

UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:	)	Investigation No.
CERTAIN ELECTRONIC DEVICES,	)	337-TA-1376
INCLUDING MOBILE PHONES, TABLETS,	)	
LAPTOPS, COMPONENTS THEREOF, AND	)	
PRODUCTS CONTAINING THE SAME	)	

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1 UNITED STATES INTERNATIONAL TRADE COMMISSION
2 Washington, D.C.
3 BEFORE THE HONORABLE CAMERON R. ELLIOT
4 Administrative Law Judge

5 _____
6 In the Matter of:) Investigation No.
7 CERTAIN ELECTRONIC DEVICES,) 337-TA-1376
8 INCLUDING MOBILE PHONES, TABLETS,)
9 LAPTOPS, COMPONENTS THEREOF, AND)
10 PRODUCTS CONTAINING THE SAME)
11 _____

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13 International Trade Commission
14 500 E Street, S.W.
15 Washington, D.C.

16
17 Wednesday, August 21, 2024

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19 EVIDENTIARY HEARING - Volume III

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21 The Hearing commenced remotely, pursuant to the notice
22 of the Judge, at 9:00 a.m. Eastern.

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24
25 Reported by: Karen Brynteson, FAPR, RMR, CRR

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1 P R O C E E D I N G S

2 (9:00 a.m.)

3 JUDGE ELLIOT: Have a seat.

4 All right. We're here in the matter of Certain
5 Electronic Devices, Including Mobile Phones, Tablets,
6 Laptops, Components Thereof, and Products Containing the
7 Same, United States International Trade Commission,
8 Investigation No. 337-TA-1376.

9 My name is Cameron Elliot, presiding
10 Administrative Law Judge. May I have appearances from
11 counsel, please.

12 MR. SWAIN: Good morning, Your Honor. Adam Swain
13 on behalf of Complainants, Ericsson, this morning. I
14 believe we just have one update for the Court, but --

15 JUDGE ELLIOT: Okay. Let me hear from
16 Respondents, and then I'll take that up.

17 MR. AROVAS: Greg Arovas, Your Honor, for the
18 Respondents. We have the same group of people here today.
19 And Mr. Mizzo will be continuing with the witness.

20 JUDGE ELLIOT: Very well. All right. Mr. Swain.

21 MR. SWAIN: Sure. You'll get an updated filing
22 on this, but we wanted to apprise Your Honor we will not be
23 calling Ms. Christina Petersson in our rebuttal case. So we
24 will be -- if you'd like an updated witness chart, we're
25 happy to do that.

1 JUDGE ELLIOT: No, that's okay. That's fine.

2 MR. SWAIN: Okay. Thank you.

3 JUDGE ELLIOT: That's adequate.

4 MR. SWAIN: That's it from our end.

5 JUDGE ELLIOT: Very well.

6 Anything for Respondents?

7 MR. AROVAS: Your Honor, we have agreed times.

8 JUDGE ELLIOT: Okay, go ahead.

9 MR. AROVAS: So the Complainant has used --
10 where's the total -- 4:09:09, and Respondents have used
11 7:29:43.

12 Just for Your Honor's information, it appears
13 that we are going significantly ahead of schedule, so my
14 expectation is we would finish the hearing some time
15 tomorrow. Obviously, we'll see how the rest of the day goes
16 today, but we are -- you know, for Your Honor's information,
17 it looks like we are ahead of schedule.

18 JUDGE ELLIOT: Very well. All right. Well,
19 that's good to hear.

20 By the way, if there's an issue with the
21 temperature or any of the climate issues here, just let me
22 know. We've been having trouble with these things, not so
23 much in this courtroom, but in Courtroom A, we've had a lot
24 of problems. And I was over here right before I called the
25 case because there's something wrong with the ventilation,

1 and we've got a water leak. So, anyway, if there's an
2 issue, please bring it to my attention and we'll try to take
3 care of it.

4 All right. So, Dr. Bederson. Oh, here we go.
5 Whereupon--

6 BENJAMIN BEDERSON,
7 having been previously duly sworn/affirmed, was examined and
8 testified as follows:

9
10 JUDGE ELLIOT: All right. Good morning, sir.
11 Let me remind you, you are still under oath. And just tap
12 that thing until it's green. Good.

13 THE WITNESS: Good morning.

14 MR. ANZALONE: Good morning, Your Honor.

15 JUDGE ELLIOT: Good morning.

16 CROSS-EXAMINATION

17 BY MR. ANZALONE:

18 Q. Good morning, Dr. Bederson.

19 A. Good morning.

20 Q. And we've worked together before?

21 A. We have.

22 Q. Okay. Good to see you again today.

23 A. As well.

24 Q. To begin with, I think I'd like to proceed with
25 something we probably will all agree on and which would

1 shorten this cross-examination by about 90 percent, and
2 would make the issues much easier for the Court as to what
3 you did and did not testify about yesterday. Okay?

4 And I don't want you to introduce new testimony,
5 new arguments that you didn't talk about yesterday. I just
6 want to confirm what you didn't talk about. And what I'm
7 going to try and do is ask questions, like correct or
8 incorrect, yes or no. I would appreciate it, if you would,
9 if possible, say yes or no or correct or incorrect. Is that
10 acceptable?

11 A. I will do my best.

12 Q. Thank you. All right.

13 Correct or incorrect: On direct you said nothing
14 about whether the accused Lenovo products infringe?

15 A. Correct.

16 Q. Correct or incorrect: On direct you said nothing
17 about whether the domestic industry products practice the
18 claims?

19 A. Correct.

20 Q. Correct or incorrect: On direct you said nothing
21 about whether the Motorola Edge phone is representative of
22 all other accused Lenovo products?

23 A. Correct.

24 Q. Correct or incorrect: On direct you said nothing
25 about whether the Samsung S23 Galaxy phone is representative

1 of all other domestic industry products?

2 A. Correct.

3 Q. Just a foundational question. Are you familiar
4 with the Samsung CL80 camera?

5 A. Yes.

6 Q. Correct or incorrect: On direct you said nothing
7 about whether the claims are valid or invalid over the
8 Samsung CL80 camera?

9 A. Correct.

10 Q. Are you familiar with the Park reference, which
11 is RX-459?

12 A. Yes.

13 Q. Correct or incorrect: On direct you said nothing
14 about whether the claims are valid or invalid over the Park
15 reference?

16 A. Correct.

17 Q. Okay. That makes it easier.

18 Okay. Can we put up slide 22.

19 And what I did is I took your slide RDX-259 here.
20 So it's supposed to be a complete copy of it.

21 Dr. Bederson, does this slide contain your
22 opinion on what the abstract ideas to which the claims are
23 directed?

24 A. Sorry, could you repeat the question?

25 Q. Does this slide -- it's entitled "claims are

1 directed to an abstract idea" -- is this what you contend
2 the abstract idea is to which the claims are directed?

3 A. No.

4 Q. Okay. What is the abstract idea to which the
5 claims are directed?

6 A. For displaying and manipulating information for
7 adjusting a camera setting.

8 Q. Okay. You understand that on Section 101, you
9 look at the claim as a whole, right, not to the field of the
10 invention or the summary, correct?

11 A. I think that's -- sounds right.

12 Q. Okay. And if you look at the claim language in
13 this case, it requires a mobile terminal having a camera, a
14 touchscreen, and a controller, correct?

15 A. I believe it includes those things.

16 Q. And the claim language also requires placing an
17 auto focus guide at a specific place selected by the user
18 and then focusing based on a location of that guide,
19 correct?

20 A. Could you repeat the question, please?

21 Q. Sure. The claim language also requires placing
22 an auto focus guide at a specific place selected by the user
23 and then focusing based on a location of the guide?

24 A. I don't think that's the actual claim language.

25 Q. Okay. Does the claim language require control

1 the touchscreen to display an auto focus guide at a specific
2 point of the touchscreen in response to a first touch to the
3 specific point?

4 A. I don't have the claim language in front of me,
5 but I could confirm that if you'd like.

6 Q. Okay. Why don't we then put it up as the claim
7 language for you. It's JX-7.46, claim 1.

8 Okay. So the claim language in that element,
9 control a touchscreen, requires displaying an auto focus
10 guide at a specific point of the touchscreen in response to
11 a first touch.

12 Do you see that?

13 A. Yes. That's part of claim limitation 1e.

14 Q. And -- let's see. If you look further down the
15 claim, it calls for determining an image capturing setting.

16 Do you see that?

17 A. I do.

18 Q. And do you see it also requires displaying an
19 indicator for indicating the current image capturing setting
20 while maintaining the displayed auto focus guide at the
21 specific point?

22 A. I see that language.

23 Q. And do you see it also requires capturing an
24 image according to the current image capturing setting?

25 A. I do.

1 Q. And would you agree with me that these claim
2 functions indicate the user can use the auto focus guide to
3 fix the focus at a specific point and determine and then
4 display another camera setting while the displayed guide is
5 maintained at that point?

6 A. Can you repeat -- excuse me. Can you repeat the
7 question, please?

8 Q. Would you agree that this set of functions
9 indicates a user can use the auto focus guide to fix the
10 focus at a specific point, determine an image capturing
11 setting responsive to a drag operation, and then display
12 that setting while the displayed auto focus guide is
13 maintained at the specific point?

14 A. You have recharacterized the claim language with
15 essentially new language, so --

16 Q. Why don't you --

17 A. I'm a little uncomfortable essentially
18 recharacterizing the whole claim language, sitting here
19 today, from just hearing it at the same time. So there's
20 nothing jumping out at me that you said that was wrong, but
21 I'm not -- I can't confirm that's exactly what the claim
22 says.

23 Q. Okay. In substance, did I say what the claim
24 says?

25 A. I recognize you captured elements of several

1 different claim limitations and put them together. So you
2 may have.

3 Q. Okay. Would you agree that these functions for a
4 camera are not limited to data collection and analysis?

5 A. I think that's probably fair.

6 Q. Okay. And if you put back slide 22, would you
7 agree that the claim language calls for more than
8 controlling a camera efficiently and conveniently, which is
9 what you highlighted here?

10 A. I mean, I think they're both true, but the --
11 yes, the claims do have some specific functional
12 requirements.

13 Q. That's --

14 A. That go beyond just efficient -- well, they
15 support, I guess I would say they support, the efficient and
16 convenient operation of capturing an image.

17 Q. By providing a specific solution, and not just
18 claiming a desired result, correct?

19 A. That's right. They provide -- the claims have
20 some functional requirements.

21 Q. Okay. Now let's turn to the prior art.

22 The Panasonic camera you have, there are at least
23 eight different camera settings on that camera; is that
24 correct?

25 A. I don't recall exactly how many there are, but I

1 think there probably are at least eight settings.

2 Q. Okay. Let's put up slide 17.

3 Now, the one that you focused on was, can we call
4 it, size of -- how would you like to characterize it? Auto
5 focus area size? What do you want to call this setting?

6 A. I think yesterday I referred to it as focus area.

7 Q. Okay. All right. And this is a way to select
8 the size or change the size of the focus area? How would
9 you characterize this setting?

10 A. The focus area is a setting that does allow --
11 does support the control of the size of the focus area.

12 Q. Okay. And in the courtroom and here in these
13 photos from your report, you actually demonstrated to the
14 Court how you could change the size of the auto focus guide
15 from -- I think it's called the initial spot size on the
16 left to what you referred to as -- in your report, at least,
17 as the extra large size on the right.

18 Do you see that?

19 A. Yes, I think those -- that's the language that
20 came from the manual.

21 Q. Okay. And you did that yesterday, correct?

22 A. I showed this operation yesterday.

23 Q. Okay. Yes or no: The displayed auto focus guide
24 on the left is different in size than the displayed auto
25 focus guide on the right?

1 A. Yes.

2 Q. Yes or no: The displayed auto focus guide on the
3 left has a different total area of focus than the displayed
4 auto focus guide on the right?

5 A. Yes.

6 Q. Okay. Now, to adjust a different setting when
7 you're in this mode, do you have to -- I think you talked
8 about yesterday modes of the camera. Do you recall that?

9 A. I think I referred to using the word "modes."

10 Q. Okay. All right.

11 How would you enter a different mode from this
12 mode to, for instance, change shutter speed?

13 A. There's different ways to do that.

14 Q. Okay. What was the way you demonstrated for the
15 Court, the first time, the first way you did it?

16 A. I think the first way was to accept the current
17 focus area setting and then I adjusted the -- or dragged my
18 thumb along the thumb wheel on the back of the camera.

19 Q. Okay. So you used the thumb wheel on the top
20 right?

21 A. Yes. That was one of the ways I adjusted it.

22 Q. Okay. And that thumb wheel, I think it's also a
23 dial, you referred to it?

24 A. Yes.

25 Q. And that's a mechanical way to actually move the

1 slider? Is that what you were doing yesterday?

2 A. Yeah. Well, one of the things I did was to use
3 that dial to adjust the shutter speed slider.

4 Q. Okay. And you did that manually with the thumb
5 wheel, correct?

6 A. I used that by dragging my thumb or finger across
7 that dial.

8 Q. And you would agree that using a thumb wheel does
9 not meet the claim language, correct? The claim language
10 requires you to use a drag operation on a touchscreen?

11 A. That's right.

12 Q. Okay. And since you know me, you know sometimes
13 I ask questions out of intellectual curiosity, which this
14 truly is, but assuming this is a state-of-the-art camera,
15 and it has a touchscreen on it, why do they have a thumb
16 wheel on it as well to do the same operation?

17 A. I don't have specific knowledge of Panasonic's
18 design reasons for including multiple reasons for
19 controlling things, so I don't have a specific answer to
20 that question.

21 Q. Oh, but you're -- my point of it was -- one of
22 the world's greatest user interface experts, correct?

23 A. Thank you. Could be.

24 Q. I think you are. And, what, 2007 Apple iPhone
25 did away with the buttons, right, total touchscreen, right?

1 That was a big innovation?

2 A. My recollection is in 2007 the iPhone actually
3 did still have some physical buttons.

4 Q. Okay. So Panasonic, which I think was owned by
5 Matsushita, thought it was important to actually have a
6 physical wheel on the camera for the owner to manipulate and
7 to move the -- I think this slider bar, correct?

8 A. Again, I don't have specific design knowledge of
9 why Panasonic chose to include it, but I will say that that
10 dial can be used to control multiple things.

11 Q. Right. And once you're going to put a dial
12 that's mechanical on a camera, wouldn't an engineer want it
13 to do multiple things?

14 A. I think in this case, it can be used for multiple
15 things.

16 Q. And if we did what you did for purposes of
17 obviousness and said we're going to actually change the
18 design so that when I'm moving the slider, I use the
19 touchscreen, maybe Panasonic can get rid of the wheel?

20 A. Sorry, I think I didn't understand your question.
21 Could you repeat it?

22 Q. I thought one of your contentions on obviousness
23 was the drag operation on the slider can be done with a
24 finger instead of with the thumb wheel?

25 A. On the Panasonic camera, you can use your finger

1 to drag the slider.

2 Q. Right. And you wanted to do it in this mode
3 where the auto focus guide is shown, correct?

4 A. To be clear, my obviousness argument is that you
5 could display an auto focus guide while displaying the slide
6 bar that you can adjust with a finger on the touchscreen.
7 The specific technical solution for how Panasonic or persons
8 of skill in the art would choose to do that would be up to
9 the person of skill in the art. And I think there are many
10 ways that that could be accomplished, from a tech -- from an
11 engineering perspective.

12 Q. All right. But you're talking about the
13 obviousness from this specific camera, correct? This is
14 your primary reference?

15 A. Yes, it is.

16 Q. Okay. So if I was going to, in this mode, where
17 the auto focus guide is, change it so that that slider bar
18 could be moved by a drag and trace on the touchscreen, it
19 seems like I would dispense with that mechanical thumb
20 wheel, correct? Can you tell me what you're looking at?

21 A. Sure. I'm looking at my direct examination
22 slides.

23 Q. Okay.

24 A. So my recollection of my direct testimony
25 yesterday is that I showed two images that were directly

1 taken from my demonstration of the camera, where I had on
2 the screen one image where you could use the slide bar by
3 touching and another image where you could use the slide bar
4 with the dial.

5 And I explained that it would be obvious to
6 combine these two views so that you could display the auto
7 focus guide that was visible when you were using the dial
8 when you were in the mode, I think I said, that you were
9 using your thumb to adjust the screen with the touch bar.

10 So, in other words, while my real opinion is that
11 you could display these two things together and there's lots
12 of ways that an engineer could choose to do that, I think
13 the specific way that I described doing that yesterday was
14 sort of the opposite of what you said, which is to start
15 with the touchscreen slider mode and continue to display the
16 auto focus guide that was already displayed when you're in
17 the dial mode.

18 Q. Okay. But didn't you also discuss doing it the
19 other way? I thought you also mentioned you could, instead
20 of using this, the thumb wheel, you could put it right on
21 the touchscreen. I thought you testified to that yesterday.

22 A. Again, my opinion is that it would be obvious to
23 combine these two displays.

24 Q. Okay.

25 A. My opinion is that it would be straightforward to

1 an engineer to combine -- to make an engineering choice
2 about exactly how to implement it. I recall saying the way
3 I described it. I may also have said the way you described
4 it.

5 Q. Okay. Well, let's assume you said, and if not,
6 it's a hypothetical, if we did it the way where instead of
7 using the thumb wheel, you're in the mode you have here in
8 this camera on slide 17, you're going to change the size and
9 now you also want to change shutter speed.

10 Assume you want to do the operation that you did
11 yesterday with the thumb drive -- or the thumb wheel, excuse
12 me. If you now did it on the touchscreen, you would no
13 longer need that thumb wheel, correct?

14 A. Again, this sounds like an engineering choice.
15 Panasonic, as it's implemented, uses the thumb wheel for
16 different ways to control things that the designer found it
17 useful for in that particular mode.

18 Q. Okay. All right. So Panasonic, you agree, found
19 it useful to implement the feature you talked about, moving
20 the slider for shutter speed when this was displayed, shown
21 on slide 17, with the thumb wheel? That's how they chose to
22 implement it?

23 A. Again, I'm a little bit confused, because this
24 slide is not showing using the thumb wheel to adjust the
25 shutter speed.

1 Q. Right. But you didn't -- I don't think you took
2 a picture of that. So that's why I'm asking.

3 A. I see. Well, I do have pictures that are closer
4 to that, that show the shutter speed on the screen.

5 Q. Okay. We'll get to that.

6 A. Okay.

7 Q. But I was asking about the thumb wheel. All
8 right.

9 Why don't we move to slide 18. Is this what you
10 were talking about?

11 A. Yes. This is -- shows the Panasonic where you
12 can use the finger to adjust the slider.

13 Q. Okay. And as shown here, and this is also, you
14 demonstrated, you're adjusting shutter speed using -- are
15 you calling that a slider bar?

16 A. Yes. Sometimes I called it that.

17 Q. Okay. And this mode is different than the mode
18 we talked about in slide 17, correct? This mode only allows
19 you to adjust shutter speed; it does not display the auto
20 focus guide, correct?

21 A. Correct.

22 Q. All right. And correct or incorrect: When you
23 actually adjust the shutter speed as shown on this slide,
24 the auto focus guide is not displayed?

25 A. Correct.

1 Q. All right. And you talked about some other
2 settings on this camera, such as brightness, aperture value,
3 and I think we discussed there might be four or five others;
4 do you recall that?

5 A. Yes.

6 Q. Okay. Any other setting, other than focus area,
7 when you adjust it, the auto focus guide will not be
8 displayed on this camera, correct?

9 A. Sorry, could you repeat the question?

10 Q. Shutter speed, brightness, aperture value, and a
11 number of other settings, when you enter this mode to adjust
12 it, the auto focus guide is not going to be displayed?

13 A. I don't think I can answer that question with a
14 yes or no.

15 Q. Okay. Let me go to slide 20.

16 You also talked about and offered opinions about
17 the exposure value setting in the Samsung S camera?

18 A. Yes, I did.

19 Q. And, again, whenever you attempt to adjust the
20 exposure value, you'll see the screen images like you've
21 shown here in these two photographs on slide 20, correct?

22 A. These images do show me adjusting the exposure
23 value by dragging on the screen with my finger.

24 Q. All right. So correct or incorrect: When you
25 actually adjust the exposure value, the auto focus guide is

1 not displayed?

2 A. Correct.

3 Q. Okay. Now, if you look at your slide -- if we
4 could put up, from Respondents demonstratives, RDX-2.55.
5 Thank you.

6 Do you recall testifying about this demonstrative
7 yesterday?

8 A. I do.

9 Q. All right. So just to be clear, the image on the
10 top left and the image on the bottom left, those are actual
11 photos, correct?

12 A. Yes. Those are actual photos from the camera --
13 the red is an annotation, but the rest is a direct photo.

14 Q. Okay. And what's shown on the right is something
15 you created; it doesn't actually exist, correct?

16 A. I created it with the elements from the pictures
17 on the left, yes.

18 Q. Yeah. You took something from the top and you
19 took something from the bottom, and you combined them and
20 put them on the right, correct?

21 A. Correct.

22 Q. All right. Now, isn't what's shown on the left
23 of your slide 55, where you're seeing the auto focus guide,
24 a different mode on the Galaxy S camera than the mode where
25 you see the exposure slider?

1 A. I don't recall using the word "mode" to describe
2 these. I'm not sure if the documentation describes these,
3 but I agree the camera certainly operates -- operating
4 different aspects of the camera functionality in these two
5 portions of the user interface.

6 Q. Okay. All right. You show one -- what should we
7 call it, if not mode? What do you want to call it?

8 A. Let's call it a screen.

9 Q. Okay. So there's one screen option where you
10 have an auto focus guide. There's another screen option
11 where you get exposure slide, correct?

12 A. Yes.

13 Q. How many other screens and settings are possible
14 to display on the Samsung Galaxy S?

15 A. I do not know.

16 Q. More than ten?

17 A. I didn't count.

18 Q. Okay. So couldn't Samsung put every single
19 setting, make an image like you did on the right, and just
20 display all 10 or 20 of them at the same time so you could
21 adjust all of them and see them all?

22 A. I think if a person of skill wanted to modify
23 this to display many settings, that would be well within
24 their capability.

25 Q. Okay. All right. Well, let's assume there's ten

1 settings. Why did you just pick these particular two, the
2 auto focus guide setting and the exposure slider setting,
3 and decide to combine those two when you could have combined
4 plenty of combinations?

5 A. As I explained yesterday, I thought that these
6 are two particularly common and useful settings, and these
7 are actually the ones that are primarily visible to a user
8 on the user interface. When the system is in preview, when
9 the preview screen is up, the auto focus guide, I believe,
10 shows up by default in the center and you can modify it.
11 That's a pretty basic part of the -- of the camera
12 functionality.

13 And of the other settings that are available,
14 only one of them is displayed on the bar on the left as
15 showing its current value, brightness, because, again, as I
16 said, brightness is a common and frequent setting.

17 In this case -- so, anyway, I think that's really
18 the same answer I gave yesterday. They are common and
19 frequent settings. They're very visible. The user will
20 likely have just set them. So those are two natural choices
21 that a person of skill in the art would have in their choice
22 to combine and display them both.

23 Q. And there are other settings that are common as
24 well?

25 A. On the Samsung, I think the other settings are

1 not so directly related to the -- how the image will be
2 captured in a way that you adjust frequently, like if you
3 press the SCN, which stands for screen, you can change the
4 resolution. You can change to a video.

5 Q. I assume you can change the camera -- I don't
6 know if it had additional lenses or cameras; can you do
7 that?

8 A. You could change -- the top left icon, let's you
9 switch from the back-facing camera to the front-facing
10 selfie camera. So, yeah, you could choose one camera or the
11 other, but that would be clear to a user which camera is
12 being used because the image would change.

13 Q. Okay. And when you combine different display
14 elements together, obviously on your created image on the
15 right, now they became smaller than they were on the left?
16 Do you see on the left your exposure slider is large, right
17 in the middle of the screen, and now it's smaller, correct?

18 A. Yes. In this design choice, I did make the
19 exposure slider a little bit smaller and moved it a little
20 bit lower.

21 Q. How would you define the word "hindsight"?

22 A. My understanding is that's a legal word relating
23 to patents, so I certainly don't have a legal definition for
24 you.

25 Q. I don't want a legal definition. I want your

1 definition, your common understanding of what it is to use
2 hindsight.

3 A. I'm not sure I have a definition to give you.

4 Q. Okay. So you don't know whether you're using
5 hindsight right now because you can't define it?

6 A. Well, I explained my rationale for why I think a
7 person of skill would be motivated to display this.

8 Q. Okay. You also -- if we could put up slide 23,
9 do you remember using this slide, which referred to the
10 prosecution history, which is RX-127, of an earlier patent?

11 A. I do.

12 Q. And this is one of the reasons you indicated
13 Ericsson's claim construction was incorrect, in your
14 opinion, correct?

15 A. That's right.

16 Q. Okay. This slide contains an argument made
17 during prosecution of a different patent, correct?

18 A. Correct.

19 Q. What happened after this amendment and argument
20 was made?

21 A. I don't recall specifically, beyond that the
22 "maintained at the specific point" language was amended or
23 added to the claim.

24 Q. Okay. Would it matter to you what happened
25 after?

1 A. It might. I guess it depends on what happened.

2 Q. Okay. Why don't we put up slide 24, the office
3 action, which is at RX-127, page 696 and, in particular,
4 page 697.

5 Do you see the Patent Office, after the amendment
6 you referred to, said, "Applicant's arguments with respect
7 to claims 21 to 40 have been considered but are moot because
8 the arguments do not apply to any of the references being
9 used in the current rejection."

10 So these arguments that you relied on in the
11 prior slide were never addressed by the Patent Office and
12 the claims were not allowed on that basis. Did you
13 understand that?

14 A. I probably did at some point in my analysis, but
15 I don't think I remember that right now.

16 Q. Okay. And do you know what happened after this
17 office action?

18 A. I do not recall.

19 Q. Okay. Do you understand that there was another
20 response given and a different amendment made to the claims?

21 A. There may have been.

22 Q. Okay. All right. Thank you very much for
23 answering my questions, Dr. Bederson. Good to see you
24 again.

25 MR. ANZALONE: No further questions.

1 JUDGE ELLIOT: Very well.

2 MR. MIZZO: Chris Mizzo for the Respondents. May
3 I proceed, Your Honor?

4 JUDGE ELLIOT: Yes.

5 REDIRECT EXAMINATION

6 BY MR. MIZZO:

7 Q. Good morning, Dr. Bederson.

8 A. Good morning.

9 Q. Let me start where Ericsson's counsel had started
10 with regard to your opinion that the asserted claims are
11 invalid under Section 101. You were asked: Are the claims
12 limited to data collection and analysis.

13 Do you recall that question?

14 A. I do.

15 Q. Is -- and was the opinion that you offered with
16 regard to what the abstract idea, was that data collection
17 analysis?

18 A. No, that was not my opinion.

19 Q. And in your opinion, what is the abstract idea
20 that the whole of claim 1 is directed to?

21 A. I believe I said it was directed to display and
22 manipulation of information for adjusting a camera setting.

23 Q. Does claim 1 of the '654 patent recite
24 "efficiently"?

25 A. It does not.

1 Q. Does it recite "conveniently"?

2 A. It does not.

3 Q. Okay. If we could please -- if I can ask the
4 trial tech for Ericsson to please pull up CDX-13C.17.

5 Sir, do you recall being shown CDX-13C.17 on the
6 cross-examination?

7 A. I do.

8 Q. And you were asked several questions about it?

9 A. Yes, I was.

10 Q. Now, I think there may have been some confusion.
11 So I want to straighten things out.

12 A. Okay.

13 Q. Are the images that are shown in CDX-13C.17, do
14 these relate to shutter speed?

15 A. No, they do not.

16 Q. What image capturing setting is shown in these
17 images?

18 A. The focus area.

19 Q. And when a user adjusts the focus area, are they
20 using the thumb wheel?

21 A. I showed this operating by using the touchscreen.

22 Q. And how did you show using the touchscreen that
23 you could adjust the focus area?

24 A. By dragging up and down on the slide bar on the
25 right side of the screen.

1 Q. And was your discussion of using a dial to adjust
2 an image capture setting in the context of the auto focus
3 setting?

4 A. It was not.

5 Q. And let's look at the image on the right. You've
6 got the yellow square and you've got the yellow slide bar.
7 What are those two elements, as you've previously
8 identified?

9 A. The square, the yellow square, is the auto focus
10 guide. And the slide bar is the indicator.

11 Q. Let's turn to -- let's now discuss shutter speed.
12 Do you see -- this is RDX-2.72, which includes
13 the two screen captures that were taken during your
14 demonstration yesterday. Do you recall that?

15 A. I do.

16 Q. And these images were provided to Ericsson's
17 counsel last night. Did they show you these images in your
18 cross-examination?

19 A. They did not.

20 Q. Okay. In the top image, which is RDX-2.70, there
21 is a white square there that I've tried to circle in blue.

22 What is that white square?

23 A. That is the auto focus guide.

24 Q. And this bar labeled SS, what is that a reference
25 to?

1 A. Shutter speed.

2 Q. And in this mode, how did you adjust shutter
3 speed?

4 A. With the dial.

5 Q. Is that why your thumb is up here (indicating)?

6 A. Yes.

7 Q. Okay. And in RDX-2.71, is this the bar down here
8 (indicating) that's highlighted in yellow for shutter speed?

9 A. Yes, it is.

10 Q. And how are you adjusting shutter speed in
11 RDX-2.71?

12 A. By dragging an object back and forth on the
13 touchscreen.

14 Q. Is that a slide bar in 2.71?

15 A. It is.

16 Q. And I believe you were discussing this with
17 opposing counsel, but what are you saying is your
18 obviousness opinion with regard to the shutter speed image
19 capturing setting?

20 A. At a high level, my opinion is that you could --
21 it would be obvious to display the automatic focus guide
22 with the shutter speed slider that you could adjust by
23 dragging your finger on the screen to adjust the slider.

24 Q. So this square (indicating) would just simply be
25 displayed there (indicating)?

1 A. Correct.

2 MR. ANZALONE: Objection, leading.

3 JUDGE ELLIOT: Okay, hold on. I'll allow it.

4 BY MR. MIZZO:

5 Q. If we could please turn to CDX-13C.18.

6 Do you recall being asked questions about this
7 slide on your cross-examination?

8 A. I do.

9 Q. And which mode is this for adjusting the shutter
10 speed? Is this the slide bar or is this the thumb wheel?

11 A. This is the touchscreen slide bar.

12 Q. And in this permutation, the auto focus guide is
13 not displayed on the touchscreen, correct?

14 A. That's right.

15 Q. Is -- when you're dragging on this, is the auto
16 focus guide set at the location that had been previously
17 touched?

18 MR. ANZALONE: Objection, leading.

19 JUDGE ELLIOT: Sustained.

20 BY MR. MIZZO:

21 Q. Okay. Before you get into the adjustable slide
22 bar for shutter speed, can you set the auto focus guide at a
23 specific point?

24 A. Yes, you can.

25 Q. And then when you get into the setting and you

1 adjust the setting and you're happy with the setting, what
2 is the next step that you can do?

3 A. Well, if you press that set -- menu set button on
4 the bottom right of the screen, then it will accept the
5 shutter speed setting that you had just set and return to
6 the previous screen that will continue to display the
7 automatic focus guide at the position you had previously set
8 it at.

9 Q. Let's turn to CDX-13C.20.

10 And do you recall being asked questions about the
11 Samsung Galaxy S and, in particular, about this slide?

12 A. I do.

13 Q. Now, in this -- in these two images, what image
14 capturing setting are you adjusting?

15 A. The exposure value.

16 Q. And after you've reached an exposure value that
17 the user likes, what is the next step?

18 A. Well, if you either touch the preview image
19 anywhere that's not on the slider or you just wait for about
20 two seconds, the exposure value will be hidden and it will
21 go back to the preview image screen where you can then touch
22 the screen to set the position of the auto focus guide.

23 Q. And now, Mr. Schlaifer, if we could please pull
24 up RDX-2.52.

25 And in RDX -2.52, on the left-hand side, we see

1 an indicator at minus 1.5. How is that showing a minus 1.5?

2 MR. ANZALONE: Objection. This is beyond the
3 scope.

4 MR. MIZZO: Your Honor, this is absolutely
5 related to the last slide.

6 JUDGE ELLIOT: I recall you asked about that
7 particular icon, Mr. Anzalone. So overruled.

8 BY MR. MIZZO:

9 Q. So you see the icon on the left. It's labeled
10 "indicator." How did -- or why does the indicator reflect a
11 value of minus 1.5?

12 A. I think I showed this in my demonstration that,
13 on the Samsung device, when you drag your finger back and
14 forth to just the exposure value, the value that you're
15 setting also gets displayed on that indicator on the left.
16 And so when you are done adjusting the exposure value, that
17 value is displayed in this indicator on the left.

18 Q. And when the indicator is shown on the left, what
19 can you do if you want to change the focus of the Samsung
20 Galaxy S?

21 A. You can then touch the screen and it will display
22 that auto focus guide centered around where you had touched,
23 like is -- and that's how I got to the screen that you see
24 here.

25 Q. And when you then touch the screen to focus the

1 camera on that specific point, what two things are being
2 shown that are consistent with the claim language?

3 A. Well, at that point, you're -- the camera
4 displays an indicator, which indicates the current image
5 capture setting, and it is displaying that indicator while
6 it maintains or displays the auto focus guide at the
7 specific point you had touched.

8 Q. And you were asked about, when discussing the
9 Samsung Galaxy S, whether a person of ordinary skill could
10 have set up many different settings to be reflected on the
11 screen at the same time. Do you recall that testimony?

12 A. I do.

13 Q. Will you please go to RDX-2.55.

14 And I think it was in the context of this slide.
15 Do you recall?

16 A. I think so.

17 Q. Is your opinion that every single setting has to
18 be called up at the same time as the auto focus guide?

19 A. No.

20 Q. Okay. What setting are you showing as part of
21 your obviousness combination for the Samsung Galaxy S?

22 A. The exposure.

23 Q. And what is -- do you see there's a pane on the
24 left side of the Samsung Galaxy S?

25 A. That vertical stack of buttons on the left side

1 of the screen?

2 Q. Yes. And that includes the indicator button. Do
3 you see that strip?

4 A. I do.

5 Q. What is -- what are the settings that on a single
6 touch would bring up an image capturing setting?

7 A. Well, that plus/minus -- actually, sorry, maybe I
8 mis- -- maybe I don't understand your question.

9 Q. If you -- if a user touches the plus/minus, what
10 happens?

11 A. Oh, if the user touches that plus/minus button,
12 then it will display the exposure slider.

13 Q. Is that exposure slider shown at the bottom left
14 of RDX-2.55?

15 A. It is.

16 Q. And if you focus on that strip of icons, of the
17 other four that are there, are there any that on a single
18 touch would pop up an image capturing setting?

19 A. I'm not sure.

20 Q. Okay. Do you recall being -- we can bring that
21 down.

22 Do you recall being asked questions about office
23 actions?

24 A. I do.

25 Q. And you were asked what happened next, what

1 happened next? Do you recall?

2 A. I do.

3 Q. Is the '654 patent -- did that issue from one
4 application or does it have a long file history?

5 A. It has a long file history.

6 Q. Okay. And do you recall being asked questions
7 about the -- about hindsight?

8 A. I do.

9 Q. Sir, are you being offered as a legal expert?

10 A. I am not.

11 Q. Did counsel for Ericsson put up a definition for
12 hindsight so that you could have a frame of reference?

13 A. No.

14 Q. And let me ask you, did you provide an expert
15 report in this case?

16 A. I did.

17 Q. Did you provide a definition of hindsight in your
18 expert report?

19 A. I don't recall doing so.

20 Q. Let's look at paragraph 48 of your expert report.

21 In paragraph 48, you say, "I understand that it is
22 impermissible to use the claimed invention, or disclosure of
23 the subject patent, as a template to piece together existing
24 elements in the prior art to arrive at the claimed
25 invention. This is considered hindsight reasoning."

1 Do you see that?

2 A. I do.

3 Q. Sir, did you apply hindsight reasoning in coming
4 to your opinion that the asserted claims are rendered
5 obvious by the Panasonic and Samsung Galaxy S pieces of
6 prior art?

7 A. I did not.

8 MR. MIZZO: No further questions, Your Honor.

9 JUDGE ELLIOT: Very well.

10 Dr. Bederson, thank you.

11 (The witness stood down.)

12 MR. AROVAS: Your Honor, the next witness will be
13 Mr. John Mulgrew. And we're just getting him from outside.
14 He was sequestered.

15 JUDGE ELLIOT: Very well.

16 Good morning, sir. That little disk in front of
17 you, tap the rim of it just once. It should turn green.
18 Okay. Good.

19 All right. I need to swear you in.

20 Whereupon--

21 JOHN MULGREW,
22 having been first duly sworn/affirmed, was examined and
23 testified as follows:

24 THE WITNESS: I do.

25 MR. DONOVAN: Good morning, Your Honor. Ed

1 Donovan from Kirkland & Ellis on behalf of the Lenovo
2 Respondents. May I proceed?

3 JUDGE ELLIOT: Yes.

4 DIRECT EXAMINATION

5 BY MR. DONOVAN:

6 Q. Good morning, Mr. Mulgrew. Would you please
7 introduce yourself for the Court?

8 A. Yes. Hi. My name is John Mulgrew.

9 Q. And could you tell us a little bit about
10 yourself.

11 A. Sure. I'm a patent attorney. I've been
12 practicing patent law for over 20 -- 20 years, and I live in
13 Redmond, Washington with my wife.

14 Q. And where do you work, Mr. Mulgrew?

15 A. I work at Lenovo.

16 Q. And which Lenovo entity?

17 A. Lenovo U.S.

18 Q. And how long have you worked at Lenovo?

19 A. I've worked at Lenovo for almost five years now.

20 Q. What are your job titles?

21 A. I have three different job titles, vice
22 president, intellectual property; deputy general counsel;
23 and chief intellectual property officer.

24 Q. And what are your responsibilities with those job
25 titles at Lenovo?

1 A. So I lead the IP team at Lenovo, and we have a
2 wide range of responsibilities. We essentially handle
3 almost every IP question that comes up with the company. It
4 ranges from protecting our innovations, developing a patent
5 portfolio strategy, through to day-to-day IP questions like
6 if there are commercial agreements or negotiations going on
7 that involve IP, we would get involved. And also we do
8 licensing, IP licensing.

9 Q. And where did you work before Lenovo?

10 A. Before Lenovo, I led the IP team at Uber. And
11 before Uber, I worked at Microsoft for ten years. And I've
12 worked at a couple different firms as well.

13 Q. In connection with your work prior to Lenovo, did
14 you have experience with patent licensing?

15 A. Yes, I have.

16 Q. Can you describe some of that for us, please?

17 A. Sure. I started doing licensing even before
18 going in-house, but at Microsoft, the team I joined and
19 eventually led was responsible for all licensing
20 negotiations. And at Uber when I led the IP team, I was
21 also -- my team was also responsible for IP licensing.

22 Q. If you had to estimate how many different patent
23 licensing negotiations have you been involved in in your
24 20-year career?

25 A. It would be in the thousands. I don't have a

1 precise number.

2 Q. Have you also been involved in corporate
3 acquisitions and divestitures with respect to patent
4 licensing?

5 A. Yes. Yes, I have.

6 Q. Can you describe some of that at a high level,
7 please?

8 A. Okay. So at a high level, both at Microsoft and
9 at Uber, both of those companies are pretty well known for
10 acquiring companies and spinning out businesses. And my
11 team at Microsoft directly supported all the
12 acquisition-type related activities. If there were any IP
13 questions, they would come to me specifically.

14 And at Uber, it was the same thing. They also
15 acquired and spun off businesses, and my team and
16 specifically I would be involved in those -- those issues,
17 those matters.

18 Q. Before we get to the substance of your testimony,
19 did you prepare some slides to assist your testimony here
20 today?

21 A. Yes, I did.

22 Q. So, Mr. Mulgrew, what I want to start with, ask
23 you a little bit about your employer, and with reference to
24 your slide RDX-1.2, where is Lenovo U.S.'s headquarters?

25 A. So Lenovo U.S.'s headquarters are in Morrisville,

1 North Carolina.

2 Q. And what do we see in the upper left-hand corner
3 of your slide?

4 A. So this is one of the buildings on our campus in
5 North Carolina. We have multiple buildings in Morrisville.

6 Q. And approximately how many employees does Lenovo
7 have in the U.S.?

8 A. 3200.

9 Q. And to be clear, is -- that 3200, does that
10 include Motorola employees in the U.S.?

11 A. No. That's just Lenovo.

12 Q. What sorts of activities does Lenovo do in the
13 U.S.?

14 A. So Lenovo has -- Lenovo U.S. has a wide range of
15 activities that it does. It does a lot of R&D. So that
16 ranges from what I would call early stage applied R&D where
17 people are researching what a PC or tablet might look like
18 five years from now or longer, versus near-term R&D like the
19 next generation product, what incremental differences are we
20 going to be making. And then there are other -- there's
21 manufacturing that we also have in North Carolina, and we
22 also have sales and marketing and other things to support
23 the business.

24 Q. And what do we see in the lower left-hand corner
25 of your slide?

1 A. In the lower left corner is a photo of our Custom
2 Solutions Center. And I think that's in Whitsett, North
3 Carolina.

4 Q. Now, you mentioned R&D. What sorts of R&D --
5 well, does Lenovo get patents on its R&D?

6 A. Yes. So we do protect our innovations, yes.

7 Q. And approximately how many different U.S.
8 inventors have U.S. Lenovo patents?

9 A. So in our portfolio for Lenovo U.S., we have over
10 725 U.S. inventors that are reflected in 3500 -- it's
11 actually over 3500 -- U.S. patents.

12 Q. Mr. Mulgrew, in this case, Ericsson has accused
13 Smartphones, laptops, and tablets, and I know you were
14 sequestered, but we heard earlier from a witness about the
15 Motorola Smartphones.

16 If we could please turn to RDX-1.3.

17 Can you tell us a little bit about the Lenovo
18 laptops and tablet business?

19 A. Sure. So Lenovo is a market leader -- I think
20 it's Number 1 in the market -- for PCs and tablets. And if
21 you look country by country, we're usually 1 or 2. So it's
22 a very successful business.

23 And I think some of the reasons why is because
24 across -- it's a wide range of products that serve lots of
25 different types of customers, and those products are highly

1 innovative and better than other people's products. So on
2 our low end, you can buy, like, a PC, maybe, for example,
3 for your child's first computer for school and it might be
4 \$200, \$250.

5 And on the high end, if you're, say, an
6 engineering firm or an architecture firm or a movie studio,
7 you can buy a very, very high performing PC. And across
8 that -- and everything in between, and across the whole
9 spectrum, we distinguish ourselves over the competition.

10 Q. And is the same true of tablets?

11 A. Yes, it's the same for tablets. It's a wide
12 range of tablets serving different types of customers.

13 Q. Now, in this investigation, Ericsson has
14 suggested in its prehearing brief that Lenovo has no
15 innovation and just bought other companies' products.

16 Do you agree with that characterization?

17 A. No, I don't agree with that characterization.

18 Q. And if we turn to RDX-1.4, can you tell us about
19 some of the honors and awards that Lenovo has received for
20 innovation in its laptops and tablets?

21 A. Sure. And I want to say that there are -- over
22 the last five years, Lenovo has received over 575 honors and
23 awards along the lines of best product, most innovative
24 product, things like that, from different trade shows and
25 different journalists and different places.

1 But I've just selected a few to highlight here,
2 and then I'm going to pick maybe one or two just to talk
3 about. So one of them is this Time Magazine one. It's in
4 the middle row on the left. This is an innovation where the
5 -- our researchers thought about changing the way you think
6 about what a laptop capability is and its display
7 capabilities.

8 So this laptop would have a display that when you
9 open the computer up, if you wanted the display to be
10 bigger, you can pull it up and it would stretch and unroll
11 so the screen is much larger than a normal laptop might be.
12 That innovation was recognized by Time Magazine as the
13 best -- one of the best inventions of 2023. And you can see
14 it's on the cover there, what's in the article.

15 The other one I will just pick out here is the
16 one just to the right of it, which is the ThinkVision 27 3D
17 monitor. This got recognized at CES, which is a -- the
18 leading trade show for our sector, for the PC and tablet
19 sector. It was recognized as most innovative. And it's a
20 display that lets you see 3D, a 3D experience, without
21 having to wear anything on your head like most other
22 companies try to do.

23 Q. And if we turn to RDX-1.5, can you tell us about
24 some of the other innovations that Lenovo has in connection
25 with its laptops and tablets?

1 A. Sure. And again there are many examples that I
2 could have given over the years. I just picked a few to
3 sort of show that we have year-over-year-over-year
4 innovations that are going into our products. And, again,
5 I'll just pick two here.

6 The middle one on the top row is the ThinkPad X1
7 Fold. And I know the picture is very small in the
8 courtroom, but what that is is a normal size tablet --
9 sorry, a normal size laptop but the entire surface where the
10 keyboard might be is also a display. So it unfolds and it's
11 one huge display, but you can also fold it up like a laptop
12 and put a floating keyboard on top of it so you can use it
13 like a regular laptop or you can take the floating keyboard
14 out and it becomes a full display and a tablet. That is the
15 -- it's the first foldable PC that ever was sold, the first
16 foldable PC in the market.

17 The other one I'll point to is a proof of concept
18 that was unveiled this year. It's over -- the bottom row on
19 the right, and, again, it's very tiny in the image there.
20 It is a transparent display for a laptop.

21 So now think about your laptop cover where the
22 display is. It's completely transparent. But when you turn
23 it on and use it, you use it like a regular monitor. So
24 it's very transformative about how people think about what a
25 PC could be.

1 Q. And are those Lenovo innovations covered by
2 Lenovo patents?

3 A. Yes.

4 MR. DONOVAN: Now I'd like to turn to a different
5 subject now, and to do so, Your Honor, I'd ask if we could
6 please turn on the party confidential record?

7 JUDGE ELLIOT: Very well.

8 (Whereupon, the hearing proceeded in confidential
9 session.)

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1 O P E N S E S S I O N

2 MR. DONOVAN: May I proceed, Your Honor?

3 JUDGE ELLIOT: Yes.

4 DIRECT EXAMINATION

5 BY MR. DONOVAN:

6 Q. Mr. Djavaheerian, would you please introduce
7 yourself to the Court.

8 A. Yeah. My name is David Djavaheerian. I'm an
9 attorney based in California. I am also a consultant.

10 Q. And who are you employed by, Mr. Djavaheerian?

11 A. In 2014, I started a law firm called PacTech Law.
12 And I continue to be employed by that company. I'm also the
13 president of a consultancy called PacTech Consulting.

14 Q. Were you retained on behalf of Lenovo as an
15 expert in this case?

16 A. Yes, I was.

17 Q. And what is your expertise as it relates to your
18 work on this case?

19 A. So for the past 15 or 20 years, my practice has
20 focused on representing clients in connection with patent
21 licensing issues, drafting patent licenses, negotiating
22 patent licenses, addressing policy issues relating to IP and
23 patents. I've sort of spent my -- much of my career doing
24 those things, doing those things.

25 Q. And what were you asked to do in this case?

1 A. I was asked to look at the Motorola/Ericsson
2 license agreement to evaluate it from the perspective of
3 someone familiar with patent licenses and to offer opinions
4 as to the considerations that are typical in patent
5 licensing and whether certain provisions, particularly the
6 corporate transaction clauses of the agreement, were
7 consistent with or inconsistent with typical expectations
8 and understandings of patent licensing.

9 Q. And did you have some -- did you reach opinions
10 on those subjects?

11 A. I did.

12 Q. And did you have some slides prepared to assist
13 your testimony here today?

14 A. Yes, I did.

15 Q. I would like to start with your credentials as an
16 expert. And in your binder you have RX-1062C.

17 Are your credentials contained in your CV in
18 RX-1062C?

19 A. Yes, they are.

20 Q. And with reference to your slide RDX-11.2, can
21 you summarize for us your formal education?

22 A. Sure. As I said I am a lawyer. I got my law
23 degree from Berkeley Law. I have a Master's degree from
24 Georgetown University and I also went to undergrad at
25 Berkeley.

1 Q. And with reference to that same slide, can you
2 describe your work experience since leaving Berkeley law
3 school?

4 A. After I graduated from law school, I started at
5 Irell & Manella doing IP litigation and other related tasks,
6 including licensing. In 2007, I joined a licensing company
7 called Tessera based in the Bay area. They were a
8 semiconductor technology company focused on a licensing
9 business in the memory space where that was our primary
10 source of revenue.

11 In 2010, I joined Broadcom, which is a leading
12 semiconductor company based in Orange County, California.
13 There I was involved in licensing disputes and litigation
14 relating to various patent issues. In 2014, I left Broadcom
15 and started PacTech Law, and soon after PacTech Consulting,
16 where I focus on representing clients in connection with IP
17 licensing, IP disputes, policy issues, and such across a set
18 of industries.

19 Q. And in connection with your licensing work, have
20 you considered the effect of future transactions like
21 corporate acquisitions and divestitures and licenses?

22 A. Sure. So it is always important to plan for the
23 future, particularly in patent licenses to make sure that
24 you have different potential possibilities covered.

25 Q. Have you been accepted as an expert and testified

1 in other cases as an expert on licensing patents?

2 A. Yes, I have.

3 MR. DONOVAN: Your Honor, Lenovo offers
4 Mr. Djavaheerian as an expert in patent licensing practices.

5 JUDGE ELLIOT: Very well.

6 MR. ABHYANKAR: No objection.

7 BY MR. DONOVAN:

8 Q. Mr. Djavaheerian, I would like to turn to your
9 opinions now, and to do so, Your Honor, I will like to turn
10 to the party confidential record.

11 (Whereupon, the hearing proceeded in confidential
12 session.)

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1 O P E N S E S S I O N

2 Whereupon--

3 SIR CHRISTOPHER FLOYD,
4 having been first duly sworn/affirmed, was examined and
5 testified as follows:

6 THE WITNESS: I do.

7 JUDGE ELLIOT: Have a seat, please.

8 DIRECT EXAMINATION

9 BY MR. RAVISHANKAR:

10 Q. Good afternoon. Can you please state your full
11 name for the record.

12 A. My name is Christopher David Floyd.

13 Q. Have you testified live in court before?

14 A. Yes. I testified in the 1375 investigation last
15 month.

16 Q. Have you prepared any slides to help illustrate
17 your testimony today?

18 A. Yes. I've prepared slides with the assistance of
19 counsel.

20 Q. Great. So those are marked as RDX-12C for the
21 record. And could we please pull those up.

22 And going to slide 2, does this slide summarize
23 your background and experience?

24 A. Yes, it does. No, it doesn't.

25 JUDGE ELLIOT: I think you've got the wrong one.

1 MR. RAVISHANKAR: No, it doesn't.

2 (Laughter.)

3 MR. RAVISHANKAR: RDX-12, please. Thank you.

4 BY MR. RAVISHANKAR:

5 Q. All right. Now, does this slide summarize your
6 background and experience?

7 A. Yes, this slide does.

8 Q. What do you do for a living today?

9 A. I'm a retired member of the Court of Appeal of
10 England and Wales. And apart from being retired, my working
11 time is divided between some legal consultancy, some
12 academic work, and also very occasional part-time sitting.

13 Q. How long have you been a judge?

14 A. Well, before I was appointed full time, I was a
15 Deputy High Court Judge, but I was appointed a full-time
16 Judge in 2007 and a Judge of the Court of Appeal in 2013.

17 Q. Do you have any experience with patent law?

18 A. I have devoted the whole of my working life to,
19 first, being a barrister in intellectual property and then a
20 judge, and the predominant focus of all that work has been
21 patents.

22 Q. How many patent cases have you presided over as a
23 judge?

24 A. Well, a very unscientific estimate would be, as a
25 High Court Judge, around 40, and as a Judge in the Court of

1 Appeal, probably rather less than that, maybe 30 to 35.

2 Q. And how many cases have you been involved in as a
3 judge regarding contract interpretation?

4 A. In the Court of Appeal, the cases are more wide
5 ranging. Looking back over the last ten years and not
6 pretending to be accurate, I would say that I've been
7 involved in around ten cases where there was a major issue
8 of contract interpretation, and in about half of those, I
9 wrote the leading judgment.

10 Q. How many preliminary issue trials have you
11 presided over?

12 A. As a High Court Judge, probably around half a
13 dozen, six.

14 Q. Let's pull up RX-1075, please.

15 What is this document, which is also in your
16 binder?

17 A. This is a more detailed CV setting up my career,
18 my publications, the list of cases, and also cases where
19 I've offered expert reports and been deposed.

20 Q. Does your CV provide your qualifications in more
21 detail?

22 A. It does.

23 MR. RAVISHANKAR: Your Honor, at this time,
24 Respondents move to have Sir Christopher Floyd admitted as
25 an expert on U.K. law, practice, and procedure.

1 JUDGE ELLIOT: Very well.

2 MR. RAVISHANKAR: And at this time, if we could
3 go onto the confidential record for the parties, for both
4 parties.

5 JUDGE ELLIOT: Very well.

6 (Whereupon, the hearing proceeded in confidential
7 session.)

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1 O P E N S E S S I O N

2 BY MR. RAVISHANKAR:

3 Q. We can move on now to the rate-setting action.
4 Let's turn to slide 7, if we could.

5 What was Lenovo seeking when it filed the
6 rate-setting action in the English court on October 13th,
7 2023?

8 A. Well, at a high level, it was asking the court to
9 determine the terms of the global cross-license between
10 Lenovo and Ericsson for their respective portfolios of
11 patents applying the FRAND principles.

12 Q. What court was that filed in?

13 A. That was filed in the Patents Court, which is
14 part of the court system of England and Wales.

15 Q. All right. Is that the same court as the
16 licensing court case?

17 A. It is, yes.

18 Q. Now, is this type of request for a rate setting
19 unusual in English courts?

20 A. It's become increasingly common, Your Honor, over
21 the last ten years. Starting with the decision of Mr.
22 Justice Birss in the Unwired Planet and Huawei case. Since
23 then, there have been two further rate-setting actions which
24 have come to trial and produced a final order, one between
25 InterDigital and Lenovo and the other between Apple and

1 Optis. And no doubt there are others in the pipeline.

2 Q. Has Ericsson ever sought a rate setting from the
3 English courts?

4 A. Yes. Ericsson sought a rate-setting
5 determination in its case against Apple in 2022. But that
6 case subsequently settled.

7 Q. All right. Let's turn to slide 8, if we could,
8 to another timeline.

9 And I want to skip ahead to the blue April 29th
10 to May 2nd, 2025 commencement for a FRAND trial.

11 Can you explain what the FRAND trial is?

12 A. Well, the FRAND trial will be preceded in what we
13 call the interim stages with the parties exchanging drafts
14 of what they say are the terms of a global FRAND
15 cross-license. Insofar as there are disagreements on
16 individual terms, the Court will iron out all those
17 disagreements and come up with a full set of terms which it
18 will declare comply with FRAND, which it will annex to its
19 order.

20 Q. When do you expect a decision to issue from the
21 FRAND trial?

22 A. Well, Mr. Justice Birss produced his decision,
23 which was the first and therefore probably the most
24 difficult, within three to four months. Since then, there
25 have been the two cases that I mentioned. There, the two

1 Judges took very considerably longer to produce their
2 decisions. One of those has now gone to the Court of
3 Appeal. And the time taken by the Judge was the subject of
4 adverse comment.

5 So bearing those considerations in mind, and also
6 the general rule that judges should produce judgments even
7 in complex cases within three months, I would predict that
8 the judgment in the FRAND trial would be in the second half
9 of 2025.

10 Q. Now, you briefly addressed this, but could you
11 explain what form the decision rendered in a rate-setting
12 claim looks like?

13 A. It will be a declaration that the annexed terms
14 are the terms of a global FRAND cross-license between
15 Ericsson and Lenovo covering their respective patents.

16 Q. Will that license cover the parties'
17 non-essential patents?

18 A. I can't give you a yes or a no answer to that.
19 In some of the cases, it has been successfully argued that
20 it should, largely because of the parties' preexisting
21 licensing practice. If a party's practice has been to
22 bundle its SEPs with its NEPs, then it may turn out to be
23 contrary to the discriminatory -- anti-discriminatory limb
24 of FRAND, not to include the non-essential patents as well.

25 So it will all depend on the facts. And I can't

1 say whether in this particular case it would include the
2 NEPs or not.

3 Q. When will that complete license that you
4 mentioned determined by the Court go into effect and need to
5 be paid back?

6 A. It would go into effect once the order is made,
7 because Lenovo has given an undertaking to enter into the
8 license, an unconditional undertaking to enter into the
9 license. It says it needs the license. So, presumably, it
10 will sign the license straight away.

11 And so the answer to your question is very
12 quickly.

13 Q. Now, is that true even if Ericsson or Lenovo
14 chooses to appeal the decision?

15 A. Yes, it is. The Court will, I would expect,
16 require the parties to respect the license pending any
17 appeal and, if royalties are payable one way or the other,
18 for those royalties to be paid pending the appeal.

19 Q. Is the rate at all subject to adjustment on
20 appeal?

21 A. Yes, of course.

22 Q. All right. Let's turn back to the licensing
23 case. And I'd like to pull up a document we've talked about
24 quite a bit, JX-19C.

25 Do you recognize this document?

1 A. Yes, I do.

2 Q. All right. And what is it?

3 A. It is the 2011 --

4 MR. RAVISHANKAR: Actually, let's go on the
5 confidential record. I apologize for that.

6 JUDGE ELLIOT: Very well.

7 (Whereupon, the hearing proceeded in confidential
8 session.)

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1 O P E N S E S S I O N

2 BY MR. RAVISHANKAR:

3 Q. And turning back to slide 4, you previously
4 explained that the U.K. courts are the courts of exclusive
5 jurisdiction. So what law applies in construing the 2011
6 license?

7 A. The first part of clause 12 refers to the laws of
8 the United Kingdom. Being pedantic about it, but it's
9 difficult to remember. There is no such thing as the law of
10 the United Kingdom. Each constituent part of the United
11 Kingdom has its own law.

12 And so clauses of this kind, they're intended to
13 refer usually, unless there's some special connection with
14 Scotland or Northern Ireland, to refer to the laws of
15 England and Wales.

16 Q. All right. So if I refer to the laws of England
17 and Wales as English law, will you understand what I mean?

18 A. I will.

19 Q. With all apologies to Wales.

20 Let's pull up RX-649. This is the Ocean Neptune
21 case from your report. And I'd like to take a look at page
22 8, paragraph 8, and it extends over to page 9.

23 What principles of law will an English court
24 apply in interpreting a contract?

25 A. Well, I picked out this passage in my report

1 because it helpfully pulls together what is quite a lot of
2 recent authority from the House of Lords and Supreme Court
3 on the right way to approach the interpretation of
4 contracts.

5 The first highlighted passage there is the basic
6 principle, which is to ascertain the objective meaning of
7 the language which the parties have chosen in which to
8 express their agreement. And the objective exercise is to
9 ascertain what a reasonable person, that is, a person who
10 has all the background knowledge reasonably available to the
11 parties, would have understood the parties to have meant.

12 So it's an objective exercise through the eyes of
13 a reasonable person. And that automatically excludes as
14 irrelevant the parties' subjective intentions as to what
15 they were seeking to achieve or what they thought the
16 contract meant.

17 The second principle that -- if I can go on, the
18 second principle that comes out of this passage is that the
19 Court must consider the contract as a whole. The Court
20 doesn't construe individual words, but construes the words
21 in context. It doesn't construe individual sentences. It's
22 the sentences in the context of the clause and the clause in
23 the context of the contract as a whole because context is
24 absolutely vital to understanding what a reasonable person
25 would have understood the parties to have meant.

1 Next, the quality and formality of the drafting
2 of the contract is an important consideration. If it's a
3 very professionally drafted and well-drafted document which
4 is crystal clear, then the relevance of the background
5 material, the background knowledge reasonably available to
6 the parties, becomes less. In a less well-drafted contract,
7 it's more important to look at surrounding circumstances and
8 commercial consequences.

9 Next, the Judge explains that if there are
10 possibly two or even more possible constructions, the Court
11 can prefer the construction which is consistent with
12 business common sense. And that's a very important
13 principle as well.

14 And then the Judge explains the process, which is
15 described as an iterative process. The Court considers the
16 various rival interpretations which are put forward and
17 checks their commercial consequences in order to see whether
18 that is really what the parties meant.

19 There's a further proviso that's always added in
20 all the cases, that one shouldn't lose sight of the
21 possibility that the parties may have entered into a really
22 bad deal. And if it's absolutely clear that they've entered
23 into a deal which is very disadvantageous, then the Court's
24 duty is to enforce that deal, but if the language is not so
25 clear, then the Court will shy away from those consequences

1 and prefer an interpretation which doesn't have those unfair
2 results.

3 Q. All right. Let's mark this as RDX-12.11.

4 And I'd like to actually turn to one of the cases
5 that's cited there, the Chartbrook versus Persimmon case.
6 And that's RX-641. And I'd like to go to paragraph 28 at
7 page 15.

8 Does the reasonable person standard that you just
9 discussed there consider subjective intent?

10 A. No, it doesn't. The subjective intent of a party
11 is irrelevant to what a reasonable person would understand
12 the contract to mean.

13 And this passage makes it clear that not only are
14 the negotiations inadmissible, but also the parties'
15 subjective intentions.

16 Q. How well established is that principle?

17 A. That is one of the bedrock principles of English
18 contract interpretation, which goes back, as you can see, to
19 the 19th century.

20 Q. All right. Let's mark this as RDX-12.12.

21 And I'd like to take the principles that you went
22 over one at a time. How does the English Court account for
23 the contract as a whole in contesting or analyzing contested
24 clauses?

25 A. Well, it sees how the word interacts with the

1 rest of the sentence, the sentence interacts with the rest
2 of the clause, because context is everything. I mean, to
3 take an example that rises from the facts of this case, but
4 it's not intended to express any view, if you say to someone
5 what does "field" mean, you could get a whole variety of
6 answers from a place where you grow crops to I don't know
7 what.

8 So the meaning that words have is highly
9 dependent, so English law regards it, on the context. And
10 that doesn't just mean that the words on either side of it.
11 It means the contract as a whole. And you have to look at
12 what the word or phrase means in its contractual setting.

13 Q. Can that textual analysis include consideration
14 of prior agreements between the parties?

15 A. Yes. Unlike looking at the parties'
16 negotiations, which in general are not looked at as a matter
17 of policy, the prior concluded agreements between the
18 parties are part of the background that the Court does
19 consider, if relevant.

20 Sometimes people would draw attention to a prior
21 contract and it raises just as many problems as the contract
22 you're trying to construe. But if the prior contract has
23 relevant material in it, clearly that material is known to
24 both parties, forms part of the factual matrix and the
25 context in which one is construing the word or phrase in

1 question.

2 Q. Now, speaking of that factual matrix known to the
3 parties, what can an English Court consider in determining
4 what was known to the parties?

5 A. Well, in principle, anything that is relevant,
6 but there are a number of well-known exclusions to that.
7 We've already mentioned subjective intention and the
8 negotiations.

9 The exceptions to negotiations are where looking
10 at the negotiations will give you some component of the
11 matrix of fact, such as that some clearly pleaded fact was
12 known to both parties, but it does not include the
13 subjective intentions or what parties were trying to
14 achieve, what their own personal objectives were, or what
15 their strategy was, or whether they thought a particular
16 clause was limiting or not. None of those matters can be
17 received as evidence going to the meaning of the contractual
18 term.

19 Q. All right. So just so I am clear on this, would
20 one party's objectives, intentions, or goals in entering
21 into an agreement be relevant or admissible as part of the
22 factual matrix for an English Court?

23 A. No.

24 Q. And just to be clear, again, does subjective
25 intent have any relevance to English contractual

1 interpretation?

2 A. Did you say "subjective intention"?

3 Q. Does subjective intent have any relevance to
4 English contractual interpretation?

5 A. No.

6 Q. Can you please provide some examples of what you
7 mean when you say "subjective intent"?

8 A. Well, in an English trial about an issue of
9 construction, you would not call the draftsman, for example,
10 to say what they were trying to achieve by drafting the
11 term. You would not admit evidence of a party's aim or
12 strategy, which was their objective in agreeing to the
13 contractual term.

14 And you would not admit evidence suggesting that
15 one party understood a contractual term which was proposed
16 in any particular way.

17 Q. All right. Let's pull up slide 9, if we can.

18 And you talked about this a little bit, but I
19 also want to make sure we get this clear. What about the
20 parties' negotiation history, can that be considered by an
21 English Court?

22 A. Well, paragraph 42 says that the rule excludes
23 evidence of what was said or done during the course of
24 negotiating the agreement for the purposes of drawing
25 inferences about what the contract meant. But then there's

1 an exception. It doesn't exclude the use of such evidence
2 for other purposes, for example, to establish a fact; in
3 other words, a fact that's part of the factual matrix that
4 was known to the parties; or to support a claim for
5 rectification or estoppel.

6 Rectification is where you're asking the Court to
7 change the terms of the agreement, and estoppel is a
8 specific doctrine which -- where the parties have
9 represented a particular meaning and the other side has
10 relied on that particular meaning. I understand from the
11 materials I've seen that neither side is relying on
12 rectification or estoppel in the present case.

13 Q. What type of evidence would the English Court
14 consider to determine what the mutual understanding between
15 the parties was?

16 A. Well, one of the best places to look for evidence
17 as to the parties' overall objectives is the recitals or
18 "whereas" clauses at the beginning of the agreement, because
19 they very frequently set out what it is the parties are
20 seeking to do by their agreement.

21 There are other ways in which that can be
22 established. There is no limit to that. But that's not any
23 sort of exception to the rule against subjective intention.
24 It's simply a way of getting at facts commonly known to both
25 sides.

1 Q. And you mentioned this as well, but how does the
2 English Court consider commercial reasonableness in its
3 objective inquiry into the interpretation of a contract?

4 A. Well, in the course of the iterative process that
5 I've described, the Court tests the various interpretations
6 put forward to see what their practical consequences in
7 commercial life would be.

8 And so I would imagine that in deciding this
9 case, the Court would be very interested in understanding
10 the practical effect of the two sides' different
11 interpretations, what restrictions the different
12 interpretations placed on the activities of the licensed
13 company, and whether those are commercially sensible
14 outcomes.

15 Q. Now, in conducting that analysis about commercial
16 common sense or commercial reasonableness, would an English
17 Court's analysis consider as relevant parties' objectives,
18 negotiation positions, or subjective evidence of the
19 parties?

20 A. No.

21 MR. RAVISHANKAR: All right. Let's go to the --
22 back to the party confidential record.

23 JUDGE ELLIOT: Very well.

24 (Whereupon, the hearing proceeded in confidential
25 session.)

1 O P E N S E S S I O N

2 CROSS-EXAMINATION

3 BY MR. ABHYANKAR:

4 Q. Good afternoon, Sir Christopher. I understand
5 that is the formal way to address you in court. Is that
6 correct?

7 A. Yes, that's -- if you want to be formal, yes.

8 Q. Okay. I'll stick with Sir Christopher.

9 Let's start with the U.K. licensing action that
10 you were talking about to Mr. Ravishankar. Lenovo filed
11 that action in November of 2023, right?

12 A. That's correct.

13 Q. And that was after Ericsson filed this
14 investigation?

15 A. That's correct.

16 Q. And I think you've been in court and listening to
17 the testimony of various witnesses in this trial?

18 A. Yes, I have.

19 Q. And Lenovo -- based on that evidence, it
20 indicates Lenovo was aware that the parties had different
21 views on what products were covered by that license years
22 ago, right?

23 A. So I understand, yes.

24 Q. Yeah. And Lenovo knew that there was a
25 disagreement on the scope of the license years ago, right?

1 A. Yes.

2 Q. And there was nothing stopping Lenovo from going
3 to the U.K. courts and filing a lawsuit then when they
4 learned there was a dispute years ago, right?

5 A. Well, when you say "nothing stopping," I don't
6 know the details of how that might have prejudiced the
7 ongoing negotiations if they had done so.

8 Q. They could have, though, right? That was an
9 option for them? Potentially?

10 A. The clause is there. If there's a dispute, the
11 Court is available to determine it.

12 Q. And after Ericsson filed this investigation,
13 Lenovo raised the license defense in this case, right?

14 A. So I understand, yes.

15 Q. Yeah. And they've retained multiple expert
16 witnesses, including yourself, to address issues concerning
17 the license defense in this investigation, right?

18 A. Yes. I'm retained as an expert on the law and
19 procedure, but subject to that, I agree.

20 Q. And Lenovo has presented a substantial amount of
21 evidence in this investigation and others related to this
22 defense, right?

23 A. So I understand.

24 Q. And you're aware there are other investigations
25 currently pending where Ericsson -- where Lenovo has raised

1 this defense as well, right?

2 A. I'm not that familiar with anything except 1375
3 and 1376.

4 Q. Got it. So 1375, that was a case that you
5 testified in about a month ago, right?

6 A. That's correct.

7 Q. And they're also advancing that defense in a case
8 that's going to go to trial in October, 1387. Are you
9 familiar with that?

10 A. Only in very sketchy terms.

11 Q. Okay. Now, you have no reason to doubt that this
12 Court, the ITC, is capable of resolving the license defense
13 that has been presented by Lenovo in this case, right?

14 A. I have no reason to doubt that at all, no.

15 Q. Right. And I want to turn to the preliminary
16 issues hearing that you mentioned. It's possible, right,
17 that that preliminary issues hearing actually doesn't occur,
18 right? It's possible?

19 A. Anything is possible, yes.

20 Q. But that's something that actually the Court has
21 actually indicated, that it is possible that this
22 preliminary issues hearing could be a bad idea; it could
23 blow up, right? Do you recall that?

24 A. Yes, I've read the transcripts of the arguments
25 on both occasions where the Court was considering ordering

1 the preliminary issues trial, and it was certainly argued
2 that -- by your side that it was a bad idea. But the Judge
3 bore that in mind but considered that the price, as it were,
4 to be gained by getting this issue decided was so great that
5 it was highly desirable in this case to have a preliminary
6 issues trial.

7 Now, of course, it could be derailed in some way,
8 but my reading of those proceedings is the Judge is very
9 keen to prevent that happening.

10 Q. So let's look at what -- the Justice that's
11 overseeing the preliminary issues hearing is Justice
12 Zacaroli, right?

13 A. That's correct.

14 Q. And do you know Justice Zacaroli? He's a
15 well-respected Justice?

16 A. I've met him on --

17 THE REPORTER: I'm sorry, I couldn't hear the
18 answer.

19 THE WITNESS: I'm sorry. I've met him on a
20 couple of occasions.

21 BY MR. ABHYANKAR:

22 Q. Okay. You respect him as a Justice?

23 A. Yes, I do.

24 Q. And let's take a look at what he said.

25 So pull up RX-1289, please. And if we can go to

1 line 128, 14, and then pull up line 28, 14 to 16. I just
2 want to see what he said about this preliminary issues
3 hearing.

4 So he says here in the middle: "As ever, the
5 Court's decision to direct a preliminary issue might be a
6 bad one." He said that, correct?

7 A. That's what he said, yes.

8 Q. And then further down, he also said that there is
9 a possibility the whole thing gets derailed.

10 So that's what the Justice said, right?

11 A. Well, there's always such a possibility, yes.

12 Q. All right. So you mentioned that there would be
13 a final resolution after this preliminary issues hearing,
14 but we don't know if that's true, right? We don't know what
15 the resolution will be because it hasn't occurred yet?

16 A. Well, if I understand your question, we don't
17 know what the Judge is going to decide, except in general
18 terms he will decide the issue of construction of clause
19 2.4A. He will tell us what it means.

20 Q. Let's pull up RDX-129C.0 -- sorry, RX-129C.006.
21 Apologies for the delay, Sir Christopher.

22 But you were shown in your direct testimony an
23 excerpt of the order of directions that listed the issues to
24 be -- to be decided, right?

25 A. That's correct.

1 Q. There were additional alternative interpretations
2 that have been presented by Lenovo that you didn't -- we
3 weren't shown on that slide, right?

4 A. We had trouble fitting everything onto the slide,
5 but I did explain that there were a number of cascading
6 alternative constructions.

7 Q. Right. And those are all alternative
8 constructions that are presented by Lenovo. Lenovo has been
9 changing its interpretations over time in this case,
10 correct?

11 A. Well, it's quite -- very -- whether that's true
12 or not, I really can't say, but what I can say is it's very
13 common for parties to advance alternative constructions,
14 having spent my life in patent cases, and one finds oneself
15 wrestling with two or three alternative constructions in the
16 course of a trial. What would be very nice would be to have
17 the issue of construction decided before one starts the
18 heavy lifting of the trial.

19 Q. And, Sir Christopher, depending on how he rules,
20 he may not agree with issue 1, he may have to go to issue 2
21 or issue 3, there might need to be additional evidence,
22 expert evidence and other factual evidence that presented in
23 a trial to determine the proper interpretation of the
24 clause, right?

25 A. No, that's not correct. The issue of

1 interpretation will be decided at the preliminary issues
2 trial. I think what you're trying to get at is that if the
3 Judge goes down the list to the -- what might be called the
4 narrowest construction, which involves a phone-by-phone
5 analysis of all the phones that are sold by Motorola, then
6 the trial that you're -- the ultimate trial on the facts is
7 going to be a much more complicated, much heavier exercise
8 than if he adopts one of the earlier constructions, where
9 all he'd have to be satisfied about is, for example, that
10 it's a mobile phone or that it's a phone made by
11 substantially the same process or a phone of the same type.

12 Q. Right. And in other words, if the Judge were to
13 adopt the narrowest construction, that wouldn't resolve the
14 dispute between the parties regarding these issues, right?

15 A. No, but the Judge considered that, and he said
16 that even then the case will go forward on the basis as to
17 the exercise which you're required to perform; namely, a
18 phone-by-phone analysis.

19 Q. You made some predictions about timing in this
20 case, on direct, right?

21 A. That's correct.

22 Q. And in 1375, you also made a prediction. Do you
23 recall that?

24 A. I did.

25 Q. And in 1375, when you were asked when you thought

1 the final resolution of the licensing action would occur,
2 you said the Court will target the end of this year, right?
3 Is that right? Is that what you said in 1375?

4 A. Could you remind me of what it was?

5 Q. Sure. I'm happy to.

6 So if you could bring up CX-1576C.

7 A. I don't think I could have said that because --

8 Q. And we will go to page 1353, 1 through 12.

9 A. Are you asking about the licensing action or
10 the --

11 Q. The licensing action, Sir Christopher.
12 1353. All right.

13 Do you see this? So the question is: In light
14 of the guidance you just discussed and your own experience,
15 based on the November 28th, 2023 filing date, what would be
16 the typical timetable to get a decision from the High Court
17 related to this?

18 A. Yes. But you just --

19 Q. The answer is that -- the answer is "the Court
20 will target the end of this year."

21 And that was the testimony you gave a month ago,
22 right?

23 A. Well, that's with all things like this, you'd
24 have to look at the context. This was before the court had
25 ordered a preliminary issues trial. Above that, immediately

1 above that passage, I draw attention to the fact that on the
2 23rd of July, which was the following week, there was to be
3 a case management conference, and I understood that the
4 Judge will give directions as to quite how this action is
5 going to be tried.

6 And then it was on that basis that -- not knowing
7 quite how the action was going to be managed, that I said
8 the court would be targeting the end of this year.

9 Q. Just to confirm, your prediction in 1375 was the
10 case would go to trial and there would be a resolution of
11 that trial by the end of the year. That's what that
12 testimony says?

13 A. Yes.

14 Q. Okay. And, of course, that estimate turned out
15 to be incorrect, because the preliminary issues hearing is
16 now set for the beginning of next year, and then at that
17 point, although you have provided another estimate, we don't
18 really know exactly when that's going to --

19 A. We don't, but I would be very surprised if it
20 took longer than I estimated.

21 Q. You also mentioned the FRAND rate-setting action.
22 Now, you understand that this investigation concerns U.S.
23 implementation patents, right, where no FRAND commitment
24 applies? You understand that?

25 A. I understand it contains implementation patents.

1 It depends what you mean by "no FRAND commitment."

2 Q. Well, you understand, based on the testimony that
3 you've heard in this courtroom, that implementation patents
4 do not carry with it, like essentials, an obligation to
5 license under FRAND terms, right?

6 A. There's no direct declaration of a non-essential
7 patent to ETSI with the corresponding undertaking.

8 Q. And in that case, Ericsson has, of course, not
9 agreed that implementation patents should be included within
10 the scope of any license set by the Court, right?

11 A. No, it hasn't, but -- no, it hasn't.

12 Q. Okay. And I think as you testified on direct,
13 you can't say with any certainty that the Court will
14 actually agree with Lenovo and include implementation
15 patents; you said some courts do; some courts don't, right?

16 A. Well, no, I said it depends on the facts.

17 Q. Okay. So in this case, you can't say with any
18 certainty that the U.K. court will actually include those
19 implementation patents in any license, right?

20 A. I can't say that with certainty, no.

21 Q. Okay. Now, you also testified that Lenovo has
22 agreed to be bound by the rate setting that the Court issues
23 after its trial in, what, May of next year, right?

24 A. Yes.

25 Q. Okay. And the thing that I want to just

1 confirm -- and if we could pull up RDX-0012.7, if --
2 Lenovo's hot seat will have to do that for me, please.
3 RDX-0012.7 from the slides.

4 So this is Lenovo's undertaking at the bottom,
5 right?

6 A. That's correct, yeah.

7 Q. And that's what Lenovo wrote as its undertaking
8 to the Court in the U.K. And to confirm, Lenovo undertakes
9 to the Court and what it wrote is that it will enter into a
10 license agreement in the form that is determined to be FRAND
11 at the FRAND trial, to the extent there are any appeals of
12 the judgment of the FRAND trial, a license agreement that is
13 finally determined to be FRAND.

14 So it's subject to appeal --

15 A. Correct.

16 Q. -- as written. Okay.

17 So they're not agreeing in writing to any
18 undertaking that doesn't include the potential deals, right?

19 A. That's correct. But, as I said, the Court would
20 expect any license to be respected pending any appeal.

21 Q. Now, there were also patent infringement claims
22 at issue in that case, right?

23 A. Patent infringement and revocation proceedings.

24 Q. Right. So after this FRAND rate-setting trial,
25 there will be a technical trial on the merits of those

1 issues in October of 2025, right?

2 A. That's when it's currently fixed for, yes.

3 Q. Yeah. And it could be later, we don't know
4 because -- right? Everyone knows things may change in the
5 future.

6 But, first, you're going to have a FRAND trial,
7 then a technical trial. And I think you testified about
8 some of this in the 1375, but you agree there's no statutory
9 mandates from which a court is required to issue judgments
10 from either of those trials, right?

11 A. No, there's very strong guidance, but it's not
12 included in a statute.

13 Q. And in the U.K., a party can appeal by permission
14 the ruling of a trial court, right?

15 A. That's correct.

16 Q. And you understand Ericsson has not undertaken
17 the U.K. Court to be bound by any of the results of any rate
18 setting?

19 A. I understand that.

20 Q. Okay. And I think you talked about this in 1375
21 as well, but as a result of the technical trial, if there is
22 no infringement found or the patents are found to be
23 invalid, then of course no FRAND injunction would be
24 granted, right?

25 A. That is correct.

1 Q. Okay. Now, you mentioned a couple of cases,
2 InterDigital versus Lenovo and Unwired Planet. The
3 timelines for those cases, I just want to confirm for the
4 Court. InterDigital /Lenovo, I believe, started in January
5 of 2022; is that right?

6 A. I can't possibly help you from the top of my
7 head --

8 Q. Right.

9 A. -- but if it does help, those cases did take a
10 long time. As I've said, the time taken by the Judge to
11 deliver his judgment in InterDigital and Lenovo was subject
12 of criticism.

13 Q. But they took a long time, and Unwired Planet
14 took, I think, almost six years; is that right?

15 A. That was a -- the absolutely seminal case raising
16 important issues of general public importance, including a
17 case -- an appeal to the Supreme Court. We've ironed out
18 most of the principles now, and cases are falling into a
19 particular pattern.

20 Q. Okay. I'd like to turn to your discussion about
21 English law principles and the MMI license. So I'm going to
22 a series of yes-or-no questions here, so I'd like you to
23 keep your answers yes or no, unless you can't do that.

24 Yes or no: Sir Christopher, under English law,
25 you agree that when interpreting a contract, the question is

1 what a reasonable person, having all the background
2 knowledge which would have been available to the parties,
3 would have understood them to be using the language in the
4 contract to mean?

5 A. Yes, reasonably available to the parties.

6 Q. Yes. Yes or no: Under U.K. law, the relevant
7 reasonable person is one who has all the background
8 knowledge which would reasonably have been available to the
9 parties in this situation in which they were at the time of
10 the contract?

11 A. That's correct.

12 Q. Yes or no: Under English law, when interpreting
13 clauses with more than one possible meaning, a Court will
14 consider evidence outside the plain text of the agreement?

15 A. It's not limited to that circumstance, so the
16 answer is no.

17 Q. Okay. Let's pull up CX-1470C, paragraph 45,
18 please.

19 This is a statement in your report, Sir
20 Christopher. Do you recognize it?

21 A. I do.

22 Q. And this is what you wrote in your report, isn't
23 it?

24 A. Yes, but I didn't say that was the only
25 circumstance in which the Court would do it.

1 Q. But you wrote these words in your report,
2 correct?

3 A. Correct.

4 Q. Okay. Yes or no, under U.K. law, if its purpose
5 is to show that the parties were negotiating on an agreed
6 understanding as to the meaning of some word or phrase in
7 the contract, it is appropriate to address the parties'
8 prior negotiations in the license agreement?

9 A. I -- I did say that in my report.

10 Q. Okay.

11 A. But I would like to qualify it, if I may.

12 Q. I think we've said -- you said what you said in
13 your report, and we'll go on to the next statement. That
14 was a yes-or-no question. And you confirmed for me that you
15 said that in your report.

16 A. Yeah. All right.

17 Q. Okay.

18 A. If you don't want me the explanation, I won't
19 give it.

20 Q. So, yes or no, in interpreting agreements, U.K.
21 courts consider that the reasonable person who has access to
22 all the surrounding circumstances is permitted to be
23 informed about an agreed approach to the meaning of words in
24 the contract?

25 A. It's more to it than that, so I can't answer yes

1 or no.

2 Q. Did you write those words in your report, Sir
3 Christopher?

4 A. I'd like to see them in context.

5 Q. So let's pull up -- let's --

6 MR. ABHYANKAR: For the moment, let's turn to the
7 party confidential record. I'd like to just turn to the
8 2011 license.

9 (Whereupon, the hearing proceeded in confidential
10 session.)

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1 O P E N S E S S I O N

2 JUDGE ELLIOT: You can have a seat, Dr. Burger.

3 Whereupon--

4 ERIC BURGER,

5 having been previously duly sworn/affirmed, was examined and
6 testified as follows:

7

8 JUDGE ELLIOT: I understand that you are done
9 with your case-in-chief?

10 MR. AROVAS: Yes. I just wanted to let the Court
11 know that we completed and the Respondents rest.

12 JUDGE ELLIOT: Before we start in with
13 Dr. Burger, I would like to get a little bit of
14 clarification on something.

15 I was not expecting to hear testimony about the
16 substantive law of England on contract interpretation, so I
17 read your prehearing brief -- I will hear from both sides on
18 this, but I read Respondents' prehearing brief to be that
19 you thought that the U.K. courts should resolve the license
20 issue in the first instance.

21 MR. AROVAS: That's correct.

22 JUDGE ELLIOT: But then, I am not entirely clear
23 on what you're asking me to do because are you asking me to
24 also resolve it by applying English law?

25 MR. AROVAS: Yeah, so let me clarify that. So

1 our view is that the correct approach here would be to defer
2 to the English courts and not reach the issue here because
3 the courts -- the English courts have exclusive jurisdiction
4 and the case is pending and that will be resolved.

5 We understand that the Court may want to reach
6 the issue to have a complete record for the Commission. If
7 that's the case, the applicable law that would apply would
8 be U.K. law in interpreting this contract.

9 And so what we wanted to do is develop a complete
10 record for the Court so if the Court does or if the
11 Commission did decide to reach the issue, that the relevant
12 principles of English law that would apply to this contract
13 would be in the record.

14 But our belief is that the correct issue -- the
15 correct approach is, since the court of exclusive
16 jurisdiction is, in fact, reaching the issue that any remedy
17 or resolution should be delayed until after that.

18 JUDGE ELLIOT: Okay. Well, I could go two ways
19 on this. I could treat this as sort of analogous to, say,
20 the PTAB and just ignore it as if this is up to the U.K.
21 courts, has nothing to do with me, whatever they come up
22 with, you know, of course I will abide by, but none of my
23 business.

24 And the other way of approaching it is I have got
25 a license defense and the Commission is going to probably

1 expect me to resolve it.

2 And I guess then I would have to apply English
3 law, and I hope I have enough English law to be able to do
4 so. It's not clear to me that there are no other
5 differences between American and English contract
6 interpretation law than what we heard today, but I don't
7 know. I don't know what I'm going to do. I will just have
8 to figure it out. And of course, in light of the parties
9 post-hearing briefs.

10 MR. AROVAS: So we can certainly address that
11 issue. We very much had that in mind as we went into this
12 as to both give the Court optionality. We wanted to make
13 sure Your Honor had at least what we believed would be a
14 sufficient record, if the Court were inclined to do so.

15 Although, you know, our belief is any remedy in
16 sort of resolution of those impacted products should wait
17 properly until after the determination of the issues in the
18 U.K.

19 JUDGE ELLIOT: Okay. Okay.

20 So you're saying that, at least, viewed from the
21 perspective of the whole Commission, not just me, that the
22 question of whether the Smartphones, there's a violation as
23 to the Smartphones should be deferred.

24 MR. AROVAS: That's right. That's right.

25 JUDGE ELLIOT: Is that what you are saying?

1 MR. AROVAS: To be clear, Your Honor, it's not
2 all products in this investigation.

3 JUDGE ELLIOT: Yes, right.

4 MR. AROVAS: It is just the Smartphone bucket of
5 products.

6 JUDGE ELLIOT: Okay. Understood. Okay.

7 Let me hear from Complainants.

8 MR. HAYNES: Your Honor, our concern is they have
9 not actually asked the Commission or Your Honor to defer the
10 license defense in favor of the U.K. They could have filed
11 -- we have asked the witnesses questions. If they wanted to
12 stay this case and wait for the U.K., they could have filed
13 a motion in November when we filed -- or October, 2023, when
14 we filed this case. They did not take that approach. We
15 could have briefed it then and dealt with that issue as to
16 whether or not this issue was before Your Honor or not.

17 Now that it is before Your Honor, we believe that
18 the evidence is in front of Your Honor, you can decide the
19 issue. The U.K. law issues, although there has been a fair
20 bit of testimony on them, we actually don't believe that the
21 U.K. law changes the evidence that you're entitled to
22 consider here.

23 And at the end of the day, we don't believe their
24 license defense has merit, but we believe that that issue is
25 before Your Honor, at least with respect to Smartphones.

1 And with respect to the U.K., we don't actually know when
2 that's going to happen, but if the U.K. enters a license,
3 obviously any exclusion order that's entered here will not
4 apply to licensed products.

5 And this is not an uncommon situation in front of
6 the ITC where somebody raises a license defense and
7 litigates it in District Court, for example, and the ITC
8 proceeds to conclusion, determines whether there is a
9 violation, and if it turns out there is a license and if
10 things move the way they say they are going to move, we will
11 know that before an exclusion order goes into effect. If
12 there is, in fact, a license in place, that exclusion order
13 won't apply to licensed products.

14 There is also an additional issue here. Given,
15 and even as we heard today, there are lots of different
16 potential outcomes of what might happen in the U.K. It
17 might be a per phone determination. So you might find out
18 that certain phones end up being determined to be licensed
19 and certain phones are not.

20 Our view is that there are no phones currently on
21 sale that are but there is also the issue of future products
22 that practice the patents that may not meet the limitations
23 of the license.

24 So a violation here would need to factor in the
25 scope of an exclusion order. So the exclusion order in our

1 view should be put into place if there is a violation to be
2 found, and then if they are able to establish a license
3 applies to something, obviously, just as any other license
4 would apply, that would not -- any product licensed would
5 not be subject to the exclusion.

6 JUDGE ELLIOT: All right. Well, I don't need to
7 hear anymore about this. So as I say, I don't know what I'm
8 going to do, both in the sense of, I don't know how I am
9 going to rule on the license defense, but I also don't know
10 whether I am even going to reach it. But it sounds like if
11 I do, it is only going to apply to the Smartphones.

12 And I don't know. All right. We will just have
13 to see. So I will, as always, read your post-hearing briefs
14 and try to figure it out as best I can. Okay.

15 MR. AROVAS: Thank you, Your Honor.

16 JUDGE ELLIOT: All right. So next up is
17 Dr. Burger.

18 MR. MURRAY: Yes, Your Honor. Good afternoon.
19 Michael Murray for Ericsson.

20 JUDGE ELLIOT: Dr. Burger, let me remind you, you
21 are still under oath.

22 THE WITNESS: Yes, sir.

23 MS. DiMARCO: Your Honor, before we get started
24 with Dr. Burger, the parties have one issue to raise or I
25 should say the Lenovo and Motorola Respondents do.

1 As with Dr. Burger's prior testimony, the parties
2 have agreed that a different attorney on each team will
3 handle each patent.

4 The parties during the last presentation of
5 evidence were in agreement that we would do all of the
6 patents together and then just continue to switch teams
7 every time.

8 For this presentation of evidence, we are in
9 disagreement. And so the Respondents wanted to know if Your
10 Honor has a preference between doing one patent, all of the
11 testimony and then switching or doing the back and forth as
12 we did it in the last presentation of evidence.

13 JUDGE ELLIOT: Since you're in disagreement then
14 we will do it in what I think is the old-fashioned way. So,
15 first, Complainant goes and does everything. Then
16 Respondent goes and does everything. And then Complainant
17 goes and redirect.

18 MS. DiMARCO: Thank you, Your Honor.

19 JUDGE ELLIOT: All right.

20 MR. MURRAY: Thank you, Your Honor, may I
21 proceed?

22 JUDGE ELLIOT: Yes.

23 DIRECT EXAMINATION

24 BY MR. MURRAY:

25 Q. Dr. Burger, good afternoon.

1 A. Good afternoon.

2 Q. Did you prepare some slides to assist with your
3 rebuttal testimony today?

4 A. Yes, I did.

5 Q. Can we have CDX-5 on the screen.

6 Are these the slides that you prepared?

7 A. Yes, they are.

8 Q. Dr. Burger, what were you asked to do for your
9 rebuttal testimony?

10 A. I was asked to prepare rebuttal testimony in
11 response to Lenovo's contentions and testimony the other
12 day.

13 Q. Let's move to slide 2 and start with the Suzuki
14 reference that is shown here in slide 2.

15 Dr. Burger, did you consider Dr. McDaniel's
16 arguments concerning whether Suzuki invalidates asserted
17 claims 16 and 17 in the '178 patent?

18 A. Yes, I did.

19 Q. Do you believe that Dr. McDaniel has established
20 that Suzuki invalidates either claim by clear and convincing
21 evidence?

22 A. No, I did not.

23 Q. Let's go to slide 4.

24 And can you explain your opinion about why you
25 think Dr. McDaniel didn't meet his burden with respect to

1 this reference?

2 A. Dr. McDaniel pointed to Suzuki to say that it
3 detected the boundaries, and he pointed the timers. And
4 here is an example of the evidence he presented. And it
5 says that, you know, there is this remaining valid time and
6 when that valid -- the value of that remaining valid time
7 reaches zero, then it changes the keys.

8 Q. Okay. And do you agree with Dr. McDaniel that
9 using a timer in this fashion meets the requirement of the
10 detecting step in the '178 patent?

11 A. No, it does not. The '178 patent talks about
12 checking timers and the claim and the disclosure talks about
13 detecting a boundary in the input stream, the encrypted
14 content stream.

15 Q. If we could go to slide 5.

16 Can you remind us what the detecting step is
17 about in the '178 patent?

18 A. Yes. So, again, '178 talks about timers. It
19 also talks about detecting and detecting the key change
20 request. And that's the step 308 detecting step.

21 Q. In terms of plain English, is there a difference
22 between detecting and checking?

23 A. Well, yes. I mean, we check our time on the
24 watch. I'll say I am checking the time. I would not say
25 I'm detecting the time by looking at my watch.

1 And, you know, a person of ordinary skill would
2 take the plain and ordinary meaning of "detecting" to be
3 looking for something and finding something, so that would
4 be different than just checking.

5 Q. Okay. Let's move to slide 6. Let's address the
6 Peterka reference.

7 Did you form an opinion as to whether
8 Dr. McDaniel established that this reference invalidates the
9 asserted claims by clear and convincing evidence?

10 A. Yes, I did.

11 Q. And what's your opinion on that?

12 A. That it does not demonstrate the anticipation of
13 the '178 patent.

14 Q. What is Dr. McDaniel relying on for the playback
15 response in the '178 patent?

16 A. So he's testified that it's the ECM, and that
17 that ECM, that multiple ECMs correspond to the license
18 request response.

19 Q. Let's move to slide 7.

20 So does this show the ECMs that Dr. McDaniel is
21 relying on?

22 A. That's correct. So here we see a set of ECMs.
23 Each of them with a content key. That's the CK, 0, 1, and
24 2, and Dr. McDaniel's asserted that we need to put those
25 multiple keys together to meet the claim language of

1 multiple keys being returned in response to the license
2 request.

3 Q. Let's go to slide 8.

4 So looking at the claim language, why is it
5 significant that Dr. McDaniel is relying on multiple ECMS to
6 meet the playback request response?

7 MS. DiMARCO: Objection, Your Honor. This is
8 outside the scope of Dr. Burger's report. He did not offer
9 an opinion based on this limitation in his report for the
10 Peterka reference.

11 JUDGE ELLIOT: All right. Where does this appear
12 in his report?

13 MR. MURRAY: Okay. If we could look at the
14 rebuttal report, which is RX-1468C. Pages 19 to 21. I
15 believe Dr. Burger is addressing the Peterka reference here.
16 So I think this is -- just what he is addressing now.

17 MS. DiMARCO: Your Honor, in this section of
18 Dr. Burger's report, he is discussing what the parties have
19 called limitation 16c, which is the parse content
20 information limitation. And the questions that counsel just
21 asked him relate to what the parties have called limitation
22 16b, initiate a media playback request.

23 JUDGE ELLIOT: Give me a moment here.

24 So the question objected to had to do with why
25 does Dr. McDaniel cite or rely upon two ECMS. I don't see

1 any reference to that here, Mr. Murray.

2 MR. MURRAY: Could we go to page 21. Okay.

3 Let's go back to the slide. If we could go to the next
4 slide.

5 BY MR. MURRAY:

6 Q. Dr. Burger, did Dr. McDaniel meet his burden to
7 show that Peterka shows the multiple key identifiers
8 required by claim 16?

9 A. No, he did not. He relied on the parity value.
10 And this is an extract from Peterka that was referenced.
11 And the parity value is not a key ID. At best, the parity
12 value informs when to change keys, but it does not identify
13 the key in that response.

14 JUDGE ELLIOT: All right. Just for the record, I
15 will sustain that last objection. Go ahead.

16 BY MR. MURRAY:

17 Q. So what -- what is the only example that Peterka
18 gives for the parity value here? How many bits is it?

19 A. The only example is a single bit where 1 could be
20 used the content key in use and 0 would be to use another
21 content key.

22 Q. How many ECMs does Dr. McDaniel need in order to
23 try to meet -- satisfy the claim?

24 A. Well, he would need -- in order to have more
25 keys, he would need multiple responses as there is only one

1 key in each response in Peterka.

2 Q. But does Peterka teach that the parity bits have
3 to be different in different ECMs?

4 A. No, it does not.

5 Q. Okay.

6 MR. MURRAY: I have no further questions, Your
7 Honor. So my partner is going to handle the '654 patent.

8 DIRECT EXAMINATION

9 BY MR. ANZALONE:

10 Q. Good afternoon, Your Honor. If we could put up
11 CDX-6.

12 And, Dr. Burger, can you tell me what CDX-6
13 contains?

14 A. Yes. So I prepared these in rebuttal of the
15 invalidity contentions of Lenovo.

16 Q. If we could put up CDX-6.21. Page 21.

17 Did you consider Lenovo's arguments relating to
18 subject matter eligibility under Section 101?

19 A. Yes, I did.

20 Q. Do you agree or disagree with him?

21 A. I disagree.

22 Q. Why do you disagree with Dr. Bederson's argument
23 that the claims are directed to an abstract idea?

24 A. Well, first of all, the claim requires a camera,
25 a touchscreen, and a controller, actual tangible device.

1 And that that controller is configured to control the
2 touchscreen to display preview images, to control the
3 touchscreen so that you get the auto focus guide at a
4 specific point where the user touches in response to that
5 first touch, the focus preview images based on the location
6 of the auto focus guide, and then to determine an image
7 capture setting responsive to an object dragged along the
8 touchscreen, as the user moves it, and to control the
9 touchscreen display, the indicator, for indicating the
10 current image capturing setting, while maintaining the
11 displayed auto focus guide at that specific point and
12 capture an image.

13 So that is a, you know, tangible, technical
14 solution to the problem of being able to see what you're
15 focusing on while you're adjusting the setting.

16 Q. Does claim 1 merely claim a desired result?

17 A. No, it does not.

18 Q. Okay. Are the claim functions set forth here
19 limited to data collection or analysis?

20 A. No, they are not.

21 Q. Why do you disagree with Dr. Bederson's argument
22 that the claims do not contain an inventive concept?

23 A. Because this is actually the steps to implement
24 this advanced more useful camera user interface.

25 Q. Okay. And later in this direct, will we talk

1 about why you believe they are novel?

2 A. Yes, I will, when we go over the prior art.

3 Q. Okay. And what is the advantage of this
4 combination of elements compared to the prior art?

5 A. That you get that auto focus guide at the same
6 time that you're making an adjustment.

7 Q. Okay. If we can turn to slide, what should be
8 CDX-6.22 and 22A. Okay.

9 Just for the Court's reference, unfortunately the
10 parties did not label their elements the same way. So you
11 saw when we did our infringement case them labeled as in
12 slide 22. You saw when Lenovo did their invalidity case
13 them label as they are on slide 22A. So they are --

14 JUDGE ELLIOT: Understood.

15 BY MR. ANZALONE:

16 Q. Okay. Great. So let's go back to slide 22.

17 Did you consider Lenovo's invalidity arguments
18 relating to prior art?

19 A. Yes, I did.

20 Q. Do you agree with them?

21 A. No, I did not.

22 Q. What claim terms are not met by the primary
23 references relied on by Lenovo?

24 A. Well, [e], [g], [h], and [i] read together,
25 because element 1i refers explicitly back to the language in

1 1e, 1g, and 1h. So, you know, the value of the image
2 capture setting according to elements [g] and [h] is
3 determined responsive to an object dragged along the
4 touchscreen and increased or decrease responsive to the
5 direction.

6 And the element [i] requires the display of the
7 indicator for the current setting while maintaining the
8 displayed auto focus guide at a specific point.

9 Q. Is the patent specification consistent or
10 inconsistent with your position?

11 A. It is consistent with my position.

12 Q. Why?

13 A. Because every description of the preferred
14 embodiment, every figure has -- where it's doing a setting,
15 has the auto focus guide displayed while the indicator for
16 the current setting is being manipulated.

17 Q. Okay. We can turn to the next slide, slide 23.

18 Did you consider Lenovo's invalidity arguments
19 relating to the different settings on the Panasonic camera?

20 A. Yes, I did.

21 Q. Could you indicate what you concluded about all
22 of the settings on those cameras?

23 A. Yes. So my conclusions are that none of the
24 settings can be adjusted while a displayed auto focus guide
25 is maintained. And for claim 3, no display of other

1 settings appear in response to the first touch.

2 Q. Can you indicate why you have grouped some of
3 these settings differently?

4 A. Yes. The first one is the size of the auto focus
5 area. And there when the auto focus area size is changed,
6 the displayed auto focus guide is not maintained. It is
7 changing, as the user is changing it.

8 For the other seven settings that Dr. Bederson
9 mentioned, when they are adjusted, there is no displayed
10 auto focus guide.

11 Q. If we can turn to the next slide, which is
12 CDX-6.24.

13 Can you explain why adjusting the auto focus
14 guide size on the Panasonic reference does not meet the
15 claim language?

16 A. Yes. You know, we see from the testimony
17 yesterday and the report, we have the small, the pinpoint
18 spot focused on the left side and we have the extra large
19 auto focus area on the right side. And we saw the change of
20 the auto focus guide in the demonstration where we saw that
21 the auto focus guide was changing. It was not being
22 maintained.

23 Q. And when you say the auto focus guide, the
24 displayed auto focus guide?

25 A. The displayed auto focus guide, that's correct.

1 Q. And why is the Panasonic camera for this setting,
2 adjusting AFG size, why is it displaying the auto focus
3 guide in this case but not in the other seven cases?

4 A. Because in this one, the user is changing the
5 auto focus guide. They are setting up the -- you know,
6 doing that change of the displayed auto focus guide. They
7 are getting it to the focus area that they want.

8 Q. Okay. Do you understand that Dr. Bederson
9 yesterday and this morning also talked about several other
10 settings on the Panasonic camera?

11 A. Yes, he did.

12 Q. Okay. Do these settings teach toward the claimed
13 invention or away from the claimed invention?

14 A. They all teach away from the claimed invention.

15 Q. If we could turn to slide 25. Let's do one of
16 the settings, adjusting shutter speed.

17 Do you recall that Dr. Bederson demonstrated that
18 yesterday?

19 A. Yes, he did.

20 Q. Can you explain why that, in your opinion, does
21 not meet the claim language?

22 A. When he did the demonstration in the figure here,
23 the auto focus guide -- the displayed auto focus guide is
24 not displayed.

25 Q. Okay. And does this teach toward the claimed

1 invention or away from the claimed invention?

2 A. It teaches away from the claimed invention.

3 Q. If we can turn to slide 26.

4 Do you remember he also discussed adjusting
5 aperture value?

6 A. Yes, he did.

7 Q. Does the changing of aperture value and
8 adjustment of it, as shown in slide 26, teach toward the
9 claimed invention or away from the claimed invention?

10 A. It teaches away, because, again, we do not have
11 the displayed auto focus guide.

12 Q. If we can turn to slide 27, ISO sensitivity.

13 Does the adjustment of ISO sensitivity on the
14 Panasonic camera teach toward the claimed invention or away
15 from the claimed invention?

16 A. Away from the claimed invention. We have no
17 displayed auto focus guide.

18 Q. If we can turn to slide 28.

19 Adjusting exposure compensation. Does the
20 adjustment of exposure compensation on the Panasonic camera
21 teach toward the claimed invention or away from the claimed
22 invention?

23 A. Away from the claimed invention. We have no
24 displayed auto focus guide.

25 Q. If we can turn to slide 29, adjusting color.

1 Does the mechanism for adjusting color using this
2 particular screen setting on the Panasonic camera teach
3 toward the claimed invention or away from the claimed
4 invention?

5 A. Away from the claimed invention, as it has not
6 maintained the displayed auto focus guide.

7 Q. If we can turn to slide 30, adjusting brightness.

8 Does the way that it's implemented in the
9 Panasonic camera teach toward the claimed invention or away
10 from the claimed invention?

11 A. It teaches away from the claimed invention.
12 There is no displayed auto focus guide maintained.

13 Q. We can turn to slide 31. Adjusting saturation.

14 Does the way that you adjust saturation on the
15 Panasonic camera teach toward the claimed invention or away
16 from the claimed invention?

17 A. It teaches away from the claimed invention
18 because it is not maintaining the displayed auto focus
19 guide.

20 Q. Okay. And what is the disadvantage to
21 implementing it this way?

22 A. We do not see where the user has selected the
23 focus area.

24 Q. Now, do you recall Dr. Bederson yesterday and
25 today also testifying that there are other ways to change

1 the settings?

2 A. That's correct.

3 Q. Okay. Does using a thumb wheel meet the claim
4 language?

5 A. No, it does not.

6 Q. Why not?

7 A. Because the claim language requires the user to
8 drag an object across the touchscreen.

9 Q. Okay. If we can turn to slide 32.

10 And we can talk about a Samsung CL80 camera. Do
11 you recall that Lenovo has contended that CL80 is relevant
12 prior art?

13 A. Yes, I do.

14 Q. What does that camera by Samsung actually
15 disclose?

16 A. So it discloses that you can change a number of
17 settings.

18 Q. Okay. And how are those -- what happens when
19 those settings are changed?

20 A. So none of these settings are adjusted while a
21 displayed auto focus guide is maintained.

22 Q. Do these adjustments in the Samsung CL80 camera,
23 which Lenovo indicated was relevant prior art, teach toward
24 the claimed invention or away from the claimed invention?

25 A. They teach away from the claimed invention. When

1 the settings are adjusted, there is no displayed auto focus
2 guide.

3 Q. Okay. We can turn to slide 33, which relates to
4 the user guide for the Samsung CL80 which is RX-988. And
5 we're on page 58 of RX-988.

6 Can you explain why adjusting the exposure value
7 setting on the Samsung CL80 camera does not meet the claim
8 language and teaches away?

9 A. Yes. As we see on the left, the user is
10 adjusting the exposure and we do not see, you know, the
11 displayed auto focus guide is not maintained.

12 Q. And what's shown on the right?

13 A. On the right is shown the auto focus guide.

14 Q. Okay. Can you ever on the CL80 camera get the
15 image you have on the right, that screen, while making any
16 of those adjustments to any of those settings?

17 A. No, you cannot.

18 Q. Okay. Let's go to slide 34 and go through the
19 six settings that were identified by Lenovo on this camera.

20 Can you explain why adjusting exposure value
21 teaches toward or away from the claimed invention?

22 A. This teaches away, because the maintaining -- the
23 displayed auto focus guide is not maintained.

24 Q. If we can turn to slide 35, adjusting ISO
25 sensitivity.

1 Does the way that is implemented on the camera
2 teach toward or away from the claimed invention?

3 A. Again, it's away from the claimed invention, as
4 we do not see the displayed auto focus guide.

5 Q. If we can turn to slide 36, adjusting image
6 resolution.

7 Is the way that is implemented on the Samsung
8 camera teach toward or away from the claimed invention?

9 A. It teaches away, because it is not maintaining
10 the displayed auto focus guide.

11 Q. If we turn to slide 37.

12 Is the way that sharpness is adjusted on the
13 Samsung camera teach toward or away from the claimed
14 invention?

15 A. It teaches away because it is not maintaining the
16 displayed auto focus guide.

17 Q. If we can turn to slide 38, adjusting contrast.

18 Does the way that setting is adjusted teach
19 toward or away from the claimed invention?

20 A. It teaches away from the claimed invention
21 because it is not maintaining the displayed auto focus
22 guide.

23 Q. If we can turn to slide 39.

24 Does the way the saturation is adjusted teach
25 toward or away from the claimed invention?

1 A. It teaches away from the claimed invention
2 because it is not maintaining the displayed auto focus
3 guide.

4 Q. If we can turn to slide 41, adjusting exposure
5 value.

6 Does the way exposure value is adjusted teach
7 toward or away from the claimed invention?

8 A. Yes, on the Samsung Galaxy S, the way it changes
9 the exposure value teaches away from the patent because it
10 is not maintaining the displayed auto focus guide.

11 Q. Okay. Now, I believe -- can you explain why,
12 looking at this figure, it doesn't meet the claim language,
13 those two images?

14 A. The auto focus guide is not maintained -- the
15 displayed auto focus guide is not maintained. We do not see
16 it.

17 Q. Okay. We can now turn to slide -- oh, I'm sorry,
18 I went to the wrong one.

19 Could you go back? Yes, we missed that one. All
20 right. Let's talk about the Galaxy S.

21 Did you consider Lenovo's invalidity arguments
22 relating to the exposure value setting on the Samsung Galaxy
23 S?

24 A. Yes, I did.

25 Q. Do you agree with them?

1 A. I do not.

2 Q. What settings does Dr. Bederson rely on in the
3 Samsung Galaxy S?

4 A. So Lenovo relied on one setting, which is the
5 exposure value, and, again, the setting cannot be adjusted
6 while a displayed auto focus guide is maintained.

7 Q. Why doesn't this setting, exposure value, meet
8 the claim limitations?

9 A. Because when the setting is adjusted on the
10 Galaxy S, there's no displayed auto focus guide.

11 Q. Okay. We can turn to the next slide. No the
12 prior slide. That one.

13 Now, we're back where we were before.

14 Can you just show why you disagree with
15 Dr. Bederson as to whether this setting for exposure value
16 invalidates the claims?

17 A. I disagree that it invalidates the claim because
18 it is not maintaining the displayed auto focus guide.

19 Q. Okay. Now, wasn't there an auto focus guide
20 displayed earlier on the regular screen of the camera?

21 A. Yes, there was.

22 Q. What happens to it when you try to adjust this
23 setting?

24 A. It disappears. It is not maintained. The
25 displayed auto focus guide is not maintained.

1 Q. Okay. If we can now turn to the next slide.

2 And the Park reference, which is RX-459, do you
3 understand that Lenovo has contended that the Park reference
4 is relevant prior art?

5 A. Yes, I do.

6 Q. What does the reference actually disclose?

7 A. So the reference is talking about using a slider
8 for -- as a user interface element on a camera.

9 Q. Okay. And does it teach toward the claimed
10 invention or teach away?

11 A. It teaches away. It does not display the focus
12 region indicator, what we call the auto focus guide, in
13 response to a first touch at a specific point and with
14 respect to claim 3, there's no display of other settings in
15 response to the first touch.

16 Q. So what is actually used to set the focus region?

17 A. A scroll bar.

18 Q. Okay. All right. If we can turn to the next
19 slide.

20 Could you explain looking at the Park reference,
21 RX-459, and we're looking at pages 43, 47, and 66 of the
22 reference, what the reference contains that teaches away
23 from the claimed invention?

24 A. Well, the area of the patent is using the scroll
25 bar displayed on the touchscreen for controlling various

1 functions and menus. In particular, with relevance to '178
2 is that the touch operation is to use the scroll bar to
3 move, in this case, the auto focus guide, so it's not moving
4 the auto focus guide in response to a touch on the
5 touchscreen, it's moving it by the move of the scroll bar.

6 Q. Okay. And if you look at the abstract, is Park
7 actually promoting use of the scroll bar instead of actually
8 touching the screen?

9 A. That's right. This teaches away from the '178
10 patent, because instead of saying as '178 does, touch for
11 where to put the auto focus guide, it says use the scroll
12 bar to locate the auto focus guide.

13 Q. Okay. Can you indicate where the elements are on
14 the claim?

15 A. Yes. So element 419 is the auto focus guide.
16 413 is the scroll bar. And 415 is, you know, where you are
17 on the scroll bar.

18 Q. Okay. Let's talk about obviousness with slide
19 44.

20 Did you consider Lenovo's invalidity arguments
21 relating to obviousness?

22 A. Yes, I did.

23 Q. Okay. Can you summarize them?

24 A. Yes. So every example cited in the prior art
25 disappeared the auto focus guide. The auto focus guide was

1 not maintained while doing another setting.

2 Q. Now, isn't it the case that in the Panasonic, the
3 auto focus guide is displayed when you're changing the auto
4 focus guide size?

5 A. Well, it's when you're changing the auto focus
6 guide size, that's correct.

7 Q. Okay. So why does the auto focus guide not
8 disappear when you're changing its size?

9 A. Because you're seeing the size you're setting it
10 to. It's not maintaining the auto focus guide.

11 Q. And in that case is the displayed auto focus
12 guide being maintained?

13 A. No, it is not.

14 Q. Okay. What improvements or advantages does the
15 claimed invention have compared to the prior art relied on
16 by Lenovo?

17 A. Well, it's being able to do that single touch,
18 where you want it to be, and adjusting a different setting
19 at the same time that you see where the focus area is.

20 Q. What evidence do you have that these advantages
21 are actual and are recognized today?

22 A. Yes. Basically most phones today, Apple and
23 Android, implement the teachings of the '178 patent.

24 MR. MIZZO: Objection, Your Honor, beyond the
25 scope, move to strike. There's no reference to Apple and

1 iPhones in his secondary considerations paragraph, nor is
2 there a single cite to any piece of evidence.

3 MR. ANZALONE: It was in his deposition. They
4 asked him about this.

5 JUDGE ELLIOT: Okay, show me, please.

6 MR. ANZALONE: Okay. 274, Your Honor, his
7 deposition questions on secondary considerations of
8 obviousness, if we could put that up. Page 274 of the
9 deposition, starting at lines 5, keep going down.

10 So in paragraph 247 of Dr. Burger's report, was
11 relating to secondary considerations of non-obviousness.
12 There were deposition questions asked about it. And you
13 will see at the end, he was questioned at his deposition
14 about, well, what phones for -- in terms of success. Your
15 observation but you don't identify a single other product
16 that you considered in the market other than the Samsung
17 Galaxy S23? He said.

18 "Answer: In the report, no. But I was going off
19 of my wife's iPhones, my Samsung phones, the pixel, Google
20 pixel does it. So, yeah, that's pretty widespread use. In
21 fact, if you looked at your phone, I would not be surprised
22 if you saw the auto focus guide maintained when you could
23 adjust at least brightness."

24 JUDGE ELLIOT: All right. So I will overrule the
25 objection. But that's pretty much all you can get on that.

1 MR. ANZALONE: Oh, absolutely. That's all we
2 we're saying.

3 JUDGE ELLIOT: Very well. Overruled.

4 BY MR. ANZALONE:

5 Q. If we could put back up slide 44.

6 Okay, the advantages you talked about.

7 A. Yeah, being able to see what you're focused on,
8 the auto focus guide at the same time that you're making an
9 adjustment.

10 Q. Were those advantages recognized in the prior
11 art, including by companies such as Panasonic or Samsung?

12 A. No. We saw 15 settings. Not a single one
13 offered the auto focus guide and setting that adjustment at
14 the same time.

15 Q. Can you think of a reason why in all of those 15
16 cases you would only show the setting being adjusted?

17 A. They had not thought of it yet.

18 Q. Okay. Why is it your opinion that the
19 differences between the claimed invention and the prior art
20 would not have been obvious?

21 A. That, you know, with hindsight, it's easy to see
22 that -- how to do it, but people were, pardon the
23 expression, focusing, you know, we had the wheel, we had the
24 real estate on the screen that they were all having like
25 this mode, I mean, a setting mode or I'm in an auto focus

1 mode, that they hadn't considered it.

2 Q. So what was the conventional wisdom in the art in
3 terms of what you should show when you are adjusting the
4 setting?

5 A. The conventional wisdom was to show only the
6 setting.

7 Q. Okay. And in the case of the references you have
8 gone over, the two Samsung references, Park, and the
9 Panasonic camera, do they teach toward the claimed invention
10 or away from the claimed invention?

11 A. They all taught away from the claimed invention,
12 which would be another indicia of non-obviousness.

13 Q. Are there any additional reasons for your opinion
14 that the differences would not have been obvious for
15 dependent claim 3, which indicates you display the indicator
16 as well as the displayed auto focus guide in response to the
17 first touch?

18 A. Well, again, not one of the examples that were
19 provided by Lenovo do that. And more especially, if they
20 don't have the auto focus guide maintained at all, it's hard
21 to have the indicator appear on that first touch with the
22 auto focus guide.

23 Q. Okay.

24 MR. ANZALONE: No further questions, Your Honor.

25 JUDGE ELLIOT: Very well.

1 MS. DiMARCO: Good afternoon, Your Honor, Libbie
2 DiMarco for the Lenovo and Motorola Respondents.

3 May I proceed?

4 JUDGE ELLIOT: Yes.

5 CROSS-EXAMINATION

6 BY MS. DiMARCO:

7 Q. Good afternoon, Dr. Burger. Nice to see you
8 again.

9 A. You as well.

10 Q. Today you offered some opinions; is that fair?

11 A. That is correct.

12 Q. As one example, you offered opinions on the
13 detect limitation of the '178 patent; is that fair?

14 A. Yes.

15 Q. But that's not the only opinion you offered, is
16 it?

17 A. On the -- I -- I offered many opinions.

18 Q. You offered many opinions, yeah. So your opinion
19 on the detect limitation, it's not the only opinion you
20 offered, is it?

21 A. That was in response to the testimony that Lenovo
22 has presented.

23 Q. Right. But is it the only opinion you have
24 offered here today?

25 A. Today? On the '178 patent?

1 Q. Yeah.

2 A. I had the opinion on Peterka as well.

3 Q. So your opinion regarding the plain meaning of
4 detect is just one example of the opinions that you have
5 offered today?

6 A. That was the opinion that I have offered in
7 response to Lenovo's contentions.

8 Q. And it is one example of the testimony that you
9 have given today, right?

10 A. That my testimony today was an example of my
11 testimony today?

12 Q. Your testimony on the detect limitation is one
13 example of all of the testimony you have given today; is
14 that fair?

15 A. I don't really understand the question.

16 Q. Do you understand the term "one example"?

17 A. Yes.

18 Q. And you're proficient in the English language?

19 JUDGE ELLIOT: Can you just get to the
20 substantive part, please?

21 MS. DiMARCO: Sure.

22 JUDGE ELLIOT: I don't think this is getting us
23 anywhere.

24 BY MS. DiMARCO:

25 Q. Sure. Can we pull up RX-462, paragraph 117,

1 please.

2 Now, Dr. Burger, in your testimony, am I correct
3 that you offered the opinion that Peterka lists only one
4 example of a parity bit value; is that what you testified to
5 today?

6 A. I testified that Lenovo asserted that the single
7 bit we see here in 117 was what signalled the boundary of a
8 screen.

9 Q. And did you -- I believe you testified that
10 Peterka discloses only one example. Am I correct or did you
11 not offer that testimony?

12 A. I -- sorry, Peterka or -- oh, Peterka. The
13 testimony that I offered was that Lenovo had asserted that
14 the parity bit was the indicator, and I responded to that
15 assertion that the parity bit was the indicator.

16 Q. And in your --

17 A. I'm sorry, the key ID.

18 Q. The content encryption key identifier?

19 A. The key identifier, that's right.

20 Q. Right. And in your response, I believe you
21 testified that Peterka discloses only one example was your
22 language?

23 A. That -- well, Lenovo had offered only the one
24 assertion and so I was responding to that one assertion that
25 that's the one example that Lenovo presented as the key ID.

1 Q. Okay. So it's not your testimony that Peterka
2 discloses only one example of a parity bit value?

3 A. My testimony is that Lenovo presented this one
4 argument and I responded to that one argument.

5 Q. And is that your only argument about Peterka,
6 Dr. Burger?

7 A. That's my only argument for validity that was
8 presented by Lenovo.

9 Q. Now, Dr. Burger, you did also testify about how a
10 person of ordinary skill in the art would interpret the word
11 "detect" during your testimony today?

12 A. Yes, I did.

13 Q. But you understand that the matter of claim
14 construction is an issue of law, right?

15 A. That is correct.

16 Q. And that this Court will decide what the term
17 "detect" means in this patent, correct?

18 A. That's correct.

19 MS. DiMARCO: No further questions, Your Honor.

20 MR. MIZZO: Chris Mizzo for the Respondents, Your
21 Honor.

22 May I proceed?

23 JUDGE ELLIOT: Yes.

24 CROSS-EXAMINATION

25 BY MR. MIZZO:

1 Q. Good afternoon, Dr. Burger.

2 A. Good afternoon.

3 Q. Let's talk about the state of the art relevant to
4 the '654 patent. Okay? And I heard some contends the
5 priority date is October 2010 based on a Korean application,
6 so we will focus on the time frame before that. Okay?

7 A. Yes.

8 Q. Now, cameras with touchscreens were known, right?

9 A. That's correct.

10 Q. Cameras that displayed preview images were known,
11 right?

12 A. That's correct.

13 Q. Cameras that allowed users to choose where to
14 focus a preview image were known, right?

15 A. That's correct.

16 Q. Cameras that allowed the user to change a setting
17 by dragging their finger on the touchscreen were known,
18 right?

19 A. That's correct.

20 Q. Displaying an indicator of the camera setting on
21 the touchscreen was known, right?

22 A. That's correct.

23 Q. Maintaining focus at a specific point and then
24 adjusting camera settings until the desired settings are
25 determined was known, right?

1 A. That's correct.

2 Q. Capturing an image according to a selected camera
3 setting was known, right?

4 A. That's correct.

5 Q. Let's discuss the origins of the '654 patent.
6 Ericsson acquired the '654 patent family from LG
7 Electronics, right?

8 MR. ANZALONE: Objection, beyond the scope.

9 JUDGE ELLIOT: Well, I think that's right. Is
10 there -- I don't remember any questioning about that.

11 MR. MIZZO: No, Your Honor, but this goes to --
12 well, let me ask a different question.

13 JUDGE ELLIOT: Sustained. Sustained. You can
14 rephrase it.

15 BY MR. MIZZO:

16 Q. All right. Sir, in preparing your opinions that
17 you have offered in this case, you didn't speak to any of
18 the named inventors, right?

19 A. That's correct.

20 Q. Now, one of the opinions you offered concerned
21 Section 101, correct?

22 A. That is correct.

23 Q. And I am going to refer to your CDX-6C.21. Do
24 you see that on the screen?

25 A. Yes, I do.

1 Q. Okay. In your discussion regarding CDX-6C.21,
2 you were asked questions about whether the claim is directed
3 towards an abstract idea. Do you remember?

4 A. Yes, I do.

5 Q. Okay. And in response you said that a claim is
6 directed towards a camera, a touchscreen, and a controller,
7 right?

8 A. Correct.

9 Q. And that the controller is configured to perform
10 the functions that you have highlighted in blue on your
11 slide, correct?

12 A. Well, actually the entire claim.

13 Q. Well, sir, the controller is configured to
14 perform the functions that come after the controller
15 limitation, right?

16 A. Correct.

17 Q. And those are -- you have highlighted at least
18 some of them in blue?

19 A. That is correct.

20 Q. Now, you're aware that novelty and eligibility
21 are separate concepts, right?

22 A. Yes, I do.

23 Q. So you understand that whether or not the claim
24 is novel does not establish that it's eligible, correct?

25 A. That's correct.

1 Q. And the alleged novelty was the only reason that
2 you identified as to why claim 1 is not directed towards an
3 abstract idea, correct?

4 A. Well, no. It is --

5 Q. Sir, it is a yes-or-no question.

6 A. Then I can't answer yes or no.

7 Q. Let's move on.

8 Let's talk about the Panasonic camera. And if we
9 could please pull up RDX-18.20.

10 This shows claim 1 of the '654 patent, correct?

11 A. Yes, it does.

12 Q. Now, I know there's an issue regarding the number
13 of claim limitations, but with regard to the way the
14 Respondents have identified it, the claim limitations you
15 dispute are 1e, 1g, and 1h, correct?

16 A. That's correct.

17 Q. And you contend those three limitations must be
18 read together, correct?

19 A. That is correct.

20 Q. And so I have your slide CDX-6C.22 here.

21 Do you see that?

22 A. Yes, I do.

23 Q. And this is claim terms not met using Ericsson's
24 labels, correct?

25 A. Correct.

1 Q. And I'm going to just put Respondents' labels
2 here. This is [e]. This is [g], and I will make it as
3 clear for the record. But Respondents' [e] corresponds to
4 your [e]. Respondents' [g] corresponds to your [g] and [h].
5 And Respondents [h] corresponds to your [i]. Correct?

6 A. Correct.

7 Q. Now, this is a core slide to your presentation,
8 correct?

9 A. Yeah, it is one of the slides in my presentation,
10 yes.

11 Q. Well it's the only one where you have the word
12 "interpretation" on it, correct?

13 A. Correct.

14 Q. Where you're offering your interpretation of
15 claim 1, right?

16 A. That's correct.

17 Q. As to why you have a rebuttal over the
18 invalidity, correct?

19 A. That is correct.

20 Q. So let's look at your interpretation, okay? You
21 have three sentences here. Do you see that?

22 A. Yes, I do.

23 Q. Okay. So let's -- I will number them, 1, 2, and
24 3.

25 So let's start with the first one. Elements must

1 be read together because language in your labels, [i], [e],
2 [g], and [h] should be read together?

3 A. Correct.

4 Q. Okay. Now, first, I will notice one of the
5 limitations you have here is [e], right?

6 A. Yes.

7 Q. But in your interpretation in sentences 2 and 23
8 you don't refer to [e], correct?

9 A. That's correct.

10 Q. In addition, despite the fact that you say claim
11 limitations should be read together, you're the one that
12 broke the claim limitation apart, aren't you, sir? You
13 broke [g] into two separate limitations, right?

14 A. That's how I labeled it.

15 Q. And we can agree that here the first sentence
16 beginning with elements must be read together doesn't
17 actually tell you how these elements should be interpreted
18 by the Court, correct?

19 A. I'm sorry, could you ask that again?

20 Q. Telling the Court that the elements should be
21 read together doesn't tell the Court how they should be
22 interpreted?

23 A. That's my opinion.

24 Q. Right. So you're missing [e]. You're breaking
25 apart claim limitations. And that sentence is not actually

1 telling the Court how to interpret these limitations on the
2 left. So let's turn to the second sentence.

3 The second sentence refers to "the value of the
4 image capturing setting," do you see that?

5 A. Yes, I do.

6 Q. And that's reflected here (indicating), right?

7 A. Yes.

8 Q. In limitation [h] of your label, correct?

9 A. Correct.

10 Q. And then you say according to elements [g] and
11 [h], which are these two limitations, which Respondents have
12 identified as a single limitation, right?

13 A. I see that.

14 Q. So you broke them apart and then you're saying
15 you should read them together, right?

16 A. So I guess you agree.

17 Q. Well that's what you did, sir, right?

18 A. Yes.

19 Q. Right. You broke it apart and then said read
20 them together, right?

21 A. Right.

22 Q. And then you said "is determined responsive to an
23 object dragged along the touchscreen." Right? That's
24 determined up here in your [g], correct?

25 A. Correct.

1 Q. And you said increased or decreased and that
2 increase is here (indicating) and decrease is in your [h],
3 correct?

4 A. That's correct.

5 Q. So in your second sentence, sir, are you offering
6 any interpretation on how the Court is supposed to interpret
7 [g] and [h] based on the plain language on this slide? Yes
8 or no?

9 A. I'm sorry, one more time.

10 Q. What you have in the second sentence is simply
11 paraphrasing what is in your limitations [g] and [h],
12 correct?

13 A. That's correct.

14 Q. Right. You are not offering a way for the Court
15 to understand these limitations any differently than the
16 plain claim language, right?

17 A. It's the plain claim language.

18 Q. And then in sentence 3, you just referred to
19 element [i], which is Respondents element [h], correct?

20 A. Correct.

21 Q. And then basically you just paraphrased the
22 language in element [i], correct?

23 A. Correct.

24 Q. And you're not offering any interpretation of how
25 the Court is supposed to construe claim I, other than the

1 plain language that is already in the claim, correct?

2 A. Well --

3 Q. It's a yes-or-no question, sir.

4 A. I can't answer that yes or no.

5 Q. Okay. Well let's -- let me ask you this. In
6 sentence 2 where you're offering an interpretation on
7 elements [g] and [h], you do not say anything about
8 adjusting, changing, or modifying, correct?

9 A. No.

10 Q. You don't say anything about size, right?

11 A. I'm sorry. When I said no, I meant your question
12 was incorrect.

13 Q. Sir, can you identify in sentence 2 where the
14 words adjusting, modifying, or changing are?

15 A. Adjusting the value, so determining an image
16 capture setting responsive to an object dragged across the
17 touchscreen, wherein the value. And that's adjusting a
18 setting.

19 Q. Sir, I asked you where is the word adjusting,
20 where is the word changing, where is the word modifying in
21 the second sentence? Is it there?

22 A. Those words do not appear.

23 Q. Is the word size in the second sentence?

24 A. Just checking because you're asking me to check
25 and no.

1 Q. Is the word "size" in your third sentence?

2 A. No, it is not.

3 Q. Is modifying, changing, or adjusting, are those
4 words in your third sentence?

5 A. Those words are not there.

6 Q. Right. So your interpretation slide, all you're
7 saying to the Court is use the plain language of claim 1,
8 correct?

9 A. The interpretation says you need to consider
10 those clauses together because we're controlling the
11 touchscreen while maintaining the displayed auto focus guide
12 at the specific point. That can't be taken by itself.

13 Q. Well, sir, you don't offer anything other than
14 the language that is used in the claims in your
15 interpretation column; yes or no?

16 A. That's correct. Well, the interpretation column
17 --

18 Q. Sir, it was a yes or no.

19 A. Then I guess I have to pull that back and say I
20 can't answer that that way.

21 Q. Let's go to RDX-18.20.

22 Sorry, let's go to RDX-18.25.

23 Sir, this shows an image of the Panasonic user
24 interface, correct?

25 A. Yes, it is.

1 Q. And the image shows a user interface with a
2 Panasonic touchscreen, correct?

3 A. Yes.

4 Q. And it shows a user touching the touchscreen?

5 A. Yes.

6 Q. And it shows an auto focus guide at the specific
7 point that the user touched, correct?

8 A. That's correct.

9 Q. And the auto focus guide appears in response to a
10 first touch, correct?

11 A. That is correct.

12 Q. And the auto focus guide is that yellow box
13 within the added red box, correct?

14 A. That is correct.

15 Q. And the Panasonic displays the auto focus guide
16 centered on the specific point touched by the user, right?

17 A. That is correct.

18 Q. Let's go to RDX-18.20 and talk about limitation
19 1g. Can we blow that up, please.

20 Now, this is the determining limitation. Do you
21 recognize that?

22 A. Yes, I do.

23 Q. And the phrase "while maintaining the displayed
24 auto focus guide at the specific point" does not appear in
25 limitation 1g, correct?

1 A. That's correct.

2 Q. Adjusting focus is an image capturing setting,
3 correct?

4 A. That is correct.

5 Q. Let's go to RDX-18.31.

6 Sir, on the left-hand side are images of the
7 Panasonic camera user interface, correct?

8 A. That's correct.

9 Q. And they show a vertical slide bar on the right
10 side of that user interface, right?

11 A. That's correct.

12 Q. And that slide bar appears at the same time the
13 user touches the touchscreen at the specific point, right?

14 A. That's correct.

15 Q. So on the Panasonic, the user touches the
16 touchscreen, the auto focus guide appears centered on that
17 specific point, and at the same time, the slide bar appears
18 on the right side of the screen, correct?

19 A. That's correct.

20 Q. And with the Panasonic camera, the user can drag
21 their finger up and down that slide bar to adjust focus,
22 right?

23 A. They use it to change the size of the auto focus
24 guide.

25 Q. So that auto focus guide is to adjust focus,

1 right?

2 A. That's correct.

3 Q. And so with the Panasonic, the user can drag
4 their finger up and down that slide bar to adjust focus,
5 correct?

6 A. They adjust the auto focus guide or they change
7 the auto focus guide, which adjusts the focus.

8 Q. Okay, sir. You sat for a deposition?

9 A. Yes, I did.

10 Q. You testified under oath?

11 A. Yes, I did.

12 Q. Did you tell the truth?

13 A. Yes, I did.

14 Q. Okay. Let's play clip 80, which is page 250,
15 lines 9 through 11.

16 (Video played as follows:)

17 "Question: So as the user drags their finger up
18 or down on the bar, it changes the focus, correct?

19 "Answer: That's correct?"

20 (End of video portion played.)

21 Sir, did you give that answer to that question?

22 A. Yes, I did.

23 Q. Okay. The slide bar, if we can go back to
24 RDX-18.31, please.

25 The slide bar has four hash marks that relate to

1 the area used to focus, right?

2 A. That's correct.

3 Q. When the slide bar is at the bottom, it
4 corresponds to the smallest focus area, right?

5 A. That's correct.

6 Q. When the slide bar, when that rectangle is at the
7 top, that corresponds to the largest focus area, right?

8 A. That's correct.

9 Q. And then when the user stops on a particular hash
10 mark, whether it's the bottom, one of the two middle ones or
11 the top, that small rectangle reflects what the size of the
12 auto focus area is, correct?

13 A. That's correct.

14 Q. That rectangle indicates what the size of the
15 auto focus area is, correct?

16 A. That's correct.

17 Q. On the right side of this slide we see RX-612,
18 which is the Panasonic operating instructions. Do you see
19 that?

20 A. Yes, I do.

21 Q. Okay. And consistent with the pictures on the
22 left, the excerpts, the excerpt on the bottom, which is from
23 pages 1578 and 1657 from the user manual show the user can
24 drag their finger up and down the slide bar to change the
25 size of the focus area, correct?

1 A. Correct.

2 Q. And as the auto focus area is changed, the auto
3 focus guide remains centered at the specific point that the
4 user touched, correct?

5 A. That's correct.

6 Q. Okay. So that just leaves limitation 1h. Let's
7 go to RDX-18.20. If we could pull up 1h, please. Thank
8 you.

9 And limitation 1h recites "control the
10 touchscreen to display an indicator for indicating the
11 current image capturing setting while maintaining the
12 displayed auto focus guide at the specific point."

13 Do you see that?

14 A. Yes, I do.

15 Q. And in the phrase "while maintaining the
16 displayed auto focus guide at the specific point," the
17 specific point is the point on the screen touched by the
18 user, right?

19 A. Correct.

20 Q. So let's go to one of your other slides. This is
21 CDX-6C.24. Do you see that?

22 A. Yes, I do.

23 Q. And this is showing images from the Panasonic,
24 correct?

25 A. That is correct.

1 Q. Now, your sole basis, really, for distinguishing
2 Panasonic is not that it doesn't show the auto focus guide
3 while you're adjusting the slide bar, it's that the auto
4 focus guide, the size changes, right?

5 A. Correct.

6 Q. And so if changing size is not required -- or let
7 me step back.

8 If the claim does not require that the auto focus
9 guide remain the same size, then you would agree with me
10 that the Panasonic anticipates claim 1, correct?

11 A. All the claim requires is that the displayed auto
12 focus guide is maintained.

13 Q. Sir, my question was a yes or no. If size -- if
14 the auto focus guide doesn't need to remain the same size
15 under claim 1, then you would agree that Panasonic
16 anticipates claim 1, correct?

17 A. In this hypothetical question?

18 Q. In my question, it's a yes or no.

19 A. If the displayed --

20 Q. Let me give you some context.

21 A. Okay.

22 Q. Maybe I can help you out here a little bit.

23 A. Please.

24 Q. Let's go to CDX-6C.23. Okay? Do you see that?

25 A. Yes, I do.

1 Q. Okay. And on this slide you're identifying the
2 bases on which or why you allege the image capturing
3 settings that are in the Panasonic do not satisfy the
4 claims, correct?

5 A. Correct.

6 Q. And the sole basis that you identified for auto
7 focus area is that the size is changed, correct?

8 A. Well, what I'm saying is that the displayed auto
9 focus guide is not maintained and the evidence of that is
10 that you're changing the size.

11 Q. Right. Your argument is that maintaining the
12 auto focus guide requires that the auto focus guide remain
13 the same size, correct?

14 A. That it remains the same, that's correct.

15 Q. And if the claim does not require that the auto
16 focus guide remain the same size, then you would agree that
17 you do not identify any other basis on your slide that would
18 save claim 1 from anticipation, correct?

19 A. Nothing else on this slide says that.

20 Q. And with regard to shutter speed and brightness,
21 which you identify as settings 2 and 7, the sole distinction
22 that you say is these settings are -- when these settings
23 are adjusted, there is no displayed auto focus guide,
24 correct?

25 A. Well, in the context of the entire claims, that's

1 correct.

2 Q. Sir, I'm asking about this slide. Can you
3 respond to my question?

4 A. So can you can ask the question again?

5 Q. Yes. On your slide for settings 2 and 7, shutter
6 speed and brightness, the only distinction you make for why
7 those settings do not anticipate claim 1 is your requirement
8 that when these settings are adjusted, there is no displayed
9 auto focus guide, correct?

10 A. That is what I have on this slide.

11 Q. And so if claim 1 -- if maintaining does not
12 require maintaining while adjusting, then you do not
13 identify any other distinction for shutter speed and
14 brightness to save claim 1 from anticipation, correct?

15 A. Are you talking about shutter speed and
16 brightness? Which are you talking about here?

17 Q. Yes, sir. I am talking about shutter speed and
18 brightness. Those are 2 and 7. And you have a single
19 distinction over claim 1 that when these settings are
20 adjusted, there is no displayed auto focus guide.

21 And my question, sir, is if this is not required,
22 if your adjustment requirement is not actually part of the
23 claims, then you don't identify anything here that would
24 save claim 1 from being anticipated, correct?

25 A. So you're saying --

1 Q. It's yes or no. Do you identify anything else
2 there? Yes or no?

3 MR. ANZALONE: Objection, Your Honor. This is
4 getting abusive.

5 JUDGE ELLIOT: Well, can you answer that question
6 yes or no?

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

8 JUDGE ELLIOT: Oh, all right. I will sustain it.
9 You can rephrase.

10 BY MR. MIZZO:

11 Q. Okay. So for shutter speed and brightness, 2 and
12 7, the only distinction you make over claim 1 is when these
13 settings are adjusted, there is no displayed auto focus
14 guide, correct?

15 A. That is correct.

16 Q. Now, we can agree that this adjustment
17 requirement and size requirement are two limitations that
18 you're reading into claim 1, correct?

19 A. Excuse me?

20 Q. The adjustment requirement and the size
21 requirement are two limitations you are reading into claim
22 1, correct?

23 A. I don't understand your adjustment requirement.
24 I don't get that. Can you -- or did I? Could you --

25 Q. Let's pull up RDX-18.20. If we could please pull

1 up limitation 1h.

2 Sir, we can agree that limitation 1h requires
3 displaying an indicator for indicating the current image
4 capturing setting; that's one part, correct?

5 A. Correct.

6 Q. And the other is "while maintaining the displayed
7 auto focus guide at the specific point," correct?

8 A. Correct.

9 Q. Limitation 1h does not refer to changing an
10 indicator, correct?

11 A. 1h does not, correct.

12 Q. Limitation 1h does not refer to adjusting or
13 modifying an indicator, correct?

14 A. That's correct.

15 Q. In fact, this adjusting requirement is something
16 that is found in a different patent in the family of the
17 '654 that is not present in claim 1, correct?

18 A. It is present in '654.

19 Q. Let's go to RDX-18.43. Sir, this is showing
20 excerpts from the '168 patent, which you are familiar with,
21 correct?

22 A. That's correct.

23 Q. And the '168 patent is a related patent to the
24 '654 patent, correct?

25 A. That is correct.

1 Q. '654 patent claims priority to the '168 patent?

2 A. That is correct.

3 Q. Let's go to RDX-18.46.

4 So we have here on the left-hand side the claim 1
5 for the '654 patent.

6 MR. ANZALONE: Objection, outside the scope, Your
7 Honor.

8 JUDGE ELLIOT: Well, we don't really have a
9 question yet. So overruled. Go ahead, Mr. Mizzo.

10 BY MR. MIZZO:

11 Q. Sure. On the left-hand side we have got the
12 claim 1 of the '654 patent and on the right-hand side we
13 have got claim 1 of the '168 patent, correct?

14 A. Correct.

15 Q. Now, the limitation you're trying to read into
16 claim 1 is actually found in the '168, which is this change
17 limitation that says "change the image capturing setting of
18 the specific point from the determined image capturing
19 setting in response to a second touch input to the
20 touchscreen while maintaining the displayed focus guide at
21 the specific point."

22 MR. ANZALONE: Objection, outside the scope.

23 JUDGE ELLIOT: So I think you can ask about the
24 change part but you're doing it in reference to the '168
25 patent. I don't remember anything about the '168 patent

1 coming up on direct. So I will sustain it, but just don't
2 refer to the '168 patent.

3 BY MR. MIZZO:

4 Q. Okay. We can agree there is no change limitation
5 in the '168 patent, correct? Sorry.

6 We can agree there is no change limitation in the
7 '654, claim 1, right?

8 A. The word "change" does not appear in claim 1.

9 Q. And we can take that down.

10 To be clear, we can agree that element 1h of the
11 '654 patent does not require changing the image capturing
12 setting while maintaining the auto focus guide at a specific
13 point, correct?

14 A. Can you give me your image?

15 Q. Sure. Sorry. Can we pull up RDX-18.20. And if
16 we can please blow up 1h, so it is easier to read.

17 And I will repeat the question for you. We can
18 agree that element 1h of the '654 patent does not require
19 changing the image capturing setting while maintaining the
20 auto focus guide at the specific point, correct?

21 A. It's -- the plain language is the current image
22 capture setting while maintaining the displayed auto focus
23 guide at the specific point, that's very clear.

24 Q. So I want to make sure this is really clear, sir,
25 okay? Let's be on the same page.

1 We can agree that element 1h of the '654 patent
2 does not require changing the image capturing setting while
3 maintaining the auto focus guide at the specific point,
4 right?

5 A. Oh, that 1h does not -- let me make sure I
6 understand, okay, that 1h does not talk about changing
7 settings?

8 Q. Well, the word -- let's start with the word
9 "change" isn't in 1h, correct?

10 A. The word "change" is not in -- yeah, the word
11 "change" is not in 1h, that's correct.

12 Q. And changing the image capturing settings isn't
13 in 1h, correct?

14 A. That's correct.

15 Q. Ericsson could have written claim 1 that way, but
16 it didn't, correct?

17 A. That's correct.

18 Q. Now, let's talk again about the Panasonic camera.
19 With the Panasonic camera, while the user is changing the
20 focus with the indicator slide bar, the auto focus guide
21 continues to appear on the touchscreen, correct?

22 A. That is correct.

23 Q. And while the user changes focus using the
24 indicator slide bar, the Panasonic camera displays the auto
25 focus guide at the specific point, correct?

1 A. That's correct.

2 Q. Now, in limitation 1h here, we can agree that
3 limitation 1h does not say maintaining the size of the
4 displayed auto focus guide, right?

5 A. That's correct.

6 Q. It says maintaining the displayed auto focus
7 guide at the specific point, correct?

8 A. Correct.

9 Q. And none of the limitations in claim 1 refer to
10 the size of the auto focus guide, correct?

11 A. Yeah, the word "size" of auto focus guide does
12 not appear.

13 Q. The word "size" does not appear in claim 1,
14 correct?

15 A. Correct.

16 Q. Let's turn to RDX-18.53. Okay.

17 Claim 3 requires the indicator for indicating the
18 current image capturing is displayed in response to the
19 first touch input, correct?

20 A. Correct.

21 Q. And we can agree that Panasonic meets the
22 additional limitation of claim 3, right?

23 A. That the indicator -- in order to meet claim 3,
24 it would need to meet claim 1 first.

25 Q. So let's -- I know you're offering testimony that

1 disagrees with me on claim 1, but for the additional
2 limitation, the indicator for indicating the current image
3 capturing setting is displayed in response to the first
4 touch input.

5 You agree Panasonic discloses that limitation,
6 right?

7 A. I can't answer that.

8 Q. Well, you agree that the Panasonic displays the
9 slide bar in response to the same touch input that causes
10 the display of the auto focus guide, correct?

11 A. Correct.

12 Q. Let's turn to RDX-18.55.

13 Now, claim 16 requires that the adjustable
14 setting corresponds to brightness, correct?

15 A. Correct.

16 Q. And the Panasonic camera allows the user to
17 adjust settings other than the focus using a slide bar,
18 right?

19 A. Correct.

20 Q. And the Panasonic allows the user, for example,
21 to adjust brightness through a drag, right?

22 A. Correct.

23 Q. Panasonic allows the user to adjust shutter speed
24 through a drag, right?

25 A. Correct.

1 Q. And if I can go to the document camera, this is
2 your CDX-6C.25. Do you see that?

3 A. Yes, I do.

4 Q. And on this slide, you reference shutter speed
5 where that functionality is on a draggable slide bar, right?

6 A. Correct.

7 Q. And the critique you have of this image is that
8 there isn't an auto focus guide that's displayed while
9 you're changing or adjusting the drag bar, correct?

10 A. That the displayed auto focus guide is not
11 maintained, that's correct.

12 Q. Right. And so after you're done dragging and you
13 hit "accept," an auto focus guide reappears where it was
14 before you went into this shutter speed functionality,
15 correct?

16 A. Correct.

17 Q. And at the same time, you have an auto focus
18 guide that is at the point that is centered where the user
19 touched, correct?

20 A. Correct.

21 Q. And there's a value for the shutter speed that's
22 at the bottom of the camera, right?

23 A. Correct.

24 Q. And so you have the indicator for the shutter
25 speed at the bottom and the auto focus guide that's

1 displayed on the user interface at the same time, correct?

2 A. Correct.

3 JUDGE ELLIOT: Mr. Mizzo, I would like to break
4 for the day within the next few minutes. Let me know when a
5 good time would be.

6 MR. MIZZO: Absolutely, Your Honor.

7 BY MR. MIZZO:

8 Q. Okay. So just a few more minutes, Your Honor.

9 There's another mode of adjusting the shutter
10 speed that you haven't shown, correct?

11 A. Correct.

12 Q. And the other mode is one where you can adjust
13 the shutter speed using a dial and the auto focus guide is
14 on the screen, correct?

15 A. Correct, Dr. Bederson demonstrated that
16 yesterday.

17 Q. Right. And -- but you don't have a slide showing
18 that functionality, correct?

19 A. Correct.

20 Q. But we can agree that Panasonic teaches that in
21 some cases you can maintain an auto focus guide and adjust a
22 setting, correct?

23 A. For that small part of the limitation, correct.

24 Q. And we can agree that Panasonic teaches
25 maintaining the size of the auto focus guide while adjusting

1 a setting, correct?

2 A. With that thumb wheel, that's correct.

3 Q. Right. Because when you're using this shutter
4 speed functionality and you're adjusting the shutter speed
5 with the thumb wheel, that auto focus guide stays the same
6 size and it stays there the entire time, correct?

7 A. Correct.

8 MR. MIZZO: Your Honor, I think now would be a
9 good time to break then.

10 JUDGE ELLIOT: Very good. So we will come back
11 at 9:00 tomorrow morning.

12 And during our break, Dr. Burger, please don't
13 discuss your testimony with anyone. And, again, if anything
14 happens overnight, tell me in the morning.

15 (Whereupon, at 4:47 p.m., the hearing recessed,
16 to reconvene at 9:00 a.m. on Thursday, August 22, 2024.)

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1 C O N T E N T S

2

3	WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
4	BENJAMIN BEDERSON		658	680	
5	JOHN MULGREW	691	720	761	
6	DAVID DJAVAHERIAN	768	786	798	
7	SIR CHRISTOPHER FLOYD	806	836	858	
8	ERIC BURGER	870	895		
9		876	898		

10

11 AFTERNOON SESSION: 786

12

13 CONFIDENTIAL SESSIONS

14 700 - 767

15 772 - 805

16 810 - 815

17 821 - 821

18 831 - 835

19 852 - 863

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1 CERTIFICATE OF REPORTER

2 TITLE: Certain Electronic Devices, Including Mobile

3 Phones, Tablets, Laptops, Mobile Phones

4 INVESTIGATION NO: 337-TA-1376

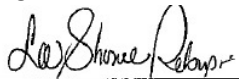
5 HEARING DATE: August 21, 2024

6 LOCATION: Courtroom B

7 NATURE OF HEARING: Evidentiary Hearing

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10 Date: August 22, 2024

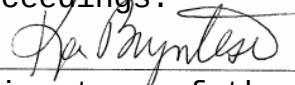
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