

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

PALTALK HOLDINGS, INC. * August 26, 2024
*
VS. * CIVIL ACTION NO. 6:21-CV-757
*
CISCO SYSTEMS, INC. *

BEFORE THE HONORABLE ALAN D ALBRIGHT
TRIAL PROCEEDINGS
Volume 1 of 4

APPEARANCES:

For the Plaintiff: Max L. Tribble, Jr., Esq.
Ryan V. Caughey, Esq.
Amber Brianna Magee, Esq.
Susman Godfrey LLP
1000 Louisiana Street, Suite 5100
Houston, TX 77002

Kalpana Srinivasan, Esq.
Susman Godfrey LLP
1900 Avenue of the Stars, Ste 1400
Los Angeles, CA 90067-6029

Mark Siegmund, Esq.
Cherry Johnson Siegmund James, PLLC
The Roosevelt Tower
400 Austin Avenue, 9th Floor
Waco, Texas 76701

For the Defendant: Sarah E. Piepmeier, Esq.
Elise Edlin, Esq.
Nate Sabri, Esq.
Karl Johnston, Esq.
Perkins Coie LLP
505 Howard Street
San Francisco, CA 94117

Ryan Hawkins, Esq.
Abigail Ann Gardner, Esq.
Perkins Coie LLP
11452 El Camino Real, Suite 300
San Diego, CA 92130

KRISTIE M. DAVIS, OFFICIAL COURT REPORTER
U.S. DISTRICT COURT, WESTERN DISTRICT OF TEXAS (WACO)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Jessica J. Delacenserie, Esq.
Perkins Coie LLP
1201 Third Ave., Suite 4900
Seattle, WA 98101

Andrew T. Dufresne, Esq.
Perkins Coie LLP
33 E. Main Street, Suite 201
Madison, WI 53703

Michael E. Jones, Esq.
Shaun William Hasset, Esq.
Potter Minton PC
102 North College, Suite 900
Tyler, TX 75702

Jonathan Irvin Tietz, Esq.
Perkins Coie LLP
700 13th St. NW, Suite 800
Washington, DC 20005

Court Reporter: Kristie M. Davis, CRR, RMR
PO Box 20994
Waco, Texas 76702-0994
(254) 340-6114

Proceedings recorded by mechanical stenography,
transcript produced by computer-aided transcription.

08:21 1 (Hearing begins.)

08:36 2 THE BAILIFF: All rise.

08:36 3 THE COURT: Good morning, everyone. You
08:36 4 may be seated.

08:36 5 DEPUTY CLERK: Court calls Case
08:36 6 6:21-CV-757, Paltalk versus Cisco. Case called for a
08:37 7 jury trial proceeding.

08:37 8 THE COURT: Announcements from counsel,
08:37 9 please.

08:37 10 MR. SIEGMUND: Good morning, Your Honor.
08:37 11 Mark Siegmund on behalf of the plaintiff. And we're
08:37 12 ready to proceed.

08:37 13 MR. JONES: Your Honor, Mike Jones on
08:37 14 behalf of Cisco, and we're ready.

08:37 15 THE COURT: And this seems as good a time
08:37 16 as any to remind everyone how closing arguments work
08:37 17 here, which -- by which I mean if in the mornings I
08:37 18 have to deal with exciting things like slides and other
08:37 19 objections, that's fine. You get 30 minutes for
08:37 20 closing arguments, but in the event that I don't have
08:37 21 to do a lot of things in the morning, then you get
08:37 22 45 minutes per side. But that's entirely up to you all
08:37 23 to deal with that.

08:37 24 Having said that, what issues do you have
08:37 25 for me to take up this morning?

08:37 1 MR. TRIBBLE: Your Honor, we have
08:37 2 objections to some of their slides, and I believe they
08:37 3 may have some objections to our slides.

08:38 4 MR. SIEGMUND: Judge, can I approach and
08:38 5 hand them to you?

08:38 6 THE COURT: Sure.

08:38 7 MR. TRIBBLE: Thank you, Your Honor. Max
08:38 8 Tribble for the plaintiff.

08:38 9 We object to Slide 8 in Cisco's opening
08:38 10 slide deck. And this slide is titled Paltalk Rewrites
08:38 11 the Patent. And then they proceed to write in and
08:39 12 change where the word "each" appears to "one or more."
08:39 13 And it's clear that they're going to argue that each
08:39 14 cannot mean one or more, and this Court has ruled a
08:39 15 couple of times to the opposite effect.

08:39 16 In other words, we don't have to rewrite
08:39 17 anything. The plain and ordinary meaning of "each" can
08:39 18 be "one or more," as this Court has found. And so
08:39 19 that's why we object to this slide that we're rewriting
08:39 20 the language.

08:39 21 THE COURT: A response?

08:39 22 MR. JONES: Your Honor, may I hand up
08:39 23 some slides to Your Honor?

08:39 24 THE COURT: Uh-huh.

08:39 25 MR. JONES: And they are opening slides.

08:39 1 Your Honor, I -- considering the Court's
08:40 2 admonishment, I think you can make one ruling here with
08:40 3 regard to Slide 8, and you will also take care of the
08:40 4 issues concerning Paltalk's opening Slide 25, Cisco's
08:40 5 opening Slide 30, and the Paltalk Scott Schaefer slide,
08:40 6 which is 34. And I'll try to do this very
08:40 7 expeditiously.

08:40 8 Your Honor, with regard to "each," where
08:40 9 I understand we are is that we lost a hearing with
08:40 10 regard to a motion for summary judgment, and the Court
08:40 11 said in denying that motion that "each" could mean one
08:40 12 or more, but did not make a claim construction but
08:40 13 expressly told us that it was a term that would be
08:40 14 given as plain and ordinary meaning to a POSITA.

08:40 15 Thereafter, there was a dispute between
08:40 16 the parties as to whether or not that meant we could do
08:40 17 exactly what we're doing now, and we made a motion to
08:41 18 clarify and the Court said he had not -- excuse me.
08:41 19 The Court said that a claim construction had not been
08:41 20 issued, and that was an issue that could be argued. In
08:41 21 other words, where we were was the Court had not
08:41 22 construed the term "each." "Each" would get its plain
08:41 23 and ordinary meaning.

08:41 24 And as I understand the law -- and the
08:41 25 Court knows much better than I do. You've been through

08:41 1 many more patent trials than I have. But my
08:41 2 understanding was that at that point, "each" had its
08:41 3 plain and ordinary meaning. That experts, based upon
08:41 4 their reports, could testify as to how a person of
08:41 5 ordinary skill in the art would interpret "each" as it
08:41 6 was used in the claims.

08:41 7 And that is exactly what we are doing.
08:41 8 We are taking the position that a person of ordinary
08:41 9 skill in the art, based upon our expert's report, would
08:41 10 look at "each" there, and, as the Court told us with
08:42 11 regard to our motion for clarification, would interpret
08:42 12 it to mean "all" and "every."

08:42 13 They are taking a different position.
08:42 14 They are going to take the position that it could be
08:42 15 interpreted one or more. But that's where we are.

08:42 16 Now, they want -- and this is where
08:42 17 you'll get to Schaefer's Slide 34. They want to tell
08:42 18 the jury that the Court has ruled that they're right,
08:42 19 that it can include "one or more" -- excuse me -- that
08:42 20 it can include "one or more." We think that's a claim
08:42 21 construction which the Court said it was not doing. It
08:42 22 was not making a claim construction.

08:42 23 We even asked for a Markman at one point.
08:42 24 Court said, no, I'm not going to give a Markman, and
08:42 25 that it is going to be a fact issue, is what we

08:42 1 understood it to be.

08:42 2 We understood that from the Court's
08:42 3 original ruling. We understood that to be where we
08:42 4 were after the motion to clarify after the last
08:43 5 pretrial conference, and we think what we're doing is
08:43 6 very consistent with the Court's ruling. We think what
08:43 7 they're trying to do in their slide when they cite the
08:43 8 Court, when they cite the Court's ruling with regard to
08:43 9 the motion for summary judgment, is a violation of your
08:43 10 Motion in Limine No. 17, which says the parties shall
08:43 11 be precluded from introducing evidence, testimony and
08:43 12 arguments relating to the Court's claim construction
08:43 13 order other than the actual adopted constructions.

08:43 14 We have your constructions. That was not
08:43 15 part of your constructions. That was part of your
08:43 16 reasoning for overruling our motion for summary
08:43 17 judgment. Their Slide 34 shouldn't come in. We think
08:43 18 if you do that, Judge, it's like you've made a claim
08:43 19 construction. We think if you do that with regard to
08:43 20 this fact issue, that it's almost like -- you know,
08:43 21 with regard to this particular fact issue, we think
08:43 22 they're encouraging the Court to put its thumb on the
08:43 23 weight and say, well, one party or the other is right
08:43 24 about this. So we believe --

08:44 25 THE COURT: I got it.

08:44 1 MR. JONES: Thank you.

08:44 2 THE COURT: So what -- let me hear from
08:44 3 plaintiff. What do you intend to say about "each"
08:44 4 during your opening argument, and maybe that'll help
08:44 5 inform me what I should permit the defendant to...

08:44 6 MR. TRIBBLE: We're planning to tell the
08:44 7 jury that the term "each" has its plain and ordinary
08:44 8 meaning but not to you or me, to a person of ordinary
08:44 9 skill in the art in light of reading the patent
08:44 10 specification and claims. It's as simple as that.

08:44 11 THE COURT: Do you intend to tell them,
08:44 12 to say anything about it being one or more or not one
08:44 13 or more?

08:44 14 MR. TRIBBLE: Yes. I do.

08:44 15 THE COURT: Well, in that case, I'm going
08:44 16 to overrule your objection on their slide.

08:44 17 What else do you have?

08:44 18 MR. TRIBBLE: We object to Cisco's --

08:44 19 THE COURT: And, Mr. Jones, does that
08:44 20 take care of your problems with theirs as well?

08:44 21 MR. JONES: I think it does. If you
08:45 22 overruled objections to ours, I believe you're
08:45 23 sustaining our objections to their Slide 8, Slide 30,
08:45 24 and Schaefer's Slide 34.

08:45 25 THE COURT: I don't think I am. So I'm

08:45 1 glad I asked.

08:45 2 MR. JONES: I'm sorry, Your Honor. I
08:45 3 didn't mean to be smart with the Court.

08:45 4 THE COURT: I think I'm going with the
08:45 5 hallowed good for the goose, good for the gander
08:45 6 ruling, which is, I'm going to let them talk about it
08:45 7 in opening, and we'll let you all talk about it in
08:45 8 opening.

08:45 9 MR. JONES: Could I ask one point on
08:45 10 that?

08:45 11 THE COURT: Sure.

08:45 12 MR. JONES: And it particularly relates
08:45 13 to Slide 34 because I think that's where we really
08:45 14 joined this issue. Can they refer to what the Court
08:45 15 said at the hearing on the motion for summary judgment
08:45 16 and say that the Court has said that "each" can
08:45 17 include?

08:45 18 THE COURT: Yes.

08:45 19 MR. JONES: They can?

08:45 20 THE COURT: That's why I said it.

08:45 21 MR. JONES: Just for the purposes of the
08:45 22 record, Your Honor, we would object to that. I
08:45 23 understand you're overruling my objection. We believe
08:45 24 that's a claim construction. We would ask that a
08:45 25 Markman hearing take place and that "each" be given a

08:46 1 claim construction, Your Honor.

08:46 2 THE COURT: I think I've done that. And
08:46 3 I'm -- I've stated -- that's why I stated at the
08:46 4 hearing that "each" can include that.

08:46 5 MR. JONES: Thank you, Your Honor.

08:46 6 THE COURT: So if I didn't make that
08:46 7 clear at the time, that's why I was taking the time to
08:46 8 say it.

08:46 9 Here are my rulings. I'm going to start
08:46 10 with the first motion.

08:46 11 I'm going to find the plain and ordinary
08:46 12 meaning "each," "each" has a plain and ordinary meaning
08:46 13 which can include one or more. That was the purpose of
08:46 14 me saying that.

08:46 15 MR. JONES: Okay. Thank you, Your Honor.
08:46 16 I'm sorry for the misunderstanding.

08:46 17 THE COURT: Mr. Tribble, anything else?

08:46 18 MR. TRIBBLE: I believe this may already
08:46 19 be covered by your ruling, but if you look at Slide 30.

08:46 20 THE COURT: Okay.

08:46 21 MR. TRIBBLE: We just think it overstates
08:46 22 it in a misleading way because it's titled Specific
08:46 23 Requirements of the '858 Patent. And what they've done
08:46 24 is they've summarized -- in the right-hand column,
08:46 25 they've summarized the claim language.

08:47 1 And so they say it's a specific
08:47 2 requirement and that it -- for example, the system
08:47 3 creates a multiplexed stream in 5 and 6 of all active
08:47 4 speakers. It sends it to all users' devices.

08:47 5 I mean, if they want to say this is how
08:47 6 our expert interprets it, I think that would be
08:47 7 consistent with the Court's ruling. But to put it up
08:47 8 there as a requirement of the patent, it just seems
08:47 9 overstated.

08:47 10 THE COURT: Got it.

08:47 11 How is that slide going to be presented?
08:47 12 Because I agree with Mr. Tribble that -- well, I feel
08:47 13 like you all -- the defense is certainly able to make
08:47 14 an argument that that's what you're going to argue, as
08:47 15 long as you're not going to say that I've -- that I've
08:47 16 construed it that way. If you're simply going to argue
08:47 17 that that's what you're arguing, then I'm fine with it.

08:48 18 MS. PIEPMEIER: Your Honor, good morning.
08:48 19 Sarah Piepmeier. Good to see you again.

08:48 20 That's exactly what I'm going to do,
08:48 21 Your Honor. I'm not going to mention a claim
08:48 22 construction ruling. I'm just going to walk through
08:48 23 the claim and I'm going to say: The words of the claim
08:48 24 are what govern. Here's a summary. But the words of
08:48 25 the claim govern.

08:48 1 THE COURT: Here's our position.

08:48 2 MS. PIEPMEIER: Yes. Thank you.

08:48 3 THE COURT: That's fine.

08:48 4 Anything else?

08:48 5 MR. TRIBBLE: No, Your Honor.

08:48 6 THE COURT: And anything else?

08:48 7 MR. JONES: Thank you. I think there are

08:48 8 some objections from us, Your Honor.

08:48 9 THE COURT: Yes.

08:48 10 MR. JONES: And this objection. And if I

08:48 11 would, I'd hand this up to Your Honor.

08:48 12 This objection is really very simple,

08:48 13 Your Honor. There are certain licenses that Paltalk

08:48 14 has with Microsoft, Activision, and Sony. These

08:48 15 licenses include the '858 patent.

08:48 16 Both experts have said they are not

08:48 17 comparable, they are not relevant, they are not

08:48 18 probative.

08:48 19 Usually in my experience, those type of

08:48 20 licenses come in. They want to refer to those licenses

08:48 21 I really think to just show Paltalk has some licenses

08:49 22 with regard to patents.

08:49 23 We have told them that's great. If y'all

08:49 24 want to refer to them, good. But if you refer to them,

08:49 25 then we get to talk about them in the evidence and talk

08:49 1 about their terms, talk about their amounts, talk about
08:49 2 how they treat the '858 patent and in circumstances
08:49 3 through which they were entered into.

08:49 4 Our position is just if y'all get to use
08:49 5 them and y'all get to use them to bolster your client,
08:49 6 then we get to explain the terms of them. And
08:49 7 either -- we think they should either stay out
08:49 8 completely or come in completely.

08:49 9 Thank you, Your Honor.

08:49 10 THE COURT: A response?

08:49 11 MR. SIEGMUND: Yes, Your Honor.

08:49 12 As Mr. Jones said, they are considered in
08:49 13 the expert reports by both experts. They are
08:49 14 technically comparable, although both experts said they
08:49 15 are not economically comparable. And we are not going
08:49 16 to talk about the circumstances of the licenses, if
08:49 17 they were the litigation or anything like that, but
08:49 18 Cisco has a big slide that says "the '858 patent" going
08:50 19 across the top of their timeline; we didn't derive
08:50 20 anything from this patent at all. Well, that's plainly
08:50 21 not true. There's licenses to that.

08:50 22 So we were just going to simply say, you
08:50 23 know, Paltalk has received licenses for its technology.
08:50 24 Here they are: Microsoft, Activision, Sony. And
08:50 25 that's it, Your Honor.

08:50 1 THE COURT: Well, but I think what
08:50 2 Mr. Jones is saying is that if you talk -- you say
08:50 3 that, then they get to tell -- talk to the jury about
08:50 4 that.

08:50 5 MR. SIEGMUND: Understood.

08:50 6 THE COURT: And so that which is my --
08:50 7 the way I see the world too.

08:50 8 So if the plaintiff wants to discuss in
08:50 9 opening argument that Microsoft, Activision, and Sony
08:50 10 licenses for some reason -- is this -- then they get to
08:50 11 talk about them during trial. I'm not excluding -- I'm
08:50 12 not going to prohibit you from talking about them
08:51 13 during opening argument, but then they're in.

08:51 14 MR. SIEGMUND: Understood.

08:51 15 THE COURT: Okay. Does that satisfy you?

08:51 16 MR. JONES: Yes, Your Honor. I
08:51 17 understand.

08:51 18 THE COURT: Any other issues?

08:51 19 MR. JONES: Just two more. I think
08:51 20 they'll be rather brief.

08:51 21 This deals with Slides 32, 33, and 34,
08:51 22 and if you'll look at 34, sir, I think you'll
08:51 23 understand exactly what we're talking about here. And
08:51 24 this is clearly a discovery issue.

08:51 25 In discovery in Interrogatory 17, we

08:51 1 asked whether they knew of any embodiments of the
08:51 2 patent, and they said they did not by either them or
08:51 3 anyone else. HearMe, the predecessor owner of the
08:51 4 patent, was expressly dealt with in the interrogatory
08:51 5 answer and they did not know.

08:51 6 Mr. Katz is their 30(b)(6) deponent. He
08:51 7 also did not know of any products that avoid -- embody
08:52 8 the patent when he was deposed.

08:52 9 What they are doing here is they're
08:52 10 taking an exhibit from the prior owner of the patent,
08:52 11 HearMe, Plaintiff's Exhibit 9, and they are comparing
08:52 12 it to the patent. The middle bar is comparing it to
08:52 13 the patent and then comparing it to a Cisco product.

08:52 14 Here, the implication is clearly that
08:52 15 it's an embodiment, and they're using it for that
08:52 16 purpose. There'll be no expert that says it's an
08:52 17 embodiment, and the discovery we have has denied that
08:52 18 any embodiments existed.

08:52 19 And even further than that, worse than
08:52 20 that, is when their corporate representative was asked
08:52 21 about this particular document, he said he didn't know
08:52 22 anything.

08:52 23 And he could read it, say what was on it,
08:52 24 but he didn't know anything about it and couldn't
08:52 25 authenticate it. He certainly couldn't tell us that

08:52 1 the product worked the way they said in the document.
08:52 2 And for that reason, we believe it should not be used,
08:52 3 Your Honor.

08:52 4 THE COURT: A response?

08:52 5 MR. SIEGMUND: Your Honor, we think this
08:53 6 is kind of a nonissue, and we are not going to argue
08:53 7 that what is depicted on Slide 30 and 31 was
08:53 8 practicing -- sorry -- was practicing the patent. We
08:53 9 aren't going to make that argument whatsoever.

08:53 10 We're simply saying, hey, we bought this
08:53 11 company. This is the technology that they had. And
08:53 12 this is kind of how hybrid systems came to be evolved.
08:53 13 So it's more of a proffer.

08:53 14 THE COURT: What I have -- I think
08:53 15 Mr. Jones is unhappy about on 32 and 33, it looks like
08:53 16 it came from a patent. So I'm not sure how that lines
08:53 17 up with what you just argued.

08:53 18 MR. SIEGMUND: So just to be clear,
08:53 19 Your Honor, you're talking about Slide 32?

08:53 20 THE COURT: I am.

08:53 21 MR. SIEGMUND: Okay. And -- okay. We
08:53 22 aren't trying to compare it and say that this practiced
08:53 23 the patent, Judge. We're just --

08:53 24 THE COURT: Well, what is the purpose of
08:54 25 having the -- what's in this middle of the -- what is

08:54 1 the purpose of having this here?

08:54 2 MR. SIEGMUND: The evolution and
08:54 3 chronology of how hybrid technology has come about.

08:54 4 THE COURT: By showing out of the -- out
08:54 5 of this -- I mean, this looks like it's out of the
08:54 6 patent.

08:54 7 MR. SIEGMUND: Oh, that's Slide 30,
08:54 8 Judge?

08:54 9 THE COURT: That's Slide 32.

08:54 10 MR. JONES: Your Honor, if I --

08:54 11 THE COURT: Maybe I'm just not --

08:54 12 MR. JONES: Maybe I wasn't clear.

08:54 13 THE COURT: Maybe I'm having a hard time.

08:54 14 MR. JONES: If you'll go to 34, what's
08:54 15 out of the patent, middle line of 34, those -- and it's
08:54 16 the comparison of those -- that document which is
08:54 17 Plaintiff Exhibit 9 of the patent that we're objecting
08:54 18 to.

08:54 19 THE COURT: I'm going to keep 34 out.

08:54 20 Now, I think 34 -- sorry. I wasn't
08:54 21 following. I think 34 is the prior two slides and then
08:55 22 it adds Cisco.

08:55 23 MR. JONES: Right. It adds the patent.
08:55 24 Yes. That's correct, Your Honor.

08:55 25 THE COURT: I'm going to exclude that.

08:55 1 MR. SIEGMUND: And that's this slide
08:55 2 right here, Your Honor?

08:55 3 THE COURT: Right.

08:55 4 MR. SIEGMUND: Got it. Understood.

08:55 5 THE COURT: Do you have an objection to
08:55 6 the other two slides?

08:55 7 MR. JONES: No.

08:55 8 THE COURT: Okay. And that -- I didn't
08:55 9 understand why you had --

08:55 10 MR. JONES: As long as they're not going
08:55 11 to refer to it as "preferred embodiment," and counsel's
08:55 12 told me he will not.

08:55 13 THE COURT: I was on the wrong slide.
08:55 14 Yes, ma'am.

08:55 15 MS. PIEPMEIER: May I make one point
08:55 16 about that? Not to step on my colleague's toes.

08:55 17 We're fine with that with regard to those
08:55 18 two slides. We will have an issue with regard to the
08:55 19 underlying document, which I believe is PX-9, which I
08:55 20 assume they intend to introduce with Mr. Katz.

08:55 21 So I just want to make it clear, we don't
08:55 22 have a problem for demonstrative purposes, but I don't
08:55 23 want that to be seen as waiving an objection to PX-9,
08:55 24 which we will have.

08:55 25 THE COURT: What is the objection you're

08:55 1 going to have?

08:55 2 MS. PIEPMEIER: The objection that we're
08:55 3 going to have -- pardon me, Your Honor.

08:56 4 The objection that we're going to have to
08:56 5 PX-9, Your Honor, is that the witness has absolutely no
08:56 6 idea what it is. Mr. Katz was not able to answer any
08:56 7 questions about it in deposition. He was designated as
08:56 8 the person to talk about this and had no idea what it
08:56 9 was.

08:56 10 And for them to now admit that through
08:56 11 him -- when I asked him, I believe he said he'd never
08:56 12 seen it before. And so now two years later, he's the
08:56 13 only person who's going to be able to put it in.
08:56 14 They've put it on the exhibit list for him. And
08:56 15 there's a whole bunch of other documents that are in a
08:56 16 similar vein to PX-9.

08:56 17 But when you're designated on that topic,
08:56 18 when you say you've never spoken to anyone from HearMe
08:56 19 and then you've never seen a document and then you're
08:56 20 the one who brings it in two years later at trial, that
08:56 21 feels like a violation of Rule 26.

08:56 22 THE COURT: Well -- and again, I'm a
08:56 23 little bit at a loss here because I don't really know
08:56 24 what this document is yet and y'all lived with it.

08:56 25 But it appears to me to be, I mean, just

08:57 1 a document produced by HearMe from May of 2000. I get
08:57 2 that this guy may or may not know.

08:57 3 Mr. Siegmund, can you sit down?

08:57 4 MR. SIEGMUND: Yes.

08:57 5 MS. PIEPMEIER: I have the document,
08:57 6 Your Honor, if you'd like to see it, and I can give you
08:57 7 just a very brief summary.

08:57 8 THE COURT: I don't want them talking
08:57 9 about it if it's not going to come in.

08:57 10 MS. PIEPMEIER: Yeah. May I approach,
08:57 11 Your Honor?

08:57 12 THE COURT: Of course.

08:57 13 MS. PIEPMEIER: This is PX-9. I believe
08:57 14 this is the one where there's a picture on the back.
08:57 15 Just the PX-9.

08:57 16 THE COURT: And let me ask this: I mean,
08:57 17 it seems to me this would be a relatively easy
08:57 18 document, just a document to get in. But is your
08:57 19 problem with the document coming in at all or the fact
08:57 20 that they don't have anyone who -- did the person that
08:58 21 they're going to put up here, that there's no one they
08:58 22 can put on to explain what's in the document any better
08:58 23 than I could do, you know, if I read it and tried to
08:58 24 explain it? Or is it both?

08:58 25 MS. PIEPMEIER: So, Your Honor, it's

08:58 1 both. And let me just set the stage very, very
08:58 2 briefly.

08:58 3 HearMe was the prior company, the assets
08:58 4 were acquired by Paltalk. The only Paltalk witness
08:58 5 who's going to testify, Mr. Katz, testified he never
08:58 6 spoke to anyone at HearMe and knew nothing about it.
08:58 7 He was designated on these topics, which is why I put
08:58 8 these documents in front of him during his deposition.
08:58 9 And when I put PX-9 in front of him during his
08:58 10 deposition, I asked him, you know:

08:58 11 Can you see this document?

08:58 12 Well, it looks like the HearMe website.

08:58 13 Is there a date?

08:58 14 Yeah. There's a date on the document.

08:58 15 Do you have any knowledge at all of what
08:58 16 types of products or services are depicted in that
08:58 17 diagram? That is the diagram they put on the slide.

08:58 18 Only to the extent I can read it.

08:59 19 VoiceNETWORK host live voice services for your network
08:59 20 application servers.

08:59 21 So he reads from the document.

08:59 22 And do you know if at the time that this
08:59 23 document I guess was printed in 2000, if one of the
08:59 24 products or services that HearMe was offering permitted
08:59 25 a user or users to participate in an audioconference

08:59 1 that included both computer and telephone connections?

08:59 2 Answer: I don't know.

08:59 3 I can only see the picture has a plain
08:59 4 old telephone plus computers that seem to indicate
08:59 5 that, but I don't know.

08:59 6 So the picture on the HearMe document
08:59 7 from May 15th appears to indicate that the HearMe
08:59 8 VoiceNETWORK permitted users to have a combined
08:59 9 audioconference using phone and computer; is that
08:59 10 right?

08:59 11 That's what it looks like. But again,
08:59 12 I'm no expert, and I'm not an engineer.

08:59 13 Your Honor, I put those in front of him
08:59 14 because he was designated on whether any products
08:59 15 practiced the patent. He didn't know. And for them to
08:59 16 now come back and suggest to the jury that HearMe had
09:00 17 products that looked like the patent, were part of the
09:00 18 evolution towards the patent is -- Your Honor, that's
09:00 19 just completely inappropriate.

09:00 20 And I don't know how to cross-examine him
09:00 21 on that because if he says, oh, yeah. I didn't know at
09:00 22 my deposition, but I spent the past two years studying
09:00 23 it, that's completely inappropriate, Your Honor.

09:00 24 So I guess I don't have a problem with
09:00 25 him showing a slide, but I do have a problem with PX-9

09:00 1 and its progeny. There's about five more of these same
09:00 2 documents where I went through the exact same exercise
09:00 3 with Mr. Katz.

09:00 4 Your Honor, I very, very carefully
09:00 5 questioned Mr. Katz in deposition to find out what he
09:00 6 would say here at trial today, and it really is
09:00 7 manifestly improper for him to know nothing about it
09:00 8 and then to sponsor those same exhibits at trial.

09:00 9 Thank you, Your Honor.

09:00 10 THE COURT: Mr. Siegmund?

09:00 11 MR. SIEGMUND: Yes, Your Honor.

09:00 12 Mr. Katz did talk to people at HearMe.
09:01 13 Otherwise, he wouldn't have been able to buy the
09:01 14 assets, for one.

09:01 15 And two, I think there's a little bit of
09:01 16 confusion on the deposition exhibit and the trial
09:01 17 exhibit because the question was not asked if he had
09:01 18 seen this document.

09:01 19 But regardless, Your Honor, I think this
09:01 20 is a perfect time where we try to lay the foundation of
09:01 21 the document, offer it into evidence, and if you don't
09:01 22 agree that we have done that or there's no exception to
09:01 23 a rule of evidence, then it doesn't come in.

09:01 24 I mean, that's how we handle that, and I
09:01 25 think it'd be helpful for the Court to see the context

09:01 1 in which we sponsor the document. And that's -- I
09:01 2 think that's pretty much our position on that,
09:01 3 Your Honor.

09:01 4 THE COURT: Okay.

09:01 5 MS. PIEPMEIER: I'm so sorry, Your Honor.
09:01 6 Just one point.

09:01 7 If he lays a foundation based on work
09:01 8 that he did after I took his deposition when he was the
09:01 9 30(b)(6) on that, that is a violation of Rule 26,
09:01 10 Your Honor.

09:01 11 THE COURT: Well, so I'm old-fashioned.
09:01 12 I get it. So the way I would do it -- and I anticipate
09:01 13 it's probably the way you'll do it too -- they can lay
09:02 14 the foundation for it, and if you'd like to take him on
09:02 15 voir dire to ask him those type of questions to see
09:02 16 whether or not the information -- when the information
09:02 17 was obtained, you're welcome to do that.

09:02 18 MS. PIEPMEIER: Okay. Thank you,
09:02 19 Your Honor.

09:02 20 THE COURT: Okay.

09:02 21 Anything else?

09:02 22 MR. JONES: It's very brief, Your Honor.
09:02 23 I apologize for imposing on the Court so much. And
09:02 24 this one is very similar, and I think you can make a
09:02 25 decision for us quickly.

09:02 1 This slide deals with this. They start
09:02 2 out with revenues for the product they don't accuse of
09:02 3 infringing. They're not the accused infringing
09:02 4 functionality.

09:02 5 As you see here, the 1.27 billion,
09:02 6 they -- in their damages expert's calculation, he
09:02 7 starts out at 1.3 billion, which I would think might be
09:02 8 enough, but they want to put in 4.2 billion, which is
09:03 9 for Webex itself, when the accused functionality is
09:03 10 Webex Audio. Webex itself is 4.2 billion; the other is
09:03 11 1.3.

09:03 12 Their justification for doing so is they
09:03 13 say it's some kind of check. Our position is that the
09:03 14 evidence that our expert submitted as the total amount
09:03 15 of revenue should be what's attributable to everybody
09:03 16 is attributable to the accused functionality, Webex
09:03 17 Audio. And we would just say, let's remove that top
09:03 18 line.

09:03 19 Thank you, Your Honor.

09:03 20 MR. SIEGMUND: And I can be brief, Judge.

09:03 21 This is used in Mr. Bratic's
09:03 22 apportionment. The 4.2 billion is the product revenue;
09:03 23 that is the product we are accusing. This is an odd
09:03 24 situation because the Webex Audio revenue is the line
09:03 25 item for --

09:03 1 THE COURT: If this is what -- if we're
09:03 2 going to hear this from an expert, I'll allow --

09:03 3 MR. SIEGMUND: You are.

09:03 4 THE COURT: -- these to come in.
09:03 5 Anything else?

09:03 6 MR. JONES: No. Thank you, Your Honor.

09:03 7 THE COURT: Are you all ready to do
09:03 8 opening arguments?

09:03 9 MR. TRIBBLE: We're ready, Your Honor.

09:03 10 THE COURT: And do y'all intend to do
09:03 11 your opening argument after theirs?

09:04 12 MR. TRIBBLE: Excuse me, Your Honor. I
09:04 13 didn't hear.

09:04 14 THE COURT: I'm wondering, do y'all want
09:04 15 to do it immediately after theirs, or are you going to
09:04 16 reserve?

09:04 17 MR. JONES: Yes, Your Honor. We're going
09:04 18 to do it immediately after.

09:04 19 THE COURT: Okay. Very good. We'll be
09:04 20 back in about five minutes.

09:04 21 MR. JONES: Thank you, Your Honor.

09:04 22 THE BAILIFF: All rise.

09:04 23 (Recess taken.)

09:09 24 THE BAILIFF: All rise.

09:09 25 THE COURT: Please remain standing for

09:09 1 the jury.

09:09 2 (Jury entered the courtroom.)

09:10 3 THE COURT: Thank you. You may be
4 seated.

09:10 5 Jen, would you call the case, please?

09:10 6 DEPUTY CLERK: A civil action in Case
09:10 7 6:21-CV-757, Paltalk versus Cisco. Case called for a
09:10 8 jury trial proceeding.

09:10 9 THE COURT: Could I have announcements
09:10 10 starting -- I'd like the plaintiff's lawyer to
09:10 11 go -- the plaintiff to go first, introduce everyone at
09:10 12 your table, and then I'll go to Mr. Jones and ask the
09:10 13 defendants to do the same.

09:10 14 MR. TRIBBLE: Thank you, Your Honor.

09:10 15 THE COURT: Mr. Tribble?

09:10 16 MR. TRIBBLE: Max Tribble for the
09:10 17 plaintiff Paltalk. With me today is my partner Kalpana
09:10 18 Srinivasan and the CEO of Paltalk, Mr. Jason Katz.

09:10 19 THE COURT: Thank you.

09:10 20 MR. JONES: Your Honor, Mike Jones for
09:11 21 Cisco. Our lead counsel Sarah Piepmeier, Nathan Sabri,
09:11 22 and our corporate representative is Xiao Chang. And
09:11 23 also I guess Mr. James over here, he's our technical
09:11 24 wizard.

09:11 25 THE COURT: He's the most important on

09:11 1 your side in a lot of ways.

09:11 2 MR. JONES: He certainly is, Your Honor.

09:11 3 THE COURT: Thank you.

09:11 4 Ladies and gentlemen of the jury, let me
09:11 5 introduce myself to you formally. My name is Alan
09:11 6 Albright. I'm the United States District Judge
09:11 7 for -- we're in the Western District of Texas, which,
09:11 8 if you want an idea of how large it is, we
09:11 9 are -- San Antonio is in it, El Paso's in it. L.A. is
09:11 10 closer to El Paso than San Antonio, so you have an
09:11 11 idea.

09:11 12 And some of you may have driven pretty
09:11 13 far. There are 11 counties in our division, so it's
09:11 14 quite something to expect people to be here and serve
09:11 15 as jurors. And I will say in advance for the lawyers
09:11 16 and their clients how grateful we are that you're
09:11 17 taking the time.

09:11 18 We will go relatively long days here so
09:12 19 that we can finish this week. But that doesn't mean
09:12 20 you won't have some relief. I'll have a morning break.
09:12 21 I'll have an afternoon break. I can't read your mind.
09:12 22 If you all need a break sooner than I need a break,
09:12 23 hand William, or whoever's sitting down there, a note
09:12 24 or catch my -- just do something, I will certainly
09:12 25 accommodate you if you need a break sooner than you

09:12 1 need one.

09:12 2 We're about to hear the opening arguments
09:12 3 for both sides. And they're important. I like to
09:12 4 think of them as the roadmap the lawyers anticipate
09:12 5 that the trial will take. But they're only arguments;
09:12 6 they're not evidence yet.

09:12 7 The evidence won't come until the -- I'm
09:12 8 not sure -- either ladies or gentlemen, I'm not sure
09:12 9 who's speaking on either side yet, but when they finish
09:12 10 their opening arguments, Mr. Tribble will call his
09:12 11 first witness and that's when the evidence will
09:12 12 actually begin.

09:12 13 So Mr. Tribble?

09:12 14 MR. TRIBBLE: Thank you, Your Honor.

09:13 15 THE COURT: Would you like any warning
09:13 16 before 30 minutes?

09:13 17 MR. TRIBBLE: I would. Maybe a
09:13 18 ten-minute warning?

09:13 19 THE COURT: Surely.

09:13 20 MR. TRIBBLE: And, Your Honor, I should
09:13 21 also introduce Ms. Srinivasan in front of them at
09:13 22 trial, our partner Ryan Caughey and our future partner
09:13 23 Amber Magee. And Matt Boles is, of course, our
09:13 24 graphics viewer.

09:13 25 THE COURT: Okay.

09:13 1 OPENING STATEMENT ON BEHALF OF THE PLAINTIFF

09:13 2 MR. TRIBBLE: Well, good morning,
09:13 3 everybody. My name is Max Tribble. And I'm honored to
09:13 4 represent the plaintiff in this case, Paltalk. This is
09:13 5 the CEO of Paltalk, Mr. Jason Katz.

09:13 6 Mr. Katz, would you stand?

09:13 7 This case is about using someone else's
09:13 8 property without paying for it. That's exactly what
09:14 9 Cisco did here. Cisco generated billions of dollars of
09:14 10 revenue using technology owned by Paltalk and contained
09:14 11 in this patent.

09:14 12 Now, during the trial, I think everyone
09:14 13 will refer to this patent by the last three digits of
09:14 14 the patent number, which is the '858. You will see it
09:14 15 referred to as the '858.

09:14 16 And I apologize. We're going to walk
09:14 17 through a number of things. I have a very limited
09:14 18 amount of time, and so I'm going to try to be as quick
09:14 19 as possible. I have a lot of things to talk about.
09:14 20 But you're going to hear a lot more about all of this
09:14 21 from the witnesses during the trial in this case.

09:14 22 So first let me tell you about Paltalk.
09:15 23 Paltalk is an innovative company that hosts
09:15 24 videoconferencing. It was founded and home grown by
09:15 25 Mr. Katz. And they have a number of related products.

09:15 1 The main one is Paltalk.com, but they have these other
09:15 2 products here shown on the screen that are related to
09:15 3 videoconferencing, communications over the Internet.

09:15 4 Now, Paltalk was a pioneer in this
09:15 5 industry. Here is a Forbes article back in May of 2003
09:15 6 featuring Paltalk and Jason Katz back in the early
09:15 7 days.

09:15 8 And since its founding, Paltalk has tried
09:15 9 to develop and also to acquire intellectual property
09:16 10 related to its videoconferencing field.

09:16 11 And so I want to be clear. Paltalk was
09:16 12 not the original inventor on this patent. Paltalk
09:16 13 bought the patent from a company named HearMe. HearMe
09:16 14 was another pioneer in both videoconferencing, Internet
09:16 15 communications, and a number of fields.

09:16 16 And in December of 2001, HearMe was
09:16 17 selling and liquidating some of its intellectual
09:16 18 property assets, not just patents, but also computer
09:16 19 code and other things. And Mr. Katz had the foresight
09:16 20 to recognize the enormous value of the application for
09:16 21 the '858 patent. It hadn't issued yet, but it had been
09:17 22 filed with the Patent and Trademark Office. And so he
09:17 23 was able to acquire the patent when nobody else would
09:17 24 pay the asking price.

09:17 25 And so here's the timeline. You see that

09:17 1 February of '98, Paltalk was founded.

09:17 2 And then certainly May of 2000, HearMe
09:17 3 was working on developing what is called a "hybrid
09:17 4 audio system." We'll -- I'll explain that in a second.

09:17 5 And in June of 2000, HearMe filed the
09:17 6 application for the '858 patent.

09:17 7 And then Paltalk purchased that and other
09:17 8 IP assets in December of 2001.

09:17 9 And eventually, the patent at issue
09:17 10 issued in January of 2004, and it was after that, years
09:18 11 after that, that Cisco bought the Webex company, and
09:18 12 the Webex products are the products being accused of
09:18 13 infringement in this case.

09:18 14 Cisco acquired Webex in May of 2007. And
09:18 15 as you'll see in a minute, it wasn't until after that
09:18 16 that the Webex subsidiary or Webex after had been
09:18 17 bought by Cisco. It was only after that that it began
09:18 18 developing a hybrid audio system.

09:18 19 This slide lists some of the Webex
09:18 20 products that are accused of infringement here. They
09:18 21 do various things. Most of them do videoconferencing,
09:18 22 but they all have one thing in common. They all use a
09:18 23 functionality called Webex Audio. You'll hear a lot of
09:18 24 testimony about that.

09:18 25 And so Webex Audio, the ability for

09:19 1 people to participate in audio- or videoconference
09:19 2 together, this technology, think about it. Even for
09:19 3 videoconferences, the audio piece is absolutely
09:19 4 essential because if you have a conference -- and their
09:19 5 main product is this Cisco Webex. But if you can have
09:19 6 a videoconference, I suppose, where you saw everybody,
09:19 7 but if you didn't hear what they were saying, it
09:19 8 wouldn't be a very productive videoconference and
09:19 9 nobody would buy that product.

09:19 10 And in particular, Cisco Webex uses the
09:19 11 patented technology. And I'll explain more and our
09:19 12 experts will explain later, but by a hybrid system,
09:19 13 what we're referring to is some of these users are
09:19 14 connecting by computer. Okay?

09:19 15 So you can see the computers connecting.
09:20 16 They would be connecting over the Internet. But you
09:20 17 see that some people are connecting over the phone
09:20 18 lines. In fact, an iPhone, it's a phone and a computer
09:20 19 you can connect over the Internet, or if you were
09:20 20 somewhere or maybe you were driving -- but if you were
09:20 21 somewhere where you didn't have a good Internet
09:20 22 connection, it's absolutely essential that for you to
09:20 23 participate in the conference, you have to be able to
09:20 24 dial in over the phone lines. That's what we mean by a
09:20 25 "hybrid system," that you can actually have both, over

09:20 1 the phone lines, by dialing in, or over the Internet or
09:20 2 some other network.

09:20 3 And let's talk a little bit about
09:20 4 patents. The -- you know, our founding fathers thought
09:21 5 that patent rights were so important to incentivize
09:21 6 people to invest in research, new inventions, new
09:21 7 technologies, that in order to incentivize that, the
09:21 8 creation of the Patent and Trademark Office, the
09:21 9 protection of the patent rights is actually a right
09:21 10 spelled out in our -- the U.S. Constitution. In fact,
09:21 11 Thomas Jefferson was the first commissioner of the
09:21 12 United States Patent and Trademark Office.

09:21 13 And in some ways, patents are kind of
09:21 14 like other property. Patents are intellectual
09:21 15 property, but, you know, like real property, like land
09:21 16 or a house. That belongs to whoever owns it. They can
09:21 17 buy it and sell it. And if someone uses your property
09:22 18 without your permission, then that person has to pay
09:22 19 for using your property.

09:22 20 And so as I've said, the patent's
09:22 21 intellectual property, but in the case of land, suppose
09:22 22 somebody had drilled an oil or gas well on your
09:22 23 property. Naturally they would owe you a royalty
09:22 24 interest. They would have to pay you for their use of
09:22 25 your property.

09:22 1 And by the way, they have to pay a
09:22 2 reasonable royalty even if they didn't know it was your
09:22 3 property, even if they didn't know of the patent. If
09:22 4 they didn't know of the land or even thought it was
09:22 5 theirs, they're still required to pay a reasonable
09:22 6 royalty for their use of your property.

09:22 7 And in this case, the patent has a number
09:23 8 of benefits that you'll hear testimony about that make
09:23 9 it an important feature for doing the kind of
09:23 10 conferencing that Webex does.

09:23 11 The main one or one of the main ones is
09:23 12 that both computer users and phone users can
09:23 13 participate together, and that's absolutely essential.

09:23 14 Think about it. If you were a chief
09:23 15 technology officer of L3Harris, when you were picking
09:23 16 which system to use, you would absolutely require that
09:23 17 the system allow access both over phone lines and over
09:23 18 the Internet or a network. I mean, Webex's competitors
09:23 19 offer that. So why would you settle for anything else?

09:24 20 But moreover, it just makes sense. Not
09:24 21 everybody all the time is going to have access to the
09:24 22 Internet, or maybe their bandwidth is slow. And in
09:24 23 those cases, they can call in over the phone lines.

09:24 24 You'll hear testimony about the
09:24 25 computational efficiency of the inventions in this

09:24 1 patent give the system -- allowing the servers to
09:24 2 offload some of the workload onto the users' computers.
09:24 3 And it results in an improvement of the sound quality
09:24 4 of the conference.

09:24 5 Okay. And so as Mr. Siegmund told you in
09:24 6 jury selection, we're going to talk about three things,
09:24 7 the first of which is infringement. And on
09:24 8 infringement, you're going to hear from Dr. Scott
09:24 9 Schaefer.

09:24 10 Dr. Schaefer, will you stand up?

09:24 11 Dr. Schaefer, I've got some resume points
09:24 12 on the slide. I don't have time to go over all of it,
09:25 13 but let me just say, he's a professor of computer
09:25 14 science at A&M. And in fact, he is head of the Texas
09:25 15 A&M computer science department.

09:25 16 And he has numerous degrees and awards.
09:25 17 You know, he was a member of the DARPA computer science
09:25 18 study panel. DARPA is a defense agency, stands for
09:25 19 Defense Advanced Research Product -- Research Product
09:25 20 Agency.

09:25 21 And you'll hear about those and the other
09:25 22 important work he's done with other institutions. And
09:25 23 he will explain to you how that Webex Audio and the
09:25 24 Webex products accused in this case all infringe Claims
09:25 25 1 through 5. And he'll walk you through that.

09:25 1 So here is the claim language. This is
09:25 2 important. This is Claim 1. And we've broken it out
09:26 3 into separate elements. And you'll see Dr. Schaefer
09:26 4 will explain to you how the accused products of Cisco
09:26 5 Webex satisfy each and every one of these limitations
09:26 6 that are in the claim language.

09:26 7 But this is very important. Look at the
09:26 8 wording. Look at the words in this claim. It has a
09:26 9 lot of jargon in it that to you and me, this would be
09:26 10 impossible to understand and -- such as active speaker,
09:26 11 active speaker list, multiplexed stream. These terms
09:26 12 like that.

09:26 13 This is something that have meaning to an
09:27 14 expert in the field who has studied the entire patent,
09:27 15 including what's called "the specification." It's the
09:27 16 six-page narrative description and the figures that are
09:27 17 in the patent. Even an expert has to study that in
09:27 18 order to understand exactly what these terms mean.

09:27 19 And I believe that the Court will
09:27 20 instruct you that this type of expert is called a
09:27 21 "person of ordinary skill in the art." And you see on
09:27 22 the bottom of the pages of the patent. It's not enough
09:27 23 to be an expert in the field. You also have to read
09:27 24 the entire patent and study it in order to understand
09:27 25 the context to know exactly what each of the terms in

09:27 1 the claim language mean.

09:27 2 And so you'll hear testimony. There's a
09:28 3 disagreement between Paltalk and Cisco. And
09:28 4 Dr. Schaefer will testify that when the word "each"
09:28 5 occurs in the claim language, it doesn't mean what you
09:28 6 might think it means if someone walked up to you.

09:28 7 So like you've heard, you might hear an
09:28 8 analogy from the other side that says, well, I promise
09:28 9 to give a cookie to each of my children, and I gave the
09:28 10 first two a cookie and then I didn't give any cookie to
09:28 11 the third one. And you'll say, that's not "each."

09:28 12 But in fact, the Court is going to
09:28 13 instruct you that the word "each" has -- to be given
09:28 14 the plain and ordinary meaning that it would mean to an
09:29 15 expert in this field, a person of ordinary skill in the
09:29 16 art, like Dr. Schaefer, who has to have the plain and
09:29 17 ordinary meaning that it would have to an expert in
09:29 18 this field after reading the patent to understand it.

09:29 19 And in fact, take a look from the patent.
09:29 20 Here's some language. This is at Column 5 of the
09:29 21 patent. And it's describing one of the embodiments of
09:29 22 the invention. And it says specifically that active
09:29 23 speaker audio data for each and every active speaker is
09:29 24 multiplexed. And you'll hear more about that.

09:29 25 But look at this. Because at back, it

09:29 1 says: However, as will be apparent to those skilled in
09:29 2 the relevant arts -- that means an expert in this field
09:29 3 like Dr. Schaefer -- if Party J is an active speaker,
09:29 4 then that step will not include Party J's own audio
09:30 5 data in the multiplexed packets.

09:30 6 And again, you'll hear testimony about
09:30 7 how this plays into what the word "each" means to a
09:30 8 person of ordinary skill in this art.

09:30 9 And it spells it out further. It says:
09:30 10 This is in essence an echo suppression function so that
09:30 11 Party J will not hear themselves speak.

09:30 12 So when people are talking on the
09:30 13 conference, the audio streams of the active speakers,
09:30 14 the people speaking, or at least some of them, are
09:30 15 combined together and sent out.

09:30 16 And what this says, even though it's
09:30 17 "each," the speaker doesn't need to receive back his
09:30 18 own audio because he's the one who said it. It's
09:30 19 called "echo suppression." The invention wouldn't
09:31 20 really work very well if he kept getting this echo.
09:31 21 And so you'll hear more about that.

09:31 22 And so when you hear argument or
09:31 23 testimony by Cisco in this case that, oh, "each" means
09:31 24 what it always does. You don't need to consider what
09:31 25 the patent teaches or consider how it's using it.

09:31 1 That's a red flag. And you need to ask yourself: Is
09:31 2 that really what's going on here?

09:31 3 In addition, Cisco Webex infringes the
09:31 4 other four claims, Claims 2 through 5. And each of
09:31 5 these claims begins with "the method of Claim 1 further
09:31 6 comprising the step of" and then it has an additional
09:31 7 step.

09:31 8 And that means that each of these claims,
09:31 9 that invention, has all of the steps of Claim 1 plus
09:32 10 something in addition that's spelled out in these.

09:32 11 And look at it. This is an engineering
09:32 12 design document of Cisco Webex. And in here, the
09:32 13 engineer literally recognizes that it is impossible to
09:32 14 broadcast all speakers' voice packages to all
09:32 15 listeners.

09:32 16 Not only does Cisco do it in the same way
09:32 17 that is spelled out in the patent, but they recognize
09:32 18 that it would be impossible to have a working invention
09:32 19 where everyone was getting their own voice sent back to
09:32 20 them.

09:32 21 This is Figure 1 in the patent. And
09:32 22 we'll walk through this. The patent has figures that
09:32 23 show diagrams of a preferred embodiment of the
09:32 24 invention.

09:33 25 You'll see here that in Figure 1, it

09:33 1 clearly shows a hybrid architecture for the
09:33 2 conferencing system, where you had both phones and
09:33 3 computers connecting over a network.

09:33 4 PSTN right here, that is the phone lines,
09:33 5 saying that you can connect over the phone lines or
09:33 6 over a network. And it's hybrid because it can do
09:33 7 both.

09:33 8 And then this is the same figure. We've
09:33 9 just kind of spread it out so that it's horizontal.

09:33 10 And then on the other hand, this is a
09:33 11 Cisco system. And the point here is that Cisco Webex
09:33 12 is clearly a hybrid architecture. It allows connection
09:33 13 both by computers over the Internet or a network and by
09:33 14 phones or cell phones connecting over phone lines.

09:34 15 Keep in mind, it's not enough to compare the pictures
09:34 16 to each other. It's the claim language that has to be
09:34 17 met, and Dr. Schaefer will walk you through that.

09:34 18 This -- remember we bought the patent and
09:34 19 other intellectual property from HearMe, and this is a
09:34 20 document that shows a HearMe hybrid architecture that
09:34 21 the company was working on back in 2000.

09:34 22 Okay. So you heard Cisco's lawyer in
09:34 23 jury selection talk about, you know, something along
09:34 24 the lines of it's not just the patent, you know, who
09:34 25 invented it first, who used it first and so forth.

09:35 1 Well, I just want to be very clear on the date that
09:35 2 Webex started even thinking or planning to adopt a
09:35 3 hybrid architecture like that in the patent.

09:35 4 THE COURT: Counsel, you have ten
09:35 5 minutes.

09:35 6 MR. TRIBBLE: Ten minutes? Thank you,
09:35 7 Your Honor.

09:35 8 And so this is a Cisco internal document
09:35 9 dated July 7, 2007, and it's a Revision 1.0, so it's
09:35 10 the very first version, and the title is Hybrid Audio
09:35 11 Architecture Design. Which is amazingly similar to the
09:35 12 title of our patent, the '858 patent, which refers to a
09:35 13 hybrid server architecture, which the application was
09:35 14 filed years earlier in June of 2000. Patent issued in
09:35 15 2004, years before Webex even considered adding a
09:35 16 hybrid architecture.

09:35 17 And the very first sentence says: The
09:36 18 hybrid audio service is a new service that this
09:36 19 engineering release will introduce. The service will
09:36 20 offer user the capability to join audioconference via
09:36 21 voice over Internet protocol -- that's over the
09:36 22 Internet -- or PSTN. That's the phone lines. And
09:36 23 that's something that Webex didn't even begin planning
09:36 24 to do until years after the patent had issued.

09:36 25 And it recognizes some of the benefits of

09:36 1 this hybrid architecture, improving usability, and it
09:36 2 offers Webex a competitive advantage over their
09:36 3 competitors.

09:36 4 And so again, we'll walk you through this
09:36 5 timeline about what happened when in detail.

09:36 6 And keep this in mind. As this document
09:36 7 shows, back in April of 2001, Cisco was actually a
09:37 8 customer or a partner of HearMe. And in weighing all
09:37 9 this to determine whether we've met our burden of proof
09:37 10 on infringement -- our burden is called a preponderance
09:37 11 of the evidence.

09:37 12 And so there's going to be evidence on
09:37 13 both sides, and if the scales of justice -- if the
09:37 14 evidence that Paltalk shows ever so slightly, ever so
09:37 15 slightly outweighs any opposing evidence, then we've
09:37 16 met our burden of proof and there is infringement.

09:37 17 Now, let's contrast that with Cisco's
09:37 18 burden of proof to try and prove that the patent is
09:37 19 invalid. Their burden is much higher. It's something
09:38 20 called clear and convincing evidence.

09:38 21 Now, I'm not going to go over it now.
09:38 22 The Court will instruct you on what the burdens are.
09:38 23 But the point is, Cisco bears a much higher burden to
09:38 24 prove invalidity than we do to prove infringement. And
09:38 25 the reason for that is because patents issued by the

09:38 1 United States Patent Office are presumed to be valid.
09:38 2 You saw the video before jury selection about the
09:38 3 process an inventor has to go through to file their
09:38 4 patent and get it approved by the Patent Office.

09:38 5 As to the validity of the patents, they
09:38 6 have experts. But you'll hear from Dr. Madisetti.
09:38 7 Again, I'm not going to go over his resume here. Just
09:38 8 let's say he is a full professor at Georgia Tech, which
09:38 9 is one of the top engineering schools in the world.
09:38 10 And he will explain -- these are a bunch of books he's
09:39 11 written and textbooks, but he will explain that the
09:39 12 prior art that Cisco relies upon that said, oh, the
09:39 13 HearMe patent, they -- those inventors weren't first is
09:39 14 this reference called Botzko.

09:39 15 And he will walk you through this and
09:39 16 explain why the claims covered in the patent don't
09:39 17 meet -- excuse me -- that the disclosures in the Botzko
09:39 18 reference do not satisfy all elements of Claim 1 or any
09:39 19 of the other claims, and therefore, Cisco has failed to
09:39 20 prove invalidity.

09:39 21 Finally, you'll hear about damages,
09:39 22 Mr. Walter Bratic.

23 Mr. Bratic, can you stand?

09:39 24 Mr. Bratic, again, a very impressive
09:39 25 resume. You know, he's been a CPA licensed in Texas

09:39 1 for decades and went to The Wharton School of Business,
09:40 2 and has specialized in analyzing patent licenses, in
09:40 3 valuing patents in his career.

09:40 4 And keep in mind, the patent statute
09:40 5 specifically says that if there's infringement, the
09:40 6 Court shall award the claim of damages that are in no
09:40 7 event less than a reasonable royalty for the use made
09:40 8 by the invention by the infringer. It's not whether
09:40 9 Paltalk used the invention. They didn't. What they
09:40 10 did was they recognized the great value of this patent.
09:40 11 It was in a field that they were already in, and they
09:41 12 bought the patent. The question is how much did Cisco
09:41 13 use the invention?

09:41 14 And this is kind of a summary of the
09:41 15 analysis for damages, the total Webex revenues during
09:41 16 the damages period. The damages period has stopped
09:41 17 because the patent expired, and so the royalties
09:41 18 stopped back in -- I think it was 2022.

09:41 19 But the total Webex revenues were
09:41 20 \$4.2 billion. The amount that Cisco itself attributed
09:41 21 to Webex Audio was \$1.27 billion. That was adjusted
09:41 22 down by Mr. Bratic to obtain the Webex Audio gross
09:41 23 profits. And it was apportioned to be just a fraction
09:41 24 of that because it was apportioned according to the
09:41 25 technical benefits of the Paltalk patent versus other

09:42 1 features that are in Webex.

09:42 2 And finally, the ultimate
09:42 3 calculation -- again, Mr. Bratic will walk you through
09:42 4 this -- the total damages owed by Cisco for its use,
09:42 5 and for the billions of dollars that it generated using
09:42 6 the patented invention is \$102 million. And we're
09:42 7 going to talk a lot more about that later.

09:42 8 Again, as the Court instructed you,
09:42 9 nothing I say is evidence. Wait and you'll see the
09:42 10 documents. You'll hear the witnesses. Nothing that
09:42 11 Cisco's lawyer says is evidence either. And I look
09:42 12 forward to presenting the witnesses and the documents
09:42 13 and the actual evidence at trial.

09:42 14 Thank you.

09:42 15 THE COURT: Thank you, sir.

09:43 16 OPENING STATEMENT ON BEHALF OF THE DEFENDANT

09:43 17 MS. PIEPMEIER: Good morning, ladies and
09:43 18 gentlemen of the jury. I haven't had a chance to
09:43 19 introduce myself to you yet. My name is Sarah
09:43 20 Piepmeier. And I'm honored to be here on behalf of
09:43 21 Cisco. We appreciate each of you and respect your
09:43 22 time, so let me just jump right in.

09:43 23 I'm going to cover five main topics in my
09:43 24 30 minutes with you this morning. And they go in
09:43 25 order. Why are we here? Cisco and its witnesses, the

09:43 1 '858 patent and what came before the '858 patent, why
09:43 2 Webex is different, and Paltalk's \$102 million damages
09:43 3 demand which you just heard about from Mr. Tribble.

09:43 4 So let's start with why are we here?
09:43 5 Let's start with the basics, and we'll just kind of
09:43 6 orient ourselves. Now, I agree with Mr. Tribble, what
09:43 7 I am saying is not evidence, and I hope to guide you
09:43 8 through what the evidence will be this week. But I
09:44 9 want to start by setting the stage.

09:44 10 So Paltalk asserts the '858 patent
09:44 11 against Cisco; you've heard about that patent a little
09:44 12 bit. And Mr. Tribble explained that this patent
09:44 13 originated with a now-defunct company called HearMe.
09:44 14 And the '858 patent covers a specific method of hosting
09:44 15 an audioconference, that -- this is one thing he didn't
09:44 16 say, no one has used and no one would use because the
09:44 17 technology is almost 25 years old.

09:44 18 Now, you heard a little bit about
09:44 19 Paltalk's history and various Paltalk products. You're
09:44 20 going to hear more about them this morning, I suspect,
09:44 21 from Mr. Katz.

09:44 22 And I want to note one thing. Despite
09:44 23 offering audio-videoconferencing products, even Paltalk
09:44 24 doesn't use the '858 patent. Why? Because it's
09:44 25 obsolete technology. In fact, from the time that it

09:44 1 issued until it expired, no one has ever put the
09:45 2 '858 patent into a product and it has never been
09:45 3 licensed other than part of a large portfolio. It
09:45 4 simply hasn't been used.

09:45 5 Now, here's the other fundamental issue,
09:45 6 and my -- both my analogy and my fundamental issue have
09:45 7 been jumped a little bit by Mr. Tribble, but that's
09:45 8 fine. I'm still going to tell the story, the analogy
09:45 9 story because I think, respectfully, I tell it just a
09:45 10 little bit better than Mr. Tribble does. So I'm going
09:45 11 to go through that.

09:45 12 Now, it is our position -- and again,
09:45 13 the -- both sides have different arguments on this. It
09:45 14 is our position that the only way that Paltalk can have
09:45 15 an infringement read is by essentially having a
09:45 16 tortured read of the English language.

09:45 17 Now, as a former English major, sort of a
09:45 18 closet English major because I'm a high-tech lawyer,
09:45 19 that offends me deeply. But in the context of this
09:45 20 patent, "each" takes its plain and ordinary meaning,
09:45 21 which is "all" or "every."

09:45 22 So let me tell you a little bit about
09:46 23 what I mean. Let me tell you how this breaks down.
09:46 24 And this is the analogy that has been pre-staged a
09:46 25 little bit.

09:46 1 So I live in San Francisco. I have a
09:46 2 niece and a nephew who live in Connecticut, Maggie and
09:46 3 John; they're 9 and 11. And whenever I go to visit
09:46 4 them, which I like to do a lot because, of course, we
09:46 5 all like to go see our nieces and nephews, especially
09:46 6 at their age -- they're 9 and 11 right now. It's a
09:46 7 pretty cool age. Before I go visit them, I text them
09:46 8 and I say, Auntie Sarah's going to bring each of you a
09:46 9 present. Now, it's not a cookie, like that would not
09:46 10 be enough to fly all the way from California, right?
09:46 11 It's like a real present.

09:46 12 So I text them and I say, Auntie Sarah's
09:46 13 going to bring you a little present. And don't you
09:46 14 know, when I show up at that airport in Hartford,
09:46 15 Connecticut, I better have a present for Maggie, and I
09:46 16 better have a present for John. Because I made that
09:46 17 mistake once before, and let me tell you, I have not
09:46 18 heard the end of it. Everyone knows what the word
09:46 19 "each" means.

09:46 20 And what I find so telling about
09:46 21 plaintiff's presentation just now is that they admitted
09:46 22 that they have to change the meaning of the word
09:47 23 "each." They admitted that. You heard that from
09:47 24 Mr. Tribble.

09:47 25 He told you, he put a red flag up and

09:47 1 said, essentially, ignore what counsel is going to tell
09:47 2 you. In a sense he's saying ignore common sense.
09:47 3 Ignore the English language. He is admitting that they
09:47 4 are changing the meaning of "each." And what they are
09:47 5 changing it to is "one or more." And why are they
09:47 6 doing that? They are doing that because that is the
09:47 7 only way that they can find a read on Webex.

09:47 8 So with that in mind, let's turn briefly
09:47 9 to Cisco. And I should say, I don't want to get into
09:47 10 specifics too much here, but the way they do this is
09:47 11 essentially rewriting the patent. They're literally
09:47 12 scratching out the word "each" and writing in "one or
09:47 13 more." I don't want to get too far into the specifics
09:47 14 of the patent at this point.

09:47 15 So Cisco -- let's talk about them for the
09:47 16 moment. Let's talk about my client that I'm honored to
09:47 17 be here to represent. They are a true American success
09:47 18 story. Cisco was founded in 1984 by Sandy Lerner and
09:48 19 Len Bosack; you see them there on the slide. They met
09:48 20 in the 1970s at Stanford as students. They fell in
09:48 21 love, they got married, that whole story, and then they
09:48 22 worked in the early '80s as Stanford University
09:48 23 scientists. And they were in different labs. And
09:48 24 picture this, this is the early '80s and they're in
09:48 25 different labs. And they're trying to find a way to

09:48 1 talk between the labs.

09:48 2 And so what do they do as innovators?

09:48 3 They create the first local area network; it's called a

09:48 4 LAN. They created a local area network so that the

09:48 5 different labs at Stanford could talk to each other.

09:48 6 And LANs are everywhere now, right?

09:48 7 There's a LAN in this courtroom. There's probably a

09:48 8 LAN in your workplace. Some of us have LANs in our

09:48 9 homes.

09:48 10 Cisco's foundational networking

09:48 11 innovations are kind of like the hidden pipes

09:48 12 underlying the Internet. You don't always see them,

09:48 13 but you certainly know if they failed.

09:48 14 Now, today, after 40 years of steady

09:48 15 growth, Cisco employs tens of thousands of people

09:48 16 throughout the United States, and it makes products and

09:48 17 services used all over the world, some of which you see

09:49 18 here on Slide 11.

09:49 19 I asked -- you can say Cisco's history of

09:49 20 innovation is perhaps best showed most clearly by the

09:49 21 fact that it has 14,000 issued U.S. patents of its own.

09:49 22 As you'll hear, more than 700 of those patents relate

09:49 23 to Webex. That's the technology that we're talking

09:49 24 about here.

09:49 25 And of those 740 patents that Cisco has

09:49 1 on Webex, it has 412 patents of its own on audio. Now,
09:49 2 audio is what Mr. Tribble just talked about. That is
09:49 3 what they are accusing here. Cisco has its own 412
09:49 4 patents on audio features. There are so many
09:49 5 innovations within Cisco's audio that they have
09:49 6 patented that. And that tells you what drives demand
09:49 7 to our Cisco products.

09:49 8 Now, you're going to hear from Cisco
09:49 9 witnesses. It's not just about how great their
09:49 10 products are. You know, everyone's going to say their
09:49 11 products are good.

09:49 12 You're going to hear from Cisco witnesses
09:50 13 who share their experience working for a company named
09:50 14 the best place to work year after year by Fortune
09:50 15 Magazine. In fact, in 2022, Cisco was voted the number
09:50 16 one best place to work in the United States by Fortune.

09:50 17 And that success, again, isn't because of
09:50 18 great products, the power of the Internet. You will
09:50 19 hear from Cisco witnesses about how Cisco invests
09:50 20 millions every year in giving back to their local
09:50 21 communities. And this People magazine article that I
09:50 22 have here on Slide 14 shows Cisco as number one in an
09:50 23 article on 100 employers who put their communities
09:50 24 first.

09:50 25 Now, I talked a bit about Cisco. Let's

09:50 1 turn back to Webex. The product that's -- that Paltalk
09:50 2 accuses of infringement.

09:50 3 Webex was founded as a company in 1995,
09:50 4 long before HearMe applied for the '858 patent. Cisco
09:50 5 acquired Webex in 2007, and you just saw a document a
09:50 6 moment ago that came right after that acquisition.

09:51 7 Now, we know, of course, Webex was
09:51 8 innovating and had its own products and technology
09:51 9 before that acquisition. 2007 is when Cisco acquired
09:51 10 it. But Cisco brought Webex into the Cisco fold, kept
09:51 11 those products, enhanced them, and it has become a core
09:51 12 part of Cisco's products offerings.

09:51 13 Now, Webex is award-winning. Whether you
09:51 14 like using it, if you've used it or not, Webex
09:51 15 certainly has won a lot of awards. I put those up on
09:51 16 Slide -- or some of them, I should say. They didn't
09:51 17 all fit. But I should put them up on Slide 16 so that
09:51 18 you can see what drives demand for Webex.

09:51 19 Now, Paltalk accuses a specific method of
09:51 20 hosting an audioconference, and you heard a little bit
09:51 21 about it just a moment ago. It's with participants who
09:51 22 dial in using a plain old telephone and those who use a
09:51 23 computer to join.

09:51 24 We sometimes call the plain old telephone
09:51 25 method PSTN. We sometimes call the computer method --

09:51 1 excuse me -- VoIP.

09:52 2 Now, here's the important part. The
09:52 3 evidence will show that that ability to join an
09:52 4 audioconference using a plain old telephone in a
09:52 5 computer has been around for decades. If that's what
09:52 6 the invention is, that's not what here we invented.
09:52 7 And it's important to keep that in mind as we go
09:52 8 through this.

09:52 9 What they actually accuse is a very
09:52 10 specific way of doing that, and we'll talk about that a
09:52 11 little bit more later.

09:52 12 Now, I've done a lot of talking here,
09:52 13 obviously. But I'm not the important person here. And
09:52 14 what I say, again, is not evidence.

09:52 15 Who's important? The Cisco witnesses are
09:52 16 important. And I want to introduce them to you.

09:52 17 This week you'll hear from Mr. Amit
09:52 18 Barave. Mr. Barave has a master's from the University
09:52 19 of California and is a vice president of product
09:52 20 management at Cisco.

09:52 21 He's been the product manager of Webex
09:52 22 for the past ten of his 23 years at Cisco. And he's
09:53 23 actually currently on a plane from California. And
09:53 24 he'll testify about the Webex products and the various
09:53 25 features that drive demand for Webex.

09:53 1 Next, you'll hear from Mr. Nathan
09:53 2 Buckles. Now, he lives just a couple of hours north of
09:53 3 Waco in McKinney. He has a computer science degree
09:53 4 from the University of Texas at Dallas, and he is a
09:53 5 distinguished engineer who has worked at Cisco for a
09:53 6 quarter of a century. And he might not have known that
09:53 7 I was going to describe it that way, because it does
09:53 8 sound like a long time.

09:53 9 But for the last decade, he has worked at
09:53 10 Webex, and he is the lead engineer responsible for how
09:53 11 Webex transmits and receives audio and video.

09:53 12 Next, you'll hear from Mr. Aaron Belcher.
09:53 13 He is a principal engineer and the head architect for
09:53 14 Webex. He has been with Cisco for over two decades and
09:53 15 has been working on Webex specifically for the last ten
09:53 16 years. He came in from Washington State and is going
09:53 17 to explain how Webex processes audio.

09:53 18 Now, let me take a step back before I
09:53 19 introduce the three industry experts.

09:53 20 It occurred to me, as I was preparing
09:54 21 these little blurbs, that each of these fact witnesses
09:54 22 from Cisco has been at Cisco over two decades and has
09:54 23 ten years of experience on Webex or more.

09:54 24 Now, I think that says something about
09:54 25 Cisco, that you've got these senior engineers and

09:54 1 executives who have spent 20 years at Cisco, who have
09:54 2 stayed there for 20 years, which is somewhat unusual in
09:54 3 this day and age, who are coming to Waco to explain to
09:54 4 you how Webex works.

09:54 5 And who better to do that than somebody
09:54 6 who lived and breathed Webex either on the technical
09:54 7 side or the product management side for ten years?
09:54 8 They're the right people to tell you how Webex works.

09:54 9 Now, you'll also hear from these -- our
09:54 10 industry experts.

09:54 11 Mr. Dean Willis earned his undergrad and
09:54 12 master's in computer science from A&M, and he is a
09:54 13 renowned leader in the area of Voice over IP, which is
09:54 14 VoIP, conferencing and multimedia systems.

09:54 15 Since the early '90s, he's worked with
09:54 16 numerous companies in that field, and he's going to
09:54 17 explain why Webex does not infringe.

09:55 18 You'll also hear from Mr. James Bress, an
09:55 19 electrical engineer with over 40 years of experience in
09:55 20 the relevant technology. He's designed relevant
09:55 21 systems and tested them throughout the years.

09:55 22 He has traveled from Florida to explain
09:55 23 the technology that came before the '858 patent and why
09:55 24 that that patent was known to those in the art before
09:55 25 it was filed.

09:55 1 Last, but not least, you'll hear from
09:55 2 Ms. Lauren Kindler. She has a bachelor's in economics
09:55 3 from Tulane and a master's from SMU. And she's an
09:55 4 expert in the area of economics and patent valuation
09:55 5 for the past two decades.

09:55 6 She's come down from Dallas, and she's
09:55 7 going to explain how the market would value the
09:55 8 '858 patent. And in addition, the errors, the
09:55 9 fundamental errors in Mr. Bratic's calculation.

09:55 10 So let's turn to the moment for -- to
09:55 11 Paltalk and the '858 patent and what came before.
09:55 12 We're going to shift gears for a moment.

09:55 13 So as you know, the plaintiff here is
09:55 14 Paltalk Holdings, but as Mr. Tribble explained, the
09:56 15 '858 patent came from a company called HearMe.

09:56 16 Now, HearMe was, like many Silicon Valley
09:56 17 startups, a company that rose real fast and fell real
09:56 18 hard in the late '90s and early 2000s.

09:56 19 Paltalk bought the assets of HearMe,
09:56 20 which included everything from servers to patents to
09:56 21 applications to trademarks with domain name for a very
09:56 22 small sum that we'll discuss later because it's
09:56 23 confidential.

09:56 24 Paltalk has been around for 20 years, and
09:56 25 it has acquired a series of companies during that time.

09:56 1 I'm sure you'll hear a lot about that.

09:56 2 But here's one thing you won't hear from
09:56 3 Mr. Katz. You won't hear how Paltalk has used the
09:56 4 patent in any way. In fact, from the time it was
09:56 5 acquired until Paltalk used it to sue in 2021, the
09:56 6 patent essentially sat on a shelf.

09:56 7 Now, I want to note -- in fact, I should
09:57 8 go back one. You see five inventors here on the slide.
09:57 9 These are inventors with HearMe. And none of those
09:57 10 inventors joined Paltalk when they came over.

09:57 11 The inventors didn't come over. We'll
09:57 12 hear about how they shelved the products. They had no
09:57 13 role with Paltalk at all going forward.

09:57 14 In fact, no one used the '858 patent at
09:57 15 all, at all until Paltalk pulled it down, dusted it off
09:57 16 in 2021, and asserted it against Cisco.

09:57 17 And speaking of Paltalk's lawsuit, y'all
09:57 18 remember the analogy that Mr. Siegmund used during jury
09:57 19 selection about someone who's using your land? And you
09:57 20 heard it a little bit again today.

09:57 21 But during jury selection, Mr. Siegmund
09:57 22 said if someone is using your land without permission,
09:57 23 you can go try to talk to them. You can reason with
09:57 24 them. And if that doesn't work, then maybe you have to
09:57 25 sue.

09:57 1 He contrasted that to a patent case, and
09:57 2 what he said, well, in a patent case, there's no patent
09:58 3 to lease. You have to sue.

09:58 4 But here's the fact that he glossed over
09:58 5 in that explanation. He glossed over one key fact.
09:58 6 Paltalk never reached out to Cisco before suing.
09:58 7 Paltalk never sent Cisco a letter. Paltalk never tried
09:58 8 to negotiate. Paltalk never picked up the phone.

09:58 9 The first thing that Paltalk did, their
09:58 10 first step, as soon as they dusted off the '858 patent
09:58 11 was run to court, pay the couple-hundred-dollar filing
09:58 12 fee and filed this lawsuit. It was right as the patent
09:58 13 was about to expire.

09:58 14 Paltalk has never once offered Cisco a
09:58 15 license, but today Paltalk is asking you to award it
09:58 16 \$100 million.

09:58 17 So we talked a bit about how the
09:58 18 '858 patent came to be, as much as we know anyway,
09:58 19 because we're not going to hear from the HearMe
09:58 20 inventors. They're not coming here this week.

09:58 21 But let's talk about what was happening
09:58 22 in the industry before the '858 patent and why that
09:58 23 patent is invalid.

09:59 24 Now, I recall you saw the patent video
09:59 25 earlier. You've heard about the role of the USPTO and

09:59 1 the examining patent applications.

09:59 2 So you may wonder, as I would if I were
09:59 3 in your shoes, how is it that the USPTO can issue a
09:59 4 patent -- it's that nice stamp, that gold stamp that
09:59 5 people hang on the wall -- and then a jury comes in and
09:59 6 invalidates that patent. How could that happen?

09:59 7 Well, that's why we have jury trials.
09:59 8 That is the job of the jury. A defendant who's accused
09:59 9 of infringement has the right by law to come to a jury
09:59 10 and say, this patent shouldn't have issued in the first
09:59 11 place.

09:59 12 And why might that happen? Well, that
09:59 13 might happen because people make mistakes. You've got
09:59 14 a human being, an examiner. It's not AI. It's not a
09:59 15 bot. You've got a human being sitting there examining
09:59 16 the patent, and they make mistakes. They overlook
09:59 17 things. No process is perfect. And so that is why we
09:59 18 have a system where the jury takes another look.

09:59 19 Now, you also might remember from the
09:59 20 patent video that you can't just -- the patent can't
10:00 21 just be something that's obvious to people of skill in
10:00 22 the art. Right? It can't be something that was
10:00 23 already known.

10:00 24 And I mentioned Mr. Bress earlier. He's
10:00 25 been in this industry for decades. And he will tell

10:00 1 you that what Paltalk claims was new was already new in
10:00 2 the industry before HearMe filed this application.

10:00 3 And he's going to talk to you about
10:00 4 Mr. Botzko and Mr. Botzko's team and this patent right
10:00 5 here, the Botzko patent.

10:00 6 Now, there's no dispute that the Botzko
10:00 7 came almost three years before the '858 patent. That's
10:00 8 just not something that can -- it came way before.

10:00 9 And so the question is: What did the
10:00 10 Botzko patent disclose? And as you'll hear from
10:00 11 Mr. Bress, what the Botzko patent did is it talked
10:00 12 about having a call with devices like telephones and
10:00 13 computers on a local area network at the same time.

10:00 14 And it also talked -- and I don't want to
10:00 15 get too far in the weeds here -- about how you process
10:00 16 the data to allow those two things to happen
10:01 17 simultaneously. That is what you're going to hear from
10:01 18 Mr. Bress, and you're going to hear how Botzko came
10:01 19 first.

10:01 20 Now, let's turn to the '858 patent,
10:01 21 stepping away from Botzko a minute. Let's go to the
10:01 22 '858 patent.

10:01 23 Paltalk's counsel described that to you a
10:01 24 moment ago, and you heard a lot about using computers
10:01 25 and telephones to participate in an audioconference. I

10:01 1 think he used the term "VoIP" and "PSTN."

10:01 2 You may have the impression that the
10:01 3 invention at issue is simply allowing an
10:01 4 audioconference with computers and telephones. But
10:01 5 that -- that idea, allowing a telephone conference with
10:01 6 telephones and computers, was known long before the
10:01 7 '858 patent. The '858 patent is something much more
10:01 8 specific than that. They did not get a patent on just
10:01 9 allowing a phone and a computer to have an
10:01 10 audioconference.

10:01 11 And so before I walk through the patent,
10:01 12 I want to show you a little animation that I prepared
10:02 13 that I think explains it.

10:02 14 Now, I want to be clear here. Again, as
10:02 15 we've said, these are my words. You should look at the
10:02 16 patent claim. I prepared this animation because I
10:02 17 think it helps explain what's going on because the
10:02 18 claim, as Mr. Tribble said, is a mouthful. But
10:02 19 obviously the words of the patent are what govern here.

10:02 20 So what do I have here on Slide 27? I
10:02 21 have an animation that shows two users at the top in
10:02 22 green on the left and the right who are what we call
10:02 23 VoIP users. They've got some kind of a computing
10:02 24 device, whether it's a computer, computer phone,
10:02 25 et cetera. And then on the bottom, I have two PSTN

10:02 1 users. They're using the old-school telephones. In
10:02 2 fact, one of those is like a rotary phone that has that
10:02 3 super satisfying, you know, noise when you slam it down
10:02 4 back when you could hang up on people.

10:02 5 Now, let's walk through what the patent
10:02 6 is talking about. This is an overview of Claim 1. For
10:02 7 the users that are participating by VoIP, what's
10:02 8 happening -- and this is a summary. This is not the
10:02 9 language of the claim -- is that the patent's saying
10:03 10 you multiplex all active speakers' data into a
10:03 11 multiplexed stream. I understand that's a mouthful.
10:03 12 What does that mean?

10:03 13 When you think about multiplexing, one
10:03 14 way to think about it -- and again, you could view the
10:03 15 words of the patent, but one way to think about that is
10:03 16 coupling together multiple audio streams into a flow of
10:03 17 data. You can think of it that way. But again, the
10:03 18 claim words are what matter.

10:03 19 So the claim is telling us, multiplex all
10:03 20 active speakers into a multiplexed stream and then send
10:03 21 that to all VoIP users. That's Claim 1.

10:03 22 It is the same process for users who are
10:03 23 participating by telephone, except it's called a
10:03 24 combined packet. It's, you know, a different technical
10:03 25 formulation, but that's the process. Is you gather

10:03 1 together all the audio from the active speakers, you
10:03 2 put it in a stream, you send it to all of the VoIP
10:03 3 users. Same thing on the bottom.

10:03 4 So why is this old patent that nobody's
10:03 5 ever used relevant to Webex? Well, the short answer is
10:04 6 it's not, but let me share with you why. And Cisco
10:04 7 witnesses will explain and the evidence will
10:04 8 demonstrate, Webex just doesn't work in the specific
10:04 9 way claimed by the patent.

10:04 10 Now, that brings me to the burden of
10:04 11 proof. You saw a scale with a feather on it. I would
10:04 12 submit that you should listen to the Judge's
10:04 13 instruction on what the preponderance of the evidence
10:04 14 means and not be overly influenced by an animation with
10:04 15 a feather on it. But Paltalk's counsel did tell you
10:04 16 about the preponderance of the evidence.

10:04 17 Now, this is important. What that does
10:04 18 not mean is that you can simply show more than half the
10:04 19 claim elements are met. You saw Claim Elements No. 1
10:04 20 through 8 in Mr. Tribble's presentation. Preponderance
10:04 21 of the evidence doesn't mean there's five of them.

10:04 22 What preponderance of the evidence means
10:04 23 is that you have to believe it is more likely or not
10:04 24 that Webex has every single one of those eight claim
10:04 25 elements in Claim 1. That is what this means. The law

10:04 1 requires Paltalk to prove that for every single
10:05 2 element.

10:05 3 So I'm going to -- that's an abstract
10:05 4 concept. I'm a very visual person, as you may have
10:05 5 been able to tell. So I'm going to show you what I
10:05 6 mean with a sample claim.

10:05 7 So we've got a sample claim up here on
10:05 8 Claim -- on Slide 29. Somebody's got a patent on a
10:05 9 soccer ball. There are four elements on that. There's
10:05 10 eight elements in Claim 1 that we're talking about
10:05 11 here, but in this sample there's four. It is made of
10:05 12 leather, it is stitched together, it is filled with
10:05 13 compressed air, and it is spherical. That is your
10:05 14 patent on a soccer ball.

10:05 15 THE COURT: Counsel, you've got ten
10:05 16 minutes left.

10:05 17 MS. PIEPMEIER: Thank you, Your Honor.

10:05 18 Now, they're trying to sue a football
10:05 19 company, makes a football and the football might have
10:05 20 three of those elements, right? It's made of leather,
10:05 21 it's stitched together, and it's filled with compressed
10:05 22 air. But it's oval. In that situation, that is not
10:05 23 the preponderance of the evidence. That is no
10:05 24 infringement.

10:05 25 And I want to be clear here. What I am

10:05 1 saying -- you should listen to Judge Albright's
10:05 2 instructions, but what I am saying here is not attorney
10:05 3 argument. That is what the law requires. You have to
10:06 4 prove by a preponderance of the evidence for each of
10:06 5 the elements of the claim.

10:06 6 Now, here is Claim 1. I've color-coded
10:06 7 it a little bit. I want to be clear: My summary is
10:06 8 not the claim language. It is for convenience.

10:06 9 But what Claim 1 is talking about here,
10:06 10 just at the highest level, is that the system is
10:06 11 receiving audio from each client. The system is
10:06 12 determining which clients are kind of the old-school
10:06 13 telephone ones and which ones are the computer ones.
10:06 14 The system is determining which of them are active
10:06 15 speakers. And then the system is creating -- we saw
10:06 16 that multiplexed stream earlier -- and sending it to
10:06 17 all users' devices that connects audio, and then it's
10:06 18 doing the same thing for the devices that cannot
10:06 19 use audio, plain old telephones, but it's putting them
10:06 20 into a packet.

10:06 21 That is essentially what's happening in
10:06 22 Claim 1. So again, look at the claim language. My
10:07 23 summary is for convenience and just to make it easier.

10:07 24 But here's the problem for Paltalk.
10:07 25 Webex never sends a multiplexed stream to all clients

10:07 1 who can mix, as required by Limitation 6. They also
10:07 2 don't do the combined packet for Limitation 8. And for
10:07 3 good reason. That may have worked 25 years ago, but
10:07 4 Webex has a much more advanced way of doing it. Now,
10:07 5 the Cisco witnesses I just spent all this time bragging
10:07 6 on, they're going to explain it better because this is
10:07 7 what they do. Here's a quick summary.

10:07 8 Instead of creating a multiplexed stream
10:07 9 and sending it to everyone, Webex creates a unique
10:07 10 stream for each participant, and that allows Webex to
10:07 11 optimize the audio for everyone. You couldn't do that
10:07 12 20 years ago. 20 years ago we had dial-up modems.
10:07 13 This is a whole different situation. Webex shouldn't
10:07 14 and doesn't want to operate the way things could have
10:07 15 been 20 years ago.

10:07 16 Now, I want to mention one other thing,
10:07 17 which is, that I just talked about Claim 1. I'm
10:08 18 obviously running out of time, as Judge Albright just
10:08 19 mentioned, so I'm not going to go through the dependent
10:08 20 claim. I'm just going to mention one thing about them.

10:08 21 The way -- you will be instructed by
10:08 22 Judge Albright and you should listen to him, but the
10:08 23 way this works is if a defendant, if Cisco does not
10:08 24 infringe Claim 1, they cannot as a matter of law
10:08 25 infringe the dependent claims.

10:08 1 So I've just demonstrated quickly why I
10:08 2 believe and why Cisco believes it doesn't infringe
10:08 3 Claim 1. If it doesn't infringe Claim 1, as a matter
10:08 4 of law, it can't infringe Claims 2 through 5.

5 In the interest of time, because I'm
10:08 6 running out of time, I will talk about that here, and
10:08 7 I'm sure you guys are not going to be upset to hear a
10:08 8 little bit less from me. But I wanted to just make
10:08 9 that point that the same argument will hold for the
10:08 10 dependent claims.

10:08 11 Now, I want to address one other thing,
10:08 12 and this goes back to the red flag. Paltalk's counsel
10:08 13 told you that you should ignore our evidence because
10:08 14 we're essentially contorting the patent in some way.

10:08 15 I want to be clear. HearMe is the one
10:09 16 who wrote this patent. HearMe decided what words to
10:09 17 put in the patent. HearMe chose the word "each." It's
10:09 18 not Cisco's burden to transform that claim into
10:09 19 something that works. Paltalk is asserting the patent;
10:09 20 it's their burden. But what Paltalk doesn't get to do
10:09 21 is change 25 years later the words of that patent.
10:09 22 They don't get to redefine the word "each."

10:09 23 Now, you recall that Paltalk's counsel
10:09 24 put up a slide. It had an oil rig and "Webex" on it.
10:09 25 You heard this, in fact, at the jury selection as well.

10:09 1 And they suggest that Cisco is in a sense building its
10:09 2 house, which is Webex, on the Paltalk lot, which is the
10:09 3 '858 patent. But what's actually going on here is
10:09 4 Paltalk is rewriting the patent. It's changing the
10:09 5 meaning of a common word in the English language. And
10:09 6 it's simply building its fence around Webex.

10:09 7 Now, I don't get to move my fence around
10:09 8 someone else's house, accuse them of building on my
10:10 9 lot, and then kick them off their own land. HearMe
10:10 10 made a contract. It negotiated the claims with the
10:10 11 U.S. government through the patent prosecution process,
10:10 12 and more than 20 years later, Paltalk doesn't get a
10:10 13 redo on those terms because they don't capture Webex.

10:10 14 Now, let's talk about the 102 million
10:10 15 that brings me to today. The evidence will show that
10:10 16 Cisco does not infringe Paltalk's patents. So it's our
10:10 17 hope that you don't reach the issue of damages. But
10:10 18 this is a large damages ask, and I think it's important
10:10 19 to address it at least briefly.

10:10 20 Ms. Kindler's going to explain to you why
10:10 21 this large demand simply doesn't reflect the market
10:10 22 value of this antiquated technology, this old-school
10:10 23 technology from the days of dial-up modems. As I
10:10 24 mentioned, Paltalk bought the assets of an entire
10:10 25 company, HearMe, for a very small amount, and we'll

10:10 1 discuss that later. We're all very familiar with
10:10 2 property that depreciates in value and certainly with
10:11 3 inflation these days.

10:11 4 But the evidence will show that 102
10:11 5 million is simply not a realistic market value for a
10:11 6 license to a patent that Paltalk bought as just one of
10:11 7 a part of a portfolio along with source codes,
10:11 8 trademark, and computer equipment. The expired patent
10:11 9 simply didn't contribute anything valuable. It's not a
10:11 10 coincidence that it sat on the shelf for more than
10:11 11 15 years.

10:11 12 And so Ms. Kindler will walk you through
10:11 13 her analysis which demonstrates what the market would
10:11 14 have valued the specific invention of the '858 patent
10:11 15 to arrive at a fair license. She will also explain in
10:11 16 detail why Mr. Bratic's analysis grossly inflates any
10:11 17 negligible value of this whole technology.

10:11 18 So that brings me to my summation. And I
10:11 19 want to thank you for your attention during the last
10:11 20 30 minutes. I want to thank you for serving and doing
10:11 21 your civic duty this week. I'm going to close here
10:11 22 with three thoughts that I hope to revisit with you
10:11 23 when the evidence closes.

10:11 24 First, the evidence will show that Cisco
10:12 25 does not infringe the asserted patent because Webex is

10:12 1 missing two key elements, at least two key elements.
10:12 2 But I didn't have a chance to cover all of them this
10:12 3 morning.

10:12 4 Second, Cisco will show by clear and
10:12 5 convincing evidence that the asserted claims are
10:12 6 invalid because they were obvious in light of the
10:12 7 Botzko reference. And for these reasons, Paltalk
10:12 8 should not be awarded any damages.

10:12 9 Thank you very much for listening.

10:12 10 THE COURT: Thank you, ma'am.

10:12 11 First witness?

10:12 12 MR. TRIBBLE: Your Honor, Paltalk calls
10:12 13 Mr. Jason Katz.

10:12 14 Oh, Your Honor, at this time we would
10:12 15 like to invoke the rule.

10:12 16 THE COURT: It'll be done.

10:12 17 (The witness was sworn.)

10:13 18 DIRECT EXAMINATION

10:13 19 BY MS. MAGEE:

10:13 20 Q. Good morning, sir.

10:13 21 Please introduce yourself to the jury.

10:13 22 A. Good morning, everybody. My name's Jason
10:13 23 Katz. I'm the chairman and CEO of Paltalk.

10:13 24 Q. Mr. Katz, have you been with us since opening?

10:13 25 A. I have.

10:13 1 Q. Okay. And where do you currently live?

10:13 2 A. I live in Long Island, New York.

10:13 3 Q. Have you been to Texas before?

10:13 4 A. Many times. Yes.

10:13 5 Q. Okay. Tell the jury a little bit about your
10:14 6 background.

10:14 7 A. My background is I was born and raised in
10:14 8 New York City, not a great place, for me, anyway. I
10:14 9 like the suburbs better.

10:14 10 My education, I went to high school, public
10:14 11 high school in Long Island.

10:14 12 I then went to the University of Pennsylvania
10:14 13 in Philadelphia.

10:14 14 After that I went to law school, New York
10:14 15 University Law School.

10:14 16 Got married 1992. Been married 32 years. I
10:14 17 have three kids and a new grandson.

10:14 18 And then I started Paltalk in 1998, and I've
10:14 19 been working on that earnestly ever since.

10:14 20 Q. Okay. Mr. Katz, you mentioned that you went
10:14 21 to law school.

10:14 22 Are you currently a practicing attorney?

10:14 23 A. I am not.

10:14 24 Q. Did you take the bar exam after law school?

10:14 25 A. I took the bar exam. I passed the bar exam.

10:14 1 I was admitted to practice in New York but then retired
10:14 2 from the law.

10:14 3 Q. Okay. And what did you do after graduating
10:15 4 from law school?

10:15 5 A. After law school, I had -- I had an economics
10:15 6 degree in college. So I was sort of business-facing.
10:15 7 I went to law school. For me, I thought it was a great
10:15 8 education. My father had done that also. And he was a
10:15 9 nonpracticing attorney. So I thought it'd be a great
10:15 10 background.

10:15 11 I had a chance to go into business with sort
10:15 12 of someone I knew in New York. And we formed a small
10:15 13 company. It's here on the screen called M.J. Capital.
10:15 14 It was a commodity and stock brokerage company. I did
10:15 15 that for five years.

10:15 16 Q. Okay. And why did you leave M.J. Capital,
10:15 17 sir?

10:15 18 A. In 1993, I mentioned I was married in '92, and
10:15 19 we had a child in 1993. She was born quite ill. Ill
10:15 20 and spending time in ICU for a period of time, which
10:16 21 had a huge impact on me personally and sort of didn't
10:16 22 feel like I could go back to doing what I was doing
10:16 23 before.

10:16 24 I actually considered going to medical school,
10:16 25 if you can believe that, after all of that, watching

10:16 1 what the doctors did with those, you know, newborns.

10:16 2 So ultimately, M.J., J, that's me, and M went
10:16 3 his way, the one other person we employed. And then I
10:16 4 moved on to something else.

10:16 5 Q. Okay. What did you do next?

10:16 6 A. Well, next, I actually got a job taking care
10:16 7 of a computer network. And in 1993, I mentioned my
10:16 8 daughter was born in 1993, in April. So after she came
10:16 9 home finally and was settled, I went to work for the
10:16 10 small company. And I took -- I actually -- you know, I
10:16 11 liked personal computers.

10:16 12 I liked the Internet in the very early days.
10:17 13 And I took care of the computer network. You know, it
10:17 14 was newly connected. It was sort of an antiquated
10:17 15 network, but it needed printers. It needed software on
10:17 16 everybody's computer. It needed to be backed up. And
10:17 17 it even needed to be connected to the Internet for
10:17 18 various updates to the hardware and everything and
10:17 19 software. And that's what I did.

10:17 20 Q. Okay. And what interested you about those
10:17 21 early computers, Mr. Katz?

10:17 22 A. Yeah. I was in college when the first PC
10:17 23 arrived in 1984. Very rudimentary, floppy disks, very
10:17 24 large five-and-a-quarter floppy disks. Didn't do much.

10:17 25 But I thought it was very interesting. I got

10:17 1 into spreadsheets early on. So I just -- I thought
10:17 2 that the technology was really advancing, and I saw the
10:17 3 Internet come and sort of led me along the way to end
10:17 4 up starting Paltalk.

10:17 5 Q. Mr. Katz, what was your experience with
10:18 6 computers in your personal life at this time?

10:18 7 A. I got -- I got a computer when I went to law
10:18 8 school actually in 1985. That was the first one I had.
10:18 9 Before that I was typing papers on a typewriter. I'm
10:18 10 sure a lot of people were. So that was a leap forward
10:18 11 for me. So I always had a personal computer after
10:18 12 that.

10:18 13 And then, you know, at M.J. we had computers
10:18 14 as well, and I had facility with them. And then, you
10:18 15 know, the job from 1993 to 1998, constantly upgrading
10:18 16 the hardware and software that was at my job.

10:18 17 Q. Did you use computers to communicate in any
10:18 18 way?

10:18 19 A. Yeah. We did. I did. So I was an AOL
10:18 20 customer. I guess a lot of people were, America
10:18 21 Online. It feels like some people thought AOL was the
10:18 22 Internet. You know, they sent the CDs around. I don't
10:18 23 know if anybody remembers that. But they would mail
10:19 24 them to your house literally.

10:19 25 So that's the way I connected initially, and

10:19 1 they had a really cool feature which was called AOL IM.
10:19 2 So you could instant-message people. You got a little
10:19 3 buddy list. You could define who was on it, friends,
10:19 4 family, whoever.

10:19 5 And it was, to me, pretty revolutionary. I
10:19 6 didn't have to coordinate talking to a cousin that was
10:19 7 in another country or friends and family. And if they
10:19 8 were online, we could -- you could chat. So I did
10:19 9 that.

10:19 10 Q. Okay. Mr. Katz, were you able to
10:19 11 voice-communicate at this time?

10:19 12 A. Well, so AOL certainly didn't have the
10:19 13 capacity to do that, and so one particular day I was
10:19 14 text-chatting and it was 1998. My -- I have -- we have
10:19 15 three kids. So my bigger son was two years old, and I
10:19 16 was typing, texting, by AOL IM. And my two-year-old --
10:20 17 and we all know two-year-olds. He just jumped on me,
10:20 18 and I literally couldn't type.

10:20 19 I'm like trying to type and I couldn't, and I
10:20 20 had sort of a eureka moment, was, why am I not talking
10:20 21 instead of typing?

10:20 22 And, you know, I was surprised. I researched
10:20 23 that idea and nobody was doing it. There was no
10:20 24 product that -- the big presence of that instant
10:20 25 messaging is important because there was a presence

10:20 1 manager. You knew when someone was talking.

10:20 2 So there weren't -- nobody was doing it. I
10:20 3 decided to try and do it myself. And I was 35 years
10:20 4 old. I just had -- we had our third child who was just
10:20 5 born, and I've been working at this ever since.

10:20 6 Q. Okay. And, sir, did these ideas lead to the
10:20 7 formation of Paltalk?

10:20 8 A. 100 percent they did. So, you know, when that
10:20 9 happened and I did the research, I decided to start a
10:20 10 company to produce my software that basically looked
10:21 11 just like that AOL Instant Messenger, but the deep
10:21 12 thought would be to talk to someone you clicked on.

10:21 13 Of course you need a microphone. Of course
10:21 14 you need speakers. I heard that it was a dial-up
10:21 15 world. That's true. That's how we all connected, with
10:21 16 that screechy sound. But what was great about it was
10:21 17 it enabled you to talk to people worldwide for free.

10:21 18 Okay. Everybody knows just how expensive long
10:21 19 distance is, international calling. If you go online
10:21 20 with the Internet, you could talk to anybody in the
10:21 21 world worldwide.

10:21 22 So fortunately for me, I knew somebody who
10:21 23 produced some coding. I don't do any coding. I don't
10:21 24 know how to code. And then he knew somebody who also
10:21 25 knew. And basically, I had three people. One to do

10:21 1 the service side of the software, one person to do the
10:21 2 client side of the software, and one person to make a
10:22 3 web page. And we worked that way, you know, through
10:22 4 1998 and launched the first version of the software in
10:22 5 January 1999.

10:22 6 Q. Okay. Mr. Katz, I'm going to back up for a
10:22 7 second.

10:22 8 When did you form the Paltalk company?

10:22 9 A. Yeah. 1998. Sort of right after my son
10:22 10 jumped on me, I knew that it would be a good idea to
10:22 11 make it a corporation. And, you know, I didn't raise
10:22 12 money from anybody.

10:22 13 And people didn't work full time either. They
10:22 14 all had full-time jobs. Everybody that was working on
10:22 15 this project with me in 1998 had a day job, and they
10:22 16 worked on this at night. And we'd meet once a week to
10:22 17 do it.

10:22 18 So I started and I formed the company in '98.
10:22 19 First software was January of 1999.

10:22 20 Q. Okay. Mr. Katz, how many employees did you
10:22 21 start out with in 1998?

10:22 22 A. Zero. Just self -- I was -- as I just
10:22 23 described, everybody had a job. They were just working
10:23 24 and paying them literally by the hour as an extra
10:23 25 moneymaker for them.

10:23 1 Q. And how many employees does Paltalk have
10:23 2 today?

10:23 3 A. We have 17 right now.

10:23 4 Q. Is Paltalk profitable?

10:23 5 A. Paltalk's -- I mean, I've been in business
10:23 6 since 1999. So Paltalk has historically been
10:23 7 profitable. Otherwise, I wouldn't be here, is what I
10:23 8 would say. It's not easy running a business.

10:23 9 In 2016, after, you know, 18 years of this, we
10:23 10 decided to merge the company into a small public
10:23 11 company. The biggest reason for that was people had
10:23 12 invested in 1999 and 2000, after we grouped and we
10:23 13 really didn't talk about it, but I put the software on
10:23 14 the Internet.

10:23 15 There's a website called download.com. People
10:23 16 could go there and download software. It was free. So
10:23 17 I have to say, I was mildly surprised. A lot of people
10:23 18 did download the software, and it just started to
10:24 19 spread because they realized they could talk for free
10:24 20 worldwide using their Internet connection.

10:24 21 So off of that, I did raise some money and the
10:24 22 next year raised some money again. And all those
10:24 23 investors from 1999, which is thousands, they never
10:24 24 were able to sell any shares to the company even though
10:24 25 I'd been around such a long time.

10:24 1 So we merged into a public company. It was a
10:24 2 small public company. We were 80 percent of a new
10:24 3 company, so I could control it. They had their own
10:24 4 business, very -- it was a dating business, very
10:24 5 complicated, convoluted, bad business, honestly.

10:24 6 So I worked through the problems of trying to
10:24 7 merge the companies, and eventually we did -- I just
10:24 8 sold off that dating business. Those people went their
10:24 9 own way. And then we -- what's called up-listed to the
10:24 10 NASDAQ. So we were in a -- sort of a bulletin board
10:24 11 listing, and we up-listed to the NASDAQ, which is a
10:25 12 national exchange which is where we are now.

10:25 13 Q. And, Mr. Katz, have the last three quarters
10:25 14 been different with respect to Paltalk's profitability?

10:25 15 A. Yeah. They've been difficult. You know --
10:25 16 you know, I think I pride myself on I'm conservative.
10:25 17 I think that's how we lasted all these years.

10:25 18 I think, you know, as we'll see and we'll talk
10:25 19 about it, you heard and saw in opening, I saw it too,
10:25 20 you know, HearMe was a tremendously successful company.
10:25 21 It had raised ridiculous amounts of money. Over
10:25 22 \$270 million went into HearMe. They were sort of
10:25 23 the -- you know, the -- by far the industry leader in
10:25 24 what I was trying to do.

10:25 25 And I was -- you know, I was aware of them,

10:25 1 but we were in a different sort of space. They weren't
10:25 2 doing exactly what I was doing. It was
10:25 3 audioconferencing related to videoconferencing by
10:25 4 acquiring Webex.

10:25 5 So it's been more difficult, but we have a
10:25 6 good balance sheet. We have money on our balance
10:26 7 sheet. So we think with the NASDAQ listing, we're in a
10:26 8 good position moving forward.

10:26 9 Q. Okay. Mr. Katz, you saw in opening a slide
10:26 10 with various Paltalk products.

10:26 11 Of these products, which product has the
10:26 12 largest amount of users?

10:26 13 A. Oh, Paltalk is by far the biggest one. So
10:26 14 that's the one I started. And then each of the other
10:26 15 four are other products that I bought over time and
10:26 16 then grew.

10:26 17 Q. And are these products conferencing products?

10:26 18 A. So Paltalk and Camfrog and Tinychat are all
10:26 19 videoconferencing products, but they're consumer based.
10:26 20 It's more like people can meet each other around
10:26 21 interests on the Internet, sort of like Facebook groups
10:26 22 but with audio and video.

10:26 23 Vumber is a calling product. It allows you to
10:26 24 have another phone number on your cell phone, if you
10:27 25 want one, without a SIM, without an extra chip or

10:27 1 anything. I bought that 12 or 14 years ago.

10:27 2 And ManyCam is a neat one; we bought that a
10:27 3 couple of years ago. It enables you to just change the
10:27 4 background on your camera. So say you're at work and
10:27 5 you want to have your work background. Say you're at
10:27 6 home and you have a different background. Say you
10:27 7 don't want any of those backgrounds you just want to
10:27 8 show mountains behind you, you can do all of that. And
10:27 9 that was a very good fit for our other video chat
10:27 10 products.

10:27 11 Q. Okay. Mr. Katz, I want to take a look at the
10:27 12 Paltalk product in particular.

10:27 13 Is this an image of a Paltalk chat room?

10:27 14 A. It is.

10:27 15 Q. Okay. Walk me through this image.

10:27 16 A. So the way we implemented this, again,
10:27 17 very -- you know, it's different. It's a consumer
10:27 18 product. It's where people are sort of meeting each
10:27 19 other. And they can do it with voice, they can do it
10:27 20 with video. And they can do it in much larger groups.
10:28 21 So I think 50, even 100, 150 can be in a conference.

10:28 22 People choose if they want to be on camera;
10:28 23 they don't have to be. People choose if they want to
10:28 24 view other people; they don't have to. And then you
10:28 25 can type. So there's a text scroll that runs through

10:28 1 the product; you can see that sort of in the middle.

10:28 2 And, you know, that's sort of the way it works.

10:28 3 And it has worked more or less that way for a

10:28 4 long time. Difference is, we've been -- really

10:28 5 improved the quality of the audio, the quality of the

10:28 6 video. The hands-free. You can hands-free now; you

10:28 7 don't have to touch any buttons. And yeah, it's a

10:28 8 pleasant -- it's a pleasant way to interact with it.

10:28 9 We also introduced a few games, so if you want

10:28 10 to play backgammon with somebody, you can play

10:28 11 backgammon. If you want to play chess. So honestly,

10:28 12 I'm very proud of it. It's been around 25 years, and

10:28 13 it came out of my head.

10:29 14 Q. Okay. And how do users join a Paltalk chat
10:29 15 room?

10:29 16 A. They go to the website, Paltalk.com. They
10:29 17 download the piece that accompanied our software, and
10:29 18 then they have to install that program on their
10:29 19 computer. They can also do it with a smartphone, with
10:29 20 an Android or an Apple phone and go to the App Store.

10:29 21 Q. And how many people use Paltalk chat rooms in
10:29 22 a given year?

10:29 23 A. Total across everything is probably a million,
10:29 24 million and a half now. But it's -- you know, I've
10:29 25 been -- I've been around a long time. It's been

10:29 1 downloaded more than 200 million times and in 150
10:29 2 countries. We vocalized the software into other
10:29 3 languages. When we started, I didn't think -- really
10:29 4 didn't think about it. It just was English. The world
10:29 5 doesn't only speak English; the world speaks a lot of
10:29 6 things. So unless you show it to them in their
10:29 7 language, they're never going to use the software. But
10:29 8 that's why we have people, users all over the world.

10:30 9 THE COURT: Counsel, would this be a good
10:30 10 time to break?

10:30 11 MS. MAGEE: Yes, Your Honor.

10:30 12 THE COURT: Ladies and gentlemen of the
10:30 13 jury, we're going to take our morning recess.

10:30 14 I have a couple of instructions for you
10:30 15 that I'm going to spell out now. And from now on,
10:30 16 after now I'm going to say, just remember my
10:30 17 instructions, what they are.

10:30 18 Number one, you're not to talk about the
10:30 19 case with each other or anyone else. When you get home
10:30 20 tonight, obviously, if your spouse says where were you,
10:30 21 you were in court. But we want you to come to the
10:30 22 resolution of this case only after you've heard all the
10:30 23 evidence. So this week, you can talk about college
10:30 24 football or whatever it is you all talk about -- I've
10:30 25 never been on a jury -- but not the case.

10:30 1 Number two, I understand from my
10:30 2 college-aged sons there's something called social
10:30 3 media. I'm unfamiliar with it myself. But if you're
10:30 4 on it, that's fine. Please don't post anything about
10:30 5 the trial while you're sitting on the jury.

10:30 6 Finally, we've already heard some
10:31 7 interesting information. We want you to formulate your
10:31 8 decisions based on what you hear in the courtroom.
10:31 9 Please don't do any independent research on someone you
10:31 10 may see on the witness stand or something you may hear
10:31 11 about. You've heard about VoIP, and you say, I need to
10:31 12 know more about VoIP. The lawyers are going to do a
10:31 13 very good job of explaining what that means, so please
10:31 14 don't do any independent research.

10:31 15 And I'm done preaching to you.

10:31 16 So we'll be in recess for 10 to
10:31 17 15 minutes, and then we'll come back in and we'll
10:31 18 resume with this witness.

10:31 19 THE BAILIFF: All rise.

10:31 20 (Jury exited the courtroom.)

10:31 21 THE COURT: Anything we need to take up?

10:32 22 MR. TRIBBLE: Not right now, Your Honor.

10:32 23 MS. PIEPMEIER: Not at this time,
10:32 24 Your Honor.

10:32 25 (Recess taken.)

10:48 1 THE BAILIFF: All rise.

10:48 2 THE COURT: Please remain standing for
10:48 3 the jury.

10:48 4 (Jury entered the courtroom.)

10:48 5 THE COURT: Thank you. You may be
10:48 6 seated.

10:48 7 Thank you. You may be seated.

10:49 8 BY MS. MAGEE:

10:49 9 Q. Mr. Katz, are you ready to resume?

10:49 10 A. Yes.

10:49 11 Q. Before the break, you took us through the
10:49 12 early days of Paltalk.

10:49 13 Who funded the development of the first
10:49 14 Paltalk product?

10:49 15 A. I did for that first year.

10:49 16 Q. And once Paltalk launched its initial
10:49 17 software, was that product successful?

10:49 18 A. I think it was successful. As I said, it
10:49 19 was -- we put it on the site called download.com, which
10:49 20 was a free software site that anyone could go to and
10:49 21 was downloaded, I think, 20,000 times in the first
10:49 22 couple of months it was available.

10:49 23 Q. And did Paltalk add video capabilities at some
10:49 24 point?

10:49 25 A. We did. We -- I always imagined video. As I

10:50 1 pointed out, it was a dial-up world. Cameras weren't
10:50 2 available very much, not a lot of bandwidth. But by
10:50 3 2001, so two and a half, two years after I launched a
10:50 4 first version, we put video in.

10:50 5 Q. Okay. And why the addition of the video?

10:50 6 A. I think most people would agree it's just nice
10:50 7 to be able to see people as well as hear them.

10:50 8 Q. Okay. And since the initial product, has
10:50 9 Paltalk revised its product offering?

10:50 10 A. Constantly. We've had to do that. Obviously
10:50 11 it's a competitive world, so many other softwares out
10:50 12 there, so many other things to do. So we've made the
10:50 13 audio better and better, and we've made video better
10:50 14 and better. The initial video was like cartoon frames
10:50 15 refreshing literally. I mean, you could see something,
10:50 16 but it wasn't like it is now, which is, you know, a
10:50 17 very nice image.

10:50 18 We also made it hands free so you don't have
10:50 19 to touch any buttons. And we put the games in as well
10:51 20 so you could play games with other people. So at that
10:51 21 point...

10:51 22 Q. Okay. Mr. Katz, who is the plaintiff in this
10:51 23 case?

10:51 24 A. Paltalk Holdings, Inc.

10:51 25 Q. And what's the relationship between Paltalk

10:51 1 Holdings, Inc. and Paltalk, Inc.?

10:51 2 A. So Paltalk, Inc. is the parent company, and
10:51 3 Paltalk Holdings is a subsidiary that I formed when I
10:51 4 bought the patents and patent applications in 2001.

10:51 5 Q. And who manages Paltalk Holdings?

10:51 6 A. I do.

10:51 7 Q. How many patents does Paltalk Holdings have?

10:51 8 A. Currently nine.

10:51 9 Q. Okay. And which Paltalk entity owned the
10:51 10 '858 patent?

10:51 11 A. Say again?

10:51 12 Q. Which Paltalk entity owned the '858 patent?

10:51 13 A. Paltalk Holdings.

10:51 14 Q. Okay. Mr. Katz, please turn to the PX-16 tab
10:51 15 in your witness binder, sir.

10:52 16 A. Okay.

10:52 17 Q. Have you seen this document before?

10:52 18 A. Yes.

10:52 19 Q. What is this document?

10:52 20 A. This is the '858 patent.

10:52 21 Q. Okay. Did the PTO award this patent to
10:52 22 Paltalk Holdings, Inc.?

10:52 23 A. Yes.

10:52 24 Q. And does this document set out the PTO's
10:52 25 activities?

10:52 1 A. Yes.

10:52 2 Q. And how do you know that the PTO awarded
10:52 3 Paltalk this patent?

10:52 4 A. It says United States Patent, and it's got a
10:52 5 number and it's got the date on the patent,
10:52 6 January 27th, 2004.

10:52 7 MS. MAGEE: Your Honor, plaintiff offers
10:52 8 PX-16.

10:52 9 MS. PIEPMEIER: No objection.

10:52 10 THE COURT: Admitted.

10:52 11 BY MS. MAGEE:

10:52 12 Q. Okay. Mr. Katz, what's the title of the
10:52 13 '858 patent?

10:52 14 A. I don't know. I have to put on my glasses.
10:52 15 Sorry. Let's see.

10:52 16 Hybrid Server Architecture for Mixing and
10:53 17 Non-mixing Client Conferencing.

10:53 18 Q. And do you have a general understanding of
10:53 19 what the '858 patent relates to?

10:53 20 A. I do generally.

10:53 21 Q. And what is that understanding, sir?

10:53 22 A. As the patent points out -- and I think you
10:53 23 saw a lot of this morning too -- it is an architecture
10:53 24 whereby computers and phones can interact in the same
10:53 25 conference. Obviously it's a lot more than that, but,

10:53 1 you know, I'm not a super expert on this.

10:53 2 Q. Okay. Sir, please turn to PX-17 in your
10:53 3 witness binder.

10:53 4 A. Okay.

10:53 5 Q. Have you seen this document before?

10:53 6 A. Yes.

10:53 7 Q. And what is it?

10:53 8 A. It's an Assignment of title for the
10:53 9 application that was the '858 patent application, and
10:54 10 this was the assignment that came from HearMe to
10:54 11 Paltalk Holdings after we bought the patent and patent
10:54 12 applications.

10:54 13 MS. MAGEE: Okay. Plaintiff offers
10:54 14 PX-17.

10:54 15 MS. PIEPMEIER: No objection.

10:54 16 THE COURT: Admitted.

10:54 17 BY MS. MAGEE:

10:54 18 Q. Mr. Katz, does this assignment give Paltalk
10:54 19 the rights to the '858 patent application?

10:54 20 A. Yes.

10:54 21 Q. Okay. And does this document make the
10:54 22 '858 patent the property of Paltalk Holdings, Inc.?

10:54 23 A. Yes.

10:54 24 Q. Okay. And who did Paltalk acquire the
10:54 25 '858 patent application from?

10:54 1 A. HearMe, Inc.

10:54 2 Q. And what was HearMe, Inc.?

10:54 3 A. HearMe, Inc. was a public company in the late
10:54 4 '90s that I was aware of. As I said, I launched
10:54 5 Paltalk, the first version in the beginning of 1999,
10:55 6 and HearMe was I think already a public company with a
10:55 7 very large amount of investment and a very valuable
10:55 8 market cap in the late '90s, and they were in
10:55 9 audioconferencing.

10:55 10 So I was quite aware of them since I was doing
10:55 11 basically a similar thing. Not exactly the same thing
10:55 12 but similar.

10:55 13 Q. Okay. And did Paltalk have a general
10:55 14 understanding of what HearMe was prior to buying some
10:55 15 of HearMe's assets?

10:55 16 A. Absolutely. Yes.

10:55 17 Q. Okay. Did you have an understanding of the
10:55 18 kind of products that HearMe offered prior to buying
10:55 19 any of its assets?

10:55 20 A. Yes.

10:55 21 Q. And what kind of products did HearMe offer
10:55 22 generally?

10:55 23 A. They were voice-conferencing products. So
10:55 24 they had a module that they sold to websites. So
10:55 25 ESPN -- I'm just making up -- ESPN, CNN, whatever. And

10:55 1 if you put their module -- installed their module on
10:56 2 your website, the user could come to the website,
10:56 3 download some software, and then you could talk to
10:56 4 other users who had done that.

10:56 5 So it was sort of like we -- what we were
10:56 6 doing, but we were doing it at Paltalk.com. They were
10:56 7 actually bringing the functionality to the other
10:56 8 website. They also had other conferencing,
10:56 9 voice-conferencing solutions that they offered.

10:56 10 Q. Okay. And, Mr. Katz, how common were these
10:56 11 voice-conferencing solutions in the late '90s?

10:56 12 A. Very uncommon. I mean, as I said, computers
10:56 13 were not really ready for audio. You know, you had to
10:56 14 get a microphone, sort of like this one, plug it into a
10:56 15 sound card. Lots of computers didn't even have sound
10:56 16 cards. Most of them came with speakers. So that meant
10:56 17 they had a sound card. You could get on a microphone.
10:56 18 They definitely didn't have cameras. So it was quite
10:56 19 uncommon.

10:56 20 Q. Okay. Mr. Katz, you heard in opening that the
10:57 21 HearMe patent, the '858 patent, was some sort of an
10:57 22 old, antiquated technology.

10:57 23 Was that, in your view of the '858 patent,
10:57 24 when you acquired it?

10:57 25 A. It was an application. When I acquired the

10:57 1 patents, they were four issued patents. There were
10:57 2 eight pending patents. They were principal assets I
10:57 3 was interested in. I was interested in them because I
10:57 4 started this company. And, you know, we were doing
10:57 5 well. But we didn't have any patents.

10:57 6 So I was aware of HearMe. I was aware of how
10:57 7 much funding they had. I was aware that they were very
10:57 8 smart people. And when the opportunity came to buy
10:57 9 that property, I thought it was literally once in a
10:57 10 lifetime.

10:57 11 Q. Mr. Katz, did you agree with the
10:57 12 characterization that the HearMe technology patents are
10:57 13 old, antiquated technology?

10:57 14 A. Totally the opposite. It was cutting edge,
10:57 15 innovative, incredibly -- they were very smart people.
10:57 16 I don't think you get to be a public company worth a
10:58 17 billion dollars unless you're doing something pretty
10:58 18 special.

10:58 19 Q. Okay. And, Mr. Katz, are you aware that
10:58 20 HearMe had customers and partners in the early 2000s?

10:58 21 A. Yes.

10:58 22 Q. And was Cisco one of those customers and
10:58 23 partners?

10:58 24 A. I believe so.

10:58 25 MS. PIEPMEIER: Objection, Your Honor. I

10:58 1 apologize. I move to strike that answer.

10:58 2 THE COURT: On what basis?

10:58 3 MS. PIEPMEIER: Your Honor, he has
10:58 4 absolutely no foundation whatsoever to provide that
10:58 5 testimony regarding HearMe.

10:58 6 THE COURT: Overruled.

10:58 7 BY MS. MAGEE:

10:58 8 Q. Okay. Mr. Katz, I'd now like to step back
10:58 9 into the year 2000, if you will.

10:58 10 What was the landscape like of technology
10:58 11 companies in 2000?

10:58 12 A. So 2000 was sort of the turning point.
10:58 13 Technology was completely the rage in the late '90s.
10:59 14 Yahoo was blowing up. AOL was blowing up. Everything
10:59 15 was blowing up in a good way.

10:59 16 And then into the end of 2000, beginning 2001,
10:59 17 the public markets just were, you know, mercilessly
10:59 18 negative. Everything was bad. Everything was down.
10:59 19 So it was a really, really difficult environment in
10:59 20 2001, and then later 2001, even worse.

10:59 21 Q. Okay. And what is that later 2001 period
10:59 22 called?

10:59 23 A. Well, the sort of prior period would have been
10:59 24 called the Internet boom. I call it Internet 1.0
10:59 25 because that was the first rise. And that was the --

10:59 1 you know, bubble bursting on the Internet at the end of
10:59 2 2001.

10:59 3 Q. And how was Paltalk doing during this time?

10:59 4 A. Well, that's interesting. Again, we were a
10:59 5 smaller company. I'm conservative. I was always about
10:59 6 making money. I think honestly, that's why I made it
10:59 7 through that period of time, 2008, '9. Again, it was a
11:00 8 tough time in the world, and we've always made it
11:00 9 through.

11:00 10 So I was on the notion that we had to make
11:00 11 money. So when -- I describe we launched the video in
11:00 12 Paltalk in 2001 and we started charging a subscription
11:00 13 for it.

11:00 14 So the software was still free. You could use
11:00 15 everything, but if you wanted to do other people's
11:00 16 video, you paid a small monthly or annual fee. And
11:00 17 just by doing that, we started making money.

11:00 18 Q. Mr. Katz, do you have a general understanding
11:00 19 of how HearMe fared during this same time period?

11:00 20 A. I do.

11:00 21 Q. What is that understanding, sir?

11:00 22 A. So HearMe was like one of the high fliers of
11:00 23 the late '90s into 2000s, and then they hit a really
11:00 24 hard time, as most other technology companies did. And
11:00 25 in 2001, later in 2001, they announced they were

11:00 1 liquidating all of their assets.

11:01 2 Rather than file for bankruptcy, they did
11:01 3 still have cash. I think they wanted to just produce
11:01 4 as much cash as they could, pay off everything they
11:01 5 could, and then actually, the shareholders could get
11:01 6 some money back too.

11:01 7 Q. And in 2001, was Paltalk interested in buying
11:01 8 any of HearMe's assets?

11:01 9 A. We were.

11:01 10 Q. And why?

11:01 11 A. As I said, I knew it was the very smart
11:01 12 people. I am sort of a financially-facing person. So
11:01 13 I was very aware of the public company HearMe as well.
11:01 14 I knew how much money had been invested. So I
11:01 15 approached them sometime earlier in 2001, probably the
11:01 16 first half of 2001, to see if we could buy any of their
11:01 17 IP.

11:01 18 Q. And did Paltalk buy HearMe's IP at that point?

11:01 19 A. No.

11:01 20 Q. Okay. Why not?

11:01 21 A. Because they -- they said, basically, unless
11:01 22 you are making an offer that starts with seven figures,
11:02 23 we're not even talking to you and you're not worth our
11:02 24 time.

11:02 25 And we sort of had -- you know, we had seven

11:02 1 figures, but we were just starting to make money. So
11:02 2 I -- I made a decision early not to pay that much money
11:02 3 at that time.

11:02 4 Q. And did Paltalk ultimately purchase some of
11:02 5 HearMe's assets later on?

11:02 6 A. We did.

11:02 7 Q. Okay. Mr. Katz, find tab PX-12 in your
11:02 8 witness binder, please, sir.

11:02 9 A. I have it.

11:02 10 Q. Okay. Have you seen this document before?

11:02 11 A. Yes.

11:02 12 Q. And what is this document?

11:02 13 A. This is the actual asset purchase agreement
11:02 14 that was executed when Paltalk bought the HearMe assets
11:02 15 at the end of 2001.

11:02 16 MS. MAGEE: Plaintiff offers PX-12.

11:03 17 MS. PIEPMEIER: No objection.

11:03 18 THE COURT: Admitted.

11:03 19 BY MS. MAGEE:

11:03 20 Q. Mr. Katz, did Paltalk purchase all of HearMe's
11:03 21 assets under this agreement?

11:03 22 A. No.

11:03 23 Q. Okay. Find Index D, Mr. Katz. Skip back.

11:03 24 A. D?

11:03 25 Q. Yes, sir. D as in door.

11:03 1 And, sir, it's actually up on the screen for
11:03 2 you.

11:03 3 A. Oh, better. Thank you. Much better. I see
11:03 4 it.

11:03 5 Q. Okay. Mr. Katz, what kind of assets did
11:03 6 Paltalk acquire from HearMe?

11:03 7 A. So, you know, the principal thing I was
11:03 8 interested in were the patents and the patent
11:03 9 applications. HearMe literally said, we'll give you
11:03 10 the source code. That is the code that the -- you
11:03 11 know, enabled you to build the software programs that I
11:03 12 was talking about before.

11:03 13 So they included some source code as well.
11:04 14 And they were literally trying to get rid of their
11:04 15 computers, server computers. We were using significant
11:04 16 numbers of server computers to do the audio and video
11:04 17 for Paltalk.

11:04 18 So actually, we got those machines and put
11:04 19 them right into service, you know, in the data center.
11:04 20 They also gave us the HearMe name and the trademark,
11:04 21 which I thought was valuable, because they had so much
11:04 22 traffic to it. It's hard to generate traffic, you
11:04 23 know, to a website. Also a couple of other domains.

11:04 24 Q. How much did Paltalk pay HearMe under its
11:04 25 asset purchase agreement?

11:04 1 A. 145,000.

11:04 2 Q. And were there risks to Paltalk associated
11:04 3 with this transaction?

11:04 4 A. Definitely.

11:04 5 Q. And what were some of those risks, Mr. Katz?

11:04 6 A. You know, any of the patents could end up
11:04 7 being invalidated. All of the applications could have
11:04 8 not actually been granted.

11:04 9 You know, we continued to prosecute. When you
11:05 10 get a patent application, you interact with the Patent
11:05 11 Office. You're prosecuting them. So there were no
11:05 12 guarantees of anything.

11:05 13 Q. And did the \$145,000 purchase price reflect
11:05 14 those risks?

11:05 15 A. Oh, it was -- you know, it was a very -- it
11:05 16 was a fire sale. I mean, they were going out of
11:05 17 business. And they were just selling for whatever, you
11:05 18 know, they could get. And notice the date on the
11:05 19 document, December the 19th.

11:05 20 I remember finishing that deal right at the
11:05 21 end of December. It was just nuts. So yeah. The
11:05 22 price was cheap. Very inexpensive.

11:05 23 Q. Did Paltalk value the assets purchased from
11:05 24 HearMe at more than \$445,000?

11:05 25 A. 145.

1 Q. Sorry.

11:05 2 A. Yeah. I valued them -- I mean, it's hard to
11:05 3 say this, but they were of extreme value to me because
11:05 4 I had a public -- not public -- a private company at
11:06 5 that point, public company now, that didn't have any
11:06 6 patents. And this was not only patents, but they were
11:06 7 patents in our area. They were similar to what we were
11:06 8 doing as a competitor that I was aware of. So it was a
11:06 9 unique singular opportunity to do something, and that's
11:06 10 why we did it.

11:06 11 Q. Why did Paltalk pay \$145,000?

11:06 12 A. As I said, they asked for seven figures, you
11:06 13 know, some months before. And then I think that the
11:06 14 fire sale was just getting to the end. They were just
11:06 15 selling off everything. And I'm sure they asked me for
11:06 16 more, and I'm sure I offered less.

11:06 17 And I was going to pay as little as I could
11:06 18 pay for it because, you know, the cash was dear to me,
11:06 19 and we needed it to pay our own employees and run our
11:06 20 own business.

11:06 21 Q. And would you have paid more than \$145,000?

11:06 22 A. Definitely.

11:06 23 Q. Why?

11:06 24 A. Because it was invaluable property. It was --
11:06 25 they were extremely smart people. They had four issued

11:07 1 patents. I knew it was expensive just to -- if you go
11:07 2 through the process of just trying to get your own
11:07 3 patent, it takes years and it takes a lot of money.
11:07 4 Because there's a back-and-forth with the Patent
11:07 5 Office. You're paying lawyers. So it was worth -- you
11:07 6 know, I couldn't even put a price on what it was worth
11:07 7 to us to own that.

11:07 8 Q. Was the patent application associated with the
11:07 9 '858 patent part of the assets Paltalk acquired from
11:07 10 HearMe?

11:07 11 A. It was.

11:07 12 Q. Did Paltalk ever perform any sort of
11:07 13 evaluation for that patent application?

11:07 14 A. Valuation or evaluation?

11:07 15 Q. Valuation.

11:07 16 A. No. We didn't -- we didn't perform valuations
11:07 17 on anything. I knew I was getting a ridiculous deal,
11:07 18 and I was happy to get it.

11:07 19 Q. Okay. What did Paltalk do to the assets it
11:07 20 acquired from here?

11:07 21 A. Well, as I said, it's a lot of work. Once you
11:08 22 get the patents, you've got to stay up with filings,
11:08 23 issued patents. And then if you have applications, you
11:08 24 have to have, you know, a patent attorney do the
11:08 25 back-and-forth with the Patent Office. So we continued

11:08 1 to -- to make sure that all the patents were paid up
11:08 2 and the fees associated with them ongoing. We
11:08 3 continued to prosecute all the other applications.

11:08 4 Q. Did Paltalk offer any HearMe products after
11:08 5 the acquisition?

11:08 6 A. We did.

11:08 7 Q. Which products are those?

11:08 8 A. So we didn't take their source code. We
11:08 9 decided because of the HearMe name, a lot of money
11:08 10 behind it, and there'd been a lot of traffic to it to
11:08 11 relaunch a videoconferencing solution at HearMe.com.
11:08 12 So unlike the Paltalk software which was the software
11:08 13 download, you go to the website, you download it and
11:08 14 install it, this was web based. So you just went to
11:09 15 HearMe.com.

11:09 16 But it was in 2000 -- we launched out I think
11:09 17 in around 2006, and the Internet still wasn't ready to
11:09 18 do video- and audioconferencing very well. So we did
11:09 19 get customers that was a different, very different
11:09 20 product from Paltalk. Paltalk was a consumer product,
11:09 21 not really facing for businesses. This was really sort
11:09 22 of like what Webex was doing and the other softwares
11:09 23 that do that now. It was pointed at people who would
11:09 24 pay to videoconference.

11:09 25 Q. Mr. Katz, we heard in opening that the

11:09 1 '858 patent allows computers and phones to join an
11:09 2 audioconference. Does Paltalk offer any products that
11:09 3 allow computers and plain old telephones to join an
11:09 4 audioconference?

11:09 5 A. No.

11:09 6 Q. Why not?

11:09 7 A. Because -- and really, again, it's my
11:10 8 judgment. People who use Paltalk are online. You
11:10 9 know, we like large screens because you're seeing a lot
11:10 10 of video. We enable you to blow up the video too so if
11:10 11 you want to see something larger than those little
11:10 12 boxes, you can do that, don't move them around and
11:10 13 shuffle them. And therefore it's -- the video is
11:10 14 really critical in that sort of scenario. Someone's
11:10 15 not calling in from another country to do -- to be in a
11:10 16 conference like that because they can't see what's
11:10 17 going on.

11:10 18 Also say you're playing a game. If you're
11:10 19 playing chess, you're playing cards, you have to see.
11:10 20 So I just made the judgment that wasn't something to
11:10 21 put in there.

11:10 22 MS. MAGEE: Your Honor, may we approach?

11:10 23 THE COURT: Sure.

11:10 24 (Bench conference.)

11:10 25 MS. MAGEE: Your Honor, ordinarily the

11:11 1 Court's MIL No. 13 would preclude mentioning any
11:11 2 party's other litigations. However, in opening,
11:11 3 Ms. Piepmeier consistently raised the theme that
11:11 4 Paltalk did not contact Cisco before filing this
11:11 5 lawsuit.

11:11 6 If asked, this witness will testify that
11:11 7 he didn't do that because he's aware of the risks of
11:11 8 Cisco filing declaratory judgment actions when parties
11:11 9 reach out to them about, you know, potential
11:11 10 infringement. So I'm asking to broach the subject with
11:11 11 Mr. Katz because they opened the door.

11:11 12 MS. PIEPMEIER: I'm sorry. I'm not sure
11:11 13 I'm following what you are asking to...

11:11 14 MS. MAGEE: I mean...

11:11 15 THE COURT: She's going to ask him why he
11:11 16 didn't contact you, and his response is going to be he
11:11 17 was afraid you would file -- Cisco would file a
11:11 18 declaratory judgment action.

11:11 19 MS. MAGEE: They put in a slide in
11:11 20 opening and everything else --

11:11 21 MS. PIEPMEIER: Your Honor, I think
11:11 22 that's completely inconsistent with what he said. I
11:11 23 think that's completely inconsistent with what he said
11:11 24 in deposition, and that's a totally different thing.
11:11 25 And I also don't think I opened the door at all. It's

11:11 1 just a fact that he never filed.

11:11 2 That is just a fact in the case. It is
11:12 3 not an argument about you should have done it or you
11:12 4 shouldn't have done it. It's literally just a fact in
11:12 5 the case that they didn't do it. This is the date that
11:12 6 they filed suit. I don't know how else to show a
11:12 7 timeline other than to show the date that the suit was
11:12 8 filed.

11:12 9 THE COURT: You can have him explain why
11:12 10 he did not give them notice.

11:12 11 MS. MAGEE: Thank you, sir.

11:12 12 (Bench conference concludes.)

11:12 13 BY MS. MAGEE:

11:12 14 Q. All right. Mr. Katz, you heard in opening
11:12 15 this idea that Paltalk did not reach out to anyone at
11:12 16 Cisco before filing this lawsuit.

11:12 17 Do you recall hearing that, sir?

11:12 18 A. Yes.

11:12 19 Q. And did Paltalk reach out to Cisco before
11:12 20 filing this lawsuit?

11:12 21 A. No.

11:12 22 Q. Why not, sir?

11:12 23 A. Because I was aware of the risks of doing
11:12 24 that. If I reached out to Cisco, they very well could
11:12 25 have just sued us. So -- and again, my judgment, it

11:12 1 was better to do it the way we did it because if we got
11:13 2 sued, it was a different set of risks.

11:13 3 Q. And, Mr. Katz, why did Paltalk ultimately file
11:13 4 this lawsuit?

11:13 5 A. Well, because we believed that the '858 patent
11:13 6 was being infringed.

11:13 7 Q. And what are you seeking if in fact Cisco is
11:13 8 using Paltalk's patent?

11:13 9 A. A reasonable royalty which is I think what the
11:13 10 law is.

11:13 11 MS. MAGEE: Okay. Thank you.

11:13 12 I pass the witness.

11:13 13 CROSS-EXAMINATION

11:13 14 BY MS. PIEPMEIER:

11:13 15 Q. Good morning, Mr. Katz. We're just going to
11:13 16 hand out the binders.

11:14 17 A. Thank you.

11:14 18 Q. Everyone has what they need? Okay, great.

11:14 19 Good morning. I think it's still morning. My
11:14 20 name is Sarah Piepmeier, and it is good to see you
11:14 21 again. I have some questions regarding your testimony
11:14 22 just now.

11:14 23 You introduced your background earlier, but I
11:14 24 want to confirm, you don't have an engineering degree,
11:14 25 correct?

11:14 1 A. Correct.

11:14 2 Q. And you have no training at all in computer
11:14 3 programming?

11:14 4 A. Correct.

11:14 5 Q. You testified a moment ago on direct
11:14 6 examination about how hard it is to get a patent or
11:14 7 keep up with the filings or something like that.

11:14 8 Do you recall that?

11:14 9 A. Yes.

11:14 10 Q. Okay. But you're not a named inventor on any
11:14 11 patent?

11:14 12 A. No.

11:14 13 Q. So you've actually never done that yourself?

11:14 14 A. My company has.

11:14 15 Q. Sir, I'm sorry. I asked you a question. If
11:14 16 you could listen to my question, I'd appreciate that.

11:14 17 THE COURT: Counsel, counsel, I know a
11:14 18 lot of different ways of doing this. If I think he
11:15 19 needs to be more direct in his response, I can assure
11:15 20 you, I will take care of that.

11:15 21 MS. PIEPMEIER: Thank you, Your Honor.

11:15 22 BY MS. PIEPMEIER:

11:15 23 Q. Let me ask my question again.

11:15 24 You personally, Mr. Katz, have never filed for
11:15 25 a patent application as an inventor, correct?

11:15 1 A. I haven't, but again, my company has with
11:15 2 people who work for me. So I guess I could have been
11:15 3 on that patent, but I wasn't. I wasn't involved
11:15 4 with -- I was involved at a high level in the
11:15 5 invention, but -- so my name isn't on it, but I was
11:15 6 involved in the process of it.

11:15 7 Q. I'm sorry. I'm confused as to what patent
11:15 8 we're talking about here. The question -- so let me
11:15 9 try to ask you a very clear question here.

11:15 10 You, Jason Katz, are not a named inventor on
11:15 11 any patent; is that right?

11:15 12 A. That is correct.

11:15 13 Q. Thank you.

11:15 14 Now, you testified on direct that you came up
11:15 15 with the idea to add the ability to communicate via
11:16 16 audio to kind of a buddy list with AOL as an
11:16 17 inspiration; is that right?

11:16 18 A. Correct.

11:16 19 Q. And you're proud of that invention?

11:16 20 A. I'm very proud of it. Yes.

11:16 21 Q. I could tell.

11:16 22 A. Yeah.

11:16 23 Q. Yeah.

11:16 24 But you never filed a patent on that idea?

11:16 25 A. I didn't.

11:16 1 Q. And to be clear, the buddy list concept that
11:16 2 you spoke about, speaking to somebody on the buddy
11:16 3 list, that's not the invention of the '858 patent,
11:16 4 correct?

11:16 5 A. That's correct.

11:16 6 Q. And you testified a moment ago you considered
11:16 7 intellectual property that Paltalk acquired, that it
11:16 8 bought, to be a valuable asset?

11:16 9 A. Correct.

11:16 10 Q. You agree with that.

11:16 11 But you would agree that in the whole history
11:16 12 of Paltalk, Inc., Holdings, whatever, it has never
11:16 13 offered a product that used the '858 patent?

11:16 14 A. That's correct.

11:16 15 Q. It could have done so?

11:17 16 A. I think it could have done so.

11:17 17 Q. But you didn't?

11:17 18 A. We didn't.

11:17 19 Q. And you think the '858 patent is valuable,
11:17 20 though?

11:17 21 A. Yes.

11:17 22 Q. Okay. But you never put out a product using
11:17 23 it?

11:17 24 A. Yes.

11:17 25 MS. PIEPMEIER: Now, I'd like to bring up

11:17 1 on the screen DX -- I think it's DDX-2. If we may.

11:17 2 Thank you.

11:17 3 BY MS. PIEPMEIER:

11:17 4 Q. I am a chronological learner. That's the way
11:17 5 I think -- I even read legal cases in a chronological
11:17 6 order. So I'd like to go through kind of a timeline.
11:17 7 You just put one up. It may be kind of similar to what
11:17 8 you put up.

11:17 9 So Paltalk's products launch in 1999; is that
11:17 10 correct?

11:17 11 A. Correct.

11:17 12 Q. Okay.

11:17 13 MS. PIEPMEIER: And of course I left the
11:17 14 clicker. Let me grab it. Excuse me.

11:17 15 BY MS. PIEPMEIER:

11:18 16 Q. And the product that you launched allowed
11:18 17 audio- and videoconferencing for free on the Internet,
11:18 18 correct, in 1999?

11:18 19 A. Audio.

11:18 20 Q. Audio. Video was added later?

11:18 21 A. Correct.

11:18 22 Q. And you testified -- we've already gone
11:18 23 through this -- in 2001, Paltalk, Inc. purchases
11:18 24 HearMe?

11:18 25 A. HearMe assets. Yeah.

11:18 1 Q. The HearMe assets. Thank you for that
11:18 2 correction. That's right.

11:18 3 Now, you testified on direct that you thought
11:18 4 the assets were valuable, including the intellectual
11:18 5 property. You used the servers, all of that; you
11:18 6 thought they were valuable, right?

11:18 7 A. Correct.

11:18 8 Q. And at the time, you testified that they
11:18 9 were -- before the fire sale, they were asking for
11:18 10 seven figures?

11:18 11 A. Correct.

11:18 12 Q. And you thought it was valuable assets?

11:18 13 A. Correct.

11:18 14 Q. You had seven figures?

11:18 15 A. Correct.

11:18 16 Q. You did not pay seven figures?

11:18 17 A. I did not.

11:18 18 Q. You paid 145 --

11:19 19 A. Correct.

11:19 20 Q. -- thousand.

11:19 21 And for the 145,000, in addition to pages of
11:19 22 appendices of servers, et cetera, that we saw a moment
11:19 23 ago, Paltalk acquired four issued patents and eight
11:19 24 pending patent applications?

11:19 25 A. Correct.

11:19 1 Q. One of those applications ultimately issued as
11:19 2 the '858 patent?

11:19 3 A. That's correct.

11:19 4 Q. And the HearMe patents and patent
11:19 5 applications, you put those in a subsidiary, Paltalk
11:19 6 Holdings?

11:19 7 A. Correct.

11:19 8 Q. You talked about on your direct a moment ago
11:19 9 the risks of acquiring patent applications.

11:19 10 Do you remember that?

11:19 11 A. Yes.

11:19 12 Q. And one of those risks is that -- or strike
11:19 13 that.

11:19 14 There's also risks to acquiring patents,
11:19 15 correct?

11:19 16 A. Can you say that again? I'm sorry.

11:19 17 Q. So there's risks to acquiring patent
11:19 18 applications.

11:20 19 Wouldn't you agree there's also risks to
11:20 20 acquiring patents?

11:20 21 A. Yes.

11:20 22 Q. And one of those risks is that they could
11:20 23 later be invalidated, right?

11:20 24 A. Yes.

11:20 25 Q. Now, HearMe had a set of products at the time

11:20 1 of the acquisition: VoiceCREATOR, VoiceNETWORK, and
11:20 2 VoiceSERVER; is that correct?

11:20 3 A. I believe so. Yes.

11:20 4 Q. And you talked about HearMe products on direct
11:20 5 just a moment ago?

11:20 6 A. Yes.

11:20 7 Q. You would agree with me that Paltalk, Inc.
11:20 8 basically shelved those products after invention?

11:20 9 A. I disagree with that.

11:20 10 Q. And have you ever testified the opposite of
11:20 11 that?

11:20 12 A. I had a deposition in this case, for example.

11:20 13 Q. Okay. And I'd like to show you your testimony
11:20 14 in your deposition. You have it in your binder. There
11:20 15 should be a deposition transcript. We'll also put it
11:20 16 up on the screen, but I want to make sure you have the
11:21 17 cite before we go anywhere. On Page 125, starting at
11:21 18 Lines 21 to 126, Line 7.

11:21 19 And I want to give you a chance to look at it
11:21 20 before I read it.

11:21 21 Question: After the acquisition to the
11:21 22 extent that VoiceCREATOR, VoiceNETWORK, and VoiceSERVER
11:21 23 products still existed, neither Paltalk, Inc. nor
11:21 24 Paltalk Holdings put forth those products in any form.

11:21 25 I asked you that question. Oh, I said:

11:21 1 Is that right?

11:21 2 Do you see that?

11:21 3 A. That's right.

11:21 4 Q. And you answered, let's follow along: That's
11:21 5 right. We never did.

11:21 6 Did you say that?

11:21 7 A. Yes. And then I answered --

11:21 8 Q. And then I asked you a question: You shelved
11:21 9 them essentially?

11:21 10 And then you answered: Basically. My memory
11:21 11 was that they were CDs that were conveyed, and they
11:22 12 went into storage somewhere. And we certainly never
11:22 13 used them.

11:22 14 You testified that, correct?

11:22 15 A. That's correct.

11:22 16 Q. So you shelved the HearMe products that
11:22 17 Paltalk acquired: VoiceCREATOR, VoiceNETWORK, and
11:22 18 VoiceSERVER?

11:22 19 A. I said I disagree with that characterization
11:22 20 of what I did. We received source code. We never
11:22 21 reconstituted the source code. We didn't have any of
11:22 22 the server -- we didn't have anything to do that. It
11:22 23 would have been a monumental task to try and do that.

11:22 24 The \$250 million investment company that had
11:22 25 tons and tons of engineers, we were a little company.

11:22 1 So I couldn't do that really. I didn't have the money.

11:22 2 Q. Thank you, sir.

11:22 3 Now, let's refer back to the deposition you

11:22 4 just gave, the deposition we just looked at.

11:22 5 MS. PIEPMEIER: If we could put it back
6 on the screen.

7 BY MS. PIEPMEIER:

11:22 8 Q. I asked you, speaking about these products:

11:23 9 You shelved them essentially? And you -- let me

11:23 10 finish, sir.

11:23 11 You answered: Basically. My memory was they
11:23 12 were CDs that were conveyed, and they went into storage
11:23 13 somewhere. And we certainly never used them.

11:23 14 A. Correct.

11:23 15 Q. Okay. Thank you.

11:23 16 Now, you never spoke to a single person who
11:23 17 created any of that IP or any of those products,
11:23 18 correct?

11:23 19 A. I spoke to Jim Schmidt, who was the active
11:23 20 CEO. I don't know if he ever created anything. I
11:23 21 didn't speak to anybody else.

11:23 22 Q. You would agree with me that Jim Schmidt was
11:23 23 the guy liquidating the company?

11:23 24 A. Correct.

11:23 25 Q. You never spoke to a HearMe employee or patent

11:23 1 inventor other than Jim Schmidt?

11:23 2 A. I didn't.

11:23 3 Q. And Jim Schmidt was the guy liquidating the
11:23 4 company, not the guy who created those valuable
11:23 5 products or the IP, correct?

11:23 6 A. To my knowledge, that's right.

11:23 7 Q. The only person you spoke to was the person
11:23 8 who you were going to write a check to?

11:24 9 A. Correct.

11:24 10 MS. PIEPMEIER: Let's go back to DX-2, if
11:24 11 we may, please.

11:24 12 BY MS. PIEPMEIER:

11:24 13 Q. Now, let's move forward on the timeline.
11:24 14 In 2004, the '858 patent issues; is that
11:24 15 correct?

11:24 16 A. Correct.

11:24 17 Q. And that's the first time that you recall
11:24 18 reading the '858 patent, correct?

11:24 19 A. Correct.

11:24 20 Q. Jumping forward 12 years, in 2016, Paltalk,
11:24 21 Inc. merged with Snap Interactive, correct?

11:24 22 A. Correct.

11:24 23 Q. And Snap was an Internet dating service, kind
11:24 24 of like match.com, right?

11:24 25 A. Correct.

11:24 1 Q. Through that merger, Paltalk gets 80 percent
11:24 2 of the stock?

11:24 3 A. Correct.

11:24 4 Q. And you sold the product off?

11:25 5 A. In 2019. Yes.

11:25 6 Q. The people went their own way. That's what
11:25 7 you testified?

11:25 8 A. Correct.

11:25 9 Q. Now, 2020 is the next time that you recall
11:25 10 reading the '858 patent, correct?

11:25 11 A. Yes. I think that's right.

11:25 12 Q. So the patent issues in 2004, and you don't
11:25 13 look at it again until 2020?

11:25 14 A. I think that's correct.

11:25 15 Q. And in 2021, 17 years after the patent issues,
11:25 16 Paltalk first begins investigating Cisco?

11:25 17 A. Approximately, you know, in that time period
11:25 18 as you said, 2020 to 2021. That's right.

11:25 19 Q. Well, it's 2021. That's -- is when you
11:25 20 first -- sometime in 2021 is when you began
11:25 21 investigating Cisco, correct?

11:25 22 A. I don't agree precisely with that. It was
11:25 23 sometime in that period, though.

11:26 24 Q. Okay. Could you please turn to Page 36 of
11:26 25 your deposition to Line 16 to 23? I'll give you a

11:26 1 minute to look at it. And then follow along and tell
11:26 2 me if I read this right.

11:26 3 When did you -- you, as Mr. Katz -- and/or
11:26 4 Paltalk first begin investigating bringing a suit
11:26 5 against Cisco? Again, I am looking for a date -- I'm
11:26 6 just looking for a date or a ballpark, not any
11:26 7 communications with counsel.

11:26 8 Answer: Sometime in 2021 is what I could
11:26 9 say. I don't have a firm date.

11:26 10 So did I read that correctly?

11:26 11 A. Correct.

11:26 12 Q. So in your deposition, your answer was that
11:26 13 you began investigating Cisco in 2021?

11:26 14 MS. MAGEE: Objection, Your Honor,
11:26 15 improper impeachment. Mr. Katz' answers are
11:26 16 consistent.

11:26 17 THE COURT: Overruled.

11:26 18 BY MS. PIEPMEIER:

11:26 19 Q. Could you answer the question?

11:26 20 A. Sure. I said there in my deposition, I don't
11:26 21 have a precise date, but it was somewhere in that
11:26 22 neighborhood.

11:26 23 Q. Of 2021?

11:26 24 A. Sure.

11:26 25 Q. That's what we're looking at on the screen

11:27 1 highlighted in yellow, correct?

11:27 2 A. Yes.

11:27 3 Q. That's what you told me then?

11:27 4 Right?

11:27 5 A. Yes.

11:27 6 Q. Not 2020.

11:27 7 Thank you. Let's move on.

11:27 8 Now, you testified on direct examination that
11:27 9 Paltalk never sent a letter to Cisco before it filed
11:27 10 this suit, correct?

11:27 11 A. Correct.

11:27 12 Q. And you testified that you were afraid --
11:27 13 strike that.

11:27 14 You testified that the reason that you didn't
11:27 15 send the letter is that you were afraid Cisco would
11:27 16 file what you -- I believe you referred to it as a DJ;
11:27 17 is that right?

11:27 18 A. I don't think I said a DJ.

11:27 19 Q. Filed suit?

11:27 20 A. Yeah. That they were suing.

11:27 21 Q. So you were afraid that Cisco -- and let me be
11:27 22 clear about this. Your concern, if you sent Cisco a
11:27 23 letter saying, hey, look at this '858 patent, can we
11:27 24 come to a deal, is that Cisco would go to a venue,
11:27 25 whatever venue, and file an action saying, no. We

11:28 1 don't infringe. And your patent's invalid, correct?

11:28 2 A. Correct.

11:28 3 Q. So you thought that Cisco would file a
11:28 4 defensive action to defend its rights after being
11:28 5 accused of infringement.

11:28 6 That was your concern?

11:28 7 A. Beyond that or anything else. You know, as I
11:28 8 said, little company, very expensive litigation. So my
11:28 9 judgment was it was best to do what we did.

11:28 10 Q. Now, you're a lawyer?

11:28 11 A. I am trained as a lawyer.

11:28 12 Q. Yeah. You're retired, though?

11:28 13 A. Retired from the law.

11:28 14 Q. And you never practiced as a patent litigator?

11:28 15 A. Oh, no. I didn't.

11:28 16 Q. So you're not familiar, if I understand or I
11:28 17 assume, with the fact that just sending somebody a
11:28 18 letter saying, hey, we have a patent, can we talk about
11:28 19 it, doesn't give them the ability to run to court and
11:28 20 file another action.

11:28 21 You're not -- you're just not familiar with
11:28 22 that, correct?

11:28 23 A. You know, I disagree with that.

11:28 24 Q. You disagree with my statement of it? You
11:29 25 disagree -- or you disagree with your familiarity?

11:29 1 A. I disagree with your characterization of what
11:29 2 I know and I don't know.

11:29 3 Q. Okay. So let me phrase that a different way
11:29 4 then. You believe that if Paltalk sent Cisco a letter
11:29 5 saying, hey, can we talk? Can we come to a deal here?
11:29 6 I've got some intellectual property that I think is
11:29 7 super valuable, and I think we should talk about it.
11:29 8 You might be interested in it. It's your legal
11:29 9 judgment as a lawyer and a former member of the bar
11:29 10 that that would give Cisco the ability to run to court
11:29 11 and file a lawsuit against Paltalk? That's your --
11:29 12 that's what you're telling the jury, right?

11:29 13 A. I'm not saying it would give them the ability.
11:29 14 I don't know that one way or the other, but I do know I
11:29 15 believe that I could be sued, so that's why we didn't
11:29 16 do that.

11:29 17 Q. But you don't know?

11:29 18 A. I don't know; not precisely I don't.

11:30 19 Q. And you didn't tell me that in your
11:30 20 deposition?

11:30 21 A. If you can point me to it, I'm happy to look
11:30 22 at it. I don't remember; it was a long day.

11:30 23 Q. Right.

11:30 24 You would agree with me, though, that
11:30 25 Paltalk's first communication to Cisco was simply

11:30 1 filing the lawsuit?

11:30 2 A. That's correct.

11:30 3 Q. Because it was your judgment that you didn't
11:30 4 want to try to have a negotiation, you didn't want to
11:30 5 sit down with Cisco at a table?

11:30 6 A. I believe there were risks in that. So that's
11:30 7 why we took the action that we took.

11:30 8 Q. And in all of your time as an executive at
11:30 9 a -- at a tech company and currently a public tech
11:30 10 company, you're aware that many companies sit down at a
11:30 11 table and negotiate and come to a license, right?

11:30 12 A. In the way you described it, I'm not aware.

11:31 13 Q. You're not. You've never seen it?

11:31 14 A. I've never seen a little company like us go to
11:31 15 a big company and say, hey, we have patents. You might
11:31 16 want them, and the other big company say, yeah, oh,
11:31 17 great. Yeah. Sure. No. That's not --

11:31 18 Q. You've never seen that?

11:31 19 A. Never seen it.

11:31 20 Q. But you're not a patent litigator?

11:31 21 A. I'm not.

11:31 22 Q. And you don't represent companies as a patent
11:31 23 litigator?

11:31 24 A. I don't.

11:31 25 Q. Right. And you don't, you know, obsessively

11:31 1 follow patent litigation news like some of us who are
11:31 2 patent litigators, right?

11:31 3 A. No, but I --

11:31 4 Q. So you don't know whether that happens; you
11:31 5 simply don't know?

11:31 6 A. I don't know, but I'd just like --

11:31 7 Q. You don't know, correct? Yes or no?

11:31 8 A. Can I answer?

11:31 9 THE COURT: Counsel, again, let him
11:31 10 answer the question. And if he isn't being responsive,
11:31 11 I'll take care of it.

11:31 12 A. As we all know, I bought four patents in 2001
11:31 13 and many pending patents.

11:31 14 THE COURT: Okay. You've answered the
11:31 15 question.

11:31 16 THE WITNESS: Okay.

11:31 17 BY MS. PIEPMEIER:

11:31 18 Q. Now, let's move on to July 26, 2022. That's
11:32 19 the date that the '858 patent expired, correct?

11:32 20 A. Correct.

11:32 21 Q. And today in 2024, Paltalk has a suite of
11:32 22 products. I couldn't fit them all in that tiny area,
11:32 23 so I apologize; I picked three of them.

11:32 24 But you have a suite of products today, right?

11:32 25 A. Correct.

11:32 1 Q. And you would agree -- and I think you
11:32 2 testified this on direct, but I just want to make
11:32 3 sure -- that of all the companies that Paltalk has
11:32 4 acquired, of all the products it's acquired, Paltalk
11:32 5 has never offered a product allowing the use of a phone
11:32 6 and a computer in audioconferencing, correct?

11:32 7 A. To dial in; we did offer one to dial out.

11:32 8 Q. But you never offered a -- strike that.

11:32 9 Paltalk has never offered a product that you
11:32 10 believe practices the invention of the '858 patent?

11:32 11 A. That's correct.

11:32 12 Q. And you gave an example on your direct of the
11:32 13 importance using, you know, your Paltalk itself product
11:33 14 as an example of why you wouldn't want to do that,
11:33 15 because the video's so important, essentially; is that
11:33 16 right?

11:33 17 A. I said to Paltalk.

11:33 18 Q. Correct. And that's not Paltalk's only
11:33 19 product, though, correct?

11:33 20 A. Sorry?

11:33 21 Q. The product that you discussed with your
11:33 22 counsel with the big video, how you could make things
11:33 23 bigger, and you said, you know, I don't need the
11:33 24 invention for that, that was one of the products that
11:33 25 you offered, correct?

11:33 1 A. Correct. Paltalk.

11:33 2 Q. Okay.

11:33 3 A. The Paltalk product.

11:33 4 Q. That's the Paltalk product?

11:33 5 A. Correct.

11:33 6 Q. And over the course of the past 20 years since
11:33 7 the patent has issued, Paltalk has had numerous other
11:33 8 products, but none of them have used the '858 patent
11:33 9 here, correct?

11:33 10 A. That's correct.

11:33 11 Q. Now, during the life of the '858 patent,
11:33 12 Paltalk has never sought to license that patent itself,
11:33 13 correct?

11:34 14 A. Correct.

11:34 15 Q. And the first lawsuit that Paltalk ever filed
11:34 16 on the '858 patent was against Cisco?

11:34 17 A. Correct.

11:34 18 Q. And you didn't testify on direct about anyone
11:34 19 who's ever asked Paltalk for a license to the
11:34 20 '858 patent other than as a part of the large
11:34 21 portfolio, part of the large portfolio?

11:34 22 A. Correct.

11:34 23 Q. So during the entire life of the '858 patent,
11:34 24 no person or entity has ever come to Paltalk and
11:34 25 requested a license to the '858 patent?

11:34 1 A. Correct.

11:34 2 Q. And in the years that Paltalk was in this
11:34 3 business and had this patent, the '858 patent, you
11:34 4 would agree that Paltalk never generated any revenue or
11:34 5 other benefit from the '858 patent?

11:34 6 A. I would disagree with that.

11:34 7 Q. Could you please turn to Page 205 of your
11:34 8 deposition, Lines 13 through 16?

11:34 9 Question: Has Paltalk ever generated any
11:34 10 revenue or other benefit from the '858 patent?

11:35 11 Answer: No. I don't believe.

11:35 12 You gave that answer when I deposed you;
11:35 13 isn't that correct?

11:35 14 A. I did.

11:35 15 Q. And so let me ask again.

11:35 16 In the years that Paltalk has been in
11:35 17 business, has Paltalk ever generated any revenue or
11:35 18 other benefit from the '858 patent?

11:35 19 A. We have.

11:35 20 Q. But that's not what you told me at deposition?

11:35 21 A. That's true. I refreshed my recollection, as
11:35 22 you've just pointed out and asked me a question. It
11:35 23 was part of other licenses, and I had forgotten that.

11:35 24 Q. So -- so when I deposed you, you were the
11:35 25 corporate representative for Paltalk and we

11:35 1 discussed -- strike that.

11:35 2 And you were disclosed as the person who was
11:35 3 going to provide Paltalk's answers and describe what
11:35 4 Paltalk was going to say at trial.

11:35 5 Do you remember that?

11:35 6 A. Yes.

11:35 7 Q. Okay. And I asked you questions, and you
11:35 8 answered them under oath and truthfully?

11:35 9 A. Yes.

11:35 10 Q. And now sitting here today, two years later,
11:36 11 you are giving me a different answer because you simply
11:36 12 remembered something different?

11:36 13 A. That's right. I had forgotten they were part
11:36 14 of the other licenses that we had done.

11:36 15 Q. Has Paltalk -- but you would agree with me
11:36 16 that Paltalk has never generated any revenue or benefit
11:36 17 from the '858 patent standing alone?

11:36 18 A. That is correct.

11:36 19 MS. PIEPMEIER: Now, we can take down the
11:36 20 timeline.

11:36 21 BY MS. PIEPMEIER:

11:36 22 Q. You testified earlier about the '858 patent.
11:36 23 And there's five named inventors on that patent,
11:36 24 correct?

11:36 25 A. I believe that's right.

11:36 1 MS. PIEPMEIER: And let's pull up PX-16,
11:36 2 please. And let's -- got that on the screen. Thank
11:36 3 you.

11:36 4 BY MS. PIEPMEIER:

11:36 5 Q. Now, you see the five named inventors listed
11:36 6 there, right?

11:36 7 A. Yes.

11:36 8 Q. Okay.

11:36 9 MS. PIEPMEIER: And actually, let's take
11:36 10 off the -- thank you very much.

11:36 11 BY MS. PIEPMEIER:

11:36 12 Q. Let's start -- let's go down the list.

11:37 13 You've never spoken to Frank Chu?

11:37 14 A. No.

11:37 15 Q. You've never spoken to Virgil Patrick
11:37 16 Dobjanschi?

11:37 17 A. No.

11:37 18 Q. You've never spoken to Corey Gates?

11:37 19 A. No.

11:37 20 Q. You've never spoken to Katherine Kwan?

11:37 21 A. No.

11:37 22 Q. You've never spoken to Daniel Wright?

11:37 23 A. No.

11:37 24 Q. In fact, you're sure that no Paltalk employee
11:37 25 has ever communicated with any of those inventors,

11:37 1 right?

11:37 2 A. I think that's right.

11:37 3 Q. And the inventors of the '858 patent, none of
11:37 4 them are here to speak with the jury this week in Waco?

11:37 5 A. If you say so; I don't know that.

11:37 6 Q. And you don't care what their opinion is of
11:37 7 this lawsuit, correct?

11:37 8 A. No. I care whether there's infringement by
11:37 9 Cisco of this patent that Paltalk Holdings owns.

11:37 10 Q. You would agree with me -- my question is a
11:37 11 little more specific.

11:37 12 You agree with me you don't care what their
11:37 13 opinion is of this lawsuit?

11:37 14 A. No. I don't. That's right.

11:37 15 Q. And sitting here today, Mr. Katz, beyond the
11:38 16 fact that the PTO issued the lawsuit and your
11:38 17 discussions with your lawyers which are privileged, you
11:38 18 can't say if the '858 patent is valid?

11:38 19 A. I think I saw Mr. Tribble earlier say there's
11:38 20 a presumption of it being valid once you get a patent
11:38 21 from the Patent Office.

11:38 22 Q. Understood. And you personally can't say
11:38 23 beyond the presumption that Mr. Tribble talked about
11:38 24 that the '858 patent is valid?

11:38 25 A. No. Not beyond that.

11:38 1 Q. And you don't know whether Claim 1 of the
11:38 2 '858 patent, you don't know whether there was any prior
11:38 3 art to Claim 1?

11:38 4 A. I'm not -- you know, I'm not a person of skill
11:38 5 in the -- in the art. So no. I don't know.

11:38 6 Q. You don't know whether Claim 2 was known in
11:38 7 the prior art?

11:38 8 A. I don't know.

11:38 9 Q. And because nobody at Paltalk has ever spoken
11:39 10 to the inventors, it's fair to say that none of them,
11:39 11 nobody at Paltalk has ever asked the inventors if this
11:39 12 patent is valid?

11:39 13 A. I haven't. That's true. But their names are
11:39 14 on the patent that submitted to the Patent Office, and
11:39 15 it was granted.

11:39 16 Q. And no one at Paltalk has ever asked any of
11:39 17 the five inventors if they searched for prior art
11:39 18 before they filed for the patent?

11:39 19 A. Never talked to them.

11:39 20 Q. No one at Paltalk has ever asked them what
11:39 21 they invented?

11:39 22 A. Never talked to them.

11:39 23 Q. No one at Paltalk has ever asked any of the
11:39 24 five inventors if they meant one or more when they
11:39 25 wrote the word "each"?

11:39 1 A. Correct.

11:39 2 Q. Paltalk relies exclusively on its paid experts
11:39 3 to tell the jury what this patent covers, correct?

11:39 4 A. Correct.

11:39 5 Q. Now, you consider the intellectual property
11:39 6 that Paltalk owns to be a valuable asset; I think you
11:39 7 said that a few times on direct. I assume you agree
11:39 8 with that?

11:39 9 A. I agree.

11:39 10 Q. Okay. And please turn to in your binder
11:40 11 DX-296.

11:40 12 A. Okay.

11:40 13 Q. And do you recognize this document?

11:40 14 A. Yes.

11:40 15 Q. Is it Paltalk's 2021 Form 10-K filed with the
11:40 16 SEC?

11:40 17 A. Yes.

11:40 18 Q. And you were president and CEO of Paltalk
11:40 19 during that year, correct?

11:40 20 A. Yes.

11:40 21 Q. You provided information that was used in that
11:40 22 filing to the SEC?

11:40 23 A. Yes.

11:40 24 Q. And to the extent you saw anything inaccurate,
11:40 25 you corrected it before it got filed?

11:40 1 A. I would hope so if I saw it.

11:40 2 Q. At least as of 2022, you were not aware of
11:40 3 anything inaccurate?

11:40 4 A. No. I'm not aware of anything inaccurate.

11:40 5 MS. PIEPMEIER: Okay. Your Honor, at
11:40 6 this time I'd like to admit DX-296 and publish it.

11:40 7 MS. MAGEE: No objection.

11:40 8 THE COURT: Admitted.

11:40 9 BY MS. PIEPMEIER:

11:40 10 Q. Now, we have up here on the screen the cover
11:40 11 page that you were just looking at.

11:40 12 MS. PIEPMEIER: Let's go to Page 54, Page
11:40 13 F4, and we can blow up the table at the top. Thank
11:41 14 you.

15 BY MS. PIEPMEIER:

11:41 16 Q. Now, in 2022 -- I'm sorry. Strike that.

11:41 17 In 2021, the year it filed suit against Cisco,
11:41 18 Paltalk filed a form with the SEC stating that the
11:41 19 value of its entire patent portfolio was 50K.

11:41 20 Do you see that?

11:41 21 A. Well, that's not what that means, but --

11:41 22 THE COURT: You need to answer her
11:41 23 question. She asked you a yes or no question about
11:41 24 what it states. Answer her question.

11:41 25 A. I don't -- I'm just saying, I don't think that

11:41 1 I can respond to the question the way you phrased it
11:41 2 because this has to do with something else.

11:41 3 BY MS. PIEPMEIER:

11:41 4 Q. You can say no to it.

11:41 5 A. So say the question again so I can be precise,
11:41 6 please.

11:41 7 Q. Let me restate the question.

11:41 8 In this SEC filing, Paltalk told the United
11:41 9 States Securities and Exchange Commission that the
11:41 10 carrying amount, that is the value of its patents, was
11:41 11 \$50,000; is that right?

11:41 12 A. Carrying amount I think is correct.

11:41 13 Q. Now, let's shift gears again.

11:42 14 You would describe Paltalk --

11:42 15 MS. PIEPMEIER: We can take that down.

11:42 16 BY MS. PIEPMEIER:

11:42 17 Q. You can describe Paltalk as a
11:42 18 videoconferencing company, right? You would say that?

11:42 19 A. Correct.

11:42 20 Q. And as the CEO of a videoconferencing company,
11:42 21 you have probably viewed just about every
11:42 22 videoconferencing platform that there is out there,
11:42 23 right?

11:42 24 A. Many of them.

11:42 25 Q. And you'd agree that all videoconferencing

11:42 1 products you use are pretty good?

11:42 2 A. Yes. Most of them are pretty good.

11:42 3 Q. Aside from this lawsuit, you're generally

11:42 4 familiar with Cisco, correct?

11:42 5 A. Generally familiar, yes. Correct.

11:42 6 Q. You've used Webex. You just can't remember

11:42 7 when?

11:42 8 A. Correct.

11:42 9 Q. And because you don't remember when, you don't

11:42 10 know if Webex offered the ability to host an audio

11:42 11 conference with a plain old telephone and a computer on

11:42 12 the same audio conference before Cisco acquired Webex.

11:42 13 You have no idea?

11:42 14 A. I don't know that.

11:42 15 Q. Could be that it did?

11:43 16 A. Could be.

11:43 17 Q. You don't see Cisco's Webex as competing with

11:43 18 any products or service that Paltalk offers today,

11:43 19 right?

11:43 20 A. I don't agree fully with that.

11:43 21 Q. Well, you think you're in a different niche?

11:43 22 A. A little bit of a different niche, so more

11:43 23 indirectly than directly.

11:43 24 MS. PIEPMEIER: Could we please put up --

25 BY MS. PIEPMEIER:

11:43 1 Q. Or please turn to your deposition, Page 106,
11:43 2 Lines 13 to 18.

11:43 3 I asked you: So as the president and CEO of
11:43 4 Paltalk, Inc., you don't see Cisco's Webex as competing
11:43 5 with the products and services that Paltalk, Inc.
11:43 6 offers today?

11:43 7 Answer: No. I think we are in a
11:43 8 different niche.

11:43 9 A. Correct.

11:43 10 Q. And you would agree with me that nobody from
11:43 11 Paltalk itself will speak as to why Paltalk believes
11:43 12 Cisco infringes its patent?

11:43 13 A. Nobody from Paltalk, Inc. That's correct.

11:43 14 Q. Nobody from Paltalk Holdings?

11:43 15 A. Nobody.

11:43 16 Q. Paltalk will leave explanation of why it
11:44 17 believes Cisco infringes to lawyers and paid experts?

11:44 18 A. Correct.

11:44 19 Q. You would also agree with me that nobody at
11:44 20 Paltalk knows what a reasonable royalty percentage
11:44 21 could be?

11:44 22 A. Correct.

11:44 23 Q. Again, you'll leave that to Paltalk's paid
11:44 24 experts?

11:44 25 A. Correct.

11:44 1 Q. Paltalk has no patent -- no policies on patent
11:44 2 licensing?

11:44 3 A. Correct.

11:44 4 Q. No practices or conventions for licensing
11:44 5 patents?

11:44 6 A. Correct.

11:44 7 Q. Now, during your direct, you testified, I
11:44 8 believe, about PX-208 -- or actually, I can't
11:44 9 believe -- remember if you actually testified about it,
11:44 10 but it was in your direct binder.

11:44 11 MS. PIEPMEIER: Can we pull up --
11:44 12 BY MS. PIEPMEIER,

11:44 13 Q. Or actually, can you turn to that in your
11:44 14 direct binder if you don't have it in front of you?

11:45 15 A. In my direct binder. Sure.

11:45 16 Q. And with apologies, I can't remember if you've
11:45 17 already discussed this, but it's in your direct binder.

11:45 18 A. 208, correct?

11:45 19 Q. Yes. Tab 10 it looks like, maybe.

11:45 20 A. Yeah. I have it.

11:45 21 Q. And do you recognize this document?

11:45 22 A. Yes.

11:45 23 MS. PIEPMEIER: I can't recall,
11:45 24 Your Honor, if this is already admitted, but if not, I
11:45 25 would like to publish it and admit it.

11:45 1 MS. MAGEE: No objection, Your Honor.

11:45 2 THE COURT: Did you say no objection?

11:45 3 MS. MAGEE: No objection.

11:45 4 THE COURT: It'll be admitted.

11:45 5 MS. PIEPMEIER: Let's go to Slide 3 --
11:45 6 strike that.

11:45 7 Actually, let's stay on this Slide 1.

8 BY MS. PIEPMEIER:

11:45 9 Q. So this is an investor presentation from
11:45 10 Paltalk on about October 2023, just about ten months
11:46 11 ago.

11:46 12 A. Correct.

11:46 13 Q. And you were involved in giving this --
11:46 14 preparing this presentation?

11:46 15 A. Yes.

11:46 16 MS. PIEPMEIER: Let's turn to Slide 3.

17 BY MS. PIEPMEIER:

11:46 18 Q. Paltalk's entire market cap you see on Slide 3
11:46 19 is 18 million; is that right?

11:46 20 A. As of that date. Correct.

11:46 21 Q. As of that date, that was the market's best
11:46 22 estimate of what your entire company is worth?

11:46 23 A. Correct.

11:46 24 Q. And that is a fraction of what you're asking
11:46 25 Cisco for in this lawsuit; is that correct?

11:46 1 A. That's correct.

11:46 2 MS. PIEPMEIER: Thank you.

11:46 3 I pass the witness.

11:46 4 REDIRECT EXAMINATION

11:46 5 BY MS. MAGEE:

11:47 6 Q. Okay. Mr. Katz, do you recall giving
11:47 7 testimony a little while ago that no one at Paltalk is
11:47 8 going to offer opinions about the infringement of the
11:47 9 '858 patent?

11:47 10 Do you remember that line of questioning?

11:47 11 A. Yes.

11:47 12 Q. Okay. Did Cisco give you or anyone else at
11:47 13 Paltalk the documents to be able to evaluate whether
11:47 14 Cisco infringes?

11:47 15 A. No. They didn't give me anything.

11:47 16 Q. Do you recall a similar line of questioning
11:47 17 about whether anyone at Paltalk would be able to speak
11:47 18 to the reasonable royalty? Do you remember those
11:47 19 questions?

11:47 20 A. Yes.

11:47 21 Q. Did Cisco give you any documents to be able to
11:47 22 discuss what a reasonable royalty might be?

11:47 23 A. No.

11:47 24 Q. Cisco did not -- did Cisco give you such
11:47 25 confidential documents?

11:47 1 A. No.

11:47 2 Q. And, Mr. Katz, you recall both in opening and
11:48 3 a minute ago questions about whether or not Paltalk
11:48 4 reached out to Cisco about negotiating a license.

11:48 5 Do you remember that?

11:48 6 A. Yes.

11:48 7 Q. Okay. And since you filed this lawsuit in
11:48 8 July of 2021, has Cisco taken a license to the
11:48 9 '858 patent?

11:48 10 A. No.

11:48 11 MS. MAGEE: Your Honor, may I approach?
11:48 12 (Bench conference.)

11:48 13 MS. MAGEE: Your Honor, ordinarily the
11:48 14 Court's MIL No. 6 would preclude any reference of any
11:48 15 IPRs or re-exams. But Ms. Piepmeier --

11:48 16 THE COURT: Not coming in.

11:48 17 MS. MAGEE: Okay.

11:48 18 (Bench conference concludes.)

11:48 19 BY MS. MAGEE:

11:49 20 Q. Lastly, Mr. Katz, do you recall being asked
11:49 21 questions about the \$145,000 you paid for the -- for
11:49 22 obtaining the assets? Do you recall?

11:49 23 A. Yes.

11:49 24 Q. Okay. And again, Mr. Katz, what went into
11:49 25 that purchase price?

11:49 1 A. Which assets?

11:49 2 Q. I'll ask a better question, Mr. Katz.

11:49 3 Did that purchase price reflect how Paltalk
11:49 4 valued the HearMe assets?

11:49 5 A. No. I said that a bunch of times. I think it
11:49 6 was just an extreme fire sale based on the way the
11:49 7 world was and where HearMe was, and their liquidation
11:49 8 was a once-in-a-lifetime sort of opportunity.

11:49 9 Q. And lastly, Mr. Katz, back on the subject of
11:49 10 Paltalk not having to reach out to Cisco, do you recall
11:49 11 those questions?

11:49 12 A. Yes.

11:49 13 Q. Okay. Mr. Katz, it is your belief that there
11:49 14 would have been -- is it your belief that there would
11:49 15 have been consequences for Paltalk had they reached out
11:49 16 to Cisco initially?

11:49 17 A. Yes. Negative consequences for Paltalk.

11:50 18 MS. MAGEE: Okay. I pass the witness.

11:50 19 MS. PIEPMEIER: No further questions.

11:50 20 THE COURT: You may step down, sir.

11:50 21 Ladies and gentlemen of the jury, we'll
11:50 22 go ahead and take our lunch break. If you all would be
11:50 23 back by 1:15, we'll get started again.

11:50 24 Unfortunately, for some reason, a lot of
11:50 25 things are closed on Mondays for lunch near the

11:50 1 courthouse. So you're sort of on your own. After
11:50 2 today, there's a food court right across the street
11:50 3 that's pretty convenient that you can get to pretty
11:50 4 quickly.

11:50 5 So please do your best to be back by
11:50 6 1:15. Please remember my instructions about not
11:50 7 discussing the case with anyone.

11:50 8 THE BAILIFF: All rise.

11:50 9 (Jury exited the courtroom.)

11:50 10 THE COURT: Thank you. You may be
11:51 11 seated.

11:51 12 Who do we -- who will we be seeing this
11:51 13 afternoon from the plaintiff?

11:51 14 MR. SIEGMUND: Your Honor, after this, we
11:51 15 have I believe four depositions that we're going to
11:51 16 play. I believe will take about an hour, and then
11:51 17 it'll be --

11:51 18 THE COURT: Juries love long depositions.

11:51 19 MR. SIEGMUND: I know they do, Judge.
11:51 20 Luckily, it's not too bad.

11:51 21 And then after that, it'll be our
11:51 22 technical expert.

11:51 23 THE COURT: Okay. Very good.

11:51 24 So no chance we'll finish your case
11:51 25 today.

11:51 1 MR. SIEGMUND: No, Your Honor.

11:51 2 THE COURT: So this may or may not hold.

11:51 3 Typically the way it's --

11:51 4 This doesn't need to be on the record.

11:51 5 (Off-the-record discussion.)

11:53 6 (Recess taken.)

01:28 7 THE BAILIFF: All rise.

01:28 8 THE COURT: Please remain standing for

01:28 9 the jury.

01:28 10 (Jury entered the courtroom.)

01:28 11 THE COURT: Thank you. You may be

01:28 12 seated.

01:28 13 Counsel?

01:28 14 MR. SIEGMUND: Yes, Your Honor. Paltalk

01:28 15 calls Nathan Buckles by video deposition. He's a Cisco

01:29 16 engineer, and his testimony is relevant to

01:29 17 infringement.

01:29 18 THE COURT: Ladies and gentlemen of the

01:29 19 jury, let me explain to you how our system works. When

01:29 20 you're preparing a case to get it ready to come to

01:29 21 trial, you have the opportunity to ask people to take a

01:29 22 deposition.

01:29 23 A deposition is where the lawyers for

01:29 24 both sides show up. There's a court reporter --

01:29 25 probably not as great as my court reporter, but a court

01:29 1 reporter. And the witness is sworn, and then each side
01:29 2 gets to ask them questions and they are under oath.

01:29 3 That's the most important part, is just
01:29 4 like the witnesses who are here in person are under
01:29 5 oath, the next four witnesses you see by deposition
01:29 6 will also be under oath. But we're in Waco. You know,
01:29 7 there are folks who can't get to Waco for a trial. And
01:29 8 so the lawyers can provide you with their video --

01:29 9 By video?

01:29 10 MR. SIEGMUND: Yes, Your Honor.

01:29 11 THE COURT: Okay. They'll show you the
01:29 12 videotaped depositions. The most important thing for
01:29 13 you to remember, and I'll give you an instruction to
01:29 14 remind you of this at the end of the trial, the fact
01:30 15 that the witness is not here should play no role in the
01:30 16 amount of credibility you give the witness or witnesses
01:30 17 because they have been sworn.

01:30 18 Now, again, I'm not telling you to
01:30 19 believe them, I'm not telling you not to believe them.
01:30 20 That's why y'all are here as judges with each witness.
01:30 21 Just don't hold it against them that they're here by
01:30 22 video and not in person.

01:30 23 Counsel?

01:30 24 (Video deposition of Nathan Buckles played as follows:

01:30 25 Q. First of all, could you state your full name

01:30 1 for the record?

01:30 2 A. Sure. My full legal name is Carl Nathan
01:30 3 Buckles.

01:30 4 Q. Who's your employer?

01:30 5 A. My employer is Cisco Systems.

01:30 6 Q. You've been working with Cisco for almost
01:30 7 25 years?

01:30 8 A. Yes. It's about 23. Yeah.

01:30 9 Q. And your title is distinguished engineer; is
01:30 10 that right?

01:30 11 A. That's correct.

01:30 12 Q. You understand that you are testifying as a
01:31 13 corporate representative of Cisco's on certain topics,
01:31 14 right?

01:31 15 A. That's correct. I do understand that. Yeah.

01:31 16 Q. Do you see Topic 20 on the screen, sir?

01:31 17 A. I do.

01:31 18 Q. 20(a) -- or Topic 20 says: The defense has
01:31 19 asserted in this case by Cisco, including but not
01:31 20 limited to, A, Cisco's basis or bases for denying
01:31 21 infringement of the patent-in-suit.

01:31 22 Do you see that?

01:31 23 A. Yes.

01:31 24 Q. And you are prepared to give testimony on that
01:31 25 topic, right?

01:31 1 A. That's correct.

01:31 2 Q. What did you do to prepare to give testimony
01:31 3 on Cisco's behalf on this Topic 20(a)?

01:31 4 A. I met with Cisco counsel as well as Brick
01:31 5 Zhang and Wilford Wang.

01:31 6 Q. The source code that you reviewed in
01:31 7 preparation for this deposition was a set of source
01:31 8 code that was presented to you for -- for review.

01:32 9 Is that -- is that fair to say?

01:32 10 A. That's correct.

01:32 11 Q. Okay. It wasn't source code that you on your
01:32 12 own volition went out and identified for review from
01:32 13 the source code repository, right?

01:32 14 A. That's correct.

01:32 15 Q. Certain Webex products include
01:32 16 audioconferencing functionality, right?

01:32 17 A. We should be -- probably be specific about
01:32 18 what you mean by audioconferencing.

01:32 19 Q. Let me ask the question in the converse.
01:32 20 Are there any Webex products that do not
01:32 21 include audioconferencing functionality?

01:32 22 A. Yeah. Again, I'm not sure we have the same
01:32 23 understanding of what you mean by audioconferencing.
01:32 24 So it's a bit hard to give an accurate answer.

01:32 25 Q. Do you have any understanding of what the term

01:32 1 "audioconferencing functionality" means as Nathan
01:32 2 Buckles?

01:32 3 A. I do.

01:33 4 Q. And what does it mean to you?

01:33 5 A. So to me, an audioconference is the exchange
01:33 6 of audio information between two or more parties in
01:33 7 a -- in a online meeting.

01:33 8 Q. You've seen this document before, right,
01:33 9 Mr. Buckles?

01:33 10 A. I've seen parts of it, yes.

01:33 11 Q. You've not seen the entire '858 patent?

01:33 12 A. No.

01:33 13 Q. You've never read the '858 patent from start
01:33 14 to finish?

01:33 15 A. That's correct.

01:33 16 Q. What parts have you seen and what parts have
01:33 17 you not seen?

01:33 18 A. That's a difficult question to answer because
01:33 19 I haven't heard -- or the latter part is difficult to
01:34 20 answer because I haven't seen the whole thing. It's
01:34 21 hard to say what I haven't seen. I have seen the
01:34 22 claims section, I believe, is what it's called --

01:34 23 Q. Okay.

01:34 24 A. -- where the claims are enumerated, and I've
01:34 25 seen some of the diagrams. I don't know where in the

01:34 1 document those come from necessarily.

01:34 2 Q. So you reviewed the claims of the patent and
01:34 3 you reviewed certain of the diagrams.

01:34 4 Is this the first time you're seeing the
01:34 5 patent itself?

01:34 6 A. Do you mean this particular, like, title page
01:34 7 or --

01:34 8 Q. Yeah.

01:34 9 A. I can't say for sure. I may have seen the
01:34 10 abstract before, but it's hard to be sure, because
01:34 11 since I've seen the claims, I can kind of -- they're
01:34 12 very similar to the abstract. So I can't be sure if
01:34 13 I've actually seen the abstract before or if it's just
01:34 14 familiar.

01:34 15 Q. You have no basis to believe that the
01:35 16 '858 patent is invalid, right?

01:35 17 A. As I said, I haven't read the entire patent,
01:35 18 and I don't know what legal sort of requirements have
01:35 19 to be met or not met for a patent to be valid. So I
01:35 20 don't hold any personal opinion about its invalidity.

01:35 21 Q. And I would like for you to identify for me
01:35 22 which of the patent drawings you've reviewed before
01:35 23 today, to the best of your recollection.

01:35 24 Did you review these two drawings on Page 1?

01:35 25 A. No.

01:35 1 Q. Did you review this drawing on Page 2?

01:35 2 A. No.

01:35 3 Q. Did you review this drawing on Page 3?

01:35 4 A. No.

01:35 5 Q. Did you -- before sitting here today, had you
01:35 6 reviewed Figure 3 on Page 4 of the patent?

01:36 7 A. No.

01:36 8 Q. Before sitting here today, have you reviewed
01:36 9 Figure 4, which is on Page 5 of the patent?

01:36 10 A. No.

01:36 11 Q. Okay. So you actually haven't reviewed any of
01:36 12 the drawings or figures on the '858 patent; isn't that
01:36 13 right?

01:36 14 A. If that's all of them, yes. I thought there
01:36 15 was a different one maybe on the first page that looked
01:36 16 familiar, but perhaps I was misremembering.

01:36 17 Q. Sir, do you recognize the text beginning on
01:36 18 Page 6 and then continuing to Page 9 to be a
01:36 19 specification of the patent?

01:36 20 A. Yeah. I have -- I have not reviewed all of
01:36 21 this, but I have seen some of it.

01:36 22 Q. Okay. Are there any parts that you recall
01:36 23 reviewing from Columns 1, 2, 3, 4, 5, 6, or 7 of the
01:37 24 '858 patent?

01:37 25 A. We went -- we went through those fairly

01:37 1 quickly, but at the bottom of Column 7, where it states
01:37 2 "what is claimed is" --

01:37 3 Q. Yep.

01:37 4 A. -- that's the part that I know for sure that I
01:37 5 have reviewed.

01:37 6 Q. From Column 1, which is on the left there,
01:37 7 that starts with background of the invention, all the
01:37 8 way through the "what is claimed is" language on Page 9
01:37 9 in Column 7, what parts of that portion of the patent,
01:37 10 if any, have you read and reviewed?

01:37 11 A. I don't think I've read or reviewed anything
01:37 12 in that -- in that section you just identified.

01:37 13 Q. Okay. Have you in connection with -- or did
01:37 14 you ever ask to review anything in the '858 patent
01:37 15 except for the claims?

01:37 16 A. I have -- I have not.

01:38 17 Q. And you're aware that this '858 patent is a
01:38 18 public document, right?

01:38 19 A. Yes.

01:38 20 Q. You have not gone, then, on your own volition
01:38 21 and pulled up the '858 patent and read anything other
01:38 22 than the claims which begin on Page 9, right?

01:38 23 A. I have not gone and retrieved this packet --
01:38 24 or sorry -- this patent document or read through it.
01:38 25 No.

01:38 1 Q. Is it your testimony on behalf of Cisco today
01:38 2 that this '858 patent is not infringed by Cisco's Webex
01:38 3 products?

01:38 4 A. Yeah. Sorry. I can't provide you with a
01:38 5 legal opinion on that, but I can provide facts around
01:38 6 the behaviors of -- of Cisco's Webex systems related to
01:38 7 this patent.

01:38 8 Q. Webex Meetings allows users to participate
01:39 9 either with a computerized device, like a smartphone or
01:39 10 a PC, or alternatively, with a standard telephone, like
01:39 11 a PSTN telephone. Isn't that right?

01:39 12 A. That's not a -- that's not a complete list,
01:39 13 but yes. All of those are capable of participating in
01:39 14 Webex Meetings. Yeah.

01:39 15 Q. Webex Meetings allow various types of devices
01:39 16 to participate in the meeting, right?

01:39 17 A. That's correct.

01:39 18 Q. And a PC can participate in a Webex meeting,
01:39 19 right?

01:39 20 A. Yes.

01:39 21 Q. PSTN telephones that cannot do mixing
01:39 22 themselves are able to participate in Webex Meeting
01:39 23 audioconferences, right?

01:39 24 A. That's correct.

01:39 25 Q. Well, Webex Meetings servers do have the

01:39 1 capability to mix audio, right?

01:40 2 A. That's correct. Some of -- some of them do.

01:40 3 Q. You use the word "multiplexing" or "multiplex"

01:40 4 in your business, right?

01:40 5 A. Yes. We sometimes use that term.

01:40 6 Q. What do you understand it to mean?

01:40 7 A. Even within Cisco, it has had different
01:40 8 meanings over time. So we'd have to talk about a
01:40 9 specific situation to sort of have a firm definition.

01:40 10 Q. In what instances would a PC-based client
01:40 11 require mixing?

01:40 12 A. So the -- the determination to -- to use
01:40 13 mixing or not is based on multiple factors, including
01:40 14 the capabilities of the physical client itself, the
01:40 15 networks and systems in between that client and Webex,
01:40 16 and the overall user experience that we want to deliver
01:40 17 to that particular client. All of those are factors in
01:40 18 determining -- sort of mixing and non-mixing isn't
01:41 19 really a standalone factor itself.

01:41 20 Q. Can you confirm, sir, that Webex Meetings is
01:41 21 capable of determining, in at least some instances,
01:41 22 which clients have the capability to mix multiple audio
01:41 23 streams and which do not?

01:41 24 A. Yeah. In some but not all instances.

01:41 25 Q. You reviewed this Claim 1 to the '858 patent,

01:41 1 right, Mr. Buckles?

01:41 2 A. Yes.

01:41 3 Q. Is it -- is it Cisco's position that Webex
01:41 4 Meetings does not infringe Claim 1 of the '858 patent?

01:41 5 A. Yes.

01:41 6 Q. What are the bases of that contention?

01:41 7 A. Yeah. So I can't provide the -- the legal
01:41 8 basis, but I can answer -- you know, provide facts
01:41 9 about the way that Webex Meetings behaves relative to
01:41 10 what's described in the claim.

01:42 11 Q. So you're not prepared to provide the bases
01:42 12 why Cisco believes Claim 1 is not infringed?

01:42 13 A. Yeah. I believe that's best presented by
01:42 14 Cisco counsel.

01:42 15 Q. So the preamble to Claim 1 says: A method of
01:42 16 providing audioconferencing for a plurality of clients
01:42 17 using varying equipment and protocols.

01:42 18 Do you see that?

01:42 19 A. Yes.

01:42 20 Q. You would agree that Webex Meetings does
01:42 21 provide via conferencing -- or is capable of providing
01:42 22 audioconferencing for a plurality of clients using
01:42 23 varying equipment and protocols?

01:42 24 A. Yeah. I think that's a somewhat vague
01:42 25 description, I think. So it's hard to be definitive.

01:42 1 Q. And there are also some situations that I'm
01:42 2 looking at now, Part 1 here or the first clause here,
01:43 3 where Cisco Webex Meetings receives an audio packet
01:43 4 from each of the plurality of clients who are
01:43 5 participating in an audioconference; isn't that right?

01:43 6 A. Just to be clear, the question was Cisco Webex
01:43 7 Meetings receives audio package from each of the
01:43 8 plurality of clients?

01:43 9 Q. Yes. There are situations where that happens.

01:43 10 A. Yes.

01:43 11 Q. Okay. And there are situations where Cisco
01:43 12 Webex Meetings then determines which of the plurality
01:43 13 of clients participating in an audioconferencing
01:43 14 session is an active speaker, right?

01:43 15 A. We should probably discuss what we mean by
01:43 16 "active speaker."

01:43 17 Q. Okay. Do you have any testimony on behalf of
01:43 18 Cisco as to whether Cisco Webex Meetings in any
01:43 19 instances determines which of the plurality of clients
01:44 20 in an audioconferencing session is an active speaker?

01:44 21 A. Yes. With the caveat that "active speaker"
01:44 22 can mean different things to different people. Some
01:44 23 people define it as very clearly being speech, and
01:44 24 other people would define it perhaps more as any form
01:44 25 of noise. So there is some -- some ambiguity there.

01:44 1 Q. Well, as Cisco uses the term. There are
01:44 2 instances where Webex Meetings determines which of the
01:44 3 plurality of clients in an audioconference is an active
01:44 4 speaker, right?

01:44 5 A. Yeah. I think that -- that's reasonable to
01:44 6 say.

01:44 7 Q. And there are also circumstances where Cisco
01:45 8 Webex Meetings determines which of the plurality of
01:45 9 clients in an audioconference is an active speaker and
01:45 10 forms an active speaker list; is that right?

01:45 11 A. There are -- there are instances where, yes,
01:45 12 clients who are determined to be active speakers are
01:45 13 grouped together in some way.

01:45 14 Q. Are there any instances where Cisco Webex
01:45 15 Meetings determines that a plurality of the clients in
01:45 16 an audioconferencing system has the capability to mix
01:45 17 multiple audio streams?

01:45 18 A. So again, we do use the capability of client
01:45 19 mixing multiple audio streams in some scenarios, but
01:46 20 it's not based strictly on the capability of those
01:46 21 clients to do so.

01:46 22 Q. Are there any instances where Cisco Webex
01:46 23 Meetings makes a determination of whether one or more
01:46 24 clients in an audioconference has the capability to mix
01:46 25 multiple audio streams?

01:46 1 A. Yeah. Again, that -- that determination is
01:46 2 based on multiple factors.

01:46 3 Q. What determination?

01:46 4 A. The determination of whether the client should
01:46 5 be delivered mixed or unmixed audio streams.

01:46 6 Q. Understood. And one of those factors is the
01:46 7 physical capabilities or characteristics of the client
01:46 8 device, right?

01:46 9 A. In some cases, but not in others.

01:46 10 Q. No. 5 says: Multiplexing said packets of
01:46 11 audio data received from each client on said active
01:46 12 speakers list into a multiplexed stream.

01:47 13 Do you see that?

01:47 14 A. Yes.

01:47 15 Q. Do you understand what that means?

01:47 16 A. Again, I think there are multiple different
01:47 17 versions or meanings behind the use of the term
01:47 18 "multiplexing." So we'd have to discuss it, what --
01:47 19 what it means in this context.

01:47 20 Q. Do you have any testimony about whether Cisco
01:47 21 Webex Meetings infringes Claim 5 of the patent? The
01:47 22 answer can be no. I'm just trying to understand your
01:47 23 testimony for trial.

01:47 24 A. No. In terms of infringement, I don't -- I'm
01:47 25 not going to offer a legal opinion on that, but I can

01:47 1 answer specific questions about the way the system
01:47 2 behaves.

01:47 3 Q. And you didn't consult any other parts of this
01:47 4 patent, including the patent specifications, to try to
01:47 5 get a better understanding of what Claim Element [5]
01:47 6 means, right?

01:47 7 A. I think, yeah, like I said earlier, I have
01:48 8 only seen the claim section for the most part.

01:48 9 Q. Do you have any understanding, based on how
01:48 10 you've used the words "multiplexing" and "multiplexed"
01:48 11 and "stream" in the ordinary course of your business,
01:48 12 whether Cisco Webex Meetings multiplexes packets of
01:48 13 audio data received from clients in an audioconference
01:48 14 on the active speaker list into a multiplexed stream,
01:48 15 whether that ever occurs?

01:48 16 A. Based on how I would define the terms
01:48 17 "multiplexing" and "multiplexed stream," I would not
01:48 18 describe the behavior of Webex -- Cisco Webex Meetings
01:48 19 in that way.

01:48 20 Q. Could you elaborate?

01:48 21 A. So again, a stream is a very particular
01:48 22 concept within the realtime media standards. It has --
01:49 23 it determines certain aspects of the way the media is
01:49 24 transmitted, like the way the security is done, the way
01:49 25 that, like, you determine whether packets are lost in a

01:49 1 network and things like that. And the way that Webex
01:49 2 Meetings uses multiplexing does not leverage the
01:49 3 multiplexed stream concept, as I would define it.

01:49 4 Q. But Cisco Webex Meetings does have
01:49 5 multiplexing capabilities with respect to audio
01:49 6 conferences, right?

01:49 7 A. Yes. I think that -- that's fair to say with
01:49 8 the caveat that, again, multiplexing can take many
01:49 9 different potential forms.

01:49 10 Q. Do you have a description in the way -- of the
01:50 11 way that Cisco Webex Meetings delivers multiplexed
01:50 12 audio to clients? Can you describe that for me?

01:50 13 A. Sure. There's multiple levels of multiplexing
01:50 14 in a Webex meeting. We -- for example, we multiplex
01:50 15 the audio and video delivered to a client onto the same
01:50 16 network. So those are sent across the same network
01:50 17 between the server and the client.

01:50 18 And we also multiplex multiple audio streams
01:50 19 to -- again, to a receiving client. We also
01:50 20 multiplex -- in some cases, video being sent from a
01:50 21 client is multiplexed onto the network towards the
01:50 22 server. So there are a lot of different usages of
01:50 23 multiplexing. That's why it's a bit difficult to
01:50 24 always have a common understanding. It's a very
01:50 25 overloaded term.

01:50 1 Q. There are instances where Cisco Webex Meetings
01:51 2 does mix audio before transmitting the audio in a
01:51 3 packet back to some or all clients in a conference,
01:51 4 right?

01:51 5 A. Yes. I think that's an accurate answer.

01:51 6 Q. Yeah. And my microphone. And then there's --
01:51 7 I assume that Webex has a feature to eliminate that
01:51 8 echo from the conference?

01:51 9 A. Yeah. To the -- to the question of does Webex
01:51 10 have a feature to eliminate that echo, yes. We do.
01:51 11 It's called audio echo cancellation, or AEC, a typical
01:51 12 abbreviation for it.

01:51 13 Q. When there's a determination at the server
01:51 14 level of who the active speaker is, how is that
01:51 15 determination made?

01:51 16 A. It does vary a little bit from server to
01:51 17 server and has varied over time. There's lots of
01:51 18 tuning of those sorts of parameters, how fast it should
01:51 19 react, how long it should stay, different things like
01:51 20 that.

01:51 21 But essentially, the system is examining the
01:52 22 audio that it's receiving, and it is looking as best as
01:52 23 it can for whether that audio contains useful noise,
01:52 24 and within the context of a meeting useful noise is
01:52 25 largely people talking, although not exclusively.

01:52 1 And then if -- if a person is talking, then
01:52 2 the server will, again, do that correlation of audio to
01:52 3 video and try to draw that blue or green box around
01:52 4 that portion of the video.

01:52 5 Q. And talking now about Webex Meetings, there
01:52 6 are instances where audio clients use SIP to connect
01:52 7 with Webex Meetings, right?

01:52 8 A. Yes. Audio clients, audio/video clients,
01:52 9 different -- yeah. Clients have different levels of
01:52 10 capability.

01:52 11 Q. You would agree that a client using a
01:52 12 telephone and the H.323 protocol is capable of
01:53 13 participating in a Webex Meetings audioconference,
01:53 14 right?

01:53 15 A. Yes. With the -- with the caveats that I
01:53 16 described earlier.

01:53 17 Q. Does Webex Meetings use a metric of loudest
01:53 18 audio to determine the active speakers?

01:53 19 A. In combination with -- with some other
01:53 20 factors. So the determination of loudest audio can be
01:53 21 quite complex.

01:53 22 For example, you can imagine that someone has
01:53 23 a noisy fan in their home office, right? Now,
01:53 24 that's -- that's loud, but it's not useful loud. So
01:53 25 there is some devil in the details in terms of the

01:53 1 determination of loudest and what we -- what we intend
01:54 2 to deliver. But at a high level, you could best
01:54 3 describe the goal as saying if someone is making --
01:54 4 speaking within a meeting, you want to be able to hear
01:54 5 them.

01:54 6 Q. And does the CMS server store an active
01:54 7 speaker list in connection with an audioconference?

01:54 8 A. I don't know the full details of the CMS code,
01:54 9 but in terms of a -- or how those -- that sort of
01:54 10 concept is tracked. But at a high level, it would
01:54 11 have, again, the notion of wanting to deliver the most
01:54 12 relevant or most useful audio to the clients that are
01:54 13 connected to it.

01:54 14 Q. Has Cisco made any efforts to design around or
01:54 15 otherwise avoid infringement of the '858 patent?

01:54 16 A. No.

01:54 17 (End of video deposition.)

01:55 18 MR. SIEGMUND: Thank you, Your Honor.

01:55 19 Paltalk next calls Mr. Aaron Belcher,
01:55 20 another Cisco engineer. And his testimony's relevant
01:55 21 to infringement by video deposition.

22 (Video deposition of Aaron Belcher played as follows:

01:55 23 Q. As you heard from your counsel, my name is
01:55 24 Bryce Barcelo, and I represent Paltalk in this case.

01:55 25 Would you mind stating your full name for the

01:55 1 record?

01:55 2 A. My name is Aaron James Belcher.

01:55 3 Q. Okay. And have you reviewed the

01:55 4 patent-in-suit?

01:55 5 A. I have reviewed the claims in the

01:55 6 patent-in-suit. Not -- yes.

01:55 7 Q. And so did you actually look at the actual

01:55 8 patent-in-suit?

01:55 9 A. The claims of the patent-in-suit. I focused
01:55 10 specifically on the claim. I didn't read every word in
01:55 11 the rest of the document.

01:55 12 Q. What did you do to prepare for today?

01:56 13 A. I mean, nothing specific related to this
01:56 14 topic. I mean, I'm the head architect for the Webex
01:56 15 Meetings and messaging BU. So as part of my daily job,
01:56 16 I pay attention to changes that are made.

01:56 17 Q. And when was the last major change to the UX
01:56 18 in this area?

01:56 19 A. Yeah. When was the last major change in the
01:56 20 UX in this area? Yeah. I mean, the -- the product's
01:56 21 been basically functioning the same in this area for as
01:56 22 long as I can remember. We -- we have always been an
01:56 23 audioconferencing, you know, application that supports
01:56 24 PSTN.

01:57 25 Q. And how would you describe or define

01:57 1 multiplexing?

01:57 2 A. So multiplexing is a pretty vague term.
01:57 3 Multicast is a standard. You know, there is an RFC
01:57 4 describing it. Cisco is very involved in that.
01:57 5 Multiplexing is a more generic term. It's a lot
01:57 6 vaguer. So I need -- need some context where you want
01:57 7 to define multiplexing in.

01:57 8 Q. So with -- with regards to audioconferencing,
01:57 9 how would you define multiplexing?

01:57 10 A. So with regard to audioconferencing, how would
01:57 11 you define multiplexing? So yeah. I -- we do have a
01:58 12 product that multiplexes video, and it might be helpful
01:58 13 for me to describe that and then go from there, and
01:58 14 then describe how -- yeah. So we have a product that
01:58 15 has two video streams -- screens, and the -- what
01:58 16 happens is the server detects that the client has two
01:58 17 video streams, and instead of sending that one video
01:58 18 stream, the server does a composed video that has a
01:58 19 complete layout on both video streams. And over that
01:58 20 one connection to the -- that video device, we send two
01:58 21 video streams, and we call that multiplexing.

01:58 22 But it's -- it's all -- it's done in a
01:58 23 transcoder, where the transcoder knows it's talking to
01:58 24 a device that has two screens, and it's, you know,
01:59 25 creating two separate video screens -- the things for

01:59 1 it. So that duplex video is the way we think about it.
01:59 2 "Multiplex video" is a term we use to describe that
01:59 3 specific thing. We don't have anything similar to that
01:59 4 for audio, so, you know, it's hard to -- to describe
01:59 5 what...

01:59 6 Q. And what role does H.323 play in
01:59 7 audioconferencing for Webex?

01:59 8 A. It's a very small role. There's some older
01:59 9 clients that still talk about protocol.

01:59 10 Q. And so it's a legacy compatibility protocol?
01:59 11 Would that be fair to say?

01:59 12 A. Correct.

01:59 13 Q. Do the Webex products receive audio packets
01:59 14 from clients?

01:59 15 A. Yeah. It's vague. Do the Webex products
02:00 16 receive audio packets from clients? Yes. It's vague.
02:00 17 But yes. We do.

02:00 18 Q. And what is -- what does the term "mux" mean
02:00 19 to you?

02:00 20 A. Context?

02:00 21 Q. Sure. You can go to the next slide if you
02:00 22 need context for the term "mux."

02:00 23 A. Oh, next slide, Slide 4?

02:00 24 Q. Yes.

02:00 25 A. I don't know what that means for sure. I

02:00 1 don't want to speculate in that context.

02:00 2 Q. Do you know what the term "mux" means in any
02:00 3 context?

02:00 4 A. So -- so I have heard it before, I think.
02:00 5 I -- you know, if I saw it in context, I would
02:01 6 understand what it means. But I can't think of like a
02:01 7 definition of what mux means.

02:01 8 Q. So you are not familiar with mux as a
02:01 9 shorthand term for multiplex?

02:01 10 A. No.

02:01 11 Q. You've never -- you've never seen that
02:01 12 association between those two terms?

02:01 13 A. No. I mean -- yeah. It could be used that
02:01 14 way, but I have never seen that association.

02:01 15 Q. Okay. Does the CMS mix audio streams before
02:01 16 sending them to the phones?

02:01 17 A. Yes.

02:01 18 (End of video deposition.)

02:01 19 MR. SIEGMUND: Paltalk next calls
02:02 20 Mr. Steven Boyles. He's a principal at Five Corners,
02:02 21 and his testimony is relevant to damages by video
02:02 22 deposition.

02:02 23 (Video deposition of Steven Boyles played as follows:

02:02 24 Q. Mr. Boyles, do you understand today that
02:02 25 you're appearing as Cisco's corporate representative

02:02 1 for a number of topics?

02:02 2 A. I do.

02:02 3 Q. Now find Topic 30. I'll read this one and let
02:02 4 you take the heavy lifting there, but Topic 30 says:
02:02 5 Sales of software incorporating the accused
02:02 6 functionalities and attendant sales data.

02:02 7 Did I read that correctly?

02:02 8 A. I believe so.

02:02 9 Q. Mr. Boyles, do you have an understanding of
02:02 10 what is meant by accused functionalities as it appears
02:02 11 in Topic 30?

02:02 12 A. Again, I have a broad understanding as to what
02:02 13 it relates to.

02:02 14 Q. And what is that broad understanding?

02:02 15 A. That it pertains to the audio portion of the
02:02 16 sales.

02:03 17 Q. What do you mean by "audio portion,"
02:03 18 Mr. Boyles?

02:03 19 A. Well, when referring to, I guess, Webex
02:03 20 products, it's the audio portion of the product
02:03 21 functionality as opposed to the meetings or polling or
02:03 22 visual portions or anything else that's not related to
02:03 23 sound.

02:03 24 Q. Mr. Boyles, do you know if Cisco keeps track
02:03 25 of the number of users of its Webex products?

02:03 1 A. I have seen no indication that within at least
02:03 2 the finance group, there's any tracking mechanism of
02:03 3 number of users.

02:03 4 Q. Mr. Boyles, do you know how much revenue Cisco
02:03 5 earned from the Webex Meetings meet option in 2021?

02:04 6 A. I have not analyzed the data that's been
02:04 7 produced or tried to break it down between meet,
02:04 8 enterprise, or other.

02:04 9 Q. And, Mr. Boyles, you don't know how many users
02:04 10 Cisco has for Webex Calling basic, do you?

02:04 11 A. I have not seen -- I have not seen any
02:04 12 documents reflecting the number of users.

02:04 13 Q. You haven't seen any documents reflecting the
02:04 14 number of users for any Webex product; is that correct?

02:04 15 A. Correct.

02:04 16 Q. And, Mr. Boyles, I'm looking now at B-13 which
02:04 17 says U.S. Revenue. I don't see any U.S. revenue listed
02:04 18 until we get to Q1 of fiscal year 2018.

02:05 19 Do you know why those rows are blank for
02:05 20 fiscal years '15 through '17?

02:05 21 A. I do.

02:05 22 Q. And why is that?

02:05 23 A. The Cisco data that anybody has access to is
02:05 24 purged after a certain number of years. And so the
02:05 25 U.S. portion of the Webex revenue, we only have access

02:05 1 to it back to fiscal year 2018. Prior to that, someone
02:05 2 at Cisco's going to have to go into some sort of
02:05 3 archive. We have to first of all identify where the
02:05 4 archive might be attributed to the U.S. only revenue
02:05 5 and try to extract that information. It just hasn't
02:05 6 been able to be done yet because there isn't specific
02:05 7 IT support available to do that any longer.

02:05 8 Q. Mr. Boyles, have you ever seen any surveys
02:06 9 completed by Cisco or Webex customers about how much
02:06 10 they value Webex Calling, for example?

02:06 11 A. I have not.

02:06 12 Q. Mr. Boyles, have you ever seen any financial
02:06 13 analyses or reports that Cisco uses to measure the
02:06 14 performance of Webex?

02:06 15 A. Beyond what we have reviewed today, I'm not
02:06 16 aware of anything additional.

02:06 17 Q. Does Cisco track revenue at a more granular
02:06 18 level than that, like with respect to revenue from
02:06 19 Webex Events, Webex Calling? Do you know the answer to
02:06 20 that question one way or the other?

02:06 21 A. Well, the information in Exhibit 16 and
02:06 22 related exhibits is the most granular level you could
02:07 23 imagine reporting this information. It's -- not only
02:07 24 is it by product, sometimes it's by elements of a
02:07 25 product.

02:07 1 Q. And, Mr. Boyles, you previously discussed that
02:07 2 Cisco does not track, for example, its R&D expenses by
02:07 3 product; is that right?

02:07 4 A. Correct. That's my understanding.

02:07 5 (End of video deposition.)

02:07 6 MR. SIEGMUND: And, Your Honor, plaintiff
02:07 7 would move to admit PX-139 and PX-154.

02:07 8 MR. SABRI: No objection, Your Honor.

02:07 9 THE COURT: Admitted.

02:07 10 MR. SIEGMUND: That's all the video
02:07 11 depositions, Your Honor.

02:07 12 THE COURT: Thank you.

02:07 13 Who will your next witness be?

02:07 14 MR. CAUGHEY: Plaintiff calls Dr. Scott
02:07 15 Schaefer.

02:07 16 (The witness was sworn.)

02:08 17 DIRECT EXAMINATION

02:08 18 BY MR. CAUGHEY:

02:08 19 Q. Good afternoon.

02:08 20 A. Good afternoon.

02:08 21 Q. Could you please state your name for the
02:08 22 record?

02:08 23 A. Sure. My name is Scott Schaefer.

02:08 24 Q. How are you doing today?

02:08 25 A. Okay.

02:08 1 Q. I see on the screen and I think it's probably
02:08 2 on the jurors' screen the cover slide. Have you put
02:08 3 together a slide deck to assist with your testimony
02:08 4 today?

02:08 5 A. Yes.

02:08 6 Q. Okay. And we will walk through this over the
02:08 7 next while.

02:08 8 MR. CAUGHEY: And if we could go -- I
02:08 9 don't have the clicker. Hold on, I'm sorry, that's
02:09 10 going to be useful --

11 BY MR. CAUGHEY:

02:09 12 Q. More than one slide, right?

02:09 13 A. It is.

02:09 14 Q. Okay. Now, this is the first slide of the
02:09 15 deck with Dr. Scott Schaefer.

02:09 16 Would you tell the jury a little bit about
02:09 17 yourself?

02:09 18 A. Sure. So I grew up around San Antonio, Texas,
02:09 19 and for my undergraduate, I went to Trinity University,
02:09 20 which is a small school in San Antonio, and I got a
02:09 21 bachelor of science in computer science and mathematics
02:09 22 from there.

02:09 23 After that, I went to Rice University in
02:09 24 Houston, Texas, and I got a master's of science in
02:09 25 computer science as well as Ph.D. in computer science

02:09 1 from there.

02:09 2 After I left Rice, I went to Texas A&M in
02:09 3 College Station. And I became assistant professor
02:09 4 there. And I was promoted to associate professor,
02:09 5 eventually full professor and became the associate
02:09 6 department head, and I've been department head of
02:09 7 computer science and engineering the last five years
02:10 8 now.

02:10 9 Q. Let's add a little daylight to a little bit of
02:10 10 that. Could you tell the jury what's involved or what
02:10 11 was involved in your working toward and receiving a
02:10 12 Ph.D. in computer science from Rice?

02:10 13 A. Yes. Well, I guess I could talk about degree
02:10 14 requirements and so forth. I've taken a set of
02:10 15 graduate classes and so forth to all factors of the
02:10 16 academic aspect, but I also had to do original research
02:10 17 and computer science. I had to publish that research,
02:10 18 within that research. And I guess those were some of
02:10 19 the main qualifications, but there were other aspects
02:10 20 to the degree as well.

02:10 21 Q. You mentioned that you're the department head
02:10 22 at Texas A&M in computer science. What
02:10 23 responsibilities does that entail?

02:10 24 A. Well, I basically run the department. So I
02:10 25 have to do things like hiring faculty. For example, I

02:10 1 get to evaluate faculty candidates and hire them. I'm
02:10 2 responsible for the budget of the department.

02:10 3 Responsible for the overall strategic directory of the
02:11 4 department.

02:11 5 I have to evaluate faculty on an annual basis,
6 and I have to evaluate them for promotion and tenure
02:11 7 and things of that nature as well. Those are I guess
02:11 8 just some of the things that you have to do as the
02:11 9 department head, but basically I'm responsible for the
02:11 10 entire department.

02:11 11 Q. Do you teach?

02:11 12 A. I do, although not right now this semester.

02:11 13 Q. What -- can you give us -- the jury some
02:11 14 examples of classes you've taught as the computer
02:11 15 science professor at Texas A&M?

02:11 16 A. Sure. I taught a bunch of classes, I guess,
02:11 17 at A&M. I taught an introduction to computing class
02:11 18 for like just starting out students in their major. I
02:11 19 taught a data structures and algorithms class. I
02:11 20 taught -- let's see. A computer graphics class. I
02:11 21 taught an upper-level seminar class for our more
02:11 22 advanced students. I taught some graduate classes in
02:11 23 geometric modeling and so forth at the graduate level
02:11 24 as well.

02:11 25 Q. And the last box here, that reflects an award

02:11 1 you've won for teaching?

02:11 2 A. Right. Yeah. I won actually several awards
02:12 3 for teaching, but that one I think is maybe referring
02:12 4 to the Association of Former Students Distinguished
02:12 5 Teaching Award at the university. It's one of the
02:12 6 highest awards actually given by the university for
02:12 7 teaching.

02:12 8 Q. Now, on this next slide, it's fairly dense
02:12 9 with information.

02:12 10 But have you ever done any private sector work
02:12 11 in addition to your faculty position at Texas A&M?

02:12 12 A. Yeah. I actually worked for a bunch of
02:12 13 different companies.

02:12 14 Q. Could you give some examples to the jury of
02:12 15 some of the computer science-oriented work in the
02:12 16 private sector?

02:12 17 A. Sure. So I guess the ones that are listed
02:12 18 here, I worked at Microsoft Research for a little bit.
02:12 19 And I also worked at -- let's see. This one's
02:12 20 Southwest Research Institute in -- it's a place in
02:12 21 San Antonio, Texas, where I did radio direction finding
02:12 22 algorithms.

02:12 23 Q. And we heard that acronym DARPA before.

02:12 24 What sort of work did you do for that defense
02:13 25 research agency?

02:13 1 A. So that was the department -- DARPA computer
02:13 2 science study panel. We went to various -- we went to
02:13 3 various military agencies. Sorry. I had to think
02:13 4 about it. I had to get clearance to do this and I had
02:13 5 to think what I can talk about.

02:13 6 Basically, we were trying to help aspects of
02:13 7 the U.S. military solve technological problems. I
02:13 8 think that's how I can put it.

02:13 9 Q. And now, probably right on the other end of
02:13 10 the spectrum, I see a cartoon mouse in the third row
02:13 11 which my children would be much more interested in.

02:13 12 What's the story with Ratatouille?

02:13 13 A. Yeah. That's a picture from one of the Pixar
02:13 14 movies. Some of the research I did was about ways of
02:13 15 animating and forming shapes, basically, and Pixar
02:13 16 implemented a variation of that technique actually as
02:13 17 part of their animation pipeline. And Ratatouille was
02:13 18 the first movie that it actually got used on.

19 Q. And it says you've published papers in the
20 field of computer science.

21 You just gave a couple of examples of your
02:13 22 scholarship and published work.

02:13 23 A. Well, I don't know how much you really want to
02:13 24 get into it.

02:13 25 Q. Not too much.

02:14 1 A. Not too much. I published a lot in different
02:14 2 areas. One actually was that technique that got used
02:14 3 in Ratatouille, for example. But I've published other
02:14 4 stuff that's been used in a variety of different
02:14 5 products that you actually might have come across.

02:14 6 Q. And I think the jury heard in one of the
02:14 7 opening statements that you've been retained and are
02:14 8 presented as an expert here to offer some testimony on
02:14 9 the topic largely of infringement and technical issues.

02:14 10 What are the questions that you considered in
02:14 11 connection with your analysis on this case?

02:14 12 A. Right. So the questions that you see there
02:14 13 really is does Webex infringe upon the '858 patent?
02:14 14 And what is the importance of Webex's infringing and
02:14 15 noninfringing features?

02:14 16 Q. In addressing those questions, what materials
02:14 17 did you consider?

02:14 18 A. I looked at a lot of stuff, actually. So I
02:14 19 looked at the patent and its file history, claim
02:14 20 constructions, the plain and ordinary meaning of claim
02:14 21 terms in light of the patent specification. I looked
02:14 22 at a lot of source code in this case, the accused
02:15 23 products, documents that were provided by Cisco,
02:15 24 documents provided by Paltalk, other publicly available
02:15 25 material like the websites and so forth, the pleadings,

02:15 1 discovery responses. I read lots of depositions, and I
02:15 2 had interviews with Dr. Madisetti and Dr. Bratic as
02:15 3 well.

02:15 4 Q. We've heard and seen, I think, some images of
02:15 5 the Webex audio conferencing product itself.

02:15 6 Have you used that product?

02:15 7 A. Yes. I have.

02:15 8 Q. Have you brought those -- that -- those
02:15 9 experiences using the product to bear on your opinion
02:15 10 in this case?

02:15 11 A. Yeah, of course.

02:15 12 Q. And could you -- we'll get into it in more
02:15 13 detail, but could you just give the jury just a couple
02:15 14 of sentences on what Webex is from the user's
02:15 15 perspective?

02:15 16 A. Yeah. So Webex is a product that allows you
02:15 17 to have videoconferences with a number of users. You
02:15 18 can join in from maybe a computer or you can call in
02:15 19 with a phone, and you can talk to each other. And at
02:15 20 least the ones that are connected via a computer can
02:15 21 see each other, if they have audio or video cameras and
02:15 22 so forth that are connected. It lets them meet
02:16 23 together, basically.

02:16 24 Q. All right. Can you -- in case folks have used
02:16 25 other ones, can you give another example or two maybe

02:16 1 about similar platforms?

02:16 2 A. So other ones that you may have seen or heard
02:16 3 of or something are things like Microsoft Teams, for
02:16 4 example, or Zoom. Those are fairly popular ones that
02:16 5 people also use.

02:16 6 MR. CAUGHEY: At this time, Your Honor, I
02:16 7 move to qualify Dr. Schaefer as an expert in computer
02:16 8 science and engineering.

02:16 9 MR. SABRI: No objection.

02:16 10 THE COURT: Admitted.

02:16 11 (Clarification by Reporter.)

02:16 12 BY MR. CAUGHEY:

02:16 13 Q. Now, we're going to start on your slides I see
02:16 14 with the first question. Does Cisco infringe the
02:16 15 '858 patent? And therefore, we'll start naturally with
02:16 16 the '858 patent.

02:16 17 What do you see on the screen here, sir?

02:16 18 A. This looks like the first part of the
02:16 19 '858 patent as well as Claim 1 of the '858 patent.

02:16 20 Q. And what do you understand these sort of
02:16 21 claims of the '858 patent to be?

02:16 22 A. I understand the Claims 1, 2, 3, 4, and 5 are
02:17 23 asserted.

02:17 24 Q. Okay. And the 2, 3, 4, and 5 aren't on the
02:17 25 screen, but you've analyzed those claims?

02:17 1 A. That's correct.

02:17 2 Q. In -- in addition to the claims which we see
02:17 3 here, what -- what else is contained in a patent?
02:17 4 We'll look at some of that now, but what are the other
02:17 5 parts of the patent?

02:17 6 A. So there's lots of different parts of a
02:17 7 patent. I guess you can see the abstract here, for
02:17 8 example, on the first page. It's sort of a small
02:17 9 summary of the patent. That's usually followed by a
02:17 10 list of figures. There's some of them on this page
02:17 11 that you see. After that there's usually a
02:17 12 description --

02:17 13 Q. Could I pause you for one second here?

02:17 14 MR. CAUGHEY: Mr. Boles, can you pull up
02:17 15 PX-16 so the jurors can kind of follow along with this
02:17 16 description?

02:17 17 A. Okay.

02:17 18 BY MR. CAUGHEY:

02:17 19 Q. There we go.

02:17 20 A. Correct. So there's --

02:17 21 Q. There's the first page, right?

02:17 22 A. There's the first page, abstract and images.
02:17 23 That's usually followed by several more images, for
02:17 24 example. And then after that, there's usually a
02:17 25 description of background of the invention. I guess

02:18 1 you can see here would be a summary of the invention
02:18 2 and a description of the figures.

02:18 3 And this is what we get as the preferred
02:18 4 embodiments. So it's a description of one way that you
02:18 5 might interpret the claims of the invention, one or
02:18 6 more of the ways, I suppose, that you might implement
02:18 7 the claimed invention in this case. It's not the only
02:18 8 way to do it, but it's an example.

02:18 9 And then after that, it would be followed by a
02:18 10 list of claims.

02:18 11 Q. And the claims start at the bottom there of
02:18 12 this, I guess, last page or second-to-last page.

02:18 13 A. Yes. That's correct.

02:18 14 Q. With the number 1?

02:18 15 A. Usually they start at No. 1. Yes.

02:18 16 Q. Excellent. Good place to start.

02:18 17 MR. CAUGHEY: You can pull that down,
02:18 18 Mr. Boles.

19 BY MR. CAUGHEY:

02:18 20 Q. So with that in mind -- there we go.

02:18 21 Now, I understand your slides march through a
02:18 22 whole bunch of analysis in this regard, but for the
02:18 23 jury's help, I think you start at the conclusion.

02:18 24 What is your conclusion?

02:19 25 A. Sure. My conclusion was that Claims 1

02:19 1 through 5 are infringed by Cisco's Webex.

02:19 2 Q. And before we get to the details of those
02:19 3 Claims 1 through 5, I see you prepared something with a
02:19 4 background of the invention. It looks like we start
02:19 5 right where we left off of the patent a little bit.

02:19 6 Could you describe in light of this background
02:19 7 of the invention, PX-16, the patent, some of the
02:19 8 background of what this patent was dealing with?

02:19 9 A. Right. So the background here's talking about
02:19 10 sort of traditional audio conference. So it's talking
02:19 11 about utilizing telephones, so like regular telephone
02:19 12 to dial into this server to have an audioconference
02:19 13 over what's referred to as the public -- I guess here
02:19 14 it says public service telephone network, which is
02:19 15 often abbreviated as PSTN, actually. So you kind of
02:19 16 see like that as PSTN probably a lot throughout this
02:20 17 case.

02:20 18 Q. And it says also Plain Old Telephone System.
02:20 19 Is that like the traditional telephone, the
02:20 20 rotary phone, something like that?

02:20 21 A. A traditional phone, yes. Connecting through
02:20 22 the phone network.

02:20 23 Q. And when I -- for example, on my iPhone, if I
02:20 24 dial a phone number, can that connect to the PSTN
02:20 25 network as well?

02:20 1 A. Right. Yes. So cellular provider but yes.

02:20 2 Q. So the next slide shows something starting
02:20 3 with kind of a grainy big old box up to a computer from
02:20 4 a little bit later probably.

02:20 5 What are you depicting here?

02:20 6 A. So this is looking at some of the -- I guess
02:20 7 the evolution basically of phones and audio products
02:20 8 and so forth starting with various sort of simplistic
02:20 9 versions of a wireless phone to like a video phone, for
02:20 10 example, to a phone that -- I had one of these phones
02:20 11 actually in my house. And eventually getting towards
02:20 12 like computers to do audioconferencing.

02:20 13 Q. In the patent we saw the term "PSTN," or plain
02:21 14 old telephone service. And I think you mentioned there
02:21 15 was a rotary phone -- could you describe -- or just a
02:21 16 traditional phone.

02:21 17 Could you describe for the jury what you're
02:21 18 depicting here with this slide?

02:21 19 A. Right. So this is connecting over like the
02:21 20 regular telephone network. Right? So we talked about
02:21 21 the PSTN. That's the telephone network in this case.
02:21 22 Phones would connect across this network in order to
02:21 23 talk to one another.

02:21 24 But there's downsides of doing things this
02:21 25 way. So it's expensive, the way that this network is

02:21 1 set up. I remember having long-distance fees, for
02:21 2 example. And so, you know, communicating over long
02:21 3 distance or geographically disparate regions was
02:21 4 difficult, expensive, and things like the speed of this
02:21 5 network was not super great either.

02:21 6 Q. This slide mentions expense, speed and long
02:21 7 instance. The next slide talks -- jumps forward back
02:21 8 to the '858 patent and the problem that you said
02:21 9 solving it, what you called hybrid audio.

02:22 10 Can you first explain to the jury what you
02:22 11 mean -- or what the patent means, I suppose, by hybrid
02:22 12 audio?

02:22 13 A. Right. So in this picture that you see
02:22 14 here --

02:22 15 Q. There you go.

02:22 16 A. So there's like telephones connecting through
02:22 17 the PSTN. We talked about that. That was the phone
02:22 18 network from before. But computers connect through a
02:22 19 different type of network. And you can use a different
02:22 20 type of communication, actually. So this wide area
02:22 21 network here is really just another word to substitute
02:22 22 the word "Internet" here, right, so this is the
02:22 23 Internet.

02:22 24 And it's showing these things connecting to
02:22 25 this server over here, and it's allowing these phone

02:22 1 clients and these computer clients to all participate
02:22 2 in the same audioconference together.

02:22 3 Q. And could you describe what the mixer is and
02:22 4 what the hybrid MCU is?

02:22 5 A. The hybrid MCU server is going to be a lot of
02:23 6 what the patent's talking about in this case, but the
02:23 7 mixer is going to be something that takes in audio
02:23 8 signals, and it's called mixing, mixes them together in
02:23 9 this case. Basically it's taking two different audio
02:23 10 signals, two or more audio signals and combining them
02:23 11 together to form a single audio signal. So that's what
02:23 12 mixing is.

02:23 13 Q. And one thing, to follow up from your answers.
02:23 14 A lot of what the patent is directed to is over here at
02:23 15 the hybrid server on this, on this diagram.

02:23 16 And first, this is a diagram from the patent?

02:23 17 A. This is Figure 1 of the patent.

02:23 18 Q. Okay. And the hybrid MCU server, that's --
02:23 19 you said "server." What do you mean by that? How
02:23 20 would that compare to, for example, Cisco's Webex
02:23 21 server? I know we're going to get into more detail on
02:23 22 this, but...

02:23 23 A. They're basically referring to similar things
02:23 24 here. So one or more devices, that's representing the
02:23 25 sort of -- well, we would call these sort of backside

02:23 1 processing or backhand processing happening.

02:24 2 Q. And then the clients, the folks that log on to
02:24 3 the conference, they're over here on the left with
02:24 4 their computers and phones?

02:24 5 A. Yes. That's right.

02:24 6 Q. Okay. Next you have included in your slides
02:24 7 another figure from the specification.

02:24 8 MR. SABRI: Your Honor, I'm going to
02:24 9 object. This is outside the scope of his report. This
02:24 10 section isn't discussed.

02:24 11 MR. CAUGHEY: The patent is discussed
02:24 12 obviously throughout his report. But in Paragraphs 24
02:24 13 and 34, Dr. Schaefer discusses how he reviews the
02:24 14 patent and all its claims in light of the review of the
02:24 15 specification. And additionally, in his multiple
02:24 16 depositions, he was asked at extraordinary length about
02:24 17 Column 5 and other aspects of the specification.

02:24 18 MR. SABRI: He never cites Column 5 in
02:24 19 his report a single time, Your Honor. Just saying he
02:24 20 talks about the patent doesn't cut it.

02:24 21 THE COURT: Is he saying anything you
02:24 22 haven't heard at the deposition?

02:24 23 MR. SABRI: I suspect he is. Of course,
02:25 24 I can't know till he says it, but I do think he's going
02:25 25 to get into what was not in his report and was not in

02:25 1 his deposition.

02:25 2 THE COURT: Could you ask the question
02:25 3 again?

02:25 4 MR. CAUGHEY: Sure. I think the
02:25 5 first -- the question pending was just whether this was
02:25 6 a figure from the patent, but...

02:25 7 THE COURT: I'll overrule the objection
02:25 8 to that question.

02:25 9 A. Can I answer it?

02:25 10 BY MR. CAUGHEY:

02:25 11 Q. Yes.

02:25 12 A. This is Figure 3 from the patent.

02:25 13 Q. And what is this figure depicting?

02:25 14 A. This figure is depicting -- well, it's what
02:25 15 would be called a flowchart. So if I can explain a
02:25 16 flowchart very briefly.

02:25 17 So a flowchart would start at the top here,
02:25 18 and it has different elements associated with it. And
02:25 19 those are statements, things that you should do. But
02:25 20 some of them might be questions like the diagrams that
02:25 21 you see. And so when you see a question, depending on
02:25 22 the outcome of that question, you might go down the
02:25 23 "yes" branch or the "no" branch that comes out of that
02:25 24 particular diamond.

02:25 25 So, for example, where it says time to update

02:26 1 active speakers right here, if the answer is yes, you
02:26 2 would go to the right; if the answer's no, you would go
02:26 3 down here.

02:26 4 Q. And on the right, that's text taken from the
02:26 5 patent specification?

02:26 6 A. Yes. This is Column -- part of Column 5.

02:26 7 Q. And does that describe how to navigate this
02:26 8 flowchart?

02:26 9 A. Yes.

02:26 10 Q. Now, you've highlighted the first sentence as
02:26 11 well as the diamond marked 310. Could you help walk
02:26 12 the jury through how the flowchart works in this
02:26 13 patent?

02:26 14 A. Sure. So what it's doing here is it's
02:26 15 asking -- it starts at J is equal to 1, you see it on
02:26 16 top, and it's going through all of the clients
02:26 17 connected here. And it's asking whether you're done
02:26 18 processing all of the clients. In other words, you've
02:26 19 gone through all of them at this point. If the answer
02:26 20 is yes, you just stop.

02:26 21 Q. And so the server's received the audio at that
02:26 22 point?

02:26 23 A. Yes. That's actually up here. It's at the
02:26 24 top.

02:26 25 Q. Okay. Keep going. I'm sorry.

02:26 1 A. So we received audio from different clients,
02:27 2 potentially updated an active speaker list, as was
02:27 3 shown here. We're down here. So it's done sending to
02:27 4 all parties. If the answer is no, then it goes through
02:27 5 this process in here. You can see it's happening in a
02:27 6 loop. So it's going to go through all of these
02:27 7 different clients here.

02:27 8 Q. Now, the highlighting moves down to diamond
02:27 9 312 which says Party J mixing client.

02:27 10 Would you continue your progression through
02:27 11 this?

02:27 12 A. Right. So this here is asking whether the
02:27 13 party that we're about to send to Party J, it is
02:27 14 sending there, so if it's a mixing client or not. We
02:27 15 haven't talked about mixing or non-mixing clients here,
02:27 16 but maybe at this point, I think simply is the mixing
02:27 17 client would be like a computer connecting over the
02:27 18 Internet, whereas a non-mixing client would be like a
02:27 19 phone connecting over the telephone network.

02:27 20 Q. And maybe it would be helpful to say what the
02:27 21 mixing means just for a second. I know we'll get into
02:28 22 it, but if you said a mixing client might be a
02:28 23 computer, what is that mixing?

02:28 24 A. Well, I think we just talked about it briefly,
02:28 25 but it would be -- mixing is the act of taking the

02:28 1 multiple audio signals and combining them together to
02:28 2 form a single audio signal. That's mixing.

02:28 3 Q. And then from Box 312, we go to a different
02:28 4 part of Column 5 in the specification. And here, you
02:28 5 highlight the next box down 314?

02:28 6 A. Right. So this is -- if it is a mixing
02:28 7 client, it goes down via the guess arrow there. And
02:28 8 then it says Mux active speaker data, and the patent
02:28 9 here says in Step 314, you can control flow
02:28 10 multiplexes. Mux is just short for multiplex -- the
02:28 11 audio stream data for all active speakers. And it says
02:28 12 in this step, active speaker audio data for each and
02:28 13 every active speaker is multiplexed.

02:29 14 However, as will be apparent to those skilled
02:29 15 in the relevant arts, if Party J is an active speaker,
02:29 16 this step will not include Party J's own audio data in
02:29 17 the multiplexed packets. And it's talking about it
02:29 18 being a form of echo suppression so you won't hear
02:29 19 yourself speak.

02:29 20 I probably should explain multiplexing a
02:29 21 little bit here at this point.

02:29 22 Q. Why don't we give it a shot?

02:29 23 A. Okay. So multiplexing is -- you have
02:29 24 different streams of data, so we just have pieces of
02:29 25 data basically over time, something to this effect.

02:29 1 Multiplexing is just taking the multiple streams of
02:29 2 data and combining them together to transmit down, say,
02:29 3 a single connection. But at the end, you need to be
02:29 4 able to separate out those streams of data into their
02:29 5 individual components at the other side. Okay.

02:29 6 So that's different than mixing that we talked
02:29 7 about before which is just producing a single audio
02:29 8 signal. Multiplexing puts them together, and then you
02:29 9 can take them apart on the other side.

02:30 10 Q. And here we have, again, another part of the
02:30 11 patent specification. Now we've taken a right -- a
02:30 12 right turn over here to Box 316.

02:30 13 What's happening now?

02:30 14 A. Right. So this is -- let's see. If they are
02:30 15 not a mixing client, right, it says, decode the active
02:30 16 speaker data, and it describes that here. Decodes all
02:30 17 the active speaker into raw, uncompressed data. As in
02:30 18 the step we just looked at, 314, it will decode all
02:30 19 active speaker audio data for each and every active
02:30 20 speaker. However, as will be apparent to those skilled
02:30 21 in the relevant arts, if it's an active speaker, then
02:30 22 Step 316 will not include Party J's own audio data in
02:30 23 the decoded data. This is going to, again, act as an
02:30 24 audio suppression feature so that you'll not hear
02:30 25 themselves speak.

02:30 1 Q. And now the highlighting continues down to
02:30 2 Box 318.

02:30 3 A. Right. So then it says the data's being
02:31 4 mixed. And so the results of this and the results are,
02:31 5 I guess, of previous processes as well is going to be
02:31 6 that we're going to get sort of different audio streams
02:31 7 going to different clients. And that's talking about
02:31 8 the echo suppression. If you were to get back your own
02:31 9 audio, you would hear yourself on the other end and
02:31 10 that would be annoying. And so it's producing
02:31 11 different streams. It's mixing and multiplexing.

02:31 12 MR. CAUGHEY: And, actually, Mr. Boles,
02:31 13 can you go back to Slide 19 just momentarily before we
02:31 14 proceed?

15 BY MR. CAUGHEY:

02:31 16 Q. I just want to put -- there was a lot of
02:31 17 technical matter in that specification and a lot of
02:31 18 right turns and left turns down the flowchart. Could
02:31 19 you kind of reassemble those pieces for the jury in
02:31 20 terms of how the overall system is depicted in Figure 1
02:31 21 of the '858 patent?

02:31 22 A. So those mixing clients were these over here
02:31 23 connected over through the Internet, computers going
02:31 24 through the Internet. The non-mixing clients of these
02:32 25 phones connected through the phone network from before.

02:32 1 And what we were talking about, the stuff really that
02:32 2 was happening here on the server side, getting audio
02:32 3 from these clients, deciding whether to mix or
02:32 4 multiplex the data and sending back to those clients.

02:32 5 Q. Great.

02:32 6 MR. CAUGHEY: Now let's go back to Slide
02:32 7 23, Mr. Boles.

02:32 8 BY MR. CAUGHEY:

02:32 9 Q. Now, what are the benefits of this hybrid
02:32 10 audio system that's described in the '858 patent?

02:32 11 A. Well, there's a number of advantages. So one,
02:32 12 both computer and phone users can participate together
02:32 13 in the same audioconference. It's different networks
02:32 14 could communicate, but this sort of puts them all
02:32 15 together in the same audioconference.

02:32 16 There's also computational efficiency. That
02:32 17 mixing action that's happening on the server, it's only
02:32 18 doing that mixing for the clients that are not going to
02:32 19 be able to mix. So for the other clients, it's sending
02:32 20 the multiplex audio. It's not doing mixing for them.
02:32 21 It's sending the multiplexed audio and making those
02:33 22 clients, those other computers do the mixing instead of
02:33 23 the server doing it. So it's distributing the
02:33 24 computational work basically between these different
02:33 25 devices.

02:33 1 And the other thing that happens is that you
02:33 2 can get better sound quality with this as well. So
02:33 3 when you multiplex, you're just sending these audio
02:33 4 packets to the clients and making them do mixing. On
02:33 5 the server, if you were to do this, you would have to
02:33 6 decode the audio data, mix it, recode it, send it. It
02:33 7 would have to be decoded again and played, and all of
02:33 8 these different actions can cause artifacts to appear.
02:33 9 So it affects the quality of the sound data at the
02:33 10 other end. So by multiplexing the data, making it done
02:33 11 at the client's side, you can get higher-quality audio.

02:33 12 Q. And just momentarily on the second benefit,
02:33 13 computational efficiency, certainly you'd understand
02:33 14 why the server companies, someone like Cisco, would
02:33 15 want their computers to be efficient.

02:33 16 What sort of benefits would the end user gain
02:33 17 from having the more efficient hybrid audio system?

02:34 18 A. Well, you could have a larger conference, for
02:34 19 example. I guess you might be able to use less server
02:34 20 hardware to have the same size conference, for example.

02:34 21 Q. Okay. Now, the next number of slides in
02:34 22 particular deal with what are called "accused
02:34 23 products."

02:34 24 We've been spending a fair amount of time on
02:34 25 the patent and the intellectual property, but as I

02:34 1 understand, infringement involves a comparison -- I
02:34 2 think we've heard this in opening -- of the accused
02:34 3 products with what's claimed in the patent.

02:34 4 What's your understanding with the -- with
02:34 5 the caveat there's a lot of words on this slide -- of
02:34 6 what the accused Cisco Webex products are in this case?

02:34 7 A. Right. So there's a lot of products that I
02:34 8 think are being used, and you're going to have to bear
02:34 9 with me because I'm supposed to read all of these, I
02:34 10 think, here.

02:34 11 So Webex App, Webex Suite, Webex Meetings,
02:34 12 Webex Messaging, Webex Events, Webex Training, Webex
02:34 13 iOS App, Webex Android app, Webex Meetings for iOS,
02:35 14 Webex Meetings for Android, Webex Teams, Webex Meetings
02:35 15 for MS Teams.

02:35 16 Q. Thank you.

02:35 17 I'm the one who made him do it.

02:35 18 So is there a common thread among these dozen
02:35 19 Webex products that you've analyzed as the accused
02:35 20 products?

02:35 21 A. Right. So these all use the same server back
02:35 22 and forth, the audio processing, this thing called
02:35 23 Webex Audio.

02:35 24 Q. And the '858 patent is focused on a server?

02:35 25 A. That's right.

02:35 1 Q. So here's -- you mentioned this before, but
02:35 2 just to help the jurors get an understanding of what
02:35 3 we're talking about, what is this next slide, 26,
02:35 4 depicting?

02:35 5 A. This is just a demonstration of what Webex
02:35 6 looks like, I guess, if you use it on a computer.
02:35 7 There's four different people that joined into this
02:35 8 conference here. Some of them are computer users. And
02:35 9 you can tell some of them have video on, for example.
02:35 10 One of them is a phone user that's called in.

02:36 11 Q. And now we're going to start diving into your
02:36 12 binder. Could you please turn to PX-144?

02:36 13 A. Yes. Yes.

02:36 14 Q. Can you identify this document?

02:36 15 A. Yes. This is a public Cisco document.

02:36 16 Q. Did you review this document in forming your
02:36 17 opinions in this case?

02:36 18 A. Yes. I did.

02:36 19 MR. CAUGHEY: Paltalk offers PX-144.

02:36 20 MR. SABRI: No objection.

02:36 21 THE COURT: Admitted.

02:36 22 BY MR. CAUGHEY:

02:36 23 Q. Now, in the next slide, we see PX-144, and
02:36 24 you've given this slide the title How Webex Works.
02:36 25 Server side.

02:36 1 So you just saw -- or the prior slide, let's
02:36 2 go back there just for a second.

02:36 3 This is the perspective of a user of Webex,
02:36 4 right?

02:36 5 A. Yes. That's right.

02:36 6 Q. And this slide shows a number of arrows sort
02:36 7 of striking out from a cloud.

02:37 8 Can you describe what you're depicting with
02:37 9 this image here?

02:37 10 A. Well, this is basically what I was just
02:37 11 showing before really. It's a variety of different
02:37 12 types of devices and products, all kind of sort of
02:37 13 connecting through this Webex -- Cisco Webex cloud.
02:37 14 This is the audio servers, basically.

02:37 15 Q. And just over -- it says PSTN on the right.
02:37 16 Do you see it?

02:37 17 A. Yes. That's right.

02:37 18 Q. And what does it read below that?

02:37 19 A. It says: Webex hybrid VoIP and
02:37 20 cloud-connected audio.

02:37 21 Q. And it says on the right -- or what does the
02:37 22 sort of teal box on the right say?

02:37 23 A. On the right side?

02:37 24 Q. Yeah.

02:37 25 A. It's talking about up to 1,000 participants

02:37 1 with Cisco's Webex with 500 video and 500 audio. It's
02:37 2 talking about the size of one of these meetings.

02:37 3 Q. Could you now turn to PX-37 in your binder?

02:38 4 A. Yes.

02:38 5 Q. And can you identify this document?

02:38 6 A. This is an internal Cisco technical document.

02:38 7 Q. Did you review this document in forming your
02:38 8 opinions?

02:38 9 A. Yes. I did.

02:38 10 MR. CAUGHEY: Plaintiffs offer PX-37.

02:38 11 MR. SABRI: No objection.

02:38 12 THE COURT: Admitted.

02:38 13 BY MR. CAUGHEY:

02:38 14 Q. Now, we see PX-37. There's a lot going on
02:38 15 here.

02:38 16 But could you tell the jury -- and I think as
02:38 17 a preview, we're going to see more of this document,
02:38 18 but tell the jury initially at a high level what this
02:38 19 is showing?

02:38 20 A. Yeah. So just at a high level, this is
02:38 21 showing some of the audio processing flow between
02:38 22 different types of clients and these boxes on the
02:38 23 inside which make up the Webex servers, Webex Audio.

02:38 24 Q. And we'll return to the text later. I'll have
02:38 25 questions about that, but I know you prepared a sort of

02:39 1 easier-to-view version without some of the noise around
02:39 2 it.

02:39 3 So if you could just -- maybe starting at
02:39 4 12 o'clock on the top -- help the jury understand what
02:39 5 this is depicting and what these various letters and
02:39 6 boxes mean to you.

02:39 7 A. Well, so first, this is the Webex Audio that
02:39 8 we're talking about. We're talking about these little
02:39 9 boxes refer to sort of pieces of Webex Audio. And
02:39 10 maybe I should start over here on the side and say that
02:39 11 this is grayed out because this is not part of the
02:39 12 accused functionality here. So we're not -- I'm not
02:39 13 going to be talking about that an awful lot here.

02:39 14 These pieces here, this is showing different
02:39 15 types of clients connecting to this piece of Webex
02:39 16 Audio called MMP, multimedia platform. And so this M1,
02:39 17 M2, and M3 are tablets or computers or something
02:39 18 connecting to this piece.

02:39 19 And then these here, P1, P2, P3, these are
02:40 20 phones connecting to a phone network to this piece of
02:40 21 Webex, which is the CMS, and it stands for Cisco Media
02:40 22 Server.

02:40 23 Q. And what this -- or I just want to make sure
02:40 24 you're done with this slide, or do you have more
02:40 25 explanation?

02:40 1 A. I mean, we could talk about audio being sent
02:40 2 from these clients and then the sent -- but I think
02:40 3 we're going to talk about this document more.

02:40 4 Q. Okay. Great. Whet your appetite for some
02:40 5 audio flow diagrams.

02:40 6 So with that background in mind, I think the
02:40 7 next portion of our presentation is this walks through
02:40 8 the individual claim elements. We heard in opening
02:40 9 this exercise is a comparison of claims with the
02:40 10 accused products.

02:40 11 And have you done that analysis of comparing
02:40 12 the claims to the accused products?

02:40 13 A. Yes. I have.

02:40 14 Q. And is that what the next number of slides
02:40 15 show?

02:40 16 A. Yes.

02:40 17 Q. In Slide 31, we see something that's becoming
02:41 18 familiar, which is the asserted claims in the patent.

02:41 19 Is this where you started with your
02:41 20 infringement analysis?

02:41 21 A. Well, I certainly looked at the claims, but I
02:41 22 also read the patent as well and analyzed all of the
02:41 23 documents.

02:41 24 Q. And this slide is just an easier-to-read
02:41 25 version of Claim 1 of the patent, right?

02:41 1 A. Yes. This is breaking out the different
02:41 2 limitations of Claim 1, and we're going to process them
02:41 3 sort of one by one.

02:41 4 Q. And the next slide is titled Person of
02:41 5 Ordinary Skill in the Art.

02:41 6 Do you see that?

02:41 7 A. Yes.

02:41 8 Q. Is that synonymous with "expert in the field"
02:41 9 to you?

02:41 10 A. Yeah.

02:41 11 Q. And did you review this patent as just a
02:41 12 normal layperson, or did you apply your knowledge as an
02:41 13 expert in the field or a person of ordinary skill in
02:41 14 the art?

02:41 15 A. I applied my knowledge as an expert in this
02:41 16 field.

02:41 17 Q. And what -- could you just read for the jury
02:41 18 what your understanding of who an expert in this field
02:42 19 would be?

02:42 20 A. Sure. So an expert would be a person with a
02:42 21 bachelor's degree in computer science, computer
02:42 22 engineering, or a related field with two years of
02:42 23 experience working in the field of communication and
02:42 24 networking. Of course if you have maybe more
02:42 25 experience in the industry, that might make up for less

02:42 1 formal education or formal education, might make up for
02:42 2 less industry experience.

02:42 3 Q. And I see below -- are those all the pages of
02:42 4 the '858 patent?

02:42 5 A. I believe so.

02:42 6 Q. And did you -- how did you bring your
02:42 7 expertise as an expert in the field as a computer
02:42 8 scientist to bear as you interpreted this patent?

02:42 9 A. Yeah. I used my experience in the field when
02:42 10 I was reading this patent and interpreting the terms of
02:42 11 the patent.

02:42 12 Q. And just going back to the language of the
02:42 13 patent, I think you saw in one of the opening
02:42 14 statements that there's a fair bit of technical
02:42 15 language in here: mixing, multiplexing, and so on and
02:42 16 so forth.

02:43 17 Does your computer science background and
02:43 18 expertise help you decipher the meaning and application
02:43 19 of these claims as you do your infringement analysis?

02:43 20 A. Of course.

02:43 21 Q. And I think I also heard in opening a
02:43 22 reference to an English major.

02:43 23 It is specifically with respect to your
02:43 24 computer science background and skill in the field that
02:43 25 you read this patent, right?

02:43 1 A. That's right.

02:43 2 Q. It's not an ordinary layperson reading it?

02:43 3 A. My understanding is you're supposed to read
02:43 4 this as an expert in the field.

02:43 5 MR. CAUGHEY: And could you pull up the
02:43 6 materials considered slide?

02:43 7 BY MR. CAUGHEY:

02:43 8 Q. Now, as you look through your lens as an
02:43 9 expert in the field, I think you mentioned right at the
02:43 10 outset all these different materials you considered,
02:43 11 right?

02:43 12 A. Yes.

02:43 13 Q. And one of those or was one of those rulings
02:43 14 of this Court?

02:43 15 A. Yes.

02:43 16 MR. CAUGHEY: All right. You can go back
02:43 17 to where we were in the slides.

02:44 18 BY MR. CAUGHEY:

02:44 19 Q. And one more thing on the patents. I think we
02:44 20 heard discussion in the opening statements about this
02:44 21 term "each" right there. I tried to circle it.
02:44 22 Hopefully I did so effectively. And it appears a few
02:44 23 times.

02:44 24 Is that one of the words in this patent that
02:44 25 you interpreted through this lens of being a person of

02:44 1 ordinary skill in the art?

02:44 2 A. Yes.

02:44 3 Q. Were there any rulings of the Court that were
02:44 4 relevant to that analysis?

02:44 5 A. Yes.

02:44 6 Q. And I'd just like you to -- or what do you
02:44 7 understand this to be on Slide 34?

02:44 8 A. My understanding is this was the ruling of the
02:44 9 Court.

02:44 10 Q. So could you just read from: So here are my
02:44 11 rulings?

02:44 12 A. Sure. So I guess after that, it says: I'm
02:44 13 going to start with the first motion we had. I'm going
02:44 14 to find that the plain and ordinary meaning of
02:45 15 "each" -- "each" has a plain and ordinary meaning which
02:45 16 can include "one or more."

02:45 17 Q. Okay. And was that ruling material to your
02:45 18 infringement analysis?

02:45 19 A. Yes.

02:45 20 Q. Okay. Now, we're going to start -- as I said,
02:45 21 we're going to break this patent up into lots of
02:45 22 pieces. This is a very precise exercise. And it
02:45 23 starts with a preamble.

02:45 24 What does the preamble say?

02:45 25 A. So the preamble says: A method of providing

02:45 1 audioconferencing for a plurality of clients using
02:45 2 varying equipment and protocols. And then it says
02:45 3 comprising the steps of, but we're going to go through
02:45 4 those in a minute.

02:45 5 Q. What are varying equipment and protocols?

02:45 6 A. Clients might use different equipment and
02:45 7 protocols. In the example we saw previously, it was
02:45 8 like, say, computers and phones. Protocols might be
02:45 9 like through the Internet or through the phone network.

02:45 10 Q. Could you please turn to your binder to PX-62?

02:45 11 A. Yes.

02:45 12 Q. Can you identify that document?

02:45 13 A. Yes. This is another Cisco document.

02:46 14 Q. Did you review PX-62 in forming your opinions?

02:46 15 A. Yes.

02:46 16 MR. CAUGHEY: Plaintiffs offer PX-62.

02:46 17 MR. SABRI: No objection.

02:46 18 THE COURT: Admitted.

02:46 19 BY MR. CAUGHEY:

02:46 20 Q. PX-62 is now published on the screen.

02:46 21 You said this is a Cisco document?

02:46 22 A. Yes.

02:46 23 Q. And it's titled Webex Audio Supported
02:46 24 Platforms. And then the first sentence is highlighted.
02:46 25 Could you read that first sentence into the record for

02:46 1 the jury?

02:46 2 A. Yes. It says: Webex Audio, also known as
02:46 3 hybrid audio, provides flexibility for attendees to
02:46 4 join an audioconference using their computer, VoIP or a
02:46 5 phone.

02:46 6 Maybe I should explain that term "VoIP."

02:46 7 Q. Yeah. Let's -- I think it was mentioned
02:46 8 before, but we haven't -- we haven't paused on it yet.
02:46 9 So why don't you -- why don't you help the jury
02:46 10 understand what VoIP is?

02:46 11 A. So VoIP is just a shortening of the term
02:46 12 "Voice over IP," so basically using a computer to, you
02:47 13 know, send all your data basically over the Internet.
02:47 14 So Voice over IP is VoIP.

02:47 15 Q. And why is this mention or discussion of
02:47 16 hybrid audio in this Webex Audio document relevant to
02:47 17 whether there's infringement of this preamble?

02:47 18 A. Well, it's talking about using varying
02:47 19 equipment and protocols as well because they'll be
02:47 20 connecting through different networks.

02:47 21 Q. And it says a computer or a phone?

02:47 22 See that?

02:47 23 A. Yes. Computer or a phone.

02:47 24 Q. Now, this is a document we've seen before,
02:47 25 PX-144. I think the jury probably understands it, but

02:47 1 could you just match up PX-144 with the claim language?

02:47 2 A. Sure. So this is, again, talking about using
02:47 3 a variety of different equipment, and you can see
02:47 4 different equipment on this document here. So, for
02:47 5 example, the computers or phones connecting all to the
02:48 6 Cisco Webex cloud here or audioconferencing and through
02:48 7 a variety of different protocols, whether that be
02:48 8 through a telephone network or through the Internet.

02:48 9 Q. So in light of the materials you've reviewed,
02:48 10 Cisco documents we've seen and the analysis you've done
02:48 11 in this case, what is your conclusion with respect to
02:48 12 whether this first part of Claim 1 is infringed?

02:48 13 A. Well, based on the documents that we've seen,
02:48 14 my conclusion is that this limitation is met.

02:48 15 Q. Now, the next limitation is this 11, and I
02:48 16 know these are broken out here, but does the text here
02:48 17 match what's in the claims of the patent?

02:48 18 A. Yes. It's just a copy.

02:48 19 Q. What does this first subelement of Claim 1
02:48 20 require?

02:48 21 A. It says: Receiving an audio packet from each
02:48 22 of the plurality of clients.

02:48 23 Q. And you mentioned this, but these are very
02:48 24 technical, so maybe you can remind the jury of what an
02:48 25 audio packet is.

02:48 1 A. We probably haven't talked about packets. So
02:49 2 packets is just a -- sort of a chunk of data,
02:49 3 basically. So the way that the Internet works is that
02:49 4 you break data into subpieces called packets. You send
02:49 5 them to the Internet, and those get routed through
02:49 6 various places over the Internet before they get to
02:49 7 their final destination.

02:49 8 This is different conceptionally from how like
02:49 9 a telephone network works, which is a service which
02:49 10 network -- you build a path basically between two
02:49 11 points to communicate. So it's fundamentally just a
02:49 12 different way to communicate.

02:49 13 Q. And we've seen this document in preview.
02:49 14 We'll see it again. But where does -- or how is this
02:49 15 audio flow active speaker document relevant to this
02:49 16 element of receiving audio packet?

02:49 17 A. Right. So this document here is showing some
02:49 18 of the audio processing that's happening. And let's
02:49 19 see here. I don't know if I can have the mouse.

02:50 20 So here, for example, you can see that the
02:50 21 different clients are speaking. So you remember M1,
02:50 22 M2, M3? We talked about those from before. Those are
02:50 23 those machines, the, you know, the tablets in this
02:50 24 picture here. Then we have P1, P2, P3, and it says
02:50 25 they're speaking. And it actually depicts the -- oh,

02:50 1 now I got the red thing here.

02:50 2 So now it depicts them sending audio data here
02:50 3 and it being received by these various components of
02:50 4 Webex. And those are the circled arrows that you see
02:50 5 there.

02:50 6 Q. And the M1, M2, M3, P1 through P3, are those
02:50 7 the clients?

02:50 8 A. Yes. Those are the clients.

02:50 9 Q. Okay. And now we come to the first instance
02:50 10 of looking at some of Cisco's source code. We're going
02:50 11 to do this source code presentation because it's in
02:50 12 hard copy on the video device or the document camera
02:50 13 device.

02:50 14 MR. CAUGHEY: Because you haven't seen it
02:50 15 before, the first time it's shown, I'm going to ask,
02:51 16 with Your Honor's permission, for Dr. Schaefer to come
02:51 17 down and work the device himself.

02:51 18 THE COURT: Response?

02:51 19 MR. SABRI: No objection to that,
02:51 20 Your Honor. I only stand because when we're talking
02:51 21 about source code, we will just go on the confidential
02:51 22 record and --

02:51 23 (Clarification by Reporter.)

02:51 24 MR. SABRI: I apologize. We'll need to
02:51 25 go on confidential record to discuss the source code,

02:51 1 and I need the public to leave the courtroom for that,
02:51 2 of course.

02:51 3 THE COURT: And that's fine. I just want
02:51 4 to let you know, it's your burden to make sure within
02:51 5 reason when he stops talking about things that are on
02:51 6 the private record, if you'll make sure because I won't
02:51 7 know. And I want to keep the courtroom as open as
02:51 8 possible.

02:51 9 That being said, if anyone in the
02:51 10 audience is not under the protective order in this
02:51 11 case, if you would excuse yourself for the next set of
02:51 12 questions, please.

02:51 13 And, Doctor, you're welcome to...

02:51 14 THE WITNESS: Can I go up there now?

02:51 15 MR. CAUGHEY: Come on up.

02:51 16 MR. SABRI: I would add, Cisco -- it's
02:51 17 fine for Cisco to state it on the record?

02:51 18 THE COURT: Yes, absolutely.

02:52 19 (Clarification by Reporter.)

20 (Sealed proceedings.)

02:52 21 [REDACTED]
02:52 22 [REDACTED]
02:52 23 [REDACTED]
02:52 24 [REDACTED]
02:52 25 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

02:52 4 [REDACTED]

02:52 5 [REDACTED]

02:52 6 [REDACTED]

02:52 7 [REDACTED]

02:52 8 [REDACTED]

02:52 9 [REDACTED]

02:52 10 [REDACTED]

11 [REDACTED]

02:52 12 [REDACTED]

02:52 13 [REDACTED]

02:52 14 [REDACTED]

02:53 15 [REDACTED]

02:53 16 [REDACTED]

02:53 17 [REDACTED]

02:53 18 [REDACTED]

02:53 19 [REDACTED]

02:53 20 [REDACTED]

02:53 21 [REDACTED]

02:53 22 [REDACTED]

02:53 23 [REDACTED]

02:53 24 [REDACTED]

02:53 25 [REDACTED]

02:53 1
02:53 2
02:53 3
02:53 4
02:53 5
02:53 6
02:53 7
02:53 8
02:53 9
02:53 10
02:53 11
02:53 12
02:53 13
02:53 14
02:54 15
02:54 16
02:54 17
02:54 18
02:54 19
02:54 20
02:54 21
02:54 22
02:54 23
02:54 24
02:54 25

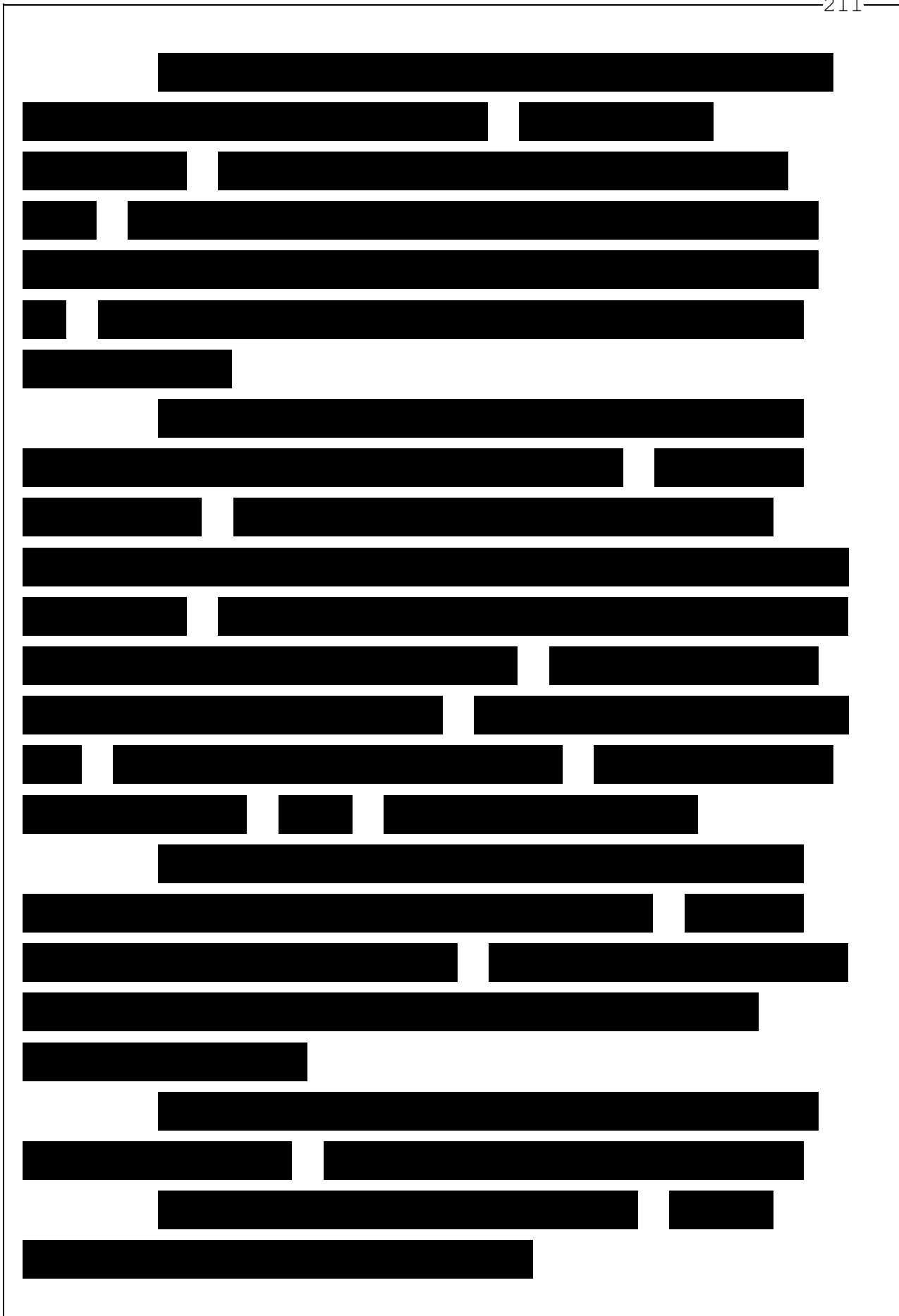
[REDACTED]

02:54
02:54
02:54
02:54
02:54
02:54
02:54
02:54
02:54
02:54
02:54
02:54
02:55
02:55
02:55
02:55
02:55
02:55
02:55
02:55
02:55
02:55
02:55
02:55
02:55
02:55
02:55
02:55

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

[REDACTED]

02:55 1
02:55 2
02:56 3
02:56 4
02:56 5
02:56 6
02:56 7
02:56 8
02:56 9
02:56 10
02:56 11
02:56 12
02:56 13
02:56 14
02:56 15
02:56 16
02:56 17
02:56 18
02:56 19
02:56 20
02:56 21
02:56 22
02:56 23
02:57 24
02:56 25



02:57 1 [REDACTED]

02:57 2 [REDACTED]

02:57 3 [REDACTED]

02:57 4 [REDACTED]

02:57 5 [REDACTED]

02:57 6 [REDACTED]

02:57 7 [REDACTED]

02:57 8 [REDACTED]

02:57 9 [REDACTED]

02:57 10 [REDACTED]

02:57 11 [REDACTED]

02:57 12 [REDACTED]

02:57 13 [REDACTED]

02:57 14 [REDACTED]

02:57 15 [REDACTED]

02:57 16 [REDACTED]

02:57 17 [REDACTED]

02:57 18 [REDACTED]

02:58 19 [REDACTED]

02:58 20 [REDACTED]

02:58 21 [REDACTED]

02:58 22 [REDACTED]

02:58 23 [REDACTED]

02:58 24 [REDACTED]

02:58 25 [REDACTED]

02:58 1
02:58 2
02:58 3
02:58 4
02:58 5
02:58 6
02:58 7
02:58 8
02:58 9
02:58 10
02:58 11
02:58 12
02:58 13
02:58 14
02:59 15
02:59 16
02:59 17
02:59 18
02:59 19
02:59 20
02:59 21
02:59 22
02:59 23
02:59 24
02:59 25

[REDACTED]

03:00 1 deposition I think a few moments ago, but you've also
03:00 2 created a slide with testimony from Cisco's corporate
03:00 3 representative Mr. Buckles.

03:00 4 How was Mr. Buckles' testimony relevant and
03:01 5 work with this receiving an audio packet limitation?

03:01 6 A. So he's confirming the information that we've
03:01 7 seen previously, I suppose. So he was asked -- and
03:01 8 there are some situations that I'm looking at now:
03:01 9 Part 1 here, or the first clause here, where Cisco
03:01 10 Webex Meetings receives an audio packet from each of
03:01 11 the plurality of clients who are participating in an
03:01 12 audioconferencing; isn't that right?

03:01 13 To which he responded: Just to be clear, the
03:01 14 question was Cisco Webex Meetings receives audio
03:01 15 packets from each of the plurality of clients?

03:01 16 Question: Yes. There are situations
03:01 17 where that happens?

03:01 18 And the answer was: Yes.

03:01 19 Q. So in light of your review of the materials,
03:01 20 consideration as an expert in the field, what's your
03:01 21 conclusion with respect to whether sub Element [1] has
03:01 22 been infringed?

03:01 23 A. Right. So based off of all the information
03:01 24 that we've just seen, it's my conclusion that this
03:01 25 limitation is met.

03:01 1 Q. Now, can you turn in your binder to PX-206?

03:02 2 A. Yes.

03:02 3 Q. Can you identify this document?

03:02 4 A. Yes. This is another Cisco document.

03:02 5 Q. Did you rely on PX-206 in forming your
03:02 6 opinions?

03:02 7 A. Yes.

03:02 8 MR. CAUGHEY: Plaintiffs offer PX-206.

03:02 9 MR. SABRI: No objection.

03:02 10 THE COURT: Admitted.

03:02 11 BY MR. CAUGHEY:

03:02 12 Q. And the -- we'll take a look at PX-206 in a
03:02 13 moment, but first, I want to isolate this next Element
03:02 14 [2] of Claim 1. It says: Determining which of the
03:02 15 plurality of clients is an active speaker and forming
03:02 16 an active speakers list.

03:02 17 What -- can you explain to the jury what you
03:02 18 understand this element to mean?

03:02 19 A. Well, so the idea behind this element here is
03:02 20 that we need to -- there's several clients that are
03:02 21 connected to this thing. We have to identify some of
03:02 22 them that have active speakers and formed an active
03:02 23 speaker list. So that's what it says.

03:02 24 Q. Now we see PX-206, and there's a Cisco
03:03 25 document on the left and some images on the right.

03:03 1 How is this relevant to this active speaker
03:03 2 question you just put forth to the jury?

03:03 3 A. So this is showing the client's side view of
03:03 4 Webex, like what you would see utilizing these things.
03:03 5 And it's showing here, for example, that you can
03:03 6 specify an active speaker video view, an active speaker
03:03 7 thumbnail view, and a grid view. So there's an
03:03 8 identification of an active speaker happening in this
03:03 9 case.

03:03 10 Q. But you said the patent and the infringement
03:03 11 analysis is focused mostly on the server.

03:03 12 How is this sort of client-focused or
03:03 13 user-focused view interactive? How is that relevant?

03:03 14 A. Yeah. So the data that the client and the
03:03 15 user is getting here is coming from the server. So
03:03 16 this idea that it's identifying this active speaker
03:03 17 means that this data's available on the server as well.

03:03 18 Q. Could you now turn to PX-228 in your binder?

03:04 19 A. Yes.

03:04 20 Q. Can you identify this document?

03:04 21 A. Yes. This is another Cisco document.

03:04 22 Q. And did you rely on this document in forming
03:04 23 your opinions?

03:04 24 A. Yes. I did.

03:04 25 MR. CAUGHEY: Plaintiffs offer PX-228.

03:04 1 MR. SABRI: No objection.

03:04 2 THE COURT: Admitted.

03:04 3 BY MR. CAUGHEY:

03:04 4 Q. Now -- whoops. Too far.

03:04 5 Now we see PX-228. I see a similar Hollywood
03:04 6 Squares type diagram here and then some text at the
03:04 7 top.

03:04 8 Walk the jury through how this is relevant to
03:04 9 your analysis.

03:04 10 A. So again, this is similar to the previous
03:04 11 document. You can see here, it's talking about
03:04 12 different layouts. And in particular, it says: Switch
03:04 13 between grid and active speaker layout.

03:04 14 And if you look a little bit further down this
03:04 15 document. Yes. It says: Use the grid layout to see
03:04 16 more participants at the same time and switch to the
03:05 17 active speaker layout when you want to focus on the
03:05 18 person speaking.

03:05 19 Q. Now, that was, again, the user side here, we
03:05 20 see another server diagram.

03:05 21 Where on this audio flow document does it
03:05 22 discuss this concept of determining active speakers?

03:05 23 A. Right. So here, you can see that it's talking
03:05 24 about these different pieces here. It says: The top
03:05 25 three loud will be switched to all clients, the piece

03:05 1 on top there. So the top three loud is identifying
03:05 2 loudest speakers, active speakers. And it's saying the
03:05 3 same thing here. CMS, it says: CMS selects the top
03:05 4 three as well.

03:05 5 MR. CAUGHEY: And we again have some
03:05 6 source code. This time I'm going to try to do my best
03:05 7 to walk Dr. Schaefer through it from here so he doesn't
03:05 8 have to get up and down, but I also suspect counsel
03:05 9 wants to go on the confidential record.

03:06 10 MR. SABRI: That's right. We would need
03:06 11 to go back on the confidential record.

03:06 12 THE COURT: Will do.

03:06 13 (Sealed proceedings.)

03:06 14 [REDACTED]
03:06 15 [REDACTED]
03:06 16 [REDACTED]
03:06 17 [REDACTED]
03:06 18 [REDACTED]
03:06 19 [REDACTED]
03:06 20 [REDACTED]
03:06 21 [REDACTED]
03:06 22 [REDACTED]
03:06 23 [REDACTED]
03:06 24 [REDACTED]
03:06 25 [REDACTED]

03:06 1
03:06 2
03:06 3
03:06 4
03:06 5
03:06 6
03:06 7
03:07 8
03:07 9
03:07 10
03:07 11
03:07 12
03:07 13
03:07 14
03:07 15
03:07 16
03:07 17
03:07 18
03:07 19
03:07 20
03:07 21
03:07 22
03:07 23
03:07 24
03:07 25

[REDACTED]

03:08 1
03:08 2
03:08 3
03:08 4
03:08 5
03:08 6
03:08 7
03:08 8
03:08 9
03:08 10
03:08 11
03:08 12
03:08 13
03:08 14
03:08 15
03:08 16
03:08 17
03:08 18
03:09 19
03:09 20
03:09 21
03:09 22
03:09 23
03:09 24
03:09 25

[REDACTED]

03:09 1
03:09 2
03:09 3
03:09 4
03:09 5
03:09 6
03:09 7
03:09 8
03:09 9
03:09 10
03:09 11
03:09 12
03:09 13
03:09 14
03:09 15
03:09 16
03:09 17
03:10 18
03:10 19
03:10 20
03:10 21
03:10 22
03:10 23
03:10 24
03:10 25

03:10 1
03:10 2
03:10 3
03:10 4
03:10 5
03:10 6
03:10 7
03:10 8
03:10 9
03:10 10
03:10 11
03:10 12
03:10 13
03:10 14
03:11 15
03:11 16
03:11 17
03:11 18
03:11 19
03:11 20
03:11 21
03:11 22
03:11 23
03:11 24
03:11 25

[REDACTED]

03:11 1
03:11 2
03:11 3
03:11 4
03:11 5
03:11 6
03:11 7
03:11 8
03:11 9
03:12 10
03:12 11
03:12 12
03:12 13
03:12 14
03:12 15
03:12 16
03:12 17
03:12 18
03:12 19
03:12 20
03:12 21
03:12 22
03:12 23
03:12 24
03:12 25

[REDACTED]

03:12 1
03:12 2
03:12 3
03:12 4
03:12 5
03:13 6
03:13 7
03:13 8
03:13 9
03:13 10
03:13 11
03:13 12
03:13 13
09:42 14
03:13 15
03:13 16
03:13 17
03:13 18
03:13 19
03:13 20
03:13 21
03:13 22
03:13 23
03:13 24
03:13 25

[REDACTED]

(Sealed proceedings end.)

BY MR. CAUGHEY:

Q. And from your review of Cisco's source code, what is your conclusion with respect to whether the Webex products determine or perform this element?

A. As we've just seen, it's determining and forming an active speaker list.

Q. Now, Mr. Buckles reappears. Again, we saw him on video. Mr. Buckles asked about this determining with respect to active speakers.

A. Yes. So he was asked, well, as Cisco uses the term, there are instances where Webex Meetings

03:13 1 determines which of the plurality of clients in an
03:13 2 audioconference is an active speaker, right?

03:13 3 To which he responded, yeah. I think that --
03:13 4 that's reasonable to say.

03:13 5 Q. And here, he was asked additional questions
03:13 6 about the active speaker list.

03:14 7 What did he say in this testimony?

03:14 8 A. So here he was asked: And there are also
03:14 9 circumstances where Cisco Webex Meetings determines
03:14 10 which of the plurality of clients in an audioconference
03:14 11 is an active speaker and forms an active speaker list;
03:14 12 is that right?

03:14 13 And the answer was there are -- there are
03:14 14 instances where, yes, clients who are determined to be
03:14 15 active speakers are grouped together in some way.

03:14 16 Q. And so what is your overall conclusion with
03:14 17 respect to whether the Cisco Webex products infringe
03:14 18 Element 2?

03:14 19 A. Well, based on all the information that we've
03:14 20 just seen, my conclusion is this limitation is met.

03:14 21 Q. Now on to Limitation 3.

03:14 22 We see the word "determining" again. What
03:14 23 does Limitation 3 talk about, from your perspective?

03:14 24 A. So Limitation 3 is determining a first subset
03:14 25 of the plurality of clients that has the capability to

03:14 1 mix multiple audio streams.

03:15 2 Q. And what does it mean to mix multiple audio
03:15 3 streams?

03:15 4 Let me step back.

03:15 5 There's a demonstrative on the screen. Can
03:15 6 you describe what's being shown?

03:15 7 A. This is just a bunch of computers basically
03:15 8 that are connecting through the Internet. It looks
03:15 9 like we have two talking. One is sending blue data.
03:15 10 Those are those little square things you see. Those
03:15 11 are the packets that we were talking about. Remember
03:15 12 how I said we break it up into different pieces and
03:15 13 send?

03:15 14 So these are packets going to the Internet.
03:15 15 The yellow is packets going into the Internet, and
03:15 16 those are being delivered to the server here. The
03:15 17 server is multiplexing this data and it's sending it
03:15 18 back to the clients. And you can see that it's putting
03:15 19 these sort of two streams of data into a single stream,
03:15 20 if you will, right? It goes back.

03:15 21 So, for example, the listener that's in the
03:15 22 middle is getting these boxes that are green on the
03:15 23 outside, and they have this alternating moving yellow,
03:15 24 for example.

03:15 25 Q. And then these multiplexed streams are being

03:16 1 mixed by the clients?

03:16 2 A. Right. You see the mixer on the different
03:16 3 clients, so they're getting these individual audio
03:16 4 streams. And they're the ones that have to do the
03:16 5 mixing.

03:16 6 Q. But to know whether to send the multiplexed
03:16 7 streams in the packet, the server has to determine
03:16 8 which of those clients are capable of doing that, I
03:16 9 assume?

03:16 10 A. That's what this limitation is about.

03:16 11 Q. And we see here the audio flow diagram, and
03:16 12 this is a Cisco document.

03:16 13 Where is the determining occurring here?

03:16 14 A. So the determining is actually happening at
03:16 15 the connection between the clients and the servers.
03:16 16 The phone-based clients, the ones that you see on this
03:16 17 audio flow document, P1, P2, P3, those devices are
03:16 18 connecting through the phone network to the CMS, so
03:16 19 those devices won't have the capability of mixing,
03:16 20 okay? The ones that you see on top are the
03:16 21 computerized twice, right, like the M1, M2, M3 tablets
03:16 22 in this case. And those are connecting through the
03:17 23 Internet for Webex's protocols and so forth to this MMP
03:17 24 server.

03:17 25 So it's how clients are connecting. It's not

03:17 1 just the device, okay, because a client is -- you've
03:17 2 seen varying equipment and protocols. So different
03:17 3 devices, but also different ways of connecting to this
03:17 4 Webex server. So depending on how they connect, this
03:17 5 is the determining step. And you might ask, for
03:17 6 example, like what about an iPhone?

03:17 7 Q. We might even see that on the next slide,
03:17 8 so --

03:17 9 A. All right.

03:17 10 Q. -- don't spoil the surprise.
03:17 11 Could you turn in your binder to PX-154?

03:17 12 A. Yes.

03:17 13 Q. And can you identify PX-154?

03:17 14 A. This is an internal Cisco technical document.

03:17 15 Q. Have you reviewed this document in connection
03:17 16 with forming your opinions?

03:17 17 A. Yes. I have.

03:17 18 MR. CAUGHEY: Paltalk offers PX-154.

03:17 19 MR. SABRI: No objection.

03:18 20 THE COURT: Admitted.

03:18 21 BY MR. CAUGHEY:

03:18 22 Q. All right. PX-154 is a Cisco slide
03:18 23 presentation. There's an excerpt from it on the
03:18 24 screen.

03:18 25 First, can you describe what's being depicted?

03:18 1 A. So this is showing some audio moving between
03:18 2 different parts of Webex servers and devices. So on
03:18 3 this slide here, you have these computerized devices
03:18 4 connecting through the Internet. Opus is an
03:18 5 audio -- we call it an audio codec. It's just the way
03:18 6 of coding and decoding audio here. So these
03:18 7 connections are going to the MMP server that we've seen
03:18 8 previously. These pieces of Webex Audio are
03:18 9 communicating with each other at CMS, and you also see
03:18 10 audio going through different audio codec to these
03:18 11 phone-based devices.

03:18 12 Q. A few questions.

03:18 13 So on the left here, we have the computers.
03:19 14 There's some lines going down. I just circled them in
03:19 15 green.

03:19 16 Are those the multiplexed streams going?

03:19 17 A. Right. So over -- I guess over here, you see
03:19 18 the mixing happening. You see multiple arrows coming
03:19 19 in and one arrow going out. This is like multiple
03:19 20 audio streams coming in, and a single one coming out.
03:19 21 And that's what's being sent to these phones over here.
03:19 22 Okay. But on the other side here, we actually have
03:19 23 multiple streams of videos, this multiplexed data
03:19 24 across these connections to the computer devices.

03:19 25 Q. And then the computers mix those multiple

03:19 1 points of data into usable audio, essentially?

03:19 2 A. That's the idea, yes.

03:19 3 Q. And on the right, we see an iPhone or some
03:19 4 sort of smartphone.

03:19 5 A. Uh-huh.

03:19 6 Q. Could that device go on either side of this
03:19 7 diagram?

03:19 8 A. Right. So this -- the iPhone, for example,
03:19 9 could connect to the MMP. Say you have a Webex iPhone
03:19 10 app installed on your phone. You can connect through
03:20 11 the Internet to the MMP in this case. And so that
03:20 12 would be a client that would have the capability of
03:20 13 mixing.

03:20 14 If instead that phone were to dial in through
03:20 15 the phone network, PSTN in this case, it would connect
03:20 16 to the CMS. And in that case, it would not have the
03:20 17 capability of mixing. It's not just about the device
03:20 18 but also remember protocol as well. So how it's
03:20 19 connecting to the network and through what network it's
03:20 20 connecting makes a difference here.

03:20 21 Q. Now, would you please turn in your binder to
03:20 22 PX-86?

03:20 23 A. Yep.

03:20 24 Q. What is this document?

03:20 25 A. This is another internal Cisco document.

03:20 1 Q. Did you rely on PX-86 in forming your
03:20 2 opinions?

03:20 3 A. Yes. I did.

03:20 4 MR. CAUGHEY: Paltalk offers PX-86.

03:21 5 MR. SABRI: No objection.

03:21 6 THE COURT: Admitted.

03:21 7 BY MR. CAUGHEY:

03:21 8 Q. Now we have PX-86 on the screen. See it
03:21 9 titled Design Architecture Overview and then some
03:21 10 neon-looking contraptions.

03:21 11 But we've pulled out some bullet points. And
03:21 12 the bottom one says: Mixing of VoIP and PSTN audio is
03:21 13 performed on the client side.

03:21 14 And I see you've highlighted the term
03:21 15 "capability to mix" up in the claim term of the
03:21 16 '858 patent.

03:21 17 Could you describe the relationship here?

03:21 18 A. So this is talking about the MMP server
03:21 19 previously that we discussed, and it's saying that
03:21 20 these clients are going to mix audio -- well, both the
03:21 21 VoIP audio that we talked about, Voice over IP, if you
03:21 22 remember, and PSTN, which is phone audio at the client.
03:21 23 So it's these clients have the capability of mixing all
03:21 24 the audio.

03:21 25 Q. And can you now turn to PX-26 in your binder?

03:21 1 A. Yes.

03:22 2 Q. Can you identify this document?

03:22 3 A. It's another internal Cisco document.

03:22 4 Q. Did you review this document in forming your
03:22 5 opinions?

03:22 6 A. Yes. I did.

03:22 7 MR. CAUGHEY: Paltalk offers PX-26.

03:22 8 MR. SABRI: No objection.

03:22 9 THE COURT: Admitted.

03:22 10 BY MR. CAUGHEY:

03:22 11 Q. PX-26 is a Cisco document titled Webex Media
03:22 12 Conference System, Revision History. You've excerpted
03:22 13 I guess Section 3.2.5 VoIP source selection and so on.

03:22 14 And why did you highlight the sentence that
03:22 15 you did?

03:22 16 A. Yeah. This is just another reference showing
03:22 17 that for the servers, that audio mixing's happening at
03:22 18 the client side.

03:22 19 Q. And is their Cisco corporate representative
03:22 20 testimony on this determining step?

03:22 21 A. Yes. So Mr. Buckles was asked: In what
03:22 22 instances would a PC-based client require mixing?

03:22 23 He said: So the -- the determination to -- to
03:23 24 use mixing or not is based on multiple factors,
03:23 25 including the capabilities of the physical client

03:23 1 itself, the networks and systems in between that
03:23 2 client, and Webex and the overall user experience that
03:23 3 we want to deliver to that particular client.

03:23 4 Q. And you've mentioned this several times. I
03:23 5 think we saw it in the patent itself, the notion of
03:23 6 varying protocols.

03:23 7 Is that varying relationships between networks
03:23 8 and systems that Mr. Buckles described?

03:23 9 A. Yes. That's right.

03:23 10 Q. And what's that relationship? Can you just
03:23 11 build that out in two sentences?

03:23 12 A. Well, it's basically the same thing,
03:23 13 basically. Right? The networks and protocols are
03:23 14 different depending on what network and how you
03:23 15 communicate.

03:23 16 Q. And based on your review of these materials
03:23 17 and working the case, what's your conclusion with
03:23 18 respect to Element [3] of Claim 1?

03:23 19 A. Based on all this information, my conclusion
03:23 20 is the limitation's met.

03:23 21 Q. Now, Claim 1(4) is another determining claim.
03:23 22 Do you see that?

03:23 23 A. Yes.

03:23 24 Q. And what's the difference between Claim 1(4)
03:24 25 and Claim 1(3)?

03:24 1 A. So Claim 1(3) was determining a set that had
03:24 2 the capability of mixing. This is essentially the
03:24 3 opposite, determining the set of clients that do not
03:24 4 have the capability of mixing.

03:24 5 Q. And I'm actually going to start here because I
03:24 6 think it might depict it even easier.

03:24 7 So before Claim 1(3) was focused on those over
03:24 8 here on the left that do have the capability to mix?

03:24 9 A. That's right. So that was the connections to
03:24 10 the MMP that we were talking about previously.

03:24 11 Q. And now we're focused on 1(4) and those on the
03:24 12 right. Is that --

03:24 13 A. Right. Now the connection's to the CMS.

03:24 14 Q. And is your analysis essentially the same to
03:24 15 Claim 1(4) as it was with 1(3)?

03:24 16 A. Yes.

03:24 17 Q. And just to go back for -- oh, I got to get
03:24 18 rid of these. Someone else did it.

03:24 19 With respect to patent Claim 1(4), you've also
03:24 20 put this audio flow diagram on the screen?

03:24 21 A. That's right.

03:24 22 Q. And it supports your analysis?

03:24 23 A. Right. Showing the connections of those
03:24 24 devices to the various servers.

03:25 25 Q. And PX-154, does that also show those

03:25 1 connections?

03:25 2 A. Again, the connections to the various servers.

03:25 3 Q. And here we have additional testimony from

03:25 4 Cisco's own engineer and corporate representative.

03:25 5 What did Mr. Buckles say about this claim
03:25 6 limitation?

03:25 7 A. So he was asked: I'm just asking, are there
03:25 8 any instances where Cisco Webex Meetings makes a
03:25 9 determination of whether one or more clients in the
03:25 10 audioconference has the capability to mix multiple
03:25 11 audio streams?

03:25 12 To which he responded: Yeah. Again, that --
03:25 13 that determination is based on multiple factors.

03:25 14 And question was: What determination?

03:25 15 And the answer was: The determination of
03:25 16 whether the client should be delivered mixed or unmixed
03:25 17 audio streams.

03:25 18 Q. Based on this evidence and your work in the
03:25 19 case, what's your conclusion with respect to whether
03:25 20 this Element [4] has been infringed?

03:25 21 A. Again, based on all things we've seen, my
03:25 22 conclusion is the limitation's met.

03:25 23 Q. Now, Claim 1(5) reintroduces some terms we've
03:25 24 heard about. Multiplexing, multiplexed stream, active
03:26 25 speaker list.

03:26 1 What -- could you describe the best you can
03:26 2 for this jury what Claim 5 requires?

03:26 3 A. Well, that -- you can just read it there. We
03:26 4 talked about multiplexing, right, some multiplexing
03:26 5 said packets of audio received from each client on said
03:26 6 active speakers list -- we talked about the active
03:26 7 speakers list in forming that previously -- into a
03:26 8 multiplexed stream. And we talked about that, I think,
03:26 9 as well, right?

03:26 10 Q. And here's a -- I think it's actually the same
03:26 11 demonstrative we saw before. We talked before about
03:26 12 the capability of mixing there on the left, but now I
03:26 13 want to focus on this multiplexer over here.

03:26 14 What is this demonstrative depicting?

03:26 15 A. Right. So this is the actual act of
03:26 16 multiplexing, taking those different streams of audio
03:26 17 and putting them together into sort of a -- it's called
03:26 18 multiplexing, putting them together into a single sort
03:26 19 of network connection, if you will, and so that they
03:26 20 can actually be separated out on the other side.

03:26 21 Q. And the next slide shows PX-154.

03:27 22 Could you describe here where this
03:27 23 multiplexing is occurring and where the stream is being
03:27 24 sent? And this is from a Cisco document?

03:27 25 A. Yes. We've seen it multiple times.

03:27 1 Q. And -- sorry. Go ahead.

03:27 2 A. The multiplexing in this case is happening
03:27 3 inside the server here, the MMP, which is sort of
03:27 4 depicted as multiple lines going back.

03:27 5 Q. And is this another page from the same
03:27 6 document?

03:27 7 A. Same document.

03:27 8 Q. And what do you take from this page with
03:27 9 respect to this multiplexing of active speakers into a
03:27 10 multiplexed stream?

03:27 11 A. So here, it's talking about multiplexing. And
03:27 12 it says: Support RTP. That's -- we've seen RTP
03:27 13 before, right? We were talking about it with respect
03:27 14 to audio data. Stream multiplexing in a single port
03:27 15 connection, it's talking about selecting the top three
03:27 16 streams or less and multiplexing those streams with
03:28 17 either connection. There's that word "mux" that we
03:28 18 saw. And remember that was just short for "multiplex"
03:28 19 previously.

03:28 20 THE COURT: Counsel, are you at a place
03:28 21 where you can take a break?

03:28 22 MR. CAUGHEY: Absolutely.

03:28 23 THE COURT: Ladies and gentlemen of the
03:28 24 jury, we're going to take our afternoon recess. If you
03:28 25 would please remember my instructions not to discuss

03:28 1 the case. We'll be back in 10 to 15 minutes.

03:28 2 THE BAILIFF: All rise.

03:28 3 (Jury exited the courtroom.)

03:29 4 THE COURT: You may be seated.

03:29 5 We're going off of the confidential

03:29 6 record. Is there -- that's what Jen said, that we were

03:29 7 on it.

03:29 8 And so is there anything we need to take

03:29 9 up?

03:29 10 We're going to go till 6:00 today. Do we

03:29 11 think Dr. Schaefer will be on direct or cross through

03:29 12 then? I'm not holding you to it. I'm just --

03:29 13 MR. CAUGHEY: We will certainly finish

03:29 14 his direct exam well before 6:00. I don't know how

03:29 15 long --

03:29 16 THE COURT: Who do you have after he's

03:29 17 done?

03:29 18 MR. CAUGHEY: We have a depo deposition

03:29 19 to be played and then Mr. Bratic.

03:29 20 THE COURT: Okay. Very good.

03:29 21 THE BAILIFF: All rise.

03:29 22 (Recess taken.)

03:48 23 THE BAILIFF: All rise.

03:48 24 THE COURT: Please remain standing for

03:48 25 the jury.

03:48 1 (Jury entered the courtroom.)

03:48 2 THE COURT: Thank you. You may be
03:48 3 seated.

03:48 4 BY MR. CAUGHEY:

03:48 5 Q. Dr. Schaefer, where we left off, we were at
03:49 6 Slide 62, and PX-154. I think we actually already
03:49 7 covered that. Whoops -- but not that.

03:49 8 We're now on Page 6 of PX-154. And here we
03:49 9 see some little Tetris-looking blocks down here. And
03:49 10 it -- actually, you're much better off deciphering this
03:49 11 than I am, truth be told. So why don't you tell us
03:49 12 what we're looking at, and I can ask follow-up
03:49 13 questions.

03:49 14 A. Right. So this is actually sort of a visual
03:49 15 depiction of what was on the previous slide here. It's
03:49 16 talking about multiplexing multiple streams. So it's
03:49 17 the multiple streams here over a single port or
03:49 18 connection. Actually, it's a decent description of how
03:49 19 you might actually do multiplexing. There's many ways
03:49 20 you can multiplex, but this is one way.

03:49 21 And so you see all the orange, yellow, and the
03:49 22 green boxes moving over the server. And then it says:
03:49 23 The CMS needs to demultiplex into individual streams.
03:49 24 And we can see the individual streams that it breaks it
03:50 25 down into.

03:50 1 So multiplexing, remember, was taking multiple
03:50 2 streams, putting them over a single connection such
03:50 3 that you could actually pull them apart in the end. So
03:50 4 that's that demux, demultiplexing.

03:50 5 Q. And "mux," which we saw that, was that a term
03:50 6 that appeared in the patent too?

03:50 7 A. Yeah. That's right. It appeared in the
03:50 8 patent. If you remember when we went through Column 5,
03:50 9 it said mux and multiplex interchangeably.

03:50 10 Q. Is that a known term to experts in the field?

03:50 11 A. Yes.

03:50 12 Q. Now, so we see our handy diagram again, and
03:50 13 just to orient everybody, we're still at this
03:50 14 multiplexing Element 5 to a multiplexed stream, and I
03:50 15 see a couple of callouts. Here, it talks about
03:50 16 switching audio to the clients. MMP switches audio
03:50 17 from CMS to all mobile clients.

03:50 18 How does this concept of switching relate to
03:51 19 the multiplexing or muxing that we saw on the prior
03:51 20 slide?

03:51 21 A. So this is the multiplexing streams that are
03:51 22 going to be sent to the different clients. He's
03:51 23 talking about switching. It's really talking about
03:51 24 this combined operation of multiplexing and sending.

03:51 25 MR. CAUGHEY: And next we have our next

03:51 1 frolic into source code. I assume counsel would want
03:51 2 to seal the courtroom.

03:51 3 MR. SABRI: That's right. We would
03:51 4 request to seal the courtroom for this and go on the
03:51 5 confidential record, Your Honor.

03:51 6 (Sealed proceedings.)

03:51 7 [REDACTED]

03:51 8 [REDACTED]

03:51 9 [REDACTED]

03:51 10 [REDACTED]

03:51 11 [REDACTED] [REDACTED]

03:51 12 [REDACTED] [REDACTED] [REDACTED]

03:51 13 [REDACTED]

03:51 14 [REDACTED] [REDACTED] [REDACTED]

03:52 15 [REDACTED] [REDACTED]

03:52 16 [REDACTED]

03:52 17 [REDACTED]

03:52 18 [REDACTED] [REDACTED]

03:52 19 [REDACTED]

03:52 20 [REDACTED]

03:52 21 [REDACTED] [REDACTED]

03:52 22 [REDACTED] [REDACTED]

03:52 23 [REDACTED]

03:52 24 [REDACTED] [REDACTED] [REDACTED]

03:52 25 [REDACTED]

03:52
03:52
03:52
03:52
03:52
03:52
03:52
03:52
03:52
03:52
03:52
03:52
03:52
03:52
03:53
03:53
03:53
03:53
03:53
03:53
03:53
03:53
03:53
03:53
03:53
03:53
03:53
03:53

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: Granted.

[REDACTED]

03:53
03:53
03:53
03:53
03:53
03:53
09:42
03:53
03:53
03:54
03:54
03:54
03:54
03:54
03:54
03:54
03:54
03:54
03:54
03:54
03:54
03:54
03:54
03:54

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

[REDACTED]

(Sealed proceedings end.)

MR. CAUGHEY: If you could pull back up the slide, Mr. Boles.

BY MR. CAUGHEY:

Q. And what conclusion do you draw from this combining of, I guess, audio data that you referred to in the source code?

A. That it's multiplexing the audio data from the active speakers into a multiplexed stream.

Q. And was Cisco's corporate representative asked about how Webex multiplexes?

A. Yes. So he was asked: Do you have a description in the way -- of the way that Cisco Webex Meetings delivers multiplexed audio to clients? Can you describe that for me?

And the answer was: Sure. There's multiple levels of multiplexing in a Webex meeting. We, for example, we multiplex the audio and video delivered to a client on the same network. So those are sent across

03:54 1 the same network between the server and the client.
03:54 2 And we also multiplex multiple audio streams to --
03:54 3 again, to a receiving client.

03:54 4 Q. So in light of your work review of these
03:54 5 materials, what is your conclusion with respect to
03:55 6 Element [5]?

03:55 7 A. That the limitation is met.

03:55 8 Q. So we arrive at Element [6]. We've now seen
03:55 9 the multiplexing and the sending of the multiplexed
03:55 10 stream. Now we have -- or at least now we have the
03:55 11 sending, Claim 1(6), what we've all been waiting for.

03:55 12 So explain what Claim 1(6) covers.

03:55 13 A. So this is -- remember we were multiplexing on
03:55 14 the previous one. Now we have send. Those are two
03:55 15 steps. So I think if you go to the very next
03:55 16 slide -- yeah, there -- it shows the top 3 loud being
03:55 17 switched to all clients, and you can see the clients
03:55 18 here getting the multiplexed stream.

03:55 19 Q. So multiplexes around here and then sends them
03:55 20 out to the clients?

03:55 21 A. Correct. Exactly.

03:55 22 Q. And then the clients ultimately, that's folks
03:55 23 who are participating in Webex?

03:55 24 A. Yes.

03:55 25 Q. And allows them to hear the audio?

03:55 1 MR. SABRI: Objection, Your Honor. This
03:55 2 is getting leading.

03:55 3 THE COURT: I couldn't understand.

03:55 4 MR. SABRI: Objection. This is getting
03:56 5 leading now, Your Honor.

03:56 6 THE COURT: Overruled.

03:56 7 A. Yes. It does allow them to hear the audio.

03:56 8 BY MR. CAUGHEY:

03:56 9 Q. And for the clients who have -- just as a
03:56 10 clarification, for the clients who are on computers or
03:56 11 mixing devices versus the PSTN telephone devices, is
03:56 12 there a material difference in how they experience the
03:56 13 audio coming to them?

03:56 14 A. It's not necessarily a material difference,
03:56 15 right, getting those multiplexed streams that we talked
03:56 16 about. They have to demultiplex that demux that we
03:56 17 talked about into the individual pieces, and then
03:56 18 actually perform the mixing. So those are different
03:56 19 audio signals, and they have to be combined together so
03:56 20 that you can hear multiple people at the same time
03:56 21 really coming out of the speaker. That's the mixing
03:56 22 aspect, but it's happening with ease. It's happening
03:56 23 at the device.

03:56 24 Q. And the next slide shows a familiar diagram
03:56 25 from PX-154. Could you just explain briefly where the

03:56 1 sending's occurring here?

03:56 2 A. Right. I think we talked about this. So the
03:57 3 multiplexing was happening in this MMP. And you see
03:57 4 the multiple streams being multiplexed across a single
03:57 5 connection back to those clients.

03:57 6 Q. And I -- oh, goodness.

03:57 7 And I think I mentioned before or probably
03:57 8 jumped the gun in asking you before about how users
03:57 9 experience this, but this is the demo we saw before, I
03:57 10 think.

03:57 11 What does this depict about the multiplexed
03:57 12 stream that's been sent?

03:57 13 A. So this has got -- it looks like there's three
03:57 14 clients that are talking at the same time, so it's
03:57 15 saying multiplexed stream. And again, you would have
03:57 16 to mix it at the clients so that you could hear it,
03:57 17 that you would hear all these people talking.

03:57 18 MR. CAUGHEY: And now we have a little
03:57 19 bit of additional source code. And I assume counsel
03:57 20 would want to go on the confidential record.

03:57 21 MR. SABRI: That's right. We should go
03:57 22 back on the confidential record, please, sir.

03:58 23 THE COURT: Okay.

03:58 24 (Sealed proceedings.)

03:58 25

03:58 1
03:58 2
03:58 3
03:58 4
03:58 5
03:58 6
03:58 7
03:58 8
03:58 9
03:58 10
03:58 11
03:58 12
03:58 13
03:59 14
03:59 15
03:59 16
03:59 17
03:59 18
03:59 19
03:59 20
03:59 21
03:59 22
03:59 23
03:59 24
03:59 25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

[REDACTED]

03:59 1
03:59 2
03:59 3
03:59 4
03:59 5
03:59 6
03:59 7
03:59 8
03:59 9
03:59 10
09:42 11
09:42 12
03:59 13
03:59 14
03:59 15
03:59 16
03:59 17
04:00 18
04:00 19
04:00 20
04:00 21
04:00 22
04:00 23
04:00 24
04:00 25

[REDACTED]

(Sealed proceedings end.)

BY MR. CAUGHEY:

Q. And so, Dr. Schaefer, what is your conclusion with respect to Element [6]?

A. Based on all the evidence we've seen, the limitation's met.

Q. Now, we've just spent considerable time talking about multiplexing. Now we move on to my second favorite topic, mixing.

What does Element [7] focus on?

A. So this is very similar to what we just saw for multiplexing but now for mixing. So we're -- it's -- instead of multiplexing from the active speakers list, we're going to be mixing. In the

04:00 1 next limitation, we'll send it to the non-mixing
04:00 2 clients.

04:00 3 Q. And so were you referring to a parallel as in
04:00 4 between Elements [5] and [6] on the one hand and [7]
04:00 5 and [8] on the other?

04:00 6 A. That's right.

04:00 7 Q. Okay. Now, here's a demonstrative. And I see
04:00 8 on -- why don't you walk the jury through how this
04:00 9 demonstrative reflects a mixing aspect that we talked
04:01 10 about?

04:01 11 A. Right. So we've got some people speaking like
04:01 12 the blue one here and the yellow one here. It's going
04:01 13 through the phone network to the server which is
04:01 14 actually performing the mixing; that's the green that's
04:01 15 coming out. So it's taking -- blue plus yellow is
04:01 16 green, I guess, right. And so it's making a mixed
04:01 17 audio signal. And like, for example, this one here is
04:01 18 receiving the green signal, and it's hearing both
04:01 19 people at the same time. Right. So two people
04:01 20 talking. They'd be able to hear both of them, but it's
04:01 21 in a single audio signal.

04:01 22 Q. And now we have the audio flow --
04:01 23 whoops -- diagram. Before we were focused up here.
04:01 24 Where can we find the mixing on this document?

04:01 25 A. Now we're looking at the CMS here. And you

04:01 1 can see here it says the CMS selects the top 3 and
04:01 2 mixes them.

04:02 3 Q. And this is a Cisco document?

04:02 4 A. Yes. It is.

04:02 5 Q. Now, on Slide 75. We have -- we have PX-154.

04:02 6 A. This is another depiction of what's going on
04:02 7 here. So you can see right here this is a mixer. It's
04:02 8 got three arrows indicating that there's multiple audio
04:02 9 signals going in and then one coming out. Except I
04:02 10 guess it's going this way to the phone. So...

04:02 11 Q. And now we're going to see how source code is
04:02 12 relevant to mixing in PX-245.

04:02 13 MR. SABRI: I do think that means we need
04:02 14 to go back on the confidential record and seal the
04:02 15 court.

04:02 16 THE COURT: Okay.

04:02 17 (Sealed proceedings.)

04:02 18 [REDACTED]
04:03 19 [REDACTED]
04:03 20 [REDACTED]
04:03 21 [REDACTED]
04:03 22 [REDACTED]
04:03 23 [REDACTED]
04:03 24 [REDACTED]
04:03 25 [REDACTED]

04:03 1 [REDACTED]

04:03 2 [REDACTED] [REDACTED]

04:03 3 [REDACTED]

04:03 4 [REDACTED] [REDACTED]

04:03 5 [REDACTED] [REDACTED]

04:03 6 [REDACTED] [REDACTED]

04:03 7 [REDACTED] [REDACTED] [REDACTED]

04:03 8 [REDACTED]

04:03 9 [REDACTED]

04:03 10 [REDACTED]

04:03 11 [REDACTED] [REDACTED]

04:03 12 [REDACTED] [REDACTED]

04:04 13 [REDACTED]

04:04 14 [REDACTED]

04:04 15 [REDACTED]

04:04 16 [REDACTED] [REDACTED]

04:04 17 [REDACTED] [REDACTED]

04:04 18 [REDACTED] [REDACTED]

04:04 19 [REDACTED] [REDACTED]

04:04 20 [REDACTED] [REDACTED]

04:04 21 [REDACTED] [REDACTED]

04:04 22 [REDACTED] [REDACTED]

04:04 23 [REDACTED] [REDACTED]

04:04 24 [REDACTED] [REDACTED]

04:04 25 [REDACTED] [REDACTED] [REDACTED] [REDACTED]

04:05 1 A. That it's met.

04:05 2 Q. And what did Cisco's corporate representative
04:05 3 say that you found important with respect to this
04:05 4 Element [7]?

04:05 5 A. So he was asked -- and there are -- just to be
04:05 6 clear, and I think this is one -- this one is probably
04:05 7 asked and answered: But there are instances where
04:06 8 Cisco's Webex Meetings does mix audio before
04:06 9 transmitting the audio in a packet back to some or all
04:06 10 clients in a conference, right?

04:06 11 And the answer was: Yes. I think that's an
04:06 12 accurate answer.

04:06 13 Q. And based on that and everything else you've
04:06 14 seen in the work you did, what was your conclusion
04:06 15 about whether Cisco Webex, the accused products mix
04:06 16 audio packets in the manner described in Element [7]?

04:06 17 A. That the limitation was met.

04:06 18 Q. I see a check next to Element [7]. We're now
04:06 19 on Element [8]. Whereas we just saw I guess in 5 and
04:06 20 6, we saw multiplexing and sending. And 7 we saw
04:06 21 mixing. And now 8, we're back to sending.

04:06 22 Could you explain to the jury what this
04:06 23 Element [8] covers?

04:06 24 A. So this is taking that mixed audio that was
04:06 25 just created and sending it to the clients that don't

04:06 1 have the capability of mixing.

04:06 2 Q. And here we have this familiar document, and I
04:07 3 think you've explained how this depicts sending, but
04:07 4 why don't you do so briefly once more for the jury?

04:07 5 A. Right. So we talked about the mixing that was
04:07 6 happening here and then the audio data being sent to
04:07 7 the phones.

04:07 8 Q. And how about here as well on the audio flow
04:07 9 diagram? PX-37?

04:07 10 A. Can you click one more?

04:07 11 Q. Oh, yes. Of course.

04:07 12 A. There you go.

04:07 13 So it says: Step 8, that's CMS, that piece
04:07 14 we've been looking at, sends mixed audio to phones.

04:07 15 And we can see that happening right here with
04:07 16 the phones receiving the audio.

04:07 17 Q. And just to be clear, the claim here doesn't
04:07 18 use the word "mixing."

04:07 19 How is the concept of mixing incorporated in
04:07 20 Element [8]?

04:07 21 A. Sorry. It says "combined packet." And that
04:07 22 was the result of mixing the previous limitation.

04:07 23 Q. Thank you, sir.

04:07 24 And we have I think our perhaps second-to-last
04:08 25 source code moment. So we may need just a couple more

04:08 1 times to go on the confidential record.

04:08 2 MR. SABRI: That's right. Request to go
04:08 3 on confidential and clear the courtroom.

04:08 4 THE COURT: Okay.

04:08 5 (Sealed proceedings.)

04:08 6 BY [REDACTED]

04:08 7 [REDACTED] [REDACTED] [REDACTED] [REDACTED]

04:08 8 [REDACTED] [REDACTED]

04:08 9 [REDACTED]

04:08 10 [REDACTED] [REDACTED] [REDACTED] [REDACTED]

04:08 11 [REDACTED] [REDACTED]

04:08 12 [REDACTED] [REDACTED]

04:08 13 [REDACTED]

04:08 14 [REDACTED] [REDACTED] [REDACTED] [REDACTED]

04:08 15 [REDACTED]

04:09 16 [REDACTED] [REDACTED]

04:09 17 [REDACTED] [REDACTED]

04:09 18 [REDACTED]

04:09 19 [REDACTED]

04:09 20 [REDACTED] [REDACTED] [REDACTED]

04:09 21 [REDACTED]

04:09 22 [REDACTED] [REDACTED]

04:09 23 [REDACTED] [REDACTED] [REDACTED]

04:09 24 [REDACTED]

04:09 25 [REDACTED] [REDACTED]

09:42 1 (Sealed proceedings end.)

04:09 2 BY MR. CAUGHEY:

04:09 3 Q. And, Dr. Schaefer, so what conclusion did you
04:09 4 draw with respect to Element [8] of Claim 1?

04:09 5 A. That limitation's met.

04:09 6 Q. And Element [9] starts with "whereby." And
04:09 7 it's -- this kind of brings us right back to the
04:09 8 beginning. Whereby said plurality of clients can
04:09 9 simultaneously participate in a single audioconference
04:09 10 application.

04:09 11 What's being shown here in this demonstrative?

04:10 12 A. This is the multiple people participating in
04:10 13 that single audioconference. We have a phone user and
04:10 14 other computer users at home participating in an
04:10 15 audioconference.

04:10 16 Q. And we see PX-144 again. I think, again, the
04:10 17 symmetry. We saw this with the preamble. We see it
04:10 18 again with the end of Claim 1.

04:10 19 What's this depicting?

04:10 20 A. Again, multiple devices with computer-based
04:10 21 devices or phone-based devices participating in a
04:10 22 single audioconference.

04:10 23 Q. And here, we now come to the end of Claim 1.

04:10 24 What is your conclusion with respect to this
04:10 25 last "whereby" clause in Claim 1?

04:10 1 A. That it -- the limitation's met.

04:10 2 Q. And so what is your conclusion with respect to
04:10 3 Claim 1, whether Claim 1 as a whole has been infringed
04:10 4 by the Cisco Webex accused products?

04:10 5 A. Well, we've gone through all the limitations
04:10 6 and shown they've all been met. So my conclusion is
04:10 7 that Claim 1 is -- that Webex infringes Claim 1.

04:11 8 Q. And we're going to move on. And you've heard
04:11 9 this 2 through 5 infringed.

04:11 10 MR. CAUGHEY: Charitably, that analysis
04:11 11 is much, much shorter, but before we get there, I do
04:11 12 want to pause for a second. Because I think it was
04:11 13 very sharply presented in the opening statements a
04:11 14 dispute about how each works and each of these -- in
04:11 15 every one of these claims.

04:11 16 And it appears a number of times. And
04:11 17 Dr. Schaefer mentioned it previously, but I just --
04:11 18 given the issue raised in opening, I do want to pause
04:11 19 on it for Dr. Schaefer here.

20 BY MR. CAUGHEY:

04:11 21 Q. And, Dr. Schaefer, could you remind the jury
04:11 22 of the lens you applied as you looked at each -- and
04:11 23 with respect to the other language in the claims as
04:11 24 well?

04:11 25 A. Right. So I'm looking at this as an expert in

04:12 1 the field, essentially, as I'm reading the patent and
04:12 2 looking at it in light of the specification of the
04:12 3 patent.

04:12 4 Q. And I'd also like to -- there was a suggestion
04:12 5 that this is a nonsensical interpretation by the other
04:12 6 side. I think you mentioned before that you also
04:12 7 relied on some guidance from the Court on this issue.

04:12 8 MR. CAUGHEY: Could you put the Court's
04:12 9 ruling back up, Mr. Boles?

04:12 10 BY MR. CAUGHEY:

04:12 11 Q. And just again, start with "I'm going to," if
04:12 12 you don't mind, sir. Dr. Schaefer.

04:12 13 A. You want me to read that?

04:12 14 Q. Yes, if you don't mind.

04:12 15 A. Oh, sorry. It says: Each has plain and
04:12 16 ordinary meaning which can include "one or more."

04:12 17 Q. And now I'd love for you to explain a little
04:12 18 bit more -- well, before we do that, I suppose, why was
04:12 19 it that you relied on this ruling as called in forming
04:13 20 your infringement analysis?

04:13 21 A. Well, one, I'm supposed to interpret it in
04:13 22 terms as an expert in the field but also utilizing the
04:13 23 Court's claim constructions.

04:13 24 Q. Now, we just looked at the ruling from the
04:13 25 Court. Now I'd like to hear your understanding in

04:13 1 light of what you said is an expert in the field, a
04:13 2 person of ordinary skill. And I think you mentioned
04:13 3 before you read the patent claim language in light of
04:13 4 the specification.

04:13 5 What did you mean by that?

04:13 6 MR. SABRI: Object, Your Honor. This is
04:13 7 getting into something not addressed in this expert's
04:13 8 report.

04:13 9 MR. CAUGHEY: I would refer Your Honor to
04:13 10 what I referred to before, which is that Dr. Schaefer
04:13 11 says explicitly in Paragraphs 24 and 34 of his report
04:13 12 that he interprets all claim language in light of the
04:13 13 specification.

04:13 14 He specifically references Your Honor's
04:13 15 ruling, and he specifically says that he interprets
04:14 16 "all" to mean "one or more." And then counsel in
04:14 17 deposition questioned Dr. Schaefer at length about this
04:14 18 Column 5.

04:14 19 MR. SABRI: Your Honor, he presents no
04:14 20 opinion in his report in how a POSITA would interpret
04:14 21 the term "each" or why, much less cites this column.
04:14 22 There's just nothing in there.

04:14 23 THE COURT: If you can bring his report
04:14 24 up here and show me where he discusses this specific
04:14 25 issue.

04:14 1 MR. CAUGHEY: Yes, Your Honor.

04:14 2 (Bench conference.)

04:14 3 MR. CAUGHEY: So I'll try to be a little
04:14 4 quieter.

04:14 5 Your Honor, so -- Your Honor, first, in
04:14 6 Paragraph 21, he references Your Honor's ruling.

04:15 7 THE COURT: Okay. Got it.

04:15 8 MR. CAUGHEY: It has been shown. And
04:15 9 then I believe he mentions Paragraph 34 at the end
04:15 10 of -- hold on. I apologize. Where he discusses his
04:15 11 method of construing the claims. There certainly was
04:15 12 reliance on Your Honor's ruling.

04:15 13 In addition, Your Honor, I did bring up
04:15 14 his deposition with one example of where he was asked
04:15 15 specifically about Column 5, which is what's on the
04:15 16 screen in light of this "each," "one or more." And
04:15 17 there's more examples from his deposition, but that's
04:15 18 one of them.

04:15 19 MR. SABRI: Your Honor, the issue is in
04:15 20 his report, he actually applied Your Honor's language
04:15 21 as a construction. He didn't say P&O, which
04:15 22 means -- and I can show you. He said court's
04:15 23 constructions. And he listed as a construction "each,"
04:15 24 which can include "one or more." And then in the body
04:15 25 of his report, he just substitutes "one or more" in for

04:15 1 "each" a few times, which he would do if it were a
04:15 2 construction.

04:15 3 But of course, as Your Honor clarified,
04:16 4 it's not. And he presents zero opinion in the report
04:16 5 on how a POSITA would interpret it, why that's what the
04:16 6 P&O is, citing Column 5 none of that. So the most he
04:16 7 does at the depo, you know, he says a couple of times,
04:16 8 what's one or more, I applied the Court's construction.
04:16 9 I applied one or more. So we know that. He can, of
04:16 10 course, say that and he said it already.

04:16 11 What he can't do now is go outside the
04:16 12 four corners of the report and say, well, now I'm going
04:16 13 to teach you what a POSITA would think when in his
04:16 14 report, he just applied it as a construction.

04:16 15 MR. CAUGHEY: Your Honor, first of all,
04:16 16 we were not sure when the report was issued that it was
04:16 17 going to be such an argument to the jury about what
04:16 18 this term was meaning. And there was a clarification
04:16 19 just a couple of weeks ago, long after expert reports
04:16 20 were closed. We think if they're going to present
04:16 21 expert testimony, which they are, about the meaning of
04:16 22 this term, we should be allowed to as well,
04:16 23 particularly in light of the disclosure, realizing --

04:16 24 THE COURT: Is what they're going to say
04:16 25 in a report?

04:16 1 MR. CAUGHEY: It is, Your Honor. It's in
04:16 2 Mr. Willis' report. And at this most recent hearing,
04:17 3 you may recall you asked Paltalk if they needed to
04:17 4 adjust their reports, and Mr. Tribble said no. We
04:17 5 don't.

04:17 6 So Mr. Willis did explicitly address,
04:17 7 here's what it means to a POSITA. Dr. Schaefer decided
04:17 8 not to, and then at the recent hearing, he doubled down
04:17 9 and said, I don't need to revise it.

04:17 10 MR. SABRI: And I would just say in
04:17 11 response, his entire -- I mean, entire report obviously
04:17 12 relies on the patent. He recites specifically to the
04:17 13 specification in Your Honor's ruling. And they asked
04:17 14 him in two depositions, including a second seven-hour
04:17 15 deposition, had an opportunity to ask him questions
04:17 16 about this. And I do think it's helpful to the jury.

04:17 17 THE COURT: Did the second deposition
04:17 18 take place after my recent ruling?

04:17 19 MR. SABRI: No. Let me show you, just if
04:17 20 I could, Your Honor. Here is what he said in the
04:17 21 supplemental report. You've got Court's construction.
04:17 22 He's got P&O on a couple of them, which is right, and
04:17 23 then "each," he says "each which can include." So he
04:17 24 doesn't even say it's P&O.

04:17 25 Then, of course, that means in his report

04:17 1 he doesn't say what that means to a POSITA as P&O
04:17 2 because in his report, it wasn't P&O; it was in
04:18 3 construction. He chose not to address it, not to
04:18 4 disclose it as Mr. Willis did, and then not to try to
04:18 5 take another shot until after August 1 of this year,
04:18 6 which Your Honor gave him the chance to do.

04:18 7 MR. CAUGHEY: And at the risk of
04:18 8 repeating, I would say there is a very clear disclosure
04:18 9 in a part of what he's relying on, which is the patent
04:18 10 specification and Your Honor's order, and -- I'm
04:18 11 sorry -- in the infringement opinions, in light of his
04:18 12 reliance on the specification in the patent and
04:18 13 Your Honor's order, and then testified about his views
04:18 14 in light of the patent, the specification and
04:18 15 Your Honor's order.

04:18 16 And we ask only that he be allowed to
04:18 17 testify to this jury about his view of the patent claim
04:18 18 language, as he's frankly done already today in light
04:18 19 of Your Honor's order, the patent and the
04:18 20 specification.

04:18 21 MR. SABRI: Your Honor, I think the most
04:18 22 he can say is, I applied "any," and "each" is "one or
04:18 23 more," and I did that by looking at the specification
04:18 24 of the claims. I don't think he can explain what a
04:18 25 POSITA means I think through the specification explain

04:18 1 this when he didn't do it in his report, and he didn't
04:18 2 do it in the depo. But the real important thing here
04:18 3 is the report because that's what we had when we
04:19 4 deposed him. And if he had said what Mr. Willis said,
04:19 5 I think its P&O is this, here's why, we would have
04:19 6 asked him questions on that, but he didn't.

04:19 7 THE COURT: Well, here's the problem. It
04:19 8 is the P&O because that's what I said. So your
04:19 9 argument's a little circumvent isn't to say that I
04:19 10 don't think he has anything in his report where he
04:19 11 explains how he did the analysis under what P&O meant.
04:19 12 So to the extent he is parroting what I said and what
04:19 13 that means, he can talk about that. But beyond that,
04:19 14 and I think because of this language in the deposition,
04:19 15 I think to the extent he asks if he wants to parrot
04:19 16 what he said there about Column 5, he can do that too.

04:19 17 I'll give you a little leeway in terms
04:19 18 of -- because someone's got to explain to the jury or
04:20 19 it doesn't make any sense -- him explaining what it
04:20 20 means for one to be a person of skill in the art the
04:20 21 plain and ordinary meaning. But he needs to make clear
04:20 22 that his analysis relies primarily, if not exclusively
04:20 23 on my Court instruction and not any analysis that he
04:20 24 did because you didn't provide any of that in his
04:20 25 report.

04:20 1 MR. CAUGHEY: So just to make absolutely
04:20 2 sure I do this properly.

04:20 3 THE COURT: Right.

04:20 4 MR. CAUGHEY: Your Honor can make that
04:20 5 clear, what you just said that his analysis relies
04:20 6 principally on -- I mean, I think I've done that.

04:20 7 THE COURT: My construction is my
04:20 8 construction. And he can talk about that.

04:20 9 MR. CAUGHEY: Exactly.

04:20 10 THE COURT: But he can explain because he
04:20 11 knows -- and the jury needs to understand what it
04:20 12 is -- what a person of ordinary skill in the art is.
04:20 13 And also what he explained what plain and ordinary
04:20 14 meaning is, so that he can lay a groundwork for the
04:21 15 jury to understand what he's saying when he's saying
04:21 16 what I said. Underline of what I said though.
04:21 17 Hopefully properly.

04:21 18 What you can't do is give the impression
04:21 19 to the jury that he did some analysis himself of
04:21 20 whether or not this meant the plain and ordinary
04:21 21 meaning, why it would, other than if he wants to -- I
04:21 22 can't tell -- y'all wouldn't know what's in Column 5.
04:21 23 If he needs to talk about what's in Column 5 --

04:21 24 MR. CAUGHEY: That's all I want to talk
04:21 25 about is what's in -- a snippet of Column 5 around

04:21 1 Lines 40 through --

04:21 2 THE COURT: I'm going to allow him to do
04:21 3 that too. But beyond that, he can't talk about
04:21 4 anything else that he did.

04:21 5 MR. CAUGHEY: That's all I'm going to do
04:21 6 is Column 5.

04:21 7 MR. SABRI: Well, that's not talking
8 about yours. This is talking about a particular
9 limitation, Your Honor.

10 THE REPORTER: I can't understand you
11 because you're talking so fast.

04:21 12 MR. SABRI: I'm sorry.

04:21 13 THE COURT: Anything else?

14 MR. CAUGHEY: No, Your Honor. Thank you.

04:21 15 MR. SABRI: I just want to make clear.
04:21 16 Does this mean he can use this slide where he's walking
04:22 17 through Column 5 to explain why in his view this is
04:22 18 what it means?

04:22 19 THE COURT: He can explain -- he needs to
04:22 20 go back through and explain what the basis was. And if
04:22 21 he wants to show in Column 5 there's support for that
04:22 22 opinion, then he can do that.

04:22 23 MR. CAUGHEY: Excellent. Thank you.

04:22 24 (Bench conference concludes.)

04:22 25 MR. CAUGHEY: Can we back up to the

04:22 1 Court's ruling one more time?

04:22 2 BY MR. CAUGHEY:

04:22 3 Q. And I think you mentioned before we spoke with
04:22 4 the Judge that you rely on the Court's claim
5 construction.

04:22 6 Did you say that?

04:22 7 A. Yes.

04:22 8 Q. And if this assertion where it says each has a
04:22 9 plain and ordinary meaning which can include one or
04:22 10 more is something that you relied on in reaching your
04:23 11 conclusion, then in the '858 patent, "each" means one
04:23 12 or more?

04:23 13 A. That's correct.

04:23 14 Q. Okay. Did you also review the patent's
04:23 15 specification with respect to your understanding of the
04:23 16 word "each"?

04:23 17 A. Yes. I did.

04:23 18 MR. CAUGHEY: Can we go to the slide we
04:23 19 were before?

20 BY MR. CAUGHEY:

04:23 21 Q. Okay. And so first we see this magnifying
04:23 22 glass or lens where, at the risk of telling the jury
04:23 23 something they've already heard before, but you applied
04:23 24 a particular approach to analyzing the patent claim
04:23 25 language; is that right?

04:23 1 A. Right. I did so as, one, as an expert in the
04:23 2 field, and I did so in light of the specification of
04:23 3 the patent.

04:23 4 Q. And here we have Column 5, and this language
04:23 5 was on the screen before. And it's, I think, Lines 44
04:24 6 to 52.

04:24 7 Is this language taken from the specification
04:24 8 of the '858 patent?

04:24 9 A. That's right.

04:24 10 Q. And how is this relevant to your reading of
04:24 11 "one or more" as a person of ordinary skill in the art?

04:24 12 A. It's talking about the multiplexing that we
04:24 13 were previously discussing in terms of limitations
04:24 14 here. So it says in Step 314, the active speaker data
04:24 15 for each and every active speaker is multiplexed. And
04:24 16 if you remember, we looked at the limitation that
04:24 17 looked pretty similar to that.

04:24 18 The next line that's highlighted, yep, says:
04:24 19 As will be apparent to those skilled in the relevant
04:24 20 arts, if the one you're sending it to is an active
04:24 21 speaker, then the multiplexed stream, the multiplexed
04:24 22 packets will not include the speaker's own data, right.
04:24 23 And that's that echo suppression that we talked about
04:24 24 there.

04:24 25 So what does that mean? It's going through a

04:25 1 loop. Okay? Every time it goes through this loop,
04:25 2 it's checking to see if it's an active speaker. If
04:25 3 it's an active speaker, it's building a different
04:25 4 multiplexed stream for all of those active speakers.
04:25 5 So Speaker 1 would get something different than Speaker
04:25 6 2 and Speaker 3 in that case.

04:25 7 Q. And as a person of ordinary skill in the art,
04:25 8 how do you draw the relationship between the sort of
04:25 9 teal or green sentence in the yellow one?

04:25 10 A. Right. So when it says each speaker is
04:25 11 multiplexed and then it says the result of that will
04:25 12 not include if it's different for the different
04:25 13 speakers that are on here, then each needs to be one or
04:25 14 more in that case. It's not the same thing that you
04:25 15 sent to all the speakers. It's not including, as it
04:25 16 says here, the speaker's own data, so it's not
04:25 17 including all of the data.

04:25 18 Q. Do these sentences make sense if each means
04:25 19 all?

04:25 20 A. I mean, each can include one or more, but it's
04:26 21 not going to -- the "however" line makes -- it would be
04:26 22 difficult to do.

04:26 23 Q. Let me ask the question in the opposite.

04:26 24 Do these sentences make sense if each can't
04:26 25 mean one or more?

04:26 1 A. No. It doesn't.

04:26 2 Q. And what does the last sentence say here?

04:26 3 A. So this is talking about the -- you know, how
04:26 4 the active speaker's data that they're sending it to is
04:26 5 not being included in multiplexed packets. This is the
04:26 6 echo suppression so that their audio data is not sent
04:26 7 to themselves. So they don't hear themselves. You
04:26 8 want to hear the other people, not yourself. You can
04:26 9 already hear yourself. You're in the room with
04:26 10 yourself.

04:26 11 Q. And so when you saw "each" in these patent
04:26 12 elements, you took them to mean one or more?

04:26 13 A. That's correct.

04:26 14 Q. As a person of ordinary skill in the art?

04:26 15 A. That's right.

04:26 16 Q. In light of the Court's ruling?

04:26 17 A. Yes.

04:26 18 Q. Now, on to Claim 2. Now, once again, try to
04:26 19 make this a touch more readable. And this says --
04:27 20 starts off with saying something we haven't seen. It
04:27 21 says: The method of Claim 1.

04:27 22 How does Claim 2 relate to Claim 1?

04:27 23 A. So this is a dependent claim. So what that
04:27 24 means is that it says method of Claim 1. So all the
04:27 25 limitations of Claim 1 need to be met as well as the

04:27 1 limitation of Claim 2.

04:27 2 Q. Okay. And what -- could you describe for
04:27 3 me -- we'll get a look at some source code in a minute.
04:27 4 But actually, don't describe for me, describe for the
04:27 5 jury what is encompassed or being taught here by this
04:27 6 Claim 2.

04:27 7 A. Well, this is talking about before sending,
04:27 8 okay, to the people who can mix removing from the
04:27 9 multiplexed stream said packets of audio data received
04:27 10 from the -- one of the people on the active speakers
04:27 11 list, right? So it's related to that phrase that we
04:27 12 were just looking at in Column 5 of the patent, right,
04:27 13 where it's saying you won't be able to hear yourself.

04:28 14 MR. CAUGHEY: And now I think we have our
04:28 15 last but possibly somewhat more extended source code
04:28 16 for it. So I might ask Dr. Schaefer again to come down
04:28 17 and get a little closer to the jury. And I think we're
04:28 18 also going to need to go on the confidential record.

04:28 19 MR. SABRI: Yes. I would request that we
04:28 20 go on the confidential record.

04:28 21 THE COURT: Sure.

04:28 22 (Sealed proceedings.)

04:28 23 [REDACTED]

04:28 24 [REDACTED]

04:28 25 [REDACTED]

04:28 1
04:28 2
04:28 3
04:28 4
04:28 5
04:28 6
04:28 7
04:28 8
04:29 9
04:29 10
04:29 11
04:29 12
04:29 13
04:29 14
04:29 15
04:29 16
04:29 17
04:29 18
04:29 19
04:29 20
04:29 21
04:29 22
04:29 23
04:29 24
04:29 25

[REDACTED]

04:29 1 [REDACTED] [REDACTED] [REDACTED]

2 [REDACTED]

04:29 3 [REDACTED]

04:29 4 [REDACTED] [REDACTED]

04:29 5 [REDACTED] [REDACTED]

04:29 6 [REDACTED]

04:29 7 [REDACTED]

04:29 8 [REDACTED]

04:30 9 [REDACTED]

04:30 10 [REDACTED] [REDACTED]

04:30 11 [REDACTED]

04:30 12 [REDACTED]

04:30 13 [REDACTED]

04:30 14 [REDACTED]

04:30 15 [REDACTED] [REDACTED]

04:30 16 [REDACTED]

04:30 17 [REDACTED] [REDACTED]

04:30 18 [REDACTED] [REDACTED] [REDACTED]

04:30 19 [REDACTED]

04:30 20 [REDACTED]

04:30 21 [REDACTED]

04:30 22 [REDACTED] [REDACTED]

04:30 23 [REDACTED]

04:30 24 [REDACTED] [REDACTED]

04:30 25 [REDACTED]

04:30 1 [REDACTED]

2 [REDACTED]

04:30 3 [REDACTED]

04:30 4 [REDACTED]

04:30 5 [REDACTED]

04:30 6 [REDACTED]

04:31 7 [REDACTED]

04:31 8 [REDACTED]

04:31 9 [REDACTED]

04:31 10 [REDACTED]

04:31 11 [REDACTED]

04:31 12 [REDACTED]

04:31 13 [REDACTED]

04:31 14 [REDACTED]

04:31 15 [REDACTED]

04:31 16 [REDACTED]

04:31 17 [REDACTED]

04:31 18 [REDACTED]

04:31 19 [REDACTED]

04:31 20 [REDACTED]

04:31 21 [REDACTED]

04:31 22 [REDACTED]

04:31 23 [REDACTED]

04:32 24 [REDACTED]

04:32 25 [REDACTED]

04:32 1 [REDACTED] [REDACTED]

04:32 2 [REDACTED]

04:32 3 [REDACTED] [REDACTED]

04:32 4 [REDACTED] [REDACTED]

04:32 5 [REDACTED] [REDACTED]

04:32 6 [REDACTED]

04:32 7 [REDACTED] [REDACTED]

04:32 8 [REDACTED]

04:32 9 [REDACTED] [REDACTED]

04:32 10 [REDACTED]

04:32 11 [REDACTED] [REDACTED] [REDACTED]

04:32 12 [REDACTED]

04:32 13 [REDACTED] [REDACTED]

04:32 14 [REDACTED]

04:32 15 [REDACTED]

04:32 16 [REDACTED] [REDACTED] [REDACTED]

04:33 17 [REDACTED] [REDACTED] [REDACTED]

04:33 18 [REDACTED] [REDACTED]

04:33 19 [REDACTED]

04:33 20 [REDACTED]

04:33 21 [REDACTED] [REDACTED] [REDACTED]

04:33 22 [REDACTED]

04:33 23 [REDACTED]

04:33 24 [REDACTED]

04:33 25 [REDACTED]

04:33 1 [REDACTED]

04:33 2 [REDACTED]

04:33 3 [REDACTED]

04:33 4 [REDACTED]

04:33 5 [REDACTED]

04:33 6 [REDACTED]

04:33 7 [REDACTED]

04:33 8 [REDACTED]

04:33 9 [REDACTED]

04:33 10 [REDACTED]

04:33 11 [REDACTED]

04:33 12 [REDACTED]

04:34 13 [REDACTED]

04:34 14 [REDACTED]

04:34 15 [REDACTED]

04:34 16 [REDACTED]

04:34 17 [REDACTED]

04:34 18 [REDACTED]

04:34 19 [REDACTED]

04:34 20 [REDACTED]

04:34 21 [REDACTED]

04:34 22 [REDACTED]

04:34 23 [REDACTED]

04:34 24 [REDACTED]

04:34 25 [REDACTED]

04:34
04:34
04:34
04:34
04:34
09:42
04:34
04:34
04:34
04:35
04:35
04:35
04:35
04:35
04:35
04:35
04:35
04:35
04:35
04:35
04:35
04:35
04:35
04:35
04:35
04:35

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

[REDACTED]

(Sealed proceedings end.)

BY MR. CAUGHEY:

Q. And in light of the source code, I think we already covered Claim 2.

But now for Claim 3, in light of the review of Cisco Webex source code, what did you conclude with respect to whether Claim 3 has been infringed?

A. Well, that Webex, it infringes Claim 3.

Q. And we have a checkmark.

Claim 4, our shortest yet. This one starts: The method of Claim 1. And then we'll make it easier to read. And then this mentions a session initiation protocol.

Could you please tell the jury what this claim element -- or I guess this claim covers?

A. Well, it's talking about PC-based equipment and utilizing a particular way of transmitting data called the SIP protocol.

Q. Could you please turn in your binder to PX-55?

A. Yes.

04:35 1 Q. And can you identify PX-55?

04:35 2 A. Yes. This is another Webex document.

04:35 3 Q. Did you rely on this document in forming your
04:35 4 opinions?

04:36 5 A. Yes.

04:36 6 MR. CAUGHEY: Paltalk offers PX-55.

04:36 7 MR. SABRI: No objection, Your Honor.

04:36 8 THE COURT: Admitted.

04:36 9 BY MR. CAUGHEY:

04:36 10 Q. PX-55 is Webex SIP addresses and control hub
04:36 11 is on the screen.

04:36 12 Does that SIP refer to in a Cisco document the
04:36 13 same SIP that's in the claim?

04:36 14 A. Yes. That's correct.

04:36 15 Q. And what is the significance of the
04:36 16 highlighted text that you called out?

04:36 17 A. Well, it's indicating that it utilizes the SIP
04:36 18 protocol here.

04:36 19 Q. And could you just put a little more meat on
04:36 20 the bone of what it means to connect using the SIP
04:36 21 protocol?

04:36 22 A. Well, it's just a way of communicating,
04:36 23 basically, in that case. So it's -- as I said
04:36 24 previously, it's transmitting data, utilizing a
04:36 25 particular way of doing that that's defined by this

04:36 1 protocol.

04:36 2 Q. And can you go to PX-229 in your binder?

04:36 3 A. Yes.

04:36 4 Q. Can you identify this document?

04:37 5 A. This is another Cisco document.

04:37 6 Q. You relied on this document?

04:37 7 A. Yes.

04:37 8 MR. CAUGHEY: Paltalk offers PX-229.

04:37 9 MR. SABRI: No objection.

04:37 10 THE COURT: Admitted.

04:37 11 BY MR. CAUGHEY:

04:37 12 Q. PX-229 is displayed on the screen.

04:37 13 Why was this document relevant to your
04:37 14 analysis of Claim 4?

04:37 15 A. Right. So here, you see a variety of
04:37 16 endpoints. Think of endpoints as clients using the SIP
04:37 17 protocol. See a computer here, for example, and
04:37 18 linking to Webex.

04:37 19 Q. And so your conclusion is with respect to --
04:37 20 oh, no. We have Mr. Buckles again. I apologize.

04:37 21 What did Cisco's corporate representative say
04:37 22 about SIP?

04:37 23 A. So he was asked -- and talking now about Webex
04:37 24 Meetings, there are instances where audio clients use
04:37 25 SIP to connect with Webex Meetings, right?

04:37 1 And he responded: Yes. Audio clients,
04:37 2 audio/video clients, different. Yeah. Clients have
04:37 3 different levels of capability.

04:37 4 Q. So your conclusion on Claim 4?

04:38 5 A. That Webex infringes on Claim 4.

04:38 6 Q. And at last, we hit Claim 5, which also begins
04:38 7 the method of Claim 1. And we see again PX-229.
04:38 8 Before we were focused on SIP, but what does this claim
04:38 9 cover?

04:38 10 A. Well, it's talking about telephone equipment
04:38 11 and H.323. And you can see H.323 in parallel to what
04:38 12 we saw previously to SIP.

04:38 13 Q. And now we see, I think -- or I guess we now
04:38 14 see the summary. And what's your conclusion with
04:38 15 respect to Claim 5 then?

04:38 16 A. That Webex infringes Claim 5.

04:38 17 Q. And we've now reached the end of the asserted
04:38 18 claims, Claims 1 through 5, and just -- we hit a slide
04:38 19 that we hit before.

04:38 20 What is your conclusion and summary of your
04:38 21 opinions with respect to infringement?

04:38 22 A. That Cisco directly infringes Claims 1
04:39 23 through 5 of the '858 patent.

04:39 24 Q. We've now arrived at the second question.

04:39 25 Now that you found infringement, there's a

04:39 1 second question that says: What are the benefits of
04:39 2 the invention?

04:39 3 And then in quotes you have "apportionment."

04:39 4 Can you explain to the jury, I guess, first
04:39 5 what this inquiry was, what you were getting at here?

04:39 6 A. Right. So we just looked at whether Webex
04:39 7 infringes on the '858 patent. But we want to look
04:39 8 at -- you know, there's -- Webex has features that
04:39 9 infringe upon the '858 patent and features also that
04:39 10 don't infringe on the '858 patent. And so this is
04:39 11 looking at what's called apportionment.

04:39 12 Q. Dividing between infringing features and
04:39 13 noninfringing features?

04:39 14 A. Correct.

04:39 15 Q. Why did you undertake this analysis, to the
04:39 16 best of your knowledge, or why were you asked to
04:39 17 undertake this analysis?

04:39 18 A. I think it's used in damages. But I don't
04:40 19 think --

04:40 20 Q. You're not a damages expert?

04:40 21 A. No.

04:40 22 Q. You're not the royalty and damages guy?

04:40 23 A. No. I'm not.

04:40 24 Q. Okay. You're a computer scientist?

04:40 25 A. Yes.

04:40 1 Q. Okay. And you have a number of steps you took
04:40 2 to perform this exercise. Can you -- and we'll march
04:40 3 through them, but could you tell the jury a little bit
04:40 4 about how you performed this division of infringing
04:40 5 functionalities as a benefit versus noninfringing
04:40 6 functionalities?

04:40 7 A. Sure. So the first part was really isolating
04:40 8 what is this Webex Audio. Then it was identifying the
04:40 9 key features of Webex. Those features, I looked at the
04:40 10 novelty, design-around potential workings. And then
04:40 11 for Step 4, I looked at the weighting of those
04:40 12 features, based off of novelties designed around
04:40 13 potential and importance.

04:40 14 Then for those features, I took -- for all
04:41 15 those features, I computed a percentage of that feature
04:41 16 that would be attributable to the '858 patent. And
04:41 17 then the last step was to sort of add it all up
04:41 18 together, and I compute the relative contribution of
04:41 19 the '858 patent to Webex Audio.

04:41 20 Q. You mentioned before, I think we saw that
04:41 21 Webex has video and maybe some other features that are
04:41 22 not audio. You mentioned that Step 1 was pinpointing
04:41 23 the audio functionality.

04:41 24 Was that a challenging step for you?

04:41 25 A. No. It was not.

04:41 1 Q. Why?

04:41 2 A. Because Cisco has evidently already done this
04:41 3 and separated out the piece that is Webex Audio.

04:41 4 Q. And we heard from Mr. Boyles, who's a
04:41 5 corporate representative of Cisco's, a moment ago. And
04:41 6 what did Mr. Boyles say about this?

04:41 7 A. Okay. So he was asked: Mr. Boyles, do you
04:41 8 have an understanding of what topic is meant by accused
04:41 9 functionalities as it appears in Topic 30?

04:41 10 And he responded: Again, I have a broad
04:41 11 understanding as to what it relates to.

04:41 12 And the question was: And what is that broad
04:42 13 understanding?

04:42 14 He answered: That it pertains to the audio
04:42 15 portion of sales.

04:42 16 And the question was: What do you mean by
04:42 17 audio portion, Mr. Boyles?

04:42 18 Then he responded: Well, when referring to, I
04:42 19 guess, Webex products, it's the audio portion of the
04:42 20 product functionality as opposed to the meetings or
04:42 21 polling or visual portions or anything else that's not
04:42 22 related to sound.

04:42 23 Q. And in Step 2, once you sort of pinpointed
04:42 24 audio, what was the next task?

04:42 25 A. So the next task was identifying the key

04:42 1 features of Webex Audio.

04:42 2 Q. And as was done, I think, a couple other
04:42 3 times, we're going to start at the end.

04:42 4 Is this the list of key features you
04:42 5 identified?

04:42 6 A. That's correct.

04:42 7 Q. Okay. And now I think you put together some
04:42 8 examples of where you found these features in Cisco
04:42 9 documents, but could you tell the jury just generally
04:42 10 how you went about determining that hybrid audio,
04:42 11 global access, scalability, conference management,
04:43 12 compatibility with other Webex products and remaining
04:43 13 features were key features relevant to your analysis?

04:43 14 A. So I looked at a lot of different documents.
04:43 15 Some of them were public; some of them were internal
04:43 16 Cisco documents. I looked at technical documents,
04:43 17 source code and so forth to come up with this list of
04:43 18 features.

04:43 19 Q. And the first one is support for hybrid audio.
04:43 20 Could you turn to PX-109 and -- or, I'm sorry. I
04:43 21 jumped the gun here.

04:43 22 First we're going to start at PX-62 which is
04:43 23 already in evidence. Slide 109 -- and then it says
04:43 24 Slide 109, PX-109. That was confusing. But PX-62
04:43 25 talks about hybrid audio in the first sentence, right?

04:43 1 A. That's right.

04:43 2 Q. And what was the significance of this document
04:43 3 identifying hybrid audio as a key feature?

04:43 4 A. So it's talking about Webex support for hybrid
04:43 5 audio. It provided these flexibilities for people to
04:43 6 join the audioconference; it's a computer or a phone in
04:44 7 this case.

04:44 8 Q. You can now turn to PX-109 in your binder.

04:44 9 A. Yes.

04:44 10 Q. Can you identify this document?

04:44 11 A. This is a survey of a -- sort of a -- it was
04:44 12 conducted by a third-party company on the app of Cisco.

04:44 13 MR. CAUGHEY: Paltalk offers PX-109.

04:44 14 MR. SABRI: No objection.

04:44 15 THE COURT: Admitted.

04:44 16 BY MR. CAUGHEY:

04:44 17 Q. And you mentioned PX-109 is a survey. You
04:44 18 said it's relevant to hybrid audio. Why is that?

04:44 19 A. Right. So it's talking here about native
04:44 20 audio calling through VoIP or PSTN. And it's looking
04:44 21 at the support compared to various different platforms
04:44 22 indicating that Webex has better support than the rest
04:44 23 of the platforms.

04:44 24 Q. And the next feature's global access. What
04:44 25 features are encompassed within global access?

04:44 1 A. So global access is really the ability to join
04:45 2 these audio conferences using different types of
04:45 3 equipment like, you know, phones, voice, but also sort
04:45 4 of in a global sense. So to connect globally. You
04:45 5 know, there's 1-800 numbers that are provided so that
04:45 6 people -- well, the equivalent of 1-800 numbers perhaps
04:45 7 so that people can join this from this audioconference
04:45 8 from all over the world really. So it's the ability to
04:45 9 connect. And that can be important because, you know,
04:45 10 some countries might restrict Voice over IP or not have
04:45 11 good telephone service or something like that.

04:45 12 Q. And could you please turn to PX-145 in your
04:45 13 binder?

04:45 14 A. Yes.

04:45 15 Q. And now identify the document.

04:45 16 A. This is another Cisco document.

04:45 17 Q. Did you rely on it in forming your opinions in
04:45 18 this case?

04:45 19 A. Yes.

04:45 20 MR. CAUGHEY: Paltalk offers PX-145.

04:45 21 MR. SABRI: No objection.

04:45 22 THE COURT: Admitted.

04:46 23 BY MR. CAUGHEY:

04:46 24 Q. PX-145 is now on the screen. And you've
04:46 25 called out part of the text on Page 5 of this Cisco

04:46 1 document. What's -- why did this speak to you?

04:46 2 A. So it's talking about part of this global
04:46 3 access feature. It says: Only Cisco offers a global
04:46 4 architecture. Some providers only support a specific
04:46 5 country or region which affects the video and meeting
04:46 6 quality for remote team members. Others only support
04:46 7 certain video devices, restricting who can join or how
04:46 8 they can participate.

04:46 9 Q. The next feature is scalability. What is
04:46 10 that?

04:46 11 A. It's the ability to support larger audio
04:46 12 conferences to scale.

04:46 13 Q. More people in an audioconference?

04:46 14 A. Yeah.

04:46 15 Q. And if you could turn to PX-129.

04:46 16 A. Yes.

04:46 17 Q. And can you identify this document?

04:46 18 A. This is another Cisco document.

04:46 19 Q. You relied on it?

04:47 20 A. Yes.

04:47 21 MR. CAUGHEY: Paltalk offers PX-129.

04:47 22 MR. SABRI: No objection.

04:47 23 THE COURT: Admitted.

04:47 24 BY MR. CAUGHEY:

04:47 25 Q. And you say your key feature is scalability,

04:47 1 and then you've called out a portion of this document
04:47 2 that mentions scalability.

04:47 3 Could you explain for the jury what you've
04:47 4 called out here?

04:47 5 A. Right. It's talking about the number of
04:47 6 people that can be part of the single meeting, 1,000
04:47 7 participants, up to 1,000 on phones and 1,000 on Voice
04:47 8 over IP, VoIP.

04:47 9 Q. And the next feature is conference management.
04:47 10 And what is conference management?

04:47 11 A. So conference management is the ability to
04:47 12 join different conferences, to mute people, to make
04:47 13 breakout rooms. It's also described as the ability to
04:47 14 identify an active speaker.

04:47 15 Q. And we see PX-109, again, a different portion
04:47 16 of this -- well, I guess, here with respect to
04:47 17 conference management, you called out a different
04:48 18 portion. What's the relevance of this portion of the
04:48 19 third-party survey?

04:48 20 A. So it's talking about meeting and session
04:48 21 management, conference management, audience management,
04:48 22 having breakout rooms and so forth, managing the
04:48 23 conference.

04:48 24 Q. The next feature's compatibility with other
04:48 25 Webex products. What does this refer to?

04:48 1 A. So we saw very early on that there's lots of
04:48 2 different Webex products all utilizing the same sort of
04:48 3 back end as Webex Audio that we've been talking about,
04:48 4 this time able to communicate with one another. That's
04:48 5 the compatibility that we're talking about.

04:48 6 Q. And we return to PX-129 which refers to
04:48 7 compatibility. Is this a Cisco document?

04:48 8 A. Yes.

04:48 9 Q. And what is this Cisco document referring to?

04:48 10 A. So it's talking about compatibility as one of
04:48 11 the features, benefits, works with all Cisco Webex
04:49 12 services, mobility clients, network-based recording and
04:49 13 so forth.

04:49 14 Q. And then we reach remaining features. What's
04:49 15 the significance of the remaining features in your
04:49 16 analysis?

04:49 17 A. So there's other features that are identified
04:49 18 in the documents, and so the idea is to -- you know, I
04:49 19 tried to create a set of features, but I recognized
04:49 20 that there's some features that I'm just not going to
04:49 21 capture with these different categories. And that's
04:49 22 the idea behind the remaining features, things like,
04:49 23 you know, talk about TCP and -- support or having a
04:49 24 chime that played when someone enters a conference or
04:49 25 exits a conference and so forth. So this is a category

04:49 1 basically to encompass those remaining features.

04:49 2 Q. And once you identified those features, what
04:49 3 was -- what did you do next?

04:49 4 A. So I started with sort of a simple model which
04:49 5 is just having them all equal, for example.

04:49 6 Q. Did you stop there?

04:49 7 A. No. I then adjusted those percentages.

04:50 8 Q. And how did you adjust those percentages
04:50 9 initially?

04:50 10 A. So I looked at the novelty of different
04:50 11 features. Is this a novel feature or not? The
04:50 12 design-around potential. In other words, were there
04:50 13 multiple ways of implementing this, you know, at a low
04:50 14 cost?

04:50 15 And then I really looked at the importance of
04:50 16 Webex -- the feature to Webex's overall function. And
04:50 17 so a critical piece of Webex Audio or something more
04:50 18 optional, for example.

04:50 19 Q. And for novelty and design-around, what did
04:50 20 you rely on?

04:50 21 A. I talked with Dr. Madisetti, who we're going
04:50 22 to hear from, I think, later, and I also looked at his
04:50 23 report as well.

04:50 24 Q. And for importance to Webex's overall
04:50 25 function, what's the basis of your analysis there?

04:50 1 A. Documents again and, you know, related to the
04:50 2 documents that we've seen so far, more documents, other
04:50 3 technical documents, that source code and so forth.

04:50 4 Q. And we just see a demonstrative here, those
04:51 5 that we've seen, and some fake, non-Cisco confidential
04:51 6 source code, just an image of -- I think we got it from
04:51 7 Google or something.

04:51 8 But how did your review of technical materials
04:51 9 contribute to your assessment of the importance of
04:51 10 these features?

04:51 11 A. Well, it's helping me to adjust these
04:51 12 different categories in terms of reports, Webex.

04:51 13 Q. And now could you turn to PX-145?

04:51 14 A. Yes.

04:51 15 Q. Can you identify this document?

04:51 16 A. This is a Cisco document. I think we've seen
04:51 17 it before.

04:51 18 Q. All right. Maybe we have.

04:51 19 You're right. It's already admitted.

04:51 20 And here you've underlined: Connect any time,
04:51 21 anywhere on any device and meetings for up to 1,000
04:51 22 attendees.

04:51 23 Can you tell the jury how these align with the
04:51 24 categories you've identified?

04:51 25 A. Right. So this is getting meetings for up to

04:51 1 1,000 attendees, is getting a scalability. It's one of
04:52 2 the things being advertised here: Connect any time,
04:52 3 anywhere on any device related to global access.

04:52 4 Q. And now could you go to PX-149 in your binder?

04:52 5 A. Yes.

04:52 6 Q. All right. You're there. Thank you.

04:52 7 Can you identify this document?

04:52 8 A. It's another Cisco document.

04:52 9 Q. And did you rely on this document?

04:52 10 A. Yes.

04:52 11 MR. CAUGHEY: Plaintiffs offer PX-149.

04:52 12 MR. SABRI: No objection.

04:52 13 THE COURT: Admitted.

04:52 14 BY MR. CAUGHEY:

04:52 15 Q. PX-149 is a Cisco document titled Webex For
04:52 16 Government -- whoops. Too fast. It says: Global
04:52 17 Access.

04:52 18 What did you take from this material?

04:52 19 A. So this is specifically marketing global
04:52 20 access to, I guess, governments in this case and
04:52 21 providing different ways to call in. And it's talking
04:52 22 about Voice over IP available where regulators allow.
04:53 23 I guess where they don't allow, you could use phones to
04:53 24 connect. It's also talking about the scalability of
04:53 25 the conference, audio capacities up to 1,000 in a

04:53 1 single meeting.

04:53 2 Q. And I think you mentioned before that this --
04:53 3 the purpose of this analysis was to adjust this equal
04:53 4 weighting.

04:53 5 Could you describe for the jury the way that
04:53 6 you ended up, which I think is in the technical weight
04:53 7 on the right-hand side?

04:53 8 A. Well, and you can see the numbers here, but
04:53 9 basically, things that were more novel and less
04:53 10 design-around potential and more importance to Webex
04:53 11 Audio received greater adjustments up. And the things
04:53 12 that were less important, more adjustments down.

04:53 13 So things like hybrid audio and global access
04:53 14 are getting that sort of very core functionality of
04:53 15 Webex Audio, and they received the biggest movement
04:53 16 upwards.

04:53 17 Scalability is very important, which in many
04:53 18 documents as well, the ability to host these different
04:53 19 conferences. And that was moved up.

04:53 20 Conference management, something that has
04:54 21 lower -- more design-around potential and less critical
04:54 22 connection importance to Webex Audio, received the
04:54 23 greatest movement downward.

04:54 24 Compatibility with other Webex products is
04:54 25 important but maybe not the most core functionality of

04:54 1 what is Webex Audio in the end. So that was the
04:54 2 remaining features set to be 15 percent.

04:54 3 Q. And I apologize to do this for the record, but
04:54 4 I don't know that you read each of those percentages
04:54 5 in.

04:54 6 Can you just read the final technical weights
04:54 7 you assigned these different features?

04:54 8 A. So hybrid audio's 25 percent. Global access,
04:54 9 25 percent. Scalability, 20 percent. Conference
04:54 10 management, 5 percent. Compatibility with other Webex
04:54 11 products, 10 percent. And remaining features,
04:54 12 15 percent.

04:54 13 Q. Did you stop there?

04:54 14 A. No.

04:54 15 Q. What did you do next?

04:54 16 A. So next, I looked for these different
04:54 17 categories, how much of these categories were
04:55 18 attributable to the patents-in-suit.

04:55 19 Q. And describe that analysis.

04:55 20 A. So hybrid audio is -- well, it's what this
04:55 21 patent is about. I was trying to be quite conservative
04:55 22 here. You can argue that hybrid audio should be more
04:55 23 towards the patent itself, but this is a recognition
04:55 24 that there may be some features in this category that
04:55 25 are not covered by the '858 patent. But again, this

04:55 1 is, you know, what the patent is really about. So
04:55 2 that's why it received the largest contribution there
04:55 3 at 75 percent.

04:55 4 Global access, we have connections, maybe PSTN
04:55 5 to PSTN or VoIP to VoIP happening in different
04:55 6 countries. There's an infrastructure needed to make
04:55 7 that happen.

04:55 8 There's some aspect of the '858 patent being
04:55 9 used here. It talks about being connected through a
04:55 10 variety of different types of devices together. And if
04:55 11 you can't connect in one way in one country, you can
04:55 12 connect maybe through another in that case. So there's
04:55 13 some contribution of the '858 patent here, but it's not
04:55 14 the majority. And so that's why I set it to be
04:56 15 20 percent.

04:56 16 Scalability, the '858 patent talks as one of
04:56 17 its benefits is scalability, right, the ability to host
04:56 18 larger conferences to distribute that computational
04:56 19 workload to different devices, but it's also about
04:56 20 quality.

04:56 21 So when we talked about quality from before,
04:56 22 it's improved quality on some devices, which actually
04:56 23 may allow it to reduce the amount of bandwidth that's
04:56 24 extending audio. It's actually maybe lowering the
04:56 25 quality, knowing that it's going to be better at the

04:56 1 endpoint in that case.

04:56 2 So those all factor into scalability, but
04:56 3 there's other things that go into scalability as well.
04:56 4 And so this was set to be less than a half, which is
04:56 5 why you received the 45 percent.

04:56 6 Conference management, most of these features
04:56 7 are not related to the '858 patent, but conference
04:56 8 management does talk about the ability to identify
04:56 9 active speakers, which is something that we talked
04:56 10 about in the '858 patent. And that's why I gave it 20
04:56 11 percent.

04:56 12 Compatibility with other Webex products, I set
04:56 13 that to zero. The '858 patent didn't really talk about
04:57 14 that.

04:57 15 And the remaining features, there might be
04:57 16 something from the '858 patent in there, but I just
04:57 17 conservatively set it to zero.

04:57 18 Q. And it sounds like part of this analysis was
04:57 19 an analysis of the patent itself. Is that fair?

04:57 20 A. Yes. Yes.

04:57 21 Q. And so I just -- I think you pulled one
04:57 22 example. Here's Column 2 and 3 from -- or I guess this
04:57 23 cuts over Columns 2 to 3 in the '858 patent.

04:57 24 Is this an excerpt from the specification of
04:57 25 the patent?

04:57 1 A. Yes.

04:57 2 Q. And what is this describing and how is it
04:57 3 relevant -- I guess let's start one question at a time.

04:57 4 What is this describing?

04:57 5 A. This is talking about one of the advantages of
04:57 6 the patent itself. And it's talking about distributing
04:57 7 what it calls a computational burden. I called it
04:57 8 workload, but, you know, the amount of work that you
04:57 9 have to do of mixing audio streams to the active
04:57 10 speakers themselves, reducing the workload on the
04:57 11 server.

04:57 12 Q. Is that relevant to scalability?

04:57 13 A. Yes.

04:57 14 Q. Now, Step 6, why don't you explain for the
04:58 15 jury what Step 6 involves in this effort enlarging
04:58 16 table we're looking at?

04:58 17 A. Yes. So we're almost done here. How to read
04:58 18 this. So this is just a simple computation. Take the
04:58 19 weight on the left-hand column, multiply it by the
04:58 20 middle column. That's equal to the right column.

04:58 21 So 25 percent times 75 percent is
04:58 22 18.75 percent. 25 percent times 20 percent is
04:58 23 5 percent. Okay. And repeat for all of the columns
04:58 24 there. And adding up those columns, the 18.75, 5, 9,
04:58 25 1, and then let's say 0 and 0 gets you 33.75 percent.

04:58 1 Q. And what does the 33.75 percent represent?

04:58 2 A. That's the total contribution of the
04:58 3 '858 patent to Webex Audio.

04:58 4 Q. And what we didn't talk about was an analysis
04:58 5 of usage data, how often folks are using Webex.

04:59 6 Did you have any Webex usage data available to
7 you?

04:59 8 A. I was provided some Webex data. It went from,
04:59 9 I think, August 2021 to August '22.

04:59 10 Q. And what did that data refer to? What was
04:59 11 that data?

04:59 12 A. I have to think back. I think it was number
04:59 13 of minutes that were in conference between VoIP and
04:59 14 PSTN users versus the total number of minutes.

04:59 15 Q. And there's a portion in this slide that's
04:59 16 green. I guess it looks like between 2021 and 2022.
04:59 17 What does that represent?

04:59 18 A. So that's the -- the green is where we had
04:59 19 data for.

04:59 20 Q. And what does the red represent?

05:00 21 A. The red is the rest of the relevant period
05:00 22 that we're supposed to be looking over. There was no
05:00 23 data available at all.

05:00 24 Q. And this is Cisco data?

05:00 25 A. I believe so.

05:00 1 Q. Is it publicly available?

05:00 2 A. No. I don't think it's publicly available.

05:00 3 Q. And did you analyze the data that you did have
05:00 4 and come to any conclusions about whether it would have
05:00 5 been helpful for your analysis?

05:00 6 A. Well, I did look at the data. Having one year
05:00 7 of data at the end of this period and over -- it would
05:00 8 have even went beyond the period that we're interested
05:00 9 in this case. It wasn't super useful. It -- it
05:00 10 doesn't necessarily represent the ability for clients
05:00 11 to make other connections.

05:00 12 So, you know, if I can't call someone, right,
05:00 13 then that -- that makes the system much less useful in
05:00 14 that case.

05:00 15 So there are calls that I don't make on a
05:00 16 daily basis, for example, right? And so those calls
05:00 17 might still be important for me to make, but they
05:01 18 wouldn't show up in just regular usage data in this
05:01 19 case.

05:01 20 And this is related to a concept, actually,
05:01 21 called Metcalfe's law. It's a well-known way,
05:01 22 actually, of valuing a network so effectively that the
05:01 23 value of the network is proportional to the number of
05:01 24 connections that you could possibly make, not the
05:01 25 number of connections that we typically make on a

05:01 1 day-to-day basis.

05:01 2 And so, you know, it may be very important to
05:01 3 call someone that you don't normally call, for example,
05:01 4 you know, your doctor or something like that.

05:01 5 I don't normally call my doctor, but it's
05:01 6 important for me to make that call. I just don't do it
05:01 7 very frequently. So the value of the network is really
05:01 8 proportional to the number of connections that are
05:01 9 possible.

05:01 10 Q. How -- do you recall, Dr. Schaefer,
05:01 11 approximately the -- what this data showed with respect
05:01 12 to how many -- I guess, the proportion of conferences
05:01 13 had a VoIP to PSTN hybrid aspect of it?

05:02 14 A. Yes. I believe it was 22 percent and -- if
05:02 15 you go to the minutes where VoIP to PSTN minutes for
05:02 16 this green data that we have out here.

05:02 17 Q. And your technical apportionment was
05:02 18 33.75 percent, so was it your conclusion that that
05:02 19 22 percent wasn't, didn't fully represent the value of
05:02 20 these functionalities that you have found to be
05:02 21 accused?

05:02 22 A. Well, I -- I looked at a more holistic view of
05:02 23 the Webex product when I did my apportionment. This
05:02 24 data is only for a very small time period. And so I
05:02 25 was looking at it more as a whole as opposed to this

05:02 1 little piece.

05:02 2 Q. And finally, there's an end piece to your
05:02 3 apportionment analysis. Did you do a separate
05:02 4 apportionment analysis as well?

05:02 5 A. I did. An alternative apportionment.

05:02 6 Q. This mentions Webex, but I don't see Webex
05:03 7 Audio. What was this alternative apportionment?

05:03 8 A. So this one is now looking at just the Webex.
05:03 9 We looked at Webex Audio previously. This is looking
05:03 10 at the entire Webex system.

05:03 11 Q. And explain for the jury what is being
05:03 12 depicted on top here where it says Webex
05:03 13 Videoconferencing, Webex Audioconferencing, and
05:03 14 remaining features.

05:03 15 A. So again, following like the exact same type
05:03 16 of thing that we did previously, I'm coming up with
05:03 17 list of features. This is a video- and
05:03 18 audioconferencing product, and so the features were
05:03 19 videoconferencing, audioconferencing, and then the
05:03 20 remaining features. Started off with all of them being
05:03 21 equal, but, of course, for me features cannot possibly
05:03 22 be the same way as the individual and audioconferencing
05:03 23 that are listed here.

05:03 24 So I had to break down video- and
05:03 25 audioconferencing into different pieces, you know, what

05:04 1 are the weights associated with them? And given that
05:04 2 it's a video/audio conferencing product, set that
05:04 3 weight to be 90 percent. And then how I partitioned
05:04 4 it, I partitioned it equally. You could actually argue
05:04 5 that audioconferencing is more important than
05:04 6 videoconferencing because a videoconference without
05:04 7 audio is not super useful. But conservatively, I set
05:04 8 them to be the same value, which is the 45 percent,
05:04 9 each one.

05:04 10 Q. And then what did you do next?

05:04 11 A. So then I looked at the percent that is
05:04 12 attributable to the patents-in-suit, and the
05:04 13 videoconferencing, I conservatively just set that to
05:04 14 zero. The audioconferencing is 33.75 percent. That's
05:04 15 actually the number we just generated from the previous
05:04 16 analysis, 33.75. So I put it in there. And all of
05:04 17 the, you know, remaining features and so forth, I set
05:04 18 those to zero. And then I multiplied, that gave me 0,
05:04 19 15.18 and 0, and I added those three numbers together,
05:04 20 and that gave me 15.18 percent.

05:05 21 Q. Even I can do that math, I think.

05:05 22 And why -- and so whereas I think you
05:05 23 explained the 33.75 related to the audio
05:05 24 functionalities specifically, this 15.18, what does
05:05 25 that relate to?

05:05 1 A. That relates to Webex as a whole.

05:05 2 Q. And we have reached the conclusion of my
05:05 3 examination, but if you could, just so the jury is left
05:05 4 with a bow on the present, could you explain and
05:05 5 summarize your three opinions you've offered today?

05:05 6 A. Right. So as we talked about in the No. 1,
05:05 7 the Cisco Webex products infringe upon Claims 1
05:05 8 through 5 of the '858 patent.

05:05 9 No. 2, the relative contribution of the
05:05 10 infringing functionalities of Webex Audio is
05:05 11 33.75 percent.

05:05 12 And then No. 3, the contributions of the
05:05 13 infringing functionalities to Webex as a whole is
05:05 14 15.18 percent.

05:06 15 MR. CAUGHEY: Thank you very much for
05:06 16 your time, Professor.

05:06 17 THE WITNESS: No problem.

05:06 18 MR. CAUGHEY: Pass the witness.

05:06 19 CROSS-EXAMINATION

05:06 20 BY MR. SABRI:

05:06 21 Q. Good afternoon, Dr. Schaefer.

05:06 22 A. Good afternoon.

05:06 23 Q. It's good to meet you. I don't think we've
05:06 24 met before. My name's Nathan Sabri, and I'll be
05:06 25 questioning you on behalf of Cisco this afternoon.

05:06 1 I'd like to start with the meaning of words.
05:06 2 So I'm going to put the claim language back up and walk
05:07 3 through some of this with you.

05:07 4 Do you agree with me that you're not
05:07 5 interpreting all the words in this claim under their
05:07 6 normal reading, right?

05:07 7 A. I'm not sure what you mean by that.

05:07 8 Q. Well, let's start from the top. Let's start
05:07 9 with "each," so the very first element, [1]. Sometimes
05:07 10 we'll call it 1[A]; the first line, receiving an audio
05:07 11 packet from each of a plurality of clients.

05:07 12 Your view of the term "each" is that it does
05:07 13 not require "every," right?

05:07 14 A. It could include, but "one or more" I think
05:07 15 was the way I was interpreting it.

05:07 16 Q. Right. Your view is that it does not require
05:07 17 "every," right?

05:07 18 A. Not require.

05:07 19 Q. And you cited some language from the Court on
05:07 20 your direct examination, right?

05:07 21 A. Yes.

05:07 22 Q. Let's bring that back up, if we could. It was
05:07 23 your Slide 34.

05:07 24 So you said that you relied on this. Pointed
05:08 25 out that it says, "each" has a plain and ordinary

05:08 1 meaning which can include "one or more." Right?

05:08 2 A. That's correct.

05:08 3 Q. The Court didn't say "each" means one or more,
05:08 4 you'd agree with me, right?

05:08 5 A. I said can include.

05:08 6 Q. The Court didn't say "each" means one or more,
05:08 7 right?

05:08 8 A. Right. It didn't. No. Not in those words.

05:08 9 Q. You also didn't address the Court's more
05:08 10 recent statements on this issue, did you?

05:08 11 A. I don't think so.

05:08 12 Q. Let's pull that up. This is from the
05:08 13 August 1st, 2024 pretrial conference.

05:08 14 You didn't consider this transcript in
05:08 15 evaluating what "each" means, right?

05:08 16 MR. CAUGHEY: Your Honor, I object.

05:08 17 MR. SABRI: May we approach, Your Honor?

05:08 18 THE COURT: You bet.

05:08 19 (Bench conference.)

05:09 20 MR. SABRI: Your Honor, this is goose for
05:09 21 the gander stuff, as you were saying this morning. If
05:09 22 they can stand up there and put up --

05:09 23 THE COURT: You're not going to use what
05:09 24 I said at a hearing.

05:09 25 MR. SABRI: This was -- so the problem

05:09 1 right now is they got a thumb on the scale.

05:09 2 THE COURT: Let me be clear. You're not
05:09 3 going to -- I was just waiting. If he hadn't objected,
05:09 4 I would have told you you can't do it. So what I said
05:09 5 at the hearing was to clarify a Markman construction.
05:09 6 That's all that's coming in from that hearing.

05:09 7 MR. SABRI: Right. So can I show you
05:09 8 what I'd like to -- the problem right now is it's --

05:09 9 THE COURT: There's nothing --

05:09 10 MR. SABRI: -- very prejudicial.

05:09 11 THE COURT: -- from that hearing coming
05:09 12 in.

05:09 13 MR. SABRI: So the statement's saying it
05:09 14 can but it doesn't have to. That's all I'm going for
05:09 15 is that it's a dispute here because right now this jury
05:09 16 thinks that is what it means and that their expert's
05:09 17 blessed and ours isn't.

05:09 18 THE COURT: I said very clearly what it
05:09 19 means. He's within what it means, and that's what
05:09 20 we're going with. If you all wanted to fight over this
05:10 21 sooner, you could have, but for right now where we're
05:10 22 at is you're not going to use what's in there. He's
05:10 23 been faithful to the sentence that I used, and that's
05:10 24 what we're going to do.

05:10 25 MR. SABRI: Okay. So nothing from the

05:10 1 August 1st. I'm clarifying here.

05:10 2 THE COURT: I don't know how I can be any
05:10 3 clearer.

05:10 4 MR. SABRI: I understand, Your Honor.
05:10 5 Thank you. I appreciate it.

05:10 6 (Bench conference concludes.)

05:10 7 BY MR. SABRI:

05:10 8 Q. I might refer to your reports in this case a
05:10 9 couple of times, so I just want to make sure everyone
05:10 10 knows what I mean when I refer to those.

05:10 11 You wrote a couple of reports in connection
05:10 12 with this case, right?

05:10 13 A. That's correct.

05:10 14 Q. And those reports set out the opinions that
05:10 15 you then came to your conclusions and how you arrived
05:10 16 at those opinions in this case, right?

05:10 17 A. I think that's the idea. Yes.

05:10 18 Q. You didn't provide any opinion in your reports
05:10 19 as to why, in your opinion, a person of skill would
05:11 20 view "each" as meaning one or more in this patent, did
05:11 21 you?

05:11 22 A. Well, I did refer to what you were just
05:11 23 talking about, the claim construction.

05:11 24 Q. Right. But you've got your report there,
05:11 25 Tab 3. Right? You didn't provide any explanation in

05:11 1 your report about why, in your opinion, a person of
05:11 2 ordinary skill would view "each" in the context of this
05:11 3 patent as meaning one or more, correct?

05:11 4 A. I don't think it's in the report.

05:11 5 Q. So let's turn back to the claim language
05:11 6 starting on 1. Let's look at Element [3]. Determining
05:11 7 that a first subset of a plurality of clients has the
05:11 8 capability to mix multiple audio streams.

05:11 9 You think first subset can consist of no
05:11 10 clients, right?

05:11 11 A. I mean, a subset could consist of no clients.

05:12 12 Q. Right. So in this limitation, you think it's
05:12 13 possible for the first subset to consist of no clients,
05:12 14 right?

05:12 15 A. Well, it has to do with the term. It could be
05:12 16 empty.

05:12 17 Q. Sorry. I just want to make sure I'm clear.

05:12 18 You agree your opinion is that in that
05:12 19 limitation, a first subset can consist of no one,
05:12 20 right?

05:12 21 A. Right. In this limitation, the subset could
05:12 22 be in there.

05:12 23 Q. And the first subset consists of clients with
05:12 24 a capability of mix, right?

05:12 25 A. Yes.

05:12 1 Q. So it's your view that it's possible for this
05:12 2 limitation to be met given that there are no clients
05:12 3 capable of mixing on a call, right?

05:12 4 A. For the determining, yes.

05:12 5 Q. And the next element, [4], determining that a
05:12 6 second subset of the plurality of clients does not have
05:12 7 the capability to mix multiple audio streams.

05:12 8 Do you see that?

05:12 9 A. Yes.

05:12 10 Q. You think this limitation can be met where a
05:13 11 second subset also includes no one, right?

05:13 12 A. That's right. It's still determining.

05:13 13 Q. And so to be clear, if the second subset
05:13 14 includes no clients, that would mean there are no
05:13 15 non-mixing clients on the call, right?

05:13 16 A. For this step, yes. That's what it would
05:13 17 mean.

05:13 18 Q. Your opinion is that the '858 patent teaches a
05:13 19 method to allow mixing and non-mixing clients to
05:13 20 participate in a single audioconference, right?

05:13 21 A. That's what it says. Yes.

05:13 22 Q. Let's go on to Elements [5] and [6]. Let's
05:13 23 kind of group these together. You've got multiplexing
05:13 24 said packets of audio data received from each client on
05:13 25 said active speakers list into a multiplexed stream.

05:13 1 You analyzed that element, right?

05:13 2 A. Yes.

05:13 3 Q. And sending said multiplexed stream to each of
05:13 4 said first subset of a plurality of clients.

05:13 5 You see that, right?

05:13 6 A. Yes.

05:13 7 Q. And you understand that in order to show
05:14 8 infringement, Paltalk has to show that Webex performs
05:14 9 every one of these elements, right?

05:14 10 A. Yes.

05:14 11 Q. That's a requirement of the law, right?

05:14 12 A. As I understand it.

05:14 13 Q. And you agree, though, that in Webex, if a
05:14 14 client is an active speaker that has a capability to
05:14 15 mix audio, it does not receive the same multiplexed
05:14 16 stream as the other mixing clients.

05:14 17 You agree with that, right?

05:14 18 A. Could you repeat that? That was complicated.

05:14 19 Q. Sure.

05:14 20 You'd agree that if you have a client who's
05:14 21 both an active speaker and can mix audio, that client
05:14 22 does not receive the same multiplexed stream as the
05:14 23 other clients that can mix audio.

05:14 24 You agree with that, right?

05:14 25 A. Right.

05:14 1 Q. You agree that Webex does not send the same
05:14 2 multiplexed stream to all clients, right?

05:14 3 A. Right.

05:14 4 Q. For listeners, in your opinion, the same
05:14 5 multiplexed stream is sent to each listener, right?

05:15 6 A. I'm sorry. The same for the listeners?

05:15 7 Q. Right.

05:15 8 A. Yes. It is sent to those.

05:15 9 Q. However, for endpoints on the speaker list, so
05:15 10 the active speakers, their packets are admitted for
05:15 11 multiplexed stream, right?

05:15 12 A. Which multiplexed stream?

05:15 13 Q. Well, the multiplexed we were just talking
05:15 14 about, right? You said for the listeners, you agree
05:15 15 that the same multiplexed stream is sent to each
05:15 16 listener, right?

05:15 17 A. Yes.

05:15 18 Q. However, from that multiplexed stream,
05:15 19 speakers' packets are admitted, right?

05:15 20 A. Right.

05:15 21 Q. So in other words, in Webex, each active
05:15 22 speaker receives a unique multiplexed stream, right?

05:15 23 A. Yes.

05:15 24 Q. With the interpretation you used to determine
05:15 25 infringement is that "each" does not require "all,"

05:15 1 right?

05:15 2 A. One or more.

05:15 3 Q. "Each" in your mind means one or more,
05:15 4 correct?

05:15 5 A. That's correct.

05:15 6 Q. You'd agree with me that if "each" means "all"
05:15 7 in Claim 1, Webex does not infringe, right?

05:16 8 A. I'd have to think about it, but I was using
05:16 9 "one or more." So --

05:16 10 Q. So I guess I can put it this way: You did not
05:16 11 provide an opinion in your reports that Webex meets
05:16 12 these claim elements by sending a set of multiplexed
05:16 13 stream to all clients with a capability to mix audio,
05:16 14 right?

05:16 15 A. I don't believe I did.

05:16 16 Q. And you provided the jury with no opinion
05:16 17 today that Webex meets these elements by sending a said
05:16 18 multiplexed stream to all clients with the capability
05:16 19 to mix audio, right?

05:16 20 A. Well, we just talked about the listeners.

05:16 21 Q. Right.

05:16 22 A. In that case, they do do the same.

05:16 23 Q. Well, listeners do, right?

05:16 24 A. That's right.

05:16 25 Q. You'd agree with me that the -- half the

05:16 1 speakers are getting a unique multiplexed stream as we
05:16 2 said a moment ago, right?

05:16 3 A. Well, with the caveat the active speaker has
05:16 4 to be one of the multiplexed, the clients that can mix.

05:17 5 Q. I'm not sure I understand. I'll just try to
05:17 6 ask it as directly as I can.

05:17 7 You agree with me that at Webex, each active
05:17 8 speaker receives a unique multiplexed stream, right?

05:17 9 A. Yes.

05:17 10 Q. I'd like to move to the code you discussed
05:17 11 during the direct examination, and I'm not going to
05:17 12 pull it back up. We don't have to close the courtroom
05:17 13 for this.

05:17 14 You had access to Cisco's source code and
05:17 15 confidential documents, right?

05:17 16 A. Yes.

05:17 17 Q. You'd agree that on your direct examination,
05:17 18 you talked about a lot of code, right?

05:17 19 A. Not nearly as much as I reviewed.

05:17 20 Q. You talked about a lot of code in connection
05:17 21 with receiving audio packet, right?

05:17 22 A. I talked about some code.

05:17 23 Q. You talked about code in connection with
05:17 24 determining an active speaker in forming an active
05:17 25 speaker list?

05:17 1 A. Yes.

05:17 2 Q. I just want to highlight one of the files you
05:17 3 called out. So I -- when it came to multiplexing into
05:17 4 a multiplexed stream, I think you discussed with the
05:17 5 jury MmMixer.Api.h.

05:18 6 Does that sound right?

05:18 7 A. Sounds right.

05:18 8 Q. In case you want to double-check, I'm not
05:18 9 trying to catch you here. I'm looking at Paragraph 86
05:18 10 of your supplemental report at Tab 3.

05:18 11 A. What was the paragraph, 86?

05:18 12 Q. 86. That's right.

05:18 13 A. Thank you. Yes.

05:18 14 Q. So fair to say that for the multiplexing into
05:18 15 a multiplexed stream, you said to the jury MmMix.Api.h,
05:18 16 right?

05:18 17 A. That was one of the things listed. The one we
05:18 18 talked about here.

05:18 19 Q. And in your reports, you also cited an
05:18 20 Mm.Mix.Api.cpp, right?

05:18 21 A. That's correct.

05:18 22 Q. Those two files?

05:18 23 A. Yes.

05:18 24 Q. Let's pull the claim back up and look at Claim
05:18 25 2 now. Claim 2 adds, among other things, the language:

05:18 1 Removing from said multiplexed stream.

05:19 2 Do you see that?

05:19 3 A. That's correct.

05:19 4 Q. And then if we can move that up, please, so
05:19 5 it'll be -- and pull up Claim 3 just to deal with them
05:19 6 together.

05:19 7 Claim 3 adds: Removing from said combining
05:19 8 packets at packets of audio data?

05:19 9 A. That's correct.

05:19 10 Q. You think the plain meaning of "removing"
05:19 11 includes "not including," right?

05:19 12 A. In light of the specification of the patent,
05:19 13 yes.

05:19 14 Q. Let's go ahead and take this down. I'd like
05:19 15 to turn to the second part of your direct examination,
05:19 16 talking about opinions you -- opinions you came to
05:19 17 support the damages expert.

05:19 18 A. Yes.

05:19 19 Q. You attempted to determine what you called the
05:19 20 date of first infringement in this case, right?

05:19 21 A. I did in my second report. Yes.

05:19 22 Q. That would be the first date when the accused
05:19 23 functionality was implemented in Cisco's products?

05:19 24 A. That's my understanding.

05:19 25 Q. And you ran searches in an attempt to

05:19 1 determine the dates of individual files, right?

05:20 2 A. Approximate dates of infringing files. Yes.

05:20 3 Q. And your best estimate after that was that the
05:20 4 functionality you accused of infringing was in Webex in
05:20 5 2010, right?

05:20 6 A. That was my estimate based off that data.

05:20 7 Q. And then you spent a fair amount of time on
05:20 8 your direct talking about apportionment, right?

05:20 9 A. Well, I spent time talking about it. Sure.

05:20 10 Q. And you attempted to apportion the allegedly
05:20 11 infringing features from what you would agree are
05:20 12 noninfringing functionalities from Webex, right?
05:20 13 Correct?

05:20 14 A. That's correct.

05:20 15 Q. Because you agree that Webex has some things
05:20 16 that you accuse of infringement but then other features
05:20 17 that you do not accuse of infringement, right?

05:20 18 A. Of course.

05:20 19 Q. You never performed this sort of apportionment
05:20 20 before, right?

05:20 21 A. When I did it for this case?

05:20 22 Q. Right.

05:20 23 A. Yeah. No. I've not.

05:20 24 Q. This was the first time?

05:20 25 A. This was my first time. Yes.

05:20 1 Q. You didn't use any sort of guide or treatise
05:20 2 to help you with the analysis, right?

05:20 3 A. No.

05:20 4 Q. Let's talk about what you attempted to
05:21 5 devalue. You attempted to devalue the ability to join
05:21 6 a conference through a telephone or desktop-based VoIP,
05:21 7 right?

05:21 8 A. I tried to -- I'm not sure what phrasing you
05:21 9 just used. The amount attributable to the '858 patent.

05:21 10 Q. Well, let me walk through it this way: You
05:21 11 took the view that Cisco's support for the Webex Audio
05:21 12 feature coincided with the exact scope and teachings of
05:21 13 the '858 patent, right?

05:21 14 A. The -- which feature?

05:21 15 Q. Cisco's support for Webex Audio, hybrid audio.

05:21 16 A. Oh, hybrid audio. I did say that, but I did
05:21 17 not assign 100 percent.

05:21 18 Q. Right. But you expressed the view that that
05:21 19 feature, support for Webex Audio feature, coincides
05:21 20 with the exact scope and teachings of the '858 patent,
05:21 21 right?

05:21 22 A. I did say that. Yes.

05:21 23 Q. And you also described Cisco's hybrid audio
05:22 24 feature as the flexibility to join the conference
05:22 25 through telephone or desktop-based VoIP, right?

05:22 1 A. Yes.

05:22 2 Q. So in other words, you took the view that
05:22 3 flexibility to join a conference through telephone or
05:22 4 desktop-based VoIP was the exact scope and teachings of
05:22 5 the '858 patent, right?

05:22 6 A. It fell within the scope, yes.

05:22 7 Q. You also said in your report that at the time
05:22 8 of the '858 patent, there were no readily available
05:22 9 alternatives.

05:22 10 THE COURT: Counsel, can I have y'all up
05:22 11 here a second?

05:22 12 (Bench conference.)

05:22 13 THE COURT: He may do it in other courts.
05:22 14 That's not the way we do it here. Just ask him a
05:22 15 question. You go to church on Sunday. Whatever he
05:22 16 says, that's it. If it's not somewhere in his report,
05:22 17 use it to impeach him.

05:22 18 MR. SABRI: Got it.

05:22 19 THE COURT: It's not a quiz over what he
05:22 20 said.

05:22 21 MR. SABRI: Understood, your Honor.

05:22 22 THE COURT: The report doesn't come up
05:22 23 again unless --

24 (Simultaneous speakers.)

05:22 25 THE COURT: And it's not in the report or

05:23 1 it's inconsistent.

05:23 2 MR. SABRI: Understood, Your Honor.

05:23 3 (Bench conference concludes.)

05:23 4 BY MR. SABRI:

05:23 5 Q. You take the view, Dr. Schaefer, that there
05:23 6 were no readily available alternatives to the
05:23 7 '858 patent that taught this support for Webex Audio
05:23 8 hybrid audio features, right?

05:23 9 A. That's -- yes.

05:23 10 Q. But you would agree that there are, in fact,
05:23 11 ways to do hybrid calls, VoIP to PSTN calls, without
05:23 12 infringing the '858 patent, right?

05:23 13 A. There are -- there are ways.

05:23 14 Q. You agree that it was possible prior to the
05:23 15 '858 patent to have a VoIP and PSTN call?

05:23 16 A. I believe so.

05:23 17 Q. And it's your understanding that prior to the
05:23 18 '858 patent, there were ways to have VoIP and PSTN
05:23 19 calls that wouldn't have infringed the '858 patent,
05:23 20 right?

05:23 21 A. Right.

05:23 22 Q. On direct examination, you discussed usage
05:24 23 data. Do you remember that?

05:24 24 A. Yes.

05:24 25 Q. And you said that if Webex only offered VoIP

05:24 1 or only offered PSTN, it would be less valuable, right?

05:24 2 A. Uh-huh.

05:24 3 Q. But again, you agree there were other ways
05:24 4 prior to the '858 patent to offer VoIP -- VoIP and PSTN
05:24 5 calls, right?

05:24 6 A. Yes.

05:24 7 Q. Let's talk now about how you apportioned
05:24 8 value.

05:24 9 You identified what you considered to be six
05:24 10 categories of key features in Webex Audio, right?

05:24 11 A. That's correct.

05:24 12 Q. You explained -- on direct examination, you
05:24 13 started with the assumption that each of those six
05:24 14 categories had more importance, so --

05:24 15 THE COURT: Counsel, maybe it's just me.
05:24 16 But when you read, you're going really fast. And I
05:24 17 don't know if -- are you having a problem? -- but I'm
05:24 18 having a problem keeping up with you.

05:24 19 MR. SABRI: I understand. I apologize,
05:24 20 Your Honor.

05:24 21 THE COURT: I want to make sure the jury
05:24 22 hears you, so -- and maybe it's just me.

05:25 23 MR. SABRI: I appreciate it.

05:25 24 BY MR. SABRI:

05:25 25 Q. You started with an assumption that the six

05:25 1 features had equal value, right?

05:25 2 A. Yes.

05:25 3 Q. But then as you discussed, you adjusted some
05:25 4 up and you adjusted some down, right?

05:25 5 A. That's correct.

05:25 6 Q. For example, you increased global access on
05:25 7 your categories from 16.7 percent to 25, right?

05:25 8 A. That's correct.

05:25 9 Q. You didn't base that change on any math or
05:25 10 calculation, right?

05:25 11 A. Nothing.

05:25 12 Q. And you didn't show the jury why you decided
05:25 13 to make it 25 as opposed to 27 percent, right?

05:25 14 A. No.

05:25 15 Q. Or 23?

05:25 16 A. No.

05:25 17 Q. Let's take another example. Scalability.
05:25 18 You adjusted that category from 16.7 to
05:25 19 20 percent, right?

05:25 20 A. That's correct.

05:25 21 Q. And again, you didn't show the jury a
05:25 22 calculation of why you ended up at 20, fair?

05:26 23 A. Not in the calculation.

05:26 24 Q. And you also presented an alternative
05:26 25 apportionment section, right?

05:26 1 A. Yes. I did.

05:26 2 Q. And you'd agree that the same six factors you
05:26 3 discussed in connection with your -- the first part of
05:26 4 your opinion, those were also part of your alternative
05:26 5 apportionment, right?

05:26 6 A. That's correct.

05:26 7 Q. And in your opinion, they retained their
05:26 8 relative importance to each other?

05:26 9 A. I just used the same apportionment number.

05:26 10 Q. All right. Now, as part of your apportionment
05:26 11 analysis, you considered each feature's novelty,
05:26 12 design-around potential, and importance to Webex's
05:26 13 overall function, right?

05:26 14 A. That's correct.

05:26 15 Q. Let's talk about those three factors. First,
05:26 16 novelty.

05:26 17 You did not determine novelty yourself, right?

05:26 18 A. That's right.

05:26 19 Q. You relied on Dr. Madisetti?

05:26 20 A. That's correct.

05:27 21 Q. You're not personally versed in all of the
05:27 22 prior art in this case, right?

05:27 23 A. I hadn't done the analysis.

05:27 24 Q. You haven't done an in-depth analysis of what
05:27 25 technologies existed prior to the '858 patent, right?

05:27 1 A. No.

05:27 2 Q. In the audioconference field, you did not do
05:27 3 an analysis of what technologies existed prior to the
05:27 4 '858 patent, right?

05:27 5 A. That's right.

05:27 6 Q. So you relied on a phone call with
05:27 7 Dr. Madisetti, right?

05:27 8 A. And his report. Yes.

05:27 9 Q. You don't remember when you had that call,
05:27 10 right?

05:27 11 A. Sometime before my supplemental report, but
05:27 12 that was some time ago.

05:27 13 Q. Let's focus on your global access category for
05:27 14 a moment. Like we just discussed a moment ago, that
05:27 15 was one of the categories you gave the highest
05:27 16 importance to, right?

05:27 17 A. Yes. That's right.

05:27 18 Q. The 25 percent?

05:27 19 A. That's right.

05:27 20 Q. And you relied on Dr. Madisetti to determine
05:27 21 the novelty of your global access category, right?

05:27 22 A. That's right.

05:28 23 Q. But you don't know if you described to him the
05:28 24 feature of global access, right?

05:28 25 A. I don't know that I described verbally to him.

05:28 1 Q. You don't know if you provided a description
05:28 2 that you used in your report, for example, right?

05:28 3 A. He may have had a copy of my report, but I
05:28 4 don't know.

05:28 5 Q. You don't know if you talked about it with him
05:28 6 on the phone call, right?

05:28 7 A. I don't remember.

05:28 8 Q. And you don't know if Dr. Madisetti's entire
05:28 9 understanding of what global access means came from you
05:28 10 or not, right?

05:28 11 A. I don't know.

05:28 12 Q. You don't know what he was defining as a
05:28 13 "mean" when he told you it was a novel feature, right?

05:28 14 A. I thought we were talking about the same
05:28 15 thing, but I don't know what he thinks.

05:28 16 Q. And if the global access category was not in
05:28 17 fact novel at the time of the invention, you don't know
05:28 18 how that would impact your total contribution number,
05:29 19 right?

05:29 20 A. Well, it could lower the contribution of that
05:29 21 particular category.

05:29 22 Q. Let's talk about the second of those three
05:29 23 factors, design-around potential. You said on direct
05:29 24 examination that you relied on Dr. Madisetti to form
05:29 25 the opinion as to whether or not there was

05:29 1 design-around potential for each of those categories,
05:29 2 right?

05:29 3 A. That's correct.

05:29 4 Q. And you relied on Dr. Madisetti rather than
05:29 5 your own opinion because you believed he was more
05:29 6 versed in that particular area?

05:29 7 A. He'd done the analysis.

05:29 8 Q. You hadn't done the analysis like he had,
05:29 9 right?

05:29 10 A. I wasn't looking at prior art.

05:29 11 Q. So we're not evaluating design-around
05:29 12 potential based on your own technical experience?

05:29 13 A. I was relying on Dr. Madisetti for that
05:30 14 aspect.

05:30 15 Q. You weren't evaluating the design-around
05:30 16 potential based on your role as a person of ordinary
05:30 17 skill?

05:30 18 A. Not at the time that -- the time period you
05:30 19 were looking at.

05:30 20 Q. And you were not evaluating design-around
05:30 21 potential yourself using testimony from Cisco's
05:30 22 witnesses?

05:30 23 A. No.

05:30 24 Q. Or publicly available and pre-asserted?

05:30 25 A. Not for design-around potential.

05:30 1 Q. Marketing documents?

05:30 2 A. Not that particular one. No.

05:30 3 Q. And you didn't use technical documents to

05:30 4 evaluate design-around potential yourself?

05:30 5 A. I relied on Dr. Madisetti.

05:30 6 Q. That's not what you said in your report, is

05:30 7 it?

05:30 8 A. I'm not sure I agree.

05:30 9 Q. Let's take a look. Let's pull up

05:30 10 Paragraph 198 of your supplemental report. We can get

05:30 11 it on the screen.

05:30 12 So in your report, you wrote: Based on my

05:31 13 technical experience, role as a POSITA, testimony from

05:31 14 Cisco's witnesses, and publicly available and produced

05:31 15 surveys, marketing documents, and technical documents,

05:31 16 I have evaluated the design-around potential.

05:31 17 That's what you wrote in your report, right?

05:31 18 A. It does say that.

05:31 19 Q. Let's look at Paragraph 158.

05:31 20 Based on my technical experience, role as a

05:31 21 POSITA, testimony from Cisco's witnesses, and publicly

05:31 22 available and produced surveys, marketing documents and

05:31 23 technical documents, I have evaluated the design-around

05:31 24 potential.

05:31 25 That's what you said in your reports, right?

05:31 1 A. It does say that. Yes.

05:31 2 Q. You didn't present any such analysis to the
05:31 3 jury today, did you?

05:31 4 A. No. I actually relied on Dr. Madisetti here.

05:31 5 MR. SABRI: No further questions,
05:31 6 Your Honor.

05:31 7 REDIRECT EXAMINATION

05:31 8 BY MR. CAUGHEY:

05:32 9 Q. Dr. Schaefer, we spent several hours talking
05:32 10 about infringement today.

05:32 11 A. Yeah.

05:32 12 Q. You talked about source code with the jury.
05:32 13 Do you recall that?

05:32 14 A. Yes.

05:32 15 Q. We saw -- give your best guess of how many
05:32 16 internal Cisco documents we talked about today during
05:32 17 your presentation.

05:32 18 A. That we talked about today?

05:32 19 Q. Uh-huh.

05:32 20 A. I don't know. Maybe 30 or 40. I don't know,
05:32 21 something like that.

05:32 22 Q. You used internal Cisco -- did you use
05:32 23 internal Cisco technical materials and source code to
05:32 24 evaluate whether Cisco's Webex servers infringe the
05:32 25 '858 patent?

05:32 1 A. Yes.

05:32 2 Q. Did Cisco's lawyers show you a single Cisco
05:32 3 document during their cross-examination?

05:32 4 A. I don't believe so.

05:32 5 Q. Not one, right?

05:32 6 A. No.

05:32 7 MR. CAUGHEY: No further questions.

05:32 8 MR. SABRI: No further questions,
05:33 9 Your Honor.

05:33 10 THE COURT: You may step down, sir.

05:33 11 Next witness, please? I know it's a
05:33 12 deposition. How long is the deposition?

05:33 13 MR. SIEGMUND: It'll be
05:33 14 our -- Your Honor, Mr. Bratic will be our next --

05:33 15 THE COURT: I thought you had a
05:33 16 deposition next.

05:33 17 MS. SRINIVASAN: No, Your Honor. We do
05:33 18 not have another deposition.

05:33 19 MR. JONES: May we approach, Your Honor?

05:33 20 THE COURT: Sure.

05:33 21 (Bench conference.)

05:33 22 MR. JONES: I would just note, we haven't
05:33 23 exchanged. He was --

05:33 24 THE COURT: Just make sure you speak in
05:33 25 the mic.

05:33 1 MR. JONES: I apologize to the Court.
05:33 2 And I'm not being critical of anybody. He was not
05:33 3 designated for today. We haven't exchanged
05:33 4 demonstratives. So...

05:33 5 MS. SRINIVASAN: I could present his
05:33 6 qualifications. I'm assuming there wouldn't be
05:33 7 objections to those slides anyway. Get through that,
05:33 8 and then we could serve the rest of his slides and
05:33 9 continue his testimony in the morning.

05:33 10 THE COURT: Is he your last live witness?

05:34 11 MS. SRINIVASAN: Yes.

05:34 12 THE COURT: Then let's do that then.

05:34 13 We'll just qualify him up and then we'll go home for
05:34 14 the day. And then after him, we'll have a deposition
05:34 15 from whom?

05:34 16 MS. SRINIVASAN: We're not going to play
05:34 17 the deposition given the time we've expended.

05:34 18 THE COURT: That's fine. So...

05:34 19 MS. SRINIVASAN: So we will rest.

05:34 20 THE COURT: That'll be your last witness?

05:34 21 MS. SRINIVASAN: Yes, Your Honor.

05:34 22 THE COURT: So we're running ahead.

05:34 23 That's great. Let's go ahead and qualify him up.

05:34 24 MS. SRINIVASAN: Okay.

05:34 25 THE COURT: And then, like I said, let's

05:34 1 go ahead and get that done and start fresh tomorrow.

05:34 2 MS. SRINIVASAN: Yes. I imagine you've
05:34 3 seen those slides before, so you'll be fine. It's in
05:34 4 his background.

05:34 5 MR. JONES: I trust you. Don't worry
05:34 6 about it.

05:34 7 (Bench conference concludes.)

05:35 8 MS. SRINIVASAN: Paltalk calls Mr. Walter
05:35 9 Bratic.

05:35 10 (The witness was sworn.)

05:35 11 MS. SRINIVASAN: Thank you.

05:35 12 DIRECT EXAMINATION

05:35 13 BY MS. SRINIVASAN:

05:35 14 Q. Good afternoon, Mr. Bratic.

05:35 15 Could you please introduce yourself to the
05:35 16 jury?

05:35 17 A. Sure. My name's Walt Bratic. And my last
05:35 18 name is spelled B-r-a-t-i-c.

05:35 19 Q. Mr. Bratic, where do you live?

05:35 20 A. I live in Houston.

05:35 21 Q. And where do you work?

05:35 22 A. I work for a consulting firm, an accounting
05:35 23 consulting firm called Whitleypenn.

05:35 24 Q. What is Whitleypenn? What does it do?

05:35 25 A. So they're a Texas-based accounting and

05:35 1 consulting firm. They do auditing, books and records
05:35 2 for companies. They do issue annual reports for
05:36 3 companies. They do tax returns for companies'
05:36 4 partnerships and individuals, and they do a variety of
05:36 5 strategic consulting and consulting like the type of
05:36 6 consulting I do.

05:36 7 Q. And what's your role at Whitleypenn,
05:36 8 Mr. Bratic?

05:36 9 A. So what I do at Whitleypenn is I provide a
05:36 10 variety of accounting, economic, financial, statistical
05:36 11 consulting services. They can be for a wide variety of
05:36 12 clients. Can be large corporations, could be
05:36 13 partnerships, could be individuals.

05:36 14 So my analysis involves looking at different
05:36 15 aspects of businesses. Some of that involves strategic
05:36 16 analysis, marketing analysis, financial projections for
05:36 17 different kinds of companies in different industries.
05:36 18 For example, offshore drilling, as an example, to
05:36 19 medical devices. There's a lot of medical technology.
05:36 20 Houston is the largest hospital complex in the world.
05:36 21 So that's part of what I do.

05:37 22 And part of that analysis, of course, involves
05:37 23 coming to court and testifying in a lawsuit and in
05:37 24 patent lawsuits, like the one I'm here to testify about
05:37 25 today and tomorrow.

05:37 1 Q. Now, before we get to the substance of your
05:37 2 testimony, I just want to talk a little bit about your
05:37 3 qualifications in this area.

05:37 4 For purposes of your testimony, did you
05:37 5 prepare some slides for us to talk about with the jury?

05:37 6 A. I did.

05:37 7 Q. Okay. All right. Mr. Bratic, can you tell
05:37 8 the jury about your educational background?

05:37 9 A. Yes. So I have two formal college degrees.
05:37 10 They're both from the same school, the University of
05:37 11 Pennsylvania. Like Mr. Katz, I also went to the
05:37 12 University of Pennsylvania.

05:37 13 I have an undergraduate degree there, and I
05:37 14 have an MBA, or master's of business administration,
05:37 15 degree from The Wharton School of Business.

05:37 16 Q. Following your time there, can you tell us
05:37 17 about your work experience?

05:37 18 A. Yes. So a significant portion of my career
05:38 19 has been spent in public accounting working for some of
05:38 20 the world's largest accounting firms. For example, I
05:38 21 spent a few years at a firm called Ernst, Ernst in the
05:38 22 old days, which eventually became known today as Ernst
05:38 23 and Whinney.

05:38 24 Then I went into industry. I was a chief
05:38 25 financial officer of a company that made equipment for

05:38 1 the energy industry, and that's where I started doing
05:38 2 work on licensing technology, including patents and
05:38 3 trade secrets. That's the primary focus of the
05:38 4 technology, that company, when I worked there back in
05:38 5 the early '80s.

05:38 6 And then after that, I joined Pricewaterhouse.
05:38 7 And I was there for about 23 years, Pricewaterhouse and
05:38 8 PricewaterhouseCoopers, where I was a partner. And for
05:38 9 the last few years before I left, my time was global
05:38 10 director of intellectual property consulting for the
05:38 11 entire firm worldwide.

05:38 12 And I had over 500 people. I was working
05:39 13 within different offices around the world. Mostly in
05:39 14 Europe, some in Asia, and in the United States and
05:39 15 Canada. Oh, and Australia. Can't forget Australia.

05:39 16 Q. Now, Mr. Bratic, do you have any credentials
05:39 17 that are relevant to your work in licensing?

05:39 18 A. Yes. So I have several certifications. First
05:39 19 of all, I'm a certified public accountant. I've been
05:39 20 licensed by the State of Texas since 1981 as a CPA. So
05:39 21 that's a long time. So over 40 years.

05:39 22 I also am a Certified Licensing Professional.
05:39 23 That's a designation I obtained from the Licensing
05:39 24 Executive Society of the United States and Canada,
05:39 25 involving about 8- or 9,000 members. The focus of the

05:39 1 Licensing Executive Society is really to promote
05:39 2 knowledge and skills in the area of licensing of
05:39 3 technology, largely patents, trade secrets, sometimes
05:40 4 copyrights and trademarks. But the main focus is
05:40 5 patents and trade secrets.

05:40 6 And I didn't normally have to take an exam,
05:40 7 but I was given a document from them for many years of
05:40 8 licensing I've been doing in intellectual property
05:40 9 going back to the early 1980s when I was chief
05:40 10 financial officer of a company called Advanced Energy
05:40 11 Supply Company.

05:40 12 And so I received that certification by being
05:40 13 able to document all my years of experience in
05:40 14 licensing of patents and trade secrets primarily.

05:40 15 Q. And --

05:40 16 A. I'm sorry.

05:40 17 Q. Go ahead.

05:40 18 A. I have other certificates, certifications.

05:40 19 I'm certified in financial forensics, which
05:40 20 you can only get if you're a licensed CPA. That's a
05:40 21 designation you receive by the American Institute of
05:40 22 Certified Public Accountants.

05:40 23 And then finally, I'm a certified fraud
05:40 24 examiner, which is an organization -- national
05:40 25 organization based out of Austin, Texas.

05:41 1 And every year, just like for my CPA, I have
05:41 2 to take courses to get my license renewed. For a CPA
05:41 3 in Texas, you need 40 hours. And for the certified
05:41 4 fraud examination, you need ten hours.

05:41 5 Q. Thank you, Mr. Bratic.

05:41 6 I've been about to ask you because you sort of
05:41 7 mentioned it, that you've been the chief financial
05:41 8 officer for a company, and I see on your slide you
05:41 9 talked about your real-world licensing experience.

05:41 10 If you could tell the jury a little bit about
05:41 11 that.

05:41 12 A. Well, yes. So going back to Advanced Energy
05:41 13 Supply Company, so we had somewhere on the order of 30
05:41 14 to 40 engineers and draftsmen. We were designing
05:41 15 equipment for the energy industry, everything from gear
05:41 16 boxes to torque drives and so forth, so on, that were
05:41 17 being used in the energy industry.

05:41 18 We weren't a manufacturer, though. We were a
05:41 19 design company. What we did is we contracted out the
05:41 20 manufacturer to put our logo on it. It's what they
05:41 21 call the white-labeling products.

05:42 22 But because we had this group of engineers and
05:42 23 designers, draftsmen designing our equipment, we came
05:42 24 to learn that we needed to license in technology from
05:42 25 other people, because they had things we need and it

05:42 1 was cheaper for us to get their technology than spend
05:42 2 years trying to figure it out on our own.

05:42 3 So I cut my teeth learning how to negotiate
05:42 4 licenses for intellectual property back in 1982, for
05:42 5 example.

05:42 6 Now, we also -- some -- as we grew as a
05:42 7 company, as people got to know us, some people came and
05:42 8 knocked on our doors and said they thought we had some
05:42 9 interesting technology and would we like to license it
05:42 10 to them.

05:42 11 And so during my tenure at Advanced Energy
05:42 12 Supply Company, I worked on somewhere between 10 and 15
05:42 13 licenses and then patents and trade secrets.

05:42 14 And then I joined Pricewaterhouse. And I was
05:42 15 one of the only people there who was doing intellectual
05:43 16 property. Of course, that was the early days where
05:43 17 people were being focused on intellectual property in
05:43 18 the early 1980s.

05:43 19 And so I was the go-to person at
05:43 20 Pricewaterhouse on licensing of intellectual property,
05:43 21 dealing with clients. Mostly at that time in the
05:43 22 energy sector because Pricewaterhouse had a huge
05:43 23 footprint. Exxon, Chevron were big clients. Shell.
05:43 24 Pricewaterhouse.

05:43 25 And then we -- you know, then Pricewaterhouse

05:43 1 started getting large clients like Intel, out in
05:43 2 California, some other very, very large technology
05:43 3 companies. So I started gravitating towards that and
05:43 4 towards pharmaceuticals and medical devices.

05:43 5 Q. And I'm going to ask you about one last thing
05:43 6 on this slide here. It references that you have been a
05:43 7 court-appointed expert and examiner.

05:43 8 Can you tell the jury about that?

05:43 9 A. Yeah. So I've been hired by judges here in
05:43 10 the State of Texas, where -- as a court-appointed
05:43 11 expert and examiner. And the difference between the
05:44 12 two is sometimes there are issues that come before the
05:44 13 Court, and there's not enough evidence to put before
05:44 14 the Court.

05:44 15 So basically, I go to get hired. I've been
05:44 16 hired to go out and do a quest to go out and find this
05:44 17 information for the Court as an examiner and report my
05:44 18 findings to the Court of the missing information.

05:44 19 And then as a court-appointed expert, for
05:44 20 example, I've been involved in disputes involving
05:44 21 software where two companies are -- have been suing
05:44 22 each other over the value of their stock in the
05:44 23 software company and they both hire experts to give --
05:44 24 determine the value of the software. And there's a
05:44 25 dispute about that, so the Court would hire me as an

05:44 1 independent expert by the Court.

05:44 2 I would determine what the value of the
05:44 3 software company was, and then a client -- the Court
05:44 4 would accept my findings, and it was binding on all the
05:44 5 parties. So that's an example of the type of courts.

05:44 6 MS. SRINIVASAN: And at this time, I'd
05:44 7 like to offer Mr. Bratic as an economic expert on
05:45 8 damages analysis in patent cases.

05:45 9 MR. JONES: No objection, Your Honor.

05:45 10 THE COURT: He'll be admitted as such.

05:45 11 Ladies and gentlemen of the jury, I think
05:45 12 this is a good time for us to take a break because he's
05:45 13 about to get into more substantive information. If you
05:45 14 all would be here by -- can everyone get here by 8:15?
05:45 15 Does that work?

05:45 16 Okay. If you all will be here by 8:15 in
05:45 17 the morning, we'll get started by 8:30. And plan on
05:45 18 going tomorrow evening till about 5:30. I think we're
05:45 19 going to do fine in this case getting it to you by
05:45 20 either Thursday or Friday. So be safe out there, and
05:45 21 we'll see you.

05:45 22 THE BAILIFF: All rise.

05:45 23 (Jury exited the courtroom.)

05:45 24 THE COURT: Okay. So we'll finish with
05:46 25 Mr. Bratic tomorrow and the plaintiff will rest?

05:46 1 MS. SRINIVASAN: Yes, Your Honor, subject
05:46 2 to our rebuttal.

05:46 3 THE COURT: You may be seated.

05:46 4 I'm sorry?

05:46 5 MS. SRINIVASAN: Subject to our rebuttal
05:46 6 case, Your Honor.

05:46 7 THE COURT: So what's going to happen, I
05:46 8 know Mr. Jones knows this, but someone can speak for
05:46 9 the defendants for a second. But when the plaintiff
05:46 10 finishes, we'll break and I'll ask for a Rule 50
05:46 11 motion.

05:46 12 And so if you want, we'll do it orally.
05:46 13 And if you want to submit something in writing, that's
05:46 14 fine too. Then I'll say, who's your next witness? And
05:46 15 the answer will be? Tomorrow?

05:46 16 Yes, ma'am?

05:46 17 MS. PIEPMEIER: Your Honor, it will be
05:46 18 Mr. Amit Barave.

05:46 19 THE COURT: Who could we expect tomorrow?
05:46 20 If you could kind of give me a lineup.

05:46 21 MS. PIEPMEIER: Sure thing, Your Honor.

05:46 22 We will have Mr. Amit Barave, and we will
05:46 23 have Mr. Nathan Buckles. We will have Mr. Aaron
05:46 24 Belcher. And then I believe, assuming there's time, we
05:46 25 would have Mr. Dean Willis.

05:47 1 THE COURT: Okay. I can't imagine that
05:47 2 we would finish before the end of the day Wednesday,
05:47 3 but if we do, we do that, I can't imagine. So for
05:47 4 right now -- and we'll see tomorrow how we go at the
05:47 5 end of the day, but I'll plan on -- we'll plan on
05:47 6 Wednesday evening at around this time, 5:00 or 5:30,
05:47 7 doing the charge conference.

05:47 8 Where are you all at in terms of working
05:47 9 on the jury charge? Are there problems? Not problems?
05:47 10 I haven't heard anything about the case that would lead
05:47 11 me to believe y'all should be having difficulties.

05:47 12 MR. SIEGMUND: We just have a few things,
05:47 13 Your Honor, but it's pretty manageable.

05:47 14 THE COURT: Okay. I'm thinking very
05:47 15 seriously this time -- I haven't had the energy to do
05:47 16 it, but I regret it every time. I'm thinking very
05:47 17 seriously this time about maybe going through and
05:47 18 crossing out some of the things I say 16 times and
05:47 19 getting you all -- it would be a change in the charge,
05:48 20 but it would make it shorter. And, you know, they only
05:48 21 need to hear -- I think I say what preponderance of the
05:48 22 evidence is at least 33 times, and I don't think they
05:48 23 need to hear it 33 times.

05:48 24 But if someone's unhappy, we'll talk
05:48 25 about it. But I'm -- actually, if someone could

05:48 1 tomorrow morning get me -- I'm not going to be judging
05:48 2 on, you know, accepting or not accepting, but if you
05:48 3 would get me the draft of where we are at, and I may go
05:48 4 through tomorrow and actually line through some stuff,
05:48 5 redline through some stuff and see if you all will
05:48 6 agree to let me not say it.

05:48 7 And, for example, if there aren't any
05:48 8 stipulations, you can leave out the page on
05:48 9 stipulations. It's that type of stuff I'm trying to
05:48 10 accomplish.

05:48 11 So it seems to me that we're in good
05:48 12 shape, though, in getting the trial done.

05:48 13 Any issues to take up?

05:48 14 MR. TRIBBLE: Nothing from plaintiff,
05:48 15 Your Honor.

05:48 16 MS. PIEPMEIER: Nothing from us at this
05:48 17 time, Your Honor.

05:48 18 THE COURT: Very good. I will see you
05:48 19 all tomorrow morning at about 8:15.

05:49 20 THE BAILIFF: All rise.

05:49 21 (Hearing adjourned.)

22

23

24

25

1 UNITED STATES DISTRICT COURT)
2 WESTERN DISTRICT OF TEXAS)

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I, Kristie M. Davis, Official Court Reporter for the United States District Court, Western District of Texas, do certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

I certify that the transcript fees and format comply with those prescribed by the Court and Judicial Conference of the United States.

Certified to by me this 6th day of September 2024.

/s/ Kristie M. Davis
KRISTIE M. DAVIS
Official Court Reporter
PO Box 20994
Waco, Texas 76702
(254) 666-0904
kmdaviscsr@yahoo.com

05:49