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## P R O C E E D I N G S

(Jury out.)

COURT SECURITY OFFICER: All rise.

THE COURT: Please be seated.

Good morning, everyone.

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

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

MR. LINDINGER: Your Honor, may I proceed?

THE COURT: Yes.

MR. LINDINGER: Michael Lindinger on behalf of Maxell.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

08:40:20 7 THE COURT: Right.

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

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

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

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

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

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

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

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

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08:41:08 1 District Court abused its discretion by failing to exclude  
08:41:12 2 expert testimony related to patent damages because the  
08:41:13 3 expert relied on licenses that were insufficient on their  
08:41:18 4 face to support his proposed royalty rate.

08:41:20 5 In EcoFactor, the Plaintiff's expert, there  
08:41:25 6 Mr. Kennedy, relied on licenses that lacked the proposed  
08:41:29 7 royalty rate on their face in testimony from a corporate  
08:41:35 8 witness about how proposed royalty rates purportedly could  
08:41:38 9 be calculated from them, regardless.

08:41:40 10 The Federal Circuit concluded -- and this was in  
08:41:42 11 our brief last night at Page 1 -- this assertion by  
08:41:47 12 Mr. Kennedy that prior willing licenses had agreed to the X  
08:41:51 13 dollar royalty rate is not supported by the licenses. The  
08:41:53 14 licenses individually or in combination do not support  
08:41:57 15 Mr. Kennedy's opinion that the licensees were paying the X  
08:42:01 16 dollar rate, agreed to pay the X dollar rate, or agreed  
08:42:06 17 that the X dollar rate was a reasonable royalty.

08:42:08 18 As set forth in our Daubert motion -- and this is  
08:42:11 19 on the market approach, which is his remaining opinion that  
08:42:15 20 he intends to present today, we believe -- Mr. Jarosz's  
08:42:18 21 licensing comparables approach relies on several license  
08:42:22 22 offers, transactions, and negotiations, but none of what he  
08:42:26 23 considers to be the most informative licenses that he uses  
08:42:29 24 for his calculation state the rate, especially the Maxell  
08:42:34 25 standard rate of 1 percent on their face.

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

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

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

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

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

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

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

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08:44:04 1 here.

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

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

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

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

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

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

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

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

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

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

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

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

08:45:48 15 THE COURT: Okay.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

08:47:31 5 (Courtroom sealed.)

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

09:13:01 9 (Courtroom unsealed.)

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

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

09:14:56 14 (Jury in.)

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

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

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

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

09:15:20 22 CROSS-EXAMINATION

09:15:21 23 BY MR. FOWLER:

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

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

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

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

09:16:36 5 A. Sure.

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

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

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

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

09:16:49 12 A. I do.

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

09:16:59 15 A. Yes.

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

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

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

09:17:26 25 A. Yes.

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

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09:18:29 1 in August of 2005.

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

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

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

09:19:02 14 A. Yes.

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

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

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

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

09:19:16 20 Q. Right.

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

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

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

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09:19:30 1 Q. Okay. So is one of the points that you were attempting  
09:19:33 2 to convey to the jury yesterday that the inventions  
09:19:38 3 described in all of these patents, it's the same invention?

09:19:41 4 A. No, I was not attempting to --

09:19:47 5 Q. So are you -- are you -- okay. This is important, and  
09:19:48 6 we'll get to this when we get to the invalidity part of the  
09:19:51 7 case. But are you saying that the invention that's  
09:19:53 8 described in each of these patents is different, or is it  
09:19:55 9 the same?

09:19:59 10 A. No --

09:19:59 11 Q. What's your position on that, sir?

09:20:01 12 A. It's -- it's -- so there's two aspects to inventions in  
09:20:05 13 patents. There's the inventions that are disclosed in the  
09:20:10 14 figures and the -- and the description. And then there  
09:20:16 15 is -- out of that entire specification, there's claims that  
09:20:22 16 claim certain aspects of the invention.

09:20:25 17 And so what this slide is showing is that all of  
09:20:30 18 these patents, the claims rely on the same description and  
09:20:37 19 the same figures to make those claimed inventions.

09:20:43 20 Q. So we'll get to this. We're going to be talking again  
09:20:48 21 at the end of the case, right, when we're talking about  
09:20:50 22 validity?

09:20:51 23 A. Okay.

09:20:51 24 Q. That's correct, right, you and I still have a chance to  
09:20:54 25 talk?

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09:20:54 1 A. Yes.

09:20:54 2 Q. So since you brought this up, I thought we should get  
09:20:57 3 this to the jury.

09:20:58 4 So your point to the jury is that the  
09:21:00 5 specification -- whatever invention is described in the  
09:21:02 6 body of the specifications, including the figures, that's  
09:21:04 7 all the same? That's your view, right?

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

09:21:09 9 Q. Right.

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

09:21:12 11 Q. Right.

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

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

09:21:17 14 So the question I asked you was the specification,  
09:21:19 15 those pages and pages of description and the figures, they  
09:21:23 16 describe the same invention, right?

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

09:21:27 18 Q. Okay. And then I think you were -- you're a little bit  
09:21:30 19 ahead of me, but the claims are different?

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

09:21:35 21 Q. Okay. So when we -- when we chat again, you would  
09:21:44 22 acknowledge to me that you need to look at both the  
09:21:46 23 specification and the claims to figure out what the correct  
09:21:48 24 priority date is, right?

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

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

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

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

09:22:15 10 A. Yes.

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

09:22:24 14 A. Fair.

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

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

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

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09:22:58 1 A. Yes.

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

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

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

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

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

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

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

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

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

09:23:20 11 misspoke.

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

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

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

09:23:33 15 right?

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

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

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

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

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

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

09:23:56 22 A. Okay.

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

09:24:00 24 A. Sorry.

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

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

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

09:24:05 3 A. Yeah.

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

09:24:09 5 A. Yes.

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

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

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

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

09:24:17 10 A. Apologize.

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

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

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

09:24:24 14 A. Yes.

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

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

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

09:24:37 18 in the product?

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

09:24:42 20 Q. Right.

09:24:42 21 A. Yes.

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

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

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

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

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

09:25:00 3 A. Yes.

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

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

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

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

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

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

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

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

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

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

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

09:26:05 2 A. Yes.

09:26:06 3 Q. Okay. And I've underlined character, because the Court

09:26:09 4 has done us a favor here -- not a favor -- but the Court

09:26:12 5 has told us what this word means, right?

09:26:14 6 A. Yes.

09:26:14 7 Q. And I don't -- I don't remember you actually ever

09:26:17 8 showing the jury what the claim construction was, but I

09:26:20 9 think you said that the Court had construed it, and you

09:26:22 10 applied it during your analysis. Is that correct?

09:26:25 11 A. I believe I had a slide that showed the Court's

09:26:29 12 construction multiple times --

09:26:31 13 Q. Okay.

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

09:26:33 15 Q. Well, perhaps I'm wrong in remembering it. But

09:26:36 16 let's -- let's rectify that situation, in any event. Let's

09:26:40 17 look at the claim construction.

09:26:41 18 A. Okay.

09:26:42 19 Q. So what the Court said "character" means in this

09:26:44 20 patent, regardless of what it might mean elsewhere in the

09:26:49 21 world, but in this patent, it means a letter -- let me stop

09:26:53 22 there. That would be like the letter F, for example,

09:26:55 23 right?

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

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

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09:27:00 1 A. Yes.

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

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

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

09:27:11 5 correct?

09:27:11 6 A. Yes.

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

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

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

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

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

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

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

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

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

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

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

09:27:51 18 case.

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

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

09:27:59 21 right?

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

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

09:28:05 24 yesterday.

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

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

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09:29:16 1 it's --

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

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

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

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

09:29:32 6 question.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

09:30:37 23 perform the actions required.

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

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

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09:30:43 1 A. Yeah.

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

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

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

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

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

09:31:19 12 Q. Yoshi --

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

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

09:31:26 15 A. Sure.

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

09:31:29 18 A. Sure.

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

09:31:30 20 A. Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

09:32:35 22 THE WITNESS: Sure.

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

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

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

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09:34:01 1 long, right?

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

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

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

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

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

09:34:31 9 THE COURT: Yes.

09:34:33 10 (Bench conference.)

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

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

09:34:57 16 THE COURT: Okay.

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

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

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

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

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

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

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

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

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

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

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

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

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

09:36:06 15 A. Yeah.

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

09:36:09 17 A. Yeah.

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

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

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

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

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

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

09:36:48 5 Q. Okay.

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

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

09:37:01 11 A. Yes.

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

09:37:05 13 A. I do.

09:37:07 14 Q. Okay.

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

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

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

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

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

09:38:00 24 Q. Okay.

09:38:01 25 A. Yes.

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

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

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

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

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

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

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

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

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

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09:39:26 1 A. Okay.

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

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

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

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

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

09:39:55 9 Q. Okay.

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

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

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

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

09:40:13 18 Q. Excuse me?

09:40:14 19 A. Sorry.

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

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

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

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09:40:32 1 A. Okay.

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

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

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

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

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

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

09:41:09 15 A. Okay.

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

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

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

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09:41:44 1 The selected folder for the left column  
09:41:50 2 thumbnails, again, what you're talking about is those  
09:41:52 3 thumbnails that are running up and down in your  
09:41:54 4 demonstrative, right, from top to bottom?

09:41:56 5 A. Reading from 227, it says in the above image, the blue  
09:42:01 6 rectangle shows the second area, so that's the blue region,  
09:42:06 7 displaying thumbnails, and those thumbnails are indicated  
09:42:13 8 graphically in this design document -- this is a design  
09:42:18 9 document --

09:42:19 10 Q. Okay.

09:42:19 11 A. -- showing some videos, yes. So those are video  
09:42:23 12 thumbnails in the blue area.

09:42:23 13 Q. Okay.

09:42:24 14 MR. FOWLER: Let's take down the report. Let's  
09:42:26 15 take down the report.

09:42:27 16 Q. (By Mr. Fowler) So it's fair, sir, to say that when  
09:42:31 17 you testified to the jury, what you were attempting to  
09:42:35 18 communicate is that this user was selecting the word  
09:42:40 19 "favorites," but when you issued a report, which was also  
09:42:44 20 under oath, and you've had months to prepare it, you were  
09:42:49 21 talking about selecting these thumbnails. Correct?

09:42:51 22 A. It is not correct.

09:42:55 23 Q. Okay. Well, we'll see what your counsel has to say  
09:42:57 24 about that.

09:42:57 25 But in terms of the paragraphs we just looked at

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

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

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

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

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

09:43:37 13 A. Yes.

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

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

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

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

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

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

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

09:44:33 3 Q. I didn't ask you what you think does. We'll get to

09:44:35 4 that in a minute.

09:44:36 5 A. Okay.

09:44:37 6 Q. But what doesn't is the thumbnail Yoshi. It's not a

09:44:43 7 character under the Court's claim construction, right?

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

09:44:49 9 Q. And one reason for that, sir, right, is because that

09:44:56 10 character, Yoshi, that icon, is represented by more than

09:44:59 11 one piece of information; is that correct?

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

09:45:09 13 unit of information.

09:45:10 14 Q. Okay. And that would mean that if you just pressed

09:45:14 15 the -- the icon, if that's what the user is selecting is

09:45:18 16 the icon, that would not be infringement, right?

09:45:20 17 A. If there was no way by which the user could select the

09:45:28 18 character, then, yes, that would not be infringement.

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

09:45:34 20 A. Okay.

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

09:45:37 22 A. Yes.

09:45:37 23 Q. If the user -- if a Samsung user is selecting the

09:45:41 24 thumbnail, that's not infringement?

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

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

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

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

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

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

09:46:51 17 Q. No.

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

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

09:46:54 20 A. Right.

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

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

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

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

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

09:47:08 3 A. Okay.

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

09:47:10 5 A. I showed the jury a graphic saying that you could

09:47:16 6 test -- select the characters.

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

09:47:19 8 A. Okay.

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

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

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

09:47:29 12 that?

09:47:29 13 A. I could have, but I was also informed by my counsel

09:47:32 14 that we needed to present evidence in the most compelling

09:47:36 15 and efficient -- actually most likely efficient -- you saw

09:47:39 16 a claim with 14 elements, counsel, twice.

09:47:45 17 Q. Don't you think the most compelling way to do it would

09:47:48 18 have been to actually show how it actually works rather

09:47:50 19 than a slide? Do you have an answer to that?

09:47:57 20 A. I do.

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

09:48:00 22 A. Well, the slide makes it very clear. It can be seen,

09:48:05 23 and it's there. And that evidence is going to be with them

09:48:10 24 in the jury -- they have PX-296 so that they can look at

09:48:14 25 that all they want.

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

09:48:26 4 A. Okay.

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

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

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

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

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

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

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

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

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09:50:44 1 A. Yes.

09:50:45 2 Q. Okay.

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

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

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

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

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

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

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

09:51:02 10 A. Yes.

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

09:51:06 12 claim, right?

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

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

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

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

09:51:21 17 one, right?

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

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

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

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

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

09:51:40 23 A. Yes --

09:51:41 24 Q. Okay.

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

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

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

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

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

09:52:18 10 A. Right.

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

09:52:37 15 A. Sure.

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

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

09:52:52 20 A. Yes.

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

09:53:00 23 A. Yes.

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

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09:53:06 1 A. Yes.

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

09:53:10 3 happen on the phone?

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

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

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

09:53:21 7 happen, right?

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

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

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

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

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

09:53:35 13 A. Yes.

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

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

09:53:41 16 A. Yes.

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

09:53:46 18 case, right?

09:53:46 19 A. Yes.

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

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

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

09:54:00 23 right?

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

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

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

09:54:20 4 A. Not true.

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

09:54:35 8 You sure?

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

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

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

09:55:15 20 Q. Okay.

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

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

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

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09:56:46 1 about it, right?

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

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

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

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

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

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

09:57:55 20 A. Yes.

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

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

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

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

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

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

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

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

09:59:01 17 A. Yeah.

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

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

09:59:17 23 Q. Okay --

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

09:59:19 25 Q. Exactly?

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

09:59:25 2 Q. Well, we'll see about that. Dr. Kia will show the jury  
09:59:29 3 about that. But I think we've made the point here.

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

09:59:39 5 So Claim -- Claim 1, we're talking about Samsung  
09:59:44 6 source code, right?

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

09:59:49 8 Q. 21, we're talking about Netflix and Netflix source  
09:59:52 9 code, right?

09:59:53 10 A. Yes.

09:59:54 11 Q. Okay. And that's why you've got two different  
09:59:59 12 infringements, and we needed to march through both of them  
10:00:02 13 separately, right?

10:00:02 14 A. Yes.

10:00:05 15 Q. Okay. So let's start with some basics. The Netflix --  
10:00:05 16 well, let me back up.

10:00:10 17 Your infringement opinion for Claim 21 relies on  
10:00:12 18 the Netflix app being on a Samsung phone, right?

10:00:16 19 A. Yes.

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

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

10:00:26 22 Q. Right. And your report -- expert report only attempts  
10:00:32 23 to show infringement by Samsung for Galaxy phones that are  
10:00:38 24 sold by Samsung with the Netflix app pre-installed on it;  
10:00:42 25 is that correct?

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10:00:42 1 A. Yes.

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

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

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

10:00:54 5 A. Yes.

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

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

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

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

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

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

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

10:01:20 13 A. Sure.

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

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

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

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

10:01:41 18 you?

10:01:41 19 A. Yes.

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

10:01:44 21 words?

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

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

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

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

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10:01:58 1 companies.

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

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

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

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

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

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

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

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

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

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

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

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

10:05:49 3 A. Yeah.

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

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

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

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

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

10:06:09 9 Netflix.

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

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

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

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

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

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

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

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

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

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

10:06:41 20 second character.

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

10:06:43 22 A. Yes.

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

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

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

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

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

10:07:02 4 A. Yes.

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

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

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

10:07:20 11 A. Yes.

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

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

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

10:07:41 20 A. Yes.

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

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

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

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

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

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

10:08:34 9 A. True.

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

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

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

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

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

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

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

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10:09:28 1 slides later.

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

10:09:32 4 A. I did.

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

10:09:40 7 A. Yes.

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

10:09:45 10 A. No.

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

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

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

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

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

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

10:10:26 23 A. No.

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

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10:10:34 1 right?

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

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

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

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

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

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

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

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

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

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

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

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

10:12:12 10 A. Yes.

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

10:12:17 13 A. Yes.

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

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

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

10:12:36 20 A. Yes.

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

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

10:12:43 24 Q. And --

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

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

10:12:53 2 A. Maybe you can refer to it as the first user interface  
10:12:58 3 or the second user interface. That might be clearer than  
10:13:02 4 left or right.

10:13:04 5 Q. Okay. So -- well, just to be clear, you identified  
10:13:08 6 what's on the right, that imagine of the phone as the  
10:13:12 7 second user interface, correct?

10:13:14 8 A. Yes.

10:13:14 9 Q. Okay. And then you're the one that enlarged -- I  
10:13:18 10 didn't do this. You enlarged the icon that has the blue  
10:13:25 11 and then what looks like -- it almost looks like a cookie,  
10:13:30 12 but it's brown with the lettering Miyagi-Do Karate. You  
10:13:38 13 enlarged that, right?

10:13:39 14 A. Yes.

10:13:40 15 Q. Okay. Now, that's -- that's an -- that's an icon,  
10:13:42 16 right?

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

10:13:47 18 Q. Okay. Now, unlike what we saw earlier where we saw a  
10:13:52 19 thumbnail with some letters that were below the thumbnail,  
10:13:56 20 there's no -- there's no lettering Miyagi-Do Karate below  
10:14:02 21 this icon, correct?

10:14:02 22 A. I see Miyagi-Do character there, that you can see the  
10:14:04 23 letters Miyagi-Do right there.

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

10:14:08 25 A. Okay.

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

10:14:10 2 A. Yes.

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

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

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

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

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

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

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

10:15:08 20 A. Sorry.

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

10:15:15 23 A. It is.

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

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10:15:24 1 A. It is.

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

10:15:31 4 A. Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10:16:37 3 A. Sorry?

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

10:16:40 5 A. Yes.

10:16:42 6 Q. Okay.

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

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

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

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

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

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

10:17:05 16 REDIRECT-EXAMINATION

10:17:05 17 BY MR. SIDDIQUI:

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

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

10:17:20 21 A. Yes.

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

10:17:27 25 A. Yes.

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

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

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

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

10:18:07 7 A. Yes.

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

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

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

10:18:18 12 A. Please.

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

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

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

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

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

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

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

10:19:20 5 Q. Okay.

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

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

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

10:19:50 15 A. No.

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

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

10:20:06 21 Q. Okay.

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

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

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

10:20:30 3 A. Yes.

10:20:30 4 Q. Okay.

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

10:20:31 6 Q. Thank you.

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

10:20:43 10 A. Yes.

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

10:20:52 13 A. Absolutely.

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

10:20:57 16 A. Of course.

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

10:21:03 19 A. Yes.

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

10:21:07 22 A. Yes.

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

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

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

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

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

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

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

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

10:22:39 14 A. I do.

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

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

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

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

10:23:15 23 A. I do.

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

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

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

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

10:23:53 9 A. Yes.

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

10:24:00 12 A. Yes.

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

10:24:03 14 A. It does.

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

10:24:07 16 A. It is.

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

10:24:11 18 A. Yes.

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

10:24:16 21 A. No.

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

10:24:21 24 A. No.

10:24:22 25 Q. Thank you.

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

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

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

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

10:24:51 6 REXCROSS-EXAMINATION

10:24:51 7 BY MR. FOWLER:

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

10:24:56 10 You're not changing any of the testimony you gave, right?

10:24:58 11 A. No.

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

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

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

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

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

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

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

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

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

10:25:48 4 A. Yes.

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

10:26:01 8 A. Yes.

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

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

10:26:10 12 Q. The album?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10:27:29 14 THE WITNESS: Okay.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10:29:06 3 A. Yes.

10:29:07 4 Q. Okay. And in Paragraph 223, when you say "the

10:29:11 5 favorites album," you're talking about the same album as in  
10:29:15 6 Paragraph 226, right?

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

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

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

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

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

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

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

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

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

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

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

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

10:30:30 6 A. Also.

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

10:30:40 10 A. Yes.

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

10:30:44 13 A. Yes.

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

10:30:49 15 A. Yes.

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

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

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

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

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

10:31:11 25 REDIRECT EXAMINATION

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10:31:12 1 BY MR. SIDDIQUI:

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

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

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

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

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

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

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

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

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

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

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

10:32:31 2 Q. Yeah.

10:32:31 3 A. Yes.

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

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

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

10:32:47 9 A. No.

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

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

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

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

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

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

10:33:09 19 (Jury out.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10:36:06 4 (Recess.)

10:53:52 5 (Jury out.)

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

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

10:54:00 8 brought down, please?

10:54:37 9 (Jury in.)

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

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

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

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

10:55:21 14 (Witness sworn.)

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

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

10:55:42 17 Your Honor.

10:55:42 18 THE COURT: Mr. Levy, you may need to move that

10:55:45 19 microphone toward you.

10:55:47 20 MR. LEVY: How is that?

10:55:49 21 THE COURT: A little better.

10:55:50 22 MR. LEVY: I'll try to stand closer, Your Honor.

10:55:52 23 If I may?

10:55:53 24 THE COURT: Yes.

10:55:55 25 JOHN C. JAROSZ, PH.D., PLAINTIFF'S WITNESS, SWORN

10:55:55

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BY MR. LEVY:

Q. Good morning, Mr. Jarosz. Can you please state your full name for the record?

A. John C. Jarosz.

Q. And what do you do for a living, Mr. Jarosz?

A. I'm an economist.

Q. And why are you here today?

A. I was asked by Maxell to provide my expert opinion on the amount of money that should be paid by Samsung to Maxell if the jury finds that the patents are valid, enforceable, and infringed. In short, I'm asked to provide my testimony on damages.

Q. Do you specialize in any particular area of economics?

A. Most of my work is in the economics of intellectual property protection. Intellectual property is what is embodied -- what embodies patents, trademarks, trade secrets, and copyrights. Most of my work has to do with determining damages or compensation when one party has infringed the rights of another.

Q. Do you work on your own or with a company?

A. I work with a company, which is called Analysis Group, Incorporated.

Q. And what is Analysis Group?

A. We're a large private economic financial strategy and

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10:57:03 1 healthcare consulting firm of about 1400 people that has  
10:57:06 2 offices throughout North America and overseas. We help our  
10:57:13 3 clients with issues they face in regulatory settings and  
10:57:17 4 litigation and real world business settings and in  
10:57:20 5 healthcare settings.

10:57:22 6 Q. Thank you. And what is your position within Analysis  
10:57:26 7 Group?

10:57:26 8 A. I'm one of the managing principals of the firm, which  
10:57:31 9 means that I'm one of the owners of the firm. I'm also the  
10:57:32 10 founder and the director of the firm's Washington, D.C.  
10:57:35 11 office.

10:57:35 12 Q. And how long have you been with Analysis Group?

10:57:37 13 A. Since 1996. And for 10 years prior to that, I was at  
10:57:41 14 another economic consulting firm and also the director of  
10:57:45 15 that firm's Washington, D.C., office.

10:57:47 16 Q. And, Mr. Jarosz, did you prepare a presentation to help  
10:57:50 17 with your testimony today?

10:57:51 18 A. Yes, I did.

10:57:52 19 MR. LEVY: Your Honor, if we may publish it?

10:57:54 20 THE COURT: Yes.

10:57:55 21 MR. LEVY: Your Honor, I also have copies if I may  
10:57:58 22 distribute them?

10:57:58 23 THE COURT: Copies of?

10:58:01 24 MR. LEVY: The presentation.

10:58:03 25 THE COURT: To the witness? Oh, I'm sorry. I

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10:58:03 1 mean, to the jury?

10:58:06 2 MR. LEVY: No, Your Honor, not to the jury.

10:58:06 3 THE COURT: Sorry. Yes.

10:58:11 4 MR. LEVY: If I may?

10:58:12 5 THE COURT: You may.

10:58:38 6 MR. LEVY: Thank you, Your Honor.

10:58:39 7 Q. (By Mr. Levy) Mr. Jarosz, did you prepare a chart that  
10:58:42 8 summarizes some of your qualifications?

10:58:45 9 A. Yes, I did.

10:58:47 10 Q. And is -- is this it on the screen?

10:58:50 11 A. It is.

10:58:50 12 Q. Can you please describe your educational background?

10:58:53 13 A. Yes. I have a BA or Bachelor's in economics and  
10:58:58 14 organizational communication from Creighton University,  
10:59:01 15 which is in Omaha, Nebraska.

10:59:04 16 After that, I was a fellowship student in the  
10:59:06 17 Ph.D. program in economics at Washington University, which  
10:59:07 18 is in St. Louis. There I completed most, but not all, of  
10:59:11 19 the requirements for my Ph.D. I left before finishing a  
10:59:15 20 dissertation. But I had met a certain level of  
10:59:19 21 requirements and was awarded a Master's in economics.

10:59:22 22 Q. Thank you.

10:59:23 23 And in addition to your bachelor's and master's  
10:59:27 24 degree -- degrees, have you received any other advanced  
10:59:31 25 degrees?

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10:59:31 1 A. Yes. I also have a law degree, a JD from the  
10:59:35 2 University of Wisconsin, which is in Madison, Wisconsin.  
10:59:38 3 There I took quite a number of courses in the economics  
10:59:41 4 department and courses in the law school that focused on  
10:59:44 5 the intersection of topics having to do with law and  
10:59:48 6 economics.

10:59:48 7 Q. Are you licensed as a -- as an attorney?

10:59:50 8 A. I've been a member of the State Bar of Wisconsin for  
10:59:54 9 the last 39 years, but I have been on inactive status that  
10:59:57 10 whole time.

10:59:58 11 Q. Have you ever practiced as a lawyer?

11:00:01 12 A. No.

11:00:01 13 Q. So have you practiced as an economist your entire  
11:00:05 14 professional career?

11:00:06 15 A. I have practiced as an economist. I happen to have a  
11:00:07 16 law degree, but I'm a practicing economist.

11:00:09 17 Q. Are you a member of any professional organizations or  
11:00:12 18 associations?

11:00:14 19 A. I am. And those are listed on the slide on the screen.  
11:00:17 20 I've been active in several of those and a member of all of  
11:00:22 21 those. The ones I've been somewhat active in are the  
11:00:27 22 American Economic Association, the American Law and  
11:00:29 23 Economics Association, the Licensing Executive Society, and  
11:00:31 24 in recent years, I've been fairly active in the Sedona  
11:00:36 25 Conference.

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11:00:36 1 Q. What is the Sedona Conference?

11:00:39 2 A. It's a group of economists, lawyers, and judges who get  
11:00:43 3 together to, what they say is move the law forward in a  
11:00:48 4 just and reasonable fashion. We try to find ways to  
11:00:51 5 improve the delivery of services associated with  
11:00:53 6 interpretation of the law.

11:00:55 7 The work that I've been more involved with than  
11:00:58 8 any others is the evaluation and presentation of patent  
11:01:01 9 damages, which is the topic I'm here today on.

11:01:04 10 Q. How else do you keep active in the field?

11:01:07 11 A. I fairly regularly give speeches to a variety of  
11:01:12 12 organizations, and I research and publish articles in  
11:01:16 13 professional and academic journals.

11:01:19 14 Q. Have you taught classes or given presentations on those  
11:01:23 15 topics?

11:01:24 16 A. Yes. I've taught at several, including the Georgetown  
11:01:28 17 University Law Center, the George Washington University law  
11:01:32 18 school, the University of Pennsylvania economics department  
11:01:34 19 and law school, and the United States Patent and Trademark  
11:01:37 20 Office.

11:01:37 21 Q. And, in general, how many matters have you worked on as  
11:01:40 22 an economic expert?

11:01:42 23 A. Over the years, I've been involved in more than 500  
11:01:45 24 matters. I've provided testimony in court like this or in  
11:01:49 25 arbitration on about 120 occasions.

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11:01:52 1 Q. Now, in this case, you're testifying on behalf of the  
11:01:55 2 Plaintiff. Over your career, how does your testimony break  
11:01:58 3 down between owners of patents and accused infringers?

11:02:02 4 A. In patent cases, it's about 50/50. In other words,  
11:02:04 5 about half the time we and I have been asked to provide  
11:02:09 6 opinions by the patent owner, and about half the time we  
11:02:14 7 and I have been asked to provide opinions by the alleged  
11:02:17 8 infringer or misappropriator.

11:02:20 9 Q. And is Analysis Group being compensated for your work  
11:02:23 10 in this case?

11:02:24 11 A. We're being compensated for the time that we undertook  
11:02:27 12 to do our analysis and for any expenses that we incurred.  
11:02:30 13 That's our normal arrangement.

11:02:32 14 Q. Does your compensation depend in any way on the  
11:02:35 15 particular testimony you offer or the amount of damages  
11:02:38 16 that the jury awards?

11:02:41 17 A. No, it does not.

11:02:41 18 MR. LEVY: Your Honor, we offer Mr. Jarosz as an  
11:02:43 19 expert in the field of economics of IP protection,  
11:02:46 20 including damages estimation.

11:02:49 21 MS. SMITH: No objection, Your Honor.

11:02:50 22 THE COURT: Very well.

11:02:52 23 Q. (By Mr. Levy) Mr. Jarosz, for your analysis, what  
11:02:56 24 types of information did you review to form your opinion?

11:02:59 25 A. I have a slide that shows that -- oh, it's up on the

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11:03:02 1 screen now.

11:03:03 2 I've reviewed quite a number of materials I've  
11:03:06 3 produced.

11:03:07 4 I've reviewed materials that were produced by the  
11:03:10 5 parties in this case, financial data, marketing materials,  
11:03:15 6 internal documents about their business.

11:03:19 7 I've reviewed the patents.

11:03:21 8 I've also gathered information from the public  
11:03:24 9 domain to understand more about the business and the  
11:03:26 10 companies.

11:03:27 11 I've read deposition testimony that was provided  
11:03:30 12 by the witnesses in this case.

11:03:33 13 I have looked at license agreements.

11:03:36 14 I have had discussions with Maxell personnel.

11:03:41 15 I've read the expert reports that have been  
11:03:43 16 submitted in this case.

11:03:45 17 And, of course, I've applied my experience that  
11:03:49 18 I've gathered over the last roughly 40 years of doing this  
11:03:53 19 work to assess the evidence that I've looked at.

11:03:57 20 Q. And have you been following the court proceedings so  
11:04:00 21 far?

11:04:00 22 A. I have. I've been in the courtroom for most of the  
11:04:03 23 proceedings, not -- not all of them.

11:04:06 24 Q. As part of your assignment in this case, did you form  
11:04:09 25 an opinion on whether the patents here are valid or

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11:04:14 1 infringed or enforceable?

11:04:15 2 A. No. That's outside my area of expertise. That's for  
11:04:19 3 the technical experts and fact witnesses to provide their  
11:04:25 4 insights. I'm just an economist. We deal with business  
11:04:28 5 issues, and so I was asked to assume that the jury here  
11:04:32 6 will find the patents to be valid and infringed, but I have  
11:04:36 7 no independent opinion on that.

11:04:38 8 Q. And before we get into the details, what's the form of  
11:04:42 9 damages that you believe is appropriate here?

11:04:44 10 A. A reasonable royalty. You can see on the screen is the  
11:04:50 11 patent damages statute. It provides that an injured party,  
11:04:54 12 and in this case it presumably is Maxell, is entitled to  
11:04:57 13 compensation and in no event less than a reasonable royalty  
11:05:00 14 for the use made of the invention by the infringer.

11:05:03 15 So I've adopted that -- that minimum form of  
11:05:06 16 recovery, a reasonable royalty, as the form of damages  
11:05:10 17 here.

11:05:11 18 Q. And what is your damages conclusion for each of the  
11:05:15 19 three patents at issue here?

11:05:18 20 A. As you can see on the screen, for the '086 patent, my  
11:05:21 21 conclusion is that the damages, assuming liability, are  
11:05:27 22 \$44.2 million.

11:05:28 23 For the '848 patent, the damages are \$32.7  
11:05:34 24 million.

11:05:34 25 And for the '815 patent, the damages are \$52.7

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11:05:40 1 million.

11:05:41 2 Q. And what is your final damages conclusion?

11:05:43 3 A. That when you add those together, the total damages  
11:05:46 4 number is \$129.6 million. That's based on infringing  
11:05:52 5 activities or sales of alleged infringing activities of  
11:05:56 6 almost 133 million Samsung units.

11:06:00 7 Q. How is a royalty determined in a reasonable royalty  
11:06:04 8 damages framework?

11:06:05 9 A. We typically use, and I've used here, what's called a  
11:06:09 10 hypothetical negotiation construct.

11:06:11 11 The way to think about that is we know that Maxell  
11:06:15 12 and Samsung haven't agreed to Samsung's use of the patents  
11:06:19 13 here. So this bargain didn't occur.

11:06:23 14 But what we're -- what -- the approach that I've  
11:06:27 15 used, and that many of us use, is if the two parties sat  
11:06:30 16 down at a bargaining table, what would be a fair and  
11:06:33 17 reasonable fee for Samsung to pay Maxell for the alleged  
11:06:37 18 infringement?

11:06:38 19 So, in this case, we're asking the question: If  
11:06:42 20 you assume that Maxell is giving rights to the '086 and  
11:06:46 21 '848 and '815 patent, how much money should Samsung pay?

11:06:51 22 So it's patent rights going one way, money coming  
11:06:54 23 back the other way. Nothing else. There's no other  
11:06:57 24 relationship or collaboration. It's just a money payment  
11:07:01 25 for access to these patent rights.

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11:07:05 1 Q. And when is the hypothetical negotiation in this case?

11:07:06 2 A. In the 2015/2016 time period. Specifically, I've  
11:07:12 3 chosen March of 2015.

11:07:14 4 Q. And what was March 2015 based on?

11:07:17 5 A. That's the point at which the '086 patent issued. So  
11:07:21 6 it was the first of the three patents. It issued as -- as  
11:07:24 7 of that point in time, I understand that Samsung was  
11:07:27 8 selling products that are alleged to infringe the '086  
11:07:31 9 patent. So that's what we say is the point of first  
11:07:34 10 alleged infringement.

11:07:36 11 Q. So as of March 2015, is it your understanding that  
11:07:39 12 Samsung was infringing the '086 patent?

11:07:41 13 A. So to speak. It was a little bit complicated because  
11:07:46 14 at that point, there was a license between Maxell and  
11:07:49 15 Samsung, which the jury has heard about. There was a  
11:07:52 16 license that was agreed upon in 2011. It covered several  
11:07:59 17 rights, and one part of that was the '086 patent. It did  
11:08:01 18 not cover the other two patents, but it did cover the '086.  
11:08:04 19 But that license was scheduled to and did terminate in  
11:08:09 20 March of 2016. So -- I'm sorry, in 2016.

11:08:15 21 So March 2015 was immediately before that license  
11:08:19 22 was about to terminate and the rights were no longer freely  
11:08:24 23 granted from Maxell to Samsung.

11:08:26 24 Q. Did your analysis consider evidence after March 2015?

11:08:29 25 A. It did. I adopted -- what we often do in patent

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11:08:35 1 damages, I adopted something called the Book of Wisdom, and  
11:08:38 2 that is we look to see how history has actually unfolded to  
11:08:44 3 help us determine what a fair bargain would be at this  
11:08:47 4 negotiation point.

11:08:50 5 So the courts and economists have said, let's see  
11:08:53 6 what the sales have been, let's see what licenses have  
11:08:56 7 occurred, let's see what margins, let's see what kind of  
11:09:03 8 benefits the companies -- the alleged infringer has made to  
11:09:06 9 give us some evidence as to what a fair bargain would be.  
11:09:09 10 So I did use that information after March of 2015, as did  
11:09:13 11 Samsung's damages witness, Ms. Davis.

11:09:15 12 Q. Which parties would be at this negotiating table?

11:09:19 13 A. It would be Maxell would be the party giving the patent  
11:09:24 14 rights, and Samsung would be the party receiving the patent  
11:09:27 15 rights and giving money in return.

11:09:29 16 Q. Now, you said Maxell. Would it be Maxell or Hitachi  
11:09:32 17 Maxell?

11:09:32 18 A. For our purposes, it's the same thing. There were some  
11:09:36 19 ownership changes over the years, but I believe the parties  
11:09:38 20 are in agreement that we can call it Maxell, we can call it  
11:09:42 21 Hitachi Maxell. We're talking about the same entity.

11:09:47 22 Q. Now, we'll hear later from Samsung's damages expert,  
11:09:52 23 Ms. Davis. Do you and she agree that the hypothetical  
11:09:56 24 negotiation is in that time frame?

11:09:57 25 A. No. She sets it a little bit later in 2016, after this

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11:10:03 1 earlier license had terminated. When that was over, then  
11:10:07 2 she said that's the point at which one should set up this  
11:10:12 3 hypothetical bargain.

11:10:13 4 Q. So why then would there be a negotiation, according to  
11:10:16 5 you, in 2015 if Samsung already had a license at that  
11:10:18 6 point?

11:10:19 7 A. Parties in the licensing world renegotiate licenses all  
11:10:21 8 the time. Just like sports stars do in basketball or  
11:10:26 9 football, their current contract isn't over, but they often  
11:10:31 10 go to management and say I need to enter a new contract.  
11:10:34 11 So once my first contract expires, we'll need to determine  
11:10:38 12 the terms for a second contract.

11:10:39 13 So I follow that, and that's what's done in the  
11:10:41 14 licensing world. You don't need to wait until one contract  
11:10:44 15 is entirely over before you start negotiating for a new  
11:10:50 16 one.

11:10:50 17 Q. And does whether the hypothetical negotiation took  
11:10:52 18 place in 2015 or 2016, does that impact your analysis?

11:10:55 19 A. No, not really. And I say that for a few reasons. You  
11:10:59 20 have the same parties, whether it's 2015 or 2016. That is  
11:11:03 21 Maxell and Samsung.

11:11:04 22 The economics of the business are roughly the same  
11:11:07 23 in that time period.

11:11:09 24 Smartphones had become very popular. The  
11:11:12 25 information that is available is the same, roughly the

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11:11:17 1 same.

11:11:18 2 And I've employed, as has Ms. Davis, this Book of  
11:11:25 3 Wisdom. So we've considered how history has unfolded.

11:11:28 4 So whether it's 2015 or 2016 doesn't have a  
11:11:31 5 material impact on the outcome for me, and Ms. Davis has  
11:11:35 6 written that it does not have a material impact for her  
11:11:37 7 either.

11:11:38 8 THE COURT: I'm sorry, I hate to interrupt. Could  
11:11:40 9 I ask you to slow down just a little bit.

11:11:42 10 THE WITNESS: I'm sorry, Your Honor.

11:11:44 11 THE COURT: Thank you.

11:11:45 12 THE WITNESS: Sometimes I find this so exciting.

11:11:47 13 THE COURT: Well, I know it's riveting material.

11:11:51 14 THE WITNESS: I'm sorry.

11:11:51 15 THE COURT: That's all right.

11:11:52 16 Q. (By Mr. Levy) Mr. Jarosz, could you remind the jury  
11:11:55 17 what patent rights are being asserted in this case?

11:11:57 18 A. Yes. It's shown on the screen. The '086 patent, to my  
11:12:02 19 understanding, generally covers fingerprint and TrustZone.

11:12:09 20 The '848 patent generally covers facial recognition for  
11:12:13 21 Gallery. And the '815 patent generally covers personalized  
11:12:17 22 video content, for example, as embodied in Netflix and  
11:12:22 23 Gallery.

11:12:23 24 I think the technical experts have talked about  
11:12:25 25 each one of the patents in some detail.

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11:12:27 1 Q. And did you consider the testimony of Maxell's  
11:12:29 2 technical experts in this case?

11:12:30 3 A. I did.

11:12:31 4 Q. Could you tell us your understanding of the importance  
11:12:35 5 of the patents at issue to Samsung's smartphones and  
11:12:39 6 tablets?

11:12:39 7 A. The asserted patents are very important to succeed in  
11:12:43 8 the business place. They're very important to the Samsung  
11:12:47 9 products. The '086 is represented to be a critical  
11:12:52 10 building block. The '848 is essential for the accused  
11:12:57 11 functionalities. And the '815 patent is critical to  
11:13:00 12 provide personalized user experiences.

11:13:02 13 Q. And is this your opinion based on your own technical  
11:13:06 14 analysis?

11:13:07 15 A. No. Again, I'm not a technical expert, but it's the  
11:13:11 16 opinion put forward by the three technical experts that I  
11:13:14 17 think the jury has heard from over the last couple days.

11:13:17 18 Q. Now, how did you ultimately calculate the total  
11:13:21 19 reasonable royalty that Samsung should pay to Maxell?

11:13:24 20 A. It's straightforward. That is, we looked at the -- we  
11:13:30 21 count up the number of accused units, so how many products  
11:13:34 22 that Samsung sold are alleged of -- alleged to be  
11:13:38 23 infringing of these patents.

11:13:39 24 We multiply that number of products by a rate per  
11:13:44 25 unit. That is how much should be paid for each infringing

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11:13:46 1 activity. And the end result is a total royalty payment.

11:13:50 2 Q. And how many accused units did you use in your  
11:13:57 3 analysis?

11:13:59 4 A. You'll see here on the screen that the accused  
11:14:04 5 smartphones are about 124.3 million, and the accused  
11:14:10 6 tablets are about 8.7 million over the damages period.

11:14:15 7 Q. And how -- how did you get those numbers?

11:14:18 8 A. Those come directly from Samsung records that were  
11:14:23 9 provided to counsel and provided to me.

11:14:26 10 Q. And you have a notebook there with some exhibits,  
11:14:30 11 Mr. Jarosz. If you could grab that.

11:14:31 12 Do you see the document in Tab PX-325?

11:14:40 13 A. Yes.

11:14:42 14 Q. Is that the Samsung-provided sales data from 2017  
11:14:47 15 through 2020 that was produced in this case?

11:14:48 16 A. Yes.

11:14:50 17 Q. And if you look at PX-326, also in your binder there,  
11:15:00 18 is that the Samsung-provided sales data from 2021 through  
11:15:05 19 2024 that was produced in this case?

11:15:06 20 A. Yes.

11:15:10 21 Q. Is that what you used, that information to calculate  
11:15:12 22 the number of accused units?

11:15:14 23 A. Yes. And we didn't have all the units through today.  
11:15:17 24 So I extrapolate -- or estimated based on what I had, and I  
11:15:22 25 think Ms. Davis and I are in agreement as to the estimate

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