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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION
WHIRLPOOL CORPORATION,) (
PLAINTIFF,) (CIVIL ACTION NO.
) (2:25-CV-1042-JRG-RSP
VS.) (MARSHALL, TEXAS
) (
SAMSUNG ELECTRONICS CO.,) (
LTD., ET AL.,) (APRIL 8, 2026
DEFENDANTS.) (8:49 A.M.

EVIDENTIARY HEARING
BEFORE THE HONORABLE ROY S. PAYNE
UNITED STATES MAGISTRATE JUDGE

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18 Official Court Reporter
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19 United States District Judge
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22 (Proceedings recorded by mechanical stenography, transcript
23 produced on a CAT system.)
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08:24:38 1 COURT SECURITY OFFICER: All rise.

08:24:39 2 THE COURT: Good morning. Please be seated.

08:43:43 3 For the record, we're here for the preliminary
08:49:56 4 injunction hearing in Whirlpool Corporation versus Samsung
08:50:01 5 Electronics, et al., which is our Case No. 2:25-1042.

08:50:07 6 Would counsel state their appearances for the
08:50:09 7 record?

08:50:10 8 MS. FAIR: Good morning, Your Honor. Andrea Fair
08:50:15 9 on behalf of Whirlpool. I'm joined today by Mr. Joe
08:50:20 10 Grinstein, Ms. Kalpana Srinivasan, Mr. Jason Onyediri, and
08:50:25 11 Ms. Gloria Park. And we also have with us from Whirlpool,
08:50:29 12 Ms. Michelle Villarroel, Mr. Christopher Gerardot, and
08:50:36 13 Mr. Nathan Davis. And we have our expert with us, Dr. Emad
08:50:40 14 Tanbour. And we are ready to proceed.

08:50:43 15 THE COURT: All right. Thank you, Ms. Fair.

08:50:47 16 MR. JONES: Good morning, Your Honor. Mike Jones
08:50:49 17 for Samsung. And here today representing Samsung,
08:50:55 18 Mr. Timothy Durst, Marc Pensabene, Paige Hardy, Frances
08:51:01 19 Mackay, Shaun Hassett. And also here from Samsung itself
08:51:09 20 as its corporate representative is Mr. Josh Stumacher. And
08:51:14 21 also here from Samsung is Daniel Girdwood, Joshua Choi
08:51:23 22 (sic), and Timothy Jeczek. And we're ready to proceed,
08:51:27 23 Your Honor.

08:51:27 24 THE COURT: All right. Thank you, Mr. Jones.

08:51:29 25 I should note for the record that yesterday

08:51:33 1 afternoon, the Court was advised by the parties by email
08:51:39 2 that the Defendants' expert, I believe is Dr. Kimberly
08:51:52 3 Cameron, is unavailable to testify today due to illness,
08:52:01 4 and counsel on both sides have agreed that in lieu of the
08:52:06 5 live testimony of the expert witnesses that was expected
08:52:10 6 for this hearing, the declarations of the experts will be
08:52:17 7 submitted, supplemented by attorney argument.

08:52:22 8 And having said that, we'll proceed with the
08:52:31 9 planned schedule, which would be to have each side make an
08:52:40 10 opening statement of roughly 15 minutes, and then we'll
08:52:43 11 move to the fact witness testimony, and then hear whatever
08:52:51 12 presentation counsel want to make based on the declarations
08:52:57 13 of their experts.

08:52:58 14 And if there is a different understanding of the
08:53:05 15 procedure than what I just outlined, please feel free to
08:53:13 16 tell me now, because I'm -- that's just my understanding of
08:53:16 17 the plan.

08:53:16 18 MR. GRINSTEIN: That's our understanding, Your
08:53:17 19 Honor, for the Plaintiff.

08:53:18 20 THE COURT: Okay.

08:53:19 21 MR. DURST: And same for Samsung, Your Honor.

08:53:21 22 THE COURT: All right. In that case, I'll turn it
08:53:23 23 over first to counsel for Plaintiff for the opening
08:53:27 24 statement.

08:53:38 25 MS. SRINIVASAN: Your Honor, may I approach? I

08:53:47 1 have a set for the Court of our slides.

08:53:51 2 THE COURT: Yes.

08:54:00 3 MS. SRINIVASAN: Thank you.

08:54:02 4 Good morning, Your Honor. Kalpana Srinivasan of
08:54:05 5 Susman Godfrey for Whirlpool.

08:54:07 6 As the Court has noted, we have a procedure in
08:54:11 7 place today. And later today you'll hear from my
08:54:15 8 colleague, Mr. Grinstein, with respect to infringement and
08:54:17 9 validity of the patents. So I'm going to focus my remarks
08:54:21 10 today on the prong of irreparable harm.

08:54:25 11 The Court is, of course, well familiar with the
08:54:29 12 test for a Plaintiff seeking a preliminary injunction.
08:54:33 13 There are also the last two factors, the balance of
08:54:36 14 equities and the public interest. A lot of that will be
08:54:41 15 covered ultimately in our briefing, based on evidence that
08:54:44 16 is developed over the course of the day.

08:54:45 17 You will hear on the issue of irreparable harm
08:54:52 18 from Whirlpool's witness who was introduced to you earlier,
08:54:55 19 Ms. Michelle Villarroel, and she has been with the -- she
08:55:00 20 was at the company and served as the vice president and the
08:55:05 21 general manager of refrigeration currently, and she was
08:55:09 22 overseeing dishwasher sales during the key period in this
08:55:13 23 case, including the rollout of the accused product by
08:55:17 24 Samsung in early 2025.

08:55:19 25 And her testimony will explain both the background

08:55:23 1 of the industry and the harm that Whirlpool has suffered
08:55:28 2 and continues to suffer by Samsung's conduct.

08:55:30 3 To start with, the home appliance industry really
08:55:35 4 is of a different nature, and we think that's critical to
08:55:38 5 understanding the request for a preliminary injunction in
08:55:41 6 this case. There are major costs and investments that go
08:55:45 7 into developing the lifecycle of a home appliance product,
08:55:51 8 the manufacturing cost, determining what features are going
08:55:54 9 to be desirable for consumers down the road. And unlike in
08:55:57 10 some types of consumer electronics, these are -- these are
08:56:01 11 features that are rolled out every few years, and consumers
08:56:05 12 are making decisions about buying things like a dishwasher
08:56:10 13 every couple of years rather than routinely turning over
08:56:14 14 these products.

08:56:15 15 And that makes it really critical that when a
08:56:18 16 company, like Whirlpool, comes into the marketplace with a
08:56:22 17 product, that it can establish its differentiating factor
08:56:26 18 right off the bat, because it needs to be able to attract
08:56:30 19 that consumer at that moment in time. This is not a
08:56:33 20 product that they're going to be continually replacing in
08:56:37 21 their homes.

08:56:38 22 Of course, this Court is very familiar with other
08:56:42 23 types of consumer products, like a smartphone, where a
08:56:44 24 consumer may decide to exchange their phone for a newer
08:56:48 25 model, it may be replacing them as frequently as every six

08:56:55 1 months or a year.

08:56:56 2 That is distinctly different from the home
08:56:59 3 appliance market. And why is that? There's major capital
08:57:02 4 investment that needs to be made, the margins are thin,
08:57:04 5 and, of course, the consumer choice is not happening
08:57:06 6 routinely but at certain inflection points in time.

08:57:14 7 And Ms. Villarroel will talk about that backdrop
08:57:16 8 because it's really exceedingly important to the way
08:57:20 9 Whirlpool has thought of the development of the premium
08:57:23 10 rack in this case and why a market entrant coming in and
08:57:26 11 infringing its patents and copying its premium rack is
08:57:30 12 going to have such a harmful impact on its ability to
08:57:33 13 attract and to capture those consumers.

08:57:36 14 And so that brings us to Whirlpool's premium rack
08:57:41 15 feature.

08:57:42 16 In 2020, Whirlpool introduced its premium third
08:57:48 17 rack dishwashers. The traditional dishwasher had two racks
08:57:52 18 to be able to accommodate utensils and cups and dishware.
08:57:58 19 And, of course, there were third racks that were known
08:58:01 20 prior to 2020, but they tended to have very limited
08:58:04 21 functionality, typically a shallow drawer that could be
08:58:09 22 pulled out for placing utensils horizontally.

08:58:14 23 Whirlpool recognized that there was demand from
08:58:17 24 consumers to enhance the capability and the capacity of a
08:58:20 25 dishwasher. And so they began and invested substantial

08:58:25 1 resources and time, engineering capability to figure out
08:58:29 2 how to make more with the space that they had. And, of
08:58:34 3 course, you know, they're working within the parameters of
08:58:37 4 a confined space. So being able to figure out how you
08:58:41 5 maximize that and offer more capacity to consumers requires
08:58:47 6 research, development, and engineering know-how. And
08:58:51 7 that's really what Whirlpool endeavored to do in coming up
08:58:54 8 with the premium third rack, which we're going to talk
08:58:56 9 about today.

08:58:57 10 By February of 2020, and after the issuance of its
08:59:04 11 initial '385 patent and the filing of its subsequent
08:59:08 12 patents, Whirlpool had perfected this opportunity. It had
08:59:12 13 come up with these premium third racks. And you can see
08:59:15 14 the one that we will be talking about today.

08:59:18 15 It had several key notable features. The first is
08:59:25 16 that it was able to accommodate cups that could be secured
08:59:28 17 into the top rack, along with the ability to have utensils.
08:59:35 18 And it would allow for many different types of glassware to
08:59:38 19 be used.

08:59:39 20 And this wasn't just about enhancing the
08:59:41 21 functionality of the third rack but also creating more
08:59:44 22 space overall because otherwise, those were dishes -- the
08:59:47 23 cups would be in other racks consuming space there. Now
08:59:51 24 they could be moved to the third rack. And additionally,
08:59:53 25 it had dedicated sprayers to make sure those cups at the

08:59:59 1 top were getting cleaned.

09:00:01 2 You know, again, this is about enhancing the
09:00:04 3 design of the third rack, but really increasing the
09:00:07 4 versatility and the functionality of the dishwasher as a
09:00:10 5 whole. And this was a very, very significant development
09:00:16 6 for Whirlpool.

09:00:17 7 As you will hear, Whirlpool has many different
09:00:21 8 brands under its umbrella. It has Maytag, it has Amana, it
09:00:26 9 has KitchenAid. But it made a very deliberate decision
09:00:32 10 that this premium rack would be included only in its
09:00:35 11 KitchenAid line because it wanted to be something that
09:00:37 12 would differentiate the introduction of its KitchenAid
09:00:41 13 dishwashers.

09:00:41 14 And I want to underscore that because I think it
09:00:43 15 is very critical to looking at the impact of the harm in
09:00:47 16 Samsung's infringing conduct because there was a clear
09:00:51 17 intention by Whirlpool to have its KitchenAid dishwashers
09:00:54 18 associated with this premium rack functionality.

09:00:56 19 Within KitchenAid, as you will see, Your Honor, it
09:01:02 20 was described as a hero feature and as something that would
09:01:06 21 allow KitchenAid to be able to demonstrate product
09:01:10 22 leadership in what is a competitive market. And you will
09:01:13 23 hear from both Ms. Villarroel and I expect from Samsung's
09:01:18 24 own witness, that it is an industry and a marketplace in
09:01:25 25 which various companies need to find ways to differentiate

09:01:28 1 their products in order to move past a crowded field. And
09:01:31 2 that was certainly KitchenAid's view of what it was doing
09:01:34 3 by adopting this premium third rack.

09:01:36 4 Whirlpool launched it in 2020, and then it did a
09:01:41 5 relaunch in 2024. And all during that time, it was
09:01:44 6 investing money in consumer marketing and being able to
09:01:49 7 educate the marketplace about the advancement that it
09:01:53 8 brought and attracting additional consumers.

09:01:55 9 This product has been very well-received by
09:01:59 10 consumers and by those in the industry who have reviewed
09:02:04 11 the product. They like not only the functionality of the
09:02:09 12 third rack but in particular the way that KitchenAid has
09:02:12 13 implemented it to make the product more versatile, to use
09:02:17 14 the premium rack to create more space in what is otherwise
09:02:24 15 a confined universe available in their home appliance.

09:02:25 16 You will hear about from Ms. Villarroel the
09:02:28 17 positive reviews that KitchenAid products with a premium
09:02:32 18 dish rack have received and additionally the sales that
09:02:36 19 they've been able to achieve since its launch in 2020.

09:02:43 20 So while all of that has been happening on the
09:02:46 21 Whirlpool KitchenAid side, what was Samsung doing? We're
09:02:49 22 going to talk about that, Your Honor. And over the course
09:02:52 23 of the discovery in advance of this hearing, Samsung
09:02:55 24 produced a number of documents, which we did not have at
09:02:59 25 the time we filed our motion, and they demonstrate that

09:03:05 1 Samsung recognized clearly that it was behind and had not
09:03:09 2 differentiated itself with respect to the racks in its
09:03:12 3 dishwashers.

09:03:13 4 Before I show those documents, they are marked
09:03:16 5 AEO, and I think counsel has my slides, so they'll show you
09:03:19 6 what those are.

09:03:20 7 Do you have an objection to our representatives
09:03:24 8 being in the courtroom while we talk about those?

09:03:34 9 MR. DURST: Which slides are we talking about?

09:03:40 10 MS. SRINIVASAN: It's -- it's at...

09:03:45 11 MR. DURST: 14, 15 --

09:03:55 12 MS. SRINIVASAN: Yes, uh-huh.

09:03:55 13 (Off-the-record discussion between counsel.)

09:04:32 14 MS. SRINIVASAN: [REDACTED]

09:04:33 15 [REDACTED]

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09:04:41 17 [REDACTED]

09:04:46 18 [REDACTED]

09:04:50 19 [REDACTED]

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09:05:01 21 [REDACTED]

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09:05:11 24 [REDACTED]

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So what happened? In the -- in the -- April of

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2025, Whirlpool discovered Samsung's infringing

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dishwashers. This is what had been in process in terms of

09:09:55 1 its own inspection, its competitive evaluation, and
09:09:58 2 Whirlpool found out that they were doing exactly that, they
09:10:01 3 were infringing Whirlpool's patents. And not just that,
09:10:03 4 they had really copied the design as part of their
09:10:07 5 competitive analysis. And we brought a preliminary
09:10:10 6 injunction to stop the harm.

09:10:12 7 I want to talk about the harm to Whirlpool that
09:10:17 8 the Court will hear about over the course of the day. Of
09:10:21 9 course, the sales that are lost by Samsung introducing a
09:10:26 10 product that not only infringes Whirlpool's patents but
09:10:29 11 also copies its design is extremely threatening to
09:10:34 12 Whirlpool's market share in this business. It is highly
09:10:38 13 competitive, and every season Whirlpool is making sure that
09:10:43 14 it is on consumers' radar. So having somebody come in and
09:10:50 15 infringe Whirlpool's patents and utilize the premium rack
09:10:53 16 design that received consumer acclaim has significant harm
09:10:58 17 to Whirlpool. And it does so on many layers when we're
09:11:02 18 looking at the factors that are considered in the analysis
09:11:03 19 of harm.

09:11:03 20 Brand equity. As you'll hear from Ms. Villarroel,
09:11:09 21 one thing that Samsung is able to do because it did not
09:11:12 22 have to invest in the research and development and the
09:11:15 23 engineering legwork in order to come up with its premium
09:11:18 24 third rack is that it can come into the market at a lower
09:11:22 25 price point. And that is historically what it has done and

09:11:24 1 what it has done here where it did not have to have the
09:11:28 2 same investment that Whirlpool made to come up with a
09:11:31 3 premium third rack. And that is a form of price erosion
09:11:34 4 that is a significant harm that Whirlpool is already
09:11:37 5 encountering in the marketplace.

09:11:38 6 Additionally, Samsung's implementation of its
09:11:43 7 third rack, the third rack that is intended to copy,
09:11:49 8 infringe Whirlpool's patents has not been implemented the
09:11:52 9 same way in the sense that it does not meet the goals of
09:11:56 10 consumers across the board.

09:11:59 11 While it infringes Whirlpool's patents, the
09:12:02 12 reviews that have been provided by consumers show that
09:12:06 13 Samsung didn't make some of the critical engineering
09:12:09 14 assessments to its dishwashers as a whole to create the
09:12:12 15 necessary space. So it added a third rack that
09:12:16 16 encapsulates the premium functionality that KitchenAid had,
09:12:20 17 but it did not create the additional vertical space needed,
09:12:24 18 and consumers have complained that they are unable to use
09:12:29 19 it in the same way they would a KitchenAid premium third
09:12:29 20 rack.

09:12:32 21 And Ms. Villarroel will explain how that
09:12:34 22 implementation hurts Whirlpool's reputation, that you can
09:12:40 23 be both infringing but not implementing it at the same high
09:12:44 24 quality that Whirlpool did because it devoted the resources
09:12:47 25 to figure out how to do that.

09:12:48 1 And we've seen numerous consumer reviews
09:12:52 2 reflecting that Samsung's infringing implementation has
09:12:56 3 left consumers wanting because they feel the vertical space
09:13:00 4 is insufficient to accomplish what they want to do.

09:13:02 5 I'm sure you will hear today, Your Honor, about
09:13:08 6 the timeline of the filing of the preliminary injunction
09:13:13 7 and how it relates to Whirlpool's rolling out this product
09:13:18 8 and additionally about the floor space that Whirlpool has
09:13:21 9 been able to obtain in various retailers and when it was
09:13:26 10 able to do so.

09:13:26 11 Let me start by saying this is obviously a major
09:13:32 12 filing between two competitors. It required diligence,
09:13:38 13 analyses of validity and infringement, and with that in
09:13:42 14 mind in the context of the industry in which we're talking
09:13:45 15 about, six months is really not a long time.

09:13:49 16 There is some distinction between what Whirlpool's
09:13:54 17 analysis was of what Samsung was able to get in terms of
09:13:59 18 floor space at the retailers and what Samsung said it was
09:14:02 19 able to do, and I expect you'll hear today that Samsung
09:14:05 20 will say, well, we were able to get substantial floor space
09:14:08 21 over the six months after our launch and that that
09:14:14 22 demonstrates that harm has been shown over that period or
09:14:17 23 that that should have been known to Whirlpool at that time.

09:14:21 24 Frankly, all that shows is that the harm is more
09:14:25 25 significant if Samsung's presenting evidence that it was

09:14:28 1 able to get more floor space in various retailers sooner
09:14:32 2 than we realized by the data that it's provided.

09:14:35 3 Second, all of the Samsung arguments you'll hear
09:14:40 4 in this case relate about the timing -- will relate to two
09:14:46 5 of the patents in the case and not to the '922, because of
09:14:50 6 course the '922 issued in February of 2026, and we added it
09:14:55 7 to the case the following day. So there can be no argument
09:14:58 8 there about -- as to delay.

09:15:00 9 And, finally -- and I think Ms. Villarroel will
09:15:03 10 best explain this -- we really have not filed this
09:15:10 11 preliminary injunction at a moment in time that is too late
09:15:12 12 given the contours of this marketplace. Whirlpool
09:15:16 13 understands what Samsung is attempting to do by coming into
09:15:18 14 the market, and you will hear that combined with the slow
09:15:25 15 moving nature of this home appliance area, the exact loss
09:15:29 16 and understanding that has taken time for Whirlpool to
09:15:32 17 achieve and to understand impact of having this copycat
09:15:37 18 third rack out in the marketplace.

09:15:39 19 The Court will also see that Samsung has enjoyed a
09:15:42 20 very significant increase in its market share right on top
09:15:47 21 of the period of releasing the accused product.

09:15:53 22 And, counsel, I'm going to show that slide. I can
09:15:56 23 have it -- the Court can see the copy before it, and I
09:15:59 24 don't have to show it to the Court because it does contain
09:16:01 25 market share information, the one you have before you.

09:16:07 1 THE COURT: Why don't you just refer to the slide
09:16:09 2 and don't -- don't display it if that is an issue.

09:16:16 3 MS. SRINIVASAN: Sure.

09:16:16 4 [REDACTED]
09:16:20 5 [REDACTED]
09:16:26 6 [REDACTED]
09:16:29 7 [REDACTED]
09:16:33 8 [REDACTED]
09:16:40 9 [REDACTED]
09:16:44 10 [REDACTED]
09:16:49 11 [REDACTED]
09:16:51 12 [REDACTED]
09:16:57 13 [REDACTED]

09:17:02 14 And I think it's very important when we hear about
09:17:08 15 Samsung saying that it has a presence in these stores,
09:17:12 16 retailers now, or that it says that, you know, it has
09:17:15 17 inventory that it -- remains, that it also has made
09:17:20 18 commitments to retailers to continue to supply the accused
09:17:23 19 product. And so that harm will continue and especially as
09:17:29 20 Samsung and KitchenAid and Whirlpool continue to fight for
09:17:32 21 that floor space from the retailers.

09:17:35 22 And, Your Honor, there is -- there's a little bit
09:17:40 23 of a Catch-22 in saying, well, you should have filed
09:17:44 24 sooner, and at the same time, have you shown sufficient
09:17:46 25 harm? And we believe we filed at exactly the right moment

09:17:52 1 in time, which is that we've had time to see that this
09:17:55 2 product is out in the marketplace and also to investigate
09:17:58 3 it to assure ourselves that it was infringing, and at the
09:18:04 4 same time to show that there is demonstrable harm,
09:18:07 5 including the impact to brand erosion, to price erosion by
09:18:11 6 Samsung coming in and undercutting prices.

09:18:13 7 I think for Whirlpool the timing is really
09:18:18 8 critical because it has learned that waiting too long means
09:18:22 9 the impact of the harm cannot be undone. And I anticipate
09:18:27 10 Samsung will want to talk about whether we can show
09:18:31 11 specifically what our market loss has been or how many
09:18:34 12 sales have been diverted to Samsung.

09:18:38 13 Obviously, you'll hear from Ms. Villarroel that
09:18:41 14 our expectations of our sales -- in a world in which
09:18:44 15 Samsung was not infringing, those sales would have been
09:18:47 16 higher. But at the same time, it really can't be the case
09:18:51 17 that Whirlpool has to wait until the damage is done and
09:18:55 18 can't be undone, especially in this marketplace, before it
09:19:00 19 can pursue action.

09:19:01 20 And this is something that Whirlpool really does
09:19:05 21 understand intimately. It had a situation involving a
09:19:10 22 low-profile microwave hood combination, another product
09:19:14 23 that it was first to the market to bring in 2018 and that
09:19:20 24 had really distinctive and differentiating features,
09:19:24 25 including that it could operate as a microwave and as a

09:19:28 1 vent, that it would sit neatly with the kitchen cabinets
09:19:33 2 above a range. And when Whirlpool introduced this product
09:19:39 3 in 2018, it took some time to notice that there were
09:19:44 4 copycat products entering the market. Samsung introduced
09:19:46 5 their own low profile microwave hood combination in 2021,
09:19:54 6 and that, in turn, spurred a bunch of other competitors to
09:19:56 7 do the same thing.

09:19:57 8 Whirlpool did not take immediate action against
09:20:01 9 Samsung in that case. It took some time for it to bring
09:20:05 10 litigation. But the impact of that was an erosion --
09:20:10 11 significant erosion in the sales that Whirlpool was able to
09:20:14 12 achieve by Samsung's conduct. And Ms. Villarroel will talk
09:20:19 13 about that. And it really is critical because waiting too
09:20:22 14 long to have the ability to pursue a claim because the
09:20:27 15 other side demands that you have perfect market information
09:20:30 16 or sales information about lost opportunities means that
09:20:36 17 you will effectively allow an entrant to come in, to make a
09:20:41 18 copycat, and secure a position in the market, and that
09:20:43 19 really cannot be done.

09:20:44 20 So I think those are all critical to consider when
09:20:48 21 we talk about timing. There is a moment in time that is
09:20:51 22 required to perform the requisite diligence to understand
09:20:54 23 what's happening in the marketplace, and then there's
09:20:57 24 certainly time where we've gone too far and the
09:21:00 25 irreparability of the damage cannot be undone.

09:21:03 1 I want to finish by making a few points on the law
09:21:07 2 related to -- and with respect to the microwave hood combo,
09:21:13 3 the decline in Whirlpool's market share was seen about a
09:21:18 4 year after Samsung introduced the copycat version of the
09:21:22 5 microwave. Again, that is instructive for Whirlpool that
09:21:28 6 it really can't wait until the point at which that has
09:21:32 7 already happened to be able to bring litigation. It needs
09:21:34 8 to find a right point in time where it's done sufficient
09:21:38 9 diligence but also recognizes that it can preempt the harm
09:21:44 10 that is ongoing.

09:21:45 11 The Court is, I'm sure, familiar with the
09:21:47 12 competitor case, Apple/Samsung, which went up and down to
09:21:51 13 the Federal Circuit numerous times. And I think it's very
09:21:54 14 critical here when it speaks to the importance of a
09:22:02 15 permanent injunction and looking at the impact of the
09:22:06 16 infringing feature.

09:22:07 17 And the Federal Circuit said it doesn't have to be
09:22:09 18 "the" reason why consumers purchased the accused products,
09:22:13 19 but it is enough to show that these features were related
09:22:17 20 to infringement and were important to consumers when they
09:22:21 21 were examining their choices.

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1

[REDACTED]

09:22:42

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[REDACTED]

09:22:45

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[REDACTED]

09:22:48

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If you look on its website now, you will see that

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the first highlight mentioned is the third rack washing

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system, the dedicated wash jets for drinkware, and the

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upgraded third rack washing system is a dedicated area for

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drinkware and cutlery.

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[REDACTED]

09:23:12

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[REDACTED]

09:23:13

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[REDACTED]

09:23:16

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[REDACTED]

09:23:20

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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And on that note, Your Honor, you're going to hear

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today about -- from Samsung, I'm sure, about various prior

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art, prior artists, including prior art that comes from

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Bosch, which is another Samsung competitor. Samsung didn't

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go and look at Bosch to see what they were doing in their

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third rack and adopt it. It looked at what KitchenAid was

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doing. It evaluated it, it closely scrutinized it, and

09:24:12 1 ultimately it chose to copy that.

09:24:13 2 And that is also, I think, very telling that the
09:24:17 3 prior artists that came from other Samsung competitors,
09:24:20 4 they may have had their own third rack systems, but Samsung
09:24:24 5 certainly did not think that those were the third systems
09:24:26 6 it should be copying in order to attract consumers and to
09:24:31 7 be competitive.

09:24:32 8 [REDACTED]
09:24:36 9 [REDACTED]
09:24:41 10 [REDACTED] [REDACTED]
09:24:46 11 [REDACTED]
09:24:50 12 [REDACTED]
09:24:54 13 [REDACTED]
09:24:58 14 [REDACTED] [REDACTED]
09:25:01 15 [REDACTED]
09:25:04 16 [REDACTED] [REDACTED]
09:25:08 17 [REDACTED] [REDACTED] [REDACTED]
09:25:11 18 [REDACTED]
09:25:15 19 [REDACTED]
09:25:17 20 [REDACTED]
09:25:19 21 [REDACTED] [REDACTED]
09:25:21 22 [REDACTED]

09:25:23 23 And we think that that is really critical to
09:25:29 24 underscoring how harmful it is to allow Whirlpool to be
09:25:32 25 subjected to having a competitor copycat product in the

09:25:36 1 market that also infringes its patents.

09:25:38 2 Your Honor, we look forward to presenting you
09:25:43 3 evidence on these issues today, including the testimony of
09:25:46 4 Ms. Villarroel. And we expect that some of Samsung's own
09:25:51 5 admissions will reflect the harm that is already underway
09:25:55 6 in the marketplace as to KitchenAid for the infringement of
09:25:59 7 these patents. It goes without saying, but the premium
09:26:04 8 third rack is a critical development and innovation for
09:26:08 9 Whirlpool. That's why it put it in only its KitchenAid
09:26:12 10 dishwashers. It recognized it as a hero feature, and it is
09:26:17 11 extremely important to Whirlpool that this innovation that
09:26:22 12 it invested in and became a market leader in, that it is
09:26:28 13 protected, especially in a case where it is clear that
09:26:30 14 Samsung made a decision, a targeted decision to copy this
09:26:33 15 innovation.

09:26:34 16 We thank you for the Court's time today. And as I
09:26:38 17 noted on the issue of the likelihood of success on the
09:26:41 18 merits, Mr. Grinstein will be addressing the infringement
09:26:44 19 and validity evidence after the presentation of the fact
09:26:47 20 witnesses.

09:26:49 21 THE COURT: Ms. Srinivasan, you know, one obvious
09:26:56 22 difference between the Apple case and this case is that
09:26:58 23 there has been no finding of infringement in this case as
09:27:01 24 there was in Apple.

09:27:06 25 What is your plan in terms of addressing the harm

09:27:11 1 to Samsung in the event that a preliminary injunction is
09:27:17 2 issued based on a prima facie case of infringement and the
09:27:23 3 ultimate outcome is different, is non-infringement or
09:27:30 4 invalidity?

09:27:32 5 MS. SRINIVASAN: Well, Your Honor, for purposes of
09:27:32 6 the preliminary injunction, as the Court has noted, the
09:27:32 7 standard is a prima facie evidence -- prima facie
09:27:38 8 determination. We believe the infringement case here
09:27:40 9 vastly exceeds a prima facie determination of infringement.

09:27:45 10 As Samsung has said, it has had the opportunity to
09:27:49 11 be in the marketplace and capture sales, but -- I mean,
09:27:53 12 that is the nature of undertaking to release a product that
09:27:58 13 utilizes competitor's IP. It's a risk that you undertake
09:28:02 14 in the marketplace.

09:28:03 15 And I expect we will hear today that when Samsung
09:28:06 16 was doing these product evaluations, it didn't search for
09:28:10 17 any IP or undertake to look at whether they may be
09:28:14 18 protected by patents.

09:28:15 19 So that is a risk that I think Samsung undertook.
09:28:19 20 We will have an analysis by the Court as to infringement
09:28:23 21 and validity, which is sufficient to support the
09:28:28 22 determination that Samsung can't continue to sell those
09:28:32 23 products for those retailers in the marketplace.

09:28:35 24 THE COURT: I know. My question is about how
09:28:38 25 you're proposing to handle harm to Samsung in the event

09:28:45 1 that it's determined that the injunction was wrongfully
09:28:48 2 issued?

09:28:52 3 MS. SRINIVASAN: Well, Your Honor, we -- if the
09:28:54 4 products are forced to be taken off the market and
09:28:58 5 ultimately the determination of infringement or validity is
09:29:00 6 reversed, then, you know, Samsung will be permitted to put
09:29:03 7 its products back in the marketplace. It will have lost
09:29:05 8 some period of sales in the interim. But that is the
09:29:10 9 nature of entering the marketplace having failed to conduct
09:29:14 10 the requisite intellectual property determination.

09:29:19 11 THE COURT: It's also in the nature of obtaining a
09:29:23 12 preliminary injunction that the moving party bears the risk
09:29:32 13 of damages if the injunction is determined to have been
09:29:37 14 wrongfully issued.

09:29:40 15 MS. SRINIVASAN: Your Honor, that is a risk that
09:29:42 16 the Plaintiff bears, and I think in this case, having done
09:29:44 17 the assessment that Whirlpool did as to both validity and
09:29:48 18 infringement, it is competent as to its position, and
09:29:53 19 that's why it's proceeding for preliminary injunction
09:29:56 20 rather than waiting until the case is concluded.

09:29:59 21 THE COURT: I'm talking about a bond. What are
09:30:01 22 you proposing to do to secure the damages that Samsung
09:30:10 23 could be found to have suffered if the injunction is
09:30:16 24 ultimately dissolved?

09:30:17 25 MS. SRINIVASAN: The Plaintiff will be in a

09:30:19 1 position to bond. I think we'd have to confer and
09:30:24 2 determine what the amount of that would be.

09:30:26 3 THE COURT: And that's what I'm asking about.
09:30:28 4 That's not something that you have considered in seeking
09:30:31 5 the injunction?

09:30:34 6 MS. SRINIVASAN: Your Honor, we have considered it
09:30:35 7 in terms of our willingness to put up a bond as to the
09:30:40 8 amount that would be appropriate. I think that's subject
09:30:43 9 to discussion, and certainly we can present that to the
09:30:45 10 Court.

09:30:49 11 THE COURT: Do you have a position on that?

09:30:51 12 MS. SRINIVASAN: Your Honor, I'd like to confer
09:30:53 13 with the client, I would say, before I offer that to the
09:30:56 14 Court, but I could do that today.

09:30:58 15 THE COURT: Okay. Well, before we finish, that is
09:31:03 16 something I'll need to hear about.

09:31:06 17 MS. SRINIVASAN: Yes, Your Honor.

09:31:07 18 THE COURT: All right. Thank you, Ms. Srinivasan.

09:31:16 19 MR. DURST: Your Honor, may I confer with counsel
09:31:31 20 for Whirlpool just a moment about one of the exhibits they
09:31:34 21 used in the opening?

09:31:35 22 THE COURT: Go ahead, Mr. Durst.

09:31:37 23 MR. DURST: Thank you.

09:32:10 24 Your Honor, I have just a very few slides. May I
09:32:15 25 approach?

09:32:15 1 THE COURT: Yes.

09:32:54 2 MR. DURST: May it please the Court.

09:33:12 3 A preliminary injunction is a request for
09:33:16 4 extraordinary relief. It should issue only in
09:33:21 5 extraordinary circumstances, and it must issue to avoid
09:33:28 6 imminent and irreparable injury. We all learned that in
09:33:33 7 law school. It is black letter law.

09:33:35 8 There's nothing imminent here, Your Honor, and
09:33:40 9 there was nothing imminent at the time of filing this
09:33:44 10 request for injunction. The act that Whirlpool sought to
09:33:48 11 enjoin had already happened.

09:33:53 12 Samsung's 90F dishwasher was already in the
09:33:57 13 market, and retailer floors were largely stocked by the
09:34:02 14 time Whirlpool asked the Court to stop the launch. And
09:34:09 15 certainly, Your Honor, there is nothing irreparable here.

09:34:13 16 Today, we'll show you that Whirlpool hasn't been
09:34:16 17 injured at all. The facts show no impact on Whirlpool in
09:34:20 18 the marketplace.

09:34:22 19 And moreover and very important for today, a
09:34:29 20 preliminary injunction hearing, is that even the injury
09:34:31 21 that Whirlpool alleges is not irreparable. It is nearly
09:34:37 22 the definition of reparable, lost sales, market share loss,
09:34:46 23 price erosion. Those are all things that dollars can make
09:34:50 24 up for. In fact, in this courtroom, this Court sees claims
09:34:59 25 similar to that in patent cases probably nearly every week.

09:35:02 1 If Whirlpool can ultimately prove its case on
09:35:05 2 liability, and it won't be able to do that, but if it
09:35:09 3 could, money would make it whole. Nor could Whirlpool
09:35:16 4 carry its burden on the other elements. Public policy
09:35:19 5 surely favors competition in delivering new products to
09:35:27 6 consumers, and that's all Samsung is doing.

09:35:28 7 And the balance of equities, Your Honor, that tips
09:35:36 8 decisively towards Samsung. The absence of an injunction
09:35:39 9 will have no discernible impact on Whirlpool. The most it
09:35:43 10 could be, the time value of damages between now and
09:35:51 11 judgment day in the case, if they can prove liability. And
09:35:55 12 if they ultimately win on liability, Your Honor, of course
09:35:59 13 the time value of those damages can be part of the damage
09:36:02 14 calculation at trial.

09:36:03 15 An injunction against Samsung, on the other hand,
09:36:07 16 would be very substantial. In this space, dishwashers --
09:36:12 17 and this case is a little different than the Samsung cases
09:36:14 18 that are often before this case -- before this Court, it's
09:36:20 19 dishwashers. Samsung is only a small player with one --
09:36:25 20 this is important -- with one premium dishwasher in the
09:36:28 21 marketplace. Whirlpool asked to take that single product,
09:36:35 22 our only product from the marketplace, and that would leave
09:36:38 23 Samsung unable to compete in this segment.

09:36:42 24 To the Court's question about bonding, that would
09:36:45 25 cost Samsung [REDACTED],

09:36:51 1 completely strip Samsung of any return on the investment it
09:36:54 2 has made to bring this product to market. This line of
09:36:58 3 business would be crushed by an injunction.

09:37:02 4 And then, of course, there is the matter of the
09:37:07 5 required showing of substantial likelihood of success,
09:37:12 6 substantial. Here, there are very obvious problems with
09:37:14 7 Whirlpool's infringement read, and we'll cover those in a
09:37:17 8 moment. And these patents, they suffer from very serious
09:37:22 9 validity problems.

09:37:25 10 All four of the necessary elements point to
09:37:27 11 denial. There's no imminent threat of irreparable injury,
09:37:32 12 nothing imminent and nothing irreparable. There's no
09:37:36 13 likelihood of success on the merits, and we'll go through
09:37:38 14 that. The equities favor denying the injunction. An
09:37:43 15 injunction would be crushing to Samsung, and public policy
09:37:46 16 favors letting competition flourish. Whirlpool fails each
09:37:52 17 of those tests. The absence of just one is enough to deny
09:37:56 18 the injunction.

09:37:58 19 Let's start with the premise for Whirlpool's
09:38:06 20 motion. Whirlpool's motion, Your Honor, was based upon a
09:38:10 21 false premise. The premise was that -- I wonder if I've
09:38:18 22 picked up the wrong clicker. I have clicker confusion,
09:38:29 23 Your Honor. My apologies. Go to the next slide.

09:38:32 24 Whirlpool's motion is based upon a false premise.
09:38:34 25 They filed this injunction in October, and the premise was

09:38:40 1 asking the Court to stop the retailer rollout. That
09:38:46 2 premise was untrue. The rollout had already happened much
09:38:49 3 earlier. Samsung's appliances are in the marketplace.
09:38:57 4 They're on regional retailer floors starting in March.
09:39:01 5 They're online later in March, and the substantial -- the
09:39:03 6 rollout to major retailers, which were the only other
09:39:06 7 retailers that Samsung issued the product to, was largely
09:39:10 8 complete in July.

09:39:11 9 Even by Whirlpool's admission, they waited some
09:39:16 10 six months after knowing about the 90F model before filing
09:39:26 11 for an injunction, before requesting an injunction.

09:39:29 12 The terms of the papers that they filed, Your
09:39:32 13 Honor, were to stop the launch, to keep it from being on
09:39:36 14 retail shelves. All of that had already happened before
09:39:42 15 they filed their motion, and they knew it was happening,
09:39:44 16 and they waited six months.

09:39:47 17 That delay has consequences. It means there is no
09:39:52 18 imminent or irreparable injury to be avoided. Whatever is
09:39:56 19 happening on account of the dishwasher being in the market,
09:40:00 20 it is happening. There's no injury to be avoided, and that
09:40:03 21 is a fundamental purpose of an injunction.

09:40:06 22 The second thing it means is that we're at a place
09:40:09 23 where dollars can be an adequate remedy. Because if we're
09:40:13 24 selling and they can prove that we're taking sales from
09:40:16 25 them, that's a simple effort for a damages expert to

09:40:18 1 calculate for the case on liability at the end of the -- at
09:40:21 2 the end of the day, and it can be compensated in terms of
09:40:25 3 damage.

09:40:25 4 But meanwhile, if these products are pulled from
09:40:30 5 the market, that would be a devastating blow to this line
09:40:34 6 of Samsung's business.

09:40:35 7 Now, Your Honor, I mentioned before that there had
09:40:40 8 been no damage to Whirlpool. Before I leave that, let
09:40:43 9 me -- let me just walk through this timeline very quickly.

09:40:46 10 These entries in January and February, Your Honor,
09:40:49 11 are when Samsung is talking to customers about this unit
09:40:52 12 that is forthcoming and then starting in March, there was a
09:40:57 13 release of the product to the store floors -- to the floors
09:41:04 14 and regional retailers. Online sales began officially on
09:41:08 15 March 30th, and then from April to August, Your Honor, we
09:41:11 16 populated all of the space that we had available to us for
09:41:14 17 this unit at Best Buy and Lowe's.

09:41:17 18 Now, let's see what happened to market share. The
09:41:26 19 slide that I have up, Your Honor, I want to explain what
09:41:29 20 this is. So there are a couple of key pieces to this that
09:41:35 21 warrant explanation.

09:41:36 22 [REDACTED] [REDACTED]
09:41:41 23 [REDACTED]
09:41:46 24 [REDACTED]
09:41:49 25 [REDACTED] [REDACTED]

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This can be a beginning and ending to the inquiry for an injunction. There is no harm in the marketplace that's being caused to Whirlpool by Samsung's products.

A word on the likelihood of success on the merits. First, it's important to understand what these patents actually claim. These are not broad patents covering every dishwasher with three racks. The parties will admit -- Whirlpool will admit that three racks are commonplace in the marketplace.

Whirlpool's own specifications for these patents acknowledge that third racks for dishwashers were already well known in the art. Rather, these patents, Your Honor, are directed to a very specific rack configuration, particular arrangements of angled bottom walls, spray tubes, and a utensil holder. Samsung's accused product, the 90F model, does not practice those specific configurations.

09:45:23 1 Now, Samsung's technical expert, Dr. Cameron, has
09:45:28 2 submitted a detailed declaration, and we're going to be
09:45:28 3 speaking about that some more this afternoon. But let me
09:45:28 4 start with some basics of the infringement case.

09:45:43 5 Your Honor, I have a sample of our rack. May I
09:45:45 6 approach?

09:45:46 7 THE COURT: All right.

09:46:08 8 MR. DURST: That rack goes into the dishwasher
09:46:12 9 with the utensil tray on the left-hand side, Your Honor.
09:46:16 10 The first distinction -- and if we're looking here at this
09:46:22 11 slide that's on the -- on the screen, the claims of the
09:46:30 12 '385 patent require an upwardly angled portion of the
09:46:33 13 bottom wall of the dish rack that must terminate at the
09:46:36 14 side wall.

09:46:37 15 So on the slide here in the upper left-hand
09:46:41 16 illustration, the purple line is the claimed feature. The
09:46:48 17 angle rises all the way to the wall -- the side wall of the
09:46:55 18 rack and terminates at the side wall.

09:46:57 19 Your Honor, the difference in the Samsung rack is
09:47:03 20 simple and clear. The Samsung rack is illustrated -- the
09:47:09 21 Court has a version of it -- and it's illustrated in the
09:47:12 22 bottom left-hand illustration on this slide, Slide No. 4,
09:47:17 23 as well as to the right. The Samsung racks terminated --
09:47:22 24 terminate to a horizontal plane. They do not extend -- the
09:47:28 25 angle does not extend all the way to the external wall as

09:47:32 1 the patent plainly requires. Instead, it terminates at a
09:47:37 2 horizontal plane on both sides. That rack does not
09:47:40 3 infringe the '385 patent, and that same claim language,
09:47:43 4 Your Honor, is in the '681 patent.

09:47:44 5 Now, Your Honor, there is a second key basis for
09:47:51 6 non-infringement. And if we go to the next slide, we'll
09:47:53 7 see that. The Court has before it the rack -- the Samsung
09:47:57 8 rack. And if you look at the blue features on the bottom
09:48:00 9 of that rack, you will see little spinners. Those are
09:48:06 10 discs. Those are washer discs.

09:48:10 11 The '385 patent and the one independent claim
09:48:12 12 that's asserted, it's Claim 17, requires, among other
09:48:16 13 things, a spray tube having nozzles. Samsung's product has
09:48:22 14 no spray tube with nozzles. It uses this entirely
09:48:26 15 different spraying mechanism, the spray discs.

09:48:32 16 The '385 itself distinguishes in the specification
09:48:35 17 between spray tubes and nozzles and spray discs. We have
09:48:41 18 discs. We do not have tubes and nozzles as the patent
09:48:47 19 requires.

09:48:48 20 And, finally, Your Honor, as to the '922 patent,
09:48:53 21 this one is very simple, the '922 patent -- go back -- I
09:48:59 22 don't have an illustration on the '922 patent. The '922
09:49:04 23 patent, Your Honor, the non-infringement argument is very
09:49:06 24 clear there. Claim 1 of the '922 patent requires a planar
09:49:10 25 portion of the bottom wall of the rack that includes

09:49:12 1 utility holders -- that includes utility holders. The '922
09:49:23 2 patent language makes it clear that the utility holders
09:49:25 3 must be integral to the rack itself and not merely placed
09:49:28 4 upon it.

09:49:29 5 Our rack, Your Honor, as you can tell, is
09:49:33 6 detachable. It comes right out. It's not included as part
09:49:34 7 of the rack.

09:49:35 8 Three very simple straightforward non-infringement
09:49:38 9 arguments that we believe will carry the day before the
09:49:41 10 jury.

09:49:41 11 Let's go to the next slide, Mr. Wiggins, if we
09:49:48 12 could.

09:49:48 13 I'm on Slide No. 6, Your Honor. Very quickly,
09:49:51 14 three invalidity arguments, as well.

09:49:51 15 The claims of the '681 patent illustrated here on
09:49:56 16 the left, Your Honor, are anticipated by both the Carr
09:49:59 17 reference, which is a Bosch patent, and then the Bosch
09:50:02 18 product itself. Both disclose a third rack dishwasher with
09:50:08 19 a planar portion, a utensil basket, and an angled
09:50:17 20 depression configured to support cups.

09:50:19 21 Now, the '922 patent, Your Honor, it's invalid
09:50:21 22 because it's obvious, given the combination of Andrew,
09:50:26 23 which is a patent that teaches an upward rack -- upper rack
09:50:33 24 with angled walls making for seat cups and a planar portion
09:50:39 25 for utensils. Combine that with Carr, which provided for

09:50:44 1 the three-rack configuration, which is now typical in most
09:50:47 2 dishwashers.

09:50:48 3 That patent, the '922, is invalid for obviousness.

09:50:53 4 And the '385 patent, Your Honor, that is invalid
09:50:55 5 for obviousness given the combination of the Bosch patent
09:51:01 6 illustrated here on Slide No. 6 in the upper right-hand
09:51:06 7 portion of the slide, which features angled racks and --
09:51:11 8 combined with a rack-mounted spray tube, which is
09:51:14 9 illustrated there in, I believe, Item No. 11 in that
09:51:20 10 illustration. And then combining that with Ochoa, which
09:51:21 11 discloses how to mount that spray tube to the underside of
09:51:25 12 a rack.

09:51:25 13 In sum, Your Honor, Samsung's accused products do
09:51:28 14 not practice the specific rack configurations, and those
09:51:33 15 patents in any event are invalid.

09:51:36 16 Your Honor, Samsung respectfully requests the
09:51:39 17 Court to deny Whirlpool's request for extraordinary relief.
09:51:43 18 This case should proceed in its normal course. Whirlpool
09:51:49 19 will be able to recover a full remedy if it can prove
09:51:55 20 liability at trial, and the impact of an injunction upon
09:52:00 21 this segment of Samsung's business, Your Honor, would be
09:52:03 22 devastating. Whirlpool will not be able to carry its
09:52:07 23 burden on the four factors warranting -- that warrant an
09:52:11 24 injunction.

09:52:11 25 Thank you, Your Honor.

09:52:12 1 THE COURT: All right. Mr. Durst, before you sit
09:52:18 2 down, you made a reference to the potential damages to
09:52:26 3 Samsung if an injunction is issued and later found to -- to
09:52:38 4 be improper. Do you have a proposal? I did not see
09:52:42 5 anything in your papers about what an appropriate security
09:52:49 6 would be.

09:52:53 7 MR. DURST: Your Honor, Samsung stands to suffer
09:52:57 8 at least \$150 million in loss of net revenue and closer --
09:53:03 9 when you consider the investment in the product itself,
09:53:07 10 probably closer to \$150 million if these products are taken
09:53:11 11 off the market. That is a combination, Your Honor, that
09:53:16 12 Mr. Stumacher will talk about of the annual net revenue for
09:53:18 13 the product, plus some additional amounts for the
09:53:23 14 investment in R&D and launch. That's where that number
09:53:26 15 comes from.

09:53:26 16 THE COURT: All right. Thank you, Mr. Durst.

09:53:32 17 All right. I think we can have the Plaintiff call
09:53:37 18 your witness.

09:53:51 19 MS. PARK: Good morning, Your Honor. Gloria Park
09:53:56 20 for the Plaintiff. We would like to call Ms. Michelle
09:53:59 21 Villarroel.

09:54:01 22 THE COURT: All right.

09:54:07 23 MS. PARK: Your Honor, just a housekeeping matter
09:54:10 24 before Ms. Villarroel gets started. The slide we have
09:54:13 25 prepared for her testimony today -- oh, I'm sorry.

09:54:18 1 THE COURT: Well, go ahead. If you would raise
09:54:20 2 your right hand and be sworn.

09:54:29 3 (Witness sworn.)

09:54:38 4 THE COURT: Have a seat, ma'am. And just pull
09:54:41 5 that microphone towards you, and we'll be able to hear you
09:54:46 6 well.

09:54:46 7 Go ahead, Ms. Park.

09:54:52 8 MS. PARK: Just a housekeeping matter. The slides
09:54:54 9 that we have prepared for Ms. Villarroel's testimony today
09:54:58 10 have some confidential numbers in them. So the hard copy
09:55:02 11 printouts that we have for Your Honor and for Samsung have
09:55:05 12 the numbers, but what we'll display on the screen will just
09:55:09 13 have numbers blurred out.

09:55:11 14 THE COURT: All right.

09:55:12 15 MS. PARK: May I approach?

09:55:13 16 THE COURT: Yes.

09:55:50 17 MICHELLE VILLARROEL, PLAINTIFF'S WITNESS, SWORN

09:55:50 18 DIRECT EXAMINATION

09:55:50 19 BY MS. PARK:

09:55:54 20 Q. Good morning. Can you please introduce yourself to the
09:55:57 21 Court?

09:55:57 22 A. I'm Michelle Villarroel.

09:55:58 23 Q. Ms. Villarroel, what is your relationship to Whirlpool
09:56:02 24 Corporation?

09:56:02 25 A. I am currently the vice president and general manager

09:56:06 1 for the refrigeration business for North America.

09:56:08 2 THE COURT: Can you pull the mic --

09:56:08 3 THE WITNESS: Closer?

09:56:10 4 THE COURT: -- a little bit toward you? Thank
09:56:12 5 you.

09:56:12 6 A. Up until January of 2026, I was the vice president and
09:56:17 7 general manager for the dishwasher business for North
09:56:20 8 America.

09:56:20 9 Q. (By Ms. Park) What was your role as the vice president
09:56:23 10 and general manager of the dishwasher business?

09:56:25 11 A. So essentially, I was responsible for delivering the
09:56:29 12 business -- of the dishwasher business for North America
09:56:32 13 overall, responsible for strategy, marketing,
09:56:38 14 merchandising, product development, and overall delivery of
09:56:43 15 the P&L.

09:56:43 16 Q. What brands does Whirlpool Corporation have?

09:56:45 17 A. Overall and within the dishwasher business, as well, we
09:56:50 18 have several brands, which include Amana, Maytag, JennAir,
09:56:56 19 KitchenAid, and Whirlpool.

09:56:57 20 Q. Were you overseeing the dishwasher business for all of
09:57:00 21 those Whirlpool brands?

09:57:01 22 A. Yes.

09:57:02 23 Q. Who was the person in charge of the dishwasher business
09:57:07 24 when Samsung launched the competitor dishwasher?

09:57:10 25 A. I was.

09:57:10 1 Q. Why did you transition out of that role?

09:57:16 2 A. The refrigeration business of North America is a very
09:57:19 3 challenged business, and the company was looking for new
09:57:23 4 leadership to turn that business around. And I was
09:57:25 5 identified as the person to do that, so I was offered the
09:57:28 6 opportunity to move into that role.

09:57:29 7 Q. Ms. Villarroel, when did you begin working at
09:57:31 8 Whirlpool?

09:57:31 9 A. In 2024.

09:57:33 10 Q. What did you do before coming to Whirlpool?

09:57:35 11 A. I was working for The Hershey Company in various
09:57:41 12 marketing and management roles. I was there for 13 years.
09:57:44 13 I was also at Procter & Gamble for eight years.

09:57:48 14 Q. Why did you decide to come work at Whirlpool?

09:57:50 15 A. Whirlpool reached out through a search firm, as they
09:57:54 16 were interested in my background and were looking to build
09:57:56 17 their talent of future leaders. They had the opportunity
09:58:01 18 and open role to lead the dishwasher business for North
09:58:05 19 America. And after multiple conversations with various
09:58:08 20 leaders in the organization, I was very interested in the
09:58:12 21 opportunity to take on the challenge and work with the
09:58:17 22 team. I also had a lot of respect for Whirlpool's
09:58:22 23 reputation, values, and history.

09:58:25 24 Q. What did you do to prepare to testify today?

09:58:28 25 A. Because I wasn't around during the development of the

09:58:33 1 innovation at hand in the product launch, I spoke to
09:58:38 2 various members of the team that were present at that time
09:58:42 3 across different functions, from engineering, marketing,
09:58:45 4 merchandizing analytics. I also reviewed various documents
09:58:50 5 that we had on file and helped prepare the materials that
09:58:53 6 we're reviewing today.

09:58:54 7 Q. Let's get into the technology at issue. When did
09:58:59 8 Whirlpool first release its dishwasher with the enhanced or
09:59:01 9 the premium third rack?

09:59:03 10 A. So we first released this rack under the KitchenAid
09:59:09 11 brand in February of 2020.

09:59:11 12 Q. Does Whirlpool have other dishwashers with an enhanced
09:59:18 13 third rack?

09:59:18 14 A. So not this particular rack that we're talking about.
09:59:22 15 We've developed a different type of third tier -- third
09:59:28 16 rack, which we call like a mid-tier rack, that we've put in
09:59:33 17 other brands and in the lower price point KitchenAid
09:59:37 18 dishwasher.

09:59:37 19 Q. What does this slide, which is based on Exhibit 3,
09:59:40 20 show?

09:59:40 21 A. So this slide shows the two different types of third
09:59:45 22 racks that we introduced in February of 2020. On the left
09:59:48 23 is the premium third rack that we are talking about today.
09:59:51 24 That is only on KitchenAid. And on the right is the
09:59:55 25 mid-tier version of the rack that is on all other brands,

09:59:59 1 including a lower price point KitchenAid.

10:00:01 2 Q. In Whirlpool's view, do both the premium and mid-tier
10:00:08 3 versions of the enhanced third rack practice the asserted
10:00:11 4 patents?

10:00:11 5 A. No. So I'm not an engineer, I'm not an -- but it's my
10:00:18 6 understanding that we're only talking about the premium
10:00:20 7 third rack on the left that is using the three patents
10:00:23 8 we're talking about.

10:00:23 9 Q. So just in terms of terminology, given that Whirlpool
10:00:26 10 manufactures two different versions, to avoid confusion
10:00:30 11 today, I'm going to refer to the practicing third rack as
10:00:34 12 the premium third rack. Is that okay?

10:00:36 13 A. Sure.

10:00:36 14 Q. From your perspective, Ms. Villarroel, what is the
10:00:40 15 difference between the premium rack and the mid-tier
10:00:44 16 version?

10:00:44 17 A. There are two primary differences, the first being
10:00:48 18 dimension, and the second being the washing system. From a
10:00:51 19 dimension standpoint, the premium third rack is deeper, can
10:00:55 20 accommodate mugs and full-sized glasses, like up to 6-inch,
10:01:01 21 like, pint size glasses.

10:01:04 22 The mid-tier version, on the other hand, can
10:01:07 23 accommodate mugs and bowls, so it's shallower.

10:01:07 24 The second difference is the washing system where
10:01:11 25 the premium third rack has two wash tubes that are

10:01:13 1 rotating, and the mid-tier version has only one wash tube,
10:01:17 2 and it's stationary.

10:01:18 3 Q. Where does this slide, which is based on Exhibit 4,
10:01:22 4 come from?

10:01:23 5 A. This is from one of the decks that were prepared for
10:01:26 6 the launch in 2020.

10:01:29 7 Q. Now, does this slide explain why you've reserved the
10:01:34 8 premium third rack for KitchenAid?

10:01:35 9 A. So this slide actually summarizes a very deliberate
10:01:40 10 choice that we wanted to reserve this rack just for
10:01:43 11 KitchenAid. We wanted to build the equity of KitchenAid as
10:01:46 12 the best dishwasher in the market all around this rack as
10:01:53 13 its hero feature. We wanted this third rack to be a unique
10:01:58 14 and differentiating feature for KitchenAid that is not in
10:02:01 15 any of our other brands.

10:02:03 16 Q. So you mentioned the hero message. What does the slide
10:02:08 17 say is the launch goal for the KitchenAid dishwasher being
10:02:13 18 released in 2020?

10:02:16 19 A. So the goal was really to wow the consumer with the
10:02:20 20 experience overall with this third rack -- essentially all
10:02:20 21 around the third rack with the capacity -- the additional
10:02:24 22 capacity that it's able to create, and the performance, the
10:02:29 23 cleaning performance that it delivers.

10:02:31 24 Q. What did KitchenAid do to market this premium third
10:02:35 25 rack in its dishwashers when you first launched in February

10:02:36 1 of 2020?

10:02:37 2 A. In February of 2020, we had all the intentions of
10:02:41 3 launching this innovation in a big way, except it coincided
10:02:47 4 with the COVID-19 pandemic. So we were not able to support
10:02:52 5 the launch at that time.

10:02:52 6 Q. Did you market the premium third rack after COVID?

10:02:55 7 A. So, yes, we did. So post-COVID, as things normalized,
10:02:59 8 both supply and demand normalized, we started to bring back
10:03:03 9 the support that we would have in 2020. In around late
10:03:09 10 2024, we launched a major campaign, which we call a
10:03:16 11 relaunch. Essentially we did a take two of this launch in
10:03:20 12 2024 to reintroduce the KitchenAid dishwashers to consumers
10:03:24 13 because we knew the few people who have discovered it love
10:03:29 14 it, and we knew we had the best dishwasher in the market
10:03:33 15 that just consumers didn't know about. So we went on a
10:03:36 16 massive campaign to drive awareness for the dishwashers.

10:03:39 17 Q. What are we seeing on this slide right now?

10:03:42 18 A. So this is an article about the campaign and how we had
10:03:46 19 created a music video around the real consumer review for
10:03:50 20 the love of -- on their love of the racks.

10:03:54 21 Q. Was there any other reason besides COVID that the
10:03:58 22 marketing efforts for the premium third rack continued
10:04:01 23 several years following the 2020 release?

10:04:04 24 A. Yes. So I think it's important to understand the
10:04:08 25 context of which consumers buy dishwashers. So dishwasher

10:04:13 1 purchases usually happen every 10, 15 years when -- when
10:04:19 2 one is -- you know, when the dishwasher is about to die or
10:04:22 3 occasionally when you purchase a new house. So the
10:04:25 4 lifecycle of our products are much longer than that of,
10:04:30 5 like, cell phones, for example, which you replace every one
10:04:32 6 to two years. So it's very normal for us to continue to
10:04:37 7 market innovations that we introduce for longer periods of
10:04:40 8 time, even more so major innovations such as this which
10:04:46 9 took years for development and a significant investment on
10:04:53 10 our part.

10:04:53 11 Q. How has the reception been to the marketing campaign
10:04:58 12 for the KitchenAid premium third rack?

10:05:00 13 A. So the campaign that we're seeing on the screen, the
10:05:03 14 reaction of this was phenomenal. It was -- it exceeded our
10:05:07 15 expectations. We were getting a lot of positive feedback
10:05:11 16 both from consumers and from the industry.

10:05:13 17 Q. Around how many KitchenAid dishwashers with the premium
10:05:18 18 third rack have you sold since this release?

10:05:20 19 A. From its release, we've sold about 1.7 million --
10:05:26 20 million units.

10:05:26 21 Q. Let's go to the next slide.

10:05:29 22 What does this slide or Exhibit 2 show?

10:05:32 23 A. So this is an email exchange between me and Magda
10:05:47 24 Pawelec.

10:05:47 25 Q. What are you exchanging emails about?

10:05:49 1 A. So she was forwarding an email sharing yet another win
10:05:50 2 and another accolade that we were getting for the launch --
10:05:52 3 or a relaunch of our dishwasher. Essentially, this was her
10:05:56 4 sharing that we were named the best third rack dishwasher
10:06:01 5 of 2025 by review.com.

10:06:04 6 Q. I should ask, who is Magda?

10:06:15 7 A. Magda is the senior director of brand management.

10:06:16 8 Q. Is this the review.com article that Magda was sharing?

10:06:21 9 A. Yes.

10:06:21 10 Q. What feature of the KitchenAid dishwasher does the
10:06:23 11 review call out?

10:06:25 12 A. So it calls out overall the attractive exterior, a
10:06:30 13 really good, normal cycle, as well as a well-designed top
10:06:35 14 rack.

10:06:37 15 Q. Let's switch gears, Ms. Villarroel. What is the
10:06:40 16 Samsung product at issue today?

10:06:42 17 A. So we're talking about the Samsung dishwashers in the
10:06:49 18 DW90 range.

10:06:49 19 Q. When did you personally first find out about Samsung's
10:06:54 20 DW90 products?

10:06:55 21 A. So I first heard about it early April of 2025.

10:07:00 22 Q. How did you find out about it?

10:07:02 23 A. I received an email from one of the members of my team.

10:07:07 24 Q. What did the email say?

10:07:08 25 A. So the email was sharing that they found this

10:07:13 1 dishwasher on the Samsung website.

10:07:17 2 Q. What did you do next?

10:07:19 3 A. I asked them to buy one of the dishwashers so that we
10:07:24 4 could test it and see it for ourselves.

10:07:27 5 Q. If you wanted to see it for yourself, why didn't you
10:07:31 6 just go to a store to see it?

10:07:34 7 A. I did. In fact, I went to several stores in our local
10:07:38 8 area, but we didn't find it.

10:07:40 9 Q. Are there many different ways that Samsung's copying
10:07:48 10 hurts Whirlpool?

10:07:48 11 A. Yes, absolutely.

10:07:49 12 Q. What is the first way that the copying harms Whirlpool?

10:07:54 13 A. So the first way is really eroding the brand
10:07:59 14 positioning and equity that we're establishing in our
10:08:03 15 strategy overall for KitchenAid.

10:08:04 16 Q. And how does it do that?

10:08:05 17 A. So we've made a significant investment in time and
10:08:10 18 money to develop the third rack that we're talking about,
10:08:14 19 not just the rack itself, but overall to the total
10:08:19 20 dishwasher on how we can create more space and how we don't
10:08:23 21 also sacrifice cleaning performance.

10:08:27 22 So with that investment, we were very deliberate
10:08:31 23 about calling out a strategy to build the KitchenAid brand
10:08:35 24 equity around this premium third rack. So our goal was to
10:08:38 25 establish KitchenAid as the best dishwasher in the market

10:08:41 1 around this rack.

10:08:43 2 Q. Where does this slide, which is based on Exhibit 3,
10:08:49 3 come from?

10:08:49 4 A. This slide is from one of the decks that were also
10:08:55 5 prepared for the launch of the KitchenAid dishwasher.

10:08:57 6 Q. At the top there, the slide says DW03G. What is that?

10:09:04 7 A. That's an internal code for the product that we're
10:09:07 8 talking about.

10:09:08 9 Q. Were those two red boxes on the screen originally in
10:09:14 10 the presentation?

10:09:14 11 A. No, they were not.

10:09:15 12 Q. Let's look at them. In the first red box under Product
10:09:22 13 Leadership, what does the first bullet point show?

10:09:25 14 A. So this supports what I was talking about on our
10:09:28 15 strategy to establish KitchenAid's product leadership,
10:09:31 16 leveraging the largest third rack with a dedicated wash.

10:09:35 17 Q. What does the second bullet show?

10:09:38 18 A. It says that all the research that we've done, that it
10:09:42 19 is truly a winning design that is preferred four times the
10:09:47 20 nearest competitor. So it was tested across different
10:09:52 21 types of existing third racks in the market, plus other
10:09:55 22 designs that we were also developing.

10:09:57 23 Q. Let's look at the red box at the bottom of the slide.
10:10:00 24 What does that show?

10:10:01 25 A. So it's calling out that this launch is a long-term

10:10:05 1 strategy for Whirlpool. So this isn't one of those
10:10:08 2 innovations that we would launch, you know, for one year
10:10:13 3 and then move on. This is an investment that we're making
10:10:18 4 to drive and build product leadership for KitchenAid for
10:10:21 5 years to come.

10:10:22 6 Q. Let's go to the next slide.

10:10:23 7 Where is this one from?

10:10:24 8 A. This slide is from that same deck.

10:10:27 9 Q. This one is also then from Exhibit 3?

10:10:33 10 A. From the same Exhibit 3, yes.

10:10:35 11 Q. Let's look at the red box on this slide. What does it
10:10:38 12 show about how you are planning on achieving product
10:10:41 13 leadership?

10:10:42 14 A. So this also reinforces that the key message and the
10:10:46 15 single focus of the KitchenAid story in building our equity
10:10:51 16 and product leadership will be around having the industry's
10:10:55 17 only dynamic wash third rack.

10:10:58 18 Q. Setting aside the premium third rack for a moment, do
10:11:02 19 you have any other concrete example of how a brand can use
10:11:06 20 a unique or specific feature to build product leadership?

10:11:11 21 A. So, yes. We have an example from decades ago when
10:11:16 22 Bosch first then introduced the quietest dishwasher. For
10:11:22 23 many years, Bosch built that equity of being the quietest.
10:11:28 24 Today, that's no longer true. But if you ask consumers, if
10:11:31 25 you walk into a store and ask the lowest sales associate,

10:11:32 1 they will tell you that Bosch is still the quietest
10:11:36 2 dishwasher in their mind. So that is a result of them
10:11:40 3 building on a key feature and owned that feature for many
10:11:46 4 years. So even though it was no longer true in the future,
10:11:50 5 that they were still perceived as that. So that's the
10:11:50 6 equity that they built, and that was the intention for
10:11:53 7 KitchenAid around the third rack.

10:11:55 8 Q. How does Samsung releasing the DW90 line of dishwashers
10:12:01 9 prevent KitchenAid or Whirlpool from building that brand
10:12:06 10 equity that you just talked about?

10:12:08 11 A. Well, essentially, we aren't able to claim that we are
10:12:12 12 now the only one with this type of rack. So essentially it
10:12:18 13 inhibits our ability to bring to life the strategy because
10:12:21 14 of the copy that's available in the market. We're no
10:12:24 15 longer the only one with this type of third rack -- third
10:12:28 16 washing rack.

10:12:29 17 Q. Can you quantify this harm in dollars and cents?

10:12:33 18 A. From a brand equity standpoint, that will be very
10:12:37 19 difficult, so no.

10:12:38 20 Q. Could you elaborate on that? Why no?

10:12:42 21 A. Equity is something that we can't measure in monetary
10:12:47 22 value, because one, this is consumer perception; and
10:12:50 23 second, this carries over time. So when it's built over
10:12:53 24 time and then you lose -- and once you lose it, you also --
10:12:58 25 it's also very hard to build it back up.

10:13:01 1 Q. When you were launching this feature from a business
10:13:05 2 perspective, did you contemplate licensing the patented
10:13:09 3 technology to others?

10:13:10 4 A. No.

10:13:12 5 Q. Why not?

10:13:13 6 A. We weren't even considering putting it on our other
10:13:17 7 Whirlpool-branded dishwashers. It was very deliberate,
10:13:20 8 that we wanted to keep this specific feature just for
10:13:24 9 KitchenAid. So licensing this to a competitor was not even
10:13:29 10 in our discussion.

10:13:31 11 Q. Let's talk about the next harm. What impact does a
10:13:35 12 Samsung DW90 have on KitchenAid's share of the market?

10:13:39 13 A. From a share standpoint, we can either lose share or
10:13:44 14 limit our ability to grow share.

10:13:46 15 Q. Is flooring a part of the impact on share?

10:13:50 16 A. It is one driver but not the only driver of share.

10:13:54 17 Q. So tell us generally about competition for floor space,
10:13:59 18 how that works at retailers like Home Depot and Lowe's.

10:14:03 19 A. So retailers essentially have flooring windows about
10:14:06 20 one to two times a year, depending on the retailer. And
10:14:10 21 every year it's an opportunity for them to remove low
10:14:16 22 productive SKUs or SKUs that are unproductive on the floor
10:14:22 23 and replace it with something new. So it's a constant
10:14:23 24 essentially battle for us and among our competitors to try
10:14:26 25 to win floor space.

10:14:27 1 So months before they make these -- the buyers
10:14:33 2 make these decisions, we're constantly proposing new
10:14:38 3 products that we want to win flooring for.

10:14:42 4 Q. In your experience in this industry, are certain
10:14:46 5 flooring spots at retailers allocated to certain brands?

10:14:50 6 A. No. Retailers will design their whole floor or all the
10:14:57 7 units on the floor to what's best for the retailer. So
10:15:00 8 there isn't a designated Whirlpool slot or Samsung or LG
10:15:06 9 slot. They will put the SKUs that are most productive for
10:15:11 10 them overall, in which case if that were true, then we
10:15:14 11 wouldn't be winning or losing floor spots.

10:15:18 12 Q. Pivoting from flooring, have you actually experienced a
10:15:20 13 decrease in share since Samsung launched the DW90?

10:15:25 14 A. It's very hard to tell. First is there are several
10:15:28 15 different sources of market share. There isn't a single
10:15:32 16 source of truth for the industry from a share standpoint.

10:15:34 17 And second is there were also multiple things
10:15:37 18 going on at the same time. When the Samsung DW90 was
10:15:42 19 launched, we were also in the midst of relaunching our
10:15:47 20 entire KitchenAid line.

10:15:48 21 Q. What does the fact that you were also at the same time
10:15:53 22 as the Samsung DW90 launch doing a -- I think you said
10:15:58 23 relaunch of the KitchenAid line, what does that have to do
10:16:00 24 with impact to market share?

10:16:02 25 A. So we had a really strong launch that we executed in

10:16:09 1 KitchenAid across all KitchenAid appliances, dishwashers,
10:16:13 2 refrigerators, cooking appliances, and this happened around
10:16:18 3 Q2, 3rd quarter of 2025. It was a relaunch of all of the
10:16:24 4 KitchenAid appliances with a whole new look, so a new logo
10:16:28 5 badge, new handle bars, and some new features, including
10:16:30 6 personalization features. So it was a big launch for
10:16:34 7 Whirlpool overall.

10:16:34 8 So we had really high expectations for sales and
10:16:38 9 share growth. So we did see some of that depending on the
10:16:41 10 data that you pulled, but we were expecting to see more
10:16:44 11 growth as a result of this launch.

10:16:46 12 Q. What impact on share -- can you say what impact on
10:17:02 13 share the Samsung launch had on KitchenAid's share versus
10:17:08 14 this aesthetic update?

10:17:10 15 A. It will be very hard to tell because it's -- it's not
10:17:15 16 easy to attribute certain wins and losses in share to
10:17:19 17 certain actions that we are taking or competition is taking
10:17:23 18 when things are happening simultaneously.

10:17:25 19 Q. Ms. Villarroel, why did Whirlpool bring this lawsuit
10:17:30 20 now if you're not sure exactly how much Samsung's launch
10:17:35 21 has decreased KitchenAid's share?

10:17:37 22 A. Essentially, we didn't want to wait until it was too
10:17:41 23 late, and we were already harmed. We've seen it happen
10:17:46 24 before, so we didn't want it to happen again this time.

10:17:49 25 Q. Where have you seen it before?

10:17:50 1 A. With our low profile microwave hood combination launch,
10:17:57 2 our low profile MHC.
10:18:00 3 Q. What product is that?
10:18:01 4 A. So a low -- a microwave hood combination is a microwave
10:18:07 5 that also acts as a vent hood that is typically placed
10:18:12 6 above a cooking range. The low profile microwave hood
10:18:18 7 combination is a much shorter microwave hood combo that is
10:18:23 8 able to fit in your traditional vent hood without having to
10:18:26 9 modify your kitchen cabinets.
10:18:28 10 Q. Who was the first to release the low profile MHC in the
10:18:36 11 marketplace?
10:18:36 12 A. Whirlpool was.
10:18:37 13 MR. DURST: Your Honor, I object to this line of
10:18:38 14 questioning. So this witness has no knowledge of this.
10:18:41 15 She was not even at Whirlpool when this went on, and she
10:18:44 16 had no responsibility for this.
10:18:46 17 Moreover, Your Honor, this is a classic attempt to
10:18:48 18 impugn Samsung with prior acts unrelated to what's at issue
10:18:53 19 in this case, and that is not allowed under the Federal
10:18:58 20 Rules of Evidence, Your Honor. So I object to this whole
10:19:00 21 line of questioning.
10:19:00 22 THE COURT: All right.
10:19:02 23 MS. PARK: Your Honor, may I respond?
10:19:03 24 THE COURT: I'll overrule the objection. I'll
10:19:05 25 take into account regarding the weight the issues that the

10:19:10 1 Defendant has pointed out. But you can continue.

10:19:13 2 MS. PARK: Thank you, Your Honor.

10:19:16 3 Q. (By Ms. Park) When did Whirlpool release the -- the
10:19:20 4 low profile MHC product?

10:19:22 5 A. So we first introduced this in 2018.

10:19:26 6 Q. What happened after you released it?

10:19:30 7 A. A couple years later, Samsung introduced their copycat
10:19:33 8 of the low profile MHC.

10:19:36 9 Q. And what happened after Samsung's copy was released?

10:19:39 10 A. Well, after Samsung's copy was released, other
10:19:44 11 competitors also introduced their copies, and our share
10:19:48 12 subsequently every year continued to decline.

10:19:50 13 Q. You kind of anticipated my next question, but what
10:19:55 14 happened to Whirlpool's share after the copies started
10:19:58 15 being released?

10:19:59 16 A. So every year, especially as more competitive copycats
10:20:05 17 came into the market, we were losing share year over year
10:20:09 18 up until the most recent year.

10:20:12 19 Q. What exhibit did we explain this share loss in more
10:20:17 20 detail?

10:20:17 21 A. This is from Exhibit 5.

10:20:20 22 Q. How does this experience with the low profile MHC
10:20:24 23 affect your decision to seek a preliminary injunction
10:20:28 24 today?

10:20:29 25 A. So this is where we learned that we can't wait until

10:20:31 1 it's too late, until we've seen the harm, for us to take
10:20:36 2 action and try to limit the copycats. We also can't
10:20:40 3 afford -- so we wanted to act before we saw the harm and
10:20:43 4 before more competition introduced a similar rack in the
10:20:49 5 market and before we started seeing impact on our equity
10:20:53 6 and our share.

10:20:54 7 Q. What is another way that Samsung's copying harms
10:20:59 8 Whirlpool?

10:20:59 9 A. So another way is pricing. Samsung is very well
10:21:08 10 known -- when we look at our prices every day is very well
10:21:13 11 known in undercutting on price. They promote very
10:21:15 12 aggressively from a price standpoint. So it was more
10:21:19 13 common knowledge, but they would offer similar type
10:21:23 14 products and offer it at a lower price.

10:21:26 15 In this case, because they did not make the
10:21:29 16 significant investment that we had made to develop the
10:21:35 17 premium third rack and the whole infrastructure around it,
10:21:38 18 they didn't have to recoup the investment like we did, and
10:21:42 19 so they have the ability to price lower than we would.

10:21:46 20 Q. Has Samsung, in fact, priced the DW90 dishwasher lower
10:21:53 21 than the KitchenAid dishwasher?

10:21:54 22 A. Yes, they have. And for most part, so we regularly do
10:22:01 23 a price scan of the market. And what we do is we look at
10:22:07 24 products that are very similar in features. So we call
10:22:10 25 them head-to-heads. Products with similar features, how

10:22:14 1 much they're priced, and how much we're priced, and monitor
10:22:17 2 that weekly. And for most part, the Samsung DW90 has been
10:22:22 3 priced lower than our comparable SKUs, sometimes by
10:22:27 4 hundreds of dollars.

10:22:27 5 Q. Where is this analysis from on this slide?

10:22:30 6 A. So this is from one of our head-to-head updates, from
10:22:35 7 October of 2025.

10:22:35 8 Q. Do you know which exhibit it is in?

10:22:41 9 A. Exhibit 5.

10:22:42 10 Q. Is KitchenAid ever priced lower than Samsung?

10:22:45 11 A. There has been times where we had to price lower, which
10:22:50 12 is not something we would have typically done, but
10:22:54 13 essentially we were forced by Samsung to be more aggressive
10:22:57 14 in price.

10:22:57 15 We had just launched this whole new line of
10:23:00 16 KitchenAid, and we had expectations for it to deliver. So
10:23:05 17 we essentially had a choice whether we price aggressively
10:23:09 18 to win share or maintain our prices but lose share. And so
10:23:14 19 there have been times where we went very aggressive, which
10:23:18 20 does hurt our, like, business case and our financials and
10:23:24 21 our ability to recoup or investments for the third rack.

10:23:26 22 Q. Based on your experience, how does a shopper react when
10:23:29 23 they see a KitchenAid and Samsung product that seem to have
10:23:33 24 similar features, but the Samsung is priced lower?

10:23:36 25 A. So if a consumer is shopping for a dishwasher and sees

10:23:41 1 very similar features, at the end of the day, for most
10:23:45 2 part, they can determine their purchase based on price.
10:23:49 3 All else being equal and perceived to be very similar
10:23:53 4 features, a consumer may choose to buy a Samsung because
10:23:56 5 it's at a lower price, which means a win of sales for
10:24:03 6 Samsung and a loss in sales for Whirlpool.

10:24:06 7 Q. Is there any other way in which Samsung's copying hurts
10:24:10 8 Whirlpool?

10:24:10 9 A. Yes. So beyond that initial sale, we think -- based on
10:24:15 10 our understanding of their product and their third rack, we
10:24:19 11 think we're in a lose/lose situation once a consumer buys a
10:24:25 12 DW90 product.

10:24:26 13 Q. What do you mean by a lose/lose situation?

10:24:28 14 A. So if the consumer has a very positive experience with
10:24:32 15 the third rack, it's a win for Samsung. So Whirlpool loses
10:24:35 16 in that case. And if they have a negative experience with
10:24:39 17 the third rack of Samsung, then it hurts Whirlpool in that
10:24:44 18 case.

10:24:44 19 Q. Can you elaborate on how exactly Samsung benefits if
10:24:48 20 the consumer has a positive experience with the premium
10:24:53 21 third rack in the DW90?

10:24:55 22 A. So if a consumer buys a DW90 product and has a positive
10:25:01 23 experience with the third rack, Samsung gets the credit for
10:25:03 24 that third rack without putting in the work and investment
10:25:06 25 behind it. Further, it can create a positive impression

10:25:12 1 for Samsung appliances overall.

10:25:15 2 Q. On the other hand, how does Whirlpool suffer if a
10:25:19 3 consumer has a negative experience with the premium third
10:25:25 4 rack in the Samsung DW90?

10:25:28 5 A. So if a consumer does not have a positive experience
10:25:31 6 with the third rack of Samsung's DW90, it creates a
10:25:36 7 negative impression for all, like, third racks in general,
10:25:42 8 which then impacts Whirlpool because that's our primary
10:25:47 9 strategy around building our KitchenAid brand equity around
10:25:53 10 this third rack.

10:25:53 11 Q. Ms. Villarroel, if the premium third rack is so great,
10:25:57 12 then why would a consumer have a negative experience with
10:26:00 13 it in the Samsung dishwasher?

10:26:01 14 A. We believe it's -- well, a couple of things. One is we
10:26:06 15 believe that Samsung did not do the same work that we did
10:26:09 16 to create more space within the dishwasher to accommodate
10:26:14 17 the premium third rack. So when you look at the
10:26:18 18 dishwasher, it's not just the rack that we developed and
10:26:22 19 designed, it was also creating vertical space, which
10:26:27 20 created more than two and a half inches of space within the
10:26:30 21 dishwasher to be able to accommodate that rack.

10:26:33 22 Q. How do you know that Samsung didn't do the same
10:26:37 23 engineering on the overall dishwasher?

10:26:39 24 A. So one of the things that we do regularly is look at
10:26:44 25 the reviews of consumers online, on Lowe's.com,

10:26:49 1 BestBuy.com. And you'll see that in their reviews, a lot
10:26:56 2 of 1 and 2 star reviews are driven by the third rack.

10:27:02 3 Q. This next slide is from Exhibit 35. Can you elaborate
10:27:06 4 on what this consumer review says?

10:27:10 5 A. So this review is an example of the challenges that
10:27:15 6 consumers have with Samsung's third rack. So they say that
10:27:17 7 it's -- it's hard -- it's not properly designed
10:27:21 8 essentially, makes it difficult to put in plates and bowls
10:27:27 9 because they -- when you've used your third rack, there's
10:27:30 10 barely any space left in the middle rack to put anything of
10:27:33 11 substance. If you lower that middle rack to put some
10:27:38 12 things of substance, then the -- the bottom rack
10:27:41 13 essentially gets squeezed, that the dinner plates
10:27:47 14 essentially get stuck by the -- the spray arm. So
10:27:52 15 essentially there's this vertical squeeze that is going on
10:27:56 16 because they -- Samsung introduced the rack without
10:27:58 17 actually creating more space.

10:28:00 18 Q. Is this a similar complaint from Exhibit 35?

10:28:03 19 A. I'm sorry, can you --

10:28:06 20 Q. Yes. Is this a similar complaint from the same
10:28:09 21 Exhibit 35?

10:28:10 22 A. Yes. So this is another review on the design of the
10:28:17 23 third rack that drives consumer dissatisfaction and
10:28:23 24 essentially complains that there is -- that it doesn't
10:28:26 25 really create more capacity. In fact, it impedes on the

10:28:30 1 capacity of the dishwasher.

10:28:31 2 Q. Does KitchenAid's premium third rack dishwasher get
10:28:35 3 these type of reviews about the vertical squeeze?

10:28:38 4 A. Oh, not at all. In fact, it is one of the delighters
10:28:43 5 when it comes to our 5 stars that it actually creates new
10:28:47 6 space -- more space for consumers to wash things without
10:28:52 7 sacrificing cleaning.

10:28:54 8 Q. If a consumer buys a Samsung DW90 and has a negative
10:29:01 9 experience with the premium third rack, how exactly does
10:29:07 10 that hurt Whirlpool?

10:29:08 11 A. So if a consumer has a negative experience with this
10:29:11 12 type of third rack, it creates the impression that these
10:29:14 13 third racks don't really create incremental space. It just
10:29:17 14 impedes on the space of the middle rack. So it creates a
10:29:21 15 negative perception for all of these racks altogether.

10:29:25 16 Q. Doesn't that just mean that the consumer won't buy
10:29:32 17 dishwashers without the third racks, so they'll just buy a
10:29:35 18 two-rack washer? How is that hurting Whirlpool?

10:29:39 19 A. Well, that's precisely the hurt that it will create
10:29:43 20 Whirlpool, especially the KitchenAid brand that is built
10:29:46 21 around this third-level rack, and all of KitchenAid's
10:29:50 22 dishwashers have a third-level rack.

10:29:53 23 Q. Ms. Villarroel, sitting here today, do you believe that
10:29:55 24 Samsung's DW90 product launch will harm Whirlpool?

10:30:00 25 A. Absolutely. And it won't just hurt us in the future,

10:30:03 1 it's already starting to hurt us today. We have built --
10:30:10 2 made significant investments around the premium third rack
10:30:16 3 and the capability and the engineering around creating more
10:30:20 4 space. And our whole strategy on KitchenAid is built
10:30:23 5 around this premium third rack. So with Samsung
10:30:28 6 introducing their DW90, it cuts us off at the knees, and
10:30:33 7 now we're unable to do that and own it as a unique and
10:30:35 8 differentiated feature.

10:30:35 9 Q. Thank you, Ms. Villarroel.

10:30:38 10 MS. PARK: I'll pass the witness.

10:30:39 11 THE WITNESS: Thank you.

10:30:40 12 THE COURT: All right. Before we proceed with the
10:30:43 13 cross-examination, we'll take the morning recess. 15
10:30:46 14 minutes.

10:30:48 15 COURT SECURITY OFFICER: All rise.

10:30:49 16 (Recess.)

10:30:49 17 COURT SECURITY OFFICER: All rise.

10:30:51 18 THE COURT: Thank you. Please be seated.

10:45:22 19 All right. We can proceed with cross-examination.

10:45:50 20 CROSS-EXAMINATION

10:45:50 21 BY MR. DURST:

10:45:52 22 Q. Good morning, ma'am.

10:45:53 23 A. Good morning.

10:45:53 24 Q. My name is Tim Durst. It's a pleasure to meet you.

10:45:57 25 A. Nice to meet.

10:45:58 1 Q. Will you please tell me the pronunciation of your last
10:46:02 2 name that you prefer?

10:46:03 3 A. Villarroel.

10:46:06 4 Q. Villarroel. Thank you.

10:46:13 5 Ms. Villarroel, I -- I'm going to ask you just a
10:46:17 6 few questions about the things you've testified to and
10:46:22 7 issues in this case. I want to just start with some basics
10:46:28 8 about things that you said and did not say in the last hour
10:46:33 9 or so.

10:46:36 10 First, you presented no data about KitchenAid or
10:46:44 11 Whirlpool losing market share, true?

10:46:49 12 A. That is true.

10:46:50 13 Q. You presented no data about Whirlpool losing floor
10:46:57 14 space, true?

10:46:57 15 A. That is information, yes.

10:47:01 16 Q. You presented no studies on the strength of the brand,
10:47:11 17 particularly as it relates to third racks, right? That's
10:47:15 18 true, no studies presented?

10:47:17 19 A. We had one slide on how it was preferred four times the
10:47:23 20 nearest competitor.

10:47:24 21 Q. That's a consumer preference --

10:47:26 22 A. That is -- yes.

10:47:28 23 Q. -- right?

10:47:29 24 Did you present any studies about the strength of
10:47:33 25 the brand as it relates to the third rack -- the strength

10:47:38 1 in the marketplace of the KitchenAid brand?

10:47:41 2 A. We did not.

10:47:41 3 Q. You presented no information about Samsung's sales,
10:47:50 4 true?

10:47:50 5 A. That is true. We do not have that data.

10:47:53 6 Q. Well, you have access to public data on the amount of
10:47:57 7 sales, right?

10:47:58 8 A. It's -- it's not accurate. Depending on the data
10:48:04 9 source, there are pockets of different representations of
10:48:07 10 data.

10:48:07 11 Q. But you know from your extensive experience,
10:48:10 12 particularly in the consumer packaged goods, that SKU data
10:48:13 13 and those sorts of things are out there, right?

10:48:17 14 A. Not SKU level data, not for this industry.

10:48:19 15 Q. Now, you have testified about a couple of other topics,
10:48:31 16 and I just want to be clear on the basis for your
10:48:34 17 testimony. You spoke of Samsung's research. You do not
10:48:42 18 know how much Samsung -- how much research and development
10:48:46 19 money or expenditures Samsung made on the 90F dishwasher,
10:48:51 20 do you?

10:48:52 21 A. We do not.

10:48:52 22 Q. And you don't know how much money they spent in
10:49:00 23 launching the dishwasher, do you?

10:49:02 24 A. No, we do not.

10:49:04 25 Q. Let me just ask you a couple of questions. So you are

10:49:14 1 relatively new to Whirlpool? You came in April of '24,
10:49:19 2 right?
10:49:19 3 A. Yes, that is correct.
10:49:20 4 Q. And you described some of the things that were going on
10:49:22 5 at Whirlpool when you were hired?
10:49:25 6 A. Yes.
10:49:25 7 Q. And you used the phrase that Whirlpool was looking to
10:49:29 8 turn around its business. Do you remember using that
10:49:32 9 phrase?
10:49:32 10 A. The refrigeration business, yes.
10:49:35 11 Q. Yes. And you were brought in to deal with
10:49:39 12 refrigeration as a first focus; is that right?
10:49:42 13 A. No. I was brought in to focus on the dishwasher
10:49:44 14 business.
10:49:45 15 Q. So the turnaround that you mentioned didn't have
10:49:50 16 anything to do with why Whirlpool hired you; is that
10:49:54 17 correct?
10:49:54 18 A. No. No.
10:49:54 19 Q. Now, you've been -- you spent 20 months total in the
10:50:00 20 dishwasher business, right?
10:50:01 21 A. Yes.
10:50:02 22 Q. And now you're in a different line?
10:50:03 23 A. Yes.
10:50:04 24 Q. But you spent enough number -- time there to know that
10:50:11 25 some basic things like third racks are a commonplace in the

10:50:15 1 dishwasher market, right?

10:50:17 2 A. Yes.

10:50:17 3 Q. And do you know -- do you know what model numbers

10:50:24 4 Whirlpool has in the market that feature what you've called

10:50:28 5 the enhanced rack?

10:50:29 6 A. It's the KitchenAid 4, 6, and 7 series.

10:50:35 7 Q. And what are the differences between the 4, 6, and 7

10:50:41 8 series?

10:50:42 9 A. There are -- between the 4 and the 6 -- between the 424

10:50:49 10 and the 624, they have -- there's a drying fan. And

10:50:52 11 between the 624 and the 724, we have LED -- LED lights.

10:50:57 12 Q. So your 7 series is your one with all the bells and

10:51:04 13 whistles; is that right?

10:51:05 14 A. Yes.

10:51:05 15 Q. And your 4 series is the one that Whirlpool dedicates

10:51:13 16 the most floor space to or has the most floor space

10:51:18 17 dedicated to in retailers, isn't that right, the 4 series?

10:51:21 18 A. That is correct, because it's the most affordable.

10:51:23 19 Q. And it far and away -- if we were to survey the major

10:51:28 20 retailers, there's far and away more floor space dedicated

10:51:32 21 to the 4 series than to the 7 series; is that right?

10:51:34 22 A. Yes, that is correct.

10:51:35 23 Q. And the 7 series with its bells and whistles is at a

10:51:46 24 different price point than the 4 series? You said the 4

10:51:50 25 series is most affordable?

10:51:52 1 A. Yes.

10:51:52 2 Q. And what do you consider the price point to be for the

10:51:55 3 4 series?

10:51:55 4 A. Before, like lower?

10:51:56 5 Q. No. No. For the 4 series.

10:51:59 6 A. For the 4 series?

10:52:00 7 Q. What do you consider the price range to be?

10:52:02 8 A. I guess it varies, depending on the time of the year

10:52:06 9 and how much it's promoted, but on average, between 949 to

10:52:11 10 999, promoted.

10:52:13 11 Q. And by that, you mean after it's discounted or before

10:52:21 12 it's discounted?

10:52:21 13 A. After.

10:52:22 14 Q. Okay. So 950 to a thousand dollars roughly --

10:52:24 15 A. Roughly.

10:52:24 16 Q. -- for the 4 series?

10:52:27 17 The 7 series, on the other hand, is substantially

10:52:34 18 more expensive, isn't it?

10:52:35 19 A. Yes.

10:52:36 20 Q. And when you did the price comparison for the Court

10:52:41 21 between Samsung and Whirlpool, or KitchenAid, you -- you

10:52:47 22 decided to illustrate the most expensive model that

10:52:53 23 KitchenAid has on the market, right?

10:52:54 24 A. It was the most comparable from a feature standpoint.

10:52:58 25 Q. It's the most expensive?

10:53:00 1 A. It is the most expensive, yes.

10:53:02 2 Q. And it's the one that consumers are least likely of
10:53:07 3 your series to find in the stores, isn't it?

10:53:09 4 A. That is correct.

10:53:09 5 Q. Now, do you remember signing a declaration in this
10:53:17 6 case?

10:53:17 7 A. I do.

10:53:18 8 Q. And you signed it on October 10th. Does that sound
10:53:23 9 right?

10:53:23 10 A. That sounds about right.

10:53:25 11 Q. Okay. Well, you looked at it in preparation for your
10:53:28 12 testimony, didn't you?

10:53:28 13 A. Yes.

10:53:29 14 Q. Yeah, okay.

10:53:29 15 A. I knew it was October.

10:53:32 16 Q. Okay.

10:53:33 17 A. The exact date is questionable.

10:53:35 18 Q. Okay. Now, would you agree that a fair reading of
10:53:41 19 that declaration is that you were anticipating that Samsung
10:53:45 20 would roll out the 90F to retail floors?

10:53:52 21 A. Yes, which is typical of any launch.

10:53:54 22 Q. Now, what research did you do before you signed that
10:54:00 23 statement under oath that rollout was coming as opposed to
10:54:06 24 had already happened?

10:54:08 25 A. We tried to find out if anybody had seen it in stores,

10:54:16 1 and up and to that point nobody had. So we were assuming
10:54:20 2 they had missed the spring reset, and they would reset in
10:54:24 3 the fall, which are the two major reset windows.

10:54:26 4 Q. But you know now that wasn't true?

10:54:28 5 A. Yes. We did not know that they were -- that you
10:54:31 6 started to get flooring.

10:54:31 7 Q. Well, you don't contest that in April and May and June
10:54:37 8 and July, Samsung was putting this unit on the floors?
10:54:40 9 That's true, isn't it?

10:54:42 10 A. We knew -- learned after the fact.

10:54:44 11 Q. So what you put in that declaration back in October,
10:54:50 12 you recognize today is not accurate?

10:54:52 13 A. It was what we knew at the best -- best of our
10:54:58 14 knowledge at that time.

10:54:59 15 Q. Is it accurate today, ma'am?

10:55:00 16 A. Now that we've learned from this process that you have
10:55:04 17 rolled out earlier during that time, then now we know it's
10:55:08 18 not accurate.

10:55:08 19 Q. It's not accurate.

10:55:09 20 And in that same declaration, you remember
10:55:13 21 predicting that Samsung would take floor space away from
10:55:18 22 KitchenAid at Home Depot, right?

10:55:22 23 A. It was just one example of a retailer.

10:55:27 24 Q. Okay. Ma'am, in your declaration that you signed under
10:55:29 25 oath on October 10th of 2025, you predicted that the 90F

10:55:36 1 model for Samsung would take floor space away from

10:55:39 2 KitchenAid, didn't you?

10:55:39 3 A. Yes.

10:55:40 4 Q. That hasn't happened either, has it?

10:55:42 5 A. It's very hard to tell because only the buyers of the
10:55:45 6 retailers know who is getting floor space at the expense of
10:55:52 7 what.

10:55:52 8 Q. Do you -- are you basing your testimony upon an
10:55:58 9 assumption that the 90F is on the floors at Home Depots?

10:56:02 10 A. No.

10:56:02 11 Q. You know that's not true, right?

10:56:04 12 A. No.

10:56:04 13 Q. Okay. So because we're making a record here, I want to
10:56:09 14 be sure we're clear on -- are 90F Samsung models on the
10:56:16 15 floors at Home Depot?

10:56:17 16 A. At Home Depot, no.

10:56:18 17 Q. So that part of what you feared or predicted at the
10:56:28 18 time that you signed the declaration, that hasn't come true
10:56:32 19 either, has it?

10:56:33 20 A. Not yet, but flooring happens regularly.

10:56:37 21 Q. Now, back to the models for just a moment. You -- you
10:56:52 22 know that on a regular basis in the dishwasher business at
10:56:59 23 KitchenAid, KitchenAid is comparing the 424 model to the
10:57:06 24 90F on a fairly regular basis, right?

10:57:08 25 A. Yes.

10:57:08 1 Q. And you agree with me that the 424 for KitchenAid is
10:57:16 2 comparably priced to the 90F?
10:57:20 3 A. Yes.
10:57:20 4 Q. And you also agree that for what the consumer confronts
10:57:27 5 on retail floors, the most likely scenario, if they see
10:57:35 6 both brands, is the 90F versus a 4 series?
10:57:39 7 A. Yes.
10:57:39 8 Q. You said, I believe, in the testimony today and
10:58:03 9 something similar in your declaration that Whirlpool has
10:58:06 10 sold 1.7 million units with the premium racks?
10:58:12 11 A. That's correct.
10:58:12 12 Q. And your testimony is every single one of those is a
10:58:14 13 KitchenAid unit; is that right?
10:58:16 14 A. That is correct.
10:58:16 15 Q. And so those total sales, 1.7 million units. Do you
10:58:23 16 know how many units Samsung has sold?
10:58:28 17 A. No, I don't.
10:58:29 18 Q. It's not going to be anywhere near 1.7 million, is it?
10:58:32 19 A. Well, they just launched. It has limited flooring.
10:58:36 20 Q. It's not going to be anywhere near 1.7 million, is it,
10:58:39 21 ma'am?
10:58:39 22 A. No, because we've had almost six years now in market.
10:58:43 23 Q. Do you know what the annual sales are of the premium
10:58:47 24 rack dishwashers at Whirlpool in terms of units?
10:58:51 25 A. Do you mean the rack itself or just --

10:58:53 1 Q. No, of the unit that contains the rack, the volume of
10:58:56 2 sales.
10:58:57 3 A. I don't know the latest. I'm sorry. I'm no longer in
10:59:02 4 the business, so I don't know the latest numbers.
10:59:04 5 Q. Well, you said 1.7 was over six years?
10:59:07 6 A. Over six years, since launch.
10:59:10 7 Q. If we just straight lined that, that would be 300,000
10:59:14 8 roughly a year, right?
10:59:16 9 A. Yes.
10:59:16 10 Q. Would it surprise you that that's six times more than
10:59:20 11 the Samsung sales of the 90F?
10:59:21 12 A. I would not be surprised because we are more broadly
10:59:28 13 floored.
10:59:28 14 Q. Now, it sounds like we don't have a quarrel about the
10:59:33 15 fact that you knew in April that the 90F had been released.
10:59:39 16 You knew that, right?
10:59:40 17 A. Yes.
10:59:40 18 Q. And it doesn't surprise you that there were a few
10:59:43 19 people -- at least a few people at Whirlpool that knew
10:59:46 20 before you?
10:59:46 21 A. I don't know that for a fact.
10:59:49 22 Q. You've not seen emails and such from at least March,
10:59:55 23 right?
10:59:55 24 A. Maybe. I don't recall.
10:59:56 25 Q. Okay. And you know -- we talked about the rollout, and

11:00:04 1 you know that it was available online sales. If somebody
11:00:06 2 just went to Samsung.com, they could have found it right
11:00:09 3 there on March 30th, right?

11:00:10 4 A. We found it, I believe, on, like, April 2nd. So maybe
11:00:14 5 they were not online on March 30th.

11:00:16 6 Q. Okay. But it was just right there, just the buy button
11:00:19 7 right there? Okay. I'm sorry, you need to answer out
11:00:24 8 loud, okay?

11:00:25 9 A. Okay.

11:00:25 10 Q. Okay. And that's where you bought the one that you
11:00:27 11 investigated, isn't it?

11:00:28 12 A. We did.

11:00:28 13 Q. And you bought it and had it shipped to some Whirlpool
11:00:32 14 facility?

11:00:32 15 A. Yes.

11:00:32 16 Q. Had engineers look it over, make pictures of it, and do
11:00:36 17 a video on everything, right?

11:00:36 18 A. Yes.

11:00:37 19 Q. Anything wrong with that? Did you feel like you were
11:00:41 20 doing something sneaky or underhanded by getting a version
11:00:45 21 of our dishwasher and taking pictures of it and comparing
11:00:48 22 features?

11:00:49 23 A. No.

11:00:49 24 Q. That's a normal thing, isn't it?

11:00:51 25 A. Yes.

11:00:51 1 Q. So the 90F has been on the market for more than a year
11:01:15 2 now, hasn't it?
11:01:16 3 A. At this point, yes. It's April.
11:01:19 4 Q. And the KitchenAid market share in that period has
11:01:23 5 increased, hasn't it?
11:01:24 6 A. Depending on the data source, yes, it has.
11:01:28 7 Q. Now, you talked about how you believe that Samsung is
11:01:40 8 following Whirlpool's lead with respect to the rack, right?
11:01:47 9 A. Yes.
11:01:47 10 Q. You used the word "copying." Where did you get that
11:01:52 11 word?
11:01:54 12 A. It looks like a copy.
11:01:56 13 Q. Have you looked at the racks? They're not the same,
11:01:59 14 are they?
11:01:59 15 A. They're a mirror image.
11:02:00 16 Q. You know about the discs versus the tube?
11:02:04 17 A. Yes.
11:02:04 18 Q. That's different, isn't it?
11:02:05 19 A. Yes. To make -- yes.
11:02:08 20 Q. And you know that they're not even oriented the same
11:02:10 21 way in the rack, right?
11:02:11 22 A. Uh-huh. It's a mirror image.
11:02:14 23 Q. Right. And you know that the angled racks where the
11:02:18 24 cups go, those are -- those are different between the two?
11:02:21 25 You know that, right?

11:02:22 1 A. That, I'm not the expert on.

11:02:24 2 Q. Your people that examined it didn't identify that for
11:02:27 3 you?

11:02:29 4 A. Maybe they did, but I don't have the information on --

11:02:35 5 Q. And you don't know what motivated -- you don't have
11:02:39 6 any, like, inside information about what the Samsung
11:02:40 7 developers were thinking, do you?

11:02:43 8 A. No.

11:02:43 9 Q. So when you say it's -- it's copied, that's because you
11:02:50 10 look at them and you think they look similar?

11:02:52 11 A. We've done the work and the investigation with our
11:02:56 12 engineering team, our legal team to understand if it was a
11:03:01 13 copy, and the assessment was that we had good enough basis
11:03:06 14 to say so.

11:03:08 15 Q. The lawyers told you it was a copy?

11:03:14 16 A. Our patent lawyers.

11:03:16 17 Q. That it was a copy?

11:03:17 18 A. No, that it was infringing on our patents.

11:03:20 19 Q. Okay. All right. You used the word "copy"?

11:03:24 20 A. That's my layman's term.

11:03:26 21 Q. That's a little different?

11:03:27 22 A. Yes.

11:03:28 23 Q. Okay. All right. Now, the -- let me ask you one more
11:03:39 24 question -- or another question about the product. I

11:03:43 25 believe you said that you -- that Whirlpool expects the run

11:03:50 1 with this -- the model of the premium rack to last multiple
11:03:55 2 years, right?
11:03:55 3 A. Yes.
11:03:56 4 Q. And it's already lasted six years?
11:03:58 5 A. Yes.
11:03:58 6 Q. And it's still going?
11:04:00 7 A. Yes.
11:04:00 8 Q. Is it still going strong?
11:04:02 9 A. Yes, and hopefully will continue for many years if
11:04:08 10 we're still able to own that unique and differentiated
11:04:13 11 feature.
11:04:13 12 Q. So the -- a feature -- a model -- a premium model that
11:04:23 13 Whirlpool invests in in -- and releases to the market, you
11:04:28 14 expect that to have a multiple-year stream of revenue from
11:04:34 15 that?
11:04:34 16 A. This particular feature, because of the investment that
11:04:37 17 we've made around it, absolutely.
11:04:40 18 Q. All right. Well, and other -- I think you used that
11:04:45 19 when you described it earlier, that applies not just to
11:04:47 20 this feature but other premium features -- not all features
11:04:50 21 but other premium features, right?
11:04:52 22 A. Not all features. So some features we can introduce
11:04:55 23 every year, not a big deal. This one was a big investment.
11:04:58 24 Q. And how long do you expect the premium rack to drive
11:05:02 25 sales in the marketplace?

11:05:03 1 A. As you saw on our slide, for many years to come.

11:05:06 2 Q. Many years to come?

11:05:08 3 A. Uh-huh.

11:05:08 4 Q. All right. Ms. Villarroel, thank you very much for
11:05:20 5 your time.

11:05:21 6 A. Thank you.

11:05:34 7 REDIRECT-EXAMINATION

11:05:50 8 BY MS. PARK:

11:05:50 9 Q. Ms. Villarroel, Samsung's counsel asked you whether you
11:05:53 10 underestimated Samsung's rollout as of October of last
11:05:57 11 year, right?

11:05:57 12 A. Yes.

11:06:00 13 Q. And then counsel asked you to confirm that Samsung was
11:06:03 14 not rolled out in Home Depots as of today, correct?

11:06:07 15 A. Yes.

11:06:07 16 Q. So were you correct in October of 2025 that Samsung
11:06:13 17 hasn't completed its rollout as of October of 2025?

11:06:16 18 A. They're not in Home Depot, so I assume so, yes.

11:06:23 19 Q. Are certain floor spots at retailers allocated to
11:06:32 20 certain retailers -- or, sorry. Let me ask that again.

11:06:35 21 Are certain floor spots at retailers allocated to
11:06:39 22 certain brands?

11:06:40 23 A. No.

11:06:41 24 Q. So what predictive value, if any, does the fact that
11:06:51 25 Samsung has not displaced KitchenAid yesterday have on what

11:06:54 1 will happen with flooring tomorrow?

11:06:56 2 A. So it doesn't guarantee anything. As I mentioned
11:07:01 3 earlier, flooring -- reflooring happens on a regular basis.
11:07:05 4 So it is a constant assessment of products that are not
11:07:08 5 productive on the floor and are at risk of losing floor
11:07:14 6 space.

11:07:15 7 Q. You conceded that we might not have gotten the precise
11:07:22 8 Samsung flooring rollout numbers correct when we filed our
11:07:26 9 motion, right?

11:07:27 10 A. That's correct.

11:07:27 11 Q. Assuming that Samsung's numbers are correct, does it
11:07:33 12 make a difference to irreparable harm if our numbers
11:07:37 13 weren't precisely correct?

11:07:38 14 A. No, not at all.

11:07:39 15 MR. DURST: Your Honor, I object to that question.
11:07:41 16 She's asking this lay witness to comment on whether
11:07:45 17 something is an irreparable injury, which is plainly a
11:07:49 18 legal standard.

11:07:50 19 THE COURT: I do think that that's something
11:07:53 20 better reserved for argument. I'll sustain that objection.

11:07:59 21 Q. (By Ms. Park) Assuming that Samsung's numbers are
11:08:03 22 correct, what difference does that make to the harm that we
11:08:07 23 will suffer on brand equity?

11:08:09 24 A. It does not make a difference. It's still a fact that
11:08:13 25 we can no longer claim on KitchenAid that we are the only

11:08:17 1 one with a premium third washing rack.

11:08:21 2 Q. Assuming that Samsung's numbers are correct, what

11:08:29 3 difference does it make to the fact that Samsung's

11:08:32 4 execution of the third rack may erode consumer demand for

11:08:38 5 the rack generally?

11:08:39 6 A. Can you say that again?

11:08:42 7 Q. Assuming Samsung's numbers are correct, what difference

11:08:45 8 does that make to the fact that Samsung's execution of that

11:08:50 9 rack may hurt consumer demand for the rack generally?

11:08:55 10 A. Samsung's numbers are irrelevant in that case. Their

11:09:02 11 execution and the consumer feedback and the satisfaction

11:09:06 12 still hurts the premium third rack and Whirlpool as a

11:09:12 13 whole.

11:09:12 14 Q. Samsung's counsel also asked you if you took photos of

11:09:18 15 the DW90 when you found out about it in April of last year,

11:09:18 16 correct?

11:09:22 17 A. Yes.

11:09:24 18 Q. Were you taking photos of Samsung's products to copy

11:09:26 19 their features?

11:09:27 20 A. No, not at all.

11:09:28 21 Q. And Samsung's counsel asked you about market share,

11:09:41 22 correct?

11:09:41 23 A. Yes.

11:09:41 24 Q. Do you remember that?

11:09:42 25 Can you remind us that -- let me start again.

11:09:54 1 You testified that around the same time as the
11:10:05 2 DW90 launch, KitchenAid also relaunched all its appliances
11:10:09 3 with a new aesthetic update, correct?
11:10:13 4 A. Yes.
11:10:14 5 Q. Did KitchenAid's share increase as much as Whirlpool or
11:10:21 6 KitchenAid expected it would have when it did the aesthetic
11:10:29 7 relaunch in 2025?
11:10:31 8 A. No, it did not.
11:10:33 9 Q. Why not?
11:10:33 10 A. It fell short of our expectations. So sales did
11:10:37 11 increase as a result of the launch, but it was not to the
11:10:41 12 extent that we expected it to.
11:10:43 13 Q. Counsel asked you a few questions about data or studies
11:11:10 14 that were presented or not presented in the case. Do you
11:11:16 15 remember that?
11:11:16 16 A. Yes.
11:11:16 17 Q. You are here to testify, correct?
11:11:18 18 A. Yes.
11:11:18 19 Q. Do you know what all we, Whirlpool, the lawyers, have
11:11:26 20 produced in this case?
11:11:26 21 A. I'm sorry, I'm not sure --
11:11:30 22 Q. That's okay.
11:11:33 23 A. -- what you mean.
11:11:34 24 Q. It's not important. I'll move on.
11:11:37 25 Do you have retailer information on what factors

11:11:39 1 went into their flooring decisions?

11:11:41 2 A. No. That is retailer information.

11:11:43 3 Q. Do you have Samsung's numbers about their internal
11:11:50 4 sales or revenue?

11:11:51 5 A. No.

11:11:51 6 Q. What information or data did you base your testimony on
11:12:00 7 today about the harm that Whirlpool will suffer?

11:12:03 8 A. So it was based on, I guess, several different things
11:12:10 9 from an equity standpoint -- you know, from an equity
11:12:14 10 standpoint, the precedent that we've seen with the low
11:12:18 11 profile MHC case before, the same type of pricing behavior
11:12:22 12 that Samsung exhibits in the market, and the launch of
11:12:28 13 essentially the -- their version of the premium third rack.

11:12:31 14 Q. Approximately how long have you had executive or
11:12:45 15 management roles in marketing in your career?

11:12:48 16 A. Marketing and general management overall, I'd say over
11:12:51 17 20 years.

11:12:52 18 Q. You were recruited to Whirlpool to run the dishwasher
11:12:59 19 business?

11:13:00 20 A. Yes.

11:13:01 21 Q. You were the head of the dishwasher business when
11:13:03 22 Samsung launched the DW90?

11:13:06 23 A. Yes.

11:13:06 24 Q. Does your experience inform your testimony today?

11:13:14 25 A. Absolutely.

11:13:17 1 MS. PARK: Thank you, Your Honor.

11:13:18 2 THE COURT: All right. Anything else, Mr. Durst?

11:13:25 3 MR. DURST: No, Your Honor. Thank you.

11:13:26 4 THE COURT: All right. Thank you, Ms. Villarroel.

11:13:29 5 THE WITNESS: Thank you.

11:13:30 6 THE COURT: You may step down.

11:13:32 7 And I think now it is the Defendants' opportunity

11:13:42 8 to call a witness.

11:13:46 9 MR. DURST: It is, Your Honor. Samsung calls

11:13:49 10 Mr. Josh Stumacher to the stand.

11:14:06 11 (Witness sworn.)

11:14:17 12 THE COURT: Have a seat, Mr. Stumacher. And just

11:14:20 13 pull that microphone towards you, and we'll be able to hear

11:14:23 14 you.

11:14:29 15 MR. DURST: Your Honor, we have -- just a second.

11:14:33 16 Ms. Hardy, wait until the Court gives permission, okay?

11:14:36 17 We have exhibit books. May we provide one to the

11:14:40 18 witness, and we'll give some, of course, to opposing

11:14:44 19 counsel? Would the Court like some, as well?

11:14:46 20 THE COURT: Yes to each of those questions.

11:14:49 21 MR. DURST: Okay. Thank you, Your Honor.

11:15:25 22 JOSHUA STUMACHER, DEFENDANTS' WITNESS, SWORN

11:15:25 23 DIRECT EXAMINATION

11:15:25 24 BY MR. DURST:

11:15:28 25 Q. Good morning, Mr. Stumacher.

11:15:30 1 A. Good morning.

11:15:30 2 Q. Where do you work?

11:15:32 3 A. Samsung Electronics America.

11:15:34 4 Q. And what do you do there? What's your title?

11:15:38 5 A. Senior director of product marketing.

11:15:40 6 Q. And in broad terms, what are your responsibilities at

11:15:44 7 Samsung?

11:15:45 8 A. I oversee the cooking and dish businesses in -- in

11:15:49 9 their entirety for Samsung.

11:15:52 10 Q. Now, Mr. Stumacher, you've been sitting in the

11:15:56 11 courtroom all morning. You know this is a patent case,

11:15:59 12 right?

11:15:59 13 A. Yes, sir.

11:15:59 14 Q. What are you here to testify about?

11:16:01 15 A. I'm here to testify about the launch of the 90F, how

11:16:05 16 it's doing in the market, and some of the pricing and

11:16:08 17 strategies around the unit.

11:16:10 18 Q. And, sir, let's talk about a few of the key takeaways

11:16:20 19 that you're going to testify about today.

11:16:22 20 When was the market -- when was the market opened

11:16:25 21 to the 90F? When did the market -- when did the 90F first

11:16:30 22 start selling in the United States?

11:16:31 23 A. So the first sales appeared in March of 2025.

11:16:37 24 Q. And when was Samsung's retail rollout substantially

11:16:41 25 complete for the 90F?

11:16:43 1 A. Substantially complete in June.

11:16:45 2 Q. And has Samsung taken market share from KitchenAid over
11:16:53 3 that period of time?

11:16:54 4 A. No.

11:16:54 5 Q. All right. Let's back up to Mr. Stumacher for just a
11:17:00 6 minute. Tell us a little bit about your educational
11:17:02 7 background, please.

11:17:04 8 A. Yes. I did my bachelor's degree at University of
11:17:09 9 Michigan, and I went on to do my MBA at Washington
11:17:13 10 University in St. Louis.

11:17:14 11 Q. What did you study?

11:17:15 12 A. At Michigan, I studied economics, sociology, and
11:17:20 13 psychology, and at Washington University, I did my MBA in
11:17:24 14 marketing strategy and entrepreneurship.

11:17:26 15 Q. And how long have you been the senior director of
11:17:31 16 product marketing at Samsung?

11:17:32 17 A. Three and a half years, more or less.

11:17:36 18 Q. Since 2022?

11:17:38 19 A. Yes, sir.

11:17:39 20 Q. All right. And then how long have you worked with
11:17:42 21 Samsung?

11:17:43 22 A. 13 years.

11:17:43 23 Q. And just quickly in a little narrative form, tell me
11:17:48 24 some of the other roles you've had at Samsung.

11:17:51 25 A. I started at Samsung in January 2013 as an assistant

11:17:54 1 manager in the laundry product group. I was promoted to
11:17:58 2 manager a few years later. A few years later, I was
11:18:04 3 promoted to senior manager, and then I took over laundry
11:18:07 4 group in 2018 as director. Stayed in that position for
11:18:12 5 about three and a half, four years, and then moved on to
11:18:15 6 senior director role of kitchen -- of cooking and
11:18:20 7 dishwasher businesses.

11:18:21 8 Q. And in that role that you've had since 2002, what are
11:18:24 9 some of the responsibilities more specifically that you
11:18:27 10 have for the cooking and -- and dish?

11:18:30 11 A. Yeah. So I oversee -- I'm responsible for the P&L for
11:18:34 12 cooking and dishwasher businesses in its entirety. I
11:18:38 13 oversee all of the strategic executions for all products
11:18:43 14 falling within those categories and marketing decisions,
11:18:48 15 spanning decisions, pricing decisions, and implementation,
11:18:52 16 as well.

11:18:52 17 Q. And in that role, are you -- do you encounter -- do you
11:18:57 18 familiarize yourself with topics such as pricing strategy?

11:19:02 19 A. Yes.

11:19:04 20 Q. And market information -- what's happening in the
11:19:07 21 marketplace with respect to you and competitors?

11:19:09 22 A. Yes.

11:19:09 23 Q. And is competitive intelligence part of what your
11:19:15 24 marketing team does, keeping an eye on what the competitors
11:19:22 25 are doing, as well?

11:19:23 1 A. Absolutely.

11:19:23 2 Q. Now, how many products have you been involved in
11:19:26 3 launching in your time at Samsung?

11:19:28 4 A. Hundreds.

11:19:29 5 Q. And you were involved in launching the 90F?

11:19:32 6 A. Yes.

11:19:33 7 Q. And is there a normal rhythm or a frequent rhythm that
11:19:38 8 Samsung has used in launching products as it relates to,
11:19:41 9 say, online and then in store launches?

11:19:44 10 A. We have, sure. So typically, we'll have an online
11:19:51 11 launch date where Samsung.com will launch the PDP with a
11:19:56 12 buy button, which is a product display page. Depending on
11:20:00 13 when the retailer has the reset date, which is when they'll
11:20:04 14 put the product on the floor, that can -- the -- the online
11:20:11 15 launch date can come before the actual flooring date at the
11:20:15 16 retailers, but they're usually quite, quite close.

11:20:19 17 Q. Tell the -- tell us what you mean by the reset of the
11:20:21 18 flooring space at retailers. How does that work and what
11:20:25 19 is the time of year that those things happen?

11:20:27 20 A. For the dishwasher business, it's often one to two
11:20:32 21 times a year. So we will ship the product to the retailer.
11:20:39 22 And at a certain point within the year or two times a year,
11:20:43 23 that will be their allocated time to set the new product on
11:20:46 24 their floors.

11:20:48 25 Q. And then that particular retailer doesn't revisit that

11:20:52 1 typically again until the next reset period? Is that the
11:20:56 2 standard practice?

11:20:56 3 A. More or less, yeah. If there's one in April, there may
11:21:00 4 be one also in August or September, or there could just be
11:21:03 5 one, let's say, in August, depending on the year and
11:21:06 6 retailer.

11:21:06 7 Q. Got it. All right. We've been talking about the 90F
11:21:10 8 line of dishwashers for Samsung. Are there different model
11:21:16 9 numbers within that 90F series?

11:21:18 10 A. Yes.

11:21:18 11 Q. Okay. And what are the differences between the various
11:21:21 12 Samsung 90F models?

11:21:23 13 A. So there's the TOUSR, T like Tom. That is a recessed
11:21:28 14 handle model, so you can actually pull the door open with a
11:21:31 15 recessed handle.

11:21:33 16 There's a P, like Peter, POUSR. It's a handleless
11:21:35 17 model that's touch to open.

11:21:37 18 And there are two more SKUs that are color
11:21:40 19 variations of the TOUSR, white and black.

11:21:44 20 Q. And the 90F, where does that stand in the overall
11:21:53 21 lineup of Samsung dishwashers? Is it an economy version?
11:21:56 22 Is it midline? Where does it stand?

11:21:58 23 A. It's our most premium dishwasher.

11:22:00 24 Q. Okay. Is it one of several premium dishwashers? How
11:22:06 25 many premium dishwashers does Samsung have?

11:22:07 1 A. Assuming a price point of 800 and above, there's only
11:22:11 2 one.
11:22:11 3 Q. And it's the 90F?
11:22:12 4 A. Yeah.
11:22:13 5 Q. Now, I've asked you to help me in preparing some things
11:22:23 6 for testimony today, and you have worked with me in
11:22:28 7 developing some slides, right?
11:22:30 8 A. Yes.
11:22:30 9 Q. Okay. I'm going to put a -- the first slide up and ask
11:22:37 10 you in general terms what is this, sir?
11:22:40 11 A. So this is a rollout timeline for the 90F dishwasher.
11:22:45 12 Q. And, Mr. Stumacher, in the early stages of the 90F, was
11:22:50 13 there a period of time when Samsung was talking to its --
11:22:53 14 its customers, the retailers, about the forthcoming 90F
11:22:58 15 series?
11:22:59 16 A. Yes.
11:22:59 17 Q. Okay. And when did that start?
11:23:01 18 A. January was -- actually it started before January. It
11:23:05 19 started in 2024. So typical, we bring our best customers
11:23:14 20 to Korea every year. In the case of 2024, we brought them
11:23:19 21 in June. So at that time, there would have been
11:23:25 22 visibility to -- there was visibility to the 90F
11:23:28 23 dishwasher.
11:23:28 24 Q. So Samsung began talking to customers about the 90F
11:23:33 25 nearly two years ago?

11:23:34 1 A. Yeah.

11:23:35 2 Q. And then did there come a period of time where Samsung
11:23:39 3 was visiting with customers and potential customers at
11:23:45 4 trade shows about the -- about the 90F?

11:23:48 5 A. Yes, at CES.

11:23:51 6 Q. Okay. And just a word about -- what is CES?

11:23:55 7 A. Consumer Electronics Show.

11:23:57 8 Q. And did Samsung have the 90F at the CES in January of
11:24:04 9 '25?

11:24:04 10 A. Yes.

11:24:04 11 Q. And then was the 90F also displayed at another trade
11:24:10 12 show in February?

11:24:10 13 A. Yes.

11:24:11 14 Q. What is that one called?

11:24:12 15 A. Kitchen & Bath Show.

11:24:17 16 Q. And did Samsung have the 90F there to feature for
11:24:22 17 customers?

11:24:22 18 A. At Kitchen & Bath?

11:24:24 19 Q. At Kitchen & Bath.

11:24:27 20 A. Yes.

11:24:27 21 Q. And is Kitchen & Bath -- how big of a thing is it in
11:24:28 22 this space?

11:24:28 23 A. It's huge. It's the largest kitchen and bath show in
11:24:33 24 the country, probably one of the largest in the world.

11:24:34 25 Q. And are all of your competitors or most of your

11:24:38 1 competitors there?

11:24:38 2 A. Definitely.

11:24:38 3 Q. Yeah. These folks, Ms. Villarroel's team, somebody was
11:24:42 4 there from -- from Whirlpool almost certainly?

11:24:43 5 A. I'm assuming all Whirlpool was there from at least PM
11:24:49 6 side.

11:24:49 7 Q. Yeah. Well, did they have a booth? Did they have a
11:24:52 8 display there?

11:24:53 9 A. Much bigger than ours.

11:24:55 10 Q. All right. And then that was in February of '25.

11:24:57 11 Earlier in the month of February, did there come a time
11:25:00 12 when Samsung registered its unit with the United States
11:25:04 13 Government?

11:25:04 14 A. Yeah, an Energy Star registration.

11:25:09 15 Q. And what is that?

11:25:10 16 A. If you're going to -- you have to register with Energy
11:25:15 17 Star in order to be Energy Star rated. So we registered
11:25:21 18 with Energy Star, and the registration was available online
11:25:23 19 in February.

11:25:24 20 Q. And if someone were to go and look at the Energy Star
11:25:27 21 registration, would they find any identifying information
11:25:32 22 there about the forthcoming unit?

11:25:33 23 A. Yes. Some -- some features are listed. It depends by
11:25:40 24 brand how much is disclosed, but there are some features
11:25:43 25 listed. Enough of the model number is listed to discern

11:25:46 1 the model number, as well.

11:25:47 2 Q. Okay. So in February -- on February '21, Samsung made
11:25:52 3 this public disclosure that included some of the features
11:25:59 4 and a portion of a model number?

11:26:00 5 A. Correct.

11:26:01 6 Q. To the public?

11:26:02 7 A. It's public. Yeah, anyone can go on and see that.

11:26:05 8 Q. Yeah. Now, when you're looking at what your
11:26:07 9 competitors are doing, are you looking at their Energy Star
11:26:10 10 registrations?

11:26:11 11 A. Absolutely.

11:26:11 12 Q. And what do you do with one when a competitor makes an
11:26:15 13 Energy Star registration?

11:26:16 14 A. When a competitor makes an Energy Star registration,
11:26:20 15 it's -- it shows you they're going to release a model in
11:26:24 16 the coming months, usually, like I was saying, there's
11:26:30 17 enough of the model number there where we can take that
11:26:33 18 model number and literally go on Google and search it. And
11:26:37 19 there's usually two to three sites that will yield more
11:26:42 20 product information about that product.

11:26:45 21 Q. Now, how long after these trade shows and this Energy
11:26:49 22 Star registration, Mr. Stumacher, was it before Samsung
11:26:52 23 began selling the 90F?

11:26:54 24 A. Sorry. Can you repeat that?

11:26:56 25 Q. How long -- well, I'll skip the preamble.

11:27:00 1 When did Samsung start selling the 90F?

11:27:03 2 A. So initial sales would have started in March.

11:27:06 3 Q. All right. And what -- to what channel were the

11:27:10 4 initial sales made?

11:27:11 5 A. So smaller regionals would have started selling first.

11:27:16 6 They don't have set reset times like larger customers, so

11:27:21 7 they have more flexibility in their ability to sell it

11:27:24 8 generally at any point.

11:27:25 9 Q. And when did those sales start?

11:27:28 10 A. March.

11:27:28 11 Q. March. And if I could turn your attention,

11:27:32 12 Mr. Stumacher, to Exhibit 52 -- DTX-52, that's in your

11:27:38 13 binder?

11:27:39 14 A. Yes.

11:27:40 15 [REDACTED]

11:27:44 16 [REDACTED]

11:27:54 17 [REDACTED]

11:27:54 18 [REDACTED] [REDACTED]

11:27:56 19 [REDACTED]

11:28:00 20 [REDACTED] [REDACTED]

11:28:04 21 [REDACTED] [REDACTED]

11:28:08 22 [REDACTED]

11:28:12 23 [REDACTED] [REDACTED]

11:28:14 24 [REDACTED]

11:28:17 25 [REDACTED] [REDACTED]

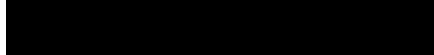
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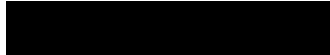
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Q. All right. Was there an online release of the 90F in

11:29:47

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March, as well?

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A. Yes.

11:29:49

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Q. And when did that happen?

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A. March 30th.

11:29:52

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Q. What's the significance of that?

11:29:53

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A. That is the official launch date for online of

11:30:00

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Samsung.com, and we try to keep the largest retailers'

11:30:03

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online launches aligned with that, as well. So the product

11:30:07

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date for launch where a consumer can go look at the

11:30:13

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product, see the features, and buy it.

11:30:15

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Q. And if anyone had watched Samsung and knew their

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behavior over time, have you ever done an online only

11:30:21

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launch?

11:30:27

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A. For a model in its entirety, no. There are, like, an

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white color version of this 90F that doesn't get any

11:30:35

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flooring. Yeah, that's only going to sell online. That's

11:30:38

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the same thing for every brand. But for a new model

11:30:41

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introduction, not in my career.

11:30:41 1 Q. So for anyone who knows how Samsung operates or watches
11:30:47 2 you, like, perhaps a competitor, they would see that when a
11:30:51 3 model is being launched online, it's coming in stores?

11:30:55 4 A. Yes, we wouldn't -- it's not our intention to launch
11:30:57 5 online without getting flooring.

11:30:58 6

11:31:04 7

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11:31:22 13 Q. Okay. All right. Now, on our timeline that we have
11:31:25 14 back up on the screen, Slide No. 4, what is the next event
11:31:30 15 that you chronicled for the Court?

11:31:32 16 A. That's the in-store rollouts at our major retailers.

11:31:37 17 Q. All right. And starting with which retailer?

11:31:38 18 A. Best Buy.

11:31:39 19

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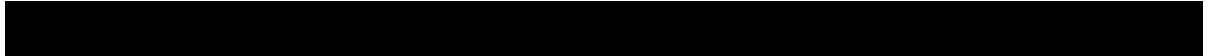
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11:32:05	1	[REDACTED]
11:32:05	2	[REDACTED]
11:32:09	3	[REDACTED]
11:32:09	4	[REDACTED]
11:32:12	5	[REDACTED]
11:32:14	6	[REDACTED]
11:32:16	7	[REDACTED] [REDACTED] [REDACTED]
11:32:18	8	[REDACTED] [REDACTED]
11:32:21	9	[REDACTED]
11:32:21	10	[REDACTED] [REDACTED] [REDACTED]
11:32:29	11	[REDACTED] [REDACTED] [REDACTED]
11:32:36	12	[REDACTED]
11:32:39	13	[REDACTED]
11:32:39	14	[REDACTED] [REDACTED]
11:32:45	15	[REDACTED]
11:32:47	16	[REDACTED]
11:32:49	17	[REDACTED] [REDACTED]
11:32:52	18	[REDACTED]
11:32:54	19	[REDACTED] [REDACTED]
11:33:04	20	[REDACTED]
11:33:08	21	[REDACTED]
11:33:08	22	[REDACTED] [REDACTED] [REDACTED]
11:33:11	23	[REDACTED]
11:33:14	24	[REDACTED] [REDACTED]
11:33:18	25	[REDACTED]

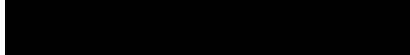
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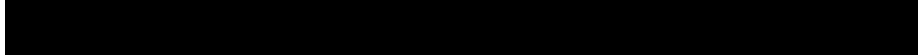
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11:34:46 1 Q. Okay. Let's go back to your timeline, sir, and look at
11:34:54 2 the next event. What came after on your timeline to the
11:34:57 3 Best Buy rollout?

11:34:57 4 A. Lowe's rollout.

11:34:59 5 [REDACTED]
11:35:13 6 [REDACTED]
11:35:17 7 [REDACTED]
11:35:22 8 [REDACTED]
11:35:24 9 [REDACTED]
11:35:26 10 [REDACTED]
11:35:30 11 [REDACTED]
11:35:32 12 [REDACTED]
11:35:34 13 [REDACTED]
11:35:35 14 [REDACTED] [REDACTED] [REDACTED]
11:35:39 15 [REDACTED] [REDACTED]
11:35:43 16 [REDACTED] [REDACTED] [REDACTED]
11:35:46 17 [REDACTED]
11:35:47 18 [REDACTED]
11:35:49 19 [REDACTED] [REDACTED]
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11:36:04 22 [REDACTED] [REDACTED] [REDACTED]
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11:36:14 24 [REDACTED] [REDACTED]
11:36:21 25 [REDACTED]

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Q. All right. Let me pause there for just a second and

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ask you, so when these 90F dishwashers went into these

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retailers, into Best Buy and Lowe's and to some extent to

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the retailers in the regional, what units did they replace?

11:41:32 1 What floor space were they taking?

11:41:34 2 A. The floor space of the predecessor model.

11:41:38 3 Q. The predecessor model by whom?

11:41:41 4 A. My own.

11:41:42 5 Q. So you were taking out one of your own units and
11:41:45 6 putting in your new model?

11:41:46 7 A. Correct. We only took our floor space, and, in fact,
11:41:49 8 we lost floor space in the transition.

11:41:51 9 Q. Well, let me ask you a little bit more about that. So
11:41:54 10 if we look at post-90F launch --

11:41:54 11 A. Correct.

11:41:58 12 [REDACTED]

11:42:00 13 [REDACTED]

11:42:06 14 [REDACTED]

11:42:10 15 [REDACTED]

11:42:14 16 [REDACTED]

11:42:16 17 [REDACTED] [REDACTED]

11:42:22 18 [REDACTED]

11:42:29 19 [REDACTED]

11:42:29 20 Q. So between -- after the launch of the 90F, you actually
11:42:35 21 had less floor space at Lowe's than you had before?

11:42:38 22 A. Correct.

11:42:39 23 Q. And all the floor space you had, to your knowledge, at
11:42:43 24 Lowe's and Best Buy, had previously been dedicated to
11:42:46 25 Samsung units?

11:42:49 1 A. Can you repeat that? I'm sorry?

11:42:50 2 Q. All the floor space that you had at Lowe's and Best Buy

11:42:54 3 before the 90F arrived had previously been dedicated to

11:42:57 4 Samsung units?

11:42:58 5 A. Yes.

11:42:59 6 Q. Have you taken any floor space away from KitchenAid or

11:43:02 7 Whirlpool with the 90F?

11:43:04 8 A. No.

11:43:05 9 [REDACTED]

11:43:19 10 [REDACTED]

11:43:31 11 [REDACTED]

11:43:34 12 [REDACTED]

11:43:37 13 [REDACTED]

11:43:43 14 [REDACTED]

11:43:45 15 [REDACTED]

11:43:49 16 [REDACTED]

11:43:49 17 [REDACTED]

11:43:50 18 [REDACTED]

11:43:53 19 [REDACTED]

11:43:57 20 [REDACTED]

11:43:57 21 [REDACTED]

11:43:59 22 [REDACTED]

11:44:01 23 [REDACTED]

11:44:04 24 [REDACTED]

11:44:05 25 [REDACTED]

11:44:10

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Q. And did you hear Ms. Villarroel's estimate of the sales

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of the KitchenAid product?

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A. Yes.

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Q. Will there ever be a time, in your reasonable estimate,

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when you're selling as many as she is?

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A. No.

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Q. Now, Mr. Stumacher, let me ask you some questions about

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what the marketing of these -- this line of dishwashers at

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this level.

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What are the features that drive consumer demand

11:45:37 1 in dishwashers of this sort?

11:45:39 2 A. Washing, sound level, drying, energy efficiency.

11:45:47 3 Q. And do you monitor things like consumer report ratings
11:45:56 4 and that sort of thing as part of your job?

11:45:58 5 A. Yes.

11:45:58 6 Q. And how does -- do you monitor that for your
11:46:04 7 competitors, as well?

11:46:05 8 A. Yes.

11:46:05 9 Q. And how does the -- how does the KitchenAid model stack
11:46:14 10 up on Consumer Reports, these 4, 6 -- 4, 6, and 7 series
11:46:25 11 that Ms. Villarroel was talking about? How do they stack
11:46:28 12 up on Consumer Reports?

11:46:30 13 A. They're in the yellow, so that's kind of like a mid to
11:46:33 14 low-tier rating. Ideally green would be where you'd like
11:46:38 15 to be, but that's mostly occupied by Bosch and LG.

11:46:42 16 Q. So Consumer Reports does not rate the Whirlpool product
11:46:46 17 as outstanding or even the highest third, I guess, of the
11:46:51 18 marks they give; is that accurate?

11:46:54 19 A. That's correct.

11:46:55 20 Q. Now, did you hear Ms. Villarroel talk about how she was
11:47:04 21 guesstimating that if a consumer had a good experience with
11:47:10 22 a Samsung 90F with a third rack, that that would benefit
11:47:14 23 Samsung, but if they had a bad experience, they would blame
11:47:18 24 KitchenAid?

11:47:19 25 A. Yes.

11:47:19 1 Q. What's your reaction to that?

11:47:21 2 A. I would say that if they had a good experience with
11:47:25 3 Samsung, it should also benefit KitchenAid.

11:47:27 4 Q. How so?

11:47:29 5 A. Because they have a third rack that has a washing
11:47:32 6 system. So if it goes one way in terms of carrying over a
11:47:37 7 negative experience, it should as easily carry over a
11:47:41 8 positive experience.

11:47:42 9 Q. And have you -- are you aware of any school of thought
11:47:47 10 or data that's out there that suggests that if someone has
11:47:51 11 a bad experience with a Samsung device, they're going to
11:47:54 12 blame it on KitchenAid?

11:47:55 13 A. No.

11:47:56 14 Q. Okay. There was also some discussion about reviews of
11:48:04 15 Samsung products and they used in Ms. Villarroel's
11:48:09 16 testimony an example of one review from Lowe's. Were you
11:48:12 17 listening when she was talking about that?

11:48:14 18 A. Yes.

11:48:14 19 Q. What is the situation with reviews? What's your
11:48:17 20 reaction to that review, and what's your understanding of
11:48:20 21 the circumstance overall?

11:48:22 22 A. The reviews on our 90F dishwasher is actually very
11:48:26 23 positive, a minimum of 4.4 and above.

11:48:29 24 Q. On what scale?

11:48:31 25 A. Out of 5.

11:48:32 1 Q. Okay.

11:48:32 2 A. Which is from a review standpoint, outstanding.

11:48:35 3 Q. And what source is that from?

11:48:37 4 A. From Lowe's, Home Depot, and Best Buy, the three
11:48:40 5 largest retailers.

11:48:41 6 Q. Okay. And what was your reaction to the one review
11:48:47 7 about a woman or somebody having difficulty in loading the
11:48:52 8 dishwasher?

11:48:52 9 A. For me, that is a review that was picked -- for as many
11:49:02 10 negative reviews that you can find for our third rack
11:49:08 11 washing system, there are as many positive or even more
11:49:12 12 positive reviews for our third rack dishwasher.

11:49:15 13 Q. Now, you mentioned some of the features that drive
11:49:23 14 sales in sound and washing and drying. Is the third rack
11:49:30 15 in a dishwasher, according to your understanding of the
11:49:35 16 marketplace, is that something that distinguishes
11:49:40 17 dishwashers from each other?

11:49:41 18 A. Having a third rack?

11:49:43 19 Q. Yes.

11:49:44 20 A. It's very commonplace these days. So I -- just a third
11:49:49 21 rack on its own is not distinguishable.

11:49:51 22 Q. And has Samsung -- has Samsung had third racks for a
11:49:58 23 long time?

11:49:58 24 A. Yes.

11:49:59 25 MR. DURST: Okay. Let's go to the next slide,

11:50:01 1 Mr. Wiggins.

11:50:02 2 Q. (By Mr. Durst) What are we seeing here on Slide No. 9?

11:50:05 3 A. These are all examples of models with third racks.

11:50:08 4 Q. Going back to 2019?

11:50:09 5 A. Yeah.

11:50:09 6 Q. Now, have you yet seen any data that suggests that the

11:50:17 7 rack that is in the KitchenAid product is driving sales

11:50:23 8 particularly to that model?

11:50:24 9 A. Sorry. Can you repeat that?

11:50:27 10 Q. Have you seen any sales that isolate the impact of the

11:50:31 11 third rack in the -- in the KitchenAid model? What they

11:50:34 12 call their premium rack, did that drive sales? Did that

11:50:38 13 feature drive sales to that model?

11:50:39 14 A. I don't have any data or any other model that shows me

11:50:43 15 that they're increasing sales. If there was an increase in

11:50:47 16 sales, is due to that feature.

11:50:48 17 Q. All right. Now, what is the price range of the 90F?

11:50:51 18 A. So we promoted anywhere between 899 and 999.

11:50:58 19 Q. And the -- you heard Ms. Villarroel say that the model

11:51:06 20 that KitchenAid has most floored is the 400 series, the

11:51:10 21 424, I think, it is now?

11:51:11 22 A. Yes.

11:51:12 23 Q. How does that compare -- your price point compare to

11:51:16 24 the KitchenAid price point?

11:51:17 25 A. 90F versus 424?

11:51:19 1 Q. Yes.

11:51:20 2 A. Very similar.

11:51:20 3 Q. In what range?

11:51:22 4 A. Between 899 and 999.

11:51:24 5 Q. Okay. You heard Ms. Villarroel price compare the 90F

11:51:38 6 to the 724 -- the KitchenAid 724 and say there was a

11:51:43 7 dramatic price difference. Did you see that testimony?

11:51:46 8 A. Yes.

11:51:47 9 [REDACTED]

11:51:48 10 [REDACTED]

11:51:55 11 [REDACTED]

11:52:02 12 [REDACTED]

11:52:05 13 [REDACTED]

11:52:11 14 [REDACTED]

11:52:15 15 Q. Okay. And, Mr. Stumacher, do you track market share?

11:52:19 16 A. Yes.

11:52:20 17 Q. All right. And how do you do that at Samsung?

11:52:22 18 A. We use TraQline.

11:52:26 19 Q. Can you turn in your book to -- the exhibit book to

11:52:32 20 DTX-54, please? Do you have that?

11:52:42 21 A. Yes, sir.

11:52:42 22 [REDACTED]

11:52:44 23 [REDACTED]

11:52:49 24 [REDACTED]

11:52:55 25 [REDACTED]

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Q. Speak to that just a little bit more about the source

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of this.

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A. TraQline is generally the only reputable source of

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market share information in the industry. Unlike Consumer

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Electronics, there's more available market share sources.

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This is the one that's used for home appliances.

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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Q. Now, Mr. Stumacher, Whirlpool has asked the Court to

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take your 90F model off the market. Are you aware of that?

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A. Yes.

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Q. What would the impact of that -- of an order like

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that -- if that request were granted, how would that impact

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you?

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A. It would be devastating from a revenue perspective,

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investment in the unit to launch it, the loss of flooring,

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reputation with retailers, as well.

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

11:57:36

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[REDACTED]

11:57:38

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[REDACTED]

11:57:39

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[REDACTED]

11:57:40

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[REDACTED]

11:57:41

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[REDACTED]

11:57:47

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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Q. And how long do you reasonably expect this model to be

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in the marketplace?

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A. Four to five years.

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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Q. Okay. And did you hear Ms. Villarroel say that

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sometimes these models go even longer than that?

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A. The lifecycle of dishwashers, but, yes, I think

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KitchenAid does keep models for a while.

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Q. Okay. And then was there -- was there research and

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development spending and spending that went into the launch

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for Samsung?

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A. So there was -- there was R&D spending to develop the

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model, tremendous, and there was also money involved in the

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launch.

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Q. And in Samsung's business, how are those prices -- how

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are those expenses recouped?

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A. By continuing to sell the model through the lifetime.

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Q. So if the sales are cut off, will you have any way to

11:59:08 1 recoup those expenses?

11:59:10 2 A. No.

11:59:10 3 Q. And then what would happen to you in the floor space
11:59:13 4 world if there was an order from the Court taking this
11:59:15 5 model off the market?

11:59:17 6 A. I would have nothing to fill the space with. If I
11:59:25 7 could not sell these on the floor anymore and I had to
11:59:28 8 remove them from the floor, I could not backfill these --
11:59:32 9 these units.

11:59:32 10 Q. You don't have another model you could just put in
11:59:35 11 there?

11:59:35 12 A. It might seem that easy, but it's actually not quite
11:59:40 13 the story. These models are very particularly placed on
11:59:45 14 the floor for where they make most sense, and the merchants
11:59:50 15 put a lot of time and effort into deciding and planning the
11:59:54 16 planograms, which is -- a planogram is sort of the -- their
11:59:59 17 flooring orientations.

12:00:04 18 So where my 90F sits today is very specifically
12:00:08 19 picked and selected by -- by the merchant to be a premium
12:00:16 20 spot for a premium dishwasher that will enhance the
12:00:19 21 merchant's overall sales. And we took the spots of our
12:00:23 22 previous unit, which was also considered a premium, so that
12:00:26 23 makes sense.

12:00:27 24 Q. And were you -- you were in the room, I think, when
12:00:34 25 Whirlpool said that floor space, once it's lost, it's --

12:00:38 1 it's hard to get back? Is that the world that you live in,
12:00:42 2 too?
12:00:43 3 A. Yes, very much so.
12:00:44 4 Q. So if you lose this floor space on account of an order
12:00:48 5 that takes the product off the market, you would expect
12:00:50 6 that to be a difficult loss to recover from?
12:00:52 7 A. Extremely difficult.
12:00:54 8 Q. Now, lost in terms of impact potentially of having to
12:00:57 9 remove a product from the marketplace, would that have, in
12:01:03 10 your assessment, any impact on Samsung's reputation in this
12:01:08 11 market?
12:01:09 12 A. Absolutely.
12:01:09 13 Q. How so?
12:01:10 14 A. It is -- it is a very bad experience to pull a product
12:01:18 15 off the floor and let a customer know that with very short,
12:01:22 16 limited time frame, that just is very disruptive to their
12:01:26 17 business, but it also just degrades how we look to the
12:01:29 18 retailer. And, of course, you know, the reason for why
12:01:32 19 we're pulling it off, that can be -- you know, that can be
12:01:39 20 interpreted and then misinterpreted and then misinterpreted
12:01:43 21 again, and that can lead to more -- more reputational
12:01:48 22 damage, as well.
12:01:49 23 Q. Thank you, Mr. Stumacher. I have no more questions at
12:01:53 24 this time.
12:01:53 25 THE COURT: All right. Thank you, Mr. Durst.

12:01:54 1 Does the Plaintiff have any extensive cross, in
12:02:04 2 which case we'll break for lunch and take the cross after,
12:02:08 3 or if it's short, we can go now.

12:02:11 4 MS. SRINIVASAN: It won't be short, Your Honor.
12:02:13 5 So I'd expect we should take lunch first.

12:02:16 6 THE COURT: All right. Then we will recess for
12:02:18 7 lunch until 1:15. Thank you.

12:02:20 8 COURT SECURITY OFFICER: All rise.

12:02:21 9 (Recess.)

12:02:21 10 COURT SECURITY OFFICER: All rise.

01:15:51 11 THE COURT: Thank you. Please be seated.

01:16:02 12 All right. We're ready for the cross-examination.

01:16:09 13 If the witness would return to the stand.

01:16:25 14 MR. DURST: Just making sure everything is
01:16:28 15 silenced, Your Honor.

01:16:30 16 THE COURT: All right. Go ahead and have a seat,
01:16:42 17 sir.

01:16:57 18 MS. SRINIVASAN: Your Honor, I have witness
01:16:59 19 binders for the witness and the Court, if I may approach?

01:17:02 20 THE COURT: Yes.

01:18:18 21 MS. SRINIVASAN: Along with slides.

01:18:18 22 THE WITNESS: Thank you, ma'am.

01:18:34 23 CROSS-EXAMINATION

01:18:35 24 BY MS. SRINIVASAN:

01:18:35 25 Q. Thank you. Good afternoon, Mr. Stumacher. Nice to

01:18:38 1 meet you. My name is Kalpana Srinivasan. We've not met
01:18:42 2 before, correct?

01:18:43 3 A. Correct.

01:18:43 4 Q. And I'm counsel for Whirlpool in this case.

01:18:45 5 I want to start with your testimony about
01:18:54 6 Samsung's DW90F. It is the case that Samsung only has one
01:18:59 7 dishwasher that has been sold in the U.S. that includes a
01:19:02 8 top third rack that can accommodate both drinkware and
01:19:09 9 utensils, correct?

01:19:10 10 A. Correct.

01:19:10 11 Q. That's the accused product that we're here about in
01:19:13 12 this case, correct?

01:19:14 13 A. Correct.

01:19:14 14 Q. And it's your testimony that Samsung, losing the
01:19:20 15 ability to sell even that one single dishwasher, would be
01:19:26 16 devastating to Samsung, correct?

01:19:28 17 A. Correct.

01:19:28 18 Q. You described the DW90F as the most premium dishwasher
01:19:37 19 that Samsung has, right?

01:19:38 20 A. Yes.

01:19:38 21 Q. And, in fact, what distinguishes it from the DW80, the
01:19:45 22 model that was before it, is that it contains a premium
01:19:49 23 third rack design, correct?

01:19:54 24 A. No, incorrect.

01:19:54 25 Q. The DW80F did not have a premium third rack, correct?

01:19:59 1 A. DW80F is not a model.

01:20:01 2 Q. The D -- okay. And you all refer to it internally -- I

01:20:06 3 heard your testimony as to the DW80. You refer to it

01:20:10 4 internally as the DW9995?

01:20:10 5 A. 9950.

01:20:13 6 Q. Yeah. And that model which you referred to internally

01:20:17 7 as the DW80; is that correct?

01:20:19 8 A. We only refer to it as the 9950.

01:20:21 9 Q. Okay. When you were describing earlier that there were

01:20:25 10 models that the DW90 replaced in various retailers, did you

01:20:33 11 utilize the term "DW80"?

01:20:35 12 A. No, it's not -- it's not a -- it's not a model number

01:20:41 13 that we use.

01:20:41 14 Q. Okay. So your testimony is that the DW90 replaced the

01:20:45 15 DW9950; is that correct?

01:20:48 16 A. Correct. Correct.

01:20:49 17 Q. Okay. And the DW9950 does not contain the premium

01:20:55 18 third rack that's been the subject of our discussion today,

01:20:55 19 correct?

01:20:58 20 A. It does not have that rack, and it does not have

01:21:00 21 several other very important features that the 90F has.

01:21:05 22 Q. Now, your testimony -- let me ask you this. You were

01:21:09 23 here during opening statements this morning, correct?

01:21:12 24 A. Correct.

01:21:12 25 Q. And you saw the documents that were displayed during

01:21:16 1 the course of my opening argument, correct?

01:21:20 2 A. Yes.

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01:21:30 7 Q. And you heard the argument in which I stated that

01:21:37 8 Samsung had copied the design of KitchenAid with respect to

01:21:41 9 the premium third rack, correct?

01:21:43 10 A. I heard you say that.

01:21:45 11 Q. Now, over the course of your direct examination with

01:21:48 12 counsel -- with your counsel today, I didn't hear you talk

01:21:51 13 at all about those documents that I showed during my

01:21:55 14 argument this morning, correct?

01:21:57 15 A. Sorry, can you repeat that?

01:21:59 16 Q. Sure. You didn't -- you didn't talk at all about the

01:22:01 17 documents that I showed this morning in my argument?

01:22:05 18 A. When?

01:22:06 19 Q. During the course of your direct examination, sir.

01:22:08 20 A. No.

01:22:11 21 Q. And, in fact, you didn't address the claim that Samsung

01:22:20 22 copied the premium third rack directly from KitchenAid,

01:22:20 23 correct?

01:22:30 24 A. No, because I do not believe we did.

01:22:35 25 Q. My question to you, sir, was during the course of your

01:22:37 1 examination with your own counsel, at no point did you deny
01:22:41 2 that Samsung had copied the design of the premium third
01:22:44 3 rack from KitchenAid, correct?

01:22:46 4 A. I didn't because I wasn't asked.

01:22:48 5 Q. Right. You didn't offer that testimony in the course
01:22:50 6 of your examination for consideration, correct?

01:22:54 7 A. I didn't -- I didn't make that statement.

01:22:56 8 [REDACTED]
01:23:00 9 [REDACTED]
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01:23:06 11 [REDACTED]
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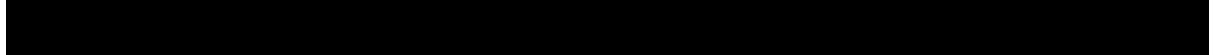
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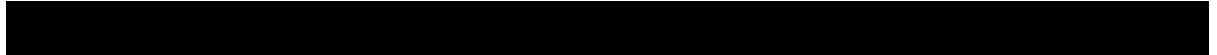
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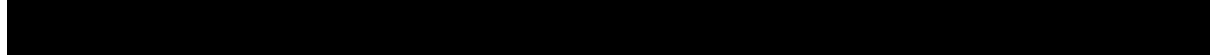
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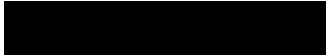
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[REDACTED]

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THE COURT: Ms. Srinivasan, help me out.

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MS. SRINIVASAN: Yes.

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THE COURT: What am I listening for here.

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

01:52:36 1 THE COURT: It's just these may be baby steps, but
01:52:41 2 if you can get to the point, that would be helpful.

01:52:45 3 MS. SRINIVASAN: Sure. Let me move ahead to the
01:52:47 4 next exhibit, which is Exhibit 28 and '9.

01:52:56 5 Q. (By Ms. Srinivasan) You see that --

01:52:58 6 MR. DURST: Your Honor, these exhibits -- that one
01:53:00 7 we just went through was one that was used in opening, and
01:53:04 8 I had the chance to talk with the client about the AEO
01:53:09 9 designation on it, and we were fine with Whirlpool's people
01:53:12 10 being in. But the next document is moving to, I think, a
01:53:15 11 new document that we have not put up before. It is marked
01:53:20 12 attorneys' eyes only, so I would request that the --

01:53:25 13 THE COURT: Well, why don't we just take it down
01:53:28 14 from the courtroom display, and I have a copy, the witness
01:53:34 15 has a copy, and Ms. Srinivasan can just question about the
01:53:41 16 document without it being displayed in the courtroom.

01:53:43 17 MR. DURST: Thank you, Your Honor.

01:53:45 18 THE COURT: All right.

01:53:47 19 MS. SRINIVASAN: Thank you, Your Honor. We did
01:53:49 20 show one image from it this morning, but there are other
01:53:53 21 images we'll be utilizing with Mr. Stumacher.

01:53:57 22 THE COURT: Which exhibit is this in your book?

01:54:01 23 MS. SRINIVASAN: It is Exhibit 28, and it is
01:54:04 24 accompanied by a translation certificate at Exhibit 29.

01:54:06 25 THE COURT: Very good. Thank you.

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01:54:38	11	[REDACTED]
01:54:42	12	[REDACTED]
01:54:43	13	[REDACTED]
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01:56:38	21	[REDACTED]
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02:02:12	19	[REDACTED]
02:02:14	20	[REDACTED]
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02:02:17	22	[REDACTED]
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02:02:21	24	[REDACTED]
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THE COURT: Ms. Srinivasan, Mr. Durst indicated, and I think you had also indicated, that this is a document that was produced in Korean by Samsung. Did the -- was the translation done by Samsung or by your side?

MS. SRINIVASAN: It was done by our side through a professional translator, and we served both that professional -- both the translation and the certificate from the translator on Samsung.

THE COURT: All right. And so you're saying that this document -- when was it produced to Samsung? In other words, have they had an opportunity to evaluate? That is unusual wording, and any time I see unusual wording in a translated document, it makes me wonder if it is capturing the intent of the original.

MS. SRINIVASAN: Your Honor, the document was

02:05:31 1 produced to us a few weeks ago, and we produced it back to
02:05:37 2 Samsung on April 1st with the -- the translated version
02:05:40 3 with the certificate from our certified translator.

02:05:48 4 THE COURT: All right. Mr. Durst, you objected
02:05:51 5 before. Have you looked into whether or not you disagree
02:05:53 6 with the translation that was commissioned by the
02:05:56 7 Plaintiff?

02:05:57 8 MR. DURST: Your Honor, we did not express
02:06:01 9 objections to the translation they gave to us.

02:06:05 10 THE COURT: All right. And so there is no reason
02:06:09 11 to have concern that that English text isn't properly
02:06:19 12 understood the way it's written?

02:06:21 13 MR. DURST: Well, I think there's plenty of reason
02:06:27 14 to wonder about how it should be understood. But the words
02:06:31 15 that are on the page we did not object to in terms of
02:06:34 16 translation.

02:06:35 17 THE COURT: All right. Good enough. Thank you,
02:06:38 18 Mr. Durst.

02:06:38 19 Go ahead, Ms. Srinivasan.

02:06:46 20 [REDACTED]

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02:06:55 25 [REDACTED]

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02:11:58	3	[REDACTED]
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02:12:09	5	[REDACTED]
02:12:12	6	[REDACTED]
02:12:12	7	[REDACTED]
02:12:15	8	[REDACTED]
02:12:18	9	[REDACTED]
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02:13:05	21	[REDACTED] [REDACTED]
02:13:08	22	[REDACTED]
02:13:14	23	[REDACTED]
02:13:19	24	[REDACTED]
02:13:22	25	(Off-the-record discussion between counsel.)

02:13:22 1 MR. DURST: I think we're still restricted.

02:13:38 2 MS. SRINIVASAN: Okay. Take this down.

02:13:40 3 [REDACTED] [REDACTED]

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02:13:50 8 [REDACTED] [REDACTED]

02:13:53 9 [REDACTED]

02:14:01 10 [REDACTED]

02:14:05 11 [REDACTED]

02:14:09 12 [REDACTED]

02:14:14 13 [REDACTED]

02:14:14 14 [REDACTED]

02:14:15 15 [REDACTED]

02:14:21 16 [REDACTED]

02:14:30 17 [REDACTED]

02:14:33 18 [REDACTED]

02:14:34 19 [REDACTED]

02:14:35 20 [REDACTED]

02:14:39 21 [REDACTED]

02:14:45 22 [REDACTED]

02:14:46 23 [REDACTED]

02:14:49 24 [REDACTED]

02:14:51 25 [REDACTED] [REDACTED]

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[REDACTED] [REDACTED]

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[REDACTED]

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[REDACTED]

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Q. Putting aside the reasons for the underperformance, if

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Samsung is underperforming and it is experiencing flooring

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loss, that creates an opportunity for a competitor to

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obtain that flooring space, correct?

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A. If we lose floors, it will generally go to either our

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model or the competitive model.

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED] [REDACTED]

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MR. DURST: Your Honor, I object. I think we're

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at a transition of a topic. I'm feeling some of the baby

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step pains here. We had an agreement between the parties

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of an hour and a half on fact witnesses each. We've been

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sitting here now for well over 30 minutes beyond that by

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Whirlpool. So --

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MS. SRINIVASAN: I'm wrapping up, Your Honor, but

02:21:27 1 I don't think that's correct in aggregate because
02:21:28 2 Ms. Villarroel's examination --

02:21:28 3 THE COURT: I would ask you to wrap up.

02:21:30 4 MS. SRINIVASAN: Yeah.

02:21:31 5 [REDACTED]
02:21:35 6 [REDACTED]
02:21:37 7 [REDACTED]
02:21:42 8 [REDACTED]
02:21:43 9 [REDACTED]
02:21:44 10 [REDACTED]
02:21:51 11 [REDACTED]

02:21:51 12 Q. At CES, you're not going to competitors and saying come
02:21:54 13 look at our products to see, you know, what features they
02:21:57 14 have, right?

02:21:57 15 A. We don't outwardly make an effort to show our
02:21:59 16 competitors our future launching products.

02:21:59 17 Q. You're not suggesting that Whirlpool should have been
02:22:02 18 figuring out whether -- should have been figuring out
02:22:07 19 whether Samsung was infringing, actively going and looking
02:22:10 20 for infringing units?

02:22:13 21 A. Sorry. Can you say that again?

02:22:15 22 Q. Sure. You're not suggesting that Whirlpool should have
02:22:18 23 been out there trying to figure out whether Samsung had
02:22:20 24 infringing units, correct?

02:22:26 25 A. I'm not saying that Whirlpool should have gone to Korea

02:22:30 1 and tried to find our new dishwasher and see if it
02:22:34 2 infringed the patent. I'm not also saying that they should
02:22:37 3 have done that at CES because you guys typically don't go
02:22:41 4 to CES, and you wouldn't have gone to Korean. Kitchen &
02:22:46 5 Bath Show, I can't account for the -- where the Whirlpool
02:22:49 6 people are.

02:22:49 7 Q. You'd agree with me, Mr. Stumacher, that's really
02:22:52 8 actually incumbent on Samsung to avoid infringement rather
02:22:57 9 than Whirlpool to have to go and discover whether Samsung's
02:22:59 10 new dishwashers are infringing, correct?

02:22:59 11 A. Sorry. Can you rephrase that?

02:23:01 12 Q. Sure. It's really the burden of Samsung to make sure
02:23:04 13 it's not infringing Whirlpool patents rather than Whirlpool
02:23:07 14 having to go out and investigate every time Samsung
02:23:11 15 launches a new dishwasher, correct?

02:23:13 16 A. We have a -- we have a very large dedicated team that
02:23:16 17 handles patent reviews, like I was saying before.

02:23:20 18 Q. Mr. Stumacher, you understand there are three patents
02:23:24 19 at issue in this case?

02:23:27 20 A. I'm not an expert in this particular subject, but I
02:23:33 21 understand there's patent -- this case about patent
02:23:36 22 infringement.

02:23:36 23 Q. Are you aware that the third patent, the '922, issued
02:23:41 24 by the Patent Office in February 2026?

02:23:43 25 A. No, I'm not aware of the details on that, or I'm just

02:23:47 1 not familiar with it because I'm covering marketing and
02:23:49 2 launch and pricing and these sorts of topics.
02:23:52 3 Q. And so you're not familiar about the timing between
02:23:55 4 the -- when that patent issued and when it was asserted in
02:23:58 5 this litigation against Samsung?
02:23:59 6 A. Not details that work into my R&Rs.
02:24:02 7 Q. So you don't have a position on behalf of Samsung in
02:24:05 8 this case that Whirlpool could have filed a preliminary
02:24:08 9 injunction motion on the '922 patent any earlier than
02:24:11 10 February of 2026?
02:24:12 11 A. I mean, we launched in Q1 of 2025. I think for me the
02:24:24 12 basic logic is you guys were aware probably within weeks.
02:24:30 13 Q. Mr. Stumacher, my question was a little bit
02:24:32 14 different --
02:24:32 15 A. Sorry.
02:24:33 16 Q. -- it was about the '922 patent which is --
02:24:35 17 THE COURT: You know, I know the answer to that.
02:24:37 18 You don't need to ask that.
02:24:40 19 MS. SRINIVASAN: Okay. All right. I will pass
02:24:41 20 the witness. Thank you.
02:24:42 21 THE COURT: All right.
02:24:45 22 REDIRECT-EXAMINATION
02:24:45 23 BY MR. DURST:
02:24:51 24 [REDACTED]
02:24:59 25 [REDACTED]

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Q. Okay. You have looked at the KitchenAid rack and the

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Samsung rack. Are they the same?

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A. No.

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Q. Now, is it normal course in the industry for

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competitors to study the features of the other of their --

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of their own competitors?

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A. Absolutely.

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Q. And do competitors sometimes follow features?

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A. Yes.

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Q. That are introduced by someone else?

02:30:07 1 A. Yes.

02:30:07 2 Q. Would you say that is common, unusual? What -- how
02:30:14 3 frequently does that happen in the industry?

02:30:16 4 A. It happens in our industry all the time and --
02:30:20 5 virtually every other consumer electronic industry and the
02:30:26 6 auto industry, most consumer goods.

02:30:28 7 Q. Would you say the concept of a third rack might even be
02:30:31 8 an example of everyone now following suit and having a
02:30:35 9 feature?

02:30:35 10 A. Correct.

02:30:36 11 Q. And have there been features that Samsung has
02:30:39 12 introduced first that now others are following?

02:30:44 13 A. In dishwasher?

02:30:47 14 Q. Yes.

02:30:52 15 A. So there is a feature that is on the majority of our
02:31:01 16 lineup, which is the auto release door. That feature did
02:31:06 17 exist before, but it was at an extremely high level of,
02:31:12 18 like, a Miele-type dishwasher. It was not affordable for
02:31:18 19 almost every person in this country. We virtually
02:31:20 20 pioneered that feature in putting it on a sub \$500
02:31:31 21 dishwasher so consumers could have better drying when
02:31:34 22 they're doing their dishwashers.

02:31:35 23 Q. What is that feature, just very briefly?

02:31:37 24 A. Yes, actually it's very simple. There's a spring and a
02:31:41 25 latch. And at the end of the cycle, the latch opens and

02:31:44 1 the spring against the door just pushes the door about an
02:31:48 2 inch, inch and a half out. It's extremely inexpensive to
02:31:52 3 do, and it is a wonderful feature because many people in
02:31:56 4 this country and other countries at the end of their
02:31:59 5 dishwasher cycle or sometime after completion they pop open
02:32:03 6 their dishwasher door, let the steam out, it helps with
02:32:07 7 drying, so we thought to just give everybody the benefit of
02:32:09 8 that feature.

02:32:10 9 Q. Samsung brought that to the everyday dishwasher market.
02:32:13 10 Have others followed that?

02:32:14 11 A. Yes. Now there's -- we had that pretty much
02:32:18 12 exclusively at the lower and mid-tier price points for some
02:32:25 13 time, and now LG has introduced that. Whirlpool has
02:32:32 14 introduced that now, as well. And it is definitely on the
02:32:37 15 KitchenAid new 24 series on the 4, 6, and 7s.

02:32:42 16 Q. So that's an example of a feature that Samsung
02:32:44 17 pioneered in that space and KitchenAid followed?

02:32:47 18 A. Correct.

02:32:48 19 Q. Mr. Stumacher, have you seen anything that gives you
02:32:55 20 the thought or a concern that Samsung copied KitchenAid in
02:32:59 21 this case?

02:33:00 22 A. No.

02:33:03 23 MR. DURST: Thank you, Your Honor. No more
02:33:05 24 questions.

02:33:05 25 THE COURT: All right. Anything else for this

02:33:11 1 witness?

02:33:12 2 MS. SRINIVASAN: No, Your Honor.

02:33:13 3 THE COURT: All right. Thank you, Mr. Stumacher.
02:33:14 4 You may step down.

02:33:15 5 THE WITNESS: Thank you.

02:33:16 6 THE COURT: Mr. Grinstein, my understanding is
02:33:33 7 that what you're going to do now is to do what your expert
02:33:39 8 would have done in showing me how the limitations or the
02:33:47 9 claim at issue reads on the Defendants' product; is that
02:33:54 10 right?

02:33:54 11 MR. GRINSTEIN: That's correct, Your Honor. I'm
02:33:57 12 also prepared to disparage their prior art if you'd like me
02:34:01 13 to.

02:34:02 14 THE COURT: I will wait until they've had the
02:34:05 15 opportunity to identify it, and then I'll call on you to
02:34:10 16 respond. But I would like to -- I've got the patents in
02:34:17 17 front of me, and I understand the '385 is the earlier of
02:34:25 18 the two. And I understand that you are asserting
02:34:32 19 Independent Claim 17 and the following -- or at least some
02:34:37 20 of the following dependent claims.

02:34:40 21 And so what I'd like you to do is to show me how
02:34:43 22 those read on this device, the primary model that you're
02:34:53 23 accusing.

02:34:54 24 MR. GRINSTEIN: Absolutely, Your Honor. And I
02:34:55 25 have a slide deck. May I approach with the slides, Your

02:34:58 1 Honor?

02:34:59 2 THE COURT: Yes.

02:34:59 3 MR. GRINSTEIN: And, Your Honor, you mentioned the
02:35:14 4 '385 first. Just because I thought it would be easier
02:35:18 5 thematically, I was going to start with the '922, which is
02:35:22 6 actually the most recent of the patents. I can do '385
02:35:26 7 first if you'd like, but '922 is how I have my presentation
02:35:30 8 arranged.

02:35:30 9 THE COURT: Frankly, I haven't even looked at the
02:35:33 10 '922. That was not mentioned in either of the briefs that
02:35:37 11 have been filed so far, I think because they preceded its
02:35:42 12 issuance. Has your focus now shifted to the '922?

02:35:49 13 MR. GRINSTEIN: It has not, Your Honor. We've got
02:35:52 14 three patents. We've asserted three patents. Three
02:35:56 15 patents are in the complaint.

02:35:58 16 THE COURT: Well, they're in the complaint that
02:36:01 17 was filed just recently, I agree.

02:36:03 18 MR. GRINSTEIN: If you take Your Honor back to the
02:36:07 19 original scheduling conference that we had in this case to
02:36:10 20 discuss this PI, I previewed that the '922 would be issued,
02:36:16 21 and we talked about the procedure by which we would add the
02:36:20 22 '922 into the case. And that procedure was we would amend
02:36:24 23 the complaint, add the '922 in, and then we had a series of
02:36:27 24 expert declaration exchanges between the parties wherein we
02:36:35 25 spelled out our '922 case, they responded on

02:36:38 1 non-infringement, invalidity, so on and so forth.

02:36:42 2 The parties and Your Honor agreed at the time that
02:36:45 3 we weren't going to amend the PI papers, and we'd instead
02:36:50 4 leave those sorts of things to post-trial briefing. So I
02:36:54 5 think that's why the parties think the '922 is in the case
02:36:57 6 but Your Honor may not have received '922 materials. That
02:37:00 7 was kind of the plan that we set forth back at the first
02:37:03 8 hearing in this case.

02:37:04 9 THE COURT: Well --

02:37:06 10 MR. GRINSTEIN: And I have a copy of the '922
02:37:09 11 patent I can hand to you right now.

02:37:10 12 THE COURT: All right.

02:37:21 13 MR. GRINSTEIN: I think one also benefit of the
02:37:24 14 '922 is its claim limitations are somewhat similar to the
02:37:30 15 '681. So going through the '922, as I'm intending to do
02:37:34 16 right now, will also help -- help you see through the
02:37:38 17 infringement case on the '685 -- on the '681, excuse me.

02:37:42 18 THE COURT: All right. So what claim of the '922
02:37:46 19 are you asserting?

02:37:47 20 MR. GRINSTEIN: Well, we're asserting various
02:37:53 21 dependent claims, but for purposes of the presentation
02:37:55 22 today, I just want to run through '922 patent, Claim 1.
02:38:00 23 I'm not going to go through all the dependent claims. I
02:38:02 24 think once I describe Claim 1 of the '922 patent, the
02:38:10 25 dependencies will make themselves clear, and we can rely on

02:38:10 1 the briefing and on the expert declarations, which I think
02:38:14 2 we intend to submit to Your Honor for the dependent claims.
02:38:16 3 And so I've got up on the screen right now, '922 patent,
02:38:20 4 Claim 1.

02:38:21 5 And, again, some of the disputes you're going to
02:38:24 6 hear about this patent are similar to some of the disputes
02:38:27 7 that you'll hear about the other two. I'm going to discuss
02:38:29 8 the other two, so hopefully all of this will be helpful to
02:38:32 9 Your Honor.

02:38:32 10 So this is '922, Claim 1. The first few
02:38:38 11 limitations of this claim are simple, and I don't think
02:38:41 12 they're in dispute. We're talking about a dishwasher with
02:38:45 13 a tub that has a dish treating chamber, and it's got two
02:38:50 14 lower dish racks, Rack No. 1 and Rack No. 2.

02:38:55 15 This is the product manual for the DW90F. Nobody
02:39:00 16 is disputing those limitations. We've got a dishwasher.
02:39:03 17 It's got a tub. It's got those first two racks on the
02:39:08 18 bottom. No argument about that.

02:39:11 19 I think the easiest way to describe the
02:39:13 20 infringement in this case, of course, is to just show you
02:39:16 21 the rack and roll through it. So I'll do that right now,
02:39:20 22 Your Honor. This is the accused Samsung rack. It's the
02:39:24 23 third rack of the DW90. And as we go through this claim,
02:39:30 24 the third limitation starts out, Limitation 1[c], an upper
02:39:35 25 rack located above the two lower ones. Well, this is the

02:39:39 1 third rack. It's above the two lower racks. No big
02:39:42 2 dispute there.

02:39:43 3 The upper rack, this upper dish rack, has a planar
02:39:48 4 portion. This right here is the planar portion, this
02:39:51 5 horizontal portion right here, and it has a depression.
02:39:56 6 And you can see my hands are on the depression right now.
02:39:58 7 This is a lower area of the dish rack that's depressed
02:40:04 8 relative to the planar portion. The depression includes a
02:40:09 9 first angled wall and a second angled wall. Here we've got
02:40:14 10 one angled wall where my hand is, and we've got a second
02:40:17 11 angled wall where my other hand is. Two angled walls.

02:40:22 12 They each extend at an acute angle relative to the
02:40:26 13 planar portion. Acute means less than 90 degrees. And
02:40:30 14 these two angles are less than 90 degrees relative to the
02:40:33 15 planar portion.

02:40:34 16 Wherein the first angled wall defines a set of cup
02:40:38 17 seats. What's a cup seat? Well, a cup seat is an area of
02:40:43 18 this angled wall where you can put a cup. And a cup sits
02:40:49 19 in there. It's cradled in this little area. It doesn't
02:40:53 20 move around. The spray jets hit it right here. It's a cup
02:40:58 21 seat. And I don't think there's really any debate that you
02:41:01 22 put a cup right there, because Samsung quite helpfully on
02:41:04 23 the front of the rack has this little picture, and it says:
02:41:07 24 Follow these instructions and put cups in this arrangement.

02:41:12 25 That's the cup seat.

02:41:13 1 So the first angled wall has a cup seat. The
02:41:20 2 second angled wall also has these cup seats. There we go.
02:41:24 3 I put a cup in there. It's seated. It's not moving
02:41:27 4 around. That's a cup seat.

02:41:28 5 Further, Limitation 1[d] says that the planar
02:41:36 6 portion includes a plurality of utensil holders configured
02:41:41 7 to horizontally support utensils. This is the planar
02:41:47 8 portion we mentioned before, and this is the utensil
02:41:52 9 holder. Again, Samsung helpfully shows you that this is
02:41:55 10 supposed to be for utensils. It's got a little picture of
02:41:59 11 a fork, a knife, and a spoon right there. Hey, people, put
02:42:05 12 your utensils here. And there's little sections where you
02:42:08 13 can lay forth your utensils, and they'll be held there.
02:42:08 14 Pretty straightforward.

02:42:09 15 And then the last limitation: Wherein the
02:42:13 16 depression extends entirely below a top of the utensil
02:42:19 17 holders in the planar portion.

02:42:22 18 Well, here's the top of the utensil holder where
02:42:24 19 my hand is, and you can see that the depression that I
02:42:26 20 talked about that was formed by these two angles, it's
02:42:29 21 entirely below the top of the utensil holder. It's not
02:42:32 22 even close.

02:42:33 23 That is Claim 1 of the '922 patent, Your Honor.

02:42:38 24 It is -- that's not some aggressive stretch read
02:42:46 25 of Claim 1. Just compare Figure 3 of the '922 patent,

02:42:52 1 which I've got up on the screen, to a picture of the
02:42:58 2 Samsung dish rack.

02:43:00 3 The only thing I'll say is that when you insert
02:43:03 4 the Samsung dish rack into the dishwasher, it's sort of
02:43:09 5 inserted in this orientation. The pictures in the patent
02:43:13 6 look at the thing from this orientation. I don't think
02:43:16 7 that matters for infringement. I mean, dish racks
02:43:19 8 obviously have two sides to them. Samsung goes right to
02:43:23 9 left. And we go left to right. I don't think that really
02:43:28 10 matters.

02:43:28 11 So apart from that fact -- I mean, just look at
02:43:31 12 the figure in the patent and look at the accused dish rack.
02:43:34 13 Those look awfully similar. This is not a stretch read of
02:43:38 14 the patent.

02:43:39 15 There are two non-infringement arguments that
02:43:44 16 Samsung raises with respect to the '922, both of which I
02:43:49 17 think get them nowhere because of the specification and the
02:43:53 18 language of the claims.

02:43:54 19 What is their first non-infringement argument?
02:43:57 20 The first non-infringement argument focuses on this
02:44:01 21 limitation of the claim. It says that there are two angled
02:44:06 22 walls that form a depression. And remember, I showed you
02:44:10 23 the two angles and the depression within the dish rack.

02:44:14 24 Their expert, Dr. Cameron, illustrates this in her
02:44:21 25 annotation of Figure 3 of the patent. She says, hey, look

02:44:25 1 at these angled walls in the patent. That purple area is
02:44:30 2 the depression, so that's how the patent works. This is
02:44:32 3 Dr. Cameron's work product right here. It's not mine.

02:44:36 4 But Samsung says in their non-infringement
02:44:41 5 argument, they say, looky here, in the Samsung device,
02:44:54 6 there is this area right here that has a planar portion,
02:44:58 7 and I'll show you a diagram of that right now. There's
02:45:07 8 this area in the middle that's a planar portion. They call
02:45:12 9 it a planar portion.

02:45:14 10 And so Samsung says, ah-ha, because there's that
02:45:18 11 planar portion which is interrupting the depression, really
02:45:25 12 what we've got here are two depressions and two planar
02:45:33 13 portions, not one depression and one planar portion. That
02:45:36 14 is their non-infringement argument, or at least the first
02:45:39 15 of them for the '922.

02:45:39 16 I will say first of all, that argument is
02:45:41 17 completely inconsistent with the claim language. The claim
02:45:46 18 language is a comprising claim. And as Your Honor knows
02:45:49 19 from the old three-legged stool example, if you've got a
02:45:53 20 patent that claims a stool comprising three legs, it is
02:45:57 21 infringed by a four-legged stool, much like a -- if there
02:46:03 22 is a second planar portion -- and I'll get to the point in
02:46:05 23 a second whether that really is planar or not -- if there
02:46:08 24 is a second planar portion, that doesn't take them out of
02:46:12 25 infringement, it just adds a planar portion to the

02:46:16 1 embodiment. But that doesn't mean that there's no
02:46:18 2 infringement.

02:46:19 3 But, you know, more to the point, compare
02:46:25 4 Dr. Cameron's annotation of the patent to the Samsung
02:46:32 5 device. The annotation of the patent that Dr. Cameron
02:46:37 6 provides -- and I flipped the images so we're both looking
02:46:39 7 at this going the same direction -- there's a structure in
02:46:42 8 the middle of the depression in the very patent itself.
02:46:47 9 It's right there in the middle, that big structure that's
02:46:52 10 labeled backwards 116, there's that big structure there
02:46:56 11 breaking up the depression.

02:46:58 12 So as far as I understand Dr. Cameron's argument,
02:47:04 13 the -- this does -- this picture from the patent meets the
02:47:11 14 limitations of the claim because the top of that structure
02:47:14 15 that intervenes is rounded, but the Samsung rack doesn't
02:47:23 16 meet the limitations of the claim because that structure is
02:47:26 17 flat. And I'm at a loss to find any claim language -- any
02:47:30 18 part of the specification that would suggest that makes a
02:47:33 19 hill of beans of difference. It doesn't.

02:47:37 20 In the patent, there is a structure that's
02:47:39 21 breaking up the depression, but that's still a depression,
02:47:42 22 and that still meets limitations of the claim.

02:47:45 23 In the accused device, there's a structure that
02:47:48 24 breaks up the depression, but it's still a depression, and
02:47:51 25 that meets the limitations of the claim. I don't follow

02:47:53 1 that argument.

02:47:54 2 I will also note that if we want to get really
02:47:57 3 technical about it, Dr. Tanbour has noted, I think without
02:48:02 4 rebuttal, that that planar portion that's right there
02:48:05 5 actually isn't a plane. If you measure it, it bows out a
02:48:10 6 little bit.

02:48:12 7 So if you want to make an argument that the -- a
02:48:16 8 curved interceding unit in this depression takes you out of
02:48:19 9 infringement, well, then that one actually is curved as you
02:48:23 10 measure it. But I don't think you even need to go there
02:48:26 11 because there's nothing in the claim language, there's
02:48:28 12 nothing in the specification that says just because you've
02:48:30 13 got something breaking up the depression, that means you no
02:48:33 14 longer have a depression that meets the language of the
02:48:36 15 claims, that's what the figure shows.

02:48:37 16 Their second non-infringement argument as to the
02:48:44 17 '922. The second non-infringement argument as to the '922
02:48:47 18 focuses on this clause that says: Wherein the planar
02:48:51 19 portion includes a plurality of utensil holders configured
02:48:54 20 to horizontally support utensils.

02:48:58 21 And Samsung's argument here, which I think you
02:49:00 22 heard during their opening presentation, was that the word
02:49:06 23 "includes" means that you can't have this removable utensil
02:49:12 24 caddy right here, that the utensil holders actually have to
02:49:16 25 be formed into the actual structure of the rack on which

02:49:21 1 the utensil caddy is sitting. That's their argument.

02:49:28 2 And I will say that is putting a lot of meaning
02:49:32 3 into the word "includes." The word "includes" says nothing
02:49:40 4 about how the utensil holders have to be structured and
02:49:43 5 actually built into the rack wiring structure. It just
02:49:46 6 says the word "includes."

02:49:49 7 Now, the specification talks about several
02:49:52 8 different embodiments. So, for example, at Column 6, Lines
02:49:57 9 9 through 16, the specification talks about an embodiment
02:50:01 10 where you have a removably-mounted utensil caddy, kind of
02:50:06 11 like what I just showed you, and so the specification talks
02:50:10 12 about that. And then the specification says:
02:50:16 13 Alternatively, at least a portion of the utensil caddy can
02:50:20 14 be integrally formed with the planar portion, and hence the
02:50:24 15 dish rack.

02:50:25 16 And I think that's what Samsung's argument is, is
02:50:28 17 that this claim is claiming that particular embodiment, not
02:50:31 18 the removable utensil caddy embodiment. I don't quite
02:50:37 19 understand how they get there, Your Honor. The patentees
02:50:40 20 knew how to say integrally formed. They knew how to
02:50:44 21 describe integrally formed. That's in the specification.
02:50:47 22 They could have used that language in Claim 1 of the '922.
02:50:52 23 But instead, they just used the term "include."

02:50:57 24 Moreover, Claim 3 of the '922, which depends upon
02:51:02 25 Claim 1, claims the utensil caddy that's removable. So I

02:51:07 1 don't think there's any evidence that the word "includes"
02:51:10 2 means that the patentees in this claim were trying to claim
02:51:12 3 this alternative embodiment which very clearly uses the
02:51:17 4 word "integrally formed," and they didn't use that language
02:51:20 5 here.

02:51:20 6 To try to bolster this point and try to provide
02:51:24 7 some meaning to the word "include," which I don't see
02:51:27 8 exists in the meaning of the word "include," Dr. Cameron,
02:51:31 9 their expert, hazards a prosecution history argument. And
02:51:37 10 what Dr. Cameron says is, ah, look, during the prosecution
02:51:41 11 of the '922 patent, the language of this claim was changed.
02:51:48 12 It currently reads: Wherein the planar portion includes a
02:51:51 13 plurality of utensil holders. But it used to read: A
02:51:56 14 plurality of utensil holders disposed in the planar
02:51:59 15 portion.

02:51:59 16 And from that, Dr. Cameron concludes this must
02:52:04 17 mean that the patentee -- the patent was changed to claim
02:52:08 18 this integrally formed embodiment.

02:52:12 19 Again, I don't know how they get there from that
02:52:15 20 change. First of all, this was not a change we made. It
02:52:18 21 was an examiner amendment. It wasn't made in response to
02:52:21 22 any prior art that has anything to do with integrally
02:52:27 23 formed utensil holders. And more to the point, this change
02:52:32 24 in language actually moved the language away from Samsung's
02:52:36 25 argument, not towards it. That's because, you know, the

02:52:42 1 Federal Circuit deals with "disposed in" claims all the
02:52:46 2 time, and the Federal Circuit has said if there's a claim
02:52:49 3 that says "disposed in," that means there's some entity
02:52:53 4 that is contained entirely or partially within another
02:52:56 5 entity. That's the way that the Federal Circuit interprets
02:53:00 6 "disposed in."

02:53:00 7 So if the language had stayed as "disposed in,"
02:53:06 8 maybe Samsung would have had an argument. I'm not so sure
02:53:09 9 it would have been a good one, but maybe they would have
02:53:13 10 had an argument that if it's disposed in, then these
02:53:16 11 utensil holders actually have to be in the structure of the
02:53:18 12 rack.

02:53:18 13 But the language got claimed -- got changed,
02:53:22 14 excuse me, and moved away -- whoops, my rack is falling
02:53:26 15 apart -- moved away from that concept and just has the very
02:53:30 16 broad language of includes.

02:53:32 17 So those -- that's it. Those are their two
02:53:36 18 non-infringement arguments. One of them is plainly
02:53:39 19 rebutted by just the picture in the patent. The other one
02:53:42 20 is trying to put word -- meaning into a word "includes"
02:53:47 21 that I just don't see how they get that meaning from that
02:53:51 22 word.

02:53:51 23 Let's talk about the next patent, the '681. Here,
02:53:58 24 we've asserted Claim 14 and some dependencies of Claim 14.
02:54:04 25 Again, I'm just going to talk about the independent claim

02:54:07 1 to try to keep this moving. And this patent shares the
02:54:11 2 same specification with the '922. So the concepts are
02:54:13 3 going to sound a little similar, and hopefully we can move
02:54:17 4 through this one quickly.

02:54:18 5 The first limitations of these claims, again,
02:54:23 6 Samsung is not disputing it. We've got an automatic
02:54:26 7 dishwasher, the DW90. It's got an automatic treating
02:54:31 8 cycle. There is a tub in which you treat dishes. Nobody
02:54:33 9 is arguing about that.

02:54:35 10 What are we looking at right here? We're looking
02:54:39 11 at a dish rack, and it has a first end spaced from a second
02:54:45 12 end. Well, every object in the world, I guess, has got two
02:54:50 13 ends. But we got an end here. We've got an end on the
02:54:53 14 other side.

02:54:54 15 There is a bottom wall, and we can see this rack
02:54:57 16 has a bottom wall. It's what I'm holding up right now.
02:55:01 17 The bottom wall has peripheral walls that define the side
02:55:05 18 walls of the dish rack. Obviously, this dish rack has two
02:55:10 19 side walls on the side there. They go up vertically.

02:55:15 20 The bottom wall has a first portion defined by a
02:55:20 21 first substantially horizontal planar portion extending
02:55:24 22 across a first portion of the bottom wall. We've already
02:55:26 23 talked about this. There is a planar portion -- a
02:55:30 24 horizontal portion of the bottom wall right there.

02:55:33 25 There's -- at the second end of the dish rack, so

02:55:40 1 there's the other end of the dish rack, there is a second
02:55:43 2 portion which is angled with respect to the first portion,
02:55:46 3 and here we see a portion of the bottom wall that's angled.
02:55:50 4 It's at the second end of the dish rack. And that angle
02:55:54 5 defines a depression, and that's a depression because the
02:55:57 6 area that's in this angle of this dish rack is lower than
02:56:01 7 the planar portion. That's a depression, and that's what
02:56:04 8 it says right here, the depression extended lower than the
02:56:07 9 first portion relative to the peripheral wall.

02:56:09 10 It says: The first portion supports a set of
02:56:13 11 utensil holders for supporting one or more utensils.

02:56:16 12 Again, the first portion was this planar portion,
02:56:19 13 and here is the utensil holder that it supports.
02:56:23 14 Straightforward.

02:56:24 15 And the second portion defines a cup seat. And,
02:56:29 16 again, as I mentioned before, that's a cup seat. The cup
02:56:33 17 sits in there nice and snug. It's cradled. That's a cup
02:56:37 18 seat. That is the infringement read on that patent.
02:56:42 19 Again, extraordinarily straightforward. We're not
02:56:44 20 stretching anything. This is not the patentees invented
02:56:50 21 something else and now they're trying to claim some
02:56:52 22 completely different concept. Straightforward.

02:56:55 23 And, in fact, Samsung, at least through
02:56:58 24 Dr. Cameron, has advanced only one non-infringement
02:57:00 25 argument with respect to the '681, only one. And with

02:57:06 1 respect to that, their argument looks to this limitation of
02:57:12 2 the claim. That limitation of the claim talks about the
02:57:15 3 second end of the dish rack. And it says: At the second
02:57:20 4 end of the dish rack, there's that angle which defines the
02:57:23 5 depression.

02:57:24 6 Excuse me.

02:57:26 7 What Samsung's argument is, is, ah-ha, looky here,
02:57:35 8 when you pointed to the end and you showed an angle, there
02:57:38 9 is this little nub on the side here which is horizontal at
02:57:44 10 the end of the dish rack, and so you don't have an angle at
02:57:49 11 the end of a dish rack, you've got this little nub that's
02:57:54 12 horizontal. And so, therefore, that's non-infringement.

02:57:56 13 There are a lot of problems with that argument,
02:58:00 14 Your Honor. And the biggest problem you can see is on the
02:58:03 15 first page of the patent. Look at the first page of the
02:58:07 16 patent, Your Honor. There is a figure that illustrates the
02:58:11 17 invention of the patent. That is Figure 3 of the patent,
02:58:16 18 and I'm showing Figure 3 right now.

02:58:19 19 And lo and behold, when you look at Figure 3 of
02:58:23 20 the patent, what does it have? Well, it has that angled
02:58:28 21 wall 112 that goes up the side, but that angled wall
02:58:33 22 doesn't go all the way to the end to the side wall of the
02:58:37 23 structure. It flattens out and goes horizontal. In fact,
02:58:44 24 that looks exactly like the Samsung dish rack. The '681
02:58:51 25 has this flattened portion after the angle that goes into

02:58:55 1 the side wall, and yet that is an illustration of the
02:58:59 2 invention of the patent. And, look, the Samsung design has
02:59:05 3 the exact same thing, an angle that goes flat or flattens
02:59:11 4 out before it hits the side wall. I mean, the kind of
02:59:15 5 similarity is striking. It even curves up a little bit
02:59:19 6 both in the patent figure and in the actual device.

02:59:23 7 So I don't see how if Figure 3 illustrates the
02:59:30 8 invention and says there's the angled wall on the other end
02:59:34 9 of the device and it forms a depression and that infringes
02:59:39 10 and you can see that in Figure 3, if Figure 3 embodies the
02:59:44 11 invention, then I don't understand how the Samsung device
02:59:46 12 that looks identical to Figure 3 in this respect with this
02:59:50 13 flattened out portion at the end, how that doesn't infringe
02:59:53 14 the claim likewise.

02:59:55 15 That's one problem with the arguments.

03:00:01 16 The other problem with the argument is that little
03:00:04 17 nub right there, it's not really horizontal anyway.

03:00:11 18 Now, Samsung argues that this claim language says
03:00:13 19 that the second portion has to be angled. But Samsung
03:00:18 20 never argues, and I don't think there's any support, that
03:00:20 21 the angle has to be uniform. So the angle can change if
03:00:26 22 this second end -- this second portion is angled.

03:00:29 23 Well, as it turns out, this horizontal portion
03:00:34 24 right here, it may look horizontal, but it's not actually
03:00:40 25 horizontal. Our expert, Dr. Tanbour, in his declarations

03:00:44 1 measured this little horizontal nub, and it may look
03:00:48 2 horizontal, but it's actually angled up at about 3 degrees.
03:00:52 3 So there's an angle here, and then there's more angle here
03:00:56 4 all the way to the side wall.

03:00:58 5 Now, to that, Samsung has got two responses.
03:01:03 6 Response No. 1 is that's all well and good, but look at our
03:01:13 7 CAD files. Our CAD files illustrate how this thing is
03:01:18 8 supposed to be constructed, and in the CAD files, that
03:01:23 9 section has no angle to it, to which my response is that's
03:01:28 10 great. That's all well and good. We're not suing the CAD
03:01:31 11 files. They're not selling CAD files at Best Buy. They're
03:01:35 12 not selling CAD files at Lowe's.

03:01:37 13 The CAD files may say that in a perfect world,
03:01:42 14 that section is horizontal, but in the way they actually
03:01:45 15 manufacture the device, and I think there's some
03:01:47 16 manufacturing reasons why they couldn't keep it horizontal,
03:01:50 17 it angles up.

03:01:51 18 My second point -- their second response to this
03:01:56 19 argument, Samsung's, is that, well, we think Dr. Tanbour's
03:02:01 20 measurements are bad. And Dr. Cameron's declaration
03:02:06 21 includes a bunch of criticism of Professor Tanbour's
03:02:11 22 measurements, says his 3 percent measurement is off. I
03:02:14 23 think those are wrong. Her criticism of those are wrong.

03:02:18 24 But perhaps more tellingly, if his measurements
03:02:24 25 were so wrong and if that actually is a straight horizontal

03:02:28 1 0 degree angle, you would think Dr. Cameron would have
03:02:32 2 measured it herself and shown that it's 0 degrees. She did
03:02:36 3 not. All she did was criticize Professor Tanbour. She
03:02:41 4 doesn't come forward with her own measurement saying,
03:02:44 5 ah-ha, that is actually 0 degrees. I think that's telling.

03:02:49 6 So on this patent, there's only one
03:02:51 7 non-infringement argument, and that non-infringement
03:02:52 8 argument, A, is completely rebutted by the very figure of
03:02:57 9 the patent, which shows that the way they're reading these
03:03:00 10 claims is wrong; and, B, even if the way they were reading
03:03:03 11 the claims were right, under their own reading, there is
03:03:06 12 not a horizontal portion going into the side wall of the
03:03:09 13 accused product. In fact, that portion is angled slightly.

03:03:13 14 That brings us to the last patent, Your Honor. I
03:03:16 15 think we're moving through these relatively quickly. I
03:03:18 16 hope you see that.

03:03:20 17 This is the '385 patent. The '385 patent, we're
03:03:28 18 asserting Claim 17 and some dependencies. Again, I'm just
03:03:33 19 going to go through this Claim 17.

03:03:35 20 As Your Honor noted, the '385 patent is the
03:03:38 21 oldest. It does not share the same specification with the
03:03:41 22 '922 and the '681. So some of the terms we'll be talking
03:03:45 23 about are slightly different -- or some of the concepts, at
03:03:48 24 least, are slightly different.

03:03:52 25 Again, clearly limitations of this patent claim I

03:03:55 1 don't think are disputed. We're accusing a dishwasher.
03:03:58 2 Everyone agrees with that. It's got a tub that receives
03:04:01 3 dishes for treatment. No controversy there.
03:04:04 4 There's a spray system that sprays dishwasher
03:04:12 5 detergent and water in the treating chambers. No arguments
03:04:17 6 there.
03:04:17 7 Next, we claim a dish rack that's located in the
03:04:20 8 tub, and it is selectively movable in and out of the tub.
03:04:23 9 And, of course, that's the very concept of a dish rack is
03:04:26 10 you move it out so you can load it. I don't think they
03:04:30 11 dispute that one.
03:04:30 12 The dish rack has a bottom wall -- holding up to
03:04:34 13 the bottom wall right now. It has a side wall extending
03:04:38 14 upwardly from the top -- bottom wall terminating at an
03:04:43 15 upper edge. So we've got side walls. No argument there.
03:04:48 16 There's an upwardly angled portion formed in the
03:04:51 17 bottom wall comprising a plurality of spaced apart inclined
03:04:56 18 portions forming the bottom wall and terminating at the
03:04:59 19 side wall. And that's what we've talked already. These
03:05:02 20 angled portions right here that end at the side wall.
03:05:06 21 Wherein two adjacent incline portions of the plurality of
03:05:10 22 spaced apart inclined portions are configured to cradle a
03:05:14 23 glass at an inclined angle. And this means the spaced
03:05:18 24 apart rack structure you see here, that is -- that is
03:05:25 25 designed to cradle a glass. The glass doesn't move because

03:05:29 1 of those two spaced apart inclined portions. And the
03:05:38 2 glass, as you can see, is at an inclined angle.

03:05:42 3 That prevents the glass from rolling because these
03:05:45 4 very helpful incline portions, glass does not roll. It's
03:05:47 5 cradled in there, as you can see.

03:05:51 6 And there's a contoured portion at the bottom wall
03:05:53 7 configured to prevent glasses from sliding down the
03:05:55 8 inclined angle. That is this portion right here. This is
03:05:59 9 the contoured portion at the bottom of the angled portion,
03:06:03 10 and that's why when I put a glass in here, the glass
03:06:08 11 doesn't slide down. It's hitting this contoured portion.
03:06:11 12 I don't actually think they dispute that either.

03:06:13 13 Where was I? And that prevents glasses from
03:06:19 14 sliding down the inclined angle.

03:06:21 15 The next limitation is a spray tube. For this
03:06:26 16 patent, now we're talking about the sprayer. And what is
03:06:29 17 the spray tube? Well, it is this structure right here. It
03:06:37 18 is removable. I just have to practice my removal skills.
03:06:42 19 There we go. This is the spray tube. The spray tube has
03:06:46 20 novel -- nozzles that emit spray along the angled portion.
03:06:51 21 These nozzles are on these discs right here. You can see
03:06:55 22 right here this little hole. It's angled up. That's what
03:06:59 23 hits spray up an angled portion. So here is the spray tube
03:07:01 24 that has the nozzles along the angled portion.

03:07:04 25 And it says: Wherein the contoured portion we

03:07:09 1 talked about earlier -- this is this contoured portion that
03:07:12 2 stops glasses from moving down -- is configured to form a
03:07:18 3 curved mounting portion adjacent which the spray tube is
03:07:22 4 mounted. And I just removed it from its mounting, but you
03:07:25 5 could see that there's this curved portion in the rack, and
03:07:30 6 that was the portion that the spray tube was mounted on
03:07:34 7 before I removed it. And such that the spray tube is
03:07:40 8 carried with the dish rack. As I showed earlier, that
03:07:44 9 spray tube, it was carried with the dish rack as you move
03:07:50 10 along the dish rack.

03:07:51 11 So, again, a very straightforward patent claim, a
03:07:56 12 very straightforward read.

03:08:04 13 Samsung has raised a variety of non-infringement
03:08:07 14 arguments with respect to the '385. I'll go through them
03:08:11 15 quickly, Your Honor.

03:08:12 16 The first one is similar to what we just heard
03:08:16 17 about. It's the argument about that the -- actually, you
03:08:24 18 can leave that alone. Leave it outside for one second if
03:08:27 19 you don't mind.

03:08:28 20 It's the argument that the angled wall doesn't
03:08:31 21 stop at the end of the dish rack. There's a little
03:08:35 22 horizontal nub. I've already talked about that with
03:08:37 23 respect to the last patent. I won't repeat myself now,
03:08:41 24 other than to say that Dr. Tanbour also argues -- offers
03:08:46 25 forth that to the extent this is at all concerning, he also

03:08:50 1 offers a doctrine of equivalents opinion with respect to
03:08:53 2 that little horizontal nub. It has no functional purpose.
03:08:57 3 It doesn't change the way the rack operates in any way,
03:09:00 4 shape, or form.

03:09:01 5 So to the extent their argument about this is of
03:09:05 6 any moment, then under the doctrine of equivalents, there's
03:09:09 7 still infringement. Despite that, I think there's a strong
03:09:13 8 direct infringement read here anyway. So DOE is not our
03:09:17 9 first line of defense on that.

03:09:18 10 The second thing that Samsung argues is that the
03:09:24 11 spray tube right here doesn't have nozzles. And, you know,
03:09:29 12 this argument is really just one of those lawyerly
03:09:34 13 box-drawing arguments.

03:09:35 14 Their argument is, ah, these discs right here,
03:09:38 15 these may have nozzles, but the spray tube, the tube
03:09:42 16 doesn't have nozzles. I think that's kind of dancing on
03:09:51 17 the head of a pin. I mean, the thing I've got in my hand
03:09:52 18 right here is a spray tube. It has different parts to it.
03:09:52 19 It's got different features to it. But I'm holding the
03:09:55 20 tube in my hand. This is the spraying tube mechanism. And
03:09:58 21 part of it has nozzles. You know, the only way you get
03:10:04 22 around that is by focusing in really close and ignoring the
03:10:08 23 rest of the structure, which is I don't think the proper
03:10:10 24 way to apply claim language to an accused device.

03:10:15 25 And then the last argument that Samsung makes with

03:10:20 1 respect to non-infringement that I'm going to talk about is
03:10:22 2 they say that this portion right here, the curved mounting
03:10:29 3 portion, is not really curved. And their argument is
03:10:32 4 there's a flat segment, and then there's a curve, and then
03:10:36 5 there's another flat segment, and then there's a curve, and
03:10:40 6 then there's a flat segment. So three flat segments and
03:10:48 7 two curves does not make a curved mounting portion. Again,
03:10:48 8 dancing on the head of a pin, plainly this is the portion
03:10:51 9 in which the spray tube got mounted. Plainly it has curves
03:10:55 10 to it. It's a curved mounting portion, Your Honor.

03:10:59 11 They also make some arguments with respect to the
03:11:03 12 term "adjacent." As you can see, the spray tube is mounted
03:11:10 13 adjacent to the curved mounting portion. I think it is. I
03:11:15 14 guess their argument is that when it's mounted, the spray
03:11:18 15 tube doesn't actually touch the curvy part. It touches the
03:11:22 16 top part, and so they think that's not adjacent, to which I
03:11:26 17 would respond, number one, all adjacent means is nearby,
03:11:32 18 and plainly the spray tube is nearby the curvy parts. And
03:11:37 19 if the patentee had wanted to say actually touching instead
03:11:41 20 of saying adjacent, they could have said directly adjacent,
03:11:45 21 which, in fact, the patentee said in Claim 16.

03:11:49 22 In Claim 16, they used the phraseology "directly
03:11:54 23 adjacent." So perhaps that argument, you could argue,
03:11:57 24 well, directly adjacent means it's got to touch. But in
03:11:59 25 Claim 17, they expressly didn't use that language.

03:12:03 1 That being said, I think even making this directly
03:12:07 2 adjacent argument gives too much credence to the position.
03:12:10 3 The entire structure is a curved mounting portion, so
03:12:13 4 nothing needs to be touching the curve. It's touching the
03:12:17 5 entire curved mounting portion, so that's infringement.

03:12:21 6 And then finally on this particular position, it's
03:12:24 7 also not actually true, as Samsung asserts, that the top of
03:12:30 8 this portion is flat. As Dr. Tanbour has pointed out and
03:12:35 9 has measured, actually this is bowed. It's not perfectly
03:12:40 10 horizontal. Their CAD files may want it to be flat, but
03:12:43 11 that's not the way it ends up out of the factory.

03:12:46 12 So even if you wanted to argue that a curvy
03:12:48 13 portion has got to have all curves, that's fine because
03:12:51 14 this thing still is curvy. And I'm not sure I saw any
03:12:56 15 rebuttal from their expert, Dr. Cameron, as to that issue
03:12:58 16 as to whether or not that is, in fact, curvy or flat.

03:13:02 17 That is basically it. That is the entirety of
03:13:08 18 their non-infringement arguments with respect to the '385
03:13:11 19 and with respect to all the other patents.

03:13:14 20 So that is our infringement presentation, Your
03:13:16 21 Honor. I'll sit down and let Samsung speak, unless
03:13:20 22 Your Honor has any questions.

03:13:21 23 I should also add, our expert -- our expert is not
03:13:25 24 sick. We brought him here. Here's here in court today.
03:13:28 25 If you have questions for him, of course, you can ask him

03:13:30 1 those questions, Your Honor. We came today to make our
03:13:33 2 presentation.

03:13:34 3 THE COURT: All right.

03:13:35 4 MR. GRINSTEIN: Thank you.

03:13:35 5 THE COURT: Thank you, Mr. Grinstein.

03:13:36 6 We will take the afternoon recess before we hear
03:13:40 7 from the Defendant on this issue. 15 minutes.

03:13:45 8 COURT SECURITY OFFICER: All rise.

03:13:47 9 (Recess.)

03:13:47 10 COURT SECURITY OFFICER: All rise.

03:13:49 11 THE COURT: Thank you. Please be seated.

03:29:52 12 Except for you, Mr. Pensabene.

03:29:55 13 MR. PENSABENE: Good afternoon, Your Honor.

03:29:55 14 THE COURT: Good afternoon.

03:29:56 15 MR. PENSABENE: If I may approach, I would like to
03:29:58 16 hand up copies of our presentation.

03:30:01 17 THE COURT: All right.

03:30:06 18 MR. PENSABENE: I apologize, we were hoping
03:30:09 19 Ms. Cameron would be able to testify, so it's still got
03:30:13 20 Ms. Cameron's name on it. But same demonstratives.

03:30:16 21 So, Your Honor, I'd like to start by just setting
03:30:18 22 the context of what we're talking about here. We're not
03:30:21 23 talking about summary judgment. We're not talking about an
03:30:23 24 ultimate finding of infringement. We're just talking about
03:30:26 25 preliminary injunction. And to defeat the preliminary

03:30:28 1 injunction and the likelihood of success on the merits, all
03:30:31 2 Samsung has to do is raise a substantial question either as
03:30:35 3 to non-infringement or invalidity as to each patent.

03:30:38 4 And I think as I go through my presentation,
03:30:41 5 you'll hear that Samsung has more than achieved that.

03:30:43 6 I think Your Honor wanted to start with the '385
03:30:46 7 patent, and I'll do just that. There are many reasons why
03:30:51 8 Samsung doesn't infringe this patent, Claim 17 being the
03:30:55 9 only asserted independent claim.

03:30:57 10 But I want to focus on two of them for this
03:31:00 11 presentation. The first one is the requirement of the
03:31:06 12 claim that it has -- that the rack in question has an
03:31:08 13 upwardly angled portion formed in the bottom wall and
03:31:11 14 terminating at the side wall. And if we look at Figure 8
03:31:16 15 from the '385 patent, you can see the bottom wall is the
03:31:19 16 bottom purple part, the upwardly angled portion I've
03:31:22 17 highlighted in the red arrow, side walls with the yellow
03:31:24 18 arrow all the way on the right. And you can see the
03:31:27 19 upwardly angled portion in the patent terminates at the
03:31:32 20 side wall. It ends there, just as required by the
03:31:34 21 Claim 17.

03:31:34 22 If you look at the Samsung product, however, it
03:31:38 23 doesn't do that. But we all, you know, look at as an
03:31:42 24 upwardly angled portion does not terminate at the side
03:31:46 25 wall, doesn't terminate anywhere near the side wall.

03:31:49 1 There's a clear horizontal portion between where the side
03:31:52 2 wall is and where the upwardly angled portion ends.

03:31:56 3 And here I'm showing an image from the CAD files.
03:31:58 4 This is DTX-10 and 11. And in these files -- and these are
03:32:03 5 actually screenshots from the CAD files. The CAD files are
03:32:06 6 massive files that just can't reasonably be used in a
03:32:09 7 PowerPoint presentation.

03:32:10 8 So these are screenshots we produced, and the one
03:32:13 9 on the right, in particular, we had our expert,
03:32:16 10 Dr. Cameron, she measured the horizontal portion. And as
03:32:19 11 you can see over there, it indicates the distance of 22
03:32:22 12 millimeters -- 22.505 millimeters. So it's a very precise
03:32:27 13 measurement. And the vertical direction is 0. There's
03:32:30 14 absolutely no vertical distance in that line as -- as
03:32:34 15 reflected in the CAD files. So that line is perfectly
03:32:39 16 horizontal.

03:32:39 17 Now, Dr. Tanbour, Whirlpool's expert, he's got a
03:32:46 18 number of different arguments why this is infringed, and I
03:32:49 19 don't think any of them really hold water. He first argues
03:32:53 20 that, no, Samsung, you're reading the claim wrong. The
03:32:59 21 terminating at the side wall part doesn't modify the
03:33:02 22 upwardly angled portion. It modifies the later part of
03:33:07 23 that, the spaced apart inclined portions.

03:33:10 24 And as you can see on the left, I've got an
03:33:12 25 excerpt from Dr. Tanbour's report, and he just draws this

03:33:12 1 arrow right from the bottom of the rack all the way to the
03:33:16 2 side wall. He completely ignores that there's even this
03:33:19 3 horizontal section there. He doesn't even acknowledge that
03:33:21 4 it's there.

03:33:22 5 And their argument is, again, that this spaced
03:33:25 6 apart inclined portions have to terminate at the side wall.
03:33:28 7 And he agrees with that. He agrees that the spaced apart
03:33:32 8 inclined portions must terminate at the side wall.

03:33:34 9 But the spaced apart inclined portions are nothing
03:33:38 10 more than the wires. That's the wires that form the bottom
03:33:40 11 of the rack. And, yes, they -- these wires extend all the
03:33:44 12 way across the rack, but Dr. Tanbour is ignoring an
03:33:47 13 important part of the claim. It says: The spaced apart
03:33:51 14 inclined portions must terminate at the side wall.

03:33:55 15 And the inclined portion, again, is just that
03:33:58 16 angled piece, and it doesn't terminate at the side wall.
03:34:01 17 It terminates well short of the side wall at the horizontal
03:34:05 18 piece.

03:34:05 19 Now, Dr. Tanbour recognizes, perhaps in
03:34:10 20 retrospect, the flaws in his argument. And so in his
03:34:16 21 rebuttal -- and he submits some other arguments. He now
03:34:18 22 says, oh, wait, you know what, that piece that I overlooked
03:34:22 23 originally and didn't even account for, it's actually
03:34:24 24 angled at 3 degrees, and he submits various ways that he
03:34:28 25 purports to measure this angle of 3 degrees.

03:34:31 1 The interesting thing is that every single one of
03:34:33 2 these, you know, methodologies has a flaw. And let me just
03:34:36 3 actually take a step back.

03:34:38 4 First of all, the rack that he measures is not a
03:34:41 5 rack that he obtained from Samsung. It's not a rack he
03:34:43 6 took out of a Samsung dishwasher. This is a rack that he
03:34:46 7 obtained from Whirlpool. We don't know how Whirlpool got
03:34:49 8 this. We don't know what Whirlpool did with it. We don't
03:34:51 9 know how Whirlpool took care of it to maintain the original
03:34:56 10 shape. All we know is that Whirlpool provided this rack to
03:34:59 11 Dr. Tanbour.

03:34:59 12 Dr. Tanbour then conducted these measurements on
03:35:03 13 this rack, but he only conducted measurements on one rack.
03:35:07 14 He didn't conduct the measurements on multiple racks to
03:35:12 15 see, hey, maybe there's variations in manufacturing. Maybe
03:35:14 16 this one rack got damaged in transport. He just measures
03:35:18 17 the one rack.

03:35:19 18 And then, finally, all his methods of purporting
03:35:22 19 to measure this angle all have serious flaws. And these
03:35:25 20 are detailed in Dr. Cameron's declarations. And I'll go
03:35:29 21 through them quickly.

03:35:30 22 First of all, the one on the left, he's just
03:35:33 23 relying on a loose photo, you know, a photo trying to line
03:35:37 24 up his iPhone with the rack. And it's -- right here, you
03:35:40 25 can see, it's an off angle image of the horizontal portion.

03:35:44 1 So, of course, it's going to look distorted.

03:35:48 2 The measurement in the middle of the screen, he's
03:35:50 3 trying to -- he purports to measure two pieces along the
03:35:54 4 horizontal piece. But even in this photo, you can see that
03:35:56 5 where he's measuring Point A is well below the horizontal
03:36:01 6 piece. It's already on the piece that's starting to curve
03:36:05 7 down.

03:36:05 8 So, of course, he's going to show a difference in
03:36:07 9 height because he's measuring down the curve and comparing
03:36:11 10 that to the flat piece.

03:36:12 11 And, likewise, when he purports to use this level,
03:36:16 12 the level is much longer than the piece he's trying to
03:36:19 13 measure. And so the left side of it in this picture, I
03:36:22 14 believe, is not at all supported. And so it easily can
03:36:24 15 vary on where it is without even looking like it's varying.

03:36:28 16 So, again, all this is detailed in Dr. Cameron's
03:36:31 17 declarations, and there's no response to this.

03:36:34 18 Now, again, Dr. Tanbour presumably realizes the
03:36:41 19 flaws in this 3 degree opinion also, and so he comes up
03:36:45 20 with yet another backup. And his other backup argument now
03:36:48 21 is the doctrine of equivalents.

03:36:50 22 But even this argument fails. And the reason is,
03:36:55 23 Dr. Tanbour, in other parts of his declarations and
03:36:59 24 Whirlpool in their arguments, have argued that the rack of
03:37:02 25 these patents support the cups by, like, touching along the

03:37:08 1 vertical height of the cup. In other words, the side of
03:37:11 2 the cup rests against the wires.

03:37:14 3 And if you look at the Samsung image from the --
03:37:17 4 from the CAD files -- again, that's DTX-10 and DTX-13 --
03:37:22 5 this little horizontal portion actually serves a purpose.
03:37:26 6 It's not just put in there for decoration. What it does is
03:37:30 7 it provides this little support point. And I've labeled
03:37:33 8 that with the yellow arrow. It's the point where the
03:37:37 9 horizontal portion meets the inclined wire portion, and it
03:37:40 10 sticks out higher than the inclined portion.

03:37:43 11 So what it actually does is a cup that's resting
03:37:45 12 on there will not rest along its length on the wire. It'll
03:37:50 13 be supported above it so it's supported by two points. And
03:37:53 14 this is a significant difference because it allows the cup
03:37:57 15 to be more thoroughly cleaned. You're not going to have a
03:38:00 16 line that's touching the rack.

03:38:02 17 So, again, for this reason, the doctrine of
03:38:04 18 equivalents opinion fails. It doesn't do the same thing in
03:38:06 19 the same way to achieve the same result. It's a very
03:38:09 20 different way of supporting it. It's supporting at points
03:38:13 21 as opposed to along the length of it.

03:38:16 22 The other reason why Samsung doesn't infringe
03:38:20 23 Claim 17 of the '385 patent is because we don't have a
03:38:24 24 spray tube having nozzles that emit spray along the angled
03:38:28 25 portion.

03:38:29 1 Again, if we look at Figure 8 of the patent, you
03:38:32 2 could show this is illustrated by this spray tube 104D.
03:38:36 3 I've highlighted it in green. And it emits spray along the
03:38:40 4 dashed lines and includes along the angled portion,
03:38:48 5 parallel to the angled portion.

03:38:50 6 The specification also shows an overview of this,
03:38:53 7 and you can see on the left is Figure 9 from the patent.
03:38:57 8 And as you see in this figure, the tube, the spray tube
03:39:00 9 runs the length of the rack, and it's got nozzles, little
03:39:04 10 holes in it along its length from which the water is
03:39:06 11 emitted.

03:39:08 12 Now, here's an important point that I think
03:39:10 13 counsel overlooked. The patent claims specifically require
03:39:15 14 spray tubes having nozzles. It doesn't say a spray system
03:39:19 15 or spray components. It says a spray tube having nozzles.

03:39:24 16 And if you read the specification -- this is
03:39:28 17 DTX-2, the '385 patent, and I'm reading from Column 10, 49
03:39:32 18 to 53 -- it talks about the rack assembly having spray
03:39:37 19 tubes with nozzles. And it also acknowledges that other
03:39:40 20 types of sprayers are acceptable to use with the rack.

03:39:45 21 So, in other words, the inventors realize, I guess
03:39:48 22 this rack is really neat, we think it's novel, and while we
03:39:51 23 show it with a spray tube, you can use other sprayers with
03:39:54 24 it.

03:39:55 25 And they go on to say that these other types of

03:39:58 1 sprayers, in other words, different sprayers include things
03:40:01 2 like spray discs, okay? So the patent is disclosing many
03:40:05 3 different types of spray systems, but it's specifically
03:40:09 4 claiming a spray tube.

03:40:11 5 Now, this is really important, particularly the
03:40:13 6 part about the spray discs, because spray discs are exactly
03:40:17 7 what Samsung uses.

03:40:19 8 What Samsung has -- and I think counsel did a
03:40:21 9 pretty good job of showing it, although I might disagree
03:40:25 10 with his explanation a little bit -- it's got a manifold,
03:40:27 11 and the manifold transmits water along the length of the
03:40:31 12 rack. The water then goes out through multiple branches to
03:40:35 13 the spray discs and the spray discs have what the Plaintiff
03:40:38 14 claims are nozzles.

03:40:40 15 So, again, we have nozzles. The patent disclosed
03:40:44 16 nozzles but didn't claim them. And it's black letter law
03:40:48 17 that disclosed with not claimed, you can't cover it.

03:40:51 18 Now, another reason why this -- as if not having a
03:40:57 19 spray tube wasn't enough, the other reason why it's not
03:41:01 20 infringed is because there's no evidence that the spray
03:41:06 21 nozzles on the spray discs emit spray along the angled
03:41:10 22 portion.

03:41:10 23 Now, Dr. Tanbour acknowledges -- and there's
03:41:13 24 two -- there's two nozzles in the spray discs, one along
03:41:17 25 the periphery and one on the top. And I've shown the two

03:41:23 1 pictures here from Dr. Tanbour's report on the left.

03:41:24 2 The hole on the outside or the perimeter of the
03:41:27 3 spray disc, Dr. Tanbour admits -- he concedes this is not
03:41:31 4 the claimed nozzle because it doesn't emit spray along the
03:41:35 5 angled portion. Instead, he points to the top nozzle. The
03:41:41 6 problem is neither Dr. Tanbour nor Whirlpool have done any
03:41:46 7 analysis to show that it actually emits water along the
03:41:50 8 inclined portion.

03:41:51 9 In fact, Dr. Cameron, Samsung's expert, did the
03:41:54 10 analysis, and she determined that this top nozzle actually
03:42:00 11 sprays the water at the top of the glass. It's not along
03:42:04 12 the inclined portion. It's upward. It's a greater angle.
03:42:07 13 And I've indicated that in the blue arrows in the excerpt
03:42:09 14 from DTX-10.

03:42:09 15 Now, how does Dr. Cameron know this? She looked
03:42:14 16 at DTX-56. DTX-56 is a video of the operation of the spray
03:42:21 17 discs of the Samsung product, and they clearly show that
03:42:26 18 the spray emitted from that top nozzle in the spray disc
03:42:30 19 goes at a greater angle. It hits the top of the glass. It
03:42:33 20 doesn't go along the glass and hit the bottom. And that's
03:42:34 21 clearly visible in the video, and Dr. Tanbour had no
03:42:36 22 analysis of that angle at all.

03:42:38 23 So in conclusion, like I said, there are multiple
03:42:43 24 reasons why this claim is not infringed, and there's really
03:42:48 25 no rebuttal to any of them.

03:42:50 1 I can cover the '681 patent really quickly, Your
03:42:58 2 Honor, because I think as counsel correctly noted, the
03:43:01 3 defense here is very similar to the one for the '385
03:43:04 4 patent.

03:43:04 5 We focus, again, on the second end of the dish
03:43:08 6 rack having a second portion that's angled. And, again,
03:43:12 7 this defense depends on the fact that there's -- that the
03:43:16 8 angled portion in the Samsung rack does not terminate at
03:43:20 9 the second end. It terminates at the horizontal piece.

03:43:24 10 So all of Dr. Tanbour's analysis for the '385
03:43:27 11 patent and the flaws in that analysis apply equally here,
03:43:31 12 as does Samsung's rebuttal to those arguments. And for the
03:43:35 13 sake of time, I won't repeat them here, but it's the same
03:43:38 14 argument.

03:43:38 15 Plaintiff's counsel pointed to a figure from the
03:43:44 16 patent which they say shows something similar to Samsung's
03:43:46 17 design, and that may or may not be. But the simple matter
03:43:50 18 is, you don't determine infringement by comparing a product
03:43:55 19 to a picture from the patent. You determine infringement
03:43:58 20 by comparing the product to the claims. And here there's
03:44:03 21 no dispute -- no dispute that the claim requires that the
03:44:06 22 second angled portion be at the second end. It doesn't
03:44:10 23 allow for any space in between.

03:44:13 24 THE COURT: Does it use the "terminating at"
03:44:16 25 language?

03:44:17 1 MR. PENSABENE: It does not use the "terminating
03:44:20 2 at" language, but it says: The second angled portion is at
03:44:22 3 the second end.

03:44:24 4 It's at the end. It's not near the end. It's not
03:44:27 5 adjacent to the end. It is at the second end.

03:44:34 6 THE COURT: All right.

03:44:35 7 MR. PENSABENE: The last patent is the '922
03:44:41 8 patent. And, again, there are multiple reasons why this is
03:44:44 9 not infringed, but in the interest of time, I'm going to
03:44:46 10 focus on a couple. Actually I'm going to focus on one, and
03:44:50 11 that is the requirement that the planar portion includes a
03:44:55 12 plurality of utensil holders.

03:44:58 13 Now, Plaintiff's counsel argued that we're placing
03:45:00 14 a lot of weight on this word "includes," but I think the
03:45:03 15 patent is very clear what it means by includes,
03:45:05 16 particularly when you view it in the context of Whirlpool's
03:45:08 17 other patents and the prosecution.

03:45:11 18 So the planar portion, we all agree, is the red
03:45:14 19 portion on the right, the flat portion. And the claim
03:45:17 20 requires that that flat portion includes the utensil
03:45:21 21 holders. So when counsel is holding up the Samsung rack,
03:45:25 22 he pointed to the wires on the bottom of the rack as being
03:45:29 23 the planar portion. And then he pointed to the separate
03:45:32 24 component, this utensil basket as having the utensil
03:45:37 25 holders. And you can see just from that demonstration that

03:45:40 1 those utensil holders are not in -- they're not in the
03:45:47 2 planar portion. They're not included in the planar
03:45:49 3 portion. They're included in a separate component.

03:45:52 4 Now, counsel said we're reading a lot into the
03:45:55 5 word "includes," and he argued that, well, you know, the
03:46:01 6 patentee could have said "integral with" or could have said
03:46:04 7 something else instead of "includes."

03:46:06 8 But what I'll point out is the patentee in this
03:46:09 9 case actually did use a different word in a different
03:46:12 10 patent. In the '681 patent that we just talked about,
03:46:15 11 there's a very similar claim limitation. I've labeled it
03:46:22 12 b(v). It's on the right side of the screen. And that
03:46:22 13 limitation talks about a first portion supporting a first
03:46:28 14 set of utensil holders. And we didn't dispute that.

03:46:30 15 And the reason why we didn't dispute that is
03:46:33 16 because that's what the Samsung rack has. It has utensil
03:46:36 17 holders that are supported on top of the planar portion.
03:46:39 18 They're not included with. The patentee had a different
03:46:42 19 word in the claim, and there's a reason for that. It has
03:46:45 20 to have a different meaning, and that is the different
03:46:48 21 meaning.

03:46:48 22 And while for sure, you know, the illustrated
03:46:55 23 example in some of the figures doesn't have this integrally
03:47:00 24 formed utensil holder -- it shows it as a separate
03:47:02 25 basket -- the specification specifically says that the

03:47:06 1 utensil basket can be integrally formed with the planar
03:47:10 2 portion. It can be integrally formed with the rack, and
03:47:14 3 that's exactly what the claim covers.

03:47:15 4 It's also important to note that this limitation
03:47:21 5 was added during the prosecution. It was changed during
03:47:24 6 the prosecution. The claim originally said a plurality of
03:47:29 7 utensil holders disposed in the planar portion. Okay?

03:47:33 8 So it had -- it had different language, but the
03:47:38 9 language was changed to be includes. And counsel suggested
03:47:43 10 that there was no reason for this change. That's not
03:47:45 11 entirely true. Okay? Because cited during prosecution was
03:47:49 12 a prior patent -- I believe it's issued to Whirlpool
03:47:52 13 actually. It's DTX-42, the Tuller patent. And the Tuller
03:47:59 14 patent had -- excuse me -- a center section. I think it's
03:48:01 15 labeled 65 in Figure 8 of Tuller -- a center section that
03:48:07 16 was designed to hold utensils. Okay?

03:48:07 17 But what it didn't have, and this is what the
03:48:11 18 examiner said when he allowed the patent, he said it
03:48:12 19 doesn't -- it doesn't disclose -- Tuller doesn't disclose
03:48:15 20 wherein the planar portion includes a plurality of utensil
03:48:18 21 holders.

03:48:19 22 So this limitation was added to the claim. It was
03:48:22 23 reworded specifically to overcome the prior art. And on
03:48:26 24 that basis, it was allowed.

03:48:27 25 As I said, in the Samsung product, the planar

03:48:34 1 portion, which we all agree are the wires on the bottom and
03:48:38 2 the flat section of the rack, they don't have these utensil
03:48:41 3 holders. They're in a separate piece. Are those utensil
03:48:45 4 holders supported by the planar portion? Sure. But are
03:48:48 5 they included in the planar portion? No, they're not.

03:48:51 6 Now, I think counsel made an argument about a
03:48:56 7 dependent claim or Dr. Tanbour certainly did in his
03:49:00 8 declaration suggesting that under Samsung's reading of the
03:49:05 9 claim, this would render Claim 3 meaningless because
03:49:08 10 Claim 3 talks about the utensil holder being in a basket
03:49:12 11 that could be removed.

03:49:13 12 The problem is that this exact idea is disclosed
03:49:17 13 in a patent that was cited during the prosecution of the --
03:49:21 14 of the patent.

03:49:23 15 I'm looking right now at the Gutkowski patent.
03:49:29 16 It's cited in the '922 patent. And it's Exhibit DTX-44.
03:49:33 17 And looking at Figure 7B from this patent, you can see it
03:49:37 18 has exactly what the -- Claim 3 is talking about. It has
03:49:41 19 utensil holders, the little pieces sticking up are included
03:49:45 20 in, they're formed with the planar portion, the bottom
03:49:47 21 portion, and the entire thing is a removable module.

03:49:52 22 So that's exactly what Claim 3 is talking about.
03:49:54 23 It clearly existed, and the patentee was aware of it
03:49:58 24 because it was included in the cited prior art.

03:50:00 25 So in conclusion, that's why Claim 1 of the '922

03:50:04 1 patent is not infringed.

03:50:05 2 Now, I assume Your Honor would like me to cover
03:50:11 3 invalidity?

03:50:12 4 THE COURT: I would.

03:50:14 5 MR. PENSABENE: Okay. I'll start with the '681
03:50:18 6 patent for this one. So I think Your Honor had suggested
03:50:24 7 in an earlier conference that, you know, you want us to
03:50:26 8 highlight for you, you know, things to pay attention to.
03:50:29 9 And for the '385 patent, I would suggest really pay
03:50:32 10 attention to non-infringement. You know, we have
03:50:36 11 non-infringement arguments for all of these patents
03:50:37 12 obviously as we went through, but really pay attention to
03:50:41 13 non-infringement on the '385, and for invalidity, look
03:50:43 14 closely at the '681, I'd suggest.

03:50:46 15 And the reason why I say that is because the '681
03:50:50 16 patent is anticipated by at least two references. It's the
03:50:55 17 Carr prior art patent application -- that's DTX-32 -- and
03:50:59 18 it's the Bosch 800 brochure, which describes a Bosch 800
03:51:05 19 dishwasher, and that's DTX-33.

03:51:06 20 And I'll walk through the Carr reference first.
03:51:13 21 Again, Carr relates to an automatic dishwasher having a
03:51:17 22 tub. There's no -- no real dispute about any of this.
03:51:20 23 Carr incorporates DTX-55 to describe its operation, which
03:51:24 24 includes an automatic operation. So there's no dispute on
03:51:27 25 these first couple of limitations.

03:51:29 1 The next couple of limitations we get into the
03:51:33 2 details of the rack itself. It requires a first end, a
03:51:37 3 second end, a bottom wall, and peripheral walls. And as
03:51:41 4 I've highlighted in Figure 4 of Carr, all of those elements
03:51:44 5 are clearly present.

03:51:45 6 The bottom wall is the purple bottom wall of the
03:51:48 7 top rack. And you'll see it's got different notches and
03:51:53 8 changes in elevation to it. The side walls are the side --
03:51:56 9 the ends of this rack, which I highlighted in yellow. And
03:52:00 10 then it's got a first end and a second end.

03:52:02 11 The claim goes on to say that the first portion is
03:52:07 12 defined by a first substantially horizontal planar portion.
03:52:10 13 And that's the far right side of this top rack in Carr.
03:52:15 14 I've indicated with a red arrow. And you can see it's a
03:52:18 15 flat horizontal portion. There's no dispute about this.
03:52:22 16 No dispute about these first two elements.

03:52:23 17 The first portion also supports a first set of
03:52:26 18 utensil holders.

03:52:27 19 Now, I just want to flag here, again, the claim
03:52:30 20 says first portion supports utensil holders, different than
03:52:30 21 the '922 patent. And here you can see Carr discloses a
03:52:39 22 utility -- a utensil basket similar to the accused product
03:52:41 23 that can be placed on that planar portion, and that
03:52:45 24 includes utensil holders. So there's absolutely no dispute
03:52:48 25 as to any of these limitations of the '681 patent.

03:52:50 1 The last few limitations relate to the second end
03:52:56 2 of the rack, and the second end of the rack has a second
03:53:00 3 portion that's angled with respect to the first portion and
03:53:03 4 defines a depression.

03:53:05 5 Now, I've highlighted this second portion, the
03:53:07 6 angled portion in blue. It's 206A and 206B in Figure 4.
03:53:14 7 And you can clearly see that it's angled with respect to
03:53:18 8 the red, the first portion on the right. It defines a
03:53:22 9 depression, it's lower than the red section, and it extends
03:53:25 10 lower than the red section.

03:53:27 11 And the last limitation -- this is the only
03:53:29 12 limitation that Whirlpool disputes in this whole claim as
03:53:32 13 far as being anticipated, and that is that the second
03:53:35 14 portion defines a cup seat for supporting one or more cups
03:53:39 15 in the depression. And here, you can see in Figure 6 of
03:53:43 16 the Carr reference, it shows a bunch of bowls, labeled B,
03:53:47 17 positioned in the second portion, highlighted in light
03:53:51 18 blue, the left side, 206.

03:53:55 19 But although it shows bowls in the figure, it
03:53:58 20 specifically says in the patent -- in the application
03:54:00 21 specification, and this is Paragraph 41, that in addition
03:54:03 22 to supporting bowls and cutlery, the top rack is
03:54:07 23 specifically designed -- it's configured to support cups.
03:54:12 24 Clearly if it's configured to support cups, that is a cup
03:54:15 25 seat within the meaning of this patent.

1 Now, as I said, this last limitation is the only
2 one that Dr. Tanbour and Whirlpool really dispute, but the
3 problem is Dr. Tanbour relies on a very specific meaning of
4 the word "cup seat" that is not supported by anything in
5 the claim. What he says -- and this is an excerpt from his
6 rebuttal declaration at 155 -- he says: The cup seat
7 disclosed in Claim 14 of the '681 patent is capable of
8 securely supporting glasses and cups of ordinary dimensions
9 along their cylindrical side. Okay? So he's got this very
10 special meaning of cup seat that has no support in the
11 claim. The claim doesn't say anything about that.

12 There's no requirement of securely supporting.
13 There's no requirement of ordinary dimensions. In fact,
14 there's no guidance anywhere as to what ordinary dimensions
15 would even be. And there's certainly no requirement in the
16 claim that the cups be secured along the cylindrical side.

17 So given the plain and ordinary meaning of cup
18 seat, which is what should apply here, the claim is clearly
19 invalid over this Carr reference.

20 And I'll skip Claim 15, because, again, we're just
21 going to cover the independent claims, I believe, for
22 purposes of this. But similar arguments apply.

23 Now, the Bosch 800 is, again, another prior art
24 reference -- clearly prior art. It published in 2019, well
25 before the 2020 priority date. And as Dr. Tanbour admits,

03:56:03 1 he admits in his declaration that the Bosch 800 has a top
03:56:06 2 rack that has the same configuration as Carr. And you can
03:56:10 3 see that clearly. Here, I've got a side-by-side image.
03:56:14 4 Bosch, again, is DTX-33. I've got an image from there on
03:56:18 5 Page 18, and I'm comparing that to Figure 4 of the Carr
03:56:22 6 patent. And you can see they're identical. It's the same
03:56:24 7 exact design. Obviously, the patent application was
03:56:27 8 assigned to Bosch, the manufacturer of the Bosch 800, and
03:56:30 9 so they had a patent that covered their product, not a
03:56:33 10 surprise.

03:56:33 11 The reason why -- and the Bosch 800 invalidates
03:56:38 12 the claims for exactly the same reason as the -- as the
03:56:44 13 Bosch reference -- the Carr reference, but the reason why I
03:56:48 14 wanted to separately cover this one is because, again, the
03:56:51 15 only point of distinction that Dr. Tanbour and Whirlpool
03:56:55 16 make is the last requirement of the claim requiring a cup
03:56:59 17 seat.

03:57:00 18 And as you can see -- and I'm showing a picture
03:57:02 19 from Page 16 to 17 of DTX-33 -- the Bosch -- the Bosch 800
03:57:10 20 brochure specifically shows cups in the cup seat. You
03:57:14 21 know, it's got these blue bowls on the left. It's got some
03:57:17 22 slightly smaller or maybe they're dipping dishes, little
03:57:20 23 bowls in the middle. And on the right, right next to the
03:57:24 24 utensils, it's got a bunch of coffee cups.

03:57:27 25 And how do we know they're coffee cups? Because

03:57:29 1 they've got the little handle so you can hold the cup and
03:57:32 2 drink it. Moreover, the brochure specifically says that in
03:57:35 3 addition to supporting all these things and cereal bowls,
03:57:40 4 et cetera, it could support large measuring cups even.

03:57:42 5 So I think there was some argument made about the
03:57:44 6 size of the cups that could be supported in this rack, but
03:57:48 7 certainly if it can support large measuring cups, it can
03:57:51 8 certainly support a coffee cup.

03:57:53 9 So, again, the Bosch 800 renders the claim
03:57:57 10 anticipated if not obvious for the same reason as the Carr
03:58:00 11 reference.

03:58:01 12 And as far as the cup seat go, we have a specific
03:58:04 13 illustration of it supporting the cups in the cup seat.

03:58:18 14 Next, I'll do the -- cover the '922 patent. The
03:58:21 15 '922 patent is invalid over the combination of Andrew and
03:58:24 16 Carr. Carr is the same Carr reference we just talked
03:58:29 17 about, DTX-32. And Andrew is a very old patent. It issued
03:58:34 18 back in 1959. And it's DTX-43. And the combination of
03:58:40 19 these two renders obvious the claims of the '922 patent.

03:58:44 20 So I'll start with the first few limitations. And
03:58:48 21 here on the left, I show an image from Andrew. This is
03:58:51 22 Figure 1. And on the right, I've got a figure from Carr.
03:58:55 23 This is Figure 1 from Carr.

03:58:56 24 And the '922 patent requires a dishwasher having a
03:58:59 25 tub with a treating chamber, and it requires three racks,

03:59:04 1 an upper rack and two lower racks.

03:59:08 2 Now, there's no dispute that Andrew has all these
03:59:10 3 limitations, except for the three racks. It's got two
03:59:12 4 racks. It's got an upper rack and one lower rack, but it
03:59:17 5 doesn't have the three racks.

03:59:18 6 So, again, the combination of Andrew and Carr to
03:59:21 7 have a dishwasher that has the Andrew top rack, that's what
03:59:26 8 Andrew is all about. Andrew is all about that top rack.
03:59:29 9 To have that top rack in a dishwasher with three racks
03:59:32 10 would have been an obvious combination. And the reason why
03:59:37 11 it would have been obvious is because the goal of Andrew is
03:59:40 12 to have a flexible and versatile rack in a modern
03:59:44 13 dishwasher. And like I said, the Andrew patent is all
03:59:47 14 about that top rack.

03:59:48 15 And Carr is an example of modern dishwasher design
03:59:51 16 where three racks are becoming the norm. And so it would
03:59:54 17 have been more than obvious to someone skilled in the art
03:59:56 18 designing a dishwasher, that, hey, we're going to
03:59:58 19 implement -- you know, come up with a dishwasher, it would
04:00:02 20 be obvious to combine these two to have the advantages of
04:00:02 21 Andrews's top rack in a conventional modern dishwasher with
04:00:07 22 three.

04:00:07 23 And the likelihood of success would be very high.
04:00:10 24 It's a simple combination of mechanical elements. It's not
04:00:14 25 rocket science, it really isn't.

04:00:17 1 Getting back to the claim, the next requirement of
04:00:24 2 the claim is that the upper dish rack, the top rack has a
04:00:26 3 planar portion and a depression. And so the planar
04:00:29 4 portion, again -- on the top what I'm showing is
04:00:32 5 Whirlpool's infringement theory. So this is an excerpt
04:00:34 6 from DTX-6. It's the CAD file of the Samsung rack. And on
04:00:40 7 the bottom is Andrew. And the reason why I'm showing this
04:00:43 8 is because like I said, there's no dispute that Andrew has
04:00:47 9 a planar portion in the middle there.

04:00:49 10 But what Whirlpool disputes is that there's a
04:00:51 11 depression. And, in fact, I think counsel kind of waved
04:00:56 12 his hands a little bit at this, but the claim requires that
04:00:59 13 there be a depression that has different requirements, and
04:01:04 14 I'll get to those in a second.

04:01:06 15 But the long and short of it is, if you look at
04:01:09 16 the Samsung design, it's got a planar portion in the middle
04:01:12 17 with two lower portions next to it, and counsel called that
04:01:15 18 a depression. That's exactly what Andrew has. It's got a
04:01:20 19 planar portion in the middle, with two lower portions next
04:01:23 20 to it, and that is a depression.

04:01:24 21 Now, if you go on in the '922 patent, it requires
04:01:30 22 that the depression have a first angled wall, a second
04:01:33 23 angled wall, each of them angled with respect to the planar
04:01:37 24 portion. And there's no dispute that Andrew has those
04:01:40 25 things. And that the angle -- the angle wall define cup

04:01:44 1 seats.

04:01:45 2 So on the right, you can see -- again, this is
04:01:48 3 Figure 5 of the patent -- of the Andrew patent. You can
04:01:51 4 see it actually has in dotted lines a cup in the cup seat
04:01:55 5 supported on the yellow section of the rack. And although
04:01:58 6 on the left Andrew shows as an example of a bowl on the
04:02:02 7 left side, the right and the left side are exactly the
04:02:05 8 same. Andrew is just showing different examples of how you
04:02:07 9 might support these things in the rack. You can clearly
04:02:10 10 have a cup in the cup seat on the left side the same as you
04:02:13 11 can have it on the right side, and so it meets the
04:02:16 12 limitations of these two cup seats on the two angled walls.

04:02:19 13 The last part of the claim requires that the
04:02:26 14 planar portion includes a plurality of utensil holders,
04:02:30 15 wherein the depression extends below this planar portion.

04:02:34 16 Now, as we said before, we dispute Whirlpool's
04:02:37 17 interpretation of this limitation of the planar portion,
04:02:42 18 including the plurality of utensil holders. But if
04:02:47 19 Whirlpool's reading of the claim is right, well, then it's
04:02:50 20 obvious over the combination of Carr and Andrew, because if
04:02:54 21 all the claim requires, as Whirlpool argues, is that you
04:02:57 22 have a utensil basket on top of the planar portion, that is
04:03:01 23 an obvious combination of Andrew and Carr.

04:03:04 24 As I said, Andrew has -- Andrew has this middle
04:03:09 25 planar portion, and the purpose of that planar portion is

04:03:12 1 to support knives and forks. So Andrew teaches you can put
04:03:17 2 utensils on this planar portion, but it doesn't have
04:03:19 3 anything to hold them from being washed off or pushed off
04:03:23 4 by the water. So it would be more than obvious to someone
04:03:26 5 of skill in the art to take the utensil basket from Carr
04:03:29 6 and just put it on this planar portion of Andrew. Maybe
04:03:32 7 you have to adjust the dimensions a little bit so it fits,
04:03:35 8 but that's the basic idea. It's very straightforward.

04:03:39 9 It's a simple mechanical modification or addition
04:03:42 10 actually, and it would be more than obvious to do it, and
04:03:46 11 there'd be a high likelihood of success. It's already
04:03:47 12 designed to support utensils, and just putting utensil
04:03:50 13 holders in there to keep them from getting knocked off
04:03:54 14 would be more than obvious.

04:03:55 15 And so with that, Claim 1 is obvious over Andrew
04:03:59 16 in view of Carr.

04:04:00 17 I'm going to skip all the dependent claims so it
04:04:06 18 will save a lot time, and I'll get to the '385 patent.

04:04:12 19 On the '385 patent -- and, again, this is one the
04:04:14 20 one I said the infringement case is particularly strong.
04:04:17 21 But I want to cover invalidity anyway.

04:04:21 22 Claim 17 is the only independent claim of the '385
04:04:26 23 patent that's asserted, and it's obvious over the
04:04:27 24 combination of Bosch and Ochoa.

04:04:31 25 Now, this is a different Bosch reference. This is

04:04:33 1 a German language patent publication from 1969. The
04:04:39 2 original is DTX-37. The translation is 38. Ochoa is a
04:04:45 3 patent issued in 2005. And that's Exhibit DTX-39.

04:04:49 4 And I'll start with the first few limitations of
04:04:55 5 Claim 17.

04:04:56 6 Claim 17 requires a dishwasher with a tub. Figure
04:05:01 7 1 of Bosch more than clearly shows this, the dishwasher
04:05:04 8 labeled 1, the tub being the brown interior portion of the
04:05:08 9 dishwasher.

04:05:10 10 Claim 17 also requires a spray system and a dish
04:05:14 11 rack located in the tub to move in and out of the tub. So
04:05:17 12 the spray system is shown in Figure 3 of Bosch. There are
04:05:22 13 elements identified by No. 11, highlighted in green. And
04:05:24 14 then the rack is identified as No. 2 in Figure 1, and it's
04:05:28 15 described in the specification of Bosch on Page 5 as being
04:05:33 16 pulled in and out of the front of the dishwasher. So it
04:05:36 17 meets all these limitations, and there's no real dispute
04:05:39 18 about that.

04:05:39 19 The next part of the claim requires a dish rack
04:05:45 20 having a bottom wall and a side wall extending up from the
04:05:48 21 bottom wall and terminating in an upper edge. So this one
04:05:54 22 is a little bit hard to envision with the figures in Bosch
04:05:57 23 because it only shows this end view. The side wall -- the
04:06:00 24 bottom wall is what I've highlighted in purple. So that's
04:06:02 25 the little kind of zig-zag pieces that go up and down, and

04:06:05 1 they're supporting the cups. That's the bottom wall of
04:06:07 2 the -- of the rack.

04:06:08 3 And then the orange pieces, which are horizontal
04:06:11 4 across the front and vertical on the side, those are the
04:06:14 5 side walls. And you can see the side wall extends up from
04:06:16 6 the bottom wall.

04:06:18 7 What I've done in the bottom figure on this slide,
04:06:21 8 it's kind of a modified version of Figure 3 to show what a
04:06:25 9 cutaway would be. And as Dr. Cameron explained in her
04:06:30 10 declaration, a person of ordinary skill in the art looking
04:06:32 11 at this will know that those horizontal pieces along the
04:06:36 12 front are just defining the perimeter of the rack. They
04:06:43 13 kind of define the outside boundaries of the rack. And the
04:06:44 14 purple pieces would be the bottom wall and extend up and
04:06:48 15 down across the bottom to support the pieces.

04:06:50 16 She goes on to explain how it would look in
04:06:52 17 perspective view, and I provided this on this slide, which
04:06:55 18 is Slide 81. Again, you would have multiple of these
04:07:02 19 triangular purple pieces because you're not going to
04:07:04 20 support a cup on a single wire. You're going to support a
04:07:08 21 cup between two wires as is conventional, and so you'd have
04:07:12 22 multiple of these wires across the depth of the dishwasher
04:07:15 23 rack.

04:07:15 24 Continuing down the claim, it requires an upwardly
04:07:21 25 angled portion formed in the bottom wall and comprising a

04:07:25 1 plurality of spaced apart inclined portions, terminating at
04:07:29 2 the side wall. And there's many different inclined
04:07:32 3 portions and upwardly angled portions in the bottom wall of
04:07:36 4 Bosch. And we highlight the one that meets the claim
04:07:38 5 limitation. And as an example, it's the upwardly angled
04:07:42 6 portion of the bottom wall 12 that's right by the side wall
04:07:46 7 on the left side. I've indicated that with a red arrow.
04:07:50 8 And you can see it's upwardly angled. It's made up with a
04:07:55 9 plurality of spaced apart portions, the plurality of wires,
04:07:56 10 and it terminates at the side wall, as required by the
04:07:59 11 claims.

04:08:00 12 Also as required by the claim, two adjacent
04:08:04 13 inclined portions are configured to cradle a cup or a
04:08:07 14 glass. And, again, that's actually shown in Figure 3. It
04:08:10 15 shows the cup on the -- on the upwardly inclined portion,
04:08:14 16 and one of skill in the art would understand that this cup
04:08:16 17 is not balancing on one single wire. That would be
04:08:19 18 impossible. There's multiple wires that hold the cup in
04:08:22 19 place.

04:08:22 20 The next part of Claim 17 relates to the spray
04:08:31 21 tubes. And as we talked about earlier, it's -- it requires
04:08:34 22 spray tubes having nozzles emitting spray along the angled
04:08:38 23 portion.

04:08:39 24 Now, unlike the Samsung rack which has a
04:08:41 25 completely different spray system and uses spray discs,

04:08:45 1 this system in Bosch is exactly what the claim requires.
04:08:47 2 It's a spray tube that has nozzles to emit spray. You can
04:08:52 3 see the spray tubes are -- are numbered 11 in Figure 3.
04:08:56 4 I've highlighted them in green. And it's a little hard to
04:08:59 5 see, but you can see little dashed lines that indicate the
04:09:02 6 water being sprayed or emitted from the nozzles in the
04:09:06 7 spray tube. And I've highlighted particular ones of those
04:09:09 8 which show that that spray goes along the angle of the
04:09:13 9 upwardly angled portion.

04:09:19 10 Moving on in the claim, the claim requires a
04:09:23 11 contoured portion formed in the bottom wall. It's
04:09:25 12 configured to prevent the glasses from sliding, and it also
04:09:29 13 includes a curved mounting portion to mount the spray tube
04:09:33 14 so that it's carried by the rack.

04:09:35 15 Now, Bosch -- the reference Bosch itself is
04:09:38 16 focused more on the rack. It's not so much focused on the
04:09:42 17 spray system.

04:09:42 18 Ochoa, which is the reference I mentioned earlier,
04:09:47 19 is focused on the spray system. It talks about a way to
04:09:50 20 mount a spray system to the bottom of a rack. And how does
04:09:53 21 it do it? It has little curved mounting portions in the
04:09:56 22 bottom of the rack to which the spray tube is mounted.

04:09:59 23 And if you look, for example, at Figures 3 and 4
04:10:02 24 of Ochoa, I've highlighted here the spray tube which is at
04:10:06 25 the bottom of the rack -- looking at the end, it's a

04:10:10 1 little -- looks like a rectangle shape. The curved
04:10:13 2 mounting portion is the blue curved part of the rack on top
04:10:17 3 of the spray tube, and if you look at it from the top
04:10:17 4 perspective view, you could see that there's multiple of
04:10:22 5 these curved sections, and the spray tube extends the
04:10:26 6 length of -- you know, the depth of the rack.

04:10:27 7 So applying the teaching of Ochoa to the Bosch
04:10:32 8 rack, one of ordinary skill in the art would modify the
04:10:36 9 rack of Bosch to make the pointy pieces between the cups
04:10:41 10 curved so that you can mount the spray tube right to that
04:10:45 11 piece.

04:10:47 12 It's an obvious combination. And as Dr. Cameron
04:10:50 13 explains in her declaration, Bosch teaches the benefit of
04:10:54 14 having the spray tube with a dish rack but doesn't talk
04:10:57 15 about how to mount it exactly to the rack.

04:11:01 16 And Ochoa provides that missing teaching. These
04:11:04 17 are all dishwasher references. It's a simple mechanical
04:11:08 18 combination, simple design choice, and there's no
04:11:11 19 unexpected results. I mean, this is what one would expect
04:11:14 20 from making these changes.

04:11:15 21 So in conclusion, all the limitations of Claim 17
04:11:20 22 are disclosed and taught by the combination of Bosch in
04:11:24 23 view of Ochoa.

04:11:25 24 So unless Your Honor has any questions.

04:11:30 25 THE COURT: No. I think I understand that issue.

04:11:32 1 Thank you.

04:11:34 2 MR. GRINSTEIN: Your Honor, I think we're
04:11:56 3 pretending to be experts, so in that vein, I'm just going
04:11:59 4 to talk about validity. I won't rebut infringement
04:12:03 5 further. I'm pretending I'm the validity rebuttal expert
04:12:07 6 right now.

04:12:07 7 And so in that regard, let's talk about Carr/Bosch
04:12:13 8 which were prior art references asserted against the '681
04:12:18 9 patent, although Carr was also mentioned with respect to
04:12:20 10 the '922 patent.

04:12:21 11 I'm not going to go through every issue we have
04:12:25 12 with every reference. I think the purpose of today was to
04:12:28 13 contextualize some of the more major prior art arguments
04:12:31 14 that we've got. And so for Carr and the Bosch product, I
04:12:37 15 want to focus on the limitation in the '922 patent and the
04:12:43 16 '681 patent requiring that there be a cup seat.

04:12:45 17 And as you recall, when we were arguing
04:12:54 18 infringement, I showed you the rack, and I showed you how
04:12:59 19 cup seats work. It's a portion of the rack that cradles
04:13:04 20 the cup. The cup does not really move around there. It's
04:13:08 21 cradled pretty well. The cup sits in that and is supported
04:13:11 22 by the cup seat.

04:13:13 23 What do Carr and Bosch disclose? Well, the Carr
04:13:21 24 patent discloses this rack. And in the figure of the
04:13:25 25 patent, the only thing in the rack are a bunch of bowls.

04:13:30 1 Samsung says, ah, but if you look at the Carr
04:13:33 2 specification, the Carr specification says, hey, in that
04:13:36 3 area that's got a bunch of bowls, you can also put a cup.

04:13:41 4 Fair enough.

04:13:44 5 They also point to the Bosch 800, and they say --
04:13:48 6 and the Bosch 800 I really think is an implementation of
04:13:53 7 the Carr patent. Carr is a patent that was assigned to
04:13:55 8 Bosch. So I really think Carr and Bosch 800 are talking
04:13:59 9 about the same thing.

04:14:00 10 They point to a picture of the Bosch 800, and
04:14:04 11 look, up in that rack, there are some cups. Agree. In
04:14:08 12 that picture of the rack, there are some cups pictured.
04:14:14 13 But there's no disclosure in either Carr or in Bosch 800
04:14:20 14 that there is any structure in these racks that
04:14:23 15 specifically cradle any kind of a cup, that are
04:14:26 16 specifically designed to hold cups.

04:14:29 17 The term "cup seat" is not used in either of those
04:14:32 18 references. Sure, you can place a cup in these areas,
04:14:36 19 albeit a very short cup, not standard sized glassware, but
04:14:41 20 you can put a short cup there, but there's no disclosure of
04:14:45 21 actually being able to hold a cup specifically and cradle a
04:14:50 22 cup specifically.

04:14:51 23 And that is essentially what Dr. Cameron says.
04:14:54 24 She basically defines a cup seat as a place you can hold
04:14:58 25 cups. That's what she says in her declaration -- March the

04:15:02 1 17th declaration at Paragraph 217. She's being challenged
04:15:07 2 on this limitation, and Dr. Cameron says it's met because
04:15:09 3 you can put a cup there.

04:15:11 4 But, Your Honor, just because there's an area of
04:15:16 5 the dishwasher you can put a cup doesn't mean that area is
04:15:19 6 a cup seat because that removes all meaning from the
04:15:22 7 concept of a cup seat.

04:15:24 8 So, for example, in the Samsung accused device,
04:15:30 9 where I said you've got a cup seat, you know what, you
04:15:34 10 could also put a bowl right there.

04:15:37 11 Now, this part of the Samsung device is not
04:15:41 12 configured to hold a bowl. There's no seating of the bowl,
04:15:44 13 but it sure fits. So I guess the Samsung device not only
04:15:49 14 has a cup seat, it's got a bowl seat. And for that matter,
04:15:53 15 you could put a small plate right here. Small plate fits.
04:15:58 16 You could put a small plate in the Samsung device. It's
04:16:01 17 nothing in here that's configured to hold the plate. But
04:16:04 18 if you put the plate here, it would wash the plate.

04:16:07 19 So I suppose that the Samsung device not only has
04:16:11 20 a bowl seat, not only has a plate seat, it's got a cup
04:16:16 21 seat. And for that matter, you know what, I could put my
04:16:19 22 shoe in there, and you could probably fit that in the
04:16:23 23 dishwasher. There's a place for my shoe. It's not -- of
04:16:26 24 course, the Samsung engineers didn't plan to wash shoes in
04:16:30 25 this third rack, but one fits there. You could put it

04:16:34 1 there. I guess the Samsung device has got a shoe seat, as
04:16:37 2 well.

04:16:39 3 THE COURT: Is there anything in the specification
04:16:41 4 that elaborates on what makes an area a cup seat?

04:16:47 5 MR. GRINSTEIN: I'll respond in two ways to that,
04:16:47 6 Your Honor.

04:16:51 7 First, the specification talks about cup seats
04:16:53 8 repeatedly, and every time it talks about the cup seats,
04:16:57 9 it's referring to this wired area in the specification --
04:17:00 10 I'm sorry, in the -- in the rack. Obviously I'm talking
04:17:04 11 about the accused device here, but it's the same. It's
04:17:07 12 talking about these wired areas right here that are used to
04:17:10 13 support the cup and keeps it from moving around. So it's
04:17:14 14 consistently always talking about that.

04:17:19 15 My second point would be, Your Honor, it uses the
04:17:22 16 word "seat" very deliberately, because under Samsung's
04:17:26 17 reading of this patent, they would also be able to say
04:17:31 18 prior art would anticipate if the patent read cup area or
04:17:36 19 cup zone or cup place because all of those are just places
04:17:40 20 you could throw a cup in the cup area.

04:17:43 21 But the patentee didn't use those broad kinds of
04:17:46 22 terms. The patentee used a term "seat." And to a person
04:17:50 23 of skill in the art, as Dr. Tanbour indicates, a seat is a
04:17:54 24 specific structural element that engineers use and talk
04:17:57 25 about that talk about fitting an object in a place and

04:18:02 1 holding it stable in some way or other, which I will say
04:18:09 2 has nothing to do with the prior art. If you threw a cup
04:18:14 3 in Figure 6 of Carr, that dish rack might as well have been
04:18:21 4 flat, completely flat. It actually is pretty close to
04:18:23 5 flat.

04:18:24 6 Does that mean that anywhere you can throw a cup
04:18:26 7 there turns it into a cup seat? I don't think so. I think
04:18:29 8 the word "seat" has to have some meaning. And as
04:18:32 9 Dr. Tanbour explains, to a person of skill in the art, seat
04:18:36 10 means something that has some ability to cradle the object
04:18:39 11 that it's seating.

04:18:41 12 So that's my response is look at the figures, look
04:18:43 13 at the specification talking about the wire frames that
04:18:47 14 hold the cups in place, and I'd also point to just the word
04:18:50 15 "cup."

04:18:50 16 So that is the prior art with respect to the '681
04:18:58 17 patent. Carr and Bosch were asserted. Neither of them, in
04:19:01 18 our opinion, disclose a cup seat.

04:19:02 19 As to the '922 patent, Carr was also asserted, but
04:19:12 20 there was a realization that the Carr third rack did not
04:19:19 21 anticipate. So they had to bring in Andrew as an
04:19:24 22 obviousness reference.

04:19:26 23 And I would note for purposes of Samsung's prior
04:19:32 24 arguments with respect to the '922, both Andrew and Carr
04:19:35 25 were before the patent examiner, and the patent issued over

04:19:40 1 Andrew and Carr.

04:19:40 2 But here is the Carr patent from 1959, and it
04:19:45 3 plainly is a two-rack system. The '922 patent requires a
04:19:49 4 three-rack system. This is plainly a two-rack system.
04:19:53 5 There's a rack down at the bottom, and then there's a big
04:19:56 6 ugly rack up top.

04:19:57 7 What Samsung says is, that's fine, you could
04:20:03 8 combine Carr -- I'm sorry, Andrew with a third rack and get
04:20:07 9 where you need to be on the '922. And their expert created
04:20:12 10 this figure where she inserted this yellow third rack.
04:20:17 11 That's not -- I guess it would be the second rack as you
04:20:21 12 count them, but it's the third rack to the Andrew reference
04:20:25 13 because Andrew only had two racks. And she says, well, if
04:20:28 14 you did that, you'd get to where you need to be.

04:20:30 15 Except look at her own figure, Your Honor. No one
04:20:33 16 would think to put that middle rack in the middle of the
04:20:39 17 Andrew disclosure because you couldn't fit anything in
04:20:42 18 there. There's got to be plates and big dishes down there
04:20:46 19 on that bottom rack. How else are you going to wash your
04:20:51 20 plates if you don't put them down there? They would butt
04:20:54 21 up against that yellow rack, and the yellow rack is so
04:20:55 22 close to the green rack, you couldn't fit anything of any
04:20:58 23 substance to it. That's why this patent has been around
04:21:00 24 since 1959, and no one thought to apply a third rack to it
04:21:05 25 since 1959 because it plainly teaches away from throwing

04:21:10 1 three racks into this dishwasher considering how big,
04:21:15 2 bulky, and unwieldy that upper dish rack is up on top.

04:21:21 3 So I think they fall apart on their motivation to
04:21:24 4 combine here with respect to the Andrew and Carr
04:21:27 5 references, which perhaps the examiner noticed when the
04:21:29 6 examiner issued the patent over this art. But the idea
04:21:33 7 that you would throw a third rack into this already crowded
04:21:37 8 Andrew reference I don't think makes any sense, and a
04:21:42 9 skilled artisan wouldn't do that.

04:21:43 10 So that's my response with respect to the '922
04:21:47 11 art. We also had the previous criticisms of the Carr
04:21:50 12 reference, which are -- which we can repeat again.

04:21:54 13 I'll also note that the disclosure with respect to
04:21:59 14 the utensil caddy, there is no utensil caddy on that upper
04:22:02 15 dish rack, so they have to also import the utensil caddy
04:22:06 16 over from Carr into Andrew into a space that doesn't really
04:22:12 17 look like it would accommodate a utensil caddy, and there's
04:22:15 18 certainly no disclosure in Andrew that suggests you'd put a
04:22:19 19 utensil caddy in that planar portion or you'd contemplate
04:22:22 20 it at least.

04:22:23 21 So this is kind of a Frankenstein combination, one
04:22:27 22 of those classic hindsight combinations, and I don't think
04:22:33 23 combining them the way they suggest to be combined works,
04:22:38 24 and the Patent Office apparently agreed.

04:22:40 25 And then last, briefly, for the '385 patent,

04:22:42 1 the -- Samsung asserts a combination of the Bosch -- the
04:22:46 2 Bosch patent, not the Bosch product -- the Bosch and Ochoa
04:22:50 3 references. I would note that Ochoa, not Bosch, not the
04:22:56 4 Bosch patent, but the Ochoa patent was before the Patent
04:23:00 5 Office during examination of the '385.

04:23:02 6 The '385 patent, as you may recall, requires a
04:23:07 7 sprayer that's mounted on a curved portion. And in Bosch,
04:23:11 8 Bosch has sprayers. Those are No. 11 in this picture, but
04:23:15 9 they're not mounted on any curved portion. There's no
04:23:18 10 dispute about that. That is why Samsung looks to Ochoa to
04:23:22 11 go pick up the curved mounting portion to try to fix the
04:23:26 12 hole in the prior art that is Bosch.

04:23:28 13 And so in Dr. Cameron's original declaration, Page
04:23:34 14 105 -- she issued it in December of 2025 -- she said look
04:23:39 15 at Ochoa, there's that spray system in green, and there's a
04:23:43 16 curved mounting portion holding up the spray system which
04:23:47 17 she indicated in blue. But the blue is not part of the
04:23:51 18 patent. That's not part of the figure. The blue is
04:23:55 19 Dr. Cameron's highlighting, and so she added that curve to
04:24:00 20 make this section look curved. We called her out on that.

04:24:05 21 And so in a subsequent declaration, she said, oh,
04:24:09 22 I didn't do anything wrong. My annotated figure had that
04:24:14 23 blue thing. But if you look at the Ochoa unannotated
04:24:18 24 figure, you will see a curved mounting portion, to which my
04:24:23 25 response is, no, you don't. That is Figure 4 of Ochoa on

04:24:29 1 the right. Let's blow it up and look at what Dr. Cameron
04:24:34 2 is looking at and claiming is a curved mounting portion.
04:24:38 3 That doesn't look like a curved mounting portion to me. I
04:24:42 4 don't see some curve that corresponds to the blue curve
04:24:47 5 that Dr. Cameron drew into this.

04:24:51 6 Instead, to me, it looks like there's two rails
04:24:53 7 that meet at a V. Admittedly, it's kind of obscured.
04:25:00 8 Admittedly it's kind of hard to see, but it sure looks like
04:25:04 9 two rails meeting at the top at a V.

04:25:07 10 And to the extent there's any doubt about this,
04:25:11 11 it's not my burden on invalidity, it's theirs. Is this
04:25:15 12 really clearly and convincingly a curved mounting portion?
04:25:22 13 I don't think it is. We have other arguments that this
04:25:25 14 portion is not actually even mounting the sprayer, but we
04:25:27 15 can dispense with this prior art reference just on the
04:25:29 16 concept of whether it's a curve or not.

04:25:31 17 It plainly does not clearly and convincingly
04:25:34 18 disclose a curve. And as a result, they don't have a
04:25:39 19 combination of references on the '385 that disclose every
04:25:43 20 element of the claim. At the very minimum, they can't show
04:25:46 21 curved mounting portions because they admit Bosch doesn't
04:25:50 22 show such a portion, and Ochoa doesn't get them there
04:25:53 23 either because there's really no curve there.

04:25:56 24 That's all I've got on invalidity, Your Honor. I
04:26:00 25 think we've got a few housekeeping items to go further

04:26:04 1 before we conclude today, but if Your Honor has any
04:26:07 2 questions as to invalidity, I'm happy to answer them.

04:26:10 3 THE COURT: You know, this is not on invalidity,
04:26:16 4 but my biggest issue about the '385 is the spray tube
04:26:23 5 having nozzles.

04:26:25 6 Can you point to any part of the '385 spec that
04:26:29 7 you think supports the idea that it should be read to cover
04:26:38 8 what Samsung has?

04:26:40 9 MR. GRINSTEIN: Well, the '385 part of the
04:26:46 10 specification that they point to, they point to a section,
04:26:53 11 which I think actually helps us more than it hurts us, a
04:26:59 12 portion of the specification that says we're -- that when
04:27:03 13 we talk about the spray tubes and these spray systems,
04:27:07 14 we're talking broad. Every single kind of thing satisfies
04:27:12 15 this element, and it's not intended to be -- not intended
04:27:20 16 to be narrowing. That is at the patent, Column 10, Lines
04:27:29 17 49 to 53, where it says this spray system, this spray rack
04:27:30 18 assembly, we've shown it here with spray tubes with spray
04:27:33 19 nozzles and any other numbers of tubes, but any kind of
04:27:36 20 sprayer would satisfy the -- the disclosure in the patent,
04:27:41 21 any kind of sprayer system.

04:27:43 22 Now, the patent here claims a tube with nozzles.
04:27:47 23 And I don't think there's anything limiting in the claim
04:27:51 24 language that takes that out. This is plainly a tube right
04:27:55 25 here, and the nozzles are connected to these discs which

04:27:57 1 are connected to the tube. They're part of the tube
04:28:00 2 system, part of the tube assembly. As you saw, I removed
04:28:03 3 the tube, waved it around. It's all one singular assembly.
04:28:07 4 The fact that Samsung chose to implement the nozzle
04:28:13 5 implementation via these discs doesn't change the fact that
04:28:17 6 there's a tube here, there's tubing that goes down to the
04:28:20 7 discs. Otherwise, how would the water get to the discs?
04:28:24 8 So it's all one contiguous tube, and out of that tube,
04:28:27 9 there's this little dot here out of which water is spewed.
04:28:32 10 So that's a nozzle.

04:28:34 11 THE COURT: Doesn't that cover any dishwasher
04:28:38 12 structure? It's always going to have water that has to get
04:28:41 13 there through some tube and eventually be ejected through
04:28:46 14 some hole which would qualify as a nozzle?

04:28:51 15 MR. GRINSTEIN: It would, Your Honor. And we're
04:28:53 16 not claiming to have invented the concept of a spray tube.
04:28:56 17 Our novelty here, of course, is it's a spray tube that
04:28:59 18 moves along on the third rack. You won't find other third
04:29:03 19 racks in the art that put the sprayer up onto the rack and
04:29:07 20 have the sprayer hit the cups.

04:29:10 21 So, yeah, any spray tube in a dishwasher that is
04:29:13 22 going to work is going to need a nozzle, but the spray
04:29:17 23 tubes in prior art dishwashers were spray tubes that were
04:29:23 24 down in, you know, the tub treating chamber. Here we've
04:29:27 25 got a third rack, and I'm not aware of any third racks that

04:29:31 1 have sprayers like we've climbed right here. So that's the
04:29:35 2 novelty. We're not claiming to have invented a spray tube
04:29:39 3 with a nozzle, Your Honor.

04:29:40 4 THE COURT: All right. I appreciate those
04:29:44 5 remarks.

04:29:45 6 What are the housekeeping issues that you were
04:29:47 7 referring to?

04:29:47 8 MR. GRINSTEIN: Housekeeping issue, the third of
04:29:51 9 them, my colleague, Ms. Srinivasan will handle on the bond.

04:29:56 10 The first issue is I just wanted to mention the
04:29:59 11 exhibits that we put in for the record. During our
04:30:02 12 examinations, cross and direct, we mentioned and referenced
04:30:08 13 Exhibits 1 through 5, 25, 27, 28, 29, 33, and 34. I think
04:30:15 14 the patents are also exhibits. I don't even know what the
04:30:19 15 patent numbers are, but I'm not sure you need patents as
04:30:22 16 exhibits in -- oh, they're in here. Never mind. So I just
04:30:26 17 wanted to put on the record the exhibits that we'd
04:30:28 18 mentioned.

04:30:29 19 Housekeeping Item No. 2, Your Honor has moved
04:30:36 20 heaven and earth and given us many different hearing dates
04:30:40 21 and given us this entire day on this preliminary
04:30:44 22 injunction, which I can tell you, you know, my client very
04:30:46 23 much appreciates. That being said, the case will go on
04:30:50 24 after the preliminary injunction, whichever way Your Honor
04:30:53 25 rules, and because I think this case got put on to the

04:30:57 1 preliminary injunction track, it missed the Markman trial
04:31:02 2 date track. So we would just ask to get put back on that
04:31:07 3 track and get a Markman date and a trial date. Because of
04:31:10 4 the preliminary injunction, we just didn't get our
04:31:13 5 scheduling conference.

04:31:16 6 And then the third point, I think Ms. Srinivasan
04:31:25 7 wanted to talk about the bond.

04:31:27 8 THE COURT: All right.

04:31:27 9 MS. SRINIVASAN: Thank you, Your Honor. You
04:31:28 10 raised with us this morning the bond. And I just want to
04:31:32 11 speak briefly to what we know from today's testimony and
04:31:35 12 from what's been provided to us by Samsung.

04:31:38 13 You heard that Samsung has said it could have just
04:31:41 14 put in its existing products if it had never launched the
04:31:45 15 DW90. So I think the assertion that floor space -- theory
04:31:50 16 that they would be harmed by having to stop the sale of the
04:31:54 17 DW90, the accused product, is really undermined by the
04:31:58 18 contention that in other scenarios, had they not even
04:32:02 19 launched the DW90, they would have been able to rely on
04:32:06 20 their existing other products to fill floor space.

04:32:09 21 Additionally, the impact, as Samsung has described
04:32:13 22 it, has not been disclosed as significant. [REDACTED]

04:32:14 23 [REDACTED]
04:32:19 24 [REDACTED] Today is
04:32:24 25 the first time that we have heard revenue data in

04:32:29 1 Mr. Stumacher's testimony both as to 2025 and as to the
04:32:36 2 projected revenue. That was not -- in data produced to us.
04:32:43 3 We obviously heard his testimony on that today. However,
04:32:48 4 taken in conjunction with the availability of other
04:32:50 5 replacement products and the fact that this is a single
04:32:53 6 product that Samsung has rolled out to date with the --
04:32:58 7 that's accused and is infringing the patents, Whirlpool's
04:33:02 8 position is that a million-dollar bond here is appropriate
04:33:06 9 in light of the availability of replacement products and
04:33:08 10 what we know about the sales to date and Samsung's having a
04:33:16 11 single dishwasher that is accused of infringement here.

04:33:17 12 Whirlpool will be prepared to consider a larger
04:33:21 13 bond should Samsung demonstrate the need for one, but we
04:33:26 14 don't have that before us. And, again, as I -- part of the
04:33:29 15 reason when the Court asked this morning is we frankly
04:33:33 16 hadn't heard about Samsung's revenues or their expectations
04:33:36 17 about future revenues, nor their views on substitution of
04:33:42 18 existing and past products.

04:33:43 19 So that's our position. And, obviously, we're
04:33:46 20 amenable to hearing what Samsung has to say and what it can
04:33:51 21 demonstrate with respect to a bond should an injunction
04:33:55 22 issue.

04:33:55 23 THE COURT: All right.

04:33:56 24 MS. SRINIVASAN: Thank you, Your Honor.

04:33:57 25 THE COURT: What else does the Defendant have,

04:34:04 1 Mr. Durst?

04:34:05 2 MR. DURST: Would you like me to remark on the
04:34:16 3 bond situation, Your Honor, or do you have what you need on
04:34:19 4 that?

04:34:19 5 THE COURT: If you have anything else to add to
04:34:21 6 that, you should feel free, but I'm not asking for it at
04:34:25 7 the moment.

04:34:26 8 MR. DURST: Okay. Well, just a couple of points.

04:34:30 9 One is the testimony in the courtroom is actually
04:34:35 10 crystal clear that there is no replacement to -- for us
04:34:39 11 with this unit. We have one unit. If it goes away, we're
04:34:43 12 going to lose that -- we're going to lose that slot. We're
04:34:46 13 going to lose that floor space. We're going to be out of
04:34:49 14 the premium -- premium third rack market.

04:34:51 15 And the second is the \$150 million. [REDACTED]

04:34:59 16 [REDACTED]

04:35:03 17 [REDACTED] [REDACTED]

04:35:08 18 [REDACTED] [REDACTED]

04:35:13 19 [REDACTED]

04:35:17 20 [REDACTED]

04:35:19 21 [REDACTED] [REDACTED]

04:35:22 22 [REDACTED]

04:35:28 23 [REDACTED]

04:35:30 24 I think it's actually, Your Honor, a fundamental
04:35:36 25 failing of Whirlpool. It is their burden. The rules are

04:35:40 1 crystal clear. If they seek an injunction, they need to
04:35:43 2 come forward with information on a bond, and they
04:35:48 3 haven't -- they haven't done it. They didn't have it in
04:35:51 4 their presentation this morning. What we just heard was a
04:35:55 5 series of speculations that were factually inconsistent
04:35:59 6 with what has been put in the record today, and I think
04:36:04 7 Whirlpool -- that's another illustration of Whirlpool
04:36:06 8 failing to carry its burden.

04:36:07 9 Just quickly, the list of exhibits that we have
04:36:14 10 referenced, moving to a different topic, those would be
04:36:20 11 DTX-49, 50, 51, 52, 54, DTX-8 and DTX-12. And DTX-40.

04:36:20 12 (Off-the-record discussion between counsel.)

04:37:03 13 MR. DURST: All right. I misunderstood my
04:37:05 14 instructions, Your Honor.

04:37:06 15 So I'll try to give them to the Court in order:
04:37:16 16 2 -- these are all DTX. 2, 6, 8, 10, 11, 12, 13, 32, 33,
04:37:32 17 37, 38, 39, and then 40 through 44, 48 through 52, 54, 55,
04:37:57 18 and 56.

04:38:08 19 And the Court has entered an order previously with
04:38:12 20 respect to post -- post-hearing briefing that is set out
04:38:16 21 with dates and lengths of those briefs. And so I don't
04:38:23 22 think there's anything more to cover on that, Your Honor.

04:38:25 23 THE COURT: All right. And I'll figure out how to
04:38:29 24 get the case on the regular track, as well. I don't know
04:38:33 25 if it will be necessary to go through a scheduling

04:38:38 1 conference, but I'll try and figure out where it got off
04:38:43 2 that track and get it back on.

04:38:47 3 Mr. Grinstein?

04:38:49 4 MR. GRINSTEIN: I didn't mean to interrupt, Your
04:38:51 5 Honor, but I forgot one housekeeping item.

04:38:54 6 THE COURT: Okay.

04:38:54 7 MR. GRINSTEIN: That is we talked about doing this
04:38:57 8 on the declarations. I don't think Your Honor has all the
04:38:59 9 declarations. We could do this one of two ways. We can
04:39:03 10 submit all the declarations to you. Alternatively, if
04:39:08 11 you'd like the parties to go through the declarations and
04:39:10 12 try to cut out the irrelevant stuff and just put in the
04:39:14 13 stuff that's pertinent to the issues that are in dispute,
04:39:18 14 we could try that, as well. I don't want to overwhelm
04:39:21 15 Your Honor with paper. We're at the Court's pleasure with
04:39:25 16 respect to that.

04:39:26 17 THE COURT: I think --

04:39:27 18 MR. GRINSTEIN: I guess it won't be that much
04:39:30 19 pleasure.

04:39:30 20 THE COURT: I think the ship has sailed on the
04:39:33 21 Court's pleasure.

04:39:34 22 MR. GRINSTEIN: Okay. Fair enough. Fair enough.

04:39:36 23 THE COURT: But all right. I do think that it's
04:39:40 24 important for the declarations to make it into the record,
04:39:46 25 and I think that -- why don't you, when you file your

04:39:54 1 briefs, file the declarations along -- as exhibits to those
04:40:01 2 briefs, and we'll just handle it that way.

04:40:04 3 MR. GRINSTEIN: That makes sense.

04:40:09 4 Okay. Thank you, Your Honor.

04:40:10 5 THE COURT: All right. Well, thank you, and we
04:40:14 6 are adjourned.

04:40:20 7 COURT SECURITY OFFICER: All rise.

04:40:22 8 (Hearing concluded 4:40 p.m.)

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CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/S/ Shelly Holmes
SHELLY HOLMES, CSR, TCRR
CERTIFIED SHORTHAND REPORTER
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4/12/2026
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The undersigned hereby certifies that counsel of record are being served with a copy of this document via email on June 10, 2026.

/s/ Ryan K. Yagura
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