

MAXELL, LTD.,) ()
 PLAINTIFF,) (CIVIL ACTION NO.
) (5:23-CV-92-RWS
 VS.) (TEXARKANA, TEXAS
) ()
 SAMSUNG ELECTRONICS CO., LTD.,) ()
 and SAMSUNG ELECTRONICS) (MAY 22, 2025
 AMERICA, INC.,) (8:32 A.M.
 DEFENDANTS.) ()

VOLUME 4

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P R O C E E D I N G S

(Jury out.)

COURT SECURITY OFFICER: All rise.

THE COURT: Please be seated.

Good morning, everyone.

Okay. I know there were a couple of overnight filings, and I've had a chance to look at those. I have not had a chance to thoroughly review the EcoFactor decision of the Federal Circuit yesterday. I've just very briefly looked at it. So I'm certainly not thoroughly familiar with it, but kind of understand the broad principles.

So whichever issue the parties wish to discuss first is fine with me.

MR. LINDINGER: Your Honor, may I proceed?

THE COURT: Yes.

MR. LINDINGER: Michael Lindinger on behalf of Maxell.

Our objection to DX- -- DTX-245 is pretty straightforward. Unlike some of the other arguments that we understand where the Court stands over this trial regarding the IPRs, this one's different. Samsung wants to bring up the IPR with its expert.

They admit that he hasn't discussed it or mentioned it anywhere in his report. Not just the

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08:34:34 1 institution decision but the '086 IPR itself.

08:34:37 2 So under Federal Rule 26, and as we said in our
08:34:43 3 short brief last night, Samsung's Motion in Limine No. 1,
08:34:47 4 which they were wanting the experts to stay to the four
08:34:51 5 corners of their report, we just ask the Court to hold
08:34:54 6 Samsung to its own standard.

08:34:57 7 If the Court has anything further, I'm happy to
08:35:00 8 address it.

08:35:01 9 THE COURT: That's almost always the practice in
08:35:04 10 this court and other courts in this district.

08:35:10 11 Can you explain to me why this isn't a different
08:35:14 12 situation?

08:35:15 13 MR. LINDINGER: We think it is the same situation.
08:35:19 14 We just need to hold him to the four corners of his report.

08:35:22 15 The IPR decisions, they've been discussed with
08:35:25 16 Mr. Yamamoto-san. They -- I understand they want -- they
08:35:28 17 don't want to get into the details, but they want to, I
08:35:33 18 think, kind of have this sheen of expert testimony, and
08:35:38 19 they want to ask the same questions to their expert.

08:35:40 20 And they had -- their expert, Mr. -- Dr. Nielson,
08:35:44 21 had a chance to mention this. The IPR institution decision
08:35:49 22 for the '086 came out on November 4th of last fall. He
08:35:55 23 submitted his invalidity report on November 5th. He had a
08:35:58 24 chance to mention -- at least mention it. He doesn't
08:35:58 25 mention the IPR at all, let alone the institution decision

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08:36:01 1 that just came out the day before.

08:36:04 2 So for those reasons, he hasn't mentioned it in
08:36:08 3 either of his reports, so he should not be allowed to
08:36:12 4 testify even to kind of the acknowledgement of the
08:36:15 5 existence of it when that evidence is already in the
08:36:19 6 record.

08:36:20 7 THE COURT: All right.

08:36:21 8 MR. LINDINGER: Thank you, Your Honor.

08:36:23 9 MR. CUNNINGHAM: Your Honor, I guess two -- two
08:36:24 10 points. One, the last things counsel said was, the
08:36:27 11 evidence is already in the record. So the jury has heard
08:36:30 12 about these IPR institutions.

08:36:32 13 And all I want Dr. Nielson to do is explain to the
08:36:37 14 jury that -- that his role in the IPR relates to prior art
08:36:43 15 patents which the Patent Office is considering.

08:36:47 16 While his role in this trial is to talk about a
08:36:49 17 different issue, written description under Section 112,
08:36:53 18 that is the purview of the jury, and the Patent Office
08:36:57 19 obviously can't take on that argument.

08:36:58 20 So all I want him to do is just say, you know,
08:37:02 21 essentially, why are we still talking about validity in
08:37:04 22 front of the jury?

08:37:05 23 I don't know anything about sheen. He's not going
08:37:08 24 to offer any opinions about what's going on in the IPR.
08:37:12 25 It's just that's a different issue. That's one for the

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08:37:15 1 Patent Office. 112 is different. It gets heard by a jury,
08:37:19 2 and -- and so that's it.

08:37:20 3 We're just trying to -- to separate what's going
08:37:23 4 on in the Patent Office in the IPR from what he's going to
08:37:26 5 be testifying about to the jury. So it's purely factual
08:37:31 6 information designed to sort of help the jury understand
08:37:34 7 why there are two different proceedings on two different
08:37:37 8 issues.

08:37:38 9 THE COURT: Anything further?

08:37:39 10 MR. LINDINGER: Very briefly, Your Honor.

08:37:40 11 Number one, Mr. Cunningham was not at the meet and
08:37:47 12 confer, I was. And Samsung represented -- and you just
08:37:51 13 heard Mr. Cunningham say they're essentially calling him as
08:37:54 14 a fact witness. They're proffering him as an expert. So
08:37:57 15 I'm not quite sure what the factual part of his testimony
08:38:00 16 is versus the expert part.

08:38:01 17 But I just heard Mr. Cunningham say he's not going
08:38:03 18 to say there's prior art, kind of distinguishing what's
08:38:05 19 going on in the IPR versus, well, my testimony here today
08:38:08 20 is about written description.

08:38:09 21 That's not -- that wasn't said in the meet and
08:38:11 22 confer, and that's not in their brief where they said even
08:38:15 23 more plainly that they just kind of want to ask about the
08:38:20 24 institution decision.

08:38:21 25 And they said in their brief last night: We'll

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08:38:24 1 not discuss the substance of his invalidity opinions in the
08:38:26 2 IPR.

08:38:27 3 Now he just said: Oh, well I'm going to talk
08:38:30 4 about the prior art at the PTAB, but I'm not going to do
08:38:33 5 that here.

08:38:34 6 So they're now even expanding what he may be
08:38:37 7 testifying to today. So, again, Your Honor, for all these
08:38:40 8 reasons --

08:38:40 9 THE COURT: Well, I may be confused, but I think
08:38:43 10 they actually said that in their filing. I think that
08:38:48 11 Samsung made that suggestion in their filing.

08:38:50 12 I'm going to overrule the objection,
08:38:53 13 Mr. Lindinger. I think what Mr. Cunningham has represented
08:38:58 14 he intends to do with the witness is -- is appropriate.
08:39:05 15 And I'm satisfied that the limited nature of that is -- is
08:39:09 16 acceptable. So I'll overrule the objection.

08:39:17 17 MR. LINDINGER: And just -- I guess what's good
08:39:19 18 for the goose is good for the gander. Our experts can
08:39:23 19 state the same thing, Your Honor?

08:39:25 20 THE COURT: We'll see how it develops. I mean,
08:39:27 21 we'll just see how it develops.

08:39:30 22 MR. LINDINGER: Okay. Thank you, Your Honor.

08:39:31 23 THE COURT: I mean, I will say I think the door
08:39:34 24 has been widely blown open on this. It has come up a
08:39:38 25 couple of times on redirect in the Plaintiff's witnesses.

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08:39:43 1 You yourself yesterday, Mr. Lindinger, I think, raised this
08:39:48 2 with -- I think you actually went through the institution
08:39:58 3 decisions and had Dr. Balakrishnan read into the record
08:40:07 4 sections of the institution decisions. Isn't that correct?

08:40:14 5 MR. LINDINGER: On redirect to respond to
08:40:17 6 something that Mr. Fowler said on cross.

08:40:20 7 THE COURT: Right.

08:40:21 8 MR. LINDINGER: Yes, Your Honor.

08:40:22 9 THE COURT: And my recollection is Mr. Beaber did
08:40:24 10 the same thing with Mr. Yamamoto the day before that. So I
08:40:27 11 think it's going to be extremely difficult to get the horse
08:40:30 12 back into the barn.

08:40:32 13 MR. LINDINGER: Understood, Your Honor. Thank
08:40:34 14 you.

08:40:34 15 THE COURT: All right. Next issue?

08:40:40 16 MS. GIBSON: Good morning, Your Honor.

08:40:41 17 THE COURT: Good morning.

08:40:41 18 MS. GIBSON: This relates to our objection to
08:40:48 19 Mr. Jarosz's testimony and demonstratives in light of the
08:40:52 20 EcoFactor en banc decision that came down yesterday,
08:40:55 21 Your Honor. I believe we all got it when we got out of
08:40:58 22 court. The timing is unique with the witness set to take
08:41:01 23 the stand this morning.

08:41:02 24 So we renew our objection in light of this
08:41:05 25 decision. The Federal Circuit yesterday held that a

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1 District Court abused its discretion by failing to exclude
2 expert testimony related to patent damages because the
3 expert relied on licenses that were insufficient on their
4 face to support his proposed royalty rate.

5 In EcoFactor, the Plaintiff's expert, there
6 Mr. Kennedy, relied on licenses that lacked the proposed
7 royalty rate on their face in testimony from a corporate
8 witness about how proposed royalty rates purportedly could
9 be calculated from them, regardless.

10 The Federal Circuit concluded -- and this was in
11 our brief last night at Page 1 -- this assertion by
12 Mr. Kennedy that prior willing licenses had agreed to the X
13 dollar royalty rate is not supported by the licenses. The
14 licenses individually or in combination do not support
15 Mr. Kennedy's opinion that the licensees were paying the X
16 dollar rate, agreed to pay the X dollar rate, or agreed
17 that the X dollar rate was a reasonable royalty.

18 As set forth in our Daubert motion -- and this is
19 on the market approach, which is his remaining opinion that
20 he intends to present today, we believe -- Mr. Jarosz's
21 licensing comparables approach relies on several license
22 offers, transactions, and negotiations, but none of what he
23 considers to be the most informative licenses that he uses
24 for his calculation state the rate, especially the Maxell
25 standard rate of 1 percent on their face.

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08:42:38 1 In fact, on numerous occasions, he cites those
08:42:41 2 licenses and says they support a rate that is nowhere in
08:42:44 3 the license, and that's the basis for his opinions as to
08:42:49 4 the royalty rates to be applied in this case.

08:42:51 5 So lacking this express standard rate in the
08:42:54 6 agreements themselves, Mr. Jarosz relies on self-serving
08:42:58 7 testimony from Mr. Yamamoto of Maxell that the purported
08:43:01 8 effective royalty rate is 1 percent, regardless of what the
08:43:05 9 licenses say on their face.

08:43:06 10 So as in EcoFactor, no reliable evidence supports
08:43:09 11 Maxell's 1 percent rate, and we would ask that Mr. Jarosz's
08:43:12 12 testimony and his demonstratives be excluded on this basis.

08:43:16 13 THE COURT: Let me ask you this. Does the -- does
08:43:21 14 he opine anywhere that the most informative agreements
08:43:25 15 which have a less than 1 percent rate on their face are
08:43:28 16 actually equivalent to 1 percent?

08:43:30 17 MS. GIBSON: He does based on, quote, nonmonetary
08:43:33 18 consideration that's based on the testimony of
08:43:35 19 Mr. Yamamoto.

08:43:36 20 THE COURT: And wasn't -- in the EcoFactor case,
08:43:42 21 wasn't the issue there that the agreements did state the
08:43:50 22 rate on their face, but that the licensee did not agree
08:43:55 23 that the rate was a reasonable royalty?

08:43:57 24 MS. GIBSON: That is part of the EcoFactor
08:44:00 25 decision. So, there, they actually had the rates, unlike

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08:44:04 1 here.

08:44:04 2 Now, there are some rates in some of the
08:44:08 3 agreements, Your Honor, but not the rates that Mr. Jarosz
08:44:11 4 says apply for some of these agreements; for example, no 1
08:44:14 5 percent rate in any of the most informative licenses.

08:44:16 6 So in EcoFactor, there was this whereas clause.
08:44:19 7 And for two of the agreements, it said here's the rate, and
08:44:22 8 then it said, and by the way, the licensee doesn't agree
08:44:24 9 that's the rate. And then for a third one, it just says
08:44:28 10 here's the rate we believe applies to the licensing party.

08:44:31 11 So, there, the rate was even in the agreements.
08:44:34 12 Two of them it said the licensing party didn't agree to it,
08:44:35 13 and the third one just said nothing at all, so presumably
08:44:38 14 that could support the rate.

08:44:39 15 But those were lump-sum agreements, and so in
08:44:41 16 order to say, oh, this was actually agreed, it's something
08:44:45 17 that the parties agreed to, they relied on this testimony
08:44:48 18 of the CEO, and the Federal Circuit found that
08:44:51 19 insufficient.

08:44:51 20 THE COURT: Okay. Again, as I said, I had an
08:44:54 21 opportunity to just briefly look at EcoFactor, but I
08:44:58 22 haven't really thoroughly reviewed it. Does EcoFactor
08:45:02 23 address or reconcile in any way the language in the
08:45:06 24 Whitserve case? Do you know?

08:45:12 25 MS. GIBSON: No, Your Honor.

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08:45:13 1 THE COURT: I'm not trying to test you here. The
08:45:15 2 decision just came out yesterday.

08:45:16 3 MS. GIBSON: That's right.

08:45:17 4 THE COURT: In that case, I think what the Court
08:45:21 5 said was that: Proposed, but unaccepted licenses, can be
08:45:28 6 informative even if their evidentiary value may be limited.

08:45:32 7 Isn't that right?

08:45:33 8 MS. GIBSON: The Whitserve case did say that,
08:45:35 9 proposed, but unaccepted royalty rates, can be informative
08:45:40 10 in some circumstances.

08:45:41 11 But there are other cases, Your Honor, including
08:45:43 12 some district court cases I'm aware of, that found that you
08:45:44 13 can't just rely on a proposed rate in order to set a
08:45:47 14 royalty rate in a case.

08:45:48 15 THE COURT: Okay.

08:45:50 16 MS. GIBSON: If there's no evidence that that rate
08:45:51 17 has ever been accepted.

08:45:52 18 THE COURT: And does the EcoFactor case address
08:45:56 19 Whitserve in any way?

08:45:59 20 MS. GIBSON: I don't recall, Your Honor, this
08:46:03 21 morning. I'm sorry.

08:46:03 22 THE COURT: Again -- well, we're all -- it's all
08:46:04 23 new to us.

08:46:04 24 So in terms of the direct contradiction that you
08:46:06 25 were talking about earlier, do we have that kind of direct

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08:46:10 1 contradiction here from the licensees in the comparable
08:46:13 2 agreements?

08:46:14 3 MS. GIBSON: No, we don't.

08:46:15 4 THE COURT: At all? Okay.

08:46:16 5 MS. GIBSON: No. We have -- it's more like the
08:46:19 6 third license in EcoFactor where we just have silence,
08:46:24 7 Your Honor, or there's no rate in the -- there's no --
08:46:25 8 there's no rate in the agreement at all that would support
08:46:28 9 Mr. Jarosz's opinion, especially that that license could be
08:46:32 10 equated to a 1 percent rate.

08:46:34 11 THE COURT: And then final question, do any of the
08:46:36 12 Georgia-Pacific factors contemplate proposed licenses?

08:46:43 13 MS. GIBSON: So I think -- both experts, I think,
08:46:48 14 Your Honor, are going to be opining that under
08:46:51 15 Georgia-Pacific Factor 15, as to the reasonable -- as to
08:46:55 16 the hypothetical negotiation, which was at issue in
08:46:57 17 EcoFactor, I think that's the best way I can answer your
08:47:02 18 question, is that's the testimony we'll hear from the
08:47:06 19 experts in this case.

08:47:06 20 THE COURT: Okay. All right. Thank you, ma'am.

08:47:10 21 MS. GIBSON: Thank you, Your Honor.

08:47:11 22 MR. LEVY: Good morning, Your Honor.

08:47:17 23 THE COURT: Good morning.

08:47:18 24 MR. LEVY: Kfir Levy for Maxell.

08:47:20 25 I'm sorry to do this, but I think it's probably

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08:47:23 1 important that I get into the agreements at issue, which
08:47:25 2 means we're going to need to seal the courtroom.

08:47:27 3 THE COURT: All right. We'll seal the courtroom
08:47:30 4 at this time.

08:47:31 5 (Courtroom sealed.)

08:47:31 6 (This portion of the transcript is sealed
08:47:31 7 and filed under separate cover as
09:13:01 8 Sealed Portion No. 10.)

09:13:01 9 (Courtroom unsealed.)

09:13:01 10 THE COURT: All right. Mr. Savage, if you would,
09:13:04 11 have our jurors brought down.

09:13:05 12 And if the witness could get back on the witness
09:13:07 13 stand.

09:14:56 14 (Jury in.)

09:14:56 15 THE COURT: Please be seated.

09:15:06 16 Good morning, ladies and gentlemen of the jury.
09:15:08 17 Welcome back. When we concluded the day yesterday, the
09:15:12 18 witness had completed his direct examination.

09:15:16 19 At this time, Mr. Fowler, you may conduct your
09:15:18 20 cross-examination.

09:15:19 21 MR. FOWLER: Thank you, Your Honor.

09:15:20 22 CROSS-EXAMINATION

09:15:21 23 BY MR. FOWLER:

09:15:21 24 Q. Good morning, Dr. Singh. How are you?

09:15:23 25 A. Very good. Good morning, counsel.

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09:15:25 1 Q. I'm not sure we met before. My name is Mark Fowler.
09:15:29 2 It's good to meet you.
09:15:30 3 A. Good to meet you, as well.
09:15:32 4 Q. Okay. Yesterday we heard from you, Maxell, and your
09:15:34 5 side of the story on the '815 infringement issue, right?
09:15:38 6 A. Yes.
09:15:38 7 Q. Okay. And you understand that Dr. Kia, who is here in
09:15:40 8 the courtroom with us, later today or maybe tomorrow
09:15:43 9 morning, he's going to be telling Samsung and his side of
09:15:46 10 the infringement story on the '815 patent, correct?
09:15:50 11 A. I believe so.
09:15:51 12 Q. And it's fair to say that you and Dr. Kia have some
09:15:55 13 pretty sharp disagreements as to whether there's
09:15:57 14 infringement with respect to at least certain limitations
09:16:00 15 of the '815 patent, right?
09:16:02 16 A. We have some disagreements, yes.
09:16:04 17 Q. They're not just small disagreements. If he's right,
09:16:08 18 there's no infringement; if you're right, there's
09:16:10 19 infringement. That's fair, right?
09:16:11 20 A. In a general sense.
09:16:12 21 Q. Okay. And since we'll be hearing from Dr. Kia
09:16:15 22 relatively soon, why don't we focus on your side of the
09:16:17 23 story this morning; is that okay?
09:16:19 24 A. Sure.
09:16:19 25 Q. So I want to talk about three things this morning. You

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09:16:24 1 started yesterday talking about the family history of the
09:16:26 2 patent, then you turned to Claim 21 -- I'm sorry, Claim 1,
09:16:30 3 and then Claim 21. So I'd like to address each of those
09:16:33 4 three things in that order; is that okay?

09:16:36 5 A. Sure.

09:16:36 6 Q. Okay. So let's start where you started.

09:16:39 7 MR. FOWLER: And pull up PDX-712.

09:16:42 8 Q. (By Mr. Fowler) Which was one of your demonstratives
09:16:43 9 that you used yesterday.

09:16:44 10 Do you recall sharing this with the jury yesterday
09:16:48 11 near the beginning of your testimony?

09:16:49 12 A. I do.

09:16:51 13 Q. And this is a timeline of the '815 patent; is that
09:16:59 14 correct?

09:16:59 15 A. Yes.

09:17:00 16 Q. And what this reflects is a different series of patents
09:17:03 17 and patent applications starting on the left and going to
09:17:06 18 the right that eventually led to the '815 patent; is that
09:17:09 19 correct?

09:17:09 20 A. It's a series of continuations.

09:17:11 21 Q. Right. And so, just so the jury understands and
09:17:15 22 perhaps they already do, what happens is you have this
09:17:19 23 August 11, 2005, that was a patent application that was
09:17:23 24 filed that later turned into a patent. Right?

09:17:26 25 A. Yes.

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09:17:29 1 Q. Okay. And then what happens is later, Maxell files a
09:17:34 2 second application on September 29 -- September 28, 2009,
09:17:40 3 that's based on the first application?
09:17:41 4 A. Yes.
09:17:41 5 Q. And what we call this in our weird little world that we
09:17:46 6 live in is the August 2005 patent, that's the parent
09:17:51 7 application -- or parent patent, right?
09:17:53 8 A. Sure, you could call it that.
09:17:56 9 Q. And then some people would call the next patent a child
09:17:59 10 patent, right?
09:17:59 11 A. I like to call it a chain, but --
09:18:02 12 Q. A what?
09:18:03 13 A. A chain.
09:18:05 14 Q. A chain?
09:18:07 15 A. A chain. It's a chain of patents.
09:18:08 16 Q. But you've heard -- you've heard the phrase "child
09:18:10 17 patent," right?
09:18:10 18 A. I've heard the phrase "child." I've heard the phrase
09:18:15 19 "continuation." Or --
09:18:17 20 Q. Sure. And then the next patent, the '783, that would
09:18:17 21 be a grandchild patent. You've heard that phrase before
09:18:17 22 too, right?
09:18:17 23 A. That one I have not heard.
09:18:25 24 Q. Okay. Well, in any event, you -- you get the idea.
09:18:26 25 These are, what you said, a chain of patents starting back

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09:18:29 1 in August of 2005.

09:18:30 2 And I think what -- you tell me if I'm wrong, but
09:18:32 3 I think what you're trying to communicate with these
09:18:36 4 figures -- and the figures are all the same, right, across
09:18:39 5 all of these patents?

09:18:40 6 A. Yeah. I mean, the slide is an illustration
09:18:45 7 demonstrating the fact that the figures are the same.
09:18:48 8 There are many more figures in the patent. These are just
09:18:50 9 a few of them.

09:18:51 10 Q. Right. So that's what I want to get into is, the text
09:18:55 11 of the specification -- I'm not talking about the claims,
09:18:57 12 but the text of the specification of all of these patents
09:19:00 13 is identical, word for word, right?

09:19:02 14 A. Yes.

09:19:02 15 Q. And all of the figures in all of these patents, they're
09:19:05 16 all the same, too, not just these three, but all of them?

09:19:08 17 A. Yes, the description and figures is the same.

09:19:10 18 Q. And the named inventors are the same, right?

09:19:12 19 A. The named inventors, I believe so.

09:19:16 20 Q. Right.

09:19:17 21 A. I'm -- I'm not a hundred percent certain on that,
09:19:21 22 but -- but, yeah, I would believe so.

09:19:22 23 Q. The titles are all the same?

09:19:24 24 A. The titles are all the same -- titles, yeah, should be
09:19:29 25 the same.

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09:19:30 1 Q. Okay. So is one of the points that you were attempting
09:19:33 2 to convey to the jury yesterday that the inventions
09:19:38 3 described in all of these patents, it's the same invention?
09:19:41 4 A. No, I was not attempting to --
09:19:47 5 Q. So are you -- are you -- okay. This is important, and
09:19:48 6 we'll get to this when we get to the invalidity part of the
09:19:51 7 case. But are you saying that the invention that's
09:19:53 8 described in each of these patents is different, or is it
09:19:55 9 the same?
09:19:59 10 A. No --
09:19:59 11 Q. What's your position on that, sir?
09:20:01 12 A. It's -- it's -- so there's two aspects to inventions in
09:20:05 13 patents. There's the inventions that are disclosed in the
09:20:10 14 figures and the -- and the description. And then there
09:20:16 15 is -- out of that entire specification, there's claims that
09:20:22 16 claim certain aspects of the invention.
09:20:25 17 And so what this slide is showing is that all of
09:20:30 18 these patents, the claims rely on the same description and
09:20:37 19 the same figures to make those claimed inventions.
09:20:43 20 Q. So we'll get to this. We're going to be talking again
09:20:48 21 at the end of the case, right, when we're talking about
09:20:50 22 validity?
09:20:51 23 A. Okay.
09:20:51 24 Q. That's correct, right, you and I still have a chance to
09:20:54 25 talk?

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09:20:54 1 A. Yes.

09:20:54 2 Q. So since you brought this up, I thought we should get

09:20:57 3 this to the jury.

09:20:58 4 So your point to the jury is that the

09:21:00 5 specification -- whatever invention is described in the

09:21:02 6 body of the specifications, including the figures, that's

09:21:04 7 all the same? That's your view, right?

09:21:07 8 A. The disclosure is the same.

09:21:09 9 Q. Right.

09:21:09 10 A. The invention is the claims.

09:21:12 11 Q. Right.

09:21:13 12 A. Each patent has its own claims.

09:21:14 13 Q. I just need you to answer my questions.

09:21:17 14 So the question I asked you was the specification,

09:21:19 15 those pages and pages of description and the figures, they

09:21:23 16 describe the same invention, right?

09:21:25 17 A. The specification is the same.

09:21:27 18 Q. Okay. And then I think you were -- you're a little bit

09:21:30 19 ahead of me, but the claims are different?

09:21:33 20 A. The claims are different.

09:21:35 21 Q. Okay. So when we -- when we chat again, you would

09:21:44 22 acknowledge to me that you need to look at both the

09:21:46 23 specification and the claims to figure out what the correct

09:21:48 24 priority date is, right?

09:21:49 25 A. Sorry, could you repeat the question?

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09:21:50 1 Q. You need to look at both the specification and the
09:21:55 2 claims to do the determination of what the correct priority
09:21:59 3 date is, right?

09:22:00 4 A. Well, the priority date is given by the U.S. Patent
09:22:03 5 Office.

09:22:03 6 Q. I know. But you understand that the jury is going to
09:22:07 7 be instructed by the Judge that this is something they need
09:22:10 8 to decide, right? It's not for the Patent Office to decide
09:22:13 9 in this courtroom; it's for the jury to decide. Right?

09:22:15 10 A. Yes.

09:22:16 11 Q. And what they need to be able to do is look, not just
09:22:19 12 at the specification, but the claims. And they have to
09:22:21 13 take both of those things into account, right?

09:22:24 14 A. Fair.

09:22:25 15 Q. Okay. I just -- I thought you might have left a
09:22:28 16 misimpression with the jury. So I wanted to clear that up.
09:22:31 17 But I'm glad we're on the same page. We can chat about
09:22:34 18 that again. I don't know when that's going to be, maybe
09:22:37 19 Tuesday, maybe tomorrow, okay?

09:22:40 20 So now let's focus on your infringement opinion.
09:22:45 21 So, the '815.

09:22:46 22 Now, the '815 patent claims, the ones we're here
09:22:50 23 about today, they focus on a very specific way of managing
09:22:53 24 playlists, and those claims have a very detailed set of
09:22:58 25 requirements, right?

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09:22:58 1 A. Yes.

09:22:59 2 Q. It's a really long claim, right?

09:23:01 3 A. They are long claims.

09:23:02 4 Q. Okay. And to prove infringement of the '815 patent,

09:23:04 5 Maxell needs to prove that every single one of those claims

09:23:07 6 is found in the Galaxy representative S23 product, right?

09:23:11 7 A. Not at all.

09:23:12 8 Q. I'm sorry?

09:23:14 9 A. I said not at all.

09:23:16 10 Q. Okay. I -- perhaps you misheard me or perhaps I

09:23:20 11 misspoke.

09:23:20 12 To prove infringement of the claims of the '815

09:23:23 13 patent, Maxell needs to prove that every requirement of the

09:23:27 14 claim, like, Claim 1, is found in the Galaxy products,

09:23:33 15 right?

09:23:33 16 A. Okay. I just want to clarify the question because

09:23:36 17 maybe -- so you're saying that to prove infringement,

09:23:41 18 Maxell needs to find that -- no, sorry, the jury needs to

09:23:46 19 find that each claim -- I think you said each of the claims

09:23:53 20 I -- I think that's what I heard. So maybe that was --

09:23:56 21 Q. No, that's not what I --

09:23:56 22 A. Okay.

09:23:56 23 Q. Maybe I should slow down a little bit.

09:24:00 24 A. Sorry.

09:24:00 25 Q. Sometimes I talk too fast.

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09:24:02 1 A. Could you just repeat the question?

09:24:04 2 Q. So, Dr. Singh --

09:24:05 3 A. Yeah.

09:24:06 4 Q. -- in order for the jury to find infringement --

09:24:09 5 A. Yes.

09:24:09 6 Q. -- they have to conclude that every single

09:24:12 7 requirement of, for example, Claim 1 --

09:24:13 8 A. Right. Each of the claim elements.

09:24:14 9 Q. Maybe you can wait until I finish my question?

09:24:17 10 A. Apologize.

09:24:18 11 Q. But you agree with me?

09:24:20 12 A. Agree with you on what?

09:24:21 13 Q. Okay. Let's do this again. You ready?

09:24:24 14 A. Yes.

09:24:24 15 Q. Okay. In order for the jury to find infringement by

09:24:29 16 the Galaxy S23, they have to conclude that every single

09:24:33 17 requirement, every single one of them in Claim 1 is found

09:24:37 18 in the product?

09:24:39 19 A. For infringement of Claim 1?

09:24:42 20 Q. Right.

09:24:42 21 A. Yes.

09:24:43 22 Q. And -- and even if one, much less two or three, are

09:24:49 23 missing, there's no infringement?

09:24:50 24 A. That's correct.

09:24:51 25 Q. And, sir, not only does it have to be present, but it

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09:24:55 1 has to be present in the exact way that's set forth in the
09:24:59 2 claim, right?

09:25:00 3 A. Yes.

09:25:00 4 Q. All right. You're familiar with something called the
09:25:05 5 doctrine of equivalents?

09:25:06 6 A. I'm not a lawyer, but in a general sense, yes.

09:25:10 7 Q. You didn't give any opinion regarding the doctrine of
09:25:14 8 equivalents for the '815 patent yesterday, right?

09:25:19 9 A. I did not.

09:25:20 10 Q. So what we're -- what we're talking about here is it's
09:25:23 11 got to be every requirement in the very specific way that's
09:25:26 12 in the claim; otherwise, there's no infringement?

09:25:27 13 A. Absolutely. That's what I was there for yesterday.

09:25:31 14 Q. Okay. So let's turn to your opinion. We're only going
09:25:34 15 to address a couple of parts of this, and I'll let Dr. Kia
09:25:39 16 talk about the rest.

09:25:40 17 But let's look at Claim 1, and we'll look at Claim
09:25:46 18 Limitation 1[j].

09:25:48 19 MR. FOWLER: Could we please put that up so
09:25:49 20 everyone can see that?

09:25:51 21 Q. (By Mr. Fowler) Okay. So here we have Claim
09:25:53 22 Limitation 1[j] which says: Wherein user selection of the
09:25:58 23 first character enables the display of a first group of
09:26:01 24 thumbnails corresponding to a first group of video
09:26:03 25 information in the second area.

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09:26:04 1 Did I read that correctly?

09:26:05 2 A. Yes.

09:26:06 3 Q. Okay. And I've underlined character, because the Court
09:26:09 4 has done us a favor here -- not a favor -- but the Court
09:26:12 5 has told us what this word means, right?

09:26:14 6 A. Yes.

09:26:14 7 Q. And I don't -- I don't remember you actually ever
09:26:17 8 showing the jury what the claim construction was, but I
09:26:20 9 think you said that the Court had construed it, and you
09:26:22 10 applied it during your analysis. Is that correct?

09:26:25 11 A. I believe I had a slide that showed the Court's
09:26:29 12 construction multiple times --

09:26:31 13 Q. Okay.

09:26:31 14 A. -- in my testimony.

09:26:33 15 Q. Well, perhaps I'm wrong in remembering it. But
09:26:36 16 let's -- let's rectify that situation, in any event. Let's
09:26:40 17 look at the claim construction.

09:26:41 18 A. Okay.

09:26:42 19 Q. So what the Court said "character" means in this
09:26:44 20 patent, regardless of what it might mean elsewhere in the
09:26:49 21 world, but in this patent, it means a letter -- let me stop
09:26:53 22 there. That would be like the letter F, for example,
09:26:55 23 right?

09:26:55 24 A. Or the letter M.

09:26:57 25 Q. Right. Or a number, which could be 1, 10, 13, right?

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09:27:00 1 A. Yes.

09:27:01 2 Q. Okay. A punctuation mark, that could be like a

09:27:04 3 question mark, right? Or other symbol or control code that

09:27:08 4 is represented to a computer by one unit of information,

09:27:11 5 correct?

09:27:11 6 A. Yes.

09:27:12 7 Q. So if it's any letter, number, punctuation mark,

09:27:17 8 symbol, but it's represented to the computer by more than

09:27:21 9 one unit of information, no infringement?

09:27:25 10 A. That's fair.

09:27:26 11 Q. All right. And that -- that is what Maxell decided

09:27:33 12 that it needed to claim in order to get around whatever

09:27:36 13 prior art was out there, right? This is the very specific

09:27:38 14 thing, very specific thing it claimed, right?

09:27:40 15 A. I'm not sure I agree with you on what Maxell needed.

09:27:44 16 This is the Court's claim construction. So that's just

09:27:46 17 what the Court has construed this term to mean in this

09:27:51 18 case.

09:27:51 19 Q. Right. But, regardless, if it doesn't do it in this

09:27:56 20 specific way as the Court construed it, no infringement,

09:27:59 21 right?

09:27:59 22 A. That is fair.

09:28:00 23 Q. Okay. So let's look at one of your demonstratives from

09:28:05 24 yesterday.

09:28:07 25 MR. FOWLER: PDX-7-44.

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09:28:13 1 Q. (By Mr. Fowler) And what we're looking at here is a
09:28:20 2 slide that you used during your direct examination; is that
09:28:22 3 correct?
09:28:23 4 A. I believe so.
09:28:27 5 Q. Okay. So let's focus on the image on the phone on the
09:28:31 6 right where you added the hand with the finger sticking
09:28:35 7 out, right?
09:28:35 8 A. Yes.
09:28:37 9 Q. Now, that was an annotation that you had added, right?
09:28:40 10 A. Yeah. The -- the hand, that's just an illustrative
09:28:46 11 graphic.
09:28:46 12 Q. That's supposed to be the user and the user's finger,
09:28:49 13 right?
09:28:49 14 A. Yes.
09:28:50 15 Q. Now, do you see where the end of the finger is in this
09:28:53 16 picture?
09:28:58 17 A. Yeah, I see where it is.
09:28:59 18 Q. Okay. And when you say "it," you mean the end of the
09:29:03 19 finger, right?
09:29:04 20 A. That's right.
09:29:05 21 Q. And, by the way, you had no trouble understanding what
09:29:07 22 I meant when I said "the end of the finger," right?
09:29:10 23 A. The end of the finger?
09:29:11 24 Q. Yeah. You know what the end of a finger is, right?
09:29:14 25 A. In a very, very general sense, sure. I mean, it's --

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09:29:16 1 it's --

09:29:16 2 Q. It's like the tip of your finger, right?

09:29:18 3 A. That's -- now you're starting to sound technical. But

09:29:23 4 just as end of the finger, it could be here -- I don't

09:29:29 5 know. It depends on what context you're asking me that

09:29:32 6 question.

09:29:35 7 Q. Okay. Now, regardless of whether you know what the end

09:29:39 8 of a finger is --

09:29:41 9 A. Uh-huh.

09:29:41 10 Q. -- in this picture that you showed the jury, the end of

09:29:46 11 the finger is pointing to that icon; is that correct?

09:29:51 12 A. Yeah, it's pointing to the icon. It's pointing to the

09:29:58 13 title. It's generally pointing to --

09:30:02 14 Q. Well, that's -- okay. I'm sorry, were you done?

09:30:04 15 A. I am done.

09:30:05 16 Q. Okay. So just to be clear, it matters in this case

09:30:14 17 whether the user's finger is pointing at the -- the icon,

09:30:18 18 which we can call a thumbnail, right?

09:30:21 19 A. You can call it a thumbnail if you like.

09:30:23 20 Q. It matters in this case whether it's pointing at the

09:30:26 21 thumbnail or the text under it, right?

09:30:28 22 A. What matters is whether the user can select the text to

09:30:37 23 perform the actions required.

09:30:39 24 Q. Okay. So we just need you to be clear. I'm just

09:30:41 25 asking you about what your opinion is.

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09:30:43 1 A. Yeah.

09:30:43 2 Q. We're going to hear from Dr. Kia later. We just need
09:30:46 3 to understand what your opinion is.

09:30:48 4 So for this Claim Limitation 1[j], when you put
09:30:53 5 that finger there, is the finger selecting the thumbnail,
09:30:59 6 or is the finger selecting the words below it?

09:31:03 7 A. In this case, it's selecting the -- the character.
09:31:08 8 It's selecting "F" in favorites.

09:31:12 9 Q. Okay. And just, by the way, so I can not just keep
09:31:15 10 saying the thumbnail, what -- what is --

09:31:18 11 A. That's Yoshi.

09:31:19 12 Q. Yoshi --

09:31:19 13 A. No, actually, I'm not sure if it's Yoshi.

09:31:26 14 Q. Can we just call him Yoshi just so we can --

09:31:26 15 A. Sure.

09:31:26 16 Q. -- we can call him anything you want, but can I call
09:31:29 17 him Yoshi for right now?

09:31:29 18 A. Sure.

09:31:29 19 Q. Is that fair?

09:31:30 20 A. Yes.

09:31:31 21 Q. So your testimony to the jury today for Claim
09:31:37 22 Limitation 1[j] is that the user is not selecting the
09:31:41 23 thumbnail but is instead selecting the word "favorites"
09:31:47 24 below it. Is that right?

09:31:48 25 A. That was a slightly convoluted question.

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09:31:54 1 Q. Well, it's one of the two. Which one?

09:31:56 2 A. For the purposes of my analysis, it's selecting the
09:32:04 3 character. It's selecting favorites.

09:32:06 4 Q. Right. And we -- when we say character, just to make
09:32:06 5 sure, we're not talking, like, the cartoon character here,
09:32:06 6 we're talking about --

09:32:06 7 A. Yes, we're talking about --

09:32:08 8 Q. -- the word --

09:32:08 9 A. -- the word.

09:32:10 10 Q. Okay. So your testimony --

09:32:10 11 THE COURT: Mr. Fowler -- I'm sorry, Mr. Fowler,
09:32:14 12 and let me ask you, as well. You all be careful about
09:32:17 13 talking over each other, and could I get you to slow down a
09:32:20 14 little bit?

09:32:21 15 MR. FOWLER: Sure. Sure.

09:32:21 16 THE COURT: All right. Thanks.

09:32:22 17 THE WITNESS: Sorry. I apologize.

09:32:24 18 THE COURT: No, it's fine. It's just really hard
09:32:25 19 on the court reporter. And I understand it's sort of
09:32:29 20 conversational in nature, but for purposes of the record, I
09:32:32 21 just need you both to be sensitive.

09:32:35 22 THE WITNESS: Sure.

09:32:37 23 Q. (By Mr. Fowler) Okay. So let me reset.

09:32:39 24 Just want to be clear. For your purposes of your
09:32:44 25 testimony here in court today under oath, you're saying

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09:32:49 1 that for Claim Limitation 1[j], the user is picking the
09:32:55 2 word "favorites" and not the thumbnail. Is that right?
09:32:58 3 A. It's not an exclusive pick. It is picking the letter
09:33:09 4 "favorites."
09:33:09 5 Q. Okay. So, in this case, Dr. Singh, before you came to
09:33:19 6 the courtroom, you put together an expert report on
09:33:23 7 infringement, correct?
09:33:24 8 A. I did.
09:33:25 9 Q. And it was pretty long, right?
09:33:30 10 A. I'm not sure how long it was, but I put together a
09:33:34 11 report, yes.
09:33:37 12 MR. FOWLER: So, Your Honor, may I distribute the
09:33:41 13 binders at this point?
09:33:42 14 THE COURT: Yes.
09:33:43 15 MR. FOWLER: If you could just give Ms. Lineberry
09:33:45 16 a moment.
09:33:48 17 Q. (By Mr. Fowler) Do you happen to have a copy of your
09:33:51 18 expert report up there in one of your binders from the
09:33:53 19 other side?
09:33:53 20 A. I do.
09:33:54 21 Q. Okay.
09:33:54 22 MR. FOWLER: May I proceed using that binder?
09:33:56 23 THE COURT: Yes, yes.
09:33:57 24 MR. FOWLER: Thank you.
09:33:58 25 Q. (By Mr. Fowler) So your report is actually 655 pages

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09:34:01 1 long, right?

09:34:02 2 A. It is. It has a lot of pictures.

09:34:10 3 Q. Right. And it was your -- both your -- your goal and
09:34:17 4 your obligation under the law to include in your expert
09:34:20 5 report all of your theories and opinions. Right?

09:34:26 6 MR. SIDDIQUI: Your Honor, may we approach?

09:34:28 7 THE COURT: I'm sorry?

09:34:29 8 MR. SIDDIQUI: May we approach?

09:34:31 9 THE COURT: Yes.

09:34:33 10 (Bench conference.)

09:34:44 11 MR. SIDDIQUI: I don't know where the line of
09:34:45 12 questioning is going, but it may violate the MIL about
09:34:49 13 dropped positions, dropped claims.

09:34:51 14 MR. FOWLER: No, I -- no, I'm talking about
09:34:56 15 Claim 1.

09:34:57 16 THE COURT: Okay.

09:34:57 17 MR. SIDDIQUI: But 600 -- he just said a lot of
09:34:59 18 theories and a lot of this --

09:35:00 19 THE COURT: We'll see where he goes.

09:35:05 20 MR. SIDDIQUI: Okay.

09:35:05 21 THE COURT: You can come back up if you need to.

09:35:07 22 MR. SIDDIQUI: Okay. Okay.

09:35:09 23 (Bench conference concluded.)

09:35:12 24 MR. FOWLER: May I proceed, Your Honor?

09:35:13 25 THE COURT: You may.

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09:35:14 1 MR. FOWLER: Thank you.

09:35:14 2 Q. (By Mr. Fowler) So let me finish my question or reask
09:35:17 3 it.

09:35:17 4 So you understood when you were putting together
09:35:19 5 your report, both you wanted to and you were required to
09:35:24 6 include all of your opinions and analysis for purposes of
09:35:28 7 your infringement opinion. Correct?

09:35:33 8 A. Right. In a -- in a general sense, but there's a lot
09:35:41 9 that informs my opinions as an expert. There's -- what is
09:35:46 10 out in common knowledge is what a POSITA would know, and
09:35:52 11 so -- but this is 652 pages. If it was some exhaustive
09:35:59 12 thing of whatever was completely in my mind, it would
09:36:02 13 probably be a lot longer.

09:36:04 14 Q. Well, let's put it this way --

09:36:06 15 A. Yeah.

09:36:07 16 Q. -- you understood that you were supposed to --

09:36:09 17 A. Yeah.

09:36:10 18 Q. -- say that for -- if there was a claim element, and
09:36:14 19 let's just call it Claim Element 50 since there is no Claim
09:36:18 20 Element 50, and you thought that something in Samsung
09:36:20 21 practiced that claim element, you were supposed to identify
09:36:23 22 that in your report. Right?

09:36:27 23 A. By and large, yes.

09:36:30 24 Q. I'm sorry, what did you say?

09:36:31 25 A. I said by and large, yes. In general.

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09:36:35 1 Q. Not by and large. You were supposed to -- if there was
09:36:37 2 some infringement, you were supposed to identify it in your
09:36:41 3 report.

09:36:41 4 A. I was supposed to identify at least one infringement.

09:36:48 5 Q. Okay.

09:36:48 6 MR. FOWLER: So let's -- let's pull up, if we
09:36:50 7 could, Paragraph 223 at Page 274 of your report. And if we
09:36:56 8 could blow up that heading.

09:36:57 9 Q. (By Mr. Fowler) So just to orient the jury, this is
09:36:59 10 your expert report, correct, sir?

09:37:01 11 A. Yes.

09:37:02 12 Q. Do you need a minute to find that page?

09:37:05 13 A. I do.

09:37:07 14 Q. Okay.

09:37:08 15 A. What page number did you say?

09:37:09 16 Q. It's 274, Paragraph 223 and the heading above it. Let
09:37:14 17 me know when you're ready.

09:37:16 18 A. 274. Yes.

09:37:33 19 Q. Okay. Now, this is just to orient ourselves. So this
09:37:37 20 is the part of your opinion or your report where you're
09:37:41 21 explaining how the Galaxy S23 allegedly infringes Claim
09:37:47 22 Limitation 1[j]. You see that at the top?

09:37:50 23 A. 274. Yes.

09:38:00 24 Q. Okay.

09:38:01 25 A. Yes.

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09:38:05 1 MR. FOWLER: So let's go three paragraphs deeper
09:38:08 2 into the report. We're going to go look at Paragraph 226,
09:38:11 3 and if we can blow that up, please.

09:38:15 4 Q. (By Mr. Fowler) So, here, you're saying, in terms of
09:38:18 5 how Samsung allegedly infringes: As an additional example,
09:38:23 6 the design documents also include a UI that shows a second
09:38:27 7 area, blue rectangle.

09:38:29 8 So the questions I've been asking you are not
09:38:32 9 about the second area, right? We're talking about the
09:38:34 10 character, but you've said that -- when user selects an
09:38:37 11 album from the first area, the thumbnails in the left
09:38:42 12 column.

09:38:42 13 So, here, in this paragraph, you're saying that
09:38:46 14 Samsung infringes because the user selects the thumbnails,
09:38:50 15 correct? Right?

09:38:53 16 A. I'll have to read a bit back for context if --

09:38:57 17 Q. Well, let's look at words. You say: When the user
09:39:01 18 selects an album from the first area, the thumbnails in the
09:39:07 19 left column.

09:39:07 20 So, here, you're saying that it's the thumbnails
09:39:11 21 that are being selected by the user, not the word, for
09:39:14 22 example, "favorites," right?

09:39:19 23 A. I might be in a different place. Which paragraph are
09:39:22 24 you reading from, counsel?

09:39:24 25 Q. 226. It's right on your screen, sir.

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09:39:26 1 A. Okay.

09:39:35 2 Q. Don't worry, we're going to look at some other
09:39:38 3 paragraphs, too. But let's focus on this paragraph.

09:39:41 4 A. Uh-huh.

09:39:42 5 Q. You're saying here that for this claim element, the
09:39:45 6 user is selecting the thumbnails, right?

09:39:52 7 Sir, can you answer my question?

09:39:54 8 A. Right. Yes, yes.

09:39:55 9 Q. Okay.

09:39:55 10 MR. FOWLER: And let's -- if we could flip back to
09:39:57 11 the demonstrative a minute.

09:39:58 12 Q. (By Mr. Fowler) And that paragraph we were looking at
09:40:03 13 says thumbnails on the left.

09:40:05 14 So just to make sure we're talking about the same
09:40:07 15 thing, that's those thumbnails that are running up and down
09:40:10 16 on the left of the phone, right?

09:40:11 17 A. That is correct, counsel, but --

09:40:13 18 Q. Excuse me?

09:40:14 19 A. Sorry.

09:40:14 20 Q. Did you -- I just asked you, yes or no, and you said
09:40:17 21 correct. Is that your answer?

09:40:20 22 A. I was giving you a complete answer. You can ask me a
09:40:26 23 question again if you'd like.

09:40:27 24 Q. This is a -- we've got to -- your counsel will have an
09:40:31 25 opportunity to ask you questions.

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09:40:32 1 A. Okay.

09:40:33 2 MR. FOWLER: Let's go back to the report again for
09:40:34 3 a second, if we could.

09:40:36 4 Q. (By Mr. Fowler) That same -- it says: The user
09:40:38 5 selects an album from the first area, the thumbnails in the
09:40:41 6 left column. So the thumbnails in the left column --

09:40:44 7 MR. FOWLER: Let's go back to the -- the
09:40:46 8 demonstrative.

09:40:48 9 Q. (By Mr. Fowler) Okay. The thumbnails in the left
09:40:52 10 column are the ones that are running up and down on the
09:40:55 11 side of the phone, right? Yes or no?

09:40:59 12 A. Yes, as an additional example. That's how Paragraph
09:41:05 13 226 starts.

09:41:05 14 Q. Okay. Well, let's -- let's look at another company.

09:41:09 15 A. Okay.

09:41:09 16 MR. FOWLER: So let's go to Paragraph -- the very
09:41:11 17 next paragraph in your report, Paragraph 227 on Page 277.
09:41:26 18 Blow that up.

09:41:26 19 Q. (By Mr. Fowler) It says: In the above image, the blue
09:41:28 20 rectangle shows a second area displaying thumbnails
09:41:31 21 corresponding to at least a portion of the plurality of
09:41:34 22 stored video information for the selected folder on the
09:41:37 23 left column thumbnails.

09:41:39 24 Okay. So, again, we're not focusing on the second
09:41:42 25 area part, we're focussing on the end of it.

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09:41:44 1 The selected folder for the left column
09:41:50 2 thumbnails, again, what you're talking about is those
09:41:52 3 thumbnails that are running up and down in your
09:41:54 4 demonstrative, right, from top to bottom?
09:41:56 5 A. Reading from 227, it says in the above image, the blue
09:42:01 6 rectangle shows the second area, so that's the blue region,
09:42:06 7 displaying thumbnails, and those thumbnails are indicated
09:42:13 8 graphically in this design document -- this is a design
09:42:18 9 document --
09:42:19 10 Q. Okay.
09:42:19 11 A. -- showing some videos, yes. So those are video
09:42:23 12 thumbnails in the blue area.
09:42:23 13 Q. Okay.
09:42:24 14 MR. FOWLER: Let's take down the report. Let's
09:42:26 15 take down the report.
09:42:27 16 Q. (By Mr. Fowler) So it's fair, sir, to say that when
09:42:31 17 you testified to the jury, what you were attempting to
09:42:35 18 communicate is that this user was selecting the word
09:42:40 19 "favorites," but when you issued a report, which was also
09:42:44 20 under oath, and you've had months to prepare it, you were
09:42:49 21 talking about selecting these thumbnails. Correct?
09:42:51 22 A. It is not correct.
09:42:55 23 Q. Okay. Well, we'll see what your counsel has to say
09:42:57 24 about that.
09:42:57 25 But in terms of the paragraphs we just looked at

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09:43:01 1 in your report, they said you were referring to selecting
09:43:04 2 thumbnails, right? Our eyes can't lie.

09:43:06 3 A. That's right. And everybody's eyes saw it said as an
09:43:11 4 additional example. It's a long report. You will find
09:43:15 5 lots of places where I specifically talk about --

09:43:17 6 Q. In that section for this claim limitation, are you
09:43:21 7 sure?

09:43:21 8 A. In the report, overall.

09:43:23 9 Q. Huh-uh. We're talking about a specific claim
09:43:28 10 limitation, Claim Limitation 1[j]. You agreed with me
09:43:33 11 before, that you've got to prove to the jury that every
09:43:34 12 single claim limitation is met, correct?

09:43:37 13 A. Yes.

09:43:37 14 Q. And you agreed with me before, that the months that you
09:43:39 15 had to prepare your expert report, which was under oath, in
09:43:41 16 that part of the report for 1[j], you only talked about
09:43:44 17 selecting thumbnails, not the word. Right?

09:43:47 18 A. As an additional example.

09:43:51 19 Q. Okay. So looking at this again, you did not testify to
09:44:01 20 the jury yesterday that a thumbnail is a character under
09:44:07 21 the Court's claim construction, right?

09:44:12 22 A. I did not say anything about thumbnails and characters
09:44:16 23 yesterday.

09:44:16 24 Q. Right. So just to be clear, you weren't saying that
09:44:20 25 the thumbnail, which we're calling Yoshi here, qualifies as

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09:44:24 1 a character under the claim, right?

09:44:29 2 A. No. "F" in favorites does.

09:44:33 3 Q. I didn't ask you what you think does. We'll get to
09:44:35 4 that in a minute.

09:44:36 5 A. Okay.

09:44:37 6 Q. But what doesn't is the thumbnail Yoshi. It's not a
09:44:43 7 character under the Court's claim construction, right?

09:44:44 8 A. On this slide, Yoshi, no.

09:44:49 9 Q. And one reason for that, sir, right, is because that
09:44:56 10 character, Yoshi, that icon, is represented by more than
09:44:59 11 one piece of information; is that correct?

09:45:01 12 A. It is because this thumbnail is not represented by a
09:45:09 13 unit of information.

09:45:10 14 Q. Okay. And that would mean that if you just pressed
09:45:14 15 the -- the icon, if that's what the user is selecting is
09:45:18 16 the icon, that would not be infringement, right?

09:45:20 17 A. If there was no way by which the user could select the
09:45:28 18 character, then, yes, that would not be infringement.

09:45:33 19 Q. That's not my question.

09:45:34 20 A. Okay.

09:45:35 21 Q. Not my question. Let's stick with my question.

09:45:37 22 A. Yes.

09:45:37 23 Q. If the user -- if a Samsung user is selecting the
09:45:41 24 thumbnail, that's not infringement?

09:45:47 25 A. That -- that is not infringement. But -- okay.

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09:45:55 1 Q. Now, if I understood what you were saying, even though
09:46:00 2 your report said "press the thumbnail" and even though you
09:46:04 3 just said that's not infringement, if I understand what
09:46:07 4 you're saying on the stand here now is the user -- the
09:46:10 5 Samsung user is not pressing the icon. They're actually
09:46:14 6 trying to get their fingers on that -- those letters. Is
09:46:18 7 that what you're saying?

09:46:20 8 A. I'm not saying that. I'm just saying that the users
09:46:24 9 can press the letters, and that upon pressing the letters,
09:46:30 10 we see the functionality of Claim 1 being practiced.

09:46:35 11 Q. Okay. I'm going to break that down into a couple of
09:46:38 12 things.

09:46:38 13 You actually never showed on your phone what would
09:46:44 14 happen if you just pressed on the letters without touching
09:46:47 15 the icon? You never showed that to the jury, did you?

09:46:50 16 A. I tested it.

09:46:51 17 Q. No.

09:46:52 18 A. I know it works.

09:46:52 19 Q. That wasn't my question, sir.

09:46:54 20 A. Right.

09:46:54 21 Q. Did you show that to the jury?

09:46:57 22 A. Show what to the jury?

09:46:58 23 Q. Did you show to the jury that if you don't press on the
09:47:01 24 thumbnail and you only touch the letters, that that somehow
09:47:04 25 is going to work?

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09:47:05 1 A. I have to -- I have tested that.

09:47:07 2 Q. That wasn't my question.

09:47:08 3 A. Okay.

09:47:09 4 Q. Did you show that to the jury?

09:47:10 5 A. I showed the jury a graphic saying that you could
09:47:16 6 test -- select the characters.

09:47:17 7 Q. That wasn't my question either.

09:47:19 8 A. Okay.

09:47:19 9 Q. Did you show it to the jury?

09:47:22 10 A. On the actual device? No.

09:47:26 11 Q. You could have, right? You could have tried to do
09:47:29 12 that?

09:47:29 13 A. I could have, but I was also informed by my counsel
09:47:32 14 that we needed to present evidence in the most compelling
09:47:36 15 and efficient -- actually most likely efficient -- you saw
09:47:39 16 a claim with 14 elements, counsel, twice.

09:47:45 17 Q. Don't you think the most compelling way to do it would
09:47:48 18 have been to actually show how it actually works rather
09:47:50 19 than a slide? Do you have an answer to that?

09:47:57 20 A. I do.

09:47:58 21 Q. What is it?

09:48:00 22 A. Well, the slide makes it very clear. It can be seen,
09:48:05 23 and it's there. And that evidence is going to be with them
09:48:10 24 in the jury -- they have PX-296 so that they can look at
09:48:14 25 that all they want.

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09:48:18 1 Q. Okay. Well, I'll represent to the jury right now that
09:48:22 2 Mr. Kia -- Dr. Kia, he's going to show them live how it
09:48:26 3 works.

09:48:26 4 A. Okay.

09:48:26 5 Q. So let's break this down even further.

09:48:30 6 In this picture, what you're now saying is
09:48:33 7 pressing on the words "favorites" -- is it -- is the user
09:48:39 8 pressing or looking for the word "favorites" or are they
09:48:43 9 searching for a letter -- a specific character, like an
09:48:45 10 "F," when they're trying to use the phone?

09:48:49 11 A. It doesn't matter, counsel. Any of these letters in
09:48:52 12 favorites can match the claim language.

09:48:56 13 And, in general, as any smartphone user would
09:48:59 14 know, that you -- our fingers are not pinpoint -- do not
09:49:08 15 have pinpoint accuracy. So you're generally selecting the
09:49:12 16 word "favorites" represented in the patent by talking about
09:49:16 17 a character among a plurality of characters.

09:49:18 18 Q. Okay. Well, I'm glad you gave that answer because
09:49:20 19 you've informed us of three things. I want to break that
09:49:23 20 down.

09:49:24 21 First of all, Maxell had the opportunity to put
09:49:26 22 its claim together in whatever way it wanted to that it
09:49:29 23 thought it could get a patent on, right? It could -- it
09:49:32 24 chose the words, right, in its claim?

09:49:36 25 A. What chose the words?

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09:49:39 1 Q. Maxell. It got a patent. It chose to use the word
09:49:43 2 "character" in a way it was construed by the Judge, right?
09:49:46 3 A. Yes.
09:49:46 4 Q. Okay. It could have used other words or tried to get a
09:49:50 5 different invention, but we're here about the invention it
09:49:53 6 actually asked the Patent Office. Right?
09:49:56 7 A. Yes.
09:49:56 8 Q. Okay. And -- and I think I heard you say that the user
09:50:01 9 is trying to select the word "favorites"; is that what
09:50:05 10 you're saying?
09:50:06 11 A. The user is selecting a character.
09:50:13 12 Q. Okay.
09:50:13 13 A. As an example, F in favorites.
09:50:15 14 Q. Okay. Well, let's break that down.
09:50:17 15 If the user is instead not trying to select the F,
09:50:20 16 if they're not like, oh, gosh, I got to get that F, what
09:50:25 17 they're doing is trying to get the word "favorites," that's
09:50:28 18 more than one unit of information. The word "favorites"
09:50:31 19 together is more than one unit of information, correct?
09:50:34 20 A. In what context?
09:50:35 21 Q. What do you mean, "in what context"? In a computer
09:50:38 22 context. Each of those letters, each one is represented by
09:50:41 23 one unit of information, right?
09:50:42 24 A. Uh-huh.
09:50:43 25 Q. Yes?

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09:50:44 1 A. Yes.

09:50:45 2 Q. Okay.

09:50:45 3 A. Each character is a unit of information.

09:50:47 4 Q. I'm not good at either spelling or math, but I'm pretty

09:50:51 5 sure favorites has nine letters in it; is that right?

09:50:53 6 A. Yes, yes.

09:50:54 7 Q. So if the user is trying to select the word

09:50:57 8 "favorites," that's nine -- I don't have enough fingers --

09:51:00 9 nine units of information, right?

09:51:02 10 A. Yes.

09:51:02 11 Q. And that's eight too many to infringe that -- this

09:51:06 12 claim, right?

09:51:11 13 A. The user can select any one of those letters.

09:51:13 14 Q. We'll get to that in a second.

09:51:15 15 But if the user is trying to select the word,

09:51:17 16 that's nine units of information, not eight -- I mean, not

09:51:21 17 one, right?

09:51:22 18 A. The claim speaks of the ability to select even one of

09:51:28 19 those characters, any one of them.

09:51:30 20 Q. We'll get to your idea that somehow the user is looking

09:51:34 21 for the F. But if the user is instead looking for the

09:51:37 22 entire word, that's nine units of information, right?

09:51:40 23 A. Yes --

09:51:41 24 Q. Okay.

09:51:41 25 A. -- that is.

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09:51:41 1 Q. So let's go to your world where the user is not
09:51:44 2 selecting the icon and is not selecting the word but is
09:51:49 3 searching out for that individual character.

09:51:54 4 Now, let's just use your example of the letter F.
09:51:59 5 Now, that is one unit of information, right?

09:52:01 6 A. The letter F is represented using one unit of
09:52:06 7 information, yes.

09:52:07 8 Q. Okay. Now, Samsung produced its source code for its
09:52:15 9 products for you to review, correct?

09:52:18 10 A. Right.

09:52:19 11 Q. Okay. And the source code would show you and the jury
09:52:24 12 whether there's anything in the code that would instruct
09:52:29 13 the phone to recognize the selection of a single character.
09:52:33 14 If it was there, it would be in the code, right?

09:52:37 15 A. Sure.

09:52:38 16 Q. Okay. And I think we've heard a lot about source code,
09:52:45 17 but just to make sure -- let's drop back.

09:52:48 18 The S23 phone is run by software on the computer,
09:52:52 19 right?

09:52:52 20 A. Yes.

09:52:52 21 Q. And that software that's on the computer, it's defined
09:52:56 22 by something called source code --

09:53:00 23 A. Yes.

09:53:00 24 Q. -- right? And the source code is what's in there that
09:53:03 25 tells the software to do something, right?

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09:53:06 1 A. Yes.

09:53:07 2 Q. And if it's not in the source code, it will never

09:53:10 3 happen on the phone?

09:53:14 4 A. Yes, in a general sense.

09:53:15 5 Q. And if it is in the source code and the conditions of

09:53:18 6 whatever are required by that source code are met, it will

09:53:21 7 happen, right?

09:53:23 8 A. You lost me on this question.

09:53:24 9 Q. Well, I'm trying to back up. But basically saying the

09:53:28 10 source code never lies. If the source code says to do

09:53:31 11 something, it'll happen, if it's not in the source code, it

09:53:34 12 won't happen, fair?

09:53:35 13 A. Yes.

09:53:36 14 Q. Okay. So the source code is a very reliable source of

09:53:39 15 information for you and the jury to rely upon, right?

09:53:41 16 A. Yes.

09:53:42 17 Q. And, in fact, you looked at the source code in this

09:53:46 18 case, right?

09:53:46 19 A. Yes.

09:53:47 20 Q. And, in fact, for other limitations, not this one, not

09:53:52 21 1[j], but for other limitations, you went to the source

09:53:56 22 code in your expert report, and you cited the source code,

09:54:00 23 right?

09:54:00 24 A. I cited the source code overall for the claims, yes.

09:54:06 25 Q. But if -- it's a fact, though, sir, right, that for

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09:54:10 1 this claim limitation, 1[j], we heard no testimony from you
09:54:15 2 yesterday, not one bit about the source code as it relates
09:54:19 3 to this claim requirement, right?

09:54:20 4 A. Not true.

09:54:21 5 Q. Oh, really? Okay. So if the jury was taking notes and
09:54:27 6 they were talking about 1[j], they're going to find in
09:54:30 7 their notes where you talked about source code for 1[j]?

09:54:35 8 You sure?

09:54:35 9 A. I said for the claims overall. So for the claim
09:54:40 10 overall.

09:54:40 11 Q. Sure. You talked about source code. I'm talking about
09:54:43 12 this claim requirement that has to be met in order for
09:54:46 13 there to be infringement. You did not talk about source
09:54:49 14 code with the jury for this claim requirement 1[j],
09:54:49 15 correct?

09:54:54 16 A. Well, if I talked about source code, maybe on a slide
09:54:58 17 earlier for one of the earlier elements, I assume that if
09:55:05 18 I'm referring to the same thing on a subsequent slide, what
09:55:08 19 I cited or what I spoke about was -- was persistent --

09:55:15 20 Q. Okay.

09:55:15 21 A. -- because we're talking about the same concepts.
09:55:18 22 Otherwise, I would have been talking for another couple of
09:55:22 23 hours.

09:55:22 24 Q. So -- but for -- for sure as shooting, you didn't
09:55:27 25 ever -- you never showed the -- any source code in Samsung

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09:55:30 1 that allows the phone to detect selecting a single
09:55:36 2 character like the letter "F" in the context of Claim
09:55:41 3 Limitation 1[j]; you never showed anything like that.
09:55:43 4 Right?
09:55:44 5 A. The -- it informed my analysis, and it is in my report.
09:55:54 6 I didn't show it on the slides because I was trying to
09:55:57 7 present things in the most compelling and efficient
09:56:00 8 fashion.
09:56:00 9 Q. I can see your counsel thumbing through your report,
09:56:02 10 but I'm pretty sure he's not going to be able to find
09:56:06 11 anything for Claim Limitation 1[j] that cites to source
09:56:09 12 code in the phone that allows the phone to detect a user
09:56:13 13 selecting a letter "F" in this context, right? That
09:56:16 14 doesn't exist, does it?
09:56:17 15 A. You can test it.
09:56:20 16 Q. That wasn't my question.
09:56:21 17 A. Right.
09:56:22 18 Q. I was asking what actually happens. You told us the
09:56:25 19 source code doesn't lie. You didn't find any source code
09:56:29 20 that allows a user to press an "F" -- "F," if that's what
09:56:34 21 they were trying to do, where the computer would recognize
09:56:37 22 that that's what the user was trying to do, right? You
09:56:40 23 didn't see any source code like that?
09:56:42 24 A. I did.
09:56:42 25 Q. Okay. Well, you sure as heck didn't tell the jury

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09:56:46 1 about it, right?

09:56:47 2 A. I did. I said I relied upon source code and testing
09:56:50 3 and my results in 296, and I showed it in practice.

09:56:56 4 Q. Okay. You said -- okay. Let's break that down, what
09:56:58 5 you did tell the jury. You made some vague statement about
09:57:02 6 relying on source code, but what you didn't do for this
09:57:05 7 claim limitation is show any source code, because it
09:57:08 8 doesn't exist, that allows the detection of a single
09:57:12 9 character in this particular part of the claim. Right?

09:57:16 10 A. Not on this slide, I did not.

09:57:20 11 Q. Well, not on any slide for this claim limitation,
09:57:24 12 right?

09:57:24 13 A. I did refer to the fact that the album titles were
09:57:28 14 represented as strings of characters in the code. I've
09:57:34 15 cited source code files in my report that specifically show
09:57:41 16 where the -- show the representation of these strings of
09:57:47 17 characters, and --

09:57:49 18 Q. Okay. But what you're talking about is the source code
09:57:52 19 displaying the characters on the screen, right? Yes?

09:57:55 20 A. Yes.

09:57:56 21 Q. But what you're not talking about is any source code
09:57:58 22 that says, okay, user's finger has touched "F." I
09:58:02 23 recognize that as a touching of that character? No such
09:58:07 24 source code, right?

09:58:07 25 A. Sir, as I said in my testimony earlier yesterday, it's

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09:58:16 1 a touchscreen. If you touch it, you have to touch it to
09:58:22 2 select anything. And when you touch it, what you're
09:58:27 3 selecting is what is underneath that -- what is displayed
09:58:30 4 there.

09:58:30 5 Q. Okay. Well, that --

09:58:31 6 A. This is -- this is anybody -- any -- it's common
09:58:34 7 knowledge.

09:58:37 8 Q. Okay. Well, we'll hear from Dr. Kia about that. But
09:58:41 9 just because you put your finger on a screen, that doesn't
09:58:45 10 mean the computer in the phone is saying I recognize that
09:58:49 11 they've touched the particular character, right, like the
09:58:52 12 letter "F"?

09:58:52 13 A. Yes, but when you see the phone respond to that
09:58:56 14 selection, you know that the source code is -- is doing
09:59:00 15 something.

09:59:00 16 Q. But, for example --

09:59:01 17 A. Yeah.

09:59:02 18 Q. -- rather than what you've just kind of made up, the
09:59:07 19 phone could be recognizing that you're touching an area of
09:59:10 20 the phone rather than, for example, selecting an individual
09:59:13 21 character, right?

09:59:15 22 A. Of course you're touching an area of the screen --

09:59:17 23 Q. Okay --

09:59:18 24 A. -- counsel.

09:59:19 25 Q. Exactly?

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09:59:22 1 A. But you are touching what's displayed therein.

09:59:25 2 Q. Well, we'll see about that. Dr. Kia will show the jury

09:59:29 3 about that. But I think we've made the point here.

09:59:31 4 Let's move on to Claim 21.

09:59:39 5 So Claim -- Claim 1, we're talking about Samsung

09:59:44 6 source code, right?

09:59:45 7 A. Yes, Samsung -- Samsung Gallery app.

09:59:49 8 Q. 21, we're talking about Netflix and Netflix source

09:59:52 9 code, right?

09:59:53 10 A. Yes.

09:59:54 11 Q. Okay. And that's why you've got two different

09:59:59 12 infringements, and we needed to march through both of them

10:00:02 13 separately, right?

10:00:02 14 A. Yes.

10:00:05 15 Q. Okay. So let's start with some basics. The Netflix --

10:00:05 16 well, let me back up.

10:00:10 17 Your infringement opinion for Claim 21 relies on

10:00:12 18 the Netflix app being on a Samsung phone, right?

10:00:16 19 A. Yes.

10:00:18 20 Q. Okay. The Netflix app is not made by Samsung, right?

10:00:23 21 A. Netflix app is made by Netflix.

10:00:26 22 Q. Right. And your report -- expert report only attempts

10:00:32 23 to show infringement by Samsung for Galaxy phones that are

10:00:38 24 sold by Samsung with the Netflix app pre-installed on it;

10:00:42 25 is that correct?

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10:00:42 1 A. Yes.

10:00:43 2 Q. Okay. Your expert report doesn't claim that any phones

10:00:47 3 that are sold by Samsung that do not have the Netflix app

10:00:51 4 pre-installed in French, right?

10:00:54 5 A. Yes.

10:00:55 6 Q. Okay. So you agree with me that the Galaxy S23 phones

10:01:00 7 that Samsung sells to AT&T do not have the Netflix app

10:01:05 8 pre-installed on them, right?

10:01:07 9 A. For that, I'll have to look at the -- the list of

10:01:11 10 actual phones that have the pre-installation or not the

10:01:17 11 pre-installation on them.

10:01:18 12 Q. You need your memory refreshed on that?

10:01:20 13 A. Sure.

10:01:21 14 Q. Well, let's look at your expert report again at

10:01:25 15 Paragraph 67 on Pages 52 and 53.

10:01:34 16 Okay. Now, I'd like to put your attention -- I'm

10:01:38 17 sorry, just to make sure. Do you have that in front of

10:01:41 18 you?

10:01:41 19 A. Yes.

10:01:42 20 Q. And this is part of your expert report. These are your

10:01:44 21 words?

10:01:44 22 A. Uh-huh.

10:01:45 23 Q. Okay. So I'd like to focus on the second bullet point.

10:01:49 24 And it says at the bottom of that: With the exception of

10:01:56 25 produce models for the following telecommunication

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10:01:58 1 companies.

10:01:59 2 So what you're about to list here is the Galaxy
10:02:02 3 phones that Samsung sells that do not have Netflix
10:02:06 4 pre-installed on them, right?

10:02:09 5 A. According to this, this is one piece of evidence. In
10:02:12 6 the end, I guess if you look at some of the accused
10:02:15 7 products, as long as the accused product has the -- has
10:02:21 8 Netflix pre-installed, then it -- it does infringe.

10:02:26 9 But I -- I agree with you that in this report, it
10:02:34 10 excludes a certain set of models from -- from having this
10:02:37 11 pre-installation.

10:02:38 12 Q. So you're excluding -- this is your report. It's not
10:02:42 13 just something that popped out of nowhere. These are your
10:02:45 14 words, right?

10:02:45 15 A. This is not my -- this is my report, but I'm citing
10:02:47 16 from -- I believe it's a discovery response. It's
10:02:52 17 Samsung's words, not mine.

10:02:53 18 Q. Okay. But you found this to be reliable, and there's
10:02:56 19 no reason for you to disagree with it?

10:02:58 20 A. No, I have no reason to disagree with it. It was
10:03:01 21 presented to me by counsel as Samsung's words.

10:03:04 22 Q. So as far as you know, all of the phones that Samsung
10:03:07 23 sells to AT&T, Comcast, Google, Sprint, TracFone Wireless,
10:03:16 24 T-Mobile, and MetroPCS, none of those phones have Netflix
10:03:20 25 pre-installed on them, right?

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10:03:21 1 A. According to this report. According to the discovery
10:03:25 2 response.
10:03:29 3 Q. Sir, I have to admit, and I looked at the transcript
10:03:33 4 yesterday so I wasn't clear, so I'm going to ask you this.
10:03:38 5 You -- you bought a phone, a Samsung phone, S23, in order
10:03:40 6 to examine it for purposes of your analysis; is that right?
10:03:42 7 A. Yes.
10:03:43 8 Q. How many did you buy? For your --
10:03:44 9 A. Well --
10:03:50 10 Q. Go ahead.
10:03:52 11 A. So I was -- I -- the phones were bought by counsel.
10:03:54 12 How many, I'm not sure.
10:03:55 13 Q. How many did they give to you?
10:03:57 14 A. Well -- how many?
10:03:59 15 Q. How many S23s?
10:04:00 16 A. I was sent one S23 --
10:04:00 17 Q. Okay.
10:04:08 18 A. -- in its box with its wrapping and everything.
10:04:11 19 Q. Now, again, I may have misheard you --
10:04:14 20 A. Yes.
10:04:14 21 Q. -- so if I did, please, I apologize, and we'll get this
10:04:18 22 straight. But the one that you had in your box, I thought
10:04:22 23 I heard you say yesterday that the Netflix app had been
10:04:26 24 pre-installed; is that right?
10:04:28 25 A. Yes. I believe it was pre-installed on that phone.

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10:04:32 1 Q. Okay. We'll be looking at some evidence later during
10:04:35 2 Dr. Kia, but how sure are you that it was pre-installed?
10:04:39 3 A. I'm pretty sure. It was in my report.
10:04:42 4 Q. Okay. So when you received the phone, had it already
10:04:46 5 been set up, or was it just fresh out of the box?
10:04:49 6 A. It was fresh out of the box with its -- with -- as I
10:04:54 7 said, with its plastic wrapping on.
10:04:56 8 Q. And you understand that on your phone, you can go to an
10:04:59 9 app and see how it got on your phone, right?
10:05:01 10 A. Yes.
10:05:03 11 Q. Right. So if it was downloaded on your phone, we could
10:05:06 12 show that to the jury, right?
10:05:07 13 A. Yes.
10:05:12 14 Q. Okay. You didn't show the jury whether you had a phone
10:05:14 15 that had been bought from one of these sources that didn't
10:05:17 16 have the Netflix app already installed, right?
10:05:21 17 A. If you're talking about an app being, you know, where
10:05:25 18 it says app downloaded from a store, these phones are
10:05:29 19 frequently communicating for all kinds of updates and
10:05:33 20 configurations and settings and updating that information,
10:05:36 21 as well. So...
10:05:39 22 Q. So with that in mind, sir --
10:05:41 23 A. Yeah.
10:05:42 24 Q. -- you want to clarify your testimony from yesterday?
10:05:45 25 And, again, it is whatever it is.

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10:05:47 1 A. Uh-huh.

10:05:47 2 Q. Dr. Kia is going to be talking about this.

10:05:49 3 A. Yeah.

10:05:50 4 Q. Do you know whether the phone that you tested had

10:05:53 5 Netflix actually pre-installed on it?

10:05:55 6 A. It is my opinion that Netflix was pre-installed on it.

10:05:59 7 Q. Okay. Well, we'll take a look at that maybe tomorrow.

10:06:01 8 So let's -- let's go to Claim 21 that relies on

10:06:09 9 Netflix.

10:06:09 10 MR. FOWLER: And if we could pull that up and look

10:06:11 11 at Claim Limitation -- we're going to look at two claim

10:06:15 12 limitations. Let's look at this one first -- 21[b], which

10:06:18 13 starts with "a display displaying." If we could -- that's

10:06:21 14 not it. There we go.

10:06:25 15 Q. (By Mr. Fowler) So this claim limitation says: A

10:06:27 16 display displaying a first user interface for a user to

10:06:31 17 select a user profile from among a plurality of user

10:06:36 18 profiles using a first user profile associated with a first

10:06:39 19 character and a second user profile associated with a

10:06:41 20 second character.

10:06:42 21 Did I read that correctly, sir?

10:06:43 22 A. Yes.

10:06:44 23 Q. And just again, for the -- to remind the jury, the

10:06:48 24 Court's construed that word "character," so let's look at

10:06:51 25 that claim construction again, which is: A letter, number,

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10:06:55 1 punctuation mark, or other symbol or control code that is
10:06:58 2 represented to a computer by one unit of information.

10:07:00 3 Did I read that correctly?

10:07:02 4 A. Yes.

10:07:02 5 Q. Okay. So let's look at one of your slides from
10:07:05 6 yesterday.

10:07:08 7 MR. FOWLER: PDX-7-70.

10:07:10 8 Q. (By Mr. Fowler) Do you recognize this as one of the
10:07:12 9 slides that you showed to the jury yesterday when you were
10:07:14 10 attempting to show infringement of Claim Limitation 21[b]?

10:07:20 11 A. Yes.

10:07:21 12 Q. Okay. I believe you testified on direct examination
10:07:23 13 that the first character of this claim limitation -- I put
10:07:28 14 that in quotes -- so first character, that's a claim term,
10:07:32 15 right?

10:07:32 16 A. Uh-huh.

10:07:33 17 Q. Okay. That the first character that is required by
10:07:35 18 Claim 21 is this Miyagi-Do icon that we see in the upper
10:07:40 19 right on the screen of the phone, right?

10:07:41 20 A. Yes.

10:07:42 21 Q. Okay. You did not show the jury any Netflix source
10:07:50 22 code for this image, correct?

10:07:51 23 A. No, but I did look at it, and I did refer to profile
10:08:00 24 indexes and those are verified by source code.

10:08:05 25 Q. Okay. But that wasn't my question. My question is,

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10:08:08 1 you had that source code, but you chose not to show it to
10:08:11 2 the jury, correct?

10:08:12 3 A. I judicially chose what source code I felt was truly
10:08:23 4 relevant to be shown in -- and still present the case in an
10:08:27 5 efficient fashion.

10:08:28 6 Q. But we agree, though, that the best source of
10:08:29 7 evidence -- kind of the gold standard of the way the phone
10:08:32 8 is going to work is the source code, right?

10:08:34 9 A. True.

10:08:35 10 Q. Okay. And you chose not to show that to the jury,
10:08:37 11 correct?

10:08:37 12 A. I chose to show things in a way that would be evident.
10:08:46 13 And where I -- there are places where I felt it was
10:08:49 14 absolutely necessary to show the source code, and I did
10:08:51 15 with regards to decryption in that scenario.

10:08:54 16 Out here, I described an index, and it is
10:09:01 17 confirmed through my analysis of source code.

10:09:03 18 Q. So you did not show the jury, for example, how the
10:09:06 19 Netflix source code instructs the phone to display this
10:09:09 20 Miyagi-Do icon on the screen, correct?

10:09:12 21 A. I did not show the source code, but you can see that it
10:09:16 22 is displayed on the screen.

10:09:17 23 Q. So let's -- let's look at something that you did show
10:09:20 24 to the jury yesterday.

10:09:25 25 MR. FOWLER: Let's look at PDX-774, which is four

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10:09:28 1 slides later.

10:09:29 2 Q. (By Mr. Fowler) Do you recall showing the jury these
10:09:32 3 documents?

10:09:32 4 A. I did.

10:09:33 5 Q. Now, these are two different documents, PX-311 and
10:09:38 6 PX-312, or excerpts from them, right?

10:09:40 7 A. Yes.

10:09:41 8 Q. Now, neither of these documents is Netflix source code,
10:09:41 9 correct?

10:09:45 10 A. No.

10:09:45 11 Q. And neither is Samsung source code, right?

10:09:48 12 A. No. They're used by Netflix and Samsung source code.

10:09:55 13 Q. Well, so you say, but you actually never showed any
10:09:58 14 evidence that ties these documents to the Netflix source
10:10:01 15 code, correct?

10:10:02 16 A. Counsel, this is Unicode. The apps are written in
10:10:06 17 Java. Java is default standard for -- for representing its
10:10:13 18 character set is Unicode.

10:10:15 19 Q. But you could have just shown the jury the actual
10:10:18 20 source code rather than these -- well, let me back up.

10:10:21 21 Neither one of these documents is either from
10:10:23 22 Samsung or Netflix, right?

10:10:26 23 A. No.

10:10:26 24 Q. And neither one of them mentions, much less discusses,
10:10:30 25 the Netflix app that we're talking about in this court,

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10:10:34 1 right?

10:10:35 2 A. That's right.

10:10:35 3 Q. And so instead of showing the jury the actual Netflix
10:10:39 4 source code, you chose to show these two documents, which
10:10:42 5 are not from Netflix and which don't discuss the Netflix
10:10:45 6 app that we're talking about in this trial? That was your
10:10:47 7 choice; is that right?

10:10:48 8 A. It was my choice to show these documents that actually
10:10:54 9 are part of what is Netflix and Samsung's character
10:11:00 10 representations.

10:11:01 11 But my reason for showing these documents was to
10:11:04 12 point out the Court's -- to -- the Court's claim
10:11:11 13 construction that characters are represented by units of
10:11:15 14 code.

10:11:15 15 And, in fact, that -- the way of understanding
10:11:18 16 that representation is that there's an index, an ID that
10:11:22 17 you can ascribe to a character.

10:11:26 18 MR. FOWLER: Your Honor, move to strike that
10:11:28 19 answer after the answer, which was he chose not to.

10:11:30 20 THE COURT: I will -- I'll strike the answer after
10:11:33 21 the initial answer and instruct the jury to disregard it.

10:11:38 22 MR. FOWLER: Thank you, Your Honor.

10:11:40 23 Q. (By Mr. Fowler) So let's go to the last claim
10:11:43 24 limitation I want to visit with you about today, which is
10:11:46 25 21[f].

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10:11:49 1 MR. FOWLER: If we could put that up on the
10:11:51 2 screen, please?

10:11:51 3 Q. (By Mr. Fowler) So this claim limitation says: The
10:11:53 4 second user interface being associated with the first user
10:11:57 5 profile and displaying the first character, the first
10:12:00 6 character associated with the first group of video
10:12:02 7 information and indicating an identity of the user with the
10:12:07 8 first user profile is associated with.

10:12:10 9 Did I read that correctly?

10:12:12 10 A. Yes.

10:12:12 11 Q. And, again, we have the Court's construction of
10:12:15 12 character. Do you see that?

10:12:17 13 A. Yes.

10:12:17 14 Q. Okay. Now, let's look at one of the slides that you
10:12:20 15 showed the jury yesterday.

10:12:22 16 MR. FOWLER: PDX-7-78?

10:12:26 17 Q. (By Mr. Fowler) Do you recognize this as a slide that
10:12:29 18 you showed in connection with your argument as to why Claim
10:12:34 19 Limitation 21[f] is infringed?

10:12:36 20 A. Yes.

10:12:36 21 Q. So on the right side of the screen, we see the Netflix
10:12:40 22 home screen, correct?

10:12:42 23 A. On -- yes.

10:12:43 24 Q. And --

10:12:44 25 A. On the left side of the screen.

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10:12:49 1 Q. The right side of the screen is the home screen, right?

10:12:53 2 A. Maybe you can refer to it as the first user interface

10:12:58 3 or the second user interface. That might be clearer than

10:13:02 4 left or right.

10:13:04 5 Q. Okay. So -- well, just to be clear, you identified

10:13:08 6 what's on the right, that imagine of the phone as the

10:13:12 7 second user interface, correct?

10:13:14 8 A. Yes.

10:13:14 9 Q. Okay. And then you're the one that enlarged -- I

10:13:18 10 didn't do this. You enlarged the icon that has the blue

10:13:25 11 and then what looks like -- it almost looks like a cookie,

10:13:30 12 but it's brown with the lettering Miyagi-Do Karate. You

10:13:38 13 enlarged that, right?

10:13:39 14 A. Yes.

10:13:40 15 Q. Okay. Now, that's -- that's an -- that's an icon,

10:13:42 16 right?

10:13:42 17 A. It is a profile icon, yes.

10:13:47 18 Q. Okay. Now, unlike what we saw earlier where we saw a

10:13:52 19 thumbnail with some letters that were below the thumbnail,

10:13:56 20 there's no -- there's no lettering Miyagi-Do Karate below

10:14:02 21 this icon, correct?

10:14:02 22 A. I see Miyagi-Do character there, that you can see the

10:14:04 23 letters Miyagi-Do right there.

10:14:06 24 Q. It wasn't my question.

10:14:08 25 A. Okay.

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10:14:08 1 Q. So we see what's in the icon?

10:14:10 2 A. Yes.

10:14:10 3 Q. But unlike the thumbnail that we saw earlier, when you
10:14:15 4 go back and you look at the actual phone, underneath the
10:14:18 5 icon, there's no separate letters below that for anybody to
10:14:21 6 select. Right?

10:14:21 7 A. Additional letters, in this image, no.

10:14:25 8 Q. Okay. Now, this thing that's in the black thing,
10:14:33 9 the -- with the blue image and the brown circle with the
10:14:36 10 lettering, that is a single graphic image, right?

10:14:41 11 A. In this context, it's actually a predefined Netflix app
10:14:49 12 that has a letter M for Miyagi-Do, and it's represented by
10:14:54 13 a unit of information.

10:14:57 14 MR. FOWLER: Your Honor, I'd move to strike that
10:14:59 15 as nonresponsive.

10:15:00 16 THE COURT: I'll sustain. Sustain the objection,
10:15:02 17 strike the answer, and instruct the jury to disregard.

10:15:05 18 Q. (By Mr. Fowler) Okay. My question to you was not at
10:15:07 19 all what you just said.

10:15:08 20 A. Sorry.

10:15:09 21 Q. The question is that icon is a single integrated
10:15:14 22 graphical image, correct?

10:15:15 23 A. It is.

10:15:16 24 Q. And that graphical image is displayed on the screen by
10:15:23 25 pixels, correct?

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10:15:24 1 A. It is.

10:15:25 2 Q. And displaying this image requires hundreds, if not
10:15:29 3 thousands, of pixels, correct?

10:15:31 4 A. Yes.

10:15:31 5 Q. And each pixel is represented by at least three bytes
10:15:35 6 or units of information representing the combination of the
10:15:38 7 colors red, green, and blue, correct?

10:15:42 8 A. Here, I disagree with the last part you said.

10:15:44 9 Q. Okay. What part do you agree with?

10:15:48 10 A. Most of it.

10:15:49 11 Q. Okay. So let's break that down.

10:15:52 12 Each pixel is represented by three bytes of
10:15:54 13 information; is that correct?

10:15:55 14 A. Each pixel is stored as three bytes of information.

10:16:01 15 Q. Okay. And so collectively, though, this image is
10:16:05 16 represented by hundreds or thousands of pieces of
10:16:10 17 information; is that correct?

10:16:11 18 A. Depends on how it's being represented.

10:16:14 19 Q. Okay. But it's in the range of hundreds or thousands;
10:16:18 20 is that right?

10:16:18 21 A. In the case of Netflix, it's just a number. One
10:16:22 22 number.

10:16:22 23 Q. That's not what I asked you. I asked you the -- the
10:16:25 24 pixels that are displaying this actual image, there's
10:16:30 25 hundreds or thousands of them being used here, right?

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10:16:32 1 A. No, 455 to be precise.

10:16:35 2 Q. Okay. Well, 455 is more than 1, right?

10:16:37 3 A. Sorry?

10:16:37 4 Q. 455 is more than 1?

10:16:40 5 A. Yes.

10:16:42 6 Q. Okay.

10:16:42 7 MR. FOWLER: Your Honor, I have no further
10:16:43 8 questions. I pass the witness.

10:16:45 9 THE COURT: All right. Mr. Siddiqui?

10:16:49 10 Mr. Siddiqui, how much time do you think you have? We've
10:16:51 11 been going --

10:16:53 12 MR. SIDDIQUI: Maybe 10 minutes, Your Honor.

10:16:54 13 THE COURT: Okay. 10 minutes, we okay for 10 more
10:16:58 14 minutes?

10:17:00 15 Okay. Mr. Siddiqui, please proceed.

10:17:05 16 REDIRECT-EXAMINATION

10:17:05 17 BY MR. SIDDIQUI:

10:17:08 18 Q. Thank you for your patience, Professor Singh.

10:17:14 19 So you recall counsel for Samsung asking you
10:17:17 20 questions about Claim Element 1[j]?

10:17:20 21 A. Yes.

10:17:21 22 Q. You recall counsel for Samsung putting a snippet from
10:17:24 23 one portion of your report talking about selecting
10:17:26 24 thumbnails?

10:17:27 25 A. Yes.

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10:17:27 1 Q. That was in relation to Claim Element 1[j], right?

10:17:32 2 A. I believe so.

10:17:32 3 Q. Okay. Let's see if I can figure this out.

10:17:58 4 You recall counsel for Samsung talking about this
10:18:02 5 1[j] and making this big show about, oh, you pointed to the
10:18:06 6 wrong thumbnail, right?

10:18:07 7 A. Yes.

10:18:08 8 Q. They wanted the jury to see that you -- they had a
10:18:11 9 gotcha, right?

10:18:12 10 A. I'm not sure what they wanted to do, but --

10:18:15 11 Q. Okay. Let's see where your analysis for 1[j] starts.

10:18:18 12 A. Please.

10:18:22 13 Q. Can you please point to the jury at 1[j] where this
10:18:25 14 claim element is -- where it starts, what it -- what it
10:18:28 15 says?

10:18:29 16 A. So I -- starting in Paragraph 223, after reciting Claim
10:18:36 17 Element 1[j], I say: It is my opinion that the Samsung
10:18:39 18 Galaxy S23 includes user selection of the first character
10:18:44 19 enables the display of the first group of thumbnails
10:18:48 20 corresponding to the first group of video information in
10:18:51 21 the second area, as required by Claim Element 1[j] of the
10:18:56 22 '815 patent.

10:18:56 23 Q. Can you please read forward leading to the next page?

10:19:01 24 A. Sure. For example, as shown below, the Samsung Galaxy
10:19:05 25 S23 includes a Gallery application that -- I can't read

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10:19:11 1 any -- would you just like me to read from my report?

10:19:15 2 Q. That -- I'll put the next page so that you --

10:19:16 3 A. Okay. Please put -- I've -- I've read to the bottom of
10:19:18 4 the page.

10:19:20 5 Q. Okay.

10:19:22 6 A. That a user selection of the first character, that is a
10:19:29 7 user selecting the favorites album within the first area
10:19:33 8 enables the display of the first group of thumbnails
10:19:36 9 corresponding to the first group of video information in
10:19:39 10 the second area, that is the display of thumbnails with
10:19:42 11 it -- with the favorite album.

10:19:43 12 Q. So who's thumbing now through the report?

10:19:47 13 So it's pretty clear that they didn't show this to
10:19:50 14 the jury, correct?

10:19:50 15 A. No.

10:19:52 16 Q. And so what else, Professor Singh, is in this claim
10:19:56 17 element? What other limitation is recited in this claim
10:20:00 18 element?

10:20:00 19 A. So it talks about a first character, then it talks
10:20:03 20 about displaying a first group of thumbnails --

10:20:06 21 Q. Okay.

10:20:06 22 A. -- corresponding to that group of video information.
10:20:10 23 That was what was on the right-hand side, those thumbnails,
10:20:14 24 what the videos were.

10:20:15 25 Q. And moving forward on the same claim element, you point

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10:20:24 1 to the same evidence and selection of favorites like you've
10:20:28 2 walked the jury through, correct?

10:20:30 3 A. Yes.

10:20:30 4 Q. Okay.

10:20:31 5 A. That's right.

10:20:31 6 Q. Thank you.

10:20:32 7 Do you recall counsel for Samsung asking you
10:20:34 8 questions about not showing the jury how to operate the
10:20:40 9 device or not touching favorites, correct?

10:20:43 10 A. Yes.

10:20:44 11 Q. Will -- will the device you use, PX-108, will it be in
10:20:50 12 evidence for them to touch it?

10:20:52 13 A. Absolutely.

10:20:52 14 Q. And would you like them to feel free to touch
10:20:55 15 "favorites" and see if "F" is selected?

10:20:57 16 A. Of course.

10:20:58 17 Q. Now, do you recall -- were you here for opening
10:21:03 18 statements?

10:21:03 19 A. Yes.

10:21:03 20 Q. Do you recall counsel for Maxell saying that they
10:21:06 21 should use their common sense?

10:21:07 22 A. Yes.

10:21:07 23 Q. So you tell me, Professor Singh, is source --

10:21:11 24 MR. FOWLER: This is beyond the scope of the
10:21:15 25 cross.

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10:21:15 1 THE COURT: Is it beyond the scope of cross?

10:21:17 2 MR. SIDDIQUI: Talking about -- I'm allowed to
10:21:19 3 talk about source code, Your Honor.

10:21:21 4 Q. (By Mr. Siddiqui) So, Professor Singh, is source code
10:21:25 5 necessary to see if a character "F" or a character "C" is
10:21:28 6 being selected?

10:21:30 7 A. No, you can just perform -- perform the action. And if
10:21:35 8 it behaves as you expect it to behave, it's responding.

10:21:43 9 MR. SIDDIQUI: Let's go to Claim Element 21[b],
10:21:47 10 Mr. Ebersole, if we can have that demonstrative? Just one
10:21:51 11 second, I'll give you the number. PDX-007-78 -- 78.

10:22:37 12 Q. (By Mr. Siddiqui) Professor Singh, do you recall this
10:22:39 13 slide?

10:22:39 14 A. I do.

10:22:44 15 MR. SIDDIQUI: 21[b] -- sorry, 21[b].

10:22:47 16 Mr. Ebersole, sorry, can you go back a few slides,
10:22:53 17 21[b]? Yeah. Sorry, one more. One more. One more. One
10:23:03 18 more. This is it. Sorry.

10:23:05 19 Q. (By Mr. Siddiqui) Sorry, Professor Singh. I got the
10:23:07 20 number wrong. It was 70.

10:23:10 21 Do you recall being asked questions about Claim
10:23:12 22 Element 21[b] and selection of profiles and characters?

10:23:15 23 A. I do.

10:23:15 24 Q. Does Dr. Kia dispute that the Netflix app running on
10:23:19 25 Samsung meets these claim elements?

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10:23:22 1 A. No. In fact, if you look back down to the left bottom
10:23:26 2 corner of these slides, it says: Dr. Kia does not dispute.
10:23:30 3 In fact, these slides were not -- I don't -- I believe they
10:23:32 4 were sent to Samsung, and they did not object to this.

10:23:37 5 MR. SIDDIQUI: Yeah. Can we move forward to 21[e]
10:23:40 6 now, Mr. Ebersole, the -- PDX-78?

10:23:47 7 Q. (By Mr. Siddiqui) Professor Singh, this -- this
10:23:51 8 element Dr. Kia does dispute, correct?

10:23:53 9 A. Yes.

10:23:53 10 Q. And do you recall counsel for Samsung asking you
10:23:56 11 questions about the Miyagi-Do icon?

10:24:00 12 A. Yes.

10:24:00 13 Q. Does the Miyagi-Do icon have the letter "M" in it?

10:24:03 14 A. It does.

10:24:05 15 Q. Is it literally an "M"?

10:24:07 16 A. It is.

10:24:08 17 Q. Is "M" a letter, per the Court's construction?

10:24:11 18 A. Yes.

10:24:12 19 Q. Did anything that Samsung's counsel say change your
10:24:15 20 opinion?

10:24:16 21 A. No.

10:24:16 22 Q. Is source code necessary to show that "M" is a letter
10:24:20 23 "M"?

10:24:21 24 A. No.

10:24:22 25 Q. Thank you.

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10:24:28 1 THE COURT: Anything else, Mr. Siddiqui?

10:24:32 2 MR. SIDDIQUI: No.

10:24:32 3 THE COURT: All right. Mr. Fowler, recross?

10:24:35 4 MR. FOWLER: Super briefly. I'll use the
10:24:47 5 microphone.

10:24:51 6 RECROSS-EXAMINATION

10:24:51 7 BY MR. FOWLER:

10:24:51 8 Q. So just to be clear, you haven't changed any of the
10:24:54 9 answers that you gave in response to my questions to you?
10:24:56 10 You're not changing any of the testimony you gave, right?

10:24:58 11 A. No.

10:24:59 12 Q. Okay. So let's look at only two things that counsel
10:25:02 13 just showed you.

10:25:06 14 Let's go back to your expert report at Paragraph
10:25:11 15 223 --

10:25:19 16 MR. FOWLER: If we could pull that up, please.

10:25:21 17 And, in particular, I'd like to look at the top of Page --
10:25:21 18 there you go -- the top of Page 275.

10:25:27 19 Q. (By Mr. Fowler) What counsel showed you was it says a
10:25:28 20 user's selection of the first character. Now, that first
10:25:31 21 character is referring to the claim language, right? Are
10:25:34 22 you with me, Dr. Singh.

10:25:37 23 A. I'm getting there, counsel.

10:25:38 24 Q. Okay. It's on the screen if you'd like.

10:25:41 25 A. Oh, yes, sorry.

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10:25:42 1 Q. Okay. So a user selection of the first character, the
10:25:45 2 character there you're referring to is the claim language,
10:25:47 3 right?

10:25:48 4 A. Yes.

10:25:49 5 Q. Okay. And then you said, i.e., and, i.e. is -- means
10:25:54 6 now you're going to define what the first character is that
10:25:58 7 you're talking about, right? That's what i.e. means?

10:26:01 8 A. Yes.

10:26:02 9 Q. Okay. So what did you say? You said a user selecting
10:26:06 10 the favorites album, right?

10:26:09 11 A. Uh-huh.

10:26:10 12 Q. The album?

10:26:11 13 A. Uh-huh.

10:26:12 14 Q. That's the thumbnail, right?

10:26:14 15 A. It has been established in -- in claim elements prior
10:26:23 16 what is being -- what is being selected.

10:26:28 17 Q. So is that a yes or a no?

10:26:30 18 A. No, the favorites album, the favorites album has the
10:26:33 19 letter F as part of it.

10:26:35 20 Q. Well, the thumbnail doesn't, right?

10:26:36 21 A. The thumbnail, but the favorites album is that entire
10:26:41 22 first classification. If you -- if you remember going
10:26:43 23 back, you can go back many slides in my testimony, go back
10:26:50 24 earlier to claim elements, I talked about -- very clearly,
10:26:53 25 I remember telling the jury there's a first character, the

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10:26:56 1 title, and there's the icon -- the thumbnail for the album,
10:27:03 2 and that together they comprise a first classification of
10:27:07 3 an album, and that's the album that I'm talking about.

10:27:10 4 MR. FOWLER: Your Honor, I asked him a yes-or-no
10:27:12 5 question. I move to strike.

10:27:14 6 THE WITNESS: Your Honor, I --

10:27:15 7 THE COURT: Hold on just a moment. Let me read
10:27:18 8 the question.

10:27:20 9 I'm going to have to strike your answer and
10:27:22 10 instruct the jury to disregard it.

10:27:24 11 Mr. Fowler, just ask your question again.

10:27:26 12 To the extent that you could just focus on the
10:27:29 13 question.

10:27:29 14 THE WITNESS: Okay.

10:27:30 15 THE COURT: If you can't give a yes or no, just
10:27:32 16 tell that to Mr. Fowler, and he can either change the way
10:27:38 17 he asks the question or...

10:27:40 18 THE WITNESS: No problem, Your Honor. It's just
10:27:43 19 that some questions cannot be answered in a yes-or-no
10:27:47 20 without context.

10:27:48 21 THE COURT: It's fine. Move along, Mr. Fowler.

10:27:48 22 MR. FOWLER: Thank you. And I'll try to close
10:27:51 23 this out quickly, Your Honor.

10:27:52 24 So if we could just move that bottom part to the
10:27:55 25 top and then show that at the top and then show what

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10:27:58 1 Dr. Singh said in his report just three paragraphs later at
10:28:03 2 Paragraph 226, so that we can see both of those one on top
10:28:06 3 of the other, please.

10:28:07 4 Can you make them equal size, please? There you
10:28:10 5 go.

10:28:12 6 Q. (By Mr. Fowler) So, here, let's highlight in 226 where
10:28:14 7 you say "selects an album from the first area (the
10:28:18 8 thumbnails)."

10:28:18 9 MR. FOWLER: Can you highlight that, please,
10:28:20 10 Mr. Splansky? User selects an album from the first area of
10:28:25 11 the thumbnails.

10:28:25 12 Q. (By Mr. Fowler) Okay. Here in 226, you're saying that
10:28:29 13 the album is the thumbnails, right?

10:28:31 14 A. No. I'm saying in both cases -- no. I'll stop there.
10:28:36 15 No.

10:28:37 16 Q. Okay. So you're saying --

10:28:39 17 A. Yes, it's part of the -- sorry, could you ask the
10:28:42 18 question again? I'm sorry.

10:28:43 19 Q. Paragraph 226, I mean, we can all read, you say
10:28:47 20 "selects an album from the first area (the thumbnails in
10:28:53 21 the left column)."

10:28:56 22 So, here, what you're saying in your own words,
10:28:59 23 under oath, in your report that the album that you're
10:29:00 24 talking about is the thumbnails. That's what this says,
10:29:02 25 right?

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10:29:02 1 A. Yes, the album is the thumbnails.

10:29:05 2 Q. And so --

10:29:06 3 A. Yes.

10:29:07 4 Q. Okay. And in Paragraph 223, when you say "the
10:29:11 5 favorites album," you're talking about the same album as in
10:29:15 6 Paragraph 226, right?

10:29:17 7 A. Yes. With the word "favorites" with the character with
10:29:20 8 the title, together they form the album.

10:29:23 9 Q. Well, I think now -- now I'm hearing something new.

10:29:26 10 Before you said -- in your report, you said it was
10:29:30 11 the thumbnail. Then today you said, well, no, it's not the
10:29:34 12 thumbnail because the thumbnail is not a character under
10:29:36 13 the Court's construction, and if it was the thumbnail, it
10:29:40 14 wouldn't infringe. Then you said it's the favorites.

10:29:44 15 Are you now saying it's the combination of the
10:29:46 16 thumbnail and the favorites?

10:29:46 17 A. What's the question, counsel?

10:29:48 18 Q. That -- what -- that. Is it -- is it your -- is it
10:29:50 19 your new opinion, for the first time now, that the
10:29:55 20 character of the claim is the combination of the thumbnail
10:29:58 21 and the letters below it?

10:30:00 22 A. No, counsel.

10:30:01 23 Q. Okay. I didn't think so. Thank you.

10:30:05 24 So let's go to the last question I have, which is
10:30:09 25 what you were shown for the graphic 778.

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10:30:14 1 So, again, just to be clear, that blue box, that's
10:30:19 2 one single integrated image, right?

10:30:21 3 A. It's a Netflix icon, counsel.

10:30:24 4 Q. Right. It's one single integrated graphical image,
10:30:30 5 right?

10:30:30 6 A. Also.

10:30:31 7 Q. So if you press -- if a user were to -- were to press
10:30:34 8 this thumbnail in the upper left corner in the blue, it
10:30:39 9 would react, right?

10:30:40 10 A. Yes.

10:30:40 11 Q. Or if it were to press in that black circle, it would
10:30:43 12 react, right?

10:30:44 13 A. Yes.

10:30:44 14 Q. And so if it pressed on the M, it would react, right?

10:30:49 15 A. Yes.

10:30:49 16 Q. So the phone is not looking for a detection of you
10:30:53 17 pressing on the M, it's looking for a detection of you
10:30:56 18 pressing on that overall graphical image, correct?

10:30:59 19 A. Yes, but you are able to select the M.

10:31:02 20 MR. FOWLER: Thank you, Your Honor. I have no
10:31:04 21 further questions.

10:31:04 22 THE COURT: Mr. Siddiqui, briefly?

10:31:07 23 MR. SIDDIQUI: Real briefly, Your Honor. Sorry, I
10:31:09 24 know we have to go on a break.

10:31:11 25 REDIRECT EXAMINATION

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10:31:12 1 BY MR. SIDDIQUI:

10:31:12 2 Q. Professor Singh, briefly, 1[j], you were explaining
10:31:15 3 something to the jury. The claim requires -- is it correct
10:31:18 4 that the claim requires both -- both a thumbnail and a
10:31:21 5 first character? The claim language itself?

10:31:23 6 A. The claim language simply requires a character.

10:31:27 7 Q. But the full -- full claim language --

10:31:29 8 A. The full claim language talks about thumbnails going
10:31:32 9 forward.

10:31:33 10 Q. And you were teaching the jury about albums and how you
10:31:36 11 had opined. Would you like to complete your answer?

10:31:42 12 A. That's right. I simply was talking about the fact
10:31:45 13 that, as I have mentioned, the claims have language that
10:31:46 14 talk about a first character, the favorites, title, there's
10:31:51 15 a thumbnail for that -- an icon for that. And then
10:31:59 16 together they form what was -- the claim refers to as a
10:32:02 17 first classification. That is the favorites album.

10:32:04 18 Q. You weren't saying that the album and the text was a
10:32:09 19 character; you were saying that was the classification.
10:32:12 20 Correct?

10:32:12 21 A. That is correct.

10:32:13 22 MR. FOWLER: Objection, leading.

10:32:16 23 Q. (By Mr. Siddiqui) Professor Singh, do you recall being
10:32:18 24 asked questions about Claim Element 21[b] about
10:32:21 25 something -- about phone needing to do detection?

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10:32:24 1 A. Something about the phone detecting user touches?

10:32:31 2 Q. Yeah.

10:32:31 3 A. Yes.

10:32:32 4 Q. Just -- just right before I got up, counsel was asking
10:32:36 5 you something about the phone is seeking for a detection of
10:32:42 6 a character?

10:32:42 7 A. Yes, I recall that.

10:32:43 8 Q. Is the word "detection" in the claim?

10:32:47 9 A. No.

10:32:48 10 MR. SIDDIQUI: Nothing further, Your Honor.

10:32:49 11 MR. FOWLER: No, Your Honor. Nothing further.

10:32:51 12 THE COURT: You may step down.

10:32:52 13 THE WITNESS: Thank you.

10:32:53 14 THE COURT: All right. Ladies and gentlemen of
10:32:54 15 the jury, thanks for your attention and focus this morning.
10:32:59 16 We'll take our morning recess at this time. We will --
10:33:03 17 we'll take about 15 minutes.

10:33:06 18 COURT SECURITY OFFICER: All rise.

10:33:09 19 (Jury out.)

10:33:10 20 THE COURT: Please be seated.

10:33:47 21 MR. FOWLER: Your Honor, may I return?

10:33:49 22 THE COURT: Of course.

10:33:53 23 On the issue of the EcoFactor decision, did we
10:33:57 24 lose Mr. Levy?

10:33:59 25 MR. LEVY: I'm back in, Your Honor.

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10:34:01 1 THE COURT: Hello, Mr. Levy.

10:34:02 2 So I have thought about this issue, Ms. Gibson. I
10:34:08 3 certainly understand and appreciate the timeliness of the
10:34:16 4 Circuit's opinion in the EcoFactor case. I think I am not
10:34:23 5 completely convinced that that case, based on just a
10:34:31 6 preliminary look at it, rules out the use of the proposed
10:34:37 7 royalty rates as informative of a reasonable royalty. It
10:34:39 8 may well. I'm just not sure that it does.

10:34:43 9 I think to some degree -- it seems likely to me to
10:34:52 10 some degree that this is really more of a factual question
10:34:55 11 at this point than a legal question. I think it's
10:35:01 12 important for you to make your record about it.

10:35:09 13 And to the extent it is necessary in post-trial
10:35:11 14 briefing, Samsung would be in a better position, having
10:35:17 15 developed those facts, to compare, you know, the facts in
10:35:25 16 the EcoFactor case to the facts in this case.

10:35:27 17 And I ultimately think the gravity of the decision
10:35:32 18 is -- is -- really just deserves more briefing than an
10:35:41 19 overnight dispute.

10:35:43 20 So I'm going to overrule the objection, and we'll
10:35:45 21 go forward on that basis, and, if necessary, address it on
10:35:52 22 post-trial.

10:35:52 23 Any questions, Ms. Gibson?

10:35:57 24 MS. GIBSON: No, Your Honor.

10:35:58 25 THE COURT: Mr. Levy, any questions?

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10:36:00 1 MR. LEVY: No, Your Honor.

10:36:03 2 THE COURT: Okay. We'll take a short recess.

10:36:05 3 COURT SECURITY OFFICER: All rise.

10:36:06 4 (Recess.)

10:53:52 5 (Jury out.)

10:53:52 6 COURT SECURITY OFFICER: All rise.

10:53:52 7 THE COURT: Mr. Savage, if you would have the jury

10:54:00 8 brought down, please?

10:54:37 9 (Jury in.)

10:54:39 10 THE COURT: Please be seated.

10:54:55 11 Maxell may call its next witness.

10:55:05 12 MR. LEVY: Your Honor, Maxell calls its next --

10:55:08 13 its next witness, Mr. John Jarosz.

10:55:21 14 (Witness sworn.)

10:55:29 15 THE COURT: Have a seat.

10:55:39 16 MR. LEVY: Kfir Levy on behalf of Maxell,

10:55:42 17 Your Honor.

10:55:42 18 THE COURT: Mr. Levy, you may need to move that

10:55:45 19 microphone toward you.

10:55:47 20 MR. LEVY: How is that?

10:55:49 21 THE COURT: A little better.

10:55:50 22 MR. LEVY: I'll try to stand closer, Your Honor.

10:55:52 23 If I may?

10:55:53 24 THE COURT: Yes.

10:55:55 25 JOHN C. JAROSZ, PH.D., PLAINTIFF'S WITNESS, SWORN

10:55:55

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DIRECT EXAMINATION

BY MR. LEVY:

Q. Good morning, Mr. Jarosz. Can you please state your full name for the record?

A. John C. Jarosz.

Q. And what do you do for a living, Mr. Jarosz?

A. I'm an economist.

Q. And why are you here today?

A. I was asked by Maxell to provide my expert opinion on the amount of money that should be paid by Samsung to Maxell if the jury finds that the patents are valid, enforceable, and infringed. In short, I'm asked to provide my testimony on damages.

Q. Do you specialize in any particular area of economics?

A. Most of my work is in the economics of intellectual property protection. Intellectual property is what is embodied -- what embodies patents, trademarks, trade secrets, and copyrights. Most of my work has to do with determining damages or compensation when one party has infringed the rights of another.

Q. Do you work on your own or with a company?

A. I work with a company, which is called Analysis Group, Incorporated.

Q. And what is Analysis Group?

A. We're a large private economic financial strategy and

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10:57:03 1 healthcare consulting firm of about 1400 people that has
10:57:06 2 offices throughout North America and overseas. We help our
10:57:13 3 clients with issues they face in regulatory settings and
10:57:17 4 litigation and real world business settings and in
10:57:20 5 healthcare settings.

10:57:22 6 Q. Thank you. And what is your position within Analysis
10:57:26 7 Group?

10:57:26 8 A. I'm one of the managing principals of the firm, which
10:57:31 9 means that I'm one of the owners of the firm. I'm also the
10:57:32 10 founder and the director of the firm's Washington, D.C.
10:57:35 11 office.

10:57:35 12 Q. And how long have you been with Analysis Group?

10:57:37 13 A. Since 1996. And for 10 years prior to that, I was at
10:57:41 14 another economic consulting firm and also the director of
10:57:45 15 that firm's Washington, D.C., office.

10:57:47 16 Q. And, Mr. Jarosz, did you prepare a presentation to help
10:57:50 17 with your testimony today?

10:57:51 18 A. Yes, I did.

10:57:52 19 MR. LEVY: Your Honor, if we may publish it?

10:57:54 20 THE COURT: Yes.

10:57:55 21 MR. LEVY: Your Honor, I also have copies if I may
10:57:58 22 distribute them?

10:57:58 23 THE COURT: Copies of?

10:58:01 24 MR. LEVY: The presentation.

10:58:03 25 THE COURT: To the witness? Oh, I'm sorry. I

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10:58:03 1 mean, to the jury?

10:58:06 2 MR. LEVY: No, Your Honor, not to the jury.

10:58:06 3 THE COURT: Sorry. Yes.

10:58:11 4 MR. LEVY: If I may?

10:58:12 5 THE COURT: You may.

10:58:38 6 MR. LEVY: Thank you, Your Honor.

10:58:39 7 Q. (By Mr. Levy) Mr. Jarosz, did you prepare a chart that
10:58:42 8 summarizes some of your qualifications?

10:58:45 9 A. Yes, I did.

10:58:47 10 Q. And is -- is this it on the screen?

10:58:50 11 A. It is.

10:58:50 12 Q. Can you please describe your educational background?

10:58:53 13 A. Yes. I have a BA or Bachelor's in economics and

10:58:58 14 organizational communication from Creighton University,

10:59:01 15 which is in Omaha, Nebraska.

10:59:04 16 After that, I was a fellowship student in the

10:59:06 17 Ph.D. program in economics at Washington University, which

10:59:07 18 is in St. Louis. There I completed most, but not all, of

10:59:11 19 the requirements for my Ph.D. I left before finishing a

10:59:15 20 dissertation. But I had met a certain level of

10:59:19 21 requirements and was awarded a Master's in economics.

10:59:22 22 Q. Thank you.

10:59:23 23 And in addition to your bachelor's and master's

10:59:27 24 degree -- degrees, have you received any other advanced

10:59:31 25 degrees?

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10:59:31 1 A. Yes. I also have a law degree, a JD from the
10:59:35 2 University of Wisconsin, which is in Madison, Wisconsin.
10:59:38 3 There I took quite a number of courses in the economics
10:59:41 4 department and courses in the law school that focused on
10:59:44 5 the intersection of topics having to do with law and
10:59:48 6 economics.

10:59:48 7 Q. Are you licensed as a -- as an attorney?

10:59:50 8 A. I've been a member of the State Bar of Wisconsin for
10:59:54 9 the last 39 years, but I have been on inactive status that
10:59:57 10 whole time.

10:59:58 11 Q. Have you ever practiced as a lawyer?

11:00:01 12 A. No.

11:00:01 13 Q. So have you practiced as an economist your entire
11:00:05 14 professional career?

11:00:06 15 A. I have practiced as an economist. I happen to have a
11:00:07 16 law degree, but I'm a practicing economist.

11:00:09 17 Q. Are you a member of any professional organizations or
11:00:12 18 associations?

11:00:14 19 A. I am. And those are listed on the slide on the screen.
11:00:17 20 I've been active in several of those and a member of all of
11:00:22 21 those. The ones I've been somewhat active in are the
11:00:27 22 American Economic Association, the American Law and
11:00:29 23 Economics Association, the Licensing Executive Society, and
11:00:31 24 in recent years, I've been fairly active in the Sedona
11:00:36 25 Conference.

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11:00:36 1 Q. What is the Sedona Conference?

11:00:39 2 A. It's a group of economists, lawyers, and judges who get
11:00:43 3 together to, what they say is move the law forward in a
11:00:48 4 just and reasonable fashion. We try to find ways to
11:00:51 5 improve the delivery of services associated with
11:00:53 6 interpretation of the law.

11:00:55 7 The work that I've been more involved with than
11:00:58 8 any others is the evaluation and presentation of patent
11:01:01 9 damages, which is the topic I'm here today on.

11:01:04 10 Q. How else do you keep active in the field?

11:01:07 11 A. I fairly regularly give speeches to a variety of
11:01:12 12 organizations, and I research and publish articles in
11:01:16 13 professional and academic journals.

11:01:19 14 Q. Have you taught classes or given presentations on those
11:01:23 15 topics?

11:01:24 16 A. Yes. I've taught at several, including the Georgetown
11:01:28 17 University Law Center, the George Washington University law
11:01:32 18 school, the University of Pennsylvania economics department
11:01:34 19 and law school, and the United States Patent and Trademark
11:01:37 20 Office.

11:01:37 21 Q. And, in general, how many matters have you worked on as
11:01:40 22 an economic expert?

11:01:42 23 A. Over the years, I've been involved in more than 500
11:01:45 24 matters. I've provided testimony in court like this or in
11:01:49 25 arbitration on about 120 occasions.

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11:01:52 1 Q. Now, in this case, you're testifying on behalf of the
11:01:55 2 Plaintiff. Over your career, how does your testimony break
11:01:58 3 down between owners of patents and accused infringers?

11:02:02 4 A. In patent cases, it's about 50/50. In other words,
11:02:04 5 about half the time we and I have been asked to provide
11:02:09 6 opinions by the patent owner, and about half the time we
11:02:14 7 and I have been asked to provide opinions by the alleged
11:02:17 8 infringer or misappropriator.

11:02:20 9 Q. And is Analysis Group being compensated for your work
11:02:23 10 in this case?

11:02:24 11 A. We're being compensated for the time that we undertook
11:02:27 12 to do our analysis and for any expenses that we incurred.
11:02:30 13 That's our normal arrangement.

11:02:32 14 Q. Does your compensation depend in any way on the
11:02:35 15 particular testimony you offer or the amount of damages
11:02:38 16 that the jury awards?

11:02:41 17 A. No, it does not.

11:02:41 18 MR. LEVY: Your Honor, we offer Mr. Jarosz as an
11:02:43 19 expert in the field of economics of IP protection,
11:02:46 20 including damages estimation.

11:02:49 21 MS. SMITH: No objection, Your Honor.

11:02:50 22 THE COURT: Very well.

11:02:52 23 Q. (By Mr. Levy) Mr. Jarosz, for your analysis, what
11:02:56 24 types of information did you review to form your opinion?

11:02:59 25 A. I have a slide that shows that -- oh, it's up on the

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11:03:02 1 screen now.

11:03:03 2 I've reviewed quite a number of materials I've
11:03:06 3 produced.

11:03:07 4 I've reviewed materials that were produced by the
11:03:10 5 parties in this case, financial data, marketing materials,
11:03:15 6 internal documents about their business.

11:03:19 7 I've reviewed the patents.

11:03:21 8 I've also gathered information from the public
11:03:24 9 domain to understand more about the business and the
11:03:26 10 companies.

11:03:27 11 I've read deposition testimony that was provided
11:03:30 12 by the witnesses in this case.

11:03:33 13 I have looked at license agreements.

11:03:36 14 I have had discussions with Maxell personnel.

11:03:41 15 I've read the expert reports that have been
11:03:43 16 submitted in this case.

11:03:45 17 And, of course, I've applied my experience that
11:03:49 18 I've gathered over the last roughly 40 years of doing this
11:03:53 19 work to assess the evidence that I've looked at.

11:03:57 20 Q. And have you been following the court proceedings so
11:04:00 21 far?

11:04:00 22 A. I have. I've been in the courtroom for most of the
11:04:03 23 proceedings, not -- not all of them.

11:04:06 24 Q. As part of your assignment in this case, did you form
11:04:09 25 an opinion on whether the patents here are valid or

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11:04:14 1 infringed or enforceable?

11:04:15 2 A. No. That's outside my area of expertise. That's for
11:04:19 3 the technical experts and fact witnesses to provide their
11:04:25 4 insights. I'm just an economist. We deal with business
11:04:28 5 issues, and so I was asked to assume that the jury here
11:04:32 6 will find the patents to be valid and infringed, but I have
11:04:36 7 no independent opinion on that.

11:04:38 8 Q. And before we get into the details, what's the form of
11:04:42 9 damages that you believe is appropriate here?

11:04:44 10 A. A reasonable royalty. You can see on the screen is the
11:04:50 11 patent damages statute. It provides that an injured party,
11:04:54 12 and in this case it presumably is Maxell, is entitled to
11:04:57 13 compensation and in no event less than a reasonable royalty
11:05:00 14 for the use made of the invention by the infringer.

11:05:03 15 So I've adopted that -- that minimum form of
11:05:06 16 recovery, a reasonable royalty, as the form of damages
11:05:10 17 here.

11:05:11 18 Q. And what is your damages conclusion for each of the
11:05:15 19 three patents at issue here?

11:05:18 20 A. As you can see on the screen, for the '086 patent, my
11:05:21 21 conclusion is that the damages, assuming liability, are
11:05:27 22 \$44.2 million.

11:05:28 23 For the '848 patent, the damages are \$32.7
11:05:34 24 million.

11:05:34 25 And for the '815 patent, the damages are \$52.7

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11:05:40 1 million.

11:05:41 2 Q. And what is your final damages conclusion?

11:05:43 3 A. That when you add those together, the total damages
11:05:46 4 number is \$129.6 million. That's based on infringing
11:05:52 5 activities or sales of alleged infringing activities of
11:05:56 6 almost 133 million Samsung units.

11:06:00 7 Q. How is a royalty determined in a reasonable royalty
11:06:04 8 damages framework?

11:06:05 9 A. We typically use, and I've used here, what's called a
11:06:09 10 hypothetical negotiation construct.

11:06:11 11 The way to think about that is we know that Maxell
11:06:15 12 and Samsung haven't agreed to Samsung's use of the patents
11:06:19 13 here. So this bargain didn't occur.

11:06:23 14 But what we're -- what -- the approach that I've
11:06:27 15 used, and that many of us use, is if the two parties sat
11:06:30 16 down at a bargaining table, what would be a fair and
11:06:33 17 reasonable fee for Samsung to pay Maxell for the alleged
11:06:37 18 infringement?

11:06:38 19 So, in this case, we're asking the question: If
11:06:42 20 you assume that Maxell is giving rights to the '086 and
11:06:46 21 '848 and '815 patent, how much money should Samsung pay?

11:06:51 22 So it's patent rights going one way, money coming
11:06:54 23 back the other way. Nothing else. There's no other
11:06:57 24 relationship or collaboration. It's just a money payment
11:07:01 25 for access to these patent rights.

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11:07:05 1 Q. And when is the hypothetical negotiation in this case?

11:07:06 2 A. In the 2015/2016 time period. Specifically, I've
11:07:12 3 chosen March of 2015.

11:07:14 4 Q. And what was March 2015 based on?

11:07:17 5 A. That's the point at which the '086 patent issued. So
11:07:21 6 it was the first of the three patents. It issued as -- as
11:07:24 7 of that point in time, I understand that Samsung was
11:07:27 8 selling products that are alleged to infringe the '086
11:07:31 9 patent. So that's what we say is the point of first
11:07:34 10 alleged infringement.

11:07:36 11 Q. So as of March 2015, is it your understanding that
11:07:39 12 Samsung was infringing the '086 patent?

11:07:41 13 A. So to speak. It was a little bit complicated because
11:07:46 14 at that point, there was a license between Maxell and
11:07:49 15 Samsung, which the jury has heard about. There was a
11:07:52 16 license that was agreed upon in 2011. It covered several
11:07:59 17 rights, and one part of that was the '086 patent. It did
11:08:01 18 not cover the other two patents, but it did cover the '086.
11:08:04 19 But that license was scheduled to and did terminate in
11:08:09 20 March of 2016. So -- I'm sorry, in 2016.

11:08:15 21 So March 2015 was immediately before that license
11:08:19 22 was about to terminate and the rights were no longer freely
11:08:24 23 granted from Maxell to Samsung.

11:08:26 24 Q. Did your analysis consider evidence after March 2015?

11:08:29 25 A. It did. I adopted -- what we often do in patent

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11:08:35 1 damages, I adopted something called the Book of Wisdom, and
11:08:38 2 that is we look to see how history has actually unfolded to
11:08:44 3 help us determine what a fair bargain would be at this
11:08:47 4 negotiation point.

11:08:50 5 So the courts and economists have said, let's see
11:08:53 6 what the sales have been, let's see what licenses have
11:08:56 7 occurred, let's see what margins, let's see what kind of
11:09:03 8 benefits the companies -- the alleged infringer has made to
11:09:06 9 give us some evidence as to what a fair bargain would be.
11:09:09 10 So I did use that information after March of 2015, as did
11:09:13 11 Samsung's damages witness, Ms. Davis.

11:09:15 12 Q. Which parties would be at this negotiating table?

11:09:19 13 A. It would be Maxell would be the party giving the patent
11:09:24 14 rights, and Samsung would be the party receiving the patent
11:09:27 15 rights and giving money in return.

11:09:29 16 Q. Now, you said Maxell. Would it be Maxell or Hitachi
11:09:32 17 Maxell?

11:09:32 18 A. For our purposes, it's the same thing. There were some
11:09:36 19 ownership changes over the years, but I believe the parties
11:09:38 20 are in agreement that we can call it Maxell, we can call it
11:09:42 21 Hitachi Maxell. We're talking about the same entity.

11:09:47 22 Q. Now, we'll hear later from Samsung's damages expert,
11:09:52 23 Ms. Davis. Do you and she agree that the hypothetical
11:09:56 24 negotiation is in that time frame?

11:09:57 25 A. No. She sets it a little bit later in 2016, after this

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11:10:03 1 earlier license had terminated. When that was over, then
11:10:07 2 she said that's the point at which one should set up this
11:10:12 3 hypothetical bargain.

11:10:13 4 Q. So why then would there be a negotiation, according to
11:10:16 5 you, in 2015 if Samsung already had a license at that
11:10:18 6 point?

11:10:19 7 A. Parties in the licensing world renegotiate licenses all
11:10:21 8 the time. Just like sports stars do in basketball or
11:10:26 9 football, their current contract isn't over, but they often
11:10:31 10 go to management and say I need to enter a new contract.
11:10:34 11 So once my first contract expires, we'll need to determine
11:10:38 12 the terms for a second contract.

11:10:39 13 So I follow that, and that's what's done in the
11:10:41 14 licensing world. You don't need to wait until one contract
11:10:44 15 is entirely over before you start negotiating for a new
11:10:50 16 one.

11:10:50 17 Q. And does whether the hypothetical negotiation took
11:10:52 18 place in 2015 or 2016, does that impact your analysis?

11:10:55 19 A. No, not really. And I say that for a few reasons. You
11:10:59 20 have the same parties, whether it's 2015 or 2016. That is
11:11:03 21 Maxell and Samsung.

11:11:04 22 The economics of the business are roughly the same
11:11:07 23 in that time period.

11:11:09 24 Smartphones had become very popular. The
11:11:12 25 information that is available is the same, roughly the

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11:11:17 1 same.

11:11:18 2 And I've employed, as has Ms. Davis, this Book of
11:11:25 3 Wisdom. So we've considered how history has unfolded.

11:11:28 4 So whether it's 2015 or 2016 doesn't have a
11:11:31 5 material impact on the outcome for me, and Ms. Davis has
11:11:35 6 written that it does not have a material impact for her
11:11:37 7 either.

11:11:38 8 THE COURT: I'm sorry, I hate to interrupt. Could
11:11:40 9 I ask you to slow down just a little bit.

11:11:42 10 THE WITNESS: I'm sorry, Your Honor.

11:11:44 11 THE COURT: Thank you.

11:11:45 12 THE WITNESS: Sometimes I find this so exciting.

11:11:47 13 THE COURT: Well, I know it's riveting material.

11:11:51 14 THE WITNESS: I'm sorry.

11:11:51 15 THE COURT: That's all right.

11:11:52 16 Q. (By Mr. Levy) Mr. Jarosz, could you remind the jury
11:11:55 17 what patent rights are being asserted in this case?

11:11:57 18 A. Yes. It's shown on the screen. The '086 patent, to my
11:12:02 19 understanding, generally covers fingerprint and TrustZone.
11:12:09 20 The '848 patent generally covers facial recognition for
11:12:13 21 Gallery. And the '815 patent generally covers personalized
11:12:17 22 video content, for example, as embodied in Netflix and
11:12:22 23 Gallery.

11:12:23 24 I think the technical experts have talked about
11:12:25 25 each one of the patents in some detail.

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1 Q. And did you consider the testimony of Maxell's
2 technical experts in this case?

3 A. I did.

4 Q. Could you tell us your understanding of the importance
5 of the patents at issue to Samsung's smartphones and
6 tablets?

7 A. The asserted patents are very important to succeed in
8 the business place. They're very important to the Samsung
9 products. The '086 is represented to be a critical
10 building block. The '848 is essential for the accused
11 functionalities. And the '815 patent is critical to
12 provide personalized user experiences.

13 Q. And is this your opinion based on your own technical
14 analysis?

15 A. No. Again, I'm not a technical expert, but it's the
16 opinion put forward by the three technical experts that I
17 think the jury has heard from over the last couple days.

18 Q. Now, how did you ultimately calculate the total
19 reasonable royalty that Samsung should pay to Maxell?

20 A. It's straightforward. That is, we looked at the -- we
21 count up the number of accused units, so how many products
22 that Samsung sold are alleged of -- alleged to be
23 infringing of these patents.

24 We multiply that number of products by a rate per
25 unit. That is how much should be paid for each infringing

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11:13:46 1 activity. And the end result is a total royalty payment.

11:13:50 2 Q. And how many accused units did you use in your
11:13:57 3 analysis?

11:13:59 4 A. You'll see here on the screen that the accused
11:14:04 5 smartphones are about 124.3 million, and the accused
11:14:10 6 tablets are about 8.7 million over the damages period.

11:14:15 7 Q. And how -- how did you get those numbers?

11:14:18 8 A. Those come directly from Samsung records that were
11:14:23 9 provided to counsel and provided to me.

11:14:26 10 Q. And you have a notebook there with some exhibits,
11:14:30 11 Mr. Jarosz. If you could grab that.

11:14:31 12 Do you see the document in Tab PX-325?

11:14:40 13 A. Yes.

11:14:42 14 Q. Is that the Samsung-provided sales data from 2017
11:14:47 15 through 2020 that was produced in this case?

11:14:48 16 A. Yes.

11:14:50 17 Q. And if you look at PX-326, also in your binder there,
11:15:00 18 is that the Samsung-provided sales data from 2021 through
11:15:05 19 2024 that was produced in this case?

11:15:06 20 A. Yes.

11:15:10 21 Q. Is that what you used, that information to calculate
11:15:12 22 the number of accused units?

11:15:14 23 A. Yes. And we didn't have all the units through today.
11:15:17 24 So I extrapolate -- or estimated based on what I had, and I
11:15:22 25 think Ms. Davis and I are in agreement as to the estimate

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1 of sales up through the beginning of trial.

2 Q. And what is the average selling price for these accused
3 Samsung products?

4 A. It's shown on the screen. For smartphones, it's
5 roughly \$484, and for tablets, it's roughly \$210. Those
6 are -- that's the average selling price that's realized by
7 Samsung.

8 So Samsung sometimes sells directly to consumers.
9 Sometimes it sells through carriers, its business partners,
10 like AT&T and Verizon.

11 So the ultimate price that we as consumers pay may
12 be more than \$484 because some money goes to Verizon, for
13 instance.

14 But these numbers I've shown on -- I'm showing on
15 the screen are the revenues that come to Samsung for the
16 products over the time period that we're talking about.

17 Q. And how did you calculate the average selling price for
18 the products?

19 A. I simply divided the revenues by the units.

20 Q. What is the start of damages date in this case?

21 A. I began counting damages up starting July 7th, 2021.

22 Q. And why did you start counting damages on that date?

23 A. That's the point at which Sam -- that Maxell sent a
24 letter to Samsung informing Samsung that Maxell was of the
25 belief that certain of its patents, including these three,

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11:17:00 1 were being infringed by Samsung's activities. So it
11:17:04 2 notified Samsung that Maxell believed that its rights were
11:17:10 3 being violated.

11:17:12 4 Q. And if you look at PX-20 in your notebook there, is
11:17:18 5 that the -- the letter that was sent on July 7th, 2021,
11:17:23 6 from Maxell to Samsung?

11:17:24 7 A. Yes, it is.

11:17:27 8 Q. Okay. So just so that I am clear, are products sold --
11:17:32 9 Samsung products that are sold or were sold before July 7,
11:17:37 10 2021, is Maxell seeking damages on those?

11:17:40 11 A. No. And under the law, as I understand it, they
11:17:43 12 cannot. So they had not notified Samsung. So any of those
11:17:47 13 sales, though perhaps infringing Maxell's rights, are not
11:17:54 14 subject to a damages award because Maxell was still doing
11:17:59 15 work and hadn't notified Samsung of its belief as to
11:18:02 16 infringement.

11:18:03 17 Q. So for sales in 2017, 2018, 2019, 2020, whether they
11:18:09 18 infringed or not, but even if they infringed, is Maxell not
11:18:14 19 entitled to damages on those?

11:18:15 20 A. No, not as I understand the law.

11:18:17 21 Q. And are those sales included in your calculations?

11:18:20 22 A. They are not.

11:18:20 23 Q. You may have explained this, but did you calculate
11:18:28 24 Samsung's unit sales from the notice date all the way
11:18:31 25 through trial?

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11:18:32 1 A. I did allude to that. No, it was only through a
11:18:36 2 certain point in 2024, so I had to estimate the sales for
11:18:40 3 the rest of '24 and -- 2024 and for 2025, but I believe
11:18:47 4 there isn't a dispute as to the estimated amounts.

11:18:53 5 Q. Can you summarize your conclusions regarding the
11:18:56 6 per-unit reasonable royalty rates that you determined for
11:19:00 7 the different patents-in-suit?

11:19:04 8 A. Sure. So if you remember, I took the number of units
11:19:06 9 and multiplied it by a rate per unit. This is the rate per
11:19:10 10 unit. And for smartphones, for the '086 patent, it's 35
11:19:17 11 cents a phone. For the '848 patent, it's 25 cents a phone.
11:19:22 12 For the '815 patent, it's 40 cents a phone.

11:19:26 13 For tablets, for the '086 patent, it's 25 cents
11:19:30 14 per tablet. For the '848 patent, it's 20 cents per tablet.
11:19:35 15 And for the '815 patent, it's 35 cents per tablet.

11:19:40 16 Q. Thank you.

11:19:42 17 And was the royalty base, the number of units --
11:19:46 18 infringing units to which you apply those per-unit rates,
11:19:50 19 were those different for the different patents?

11:19:51 20 A. A little bit. You'll see in the next slide that the
11:19:57 21 '848 and '815 accused units were identical. They're the
11:20:01 22 same.

11:20:01 23 For the '086 patent, it's a little bit less.
11:20:05 24 That's because there are a few less models of Samsung that
11:20:08 25 are alleged to embody the '086 patent, but you'll see that

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11:20:13 1 the volumes are roughly the same across the patents and, of
11:20:18 2 course, identical for the '848 and '815.

11:20:23 3 Q. Thank you, Mr. Jarosz.

11:20:25 4 Sorry, get closer to the microphone.

11:20:27 5 Could you please now walk us through the royalty
11:20:29 6 calculations for the smartphones? As an example, let's do
11:20:32 7 the '086 patent.

11:20:35 8 A. Yes. So we take our accused units, although I see the
11:20:40 9 way we printed that out, the accused units look funny with
11:20:44 10 that 7 there at the bottom, but it's 120,341,257. And for
11:20:49 11 the '086 for smartphones, I multiply that by the 35 cents
11:20:55 12 that I showed on the previous slide to arrive at a total
11:20:59 13 damages for that patent for smartphones of about \$42.1
11:21:06 14 million.

11:21:06 15 Q. Thank you.

11:21:07 16 And could you do the same for tablets for the '086
11:21:10 17 patent, just walk us through the math?

11:21:11 18 A. Right. For the '086 patent, it's about 8.3 million
11:21:14 19 accused units for tablets. It's -- the rate is 25 cents
11:21:18 20 per unit. And the number for tablets for the '086 is about
11:21:23 21 \$2.1 million.

11:21:24 22 Q. Thank you.

11:21:26 23 And then how did you arrive at your final damages
11:21:29 24 conclusion?

11:21:29 25 A. I did that same calculus across the product types,

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1 meaning smartphones and tablets, and across the patents.

2 So you'll see the table on the screen showing us
3 that for smartphones across the three patents, that damages
4 number is \$122.8 million. For tablets across the three
5 patents, that number is about \$6.8 million. And total
6 across the three patents, across the two types of products
7 is the \$129.6 million number that we spoke of before. And
8 that's keyed off of about 133 million instances of
9 infringing -- alleged infringing activity.

10 Q. And we've been talking about a per-unit reasonable
11 royalty. Can a reasonable royalty also take other forms?

12 A. Yes. Basically, a reasonable royalty can be thought of
13 as the terms of a license. And licenses generally take two
14 different forms.

15 The first form is what's called a running royalty.
16 That is determined -- that payment is determined by
17 activity from the point -- typically from the point of that
18 license of going forward.

19 A running royalty is usually tied to the use made
20 of the asset -- in this case, a patent -- and that can be
21 represented either on a per-unit basis or a per-dollar
22 basis. So a running royalty can be per-unit or per-dollar.

23 The other general type of license is a lump-sum
24 license. That is one pay -- one amount is paid, regardless
25 of what the going-forward activity is.

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1 So, typically, that's determined by estimating
2 what the future might be, and then the licensing partner,
3 the licensee pays, say, a hundred dollars and can use those
4 rights as much as it wants. And it's really not tied to
5 the exact use of that patent by that licensing partner.

6 Q. And what's your opinion on what the appropriate form of
7 royalty is here?

8 A. It should be a running royalty, and specifically it
9 should be per-unit. And I say that for a few reasons.

10 Number one is, that is consistent with Maxell's
11 licensing policies, licensing practices for these patents.

12 Number two, many of Maxell's licensing partners
13 have accepted a per-unit rate -- a running royalty
14 expressed in per-unit terms.

15 Third, many of the licenses that Maxell has
16 entered identify a per-unit rate.

17 Fourth, many of the licenses that have some
18 lump-sum payment are calculated based on a per-unit
19 calculation.

20 And doing things on a running royalty per-unit
21 basis allows the payment to be tied to exactly what the use
22 or infringing activity was. So if it's small, that payment
23 will be small. If it's large, that payment will be large.

24 So those are the reasons I find a running royalty
25 on a per-unit basis to be most appropriate here.

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11:24:59 1 I should also mention that Samsung, though it may
11:25:03 2 in some instances prefer a lump-sum royalty, it has paid
11:25:07 3 running royalties in the past.

11:25:09 4 Q. Now, are you aware that in her report, Ms. Davis
11:25:12 5 provides an opinion that Samsung would have insisted on a
11:25:15 6 lump-sum form of a royalty payment?

11:25:17 7 A. Yes, I am aware of that.

11:25:20 8 Q. And do you agree with her?

11:25:21 9 A. No. What Samsung would like to pay is only part of the
11:25:27 10 calculation. What should be determined here is what is a
11:25:34 11 fair rate considering both parties and the economics of
11:25:39 12 both parties.

11:25:40 13 Maxell prefers a per-unit, a running royalty. So
11:25:43 14 one has to consider that.

11:25:44 15 Secondly, as I mentioned a few moments ago,
11:25:49 16 Maxell -- I'm sorry, Samsung has paid running royalty
11:25:52 17 rates. It prefers a lump sum, but it has agreed to a
11:25:55 18 running royalty.

11:25:56 19 And, third, I don't agree with Ms. Davis' approach
11:25:59 20 because it doesn't allow the payment to be tied to the
11:26:04 21 amount of infringing activity. So the payment is the same
11:26:07 22 if you use a lump sum whether the infringement is small or
11:26:12 23 large.

11:26:12 24 Q. Thank you, Mr. Jarosz.

11:26:14 25 MR. LEVY: Your Honor, at this point,

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11:26:16 1 unfortunately, we have to seal the courtroom.

11:26:18 2 THE COURT: Okay. The courtroom will be sealed at
11:26:21 3 this time.

11:26:21 4 (Courtroom sealed.)

11:26:21 5 (This portion of the transcript is sealed
11:26:21 6 and filed under separate cover as

12:05:05 7 Sealed Portion No. 11.)

12:05:05 8 (Courtroom unsealed.)

12:05:05 9 THE COURT: Ladies and gentlemen of the jury, now
12:05:06 10 is a good time for us to break, so we'll do that. Your
12:05:06 11 lunch is here and upstairs.

12:05:10 12 As a reminder, don't discuss the case among
12:05:13 13 yourselves. Don't permit it to be discussed in your
12:05:16 14 presence.

12:05:16 15 Don't do any independent research or investigation
12:05:18 16 into any matter associated with the case.

12:05:21 17 And, finally, don't post anything about your
12:05:24 18 involvement as a juror in this matter on any social media
12:05:27 19 website or app.

12:05:28 20 We will reconvene here in the courtroom probably
12:05:31 21 right about 1:15.

12:05:35 22 COURT SECURITY OFFICER: All rise.

12:05:35 23 (Jury out.)

12:06:00 24 THE COURT: Okay. We'll be in recess.

12:14:42 25 (Recess.)

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12:30:47 1 (Jury out.)

01:14:53 2 COURT SECURITY OFFICER: All rise.

01:14:54 3 THE COURT: Mr. Goecke, if you would have the jury

01:14:58 4 brought down, please.

01:15:32 5 COURT SECURITY OFFICER: Please stand for the

01:15:34 6 jury.

01:15:34 7 (Jury in.)

01:15:35 8 THE COURT: Please be seated.

01:16:00 9 Mr. Levy, you may continue.

01:16:03 10 MR. LEVY: Yes. Your Honor, just as a point of

01:16:07 11 procedure, we discussed -- Ms. Smith and I discussed

01:16:11 12 whether we'd need to seal the courtroom for the remainder.

01:16:14 13 There are little bits and drabs of confidential information

01:16:17 14 through the rest, and I understand through the -- through

01:16:21 15 the cross-examination, as well.

01:16:23 16 THE COURT: All right. Well, we will seal the

01:16:25 17 courtroom at this time.

01:16:27 18 (Courtroom sealed.)

01:16:27 19 (This portion of the transcript is sealed

01:16:27 20 and filed under separate cover as

01:16:27 21 Sealed Portion No. 12.)

02:28:00 22 (Courtroom unsealed.)

02:28:00 23 THE COURT: Does that make for the Plaintiff

02:28:02 24 proceeding in that way?

02:28:03 25 MR. BEABER: It does, yes.

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02:28:05 1 THE COURT: Okay. Good.

02:45:06 2 (Recess.)

02:45:06 3 (Jury out.)

02:45:07 4 COURT SECURITY OFFICER: All rise.

02:45:08 5 THE COURT: Okay. Before we have the jury come
02:45:11 6 down, how about we discuss just briefly the arrangements
02:45:15 7 that have been made with respect to the interpreter or
02:45:21 8 interpreters.

02:45:21 9 I understand the first witness the Defense will
02:45:27 10 call does require translation, and that she is here.

02:45:30 11 And we are prepared to swear you in before we
02:45:33 12 swear the witness in.

02:45:34 13 And I understand, Mr. Culbertson, you have an
02:45:37 14 additional interpreter for your consultation?

02:45:41 15 MR. CULBERTSON: We do, Your Honor. She's just
02:45:43 16 going to act as a check reporter here with me. She'll
02:45:48 17 alert me if she thinks there's an issue. And if I think
02:45:51 18 it's something that needs to be raised, then I'll do it at
02:45:54 19 that time, if that's acceptable?

02:45:54 20 THE COURT: It works for me.

02:45:56 21 Does it work for the Defendant?

02:45:57 22 MS. GIBSON: It does, Your Honor.

02:45:58 23 THE COURT: Good. Okay. Excellent.

02:45:58 24 Anything else to resolve before we have the jury
02:46:00 25 brought down?

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02:46:02 1 MR. CULBERTSON: No, sir.

02:46:03 2 THE COURT: Mr. Goecke.

02:46:15 3 And, Mr. Beaber, will you be prepared to explain
02:46:19 4 what the Plaintiff's intention is?

02:46:21 5 MR. BEABER: I think Mr. Culbertson is going to do
02:46:23 6 it.

02:46:23 7 THE COURT: Mr. Culbertson.

02:46:24 8 MR. BEABER: Uh-huh. Thank you.

02:46:34 9 COURT SECURITY OFFICER: Please stand for the
02:46:35 10 jury.

02:46:36 11 (Jury in.)

02:46:37 12 THE COURT: Okay. Please be seated.

02:47:09 13 Mr. Culbertson, do you have an announcement on the
02:47:11 14 behalf of the Plaintiff?

02:47:12 15 MR. CULBERTSON: I do, Your Honor. The Plaintiff
02:47:16 16 is not prepared to rest just yet. We'll do so after the
02:47:20 17 examination of the following Defense witness occurs.

02:47:23 18 THE COURT: All right.

02:47:24 19 MR. CULBERTSON: If that's acceptable.

02:47:26 20 THE COURT: Yes. Very good. Thanks.

02:47:28 21 At this time, ladies and gentlemen, the Defendants
02:47:30 22 may call their first witness.

02:47:35 23 MS. GIBSON: Thank you, Your Honor. May it please
02:47:36 24 the Court. Samsung calls its first witness, Mr. Youngho
02:47:40 25 Kim.

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02:47:40 1 THE COURT: All right. Mr. Kim, if you would come
02:47:46 2 forward.
02:47:47 3 And we'll swear the interpreter first.
02:47:49 4 Have you executed an oath of interpreter yet?
02:47:53 5 THE INTERPRETER: No.
02:47:54 6 THE COURT: Okay. We'll have you execute the
02:47:56 7 oath, but at this time, I'm going to swear you in before we
02:48:03 8 swear the witness in.
02:48:05 9 (Interpreter sworn.)
02:48:17 10 THE COURT: And, then, Mr. Kim, if you would be
02:48:20 11 sworn.
02:48:21 12 (Witness sworn.)
02:48:38 13 THE COURT: All right. You may take a seat on the
02:48:42 14 witness stand.
02:48:48 15 Ms. Gibson, whenever you're ready.
02:48:51 16 MS. GIBSON: Thank you, Your Honor.
02:48:52 17 YOUNGHO KIM, DEFENDANTS' WITNESS, SWORN
18 (INTERPRETED)
19 DIRECT EXAMINATION
20 BY MS. GIBSON:
02:48:53 21 Q. Good afternoon, Mr. Kim.
02:48:56 22 A. Good afternoon.
02:48:56 23 Q. Would you please introduce yourself to the jury?
02:48:58 24 A. Good afternoon. My name is Youngho Kim. I have worked
02:49:01 25 for Samsung Electronics since 2003.

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02:49:04 1 Q. Mr. Kim, where are you from?

02:49:05 2 A. I come from Seoul, South Korea.

02:49:08 3 Q. Do you have a family?

02:49:09 4 A. Yes, I have. My wife and two daughters.

02:49:13 5 Q. I see we have an interpreter. Would you like to

02:49:17 6 testify with the help of an interpreter today?

02:49:19 7 A. Yes.

02:49:21 8 Q. Why is that?

02:49:22 9 A. I can speak English a little bit, but for me to be more

02:49:35 10 accurate, I'd like to testify through the interpreter,

02:49:38 11 please.

02:49:40 12 MS. GIBSON: And, Your Honor, can we hear the

02:49:43 13 interpreter very well? I just want to make sure.

02:49:46 14 THE COURT: A little bit of a struggle for me.

02:49:49 15 How close is it -- could you raise it up a little bit?

02:49:57 16 THE INTERPRETER: How about now?

02:49:58 17 THE COURT: A little better.

02:50:01 18 THE INTERPRETER: Okay. Is this better?

02:50:02 19 MS. GIBSON: It is for me. Is it for Your Honor?

02:50:05 20 THE COURT: Better.

02:50:05 21 MS. GIBSON: Excellent. Thank you.

02:50:08 22 THE COURT: You're having trouble?

02:50:12 23 Okay. Can you just hold it in your hand as

02:50:17 24 troublesome as that might be?

02:50:19 25 THE VIDEOGRAPHER: I'll try, Your Honor.

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02:50:19 1 JUROR: I'm sorry. There's a lot of noise outside
02:50:26 2 of this window.
02:50:27 3 THE COURT: Yeah, it's a problem with this
02:50:29 4 courtroom.
02:50:29 5 Q. (By Ms. Gibson) Mr. Kim, do you work as part of a team
02:50:32 6 at Samsung?
02:50:34 7 A. Yes, I'm part of the licensing team within the IP
02:50:40 8 center.
02:50:40 9 Q. When did you join the licensing team?
02:50:42 10 A. That was in July of 2021.
02:50:50 11 Q. Do you have a title at Samsung?
02:50:52 12 A. Yes, I'm a principal engineer.
02:50:59 13 Q. Is that a director position?
02:51:01 14 A. Yes, it's the same.
02:51:05 15 Q. What do you do as a member of the licensing team at
02:51:08 16 Samsung?
02:51:08 17 A. So what we do is at Samsung is that when patent holders
02:51:25 18 ask Samsung to take a license, when there's a request for a
02:51:28 19 license, I respond to those requests. That's my main
02:51:33 20 responsibility.
02:51:33 21 Q. Mr. Kim, do you have any college degrees?
02:51:36 22 A. Yes, I have bachelor's and a master's degrees.
02:51:46 23 Q. Focusing on your master's degree, what was that in?
02:51:49 24 A. It was electrical engineering.
02:51:56 25 Q. Other than your job on the licensing team, what jobs

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02:52:01 1 have you held at Samsung since 2003?

02:52:03 2 A. For me, I worked on patent prosecution and also patent
02:52:22 3 analysis for quite some time.

02:52:25 4 Q. For how many years total have you been working on
02:52:29 5 analyzing and licensing patents for Samsung?

02:52:30 6 A. Approximately for about 17 years.

02:52:44 7 Q. Did you ever work for Samsung in the United States?

02:52:50 8 A. Yes. I worked in the United States for about five
02:52:59 9 years from 2015 to 2020.

02:53:03 10 Q. What did you think about that?

02:53:05 11 A. I do have a lot of good memories. I did gain a lot of
02:53:21 12 experiences. I learned a lot. And my family also enjoyed
02:53:28 13 living here.

02:53:28 14 Q. What do you think about working for Samsung?

02:53:31 15 A. I am rather proud to be part of Samsung because Samsung
02:53:50 16 is a global IT leader, and it respects its employees. It
02:53:58 17 is interested in -- it actually encourages growth of its
02:54:02 18 employees, so I'm rather proud.

02:54:03 19 Q. Does Samsung have offices here in Texas?

02:54:06 20 A. Yes. To my knowledge, we do have offices in Austin and
02:54:18 21 also in Plano.

02:54:20 22 MS. GIBSON: Can we have DDX-1.04, please,
02:54:24 23 Mr. Splansky? There we are.

02:54:35 24 Q. (By Ms. Gibson) Mr. Kim, are these pictures of
02:54:37 25 Samsung's offices in Texas?

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02:54:39 1 A. That's right.

02:54:44 2 Q. About how many people work for Samsung in Texas?

02:54:47 3 A. In Texas, there are about 20,000 people working in the
02:55:06 4 state of Texas, but of those 20,000, about 6,000 are
02:55:10 5 working in Plano, and there are -- their work are related
02:55:15 6 to mobile devices.

02:55:18 7 MS. GIBSON: Let's go to DDX-1.3.

02:55:21 8 Q. (By Ms. Gibson) Mr. Kim, what types of products does
02:55:24 9 Samsung make?

02:55:24 10 A. We are engaged in production and selling a variety of
02:55:52 11 products including foldable phones, Galaxy series cell
02:55:57 12 phones, QLED TVs, refrigerators, and washers, and so forth.

02:56:02 13 Q. Does Samsung work on any of these products in Texas?

02:56:05 14 A. Yes. Those people working out of Plano, they are
02:56:19 15 mostly working on marketing aspects relating to cell
02:56:23 16 phones.

02:56:23 17 Q. Have you personally negotiated license agreements for
02:56:28 18 Samsung for any of the products we see on the screen?

02:56:30 19 A. Yes. For me, mostly I worked on cell phones, and there
02:56:57 20 were also some license agreements that I worked on relating
02:57:00 21 to TVs.

02:57:02 22 MS. GIBSON: Mr. Splansky, you can take that down.
02:57:04 23 Thank you.

02:57:05 24 Q. (By Ms. Gibson) Mr. Kim, how many patent licenses have
02:57:07 25 you negotiated for Samsung?

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02:57:09 1 A. Approximately 15 to 20 or so licenses that I've worked
02:57:27 2 on.

02:57:28 3 Q. Are you responsible for the matter between Samsung and
02:57:31 4 Maxell?

02:57:31 5 A. Yes, I've been responsible for that matter between the
02:57:49 6 companies ever since September of 2023, which was when
02:57:55 7 Maxell filed the lawsuit against us.

02:57:57 8 Q. What did you do when you first became responsible for
02:58:01 9 the licensing between Maxell and Samsung?

02:58:03 10 A. First of all, I analyzed the claim charts, and also --
02:58:29 11 I also look at the emails and materials and letters that
02:58:34 12 were received from Maxell after I receive them from my
02:58:40 13 predecessor.

02:58:41 14 Q. And by claim charts, you mean with the complaint filed
02:58:44 15 in this case?

02:58:44 16 A. That's right. I meant the claim -- the complaint.

02:58:55 17 Q. Did the file you reviewed include emails or letters
02:59:00 18 between Samsung and Maxell?

02:59:05 19 THE INTERPRETER: I'm sorry, could you repeat?

02:59:05 20 Q. (By Ms. Gibson) Did the file that you reviewed include
02:59:09 21 emails or letters exchanged by Samsung and Maxell?

02:59:11 22 A. Yes, those were included there as well.

02:59:21 23 Q. Do you know whether Samsung and Hitachi Maxell had a
02:59:25 24 prior patent purchase agreement between them?

02:59:35 25 A. Yes, based on my review of the -- the records and the

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02:59:46 1 history, there was such an agreement that was entered into
02:59:50 2 in July of 2011.

02:59:52 3 Q. Are you familiar with that agreement?

02:59:54 4 A. Yes, I'm very familiar with it.

02:59:59 5 Q. All right. We'll come back to specifics in a minute.

03:00:02 6 At a high level, does that agreement include a permanent
03:00:05 7 license to some patents?

03:00:06 8 A. Yes, it was included.

03:00:19 9 Q. Does that agreement also contain a term license to some
03:00:22 10 other patents?

03:00:23 11 A. Yes, it was.

03:00:29 12 Q. What was the period of that term license, the length?

03:00:36 13 A. It was for five years. It started from July of 2011 to
03:00:48 14 July of 2016.

03:00:50 15 Q. So did the term license expire at some point?

03:00:56 16 A. Yes, it did. And it expired in July in 2016.

03:01:10 17 Q. Did Maxell ask Samsung to renew that five-year term
03:01:15 18 license in 2016?

03:01:15 19 A. No. I did review the records, but I couldn't find any
03:01:35 20 record to that effect.

03:01:36 21 Q. What about in 2017, did Samsung hear from Maxell then?

03:01:40 22 A. No, there wasn't any such record.

03:01:51 23 Q. So what about 2018, 2019, 2020, did Samsung hear from
03:01:56 24 Maxell about this in any of those years?

03:01:59 25 A. No, there weren't any such records.

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03:02:14 1 Q. After 2016, when was the first time that Samsung heard
03:02:19 2 from Maxell before this lawsuit was filed?

03:02:21 3 A. We received the first notice letter from them in July
03:02:44 4 of 2021.

03:02:47 5 MS. GIBSON: Let's have PX-20, the July 7, 2021,
03:02:54 6 letter. There we are.

03:02:55 7 Q. (By Ms. Gibson) Is this the letter you were referring
03:02:57 8 to?

03:02:57 9 A. That's right.

03:03:01 10 Q. Now, Mr. Kim, do you read English pretty well?

03:03:03 11 A. Yes, I can read English.

03:03:10 12 Q. Was this letter part of Samsung's file that you
03:03:12 13 reviewed?

03:03:13 14 A. Yes, it was.

03:03:17 15 Q. Who sent this letter?

03:03:22 16 A. It was sent from Mr. Yamamoto of Maxell.

03:03:29 17 Q. Now, had Samsung heard anything at all between July
03:03:33 18 2016 and the July 7, 2021, date of this letter?

03:03:37 19 A. No, there wasn't anything.

03:03:53 20 Q. In your experience with licensing, is that unusual?

03:03:56 21 A. Yes, I believe it was very unusual.

03:04:08 22 MS. GIBSON: Can we go to Page 2 of this letter,
03:04:11 23 please?

03:04:11 24 Q. (By Ms. Gibson) Why was that unusual?

03:04:13 25 A. Because, in general, patent holders, what they do is

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03:04:38 1 that when they want to renew the agreement, they would
03:04:42 2 engage in active -- activities to reach out before the
03:04:49 3 expiration of the prior agreement so that they can secure
03:04:53 4 royalties -- royalties, and there was no activities like
03:04:59 5 that at all from Maxell. So it was very unusual for me.
03:05:02 6 Q. Now, did Maxell's July 2021 letter include a list of
03:05:09 7 patents?

03:05:14 8 THE INTERPRETER: I'm sorry, could you repeat?

03:05:18 9 Q. (By Ms. Gibson) Did Maxell's July 2021 letter include
03:05:23 10 a list of patents?

03:05:24 11 A. Yes, there was a list of many patents -- for over 200
03:05:39 12 patents, and they included many pages for those lists.

03:05:44 13 MS. GIBSON: Mr. Splansky, can we scroll through
03:05:46 14 this letter?

03:05:48 15 Q. (By Ms. Gibson) As we scroll, Mr. Kim, about how many
03:06:09 16 pages of patents will we get to?

03:06:12 17 A. As far as I remember, there were about 30 pages or so
03:06:28 18 of those patents in the list.

03:06:31 19 Q. Did Samsung respond when it got Maxell's letter?

03:06:36 20 A. Yes, we did. Since we respect everybody's IP rights,
03:06:58 21 immediately after, we requested a phone call with them so
03:07:03 22 that we can discuss further after we received this notice
03:07:07 23 letter.

03:07:09 24 MS. GIBSON: Your Honor, at this point, we need to
03:07:11 25 close the courtroom, but all the Maxell and represent --

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03:07:15 1 and Samsung representatives can stay. So it would only be
03:07:18 2 closed to the public who are not under the protective
03:07:20 3 order.

03:07:20 4 THE COURT: All right. Very well. With those
03:07:22 5 exceptions, the courtroom will need to be sealed at this
03:07:24 6 time.

03:07:25 7 (Courtroom sealed.)

03:07:25 8 (This portion of the transcript is sealed
03:07:25 9 and filed under separate cover as

03:43:05 10 Sealed Portion No. 13.)

03:43:05 11 (Courtroom unsealed.)

03:43:22 12 THE COURT: You may proceed.

03:43:23 13 MS. GIBSON: Thank you, Your Honor.

03:43:23 14 Q. (By Ms. Gibson) Mr. Kim, when Samsung looks to license
03:43:33 15 patents, does it consider any prior license or agreement
03:43:36 16 with the patent holder?

03:43:38 17 A. Yes, it does, especially if there is any prior
03:44:00 18 agreement with the same patent holder than that agreement
03:44:05 19 which will serve as an important reference.

03:44:07 20 Q. Did Samsung consider its prior agreement with Hitachi
03:44:11 21 Maxell when Maxell filed this lawsuit?

03:44:14 22 A. Yes, it did.

03:44:24 23 Q. In your experience in licensing, is it common practice
03:44:29 24 for patent holders to send claim charts in a license
03:44:33 25 negotiation?

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03:44:33 1 A. Yes, I believe it is a common practice, especially when
03:44:55 2 a patent holder has a lot of patents. I believe that would
03:45:00 3 serve as a very necessary material.

03:45:03 4 Q. Have you personally, in your job at Samsung, ever seen
03:45:08 5 a company other than Maxell refuse to send claim charts?

03:45:12 6 A. No, I have not seen any company personally.

03:45:28 7 Q. What, if anything, did you personally conclude when you
03:45:33 8 learned the fact that Maxell did not send claim charts to
03:45:36 9 Samsung before filing this lawsuit?

03:45:37 10 A. What I thought was that they might not have confidence
03:46:03 11 or they might not be proud of their patents.

03:46:08 12 Q. Mr. Kim, you're aware that Samsung contends in this
03:46:21 13 trial that Maxell's patents are invalid?

03:46:23 14 A. Yes, I am.

03:46:32 15 Q. Has anything happened at the Patent Office to support
03:46:36 16 Samsung's view that these patents are invalid?

03:46:38 17 A. Yes. Samsung Electronics started the process to
03:47:23 18 request IPR, re-examination, of Maxell's patents in this
03:47:27 19 case to -- because we believed that those patents were
03:47:31 20 invalid.

03:47:32 21 And the Patent Office, when they instituted the --
03:47:38 22 the process, they indicated that Samsung demonstrated there
03:47:45 23 is reasonable likelihood that those patents would be
03:47:48 24 invalid.

03:47:51 25 Q. Have you, as part of your job, seen the Patent Office

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03:47:56 1 institution decisions on Maxell's patents in this trial?

03:47:58 2 A. Yes.

03:48:13 3 Q. Has the Patent Office said anything that might support
03:48:16 4 Samsung's view that these patents are invalid?

03:48:20 5 MR. CULBERTSON: Your Honor, I object.

03:48:21 6 THE COURT: What's the objection?

03:48:22 7 MR. CULBERTSON: Calls for expert testimony. It's
03:48:24 8 outside the scope of his expertise. He can't talk about
03:48:27 9 PTAB proceedings or his interpretation of what the PTAB has
03:48:32 10 done.

03:48:33 11 THE COURT: Well, I think the question was whether
03:48:35 12 the Patent Office had said anything that might support its
03:48:39 13 view that -- that might support Samsung's view that the
03:48:43 14 patents are invalid. I don't think it does any of those
03:48:47 15 things. I'm going to overrule the objection.

03:48:48 16 MR. CULBERTSON: Understood. Thank you.

03:49:07 17 A. Yes, there was -- it was their determination that when
03:49:24 18 they instituted the IPR re-examination saying that Samsung
03:49:29 19 demonstrated reasonable likelihood that Maxell's patents
03:49:34 20 would be invalid.

03:49:35 21 MS. GIBSON: Let's have DTX-245.

03:49:40 22 Q. (By Ms. Gibson) Mr. Kim, have you seen the Patent
03:49:42 23 Office decision to institute review of the '086 patent in
03:49:45 24 this trial?

03:49:46 25 A. Yes, I have.

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03:50:00 1 MS. GIBSON: Let's go to DTX-245.48.

03:50:07 2 Mr. Splansky, could you blow up the top paragraph
03:50:10 3 so we can see it, please? Thank you.

03:50:13 4 Q. (By Ms. Gibson) Mr. Kim, what did the Patent Office
03:50:15 5 find with respect to the '086 patent?

03:50:16 6 A. Yes, so here, the Patent Office is agreeing with
03:50:49 7 Samsung in its challenge of the validity of the patents,
03:50:55 8 and the Patent Office is saying that they erred in issuing
03:50:59 9 those claims or issuing those patents.

03:51:04 10 Q. Did that impact Samsung's belief that the '086 patent
03:51:08 11 was invalid?

03:51:08 12 A. Yes, that's right.

03:51:22 13 MS. GIBSON: Let's have DTX-244, the '848 patent
03:51:28 14 institution decision.

03:51:29 15 Q. (By Ms. Gibson) Mr. Kim, have you seen this one, as
03:51:31 16 well?

03:51:31 17 A. Yes, I have.

03:51:40 18 MS. GIBSON: Let's go to Page 47. Mr. Splansky,
03:51:51 19 if you can blow up the paragraph right above the
03:51:54 20 conclusion, please, starting "we have considered" so that
03:51:56 21 we can see it? Thank you.

03:51:58 22 Q. (By Ms. Gibson) Mr. Kim, what did the Patent Office
03:52:02 23 find with respect to the '848 patent?

03:52:03 24 A. Yes, the Patent Office's conclusion was that they
03:52:25 25 indicated that Samsung Electronics demonstrated the

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03:52:31 1 reasonable likelihood that Maxell's patents would be
03:52:34 2 invalid.

03:52:36 3 Q. Now, turning to Maxell's '815 patent, how many Patent
03:52:40 4 Office institution decisions are there for that one patent?

03:52:43 5 A. There were two decisions.

03:52:53 6 MS. GIBSON: Let's have DTX-242.

03:53:00 7 Q. (By Ms. Gibson) Mr. Kim, is this one of the two
03:53:03 8 decisions?

03:53:05 9 A. That's right.

03:53:08 10 MS. GIBSON: Let's go to Page 2, please, starting
03:53:13 11 with the words -- and let's blow up the second paragraph,
03:53:17 12 please, Mr. Splansky.

03:53:18 13 Q. (By Ms. Gibson) Mr. Kim, what did the Patent Office
03:53:21 14 find in this first institution decision for the '815
03:53:24 15 patent?

03:53:24 16 A. It was similar in that they concluded that Samsung
03:53:48 17 Electronics was able to demonstrate a reasonable likelihood
03:53:52 18 that Maxell's claims would be invalid.

03:53:54 19 Q. All right.

03:53:56 20 MS. GIBSON: Let's go to DTX-243.

03:53:59 21 Q. (By Ms. Gibson) Is this also an institution decision
03:54:05 22 on the '851 -- on the '815 patent?

03:54:11 23 A. Yes, it is.

03:54:16 24 MS. GIBSON: Let's go to Page 2, please. Let's
03:54:23 25 blow up the second paragraph, Mr. Splansky. Thank you.

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03:54:26 1 Q. (By Ms. Gibson) Mr. Kim, what did the Patent Office
03:54:28 2 find in this second institution decision for the '815
03:54:30 3 patent?

03:54:30 4 A. Also, this is similar. As I indicated to you earlier,
03:54:52 5 they -- their conclusion was that Samsung has demonstrated
03:54:57 6 a reasonable likelihood that Maxell's claims would be
03:55:01 7 invalid.

03:55:06 8 Q. So taken together, did the Patent Office institution
03:55:09 9 decisions we just looked at impact Samsung's belief that
03:55:13 10 the '086, '848, and '815 patents are invalid?

03:55:17 11 A. That's right. It -- it naturally did.

03:55:37 12 Q. Now, for the jury, are these final decisions of the
03:55:42 13 Patent Office?

03:55:42 14 A. No.

03:55:50 15 Q. But as part of your job, are you personally aware of
03:55:55 16 statistics regarding what happens to patents at the Patent
03:55:59 17 Office after institution?

03:56:15 18 THE COURT: Counsel, approach.

03:56:18 19 A. Yes.

03:56:19 20 (Bench conference.)

03:56:28 21 THE COURT: I sense an objection coming.

03:56:30 22 MR. CULBERTSON: Yes, Your Honor. Again, he's
03:56:32 23 talking about PTAB procedures, statistics, he's talking
03:56:36 24 about legal issues --

03:56:38 25 THE COURT: My problem -- my -- I'm not concerned

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03:56:41 1 about that, okay? I've ruled on that. My problem is
03:56:45 2 Mr. Yamamoto opened the door on this by talking about his
03:56:48 3 personal knowledge about how many IPRs had been -- had been
03:56:52 4 filed and how many were successful and how many were not.

03:56:55 5 So, I mean, I think there's an argument here that
03:56:57 6 the door has been opened on this. It has to be measured.

03:57:01 7 So I don't know what you've got or how long you
03:57:04 8 plan to go into this subject, but I want you to make your
03:57:09 9 objection, Mr. Culbertson. I think a little bit of this is
03:57:12 10 fair, based upon Mr. Yamamoto's testimony.

03:57:16 11 MR. CULBERTSON: And not to argue, but --

03:57:18 12 THE COURT: Sure.

03:57:18 13 MR. CULBERTSON: -- can I explain myself there?

03:57:20 14 Mr. Yamamoto was speaking specifically about the
03:57:23 15 smartphone patents -- patent portfolio at Maxell. He is
03:57:27 16 now going to talk about generally statistics at the PTAB
03:57:32 17 and the success rates -- success rates for IPRs.
03:57:34 18 Mr. Yamamoto was talking about specific challenges and what
03:57:37 19 the outcomes of those have been.

03:57:39 20 There's a big difference there from what this man
03:57:42 21 has been asked and what he's about to say.

03:57:42 22 THE COURT: Yeah.

03:57:44 23 MS. GIBSON: Your Honor?

03:57:44 24 THE COURT: Yeah, go ahead.

03:57:47 25 MS. GIBSON: Thank you, Your Honor.

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03:57:48 1 The witness in his job has personally compiled and
03:57:51 2 is aware of statistics at what happens at the Patent
03:57:54 3 Office. I asked him and he gave me the answer. It was not
03:57:55 4 provided to him. He knows as part of his job.

03:57:57 5 He has also, in the next question, researched
03:58:00 6 what's happened to Maxell's patents as part of Samsung's
03:58:03 7 belief as to whether the patents are invalid because they
03:58:05 8 are accused of willful infringement in this trial.

03:58:07 9 And so those are the two questions I plan to ask
03:58:10 10 him, and he does have personal knowledge based on his own
03:58:13 11 research.

03:58:14 12 MR. CULBERTSON: And, Your Honor, I maintain the
03:58:16 13 objection to the question that's on the table because it is
03:58:19 14 not limited in any way to this case. It is broad about
03:58:22 15 every challenge at the IPR -- excuse me, the PTAB.

03:58:25 16 THE COURT: Rephrase your question. We'll see
03:58:27 17 where we go. I think this is -- I think this is, you know,
03:58:34 18 fertile ground for cross-examination. But I'm going to
03:58:37 19 allow the questions -- the two questions that you've
03:58:39 20 described so far.

03:58:40 21 MS. GIBSON: Thank you.

03:58:40 22 (Bench conference concluded.)

03:58:46 23 Q. (By Ms. Gibson) Mr. Kim, as part of your job, are you
03:59:00 24 personally aware of statistics that you have regarding what
03:59:05 25 happens to patents at the Patent Office after inter partes

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03:59:09 1 review is instituted?

03:59:10 2 A. Yes. Based on my experience and also based on the
03:59:50 3 statistics materials that I was able to review, once an IPR
03:59:56 4 is instituted at the Patent Office, the -- the likelihood
04:00:00 5 that they would get invalidated at the FW -- final written
04:00:06 6 decision, it would be approximately 80 percent that they
04:00:10 7 would get invalidated. That's what I reviewed.

04:00:13 8 Q. Is there any other reason you personally feel confident
04:00:17 9 about the likely outcome of the Patent Office proceedings
04:00:20 10 with respect to Maxell's patents?

04:00:25 11 THE INTERPRETER: I'm sorry, could you repeat? It
04:00:27 12 stopped working.

04:00:27 13 Q. (By Ms. Gibson) Is there any other reason you feel
04:00:29 14 confident about the likely outcome of the Patent Office
04:00:32 15 proceedings with respect to Maxell's patents?

04:01:32 16 MR. CULBERTSON: Your Honor, I have an objection.

04:01:34 17 THE COURT: Okay. You want to approach or you
04:01:37 18 want to make your objection?

04:01:38 19 MR. CULBERTSON: I'm happy to make it from here,
04:01:40 20 Your Honor. The question was, is there any other reason?
04:01:45 21 That's a yes-or-no question. I don't think I'm going --
04:01:47 22 about to hear a yes or no.

04:01:49 23 And so I'm entitled to know what the foundation of
04:01:52 24 this answer is that he's about to provide before he blurts
04:01:55 25 it out. We've been hearing a lot of hearsay already. And

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04:01:59 1 I'd like to understand his basis --

04:02:05 2 THE COURT: Mr. Culbertson.

04:02:08 3 (Bench conference.)

04:02:09 4 THE COURT: Mr. Culbertson, I don't need the
04:02:11 5 sidebars or the speaking objections. If you've got an
04:02:14 6 objection to make, I want to hear it and I want to rule on
04:02:16 7 it.

04:02:16 8 MR. CULBERTSON: Understood.

04:02:17 9 THE COURT: But I don't need you giving a speech
04:02:19 10 from back there in the back of the courtroom.

04:02:23 11 MR. CULBERTSON: Understood.

04:02:23 12 THE COURT: Understood?

04:02:24 13 MR. CULBERTSON: Understood.

04:02:25 14 MS. GIBSON: Your Honor, this is the question --
04:02:26 15 the second question I referenced that was -- you already
04:02:29 16 overruled the objection is my understanding. This is it?

04:02:31 17 THE COURT: Any other reason?

04:02:32 18 MS. GIBSON: Yes.

04:02:33 19 THE COURT: What's his answer going to be?

04:02:34 20 MS. GIBSON: Well, my next question, I think he
04:02:36 21 may be giving it all at once, would be, you know, do you
04:02:39 22 have an understanding of what has happened to Maxell's
04:02:44 23 IPRs?

04:02:45 24 THE COURT: Well, I suggest you rephrase the
04:02:48 25 question to make clear that's what you're asking for.

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04:02:52 1 MS. GIBSON: Okay.

04:02:54 2 THE COURT: I think Mr. Culbertson has a valid
04:02:57 3 point about it. So just rephrase it, and let's see what --
04:03:01 4 let's see what he says.

04:03:02 5 MS. GIBSON: All right. Your Honor, and to be --
04:03:04 6 to be clear, I unfortunately don't understand Korean, so I
04:03:07 7 do not know what the witness said, but I believe
04:03:10 8 Mr. Culbertson might, since he has a translator sitting
04:03:13 9 next to him.

04:03:13 10 THE COURT: Do you?

04:03:13 11 MR. CULBERTSON: I don't know what he said. I
04:03:17 12 just know it was a lot longer than yes or no. And I
04:03:19 13 recognize it's difficult to lay a foundation under these
04:03:21 14 circumstances, but it is -- it's troublesome when the
04:03:24 15 question -- when it's clear we're about to get an answer to
04:03:27 16 what I think is the question that could come two or three
04:03:30 17 later.

04:03:31 18 THE COURT: Well, I mean, if -- if the objection
04:03:33 19 is that it's a yes-or-no question and he's giving more than
04:03:38 20 a yes or no, I think -- you know, I don't think we want to
04:03:42 21 start casting stones on that --

04:03:45 22 MS. GIBSON: I agree.

04:03:45 23 THE COURT: -- point. So let's move along.

04:03:49 24 MS. GIBSON: Your Honor, just to be clear, can we
04:03:51 25 have the translation of that question, or should I ask

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04:03:55 1 something a little bit different?

04:03:55 2 THE COURT: I think the better course is to ask
04:03:57 3 the question -- unless you are willing to share with her
04:04:00 4 your translation?

04:04:01 5 MR. CULBERTSON: I'm happy to because --

04:04:04 6 THE COURT: Why don't you go get it? Why don't
04:04:06 7 you go get it?

04:04:56 8 MR. CULBERTSON: So I understand what he's going
04:04:57 9 to say, and I understand your difficulty of laying a
04:05:01 10 foundation here.

04:05:01 11 MS. GIBSON: Thank you.

04:05:02 12 MR. CULBERTSON: He's going to say he went to the
04:05:04 13 PTO website, I think, and researched the results of
04:05:07 14 challenges to Maxell's patents. And they found -- I think
04:05:11 15 he said five cases of invalidity. I think that's what --
04:05:16 16 we think that's what's coming.

04:05:18 17 MS. GIBSON: And, Your Honor, that's exactly what
04:05:20 18 Mr. Yamamoto opened the door to, exactly.

04:05:23 19 THE COURT: I'm going to allow it.

04:05:24 20 MR. CULBERTSON: Okay.

04:05:25 21 One last objection to preserve the record,
04:05:28 22 Your Honor. These are going to be patents that are outside
04:05:30 23 of the smartphone portfolio from which the asserted patents
04:05:34 24 come from. They're not relevant to -- to the trial.

04:05:36 25 MS. GIBSON: That sounds to me like

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04:05:39 1 cross-examination to me.

04:05:39 2 MR. CULBERTSON: It is.

04:05:42 3 THE COURT: Okay. Thank you.

04:05:43 4 (Bench conference concluded.)

04:05:49 5 Q. (By Ms. Gibson) Thank you, Mr. Kim, for your patience.

04:05:53 6 I'm going to reask the question. Did you do

04:05:57 7 anything to evaluate whether any Maxell patents had been

04:06:02 8 invalidated at the Patent Office after review proceedings?

04:06:06 9 A. Yes. So I went into the website at the U.S. Patent

04:07:14 10 Office that tracks IPR status, and I looked at those IPR

04:07:22 11 status in terms of the Maxell's patents once the

04:07:26 12 re-examination is instituted, and I saw how they would be

04:07:33 13 determined -- the final decisions and whatnot.

04:07:35 14 What I found out was that their patents -- five of

04:07:39 15 their patents were invalidated at the final decision stage.

04:07:42 16 And for the remaining patents, they settled those cases

04:07:48 17 between the petitioner and Maxell, so those IPRs had been

04:07:54 18 canceled. So there were no final decisions available for

04:07:59 19 those cases.

04:08:08 20 MS. GIBSON: You can take that down. Thank you.

04:08:10 21 Q. (By Ms. Gibson) Mr. Kim, were you here in the

04:08:12 22 courtroom for Maxell's opening statement?

04:08:21 23 A. Yes, I was.

04:08:22 24 Q. Did you understand most of it?

04:08:23 25 A. Yes, I did.

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04:08:28 1 MS. GIBSON: Let's have DDX-15.5.

04:08:31 2 Q. (By Ms. Gibson) Did you hear Maxell's lawyers say that
04:08:37 3 patents Hitachi sold Samsung were a piece of junk?

04:08:42 4 A. Yes, I did.

04:08:52 5 Q. What was your reaction?

04:09:06 6 A. That was unfair, and it didn't make much sense because
04:09:31 7 we paid a big amount of money for those patents, a big
04:09:36 8 amount of money, of \$35 million. And we did -- when they
04:09:41 9 said that we paid that big of a money to buy a piece of
04:09:47 10 junk, it was just absurd.

04:09:51 11 Moreover, we analyzed those patents in detail
04:09:53 12 before we bought the patents. So we didn't buy a piece of
04:09:58 13 junk at all.

04:09:59 14 Q. And the patents you're referring to as analyzing, are
04:10:03 15 those the 10 patent families?

04:10:05 16 A. That's right.

04:10:15 17 Q. Are you aware of Hitachi ever telling Samsung before,
04:10:21 18 that the patent families it was selling were a piece of
04:10:24 19 junk?

04:10:25 20 A. No, not at all.

04:10:39 21 Q. Was the opening statement in this courtroom the first
04:10:48 22 time you heard Maxell say Samsung bought pieces of junk?

04:10:51 23 A. Yes, it was the first time that I heard.

04:11:01 24 Q. Did you also hear Maxell's lawyers say in opening
04:11:05 25 statement that Samsung only got a permanent license to one

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04:11:08 1 patent?

04:11:08 2 A. Yes, I did.

04:11:21 3 Q. What was your reaction to that?

04:11:33 4 A. That was absurd, as well, because we bought the
04:11:48 5 entirety of patents that Hitachi's mobile division had
04:11:53 6 before April of 2004. Since we bought the entirety of the
04:11:58 7 patents, it cannot be one. It is far more than that.

04:12:02 8 Q. To the best of your knowledge, did Hitachi or Maxell
04:12:06 9 tell Samsung, hey, it's only one patent, prior to this
04:12:09 10 lawsuit?

04:12:10 11 A. No, I have no recollection of that at all.

04:12:30 12 Q. Thank you, Mr. Kim. Just a few more questions.

04:12:32 13 Did Maxell do anything that you saw in the file
04:12:40 14 between 2016 and July 2021 to tell Samsung that it was
04:12:44 15 allegedly using Maxell's patents?

04:12:46 16 A. No. I looked at the records, but I couldn't find any
04:13:15 17 such records.

04:13:15 18 Q. Did Maxell do anything that you saw between 2016 and
04:13:21 19 2021 to tell Samsung that it needed to pay more money than
04:13:27 20 it had already paid?

04:13:28 21 A. No, there was nothing.

04:13:47 22 Q. In your view, is a company selling pieces of junk for
04:13:53 23 millions of dollars just how business goes?

04:14:00 24 A. No, that would not happen in my experience at all.

04:14:22 25 Because if there was any such executive who would approve

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04:14:25 1 of that -- you know, buying a piece of junk and paying \$35
04:14:30 2 million, that executive should be fired, in my experience.

04:14:35 3 Q. Thank you, Mr. Kim.

04:14:37 4 MS. GIBSON: Your Honor, I pass the witness.

04:14:38 5 THE COURT: Cross-examination?

04:14:40 6 MR. CULBERTSON: Yes, Your Honor.

04:14:51 7 CROSS-EXAMINATION

04:14:52 8 BY MR. CULBERTSON:

04:14:52 9 Q. Good afternoon, Mr. Kim.

04:14:54 10 A. Good afternoon.

04:14:54 11 Q. My name is Geoff Culbertson. I'm going to ask you some
04:14:57 12 questions, okay?

04:15:00 13 A. Yes, please.

04:15:01 14 Q. And I think I'll start where your attorney did, with
04:15:08 15 Samsung's dealings with Maxell, okay?

04:15:13 16 A. Yes.

04:15:20 17 Q. You weren't personally involved in those dealings ever,
04:15:23 18 were you?

04:15:23 19 A. Right.

04:15:34 20 Q. You learned about them from someone else, correct?

04:15:43 21 A. Not necessarily.

04:15:44 22 Q. You learned about it from Mr. Jeon, right?

04:15:48 23 A. That is also included.

04:15:55 24 Q. Okay.

04:15:55 25 MR. CULBERTSON: Can we pull up PX-20, please,

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04:15:59 1 Mr. Ebersole?

04:16:00 2 Q. (By Mr. Culbertson) Your attorney asked you some

04:16:26 3 questions about PX-20. That's the July '21 letter that

04:16:30 4 Maxell sent Samsung; is that right?

04:16:32 5 A. That's right.

04:16:39 6 Q. Okay. And then a few days later on July 16, Samsung --

04:16:44 7 Samsung sent an email with -- to Maxell with an NDA, right?

04:16:48 8 A. Yes, that's right.

04:17:00 9 MR. CULBERTSON: And if we could pull up PX-2. --

04:17:04 10 21.1, please, Mr. Ebersole.

04:17:08 11 Q. (By Mr. Culbertson) Is this the nondisclosure

04:17:10 12 agreement?

04:17:10 13 A. That's right.

04:17:12 14 Q. And Samsung sent this on July the 16th, right?

04:17:19 15 A. Yes, a draft of it, yes.

04:17:22 16 Q. And you made the effective date July 7th, right?

04:17:27 17 A. That's right.

04:17:35 18 Q. You backdated it?

04:17:38 19 A. Yes.

04:17:44 20 Q. And July 7th is important because that's the date of

04:17:47 21 Maxell's notice letter, right?

04:17:49 22 A. That's right.

04:17:56 23 Q. Okay. And you know that a patent holder can't seek

04:17:59 24 damages until it provides notice to the infringer, right?

04:18:01 25 A. Not necessarily.

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04:18:15 1 Q. As the head of licensing at Samsung, you don't have an
04:18:18 2 understanding that a patent holder generally can't seek
04:18:22 3 damages without providing notice to the infringer?

04:18:26 4 THE INTERPRETER: Withdrawn. Actually let me
04:18:29 5 repeat the prior answer.

04:18:30 6 A. That's not the case necessarily.

04:18:33 7 Q. (By Mr. Culbertson) I understand.

04:18:35 8 One way to start the damages clock, Mr. Kim, is to
04:18:38 9 send a notice letter, right?

04:18:39 10 A. Generally speaking, yes.

04:18:53 11 Q. And without the clock running on damages, an accused
04:18:58 12 infringer doesn't have a whole lot of motivation to move
04:19:01 13 forward with negotiations, does it?

04:19:03 14 A. I don't agree with that.

04:19:26 15 Q. Okay. As a licensing professional, you don't agree
04:19:29 16 with that?

04:19:30 17 A. Correct, I don't.

04:19:39 18 Q. All right. We heard in opening statements and we heard
04:19:42 19 again today about the period from 2016 to 2021, right?

04:19:47 20 A. Yes.

04:19:59 21 MR. CULBERTSON: Mr. Ebersole, could you bring up
04:20:04 22 the Day 1 transcript at 243, Lines 4 to 7?

04:20:13 23 Q. (By Mr. Culbertson) This is Mr. Fowler. He said:

04:20:18 24 Five years passed. Samsung sold a lot of phones.

04:20:22 25 Mr. Tidwell acknowledged these phones and the technology

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04:20:25 1 we're talking about from the get-go. And Maxell didn't
04:20:27 2 talk to us in 2017, 2018, 2019, 2020, or '21.

04:20:35 3 You see that?

04:20:36 4 A. Yes.

04:20:45 5 Q. You understand that Maxell is not seeking damages from
04:20:50 6 2016 until July of 2021, right?

04:21:02 7 A. Yes.

04:21:06 8 Q. The damages period begins on July 7, 2021, and runs
04:21:10 9 through trial, right?

04:21:10 10 A. Generally speaking, that is the case.

04:21:26 11 Q. So that means that if the jury finds that Samsung's
04:21:29 12 infringing these patents, that Samsung had a free license
04:21:33 13 from 2016 until July of 2021, right?

04:21:36 14 A. I don't agree with that.

04:22:00 15 Q. Not asking for any damages for that period, are we?

04:22:03 16 A. Not necessarily.

04:22:14 17 MR. CULBERTSON: Let's go back to the NDA, please,
04:22:17 18 Mr. Ebersole, at PX-21.02.

04:22:50 19 Okay. If we could blow up Section 8, please.

04:22:54 20 Q. (By Mr. Culbertson) That's entitled Inadmissibility of
04:23:02 21 Disclosure, right?

04:23:03 22 A. Yes.

04:23:03 23 Q. And the effect of that is that if the parties wound up
04:23:08 24 in court, they would -- their communications wouldn't be
04:23:13 25 admissible, right?

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04:23:13 1 A. I don't agree with that.

04:23:34 2 Q. You don't agree with that?

04:23:36 3 A. I don't.

04:23:42 4 Q. Okay. So you disagree that, for whatever reason,

04:23:44 5 Samsung wanted to keep the communications with Maxell out

04:23:47 6 of court?

04:23:57 7 THE INTERPRETER: I'm sorry, could you repeat?

04:24:01 8 Maxell out of court, okay.

04:24:24 9 A. Right, I don't agree with that.

04:24:26 10 Q. (By Mr. Culbertson) Okay, sir. You know that Maxell

04:24:28 11 was prepared to negotiate with Samsung without an NDA,

04:24:31 12 right?

04:24:31 13 A. I'm not certain about that.

04:24:48 14 MR. CULBERTSON: Mr. Ebersole, could you pull up

04:24:50 15 PX-25? And if we could blow up the email from 8/2/21.

04:25:10 16 Q. (By Mr. Culbertson) You recognize this email from

04:25:12 17 Hirabayashi-san at Maxell?

04:25:19 18 A. Yes.

04:25:20 19 Q. See where he says that: Maxell is willing to continue

04:25:24 20 to proceed with licensing negotiations without an NDA?

04:25:27 21 A. Yes, I see that.

04:25:38 22 Q. Maxell had nothing to hide, right?

04:25:40 23 A. I don't agree with that. It means something different.

04:25:54 24 Q. Nevertheless, they were ready to proceed without an

04:25:57 25 NDA, right?

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04:25:58 1 A. That's what they claimed.

04:26:13 2 Q. Okay.

04:26:13 3 MR. CULBERTSON: If we could go back to PX-20,
04:26:16 4 please, Mr. Ebersole. And let's go to Page 18 of the
04:26:21 5 exhibit, please.

04:26:25 6 Q. (By Mr. Culbertson) You talked a lot about claim
04:26:28 7 charts, right?

04:26:29 8 A. Yes.

04:26:35 9 Q. And before we go there, sir, isn't it true that any
04:26:39 10 analysis that Samsung did regarding Maxell's notice letter
04:26:44 11 was done under the advice and control of counsel?

04:26:47 12 A. I don't agree with that.

04:27:08 13 Q. Okay. Sir, do you recall providing a deposition in
04:27:12 14 this case?

04:27:12 15 A. Yes.

04:27:21 16 MS. GIBSON: Your Honor, may we?

04:27:24 17 THE COURT: Yes.

04:27:25 18 MS. GIBSON: Thank you.

04:27:25 19 (Bench conference.)

04:27:38 20 MS. GIBSON: Your Honor, there is an agreed MIL
04:27:41 21 No. 18, neither party shall reference the presence -- oh,
04:27:43 22 I'm sorry, I'm reading the wrong one.

04:27:43 23 THE COURT: No.

04:27:46 24 MS. GIBSON: No. 17, neither party shall ask
04:27:47 25 questions or make statements to invoke a privilege or

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04:27:49 1 protected answer.

04:27:50 2 I think where counsel is going is when these
04:27:53 3 questions were asked at his deposition, he was instructed
04:27:56 4 not to answer on privilege grounds. And not surprisingly,
04:28:00 5 the witness said he'd follow his counsel's instruction.

04:28:04 6 MR. CULBERTSON: They're doing the exact same
04:28:05 7 thing to establish that we're not going to hear anything
04:28:06 8 about investigation that Ms. Smith did with Mr. Yamamoto
9 just to establish that it was all done under the advice and
10 control of counsel --

11 THE COURT: And you're using --

12 MR. CULBERTSON: That's all.

13 MS. GIBSON: He already answered.

04:28:12 14 THE COURT: -- and you're using his deposition to
04:28:16 15 establish a prior consistent statement? Are you impeaching
04:28:23 16 him or what?

04:28:25 17 MR. CULBERTSON: I thought he said no. He said he
04:28:27 18 didn't -- he didn't agree with that.

04:28:27 19 THE COURT: Oh, so he did say that. He did say
04:28:28 20 that.

04:28:29 21 MS. GIBSON: All right.

04:28:30 22 THE COURT: Sorry.

04:28:30 23 MR. CULBERTSON: He did.

04:28:30 24 THE COURT: Okay.

04:28:32 25 MS. GIBSON: Can we ask a yes-or-no question,

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04:28:35 1 just -- since he was instructed not to answer last time? I
04:28:38 2 just want to clear that we're not calling for privileged
04:28:38 3 communications with --

04:28:44 4 THE COURT: Just rephrase -- just rephrase.

04:28:44 5 MR. CULBERTSON: I'm not trying to get anything
04:28:46 6 privileged. I wouldn't mind impeaching him.

04:28:49 7 MS. GIBSON: Maybe you can make that clear in your
04:28:52 8 question, you're not looking for privileged information.

04:28:52 9 MR. CULBERTSON: Okay.

04:28:53 10 THE COURT: I don't think there's a disagreement
04:28:54 11 here.

04:28:55 12 (Bench conference concluded.)

04:29:11 13 Q. (By Mr. Culbertson) Mr. Kim, let me ask that one more
04:29:13 14 time.

04:29:15 15 Isn't it true that any analysis that Samsung did
04:29:18 16 regarding Maxell's notice letter was done under the advice
04:29:22 17 and control of counsel?

04:29:25 18 A. We didn't review any patents.

04:29:51 19 Q. You didn't review any patents?

04:29:53 20 A. What I mean is, we could not review any of the patents,
04:30:09 21 200 -- over 200 patents that were listed on that notice
04:30:12 22 letter.

04:30:13 23 Q. Your answer is you could not review any of the patents;
04:30:17 24 is that right?

04:30:17 25 A. That's right.

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04:30:21 1 Q. Okay. So whether it was with or without counsel, y'all
04:30:26 2 didn't review any patents, right?

04:30:28 3 A. When I say that, I mean that it was practically
04:30:46 4 impossible.

04:30:47 5 MR. CULBERTSON: Objection, non-responsive.

04:30:49 6 THE COURT: I'll sustain the objection.

04:31:17 7 Q. (By Mr. Culbertson) Mr. Kim, do you recall giving a
04:31:19 8 deposition in this case on October 23rd, 2024?

04:31:23 9 A. Yes.

04:31:27 10 Q. And you swore to tell the truth that day?

04:31:30 11 A. Yes.

04:31:34 12 Q. Recall being asked: When Samsung received this letter
04:31:37 13 on or around July 7th, did anyone in the technology
04:31:41 14 analysis group review any of the patents listed in this
04:31:44 15 letter?

04:31:45 16 A. Yes.

04:32:05 17 Q. Okay. And do you recall --

04:32:07 18 MR. CULBERTSON: Mr. Ebersole, can we call up
04:32:16 19 Lines 50 (sic), 9 through 16?

04:32:25 20 Q. (By Mr. Culbertson) When you were asked that question,
04:32:27 21 your counsel objected and instructed you not to answer,
04:32:42 22 right?

04:32:42 23 A. Yes.

04:32:42 24 Q. And you followed your counsel's instruction?

04:32:44 25 A. Yes.

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04:32:52 1 Q. Okay. Thank you.

04:32:53 2 MR. CULBERTSON: You can take that down.

04:32:58 3 Okay. If we could go back to PX-20.18?

04:33:06 4 Q. (By Mr. Culbertson) No. 89 here relates to the '086
04:33:12 5 patent that's asserted in this case, right?

04:33:13 6 A. That's right.

04:33:22 7 Q. And it identifies the specific claims that Maxell is
04:33:27 8 telling Samsung to focus on, right?

04:33:28 9 A. Generally speaking, that's the case.

04:33:46 10 Q. Claims 1 through 4, right?

04:33:48 11 A. Yes. Generally speaking, yes.

04:33:54 12 Q. And it identifies the products that Samsung is
04:33:57 13 suggesting that Samsung focus on with regard to Claims 1
04:34:00 14 through 4 of the '086, right?

04:34:03 15 A. There are products, yes.

04:34:19 16 Q. And Maxell provided you this information, correct?

04:34:28 17 A. It's a very limited information, yes.

04:34:30 18 MR. CULBERTSON: Objection, non-responsive.

04:34:32 19 THE COURT: Sustained.

04:34:33 20 Q. (By Mr. Culbertson) Maxell provided you this
04:34:35 21 information, right?

04:34:35 22 A. Yes.

04:34:47 23 Q. And when Samsung got this letter from Maxell, it had
04:34:51 24 full access to, not just these products, but to every
04:34:54 25 product that's identified in the 30-plus page letter,

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04:34:59 1 right?

04:34:59 2 A. Generally speaking, yes.

04:35:23 3 Q. Had access to the engineers that designed these

04:35:26 4 products, right?

04:35:27 5 A. I cannot agree with that.

04:35:35 6 Q. Samsung had access to the design documents that

04:35:38 7 underlie those products, right?

04:35:39 8 A. Generally speaking, yes.

04:35:52 9 Q. Samsung had access to the schematics and the components

04:35:57 10 that are in the products that are identified in this

04:35:59 11 letter, right?

04:35:59 12 A. Generally speaking, yes.

04:36:15 13 Q. Samsung had access to its components suppliers, right?

04:36:20 14 It could go talk to them for all of these products?

04:36:23 15 A. Not necessarily.

04:36:36 16 Q. Samsung had access to the source code that runs on

04:36:39 17 these products, didn't it?

04:36:41 18 A. Not necessarily.

04:36:47 19 Q. So your testimony is that Samsung doesn't have access

04:36:51 20 to the components and the source code that are in the

04:36:56 21 products?

04:36:56 22 A. I cannot agree with what you said.

04:37:10 23 Q. Samsung had access to the block diagrams and things

04:37:14 24 like that about the products, correct?

04:37:16 25 A. Not necessarily.

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04:37:26 1 Q. Samsung had all the confidential information that's
04:37:32 2 been discussed in this trial about the products that are
04:37:35 3 identified in this letter, didn't it?

04:37:52 4 A. I cannot agree with that.

04:37:54 5 Q. For its own products, your testimony is that Samsung
04:38:01 6 didn't have access to it, right?

04:38:03 7 A. That's right. What I'm saying is that there are
04:38:19 8 occasions where we don't.

04:38:20 9 Q. Samsung had all the information it needed to create the
04:38:30 10 charts that it wanted from Maxell, didn't it?

04:38:32 11 A. I don't agree with that.

04:38:51 12 Q. Samsung was certainly better situated to create the
04:38:54 13 charts it says it wanted based on this information that
04:38:57 14 Maxell provided to it than Maxell?

04:39:00 15 A. I cannot agree with that at all.

04:39:28 16 MR. CULBERTSON: If we could go to Page 32 of
04:39:32 17 PX-20, please, Mr. Ebersole.

04:39:34 18 Q. (By Mr. Culbertson) Do you recognize that document,
04:39:38 19 sir?

04:39:38 20 A. Yes.

04:39:43 21 Q. Maxell's identified a number of litigations in which
04:39:48 22 publicly available information about its patents was
04:39:53 23 available, right?

04:39:56 24 A. Yes, that's what it says.

04:40:22 25 Q. As the head of licensing at Samsung, you know how to

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04:40:26 1 access this information, don't you?

04:40:44 2 A. I can access to some of this information.

04:40:49 3 Q. Okay. You know what the ITC is, right, the

04:40:56 4 International Trade Commission?

04:40:57 5 A. Yes.

04:40:58 6 Q. Do you see where Maxell has cited to you the ITC

04:41:07 7 investigation with Apple?

04:41:11 8 A. Yes.

04:41:23 9 Q. Okay. That's it, right?

04:41:27 10 A. Yes.

04:41:27 11 Q. You know the ITC?

04:41:28 12 A. Yes.

04:41:30 13 Q. Samsung's litigated at the ITC?

04:41:33 14 A. Yes.

04:41:36 15 Q. And subject to investigations at the ITC?

04:41:44 16 THE INTERPRETER: Sorry, could you repeat?

04:41:48 17 Q. (By Mr. Culbertson) Samsung's been subject to

04:41:50 18 investigations at the ITC?

04:41:52 19 A. Sorry, are you talking about --

04:42:10 20 THE INTERPRETER: Or withdrawn.

04:42:11 21 A. Are you asking this question in a general sense, or are

04:42:14 22 you specifically talking about this case where Apple and

04:42:16 23 Maxell are involved at the ITC?

04:42:20 24 Q. (By Mr. Culbertson) I'm asking you if Samsung has ever

04:42:22 25 been involved in investigations at the ITC?

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04:42:23 1 A. Yes, it has.

04:42:36 2 Q. So you know that the complaints at the ITC are filed
04:42:40 3 with publicly available claim charts, right?

04:42:42 4 A. Generally speaking, yes.

04:43:01 5 Q. And you already told me that y'all didn't investigate
04:43:08 6 any of the patents. Did you investigate any of these
04:43:11 7 cases?

04:43:11 8 A. No.

04:43:32 9 Q. Okay. Well, let's go see what you might have found if
04:43:38 10 you'd gone to this ITC investigation with Apple.

04:43:41 11 MR. CULBERTSON: Can we pull up Exhibit 22 to the
04:43:45 12 Apple ITC investigation, please?

04:43:48 13 A. Okay.

04:43:48 14 Q. (By Mr. Culbertson) That's a claim chart, isn't it?

04:44:08 15 A. It appears to be.

04:44:14 16 Q. Okay. It's a claim chart for the '086 patent to an
04:44:18 17 ASUS product, correct?

04:44:28 18 A. That appears to be the case.

04:44:30 19 MR. CULBERTSON: And, Mr. Ebersole, can we
04:44:31 20 identify how many pages are available here?

04:44:36 21 Q. (By Mr. Culbertson) 91 pages.

04:44:38 22 MR. CULBERTSON: Can we pull up Exhibit 31 to the
04:44:43 23 Apple ITC investigation?

04:44:53 24 Q. (By Mr. Culbertson) Do you recognize this as a claim
04:44:56 25 chart for the '848 patent that's asserted here?

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04:44:59 1 A. Yes, and this relates to an ASUS product.

04:45:15 2 Q. Correct. And how many pages --

04:45:17 3 MR. CULBERTSON: Can we back out and see how many
04:45:20 4 pages this is?

04:45:21 5 Q. (By Mr. Culbertson) 244 pages, right?

04:45:24 6 A. Yes.

04:45:28 7 Q. Okay.

04:45:29 8 MR. CULBERTSON: And can we pull up Exhibit 20 to
04:45:33 9 the Apple ITC investigation, please?

04:45:35 10 Q. (By Mr. Culbertson) Does this appear to be a claim
04:45:37 11 chart for the '086 patent that's asserted here to another
04:45:41 12 BLU product?

04:45:41 13 A. Yes, it does.

04:45:57 14 Q. How many --

04:45:58 15 MR. CULBERTSON: Can we back out, Mr. Ebersole?

04:46:02 16 Q. (By Mr. Culbertson) 90 pages of information, sir?

04:46:03 17 A. Yes.

04:46:09 18 MR. CULBERTSON: And last, can we pull up
04:46:11 19 Exhibit 21 to the Apple ITC investigation?

04:46:14 20 Q. (By Mr. Culbertson) Is this a claim chart to the '086
04:46:23 21 patent to a ZTE product?

04:46:25 22 A. It appears to be the case.

04:46:35 23 Q. These are all Android smartphones, right?

04:46:40 24 A. You can say that, generally speaking.

04:46:46 25 Q. And the Samsung phones and tablets that are accused

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04:46:50 1 here are also Android devices, right?

04:46:51 2 A. Generally speaking, I can say yes.

04:47:05 3 MR. CULBERTSON: If we could go to Day 1 of the
04:47:08 4 transcript, Page 240, Lines 11 to 16, Mr. Ebersole, please.

04:47:31 5 Q. (By Mr. Culbertson) I may have the wrong lines, but I
04:47:33 6 believe Mr. Fowler said in opening statement that: Samsung
04:47:35 7 is entitled to a permanent license to the patents that
04:47:40 8 Hitachi had for the mobile phone business.

04:47:42 9 Remember that? You were here.

04:47:44 10 A. Yes.

04:48:07 11 Q. Okay. He said there was a license to 87 patents,
04:48:11 12 right?

04:48:11 13 A. That's right.

04:48:20 14 MR. CULBERTSON: And if we look at Page 242, Lines
04:48:25 15 24 to Page 243, Line 1 -- can you grab one more line up on
04:48:41 16 Page 2...

04:48:48 17 Q. (By Mr. Culbertson) Okay. It says: Now, Samsung,
04:48:51 18 when this license expired, they looked at -- we don't know
04:48:54 19 what they looked like. They already had the patents they
04:48:57 20 wanted, the 87 patents, and the purchased patents, and so
04:49:01 21 they thought, well, we don't need a license.

04:49:03 22 Do you see that?

04:49:04 23 A. Yes.

04:49:19 24 Q. And he's talking about you, Mr. Kim, in 2016, that this
04:49:25 25 was your belief, right?

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04:49:26 1 A. Generally speaking, yes.

04:49:54 2 Q. And when I say "you," I mean Samsung. That's fair,
04:49:58 3 right?

04:49:58 4 A. Yes.

04:50:12 5 Q. When -- when Maxell sent this notice letter in July of
04:50:20 6 2021, Samsung didn't say, we've got a license. We've got
04:50:27 7 all we need, did it?

04:50:28 8 A. There was not necessarily the case.

04:50:48 9 Q. Well, you didn't tell Maxell what Mr. Fowler said,
04:50:55 10 right? You didn't tell Maxell that Mr. Fowler said Samsung
04:50:59 11 believed that we've got a license already, we've got all we
04:51:02 12 need?

04:51:07 13 A. Generally speaking, that's right.

04:51:35 14 Q. Instead, you said sign this NDA? Right?

04:51:51 15 A. I don't agree with that.

04:51:57 16 Q. Instead, what Samsung said, sign this NDA and contract
04:52:02 17 your notice date away?

04:52:03 18 A. I don't agree with that.

04:52:24 19 Q. Instead, it said sign this NDA and contract away your
04:52:30 20 claim for willfulness, right?

04:52:31 21 A. I don't agree with that.

04:52:43 22 Q. Can we agree, sir, that if a reasonable company
04:52:48 23 believed it had a license to patents, in a letter like the
04:52:52 24 one Maxell sent, that it would say so? Hey, we've got a
04:52:57 25 misunderstanding here. Let's talk about this. We've

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04:53:00 1 already got a license. Wouldn't that be reasonable?

04:53:30 2 A. I don't agree with that.

04:53:33 3 Q. Wouldn't that be the honest thing to do if you believed
04:53:36 4 you had a license, to say so?

04:53:38 5 A. I don't agree with that.

04:53:47 6 Q. Instead you said: Send us claim charts?

04:53:55 7 A. Yes, we did request four claim charts.

04:54:07 8 MR. CULBERTSON: Can we pull up DTX-244, please,
04:54:11 9 Mr. Ebersole? And if we could go to the last page -- I'm
04:54:22 10 sorry, second to the last page.

04:54:28 11 Q. (By Mr. Culbertson) And I'd like you to focus here,
04:54:30 12 sir -- this is one the IPRs that your counsel asked you
04:54:33 13 about. You understand that this is just a preliminary
04:54:37 14 stage of the proceeding, right?

04:54:38 15 A. Generally speaking, that's correct.

04:54:58 16 Q. Well, it says so, right? "Preliminary stage of the
04:55:01 17 proceeding"?

04:55:02 18 A. Generally speaking, that's correct.

04:55:10 19 Q. And it says that there would be a complete record
04:55:17 20 developed during the trial before any final decision,
04:55:21 21 right?

04:55:21 22 A. Yes, that's what it says.

04:55:37 23 Q. And that's a separate trial from here, right?

04:55:39 24 A. Yes.

04:55:46 25 Q. Okay. It's going to be based on different evidence

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04:55:49 1 than this jury considers, right?

04:55:56 2 THE INTERPRETER: Apologize. Could you repeat for
04:55:59 3 the interpreter?

04:56:00 4 Q. (By Mr. Culbertson) That separate trial will be based
04:56:02 5 on different evidence than this jury will consider, right?

04:56:05 6 A. Not necessarily.

04:56:18 7 Q. It's going to be based on a different standard than the
04:56:21 8 jury will apply to Samsung's validity claim here, right?

04:56:23 9 A. Not necessarily.

04:56:47 10 Q. Let's move forward and talk about Plaintiff's Exhibit
04:56:55 11 350, please, the Hitachi patent sale.

04:56:59 12 Okay. I think, based on your testimony with
04:57:09 13 counsel earlier, we can agree that Samsung bought 10 patent
04:57:13 14 families from Hitachi, right?

04:57:14 15 A. Yes.

04:57:29 16 Q. And can we agree that Hitachi and Samsung exchanged a
04:57:33 17 five-year cross-license to all patents covered by mobile
04:57:38 18 phone products?

04:57:38 19 A. Yes, that's right.

04:57:51 20 Q. And can we agree that Samsung got a lifetime license to
04:57:55 21 a certain subset of patents?

04:57:57 22 THE INTERPRETER: Sorry, may -- may I interject?

04:58:03 23 MR. CULBERTSON: My apologies.

04:58:06 24 THE INTERPRETER: Generally speaking, that's
04:58:08 25 right, was the answer earlier.

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04:58:09 1 And I'm going to interpret the question.

04:58:13 2 MR. CULBERTSON: Okay.

04:58:20 3 A. Yes.

04:58:21 4 Q. (By Mr. Culbertson) Okay. Can we agree that that
04:58:26 5 subset of patents is defined in this agreement as Hitachi
04:58:32 6 mobile unit patents?

04:58:39 7 A. Yes, that's right.

04:58:53 8 MR. CULBERTSON: Okay. Can we go to Section 1.7,
04:58:57 9 please, Mr. Ebersole?

04:58:58 10 Q. (By Mr. Culbertson) So we need to understand what
04:59:01 11 Hitachi mobile unit patents are, right?

04:59:03 12 A. Yes.

04:59:14 13 Q. That means Hitachi's licensed patents, that, i, were
04:59:23 14 administered by the Mobile Phone Business Unit, and, ii,
04:59:27 15 filed by Hitachi Limited prior to April 1, 2004, correct?

04:59:47 16 A. Yes.

04:59:51 17 MR. CULBERTSON: So let's look at Section 1.13 so
04:59:57 18 we can figure out what mobile phone business unit means.

05:00:12 19 Q. (By Mr. Culbertson) Mobile Phone Business Unit shall
05:00:15 20 mean Mobile Information and Appliance Division of Hitachi
05:00:20 21 Limited, which, i, marketed mobile phone products, related
05:00:25 22 parts, and related service, and, ii, was spun off from
05:00:30 23 Hitachi Limited to CHMC as of April 2004.

05:00:36 24 Correct?

05:00:38 25 A. Yes.

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05:00:38 1 Q. So what Samsung got a lifetime license to, Mr. Kim,
05:00:41 2 were the patents that belonged to a unit of Hitachi that
05:00:46 3 was spun off to a different company in April of 2004,
05:00:50 4 right?

05:00:50 5 A. Generally speaking, that's correct.

05:01:14 6 Q. I mean, you know that's true, correct?

05:01:21 7 A. Generally, that's correct.

05:01:25 8 Q. What Samsung did not get a lifetime license to are the
05:01:29 9 patents that remained with Hitachi and now belong to
05:01:33 10 Maxell?

05:01:52 11 A. Generally, that's correct.

05:01:53 12 Q. And the date of this agreement on Page 1 is July 8th of
05:01:59 13 2011, right?

05:01:59 14 A. Yes.

05:02:08 15 Q. These -- these patents that Samsung got a license to
05:02:11 16 were spun off to a Casio entity way back in April of 2004,
05:02:17 17 right?

05:02:17 18 A. Not necessarily.

05:02:35 19 Q. Well, you understand as the head of licensing that the
05:02:39 20 words of these agreements are important, right?

05:02:41 21 A. Generally speaking, that's correct.

05:02:52 22 Q. And if we look back at Section 1.13, it tells us that
05:03:09 23 the Mobile Phone Business Unit shall mean Mobile
05:03:18 24 Information and Appliance Division of Hitachi Limited,
05:03:20 25 which, i, marketed mobile phone products, related parts,

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05:03:26 1 and related service, and was spun off from Hitachi to this
05:03:30 2 Casio entity in April of 2004.

05:03:35 3 Those are the patents you got a lifetime license
05:03:37 4 to?

05:03:38 5 A. Yes.

05:04:02 6 Q. And you knew that in July of 2021, right?

05:04:13 7 A. Generally speaking, yes.

05:04:23 8 Q. You certainly didn't tell Maxell in July of '21, hey,
05:04:33 9 we've got a license to these patents, right? We think
05:04:35 10 you're wrong. We don't need a license, correct?

05:04:38 11 A. Not necessarily.

05:04:58 12 Q. Samsung pays incentives to its inventors when it
05:05:03 13 collects royalties on the employees' inventions, right?

05:05:07 14 A. Generally speaking, that's correct.

05:05:23 15 Q. Nothing wrong with that, is there?

05:05:26 16 A. Correct.

05:05:31 17 Q. You're aware, sir, that Samsung and Apple were
05:05:34 18 previously involved in an epic patent dispute, right?

05:05:41 19 A. Yes.

05:05:48 20 Q. And the jury heard testimony on Tuesday from you, by
05:05:52 21 videotape, that Samsung bought patents from Hitachi to
05:05:56 22 assert against Apple, right?

05:05:58 23 A. Yes.

05:06:21 24 Q. And Samsung -- Samsung did assert one of those Hitachi
05:06:25 25 patents against Apple, right?

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05:06:26 1 A. Yes, that's my understanding.

05:06:37 2 Q. Samsung asked the jury to award \$158,400 for Apple's
05:06:43 3 infringement, right?

05:06:50 4 THE INTERPRETER: Actually, could you repeat?

05:06:53 5 Interjection. Could you repeat the question for
05:06:55 6 me?

05:06:56 7 Q. (By Mr. Culbertson) Samsung requested the jury award
05:07:01 8 \$158,400 for Apple's infringement?

05:07:16 9 A. That's the level of amount that I'm understanding.

05:07:23 10 Q. Can we agree, sir, that that was a low-value patent?

05:07:29 11 A. Not at all.

05:07:44 12 Q. Samsung's -- Samsung's lawyer, your own lawyer, argued
05:07:48 13 to the jury that that patent was low value, right?

05:07:51 14 A. I don't agree.

05:08:11 15 MR. CULBERTSON: Mr. Ebersole, can we bring up the
05:08:15 16 transcript of the closing argument in Apple v. Samsung?

05:08:20 17 Q. (By Mr. Culbertson) Recognize that case style, sir?

05:08:23 18 A. I'm not familiar with this case.

05:08:41 19 MR. CULBERTSON: Can we go to Page 127, please?
05:08:45 20 And can you blow up that section?

05:08:48 21 Q. (By Mr. Culbertson) I'll represent to you this is
05:08:50 22 Samsung's own lawyer talking about the '449 patent that it
05:08:59 23 acquired from Hitachi.

05:09:00 24 A. Okay.

05:09:11 25 Q. He said: Now, for the '449 patent, the number is

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05:09:16 1 considerably lower. It's \$158,000. And Dr. Kearl
05:09:23 2 testified that's because of two reasons. The first is the
05:09:26 3 video album patent is not as valuable as the FaceTime and
05:09:32 4 emailing video features that's covered by the '239.

05:09:37 5 And, second, for the '449 patent, there's a
05:09:42 6 non-infringing alternative, a way to design around the
05:09:44 7 patent, and if a patent is easy to design around, it lowers
05:09:49 8 the value of the patent. That makes sense.

05:09:52 9 I read that correctly?

05:09:54 10 A. Yes, I believe you read that correctly.

05:09:57 11 Q. Is \$130 million a material amount of money to Samsung?

05:10:11 12 MS. GIBSON: Objection, Your Honor.

05:10:12 13 THE COURT: I'm sorry.

05:10:12 14 MS. GIBSON: Objection.

05:10:14 15 THE COURT: Can you all approach?

05:10:16 16 (Bench conference.)

05:10:25 17 MS. GIBSON: Yes, Your Honor. He's asking if the
05:10:26 18 amount they're requesting for in this case is a material
05:10:29 19 amount to Samsung, going to the ability and willing -- the
05:10:32 20 ability of the Defendant to pay the verdict. So that's
05:10:35 21 402/403, more prejudicial than probative. And irrelevant.

05:10:39 22 THE COURT: What's it relevant to, Mr. Culbertson?

05:10:42 23 MR. CULBERTSON: I'll withdraw the question,
05:10:44 24 Your Honor. I was headed in another direction.

05:10:44 25 THE COURT: How close are you?

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05:10:45 1 MR. CULBERTSON: Very. Very, very, very.

05:10:56 2 (Bench conference concluded.)

05:11:14 3 Q. (By Mr. Culbertson) Mr. Kim, you testified that you
05:11:15 4 did some research on IPR proceedings, correct?

05:11:24 5 A. Yes.

05:11:25 6 Q. And you told the jury that 80 percent of petitions
05:11:30 7 result in invalidity, right?

05:11:31 8 A. That's right.

05:11:39 9 Q. But you didn't tell the jury where you got those
05:11:41 10 numbers, did you?

05:11:51 11 A. Right.

05:11:53 12 Q. Well, we did some research here at the USPTO website,
05:11:58 13 right? You know they make their statistics available?

05:12:16 14 A. I didn't look at the materials from the PTO website.

05:12:24 15 Q. Right. But I think it'd be helpful if we did that
05:12:28 16 today.

05:12:28 17 MR. CULBERTSON: So, Mr. Ebersole, can you pull up
05:12:30 18 the USPTO stats?

05:12:34 19 Q. (By Mr. Culbertson) All right. Do you see this image,
05:12:54 20 Mr. Kim? It says: All patents: All time.

05:12:57 21 Did I read that correctly?

05:12:58 22 A. Yes.

05:13:02 23 Q. That's all the patents since 2012 when the PTAB, who
05:13:08 24 operates the IPR procedures, started?

05:13:10 25 A. That's right.

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05:13:31 1 MR. CULBERTSON: Mr. Ebersole, can you blow up the
05:13:35 2 blue box on this page?

05:13:43 3 Q. (By Mr. Culbertson) Mr. Kim, the USPTO says that for
05:13:48 4 all time, only 10 percent of challenged patents are fully
05:13:52 5 invalidated, right?

05:13:53 6 A. Not necessarily.

05:14:10 7 Q. This is the USPTO's data, and they say that only
05:14:14 8 10 percent of patent -- challenged patents are fully
05:14:20 9 invalidated.

05:14:21 10 Did I read that correctly?

05:14:22 11 A. That's what it says. But what I was referring to in
05:14:49 12 terms of the data that I mentioned, it was talking about
05:14:53 13 the data when -- once IPR is instituted. So that was the
05:15:01 14 condition.

05:15:02 15 MR. CULBERTSON: Your Honor, I object and move to
05:15:05 16 strike that.

05:15:05 17 THE COURT: I'll overrule that. The question was
05:15:07 18 not contradictory to his earlier testimony. If you've got
05:15:11 19 a basis for suggesting it is, I'd love to hear it.

05:15:15 20 MR. CULBERTSON: No, Your Honor, the objection was
05:15:17 21 non-responsive, not that it was contradictory.

05:15:20 22 THE COURT: I'll overrule it.

05:15:21 23 MR. CULBERTSON: Understood. Thank you.

05:15:24 24 Q. (By Mr. Culbertson) You also mentioned that you found
05:15:28 25 IPRs against Maxell patents that resulted in invalidity,

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05:15:31 1 didn't you?

05:15:42 2 A. Yes.

05:15:45 3 Q. So 5 out of 70, it's about 7 percent, right?

05:15:52 4 A. I think that's about -- generally speaking, that's
05:16:05 5 right.

05:16:05 6 Q. So Maxell is doing pretty well at the PTAB, isn't it?

05:16:08 7 A. I don't agree with that.

05:16:16 8 Q. Certainly better than the 80 percent figure you
05:16:18 9 testified about earlier?

05:16:21 10 THE INTERPRETER: I'm sorry, withdrawn. The
05:16:24 11 LiveNote is not working, but I cannot really hear you.

05:16:27 12 Q. (By Mr. Culbertson) I said it's certainly better than
05:16:30 13 the 80 percent figure you testified about earlier?

05:16:44 14 THE INTERPRETER: 80 percent figure?

05:16:47 15 A. I don't agree with that.

05:16:49 16 Q. (By Mr. Culbertson) 7 percent is not better than
05:16:51 17 80 percent?

05:16:51 18 A. Since you're talking about different circumstances,
05:17:02 19 different situation, that's why I don't agree with that.

05:17:06 20 MR. CULBERTSON: Your Honor, I pass the witness.

05:17:08 21 Thank you, Mr. Kim.

05:17:09 22 THE COURT: Ms. Gibson, how much do you have?

05:17:11 23 Ms. Gibson, how much do you have?

05:17:13 24 MS. GIBSON: Yes, Your Honor, I have 10 minutes.

05:17:15 25 I can proceed now, or we can proceed in the morning.

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05:17:20 1 THE COURT: What's the jury's preference? Ten
05:17:20 2 more minutes today to finish this witness? Is that okay
05:17:24 3 with everyone? Okay. Ready to break for the day?

05:17:27 4 I think break for the day is probably what the
05:17:30 5 jury's request is. So let's do that, and I will remind you
05:17:33 6 all not to talk to anyone about the case, don't visit among
05:17:41 7 yourselves, do not do any independent research or
05:17:44 8 investigation into the case, don't post anything about your
05:17:47 9 involvement.

05:17:48 10 I'll ask you to be back at 8:45 in the morning.
05:17:51 11 We are proceeding along very nicely. And I appreciate your
05:17:56 12 time, attention, and focus today.

05:17:57 13 We'll see you in the morning about 8:45.

05:18:01 14 COURT SECURITY OFFICER: Please stand for the
05:18:03 15 jury.

05:18:03 16 (Jury out.)

05:18:37 17 THE COURT: What else to discuss for the day?

05:18:40 18 MS. GIBSON: Your Honor, just on the record, I'd
05:18:41 19 like permission to talk to the witness, just make sure he
05:18:44 20 knows not to speak to anyone else about his testimony, just
05:18:46 21 so he knows how --

05:18:46 22 THE COURT: Any concern about that?

05:18:47 23 MR. CULBERTSON: No objection.

05:18:48 24 MS. GIBSON: Thank you, Your Honor.

05:18:49 25 MR. FOWLER: Your Honor, if I could, I don't want

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05:18:51 1 to put the clerk on the spot, but could we get a time check
05:18:54 2 in terms of how much time the parties each have?

05:18:58 3 THE COURT: You have 7 hours and 52 minutes -- is
05:19:01 4 this accurate, Ms. Combs?

05:19:03 5 We'll get you an accurate count. There may need
05:19:07 6 to be some sidebar deductions. More than normal. We'll
05:19:13 7 get you an accurate count.

05:19:16 8 MR. FOWLER: Okay. Thank you, Your Honor.

05:19:17 9 THE COURT: What else?

05:19:18 10 MR. BEABER: Nothing.

05:19:20 11 MR. FOWLER: Nothing.

05:19:21 12 THE COURT: May I see you, Mr. Beaber, and you,
05:19:24 13 Mr. Fowler, at the bench?

05:19:26 14 We're off the record.

15 (Court adjourned at 5:19 p.m.)

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CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/S/ Shelly Holmes
SHELLY HOLMES, CSR, TCRR
CERTIFIED SHORTHAND REPORTER
State of Texas No.: 7804
Expiration Date: 10/31/2025

5/22/2025
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