

SCOTT CHRISTOPHER SANDER - 12/18/2012

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ORIGINAL

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

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SIGHTSOUND TECHNOLOGIES, LLC,

Plaintiff,

vs.

CASE NO.:

2:11cv01292-DWA

APPLE INC.,

Defendant.

_____ /

30(b)(6) VIDEOTAPED DEPOSITION OF

SCOTT CHRISTOPHER SANDER

Tuesday, December 18, 2012

REPORTED BY: RACHEL FERRIER, CSR 6948

(1-448406)

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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 18, 2012, commencing at 9:33 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 SCOTT CHRISTOPHER SANDER, called as a witness by
8 Defendant, who, being by me first duly sworn, was
9 thereupon examined as a witness in said action.

10 APPEARANCES OF COUNSEL

11 For the Plaintiff and the Witness:

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25 ALSO PRESENT: PETER HIBDON, Videographer

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1 EAST PALO ALTO, CALIFORNIA
2 TUESDAY, DECEMBER 18, 2012
3 9:33 A.M.
4 ---o0o---
5 PROCEEDINGS
6 THE VIDEOGRAPHER: Good morning.
7 Here begins Disc 1 in the deposition of Scott
8 Sander in the matter regarding -- in the matter of
9 Sightsound Technologies, LLC, versus Apple Inc.
10 Today's date is December 18th, 2012, and the
11 time is 9:33 a.m.
12 My name is Peter Hibdon, and the court reporter
13 is Rachel Ferrier of Merrill Court Reporting.
14 Counsel, please identify yourselves and state
15 whom you represent.
16 MR. BATCHELDER: My name is James Batchelder
17 from the law firm of Ropes & Gray on behalf of
18 defendant, Apple.
19 MR. DiBOISE: James DiBoise. I represent the
20 plaintiff and the witness.
21 THE VIDEOGRAPHER: Thank you.
22 Would the court reporter swear in the witness.
23 ---o0o---
24 //
25 //

09:34:28

09:34:39

09:34:53

09:35:02

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SCOTT CHRISTOPHER SANDER

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

---o0o---

EXAMINATION

BY MR. BATCHELDER:

Q Would you please state your full name for the record.

A Scott Christopher Sander.

Q And what is your home address?

A 851 Valley View Road.

Q What is your business address?

A 311 South Craig Street, Pittsburgh, Pennsylvania.

Q Mr. Sanders, if there's anything that I say or ask you today that confuses you in any way, will you please say so?

A I will.

Q Thank you.

I'm likely to use in this deposition the word "communicate" or various forms of that word, "communication," "communicating," etc. I just want to be clear at the outset by -- that by those terms, I'm referring to communications in their broadest sense,

09:27:22

09:35:17

09:35:27

09:35:35

09:35:53

1 whether oral, written, electronic, or otherwise.

2 Does that make sense to you?

3 A I understand.

4 Q Also, I understand there have been several
5 entities that used the name or word "SightSound," and I
6 want to be clear that if I intend a question to be
7 directed to a particular SightSound entity, then I will
8 call that out in the question, but, otherwise, I'll use
9 the term "SightSound" to refer to any and all SightSound
10 entities.

09:36:04

09:36:24

11 Does that make sense to you?

12 A I understand.

13 Q Okay. And -- and if your answer to any
14 question is particular to a given SightSound entity,
15 would you please try to specify that in your answer so
16 we have a clear record?

09:36:34

17 A Yes.

18 MR. BATCHELDER: Thank you.

19 (Exhibit 178 was marked for identification by
20 the Court Reporter.)

09:36:38

21 MR. BATCHELDER: I've had marked as Exhibits 2
22 through 4 in this deposition the patents-in-suit in this
23 matter -- oh, I'm sorry.

24 THE WITNESS: Yeah.

25 MR. BATCHELDER: Yeah, 178, 179, and 180. So

09:36:59

1 178 is Patent No. 5,191,573.

2 Q Do you have that before you?

3 A Yes.

4 Q Okay. And --

5 MR. DiBOISE: Can you hold on a second. We're 09:37:25
6 not scrolling. Thank you.

7 BY MR. BATCHELDER:

8 Q So to the extent we need to refer to that
9 patent during the course of the deposition, would you
10 understand if I refer to it as the "'573 patent"? 09:37:57

11 A Yes.

12 (Exhibit 179 was marked for identification by
13 the Court Reporter.)

14 MR. BATCHELDER: All right. And we have also
15 marked, as Exhibit 179, Patent No. 5,675,734. 09:38:03

16 Q Do you have that before you?

17 A Yes.

18 Q And can we refer to that as the "'734 patent"?

19 A Yes.

20 (Exhibit 180 was marked for identification by 09:38:17
21 the Court Reporter.)

22 MR. BATCHELDER: And we have marked, as
23 Exhibit 180, Patent No. 5,966,440.

24 Q Do you have that before you?

25 A Yes. 09:38:24

1 Q And can we refer to that as the '440 patent?

2 A Yes.

3 Q And, collectively, can we refer to those three
4 patents as "the patents-in-suit"?

5 A Yes.

09:38:33

6 (Exhibit 177 was marked for identification by
7 the Court Reporter.)

8 MR. BATCHELDER: I also had marked, as
9 Exhibit 177, Defendant Apple Inc.'s Notice of 30(b)(6)
10 Deposition to Plaintiff SightSound Technologies, LLC.

09:38:48

11 Q Do you have that before you?

12 A Yes.

13 Q Have you seen that document before?

14 A I don't -- I don't know.

15 Q Is it familiar to you?

09:39:01

16 A No.

17 Q If I could ask you, within that Rule 30(b)(6)
18 Deposition Notice that is Exhibit 177, to turn to
19 Schedule A, which lays out a set of 32 topics.

20 Have you seen this list of topics before?

09:39:40

21 A I don't believe I have.

22 Q Do you understand that you have been designated
23 to testify today on SightSound's behalf as to any of
24 these topics?

25 A Yes.

09:39:58

1 Q Which ones?

2 A 7, 8, and 12. 7, 8, and 12.

3 Q As between you and Mr. Hair, who is more
4 knowledgeable about Topic 7?

5 MR. DiBOISE: Objection.

09:40:34

6 THE WITNESS: Yeah, I don't know. I
7 couldn't -- I couldn't speculate.

8 BY MR. BATCHELDER:

9 Q So it might be you; it might be him?

10 A Perhaps.

09:40:45

11 Q As to Topic 8, who is more knowledgeable, you
12 or Mr. Hair?

13 MR. DiBOISE: Objection.

14 THE WITNESS: I -- I can't -- I can't
15 determine.

09:40:55

16 BY MR. BATCHELDER:

17 Q Might be you; might be him?

18 A Yes.

19 Q As to Topic 12, who is more knowledgeable, you
20 or Mr. Hair?

09:41:01

21 MR. DiBOISE: Objection.

22 THE WITNESS: Yeah, I don't know.

23 BY MR. BATCHELDER:

24 Q Might be you; might be him?

25 A Yes.

09:41:04

1 Q To prepare to testify today on SightSound's
2 behalf on Topics 7, 8, and 12, did you meet with
3 counsel?

4 A Yes.

5 Q Did counsel provide you with any information in 09:41:20
6 those meetings that refreshed your recollection
7 regarding any information responsive to those topics?

8 MR. DiBOISE: Objection.

9 THE WITNESS: No. I -- no.

10 BY MR. BATCHELDER: 09:41:39

11 Q Aside from meeting with counsel, what did you
12 do to prepare to testify on SightSound's behalf today
13 regarding Topic 7?

14 A I did nothing extraordinary to prepare.

15 Q Whether or not it was extraordinary, did you do 09:41:51
16 anything?

17 A No.

18 Q Aside from meeting with counsel, what did you
19 do to prepare today to testify -- or excuse me.

20 Aside from meeting with counsel, what did you 09:42:02
21 do to prepare to testify today on SightSound's behalf
22 regarding Topic 8?

23 A Nothing.

24 Q Aside from meeting with counsel, what did you
25 do to prepare to testify today on SightSound's behalf 09:42:15

1 regarding Topic 12?

2 A Nothing.

3 Q How long did you meet with counsel to prepare
4 to testify today on SightSound's behalf regarding
5 Topic 7, 8, and 12?

09:42:29

6 A Couple of hours.

7 Q Have you read any depositions that have been
8 taken in this matter?

9 A In this matter? No.

10 Q No?

09:42:52

11 Have you read any depositions taken in any
12 other matter?

13 A Yes.

14 Q Which ones?

15 A My own, in the matter of N2K.

09:43:00

16 MR. BATCHELDER: Why don't we go ahead and mark
17 that next in order, please.

18 When you mark it, would you call out the number
19 for me.

20 THE REPORTER: 181.

09:43:34

21 MR. BATCHELDER: Thank you.

22 MR. DiBOISE: 81?

23 THE REPORTER: 181.

24 (Exhibits 181 and 182 were marked for
25 identification by the Court Reporter.)

09:43:53

1 MR. BATCHELDER: So I've had marked, as
2 Exhibits 181 and 182, two volumes of your deposition in
3 the N2K litigation.

4 Q Are these the transcripts you were just
5 referring to?

09:44:12

6 A Yes, I believe so.

7 Q Okay.

8 A Yes.

9 Q And you have read both of these transcripts?

10 A 11 years ago.

09:44:22

11 Q Have you read them since?

12 A No. I scanned them.

13 Q When did you scan them?

14 A Yesterday.

15 Q Other than scanning them yesterday and reading
16 them 11 years ago, have you read or scanned these
17 transcripts?

09:44:34

18 A No.

19 Q Are you aware of any inaccuracies in your
20 testimony in -- in Exhibits 181 and 182?

09:44:48

21 MR. DiBOISE: Objection.

22 THE WITNESS: I don't know.

23 BY MR. BATCHELDER:

24 Q Well, the question is whether, as you sit here,
25 you are aware?

09:44:56

1 A As I sit here today, am I aware of inaccuracies
2 of something that I read 11 years ago? No. I mean, I
3 don't know.

4 MR. DiBOISE: So now I'm objecting to your
5 questions.

09:45:15

6 Wait for a question.

7 BY MR. BATCHELDER:

8 Q So we have a clear record, the question is: As
9 to Exhibits 181 and 182, as you sit here today, are you
10 aware of any inaccuracies in the testimony provided in
11 those two exhibits?

09:45:25

12 MR. DiBOISE: Objection.

13 THE WITNESS: I don't know.

14 BY MR. BATCHELDER:

15 Q Well, either you are or you're not -- are
16 you -- either you are or you are not aware of
17 inaccuracies.

09:45:41

18 Are you or are you not?

19 MR. DiBOISE: Objection.

20 THE WITNESS: I wouldn't know if it's an
21 inaccuracy -- I don't think I understand the question.
22 Are you saying is everything in here accurate? I don't
23 know.

09:45:49

24 BY MR. BATCHELDER:

25 Q The question is: Are you aware of anything in

09:46:06

1 Exhibit 181 and 182 that you testified to that, as you
2 sit here today, you believe is inaccurate?

3 MR. DiBOISE: Objection.

4 THE WITNESS: I don't know.

5 BY MR. BATCHELDER:

09:46:22

6 Q Why don't you know?

7 MR. DiBOISE: Objection.

8 THE WITNESS: It was 11 years ago.

9 BY MR. BATCHELDER:

10 Q When you scanned them recently, did you notice
11 any inaccuracies?

09:46:44

12 MR. DiBOISE: Objection.

13 THE WITNESS: I don't -- I don't think so.

14 BY MR. BATCHELDER:

15 Q Other than Exhibits 181 and 182, have you read
16 any other depositions?

09:46:57

17 A No.

18 Q Your deposition was taken earlier in this case.
19 Have you read over that transcript?

20 A No, I have not.

09:47:16

21 Q Have you read any of the testimony of Mr. Hair?

22 A No.

23 Q Mr. LePore?

24 A No.

25 Q How much time have -- have you taken -- strike

09:47:49

1 that, please.

2 How much time have you spent reading the
3 patents-in-suit?

4 A I suppose the time necessary to review them
5 back in 1993 and '7 and -- you know, when they issued. 09:48:09

6 Q Can you give me your best estimate of how much
7 time that was?

8 A I don't recall how much time it would have
9 taken.

10 Q Can you give me an estimate? 09:48:28

11 MR. DiBOISE: Objection.

12 THE WITNESS: I don't -- I don't recall.

13 BY MR. BATCHELDER:

14 Q Have you spent more than 10 hours reading the
15 patents-in-suit? 09:48:46

16 MR. DiBOISE: Objection.

17 THE WITNESS: I -- I don't think so.

18 BY MR. BATCHELDER:

19 Q Have you spent more than five hours reading the
20 patents-in-suit? 09:48:57

21 MR. DiBOISE: Objection.

22 THE WITNESS: I don't know.

23 BY MR. BATCHELDER:

24 Q Have you ever read any of the prosecution
25 histories for any of the patents-in-suit? 09:49:05

1 A I don't -- what do you mean by "prosecution
2 history"?

3 Q The back-and-forth between applicant and the
4 Patent Office in connection with securing a patent.

5 A I don't believe I have.

09:49:22

6 Q You've never read any portion of the
7 prosecution history of any of the patents-in-suit?

8 A I -- I may have, but I really don't -- that was
9 not my area of focus.

10 Q As you sit here today, you don't remember doing
11 so?

09:49:33

12 A I do not.

13 Q Is Arthur Hair your best friend?

14 A Yes.

15 Q How long has that been true?

09:49:41

16 A I'd say 1976 until today, so someone could do
17 the math.

18 Q And -- and how old were you in 1976?

19 A 16.

20 Q So he's your -- he's been your best friend
21 since you were 16 years old?

09:50:00

22 A Yes, that's correct.

23 Q Where are you currently employed?

24 A Pense Productions and SightSound Technologies,
25 LLC.

09:50:26

1 Q Has your employment status changed in any way
2 since you were last deposed in this matter?

3 A I don't believe so.

4 Q Same title, same responsibilities?

5 A Yes.

09:50:37

6 Q What are your current sources of income?

7 A SightSound Technologies, LLC, and Pense
8 Productions.

9 Q Anything else?

10 A No.

09:50:51

11 Q And what is your current salary from SightSound
12 Technologies, LLC?

13 A I -- I don't receive a salary, per se. I have
14 a -- there is a consulting arrangement that provides me
15 a fee.

09:51:13

16 Q What is that fee?

17 A It's approximately 13 -- I think it's \$13,500 a
18 month.

19 Q And do you receive a salary from Pense
20 Productions?

09:51:33

21 A Not -- not really. It depends. It's my
22 company, so I'm an entrepreneur, so I -- sometimes I pay
23 myself; sometimes I don't, depending on what -- what's
24 happening with the business.

25 Q And how much do you anticipate Pense

09:51:47

1 Productions will have paid you for 2012 by early 2013?

2 A For calendar year 2012?

3 Q Yes.

4 A I suppose around 200 -- around \$200,000.

5 Q How many employees does Pense Productions have? 09:52:22

6 A It -- it's variable because it's a motion
7 picture production company, so it expands and con- --
8 contracts based on whether we are doing a project.

9 Q How many does it have today?

10 A Five. 09:52:35

11 Q Do you receive -- in 2012, have you received
12 any consulting from any entities other than Pense or
13 SightSound?

14 A No.

15 Q What is your current equity stake in 09:52:55
16 SightSound?

17 A Well, I have --

18 MR. DiBOISE: Objection.

19 THE WITNESS: Could you clarify? The
20 SightSound -- I own a small portion of SightSound 09:53:22
21 Technologies Holdings, LLC, which owns one half of
22 SightSound Technologies, LLC.

23 BY MR. BATCHELDER:

24 Q And what is your stake in SightSound Holdings?

25 A Approximately three and a half percent. 09:53:39

1 Q And do you have an ownership stake in any other
2 SightSound entity?

3 A No.

4 Q Do you have any outstanding loans to any
5 SightSound entity?

09:54:03

6 A I don't believe I do. Well, I stand corrected.
7 Monthly travel expenses incurred, or briefly. I guess
8 one could express it as a debt that the company owes me,
9 so like --

10 MR. DiBOISE: I think you meant the other way
11 around. Have you loaned SightSound any money?

09:54:22

12 THE WITNESS: Have I loaned SightSound any
13 money?

14 MR. BATCHELDER: That's what I meant.

15 THE WITNESS: No.

09:54:32

16 BY MR. BATCHELDER:

17 Q Have you at any time loaned SightSound money?

18 A I can't recall.

19 Q And when you referred earlier to having a
20 three-and-a-half-percent stake, is that your personal
21 stake or the stake of some trust or a combination?

09:54:39

22 A My personal stake.

23 Q Okay. And is there a -- a trust that bears the
24 Sander name?

25 A Yes.

09:54:53

1 Q And does that trust have a separate stake in
2 some SightSound entity?

3 A It does.

4 Q What's the name of that trust?

5 A Sander Children's Trust.

09:55:00

6 Q And what stake does Sander Children's Trust
7 have in a SightSound entity?

8 A About 7/10ths of a percent.

9 Q And in which entity? SightSound Holdings?

10 A Yes.

09:55:20

11 Q Okay. So aside from your
12 three-and-a-half-percent stake and the 7/10ths stake of
13 SightSound Children's Trust, is there any other stake in
14 any SightSound entity with which you are somehow
15 affiliated?

09:55:34

16 A Yes.

17 Q What is that?

18 A Pense Productions.

19 Q And could you explain that connection?

20 A Pense Productions owns approximately a little
21 more than 2 percent of Holdings.

09:55:42

22 Q And do you own Pense?

23 A A portion of it.

24 Q What portion?

25 A Approximately 60 percent.

09:56:03

1 Q How much of your own money have you invested in
2 SightSound over time?

3 A Of my own money?

4 Q Yes.

5 A I was not a cash investor. I invested my time 09:56:26
6 and effort -- well, that -- that's not -- I think it did
7 vary, the formation of the very first entity, the
8 predecessor entity. I wrote a check of some kind, but
9 my investment was sweat equity, as what they call it.

10 Q What was that check for? 09:57:02

11 A I can't recall as I sit here today. It was,
12 perhaps, 500 bucks.

13 Q And did that money get paid back to you?

14 A No.

15 Q But -- I understand your point about sweat 09:57:18
16 equity, but --

17 A Thank you.

18 Q -- in terms of money contribution, other than
19 that \$500, you never provided any money to SightSound as
20 an investment? 09:57:35

21 A As an investment of cash, no.

22 Q For a given dollar awarded to SightSound in
23 this litigation, how much would go to you?

24 MR. DiBOISE: Objection.

25 THE WITNESS: As I sit here now, I couldn't 09:57:56

1 calculate it precisely because there are liabilities
2 that the company has, etc., and other people that stand
3 in a preferential position.

4 BY MR. BATCHELDER:

5 Q Can you even estimate it?

09:58:15

6 A Yes.

7 Q Would you, please.

8 A The percentages I just expressed to you, if you
9 summed them up, and then that would represent less than
10 half of what would be distributed, as you put it, for a
11 given dollar, and it depends greatly on the size of --
12 of the actual award or whatever financial transaction
13 would take place, so it moved -- those ratios move as
14 the numbers increase or decrease.

09:58:36

15 Q You began your answer by saying that the
16 percentages that you just expressed, if I summed them
17 up, they would represent less than half of what would be
18 distributed.

09:58:59

19 Is that what you meant?

20 A No. Allow me to clarify. Those percentages
21 are my ownership or related-entity ownership in one half
22 of SightSound Technologies Hol- -- SightSound
23 Technologies, LLC. So if a dollar came in, half of it
24 would go to another entity, other expenses and
25 preferences would be paid, and then that remaining

09:59:15

09:59:40

1 portion one could apply the percentages that I gave you
2 before to that. So the -- the enumerator would be less
3 than half of that dollar that comes in, and then those
4 percentages could be applied to it.

5 Q If SightSound were awarded the damages that
6 it's seeking in this litigation, how would that affect
7 your personal finances?

10:00:08

8 MR. DiBOISE: Objection; may call for legal
9 conclusion.

10 THE WITNESS: If SightSound were awarded the
11 damages it's seeking in this litigation, how would it
12 affect my personal finances?

10:00:22

13 MR. BATCHELDER: That's the question.

14 THE WITNESS: It would affect them favorably.

15 BY MR. BATCHELDER:

10:00:42

16 Q Is it fair to say that you would become a very
17 wealthy man?

18 A I don't --

19 MR. DiBOISE: Objection.

20 THE WITNESS: It depends on your definition of
21 wealthy.

10:00:53

22 BY MR. BATCHELDER:

23 Q Using your definition of wealthy, can you
24 answer the question?

25 MR. DiBOISE: Objection.

10:01:11

1 THE WITNESS: Certainly not by Silicon Valley
2 standards.

3 BY MR. BATCHELDER:

4 Q How much money do you think Apple should pay
5 SightSound in this litigation?

10:01:32

6 MR. DiBOISE: Objection.

7 THE WITNESS: I don't know. That's a job for
8 our damages experts, and that's not my responsibility.

9 BY MR. BATCHELDER:

10 Q Can you round it to the nearest \$100 million?

10:01:48

11 A No.

12 MR. DiBOISE: Objection.

13 BY MR. BATCHELDER:

14 Q No?

15 A No, I don't believe I can.

10:01:54

16 MR. DiBOISE: Objection.

17 BY MR. BATCHELDER:

18 Q Can you round it to the nearest billion
19 dollars?

20 MR. DiBOISE: Objection.

10:01:58

21 THE WITNESS: As I said, that's not my
22 responsibility to determine damages in this case.

23 BY MR. BATCHELDER:

24 Q So you can't round it to the nearest billion
25 dollars?

10:02:08

1 MR. DiBOISE: Objection. Object.

2 Go ahead.

3 THE WITNESS: No, I don't believe I can.

4 BY MR. BATCHELDER:

5 Q Do you recall an initial communication between 10:02:28
6 you and Mr. Hair in which he described what SightSound
7 is calling in this litigation his invention?

8 MR. DiBOISE: Objection.

9 THE WITNESS: Could you rephrase the question
10 in a -- in a less offensive manner? 10:02:52

11 BY MR. BATCHELDER:

12 Q What -- what do you find offensive?

13 MR. DiBOISE: Objection.

14 THE WITNESS: Your dismissive use of the term
15 "invention." 10:03:10

16 BY MR. BATCHELDER:

17 Q Why do you characterize it as dismissive?

18 MR. DiBOISE: Must we? Seriously.

19 BY MR. BATCHELDER:

20 Q Please. 10:03:30

21 MR. DiBOISE: Objection.

22 THE WITNESS: Did -- did you not mean it to be
23 dismissive?

24 BY MR. BATCHELDER:

25 Q SightSound is alleging in this litigation that 10:03:41

1	Mr. Hair invented something; correct?	
2	A Yes.	
3	Q My question is: Do you recall an initial	
4	conversation with Mr. Hair about that subject matter?	
5	A Yes.	10:03:53
6	Q When was that conversation?	
7	A Back in the '80s.	
8	Q Can you be more precise?	
9	A I don't remember exactly or precisely, no.	
10	Q Was it in person?	10:04:07
11	A No.	
12	MR. DiBOISE: Objection.	
13	THE WITNESS: No.	
14	MR. DiBOISE: Slow down.	
15	BY MR. BATCHELDER:	10:04:18
16	Q Telephone?	
17	A Yes, I believe it was.	
18	Q But you are not sure?	
19	A I believe it was a telephone call.	
20	Q Are you certain that it was a telephone call?	10:04:27
21	MR. DiBOISE: Objection.	
22	THE WITNESS: As I sit here today, that was	
23	many, many years ago, but I believe it was a telephone	
24	call.	
25	BY MR. BATCHELDER:	10:04:37

1 Q But you are not certain?

2 MR. DiBOISE: Objection.

3 THE WITNESS: I think so. I'm certain is a --
4 is a high standard to use for something that happened
5 decades ago.

10:04:49

6 BY MR. BATCHELDER:

7 Q How long was the conversation?

8 A I don't recall.

9 Q Can you give me your best estimate?

10 A I don't recall.

10:04:55

11 Q Could it have been as short as one minute?

12 MR. DiBOISE: Objection.

13 THE WITNESS: I find that -- I don't -- I doubt
14 that.

15 BY MR. BATCHELDER:

10:05:06

16 Q Could it have been as short as five minutes?

17 MR. DiBOISE: Objection.

18 THE WITNESS: Perhaps.

19 BY MR. BATCHELDER:

20 Q Perhaps?

10:05:17

21 MR. DiBOISE: Objection.

22 THE WITNESS: I don't recall.

23 BY MR. BATCHELDER:

24 Q And did Mr. Hair say he had this idea when he
25 was at a party?

10:05:33

1 MR. DiBOISE: Objection.

2 THE WITNESS: I believe so.

3 BY MR. BATCHELDER:

4 Q Do you know anything about that party?

5 A No.

10:05:49

6 MR. DiBOISE: Objection.

7 BY MR. BATCHELDER:

8 Q Do you have any reason to think that he had
9 anything to drink before he had his idea?

10 MR. DiBOISE: Objection.

10:06:00

11 THE WITNESS: You would have to ask Mr. Hair.

12 BY MR. BATCHELDER:

13 Q The question is whether you have any reason to
14 believe that one way or the other?

15 MR. DiBOISE: Objection.

10:06:10

16 THE WITNESS: I would -- if I had to speculate,
17 I would say not -- not likely or -- or not significant.
18 Art's not a big drinker.

19 BY MR. BATCHELDER:

20 Q And do you have any reason to believe that he
21 would have ingested any other mind-altering substances
22 before having his idea?

10:06:27

23 MR. DiBOISE: Objection.

24 THE WITNESS: Absolutely not.

25 BY MR. BATCHELDER:

10:06:36

1 Q Do you have any reason to believe that at that
2 party, he told anyone, any of the party guests or hosts,
3 about the idea that he had at the party?

4 A I don't know.

5 Q How soon after the party did you have your
6 conversation with him?

10:06:53

7 A I don't know.

8 Q Could it have been weeks later?

9 A I don't know.

10 Q Did you know at one point?

10:07:07

11 A I can't recall if I knew at one point the
12 distance between the party and the -- what I recall, I
13 believe, was a phone call. No, I don't. Perhaps I did.
14 I don't know, as I sit here today, whether I knew the
15 linkage.

10:07:32

16 Q Would you please recount for me, in as much
17 detail as you do remember, what Mr. Hair said about his
18 idea.

19 MR. DiBOISE: Objection.

20 THE WITNESS: Recount for you? I generally
21 recall that he felt that it was going to revolutionize
22 the distribution and sale of music and movies.

10:07:47

23 BY MR. BATCHELDER:

24 Q Do you recall anything else about that
25 conversation?

10:08:19

1 A I believe he suggested to me not to buy a CD
2 player.

3 Q Do you recall anything else about that
4 conversation?

5 A No --

10:08:35

6 MR. DiBOISE: Objection.

7 THE WITNESS: -- not as I sit here today.

8 BY MR. BATCHELDER:

9 Q Did he provide you any detail about how the
10 system that he had envisioned would work?

10:08:55

11 MR. DiBOISE: Objection.

12 THE WITNESS: I don't recall.

13 BY MR. BATCHELDER:

14 Q Did he tell you that he envisioned a system for
15 distribution of music or movies?

10:09:10

16 MR. DiBOISE: Objection.

17 THE WITNESS: I don't specifically recall.

18 BY MR. BATCHELDER:

19 Q So other than telling you, "Scott, don't buy a
20 CD player," and, "I've had an idea that will
21 revolutionize the distribution and sale of music and
22 movies," did he give you any other information or detail
23 about what his idea was?

10:09:31

24 MR. DiBOISE: Objection.

25 THE WITNESS: Not that I recall.

10:09:42

1 BY MR. BATCHELDER:

2 Q When did you next speak with him about his
3 idea, the one that he had imparted to you that he had
4 had at that party?

5 MR. DiBOISE: Objection. 10:10:01

6 THE WITNESS: It must have -- I don't -- I
7 don't recall specifically when or how many times we
8 spoke of it in the subsequent years prior to 1993.

9 BY MR. BATCHELDER:

10 Q I want to focus my question on after this 10:10:22
11 initial conversation that you had had with him.

12 My question is focused on: When was the next
13 conversation between you and Mr. Hair about his idea?

14 MR. DiBOISE: Objection.

15 THE WITNESS: I can't recall. 10:10:34

16 BY MR. BATCHELDER:

17 Q Could it have been more than a week?

18 MR. DiBOISE: Objection.

19 THE WITNESS: Perhaps.

20 BY MR. BATCHELDER: 10:10:41

21 Q Could it have been more than a month?

22 MR. DiBOISE: Objection.

23 THE WITNESS: I -- I don't recall.

24 BY MR. BATCHELDER:

25 Q As you sit here, do you have an understanding 10:10:57

1 of what you believe Mr. Hair invented as compared to
2 what came before?

3 MR. DiBOISE: Objection; calls for a legal
4 conclusion, may call for expert testimony.

5 THE WITNESS: Of what I believe? Of course I 10:11:10
6 have understandings of what I believe.

7 BY MR. BATCHELDER:

8 Q What do you believe Mr. Hair invented as
9 compared to what came before?

10 MR. DiBOISE: Objection. Same objections as 10:11:43
11 previously -- previously stated.

12 THE WITNESS: I'm not a patent lawyer; I'm a
13 businessman, and so I think the -- the invention was
14 transformative because it ushered in the era of digital
15 distribution of audio and video -- of music and movies 10:12:24
16 versus the analog or digital on hard-media distribution
17 that preceded the invention.

18 BY MR. BATCHELDER:

19 Q I'm not sure that your answer was in line with
20 me question, so let me clarify why I think that concern 10:12:47
21 exists. Your answer was about the impact and your
22 understanding of Mr. Hair's invention.

23 My question wasn't about its impact, it was,
24 What do you believe Mr. Hair invented as compared to
25 what came before? 10:13:10

1 Can you answer that question?

2 MR. DiBOISE: Objection.

3 THE WITNESS: I -- I honestly think I just did.

4 BY MR. BATCHELDER:

5 Q Again, what you answered was the impact of what 10:13:21
6 you understand his invention was, and my question is --
7 is what he invented, not what impact it had.

8 MR. DiBOISE: Objection.

9 THE WITNESS: If -- if I could go back and read
10 my answer, we could perhaps exercise the impactful 10:13:41
11 words, but I believe I've answered the question.

12 BY MR. BATCHELDER:

13 Q Well, you are welcome to go back and read the
14 answer if you like, but what you said was, "I'm not a
15 patent lawyer; I'm a businessman, and so I think the 10:14:04
16 invention was transformative because it ushered in the
17 era of digital distribution of audio and video -- of
18 music and movies versus the analog or digital on
19 hard-media distribution that preceded the invention."

20 So, again, my point is that you talked about 10:14:26
21 how it was transformative because it ushered something
22 in, and my question was simply: What did he invent as
23 compared to what came before?

24 MR. DiBOISE: Objection all the -- for the same
25 reasons I previously stated. 10:14:40

1 THE WITNESS: I believe the patents disclosed
2 the invention, and as I said, I'm not a patent lawyer,
3 so my observations are my own observations, and so
4 perhaps that's where the impactfulness of the invention
5 comes, but I'm not the patent lawyer to describe the
6 patented invention. That's -- that was up to the Patent
7 and Trademark Office and the inventor, Mr. Hair.

10:15:17

8 BY MR. BATCHELDER:

9 Q You have, over the course of your duties at
10 SightSound over many years, described the patented
11 invention to third parties and investors, haven't you?

10:15:35

12 MR. DiBOISE: Objection.

13 THE WITNESS: I've described our business.

14 BY MR. BATCHELDER:

15 Q Have you described the patented invention?

10:15:45

16 MR. DiBOISE: Objection.

17 BY MR. BATCHELDER:

18 Q Or your understanding of it?

19 MR. DiBOISE: Objection.

20 THE WITNESS: My understanding of it? Perhaps,
21 yes.

10:15:53

22 BY MR. BATCHELDER:

23 Q Okay. So what is your understanding of the
24 patented invention as you described it to investors over
25 time?

10:16:03

1 multiple people.

2 Q Including you?

3 A Yes.

4 Q Okay. And does her name in the upper left-hand
5 corner indicate to you that she printed out this e-mail?

10:19:03

6 A Yeah, I suppose she did.

7 Q Okay. The e-mail itself from John Reynolds to
8 you, do you recognize this e-mail?

9 A Not as I sit here today, no. This is back in,
10 what, 1999?

10:19:23

11 Q Do you have any reason to doubt that you
12 received this e-mail on or about August 6th, 1999?

13 A No. Well, I have no doubt that Missy Gralish
14 received this e-mail on or about August 29th of 1999.

15 Q But it -- it was sent to you, Scott Sander.
16 Do you see that?

10:19:42

17 A Yes.

18 Q And you have no reason to doubt that it was,
19 indeed, sent to you and appeared in your e-mail inbox;
20 correct?

10:19:55

21 MR. DiBOISE: Objection.

22 THE WITNESS: I -- I can't recall.

23 BY MR. BATCHELDER:

24 Q The question is: Do you have any reason to
25 doubt it?

10:20:02

1 MR. DiBOISE: Objection.

2 THE WITNESS: I doubt that I ever, ever saw
3 this? I don't know.

4 BY MR. BATCHELDER:

5 Q The -- the question is different. The question 10:20:13
6 is whether you have a reason to doubt that it appeared
7 in your e-mail inbox --

8 MR. DiBOISE: Objection.

9 BY MR. BATCHELDER:

10 Q -- in August 1999? 10:20:20

11 MR. DiBOISE: Objection.

12 THE WITNESS: I don't recall.

13 BY MR. BATCHELDER:

14 Q In the first paragraph of this e-mail, this 10:20:39
15 man, John Reynolds, writes to you -- I'm looking at the
16 second sentence. He says, In 1981, a former Stanford
17 GSP classmate and I briefly pursued a concept we called
18 "home jukebox." The idea was similar yours.

19 Do you see that?

20 A I see that. 10:21:02

21 Q And he says, We would use the existing cable
22 network to deliver songs on demand to a turntableless
23 player at a subscriber's residence from a library stored
24 centrally. Downloads would be initiated by a dial-up
25 connection. 10:21:21

1 Do you see that?

2 A I do.

3 Q You do you have any reason to doubt the truth
4 of those words that I just read to you from
5 Mr. Reynolds?

10:21:29

6 MR. DiBOISE: Objection.

7 THE WITNESS: I have no idea whether that was a
8 true statement or not.

9 BY MR. BATCHELDER:

10 Q Did you respond to him?

10:21:35

11 A I don't recall.

12 Q Did you follow up with him in any way?

13 MR. DiBOISE: Objection.

14 THE WITNESS: Not that I -- I don't recall.

15 BY MR. BATCHELDER:

10:21:48

16 Q Was this document or anything about the home
17 jukebox disclosed to the Patent and Trademark Office --

18 MR. DiBOISE: Objection.

19 BY MR. BATCHELDER:

20 Q -- in connection with the prosecution of any of
21 the patents-in-suit?

10:22:01

22 MR. DiBOISE: To the extent that the question
23 may require you to reveal any discussions with counsel,
24 I would caution you not to do so in answer to counsel's
25 question.

10:22:14

1 Do you understand my instruction?

2 THE WITNESS: Say it again.

3 MR. DiBOISE: If your answer to that question
4 would require you to reveal any discussions you had with
5 counsel for SightSound or any of the entities of
6 SightSound related to the patent, I would caution you
7 not to reveal those communications in answer to the
8 question.

10:22:25

9 Now, do you understand my ques- -- my
10 instruction?

10:22:39

11 THE WITNESS: Yes.

12 MR. DiBOISE: Okay. Can you answer the
13 question?

14 MR. BATCHELDER: In light of that instruction,
15 let me ask you a "yes" or "no" question.

10:22:45

16 Q In connection with the prosecution of any of
17 the patents-in-suit, "yes" or "no," was this document,
18 Exhibit 183, or any portion of it, disclosed to the
19 Patent and Trademark Office?

20 MR. DiBOISE: So same instruction. If you can
21 answer it without revealing any communications you had
22 with counsel, go ahead.

10:23:03

23 THE WITNESS: I can because I don't know.

24 BY MR. BATCHELDER:

25 Q If what Mr. Reynolds describes about his home

10:23:23

1 jukebox idea in 1981 is an accurate -- factually
2 accurate description, in your understanding, then, what
3 did Mr. Hair invent that Mr. Reynolds had not thought of
4 in 1981?

5 MR. DiBOISE: Objection; incomplete
6 hypothetical, may call for expert testimony.

10:23:42

7 You can answer if you have any idea what he's
8 asking.

9 THE WITNESS: As I said, I'm not a patent
10 lawyer, so I don't know.

10:23:52

11 BY MR. BATCHELDER:

12 Q Mr. Hair did not invent computers; correct?

13 MR. DiBOISE: Objection; calls for expert
14 testimony.

15 THE WITNESS: I don't believe so, no.

10:24:13

16 BY MR. BATCHELDER:

17 Q Mr. Hair did not invent computer networks;
18 correct?

19 MR. DiBOISE: Objection; calls for expert
20 testimony, may call for speculation.

10:24:22

21 THE WITNESS: Mr. Hair invent networks, is that
22 the question?

23 BY MR. BATCHELDER:

24 Q Did Mr. Hair invent computer networks?

25 MR. DiBOISE: Objection. Same objections.

10:24:43

1 THE WITNESS: I don't know. I don't believe
2 so.

3 BY MR. BATCHELDER:

4 Q Mr. Hair did not invent the Internet; correct?

5 MR. DiBOISE: Same objections. 10:24:48

6 THE WITNESS: No.

7 BY MR. BATCHELDER:

8 Q Mr. Hair did not invent telephone lines;
9 correct?

10 MR. DiBOISE: Objection. 10:24:57

11 THE WITNESS: No.

12 BY MR. BATCHELDER:

13 Q To be clear, when you are answering "no" --

14 A I understand your question, and the "no" to
15 your question, Mr. Hair did not invent a telephone -- 10:25:13
16 the telephone line.

17 Q Okay. So -- so we have a clear record, if I
18 ask you a question and end with the word "correct," if
19 you mean to agree with me, if could you just say
20 "correct," I think that would lead to a clearer record. 10:25:29

21 Is that okay?

22 MR. DiBOISE: Objection.

23 BY MR. BATCHELDER:

24 Q Would you do your best to do that?

25 A I'll try. 10:25:35

1 Q Thank you.

2 Mr. Hair did not invent telecommunication
3 lines; correct?

4 MR. DiBOISE: Objection.

5 THE WITNESS: Yes.

10:25:40

6 BY MR. BATCHELDER:

7 Q Mr. Hair did not invent using a
8 telecommunications line to electronically connect the
9 memories of two devices; correct?

10 MR. DiBOISE: Objection.

10:25:53

11 THE WITNESS: I -- I don't know.

12 BY MR. BATCHELDER:

13 Q Mr. Hair did not invent sending digital signals
14 over a network; correct?

15 MR. DiBOISE: Objection.

10:26:07

16 THE WITNESS: I don't know.

17 BY MR. BATCHELDER:

18 Q Mr. Hair did not invent sending digital signals
19 over a telecommunications line; correct?

20 MR. DiBOISE: Objection.

10:26:21

21 THE WITNESS: I don't know.

22 BY MR. BATCHELDER:

23 Q Mr. Hair did not invent storing digital signals
24 that had been transmitted over telecommunications line;
25 correct?

10:26:34

1 MR. DiBOISE: Objection.

2 THE WITNESS: I don't know.

3 BY MR. BATCHELDER:

4 Q Digital audio signals are a type of digital
5 data; correct?

10:26:40

6 MR. DiBOISE: Objection.

7 THE WITNESS: Like I said, I'm not a patent
8 lawyer.

9 BY MR. BATCHELDER:

10 Q Do you know whether digital audio signals are a
11 type of digital data?

10:27:01

12 MR. DiBOISE: Objection.

13 THE WITNESS: And I'm not an engineer.

14 BY MR. BATCHELDER:

15 Q Do you know the answer to my question?

10:27:16

16 MR. DiBOISE: Asked and answered; objection.

17 BY MR. BATCHELDER:

18 Q Do you know the answer to my question?

19 MR. DiBOISE: Objection.

20 THE WITNESS: I believe I've answered your
21 question.

10:27:34

22 BY MR. BATCHELDER:

23 Q My question is: Digital audio signals are
24 not -- are a type of digital data; correct?

25 MR. DiBOISE: Objection.

10:27:43

1 THE WITNESS: The terms used are used
2 differently by -- I believe, by engineers, patent
3 lawyers, and that's -- it is my understanding that that
4 is why there is a claim construction portion of a case
5 such as this.

10:28:10

6 BY MR. BATCHELDER:

7 Q If what you are telling me is you don't know
8 the answer, then that's perfectly fine --

9 A Yeah, I don't know.

10 Q -- you just need --

10:28:21

11 A Yeah, I don't know.

12 Q Okay.

13 A Although, I told it to you three times.

14 Q Mr. Hair did not invent encryption; correct?

15 MR. DiBOISE: Objection.

10:28:27

16 THE WITNESS: I don't know.

17 BY MR. BATCHELDER:

18 Q Mr. Hair did not invent encryption of digital
19 data; correct?

20 MR. DiBOISE: Objection.

10:28:36

21 THE WITNESS: I don't know.

22 BY MR. BATCHELDER:

23 Q Mr. Hair did not invent encryption of digital
24 signals; correct?

25 MR. DiBOISE: Objection.

10:28:41

1 THE WITNESS: I don't know.

2 BY MR. BATCHELDER:

3 Q Mr. Hair did not invent encryption of digital
4 signals sent over a telecommunications line; correct?

5 MR. DiBOISE: Objection.

10:28:49

6 THE WITNESS: I don't know.

7 BY MR. BATCHELDER:

8 Q Mr. Hair did not invent electronic credit card
9 payment; correct?

10 MR. DiBOISE: Objection.

10:28:58

11 THE WITNESS: I don't know.

12 BY MR. BATCHELDER:

13 Q Mr. Hair did not invent e-commerce; correct?

14 MR. DiBOISE: Objection.

15 THE WITNESS: I don't know.

10:29:04

16 BY MR. BATCHELDER:

17 Q Mr. Hair did not invent electronic transmission
18 of digital data; correct?

19 MR. DiBOISE: Objection.

20 THE WITNESS: I don't know.

10:29:20

21 BY MR. BATCHELDER:

22 Q Mr. Hair did not invent electronic sale of
23 digital data; correct?

24 MR. DiBOISE: Objection.

25 THE WITNESS: I don't know.

10:29:26

1 BY MR. BATCHELDER:

2 Q Mr. Hair did not invent paying electronically
3 for digital signals sent over a network; correct?

4 MR. DiBOISE: Objection.

5 THE WITNESS: I don't know. 10:29:34

6 BY MR. BATCHELDER:

7 Q Mr. Hair didn't invent digital audio signals;
8 correct?

9 MR. DiBOISE: Objection.

10 THE WITNESS: I don't know. 10:29:44

11 BY MR. BATCHELDER:

12 Q Mr. Hair did not invent digital video signals;
13 correct?

14 MR. DiBOISE: Objection.

15 THE WITNESS: I don't know. 10:29:49

16 BY MR. BATCHELDER:

17 Q Mr. Hair did not invent storing digital audio
18 signals in memory; correct?

19 MR. DiBOISE: Objection.

20 THE WITNESS: I don't know. 10:29:57

21 BY MR. BATCHELDER:

22 Q Mr. Hair did not invent storing digital video
23 signals in memory; correct?

24 MR. DiBOISE: Objection.

25 THE WITNESS: I don't know. 10:30:06

1 BY MR. BATCHELDER:

2 Q Mr. Hair did not invent storing digital audio
3 signals in nonvolatile memory; correct?

4 MR. DiBOISE: Objection.

5 THE WITNESS: I don't know.

10:30:15

6 BY MR. BATCHELDER:

7 Q Mr. Hair did not invent playing digital audio
8 signals; correct?

9 MR. DiBOISE: Objection.

10 THE WITNESS: I don't know.

10:30:21

11 BY MR. BATCHELDER:

12 Q Mr. Hair did not invent playing digital video
13 signals; correct?

14 MR. DiBOISE: Objection.

15 THE WITNESS: I don't know.

10:30:28

16 BY MR. BATCHELDER:

17 Q Mr. Hair didn't invent transferring money
18 electrically; correct?

19 MR. DiBOISE: Objection.

20 THE WITNESS: I don't know.

10:30:44

21 BY MR. BATCHELDER:

22 Q Mr. Hair did not invent charging a fee via
23 telecommunications lines; correct?

24 MR. DiBOISE: Objection.

25 THE WITNESS: I don't know.

10:30:51

1 BY MR. BATCHELDER:

2 Q Mr. Hair did not invent charging a party's
3 account via telecommunications lines; correct?

4 MR. DiBOISE: Objection.

5 THE WITNESS: I don't know.

10:30:59

6 BY MR. BATCHELDER:

7 Q Mr. Hair did not invent transmitting digital
8 data between two memories; correct?

9 MR. DiBOISE: Objection.

10 THE WITNESS: I don't know.

10:31:06

11 BY MR. BATCHELDER:

12 Q Mr. Hair didn't invent selling digital audio
13 signals; correct?

14 MR. DiBOISE: Objection.

15 THE WITNESS: I don't know.

10:31:36

16 BY MR. BATCHELDER:

17 Q Mr. Hair didn't invent selling digital video
18 signals; correct?

19 MR. DiBOISE: Objection.

20 THE WITNESS: I don't know.

10:31:42

21 BY MR. BATCHELDER:

22 Q Mr. Hair did not invent selling digital
23 signals; correct?

24 MR. DiBOISE: Objection.

25 THE WITNESS: I don't know.

10:31:50

1 BY MR. BATCHELDER:

2 Q Mr. Hair did not invent selling digital data;
3 correct?

4 MR. DiBOISE: Asked and answered; objection.

5 THE WITNESS: I don't know. 10:31:57

6 BY MR. BATCHELDER:

7 Q Mr. Hair did not invent electronic sales;
8 correct?

9 A I don't know.

10 Q Mr. Hair did not invent a new way to transfer 10:32:03
11 signals; correct?

12 MR. DiBOISE: Objection.

13 THE WITNESS: I don't know.

14 BY MR. BATCHELDER:

15 Q We discussed earlier this party that Mr. Hair 10:32:27
16 went to where he had the idea that gave rise to the
17 patents-in-suit.

18 Before Mr. Hair went to his party, people were
19 selling music; correct?

20 MR. DiBOISE: Objection. 10:32:39

21 THE WITNESS: Yes.

22 BY MR. BATCHELDER:

23 Q Before Mr. Hair went to his party, people were
24 selling digital music; correct?

25 MR. DiBOISE: Objection. 10:33:02

1 THE WITNESS: I don't know.

2 BY MR. BATCHELDER:

3 Q Before Mr. Hair went to his party, people were
4 selling digital video; correct?

5 MR. DiBOISE: Objection.

10:33:13

6 THE WITNESS: I don't know.

7 BY MR. BATCHELDER:

8 Q Before Mr. Hair went to his party, people knew
9 it would be desirable to sell music electronically;
10 correct?

10:33:22

11 MR. DiBOISE: Objection.

12 THE WITNESS: I don't know that.

13 BY MR. BATCHELDER:

14 Q Before Mr. Hair went to his party, people knew
15 it would be desirable to sell video electronically;
16 correct?

10:33:28

17 MR. DiBOISE: Objection.

18 THE WITNESS: I don't know.

19 BY MR. BATCHELDER:

20 Q Before Mr. Hair went to his party, people knew
21 it would be desirable to allow all electronic purchases
22 and transfers of digital audio; correct?

10:33:33

23 MR. DiBOISE: Objection.

24 THE WITNESS: I don't know.

25 BY MR. BATCHELDER:

10:33:44

1 Q Before Mr. Hair went to his party, people knew
2 that purchasing of digital music via electronic
3 distribution directly to the home would be desirable;
4 correct?

5 MR. DiBOISE: Objection. 10:33:55

6 THE WITNESS: I don't know.

7 BY MR. BATCHELDER:

8 Q Before Mr. Hair went to his party, people were
9 storing digital audio signals in nonvolatile memory;
10 correct? 10:34:09

11 MR. DiBOISE: Objection.

12 THE WITNESS: I don't know.

13 BY MR. BATCHELDER:

14 Q Before Mr. Hair went to his party, people were
15 storing digital video signals in nonvolatile memory;
16 correct? 10:34:14

17 MR. DiBOISE: Objection.

18 THE WITNESS: I don't know.

19 BY MR. BATCHELDER:

20 Q Before Mr. Hair went to his party, people were 10:34:20
21 transmitting digital audio signals via telecommunication
22 lines; correct?

23 MR. DiBOISE: Objection.

24 THE WITNESS: I don't know.

25 BY MR. BATCHELDER: 10:34:28

1 Q Before Mr. Hair went to his party, people were
2 transmitting digital signals via telecommunication
3 lines; correct?

4 MR. DiBOISE: Objection.

5 THE WITNESS: I don't know.

10:34:38

6 BY MR. BATCHELDER:

7 Q Before Mr. Hair went to his party, people were
8 electronically selling digital signals via
9 telecommunication lines; correct?

10 MR. DiBOISE: Objection.

10:34:45

11 THE WITNESS: I don't know.

12 BY MR. BATCHELDER:

13 Q Before Mr. Hair went to his party, people were
14 connecting two memories via telecommunication lines
15 where the two memories were remote from one another;
16 correct?

10:34:57

17 MR. DiBOISE: Objection.

18 THE WITNESS: I don't know.

19 BY MR. BATCHELDER:

20 Q Before Mr. Hair went to his party, people were
21 transmitting digital signals between two remote memories
22 via telecommunication lines; correct?

10:35:02

23 MR. DiBOISE: Objection.

24 THE WITNESS: I don't know.

25 BY MR. BATCHELDER:

10:35:12

1 Q Have you done anything to determine whether,
2 before Mr. Hair went to his party in 1988, others had
3 realized that it would be desirable to sell downloaded
4 music or downloaded video over computer networks?

5 MR. DiBOISE: Objection.

10:35:30

6 THE WITNESS: I can't -- not as I sit here
7 today, I can't recall doing -- I don't believe so.

8 BY MR. BATCHELDER:

9 Q If I could ask you to turn to Exhibit 68 before
10 you, which is the '573 patent. It's also been marked
11 here as Exhibit 178. Just ask you to turn to the first
12 claim of the patent, which is in column 6.

10:35:58

13 A Okay.

14 Q So this patent claim has a preamble that are
15 using the words "comprising the steps of."

10:36:40

16 Do you see that?

17 MR. DiBOISE: Objection.

18 THE WITNESS: Yes.

19 BY MR. BATCHELDER:

20 Q And then there are four indented claim
21 elements; one beginning with "transferring," one
22 beginning with "connecting," another beginning with
23 transferring, and then the final one beginning with
24 "storing."

10:36:53

25 Do you see those four claim elements?

10:37:07

1 MR. DiBOISE: Objection.

2 THE WITNESS: No.

3 BY MR. BATCHELDER:

4 Q You don't?

5 A I don't.

10:37:11

6 Q Where are we disconnected?

7 A The third term you used is not consistent with
8 what it says here.

9 Q I may have misspoken, so let me do it again.

10 In claim 1 of the '573 patent, underneath the
11 preamble, there are four claim elements; the first
12 beginning with "transferring," the second beginning with
13 "connecting," the third beginning with "transmitting,"
14 and the fourth beginning with "storing."

10:37:29

15 Do you see those?

10:37:44

16 MR. DiBOISE: Objection.

17 THE WITNESS: Yes.

18 BY MR. BATCHELDER:

19 Q Starting with the preamble, do you see anything
20 in that preamble that you believe had not occurred to
21 someone else before Mr. Hair went to his party?

10:37:54

22 MR. DiBOISE: Calls for speculation.

23 THE WITNESS: I don't know.

24 BY MR. BATCHELDER:

25 Q Looking underneath the preamble to that first

10:38:15

1 element of claim 1, do you see anything there that you
2 believe had not occurred to someone else before Mr. Hair
3 went to his party?

4 MR. DiBOISE: Objection.

5 THE WITNESS: I don't -- I don't know.

10:38:34

6 BY MR. BATCHELDER:

7 Q Turning to the second element, the one
8 beginning with "connecting," do you see anything there
9 that you believe had not occurred to someone else before
10 Mr. Hair went to his party?

10:38:45

11 MR. DiBOISE: Objection.

12 THE WITNESS: Yeah, I don't know.

13 BY MR. BATCHELDER:

14 Q Turning to the third element, the one beginning
15 with the word "transmitting" --

10:38:54

16 (Telephonic interruption.)

17 BY MR. BATCHELDER:

18 Q Turning back to claim 1 of the '573 patent into
19 the third element, the one beginning with the word
20 "transmitting," do you see anything in that element that
21 you believe had not occurred to someone else before
22 Mr. Hair went to his party?

10:39:17

23 MR. DiBOISE: Objection.

24 THE WITNESS: Yeah, I don't know.

25 BY MR. BATCHELDER:

10:39:30

1 Q And turning to the final element of claim 1 of
2 the '573 patent, the element beginning with "storing,"
3 do you see anything in that element that you believe had
4 not occurred to someone else before Mr. Hair went to his
5 party?

10:39:43

6 MR. DiBOISE: Objection.

7 THE WITNESS: Yeah, I don't know.

8 BY MR. BATCHELDER:

9 Q SightSound built some implementations of the
10 patents-in-suit?

10:39:58

11 MR. DiBOISE: Let's take a break while you are
12 changing subjects.

13 MR. BATCHELDER: You want to take a break?

14 MR. DiBOISE: Yeah.

15 THE VIDEOGRAPHER: Off the record at 10:39.

10:40:04

16 (Recess taken.)

17 THE VIDEOGRAPHER: On the record at 10:48.

18 BY MR. BATCHELDER:

19 Q If I could direct your attention back to
20 Exhibit 177 -- that was the Rule 30(B)(6) notice that we
21 looked at at the outset. If you could turn again to the
22 topics that are listed in Schedule A, you will see
23 Topic 7 reads: The first sale, offer for sale, public
24 use, demonstration, or disclosure of the subject matter
25 of the patents-in-suit.

10:49:01

10:49:39

1 Do you see that?

2 A Yes.

3 Q And what was the first sale, offer for sale,
4 public use, demonstration, or disclosure of the subject
5 matter of the patents-in-suit?

10:49:50

6 A Disclosure of the subject matter I believe
7 would have been 1993.

8 Q And was that a patent application?

9 A No. That was the issuance of the patent.

10 Q And what was the first sale responsive to
11 Topic 7?

10:50:31

12 A The first offer for sale was in 1995.

13 Q And that was an offer to whom?

14 A Consumers in general.

15 Q And what form did the offer take?

10:50:56

16 A The sale of -- an offer for sale of download
17 audio recordings.

18 Q How was that offer communicated?

19 A Over the World Wide Web.

20 Q And when in 1995?

10:51:17

21 A As I sit here today, I can't remember the exact
22 date. I know it was 1995, but I can't remember the
23 exact date.

24 Q In preparing for your deposition today, did you
25 do anything to investigate the answer to that question?

10:51:43

1 A Yeah, I -- I met with counsel to refresh my
2 memory on -- on some of these 30(b)(6) topics, but --
3 I'm not trying to be difficult, but that was yesterday
4 and I can't remember the specific date.

5 Q What was the first -- I -- I think your answer
6 just now was in connection with Topic 7 of Exhibit 177.
7 So the first offer for sale was in 1995, and it was to
8 consumers generally.

10:52:08

9 What was the first sale?

10 A It may have been the same time, in 1995, and,
11 subsequently, sales of audio recordings re- --
12 recommenced in 1998.

10:52:27

13 Q Was there a time gap between the offer -- the
14 first offer and the first sale?

15 A There was -- the -- the first offer for sale
16 was not completely consummated because the credit card
17 of the purchasers, is my recollection, that they were
18 ultimately not charged. The charging of the -- the
19 credit card commenced -- again, in the actual taking of
20 the money from the purchaser -- in 1998.

10:52:58

10:53:30

21 Q I want to make sure I understand this. You are
22 referring to two different time periods, '95 --

23 A Yes.

24 Q -- and '98.

25 SightSound then -- did it shut down its system

10:53:52

1 for some time between '95 and '98?

2 A It did.

3 Q And can you be precise about what exactly the
4 time frames were associated with that shutdown?

5 A From 1995 to 1998. I believe from -- I think 10:54:04
6 it -- well, I can't remember precisely when in 1998 the
7 system was back online for e-commerce. In 1995, it was
8 on briefly.

9 Q On briefly?

10 A So it would -- I can't recall specifically how 10:54:31
11 briefly, but it was not the entire year of 1995.

12 Q Can you be any more precise about how long it
13 was up and running in 1995?

14 A It -- it could have been as short as a few
15 weeks or a few days. 10:54:49

16 Q Did that system in 1995 have a name?

17 A The system had a name?

18 Q Yes.

19 A I don't -- I don't recall referring to it by a
20 specific name. 10:55:06

21 Q I just -- what I want to do is establish some
22 nomenclature --

23 A Oh.

24 Q -- so that you and I can refer to it.

25 Is there some way that -- that we can reference 10:55:11

1 it so we can talk about it?

2 A We could call it the 1995 system.

3 Q Okay. What was the reason for the shutdown
4 between the 1995 system and the 1998 system?

5 MR. DiBOISE: Objection. 10:55:34

6 THE WITNESS: Business strategy.

7 BY MR. BATCHELDER:

8 Q Can you elaborate?

9 MR. DiBOISE: Objection.

10 THE WITNESS: Yes. The strategy of the company 10:55:42

11 was to sell music and movies download to consumers over

12 the Internet. The -- the company went -- we made a

13 strategic decision to go back offline to enable us to

14 have meetings with content holders in -- in an

15 environment where we weren't actively selling the music 10:56:19

16 while we were talking the meetings.

17 BY MR. BATCHELDER:

18 Q If that was important to the company to do, why
19 did you begin selling music and movies in 1995 at all?

20 A At the time that we began doing it, we -- we 10:56:36
21 felt that it was the right strategy for the company.

22 Q What changed your mind?

23 A Meeting with a venture capitalist here in -- in
24 the Bay Area.

25 Q So he persuaded you that going offline was the 10:56:54

1 right thing to do?

2 A He did at that time, yes.

3 Q And what persuaded you then to go back online
4 in 1998?

5 A We just felt that we -- we should continue to
6 do what we had designed the company to do, and by then,
7 the act of actually selling the music, we felt, wouldn't
8 be perceived as provocatively as it was in 1995.

10:57:07

9 Q Who was that venture capitalist?

10 A John Doerr.

10:57:41

11 Q And Mr. Doerr persuaded you to shut down the
12 system and keep it shut down until what?

13 A Until the owners of copyright were given a
14 more -- given a private discussion about the features
15 and benefits of doing this new thing instead of a public
16 discussion, a public presentation.

10:58:10

17 Q Can you describe the -- the 1995 system? What
18 did it consist of?

19 A It -- it consisted of the technology systems
20 integrated in a way that someone could see the album or
21 the individual song on the Internet through a graphical
22 user interface, choose to purchase the desired song or
23 album in exchange for payment, and that song -- or that
24 specific song or that entire album, based upon which was
25 the desired recording, would be transferred to the

10:58:43

10:59:10

1 consumer.

2 Q The 1995 system offered only music and not
3 movies?

4 A That's correct.

5 Q Why was that your initial focus?

10:59:24

6 MR. DiBOISE: Objection.

7 THE WITNESS: The -- the 1995 system, our focus
8 was both music and movies. The graphical user interface
9 indicated that both music and movies would be sold by
10 SightSound on, at that time, the website SightSound.com.

10:59:47

11 At the moment of that demonstration, we had the rights
12 to a specific album, and so that was the reason why
13 there was no movie.

14 BY MR. BATCHELDER:

15 Q Was there a reason that SightSound did not
16 secure the rights to distribute some -- one or more
17 movies before going online with its demonstration
18 system?

11:00:03

19 MR. DiBOISE: Objection.

20 THE WITNESS: You say, was there a reason --
21 was there a specific reason?

11:00:13

22 MR. BATCHELDER: Yes.

23 THE WITNESS: Well, the -- the reason was we
24 had the song and the album, so let's go sell that, and
25 we felt that as a proof-of-concept system, that was

11:00:31

1 sufficient.

2 BY MR. BATCHELDER:

3 Q The -- we have been referring to this 1995
4 system.

5 A Yes. 11:00:48

6 Q And then SightSound went back online in 1998;
7 correct?

8 A Yes, correct.

9 Q And did it go back online with the same system
10 or was it a different system? 11:00:55

11 A It was -- it was somewhat different.

12 Q How so?

13 A Scaleability.

14 Q Would you please elaborate.

15 A Just the sheer capacity of the system. 11:01:08

16 Q What -- what was it about the system that
17 enhanced its capacity?

18 A The ability to store more of the desired audio
19 signals.

20 Q Can you give me some sense from the 1995 system 11:01:29
21 for what its storage capacity was in terms of number of
22 albums that could be stored?

23 A I -- it was sufficient to store the one album
24 that we were demonstrating with, I do -- I know that.

25 Q Do you have an understanding, though, of how 11:01:51

1 many more albums it was sufficient to store?

2 A I'm sure -- I generally believe it had very
3 substantial additional headroom, if we could call it
4 that, room to store more, but the business imperatives
5 and the technological abilities were two different
6 things.

11:02:06

7 Q What do you mean when you say "the business
8 imperatives and the technological abilities were two
9 different things"?

10 A I mean that as -- as a business selling music
11 or movie downloads over the Internet at the -- the first
12 one to ever do it, it was not necessary at that time to
13 convince everyone that owned a copyright that this was
14 the way to go. It was, we felt, important as a business
15 strategy to just show that it could be done.

11:02:23

11:02:55

16 Q And you are saying that's why you created a
17 system in 1995 that didn't have the storage capacity
18 that your '98 system did?

19 MR. DiBOISE: Objection.

20 THE WITNESS: That and limited capital.

11:03:08

21 BY MR. BATCHELDER:

22 Q Did the 1998 system differ from the 1995 system
23 other than in terms of its storage capacity?

24 A I -- I -- I don't know specific differences.

25 That's a question better suited for Mr. Hair.

11:03:50

1 Q Did the 1998 system have the ability to
2 transmit data more quickly than the 1995 system?

3 A I don't know that.

4 Q Other than the 1995 system and the 1998 system,
5 are there any other systems that would fall within the
6 scope of Topic 12 of Exhibit 177?

11:04:12

7 MR. DiBOISE: Objection.

8 THE WITNESS: Yes.

9 BY MR. BATCHELDER:

10 Q What other systems?

11:04:41

11 A The 1998 system, we'll call it, evolved in 1999
12 and beyond to have, as similarly as I described from '95
13 to '98, more storage capacity for more movies and more
14 music.

15 Q Would it be fair to use the term "'99 system,"
16 then, to describe a follow-on system after the '98
17 system?

11:05:15

18 A No. I think it would be more accurate to
19 perceive it as a -- as a continual expansion, perhaps,
20 of the '98 system.

11:05:41

21 Q Okay.

22 A An extension. The -- the break between '95 and
23 '98 was -- was a going-offline break. Subsequent to
24 that, any -- any expansion of the capacity of the system
25 was without interruption to the consumer.

11:06:06

1 Q I -- I understand that testimony, and I
2 appreciate it. It's helpful.

3 Other than the '95 system and we have called it
4 the 1998 system in its '98 state and then its
5 evolutionary progressing state after that, are there any
6 other systems that are responsive to Topic 12 of
7 Exhibit 177?

11:06:26

8 MR. DiBOISE: Objection.

9 THE WITNESS: No, I don't believe so.

10 BY MR. BATCHELDER:

11:06:48

11 Q You have described that the system that was put
12 in place by SightSound in 1998 evolved to even further
13 increase its storage capacity.

14 Other than increases in storage capacity, did
15 that system evolve or change in any ways that you are
16 aware of?

11:07:04

17 MR. DiBOISE: Objection.

18 THE WITNESS: I don't -- I don't believe that
19 it was fundamentally different than what we proved in
20 1995.

11:07:18

21 BY MR. BATCHELDER:

22 Q Over time, were there changes in the speed at
23 which data could be sent from the 1998 system through
24 its evolutionary phases?

25 MR. DiBOISE: Objection.

11:07:36

1 THE WITNESS: Were there changes in the speed
2 at which data could be sent from the '98 system. Yes.

3 BY MR. BATCHELDER:

4 Q And what can you tell me about those changes?

5 A Generally understand them to be nominally
6 faster, continuously nominally faster.

11:07:58

7 Q What do you mean by "nominally faster"?

8 A Like every given iteration of a given computer
9 technology seems to get faster and cheaper. That's just
10 generally understood. Sometimes it's referred to as
11 Moore's law.

11:08:24

12 Q Was improving the speed at which the digital
13 files could be downloaded an objective that SightSound
14 regarded as important in evolving its system over time?

15 MR. DiBOISE: Objection.

11:08:50

16 THE WITNESS: No, I don't think so. It was a
17 given that it would.

18 BY MR. BATCHELDER:

19 Q When you say "it was a given that it would,"
20 you mean it was a given that the speed would improve as
21 technology improved?

11:09:03

22 A Yes.

23 Q I'd like to, again, just come up with
24 nomenclature referring to the systems responsive to
25 Topic 12.

11:09:36

1 MR. DiBOISE: Objection.

2 THE WITNESS: A nominal amount. It was on par
3 with the systems being proof-of-concept exercises.

4 BY MR. BATCHELDER:

5 Q Can you give me an estimate of how much
6 revenue?

11:11:32

7 MR. DiBOISE: Objection.

8 THE WITNESS: No, I don't -- I don't recall
9 specifically.

10 BY MR. BATCHELDER:

11:11:41

11 Q Was it less than \$100,000?

12 A I don't know.

13 Q If you had to figure that out, where would you
14 look?

15 A I would look to Mr. Alex LePore.

11:11:52

16 Q Are there any particular documents you would
17 look to?

18 A No.

19 Q Are there any components of the SightSound
20 systems that still exist today?

11:12:26

21 MR. DiBOISE: Objection.

22 THE WITNESS: I believe the -- no. I think the
23 system -- all of the various components were
24 decommissioned when our business strategy changed.

25 BY MR. BATCHELDER:

11:12:54

1 Q When was that?

2 A Circa 2002 or '3, 2002.

3 Q And what do you mean by "decommissioned"?

4 A We went offline and ceased the sale -- the
5 download sale of audio and video over the SightSound
6 system.

11:13:24

7 Q Can you be any more precise about when that
8 occurred?

9 A Yeah. I believe it would -- I would narrow it
10 to 2002. I think in my prior answer I said 2002, 2003.
11 I'm thinking it was 2002.

11:13:44

12 Q When SightSound went offline and ceased the
13 download sale of audio and video over the SightSound
14 system, what became of the equipment, hardware, software
15 data associated with that system?

11:14:14

16 A It's my recollection that it was -- I use the
17 term "decommissioned," powered down everything, erased
18 so that the equipment itself could be sold.

19 Q And was it sold?

20 A I believe so.

11:14:32

21 Q Who made the decision to decommission that
22 system?

23 A The board, board of directors.

24 Q Were you in favor of doing so?

25 A I was.

11:14:50

1 Q When the SightSound system was decommissioned
2 in 2002 or 2003, was the software that was running that
3 system saved?

4 A I don't believe so.

5 Q When SightSound decommissioned its system in
6 2002 or 2003, was the data on the system saved?

11:15:11

7 MR. DiBOISE: Objection.

8 THE WITNESS: No, I don't believe so.

9 BY MR. BATCHELDER:

10 Q Why not?

11:15:29

11 MR. DiBOISE: Objection.

12 THE WITNESS: As I previously answered, we
13 decommissioned the system and then sought to sell the
14 various components, so eliminating any data from, for
15 example, memory that you are going to sell to someone
16 else is just an appropriate practice.

11:15:51

17 BY MR. BATCHELDER:

18 Q Why didn't SightSound back up the data onto
19 another device that it could -- that would allow it to
20 store that data more permanently?

11:16:08

21 MR. DiBOISE: Objection.

22 THE WITNESS: Cost reasons.

23 BY MR. BATCHELDER:

24 Q Did it occur to you at the time that that data
25 might be relevant in a subsequent litigation?

11:16:23

1 MR. DiBOISE: Objection.

2 THE WITNESS: I don't know.

3 BY MR. BATCHELDER:

4 Q Who was involved in the decision not to save
5 the software and data associated with the SightSound
6 system when it was decommissioned in 2002 or 2003?

11:16:42

7 MR. DiBOISE: Objection.

8 THE WITNESS: I don't believe there was a
9 decision to, quote, not save the software or data
10 associated. There was a decision to not let such data
11 go out to someone who purchased any of the equipment.

11:17:08

12 BY MR. BATCHELDER:

13 Q Well, at some point that data was erased by
14 SightSound; correct?

15 MR. DiBOISE: Objection.

11:17:23

16 THE WITNESS: Yes.

17 BY MR. BATCHELDER:

18 Q Who made that decision?

19 MR. DiBOISE: Objection.

20 THE WITNESS: I would think Arthur Hair.

11:17:33

21 (Exhibit 184 was marked for identification by
22 the Court Reporter.)

23 MR. BATCHELDER: I've had marked, as

24 Exhibit 184, a document from the Bates range SST-21837
25 through 21912.

11:18:27

1 Q My first question, Mr. Sander, is: What do you
2 understand this document to be?

3 MR. DiBOISE: Objection.

4 THE WITNESS: It appears to be screen captures.

5 BY MR. BATCHELDER:

11:18:51

6 Q From?

7 A SightSound.com.

8 Q Seeing the document, do you have any ability to
9 date it?

10 A Around the turn of the Century.

11:19:02

11 Q Roughly 2000?

12 A Yes.

13 Q And do these screen captures, then, reflect the
14 various audio and video offerings from the SightSound
15 website around the year 2000?

11:20:07

16 MR. DiBOISE: Objection.

17 THE WITNESS: Yes.

18 BY MR. BATCHELDER:

19 Q Is there any way now to go back to replicate,
20 for any given time, what was on the SightSound website?

11:20:31

21 A Yes.

22 Q How would you do that?

23 A I would use the way-back time machine.

24 Q Have you tried to do that, to go back and view
25 SightSound.com for various periods?

11:20:51

1 MR. DiBOISE: Objection.

2 THE WITNESS: I don't know if I did it
3 specifically for that, but I'm generally aware of its
4 functionality.

5 BY MR. BATCHELDER:

11:21:14

6 Q I just want to make a list of the years that
7 the SightSound system was in place. 1995, it was in
8 place for some time, and then it was in place from 1998
9 through 2002 or 2003.

10 Do I have that right?

11:21:43

11 A I believe I've answered that. I think it was
12 2002.

13 Q Okay.

14 A I should clarify. I'm not certain when the
15 system was ultimately decommissioned. I believe it was
16 in 2002.

11:21:56

17 Q But other than the shutdown between the '95
18 system and the '98 system, the system was up and running
19 throughout the 1998-through-2002 time period as far as
20 you know?

11:22:13

21 A Yes.

22 Q And then it was decommissioned in around 2002,
23 and there's been no subsequent SightSound system?

24 A Yes.

25 Q In 1995, what was SightSound's investment in

11:22:26

1 the system?

2 MR. DiBOISE: Objection.

3 THE WITNESS: I don't recall.

4 BY MR. BATCHELDER:

5 Q Can you even ballpark it for me?

11:22:43

6 MR. DiBOISE: Objection.

7 THE WITNESS: I don't -- I -- yes, I could
8 ballpark it.

9 BY MR. BATCHELDER:

10 Q Please.

11:23:04

11 A Maybe -- well, several hundreds of thousands of
12 dollars.

13 Q Several hundreds of thousands?

14 A I'm just, in my mind, trying to go back and
15 reconstruct capital-raising use of those funds, so,
16 yeah, maybe -- certainly six figures.

11:23:28

17 Q And between the -- well, while that system was
18 up and running in 1995 before it was shut down during
19 '96 and '97, what revenue did SightSound obtain in
20 connection with that system?

11:24:03

21 MR. DiBOISE: Objection.

22 THE WITNESS: De minimis.

23 BY MR. BATCHELDER:

24 Q Can you be more specific?

25 A Or, as I answered previously, that when John

11:24:12

1 Doerr had suggested that we alter our strategy, we --
2 it's my recollection that we didn't process the credit
3 card payments, so it may have been zero.

4 Q And how many credit card payments were there?

5 A My recollection is it's a handful. 11:24:36

6 Q So four or five kind of thing?

7 A It was limited. A period of time -- the period
8 of time was very limited.

9 Q But it was single-digit credit card payments,
10 you think? 11:24:55

11 A Yes.

12 Q And SightSound didn't process them because it
13 wasn't worth the money?

14 MR. DiBOISE: Objection.

15 THE WITNESS: It was because -- we changed our
16 strategy. 11:25:00

17 BY MR. BATCHELDER:

18 Q Would it have cost more to secure that money
19 than it would have -- than SightSound would have gained
20 in the products? 11:25:14

21 MR. DiBOISE: Objection.

22 THE WITNESS: I don't know.

23 BY MR. BATCHELDER:

24 Q What was your salary in 1995 from SightSound?

25 A I don't believe that I took one. I don't 11:25:30

1 recall. I'm sorry. I don't recall.

2 Q Were you compensated at all by SightSound in
3 1995?

4 A Well, I owned part of the company, and that
5 wasn't the central driver of what my -- what you are
6 characterizing as compensation. When you are an
7 entrepreneur, you are trying to build something. It
8 doesn't have to be a paycheck.

11:25:52

9 Q Okay. So other than an equity stake, you don't
10 remember receiving any cash from SightSound in 1995; is
11 that right?

11:26:06

12 A As I sit here today, I don't recall.

13 Q And then same question for 1998: Were you
14 compensated with cash by SightSound in 1998?

15 A By 1998, I believe so.

11:26:26

16 Q And what was your '98 compensation?

17 A I don't recall.

18 Q Can you ballpark it for me?

19 A No. I don't recall.

20 Q If you had to reconstruct it, how would you do
21 that?

11:26:47

22 A I suppose I would go back and look at my tax
23 returns.

24 Q Do you still have them?

25 A For 1998, no. No.

11:26:56

1 Q Does SightSound have records of who it paid,
2 what it paid its executives back in the '98, '99, 2000
3 time frame?

4 A I don't know. I don't know.

5 Q And in the year 2000, did you receive cash from
6 SightSound?

11:27:15

7 A I believe so, yes.

8 Q And what were you paid?

9 A I don't recall specifically, but maybe it
10 was -- I don't recall. The nature of my employment was
11 also up and down because it was a start-up company.

11:27:42

12 Q For the year 2000, can you give me an estimate
13 of what you were paid?

14 A I don't know. Hundred, 200,000 bucks.

15 Q And in 2001, were you paid cash by SightSound?

11:28:03

16 A Yes, I believe so.

17 Q And how much were you paid?

18 A Similar amount.

19 Q Roughly 100,000 to 200,000?

20 A I don't recall specifically, but, yes, I think
21 so.

11:28:21

22 Q And in 2002, were you paid by SightSound?

23 A Yes. Or a portion, yes.

24 Q And would you estimate that for me, please.

25 A I can't recall as I sit here today. There was

11:28:38

1 a time when it went down because of illiquidity, so I
2 don't recall specifically.

3 Q And that was roughly 2002 time frame?

4 A I think so.

5 Q And can you quantify at all how much it went
6 down?

11:28:56

7 A Well, then it -- I think I've already asked --
8 I've already answered that question. It would go up and
9 down. We raised capital, and then when capital was
10 available and sufficient to pay salaries, probably might
11 have been making 200,000 or more, but, you know, then --
12 so in that era, I would say maybe 200-, 250,000 bucks
13 after a successful round of financing.

11:29:20

14 Q And what time frame do you associate with that
15 era?

11:29:46

16 A Sometime in 2000.

17 Q And how long did it last, that era?

18 A I'm here today. You mean capital sufficient
19 for the company to exist? It never stopped after that.

20 Q My question is: With what time frame do you
21 associate the era when there was a capital infusion in
22 the company you would draw down a salary in the
23 neighborhood of 200-, \$250,000?

11:30:05

24 A I'd say from '99 to 2005.

25 Q From the years 1998 through 2002 when the

11:30:38

1 SightSound system was up and running, can you estimate
2 for me the revenue that was associated with that system
3 annually?

4 MR. DiBOISE: Objection.

5 THE WITNESS: I think I've already answered. 11:31:03

6 As I said, it was a proof-of-concept system, so maybe --
7 I don't know specifically. I can't remember
8 specifically.

9 BY MR. BATCHELDER:

10 Q Can you just ballpark it for me? 11:31:23

11 A Six figures, under, somewhere around there.

12 Q So \$100,000 or less, roughly?

13 A I can't recall specifically.

14 Q Under SightSound's system, how were consumers
15 to play the music that they downloaded? What was the 11:32:03
16 concept there?

17 MR. DiBOISE: Objection.

18 THE WITNESS: How would they play it?

19 MR. BATCHELDER: Yes.

20 THE WITNESS: Numerous ways. 11:32:25

21 BY MR. BATCHELDER:

22 Q Would you give me some examples?

23 A They could play it on their computer. They
24 could play it on a handheld portable device of some
25 kind. They could play it on a -- what we today would 11:32:39

1 call a tablet, a smaller device with a stylus.

2 Q You mentioned a handheld portable device.

3 What -- do you have any specific devices in
4 mind?

5 A Yes. 11:33:05

6 Q What do you have in mind?

7 A A Compaq iPAQ.

8 Q Would you describe that device for me? First
9 of all, would you spell that device for me.

10 A C-o-m-p-a-q, i-P-A-Q, I believe. That's my 11:33:19
11 recollection.

12 Q Thank you.

13 And would you describe the Compaq iPAQ?

14 A It's a handheld portable device with audio
15 output. A screen running Windows CE, I believe. 11:33:39

16 Q When SightSound sold music over its system in
17 1995, was there some technology on that system for
18 limiting the ability of consumers to reproduce or replay
19 it?

20 MR. DiBOISE: Objection. 11:34:07

21 THE WITNESS: I don't recall.

22 BY MR. BATCHELDER:

23 Q The same question for the time period 1998
24 through 2002.

25 MR. DiBOISE: Objection. 11:34:16

1 THE WITNESS: Yes, we had those abilities.

2 BY MR. BATCHELDER:

3 Q And when did you first have them?

4 A I don't remember specifically.

5 Q Can you provide me an estimate?

11:34:37

6 A We may have always had such capabilities, but
7 they became business requirements in dealing with
8 copyright holders after we demonstrated that music and
9 movies could be sold download over the Internet.

10 Q So when you say "we may have always had such
11 capabilities," you mean they may have been present in
12 the '95 system, but you don't remember one way or the
13 other?

11:35:00

14 A Yes.

15 Q And is it fair to say, then, that, as you sit
16 here, you don't remember a given time at which you were
17 made aware that SightSound was making a change to
18 introduce that ability to its system?

11:35:12

19 A Yes.

20 Q Did SightSound sell to consumers any hardware
21 or software that consumers could use to download, store,
22 or play back any of the audio files or video files that
23 they were downloading from SightSound's website?

11:35:35

24 A No.

25 Q Why not?

11:36:01

1 MR. DiBOISE: Objection.

2 THE WITNESS: We collaborated with the hardware
3 manufacturers.

4 BY MR. BATCHELDER:

5 Q What manufacturers? 11:36:23

6 A What time frame?

7 Q If your answer changes depending on the time
8 frames, you can just clarify that in your answer, if you
9 would.

10 A My general recollection is a pan -- 11:36:40
11 specifically, panoply of device makers: Compaq, Gateway
12 2000, Microsoft. We had interactions with many of the
13 computer hardware companies, as well as the software,
14 the creators of the operating system.

15 Q A moment ago, you said that the SightSound 11:37:18
16 collaborated with these entities, and you said that in
17 response to my question about why SightSound didn't sell
18 to consumers hardware or software to facilitate the
19 downloading or storing or playing of the files.

20 Why was it that SightSound concluded that this 11:37:43
21 collaboration made it unnecessary for SightSound to sell
22 such hardware or software to consumers?

23 MR. DiBOISE: Objection.

24 THE WITNESS: Our focus was on the download
25 sale of music and movies to everyone, regardless of the 11:38:02

1 platform or device.

2 BY MR. BATCHELDER:

3 Q What were the fruits of SightSound's
4 collaboration with the hardware manufacturers that you
5 were just describing? 11:38:32

6 MR. DiBOISE: Objection.

7 THE WITNESS: Numerous, numerous historic
8 firsts as demonstration of the capabilities and capacity
9 of downloading music and movies.

10 BY MR. BATCHELDER: 11:38:56

11 Q Did the hardware manufacturers or software
12 manufacturers that you were describing that you
13 collaborated with change their product offerings in
14 order to encourage or facilitate customer use of
15 SightSound offerings? 11:39:18

16 A I think so.

17 Q How so?

18 A Examples?

19 Q Please.

20 A Gateway Computers created a product which was 11:39:32
21 television, where you could get the desired video onto
22 the television. Compaq created the iPAQ, which was a
23 first handheld portable device to receive a purchased
24 movie that -- for subsequent portable playback.

25 Panasonic -- maybe I misspoke. Texas Instruments with 11:40:09

1 their DLP projector did a demonstration with us of a
2 movie sold over the Internet that was then subsequently
3 displayed for theatrical exhibition, so -- and in those
4 exhibitions, alterations were made -- it's my belief
5 that they would do things because they liked the idea of 11:40:45
6 the virtue of having movies or music be available on
7 their devices.

8 Q And in your understanding, were those changes
9 made specifically to facilitate or encourage customer
10 use of SightSound's systems as opposed to other systems? 11:41:05

11 A I don't know.

12 MR. BATCHELDER: The videographer needs to
13 change the tape, so why don't we take a break here.

14 THE VIDEOGRAPHER: This is the end of Disc 1 of
15 Scott Sander. 11:41:18

16 Off the record at 11:40.

17 (Recess taken.)

18 THE VIDEOGRAPHER: This is Disc 2 of Scott
19 Sander.

20 On the record at 11:51. 11:52:26

21 BY MR. BATCHELDER:

22 Q For the SightSound systems that we have been
23 talking about responsive to Topic 12 in the 30(b)(6)
24 notice, what were the various costs that went into
25 establishing those systems and operating them 11:52:45

1 day-to-day?

2 MR. DiBOISE: Objection. Disagree that the
3 questions you have been asking relate to Topic 12.

4 You can answer.

5 THE WITNESS: I believe I've already answered 11:52:55
6 that because I had expressed previously that something
7 north of \$45 million.

8 MR. BATCHELDER: Let me clarify. I didn't mean
9 to give me a total dollar estimate. I meant to lay out
10 the categories of -- of the -- of the costs. That is, I 11:53:22
11 assume there was some expenditure for securing the
12 content, for example.

13 Q Would you answer whether that's true and then
14 what the other categories were?

15 MR. DiBOISE: Objection. 11:53:40

16 THE WITNESS: You said let me clarify, but then
17 I became more confused.

18 MR. BATCHELDER: All right. Let me -- let me
19 start over.

20 Q For the SightSound systems that we have been 11:54:04
21 talking about that offered for sale audio files and
22 video files, there were certain costs that SightSound
23 incurred in setting up those systems and in running
24 them, and my question is to elicit a list of the
25 categories of those things that were associated with 11:54:26

1 those costs.

2 Is that clear?

3 MR. DiBOISE: Objection.

4 THE WITNESS: Do you want me to attempt to
5 construct a list of where all of our costs were?

11:54:38

6 MR. BATCHELDER: Yeah, as best you can.

7 MR. DiBOISE: Same objection.

8 THE WITNESS: I don't know that I can. There
9 was no cost that was unassociated with our sole
10 business.

11:54:58

11 BY MR. BATCHELDER:

12 Q One of the costs was securing from copyright
13 holders the right to display the content and to sell the
14 content; correct?

15 A The cost to obtain the right -- I don't know.
16 The -- I guess I'm having difficulty with the concept of
17 whether that was a -- an expenditure or -- I don't
18 understand.

11:55:14

19 Q When SightSound secured from copyright holders
20 the right to sell their content, how were the copyright
21 holders paid by SightSound? Was it cash or were they
22 paid a percentage of sales or what was the formula?

11:55:55

23 A A percentage of sales.

24 Q So there was no cash up front?

25 A I don't believe so.

11:56:15

1 (Exhibit 185 was marked for identification by
2 the Court Reporter.)

3 MR. BATCHELDER: I've had marked, as
4 Exhibit 185, a document that spans the Bates range
5 STI-13695 through 13707. 11:57:24

6 Q Do you recognize this document?

7 A No.

8 Q Do you recognize the formatting of the content?

9 A Yes.

10 Q What do you recognize it to be? 11:57:49

11 A Sales of particular recordings.

12 Q On the page ending 3696 in the upper left-hand
13 corner, it says SightSound.com.sales.

14 Do you see that?

15 A Yes. 11:58:26

16 Q And what is that?

17 MR. DiBOISE: Objection.

18 THE WITNESS: It appears to be monthly totals
19 for the year 1999.

20 BY MR. BATCHELDER: 11:58:46

21 Q And have you seen sales figures in this format
22 before associated with SightSound?

23 A I suppose so, yes.

24 Q In the left-hand column on that same page,
25 3696, there are a series of entries starting with raw 11:59:10

1 sales and ending back to manager.

2 Do you see that?

3 A Yes.

4 Q And what are those?

5 MR. DiBOISE: Objection.

11:59:23

6 THE WITNESS: We are looking at a paper
7 printout of something that was on a computer screen, so
8 I -- I suppose those were links to the information
9 categorized that way.

10 BY MR. BATCHELDER:

11:59:50

11 Q So was there a database that was referred to as
12 "SightSound.com.sales"?

13 MR. DiBOISE: Objection.

14 THE WITNESS: I don't know that you would call
15 it database. I -- there -- there was the ability to
16 track sales electronically.

12:00:00

17 BY MR. BATCHELDER:

18 Q And do electronic records of these sales still
19 exist?

20 A I don't know.

12:00:28

21 Q If you need to know the answer to that, where
22 would you go?

23 A Alex LePore.

24 Q The page we have been looking at, 3696, on the
25 top it says, Monthly Totals for the Year 1999.

12:00:50

1 Do you see that?

2 A Yes.

3 Q And the total appears to be \$5,326?

4 A Yes.

5 Q Do you have any -- well, is it your
6 understanding that that number captures the sales from
7 the SightSound system as it existed in 1999?

12:01:07

8 MR. DiBOISE: Objection.

9 THE WITNESS: No.

10 BY MR. BATCHELDER:

12:01:23

11 Q Why not?

12 A This appears to commence in April.

13 Q Is it your understanding, then, that the --
14 that number, the \$5,326, reflects the sales of audio
15 files and video files from SightSound's system through
16 the months April through December 1999?

12:01:44

17 MR. DiBOISE: Objection.

18 THE WITNESS: I think so.

19 BY MR. BATCHELDER:

20 Q Looking at the next page of Exhibit 185, the
21 page ending in 13697, there at the top, it's Monthly
22 Totals for the Year 2000.

12:02:08

23 Do you see that?

24 A Yes.

25 Q And there, in the lower right-hand entry, the

12:02:17

1 monthly total is \$39,691.

2 Do you see that?

3 A Yes.

4 Q And is it your understanding that that figure
5 reflects the total sales from the SightSound system for 12:02:35
6 the entirety of the year 2000?

7 MR. DiBOISE: Objection.

8 THE WITNESS: I suppose so.

9 BY MR. BATCHELDER:

10 Q Again, focusing on the entries in the left-hand 12:03:02
11 column, was it possible to sort the data by these
12 various categories?

13 MR. DiBOISE: Objection.

14 THE WITNESS: I think so.

15 BY MR. BATCHELDER: 12:03:17

16 Q And are you aware of any data currently within
17 SightSound's possession, custody, or control that allows
18 you to sort the historical sales data by those
19 categories?

20 MR. DiBOISE: Objection. 12:03:31

21 THE WITNESS: I don't believe so.

22 BY MR. BATCHELDER:

23 Q When were these data -- well, as far as you
24 know, these data no longer exist?

25 MR. DiBOISE: Objection. 12:03:53

1 BY MR. BATCHELDER:

2 Q In electronic form?

3 MR. DiBOISE: Objection.

4 THE WITNESS: I don't know.

5 BY MR. BATCHELDER:

12:04:00

6 Q And if they were destroyed, would you have any
7 understanding as to when they were destroyed?

8 MR. DiBOISE: Objection.

9 THE WITNESS: Well, they weren't destroyed.

10 BY MR. BATCHELDER:

12:04:26

11 Q I'm referring to electronic data, not this
12 hard-copy printout.

13 A I don't know.

14 Q Okay. And for years other than '99 and 2000,
15 are you aware of any hard-copy or electronic versions of
16 data that would allow the reconstruction of the sales
17 from the SightSound system month by month?

12:04:38

18 MR. DiBOISE: Objection.

19 THE WITNESS: I'm not.

20 BY MR. BATCHELDER:

12:04:54

21 Q What about year by year?

22 MR. DiBOISE: Objection.

23 THE WITNESS: I'm not aware.

24 (Exhibit 186 was marked for identification by
25 the Court Reporter.)

12:05:29

1 MR. BATCHELDER: Sadly, using these glasses
2 more and more.

3 I've had marked, as Exhibit 186, a document
4 that spans the Bates range SST-36864 through 6882.

5 Q And my first question is: Do you recognize
6 this document?

12:06:01

7 A I recognize the content.

8 Q What do you recognize it to be?

9 A It appears to be Arthur's notes.

10 Q Is any of the content content that you
11 generated?

12:06:40

12 MR. DiBOISE: Objection -- well, no.
13 Withdrawn.

14 THE WITNESS: I generated?

15 MR. BATCHELDER: Yes.

12:06:53

16 THE WITNESS: Like inputted it into Arthur's
17 device? No.

18 BY MR. BATCHELDER:

19 Q My -- my question isn't limited to devices, but
20 is any of this content -- did you write any of this?

12:07:01

21 A I don't know. I don't believe so.

22 Q Okay.

23 A I believe this is Art's.

24 Q At some point SightSound included among its
25 offerings the service of going out to third parties to

12:07:25

1 build systems that would allow the third parties to sell
2 their own music or movies to consumers; is that fair?

3 A Yes.

4 Q And did SightSound ever succeed in selling such
5 services to any third parties?

12:07:56

6 MR. DiBOISE: Objection.

7 THE WITNESS: Well, we changed our strategy.

8 MR. BATCHELDER: We'll -- we'll get to that in
9 a moment.

10 Q The question now is: Did SightSound ever
11 succeed in selling such services to any third parties?

12:08:31

12 A No.

13 Q For how long were those services a part of
14 SightSound's offerings?

15 A Briefly.

12:08:51

16 Q Can you be more specific?

17 A Perhaps a series of months or a window of time.
18 Maybe -- maybe a year, maybe.

19 Q And what year?

20 A Well, it may have been attempts during multiple
21 years for windows of time, but.

12:09:17

22 Q What year or years do you associate with having
23 those services a part of SightSound's offerings?

24 A Maybe 2001 through '3.

25 Q And what was it that prompted SightSound to

12:09:54

1 make those services a part of its offerings? Why did --
2 do you believe that was a good idea?

3 A We were attempting to revolutionize the
4 distribution of music and movies over the Internet.

5 Q And why was making those services a part of
6 your offerings a good idea in connection with that
7 objective?

12:10:29

8 A We felt that it may enable us to generate
9 revenue.

10 Q What changed your mind?

12:10:45

11 MR. DiBOISE: Objection.

12 THE WITNESS: What changed our mind? We didn't
13 change our mind; we changed our strategy.

14 BY MR. BATCHELDER:

15 Q At some point you dropped those services from
16 your offerings; correct?

12:11:09

17 A Yes.

18 Q Why?

19 A We had -- we entered into a different business
20 strategy.

12:11:22

21 Q Please describe that strategy.

22 A We focused on defending and licensing our
23 intellectual property.

24 Q Why not do both?

25 MR. DiBOISE: Objection.

12:11:50

1 THE WITNESS: We felt the defending and
2 licensing of our intellectual property strategy was
3 superior.

4 BY MR. BATCHELDER:

5 Q Even assuming the truth of that, why not do
6 both?

12:12:14

7 MR. DiBOISE: Objection.

8 THE WITNESS: Limited resources.

9 BY MR. BATCHELDER:

10 Q How do you explain the fact that no consumers
11 or entities took you up on your offers to perform the
12 service of implementing for them a system that would
13 allow them to sell digital audio files or video files?

12:12:27

14 MR. DiBOISE: Objection.

15 THE WITNESS: A lack of vision on their part.

12:12:50

16 BY MR. BATCHELDER:

17 Q To whom did SightSound extend that offer?

18 A I don't remember specifically, but -- I don't
19 remember the specific entities, but, generally, the -- I
20 think the movie studios or a subset of the movie
21 studios.

12:13:22

22 Q Did SightSound make that offer to the major
23 motion picture studios?

24 MR. DiBOISE: Objection.

25 THE WITNESS: Yeah, I said -- I think I

12:13:40

1 answered a subset.

2 BY MR. BATCHELDER:

3 Q There were five or six major motion picture
4 studios in the 2001-through-2003 vintage; is that fair?

5 A That's fair.

12:14:00

6 Q And you are saying that SightSound made this
7 offer of services to a subset of those five or six?

8 A I don't recall the distinction, offer of
9 services versus -- we were generally engaged with the
10 major studios.

12:14:25

11 Q Is it the case, though, that as to the offer of
12 services of going into the major motion picture studio
13 and setting up a system that would allow that studio
14 to -- to sell movies itself, you don't recall a --
15 studio by studio which one SightSound talked to?

12:14:48

16 A No.

17 Q So you do recall?

18 A Yes.

19 Q Okay. Which ones?

20 A Walt Disney Company, Warner Brothers, and MGM.

12:14:59

21 Q And why did you not approach the other major
22 motion picture studios with this idea?

23 A I didn't say we didn't. I said I don't recall.
24 I don't know.

25 Q Okay. But you do recall for those three?

12:15:23

1 A Yes, sir.

2 Q Okay. And as to Disney, what do you recall of
3 those communications? And in particular -- let me focus
4 the question.

5 As to Disney, what reasons, if any, did Disney 12:15:34
6 cite to you for its decision not to go forward?

7 A I don't know. I'm sorry. Cite to us? They
8 didn't have to explain to us.

9 Q Whether or not they had to, though, did they?

10 A I don't believe so. 12:15:52

11 Q And did Warner Brothers cite a reason for not
12 going forward with those services from SightSound?

13 A I don't recall.

14 Q Did MGM?

15 A Yes. 12:16:05

16 Q What reasons?

17 A Intellectual property strategy.

18 Q Are you done with your answer?

19 A Yes.

20 Q Would you elaborate? 12:16:29

21 MR. DiBOISE: Objection.

22 THE WITNESS: That the -- a bad patent license
23 request by one of the -- a request for a licensing of
24 the patents that would have -- that was unacceptable to
25 MGM. 12:17:05

1 BY MR. BATCHELDER:

2 Q You are referring to a -- a request that
3 SightSound made?

4 A No.

5 Q That who made? 12:17:14

6 A Microsoft.

7 Q What request?

8 A For a license.

9 Q Can you explain more? I just -- I don't
10 understand what you are telling me about Microsoft
11 offering a license to SightSound patents. 12:17:35

12 Can you put some meat on that?

13 MR. DiBOISE: Objection.

14 THE WITNESS: No. That -- no. Microsoft
15 offering a license to SightSound patents. No. 12:17:48

16 BY MR. BATCHELDER:

17 Q Do I understand you correctly that Microsoft
18 offered MGM a license to SightSound patents?

19 A No.

20 Q What is it that Microsoft did that MGM found
21 unacceptable? 12:17:58

22 A Requested a license to the SightSound patents
23 that was -- that had terms that were unacceptable.

24 Q And Microsoft requested that from MGM?

25 A Yes. 12:18:17

1 Q Did it do so in writing?

2 A Yes.

3 Q Did you get a copy of that writing?

4 A Yes.

5 Q Has that been produced in this case as far as 12:18:32
6 you know?

7 A I believe so.

8 Q What do you understand to have been the terms?

9 A That the license would be royalty-free.

10 Q To Microsoft? 12:18:47

11 A Yes.

12 Q In exchange for what from Microsoft?

13 A Their investment in the system in conjunction
14 with MGM.

15 Q What investment? 12:19:08

16 A Their proposed investment, I should say.

17 Q Was it just a money investment or something
18 else?

19 A It was a money investment and something else.

20 Q And what was the money? 12:19:23

21 A As I sit here today, my recollection is that
22 the initial portion would be 10 million.

23 Q And subsequent portions?

24 A I don't recall with specificity the -- the
25 follow-on -- the nature of the follow-on rounds. 12:19:48

1 Q Was there some running royalty?

2 A No. That was -- no.

3 Q The following rounds were milestone triggered?

4 A I don't recall.

5 Q In addition to the money, what else from

12:20:08

6 Microsoft was part of the proposal?

7 A Marketing support.

8 Q Anything else?

9 A I don't believe so.

10 Q Did Microsoft offer any software services in

12:20:27

11 connection with the deal?

12 A I don't believe so.

13 Q How was it that Microsoft's proposal killed

14 MGM's interest in going forward with SightSound's offer

15 to provide the services?

12:20:47

16 MR. DiBOISE: Objection.

17 THE WITNESS: Microsoft would get a

18 royalty-free license to the SightSound patent portfolio

19 that was vital to the -- to the deal.

20 BY MR. BATCHELDER:

12:21:13

21 Q Your understanding was that MGM was not

22 interested in the transaction without those investments

23 from Microsoft?

24 MR. DiBOISE: Objection.

25 THE WITNESS: No.

12:21:30

1 BY MR. BATCHELDER:

2 Q And I'm still trying to understand the linkage
3 between Microsoft's request and MGM's decision not to go
4 forward.

5 Can you explain? 12:21:40

6 MR. DiBOISE: Objection.

7 THE WITNESS: MGM's objection -- or MGM's
8 withdrawal from the proposed transaction was based upon
9 Microsoft requesting a royalty-free license that would
10 have extinguished in MGM -- well, I believe in MGM's
11 opinion the value of the SightSound patents because
12 Microsoft would have a royalty-free license. 12:22:07

13 BY MR. BATCHELDER:

14 Q So what I'm trying to get at is, who -- if you
15 know, why didn't MGM say, "Microsoft, we are not
16 interested in your piece of it. We want to go forward
17 with SightSound and accept its offerings"? 12:22:31

18 MR. DiBOISE: Objection.

19 THE WITNESS: I don't know.

20 BY MR. BATCHELDER: 12:23:00

21 Q And MGM didn't communicate to you anything
22 along those lines as to why?

23 A No.

24 Q Aside from your communications with Disney and
25 Warner Brothers and MGM, were there any other 12:23:16

1 communications that you can remember as you sit here
2 between SightSound and any other entity regarding the
3 possibility that SightSound would work with that entity
4 to create a system that the entity could use to sell
5 audio or video signals online?

12:23:45

6 MR. DiBOISE: Objection.

7 THE WITNESS: I can remember, as I sit here,
8 that those were -- those are the ones that I remember.
9 I don't remember specifically other offers. Those were
10 sufficiently in-depth interactions that I recall them
11 specifically.

12:24:13

12 BY MR. BATCHELDER:

13 Q Did SightSound publicize that offering in any
14 way other than in one-on-one communications with
15 individual entities?

12:24:29

16 MR. DiBOISE: Objection.

17 THE WITNESS: I don't recall.

18 (Exhibit 187 was marked for identification by
19 the Court Reporter.)

20 MR. BATCHELDER: I've had marked, as
21 Exhibit 187, a document spanning SST-24812 through
22 24818, and the cover page is titled "Concept Plan for
23 the Formation of Digital Sight/Sound," presented to
24 Mr. Michael Milken.

12:25:13

25 Q Do you recognize this document?

12:25:38

1 A Yes.

2 Q And what do you recognize it to be?

3 A Something that Art created.

4 Q Did you have any role in its creation?

5 A No.

12:25:53

6 Q Were you associated with Mr. Hair in any
7 business venture that became SightSound at the time that
8 this was created?

9 MR. DiBOISE: Objection.

10 THE WITNESS: Yes.

12:26:20

11 BY MR. BATCHELDER:

12 Q How so?

13 MR. DiBOISE: Objection.

14 THE WITNESS: We were trying to start the
15 company.

12:26:39

16 BY MR. BATCHELDER:

17 Q Were you involved in the decision to approach
18 Michael Milken?

19 A Yes.

20 Q Did you think it was a good idea?

12:26:48

21 A Yes.

22 Q Why?

23 A He had substantial capital.

24 Q Any other reasons?

25 A No.

12:27:05

1 Q What -- was this document, Exhibit 187,
2 communicated to Mr. Milken?

3 MR. DiBOISE: Objection.

4 THE WITNESS: I don't remember.

5 BY MR. BATCHELDER:

12:27:25

6 Q Did he respond in any way?

7 A Yes.

8 Q How?

9 A We met.

10 Q When was that?

12:27:44

11 A I can't recall specifically. In the '90s.

12 Q What did you propose?

13 A An investment in SightSound.

14 Q Anything else?

15 A No, I don't believe so.

12:28:09

16 Q What came of it?

17 A He did not invest.

18 Q Did he say why?

19 A Yes.

20 Q What did he say?

12:28:21

21 A He was dedicating his resources to curing
22 cancer.

23 Q Did he give any other reasons?

24 A No.

25 //

12:29:30

1 (Exhibit 188 was marked for identification by
2 the Court Reporter.)

3 MR. BATCHELDER: I've had marked, as
4 Exhibit 188, a document Bates range SST-25004 through
5 25151 and is titled "Business Plan for Digital
6 Sight/Sound, Inc."

12:29:42

7 Q Do you recognize this document?

8 A Yes.

9 Q What do you recognize it to be?

10 A Something that Arthur created during that time
11 frame.

12:30:08

12 Q What time frame?

13 A The '90s.

14 Q Can you be any more specific?

15 A No.

12:30:37

16 Q Did you have any role in its creation?

17 A Arthur and I collaborated, but I did not create
18 documents. That was Art's purview.

19 Q Did you review it before it went out?

20 A I don't know.

12:31:15

21 Q Is that something you typically did in
22 connection with something like business plans?

23 A Yeah, I don't know that this went out. You see
24 there's no name on it.

25 Q When business plans went out, did you typically

12:31:43

1 review them for accuracy?

2 MR. DiBOISE: Objection.

3 THE WITNESS: Yes.

4 BY MR. BATCHELDER:

5 Q And do you recognize this as a document that, 12:32:10
6 with the name filled in, did go out to any third
7 parties?

8 A I don't.

9 Q Did SightSound from time to time create
10 business plans that did get distributed to third 12:32:24
11 parties?

12 A It did.

13 Q For purposes of stimulating investment?

14 MR. DiBOISE: Objection.

15 THE WITNESS: Yes. 12:32:46

16 BY MR. BATCHELDER:

17 Q If I could ask you to turn to the page ending
18 in 25009, there's a title in the upper left-hand corner
19 "The Business."

20 Do you see that? 12:33:07

21 A Yes.

22 Q And then about halfway down the page, there's a
23 title "Music Distribution Rights."

24 Do you see that?

25 A Yes. 12:33:17

1 Q In the first sentence after that title "Music
2 Distribution Rights," it says, Digital Sight/Sound
3 currently represents one band, The Gathering Field.

4 Do you see that?

5 A Yes. 12:33:35

6 Q Does that help you date this document?

7 A Yes, I suppose it was 1995 or early '96. I
8 don't know.

9 Q By the time SightSound's system went back up in
10 1998, how many bands did it represent? 12:34:04

11 A I don't recall.

12 Q Can you ballpark it?

13 A Yes.

14 Q Please.

15 A When we went up in 1998, perhaps a dozen. 12:34:19

16 Q What's the largest number of albums that was
17 available for sale by SightSound on its system at any
18 given time?

19 A I don't recall specifically.

20 Q Can you ballpark that? 12:34:46

21 A Maybe a hundred.

22 Q Same question as to movies.

23 MR. DiBOISE: Objection.

24 THE WITNESS: There were movies and television
25 shows and -- do you mean all video recordings? 12:35:04

1 MR. BATCHELDER: Concentrating on movies.

2 THE WITNESS: I -- I can't recall specifically.

3 BY MR. BATCHELDER:

4 Q Can you give me an estimate?

5 A Hundreds. 12:35:19

6 Q Hundreds?

7 A Yeah.

8 Q Can you be any narrower than that?

9 A I don't know. I don't think so.

10 Q Was it closer to 200 than 900? 12:35:30

11 A Maybe. I -- okay. I don't -- I don't
12 specifically recall.

13 Q Okay. Coming back to document Exhibit 188 and
14 page 25009, that paragraph titled "Market Penetration
15 Strategy," in the second sentence there, it says, When 12:36:00
16 the library of music reaches an appropriate level,
17 Digital Sight/Sound will target small record labels for
18 inclusion in the Digital Sight/Sound library.

19 Do you see that?

20 A Yes. 12:36:16

21 Q Did that ever happen?

22 A I don't know. It might have gotten lost in the
23 middle.

24 Q You don't have any memory of it happening?

25 A I -- I don't -- I don't recall, because the 12:36:40

1 strategy described here was altered when we went offline
2 after the meeting with Mr. Doerr.

3 Q Sitting here now, do you have any memory of
4 SightSound approaching small record labels for inclusion
5 in the Digital Sight/Sound library? 12:37:21

6 A I don't recall.

7 Q The next sentence on page 25009 of Exhibit 181
8 says, Building on this strategy and once a critical mass
9 has been achieved, Digital Sight/Sound will target major
10 performing artists who have the flexibility to break 12:37:43
11 ranks.

12 Do you see that?

13 A Yes.

14 Q And did that ever happen?

15 MR. DiBOISE: Objection. 12:37:53

16 BY MR. BATCHELDER:

17 Q So that my question is clear, I'm asking: Did
18 SightSound target the major performing artists described
19 in the sentence I just read?

20 A No, I don't -- I don't believe so. 12:38:11

21 Q Why not?

22 A Because by the time we re-emerged in 1998, it
23 was a two-prong strategy of proving the capabilities and
24 discussing the possibilities with the major record
25 labels not going specifically to artists of those 12:38:44

1 labels.

2 Q The next sentence in the paragraph we have been
3 reading from, page 25009, says, Once this newly formed
4 electronic market has evolved beyond infancy, Digital
5 Sight/Sound will target the big six record labels for
6 inclusion in the Digital Sight/Sound music library.

12:39:06

7 Do you see that?

8 A Yes.

9 Q And was SightSound ever successful in
10 convincing any of the big six record labels to include
11 their wares in the Digital Sight/Sound library?

12:39:18

12 A No.

13 Q Why not?

14 A Because we changed our strategy.

15 Q What strategy change are you referring to?

12:39:33

16 A A focus on defense and licensing of
17 intellectual property.

18 Q And what time change do you associate -- excuse
19 me.

20 What time frame do you associate with that
21 change?

12:39:59

22 A 2002.

23 Q Looking on page 25010, you will see there's a
24 heading at the top, "The Competition."

25 Do you see that?

12:40:17

1 A Yes.

2 Q Immediately under that heading, it says,
3 Inefficient distribution model, and then there's a
4 sentence: Digital Sight/Sound's objective is to
5 position itself in the newly emerging Internet market by 12:40:31
6 signing as many recording artists in as broad a spectrum
7 of music as is possible before potential competitors
8 enter the market.

9 Do you see that?

10 A Yes. 12:40:43

11 Q Was that, indeed, SightSound's strategy?

12 A Circa 1995? Yes.

13 Q Did that change at some point?

14 A Yes.

15 Q When? 12:41:01

16 A When -- when we decommissioned the system.

17 Q 2002?

18 A Yes, I believe so.

19 Q The next paragraph is titled "Lack of Action."

20 Do you see that? 12:41:31

21 A Yes.

22 Q And the final sentence in that paragraph refers
23 to the At-Home Network.

24 Do you see that?

25 A Yes. 12:41:45

1 Q Did SightSound have some relationship with
2 At-Home Network?

3 A No.

4 Q Did it pursue that relationship?

5 A Yes.

12:42:01

6 Q And why did it not consummate?

7 MR. DiBOISE: Objection.

8 THE WITNESS: I don't know.

9 BY MR. BATCHELDER:

10 Q What relationship did SightSound pursue?

12:42:09

11 A A more close marketing affiliation with At-Home
12 Network.

13 Q When you say "more close," was there some
14 marketing affiliation between SightSound and At-Home?

15 A No.

12:42:31

16 Q Can you describe what the market affiliation
17 was that you were pursuing?

18 A By definition, we could sell to someone
19 utilizing the At-Home Network.

20 Q And -- and how would that have worked?

12:42:52

21 A If the consumer had the At-Home Network and
22 they purchased the desired recording from us.

23 Q So you made this proposal to At-Home Network,
24 and was there any response?

25 A I don't -- I don't recall. It would need to

12:43:10

1 ultimately be a response because, at this time, this was
2 concurrent with taking the proof-of-concept first system
3 offline, and the At-Home Network had as its major
4 investor John Doerr. These were related discussions.

5 Q If I could take you to the next and final 12:43:36
6 paragraph of page 25010 titled "Competitive Advantage,"
7 do you see that?

8 A Yes.

9 Q The last sentence there begins: Other than 12:44:04
10 approximately \$1, which Digital Sight/Sound estimates
11 will be paid as royalties to the recording artist, the
12 remaining proceeds will be maintained by Digital
13 Sight/Sound.

14 Do you see that?

15 A Yes. 12:44:17

16 Q Do you understand that to be \$1 out of the
17 15.98 or 16.98 fees referenced above in that paragraph?

18 MR. DiBOISE: Objection.

19 THE WITNESS: No.

20 BY MR. BATCHELDER: 12:44:36

21 Q What do you understand the \$1 to be from?

22 A The desired recording, which could be a single.

23 Q When SightSound system was up and running, how
24 much did a single cost?

25 A In 1995? \$1. 12:45:20

1 Q What about in 1998?

2 A I believe -- it's my recollection we shifted to
3 99 cents.

4 Q And what about 2002?

5 A I think the same. It might -- it may well have 12:45:39
6 been different for different recordings.

7 Q And how much was an album?

8 A I believe that depended as well, but it was
9 obviously multiples of that. I don't -- I don't recall
10 specifically. 12:45:57

11 MR. BATCHELDER: Why don't we stop now and
12 break for lunch.

13 THE VIDEOGRAPHER: Off the record at 12:45.

14 (Lunch recess taken.)

15 ---o0o--- 13:35:52

16

17

18

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1	AFTERNOON SESSION	1:35 P.M.
2		
3	THE VIDEOGRAPHER: On the record at 1:35.	
4	BY MR. BATCHELDER:	
5	Q Has there ever been a time in which	13:36:01
6	SightSound's principal focus was selling audio signals	
7	as opposed to video signals or video signals as opposed	
8	to audio signals?	
9	A Yes.	
10	Q What time?	13:36:31
11	A Circa 2000.	
12	Q And what was the primary focus?	
13	A Video signals.	
14	Q For how long?	
15	A Till 2002.	13:36:59
16	Q Until the system went offline?	
17	A Yes.	
18	Q And was there ever a time when SightSound's	
19	primary focus was selling audio signals as opposed to	
20	video signals?	13:37:20
21	A Yes.	
22	Q What time?	
23	A 1998.	
24	Q For how long?	
25	A Half a year.	13:37:36

1 Q So was that all within 1998?

2 A Into 1999.

3 Q How far into 1999?

4 A April 13th.

5 Q What happened on April 13th?

13:38:04

6 A We sold the first movie download.

7 Q Between April 13th, 1998 and 2000, did

8 SightSound have a principal focus as between audio and
9 video?

10 A Between April 13th, 1998 and 2000, we focused
11 on both.

13:38:47

12 Q All right. So let's start with the -- the
13 first time frame that you identified there, the -- the
14 time frame for about a half a year, somewhere around '98
15 and into '99, where SightSound's primary focus was on
16 selling audio as opposed to video.

13:39:15

17 Why was that SightSound's primary focus?

18 A We were still negotiating for the right to sell
19 the first movie.

20 Q And how long had SightSound tried to secure
21 rights to sell movies?

13:39:38

22 A During that same time period.

23 Q Roughly how long?

24 A '98 into '99.

25 Q And how many months, roughly?

13:39:56

1	A	Maybe six.	
2	Q	Why did it take so long?	
3		MR. DiBOISE: Objection.	
4		THE WITNESS: It didn't.	
5	BY MR. BATCHELDER:		13:40:36
6	Q	Why did it take six months?	
7	A	I don't know.	
8	Q	In 2002 -- excuse me.	
9		In year 2000, roughly when during that year did	
10		SightSound begin to focus primarily on selling video as	13:40:57
11		opposed to audio?	
12		MR. DiBOISE: Objection.	
13		THE WITNESS: In the year 2000?	
14		MR. BATCHELDER: Yes.	
15		THE WITNESS: For the year 2000.	13:41:18
16	BY MR. BATCHELDER:		
17	Q	So starting at the beginning of the year?	
18	A	No.	
19	Q	When?	
20	A	I think I already answered that, at April of	13:41:25
21		1999.	
22	Q	Is that April 13th?	
23	A	Yes.	
24	Q	Oh, okay. I thought the April date that you	
25		gave me was for '98.	13:41:44

1 A No.

2 Q Maybe I just misunderstood.

3 Okay. And so starting in April '99,
4 SightSound's primary focus shifted to video; correct?

5 A No.

13:42:01

6 Q What's incorrect?

7 A SightSound's primary focus.

8 Q I thought you had said that in April 13th,
9 1999, SightSound's primary focus became selling video as
10 opposed to audio?

13:42:22

11 A But you put limits as to just the sale of audio
12 and video. Our primary focus was our patent rights.

13 Q Okay. So as between selling video and audio,
14 starting in April '99, SightSound's primary focus as
15 between those two was selling video; correct?

13:42:48

16 A Yes.

17 Q Why did that shift?

18 A Success in obtaining high-quality video to
19 sell.

20 Q What do you mean by "high-quality video"?

13:43:13

21 A Popular -- popular shows like South Park.

22 Q Did you also regard the quality of SightSound's
23 movie offerings to be high quality in that time frame?

24 MR. DiBOISE: Objection.

25 THE WITNESS: Yes.

13:43:45

1 BY MR. BATCHELDER:

2 Q And for how long was that true?

3 A Since April 13th of 1999.

4 Q So since SightSound had its first movie

5 available for distribution on its system, you regarded 13:44:11

6 SightSound's movie offerings to be high quality as

7 measured by the kind of movies that consumers wanted; is

8 that fair?

9 MR. DiBOISE: Objection.

10 THE WITNESS: Yes. 13:44:25

11 BY MR. BATCHELDER:

12 Q How much money has SightSound received from

13 investors over the years?

14 MR. DiBOISE: Objection.

15 THE WITNESS: I think I answered that already. 13:44:44

16 Approximately something north of 45 million.

17 BY MR. BATCHELDER:

18 Q In addition to money received from investors,

19 has SightSound done any borrowing?

20 A Yes. 13:45:12

21 Q How much has it borrowed?

22 A I don't know specific -- precisely, but a

23 portion of that 46 would be borrowing.

24 Q Can you estimate it?

25 A Perhaps 6 million. 13:45:32

1 Q So roughly 6 million borrowing and roughly
2 40 million in investment?

3 A Roughly.

4 Q Of the money that SightSound has borrowed, what
5 percentage of it has been paid back?

13:46:00

6 A I don't know precisely.

7 Q Can you ballpark it for me?

8 A The -- the outstanding debt, approximately
9 6 million.

10 Q Is still outstanding today?

13:46:37

11 A Yes.

12 Q So has SightSound paid back any of its debt?

13 A Over the life of the company?

14 Q Yes.

15 A Yes.

13:46:55

16 Q And of the \$40 million of investment, has
17 SightSound returned any of that money to investors; that
18 is, has it cashed out any of the investments?

19 A I don't believe so.

20 Q And how much money has SightSound spent over
21 the years?

13:47:15

22 A You said if you asked me a question that was
23 confusing to me, I could -- I -- there -- there are
24 different entities that you collectively referred to as
25 "SightSound," and so I can't -- I don't know the answer

13:47:53

1 to the question for all the entities.

2 Q All right. Do you know the answer to the
3 question for any of them?

4 A Yes.

5 Q Which ones do you know the answer for?

13:48:09

6 A For Holdings.

7 Q And what's the answer?

8 A As I said, approximately 46 million, plus or
9 minus.

10 Q And do you know the answer for any others?

13:48:18

11 A No.

12 Q Okay. So all of the money that has ever been
13 invested in or loaned to SightSound Holdings is spent;
14 is that right?

15 A Yes.

13:48:44

16 Q If I could bring you back to the Rule 30(B)(6)
17 notice that we looked at, which is Exhibit 177. Of
18 course, it's the last document.

19 A It's the last thing I find, yeah.

20 Q If I could ask you to turn, again, to the
21 Schedule A in the back with the list of topics and,
22 again, to Topic 12.

13:49:31

23 A Okay.

24 Q We have been talking for much of -- of the day
25 so far about SightSound's 1995 system and its 1998

13:49:44

1 system that offered for sale certain audio signals and
2 video signals.

3 And bringing you back to Topic 12, the question
4 is: Is it your understanding that those systems
5 practiced the patents-in-suit? 13:50:05

6 MR. DiBOISE: Objection. Object to the
7 preamble. I also object to the question as asked, calls
8 for a legal conclusion, may call for expert testimony.

9 THE WITNESS: I don't know.

10 BY MR. BATCHELDER: 13:50:25

11 Q Does SightSound have a position in this
12 litigation on the question of whether the 1995 system
13 and the 1998 system practiced one or more asserted
14 claims of the patents-in-suit?

15 MR. DiBOISE: Same objections. 13:50:41

16 THE WITNESS: I don't know.

17 BY MR. BATCHELDER:

18 Q Does SightSound have a position in this
19 litigation as to whether the '95 system or the '98
20 system embody, integrate, use, or practice one or more
21 asserted claims of the patents-in-suit? 13:50:52

22 MR. DiBOISE: Same objections.

23 THE WITNESS: I don't know.

24 BY MR. BATCHELDER:

25 Q Do you understand that, in this litigation, 13:51:13

1 SightSound is accusing Apple, through the use of its
2 iTunes Store, of infringing the patents-in-suit?

3 A Yes.

4 Q Do you understand that Apple, through the use
5 of its iTunes Store, has profitably sold audio files? 13:51:34

6 A I don't know Apple's profits.

7 Q Do you believe that App- -- Apple's iTunes
8 Store has been a profitable enterprise?

9 A I don't know.

10 Q Would you describe Apple's iTunes Store as 13:52:03
11 successful?

12 A Yes.

13 Q Why?

14 A It is my understanding that they have the
15 overwhelming majority of the market share for download 13:52:23
16 sale.

17 Q And what market are you referring to?

18 A The download sale of audio and video
19 recordings.

20 Q How do you explain Apple's success in running 13:52:46
21 its iTunes Store as opposed to the level of success
22 achieved by SightSound with its 1995 and 1998 systems?

23 MR. DiBOISE: Objection.

24 THE WITNESS: Timing.

25 BY MR. BATCHELDER: 13:53:21

1 Q Anything else?

2 MR. DiBOISE: Objection.

3 THE WITNESS: No.

4 BY MR. BATCHELDER:

5 Q If someone were to argue that Apple's success 13:53:42
6 arose from, at least in significant part, its ability to
7 persuade major record labels to allow their goods to be
8 sold on iTunes, how would you respond?

9 MR. DiBOISE: Objection; calls for speculation,
10 incomplete hypothetical. 13:54:06

11 THE WITNESS: If someone were to argue that
12 Apple's success arose, from at least in significant
13 part, of its ability to persuade maj- -- major record --
14 I don't think I understand the question.

15 MR. BATCHELDER: I'll start over. 13:55:01

16 Q You have been talking about the success of the
17 iTunes Store, and my question is: If someone were to
18 argue that, at least in a significant part, that success
19 was attributable to Apple's ability to persuade major
20 record holder -- or, excuse me, major record companies 13:55:15
21 to permit their offerings to be sold on the iTunes
22 Store, how would you respond?

23 MR. DiBOISE: Objection; calls for speculation,
24 incomplete hypothetical.

25 You can answer. 13:55:30

1 THE WITNESS: I believe I've already answered.
2 I believe that the timing was the thing. The record
3 labels chose to sell their music.

4 BY MR. BATCHELDER:

5 Q Why do you think that the major record labels 13:55:57
6 were ready to do that in 2004 and not 2002?

7 MR. DiBOISE: Objection.

8 THE WITNESS: Piracy.

9 BY MR. BATCHELDER:

10 Q Is there anything that you believe Apple did 13:56:14
11 better than SightSound that helps to explain why Apple
12 was able to succeed with the iTunes Store in a way that
13 SightSound was not able to succeed with its systems?

14 MR. DiBOISE: Objection.

15 THE WITNESS: No. 13:56:35

16 MR. BATCHELDER: What number are we on?

17 THE REPORTER: 189.

18 (Exhibit 189 was marked for identification by
19 the Court Reporter.)

20 MR. BATCHELDER: I've marked, as Exhibit 189, a 13:57:48
21 document spanning the Bates range STI-13150 through
22 13159.

23 Q My first question is whether you recognize this
24 document?

25 A Yes. 13:58:07

1 Q What do you recognize it to be?

2 A A limited license to Henry Moore.

3 Q And who is Henry Moore?

4 A He was a guy in Philadelphia.

5 Q How did this license come to be? 13:58:53

6 MR. DiBOISE: Objection.

7 THE WITNESS: Chris Reese prepared it, I
8 expect.

9 BY MR. BATCHELDER:

10 Q Prior to the preparation of the document, 13:59:15
11 though, what communications between SightSound and Henry
12 Moore led to this agreement?

13 A I don't recall.

14 Q Were you involved in any way?

15 A I don't believe so. 13:59:27

16 Q Were there any communications to SightSound
17 about how Mr. Moore or Moore Multimedia Publishing would
18 make use of its license rights?

19 A I don't remember.

20 Q Were any documents exchanged between SightSound 13:59:53
21 and Mr. Moore or Moore Multimedia Publishing that led to
22 this agreement?

23 A I don't know.

24 Q When this agreement was signed, did you have
25 any expectation about how the licensee would make use of 14:00:18

1 the license?

2 A Yes.

3 Q What was your understanding?

4 A That it was limited to one year.

5 Q Aside from the time frame when this agreement
6 was signed, did you have any expectation about how the
7 licensee would make use of the license?

14:00:32

8 A I don't recall.

9 Q You did sign the agreement; correct?

10 A Yes.

14:00:54

11 Q Has SightSound received any royalties under
12 this agreement?

13 A I don't think so.

14 Q After the signing of this agreement, were there
15 any communications between SightSound and Mr. Moore
16 about whether the license rights were being exercised by
17 Moore or Moore Publishing?

14:01:17

18 MR. DiBOISE: Objection.

19 THE WITNESS: I don't know.

20 BY MR. BATCHELDER:

14:01:34

21 Q You are not aware of any?

22 A I'm not.

23 Q In Section 4.2, there is a royalty provision of
24 1 percent of net sales.

25 Do you see that?

14:01:59

1 A Yes.

2 Q How did that royalty rate come to be? In other
3 words, what were the negotiations that led to that?

4 MR. DiBOISE: Objection.

5 THE WITNESS: The -- internally in SightSound, 14:02:13
6 there was contemplation to grant limited low royalty
7 rate to independent artists as a -- as a strategy of
8 outreach that was distinct from dealings with the major
9 record labels or movie studios.

10 BY MR. BATCHELDER: 14:02:56

11 Q What do you mean by the phrase "independent
12 artists"?

13 A Not signed to a major record label.

14 Q Was Henry Moore an independent artist?

15 A That was my understanding, or he was seeking to 14:03:06
16 aggregate independent artists.

17 Q How did you come to that understanding?

18 A I knew that he was not a major record label.

19 Q Did someone communicate to you that he was
20 seeking to aggregate artists? 14:03:25

21 MR. DiBOISE: Objection.

22 THE WITNESS: I don't -- I don't know.

23 BY MR. BATCHELDER:

24 Q Aside from the License Agreement that we have
25 been discussing, Exhibit 189, has SightSound entered 14:03:43

1 into any other License Agreements to any of the
2 patents-in-suit?

3 MR. DiBOISE: Objection.

4 THE WITNESS: No, I don't think so.

5 BY MR. BATCHELDER:

14:04:01

6 Q Did SightSound enter into a contract with
7 Polygram?

8 A Yes.

9 Q Polygram paid \$55,000 to SightSound?

10 A Yes.

14:04:19

11 Q For what?

12 A An exclusive negotiating period.

13 Q How long was that period?

14 A Five weeks.

15 Q During that period, did SightSound provide
16 information to Polygram about SightSound's business and
17 offerings?

14:04:30

18 A Yes.

19 Q Did Polygram interview SightSound employees?

20 A Yes.

14:04:51

21 Q And did SightSound provide information in
22 writing?

23 A I don't -- I don't recall. That was the
24 agreement you just referenced.

25 Q What SightSound employees did Polygram

14:05:09

1 interview in connection with that analysis?

2 A Myself and Mr. Hair.

3 Q Did SightSound make available any third parties
4 that were working on its behalf to communicate with
5 Polygram during that window? 14:05:25

6 MR. DiBOISE: Objection.

7 THE WITNESS: Our lawyers.

8 BY MR. BATCHELDER:

9 Q What about bankers?

10 A No. 14:05:36

11 Q You said the consideration window was five
12 weeks?

13 A Yes.

14 Q Did you get the sense that Polygram had thought
15 pretty hard about the issue of whether to go forward? 14:05:53

16 MR. DiBOISE: Objection.

17 THE WITNESS: Yes.

18 BY MR. BATCHELDER:

19 Q It ultimately decided not to go forward?

20 A They did. 14:06:04

21 Q What reasons did they cite?

22 MR. DiBOISE: Sorry?

23 THE WITNESS: What reasons did Polygram cite?

24 MR. BATCHELDER: That's the question.

25 MR. DiBOISE: Objection. 14:06:17

1 THE WITNESS: Timing. Timing.

2 BY MR. BATCHELDER:

3 Q Could you further explain?

4 MR. DiBOISE: Objection.

5 THE WITNESS: It was -- I can't speculate as to 14:06:25
6 what happened in Polygram's executives' minds. I do
7 generally understand that there was a difference between
8 those who wanted to proceed and those who felt that it
9 was too soon.

10 BY MR. BATCHELDER: 14:06:58

11 Q What was the time period associated with this?

12 A 1993.

13 Q Did Polygram ever come back to SightSound and
14 say, "The timing was bad in '93, but I think the time is
15 right now"? 14:07:09

16 A I don't recall.

17 Q Did you ever reapproach Polygram and suggest
18 that "I know the timing wasn't good from your
19 perspective in 1993, but what about now?"

20 MR. DiBOISE: Objection. 14:07:22

21 THE WITNESS: I don't -- I don't know.

22 BY MR. BATCHELDER:

23 Q You don't remember doing so?

24 MR. DiBOISE: Objection.

25 THE WITNESS: Polygram had changed. 14:07:29

1 BY MR. BATCHELDER:

2 Q You don't remember having that communication?

3 MR. DiBOISE: Objection.

4 THE WITNESS: What communication? I'm sorry.

5 I don't understand.

14:07:39

6 BY MR. BATCHELDER:

7 Q Do you remember going back to Polygram after
8 they said no in the 1993 time frame and saying, "My
9 understanding was that, from your perspective, the
10 timing wasn't right in 1993, but what about now? Is the
11 timing right now?"

14:07:52

12 A No.

13 Q Did you have a communication like that?

14 A I don't remember.

15 Excuse me. Could we break while he digs
16 through the box? Do you mind?

14:08:38

17 Q Do you need a break?

18 A Just for a moment.

19 THE VIDEOGRAPHER: Off the record at 2:07.

20 (Recess taken.)

14:08:48

21 THE VIDEOGRAPHER: On the record at 2:12.

22 MR. BATCHELDER: I've had marked a document as
23 Exhibit 32. It's been premarked, so I'm just going to
24 hand it -- if you would hand one copy to the witness.

25 THE WITNESS: Thank you.

14:13:16

1 BY MR. BATCHELDER:

2 Q Exhibit 32 is -- has a heading right over the
3 table "Parties Who Receive the Patent License Offer or
4 Notice of Possible Infringement."

5 Have you seen this document before?

14:13:27

6 A Yes.

7 Q And do you understand it to be a complete list
8 of parties who have received a patent license offer or
9 notice of possible infringement from SightSound?

10 A I don't know.

14:13:52

11 Q As you sit here, are there any entities who you
12 believe received a patent license offer from SightSound
13 or a notice of possible infringement from SightSound but
14 do not appear on this list?

15 A I don't know. This looks like quite a
16 comprehensive list, but as I sit here, I cannot say
17 whether it's everyone that ever received such an offer.
18 I don't know.

14:14:09

19 Q But no one leaps to mind?

20 A No.

14:14:41

21 Q And as you sit here, do you notice any entities
22 on this list that you believe did not receive from
23 SightSound a patent license offer or notice of possible
24 infringement?

25 MR. DiBOISE: Sorry. Just hold on a second.

14:14:56

1 So just so I understand, is the list
2 over-inclusive?

3 MR. BATCHELDER: Exactly.

4 Q Are there any entities listed here that don't
5 belong?

14:15:11

6 MR. DiBOISE: I don't know.

7 BY MR. BATCHELDER:

8 Q And Moore Multimedia is in the left-hand column
9 near the bottom. We have just talked about that
10 license, but to confirm, you are not aware that any of
11 the other entities on Exhibit 32 have actually entered
12 into a License Agreement with SightSound; is that
13 correct?

14:15:27

14 A Yes.

15 Q In your understanding in October of 1993, was
16 an offer made to purchase patent rights from SightSound
17 and Mr. Hair for \$10 million?

14:15:38

18 A Was an offer made? I don't recall.

19 MR. BATCHELDER: 190?

20 THE REPORTER: Yes.

14:17:07

21 MR. BATCHELDER: Thanks.

22 (Exhibit 190 was marked for identification by
23 the Court Reporter.)

24 MR. BATCHELDER: I've had marked, as

25 Exhibit 190, a document spanning the Bates range

14:17:12

1 SST-8779 through 8787.

2 Q The first page of this document has on the top
3 "Newco Offer," and then there's a paragraph describing
4 an offer.

5 Do you see that --

14:17:34

6 A Yes.

7 Q -- paragraph?

8 A Yeah.

9 Q Have you seen it before?

10 A No.

14:17:39

11 Q Would you read that paragraph to yourself,
12 please, and let me know when you have finished.

13 A I'm finished.

14 Q Thanks.

15 Do you have any reason to doubt the factual
16 accuracy of that paragraph on the face page of
17 Exhibit 190?

14:18:02

18 MR. DiBOISE: Objection.

19 THE WITNESS: Do I have a reason to doubt the
20 factual accuracy of this paragraph? No.

14:18:29

21 BY MR. BATCHELDER:

22 Q Do you have any independent knowledge about
23 this subject?

24 A Could you ask that again, please?

25 Q Do you have any independent knowledge about the

14:18:44

1 subject of this --

2 A Independent of this paragraph?

3 Q Yes.

4 A Yes.

5 Q And what do you know?

14:18:49

6 A That in the earliest days, circa 1993, a record
7 retailer, which was controlled by a guy named Bill
8 Teitelbaum, he was one of the few people that sort of
9 got it and tried to do something with us.

10 Q Did he make a written offer to SightSound and
11 Mr. Hair?

14:19:14

12 A Apparently.

13 Q I'm sorry?

14 A I said "apparently."

15 Q And what leads you to say that?

14:19:41

16 A Because this is the -- the next pages are from
17 Teitelbaum or his entity or his, quote, group. Appears
18 to be the creator of this document.

19 Q And do you have any understanding as to what
20 patent rights Mr. Teitelbaum was seeking to acquire?

14:20:15

21 MR. DiBOISE: Objection.

22 THE WITNESS: I don't know that it was patent
23 rights. I thought there was an investment to Newco, to
24 create a company.

25 BY MR. BATCHELDER:

14:20:55

1 Q If I could turn you back to the cover of
2 Exhibit 190, and that first sentence describes the offer
3 as being for the sale of the '573 patent.

4 Do you see that?

5 A I see that.

14:21:19

6 Q Do you think that's accurate or inaccurate?

7 A That appears to be accurate.

8 Q So your understanding is that it was a
9 \$10 million offer for the sale of the '573 patent?

10 MR. DiBOISE: Objection.

14:21:55

11 THE WITNESS: No, but -- no.

12 BY MR. BATCHELDER:

13 Q Why no?

14 A Because there would be participation -- there
15 would be a revenue participation. It wasn't a one-time
16 sale and everything's done.

14:22:41

17 Q What do you mean by the phrase "revenue
18 participation"?

19 A Thereafter, all revenues shall be distributed
20 equally between Newco and inventor.

14:22:58

21 Q Were you involved in the decision as to whether
22 or not this offer would be acceptable?

23 A Yes.

24 Q What was your involvement?

25 A Commencing in 1993, Arthur and I were -- were

14:23:24

1 involved with each other on SightSound strategy.

2 Q And what was your counsel on this question?

3 A I did not think Bill Teitelbaum was a good guy.

4 Q Why not?

5 A Business practices and general impression at

14:23:52

6 National Record Mart.

7 Q You didn't trust him?

8 A No.

9 Q So you counseled against entering into this
10 deal?

14:24:20

11 A As I sit here today, it's my recollection.

12 Q For the reasons that you have just cited?

13 A Yes.

14 Q And did Mr. Hair feel the same way?

15 A I don't know.

14:24:51

16 Q Did he express to you that he felt the same
17 way?

18 A I don't remember.

19 (Exhibit 191 was marked for identification by
20 the Court Reporter.)

14:25:18

21 MR. BATCHELDER: I've had marked, as
22 Exhibit 191, a document spanning the Bates range
23 SST-7842 through 7848.

24 Q Have you seen this document before?

25 A Yes.

14:25:52

1 Q What do you recognize it to be?

2 A I think it was part of the original
3 organization of what you have been collectively
4 referring to as "SightSound."

5 Q Why was this transaction entered into?

14:26:15

6 MR. DiBOISE: To the extent that counsel's
7 question would require you, in providing your answer, to
8 reveal any discussions you may have had with counsel --
9 attorneys -- by "counsel" that's what I mean there -- I
10 would caution you not to do so when answering his
11 question. However, if you can answer his question
12 without revealing those discussions, if any had
13 occurred, feel free to do so.

14:26:38

14 Do you understand the instruction?

15 THE WITNESS: Yes.

14:26:49

16 MR. DiBOISE: Can you answer the question.

17 THE WITNESS: No.

18 MR. DiBOISE: Then I'll instruct you not to
19 answer the question on the basis of attorney-client
20 privilege.

14:26:58

21 BY MR. BATCHELDER:

22 Q Are you going to follow that advice?

23 A Yes.

24 Q Were there business reasons as opposed to legal
25 reasons for entering into the Patent License Agreement

14:27:04

1 that is Exhibit 191?

2 MR. DiBOISE: Same cautionary instruction.

3 Could you answer the question?

4 THE WITNESS: No.

5 MR. DiBOISE: Based on the instruction?

14:27:29

6 THE WITNESS: Yes.

7 MR. DiBOISE: Okay.

8 BY MR. BATCHELDER:

9 Q If you could turn to the signature page, you
10 signed on behalf of both contracting entities; correct?

14:27:35

11 A Yes.

12 Q And staying with that same signature page of
13 Exhibit 191, Mr. Hair also signed on behalf of both
14 contracting entities; correct?

15 A Yes.

14:27:59

16 Q Were the contracting entities both also
17 represented by the same lawyers?

18 A Yes.

19 Q Was this a negotiated transaction, that is, the
20 Patent License Agreement of Exhibit 191?

14:28:32

21 MR. DiBOISE: Objection. It's "yes" or "no" or
22 "I don't know." I mean, I'm not going to instruct you
23 not to answer "yes" or "no."

24 THE WITNESS: A negotiated transaction?

25 BY MR. BATCHELDER:

14:29:02

1 Q Yeah, my question is: Is the Patent License
2 Agreement reflected in Exhibit 191 -- was it a
3 negotiated transaction?

4 MR. DiBOISE: Objection.

5 THE WITNESS: I don't know. 14:29:10

6 BY MR. BATCHELDER:

7 Q Do you recall any negotiations?

8 MR. DiBOISE: Again "yes" or "no."

9 THE WITNESS: No. 14:29:25

10 BY MR. BATCHELDER:

11 Q If I could ask you to turn to Section 3, in the
12 first line of Section 3, it says that Parsec Sight/Sound
13 hereby grants to Digital Sight/Sound the exclusive right
14 and license. Then it goes on to refer to certain patent
15 rights. 14:29:45

16 Do you see that?

17 A Yes.

18 Q Was there a business reason as opposed to a
19 legal reason for conferring that exclusive right and
20 license? 14:29:57

21 MR. DiBOISE: If you can make that distinction.

22 THE WITNESS: I can't.

23 BY MR. BATCHELDER:

24 Q You can't answer the question?

25 A Make that distinction. 14:30:08

1 Q Okay.

2 MR. DiBOISE: Then I'll instruct him.

3 MR. BATCHELDER: Okay. You are instructing him
4 not to answer?

5 MR. DiBOISE: Yes. 14:30:14

6 BY MR. BATCHELDER:

7 Q All right. If I could ask you to turn within
8 Exhibit 191 to the page ending in Bates 7844, looking at
9 Sections 4, 5, and 6 of the agreement, you will see
10 Section 4 sets out an initial fee of \$1 million. 14:30:32

11 Do you see that?

12 A Yes.

13 Q And that was to be paid to Parsec Sight/Sound
14 by Digital Sight/Sound under this agreement; correct?

15 A Yes. 14:30:48

16 Q Did that payment ever occur?

17 MR. DiBOISE: Objection.

18 THE WITNESS: I don't recall.

19 BY MR. BATCHELDER:

20 Q Assuming it did not occur, is there a reason
21 why? 14:31:12

22 A Yes.

23 Q What reason?

24 A The entities were recombined.

25 Q How long after this agreement was consummated 14:31:38

1 were the entities recombined?

2 A I don't remember.

3 Q This agreement was dated August 1995.

4 Can you even estimate for me how much longer or
5 what -- how much time elapsed after the consummation of 14:32:00
6 this agreement; that is, how much time elapsed between
7 the consummation of this agreement and the recombining
8 of the entities?

9 A Yes.

10 Q What's your estimate? 14:32:21

11 A Three or four years.

12 Q Why wasn't the initial payment on paragraph --
13 excuse me, the initial fee spelled out in paragraph 4 of
14 Exhibit 191 paid between the signing of the agreement
15 and the recombining of the entities? 14:32:44

16 A You know, I don't know exactly when we
17 recombined them. As I sit here and think about it more,
18 I don't -- I don't remember when Digital and Parsec were
19 combined into SightSound.

20 Q Putting aside the specific date, is there a 14:33:07
21 reason that the initial fee set out in Section 4 of
22 Exhibit 191 wasn't paid at or shortly after the
23 consummation of the agreement?

24 A I don't recall.

25 Q There's an annual licensing fee set out in 14:33:27

1 Section 5 of the agreement.

2 Was an annual licensing fee ever paid under
3 this agreement?

4 A I don't know.

5 Q Assuming no annual licensing fee was paid, is 14:33:43
6 there a reason why?

7 A Assuming no fee was paid? We weren't executing
8 the method protected by the patent.

9 Q Meaning your system had been shut down?

10 A Yes. 14:34:20

11 Q Did -- did any money change hands between the
12 two licensing parties to Exhibit 191 pursuant to its
13 terms?

14 MR. DiBOISE: Objection.

15 THE WITNESS: I don't know. 14:34:45

16 BY MR. BATCHELDER:

17 Q Are you familiar with an entity called Adams
18 Capital?

19 A Yes.

20 Q Did SightSound ever enter into negotiations 14:35:05
21 with Adams Capital?

22 A Discussions, yes.

23 Q Did SightSound ever make a proposal to Adams
24 Capital?

25 A I don't recall. 14:35:24

1 Q Was any deal ever consummated?

2 A No.

3 Q Do you recall why?

4 A No.

5 THE REPORTER: 192.

14:35:36

6 (Exhibit 192 was marked for identification by
7 the Court Reporter.)

8 MR. BATCHELDER: I've had marked, as

9 Exhibit 192, a document spanning the Bates range
10 SST-8856 through 8864.

14:36:15

11 Q Do you recognize this document?

12 A No.

13 Q On -- well, first of all, you see on the cover
14 page this is addressed to a Joel Adams at Adams Capital
15 Management.

14:36:44

16 Do you see that?

17 A Yes.

18 Q And your name is listed on the second page of
19 the signature block.

20 Do you see that?

14:36:58

21 A Yes.

22 Q Did this communication ever go to Adams Capital
23 Management?

24 A I don't know.

25 Q Do you have any reason to think it did not?

14:37:11

1 A Yes.

2 Q What's that reason?

3 A It's unsigned.

4 Q Any other reason?

5 A No.

14:37:20

6 Q Who draft Exhibit 192?

7 A I think Art.

8 Q Did you have any role in drafting?

9 A I don't remember.

10 Q In the second paragraph of the document,

14:37:49

11 there's a reference to SightSound creating an affiliated
12 company, Virtual Records.

13 Do you see that?

14 A Yes.

15 Q Did Virtual Records ever get created?

14:38:07

16 A No.

17 Q Why not?

18 A All overtures to potential investors ended up
19 in a discussion about the patents.

20 Q How does that answer the question about why
21 SightSound did not end up creating Virtual Records?

14:38:40

22 A Investors consistently expressed an interest in
23 combine -- owning the patent rights, as well as any
24 interest in any operating business.

25 Q And what does that have to do with Virtual

14:39:02

1 Records not getting created?

2 A Everything.

3 Q How so?

4 A Separating the value of the patent rights from
5 the operating business was unattractive to investors.

14:39:16

6 Q What was SightSound's vision for Virtual
7 Records?

8 A To attract different types of investor capital.

9 Q And what was the envisioned business plan for
10 Virtual Records?

14:40:15

11 A To operate the system and download the music.

12 Q On the bottom of that first page, there's a
13 proposal for Adams Capital Management to invest between
14 4 million and \$9 million.

15 Do you see that?

14:40:49

16 A Yes.

17 Q And that would result in a 22.2 percent to
18 50 percent ownership position.

19 Do you see that?

20 A Yes.

14:41:05

21 Q Ownership position in what?

22 A Digital Sight/Sound.

23 Q Was Digital Sight/Sound at the time the entity
24 that owned the patents?

25 A No.

14:41:28

1 Q Did it have an exclusive license to the
2 patents?

3 A Yes.

4 Q So did SightSound propose that for a \$9 million
5 investment, Adams Capital Management could secure a
6 50 percent share of an entity that had an exclusive
7 license to practice the patents?

14:42:06

8 MR. DiBOISE: Objection.

9 THE WITNESS: I don't know. I, myself, am
10 confused by the language in this paragraph in the
11 letter, 22.2 percent to 50 percent.

14:43:34

12 BY MR. BATCHELDER:

13 Q What is it that's confusing?

14 A Did SightSound propose that for a \$9 million
15 investment, Adams Capital Management could secure a
16 50 percent share of an entity that had an exclusive
17 license to practice the patents. Option to purchase.
18 I'm confused by the range of percentages that are
19 expressed here.

14:43:57

20 Q What is it about that range that's confusing?

14:44:24

21 MR. DiBOISE: Objection.

22 THE WITNESS: All right. They would have an
23 option, it appears, to purchase up to 50 percent. The
24 mathematics work out based upon the amount of money
25 potentially invested to range from 22.2 percent to

14:45:05

1 50 percent.

2 MR. BATCHELDER: The videographer needs to
3 change the tape, so let's break here.

4 THE VIDEOGRAPHER: This is the end of Disc 2.
5 Off the record at 2:44. 14:45:16

6 (Recess taken.)

7 THE VIDEOGRAPHER: Okay. This is Disc 3 of
8 Scott Sander.

9 On the record at 2:49.

10 BY MR. BATCHELDER: 14:50:50

11 Q Directing your attention back to Exhibit 192,
12 in the final paragraph on the cover page, there's a
13 reference there to ACM will receive an option to
14 purchase between 4 million and \$9 million of shares of
15 Digital Sight/Sound valued at approximately \$128.57 per 14:51:11
16 share which would result in a 22 percent to 50 percent
17 ownership position respectively.

18 Do you see that sentence?

19 A Yes.

20 Q Is it your understanding, based on that 14:51:30
21 sentence, that the \$4 million investment that's
22 referenced there would result in a 22 percent ownership
23 share in Digital Sight/Sound?

24 MR. DiBOISE: Objection.

25 THE WITNESS: Is it my understanding that the 14:51:42

1 sentence results in -- I'm confused.

2 BY MR. BATCHELDER:

3 Q The sentence that we just read, the final
4 sentence on the cover page of Exhibit 192 that straddles
5 the first and second page of that exhibit, is it your
6 understanding that the \$4 million referenced there, if
7 made by Adams Capital Management as an investment, would
8 result in a 22.2 percent share of Digital Sight/Sound?

14:52:26

9 A Yes.

10 Q Is it also your understanding that if it
11 invested 9 million as opposed to 4 million, it would
12 receive a 50 percent share in Digital Sight/Sound?

14:52:43

13 A Yes.

14 THE REPORTER: 193.

15 (Exhibit 193 was marked for identification by
16 the Court Reporter.)

14:52:55

17 MR. BATCHELDER: I've had marked, as
18 Exhibit 193, Bates ranges SST-8865 through 8867, and
19 these are two letters, both to Mr. Joel Adams.

20 Q Starting with the first letter, the one dated
21 November 10, 1995, have you seen that letter before?

14:54:08

22 A I don't remember.

23 Q There's a reference in the first paragraph of
24 that letter to \$600,000 of seed funding.

25 Do you see that in the third line?

14:54:37

1 A Yes.

2 Q There's also a reference near the bottom of the
3 page -- do you see those five enumerated entries?

4 A Yes.

5 Q And there's a 24.84 percent share reference
6 there in No. 3.

14:54:53

7 Do you see that?

8 A Yes.

9 Q Do you understand what's being proposed is that
10 for \$600,000, Adams Capital Management would get a
11 24.84 percent share?

14:55:08

12 A Yes.

13 Q If I could direct your attention, then, to the
14 November 17, 1995 letter, which is a part of
15 Exhibit 193.

14:57:07

16 This is a letter that you co-signed; correct?

17 A Yes.

18 Q And there are seven enumerated entries there in
19 the body of the letter.

20 Do you see those?

14:57:23

21 A Yes.

22 Q In Entry No. 3, there's a \$300,000 investment
23 by Adams.

24 Do you see that?

25 A Yes.

14:57:32

1 Q And then there's another \$300,000 investment
2 referenced in Item No. 5.

3 Do you see those?

4 A Yes.

5 Q So for that combined \$300,000 investment, Adams
6 would get what? What percentage of Digital Sight/Sound?

14:57:42

7 MR. DiBOISE: Objection.

8 THE WITNESS: The combined \$300,000 investment
9 that actually suggests a combined \$600,000 investment?
10 Is that the question?

14:58:47

11 BY MR. BATCHELDER:

12 Q My question is directed to if both the \$300,000
13 investment in Item No. 3 and the \$300,000 investment in
14 Item No. 5 -- if both of those are made, combining to
15 form a \$600,000 investment, under the proposal that's
16 set forth in this November 17 letter, then Adams Capital
17 would receive what share?

14:59:00

18 A 20,000 shares.

19 Q And what percentage share would that be of
20 Digital Sight/Sound?

14:59:18

21 MR. DiBOISE: Objection.

22 THE WITNESS: I don't know.

23 BY MR. BATCHELDER:

24 Q You are familiar with a company called
25 V2 Music?

14:59:31

1 A Yes.

2 Q And did SightSound enter into negotiations with
3 V2 Music?

4 A Yes.

5 Q Were you involved?

14:59:41

6 A Yes.

7 Q What was your role?

8 A I don't know that my -- I can't recall the
9 specific negotiations, but we were -- I was in my
10 capacity as trying to do business development with Art.

15:00:03

11 Q Were you the lead negotiator for SightSound?

12 A I was lead in arranging the meetings.

13 (Exhibit 194 was marked for identification by
14 the Court Reporter.)

15 MR. BATCHELDER: I've had a document marked
16 bearing the Bates range SST 24870. It's a one-page
17 document, and it's an April 28th, 1997 letter to a
18 Mr. Jeremy Pearce.

15:00:53

19 Q Have you seen this document before?

20 A Yes.

15:01:06

21 Q In what capacity?

22 A President of Digital Sight/Sound.

23 Q Did you draft this letter?

24 A I don't remember.

25 Q Did you send it?

15:01:26

1 A I don't remember.

2 Q Was a letter sent from you to Mr. Pearce
3 conveying an offer in connection with V2?

4 A I don't remember.

5 Q You will see in the third paragraph of the
6 letter there is a reference, in the first sentence, to
7 dropping the royalty rate from 5.0 percent to
8 0.5 percent.

15:01:44

9 Do you see that?

10 A Yes.

15:02:12

11 Q Were there such communications between V2 and
12 SightSound, that is, on the subject of dropping the
13 royalty rate from 5 to .5 percent?

14 A I believe so.

15 Q And did SightSound agree to that drop?

15:02:30

16 A Yes.

17 Q After SightSound agreed to drop the royalty
18 rate to .5 percent, V2 still decided not to go forward
19 with the deal?

20 A Yes.

15:02:52

21 Q What reasons did it give, if any?

22 A I don't remember.

23 (Exhibit 195 was marked for identification by
24 the Court Reporter.)

25 MR. BATCHELDER: I've had marked, as

15:03:55

1 Exhibit 195, a document spanning the Bates range
2 SST-15891 through 15915, and the title page that is on
3 the very top "Board Prospectus" dated August 15th, 1997.

4 Q Have you seen this document before?

5 A I don't recall seeing this.

15:04:18

6 Q Assuming that SightSound issued this
7 prospectus, is this something that you would have
8 reviewed in the ordinary course of discharging your
9 duties and responsibilities?

10 A Yes.

15:04:47

11 Q Do you have any reason to think that this
12 prospectus was not distributed to potential investors?

13 A I don't -- I don't know.

14 Q On the cover page of Exhibit 195, it references
15 2,977,825 shares Digital Sight/Sound common stock.

15:05:38

16 Do you see that?

17 A Yes.

18 Q What is that?

19 A Sorry?

20 Q What do you understand that to refer to?

15:05:50

21 A 2,977,825 shares Digital Sight/Sound, Inc.,
22 common stock?

23 Q Right.

24 What do you understand that to refer to? Is

25 that a number of shares that SightSound was seeking to

15:06:07

1 sell at this time?

2 A Yes. Yes.

3 Q If you could turn to the page ending in the
4 Bates-stamped 5893, do you see on the top there's a
5 title "Prospectus Summary"?

15:06:33

6 Do you see that?

7 A Yes.

8 Q You will see in the fourth line there's a
9 reference to "entertainment e-commerce"?

10 A Yes.

15:06:48

11 Q What does that phrase mean?

12 A Selling music and movies download over the
13 Internet.

14 Q What does the phrase "e-commerce" mean to you?

15 A Shorthand for electronic commerce.

15:07:07

16 Q And what does "electronic commerce" mean to
17 you?

18 A It means commerce that's done in -- as distinct
19 from physically shipping things on trucks.

20 Q Is entertainment e-commerce selling of
21 entertainment in a way that does not involve shipping
22 things on trucks?

15:07:37

23 A Yes.

24 Q In the second paragraph of page 15893, there's
25 a reference to a band called The Gathering Field.

15:07:58

1 Do you see that?

2 A Yes.

3 Q And there's a reference in that last sentence
4 to expiration of the Entertainment e-commerce Agreement.
5 Do you see that? 15:08:12

6 A Yes.

7 Q How long was the term of the agreement between
8 SightSound and The Gathering Field?

9 A I don't remember.

10 Q Did it expire because its term ran, or did one 15:08:26
11 party or the other terminate it?

12 MR. DiBOISE: Objection.

13 THE WITNESS: I don't remember.

14 BY MR. BATCHELDER:

15 Q In the third paragraph under the title 15:08:43
16 "Prospectus Summary," you see near the bottom it says,
17 The company offers a variety of entertainment e-commerce
18 services to record labels.

19 Do you see that?

20 A I'm sorry. Where? 15:08:55

21 Q I'm looking at the --

22 A Where?

23 Q -- the third paragraph under "Prospectus
24 Summary" --

25 A Okay. 15:09:02

1 Q -- and the final sentence of that paragraph.

2 It says, Today, the company offers a variety of
3 entertainment e-commerce services to record labels.

4 Do you see that?

5 A Yes. 15:09:13

6 Q What were those services?

7 A Preparing the recordings and artwork for
8 presentation on the Internet and download sale.

9 Q What artwork are you referring to?

10 A Album cover art and related -- artwork related 15:09:38
11 to the specific recording.

12 Q And SightSound was in the business of
13 generating that artwork?

14 A No.

15 Q What services were related to that artwork was 15:09:55
16 SightSound providing?

17 A We would take it from whatever source it was
18 and make it functional for -- for graphical use -- user
19 interface on the web.

20 Q And how long was SightSound in the business of 15:10:15
21 doing that sort of artwork-related offering?

22 A In 1995 and then from 1998 till 2000.

23 Q So the whole time that its system was up and
24 running?

25 A Yes. 15:10:37

1 Q If I could ask you to turn to the page ending
2 in 15894, you will see near the top there's a title
3 "Beginning Short Operating History, History of Losses,
4 Unproven Business, and No Assurance Profitability."

5 Do you see that?

15:10:54

6 A Yes.

7 Q In the first sentence there, it says that
8 SightSound has incurred substantial net losses in each
9 fiscal period since its inception.

10 Do you see that?

15:11:12

11 A Yes.

12 Q Was that an accurate statement?

13 A Yes.

14 Q Was Apple in any way responsible for any of
15 those losses?

15:11:33

16 MR. DiBOISE: Objection.

17 THE WITNESS: No.

18 BY MR. BATCHELDER:

19 Q If I could ask you to turn to the page ending
20 in 15896, there's a subheading there that begins
21 "Dependence on High Quality Audio and Video Content."

15:11:53

22 Do you see that?

23 A Yes.

24 Q In that paragraph, the third sentence begins:
25 The company's success is dependent on its ability to

15:12:19

1 motivate the major owners of audio and video recordings
2 to purchase the company's e-warehousing and
3 e-distribution services.

4 Do you see that?

5 A Yes.

15:12:33

6 Q Was that an accurate statement?

7 A As to distribution, yes.

8 Q And did SightSound ever succeed in motivating
9 the major owners of audio and video recordings to
10 purchase the company's e-warehousing and e-distribution
11 services?

15:12:57

12 A Yes.

13 Q How so?

14 A We distributed content such as Miramax Films,
15 Comedy Central, Barney, etc.

15:13:15

16 Q In connection with -- well, let me just say
17 this: Your answer now is directed all to video, at
18 least your examples were?

19 A Yes.

20 Q How would you rate SightSound's success in
21 motivating the major owners of audio recordings to
22 purchase the company's e-warehousing and e-distribution
23 services?

15:13:49

24 A We decommissioned our distribution system prior
25 to their adoption of down- -- of download sale.

15:14:09

1 Q So SightSound never succeeded on that notion;
2 correct?

3 A On what metric?

4 Q On the metric of motivating the major owners of
5 audio recordings to purchase the company's e-warehousing 15:14:43
6 and e-distribution services?

7 A No.

8 Q I want to make sure that my question is relying
9 with your answer.

10 When you say "no," what do you mean? 15:14:58

11 A As to major audio recording labels, adopting
12 our particular distribution system that operated until
13 2002, they -- they did not.

14 Q Moving on in the same page in Exhibit 195,
15 page 15896, there is a subheading in the middle of the 15:15:25
16 page "Dependence on Unique Web Spaces."

17 Do you see that?

18 A Yes.

19 Q And what does that reference "unique web
20 spaces" mean to you? 15:15:42

21 A Point of all graphical user interface for music
22 and movies.

23 Q In that paragraph, SightSound refers to the
24 creating unique web spaces which aggregate content for
25 the convenience of the customer, but, more importantly, 15:16:11

1 entertain the customer up to the moment of purchase.

2 Do you see that?

3 A Yes.

4 Q How do you rate SightSound's success on that
5 more important metric of entertaining the customer up to 15:16:24
6 the moment of purchase?

7 A It was excellent.

8 Q If I could ask you to turn, then, to the next
9 page, SST-15897, under the paragraph "Competition," do
10 you see that paragraph? 15:16:50

11 A Yes.

12 Q There's a reference toward the bottom. You see
13 about seven lines up or so the final word of the line is
14 "such," sentence beginning: Such competitors may be
15 able to undertake? 15:17:11

16 A Yes.

17 Q It says, Such competitors may be able to
18 undertake more extensive marketing campaigns, adopt more
19 aggressive pricing policies, and devote substantially
20 more resources to developing e-warehousing and 15:17:29
21 e-distribution services than the company.

22 Do you see that?

23 A Yes.

24 Q Why was that an important thing to note in this
25 document? 15:17:43

1 A I don't recall.

2 Q This appears to be in the form of a template,
3 given that, in the upper left-hand corner, it's
4 addressed to Mr. VC.

5 Do you see that?

15:20:30

6 A Yes.

7 Q Do you understand that to be a reference to
8 Mr. Venture Capitalist?

9 A I think characterizing it as template is -- is
10 accurate. Yes, VC would be venture capitalist.

15:20:41

11 Q And was this template followed; that is, were
12 there communications sent out with this content to one
13 or more venture capitalists or potential investors?

14 A I don't recall it.

15 Q You see in the middle of the first page there's
16 a heading "Why haven't I heard of Digital Sight/Sound
17 and Parsec Sight/Sound?"

15:21:02

18 Do you see that?

19 A Yes.

20 Q And underneath that, it says, We've been
21 working behind the scenes developing strategies to
22 enable large-scale transition to electronic commerce by
23 the major owners of audio and video recordings.

15:21:15

24 Do you see that?

25 A Yes.

15:21:29

1 Q Was that an accurate statement as of October
2 1997?

3 A Yes.

4 Q And then in the paragraph underneath that, it
5 says, These discussions commenced in 1993 following the 15:21:43
6 issuance -- issuance of the '573 patent. Audio and
7 video content owners who have participated in these
8 strategy and private discussions include, and then it
9 lists several entities.

10 Do you see those? 15:22:00

11 A Yes.

12 Q And as to those listed entities, is the passage
13 that I just read an accurate description?

14 A An accurate description? Yes.

15 Q It is accurate? 15:22:12

16 A Yes.

17 Q So as of this date, SightSound had entered into
18 substantive discussions with each of the entities listed
19 on the -- this first page of Exhibit 196?

20 A Yes. 15:22:25

21 Q All right. Now, I know the last one, N2K, is
22 an entity that SightSound sued; correct?

23 A Yes.

24 Q Other than N2K, did SightSound enter into deals
25 with any of the other entities listed on the face sheet 15:22:40

1 of Exhibit 196?

2 A Yes.

3 Q Which ones?

4 A Polygram.

5 Q And what was the deal? 15:22:49

6 A The -- the exclusive negotiating period.

7 Q This is the -- the \$55,000 deal for a five-week

8 look?

9 A Yes.

10 Q Okay. Aside from that deal, were any other 15:23:03

11 deals entered into with any of the other entities on

12 this list?

13 A Ever?

14 Q Yes.

15 A Yes. 15:23:18

16 Q With who else?

17 A A wholly owned subsidiary of the Walt Disney

18 Company.

19 Q I couldn't quite hear you. Could you say it

20 louder. 15:23:26

21 A A wholly owned subsidiary of Walt Disney

22 Company, Miramax Films.

23 Q And what was the deal?

24 A To distribute the content.

25 Q What content? 15:23:33

1	A	Motion pictures.	
2	Q	How many?	
3	A	12.	
4	Q	12 movies?	
5	A	Yes.	15:23:40
6	Q	When was that?	
7	A	2000. You should put a question mark behind	
8		that number because plus or minus 2000, 2001.	
9	Q	And why was it limited to 12? Did you seek	
10		more? Let's put it that way.	15:24:06
11	A	Did we seek more movies?	
12	Q	Yes, from Miramax.	
13	A	Yes.	
14	Q	Why was it limited to 12?	
15	A	Demonstration project.	15:24:18
16	Q	How long did the project last?	
17	A	Until we went offline in 2002.	
18	Q	So aside from the Polygram \$55,000 deal, the	
19		deal with Miramax for 12 movies, and the N2K lawsuit,	
20		did SightSound enter into any other transactions with	15:24:43
21		any of the entities listed on the face sheet of 196?	
22	A	Yes.	
23	Q	What other entities?	
24	A	BMG -- Sony BMG.	
25	Q	What was the relationship between Sony and BMG?	15:25:04

1 A Sony acquired BMG.

2 Q And what deal did you enter into with Sony BMG?

3 A They acquired the N2K agreement.

4 Q Could you explain more what you mean by them
5 acquiring the agreement? 15:25:28

6 A As the record labels consolidated, Bertelsmann
7 Music Group, which had acquired N2K, which we were party
8 to Patent License Settlement Agreement with that entity,
9 then was merged into Sony, so by virtue of these various
10 combinations over time, there is -- there is a -- there 15:25:52
11 is an agreement with -- that has -- that now survives
12 into Sony BMG N2K. Does that make sense?

13 Q I think so.

14 A Yeah.

15 Q Let me just summarize it so I have it clear 15:26:09
16 that -- that Sony and BMG became a successor-in-interest
17 to Bertelsmann under the Settlement Agreement involving
18 SightSound on the one hand and N2K and Bertelsmann on
19 the other hand?

20 A Yes. 15:26:27

21 Q Okay. All right. Focusing again on
22 Exhibit 196 and the entities listed on the face sheet,
23 other than the transactions you just described for me,
24 are there any other entities listed here as to which
25 SightSound has entered into any transactions? 15:26:42

1 A No.

2 Q Okay. All right. And then turning to
3 page 8869 within Exhibit 196, there are a variety of
4 names and entities listed there as folks to whom
5 SightSound systematically presented the patent and
6 described the company's unique position of control.

15:27:12

7 Do you see those?

8 A Yes.

9 Q And is that an accurate statement as to the --
10 the people and entities that are listed there?

15:27:22

11 A Yes.

12 Q And did SightSound engage in those
13 presentations in order to stimulate investments from
14 those people and entities?

15 A Yes.

15:27:36

16 Q And did any of these people in any of these
17 entities make investments in SightSound?

18 A Yes.

19 Q Which ones?

20 A Microsoft.

15:27:53

21 Q Any others?

22 A No.

23 Q What investment did Microsoft make in
24 SightSound?

25 A I believe they made nominal bridge loans, a

15:28:02

1 bridge loan to us.

2 Q Roughly, how much money?

3 A I can't -- I can't remember. Several hundred
4 thousand dollars.

5 Q Several hundred thousand? 15:28:14

6 A Yeah, plus or minus.

7 Q And is that -- were those loans ever paid back?

8 A I don't know.

9 Q Did SightSound -- or, excuse me, did Microsoft
10 secure anything in return for those loans? 15:28:40

11 A No.

12 Q Is there a reason that SightSound has not sued
13 Microsoft under the patents-in-suit?

14 MR. DiBOISE: To the extent that an answer to
15 your question would require you to divulge any
16 communication you've had with counsel, I would caution
17 you not to so divulge those communications in answer to
18 counsel's question. 15:29:02

19 Can you answer the question without divulging
20 such communications? 15:29:18

21 THE WITNESS: No.

22 MR. DiBOISE: Then I would instruct you
23 under -- pursuant to the attorney-client privilege and
24 work product privileges not to answer counsel's
25 question. 15:29:27

1 BY MR. BATCHELDER:

2 Q Do you, Scott Sander, have a belief as to
3 whether Microsoft today is infringing any of the
4 patents-in-suit?

5 MR. DiBOISE: To the extent that your
6 understanding is in part informed by your discussions
7 with counsel, I would caution you, in answering
8 counsel's question, not to reveal what counsel have
9 discussed with you concerning the subject matter of his
10 question.

15:29:38

15:30:05

11 Do you understand --

12 THE WITNESS: Yes.

13 MR. DiBOISE: -- my admonition?

14 THE WITNESS: Yes.

15 MR. DiBOISE: Okay. You can answer the
16 question.

15:30:13

17 THE WITNESS: I cannot.

18 BY MR. BATCHELDER:

19 Q Did SightSound enter into any transaction with
20 AT&T?

15:30:18

21 A Yes.

22 Q What transaction?

23 A It was a provisional license -- it was a
24 provisional arrangement in the event that AT&T spun out
25 into a separate entity, division of AT&T Bell Labs

15:30:48

1 called A2B Music.

2 Q So it was a provisional arrangement that would
3 have gone forward if AT&T had spun out A2B Music as a
4 separate entity?

5 A Yes. 15:31:14

6 Q And it never did?

7 A AT&T never spun A2B -- correct.

8 Q All right.

9 A No. No, they did not spin it out.

10 Q And so aside from that provisional agreement, 15:31:26
11 there was no ultimately consummated agreement between
12 AT&T and SightSound?

13 A No.

14 Q Did SightSound extend to AT&T a non-exclusive
15 license offering? 15:31:50

16 A I don't recall the particulars of that
17 arrangement.

18 Q I'm looking now in the middle of the page 8869
19 that we have been looking at within Exhibit 196.
20 There's the question -- there's a heading "When Will You 15:32:06
21 Begin Offering Licenses?"

22 Do you see that?

23 A Yes.

24 Q And underneath it, it says, Non-exclusive
25 licenses have been extended to AT&T and N2K. 15:32:14

1 Do you see that?

2 A Yes.

3 Q Do you have any reason to believe that's not
4 accurate?

5 A No.

15:32:21

6 Q Okay. And did AT&T ever take SightSound up on
7 its offer to enter into a non-exclusive license?

8 A Yes, but it didn't consummate because they
9 didn't meet the standard of spinning out the division.

10 (Exhibit 197 was marked for identification by
11 the Court Reporter.)

15:33:21

12 MR. BATCHELDER: I've had marked, as
13 Exhibit 197, a one-page document stamped SST-8787.

14 Q And have you seen this document before?

15 A Yes.

15:33:40

16 Q I couldn't hear you.

17 A Yes.

18 Q Is that your signature on the bottom?

19 A Yes.

20 Q In the final paragraph, it begins: Currently,
21 three of the major record labels are reviewing our
22 License Agreement.

15:33:48

23 Do you see that?

24 A Yes.

25 Q What three labels is that referring to?

15:34:00

1 THE REPORTER: 198. 198.

2 MR. DiBOISE: You said "98."

3 MR. BATCHELDER: Oh. I'm sorry.

4 I've had marked, as Exhibit 198, a document
5 spanning SST-8810 through 8812.

15:36:37

6 Q Have you seen this document before?

7 A Yes.

8 Q All right. Who is Ken Adams?

9 A An executive with the Coca Cola Company.

10 Q And did you send him this document,
11 Exhibit 198?

15:37:02

12 A Yes.

13 Q What were you looking to accomplish?

14 MR. DiBOISE: Objection.

15 THE WITNESS: It was in preparation for a
16 meeting.

15:37:21

17 BY MR. BATCHELDER:

18 Q What were your objectives?

19 A Introduce ourselves prior to the meeting.

20 Q What were your objectives for the meeting?

15:37:34

21 A Obtain Coca Cola's support of Virtual Tour '98.

22 Q What was Virtual Tour '98?

23 A Multimedia download sale of music from multiple
24 bands presented as a specific online event.

25 Q Did it go forward?

15:38:15

1 A Yes.

2 Q How long did it last?

3 A I don't -- I don't remember specifically.

4 Q In terms of generating a -- well, first of all,

5 let me ask you: What did it cost SightSound to put on 15:38:30

6 Virtual Tour '98?

7 A I don't recall the specifics.

8 Q Millions of dollars?

9 A No, I don't believe so.

10 Q Can you give me any ballpark? 15:38:41

11 A It was for a finite period of time, so whatever

12 our burn rate was at that time for that window of time.

13 Q In terms of generating a return on investment,

14 how do you rate the success of Virtual Tour '98?

15 A I think it was very successful. 15:39:16

16 Q Why do you say that?

17 A Because it demonstrated the virtue and ability

18 of digital download as a way to introduce unsigned

19 bands.

20 Q Did major record label artists participate? 15:39:43

21 A No, they did not.

22 Q Did you want them to?

23 A Yes.

24 Q Did you seek their participation?

25 A No. 15:39:56

1 Q Why not?

2 A Because we had an expectation and understanding
3 from our various meetings that timing was not right.

4 Q Was that your understanding as of this time
5 frame, December 1997? 15:40:11

6 A Yes.

7 Q If I could direct your attention to the second
8 paragraph on SST-8810, in the last sentence there, you
9 say, The event will showcase music from major record
10 label artists. 15:40:31

11 Do you see that?

12 A Yes.

13 Q Did it?

14 A No.

15 Q Why not? 15:40:38

16 A The artists were independent artists.

17 Q Why did you tell Ken Adams that the event would
18 showcase music from major record label artists?

19 A I think that's already been answered. I had
20 hoped that it would. 15:41:02

21 Q This says it lasted for -- or it would last for
22 98 days.

23 Is that -- was that accurate?

24 A I can't recall.

25 Q And -- and when did the Virtual Tour take 15:41:13

1 place?

2 A 1998.

3 Q Do you remember the months?

4 A No.

5 MR. BATCHELDER: Why don't we take a short

15:41:42

6 break.

7 THE VIDEOGRAPHER: Off the record at 3:40.

8 (Recess taken.)

9 THE VIDEOGRAPHER: On the record at 3:52.

10 (Exhibit 199 was marked for identification by

15:53:55

11 the Court Reporter.)

12 THE REPORTER: 199.

13 THE WITNESS: Thank you.

14 MR. BATCHELDER: I've had marked, as

15 Exhibit 199, a document spanning SST-8694 through 8708.

15:54:00

16 The top and cover page is titled "Information

17 Memorandum," and the bottom of the cover page says

18 Goldman Sachs & Co., March 9, '98.

19 Q Have you seen this document before?

20 A Yes.

15:54:24

21 Q Did you review this before it was sent out to

22 third parties?

23 A Yes.

24 MR. DiBOISE: Objection.

25 BY MR. BATCHELDER:

15:54:44

1 Q What was the directive from SightSound to
2 Goldman Sachs?

3 A Discussing raising capital.

4 Q Over what time span?

5 A 1998. I don't know when that -- I don't recall 15:55:03
6 when that relationship expired.

7 Q What led it to expire?

8 A The passage of time.

9 Q And was there a -- in other words, was there a
10 time-bounded contract with Goldman? 15:55:36

11 A I don't recall the specifics of the arrangement
12 with Goldman.

13 Q Did you ever terminate the relationship
14 affirmatively, you or SightSound?

15 A I don't recall. 15:55:51

16 Q Was Goldman successful in raising capital for
17 SightSound?

18 A I don't recall who was. We raised capital in
19 1998, I believe. I don't recall the attribution to
20 Goldman, us. I don't remember specifically. 15:56:15

21 Q Was Exhibit 199 provided to third-party
22 potential investors?

23 A Yes.

24 Q If I could direct your attention to the page
25 ending 8696 titled "Executive Summary" at the top, do 15:56:56

1 you see that?

2 A Yes.

3 Q In the first paragraph, the phrase "the
4 company" is used to refer to Digital and Parsec.

5 Do you see that?

15:57:14

6 A Yes.

7 Q And then in the second paragraph, the second
8 sentence says, Management believes that third parties
9 wishing to generate revenue by utilizing download sale
10 of digital audio and digital video recordings over the
11 Internet will need to license the Hair patents and pay a
12 royalty to the company.

15:57:28

13 Do you see that?

14 A Yes.

15 Q Was that an accurate statement?

15:57:37

16 A Yes.

17 Q There's a heading in the middle of page 8696
18 that reads: Independent Producer of Music-Oriented
19 Cutting-Edge Web Events.

20 Do you see that?

15:58:03

21 A Yes.

22 Q And then there's a reference in the third line
23 to cutting-edge, web-based, music-oriented programming.

24 Do you see that?

25 A Yes.

15:58:12

1 Q Did SightSound wind up creating web-based,
2 music-oriented programming?

3 A Yes.

4 Q And can you describe that for me?

5 A With using Virtual Tour '98 as an example, a 15:58:25
6 consumer could go and -- to a graphical user interface,
7 sample 30-second free samples of the song, choose to
8 download the song for purchase, and just be made aware
9 of the music through a graphical interface.

10 Q Aside from having a graphical interface and the 15:58:59
11 availability of free samples, was there any other
12 music-oriented programming that SightSound made
13 available to consumers?

14 A We had flash animations, which I would
15 characterize as part of the graphical user interfash -- 15:59:17
16 or interface.

17 Q Anything else?

18 A The previews of the songs and sometimes
19 introduction of the songs by voiceover.

20 Q If I could ask you to turn to the page within 15:59:40
21 Exhibit 199 that ends 8702, there's a heading at the top
22 "Current Projects."

23 Do you see that?

24 A Yes.

25 Q And at the bottom of that first paragraph, it 15:59:58

1 says, Digital's properties produce revenue from three
2 sources: co-branding sponsors, advertisers, and
3 customers purchasing download recordings.

4 Do you see that?

5 A Yes. 16:00:15

6 Q Was that an accurate statement?

7 A Designed to produce revenue from these sources?

8 Q The statement that I just read says, Digital's
9 properties --

10 A Yes. 16:00:42

11 Q -- produce revenue from three sources.

12 Do you see that?

13 A Yes.

14 Q And was that an accurate statement?

15 A Yes. 16:00:49

16 Q So let's go through those three categories.

17 The first is co-branding sponsors.

18 How much revenue was generated by SightSound in
19 connection with co-branding sponsors over the years?

20 A I don't recall specifically the amount of 16:01:00
21 revenue. It was -- the co-branding sponsor for Virtual
22 Tour '98 was a company called Avery Dennison.

23 Q Can you estimate the amount of revenue
24 associated with co-branding sponsors?

25 A I really can't. I don't recall it right now. 16:01:21

1 Q The second category listed in that same
2 sentence is advertisers.

3 Can you estimate the amount of advertising
4 revenue that SightSound generated?

5 A We ultimately didn't pursue an
6 advertising-supported model, so I estimate it to be
7 zero.

16:01:38

8 Q And -- and do you make that estimate with
9 confidence?

10 A Yes.

16:01:50

11 Q Why did you choose not to include advertising
12 as a revenue-generating source?

13 A In the era of 1998 -- this was at the very
14 early days of people gaining awareness of the capacity
15 and the capability of the Internet -- it was important,
16 when talking to potential investors, not to put limiting
17 statements in because they all wanted you to go make
18 money from every conceivable source.

16:02:14

19 Q My question was: Why did SightSound choose not
20 to pursue advertising as a revenue source?

16:02:40

21 A We chose to focus exclusively on download and
22 then, ultimately, patent licensing.

23 Q Aside from Avery Dennison, did SightSound have
24 any other co-branding sponsors?

25 A No.

16:02:56

1 Q On the bottom of page 8702, you will see
2 there's a statement: Virtual Tour '98 has been
3 custom-designed for participation by the major record
4 labels.

5 Do you see that?

16:03:30

6 A Yes.

7 Q Was that an accurate statement as of this date,
8 March 1998?

9 A Yes.

10 Q And did that design ultimately change?

16:03:40

11 A Yes.

12 Q When?

13 A By the time we launched Virtual Tour '98.

14 Q And it changed because the major record labels
15 expressed no interest?

16:04:02

16 A The timing wasn't right.

17 Q The next sentence says, Digital will only
18 accept music that is property of the major record labels
19 for inclusion in Virtual Tour '98.

20 And that, I take it, was also your plan as of
21 March of 1998?

16:04:19

22 A Yes.

23 Q Why was that your plan?

24 A We were actually trying to seek various
25 business relationships with a first-mover record label.

16:04:36

1 Q If I could ask you to turn to the page that
2 ends 8703 within Exhibit 199, you will see at the top
3 there's a reference to an "EJ"?

4 A Yes.

5 Q What is that?

16:05:02

6 A That was our terminology for an electronic
7 jockey instead of a disc jockey.

8 Q And did the EJ-related programming ever get
9 implemented with SightSound?

10 A Yes.

16:05:19

11 Q It was a part of Virtual Tour '98?

12 A Yes.

13 Q Other than in connection with Virtual Tour '98,
14 did -- did SightSound use the EJ programming?

15 A No.

16:05:28

16 Q Why not?

17 A We moved to focus more specifically on album
18 cover art and song samples and motion picture trailers
19 and what's called "key art" for motion pictures and
20 television shows.

16:05:47

21 Q Why, though, did you not continue to pursue the
22 EJ programming?

23 A It was not as scalable.

24 Q Can you explain your answer?

25 A Yeah. If you -- it's the difference between

16:06:04

1 having MTV on the Internet where you can also invoke a
2 download with -- they called them VJs, right? It was --
3 DJs were disc jockeys, VJs were video jockeys on MTV,
4 and EJs were electronic jockeys on SightSound.

5 By doing this -- this experiment with Virtual 16:06:34
6 Tour '98, we were convinced of the potential for
7 download sale of music and movies, obviously. We always
8 had been convinced of that, but we also saw, through
9 doing it, the limitations of having to produce
10 programming around each -- having to produce original 16:06:55
11 programming to convey the content, so we focused on the
12 album cover art, 30-second samples of music, and then
13 trailers and key art for motion pictures or television
14 shows.

15 Q How many EJ segments did SightSound wind up 16:07:13
16 implementing?

17 A Maybe 11, 12, you know, something like that.

18 Q If I could ask you to turn to the page within
19 Exhibit 199 stamped 8707, there's a reference at the
20 bottom there to AT&T and A2B Music. 16:07:52

21 Do you see that?

22 A Yes.

23 Q The first sentence says, Digital will support
24 the music file format developed by A2B Music.

25 Do you see that? 16:08:04

1 A Yes.

2 Q And did that ultimately happen?

3 A I don't recall the actual format on Virtual
4 Tour '98. I don't remember.

5 Q Aside from Virtual Tour '98, did -- did 16:08:24
6 SightSound implement any file formatting associated with
7 A2B Music or AT&T?

8 MR. DiBOISE: Objection.

9 THE WITNESS: I don't recall.

10 BY MR. BATCHELDER: 16:08:40

11 Q You will notice there's a reference there to
12 A2B server tools that would compress, encrypt, and
13 transmit digital audio music and integrate with
14 Digital's back office.

15 Do you see that? 16:09:04

16 A I do.

17 Q Now that you see that phrase, does that refresh
18 your recollection as to whether SightSound ever
19 performed compression and encryption in connection with
20 its systems? 16:09:17

21 A No.

22 Q On page -- page 8708 within Exhibit 199,
23 there's a reference to Avery Dennison Corporation.

24 This is the entity you referenced earlier?

25 A Yes. 16:09:39

1 Q And it says, Avery Dennison is the sponsor and
2 co-developer of the sticker and poster layer within
3 Digital properties.

4 Do you see that?

5 A Yes.

16:09:47

6 Q What is the "sticker and poster layer"?

7 A It was something that TBWA/Chiat/Day cooked up
8 to -- as an added feature for Virtual Tour '98.

9 Q I missed the name. TBW?

10 A TBWA/Chiat/Day.

16:10:04

11 Q So this was used only in connection with
12 Virtual Tour '98?

13 A The stickers and posters?

14 Q Yes.

15 A Yes.

16:10:22

16 Q Was that a successful venture, that sticker and
17 poster venture?

18 A I think so.

19 Q Did SightSound wind up cancelling that
20 arrangement before the contract term had been fulfilled?

16:10:38

21 MR. DiBOISE: Objection.

22 THE WITNESS: Yeah, I don't recall.

23 (Exhibit 200 was marked for identification by
24 the Court Reporter.)

25 MR. BATCHELDER: I've had marked, as

16:11:38

1 Exhibit 200, a document spanning STI-13102 through
2 13116.

3 Q Have you seen this document before?

4 A Yes.

5 Q What do you understand it to be?

16:11:57

6 A Software License Agreement.

7 Q And earlier you had referenced, I think, what
8 you referred to as a "provisional agreement."

9 First of all, do I have that right?

10 A Yes.

16:12:22

11 Q And is the Software License Agreement that is
12 in Exhibit 200 the provisional agreement you were
13 referring to earlier?

14 MR. DiBOISE: Objection.

15 THE WITNESS: I think so.

16:12:36

16 BY MR. BATCHELDER:

17 Q Would you take a moment to confirm?

18 A I -- I recall an arrangement with A2B Music
19 that required A2B Music to be spun out of AT&T Labs, and
20 so I don't know if there were multiple documents in and
21 around that transaction back in 1998, but I generally
22 remember it to be based upon AT&T spinning A2B Music
23 into a separate entity.

16:13:11

24 Q I just want to make sure that I'm using your
25 terminology correctly in that when you were referring

16:13:37

1 earlier to something being provisional, you were
2 referring to this document and not another one?

3 A I don't know that --

4 MR. DiBOISE: Objection.

5 THE WITNESS: -- no.

16:13:45

6 BY MR. BATCHELDER:

7 Q You don't what?

8 A I don't know that.

9 Q Okay.

10 MR. DiBOISE: Just give me a second.

16:13:49

11 THE WITNESS: Sorry.

12 MR. DiBOISE: Just give me a second.

13 BY MR. BATCHELDER:

14 Q Are you aware of any signed agreement between
15 AT&T and SightSound other than Exhibit 200?

16:13:57

16 A No.

17 Q If I could invite your attention to the page
18 ending in 131088 -- 13108, I'm looking at Article 3.2
19 titled "Content Distribution Fee."

20 Do you see that?

16:14:37

21 A Yes.

22 Q My reading of this is starting at the second
23 line. It says, AT&T's royalty shall be the greater of
24 26 cents per transmission of an encrypted sound
25 recording or 26 percent of any and all moneys or other

16:15:00

1 consideration received by DSS at any time from each
2 music download of any and all encrypted sound
3 recordings.

4 Do you see that?

5 A Yes.

16:15:13

6 Q And did you, in fact, understand those to be
7 the royalties associated with this deal?

8 MR. DiBOISE: Objection.

9 THE WITNESS: I don't know.

10 BY MR. BATCHELDER:

16:15:42

11 Q You just don't remember?

12 MR. DiBOISE: Objection.

13 THE WITNESS: Yeah, I don't know.

14 BY MR. BATCHELDER:

15 Q Did you have an understanding as to what AT&T
16 was offering in consideration for the content
17 distribution fee set forth in Section 3.2?

16:15:57

18 MR. DiBOISE: Objection.

19 THE WITNESS: No.

20 BY MR. BATCHELDER:

16:16:08

21 Q Did you approve of the terms set forth in this
22 contract that you signed, that is, Exhibit 200?

23 MR. DiBOISE: Objection.

24 THE WITNESS: Yes.

25 THE REPORTER: 21.

16:16:37

1 THE WITNESS: Thank you.

2 (Exhibit 201 was marked for identification by
3 the Court Reporter.)

4 MR. BATCHELDER: I've had marked, as
5 Exhibit 201, a document Bates-stamped 98-01182945A
6 through 2948A.

16:17:29

7 Q Have you seen this document before?

8 MR. DiBOISE: Sorry. Which numbers were you
9 reading?

10 MR. BATCHELDER: The ones in the lower
11 right-hand corner.

16:17:52

12 MR. DiBOISE: There are two sets of numbers.

13 MR. BATCHELDER: Oh, I'm sorry. Let's just use
14 the SST numbers. I didn't see them.

15 Yeah, the Bates range for 201 is SST-24634
16 through 24637. Thank you.

16:18:00

17 THE WITNESS: Yes.

18 BY MR. BATCHELDER:

19 Q You have seen this before?

20 A Yes.

16:18:14

21 Q Thank you.

22 And what do you recognize it to be?

23 A A description of the Virtual Tour '98.

24 Q And who was Nicki Slate?

25 A An executive at Atlantic Records.

16:18:33

1 Q And what were you hoping to accomplish with
2 this deal memo?

3 A To provoke Atlantic Records to think about
4 digital download.

5 Q Were you seeking, ultimately, a License
6 Agreement between SightSound and Atlantic Records?

16:19:02

7 A Yes.

8 Q On the cover page of Exhibit 201, you will see
9 there's a heading "The Company" in the middle.

10 A Yes.

16:19:50

11 Q And then five lines up from the bottom of that
12 paragraph, there's a sentence that says, Throughout the
13 10 years of thought and preparation, the goal of Digital
14 Sight/Sound has been to create a company which would
15 service the major record labels.

16:20:10

16 Do you see that?

17 A Yes.

18 Q Was that an accurate statement?

19 A Yes.

20 Q And by the 10 years of preparation, you're
21 referring to 1988 through 1998?

16:20:15

22 A Yes.

23 Q As of today, has SightSound ever serviced the
24 major record labels?

25 MR. DiBOISE: Objection.

16:20:49

1 THE WITNESS: What do you mean by "serviced"?

2 BY MR. BATCHELDER:

3 Q I'm using the words of your measurement from
4 the sentence I just read that said that the goal of
5 Digital Sight/Sound has been to create a company which
6 would service the major record labels.

16:21:07

7 A Yes.

8 Q How so?

9 A I think we introduced them to the virtue and
10 capability and possibilities of digital download as an
11 alternative to piracy.

16:21:23

12 Q And up through today, has SightSound generated
13 any revenue in connection with its servicing of the
14 major record labels?

15 A Yes.

16:21:39

16 Q How so?

17 A Patent licensing revenue.

18 Q How much revenue?

19 THE WITNESS: Can I ask a you question about
20 the N2K and the Napster Settlement Agreements?

16:22:01

21 MR. DiBOISE: Sure.

22 THE WITNESS: Is that --

23 MR. DiBOISE: You can -- you can answer. I'm
24 not certain how I understand why that license -- that
25 Settlement Agreement is implicated.

16:22:21

1 THE WITNESS: Because major record label
2 content was sold.

3 MR. DiBOISE: Can you answer the question?

4 THE WITNESS: I'm -- I'm asking you if that's
5 privileged information as to those Settlement
6 Agreements. 16:22:43

7 MR. DiBOISE: And I'm asking you if you can
8 answer the question.

9 THE WITNESS: I don't know.

10 BY MR. BATCHELDER: 16:23:02

11 Q You don't know what?

12 A If I can answer the question.

13 Q Within the bounds of privilege?

14 A Yes.

15 MR. BATCHELDER: Could I suggest that you two
16 step outside and try to work this out. 16:23:10

17 MR. DiBOISE: And the question, just so we are
18 clear, is: Up through today, has SightSound generated
19 any revenue in connection with its servicing of the
20 major record labels? 16:23:20

21 MR. BATCHELDER: That's the question.

22 THE VIDEOGRAPHER: Off the record at 4:22.

23 (Recess taken.)

24 THE VIDEOGRAPHER: On the record at 4:24.

25 BY MR. BATCHELDER: 16:25:47

1 Q Would you like me to repeat the question?

2 A No.

3 Q What's your answer?

4 A No.

5 Q Your answer was no, SightSound has not
6 generated any revenue in connection with its servicing
7 of the major record labels?

16:25:53

8 A Yes.

9 Q If I could ask you to turn to page ending in
10 SST-24635 of that Exhibit 201, and in that second
11 paragraph under the "Micro Shows" heading, there's a
12 reference to Jam TV, MTV Online, and My Launch.

16:26:27

13 Do you see that?

14 A Yes.

15 Q And did SightSound ever undertake any
16 activities in connection with those entities?

16:26:47

17 A No.

18 Q Why not?

19 A Change in strategy away from the Internet micro
20 show, as I previously described.

16:27:11

21 Q Is it the case that SightSound initiated
22 discussions with those channels?

23 MR. DiBOISE: I'm sorry?

24 THE WITNESS: Yes.

25 BY MR. BATCHELDER:

16:27:21

1 Q And did the channels express interest?

2 A Yes.

3 Q And SightSound simply changed its mind?

4 A Yes.

5 Q At the bottom of that page we have been looking 16:27:29
6 at, 24635, there's a reference to micro shows in
7 development.

8 Now, you see the six enumerated entities there?

9 A Yes.

10 Q So you have told me about the first one, 16:27:53
11 Virtual Tour '98.

12 Did the other entries go forward, the Road Trip
13 '98, the COR, the Music At Work, the Classical Tastings,
14 and the Soundtrack Prerelease Party?

15 A No. 16:28:10

16 Q None of them did?

17 A No.

18 Q Why not?

19 A Change in strategy.

20 Q What explained that change? 16:28:14

21 MR. DiBOISE: Objection.

22 THE WITNESS: I believe I've already answered
23 it; the lack of scaleability of making programming and,
24 instead, focusing just on album art, 30-second previews,
25 and download sales. 16:28:33

1 BY MR. BATCHELDER:

2 Q Was SightSound ever a licensee of A2B Music?

3 A Yes.

4 Q And you are consulting a document in connection
5 with answering that question.

16:29:09

6 What document are you consulting?

7 A License Agreement.

8 Q Can you reference it by --

9 A Oh --

10 Q -- the exhibit number?

16:29:17

11 A -- you know what? I stand corrected. My
12 answer is no, A2B Music, because this is between
13 SightSound and AT&T. I'm not trying to be too difficult
14 or too precise. I'm just confused.

15 Q So we have a clear record --

16:29:43

16 A Okay.

17 Q -- let me repeat the question.

18 Was SightSound ever a licensee of A2B Music?

19 A No.

20 MR. DiBOISE: Object.

16:29:54

21 BY MR. BATCHELDER:

22 Q What is SDMI?

23 A The Secured Digital Music Initiative.

24 Q Did SightSound have any dealings with SDMI?

25 A Yes.

16:30:33

1 Q Would you summarize them for me, please?

2 A Secured Digital Music Initiative was a -- I
3 would summarize it as a stall-and-delay tactic
4 coordinated by the major record labels.

5 Q Would you explain what you mean by that?

16:30:58

6 MR. DiBOISE: Objection.

7 THE WITNESS: I meant they were stalling and
8 delaying adoption of digital download while, at the same
9 time, giving lip service and sanctimonious declarations
10 about the importance of their copyright.

16:31:35

11 BY MR. BATCHELDER:

12 Q Was SightSound ever a supporter of SDMI?

13 A I don't remember the -- I don't remember the
14 strategy with SDMI. I believe it was short lived in the
15 late '90s. Maybe -- maybe it carried forward.

16:31:58

16 MR. BATCHELDER: 202? Thanks.

17 (Exhibit 202 was marked for identification by
18 the Court Reporter.)

19 MR. BATCHELDER: I've had marked, as
20 Exhibit 202, a document STI-13148 through 49.

16:32:29

21 Q Have you seen this document before?

22 A I don't remember seeing this.

23 Q At the top of page 13149, there's a three-word
24 phrase, "For Immediate Release."

25 Do you see that?

16:32:57

1 A Yes.

2 Q Is this a SightSound press release?

3 A Yeah -- yes, it appears so.

4 Q You -- you're quoted in the middle paragraph
5 there. Would you read that for me and let me know when 16:33:12
6 you are done.

7 A Since 1993, we have been warning --

8 Q I'm sorry, sir. I just meant for you to read
9 it to yourself and let me know when you are done reading
10 it. 16:33:26

11 A Okay. Yes.

12 Q Thank you.

13 Are those quotes from you accurate?

14 A Yes.

15 Q Did SightSound become an ally of SDMI? 16:33:56

16 A I don't think so.

17 Q Did Mr. Hair participate in SDMI?

18 A He may have spoken on a panel, but I don't
19 recall specifically.

20 Q Was there a time when SightSound believed that 16:34:29
21 SDMI was a good thing and then changed its mind?

22 A No.

23 Q So it's your understanding that SightSound
24 consistently thought SDMI was a bad idea?

25 A Yes. 16:34:52

1 THE REPORTER: 203.

2 (Exhibit 203 was marked for identification by
3 the Court Reporter.)

4 MR. BATCHELDER: I've had marked, as
5 Exhibit 203, a Private Placement Memorandum dated
6 April 27, 1999. The Bates range is SST-8421 through
7 8453.

16:35:48

8 Q Have you seen this document before?

9 A Yeah.

10 Q What do you recognize it to be?

16:36:20

11 A One of our various documents over time of
12 attempting to raise capital.

13 Q This document was distributed to third-party
14 potential investors?

15 A I believe so.

16:36:36

16 Q Were you involved in generating this document?

17 A Yes.

18 Q And did you review it for accuracy before it
19 was sent to third parties?

20 A Yes.

16:36:55

21 Q If I could direct your attention first to,
22 within Exhibit 203, the page 8425, this is the section
23 titled "Introduction."

24 A 8425? Yes.

25 Q In the -- there's a paragraph that begins: The

16:37:56

1 company was incorporated, the third paragraph in?

2 A Yes.

3 Q And near the bottom of that paragraph, about
4 five lines up, it says, Effective as of August 15th,
5 1997, Digital Sight/Sound and the company terminated the
6 Exclusive Patent License Agreement as amended and
7 replaced it with a Non-Exclusive Patent License
8 Agreement, granting to Digital Sight/Sound certain
9 non-exclusive rights to the patent claims.

16:38:22

10 Do you see that?

16:38:36

11 A Yes.

12 Q Why was that action undertaken?

13 MR. DiBOISE: So to the extent that your answer
14 would require you to reveal any discussions with
15 counsel, I would caution you not to reveal such
16 discussions in answer to this question.

16:38:55

17 Do you understand my instruction --

18 THE WITNESS: Yes.

19 MR. DiBOISE: -- my admonition?

20 THE WITNESS: Yes.

16:39:06

21 MR. DiBOISE: Can you answer the question?

22 THE WITNESS: No.

23 MR. DiBOISE: Because -- okay. So I'll
24 instruct you.

25 MR. BATCHELDER: So you are instructing him not

16:39:11

1 to answer?

2 MR. DiBOISE: Right.

3 BY MR. BATCHELDER:

4 Q And you are going to follow that advice?

5 A Yes. 16:39:17

6 Q There's a paragraph -- looks like it's one,
7 two, three -- the fourth paragraph on page 8425 begins:
8 The company envisions entertainment e-commerce as a
9 platform change.

10 Do you see that? 16:39:41

11 A Yes.

12 Q And -- and what did that phrase mean?

13 A "Platform change"?

14 Q Yes.

15 A The quoted phrase? From -- recorded music and 16:39:57
16 movies have transitioned over time through various
17 platforms; music, for example, vinyl to 8-track tapes to
18 cassette tapes to compact discs and, ultimately, to
19 digital download.

20 Q The final sentence in that paragraph says, 16:40:23
21 Additionally, the company is planning to offer services
22 to potential clients in other industries.

23 Do you see that?

24 A Yes.

25 Q What other industries is that referencing? 16:40:34

1 A Instructional videos, download news; in other
2 words, not limited to simply motion pictures or musical
3 recordings.

4 Q In the next paragraph on page 8425, you will
5 see, in the middle of that paragraph, there's a
6 reference to -- well, it says, The company is one of the
7 first to begin using Windows Media Technologies 4.0.

16:41:05

8 Do you see that?

9 A Yes.

10 Q And how was that used?

16:41:16

11 A The -- Arthur was the engineer. It was my
12 understanding that he installed -- base of computers was
13 overwhelmingly -- overwhelmingly a Microsoft operating
14 system world, and so that was -- that was the focus, to
15 enable the sale of music and movies to people with
16 computers, and, overwhelmingly, they had Microsoft.
17 Dell, Compaq, Gateway, whatever, would be running on a
18 Microsoft operating system.

16:41:46

19 Q The Windows Media Technology -- excuse me,
20 Windows Media Technologies 4.0, this paragraph describes
21 it working along with a Windows Media Rights Manager,
22 and it says, It enables the company to compress and
23 encrypt audio and video files.

16:42:09

24 Do you see that?

25 A Yes.

16:42:25

1 Q Does this refresh your recollection about
2 whether -- or when SightSound had the ability to
3 compress and encrypt audio/video files that it was
4 selling over its system?

5 A No.

16:42:45

6 Q And as you sit here today, do you have a memory
7 of whether SightSound ever had that ability?

8 MR. DiBOISE: Objection.

9 THE WITNESS: I think I already answered that
10 the various systems' -- the first one, I think,
11 operating was Sun Microsystems, Microsoft, whatever --
12 capabilities existed, I imagine, from the day we first
13 started selling music in '95, but Arthur was the
14 engineer.

16:43:00

15 BY MR. BATCHELDER:

16:43:25

16 Q And I just want to have a clear record on this.
17 In your answers now, you said you imagined that that
18 capability existed starting in 1995, but Arthur was the
19 engineer.

20 Is there a point you are not sure --

16:43:34

21 A Yes.

22 Q -- and he is the guy to ask?

23 A He is the guy to ask.

24 Q As of this time frame, April 27th, 1999, is it
25 fair to say that SightSound was -- that as between video

16:43:51

1 and audio, SightSound was prioritizing video?

2 MR. DiBOISE: Vague.

3 THE WITNESS: No.

4 BY MR. BATCHELDER:

5 Q No. Is that your answer? 16:44:05

6 A Yes.

7 Q Under the heading "Current Activities" that is
8 on the bottom of page 8425, it begins with: The company
9 sells motion pictures in download fashion Internet
10 users. 16:44:33

11 Do you see that?

12 A Yes.

13 Q And then in that same paragraph, kicking over
14 to the next page, it references two motion pictures, Pi,
15 that is, P-i, and a production called Films That Suck. 16:44:46

16 Were those the only two motion pictures that
17 SightSound had available as of this Private Placement
18 Memorandum?

19 A April 27th? I don't know.

20 Q Looking on the first full paragraph of 16:45:15
21 page 8426, it begins: The company also sells music in
22 download fashion.

23 Do you see that?

24 A Yes.

25 Q And then in the third sentence, it says, The 16:45:29

1 company intends to offer audio only Non-Exclusive Patent
2 License Agreements.

3 Do you see that?

4 A Yes.

5 Q As of this time, April of 1999, was it the case 16:45:42
6 that SightSound was offering Non-Exclusive Patent
7 License Agreements for audio signals but not for video
8 signals?

9 A Yes.

10 Q Why? 16:46:03

11 A We -- we had, as a strategy, the objective of
12 licensing audio re- -- to -- audio download systems and
13 retaining exclusively for SightSound video rights.

14 Q Why was that your strategy? Why differentiate
15 between the two media? 16:46:43

16 A It was a reflection of our content focus.

17 Q Are you done with your answer?

18 A Yes.

19 Q Can you explain it further?

20 MR. DiBOISE: Objection. 16:47:03

21 THE WITNESS: The -- it was our assessment that
22 the recording music industry was still not ripe for
23 transition to this method and that their increasingly
24 difficult problem of piracy was proving illustrative to
25 the movie studios, and we felt that the record labels 16:47:39

1 still weren't ripe.

2 BY MR. BATCHELDER:

3 Q Despite that belief, it's your testimony that
4 in that time frame, SightSound was still focusing
5 equally as between those two media?

16:48:18

6 MR. DiBOISE: Objection.

7 THE WITNESS: Yes. You -- the question is not
8 clear to me.

9 BY MR. BATCHELDER:

10 Q What's confusing you?

16:48:32

11 A You repeatedly seem to indicate a totality of
12 SightSound's business being about the distribution of
13 audio or video and not about the protection of its
14 intellectual property rights, and all activities that
15 SightSound was taking were holistically, strategically
16 intertwined at any given moment. The first principal
17 was always the patent rights.

16:48:57

18 Q As between the video media and the audio media,
19 you said a couple of answers ago that the audio industry
20 wasn't ready or wasn't ripe, but the video industry
21 believed it was, and so my question is: As between
22 those two media --

16:49:26

23 A I don't believe I said that.

24 Q Okay. I certainly didn't mean to
25 mischaracterize, so where -- where did I get that wrong?

16:49:37

1 A We were quite convinced that the audio
2 recording holders were not ripe yet. We had not yet
3 concluded as to the willingness of the video recording
4 holders to proceed, and we received some encouraging
5 first signals, so we didn't know that they were ripe 16:49:58
6 either.

7 Q And --

8 A But you got to try something.

9 Q And before shutting down your system in the
10 2002 time frame, did you have a firmer understanding of 16:50:17
11 whether the video industry was, indeed, ripe for this
12 kind of a distribution system?

13 A Yes.

14 MR. DiBOISE: Objection.

15 BY MR. BATCHELDER: 16:50:33

16 Q And what was your understanding?

17 A That neither audio nor video, not a major --
18 neither major audio or video content rights holders were
19 yet ripe to reap the benefits of our method.

20 Q Is it the case that, at some point, SightSound 16:50:58
21 decided to go public?

22 A Yes.

23 Q Why was that decision made?

24 A Relative cost of capital.

25 Q Meaning it would be a cheaper way to raise 16:51:40

1 money than your alternatives?

2 MR. DiBOISE: Objection.

3 THE WITNESS: It was -- it was an alternative.

4 It was an attractive alternative.

5 BY MR. BATCHELDER:

16:51:56

6 Q For raising capital?

7 A When we commenced the effort.

8 Q I didn't understand your last response.

9 MR. DiBOISE: Objection.

10 THE WITNESS: Is that a question?

16:52:06

11 BY MR. BATCHELDER:

12 Q Would you explain, please?

13 MR. DiBOISE: Objection.

14 THE WITNESS: Explain. Could you clarify?

15 BY MR. BATCHELDER:

16:52:19

16 Q You said, "When we commenced the effort," and I
17 didn't understand what you were trying to get across.

18 Would you explain your answer?

19 A Yes. The -- the so-called Internet bubble was
20 propelling any number of very advantageous valuations
21 for Internet companies; that those market conditions
22 changed radically, and what would have been a good idea
23 was foreclosed because of dramatic capital market
24 changes.

16:52:34

25 Q And what time frame do you associate with those

16:53:00

1 dramatic changes?

2 A I can't remember exactly as I sit here today.
3 I mean, I remember it, but I don't remember. What was
4 it, 2000, 2001, I think? I mean, I'm sure it's on
5 Wikipedia.

16:53:20

6 (Exhibit 204 was marked for identification by
7 the Court Reporter.)

8 MR. BATCHELDER: I've had marked, as
9 Exhibit 204, a document titled "Minutes of Special
10 Meeting of Directors of SightSound.com Incorporated."

16:54:04

11 Q Have you seen this document before?

12 A Yes.

13 Q And this appears to reflect that at the end of
14 January 2000, SightSound called a special meeting of
15 directors and discussed going public; is that fair?

16:54:24

16 A Yes.

17 Q You were the president at the time?

18 A Yes.

19 Q So looking at the third paragraph of
20 Exhibit 204, The chairman called the meeting to order
21 and asked the president to report on meetings with
22 investment bankers. The president reported on recent
23 meetings held with a number of investment banking firms.
24 The president recommended that the corporation hire
25 WR Hambrecht to take the corporation public.

16:54:44

16:54:58

1 Is that an accurate statement?

2 A Yes.

3 Q And did SightSound hire WRH?

4 A Yes.

5 Q How soon after this, that is, after
6 January 31st, 2000, did SightSound decide not to go
7 public?

16:55:14

8 A I don't recall.

9 Q Was it a difficult decision not to go public?

10 MR. DiBOISE: Objection.

16:55:34

11 THE WITNESS: I don't -- I don't recall the --
12 I don't know that it was a difficult decision, no. No,
13 it was not a difficult decision.

14 BY MR. BATCHELDER:

15 Q Do you recall investment banks asking
16 SightSound to explain why it should go public,
17 suggesting that it shouldn't, and SightSound,
18 nonetheless, explaining why SightSound still thought it
19 should?

16:55:56

20 A No.

16:56:15

21 MR. DiBOISE: Objection.

22 BY MR. BATCHELDER:

23 Q You don't remember that kind of dialogue?

24 MR. DiBOISE: Objection.

25 THE WITNESS: I don't.

16:56:22

1 MR. BATCHELDER: All right. It's right around
2 5:00 o'clock. I suggest we break for the day, and we
3 can meet in the morning, 9:00 or 9:30, whatever your
4 preference is.

5 MR. DiBOISE: How long tomorrow? 16:56:38

6 MR. BATCHELDER: I think most of the day, but
7 I'll try to end as early as I can.

8 MR. DiBOISE: Would it help if we went another
9 hour tonight to get us done earlier in the afternoon?

10 MR. BATCHELDER: Well, it would -- I think it 16:56:50
11 would probably be better if I just tried to winnow
12 things down and just try to go as quickly as I can
13 tomorrow.

14 MR. DiBOISE: Okay.

15 THE VIDEOGRAPHER: Okay. This is the end of 16:57:01
16 Disc 3 of Scott Sander.

17 Off the record at 4:56.

18 (Whereupon, the deposition was adjourned at
19 4:56 p.m.)

20 ---o0o---

21
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1 I declare under penalty of perjury that the
2 foregoing is true and correct. Subscribed at
3 _____, California, this ____ day of
4 _____, 2013.

5
6 _____
7 Signature of the witness

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CERTIFICATE OF REPORTER

I, RACHEL FERRIER, a Certified Shorthand Reporter, hereby certify that the witness in the foregoing deposition was by me duly sworn to tell the truth, the whole truth, and nothing but the truth in the within-entitled cause;

That said deposition was taken down in shorthand by me, a disinterested person, at the time and place therein stated, and that the testimony was thereafter reduced to typewriting by computer under my direction and supervision and is a true record of the testimony given by the witness;

That before completion of the deposition, review of the transcript [X] was [] was not requested. If requested, any changes made by the deponent (and provided to the reporter) during the period allowed are appended hereto.

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.

DATED: *January 2nd 2013*



RACHEL FERRIER, CSR No. 6948

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(date)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ORIGINAL

---o0o---

SIGHTSOUND TECHNOLOGIES, LLC,

Plaintiff,

vs.

CASE NO.:
2:11cv01292-DWA

APPLE INC.,

Defendant.

_____ /

30(b) (6) VIDEOTAPED DEPOSITION OF

SCOTT CHRISTOPHER SANDER

VOLUME 2

Wednesday, December 19, 2012

REPORTED BY: RACHEL FERRIER, CSR 6948

(1-448408)

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1 BE IT REMEMBERED that, pursuant to the laws
2 governing the taking and use of depositions, on
3 Wednesday, December 19, 2012, commencing at 9:03 a.m.
4 thereof, at Ropes & Gray, 1900 University Avenue, 6th
5 Floor, East Palo Alto, California 94303, before me,
6 RACHEL FERRIER, a Certified Shorthand Reporter,
7 personally appeared SCOTT CHRISTOPHER SANDER, called as
8 a witness by Defendant, who, being by me duly previously
9 sworn, was thereupon examined as a witness in said
10 action.

11 APPEARANCES OF COUNSEL

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ALSO PRESENT: PETER HIBDON, Videographer

---o0o---

1 EAST PALO ALTO, CALIFORNIA

2 WEDNESDAY, DECEMBER 19, 2012

3 9:03 A.M.

4 ---o0o---

5 PROCEEDINGS

09:03:39

6 THE VIDEOGRAPHER: Good morning.

7 Here begins Disc 1, Volume 2 in the deposition
8 of Scott Sander in the matter of SightSound
9 Technologies, LLC, versus Apple Inc.

10 Today's date is December 19th, 2012, and the
11 time is 9:03 a.m.

09:03:51

12 Counsel, please identify yourselves and state
13 whom you represent.

14 MR. BATCHELDER: James Batchelder from Ropes &
15 Gray on behalf of defendant, Apple.

09:04:04

16 MR. DiBOISE: James DiBoise -- Arnold &
17 Porter -- representing the plaintiff and the witness.

18 ---o0o---

19 SCOTT CHRISTOPHER SANDER

20

21 _____
22 called as a witness, having been previously
23 duly sworn, was examined and testified further
24 as follows:

24 ---o0o---

25 //

09:27:22

1 EXAMINATION

2 BY MR. BATCHELDER:

3 Q Mr. Sander, you understand you are still under
4 oath?

5 A Yes. 09:04:19

6 (Exhibit 205 was marked for identification by
7 the Court Reporter.)

8 MR. BATCHELDER: I've had marked, as
9 Exhibit 205, a document with a Bates range SST-11096
10 through 11105. It is titled "Memorandum" from Alex 09:04:28
11 LePore regarding company stock valuation dated
12 April 12th, 2000.

13 Q Have you seen this document before?

14 A I don't recall seeing it.

15 Q Do you have any understanding as to how, if at 09:04:45
16 all, this document was used by SightSound?

17 MR. DiBOISE: Objection.

18 THE WITNESS: I don't recall.

19 BY MR. BATCHELDER:

20 Q Do you have any understanding as to why, in 09:05:02
21 April 2000, SightSound undertook a company stock
22 valuation analysis?

23 MR. DiBOISE: Objection.

24 THE WITNESS: No.

25 BY MR. BATCHELDER: 09:05:15

1 Q As you sit here now, knowing the company's
2 business, can you think of a reason why that would have
3 been done?

4 MR. DiBOISE: Objection.

5 THE WITNESS: No.

09:05:23

6 BY MR. BATCHELDER:

7 Q If I could ask you to turn to the page ending
8 in 097, the second page of the document, you see in the
9 middle of the page there's a heading "Pre-1999 Business
10 and Financing Activities."

09:05:47

11 Do you see that?

12 And it begins discussing the period from March
13 1996 through March 1998.

14 Do you see that's the opening phrase in that
15 paragraph?

09:06:04

16 A Yes.

17 Q And it says in this paragraph, It was clear
18 over this period of time that the company's value did
19 not change dramatically.

20 Is that a fair statement describing the period
21 of time March 1996 through March 1998?

09:06:15

22 MR. DiBOISE: Objection.

23 THE WITNESS: I don't know.

24 BY MR. BATCHELDER:

25 Q You don't know?

09:06:27

1 MR. DiBOISE: Objection.

2 THE WITNESS: No.

3 BY MR. BATCHELDER:

4 Q Just so we have a clear record, you are saying
5 you don't know whether that's an accurate statement?

09:06:40

6 MR. DiBOISE: Objection.

7 THE WITNESS: I don't.

8 BY MR. BATCHELDER:

9 Q That same paragraph goes on to say, The company
10 attempted to launch several different music distribution
11 strategies from 1995 to 1998, only to realize less than
12 \$600 in gross revenue for the entire three-year period.

09:07:02

13 Do you see that?

14 A Yes.

15 Q Is that an accurate statement?

09:07:18

16 MR. DiBOISE: Objection.

17 THE WITNESS: I don't know.

18 BY MR. BATCHELDER:

19 Q Is it the case that from 1995 to 1998, the
20 company realized less than \$600 in gross revenue for the
21 entire three-year period?

09:07:34

22 MR. DiBOISE: Objection.

23 THE WITNESS: I don't know.

24 BY MR. BATCHELDER:

25 Q Do you have any reason to doubt it?

09:07:41

1 MR. DiBOISE: Objection.

2 THE WITNESS: No.

3 BY MR. BATCHELDER:

4 Q The statement that I just read refers to the
5 company launching several different music distribution 09:07:53
6 strategies from 1995 to 1998.

7 What strategies did it launch during that time
8 period for music distribution?

9 MR. DiBOISE: Objection.

10 THE WITNESS: I believe I've answered that 09:08:05
11 previously.

12 BY MR. BATCHELDER:

13 Q Would you just list the strategies now for me
14 so we have a clear record.

15 MR. DiBOISE: Objection. 09:08:29

16 THE WITNESS: As I stated previously, the
17 strategy was to launch a proof-of-concept site. That
18 strategy altered based upon a meeting with Mr. John
19 Doerr, and that strategy altered again in 1998.

20 BY MR. BATCHELDER: 09:08:56

21 Q What was the 1998 strategy alteration that you
22 are referring to?

23 MR. DiBOISE: Objection.

24 THE WITNESS: To commence selling music
25 downloads again. 09:09:10

1 BY MR. BATCHELDER:

2 Q Staying on page 11097 from Exhibit 205, the
3 second paragraph under the subheading "Pre-1999 Business
4 and Financing Activities" begins with the sentence,
5 quote: From its inception through 1998, the company
6 solely focused on the music business, end quote.

09:09:33

7 Do you see that sentence?

8 A Yes.

9 Q Is that accurate?

10 A No.

09:09:42

11 MR. DiBOISE: Objection.

12 BY MR. BATCHELDER:

13 Q The next sentence of that paragraph says, It
14 was clear from numerous meetings and proposals that the
15 major industry players were not prepared to distribute
16 their products in digital fashion.

09:10:01

17 Do you see that?

18 A Yes.

19 Q Is that accurate?

20 MR. DiBOISE: Objection.

09:10:09

21 THE WITNESS: Yes.

22 BY MR. BATCHELDER:

23 Q A couple of sentences later, it says, Without
24 an agreement to distribute music for the major labels,
25 the company concluded that its ability to be successful

09:10:27

1 was severely limited.

2 Do you see that?

3 A Yes.

4 Q Is that accurate?

5 MR. DiBOISE: Objection.

09:10:34

6 THE WITNESS: No.

7 BY MR. BATCHELDER:

8 Q Did the company ever draw that conclusion?

9 A No.

10 Q Staying on page 11097 of Exhibit 205, there are

09:10:58

11 two bullet points at the bottom of that page. The first

12 of those bullet points begins with the sentence: The

13 company initially attempted to sign artists to

14 agreements whereby the company would distribute the

15 artists' music directly over the Internet.

09:11:20

16 Do you see that?

17 A Yes.

18 Q Is that accurate?

19 MR. DiBOISE: Objection.

20 THE WITNESS: Yes.

09:11:26

21 BY MR. BATCHELDER:

22 Q The next sentence begins: This did not prove
23 successful.

24 Do you see that?

25 A Yes.

09:11:43

1 Q And then the rest of that paragraph goes on to
2 explain why this did not prove successful.

3 Would you read the rest of that paragraph to
4 yourself, please, and let me know when you are done.

5 A Yes.

09:11:58

6 Q Do you agree with those reasons?

7 MR. DiBOISE: Objection -- withdrawn.

8 THE WITNESS: I do.

9 BY MR. BATCHELDER:

10 Q Given those reasons, why was it the company's
11 initial strategy to sign artists to agreements whereby
12 the company would distribute the artists' music directly
13 over the Internet?

09:12:15

14 A Speed of licensing.

15 Q Is it the case that having -- when the company
16 launched that strategy, the company did not foresee that
17 it wouldn't work for the reasons that are cited in that
18 bullet point?

09:12:46

19 A I don't know if I understand the question.

20 Q I'll withdraw it.

09:13:08

21 Let's turn to the second bullet point; that is,
22 the bottom bullet point on page 11097 of Exhibit 205.
23 It begins: The company approached record labels without
24 outsourcing their Internet distribution strategy by
25 permitting SightSound.com to sell music digitally in

09:13:28

1 exchange for 30 percent royalty payment.

2 Do you see that?

3 A Yes.

4 Q Is that accurate?

5 A Yes.

09:13:36

6 Q Did any record label take SightSound up on that
7 offer?

8 A No.

9 Q The next sentence says, Alternatively, the
10 company offered the labels a license on the use of the
11 company's intellectual property.

09:13:55

12 Do you see that?

13 A Yes.

14 Q Did any record label take SightSound up on that
15 offer?

09:14:06

16 A No.

17 Q The remainder of that bullet point, as it kicks
18 over to the next page of the document to page 11098,
19 explains the reasons why the record labels didn't take
20 SightSound up on either one of those offers.

09:14:31

21 Would you read those reasons to yourself,
22 please, and let me know when you are done, those three
23 reasons.

24 A I'm done.

25 Q The first reason listed is that the labels were

09:14:54

1 afraid that the encryption would be hacked, resulting in
2 the free distribution of the legal copies.

3 Do you see that?

4 A Yes.

5 Q Is that true?

09:15:05

6 MR. DiBOISE: Objection.

7 THE WITNESS: I don't know.

8 BY MR. BATCHELDER:

9 Q The second reason listed is that the companies
10 did not believe that SightSound.com's patent was valid.

09:15:13

11 Is that accurate?

12 MR. DiBOISE: Objection.

13 THE WITNESS: Yes.

14 BY MR. BATCHELDER:

15 Q The third reason is that the record labels
16 prefer to distribute music without using a third-party
17 service provider.

09:15:23

18 Is that accurate?

19 MR. DiBOISE: Objection.

20 THE WITNESS: I don't know.

09:15:32

21 BY MR. BATCHELDER:

22 Q On the top of page 11098 of Exhibit 25 (sic),
23 there's a -- a bullet point that begins: The last
24 strategy.

25 Do you see that?

09:15:46

1 A I do.

2 Q It begins: The last strategy the company
3 pursued was to produce special music content such as its
4 micro shows. Again, the company was not able to win the
5 timely cooperation of the record labels or individual
6 artists to successfully launch the strategy.

09:15:58

7 Do you see that?

8 A Yes.

9 Q Is that accurate?

10 A No.

09:16:07

11 Q The next paragraph on page 11098 says, In the
12 meantime, other companies emerged in the digital
13 distribution business. These companies were clearly
14 competitive threats and, in many cases, found to be
15 infringing on the use of the company's intellectual
16 property. SightSound.com offered the companies
17 considered to be infringing a License Agreement.

09:16:30

18 Do you see that?

19 A Yes.

20 Q Is that accurate?

09:16:40

21 A Yes.

22 Q Roughly how many such offers did SightSound
23 make?

24 MR. DiBOISE: Objection.

25 THE WITNESS: I don't recall.

09:16:48

1 BY MR. BATCHELDER:

2 Q Ballpark?

3 MR. DiBOISE: Objection.

4 THE WITNESS: I -- I don't recall.

5 BY MR. BATCHELDER:

09:16:53

6 Q The paragraph goes on to say, No one agreed to

7 become a licensee. The companies either believed

8 SightSound.com's patent claims do not apply to their

9 specific method of doing business or that the patents

10 were not valid.

09:17:09

11 Do you see that?

12 A Yes.

13 Q Is that accurate?

14 MR. DiBOISE: Objection.

15 THE WITNESS: Yes.

09:17:13

16 BY MR. BATCHELDER:

17 Q Toward the bottom of page 11098, you will see

18 the -- the second-to-last paragraph begins:

19 SightSound.com intends.

20 Do you see that?

09:17:33

21 A I do.

22 Q The second sentence of that paragraph says,

23 SightSound.com does not currently have plans to offer

24 Non-Exclusive Patent License Agreements to potential

25 licensees desiring to conduct entertainment e-commerce

09:17:45

1 for video applications.

2 Do you see that?

3 A Yes.

4 Q Was that accurate?

5 A Yes.

09:17:56

6 Q Is that accurate today?

7 A No.

8 Q When did that change?

9 A When we emerged from re-examination.

10 Q And why did it change when you emerged from
11 re-examination?

09:18:19

12 MR. DiBOISE: Just to caution you, to the
13 extent that your -- the company's decision was based on
14 any advice of counsel, please be cautious and do not
15 reveal any of that coun- -- any of counsel's advice in
16 answer to this question.

09:18:44

17 Do you understand my admonition?

18 THE WITNESS: I do.

19 MR. DiBOISE: Can you answer the question?

20 THE WITNESS: No.

09:18:55

21 MR. DiBOISE: Then I instruct you on the basis
22 of the attorney-client and work product protections.

23 BY MR. BATCHELDER:

24 Q Is it your testimony, Mr. Hair, that without
25 revealing attorney-client-privileged communications, you

09:19:09

1 can't tell me why it is that SightSound.com reversed
2 course and decided to offer licenses for video
3 applications?

4 MR. DiBOISE: Objection.

5 THE WITNESS: Could you restate the question, 09:19:32
6 because I think you referred to me as Mr. Hair.

7 MR. BATCHELDER: Apologies.

8 Q Is it your testimony that you cannot, without
9 revealing attorney-client-privileged communications,
10 tell me why it is that SightSound reversed course and 09:19:50
11 decided to begin licensing video applications under the
12 patents-in-suit?

13 MR. DiBOISE: Objection.

14 THE WITNESS: Yes.

15 BY MR. BATCHELDER: 09:20:04

16 Q The final paragraph on page 11098 begins with
17 the sentence: The company concluded in 1998 that the
18 second patent greatly increased its value.

19 Do you see that?

20 A Yes. 09:20:18

21 Q Is that referring to the second patent-in-suit
22 in this case?

23 A Yes.

24 Q Is that an accurate statement; that is, did the
25 company conclude in 1998 that the second patent greatly 09:20:35

1 increased the company's value?

2 A Yes.

3 Q Why was that its conclusion?

4 A Because we believed in the value of our patent
5 rights.

09:20:51

6 Q Was there something in particular about that
7 patent that SightSound believed was particularly
8 valuable as compared to the first one?

9 A Yes.

10 MR. DiBOISE: Objection.

09:21:12

11 BY MR. BATCHELDER:

12 Q What?

13 A Its issuance.

14 Q Anything else?

15 MR. DiBOISE: Objection.

09:21:21

16 THE WITNESS: No. I don't know.

17 BY MR. BATCHELDER:

18 Q If I could ask you to turn to page -- the next
19 page in Exhibit 205, page 11099, you will see there is a
20 heading near the top of the page that reads: Business
21 and Financing Activities Since January 1999.

09:21:36

22 Do you see that?

23 A Yes.

24 Q And the first subheading is January to April,
25 and the first sentence there is, Unfortunately, the

09:21:52

1 music industry opportunity never materialized.

2 Do you see that?

3 A Yes.

4 Q Is that accurate?

5 MR. DiBOISE: Objection -- withdrawn.

09:22:00

6 THE WITNESS: Yes.

7 BY MR. BATCHELDER:

8 Q Is it fair to say that that was no fault of
9 Apple's?

10 MR. DiBOISE: Objection.

09:22:11

11 THE WITNESS: I don't know.

12 BY MR. BATCHELDER:

13 Q Two paragraphs down -- I'm referring to the
14 paragraph that begins with the words: In early 1999.

15 Do you see that?

09:22:40

16 A Yes.

17 Q The final sentence of that paragraph reads: In
18 essence, the company, believing a tremendous music
19 distribution opportunity was available since it had
20 received the second patent, found instead that it
21 basically had to mortgage its future on a video
22 distribution strategy that did not exist until the
23 Microsoft discussions occurred.

09:22:54

24 Do you see that?

25 MR. DiBOISE: Hold on a second. I didn't see

09:23:05

1 it. What -- where are you referring to?

2 MR. BATCHELDER: The last sentence of the
3 paragraph beginning: In early 1999.

4 THE WITNESS: Yes.

5 BY MR. BATCHELDER:

09:23:17

6 Q Is that last sentence of the paragraph that I
7 just read from accurate?

8 MR. DiBOISE: Objection.

9 THE WITNESS: No.

10 BY MR. BATCHELDER:

09:23:26

11 Q What are the Microsoft discussions that are
12 referenced there?

13 A Arthur -- Arthur Hair worked -- or interacted
14 with Microsoft on technical issues regarding the video
15 distribution via SightSound.

09:23:48

16 Q What technical issues?

17 A I think you would have to ask Mr. Hair.

18 Q Do you know?

19 A I generally understand them to be systems
20 integration issues.

09:24:14

21 Q Is it fair to say that SightSound embarked on a
22 video distribution strategy that did not exist until
23 those Microsoft system integration discussions occurred?

24 MR. DiBOISE: Objection.

25 THE WITNESS: No.

09:24:32

1 BY MR. BATCHELDER:

2 Q Turning to page 11100 of Exhibit 205, the first
3 full sentence on the top of that page reads: The
4 company had exhausted nearly all of its resources in
5 preparing for the April 13th trial.

09:24:54

6 Do you see that?

7 A Yes.

8 Q Is that accurate?

9 A Yes.

10 Q The April 13th trial was Virtual '98?

09:25:03

11 A No.

12 Q What was it?

13 A It was the world's first sale of a
14 feature-length movie download, Hollywood movie. It was
15 the movie Pi directed by Darren Aronofsky. It was the
16 Sundance -- Sundance award-winning picture that became
17 the first -- the first movie sold over the Internet.

09:25:19

18 Q On page 11100, there are three bullet points in
19 the middle of the page, and then there's a paragraph
20 beginning with the words: Early in the offering period.

09:25:58

21 Do you see that paragraph?

22 A Yes.

23 Q The third sentence reads: Many potential
24 investors were concerned about the lack of available
25 compelling content.

09:26:10

1 Do you see that?

2 A Yes.

3 Q Is that accurate?

4 A As to our distribution strategy, yes.

5 Q Are you distinguishing your distribution

09:26:20

6 strategy from some other strategy?

7 A Yes.

8 Q Which other strategy?

9 A Intellectual property defense and licensing

10 strategy.

09:26:36

11 Q Why was there a lack of available compelling
12 content for SightSound's distribution strategy as of the
13 time of this memorandum?

14 MR. DiBOISE: Objection.

15 THE WITNESS: The record labels and the movie
16 studios were not yet ripe for download.

09:26:55

17 BY MR. BATCHELDER:

18 Q The final sentence of that same paragraph on
19 page 11100 reads: With consumer technology, i.e.,

20 high-speed Internet access, faster PCs, initial

09:27:16

21 development of smart TVs well on the way, available
22 content was the key missing ingredient.

23 Do you see that?

24 A Yes.

25 Q Is that accurate?

09:27:26

1 A As to our distribution strategy, yes.

2 Q Why is it that high-speed Internet access was
3 well on the way but not there yet as of the time of this
4 memorandum, April 2000?

5 MR. DiBOISE: Hold on.

09:27:50

6 Objection.

7 THE WITNESS: I -- I don't understand -- I
8 can't answer the question because I disagree with its
9 presumption.

10 BY MR. BATCHELDER:

09:28:13

11 Q Staying on page 11100, there's a paragraph
12 beginning: In June 1999.

13 Do you see that?

14 A Yes.

15 Q That sentence reads: In June 1999, the
16 emphasis on raising capital was reduced and the
17 company's CEO, Scott Sander, moved to California for the
18 summer.

09:28:25

19 Is that accurate?

20 A Yes.

09:28:38

21 Q The next sentence reads: From June through
22 August, Mr. Sander pursued countless business deals to
23 secure the digital distribution rights to motion
24 pictures.

25 Do you see that?

09:28:50

1 A Yes.

2 Q Is that accurate?

3 A Yes.

4 Q The next two sentences read: By September
5 1999, the company had slightly over 100 titles under

09:29:00

6 contract. The titles were largely unknown productions
7 from independent film producers.

8 Do you see that?

9 A Yes.

10 Q Is that accurate?

09:29:13

11 A I can't recall the licensing prior to September
12 1999 versus post-September '99, so the dates are a

13 bit -- it's hard for me to remember precisely when, for
14 example, the Miramax deal happened, Comedy Central deal,

15 a deal with Showtime. So it may be accurate within that
16 narrow time band, yes. It may be inaccurate because

09:29:41

17 those -- I can't recall, as I sit here today, when those
18 other agreements were signed.

19 Q The next sentence in that same paragraph

20 begins: Although, we did not have high expectations
21 that the films would sell well.

09:30:02

22 Do you see that?

23 A Yes.

24 Q Is that an accurate statement with respect to
25 the films as to which you secured distribution rights

09:30:13

1 during your summer-of-1999 stay in California?

2 A Partially.

3 Q Staying on 11100, the final sentence reads:

4 While negotiations with most of the major studios appear
5 to progress well, it was also clear that we would not
6 receive compelling studio-produced content for quite
7 some time.

09:30:44

8 Do you see that?

9 A Yes.

10 Q Is that accurate?

09:30:53

11 A Yes.

12 Q Turning to the next page of Exhibit 205,
13 page 1101, you will see in the second paragraph there's
14 a reference to September, the company raising
15 \$10 million from Binlong Trading.

09:31:22

16 Do you see that?

17 A What paragraph are you on?

18 Q The second paragraph.

19 A Yes.

20 Q And then three paragraphs later, it says that
21 by December, so two months later, the company estimated
22 that it would need to begin raising additional capital,
23 capital by April 2000.

09:31:41

24 Do you see that?

25 A Yes.

09:31:59

1 Q Is that accurate?

2 A Yes.

3 Q The next sentence reads: In general, the cash
4 fund rate exceeded the budget.

5 Do you see that?

09:32:15

6 A Yes.

7 Q Is that accurate?

8 A Yes.

9 Q The next sentence reads: Marketing and
10 promotional costs and legal costs related to patent
11 defense and patent filings were significantly over the
12 original budget.

09:32:28

13 Do you see that?

14 A Yes.

15 Q Is that accurate?

09:32:37

16 A Yes.

17 Q The next sentence reads: More importantly, the
18 company determined that it had to fund compelling
19 original programming for exclusive Internet
20 distribution.

09:32:51

21 Do you see that?

22 A Yes.

23 Q Was that accurate?

24 A Yes.

25 Q The second-to-last paragraph on the same page,

09:33:02

1 1101, begins: In late 1999, the company held
2 discussions with a number of strategic partner
3 candidates, and then that paragraph specifically
4 references Showtime and NBC Internet.

5 Do you see that?

09:33:16

6 A Yes.

7 Q Is that accurate?

8 A Yes.

9 Q The next paragraph says that Showtime and NBCI
10 disagreed with a valuation increase since the company's
11 available content remained the same and it did not
12 appear that quality content would be made available any
13 time soon.

09:33:28

14 Do you see that?

15 A Yes.

09:33:39

16 Q Is that accurate?

17 A I don't know.

18 Q That paragraph, as it transitions over to the
19 next page, page 1102, describes an offer that NBCI made
20 that involved \$7 million in promotion time and describes
21 SightSound rejecting that offer because, quote, the
22 company did not have anything specific to promote, end
23 quote.

09:34:02

24 Do you see that?

25 A Yes.

09:34:15

1 Q Is that accurate?

2 A I don't recall that, that offer.

3 Q In the middle of the page, 1102, the one, two,
4 three -- fourth paragraph in reads: The company did
5 have an existing relationship with Goldman Sachs. 09:34:44
6 Goldman had provided the company with corporate
7 financial advice and specifically represented the
8 company in certain equity-raising efforts.
9 Do you see that?

10 A I do. 09:34:55

11 Q Was that accurate?

12 MR. DiBOISE: Objection.

13 THE WITNESS: Yes.

14 BY MR. BATCHELDER:

15 Q The next two sentences read: Goldman was not 09:35:05
16 successful in securing any investor commitments. All of
17 the equity raised by the company was a result of
18 management's efforts.
19 Do you see that?

20 MR. DiBOISE: Objection. 09:35:17

21 THE WITNESS: I do.

22 BY MR. BATCHELDER:

23 Q Was that accurate?

24 A Yes.

25 Q On the bottom of that page, the final paragraph 09:35:23

1 begins with the sentence: After much consideration, the
2 company concluded that it was important to approach the
3 public capital markets.

4 Do you see that?

5 A I do.

09:35:38

6 Q Was that accurate?

7 A Yes.

8 Q In the next couple of sentences, it refers to
9 the reactions of the banks and says, The banks generally
10 believed that the timing was premature. Although banks
11 were extremely impressed with the system SightSound.com
12 built, most agreed that the company needed major studio
13 content.

09:35:53

14 Do you see that?

15 A Yes.

09:36:06

16 Q Is that accurate?

17 MR. DiBOISE: Objection.

18 THE WITNESS: I don't recall.

19 BY MR. BATCHELDER:

20 Q Do you recall communications from the banks to
21 that effect around this time?

09:36:18

22 A No.

23 Q The final sentence of page 1102 reads: The
24 banks challenged management to explain the need to go
25 public, notwithstanding the business concerns the banks

09:36:33

1 raised.

2 Do you see that?

3 A Yes.

4 Q Was that accurate?

5 MR. DiBOISE: Objection.

09:36:38

6 THE WITNESS: No.

7 BY MR. BATCHELDER:

8 Q What's inaccurate about it?

9 A My recollection is that the -- was the inverse.

10 When we went into registration, the back-and-forth with

09:37:02

11 bankers was about how we needed to show the necessary

12 use of funds to justify substantial capital raise, and,

13 at the time, our focus was twofold: Defending our

14 intellectual property rights and maintaining and

15 operating the system in anticipation of adoption of

09:37:34

16 digital download as the method of choice. And I would

17 characterize it as us wanting to be in more of a

18 tread-water mode and they wanted us to have a use of

19 funds that was substantial.

20 Q So it's your memory that the banks were

09:37:58

21 encouraging SightSound to go public as of this time

22 frame and SightSound was being more cautious?

23 A It's my memory that the banks were encouraging

24 every Internet company from the -- yes. They were,

25 essentially, encouraging all Internet companies to go

09:38:17

1 public.

2 Q My question was directed to SightSound.

3 MR. DiBOISE: Objection.

4 THE WITNESS: And we were an Internet company.

5 BY MR. BATCHELDER:

09:38:27

6 Q So the answer is yes, the banks were
7 encouraging SightSound to go public in this time frame?

8 MR. DiBOISE: Objection.

9 THE WITNESS: Well, the bank we worked with.

10 BY MR. BATCHELDER:

09:38:35

11 Q Which bank?

12 A WR Hambrecht.

13 Q On the top of page 1103 of Exhibit 205, it
14 says, in the first sentence, The company believes that
15 it should conduct an IPO for two reasons.

09:38:49

16 Do you see that?

17 A Yes.

18 Q And then the next paragraph begins with the
19 sentence: First, each major studio received a proposal
20 that involved the issuance of up to 16,500,000 shares of
21 SightSound.com common stock.

09:39:03

22 Do you see that?

23 A Yes.

24 Q Is that accurate?

25 A I think so, yes.

09:39:19

1 Q And how, if at all, did that relate to why the
2 company should or shouldn't have gone public as of this
3 time?

4 MR. DiBOISE: Objection.

5 THE WITNESS: The liquidity of the stock on
6 offer.

09:39:34

7 BY MR. BATCHELDER:

8 Q Can you explain your answer?

9 A If a studio, as a first mover, partnered with
10 us, it would be easier for them, as a publicly traded
11 company, to, its my understanding, deal with valuation
12 issues of our stock if it were publicly traded versus a
13 private share.

09:40:16

14 Q The final sentence in that paragraph on
15 page 1103 reads: The company believes that most of the
16 studios will not react to the proposal until the company
17 registers a public offering.

09:40:34

18 Do you see that?

19 A Yes.

20 Q Was that accurate?

09:40:43

21 A Yes.

22 MR. DiBOISE: Object.

23 BY MR. BATCHELDER:

24 Q The next paragraph on 1103 begins: Secondly
25 and more importantly, the company believes that the

09:40:54

1 organization that becomes public first in this newborn
2 industry will begin to define what movies over the
3 Internet means.

4 Do you see that?

5 A Yes.

09:41:05

6 Q Was that accurate?

7 MR. DiBOISE: Objection.

8 THE WITNESS: No.

9 BY MR. BATCHELDER:

10 Q What's inaccurate about it?

09:41:20

11 MR. DiBOISE: Objection.

12 THE WITNESS: I believe we already defined what
13 movies over the Internet meant as of the time that
14 Mr. LePore wrote this memorandum.

15 BY MR. BATCHELDER:

09:41:35

16 Q On page 1103, in the middle of the page,
17 there's a paragraph beginning with the word "generally."

18 Do you see that?

19 A Yes.

20 Q The final sentence of that paragraph reads:

09:41:45

21 From August 1st, 1995 through February 29, 2000, the
22 company recognized less than \$10,000 in gross revenue.

23 Do you see that?

24 A Yes.

25 Q Was that accurate?

09:41:58

1 A I have no reason to doubt it.

2 Q On the bottom of page 1103, the paragraph
3 beginning: Initially?

4 A Yes.

5 Q That says, in the second sentence, As WRH did
6 further due diligence, the bank began to question
7 whether SightSound could sustain a successful IPO. The
8 analyst who originally evaluated the company resigned
9 from WRH. Other analysts questioned the original
10 valuation based on additional research and analysis.

09:42:19

09:42:36

11 Do you see that?

12 A Yes.

13 Q Is that accurate?

14 A I don't know.

15 Q Turning to page 1104 of Exhibit 205 in the
16 second paragraph begins: On February 25th, 2000, the
17 company and Franchise Pictures entered into a five-year
18 exclusive worldwide Internet distribution deal.

09:42:47

19 Do you see that?

20 A Yes.

09:43:06

21 Q And what did Franchise Pictures provide to
22 SightSound in connection with that deal?

23 A I don't recall.

24 Q The paragraph references Franchise Pictures
25 receiving an equity stake in the company.

09:43:25

1 Do you see that?

2 A Yes.

3 Q What was the equity stake?

4 A My recollection is that it was conditional upon
5 delivery of titles for -- for distribution. I don't
6 know if that was ever consummated.

09:43:36

7 Q What would the equity stake have been if it had
8 been consummated?

9 A I don't remember.

10 Q And roughly how many titles were involved?

09:43:54

11 A It says here 35, at least 35.

12 Q Can you ballpark what the equity stake would
13 have been for those 35 movies?

14 MR. DiBOISE: Objection.

15 THE WITNESS: No.

09:44:09

16 BY MR. BATCHELDER:

17 Q The final sentence of that paragraph said the
18 transaction is expected to close by March 31st, 2000.

19 Do you see that?

20 A Yes.

09:44:19

21 Q Did it close?

22 A I don't know.

23 Q The next paragraph references Miramax Films.

24 Do you see that?

25 A Yes.

09:44:29

1 Q And it says, We issued common stock to them in
2 exchange for Internet distribution rights.

3 Do you see that?

4 A Yes.

5 Q What percentage stake in the company did
6 Miramax receive?

09:44:36

7 A I can't recall.

8 Q Can you estimate it?

9 A I think maybe they own 1 percent of Holdings,
10 which would represent half a percent of LLC.

09:45:09

11 Q And that was conferred to Miramax in exchange
12 for it doing what?

13 MR. DiBOISE: Objection.

14 THE WITNESS: Agreeing to release content.

15 BY MR. BATCHELDER:

09:45:23

16 Q How much content?

17 MR. DiBOISE: Objection.

18 THE WITNESS: I believe it was 12 pictures.

19 BY MR. BATCHELDER:

20 Q There's a series of bullet points on
21 page 1104 --

09:45:44

22 A Yes.

23 Q -- and underneath that there's a sentence:

24 Based on these developments, WRH believes the company

25 has a current market capitalization between 250 and

09:45:54

1 \$300 million.

2 Do you see that?

3 MR. DiBOISE: Can I -- where -- where are you?

4 Oh, sorry.

5 THE WITNESS: Yes.

09:46:04

6 BY MR. BATCHELDER:

7 Q Do you see the sentence I just read, sir?

8 A I do.

9 Q Did WRH communicate that belief to SightSound
10 at this time?

09:46:13

11 MR. DiBOISE: Objection.

12 THE WITNESS: I think so.

13 BY MR. BATCHELDER:

14 Q Did SightSound pay taxes based on that
15 valuation?

09:46:23

16 A I don't --

17 MR. DiBOISE: Objection.

18 THE WITNESS: I don't know.

19 BY MR. BATCHELDER:

20 Q The final -- excuse me, the second-to-last
21 paragraph on page 1104 says -- it begins with the phrase
22 "By early 1998."

09:46:34

23 Do you see that?

24 A Yes.

25 Q And the fourth sentence in says: The company

09:46:48

1 increased its share price to \$1.50, reflecting a
2 post-money enterprise value of roughly \$50 million.

3 Do you see that?

4 A Yes.

5 Q It goes on to say, More than anything, this
6 reflected what the company believed someone would have
7 to pay to acquire it.

09:47:03

8 Do you see that?

9 A Yes.

10 Q Was that accurate?

09:47:16

11 A I don't know.

12 Q At the time did you have a view that
13 \$50 million or thereabouts would be a fair selling price
14 for SightSound?

15 MR. DiBOISE: Objection.

09:47:40

16 THE WITNESS: I don't recall an interest in
17 selling out.

18 BY MR. BATCHELDER:

19 Q Whether or not you were interested in selling
20 out at the time, did you view \$50 million or thereabouts
21 as a fair selling price for SightSound?

09:47:47

22 MR. DiBOISE: Objection.

23 THE WITNESS: I didn't think of it that way.

24 BY MR. BATCHELDER:

25 Q How did you think of it?

09:48:02

1 MR. DiBOISE: Objection.

2 THE WITNESS: I wanted to build it.

3 BY MR. BATCHELDER:

4 Q Staying with that same paragraph on page 1104
5 of Exhibit 205, the last sentence reads: At the time,
6 the company believed that the commercial viability of
7 movies over the Internet was 10 years away, but an
8 immediate opportunity in music distribution was well
9 within its grasp.

09:48:16

10 Do you see that?

09:48:35

11 A Yes.

12 Q Was that an accurate statement describing early
13 1998?

14 MR. DiBOISE: Objection.

15 THE WITNESS: No.

09:48:40

16 BY MR. BATCHELDER:

17 Q What's inaccurate about it?

18 MR. DiBOISE: Objection.

19 THE WITNESS: We never made a distinction.

20 From 1995, if one looks at the original SightSound
21 website, we talk of music and movies over the Internet.
22 It was always our strategy to defend the IP that covered
23 both, and, at times, our strategy reflected either
24 operationally distribution of music or distribution of
25 movies to prove the concept, but it was possible from

09:48:59

09:49:22

1 the day we did everything. So by definition, it wasn't
2 10 years away. We did it in April of 1999.

3 BY MR. BATCHELDER:

4 Q The final paragraph on page 1104 of Exhibit 205
5 begins with this sentence, quote: By late 1999, the
6 company was still in a developmental stage but
7 repositioned to execute on a movies-over-the-Internet
8 strategy.

09:49:51

9 Do you see that?

10 A Yes.

09:50:03

11 Q Is that accurate?

12 A As to distribution, yes.

13 Q Turning to the final page of Exhibit 205, the
14 top paragraph has a final sentence that begins: As of
15 December 31st, 1999, the company store consists of
16 largely unknown independent titles.

09:50:31

17 Do you see that?

18 A Yes.

19 Q Was that accurate?

20 MR. DiBOISE: Objection.

09:50:43

21 THE WITNESS: Yes.

22 BY MR. BATCHELDER:

23 Q The next sentence says, Thus, the company finds
24 itself at the end of the year in a position akin to
25 building a shopping center and not having any tenants.

09:50:57

1 Do you see that?

2 A Yes.

3 Q Is that a fair analogy?

4 MR. DiBOISE: Objection.

5 THE WITNESS: Yes, as to distribution.

09:51:05

6 (Discussion off the stenographic record.)

7 MR. BATCHELDER: Let's -- let's not mark this.

8 Is it already marked? Yeah, let's just take it off

9 because it's already been marked in this case. I've

10 already done that by mistake a couple of times, but.

09:52:47

11 MR. DiBOISE: Thank you. What's the number?

12 MR. BATCHELDER: 125.

13 Q I've handed you a document that's been marked

14 as Exhibit 2 -- 125 in this matter and spans the Bates

15 range SST-10196 through 10424, and the cover page is

09:53:01

16 titled "GE/SightSound Signing and Closing Deliveries in

17 Connection with the Asset Purchase Agreement," and it

18 goes on from there.

19 Have you seen this document before?

20 MR. DiBOISE: Objection.

09:53:27

21 THE WITNESS: Yes.

22 BY MR. BATCHELDER:

23 Q What do you understand it to be?

24 MR. DiBOISE: Objection.

25 THE WITNESS: As titled on the front page, the

09:53:35

1 Asset Purchase Agreement.

2 BY MR. BATCHELDER:

3 Q The --

4 A And related documents.

5 Q Thank you.

09:53:55

6 If I could ask you to turn to the page ending
7 in 199, it's just a few pages in.

8 A Yes.

9 Q This is titled "Asset Purchase Agreement."

10 Do you see that?

09:54:14

11 A I do.

12 Q And what do you understand this document to be?

13 A The Asset Purchase Agreement between DMT
14 Licensing and SightSound Technologies.

15 Q If I could ask you to turn to the signature
16 page -- it's on page 229 -- does that bear your
17 signature?

09:54:26

18 A It does.

19 Q What was your role in negotiating this Asset
20 Purchase Agreement with DMT?

09:54:47

21 A I represented SightSound Technologies, its
22 board and shareholders.

23 Q Were you the lead negotiator?

24 A I was.

25 Q If we could turn to page 6 of the agreement,

09:55:02

1 which is Bates-stamped 203, I'm looking at

2 Provision 2.2, Purchase Price.

3 Are you there?

4 A Yes.

5 Q And it references the amount of \$1 in

09:55:20

6 Provision A.

7 Do you see that?

8 A Yes.

9 Q How was that amount arrived at?

10 A The purpose of the sale was to participate at a

09:55:33

11 level of 50 percent in the future value of the patent

12 portfolio. It's my understanding that a -- an actual

13 sum that exceeded zero needed to be exchanged for legal

14 purposes. I'm not a lawyer, but that was my

15 understanding.

09:56:04

16 Q When you say that "The purpose of the sale was

17 to participate at a level of 50 percent in the future

18 value of the patent portfolio," what did you mean?

19 A It was -- that we were entering into an

20 arrangement with General Electric where we would split

09:56:26

21 the value.

22 Q Other than -- first of all, did GE ever pay

23 that \$1?

24 A I believe they did. I don't -- I don't recall.

25 I recall the closing, but I assumed it was a dollar

09:56:59

1 exchanged hands that night.

2 Q Okay. And other than that \$1 and -- well,
3 strike that, please.

4 Let me ask you to turn to page 14 of the
5 agreement, which ends in page 211 of the Bates numbers.
6 I'm looking at Provision 7.2, which actually begins on
7 page 13 and kicks over to the following page.

09:57:17

8 Are you there?

9 A Yes.

10 Q So other than the provisions within 7.2C and
11 the \$1 that we talked about in connection with
12 Section 2.2, did GE have any monetary obligations to
13 SightSound in connection with this agreement?

09:57:35

14 MR. DiBOISE: Objection.

15 THE WITNESS: What do you mean by "monetary
16 obligations"?

09:57:58

17 MR. BATCHELDER: Obligation to pay money.

18 MR. DiBOISE: Objection.

19 THE WITNESS: Yes.

20 BY MR. BATCHELDER:

09:58:12

21 Q What?

22 A As previously stated, the participation in
23 moneys derived from the value of the patents.

24 Q Isn't that referenced in 7.2C?

25 MR. DiBOISE: Objection.

09:58:30

1 THE WITNESS: Yes.

2 BY MR. BATCHELDER:

3 Q Okay. So we may have talked past each other,
4 but what I was trying to get at is: Other than the
5 monetary obligations set forth in paragraph 7.2C and the 09:58:47
6 \$1 referenced in paragraph 2.2 of the Asset Purchase
7 Agreement, did GE or DMT have any monetary obligations
8 that were incurred, in your understanding?

9 MR. DiBOISE: Object.

10 THE WITNESS: Yes. 09:59:07

11 BY MR. BATCHELDER:

12 Q And what other obligations?

13 A Funding the operations of SightSound.

14 Q Is that obligation something other than what's
15 set forth in 7.2C? 09:59:19

16 MR. DiBOISE: Objection.

17 THE WITNESS: No.

18 BY MR. BATCHELDER:

19 Q So those are in 7.2C also?

20 A Yes. 09:59:38

21 Q Okay. So coming back to my question: Other
22 than the \$1 from paragraph 2.2 and other than the
23 obligations of paragraph 7.2C, did GE or DMT undertake
24 any other monetary obligations in this agreement?

25 MR. DiBOISE: Objection. 09:59:55

1 THE WITNESS: I don't know. I don't -- I don't
2 know if I understand the distinction.

3 BY MR. BATCHELDER:

4 Q Between what?

5 A The monetary obligations of GE. They
6 precede -- the 7.2C references them recapturing that
7 money that they have invested. That's my understanding.
8 So to use your terminology, I think maybe we are talking
9 past each other.

10:00:04

10 Q I think I understand your point, but the --
11 what's being recaptured there is money that they were
12 otherwise obligated to spend?

10:00:41

13 A Correct.

14 Q Okay. And so other than -- other than the --
15 the financial obligations corresponding to that, that
16 would be recaptured under paragraph 7.2C and the \$1 in
17 paragraph 2.2, were there any other monetary obligations
18 that GE or DMT undertook in connection with this
19 agreement?

10:00:56

20 A No.

10:01:17

21 Q If I could ask you to turn to the Bates page
22 ending 230?

23 A Yes.

24 Q This is Exhibit A to the agreement we have been
25 discussing; is that right?

10:01:39

1 A It is.

2 Q And in the far left-hand column at the very
3 top, it says A/V e-commerce patents.

4 Do you see that?

5 A Yes.

10:01:50

6 Q What is A/V?

7 A It's -- I believe it's shorthand for
8 audio/video.

9 Q There are four entries under the first heading
10 for country. The first three are the patents-in-suit in
11 this matter; correct? 10:02:06

12 A Yes.

13 Q And then the fourth reference -- references an
14 application in progress.

15 Do you see that?

10:02:18

16 A It says in process.

17 Q In process. Thank you.

18 A Yes, I do.

19 Q And what is that?

20 A That was --

10:02:26

21 MR. DiBOISE: Objection.

22 THE WITNESS: -- reference to application in
23 process at the time of the closing.

24 BY MR. BATCHELDER:

25 Q Does that application still exist?

10:02:34

1 MR. DiBOISE: Objection.

2 THE WITNESS: I don't believe so.

3 BY MR. BATCHELDER:

4 Q Did it issue as a patent?

5 MR. DiBOISE: Objection.

10:02:41

6 THE WITNESS: I don't think so.

7 BY MR. BATCHELDER:

8 Q In your understanding, what became of it?

9 A I don't know.

10 Q Do you have any understanding?

10:02:52

11 A I know that it -- it does not -- I believe that
12 it does not exist as an ongoing application or patent.

13 Q And what's the basis of that?

14 A I don't recall.

15 Q Do you have any other information other than
16 what you have shared with me about how it came to no
17 longer exist?

10:03:08

18 MR. DiBOISE: To the extent that that question
19 would require you to divulge any information and
20 discussions exchanged between yourself or others in
21 SightSound and patent counsel, I would caution you not
22 to reveal those discussions in answer to this question.

10:03:24

23 Do you understand my admonition?

24 THE WITNESS: Yes.

25 MR. DiBOISE: Can you answer the question?

10:03:40

1 THE WITNESS: No.

2 MR. DiBOISE: Then I instruct you not to answer
3 the question.

4 BY MR. BATCHELDER:

5 Q Are you going to follow that instruction?

10:03:47

6 A I am.

7 Q If I could ask you to turn to the Bates page
8 ending in 233 of Exhibit 2 titled "License Agreements."

9 Do you see that?

10 A Yes.

10:04:00

11 Q The first sentence reads: SightSound
12 Technologies, Inc., does not have any existing License
13 Agreements with any third parties.

14 Do you see that?

15 A Yes.

10:04:10

16 Q Was that accurate at the time?

17 MR. DiBOISE: Objection.

18 THE WITNESS: Yes.

19 BY MR. BATCHELDER:

20 Q Was that accurate as to all SightSound entities
21 at the time?

10:04:17

22 MR. DiBOISE: Objection.

23 THE WITNESS: All SightSound -- at the time of
24 this document, there was only one SightSound entity.

25 Well, I guess at the -- yeah, I -- I don't -- I don't

10:04:31

1 recall. I mean, I'm confused by your question
2 because -- not to put too fine a point on it, but at the
3 moment that this deal closed, there was SightSound
4 Technologies Holdings and DMT Licensing, and I'm not
5 aware, as I sit here today, of any licenses other than
6 the referenced settlement with BeMusic.

10:04:58

7 BY MR. BATCHELDER:

8 Q What about the License Agreement we discussed
9 yesterday with Henry Moore; had that expired --

10 MR. DiBOISE: Objection.

10:05:25

11 BY MR. BATCHELDER:

12 Q -- as of the time that exhibit -- as of the
13 time that the DMT agreement was entered into?

14 MR. DiBOISE: Objection.

15 THE WITNESS: I believe so.

10:05:25

16 BY MR. BATCHELDER:

17 Q Would you turn, please, to the page within
18 Exhibit 20- -- excuse me, within Exhibit 125 to the
19 Bates ending 263. This has a heading "SightSound
20 Preliminary Operating Plan."

10:06:01

21 Do you see that?

22 A Yes.

23 Q And who prepared this document?

24 MR. DiBOISE: Objection.

25 THE WITNESS: GE.

10:06:07

1 BY MR. BATCHELDER:

2 Q Did you have any role in preparation of this
3 document?

4 MR. DiBOISE: Objection.

5 THE WITNESS: No.

10:06:35

6 BY MR. BATCHELDER:

7 Q The first sentence of page 263 reads: The
8 operating plan contemplates the commercialization of the
9 subject patents into two markets: Audio On Demand and
10 Hotel Video On Demand.

10:07:00

11 Do you see that?

12 A Yes.

13 Q Was that accurate?

14 MR. DiBOISE: Objection.

15 THE WITNESS: No.

10:07:06

16 BY MR. BATCHELDER:

17 Q What's inaccurate about it?

18 MR. DiBOISE: Objection.

19 THE WITNESS: The operating plan. This was a
20 form of operating plan that was supposed to be created
21 at the time provided for in the provisions that are
22 inside this document, which didn't trigger until
23 emergence from re-examination.

10:07:33

24 BY MR. BATCHELDER:

25 Q Is the first sentence on page 263 accurate of

10:07:57

1 the operating plan that was to go into effect upon
2 emergence from re-examination?

3 MR. DiBOISE: Objection.

4 THE WITNESS: I believe I've answered that.

5 This was a -- let me try it in a different word -- a
6 place holder as to format for the actual operating plan
7 that had not been developed, because it was not
8 necessary until after emergence from re-examination.

10:08:17

9 BY MR. BATCHELDER:

10 Q There is a reference here to Hotel Video On
11 Demand.

10:08:39

12 Has SightSound communicated to proprietors of
13 Hotel Video On Demand a belief that they are infringing?

14 MR. DiBOISE: Hold on a second.

15 You can answer "yes" or "no" or "I don't know."

10:09:08

16 THE WITNESS: No.

17 BY MR. BATCHELDER:

18 Q Has SightSound --

19 A May I ask for a clarification? Are we talking
20 about -- I misunderstood your -- your sentence -- or
21 your question, because I thought we were referencing
22 this moment in time of this document. Could you re-ask
23 that question? Did you mean in the arc of all time?

10:09:34

24 Q That's what I meant.

25 A I do not know.

10:09:49

1 Q Has SightSound ever communicated to Microsoft a
2 belief that Microsoft infringes any of the
3 patents-in-suit in this matter?

4 A Yes.

5 Q And what activities of Microsoft has SightSound 10:10:22
6 communicated to Microsoft that SightSound believes are
7 infringing?

8 MR. DiBOISE: Objection.

9 THE WITNESS: I should clarify. I don't know
10 if we communicated that they are infringing. I'm highly 10:10:52

11 confident that we communicated that we did not grant
12 them a license for any of their Zune products or
13 marketplace, for example. So as to an affirmative
14 statement that they are infringing, that's -- that's the
15 purview of our patent and legal -- patent lawyers and -- 10:11:15

16 and -- but I think Microsoft is well aware of the
17 SightSound patents and was made aware and with proper
18 notification when they launched various products and
19 services.

20 BY MR. BATCHELDER: 10:11:41

21 Q What time frame is associated with those
22 communications?

23 A 2004.

24 Q Nothing recent?

25 A I don't know. 10:11:55

1 Q If there had been recent communications with
2 Microsoft on those subjects, would you expect to know
3 about them?

4 A No.

5 Q Why not?

10:12:08

6 A Because our partner in this venture is General
7 Electric, and I can't know all interactions that General
8 Electric has with Microsoft, MSNBC, etc. There are
9 large companies with multiple linkages.

10 Q Has SightSound communicated to LodgeNet that
11 SightSound believes LodgeNet has infringed any of the
12 patents-in-suit?

10:12:29

13 MR. DiBOISE: Objection.

14 THE WITNESS: I don't know.

15 BY MR. BATCHELDER:

10:12:44

16 Q Has SightSound approached LodgeNet to take a
17 license to any of the patents-in-suit?

18 MR. DiBOISE: Objection.

19 THE WITNESS: I don't know.

20 BY MR. BATCHELDER:

10:12:53

21 Q Are you aware of any communications not
22 involving attorneys about whether LodgeNet practices any
23 of the patents-in-suit?

24 MR. DiBOISE: Hold on.

25 Objection.

10:13:05

1 THE WITNESS: I am not.

2 BY MR. BATCHELDER:

3 Q If I could ask you to turn to page 279, this is
4 titled "Schedule 2.1, List of Encumbrances."

5 Do you see that?

10:13:30

6 A I do.

7 Q Do these encumbrances still exist?

8 MR. DiBOISE: Objection.

9 THE WITNESS: I don't believe -- I don't
10 believe Mr. Schwartz's does.

10:13:56

11 BY MR. BATCHELDER:

12 Q Did Mr. Schwartz actually take out a lien on
13 some SightSound assets?

14 MR. DiBOISE: Objection.

15 THE WITNESS: I don't know.

10:14:08

16 BY MR. BATCHELDER:

17 Q Did Kenyon & Kenyon take out a lien on
18 Sightset's -- SightSound's assets?

19 MR. DiBOISE: Objection.

20 THE WITNESS: I don't know.

10:14:18

21 BY MR. BATCHELDER:

22 Q If you look at the next page, page 280 of that
23 Exhibit 125, you will see a letter from Kenyon & Kenyon
24 referring, in the second paragraph, to extending the
25 deadline on foreclosure of the lien.

10:14:37

1 Do you see that?

2 A Yes.

3 Q And in the next paragraph, it refers to having
4 an option to, among other things, 10 percent of the
5 income received by SightSound under its agreement with
6 GE.

10:14:52

7 Do you see that?

8 A Yes.

9 Q And what agreement with GE is it referring to?
10 MR. DiBOISE: Objection.

10:15:01

11 THE WITNESS: I'm not the lawyer, but it is my
12 understanding that this -- this substantial document
13 required, at the moment of the closing, for lienholders
14 of SightSound to stand still, if you will, in
15 anticipation of the patents re-emerging -- emerging from
16 re-examination, and so that's -- that's my general
17 understanding. The agreement is not to move on -- on
18 any outstanding -- outstanding obligations.

10:15:34

19 BY MR. BATCHELDER:

20 Q Is it your understanding that Kenyon & Kenyon,
21 in connection with this transaction, now has an option
22 on 10 percent of the income received by SightSound under
23 its agreement with GE?

10:15:51

24 MR. DiBOISE: Objection.

25 THE WITNESS: No.

10:16:05

1 BY MR. BATCHELDER:

2 Q And how is what I just said inconsistent with
3 your understanding?

4 MR. DiBOISE: Objection.

5 THE WITNESS: Time frame has passed.

10:16:21

6 BY MR. BATCHELDER:

7 Q Would you explain?

8 MR. DiBOISE: Objection.

9 THE WITNESS: The -- it's my understanding that
10 they do not currently hold the 10 percent option right.

10:16:43

11 BY MR. BATCHELDER:

12 Q And what resulted in that change in
13 circumstances?

14 A The time -- the time frame had passed.

15 Q What time frame?

10:16:57

16 MR. DiBOISE: Objection.

17 THE WITNESS: My recollection that there's a --
18 there was a specific period of time after emergence from
19 re-examination and that that -- that triggered their
20 requirement to decide whether to exercise their option
21 or not, and that time frame has passed.

10:17:12

22 MR. BATCHELDER: I see.

23 Q If I could ask you to turn to page 290, this is
24 a page with the heading "Collaborative Approach to Value
25 Creation."

10:17:55

1	A	Yes.	
2	Q	The second bullet point on this page refers to	
3		the nonrevenue-generating e-commerce patent portfolio.	
4		Do you see that?	
5	A	Yes.	10:18:06
6	Q	Is that a reference to the patents-in-suit?	
7		MR. DiBOISE: Objection.	
8		THE WITNESS: I think so.	
9		MR. BATCHELDER: Why don't we take a quick	
10		break.	10:18:35
11		THE WITNESS: Okay.	
12		THE VIDEOGRAPHER: Off the record at 10:17.	
13		(Recess taken.)	
14		THE VIDEOGRAPHER: On the record at 10:26.	
15		(Exhibit 206 was marked for identification by	10:26:55
16		the Court Reporter.)	
17		MR. BATCHELDER: I've had marked, as	
18		Exhibit 206, a document spanning the Bates range	
19		STI-13552 through 13633.	
20	Q	Do you recognize this document?	10:27:19
21	A	Yes.	
22	Q	What do you recognize it to be?	
23	A	Registration Form S-1.	
24	Q	Was this filed by SightSound with the	
25		Securities and Exchange Commission?	10:27:36

1 MR. DiBOISE: Objection.

2 THE WITNESS: I don't remember.

3 BY MR. BATCHELDER:

4 Q Did SightSound file an SK -- or, excuse me, S-1
5 with the Securities and Exchange Commission?

10:27:51

6 A I know it was in -- I don't remember. I know
7 it was in preparation, but I can't recall when the
8 offering was withdrawn or whether it was not submitted.
9 I don't know.

10 Q Was this generated on or about April 20th,
11 2000? That appears to be the date on the top.

10:28:09

12 A Okay.

13 MR. DiBOISE: Objection.

14 BY MR. BATCHELDER:

15 Q Was it generated on or about that date?

10:28:28

16 A It appears to have been.

17 Q Okay. And did you review this document for
18 accuracy?

19 MR. DiBOISE: Objection.

20 THE WITNESS: I don't recall that.

10:28:42

21 BY MR. BATCHELDER:

22 Q What was your role in its preparation, if any?

23 A Meetings with investment bankers.

24 Q Did you have any role in actually creating the
25 content?

10:28:53

1 A I would characterize it as being interviewed by
2 the investment bankers.

3 Q Did you draft any content?

4 A I don't believe so.

5 Q Did you edit any of the content?

10:29:03

6 A I don't think so.

7 Q If I could ask you to turn to the page ending
8 in 556.

9 A Yes.

10 Q The last paragraph reads: We are a
11 development-stage company and have experienced net
12 losses since our inception in 1995. We intend to invest
13 aggressively to implement our strategy and expect to
14 continue to incur net losses for the foreseeable future.

10:29:22

15 Do you see that?

10:29:40

16 A I do.

17 Q Was that accurate at the time?

18 MR. DiBOISE: Objection.

19 THE WITNESS: I think that's a requirement of
20 the lawyers to put that kind of language in a document
21 such as this.

10:30:00

22 BY MR. BATCHELDER:

23 Q The question is: Is it an accurate statement,
24 or was it as of the time, April 2000?

25 A I don't know.

10:30:13

1 MR. DiBOISE: Objection.

2 BY MR. BATCHELDER:

3 Q So you are not sure one way or the other?

4 A Well --

5 MR. DiBOISE: Objection.

10:30:22

6 THE WITNESS: -- I can't speculate as to what
7 the lawyers wanted "foreseeable future" to mean.

8 MR. DiBOISE: You should read the question if
9 you can't understand it.

10 BY MR. BATCHELDER:

10:30:35

11 Q If I could ask you to turn to the page ending
12 in 558, it's titled "Summary Financial Data."

13 Do you have any reason to believe that these
14 data were inaccurate at the time?

15 MR. DiBOISE: Objection.

10:30:50

16 THE WITNESS: No.

17 BY MR. BATCHELDER:

18 Q Looking at the right-hand column, it addresses
19 the period August 1st, 1995 through December 31st, 1999.

20 Do you see that?

10:31:16

21 A Yes.

22 Q And it refers to August 1st, 1995 as inception?

23 A Okay.

24 Q It looks like the net loss associated with that
25 period was \$8,773,000 -- excuse me, \$8,773,250.

10:31:32

1 Is that your reading of it also?

2 A Yes.

3 Q If I can ask you to turn to the page ending in
4 561, please, about three-quarters of the way down that
5 page, there's a paragraph beginning: We currently
6 derive.

10:32:23

7 Do you see that?

8 A Yes.

9 Q The first sentence in that paragraph reads: We
10 currently derive substantially all of our revenue from
11 the rental and sale of movies, and we expect this to
12 continue.

10:32:34

13 Do you see that?

14 A Yes.

15 Q Was that accurate at the time?

10:32:48

16 MR. DiBOISE: Objection.

17 THE WITNESS: As to the distribution strategy.

18 BY MR. BATCHELDER:

19 Q As to the distribution strategy, the answer is
20 yes?

10:33:22

21 A Yes.

22 Q Why was it that as of April 2000, SightSound
23 had derived and expected to continue to derive
24 substantially all of its revenue from the rental and
25 sale of movies as opposed to audio signals?

10:33:44

1 MR. DiBOISE: Objection.

2 THE WITNESS: As to distribution, it was based
3 on the content on our site.

4 BY MR. BATCHELDER:

5 Q Would you elaborate on that answer.

10:34:03

6 MR. DiBOISE: Objection.

7 THE WITNESS: There were more video recordings
8 than audio recordings.

9 BY MR. BATCHELDER:

10 Q Is that because SightSound had invested more in
11 developing its video content than audio content?

10:34:22

12 MR. DiBOISE: Objection.

13 THE WITNESS: No.

14 BY MR. BATCHELDER:

15 Q What is the reason?

10:34:38

16 MR. DiBOISE: Objection.

17 THE WITNESS: Willingness of the copyright
18 holders.

19 BY MR. BATCHELDER:

20 Q If you look at page 562, you will see there's
21 a -- a paragraph followed by a series of bullets that
22 begins -- about a third of the way down the page begins:
23 Many of our current and potential competitors have
24 substantial advantages over us.

10:34:49

25 Do you see that?

10:35:09

1 A I'm sorry. Where are you?

2 Q I'm on the page ending 562.

3 A Okay.

4 Q And about a third of the way down, there's a
5 set of bullets, the first being: Longer operating
6 histories.

10:35:24

7 A Yes.

8 Q So I'm looking at the sentence right over that
9 list of bullets. The sentence reads: Many of our
10 current and potential competitors have substantial
11 advantages over us.

10:35:37

12 Do you see that?

13 A Yes.

14 Q And then it lists some of those substantial
15 advantages. It lists five of them. One is: Longer
16 operating histories.

10:35:45

17 Do you see that?

18 A Yes.

19 Q Do you agree that that was a substantial
20 advantage of SightSound's competitors over SightSound?

10:35:55

21 MR. DiBOISE: Objection.

22 THE WITNESS: Yes.

23 BY MR. BATCHELDER:

24 Q The second reason listed is: Significantly
25 greater financial, technical, and marketing resources.

10:36:27

1 Do you agree that that was a substantial
2 advantage of SightSound's competitors over SightSound?

3 A Yes.

4 MR. DiBOISE: Objection.

5 BY MR. BATCHELDER:

10:36:40

6 Q The next advantage listed is: Greater brand
7 name recognition.

8 Do you agree that that was a substantial
9 advantage of SightSound's competitors over SightSound?

10 MR. DiBOISE: Objection.

10:36:51

11 THE WITNESS: Yes.

12 BY MR. BATCHELDER:

13 Q The next advantage listed is: Larger existing
14 customer basis.

15 Do you agree that that was a substantial
16 advantage of SightSound's competitors over SightSound?

10:37:03

17 MR. DiBOISE: Objection.

18 THE WITNESS: Yes.

19 BY MR. BATCHELDER:

20 Q The final advantage listed is: More popular
21 content.

10:37:16

22 Do you agree that that was a substantial
23 advantage of SightSound's competitors over SightSound?

24 A No.

25 Q Why not?

10:37:26

1 A Circa April 2000, more popular content was not
2 widely available through any competitor.

3 Q Do you have an understanding as to how that
4 phrase became a part of this list if your perception is
5 correct?

10:38:04

6 A Because lawyers make us put risk factors in all
7 these documents.

8 Q If I could ask you to turn to page 564, there's
9 a heading at the top "We are Dependent on Software
10 Developed by Third Parties."

10:38:22

11 Do you see that?

12 A I do.

13 Q The sentence under that says, We currently
14 depend on Microsoft's Windows Media Technologies and
15 Windows Media Rights Manager software for our video and
16 audio compression and encryption capabilities.

10:38:34

17 Do you see that?

18 A Yes.

19 Q Was that accurate?

20 A I don't know.

10:38:46

21 Q Could I ask you to turn to the page ending in
22 599. At the top it's titled "Executive Compensation,"
23 and there is a summary compensation table.

24 Do you see that table?

25 A Yes.

10:39:26

1 Q Do you have any reason to doubt the accuracy of
2 the financial information in that table?

3 A No.

4 Q Looking at the entries corresponding to you, do
5 you believe that those are accurate recitations of your
6 salary and other compensation during the years 1997,
7 '98, and '99.

10:39:40

8 A I guess so.

9 Q You don't have any reason to doubt it as you
10 sit here?

10:39:57

11 A No, I don't.

12 Q Okay.

13 MR. DiBOISE: We need a quick break to speak
14 with the witness about a matter of privilege.

15 THE VIDEOGRAPHER: This is the end of Disc 1.

10:40:06

16 Off the record at 10:39.

17 (Recess taken.)

18 THE VIDEOGRAPHER: This is Disc 2 of Scott --
19 Volume -- Disc 2, Volume 2 of Scott Sander.

20 On the record at 10:43.

10:44:11

21 BY MR. BATCHELDER:

22 Q Mr. Sander, we left off on Exhibit 206. One
23 last entry I want to ask you about on page 599. This
24 was the Executive Compensation page. For 1999, you have
25 a salary of \$187,500, and then 2007, \$100 of other

10:44:33

1 annual compensation.

2 Do you see that?

3 A Yes.

4 Q What was the other annual compensation?

5 A I don't recall.

10:44:45

6 (Exhibit 207 was marked for identification by
7 the Court Reporter.)

8 THE WITNESS: Thank you.

9 MR. BATCHELDER: I've had marked, as

10 Exhibit 207, a document with the Bates range SST-7870

10:45:21

11 through 7876.

12 Q Do you recognize this document?

13 A Yes.

14 Q What do you recognize it to be?

15 A The Settlement Agreement between SightSound

10:45:40

16 Technologies and BeMusic.

17 Q Is that your signature on page 875?

18 A Yes.

19 Q Were you SightSound's principal negotiator?

20 A No.

10:46:02

21 Q Who was?

22 A Our patent lawyers.

23 Q What role, if any, did you have in the
24 negotiation of this Settlement Agreement?

25 A Strategic.

10:46:19

1 Q Did you have any role communicating with the
2 other side?

3 A I did.

4 Q Would you describe that role.

5 A I believe we were -- I believe we met --

10:46:36

6 MR. DiBOISE: Objection.

7 I don't know how to deal with this, and I
8 apologize to you, but I know that I'm going to assert an
9 instruction here, but he's not answering your question,
10 so I don't know how to handle this, Jim, and I'm just

10:47:08

11 being candid with you. He's about to discuss a
12 mediation session that is subject to privilege. And if
13 I'm wrong, could you ask him if that's what this was
14 about so I can get the record straight?

15 MR. BATCHELDER: Sure.

10:47:23

16 Q I don't -- I'm not asking you about the content
17 of any mediation session, but if you participated in a
18 mediation, you could say that much, I think, on the
19 record.

20 A I did.

10:47:31

21 Q Okay. Beyond participating in a mediation
22 session, did you have any other role in connection with
23 the settlement of this matter?

24 A No.

25 Q Okay. When you signed the agreement, did you

10:47:41

1 believe you understood its terms?

2 A Yes.

3 Q It appears, in Provision 2, that there was a
4 \$3,300,000 payment to SightSound.

5 Did that payment get made?

10:48:04

6 A Yes.

7 Q How did you come to that number?

8 MR. DiBOISE: Objection.

9 THE WITNESS: I'm not -- I don't think that I
10 can disclose how I came -- how we came to that number
11 because it was us and the lawyers making --

10:48:30

12 MR. DiBOISE: So to the extent that that
13 question requires you to disclose attorney-client
14 information, I would admonish you not to reveal in
15 answer to that question.

10:48:51

16 Do you understand that?

17 THE WITNESS: I do.

18 MR. DiBOISE: Okay. Now, he's asking you how
19 did you come to that number, and I don't know what he
20 means by "you," so --

10:48:58

21 THE WITNESS: I didn't come to that number.

22 BY MR. BATCHELDER:

23 Q What was the -- the basis for that number?

24 MR. DiBOISE: To the extent that that -- the
25 answer to that question involves the revelation of

10:49:11

1 communications you had with counsel, I would admonish
2 you not to reveal such consultations with counsel in
3 response to that question.

4 Do you understand that admonition?

5 THE WITNESS: Yes. 10:49:25

6 MR. DiBOISE: Can you answer the question?

7 THE WITNESS: No.

8 MR. DiBOISE: I instruct you not to answer on
9 the basis of work product and attorney-client
10 communication. 10:49:32

11 BY MR. BATCHELDER:

12 Q Are you going to follow that instruction?

13 A I am.

14 Q Was there communication between SightSound and
15 BeMusic about the basis for the calculation of
16 \$3,300,000? 10:49:42

17 A Yes.

18 MR. DiBOISE: Objection.

19 BY MR. BATCHELDER:

20 Q And would you please summarize those
21 communications. 10:49:51

22 A No.

23 MR. DiBOISE: I -- I'm just smiling. Let the
24 record reflect that I believe the witness is, again,
25 being asked to provide attorney-client information in 10:50:05

1 response to the question.

2 The "you" means you. It doesn't mean
3 SightSound.

4 THE WITNESS: The question said SightSound.

5 MR. DiBOISE: No, it didn't.

10:50:17

6 THE WITNESS: The first question.

7 MR. DiBOISE: The second question didn't, so I
8 can only -- I can only respond to object to the
9 questions that are asked to you, so please answer the
10 questions that are asked to you.

10:50:31

11 MR. BATCHELDER: To -- to be clear, Mike,
12 Mr. Sander is right, that my -- my question was directed
13 to communication between SightSound and the other side
14 in this negotiation, BeMusic.

15 MR. DiBOISE: Then if that's true, then I would
16 object and instruct on the basis that the question calls
17 for attorney-client information.

10:50:42

18 MR. BATCHELDER: How could it be
19 attorney-client if it's communication between two
20 adversarial parties?

10:50:55

21 MR. DiBOISE: Because he didn't have the
22 communication. He only knows about it from the
23 conversations with counsel. That's why I'm trying to --
24 to navigate when you say "you," whether you are talking
25 about him or you are talking about SightSound.

10:51:05

1 MR. BATCHELDER: Well, if -- if his counsel
2 communicated something to BeMusic and then passed along
3 to Mr. Sander what was communicated, that -- that
4 doesn't make it -- that communication between the two
5 adversaries privileged. The fact that a lawyer
6 delivered the message about what was said between the
7 two adversaries doesn't make it privileged.

10:51:17

8 MR. DiBOISE: I don't know that I necessarily
9 agree with that, but I don't believe that's what your
10 question was asking him to tell you.

10:51:33

11 MR. BATCHELDER: It's what I'm intending to get
12 to, so let me start over and let's make a clear record.

13 Q My question is about communications between
14 SightSound and BeMusic in connection with the
15 negotiation of the Settlement Agreement that is
16 Exhibit 207.

10:51:54

17 Do you understand that, Mr. Sander?

18 A No.

19 Q What's unclear?

20 A I don't know if you asked me a question.

10:52:05

21 Q I'm about to. I'm just saying, are you with me
22 so far?

23 A Yes.

24 Q Okay.

25 A You guys invented the rules. I'm just --

10:52:17

1 Q So my question is: As to those communications
2 between SightSound and BeMusic, what was communicated
3 about the basis for the \$3,300,000 payment that is set
4 forth in Provision 2 of the Settlement Agreement?

5 MR. DiBOISE: If the only information available 10:52:37
6 to you to answer this question is the result of
7 communications with your counsel, I would instruct you
8 not to answer the question.

9 Do you understand that admonition?

10 THE WITNESS: I do. 10:52:49

11 MR. DiBOISE: Can you answer the question?

12 THE WITNESS: No.

13 MR. DiBOISE: I instruct you not to answer.

14 BY MR. BATCHELDER:

15 Q Are you going to follow that instruction? 10:52:55

16 A I am.

17 MR. BATCHELDER: And for the record, I think
18 that's an improper instruction for the reasons I've
19 stated. I don't think that information is privileged.

20 Q Did BeMusic communicate to SightSound in 10:53:11
21 connection with the negotiations over the Settlement
22 Agreement what its past sales had been in connection
23 with the conduct that was being accused of infringement
24 in that matter?

25 A Yes. 10:53:42

1 Q And what did it convey in that regard?

2 MR. DiBOISE: Objection.

3 You can answer if you know.

4 THE WITNESS: Its past sales.

5 BY MR. BATCHELDER:

10:54:01

6 Q What numbers did it convey in connection with
7 its past sales?

8 A I don't recall specifically.

9 Q Did it convey those numbers in writing?

10 A I don't know.

10:54:11

11 Q Can you provide me an estimate?

12 A Yes.

13 Q What's your estimate?

14 MR. DiBOISE: Well, I believe that that

15 information is subject to confidentiality restrictions
16 regarding -- between SightSound and the parties to the
17 Settlement Agreement. And while we would be willing to
18 let the witness answer the question, we have to be
19 respectful of their rights and consider that

10:54:19

20 information -- in considering that information

10:54:41

21 confidential to the other signatories to this agreement,
22 and I have to instruct the witness not to answer the
23 question on that basis.

24 BY MR. BATCHELDER:

25 Q Are you going to follow that instruction?

10:54:54

1 A Yes.

2 MR. BATCHELDER: For the record, I also believe
3 that that instruction is improper.

4 Q Is there any information that you can provide
5 to me today, Mr. Sander, about the basis for that 10:55:06
6 \$3,300,000 figure in Provision 2 of Exhibit 207?

7 MR. DiBOISE: To the extent that that -- an
8 answer to that question would involve your discussions
9 with counsel about how the numbers and settlement was
10 achieved, I would admonish you not to reveal such 10:55:28
11 information in answer to the question.

12 Do you understand that admonition?

13 THE WITNESS: I do.

14 MR. DiBOISE: Can you answer the question?

15 THE WITNESS: No. 10:55:40

16 MR. DiBOISE: I instruct you not to answer on
17 the basis of attorney-client information and work
18 product.

19 BY MR. BATCHELDER:

20 Q Do you intend to follow that instruction? 10:55:46

21 A I do.

22 MR. BATCHELDER: I also disagree and object to
23 that instruction.

24 MR. DiBOISE: What -- so let me just try to
25 obviate this. 10:55:57

1 What -- what is it that you are after? I just
2 don't -- I just don't want to be -- I'm trying to be
3 very careful and not waive anything, but if you -- if
4 you just tell me what information you are seeking,
5 perhaps we can get it to you.

10:56:08

6 MR. BATCHELDER: Well, as I've said, my broad
7 question is: What's the basis for the calculation?

8 MR. DiBOISE: It was a percentage of the
9 revenue on the downloads.

10 MR. BATCHELDER: Okay. Well, Mr. Sander hasn't
11 been able to tell me that.

10:56:23

12 MR. DiBOISE: Right, because he didn't
13 negotiate the agreement, and the only reason he knows of
14 it is through negotiations with counsel.

15 MR. BATCHELDER: Again --

10:56:32

16 MR. DiBOISE: I mean discussions with counsel.
17 And -- and I do -- and I understand your point, but I
18 don't know how you dance on the head of that pin in
19 terms of whether it was a factual discussion between us
20 and the other side or it was a revelation to Mr. Sanders
21 (sic) of our thinking about how we would get to an
22 appropriate number in the settlement, and I just don't
23 know how to define -- divine the -- navigate that route
24 to give you the answer.

10:56:44

25 MR. BATCHELDER: Well, as I said, I -- I

10:57:00

1 believe that we are entitled to that information, and if
2 SightSound refuses to disclose it in -- in deposition, I
3 think that has ramifications, and we will just have to
4 take it from there.

5 Next, please.

10:57:29

6 (Exhibit 208 was marked for identification by
7 the Court Reporter.)

8 MR. DiBOISE: Well, not to belabor the point,
9 you are asking the witness that question not -- not
10 SightSound that question.

10:57:34

11 MR. BATCHELDER: I'm asking the witness that
12 question. He's the one being deposed.

13 MR. DiBOISE: Correct.

14 MR. BATCHELDER: I've had marked, as
15 Exhibit 208, a document bearing the Bates-stamped
16 ALLEN 1062 through 1067.

10:58:04

17 Q Have you seen this document before?

18 A Yes.

19 Q What do you recognize it to be?

20 A Allen & Company projections.

10:58:39

21 Q Were these projections done at SightSound's
22 behest?

23 A Yes.

24 Q For what purpose?

25 A Allen & Company was our investment banker at

10:59:02

1 the time.

2 Q Understanding that Allen & Company was your
3 investment banker, for what purpose did SightSound ask
4 Allen & Company to generate Exhibit 208?

5 (Discussion off the stenographic record.)

10:59:20

6 THE WITNESS: Could you repeat the question
7 after all that?

8 BY MR. BATCHELDER:

9 Q What was -- for what purpose did SightSound ask
10 Allen & Company to generate Exhibit 208?

11:00:17

11 A I don't know that we asked Allen & Company to
12 generate it.

13 Q Do you have an understanding as to why it was
14 generated?

15 A Yes.

11:00:37

16 Q What's your understanding?

17 A That Allen & Company wanted to represent us in
18 potential interactions with potential licensees,
19 partners, investors, purchasers.

20 Q And this was generated April 2004, in your
21 understanding?

11:00:58

22 A It appears to be.

23 Q If I could ask you to turn to the page ending
24 in 163 -- excuse me, 1063, you will see at the -- in the
25 upper left-hand corner it says, SightSound Technologies

11:01:31

1 e-commerce patents financial model.

2 Do you see that?

3 A Yes.

4 Q What was the financial model?

5 A Allen & Company's modeling and projections of 11:01:46
6 licensing revenue.

7 Q Did you review these projections at the time?

8 A I don't recall.

9 Q Were these projections ever sent to third
10 parties? 11:02:08

11 A I don't know.

12 Q Were any Allen & Company projections sent to
13 third parties?

14 A I don't know.

15 Q Have you ever analyzed the data on page 1063 to 11:02:18
16 determine whether or not it comports with your
17 understanding or opinions?

18 A Comports with my understandings or opinions?

19 Q Yeah.

20 A No. 11:02:49

21 Q Looking again on page 1063, in the year 2011,
22 Allen & Company was projecting licensing revenue of
23 \$161.8 million.

24 Is that your read of this?

25 A Yes. 11:03:21

1 Q And what was SightSound's licensing revenue in
2 2011?

3 A The -- in 2000 -- I can't recall when the N2K
4 revenue -- I'm sorry, the Napster revenue was realized,
5 so I -- I can't recall whether that was 2011, '10, or
6 '12.

11:04:15

7 Q Other than the Napster revenue referred to in
8 your answer just now, was there any other licensing
9 revenue that is a candidate for inclusion in 2011 or
10 '10?

11:04:32

11 A No.

12 Q 2005, the entry is -- for licensing revenue is
13 8.5 million.

14 Do you see that?

15 A Yes.

11:04:40

16 Q And what was SightSound's licensing revenue in
17 2005?

18 A Zero.

19 Q In 2004, the estimate is 2.4 million.

20 Do you see that?

11:04:54

21 A Yes.

22 Q And what was SightSound's licensing revenue in
23 2004?

24 A Zero.

25 I'm sorry.

11:05:19

1 Q Did you have a comment?

2 A Yes.

3 Q What would you like to say?

4 A And I can't recall the -- the timing of the
5 BeMusic licensing revenue or Settlement Agreement. That 11:05:34
6 was around -- it might have preceded that.

7 Q Might have preceded what date?

8 A 2004. No, it doesn't appear to. So then I
9 have no reason to doubt the -- that there was revenue in
10 2004 of \$3.3 million. 11:06:12

11 Q Do you believe there was in 2004?

12 A Yes.

13 MR. BATCHELDER: Counsel, I'm going to hand you
14 two copies of this because it's already been marked as
15 Exhibit 36. 11:06:45

16 Q I've handed you a document that, as I said, has
17 been marked as Exhibit 36, and it spans the Bates range
18 SST-21917 through 21942.

19 Have you seen this document before?

20 A No. 11:07:20

21 Q Do you have an understanding -- well, strike
22 that, please.

23 If I could ask you to turn to the page ending
24 in 919 -- it's the second page in -- it's titled
25 "Summary and Conclusions." 11:07:46

1 Do you see that?

2 A Yes.

3 Q The first sentence reads: Management conducted
4 evaluation to determine the fair market value of the
5 company's assets as of December 31st, 2010.

11:07:57

6 Do you see that?

7 A Yes.

8 Q Is that accurate?

9 A I don't know.

10 Q Do you have any reason to doubt that SightSound
11 management conducted evaluation to determine the fair
12 market value of the company's assets as of
13 December 31st, 2010?

11:08:14

14 A Yes.

15 Q What's your reason to doubt it?

11:08:26

16 A I did not participate in it, and I would
17 consider myself management.

18 Q Can you think of a reason why Alex LePore would
19 have written that if it weren't true?

20 A Yes.

11:08:42

21 Q What reason?

22 A He would have assumed that it was his purview
23 and responsibility and not solicited my participation.

24 Q So your take is that Alex LePore undertook this
25 evaluation?

11:09:09

1 A Yes.

2 Q If I could ask you to turn to the bottom of
3 that same page 919 within Exhibit 36, you will see
4 there's a paragraph that begins with the word
5 "Accordingly"?

11:09:29

6 A Yes.

7 Q And it reads: Accordingly, based on the fact
8 that DMT determined that the patent portfolio had a
9 nominal value in 2005.

10 Do you see that phrase?

11:09:45

11 A Yes.

12 Q Is it accurate that DMT determined that the
13 patent portfolio had a nominal value in November 2005?

14 A I don't know.

15 Q Is it your understanding that the patent
16 portfolio referenced there includes the patents-in-suit?

11:09:59

17 MR. DiBOISE: Objection.

18 THE WITNESS: Referenced in -- yes.

19 BY MR. BATCHELDER:

20 Q So that phrase is: DMT determined that the
21 patent portfolio had a nominal value in November 2005,
22 and the validity of the patents remains uncertain.

11:10:25

23 Do you see that?

24 A Yes.

25 Q Had DMT determined that the validity of the

11:10:54

1 patents remains uncertain?

2 MR. DiBOISE: Objection.

3 THE WITNESS: I don't know.

4 BY MR. BATCHELDER:

5 Q Are you aware of any communications with DMT on 11:11:07
6 that subject?

7 A No.

8 Q That sentence goes on to say -- that is, the
9 sentence on page 919 that we have been reading --
10 Management believes that as of the date of the merger, 11:11:23
11 that the fair market value of the company's assets is
12 equal to its unadjusted book value of \$1,028.

13 Do you see that?

14 A Yes.

15 Q Is that accurate? 11:11:42

16 A I don't know.

17 Q Do you have any reason to doubt it?

18 A I don't know.

19 Q You see in the paragraph above that, there's a
20 reference to the SightSound/DMT agreement and the 11:12:02
21 50 percent participation that you referenced earlier.

22 Do you see that?

23 A Yes.

24 Q In the phrase that we were just reading, that
25 is, the phrase that says, "the value of the company's 11:12:17

1 assets is equal to its unadjusted book value of \$1,028,"
2 is it your understanding that the phrase "the company's
3 assets" includes SightSound's interest in the
4 SightSound/DMT agreement?

5 MR. DiBOISE: Objection. 11:12:52

6 THE WITNESS: Yes.

7 BY MR. BATCHELDER:

8 Q Have you had any conversations with Alex LePore
9 about this valuation report?

10 A No. 11:13:11

11 Q Have you had any communications with Alex
12 LePore regarding why he undertook this valuation?

13 A No.

14 Q Was it within his set of duties and
15 responsibilities to do so? 11:13:35

16 A I don't know.

17 (Exhibit 209 was marked for identification by
18 the Court Reporter.)

19 THE REPORTER: 209.

20 MR. BATCHELDER: 209, you said? Thanks. 11:14:00

21 I've had marked, as Exhibit 209, a document
22 with the Bates range SST-20567 through 20573 titled
23 "Settlement Agreement."

24 Q Do you recognize this document, sir?

25 A Yes. 11:14:36

1 Q What do you recognize it to be?

2 A A Settlement Agreement between SightSound
3 Technologies and Napster.

4 Q Is that your signature on page 573?

5 A Yes.

11:14:49

6 Q Were you the principal negotiator for
7 SightSound in this agreement?

8 A No.

9 Q Who was?

10 A It was a team.

11:15:00

11 Q Did you have any role in the negotiation?

12 A Yes.

13 Q Please describe your role.

14 A I was one of the members of the team.

15 Q Can you provide a more particularized
16 description of your role as -- as compared to the other
17 team members?

11:15:26

18 A Yes. My role was distinct from the other
19 members of the team because I was also a defendant in a
20 counterclaim personally.

11:15:53

21 Q So what you have told me is that you were a
22 team member and you were a defendant.

23 What I'm trying to get to is: What was your
24 role in the negotiation; that is, what job functions did
25 you pursue in the negotiation?

11:16:11

1 A Developing settlement strategy.

2 Q Did you have a communication role with the
3 other side?

4 A Yes.

5 Q Please describe that. 11:16:20

6 A It was in mediation.

7 Q Outside of mediation, did you have any
8 communication role with the other side?

9 A Yes.

10 Q Please describe that. 11:16:43

11 A We went back and forth negotiating the price of
12 the settlement.

13 MR. DiBOISE: As part of the mediation or
14 out- -- outside the mediation? And by "outside the
15 mediation," we're not mean -- we don't mean that it was 11:17:02
16 in the actual conference room. If the discussions
17 continued after we broke from the conference room,
18 that's still within the mediation.

19 THE WITNESS: Oh, well, then, it was a mediated
20 process that resulted in this agreement. 11:17:23

21 MR. DiBOISE: Counsel is asking you whether or
22 not you had any discussions with anybody representing
23 the other side.

24 THE WITNESS: Yes.

25 MR. DiBOISE: You understand that? And you 11:17:40

1 did, but only in the mediation?

2 THE WITNESS: Yes.

3 MR. BATCHELDER: And my question was not just
4 directed to communications with people representing the
5 other side but actually with the other side.

11:17:52

6 Q Did you speak with the principals at -- of the
7 defendant in connection with your negotiations outside
8 the mediation?

9 A No.

10 Q If I could ask you to turn to paragraph 5 --
11 first of all, let me ask you: Did you feel like you
12 understood the terms of Exhibit 209 when you signed it?

11:18:05

13 A Yes.

14 Q Could I ask you to turn to Provision 5, which
15 is on page 569.

11:18:35

16 Are you there?

17 A No. Yes.

18 Q So that provision is titled "Covenant Not to
19 Sue."

20 MR. DiBOISE: Sorry. Did I misunderstand you?
21 Oh, okay. I thought you meant 6 of the agreement.

11:18:55

22 MR. BATCHELDER: All right. So we are looking
23 at page 569 and Provision 5 titled "Covenant Not to
24 Sue."

25 Q Are you with me, Mr. Sander?

11:19:08

1 A Yes.

2 Q I want to share with you my high-level
3 understanding of this provision and ask whether it
4 comports with yours.

5 At a high-level, it appears to provide to 11:19:25
6 Best Buy a covenant that it will not be sued under the
7 patents-in-suit for past or future behavior.

8 Does that comport with your understanding?

9 MR. DiBOISE: Objection.

10 THE WITNESS: I don't understand -- I don't 11:19:52
11 know. I mean -- your high-level -- no.

12 BY MR. BATCHELDER:

13 Q Paragraph 5 references the sale or offer for
14 sale of digital audio content.

15 Do you see that? It's like the fifth line 11:20:50
16 down?

17 A Yes.

18 Q Is it your understanding that the covenant that
19 is provided in paragraph 5 applies to Best Buy's future
20 sale or offer for sale of digital audio content? 11:21:10

21 MR. DiBOISE: Objection.

22 And, again, I would admonish you that to the
23 extent you do have an understanding of any clause in
24 this agreement that is a result of your discussions with
25 counsel, please refrain from disclosing the content of 11:21:25

1 any of those discussions with counsel in answer to your
2 question -- answer to this question.

3 Do you understand the admonition?

4 THE WITNESS: Yes.

5 MR. DiBOISE: Can you answer the question? 11:21:41

6 THE WITNESS: No.

7 MR. DiBOISE: Then I will instruct you not to
8 answer the question.

9 BY MR. BATCHELDER:

10 Q Are you going to follow that instruction, 11:21:48
11 Mr. Sander?

12 A Yes.

13 MR. BATCHELDER: Again, I think that's an
14 improper instruction.

15 MR. DiBOISE: Well, in what way? 11:21:56

16 MR. BATCHELDER: I'm asking the witness about
17 his understanding.

18 MR. DiBOISE: Right, and I've admonished him
19 that if his understanding is based on his discussions
20 with counsel, that he should not reveal that 11:22:05

21 understanding because it's based on discussions with
22 counsel.

23 If he can do so without revealing those
24 discussions, he's free to do so, and he's indicated that
25 he can't, so how -- how is that inappropriate? And I'm 11:22:20

1 just trying to see if we can get to a reasonable place
2 here.

3 MR. BATCHELDER: I understand. I don't mind
4 your colloquy, but my belief is if I ask him a question
5 about his understanding, he can tell me that. I'm not 11:22:34
6 asking him about the content of communications. If I
7 had asked him, "What did your counsel tell you about the
8 meeting?" that would be different.

9 But if he has an understanding and he had that
10 understanding when he signed the agreement, I think I'm 11:22:46
11 allowed to get that.

12 MR. DiBOISE: Okay. And just so we are clear,
13 the basis for the instruction is that if the
14 understanding is based on discussions with counsel, I
15 think that is a privileged understanding that he would 11:22:57
16 be revealing to you in giving you his understanding.

17 So we are clear, and I instruct.

18 MR. BATCHELDER: So we just disagree about
19 that.

20 Q The \$3,100,000 settlement payment referenced in 11:23:17
21 paragraph 2, what was that based on?

22 MR. DiBOISE: Again, you should be able to
23 answer that question without -- and just be careful
24 about revealing any attorney-client communications.

25 THE WITNESS: It was based on Napster's 11:23:47

1 revenue.

2 BY MR. BATCHELDER:

3 Q What did you understand its revenue to be?

4 MR. DiBOISE: You are asking for a number or
5 his understanding of --

11:24:05

6 MR. BATCHELDER: I'm asking for a --

7 MR. DiBOISE: -- where it resulted from?

8 MR. BATCHELDER: -- a number.

9 MR. DiBOISE: So we are in the same situation
10 about the confidentiality that's delineated in

11:24:23

11 paragraph 8 of Exhibit 209, which seems to me to

12 prohibit his ability to answer that question, and in

13 order not to violate the terms of the Settlement

14 Agreement, I'm going to instruct him not to answer the
15 question.

11:24:53

16 I think there's got to be a way for us to get
17 you this information.

18 MR. BATCHELDER: Before we go further.

19 Q Are you going to follow that instruction,
20 Mr. Sander?

11:25:01

21 THE WITNESS: Yes.

22 MR. BATCHELDER: All right. Let's talk
23 offline, Jamie.

24 MR. DiBOISE: Sure.

25 MR. BATCHELDER: But I need to get through the

11:25:07

1 deposition.

2 Q The covenant not to sue in paragraph 5, were
3 there communications between the parties in the
4 negotiation about what it was worth?

5 A Yes.

11:25:25

6 Q Please describe.

7 MR. DiBOISE: I think it's fair to give him a
8 high-level discu- -- description of what was discussed,
9 if you were present for it.

10 THE WITNESS: The settlement was holistic in
11 that it represented Napster's requirement to pay us on
12 their download revenue a quid pro quo of not suing while
13 not allowing them to re-engage in subsequent infringing
14 activity, and it was all wrapped up into one agreement.

11:26:01

15 BY MR. BATCHELDER:

11:26:52

16 Q My question was about whether there were
17 communications between the parties about the value of a
18 specific provision, and that's Provision 5, and you said
19 there were communications in that regard, and I asked
20 you to describe those, and I'm not sure your answer was
21 aligned with my question.

11:27:09

22 MR. DiBOISE: Objection.

23 THE WITNESS: I'm not sure your question said
24 specific. Perhaps I misunderstood it.

25 MR. BATCHELDER: I'll ask you --

11:27:25

1 THE WITNESS: I can't --

2 MR. BATCHELDER: I'll ask you that question
3 now.

4 Q Paragraph 5, the covenant not to sue that is
5 set forth in Exhibit 209, were there communications
6 between the negotiating parties about the value of that
7 provision?

11:27:30

8 A No. I don't think that they were unbundled
9 from the overall settlement.

10 Q One answer ago you -- you mentioned that
11 part of what you -- that the Settlement Agreement
12 accomplishes is not allowing them to engage in ongoing
13 infringing activity.

11:27:53

14 Did I hear that right?

15 A No.

11:28:21

16 Q Where did I go wrong?

17 A I said re-engage, I believe, or I meant to
18 suggest re-start infringing activity, because Napster
19 ceased download sales.

20 Q All right. And your counsel has already given
21 you an instruction about Best Buy and what it was
22 allowed to do going forward, and so I want to be careful
23 to give him a chance to give you an instruction, but I
24 want to be sure that we have as much of a conversation
25 as we can.

11:28:46

11:29:03

1 In your understanding of the agreement, did the
2 covenant of paragraph 5 allow Best Buy to engage in
3 activity that absent that covenant would be infringing?

4 MR. DiBOISE: Objection.

5 To the extent you have an understanding that 11:29:28
6 you arrived at independent of any discussions and advice
7 of counsel, feel free to answer his question. If,
8 however, your answer would require you to also disclose
9 the advice and discussions with counsel that you had in
10 arriving at your understanding necessary to answer his 11:29:49
11 question, I would admonish you not to reveal those
12 discussions in answer to your ques- -- in answer to
13 counsel's question.

14 Do you understand the admonition?

15 THE WITNESS: Yes. 11:30:01

16 MR. DiBOISE: Can you answer the question of
17 your own understanding?

18 THE WITNESS: No.

19 MR. DiBOISE: Then I'll instruct you not to
20 answer. 11:30:09

21 BY MR. BATCHELDER:

22 Q Are you going to follow that instruction?

23 A Yes.

24 MR. BATCHELDER: Okay. And, again, I disagree
25 with the instruction. 11:30:15

1 Q We talked yesterday about the fact that
2 SightSound, at least for some period or periods,
3 included within its offering the service of building for
4 others a system that would allow them to electronically
5 sell downloaded video or audio files.

11:30:43

6 Are you with me?

7 A I'm with you.

8 Q Did any major studio ever approach SightSound
9 to ask if it would build them such a system?

10 A I don't recall.

11:31:02

11 Q Did any company at all ever approach SightSound
12 to ask if SightSound would build them such a system?

13 A I don't know.

14 THE REPORTER: 210.

15 (Exhibit 210 marked for identification by the
16 Court Reporter.)

11:32:01

17 MR. BATCHELDER: Where are we?

18 THE REPORTER: 210.

19 MR. BATCHELDER: I've had marked, as

20 Exhibit 210, a two-page document stamped SST-25454
21 through 455.

11:32:13

22 Q Have you seen this document before?

23 A I don't recall it.

24 Q Would you please take a moment to read it over
25 and let me know when you are done.

11:32:38

1 A I'm done.

2 Q Now that you have had a chance to read over it,
3 do you recall seeing this before?

4 A No.

5 Q You are referenced in this article as having
6 spoken to the Daily Variety, and this is dated November
7 2000.

11:33:17

8 Do you have any reason to -- well, first of
9 all, did you have a conversation with Daily Variety in
10 November 2000?

11:33:37

11 A I can't recall.

12 Q Do you have any reason to doubt it?

13 A Yes.

14 Q What's your reason?

15 A As is standard practice, we had a lot of media
16 coverage of our company at that time, and so Jennifer
17 Pesci, who was our communications director, would ask me
18 for quotes or things like that, and they would be
19 conveyed to somebody writing an article, not necessarily
20 in conversation.

11:33:46

11:34:11

21 Q Did you sometimes have conversation with
22 journalists in this time frame?

23 A Yes.

24 Q Given that fact, is it -- and given the fact
25 that you are quoted in this article, does that suggest

11:34:32

1 to you that you had a conversation with Daily Variety
2 around November 2000?

3 MR. DiBOISE: Objection.

4 THE WITNESS: No.

5 BY MR. BATCHELDER:

11:34:44

6 Q You think it's more likely that someone just
7 made this up?

8 MR. DiBOISE: Objection.

9 THE WITNESS: I didn't say that.

10 BY MR. BATCHELDER:

11:34:53

11 Q I'm asking you.

12 MR. DiBOISE: Objection.

13 THE WITNESS: I don't know what's more likely.

14 BY MR. BATCHELDER:

15 Q The final paragraph on the cover page of
16 Exhibit 210 has two quotes from you. One is: We were
17 approached by companies around the world and major
18 studios in this country and asked if we would build them
19 a similar system.

11:35:05

20 Do you see that?

11:35:25

21 A Yes.

22 Q Did you say that?

23 MR. DiBOISE: Objection.

24 THE WITNESS: I don't recall.

25 BY MR. BATCHELDER:

11:35:32

1 Q And the next quote is: We wanted to capitalize
2 on that demand.

3 Do you see that?

4 A Yes.

5 Q Did you say that?

11:35:39

6 A I don't recall.

7 Q Do you have reason to doubt that you said
8 either one of those things?

9 A Yes.

10 Q What's your reason to doubt it?

11:35:46

11 A The nuance of whether we approached or were
12 approached.

13 Q Would you explain your answer.

14 MR. DiBOISE: Objection.

15 THE WITNESS: We were approached by companies,
16 and we approached the major studios and record labels --
17 or, no, I stand corrected -- the major studios at this
18 time frame.

11:36:05

19 BY MR. BATCHELDER:

20 Q I'm sorry. I didn't understand your answer.
21 You seemed to correct yourself in the middle, and I'm
22 not sure I follow. Would you explain.

11:36:29

23 A I'm seeking to make the distinction for you
24 that we were approached by some companies. We
25 approached other companies, and this quote muddles the

11:36:40

1 line between those two things.

2 Q The final paragraph of this document also has a
3 quote: While other people were spending their money on
4 sock puppets, we were continuing to develop new
5 products.

11:37:05

6 Do you see that quote?

7 A Yes.

8 Q Did you say that?

9 A That I think I did say. I don't know if it was
10 in this context, but I do remember that as a point of
11 contention at the time.

11:37:18

12 Q What was the point of contention?

13 A Companies were spending millions of dollars on
14 Super Bowl ads for their brand, and they would use
15 things like sock puppets and things like that, but we
16 thought there was a more sober and serious use for
17 capital than goofy ads for a -- fledgling Internet
18 companies.

11:37:35

19 Q So given that you remember saying this about
20 sock puppets, does that increase the likelihood, in your
21 mind, that you did, in fact, have a conversation with
22 someone from the Daily Variety around November 2000?

11:37:53

23 MR. DiBOISE: Objection.

24 THE WITNESS: No.

25 BY MR. BATCHELDER:

11:38:07

1 Q Why not?

2 A As previously stated, it could have been
3 prepared quotes that went out. I don't remember.

4 Q Are you saying that the -- all the quotes that
5 appear in this document may have resulted from prepared
6 quotes as opposed to you having a live conversation with
7 someone?

11:38:26

8 MR. DiBOISE: Objection.

9 THE WITNESS: Yes.

10 BY MR. BATCHELDER:

11:38:33

11 Q The final sentence in document 210 is: This is
12 an expansion to recognize the interest in those
13 innovations.

14 Do you see that?

15 A Yes.

11:38:50

16 Q And did you say that?

17 A I don't recall.

18 Q In connection with the statements in
19 Exhibit 2010 that are attributed -- excuse me.

20 In connection with the statements in
21 Exhibit 210 that are attributed to you, is it your
22 belief either that you said them in a live conversation
23 or that they were prepared written quotes that were
24 submitted to the media?

11:39:08

25 MR. DiBOISE: Objection.

11:39:20

1 THE WITNESS: I may have been misquoted.

2 BY MR. BATCHELDER:

3 Q But you are just not sure as you sit here?

4 A I'm not.

5 (Exhibit 211 was marked for identification by 11:39:55
6 the Court Reporter.)

7 MR. BATCHELDER: I've had marked, as
8 Exhibit 211, document SST-25429 through 25430.

9 Q Have you seen this document before?

10 A I don't recall. 11:40:22

11 Q Would you give it a quick read and let me know
12 when you are done.

13 A Yes, I'm done.

14 Q Did you have a conversation with someone from
15 the Pittsburgh Business Times around December 2000? 11:41:26

16 A I don't recall it.

17 Q Does this article reflect some interview that
18 you participated in?

19 A My -- my prior answer about it could have been
20 an interview or Jen Pesci could have provided a 11:41:51
21 structured series of quotes. It was quite typical for
22 her to be the buffer and interact with the media. That
23 was her full-time job at SightSound.

24 Q The quotes that are attributed to you in this
25 document, do you believe that either you said them or 11:42:11

1 that they were provided by SightSound's PR department to
2 the media?

3 A Yes.

4 Q In the middle of the first page, it says -- you
5 are quoted as saying, We are repositioning the company
6 because of things we have learned from the movie
7 studios.

11:42:32

8 Do you see that?

9 A Yes.

10 Q What things were you referring to?

11:42:38

11 A Generally, that they were still at that early
12 stage reluctant to have the copyright released to a
13 third party.

14 Q It's possible I asked you this already, and if
15 I did, I apologize, but the strategy of including this
16 in SightSound's offerings, how long did that last as a
17 strategy after December 2000?

11:43:11

18 A Not long, I don't believe.

19 Q On the bottom of the first page of Exhibit 211,
20 it says, Mr. Sander said the decision not to go public
21 has not proven to be a drawback.

11:43:44

22 Did you say that?

23 A I don't know.

24 Q Was it true?

25 A I think so.

11:43:56

1 (Exhibit 212 was marked for identification by
2 the Court Reporter.)

3 THE WITNESS: Thank you.

4 THE REPORTER: 212.

5 MR. BATCHELDER: I've had marked, as
6 Exhibit 212, a document stamped SST-17135 through 17181.

11:44:52

7 Q Have you seen this document before?

8 A I don't specifically remember it. I don't
9 know.

10 Q Do you have any reason to doubt that this
11 prospectus was distributed to third parties?

11:45:19

12 MR. DiBOISE: Objection.

13 THE WITNESS: Yes.

14 BY MR. BATCHELDER:

15 Q What's your reason?

11:45:41

16 A As I sit here today, it appears that this is a
17 draft document. It's not complete, so that would give
18 me reason to believe that it was a draft. May or may
19 not have ever been utilized.

20 Q If I could ask you to turn to, within
21 Exhibit 212, page 7175 titled "Competition," did you
22 have any hand in writing this paragraph under the
23 heading "Competition"?

11:45:59

24 MR. DiBOISE: Objection.

25 THE WITNESS: I don't know.

11:46:35

1 BY MR. BATCHELDER:

2 Q Do you know who was involved in writing this
3 paragraph?

4 A As I sit here today, I don't -- I don't recall
5 this document.

11:46:48

6 Q There's a sentence in this paragraph, starting
7 four lines down, begins with the word "Additionally."

8 Do you see that?

9 A Yes.

10 Q So it begins with the word "Additionally," and
11 it ends: At some time and in some manner.

11:47:19

12 Are you looking at the same sentence?

13 A Yes.

14 Q Okay. Have you had a chance to read that
15 sentence?

11:47:34

16 A Yes.

17 Q Was that accurate as of July 2000?

18 MR. DiBOISE: Objection.

19 THE WITNESS: I don't know.

20 BY MR. BATCHELDER:

11:47:50

21 Q What are you unsure about?

22 MR. DiBOISE: Objection.

23 THE WITNESS: I can't -- I can't go back and
24 remember all of the companies that had said they were
25 going to -- the sentence is about announcing. I don't

11:48:03

1 know what other companies' announcements were in total.

2 BY MR. BATCHELDER:

3 Q Let me ask you to assume that the sentence is
4 accurate in describing the listed companies as having
5 entered into or announced plans to enter the
6 entertainment e-commerce business as of this time, July
7 2000.

11:48:22

8 Are you with me?

9 A Yes.

10 Q If that were the case; that is, if all of these
11 entities had either already entered into or announced
12 plans to enter the entertainment e-commerce business by
13 July 2000, why has Apple's iTunes Store been more
14 successful than the offerings of any of these other
15 competitors in the entertainment e-commerce space?

11:48:32

16 A Timing.

17 Q Any other reason?

18 A I don't believe so.

19 MR. BATCHELDER: I've just been passed a note
20 that we can expect lunch around 12:30.

11:49:28

21 (Exhibit 213 was marked for identification by
22 the Court Reporter.)

23 THE WITNESS: Thank you.

24 MR. BATCHELDER: 212?

25 MR. DiBOISE: '13.

1 MR. BATCHELDER: So bad at that.

2 I've had marked, as Exhibit 213, a document
3 STI-13634 through 636.

4 Q Have you seen this document before?

5 A I don't know. I can't recall seeing it.

11:50:30

6 Q Would you give it a quick read-through and let
7 me know when you are done, please.

8 A Sure. I've read it.

9 Q Thank you.

10 Looking on page 636 in the third paragraph,
11 there's a quote attributed to you where you say the
12 music business had become your personal Vietnam.

11:51:49

13 Did you say that?

14 A I don't specifically recall saying that, but if
15 I did, I regret it.

11:52:06

16 Q Do you have a reason to doubt that you said it?

17 A No.

18 Q In the paragraph on the bottom of the first
19 page, you see the paragraph beginning with the word
20 "Despite"?

11:52:27

21 A Oh, the first page. I'm sorry. Yeah. Yes.

22 Q Would you read that paragraph to yourself and
23 let me know when you are done, please.

24 A I already did.

25 Q Okay. Do you believe that that paragraph was

11:52:44

1 accurate as of November 2000?

2 A Yes.

3 (Exhibit 214 was marked for identification by
4 the Court Reporter.)

5 MR. DiBOISE: Can I jump for 90 seconds? Can I 11:53:18
6 take a break?

7 MR. BATCHELDER: You want to take a break?

8 MR. DiBOISE: Yes, please.

9 THE VIDEOGRAPHER: Off the record at 11:52.

10 (Recess taken.) 11:53:27

11 THE VIDEOGRAPHER: On the record at 11:55.

12 MR. BATCHELDER: I've had marked, as
13 Exhibit 214, document STI-13184 through 13195.

14 Q Do you recognize this document?

15 A Yes. 11:56:54

16 Q What do you recognize it to be?

17 A Appears to be a draft of a letter from me to
18 Silvio Mehta (phonetic).

19 Q Did you ever send the letter?

20 MR. DiBOISE: Objection. 11:57:29

21 THE WITNESS: I don't remember.

22 BY MR. BATCHELDER:

23 Q The letter refers to an upfront payment of
24 \$8,160,000.

25 Do you see that? 11:57:47

1 A Yes.

2 Q That's not a particularly round number.

3 Do you remember how you came to that number?

4 A No.

5 Q Do you have any information or understanding as 11:57:56

6 to what the basis was for it?

7 A I don't remember it.

8 Q Did you ever convey to Disney any offer using a

9 number in that ballpark?

10 A Yeah, I don't -- I don't -- I don't remember. 11:58:22

11 I remember the time frame and the interactions with

12 Disney, but I don't remember the financial details.

13 Q Did SightSound ever convey an offer to Disney?

14 A Yes.

15 Q In the fall 2000 time frame? 11:58:47

16 A Yes.

17 Q Did you prepare this draft that is Exhibit 214?

18 A No.

19 Q Who did?

20 A Art. 11:59:03

21 Q The -- the terms that are set forth in your

22 draft letter, are those terms that you were comfortable

23 with?

24 A I don't recall.

25 Q There's a reference to Disney-controlled 11:59:25

1 subsidiaries in the middle of that paragraph.

2 Do you see that?

3 A Yes.

4 Q Who -- who would that have included?

5 MR. DiBOISE: You are asking his understanding; 11:59:48
6 right?

7 MR. BATCHELDER: Yes.

8 THE WITNESS: I don't know in -- in its
9 entirety. Specifically, at that time, we were already
10 interacting with Miramax, which is a wholly owned 11:59:57
11 subsidiary to the Walt Disney Company.

12 BY MR. BATCHELDER:

13 Q So it would have included Miramax?

14 A I believe so.

15 Q In your understanding, would it have included 12:00:04
16 any other Disney subsidiary?

17 A Yes.

18 Q Who else?

19 A I don't know. I mean, to the extent they
20 existed, it was meant to distinguish from non-Disney or 12:00:18
21 Disney-affiliated copyright.

22 Q My question is: Other than Miramax, do you
23 have in mind, as you sit here, any other subsidiaries
24 that would have been covered?

25 A In 2000? No. 12:00:32

1 Q Have there been unexpected results associated
2 with what SightSound has described in this litigation as
3 being Mr. Hair's invention?

4 MR. DiBOISE: Objection.

5 THE WITNESS: I don't understand the question. 12:00:58

6 BY MR. BATCHELDER:

7 Q I'm referring to -- well, you are aware that
8 SightSound is -- takes the position in this litigation
9 that Mr. Hair has invented something, and that thing has
10 become the subject of the patents-in-suit; correct? 12:01:29

11 A Yes.

12 Q So the question is -- focusing on what
13 SightSound is describing as Mr. Hair's invention, the
14 question is: Have there been unexpected results
15 associated with that alleged invention? 12:01:42

16 MR. DiBOISE: Objection.

17 THE WITNESS: I don't understand the question.

18 BY MR. BATCHELDER:

19 Q What is confusing to you?

20 A Unexpected results. 12:01:57

21 Q Are you uncomfortable with either one of those
22 words?

23 MR. DiBOISE: Objection.

24 THE WITNESS: I'm not uncomfortable. I don't
25 understand the question. 12:02:14

1 BY MR. BATCHELDER:

2 Q In connection with what SightSound alleges to
3 be Mr. Hair's invention, have there been results that
4 would have been unpredictable before Mr. Hair went to
5 the party that you described to me yesterday where he
6 came up with this idea?

12:02:36

7 MR. DiBOISE: Objection.

8 THE WITNESS: I still don't understand the
9 question.

10 BY MR. BATCHELDER:

12:02:51

11 Q What's confusing?

12 A Pretty much the whole thing. I'm sorry. It's
13 con- -- it's confusing.

14 Q The idea that Mr. Hair came up with at the
15 party, did it involve something more than the
16 predictable use of prior art elements according to their
17 established functions?

12:03:19

18 MR. DiBOISE: Objection.

19 THE WITNESS: I still don't understand. I
20 don't understand the question.

12:04:04

21 BY MR. BATCHELDER:

22 Q Before Mr. Hair went to his party, did others
23 try but fail to provide over telecommunication lines
24 digital audio signals or digital video signals in
25 exchange for money?

12:04:25

1 A I don't know.

2 Q Before Mr. Hair went to his party, did others
3 try but fail to engage in entertainment e-commerce?

4 MR. DiBOISE: Object. Objection.

5 THE WITNESS: I don't know.

12:04:49

6 BY MR. BATCHELDER:

7 Q Have there been entities that, since 1993, have
8 practiced Mr. Hair's invention but done so in a way that
9 was not commercially successful?

10 MR. DiBOISE: Objection.

12:05:05

11 THE WITNESS: I don't know.

12 BY MR. BATCHELDER:

13 Q Is it fair to say that SightSound's practicing
14 of Mr. Hair's invention did not yield any commercial
15 profit?

12:05:32

16 A No.

17 Q Why not?

18 A We had patent license settlements, and our
19 actions were always in exposition of and in defense of
20 our patent rights.

12:05:59

21 Q You have described for me a system that was in
22 place in 1995 and then another system that was in place
23 between 1998 and 2002.

24 A Yes.

25 Q Is it your understanding that those systems

12:06:17

1 practiced Mr. Hair's invention?

2 A I'm -- I'm not the patent lawyers.

3 Q Did either of those systems generate a net
4 profit?

5 A From activities related directly to those
6 systems, no.

12:06:38

7 Q Does SightSound contend that its 1995 system
8 was a commercial success?

9 A Yes.

10 Q What's the basis for that?

12:07:02

11 A Proof of concept for the patents.

12 Q Would you explain your answer, please.

13 MR. DiBOISE: Objection.

14 THE WITNESS: We had the patent rights. We
15 also wanted to operate a business in electronic commerce
16 of audio and video recordings to prove -- to show the
17 world.

12:07:29

18 BY MR. BATCHELDER:

19 Q To show the world that it would be possible to
20 build a system that practiced Mr. Hair's invention?

12:07:45

21 A To show the world the benefits of Mr. Hair's
22 invention.

23 Q I would like to ask you to turn back to the
24 Rule 30(B)(6) notice that we looked at yesterday. This
25 was Exhibit 177. And if you would turn to Schedule A

12:08:17

1 under Topic 8, Topic 8 is the factual bases for any and
2 all secondary considerations or objective indicia of
3 nonobviousness that you intend to rely on in the action.

4 Do you see that?

5 A Yes.

12:08:54

6 Q What are the reference to factual bases?

7 A It's my understanding that there are -- there
8 are considerations such as pent-up demand, widespread
9 acceptance of the invention, acknowledgment and awards
10 and recognition, things of that nature.

12:09:39

11 Q Anything else?

12 A Not that I can recall right now.

13 Q Let's step through those in turn.

14 Pent-up demand, what factual bases are you
15 referring to that fall within that category?

12:10:08

16 A Rampant piracy on the Internet.

17 Q As of what time frame?

18 A After we practiced the invention, after we had
19 our demonstration system in '95 and '98.

20 Q Was there pent-up demand before Mr. Hair went
21 to his party?

12:10:42

22 MR. DiBOISE: Objection.

23 THE WITNESS: Yes, I think so. The ability to
24 downloaded had so many valuable -- had so many credible
25 advantages over physical distribution that it was just a

12:11:15

1 matter of revelation to people, and then -- and then
2 they realized, well, this is just a way better way.

3 BY MR. BATCHELDER:

4 Q What facts do you point to in support of the
5 contention that before Mr. Hair went to his party, there 12:11:37
6 was a pent-up demand for his invention?

7 A I don't know specifically, as I sit here today,
8 the -- I don't know.

9 Q The second category you mentioned was
10 acceptance by the industry. 12:12:07

11 Did I get that right?

12 A No. I meant the consumer.

13 Q Acceptance by consumers?

14 A Yeah.

15 Q Okay. And what are the facts that SightSound 12:12:17
16 relies upon in connection with that category?

17 A Similarly, the -- the enumerable points of --
18 of indication that there was rampant piracy because
19 people recognized the value of this new, useful way of
20 doing it, this better way of doing it. 12:12:43

21 Q This rampant piracy that you are referring to,
22 what time frame do you associate with it?

23 A I associate it -- with it from 1998 till today.

24 Q Are there any other facts that SightSound
25 relies upon in connection with the category acceptance 12:13:14

1 by consumers that you referenced?

2 A Not that I can think of as I sit here today.

3 Q The third category that you mentioned was
4 acknowledgment and awards.

5 What facts does SightSound rely upon in
6 connection with that category?

12:13:34

7 A We had tremendous media coverage of our various
8 demonstrations and innovations, and so there's --
9 there's a -- a full body of -- of positive media
10 coverage of SightSound's historic firsts.

12:14:01

11 Q Any other facts?

12 A Not that I can think of right now.

13 Q Has SightSound won any industry awards?

14 A It was such a nascent industry that awards,
15 per se -- well, for example, we were recognized as -- by
16 Yahoo! Internet Life in the year 2000 as -- as a big
17 spread on most impressive or the most interesting sights
18 for the year 2000, and we were the first one mentioned
19 in that litany.

12:14:26

20 Q Was that an award?

12:14:57

21 A Not like an Academy Award. It was a
22 recognition, I guess you would call it.

23 Q How many others were included?

24 A Were included?

25 Q In that Yahoo! Internet Life.

12:15:13

1 A Oh, how many others? I don't know. I can't
2 remember. I just know we were first -- the first one
3 referenced.

4 Q Are there any other facts in connection with
5 acknowledgment and awards that SightSound relies upon in 12:15:26
6 connection with that category?

7 A As I said, numerous recognition and awareness
8 and positive media coverage of our successes during that
9 time. But as I sit here today, I can't -- I can't think
10 of the inventory of it. 12:15:49

11 Q Aside from positive media coverage and aside
12 from the Yahoo! Internet Life entry, are there any other
13 acknowledgment and awards that SightSound relies upon in
14 connection with that category in support of -- or in
15 connection with Topic 8 of Exhibit 177? 12:16:10

16 A Yeah, I can't think of -- I can't think of it.

17 Q So we talked about the three categories you
18 referenced: pent-up demand, acceptance by consumers,
19 and acknowledgment and awards.

20 Are there any other categories of information 12:16:28
21 that SightSound relies upon as factual bases in
22 connection with Topic 8 of Exhibit 177?

23 A Not that I can recall as I sit here today.

24 MR. DiBOISE: Thank you.

25 MR. BATCHELDER: What number are we on?

1 THE REPORTER: 215.

2 MR. BATCHELDER: Thanks.

3 (Exhibit 215 was marked for identification by
4 the Court Reporter.)

5 MR. BATCHELDER: I've had marked, as

12:17:14

6 Exhibit 215, Bates No. APPLE 48879 through 81.

7 Q Have you seen this document before?

8 A I don't recall it. I don't remember it.

9 Q If you could just, again, take a minute to read
10 through it.

12:17:39

11 A Sure. I've read it.

12 Q The quotes that are attributed to you in
13 Exhibit 215, do you believe that you either provided
14 those quotes in an interview or that they were provided
15 on your behalf from SightSound to the media?

12:19:14

16 A I -- yes.

17 Q If I could ask you to look at -- in the bottom
18 of the first page, second-to-last paragraph, there's a
19 quote. It says, They will be able to do as they please
20 with the promotional material. Quote: They could
21 create the word's most kick-ass Fay Masterson site, end
22 quote.

12:19:41

23 Do you see that?

24 A Yes.

25 Q What did you mean by that?

12:19:52

1 A I meant that they could take all of the
2 material associated with the -- the -- that particular
3 actress in the movie and make a fan site, because all of
4 the materials they would have access to.

5 Q So Fay Masterson was an actor in a movie?

12:20:06

6 A She was.

7 Q And in the paragraph above, it says, Viewers
8 will pay to download the movie. How much, Sander won't
9 say. They are free to pass it on to their friends, but
10 the money's encrypted digital format -- or, excuse me,
11 the movie's encrypted digital format will require
12 successive viewers to pay too.

12:20:22

13 Do you see that?

14 A Yes.

15 Q What were you referring to there about they are
16 free to pass it on to their friends?

12:20:31

17 A I believe this was the writer.

18 Q I see.

19 So you don't think you -- that information came
20 from you?

12:20:55

21 A I'm sorry. Not to put too fine a point on it,
22 I thought we were talking about quotes from me.

23 Q This information -- well, I'll just read to you
24 the sentence: They are free to pass it on to their
25 friends, but the movie's encrypted digital format will

12:21:10

1 require successive viewers to pay too.

2 A Yeah.

3 Q Did you provide that information to the
4 reporter?

5 A I don't remember. 12:21:19

6 Q Was it accurate in 2000 -- was it an accurate
7 description of SightSound's system that the encryption
8 program allowed copies to be distributed, but just
9 didn't allow playback by those other systems?

10 A No. 12:21:45

11 Q Okay. Can you explain what was inaccurate
12 about what I said?

13 A It was -- it was confusing. Do you want --

14 Q Is my -- you're saying my question was
15 confusing? 12:22:26

16 A Yes.

17 Q Let me just start over, then.

18 A Yeah.

19 Q For SightSound's distribution system in the
20 year 2000 when a consumer downloaded content, did the
21 SightSound system prevent that content from being
22 copied, or did it allow that content to be copied but
23 just prevent the content from being played back on a
24 machine other than that that did the downloading?

25 A You're close. Gen- -- yes, generally. At a 12:23:02

1 high-level, I think you're -- the answer to your
2 question is yes.

3 Q My question was actually a choice, and I want
4 to make sure I'm understanding you.

5 A Oh, I'm sorry. I thought it was a statement. 12:23:22

6 Q Let me start over again.

7 My question is: For SightSound's distribution
8 system that existed in March 2000, was it the case that
9 it didn't prevent the copying of a file that was
10 downloaded, but, rather, it prevented a copied version 12:23:49
11 to be played back from another machine?

12 A Yes.

13 Q Okay.

14 (Exhibit 216 was marked for identification by
15 the Court Reporter.) 12:24:32

16 MR. DiBOISE: Thank you.

17 MR. BATCHELDER: I've had marked, as
18 Exhibit 216, document stamped APPLE 48882 through 83 --
19 excuse me, through 84.

20 Q Would you also just take a minute to read this 12:24:55
21 one over.

22 A I've read it.

23 Q The second paragraph of Exhibit 216 has a quote
24 that it attributes to you, and is that a quote that you
25 provided to someone in a conversation? 12:26:32

1 A I don't recall.

2 Q Is it your understanding that that quote was
3 either provided in a conversation or provided to the
4 media through SightSound's public relations department?

5 A Yes.

12:26:52

6 MR. BATCHELDER: All right. Mr. Sander, I have
7 no further questions for you at this time.

8 THE WITNESS: Thank you.

9 MR. BATCHELDER: I need to keep the record open
10 so that Apple reserves the right to secure information
11 to questions you couldn't answer within the scope of
12 your 30(b)(6) topics and also in connection with
13 disputes that counsel and I had about instructions not
14 to answer.

12:27:05

15 MR. DiBOISE: Thank you.

12:27:24

16 THE WITNESS: Thank you.

17 THE VIDEOGRAPHER: This is the end of Disc 2,
18 Volume 2 of Scott Sander.

19 Off the record at 12:26.

20 (Whereupon, the deposition was concluded at
21 12:26 p.m.)

12:27:37

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1 I declare under penalty of perjury that the
2 foregoing is true and correct. Subscribed at
3 _____, California, this ____ day of
4 _____, 2013.

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Signature of the witness

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CERTIFICATE OF REPORTER

I, RACHEL FERRIER, a Certified Shorthand Reporter, hereby certify that the witness in the foregoing deposition was by me duly sworn to tell the truth, the whole truth, and nothing but the truth in the within-entitled cause;

That said deposition was taken down in shorthand by me, a disinterested person, at the time and place therein stated, and that the testimony was thereafter reduced to typewriting by computer under my direction and supervision and is a true record of the testimony given by the witness;

That before completion of the deposition, review of the transcript [X] was [] was not requested. If requested, any changes made by the deponent (and provided to the reporter) during the period allowed are appended hereto.

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.

DATED: *January 3rd, 2013*


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