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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(Proceedings recorded by mechanical stenography, transcript produced on a CAT system.)

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]
09:04:38 16 [redacted]
09:04:41 17 [redacted]
09:04:46 18 [redacted]
09:04:50 19 [redacted]
09:04:55 20 [redacted]
09:05:01 21 [redacted]
09:05:02 22 [redacted]
09:05:07 23 [redacted]
09:05:11 24 [redacted]
09:05:13 25 [redacted]

09:05:14 1 [redacted]
09:05:18 2 [redacted]
09:05:23 3 [redacted]
09:05:27 4 [redacted]
09:05:30 5 [redacted]
09:05:34 6 [redacted]
09:05:35 7 [redacted]
09:05:38 8 [redacted]
09:05:43 9 [redacted]
09:05:47 10 [redacted]
09:05:52 11 [redacted]
09:05:55 12 [redacted]
09:05:59 13 [redacted]
09:06:00 14 [redacted]
09:06:02 15 [redacted]
09:06:06 16 [redacted]
09:06:09 17 [redacted]
09:06:11 18 [redacted]
09:06:14 19 [redacted]
09:06:17 20 [redacted]
09:06:21 21 [redacted]
09:06:25 22 [redacted]
09:06:25 23 [redacted]
09:06:29 24 [redacted]
09:06:32 25 [redacted]

09:06:36 1 [redacted]
09:06:40 2 [redacted]
09:06:44 3 [redacted]
09:06:46 4 [redacted]
09:06:49 5 [redacted]
09:06:55 6 [redacted]
09:06:58 7 [redacted]
09:07:02 8 [redacted]
09:07:04 9 [redacted]
09:07:11 10 [redacted]
09:07:15 11 [redacted]
09:07:20 12 [redacted]
09:07:20 13 [redacted]
09:07:24 14 [redacted]
09:07:28 15 [redacted]
09:07:33 16 [redacted]
09:07:37 17 [redacted]
09:07:40 18 [redacted]
09:07:44 19 [redacted]
09:07:46 20 [redacted]
09:07:53 21 [redacted]
09:07:57 22 [redacted]
09:08:00 23 [redacted]
09:08:05 24 [redacted]
09:08:10 25 [redacted]

09:08:14 1 [redacted]
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09:08:41 8 [redacted]
09:08:47 9 [redacted]
09:08:47 10 [redacted]
09:08:53 11 [redacted]
09:08:56 12 [redacted]
09:09:01 13 [redacted]
09:09:04 14 [redacted]
09:09:07 15 [redacted]
09:09:15 16 [redacted]
09:09:20 17 [redacted]
09:09:27 18 [redacted]
09:09:30 19 [redacted]
09:09:33 20 [redacted]
09:09:36 21 [redacted]
09:09:39 22 [redacted]
09:09:41 23 So what happened? In the -- in the -- April of
09:09:47 24 2025, Whirlpool discovered Samsung's infringing
09:09:51 25 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.
09:22:23 22 [redacted]
09:22:26 23 [redacted]
09:22:30 24 [redacted]
09:22:35 25 [redacted]

09:22:37 1 [redacted]
09:22:42 2 [redacted]
09:22:45 3 [redacted]
09:22:48 4 If you look on its website now, you will see that
09:22:52 5 the first highlight mentioned is the third rack washing
09:22:55 6 system, the dedicated wash jets for drinkware, and the
09:23:02 7 upgraded third rack washing system is a dedicated area for
09:23:07 8 drinkware and cutlery.
09:23:10 9 [redacted]
09:23:12 10 [redacted]
09:23:13 11 [redacted]
09:23:16 12 [redacted]
09:23:20 13 [redacted]
09:23:23 14 [redacted]
09:23:27 15 [redacted]
09:23:30 16 [redacted]
09:23:33 17 [redacted]
09:23:36 18 [redacted]
09:23:41 19 And on that note, Your Honor, you're going to hear
09:23:44 20 today about -- from Samsung, I'm sure, about various prior
09:23:49 21 art, prior artists, including prior art that comes from
09:23:53 22 Bosch, which is another Samsung competitor. Samsung didn't
09:23:59 23 go and look at Bosch to see what they were doing in their
09:24:03 24 third rack and adopt it. It looked at what KitchenAid was
09:24:06 25 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]

09:24:46 11 [redacted]

09:24:50 12 [redacted]

09:24:54 13 [redacted]

09:24:58 14 [redacted]

09:25:01 15 [redacted]

09:25:04 16 [redacted]

09:25:08 17 [redacted]

09:25:11 18 [redacted]

09:25:15 19 [redacted]

09:25:17 20 [redacted]

09:25:19 21 [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]
09:41:41 23 [redacted]
09:41:46 24 [redacted]
09:41:49 25 [redacted]

09:41:52 1 [redacted]
09:41:58 2 [redacted]
09:42:01 3 [redacted]
09:42:04 4 [redacted]
09:42:05 5 [redacted]
09:42:13 6 [redacted]
09:42:17 7 [redacted]
09:42:24 8 [redacted]
09:42:26 9 [redacted]
09:42:29 10 [redacted]
09:42:32 11 [redacted]
09:42:37 12 [redacted]
09:42:42 13 [redacted]
09:42:45 14 [redacted]
09:42:46 15 [redacted]
09:42:50 16 [redacted]
09:42:56 17 [redacted]
09:43:01 18 [redacted]
09:43:07 19 [redacted]
09:43:11 20 [redacted]
09:43:14 21 [redacted]
09:43:16 22 [redacted]
09:43:16 23 [redacted]
09:43:23 24 [redacted]
09:43:29 25 [redacted]

09:43:38 1 [redacted]
09:43:42 2 [redacted]
09:43:50 3 [redacted]
09:43:54 4 [redacted]
09:43:57 5 [redacted]
09:44:00 6 [redacted]
09:44:06 7 [redacted]
09:44:10 8 [redacted]
09:44:11 9 This can be a beginning and ending to the inquiry
09:44:18 10 for an injunction. There is no harm in the marketplace
09:44:24 11 that's being caused to Whirlpool by Samsung's products.
09:44:28 12 A word on the likelihood of success on the merits.
09:44:37 13 First, it's important to understand what these patents
09:44:42 14 actually claim. These are not broad patents covering every
09:44:45 15 dishwasher with three racks. The parties will admit --
09:44:50 16 Whirlpool will admit that three racks are commonplace in
09:44:53 17 the marketplace.
09:44:55 18 Whirlpool's own specifications for these patents
09:44:57 19 acknowledge that third racks for dishwashers were already
09:45:02 20 well known in the art. Rather, these patents, Your Honor,
09:45:05 21 are directed to a very specific rack configuration,
09:45:08 22 particular arrangements of angled bottom walls, spray
09:45:14 23 tubes, and a utensil holder. Samsung's accused product,
09:45:19 24 the 90F model, does not practice those specific
09:45:22 25 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
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 Q. When you were launching this feature from a business
10:13:05 perspective, did you contemplate licensing the patented
10:13:09 technology to others?
10:13:10 A. No.
10:13:12 Q. Why not?
10:13:13 A. We weren't even considering putting it on our other
10:13:17 Whirlpool-branded dishwashers. It was very deliberate,
10:13:20 that we wanted to keep this specific feature just for
10:13:24 KitchenAid. So licensing this to a competitor was not even
10:13:29 in our discussion.
10:13:31 Q. Let's talk about the next harm. What impact does a
10:13:35 Samsung DW90 have on KitchenAid's share of the market?
10:13:39 A. From a share standpoint, we can either lose share or
10:13:44 limit our ability to grow share.
10:13:46 Q. Is flooring a part of the impact on share?
10:13:50 A. It is one driver but not the only driver of share.
10:13:54 Q. So tell us generally about competition for floor space,
10:13:59 how that works at retailers like Home Depot and Lowe's.
10:14:03 A. So retailers essentially have flooring windows about
10:14:06 one to two times a year, depending on the retailer. And
10:14:10 every year it's an opportunity for them to remove low
10:14:16 productive SKUs or SKUs that are unproductive on the floor
10:14:22 and replace it with something new. So it's a constant
10:14:23 essentially battle for us and among our competitors to try
10:14:26 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 it's too late, until we've seen the harm, for us to take
10:20:36 action and try to limit the copycats. We also can't
10:20:40 afford -- so we wanted to act before we saw the harm and
10:20:43 before more competition introduced a similar rack in the
10:20:49 market and before we started seeing impact on our equity
10:20:53 and our share.
10:20:54 Q. What is another way that Samsung's copying harms
10:20:59 Whirlpool?
10:20:59 A. So another way is pricing. Samsung is very well
10:21:08 known -- when we look at our prices every day is very well
10:21:13 known in undercutting on price. They promote very
10:21:15 aggressively from a price standpoint. So it was more
10:21:19 common knowledge, but they would offer similar type
10:21:23 products and offer it at a lower price.
10:21:26 In this case, because they did not make the
10:21:29 significant investment that we had made to develop the
10:21:35 premium third rack and the whole infrastructure around it,
10:21:38 they didn't have to recoup the investment like we did, and
10:21:42 so they have the ability to price lower than we would.
10:21:46 Q. Has Samsung, in fact, priced the DW90 dishwasher lower
10:21:53 than the KitchenAid dishwasher?
10:21:54 A. Yes, they have. And for most part, so we regularly do
10:22:01 a price scan of the market. And what we do is we look at
10:22:07 products that are very similar in features. So we call
10:22:10 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 very similar features, at the end of the day, for most
10:23:45 part, they can determine their purchase based on price.
10:23:49 All else being equal and perceived to be very similar
10:23:53 features, a consumer may choose to buy a Samsung because
10:23:56 it's at a lower price, which means a win of sales for
10:24:03 Samsung and a loss in sales for Whirlpool.
10:24:06 Q. Is there any other way in which Samsung's copying hurts
10:24:10 Whirlpool?
10:24:10 A. Yes. So beyond that initial sale, we think -- based on
10:24:15 our understanding of their product and their third rack, we
10:24:19 think we're in a lose/lose situation once a consumer buys a
10:24:25 DW90 product.
10:24:26 Q. What do you mean by a lose/lose situation?
10:24:28 A. So if the consumer has a very positive experience with
10:24:32 the third rack, it's a win for Samsung. So Whirlpool loses
10:24:35 in that case. And if they have a negative experience with
10:24:39 the third rack of Samsung, then it hurts Whirlpool in that
10:24:44 case.
10:24:44 Q. Can you elaborate on how exactly Samsung benefits if
10:24:48 the consumer has a positive experience with the premium
10:24:53 third rack in the DW90?
10:24:55 A. So if a consumer buys a DW90 product and has a positive
10:25:01 experience with the third rack, Samsung gets the credit for
10:25:03 that third rack without putting in the work and investment
10:25:06 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 capacity of the dishwasher.
10:28:31 Q. Does KitchenAid's premium third rack dishwasher get
10:28:35 these type of reviews about the vertical squeeze?
10:28:38 A. Oh, not at all. In fact, it is one of the delighters
10:28:43 when it comes to our 5 stars that it actually creates new
10:28:47 space -- more space for consumers to wash things without
10:28:52 sacrificing cleaning.
10:28:54 Q. If a consumer buys a Samsung DW90 and has a negative
10:29:01 experience with the premium third rack, how exactly does
10:29:07 that hurt Whirlpool?
10:29:08 A. So if a consumer has a negative experience with this
10:29:11 type of third rack, it creates the impression that these
10:29:14 third racks don't really create incremental space. It just
10:29:17 impedes on the space of the middle rack. So it creates a
10:29:21 negative perception for all of these racks altogether.
10:29:25 Q. Doesn't that just mean that the consumer won't buy
10:29:32 dishwashers without the third racks, so they'll just buy a
10:29:35 two-rack washer? How is that hurting Whirlpool?
10:29:39 A. Well, that's precisely the hurt that it will create
10:29:43 Whirlpool, especially the KitchenAid brand that is built
10:29:46 around this third-level rack, and all of KitchenAid's
10:29:50 dishwashers have a third-level rack.
10:29:53 Q. Ms. Villarroel, sitting here today, do you believe that
10:29:55 Samsung's DW90 product launch will harm Whirlpool?
10:30:00 A. Absolutely. And it won't just hurt us in the future,

10:30:03 it's already starting to hurt us today. We have built --
10:30:10 made significant investments around the premium third rack
10:30:16 and the capability and the engineering around creating more
10:30:20 space. And our whole strategy on KitchenAid is built
10:30:23 around this premium third rack. So with Samsung
10:30:28 introducing their DW90, it cuts us off at the knees, and
10:30:33 now we're unable to do that and own it as a unique and
10:30:35 differentiated feature.
10:30:35 Q. Thank you, Ms. Villarroel.
10:30:38 MS. PARK: I'll pass the witness.
10:30:39 THE WITNESS: Thank you.
10:30:40 THE COURT: All right. Before we proceed with the
10:30:43 cross-examination, we'll take the morning recess. 15
10:30:46 minutes.
10:30:48 COURT SECURITY OFFICER: All rise.
10:30:49 (Recess.)
10:30:49 COURT SECURITY OFFICER: All rise.
10:30:51 THE COURT: Thank you. Please be seated.
10:45:22 All right. We can proceed with cross-examination.
10:45:50 CROSS-EXAMINATION
10:45:50 BY MR. DURST:
10:45:52 Q. Good morning, ma'am.
10:45:53 A. Good morning.
10:45:53 Q. My name is Tim Durst. It's a pleasure to meet you.
10:45:57 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
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 When did Samsung start selling the 90F?
11:27:03 A. So initial sales would have started in March.
11:27:06 Q. All right. And what -- to what channel were the
11:27:10 initial sales made?
11:27:11 A. So smaller regionals would have started selling first.
11:27:16 They don't have set reset times like larger customers, so
11:27:21 they have more flexibility in their ability to sell it
11:27:24 generally at any point.
11:27:25 Q. And when did those sales start?
11:27:28 A. March.
11:27:28 Q. March. And if I could turn your attention,
11:27:32 Mr. Stumacher, to Exhibit 52 -- DTX-52, that's in your
11:27:38 binder?
11:27:39 A. Yes.
11:27:40 [redacted]
11:27:44 [redacted]
11:27:54 [redacted]
11:27:54 [redacted]
11:27:56 [redacted]
11:28:00 [redacted]
11:28:04 [redacted]
11:28:08 [redacted]
11:28:12 [redacted]
11:28:14 [redacted]
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11:28:24 3 [redacted]
11:28:25 4 [redacted]
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11:28:31 6 [redacted]
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11:28:36 8 [redacted]
11:28:37 9 [redacted]
11:28:41 10 [redacted]
11:28:44 11 [redacted]
11:28:47 12 [redacted]
11:28:50 13 [redacted]
11:28:54 14 [redacted]
11:28:58 15 [redacted]
11:29:03 16 [redacted]
11:29:05 17 [redacted]
11:29:09 18 [redacted]
11:29:12 19 [redacted]
11:29:18 20 [redacted]
11:29:18 21 [redacted]
11:29:19 22 [redacted]
11:29:22 23 [redacted]
11:29:28 24 [redacted]
11:29:28 25 [redacted]

11:29:28 1 [redacted]
11:29:31 2 [redacted]
11:29:35 3 [redacted]
11:29:38 4 [redacted]
11:29:38 5 [redacted]
11:29:38 6 [redacted]
11:29:40 7 Q. All right. Was there an online release of the 90F in
11:29:47 8 March, as well?
11:29:47 9 A. Yes.
11:29:49 10 Q. And when did that happen?
11:29:50 11 A. March 30th.
11:29:52 12 Q. What's the significance of that?
11:29:53 13 A. That is the official launch date for online of
11:30:00 14 Samsung.com, and we try to keep the largest retailers'
11:30:03 15 online launches aligned with that, as well. So the product
11:30:07 16 date for launch where a consumer can go look at the
11:30:13 17 product, see the features, and buy it.
11:30:15 18 Q. And if anyone had watched Samsung and knew their
11:30:17 19 behavior over time, have you ever done an online only
11:30:21 20 launch?
11:30:27 21 A. For a model in its entirety, no. There are, like, an
11:30:33 22 white color version of this 90F that doesn't get any
11:30:35 23 flooring. Yeah, that's only going to sell online. That's
11:30:38 24 the same thing for every brand. But for a new model
11:30:41 25 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 [redacted]
11:31:04 7 [redacted]
11:31:06 8 [redacted]
11:31:10 9 [redacted]
11:31:15 10 [redacted]
11:31:20 11 [redacted]
11:31:22 12 [redacted]
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 [redacted]
11:31:42 20 [redacted]
11:31:50 21 [redacted]
11:31:50 22 [redacted]
11:31:53 23 [redacted]
11:31:55 24 [redacted]
11:32:00 25 [redacted]

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

11:33:23 1 [redacted]
11:33:26 2 [redacted]
11:33:27 3 [redacted]
11:33:37 4 [redacted]
11:33:42 5 [redacted]
11:33:45 6 [redacted]
11:33:48 7 [redacted]
11:33:51 8 [redacted]
11:33:55 9 [redacted]
11:34:01 10 [redacted]
11:34:01 11 [redacted]
11:34:05 12 [redacted]
11:34:09 13 [redacted]
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11:34:36 22 [redacted]
11:34:37 23 [redacted]
11:34:38 24 [redacted]
11:34:41 25 [redacted]

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]
11:35:39 15 [redacted]
11:35:43 16 [redacted]
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11:36:38 8 [redacted]
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11:36:46 10 [redacted]
11:36:47 11 [redacted]
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11:36:52 13 [redacted]
11:36:55 14 [redacted]
11:36:59 15 [redacted]
11:37:00 16 [redacted]
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11:37:53 7 [redacted]
11:37:57 8 [redacted]
11:38:00 9 [redacted]
11:38:05 10 [redacted]
11:38:09 11 [redacted]
11:38:10 12 [redacted]
11:38:18 13 [redacted]
11:38:20 14 [redacted]
11:38:22 15 [redacted]
11:38:23 16 [redacted]
11:38:25 17 [redacted]
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11:38:59 4 [redacted]
11:39:03 5 [redacted]
11:39:08 6 [redacted]
11:39:09 7 [redacted]
11:39:12 8 [redacted]
11:39:16 9 [redacted]
11:39:26 10 [redacted]
11:39:29 11 [redacted]
11:39:29 12 [redacted]
11:39:32 13 [redacted]
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11:39:43 17 [redacted]
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11:40:35 10 [redacted]
11:40:36 11 [redacted]
11:40:39 12 [redacted]
11:40:42 13 [redacted]
11:40:42 14 [redacted]
11:40:46 15 [redacted]
11:40:52 16 [redacted]
11:40:56 17 [redacted]
11:40:59 18 [redacted]
11:41:04 19 [redacted]
11:41:11 20 [redacted]
11:41:13 21 [redacted]
11:41:14 22 Q. All right. Let me pause there for just a second and
11:41:18 23 ask you, so when these 90F dishwashers went into these
11:41:24 24 retailers, into Best Buy and Lowe's and to some extent to
11:41:29 25 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]
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]
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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 1 [redacted]
11:44:11 2 [redacted]
11:44:13 3 [redacted]
11:44:14 4 [redacted]
11:44:19 5 [redacted]
11:44:19 6 [redacted]
11:44:20 7 [redacted]
11:44:29 8 [redacted]
11:44:33 9 [redacted]
11:44:36 10 [redacted]
11:44:40 11 [redacted]
11:44:43 12 [redacted]
11:44:44 13 [redacted]
11:44:48 14 [redacted]
11:44:52 15 [redacted]
11:44:58 16 Q. And did you hear Ms. Villarroel's estimate of the sales
11:45:06 17 of the KitchenAid product?
11:45:07 18 A. Yes.
11:45:07 19 Q. Will there ever be a time, in your reasonable estimate,
11:45:11 20 when you're selling as many as she is?
11:45:13 21 A. No.
11:45:18 22 Q. Now, Mr. Stumacher, let me ask you some questions about
11:45:26 23 what the marketing of these -- this line of dishwashers at
11:45:31 24 this level.
11:45:31 25 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]

11:52:56 1 [redacted]
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11:56:11 19 Q. Speak to that just a little bit more about the source
11:56:13 20 of this.
11:56:14 21 A. TraQline is generally the only reputable source of
11:56:21 22 market share information in the industry. Unlike Consumer
11:56:25 23 Electronics, there's more available market share sources.
11:56:28 24 This is the one that's used for home appliances.
11:56:31 25 [redacted]

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11:56:45 5 Q. Now, Mr. Stumacher, Whirlpool has asked the Court to
11:56:50 6 take your 90F model off the market. Are you aware of that?
11:56:54 7 A. Yes.
11:56:54 8 Q. What would the impact of that -- of an order like
11:57:02 9 that -- if that request were granted, how would that impact
11:57:05 10 you?
11:57:05 11 A. It would be devastating from a revenue perspective,
11:57:11 12 investment in the unit to launch it, the loss of flooring,
11:57:16 13 reputation with retailers, as well.
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11:57:22 15 [redacted]
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11:57:57 4 Q. And how long do you reasonably expect this model to be
11:58:02 5 in the marketplace?
11:58:04 6 A. Four to five years.
11:58:08 7 [redacted]
11:58:13 8 [redacted]
11:58:19 9 [redacted]
11:58:24 10 [redacted]
11:58:26 11 [redacted]
11:58:27 12 Q. Okay. And did you hear Ms. Villarroel say that
11:58:29 13 sometimes these models go even longer than that?
11:58:33 14 A. The lifecycle of dishwashers, but, yes, I think
11:58:38 15 KitchenAid does keep models for a while.
11:58:40 16 Q. Okay. And then was there -- was there research and
11:58:43 17 development spending and spending that went into the launch
11:58:46 18 for Samsung?
11:58:46 19 A. So there was -- there was R&D spending to develop the
11:58:51 20 model, tremendous, and there was also money involved in the
11:58:55 21 launch.
11:58:55 22 Q. And in Samsung's business, how are those prices -- how
11:59:01 23 are those expenses recouped?
11:59:03 24 A. By continuing to sell the model through the lifetime.
11:59:05 25 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.
01:21:20 3 [redacted]
01:21:23 4 [redacted]
01:21:28 5 [redacted]
01:21:30 6 [redacted]
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.
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01:51:57 13 THE COURT: Ms. Srinivasan, help me out.
01:51:57 14 MS. SRINIVASAN: Yes.
01:52:04 15 THE COURT: What am I listening for here.
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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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02:04:28 11 THE COURT: Ms. Srinivasan, Mr. Durst indicated,
02:04:32 12 and I think you had also indicated, that this is a document
02:04:37 13 that was produced in Korean by Samsung. Did the -- was the
02:04:45 14 translation done by Samsung or by your side?
02:04:49 15 MS. SRINIVASAN: It was done by our side through a
02:04:51 16 professional translator, and we served both that
02:04:54 17 professional -- both the translation and the certificate
02:04:57 18 from the translator on Samsung.
02:05:00 19 THE COURT: All right. And so you're saying that
02:05:08 20 this document -- when was it produced to Samsung? In other
02:05:12 21 words, have they had an opportunity to evaluate? That is
02:05:18 22 unusual wording, and any time I see unusual wording in a
02:05:22 23 translated document, it makes me wonder if it is capturing
02:05:26 24 the intent of the original.
02:05:29 25 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.
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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.

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02:17:19 6 Q. Putting aside the reasons for the underperformance, if
02:17:24 7 Samsung is underperforming and it is experiencing flooring
02:17:29 8 loss, that creates an opportunity for a competitor to
02:17:33 9 obtain that flooring space, correct?
02:17:36 10 A. If we lose floors, it will generally go to either our
02:17:40 11 model or the competitive model.
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02:20:31 8 [redacted]
02:20:32 9 [redacted]
02:20:37 10 [redacted]
02:20:38 11 [redacted]
02:20:42 12 [redacted]
02:20:45 13 [redacted]
02:20:48 14 [redacted]
02:20:52 15 [redacted]
02:20:53 16 [redacted]
02:20:54 17 [redacted]
02:21:00 18 [redacted]
02:21:00 19 MR. DURST: Your Honor, I object. I think we're
02:21:02 20 at a transition of a topic. I'm feeling some of the baby
02:21:07 21 step pains here. We had an agreement between the parties
02:21:12 22 of an hour and a half on fact witnesses each. We've been
02:21:15 23 sitting here now for well over 30 minutes beyond that by
02:21:17 24 Whirlpool. So --
02:21:22 25 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]

02:25:02 1 [redacted]
02:25:06 2 [redacted]
02:25:09 3 [redacted]
02:25:15 4 [redacted]
02:25:17 5 [redacted]
02:25:20 6 [redacted]
02:25:24 7 [redacted]
02:25:27 8 [redacted]
02:25:27 9 [redacted]
02:25:35 10 [redacted]
02:25:40 11 [redacted]
02:25:47 12 [redacted]
02:25:52 13 [redacted]
02:25:55 14 [redacted]
02:25:57 15 [redacted]
02:26:04 16 [redacted]
02:26:09 17 [redacted]
02:26:18 18 [redacted]
02:26:21 19 [redacted]
02:26:29 20 [redacted]
02:26:31 21 [redacted]
02:26:36 22 [redacted]
02:26:44 23 [redacted]
02:26:46 24 [redacted]
02:26:51 25 [redacted]

02:26:57 1 [redacted]
02:27:01 2 [redacted]
02:27:03 3 [redacted]
02:27:06 4 [redacted]
02:27:10 5 [redacted]
02:27:13 6 [redacted]
02:27:14 7 [redacted]
02:27:21 8 [redacted]
02:27:30 9 [redacted]
02:27:33 10 [redacted]
02:27:55 11 [redacted]
02:28:03 12 [redacted]
02:28:03 13 [redacted]
02:28:07 14 [redacted]
02:28:14 15 [redacted]
02:28:18 16 [redacted]
02:28:19 17 [redacted]
02:28:21 18 [redacted]
02:28:25 19 [redacted]
02:28:28 20 [redacted]
02:28:32 21 [redacted]
02:28:32 22 [redacted]
02:28:33 23 [redacted]
02:28:40 24 [redacted]
02:28:44 25 [redacted]

02:28:46 1 [redacted]
02:28:48 2 [redacted]
02:28:53 3 [redacted]
02:28:56 4 Q. Okay. You have looked at the KitchenAid rack and the
02:29:01 5 Samsung rack. Are they the same?
02:29:04 6 A. No.
02:29:05 7 [redacted]
02:29:17 8 [redacted]
02:29:20 9 [redacted]
02:29:23 10 [redacted]
02:29:26 11 [redacted]
02:29:27 12 [redacted]
02:29:33 13 [redacted]
02:29:34 14 [redacted]
02:29:36 15 [redacted]
02:29:37 16 [redacted]
02:29:43 17 [redacted]
02:29:46 18 [redacted]
02:29:46 19 Q. Now, is it normal course in the industry for
02:29:53 20 competitors to study the features of the other of their --
02:29:57 21 of their own competitors?
02:29:59 22 A. Absolutely.
02:29:59 23 Q. And do competitors sometimes follow features?
02:30:04 24 A. Yes.
02:30:05 25 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 there's the other end of the dish rack, there is a second
02:55:43 portion which is angled with respect to the first portion,
02:55:46 and here we see a portion of the bottom wall that's angled.
02:55:50 It's at the second end of the dish rack. And that angle
02:55:54 defines a depression, and that's a depression because the
02:55:57 area that's in this angle of this dish rack is lower than
02:56:01 the planar portion. That's a depression, and that's what
02:56:04 it says right here, the depression extended lower than the
02:56:07 first portion relative to the peripheral wall.
02:56:09 It says: The first portion supports a set of
02:56:13 utensil holders for supporting one or more utensils.
02:56:16 Again, the first portion was this planar portion,
02:56:19 and here is the utensil holder that it supports.
02:56:23 Straightforward.
02:56:24 And the second portion defines a cup seat. And,
02:56:29 again, as I mentioned before, that's a cup seat. The cup
02:56:33 sits in there nice and snug. It's cradled. That's a cup
02:56:37 seat. That is the infringement read on that patent.
02:56:42 Again, extraordinarily straightforward. We're not
02:56:44 stretching anything. This is not the patentees invented
02:56:50 something else and now they're trying to claim some
02:56:52 completely different concept. Straightforward.
02:56:55 And, in fact, Samsung, at least through
02:56:58 Dr. Cameron, has advanced only one non-infringement
02:57:00 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.

03:54:17 1 Now, as I said, this last limitation is the only
03:54:24 2 one that Dr. Tanbour and Whirlpool really dispute, but the
03:54:28 3 problem is Dr. Tanbour relies on a very specific meaning of
03:54:34 4 the word "cup seat" that is not supported by anything in
03:54:39 5 the claim. What he says -- and this is an excerpt from his
03:54:43 6 rebuttal declaration at 155 -- he says: The cup seat
03:54:48 7 disclosed in Claim 14 of the '681 patent is capable of
03:54:53 8 securely supporting glasses and cups of ordinary dimensions
03:54:57 9 along their cylindrical side. Okay? So he's got this very
03:55:02 10 special meaning of cup seat that has no support in the
03:55:06 11 claim. The claim doesn't say anything about that.
03:55:08 12 There's no requirement of securely supporting.
03:55:13 13 There's no requirement of ordinary dimensions. In fact,
03:55:15 14 there's no guidance anywhere as to what ordinary dimensions
03:55:19 15 would even be. And there's certainly no requirement in the
03:55:22 16 claim that the cups be secured along the cylindrical side.
03:55:26 17 So given the plain and ordinary meaning of cup
03:55:29 18 seat, which is what should apply here, the claim is clearly
03:55:33 19 invalid over this Carr reference.
03:55:36 20 And I'll skip Claim 15, because, again, we're just
03:55:43 21 going to cover the independent claims, I believe, for
03:55:45 22 purposes of this. But similar arguments apply.
03:55:50 23 Now, the Bosch 800 is, again, another prior art
03:55:53 24 reference -- clearly prior art. It published in 2019, well
03:55:58 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 an upper rack and two lower racks.

03:59:08 Now, there's no dispute that Andrew has all these

03:59:10 limitations, except for the three racks. It's got two

03:59:12 racks. It's got an upper rack and one lower rack, but it

03:59:17 doesn't have the three racks.

03:59:18 So, again, the combination of Andrew and Carr to

03:59:21 have a dishwasher that has the Andrew top rack, that's what

03:59:26 Andrew is all about. Andrew is all about that top rack.

03:59:29 To have that top rack in a dishwasher with three racks

03:59:32 would have been an obvious combination. And the reason why

03:59:37 it would have been obvious is because the goal of Andrew is

03:59:40 to have a flexible and versatile rack in a modern

03:59:44 dishwasher. And like I said, the Andrew patent is all

03:59:47 about that top rack.

03:59:48 And Carr is an example of modern dishwasher design

03:59:51 where three racks are becoming the norm. And so it would

03:59:54 have been more than obvious to someone skilled in the art

03:59:56 designing a dishwasher, that, hey, we're going to

03:59:58 implement -- you know, come up with a dishwasher, it would

04:00:02 be obvious to combine these two to have the advantages of

04:00:02 Andrews's top rack in a conventional modern dishwasher with

04:00:07 three.

04:00:07 And the likelihood of success would be very high.

04:00:10 It's a simple combination of mechanical elements. It's not

04:00:14 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 knifes 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]

04:35:08 18 [redacted]

04:35:13 19 [redacted]

04:35:17 20 [redacted]

04:35:19 21 [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 4/12/2026
SHELLY HOLMES, CSR, TCRR Date
CERTIFIED SHORTHAND REPORTER
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CERTIFICATE OF SERVICE

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
Ryan K. Yagura