 23 Portsmouth here, they don't point out that this is 24 an example when citing the column 1, line 35 passage 25 from the '986 patent, right?</p>
<p style="text-align: right;">63</p> <p>1 '986 patent is not directly mentioned in your 2 declaration. Is that right? 3 A. Correct. 4 Q. So if we turn to the bottom of page 12 of 5 Exhibit 6, the last sentence of page 12, Portsmouth 6 states that, "The '986 patent defines edge switches 7 as core switches that are directly connected to 8 access switches." Do you see that? 9 A. Yes, I do. 10 Q. And so Portsmouth relied on the exact same 11 passage we were looking at, column 1, line 35, to 12 support its position in its preliminary response. 13 Is that right? 14 A. To support its position. All I know is 15 they put that paragraph in there. They wrote it in 16 their response. I don't know if and how it supports 17 their position or not. 18 Q. Well, Portsmouth specifically points out 19 that the '986 patent defines "edge switch" using the 20 language from the '986 patent. Do you see that? 21 A. Yes, I do. 22 Q. And do you agree with Portsmouth that the 23 '986 patent defines edge switches as core switches 24 that are directly connected to access switches? 25 A. It depends what you mean by the word</p>	<p style="text-align: right;">65</p> <p>1 A. Correct. But you were asking me different 2 ways of defining the word "define," so I was giving 3 you different examples of that. 4 Q. Fair. And Cisco's proposed definition for 5 the term "edge switch" is based on the column 1, 6 line 35 language of the '986 patent specification 7 and Portsmouth's preliminary response, correct? 8 MS. MISBAH: Objection, form. 9 A. Yeah, I don't know the timing of this, 10 whether this came out before Cisco's preliminary -- 11 their 4-2 or not. So I don't know that Cisco 12 referenced this in their definition for the term. 13 I -- it appears to me that it comes from 14 column 1, lines 35 through 37. 15 Q. Now, turning back to your declaration at 16 paragraph 19, you state that you also considered 17 extrinsic evidence when proposing your opinion for 18 the term "edge switch," right? 19 A. Correct. 20 Q. And the extrinsic evidence you considered 21 is the -- Newton's Telecom Dictionary, correct? 22 A. Correct. 23 Q. That's Exhibit 2 to your declaration? 24 A. Yes. 25 Q. So if we turn to Exhibit 2 of your</p>

<p style="text-align: right;">66</p> <p>1 declaration, this is a picture of the 23rd edition 2 of Newton's Telecom Dictionary, right?</p> <p>3 A. Yes.</p> <p>4 Q. And we turn to the next page of Exhibit 2 5 to your declaration. It's a little fuzzy, but 6 you're able to see that the copyright at the top of 7 the page is 2007, right?</p> <p>8 A. That's what it looks like, yes.</p> <p>9 Q. We touched about -- on this a little while 10 ago, but the knowledge of a person of skill in the 11 art in 2007 is not necessarily indicative of that of 12 a person of ordinary skill in the art in 2002, 13 right?</p> <p>14 A. Not necessarily, but I could tell you we 15 still use the same definition of "edge switch" today 16 in 2024. So maybe it hasn't evolved that much.</p> <p>17 Q. And why did you rely on a dictionary from 18 2007?</p> <p>19 A. Instead of?</p> <p>20 Q. Instead of a dictionary from the priority 21 date in 2002 for the '986 patent.</p> <p>22 A. Because it didn't change all that much, in 23 my opinion.</p> <p>24 Q. So in your view, the state of the art with 25 respect to edge switches was unchanged from 2002 to</p>	<p style="text-align: right;">68</p> <p>1 Q. So now I just want to turn back to the 2 '986 section of your declaration. And the last 3 paragraph, paragraph 22 on page 6, you point out 4 that the '986 invention is applicable to other 5 devices such as bridges. Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. And from your review of the '986 patent, 8 you're aware that the '986 patent's claims are 9 directed to other types of network devices and 10 configurations besides just edge switches, right?</p> <p>11 A. I'm sorry. I didn't get your question.</p> <p>12 Q. So from your review of the '986 patent --</p> <p>13 A. Yes.</p> <p>14 Q. -- including the claims, you'd agree that 15 the '986 patent includes claims directed to other 16 devices besides just edge switches, right?</p> <p>17 A. Let's see.</p> <p>18 Q. So, for example, claim 12.</p> <p>19 A. Correct.</p> <p>20 Q. Claim 12 is a method for network 21 communication comprising coupling of first bridge 22 and a network to a second bridge, et cetera, 23 et cetera.</p> <p>24 And so claim 12 is directed to bridge 25 devices, not edge switches, correct?</p>
<p style="text-align: right;">67</p> <p>1 2007?</p> <p>2 A. No. In -- in my opinion, the state of -- 3 that an edge switch is located at the edge of a 4 network didn't change between 2002 and 2007.</p> <p>5 Q. Would the function of an edge switch, 6 separate from the location, have changed from 2002 7 to 2007?</p> <p>8 A. What do you mean by "function of an edge 9 switch"?</p> <p>10 Q. What an edge switch is used for, the 11 particular mechanisms involved and the components 12 contained in an edge switch between 2002 to 2007.</p> <p>13 THE WITNESS: Can you read that back? 14 (The pending question was read)</p> <p>15 A. What it's used for wouldn't have changed. 16 The components inside of it would have changed. 17 Broadcom -- most edge switches are built on Broadcom 18 devices, and Broadcom continually brings out faster 19 and faster devices. So I would say the components 20 may change, or they may not. You'd have to look at 21 the individual edge switches.</p> <p>22 Q. You would agree that a person of ordinary 23 skill in the art in 2002 would not have been able to 24 view this 2007 dictionary, right?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">69</p> <p>1 A. Correct.</p> <p>2 Q. And so you would agree that the '986 3 patent has claims that are -- that cover network 4 devices other than edge switches. Fair?</p> <p>5 A. Correct.</p> <p>6 Q. So let's turn back to your declaration 7 beginning paragraph 23. And this begins your 8 opinions on the term "access switch," right?</p> <p>9 A. Correct.</p> <p>10 Q. And you disagree with Cisco's proposed 11 construction that "access switch" means a switch 12 with ports that connect to LANs and/or to other 13 network endpoints, right?</p> <p>14 A. Correct.</p> <p>15 Q. And it's your opinion that the plain and 16 ordinary meaning of "access switch" is a switch 17 providing access to a network?</p> <p>18 A. Correct.</p> <p>19 Q. What is the difference between a switch 20 that provides access to a network and a switch that 21 doesn't provide access to a network?</p> <p>22 A. The part that it -- that says an access 23 switch connects to LANs or other access points. 24 The standard or known definition of 25 switches in an access network isn't restricted to</p>

<p style="text-align: right;">70</p> <p>1 just those that connect to LANs or other access 2 ports.</p> <p>3 We have access networks that gather the 4 information from the users and groom it in order to 5 send it into usually, typically, an aggregation 6 network and then to the core network. But to say 7 that an access switch is strictly that switch which 8 is on the edge of an access network doesn't make 9 sense to a POSITA, especially if it's restricted to 10 just LANs, which are local area networks, because 11 access switches can be involved in cellular 12 networks, access switches can be involved in fiber 13 networks, like PONs, passive optical networks.</p> <p>14 So Cisco's restriction that it is 15 connected to a LAN or another network access point 16 limits the access switch and makes it impossible to 17 create an access network, which a POSITA would know 18 what an access network is.</p> <p>19 So that's why I disagree with Cisco's 20 definition of "access switch" being a switch with 21 ports that connect to LANs and/or other network 22 endpoints.</p> <p>23 Q. And an access switch is a necessary 24 component of an access network?</p> <p>25 A. Yes, the switches in the access network</p>	<p style="text-align: right;">72</p> <p>1 fewer components but very high bandwidth.</p> <p>2 This definition of Cisco restricts the 3 access switch, which I'm assuming is the switch, to 4 only be on the edge of this network, because as soon 5 as I move it in, it's no longer connected to a user. 6 But that doesn't make sense because I typically have 7 other switches in my access network to connect in 8 and groom to traffic.</p> <p>9 Q. But you would agree, at least in Figure 1 10 of the '986 patent, the access switches are the 11 switches that are directly connected to the network 12 endpoints?</p> <p>13 A. In this embodiment that's what's shown as 14 access switches, correct.</p> <p>15 Q. If not an access switch, how else would 16 you categorize a switch that connects to a LAN or 17 other network endpoints?</p> <p>18 A. You -- there's -- there's not a -- the 19 access switch -- so providing access to the network 20 involves two things. It involves getting 21 information from the person and then taking that 22 traffic and grooming it to the actual point that's 23 going to use it.</p> <p>24 And so, yes, the switches on the edge of 25 the network are access switches. But typically in</p>
<p style="text-align: right;">71</p> <p>1 are core access switches.</p> <p>2 Q. And how does an access network differ from 3 the network configurations described in the '986 4 patent?</p> <p>5 A. I don't understand your question. Sorry.</p> <p>6 Q. You described access switches as necessary 7 to create an access network. Is an access network 8 covered in the '986 patent?</p> <p>9 A. Is an access -- the word "access network" 10 used in the '986 patent?</p> <p>11 Q. From your point of view as an expert in 12 the --</p> <p>13 A. Well, this -- this Figure 1 looks like 14 part of an access network. But it's a -- it's not 15 indicative of what access networks typically look 16 like.</p> <p>17 Q. And what do access networks typically look 18 like?</p> <p>19 A. So you see -- access networks are for 20 grooming the traffic from the access, from the 21 users, to get it into the core network. That's why 22 they're called access networks, because we typically 23 have a huge number of users on the outside but we 24 have low bandwidth. So we need to take that traffic 25 and groom it towards the core network which has</p>	<p style="text-align: right;">73</p> <p>1 the access network, there must be other switches 2 because otherwise you can't take the traffic and 3 groom it down to a level where you can hand it off 4 to the core.</p> <p>5 Q. So a single access switch can't both 6 interface with the network endpoints or the user 7 devices and an access -- and a edge switch?</p> <p>8 A. It could, but the definition of an access 9 switch is just not limited to that. It's a subset.</p> <p>10 Q. So are you saying that Figure 1 of the 11 '986 patent must have other switches that are not 12 shown?</p> <p>13 A. No.</p> <p>14 Q. You're not saying that?</p> <p>15 A. I'm not saying that.</p> <p>16 Q. So the configuration of the network 17 depicted in Figure 1 of the '986 patent is a 18 possible configuration?</p> <p>19 A. It's a possible configuration, correct. 20 It's an embodiment of one very, very small network.</p> <p>21 Q. Now, if we flip back to column 1 of the 22 '986 patent and turn to line 30. It reads, "An 23 access switch has ports that connect to LANs and/or 24 to other network endpoints such as user computer 25 systems." Do you see that?</p>

<p style="text-align: right;">74</p> <p>1 A. Yes, I do.</p> <p>2 Q. And this is -- this passage at column 1,</p> <p>3 line 30 of the '986 patent is nearly identical to</p> <p>4 Cisco's proposed construction, right?</p> <p>5 A. Correct.</p> <p>6 Q. And this passage describing an access</p> <p>7 switch in the '986 patent is not correlated to a</p> <p>8 specific embodiment, correct?</p> <p>9 A. It's in the "Background of the Invention,"</p> <p>10 correct.</p> <p>11 Q. And so this sentence in the "Background of</p> <p>12 the Invention" section does not correlate to a</p> <p>13 specific embodiment?</p> <p>14 A. Correct.</p> <p>15 Q. Now, turning back to Portsmouth's</p> <p>16 preliminary response, Exhibit 6. If you turn to</p> <p>17 page 13 at the top of the page, Portsmouth states,</p> <p>18 "The '986 patent further defines an access switch as</p> <p>19 a switch with ports that connect to LANs and/or to</p> <p>20 other network endpoints such as user computer</p> <p>21 systems." Do you see that?</p> <p>22 A. Yes, I do.</p> <p>23 Q. And that sentence is quoted directly from</p> <p>24 the '986 patent, columns 30 to 32. Sorry, column 1,</p> <p>25 lines 30 to 32.</p>	<p style="text-align: right;">76</p> <p>1 (Recess from 12:31 to 1:25)</p> <p>2 THE VIDEOGRAPHER: We are back on the</p> <p>3 record at 1:25 p.m.</p> <p>4 BY MS. OWENS:</p> <p>5 Q. Welcome back, Dr. Olivier.</p> <p>6 A. Thank you.</p> <p>7 Q. Did you speak with your counsel about</p> <p>8 anything regarding this deposition during the break?</p> <p>9 A. No.</p> <p>10 Q. So I want to turn now to your opinions</p> <p>11 regarding the '279 patent which begin on page 8 of</p> <p>12 your declaration. Did you read the '279 patent?</p> <p>13 A. Yes.</p> <p>14 Q. Did you understand the '279 patent?</p> <p>15 A. Yes.</p> <p>16 Q. What is the '279 patent about? '279</p> <p>17 patent should be Exhibit 3.</p> <p>18 A. So the '279 patent is about flow</p> <p>19 allocation in a ring. It's dealing with</p> <p>20 interconnecting in a ring topology the different</p> <p>21 requests for resources.</p> <p>22 Q. So you'd agree that the '279 patent is</p> <p>23 generally about resource allocation and ring</p> <p>24 topologies, right?</p> <p>25 A. Generally. I don't know if the broadest</p>
<p style="text-align: right;">75</p> <p>1 A. Correct.</p> <p>2 Q. And again, Portsmouth specifically points</p> <p>3 out that the '986 patent specifically defines access</p> <p>4 switches with this language, right?</p> <p>5 A. They use the word "defines," yes.</p> <p>6 Q. Do you agree with Portsmouth that the '986</p> <p>7 patent further defines an access switch as a switch</p> <p>8 with ports that connect to LANs and/or to other</p> <p>9 network endpoints such as users' computer systems?</p> <p>10 A. I agree that's a type of access switch, so</p> <p>11 defined by way of example again.</p> <p>12 MS. OWENS: Okay. So I think at this</p> <p>13 point we can take a short break.</p> <p>14 THE WITNESS: Okay. When do you imagine</p> <p>15 lunch? Or do you not imagine lunch, we just keep</p> <p>16 going?</p> <p>17 MR. PACKIN: I imagine lunch, just for</p> <p>18 myself.</p> <p>19 MS. OWENS: I think seeing that it's</p> <p>20 12:30, we could take lunch now.</p> <p>21 THE WITNESS: It's up to you completely,</p> <p>22 or we could go another hour and take lunch or -- I</p> <p>23 don't know your plans.</p> <p>24 THE VIDEOGRAPHER: We are off the record</p> <p>25 at 12:31 p.m.</p>	<p style="text-align: right;">77</p> <p>1 claim incorporates a ring in it or not, but it's</p> <p>2 definitely interconnecting of links and allocation</p> <p>3 of resources along those links. It's usually what</p> <p>4 we would call -- a POSITA would call admission</p> <p>5 control.</p> <p>6 Q. And what is a ring topology network?</p> <p>7 A. There's variations of rings. There can be</p> <p>8 a -- two rings going counter-rotating, a single</p> <p>9 ring. It's any topology that closes on itself.</p> <p>10 Q. And what makes a ring topology useful?</p> <p>11 A. What makes a ring topology useful?</p> <p>12 It's -- I mean, it generally comes from SONET, which</p> <p>13 is an access technology from the late Eighties to</p> <p>14 the early Nineties, where we set up SONET rings to</p> <p>15 distribute information from -- in an access network</p> <p>16 generally.</p> <p>17 But also, SONET rings are in core</p> <p>18 networks. It's a particular topology. It's a</p> <p>19 SONET, synchronous optical network, N-E-T. It's a</p> <p>20 particular topology that's advantageous to build in</p> <p>21 a ring, though you don't have to build SONET in a</p> <p>22 ring. You could do trees.</p> <p>23 Q. So SONET is one type of topology that</p> <p>24 could be configured in a ring?</p> <p>25 A. The SONET technology could be configured</p>

<p style="text-align: right;">78</p> <p>1 in a ring and typically is.</p> <p>2 Q. And how are ring topologies different than</p> <p>3 other network topologies?</p> <p>4 A. They close themselves. They're a topology</p> <p>5 where you can make a continuous loop around it,</p> <p>6 whereas other topologies have branches, spurs,</p> <p>7 trees.</p> <p>8 Q. Do you have any experience working with</p> <p>9 ring topologies?</p> <p>10 A. Sure, I have experience in SONET rings.</p> <p>11 I teach SONET rings in my class.</p> <p>12 Q. And does that experience relate to</p> <p>13 allocating resources in a ring topology?</p> <p>14 A. Well, the allocations of resource in a</p> <p>15 ring topology is done with admission control. And</p> <p>16 so typically the SONET ring is a physical layer,</p> <p>17 which the admission controls usually handle at a</p> <p>18 higher level. So when we talk about admission</p> <p>19 control, it can -- it generally is typically a</p> <p>20 Layer 2 or 3 attribute because we have to worry</p> <p>21 about the schedulers, the cues, policers, and things</p> <p>22 like that which generally happen at a higher level</p> <p>23 than just the pure physical light wavelengths that</p> <p>24 you're working on in SONET.</p> <p>25 Q. And are SONET rings used today still?</p>	<p style="text-align: right;">80</p> <p>1 claim limitation is not necessarily a novel way that</p> <p>2 was not known prior to the '279 patent on how to</p> <p>3 allocate resources?</p> <p>4 MS. MISBAH: Objection, form.</p> <p>5 A. I don't quite understand your question.</p> <p>6 And the claims teach a novel way of this</p> <p>7 allocation of resources, and it's the totality of</p> <p>8 the claims which is novel. To pick and choose an</p> <p>9 individual one out, I don't understand your</p> <p>10 question.</p> <p>11 Q. So let's just take the first indented</p> <p>12 claim limitation of claim 1 in the '279 patent,</p> <p>13 "Allocating a respective number of quanta of one or</p> <p>14 more resources in the network to each of the nodes."</p> <p>15 What about this claim limitation was not</p> <p>16 known prior to the '279 patent?</p> <p>17 MS. MISBAH: Objection, form.</p> <p>18 A. Yeah, I didn't analyze, and like I said, I</p> <p>19 didn't do a validity/invalidity analysis on it and I</p> <p>20 certainly wouldn't do it on a claim-by- --</p> <p>21 limitation-by-limitation basis. So that's not an</p> <p>22 analysis I've performed so far.</p> <p>23 Q. So having reviewed the '279 patent and</p> <p>24 being Portsmouth's technical expert, are you aware</p> <p>25 of anyone using the invention in the '279 patent?</p>
<p style="text-align: right;">79</p> <p>1 A. I believe they are, yes.</p> <p>2 Q. Were SONET ring topologies used before the</p> <p>3 '279 patent which has a priority date of</p> <p>4 January 9th, 2001?</p> <p>5 A. Yes.</p> <p>6 Q. And so in your view as Portsmouth's</p> <p>7 technical expert who has read the '279 patent, how</p> <p>8 does the '279 patent improve over the prior art?</p> <p>9 MS. MISBAH: Objection, form.</p> <p>10 A. I think the '279 patent discusses a novel</p> <p>11 way of allocating path and resources in the ring, in</p> <p>12 any network topology actually.</p> <p>13 Q. And what is the specific way that the '279</p> <p>14 patent teaches allocating resources over a topology?</p> <p>15 A. I think it's in the claims.</p> <p>16 Q. And what exactly in the claims?</p> <p>17 A. I think it's the entirety of the claim</p> <p>18 that teaches how to allocate -- allocate the</p> <p>19 resources.</p> <p>20 Q. Would you say that every limitation of,</p> <p>21 let's say, claim 1 of the '279 patent teaches a</p> <p>22 novel way to allocate resources in a topology?</p> <p>23 A. No, I'd say the sum of all the limitations</p> <p>24 of claim 1 teach a novel way.</p> <p>25 Q. But each individual one -- each individual</p>	<p style="text-align: right;">81</p> <p>1 MS. MISBAH: Objection, form.</p> <p>2 A. Again, I haven't analyzed that in any way,</p> <p>3 shape, or form.</p> <p>4 Q. Okay. So let's turn to the first term you</p> <p>5 analyzed for the '279 patent which is</p> <p>6 "predetermined."</p> <p>7 Do you see your opinions for the term</p> <p>8 "predetermined" starting at the bottom of page 8 of</p> <p>9 your declaration?</p> <p>10 A. Yes.</p> <p>11 Q. And you opine that the plain and ordinary</p> <p>12 meaning of "predetermined" is "to determine</p> <p>13 beforehand," right?</p> <p>14 A. Correct.</p> <p>15 Q. And you considered extrinsic evidence when</p> <p>16 you determined your plain and ordinary meaning.</p> <p>17 Is that right?</p> <p>18 A. Correct.</p> <p>19 Q. And more specifically, you looked at the</p> <p>20 Merriam-Webster's Collegiate Dictionary for support</p> <p>21 for your plain and ordinary meaning of</p> <p>22 "predetermined," correct?</p> <p>23 A. Correct.</p> <p>24 Q. The Merriam-Webster's Collegiate</p> <p>25 Dictionary isn't a technical dictionary, right?</p>

<p style="text-align: right;">82</p> <p>1 A. Correct.</p> <p>2 Q. And you didn't consult any other technical</p> <p>3 dictionaries when coming up with the plain and</p> <p>4 ordinary meaning of "predetermined"?</p> <p>5 A. Yeah, I don't think you would find</p> <p>6 "predetermined" in a technical dictionary because</p> <p>7 it's -- it's used in its ordinary meaning. So</p> <p>8 that's why I consulted a Merriam-Webster's</p> <p>9 Collegiate Dictionary for the definition of</p> <p>10 "predetermined."</p> <p>11 Q. And so in your opinion, based on your</p> <p>12 plain and ordinary meaning for "predetermined" and</p> <p>13 in the context of the '279 patent, before what</p> <p>14 exactly is the quantum determined?</p> <p>15 A. "Predetermined," the claims decide what is</p> <p>16 determined before. The word "predetermined" just</p> <p>17 means to determine beforehand.</p> <p>18 Q. So what in the claims shows you what step</p> <p>19 the quantum is determined before?</p> <p>20 A. So it makes sense it has to be determined</p> <p>21 before increasing. So the final step, increasing</p> <p>22 allocation of the resources to the first node by a</p> <p>23 predetermined quantum. So before you increase the</p> <p>24 allocation to the resource, you have to have</p> <p>25 determined it.</p>	<p style="text-align: right;">84</p> <p>1 We're introducing a new entity into the claims, and</p> <p>2 at that point we have to have the predetermined part</p> <p>3 of a quantum.</p> <p>4 Q. Right. And as a technical expert in this</p> <p>5 case and someone who reviewed the '279 patent, I'm</p> <p>6 asking your opinion on when that determination</p> <p>7 occurs.</p> <p>8 A. It can occur at various times, but it has</p> <p>9 to be determined before you do the increasing of the</p> <p>10 allocation of the resource.</p> <p>11 Q. So is it possible that the quantum is</p> <p>12 determined before the initial data flow request?</p> <p>13 A. Sure, it's possible it could be -- it's</p> <p>14 possible it could be any different places, but it</p> <p>15 has to be -- in the broadest interpretation of the</p> <p>16 claim, it has to be before you do the increase of</p> <p>17 the allocation. You can restrict it in other ways,</p> <p>18 but in using the broadest interpretation of the</p> <p>19 claim, it must be predetermined prior to the</p> <p>20 increasing.</p> <p>21 Q. Okay. I just want to turn back to column</p> <p>22 7 of the '279 patent, and I'm going to direct you to</p> <p>23 line 29 of column 7. And it starts by saying, "At a</p> <p>24 budget checking step 60, in response to a request by</p> <p>25 a node to allocate a quantum of resources, the</p>
<p style="text-align: right;">83</p> <p>1 Q. So is it your view that the quantum can be</p> <p>2 determined before any other limitation in claim 1?</p> <p>3 MS. MISBAH: Objection, form.</p> <p>4 A. The quantum to be determined? The word --</p> <p>5 like I said, "predetermined" just means beforehand.</p> <p>6 Everything else is how you read it within the claims</p> <p>7 using that definition of "predetermined."</p> <p>8 So are you asking me when the</p> <p>9 predetermining has to take place, not what the</p> <p>10 definition of "predetermined" means?</p> <p>11 Q. Correct.</p> <p>12 A. Okay. So this is not to do with claim</p> <p>13 construction. This is to do with something else.</p> <p>14 Q. Well, I'm just trying to understand how</p> <p>15 your claim construction fits in with what is claimed</p> <p>16 in the '279 patent.</p> <p>17 So the claim limitation where the term</p> <p>18 "predetermined" appears is "increasing the</p> <p>19 allocation of the resources to the first node on the</p> <p>20 selected path by a predetermined quantum." So</p> <p>21 "predetermined" qualifies "quantum," correct?</p> <p>22 A. Correct. And so you see "A" in front of</p> <p>23 "predetermined" which means that's the first</p> <p>24 introduction of the term "predetermined."</p> <p>25 So at that point it has to be determined.</p>	<p style="text-align: right;">85</p> <p>1 dispatcher checks whether allocation of the</p> <p>2 additional quantum will put the node over budget on</p> <p>3 either or both of rings 24 and 26."</p> <p>4 Do you see that?</p> <p>5 A. Yes, I do.</p> <p>6 Q. And so the '279 patent states that the</p> <p>7 budget-checking step is where the dispatcher</p> <p>8 determines whether allocation of quantum will put</p> <p>9 the particular node over its budget of resources</p> <p>10 that it can accommodate, right?</p> <p>11 MS. MISBAH: Objection, form.</p> <p>12 A. Yeah, I didn't understand your question.</p> <p>13 Q. So in the budget-checking step 60 that we</p> <p>14 just read --</p> <p>15 A. Okay.</p> <p>16 Q. -- column 7, the role of this step is to</p> <p>17 determine whether the dispatcher, which allocates</p> <p>18 resources to the other nodes, whether the allocation</p> <p>19 of additional resources in the form of quantum will</p> <p>20 put the node over its specified budget of resources</p> <p>21 that it can handle.</p> <p>22 A. So in --</p> <p>23 MS. MISBAH: Objection, form.</p> <p>24 A. In this particular embodiment, the</p> <p>25 description of the '279 patent is that the allocator</p>

<p style="text-align: right;">86</p> <p>1 checks whether the allocation of additional quantum</p> <p>2 will put the node over the budget on either ring.</p> <p>3 Q. Right. And so what does "the budget"</p> <p>4 refer to?</p> <p>5 A. What does "the budget" refer to. It's the</p> <p>6 amount that was allocated, amount of resources that</p> <p>7 was allocated previously to the node.</p> <p>8 Q. And what is meant by "whether the</p> <p>9 allocation of additional quantum will put the node</p> <p>10 over budget"?</p> <p>11 A. So I can't even read this, honestly,</p> <p>12 because the print's so small. If you're going to</p> <p>13 ask very specific questions about the embodiment,</p> <p>14 could you get me one that's printed larger so I can</p> <p>15 read it, or at least clearer?</p> <p>16 Q. Yeah, we could try to get that. I don't</p> <p>17 have it on hand. This is the certified copy that we</p> <p>18 were provided.</p> <p>19 A. So your question is about the budget?</p> <p>20 Q. Correct.</p> <p>21 A. And what is your question about the</p> <p>22 budget?</p> <p>23 Q. So what does it mean that "to determine</p> <p>24 whether the allocation of additional quantum will</p> <p>25 put the node over budget"?</p>	<p style="text-align: right;">88</p> <p>1 introduces the word "predetermined quantum" at the</p> <p>2 end.</p> <p>3 Q. So is it your view that quantum, as used</p> <p>4 in column 7 of the '279 patent to describe the</p> <p>5 determination at the budget-checking step, is</p> <p>6 different than the quantum that would be allocated</p> <p>7 in claim 1?</p> <p>8 A. That it could be. This is just one</p> <p>9 particular embodiment of how the claims are</p> <p>10 embodied. So it could be a different one. It could</p> <p>11 be the same. It's not restricted.</p> <p>12 Q. So the use of the term "quantum" could</p> <p>13 mean different things --</p> <p>14 MS. MISBAH: Objection, form.</p> <p>15 Q. -- in the context of the '279 patent?</p> <p>16 A. In the context of the '279 patent, the</p> <p>17 "predetermined," which is the word we were talking</p> <p>18 about, the amount that you predetermine the quantum</p> <p>19 doesn't have to be done until you actually increase</p> <p>20 the quantum. You could have it predetermined ahead</p> <p>21 of time, or you could not have it predetermined</p> <p>22 ahead of time.</p> <p>23 Q. And how would a quantum that is not</p> <p>24 determined ahead of time be reconciled with your</p> <p>25 proposed plain and ordinary meaning of</p>
<p style="text-align: right;">87</p> <p>1 In other words, would you agree that the</p> <p>2 budget is the amount of resources that a particular</p> <p>3 ring can accommodate?</p> <p>4 MS. MISBAH: Objection, form.</p> <p>5 A. I'd have to look. So the budget is</p> <p>6 assigned to a node.</p> <p>7 Q. And does the budget relate to the amount</p> <p>8 of resources that a node can handle at any given</p> <p>9 time?</p> <p>10 A. Yes.</p> <p>11 Q. So when -- in this budget-checking step,</p> <p>12 the dispatcher has to determine whether allocating</p> <p>13 additional resources puts a node over its specific</p> <p>14 budget.</p> <p>15 A. Correct.</p> <p>16 Q. So at that step where you have to -- the</p> <p>17 dispatcher determines whether it can allocate</p> <p>18 additional quantum, for that to make sense, the</p> <p>19 dispatcher has to know the size of the quantum</p> <p>20 before it allocates the resource in response to a</p> <p>21 request from the node, correct?</p> <p>22 MS. MISBAH: Objection, form.</p> <p>23 A. It has to know -- so that quantum is not</p> <p>24 the same as the pre- -- it doesn't have to be the</p> <p>25 same as a predetermined one in a claim because it</p>	<p style="text-align: right;">89</p> <p>1 "predetermined" as -- to be -- to come beforehand?</p> <p>2 A. I didn't understand that question.</p> <p>3 Q. So, strike that.</p> <p>4 Turning back to the budget-checking step</p> <p>5 we were just talking about in column 7, the specific</p> <p>6 size of the quantum that's discussed here would have</p> <p>7 to be known prior to the dispatcher's determination</p> <p>8 of whether to allocate additional quantum to the</p> <p>9 node requesting resources, correct?</p> <p>10 A. Can you read it back?</p> <p>11 (The pending question was read)</p> <p>12 A. It would have to know a size for that</p> <p>13 quantum, yes. But it doesn't mean that you couldn't</p> <p>14 increase it by a different amount. Could be greater</p> <p>15 or less than that when you're just checking to see</p> <p>16 with -- what -- what's within the budget. But if</p> <p>17 you wanted to, maybe you could add double because</p> <p>18 you wanted to give it extra resources later on. The</p> <p>19 predetermined quantum is the one that got increased.</p> <p>20 Q. When you say "add double," do you mean two</p> <p>21 quanta?</p> <p>22 A. Let's assume that -- and it's kind of</p> <p>23 confusing because "quantum" and "increased by a</p> <p>24 predetermined quantum" can be two different things.</p> <p>25 The embodiment doesn't have them being two different</p>

<p style="text-align: right;">90</p> <p>1 things, but they could be two different things.</p> <p>2 So the one -- you could take the amount of</p> <p>3 traffic in your network and say, "Hey, my traffic is</p> <p>4 really low right now, and when I increase it, I'm</p> <p>5 going to increase it by this predetermined amount,"</p> <p>6 and I can be managing it on a different amount of</p> <p>7 quantum. That's not restricted in the claims to be</p> <p>8 predetermined.</p> <p>9 Q. So it's your view that the additional</p> <p>10 quantum talked about in the budget-checking step is</p> <p>11 different than the predetermined quantum?</p> <p>12 A. It can be.</p> <p>13 Q. Okay. So it's probably a good time to</p> <p>14 shift to the next term which is "quantum" itself.</p> <p>15 Your opinions on that appear beginning paragraph 31</p> <p>16 of your declaration.</p> <p>17 A. Correct.</p> <p>18 Q. And it's your opinion that "quantum" does</p> <p>19 not need a construction beyond the plain and</p> <p>20 ordinary meaning, correct?</p> <p>21 A. Which is simply an amount, correct.</p> <p>22 Q. And you would agree that a quantum needs</p> <p>23 to be a certain amount?</p> <p>24 MS. MISBAH: Objection, form.</p> <p>25 A. An amount, yes.</p>	<p style="text-align: right;">92</p> <p>1 decrease, that's directly contradicted by the spec,</p> <p>2 because quanta -- quantum is not the amount that</p> <p>3 you're increasing or decreasing. Quanta is</p> <p>4 multiples of quantum.</p> <p>5 Q. It's possible to allocate a singular</p> <p>6 quantum, right?</p> <p>7 A. That's not -- Cisco's definition says an</p> <p>8 amount of requested resource by which to increase or</p> <p>9 decrease, not that it's possible, in a possible</p> <p>10 amount to be increased or decreased. So Cisco's --</p> <p>11 the proposed construction is contradicted by the</p> <p>12 spec.</p> <p>13 Q. So I just want to clarify. So the term</p> <p>14 that's in dispute is "quantum."</p> <p>15 A. Right.</p> <p>16 Q. And in the spec at line 26, column 5, the</p> <p>17 '279 patent, it says, "node quantum ... Amount by</p> <p>18 which to increase or decrease node used In or Out at</p> <p>19 each resource allocation or deallocation."</p> <p>20 Isn't that the basis of Cisco's</p> <p>21 construction?</p> <p>22 A. In -- if you look at column 6 around line,</p> <p>23 let's see, 58, "Otherwise, the node requests one or</p> <p>24 more quanta of the resource, as needed, from the</p> <p>25 dispatcher."</p>
<p style="text-align: right;">91</p> <p>1 Q. In other words, you would agree that a</p> <p>2 quantum needs to be a certain size?</p> <p>3 A. A quantum will have a certain size.</p> <p>4 Q. And we turn to the two seven (sic) patent</p> <p>5 again, the '279 patent, and we turn to column 5</p> <p>6 beginning at line 26. It reads, "node quantum ...</p> <p>7 Amount by which to increase or decrease node used In</p> <p>8 or Out at each resource allocation or deallocation.</p> <p>9 Resources are allocated in quanta in order to limit</p> <p>10 the frequency with which allocation and deallocation</p> <p>11 operations must be performed."</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. And so in the '279 patent, the size of the</p> <p>15 particular quantum is not different or specific to</p> <p>16 each individual request. It's based -- it's a fixed</p> <p>17 amount that is applied to all resource requests,</p> <p>18 right?</p> <p>19 A. No. It's quanta, plural. So quantum is a</p> <p>20 unit, an amount, and they're saying you can allocate</p> <p>21 in quanta, which are plural. So you can allo- --</p> <p>22 you can ask requests for multiple quantum.</p> <p>23 Q. Right. And --</p> <p>24 A. So when Cisco says an amount by -- an</p> <p>25 amount of requested resource by which to increase or</p>	<p style="text-align: right;">93</p> <p>1 So you can see the node's requesting</p> <p>2 quanta, not quantum. It's what we call multiples of</p> <p>3 an amount, not -- the amount requested is not a</p> <p>4 quantum.</p> <p>5 Q. So would you agree that a quantum is the</p> <p>6 minimum increment by which a node can request</p> <p>7 resources?</p> <p>8 A. You mean in the embodiment that we're</p> <p>9 talking about here?</p> <p>10 Q. In the specification.</p> <p>11 A. In the spec- -- in this particular</p> <p>12 embodiment, right? Is that what you're asking?</p> <p>13 Q. Quantum is the singular of quanta.</p> <p>14 A. Correct.</p> <p>15 Q. So when resources are allocated by quanta,</p> <p>16 that is multiple quantum.</p> <p>17 A. In this embodiment, yes. That's why it</p> <p>18 says one or more quanta. But Cisco's proposed</p> <p>19 definition says "an amount of requested resources by</p> <p>20 which to increase or decrease."</p> <p>21 So that is in contradiction to what's said</p> <p>22 everywhere, that you can increase and decrease it by</p> <p>23 more than a quantum. You can increase it by</p> <p>24 multiple quantum or quanta.</p> <p>25 Q. And so would you agree that a quantum is</p>

<p style="text-align: right;">94</p> <p>1 the minimal -- the minimum increment by which a 2 resource can be allocated?</p> <p>3 A. In this particular embodiment they're 4 discussing here, yes, not that the claims are 5 restricted in any way. Only that it was 6 predetermined, I guess, in that particular increase 7 of -- increase in a quanta.</p> <p>8 Q. Is it your view that there are embodiments 9 in the '279 patent that only describe requesting 10 resources in multiple quanta and not -- and it's 11 impossible to request a singular quantum of 12 resources?</p> <p>13 A. No, I think this embodiment has both. It 14 says "one or more quanta." So that's requesting one 15 or more.</p> <p>16 Q. And so would you agree that you cannot 17 increase or decrease resources by less than one 18 quantum in the '279 patent?</p> <p>19 A. In the embodiment they're talking about 20 here, that seems to be. But as I say, that's not 21 Cisco's definition. So I don't know why we're 22 discussing it. But in this particular embodiment, 23 you can increase it by one or more quanta.</p> <p>24 Q. And in the '279 patent, what is the unit 25 of measurement of a quantum?</p>	<p style="text-align: right;">96</p> <p>1 A. Correct, that's how it's described in the 2 specification.</p> <p>3 Q. And so if a node needed a certain amount 4 of resources greater than two quanta but less than 5 three quanta, the node would be given three quanta, 6 correct?</p> <p>7 A. Under some situations if there was 8 available bandwidth for that, if we're going to use 9 bandwidth as a resource, then yes, that would happen 10 in this embodiment.</p> <p>11 Q. And so based on that example, the size of 12 a quantum is not determined to be the exact amount 13 of a resource a node needs at a given point. It's a 14 specific size.</p> <p>15 A. I like to say "amount." That's why I said 16 the definition of "quantum" is an amount.</p> <p>17 Q. So using "amount," in the '279 patent the 18 quantum that is allocated, based on the resource 19 request from the node, is not determined based on 20 the exact amount the node is requesting; it's a 21 specific, fixed amount that is known beforehand?</p> <p>22 MS. MISBAH: Objection, form.</p> <p>23 A. I would have to look at -- in a 24 hypothetical it may be true or it may -- the node 25 knows to request in a quanta, so it's going to be</p>
<p style="text-align: right;">95</p> <p>1 A. I don't think they actually define it 2 because they want to keep it broad that it can work 3 with any resource.</p> <p>4 Q. So in your experience, the types of 5 networks discussed in the '279 patent, what would be 6 an example of a typical size of a quantum?</p> <p>7 A. Typical -- it depends on what resource 8 you're managing.</p> <p>9 Q. So let's say the resource is bandwidth.</p> <p>10 A. Let's see. Typically we do that in -- in 11 the class I teach, it's -- if we're doing an MPLS 12 network and we're doing admission control, 1 13 megabyte could be a typical one you use. We're 14 talking about bandwidth as a resource.</p> <p>15 If you're talking about jitter, you're 16 probably talking about the inverse of the buffer 17 size so you could control the jitters. As I noticed 18 in the '279 patent, they weren't specific on what 19 resource they were managing, they were just 20 increasing or decreasing a quantum, an amount of 21 something.</p> <p>22 Q. Right. And the way the '279 describes 23 quantum or quanta is that it's allocated in whole 24 numbers, right? So, for example, one quantum, two 25 quanta, five quanta?</p>	<p style="text-align: right;">97</p> <p>1 exactly what they request. So it wouldn't be like 2 requesting for two and a half if you said the node 3 is going to work in a unit, the amounts of the 4 quantum.</p> <p>5 Q. So in the '279 patent, the unit of the 6 quantum is --</p> <p>7 A. The amount.</p> <p>8 Q. -- is known before the node requests 9 additional resources?</p> <p>10 MS. MISBAH: Objection, form.</p> <p>11 A. It may or may not.</p> <p>12 Q. So the point of giving resources in 13 increments of quanta is to limit the number of times 14 resources need to be requested by nodes, correct?</p> <p>15 A. It can be one of the benefits.</p> <p>16 Q. So if we turn back to the '279 patent, 17 column 5, line 28, it says, "Resources are allocated 18 in quanta in order to limit the frequency with which 19 allocation and deallocation operations must be 20 performed." Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. So you'd agree that in the '279 patent, 23 the purpose of allocating resources in quanta is to 24 limit the amount of times nodes have to request 25 additional resources, right?</p>

<p style="text-align: right;">98</p> <p>1 A. It can be one advantage of it, yes.</p> <p>2 Q. What are other advantages of allocating</p> <p>3 resources in quanta?</p> <p>4 A. You may want to, let's say, restrict</p> <p>5 jitter and therefore want to keep your cues short</p> <p>6 and therefore may not want to allocate too much</p> <p>7 quanta, if quanta's buffer-size.</p> <p>8 Q. And what are other ways of allocating</p> <p>9 resources that a person of ordinary skill in the art</p> <p>10 would know of besides doing so in predetermined</p> <p>11 quanta?</p> <p>12 A. You could just request the exact value you</p> <p>13 need for the resource.</p> <p>14 Q. So allocating resources in quanta is</p> <p>15 different than giving the exact amount of resources</p> <p>16 a particular node needs?</p> <p>17 A. It depends what the -- if you -- quanta is</p> <p>18 an amount that's used in the specification. If</p> <p>19 the -- if you needed resources in different than</p> <p>20 those amounts, they may request -- the request may</p> <p>21 not be in quanta.</p> <p>22 Q. And so in the specification of the '279</p> <p>23 patent, resources are allocated in quanta, right?</p> <p>24 A. Yes, in multiples of quanta.</p> <p>25 Q. And allocating resources in quanta, like</p>	<p style="text-align: right;">100</p> <p>1 Q. So taking that example, can you explain</p> <p>2 again how requesting the specific amount of</p> <p>3 resources that's needed by a node is different than</p> <p>4 allocating resources in multiples of quantum like in</p> <p>5 the '279 patent?</p> <p>6 A. Sure. So the guy wanted a request of 1.45</p> <p>7 megabits, and the quanta set up in the system for</p> <p>8 budgeting requests was only set up in 5 megabits.</p> <p>9 So that would be different. His request would be a</p> <p>10 1.45, but you could only allocate the quantum as 5</p> <p>11 megabits, an amount of 5 megabits, instead of</p> <p>12 requesting 1.45 and getting 1.45.</p> <p>13 Q. Right. Okay. And so in that example that</p> <p>14 you just explained, the dispatcher would allocate 1</p> <p>15 quantum to the requesting node?</p> <p>16 A. Correct.</p> <p>17 Q. Now, I want to turn to the file history of</p> <p>18 the '279 patent which you've reviewed, correct?</p> <p>19 A. Correct.</p> <p>20 Q. This is a big one.</p> <p>21 (Exhibit 7 marked)</p> <p>22 Q. So the '279 patent's file history is</p> <p>23 marked as Exhibit 7. Is Exhibit 7 the '279 file</p> <p>24 history that you reviewed?</p> <p>25 A. I believe so.</p>
<p style="text-align: right;">99</p> <p>1 in the '279 patent, is different than dynamic</p> <p>2 allocations of resources that are the exact amount</p> <p>3 that a node needs at a particular time.</p> <p>4 A. So I guess I can't understand what you</p> <p>5 mean by "dynamic allocation of resources."</p> <p>6 The -- the quanta is, you know, like I</p> <p>7 said, is not a term of art. It's a construct of</p> <p>8 this patent that is used in the -- to -- to manage</p> <p>9 the admission control system.</p> <p>10 And do we have dynamic admission control</p> <p>11 systems? We do, though, but those are generally</p> <p>12 based on policing and not -- this is based on an</p> <p>13 RSVP protocol which is based off IntServ which is a</p> <p>14 pre-request.</p> <p>15 So I don't know -- I'm trying to figure</p> <p>16 out what a possible definition of the "dynamic</p> <p>17 allocation" is other than a more granular allocation</p> <p>18 in your question.</p> <p>19 Q. So, for example, at every point that a</p> <p>20 node needs additional resources, the node would</p> <p>21 request resources from, let's say, the dispatcher,</p> <p>22 and the dispatcher would allocate additional</p> <p>23 resources at the exact amount that's requested?</p> <p>24 A. That could be. That could be something</p> <p>25 that happens, yes.</p>	<p style="text-align: right;">101</p> <p>1 Q. So can you turn to the page stamped with</p> <p>2 Bates number PNC-CSC0000822.</p> <p>3 A. Yes.</p> <p>4 Q. And so this page begins an amendment and a</p> <p>5 response by the '279 patent's applicant to the</p> <p>6 examiner in response to rejection of the claims.</p> <p>7 Right?</p> <p>8 A. Right.</p> <p>9 Q. And so turning to the next page ending in</p> <p>10 823, the underlined parts of the claims are</p> <p>11 amendments to the claim, correct?</p> <p>12 A. Correct.</p> <p>13 Q. And here the underlined parts include</p> <p>14 reference to limitations including quanta and</p> <p>15 quantum, right?</p> <p>16 A. Correct.</p> <p>17 Q. And you'd agree that the addition of these</p> <p>18 amendments to claim 1 that include quantum and</p> <p>19 quanta were added to overcome a rejection based on</p> <p>20 the prior art?</p> <p>21 A. So it said the applicant amended claims 1</p> <p>22 and 15 to overcome this rejection of the prior art.</p> <p>23 Q. So you would agree that the addition --</p> <p>24 that these amendments were meant to overcome --</p> <p>25 A. Correct.</p>

<p style="text-align: right;">102</p> <p>1 Q. -- the prior art for claim 1?</p> <p>2 Now, if you could turn to page stamped</p> <p>3 with Bates number ending in 830 which is also part</p> <p>4 of this applicant response.</p> <p>5 A. Sure.</p> <p>6 Q. And turning to the bottom of this page</p> <p>7 beginning with the paragraph "Original claim 9."</p> <p>8 Do you see that?</p> <p>9 A. Uh-huh. Sorry. Original claim 9. Got</p> <p>10 it.</p> <p>11 Q. And here in this paragraph, the applicant</p> <p>12 is explaining how the allocation of resources by a</p> <p>13 predetermined quantum is different than the prior</p> <p>14 art cited by the examiner, right?</p> <p>15 A. So what was your question again? I was</p> <p>16 reading it. Sorry.</p> <p>17 Q. So in this paragraph in the '279 file</p> <p>18 history, the applicant is explaining how the</p> <p>19 allocation of resources by a predetermined quantum</p> <p>20 is different than the allocation of resources</p> <p>21 described in the prior art cited by the examiner,</p> <p>22 right?</p> <p>23 A. Right.</p> <p>24 Q. And if we look midway through this</p> <p>25 paragraph, the applicant says, "The cited passage in</p>	<p style="text-align: right;">104</p> <p>1 allocating resources based on statistical</p> <p>2 multiplexing?</p> <p>3 A. So that's what I was alluding to earlier</p> <p>4 when I talked about policing. So statistical</p> <p>5 multiplexing means you are hoping that the amount of</p> <p>6 data coming in doesn't overflow your buffers, you're</p> <p>7 using statistics to say .999 probability that it's</p> <p>8 not going to fail. So that is, you know, as I say,</p> <p>9 diametrically opposed to allocating them in quanta.</p> <p>10 So instead of using a statistical way of</p> <p>11 determining whether you're going to stay within --</p> <p>12 your resource is going to stay within bounds, you're</p> <p>13 using a deterministic way.</p> <p>14 Q. Wouldn't it be obvious to a person of</p> <p>15 ordinary skill in the art to allocate resources</p> <p>16 based on predetermined amounts rather than</p> <p>17 dynamically based on what's actually needed by the</p> <p>18 node?</p> <p>19 A. "Would need to be obvious."</p> <p>20 Well, I mean, they're diametrically</p> <p>21 opposed, so you couldn't say one derives from the</p> <p>22 other, one's obvious in light of the other. That</p> <p>23 you can allocate resources in quantities, you only</p> <p>24 have so many schedulers, so you would do one</p> <p>25 scheduler, two schedulers, three schedulers, four</p>
<p style="text-align: right;">103</p> <p>1 Chin describes methods for updating available and</p> <p>2 allocated bandwidth, in the context of a method by</p> <p>3 which nodes dynamically increase and decrease their</p> <p>4 fair share of bandwidth by statistical</p> <p>5 multiplexing."</p> <p>6 A. Right.</p> <p>7 Q. So the applicant is making the distinction</p> <p>8 between allocating resources in predetermined</p> <p>9 quantum and allocating resources dynamically by</p> <p>10 using statistical multiplexing, right?</p> <p>11 A. Correct.</p> <p>12 Q. And the next paragraph, the applicant</p> <p>13 says, "This approach is diametrically opposed to</p> <p>14 that recited in amended claim 1, wherein resources</p> <p>15 are specifically requested by the nodes and</p> <p>16 allocated to them in quanta." Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. And so the applicant is making the point</p> <p>19 that allocating resources in quanta is different</p> <p>20 than the dynamic increase or decrease of resources</p> <p>21 using statistical multiplexing in the prior art</p> <p>22 reference, right?</p> <p>23 A. Correct.</p> <p>24 Q. In your view, how is allocating a</p> <p>25 predetermined quantum different from dynamically</p>	<p style="text-align: right;">105</p> <p>1 schedulers, depending on the particular product</p> <p>2 you're using.</p> <p>3 So I don't understand when you say to be</p> <p>4 "obvious." Both techniques exist. The statistical</p> <p>5 multiplexing is dynamic in that the load is</p> <p>6 dynamically changing, and that is a different way of</p> <p>7 trying to solve the problem than doing the</p> <p>8 incremental deterministic way.</p> <p>9 Q. And so you would agree that allocating</p> <p>10 resources dynamically in response to the particular</p> <p>11 need of the node was well known before the '279</p> <p>12 patent?</p> <p>13 A. That concept, yeah, existed prior to the</p> <p>14 '279 patent.</p> <p>15 Q. Are you aware of any uses outside of the</p> <p>16 '279 patent that uses the quantum approach of</p> <p>17 allocating resources?</p> <p>18 MS. MISBAH: Objection, form.</p> <p>19 A. I haven't investigated that in any way,</p> <p>20 shape, or form, so as I sit here, no. If asked to</p> <p>21 investigate it, I'll look into it.</p> <p>22 Q. So just going back to the example you gave</p> <p>23 with a quantum being 5 megabits, I believe you said?</p> <p>24 A. It could be.</p> <p>25 Q. So let's say the example you gave before</p>

<p style="text-align: right;">106</p> <p>1 where a quantum is found to be 5 megabits. We're</p> <p>2 talking about bandwidth using that quantum size in</p> <p>3 the '279 patent.</p> <p>4 If you were just to get what you needed,</p> <p>5 like you said, 1.45, you would be getting fractions</p> <p>6 of the determined quantum size, correct?</p> <p>7 MS. MISBAH: Objection, form.</p> <p>8 A. Well, yeah, I didn't --</p> <p>9 Q. I'm sorry.</p> <p>10 A. First of all, the patent doesn't discuss</p> <p>11 bandwidth or -- there's a lot in there.</p> <p>12 Q. So just taking a step back. The</p> <p>13 difference between allocating resources you need and</p> <p>14 allocating resources in multiples of quantum in the</p> <p>15 '279 patent is that allocating resources based on</p> <p>16 predetermined quantum is a less granular approach to</p> <p>17 allocating resources.</p> <p>18 A. It could be. I was giving an example of</p> <p>19 how they were different, so it could be. Could also</p> <p>20 be if it's a really tight, small amount, then maybe</p> <p>21 you're always allocating it. If it's, you know --</p> <p>22 let's say it's, you know, 1 bit per second, then</p> <p>23 you're probably always going to be able to allocate</p> <p>24 it in that amount because you're not going to be</p> <p>25 able to measure it lower than that. So it could or</p>	<p style="text-align: right;">108</p> <p>1 It's just like we do -- used to do in a</p> <p>2 telephone network where we said statistically you're</p> <p>3 not going to get a busy signal because we build our</p> <p>4 switches this way. So the dynamic approach they</p> <p>5 were talking about in the file history was using a</p> <p>6 statistical multiplexing approach.</p> <p>7 So there is no request. There is no</p> <p>8 pre-request for anything in the statistical</p> <p>9 multiplexing approach other than you may have what</p> <p>10 we call, I alluded to earlier, policers. So you may</p> <p>11 police them at a peak rate and then use statistical</p> <p>12 multiplexing to say you can survive 99.99 percent at</p> <p>13 a time without dropping a packet.</p> <p>14 Q. So the '279 patent requires a request for</p> <p>15 additional resources in order to be allocated</p> <p>16 quantum?</p> <p>17 A. Yeah, '279 does request additional</p> <p>18 resources.</p> <p>19 MS. OWENS: Maybe this is a time -- a good</p> <p>20 time to take another short break.</p> <p>21 THE WITNESS: Okay. Are you done with</p> <p>22 this one so I can get it out in front of me?</p> <p>23 MS. OWENS: We are, yes.</p> <p>24 THE VIDEOGRAPHER: We are off the record</p> <p>25 at 2:23 p.m.</p>
<p style="text-align: right;">107</p> <p>1 it couldn't be.</p> <p>2 Q. So in instances where the amount needed is</p> <p>3 not the equivalent of the size of the quantum, if</p> <p>4 you were to get -- if you needed an amount of</p> <p>5 resources less than the size of the quantum, the</p> <p>6 prior arts approach would be to allocate a fraction</p> <p>7 of a quantum that is measured to be bigger than</p> <p>8 what's actually needed?</p> <p>9 A. What prior art approach are you referring</p> <p>10 to?</p> <p>11 Q. The -- the dynamic increasing and</p> <p>12 decreasing.</p> <p>13 MS. MISBAH: Objection, form.</p> <p>14 A. There's no request in a dynamic incre- --</p> <p>15 the statistical multiplexing, there is no request.</p> <p>16 You're just depending -- as I was trying to describe</p> <p>17 earlier, you're depending on statistics, not on</p> <p>18 requests. That's the fundamental difference between</p> <p>19 RSVP, which is cited in this, and a DiffServ which</p> <p>20 is the competing way of doing it.</p> <p>21 And it -- it's literally instead of a</p> <p>22 request, you're just assuming a certain curve,</p> <p>23 certain probability of, let's say, peak cell rates</p> <p>24 or peak megabits per second in a stream and saying</p> <p>25 statistically I'm going to be okay.</p>	<p style="text-align: right;">109</p> <p>1 (Recess from 2:23 to 2:35)</p> <p>2 THE VIDEOGRAPHER: We are back on the</p> <p>3 record at 2:35 p.m.</p> <p>4 BY MS. OWENS:</p> <p>5 Q. Welcome back, Dr. Olivier.</p> <p>6 A. Thank you.</p> <p>7 Q. I just have one final question on the '279</p> <p>8 patent that we were talking about.</p> <p>9 If you have a system that is allocating</p> <p>10 the exact amount of a resource based on a request,</p> <p>11 how can you know if the system is using</p> <p>12 predetermined quantum or not if -- if the quantum</p> <p>13 can be the smallest unit of measurement for that</p> <p>14 resource?</p> <p>15 MS. MISBAH: Objection, form.</p> <p>16 A. You can't tell from that example. You'd</p> <p>17 have to look at the way the system was designed and</p> <p>18 how the software was written.</p> <p>19 Q. And so would you find then software where</p> <p>20 the system is configured to allocate in quantum?</p> <p>21 A. You probably would, yes.</p> <p>22 Q. Is the size of the quantum determined by</p> <p>23 the manager of the particular system, or is it --</p> <p>24 A. Could be done all sorts of ways.</p> <p>25 Q. Okay. So you could put aside Exhibit 6,</p>

<p style="text-align: right;">110</p> <p>1 I believe. Now, let's turn to page 10 of your 2 declaration which begins your discussion on the '394 3 patent. Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. And did you read the '394 patent?</p> <p>6 A. Yes.</p> <p>7 Q. Did you understand the '394 patent?</p> <p>8 A. Yes.</p> <p>9 Q. What would you say the '394 patent is 10 about?</p> <p>11 A. So the '394 patent is about an improved 12 way of delivering multicast traffic over a 13 communications network.</p> <p>14 Q. And one example of multicast traffic 15 that's given throughout the '394 patent is using a 16 television, right?</p> <p>17 A. Oh, you mean IPTV. That's not using a 18 television. Sorry.</p> <p>19 Q. So let's -- if you look at the '394 20 patent, go to column 4.</p> <p>21 A. Right.</p> <p>22 Q. Down to the "Overview" section starting at 23 line 44, or I guess the second sentence forty -- at 24 line 46.</p> <p>25 A. Right.</p>	<p style="text-align: right;">112</p> <p>1 application discussed in the '394 patent, this is 2 relating to the delay in stopping and receiving 3 multicast content when a person changes a television 4 channel, correct?</p> <p>5 A. Correct.</p> <p>6 Q. In your view as Portsmouth's technical 7 expert and someone who's read the '394 patent, how 8 has the invention of the '394 patent improved on the 9 prior art?</p> <p>10 A. How has it improved? I think it's a -- 11 it's a novel way of reducing the amount of time it 12 takes to switch from one multicast packet stream to 13 another multicast packet stream.</p> <p>14 Q. Are you aware of anyone ever using the 15 '394 patent from your experience as a technical 16 expert and your work in the networking space?</p> <p>17 A. So, to be clear, I never saw these patents 18 before, let's say in the last six months. So, no, I 19 didn't perform any infringement analysis and compare 20 the claims in the patent to any known systems out 21 there. So I'm not aware of anyone who is practicing 22 the claims of the '394 patent at this point.</p> <p>23 Q. Now, turning to your declaration, the 24 first term you addressed from the '394 patent is the 25 high-capacity port, right?</p>
<p style="text-align: right;">111</p> <p>1 Q. "For example, in an Internet Protocol 2 Television (IPTV) application, when a user switches, 3 or zaps, from one television channel to another, the 4 user's set-top box initiates a process of stopping 5 to receive one multipacket -- one multicast packet 6 stream and starting to receive another multicast 7 stream."</p> <p>8 A. Correct.</p> <p>9 Q. So one example that involves multicast 10 traffic in the real world is when a user switches 11 channels on a TV.</p> <p>12 A. So I guess broadcast television versus 13 IPTV, which is internet packets carrying television 14 stations. When you said "television," I was 15 assuming you were talking broadcast. So that's what 16 I said, oh, IPTV, now we're talking about multicast 17 packets which are, you know, subtly different.</p> <p>18 Q. And what's the difference between IPTV and 19 broadcasting?</p> <p>20 A. So in IPTV, you can send any kind of codec 21 you want to and compress the visual and audio 22 information where over broadcast TV you're 23 specifically assigned with the NTSB (sic) framing 24 and how the scans go across the television set.</p> <p>25 Q. Got it. And in terms of the IPTV</p>	<p style="text-align: right;">113</p> <p>1 A. Right.</p> <p>2 Q. And in paragraph 35 of your declaration, 3 you state that, "The claim language confirms that a 4 high-capacity port is a port formed by aggregating 5 two or more ports." Do you see that?</p> <p>6 A. Yes, I do.</p> <p>7 Q. How does the claim language confirm that a 8 high-capacity port is a port formed by aggregating 9 two or more ports?</p> <p>10 A. It says, "wherein operating the network 11 element comprises aggregating two or more ports to 12 form a high-capacity port."</p> <p>13 Q. Are there other ways of forming a 14 high-capacity port?</p> <p>15 A. Are there other ways of forming a 16 high-capacity port? There's, let's say, ambiguity 17 in what a high-capacity port is outside of what the 18 claim language is defining a high-capacity port to 19 be in the claim language.</p> <p>20 And the easiest way to think about it is 21 20 years from now what we're calling a high-capacity 22 port won't be a high-capacity port. It's kind of, 23 you know, something that's relative to the time, if 24 you were just taking what a person of ordinary skill 25 would think, if you presented them the term</p>

<p style="text-align: right;">114</p> <p>1 "high-capacity port."</p> <p>2 Q. And so how would a high-capacity port be</p> <p>3 formed in terms of aggregating two or more of the</p> <p>4 ports? What's the formation process?</p> <p>5 A. You can bond them together and say these</p> <p>6 two -- these two or more ports are going to the same</p> <p>7 place, so you're aggregating two links that are</p> <p>8 attached to these two ports to the same switch on</p> <p>9 the other side.</p> <p>10 Q. Are there any other ways of aggregating</p> <p>11 two or more ports?</p> <p>12 A. I mean, that's the broadest way. There is</p> <p>13 a port aggregation protocol that was proposed by</p> <p>14 Cisco. There's a EtherChannel which is implemented</p> <p>15 by Cisco. There's -- there's a -- the broadest way</p> <p>16 of interpreting it is just aggregating two or more</p> <p>17 ports together to go to the same place. They call</p> <p>18 that a high-capacity port, I think because now</p> <p>19 you've doubled the capacity of the port.</p> <p>20 Q. So you mentioned how the meaning of</p> <p>21 high-capacity port might evolve over time. So going</p> <p>22 back to the priority date of the patent, which is</p> <p>23 February 11th, 2009, the meaning of high-capacity</p> <p>24 port in 2009 could be different than what it means</p> <p>25 today to a person of ordinary skill in the art,</p>	<p style="text-align: right;">116</p> <p>1 high-capacity port in light of the claim language.</p> <p>2 Q. Is the formation of a LAG different than</p> <p>3 the formation of other high-capacity ports?</p> <p>4 A. A high-capacity -- how do you -- what are</p> <p>5 you defining as a high-capacity port in that</p> <p>6 question?</p> <p>7 Q. The broadest possible view of what a</p> <p>8 high-capacity port --</p> <p>9 A. So outside of the '394 specification or</p> <p>10 outside of the claim language of the '394? You're</p> <p>11 asking in general is a LAG different than a</p> <p>12 high-capacity port?</p> <p>13 Q. Well, taking a step back, you stated that</p> <p>14 a LAG is a type of high-capacity port, but --</p> <p>15 A. I stated in regards to the '394 patent</p> <p>16 claims it's a high-capacity port because it's an</p> <p>17 aggregation of two or more ports.</p> <p>18 Q. Are there other types of high-capacity</p> <p>19 ports that are not LAGs?</p> <p>20 A. Yes. As I said in the '394</p> <p>21 specification -- I mean in the claim language, you</p> <p>22 just -- you just have to aggregate two ports to</p> <p>23 create a high-capacity port. That's why I said it</p> <p>24 confirms that that is -- that's what the claim</p> <p>25 language requires to create a high-capacity port is</p>
<p style="text-align: right;">115</p> <p>1 right?</p> <p>2 A. Outside of reading it in light of the</p> <p>3 specification and the claims, yes.</p> <p>4 Q. Now, the '394 patent also mentions link</p> <p>5 aggregation groups, or LAGs.</p> <p>6 A. Yes.</p> <p>7 Q. And are you familiar with what a LAG is?</p> <p>8 A. Yes.</p> <p>9 Q. What is it?</p> <p>10 A. A LAG, it's a specific protocol developed</p> <p>11 by the IETF for link aggregation. So it's a -- it's</p> <p>12 a standard that allows you to aggregate links</p> <p>13 together. It involves -- you can do failover. You</p> <p>14 basically cycle the packets through each of the</p> <p>15 links in a round robin fashion. So it's a</p> <p>16 particular way of aggregating ports.</p> <p>17 Q. Is a LAG a high-capacity port?</p> <p>18 A. It is in the context of the claims of the</p> <p>19 '394 patent because we're aggregating two or more</p> <p>20 ports.</p> <p>21 Q. Is there any difference between a LAG and</p> <p>22 a high-capacity port?</p> <p>23 A. Yes. It doesn't have to be done by the</p> <p>24 standards. You can just aggregate or bond two ports</p> <p>25 going to the same place, and that would be a</p>	<p style="text-align: right;">117</p> <p>1 the aggregation of two or more ports. A LAG does</p> <p>2 provide that functionality. There's other ways of</p> <p>3 doing it too.</p> <p>4 Q. And what are those other ways of doing it?</p> <p>5 A. Like I described earlier, the port</p> <p>6 aggregation protocol developed by Cisco is another</p> <p>7 way of doing it. The static LAG is a different way</p> <p>8 than the standardized LAG. There is just bonding</p> <p>9 two ports together to go to a particular place as a</p> <p>10 third way of doing it outside of the LAG standard.</p> <p>11 Q. So the port aggregation protocol developed</p> <p>12 by Cisco is -- does not form a LAG when implemented?</p> <p>13 A. It doesn't --</p> <p>14 MS. MISBAH: Objection, form.</p> <p>15 A. It doesn't conform to the LAG standard.</p> <p>16 Q. Aggregating ports together was well known</p> <p>17 before the '394 patent, right?</p> <p>18 A. Sure. You would send two or -- two ports</p> <p>19 together to the same place prior to the '394 patent.</p> <p>20 Q. And LAGs were well known before the '394</p> <p>21 patent as well, right?</p> <p>22 A. Correct.</p> <p>23 Q. Now, the formation of an aggregated port</p> <p>24 using the port aggregation protocol developed by</p> <p>25 Cisco, that's different than what was invented in</p>

<p style="text-align: right;">118</p> <p>1 the '394 patent, right?</p> <p>2 MS. MISBAH: Objection, form.</p> <p>3 A. Yeah, I don't understand your question.</p> <p>4 What's invented in the '394 patent is what's</p> <p>5 described in the claims, and I don't think these</p> <p>6 claims describe the port aggregation protocol of</p> <p>7 Cisco, so your question doesn't -- it's hard to</p> <p>8 understand.</p> <p>9 Q. The port aggregation protocol developed by</p> <p>10 Cisco is different than the formation of a</p> <p>11 high-capacity port as described in the '394 patent.</p> <p>12 A. No.</p> <p>13 Q. How so?</p> <p>14 A. How so? Port aggregation protocol of</p> <p>15 Cisco is the aggregation of two or more ports to</p> <p>16 create a high-capacity port.</p> <p>17 Q. Why is it beneficial to form a</p> <p>18 high-capacity port in the '394 patent?</p> <p>19 A. You typically form high-capacity ports to</p> <p>20 get more connectivity, more bandwidth from one point</p> <p>21 to another. That's the benefit of a high-capacity</p> <p>22 port.</p> <p>23 Q. And how does that benefit of providing</p> <p>24 more connectivity and more bandwidth play into the</p> <p>25 specific invention of let's say claim 1 of the '394</p>	<p style="text-align: right;">120</p> <p>1 uncertainty to the claim language?</p> <p>2 A. It -- "newly-inserted" is -- so "insert"</p> <p>3 is an action, "inserted." "Newly-inserted." So</p> <p>4 that adds a temporal -- it adds a temporal aspect to</p> <p>5 an action.</p> <p>6 Q. And how does "newly-inserted" differ from</p> <p>7 "a new processing unit added"?</p> <p>8 A. Because it -- "newly" is -- "a new</p> <p>9 processing unit" is just something that wasn't there</p> <p>10 before. It was added. It's a new processing unit.</p> <p>11 "Newly-inserted" has this, "I just inserted into the</p> <p>12 system this processor."</p> <p>13 So it has the problem with the temporal</p> <p>14 aspect, and also the "inserted" part kind of implies</p> <p>15 it's a backplane system so you can't use a cabling</p> <p>16 system to connect your processing units. And I</p> <p>17 don't see any restrictions in the specification or</p> <p>18 in the claim language that it has to be a backplane</p> <p>19 system that has newly-inserted processor units. I</p> <p>20 mean, that's just one embodiment.</p> <p>21 Q. So if not "inserted," what would</p> <p>22 constitute "added" as used in the term?</p> <p>23 A. Cabling it.</p> <p>24 Q. Can you explain that a bit more?</p> <p>25 A. How do you connect cables on the back of a</p>
<p style="text-align: right;">119</p> <p>1 patent?</p> <p>2 MS. MISBAH: Objection, form.</p> <p>3 A. I think it's a limitation of claim 1 of</p> <p>4 the '394 patent.</p> <p>5 Q. Okay. So let's set this aside and you can</p> <p>6 turn to the next term of the '394 patent that you</p> <p>7 discuss in your declaration starting at paragraph</p> <p>8 38. So the next claim term you discuss is "a new</p> <p>9 processing unit added to the network element,"</p> <p>10 right?</p> <p>11 A. Correct.</p> <p>12 Q. And you contend that a new processing unit</p> <p>13 added to the network element does not need any</p> <p>14 construction, right?</p> <p>15 A. Correct. A POSITA would readily</p> <p>16 understand how that's used.</p> <p>17 Q. And moving to paragraph 39 of your</p> <p>18 declaration, you contend that Cisco's proposed</p> <p>19 construction imposes a temporal aspect to the claim</p> <p>20 term that is not defined. Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. What temporal aspect are you talking about</p> <p>23 in paragraph 39?</p> <p>24 A. "Newly-inserted."</p> <p>25 Q. And how does "newly-inserted" add</p>	<p style="text-align: right;">121</p> <p>1 TV? You take cables and connect it, whereas a</p> <p>2 backplane is you insert in a backplane. So</p> <p>3 backplane is what is typically used in the hardware</p> <p>4 design of these products, and you insert into a</p> <p>5 backplane and you connect cables.</p> <p>6 So newly-inserted implies that I've just</p> <p>7 inserted this into a backplane to a person of</p> <p>8 ordinary skill, which there's no -- a new processing</p> <p>9 unit added to a network element does not imply -- in</p> <p>10 the broadest sense of that term does not imply I've</p> <p>11 inserted a new processor into a backplane recently,</p> <p>12 newly-inserted.</p> <p>13 Q. Okay. So let's turn to the '394 patent</p> <p>14 itself, which is Olivier Exhibit 4. And turn to</p> <p>15 column 9. And you could start going down to line 41</p> <p>16 where the paragraph starts "When a new line card."</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. So the first sentence reads at column 9,</p> <p>20 line 41 of the '394 patent, "When a new line card is</p> <p>21 inserted into an active network element, the NP of</p> <p>22 the new line card runs a process that updates its</p> <p>23 filtering database." You see that?</p> <p>24 A. Yes, I do.</p> <p>25 Q. And so here the line card is expressly</p>

<p style="text-align: right;">122</p> <p>1 inserted in the specification, right?</p> <p>2 A. In this particular embodiment, the line</p> <p>3 card is inserted into an active network element</p> <p>4 which would imply to a person of ordinary skill that</p> <p>5 that's a backplane system, the active network</p> <p>6 element and the insertion. We use backplanes and</p> <p>7 have a live insertion in backplanes typically. So</p> <p>8 that would imply that's a backplane system in this</p> <p>9 particular embodiment.</p> <p>10 Q. And so you contend that you cannot insert</p> <p>11 a line card when there's cabling involved?</p> <p>12 A. I don't understand your question.</p> <p>13 Q. Well --</p> <p>14 A. I'm saying another way of adding a new</p> <p>15 line card to a network element is to just cable it,</p> <p>16 not insert it.</p> <p>17 Q. Right. So when cabling is involved in</p> <p>18 adding a line card, a new line card, then you</p> <p>19 contend that it's not considered inserting?</p> <p>20 A. Absolutely.</p> <p>21 Q. But here in column 9 starting line 41,</p> <p>22 here in this particular part of the '394 patent, the</p> <p>23 new line card is inserted into the network, correct?</p> <p>24 A. In this particular embodiment, yes,</p> <p>25 they're discussing inserting it into the network,</p>	<p style="text-align: right;">124</p> <p>1 card, correct?</p> <p>2 A. I don't see the restriction that a</p> <p>3 processing unit be a line card in the claim</p> <p>4 language.</p> <p>5 Q. So if we turn to column 6, lines --</p> <p>6 line 23 of the '394 patent, it says, "Network</p> <p>7 element 32 comprises multiple processing units such</p> <p>8 as line cards 36." Do you see that?</p> <p>9 A. Yes, I do.</p> <p>10 Q. And so when the processing unit is a line</p> <p>11 card, doesn't that suggest that the card goes</p> <p>12 into -- strike that.</p> <p>13 Line cards are put into chassis in network</p> <p>14 elements, correct?</p> <p>15 A. That's a typical way line cards are</p> <p>16 provided in chassis. They don't have to be, but</p> <p>17 it's a typical way of doing it.</p> <p>18 Q. Are you aware of any instances where line</p> <p>19 cards are not put into chassis?</p> <p>20 A. Sure. They can be cabled. They can be</p> <p>21 cabled in another chassis. They can be cabled in a</p> <p>22 auxiliary shelf. So if you define "chassis" as "any</p> <p>23 container for a line card," then I guess that's</p> <p>24 correct. But I tend to think of chassis as the main</p> <p>25 chassis for the network element, since you said</p>
<p style="text-align: right;">123</p> <p>1 active network element.</p> <p>2 Q. Now, if we go down to column 9, line 51,</p> <p>3 the '394 patent states, "When the database</p> <p>4 encounters are up-to-date (or after a certain time</p> <p>5 out), the NP activates the ports of the</p> <p>6 newly-inserted line card, and may start normal</p> <p>7 operation." Do you see that?</p> <p>8 A. Yes, I do.</p> <p>9 Q. And the newly-inserted line card would be</p> <p>10 the processing unit?</p> <p>11 A. Correct. So this embodiment talks about a</p> <p>12 newly-inserted line card that has a processing unit.</p> <p>13 Q. The specification of the '394 patent</p> <p>14 doesn't use any other term for "addition" besides</p> <p>15 "insertion," correct?</p> <p>16 A. It may or may not. It -- the claims don't</p> <p>17 use "insertion." So if they wanted to claim</p> <p>18 insertion, they could have easily claimed it.</p> <p>19 Q. But you're not aware of any part of the</p> <p>20 '394 specification that uses a different word other</p> <p>21 than "insert" to convey the addition of a new</p> <p>22 processing unit, right?</p> <p>23 A. As I sit here, that's correct.</p> <p>24 Q. Now, you would agree that the processing</p> <p>25 unit that's part of this claim term would be a line</p>	<p style="text-align: right;">125</p> <p>1 chassis of network element.</p> <p>2 Q. So if the chassis is a container like you</p> <p>3 just said, then adding a line card would require</p> <p>4 insertion, not cabling. Is that right?</p> <p>5 A. No. You can still cable with a chassis.</p> <p>6 You connect up cables all the time in a PC chassis</p> <p>7 or something like that. And we've designed lower</p> <p>8 cost systems. Backplanes are expensive sometimes.</p> <p>9 Sometimes your lower cost systems, you'll just cable</p> <p>10 up the system rather than make a backplane for it.</p> <p>11 Q. Where a line card is put into the chassis</p> <p>12 that does not involve any cabling --</p> <p>13 A. Even when it's inserted in a backplane?</p> <p>14 Q. Yeah, it would be inserted into a</p> <p>15 backplane.</p> <p>16 A. Okay. Is that your example? Okay. I was</p> <p>17 trying to understand your example.</p> <p>18 Q. I'm trying to get a sense of how it would</p> <p>19 be typically described when you add a line card to a</p> <p>20 chassis that does not involve cabling. Would you</p> <p>21 describe that as insertion?</p> <p>22 A. If you want to say -- so, to be clear,</p> <p>23 there's cabling even in a system that has backplane,</p> <p>24 but in backplane you talk about inserting a line</p> <p>25 card into a backplane. And in those cases, the pins</p>

<p style="text-align: right;">126</p> <p>1 on the line card line up with particular wires that</p> <p>2 are etched in the backplane in order to connect it</p> <p>3 up.</p> <p>4 So a backplane system is where you find</p> <p>5 people of ordinary skill using the term "insertion."</p> <p>6 Q. Okay. Now, we could set the '394 patent</p> <p>7 aside. I want to turn back to your declaration.</p> <p>8 So the next term you discuss from the '394</p> <p>9 patent begins on page 12 of your declaration, and</p> <p>10 that term is "multicast packet stream," right?</p> <p>11 A. Correct.</p> <p>12 Q. And your opinion is that multicast packet</p> <p>13 stream is a packet stream that can be sent to</p> <p>14 multiple devices, correct?</p> <p>15 A. Correct. Well, its ordinary meaning which</p> <p>16 means a packet stream that can be sent to multiple</p> <p>17 devices.</p> <p>18 Q. So I think it would be helpful if we broke</p> <p>19 it down a bit more. So what -- what is a packet?</p> <p>20 A. Depends on the context. I think typically</p> <p>21 in the embodiments we're talking about here, since</p> <p>22 it was talking about IPTV, we're talking about IP</p> <p>23 packets. Or it could be Ethernet. No, it's --</p> <p>24 we're talking about IGMP, which is IP packets.</p> <p>25 Q. And what is a multicast packet?</p>	<p style="text-align: right;">128</p> <p>1 multicast packet streams.</p> <p>2 A. It depends on the context. I'd have to</p> <p>3 see where they're describing multicast traffic. It</p> <p>4 could be the entire traffic going across the content</p> <p>5 deliverable network. It would be context specific.</p> <p>6 Q. Okay. So let's turn to -- back to the</p> <p>7 '394 patent and turn to column 1 starting at line 12</p> <p>8 of the "Background of the Invention" section.</p> <p>9 A. Which one are we on? '394?</p> <p>10 Q. Yes. So column 1, line 12 of the '394</p> <p>11 packet says, "Various communication applications</p> <p>12 deliver content to multiple recipients over packet</p> <p>13 networks by transmitting multicast traffic."</p> <p>14 So in this context, what does "multicast</p> <p>15 traffic" mean?</p> <p>16 A. Probably a set of multicast packet</p> <p>17 streams.</p> <p>18 Q. And like we discussed before, the</p> <p>19 applications discussed in the '394 patent include</p> <p>20 internet protocol television, or IPTV, and other</p> <p>21 visual and audio content applications, right?</p> <p>22 A. That's one example of multicast packet</p> <p>23 streams, of the content that's being carried.</p> <p>24 Q. Now, if we go to column 4 of the '394</p> <p>25 patent starting at line 63, it says, "In some</p>
<p style="text-align: right;">127</p> <p>1 A. It's a packet with the ability to be sent</p> <p>2 to multiple devices instead of a single device. So</p> <p>3 it has what we call multicast address instead of a</p> <p>4 particular IP address.</p> <p>5 Q. So IP packets are different than multicast</p> <p>6 packets?</p> <p>7 A. No, IP packets -- multicast packets are a</p> <p>8 type of IP packet.</p> <p>9 Q. And what is a packet stream?</p> <p>10 A. So the easiest way to think about it is a</p> <p>11 sequence of packets one after another, like a stream</p> <p>12 is a sequence of water coming one after another.</p> <p>13 So, because it doesn't have to be a sequence one</p> <p>14 after another, you could have back and forth, client</p> <p>15 server responses. But a packet stream is usually</p> <p>16 thought of as a sequence of packets coming one after</p> <p>17 another.</p> <p>18 Q. And is a multicast packet stream a</p> <p>19 sequence of multicast packets coming one after</p> <p>20 another?</p> <p>21 A. Correct.</p> <p>22 Q. And how would you describe multicast</p> <p>23 traffic?</p> <p>24 A. As opposed to --</p> <p>25 Q. In relation to multicast packets and</p>	<p style="text-align: right;">129</p> <p>1 embodiments, a network element forwards multicast</p> <p>2 content requests (e.g., requests to start receiving</p> <p>3 certain multicast streams or requests to stop</p> <p>4 receiving certain multicast streams) from multicast</p> <p>5 clients to multicast sources."</p> <p>6 And so you see in the parentheses an</p> <p>7 example of what multicast content requests are,</p> <p>8 right?</p> <p>9 A. Right.</p> <p>10 Q. And so an example, the '394 highlights an</p> <p>11 example of multicast content requests as requests to</p> <p>12 start receiving certain multicast streams or</p> <p>13 requests to stop receiving certain multicast</p> <p>14 streams, right?</p> <p>15 A. Right.</p> <p>16 Q. So a request to receive multicast content</p> <p>17 can be a request to receive a multicast stream.</p> <p>18 Fair?</p> <p>19 A. Well, these are requests for multicast</p> <p>20 streams. The -- what's within the stream would be</p> <p>21 the content.</p> <p>22 Q. So based on the language used in this</p> <p>23 portion of the '394 patent, the multicast content</p> <p>24 request would be -- an example of that would be a</p> <p>25 request to receive a multicast stream.</p>

<p style="text-align: right;">130</p> <p>1 A. Right, so the contents within the stream.</p> <p>2 Q. So if we turn to the next column, column</p> <p>3 5, and go down to line 66, the '394 patent</p> <p>4 reads, "Source 24 may transmit multicast packet</p> <p>5 streams that carry, for example, live IP Television,</p> <p>6 or IPTV, channels, video movies, audio content,</p> <p>7 stock quotes and/or any other suitable type of</p> <p>8 multicast content." Do you see that?</p> <p>9 A. Yes, I do.</p> <p>10 Q. And you quoted that same passage in your</p> <p>11 declaration, correct?</p> <p>12 A. Looks like I did, right.</p> <p>13 Q. In paragraph 44?</p> <p>14 A. Right.</p> <p>15 Q. And so you'd agree that a multicast packet</p> <p>16 stream carries multicast content, right?</p> <p>17 A. It carries multicast content and other</p> <p>18 things also.</p> <p>19 Q. Right. But you would agree that multicast</p> <p>20 content is carried by multicast packet streams?</p> <p>21 A. Multicast packet streams, yes.</p> <p>22 Q. Now, we talked a little bit earlier about</p> <p>23 Portsmouth's patent owner's preliminary response to</p> <p>24 Cisco's IPR petition for the '394 patent.</p> <p>25 Do you remember that?</p>	<p style="text-align: right;">132</p> <p>1 the multicast packet or content stream refers to the</p> <p>2 actual content coming from a multicast source, such</p> <p>3 as a TV channel or movie, and not a multicast group</p> <p>4 itself." Do you see that?</p> <p>5 A. Yes, I do.</p> <p>6 Q. And following that sentence, Portsmouth</p> <p>7 cites the '394 patent, column 5, line 66, which is</p> <p>8 the portion we just read earlier, correct?</p> <p>9 A. Correct.</p> <p>10 Q. And so here Portsmouth is stating that the</p> <p>11 '394 patent makes clear that the multicast packet</p> <p>12 stream or the multicast content stream is referring</p> <p>13 to the actual content, right?</p> <p>14 A. Makes it clear that the multicast packet</p> <p>15 or content stream refers to the actual content</p> <p>16 coming from the multicast source and is not a</p> <p>17 multicast group itself. Okay.</p> <p>18 Q. So Portsmouth is saying that the multicast</p> <p>19 packet or content stream refers to the actual</p> <p>20 content itself, right?</p> <p>21 MS. MISBAH: Objection, form.</p> <p>22 A. I guess I'd have to read everything that's</p> <p>23 going on in front of it to see what they're talking</p> <p>24 about.</p> <p>25 So that's what they're saying here, yes,</p>
<p style="text-align: right;">131</p> <p>1 A. I think we did, yeah. It's been a long</p> <p>2 day.</p> <p>3 Q. Do you recall if you reviewed Portsmouth's</p> <p>4 preliminary response for the '394 patent IPR?</p> <p>5 A. I don't believe I did.</p> <p>6 Q. Okay. Let's take a look at that then.</p> <p>7 (Exhibit 8 marked)</p> <p>8 Q. So you've just been handed Exhibit 8 which</p> <p>9 is Portsmouth's patent owner's preliminary response</p> <p>10 for the '394 patent IPR. Do you see that?</p> <p>11 A. Yes, I do.</p> <p>12 Q. And Steptoe filed the '394 patent</p> <p>13 preliminary response on behalf of Portsmouth,</p> <p>14 correct?</p> <p>15 A. I assume so.</p> <p>16 Q. If you turn to the last page.</p> <p>17 A. Okay. Like I said, it's the first time me</p> <p>18 seeing it, so --</p> <p>19 Q. And so that last page shows that Steptoe</p> <p>20 filed --</p> <p>21 A. Yes.</p> <p>22 Q. -- the preliminary response.</p> <p>23 Now, if we turn to page 11 of Olivier</p> <p>24 Exhibit 8. The first full paragraph of page 11,</p> <p>25 Portsmouth states, "The '394 patent is clear that</p>	<p style="text-align: right;">133</p> <p>1 that the multicast packet or content stream refers</p> <p>2 to the actual content coming from a multicast</p> <p>3 source, such as a TV channel or movie, and not the</p> <p>4 multicast group.</p> <p>5 Q. And just to clean the record, you would</p> <p>6 agree that Portsmouth is saying that the multicast</p> <p>7 packet or content stream refers to the actual</p> <p>8 content itself, right?</p> <p>9 A. I can only read what they said here, which</p> <p>10 is, the actual content coming from a multicast</p> <p>11 source, such as a TV channel or movie, and not a</p> <p>12 multicast group itself.</p> <p>13 Q. Right. And so reading what they say on</p> <p>14 page 11 of the preliminary response, Portsmouth is</p> <p>15 saying that the multicast packet stream refers to</p> <p>16 the actual content from the multicast source, right?</p> <p>17 A. That's not the sentence. You cut and</p> <p>18 pasted the words out of the sentence. The sentence</p> <p>19 just says -- it says, "The '394 patent is clear that</p> <p>20 the multicast packet or content stream refers to the</p> <p>21 actual content coming from a multicast source, such</p> <p>22 as a TV channel or movie, and not the multicast</p> <p>23 group itself." That's what the sentence says.</p> <p>24 Q. Do you agree with Portsmouth's statement</p> <p>25 here?</p>

<p style="text-align: right;">134</p> <p>1 A. I'd have to study this in detail to reach 2 a conclusion on that. 3 Q. And so sitting here today, you have not 4 taken a read of Portsmouth's '394 preliminary 5 response? 6 A. Correct. I think we went over that 7 earlier. 8 Q. And so Portsmouth's preliminary response 9 didn't factor into any of your claim construction 10 opinions for the '394 patent? 11 A. Correct. 12 Q. Okay. You can set Exhibit 8 aside. 13 And moving back to your declaration, let's 14 turn to page 13 of your declaration which begins 15 your discussion on the '637 patent. 16 And so do you see that your opinions on 17 the terms of the '637 patent start on page 13 of 18 your declaration? 19 A. Yes. 20 Q. And did you read the '637 patent? 21 A. Yes. 22 Q. And did you understand the '637 patent? 23 A. Yes. 24 Q. And the '637 patent is about handling 25 failures in a VPLS network, right?</p>	<p style="text-align: right;">136</p> <p>1 So it discusses all of them. 2 Q. And so if we turn to column 1 of the '637 3 patent under the "Field of the Invention," the 4 patent reads that, "The present invention relates 5 generally to communication networks, and 6 particularly to methods and systems for providing 7 virtual private LAN services (VPLS)," right? 8 A. Correct. 9 Q. And in your declaration at paragraph 47, 10 you only rely on the first half of that sentence, 11 right? 12 A. Correct. 13 Q. But you would agree that the full sentence 14 states that the 3 -- that the '637 patent 15 particularly relates to methods and systems for 16 providing VPLS, right? 17 A. So the full sentence says, "The present 18 invention relates generally to communication 19 networks and particularly to methods and systems 20 providing virtual private LAN services." 21 Q. So you left out that second half of the 22 sentence in your declaration. 23 A. Yes. Because the point I was trying to 24 make is that it relies generally to communication 25 networks, as it says in that sentence.</p>
<p style="text-align: right;">135</p> <p>1 A. Well, the claims aren't restricted to a 2 VPLS network, but the title talks about a VPLS 3 network. The embodiments talk about a VPLS network. 4 Q. And so VPLS networks appear throughout the 5 '637 patent specification? 6 A. Correct. 7 Q. And it's true that all of the embodiments 8 of the '637 patent discuss VPLS, correct? 9 A. The embodiments do. The summary of the 10 invention does not. 11 Q. So let's look to the "Summary of the 12 Invention." If you go to column 2 beginning line 24 13 of the '637 patent, it says, "In another embodiment, 14 the communication service includes a virtual private 15 local area network service (VPLS), and the first and 16 second instances include first and second VPLS 17 instances." Do you see that? 18 A. Yes. 19 Q. So the summary of the invention also 20 discusses VPLS, right? 21 A. The summary of invention does. Before 22 that, it says, "In some embodiments, the network 23 includes a ring network." And around line 6 it 24 says, "provisioning of first and second instance of 25 a multipoint-to-multipoint communication service."</p>	<p style="text-align: right;">137</p> <p>1 Q. So if we go down to line 23 of column 1 of 2 the '637 patent, it begins by talking about virtual 3 private local area network service, correct? 4 A. So what was your question? I was reading 5 the sentence. Sorry. 6 Q. The beginning of the "Background of the 7 Invention" section at column 1, line 23, begins with 8 a discussion on VPLS, right? 9 A. Column 1, line 23. So it describes a 10 virtual private LAN services, 11 multipoint-to-multipoint service. It's a type of 12 multipoint-to-multipoint service which emulates a 13 local area network over a provider network. Yes. 14 Q. And throughout the "Background of the 15 Invention" section, the '394 patent mentions VPLS a 16 number of times, right? 17 A. Yes. It also mentions pseudowires which 18 are different than virtual private LAN services. 19 Q. Now, if we turn to column 6, line 55 of 20 the '637 patent, it reads, "Network 20 comprises two 21 alternative topologies, each using a different VPLS 22 instance," right? 23 A. Correct. 24 Q. And VPLS1 and VPLS2 are the two VPLS 25 instances described in the '637 patent, right?</p>

<p style="text-align: right;">138</p> <p>1 A. Correct.</p> <p>2 Q. And if we turn to Figure 1 of the '637</p> <p>3 patent, VPLS1 and VPLS2 are clearly denoted as the</p> <p>4 two instances in this figure, right?</p> <p>5 A. VPLS1 and VPLS2 are denoted in this</p> <p>6 figure, correct.</p> <p>7 Q. And in order to provision a VPLS instance,</p> <p>8 you would agree that you would need a network setup</p> <p>9 for VPLS, right?</p> <p>10 MS. MISBAH: Objection, form.</p> <p>11 A. I don't know what that means, what you</p> <p>12 just said. Sorry. What does it mean to be set up</p> <p>13 for VPLS?</p> <p>14 Q. You need a -- strike that.</p> <p>15 In order to provision a VPLS instance, to</p> <p>16 carry a VPLS service as described in the '637</p> <p>17 patent, you would need a network that is configured</p> <p>18 for VPLS.</p> <p>19 A. So "configured for VPLS" I don't</p> <p>20 understand. So there's signaling protocols, several</p> <p>21 different ways of signaling protocols for setting up</p> <p>22 VPLS. And is signaling what you're talking about,</p> <p>23 provisioned or not? Because typically we don't say</p> <p>24 "provisioning" and "signaling" in the same sentence.</p> <p>25 It needs to be an MPLS network if it's going to do</p>	<p style="text-align: right;">140</p> <p>1 Q. And what provides the ability to set up a</p> <p>2 VPLS instance?</p> <p>3 A. So a VPLS instance is set up typically in</p> <p>4 an MPLS network and typically over two different</p> <p>5 signaling protocols. You can see in the other</p> <p>6 publications here we have two of them, which is LDP,</p> <p>7 which is laborer distribution protocol, and then the</p> <p>8 PGP way of setting up instances.</p> <p>9 So you -- the steps are -- it's going to</p> <p>10 be great. We're going to be teaching it in a couple</p> <p>11 weeks in my class. You set up -- you set up an MPLS</p> <p>12 network, and then you allow the signaling protocols</p> <p>13 that you have in your MPLS network to establish</p> <p>14 instances, Instance 1, Instance 2, within -- in</p> <p>15 multiple instances in the service provider's</p> <p>16 network.</p> <p>17 Q. So you just gave the example of MPLS</p> <p>18 networks, right?</p> <p>19 A. Right.</p> <p>20 Q. So that same logic would flow for a VPLS</p> <p>21 network, correct?</p> <p>22 A. No, VPLS runs on top of MPLS.</p> <p>23 Q. Sorry. Yes. So in order to -- strike</p> <p>24 that.</p> <p>25 You need to have VPLS running on top of</p>
<p style="text-align: right;">139</p> <p>1 virtual private LAN services.</p> <p>2 But then there's a whole bunch of ways of</p> <p>3 signaling how to join into a VPLS network. There's</p> <p>4 different ways of setting those up. So when you say</p> <p>5 "configured" for it, I don't know the bounds of that</p> <p>6 word that you're -- that you're using there.</p> <p>7 Q. Can you establish a VPLS instance as</p> <p>8 described in the '637 patent without having VPLS</p> <p>9 service set up in the network?</p> <p>10 A. Yeah, the first time you install it, you</p> <p>11 can set it up without having it already in the</p> <p>12 network.</p> <p>13 Q. Sorry. Install what?</p> <p>14 A. VPLS, so install my first instance of it.</p> <p>15 Prior to that, there was no instance. So I can set</p> <p>16 up VPLS on a network that didn't have VPLS.</p> <p>17 Q. Right. So the '637 patent discusses VPLS</p> <p>18 instances like VPLS1 and VPLS2.</p> <p>19 A. Correct.</p> <p>20 Q. You would not be able to establish a VPLS</p> <p>21 instance without having a network compatible with a</p> <p>22 VPLS service.</p> <p>23 A. You have to have the ability to set up a</p> <p>24 VPLS instance in a network where you set up a VPLS</p> <p>25 instance.</p>	<p style="text-align: right;">141</p> <p>1 MPLS to have VPLS instances?</p> <p>2 A. What do you mean by "VPLS running"? Do</p> <p>3 you mean I already have instances or not?</p> <p>4 Q. Do you need to have a VPLS precursor</p> <p>5 before having a VPLS instance in a network?</p> <p>6 A. What's a VPLS precursor? It's not a term</p> <p>7 I'm familiar with.</p> <p>8 Q. Do you need to establish anything related</p> <p>9 to VPLS before setting up a VPLS instance in a</p> <p>10 network?</p> <p>11 MS. MISBAH: Objection, form.</p> <p>12 A. So one of the things you would have to set</p> <p>13 up earlier is MPLS, if we're doing VPLS over MPLS,</p> <p>14 which I think that's what this patent is talking</p> <p>15 about. So is that what you meant by a precursor? I</p> <p>16 mean, you'd have to set up the cabling. You'd have</p> <p>17 to set up the IGP. You would have -- and then after</p> <p>18 you set up the IGP, you can set up the MPLS domain.</p> <p>19 You can set up what a provider edge router is and</p> <p>20 what a provider router is.</p> <p>21 You have to do all these things in order</p> <p>22 to get any services, Layer 2 VPNs, Layer 3 VPNs,</p> <p>23 VPLS services in an MPLS network. Then you</p> <p>24 establish -- you allow your signaling protocols to</p> <p>25 establish instances of -- "instances" has very</p>

<p style="text-align: right;">142</p> <p>1 specific meaning in this terminology. So then you</p> <p>2 use your signaling protocols to establish particular</p> <p>3 instances.</p> <p>4 Q. Okay. So VPLS is set up over a particular</p> <p>5 network topology?</p> <p>6 A. No.</p> <p>7 Q. So if you go to the top of column 6 of the</p> <p>8 '637 patent, it reads, "Although the example of</p> <p>9 Figure 1 refers to VPLS over a ring topology, the</p> <p>10 methods and systems described herein are in no way</p> <p>11 limited to ring networks."</p> <p>12 So here VPLS would be established in a</p> <p>13 particular topology.</p> <p>14 A. It says "in no way limited to a particular</p> <p>15 topology such as a ring topology." So they're not</p> <p>16 limited to any particular topologies is what they're</p> <p>17 saying here.</p> <p>18 Q. Correct. But VPLS has to be established</p> <p>19 over any type of topology.</p> <p>20 A. Any type. You said a particular one.</p> <p>21 Q. Any type of topology.</p> <p>22 A. Okay. Are you asking can MPLS be set up</p> <p>23 over any type of topology?</p> <p>24 Q. VPLS has to be established over a network</p> <p>25 topology.</p>	<p style="text-align: right;">144</p> <p>1 embodiments. And they're discussing VPLS in the</p> <p>2 embodiments, that's true.</p> <p>3 Q. Okay. Great. Now going back to your</p> <p>4 declaration, on page 14 you discuss the next '637</p> <p>5 claim term, which is, "deactivating a physical layer</p> <p>6 of the first set of links connected thereto," or its</p> <p>7 corollary, "deactivate the physical layer resources</p> <p>8 of each node to links in the first set of links</p> <p>9 connected to that node." Right?</p> <p>10 A. Correct.</p> <p>11 Q. And for this term, you opine that it</p> <p>12 should be given its plain and ordinary meaning,</p> <p>13 correct?</p> <p>14 A. Correct.</p> <p>15 Q. And you contend that a person of ordinary</p> <p>16 skill in the art would easily understand the</p> <p>17 language of this term?</p> <p>18 A. Correct.</p> <p>19 Q. Do you consider yourself a person of</p> <p>20 ordinary skill in the art regarding the '637 patent?</p> <p>21 A. Probably be above ordinary skill since I</p> <p>22 teach it in class in graduate school.</p> <p>23 Q. And so from your point of view, can you</p> <p>24 explain your understanding of this "deactivating"</p> <p>25 term?</p>
<p style="text-align: right;">143</p> <p>1 A. Over a network -- you said a particular</p> <p>2 one, meaning, like they say it here, rings. And so</p> <p>3 could be established over all sorts of different</p> <p>4 network topologies. That's one of the advantages of</p> <p>5 it.</p> <p>6 Q. Right. And the '637 patent specifically</p> <p>7 talks about VPLS over any type of network topology.</p> <p>8 A. Correct.</p> <p>9 Q. Now, turning to column 10 of the '637</p> <p>10 patent, line 55 or, sorry, 59, the '637 patent</p> <p>11 reads, "For example, the methods and systems</p> <p>12 described herein are not confined to ring networks,</p> <p>13 but apply to VPLS in general and can be carried out</p> <p>14 over any VPLS topology." You see that?</p> <p>15 A. Yes, I do.</p> <p>16 Q. And so the '637 patent relates to the</p> <p>17 applications of VPLS in general.</p> <p>18 A. It -- the '637 patent uses in its</p> <p>19 embodiments VPLS and discusses VPLS technology,</p> <p>20 top- -- VPLS technology in its embodiments.</p> <p>21 Q. And the '637 patent discusses VPLS</p> <p>22 topologies in all of its embodiments, correct?</p> <p>23 A. Well, as we said earlier in the "Summary</p> <p>24 of the Invention," it talks just about</p> <p>25 multipoint-to-multipoint. So we can talk about the</p>	<p style="text-align: right;">145</p> <p>1 A. I'll explain what I was trying to say</p> <p>2 here, which is, you don't need additional language</p> <p>3 to understand that. This is -- this is covered</p> <p>4 earlier in the claim limitation. So adding this</p> <p>5 additional language would just confuse the issue.</p> <p>6 So there's no reason to add this</p> <p>7 additional language since a person of ordinary skill</p> <p>8 would understand reading the claim limitations what</p> <p>9 happens to the deactivating of the physical layer in</p> <p>10 the nodes.</p> <p>11 Q. And so when you came up with your opinion</p> <p>12 that this deactivating claim term doesn't require a</p> <p>13 construction beyond the plain and ordinary meaning,</p> <p>14 did you review the intrinsic evidence?</p> <p>15 A. Yes.</p> <p>16 Q. And did that include a review of the '637</p> <p>17 patent's file history?</p> <p>18 A. Yes, it did.</p> <p>19 Q. Okay. I am handing you what will be</p> <p>20 marked Exhibit 9 which is the '637 patent's file</p> <p>21 history.</p> <p>22 (Exhibit 9 marked)</p> <p>23 Q. And is this the -- is Exhibit 9 the '637</p> <p>24 patent's file history that you reviewed?</p> <p>25 A. I believe so.</p>

<p style="text-align: right;">146</p> <p>1 Q. Now, if you could turn to page that's</p> <p>2 Bates stamped PNC-CSC0025028. This is part of the</p> <p>3 applicant's response to the examiner's office action</p> <p>4 rejecting the '637 patent application, right?</p> <p>5 A. Correct.</p> <p>6 Q. And the applicant's response discusses its</p> <p>7 disagreement with the examiner's rejection of the</p> <p>8 '637 claims based on the examiner's analysis of the</p> <p>9 Grenier reference. Is that right?</p> <p>10 A. Correct.</p> <p>11 Q. And the last paragraph on this page ending</p> <p>12 in 028 discusses the "deactivating" claim term we're</p> <p>13 talking about, right?</p> <p>14 A. Correct.</p> <p>15 Q. Turning to the next page of the</p> <p>16 applicant's response, at the top the applicant</p> <p>17 states, "In contrast, claim 1 requires that physical</p> <p>18 layers of all links connected all other nodes other</p> <p>19 than the detecting node are to be deactivated."</p> <p>20 A. Correct.</p> <p>21 Q. Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. And the '63 (sic) patent applicant's</p> <p>24 statement is the same language that Cisco uses in</p> <p>25 its proposed construction, correct?</p>	<p style="text-align: right;">148</p> <p>1 nodes of the plurality of network nodes" means all</p> <p>2 the other nodes in the network, right?</p> <p>3 A. Yeah, I don't know that sitting here</p> <p>4 unless I read it. I'd have to study it.</p> <p>5 Q. So sitting here, you're not -- you're not</p> <p>6 able to say whether "each node of the other nodes"</p> <p>7 means all the other nodes in the network?</p> <p>8 A. Because it says "a plurality of network</p> <p>9 nodes traversed by the first set of links." So then</p> <p>10 you have to go analyze does that mean all the nodes</p> <p>11 in the network or not. Because the claims say what</p> <p>12 they say.</p> <p>13 Q. So would you agree that "for each node of</p> <p>14 the other nodes of the plurality of network nodes</p> <p>15 traversed by the first set of links" means all of</p> <p>16 the other nodes in the set of links?</p> <p>17 A. The first set of links? Could you phrase</p> <p>18 the question that way?</p> <p>19 Q. Sorry. Yes. "For each node of the other</p> <p>20 nodes of the plurality of network nodes traversed by</p> <p>21 the first set of links" means all the other nodes in</p> <p>22 the first set of links?</p> <p>23 A. All the other nodes that are traversed by</p> <p>24 the first set of links. So all the other nodes that</p> <p>25 are traversed by the first set of links.</p>
<p style="text-align: right;">147</p> <p>1 A. Correct. It's -- that is in there when it</p> <p>2 says "for each node of all the other nodes,</p> <p>3 deactivate." So Cisco's proposed construction is</p> <p>4 redundant based on the claim terms, and that's why</p> <p>5 it's confusing.</p> <p>6 Q. And so you would agree that a person of</p> <p>7 ordinary skill in the art would understand claim 1</p> <p>8 of the '637 patent to require that physical layers</p> <p>9 of all links connected to all other nodes other than</p> <p>10 the detecting node are to be deactivated?</p> <p>11 A. Correct. It's written in the claim</p> <p>12 language. It's not specifically a limitation, but</p> <p>13 this "for each node" does that functionality. So</p> <p>14 Cisco's construction is just redundant and confusing</p> <p>15 based on whatever a person of ordinary skill would</p> <p>16 read into the claim language.</p> <p>17 Q. And you're aware now that Cisco filed an</p> <p>18 IPR on the '637 patent, right?</p> <p>19 A. I heard it from you, yes.</p> <p>20 Q. Now, if we take a look at the limitation</p> <p>21 in claim 1 of the '637 patent immediately preceding</p> <p>22 the "deactivating" claim term, "For each node of the</p> <p>23 other nodes of the plurality of network nodes</p> <p>24 traversed by the first set of links."</p> <p>25 You'd agree that "each node of the other</p>	<p style="text-align: right;">149</p> <p>1 Q. Okay. Now, just going back to my question</p> <p>2 about the '637 patent's IPR, are you aware that</p> <p>3 Portsmouth filed a patent owner's preliminary</p> <p>4 response for the '637 patent in response to Cisco's</p> <p>5 IPR petition?</p> <p>6 A. I think you told me that. I wasn't aware</p> <p>7 of it prior to coming here today.</p> <p>8 Q. So you did not review that?</p> <p>9 A. I don't recall reviewing it. If it was in</p> <p>10 the file history I got, then I reviewed it. I don't</p> <p>11 know how fast things get in the file histories.</p> <p>12 MS. OWENS: Okay. Well, with that, I</p> <p>13 don't have any further questions for you at this</p> <p>14 moment.</p> <p>15 MS. MISBAH: Can we take a brief</p> <p>16 five-minute recess --</p> <p>17 MS. OWENS: Uh-huh.</p> <p>18 MS. MISBAH: -- and then reconvene?</p> <p>19 THE VIDEOGRAPHER: We are off the record</p> <p>20 at 3:50 p.m.</p> <p>21 (Recess from 3:50 to 3:54)</p> <p>22 THE VIDEOGRAPHER: We are back on the</p> <p>23 record at 3:54 p.m.</p> <p>24 MS. MISBAH: We have no redirect. Thank</p> <p>25 you.</p>

<p style="text-align: right;">150</p> <p>1 THE VIDEOGRAPHER: We are off the record 2 at 3:54 p.m. 3 4 (Deposition concluded at 3:54 p.m.) 5 -oOo- 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">152</p> <p>1 I JAMES OLIVIER, have read the foregoing 2 deposition and hereby affix by signature that same 3 is true and correct, except as noted above. 4 5 6 7 JAMES OLIVIER 8 STATE OF _____) 9 COUNTY OF _____) 10 Before me, _____, on this 11 day personally appeared JAMES OLIVIER, known to me 12 (or proved to me under oath or through 13 _____) (description of identity card or 14 other document) to be the person whose name is 15 subscribed to the foregoing instrument and 16 acknowledged to me that they executed the same for 17 the purposes and consideration therein expressed. 18 Given under my hand and seal of office 19 this _____ day of _____, 2024. 20 21 22 NOTARY PUBLIC IN AND FOR 23 THE STATE OF _____ 24 25 My Commission Expires: _____</p>
<p style="text-align: right;">151</p> <p>1 CHANGES AND SIGNATURE 2 WITNESS NAME: DATE OF DEPOSITION: 3 JAMES OLIVIER OCTOBER 17, 2024 4 PAGE LINE CHANGE REASON 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">153</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE EASTERN DISTRICT OF TEXAS 3 MARSHALL DIVISION 4 PORTSMOUTH NETWORK) 5 CORPORATION,) 6) 7 Plaintiff,) Civil Action No. 8) 2:23-cv-00441-JRG 9 vs.) 10) 11 CISCO SYSTEMS, INC.,) 12) 13 Defendant.) 14) 15 REPORTER'S CERTIFICATE 16 VIDEOTAPED DEPOSITION OF JAMES OLIVIER 17 OCTOBER 17, 2024 18 I, KAREN L. SHELTON, a Certified Shorthand 19 Reporter in and for the State of Texas, hereby 20 certify to the following: 21 That the witness, JAMES OLIVIER, was duly 22 sworn by the officer and that the transcript of the 23 oral deposition is a true record of the testimony 24 given by the witness; 25 I further certify that pursuant to FRCP Rule 30(e) that the signature by the deponent: _X_ was requested by the deponent or a party before the completion of the deposition and is to be returned within 30 days from date of receipt of the transcript. If returned, the attached Errata contains any changes and the reasons therefor; _____ was not requested by the deponent or a</p>

<p style="text-align: right;">154</p> <p>1 party before the completion of the deposition. 2 I further certify that I am neither 3 counsel for, related to, nor employed by any of the 4 parties in or counsel to this action, nor am I 5 financially or otherwise interested in the outcome 6 of this action. 7 Certified to by me this 21st day of 8 October, 2024. 9 10 11 12 13 <hr style="width: 200px; margin-left: 0;"/>Karen L. Shelton, CSR, RDR, CRR Texas CSR No. 7050 Exp: 10/31/25 Henderson Legal Services 14 Firm Registration No. 11601 2300 Wilson Boulevard 15 7th Floor Arlington, Virginia 22201 16 (877) 548-8787 17 18 19 20 21 22 23 24 25</p>	

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