

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

VB ASSETS, LLC,) VOLUME 1
)
Plaintiff,)
) C.A. No. 19-1410 (MN)
v.)
)
AMAZON.COM SERVICES LLC,)
)
Defendant.)

Thursday, November 2, 2023
8:55 a.m.
Jury Trial

844 King Street
Wilmington, Delaware

BEFORE: THE HONORABLE MARYELLEN NOREIKA
United States District Court Judge

APPEARANCES:

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15 THE COURT: All right. Good morning, everyone.
16 Please be seated. All right. So we have a bunch of
17 objections. Let's take them one by one. PTX-743. That one
18 I can't quite --

19 MS. MAYER: It's a video, Your Honor.

20 THE COURT: Can we watch the video?

21 MS. MAYER: These are the same documents we
22 discussed at the pretrial conference.

23 THE COURT: I never saw them at the pretrial
24 conference. If you want me to keep it out, you're going to
25 have to show it to me. I can't say no document based on

1 this.

2 MS. MAYER: The video will be about Amazon's new
3 product, Your Honor. It's not at issue in this case.

4 (PTX-743 video playing.)

5 MS. MAYER: You can pause it there. Your Honor,
6 I understand this is -- this is plaintiff's exhibit, it's an
7 hour-and-a-half video.

8 THE COURT: You're not going to play an
9 hour-and-a-half video, why are we sitting here doing this,
10 what are you going to do with this? You're not going to
11 play an hour-and-a-half video, so what are you going to do
12 with it?

13 MR. SMITH: Your Honor, this was video that was
14 subject to the motion to amend.

15 THE COURT: I don't care, I want to know what
16 you're going to do with it?

17 MR. SMITH: We're only going to introduce it as
18 an exhibit if the door opened on the damages issues and
19 Dr. Polish has supporting opinions.

20 THE COURT: Has Dr. Polish opined on this
21 document?

22 MR. SMITH: No.

23 THE COURT: Then he can't testify about it. If
24 you want to use something on cross, if someone opens the
25 door, maybe you can talk about it, but how can he offer an

1 opinion on this document, or this hour-and-a-half long video
2 if he hasn't given an opinion? What's he going to say?
3 Where did you disclose what he would say about it?

4 MR. SMITH: I think the issue is if they open
5 the door on cross-examination.

6 THE COURT: That doesn't let your expert give
7 opinions he never gave. On cross-examination it seems to me
8 if they open the door, you use it with their people saying
9 you think it's unimportant, look at the video. So no,
10 Dr. Polish can't use that.

11 MR. SMITH: That would also resolve PTX-744 and
12 745, they're in the same boat.

13 THE COURT: You can't use them with an expert
14 who hasn't disclosed an opinion on them. But I'm not making
15 a ruling as to whether they could be used on cross or some
16 other way.

17 MR. SMITH: Thank you, Your Honor.

18 THE COURT: Okay.

19 Now we have PTX-087. Let me find that. Where's
20 that? Do we have a hard copy of that?

21 MR. SALMASTLIAN: Your Honor, this is the same
22 issue. PTX-87 is a document that I --

23 THE COURT: It's the same issue, wait a second,
24 the same issue being what, that -- I mean, these aren't the
25 three documents I let them add, so it's not that same issue,

1 what do you mean by the same issue?

2 MR. SALMASTLIAN: What I mean, by Dr. Polish
3 hasn't offered any opinions about this document in his
4 report.

5 THE COURT: Where is his opinion about this
6 document.

7 MR. SMITH: Your Honor, so this document
8 PTX-087, that was identified in Dr. Polish's materials,
9 considered on page 4.

10 THE COURT: Okay, but did he offer an opinion on
11 it? What's he going to say and how do they know what he's
12 going to say?

13 MR. SMITH: What this is in -- relates to in
14 Dr. Polish's reply report he rebuts Dr. Johnson's
15 non-infringement argument that Alexa doesn't have ads, and
16 this was one of the documents he cited in his opening report
17 that discusses ads, but he does not specifically cite it in
18 his reply report. But it is one of the documents he's
19 considered and identified, specifically in his opening
20 report.

21 THE COURT: When you say that, does that mean
22 there is like a list of 500 exhibits that he considered but
23 didn't opine on, or do you mean in his report he said there
24 is something about ads, and then he listed this document?

25 MR. SMITH: It's the former in that -- but it's

1 not as volumus as 500, there was a list of deposition
2 exhibits.

3 THE COURT: Let me see what you're talking
4 about, what this list is.

5 MR. SMITH: Mr. Smith, can you pull up the
6 Polish opening report materials considered, page 3? Going
7 back to the page 4. This is the list of select number of
8 depositions.

9 THE COURT: What's he going to say? Where did
10 you give fair notice as to what he's going to use this
11 document for?

12 MR. SMITH: It was really --

13 THE COURT: Where did you -- how are they
14 supposed to know what he's going to use this document for?
15 Where did he give an opinion that's going to say what he
16 used this document for?

17 MR. SMITH: He does not in his report.

18 THE COURT: He can't give an opinion at trial,
19 but you can use it on cross-examination with their witness
20 if you want.

21 MR. SMITH: Thank you, Your Honor. Actually, I
22 would say that's the same exact issue for '204 and '079 as
23 well. So they're in the same boat.

24 THE COURT: Well I guess that ruling applies to
25 those as well.

1 All right. Now, we have -- wait, there were
2 some others that were added later. PTX-3, is that supposed
3 to be PDX, it's PTX, it was in the 7:35 e-mail that added 1,
4 2, 3, 4 to the 31, or the 40 objections. So what are these
5 things that were in Mr. Mayo's 7:35 email, it's PTX-3-21, I
6 don't know what that is, is that supposed to be PDX?

7 MR. SALMASTLIAN: The issue, PDX, these are
8 Dr. Polish's demonstratives that were provided last night.
9 And I just wanted to, for a moment just back up to
10 Exhibit 79. One of the other issues with that exhibit is
11 the compilation of 27 different Amazon documents, and
12 Dr. Polish only relies on seven of those documents. There
13 is 20 others that have been compiled included in that set
14 and they should not be even providing opinions on 20 of
15 those documents.

16 THE COURT: Did you understand the ruling that I
17 made?

18 MR. SALMASTLIAN: Yes.

19 THE COURT: What was the ruling that I made?

20 MR. SALMASTLIAN: That they can only be used on
21 cross.

22 THE COURT: Okay. So then why do we care if
23 Dr. Polish can use seven of the pages, when he can't use any
24 of that document?

25 MR. SALMASTLIAN: Understood, Your Honor.

1 THE COURT: But if you're saying he can use the
2 seven pages because he did use -- he did refer to those in
3 his report, then I guess maybe they should have made that
4 argument. Are there pages of that document that he did rely
5 on?

6 MR. SMITH: My understanding is we only relied
7 on it in materials considered.

8 THE COURT: All right. So --

9 MR. SALMASTLIAN: So on Dr. Polish's
10 demonstratives Your Honor, the other issue is that --

11 THE COURT: No, we have to go through each one
12 here. Let's start with nine. Okay, what's the issue on
13 nine? PDX3-9.

14 MR. SALMASTLIAN: So this is a new example that
15 Dr. Polish did not provide an opinion on in his report.

16 THE COURT: Did they tell you that he was going
17 to rely on VoiceID, like what's new about it?

18 MR. SALMASTLIAN: So it's entirely new
19 conversation. In Dr. Polish's report, the only reference
20 that he had provided was to a single document, Amazon
21 document which is actually shown on slide -- one moment. On
22 slide -- so he maps this --

23 THE COURT: Slide what?

24 MR. SALMASTLIAN: So he maps this conversation
25 to slide 27. This is two parts, there are two parts to

1 this. And it's shown on slide nine, and then on the second
2 part of this conversation --

3 THE COURT: Why is this -- why is this -- I
4 mean, why does it matter what the specific words of the
5 conversation are? If he mapped out a conversation for
6 infringement, why does it matter the specific words that are
7 used?

8 MR. SALMASTLIAN: So, if Your Honor recalls in
9 the '681 patent, the claims require a specific utterance and
10 then showing that you have accumulated short-term knowledge
11 and long-term knowledge, and use those together to identify
12 context for a specific utterance. And the examples he
13 provided in his report are entirely different than what he
14 provided in his demonstratives. And he didn't provide any
15 opinion on these new examples.

16 THE COURT: Okay. Let me hear from the
17 plaintiff.

18 MR. SMITH: Your Honor, the Polish expert report
19 has numerous examples of the VoiceID and voice purchasing.

20 THE COURT: Why didn't you use this one, why
21 didn't you use an example that -- I mean, where did this
22 example come from?

23 MR. SMITH: If we can go to paragraph 278,
24 Mr. Smith. So setting up the VoiceID is a prerequisite to
25 doing the voice purchases and other things. So first, you

1 have to settle the VoiceID, and then once you do that, then
2 you can do purchases and other things. So in his report, we
3 talk about, for example, setting up VoiceID, and we do have
4 a screen shot of his phone doing it, but then we didn't
5 actually have -- we just didn't have the dialogue screen
6 shot showing the specific back and forth for this process
7 laid out in the screen shot.

8 THE COURT: Well, where did this come from?
9 Where did you get this text that's written here?

10 MR. SMITH: We got it from Alexa.

11 THE COURT: When?

12 MR. SMITH: When we recorded it. So in his
13 expert report, he recorded it before his expert report and
14 we set forth screen shots showing the dialogue. And then we
15 recreated the conversation, the same conversations almost
16 with a few minor differences and played the video.

17 THE COURT: What were the differences?

18 MR. SMITH: Well the differences are, one thing
19 is in here we had screen shots showing that he had done the
20 purchase by voice steps and everything like that, but we
21 just didn't have a screen shot showing the dialogue of Alexa
22 asking him a question to set it up. We can have the screen
23 shots of all the subsequent examples of Dr. Polish's use of
24 Alexa with the specific screen shot. And so that's really
25 the difference. It really just comes down to --

1 THE COURT: All right. I think this is just a
2 demonstrative explaining an example conversation, so I'm
3 going to let that go.

4 All right. PDX3-12.

5 MR. SALMASTLIAN: Your Honor, this is the same
6 issue that we just discussed and part of the issue here is
7 that none of these examples were produced or conversations
8 were produced, the videos were not produced in discovery.
9 We do not know what they are referring to.

10 THE COURT: Are these videos that are going to
11 be played, or is this just a screen shot? What is this? I
12 have a piece of paper, but I don't know what it is.

13 MR. SMITH: Your Honor, we did ---we recreated a
14 video of Dr. Polish talking to Alexa, and it is very, very
15 close to the screen --

16 THE COURT: Why is it different? Let me ask you
17 this. Why is it different? You know, you're saying it's
18 very close, but they're saying wait a second, the closeness
19 means they changed something that's important. So tell me
20 exactly what was said and what was changed.

21 MR. SMITH: So what was said was changed, there
22 is the VoiceID part, and then the second thing was on this
23 list here is there is an alarm conversation, and in
24 Dr. Polish's opening report, he has screen shots of his
25 alarm conversations that he did before submitting his

1 opening report. Really the only difference is I think when
2 he recorded, he might have -- he used different times. So
3 this was like an alarm for 6:30 and 10:45 p.m., and I think
4 in his report he had something like 6:00 a.m., That's the
5 difference. We can change it back to the original times
6 that we had in the report if it makes a difference. There
7 is that one.

8 And there is one, and this is PDX3-13, it's
9 about a calendar, and I will say that is something that is
10 different, we did not have a calendar, the exact calendar
11 example in our opening expert report. That is the only
12 example that was not expressly discussed in the opening
13 report. But the calendar example is, it just -- it's just a
14 slight variation of the other stuff that he was doing with
15 Alexa, setting up alarms, and then I guess he set up a
16 calendar appointment for a dentist appointment or something.
17 That's the only difference. And I think the other issue
18 they raised was in one instance he was trying to do a voice
19 purchase, and the only difference there is he said the same
20 words to Alexa, but Alexa said something slightly different
21 back to him in response. So instead of offering a certain
22 type of iPhone case, she offered a different type of iPhone
23 case, so we couldn't have exactly the same text because
24 Alexa is telling us something slightly different. Those are
25 the differences.

1 THE COURT: Are those the differences?

2 MR. SALMASTLIAN: Your Honor, I'd just like to
3 start by noting that even with -- during discovery, they
4 didn't produce any videos of Dr. Polish --

5 THE COURT: I know, but it's the same -- why
6 couldn't he sit up there, you can have Alexa here and he
7 says let me just show the jury what's going to happen. I
8 mean, the fact that suddenly there is a video, you're not
9 saying that this isn't what happens with the device. I
10 mean, he said look, for the alarms, the text, the difference
11 in the text is the time. Is that really what we care about?

12 MR. SALMASTLIAN: There is more difference than
13 that, Your Honor.

14 THE COURT: All right, tell me what the
15 differences are, because you just heard that representation,
16 so show me what the difference is.

17 MR. SALMASTLIAN: Another difference is how
18 they're using the example. So in their report, the alarm
19 conversation is broken up into a first part and a second
20 part, and they are mapping a different part of that
21 conversation now to the short-term shared knowledge
22 limitation of the '681 patent.

23 THE COURT: So can you show me what you're
24 talking about with the mapping and different --

25 MR. SALMASTLIAN: Yes, one moment. So I am

1 referring to slide 23, which is where they're using the
2 second portion of the alarm conversation. And in their
3 report, in Polish's opening report for the corresponding
4 limitation, they said that they were using the first part of
5 the conversation which is set an alarm, and then they
6 pointed to the time 10:00 as being the portion that they
7 were mapping as short-term knowledge, and now they're
8 mapping the second part of that conversation to short-term
9 knowledge.

10 THE COURT: Did they disclose the second part of
11 the conversation in his report?

12 MR. SALMASTLIAN: They identified a block as a
13 single conversation in their report, in the previous
14 limitation, and I can show you what they did here without
15 actually even distinguishing the parts.

16 THE COURT: Okay.

17 MR. SALMASTLIAN: So this is what they have in
18 their opening report, Your Honor. So if you can see there
19 is set an alarm, set alarm for 10:00, and then they go on
20 say change my alarm, 10:30.

21 THE COURT: I can't read that. Mark, can you
22 help him, try to just get it to stop going back and forth.

23 MR. SALMASTLIAN: It's just automatically
24 zooming.

25 THE COURT: All right. Go ahead.

1 MR. SALMASTLIAN: So, Your Honor, as I was
2 mentioning, they mapped -- they used the set an alarm on the
3 left, and they say 10:00 is the short-term knowledge, and
4 now they're relying on the thing on the right which they're
5 calling a second conversation, and they're mapping that to
6 the short-term shared knowledge element of Claim 13, so it's
7 a different opinion. And it matters for this patent because
8 you have to specifically show what is the short-term
9 knowledge that's accumulated for -- about the utterance and
10 what is the long-term shared knowledge from past
11 conversation and how both are used together to identify
12 context for the utterance that's supposed to be meeting
13 every element of the claim.

14 THE COURT: So why does it matter? I'm trying
15 to figure out what the difference between the 10:00 a.m. on
16 the left, and the 10:00 a.m. on the right. Why does it
17 matter?

18 MR. SALMASTLIAN: So they're saying that this is
19 now two separate conversations and they're moving to the
20 latter half of the conversation to then change their theory
21 because our expert explained why this utterance that they
22 initially point to, didn't work, they didn't provide an
23 opinion on it, and now they're providing a new opinion.

24 THE COURT: All right. Let me hear from the
25 plaintiff. Where is this -- why is this not a different

1 opinion, why can he change his opinion, and if he did change
2 his opinion, why is that okay?

3 MR. SMITH: Well, I think, Your Honor, in
4 paragraph 150, what is depicted there --

5 THE COURT: I don't know what that means. I
6 don't have anything with paragraph 150. So you're going to
7 have to show it to me or something.

8 MR. SMITH: Thank you, Your Honor. Can we
9 switch back to the screen here. Mr. Smith, can you pull
10 paragraph 150 from Polish's opening report?

11 If you go to the next page, please.

12 And Your Honor, the way this was organized in
13 Dr. Polish's report, was there is a series of screen shots
14 and what he was conveying was that there was first
15 conversation, second conversation --

16 THE COURT: Yes, but what they said is look, in
17 his report when he was mapping, this is the short-term
18 knowledge, this is the long-term knowledge, these two are
19 used together to form the context, or whatever he said.
20 That now Dr. Polish is identifying something different as
21 the short-term knowledge, and that that matters because he's
22 changed it in response to what Amazon's expert said, but he
23 didn't disclose that he was changing it. Were there reply
24 reports in this case?

25 MR. SMITH: Your Honor, there were reply

1 reports. And I believe -- I think generally what he did in
2 his opening report is he expressed his opinions and then he
3 said -- and then what he would say is I'm relying on the
4 conversations that I discussed earlier in the report as
5 support for the opinions. So I don't think he -- I don't
6 think he -- yeah, I don't think -- I don't think he ever
7 said that he only had one conversation. And so this also,
8 the portion of the slide they're trying to exclude, too, is
9 this is part of the conversation he had at the beginning of
10 his report to show the operation of Alexa, which is
11 consistent with the way his report was structured which had
12 a paragraph that went through 2 different conversations --

13 THE COURT: So what did, he identified as the
14 short-term knowledge when he was mapping the Alexa product
15 to the claim at issue?

16 MR. SMITH: It's really -- it's the same thing
17 he's doing now which is the context inter-

18 THE COURT: Why did you change the conversation
19 that he used? That's what I'm trying to understand. I
20 don't understand why it really matters, but I don't
21 understand, they seem to be fighting it, so I'm trying to
22 make sure I understand why it would matter.

23 MR. SMITH: In terms of the actual dialogue, as
24 I was indicating earlier, really the only difference that I
25 could see, is he set an alarm for 10:00 --

1 THE COURT: Why did he change it if it doesn't
2 matter, is my question?

3 MR. SMITH: It doesn't matter, Dr. Polish -- and
4 we would be happy to re-record it with the exact same times
5 that he had initially --

6 THE COURT: It's not the times that they're
7 talking about. That's not what he said. Tell him what you
8 said was the difference that you had a problem with.

9 MR. SALMASTLIAN: The issue is, it is being
10 mapped in a different way to the claims and they're relying
11 on different utterances in different parts of the
12 conversation. This is a consistent issue Your Honor, with
13 all these examples frankly, and our position is that he
14 should be held to the exact examples that --

15 THE COURT: Look, I'm not so wedded to the exact
16 examples because I mean, come on, he already showed me Alexa
17 said something different in response. And you guys can
18 certainly deal with a little bit of difference in the way he
19 asked the question. I'm trying to figure out if this is a
20 new opinion, or just a difference in the wording. And
21 neither of you is telling me that. So let me ask the
22 plaintiff, because you're the ones who want this different
23 language, why is it not a big deal to change from saying set
24 an alarm for 10:00 a.m., to update which alarm or change my
25 alarm? Why are you making that change, and is it in

1 response to something that Amazon said? I don't know.

2 MR. SMITH: The issue of the changing the alarm
3 is not different. So, I mean, if we go to, for example,
4 PDX3-15, he just -- all he does here, is this is the same
5 thing where he says -- really the difference here is he
6 asked again if he has an alarm set, and this is more of just
7 to set -- give the jury a little bit more explanation so
8 that it's not quite as terse as it was in the screen shots,
9 and so all -- he's doing the exact same thing he did in the
10 second -- the right-hand portion of that second conversation
11 where all he's doing is just changing his alarm from one
12 time to another. But the only thing that he is doing
13 differently here is, he is providing a little bit more
14 background where he ask her do I have any alarms for
15 tomorrow? And then he says, okay, I want to change that one
16 you identified as 6:30, to 6:45. So again, really the only
17 difference is he did use slightly different times, and when
18 he provided a little bit more I guess, a little bit more
19 text to give the jury, a little bit more background because
20 I think the screen shots were admittedly a little bit terse.
21 The same thing, in the report there is two conversations,
22 there is a left hand, right hand column with two screen
23 shots and that -- really what he's doing here is he's having
24 two conversations and he's changed the dialogue to add a
25 little bit of context or background so it's easier for the

1 jury to understand. That was our goal here.

2 THE COURT: All right. That seems fair. So
3 what's the problem?

4 MR. SALMASTLIAN: I attempted to show this to
5 you Your Honor, so you can see exactly what I was saying.
6 But if you look at PDX3-23, this is how they're using the
7 alarm conversation, the new one in their demonstratives.
8 And they're mapping the second part of the conversation to
9 short-term shared knowledge, which is, do I have any alarms.
10 Okay. And --

11 THE COURT: So hold on, hold on.

12 How do you know they're mapping the second part
13 of the conversation, they have the whole conversation there
14 on the side.

15 MR. SALMASTLIAN: Your Honor, if you look at
16 slide 15, it's the second part of the conversation.

17 THE COURT: Oh, I see.

18 MR. SALMASTLIAN: And what I showed you a moment
19 ago, Your Honor, in their report is that they mapped the
20 first part of the conversation to this claim element, so it
21 is a material change in their opinions.

22 THE COURT: So show me where he -- show me
23 wherein his report he mapped the first conversation.

24 MR. SALMASTLIAN: It's -- can we pull up page 55
25 of Dr. Polish's opening expert report? And this spans

1 between pages 55 and 56, we'll have to show both. So at the
2 bottom here, Your Honor, in paragraph 155, you can see they
3 say this is illustrating the alarm conversation, and they
4 say "where the user says set an alarm "Alexa asked the alarm
5 to what time.

6 THE COURT: Hold on. And 1(a) is what, receive
7 an utterance?

8 MR. SALMASTLIAN: 1(a) is the utterance that is
9 being received and that's where they identify the alarm
10 conversation image.

11 THE COURT: So I see 1(a) is receive an
12 utterance, okay. So then we have to go to 1(b)?

13 MR. SALMASTLIAN: Yes. And we're looking at
14 1(b) now, in paragraph 155 --

15 THE COURT: I don't see 1(b). I see 1(a).

16 MR. SALMASTLIAN: If we go to page 54, you'll
17 see 1(b) --1(b) this is a reference back to the conversation
18 that was identified, those images are in 1(a).

19 THE COURT: What did they cite for 1(b), (c)?

20 MR. SALMASTLIAN: For 1(b), we're looking at
21 1(b) right now.

22 THE COURT: I can't read that, you got to make
23 it bigger.

24 MR. SALMASTLIAN: Can you show that this is
25 1(b), please at the top of the page. Accumulating

1 short-term shared knowledge.

2 THE COURT: I got that, I want to see the
3 substance, I can't read the substance.

4 MR. SALMASTLIAN: Can we go to the next page,
5 please. Bottom of paragraph 155, this is where they're
6 mapping, the last three lines, this is where they start
7 mapping the first part of the alarm conversation when Alexa
8 asks alarm for what time. That corresponds to the first
9 part of the conversation.

10 THE COURT: What's next?

11 MR. SALMASTLIAN: If we go to the next page,
12 they say it's 10:00 in that conversation, the first part
13 when you're setting an alarm. And what they've done here in
14 slide 23, is they're mapping the second part of the alarm
15 conversation which was on slide 15. So it is a material
16 change in opinion. And we believe it's in response to our
17 expert telling them that it didn't work.

18 THE COURT: So let me ask you this. When is
19 Mr. Polish going to testify, because I believe we set this
20 trial to start on a Thursday because I was told that he
21 wasn't going to be here to testify until Monday. So do we
22 have until Monday?

23 MR. SMITH: He can now be available on Friday.

24 THE COURT: Okay. So when did that change?

25 MR. SMITH: He had another trial in Texas, and I

1 think at some point, maybe last week he told us it looked
2 like it was likely to be delayed or off, and now it's off.
3 I haven't been following the docket in the case.

4 THE COURT: All right. So Mr. Polish isn't
5 going to testify today, so I don't need to worry about these
6 slides right this second, so we can bring the jury in?

7 MR. SMITH: That's correct.

8 THE COURT: So I need to have some more
9 understanding. You guys need to talk specifically about
10 what these issues are, and you need to show them where he
11 fairly disclosed, it doesn't have to be word for word and if
12 it's just things like the time, I get it, it's not a big
13 deal. But if he's -- if he's -- you need to understand why
14 they think he's changing his opinions by saying in his
15 report this is short-term knowledge, and then what they seem
16 to be saying, I don't know if this is true, their expert
17 said that can't be short-term knowledge because of whatever.
18 And your expert, in his reply, said nothing about that, and
19 now he's responding. That's the argument I'm hearing. You
20 need to talk with them and explain why that's not the case,
21 or you guys need to be able to spend some time with me at
22 the end of the day today and explain why it's not because
23 I'm just getting -- I'm getting this uneasy feeling that
24 your expert is just making up new stuff that he didn't
25 previously disclose.

1 Now it may be that the new stuff isn't really
2 new stuff, and it's all fair game, but I'm not getting that.
3 I don't know what either of you is really saying. So I need
4 some better argument. But at this point, I don't want to
5 waste the jury's time, so I need to bring in the jury and
6 everyone who is in the back is going to have to vacate.

7 MR. SMITH: Thank you, Your Honor.

8 COURTROOM DEPUTY: All rise.

9 THE COURT: And I want a copy of Dr. Polish's
10 report.

11 (A brief recess was taken.)

12 THE COURT: All right. Good morning, everyone.
13 Please be seated. I am supposed to have a list of questions
14 up here and I have lost them. Not a good start. All right.

15 Okay. Good morning. Again, my name is
16 Maryellen Noreika, and I am the judge who is going to
17 preside over the case that we're picking a jury for today.
18 I am going to ask you some questions. The purpose of which
19 is to one, enable us to determine whether any prospective
20 juror should be excused for cause. And two, to enable
21 counsel for the parties to exercise their individual
22 judgment with respect to what are called peremptory
23 challenges, those are challenges for which no cause needs to
24 be stated.

25 Now before I ask the questions, I'm going to ask

1 my deputy, over here, Mr. Buckson, to swear in the jury
2 panel to answer the questions truthfully.

3 COURTROOM DEPUTY: Members of the jury panel,
4 will you please rise and raise your right hand. Do each of
5 you solemnly swear, those of you who swear and affirm, and
6 those who affirm, that you will answer truthfully any
7 questions that you are asked pertaining to the matter now
8 before the court?

9 THE JURY: Yes.

10 THE COURT: Thank you, very much. You may be
11 seated. Now you should have a list of the questions that I
12 am going to read out loud, if you answer yes to any of the
13 questions, just make a note on the list, and at the end of
14 the questions I will ask you whether you have answered yes
15 to any of the questions and if you have, we'll bring you
16 each to the back and talk with you and the lawyers about
17 your answers.

18 We are having a jury trial for a case that will
19 begin today, and last up to five days until Wednesday,
20 November 8th, Wednesday of next week. The trial will be
21 timed, so the attorneys must complete their presentations in
22 that time. It's possible, however, that the jury
23 deliberations may require you to be here longer than the
24 scheduled number of days. Our trial days will run from
25 approximately 9:00 a.m. to 4:30 p.m. each day. With those

1 introductions, my questions are:

2 1. Does the schedule that I have just mentioned
3 present a special problem to you?

4 2. VB Assets LLC filed this lawsuit asserting
5 that Amazon.com Services LLC infringes four patents. Amazon
6 has responded that it does not infringe VB Assets patents,
7 and that the patents are invalid. Have you heard anything
8 about this case prior to now?

9 3. This case involves voice enabled speakers
10 such as Echo, and personal assistant such as Alexa. Do you
11 have any strong opinions about this type of technology that
12 would make it difficult for you to be a fair and impartial
13 juror in this case?

14 4. The lawyers and law firms involved in this
15 case are listed here. Please carefully review the list.

16 Do you or your immediate family members or close
17 friends know of, or have any business dealings with, or have
18 any employment or other relationship with any of these
19 attorneys or law firms?

20 5. The potential witnesses in this case are
21 listed here. Please carefully review that list.

22 Are you, or is anyone in your immediate family
23 or your close friends related to or acquainted with any of
24 these individuals?

25 6. Have you or anyone in your immediate family

1 or close friends had any experience with patents, patent
2 law, patented technology or the United States Patent and
3 Trademark Office?

4 7. Have you or any member of your immediate
5 family or close friends ever applied for, or obtained a
6 patent, copy right or trademark?

7 8. Do you have any opinions about patents or
8 the patent system that would make it difficult for you to be
9 fair and impartial, a fair and impartial juror in this case?

10 9. Have you or has anyone in your immediate
11 family or close friends been employed by Amazon or any of
12 it's affiliate companies or by VB Assets or VoiceBox?

13 10. Have you or has anyone in your immediate
14 family or close friends had any business dealings with
15 Amazon or any of its affiliate companies, VB Assets or
16 VoiceBox that would make it difficult for you to be a fair
17 and impartial juror in this case?

18 11. Do you or does anyone in your immediate
19 family or close friends own individual stock as opposed to
20 Holdings in a mutual fund or an exchange traded fund in
21 Amazon or VB Assets or VoiceBox?

22 12. Do you have any strong feelings, positive
23 or negative, concerning Amazon, VoiceBox, VB Assets, or
24 their products or services that would make it difficult for
25 you to be a fair and impartial juror in this case?

1 13. Do you have any formal education or
2 training, or have you worked in any of the following fields:
3 Law, engineering, computer programing, computer science,
4 software development, voice assistant technology or speech
5 processing?

6 14. Have you or any member of your immediate
7 family ever been a plaintiff, a defendant, or a witness in a
8 lawsuit?

9 15. Have you or any member of your immediate
10 family ever served as a juror in a criminal or civil
11 lawsuit?

12 16. Have you or any member of your immediate
13 family ever had experience with the legal system that would
14 make it difficult for you to be a fair and impartial juror.

15 And 17. This is the last question, do you know
16 of any other matter that you believe should be called to my
17 attention as having some bearing upon your qualifications or
18 ability to sit as a juror, or that you think might prevent
19 you from rendering a fair and impartial verdict based solely
20 on the evidence and my instructions as to the law?

21 All right. So those are the questions that we
22 have to ask. Let me start by asking the folks who are
23 sitting in the back over on this side, if you answered yes
24 to any question, could you just stand up.

25 THE COURT: All right. Juror number one?

1 A JUROR: Yes.

2 THE COURT: You can sit down once I get your
3 number. Juror number 2? Juror number 3 and 4? All right.
4 In the back, what number are you ma'am?

5 A JUROR: 5.

6 THE COURT: 5. Okay.

7 Sorry I can't see that far. In the pink shirt,
8 you're 6?

9 A JUROR: Yes.

10 THE COURT: All right. 7?

11 A JUROR: Uh-huh.

12 THE COURT: 8 and 9. Okay, we're on a full
13 clean sweep here, and in the back?

14 A JUROR: 10.

15 THE COURT: And 11?

16 A JUROR: Yes.

17 THE COURT: 12. You're good. Okay. 13 and 14.

18 Okay. How about over on this side of the aisle? Okay.

19 15, 16, 17 and 18. Okay. 19, 20.

20 A JUROR: 22.

21 THE COURT: 21 is okay.

22 Okay. 22, 23. 24, sir.

23 A JUROR: 26.

24 THE COURT: 24, 26. And?

25 A JUROR: 28.

1 THE COURT: 28. Just for completeness, I'll ask
2 you guys over here, did you answer yes to any questions?

3 A JUROR: No.

4 THE COURT: Okay. All right. Okay. So what
5 we're going to do is, I'll just ask you all to be patient
6 for a few minutes, we're going to bring you back, anyone who
7 answered yes, back one at a time and then we will be in a
8 better position to pick a jury.

9 COURTROOM DEPUTY: All rise.

10 (Jury conference room voir dire) .

11 THE COURT: All right. Got a record number of
12 yes answers. We are only supposed to have two people, but I
13 guess I didn't mention that. All right.

14 MR. YOON: Your Honor, we could reduce by one if
15 you want.

16 COURTROOM DEPUTY: Juror number 1 answered yes
17 to 3, 9 and 12.

18 (Juror entering the conference room.)

19 THE COURT: Good morning, sir. Thanks for
20 coming in. All right. Three. Okay. Three is this case
21 involves voice enabled speakers, do you have strong
22 opinions? Do you want to tell us about that?

23 A JUROR: Yes, number three and number 12 kind
24 of go hand in hand just with my own personal believes of the
25 Amazon companies and their products like Alexa. I honestly

1 have never been a fan of the Alexa, a lot of reports of
2 listening in even when deactivated, never been a fan of it.

3 THE COURT: And you think that that would make
4 it difficult for you to be fair in a case where Amazon is a
5 defendant?

6 A JUROR: Potentially, depending on what
7 evidence I might hear, my personal beliefs may skew my --

8 THE COURT: Your ability to just listen to the
9 facts?

10 A JUROR: Correct.

11 THE COURT: All right. Any questions?

12 MS. SHAMILOV: No.

13 MR. YOON: No.

14 THE COURT: All right. Thank you, sir. Just
15 give us a minute.

16 (Juror exiting the conference room.)

17 MS. SHAMILOV: Motion to excuse for cause.

18 THE COURT: Yeah, I think we should grant that.
19 Any objection?

20 MR. YOON: No objection.

21 THE COURT: You can tell him.

22 COURTROOM DEPUTY: Number two answered yes to
23 number nine.

24 (Juror entering the conference room.)

25 THE COURT: All right. Good morning, sir.

1 Thanks for coming in. You can have a seat.

2 Question number nine, do you want to tell us,
3 that was have you been employed by Amazon or an affiliated
4 company.

5 A JUROR: Yes, I was employed by Amazon, and my
6 mother-in-law, she was employed.

7 THE COURT: Was that at the warehouse close by?

8 A JUROR: Yeah. Yeah, Boxtown Road, Boxwood
9 Road, something like that.

10 THE COURT: Are you still employed there?

11 A JUROR: No.

12 THE COURT: And your mother-in-law?

13 A JUROR: No.

14 THE COURT: Is there anything about your
15 experience that would make it difficult for you to be fair
16 in a trial involving Amazon?

17 A JUROR: I don't think so.

18 THE COURT: Questions?

19 MR. YOON: Yes, not trying to get into anything
20 sensitive, but was there a reason you left Amazon?

21 A JUROR: Not particularly, no, just demanding
22 work hours, I found something a little better.

23 MS. SHAMILOV: Was the experience at Amazon
24 positive, was it positive or negative?

25 A JUROR: It was a good company, I felt to work

1 for, it just didn't fit my schedule, what I needed.

2 MS. SHAMILOV: Thank you.

3 THE COURT: All right. Anything else?

4 A JUROR: I don't think so.

5 THE COURT: Thanks. Just give us a minute.

6 A JUROR: Thank you.

7 (Juror exiting the conference room.)

8 MR. YOON: We're not going to object for cause
9 on him.

10 MS. SHAMILOV: No.

11 THE COURT: Okay.

12 COURTROOM DEPUTY: Juror number three.

13 THE COURT: Good morning. You can have a seat
14 if you want.

15 COURTROOM DEPUTY: 1, 3, 6, 7, 8, 9, 13, 14, and
16 15.

17 (Juror entering the conference room.)

18 THE COURT: 15 or 14?

19 COURTROOM DEPUTY: 14 and maybe 15.

20 A JUROR: 15 was a question mark because I don't
21 really have an answer to that.

22 THE COURT: Why don't we start with one.

23 A JUROR: I will be in Portland from the 6th to
24 the 10th.

25 THE COURT: You have already made flight

1 arrangements?

2 A JUROR: Yes.

3 THE COURT: Is that a work trip or a vacation?

4 A JUROR: Vacation.

5 THE COURT: Okay. Anyone have any objection to
6 excusing her, she's not going to be here for the second half
7 of the trial.

8 MR. YOON: No, Your Honor.

9 MR. HADDEN: No.

10 THE COURT: All right. We'll excuse you. You
11 can leave.

12 A JUROR: Thank you. My other question was so
13 much harder, I work in voice and all that.

14 THE COURT: Well, we do appreciate you coming in
15 here, but we don't want to interfere with your vacation.

16 A JUROR: All right. Thank you.

17 THE COURT: And if you have your stuff, you can
18 go.

19 (Juror exiting the conference room.)

20 THE COURT: I figured I was going to let her go
21 so it didn't seem like we should waste the time hearing
22 about all the other issues.

23 COURTROOM DEPUTY: Juror number four answered
24 yes to number four.

25 (Juror entering the conference room.)

1 THE COURT: Good morning, Mr. Prince.

2 A JUROR: Yes, ma'am.

3 THE COURT: Thanks for coming in. You can have
4 a seat. Question number four, that's a new one for me. Oh,
5 lawyers and law firms, you know someone on there?

6 A JUROR: No.

7 THE COURT: What was the question he answered
8 yes to?

9 COURTROOM DEPUTY: He told me number four.

10 A JUROR: Oh, I thought you were asking me if I
11 was number four.

12 COURTROOM DEPUTY: That was in the back of my
13 mind.

14 A JUROR: I had number one.

15 THE COURT: What is your issue?

16 A JUROR: The problem for me is coming from
17 Milton, and we only have one car and my wife does a lot of
18 things down in Milton during the day.

19 THE COURT: Right.

20 A JUROR: I mean, that's a small thing.

21 THE COURT: Well it's not insignificant to her.

22 A JUROR: It's a consideration, that's all.

23 THE COURT: So we could get you a room up here.
24 And if we did that, would that alleviate the problem for
25 you.

1 A JUROR: Yes.

2 THE COURT: Okay. Is there any other issue with
3 that, because Mark, we can --

4 COURTROOM DEPUTY: For today or tomorrow.

5 THE COURT: Or next week.

6 COURTROOM DEPUTY: Or next week.

7 THE COURT: So we could do that.

8 A JUROR: Okay.

9 THE COURT: Is there any other issue that you
10 had with respect to one? The scheduling issue first?

11 A JUROR: No.

12 THE COURT: So we can deal with that. Now other
13 issues that you had?

14 A JUROR: I marked them so I could remember.

15 THE COURT: That's what I told you to do, so
16 you're already following instructions.

17 A JUROR: I guess I was paying attention.

18 THE COURT: Yes, thank you.

19 A JUROR: On number nine, I have a
20 daughter-in-law that works at Amazon.

21 THE COURT: Okay. Do you know -- does she work
22 at the warehouse, do you know where she works or what she
23 does.

24 A JUROR: She is like, where she does hiring or
25 something like that.

1 THE COURT: Is there anything about what you
2 know about her job or her experience that would make it hard
3 for you to be fair to Amazon in a case.

4 A JUROR: Not at all.

5 THE COURT: Okay.

6 A JUROR: And then on number 11, that's pretty
7 much the same thing, I don't know if she has any stock in
8 Amazon or anything.

9 THE COURT: Okay.

10 A JUROR: I mean, she very well may.

11 THE COURT: But you don't know about it, and --

12 A JUROR: If she told me or whatever, I don't
13 remember. I wasn't paying -- I shouldn't say that, I wasn't
14 paying any attention.

15 THE COURT: There is a limit to how much you can
16 take in from what people tell you.

17 A JUROR: Exactly.

18 THE COURT: Anything else?

19 A JUROR: No, that's it.

20 THE COURT: All right. Any questions you all
21 want to ask?

22 MR. YOON: No, Your Honor.

23 MS. SHAMILOV: No, Your Honor.

24 THE COURT: Thanks very much. Just give us a
25 minute.

1 A JUROR: All right. Appreciate it.

2 THE COURT: Don't forget your coat.

3 A JUROR: Yeah.

4 (Juror exiting the conference room.)

5 MR. YOON: Nothing from us, Your Honor.

6 MS. SHAMILOV: No, Your Honor.

7 THE COURT: All right.

8 COURTROOM DEPUTY: Juror number five answered
9 yes to 14 and 15.

10 (Juror entering the conference room.)

11 THE COURT: Good morning, Ms. Campbell.

12 A JUROR: Yes.

13 THE COURT: All right. You have been a
14 plaintiff, defendant or witness?

15 A JUROR: A witness, wrongful termination.

16 THE COURT: And was anything about -- so you
17 weren't the person-

18 A JUROR: I wasn't the person wrongfully
19 terminated.

20 THE COURT: Is there anything about your
21 experience as being a witness that would make it difficult
22 for you to be fair and impartial as a juror in this case?

23 A JUROR: No.

24 THE COURT: Did you actually testify at trial?

25 A JUROR: It went to arbitration.

1 THE COURT: And then 15 is ever served as a
2 juror.

3 A JUROR: I wasn't, but my husband was a juror
4 for a criminal case in Philadelphia.

5 THE COURT: Anything about that that you can
6 think of that would make it difficult for you to be fair and
7 impartial in this patent case?

8 A JUROR: No, murder is different than patents.

9 THE COURT: We hope.

10 MR. YOON: Yes. When you were a witness, were
11 you a witness on behalf of the company?

12 A JUROR: Yes.

13 MR. YOON: What was that company?

14 A JUROR: The Boeing Company.

15 MR. YOON: And are you still employed?

16 A JUROR: I am not.

17 THE COURT: Anything?

18 MS. SHAMILOV: No, Your Honor.

19 THE COURT: All right. Thank you, just give us
20 a minute.

21 (Juror exiting the conference room.)

22 MR. YOON: No basis for cause, Your Honor.

23 MS. SHAMILOV: No, Your Honor.

24 (Juror entering the conference room.)

25 COURTROOM DEPUTY: Juror number six answered yes

1 to 7, 9, 11 and 13.

2 THE COURT: Good morning. You can have a seat.

3 A JUROR: Thank you.

4 THE COURT: Ms. Jones?

5 A JUROR: Yes.

6 THE COURT: I'm sorry, 7, 9, 11 and 13.

7 COURTROOM DEPUTY: Yes.

8 THE COURT: Let's just start. Ever applied, oh
9 a patent, copy right or trademark.

10 A JUROR: That would have been my mom.

11 THE COURT: Was it a patent, copy right or
12 trademark?

13 A JUROR: It was a patent.

14 THE COURT: Do you remember what the technology
15 was?

16 A JUROR: It was for a curtain rod, but it
17 wasn't approved.

18 THE COURT: Okay. And was there anything that
19 you talked with your mom about that experience that would
20 make it difficult for you to be a juror on a case involving
21 a patent?

22 A JUROR: No.

23 THE COURT: Okay. Then we have nine which is
24 have you ever, or anyone in your immediate family been
25 employed by Amazon, VB Assets or VoiceBox.

1 A JUROR: My daughter-in-law, she works for
2 Amazon.

3 THE COURT: What does she do?

4 A JUROR: She's a manager there.

5 THE COURT: Is that at the one in Delaware, or
6 someplace else?

7 A JUROR: In Delaware.

8 THE COURT: Is there anything about her
9 experience that you're aware of that would make it difficult
10 for you to be fair and impartial in a case involving Amazon?

11 A JUROR: No.

12 THE COURT: And then we have 11. Owning stock
13 in any of the companies.

14 A JUROR: I have stock in Amazon.

15 THE COURT: You do, you have individual stock,
16 not as part of like a mutual fund or something like that.

17 A JUROR: It is part of a mutual fund.

18 THE COURT: It's part of a mutual fund?

19 A JUROR: Uh-huh.

20 THE COURT: Is it something where you could, if
21 you wanted, say I want to sell that Amazon stock or is it
22 just something you're in the Vanguard fund or whatever.

23 A JUROR: I can't sell it at this time.

24 THE COURT: Okay. And how did you come to have
25 that Amazon stock?

1 A JUROR: Through my company, my 401(k) plan.

2 THE COURT: Okay. And do you know what all the
3 stocks are that are in the 401(k) plan, or is there a reason
4 that you happen to know Amazon.

5 A JUROR: I just happen to know Amazon is a part
6 of it. But it's one of those where you pick a year that you
7 want it to vest, so it's just.

8 THE COURT: We have those.

9 A JUROR: It wasn't targeted because it is
10 Amazon, it's targeted because I'm near retirement.

11 THE COURT: Any other stock other than that as
12 part of your 401(k)?

13 A JUROR: No.

14 THE COURT: And then 13 is education in one of
15 those fields.

16 A JUROR: I work for Verizon, I'm a switching
17 equipment technician, I work closely with engineers, I deal
18 closely with the infrastructure that gets T1 services, any
19 high speed services from inner office facilities.

20 THE COURT: Excellent. And to the extent, I'm
21 not sure that there would be, but to the extent that any of
22 the technology involved in this case, overlaps with
23 something that you know from work, would you be able to just
24 listen to what you hear in the courtroom and try and
25 separate that out from what you might think otherwise?

1 A JUROR: Yes.

2 THE COURT: All right. Any questions?

3 MR. YOON: This case might involve a large
4 number in which Amazon is the defendant, would that cause
5 you any concern one way or the other?

6 THE COURT: He's saying damages number.

7 A JUROR: No.

8 MR. YOON: I was just -- yes, the damages
9 number. Would that have any impact on you one way or the
10 other?

11 A JUROR: No.

12 MS. SHAMILOV: Your daughter-in-law works at
13 Amazon. Her experience, positive, negative?

14 A JUROR: To be honest we don't really talk
15 about it.

16 THE COURT: Neutral.

17 A JUROR: Yeah.

18 MS. SHAMILOV: And because of your mom applying
19 for the patent, because this is a patent case, do you think
20 the patent owner would be a little ahead in this case
21 because of that?

22 A JUROR: No.

23 THE COURT: All right. Great. Thanks. Just
24 give us a moment. Thanks.

25 A JUROR: You're welcome.

1 (Juror exiting the conference room.)

2 MR. YOON: No objection for cause, Your Honor.

3 MS. SHAMILOV: None, Your Honor.

4 MR. YOON: Your Honor, this is the first time we
5 have done so, I just want to make sure, did I word that okay
6 when I asked about the damages?

7 THE COURT: Yeah, I just didn't think she had a
8 clue what you were talking about when you said a big number.

9 MR. YOON: I just wanted to make sure I did it
10 in a way that was appropriate Your Honor, I haven't done
11 this before.

12 THE COURT: No, it was fine.

13 (Juror entering the conference room.)

14 COURTROOM DEPUTY: Juror number seven answered
15 yes to number one.

16 THE COURT: All right. Good morning.
17 Ms. Christensen?

18 A JUROR: Yes.

19 THE COURT: Thanks for coming in. Okay. So you
20 answered yes to question number one. Can you tell us what
21 your issue is?

22 A JUROR: Problem getting here.

23 THE COURT: Okay. You're from Kent County?

24 A JUROR: Yes, from down in Milford.

25 THE COURT: Okay. And we have the ability to

1 get you a hotel room up here.

2 A JUROR: Okay.

3 THE COURT: Would that help your situation?

4 A JUROR: Well it depends because I'm on Social
5 Security, so I really don't have the extra money.

6 THE COURT: For what?

7 A JUROR: For the hotel room.

8 THE COURT: No, we will get it and pay for it.

9 A JUROR: Okay.

10 THE COURT: We're not going to make you pay for
11 it. No, we would pay for that.

12 A JUROR: Yeah, that would help.

13 THE COURT: Okay. Do you have any other
14 concerns with respect to number one other than the obvious
15 difficulty of you getting here every morning?

16 A JUROR: No.

17 THE COURT: All right. Any questions?

18 MR. YOON: No questions, Your Honor.

19 MS. SHAMILOV: No questions.

20 THE COURT: Great. Thank you so much.

21 A JUROR: Thank you.

22 (Juror exiting the conference room.)

23 MR. YOON: No objection for cause, Your Honor.

24 MS. SHAMILOV: No, Your Honor.

25 THE COURT: That's nice that she didn't just

1 assume that we would pay for it.

2 (Juror entering the conference room.)

3 COURTROOM DEPUTY: Juror number 18 answered yes
4 to number one.

5 THE COURT: All right. Good morning.

6 A JUROR: Good morning.

7 THE COURT: You're a teacher number one, I'm
8 guessing I can guess.

9 A JUROR: Yeah.

10 THE COURT: Okay. So you want to just tell us
11 in your own words so we have it on the record.

12 A JUROR: Absolutely. So I'm a fifth grade
13 teacher at a Title 1 school, and the Title 1 school is most
14 of our students are below the poverty line and due to their
15 socioeconomic status and also with the conditions of Covid,
16 a lot of our students are behind, and I'm in a two-teacher
17 classroom. It's really hard to find subs, practically
18 impossible. And by law, a lot of my students require two
19 teachers and so taking me out of the classroom, it doesn't
20 really allow them to have all of the services that they are
21 required.

22 THE COURT: Any objection to me --

23 MR. YOON: We have no objection, Your Honor.

24 MS. SHAMILOV: No objection.

25 THE COURT: We will excuse you. I will put in

1 since you are a fifth grade teacher that we every year in
2 the court we have programs with civics and we invite kids to
3 come in and there is an essay contest, but if at any time
4 you all want to come in so your kids can see, we can talk to
5 the marshals.

6 A JUROR: I wanted to take pictures.

7 THE COURT: So any of those things, if you're
8 ever interested, just contact my chambers and we would love
9 you guys to come in.

10 A JUROR: We would love that, unfortunately they
11 just started -- we were teaching civics and we had this
12 whole computer program with this game that is called what is
13 my right and it was really fun and then they switched it and
14 we don't keep that anymore.

15 THE COURT: The Third Circuit which is the
16 circuit that we're in, they have this whole essay contest
17 and it's directed at certain grades. And Delaware we're
18 always coming in at the bottom of the barrel in terms of how
19 many subscriptions we have and then we realized that they
20 don't teach civics in all of the grades that are at issue so
21 we got them to expand it to different grades, if any of your
22 fellow teachers who are doing that, if they are at all
23 interested, please, I have to give my plug here. We love
24 having the kids come in, it's so much fun, they love to come
25 up and sit on the bench and sitting in the jury box.

1 A JUROR: We're thinking of taking them on a
2 field trip in December for Miracle on 34th Street and they
3 do a reenactment in the court house.

4 THE COURT: We have kids come in and doing their
5 own little mock trial, we have had it in the past where
6 there is cup cakes and cookies and dogs versus cats and we
7 have them come in and make the arguments. If at any time
8 you guys think you're interested, just let Mark know.

9 A JUROR: Thank you.

10 THE COURT: And good luck.

11 (Juror exiting the conference room.)

12 THE COURT: Sorry, I had to put in my plug.

13 MS. SHAMILOV: That sounds great, though.

14 (Juror entering the conference room.)

15 COURTROOM DEPUTY: Juror number nine answered
16 yes to number 13.

17 THE COURT: All right. Good morning, Mr. Mock.

18 A JUROR: Sit here?

19 THE COURT: Yes. Please. So you have education
20 or training in one of these areas?

21 A JUROR: Yes, ma'am.

22 THE COURT: Can you tell us about that?

23 A JUROR: I have a degree in micro computers and
24 networking computer programing, I have programmed in basics
25 visual basic, Pascal, Cobalt, RPG3, and --

1 THE COURT: And probably more. Okay. I don't
2 even know what to ask in terms of that, maybe you guys would
3 know the relevance.

4 MR. YOON: Yes. What -- with regards to your
5 technical background, what companies have you worked for?

6 A JUROR: I have used it only in the classroom
7 phase, when I went to go to use it at work, I took a job in
8 production, so I've not used in it in an industrial or
9 professional thing. I just can do it and I help them, I
10 assist them at work when they have the IT department.

11 MR. YOON: And what production company is it?

12 A JUROR: SPI Pharma, it's in Lewes, Delaware.

13 MR. YOON: How long have you worked there?

14 A JUROR: Twenty-two years.

15 MR. YOON: Thank you.

16 MS. SHAMILOV: No questions, Your Honor.

17 THE COURT: All right. Thank you very much.

18 Just give us a minute.

19 (Juror exiting the conference room.)

20 MR. YOON: No basis for cause, Your Honor.

21 MS. SHAMILOV: None.

22 (Discussion off the record.)

23 (Juror entering the conference room.)

24 COURTROOM DEPUTY: Juror Number 10 here answered
25 yes to 9 and 13.

1 THE COURT: Good morning.

2 A JUROR: Good morning. How are you doing?

3 THE COURT: I'm fine thanks. How are you?

4 A JUROR: I'm good.

5 THE COURT: Number 9 is anyone work for Amazon,
6 VB Assets or VoiceBox.

7 A JUROR: Yes, my affiliate, my employer Western
8 Union has a business relationship with Amazon which
9 customers of developing nations can pay with their Amazon
10 purchases with cash, turn it into one of our locations, and
11 we're also an AWS customer.

12 THE COURT: Anything about that relationship
13 that you know of that would make it difficult for you to be
14 fair and impartial in a case where Amazon is a defendant?

15 A JUROR: Obviously I want to see Amazon succeed
16 as a business, so our business relationship with them
17 continues to flourish.

18 THE COURT: So you think that would make it
19 difficult for you to be fair?

20 A JUROR: I think so, yes.

21 THE COURT: What about --

22 A JUROR: 13, I'm a software engineer at Western
23 Union, so I work in computer programing, computer science.

24 THE COURT: Okay. Any questions?

25 MR. YOON: In your job and role, do you

1 interface directly with anyone from Amazon?

2 A JUROR: No, I don't interface with anyone
3 directly.

4 MR. YOON: No more questions, Your Honor.

5 MS. SHAMILOV: And would you be able to put your
6 opinions or thoughts about Amazon and just listen to the
7 facts and the law and the judge's instructions for this case
8 if you end up on the jury?

9 A JUROR: Yeah, I suppose so.

10 THE COURT: So I'm just trying to make sure
11 because you kind of suggested that the scale might already
12 be tipped in favor of Amazon, would you be able to start it
13 where it's level? And I know you're struggling because you
14 don't want to suggest that you're bias, but you can say it,
15 nobody is going to judge you for it, I'm just trying to
16 figure it out.

17 A JUROR: I certainly am pro Amazon, yeah.

18 THE COURT: Would that make it difficult for you
19 if the plaintiff wanted a lot of money from Amazon, would it
20 be difficult for you to award that?

21 A JUROR: A lot of money, how much money we
22 talking?

23 THE COURT: I don't know. I am going to hear it
24 at the same time you do.

25 A JUROR: I suppose slightly difficult.

1 THE COURT: Okay. All right. Thanks very much.

2 (Juror exiting the conference room.)

3 MR. YOON: We move for cause on this juror and
4 ask him to be excused for cause.

5 MS. SHAMILOV: I think when I asked the
6 question, whether he'll be --

7 THE COURT: I think it was pretty clear that he
8 was going to be biased, so I am going to grant that motion.

9 (Juror entering the conference room.)

10 COURTROOM DEPUTY: Juror number 11 answered yes
11 to 9, maybe 10 and 13.

12 THE COURT: Okay. Good morning. You can have a
13 seat.

14 A JUROR: Thank you.

15 THE COURT: Okay. Nine. Anyone in your
16 immediate family or close friends or you employed by Amazon,
17 VoiceBox or VB Assets.

18 A JUROR: Yeah, so I went to college for
19 information technology, and a close friend worked for Amazon
20 web services after college. And then in another role, after
21 they left General Electric, after I left General Electric
22 and they left General Electric, they went to work for Amazon
23 web services as well.

24 THE COURT: Anything about the experiences that
25 you know of through those folks that would make it difficult

1 for you to be fair and impartial in a case where Amazon is a
2 party?

3 A JUROR: I don't believe so.

4 THE COURT: The other one was 11?

5 A JUROR: 10.

6 THE COURT: Ten. Maybe ten.

7 A JUROR: When I worked for General Electric,
8 one of my projects was to help General Electric utilize
9 Amazon Web Services, so prior to that, people had used their
10 credit cards to start accounts and we tried to make a
11 corporate account, so I had some work with Amazon Web
12 Services, the only thing that I recall was that GE and
13 Amazon were fighting on who was -- whose paper the contract
14 was going to be on, that's the only thing I would have prior
15 to this related to this. Does that make sense?

16 THE COURT: Yes. Anything about that experience
17 or that dispute on the paper issue that would make it
18 difficult for you to be fair and impartial.

19 A JUROR: I don't think it would make me
20 impartial, just an anecdote that I remembered.

21 THE COURT: You don't think it would make you
22 impartial.

23 A JUROR: That's correct, sorry.

24 THE COURT: And then 13, was that the last one,
25 your formal education.

1 A JUROR: Information technology and now my
2 family has a small business, does information technology
3 finance system type of work.

4 THE COURT: Okay. Any questions?

5 MR. YOON: Yes. In your contact or involvement
6 with Amazon, did any of those involve Amazon voice services
7 that go with AWS?

8 A JUROR: I don't believe so. I don't believe
9 it existed at the time, if -- it's like 2012 when this would
10 have been. We were just trying to use the compute
11 functions.

12 MR. YOON: And what's your current position?

13 A JUROR: Director of Operations at our family's
14 IT business in Delaware.

15 MR. YOON: Does your family's business use or
16 utilize Amazon's Web Services as well?

17 A JUROR: We use Azure, Microsoft Azure, not
18 Amazon.

19 THE COURT: Any questions?

20 MS. SHAMILOV: No questions.

21 THE COURT: Thank you. Just give us a minute.

22 (Juror exiting the conference room.)

23 MR. YOON: No basis for cause, Your Honor.

24 MS. SHAMILOV: None, Your Honor.

25 THE COURT: So then 12 didn't answer yes to any

1 questions. The next would be 13.

2 (Juror entering the conference room.)

3 COURTROOM DEPUTY: Juror number 13.

4 THE COURT: Good morning.

5 COURTROOM DEPUTY: Answered yes to numbers 11
6 and 15.

7 THE COURT: You can have a seat. All right,
8 Ms. James?

9 A JUROR: Yes.

10 THE COURT: So 11, owning stock in Amazon, VB
11 assets or VoiceBox.

12 A JUROR: I'm not sure, my son owns like an
13 Amazon store. I don't think it's the same thing, but I
14 thought I better disclose that.

15 THE COURT: Sure. So when you say he owns an
16 Amazon store, what is that, can you just give us a little
17 bit more specifics on that.

18 A JUROR: It's just strictly online, he doesn't
19 own any -- like where people buy and I think it comes
20 through him.

21 THE COURT: Anything about his experience that
22 would make it difficult for you to be fair and impartial in
23 a case involving Amazon?

24 A JUROR: No. No.

25 THE COURT: And the other one that you had was

1 15. Have you served as a juror?

2 A JUROR: No, my son --

3 THE COURT: Your son --

4 A JUROR: Yeah, my other son.

5 THE COURT: He's giving you lots of trouble
6 here.

7 A JUROR: My other son, I don't even know enough
8 if it was a civil lawsuit, I know somebody sued somebody,
9 sued a hospital, again, it doesn't have anything to do with
10 this.

11 THE COURT: But anything about his experience
12 that would make it difficult?

13 A JUROR: No.

14 THE COURT: Okay. All right. Any questions?

15 MR. YOON: Yes. I understand you're a claims
16 processor?

17 A JUROR: Yes.

18 MR. YOON: And what company do you work for?

19 A JUROR: Integra Administrative Group, it's a
20 small group health insurance, the claims I process are, if
21 you know what a FLEX cafeteria plan is, Section 125, that's
22 what I process.

23 MR. YOON: In your role as a claim processor, do
24 you ever work with a legal department or been involved with
25 lawsuits?

1 A JUROR: No.

2 MR. YOON: Thank you.

3 MS. SHAMILOV: None, Your Honor.

4 THE COURT: All right. Thank you very much.

5 Just give us a minute, please.

6 A JUROR: You want me to go out?

7 THE COURT: Yes. Thanks.

8 (Juror exiting the conference room.)

9 MR. YOON: No basis for cause, Your Honor.

10 MS. SHAMILOV: None, Your Honor.

11 THE COURT: All right.

12 (Juror entering the conference room.)

13 COURTROOM DEPUTY: Juror number 14 answered yes
14 to 9, 14 and 16.

15 THE COURT: All right. Good morning.

16 A JUROR: Good morning.

17 THE COURT: Ms. Barr?

18 A JUROR: Yes.

19 THE COURT: All right. So question number nine
20 is the one of anyone been employed by Amazon, VB Assets or
21 VoiceBox.

22 A JUROR: Right. So my son worked for Amazon
23 for three years.

24 THE COURT: Here in Delaware?

25 A JUROR: Yes.

1 THE COURT: And what was his position?

2 A JUROR: His position was on the floor, I'm not
3 sure, packing.

4 THE COURT: At the warehouse?

5 A JUROR: At the warehouse, yes.

6 THE COURT: And anything about his experience
7 that would make it difficult for you to be fair in a case
8 involving Amazon?

9 A JUROR: No.

10 THE COURT: And he doesn't work there anymore?

11 A JUROR: He does not.

12 THE COURT: 14 is anyone, you or any member of
13 your family, been a plaintiff, defendant or a witness.

14 A JUROR: So my brother-in-law, he did go to
15 jail for -- from 2018 to 2021.

16 THE COURT: So you're assuming he was a
17 defendant in a case?

18 A JUROR: Yes. Yes, yes, yes.

19 THE COURT: Okay. Anything about that, what you
20 know about that case or his experience with the law that
21 would make it difficult for you to be fair and impartial in
22 a civil case?

23 A JUROR: I have some issues of what happened
24 while he was there, he should have gone to jail for what he
25 did, but I think some of the things during and after were

1 not fair and it kind of made me lose some faith to be honest
2 in the court system. I don't know that what I think is fair
3 is necessarily what you think is fair.

4 THE COURT: Okay. Was your brother-in-law, was
5 he in state court, federal court, do you know?

6 A JUROR: State.

7 THE COURT: State court. In Delaware or
8 someplace else?

9 A JUROR: In Delaware.

10 THE COURT: And do you think that your feelings
11 about the court system based on that, that you would not be
12 able to be fair in this case?

13 A JUROR: No, I think I can be fair, I just
14 questioned if what I think is fair is what you think is
15 fair.

16 THE COURT: Well, the good news is in this case,
17 you get to decide, I don't.

18 And then the last question that you answered yes
19 to was 16 which is, that's --

20 A JUROR: That's more of that, yes.

21 THE COURT: That's your answer. Anything you
22 want to follow-up?

23 MR. YOON: No questions, Your Honor.

24 MS. SHAMILOV: One question, your son working
25 for Amazon, was that experience positive or negative?

1 A JUROR: It was positive.

2 MS. SHAMILOV: Thank you.

3 THE COURT: All right. Just give us a minute.

4 Thank you.

5 (Juror exiting the conference room.)

6 MR. YOON: No basis for cause, Your Honor.

7 MS. SHAMILOV: None, Your Honor.

8 (Juror entering the conference room.)

9 COURTROOM DEPUTY: Juror 15 answered yes to 6, 9
10 and 13.

11 THE COURT: How are you?

12 A JUROR: Fine, thanks, how are you?

13 THE COURT: All right. 6, 9 and 13.

14 A JUROR: And six is --

15 THE COURT: That's the patent.

16 A JUROR: Yes. Relates to 13, I'm a law
17 librarian, I don't have a JD, but I have taught people how
18 to use the Patent and Trademark Office website.

19 THE COURT: The website?

20 A JUROR: That's it.

21 THE COURT: I could use a little help with that,
22 she knows, I always have to go to her and ask her. Is that
23 your only experience with the patents?

24 A JUROR: Yes.

25 THE COURT: Anything about the website or your

1 experience that make it difficult for you to be fair?

2 A JUROR: No.

3 THE COURT: Okay. And then nine is anyone
4 employed by Amazon or VB Assets or VoiceBox.

5 A JUROR: Not currently, but a good friend used
6 to work for Amazon in the IT department locally, maybe
7 15 years ago.

8 THE COURT: Anything about your knowledge of
9 that person's experience that would make it difficult for
10 you to be fair in a case where Amazon is the defendant?

11 A JUROR: No.

12 THE COURT: And 13, that was what you just told
13 us, the fact that you work in a law library?

14 A JUROR: That's correct.

15 THE COURT: Excellent. Where do you work?

16 A JUROR: Delaware Law School.

17 THE COURT: Oh, nice. Okay, any questions?

18 MR. YOON: Yes, in your role as a librarian, do
19 you ever use voice technology to do queries or questions is
20 that your kind of way of interfacing the system?

21 A JUROR: Not in my role as a law librarian. At
22 home I use that.

23 MR. YOON: And at home, which particular voice
24 service do you use?

25 A JUROR: Alexa.

1 MR. YOON: And how long have you been using
2 Alexa?

3 A JUROR: Given as a Christmas present maybe
4 three years ago.

5 MR. YOON: Do you use it for --

6 A JUROR: Grocery lists.

7 MR. YOON: Okay. No further questions, Your
8 Honor.

9 MS. SHAMILOV: None, Your Honor.

10 THE COURT: All right. Great. Thank you.

11 (Juror exiting the conference room.)

12 MR. YOON: No basis for cause, Your Honor.

13 MS. SHAMILOV: None, Your Honor.

14 (Juror entering the conference room.)

15 COURTROOM DEPUTY: Juror number 16 answered yes
16 to number 13.

17 THE COURT: Good morning. Come on in.

18 A JUROR: Good morning.

19 THE COURT: Ms. Emmett?

20 A JUROR: Yes.

21 THE COURT: All right. And you answered yes to
22 question number 13 which is formal education or training.

23 A JUROR: Yes. Well I have 18 years in computer
24 programing.

25 THE COURT: Where did you work?

1 A JUROR: Several places. Harleysville
2 Insurance, FMC Manufacturing and also El Products
3 Manufacturing.

4 THE COURT: And I think -- I don't know exactly
5 what to ask you because I'm not sure about this case, so why
6 don't I open the floor.

7 MR. YOON: With your role as a computer
8 programmer, was that with regards to working with databases
9 or was it the developing applications?

10 A JUROR: It was a long time ago, so we're
11 looking at, I worked with the databases, I'm talking about
12 from cards to the PC, early PC. So that's how long ago it
13 was.

14 MR. YOON: And so when was the last time you
15 were operating in a computer programing capacity?

16 A JUROR: 2001.

17 MR. YOON: And what company was that?

18 A JUROR: That was with El Products.

19 MR. YOON: Thank you, Your Honor.

20 THE COURT: Okay.

21 MS. SHAMILOV: It says you're retired now, what
22 did you do right before retirement, computer field or
23 something else?

24 A JUROR: No, something else.

25 MS. SHAMILOV: What was that?

1 A JUROR: I did ten years as a relator and then
2 I had a part-time job as a salesperson, so that's it.

3 THE COURT: Excellent.

4 A JUROR: Less stress.

5 THE COURT: Exactly. All right. Thank you.
6 Just give us a minute.

7 (Juror exiting the conference room.)

8 MR. YOON: No basis.

9 MS. SHAMILOV: None, Your Honor.

10 (Juror entering the conference room.)

11 COURTROOM DEPUTY: Juror number 17 answered yes
12 to 1, 14, 15, and 17.

13 THE COURT: Good morning.

14 A JUROR: Good morning.

15 THE COURT: Ms. Diaz?

16 A JUROR: Yes.

17 THE COURT: Let's start with number one.

18 A JUROR: I will be traveling starting next
19 Thursday. I am also a school teacher, so that presents a
20 hardship with my class.

21 THE COURT: So what grade do you teach?

22 A JUROR: Second grade.

23 THE COURT: And do you have a substitute.

24 A JUROR: Intermittently yes, so it's like hit
25 or miss with subs, yes.

1 THE COURT: And where do you teach?

2 A JUROR: At Mount Pleasant Elementary School.

3 THE COURT: And then you have a trip planned for
4 next week?

5 A JUROR: Uh-huh.

6 THE COURT: That's vacation?

7 A JUROR: Uh-huh.

8 THE COURT: And that starts Thursday?

9 A JUROR: Yes.

10 THE COURT: So if the trial were to end on
11 Wednesday, you would be okay, but if deliberations went a
12 little bit long you would have an issue? Are you leaving
13 early in the morning on Thursday?

14 A JUROR: Midday.

15 THE COURT: Midday.

16 Okay. Anything else for number one?

17 A JUROR: No.

18 THE COURT: How about 14, plaintiff, witness or
19 defendant?

20 A JUROR: For number four, I used to work at TD
21 Bank, so I'm very familiar with Smith, Katzenstein &
22 Jenkins.

23 THE COURT: Okay. And so did you work with the
24 firm, anyone in particular at the firm or you just know the
25 name?

1 A JUROR: Some of the attorneys, I worked with
2 them.

3 THE COURT: Okay. Would that make it difficult
4 for you to be fair and impartial to the side that is using
5 them as an attorney?

6 A JUROR: It depends on who the lawyer is, yeah.

7 THE COURT: Okay. I forget what the next
8 question is.

9 A JUROR: 15. So I want to say it was either
10 2017 or 2018 I did serve as a juror for a different case.

11 THE COURT: Was that here or in the state court,
12 do you know where that was?

13 A JUROR: I don't remember, no.

14 THE COURT: Do you remember what kind of case it
15 was?

16 A JUROR: It was a criminal case.

17 THE COURT: Anything about that experience that
18 would make it difficult for you to be fair and impartial?

19 A JUROR: No.

20 THE COURT: Okay. All right.

21 A JUROR: And then 17, I just did jury duty in
22 May.

23 THE COURT: You did?

24 A JUROR: Yes.

25 THE COURT: Oh, probably not here, though.

1 COURTROOM DEPUTY: Was it for the estate?

2 A JUROR: It was for the estate on May 25th.

3 COURTROOM DEPUTY: She should be excused is my
4 understanding.

5 THE COURT: Is that right?

6 COURTROOM DEPUTY: It's a two-year --

7 THE COURT: Even for state and federal?

8 COURTROOM DEPUTY: I would have to check on
9 that, but I think so.

10 THE COURT: They are bringing in everybody, I
11 got called in April down there and like two of the other
12 judges there got called.

13 A JUROR: You're a judge, how can you get
14 called?

15 THE COURT: I sat there for jury duty just like
16 everybody else, nobody wanted me on the jury.

17 COURTROOM DEPUTY: Shocking.

18 THE COURT: All right. Just give us a minute.
19 Wait, did you guys want to ask any questions?

20 MR. YOON: We have no questions.

21 MS. SHAMILOV: None.

22 THE COURT: Thank you.

23 (Juror exiting the conference room.)

24 THE COURT: Look, I would have excused her
25 because she is a teacher but then she's going on vacation

1 next week, so apparently they can cover. I don't know, what
2 do you want to do?

3 MR. YOON: Your Honor, I don't have a basis for
4 cause, but I think this juror can be excused for the
5 multiple reasons, including having recently served.

6 THE COURT: Yes. Any objection?

7 MS. SHAMILOV: None, Your Honor.

8 THE COURT: We'll let her go.

9 (Juror entering the conference room.)

10 COURTROOM DEPUTY: Juror number 18 answered yes
11 to number one.

12 A JUROR: How are you guys?

13 THE COURT: Good, how are you? Physical
14 therapist?

15 A JUROR: Yes.

16 THE COURT: All of your folks are going to be.

17 A JUROR: Canceled.

18 THE COURT: All right. So go ahead, do you want
19 to just tell us.

20 A JUROR: Yeah, I'm a neurological physical
21 therapist, and I treat at least eight patients a day. And I
22 have no coverage, I am the only full time physical therapist
23 at my clinic for neuro. So I would have to cancel 40 total,
24 and if it goes longer than that, it would be a little bit
25 more of a hardship on my patients. And I'm also starting

1 personally IBF prep, where I don't always know exactly when
2 I have to do monitoring for blood work and everything, so
3 that could also interfere with --

4 THE COURT: All right. I think with the 40
5 patients that we would be interfering with their
6 neurological therapy. That's like stroke patients.

7 A JUROR: Strokes, spinal cord injuries.

8 THE COURT: Any objections?

9 MR. YOON: No.

10 MS. SHAMILOV: None, Your Honor.

11 THE COURT: All right. We'll let you go. Do
12 you have all your stuff with you?

13 A JUROR: I do.

14 THE COURT: You can take off and get back.

15 A JUROR: Thank you so much. Have a great day.

16 THE COURT: Thank you. You, too.

17 (Juror exiting the conference room.)

18 (Juror entering the conference room.)

19 COURTROOM DEPUTY: Juror number 19 answered yes
20 to 14 and 15.

21 THE COURT: Good morning.

22 A JUROR: Good morning.

23 THE COURT: You can take a seat. Thanks for
24 coming in. All right. 14, any --

25 A JUROR: I was a witness in a trial because I

1 had taken photographs, and they were admitted as evidence.
2 That's was in the '80's.

3 THE COURT: So I guess it wasn't using your
4 phone?

5 A JUROR: Oh no, it was a camera, yeah,
6 35-millimeter.

7 THE COURT: So your testimony was essentially
8 just to authenticate those photos.

9 A JUROR: That I took them, yeah.

10 THE COURT: Anything about that experience that
11 would make it difficult for you to be fair and impartial
12 here?

13 A JUROR: No.

14 THE COURT: And then anything else for 14?

15 A JUROR: No.

16 THE COURT: Okay.

17 A JUROR: A witness, that was it.

18 THE COURT: And then about the prior jury
19 service.

20 A JUROR: A few years ago, I served New Castle
21 County on an arson trial.

22 THE COURT: You were picked for the jury?

23 A JUROR: Uh-huh.

24 THE COURT: And anything about that experience
25 that would make it difficult for you to be fair?

1 A JUROR: No.

2 THE COURT: Was the person guilty or not guilty?

3 A JUROR: Guilty.

4 THE COURT: All right. Any questions?

5 MR. YOON: What do you do as a coordinator?

6 A JUROR: Oh, I stock shelves, process goods
7 from the back room warehouse coming in off the truck, put
8 them out on the sales floor.

9 MR. YOON: Thank you.

10 MS. SHAMILOV: No questions, Your Honor.

11 THE COURT: All right. Thank you very much.

12 (Juror exiting the conference room.)

13 MR. YOON: No objections for cause, Your Honor.

14 MS. SHAMILOV: None, Your Honor.

15 THE COURT: Okay. Just need one more.

16 (Juror entering the conference room.)

17 COURTROOM DEPUTY: Juror number 20 answered yes
18 to 1, 14 and 15.

19 THE COURT: Good morning. Let's start with
20 number one, scheduling issue.

21 A JUROR: Yeah, well it's just going to be
22 turning into six days and that's going to kind of really
23 hurt me financially.

24 THE COURT: Five days, yeah, I get it. So
25 you're in commercial construction, so if you don't work, you

1 don't get paid?

2 A JUROR: Correct.

3 THE COURT: Do you have work scheduled for these
4 next five days?

5 A JUROR: Yes.

6 THE COURT: All right. I think given where we
7 are, anyone object to us excusing him?

8 MR. YOON: No, Your Honor.

9 MS. SHAMILOV: No, Your Honor.

10 THE COURT: We'll let you get back to work. Do
11 you have your stuff with you?

12 A JUROR: Yes.

13 THE COURT: You can be excused now.

14 A JUROR: Thank you.

15 (Juror exiting the conference room.)

16 THE COURT: All right. And then 21 didn't
17 answer yes to any questions. So that should be our 14.
18 They would be 2, 4, 5, 6, 7, 9, 11, 12, 13, 14, 15, 16, 19
19 and 21.

20 COURTROOM DEPUTY: Yes.

21 THE COURT: So I had 2, 4, 5, 6, 7, 9, 11, 12,
22 13, 14, 15, 16, 19, 21. Excellent. All right. We can go
23 back in.

24 (End of juror questioning in conference room.)

25 THE COURT: All right. Please be seated. All

1 right. Almost done here.

2 COURTROOM DEPUTY: Folks, when I call your
3 number, please -- if I call your number, can you please come
4 forward, or come through here, you're going to walk behind
5 here and we're going -- the first seat is going to be in the
6 front row closest to that wall over there.

7 Juror number 2.

8 Juror number 4.

9 We're going to sit every other chair.

10 And juror number 5.

11 Juror number 6.

12 Juror number 12, you're going to have a seat in
13 the second row but closest to the far wall.

14 And juror number 13.

15 Juror number 14.

16 Juror number 16.

17 THE COURT: All right. So that is it.

18 Mr. Buckson, will you swear in the jury.

19 Actually we can dismiss everybody else. Thank you all for
20 coming in. We appreciate your coming in and being here for
21 service. Have a good rest of the day.

22 While you guys are standing, I'm going to swear
23 you in. Please raise your right hand.

24 You and each of you do swear, those of you who
25 swear, and you and each of you do affirm, those of you who

1 affirm, that you will well and truly try the issue joined
2 wherein VB Assets LLC is the plaintiff, and Amazon.com
3 Services is the defendant, and that you will a true verdict
4 render according to the evidence, so help you God, those of
5 you who swear, and you do so affirm, those of you who
6 affirm.

7 (All jurors said yes.)

8 THE COURT: So what I'm going to do is read to
9 you some of the preliminary instructions that we have and
10 then we'll take a break, we'll take sort of an early lunch
11 break after this where you can put your stuff in back, and
12 get situated, make any telephone calls that you need to
13 make.

14 All right. Now that you have been sworn in, I
15 have the following preliminary instructions for guidance on
16 your role as jurors in this case.

17 These instructions are intended to assist you in
18 discharging your duties as jurors and to introduce you to
19 the case and the law that you will apply to the evidence
20 that you will hear. Also, because this case involves
21 patents, I will give you some preliminary instructions
22 regarding patents. I will give you more detailed
23 instructions on the law at the end of the trial.

24 You will hear the evidence, decide what the
25 facts are, and then apply those facts to the law that I will

1 give to you. You and only you will be the judges of the
2 facts. I play no part in judging the facts. My role is to
3 be the judge of the law. I make whatever legal decisions
4 have to be made during the course of the trial, and I will
5 explain to you the legal principles that must guide you in
6 your decisions. You must follow that law whether you agree
7 with it or not. It is important that you perform your
8 duties fairly. Do not let any bias, sympathy, or prejudice
9 influence your decision in any way. Nothing that I say or
10 do during the course of the trial is intended to indicate
11 what your verdict should be.

12 This is a civil trial arising under the patent
13 laws of the United States. The parties in this case are the
14 plaintiff, VB Assets, LLC, and defendant, Amazon.com
15 Services LLC.

16 VB Assets is the owner of the four
17 patents-at-issue in this case, which together are referred
18 to as "the asserted patents." During the trial, the parties
19 will offer testimony and evidence to familiarize you with
20 the technology involved in the asserted patents.

21 VB Assets contends that Amazon has infringed the
22 asserted patents and seeks damages. Amazon contends that it
23 does not infringe the asserted patents and that those
24 patents are invalid and that it does not owe any damages to
25 VB Assets.

1 And as I just mentioned, this case is about
2 patents, which is an area that's unfamiliar to many people.
3 To help you understand what patents are and how they are
4 obtained, you will now be shown a video produced by the
5 Federal Judicial System. The video will run for
6 approximately seventeen minutes. The video refers to a
7 sample patent. Although you do not have the sample patent,
8 I do not think that you need it to follow what is being
9 said. At the conclusion of the video, I will provide you
10 with additional instructions.

11 (Patent video played as follows.)

12 JUDGE FOGEL: Hello. I'm Jeremy Fogel. I've
13 been a United States District Judge since 1998, and I'm now
14 the Director of the Federal Judicial Center.

15 As you probably know by now, this is a patent
16 case, so you may be wondering, how can I sit in judgment on
17 a case like this when I'm not entirely sure what a patent
18 is? We hope to answer that concern with this brief video,
19 which will give you some of the background needed to do your
20 job.

21 This case will involve some special issues that
22 the Judge and lawyers will explain to you, but all patent
23 cases involve some basics that you will learn about.

24 This video will discuss what patents are, why we
25 have them, how people get them, and why there are disputes

1 that require us to call in a jury like you. We'll also show
2 you what patents look like.

3 The United States Constitution gives Congress
4 the power to pass laws relating to patents. Article 1,
5 Section 8, Clause 8 allows Congress to promote the progress
6 of science and useful arts by securing for limited times to
7 authors and inventors the exclusive right to their
8 respective writings and discoveries.

9 A patent, then, is an official grant by the
10 United States Government that gives its owners certain
11 rights to an invention. Those include the right to stop
12 others from making, using, selling, or offering for sale the
13 invention that is claimed in the patent.

14 A patent lasts for a specific period of time,
15 usually 20 years from the date that the application is filed
16 by the inventor. But because it takes an average of three
17 years for the Patent and Trademark Office to act on the
18 application, the effective life of a patent is closer to
19 17 years.

20 A patent represents a bargain made between the
21 government and the inventor. In return for the right to
22 prevent others from using the invention, the inventor must
23 enhance the public knowledge, or what we sometimes call the
24 state of the art, by adding something new and useful to it.

25 A famous example is Thomas Edison's invention of

1 a light bulb. Harnessing electrical power for illumination
2 transformed society and led to many other important
3 break-throughs. During the lifetime of the patent, its
4 disclosure may inspire new inventions, and after it expires,
5 the invention is free for anyone to use. It is this
6 combination of something new and valuable to the public that
7 justifies granting time-limited patent protection to the
8 inventor.

9 A patent is in many ways like a deed to a piece
10 of property. It grants the owner the right to keep people
11 off the property or to charge them a fee, like rent, for
12 using it. And just as a deed indicates boundaries defining
13 the landowner's property, a patent claim defines the
14 patentee's domain.

15 The patent system works because the inventor is
16 required to describe the invention in clear and specific
17 terms so that the public knows what the boundaries of the
18 invention are. Once a patent is issued by the government,
19 it becomes available for public inspection. And that way,
20 anyone who learns of the patent can read it and understand
21 exactly what the inventor invented and the limits of the
22 patent set forth in the claims.

23 Now that we understand what a patent is, let's
24 take a closer look at term "invention." An invention is a
25 new way of solving a problem for a useful new machine,

1 manufacture, or composition of matter.

2 The patent process begins in the mind of the
3 inventor and, in particular, when the invention is
4 formulated in the mind of the inventor. Patent lawyers call
5 this "conception." This is when the idea occurs to the
6 inventor clearly enough that he or she can write it down and
7 explain it to someone.

8 To qualify for a patent, the invention needs to
9 be new and useful. Also, it must not be obvious to one of
10 ordinary skill in the field. If the inventor believes these
11 requirements are met, he or she will prepare an application
12 for filing with the Patent and Trademark Office, whose
13 headquarters are in Alexandria, Virginia, just outside of
14 Washington, D.C.

15 The Patent and Trademark Office, often called
16 the PTO, is the agency of the federal government whose job
17 it is to examine patent applications to make sure they were
18 in proper form and comply with the requirements of the law.

19 The inventor can prepare an application for
20 filing with the PTO, but usually it is drafted by a patent
21 attorney or a patent agent who specializes in what is called
22 prosecuting patent applications. That is, the process by
23 which they are evaluated.

24 The attorney or agent works with the inventor to
25 be sure the invention is described and claimed in a way that

1 complies with the law and the regulations of the PTO.

2 Ninety-eight percent of patent applications are made online
3 using the PTO's electronic filing system, although a few
4 paper applications are still made.

5 When the PTO receives the inventor's
6 application, it is first checked to see if it is complete
7 and complies with all the PTO's application requirements.
8 It then assigns the submission to a Patent Examiner, a staff
9 person with a background in the field or art the invention
10 falls within to evaluate the application and decide whether
11 a patent can be granted.

12 You've been given a sample patent to refer to as
13 you watch this video, so you already have a sense of what a
14 patent looks like, but now let's take a closer look at the
15 three main parts of a patent.

16 To begin with, there are some basic identifying
17 information on the first page. This material is highlighted
18 in your handout. On the upper right side of the page is the
19 number assigned to the patent by the PTO and on the left
20 side is a title that describes the invention and the names
21 of the inventors and sometimes the company to whom they've
22 assigned the patent. Also on the left is the date when the
23 patent application was filed, and back on the right, the
24 date when the patent was issued.

25 There also is more detailed information on the

1 first page, including a list of numbers following the
2 caption "Field of Search." These numbers identify
3 previously issued patents the Examiner looked at or searched
4 to make sure the applicant's claimed invention really is
5 something new, not obvious, and thus patentable.

6 Also listed on the first page is what we call
7 references. That is, previous patents or articles that
8 describe the technology or prior art known at the time the
9 application was filed. It may seem strange to you that we
10 call this pre-existing technology prior art even though it
11 has nothing to do with artists.

12 We use the word "art" in its historical sense to
13 include inventions and other subject matter reasonably
14 related to the claimed invention. We also refer to the
15 latest technology as state of the art, and we say of someone
16 who can understand and apply the technology that he or she
17 is skilled in the art.

18 The second major part of the patent is what we
19 call the specification or written description. As is the
20 case in your sample, it is usually the longest part of the
21 patent. It includes an abstract, which is a brief summary
22 of the invention. A background section describes the nature
23 of the problem the invention is supposed to solve. One or
24 more drawings, called figures, that illustrate various
25 aspects of the application, and a detailed description of

1 one or more embodiments of the invention.

2 An embodiment is a specific device or method
3 that uses the invention, such as a particular form of light
4 bulb.

5 The third and most important part of the patent
6 is the claims. These are the numbered paragraphs that
7 appear at the end. The claims are what give the public
8 notice of the boundaries of the invention. They're similar
9 to the description of property you may have seen in a deed,
10 referring to precise measurements taken on the ground.

11 The Judge will instruct you further on how any
12 technical or ambiguous terms in the patent claims should be
13 understood.

14 Now that we've discussed the main parts of a
15 patent, let's look at how the PTO processes patent
16 applications, what we referred to earlier as prosecution of
17 the patent application. This process begins when the
18 inventor's application arrives at the PTO. There, it
19 receives a filing date. Under the American Invents Act of
20 2011, filing dates will determine who is awarded the patent
21 if there are competing valid applications.

22 In 2012, the PTO received nearly 600,000 patent
23 applications and issued more than 270,000 patents.

24 After determining that the application is
25 complete, the receiving branch also decides what field of

1 technology an application relates to and assigns it to the
2 appropriate examining group. In order to make that
3 decision, the Patent Examiner usually looks at patents that
4 have been issued previously in the same or closely related
5 fields of art. The Examiner has computer databases that
6 contain information used to accomplish this task.

7 Another part of the job is to decide if the
8 inventor's description of the invention is complete and
9 clear enough to meet the requirements for a patent,
10 including the requirement that the description enables
11 someone of ordinary skill in the field to actually make and
12 use it.

13 However, because the job of examining so many
14 applications is challenging, the law requires the applicant
15 to tell the Examiner whatever he or she knows about the
16 prior art that might be important to the Examiner's decision
17 on whether to allow the patent. We call this the
18 applicant's duty of candor.

19 One way the applicant can satisfy this duty is
20 by bringing pertinent prior art to the attention of the
21 Examiner, either in the original application, or in other
22 submissions called Information Disclosure Statements. In
23 this way, the decisions of the Examiner are based on both
24 the information provided by the applicant and on the
25 information the Examiner finds during his or her prior art

1 search.

2 Sometimes the Examiner concludes that the
3 application meets all the requirements we've discussed and
4 allows the patent to issue at this first stage, but more
5 frequently the Examiner will reject the application as
6 deficient in some respect. This decision will be
7 communicated by the Examiner in what is called an Office
8 Action, which is a preliminary notice to the applicant of
9 what the Examiner finds insufficient or unpatentable. For
10 example, the Examiner may reject certain claims as being
11 unpatentable because a journal article written and published
12 by another person prior to the effective filing date of the
13 patent application disclosed what the applicant was
14 currently claiming. At that point, the applicant prepares a
15 written response, either agreeing or disagreeing with the
16 Examiner.

17 An applicant who agrees with the Examiner can
18 suggest amendments to the application designed to overcome
19 the Examiner's rejection. Alternatively, an applicant who
20 disagrees with the Examiner's Office Action can explain the
21 reasons for the disagreement.

22 This exchange of Office Actions and responses
23 goes on until the Examiner issues a Final Office Action,
24 which may reject or allow some or all of the applicant's
25 claims. The overall process is referred to as the

1 prosecution history of the application.

2 The written incoming and outgoing correspondence
3 between the PTO Examiner and the applicant is also called
4 the file wrapper. In the past, these file wrappers were all
5 in paper form as were the submitted applications. Now they
6 are most often electronic and may occasionally be paper as
7 well.

8 Most patent applications filed on or after
9 November 29th, 2000 are published by the PTO eighteen months
10 after the inventor has filed his or her application so that
11 the public may inspect it.

12 Once a final PTO Office Action has occurred and
13 one or more claims have been allowed, the applicant is
14 required to pay an issuance fee and the patent is printed.
15 Then, on the date shown on the upper right-hand corner, the
16 first page of the patent, it is issued by the PTO and the
17 inventor receives all the rights of the patent. That date
18 is highlighted on your sample.

19 Once a patent has issued, the inventor or the
20 person or company the inventor has assigned a patent to can
21 enforce the patent against anyone who uses the invention
22 without permission. We call such unlawful use infringement,
23 but the PTO and its Examiners have no jurisdiction over
24 questions relating to infringement of patents. If there is
25 a dispute about infringement, it is brought to the Court to

1 decide.

2 Sometimes in a court case you are also asked to
3 decide about validity. That is whether the patent should
4 have been allowed at all by the PTO. A party accused of
5 infringement is entitled to challenge whether the asserted
6 patent claims are sufficiently new or nonobvious in light of
7 the prior art or whether other requirements of patentability
8 have been met. In other words, a defense to an infringement
9 lawsuit is that the patent in question is invalid.

10 You may wonder why it is that you would be asked
11 to consider such things when the patent has already been
12 reviewed by a Government Examiner. There are several
13 reasons for this.

14 First, there may be facts or arguments that the
15 Examiner did not consider, such as prior art that was not
16 located by the PTO or provided by the applicant. In
17 addition, there is of course the possibility that mistakes
18 were made or important information overlooked. Examiners
19 have a lot of work to do and no process is perfect.

20 Also, unlike a court proceeding, prosecution of
21 a patent application takes place without input from people
22 who might later be accused of infringement, so it is
23 important that we provide a chance for someone who is
24 accused of infringement to challenge the patent in court.

25 In deciding issues of infringement and validity,

1 it is your job to decide the facts of the case. The Judge
2 will instruct you about the law, which may include the
3 meaning of certain words or phrases contained in the patent.

4 So it is your primary duty as jurors to resolve
5 any factual disputes and in some cases, such as infringement
6 and validity, to apply the law to those facts. To prove
7 infringement, the patentholder must persuade you by what is
8 called a preponderance of the evidence relating to the facts
9 of the case that the patent has been infringed.

10 To prove invalidity, the alleged infringer must
11 persuade you by what is called clear and convincing evidence
12 that the patent is invalid.

13 The Judge in your case will explain these and
14 other terms and provide additional specific instructions at
15 the appropriate time.

16 Good luck with your task, and thank you for your
17 service.

18 (End of video.)

19 THE COURT: All right. Thank you. Picking
20 where we left off.

21 The evidence from which you will find the facts
22 will consist of the testimony of witnesses and documents,
23 and other things admitted into evidence as exhibits; any
24 facts that have been stipulated, that is formally agreed to
25 by the parties; and any facts which I say you must accept as

1 true.

2 Certain things are not evidence. I will list
3 those things for you now:

4 1. Statements, arguments, questions, and
5 comments by lawyers are not evidence.

6 2. Exhibits that are identified by a party but
7 not offered or received into evidence are not evidence.
8 This includes demonstrative exhibits such as PowerPoint
9 presentations.

10 3. Objections to questions are not evidence.
11 Lawyers have an obligation to object when they believe that
12 the testimony or exhibits being offered into evidence are
13 not proper under the Federal Rules of Evidence. You should
14 not be influenced by a lawyer's objection or by my ruling on
15 the objection. If I sustain or uphold the objection, you
16 should ignore the question or document in question. If I
17 overrule an objection and allow the matter into evidence,
18 treat the testimony or document like any other evidence. If
19 I instruct you that some item of evidence is admitted for a
20 limited purpose, you must follow that instruction and
21 consider that evidence for that purpose only. If this
22 occurs during the trial, I will try to clarify this for you
23 at that time.

24 4. Testimony and exhibits that I exclude or
25 strike from the record or tell you to disregard are not

1 evidence and should not be considered.

2 5. Anything you see or hear outside the
3 courtroom is not evidence and must be disregarded. You are
4 to decide this case solely on the evidence presented here in
5 the courtroom.

6 Finally, some of you may have heard the phrases
7 or terms "direct evidence" or "circumstantial evidence."
8 Direct evidence is direct proof of a fact, such as testimony
9 of an eye witness. Circumstantial evidence is proof of a
10 fact or facts from which you may infer or conclude that
11 other facts do or do not exist. For example, the fact that
12 it snowed overnight could be proven directly with someone
13 testifying ("I saw it snow last night") or circumstantially
14 ("when I went to sleep the grass was green, when I woke up
15 there was a foot of snow on the ground "). Do not be
16 concerned about whether evidence is "direct evidence" or
17 "circumstantial evidence." As a general rule, the law makes
18 no distinction between those two types of evidence, but
19 simply requires that you find facts from all the evidence in
20 the case, whether direct or circumstantial or a combination
21 of the two.

22 In judging the facts, it will be up to you to
23 decide which witnesses to believe, which witnesses not to
24 believe, and how much of any witness's testimony to accept
25 or reject.

1 You should consider and weigh all of the
2 evidence that is presented to you. You should use your
3 common sense in weighing the evidence. Consider it in light
4 of your every day experience and give it whatever weight you
5 believe it deserves. If your experience tells you that
6 certain evidence reasonably leads to a conclusion, you are
7 free to reach that conclusion.

8 In any legal action, facts must be proven by the
9 required standard of evidence, which is known as the burden
10 of proof. In a case involving patents, different burdens of
11 proof are used. The first is called "preponderance of the
12 evidence." The second is called "clear and convincing
13 evidence." Your verdict depends on whether you find certain
14 facts have been proved either by a preponderance of the
15 evidence or by clear and convincing evidence.

16 VB Assets has the burden of proving patent
17 infringement by a preponderance of the evidence. That means
18 VB Assets has to prove to you, in light of all the evidence,
19 that what it claims is more likely true than not. To put it
20 differently, if you were to put the evidence in support of
21 VB Assets' claims and the evidence weighing against VB
22 Assets' claims on opposite sides of a scale, the evidence
23 supporting VB Assets' claims would have to make the scales
24 tip in VB Assets' favor. If the scale remain equal or tip
25 in favor of Amazon, you must find for Amazon.

1 Amazon on the other hand has the burden of
2 proving patents are invalid by clear and convincing
3 evidence. That means Amazon has to prove to you, in light
4 of all the evidence, that what it claims is highly probable.
5 Proof by clear and convincing evidence is a higher burden of
6 proof than a preponderance of the evidence.

7 You may have heard the term "proof beyond a
8 reasonable doubt." That is a stricter standard of proof and
9 it applies only to criminal cases. It does not apply to
10 civil cases such as this. You should not consider that
11 burden of proof in this case. You should put it out of your
12 mind.

13 You are the sole judges of each witness's
14 credibility. That is, it will be up to you to decide which
15 witnesses to believe, which witnesses not to believe, and
16 how much of any witness's testimony to accept or reject.
17 You should consider each witness's means of knowledge;
18 strength of memory; opportunity to observe; how reasonable
19 or unreasonable the testimony is; whether it is consistent
20 or inconsistent; whether it has been contradicted; the
21 witness's biases, prejudices, or interests; the witness's
22 manner or demeanor on the witness stand; and all
23 circumstances that, according to the evidence, could affect
24 the credibility of the testimony.

25 The weight of the evidence to prove a fact does

1 not necessarily depend on the number of witnesses who
2 testify. What is more important is how believable the
3 witnesses were, and how much weight you think their
4 testimony deserves.

5 If you find the testimony to be contradictory,
6 you must try to reconcile it, if reasonably possible, so as
7 to make one harmonious story of it all. But if you cannot
8 do this, then it is your duty and privilege to believe the
9 testimony that you think is most believable and disregard
10 any testimony that, in your judgment, is not believable.
11 This instruction applies to the testimony of all witnesses,
12 including expert witnesses.

13 Expert testimony is testimony from a person who
14 has a special skill or knowledge in some science, profession
15 or business. This skill or knowledge is not common to the
16 average person but has been acquired by the expert through
17 special study or experience. In weighing expert testimony,
18 you may consider the expert's qualifications, the reasons
19 for the expert's opinions, and the reliability of the
20 information supporting the expert's opinions, as well as the
21 factors I have previously mentioned for the weighing
22 testimony of any other witness. Expert testimony should
23 receive whatever weight and credit you think appropriate,
24 given all the other evidence in the case. You are free to
25 accept or reject the testimony of experts, just as with any

1 other witness.

2 You may hear from witnesses who testify through
3 what is called deposition testimony. A deposition is the
4 sworn testimony of a witness taken before trial. The
5 witness is placed under oath and swears to tell the truth,
6 and lawyers for each party may ask questions. A court
7 reporter is present and records the questions and answers.
8 The deposition may also be recorded on videotape.
9 Deposition testimony is entitled to the same consideration
10 and is to be judged in the same way as if the witness had
11 been present to testify.

12 The parties in this case have stipulated that
13 certain facts are true, and those admitted facts may be read
14 to you during trial. If that happens, you must treat those
15 admitted facts as having been proven for purposes of this
16 case.

17 You have been given a notebook and a pen.
18 Inside your notebook, you will find paper, a copy of the
19 asserted patents and photographs of each witness. If you
20 wish, you may, but you are not required to take notes to
21 help you remember what witnesses said. Notes may be helpful
22 to you because at the end of the trial, you must make your
23 decision based on what you recall of the evidence. You will
24 not have a written transcript to consult, and it may not be
25 practical for the court reporter to read back lengthy

1 testimony. Therefore, you should pay close attention to the
2 testimony as it is given. I do not suggest that you look to
3 your note taking as a substitute for that written
4 transcript. Instead, as you listen to the testimony, keep
5 in mind that you will be relying on your recollection of the
6 testimony during your deliberations.

7 If you do take notes, please keep them to
8 yourself until you and your fellow jurors go to the jury
9 room to decide this case. Do not let note-taking distract
10 you to the point that you miss hearing or seeing testimony
11 from the witness. Your notes are only a tool to aid your
12 own individual memory and you should not compare your notes
13 with other jurors in determining the content of any
14 testimony or in evaluating the importance of any evidence.
15 Your notes are not evidence and they are not a complete
16 outline of the proceedings or a list of the highlights of
17 the trial. Do not use your notes, or any other juror's
18 notes, as an authority to persuade fellow jurors.

19 During the trial, documents or other physical
20 items may be received into evidence. At present, however,
21 you will not be supplied with a list of the exhibits as they
22 are received. Therefore, you may wish to make notes about
23 the exhibits, especially their description and number, so
24 that you can refer to those exhibits while you are
25 deliberating. You will be given a hard copy of every

1 admitted exhibit to take to the jury room to use during
2 deliberations.

3 When we take our recess each day for the
4 lunchtime break and when we take our recess each night,
5 please take your notes to the jury room and leave your notes
6 there. Do not take your notes away at any time. No one
7 will read your notes. Your notes will be destroyed after
8 the trial is over.

9 During the trial it may be necessary for me to
10 talk with the lawyers outside of your hearing, either by
11 having what we call a bench conference while you are present
12 in the courtroom, sometimes called a side-bar, or by me
13 calling a recess. That may mean that some of the lawyers
14 and I go out into the hall for a few minutes so that we can
15 talk and if I have to have a recess I will excuse you. If
16 we have a bench conference, please understand that while you
17 are waiting, the lawyers and I are working. And know that
18 even then the parties are being charged for the time - *i.e.*,
19 the time spent comes out of their total trial time. We are
20 not trying to keep important information from you. The
21 purpose of the conferences is to decide how certain evidence
22 is to be treated under the rules of evidence that guide the
23 trial, and to avoid confusion and error.

24 We will, of course, do what we can to keep the
25 number and length of these conferences to a minimum. If we

1 do leave the courtroom and you would like to stand or
2 stretch or walk around the jury box while we are conferring,
3 you should feel free to do so.

4 I may not always grant a request for a bench
5 conference or a recess. Do not consider my granting or
6 denying a request for a conference as any indication of my
7 opinion of the case or of what your verdict should be.

8 Now, a few words about your conduct as jurors.

9 First, during the trial and until you have heard
10 all of the evidence and retired to the jury room to
11 deliberate, you are not to discuss the case with anyone, not
12 even among yourselves. If any lawyer, party or witness does
13 not speak to you when you pass in the hall, ride the
14 elevator or the like, remember it is because they are not
15 supposed to talk with you, nor you with them. If anyone
16 should try to talk to you about the case, please bring it to
17 my attention promptly.

18 Second, do not read or listen to anything
19 touching on this case that is not admitted into evidence.
20 By that I mean, if there is a newspaper or internet article
21 or radio or television report relating to this case, do not
22 read the article or watch or listen to the report.

23 Third, do not try to research or investigate the
24 case on your own. During the course of the trial, you must
25 not conduct any independent research about the case, the

1 matters in the case, the technology involved in the case, or
2 the individuals or entities involved in the case. In other
3 words, you should not consult dictionaries or reference
4 materials (in print, electronic, or other format) or search
5 websites or blogs on the internet. Should there happen to
6 be a newspaper article, internet article or television or
7 radio report relating to this case, do not read the article
8 or watch or listen to the report. It is important that you
9 decide this case based solely on the evidence presented in
10 the courtroom. Please do not try to find out any
11 information from any other sources.

12 I know that many of you use cell phones, iPhones
13 and other smartphones, iPads and other tablets, the
14 internet, and other forms of technology. You must not talk
15 to anyone about this case or use these tools to communicate
16 electronically with anyone about the case. This includes
17 your family and friends. You may not communicate with
18 anyone about the case on your cell phone or smartphone,
19 through e-mail, your tablet, text messaging, on Twitter,
20 through any blog or website, through any internet chat room,
21 or by way of any other social networking websites, including
22 but not limited to Facebook, X (formally known as Twitter),
23 Instagram, TikTok, WeChat, WhatsApp, SnapChat, LinkedIn, and
24 YouTube.

25 Finally, you should not form any conclusion as

1 to the issues in the case until all of the evidence is in.
2 Keep an open mind until you start your deliberations at the
3 end of the case. You will receive more detailed
4 instructions on the law at the end of the case, and those
5 instructions will control your deliberations and decision.

6 The trial will begin shortly.

7 First, each side may make an opening statement.
8 An opening statement is not evidence but is simply an
9 outline of what that party intends to prove to help you
10 follow the evidence that will be presented.

11 After the opening statements, the parties will
12 present their evidence. VB Assets will go first and present
13 its case and witnesses, who counsel for Amazon may
14 cross-examine. Amazon will then present its case and
15 witnesses who counsel for VB Assets may cross-examine. VB
16 Assets will then have an opportunity to present its rebuttal
17 to Amazon's invalidity case.

18 After that, I will give you instructions on the
19 law and the attorneys will make their closing arguments to
20 summarize and interpret the evidence for you. And then you
21 will retire to the jury room to deliberate on your verdict.

22 Though you have heard this before, I want to
23 again outline the schedule I will maintain during the course
24 of this trial.

25 As mentioned previously, once trial begins, this

1 case is expected to take up to five days to try, between now
2 and Wednesday, November 8, 2023.

3 The trial will normally begin each day at
4 9:00 a.m. and will go until we take a lunch break, which
5 will be about thirty to forty-five minutes, continuing after
6 that until 4:30 or 4:45 p.m. There will be a fifteen-minute
7 break in the morning and a fifteen-minute break in the
8 afternoon.

9 What I have just outlined is the general
10 schedule. It is possible there will be some interruptions
11 if I need to attend to other matters.

12 The only significant exception to this schedule
13 may occur when the case is submitted to you for your
14 deliberations. At that point, you will be permitted to
15 deliberate as late as you wish.

16 This is, I think I have mentioned before, a
17 timed trial. That means that I have allocated each party a
18 maximum number of hours in which to present all portions of
19 its case. This allows me to assure you that this case is
20 expected to be completed by November 8th.

21 Of course, you can help us stay on schedule by
22 being here promptly each morning and being ready to proceed
23 at the end of each break.

24 So those are my preliminary instructions and now
25 as I said, it's about 11:30. We're going to take -- we'll

1 take about an hour lunch break today so that you guys can
2 get situated. We have had some food brought in, but you
3 will also be allowed to order food that you prefer for the
4 remaining days of the trial.

5 All right. So with that, I will excuse you to
6 the jury room.

7 COURTROOM DEPUTY: All rise.

8 (Jury exiting the courtroom at 11:32 a.m.)

9 THE COURT: All right. Anything we need to talk
10 about?

11 MR. YOON: No, Your Honor.

12 MR. HADDEN: No, Your Honor.

13 THE COURT: Do I have a copy -- I asked for a
14 copy of the expert report. Do I have that? All right.
15 We'll come back at 12:30.

16 (A luncheon recess was taken.)

17 COURTROOM DEPUTY: All rise.

18 (Jury entering the courtroom at 12:41 p.m.)

19 THE COURT: All right. Everyone, welcome back.
20 Please be seated. Members of the jury, when you come in,
21 you can sit down right away. Everyone is standing for you.
22 You don't have to stand for them.

23 All right, let's start with opening statements.

24 MR. YOON: Yes, Your Honor. May I begin?

25 THE COURT: Please.

1 MR. YOON: The evidence will show that this case
2 is about Amazon's willful infringement and disregard of the
3 patent rights of VB Assets. Over the next few days, you
4 will hear the story about VoiceBox and its successor VB
5 Assets. VoiceBox and its founders were one of the first
6 companies to tackle voice computing. They created and built
7 the first smart speaker. They created and built the first
8 connected voice system for cars in a partnership with
9 Toyota.

10 Most important, VoiceBox patented its invention
11 to protect the company's expense in research and
12 development. Patented technology that is fundamental to the
13 operation of voice systems like Amazon Alexa. You will hear
14 that Amazon was told about VoiceBox patents on multiple
15 occasions. You will see and hear how VoiceBox explained its
16 patents to Amazon. You will hear that Amazon was given many
17 opportunities to respect VoiceBox's patent rights. Amazon
18 could have partnered with VoiceBox. Amazon could have
19 acquired VoiceBox. Amazon could have tried to license
20 VoiceBox's patents. Amazon's own expert will tell you that
21 it is possible for Amazon to design a system that did not
22 use the VoiceBox patents. Amazon did none of that. The
23 evidence will show that Amazon infringed the VoiceBox
24 patents. The evidence will show that this infringement was
25 willful. And this is a case about holding Amazon

1 accountable for its own choices.

2 At the end of this trial, VB Assets will ask for
3 compensation for the losses caused by Amazon's infringement
4 of the patents. As you will hear, the law requires that
5 this compensation be no less than a reasonable royalty which
6 the evidence in this case will show is \$46.7 million.

7 My name is James Yoon. It's my honor and
8 privilege to represent VB Assets, the successor to VoiceBox.
9 With me at counsel table today is Mike Kennewick. Can you
10 stand, Mike. One of the founders of VoiceBox and the
11 inventor on three of the VoiceBox patents in this case.
12 Also here today are his brother Rich Kennewick, and Tom
13 Freeman. Mr. Freeman will also testify in this case, and is
14 an inventor on three of the patents. Also with me today is
15 our team, my colleagues, Ryan Smith, Matt Macdonald, Neal
16 Belgam, Brad Tennis, Jamie Otto, Mikaela Evans-Aziz, Alex
17 Turner, Bruce Chang, and Arlene Apodaca.

18 As you saw in the patent video, patents are
19 based on the U.S. Constitution. The Constitution grants
20 Congress the right to promote science and the useful arts by
21 granting inventors the exclusive rights to their
22 discoveries. Patents protect individuals, they protect
23 small companies, they protect large companies. Patent
24 rights are rights that should be respected and this is a
25 case about protecting those rights.

1 VoiceBox was the dream of three brothers, Mike
2 and his brothers Bob and Rich, founded VoiceBox in 2001.
3 The Kennewick brothers' dream was to build the world's first
4 Star Trek computer. This was a distant dream, a huge
5 challenge. It would require the development of a range of
6 new and innovative technologies and the patents in this case
7 reflect important steps along the road to achieving the
8 dream.

9 In 2001, when they founded VoiceBox, the
10 Kennewick brothers recognized that they faced two
11 significant challenges. Challenge one, speech recognition
12 was not reliable. At the time even good speech recognition
13 systems could only achieve 95 percent accuracy. This was
14 not good enough. 95 percent meant the recognition system
15 would make five mistakes out of every 100 words.

16 And challenge two was that language was
17 extraordinarily difficult for computers to understand. Even
18 if the computer could identify the words correctly,
19 computers had a very difficult time understanding the
20 underlying meaning of human language.

21 VoiceBox had a clear idea for their smart
22 speaker. Their smart speaker was called Cybermind. You see
23 this on the screen and VoiceBox wanted to be the first voice
24 retrieval system. As they explained, you talk to it and it
25 talks back. It's that simple.

1 On the screen is the 2002 VoiceBox Cybermind
2 system. VoiceBox knew for this system to work, they would
3 need to develop a new and novel Natural Language
4 Understanding or NLU technology. Natural Language
5 Understanding refers to the technology used by systems to
6 understand what a person meant or intended, when he or she
7 communicated with the system in a wide range of real world
8 operations.

9 By 2005, VoiceBox had publicly shown and
10 demonstrated Cybermind, the world's first working prototype
11 of a smart speaker. Cybermind was a step forward. It did
12 many of the things, but certainly not all that we take for
13 granted today. You could ask Cybermind, computer, what is
14 the NBA schedule? Find me a good recipe for chocolate cake.
15 Play the song, Brown Eyed Girl. Cybermind was featured on
16 the evening news, and its achievements made the industry
17 take notice.

18 Cybermind though was a start. VoiceBox knew
19 that more needed to be done. They knew that a long road
20 remained ahead. VoiceBox knew that for computers to truly
21 become conversational, it would have to make communication
22 more accurate, more intuitive and more natural. VoiceBox
23 needed to develop and patent a technology that could
24 interpret a word based on how, who and when it was used.
25 These patents used the context of communication between the

1 speaker and the system to interpret the words and meanings
2 and understand the intent of phrases. The R & D efforts
3 culminated in the development of the four patents in this
4 case, the '176 and '097 voice ad patents, the '681
5 cooperative conversation patent, and the '703 voice commerce
6 patent.

7 At this trial you will hear from the inventors
8 of the VoiceBox patents, Mike Kennewick and Tom Freeman.
9 Both are original members of the VoiceBox team. VoiceBox
10 was a small company, but it had major successes. It shipped
11 more than 200 million devices in 23 languages, and in 2011,
12 VoiceBox and Toyota deployed the first connected car.

13 VoiceBox realized that in the tech industry,
14 there was always more to be done. VoiceBox began its
15 Cybermind 2012 project with the hope of developing and
16 commercializing an enhanced version of Cybermind. Cybermind
17 2012, built on the foundation of the original Cybermind
18 product. VoiceBox planned to have Cybermind 2012
19 incorporate all of VoiceBox's best ideas and inventions.

20 Things began to change in 2011. VoiceBox met
21 with Amazon. VoiceBox's goal and its business model had
22 always been to partner with a larger company. A company
23 with the leverage and resources to use the full range of
24 VoiceBox's patented technology. A company like Amazon. In
25 October 2011, VoiceBox held a series of meetings with

1 Amazon. The purpose of these meetings were to explore how
2 the companies could work together, and how VoiceBox
3 technology could be incorporated into Amazon.

4 VoiceBox thought Amazon and it were natural
5 partners. During these meetings, which involved numerous
6 engineers from both companies, Amazon received a detailed
7 overview of VoiceBox's products, business and patents.
8 VoiceBox believed it could share its plans and technology,
9 because the technology was protected by patents. During the
10 October 2011 meeting, VoiceBox informed Amazon that it has
11 already been awarded 12 patents for contextual and
12 conversational speech technology, and VoiceBox informed
13 Amazon that it had 14 pending applications.

14 Specifically, VoiceBox informed Amazon that it
15 had the voice ad patent issued in 2010. The '176 patent
16 that is at issue in this case and on the cover of this slide
17 show from October 2011 that was presented to Amazon, you see
18 the cover of the '176 patent.

19 And VoiceBox explained that the '176 patent
20 covered presenting ads based on voice queries.

21 At the time, the cooperative conversation
22 patent, the '681, had not yet issued. It was one of those
23 pending contextual and conversational patent applications
24 that VoiceBox told Amazon about during the October 2011
25 meeting.

1 During these meetings, VoiceBox outlined how its
2 technology could be integrated into that Amazon Web Services
3 platform. VoiceBox explained how its technology could be
4 used by Amazon for eCommerce.

5 After the meeting, Amazon informed VoiceBox that
6 Amazon was "very impressed," and that everyone at Amazon
7 found the meeting to be quite helpful.

8 Further, Amazon informed VoiceBox that Amazon
9 was discussing "how contextual speech/Cybermind 2012 could
10 play a part in Amazon's future." That meeting did not
11 produce the partnership that VoiceBox hoped for. It didn't
12 produce any kind of deal at all. The evidence will show
13 instead, Amazon willfully infringed the VoiceBox patents.

14 After the meeting with Amazon, VoiceBox kept
15 focus on developing new technology. Companies continued to
16 adapt and adopt and incorporate VoiceBox technology into
17 their products. In 2013, Samsung and VoiceBox entered into
18 a software development agreement so that VoiceBox could
19 provide the voice, and voice commerce technology for Samsung
20 phones and televisions.

21 In November 2014, Amazon announced Alexa, and
22 the Echo speaker. The evidence will show that from the time
23 Alexa launched, it infringed the '176 voice ad patent and
24 the '681 cooperative conversation patent.

25 The evidence will show that Alexa infringed the

1 '681 cooperative conversation patent and the '176 voice ad
2 patent. The evidence will also show that Alexa and Alexa
3 Shopping, later infringed the '097 voice ad patent, and the
4 '703 voice commerce patent.

5 Amazon's entry into the market had a major
6 impact on VoiceBox. Despite its efforts, VoiceBox could not
7 match Amazon's resources, or the resources of other large
8 players such as Google in the space. By 2017, in light of
9 the changed business environment, VoiceBox determined that
10 it would have to merge with a larger company to achieve its
11 vision.

12 Ultimately, VoiceBox was divided into pieces and
13 sold to two different companies, Nuance and Oracle. But the
14 founders, Mike Kennewick and others, did not want to sell
15 the important patents that are at issue here. The founders
16 and shareholders of VoiceBox formed VB Assets. The purpose
17 of VB Assets was to preserve the value of the VoiceBox
18 investment in research and development. VB Assets held the
19 patents infringed by Amazon.

20 The evidence you will hear in this case will
21 show four things. Amazon infringed all four patents.
22 Amazon's infringement was willful. Amazon knew about the
23 patents for years before this lawsuit was filed, but never
24 did anything to make a deal with VoiceBox or to avoid
25 infringing the patents. Three, the patents are valid.

1 These are valid and useful inventions and Amazon will not be
2 able to meet their heavy burden to show otherwise. Four, VB
3 Assets is entitled to a running reasonable royalty. We're
4 going to ask you to award a royalty that reflects only a
5 small percentage of the enhanced growth that Amazon enjoyed
6 as a result of infringing the patented technology.

7 Now, let's talk a little bit more about the four
8 patents at issue in this case. In 2006, VoiceBox filed for
9 the '681 cooperative conversation patent. The '681 patent
10 is entitled system and method for cooperative conversational
11 voice user interface. What is cooperative conversation?
12 Cooperative conversation occurs when a voice recognition
13 system uses the short-term and long-term shared knowledge
14 about its communication with a person to help it determine
15 the meaning and intent of spoken words. On the screen is
16 Figure 1 of the '681 patent with some annotation. The
17 system has an input for receiving the verbal utterances or
18 words of a person, and ASR, which is number two at 110, an
19 Automatic Speech Recognizer for translating the verbal
20 utterances into text, a list of possible interpretations for
21 the verbal utterance, and three, an NLU or Conversational
22 Language Processor for determining a person's meaning or
23 intent.

24 The NLU, or Natural Language Understanding, uses
25 the context of short-term and long-term shared knowledge

1 from communication with a person, to determine the meaning
2 of what was said.

3 In 2007, VoiceBox filed the original application
4 for the '176 and the '097 voice ad patents. These patents
5 are key and powerful patents for voice based eCommerce
6 companies. They use the context of a user's communication
7 of a system to identify and provide tailored advertisement
8 that meets the person's needs. On the screen is Figure 1 of
9 the '176 and '097 patents. The figure shows the key
10 components, the hardware that's used by the invention, an
11 input, the ASR, the Conversational Language Processor or
12 NLU, and a key internal component for context determination.
13 And four, the application server that includes advertising
14 and eCommerce.

15 As you will hear at trial, the inventions of the
16 '176 and '097 patent created a new way for people to
17 interact with a system, and for those systems to assist
18 people with advertisements that are responsive to the
19 communications that the person has had with the system.

20 The last patent is the '703 patent, the voice
21 commerce patent. On the screen are Figures 1 and 3 of the
22 '703 patent. These figures disclose the component and flow
23 chart algorithm for the voice commerce patent. The novel
24 system provides the technology that allows speakers to
25 purchase items in a manner that eliminates the hassle and

1 burden of purchasing items in prior generation of computer
2 systems.

3 In order to determine whether and how Amazon
4 Alexa infringes the VoiceBox patents, VB Assets retained Dr.
5 Nathaniel Polish, one of the leading experts in the field of
6 Computer Speech and Interactive Environment. Dr. Polish is
7 an inventor on ten patents, including a patent on
8 Conversational Speech Technology.

9 To perform his analysis, Dr. Polish performed a
10 detailed review of the patents, the prosecution history of
11 the patents, the claim construction order, Amazon's
12 technical and engineering documents, and the source code
13 analysis and report, prepared by another VB Assets expert,
14 Mr. Peck.

15 On the screen is an Amazon technical
16 presentation. This is an Amazon document. You may be
17 asking yourself how we can show you Amazon's technical
18 documents in this case. It's through a process called
19 discovery that's available to the parties in litigation.
20 During discovery, we received, and our experts reviewed
21 Amazon's technical documents and deposed Amazon technical
22 witnesses. During the trial you will see the exhibit number
23 on each of these documents that are discussed by the
24 witnesses. If you want to review a specific exhibit or
25 document, write the number down, and you'll be able to

1 review the exhibit in the jury room during your
2 deliberations.

3 The evidence will show that the Amazon
4 presentation illustrates how Alexa infringes the VoiceBox
5 patents. As you can see on the screen, Amazon receives an
6 utterance from a person, and that's provided to the Alexa
7 voice service. Like the patents, Alexa uses an ASR. This
8 ASR converts the verbal utterance into text and provides a
9 list of possible interpretations to the NLU, or Natural
10 Language Understanding unit. And like the patents, Alexa
11 includes an NLU that uses context including shared
12 short-term and long-term knowledge to identify the best
13 interpretation and to decide how the received utterance will
14 be interpreted.

15 And you can see in this Amazon technical
16 document, an Alexa NLU determines intent. Based on the
17 interpretation of intent, the Alexa voice system will take
18 action. These actions include providing an advertisement or
19 taking another action in response to spoken words.

20 The evidence will show that Alexa incorporated
21 and infringed the claimed inventions of the '681 patent.
22 The inventions of the '681 patent are illustrated in Figures
23 1 and 3 of the patent. The system has an input that
24 receives the verbal utterance, an ASR that converts the
25 received utterance into a list of potential interpretations,

1 a Conversational Language Processor, or NLU, that uses
2 context based on the short-term and long-term knowledge
3 identified, to identify the proper interpretation of the
4 utterance. Figure 3 shows how this cooperative conversation
5 occurs. The system uses the shared knowledge as an input to
6 help it decide the proper construction of a received
7 utterance.

8 Turning to Claim 13 of the '681 patent, which is
9 the claim on this patent, you will hear evidence that Alexa
10 practices each and every element of the claimed invention.
11 Dr. Polish will explain how Alexa practices each of these
12 elements in the claims, and that Alexa infringes Claim 13 of
13 the '681 patent.

14 Alexa also infringes the '176 voice ad patent by
15 selecting voice ads based on the user conversation and
16 context. As VoiceBox explained to Amazon in October 2011,
17 the '176 patent covers presenting ads based on voice query.
18 Dr. Polish will explain how Alexa practices each and every
19 element of Claim 40 of the '176 patent.

20 Amazon compounded its infringement by using the
21 voice ad technology of the '097 patent to select voice based
22 ads based on user conversation and context.

23 Dr. Polish will explain that the Alexa system
24 practices each and every element of Claim 23 of the '097
25 patent. And Alexa infringed the '703 patent by

1 incorporating its patented technology to allow Alexa users
2 to purchase items with their voice, without requiring them
3 to provide the input for transactional requirements such as
4 credit cards or shipping information. Dr. Polish will
5 explain how the Alexa system practices each and every
6 element of Claim 25 of the '703 patent.

7 Now, given this showing of infringement that
8 will occur at trial, Amazon is likely to argue that they
9 should not be held accountable for their conduct for a
10 variety of reasons. Amazon will say it does not infringe.
11 And Amazon will suggest in part, that because they use AI,
12 or machine learning, they cannot infringe. They will
13 suggest that VoiceBox's products were rules based systems
14 and by suggestion, that VoiceBox patents cannot cover
15 systems that use AI, or machine learning.

16 The evidence will show that there is no basis
17 for this argument. As the Court will instruct you, what
18 matters is whether Alexa meets the written requirements set
19 forth in the claims. Do they possess each and every claim
20 element, and Dr. Polish will demonstrate that they do.

21 The evidence and Amazon's own technical
22 documents, and engineering documents, will show that all the
23 elements of the claims are present in Alexa. Listen closely
24 to the testimony of the witnesses, and pay careful attention
25 to the Amazon documents that you see come into evidence.

1 Alexa infringes.

2 Willful infringement. The evidence will show
3 that Amazon's infringement was willful and done with full
4 knowledge of the VoiceBox patents. As I told you before, in
5 October 2011, VoiceBox expressly informed Amazon and its
6 executive team, that the company had 12 awarded patents for
7 Contextual and Conversational Speech Technology, and 14
8 pending applications. As discussed earlier, VoiceBox
9 explained to Amazon in October 2011 that the '176 patent
10 covered presenting ads based on voice query.

11 The evidence will show that Amazon was fully
12 aware of the VoiceBox patent years before this lawsuit and
13 did nothing, despite full knowledge of the VoiceBox patents
14 and the technology, Amazon never took any step to avoid
15 infringing the VoiceBox patents. Amazon never took a
16 license. Amazon never explained its action. Amazon did
17 nothing. Amazon infringed the VoiceBox patents. And this
18 willful conduct is demonstrated by the fact that Amazon knew
19 all about the VoiceBox patents and did nothing to avoid
20 infringement.

21 Now, another defense that Amazon will raise in
22 this case is invalidity. Amazon will seek to avoid
23 infringement by arguing that all four of the VoiceBox
24 patents are invalid for a number of reasons. Amazon will
25 not be able to meet their high burden. As you heard in the

1 opening instructions, Amazon has the burden of proving by
2 clear and convincing evidence that our patents are invalid.

3 Each of these patents were reviewed in detail
4 and approved by the examiners of the U.S. Patent Office.
5 The first invalidity defense is written description. Amazon
6 will argue that the patents are defective and fail to
7 describe the invention which is called the written
8 description defense. In short, what Amazon is asking you to
9 find is that the Patent Office didn't just make one mistake,
10 or two mistakes, or three mistakes, but made four mistakes
11 by granting the four VoiceBox patents.

12 The evidence in this case will show that
13 Amazon's argument has no support. The description was
14 complete and clear and it provided an explanation of the
15 invention to people in the field. The Patent Office was
16 correct. The four VoiceBox patents are properly written and
17 they fully describe the invention.

18 The second defense, obviousness. Amazon will
19 point to prior art, a selection of references that they
20 suggest make our patent obvious. Amazon will not have the
21 evidence to support this defense. Dr. Polish will explain
22 that the alleged prior art combination pushed by Amazon
23 failed to disclose all the elements of the claims. They are
24 missing pieces. The patents are valid.

25 The last invalidity defense is patentability.

1 Amazon will argue that the patents do not qualify, or claim
2 a patentable invention. Dr. Polish will explain that there
3 is no valid basis for this argument.

4 Now, let's talk about damages for a little bit.
5 VoiceBox retained an expert, Brett Reed, to determine what a
6 reasonable royalty would be for the use of the VoiceBox
7 patents. Mr. Reed went over the extensive Amazon financial
8 data and documentation relating to Alexa, including Amazon's
9 own internal documents and key business presentation. Those
10 documents clearly show that Amazon clearly benefited from
11 the technology of the patent.

12 The evidence will show that the patents improved
13 speech technology and make Alexa simpler and easier to use,
14 it makes the thing more natural.

15 Mr. Reed will explain that Amazon should pay VB
16 Assets a reasonable royalty of \$46.7 million for its
17 infringement of the VoiceBox patents. This amount should
18 be, in what we call, a running royalty. An annual payment
19 for Alexa's use of the patented technology. A royalty based
20 on each new monthly active user of Alexa or Alexa Shopping.

21 There are over 153 million Alexa users in the
22 United States. Amazon should pay a reasonable royalty for
23 this infringing use. Amazon knew that it was in a race with
24 companies like Google and Apple, to win the race for voice.
25 They called it a land rush. Amazon understood whoever won

1 voice, would reap huge rewards. The evidence will show that
2 Amazon needed the patented technology to grow its Alexa
3 business and to meet its plans to "get big fast." Amazon
4 documents will show that Amazon knew and understood the
5 importance of having a high quality customer experience with
6 simple natural conversation with Alexa. A fair and
7 reasonable royalty for Amazon to pay VB Assets is \$0.40 per
8 new active user of Alexa for the '681 cooperative
9 conversation patent, and \$0.22 per new active user of Alexa
10 Shopping for the '176 and '097 voice ad patent, and another
11 \$0.22 for the '703 voice commerce patent. \$0.40 per new
12 active user royalty is a fair and just result for Alexa's
13 infringement of the '681 cooperative conversation patent.
14 \$0.22 per new active Alexa shopper is a fair and just result
15 for the '176 and '097 voice ad patent. And \$0.22 per new
16 active Alexa shopper is a fair and just result for the '703
17 patent.

18 This would result to date in a reasonable
19 royalty damages of \$46.7 million. The evidence will show
20 that Amazon expects to receive \$400 in additional revenue
21 per year from Alexa users over and above what a non-voice
22 Amazon prime member would spend. The \$46.7 million
23 represents a fraction of the cost savings and revenue that
24 Amazon will receive for infringing the VoiceBox patents.
25 The evidence will show that this is a reasonable royalty

1 that is fair and just.

2 Ladies and gentlemen, you heard from the Court
3 that witness credibility is yours to judge. I would ask you
4 to carefully consider and compare what Amazon witnesses say
5 in this court, and what Amazon's own documents state and
6 declare during the key time periods of this case. Thank you
7 for your time and consideration. We all appreciate your
8 attention and dedication to a fair result.

9 Thank you.

10 MR. HADDEN: Good afternoon. Being able to talk
11 to a computer and have it understand you and do what you ask
12 has been a goal and dream of computer scientists for
13 decades. It's a very hard problem, it's hard to get a
14 computer to recognize words from the noise that's received
15 at a microphone. And it's maybe even harder to get a
16 computer to understand the meaning of those words. People
17 can ask for things using lots of different words. You can
18 ask for the weather by saying, "what's the weather?" Or you
19 could ask by saying, "Do I need an umbrella?" And being
20 able to get a computer to understand that both of those are
21 asking for the same thing, is hard. And it gets harder when
22 you can ask for more and more things because people use the
23 same words to often refer to different requests.

24 So here is a simple example, right. I can say
25 Alexa, "Do I need an umbrella?" It means I want to know if

1 it's going to rain today. But I can use almost the
2 identical words, Alexa, "I need an umbrella", and I mean
3 something completely different. I may be shopping for an
4 umbrella. To get to a solution to that problem, this case
5 is really about two different paths. There was a path that
6 Amazon took, and it was based on statistical machine
7 learning. In particular, what are called deep neural
8 networks. That's the machine learning technology we hear
9 about today that's powering the AI revolution and things
10 like chat GPT. VoiceBox took a different path. They chose
11 to write manual rules. So programmers would write rules
12 that would try to capture the different ways that people
13 could ask for things.

14 Now, because Amazon chose instead to use machine
15 learning, you will learn from the evidence in this case that
16 the natural -- the deep neural networks that Amazon uses to
17 understand the meaning of words because they determine all
18 possible meanings for those words without first identifying
19 a context and without using short-term or long-term
20 knowledge, Amazon does not infringe these patents.

21 To get to why and how Amazon chose the path it
22 did, we really have to go back to 1992, and Dr. Nikko Strom,
23 who is sitting at counsel table with us, at that point was a
24 graduate student at the Royal Institute of Technology in
25 Sweden. And he was getting a Ph.D. in Speech Technology.

1 And during his research for his Ph.D., he invented a new
2 type of deep neural network that was particularly good at
3 speech recognition.

4 So what's a deep neural network? Well neural
5 networks are inspired by the human brain. Your brain has
6 billions of neurons, and they're connected by synapses. And
7 when you learn the strength of those connections gets
8 varied, and it changes. And that's how you learn.

9 So neural networks try to model that same idea,
10 mathematically. So we have these circles, those represent
11 the mathematical neurons in a neural network, and they're
12 connected together in lots of different ways. And then
13 those connections also have different strengths. So when a
14 neural network processes data, it takes the input in, the
15 data goes through the network, and it gets modified based on
16 those different waves, and the output will vary. That's how
17 the neural network computes or answers whatever question
18 it's been trained to answer, and it learns to do that from
19 examples, much like people learn. So you can train a neural
20 network to recognize and understand the meaning of words by
21 giving it examples and it learns. And importantly, no human
22 has to tell it how to do its job, it learns itself from
23 examples. In the case of Alexa, millions of examples.

24 If we go back, after Dr. Strom got his Ph.D. in
25 1992, or in 1998, rather, he joined MIT, in particular he

1 joined the Spoken Language Laboratory at MIT, which was one
2 of the top research facilities in the world that were
3 working on conversational human computer systems. He worked
4 on a system there called Galaxy, that allowed people to
5 interact with computers to do all kind of tasks. During his
6 time at MIT, he helped improved the underlying speech
7 recognition system, and he helped make that system more
8 conversational, and you'll hear more about MIT Galaxy system
9 in this case. In 2000, Dr. Strom joined a start up company
10 called TellMe to try to bring those conversational speech
11 systems to wider audience so more people could use them in
12 their daily life. That's what TellMe did, develop systems
13 like Fandango, so you could buy movie tickets with your
14 voice, or trade stocks through eTrade with your voice. It
15 was a successful company. In 2007, Microsoft bought TellMe,
16 and at that point, Dr. Strom joined Microsoft and he worked
17 on the core speech team at Microsoft. One of the things he
18 did was he voice enabled the windows operating system so
19 that people who were visually impaired, who had trouble
20 seeing, could still control their computers with their
21 voice. The other thing he did was he brought his neural
22 network technology, and improved Microsoft's underlying
23 speech recognition system with it. And he had a good job at
24 Microsoft, it was a very well respected team, he was doing
25 good work.

1 But in the spring of 2011, he got a call from
2 Amazon, and Amazon asked him to come join Amazon and work on
3 a secret project. They wouldn't tell him what the project
4 was, but they told him it had to do with speech, his
5 expertise. And Dr. Strom was intrigued and he will tell you
6 why, but he decided to take the leap. So in September,
7 2011, he left Microsoft and he joined Amazon.

8 And when he got there, they told him what the
9 project was. And the project was to build a device that
10 would be in people's homes and that people could talk to
11 from across a noisy room that would understand what they say
12 and do what they wanted. Lots of things. And the
13 inspiration was this Star Trek computer. And the notion was
14 in Star Trek, the people on the ship could say computer from
15 anywhere, you never see the computer, but it's always there,
16 it hears what they want and it does what they ask. And that
17 was what he and his colleagues at Amazon were tasked to do.
18 That's a very hard problem as Dr. Strom will explain,
19 because no system had ever been able to recognize human
20 speech from across a room, if there is a lot of noise. But
21 he and his colleagues solved that problem, and they did it
22 using that deep neural network technology that he began
23 developing back in 1990.

24 He also knew, and his colleagues knew, that they
25 had to build Alexa to be able to understand lots of

1 different kind of requests. And they knew that those
2 requests would be coming from millions of different people
3 who would speak in different ways and would ask for things
4 in different ways. And they knew that the only way that
5 they could build a system that could do all those things was
6 to use Artificial Intelligence, to use that machine
7 learning, deep neural network technology. And so that's
8 what they did. Now today, Alexa can distinguish, "do I need
9 an umbrella", from "I need an umbrella", and give you the
10 right answer.

11 So that is the path that Dr. Strom and Amazon
12 took to get Alexa. And they succeeded. And in November of
13 2014, Alexa launched, and the first Echo device was sold.
14 And it was a revolution. It was an innovation in speech
15 technology, and was widely recognized as that.

16 So that's one path.

17 The other path is the path that VoiceBox chose
18 to take. And they chose to try to build a system based on
19 manual rules where programers would try to guess how people
20 would ask for things, write rules to capture those requests.
21 We saw this image of this Cybermind demonstration from
22 around 2002. What's going on in this demonstration is that
23 that circular speaker and microphone is connected to a
24 laptop computer. And VoiceBox didn't have any Speech
25 Recognition Technology, so that laptop computer was actually

1 running software from IBM that did the speech recognition,
2 dictation software. And VoiceBox didn't have any text to
3 speech technology either, text to speech is what allows the
4 computer the talk back. So that laptop was running text to
5 speech software from AT&T. The part of that software on the
6 laptop that came from VoiceBox was this rules-based system.
7 And that allowed the demonstration to work because the
8 VoiceBox employee knew how he could say things so that they
9 would match the rules. If he said something the rules were
10 not written to understand, the system wouldn't work.

11 In fact, VoiceBox gave up on Cybermind, never
12 sold a single one of those devices and quit developing it in
13 2005.

14 Now as you heard, at that point they switched to
15 automobile systems, and in particular, they worked with
16 Toyota. But the system they developed for Toyota was also
17 based on the manual rules and non-machine learning. It
18 didn't work that great. This is from Toyota's own
19 evaluation of the system in 2017. As you can see,
20 63 percent of the Toyota evaluators rated it as somewhat
21 bad, or significantly bad. And the comments were along the
22 same lines. Talks about how critical tasks such as, "go to
23 address", are a trial and error battle.

24 You also heard that VoiceBox was trying to
25 develop an assistant for Samsung, and that's true. But

1 their own internal evaluation of that system showed why the
2 path they had taken was the wrong one. So this is an
3 internal VoiceBox document, and it's reference to N66. N66
4 was the current version of their software. It says here,
5 "thousands of overly specific rules." It says that you must
6 list all possible combinations as alternatives to the rules.
7 The next page, it goes on and explains how unwieldy this
8 became. You need a hundred different rules just to handle
9 phone numbers, and those came out of a list of 2000 rules
10 just for contacts. They write at the bottom here, why are
11 there so many. The problem is if you're going to try to
12 write rules, manual rules to try to capture everything that
13 someone would want to say, it just becomes impossible.

14 And that's what VoiceBox found out
15 unfortunately. And Samsung ended up not working with
16 VoiceBox, instead switched to a company that was developing
17 machine learning technology more like Amazon's.

18 At that point, the engineers within VoiceBox
19 realized they had taken the wrong path. So this is an
20 e-mail from Mr. Menaker, who was the Senior Vice-President
21 of Engineering to Mr. Kenck, who was the Chief Financial
22 Officer. Mr. Menaker is saying from an engineering point of
23 view, VBT, that's VoiceBox Technology the company, has big
24 challenges to win and deliver future projects. Then he
25 explains the challenges with respect to NLU, the Natural

1 Language Understanding, he says there is no clear plan to
2 introduce next generation of NLU. The current NLU is
3 expensive to deliver and maintain. And then with respect to
4 application development, he says the current approach not
5 scalable and expensive, needs improvement. Maybe most
6 telling of all, he says new approach not defined the
7 engineers had realized they had kind of reached the end of
8 the road and they didn't know what to do next.

9 But what they did do, is they tried to copy what
10 Amazon had already done. So this is an e-mail from
11 Mr. Carter, Vice-President of Engineering, and he says here,
12 we have conducted a device that imitates the Amazon Echo.
13 He goes on and talks about the microphone array, he says
14 this is nearly identical to the Amazon's Echo array, they
15 show the picture, it looks just like an Echo. This is seven
16 months after the Echo was already on the market.

17 But their attempts to pivot and try to copy
18 Amazon came too late. They could never catch up. So in
19 2017, VoiceBox laid off some workers. And other engineers
20 left, and some of them even got jobs at Amazon. So at that
21 point, they didn't bring anything that was helpful in
22 building Alexa because it was already built three years
23 earlier.

24 We also know why those engineers left in 2017.
25 This is from VoiceBox's own Board of Director presentation,

1 and it explains flight risk, and it says that VoiceBox's
2 total compensation is approximately 30 percent below market.
3 And the top people are 40 to 50 percent below market. And
4 that people are asked to multitask and do work below their
5 capability, so they left.

6 Now you heard about meetings between VoiceBox
7 and Amazon, and that's true. It's important to note,
8 though, that both of those meetings, it was VoiceBox that
9 approached Amazon and asked to meet. Let's talk about the
10 first one in 2011. When Amazon met with VoiceBox in 2011,
11 it had already determined the criteria that it would have to
12 be met by a company if they were going to partner with
13 Amazon. In particular, with respect to this NLU, the
14 Natural Language Understanding technology. And this is a
15 document from 2011 where Amazon laid out those requirements
16 internally. And the first requirement is that the system
17 has to be statistical based. It says here statistical-based
18 approach. It explains that NLU systems generally follow a
19 rules or statistical-based approach. Statistical-based
20 here, refers to machine learning. Statistical means you
21 learn from the data, you don't write the rules. At the end
22 it says we require NLU technology built using a statistical
23 approach given its scalability advantages over a
24 rules-based approach.

25 That's what Amazon needed if it was going to

1 partner with VoiceBox.

2 But we know from what VoiceBox showed them, and
3 this is part of the presentation that VoiceBox gave, that
4 what they had was a rule-based approach. They showed them
5 this slide which shows a simple system of rules to be used
6 to determine whether or not the user is asking about
7 calendar or music. And there is no dispute there was a
8 rules-based system. Mr. Kennewick testified in his
9 deposition that it was rules-based, and that those rules
10 were manual rules, they were created by the development
11 team.

12 And immediately after that meeting, the
13 engineers at Amazon who recognized that what VoiceBox had
14 showed them was a manual rules-based machine, not machine
15 learning. This is Mr. Typrin, who was one of the engineers
16 from Amazon who attended the meeting, he said we met with
17 VoiceBox yesterday. The bottom line is that their NLU is
18 based on manual tuning, people had to write the rules, not a
19 machine learning.

20 And in Amazon's evaluation of VoiceBox and the
21 other companies that it met with, this is exactly what they
22 said, they said VoiceBox statistical or rules, rules. And
23 then they note at the top, to date, no prospective company
24 clearly satisfies our partnering criteria. So Amazon
25 considering VoiceBox, they considered these other companies,

1 none of them had a machine learning based NLU system that
2 Amazon needed, so they built their own. Amazon built their
3 own using those deep neural networks.

4 Now, Amazon did acquire, did both, they paid a
5 lot of money to buy other companies that did have useful
6 technology. One example, is a company called Yap, that had
7 Speech Recognition Technology, Amazon bought and hired the
8 engineers in 2011, they bought a company called Ivona which
9 had text to speech technology, which helped Alexa sound more
10 natural, they bought that company and hired the engineers
11 and they bought a company called Evi which has technology
12 useful for answering general technology questions, they
13 purchased that company, hired the engineers and they all
14 became part of the Alexa team. I'm going to jump ahead to
15 this meeting in 2017. In 2017, VoiceBox again approached
16 Amazon this time hoping that Amazon would buy them. This is
17 an internal e-mail from slightly later in 2018 from
18 Mr. Kennewick. And he's talking to his brother Rich, who is
19 the President, and the CFO Mr. Kenck, and he says, let's
20 remember, we have been trying to get the company sold or
21 financed for a long time. Here is a list of prospective
22 buyers who backed out after diligence, he list all these
23 companies, including Amazon, Microsoft, Samsung. And what
24 diligence means is, once the companies looked at VoiceBox's
25 technology and business, they decided they didn't want to

1 buy it. Amazon is just one of many companies to reach that
2 conclusion.

3 Let me talk now about the patents in this case,
4 you heard about them, one important point about these
5 patents is that VoiceBox has never used any of them. So
6 what does that mean? It means that VoiceBox could never do
7 what it claimed in any one of these patents.

8 If we look at the evidence, we'll see that's the
9 case. So we start with this voice commerce patent, it was
10 filed in 2014. But in 2015, a year later, VoiceBox is
11 trying to work on a voice commerce solution for Samsung.
12 This is their own internal test results. And the user would
13 say "shop for purses online," and the response would be
14 "here is information about Aces Town Car Service," or the
15 person would ask "show me DKNY blue jeans," and their
16 response would be, "I was not able to find that business in
17 that city." The system could not understand the request the
18 users were making.

19 We know from VoiceBox's documents, and this is
20 an e-mail from Mr. Bargaen at VoiceBox, again to Bob
21 Kennewick, another one of the Kennewick brothers, this is
22 dated July 5th, 2016. This is now two years after Amazon
23 already launched the Echo and Alexa. What he says is,
24 what's new with Alexa. Then he goes on and says, we have
25 just a couple of minor issues to fix with the purse demo.

1 They're trying to create a demo that would allow you to see
2 what it would be like to buy a purse with your voice. He
3 goes on and on and says we need to implement some sort of
4 buy functionality. What we're missing though is pure voice,
5 that was the tougher problem that Amazon was trying to
6 solve. VoiceBox did not have a solution for voice commerce
7 when they filed their patent. In fact, two years later,
8 they were trying to copy Amazon.

9 There is no real dispute about this.

10 Mr. Kennewick again testified at his deposition that at the
11 time of those e-mails, VoiceBox did not have a way for users
12 to make purchases solely with their voice.

13 If we look at the voice advertising patents, the
14 situation was much the same. Those are filed in 2007 by
15 Mr. Freeman, who later testified in his deposition that in
16 2007 when those patents were filed, VoiceBox did not have a
17 system that provided spoken advertisers based on the user
18 utterance in response to what the user said.

19 And Mr. Kennewick in his deposition, testified
20 that that was also true five years later in 2012, VoiceBox
21 still didn't have a solution for determining what voice ad
22 to show somebody five years after they filed the patent.

23 With respect to the '681, this cooperative
24 conversation patent, Mr. Freeman testified, and he's the
25 inventor on that, that at no time while he was at VoiceBox,

1 and he quit in 2010, at no time while he was there did
2 VoiceBox implement a system that would do what this patent
3 requires, which is identifying a context associated with an
4 utterance using both the short-term shared knowledge and
5 long-term shared knowledge. So VoiceBox could never do what
6 any of these patents claimed. They had no solution.

7 So why does that matter? Well it matters
8 because as you heard in the patent video, patents are
9 bargains. They're bargains between the inventor and the
10 government, and us. And the inventor's part of the bargain
11 is a new solution, right? That's what they give us in
12 exchange for getting a patent. But if you don't have a
13 solution, and you don't describe it in your patent when you
14 file it, your patent is not valid. And that's the case
15 here. And that's what's captured by what's called the
16 written description law.

17 Another problem with these patents is that
18 though VoiceBox could never do what they claim, other people
19 did, and one of them are the folks at MIT where Dr. Strom
20 worked after he got his Ph.D. And that Galaxy system did
21 what these patents later tried to claim. And you will hear
22 from Dr. Polifroni, who was one of the developers along with
23 Dr. Strom at Galaxy system, and he will be here and testify
24 about it. Another system that did the voice commerce patent
25 before VoiceBox was United Airlines, and you will hear about

1 that from Amazon's expert Dr. Michael Johnson, who is an
2 expert in machine learning, speech technology, he is also
3 the Chairman of the Electrical and Computer Engineering
4 Department at the University of Kentucky. So for that
5 reason, you will see that these patents are not valid and
6 they shouldn't have been issued. I'm going to talk a little
7 bit now about why Alexa did not use these patents. Before I
8 do that, I want to remind you of one of the things you heard
9 in that patent video, which is that to infringe a patent,
10 you have to do every single thing in a claim. So here is a
11 simple example. There is a claim for a ball, it's leather,
12 it's stitched, filled with air and round. That would cover
13 a soccer ball, it meets all those requirements. But if you
14 looked at a football, even though it's leather, stitched,
15 filled with air, it's not round. So meeting part of the
16 requirements for the claim is not enough, you have to meet
17 all of the requirements. You'll see that that's not the
18 case here.

19 Now, I'm not going to go through all the
20 elements of the claim and all the language, I'm only going
21 to talk about the claims in the '681 patent, Dr. Johnson
22 will explain the rest. But if we just focus on this
23 language here. What this requires is that the system
24 identify a context associated with what the user said. And
25 then after you -- it has identified a context, it has to

1 establish an intended meaning for the utterance, for the
2 words the user said within that identified context. And
3 that's just not the way Amazon machine learning based system
4 works.

5 And here is why. So the way Amazon's Natural
6 Language Understanding system works, is it had a whole
7 series of these neural networks, these kind of mini-brains.
8 And each one of them is trained to kind of identify words
9 that match an intent related to what it's trained to do. So
10 the shopping neural network will look for requests that it
11 makes related to shopping. The weather DNN will look for
12 requests it thinks is related to weather. What Amazon does
13 is, it sends the words that the user said to all of those at
14 the same time, and they all get processed and they all come
15 up with their best interpretation for what they think those
16 words mean within their own context, and they output their
17 best intent and all those get collected. And when a DNN
18 comes up with a meaning, it also assigns a confidence to it,
19 how sure it is that it got the right answer. Amazon uses
20 those confidence scores and ranks those meanings in a way.
21 It does all of that. Every possible meaning that could be
22 relevant to Alexa is determined right away from just the
23 words you said.

24 And Amazon does that because the system has to
25 be very fast. Alexa processes around a thousand requests a

1 second. And to do that, it needs to immediately be able to
2 figure out all the possible meanings. The other reason
3 Amazon does that is it doesn't know if the words you said
4 relate to shopping, or music or alarms until those DNN's do
5 their job and come up with their intent and their confidence
6 score.

7 So here is an example. It's a patent -- if
8 Alexa worked the way the patent did, and you picked a
9 context first, say shopping, right, the words would come in,
10 and you would get some shopping intent out. But you
11 wouldn't know if that was right. So if we go back to my
12 umbrella example, right, if Amazon did this, which is that
13 you would just pick a context like shopping, and if you said
14 "Alexa, do I need an umbrella", the shopping DNN would think
15 that's a shopping intent and it would get it wrong. It's
16 only because Amazon also runs the weather DNN at the same
17 time, and the weather DNN will say no, they're asking about
18 the weather, I'm more confident than you are that Amazon is
19 able to pick that that's about weather, but "I need an
20 umbrella" is actually about shopping. So that wouldn't work
21 if Amazon did what the patent does, and so it doesn't.

22 The other thing that Amazon doesn't do is use
23 this accumulated short-term and long-term shared knowledge
24 which is talking about what people said earlier in the
25 conversation, what they said in other conversations. Amazon

1 doesn't do that because most requests to Alexa are single
2 statements. "Alexa, play the Beatles," or "Alexa, set a
3 timer." So the system is optimized to handle those types of
4 requests.

5 The other reason Amazon doesn't do that is, that
6 all requests are handled initially by different computers.
7 So if you had to get a prior request from one computer and
8 send it to another computer, it would take too long and it
9 wouldn't work.

10 So what happens when you say "Alexa, find me a
11 paper towel." Everybody that has used Alexa says of course,
12 Alexa knows what I have done before, it remembers things.
13 That's true, but it doesn't use that information to
14 determine the meaning of words. What happens is those words
15 come in, they get processed by all these DNN's, all those
16 DNN's pick their own favorite meaning, they get collected
17 and ultimately, in this case, because it's a shopping
18 request, it should get sent to the shopping application.
19 What it does then, is it realizes it's a request for paper
20 towels, it knows that it's from you, so it looks in your
21 purchase history and sees that you have purchased Bounty
22 paper towels, so it adds Bounty paper towels to your
23 shopping cart. But that has nothing to do with what you
24 told Alexa before, it just knows what you have done based on
25 what your account says.

1 So for that reason, Amazon doesn't infringe this
2 claim and there are other reasons as well that Dr. Johnson
3 will explain. For similar reasons, this notion that Amazon
4 and Alexa, because it uses these neural networks they all
5 get processed at the same time, there is no identification
6 of a context before the meaning is determined, none of these
7 patents are infringed.

8 We talked a lot about VoiceBox, but VoiceBox did
9 not sue Amazon. And none of the companies that VoiceBox
10 sold its pieces to, Nuance or Oracle, ever sued Amazon.

11 The plaintiff in this case is VB Assets. So not
12 only did VoiceBox not sue Amazon, VoiceBox really wanted to
13 be part of Amazon. This is an e-mail from Mr. Kennewick in
14 2017, he's telling the folks at Amazon when he's trying to
15 get them to buy his company, he says our team would be
16 excited about becoming part of the Alexa team and realizing
17 our vision through a synergistic path. He says I personally
18 feel that it would be a shame if we can't find a way to do
19 something. So they wanted to be part of Amazon.

20 But Mr. Kennewick instead kept the patents in
21 this case, the patents that VoiceBox could never do. And he
22 formed this company, VB Assets, for the sole purpose of
23 suing Amazon, because Amazon succeeded.

24 But punishing a company whose technology was
25 successful is not the purpose of our patent system. As you

1 heard in the patent video, the Constitution makes it clear,
2 the purpose of our patent system is to promote the progress
3 of science and useful arts technology. And Dr. Strom and
4 his colleagues at Amazon, more than 10,000 engineers who
5 worked on Alexa, they have advanced the science and speech
6 technology in Artificial Intelligence through their work on
7 Alexa. And they have published hundreds of scientific
8 papers spreading those advances to others. And the United
9 States Patent Office, has recognized those advances as well.
10 They have granted over 400 patents to Amazon on Alexa and
11 Dr. Strom is an inventor on over 40 of those patents.

12 I'm going to stop there, thank you very much for
13 your time and attention in this case. You won't hear from
14 Amazon's witnesses for a couple of days because VB Assets
15 goes first, but I look forward to speaking to you again at
16 the end of the case.

17 Thank you.

18 THE COURT: All right. Let's call the first
19 witness.

20 MR. YOON: Your Honor, may I adjust the lectern
21 before you do that.

22 THE COURT: Yes.

23 MR. YOON: We had a technical difficulty before
24 Your Honor.

25 At this time, Your Honor, VB Assets calls its

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1 first witness, Mike Kennewick, Your Honor. And
2 Mr. Kennewick's witness binder is on the stand.

3 THE COURT: All right.

4 COURTROOM DEPUTY: Please raise your right hand.
5 Please state and spell your full name for the record.

6 THE WITNESS: Mike Kennewick, M-I-K-E,
7 K-E-N-N-E-W-I-C-K.

8 MIKE KENNEWICK, having been duly sworn, was
9 examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. YOON:

12 Q. Good afternoon, Mr. Kennewick. Could you please
13 introduce yourself to the jury?

14 A. Hi, my name is Mike Kennewick.

15 Q. Mr. Kennewick, where did you grow up?

16 A. I grew up in Seattle, Washington.

17 Q. Could you briefly describe your educational
18 background, sir?

19 A. I got a bachelor of science in electrical engineering
20 from the University of Washington.

21 Q. And what was your first job after college?

22 A. My first job was at a company called Digital
23 Equipment. Digital Equipment at the time was the second
24 largest computer company in the world. And specifically, my
25 job was to work with the company Boeing to help them

M. Kennewick - direct

1 implement computers in advanced testing of airplane wings,
2 deploying sensors across large fields and that sort of
3 thing.

4 Q. After Digital Equipment, sir, what did you do next?

5 A. I went to work for Microsoft.

6 Q. And what time frame was this?

7 A. This was in 1981.

8 Q. And about how big was Microsoft at that time?

9 A. I was the fiftieth employee.

10 Q. What were your responsibilities at Microsoft?

11 A. I was hired by Steve Ballmer, who had just joined the
12 company and he told me specifically that my job was to take
13 over the business development and licensing of software and
14 IP from Bill Gates. So I spent the first two years
15 traveling around the country with Bill, and we worked with
16 computer companies to license MS DOS Windows. My team over
17 the years probably did the first several hundred licensing
18 deals for Microsoft Windows.

19 Q. And sir, what did you do after Microsoft?

20 A. Microsoft had started to grow pretty big, and I
21 really like the entrepreneurial spirit of early Microsoft,
22 so I decided to leave and do a startup.

23 Q. What was that?

24 A. The company name was Saros, and we were the first
25 company to bring enterprise level document management down

M. Kennewick - direct

1 on to PC's.

2 Q. And, sir, are you familiar with a company called
3 VoiceBox?

4 A. Of course.

5 Q. Were you one of the founders of VoiceBox?

6 A. I was.

7 Q. And how and why did you found VoiceBox?

8 A. At Steros, we had a customer request to see if we
9 could use voice to allow them to access their documents and
10 Document Management System over the internet. And so we
11 hired my brother Bob, who was an early internet pioneer, to
12 look at that project. And what we found is that voice at
13 the time in the late 1990s were largely insufficient, the
14 user had to speak in keywords, and you were very limited in
15 what you could say. And you had to design a system to only
16 say certain words. And that made it near impossible to use
17 against a robust Document Management System.

18 So we decided it was a big opportunity to look
19 at why technology, even the speech technology, even though
20 it's been around 25 years hasn't really approached what,
21 Hollywood thought of in Star Trek. So we wanted to figure
22 out how to change the man/machine interaction to be much
23 more natural.

24 Q. Now if you look in your witness binder sir, there is
25 an exhibit there, PTX-575.

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1 A. Yes.

2 Q. And do you recognize PTX-575, sir?

3 A. I do.

4 Q. What is it?

5 A. Its our original business plan.

6 MR. YOON: At this time Your Honor, we would
7 move to admit Exhibit 575.

8 MR. HADDEN: No objection.

9 THE COURT: Thank you. It's admitted.

10 (PTX Exhibit No. 575 was admitted into
11 evidence.)

12 BY MR. YOON:

13 Q. And sir, this business plan, it has the word
14 Androfactory on it, do you see that?

15 A. Yes.

16 Q. What's what was that?

17 A. That was the original company name.

18 Q. What was the date of this original plan?

19 A. It was September 2001.

20 Q. If could go to page 8238, and Mr. Kennewick, what was
21 the barriers and challenges that you and your brothers and
22 the team at VoiceBox faced when you formed the company?

23 A. There were a number of them, but the top two really
24 were that speech recognition was not reliable, was very
25 limited. At the time the companies that were doing this

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1 were using applications like directory assistance. There
2 was dictation coming out but it was only about 95 percent
3 accurate even for the best systems, and that wasn't good
4 enough because as you said earlier, you have about five
5 errors in every hundred words, and if you had an accent or
6 you had noise, it dropped way, way down. The second is that
7 human interaction and human language is very complicated.
8 And teaching the computer to really think and cooperate in a
9 speaking environment was very, very difficult.

10 Q. If we go to page 8247. You see this is the
11 management team?

12 A. Yes.

13 Q. What was your role at VoiceBox?

14 A. I was the CEO.

15 Q. And another witness in this case will be Mr. Freeman.
16 What was his role?

17 A. He was the Chief Operating Officer, but he was also
18 Head of Product Management.

19 Q. If we could now go to PTX-669, in your binder, sir,
20 it's PTX-669. Do you recognize Exhibit 669, sir?

21 A. I do.

22 Q. What is it?

23 A. It's an update of our business plan.

24 MR. YOON: I would now ask to admit Exhibit 669.

25 MR. HADDEN: No objection.

M. Kennewick - direct

1 THE COURT: Thank you. It's admitted.

2 (PTX Exhibit No. 669 was admitted into
3 evidence.)

4 BY MR. YOON:

5 Q. Is this the VoiceBox business plan of November 10th,
6 2001?

7 A. It is.

8 Q. And I see that the name is different on this
9 November 2001 business plan?

10 A. Yes. We renamed the company to VoiceBox.

11 Q. And if we could now go to page 8264. And what was
12 Cybermind, we heard about that in the opening?

13 A. Cybermind was the worlds first smart speaker and
14 voice assistant. The whole idea was that people could talk
15 to it on the go walking around a room and ask it questions
16 and it answers, and we wanted a truly human to human type
17 communication. And we were able to do it using just your
18 voice.

19 Q. And if we could now go to your binder exhibit
20 PTX-526?

21 A. 526?

22 Q. Yes.

23 A. I have got it.

24 Q. And Mr. Kennewick, do you recognize Exhibit 526?

25 A. I do.

M. Kennewick - direct

1 Q. What is it, sir?

2 A. It's an update to two VoiceBox business plans in
3 February of 2002.

4 MR. YOON: I would like to now admit
5 Exhibit 526.

6 MR. HADDEN: No objection.

7 THE COURT: Thank you. It's admitted.

8 (PTX Exhibit No. 526 was admitted into
9 evidence.)

10 BY MR. YOON:

11 Q. And as you mentioned, this is a business plan for
12 February 26, 2002?

13 A. Yes.

14 Q. And if we could turn to page 0190. And kind of
15 focusing on that top paragraph under products there, sir,
16 what was your company's product goal in 2002?

17 A. Our goal was to create a human to machine user
18 interface that was as human like as possible. That was the
19 goal.

20 Q. And is Cybermind shown on that --

21 A. It is, up there on the upper left side.

22 Q. If we go to the bottom of that page, and do you see
23 the Figure 2 VoiceBox solution?

24 A. I do.

25 Q. What is that, sir?

M. Kennewick - direct

1 A. That was the architecture that we had. And in 2001
2 and 2002, there was no cellular network, so you couldn't
3 have a smart speaker go out straight over the internet like
4 you can today. There was no WiFi, even in most households.
5 What we had to do was we used Bluetooth technology to have
6 the smart speaker up to 100 meters away from the computer,
7 you would then talk to it, and it used a long distance
8 Bluetooth to go and use your PC, to then go out over the
9 internet. That was the main reason, every household had
10 PC's connected to the internet but they didn't have WiFi in
11 place.

12 Q. If we could turn to page 0194. Do you see that this
13 slide references VoiceBox architecture, do you see that?

14 A. I do.

15 Q. Do you see at the bottom there is a reference to
16 software?

17 A. Yes.

18 Q. And that software section, let's go to the next page,
19 0194. And if we could on that page, if you could put just
20 the top paragraph on the screen. And kind of put it to the
21 side so you can see both at the same time. During the
22 opening by Amazon's counsel, you indicated that the original
23 Cybermind used some software from IBM, did you hear that?

24 A. Yes.

25 Q. What was that, sir?

M. Kennewick - direct

1 A. That was a component called the ASR, Automated Speech
2 recognition engine and that was pretty much a commodity
3 product at the same time.

4 Q. Was that the recognition engine that could achieve
5 maybe 95 percent?

6 A. That's correct.

7 Q. And also counsel for Amazon mentioned a
8 text-to-speech module. What was that?

9 A. The text-to-speech module is what you hear coming out
10 of the interface. At the time AT&T had the best
11 text-to-speech module, later we went with other companies.

12 Q. Now, sir, focusing on what VoiceBox was, there was
13 some discussion about Natural Language Understanding or NLU.
14 What was the focus of VoiceBox Technology in 2002?

15 A. Our focus was to create a model that would
16 essentially examine the words that the user was speaking and
17 from that model, extract topics, examine noun verb
18 combination and hypothesize different contexts, is this
19 music, is this navigation, am I looking for something and
20 coming up with final solution in terms of context and from
21 that arising the commands.

22 Q. Let's talk about the hardware VoiceBox was using. If
23 could go to page 0197.

24 Was VoiceBox working on any type of hardware
25 technology in 2002?

M. Kennewick - direct

1 A. We did. That Cybermind picture that everyone saw had
2 an embedded set of multiple microphones, that's called an
3 array microphone. An array microphone then forms a beam
4 that cancels out noise. What that enables is two things.
5 One is to work well in a commercial environment or in-home
6 environment where a dog is barking or the phone is ringing,
7 and it also allows you to stand more than 30 feet away from
8 the computer and make the commands.

9 Q. Now, when did VoiceBox start working with microphone
10 array technology?

11 A. Between 2001 and 2002.

12 Q. And approximately how much was that before the
13 introduction of Alexa in November of 2014?

14 A. Well over a decade.

15 Q. If we could have PDX2-2 on the screen?

16 Mr. Kennewick, do you recognize this picture?

17 A. I do.

18 Q. And what is it?

19 A. This is our picture of our team in about 2013.

20 Q. And at its peak, how many people were employed by
21 VoiceBox?

22 A. About 300.

23 Q. Now, after 2005, did VoiceBox undertake any research
24 and development efforts to improve upon the original
25 Cybermind product?

M. Kennewick - direct

1 A. Yes, of course. We -- that was both a corporate
2 mandate and a personal passion, so we continually invested
3 in Cybermind.

4 MR. YOON: Your Honor, we would like to now
5 admit exhibit JX-1, which is the '681 patent in this case.

6 MR. HADDEN: No objection.

7 THE COURT: Thank you. It's admitted.

8 (JX Exhibit No. 1 was admitted into evidence.)

9 BY MR. YOON:

10 Q. Mr. Kennewick, would you understand that I'm
11 referring to JX-1, if I refer to the '681 patent?

12 A. Yes.

13 Q. And you understand this is the cooperative
14 conversation patent?

15 A. It is.

16 Q. And is one of the inventors on the '681 patent
17 Mr. Freeman?

18 A. It is. He is.

19 Q. And was Mr. Freeman part of the original management
20 team at VoiceBox?

21 A. He was.

22 Q. And is it your understanding that Mr. Freeman will be
23 a witness at this trial?

24 A. Yes, he will be.

25 Q. And do you see the filing date of the '681 patent

M. Kennewick - direct

1 application was October, 2006?

2 A. Yes, I can see that.

3 Q. And was the '681 patent a result of VoiceBox's
4 efforts to improve upon the original Cybermind product?

5 A. Yes, it was, it was based on a lot we studied and
6 learned.

7 MR. YOON: Your Honor, at this time we would
8 like to admit exhibit JX-3, the '176 patent.

9 MR. HADDEN: No objection.

10 THE COURT: Thank you. It's admitted.

11 (JX Exhibit No. 3 was admitted into evidence.)

12 BY MR. YOON:

13 Q. Mr. Kennewick, will you understand that I'm referring
14 to exhibit JX-3, if I refer to the '176 patent?

15 A. Yes.

16 Q. Are you one of the inventors on the '176 patent?

17 A. I am.

18 Q. Do you see that the filing date for the '176 patent
19 was February 2007?

20 A. Yes, I can see that.

21 Q. And what is the '176 patent directed to, sir?

22 A. The '176 patent was based on our idea that since
23 prior to 2007 we saw that the internet was being largely
24 supported by advertising. And so we tried to envision what
25 the next generation of advertising would be on multiple

M. Kennewick - direct

1 devices powered by voice base user interfaces. To do that,
2 we wanted to be able to present more interactive ads that
3 are voice driven and voice interactive to the marketplace.

4 Q. And was the '176 patent part of VoiceBox's efforts to
5 bring the Cybermind to market?

6 A. Absolutely.

7 Q. How so?

8 A. We ended up -- our business model was to have a suite
9 of technology from the Cybermind itself to the NLU, to other
10 components that we had, and we licensed it to companies who
11 in turn take it to market. And so -- sorry, I lost my train
12 of thought, would you please repeat the question?

13 Q. Was the '176 patent part of VoiceBox's effort to
14 bring the Cybermind to market?

15 A. Yes. And so we offered it to our potential partners
16 including Amazon and other partners.

17 MR. YOON: I would like to now, Your Honor,
18 admit exhibit JX-5, the '097 patent.

19 MR. HADDEN: No objection.

20 THE COURT: Thank you. It's admitted.

21 (JX Exhibit No. 5 was admitted into evidence.)

22 BY MR. YOON:

23 Q. And Mr. Kennewick, would you understand that I'm
24 referring to exhibit JX-5, if I refer to the '097 patent?

25 A. Yes.

M. Kennewick - direct

1 Q. And are you one of the inventors on the '097 patent?

2 A. I am.

3 Q. What is the relationship between the '176 and the
4 '097 patent?

5 A. The '097 was an extension of the other patent where
6 it was meant to expand on the number of use cases that could
7 be involved there. For example, it added the use of a
8 pronoun so that if you wanted to use the word it, it would
9 figure out it relates to a product that you might want to
10 put in your car.

11 Q. Will you understand that I'm referring to the '176
12 and '097 patent, if I use the term voice ad patents?

13 A. Yes.

14 Q. In the 2005 time, let's talk about the business.
15 There was a lot of discussion during Amazon's opening
16 statement about what VoiceBox's business was and was not.
17 In the 2005, 2006 time frame, what type of businesses was
18 VoiceBox looking at?

19 A. So, we were considering three potential business
20 paths. The first was taking the product directly to the
21 consumer. We were negotiating with the Home Shopping
22 Network as a place to initially launch the product. But it
23 took a lot of capital, and we did go out and get an offer
24 from a venture capitalists to provide \$5 million to help us
25 bring it to market. At the same time, Gateway Computer was

M. Kennewick - direct

1 very interested in potentially bundling it with their PC's
2 in retail stores. And finally, automotive, we were having
3 discussions with Toyota and those were the three.

4 Q. And what did the company help make the decision
5 between those three patents?

6 A. Toyota came to us and said that they really like the
7 technology, and that they would essentially pay us \$5
8 million up front to develop the product for the car. And
9 when we compared it to the risks of bringing it retail and
10 essentially getting \$5 million from venture capitalists, we
11 thought it was the better alternative, particularly since
12 Toyota was the number one car company in the world.

13 Q. If we could take a look at PTX-261. In your binder,
14 sir, PTX-261?

15 A. 621?

16 Q. 261.

17 A. Got it.

18 Q. And Mr. Kennewick, do you recognize Exhibit 261?

19 A. I do.

20 Q. What is it?

21 A. That is the press release between Toyota and
22 VoiceBox.

23 MR. YOON: At the time Your Honor, we would ask
24 to be able to admit Exhibit 261.

25 MR. HADDEN: No objection.

M. Kennewick - direct

1 THE COURT: Thank you. It's admitted.

2 (PTX Exhibit No. 261 was admitted into
3 evidence.)

4 BY MR. YOON:

5 Q. And Mr. Kennewick, what was the significance of
6 Toyota's development agreement with VoiceBox?

7 A. This was a very significant milestone for the company
8 because Toyota was committing to put this in many of their
9 cars, they ship 10 million cars every year throughout the
10 world, about 3 million in the United States. And they
11 proposed a very close partnership to tailor this capability
12 into the car.

13 Q. Did VoiceBox view this as a long-term relationship?

14 A. We did. In fact, we worked with Toyota for many,
15 many years.

16 Q. And what type of product did VoiceBox develop with
17 Toyota?

18 A. The first product we developed, they asked us to take
19 the Cybermind capability that we had and shrink it down so
20 it could run directly on the chips inside the radio. At
21 that time, there was no connectivity to cars, people didn't
22 have smartphones, there was no way to get the internet so we
23 ended up taking it and putting it into the chips.

24 Q. Did you also make a connective concept?

25 A. Yes, in 2011, Toyota asked us to essentially take the

M. Kennewick - direct

1 original version of Cybermind and upgrade it to connect to
2 the car, because by then, people had smartphones and people
3 were connecting cars to the internet.

4 Q. Now, did there come a time, Mr. Kennewick, when
5 VoiceBox met with Amazon?

6 A. We did, in October of 2011.

7 Q. And how about -- how did this come about?

8 A. We had some existing conversations with Amazon and
9 our business development people had discussions about
10 possibly working together on the Fire tablet. So our CFO
11 had a business school classmate that worked at Amazon, and
12 they talked and that classmate, introduced him to Nick
13 Komorous at Amazon.

14 Q. And if you could now look at PTX-271, sir?

15 A. 271?

16 Q. Yes?

17 A. I see it.

18 Q. Is that an e-mail chain that was sent to you, sir?

19 A. Yes, it was.

20 MR. YOON: We now like to move into evidence
21 PTX-271.

22 MR. HADDEN: No objection.

23 THE COURT: All right. Thank you. It's
24 admitted.

25 (PTX Exhibit No. 271 was admitted into

M. Kennewick - direct

1 evidence.)

2 BY MR. YOON:

3 Q. And Mr. Kennewick, who is Todd Kenck?

4 A. Todd Kenck was our CFO.

5 Q. Did he report to you?

6 A. Yes, he did.

7 Q. And if we could go down to the bottom e-mail on that
8 page. Who do you understand is Nick Komorous?

9 A. Nick Komorous worked on the Corporate Development
10 Team, they are the team that takes a look at partnership and
11 investments for Amazon.

12 Q. If you could now go to page 97720, do you see that
13 this is an e-mail dated Friday, October 21, 2011?

14 A. I do.

15 Q. If we could expand that. Was this after a first
16 meeting between Amazon and VoiceBox?

17 A. Yes it was.

18 Q. Do you see the statement "we found the meeting to be
19 extremely helpful, and would like to take you up on your
20 offer to have a deeper dive at your office." Do you see
21 that?

22 A. Yes.

23 Q. Did Amazon and VoiceBox ever have a deep dive meeting
24 at your office?

25 A. Yes, we had a very deep dive.

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1 Q. If could go to page 9719. Do you see that this is an
2 e-mail dated October 21, 2011, at 5:11 p.m.?

3 A. Yes.

4 Q. And did VoiceBox and Amazon enter into a
5 nondisclosure agreement, or NDA, prior to your meeting at
6 your office?

7 A. We did.

8 Q. If we could now go to page 9717. And do you see
9 there is an e-mail there dated October 25, 2011?

10 A. I see it.

11 Q. If we could just expand the top e-mail there. And
12 did that e-mail identify the initial agenda for the deep
13 dive meeting?

14 A. Yes, it does.

15 Q. And let's talk about this chain here. If we go now
16 to page 9714, do you see there is an e-mail at the bottom of
17 that page dated November 3rd, 2011. If we could have the
18 full e-mail on the screen. And Mr. Kennewick, was this
19 e-mail sent after the deep dive meeting?

20 A. Yes, it was.

21 Q. And what did Amazon tell VoiceBox?

22 A. They told us that they were very impressed with what
23 they heard and that they really liked the idea of moving
24 forward with the smart speaker. A lot of their technical
25 team actually stayed well beyond the allotted time

M. Kennewick - direct

1 interacting with our Chief Scientist, and many of our
2 engineers.

3 Q. Did Mr. Komorous provide any indication about what
4 Amazon's plans were?

5 A. Yes, it says here in the e-mail that they're
6 discussing internally how contextual speech, the idea of
7 context and cooperative conversations could play inside of
8 Amazon's future.

9 Q. And Cybermind 2012?

10 A. And Cybermind 2012, of course.

11 Q. If we could now go to PTX-65. Mr. Kennewick, do you
12 recognize in your binder PTX-65?

13 A. 65?

14 Q. Yes, please.

15 A. Yes.

16 Q. And do you recognize that as a presentation that you
17 made to Amazon in October 2011?

18 A. Yes, this is the presentation that I presented to
19 Amazon.

20 MR. YOON: I would like to now move into
21 evidence exhibit PTX-65.

22 MR. HADDEN: No objection.

23 THE COURT: All right. It's admitted.

24 (PTX Exhibit No. 65 was admitted into
25 evidence.)

M. Kennewick - direct

1 BY MR. YOON:

2 Q. And were you the person who made this presentation,
3 sir?

4 A. I was.

5 Q. And did you answer questions from Amazon engineers
6 and executive team in response to this presentation?

7 A. Yes, I did.

8 Q. And what was the purpose of this presentation, sir?

9 A. At the time, Amazon was exploring putting voice into
10 their Amazon Kindle Fire, and perhaps the Amazon phone. We
11 came up with the idea that Amazon may be the perfect company
12 to ship smart speaker. If you think about the smart speaker
13 and the voice commerce and the voice ad opportunity, there
14 is a big giant retailer, there is a perfect launch to tie
15 that all together and we wanted to persuade Samsung to build
16 a smart speaker and work with us to do it.

17 Q. If could go to page 10 of this presentation. Do you
18 see this slide is entitled VoiceBox patents?

19 A. I do.

20 Q. And why did you tell Amazon about your patents?

21 A. Well, even though we had a nondisclosure agreement,
22 we felt it was very important to protect ourselves by
23 explaining that the concepts that we're talking to them
24 about are patented.

25 Q. And at the time of October 2011, approximately how

M. Kennewick - direct

1 many patents did VoiceBox have?

2 A. We had 12 patents, and as you can see, an additional
3 14 patents pending.

4 Q. If could go to the next page. And Mr. Kennewick, do
5 you see that this slide is entitled VoiceBox voice ads?

6 A. I do.

7 Q. What patents did VoiceBox receive in 2010?

8 A. The '176 patent.

9 Q. And why did you tell Amazon about the '176 voice ad
10 patent?

11 A. As I said earlier, I thought Amazon as an online
12 retailer would be perfect to practice this patent. The
13 whole idea of the patent was to move from display ads to
14 more voice driven interactive ads, so that if somebody
15 wanted to deal with a coupon or do a download or trial or
16 that sort of thing, it was very easy with your voice and we
17 thought Amazon would be great with that. But we wanted them
18 to know if they worked with us, they could do all of these
19 things that were covered in the patent.

20 Q. If we go to slide 36 of this presentation,
21 Mr. Kennewick, what was Cybermind 2012?

22 A. That was an upgrade to the previous Cybermind, but it
23 included all of our best technologies and inventions. And
24 basically was the baseline by which our partners could then
25 commercialize products.

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1 Q. What does the first bullet point indicate?

2 A. So the whole idea is that by re-skinning the enhanced
3 Cybermind, each of our customers could put it in their own
4 form factor and present it to consumers, however, they
5 wanted to do it themselves, our business was a white label
6 business we were behind the scenes and licensed our
7 capability accordingly.

8 Q. Why were you telling Amazon about Cybermind 2012 in
9 October of 2011?

10 A. Because -- well, Cybermind 2012 was the next version
11 and we wanted them to incorporate it, not only as a smart
12 speaker, but we also thought it would fit well in their
13 other products, the tablets, the potential phones, and
14 potential partnerships that they had.

15 Q. If we could have Amazon's opening slide 23 on the
16 screen. Mr. Kennewick, you were here during the opening
17 statement?

18 A. Yes.

19 Q. And you heard what Amazon's counsel said?

20 A. I did.

21 Q. Did VoiceBox ever abandon Cybermind?

22 A. We never abandoned it. In fact, we increased the
23 investment after 2005 and we continually invested in it
24 until we sold the company in 2018.

25 Q. If we can go back to slide 36 of the October 2011

M. Kennewick - direct

1 presentation. Actually go to slide 40, please. What is
2 slide 40 show, sir?

3 A. Our idea was to be able to put the Natural Language
4 Understanding capability into Amazon Web Services, which was
5 pretty new at the time. And our concept was third parties
6 or Amazon themselves, could connect laptops and TVs and
7 phones and tablets into this web service, and Amazon
8 specifically could tie in their eCommerce platform so people
9 could buy and promote products throughout the system. And
10 we promoted this as voice services.

11 Q. If we could go to PTX-429, sir. PTX-429, in your
12 binder.

13 A. Sorry.

14 Q. I apologize.

15 A. 429?

16 Q. Yes.

17 A. I got it.

18 Q. What is Exhibit 429, sir?

19 A. It's an article from the IEEE, which is the
20 preeminent professional organization for engineering and
21 advanced technology.

22 MR. YOON: We would like to now move into
23 evidence exhibit PTX-429.

24 MR. HADDEN: No objection.

25 THE COURT: Thank you. It's admitted.

M. Kennewick - direct

1 (PTX Exhibit No. 429 was admitted into
2 evidence.)

3 BY MR. YOON:

4 Q. And what is patent power 2013 refer to?

5 A. So the IEEE occasionally evaluates the power of
6 patents across companies all over the world.

7 Q. And what was VoiceBox range in this?

8 A. So, yeah, so we were pleasantly surprised to see this
9 particular article come out because we were ranked as the
10 number 13 patent power in the world. And we were the only
11 small company on the list. In fact, if you look at the
12 list, we were one ahead of Sony, which was pretty amazing.

13 Q. If we could advance it for three pages. Go back one
14 more page. There it is. Do you see there is a reference
15 there to VoiceBox number 13 in computer software with its
16 conversational speech recognition software?

17 A. I do.

18 Q. Is that what you were recognized for by the IEEE?

19 A. Yes, it was, the whole concept of the Natural
20 Language Understanding using context is what we were
21 recognized for.

22 Q. If you now could turn to exhibit PTX-275 in your
23 binder. And what is PTX-275, sir?

24 A. This is an agreement that we entered into with
25 Samsung.

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1 MR. YOON: I would like to now move into
2 evidence exhibit PTX-275.

3 MR. HADDEN: No objection.

4 THE COURT: Okay. It's admitted.

5 (PTX Exhibit No. 275 was admitted into
6 evidence.)

7 BY MR. YOON:

8 Q. Mr. Kennewick, could you please describe what this
9 agreement was about?

10 A. As I said earlier, our business was licensing our
11 technology to third parties, when it became evident that
12 Amazon was not going to license our NLU, we approached
13 Samsung. Samsung is the number one shipper of phones in the
14 world, shipping over a billion phones all over the world.
15 And so we came to an agreement to create a Natural Language
16 Understanding module that they could embed across all of
17 their phones and TVs.

18 Q. And sir, did -- what did Samsung pay VoiceBox under
19 this agreement?

20 A. So they basically paid us about \$40 million in
21 service fees to do a co-development with them. They sent 50
22 engineers from Korea to our offices in Seattle who
23 co-resided with our team for over a year, we co-developed
24 it, for our part of that, they paid us \$40 million. In
25 addition to that, they committed to \$20 million a year in

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1 royalties as they shipped the product.

2 Q. And sir, was there any type of perpetual license
3 option under the agreement?

4 A. There was, they had an option to pay another \$42
5 million to buyout the \$20 million a year royalty stream.
6 And when we looked at that, we agreed to it mostly because
7 even though that the \$20 million a year, say for five years
8 was worth \$100 million, and the perpetual was \$42 million,
9 we felt that we could make it up because Samsung then
10 committed to pay us 20 percent of any of their voice
11 commerce or voice advertising that they could generate
12 across the board, we thought that more than made up for the
13 \$100 million that we were giving up on the royalty stream.

14 Q. Did Samsung ever terminate this agreement?

15 A. No, they did not.

16 Q. Now let's talk about attempts to purchase VoiceBox's
17 patents. While you were at VoiceBox did any companies ever
18 attempt to purchase your patents?

19 A. Yes. There were.

20 Q. And who and when?

21 A. In 2012, I was approached by two brokers that said
22 that they were interested in purchasing our patents. We
23 said no, we weren't interested, this was too strategic to
24 what we were investing in. In 2013, they came back again
25 because of the IEEE power article, and they raised their

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1 price. We still were not interested. They came back a year
2 later, and one of them offered us 25 million, and they were
3 willing to pay us the 25 million for only six patent
4 families, so we were able to keep most of our patents and
5 generate 25 million. So at that point, we became
6 interested.

7 Q. Who was the company that offered 25 million?

8 A. That was Apple.

9 Q. And did VoiceBox ultimately sell its patents to
10 Apple?

11 A. We didn't.

12 Q. What happened?

13 A. There was a company called Nuance Communication that
14 we had a prior business relationship with. They offered us
15 27-and-a-half million, and they reduced the number of
16 patents we had to sell, but more importantly, they made
17 concessions in our existing business relationship. So we
18 ended up selling those to Nuance for 27-and-a-half million
19 dollars.

20 Q. Were any of the patents in this case involved with
21 that?

22 A. No, we wouldn't sell the patents involved in this
23 case.

24 Q. Now, looking through your binder for PTX-281.

25 A. 281? Okay.

M. Kennewick - direct

1 Q. And what is that, sir?

2 A. This is the agreement that we entered into with
3 Nuance Communication.

4 MR. YOON: I would like to now move into
5 evidence exhibit PTX-281.

6 MR. HADDEN: No objection.

7 THE COURT: Thank you. It's admitted.

8 (PTX Exhibit No. 281 was admitted into
9 evidence.)

10 MR. YOON: And we also would like to now turn
11 Your Honor ---we would now like to move on to and admit
12 exhibit JX-2, the '703 patent.

13 MR. HADDEN: No objection.

14 THE COURT: Thank you. It's admitted.

15 BY MR. YOON:

16 Q. Mr. Kennewick, will you understand that I'm referring
17 to exhibit JX-2, if I'm referring to the '703 patent?

18 A. Yes.

19 Q. And are you an inventor on the '703 patent?

20 A. I am.

21 Q. And what is the '703 patent directed to, sir?

22 A. The '703 patent is a voice commerce patent. What we
23 wanted to do was extend our voice ads capability to allow
24 people to make purchases when they're using devices such as
25 a smartphone or smart speaker. In that case, it's very

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1 cumbersome to tap on a screen, find a product, put it in
2 your cart, put in your credit card, put in your shipping
3 information, we wanted to be able to do it just by saying I
4 like to buy Bounty paper towels, and place the order.

5 Q. Did VoiceBox ever have plans to commercialize the
6 technology of the '703 patent?

7 A. Yes, we absolutely did.

8 Q. What were those plans?

9 A. Among others, we had reached an agreement with
10 Samsung to work together with Alibaba in China, Alibaba is
11 the Amazon of China. So Alibaba had committed to Samsung
12 that they would give Samsung 5 to 15 percent of any product
13 that somebody bought when they searched for it through voice
14 on an Amazon phone, and we would get 20 percent of that,
15 again, that was the reason we agreed to the \$42 million
16 single fee royalty.

17 Q. And if we can now have on the screen the cover of the
18 '176 and '097 patent, which is JX-3 and JX-5. Did VoiceBox
19 ever have plans to commercialize the technology of the '176
20 and '097 patents?

21 A. Yes, we did.

22 Q. And what were those plans?

23 A. On the '176 and '097 patents, this is the voice
24 advertising, we talked to a number of companies, including
25 Wal-Mart, about incorporating this capability into their

M. Kennewick - direct

1 products.

2 Q. Now, let's transition over now --

3 THE COURT: If you're going to transition, how
4 about we take our afternoon break.

5 MR. YOON: Yes, Your Honor.

6 THE COURT: All right. So let's take our
7 afternoon break. We'll come back in about fifteen minutes.

8 COURTROOM DEPUTY: All rise.

9 (Jury exiting the courtroom at 2:27 p.m.)

10 THE COURT: All right. Anything we need to
11 discuss.

12 MR. YOON: Just one note, Your Honor, we may not
13 need to have the hearing tonight after all, I think the
14 parties have made progress, and I'm hopeful to report back
15 that we have resolved the issue, certainly parties are
16 trying to work on that. I just want to let you know that
17 we're getting closer on that.

18 THE COURT: I don't remember what the issue was.

19 MR. YOON: This is the issue about the reports
20 and the slide this morning.

21 THE COURT: Excellent.

22 MR. YOON: All right.

23 THE COURT: Great.

24 (A brief recess was taken.)

25 COURTROOM DEPUTY: All rise.

M. Kennewick - direct

1 (Jury entering the courtroom at 2:44 p.m.)

2 THE COURT: All right, everyone. Welcome back.

3 All right, Mr. Yoon, please continue.

4 MR. YOON: Yes, Your Honor.

5 BY MR. YOON:

6 Q. Mr. Kennewick, in the opening statement, do you
7 recall the counsel for Amazon indicating that in both 2011
8 and 2017, VoiceBox reached out to Amazon, do you recall
9 that?

10 A. I do.

11 Q. And let's talk about why VoiceBox reached out to
12 Amazon in 2017. Can you turn to exhibit PTX-621?

13 A. Yes, I see it.

14 Q. And do you recognize Exhibit 621?

15 A. I do.

16 Q. And what is it, sir?

17 A. This is a letter that I wrote to Jeff Bezos on
18 January of 2017.

19 Q. And --

20 MR. YOON: We now would ask, Your Honor, to
21 admit exhibit PTX-621.

22 MR. HADDEN: No objection.

23 THE COURT: All right. Thank you. It's
24 admitted.

25 (PTX Exhibit No. 621 was admitted into

M. Kennewick - direct

1 evidence.)

2 BY MR. YOON:

3 Q. Mr. Kennewick, who is Jeff Bezos?

4 A. Jeff Bezos is the founder and CEO of Amazon, at the
5 time he was CEO.

6 Q. And Mr. Kennewick, why did you write the founder and
7 CEO of Amazon in January of 2017?

8 A. We had just gone through a very frustrating set of
9 events. Amazon had previously hired a number of our
10 employees, and also were talking to our key customers like
11 Toyota. But what really prompted the letter, was they sent
12 an Evite to 100 of our engineers where they bought out the
13 most expensive restaurant in our area, and in the Evite,
14 they said you're invited to an exclusive VoiceBox employee
15 only event, and we found out it was a recruiting event where
16 they were offering jobs to 100 of our employees. And I felt
17 like it would destroy the company if he didn't do something
18 about it, so I wrote Mr. Bezos to see if we could talk.

19 Q. And at the time that this letter was sent, about how
20 many employees did you have?

21 A. We had total of about 150, but 106 or so engineers,
22 so it was nearly all of our engineering staff.

23 Q. If we could just look at the first sentence of the
24 second paragraph for a moment.

25 A. Yes.

M. Kennewick - direct

1 Q. And do you see the statement "the reason I am writing
2 you, is that your voice and advance NUI shopping team
3 recently hosted a targeted, invite-only recruiting dinner
4 for over 100 of our current and former employees." Do you
5 see that?

6 A. I do.

7 Q. And was that the reason you sent the letter to
8 Mr. Bezos?

9 A. That was absolutely the reason.

10 Q. And if you now take that down. And -- keep the
11 document on the screen. Sorry.

12 Now, do you see the statement in the letter "as
13 it turns out, we are currently considering the sale of
14 VoiceBox to another party. It occurs to me that perhaps we
15 should also be talking to Amazon about such an acquisition."
16 Do you see that?

17 A. Yes, I do.

18 Q. And why did you think it would be worth while to be
19 talking to Amazon in January 2017?

20 A. Again, the sentiment in this letter was that instead
21 of hiring our people, why don't we instead combine. We
22 thought that the combination would be excellent, they would
23 not only get the people, but they would get the patents, and
24 the IP that are needed, and that we felt they were
25 infringing.

M. Kennewick - direct

1 And also, we were told that Amazon was now
2 interested in the automotive market because we knew they
3 were talking to Toyota, and we said we had extensive
4 experience in automotive industry, and we thought we could
5 be helpful.

6 Q. Did you inform Mr. Bezos that VoiceBox had a large
7 number of significant patents not only in NLU but also in
8 voice commerce on over 2 million devices?

9 A. That's number two here, that was a key thing was that
10 we had a lot of patents and that our software was already
11 running on over 200 million devices, millions of cars and
12 hundreds of millions of cell phones.

13 Q. What happened in response to your January 17th, 2001,
14 letter to Mr. Bezos, did Amazon do anything?

15 A. Yes, I got a call from Doug Booms, who heads their
16 Corporate Development Group.

17 Q. If we could now look at exhibit PTX-622. In your
18 binder, sir?

19 A. Yes, I see it.

20 Q. Is that an e-mail that Mr. Booms sent you?

21 A. It is.

22 MR. YOON: I would like to now admit
23 Exhibit 622.

24 MR. HADDEN: No objection.

25 THE COURT: Thank you. It's admitted.

M. Kennewick - direct

1 (PTX Exhibit No. 622 was admitted into
2 evidence.)

3 BY MR. YOON:

4 Q. If we could expand the e-mail from Mr. Booms dated --
5 thank you. You indicated where was Mr. Blooms from, with
6 respect to Amazon?

7 A. He ran the Corporate Development Group, and that's
8 the group that runs mergers and acquisitions and investments
9 for Amazon.

10 Q. And this is dated January 20th, 2017?

11 A. Correct.

12 Q. Approximately how many days after you sent the letter
13 to Mr. Bezos, the individual in charge of mergers and
14 acquisitions at Amazon contacted you?

15 A. Three days.

16 Q. And what was your understanding as to why he was
17 contacting you in January of 2017?

18 A. He wanted to have a discussion on whether Amazon
19 should acquire VoiceBox.

20 Q. If we could now take a look at PTX-629. In your
21 binder, sir, 629.

22 A. 629. Yes.

23 Q. And do you recognize Exhibit 629?

24 A. I do.

25 Q. And what is this, sir?

M. Kennewick - direct

1 A. This is a due diligence list from Amazon.

2 MR. YOON: We now move to admit exhibit PTX-629.

3 MR. HADDEN: No objection.

4 THE COURT: Thank you. It's admitted.

5 (PTX Exhibit No. 629 was admitted into
6 evidence.)

7 By Mr. Yoon:

8 Q. Sir, why was Amazon providing VoiceBox with a
9 preliminary due diligence list?

10 A. They had asked that in order to revisit the idea of
11 acquiring VoiceBox, that we provided them with both business
12 and technology material.

13 Q. If we could now go to Section 4 of the due diligence
14 list. Do you see that references technology and
15 intellectual property?

16 A. I do.

17 Q. And what did you understand that referred to, sir?

18 A. That they wanted a detailed description of our
19 capabilities and technology.

20 Q. And do you see Section 4.2, please list all domain
21 names, patents, trademarks, copy rights, and service marks,
22 including applications, oppositions, reexaminations, or
23 reissuances thereof, owned by the company?

24 A. I see it.

25 Q. What did you understand that was seeking?

M. Kennewick - direct

1 A. That they were looking for a list and understanding
2 of our intellectual property which included patents.

3 Q. And did VoiceBox identify all its patents for Amazon
4 in the beginning of 2017?

5 A. Yes, we did.

6 Q. If you would now look at PTX-642.

7 A. I see it.

8 Q. And what is this, sir?

9 A. This is an e-mail thread between Mr. Booms and
10 myself.

11 MR. YOON: We now move into evidence
12 Exhibit 642.

13 MR. HADDEN: No objection.

14 THE COURT: Thank you. It's admitted.

15 BY MR. YOON:

16 Q. And if we could turn to page VoiceBox 4937. And just
17 for everyone, documents and cases have what they call Bates
18 numbers, so when I'm referring to a number 4937, if you can
19 just expand it, it is the number at the bottom of the page,
20 the numbers by Amazon will have an Amazon, and a number if
21 you're wondering what those numbers are.

22 Do you see that this is an e-mail from Doug
23 Booms, who you dated March 13th, 2017?

24 A. I do.

25 Q. What was this e-mail about?

M. Kennewick - direct

1 A. This was a follow-up to our conversation. He set up
2 a meeting and wanted to come back, but this time he wanted
3 to bring the leadership from Alexa voice services team, as
4 well as, a newly formed automotive team.

5 Q. Did Amazon send over the leadership from Alexa voice
6 services, and the automotive domain team to meet at
7 VoiceBox?

8 A. They did.

9 Q. If we could now go to that chain, go to the March 15,
10 2017, e-mail. The top. Yes. And Mr. Kennewick, was this
11 e-mail sent after the meeting with the senior leadership
12 team for Alexa voice and the automotive?

13 A. It was.

14 Q. Do you see the statement "VoiceBox has to decide
15 whether to continue to grow on our own, or whether the
16 market is getting so big we need to move forward with the
17 leverage of someone else's platform." Do you see that?

18 A. I do.

19 Q. What did you mean by that?

20 A. Companies like Amazon and others were starting to
21 worry our customers, they wondered whether we could keep up,
22 whether we could support them, and so forth. And so we felt
23 like at that time, we needed to be part of a bigger
24 company's platform.

25 Q. During your meetings with Mr. Booms and the

M. Kennewick - direct

1 leadership of the Alexa voice services and automotive, did
2 you tell them about VoiceBox IP and patents?

3 A. Yes, we did.

4 Q. And why did you think it was useful to tell Amazon
5 about the VoiceBox IP and patents?

6 A. Because for the same reason as 2011, at that time we
7 now had a lot more patents issued, our capabilities were
8 much more advanced and we wanted to make sure that they
9 understood both that we needed to protect ourselves through
10 those patents, but also if they acquired us or partnered
11 with us or licensed, they would have access to those
12 patents.

13 Q. And now if you can look in your binder at exhibit
14 PTX-632?

15 A. 632?

16 Q. Yes.

17 A. Yes, I have got it.

18 Q. And do you recognize Exhibit 632?

19 A. I do.

20 Q. What is it, sir?

21 A. This is the presentation that I gave to the Amazon
22 team when they came over the second time.

23 MR. YOON: I would like to move into evidence
24 exhibit PTX-632.

25 MR. HADDEN: No objection.

M. Kennewick - direct

1 THE COURT: Thank you. It's admitted.

2 (PTX Exhibit No. 632 was admitted into
3 evidence.)

4 BY MR. YOON:

5 Q. And was this the presentation that you personally
6 made to the senior leadership team for Amazon voice auto and
7 Mr. Booms?

8 A. Yes, it is.

9 Q. And if we could go to slide 12, please. And did you
10 discuss the VoiceBox patents with Amazon in 2017?

11 A. We did, and we reminded them of the patent portfolio.

12 Q. Let's take a moment and pause on this for a moment,
13 Mr. Kennewick. Do you see on the right side of that table
14 there is a green box that says NLU, voice shopping, and
15 voice ads. Do you see that?

16 A. I do.

17 Q. What is that, sir?

18 A. Those are the patents that we're talking about today,
19 the NLU is the cooperative conversation patents, the voice
20 shopping is the '176 patent -- I'm sorry, the voice shopping
21 and the voice ads.

22 Q. Is the voice shopping just the '703 patent?

23 A. Yes, that's correct.

24 Q. And the voice ads, does that refer to the '176 and
25 '097?

M. Kennewick - direct

1 A. That's correct.

2 Q. And why were you talking to Amazon's senior
3 leadership about the NLU voice shopping and voice ad patents
4 in January -- in early 2017?

5 A. Again, we always felt a fundamental part of our
6 business that voice shopping and voice ads were additional
7 sources of revenue in addition to just the smart speaker,
8 you could essentially create a much more affordable product
9 for consumers, more capable and recover a lot of investment.
10 The NLU patent, again we were reminding them that the basic
11 idea of being able to interact with the human machine in the
12 way we did cooperatively, that we have that patent.

13 Q. If we could have on the screen slide three from
14 Amazon's opening statement. Mr. Kennewick, you were here
15 for Amazon's opening statement. Do you recall that?

16 A. I do.

17 Q. And did you recall the characterization of VoiceBox
18 as a manual rules company?

19 A. Yes.

20 Q. And if we could keep that on the screen and go back
21 to slide 24 of what you showed Amazon in 2017, did VoiceBox
22 have AI technology?

23 A. Yes. We continually invested, even in 2011, we did
24 have statistical capability, particularly for music and
25 navigation. We ultimately later had heavy investment in

M. Kennewick - direct

1 deep neural networks, and at this time, we were explaining
2 to them the benefits of a semantic parser. What a semantic
3 parser enabled us to do, was very advance capability that
4 Alexa couldn't do, for example, you could ask what's the
5 population of all the states that bordered Pennsylvania and
6 Ohio, and this is a very complicated set of syntax, and we
7 were able to resolve that through AI.

8 Q. Did VoiceBox lead an AI platform use context?

9 A. No, the notion of cooperative conversation is
10 independent of the implementation, whether you use machine
11 learning or you use rules, it's really independent. The
12 full idea is that when you interact with a computer, the
13 computer comes up with some concepts and essentially says,
14 an example would be if I say "I want information on
15 traffic," the idea would be the computer would say does he
16 mean traffic report, does he mean the band Traffic, does he
17 mean the movie Traffic, and you have to test all of that
18 against what the user said now, and what they said before
19 and what others have said. If you do that, then you could
20 resolve it. It doesn't matter if you do it through machine
21 learning or so forth. Machine learning is great for big,
22 big lists but rules are better for small systems.

23 Q. And on the slide here, you see that there is a
24 reference to big data, semantic parser and reasoning engine.
25 Do you see that?

M. Kennewick - direct

1 A. Yes.

2 Q. In reasoning engine, they have machine learning?

3 A. Yes, all of this is machine learning, deep neural
4 networks.

5 Q. That's all surrounding the word context?

6 A. Yes.

7 Q. Now, if could go to slide 22 and keep up the slide,
8 did VoiceBox have a natural language understanding AI team?

9 A. We did, very seasoned, very strong team.

10 Q. Did this team have experience in use of AI in speech?

11 A. Yes. Mr. Cohen, in fact, was at the lab that
12 invented Siri.

13 Q. If we could now have slide 23. What's shown on that
14 slide, sir?

15 A. This was our Scientific Advisory Board for AI.

16 Q. Did VoiceBox have a Scientific Advisory Board for AI,
17 why did you have it?

18 A. We wanted to enlist the leading professors and
19 leading researchers in voice AI and make sure that we were
20 keeping up with the latest techniques and capability.

21 Q. And now we go to slide 11. And do you see the
22 reference there to cloud API?

23 A. I do.

24 Q. And if we would go look at the fifth item on that, if
25 you could blow that up. Do you see there is a reference

M. Kennewick - direct

1 there to upcoming NLU update based on deep learning semantic
2 parser. Do you see that?

3 A. I do.

4 Q. Did you expressly inform Amazon in 2017 that VoiceBox
5 had an NLU based on deep learning semantic parser?

6 A. Yes, we did.

7 Q. And that used machine learning?

8 A. It used machine learning.

9 Q. AI?

10 A. AI and we did that since 2011.

11 Q. Statistics?

12 A. Yes.

13 Q. Was VoiceBox limited to manual rules, sir?

14 A. No, we were not.

15 Q. And sir, with respect to your patents, at any point
16 in time, did VoiceBox believe its patents were limited to
17 the use of manual rules?

18 A. No, again, those are just implementation issues
19 optimized for the type of application you're dealing with.
20 It doesn't matter if you use rules or machine learning in
21 regarding to practicing a patent.

22 Q. Now, did any deal actually happen with Amazon?

23 A. No, it unfortunately did not.

24 Q. What happened to VoiceBox?

25 A. So Amazon talked to us for about six months and

M. Kennewick - direct

1 again, we found out from Toyota that they had decided, in
2 fact, to switch to Amazon. So, at that point, we felt we
3 had no choice but to find a way to get -- to recoup our
4 R & D money back to shareholders. So what we did, was we
5 broke the company up into three parts. We sold the
6 automotive business to a company called Nuance
7 Communications, who combined it with their own automotive
8 business, spun it out into a public company called Cerence.
9 We then formed VB Assets, and we put the non-automotive
10 software in there, as well as, the patent. We then hired
11 thirty-five people, former VoiceBox employees, to create a
12 business and we licensed the non-automotive software to
13 several third parties. Ultimately, we pitched Oracle on
14 licensing it, but they decided to buy the non-automotive AI.
15 And it's now the foundation of Oracles voice and NLU AI team
16 and they have hired many VoiceBox people to that team.

17 Q. So when VB Assets was formed, did VB Assets have a
18 business in voice AI?

19 A. Yes, we hired thirty-five people and we did licensing
20 deals.

21 Q. So was VB Assets formed to sue Amazon?

22 A. No, although we certainly knew that they were
23 infringing on our patents, and we did think that monetizing
24 it at some point would be a good idea.

25 Q. And sir, with regard to the non-automotive VoiceBox

M. Kennewick - direct

1 business including VoiceBox AI business, who was that sold
2 to?

3 A. That was Oracle, I think they're the fourth largest
4 high tech company in the world, and the leader in databases,
5 so they're a giant company.

6 Q. What did Oracle pay for VoiceBox AI technology?

7 A. 32 million.

8 Q. Now, why did VB Assets keep the patents in this case?

9 A. So we retained the patents because we saw now that
10 voice, and the idea of voice assistance proliferating all
11 over the world. We also thought that we sent decades of
12 work, over a decade of work and R & D making that happen.
13 And in a sense of fairness, we thought we should go out and
14 see if we could license the patents to the companies that
15 were infringing on them.

16 Q. Now, sir, who are the owners of the VB Assets?

17 A. The owners of VB Assets are the original shareholders
18 of VoiceBox. I set up VB Assets in order to return value to
19 the shareholders who were behind us, and the employees who
20 have been behind us for years. I only hold a small
21 percentage, maybe five percent of VB Assets. But I'm doing
22 the work on behalf of everybody that bet on the company for
23 over a decade.

24 MR. YOON: Thank you, sir.

25 THE COURT: Cross-exam.

M. Kennewick - cross

CROSS-EXAMINATION

BY MR. HADDEN:

Q. Hello, Mr. Kennewick.

A. Hello.

Q. Now, we saw this slide in VB Assets's opening and it showed the Cybermind 2005. Do you see that?

A. I do.

Q. And it's a true fact, isn't it sir, that no customer ever bought a Cybermind 2005; correct?

A. By that do you mean the hardware?

Q. What we see here, what was put on the slide by your counsel, nobody ever had one of those in their house?

A. This was an NLU inside which was licensed by a number of partners.

Q. That wasn't my question. This picture here of the device with the VoiceBox logo that's connected to the computer in this demonstration, nobody ever had one of those in their home, correct?

A. If you're referring to the hardware, that's correct.

Q. And you said that you continued to develop this, but it's true, isn't it, that you quit developing what we see on the screen here in 2005, and you pivoted to the automotive business, right?

A. No, that's not true.

Q. So when we just established that nobody had this

M. Kennewick - cross

1 thing that we see on the screen here in their house, did
2 VoiceBox ever sell a smart speaker that anybody had in their
3 house?

4 A. As I said, there is a software, and a hardware
5 component, we continued investing in the software, and the
6 hardware is something that we updated later.

7 Q. You're not answering my question, simple question.
8 Smart speaker has a hardware device you can talk to from a
9 distance. Did VoiceBox ever sell one of those to anybody so
10 they could have it in their house?

11 A. The hardware was not sold to anybody, no.

12 Q. When you talk about this Cybermind 2012, actually
13 let's put that up, Mr. Patterson. PTX -- so it's PTX-65.
14 Let's go to the slide "new opportunities." If you just go
15 forward to Cybermind 2012. Should be right here.

16 You talked about this. Now, this doesn't show a
17 smart speaker, does it, Mr. Kennewick?

18 A. Yeah, I was trying -- it does not.

19 Q. It does not, correct.

20 And if we look at -- let's go back a page, we
21 have this tablet computer. It's Siri alternative. VoiceBox
22 never sold a tablet computer with a Siri alternative, did
23 it?

24 A. No, we did not.

25 Q. All right. And let's look one page back farther,

M. Kennewick - cross

1 there is a connected TV. VoiceBox never sold a connected TV
2 with a Siri alternative?

3 A. We sold a Siri alternative to Samsung for use with
4 their TVs.

5 Q. We're getting the Samsung, but Samsung dropped
6 VoiceBox, right?

7 A. No, I don't think that's correct characterization.

8 Q. So you talk about this royalty payment that you're
9 going to get from Samsung, in fact, Samsung never paid you
10 any of those royalty payments, right?

11 A. No, we did, we received \$82 million from Samsung.

12 Q. The royalties that you talked about based on these
13 sales that would be made through a Samsung phone, Samsung
14 never paid you any of those royalties?

15 A. They paid us \$42 million in royalties, and they paid
16 us \$40 million in services.

17 Q. They paid you royalties for voice commerce on their
18 phone, is that your testimony?

19 A. They paid is --

20 THE COURT: Hold on, you got to wait for him to
21 finish so my court reporter can get it down.

22 BY MR. HADDEN:

23 Q. You talked about an arrangement with your counsel
24 where Samsung was going to pay you a percentage of sales
25 made through their phones, right, do you recall that?

M. Kennewick - cross

1 A. I do.

2 Q. And that never happened, correct?

3 A. Yeah, I think you're talking about the percentage of
4 voice commerce and voice ads, and yes, that did not happen.
5 Samsung pulled out of China.

6 Q. And Samsung replaced VoiceBox on their phone with
7 technology from a company called TiVo, right?

8 A. They ultimately did, yes. After we were sold to
9 Nuance.

10 Q. Now, go back to the slide with Cybermind. Now, we
11 heard, and I think that you testified what we see here, the
12 Speech Recognition Technology was from IBM, right?

13 A. A component called an ASR was from IBM.

14 Q. That's speech recognition, right?

15 A. That's the speech detection version.

16 Q. And the text-to-speech was from AT&T correct?

17 A. That's right.

18 Q. The NLU that was used here in this demo, that was
19 based on manual rules, right?

20 A. Yes, it was.

21 Q. Let's look at, if you have your binder, sir, there
22 should be a tab, DTX-194. It should be in your binder --
23 you should have two binders, one from your lawyer, and one
24 from us.

25 A. Yes, I see it.

M. Kennewick - cross

1 Q. So DTX-194 is an e-mail string, the top e-mail is
2 from Sam Menaker, do you see that?

3 A. I do.

4 Q. And Sam Menaker was the Senior Vice-President of
5 Engineering at VoiceBox, is that right?

6 A. He was the Senior Vice-President of Customer
7 Engineering, he worked with our customers to integrate our
8 core technology into our products.

9 MR. HADDEN: Move DTX-194 into evidence.

10 MR. YOON: No objection.

11 THE COURT: It's admitted.

12 (DTX Exhibit No. 194 was admitted into
13 evidence.)

14 BY MR. HADDEN:

15 Q. If we look at this document, this includes an
16 attachment which is a survey performed by Toyota, right?

17 A. Yes, it was.

18 Q. And in that survey, Toyota had 40 of their own
19 employees try the system in the Toyota cars that used the
20 VoiceBox NLU technology, right?

21 A. We had multiple systems at Toyota, so yes, that was a
22 particular system that they tried by a particular
23 integrator.

24 Q. And the attachment to this shows the results of the
25 ratings of the VoiceBox system by those Toyota engineers;

M. Kennewick - cross

1 right?

2 A. Yes, in this particular system, they put results and
3 we had to work with Toyota to improve it to the level that
4 the other systems were.

5 Q. So let's look at page 16 of this presentation,
6 Mr. Patterson. Bates number 9148. That's 11 -- five more.
7 There you go. Thank you.

8 Could we blow up the bottom on the right under
9 -- yeah, start with one on the right.

10 So this says the results of the Toyota survey,
11 and it finds that 63 percent of the responses rated the VR
12 performance as somewhat bad, or significantly bad, correct?

13 A. Yes, in this system, that's true.

14 Q. If we go to the next page, please, Mr. Patterson.
15 There is some -- please tell us what you like and didn't
16 like. If we look at the right, the Toyota evaluators found
17 that the actual tasks and commands didn't get completed
18 correctly even if the system did pick up what I was saying.
19 Do you see that?

20 A. Yes, I can see that.

21 Q. It goes on, then it says "critical tasks, such as go
22 to address, are a trial and error battle." Do you see that?

23 A. Yes, that's correct.

24 Q. And this system that Toyota was using from VoiceBox,
25 that was also a manual rules-based system, correct?

M. Kennewick - cross

1 A. That's correct.

2 Q. If you look in your binder there, there should be
3 another document which is DTX-187. Do you see that, sir?

4 A. I do.

5 MR. HADDEN: Move DTX-187 into evidence, please.

6 MR. YOON: No objection, Your Honor.

7 THE COURT: Thank you, it's admitted.

8 (DTX Exhibit No. 187 was admitted into
9 evidence.)

10 BY MR. HADDEN:

11 Q. DTX-187 is again an e-mail string, and it relates to
12 the prompts that you talked about that you were doing with
13 Samsung, correct?

14 A. That's correct.

15 Q. And if we look at, let's go to page -- let's go to
16 page 7 of the presentation. This will benefit the semantic
17 parsing. Do you see that? If we look on this slide, just
18 to orient the jury, N66 was your code name for the current
19 version of your natural language system, right?

20 A. Yes, it was.

21 Q. And so this is analyzing the state of your natural
22 language system at the time you were working with Samsung,
23 and it says the first bullet point, thousands of overly
24 specific rules. Do you see that?

25 A. I see that. I don't know what this document is,

M. Kennewick - cross

1 though.

2 Q. But just N66 was a manual rule-based system that
3 you're trying to develop for Samsung, right?

4 A. I know what N66, I don't know who did this document.
5 Was it VoiceBox? Was it you? I don't know who did this
6 document, and I don't know what it is.

7 Q. You don't know what N66 is?

8 A. N66 is the project that we did with Samsung.

9 Q. So this is describing that as in N66, there are
10 thousands of overly specific rules, right?

11 A. Again, whoever wrote this document apparently thought
12 that.

13 Q. And this is a document that you were copied on, along
14 with your brother Rich Kennewick, the President of the
15 company, right?

16 A. Was it? That was seven years ago, so I don't
17 remember this document.

18 Q. But if we look at the -- further down in the same
19 page, it says that you must list all possible combinations
20 as alternatives in rules. Do you see that?

21 A. Yes.

22 Q. That is describing what you have to do in this N66
23 version of your rule-based technology, right?

24 A. Yes.

25 Q. If we look at the next page, it has example, let's

M. Kennewick - cross

1 blow that up. At the top, it says "approximately 100,"
2 that's referring to 100 different rules, just for handling
3 phone numbers, right?

4 A. That's correct.

5 Q. And then next to that, it says from a list of 2000,
6 just for contacts, correct?

7 A. That's correct.

8 Q. This is saying you would have to write 2000 rules
9 manually just to handle interacting with contacts, right?

10 A. That's correct.

11 Q. At the bottom it says, "why are there so many," and
12 that's referring to the fact that there are so many rules in
13 this system that you needed to write and maintain; correct?

14 A. Again, I don't have any context for what this
15 document is and what it means by why, but I don't know.

16 Q. If you look at -- let's go forward to page 11 of the
17 presentation, please, Mr. Patterson. And it's got a heading
18 at the top, multiple rules for I want John's, and it's got a
19 place holder for attributes, do you see that?

20 A. I see that.

21 Q. It notes again at the bottom the problem, it says
22 "why do we need separate rules for these?" Do you see that?

23 A. Yes, I see that.

24 Q. He didn't tell you about the problem with these
25 manual based rules that you're trying to present, right?

M. Kennewick - cross

1 A. It could be a question of why we should move
2 learning, or why we shall be using the rules, I don't have a
3 context for this.

4 Q. Let's be clear on the date of this, right. Let's go
5 back to the front and look at the e-mail, Mr. Patterson.

6 A. That's helpful, thank you.

7 Q. Surely. And the date of this is October 2016. So
8 this is two years after Amazon launched the Alexa, and the
9 Echo, correct?

10 A. That's correct.

11 Q. So you were just talking with your counsel about how
12 you had this great machine learning, NLU network technology
13 but here we are two years after Amazon has already launched
14 Alexa, and you're dealing with thousands of overly specific
15 manual rules when you're trying to build a system for
16 Samsung, right?

17 A. Yes.

18 Q. Let's go back to the document, Mr. Patterson, where
19 we were. Which is -- let's move forward in the document to
20 page 13. Two pages more.

21 It says, "N66 has overly specific rules." Do
22 you see that?

23 A. Yes.

24 Q. And then it's got an example down below. It says the
25 following common alternatives don't work. It says block all

M. Kennewick - cross

1 my incoming calls except those from mom. And then it says
2 block all my incoming calls except for those from mom. What
3 it's saying is the rule is so specific that the second
4 example won't work; right?

5 A. That actually won't work on any voice assistant
6 that's shipping right now.

7 Q. Let's look if I could have you look back in your
8 binder, sir, to tab DTX-188. Do you have that?

9 A. 188?

10 Q. Yes.

11 Did you find it sir?

12 A. I did.

13 Q. DTX-188 is an e-mail from Mr. Menaker again to
14 Mr. Kenck, the Chief Financial Officer at VoiceBox, correct?

15 A. Correct.

16 Q. That's dated September 23rd, 2016, do you see that?

17 A. That's correct.

18 MR. HADDEN: Move DTX-188 into evidence, please.

19 MR. YOON: No objection.

20 THE COURT: It's admitted.

21 (DTX Exhibit No. 188 was admitted into
22 evidence.)

23 BY MR. HADDEN:

24 Q. So the subject line on this is confidential VBT
25 technology, right?

M. Kennewick - cross

1 A. Yes.

2 Q. And VBT, that's VoiceBox, right?

3 A. That's correct.

4 Q. And in this e-mail, Mr. Menaker writes "from
5 engineering point of view, VBT has big challenges to win and
6 deliver future projects, do you see that?

7 A. That's right.

8 Q. If we go farther down, there is a heading to cloud
9 NLU, do you see that?

10 A. Yes.

11 Q. NLU, that is Natural Language Understanding, correct?

12 A. That's correct.

13 Q. And that was the technology that you were focused on
14 at VoiceBox, right?

15 A. That's correct.

16 Q. Okay. Underneath that, Mr. Menaker says "no clear
17 plan to introduce next generation of NLU." Right?

18 A. Yes.

19 Q. And so Mr. Menaker is telling Mr. Kenck, the Chief
20 Financial Officer, that in September 2016, and again, this
21 is almost two years after Amazon launched Alexa, VoiceBox
22 had no clear plan to introduce a next generation NLU;
23 correct?

24 A. In Mr. Menaker's opinion as the head of customer
25 engineering, he felt that the plan was not possible.

M. Kennewick - cross

1 Q. He goes on underneath that and says that the current
2 NLU is expensive to deliver and maintain, do you see that?

3 A. Yes, I do.

4 Q. And that's consistent with what we just saw in the
5 Samsung evaluation about all those rules, right?

6 A. That's partially correct. It's not only rules.

7 Q. Let's look at farther down in this same document, and
8 we get to server infrastructure. Mr. Menaker says the third
9 attempt to deliver server next generation, do you see that?

10 A. Yes, I do.

11 Q. And underneath that he says first attempt failed, do
12 you see that?

13 A. Yes.

14 Q. And he says second attempt over budget, delayed and
15 still not ready, do you see that?

16 A. Correct.

17 Q. Third, he says current attempt had no clear plan. Do
18 you see that?

19 A. Yes, I do.

20 Q. If we look at application development, it says
21 current approach not scalable and expensive, needs
22 improvement. Do you see that?

23 A. Yes, I do.

24 Q. Underneath that, he says new approach not defined, do
25 you see that?

M. Kennewick - cross

1 A. Yes, I do.

2 Q. And underneath that, there is a heading Xavier, do
3 you see that?

4 A. I do.

5 Q. Xavier was one of VoiceBox's attempts to make a copy
6 of an Echo, right?

7 A. I wouldn't characterize it that way.

8 Q. Well, you saw the Echo, and you're trying to make
9 something like the Echo, and you called it Xavier, right?

10 A. We were making a modern version of Cybermind that you
11 saw in 2005.

12 Q. We'll get to that, though, but you, you decided after
13 you saw the Echo that you should try to make a smart speaker
14 too, right?

15 A. We had made a smart speaker in 2001, and 2002 and
16 invested in that, this was the latest version.

17 Q. Let's be clear. Between 2005, you quit developing
18 that thing you started with, in 2016, you didn't sell a
19 smart speaker, right?

20 A. That was not our business focus, that's correct.

21 Q. And so you decided we're going to try to sell a smart
22 speaker after Amazon came out with the Echo, right?

23 A. Yes, in that time frame we did decide to sell the
24 Xavier speaker as an option.

25 Q. And you called that thing internally, Xavier?

M. Kennewick - cross

1 A. Yes.

2 Q. Mr. Menaker is assessing your status of Xavier, and
3 says I cannot see how we can make money?

4 A. Yes.

5 Q. Then he goes on probably more importantly on number
6 C, he says no clear scope, delayed many times, do you see
7 that?

8 A. I do.

9 Q. And then D, he says quality is low. Do you see that?

10 A. Yes.

11 Q. If we could look in your binder, sir, to DTX-195,
12 please.

13 A. Okay. I have got it.

14 Q. Got that.

15 A. I do.

16 Q. So this is an e-mail from you with an attachment you
17 were sending to your brother Rich, and the attachment is the
18 VoiceBox board meeting from Wednesday, August 16th, 2017.

19 Correct?

20 A. Yes, I see that.

21 MR. HADDEN: Move DTX-195 into evidence, Your
22 Honor.

23 MR. YOON: No objection, Your Honor.

24 THE COURT: Thank you. It's admitted.

25 (DTX Exhibit No. 195 was admitted into

M. Kennewick - cross

1 evidence.)

2 BY MR. HADDEN:

3 Q. So if you look at -- let's look at page 35 of the
4 presentation, please, Mr. Patterson, it should be Bates
5 number 292, yes.

6 So this is what VoiceBox is telling its Board of
7 Directors about the flight risk of its engineers, correct?

8 A. That's correct.

9 Q. And if you look at the second bullet point it says
10 "VoiceBox total compensation is approximately 30 percent
11 below market." Do you see that?

12 A. That's correct.

13 Q. It says next, "top people are 40 to 50 percent below
14 market, do you see that?

15 A. Yes, see that.

16 Q. Last bullet point, people are being asked to
17 multitask, and do work below their capability. Do you see
18 that?

19 A. Yes, that's correct.

20 Q. Can you go to page 37, please, Mr. Patterson? It's
21 got 2017 attrition, 35 employees. This list 35 employees
22 who quit VoiceBox because of those conditions in 2017;
23 right?

24 A. I wouldn't characterize it as quitting because of
25 those conditions, it's probably for various reasons.

M. Kennewick - cross

1 Q. Most of these people were engineers, right?

2 A. Emily Harvey, the first on the list was HR. I don't
3 know if that's true or not.

4 Q. Well, if I just look at the column there, most of
5 them are engineering, correct?

6 A. Yes, many of them were engineers.

7 Q. I'm going to ask you to look in your binder again,
8 there should be an exhibit, DTX-167. Do you see that, sir?

9 A. 167? Yes, I see that.

10 Q. Okay. DTX-167 is an e-mail from Joy Zenner to you,
11 do you see that, from November 2011?

12 A. I see that.

13 MR. HADDEN: Move DTX-167 into evidence, Your
14 Honor.

15 MR. YOON: No objection, Your Honor.

16 THE COURT: It's admitted.

17 (DTX Exhibit No. 167 was admitted into
18 evidence.)

19 THE COURT: Wait, it's admitted.

20 Can you just give me a second to say that.

21 MR. HADDEN: I'm sorry, Your Honor.

22 BY MR. HADDEN:

23 Q. Ms. Zenner was a recruiter for VoiceBox, right?

24 A. She didn't work for VoiceBox, but she was a recruiter
25 that we worked with.

M. Kennewick - cross

1 Q. But you did give her VoiceBox stock, right?

2 A. Yes, she recruited for free early in the company so
3 we gave her stock.

4 Q. And she is sending you this article about Amazon
5 acquiring Yap?

6 A. Yes, I see that.

7 Q. And in the e-mail that she has above, above the
8 article, she says "do you think you need a dedicated speech
9 person who has participated in the creation and delivery of
10 speech type products on the team," do you see that?

11 A. Yes, I see that.

12 Q. And then continues "I'm thinking a guy like," she got
13 a LinkedIn to Nikko Strom, do you see that?

14 A. Yes, I see that.

15 Q. Then we go in your binder sir to DTX-168. Let me
16 know when you have that, sir?

17 A. I see that, yes.

18 Q. This is another e-mail from Ms. Zenner to you and
19 some other folks at VoiceBox. Correct?

20 A. Yes, that's what I interpret it to be.

21 MR. HADDEN: Move DTX-168 into evidence, Your
22 Honor.

23 MR. YOON: No objection, Your Honor.

24 THE COURT: Thank you. It's admitted.

25 MR. HADDEN: Thank you.

M. Kennewick - cross

1 (DTX Exhibit No. 168 was admitted into
2 evidence.)

3 BY MR. HADDEN:

4 Q. Now, if you look at the top of this e-mail,
5 Ms. Zenner says -- sorry, "I'm LinkedIn with Nikko Strom,
6 speech expert with Amazon, former Microsoft." Do you see
7 that?

8 A. I see that.

9 Q. Then she goes on and says "Nikko has multiple speech
10 contacts, I just noted this ad today. I'll try to get a
11 meeting with Nikko from Amazon." Do you see?

12 A. Yes, I see that.

13 Q. Then she continues to say, "We chatted a few times.
14 I believe I can get a meeting, and I'll keep it innocuous
15 like staffing in his department or something." Do you see
16 that?

17 A. I see that.

18 Q. She says, "if later there is a reason to intro
19 VoiceBox to him, I will, but right now, I prefer to gather
20 info on what is happening surrounding speech." Do you see
21 that?

22 A. I see that.

23 Q. So Ms. Zenner is saying she is going to try to set up
24 a meeting with Dr. Strom to try to figure out what Amazon is
25 doing regarding speech, right?

M. Kennewick - cross

1 A. I'm not sure how to interpret that. I don't recall
2 this e-mail.

3 Q. Let's look at, in the same binder, sir, DTX-172,
4 please.

5 A. 172?

6 Q. Yes, sir. Are you there?

7 A. Yes, it's there.

8 Q. Okay.

9 MR. HADDEN: Move DTX-172 into evidence, Your
10 Honor.

11 MR. YOON: No objection.

12 THE COURT: All right. Thank you. It's
13 admitted.

14 (DTX Exhibit No. 172 was admitted into
15 evidence.)

16 BY MR. HADDEN:

17 Q. So, DTX-172 is an e-mail from Mr. DiCristo, to you
18 and your brother, Bob Kennewick, correct?

19 A. Yes, that's what it looks like.

20 Q. It's dated October 2014, do you see that?

21 A. Yes, I see that.

22 Q. The subject is speech scientist from Amazon, do you
23 see that?

24 A. I see that.

25 Q. Okay. And Mr. DiCristo is writing to you and he says

M. Kennewick - cross

1 yesterday we interviewed a senior speech scientist from
2 Samsung speech team?

3 A. I see that.

4 Q. I would like to extend an offer to this candidate.
5 Do you see that?

6 A. Yes.

7 Q. Then skip down a line, it says at Amazon he is
8 training acoustic models using deep neural network. Do you
9 see that?

10 A. Yes, I see that.

11 Q. Then he continues and says that's exactly in the
12 direction and the objectives I set for the team. Do you see
13 that?

14 A. Yes.

15 Q. And then if we skip down a paragraph, Mr. DiCristo
16 says his resume does not mention much of speech because
17 Amazon is very secretive, but I know he is working with
18 Nikko Strom. Do you see that?

19 A. Yes.

20 Q. And VoiceBox hired this senior speech scientist from
21 Amazon, didn't they?

22 A. Is there a name here? I don't see one.

23 Q. Well, you know that VoiceBox hired a senior speech
24 scientist from Amazon?

25 A. We hired several hundred engineers, and in the

M. Kennewick - cross

1 Seattle area, the place you recruit is Amazon or Microsoft,
2 and so we hired many from Amazon and many from Microsoft. I
3 don't recall this particular one, and I was largely not
4 involved in the hiring at this level other than to approve
5 it.

6 Q. Look in your binder for DTX-58, please.

7 A. 58?

8 Q. Yes, sir. 5, 8.

9 A. Yes, I see that.

10 MR. HADDEN: Move DTX-58 into evidence, Your
11 Honor.

12 MR. YOON: No objection, Your Honor.

13 THE COURT: All right. It's admitted.

14 (DTX Exhibit No. 58 was admitted into evidence.)

15 BY MR. HADDEN:

16 Q. Now, DTX-58 is an e-mail from Dan Carter at VoiceBox
17 to Marco Kuhne, and some other folks at VoiceBox and it's
18 dated June of 2015, correct?

19 A. Yes.

20 Q. And by June of 2015, the Echo and Alexa had been out
21 in the market for seven months, right?

22 A. Yes.

23 Q. And in this e-mail, Mr. Carter says, this was in the
24 middle of the first paragraph, "interest in far-field
25 microphone solutions has gone up considerably with the

M. Kennewick - cross

1 launch of the Amazon Echo product in the U.S." Do you see
2 that?

3 A. I see that.

4 Q. He continues and says "Amazon has been able to show
5 the market that accurate voice recognition at a distance is
6 a solved problem." Do you see that?

7 A. I see that.

8 Q. He's talking about the far-field speech recognition
9 problem that Amazon solved, right?

10 A. Yes, he's talking specifically about the acoustic
11 model in the ASR.

12 Q. If we look on the next page of this document, there
13 is a picture of something that looks like an Echo, and this
14 e-mail says "we have constructed a device that imitates the
15 Amazon Echo." Do you see that?

16 A. I do.

17 Q. It continues and says "it has a seven microphone
18 array distributed within a diameter of 75-millimeter with a
19 center microphone, do you see that?

20 A. That's correct.

21 Q. It continues, "this is nearly identical to the Amazon
22 Echo array." Do you see that?

23 A. I see that.

24 Q. Is this Xavier?

25 A. No, this one was not Xavier, this one was the

M. Kennewick - cross

1 research that he was doing that led to the development of
2 Xavier.

3 Q. Okay. Let's look, if you could, sir, to DTX-183.
4 Did you find that sir?

5 A. I have it, yes.

6 MR. HADDEN: Thank you. Move DTX-183 into
7 evidence, Your Honor.

8 MR. YOON: No objection.

9 THE COURT: Thank you. It's admitted.

10 (DTX Exhibit No. 183 was admitted into
11 evidence.)

12 BY MR. HADDEN:

13 Q. DTX-183 is an e-mail dated February 1st, 2016, from
14 Mr. DiCristo, and the subject is RE plan for AM training
15 parcellation, do you see that?

16 A. I see that.

17 Q. AM here stands for acoustic model, correct?

18 A. That's correct.

19 Q. And if we look in this e-mail starting with the
20 e-mail from the bottom, Mr. Patterson, this e-mail from
21 Mr. Green, if we look under the first sentence, he says "the
22 quality of the far-field AM, is key to the project." Do you
23 see that?

24 A. I do.

25 Q. He's talking about the need to have an acoustic model

M. Kennewick - cross

1 that can be used to do far-field speech recognition;
2 correct?

3 A. Yes, that's correct.

4 Q. And he says here in the second paragraph, "we will
5 confirm on Friday when we review, but from the plans
6 presented so far, it doesn't really show us reaching Echo
7 level this year." Do you see that?

8 A. Yes.

9 Q. And Mr. Green is saying in 2016, that it doesn't look
10 like VoiceBox is going to be able to catch up with Amazon's
11 far-field speech recognition for at least another year.
12 Right?

13 A. That's correct.

14 Q. Okay. If we look in the e-mail above from
15 Mr. DiCristo, in the second paragraph, he says to add to
16 your comments, the plans presented so far, it doesn't really
17 show us reaching Echo level this year, the speech team leads
18 and I could not agree more." Do you see that?

19 A. Yes, I do.

20 Q. So he's saying that the folks on his team agree with
21 Mr. Green that VoiceBox is not going to be able to catch up
22 to Amazon's Echo even three years after it was launched.
23 Right?

24 A. No, this was a new project, this has nothing to do
25 with NLU, this is the ASR. We wanted to replace the IBM ASR

M. Kennewick - cross

1 with our own, and that's a big 3 or 4-year project that they
2 were in the middle of working on when these notes came out.

3 Q. Right, but if you're going to have a smart speaker
4 that could do far-field speech recognition, you needed to do
5 it, right?

6 A. Yes, you also needed an ASR that has a far-field
7 model, and that's what we were working on and it takes time.

8 Q. Ultimately, you didn't get there, did you?

9 A. Well, we did. That's actually what was sold to
10 Oracle, and it's in commercial use by Oracle today in many,
11 many large enterprises.

12 Q. You sold a far-field speech recognition to Oracle?

13 A. We sold Amazon Echo ASR with both a near-field and
14 far-field acoustic.

15 Q. What device did you put that in?

16 A. We sold the technology to Oracle, and they sense put
17 it into their own systems.

18 Q. Let's look at DTX-177, sir. Did you find that?

19 A. 177?

20 Q. Yes, sir.

21 A. Yes, I see it.

22 Q. This is a document entitled eCommerce proposal;
23 correct?

24 A. I see it.

25 Q. And it's dated August 28, 2015; correct?

M. Kennewick - cross

1 A. Yes.

2 MR. HADDEN: Move DTX-177 into evidence, Your
3 Honor.

4 MR. YOON: No objection, Your Honor.

5 THE COURT: Thank you. It's admitted.

6 (DTX Exhibit No. 177 was admitted into
7 evidence.)

8 BY MR. HADDEN:

9 Q. If you look at the last page of this, Mr. Patterson,
10 with the heading monetizing intent to purchase. Do you see
11 that? Do you see that, Mr. Kennewick?

12 A. I do.

13 Q. This mentions current N66 behavior in English?

14 A. Correct.

15 Q. This is referring to that same version of your NLU
16 technology that you were trying to develop for Samsung that
17 we looked at earlier with all the rules; right?

18 A. Yes, this was the currently deployed system by
19 Samsung, we were working on a more advanced system in
20 parallel.

21 Q. But in 2015, that was again the year after Amazon
22 launched Alexa and the Echo, it says the current version
23 that you were working on with Samsung, right?

24 A. That's correct.

25 Q. If we look at the results here, you just said "shop

M. Kennewick - cross

1 for purses online," and the VoiceBox response is, "Here is
2 information about Aces Town Car Service." Right?

3 A. Yes. This looks like a test of the system and at
4 that time, yes, that's why you do testing.

5 Q. And in the next row in the task, the user says "How
6 much does it cost to vacation in Europe?"

7 And the VoiceBox system responds, "Belgium, is
8 not installed. Would you like to install it?" Right?

9 A. Yes, that's correct.

10 Q. And the next test the user says "Book a plane flight
11 to New York on American Airlines."

12 And the VoiceBox system says, "I found several
13 print media in New York, New York." Right?

14 A. Yes.

15 Q. And the user says, "Show me DKNY blue jeans."

16 And the VoiceBox says, "I was not able to find
17 that business in that city." Correct?

18 A. Yes.

19 Q. Now, I asked you to look in your binder, sir, to
20 DTX-186?

21 A. Yes, I have it.

22 Q. Thank you.

23 MR. HADDEN: Move DTX-186 into evidence, Your
24 Honor.

25 MR. YOON: No objection, Your Honor.

M. Kennewick - cross

1 THE COURT: Thank you. It's admitted.

2 (DTX Exhibit No. 186 was admitted into
3 evidence.)

4 BY MR. HADDEN:

5 Q. This is an e-mail from Brad Bargaen to your brother
6 Bob Kennewick, and Tom Gotuzzo, he is VP at VoiceBox, right?

7 A. Yes, it is.

8 Q. It's dated July 6, 2016, right?

9 A. Yes.

10 Q. And the subject line is RE, what's new with Alexa, do
11 you see that?

12 A. I see that.

13 Q. If we look at the e-mail lower down in this string,
14 it is also from Brad Bargaen with the same RE line.

15 Mr. Bargaen says in the text starting on the next page "we
16 have just a couple of minor issues to fix with the purse
17 demo." Do you see that?

18 A. I see that.

19 Q. And the purse demo was a demonstration system to show
20 how you could shop for a purse; right?

21 A. This was a demonstration that Wal-Mart requested we
22 do against their purse selection.

23 Q. Okay. And what Mr. Bargaen says is "we need to
24 implement some sort of buy functionality." Do you see that?

25 A. Yes.

M. Kennewick - cross

1 Q. And he continued, he says, "what we are missing,
2 though, is pure voice, quote unquote, that was the tougher
3 problem that Amazon was trying to solve." Do you see that?

4 A. Yes, I see that.

5 Q. And so, this is in again, 2016, almost two years
6 after Alexa is launched and VoiceBox is still trying to come
7 up with a pure voice purchasing capability, right?

8 A. No, this was specific to this demonstration, if you
9 look at the bottom line there, he's looking at the Wal-Mart
10 API, it worked differently than Amazon, he was unable to do
11 this demo with the Amazon database, but he was trying to do
12 it against the Wal-Mart, different implementation that made
13 it difficult to do.

14 Q. Mr. Bargaen is saying in this e-mail, we need to
15 implement some sort of buy functionality, correct?

16 A. That's credit card processing, yes.

17 Q. And he goes on and says what we're missing though is
18 pure voice, that was the tougher problem that Amazon was
19 trying to solve, right?

20 A. Yes.

21 Q. He's talking about trying to purchase with just your
22 voice, correct?

23 A. Yes, that's correct.

24 Q. Look in your binder for DTX-169. Do you have that,
25 sir?

M. Kennewick - cross

1 A. I got it.

2 Q. And this is a VoiceBox document that's entitled
3 VoiceBox response to Intel interview questions May 7, 2012.
4 Do you see that?

5 A. I see that.

6 MR. HADDEN: Move DTX-169 into evidence, Your
7 Honor.

8 MR. YOON: No objection, Your Honor.

9 THE COURT: Thank you. It's admitted.

10 (DTX Exhibit No. 169 was admitted into
11 evidence.)

12 BY MR. HADDEN:

13 Q. If you look on -- if we go to page 7 of the actual
14 presentation, Mr. Patterson. Thank you. About halfway
15 through that first paragraph, he says "NLP will also be used
16 in our inference engine and for determining relevant voice
17 ads in the future." Do you see that?

18 A. I see that.

19 Q. He's telling Intel in 2012 that you hope in the
20 future to come up with a way to find relevant voice ads,
21 right?

22 A. That's correct.

23 Q. Let's look at PTX-65, again, Mr. Patterson. If you
24 go to page 6. One page earlier. There you go.

25 Now, this is the presentation that you talked

M. Kennewick - cross

1 about with your counsel that you gave to the folks from
2 Amazon in 2011; right?

3 A. That's correct.

4 Q. And on this page you're showing an example of
5 VoiceBox's rules-based NLU, right?

6 A. That's correct.

7 Q. And those rules that you're demonstrating or showing
8 in this slide, those are manual rules that were created by
9 VoiceBox's developers; right?

10 A. That's correct.

11 Q. Please look in your binder, if you would, sir, for
12 DTX-196.

13 A. I have it.

14 Q. Thank you.

15 MR. HADDEN: Move DTX-196 into evidence, Your
16 Honor.

17 MR. YOON: No objection.

18 THE COURT: Thank you. It's admitted.

19 (DTX Exhibit No. 196 was admitted into
20 evidence.)

21 BY MR. HADDEN:

22 Q. So DTX-196 is an e-mail string, the top e-mail is
23 dated January 3, 2018. Do you see that?

24 A. I do.

25 Q. And the e-mail is between you and Mr. Cash Elston,

M. Kennewick - cross

1 correct?

2 A. Let me take a look, yes.

3 Q. And Mr. Elston, was someone you had retained to try
4 to sell VoiceBox patents; right?

5 A. Mr. Elston was the original person who came to us
6 representing Apple to try to buy our patents. He later came
7 back and asked to be a consultant to help value our patents
8 and we hired him as a consultant to help find out if there
9 was value in our patents.

10 Q. Right. In this e-mail string, you're talking about
11 Mr. Elston's attempts to sell VoiceBox's patents to TiVo,
12 right?

13 A. Where are we looking?

14 Q. Look at the email that is dated January 2nd, 2018,
15 from you.

16 A. Yes, I see it.

17 Q. And in this e-mail, you're saying that alternatively,
18 we could do 10 million with no rev share, maybe settle on 7
19 to 8 million. Do you see that?

20 A. I do.

21 Q. So you're telling Mr. Elston that you would probably
22 sell for 7 to \$8 million, the sale of five families of
23 VoiceBox patents, right?

24 A. No, that's not correct.

25 Q. Well, if we look farther down, there is an e-mail

M. Kennewick - cross

1 from Mr. Elston to you, saying "I had a brief discussion
2 with Mark Kroot regarding the five families, right?

3 A. I see that.

4 Q. Those are family of VoiceBox patents including the
5 patents that are being asserted in this case, right?

6 A. I don't know if that's right or not.

7 Q. But you told Mr. Elston that you would take 7 to \$8
8 million for that collection of patents; right?

9 A. I wouldn't characterize -- our arrangement with
10 Mr. Elston was to discover if he could sell the patents for
11 greater than 50 million. He told us that the market for
12 patents because of something called Section 101, was down.
13 And that I asked him in case we needed a fire sale, we sell
14 the company and we want to sell the patents, find out what
15 the pricing is. Ultimately, we decided we wouldn't sell it
16 at these price points.

17 Q. But what you said to Mr. Elston in this e-mail in
18 January of 2018 is maybe settle on 7 to 8 million, correct?

19 A. Yes, if we took a path where we were going to do
20 another transaction and we needed to increment, we would
21 have considered doing it here, but that would have been a
22 fire sale which we didn't have to do.

23 Q. Let's look in your binder, please, sir, to DTX-197?

24 A. I see it.

25 Q. Did you find that sir?

M. Kennewick - cross

1 MR. HADDEN: Move DTX-197 into evidence, Your
2 Honor.

3 MR. YOON: No objection, Your Honor.

4 THE COURT: Thank you. It's admitted.

5 (DTX Exhibit No. 197 was admitted into
6 evidence.)

7 BY MR. HADDEN:

8 Q. Put up -- this is an e-mail exchange or string
9 between you and your brother Rich Kennewick and Todd Kenck,
10 the CFO, correct?

11 A. Yes.

12 Q. If we look in the bottom e-mail from you dated
13 January 29th, 2018, if we continue on to the second page,
14 scroll down if you would, so if we look at the bottom here,
15 you say lets remember that we have been trying to get the
16 company sold or financed for a long time." Do you see that?

17 A. Yes.

18 Q. The next sentence you said "here is a list of
19 prospective buyers who backed out after diligence." Do you
20 see that?

21 A. I do.

22 Q. So all of the companies on this list were companies
23 that VoiceBox was trying to get to purchase VoiceBox; right?

24 A. What's the date on this e-mail?

25 Q. Oh, the date?

M. Kennewick - cross

1 A. The date.

2 Q. It is January 29, 2018?

3 A. Okay, thank you. Yes. In 2018, we were feeling the
4 pressure of the competition from both Amazon and Google. If
5 you recall in 2017, we had a meeting with Amazon to acquire
6 and it didn't happen. So at this point, we were looking to
7 see what the possibilities were. All of these companies
8 that backed out in diligence did so because they didn't
9 think that we could compete with the big players in the
10 marketplace.

11 Q. So it's a true fact, isn't sir, that every one of the
12 companies on this list, the companies that VoiceBox is
13 trying to get to purchase VoiceBox, they did their diligence
14 which means they looked at VoiceBox's technology and
15 business and they decided that VoiceBox is not something
16 they wanted to buy; correct?

17 A. In almost all cases, they did not turn it down
18 because of technology, mostly they were fundamentally
19 worried about the competitive landscape.

20 Q. These companies include Microsoft and Samsung?

21 A. I'll tell you about number one --

22 Q. Microsoft was afraid of the competitive landscape?

23 A. I thought you were talking about number one. Let me
24 look at number two.

25 Number two refers to partners that we exchanged

M. Kennewick - cross

1 proposal with, but never entered due diligence and they
2 never looked at our technology.

3 Q. Look, if you could, sir, in your binder to PTX-631.

4 A. Yes, I'm there.

5 Q. If you look at the top e-mail, I think this is
6 actually an e-mail you discussed with your counsel where you
7 were e-mailing Mr. Booms at Amazon. Do you see that?

8 A. Yes, I do.

9 Q. And?

10 MR. YOON: Your Honor, I don't object to -- this
11 is not the admitted one, but I don't have an objection, it's
12 a little confusing, this one has not been admitted yet, Your
13 Honor, but I have no objection to it being admitted.

14 MR. HADDEN: I move to admit PTX-631 into
15 evidence, Your Honor, I apologize.

16 MR. YOON: No objection.

17 THE COURT: It's admitted.

18 (PTX Exhibit No. 631 was admitted into
19 evidence.)

20 BY MR. HADDEN:

21 Q. Sir, if you look at the top e-mail, that's from you
22 to Mr. Booms at Amazon, right?

23 A. Yes it is.

24 Q. This is where you say VoiceBox has to decide whether
25 we continue to grow on our own, or whether the market is

M. Kennewick - cross

1 getting so big that we need to move forward with leverage of
2 someone else's platform, do you see that?

3 A. Yes.

4 Q. You continue to say "as I said, management at
5 VoiceBox all see Amazon as a favorable landing place, where
6 our vision can be realized with the help of Amazon's brand,
7 resources and, in fact, eCommerce platform, hopefully you
8 agree. Do you see that?

9 A. Yes.

10 Q. This is one of the e-mails that you were trying to
11 get Amazon to engage and purchase VoiceBox in 2017, right?

12 A. This was as a result of the dinner that Amazon tried
13 to hire 100 of our employees, and I felt it would be much
14 better to combine with them as opposed to fight.

15 Q. Nowhere in this e-mail with Mr. Boom to Amazon, do
16 you say Amazon is infringing our patents, do you?

17 A. No, I don't.

18 Q. And nowhere in that e-mail that you sent Mr. Bezos,
19 did you say Amazon is infringing VoiceBox's patents, did
20 you?

21 A. No, of course not.

22 Q. And nowhere in that presentation that you provided to
23 Amazon in 2017 when you were trying to get Amazon to buy
24 VoiceBox, did you say Amazon is infringing our patents?

25 A. No, we wouldn't do that.

M. Kennewick - cross

1 Q. And in fact, Alexa and the Echo came out in 2014,
2 this is 2017. VoiceBox never sued Amazon during that
3 period; correct?

4 A. No, it would have been very expensive.

5 Q. And VoiceBox never told Amazon that it was infringing
6 its patents; correct?

7 A. As far as I know, that's probably true.

8 Q. And, in fact, VoiceBox never told Amazon it was
9 infringing its patents until VB Assets filed this lawsuit in
10 2019; right?

11 A. That's correct.

12 Q. Let's look at in your binder, if you would, sir,
13 PTX-640.

14 A. Yes, I'm there.

15 Q. Okay. So if we look at--

16 MR. HADDEN: Move PTX-640 into evidence, Your
17 Honor.

18 MR. YOON: No objection, Your Honor.

19 THE COURT: Thank you. It's admitted.

20 (PTX Exhibit No. 640 was admitted into
21 evidence.)

22 BY MR. HADDEN:

23 Q. If we look at the e-mail at the bottom, there is an
24 e-mail from you to Mr. Booms again, dated April 12, 2017.
25 Do you see that?

M. Kennewick - cross

1 A. I do.

2 Q. And in the -- toward the end of the first paragraph,
3 do you see, "our team would be excited about becoming part
4 of the Alexa team and realizing our vision through its
5 synergistic path. I personally feel that it would be a
6 shame if we can't find a way to do something." Do you see
7 that?

8 A. I do.

9 Q. You wrote that in an e-mail you sent to Amazon,
10 right?

11 A. Yes, I wrote it to Mr. Booms.

12 Q. And you didn't tell Mr. Booms in this e-mail where
13 you're saying that the team wants to join Amazon, that
14 Amazon was infringing VoiceBox's patents, correct?

15 A. No, but what I told him is that we had -- if you look
16 at number three, IP, that will impede others from vCommerce
17 if they bought us.

18 Q. Sure, you didn't say it would impede Amazon or that
19 Amazon was using VoiceBox's technology or patents, correct?

20 A. No, that wouldn't occur to me.

21 Q. Let's look at JTX-3, if we could, Mr. Patterson.
22 This is the '176 patent that your counsel asked you about.
23 Do you recognize that, sir?

24 A. I do.

25 Q. Could we go to Claim 40, please, Mr. Patterson. Now,

M. Kennewick - cross

1 if we look at Claim 40, it says, "A Conversational Language
2 Processor," do you see that, sir?

3 A. Yes, I see that.

4 Q. Did you invent a Conversational Language Processor?

5 A. No.

6 Q. And if you look at, towards the bottom of the blow
7 out, it says an adaptive misrecognition engine. Do you see
8 that?

9 A. Yes, I do.

10 Q. Did you invent an adaptive misrecognition engine?

11 A. I'm not aware of other representations.

12 Q. My question is simple, this claim says an adaptive
13 misrecognition engine. Did you invent an adaptive
14 misrecognition engine or not?

15 A. I don't know, there were other implementations, I
16 don't know who was the first to do it, there were others.

17 Q. So you were 1 of 2 named inventors on this patent,
18 there is you and Mr. Freeman. Did you invent the adaptive
19 misrecognition engine that's claimed here?

20 A. That's claimed here? Yes.

21 Q. So you invented adaptive misrecognition engine?

22 A. With respect to this claim?

23 Q. I'm trying to understand, it says an adaptive
24 misrecognition engine, is that something you invented?

25 A. What we invented was the combination of these claims

M. Kennewick - cross

1 with an adaptive misrecognition engine, if you're asking
2 about it stand-alone, I don't know.

3 Q. Do you know what an adaptive misrecognition engine
4 is?

5 A. I do.

6 Q. So did you invent one?

7 A. In conjunction with other points in the claims, we
8 did.

9 Q. So how did the adaptive misrecognition engine that
10 you invented determine that the conversational language
11 incorrectly interpreted the words or phrases?

12 A. So if the -- sorry I didn't mean to interrupt you.
13 How did it do it? Basically, what it did was it would
14 explore the ASR, the speech recognition engine, and see if
15 there were mistakes. Based on those mistakes, the NLU would
16 determine whether or not there was a mistake and there are
17 other aspects of the NLU which were used. One of the
18 predetermined events would be the device that the system is
19 running on. Saying it's TV or large screen or a small
20 screen, it could trigger then a set of NLU's and the
21 response that ignores the mistakes or compensates for the
22 mistakes.

23 Q. How would the adaptive misrecognition engine learn
24 that there was a mistake?

25 A. The ASR and the NLU would collaborate to find out if

M. Kennewick - cross

1 there was a mistake in the ASR.

2 Q. Does this patent describe how the ASR and NLU would
3 collaborate to determine if there was a mistake?

4 A. There is a description of the adaptive misrecognition
5 engine.

6 Q. Where is that?

7 A. In the detailed description.

8 Q. Can you show me where that is?

9 A. I don't have the patent in front of me.

10 Q. It is in front of you. I'm sorry, it's in binder
11 that your lawyer gave you, it's one of the documents that
12 you put up on the screen and he asked you about it?

13 MR. YOON: Objection, Your Honor.

14 THE COURT: Hold on.

15 MR. YOON: Objection, Your Honor, he's asking
16 him to search for a document, counsel can point him to
17 anything he wants and can question on, to ask him to search
18 on the spot for a document and find something, I think --

19 THE COURT: It's fine, the witness can say that,
20 if you know, you don't have the thing memorized and you
21 can't find it, you can say that.

22 MR. YOON: Thank you, Your Honor.

23 BY MR. HADDEN:

24 Q. I'll ask another question. Do you know whether this
25 patent describes how the misrecognition engine determines

M. Kennewick - cross

1 that the Conversational Language Processor incorrectly
2 interpreted the words?

3 A. My recollection is that it generally describes how it
4 works, but doesn't specifically include the example I gave
5 you.

6 Q. So do you know what the -- where the general
7 description of how it works is in this patent?

8 A. I need access to the patent, you were in the middle
9 of telling me how to get that.

10 Q. I'm sorry. It's JTX-3, it should be in the binder
11 that your lawyer gave you.

12 A. JTX?

13 Q. Yes, sir.

14 A. I'm looking through it now. I was hoping it would be
15 referred to in the figures and would refer me to a column or
16 a place, but it doesn't, so I will need to read through the
17 detailed description. Yes, there is one there may be
18 multiple places, and it could be spread out in the detailed
19 description, this is very lengthy, very small print, two
20 columns, so there is a lot of reading. But if you turn to
21 page -- to column four on the detailed description. Do you
22 want me to read it to you?

23 Q. No, if you point me to a line, I'll blow it up so we
24 can all see it?

25 A. 45.

M. Kennewick - cross

1 Q. Okay. The sentence that says, "Furthermore,
2 Conversational Language Processor may support adaptive
3 misrecognition to reinterpret a current utterance and/or one
4 or more previous utterances."

5 Is that what you're looking at?

6 A. Yes, it is.

7 Q. So my question is, how did that describe how the
8 misrecognition engine determines that the the NLU made a
9 mistake?

10 A. So it says here, "Information contained in the
11 current utterance may indicate that interpretations for one
12 or more previous utterances were incorrect, and therefore,
13 the previous utterances may be reinterpreted to improve
14 subsequent interpretations. Accordingly, Conversational
15 Language Processor may use the techniques described herein
16 along with various other techniques to interpret and respond
17 to conversational natural languages."

18 Q. If we can blow this up, Mr. Patterson.

19 For example, information contained in a current
20 utterance may indicate that interpretations for one or more
21 previous utterances were incorrect?

22 A. Yeah.

23 Q. That's talking about the user saying something to the
24 system that says you got it wrong, right?

25 A. That's correct.

M. Kennewick - redirect

1 MR. HADDEN: Thank you. No further questions.

2 Thank you, Mr. Kennewick.

3 THE COURT: Thank you. Redirect.

4 MR. YOON: Yes, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. YOON:

7 Q. Could we have DTX-194 on the screen.

8 And Mr. Kennewick, you recall that you were
9 asked a number of questions about when the limitation of the
10 VoiceBox designed at 40 engineers at Toyota looked at. Do
11 you recall that?

12 A. I do.

13 Q. If we could now go to page 29149. Could we blow that
14 up, please?

15 Do you recall that counsel for Amazon asked you
16 questions about what people didn't like about the system to
17 the right side of that slide, do you see that?

18 A. I do.

19 Q. Counsel for Amazon didn't ask you what they liked
20 about the system, did he?

21 A. No, he did not.

22 Q. And so looking at this, if you look at the bullet
23 point, the third one down on the left, could you highlight
24 that, sir. It says "I liked how you could talk to it in a
25 human way" --

M. Kennewick - redirect

1 MR. HADDEN: Objection. Leading.

2 THE COURT: Can you ask it in a non-leading way?

3 MR. YOON: Understood, Your Honor.

4 BY MR. YOON:

5 Q. If you look at it, what does that bullet say?

6 A. "Liked how you could talk to it in a very human way
7 versus a robotic way."

8 Q. Put that one back.

9 If you could look at the bottom bubble, and what
10 does the survey say about handling slang?

11 A. "I liked the natural language feature. It seemed to
12 pick up slang very well."

13 Q. For example to the bottom. If we could look at the
14 additional comments and just blow up the additional
15 comments. What did that say, sir?

16 A. "Overall and with more refinement, I think this could
17 be very useful."

18 Q. What did they say --

19 A. I'm not inclined towards using verbal command
20 systems, especially Siri, but I would definitely use this
21 system.

22 Q. When you were working with Toyota or Samsung, in the
23 process of working through things the first development
24 cycle prototypes, did they always work right?

25 A. No. This is very complicated software and it goes

M. Kennewick - redirect

1 through a lot of test cycles.

2 Q. Would you work with Toyota, your partner?

3 A. Yes. This was an example of how we worked together.
4 We worked together to resolve the things people didn't like
5 about it, and in a future system it was all resolved.

6 Q. Did you work those things out with Toyota?

7 A. We did.

8 Q. Now we can go to Exhibit 632, and if you could turn
9 on Exhibit 632 to page 4764. This is the presentation you
10 showed to Amazon in 2017?

11 A. It was.

12 Q. And do you see the words "semantic parser"?

13 A. I do.

14 Q. What is semantic parser?

15 A. The semantic parser is something that goes beyond how
16 we originally did natural language, nouns and verses, it
17 actually looked at the entire grammatical construct. For
18 example, I could say, "Are there coffee shops within walking
19 distance of the courthouse, but I don't want Starbucks?"

20 So you could do those things that aren't
21 possible in today's voice assistance.

22 Q. If we could get DTX-187 on the screen.

23 Do you recall that counsel for Amazon was asking
24 you questions about 2016 e-mail regarding the N66 version
25 with respect to Samsung?

M. Kennewick - redirect

1 A. I do.

2 Q. And can we just go, for a moment here, and go to
3 page 23412 for a moment?

4 412. You recall this is -- we can blow that up
5 for a moment. This is the slide that Amazon showed in its
6 opening statement and asked you about in cross-examination?

7 A. I do.

8 Q. And this is just one slide in a presentation;
9 correct?

10 A. Correct.

11 Q. And if we could just turn to the first page of that
12 presentation, which Amazon didn't show you, and that's
13 page 23405. 405.

14 What was the title of this presentation?

15 A. Benefits of Semantic Parsing.

16 Q. And in particular, if you go to the next page which
17 is the executive summary of this presentation, what does it
18 say?

19 A. We were trying to convince them to move from the
20 current N66 which they started co-development in 2013 and
21 move to the AI version of our product.

22 Q. And do you recall that you had mentioned to counsel
23 for Intel that you had parallel development of an AI version
24 in addition to the original version?

25 A. That's correct. These things take two to three years

M. Kennewick - redirect

1 to develop and we have to do them in parallel.

2 Q. So in 2016, VoiceBox had an AI based semantic parser?

3 A. We did.

4 Q. And the purpose of this presentation was to show how
5 much better VoiceBox's semantic parser in 2016 performed
6 versus its older technology, the N66?

7 A. That's correct.

8 Q. And if you go to the first page of Exhibit 187, and
9 if we go down to the e-mail from David McGee. And what was
10 the subject of Mr. McGee's e-mail?

11 A. Semantic parsing project executive summary.

12 Q. And was Mr. McGee pleased to report in
13 September 18th, 2016, about the performance of VoiceBox's AI
14 semantic parsing versus its older N66 product?

15 MR. HADDEN: Objection. Leading.

16 THE COURT: Rephrase it.

17 MR. YOON: Yes. No problem, Your Honor.

18 BY MR. YOON:

19 Q. Did Mr. McGee have a feud regarding the performance
20 of the semantic parser versus the N66?

21 A. Yes. Given how complicated semantic parser is, he
22 was very pleased to reach high degrees of accuracy.

23 Q. And now, if if we can now have DTX-169 on the screen.
24 You were asked about this document, sir, in your cross?

25 A. Yes.

M. Kennewick - redirect

1 Q. And this document is dated May 7th, 2012?

2 A. Yes.

3 Q. It's approximately six or seven months after the
4 meeting with Amazon in October 2011?

5 A. That's correct.

6 Q. And if you would go to page 188, page 5, and if we
7 could just blow up the bottom. And what did you inform
8 Intel in 2012?

9 A. That we combined rules-based and statistical together
10 in a system we called hybrid.

11 Q. And is it accurate to say VoiceBox was already moving
12 to a statistical model by 2012?

13 A. Yes, in 2012, our belief was that certain
14 applications are better on rules-based and certain ones are
15 better with machine learning and we wanted to do both so we
16 could get the best of both.

17 Q. If we could have JX-3 back on the screen. This is
18 the '176 patent. If we could have column 4, lines 45 to 67
19 on the screen. And you see starting at line 55,
20 "Conversational Language Processor 120 may use various other
21 techniques as will be apparent."

22 A. Yes, I do.

23 Q. What's identified below that, sir?

24 A. It identifies other patents we have that include
25 systems and method for supporting adaptive misrecognition

1 and conversational speech.

2 Q. And do you see one of those patents is entitled,
3 System and Method For Cooperative Conversational Voice User
4 Interface, do you see that?

5 A. I do.

6 Q. And do you see that was filed October 16, 2006?

7 A. Yes.

8 Q. Is that the '681 cooperative conversation patent?

9 A. It is.

10 MR. YOON: Thank you, sir.

11 THE COURT: That's it?

12 MR. YOON: Your Honor, we're ready to go on with
13 the next depo testimony.

14 THE COURT: All right. Thank you, sir. You're
15 excused. And I think your depositions for today were just
16 about ten minutes.

17 MR. YOON: This one is only twelve minutes.

18 THE COURT: Why don't we do that and then we'll
19 break for the day.

20 MR. YOON: At this time, Your Honor, VoiceBox is
21 now calling via deposition, the deposition testimony of
22 Philippe DiCristo, who is the former Senior Science Manager
23 at Amazon from 2016 to 2022.

24 I apologize, Your Honor. Can we restart it?

25 I apologize, Your Honor, there is something that

1 we have to do here at the desk to turn the speaker on.

2 THE COURT: How about we just break for the
3 evening and then you guys can figure it out, and we'll start
4 with this first thing tomorrow morning.

5 MR. YOON: My apologies, Your Honor.

6 THE COURT: That's all right. Members of the
7 jury, I'll just remind you not to do any research, not to
8 talk with anyone about the substance of the case and we'll
9 see you tomorrow. Thanks very much.

10 COURTROOM DEPUTY: All rise.

11 (Jury exiting the courtroom at 4:25 p.m.)

12 THE COURT: All right. You can be seated.

13 Mr. Yoon, where are we on the evidentiary
14 issues?

15 MR. YOON: Your Honor, I think we made progress,
16 but obviously since I was here, I don't know the details. I
17 do believe if you give us the opportunity this evening to
18 meet and confer, hopefully you don't see a letter from us at
19 7:00 a.m. tomorrow, but I think that would be the most
20 efficient way.

21 THE COURT: Okay. I'll give you that
22 opportunity to try to figure out what's going on and if not,
23 then send us an e-mail letting us know that we need to
24 address it.

25 Anything else that we need to talk about?

1 MR. YOON: No, Your Honor.

2 MR. HADDEN: No, Your Honor.

3 COURTROOM DEPUTY: All rise. Court is
4 adjourned.

5 (Court adjourned at 4:24 p.m.)

6

7 I hereby certify the foregoing is a true and
8 accurate transcript from my stenographic notes in the proceeding.

9

10 /s/ Dale C. Hawkins
11 Official Court Reporter
12 U.S. District Court
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