

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ORIGINAL

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SIGHTSOUND TECHNOLOGIES, LLC,

Plaintiff,

vs.

CASE NO.:
2:11cv01292-DWA

APPLE INC.,

Defendant.

_____ /

VIDEOTAPED DEPOSITION OF

ARTHUR ROBERT HAIR

Tuesday, December 11, 2012

REPORTED BY: RACHEL FERRIER, CSR 6948

(1-448339)

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1 BE IT REMEMBERED that, pursuant to the laws
2 governing the taking and use of depositions, on Tuesday,
3 December 11, 2012, commencing at 9:04 a.m. thereof, at
4 Ropes & Gray, 1900 University Avenue, 6th Floor, East
5 Palo Alto, California 94303, before me, RACHEL FERRIER,
6 a Certified Shorthand Reporter, personally appeared
7 ARTHUR ROBERT HAIR, called as a witness by Defendant,
8 who, being by me first duly sworn, was thereupon
9 examined as a witness in said action.

10 APPEARANCES OF COUNSEL

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25 ALSO PRESENT: PATRICIA GUERRERO, Videographer

---o0o---

1 EAST PALO ALTO, CALIFORNIA

2 TUESDAY, DECEMBER 11, 2012

3 9:04 A.M.

4 ---o0o---

5 PROCEEDINGS

6 THE VIDEOGRAPHER: Good morning.

7 Here begins Videotape No. 1, Volume 1 in the
8 deposition of Arthur Hair in the matter of SightSound
9 Technologies, LLC, versus Apple Inc. in the
10 U.S. District Court, Western Division of Pennsylvania. 09:04:10
11 The case number is 2:11cv01292-DWA.

12 Today's date is December 11th, 2012. The time
13 on the video monitor is 9:04.

14 The videographer today is Patricia Guerrero, a
15 notary public employed by Merrill Court Reporting, 09:04:27
16 San Francisco.

17 This video deposition is taking place at the
18 Law Offices of Ropes & Gray, 1900 University Avenue,
19 East Palo Alto, California.

20 Counsel, please voice identify yourselves and 09:04:39
21 state whom you represent.

22 MS. FUKUDA: Ching-Lee Fukuda with Ropes &
23 Gray, representing defendant, Apple.

24 MR. DiBOISE: James DiBoise with Arnold &
25 Porter, representing the witness and the plaintiff. 09:04:50

1 THE VIDEOGRAPHER: Thank you.

2 The court reporter today is Rachel Ferrier of
3 Merrill Court Reporting.

4 Would the court reporter please swear in the
5 witness.

09:04:59

6 ---o0o---

7 ARTHUR ROBERT HAIR

8

9 called as a witness, having been first duly
10 sworn, was examined and testified as follows:

09:27:22

11 ---o0o---

12 THE VIDEOGRAPHER: Thank you.

13 Please begin.

14 EXAMINATION

15 BY MS. FUKUDA:

09:05:06

16 Q Good morning, Mr. Hair.

17 A Good morning.

18 Q Would you just state your full name for the
19 record, please.

20 A Arthur Robert Hair.

09:05:12

21 Q And where do you currently reside?

22 A In Westlake Village, California.

23 Q Could I have the full address, please.

24 A 2009 Channelford Road, Westlake Village,

25 California 91361.

09:05:24

1 Q Thank you.

2 Mr. Hair, you have given prior deposition
3 testimony before?

4 A Yes.

5 Q About how many times?

09:05:31

6 A Twice.

7 Q Can you tell me -- describe under what
8 circumstances you provided the testimony in those two
9 depositions?

10 A What do you mean by --

09:05:43

11 Q What -- what cases did you testify in?

12 A I testified in the N2K case and this case.

13 Q Okay. Anything else?

14 A Not that I can recall.

15 MS. FUKUDA: Okay. I am going to mark, for
16 purposes of the record, Exhibit 111, a copy of your
17 deposition testimony in the N2K case, as well as the
18 associated exhibits, and I'm just going to put that in
19 front of you. I have a couple questions for you
20 regarding that.

09:06:05

09:06:37

21 MR. DiBOISE: Thank you.

22 (Exhibit 111 was marked for identification by
23 the Court Reporter.)

24 BY MS. FUKUDA:

25 Q Mr. Hair, have you had a chance to review the

09:06:49

1 deposition testimony that you had given in the N2K case?

2 MR. DiBOISE: Objection.

3 THE WITNESS: Can you tell me what you mean by
4 "review it"?

5 BY MS. FUKUDA:

09:07:02

6 Q Have -- did -- have you had an opportunity to
7 read through it at any time in the past?

8 A An opportunity or did I? because I did not -- I
9 did not read through it.

10 Q You've never read through your deposition
11 testimony?

09:07:11

12 A Recently or back then?

13 Q At any time.

14 A I possibly might have read through it after
15 this deposition. I can't recall right now.

09:07:21

16 Q Okay. Are you aware of any corrections that
17 you had made to this deposition transcript?

18 MR. DiBOISE: Object -- objection.

19 Go ahead.

20 THE WITNESS: That is a possibility. I can't
21 recall right now.

09:07:35

22 BY MS. FUKUDA:

23 Q Okay. And as -- as far as you know, sitting
24 here today, is there anything in your prior N2K
25 testimony that is not true or inaccurate?

09:07:48

1 MR. DiBOISE: Objection. The question calls
2 for him to read through the transcript to be able to
3 give you a present-day answer to that.

4 Do you really want him to read through it all
5 and look for anything he wants to change?

09:07:59

6 MS. FUKUDA: That's not my question.

7 MR. DiBOISE: Yes, it is your question. Let's
8 just --

9 MS. FUKUDA: Jamie, let's stick to objection to
10 form, please.

09:08:07

11 MR. DiBOISE: If you persist in the question --
12 You can answer it if you think you can.

13 THE WITNESS: I don't recall.

14 BY MS. FUKUDA:

15 Q Okay. Well, sitting here today, are you aware
16 of any inaccuracies in your prior N2K testimony?

09:08:14

17 MR. DiBOISE: Objection.

18 THE WITNESS: Sitting here today, I don't
19 recall.

20 BY MS. FUKUDA:

09:08:23

21 Q Okay. But are you aware of any inaccuracies?

22 MR. DiBOISE: Objection.

23 THE WITNESS: I don't recall.

24 BY MS. FUKUDA:

25 Q Okay. Do you remember -- if you could turn

09:08:30

1 to -- I think it's the fourth document in that pile? I
2 think you're looking at the fifth one, so the fourth
3 document in that pile.

4 Do you recognize what that document is?

5 MR. DiBOISE: So I just want to state that 09:08:59
6 referring to it as the "fourth document in the pile" in
7 the record is really not going to help us find it again.

8 MS. FUKUDA: Here, let me --

9 MR. DiBOISE: That's okay. The heading is
10 "Correction sheet for deposition of Arthur Hair 09:09:14
11 September 6-8, 2000," having Production Nos. ST -- may
12 be an "I" -- 012312 through 14.

13 MS. FUKUDA: Yes. I confirm it's STI 12312
14 through 12314.

15 Q Do you see that document? 09:09:54

16 A Mm-hmm. Yes, I do.

17 Q Do you remember providing any information to be
18 submitted with this document?

19 A I don't recall a date or dates or anything like
20 that as far as doing it. I'm not saying I didn't, I'm 09:10:06
21 just saying I don't recall it.

22 Q Do you know who Christopher Reese is?

23 A Yes, I do.

24 Q Okay. And do you remember whether Mr. Reese
25 had submitted an errata sheet on your behalf with 09:10:26

1 respect to any corrections to your deposition testimony
2 in the N2K case?

3 MR. DiBOISE: Hold on. "Yes" or "no."

4 THE WITNESS: I -- I don't recall, but, again,
5 I'm not saying it didn't happen.

09:10:47

6 MS. FUKUDA: Let me just mark, as Exhibit 112,
7 a document dated October 27th, 2000 from Christopher J.
8 Reese to Alderson Reporting Company. I apologize that
9 this is the one copy I have, but you may share that with
10 your counsel, if you could take a look at that.

09:12:34

11 (Exhibit 112 was marked for identification by
12 the Court Reporter.)

13 BY MS. FUKUDA:

14 Q So, Mr. Hair, do you recall around the time of
15 October of 2000 whether Mr. Reese had asked you to
16 review your deposition transcript in the N2K to provide
17 any corrections for this errata sheet?

09:13:29

18 MR. DiBOISE: Objection; instruction.
19 Attorney-client privilege, work product.

20 You don't have to answer that question.

09:13:40

21 MS. FUKUDA: Are you instructing the witness
22 not to answer?

23 MR. DiBOISE: I think that's what I just said.

24 BY MS. FUKUDA:

25 Q Are you going to follow your counsel's advice?

09:13:46

1 A Yes, I will.

2 Q Did you provide any corrections to Mr. Reese --

3 MR. DiBOISE: Objection; instruction.

4 BY MS. FUKUDA:

5 Q -- around October of 2000 for your deposition 09:13:54

6 testimony in the N2K?

7 MR. DiBOISE: Objection; instruction.

8 You don't have to answer.

9 MS. FUKUDA: I disagree that that's privileged
10 information, but you are instructing the witness not to 09:14:11

11 answer; correct?

12 MR. DiBOISE: Correct.

13 BY MS. FUKUDA:

14 Q And you are going to follow your counsel's
15 advice? 09:14:18

16 A Yes.

17 Q Okay. So just to short-circuit through this,
18 sitting here today, are you aware of anything that's
19 incorrect in your testimony in the N2K case?

20 MR. DiBOISE: Asked and answered. 09:14:33

21 THE WITNESS: Not that I can recall.

22 MS. FUKUDA: You can put that aside for now.

23 Q One more question: Do you recall whether your
24 deposition in the N2K case was videotaped?

25 A I -- I can't recall if it was videotaped. 09:14:56

1 Q Have you ever seen videotape associated with
2 your deposition?

3 MR. DiBOISE: In the N2K case?

4 MS. FUKUDA: In the N2K case.

5 THE WITNESS: I do not recall.

09:15:07

6 BY MS. FUKUDA:

7 Q If there were videotapes for your deposition in
8 the N2K case, do you know who would have them?

9 A I can't think of who would have them.

10 Q Do you recall who your counsel was in the N2K
11 case?

09:15:16

12 A Yes.

13 Q And who was that?

14 A Kenyon & Kenyon.

15 Q Any particular lawyer that you remember?

09:15:24

16 A Bill Wells.

17 Q Did Bill Wells defend you during that
18 deposition in the N2K case?

19 MR. DiBOISE: Objection.

20 THE WITNESS: Was he my lawyer?

09:15:36

21 MS. FUKUDA: At the deposition.

22 THE WITNESS: He -- he was the SightSound
23 lawyer at the deposition.

24 BY MS. FUKUDA:

25 Q Okay. So you understand that, today, you are

09:15:46

1 still under oath to testify?

2 A Yes.

3 MR. DiBOISE: From what deposition?

4 MS. FUKUDA: Today's deposition.

5 MR. DiBOISE: Okay.

09:15:54

6 THE WITNESS: Yes.

7 BY MS. FUKUDA:

8 Q Okay. And you understand the general rules of
9 the deposition. You have to verbally answer "yes" or
10 "no" to my questions?

09:16:01

11 A Yes.

12 Q And if you need a break at any time, let me
13 know. If there's something you need me to clarify, let
14 me know as well.

15 Is that all right?

09:16:14

16 A Yes.

17 Q Okay. And is there any reason why you can't
18 testify completely and truthfully today?

19 A I do not believe so.

20 MS. FUKUDA: Let me just mark a couple of
21 Deposition Notices.

09:16:34

22 Exhibit 113 is Defendant Apple Inc.'s Notice of
23 30(b)(6) Deposition to Plaintiff SightSound
24 Technologies, LLC.

25 //

09:16:52

1 (Exhibit 113 was marked for identification by
2 the Court Reporter.)

3 MS. FUKUDA: And Exhibit 114 is Defendant Apple
4 Inc.'s Notice of Deposition to Arthur R. Hair.

5 (Exhibit 114 was marked for identification by 09:17:31
6 the Court Reporter.)

7 MR. DiBOISE: Thanks.

8 BY MS. FUKUDA:

9 Q Mr. Hair, did you understand you are here today
10 to testify pursuant to Exhibit 113 in your individual 09:18:02
11 capacity?

12 MR. DiBOISE: Objection.

13 MS. FUKUDA: My apologies. I have that
14 backwards.

15 Q It's pursuant to 114, Exhibit 114, in your 09:18:11
16 individual capacity?

17 MR. DiBOISE: Objection.

18 THE WITNESS: So what is your question?

19 BY MS. FUKUDA:

20 Q Are you here to testify today in your 09:18:25
21 individual capacity in response to Exhibit 114, Notice
22 of Deposition of Arthur Hair?

23 A Yes.

24 Q And have you also been designated as a
25 corporate witness on behalf of SightSound to testify 09:18:41

1 with respect to certain topics in Exhibit 113, the
2 30(b)(6) notice?

3 A Can you tell me which topics?

4 Q Sure. Topics 1, 6, 8, 10, and 12.

5 A Yes, I believe those are the ones.

09:19:30

6 Q And have you been designated with respect to
7 any of the other topics in this notice?

8 MR. DiBOISE: No, he has not.

9 THE WITNESS: Not that I'm aware of.

10 BY MS. FUKUDA:

09:19:43

11 Q Okay. Now, you understand that there have been
12 various different corporate entities with the name
13 SightSound over the years; correct?

14 A Yes, I am.

15 Q Okay. With respect to your corporate witness
16 testimony today in response to the 30(b)(6) topics, do
17 you understand that you have been designated to testify
18 on behalf of all the different SightSound entities over
19 the years?

09:19:59

20 A Yes, that's my understanding.

09:20:15

21 Q Okay. And you are knowledgeable to testify on
22 those topics?

23 A Up until July of 2006.

24 Q And what happened in July of 2006?

25 A I left SightSound.

09:20:37

1 Q So your corporate testimony today will be
2 limited to the time period of July 2006 and earlier?

3 MR. DiBOISE: Objection.

4 THE WITNESS: That is my belief.

5 BY MS. FUKUDA:

09:20:56

6 Q Okay. After you left SightSound in July of
7 2006, did you continue to have contact with members of
8 SightSound?

9 A Yes.

10 Q And did you continue to have knowledge about
11 SightSound's various activities after July of 2006?

09:21:11

12 A Nothing other than what shareholders were
13 receiving in the mail.

14 Q Okay. Did you -- after July of 2006, you no
15 longer worked with anyone affiliated with SightSound?

09:21:29

16 A Up until a point. There needs to be a
17 clarification, because I did rejoin the board of one of
18 the SightSound entities. I believe it was in, I
19 believe, 2011?

20 Q Okay. So I -- but for purposes of your
21 30(b)(6) testimony today, it is limited to July 2006 and
22 earlier --

09:22:01

23 MR. DiBOISE: Object --

24 BY MS. FUKUDA:

25 Q -- is that right?

09:22:08

1 MR. DiBOISE: Objection.

2 If you know.

3 THE WITNESS: Again, I believe that's -- that's
4 why I'm here.

5 BY MS. FUKUDA:

09:22:19

6 Q Okay. When you were -- when you prepared for
7 your 30(b)(6) testimony today, did you discuss with
8 anyone what took place at SightSound after July of 2006
9 for purposes of preparing you to testify as a corporate
10 witness?

09:22:39

11 MR. DiBOISE: "Yes" or "no."

12 THE WITNESS: I do not believe so.

13 BY MS. FUKUDA:

14 Q In those parts of the deposition where you are
15 testifying on those five topics, if I ask you a question
16 that says "you," what I mean is not just you,
17 personally, but also you as in the SightSound entity.

09:22:54

18 A That is my understanding.

19 MR. DiBOISE: Well, for clarity purposes, I
20 would like you to identify which questions are
21 pertaining to the 30(b)(6) notice and which are
22 pertaining to the witness in his individual capacity.

09:23:14

23 BY MS. FUKUDA:

24 Q Okay. Well, if you are confused about in which
25 capacity you are answering, please let me know. I will

09:23:29

1 do my best to be clear that I'm asking for your
2 testimony as a corporate witness as opposed to an
3 individual capacity.

4 Is that all right?

5 A That's all right.

09:23:39

6 Q In some of my questions today, I may ask you
7 questions that use the word "communicate" or
8 "communications," and when I do that, I want you to take
9 an expansive meaning of that term to cover all forms of
10 communications, including written, oral, paper,
11 electronic, and so forth.

09:24:01

12 Is that all right?

13 A That's fine.

14 Q Okay. In preparing for your testimony as a
15 30(b)(6) witness today, did you have any discussions
16 with anybody?

09:24:17

17 A Legal counsel.

18 Q Okay. Can you identify them, please?

19 A Jamie DiBoise.

20 Q Anyone else?

09:24:35

21 A Forgot his name.

22 Q An attorney from Arnold & Porter?

23 A Correct.

24 Q Okay. Did you have any discussions with anyone
25 else in preparation for your testimony today?

09:24:48

1 A Not that I can think of.

2 Q And these discussions with Jamie and somebody
3 else at Arnold & Porter, how long did they last?

4 MR. DiBOISE: Objection. It's compound.

5 THE WITNESS: Roughly five hours.

09:25:14

6 BY MS. FUKUDA:

7 Q When -- which day?

8 A That would be yesterday.

9 Q Was that an in-person meeting or by phone?

10 MR. DiBOISE: Objection; compound.

09:25:25

11 THE WITNESS: One in person, one by phone.

12 BY MS. FUKUDA:

13 Q Okay. And -- and the lawyer by phone is the
14 other lawyer, not Jamie; correct?

15 A Correct.

09:25:38

16 Q Is it a he or a she?

17 A It's a he.

18 Q Okay. Did you do anything else to prepare that
19 we haven't covered?

20 A Not --

09:25:51

21 MR. DiBOISE: Objection.

22 THE WITNESS: Not that I can think of.

23 BY MS. FUKUDA:

24 Q Now, Mr. Hair, just a couple of follow-up on
25 your background.

09:26:14

1 Who are you currently employed by?

2 A I am a consultant for Pense Productions.

3 Q And has your role for Pense changed in any way
4 since your last deposition in this case?

5 A No, I do not believe so.

09:26:30

6 Q Do you have any current affiliations with
7 SightSound?

8 MR. DiBOISE: Objection.

9 THE WITNESS: Yes.

10 BY MS. FUKUDA:

09:26:47

11 Q What is that?

12 A I am a board member of one of the SightSound
13 entities.

14 Q Do you know which SightSound entity?

15 A Off the top of my head, I don't know the exact
16 way the SightSound entity is described.

09:26:55

17 Q Okay. And this is -- you have been a board
18 member of that SightSound entity since 2011?

19 A I believe that is the case, sometime in 2011.

20 Q Okay. Do you know if it was early or late
21 2011?

09:27:17

22 A I would have to guess, so I -- I don't recall.

23 Q And what is your role on the board of the
24 SightSound entity?

25 MR. DiBOISE: Objection.

09:27:31

1 THE WITNESS: I am a board member.

2 BY MS. FUKUDA:

3 Q What kind of things do you do as a board member
4 of SightSound?

5 A Attend board meetings.

09:27:40

6 Q Anything else?

7 A Not really.

8 Q Do you make decisions?

9 A Yes.

10 Q What kind of decisions do you make on behalf of
11 SightSound?

09:27:52

12 MR. DiBOISE: Objection. May also call for the
13 disclosure of confidential attorney-client information.

14 If you can separate any decisions that you made
15 that involve legal device -- legal advice, I would
16 caution you not to reveal those decisions. If there
17 were any decisions that you participated in that did not
18 involve legal advice, feel free to answer the question.

09:28:06

19 Do you understand my instruction?

20 THE WITNESS: Yes.

09:28:21

21 MR. DiBOISE: Can you answer the question?

22 THE WITNESS: No.

23 MR. DiBOISE: Then I instruct you.

24 BY MS. FUKUDA:

25 Q You can't answer any part of my question even

09:28:28

1 at a high-level about the type of decisions you make on
2 behalf of SightSound as a board member?

3 A Based on instruction from counsel, no.

4 Q Okay. Are you able to tell me whether your
5 decisions are with respect to litigation or business?

09:28:42

6 MR. DiBOISE: Objection; compound, lacks
7 foundation.

8 THE WITNESS: Again, based on direction from
9 counsel, I can't answer that.

10 MS. FUKUDA: Yeah, I don't think your counsel
11 objected on the basis of privilege just now.

09:28:58

12 Q So my question is: Do you make decisions on
13 behalf of SightSound with respect to litigation or
14 SightSound business?

15 MR. DiBOISE: The question is compound, and
16 he's following the instruction that I gave him. If he
17 can answer it, he will. If he can't answer it, he'll
18 abide by the instruction.

09:29:09

19 THE WITNESS: I'm abiding by instruction from
20 counsel.

09:29:19

21 BY MS. FUKUDA:

22 Q Does SightSound have any business separate and
23 apart from litigation?

24 A At this time, I do not believe so.

25 Q How often do you have board meetings?

09:29:36

1 A They are not routinely scheduled, so I would
2 say two, three times a year at most.

3 Q And has that been the case for the past several
4 years, or at least since you joined the board of
5 SightSound?

09:30:02

6 A I believe so.

7 Q Who attends these board meetings for
8 SightSound?

9 A Board members.

10 Q Just the board members?

09:30:17

11 A Yes, I believe so.

12 Q No other entities?

13 MR. DiBOISE: You mean people?

14 BY MS. FUKUDA:

15 Q No people affiliated with other entities other
16 than board members?

09:30:32

17 A There could be times when counsel was involved.
18 Other than that, I can't recall.

19 Q When you say "counsel," who are you referring
20 to?

09:31:12

21 A A lawyer.

22 Q I understand, but which lawyer?

23 A Again, I -- I don't recall which one at -- in
24 any specific situation.

25 Q You have no recollection of who had attended in

09:31:23

1 the past as a lawyer during these board meetings?

2 A That's correct.

3 Q When was the last board meeting you had at
4 SightSound?

5 A I don't recall the date.

09:31:41

6 Q Do you know approximately when?

7 A I believe it was a few months ago, but I don't
8 recall the specific date.

9 Q All right. Mr. Hair, I'm going to ask you a
10 series of questions in your capacity as a 30(b)(6)
11 witness that relates to at least Topic 1 and may touch
12 upon some of the other topics, so this is where I would
13 like to make clear that you are not answering just as an
14 individual with individual knowledge but also on behalf
15 of SightSound. Okay?

09:32:09

09:32:26

16 MR. DiBOISE: And just the -- make the record
17 clear, the witness was prepared through today's date.
18 There was no cutoff in 2006 in terms of his preparation
19 on these topics.

20 MS. FUKUDA: Okay. I guess, let me just
21 clarify that.

09:32:41

22 With respect to all five topics?

23 MR. DiBOISE: Yes.

24 BY MS. FUKUDA:

25 Q Okay. So, Mr. Hair, you --

09:32:54

1 MR. DiBOISE: Subject to the objections that
2 were interposed by SightSound to your topics.

3 BY MS. FUKUDA:

4 Q Mr. Hair, you understand that you've been
5 designated as SightSound's corporate witness on these
6 five topics without regard to any time limit.

09:33:01

7 Understood?

8 A That's fine.

9 Q Okay. For your convenience, let me just -- I
10 would like to put the three patents-in-suit in front of
11 you, and you should feel free to refer to them if you
12 need to. I would like to have them there for your
13 reference.

09:33:15

14 So it's the '573 patent, which was previously
15 marked Exhibit 68; the '734 patent, which was previously
16 marked Exhibit 69; and the '440 patent, previously
17 marked Exhibit 70.

09:33:37

18 (Discussion off the stenographic record.)

19 BY MS. FUKUDA:

20 Q So, Mr. Hair, you have reviewed the three
21 patents-in-suit in their entirety before -- sometime
22 before, haven't you?

09:34:38

23 A Yes, I have.

24 Q Okay. What was the most recent instance when
25 you had the occasion to view these patents-in-suit?

09:34:41

1 A Can you describe "review"?

2 Q Read through them --

3 A What you mean by "review"?

4 Q Read through them sub-- -- read through a
5 substantial portion.

09:34:51

6 A I'd say it's been several years to read through
7 it thoroughly.

8 Q Okay. And do you remember why you were reading
9 through them thoroughly several years ago?

10 A No, I don't recall.

09:35:06

11 Q And have you read through parts of each of
12 these patents-in-suit since several years ago?

13 A No.

14 Q Now, Mr. Hair, I -- I understand that you had
15 testified that you conceived of your invention back in
16 1986 during a friend's party; is that correct?

09:35:36

17 MR. DiBOISE: Objection; calls for a legal
18 conclusion.

19 THE WITNESS: I came up with an idea. I
20 wouldn't call it a legal -- or I wouldn't put it in
21 legal terms. I would just say, in layman's terms, I
22 came up with the idea.

09:35:52

23 BY MS. FUKUDA:

24 Q Okay. And did you consider that idea to be
25 the -- excuse me.

09:36:06

1 Did you consider the idea that you came up with
2 in 1986 to be the invention that is described in these
3 patents-in-suit?

4 MR. DiBOISE: Objection; form.

5 THE WITNESS: Are you saying did I have the
6 idea all in one moment and everything that I thought
7 then is here? Is that what you are saying -- or asking?

09:36:16

8 MS. FUKUDA: Yes.

9 THE WITNESS: No.

10 BY MS. FUKUDA:

09:36:36

11 Q Okay. With respect to the claims that are in
12 these patents-in-suit -- and you understand what I mean
13 by "claims"?

14 A I understand the claim section back here.

15 Q Yes. It's at the end of each of the patents.

09:36:56

16 A Yes. Mm-hmm.

17 Q And you understand that the claims are meant to
18 identify what the scope of your invention coverage is;
19 correct?

20 MR. DiBOISE: May call for legal conclusion.

09:37:07

21 You can answer.

22 THE WITNESS: From a layman's point of view, I
23 understand the -- the specification is what the inventor
24 comes up with, and, generally speaking, the claims, that
25 is a -- the legal part of the document that is done in

09:37:28

1 conjunction with counsel.

2 BY MS. FUKUDA:

3 Q Okay. So you have worked on the claims in
4 these patents-in-suit with counsel?

5 MR. DiBOISE: Hold on.

09:37:41

6 Objection. I couldn't get it out.

7 You can answer.

8 THE WITNESS: Yes, I worked with legal
9 counsel -- in consultation with legal counsel.

10 BY MS. FUKUDA:

09:37:53

11 Q Were there elements of any of these patent
12 claims that were not part of your idea during that 1986
13 party?

14 MR. DiBOISE: Hold on.

15 You can answer.

09:38:11

16 THE WITNESS: I don't understand what -- what
17 you are referring to as far as the 1986 party and tying
18 that to the claims in the patent. Can you be more
19 specific, please?

20 MS. FUKUDA: Sure. Let me try to break it a
21 part a bit.

09:38:27

22 Q So you know what -- you know what I'm referring
23 to when I say "the 1986 party"; right?

24 MR. DiBOISE: Objection.

25 THE WITNESS: I don't know what you are

09:38:37

1 referring to. I know what I had.

2 BY MS. FUKUDA:

3 Q Okay. I think there's only one party that --
4 if you can -- if you would like me to use a more
5 specific term, can you identify the date of that party?

09:38:46

6 A No, I can't.

7 Q Okay. Early or late 1986?

8 A I believe it was early.

9 Q Okay. And -- and whose party was this?

10 A It was a gentleman named Bill Smith.

09:38:57

11 Q Okay. Okay. So at Bill Smith's party in early
12 1986 when you came up with an idea relating to this
13 field, did your idea, at that point in time, capture all
14 of the different elements that are claimed in these
15 patents-in-suit?

09:39:32

16 MR. DiBOISE: Objection.

17 THE WITNESS: No, I do not believe it
18 encompassed everything.

19 BY MS. FUKUDA:

20 Q Okay. Can you think of any element that was
21 not encompassed by the idea that you came up with during
22 that party?

09:39:38

23 MR. DiBOISE: Objection.

24 THE WITNESS: Sitting here, I can't recall
25 specifics.

09:39:47

1 BY MS. FUKUDA:

2 Q Setting aside the patents-in-suit for now, I
3 would like to ask you, in your own words, what exactly
4 did you invent that is captured in the patents-in-suit?
5 You know, what is your invention?

09:40:12

6 MR. DiBOISE: Objection.

7 THE WITNESS: The invention is the electronic
8 sale of digital video and digital audio recordings via
9 telecommunications. And I would add to that the -- I
10 would say digital video and digital audio download
11 recordings via telecommunications.

09:40:59

12 MS. FUKUDA: Okay. Let me just make sure I get
13 that correct.

14 Q So you testified that your invention is the
15 electronic sale of digital video and digital audio
16 download recordings via telecommunications; is that
17 right?

09:41:14

18 MR. DiBOISE: Asked and answered.

19 THE WITNESS: Without being limiting, I would
20 say that's a -- a nice general description.

09:41:41

21 BY MS. FUKUDA:

22 Q Why did you insert the word "download" into
23 your description?

24 A To be descriptive.

25 Q Okay. And -- and what are you describing with

09:41:57

1 the word "download"?

2 A A download.

3 Q Yeah, well, can -- can you explain -- I guess
4 what I'm getting at is: What did you mean by "download"
5 when you used it in that manner?

09:42:10

6 A I'm not sure why my description would be
7 different than any description of download.

8 Q I just wanted to understand whether you meant
9 that it was limited to download or if it's not limited
10 to download, your invention?

09:42:29

11 A I would say it's a download. I -- I guess I
12 don't understand your question.

13 Q By "download," are you limiting in any way to
14 the use of the Internet?

15 A I am not limiting anything.

09:42:51

16 Q Okay. So your -- your definition of download,
17 as you are using in this sentence here, I'm trying to
18 understand what the scope of it is.

19 MR. DiBOISE: That's not a question.

20 THE WITNESS: I --

09:43:06

21 MR. DiBOISE: No pending question.

22 BY MS. FUKUDA:

23 Q Can you explain what you meant just so I
24 understand the scope of your download meaning?

25 MR. DiBOISE: Asked and answered.

09:43:15

1 THE WITNESS: The best way to -- for me to
2 describe is to go back to the Markman hearing that was
3 in the N2K litigation, and those definitions are fine by
4 me.

5 BY MS. FUKUDA:

09:43:32

6 Q Okay. So your contention is that the
7 definition given by the court in the N2K litigation
8 governs your invention -- or governs the scope of your
9 invention?

10 A I believe that's the situation when a federal
11 court makes a ruling, that it does govern the invention.

09:43:47

12 Q Okay. When you said "via
13 telecommunications" --

14 A Mm-hmm.

15 Q -- is that different than via
16 telecommunications lines?

09:44:00

17 A I would say it is inclusive.

18 Q So telecommunications includes
19 telecommunications lines?

20 A To me, it's all one thing. Whether it's
21 telecommunications, telecommunication lines, it's
22 telecommunications.

09:44:11

23 Q Okay. So you are using telecommunications to
24 equate to telecommunications lines?

25 MR. DiBOISE: Objection.

09:44:27

1 THE WITNESS: I'm using telecommunications in
2 the broadest sense of the term.

3 BY MS. FUKUDA:

4 Q Okay. I think my question is: When you
5 described your invention as doing something via
6 telecommunications, is that the same thing as doing
7 something via telecommunications lines?

09:44:34

8 MR. DiBOISE: Asked and answered.

9 THE WITNESS: I would say they are all the
10 same.

09:44:56

11 BY MS. FUKUDA:

12 Q Can you give me any example of sending either
13 digital video or digital audio recordings via
14 telecommunications that's not download?

15 A Are we still on Topic 1 of the 30(b)(6)?

09:45:24

16 Q Yeah, we are still talking about the invention
17 that you had conceived.

18 So my question, you know, again, is off of
19 your -- your description, in your own words --

20 A Mm-hmm.

09:45:37

21 Q -- of your invention, and the question is, you
22 know: As you are using that -- the way you are using
23 those words in your description, can you give me any
24 example of sending digital video or digital audio
25 signals -- or, I'm sorry.

09:45:55

1 Can you give me an example of sending digital
2 video or digital audio recordings via telecommunications
3 that's not a download?

4 MR. DiBOISE: Objection; outside the scope of
5 the 30(b) (6) notice.

09:46:09

6 You can answer in your personal capacity.

7 THE WITNESS: So do you want me to answer in my
8 personal capacity --

9 MS. FUKUDA: Yes.

10 THE WITNESS: -- that question?

09:46:18

11 MS. FUKUDA: Go ahead.

12 THE WITNESS: Is there a way to back this up?

13 MR. DiBOISE: Where's the arrow? There it is.

14 THE WITNESS: One example, but this isn't
15 sending the entire file, is to broadcast the digital
16 video signal or broadcast a digital audio signal.

09:47:08

17 BY MS. FUKUDA:

18 Q And can you explain in any more detail what you
19 mean by "broadcast"?

20 A Have you ever watched an NBC show --

09:47:28

21 Q Sure.

22 A -- that is broadcast --

23 Q Sure.

24 A -- that's an example --

25 Q That's regular TV --

09:47:38

1 A -- of --

2 Q -- you're watching a TV broadcast.

3 A Mm-hmm.

4 Q Okay. In your own words, what's the difference
5 between a broadcast and a download?

09:47:46

6 A A broadcast, the signal does not reside
7 permanently at the other end, and a download can be sent
8 and can be stored at the other end.

9 Q So in your use of "download," the signal can be
10 stored either temporarily or permanently at the user's
11 end; is that right?

09:48:28

12 MR. DiBOISE: Objection; misstates testimony.

13 THE WITNESS: Can you repeat the question?

14 MS. FUKUDA: Sure.

15 Q In your use of the word "download," the signal
16 can be stored either temporarily or permanently at the
17 user's end; is that correct?

09:48:45

18 MR. DiBOISE: Objection.

19 THE WITNESS: I don't know what you are getting
20 at.

09:49:11

21 BY MS. FUKUDA:

22 Q Just -- well, maybe -- let me -- let me go
23 back.

24 In your -- I had originally asked you what is
25 the difference between broadcast and download, and based

09:49:19

1 on that answer, you had indicated that, in a download,
2 the signal can be stored at the user's end; is that
3 correct?

4 A Mm-hmm.

5 Q Okay.

09:49:37

6 MR. DiBOISE: You have to say "yes" or "no."

7 THE WITNESS: Oh. Yes.

8 BY MS. FUKUDA:

9 Q Okay. And in a -- in a situation of a download
10 where the signal is not stored at the user's end, how is
11 that download different from broadcast?

09:49:42

12 A I just have to say, in the ability of when the
13 download lands at the user end, it can -- it can be
14 stored or it can be streamed, but, essentially, a
15 download is going from a network interface card to a
16 network interface card, and then after that, it can be
17 stored. It can be streamed in a broadcast. It's just
18 sent out, received, and not stored.

09:50:45

19 Q In your description of broadcast, the audio or
20 video signal is not stored at all; is that right?

09:51:14

21 MR. DiBOISE: Objection.

22 THE WITNESS: Is this 30(b)(6) or individual?

23 BY MS. FUKUDA:

24 Q This is regarding your testimony in your own
25 words of your invention, so --

09:51:26

1 A So as an individual?

2 MR. DiBOISE: Yes.

3 BY MS. FUKUDA:

4 Q Please go ahead.

5 A No, I wouldn't say that.

09:51:33

6 Q Okay. Then help me out here. I'm still trying
7 to understand the difference in how you are describing
8 broadcast versus download.

9 So I believe you had testified -- I believe you
10 had testified that, in a broadcast, the signal is just
11 sent out, received, and not stored; is that correct?

09:52:27

12 A Not stored permanently, but in a digital
13 broadcast, there is a buffer memory, so you could
14 consider there a temporary storage.

15 So you're -- you're asking for limitations on
16 it, and I'm just looking in the broadest sense.

09:52:52

17 Q Okay. Okay. Well, I think I'm just trying to
18 understand, because you're -- I believe you're
19 testifying that your invention is with respect to
20 downloads and does not include broadcast signals;
21 correct?

09:53:08

22 MR. DiBOISE: Asked and answered.

23 THE WITNESS: Yeah, I'm going to go to the
24 high-level and say, yes, downloads, not broadcast.

25 BY MS. FUKUDA:

09:53:28

1 Q Okay. And that's why I'm trying to understand
2 the differences between, you know, why you contend that
3 downloads are covered by your invention but broadcast is
4 not.

5 And the one distinction I heard you say is
6 that, for download, the signal that's sent out can be
7 stored permanently at the user's end.

09:53:39

8 MR. DiBOISE: Objection; calls for --

9 BY MS. FUKUDA:

10 Q And in the --

09:53:52

11 MR. DiBOISE: Sorry.

12 BY MS. FUKUDA:

13 Q And in the broadcasting of signals, that signal
14 cannot be stored permanently at the user's end --

15 MR. DiBOISE: Object --

09:54:01

16 BY MS. FUKUDA:

17 Q -- is that fair?

18 MR. DiBOISE: Objection; legal conclusion,
19 compound.

20 I don't know which question you want him to
21 answer.

09:54:05

22 THE WITNESS: Which question do you want me to
23 answer?

24 BY MS. FUKUDA:

25 Q Actually, there's only one question, so if

09:54:17

1 there's any part of it that isn't right, please correct
2 me.

3 MR. DiBOISE: Well, calls for a legal
4 conclusion. You put in the preamble. You are asking
5 what the invention covers --

09:54:26

6 MS. FUKUDA: Jamie, please just -- just
7 objection to form. All right? We -- we -- we've had a
8 back-and-forth about this. No explanations to the
9 witness. You can object to form if you want to. It's
10 the only way for you to preserve your objection.

09:54:36

11 MR. DiBOISE: Well, if you have any clue what
12 the witness -- what the question is, you can answer it.
13 If not --

14 MS. FUKUDA: Jamie, objection to form. I know
15 you can do it.

09:54:44

16 MR. DiBOISE: Your question is impossible to
17 answer.

18 MS. FUKUDA: Well, let's let the witness decide
19 that.

20 THE WITNESS: I think the best way for me to
21 answer it is I'm fine with the -- what the Markman
22 ruling ended up being on that.

09:55:09

23 BY MS. FUKUDA:

24 Q Okay. Well, I understand that there was a
25 Markman ruling in the N2K case.

09:55:20

1 A Mm-hmm.

2 Q I wanted to get your personal testimony as the
3 inventor of these patents-in-suit, you know, what your
4 understanding of your invention is.

5 Is that clear in terms of what it is that I'm 09:55:36
6 asking for?

7 A If you are asking for a layman's term, yes, but
8 if you are asking for a legal conclusion, no, I don't
9 understand that.

10 Q Okay. Yeah, I'm not asking for your -- a legal 09:55:47
11 conclusion, but not exactly layman's either, because you
12 are the inventor behind these patents-in-suit; correct?
13 So I'm asking you, as the inventor of these
14 patents-in-suit, what you understand your invention to
15 be. 09:56:01

16 A At the time of the invention? It was the
17 download sale of digital video and digital audio
18 recordings over communications for electronic sale.

19 Q Okay. And it does not include the broadcasting
20 of signals for sale; correct? 09:56:18

21 MR. DiBOISE: Objection.

22 THE WITNESS: It includes the download sale.
23 So I'm not going to say what it doesn't include, I'm
24 going to tell you what it does include. It includes the
25 download sale. 09:56:34

1 BY MS. FUKUDA:

2 Q And download sale is different than broadcast
3 sale?

4 MR. DiBOISE: Objection.

5 BY MS. FUKUDA:

09:56:40

6 Q Correct?

7 A I would say it is different.

8 Q Okay. And -- and the questions I had asked you
9 earlier was merely to figure out what you think is the
10 difference between broadcasting and downloading.

09:56:52

11 MR. DiBOISE: Objection. No question pending.

12 BY MS. FUKUDA:

13 Q So to get back to my question, in your
14 understanding of your invention, broadcasting is the
15 means by which a signal is sent to the user but is not
16 permanent -- but cannot be permanently stored at the
17 user site; is that correct?

09:57:09

18 A Back when this was filed for, the distinction
19 between broadcast and download, as I recall it, there
20 was only analog broadcast, and there was digital
21 download, and so I think the distinctions are very wide.

09:57:41

22 And so if you -- if you're talking about back
23 then, then there is a big distinction between download
24 and broadcast at a high-level.

25 Does that make sense? Does that answer your

09:58:09

1 question?

2 Q Not all the way, so let me see if I can do a
3 follow-up question.

4 Does your invention include the electronic sale
5 of digital video and digital audio recordings that are
6 broadcast? 09:58:25

7 MR. DiBOISE: Vague as to time.

8 THE WITNESS: Take me back to the filing date.
9 So are you saying broadcasted digital video and
10 broadcasted digital audio signals? 09:58:44

11 MS. FUKUDA: Well, I don't see why we're
12 limiting it.

13 Q I -- I guess my question for you is: Does your
14 definition cover electronic sale of broadcasted digital
15 signals? 09:59:02

16 A Well, I -- I -- I beg to differ with your use
17 of don't be limiting, because back at that time, I don't
18 recall there being broadcasted digital video signals. I
19 could be wrong, but -- but that wasn't my thinking at
20 the time. 09:59:20

21 Q Okay. If there were broadcasted digital audio
22 or digital video signals at the time of your invention,
23 would that be covered by your invention?

24 MR. DiBOISE: Calls for a legal conclusion and
25 speculation. 09:59:35

1 THE WITNESS: To me, my understanding was there
2 were analog broadcast signals, and I do not recall there
3 being digital signals, so I think it's irrelevant if
4 there were or weren't. When I filed for it, my
5 understanding was that broadcast was very distinct from
6 download.

09:59:51

7 BY MS. FUKUDA:

8 Q Okay. So you have no understanding about
9 whether your invention covers broadcasting of digital
10 signals for sale?

10:00:06

11 MR. DiBOISE: Calls for a legal conclusion.

12 THE WITNESS: Can you repeat the question?

13 BY MS. FUKUDA:

14 Q So you have no understanding of whether your
15 invention covers the broadcasting of digital signals for
16 sale?

10:00:15

17 A I -- I don't believe I said that.

18 Q Okay. So do you agree with that statement, or
19 you disagree with that statement?

20 MR. DiBOISE: Objection.

10:00:30

21 THE WITNESS: I disagree with that statement.

22 BY MS. FUKUDA:

23 Q What is your understanding of whether your
24 invention covers the broadcasting of digital audio or
25 digital video signals for sale?

10:01:03

1 MR. DiBOISE: Objection; legal conclusion --
2 calls for a legal conclusion.

3 THE WITNESS: At that time?

4 MS. FUKUDA: At the time of your invention.

5 THE WITNESS: This thing froze up. 10:01:18

6 MR. DiBOISE: How's that?

7 Asked and answered as well.

8 THE WITNESS: At the time, digital download was
9 very distinct from broadcast, so that's -- that's the
10 distinction. 10:01:48

11 BY MS. FUKUDA:

12 Q Because your testimony is that it's different
13 because the broadcasting was limited to analog signals
14 at the time; is that right?

15 A I'm saying, I do not recall there being digital 10:01:59
16 broadcasts.

17 Q Okay.

18 A I'm not saying there weren't.

19 Q What about now; what is your understanding
20 about whether your invention covers the digital 10:02:12
21 broadcasting of music -- well, let me rephrase.

22 What is your current understanding about
23 whether your invention covers the digital broadcasting
24 of audio or video signals for sale?

25 MR. DiBOISE: Objection. 10:02:39

1 THE WITNESS: My current understanding is that
2 the Markman ruling governs those definitions.

3 MS. FUKUDA: So --

4 THE WITNESS: So I'm fine with that. I -- I
5 haven't gone back and reanalyzed everything based on
6 Markman.

10:02:48

7 BY MS. FUKUDA:

8 Q Okay. So -- so you don't know, sitting here
9 today, about whether your invention covers the
10 broadcasting of digital audio and digital video signals
11 for sale?

10:02:56

12 MR. DiBOISE: Objection.

13 THE WITNESS: I'm saying that I'm fine with
14 what the Markman ruling has.

15 BY MS. FUKUDA:

10:03:07

16 Q But can you answer my question, sitting here
17 today, whether your invention covers it or it doesn't
18 cover it?

19 A Can you give me the Markman ruling?

20 Q Would that help?

10:03:14

21 A Yes.

22 Q Okay.

23 A And then you can ask your question and I'll
24 point to it, if I can find it.

25 Q Okay. Well, why don't I pull that at the next

10:03:20

1 break for you.

2 A Okay.

3 Q Now, going back to how you had described your
4 invention in your own words earlier, did you invent
5 electronic sale?

10:03:48

6 MR. DiBOISE: Objection --

7 THE WITNESS: I --

8 MR. DiBOISE: -- calls for legal conclusion.

9 THE WITNESS: I did not invent electronic sale.

10 BY MS. FUKUDA:

10:03:56

11 Q And did you invent the electronic transmission
12 of digital audio signals?

13 MR. DiBOISE: Asked and answered.

14 You can answer again.

15 THE WITNESS: If you are trying to go through
16 each element, east -- each piece of the invention and --
17 and say that did I invent prior pieces, I did not -- I
18 did not invent electronic transmission of digital audio
19 signals.

10:04:10

20 MS. FUKUDA: Okay. And you understand
21 correctly. I'm just asking you with respect to just
22 that element. Okay.

10:04:37

23 Q So did you invent the electronic transmission
24 of digit -- digital video signals?

25 MR. DiBOISE: Asked and answered.

10:04:48

1 THE WITNESS: No, I did not.

2 BY MS. FUKUDA:

3 Q Did you -- did you invent the electronic
4 transmission of computer programs for electronic sale?

5 MR. DiBOISE: Asked and answered. It's vague. 10:05:06

6 THE WITNESS: Can you go into detail what you
7 mean by "computer programs"?

8 BY MS. FUKUDA:

9 Q Well, let me ask you this: In your view, are
10 computer -- are digital audio signals and digital video 10:05:29
11 signals the same thing as computer programs?

12 MR. DiBOISE: Objection; asked and answered.

13 THE WITNESS: I do not believe they are the
14 same.

15 BY MS. FUKUDA: 10:05:40

16 Q Okay. So did you invent the electronic
17 transmission of computer programs for electronic sale?

18 MR. DiBOISE: Objection; asked and answered.

19 THE WITNESS: No, I did not.

20 BY MS. FUKUDA: 10:05:54

21 Q Did you invent the electronic transmission of
22 MIDI files for electronic sale?

23 MR. DiBOISE: Objection; vague, asked and
24 answered.

25 THE WITNESS: Are we still me as an individual 10:06:08

1 or the company?

2 MR. DiBOISE: You are an individual.

3 THE WITNESS: Individual.

4 MS. FUKUDA: Well, you know, I mean, I think
5 to -- to the extent that this touches upon what his
6 conception and reduction to practice of the invention
7 is, he's going to be testifying in his corporate witness
8 capacity.

10:06:16

9 MR. DiBOISE: It doesn't relate to that topic.

10 THE WITNESS: So --

10:06:27

11 MS. FUKUDA: We -- and we can fight about that,
12 you know.

13 Q But -- but go ahead and answer the question to
14 the best of your ability.

15 MR. DiBOISE: So answer in your individual
16 answer.

10:06:33

17 THE WITNESS: Individual, not corporate?

18 MR. DiBOISE: Individual.

19 MS. FUKUDA: I -- I --

20 MR. DiBOISE: She's not going to agree with me,
21 but just answer the question as best --

10:06:38

22 BY MS. FUKUDA:

23 Q Yeah, just give me your testimony on this
24 topic, and we'll fight about what capacity it is later.

25 MR. DiBOISE: The end of my statement was "as

10:06:49

1 best you can."

2 THE WITNESS: No, I did not.

3 BY MS. FUKUDA:

4 Q Do you have any currently pending application
5 that claims priority to this chain of patents?

10:07:14

6 MR. DiBOISE: Do you understand the question?

7 THE WITNESS: No.

8 BY MS. FUKUDA:

9 Q Do you know what continuation applications are?

10 A From a layman's standpoint, yes.

10:07:27

11 Q Okay. So you understand that, you know, the --
12 your -- for example, your '440 patent was issued off of
13 a continue application -- continuing application to
14 earlier applications that resulted in the '573 patent?

15 A I understand that.

10:07:45

16 Q Okay. And my question for you right now is:
17 Do you have any continuation applications or
18 continuation-in-part applications at the Patent Office
19 that have not yet issued as a patent that also claim
20 priority to this set of applications?

10:08:01

21 A Okay. So is that me as the company or me as
22 the individual?

23 Q I -- just give me your testimony, because I
24 think that this at least relates to your conception and
25 reduction to practice.

10:08:19

1 MR. DiBOISE: And I disagree.

2 Answer as best you can.

3 THE WITNESS: When you say me, I don't own the
4 patents, so it's not -- it's not my patent anymore, so
5 it's not me having continuations or anything like that. 10:08:32

6 BY MS. FUKUDA:

7 Q Okay. But you are still the inventor on this
8 chain of patents; right?

9 A I am the inventor.

10 Q And so are you the inventor of any pending 10:08:44
11 applications at the Patent Office right now that claims
12 priority to the -- you know, the patents-in-suit?

13 MR. DiBOISE: May call for legal conclusion.
14 Just answer as best you can.

15 THE WITNESS: I -- as a layman, I don't know if 10:09:01
16 there are continuations or not.

17 BY MS. FUKUDA:

18 Q Okay. Have you been executing, you know, or
19 signing any declarations for any applications at the
20 Patent Office that claim priority to the 10:09:15
21 patents-in-suit?

22 MR. DiBOISE: It's vague as to time.

23 THE WITNESS: Yeah, can you tell me when?

24 MS. FUKUDA: At -- at any time in the past
25 couple of years. 10:09:24

1 THE WITNESS: In the past couple years, I do
2 not recall.

3 BY MS. FUKUDA:

4 Q So do you know, sitting here today, whether
5 there is a pending application at the Patent Office with 10:09:35
6 you as the named inventor that claims priority to the
7 chain of applications in the patents-in-suit?

8 A I believe you already asked that, and I said I
9 don't recall. I don't know if there are or not
10 continuations on this. 10:09:57

11 Q You do not know?

12 A I don't recall.

13 Q I'm not -- I guess I'm trying to understand
14 what you mean by you don't recall.

15 A I don't recall if there were any in or if there 10:10:11
16 weren't.

17 Q When was the last time -- well, let me put it
18 this way: Are you working with any attorneys currently
19 who is prosecuting patents on behalf of SightSound?

20 A Ansel Schwartz sends me communications on 10:10:29
21 different things he's working on.

22 Q Okay. And do any of those communications
23 relate to an invention that deals with a system or
24 method for transmitting desired digital video or audio
25 signals? 10:10:56

1 MR. DiBOISE: Objection; instruction,
2 attorney-client privilege.

3 You don't have to answer.

4 THE WITNESS: I know.

5 BY MS. FUKUDA:

10:11:07

6 Q Can you -- you can't answer that question
7 without revealing attorney-client privilege?

8 A It's --

9 MR. DiBOISE: It calls for attorney-client
10 privilege.

10:11:13

11 You're instructed.

12 Your question specifically asks for
13 communication between him and Ansel Schwartz.

14 MS. FUKUDA: All right. I disagree, but let me
15 rephrase and see if he can answer this one.

10:11:21

16 Q Do you have any communications with Ansel
17 Schwartz regarding prosecution for an application that
18 is in this chain of priority? And by "this chain," I
19 mean the patents-in-suit.

20 MR. DiBOISE: Objection; instruction.

10:11:38

21 You can't answer that question.

22 MS. FUKUDA: Cannot?

23 MR. DiBOISE: He cannot -- I will not let him
24 answer the question. I insert the attorney-client
25 privilege. The question starts out by communications

10:11:50

1 and identifies the person with whom he's communicating,
2 the -- the patent counsel for the company, and then asks
3 for the substance of the communication. Clearly within
4 the attorney-client privilege.

5 MS. FUKUDA: Okay. Let me rephrase.

10:12:08

6 Q Have you signed --

7 MR. DiBOISE: Asked and answered.

8 Sorry, Ching-Lee.

9 MS. FUKUDA: I -- I'm not done with my question
10 yet. Okay?

10:12:14

11 Q Have you signed any declarations relating to an
12 application pending at the Patent Office that claims
13 priority to the patents-in-suit?

14 MR. DiBOISE: Asked and answered, vague as to
15 time.

10:12:30

16 THE WITNESS: My answer to your question
17 previously when you said within the past two years, I do
18 not recall if that's -- if you are repeating that
19 question.

20 BY MS. FUKUDA:

10:12:42

21 Q Okay. How about in the last five or six years;
22 do you recall signing any declaration?

23 A I do not recall.

24 Q And sitting here today, you don't know whether
25 you have a pending application that is a continuation --

10:12:57

1 A I --

2 Q -- of the patents-in-suit?

3 MR. DiBOISE: Hold on. Slow down.

4 Asked and answered.

5 Go ahead.

10:13:03

6 THE WITNESS: I do not recall if there is a
7 continuation.

8 MS. FUKUDA: Okay. How are we doing on time?

9 (Discussion off the stenographic record.)

10 MS. FUKUDA: Okay. Let me mark, as

10:14:26

11 Exhibit 115, a copy of the prosecution history for the
12 '573 patent that was downloaded from the Patent Office.

13 (Exhibit 115 was marked for identification by
14 the Court Reporter.)

15 MR. DiBOISE: Thank you. This is 115?

10:14:50

16 BY MS. FUKUDA:

17 Q Okay. Mr. Hair, the earliest application that
18 you had filed with the Patent Office relating to the
19 patents-in-suit is a June 13th, 1988 application;
20 correct?

10:15:38

21 A I believe that's the date.

22 Q Okay. And for reference, you can turn -- you
23 know, unfortunately, I don't think the prosecution
24 history was produced in this case, so these don't have
25 Bates numbers on them, but if you flip, I would say,

10:15:51

1 about 10 pages in, you will see that there is a couple
2 of figures and then followed by an application that's
3 stamped June 13th, 1988 on the upper right-hand corner.

4 A Okay. I'm on page 10.

5 Q Why don't you flip into it a couple more pages 10:16:22
6 until you get to --

7 A Oh.

8 Q -- there we go, right there. So there are two
9 figures, and then there is an application that starts at
10 the top with title of the invention. 10:16:37

11 A Mm-hmm.

12 Q And then you see there is -- on the upper
13 left-hand corner, it says -- it's a PTO stamp that says
14 June 13th, 1988?

15 A Mm-hmm. 10:16:46

16 Q Can you confirm that this was the first
17 application that you had filed with the Patent Office
18 describing your invention?

19 MR. DiBOISE: Are you referring to the
20 document, or are you referring to a portion of the 10:16:59
21 document?

22 MS. FUKUDA: Yeah, I -- I'm referring to that
23 entire application, which is -- you know, on the upper
24 right-hand corner, it says page 1 of 6, and then it goes
25 through page 6 of 6, and then I believe that there's 10:17:09

1 also a couple of figures that precede that.

2 MR. DiBOISE: Okay. I'm only trying to -- are
3 you including the handwriting or not?

4 MS. FUKUDA: No, I'm not including the
5 handwriting. 10:17:24

6 THE WITNESS: So what's your question?

7 BY MS. FUKUDA:

8 Q Yeah, the question is --

9 A Hang on just a second. So you are saying these
10 four pages? 10:17:43

11 Q Actually, I think there's six pages?

12 A Okay. I'm saying physical pieces of paper.

13 Q Okay. They are double-sided pages.

14 A Yeah.

15 Q So -- so it would be the two figures plus the 10:17:53
16 six pages of the text that's been stamped June 13th,
17 1988.

18 Okay. And -- and excluding the handwritten
19 markups on those pages --

20 A Mm-hmm. 10:18:14

21 Q -- is this the first application that you had
22 sent to the Patent Office relating to your
23 patents-in-suit?

24 A I believe it is.

25 Q Okay. And in your June 13th, 1988 application, 10:18:28

1 isn't it correct that it only discloses telephone lines
2 for the transmission of signals?

3 A Can you show me --

4 MR. DiBOISE: Hold on a second.

5 It calls for a legal conclusion.

10:18:59

6 THE WITNESS: So what's your question?

7 BY MS. FUKUDA:

8 Q You can still answer the question, which is --

9 How do I -- this thing --

10 MR. DiBOISE: Don't worry. I pointed it out to
11 him. You can read it. Okay?

10:19:15

12 BY MS. FUKUDA:

13 Q Can you -- are you able to answer my question?

14 A The word "discloses," again, that -- that
15 sounds to me like you want me to give a legal opinion,
16 so I can't say what "discloses" is.

10:19:31

17 Q All right. Let me try to rephrase and see if
18 you can answer --

19 A Okay.

20 Q -- the question.

10:19:43

21 In your June 13th, 1988 application to the
22 Patent Office, isn't it true that you only use the words
23 "telephone lines" to describe how to transmit the
24 signals?

25 A The way you worded that, yes, using telephone

10:20:09

1 lines. As I'm going through this right now, I see in
2 the -- in the figure there's the word -- the words
3 "telephone lines," and I'll scan through this to see
4 where else that's used.

5 Okay. So what's your question?

10:23:11

6 Q So the question is that, in your June 13th,
7 1988 application, isn't it true that you only use the
8 words "telephone lines" to describe how to transmit the
9 digital audio signals?

10 A No, you are incorrect.

10:23:33

11 Q Okay.

12 A If you go to page 3 of 6, you will notice that
13 Item 30 says "telephone line/input transfer."

14 Q Okay. Anything else?

15 A No. I scanned through and saw the -- the use
16 of the phrase "telephone lines" in a couple other
17 places.

10:23:49

18 Q Okay. Did you see any instance of the phrase
19 "telecommunications line" in this application?

20 A No, I did not.

10:24:03

21 Q As of June 13th, 1988, were you aware of any
22 other ways to transmit digital audio signals other than
23 telephone lines?

24 MR. DiBOISE: Hold on a second.

25 Objection.

10:24:35

1 THE WITNESS: Back then, the -- the -- my usage
2 of the word "telephone lines," "telephoning," etc., in
3 my mind, encompassed everything.

4 BY MS. FUKUDA:

5 Q And what do you mean by "everything"?

10:24:57

6 A Going back to your question, other ways to
7 transmit digital audio signals other than telephone
8 lines.

9 Q So when you say telephone lines encompassed
10 everything, what's the "everything" you are referring
11 to?

10:25:22

12 A Other ways. You're trying to split off
13 telephone lines and something else.

14 Q Well, let me ask you this: Were there any
15 other telecommunication lines that you knew about in
16 1988 other than telephone lines?

10:25:34

17 A There were networks inside an office building
18 and -- but, at the time, telephone lines, in my mind,
19 was inclusive of that. There was -- if you are talking
20 about satellite transmission, I just broadly encompassed
21 everything into telephone lines, and I think you can see
22 from that page, telephone lines/input transfer.

10:26:01

23 Am I answering your question, or do I not
24 understand your question?

25 Q Well, I -- I think what I -- let me ask you

10:26:29

1 this. Okay?

2 At Bill Smith's party in early 1986 when you
3 first came up with the idea --

4 A Mm-hmm.

5 Q -- did your idea encompass the transmission of 10:26:47
6 digital audio signals via telephone lines?

7 A Yes.

8 Q Okay. And at that time, did your idea for this
9 invention also encompass the transmission of digital
10 audio signals via cable lines? 10:27:16

11 A What do you mean by "cable lines"? Are you
12 talking transatlantic cable? cable TV?

13 Q Any kind of cable lines.

14 A It -- it -- it encompassed anything in
15 telecommunications, because I -- I didn't -- I didn't 10:27:35
16 stand there and say, Okay. What does it not include?

17 Q Okay. So it's your testimony today that cable
18 lines, satellite, and radio, for example, are also
19 telephone lines?

20 A I'm testifying today that, back then, I 10:27:58
21 encompassed everything under the phrase "telephone
22 lines," and I did not split anything out. I did not
23 limit anything.

24 Q So you did not believe that telecommunications
25 lines is different from telephone lines? 10:28:17

1 MR. DiBOISE: Objection; form.

2 THE WITNESS: I think I answered the question,
3 and if you turn to page 5 of 6, I state, at the very
4 bottom -- do you want me to read it?

5 MS. FUKUDA: 5 of 6? Go ahead. 10:28:44

6 THE WITNESS: "Since numerous changes may be
7 made in the above described process and apparatus and
8 different embodiments of the invention may be made
9 without departing from the spirit thereof," and I
10 emphasize spirit, "it is intended that all matter 10:28:57
11 contained in the foregoing description or shown in the
12 accompanying drawings shall be interpreted as
13 illustrative, and not in a limiting sense," and I -- I
14 stress the limiting sense. So -- so my use of the
15 phrase "telephone lines" back then was not limiting. 10:29:15

16 BY MS. FUKUDA:

17 Q Are you -- when you say it's not limiting, are
18 you saying that your use of the "telephone lines" as an
19 example does not limit your invention to transmission of
20 signals through lines other than telephone lines? 10:29:36

21 MR. DiBOISE: Objection; form.

22 THE WITNESS: I'm saying -- I think I've
23 answered this several times, and I don't -- I'm not sure
24 what angle you are coming at. I think I'm pretty clear.

25 MS. FUKUDA: Yeah, well, not quite clear to me 10:29:53

1 yet, so let me --

2 THE WITNESS: Okay.

3 MS. FUKUDA: -- keep asking a couple questions
4 here.

5 THE WITNESS: Mm-hmm.

10:29:58

6 BY MS. FUKUDA:

7 Q You know, you had just cited to a paragraph in
8 your June of 1988 application, and I'm just trying to
9 understand why you are citing to that paragraph, because
10 the paragraph says that numerous changes may be made in
11 the above process and apparatus, and different
12 embodiments of the invention may be made without
13 departing from the spirit thereof; right? That's the
14 paragraph that you just read to me; correct?

10:30:08

15 A That is correct.

10:30:23

16 Q Okay. So what I'm trying to understand is why
17 you read that paragraph and to -- you know, to tie it
18 back to our discussion of telephone lines.

19 MR. DiBOISE: Asked and answered.

20 THE WITNESS: Because I believe you are trying
21 to split up what was in my mind as far as what telephone
22 lines were at the time and in my disclosure in this
23 invention.

10:30:34

24 MS. FUKUDA: Okay. That's what I'm getting at.

25 Q So when you use the term "telephone lines" in

10:30:51

1 this application --

2 A Mm-hmm.

3 Q -- is that different, in your mind, from
4 telecommunications lines?

5 A No. 10:31:02

6 Q Okay. So can you think of any other
7 telecommunications lines that you knew about back in
8 1986 or 1988 that are different from telephone lines?

9 A No.

10 Q Do you have any understanding as to how the 10:31:25
11 court in this case -- or the special master in this case
12 has construed telecommunications line and telephone
13 line?

14 A No, I do not.

15 Q Okay. I'm going to ask you to turn to about -- 10:32:03
16 a little past halfway into your stack, and, you know,
17 just to make this easier, let me find it for you, and
18 I'll hand it back to you.

19 MR. DiBOISE: Can you, as you flip through,
20 describe it so I can find it? 10:32:45

21 MS. FUKUDA: I will, as soon as I find it.

22 Okay. Here we go. It is the December 11th,
23 1991 amendment that was filed and it looks like this.

24 MR. DiBOISE: I think I have it.

25 MS. FUKUDA: Okay. 10:33:53

1 MR. DiBOISE: So you are going by the mail room
2 stamp?

3 MS. FUKUDA: I am.

4 MR. DiBOISE: Okay.

5 MS. FUKUDA: Just as a way of identifying this. 10:33:56

6 Q Okay. So you have in front of you the
7 December 11th, 1991 amendment, Mr. Hair?

8 A Mm-hmm.

9 Q Okay. Now, it looks like -- if you flip
10 through the next couple of pages, it looks like some of 10:34:17
11 the pages got reshuffled in the download copy of the
12 file history, so I believe that page 1 of the amendment
13 is where I had indicated, and then you have to skip over
14 the next couple of pages and you will get to page 2 of
15 that amendment. 10:34:40

16 MR. DiBOISE: This one?

17 MS. FUKUDA: That's right.

18 Q Okay? You see the page numbers on the bottom?

19 A Mm-hmm.

20 Q It says page 2, 3, and then it goes to -- that 10:34:49
21 amendment has a total of 12 pages. Okay?

22 Do you recall reviewing this amendment before
23 it was submitted to the Patent Office?

24 A Sitting here today, I don't remember.

25 Q And during your back-and-forth with Ansel 10:35:17

1 Schwartz, is it typical that you would get drafts of
2 amendments to review before he submitted it to the
3 Patent Office?

4 MR. DiBOISE: Objection; form.

5 Only answer that "yes" or "no" or "I don't
6 recall."

10:35:30

7 THE WITNESS: I don't recall.

8 BY MS. FUKUDA:

9 Q If you look at page 1 of that amendment, you
10 will see there's a subheading -- I think you need to,
11 yeah, skip over a couple pages to the first page that I
12 had shown you, page 1. Go all the way to -- back, back.

10:35:55

13 MR. DiBOISE: Keep going. Keep going.

14 THE WITNESS: Mm-hmm.

15 BY MS. FUKUDA:

10:36:13

16 Q Okay. You will see there's a subheading that
17 says "In The Specification"?

18 A Mm-hmm.

19 Q And right under that it says, "Page 3, before
20 the paragraph starting with 'Referring' insert the
21 following." Okay? And then you have a paragraph that
22 goes on to page 2 that's inserted. Okay? You see that
23 entire paragraph? So it starts at the bottom of page 1
24 and then goes on through page 2 into page 3.

10:36:22

25 A So it does that.

10:36:48

1 Q Yes, and page 3 --

2 A Okay.

3 Q -- on page 3 as well.

4 So you will see that that entire paragraph was
5 asked to be inserted into the specification of your
6 application.

10:36:57

7 A Mm-hmm.

8 Q Correct?

9 A Mm-hmm.

10 Q In that paragraph -- you will see it on page
11 2 -- about six or seven lines down, it says, "... the
12 step of connecting electronically via a
13 telecommunications line the first memory with the second
14 memory."

10:37:05

15 You see that phrase?

10:37:28

16 A Mm-hmm.

17 Q Okay.

18 MR. DiBOISE: "Yes" or "no."

19 THE WITNESS: Yes, I do.

20 BY MS. FUKUDA:

10:37:32

21 Q Do you have any understanding as to why this
22 paragraph was inserted into the specification --

23 MR. DiBOISE: To the extent --

24 BY MS. FUKUDA:

25 Q -- in -- in the amendment?

10:37:41

1 MR. DiBOISE: To the extent the question calls
2 for you to reveal the substance of your communication
3 with Mr. Ansel Schwartz as you were -- as he and you
4 were preparing this document, I would ask you to exclude
5 those communications from your answer. However, you can 10:37:53
6 testify in answer to this question if you have an
7 independent memory or recollection of why the change was
8 made.

9 Do you understand my instruction?

10 THE WITNESS: Yes, I do, and I don't have 10:38:06
11 independent recollection.

12 MS. FUKUDA: Okay.

13 MR. DiBOISE: Okay. Then I'll instruct you not
14 to answer the question.

15 BY MS. FUKUDA: 10:38:14

16 Q Do you have any understanding of why the phrase
17 "telecommunications line" was added to the amend- --
18 was added to the specification?

19 MR. DiBOISE: Same instruction.

20 THE WITNESS: Same answer. 10:38:28

21 MS. FUKUDA: Marking, as Exhibit 116, a
22 May 5th, 1992 Declaration Under 37 C.F.R. Section 1.132
23 submitted to the U.S. Patent office.

24 MR. DiBOISE: Sorry. I lost track again. What
25 number? 16? 10:41:42

1 (Exhibit 116 was marked for identification by
2 the Court Reporter.)

3 BY MS. FUKUDA:

4 Q So you will see on the last page there's a
5 signature.

10:42:30

6 Is -- is that your signature?

7 A That is my signature.

8 Q And was this a declaration that you had
9 submitted to the Patent Office with the exception of
10 that sticky note on page 2, which is a duplicate page?

10:42:44

11 A I did not submit it.

12 Q Is this a copy of a declaration signed by you
13 that was submitted to the Patent Office?

14 A I believe it is.

15 Q And you will see on page 3 of the declaration,
16 bottom paragraph, two lines up where you had said
17 "through," quote, "telephone lines 30," unquote, open
18 paren, "electrical lines," close paren.

10:43:09

19 You see that phrase right there?

20 A Mm-hmm.

10:43:37

21 Q Did you describe telephone lines 30 as
22 electrical lines in this declaration?

23 MR. DiBOISE: Objection.

24 THE WITNESS: So what is -- your question is
25 did I describe it?

10:43:50

1 MS. FUKUDA: Yes.

2 THE WITNESS: Are you -- do you mean did I
3 limit it?

4 MS. FUKUDA: No.

5 Q I mean, did you describe telephone lines to be 10:43:57
6 electrical lines in this declaration?

7 A Oh, did I describe telephone lines as
8 electrical lines? I don't -- I don't know. I don't
9 have any recollection of why that parenthetical was put
10 in at that time. 10:44:09

11 Q Do you typically review -- well, let me put it
12 this way: Did you review this declaration before you
13 signed it and dated it on May 12th, 1992?

14 A I believe this was done in conjunction with
15 Ansel Schwartz. 10:44:28

16 Q Understood, but --

17 A Me and Ansel Schwartz.

18 Q Yeah, understood.

19 A Mm-hmm.

20 Q But what I'm referring to is you signed this 10:44:32
21 declaration --

22 A That is correct.

23 Q -- on May 12th, 1992?

24 A Yes, I did.

25 Q And when you -- before you signed it, did you 10:44:39

1 review this document?

2 A Yes, I did.

3 Q Okay. And you didn't make any correction to
4 this document; correct, that -- that's not reflected
5 here?

10:44:50

6 A Not that I'm aware.

7 MS. FUKUDA: Okay. I'm marking, as
8 Exhibit 117, a copy of a December 30th, 1993 Declaration
9 Under 37 C.F.R. Section 1.132 also signed by Arthur
10 Hair.

10:45:31

11 (Exhibit 117 was marked for identification by
12 the Court Reporter.)

13 MR. DiBOISE: I assume the tab number isn't --
14 well, forget it.

15 MS. FUKUDA: Yes. Just for the record, the
16 first page is a Tab 10. It's just part of the way the
17 document was produced, but I'm referring Mr. Hair to the
18 substantive portion of this document.

10:45:47

19 Q Okay. And I'm going to ask you to turn to the
20 last page of this exhibit, which is page 6, and is that
21 your signature on the last page?

10:46:06

22 A Yes, that is.

23 Q And that's dated December 30th, 1993?

24 A Yes, it is.

25 Q And did you review this declaration before you

10:46:17

1 signed it for submission to the Patent Office?

2 A I believe I would have.

3 Q And I'm going to refer you to --

4 A And -- and I didn't submit it to the Patent
5 Office.

10:46:30

6 Q Oh, I didn't say that you did. I said before
7 it was submitted to --

8 A Oh, I'm sorry. I thought you said that I did.

9 Q And, again, I'll refer you to page 5, first
10 paragraph, and in the middle of that paragraph, you will
11 see that you also describe -- again, you have the words
12 "through," quote, "telephone lines 30," unquote, open
13 paren, "electrical lines," close paren.

10:46:40

14 Do you see that?

15 A Yes, I do.

10:46:57

16 Q Okay. Is that statement there accurate, to
17 your knowledge?

18 A My recollection of when this was done, I do not
19 know why "electrical lines" was put in, if it was in
20 conjunction with electronic sales, but I don't -- I
21 don't recall why it was put in, if that's your question.

10:47:19

22 Q Okay. But you reviewed this document before
23 you signed it?

24 A Yes, I did.

25 Q And you didn't correct any portion of telephone

10:47:29

1 lines, open paren, electrical lines, close paren?

2 A I'm not saying that's incorrect.

3 Q Okay.

4 A I'm saying, I don't know why it's in there. If
5 there was some reason for linking it, it's -- it's been 10:47:44
6 quite a while since this was done.

7 Q Okay.

8 A So I'm not saying that there needs to be a
9 correction, I'm saying I don't -- I don't recall why a
10 parenthetical of "electrical lines" was put in there in 10:47:54
11 describing telephone lines 30, would also know that
12 electronic sale. So as far as that phrase, I don't -- I
13 don't recall why "electrical lines" was put in there.

14 Q Okay. Okay. And -- and I'm merely asking that
15 you have reviewed this declaration before you signed it? 10:48:13

16 A I think that's the third time I've said yes.

17 Q Okay. Yeah, and I didn't ask you, you know,
18 why or how, or -- you know, I was just merely asking you
19 whether you had made --

20 A Oh, I -- 10:48:23

21 Q -- a correction --

22 A I apologize. I assumed -- oh, no, no, I did
23 not make a correction.

24 Q Okay. All right. So you -- you had reviewed
25 the declaration that said "through telephone lines," 10:48:32

1 open paren, "electrical lines," close paren, and you did
2 not make a correction to this submission?

3 A I read through it and read through the whole
4 document, "through telephone lines," paren, "(electrical
5 lines) would also know that the" electrical -- that 10:48:47
6 "'electronic sales' as disclosed," so I read the whole
7 thing in its entirety and did not make corrections. So
8 I'm not saying it's incorrect.

9 Q Are you saying it's correct?

10 A I'm saying, at the time, I did not change 10:49:06
11 anything. I'm not saying right now that it's correct
12 because I don't have a recollection of everything that
13 was going on at the time in its entirety in this
14 document.

15 Q But as of the date that you signed this 10:49:17
16 declaration on December 30th, 1993, you thought that
17 that was a correct statement?

18 MR. DiBOISE: Asked and answered.

19 THE WITNESS: Like I've said, in its entirety,
20 correct. Yes. 10:49:28

21 MS. FUKUDA: Now, I'm going to be moving on to
22 a slightly different topic, so why don't we take a short
23 break.

24 THE VIDEOGRAPHER: Okay. This is the end of
25 Volume 1, Videotape No. 1 in the deposition of Arthur 10:50:27

1 Hair.

2 We are going off the record; the time is 10:50.

3 (Recess taken.)

4 THE VIDEOGRAPHER: We are back on the record.

5 This is the beginning of Volume 1, Videotape No. 2 in 10:59:03
6 the deposition of Arthur Hair.

7 The time is 10:59.

8 BY MS. FUKUDA:

9 Q Mr. Hair, just one quick follow-up to our early
10 discussion about that 1986 party at Bill Smith's house. 10:59:16

11 At that point, did the idea that you had
12 relating to this invention -- did it encompass digital
13 video signals?

14 A Yes.

15 Q So when you saw the CD that was being played, 10:59:29
16 you thought about not just songs but also movies?

17 A Oh, yeah. It was -- it was -- the -- the whole
18 party was an entertainment kind of party, so, yeah.

19 Q Were there DVDs at that party?

20 A I don't believe there were. I don't believe 10:59:47
21 DVDs were even close.

22 Q Okay. A little bit earlier on, we had talked
23 about -- or we touched upon the idea of streaming. I
24 think you had included that in one of your answers, and
25 my question to you is: Do you believe that your 11:00:16

1 invention covers the streaming of audio -- of digital
2 audio and digital video signals for electronic sale?

3 MR. DiBOISE: Objection to the preamble,
4 foundation.

5 THE WITNESS: Are we talking about the 30(b)(6) 11:00:31
6 or the individual?

7 MS. FUKUDA: Both.

8 THE WITNESS: Both. Okay.

9 Back when I had the idea, there wasn't that
10 parsing of phrases as far as streaming download, and so 11:00:52
11 it wasn't a consideration because it hadn't evolved at
12 that time, so -- so I think it's -- it's irrelevant
13 because there was no phraseology or whatever that said
14 "streaming."

15 BY MS. FUKUDA: 11:01:15

16 Q Okay. What about sitting here today; do you
17 have an understanding whether your invention covers the
18 streaming of digital signals for electronic sale?

19 A I believe that's on the Markman.

20 Q You're just deferring to -- 11:01:33

21 A I'm deferring to the Markman.

22 Q And -- and to whatever Markman issues in this
23 case as well?

24 A Can you be specific?

25 Q You understand that we are completing a Markman 11:01:42

1 process in this case against Apple?

2 A I believe the -- the way it's phrased in the
3 Markman in the N2K, that's the only thing that I have
4 seen. I have not seen anything as far as this case.

5 Q Is it your understanding that your invention 11:02:02
6 covers the electronic sale of digital audio and video
7 signals that are transmitted over telecommunications
8 lines in a subscription-based system?

9 MR. DiBOISE: Calls for a legal conclusion.

10 You can answer. 11:02:41

11 THE WITNESS: You would have to go into
12 describing what you mean by "subscription."

13 BY MS. FUKUDA:

14 Q Okay. By "subscription," I mean that the
15 payment that's made is for access to download signals,
16 not paying per song, for example? 11:02:52

17 MR. DiBOISE: Asked and answered. Same
18 objection as to asking for a legal conclusion.

19 THE WITNESS: I think all of that is in the
20 Markman -- the N2K Markman ruling, so I would like to
21 just stick with that. 11:03:12

22 BY MS. FUKUDA:

23 Q Sitting here today, do you have an
24 understanding of whether your invention covers
25 subscription-based -- 11:03:22

1 MR. DiBOISE: Same --

2 BY MS. FUKUDA:

3 Q -- transmission of signals for electronic
4 payment?

5 MR. DiBOISE: Asked and answered -- hold on a 11:03:29
6 second.

7 THE WITNESS: Mm-hmm.

8 MR. DiBOISE: May call for a legal conclusion.
9 But you can give your own opinion.

10 THE WITNESS: Same -- same answer. 11:03:34

11 BY MS. FUKUDA:

12 Q And you don't know until you review the Markman
13 ruling; is that the answer?

14 A Correct.

15 Q Okay. I would like to switch to Topic 12 11:03:58
16 regarding SightSound's commercial embodiments, and is it
17 correct that SightSound has built five systems that
18 practiced your invention in the past?

19 A In -- in the past, that is correct.

20 Q Okay. And let's start with the first one. 11:04:23

21 I understand -- is it true that, in 1995,
22 SightSound had built a system -- let's call it
23 Version 1 -- that practiced your patented invention?

24 A That is correct.

25 Q And songs were commercially available for sale 11:04:49

1 on that 1995 Version 1 system?

2 A That is correct.

3 Q But no movies or videos were commercially
4 available for sale on that system?

5 A That is my understanding, yes, my recollection. 11:05:03

6 Q How long was that Version 1 system commercially
7 available where people can go and buy songs or music?

8 MR. DiBOISE: Objection to form.

9 THE WITNESS: Not for long. Just a few months.

10 BY MS. FUKUDA: 11:05:22

11 Q Any idea --

12 A At least, I believe. I believe it was just a
13 few months.

14 Q Any idea how many months?

15 A I can't recall. 11:05:28

16 Q And is it correct that during those months
17 where that 1995 system was making songs commercially
18 available for sale, that SightSound sold only one song
19 during the entire time?

20 A That is my recollection, and -- yeah, that is 11:06:00
21 my recollection.

22 Q Why is it that only one song sold, if you know?

23 MR. DiBOISE: Calls for speculation.

24 THE WITNESS: Yeah, I agree. It would be
25 speculative. 11:06:25

1 BY MS. FUKUDA:

2 Q I mean, you -- did you build that Version 1
3 system?

4 A Myself and a couple other people.

5 Q Did you expect at that time that more than one 11:06:32
6 song would be sold?

7 A I don't recall what my expectation was other
8 than getting the system built.

9 Q Okay. I mean, you -- you commercially launched
10 that system; right? 11:06:47

11 A That's correct.

12 Q Okay. And were you hoping to generate revenues
13 with that system?

14 A Yes. That was the intention, to generate
15 revenue. 11:06:58

16 Q And did you generate revenues with that system?

17 A No.

18 Q Do you know why not?

19 A Well, one reason, we pulled it down.

20 Q Right, but during the -- 11:07:06

21 A Turned it off.

22 Q But during the time that it was commercially
23 available, do you understand why it -- the system did
24 not generate revenues?

25 A There could be many reasons. 11:07:19

1 Q Such as?

2 A Consumer preference.

3 Q Can you explain what you mean by that?

4 A Maybe they didn't like the songs.

5 Q Any other reason? 11:07:33

6 A There could be.

7 Q How many songs did you have available on
8 Version 1 of your system?

9 A I don't recall exactly, but we had rights to
10 one album. 11:07:52

11 Q Okay. And that's, what, about -- usually in
12 the neighborhood of 10 songs or so?

13 MR. DiBOISE: Objection.

14 THE WITNESS: I don't -- I don't know how many
15 songs was on that album. 11:08:06

16 BY MS. FUKUDA:

17 Q Did you ever ask or get any feedback from users
18 or potential customers of that system regarding your
19 Version 1 system?

20 A I do not believe we had feedback that we asked
21 for. 11:08:24

22 Q Did you consider your Version 1 system to be
23 commercially successful?

24 A I believed it to be commercially successful in
25 the extent that it was the first stood up and offered 11:08:40

1 music for sale.

2 Q Okay. But you didn't generate any revenues?

3 A No.

4 Q Why did you ultimately shut down your Version 1
5 system?

11:08:55

6 A Business reasons.

7 Q What were those business reasons?

8 A We were going to go back to the major record
9 labels and try to get major record label content.

10 Q Why was it desirable to go back to the major
11 record labels?

11:09:09

12 A To get more content.

13 Q Did you believe that the lack of content on
14 your Version 1 system prevented it from generating
15 revenues?

11:09:23

16 MR. DiBOISE: Objection.

17 THE WITNESS: We only had one album, so I would
18 believe that just having one album isn't going to be
19 able to make a lot of money.

20 BY MS. FUKUDA:

11:09:35

21 Q And is it correct that that one song that was
22 sold on your 1995 Version 1 of your system -- that it
23 took more than a day to download?

24 A That's possible.

25 Q Did you have any understanding as to how long

11:09:58

1 it took one of the songs to be downloaded in your 1995
2 Version 1 system?

3 MR. DiBOISE: Asked and answered.

4 THE WITNESS: That's dependent on the other
5 end.

11:10:16

6 BY MS. FUKUDA:

7 Q But -- but using typical computer technology
8 that existed in 1995 -- you know, you built the system;
9 right?

10 MR. DiBOISE: Object --

11:10:22

11 BY MS. FUKUDA:

12 Q How long did you think it would take to
13 download one of those songs using your Version 1 system?

14 MR. DiBOISE: Object --

15 BY MS. FUKUDA:

11:10:29

16 Q -- in 1995?

17 MR. DiBOISE: Objection.

18 THE WITNESS: It depends, if it's someone on
19 dial-up or someone at a university, so there is no one
20 answer to your question.

11:10:37

21 BY MS. FUKUDA:

22 Q Okay. How long would it take through dial-up?

23 A A long time.

24 Q How long?

25 A Are you asking me to do the math?

11:10:47

1 Q Just approximately.

2 A I can't recall.

3 Q Okay. Then what about somebody at a
4 university?

5 A That would be dependent on their bandwidth.

11:11:00

6 Q In 1995 technology, what would the range of
7 download time be?

8 MR. DiBOISE: Objection; asked and answered.

9 THE WITNESS: I would have to calculate that.

10 BY MS. FUKUDA:

11:11:16

11 Q Okay. Would it surprise you to learn that it
12 would have taken more than a day to download one of your
13 songs in your -- from the 1995 commercial system?

14 A No, it wouldn't surprise --

15 MR. DiBOISE: Objection -- hold on.

11:11:26

16 THE WITNESS: Okay.

17 MR. DiBOISE: Objection; asked and answered.

18 THE WITNESS: No, it wouldn't surprise me.

19 BY MS. FUKUDA:

20 Q What happened to the hardware and the software
21 that was used for your Version 1 system?

11:11:52

22 MR. DiBOISE: Objection; asked and answered.

23 THE WITNESS: Over the years, it was discarded.

24 BY MS. FUKUDA:

25 Q Do you know when it was discarded?

11:12:07

1 MR. DiBOISE: Asked and answered.

2 THE WITNESS: I don't recall.

3 BY MS. FUKUDA:

4 Q When you -- you said you had shut down your
5 Version 1 system.

11:12:15

6 Do you recall when that was shut down?

7 A I believe I answered that. It was a few months
8 after it was -- it was launched.

9 Q Was it still in 1995?

10 A I believe it might have been.

11:12:25

11 Q Okay. And did you retain the hardware and
12 software used for Version 1 at that time in 1995?

13 A Yes, I believe so.

14 Q And you said that that was discarded at some
15 point in time.

11:12:44

16 Can you recall when it was discarded?

17 A No, I cannot.

18 Q Okay. Can you estimate whether it was close to
19 1995, or it was several years later?

20 A It was most likely several years later.

11:12:55

21 Q Do you know why that -- why the hardware and
22 software was discarded?

23 A Didn't work anymore.

24 Q Okay. Did you also have accounting software
25 associated with Version 1 of the commercial system?

11:13:15

1 A Can you --

2 MR. DiBOISE: Objection.

3 Go ahead.

4 THE WITNESS: Can you describe what you mean by
5 "accounting software"?

11:13:23

6 MS. FUKUDA: Software that's used to keep track
7 of the sales and revenues collected and so forth.

8 THE WITNESS: There was a listing of the
9 transaction.

10 BY MS. FUKUDA:

11:13:34

11 Q Okay. And was that also discarded?

12 A I don't recall what happened to that.

13 Q Do you know where any of this hardware and
14 software associated with Version 1 is today?

15 A No.

11:13:48

16 Q In your 1995 Version 1 system, did that system
17 have the ability to electronically code the songs to
18 prevent unauthorized reproduction?

19 MR. DiBOISE: Asked and answered.

20 THE WITNESS: No, it did not.

11:14:25

21 BY MS. FUKUDA:

22 Q Why not?

23 A It didn't.

24 Q Is one aspect of your invention the element of
25 electronically coding these songs to prevent

11:14:39

1 unauthorized reproduction?

2 A That is one aspect.

3 Q Why did you not build that functionality into
4 Version 1?

5 A It was not available, at least I don't recall 11:14:49
6 it being available.

7 Q Did you look into the availability of such a
8 functionality at the time?

9 A I believe I did.

10 Q Do you recall what you did to look for the 11:15:25
11 availability of adding such a functionality into your
12 Version 1 system?

13 A I do not recall.

14 Q Switching to Version 2, and I'm going to
15 describe that as in -- well, let me preface it with this 11:15:46
16 question: Is it true that SightSound then built, in
17 1998, a second commercial system that practiced your
18 invention?

19 A We built a second system around that time
20 frame. 11:16:03

21 Q Okay. And I'm going to describe that as
22 Version 2, just to keep it separate. Okay?

23 Did you reuse any of the hardware or software
24 from Version 1 to build Version 2?

25 A I do not recall using the old hardware or 11:16:19

1 software.

2 Q And is it true that Version 2 only offered
3 music for sale?

4 A That is my recollection.

5 Q How long was Version 2 commercially available? 11:16:38

6 A I believe about a year. But, again, I'm
7 just -- that's -- that's the best recollection I have.

8 Q How was Version 2 different from Version 1?

9 A In what way?

10 Q In functionality. 11:17:08

11 A In functionality, pretty much the same, other
12 than I believe it did offer digital rights management as
13 an addition.

14 Q Can you please describe in more detail what you
15 mean by "digital rights management." 11:17:39

16 A The ability to protect the content.

17 Q Protect content from what?

18 A Duplication.

19 Q And what did you use in your 1998 Version 2
20 system for that capability? 11:18:03

21 A AT&T's A2B music.

22 Q By "AT&T's A2B music," are you referring to
23 software?

24 A Yes.

25 Q Was that software specially designed by AT&T 11:18:30

1 for use in your system?

2 MR. DiBOISE: Objection.

3 THE WITNESS: For us?

4 MS. FUKUDA: Yes, for SightSound.

5 THE WITNESS: No, it was not specially designed 11:18:43
6 just for us.

7 BY MS. FUKUDA:

8 Q Okay. So in 1998, that was a commercially
9 available software?

10 A What do you mean by "commercially available"? 11:18:57

11 Q Well, why don't I step back a little bit and
12 ask: How did SightSound come to use AT&T's A2B music
13 software for your Version 2 system?

14 A It was through a business dealing with AT&T.

15 Q And did you pay AT&T for the use of their 11:19:16
16 software?

17 A I don't recall.

18 Q So your Version 2 system was commercially
19 available for the sale of songs approximately sometime
20 in 1998 until sometime in 1999? 11:19:41

21 A I believe that's -- those are the right dates.

22 Q And how many songs did you sell through your
23 Version 2?

24 A I don't recall.

25 Q Do you remember generating any revenue from 11:19:52

1 Version 2?

2 A I -- I don't recall that. As far as accounting
3 goes, I don't recall.

4 Q Who at SightSound would have that knowledge?

5 A Most likely Alex LePore.

11:20:12

6 Q And why did you discontinue your Version 2
7 system in 1999?

8 A Because we changed and started using a
9 different system.

10 Q And what was the reason for changing it and
11 start using a different system?

11:20:38

12 A We wanted to also add video.

13 Q Did you reuse any of the hardware and software
14 from Version 2 to add the functionality of video?

15 A I don't believe we reused software. We might
16 have reused hardware.

11:20:58

17 Q What happened to the hardware that was used
18 to -- for Version 2?

19 A Can you tell me what time frame?

20 Q Yeah.

11:21:27

21 When you discontinued operation of your
22 Version 2 system in 1999, what did you do for the
23 hardware for that system?

24 A I'm not sure. We -- either we reused it for
25 something or -- outside of the system, or we reused it

11:21:41

1 for something within the system. I don't recall.

2 Q Okay. And what about the software from your
3 Version 2 system; what happened to it after 1999?

4 A I don't recall.

5 Q Do you still have the software from Version 2? 11:21:57

6 A No.

7 Q Do you remember when -- do you believe that
8 software for Version 2 was discarded?

9 MR. DiBOISE: Objection.

10 THE WITNESS: I'm sorry. Say again? 11:22:06

11 MS. FUKUDA: Yeah.

12 Q Do you believe that software for Version 2 of
13 your system was discarded?

14 MR. DiBOISE: Objection.

15 THE WITNESS: When you say "discarded," are you 11:22:16
16 saying deleted, erased? What are you --

17 MS. FUKUDA: Yes.

18 THE WITNESS: -- what are you saying?

19 BY MS. FUKUDA:

20 Q Thrown out? 11:22:22

21 A Yeah, it was discarded. We didn't reuse it.

22 Q Do you remember when it was discarded?

23 A No, I don't.

24 Q Do you now if it was close to -- you know, in
25 or around 1999, after discontinuing Version 2, or was it 11:22:35

1 several years later?

2 A I don't recall.

3 Q You do not know today where software for
4 Version 2 is; right?

5 A I think I've answered that several times. No, 11:22:49
6 I don't.

7 Q When was the next version of a SightSound
8 system that practiced your invention built?

9 A Roughly in the time frame early 1999, I
10 believe. Could have encompassed late '98, but I -- I 11:23:23
11 can't recall exactly when it was -- when you say that it
12 was built.

13 Q Okay. Were there multi -- I'm sorry. Let me
14 just -- you mentioned that at this next version of your
15 system also offered for sale movies; correct? 11:23:43

16 MR. DiBOISE: Asked and answered.

17 THE WITNESS: The third one?

18 MS. FUKUDA: Yes, the third version.

19 THE WITNESS: Yes, I believe I mentioned that.

20 BY MS. FUKUDA: 11:23:55

21 Q Okay. And were there multiple versions of
22 commercial systems built by SightSound that offered both
23 music and movies for sale?

24 A Yes.

25 Q Okay. How many different versions? 11:24:08

1 A I recall there being three revisions --
2 versions, revisions of that system.

3 Q Did -- did these versions or revisions just
4 reuse the hardware and software from the prior version?
5 I guess what I'm saying is, let's -- let me do it this
6 way: You said that there were three versions that
7 offered both music and videos for sale; right?

11:24:30

8 A I did say that.

9 MR. DiBOISE: Asked and answered.

10 BY MS. FUKUDA:

11:24:40

11 Q So let's call them Version 3.1, 3.2, and 3.3 --
12 okay? -- in chronological order. You said that
13 Version 3.1 was built in, perhaps, early 1999 or late
14 1998.

15 How long did it take to build up Version 3.1?

11:25:00

16 A I don't recall.

17 Q I mean, was it months?

18 A I would imagine months.

19 Q And just to go back a little bit, what about
20 Version 2 that was built in 1998; did that also take
21 months to build or longer?

11:25:17

22 A I don't recall, but definitely in the months.

23 Q Okay. And what about Version 1 in 1995; how
24 long did it take to build that system?

25 A Also measured in months.

11:25:31

1 Q How long was Version 3.1 commercially available
2 for?

3 A I don't --

4 MR. DiBOISE: Objection.

5 Go ahead.

11:26:04

6 THE WITNESS: I don't recall.

7 BY MS. FUKUDA:

8 Q Okay. When was Version 3.2 built?

9 A I don't recall.

10 Q Okay. And what about Version 3.3?

11:26:19

11 A I don't recall.

12 Q When you -- when SightSound changed its system
13 from Version 3.1 to 3.2 to 3.3, did it reuse hardware
14 and software from the prior version or did it start from
15 scratch; meaning, you know, was 3.2 built from scratch
16 or did it reuse 3.1's --

11:26:37

17 A Elements.

18 Q -- elements?

19 A Elements were reused, and elements were from
20 scratch.

11:26:50

21 Q And same thing going from Version 3.2 to 3.3,
22 elements were used?

23 A That is my recollection.

24 Q Okay. What were the differences between
25 Version 3.1 and 3.2?

11:26:59

1 differences in functionality between 3.2 and 3.3?

2 A I don't recall the individual feature
3 improvements at this time.

4 Q Were those versions -- did they ever overlap in
5 terms of commercial availability? Meaning that, did you 11:28:45
6 offer Version 3.1 and then launch 3.2 while 3.1 was
7 still available, or was it -- was it that 3.2 completely
8 replaced 3.1?

9 MR. DiBOISE: Asked and answered. It's vague.

10 THE WITNESS: Yeah, I don't think there was a 11:29:01
11 start bright-line test of when one was on and one was
12 off.

13 BY MS. FUKUDA:

14 Q So you were making modifications to the system
15 on a more continuing basis? 11:29:10

16 MR. DiBOISE: Objection; argumentative.

17 THE WITNESS: We were making modifications.
18 I -- those wouldn't be my words, "on a continual basis."

19 MS. FUKUDA: Well, let me ask you to use it in
20 your words, then. 11:29:22

21 Q How -- how do you distinguish between -- how
22 did you come up with the fact that there were three
23 different versions or revisions of your commercial
24 system starting in 1999? How did you delineate them?

25 MR. DiBOISE: Objection. 11:29:41

1 THE WITNESS: I -- I don't understand your
2 question.

3 BY MS. FUKUDA:

4 Q Well, actually, I'm taking you back to your
5 original answer. 11:29:46

6 A Mm-hmm.

7 Q You had mentioned that there were -- starting
8 in 1999, you said that there were three different
9 versions --

10 A Mm-hmm. 11:29:51

11 Q -- or revisions of your -- of SightSound's
12 commercial system?

13 A Yes.

14 Q Okay. How did you distinguish, you know, such
15 that you can tell this is Version 1, this is Version 2,
16 and this is Version 3? 11:29:58

17 A I don't recall the -- the specific details, but
18 at the time we had -- that's how we referenced them. We
19 had Version 1 -- or, as you put it, 3.1, and then we
20 made improvements, and then we went to the next one, and 11:30:19
21 then we made improvements and went to the next one. I
22 don't recall the specific improvements.

23 Q Okay. So internally at SightSound, they were
24 referred to as Version 1, 2, and 3?

25 A Yes, you can -- I guess you can generally say 11:30:31

1 that.

2 Q Can you tell me how much rev- -- revenue was
3 generated by Version 3.1?

4 A No, I can't.

5 Q Did it generate any revenues? 11:30:44

6 A I -- I don't recall. That's a question you can
7 ask Alex.

8 Q Okay. And would your answers regarding
9 revenues be any different with respect to 3.2 and 3.3?

10 A That I don't recall? 11:31:01

11 Q Right.

12 A Yes.

13 Q Sorry. That was vague. Let me ask it again.

14 Do you know whether 3.2 -- Version 3.2 had
15 generated any revenues? 11:31:14

16 MR. DiBOISE: Asked and answered.

17 THE WITNESS: I don't recall.

18 BY MS. FUKUDA:

19 Q Okay. And do you know whether Version 3.3 had
20 generated any revenues? 11:31:21

21 A I don't recall.

22 Q What happened to the hardware associated with
23 any of the versions, 3.1, 3.2, and 3.3?

24 A Eventually it was sold off.

25 Q Do you know when? 11:31:40

1 A No, I don't.

2 Q Do -- do you know if it was -- well, let me --
3 let me try it this way: When did all versions of
4 SightSound's commercial systems cease operation?

5 A I don't recall the exact date, but it was in 11:32:03
6 the early 2000s.

7 Q Okay. And was the hardware and software for
8 those versions sold off after SightSound had ceased
9 operation for these commercial systems?

10 MR. DiBOISE: Objection. 11:32:30

11 THE WITNESS: Let me see your question again?
12 So are you asking if the hardware and software was sold
13 off after we shut down the system?

14 MS. FUKUDA: Yes, shut down all -- all systems.

15 THE WITNESS: Shut down all the systems. 11:32:48

16 MS. FUKUDA: Mm-hmm.

17 THE WITNESS: So your question is did we sell
18 the hardware -- the -- the remaining hardware after we
19 shut it down?

20 MS. FUKUDA: Yes. 11:32:59

21 THE WITNESS: Yes.

22 BY MS. FUKUDA:

23 Q Okay. And what about the software; was -- was
24 the software also sold off?

25 A No. It was erased. 11:33:04

1 Q Was the -- when was the software erased?

2 A Before the hardware was sold.

3 Q And the erasure of the software and sell-off of
4 the hardware, that all happened in the early 2000s after
5 SightSound ceased commercial operations?

11:33:33

6 A I believe it was sold off after we shut down
7 the system.

8 Q Would it be consistent with your memory if I
9 told you that SightSound's commercial operations
10 ceased -- would it be consistent with your memory if I
11 told you that SightSound's commercial systems went
12 offline during 2002?

11:34:49

13 A I wouldn't be surprised.

14 Q What did the company do after it ceased
15 commercial operations?

11:35:05

16 A After it shut down the system?

17 Q And -- and shut down the system?

18 A Yeah, and --

19 MR. DiBOISE: Objection; compound.

20 THE WITNESS: What did we do after we shut down
21 the system?

11:35:17

22 MS. FUKUDA: Yes.

23 THE WITNESS: We -- we laid off employees.

24 BY MS. FUKUDA:

25 Q Well, what did SightSound do as a business

11:35:28

1 after it no longer offered commercial services?

2 A Do you mean as far as selling movies and music
3 or --

4 Q Yes.

5 A We did not sell movies and music after we shut 11:35:42
6 down the last system.

7 Q What did SightSound do as a business instead?

8 A Well, we were in the business to sell movies
9 and music, so we stopped selling movies and music, so
10 I'm not sure I understand what you mean by what did we 11:36:01
11 do for a business?

12 Q Well, did -- did SightSound, the entity, still
13 exist?

14 A It still exists today.

15 Q Okay. And what is the business of the 11:36:09
16 SightSound entities after it ceased commercial
17 operations?

18 A I'm not sure what you are asking. What's our
19 business?

20 Q Yeah. 11:36:20

21 Why did the SightSound entity still exist after
22 it went offline with its commercial systems?

23 A Because we still have assets that have value.

24 Q What is SightSound doing with those assets?

25 A We are protecting them. I'm here today. 11:36:35

1 That's what we are doing with them.

2 Q Is SightSound doing anything else in terms of
3 a, you know, commercial operation or business?

4 A No. I think I answered that, no.

5 Q Was it true that, over the years, SightSound
6 had pitched to companies and offered SightSound's
7 consulting services to help companies build their own
8 media download services?

11:37:14

9 MR. DiBOISE: Compound.

10 THE WITNESS: At one point we were trying to do
11 that.

11:37:31

12 BY MS. FUKUDA:

13 Q Do you remember when?

14 A After we shut down the system.

15 Q And is it accurate to say that you have pitched
16 to companies for that purpose that included Warner,
17 Universal, Spiral, and Star?

11:37:40

18 A During what time frame?

19 Q At any time frame.

20 A At any time frame? We did talk to those
21 companies about the system, but I -- I can't recall if
22 we did about consulting, if that was your question.

11:37:58

23 Q I see.

24 A Is that --

25 Q Yeah, I was referring to, you know, offering

11:38:15

1 BY MS. FUKUDA:

2 Q And did SightSound retain all of those
3 documents?

4 A I don't know if we retained every document.

5 Q Okay. It retains -- did SightSound turn over 11:40:00
6 all of those documents to its counsel in connection with
7 the various litigations?

8 A Yes.

9 Q Are you aware of any documents that were
10 generated in 1995 to 2002 regarding SightSound's 11:40:22
11 commercial systems that were no longer available to turn
12 over to counsel?

13 MR. DiBOISE: Objection --

14 THE WITNESS: In- --

15 MR. DiBOISE: -- calls for speculation. 11:40:35
16 Individual.

17 THE WITNESS: As an individual? I don't
18 recall.

19 BY MS. FUKUDA:

20 Q The -- the five versions of the -- SightSound's 11:41:28
21 commercial systems that were -- that we have been
22 discussing, did each of them practice your invention
23 that's claimed in the patents-in-suit?

24 MR. DiBOISE: Calls for a legal conclusion.

25 THE WITNESS: From a layman's standpoint, it 11:41:48

1 did practice the invention.

2 BY MS. FUKUDA:

3 Q Okay. Now, you do understand that there are
4 multiple patent claims that are found in each of your
5 patents in this case?

11:42:01

6 A I understand there are multiple claims.

7 Q Do you have any understanding whether each of
8 your five commercial systems have practiced every one of
9 those claims?

10 MR. DiBOISE: Objection; calls for a legal
11 conclu- -- conclusion.

11:42:12

12 THE WITNESS: I have never done any kind of
13 analysis on a one-by-one basis. No, I have not.

14 BY MS. FUKUDA:

15 Q Are you aware -- other than -- I know we had
16 talked about earlier the -- the element relating to the
17 electronically coding to prevent unauthorized
18 reproduction, and I understand that that particular
19 element was not present in Version 1 of SightSound's
20 commercial system; right?

11:42:31

11:42:48

21 MR. DiBOISE: Asked and answered.

22 THE WITNESS: I did answer that.

23 BY MS. FUKUDA:

24 Q Okay. And -- and your answer was yes; correct?

25 MR. DiBOISE: Hold on.

11:42:55

1 THE WITNESS: So -- so what is your -- can you
2 rephrase the question?

3 MS. FUKUDA: Yeah.

4 Q You remember testifying that the
5 electronically -- the functionality of electronically 11:43:10
6 coding to prevent unauthorized copying was not a feature
7 in commercial system Version 1?

8 MR. DiBOISE: Objection.

9 THE WITNESS: That is correct.

10 BY MS. FUKUDA: 11:43:21

11 Q Okay. Other than that functionality, are you
12 aware of any element that was in your patent claims that
13 was not practiced by any of the commercial versions of
14 SightSound systems?

15 MR. DiBOISE: Objection; compound, calls for a 11:43:37
16 legal conclusion.

17 THE WITNESS: I can't recall.

18 BY MS. FUKUDA:

19 Q Did you ever do that analysis?

20 A I do not recall ever doing that analysis. I 11:43:44
21 think I mentioned that already.

22 Q Other than the -- okay. Let me rephrase.

23 Since the filing of your original application
24 in June of 1998, have you been aware of any commercial
25 systems out there, you know, by anybody, that offered 11:44:39

1 the electronic sale of digital audio or digital video
2 signals over telecommunications lines that did not
3 practice your inventions?

4 MR. DiBOISE: Objection; form. I think you
5 misspoke. 11:45:02

6 MS. FUKUDA: Okay. Let me try to rephrase
7 that.

8 Q Are you aware of any commercial systems, with
9 the exception of SightSound's commercial systems, that
10 existed after June of 1998 -- oh, you are right. That's 11:45:40
11 the miss- -- that existed after June of 1988 that
12 offered the electronic sale of digital audio or digital
13 video signals for transmission over telecommunications
14 lines?

15 A And is this as corporate or individual? 11:46:01

16 MR. DiBOISE: Corporate.

17 MS. FUKUDA: It's as corporate and individual.

18 THE WITNESS: Yes.

19 BY MS. FUKUDA:

20 Q What -- what systems are you aware of? 11:46:42

21 A This is a very broad definition of what you say
22 digital video signals for transmission over
23 telecommunications lines, Apple would be one.

24 Q Okay. Well, all right. I think I left out the
25 clause at the end from my prior question, which is, are 11:47:07

1 you aware of a system -- all right. Let me try to
2 rephrase that.

3 Other than SightSound's sys- -- well, let me
4 get this straight in my own head.

5 Okay. Are you aware of any commercial system
6 out there since June of 1998 that offered for electronic
7 sale and transmission music and video over
8 telecommunications lines --

11:47:35

9 MR. DiBOISE: Objection; form.

10 BY MS. FUKUDA:

11:47:55

11 Q -- that -- that did not practice your
12 invention?

13 MR. DiBOISE: Objection; form --

14 THE WITNESS: So --

15 MR. DiBOISE: -- may call for a legal
16 conclusion.

11:48:01

17 You can answer.

18 THE WITNESS: Are you saying from June of 1998?

19 MS. FUKUDA: Yes, onward. Oh, did I do that
20 again? Sorry. Okay. Let me -- I can't get the date
21 right here.

11:48:11

22 Q Since June of 1988, are you aware of any
23 commercial systems that offers for electronic sale music
24 or videos that are transmitted over telecommunications
25 lines that do not practice your invention?

11:48:34

1 A You mean to include digital when you say
2 signals?

3 MS. FUKUDA: Yeah, digital.

4 THE WITNESS: Okay.

5 MR. DiBOISE: Objection; form, calls for a
6 legal conclusion.

11:48:46

7 And you are answering in your personal
8 capacity.

9 THE WITNESS: And it still says June of 1998.

10 MS. FUKUDA: I meant to say June -- I can't get
11 that --

11:48:54

12 MR. DiBOISE: You can assume '88.

13 MS. FUKUDA: Yeah, let -- I meant to say 1988.

14 THE WITNESS: I'm going to have to read the
15 question.

11:49:03

16 MS. FUKUDA: Sure.

17 THE WITNESS: Okay. So if I understand your
18 question, you are asking, since June of 1988, if I'm
19 aware of any systems that -- that sell movies and music
20 like our patent but don't violate our patent.

11:50:18

21 MS. FUKUDA: Well, not the like your patent
22 part. I'm just talking about anybody, any system out
23 there that electronically sold movies or music and
24 transmits them electronically that does not practice
25 your invention.

11:50:39

1 MR. DiBOISE: Hold on.

2 THE WITNESS: Yeah, this is confusing, because
3 the way I'm understanding --

4 MR. DiBOISE: Yeah, why don't you start over.

5 THE WITNESS: Yeah, the way I'm -- yeah. 11:50:47

6 MS. FUKUDA: Okay. Let me try it one more
7 time.

8 Q Is there -- is there anybody out there who's
9 offering for sale, for electronic sale, songs and movies
10 that are electronically transmitted that you believe 11:50:58
11 does not practice your invention?

12 MR. DiBOISE: You are including digital in that
13 question?

14 MS. FUKUDA: Well, no, not right now.

15 MR. DiBOISE: Okay. Objection; calls for a 11:51:24
16 legal conclusion.

17 You can testify in your individual capacity.

18 THE WITNESS: The way you worded -- worded
19 this, that could be NBC, because that's very broad.

20 BY MS. FUKUDA: 11:51:47

21 Q When you say "NBC," are you referring to
22 broadcasting?

23 A Mm-hmm.

24 Q Okay. Excluding broadcasting, are you aware of
25 any other systems that you believe does not practice 11:52:09

1 your invention?

2 MR. DiBOISE: Calls for a legal conclusion.

3 Are you done?

4 THE WITNESS: Not yet.

5 Now, from a layman's standpoint, Netflix.

11:52:32

6 BY MS. FUKUDA:

7 Q You are referring to the -- the current Netflix
8 system where you can --

9 A I'm referring to Netflix.

10 Q Well, you are not talking about the Netflix one
11 where they mail --

11:52:43

12 A Mail you a CD?

13 Q -- you the DVD or the --

14 A No.

15 Q Are you referring to that service, or are you
16 talking about the Netflix streaming business?

11:52:49

17 A Netflix streaming business.

18 Q Okay. You believe that that does not practice
19 your invention?

20 A Yes. I just said that.

11:52:58

21 Q Anybody else?

22 A Off the top of my head, I can't think of
23 anything right now.

24 Q Why do you believe that Netflix streaming
25 business is not covered by your invention?

11:53:43

1 MR. DiBOISE: Objection; calls for a legal
2 conclusion.

3 You can answer in your personal capacity.

4 THE WITNESS: Personal, not corporate?

5 MR. DiBOISE: Correct. 11:53:56

6 THE WITNESS: They are really a subscription
7 service selling time.

8 BY MS. FUKUDA:

9 Q What do you mean by "subscription service
10 selling time"? 11:54:22

11 A Well, I don't know how to make that even better
12 of -- of an answer.

13 Q Well, what do you mean by "selling time"?

14 A Well, you pay for a monthly subscription to
15 watch the movies on their service, and if you stop 11:54:46
16 paying on that monthly timetable, you don't get to watch
17 the movies from their service.

18 Q And that type of service is not covered by your
19 invention?

20 A That's correct. 11:55:01

21 Q Let me circle back briefly to when you were
22 preparing your very first application, the June 1988
23 application submitted to the Patent Office.

24 When did you start working on that application?

25 A I don't recall the exact time. 11:56:00

1 Q Do you remember for how long you worked on that
2 application before it was submitted to the Patent
3 Office?

4 A Most likely several months, but I don't recall
5 specifically.

11:56:17

6 Q Was that several months of continuous work on
7 the application, or did you, you know, work for a couple
8 of days here and there throughout several months?

9 A You mean back in the 1988 time frame?

10 Q Yes.

11:56:37

11 A I don't recall.

12 Q Did you -- so you believe that the preparation
13 of your application was done in 1988?

14 A Is this as individual or corporate?

15 Q I believe this is both.

11:56:51

16 A Both?

17 Yes, preparation was done including 1990 --
18 1988, but it might have been into 1987.

19 Q Okay.

20 A I don't recall, so I'm not going to state
21 emphatically that it was done in 1988.

11:57:07

22 Q Okay. If it went into 1997, would it just be
23 the late part of 1990 -- I did it again.

24 If it went into 1987, would it be the latter
25 part of 1987?

11:57:28

1 A I don't recall.

2 Q Did you work continuously on your application
3 until it was submitted to the Patent Office?

4 MR. DiBOISE: Asked and answered.

5 THE WITNESS: Yeah, I think -- I think I
6 answered that as I don't recall.

11:57:46

7 BY MS. FUKUDA:

8 Q And do you remember for months during 1987 or
9 1988 that you were just working every day on your patent
10 application?

11:57:57

11 A I don't recall.

12 Q At the time of filing of your 1988 application,
13 did you have any understanding as to which type of
14 telephone lines would work best with your invention?

15 A I don't believe I made any kind of
16 distinguishing thought.

11:59:44

17 Q Did you -- when -- when you conceived of your
18 invention and then eventually, you know, filed an
19 application on it, did you think that -- for example,
20 that some lines, like cable lines, would work better for
21 your invention than, you know, for example, traditional
22 telephone lines, in your words?

12:00:05

23 MR. DiBOISE: Objection; lacks foundation.

24 THE WITNESS: Okay. So are you taking about in
25 1986, '87, '88 cable TV lines?

12:00:21

1 MS. FUKUDA: Yeah, any -- any kind of -- you
2 know, like -- like you had said --

3 THE WITNESS: Because I don't recall --

4 MS. FUKUDA: -- you understood telephone lines
5 to be broad; right?

6 THE WITNESS: Yeah.

7 BY MS. FUKUDA:

8 Q Did you consider any specific type of lines to
9 be better for your invention than others?

10 A I don't believe I thought of it as being
11 better. I just was inclusive on all communication
12 lines, links, whatever you want to call them,
13 telecommunication.

12:00:44

14 Q Did you understand, in the 1986-to-1988 time
15 period, that certain types of line would have faster
16 transmission speed than other lines?

12:00:59

17 A Yes.

18 Q And did you believe that the lines that had
19 faster transmission speed would be better for
20 implementing your invention?

12:01:12

21 MR. DiBOISE: Objection.

22 THE WITNESS: I wouldn't characterize it as
23 better.

24 BY MS. FUKUDA:

25 Q Why not?

12:01:19

1 You can give your personal opinion.

2 MS. FUKUDA: I disagree with that.

3 Q But you can answer.

4 MR. DiBOISE: Well, it's subject to our notice
5 in which we objected to all the topics that would
6 require expert testimony --

12:02:22

7 MS. FUKUDA: Again, you know --

8 MR. DiBOISE: -- and/or legal conclusion, so
9 that's the distinction.

10 MS. FUKUDA: You can -- you can object. I'm
11 not agreeing with any of your objections, but we can
12 sort through that. You know, I'll just ask the witness
13 to testify to the best of his ability.

12:02:33

14 THE WITNESS: Can you repeat the question.

15 BY MS. FUKUDA:

12:02:43

16 Q So in the 1986-to-1988 time period, did you
17 believe that fiber lines would be a better
18 implementation of your invention than twisted pair lines
19 into the home?

20 MR. DiBOISE: Objection.

12:03:02

21 THE WITNESS: Again, I -- I testified that I
22 did not think of it that way. I did not consider it.
23 I -- it just didn't come up.

24 BY MS. FUKUDA:

25 Q Okay. So, you know, as you were thinking about

12:03:23

1 your invention, you were not thinking about the details
2 of how to implement your system?

3 MR. DiBOISE: Objection; argumentative,
4 misstates prior testimony.

5 THE WITNESS: I didn't say that.

12:03:33

6 BY MS. FUKUDA:

7 Q Did you try to come up with a way that would
8 best implement your invention?

9 A Yes, I did.

10 Q Okay. And did you believe that fiberoptic
11 lines would be faster and, therefore, better for use to
12 implement your invention than the twisted pair telephone
13 lines into the home?

12:03:39

14 MR. DiBOISE: Objection; calls for expert
15 testimony.

12:03:55

16 You can give your opinion.

17 THE WITNESS: I believe coming up with a way
18 that would best implement my invention is in the
19 specification?

20 BY MS. FUKUDA:

12:04:10

21 Q I understand, but I'm asking you whether you
22 believed at that time that fiber lines would be better
23 for this invention than telephone lines into the home?

24 A Again --

25 MR. DiBOISE: Objection; asked and answered.

12:04:21

1 THE WITNESS: Again, I'm not saying better, I'm
2 saying faster.

3 BY MS. FUKUDA:

4 Q Is faster transmission a better implementation
5 of your invention? 12:04:32

6 MR. DiBOISE: Objection; asked and answered,
7 calls for expert testimony.

8 THE WITNESS: Again, I'm sticking with faster.

9 BY MS. FUKUDA:

10 Q Okay. Were there any other type of 12:04:46
11 telecommunications that would be faster, in your
12 understanding back in 1988, than the twisted pair
13 telephone lines into the home?

14 A At that time, there were a variety of different
15 types of lines. There would DS1 -- DS3s. There were 12:05:09
16 DS1s. There was T1s, so it's just a combination of a
17 different -- of a variety of different ways that
18 telecommunications was molded into a global system, so I
19 have no idea how you can parse one out over the other.

20 Q Well, I guess my question is simpler than that, 12:05:36
21 which is, you know, in your understanding back in 1988,
22 were there telecommunications lines that you believe
23 would be faster than the twisted pair telephone lines
24 that go into the home?

25 MR. DiBOISE: Asked and answered. 12:06:19

1 THE WITNESS: Okay. When you are talking about
2 this invention, again, I go back to I don't think I
3 would have control from where one -- the -- the service,
4 example, SightSound, controlling the actual
5 telecommunication system that gets from SightSound to
6 the enduser, so having that kind of thought process of,
7 Oh, well, it would be better to have one -- one type of
8 connection that is within the whole telephone system
9 over another, that -- that's entirely irrelevant at that
10 time and -- and today, so I -- I have no idea how to
11 answer your question.

12:06:36

12:07:02

12 MS. FUKUDA: Well, I'm sorry that we keep going
13 around in circles, but that wasn't really the question I
14 asked.

15 Q The question is, in 1988, whether you believed
16 that there were telecommunications lines that were
17 faster for transmission of signals than the twisted pair
18 telephone lines that went into homes?

12:07:32

19 MR. DiBOISE: Asked and answered.

20 THE WITNESS: Well, if you are just talking
21 about was there something faster than twisted pair, yes.
22 BY MS. FUKUDA:

12:07:49

23 Q Okay. And -- and you -- you named fiber lines
24 as one example.

25 A Mm-hmm.

12:07:59

1 Q All I'm asking is: Any other examples?

2 MR. DiBOISE: Asked and answered.

3 THE WITNESS: Satellite, wireless.

4 BY MS. FUKUDA:

5 Q You believe that in 1988 --

12:08:10

6 A That satellite existed --

7 Q -- that satellite --

8 A Yes.

9 Q -- and wireless would be faster transmission of
10 digital signals than twisted pair telephone lines into
11 the home?

12:08:18

12 A You didn't ask that.

13 Q Oh, that -- that was my question, yeah.

14 Other than fiber lines --

15 MR. DiBOISE: Let her just ask her question.

12:08:28

16 THE WITNESS: Yeah.

17 BY MS. FUKUDA:

18 Q Yeah, I'm referring to things that you believed
19 were faster for transmission of signals than twisted
20 pair telephone lines.

12:08:39

21 A That's it? You're -- you're just asking what
22 is faster than twisted pair?

23 MR. DiBOISE: In 1988.

24 THE WITNESS: In 1988?

25 MS. FUKUDA: Yeah, I mean, I'm happy to give

12:08:51

1 you the entire question. You know, I'm just trying
2 to --

3 THE WITNESS: Okay.

4 MS. FUKUDA: Okay. So --

5 THE WITNESS: Please do.

12:08:53

6 BY MS. FUKUDA:

7 Q So in 1988 when you filed application, did you
8 believe that there were telecommunications lines that
9 were faster for the transmission of digital signals than
10 twisted pair telephone lines?

12:09:09

11 A Yes.

12 Q Okay. And one example you gave of a faster
13 line is the fiber line; correct?

14 A Yes.

15 Q Are there any other examples of faster lines?

12:09:22

16 A Satellite.

17 Q Any other example?

18 A T1.

19 Q Okay. Did that exist in 1988?

20 A I believe it did.

12:09:35

21 Q Okay. Any other example?

22 A I'm not sure about DS1 or DS3, but those were
23 faster.

24 Q Okay. Anything else?

25 A I'm not sure if DSL existed at that time, but

12:09:45

1 it was faster.

2 Q Okay. And anything else?

3 A Radio.

4 Q That was faster than twisted pair telephone
5 lines?

12:10:03

6 A Microwave.

7 It can be.

8 Q Can you think of anything else?

9 A Not off the top of my head.

10 Q Okay. At your -- at the time of your filing in
11 1988, did you conceive of how to configure your
12 invention to prevent unauthorized electronic copying of
13 digital audio music?

12:10:14

14 A Oh, I don't -- I don't understand the question.
15 Did I conceive of how to configure?

12:11:19

16 Q Yeah.

17 How to configure your in- -- invention to
18 prevent unauthorized electronic copying of digital audio
19 music?

20 MR. DiBOISE: It's vague.

12:11:27

21 THE WITNESS: Yeah. Now, is this as corporate
22 or individual?

23 MS. FUKUDA: This would be both.

24 MR. DiBOISE: Both.

25 THE WITNESS: Okay. Yeah, I -- I think it's in

12:11:35

1 the document. Everything I did was right here.

2 MS. FUKUDA: Okay.

3 MR. DiBOISE: Referring to exhibit what?

4 THE WITNESS: Oh, I apologize. 70, 69, 68.

5 BY MS. FUKUDA:

12:11:55

6 Q Okay. I'm going to refer you back to -- where
7 is the file history -- the '573 file history exhibit.
8 Here we go.

9 I'm going to refer you back to Exhibit 115, and
10 if you could go back to your June 13th, 1988 application
11 again. Right there, yeah, right on that page.

12:12:38

12 A Mm-hmm.

13 Q Okay. And I'm going to refer you to -- if you
14 could take a look at page 2 of 6 in that application.

15 A Mm-hmm.

12:13:05

16 Q Here we go. Take a look at -- you see that
17 subsection that starts, at the very top, "Copyright
18 Protection"?

19 A Mm-hmm.

20 Q Okay. Now --

12:13:19

21 MR. DiBOISE: Say "yes" instead of --

22 THE WITNESS: Yes. I'm sorry.

23 BY MS. FUKUDA:

24 Q Okay. And you will see that -- you know,
25 there's a -- if you go down one, two, three -- four.

12:13:25

1 Okay? If you take a look at the fourth paragraph that
2 begins with: "Still another objective?"

3 A Mm-hmm. Yes.

4 Q It says, "Still another objective of this
5 invention is to offer a new and improved methodology
6 system which can prevent unauthorized electronic copying
7 of quality digital audio music."

12:13:42

8 Do you see that?

9 A In the fourth paragraph?

10 Q I just read that paragraph that starts with
11 "Still another objective."

12:14:03

12 A Oh, that's the fifth up. I'm sorry. It's the
13 fifth paragraph.

14 Q Two, three, four -- you are correct. That's
15 the fifth paragraph.

12:14:13

16 A Yes.

17 Q Is there anywhere in this application -- well,
18 let me -- let me put it this way: Did you -- when you
19 filed this application, did you -- did you know how to
20 include the functionality of preventing unauthorized
21 electronic copying into the invention?

12:14:44

22 MR. DiBOISE: Objection; calls for speculation.

23 THE WITNESS: Did I know how to include?

24 MS. FUKUDA: Yeah.

25 Q How to implement the functionality of

12:14:58

1 preventing unauthorized electric -- electronic copying?

2 A Well, the -- the approach to that was to use
3 that as an element that had already been invented,
4 encryption.

5 Q Okay. And -- and where do you refer to that? 12:15:18

6 A In the last paragraph of that page.

7 Q Can you point me to the exact sentence you are
8 referring to?

9 A The paragraph: "This invention can be
10 configured." 12:15:55

11 Q Okay. You are referring to the first
12 paragraph -- first sentence of that last paragraph on
13 page 2 of 6?

14 A I'm -- I'm referring to the whole paragraph.

15 Q Where in that paragraph do you see reference as 12:16:18
16 to how your invention can be configured to implement the
17 objective of preventing unauthorized electronic copying?

18 A I'm not sure I understand your question.

19 Q You -- you pointed me to that entire
20 paragraph -- 12:17:00

21 A Mm-hmm.

22 Q -- but, you know, my question is: Where in the
23 paragraph do you describe how to configure your
24 invention to implement the objective of preventing
25 unauthorized electronic copying? 12:17:15

1 MR. DiBOISE: Objection; calls for a legal
2 conclusion, may call for expert testimony.

3 THE WITNESS: Yeah, I mean, I think it's --

4 MR. DiBOISE: Answer from your knowledge, if
5 you can. 12:17:31

6 THE WITNESS: Yeah, to me, it's kind of clear,
7 but I think anything other than layman's view of this --
8 I mean, it's right here.

9 BY MS. FUKUDA:

10 Q How -- how is it configured? 12:17:43

11 MR. DiBOISE: Objection; asked and answered,
12 vague.

13 BY MS. FUKUDA:

14 Q Can you just read it to me.

15 A Yeah. This invention -- 12:17:55

16 Q How is it --

17 A Pardon?

18 Q Sorry. Go ahead.

19 A "This invention can be configured to either
20 accept direct input of Digital Audio Music" -- 12:18:01

21 MR. DiBOISE: Slow down.

22 THE WITNESS: -- "from the digital output of a
23 Compact Disc, such transfer would be performed by the
24 private user, or this invention can be configured to
25 accept Digital Audio Music from a source" -- "source 12:18:13

1 authorized by the copyright holder to sell and
2 distribute the copyrighted materials, thus guaranteeing
3 the protection of the copyrighted materials. Either
4 method of electronically transferring Digital Audio
5 Music by means of this invention is intended to comply
6 with all copyright laws and restrictions and any such
7 transfer is subject to the appropriate authorization by
8 the copyright holder."

12:18:29

9 BY MS. FUKUDA:

10 Q This paragraph doesn't point to any software
11 that could do the configuration to prevent unauthorized
12 copying; is that right?

12:18:44

13 MR. DiBOISE: Objection; calls for legal
14 conclusion, calls for an expert opinion.

15 THE WITNESS: I think I'm -- I pretty much
16 answered, but I do not want to answer like a lawyer.

12:19:05

17 BY MS. FUKUDA:

18 Q No, I'm not asking you -- I'm asking you to
19 answer like an inventor.

20 A Okay.

12:19:16

21 Q Okay. Does this paragraph describe what type
22 of software to be used to implement the objective of
23 preventing unauthorized electronic copying?

24 MR. DiBOISE: Same objections.

25 THE WITNESS: Your question is, does it -- does

12:19:35

1 it describe what type of software? No, I just read it.

2 It does not describe what type of software.

3 BY MS. FUKUDA:

4 Q At the time of filing, were you aware of

5 software that could be used to implement the

6 functionality of preventing unauthorized electronic

7 copying?

12:19:48

8 MR. DiBOISE: Same -- objection; may call for

9 legal conclusion. It does call for expert testimony.

10 If you understand the question, you can answer

12:20:04

11 from your own knowledge.

12 THE WITNESS: From my own knowledge, I was

13 aware of cryptography that existed.

14 BY MS. FUKUDA:

15 Q Okay. What --

12:20:18

16 A From a general standpoint.

17 Q And you believe that that cryptography could be

18 used to -- or could be implemented in your invention?

19 A That's correct.

20 MR. DiBOISE: Same objections.

12:20:29

21 BY MS. FUKUDA:

22 Q Can you be any more specific than cryptography?

23 You know, what -- what specific cryptography were you

24 referring to?

25 MR. DiBOISE: Objection; may call for expert

12:20:36

1 opinion.

2 THE WITNESS: I wasn't being specific.

3 BY MS. FUKUDA:

4 Q Okay. Were you -- were you aware of any
5 specific cryptography software that could be used to
6 implement your invention at the time of filing?

12:20:48

7 MR. DiBOISE: Okay. Hold on a second.

8 You can answer.

9 THE WITNESS: My recollection at the time right
10 now is that I was familiar with or -- or aware of
11 encryption, but I do not recall anything specific.

12:21:16

12 BY MS. FUKUDA:

13 Q And at the time of filing, did you know of any
14 specific software that could be used or could be
15 implemented in your -- to make your invention work at
16 that time?

12:21:34

17 MR. DiBOISE: Objection -- objection; calls for
18 expert testimony, asked and answered.

19 THE WITNESS: Okay. Again, I answered --
20 I'm -- you asked, did you know of any specific software,
21 and I'm saying I do not recall any specific software. I
22 think I answered that.

12:21:46

23 MS. FUKUDA: Now, how are you doing in terms
24 of -- do you want to do a lunch break now and then come
25 back?

12:22:32

1 THE WITNESS: No, I'm fine.

2 MS. FUKUDA: You're okay?

3 MR. DiBOISE: How about you guys?

4 MS. FUKUDA: Okay.

5 MR. DiBOISE: Okay.

6 MS. FUKUDA: Why don't we take our lunch break

7 now and -- did -- let's go off the record.

8 THE VIDEOGRAPHER: Okay. Going off the record,

9 the time is 12:22.

10 (Lunch recess taken.)

12:22:44

11 ---o0o---

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1 AFTERNOON SESSION 1:09 P.M.

2

3 THE VIDEOGRAPHER: We are back on the record.

4 This is the beginning of Volume 1, Videotape No. 3 in
5 the deposition of Arthur Hair.

13:09:09

6 The time is 1:09.

7 BY MS. FUKUDA:

8 Q Mr. Hair, if I could just get you to take a
9 look at -- let me see if I have these. Where are the
10 different exhibits here.

13:09:44

11 Do you have your declarations to the PTO lying
12 around here? Oh, wait.

13 MR. DiBOISE: That's one --

14 MS. FUKUDA: Yeah.

15 MR. DiBOISE: -- there's two.

13:10:03

16 MS. FUKUDA: Yeah. Here we go.

17 Q Referring you back to Exhibits 116 and 117,
18 and, again, in Exhibit 116, it would be page 3.

19 MR. DiBOISE: Third page?

20 MS. FUKUDA: Page 3 of the -- the actual
21 physical labeled document.

13:10:46

22 Q And on page -- in Exhibit 117, it would be
23 page 5 of that document, and my question is going to be
24 the same with respect to both of these declarations.

25 In the phrase "telephone lines 30" and then,

13:11:23

1 open paren, "electrical lines," close paren, what does
2 "electrical lines" mean?

3 A I can't recall the context of what "electrical
4 line" means in the entirety of that paragraph.

5 Q Did you have any understanding at the time
6 about what "electrical lines" meant?

13:11:45

7 A I'm sure I did, because this was prepared with
8 legal counsel, and I'm sure I understood the context,
9 but right now I can't recall what that was.

10 Q Okay. I -- I guess, you know, different
11 question is, you know, what did -- you know, taken out
12 of the context of this paragraph, what did "electrical
13 lines" mean to you at the time of your declaration?

13:12:07

14 MR. DiBOISE: Objection; asked and answered.

15 THE WITNESS: Yeah, like I said, I don't know
16 what it's -- if it's referring to what part of that --
17 that -- that paragraph, that phrase, that sentence of --
18 so I don't recall.

13:12:21

19 BY MS. FUKUDA:

20 Q Do you have any understanding of "electrical
21 lines" as you sit here today?

13:12:36

22 MR. DiBOISE: In the context of this document?

23 THE WITNESS: In the context of the document or
24 outside of the document?

25 MS. FUKUDA: Outside of the document.

13:12:46

1 THE WITNESS: The equipment here is plugged
2 into power lines --

3 MS. FUKUDA: Okay.

4 THE WITNESS: -- electrical lines.

5 BY MS. FUKUDA:

13:12:55

6 Q Okay. And do you understand that electrical
7 lines operates with the flow of electrons?

8 MR. DiBOISE: Objection; may call for a expert
9 opinion.

10 You can answer from your personal knowledge.

13:13:07

11 THE WITNESS: In the context of this or just
12 in -- outside the context of this?

13 MS. FUKUDA: Both. I mean, just electrical
14 lines in general.

15 A Outside of --

13:13:17

16 MR. DiBOISE: Compound.

17 THE WITNESS: -- this context --

18 MR. DiBOISE: I'm just trying to get an
19 objection.

20 Go ahead.

13:13:23

21 THE WITNESS: Okay. Outside of this context,
22 yes, electrical lines do have electrons flowing to them.

23 BY MS. FUKUDA:

24 Q And is electrical lines used differently in any
25 way in the context of this paragraph?

13:13:40

1 MR. DiBOISE: Objection; asked and answered.

2 You can answer again.

3 THE WITNESS: That's what I said. Again, I
4 don't recall what context this was used in that phrase.

5 BY MS. FUKUDA:

13:13:51

6 Q In -- in reviewing this paragraph now, do you
7 see anything in here that tells you that electrical
8 lines are being used in a manner different from the --
9 from your, you know, general understanding of what
10 electrical lines are?

13:14:06

11 MR. DiBOISE: Asked and answered. You just
12 asked him that question.

13 THE WITNESS: Yeah, I -- I gave you my answer.

14 BY MS. FUKUDA:

15 Q Which is?

13:14:14

16 A Which, I don't recall the context of that
17 parenthetical in that phrase.

18 Q Okay. Well, my question is, you know, as you
19 read through this paragraph now, do you see anything in
20 here that indicates to you that "electrical lines" is
21 being used in a manner that's different than your
22 general understanding of "electrical lines"?

13:14:26

23 MR. DiBOISE: Objection; asked and answered.

24 THE WITNESS: Like I said, I don't know how
25 it's being used because it's in a parenthetical.

13:14:39

1 BY MS. FUKUDA:

2 Q Okay. So you just don't know at all about what
3 "electrical lines" means here?

4 A I didn't say that.

5 Q Okay. What --

13:14:50

6 A I said, I don't -- I do not recall the
7 structure of the sentence when it was written. At the
8 time, I'm sure I did, but right now, I do not recall.

9 Q And right now you don't recall what you meant
10 by "electrical lines" as used in this paragraph?

13:15:03

11 A No. I think I said I don't recall why
12 "electrical lines" was used in a parenthetical in that
13 sentence.

14 Q Do you recall what you meant by "electrical
15 lines" as used in this paragraph?

13:15:22

16 MR. DiBOISE: Asked and answered.

17 THE WITNESS: I answered that.

18 BY MS. FUKUDA:

19 Q Actually, your last answer said that, no, you
20 didn't say that, so I am asking you the question. Okay?

13:15:29

21 Do you recall what you meant by "electrical
22 lines" as used in this paragraph in your two
23 declarations?

24 MR. DiBOISE: Asked and answered.

25 THE WITNESS: Like I said, I do not recall why

13:15:45

1 "electrical lines" was put in the parenthetical in that
2 phrase.

3 MS. FUKUDA: Right. My question is different
4 though.

5 Q My question is: What was meant -- you know,
6 what did you mean by "electrical lines," the term
7 itself, the "electrical lines," as used in these two
8 paragraphs?

13:15:54

9 MR. DiBOISE: Objection; asked --

10 THE WITNESS: I think --

13:16:05

11 MR. DiBOISE: Hold on.

12 MS. FUKUDA: I'm not talking -- you know,
13 again, let him finish.

14 MR. DiBOISE: Well, that's the seventh time you
15 have asked the same question.

13:16:14

16 MS. FUKUDA: Not according to the witness.

17 MR. DiBOISE: I think you might count it as 22
18 times, but that's neither here nor there.

19 You can answer if you have an understanding of
20 the question.

13:16:24

21 THE WITNESS: Again, I do not have a
22 recollection of why "electrical lines" was put in a
23 parenthetical --

24 MS. FUKUDA: Yeah -- sorry. Go ahead.

25 THE WITNESS: -- or the meaning of "electrical

13:16:37

1 lines" or why it was there. I do not have a
2 recollection of why that was put there.

3 BY MS. FUKUDA:

4 Q And you have no recollection of the meaning of
5 "electrical lines" as used in this paragraph?

13:16:50

6 MR. DiBOISE: Eighth time, asked and answered.

7 THE WITNESS: Again, I have no recollection of
8 why "electrical lines" was put in a parenthetical --

9 BY MS. FUKUDA:

10 Q I didn't ask you about the parenthetical.

13:17:01

11 A Again, I --

12 MR. DiBOISE: Don't interrupt him.

13 Are you done? Were you done with your answer
14 previous to the interruption?

15 MS. FUKUDA: Well, I think there's --

13:17:11

16 THE WITNESS: No.

17 MS. FUKUDA: -- apparently some

18 misunderstanding between the witness and my question, so
19 I wanted to clarify it for the witness that my
20 question --

13:17:18

21 MR. DiBOISE: Well, you can still wait for him
22 to finish his answer, and you keep asking the same
23 question over and over again, and you are getting the
24 same answer.

25 MS. FUKUDA: Well, I'm not getting an answer to

13:17:22

1 my question, so I'm going to ask --

2 MR. DiBOISE: Well, maybe you might try asking
3 the question a little bit more precisely.

4 MS. FUKUDA: I already did that, Counsel.

5 MR. DiBOISE: Then you have gotten an answer. 13:17:30
6 If you can't get it any other --

7 MS. FUKUDA: Just go ahead and object.

8 MR. DiBOISE: Well, I'll object a few more
9 times, and then I'll just suggest to you to move on.

10 MS. FUKUDA: You can suggest that, but I would 13:17:37
11 like an answer to my question.

12 MR. DiBOISE: What's your question?

13 BY MS. FUKUDA:

14 Q Okay. What does "electrical lines" mean in
15 this paragraph? 13:17:50

16 MR. DiBOISE: Objection; asked and answered.

17 THE WITNESS: Okay. I do not know two things:
18 Why "electrical lines" was put in the parentheses in
19 that phrase or what the meaning of "electrical lines"
20 was intended in that parenthetical at that time in that 13:18:03
21 phrase. I do not have a recollection of that.

22 BY MS. FUKUDA:

23 Q Okay. And whether or not it was put into a
24 parenthetical, do you have any idea what "electrical
25 lines," that phrase, means in this paragraph? 13:18:17

1 MR. DiBOISE: Asked and answered. You just
2 asked that question.

3 THE WITNESS: I do believe I answered that.
4 BY MS. FUKUDA:

5 Q Okay. You keep referring to the idea that it 13:18:26
6 was in a parenthetical, so --

7 A No, I --

8 MR. DiBOISE: Don't. You know --
9 BY MS. FUKUDA:

10 Q So all I wanted to know is: Do you have any 13:18:33
11 understanding about what "electrical lines" means as
12 used in these two paragraphs?

13 MR. DiBOISE: Objection; asked and answered.
14 BY MS. FUKUDA:

15 Q It's either "yes" or "no." 13:18:41

16 MR. DiBOISE: It's asked and answered.

17 THE WITNESS: I -- I do not have a recollection
18 of why this was put in there.

19 BY MS. FUKUDA:

20 Q Do you know -- at that time, did you know what 13:18:53
21 "electrical lines" meant?

22 A I believe I answered that.

23 MR. DiBOISE: You can answer it again.

24 BY MS. FUKUDA:

25 Q I don't recall you answering that question, but 13:19:03

1 at the time of your declarations, did you know what
2 "electrical lines" meant?

3 MR. DiBOISE: Asked and answered.

4 THE WITNESS: Again, before the break, that
5 question was asked, and I did answer it.

13:19:12

6 BY MS. FUKUDA:

7 Q Remind me what your answer was?

8 A Can we go back to it?

9 MR. DiBOISE: You can just answer it.

10 THE WITNESS: Outside of the context of this,
11 if your question is, What are "electrical lines"?

13:19:20

12 BY MS. FUKUDA:

13 Q At the time that you signed these declarations,
14 what did "electrical lines" mean to you?

15 A Within this context or outside of this context?

13:19:29

16 Q At the --

17 A Because, again, I'm telling you that I do not
18 recall why this parenthetical was put in and what the
19 connotation and meaning of "electrical lines" was used
20 in this phrase.

13:19:43

21 Q At the time you signed these declarations, did
22 you have a general understanding of what "electrical
23 lines" meant?

24 A Yes.

25 Q Okay. And is that the same as your general

13:19:53

1 understanding of "electrical lines" today?

2 A Yes.

3 Q Okay. Going back to earlier in today's
4 testimony, when I asked you to describe in your own
5 words what your invention is, do you recall that you
6 described it as the electronic sale of digital video and
7 digital audio download recordings via
8 telecommunications?

13:20:27

9 MR. DiBOISE: Asked and answered. You can --
10 is this a memory test?

13:20:43

11 THE WITNESS: Do I recall? Yes.

12 BY MS. FUKUDA:

13 Q Okay. And remember we had some discussions
14 about what you meant by "download."

15 My question for you is: Do you -- in your
16 understanding, is download a component of your
17 invention?

13:20:58

18 MR. DiBOISE: Asked and answered.

19 THE WITNESS: Yes. Download is a component of
20 the invention.

13:21:12

21 BY MS. FUKUDA:

22 Q If download is a component of your invention,
23 why was that term not used in any of your claims in the
24 three patents?

25 MR. DiBOISE: Objection; calls for legal

13:21:25

1 conclusion.

2 THE WITNESS: Yeah, I would prefer not to talk
3 about the claims as a layman because I'm not a lawyer.

4 BY MS. FUKUDA:

5 Q As an inventor, why was the term "download" not 13:21:37
6 used in any of your patent claims?

7 MR. DiBOISE: Same objection.

8 THE WITNESS: I -- I do not recall. That was
9 done in consultation with my attorney.

10 BY MS. FUKUDA: 13:22:00

11 Q I'm sorry. I didn't understand your answer.

12 What do you mean that you do not recall that
13 was done in consultation with my attorney? I see your
14 answer is, I do not recall. That was done in
15 consultation with your attorney. 13:22:28

16 Is that what you said?

17 A Correct.

18 Q But you believe that the concept of download is
19 embodied in your patent claims?

20 MR. DiBOISE: Objection; calls for a legal 13:22:51
21 conclusion, asked and answered.

22 THE WITNESS: Yeah, I did answer that.

23 BY MS. FUKUDA:

24 Q Would you please answer that question?

25 MR. DiBOISE: Asked and answered, calls for a 13:23:05

1 legal conclusion.

2 THE WITNESS: Yeah, as far as the -- anything
3 that has to do with the patent claims, I would prefer
4 not to answer those questions because that was done in
5 consultation with my patent attorney.

13:23:23

6 BY MS. FUKUDA:

7 Q Okay. Can you answer the question outside of
8 what was done in consultation with your attorneys?

9 A I don't understand.

10 Q Well, you keep saying you prefer not to answer,
11 so, you know, I'm trying to understand what exactly. So
12 if you are saying that you can't answer the question
13 without revealing your consultation with your attorneys
14 or is it something else? I'm trying to understand the
15 basis for your refusal to answer.

13:23:33

13:23:47

16 A I don't believe I'm refusing to answer. I'm
17 saying I don't recall, and I'm saying that was also done
18 in consultation with my attorney.

19 Q Earlier we had also discussed how broadcasting
20 is different from downloading, and one of the things you
21 pointed to was that, in broadcasting, the files are
22 sent, but it's not stored at the user end.

13:24:30

23 Is that a fair characterization of what you
24 said earlier?

25 MR. DiBOISE: Objection; misstates prior

13:24:46

1 testimony.

2 THE WITNESS: At the time of this filing, the
3 analog broadcast was just sent, and it was captured, so
4 I think you are mixing time frames.

5 BY MS. FUKUDA:

13:24:59

6 Q Well, let's -- you know, let's talk about --
7 well, actually, let's talk about both time frames. All
8 right?

9 Do you believe that broadcasting now is
10 captured by your invention?

13:25:15

11 MR. DiBOISE: Sorry. I missed that. Asked and
12 answered.

13 THE WITNESS: If you can go into broadcasting,
14 a clear definition of what you mean by "broadcasting"?

15 BY MS. FUKUDA:

13:25:30

16 Q I'm actually using "broadcasting" because that
17 was your word, so it's your meaning of "broadcasting."

18 A Okay.

19 Q Do you -- currently, when you use the term
20 "broadcasting," does that include digital signals as
21 well?

13:25:38

22 A Okay. My meaning of "broadcasting," of sending
23 out a TV show, as an example, that goes to a TV set?

24 No, that is not included in my patent.

25 Q Okay. Even though it's broadcasting digital

13:25:55

1 signals --

2 A Mm-hmm.

3 Q -- that's still not captured by your patent?

4 A Mm-hmm.

5 MR. DiBOISE: "Yes" or "no"?

13:26:02

6 THE WITNESS: Yes, it is not.

7 BY MS. FUKUDA:

8 Q Okay. What about if there is -- what about the
9 cases where the broadcasting of digital signals is sent
10 out and then the user records it such that it is stored
11 on some device; is that -- and if you do that for
12 electronic sale, is that captured by your invention?

13:26:15

13 MR. DiBOISE: Objection; incomplete

14 hypothetical, calls for expert testimony. The witness
15 is here to testify in his lay capacity.

13:26:32

16 If you have an understanding of the question
17 and you can an answer it from a layman's perspective, go
18 ahead.

19 THE WITNESS: I think the -- the question is
20 incomplete.

13:26:45

21 BY MS. FUKUDA:

22 Q Okay. What else do you need to know?

23 A It's just that the question is -- is way too
24 broad and vague.

25 Q Which part?

13:26:55

1 A Let me see if I can stop it from -- okay. What
2 about if there is -- what about the cases where the
3 broadcasting of digital signals is sent out and then the
4 user records it such that it is stored on some device;
5 is that -- and if you do that for electronic sale, is
6 that captured by your invention? I don't know how to
7 answer that question.

13:27:18

8 Q Right, and I'm asking you: Is there a
9 particular part that you have difficulty with?

10 A The whole thing.

13:27:30

11 Q Okay. Now, you know, I'm trying to build upon
12 the earlier question I asked you and to which you had
13 indicated that in the broadcasting of digital signals,
14 that signal was sent out, and you had said it's not
15 captured; correct?

13:27:46

16 MR. DiBOISE: Misstates prior testimony.

17 THE WITNESS: Yeah.

18 BY MS. FUKUDA:

19 Q You didn't say that?

20 A I don't -- I don't know what I said as far as a
21 while back, but I can tell you that broadcasting of a
22 signal in the traditional view of broadcasting is that
23 it goes straight into a TV set, for example, and is
24 played back and is not intended to be sent out like a
25 download.

13:27:53

13:28:14

1 Q Okay. And that -- that traditional
2 broadcasting of a TV signal, even if it's a digital
3 signal, is not captured by your invention?

4 A Okay. Going -- now are we going back to the
5 invention --

13:28:29

6 Q I'm talking about --

7 A -- in 1988?

8 Q No, no. I'm talking about right now.

9 A Right now?

10 Q Yeah.

13:28:34

11 A Okay. So you are asking if a digital broadcast
12 is covered by my invention? The answer is no, a digital
13 broadcast is not covered by the invention.

14 Q Okay. And digital broadcast for electronic
15 sale is also not covered by your invention --

13:28:46

16 MR. DiBOISE: Objection --

17 BY MS. FUKUDA:

18 Q -- correct?

19 MR. DiBOISE: -- argumentative, calls for an
20 expert opinion, incomplete hypothetical.

13:28:53

21 MS. FUKUDA: Jamie, please, objection to form.
22 Reserve your objections by objecting to form. You don't
23 have to go through the litany. You know you can
24 preserve your rights that way.

25 MR. DiBOISE: No, that's not quite true.

13:29:04

1 MS. FUKUDA: No, that's --

2 MR. DiBOISE: Quite true.

3 MS. FUKUDA: -- that's the standard that you
4 have held when you were taking depositions. Let me just
5 remind you that objection to form. I know you can do
6 it. 13:29:10

7 MR. DiBOISE: Whether I can do it or not is not
8 the issue.

9 MS. FUKUDA: I think you are required to do
10 that. 13:29:17

11 MR. DiBOISE: Are you going to interrupt me
12 every time I speak?

13 MS. FUKUDA: Sometimes, but go ahead.

14 MR. DiBOISE: Are you done?

15 MS. FUKUDA: Go ahead. 13:29:23

16 MR. DiBOISE: I can make an objection to form
17 and suggest to you how to fix the question to avoid the
18 form objection.

19 MS. FUKUDA: Well, I would like you just to
20 object to form. 13:29:32

21 MR. DiBOISE: Sorry. I'm entitled to suggest
22 the answer so we don't waste the court's time dealing
23 with questions that could be fixed at the time of the
24 deposition.

25 MS. FUKUDA: What I contend is that you are 13:29:38

1 suggesting an answer to the witness, so I'm asking you
2 to restrict your objections to just form.

3 MR. DiBOISE: My objections are suggesting an
4 answer to the witness?

5 MS. FUKUDA: I'm --

13:29:46

6 MR. DiBOISE: I don't think so.

7 MS. FUKUDA: -- I'm asking you to confine your
8 objections to form as required.

9 MR. DiBOISE: I'm going to continue as I have.

10 MS. FUKUDA: All right. Do it at your own
11 peril.

13:29:55

12 MR. DiBOISE: I don't have any peril, so --

13 MS. FUKUDA: We can disagree about that. All
14 right?

15 MR. DiBOISE: If you threaten me again, we will
16 terminate the deposition and take it up with the
17 discovery master.

13:30:01

18 MS. FUKUDA: I would be happy to read you a
19 transcript to which you had given me the same
20 instruction, so let's not fight about this. I'm just
21 asking you to please refrain from coaching the witness
22 or getting into all kinds of details in your objections.

13:30:10

23 MR. DiBOISE: So now you are suggesting I'm
24 coaching the witness. I don't think I am. I am making
25 objections to your questions, and I'm per- -- permitted

13:30:23

1 to do that.

2 MS. FUKUDA: Let's get back to the question
3 here.

4 MR. DiBOISE: Do you think you could ask one
5 you haven't asked already?

13:30:35

6 THE WITNESS: I'm sorry?

7 MS. FUKUDA: I'm not -- Counsel, please refrain
8 from these comments. It's not helpful during the
9 deposition. It's my deposition. Let me ask the
10 questions.

13:30:45

11 Q Why do you say that digital broadcasting to a
12 TV set is not practicing your patent?

13 MR. DiBOISE: Objection; calls for expert
14 opinion.

15 THE WITNESS: Because it is a broadcast; it's
16 not a download.

13:31:48

17 BY MS. FUKUDA:

18 Q Okay. And what makes a digital broadcast not a
19 download?

20 A Assuming the digital broadcast is not captured,
21 stored for playback, it's a broadcast.

13:31:59

22 Q Based on that answer, if the recipient at the
23 TV set records the digital broadcast and, thus, it can
24 be played back, is that captured within the scope of
25 your invention?

13:32:31

1 MR. DiBOISE: Objection; calls for expert
2 opinion, may call for a legal conclusion. It's vague
3 and ambiguous.

4 THE WITNESS: So you are saying at the time of
5 the invention? 13:32:41

6 MS. FUKUDA: No, right now.

7 THE WITNESS: Right now.

8 MR. DiBOISE: Repeat the objection.

9 THE WITNESS: Yeah, it -- it -- that is a
10 too-vague question. 13:32:51

11 BY MS. FUKUDA:

12 Q You testified that a digital broadcast is not a
13 download because the digital broadcast is not captured,
14 stored for playback; is that accurate?

15 A Let me go back up to what I actually said. I 13:33:28
16 believe this is -- this was the answer that you are
17 talking about. It says, "I don't -- I don't know what I
18 said as far as a while back, but I can tell you that
19 broadcasting of a signal in the traditional view of
20 broadcasting is that it goes straight to a TV set, for 13:34:38
21 example, and it's played back and is not intended to be
22 sent out like a download.

23 Is that --

24 Q That --

25 A -- what you are referring to? 13:34:47

1 Q Well, and -- and in conjunction later where I
2 say, "What makes a digital broadcast not a download?"
3 and your answer was, "Assuming that digital broadcast is
4 not captured, stored for playback, it's a broadcast."

5 A Okay. So now what's the question? because I
6 think we are going around in circles on this.

13:35:05

7 Q I said, based on that answer, where you've
8 differentiated between a digital broadcast and
9 downloading --

10 A Mm-hmm.

13:35:24

11 Q -- on the basis that in the digital broadcast,
12 it is not captured, stored for playback.

13 A Okay. So are you asking if someone were to
14 record a digital signal --

15 MR. DiBOISE: So I --

13:35:38

16 THE WITNESS: -- and it's a download --

17 MR. DiBOISE: -- you're going to object to my
18 question?

19 So why don't you let her ask the question.

20 MS. FUKUDA: Let the witness finish. Let the
21 witness finish --

13:35:48

22 MR. DiBOISE: No.

23 MS. FUKUDA: -- because he's asking me for a
24 clarification.

25 THE WITNESS: Yes, I am.

13:35:50

1 BY MS. FUKUDA:

2 Q So go ahead.

3 A Can you clarify that?

4 Q So what I'm asking is, if there is a digital
5 broadcast to the user for electronic sale and the user
6 then records that digital signal, is that encompassed
7 within your invention?

13:36:08

8 MR. DiBOISE: Calls for an expert opinion,
9 calls for legal conclusion. It's vague and ambiguous,
10 asked and answered.

13:36:25

11 THE WITNESS: It is vague because there are
12 different ways that you can record that digital signal.

13 BY MS. FUKUDA:

14 Q Okay. And some -- some ways are encompassed by
15 your invention and other ways are not?

13:36:37

16 A That's correct.

17 Q Okay. If the -- if the user records the
18 broadcast digital signals on a -- a DVR, is that within
19 the scope of your invention?

20 MR. DiBOISE: Calls for a legal conclusion, may
21 call for expert testimony.

13:36:59

22 THE WITNESS: I believe if a user records
23 digital signals on a DVR, that is not part of the
24 invention.

25 BY MS. FUKUDA:

13:37:09

1 Q What kind of recording does the user do that --
2 you know, of digital broadcasts that would fall within
3 the scope of your invention?

4 MR. DiBOISE: That calls for -- well, no, you
5 can answer that one.

13:37:26

6 THE WITNESS: I'm reading the question and it
7 doesn't make sense.

8 (Discussion off the stenographic record.)

9 BY MS. FUKUDA:

10 Q What kind of recording -- let -- let me just
11 ask it again.

13:37:59

12 What kind of recording that the user would do
13 of digital broadcasts that would fall within the scope
14 of your invention?

15 A Potentially --

13:38:15

16 MR. DiBOISE: Calls -- same objections as
17 previous: Calls for legal conclusion, may call for
18 expert testimony, vague and ambiguous.

19 You can answer.

20 THE WITNESS: If the -- if the broadcast were
21 of a digital download and they recorded the download.

13:38:26

22 BY MS. FUKUDA:

23 Q I thought you had said that digital
24 broadcasting and digital download is different?

25 A You're -- you're now talking different time

13:38:39

1 frames?

2 Q Yeah, I'm talking about currently.

3 A Currently?

4 Q Mm-hmm.

5 A There is a way to broadcast a download and

13:38:48

6 there's a way to broadcast a TV set.

7 Q What's the difference between the two?

8 MR. DiBOISE: Calls for expert testimony.

9 Yeah, you can answer in your personal capacity.

10 THE WITNESS: Broadcasting a digital signal,

13:39:13

11 the intent is not to save it as a downloaded file, but

12 you can broadcast a downloaded file.

13 BY MS. FUKUDA:

14 Q When you say the intent is not to save that as

15 a downloaded file, whose intent are you referring to?

13:39:35

16 A Either party, I would imagine.

17 Q Can you give me an example of current-day

18 digital broadcast that is recorded that would be within

19 the scope of your invention?

20 MR. DiBOISE: Calls for a legal conclusion, may

13:40:20

21 call for expert testimony.

22 You can answer in your personal capacity.

23 THE WITNESS: Of a system that is in place

24 right now? I can't think of one example right off the

25 top of my head.

13:40:32

1 BY MS. FUKUDA:

2 Q Getting back to your testimony regarding your
3 1995 commercial system -- that's the Version 1 system we
4 talked about earlier -- you had testified that the
5 Version 1 system did not have the functionality of
6 electronically coding the songs to prevent unauthorized
7 reproduction; is that right?

13:41:07

8 A That is correct.

9 Q And my question for you is: Did you know -- at
10 the time that you were building that system, did you
11 know how to implement that functionality?

13:41:28

12 A At the time, I do not believe that there was
13 a -- a software package that could easily be connected
14 into the system that we put up, and, at the time, the
15 people that we were selling their music from didn't hold
16 that in as a -- as a requirement of us, so that really
17 didn't become that much of an issue, because what we
18 were trying to do is use off-the-shelf components to
19 assemble into the invention.

13:41:51

20 Q But did you try to incorporate the
21 functionality of coding the songs to prevent
22 unauthorized production?

13:42:09

23 MR. DiBOISE: Hold on.

24 Are you finished?

25 Objection; calls for speculation.

13:42:27

1 THE WITNESS: I do not recall because the --
2 the -- the song -- the people that we were selling their
3 song, they didn't have it as a requirement of us.

4 BY MS. FUKUDA:

5 Q At the time that you were building the system 13:42:36
6 in 1995, did you look into implementing that
7 functionality in your system?

8 A I can't recall.

9 Q Why did SightSound cease operation of its
10 commercial systems in the early 2000s? 13:43:11

11 MR. DiBOISE: Asked and answered.

12 THE WITNESS: Business reasons.

13 BY MS. FUKUDA:

14 Q What were those business reasons?

15 A We needed the money to fund the ongoing company 13:43:26
16 and we couldn't put the money into the system.

17 Q Your system was not generating sufficient
18 revenues to continue the running of the commercial
19 systems?

20 A That is correct. 13:43:51

21 Q Would you say that the commercial systems that
22 SightSound had implemented failed from a business
23 perspective?

24 MR. DiBOISE: Asked and answered. It's vague.

25 THE WITNESS: No, I do not think they failed 13:44:14

1 from a business standpoint because they were up. They
2 were running. They were capable. We just didn't have
3 enough content.

4 BY MS. FUKUDA:

5 Q How much content did you have in your system at 13:44:25
6 the time that -- in the early 2000s?

7 A I don't recall.

8 Q But whatever it is, you didn't think you had
9 enough content at the time?

10 A That -- that's correct. 13:44:41

11 Q How much content did you think you would need?

12 MR. DiBOISE: Calls for speculation.

13 THE WITNESS: I do not recall.

14 BY MS. FUKUDA:

15 Q You had also testified that you -- that 13:45:06
16 SightSound had erased the software before the hardware
17 was sold off when the commercial systems were taken
18 offline; correct?

19 MR. DiBOISE: Objection.

20 THE WITNESS: That is my belief. 13:45:28

21 BY MS. FUKUDA:

22 Q Why did SightSound erase the software?

23 A Whoever ended up buying the hardware, we didn't
24 want them to have it.

25 Q Okay. Why didn't SightSound preserve a copy of 13:45:37

1 the software?

2 MR. DiBOISE: Objection.

3 THE WITNESS: There wasn't a copy. It was a
4 system of routers, which is servers. It wasn't like you
5 could put it on a disc.

13:45:52

6 BY MS. FUKUDA:

7 Q Was there software that could be saved on a
8 disc?

9 A There were elements of software that could be
10 saved on a disc.

13:46:01

11 Q Okay. And why did SightSound preserve copies
12 of that software?

13 MR. DiBOISE: Objection.

14 THE WITNESS: We just didn't.

15 BY MS. FUKUDA:

13:46:08

16 Q Did -- was that software software that you had
17 bought from vendors, or was it program -- programming
18 that SightSound had done itself?

19 MR. DiBOISE: Objection.

20 THE WITNESS: Combination.

13:46:22

21 BY MS. FUKUDA:

22 Q Did you not think that preserving that software
23 would be relevant to SightSound's litigation?

24 MR. DiBOISE: Objection; calls for spec- --

25 speculation, may ask for a legal conclusion.

13:46:35

1 THE WITNESS: I don't recall what the thinking
2 was back at that time. We just didn't keep it.

3 MS. FUKUDA: I'm marking, as Exhibit 118, a
4 copy of document SST-010449 through 10542.

5 (Exhibit 118 was marked for identification by 13:48:52
6 the Court Reporter.)

7 BY MS. FUKUDA:

8 Q Now, Mr. Hair, do you recognize this document?

9 A No, because down at the bottom, it has a title
10 "Valuation Reports," so there looks to be a piece of a 13:49:21
11 document called a Valuation Report.

12 Q Okay. Do you see that there is a timeline
13 that's in this document?

14 A Yes, I do.

15 Q Do you recognize that timeline? 13:49:44

16 MR. DiBOISE: Vague.

17 THE WITNESS: I recognize many of the dates in
18 the timeline, yes.

19 BY MS. FUKUDA:

20 Q Did you ever prepare a timeline that looks like 13:49:57
21 this?

22 A Over the years, yes, I was a party to making
23 timelines, but I don't know which pieces of this.

24 Did that answer your question?

25 Q Yes. Yes -- well, let -- you know, let me ask 13:50:18

1 a couple of follow-up questions and see if you are able
2 to recognize any of the content in here.

3 If you look at the entry under timeline of
4 November 22nd, 1993?

5 A Yes.

13:50:38

6 Q It talks about a deal that was being discussed
7 between PolyGram, Philips Media, and you and Mr. Sander,
8 and it -- the second half of the sentence says, "but the
9 deal is never consummated because of a fear that such a
10 purchase would alienate brick and mortar retailers."

13:51:02

11 Do you know who prepared this entry of the
12 timeline?

13 A It was most likely done between myself and
14 Scott Sander.

15 Q Okay. Can you explain what is meant by "a fear
16 that such a purchase would alienate brick and mortar
17 retailers"?

13:51:18

18 MR. DiBOISE: Document speaks for itself.

19 THE WITNESS: I believe that was based on what
20 was told to us by Philips Media, slash, PolyGram.

13:51:39

21 BY MS. FUKUDA:

22 Q And did they explain what they meant?

23 A Yes.

24 Q What did they say?

25 A They said, quote, The retailers will crucify

13:51:52

1 us, close quote.

2 Q Why would the retailers crucify them?

3 MR. DiBOISE: Calls for speculation.

4 THE WITNESS: I don't -- you would have to ask
5 them.

13:52:04

6 BY MS. FUKUDA:

7 Q Did you understand what they meant when they
8 said that?

9 A Yes. They meant that the deal was not going to
10 go through.

13:52:11

11 Q Okay. But did you understand why the retailers
12 would not like PolyGram and Philips Media to do that
13 deal?

14 MR. DiBOISE: Objection.

15 THE WITNESS: I -- I would only have to
16 speculate.

13:52:24

17 BY MS. FUKUDA:

18 Q What was your understanding based on what
19 PolyGram and Philips Media told you?

20 A My understand- --

13:52:32

21 MR. DiBOISE: Objection.

22 Go ahead.

23 THE WITNESS: My understanding is that the --
24 they thought that the retailers would see the electronic
25 sale of music as a threat to their business.

13:52:46

1 BY MS. FUKUDA:

2 Q Do you understand what type of threat it would
3 be?

4 MR. DiBOISE: Calls for conclusion; objection.

5 THE WITNESS: Yeah, reduced sales.

13:53:01

6 BY MS. FUKUDA:

7 Q In the August 1st, 1995 entry, which is the
8 next entry down --

9 A Mm-hmm.

10 Q -- it says, "Because the record companies are
11 slow to take advantage of the fact that music could be
12 sold online, Messrs. Hair and Sander decide to start
13 without them."

13:53:17

14 Was it true that the record companies were slow
15 to take advantage of the fact that music could be sold
16 online?

13:53:33

17 A I believe so.

18 Q And why do you believe that to be true?

19 A Because they didn't get into it at that time.

20 Q Now, SightSound had contacted record companies
21 to enter into a deal with SightSound for selling music
22 online; is that right?

13:53:49

23 A That --

24 MR. DiBOISE: Objection -- just give me a sec.

25 Objection.

13:54:05

1 THE WITNESS: That is my recollection.

2 BY MS. FUKUDA:

3 Q And in 1995, how many record companies had
4 signed up with SightSound to sell music online?

5 A None.

13:54:19

6 Q How many record companies did SightSound
7 contact at that time?

8 A I don't recall the exact number.

9 Q Any approximate?

10 A At least five.

13:54:34

11 Q Were the other five -- were they five major
12 record companies or smaller record companies?

13 MR. DiBOISE: Objection.

14 THE WITNESS: I believe they were the five
15 majors. I -- I can't be sure. We might have done four,
16 but I think it was five.

13:54:47

17 BY MS. FUKUDA:

18 Q Did any of those record companies tell you why
19 they didn't want to do -- or enter into a deal with
20 SightSound?

13:55:03

21 MR. DiBOISE: Objection. I don't recall the
22 specifics, but I know they were vague.

23 BY MS. FUKUDA:

24 Q What did they tell you?

25 MR. DiBOISE: Objection.

13:55:16

1 THE WITNESS: I -- I don't recall the exact
2 wording.

3 BY MS. FUKUDA:

4 Q If you go further down to an entry "Winter
5 1995," it says, "Realizing they are upsetting the record 13:55:36
6 labels with their competing virtual record store,
7 SightSound goes offline and begins to work behind the
8 scenes with the major record labels."

9 How was SightSound upsetting the record labels
10 at that time? 13:56:00

11 MR. DiBOISE: Objection.

12 THE WITNESS: We were contacting independent
13 artists directly.

14 BY MS. FUKUDA:

15 Q How did you know that the record labels were 13:56:15
16 upset?

17 A As I recall, it was in a conversation with
18 someone we held in high regard and advised us not to
19 continue in that course of action but to go try to
20 negotiate with the record labels. 13:56:42

21 Q And who was that person?

22 A A gentleman named John Doerr.

23 Q Spell his last name?

24 A I believe it might be D-o-e-r-r.

25 Q And who was John Doerr at that time? Who was 13:56:57

1 he working with?

2 A He was with two different groups. One was a
3 company called Kleiner Perkins Caufield Byers, and the
4 other was the At Home Network.

5 Q And did SightSound, in fact, begin to work with 13:57:18
6 the major record labels in the late 1990s?

7 MR. DiBOISE: Objection.

8 THE WITNESS: What do you mean by "work"?

9 BY MS. FUKUDA:

10 Q Well, in that entry, it says, "SightSound goes 13:57:33
11 offline and begins to work behind the scenes with the
12 major record labels."

13 Did -- did SightSound, in fact, begin to do
14 that?

15 MR. DiBOISE: Objection. 13:57:43

16 THE WITNESS: To -- to work with the record
17 labels or to work behind the scenes?

18 MS. FUKUDA: To work behind the scenes with the
19 major record labels.

20 THE WITNESS: We worked behind the scenes 13:57:55
21 quietly and were talking with the major record labels
22 about our offering.

23 BY MS. FUKUDA:

24 Q And did any of the major record labels actually
25 sign a deal with SightSound in the late '90s? 13:58:13

1 MR. DiBOISE: Objection.

2 THE WITNESS: I do not believe they did.

3 BY MS. FUKUDA:

4 Q On the next page of Exhibit 118, last entry,
5 June 14th, 2000, it says, "SightSound begins
6 distributing encrypted movie files through Gnutella..."

13:59:19

7 Did SightSound indeed provide encrypted movie
8 files through Gnutella in that time period?

9 A Yes.

10 Q And do you know how many movie files were sold
11 through Gnutella?

13:59:37

12 A I do not recall.

13 Q And the next entry on the following page is
14 November 6, 2000. It says, "SightSound deploys a secure
15 solution for the Napster file-sharing program, releasing
16 an encrypted copy of the Quantum Project soundtrack into
17 Napster using subscription-based accounts."

14:00:01

18 Did SightSound indeed do that?

19 MR. DiBOISE: Objection.

20 THE WITNESS: Yes.

14:00:19

21 BY MS. FUKUDA:

22 Q And is SightSound's offer -- I'm sorry.

23 Is SightSound's release of an encrypted copy of
24 the Quantum Project into Napster using
25 subscription-based accounts -- is that practicing the

14:00:37

1 invention in your patents?

2 MR. DiBOISE: Objection.

3 THE WITNESS: Are you asking if what we did
4 practiced the patents?

5 MS. FUKUDA: Yeah, the fact that you were doing 14:00:48
6 that through sub- -- subscription-based accounts via
7 Napster.

8 MR. DiBOISE: Objection.

9 THE WITNESS: You mean -- are you saying if
10 what we did with our system actually practiced these 14:01:04
11 patents?

12 MS. FUKUDA: Yes, what this entry is referring
13 to.

14 Q What you did in this entry, did that offering
15 practice the invention in your patents-in-suit? 14:01:13

16 MR. DiBOISE: Which entry are we talking about?

17 THE WITNESS: I believe she's on November 6,
18 2000.

19 MR. DiBOISE: Thank you.

20 Objection. 14:01:26

21 MS. FUKUDA: That's correct.

22 THE WITNESS: The element of subscription I do
23 not recall being part of the patents, but you could also
24 purchase Quantum Project soundtrack through Napster when
25 we did this. 14:01:42

1 BY MS. FUKUDA:

2 Q Using nonsubscription-based accounts?

3 A That is my recollection.

4 Q Okay. In the entry on December 10th, 2001, it
5 says, "SightSound sold the first EVD (Electronic
6 Versatile Download), a downloadable package that
7 includes a specially encoded, high-resolution copy of
8 Miramax Films' Hamlet, plus additional DVD-like
9 features."

14:01:59

10 Did SightSound, in fact, do that?

14:02:16

11 THE WITNESS: Yes.

12 MR. DiBOISE: Objection.

13 THE WITNESS: Yes.

14 BY MS. FUKUDA:

15 Q In this EVD downloadable package, in addition
16 to a copy of the movie, what else was in that package?

14:02:24

17 MR. DiBOISE: Objection.

18 THE WITNESS: I recall photographs,
19 behind-the-scene photographs; description of the
20 different characters. There were a couple things that I
21 can't recall. Essentially, DVD-like bonus features.

14:02:46

22 BY MS. FUKUDA:

23 Q And was the -- SightSound's sale of that
24 downloadable package also practicing the inventions in
25 your patents-in-suit?

14:03:09

1 MR. DiBOISE: Objection; calls for expert
2 opinion and a legal conclusion.

3 THE WITNESS: Pieces of it.

4 BY MS. FUKUDA:

5 Q Which pieces? 14:03:22

6 MR. DiBOISE: Objection; legal conclusion,
7 expert testimony.

8 THE WITNESS: The movie.

9 MS. FUKUDA: Let me mark, as Exhibit 119, a
10 copy of document bearing SST-010827 through 10851. 14:04:18

11 (Exhibit 119 was marked for identification by
12 the Court Reporter.)

13 MR. DiBOISE: Thank you.

14 BY MS. FUKUDA:

15 Q Mr. Hair, have you seen this document before? 14:04:50

16 A I -- I do believe I've seen this before, yes.

17 Q Sorry. Can I just take a -- that's fine.

18 A But there's some handwritten notes that I don't
19 recall.

20 Q Okay. You don't recognize the handwritten -- 14:05:35
21 you don't recognize the handwriting in this document?

22 A I think -- I don't know. I don't know whose it
23 is.

24 Q This document says that it's a Confidential
25 Offering Memorandum dated March 2004. Looks like it's 14:06:13

1 got Allen & Company's logo down on the bottom there.

2 Who prepared this document?

3 A Are you asking me as the corporation or as the
4 individual?

5 MR. DiBOISE: It's not in any of your topics. 14:06:27
6 It's your individual.

7 THE WITNESS: Individual?

8 There are pieces in here that I -- that I
9 recognize that I did and then other pieces that -- that
10 other people within the company did, so it wasn't one 14:06:44
11 person that did it alone.

12 BY MS. FUKUDA:

13 Q Do you know whether this version of the
14 Confidential Offering Memorandum was actually sent to
15 other companies? 14:07:02

16 A I do not recall. I -- yeah, this was outside
17 of my purview. I'm sure it was, but I -- I don't
18 recall.

19 Q Can you identify which pieces you had prepared?

20 A My bio, some of the timeline, then -- I 14:07:21
21 believe, but I can't be for sure -- the background.

22 Q Background. Okay.

23 Where is the background that you are referring
24 to, what page?

25 A Five. 14:08:31

1 Q This is on Bates No. SST-10835?

2 If you go to the page that's marked on the
3 bottom right-hand corner as SST-010830, do you know who
4 prepared the overview?

5 A That was probably done by Scott and myself, to 14:09:37
6 some extent.

7 Q You see in the overview, the second sentence?
8 It says, "Recent litigation tested three of the"
9 patent -- "tested three of the Company's patents
10 covering download and streaming delivery and both 14:09:57
11 pay-per-use and subscription models."

12 Is that sentence accurate?

13 MR. DiBOISE: Calls for legal conclusion.

14 THE WITNESS: "Recent litigation tested three
15 of the Company's patents covering download and streaming 14:10:20
16 delivering and both pay-per-use and subscription
17 models." I can't recall the litigation, but -- I can't
18 recall.

19 BY MS. FUKUDA:

20 Q If you turn to page SST-10840, you see there's 14:10:49
21 a section under "Audio/Video eCommerce"?

22 A Mm-hmm. Yes.

23 Q Who prepared that section?

24 A I don't recall.

25 Q If you look at the very last sentence of that 14:11:13

1 section, it says, "Still other embodiments include
2 features such as electronic payment for the digital
3 audio or video signals made through charging the buyer's
4 account, such as a credit card number; this would cover
5 a variety of electronic payment mechanisms, including
6 subscriptions."

14:11:41

7 Do you agree that your invention covers
8 subscriptions?

9 MR. DiBOISE: Calls for a legal conclusion.

10 THE WITNESS: I believe that is spelled out in
11 the Markman, the N2K Markman.

14:11:54

12 BY MS. FUKUDA:

13 Q But is it -- is it your understanding that
14 your -- your invention covers subscriptions?

15 MR. DiBOISE: Calls for a legal conclusion.

14:12:08

16 THE WITNESS: As of today or when I invented
17 it?

18 MS. FUKUDA: As of today?

19 THE WITNESS: As of today? I think, as of
20 today, the Markman ruling defines all of that.

14:12:17

21 BY MS. FUKUDA:

22 Q And is it your understanding that it covers
23 subscriptions, or does not?

24 A I -- I believe --

25 MR. DiBOISE: Wait a minute.

14:12:27

1 It's vague.

2 THE WITNESS: Can you repeat that?

3 BY MS. FUKUDA:

4 Q Is it your understanding as of today that your
5 invention covers subscriptions?

14:12:32

6 MR. DiBOISE: Asked and answered.

7 THE WITNESS: It -- it's my belief that the
8 Markman excludes subscriptions.

9 MS. FUKUDA: Okay.

10 THE WITNESS: But I can't be sure.

14:12:45

11 BY MS. FUKUDA:

12 Q If you look at page SST-10844, you see that
13 handwriting on the bottom?

14 A Yes, I see it.

15 Q And do you recognize whose handwriting that is?

14:13:18

16 A I told you already I don't.

17 Q Okay. Turn to page 10846. You see there that
18 there's a number of bullet points that identifies a
19 number of download sites, starting with Apple iTunes and
20 continues on with BuyMusic and so forth.

14:13:55

21 Has SightSound licensed any of these entities?

22 MR. DiBOISE: Calls for a legal conclusion.

23 THE WITNESS: I -- I do not recall.

24 BY MS. FUKUDA:

25 Q And then there are two more bullet points that

14:14:23

1 add MusicNet and Rhapsody.

2 Are you familiar with either of those two
3 companies or models?

4 MR. DiBOISE: Objection.

5 THE WITNESS: Vaguely.

14:14:41

6 BY MS. FUKUDA:

7 Q Do you have any understanding as to how their
8 system works?

9 A I have no --

10 MR. DiBOISE: Objection.

14:14:47

11 THE WITNESS: I -- I do not recall ever using
12 Rhapsody. Which was the other one? MusicNet?

13 MS. FUKUDA: MusicNet.

14 THE WITNESS: I do not recall using MusicNet.

15 BY MS. FUKUDA:

14:14:59

16 Q Do you think you have -- do you have any
17 understanding as to how they offer music or downloads?

18 MR. DiBOISE: Asked and answered.

19 THE WITNESS: I -- I do not believe I've ever
20 done an analysis of them, no.

14:15:13

21 BY MS. FUKUDA:

22 Q On the next page, 10847, there's a section on
23 "Video-on-Demand Landscape."

24 Do you know who drafted that section?

25 A Most likely a combination of Scott Sander,

14:15:56

1 Chris Reese, and myself.

2 Q It says, in the fourth paragraph of that
3 section, "Over the Internet, online content services in
4 the film industry have been hampered by the limitations
5 of watching movies on a computer screen and the length
6 of time it takes to download a feature-length."

14:16:28

7 What is your understanding, at the time, of
8 what the length of time it was to -- or -- or what the
9 length of time it was in order to download a
10 feature-length movie?

14:16:45

11 A When this was done?

12 Q Yes.

13 MR. DiBOISE: Objection.

14 THE WITNESS: I -- I don't recall what -- what
15 metrics were used.

14:16:55

16 BY MS. FUKUDA:

17 Q Who would know? What was the basis behind this
18 sentence?

19 A At the time, me.

20 Q Okay.

14:17:05

21 A But I don't recall.

22 Q You don't recall?

23 A No.

24 Q And did SightSound license any of the entities
25 listed there: Movielink, CinemaNow, or MovieFlix?

14:17:12

1 MR. DiBOISE: Objection.

2 THE WITNESS: I -- I do not recall.

3 MS. FUKUDA: Mark, as Exhibit 120, a copy of
4 document SST-10917 through 10925.

5 (Exhibit 120 was marked for identification by 14:19:44
6 the Court Reporter.)

7 BY MS. FUKUDA:

8 Q Have you seen this document before?

9 A I believe so, yes. It looks very familiar, the
10 content of it especially. 14:19:56

11 Q Okay. The cover of that document refers to
12 a -- an agenda for April 4 through 5 of 2001.

13 Can you tell me what that agenda was for?

14 MR. DiBOISE: Call -- objection.

15 THE WITNESS: It was for a meeting between 14:20:21
16 people at SightSound and executives from MGM.

17 BY MS. FUKUDA:

18 Q Did that meeting, in fact, take place on
19 April 4th and 5th of 2001?

20 A I -- I believe it did. I mean, the dates -- 14:20:40
21 the meeting happened. I can't confirm the dates.

22 Q You see on the cover sheet there's some
23 handwriting on the bottom.

24 Do you recognize that handwriting?

25 A No, I don't. 14:20:57

1 Q It says "Patent Review - Chris," slash, "Art."

2 Do you remember presenting any or discussing
3 any patent review at that meeting with MGM?

4 A I do not recall.

5 Q What was the purpose of that meeting between
6 SightSound and MGM?

14:21:23

7 MR. DiBOISE: Objection.

8 THE WITNESS: MGM, as I recall, was doing due
9 diligence on SightSound.

10 BY MS. FUKUDA:

14:21:36

11 Q Okay. And it was due digital for the purpose
12 of what?

13 MR. DiBOISE: Objection.

14 THE WITNESS: For the purpose of a potential
15 business partnership, slash -- I -- I don't recall, but
16 it was -- we were looking to get their content.

14:21:44

17 BY MS. FUKUDA:

18 Q Did MGM ultimately enter into a deal with
19 SightSound?

20 A We did not close a deal with MGM.

14:22:06

21 MS. FUKUDA: Marking, as Exhibit 121, a copy of
22 document SST-10934 through 10942.

23 MR. DiBOISE: Thank you.

24 (Exhibit 121 was marked for identification by
25 the Court Reporter.)

14:24:04

1 BY MS. FUKUDA:

2 Q Do you recognize this document?

3 A I don't recall specifics of it -- I take that
4 back. That looks familiar. I don't recall the date. I
5 don't recall the time frame.

14:24:41

6 Q Does this look like something that you had
7 prepared?

8 MR. DiBOISE: Objection.

9 THE WITNESS: I did do elements of this, but
10 not the entire thing.

14:24:56

11 BY MS. FUKUDA:

12 Q If you turn to page SST-10937, you will see
13 there is a "SightSound Technologies systems topology."

14 Did you prepare that drawing?

15 A Yes, I did.

14:25:19

16 Q And does that describe any of the commercial
17 systems that SightSound had had?

18 MR. DiBOISE: Objection.

19 THE WITNESS: There is an element in here of
20 the system that we had up and running.

14:25:44

21 BY MS. FUKUDA:

22 Q Which element are you referring to?

23 A The -- the element within a box that says
24 "Movie Studio."

25 Q When did you have that movie studio element up

14:25:54

1 and running?

2 A Inside that box.

3 Q No, I mean in -- in time.

4 When did you have it up and running?

5 A You asked when we had the movie studio element 14:26:07
6 up and running. I'm saying, inside that box is this --
7 what we called the Secure Media eCommerce System. That
8 would have been one of the 3.1, 2, or 3. I don't recall
9 when this was done.

10 Q Oh, okay. I see. 14:26:29

11 So you're not -- your testimony is not that the
12 movie studio was up and running?

13 A That is correct.

14 Q Okay. Did SightSound ever have a movie studio
15 up and running as described in this systems topology? 14:26:40

16 MR. DiBOISE: Objection.

17 THE WITNESS: We did not have a movie studio.

18 BY MS. FUKUDA:

19 Q If you turn to page SST-10941, you will see a
20 list of what appears to be SightSound Technologies'
21 proprietary technology. 14:27:13

22 Did you prepare this list?

23 A It -- it is quite possible that I did this
24 list.

25 Q Is this a list of technology that was developed 14:27:28

1 by SightSound?

2 A That is correct. I would have to read through
3 each one, but it's my -- my belief that all of these
4 were.

5 Q Okay. And were any of -- were any of the items 14:27:45
6 listed here preserved by SightSound?

7 MR. DiBOISE: Objection.

8 THE WITNESS: I do not believe any were.

9 BY MS. FUKUDA:

10 Q Were these software modules all discarded after 14:28:00
11 SightSound ceased operation?

12 A Of the system?

13 Q Yes.

14 A Yes.

15 MS. FUKUDA: Let me mark, as Exhibit 122, a 14:29:03
16 copy of document SST-15052 through 15058.

17 (Exhibit 122 was marked for identification by
18 the Court Reporter.)

19 BY MS. FUKUDA:

20 Q Have you ever seen this document before? 14:29:43

21 A The back part of it, I recognize elements in
22 there. I don't recall exactly, and I'm not sure if I
23 actually saw the letter before it was sent out, and I'm
24 not sure I saw the fax sheet when it was sent out.

25 Q Okay. Just referring you to the page 15054, 14:30:37

1 you will see that there's a second heading that says
2 "Value to DreamWorks." The first sentence says,
3 "SightSound Technologies has invested \$24 million to
4 build an ECommerce System and patent portfolio to
5 support the electronic sale of movies in computer file
6 format to complement the traditional means of
7 distribution."

14:31:03

8 Do you have any understanding as to how that
9 \$24 million was invested?

10 A I do not recall.

14:31:21

11 Q But who would know that?

12 A I believe Alex LePore.

13 Q Okay. Does that sound accurate to you, that
14 SightSound has invested 24 million?

15 MR. DiBOISE: Objection.

14:31:36

16 THE WITNESS: I would not dispute it. I don't
17 have any recollection of how much was spent at that
18 time.

19 MS. FUKUDA: I'm marking, as Exhibit 123, a
20 copy of SST-021837 through 021912.

14:32:20

21 (Exhibit 123 was marked for identification by
22 the Court Reporter.)

23 BY MS. FUKUDA:

24 Q You can feel free to flip through that, but I
25 am going to ask you whether you recognize what this

14:32:47

1 document is.

2 Do you recognize this document?

3 A I don't --

4 MR. DiBOISE: Objection.

5 THE WITNESS: I don't recognize the document. 14:33:09

6 I do recognize the content.

7 BY MS. FUKUDA:

8 Q Okay. What's the content in this document?

9 A Screen shots of the SightSound website.

10 Q Are you able to identify which version of 14:33:20

11 SightSound's system this correlates to?

12 A I can't recall which one it was.

13 Q Is it one of the versions; 3.1, 3.2, or 3.3?

14 A Yes, it is.

15 Q But you are not able to date this -- 14:34:00

16 MR. DiBOISE: Objection.

17 BY MS. FUKUDA:

18 Q -- website as presented in this document?

19 A What's your question?

20 Q Are you able to date this website as presented 14:34:13

21 in this document?

22 A I do not know what date this was from.

23 Q If you take a look at page 21860, for example.

24 MR. DiBOISE: Sorry. What was the page number

25 again? 14:34:44

1 MS. FUKUDA: 21860.

2 Q You see how there's a box in the middle that
3 has a big "X" through it?

4 MR. DiBOISE: Hold on. I'm not there. Thank
5 you. 14:35:03

6 THE WITNESS: Yes.

7 BY MS. FUKUDA:

8 Q Is this an actual representation of what was
9 shown on SightSound's website?

10 MR. DiBOISE: Objection. 14:35:11

11 THE WITNESS: I -- I don't know.

12 BY MS. FUKUDA:

13 Q Did you -- did SightSound's website ever
14 display content with a blank box and an "X" over it?

15 MR. DiBOISE: Objection. 14:35:21

16 THE WITNESS: If the content wasn't there, it's
17 quite possible that that -- that would show up.

18 BY MS. FUKUDA:

19 Q Okay. Now, I'm just trying to get a sense of
20 whether these are actual screen shots from SightSound's
21 website. 14:35:33

22 A Oh, not --

23 MR. DiBOISE: That's not a question.

24 BY MS. FUKUDA:

25 Q Do they look like they are screen shots from an 14:35:44

1 actual SightSound website?

2 MR. DiBOISE: Objection.

3 THE WITNESS: Looking at it, they appear to be.
4 I don't know who did this.

5 MR. DiBOISE: Are you done with this?

14:36:14

6 MS. FUKUDA: Yes.

7 MR. DiBOISE: Did you -- did you mark this, or
8 did you just use the old numbers?

9 MS. FUKUDA: I marked it 123.

10 MR. DiBOISE: So it now has three numbers?

14:36:22

11 MS. FUKUDA: That's correct. I believe the old
12 exhibit numbers are from not this litigation.

13 MR. DiBOISE: Okay.

14 BY MS. FUKUDA:

15 Q Did SightSound ever enter into a deal with
16 Universal Entertainment Group?

14:36:51

17 A I do not recall.

18 MS. FUKUDA: I'm marking Exhibit 124, Bates
19 Nos. SST-7842 through 7848.

20 (Exhibit 124 was marked for identification by
21 the Court Reporter.)

14:37:55

22 MR. DiBOISE: Thank you.

23 MS. FUKUDA: Let me just add to that exhibit
24 here. I would like to also add to that exhibit SST-7849
25 through 7851. Just take that as an exhibit.

14:38:22

1 Q And, Mr. Hair, do you recognize Exhibit 124?

2 A Yes, I do.

3 Q And what is that document?

4 A That's a Patent License Agreement.

5 Q Turn to SST-7848, the two signatures above the 14:39:04
6 two lines saying Arthur R. Hair, are those your
7 signatures?

8 A Yes, they are.

9 Q And this is a License Agreement entered into on
10 August 1st, 1995 between Parsec Sight/Sound, Inc., and 14:39:25
11 Digital Sight/Sound, Inc.; correct?

12 A That is correct.

13 Q At that time, Parsec Sight/Sound is the holder
14 of the '573 patent; is that right?

15 A That is correct. 14:39:51

16 Q And, at that time, Digital Sight/Sound was the
17 operating company to implement the commercial system for
18 SightSound; is that right?

19 A It was the company that was going to run the
20 system. 14:40:06

21 Q SightSound's commercial system?

22 A At the time, it was Digital Sight/Sound.

23 Q Right. Right. What I meant was Digital
24 Sight/Sound to run the commercial system.

25 A To -- to run a system, yes. 14:40:21

1 Q And this is a grant of license from Parsec
2 Sight/Sound to Digital Sight/Sound that covers patent
3 rights that include the '573 patent and U.S. and foreign
4 patents issued from the applications and from
5 divisionals and continuations of the applications in
6 Appendix 1.

14:40:52

7 Do you see that?

8 MR. DiBOISE: Objection.

9 THE WITNESS: Yes, I see it.

10 BY MS. FUKUDA:

14:41:03

11 Q So this is a license to the '573, as well as
12 anything that issues from applications associated with
13 '573?

14 A That's my understanding of what it did at the
15 time.

14:41:17

16 Q If you turn to page SST-7844, under -- under
17 Section 4, "Initial Fee," there is a reference to
18 Digital Sight/Sound shall pay an initial fee of
19 1 million and zero dollars -- I guess it's \$1 million --
20 to Parsec Sight/Sound upon execution of this agreement.

14:41:50

21 Do you see that?

22 A Yes, I do.

23 Q Did Digital Sight/Sound ever pay \$1 million?

24 MR. DiBOISE: Asked and answered.

25 THE WITNESS: I believe not.

14:42:00

1 BY MS. FUKUDA:

2 Q And under Section 5, there's an annual
3 licensing fee of \$1 million per year to be paid by
4 Digital Sight/Sound in 1995 and each subsequent year.

5 Did Digital Sight/Sound ever pay any annual
6 licensing fee to Parsec Sight/Sound?

14:42:23

7 MR. DiBOISE: Asked and answered.

8 THE WITNESS: I do not believe so.

9 BY MS. FUKUDA:

10 Q And in Section 6, there are a couple of
11 paragraphs relating to royalty payments.

14:42:37

12 Did Digital Sight/Sound ever pay any of those
13 royalties to Parsec Sight/Sound?

14 MR. DiBOISE: Asked and answered.

15 THE WITNESS: I do not believe so.

14:42:53

16 BY MS. FUKUDA:

17 Q In the amendment -- oh, I'm sorry, in the
18 Appendix A -- no, I am referring to the amendment.

19 If you look at SST-7850, there is a First
20 Amendment to Patent License Agreement that's dated
21 March 15th, 1996.

14:43:11

22 And is this First Amendment also signed by you?

23 A Yes, it is.

24 Q Why was this First Amendment made to the
25 License Agreement?

14:43:28

1 MR. DiBOISE: Asked and answered.

2 THE WITNESS: I do not recall.

3 BY MS. FUKUDA:

4 Q In Section 3 of that amendment, it refers to
5 how the payment of the initial fee is abated.

14:43:51

6 Why was that initial fee bated?

7 MR. DiBOISE: Asked and answered.

8 BY MS. FUKUDA:

9 Q Abated?

10 A I do not recall. I'm guessing that we didn't
11 have the money.

14:44:04

12 Q By "we," you mean Digital Sight/Sound?

13 A At that time, correct, Digital Sight/Sound.

14 Q And you will see that there -- under three --
15 small Roman numeral iii, again there's a modification
16 that if gross income is less than \$20 million, then
17 payment of the annual licensing fees and the royalty
18 payments shall be abated as well.

14:44:27

19 Is that modified for the same reason as the
20 abatement of the initial fee?

14:44:47

21 MR. DiBOISE: Asked and answered.

22 THE WITNESS: Yeah, I don't recall.

23 MS. FUKUDA: Marking, as Exhibit 125, a copy of
24 SST-10196 through 10424.

25 //

14:45:27

1 (Exhibit 125 was marked for identification by
2 the Court Reporter.)

3 MR. DiBOISE: Oh, would you do me a favor
4 and -- did you staple that?

5 THE WITNESS: Mm-hmm. 14:45:42

6 BY MS. FUKUDA:

7 Q Mr. Hair, have you reviewed the document
8 represented in Exhibit 125 before?

9 A You mean ever or --

10 Q Ever. 14:46:54

11 A -- recently? I don't recall reviewing it. I
12 don't recall -- well, I've seen my name on certain pages
13 as a signature, but I don't recall reviewing the entire
14 document.

15 Q You understand this to be the agreement -- or 14:47:13
16 the Asset Purchase Agreement between General Electric
17 and SightSound?

18 A That's what it looks like it is.

19 Q As of today, has DMP (sic) -- do you know if
20 DMT has paid anything to SightSound under this 14:47:57
21 agreement?

22 MR. DiBOISE: Objection.

23 Go ahead.

24 THE WITNESS: I do not know. I do not recall.

25 BY MS. FUKUDA: 14:48:09

1 Q Do you know how much was paid by GE to
2 SightSound upon the execution of this agreement?

3 A I would have to look in here.

4 Q Sure.

5 A Yeah, if you look at Section 2.2, 2.2(a) says 14:49:18
6 "one U.S. dollar."

7 Q Did GE pay that to SightSound?

8 A I believe so.

9 Q Okay. Was any other payment made upon the
10 execution of this agreement? 14:49:40

11 MR. DiBOISE: Objection.

12 THE WITNESS: I do not recall.

13 BY MS. FUKUDA:

14 Q Could you turn to page -- don't unclip
15 that yet -- 10233. 14:50:06

16 MR. DiBOISE: I'm sorry. Can you say that
17 number again.

18 MS. FUKUDA: 10233.

19 Q You see under "Exhibit 2 'License Agreements,'"
20 first sentence says, "SightSound Technologies, Inc. 14:50:44
21 does not have any existing license agreements with any
22 third parties."

23 Is that a true and accurate statement as of the
24 date of this agreement?

25 MR. DiBOISE: Sorry. Are you just talking 14:50:56

1 about the first sentence?

2 MS. FUKUDA: Yes.

3 MR. DiBOISE: Okay.

4 THE WITNESS: I don't recall anything -- any
5 reason why to say it's untrue.

14:51:10

6 BY MS. FUKUDA:

7 Q And there's a reference to a Settlement
8 Agreement with BeMusic, which is referenced in
9 section -- Exhibit 6, and I will refer you to that.
10 That starts on page10266. You can take a look at the
11 actual agreement that follows.

14:51:32

12 Have you reviewed this Settlement Agreement
13 before?

14 A I don't recall.

15 Q Do you have any understanding as to what was
16 granted by SightSound Technologies, Inc., to BeMusic in
17 this agreement?

14:52:46

18 MR. DiBOISE: Objection.

19 THE WITNESS: The extent of what I know is this
20 was the settlement from litigation from N2K.

14:53:24

21 BY MS. FUKUDA:

22 Q Okay. And you see that there was a covenant
23 not to sue that was granted in paragraph 5 of the
24 agreement?

25 MR. DiBOISE: Objection.

14:53:39

1 THE WITNESS: I see that paragraph.

2 BY MS. FUKUDA:

3 Q Okay. It -- it says that -- if you look at the
4 page 10267, it says -- the very last "Whereas" clause,
5 it says, "WHEREAS, the parties desire that LQ
6 Corporation, Inc. (formerly known as Liquid Audio,
7 Inc.)," and then blah, blah, blah, address, "be a third
8 party beneficiary of the provisions as directed to
9 Liquid Audio in Paragraphs 4(a) and 5 herein."

14:53:57

10 Do you have any understanding as to why LQ
11 Corporation, or Liquid Audio, was a third-party
12 beneficiary of this agreement?

14:54:16

13 MR. DiBOISE: Objection.

14 THE WITNESS: Is this as me as an individual or
15 the corporation?

14:54:29

16 MR. DiBOISE: Individual.

17 BY MS. FUKUDA:

18 Q Is your knowledge different, depending on which
19 one?

20 A Well, I -- I guess under the corporation, I'm
21 supposed to testify as to what the corporation knows,
22 but as an individual, I -- I do not recall this. I do
23 not recall why.

14:54:33

24 Q Okay. And as a corporation?

25 A I still don't recall why, so I'm not -- I'm

14:54:47

1 definitely not the person to ask the question of.

2 MS. FUKUDA: Turn to page 10279.

3 You know what? Why don't -- I just realized we
4 should take a break so we can change the video. Why
5 don't we take a short break for that.

14:55:41

6 THE VIDEOGRAPHER: This is the end of Volume I,
7 Videotape No. 3 in the deposition of Arthur Hair.

8 Going off the record, the time is 2:55.

9 (Recess taken.)

10 THE VIDEOGRAPHER: We are back on the record.

15:02:10

11 This is the beginning of Volume 1, Videotape No. 4 in
12 the deposition of Arthur Hair.

13 The time is 3:02.

14 BY MS. FUKUDA:

15 Q Okay. So, Mr. Hair, I was directing you to
16 page 10279 of Exhibit 125. You see that that refers to
17 a "Schedule 2.1 'List of Encumbrances.'"

15:02:20

18 Are you familiar with the list provided on this
19 page?

20 A I recognize them.

15:02:56

21 Q Okay. It appears that Kenyon & Kenyon had a
22 security interest in SightSound's patent portfolio and
23 other IP as of the date of this agreement.

24 Does Kenyon & Kenyon currently still have a
25 security interest?

15:03:20

1 A I do not recall.

2 Q And with respect to Ansel Schwartz, does Ansel
3 Schwartz still currently have a security interest?

4 A Again, I don't have the -- I don't recall the
5 details of this. This wasn't my area.

15:03:34

6 Q Oh, okay. I'm just talking about your current
7 awareness.

8 Do you know whether --

9 A I don't recall if this is still accurate.

10 Q Okay. But sitting here today, are you aware of
11 either Kenyon & Kenyon or Ansel Schwartz having a
12 security interest in the patents-in-suit?

15:03:43

13 A Again, I don't know if -- if it is still a
14 security interest.

15 Q What about DigaComm LLC?

15:04:02

16 A Same thing for all three.

17 Q Okay.

18 A I'm not saying they don't. I'm just saying I
19 don't.

20 Q Who -- who knows?

15:04:17

21 A I'm not sure who would know. Someone in the
22 company.

23 Q Okay. Who is that most likely to be?

24 A Could be Alex.

25 Q Please turn to -- one second. Please turn to

15:04:52

1 page 10286. You see that there is a June 10th, 2005
2 letter from GE to Scott Sander with an attachment?

3 Have you ever reviewed this letter and the
4 attachment?

5 A Where does the attachment end?

15:06:08

6 Q I believe it ends at 10296.

7 A I recognize this. I don't remember the
8 specifics of this -- of the first page, but I do
9 recognize this.

10 Q You recognize the attachment to the letter?

15:06:58

11 A That's correct.

12 Q Okay. It's -- it appears to be a June 10th,
13 2005 preliminary proposal to SightSound Technologies
14 from GE.

15 Was this just sent to you as an attachment, or
16 did GE ever do an in-person presentation from this
17 proposal?

15:07:10

18 A It wasn't sent to me.

19 Q Sent to SightSound, I meant.

20 A Oh. Sent to Scott? What was your question
21 again?

15:07:23

22 Q Was this just sent as a document or was it ever
23 presented in person by GE?

24 A I don't recall.

25 Q Do you remember ever having in-person meetings

15:07:36

1 with GE in this time period where GE made any
2 presentations to you?

3 MR. DiBOISE: Objection.

4 THE WITNESS: I don't recall specifics, but I
5 do recall meeting John Hall.

15:07:50

6 BY MS. FUKUDA:

7 Q Okay. Do you recall meeting anybody else from
8 GE in that time frame besides John Hall?

9 MR. DiBOISE: Objection.

10 THE WITNESS: I don't recall their names, but I
11 believe so.

15:08:10

12 BY MS. FUKUDA:

13 Q About how many people from GE?

14 A Two or three.

15 Q If you take a look at page 10294. 294.

15:08:20

16 A Mm-hmm. This one?

17 Q Yes.

18 In addition to John Hall, there's also a
19 Laurence Rosenberg and Henry Fong?

20 A Fang.

15:08:55

21 Q Fang.

22 MR. DiBOISE: Could be Fong.

23 BY MS. FUKUDA:

24 Q Did you meet with either Laurence or Henry?

25 A I do not recall meeting either one of them.

15:09:03

1 Q Okay. How did you know it was pronounced
2 "Fang" rather than "Fong"?

3 A F-a-n-g.

4 Q I pronounce it "Fong," but okay.

5 Turn to the next page, please. It's -- what
6 about the two names there: Bob Radtke and Rob Morin;
7 have you met either one of those two?

15:09:22

8 A I believe Rob Morin. I do not recall Bob
9 Radtke.

10 Q Okay. Did you have discussions with Mr. Hall
11 and Mr. Morin in connection with working out this deal
12 with GE?

15:09:44

13 A I was not the lead in discussions with them,
14 but, yes, I had discussions in general with them.

15 Q Do you know how long it took to negotiate this
16 deal that was ultimately executed on November 10th of
17 2005?

15:10:01

18 MR. DiBOISE: Objection.

19 THE WITNESS: I do not recall.

20 BY MS. FUKUDA:

15:10:13

21 Q I mean, was it weeks or months?

22 A I do not recall.

23 Q Do you recall the content of any discussions
24 you had with Mr. Hall or Mr. Morin?

25 A Can you explain what you mean by "content" of

15:10:36

1 the discussions?

2 Q Yeah.

3 Do you recall any -- you know, what you talked
4 about during discussions with those two gentlemen?

5 A Just this -- their proposal, is about all I
6 recall that was discussed. I don't recall specifics.

15:10:47

7 Q And about how many discussions did you have
8 with them?

9 MR. DiBOISE: Objection.

10 THE WITNESS: I don't recall.

15:11:01

11 BY MS. FUKUDA:

12 Q In addition to discussions, did you have any
13 other form of communications with them, whether e-mails,
14 letters?

15 A Not that I recall.

15:11:15

16 Q On page 10290 --

17 MR. DiBOISE: I'm sorry. 290?

18 MS. FUKUDA: Yes.

19 Q And that particular page, GE said, "We propose
20 to," first bullet, establish a fund -- "establish and
21 fund a commercialization budget (currently estimated to
22 be \$12 million)."

15:11:50

23 Do you know whether that commercialization
24 budget still remains at \$12 million?

25 A I do not have knowledge of that.

15:12:08

1 Q Okay. And do you have any understanding as to
2 what that commercialization budget encompasses? What is
3 it to be used for?

4 MR. DiBOISE: Objection.

5 THE WITNESS: I don't have the details of what 15:12:17
6 that budget is.

7 BY MS. FUKUDA:

8 Q Do you have any understanding as to what that
9 commercialization budget is to be used for?

10 MR. DiBOISE: Objection. 15:12:29

11 THE WITNESS: I don't understand what the
12 question is. Do I have any understanding?

13 MS. FUKUDA: Yeah.

14 Q Did you understand what that commercialization
15 budget would be for? 15:12:45

16 MR. DiBOISE: Objection.

17 THE WITNESS: The best I can assume is that --
18 for the collaboration approach to valuation.

19 BY MS. FUKUDA:

20 Q Okay. The second bullet says, "Acquire 15:13:05
21 substantially all of the intellectual property assets of
22 SightSound Technologies, including the non-revenue" --
23 "the non-revenue-generating e-Commerce patent
24 portfolio."

25 Do you understand that the "e-Commerce patent 15:13:20

1 portfolio" includes the patents-in-suit in this case?

2 MR. DiBOISE: Objection.

3 THE WITNESS: My understanding is that their
4 proposal is to include everything.

5 BY MS. FUKUDA:

15:13:38

6 Q Okay. They -- they have specifically
7 identified "e-Commerce patent portfolio."

8 Is that -- has that term, "e-Commerce patent
9 portfolio," been used between GE and SightSound to refer
10 to a portfolio that includes the patents-in-suit?

15:13:49

11 MR. DiBOISE: Objection.

12 THE WITNESS: That's their words. I mean,
13 but -- but this was for all patents.

14 BY MS. FUKUDA:

15 Q So your understanding is that the "e-Commerce
16 patent portfolio" includes all of the patents of
17 SightSound at that time?

15:14:09

18 MR. DiBOISE: Objection; calls for speculation.

19 THE WITNESS: I'm saying, the -- the deal with
20 GE was for all patents.

15:14:20

21 BY MS. FUKUDA:

22 Q Okay. But do you have any understanding as to
23 what "non-revenue-generating e-Commerce patent
24 portfolio" refers to?

25 MR. DiBOISE: Objection.

15:14:30

1 THE WITNESS: I don't know what their wording
2 is in their proposal.

3 BY MS. FUKUDA:

4 Q Do you remember discussing this proposal with
5 SightSound.

15:14:38

6 Oh, I'm sorry. Do you remember discussing this
7 proposal with GE?

8 MR. DiBOISE: Objection.

9 THE WITNESS: I don't have a recollection. It
10 was a while ago.

15:14:48

11 BY MS. FUKUDA:

12 Q If you turn to page 10292, the page called
13 "Terms and Conditions," under the row titled "Revenue
14 Sharing Agreement," there are three bullets, and the
15 first bullet says, "10% to an entity to be formed by Ted
16 Field, Paul Brindze, and Peter Smith."

15:15:12

17 Do you know who those three individuals are?

18 A Yes. I have met them.

19 Q And -- and who are they? With -- with what
20 entity are they associated?

15:15:29

21 A I can't recall the name of the entity.

22 Q Are they associated with one entity?

23 A I believe they were.

24 Q Okay. And you said you have met all three of
25 them?

15:15:48

1 A Yes, I have.

2 Q Was this in connection with negotiating this
3 deal with GE?

4 MR. DiBOISE: Objection.

5 THE WITNESS: I wasn't the one that negotiated 15:15:56
6 the deal. I just was introduced to them.

7 BY MS. FUKUDA:

8 Q Who introduced you to them?

9 A Scott Sander.

10 Q Did any of Mr. Field, Mr. Brindze, or Mr. Smith 15:16:08
11 enter into an agreement with either SightSound or GE
12 with respect to SightSound's patent portfolio?

13 A I -- I believe they did with us. I can't say
14 what they did with GE.

15 Q Okay. When did they enter into a deal with 15:16:33
16 SightSound?

17 A I don't recall.

18 Q Was it before or after this agreement?

19 A I can't recall whether it was before or after.

20 Q Do any of these three individuals have an 15:16:54
21 interest in the SightSound patents-in-suit?

22 A I -- I can't come up with any reason why they
23 don't.

24 Q You believe that they do?

25 A No. I believe that I can't come up with any 15:17:08

1 reason why they still don't.

2 Q Yeah, I guess what I'm asking you is: Do you
3 know whether this Revenue Sharing Agreement, as
4 represented here in this row, was, in fact, entered
5 into?

15:17:23

6 A This contract?

7 Q Yes.

8 A I believe this contract was entered into.

9 Q And did that include a 10 percent revenue share
10 with Mr. Field, Mr. Brindze, and Mr. Smith?

15:17:39

11 MR. DiBOISE: Objection.

12 THE WITNESS: Again, I don't know the specific
13 details right here. This was -- this is a proposal
14 inside it. Again, I -- I don't know.

15 BY MS. FUKUDA:

15:17:57

16 Q Turn to page SST-10314. It's "Schedule 4.13
17 'List of SightSound's Assets and Liabilities.'"

18 Does the information represented on this page
19 appear accurate to you as of November 10th, 2005?

20 A I don't have any knowledge of if it were
21 accurate or not. I would assume it's accurate, but I
22 have no reason to say that it isn't. This isn't my
23 creation.

15:18:44

24 Q Who do you think created it?

25 A I would believe -- I would believe that would

15:19:01

1 have been Alex LePore.

2 MS. FUKUDA: I'm marking, as Exhibit 126, a
3 copy of SST-7983 through 7988.

4 (Exhibit 126 was marked for identification by
5 the Court Reporter.)

15:21:16

6 BY MS. FUKUDA:

7 Q Do you recognize this document at all?

8 A Yes.

9 Q It -- the document at the top appears to --
10 there's a number of blanks, so this is a draft, but it
11 appears to be for the year -- it's 19 blank.

15:22:03

12 Do you have any idea when this draft was
13 prepared?

14 A I do not recall.

15 Q And do you know who prepared this draft?

15:22:18

16 A This looks like it's a combination of
17 boilerplate and cut-and-paste names, but I -- my
18 recollection is that we got the boilerplate document
19 from Ansel Schwartz, but I don't know if -- but I don't
20 know what this was -- ended up being for.

15:22:53

21 Q Were you involved in pulling this document --
22 or this draft together?

23 MR. DiBOISE: Objection.

24 THE WITNESS: I believe I did work with Ansel
25 on learning a little about this.

15:23:04

1 BY MS. FUKUDA:

2 Q Was this the first draft license that
3 SightSound had pulled together?

4 MR. DiBOISE: Objection.

5 THE WITNESS: I don't recall.

15:23:18

6 BY MS. FUKUDA:

7 Q Do you know if any licenses modeled after
8 Exhibit 126 was, in fact, sent out to any company?

9 A I don't know that.

10 Q Did --

15:23:29

11 A I don't recall.

12 Q In the 1990s time frame, did SightSound send
13 out license proposals to other companies with respect to
14 any of the patents-in-suit?

15 A I don't recall one way or the other.

15:23:45

16 Q Who was involved in sending out licensing
17 offers to other companies in the 1990s time frame?

18 A I don't know if he did, but it would have been
19 our general counsel, Chris Reese. At least, that's the
20 best of my recollection from the late 1990s.

15:24:12

21 MS. FUKUDA: Marking, as Exhibit 127, a copy of
22 document SST-037049 through 37050.

23 (Exhibit 127 was marked for identification by
24 the Court Reporter.)

25 MR. DiBOISE: Thank you.

15:25:32

1 BY MS. FUKUDA:

2 Q Have you ever seen this document before?

3 A Yes, I have.

4 Q Okay. And do you remember from whom did you
5 receive a copy of this document?

15:26:22

6 A I don't know who gave it to me.

7 Q Do you know who is C.D. de Jongh from Philips
8 International B.V.?

9 A I can't recall that person.

10 Q Did you receive a copy of this letter around
11 the time of November 1993?

15:26:45

12 MR. DiBOISE: Objection.

13 THE WITNESS: I believe so.

14 BY MS. FUKUDA:

15 Q And in this letter, it refers to U.S. Patent
16 4,538,176 and U.S. Patent 4,654,799.

15:26:59

17 Did you ever review those two patents?

18 A I don't recall them.

19 Q On the next page, there is handwriting that
20 says "N.B."

15:27:28

21 Do you recognize that handwriting at all?

22 A No, I don't.

23 Q The two U.S. patents mentioned in this letter,
24 did you understand them to be prior art to your patents?

25 MR. DiBOISE: Objection; calls for legal

15:28:32

1 conclusion, may call for expert testimony.

2 THE WITNESS: I don't know at the time what all
3 of that meant. I don't know if those are the two
4 patents that they showed me, but I'm not a lawyer, so I
5 can't opine as to prior art.

15:28:53

6 BY MS. FUKUDA:

7 Q Did you ask Ansel Schwartz to prepare a review
8 or an analysis of these two patents?

9 A Oh, I don't recall asking for him to do an
10 analysis.

15:29:17

11 MS. FUKUDA: I'm marking, as Exhibit 128, a
12 copy of a November 30th, 1993 letter from Ansel Schwartz
13 to Arthur Hair.

14 (Exhibit 128 was marked for identification by
15 the Court Reporter.)

15:29:31

16 BY MS. FUKUDA:

17 Q Is this a letter that you had received from
18 Mr. Hair on or about November 30th, 1993?

19 A No.

20 Q You never received this letter?

15:30:16

21 A I received it from Ansel Schwartz.

22 Q Oh, apologies.

23 Is this a letter that you had received from
24 Mr. Schwartz on or about November 30th, 1993?

25 A Yes, it is.

15:30:30

1 Q Did Mr. Schwartz provide this letter in
2 response to a request from you?

3 A I do not recall requesting him to do this.

4 MR. DiBOISE: So was this produced by us in
5 this litigation?

15:30:57

6 MS. FUKUDA: I believe it was.

7 MR. DiBOISE: Well, why doesn't it have a
8 production number?

9 MS. FUKUDA: Because it was probably sitting in
10 those 80 boxes of paper documents.

15:31:04

11 MR. DiBOISE: Okay. So I'm -- I'm confused,
12 and what I'm confused about is the exhibit stamp.

13 MS. FUKUDA: I believe this was an exhibit to a
14 Ansel Schwartz deposition in the prior N2K case.

15 MR. DiBOISE: Why don't you hold on to your
16 questioning regarding this document for a few minutes.
17 Let me have a break.

15:31:45

18 MS. FUKUDA: Okay. Well, maybe this might
19 clear it up. Let me just ask one question, and you let
20 me know if you still need the break.

15:31:56

21 Q Mr. Hair, did you forward a copy of this letter
22 from Mr. Schwartz to Philips at any point?

23 A That is possible.

24 MS. FUKUDA: And -- and you see at the -- let
25 me see here.

15:32:33

1 Do you still want that break?

2 MR. DiBOISE: No.

3 BY MS. FUKUDA:

4 Q Okay. You see on page 6 of Mr. Schwartz's
5 letter, he says, at the bottom, "I suggest that you
6 forward a copy of this report to Mr. de Jongh for his
7 review"?

15:32:41

8 A I see that.

9 Q And does this refresh your recollection about
10 whether you had indeed forwarded this letter or this
11 report to Mr. de Jongh?

15:33:00

12 A I don't recall sending it to Mr. de Jongh --
13 de Jongh.

14 Q Do you recall sending it to anybody else at
15 Philips?

15:33:15

16 A I believe this might have gone to Eric
17 Kronfeld.

18 Q Sorry. Where are you getting that name from?
19 Eric?

20 A Eric Kronfeld.

15:33:42

21 Q Can you spell that last name?

22 A K-r-o-n-f-e-l-d.

23 Q Okay. And what made you think that you sent
24 this to Mr. Kronfeld?

25 A I'm just trying to piece this together, because

15:33:54

1 if I would have forwarded it, it would have been to
2 Mr. Kronfeld, not Mr. de Jongh.

3 MR. DiBOISE: Who -- who is Mr. Kronfeld?

4 THE WITNESS: Eric Kronfeld is the -- was the
5 president of PolyGram USA.

15:34:26

6 MS. FUKUDA: PolyGram. Okay.

7 Q And why were you -- why would you send a
8 response to PolyGram in response to a letter from
9 Philips?

10 MR. DiBOISE: Objection.

15:34:38

11 THE WITNESS: Philips owned PolyGram.

12 BY MS. FUKUDA:

13 Q After you forwarded the -- Mr. Schwartz's
14 November 30th, 1993 letter to Polygram, did you receive
15 any response from them?

15:34:55

16 MR. DiBOISE: Objection.

17 THE WITNESS: I don't recall anything specific.
18 I'm sure there might have been.

19 MS. FUKUDA: Mark, as Exhibit 129, a copy of a
20 January 18th, 1994 letter from Michael E. Marion at
21 Philips Electronics North America Corp. to Mr. Arthur
22 Hair, and this one has a Bates number, SST-024433.

15:35:30

23 (Exhibit 129 was marked for identification by
24 the Court Reporter.)

25 BY MS. FUKUDA:

15:36:16

1 Q Do you remember receiving this letter from
2 Mr. Marion or about January 18th, 1994?

3 A Yes.

4 Q In Mr. Marion's letter, he says, "As we
5 discussed at the meeting, further analysis of the
6 commercial value of your patent will depend to a great
7 extent on your comments regarding the prior art that we
8 have found. In particular, I would appreciate your
9 comments regarding the relevance of the Abraham patent
10 (4,521,806)."

15:36:27

15:36:42

11 Which meeting is he referring to?

12 MR. DiBOISE: Objection.

13 THE WITNESS: I believe it was a meeting with
14 Rob Hamersma.

15 BY MS. FUKUDA:

15:36:55

16 Q Okay. And that's H-a-m-e-r-s-m-a?

17 A Yes.

18 Q And how much in advance of this letter did you
19 have that meeting with Mr. Hamersma and Mr. Marion?

20 A I don't recall. That was back in 1994.

15:37:18

21 Q Okay. But you remember meeting the two of
22 them?

23 A Yes, I do.

24 Q Do you remember if it was in the U.S. or if it
25 was international meeting?

15:37:28

1 A United States.

2 Q Can you recall where?

3 A New York City.

4 Q And how long did you -- did that meeting last?

5 A I don't recall.

15:37:41

6 Q Was anybody else there from SightSound?

7 A Possibly Scott Sander, but I -- I can't recall.

8 That's been quite a while.

9 Q Okay. He mentions in here wanting your
10 comments regarding the prior art that they have found.

15:38:08

11 Do you know what prior art is being referred
12 to?

13 MR. DiBOISE: Hold on a second.

14 Objection.

15 THE WITNESS: They handed me two patents. I
16 don't know if that's what they characterize as prior
17 art. They handed me two patents. I took them back and
18 gave them to Ansel Schwartz.

15:38:28

19 BY MS. FUKUDA:

20 Q Okay. Do you know which two patents those
21 were?

15:38:41

22 A I don't recall the numbers.

23 Q Okay. Do you know if one of them was the
24 Abraham patent that's enumerated here?

25 A I do not recall.

15:38:51

1 MS. FUKUDA: I'm marking, as Exhibit 130, a
2 copy of a January 26, 1994 letter from Ansel Schwartz to
3 Mr. Arthur R. Hair regarding U.S. Patent No. 5,191,573
4 by and of A.R. Hair.

5 (Exhibit 130 was marked for identification by 15:39:49
6 the Court Reporter.)

7 BY MS. FUKUDA:

8 Q Do you remember reviewing -- did you receive
9 this letter from Mr. Hair on or after January 26, 1994?

10 A No. 15:40:26

11 Q You did not?

12 A I did not.

13 Q How do you know that?

14 A Because I am Mr. Hair.

15 Q Sorry. My apologies. I keep looking at your 15:40:33
16 name.

17 Did you receive this letter from Mr. Schwartz
18 on or about January 26, 1994?

19 A Yes.

20 Q And did you review the contents of this letter? 15:40:43

21 A At the time, I'm sure I did.

22 Q Did you then forward this letter to Philips?

23 A It is possible.

24 MS. FUKUDA: Here, let me help you out with
25 that. 15:41:13

1 Marking, as Exhibit 131, a copy of a
2 January 28th, 1994 letter from Mr. Hair to Michael E.
3 Marion of Philips Electronics, SST-024424.

4 (Exhibit 131 was marked for identification by
5 the Court Reporter.)

15:41:46

6 BY MS. FUKUDA:

7 Q Is this a letter that you had sent to Michael
8 Marion of Phillips on or about January 28th, 1994?

9 A Yes.

10 Q Okay. And here it's referring to -- you say
11 that you have enclosed a copy of this report.

15:42:12

12 Are you referring to the letter from
13 Mr. Schwartz that's Exhibit 130?

14 A I don't recall if -- tying the two together,
15 but I don't see why not.

15:42:37

16 MS. FUKUDA: Marking, as Exhibit 132, a copy of
17 a March 9th, 1994 letter from Mr. Hamersma to Mr. Hair.

18 (Exhibit 132 was marked for identification by
19 the Court Reporter.)

20 BY MS. FUKUDA:

15:43:53

21 Q Did you receive this letter from Mr. Hamersma
22 on or about March 9th, 1994?

23 A Yes.

24 Q Okay. In this letter, Philips says, "We" --
25 the second paragraph: "We have now completed our

15:44:40

1 analysis of the commercial value of your patent after
2 carefully studying this report." And I will note that
3 "this report" appears to be referring to a report of
4 your patent attorney discussing the relevance of the
5 Abraham patent that's referred to in the above
6 paragraph. Philips continues to say, "We have come to
7 the conclusion that, in view of the Abraham patent, your
8 patent could effectively cover only audio/video
9 delivery" system "in which both the request/billing and
10 the audio/video signals are transmitted over ordinary
11 telephone lines."

15:44:56

15:45:17

12 Did you have any further discussions with
13 Philips or Polygram after the receipt of this letter?

14 MR. DiBOISE: Objection.

15 THE WITNESS: I don't recall.

15:45:37

16 BY MS. FUKUDA:

17 Q Ultimately, did SightSound ever enter into a
18 deal with Philips or Polygram regarding SightSound's
19 patents-in-suit?

20 A No, we did not.

15:45:49

21 MS. FUKUDA: Marking, as Exhibit 133, a letter
22 dated March 25th, 1994 from Ansel Schwartz to Mr. Arthur
23 Hair.

24 (Exhibit 133 was marked for identification by
25 the Court Reporter.)

15:46:50

1 BY MS. FUKUDA:

2 Q Did you receive this letter from Mr. Schwartz
3 on or about March 25th, 1994?

4 A Yes.

5 MS. FUKUDA: Marking, as Exhibit 134, a copy of 15:48:57
6 the March 31st, 1994 letter from Mr. Hair to Robert
7 Hamersma at Philips, SST-24425.

8 (Exhibit 134 was marked for identification by
9 the Court Reporter.)

10 BY MS. FUKUDA: 15:49:18

11 Q And is this a letter that you had sent to
12 Mr. Hamersma on March 31st, 1994?

13 A Yes.

14 Q There's a reference in this letter in the
15 last -- in the last two sentences of your first 15:49:50
16 paragraph where you say, "I have enclosed a photocopy of
17 Mr. Schwartz's letter addressed to me, dated March 25,
18 1994."

19 Is that reference to Exhibit 133?

20 MR. DiBOISE: Objection. 15:50:21

21 THE WITNESS: It appears to be.

22 BY MS. FUKUDA:

23 Q And you concluded your letter saying,
24 "Mr. Hamersma, I would appreciate your review of
25 arguments raised by Mr. Schwartz. I am confident you 15:50:42

1 will find merit in his interpretation. I welcome your
2 questions or comments."

3 After sending out this letter to Mr. Hamersma
4 of Philips in March of 1994, did you receive any
5 response from Philips? 15:50:59

6 A I don't recall.

7 MS. FUKUDA: Marking, as Exhibit 135, a
8 January 15th, 1997 letter from Robert Sachs of Fenwick &
9 West to Art Hair, SST-037064 through 37065.

10 (Exhibit 135 was marked for identification by 15:52:54
11 the Court Reporter.)

12 BY MS. FUKUDA:

13 Q Did you receive this letter from Mr. Sachs on
14 or about January 15th, 1997?

15 A I believe I did. 15:53:34

16 Q And did you ever respond to Mr. Sachs' letter?

17 A I don't recall.

18 Q Do you remember any follow-up that was done at
19 SightSound in response to Mr. Sachs' letter?

20 A Could have been, but I don't -- I don't 15:53:50
21 specifically recall.

22 Q I see in the last paragraph of Mr. Sachs'
23 letter where he points you to: "We also note that there
24 appears to be substantial prior art such as the Freeny,
25 U.S. Patent No. 4,528,643 that anticipates the Hair 15:54:11

1 patent."

2 What, if anything, did you do in response to
3 Mr. Sachs' identification of prior art?

4 MR. DiBOISE: Objection.

5 THE WITNESS: I believe I handed this letter to 15:54:29
6 Ansel Schwartz, my attorney.

7 BY MS. FUKUDA:

8 Q And did you do anything else in addition to
9 that?

10 MR. DiBOISE: Objection. 15:54:38

11 To the extent that anything you did was a
12 result of communication with Mr. Schwartz, I would
13 caution you not to reveal the substance or the direction
14 given to you by Mr. Schwartz.

15 THE WITNESS: I do not -- 15:54:54

16 MR. DiBOISE: Go ahead.

17 THE WITNESS: I do not recall.

18 MS. FUKUDA: Marking, as Exhibit 136, a copy of
19 a -- an October 1st, 1997 letter from Arthur Hair to
20 Mr. J.J. Rosen at N2K, Inc. Bates No. N2K 159 through 15:56:27
21 165.

22 (Exhibit 136 was marked for identification by
23 the Court Reporter.)

24 BY MS. FUKUDA:

25 Q Do you remember sending -- did you send this 15:57:33

1 letter to Mr. Rosen on or about October 1st, 1997?

2 A I believe so, yes.

3 Q You see in the attachment there is a -- a draft
4 Patent License Agreement.

5 Did you prepare that draft?

15:57:48

6 A That would have been prepared by Ansel Schwartz
7 along with me, I would imagine.

8 Q Directing your attention to paragraph 4.2 in
9 this proposal, it says, Licensee shall pay a royalty
10 equal to one and one half percent of the net sales.

15:58:15

11 Did N2K accept your license proposal embodied
12 in Exhibit 136?

13 A At that time, no.

14 MS. FUKUDA: Mark, as Exhibit 137, a copy of a
15 January 22nd, 1998 letter from Christopher Reese to
16 Mr. J.J. Rosen at N2K, Bates No. N2K 173 through 182.

15:59:04

17 (Exhibit 137 was marked for identification by
18 the Court Reporter.)

19 BY MS. FUKUDA:

20 Q And my question is: Did you review either this
21 letter or the attached proposed License Agreement before
22 it went out to Mr. Rosen?

15:59:59

23 A I don't recall.

24 Q I note here that in the last paragraph of the
25 letter, there's a reference that -- this would be the

16:00:24

1 last -- the second-to-last sentence of the last
2 paragraph in which SightSound had offered a royalty rate
3 of 2 percent.

4 Do you have any understanding as to why the
5 offer was for 2 percent at this point in time?

16:00:55

6 MR. DiBOISE: Objection.

7 THE WITNESS: I do not recall.

8 BY MS. FUKUDA:

9 Q And did N2K accept that license proposal from
10 SightSound?

16:01:07

11 A I do not believe so.

12 MS. FUKUDA: Mark, as Exhibit 138, a copy of a
13 May 6, 1998 letter from Richard Rinaldo of Meyer Unkovic
14 to Arthur Hair, Bates No. SST-025984.

15 MR. DiBOISE: Thanks.

16:02:05

16 (Exhibit 138 was marked for identification by
17 the Court Reporter.)

18 BY MS. FUKUDA:

19 Q Did you receive this letter from Mr. Rinaldo on
20 or about May 6, 1998?

16:02:28

21 A It would appear so.

22 Q He says, "Enclosed for your records is a copy
23 of the material which I have received from Ed Flynn..."

24 Who is Ed Flynn?

25 A I do not recall.

16:02:40

1 Q "... which he characterizes as," quote, "'what
2 we consider to be the most relevant prior art
3 documentation relating to the Hair patent,'" unquote.
4 And then there's a passage that's been redacted here.

5 Do you know what prior art documentation is
6 here -- was attached to this letter?

16:03:00

7 A I do not recall.

8 Q Do you know what, if any, action did you take
9 with respect to the attachment to this letter?

10 A No, I don't recall.

16:03:18

11 Q Did you ever have -- did you ever take any --
12 what was Mr. Rinaldo's role in the 1998 time frame with
13 respect to SightSound?

14 A I believe he was one of the lawyers on the
15 legal case against N2K.

16:03:48

16 MS. FUKUDA: Mark, as Exhibit 139, a copy of
17 document SST-027574 through 27581.

18 (Exhibit 139 was marked for identification by
19 the Court Reporter.)

20 BY MS. FUKUDA:

16:05:28

21 Q Do you recognize this document?

22 A Yes.

23 Q And what is this document?

24 A It's a printout of copious notes of mine.

25 Q Okay. It says "Memo Pad for Arthur R. Hair."

16:05:35

1 Q Do you remember a meeting with Mr. Jordan Rost
2 around that time?

3 A I don't recall the meeting.

4 Q Your notes say, "He characterized" our "royalty
5 rate as 'IBM/Blockbusterish,' and said that they would
6 have to think long and hard about" relinqu- --
7 "relinquishing 5% of their receivables."

16:07:25

8 Do you know what he meant by
9 "IBM/Blockbusterish"?

10 MR. DiBOISE: Objection.

16:07:39

11 THE WITNESS: I don't recall, but I'm sure it
12 was in the negative.

13 BY MS. FUKUDA:

14 Q Did Warner Brothers ever agree to license
15 SightSound's patents?

16:07:56

16 A No.

17 Q Turning to the page 27575, which is the next
18 page, under the category of "Sony Music Distribution,"
19 if you go to the right-hand column, there's an entry
20 October 1st, 1996.

16:08:20

21 Do you see that?

22 A Yes, I do.

23 Q And it says Alan Weyl, W-e-y-l.

24 Do you remember having a discussion with
25 Mr. Alan Weyl of Sony Music Distribution?

16:08:33

1 (Exhibit 140 was marked for identification by
2 the Court Reporter.)

3 BY MS. FUKUDA:

4 Q Do you recognize this document?

5 A Yes, I do. 16:11:39

6 Q It -- it notes that it is a White Paper dated
7 February 26, 1999. It's got your name on the bottom as
8 chief technology officer of SightSound.com.

9 Did you prepare this document?

10 A Yes, I did. 16:11:59

11 Q And did you prepare this document around 1999,
12 early 1999?

13 A Yes, I did.

14 Q Okay. What was the purpose of this White
15 Paper? 16:12:12

16 A As I recall, it was a precursor to formulating
17 ideas in and around of a patent filing I did.

18 Q And did you ultimately file for a patent as
19 follow-up to this White Paper?

20 A Yes, I did. 16:12:38

21 Q Which patent was that?

22 A I don't recall the numbers.

23 Q What's the subject matter of that patent?

24 A Applied encryption.

25 Q Directing you to page 7967. Now, towards the 16:12:59

1 bottom of that document, if you go eight lines up,
2 there's a sentence that starts with: "In looking for
3 ways to improve."

4 Do you see that?

5 A Yes. 16:13:24

6 Q Okay. Sentence goes on to say, "SightSound.com
7 has identified a fundamental weakness in the
8 conventional approach of bundling encryption,
9 compression and playback functions in application-level
10 audio player software." 16:13:37

11 What was the fundamental weakness that
12 SightSound has identified?

13 MR. DiBOISE: Objection; document speaks for
14 itself.

15 THE WITNESS: That was what came out of the
16 next patent that I filed for. 16:13:55

17 BY MS. FUKUDA:

18 Q If you turn to the next page, 7968, towards the
19 top, third line down, it says, "Furthermore,
20 SightSound.com believes that mission critical functions,
21 such as encryption, must reside deep in the operating
22 system." 16:14:22

23 Is that still your belief?

24 A It's the belief at that time.

25 Q Okay. Has that changed since? 16:14:38

1 A I haven't reviewed this since then.

2 Q What did you mean by "must reside deep in the
3 operating system"?

4 A If you are a layer on top, it's very easy for
5 DRM systems to be circumvented. It's more difficult if 16:15:01
6 they are deeper into the operating system.

7 Q Did SightSound ever incorporate the encryption
8 technique in this White Paper in any of its commercial
9 systems?

10 A No, we did not. 16:15:20

11 Q Why not?

12 MR. DiBOISE: Objection.

13 THE WITNESS: We didn't get -- we didn't
14 actually do it.

15 BY MS. FUKUDA: 16:15:31

16 Q Did you ever attempt to do so?

17 MR. DiBOISE: Objection.

18 THE WITNESS: We first filed the patent and
19 waited for the patent to be issued, and there was plans,
20 but then we stopped the company. We stopped the system. 16:15:44

21 MR. DiBOISE: Can I just have a second?

22 MS. FUKUDA: Sure.

23 MR. DiBOISE: We can stay on the record too.

24 MS. FUKUDA: Mark, as Exhibit 141, a copy of
25 SST-8694 through 8708. 16:16:52

1 (Exhibit 141 was marked for identification by
2 the Court Reporter.)

3 BY MS. FUKUDA:

4 Q Now, Mr. Hair, have you ever seen this document
5 before? 16:17:48

6 A Yes, I have.

7 Q It appears to be a March 9th, 1998 memorandum
8 prepared by Goldman, Sachs; is that correct?

9 A That's what it appears.

10 Q Okay. Did you assist in the preparation of
11 this document? 16:18:04

12 MR. DiBOISE: Asked and answered.

13 THE WITNESS: I -- I can't recall precisely,
14 but I'm sure I did.

15 BY MS. FUKUDA: 16:18:18

16 Q You see that on page 8696 there's an Executive
17 Summary there under "A. Key Investment Considerations"?
18 If you could just read through that section and let me
19 know whether you agree with the content of those
20 statements. 16:18:41

21 MR. DiBOISE: Objection.

22 All three paragraphs?

23 BY MS. FUKUDA:

24 Q Do you agree with the content of those three
25 paragraphs? 16:19:58

1 MR. DiBOISE: Objection.

2 THE WITNESS: At the time, I would imagine I
3 did, because I did not object to it.

4 MS. FUKUDA: Mark, as Exhibit 142, a copy of
5 SST-37598 through 37599. 16:20:33

6 (Exhibit 142 was marked for identification by
7 the Court Reporter.)

8 BY MS. FUKUDA:

9 Q Have you ever seen this letter before?

10 A I don't recall. 16:21:42

11 Q Did you ever have any discussions with Alex
12 LePore or Chris Reese regarding the content of this
13 letter?

14 A I don't recall. This would be something that
15 they would have handled. 16:21:57

16 Q Do you recall -- do you have any knowledge,
17 with respect to SightSound, contacting Intellectual
18 Ventures regarding its patent portfolio -- regarding
19 SightSound's patent portfolio?

20 A I don't have a specific recollection of that. 16:22:37

21 Q Were you ever informed of Intellectual
22 Ventures' response that SightSound's IP has a problem?

23 MR. DiBOISE: Objection; lacks foundation.

24 THE WITNESS: I -- I don't recall.

25 MS. FUKUDA: Mark, as Exhibit 143, a copy of 16:23:21

1 document SST-37140 through 37171.

2 (Exhibit 143 was marked for identification by
3 the Court Reporter.)

4 BY MS. FUKUDA:

5 Q Do you recognize this document?

16:24:33

6 A I vaguely remember this.

7 Q Do you know if this was a presentation that was
8 made by SightSound?

9 MR. DiBOISE: Objection.

10 THE WITNESS: I don't recall if this was
11 actually ever made into a presentation. I -- I can't
12 recall.

16:24:54

13 BY MS. FUKUDA:

14 Q I see that there are -- in each of the pages,
15 there's a reference to a "Voice Over" and "Action."

16:25:08

16 Do you know in which -- what format this was
17 meant to be presented?

18 A I didn't --

19 MR. DiBOISE: Objection.

20 THE WITNESS: I do not recall.

16:25:16

21 BY MS. FUKUDA:

22 Q And do you know for what purpose was this
23 document created?

24 MR. DiBOISE: Asked and answered.

25 THE WITNESS: No, I don't recall.

16:25:24

1 BY MS. FUKUDA:

2 Q Are you able to give me an approximate date of
3 when this document was generated?

4 A No. There's no indication of date on here.

5 Q Mr. Hair, do you have any interest in the
6 SightSound entity that's a party to this litigation?

16:26:02

7 MR. DiBOISE: Objection.

8 THE WITNESS: I do --

9 BY MS. FUKUDA:

10 Q Financial interest?

16:27:47

11 A Financial interest. I do not recall if my
12 interest is in the one directly associated with this
13 litigation.

14 Q But you have a financial interest in some
15 SightSound entity?

16:28:11

16 A I believe, yes.

17 Q Do you know about -- what -- what your
18 financial interest is?

19 A My personal? I don't recall. It's minimal.

20 Q Okay. Do you have an entity that's affiliated
21 with you that has a larger financial interest?

16:28:21

22 A A trust for my children.

23 Q And -- and, currently, what amount of interest
24 does that trust have in SightSound?

25 MR. DiBOISE: Objection.

16:28:39

1 THE WITNESS: I don't recall the exact number
2 of shares.

3 BY MS. FUKUDA:

4 Q Is it -- do you know if, currently, it's
5 greater than or less than 10 percent?

16:28:47

6 MR. DiBOISE: Objection.

7 THE WITNESS: I believe it might be -- I
8 believe it is less than 10 percent.

9 BY MS. FUKUDA:

10 Q Do you have any financial interest in the
11 outcome of this litigation?

16:28:55

12 MR. DiBOISE: Objection.

13 THE WITNESS: I don't understand the question.
14 A financial interest?

15 MS. FUKUDA: Yes.

16:29:08

16 Q Other than your ownership interest in your
17 trust in -- in a SightSound entity, do you have any
18 direct financial interest in the outcome of this
19 litigation?

20 MR. DiBOISE: Objection.

16:29:17

21 THE WITNESS: The only thing that I'm currently
22 aware of is the -- I believe they're called membership
23 interests, and I believe that's it.

24 BY MS. FUKUDA:

25 Q Okay. What are membership interests?

16:29:31

1 A In the SightSound entity.

2 Q Is that different from your -- the financial
3 interest that you were referring to earlier?

4 A It --

5 MR. DiBOISE: Objection.

16:29:45

6 THE WITNESS: It was stock, and then it was
7 converted to -- I believe it's called membership
8 interests.

9 BY MS. FUKUDA:

10 Q Do you know the approximate value of your
11 membership interests?

16:29:57

12 MR. DiBOISE: Objection.

13 THE WITNESS: No, I do not.

14 BY MS. FUKUDA:

15 Q Do you have an approximate range that it falls
16 between currently?

16:30:04

17 MR. DiBOISE: Objection.

18 THE WITNESS: No, I do not.

19 BY MS. FUKUDA:

20 Q And how many people have membership interests?

16:30:11

21 MR. DiBOISE: Objection.

22 THE WITNESS: I -- I don't know that off the
23 top of my head.

24 BY MS. FUKUDA:

25 Q Is it -- do you know if it's limited to board

16:30:20

1 members or extends beyond that?

2 A It extends beyond that.

3 MS. FUKUDA: Okay. So reserving any further
4 disputes between your counsel and us, I have no further
5 questions for you today. Thank you for your time.

16:31:02

6 THE WITNESS: Mm-hmm.

7 MR. DiBOISE: Thank you.

8 THE VIDEOGRAPHER: This is the end of Volume 1,
9 Videotape No. 4 in the deposition of Arthur Hair.

10 We are going off the record; the time is 4:31.

16:31:13

11 (Whereupon, the deposition was concluded at
12 4:31 p.m.)

13 ---oOo---

14 I declare under penalty of perjury that the
15 foregoing is true and correct. Subscribed at

16 _____, California, this _____ day of

17 _____, 2012.

18

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Signature of the witness

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I further certify that I am not of counsel or attorney for either or any of the parties to the said deposition, nor in any way interested in the event of this cause, and that I am not related to any of the parties thereto.

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