1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE EASTERN DISTRICT OF TEXAS

3 TEXARKANA DIVISION

4 MAXELL, LTD.,)(
PLAINTIFF,)(CIVIL ACTION NO.
5)(5:23-CV-92-RWS
VS.)(TEXARKANA, TEXAS
6)(
SAMSUNG ELECTRONICS CO., LTD.,)(
7 and SAMSUNG ELECTRONICS)(MAY 22, 2025
AMERICA, INC.,)(8:32 A.M.
8 DEFENDANTS.)(

9

10 JURY TRIAL TRANSCRIPT

11 BEFORE THE HONORABLE ROBERT W. SCHROEDER III

12 UNITED STATES DISTRICT JUDGE

13 VOLUME 4

14

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08:32:55 1 P R O C E E D I N G S
08:32:55 2 (Jury out.)
08:32:55 3 COURT SECURITY OFFICER: All rise.
08:32:56 4 THE COURT: Please be seated.
08:33:03 5 Good morning, everyone.
08:33:08 6 Okay. I know there were a couple of overnight
08:33:18 7 filings, and I've had a chance to look at those. I have
08:33:22 8 not had a chance to thoroughly review the EcoFactor
08:33:29 9 decision of the Federal Circuit yesterday. I've just very
08:33:34 10 briefly looked at it. So I'm certainly not thoroughly
08:33:39 11 familiar with it, but kind of understand the broad
08:33:44 12 principles.
08:33:44 13 So whichever issue the parties wish to discuss
08:33:50 14 first is fine with me.
08:33:56 15 MR. LINDINGER: Your Honor, may I proceed?
08:34:04 16 THE COURT: Yes.
08:34:05 17 MR. LINDINGER: Michael Lindinger on behalf of
08:34:07 18 Maxell.
08:34:08 19 Our objection to DX- -- DTX-245 is pretty
08:34:14 20 straightforward. Unlike some of the other arguments that
08:34:17 21 we understand where the Court stands over this trial
08:34:22 22 regarding the IPRs, this one's different. Samsung wants to
08:34:25 23 bring up the IPR with its expert.
08:34:28 24 They admit that he hasn't discussed it or
08:34:30 25 mentioned it anywhere in his report. Not just the

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

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

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

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.

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

08:41:08 1 District Court abused its discretion by failing to exclude
08:41:12 2 expert testimony related to patent damages because the
08:41:13 3 expert relied on licenses that were insufficient on their
08:41:18 4 face to support his proposed royalty rate.
08:41:20 5 In EcoFactor, the Plaintiff's expert, there
08:41:25 6 Mr. Kennedy, relied on licenses that lacked the proposed
08:41:29 7 royalty rate on their face in testimony from a corporate
08:41:35 8 witness about how proposed royalty rates purportedly could
08:41:38 9 be calculated from them, regardless.
08:41:40 10 The Federal Circuit concluded -- and this was in
08:41:42 11 our brief last night at Page 1 -- this assertion by
08:41:47 12 Mr. Kennedy that prior willing licenses had agreed to the X
08:41:51 13 dollar royalty rate is not supported by the licenses. The
08:41:53 14 licenses individually or in combination do not support
08:41:57 15 Mr. Kennedy's opinion that the licensees were paying the X
08:42:01 16 dollar rate, agreed to pay the X dollar rate, or agreed
08:42:06 17 that the X dollar rate was a reasonable royalty.
08:42:08 18 As set forth in our Daubert motion -- and this is
08:42:11 19 on the market approach, which is his remaining opinion that
08:42:15 20 he intends to present today, we believe -- Mr. Jarosz's
08:42:18 21 licensing comparables approach relies on several license
08:42:22 22 offers, transactions, and negotiations, but none of what he
08:42:26 23 considers to be the most informative licenses that he uses
08:42:29 24 for his calculation state the rate, especially the Maxell
08:42:34 25 standard rate of 1 percent on their face.

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

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.

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

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

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.

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

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.

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

09:18:29 in August of 2005.
09:18:30 And I think what -- you tell me if I'm wrong, but
09:18:32 I think what you're trying to communicate with these
09:18:36 figures -- and the figures are all the same, right, across
09:18:39 all of these patents?
09:18:40 A. Yeah. I mean, the slide is an illustration
09:18:45 demonstrating the fact that the figures are the same.
09:18:48 There are many more figures in the patent. These are just
09:18:50 a few of them.
09:18:51 Q. Right. So that's what I want to get into is, the text
09:18:55 of the specification -- I'm not talking about the claims,
09:18:57 but the text of the specification of all of these patents
09:19:00 is identical, word for word, right?
09:19:02 A. Yes.
09:19:02 Q. And all of the figures in all of these patents, they're
09:19:05 all the same, too, not just these three, but all of them?
09:19:08 A. Yes, the description and figures is the same.
09:19:10 Q. And the named inventors are the same, right?
09:19:12 A. The named inventors, I believe so.
09:19:16 Q. Right.
09:19:17 A. I'm -- I'm not a hundred percent certain on that,
09:19:21 but -- but, yeah, I would believe so.
09:19:22 Q. The titles are all the same?
09:19:24 A. The titles are all the same -- titles, yeah, should be
09:19:29 the same.

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?

09:20:54 A. Yes.
09:20:54 Q. So since you brought this up, I thought we should get
09:20:57 this to the jury.
09:20:58 So your point to the jury is that the
09:21:00 specification -- whatever invention is described in the
09:21:02 body of the specifications, including the figures, that's
09:21:04 all the same? That's your view, right?
09:21:07 A. The disclosure is the same.
09:21:09 Q. Right.
09:21:09 A. The invention is the claims.
09:21:12 Q. Right.
09:21:13 A. Each patent has its own claims.
09:21:14 Q. I just need you to answer my questions.
09:21:17 So the question I asked you was the specification,
09:21:19 those pages and pages of description and the figures, they
09:21:23 describe the same invention, right?
09:21:25 A. The specification is the same.
09:21:27 Q. Okay. And then I think you were -- you're a little bit
09:21:30 ahead of me, but the claims are different?
09:21:33 A. The claims are different.
09:21:35 Q. Okay. So when we -- when we chat again, you would
09:21:44 acknowledge to me that you need to look at both the
09:21:46 specification and the claims to figure out what the correct
09:21:48 priority date is, right?
09:21:49 A. Sorry, could you repeat the question?

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?

09:22:58 A. Yes.
09:22:59 Q. It's a really long claim, right?
09:23:01 A. They are long claims.
09:23:02 Q. Okay. And to prove infringement of the '815 patent,
09:23:04 Maxell needs to prove that every single one of those claims
09:23:07 is found in the Galaxy representative S23 product, right?
09:23:11 A. Not at all.
09:23:12 Q. I'm sorry?
09:23:14 A. I said not at all.
09:23:16 Q. Okay. I -- perhaps you misheard me or perhaps I
09:23:20 misspoke.
09:23:20 To prove infringement of the claims of the '815
09:23:23 patent, Maxell needs to prove that every requirement of the
09:23:27 claim, like, Claim 1, is found in the Galaxy products,
09:23:33 right?
09:23:33 A. Okay. I just want to clarify the question because
09:23:36 maybe -- so you're saying that to prove infringement,
09:23:41 Maxell needs to find that -- no, sorry, the jury needs to
09:23:46 find that each claim -- I think you said each of the claims
09:23:53 I -- I think that's what I heard. So maybe that was --
09:23:56 Q. No, that's not what I --
09:23:56 A. Okay.
09:23:56 Q. Maybe I should slow down a little bit.
09:24:00 A. Sorry.
09:24:00 Q. Sometimes I talk too fast.

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

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.

09:26:04 Did I read that correctly?
09:26:05 A. Yes.
09:26:06 Q. Okay. And I've underlined character, because the Court
09:26:09 has done us a favor here -- not a favor -- but the Court
09:26:12 has told us what this word means, right?
09:26:14 A. Yes.
09:26:14 Q. And I don't -- I don't remember you actually ever
09:26:17 showing the jury what the claim construction was, but I
09:26:20 think you said that the Court had construed it, and you
09:26:22 applied it during your analysis. Is that correct?
09:26:25 A. I believe I had a slide that showed the Court's
09:26:29 construction multiple times --
09:26:31 Q. Okay.
09:26:31 A. -- in my testimony.
09:26:33 Q. Well, perhaps I'm wrong in remembering it. But
09:26:36 let's -- let's rectify that situation, in any event. Let's
09:26:40 look at the claim construction.
09:26:41 A. Okay.
09:26:42 Q. So what the Court said "character" means in this
09:26:44 patent, regardless of what it might mean elsewhere in the
09:26:49 world, but in this patent, it means a letter -- let me stop
09:26:53 there. That would be like the letter F, for example,
09:26:55 right?
09:26:55 A. Or the letter M.
09:26:57 Q. Right. Or a number, which could be 1, 10, 13, right?

09:27:00 A. Yes.
09:27:01 Q. Okay. A punctuation mark, that could be like a
09:27:04 question mark, right? Or other symbol or control code that
09:27:08 is represented to a computer by one unit of information,
09:27:11 correct?
09:27:11 A. Yes.
09:27:12 Q. So if it's any letter, number, punctuation mark,
09:27:17 symbol, but it's represented to the computer by more than
09:27:21 one unit of information, no infringement?
09:27:25 A. That's fair.
09:27:26 Q. All right. And that -- that is what Maxell decided
09:27:33 that it needed to claim in order to get around whatever
09:27:36 prior art was out there, right? This is the very specific
09:27:38 thing, very specific thing it claimed, right?
09:27:40 A. I'm not sure I agree with you on what Maxell needed.
09:27:44 This is the Court's claim construction. So that's just
09:27:46 what the Court has construed this term to mean in this
09:27:51 case.
09:27:51 Q. Right. But, regardless, if it doesn't do it in this
09:27:56 specific way as the Court construed it, no infringement,
09:27:59 right?
09:27:59 A. That is fair.
09:28:00 Q. Okay. So let's look at one of your demonstratives from
09:28:05 yesterday.
09:28:07 MR. FOWLER: PDX-7-44.

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

09:29:16 it's --
09:29:16 Q. It's like the tip of your finger, right?
09:29:18 A. That's -- now you're starting to sound technical. But
09:29:23 just as end of the finger, it could be here -- I don't
09:29:29 know. It depends on what context you're asking me that
09:29:32 question.
09:29:35 Q. Okay. Now, regardless of whether you know what the end
09:29:39 of a finger is --
09:29:41 A. Uh-huh.
09:29:41 Q. -- in this picture that you showed the jury, the end of
09:29:46 the finger is pointing to that icon; is that correct?
09:29:51 A. Yeah, it's pointing to the icon. It's pointing to the
09:29:58 title. It's generally pointing to --
09:30:02 Q. Well, that's -- okay. I'm sorry, were you done?
09:30:04 A. I am done.
09:30:05 Q. Okay. So just to be clear, it matters in this case
09:30:14 whether the user's finger is pointing at the -- the icon,
09:30:18 which we can call a thumbnail, right?
09:30:21 A. You can call it a thumbnail if you like.
09:30:23 Q. It matters in this case whether it's pointing at the
09:30:26 thumbnail or the text under it, right?
09:30:28 A. What matters is whether the user can select the text to
09:30:37 perform the actions required.
09:30:39 Q. Okay. So we just need you to be clear. I'm just
09:30:41 asking you about what your opinion is.

09:30:43 A. Yeah.
09:30:43 Q. We're going to hear from Dr. Kia later. We just need
09:30:46 to understand what your opinion is.
09:30:48 So for this Claim Limitation 1[j], when you put
09:30:53 that finger there, is the finger selecting the thumbnail,
09:30:59 or is the finger selecting the words below it?
09:31:03 A. In this case, it's selecting the -- the character.
09:31:08 It's selecting "F" in favorites.
09:31:12 Q. Okay. And just, by the way, so I can not just keep
09:31:15 saying the thumbnail, what -- what is --
09:31:18 A. That's Yoshi.
09:31:19 Q. Yoshi --
09:31:19 A. No, actually, I'm not sure if it's Yoshi.
09:31:26 Q. Can we just call him Yoshi just so we can --
09:31:26 A. Sure.
09:31:26 Q. -- we can call him anything you want, but can I call
09:31:29 him Yoshi for right now?
09:31:29 A. Sure.
09:31:29 Q. Is that fair?
09:31:30 A. Yes.
09:31:31 Q. So your testimony to the jury today for Claim
09:31:37 Limitation 1[j] is that the user is not selecting the
09:31:41 thumbnail but is instead selecting the word "favorites"
09:31:47 below it. Is that right?
09:31:48 A. That was a slightly convoluted question.

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

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

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.

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.

09:36:35 Q. Not by and large. You were supposed to -- if there was
09:36:37 some infringement, you were supposed to identify it in your
09:36:41 report.
09:36:41 A. I was supposed to identify at least one infringement.
09:36:48 Q. Okay.
09:36:48 MR. FOWLER: So let's -- let's pull up, if we
09:36:50 could, Paragraph 223 at Page 274 of your report. And if we
09:36:56 could blow up that heading.
09:36:57 Q. (By Mr. Fowler) So just to orient the jury, this is
09:36:59 your expert report, correct, sir?
09:37:01 A. Yes.
09:37:02 Q. Do you need a minute to find that page?
09:37:05 A. I do.
09:37:07 Q. Okay.
09:37:08 A. What page number did you say?
09:37:09 Q. It's 274, Paragraph 223 and the heading above it. Let
09:37:14 me know when you're ready.
09:37:16 A. 274. Yes.
09:37:33 Q. Okay. Now, this is just to orient ourselves. So this
09:37:37 is the part of your opinion or your report where you're
09:37:41 explaining how the Galaxy S23 allegedly infringes Claim
09:37:47 Limitation 1[j]. You see that at the top?
09:37:50 A. 274. Yes.
09:38:00 Q. Okay.
09:38:01 A. Yes.

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.

09:39:26 A. Okay.
09:39:35 Q. Don't worry, we're going to look at some other
09:39:38 paragraphs, too. But let's focus on this paragraph.
09:39:41 A. Uh-huh.
09:39:42 Q. You're saying here that for this claim element, the
09:39:45 user is selecting the thumbnails, right?
09:39:52 Sir, can you answer my question?
09:39:54 A. Right. Yes, yes.
09:39:55 Q. Okay.
09:39:55 MR. FOWLER: And let's -- if we could flip back to
09:39:57 the demonstrative a minute.
09:39:58 Q. (By Mr. Fowler) And that paragraph we were looking at
09:40:03 says thumbnails on the left.
09:40:05 So just to make sure we're talking about the same
09:40:07 thing, that's those thumbnails that are running up and down
09:40:10 on the left of the phone, right?
09:40:11 A. That is correct, counsel, but --
09:40:13 Q. Excuse me?
09:40:14 A. Sorry.
09:40:14 Q. Did you -- I just asked you, yes or no, and you said
09:40:17 correct. Is that your answer?
09:40:20 A. I was giving you a complete answer. You can ask me a
09:40:26 question again if you'd like.
09:40:27 Q. This is a -- we've got to -- your counsel will have an
09:40:31 opportunity to ask you questions.

09:40:32 A. Okay.
09:40:33 MR. FOWLER: Let's go back to the report again for
09:40:34 a second, if we could.
09:40:36 Q. (By Mr. Fowler) That same -- it says: The user
09:40:38 selects an album from the first area, the thumbnails in the
09:40:41 left column. So the thumbnails in the left column --
09:40:44 MR. FOWLER: Let's go back to the -- the
09:40:46 demonstrative.
09:40:48 Q. (By Mr. Fowler) Okay. The thumbnails in the left
09:40:52 column are the ones that are running up and down on the
09:40:55 side of the phone, right? Yes or no?
09:40:59 A. Yes, as an additional example. That's how Paragraph
09:41:05 226 starts.
09:41:05 Q. Okay. Well, let's -- let's look at another company.
09:41:09 A. Okay.
09:41:09 MR. FOWLER: So let's go to Paragraph -- the very
09:41:11 next paragraph in your report, Paragraph 227 on Page 277.
09:41:26 Blow that up.
09:41:26 Q. (By Mr. Fowler) It says: In the above image, the blue
09:41:28 rectangle shows a second area displaying thumbnails
09:41:31 corresponding to at least a portion of the plurality of
09:41:34 stored video information for the selected folder on the
09:41:37 left column thumbnails.
09:41:39 Okay. So, again, we're not focusing on the second
09:41:42 area part, we're focussing on the end of it.

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

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

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.

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?

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.

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?

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?

09:50:44 A. Yes.
09:50:45 Q. Okay.
09:50:45 A. Each character is a unit of information.
09:50:47 Q. I'm not good at either spelling or math, but I'm pretty
09:50:51 sure favorites has nine letters in it; is that right?
09:50:53 A. Yes, yes.
09:50:54 Q. So if the user is trying to select the word
09:50:57 "favorites," that's nine -- I don't have enough fingers --
09:51:00 nine units of information, right?
09:51:02 A. Yes.
09:51:02 Q. And that's eight too many to infringe that -- this
09:51:06 claim, right?
09:51:11 A. The user can select any one of those letters.
09:51:13 Q. We'll get to that in a second.
09:51:15 But if the user is trying to select the word,
09:51:17 that's nine units of information, not eight -- I mean, not
09:51:21 one, right?
09:51:22 A. The claim speaks of the ability to select even one of
09:51:28 those characters, any one of them.
09:51:30 Q. We'll get to your idea that somehow the user is looking
09:51:34 for the F. But if the user is instead looking for the
09:51:37 entire word, that's nine units of information, right?
09:51:40 A. Yes --
09:51:41 Q. Okay.
09:51:41 A. -- that is.

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?

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

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

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

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

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?

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?

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

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?

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.

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.

10:05:47 A. Uh-huh.
10:05:47 Q. Dr. Kia is going to be talking about this.
10:05:49 A. Yeah.
10:05:50 Q. Do you know whether the phone that you tested had
10:05:53 Netflix actually pre-installed on it?
10:05:55 A. It is my opinion that Netflix was pre-installed on it.
10:05:59 Q. Okay. Well, we'll take a look at that maybe tomorrow.
10:06:01 So let's -- let's go to Claim 21 that relies on
10:06:09 Netflix.
10:06:09 MR. FOWLER: And if we could pull that up and look
10:06:11 at Claim Limitation -- we're going to look at two claim
10:06:15 limitations. Let's look at this one first -- 21[b], which
10:06:18 starts with "a display displaying." If we could -- that's
10:06:21 not it. There we go.
10:06:25 Q. (By Mr. Fowler) So this claim limitation says: A
10:06:27 display displaying a first user interface for a user to
10:06:31 select a user profile from among a plurality of user
10:06:36 profiles using a first user profile associated with a first
10:06:39 character and a second user profile associated with a
10:06:41 second character.
10:06:42 Did I read that correctly, sir?
10:06:43 A. Yes.
10:06:44 Q. And just again, for the -- to remind the jury, the
10:06:48 Court's construed that word "character," so let's look at
10:06:51 that claim construction again, which is: A letter, number,

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,

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

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,

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].

10:11:49 MR. FOWLER: If we could put that up on the
10:11:51 screen, please?
10:11:51 Q. (By Mr. Fowler) So this claim limitation says: The
10:11:53 second user interface being associated with the first user
10:11:57 profile and displaying the first character, the first
10:12:00 character associated with the first group of video
10:12:02 information and indicating an identity of the user with the
10:12:07 first user profile is associated with.
10:12:10 Did I read that correctly?
10:12:12 A. Yes.
10:12:12 Q. And, again, we have the Court's construction of
10:12:15 character. Do you see that?
10:12:17 A. Yes.
10:12:17 Q. Okay. Now, let's look at one of the slides that you
10:12:20 showed the jury yesterday.
10:12:22 MR. FOWLER: PDX-7-78?
10:12:26 Q. (By Mr. Fowler) Do you recognize this as a slide that
10:12:29 you showed in connection with your argument as to why Claim
10:12:34 Limitation 21[f] is infringed?
10:12:36 A. Yes.
10:12:36 Q. So on the right side of the screen, we see the Netflix
10:12:40 home screen, correct?
10:12:42 A. On -- yes.
10:12:43 Q. And --
10:12:44 A. On the left side of the screen.

10:12:49 Q. The right side of the screen is the home screen, right?
10:12:53 A. Maybe you can refer to it as the first user interface
10:12:58 or the second user interface. That might be clearer than
10:13:02 left or right.
10:13:04 Q. Okay. So -- well, just to be clear, you identified
10:13:08 what's on the right, that imagine of the phone as the
10:13:12 second user interface, correct?
10:13:14 A. Yes.
10:13:14 Q. Okay. And then you're the one that enlarged -- I
10:13:18 didn't do this. You enlarged the icon that has the blue
10:13:25 and then what looks like -- it almost looks like a cookie,
10:13:30 but it's brown with the lettering Miyagi-Do Karate. You
10:13:38 enlarged that, right?
10:13:39 A. Yes.
10:13:40 Q. Okay. Now, that's -- that's an -- that's an icon,
10:13:42 right?
10:13:42 A. It is a profile icon, yes.
10:13:47 Q. Okay. Now, unlike what we saw earlier where we saw a
10:13:52 thumbnail with some letters that were below the thumbnail,
10:13:56 there's no -- there's no lettering Miyagi-Do Karate below
10:14:02 this icon, correct?
10:14:02 A. I see Miyagi-Do character there, that you can see the
10:14:04 letters Miyagi-Do right there.
10:14:06 Q. It wasn't my question.
10:14:08 A. Okay.

10:14:08 Q. So we see what's in the icon?
10:14:10 A. Yes.
10:14:10 Q. But unlike the thumbnail that we saw earlier, when you
10:14:15 go back and you look at the actual phone, underneath the
10:14:18 icon, there's no separate letters below that for anybody to
10:14:21 select. Right?
10:14:21 A. Additional letters, in this image, no.
10:14:25 Q. Okay. Now, this thing that's in the black thing,
10:14:33 the -- with the blue image and the brown circle with the
10:14:36 lettering, that is a single graphic image, right?
10:14:41 A. In this context, it's actually a predefined Netflix app
10:14:49 that has a letter M for Miyagi-Do, and it's represented by
10:14:54 a unit of information.
10:14:57 MR. FOWLER: Your Honor, I'd move to strike that
10:14:59 as nonresponsive.
10:15:00 THE COURT: I'll sustain. Sustain the objection,
10:15:02 strike the answer, and instruct the jury to disregard.
10:15:05 Q. (By Mr. Fowler) Okay. My question to you was not at
10:15:07 all what you just said.
10:15:08 A. Sorry.
10:15:09 Q. The question is that icon is a single integrated
10:15:14 graphical image, correct?
10:15:15 A. It is.
10:15:16 Q. And that graphical image is displayed on the screen by
10:15:23 pixels, correct?

10:15:24 A. It is.
10:15:25 Q. And displaying this image requires hundreds, if not
10:15:29 thousands, of pixels, correct?
10:15:31 A. Yes.
10:15:31 Q. And each pixel is represented by at least three bytes
10:15:35 or units of information representing the combination of the
10:15:38 colors red, green, and blue, correct?
10:15:42 A. Here, I disagree with the last part you said.
10:15:44 Q. Okay. What part do you agree with?
10:15:48 A. Most of it.
10:15:49 Q. Okay. So let's break that down.
10:15:52 Each pixel is represented by three bytes of
10:15:54 information; is that correct?
10:15:55 A. Each pixel is stored as three bytes of information.
10:16:01 Q. Okay. And so collectively, though, this image is
10:16:05 represented by hundreds or thousands of pieces of
10:16:10 information; is that correct?
10:16:11 A. Depends on how it's being represented.
10:16:14 Q. Okay. But it's in the range of hundreds or thousands;
10:16:18 is that right?
10:16:18 A. In the case of Netflix, it's just a number. One
10:16:22 number.
10:16:22 Q. That's not what I asked you. I asked you the -- the
10:16:25 pixels that are displaying this actual image, there's
10:16:30 hundreds or thousands of them being used here, right?

10:16:32 A. No, 455 to be precise.
10:16:35 Q. Okay. Well, 455 is more than 1, right?
10:16:37 A. Sorry?
10:16:37 Q. 455 is more than 1?
10:16:40 A. Yes.
10:16:42 Q. Okay.
10:16:42 MR. FOWLER: Your Honor, I have no further
10:16:43 questions. I pass the witness.
10:16:45 THE COURT: All right. Mr. Siddiqui?
10:16:49 Mr. Siddiqui, how much time do you think you have? We've
10:16:51 been going --
10:16:53 MR. SIDDIQUI: Maybe 10 minutes, Your Honor.
10:16:54 THE COURT: Okay. 10 minutes, we okay for 10 more
10:16:58 minutes?
10:17:00 Okay. Mr. Siddiqui, please proceed.
10:17:05 REDIRECT-EXAMINATION
10:17:05 BY MR. SIDDIQUI:
10:17:08 Q. Thank you for your patience, Professor Singh.
10:17:14 So you recall counsel for Samsung asking you
10:17:17 questions about Claim Element 1[j]?
10:17:20 A. Yes.
10:17:21 Q. You recall counsel for Samsung putting a snippet from
10:17:24 one portion of your report talking about selecting
10:17:26 thumbnails?
10:17:27 A. Yes.

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

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

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.

10:21:15 THE COURT: Is it beyond the scope of cross?
10:21:17 MR. SIDDIQUI: Talking about -- I'm allowed to
10:21:19 talk about source code, Your Honor.
10:21:21 Q. (By Mr. Siddiqui) So, Professor Singh, is source code
10:21:25 necessary to see if a character "F" or a character "C" is
10:21:28 being selected?
10:21:30 A. No, you can just perform -- perform the action. And if
10:21:35 it behaves as you expect it to behave, it's responding.
10:21:43 MR. SIDDIQUI: Let's go to Claim Element 21[b],
10:21:47 Mr. Ebersole, if we can have that demonstrative? Just one
10:21:51 second, I'll give you the number. PDX-007-78 -- 78.
10:22:37 Q. (By Mr. Siddiqui) Professor Singh, do you recall this
10:22:39 slide?
10:22:39 A. I do.
10:22:44 MR. SIDDIQUI: 21[b] -- sorry, 21[b].
10:22:47 Mr. Ebersole, sorry, can you go back a few slides,
10:22:53 21[b]? Yeah. Sorry, one more. One more. One more. One
10:23:03 more. This is it. Sorry.
10:23:05 Q. (By Mr. Siddiqui) Sorry, Professor Singh. I got the
10:23:07 number wrong. It was 70.
10:23:10 Do you recall being asked questions about Claim
10:23:12 Element 21[b] and selection of profiles and characters?
10:23:15 A. I do.
10:23:15 Q. Does Dr. Kia dispute that the Netflix app running on
10:23:19 Samsung meets these claim elements?

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.

10:24:28 THE COURT: Anything else, Mr. Siddiqui?
10:24:32 MR. SIDDIQUI: No.
10:24:32 THE COURT: All right. Mr. Fowler, recross?
10:24:35 MR. FOWLER: Super briefly. I'll use the
10:24:47 microphone.
10:24:51 RECROSS-EXAMINATION
10:24:51 BY MR. FOWLER:
10:24:51 Q. So just to be clear, you haven't changed any of the
10:24:54 answers that you gave in response to my questions to you?
10:24:56 You're not changing any of the testimony you gave, right?
10:24:58 A. No.
10:24:59 Q. Okay. So let's look at only two things that counsel
10:25:02 just showed you.
10:25:06 Let's go back to your expert report at Paragraph
10:25:11 223 --
10:25:19 MR. FOWLER: If we could pull that up, please.
10:25:21 And, in particular, I'd like to look at the top of Page --
10:25:21 there you go -- the top of Page 275.
10:25:27 Q. (By Mr. Fowler) What counsel showed you was it says a
10:25:28 user's selection of the first character. Now, that first
10:25:31 character is referring to the claim language, right? Are
10:25:34 you with me, Dr. Singh.
10:25:37 A. I'm getting there, counsel.
10:25:38 Q. Okay. It's on the screen if you'd like.
10:25:41 A. Oh, yes, sorry.

10:25:42 Q. Okay. So a user selection of the first character, the
10:25:45 character there you're referring to is the claim language,
10:25:47 right?
10:25:48 A. Yes.
10:25:49 Q. Okay. And then you said, i.e., and, i.e. is -- means
10:25:54 now you're going to define what the first character is that
10:25:58 you're talking about, right? That's what i.e. means?
10:26:01 A. Yes.
10:26:02 Q. Okay. So what did you say? You said a user selecting
10:26:06 the favorites album, right?
10:26:09 A. Uh-huh.
10:26:10 Q. The album?
10:26:11 A. Uh-huh.
10:26:12 Q. That's the thumbnail, right?
10:26:14 A. It has been established in -- in claim elements prior
10:26:23 what is being -- what is being selected.
10:26:28 Q. So is that a yes or a no?
10:26:30 A. No, the favorites album, the favorites album has the
10:26:33 letter F as part of it.
10:26:35 Q. Well, the thumbnail doesn't, right?
10:26:36 A. The thumbnail, but the favorites album is that entire
10:26:41 first classification. If you -- if you remember going
10:26:43 back, you can go back many slides in my testimony, go back
10:26:50 earlier to claim elements, I talked about -- very clearly,
10:26:53 I remember telling the jury there's a first character, the

10:26:56 title, and there's the icon -- the thumbnail for the album,
10:27:03 and that together they comprise a first classification of
10:27:07 an album, and that's the album that I'm talking about.
10:27:10 MR. FOWLER: Your Honor, I asked him a yes-or-no
10:27:12 question. I move to strike.
10:27:14 THE WITNESS: Your Honor, I --
10:27:15 THE COURT: Hold on just a moment. Let me read
10:27:18 the question.
10:27:20 I'm going to have to strike your answer and
10:27:22 instruct the jury to disregard it.
10:27:24 Mr. Fowler, just ask your question again.
10:27:26 To the extent that you could just focus on the
10:27:29 question.
10:27:29 THE WITNESS: Okay.
10:27:30 THE COURT: If you can't give a yes or no, just
10:27:32 tell that to Mr. Fowler, and he can either change the way
10:27:38 he asks the question or...
10:27:40 THE WITNESS: No problem, Your Honor. It's just
10:27:43 that some questions cannot be answered in a yes-or-no
10:27:47 without context.
10:27:48 THE COURT: It's fine. Move along, Mr. Fowler.
10:27:48 MR. FOWLER: Thank you. And I'll try to close
10:27:51 this out quickly, Your Honor.
10:27:52 So if we could just move that bottom part to the
10:27:55 top and then show that at the top and then show what

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?

10:29:02 A. Yes, the album is the thumbnails.
10:29:05 Q. And so --
10:29:06 A. Yes.
10:29:07 Q. Okay. And in Paragraph 223, when you say "the
10:29:11 favorites album," you're talking about the same album as in
10:29:15 Paragraph 226, right?
10:29:17 A. Yes. With the word "favorites" with the character with
10:29:20 the title, together they form the album.
10:29:23 Q. Well, I think now -- now I'm hearing something new.
10:29:26 Before you said -- in your report, you said it was
10:29:30 the thumbnail. Then today you said, well, no, it's not the
10:29:34 thumbnail because the thumbnail is not a character under
10:29:36 the Court's construction, and if it was the thumbnail, it
10:29:40 wouldn't infringe. Then you said it's the favorites.
10:29:44 Are you now saying it's the combination of the
10:29:46 thumbnail and the favorites?
10:29:46 A. What's the question, counsel?
10:29:48 Q. That -- what -- that. Is it -- is it your -- is it
10:29:50 your new opinion, for the first time now, that the
10:29:55 character of the claim is the combination of the thumbnail
10:29:58 and the letters below it?
10:30:00 A. No, counsel.
10:30:01 Q. Okay. I didn't think so. Thank you.
10:30:05 So let's go to the last question I have, which is
10:30:09 what you were shown for the graphic 778.

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

10:31:12 BY MR. SIDDIQUI:
10:31:12 Q. Professor Singh, briefly, 1[j], you were explaining
10:31:15 something to the jury. The claim requires -- is it correct
10:31:18 that the claim requires both -- both a thumbnail and a
10:31:21 first character? The claim language itself?
10:31:23 A. The claim language simply requires a character.
10:31:27 Q. But the full -- full claim language --
10:31:29 A. The full claim language talks about thumbnails going
10:31:32 forward.
10:31:33 Q. And you were teaching the jury about albums and how you
10:31:36 had opined. Would you like to complete your answer?
10:31:42 A. That's right. I simply was talking about the fact
10:31:45 that, as I have mentioned, the claims have language that
10:31:46 talk about a first character, the favorites, title, there's
10:31:51 a thumbnail for that -- an icon for that. And then
10:31:59 together they form what was -- the claim refers to as a
10:32:02 first classification. That is the favorites album.
10:32:04 Q. You weren't saying that the album and the text was a
10:32:09 character; you were saying that was the classification.
10:32:12 Correct?
10:32:12 A. That is correct.
10:32:13 MR. FOWLER: Objection, leading.
10:32:16 Q. (By Mr. Siddiqui) Professor Singh, do you recall being
10:32:18 asked questions about Claim Element 21[b] about
10:32:21 something -- about phone needing to do detection?

10:32:24 A. Something about the phone detecting user touches?
10:32:31 Q. Yeah.
10:32:31 A. Yes.
10:32:32 Q. Just -- just right before I got up, counsel was asking
10:32:36 you something about the phone is seeking for a detection of
10:32:42 a character?
10:32:42 A. Yes, I recall that.
10:32:43 Q. Is the word "detection" in the claim?
10:32:47 A. No.
10:32:48 MR. SIDDIQUI: Nothing further, Your Honor.
10:32:49 MR. FOWLER: No, Your Honor. Nothing further.
10:32:51 THE COURT: You may step down.
10:32:52 THE WITNESS: Thank you.
10:32:53 THE COURT: All right. Ladies and gentlemen of
10:32:54 the jury, thanks for your attention and focus this morning.
10:32:59 We'll take our morning recess at this time. We will --
10:33:03 we'll take about 15 minutes.
10:33:06 COURT SECURITY OFFICER: All rise.
10:33:09 (Jury out.)
10:33:10 THE COURT: Please be seated.
10:33:47 MR. FOWLER: Your Honor, may I return?
10:33:49 THE COURT: Of course.
10:33:53 On the issue of the EcoFactor decision, did we
10:33:57 lose Mr. Levy?
10:33:59 MR. LEVY: I'm back in, Your Honor.

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?

10:36:00 MR. LEVY: No, Your Honor.
10:36:03 THE COURT: Okay. We'll take a short recess.
10:36:05 COURT SECURITY OFFICER: All rise.
10:36:06 (Recess.)
10:53:52 (Jury out.)
10:53:52 COURT SECURITY OFFICER: All rise.
10:53:52 THE COURT: Mr. Savage, if you would have the jury
10:54:00 brought down, please?
10:54:37 (Jury in.)
10:54:39 THE COURT: Please be seated.
10:54:55 Maxell may call its next witness.
10:55:05 MR. LEVY: Your Honor, Maxell calls its next --
10:55:08 its next witness, Mr. John Jarosz.
10:55:21 (Witness sworn.)
10:55:29 THE COURT: Have a seat.
10:55:39 MR. LEVY: Kfir Levy on behalf of Maxell,
10:55:42 Your Honor.
10:55:42 THE COURT: Mr. Levy, you may need to move that
10:55:45 microphone toward you.
10:55:47 MR. LEVY: How is that?
10:55:49 THE COURT: A little better.
10:55:50 MR. LEVY: I'll try to stand closer, Your Honor.
10:55:52 If I may?
10:55:53 THE COURT: Yes.
10:55:55 JOHN C. JAROSZ, PH.D., PLAINTIFF'S WITNESS, SWORN
10:55:55

10:55:55 1 DIRECT EXAMINATION

10:55:56 2 BY MR. LEVY:

10:55:56 3 Q. Good morning, Mr. Jarosz. Can you please state your

10:56:00 4 full name for the record?

10:56:00 5 A. John C. Jarosz.

10:56:02 6 Q. And what do you do for a living, Mr. Jarosz?

10:56:03 7 A. I'm an economist.

10:56:05 8 Q. And why are you here today?

10:56:06 9 A. I was asked by Maxell to provide my expert opinion on

10:56:09 10 the amount of money that should be paid by Samsung to

10:56:12 11 Maxell if the jury finds that the patents are valid,

10:56:17 12 enforceable, and infringed. In short, I'm asked to provide

10:56:20 13 my testimony on damages.

10:56:22 14 Q. Do you specialize in any particular area of economics?

10:56:25 15 A. Most of my work is in the economics of intellectual

10:56:30 16 property protection. Intellectual property is what is

10:56:34 17 embodied -- what embodies patents, trademarks, trade

10:56:39 18 secrets, and copyrights. Most of my work has to do with

10:56:43 19 determining damages or compensation when one party has

10:56:48 20 infringed the rights of another.

10:56:50 21 Q. Do you work on your own or with a company?

10:56:53 22 A. I work with a company, which is called Analysis Group,

10:56:56 23 Incorporated.

10:56:57 24 Q. And what is Analysis Group?

10:56:58 25 A. We're a large private economic financial strategy and

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

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?

10:59:31 A. Yes. I also have a law degree, a JD from the
10:59:35 University of Wisconsin, which is in Madison, Wisconsin.
10:59:38 There I took quite a number of courses in the economics
10:59:41 department and courses in the law school that focused on
10:59:44 the intersection of topics having to do with law and
10:59:48 economics.
10:59:48 Q. Are you licensed as a -- as an attorney?
10:59:50 A. I've been a member of the State Bar of Wisconsin for
10:59:54 the last 39 years, but I have been on inactive status that
10:59:57 whole time.
10:59:58 Q. Have you ever practiced as a lawyer?
11:00:01 A. No.
11:00:01 Q. So have you practiced as an economist your entire
11:00:05 professional career?
11:00:06 A. I have practiced as an economist. I happen to have a
11:00:07 law degree, but I'm a practicing economist.
11:00:09 Q. Are you a member of any professional organizations or
11:00:12 associations?
11:00:14 A. I am. And those are listed on the slide on the screen.
11:00:17 I've been active in several of those and a member of all of
11:00:22 those. The ones I've been somewhat active in are the
11:00:27 American Economic Association, the American Law and
11:00:29 Economics Association, the Licensing Executive Society, and
11:00:31 in recent years, I've been fairly active in the Sedona
11:00:36 Conference.

11:00:36 Q. What is the Sedona Conference?
11:00:39 A. It's a group of economists, lawyers, and judges who get
11:00:43 together to, what they say is move the law forward in a
11:00:48 just and reasonable fashion. We try to find ways to
11:00:51 improve the delivery of services associated with
11:00:53 interpretation of the law.
11:00:55 The work that I've been more involved with than
11:00:58 any others is the evaluation and presentation of patent
11:01:01 damages, which is the topic I'm here today on.
11:01:04 Q. How else do you keep active in the field?
11:01:07 A. I fairly regularly give speeches to a variety of
11:01:12 organizations, and I research and publish articles in
11:01:16 professional and academic journals.
11:01:19 Q. Have you taught classes or given presentations on those
11:01:23 topics?
11:01:24 A. Yes. I've taught at several, including the Georgetown
11:01:28 University Law Center, the George Washington University law
11:01:32 school, the University of Pennsylvania economics department
11:01:34 and law school, and the United States Patent and Trademark
11:01:37 Office.
11:01:37 Q. And, in general, how many matters have you worked on as
11:01:40 an economic expert?
11:01:42 A. Over the years, I've been involved in more than 500
11:01:45 matters. I've provided testimony in court like this or in
11:01:49 arbitration on about 120 occasions.

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

11:03:02 screen now.
11:03:03 I've reviewed quite a number of materials I've
11:03:06 produced.
11:03:07 I've reviewed materials that were produced by the
11:03:10 parties in this case, financial data, marketing materials,
11:03:15 internal documents about their business.
11:03:19 I've reviewed the patents.
11:03:21 I've also gathered information from the public
11:03:24 domain to understand more about the business and the
11:03:26 companies.
11:03:27 I've read deposition testimony that was provided
11:03:30 by the witnesses in this case.
11:03:33 I have looked at license agreements.
11:03:36 I have had discussions with Maxell personnel.
11:03:41 I've read the expert reports that have been
11:03:43 submitted in this case.
11:03:45 And, of course, I've applied my experience that
11:03:49 I've gathered over the last roughly 40 years of doing this
11:03:53 work to assess the evidence that I've looked at.
11:03:57 Q. And have you been following the court proceedings so
11:04:00 far?
11:04:00 A. I have. I've been in the courtroom for most of the
11:04:03 proceedings, not -- not all of them.
11:04:06 Q. As part of your assignment in this case, did you form
11:04:09 an opinion on whether the patents here are valid or

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 a 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

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.

11:07:05 Q. And when is the hypothetical negotiation in this case?
11:07:06 A. In the 2015/2016 time period. Specifically, I've
11:07:12 chosen March of 2015.
11:07:14 Q. And what was March 2015 based on?
11:07:17 A. That's the point at which the '086 patent issued. So
11:07:21 it was the first of the three patents. It issued as -- as
11:07:24 of that point in time, I understand that Samsung was
11:07:27 selling products that are alleged to infringe the '086
11:07:31 patent. So that's what we say is the point of first
11:07:34 alleged infringement.
11:07:36 Q. So as of March 2015, is it your understanding that
11:07:39 Samsung was infringing the '086 patent?
11:07:41 A. So to speak. It was a little bit complicated because
11:07:46 at that point, there was a license between Maxell and
11:07:49 Samsung, which the jury has heard about. There was a
11:07:52 license that was agreed upon in 2011. It covered several
11:07:59 rights, and one part of that was the '086 patent. It did
11:08:01 not cover the other two patents, but it did cover the '086.
11:08:04 But that license was scheduled to and did terminate in
11:08:09 March of 2016. So -- I'm sorry, in 2016.
11:08:15 So March 2015 was immediately before that license
11:08:19 was about to terminate and the rights were no longer freely
11:08:24 granted from Maxell to Samsung.
11:08:26 Q. Did your analysis consider evidence after March 2015?
11:08:29 A. It did. I adopted -- what we often do in patent

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

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

11:11:17 same.

11:11:18 And I've employed, as has Ms. Davis, this Book of

11:11:25 Wisdom. So we've considered how history has unfolded.

11:11:28 So whether it's 2015 or 2016 doesn't have a

11:11:31 material impact on the outcome for me, and Ms. Davis has

11:11:35 written that it does not have a material impact for her

11:11:37 either.

11:11:38 THE COURT: I'm sorry, I hate to interrupt. Could

11:11:40 I ask you to slow down just a little bit.

11:11:42 THE WITNESS: I'm sorry, Your Honor.

11:11:44 THE COURT: Thank you.

11:11:45 THE WITNESS: Sometimes I find this so exciting.

11:11:47 THE COURT: Well, I know it's riveting material.

11:11:51 THE WITNESS: I'm sorry.

11:11:51 THE COURT: That's all right.

11:11:52 Q. (By Mr. Levy) Mr. Jarosz, could you remind the jury

11:11:55 what patent rights are being asserted in this case?

11:11:57 A. Yes. It's shown on the screen. The '086 patent, to my

11:12:02 understanding, generally covers fingerprint and TrustZone.

11:12:09 The '848 patent generally covers facial recognition for

11:12:13 Gallery. And the '815 patent generally covers personalized

11:12:17 video content, for example, as embodied in Netflix and

11:12:22 Gallery.

11:12:23 I think the technical experts have talked about

11:12:25 each one of the patents in some detail.

11:12:27 1 Q. And did you consider the testimony of Maxell's
11:12:29 2 technical experts in this case?
11:12:30 3 A. I did.
11:12:31 4 Q. Could you tell us your understanding of the importance
11:12:35 5 of the patents at issue to Samsung's smartphones and
11:12:39 6 tablets?
11:12:39 7 A. The asserted patents are very important to succeed in
11:12:43 8 the business place. They're very important to the Samsung
11:12:47 9 products. The '086 is represented to be a critical
11:12:52 10 building block. The '848 is essential for the accused
11:12:57 11 functionalities. And the '815 patent is critical to
11:13:00 12 provide personalized user experiences.
11:13:02 13 Q. And is this your opinion based on your own technical
11:13:06 14 analysis?
11:13:07 15 A. No. Again, I'm not a technical expert, but it's the
11:13:11 16 opinion put forward by the three technical experts that I
11:13:14 17 think the jury has heard from over the last couple days.
11:13:17 18 Q. Now, how did you ultimately calculate the total
11:13:21 19 reasonable royalty that Samsung should pay to Maxell?
11:13:24 20 A. It's straightforward. That is, we looked at the -- we
11:13:30 21 count up the number of accused units, so how many products
11:13:34 22 that Samsung sold are alleged of -- alleged to be
11:13:38 23 infringing of these patents.
11:13:39 24 We multiply that number of products by a rate per
11:13:44 25 unit. That is how much should be paid for each infringing

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

11:15:27 1 of sales up through the beginning of trial.
11:15:29 2 Q. And what is the average selling price for these accused
11:15:33 3 Samsung products?
11:15:34 4 A. It's shown on the screen. For smartphones, it's
11:15:38 5 roughly $484, and for tablets, it's roughly $210. Those
11:15:45 6 are -- that's the average selling price that's realized by
11:15:49 7 Samsung.
11:15:49 8 So Samsung sometimes sells directly to consumers.
11:15:54 9 Sometimes it sells through carriers, its business partners,
11:15:54 10 like AT&T and Verizon.
11:15:56 11 So the ultimate price that we as consumers pay may
11:16:02 12 be more than $484 because some money goes to Verizon, for
11:16:02 13 instance.
11:16:09 14 But these numbers I've shown on -- I'm showing on
11:16:11 15 the screen are the revenues that come to Samsung for the
11:16:14 16 products over the time period that we're talking about.
11:16:16 17 Q. And how did you calculate the average selling price for
11:16:19 18 the products?
11:16:20 19 A. I simply divided the revenues by the units.
11:16:24 20 Q. What is the start of damages date in this case?
11:16:37 21 A. I began counting damages up starting July 7th, 2021.
11:16:43 22 Q. And why did you start counting damages on that date?
11:16:47 23 A. That's the point at which Sam -- that Maxell sent a
11:16:52 24 letter to Samsung informing Samsung that Maxell was of the
11:16:57 25 belief that certain of its patents, including these three,

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?

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

11:20:13 the volumes are roughly the same across the patents and, of
11:20:18 course, identical for the '848 and '815.
11:20:23 Q. Thank you, Mr. Jarosz.
11:20:25 Sorry, get closer to the microphone.
11:20:27 Could you please now walk us through the royalty
11:20:29 calculations for the smartphones? As an example, let's do
11:20:32 the '086 patent.
11:20:35 A. Yes. So we take our accused units, although I see the
11:20:40 way we printed that out, the accused units look funny with
11:20:44 that 7 there at the bottom, but it's 120,341,257. And for
11:20:49 the '086 for smartphones, I multiply that by the 35 cents
11:20:55 that I showed on the previous slide to arrive at a total
11:20:59 damages for that patent for smartphones of about $42.1
11:21:06 million.
11:21:06 Q. Thank you.
11:21:07 And could you do the same for tablets for the '086
11:21:10 patent, just walk us through the math?
11:21:11 A. Right. For the '086 patent, it's about 8.3 million
11:21:14 accused units for tablets. It's -- the rate is 25 cents
11:21:18 per unit. And the number for tablets for the '086 is about
11:21:23 $2.1 million.
11:21:24 Q. Thank you.
11:21:26 And then how did you arrive at your final damages
11:21:29 conclusion?
11:21:29 A. I did that same calculus across the product types,

11:21:35 meaning smartphones and tablets, and across the patents.

11:21:38 So you'll see the table on the screen showing us

11:21:42 that for smartphones across the three patents, that damages

11:21:49 number is $122.8 million. For tablets across the three

11:21:59 patents, that number is about $6.8 million. And total

11:22:02 across the three patents, across the two types of products

11:22:02 is the $129.6 million number that we spoke of before. And

11:22:08 that's keyed off of about 133 million instances of

11:22:13 infringing -- alleged infringing activity.

11:22:15 Q. And we've been talking about a per-unit reasonable

11:22:20 royalty. Can a reasonable royalty also take other forms?

11:22:22 A. Yes. Basically, a reasonable royalty can be thought of

11:22:27 as the terms of a license. And licenses generally take two

11:22:35 different forms.

11:22:36 The first form is what's called a running royalty.

11:22:39 That is determined -- that payment is determined by

11:22:43 activity from the point -- typically from the point of that

11:22:47 license of going forward.

11:22:48 A running royalty is usually tied to the use made

11:22:55 of the asset -- in this case, a patent -- and that can be

11:23:00 represented either on a per-unit basis or a per-dollar

11:23:05 basis. So a running royalty can be per-unit or per-dollar.

11:23:09 The other general type of license is a lump-sum

11:23:12 license. That is one pay -- one amount is paid, regardless

11:23:16 of what the going-forward activity is.

11:23:19 So, typically, that's determined by estimating
11:23:22 what the future might be, and then the licensing partner,
11:23:27 the licensee pays, say, a hundred dollars and can use those
11:23:31 rights as much as it wants. And it's really not tied to
11:23:37 the exact use of that patent by that licensing partner.
11:23:43 Q. And what's your opinion on what the appropriate form of
11:23:47 royalty is here?
11:23:48 A. It should be a running royalty, and specifically it
11:23:51 should be per-unit. And I say that for a few reasons.
11:23:55 Number one is, that is consistent with Maxell's
11:23:59 licensing policies, licensing practices for these patents.
11:24:04 Number two, many of Maxell's licensing partners
11:24:08 have accepted a per-unit rate -- a running royalty
11:24:13 expressed in per-unit terms.
11:24:16 Third, many of the licenses that Maxell has
11:24:19 entered identify a per-unit rate.
11:24:25 Fourth, many of the licenses that have some
11:24:28 lump-sum payment are calculated based on a per-unit
11:24:32 calculation.
11:24:34 And doing things on a running royalty per-unit
11:24:38 basis allows the payment to be tied to exactly what the use
11:24:43 or infringing activity was. So if it's small, that payment
11:24:48 will be small. If it's large, that payment will be large.
11:24:51 So those are the reasons I find a running royalty
11:24:55 on a per-unit basis to be most appropriate here.

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,

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.)

12:30:47 (Jury out.)

01:14:53 COURT SECURITY OFFICER: All rise.

01:14:54 THE COURT: Mr. Goecke, if you would have the jury

01:14:58 brought down, please.

01:15:32 COURT SECURITY OFFICER: Please stand for the

01:15:34 jury.

01:15:34 (Jury in.)

01:15:35 THE COURT: Please be seated.

01:16:00 Mr. Levy, you may continue.

01:16:03 MR. LEVY: Yes. Your Honor, just as a point of

01:16:07 procedure, we discussed -- Ms. Smith and I discussed

01:16:11 whether we'd need to seal the courtroom for the remainder.

01:16:14 There are little bits and drabs of confidential information

01:16:17 through the rest, and I understand through the -- through

01:16:21 the cross-examination, as well.

01:16:23 THE COURT: All right. Well, we will seal the

01:16:25 courtroom at this time.

01:16:27 (Courtroom sealed.)

01:16:27 (This portion of the transcript is sealed

01:16:27 and filed under separate cover as

01:16:27 Sealed Portion No. 12.)

02:28:00 (Courtroom unsealed.)

02:28:00 THE COURT: Does that make for the Plaintiff

02:28:02 proceeding in that way?

02:28:03 MR. BEABER: It does, yes.

02:28:05 THE COURT: Okay. Good.
02:45:06 (Recess.)
02:45:06 (Jury out.)
02:45:07 COURT SECURITY OFFICER: All rise.
02:45:08 THE COURT: Okay. Before we have the jury come
02:45:11 down, how about we discuss just briefly the arrangements
02:45:15 that have been made with respect to the interpreter or
02:45:21 interpreters.
02:45:21 I understand the first witness the Defense will
02:45:27 call does require translation, and that she is here.
02:45:30 And we are prepared to swear you in before we
02:45:33 swear the witness in.
02:45:34 And I understand, Mr. Culbertson, you have an
02:45:37 additional interpreter for your consultation?
02:45:41 MR. CULBERTSON: We do, Your Honor. She's just
02:45:43 going to act as a check reporter here with me. She'll
02:45:48 alert me if she thinks there's an issue. And if I think
02:45:51 it's something that needs to be raised, then I'll do it at
02:45:54 that time, if that's acceptable?
02:45:54 THE COURT: It works for me.
02:45:56 Does it work for the Defendant?
02:45:57 MS. GIBSON: It does, Your Honor.
02:45:58 THE COURT: Good. Okay. Excellent.
02:45:58 Anything else to resolve before we have the jury
02:46:00 brought down?

02:46:02 MR. CULBERTSON: No, sir.
02:46:03 THE COURT: Mr. Goecke.
02:46:15 And, Mr. Beaber, will you be prepared to explain
02:46:19 what the Plaintiff's intention is?
02:46:21 MR. BEABER: I think Mr. Culbertson is going to do
02:46:23 it.
02:46:23 THE COURT: Mr. Culbertson.
02:46:24 MR. BEABER: Uh-huh. Thank you.
02:46:34 COURT SECURITY OFFICER: Please stand for the
02:46:35 jury.
02:46:36 (Jury in.)
02:46:37 THE COURT: Okay. Please be seated.
02:47:09 Mr. Culbertson, do you have an announcement on the
02:47:11 behalf of the Plaintiff?
02:47:12 MR. CULBERTSON: I do, Your Honor. The Plaintiff
02:47:16 is not prepared to rest just yet. We'll do so after the
02:47:20 examination of the following Defense witness occurs.
02:47:23 THE COURT: All right.
02:47:24 MR. CULBERTSON: If that's acceptable.
02:47:26 THE COURT: Yes. Very good. Thanks.
02:47:28 At this time, ladies and gentlemen, the Defendants
02:47:30 may call their first witness.
02:47:35 MS. GIBSON: Thank you, Your Honor. May it please
02:47:36 the Court. Samsung calls its first witness, Mr. Youngho
02:47:40 Kim.

02:47:40 THE COURT: All right. Mr. Kim, if you would come
02:47:46 forward.
02:47:47 And we'll swear the interpreter first.
02:47:49 Have you executed an oath of interpreter yet?
02:47:53 THE INTERPRETER: No.
02:47:54 THE COURT: Okay. We'll have you execute the
02:47:56 oath, but at this time, I'm going to swear you in before we
02:48:03 swear the witness in.
02:48:05 (Interpreter sworn.)
02:48:17 THE COURT: And, then, Mr. Kim, if you would be
02:48:20 sworn.
02:48:21 (Witness sworn.)
02:48:38 THE COURT: All right. You may take a seat on the
02:48:42 witness stand.
02:48:48 Ms. Gibson, whenever you're ready.
02:48:51 MS. GIBSON: Thank you, Your Honor.
02:48:52 YOUNGHO KIM, DEFENDANTS' WITNESS, SWORN
(INTERPRETED)
DIRECT EXAMINATION
BY MS. GIBSON:
02:48:53 Q. Good afternoon, Mr. Kim.
02:48:56 A. Good afternoon.
02:48:56 Q. Would you please introduce yourself to the jury?
02:48:58 A. Good afternoon. My name is Youngho Kim. I have worked
02:49:01 for Samsung Electronics since 2003.

02:49:04 Q. Mr. Kim, where are you from?
02:49:05 A. I come from Seoul, South Korea.
02:49:08 Q. Do you have a family?
02:49:09 A. Yes, I have. My wife and two daughters.
02:49:13 Q. I see we have an interpreter. Would you like to
02:49:17 testify with the help of an interpreter today?
02:49:19 A. Yes.
02:49:21 Q. Why is that?
02:49:22 A. I can speak English a little bit, but for me to be more
02:49:35 accurate, I'd like to testify through the interpreter,
02:49:38 please.
02:49:40 MS. GIBSON: And, Your Honor, can we hear the
02:49:43 interpreter very well? I just want to make sure.
02:49:46 THE COURT: A little bit of a struggle for me.
02:49:49 How close is it -- could you raise it up a little bit?
02:49:57 THE INTERPRETER: How about now?
02:49:58 THE COURT: A little better.
02:50:01 THE INTERPRETER: Okay. Is this better?
02:50:02 MS. GIBSON: It is for me. Is it for Your Honor?
02:50:05 THE COURT: Better.
02:50:05 MS. GIBSON: Excellent. Thank you.
02:50:08 THE COURT: You're having trouble?
02:50:12 Okay. Can you just hold it in your hand as
02:50:17 troublesome as that might be?
02:50:19 THE VIDEOGRAPHER: I'll try, Your Honor.

02:50:19 JUROR: I'm sorry. There's a lot of noise outside
02:50:26 of this window.
02:50:27 THE COURT: Yeah, it's a problem with this
02:50:29 courtroom.
02:50:29 Q. (By Ms. Gibson) Mr. Kim, do you work as part of a team
02:50:32 at Samsung?
02:50:34 A. Yes, I'm part of the licensing team within the IP
02:50:40 center.
02:50:40 Q. When did you join the licensing team?
02:50:42 A. That was in July of 2021.
02:50:50 Q. Do you have a title at Samsung?
02:50:52 A. Yes, I'm a principal engineer.
02:50:59 Q. Is that a director position?
02:51:01 A. Yes, it's the same.
02:51:05 Q. What do you do as a member of the licensing team at
02:51:08 Samsung?
02:51:08 A. So what we do is at Samsung is that when patent holders
02:51:25 ask Samsung to take a license, when there's a request for a
02:51:28 license, I respond to those requests. That's my main
02:51:33 responsibility.
02:51:33 Q. Mr. Kim, do you have any college degrees?
02:51:36 A. Yes, I have bachelor's and a master's degrees.
02:51:46 Q. Focusing on your master's degree, what was that in?
02:51:49 A. It was electrical engineering.
02:51:56 Q. Other than your job on the licensing team, what jobs

02:52:01 have you held at Samsung since 2003?
02:52:03 A. For me, I worked on patent prosecution and also patent
02:52:22 analysis for quite some time.
02:52:25 Q. For how many years total have you been working on
02:52:29 analyzing and licensing patents for Samsung?
02:52:30 A. Approximately for about 17 years.
02:52:44 Q. Did you ever work for Samsung in the United States?
02:52:50 A. Yes. I worked in the United States for about five
02:52:59 years from 2015 to 2020.
02:53:03 Q. What did you think about that?
02:53:05 A. I do have a lot of good memories. I did gain a lot of
02:53:21 experiences. I learned a lot. And my family also enjoyed
02:53:28 living here.
02:53:28 Q. What do you think about working for Samsung?
02:53:31 A. I am rather proud to be part of Samsung because Samsung
02:53:50 is a global IT leader, and it respects its employees. It
02:53:58 is interested in -- it actually encourages growth of its
02:54:02 employees, so I'm rather proud.
02:54:03 Q. Does Samsung have offices here in Texas?
02:54:06 A. Yes. To my knowledge, we do have offices in Austin and
02:54:18 also in Plano.
02:54:20 MS. GIBSON: Can we have DDX-1.04, please,
02:54:24 Mr. Splansky? There we are.
02:54:35 Q. (By Ms. Gibson) Mr. Kim, are these pictures of
02:54:37 Samsung's offices in Texas?

02:54:39 A. That's right.
02:54:44 Q. About how many people work for Samsung in Texas?
02:54:47 A. In Texas, there are about 20,000 people working in the
02:55:06 state of Texas, but of those 20,000, about 6,000 are
02:55:10 working in Plano, and there are -- their work are related
02:55:15 to mobile devices.
02:55:18 MS. GIBSON: Let's go to DDX-1.3.
02:55:21 Q. (By Ms. Gibson) Mr. Kim, what types of products does
02:55:24 Samsung make?
02:55:24 A. We are engaged in production and selling a variety of
02:55:52 products including foldable phones, Galaxy series cell
02:55:57 phones, QLED TVs, refrigerators, and washers, and so forth.
02:56:02 Q. Does Samsung work on any of these products in Texas?
02:56:05 A. Yes. Those people working out of Plano, they are
02:56:19 mostly working on marketing aspects relating to cell
02:56:23 phones.
02:56:23 Q. Have you personally negotiated license agreements for
02:56:28 Samsung for any of the products we see on the screen?
02:56:30 A. Yes. For me, mostly I worked on cell phones, and there
02:56:57 were also some license agreements that I worked on relating
02:57:00 to TVs.
02:57:02 MS. GIBSON: Mr. Splansky, you can take that down.
02:57:04 Thank you.
02:57:05 Q. (By Ms. Gibson) Mr. Kim, how many patent licenses have
02:57:07 you negotiated for Samsung?

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

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.

03:02:14 Q. After 2016, when was the first time that Samsung heard
03:02:19 from Maxell before this lawsuit was filed?
03:02:21 A. We received the first notice letter from them in July
03:02:44 of 2021.
03:02:47 MS. GIBSON: Let's have PX-20, the July 7, 2021,
03:02:54 letter. There we are.
03:02:55 Q. (By Ms. Gibson) Is this the letter you were referring
03:02:57 to?
03:02:57 A. That's right.
03:03:01 Q. Now, Mr. Kim, do you read English pretty well?
03:03:03 A. Yes, I can read English.
03:03:10 Q. Was this letter part of Samsung's file that you
03:03:12 reviewed?
03:03:13 A. Yes, it was.
03:03:17 Q. Who sent this letter?
03:03:22 A. It was sent from Mr. Yamamoto of Maxell.
03:03:29 Q. Now, had Samsung heard anything at all between July
03:03:33 2016 and the July 7, 2021, date of this letter?
03:03:37 A. No, there wasn't anything.
03:03:53 Q. In your experience with licensing, is that unusual?
03:03:56 A. Yes, I believe it was very unusual.
03:04:08 MS. GIBSON: Can we go to Page 2 of this letter,
03:04:11 please?
03:04:11 Q. (By Ms. Gibson) Why was that unusual?
03:04:13 A. Because, in general, patent holders, what they do is

03:04:38 that when they want to renew the agreement, they would
03:04:42 engage in active -- activities to reach out before the
03:04:49 expiration of the prior agreement so that they can secure
03:04:53 royalties -- royalties, and there was no activities like
03:04:59 that at all from Maxell. So it was very unusual for me.
03:05:02 Q. Now, did Maxell's July 2021 letter include a list of
03:05:09 patents?
03:05:14 THE INTERPRETER: I'm sorry, could you repeat?
03:05:18 Q. (By Ms. Gibson) Did Maxell's July 2021 letter include
03:05:23 a list of patents?
03:05:24 A. Yes, there was a list of many patents -- for over 200
03:05:39 patents, and they included many pages for those lists.
03:05:44 MS. GIBSON: Mr. Splansky, can we scroll through
03:05:46 this letter?
03:05:48 Q. (By Ms. Gibson) As we scroll, Mr. Kim, about how many
03:06:09 pages of patents will we get to?
03:06:12 A. As far as I remember, there were about 30 pages or so
03:06:28 of those patents in the list.
03:06:31 Q. Did Samsung respond when it got Maxell's letter?
03:06:36 A. Yes, we did. Since we respect everybody's IP rights,
03:06:58 immediately after, we requested a phone call with them so
03:07:03 that we can discuss further after we received this notice
03:07:07 letter.
03:07:09 MS. GIBSON: Your Honor, at this point, we need to
03:07:11 close the courtroom, but all the Maxell and represent --

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?

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

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.

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

03:52:31 reasonable likelihood that Maxell's patents would be
03:52:34 invalid.
03:52:36 Q. Now, turning to Maxell's '815 patent, how many Patent
03:52:40 Office institution decisions are there for that one patent?
03:52:43 A. There were two decisions.
03:52:53 MS. GIBSON: Let's have DTX-242.
03:53:00 Q. (By Ms. Gibson) Mr. Kim, is this one of the two
03:53:03 decisions?
03:53:05 A. That's right.
03:53:08 MS. GIBSON: Let's go to Page 2, please, starting
03:53:13 with the words -- and let's blow up the second paragraph,
03:53:17 please, Mr. Splansky.
03:53:18 Q. (By Ms. Gibson) Mr. Kim, what did the Patent Office
03:53:21 find in this first institution decision for the '815
03:53:24 patent?
03:53:24 A. It was similar in that they concluded that Samsung
03:53:48 Electronics was able to demonstrate a reasonable likelihood
03:53:52 that Maxell's claims would be invalid.
03:53:54 Q. All right.
03:53:56 MS. GIBSON: Let's go to DTX-243.
03:53:59 Q. (By Ms. Gibson) Is this also an institution decision
03:54:05 on the '851 -- on the '815 patent?
03:54:11 A. Yes, it is.
03:54:16 MS. GIBSON: Let's go to Page 2, please. Let's
03:54:23 blow up the second paragraph, Mr. Splansky. Thank you.

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

03:56:41 about that, okay? I've ruled on that. My problem is
03:56:45 Mr. Yamamoto opened the door on this by talking about his
03:56:48 personal knowledge about how many IPRs had been -- had been
03:56:52 filed and how many were successful and how many were not.
03:56:55 So, I mean, I think there's an argument here that
03:56:57 the door has been opened on this. It has to be measured.
03:57:01 So I don't know what you've got or how long you
03:57:04 plan to go into this subject, but I want you to make your
03:57:09 objection, Mr. Culbertson. I think a little bit of this is
03:57:12 fair, based upon Mr. Yamamoto's testimony.
03:57:16 MR. CULBERTSON: And not to argue, but --
03:57:18 THE COURT: Sure.
03:57:18 MR. CULBERTSON: -- can I explain myself there?
03:57:20 Mr. Yamamoto was speaking specifically about the
03:57:23 smartphone patents -- patent portfolio at Maxell. He is
03:57:27 now going to talk about generally statistics at the PTAB
03:57:32 and the success rates -- success rates for IPRs.
03:57:34 Mr. Yamamoto was talking about specific challenges and what
03:57:37 the outcomes of those have been.
03:57:39 There's a big difference there from what this man
03:57:42 has been asked and what he's about to say.
03:57:42 THE COURT: Yeah.
03:57:44 MS. GIBSON: Your Honor?
03:57:44 THE COURT: Yeah, go ahead.
03:57:47 MS. GIBSON: Thank you, Your Honor.

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

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

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.

04:02:52 MS. GIBSON: Okay.

04:02:54 THE COURT: I think Mr. Culbertson has a valid
04:02:57 point about it. So just rephrase it, and let's see what --
04:03:01 let's see what he says.

04:03:02 MS. GIBSON: All right. Your Honor, and to be --
04:03:04 to be clear, I unfortunately don't understand Korean, so I
04:03:07 do not know what the witness said, but I believe
04:03:10 Mr. Culbertson might, since he has a translator sitting
04:03:13 next to him.

04:03:13 THE COURT: Do you?

04:03:13 MR. CULBERTSON: I don't know what he said. I
04:03:17 just know it was a lot longer than yes or no. And I
04:03:19 recognize it's difficult to lay a foundation under these
04:03:21 circumstances, but it is -- it's troublesome when the
04:03:24 question -- when it's clear we're about to get an answer to
04:03:27 what I think is the question that could come two or three
04:03:30 later.

04:03:31 THE COURT: Well, I mean, if -- if the objection
04:03:33 is that it's a yes-or-no question and he's giving more than
04:03:38 a yes or no, I think -- you know, I don't think we want to
04:03:42 start casting stones on that --

04:03:45 MS. GIBSON: I agree.

04:03:45 THE COURT: -- point. So let's move along.

04:03:49 MS. GIBSON: Your Honor, just to be clear, can we
04:03:51 have the translation of that question, or should I ask

04:03:55 something a little bit different?
04:03:55 THE COURT: I think the better course is to ask
04:03:57 the question -- unless you are willing to share with her
04:04:00 your translation?
04:04:01 MR. CULBERTSON: I'm happy to because --
04:04:04 THE COURT: Why don't you go get it? Why don't
04:04:06 you go get it?
04:04:56 MR. CULBERTSON: So I understand what he's going
04:04:57 to say, and I understand your difficulty of laying a
04:05:01 foundation here.
04:05:01 MS. GIBSON: Thank you.
04:05:02 MR. CULBERTSON: He's going to say he went to the
04:05:04 PTO website, I think, and researched the results of
04:05:07 challenges to Maxell's patents. And they found -- I think
04:05:11 he said five cases of invalidity. I think that's what --
04:05:16 we think that's what's coming.
04:05:18 MS. GIBSON: And, Your Honor, that's exactly what
04:05:20 Mr. Yamamoto opened the door to, exactly.
04:05:23 THE COURT: I'm going to allow it.
04:05:24 MR. CULBERTSON: Okay.
04:05:25 One last objection to preserve the record,
04:05:28 Your Honor. These are going to be patents that are outside
04:05:30 of the smartphone portfolio from which the asserted patents
04:05:34 come from. They're not relevant to -- to the trial.
04:05:36 MS. GIBSON: That sounds to me like

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.

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

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

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,

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.

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

04:20:25 we're talking about from the get-go. And Maxell didn't
04:20:27 talk to us in 2017, 2018, 2019, 2020, or '21.
04:20:35 You see that?
04:20:36 A. Yes.
04:20:45 Q. You understand that Maxell is not seeking damages from
04:20:50 2016 until July of 2021, right?
04:21:02 A. Yes.
04:21:06 Q. The damages period begins on July 7, 2021, and runs
04:21:10 through trial, right?
04:21:10 A. Generally speaking, that is the case.
04:21:26 Q. So that means that if the jury finds that Samsung's
04:21:29 infringing these patents, that Samsung had a free license
04:21:33 from 2016 until July of 2021, right?
04:21:36 A. I don't agree with that.
04:22:00 Q. Not asking for any damages for that period, are we?
04:22:03 A. Not necessarily.
04:22:14 MR. CULBERTSON: Let's go back to the NDA, please,
04:22:17 Mr. Ebersole, at PX-21.02.
04:22:50 Okay. If we could blow up Section 8, please.
04:22:54 Q. (By Mr. Culbertson) That's entitled Inadmissibility of
04:23:02 Disclosure, right?
04:23:03 A. Yes.
04:23:03 Q. And the effect of that is that if the parties wound up
04:23:08 in court, they would -- their communications wouldn't be
04:23:13 admissible, right?

04:23:13 A. I don't agree with that.
04:23:34 Q. You don't agree with that?
04:23:36 A. I don't.
04:23:42 Q. Okay. So you disagree that, for whatever reason,
04:23:44 Samsung wanted to keep the communications with Maxell out
04:23:47 of court?
04:23:57 THE INTERPRETER: I'm sorry, could you repeat?
04:24:01 Maxell out of court, okay.
04:24:24 A. Right, I don't agree with that.
04:24:26 Q. (By Mr. Culbertson) Okay, sir. You know that Maxell
04:24:28 was prepared to negotiate with Samsung without an NDA,
04:24:31 right?
04:24:31 A. I'm not certain about that.
04:24:48 MR. CULBERTSON: Mr. Ebersole, could you pull up
04:24:50 PX-25? And if we could blow up the email from 8/2/21.
04:25:10 Q. (By Mr. Culbertson) You recognize this email from
04:25:12 Hirabayashi-san at Maxell?
04:25:19 A. Yes.
04:25:20 Q. See where he says that: Maxell is willing to continue
04:25:24 to proceed with licensing negotiations without an NDA?
04:25:27 A. Yes, I see that.
04:25:38 Q. Maxell had nothing to hide, right?
04:25:40 A. I don't agree with that. It means something different.
04:25:54 Q. Nevertheless, they were ready to proceed without an
04:25:57 NDA, right?

04:25:58 A. That's what they claimed.
04:26:13 Q. Okay.
04:26:13 MR. CULBERTSON: If we could go back to PX-20,
04:26:16 please, Mr. Ebersole. And let's go to Page 18 of the
04:26:21 exhibit, please.
04:26:25 Q. (By Mr. Culbertson) You talked a lot about claim
04:26:28 charts, right?
04:26:29 A. Yes.
04:26:35 Q. And before we go there, sir, isn't it true that any
04:26:39 analysis that Samsung did regarding Maxell's notice letter
04:26:44 was done under the advice and control of counsel?
04:26:47 A. I don't agree with that.
04:27:08 Q. Okay. Sir, do you recall providing a deposition in
04:27:12 this case?
04:27:12 A. Yes.
04:27:21 MS. GIBSON: Your Honor, may we?
04:27:24 THE COURT: Yes.
04:27:25 MS. GIBSON: Thank you.
04:27:25 (Bench conference.)
04:27:38 MS. GIBSON: Your Honor, there is an agreed MIL
04:27:41 No. 18, neither party shall reference the presence -- oh,
04:27:43 I'm sorry, I'm reading the wrong one.
04:27:43 THE COURT: No.
04:27:46 MS. GIBSON: No. 17, neither party shall ask
04:27:47 questions or make statements to invoke a privilege or

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,

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.

04:30:21 Q. Okay. So whether it was with or without counsel, y'all
04:30:26 didn't review any patents, right?
04:30:28 A. When I say that, I mean that it was practically
04:30:46 impossible.
04:30:47 MR. CULBERTSON: Objection, non-responsive.
04:30:49 THE COURT: I'll sustain the objection.
04:31:17 Q. (By Mr. Culbertson) Mr. Kim, do you recall giving a
04:31:19 deposition in this case on October 23rd, 2024?
04:31:23 A. Yes.
04:31:27 Q. And you swore to tell the truth that day?
04:31:30 A. Yes.
04:31:34 Q. Recall being asked: When Samsung received this letter
04:31:37 on or around July 7th, did anyone in the technology
04:31:41 analysis group review any of the patents listed in this
04:31:44 letter?
04:31:45 A. Yes.
04:32:05 Q. Okay. And do you recall --
04:32:07 MR. CULBERTSON: Mr. Ebersole, can we call up
04:32:16 Lines 50 (sic), 9 through 16?
04:32:25 Q. (By Mr. Culbertson) When you were asked that question,
04:32:27 your counsel objected and instructed you not to answer,
04:32:42 right?
04:32:42 A. Yes.
04:32:42 Q. And you followed your counsel's instruction?
04:32:44 A. Yes.

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,

04:34:59 right?
04:34:59 A. Generally speaking, yes.
04:35:23 Q. Had access to the engineers that designed these
04:35:26 products, right?
04:35:27 A. I cannot agree with that.
04:35:35 Q. Samsung had access to the design documents that
04:35:38 underlie those products, right?
04:35:39 A. Generally speaking, yes.
04:35:52 Q. Samsung had access to the schematics and the components
04:35:57 that are in the products that are identified in this
04:35:59 letter, right?
04:35:59 A. Generally speaking, yes.
04:36:15 Q. Samsung had access to its components suppliers, right?
04:36:20 It could go talk to them for all of these products?
04:36:23 A. Not necessarily.
04:36:36 Q. Samsung had access to the source code that runs on
04:36:39 these products, didn't it?
04:36:41 A. Not necessarily.
04:36:47 Q. So your testimony is that Samsung doesn't have access
04:36:51 to the components and the source code that are in the
04:36:56 products?
04:36:56 A. I cannot agree with what you said.
04:37:10 Q. Samsung had access to the block diagrams and things
04:37:14 like that about the products, correct?
04:37:16 A. Not necessarily.

04:37:26 Q. Samsung had all the confidential information that's
04:37:32 been discussed in this trial about the products that are
04:37:35 identified in this letter, didn't it?
04:37:52 A. I cannot agree with that.
04:37:54 Q. For its own products, your testimony is that Samsung
04:38:01 didn't have access to it, right?
04:38:03 A. That's right. What I'm saying is that there are
04:38:19 occasions where we don't.
04:38:20 Q. Samsung had all the information it needed to create the
04:38:30 charts that it wanted from Maxell, didn't it?
04:38:32 A. I don't agree with that.
04:38:51 Q. Samsung was certainly better situated to create the
04:38:54 charts it says it wanted based on this information that
04:38:57 Maxell provided to it than Maxell?
04:39:00 A. I cannot agree with that at all.
04:39:28 MR. CULBERTSON: If we could go to Page 32 of
04:39:32 PX-20, please, Mr. Ebersole.
04:39:34 Q. (By Mr. Culbertson) Do you recognize that document,
04:39:38 sir?
04:39:38 A. Yes.
04:39:43 Q. Maxell's identified a number of litigations in which
04:39:48 publicly available information about its patents was
04:39:53 available, right?
04:39:56 A. Yes, that's what it says.
04:40:22 Q. As the head of licensing at Samsung, you know how to

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?

04:42:23 A. Yes, it has.
04:42:36 Q. So you know that the complaints at the ITC are filed
04:42:40 with publicly available claim charts, right?
04:42:42 A. Generally speaking, yes.
04:43:01 Q. And you already told me that y'all didn't investigate
04:43:08 any of the patents. Did you investigate any of these
04:43:11 cases?
04:43:11 A. No.
04:43:32 Q. Okay. Well, let's go see what you might have found if
04:43:38 you'd gone to this ITC investigation with Apple.
04:43:41 MR. CULBERTSON: Can we pull up Exhibit 22 to the
04:43:45 Apple ITC investigation, please?
04:43:48 A. Okay.
04:43:48 Q. (By Mr. Culbertson) That's a claim chart, isn't it?
04:44:08 A. It appears to be.
04:44:14 Q. Okay. It's a claim chart for the '086 patent to an
04:44:18 ASUS product, correct?
04:44:28 A. That appears to be the case.
04:44:30 MR. CULBERTSON: And, Mr. Ebersole, can we
04:44:31 identify how many pages are available here?
04:44:36 Q. (By Mr. Culbertson) 91 pages.
04:44:38 MR. CULBERTSON: Can we pull up Exhibit 31 to the
04:44:43 Apple ITC investigation?
04:44:53 Q. (By Mr. Culbertson) Do you recognize this as a claim
04:44:56 chart for the '848 patent that's asserted here?

04:44:59 A. Yes, and this relates to an ASUS product.
04:45:15 Q. Correct. And how many pages --
04:45:17 MR. CULBERTSON: Can we back out and see how many
04:45:20 pages this is?
04:45:21 Q. (By Mr. Culbertson) 244 pages, right?
04:45:24 A. Yes.
04:45:28 Q. Okay.
04:45:29 MR. CULBERTSON: And can we pull up Exhibit 20 to
04:45:33 the Apple ITC investigation, please?
04:45:35 Q. (By Mr. Culbertson) Does this appear to be a claim
04:45:37 chart for the '086 patent that's asserted here to another
04:45:41 BLU product?
04:45:41 A. Yes, it does.
04:45:57 Q. How many --
04:45:58 MR. CULBERTSON: Can we back out, Mr. Ebersole?
04:46:02 Q. (By Mr. Culbertson) 90 pages of information, sir?
04:46:03 A. Yes.
04:46:09 MR. CULBERTSON: And last, can we pull up
04:46:11 Exhibit 21 to the Apple ITC investigation?
04:46:14 Q. (By Mr. Culbertson) Is this a claim chart to the '086
04:46:23 patent to a ZTE product?
04:46:25 A. It appears to be the case.
04:46:35 Q. These are all Android smartphones, right?
04:46:40 A. You can say that, generally speaking.
04:46:46 Q. And the Samsung phones and tablets that are accused

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?

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

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

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.

04:58:09 And I'm going to interpret the question.
04:58:13 MR. CULBERTSON: Okay.
04:58:20 A. Yes.
04:58:21 Q. (By Mr. Culbertson) Okay. Can we agree that that
04:58:26 subset of patents is defined in this agreement as Hitachi
04:58:32 mobile unit patents?
04:58:39 A. Yes, that's right.
04:58:53 MR. CULBERTSON: Okay. Can we go to Section 1.7,
04:58:57 please, Mr. Ebersole?
04:58:58 Q. (By Mr. Culbertson) So we need to understand what
04:59:01 Hitachi mobile unit patents are, right?
04:59:03 A. Yes.
04:59:14 Q. That means Hitachi's licensed patents, that, i, were
04:59:23 administered by the Mobile Phone Business Unit, and, ii,
04:59:27 filed by Hitachi Limited prior to April 1, 2004, correct?
04:59:47 A. Yes.
04:59:51 MR. CULBERTSON: So let's look at Section 1.13 so
04:59:57 we can figure out what mobile phone business unit means.
05:00:12 Q. (By Mr. Culbertson) Mobile Phone Business Unit shall
05:00:15 mean Mobile Information and Appliance Division of Hitachi
05:00:20 Limited, which, i, marketed mobile phone products, related
05:00:25 parts, and related service, and, ii, was spun off from
05:00:30 Hitachi Limited to CHMC as of April 2004.
05:00:36 Correct?
05:00:38 A. Yes.

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,

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?

05:06:26 A. Yes, that's my understanding.
05:06:37 Q. Samsung asked the jury to award $158,400 for Apple's
05:06:43 infringement, right?
05:06:50 THE INTERPRETER: Actually, could you repeat?
05:06:53 Interjection. Could you repeat the question for
05:06:55 me?
05:06:56 Q. (By Mr. Culbertson) Samsung requested the jury award
05:07:01 $158,400 for Apple's infringement?
05:07:16 A. That's the level of amount that I'm understanding.
05:07:23 Q. Can we agree, sir, that that was a low-value patent?
05:07:29 A. Not at all.
05:07:44 Q. Samsung's -- Samsung's lawyer, your own lawyer, argued
05:07:48 to the jury that that patent was low value, right?
05:07:51 A. I don't agree.
05:08:11 MR. CULBERTSON: Mr. Ebersole, can we bring up the
05:08:15 transcript of the closing argument in Apple v. Samsung?
05:08:20 Q. (By Mr. Culbertson) Recognize that case style, sir?
05:08:23 A. I'm not familiar with this case.
05:08:41 MR. CULBERTSON: Can we go to Page 127, please?
05:08:45 And can you blow up that section?
05:08:48 Q. (By Mr. Culbertson) I'll represent to you this is
05:08:50 Samsung's own lawyer talking about the '449 patent that it
05:08:59 acquired from Hitachi.
05:09:00 A. Okay.
05:09:11 Q. He said: Now, for the '449 patent, the number is

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?

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.

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,

05:15:31 didn't you?
05:15:42 A. Yes.
05:15:45 Q. So 5 out of 70, it's about 7 percent, right?
05:15:52 A. I think that's about -- generally speaking, that's
05:16:05 right.
05:16:05 Q. So Maxell is doing pretty well at the PTAB, isn't it?
05:16:08 A. I don't agree with that.
05:16:16 Q. Certainly better than the 80 percent figure you
05:16:18 testified about earlier?
05:16:21 THE INTERPRETER: I'm sorry, withdrawn. The
05:16:24 LiveNote is not working, but I cannot really hear you.
05:16:27 Q. (By Mr. Culbertson) I said it's certainly better than
05:16:30 the 80 percent figure you testified about earlier?
05:16:44 THE INTERPRETER: 80 percent figure?
05:16:47 A. I don't agree with that.
05:16:49 Q. (By Mr. Culbertson) 7 percent is not better than
05:16:51 80 percent?
05:16:51 A. Since you're talking about different circumstances,
05:17:02 different situation, that's why I don't agree with that.
05:17:06 MR. CULBERTSON: Your Honor, I pass the witness.
05:17:08 Thank you, Mr. Kim.
05:17:09 THE COURT: Ms. Gibson, how much do you have?
05:17:11 Ms. Gibson, how much do you have?
05:17:13 MS. GIBSON: Yes, Your Honor, I have 10 minutes.
05:17:15 I can proceed now, or we can proceed in the morning.

05:17:20 THE COURT: What's the jury's preference? Ten
05:17:20 more minutes today to finish this witness? Is that okay
05:17:24 with everyone? Okay. Ready to break for the day?
05:17:27 I think break for the day is probably what the
05:17:30 jury's request is. So let's do that, and I will remind you
05:17:33 all not to talk to anyone about the case, don't visit among
05:17:41 yourselves, do not do any independent research or
05:17:44 investigation into the case, don't post anything about your
05:17:47 involvement.
05:17:48 I'll ask you to be back at 8:45 in the morning.
05:17:51 We are proceeding along very nicely. And I appreciate your
05:17:56 time, attention, and focus today.
05:17:57 We'll see you in the morning about 8:45.
05:18:01 COURT SECURITY OFFICER: Please stand for the
05:18:03 jury.
05:18:03 (Jury out.)
05:18:37 THE COURT: What else to discuss for the day?
05:18:40 MS. GIBSON: Your Honor, just on the record, I'd
05:18:41 like permission to talk to the witness, just make sure he
05:18:44 knows not to speak to anyone else about his testimony, just
05:18:46 so he knows how --
05:18:46 THE COURT: Any concern about that?
05:18:47 MR. CULBERTSON: No objection.
05:18:48 MS. GIBSON: Thank you, Your Honor.
05:18:49 MR. FOWLER: Your Honor, if I could, I don't want

05:18:51 to put the clerk on the spot, but could we get a time check
05:18:54 in terms of how much time the parties each have?
05:18:58 THE COURT: You have 7 hours and 52 minutes -- is
05:19:01 this accurate, Ms. Combs?
05:19:03 We'll get you an accurate count. There may need
05:19:07 to be some sidebar deductions. More than normal. We'll
05:19:13 get you an accurate count.
05:19:16 MR. FOWLER: Okay. Thank you, Your Honor.
05:19:17 THE COURT: What else?
05:19:18 MR. BEABER: Nothing.
05:19:20 MR. FOWLER: Nothing.
05:19:21 THE COURT: May I see you, Mr. Beaber, and you,
05:19:24 Mr. Fowler, at the bench?
05:19:26 We're off the record.
(Court adjourned at 5:19 p.m.)

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 5/22/2025
SHELLY HOLMES, CSR, TCRR Date
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