

1           BEFORE THE PATENT TRIAL AND APPEAL BOARD  
2           IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
3

4           TRIAL NOS.: IPR 2013-00082 through 2013-00087  
5           PATENT NOS: 5,978,791; 6,415,280; 7,945,544;  
6                               7,945,539; 7,949,662; 8,001,096  
7

8           PATENT OWNERS: PERSONALWEB TECHNOLOGIES, LLC  
9                               & LEVEL 3 COMMUNICATIONS  
10

11          PETITIONER: EMC CORPORATION & VMWARE, INC.  
12

13          INVENTOR: DAVID A. FARBER and RONALD D. LACHMAN  
14          -----  
15

16                       DEPOSITION OF KEVIN G. BERMEISTER

17                               Los Angeles, California

18                               Tuesday, August 27, 2013  
19  
20

21          Reported by:

22          WENDY S. SCHREIBER

23          CSR No. 3558, RPR

EMC/VMware v. PersonalWeb  
IPR2013-83  
EMCVMW 1077  
24  
25

1           BEFORE THE PATENT TRIAL AND APPEAL BOARD  
2           IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

3  
4           TRIAL NOS.: IPR 2013-00082 through 2013-00087  
5           PATENT NOS:   5,978,791; 6,415,280; 7,945,544;  
6                        7,945,539; 7,949,662; 8,001,096

7  
8           PATENT OWNERS:   PERSONALWEB TECHNOLOGIES, LLC  
9                            & LEVEL 3 COMMUNICATIONS

10  
11          PETITIONER:   EMC CORPORATION & VMWARE, INC.

12  
13          INVENTOR:   DAVID A. FARBER and RONALD D. LACHMAN

14          -----  
15                 Videotaped Deposition of KEVIN BERMEISTER,  
16                 taken at 350 S. Grand Avenue, Suite 2100 Los  
17                 Angeles, California, commencing at 10:02 A.M.,  
18                 and ending at 2:24 P.M., Tuesday, August 27, 2013,  
19                 before WENDY S. SCHREIBER, Certified Shorthand  
20                 Reporter No. 3558, RPR.

1 APPEARANCES OF COUNSEL:  
2

3 Attorneys for Patent Owner, PersonalWeb  
4 Technologies, LLC:  
5

6 NIXON & VANDERHYE, P.C.

7 BY: JOSEPH A. RHOA, ESQ.

8 901 N. Glebe Road

9 11th Floor

10 Arlington, Virginia 22203

11 - and -  
12

13 McKOOL SMITH, P.C.

14 BY: LAWRENCE HADLEY, ESQ.

15 865 South Figueroa Street

16 Los Angeles, California 90017

17 (213) 694-1200

18 lhadley@mckoolsmith.com  
19  
20  
21  
22  
23  
24  
25

1 APPEARANCES (Continued):  
2

3 Attorneys for Petitioner, EMC  
4 Corporation and VMware, Inc.:  
5

6 WILMERHALE

7 BY: ROBERT M. GALVIN, ESQ.

8 950 Page Mill Road

9 Palo Alto, California 94304

10 (650) 858-6017

11 robert.galvin@wilmerhale.com  
12  
13

14 Video Operator - Julian Shine  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

## INDEX

TUESDAY, August 27, 2013

## WITNESS

## EXAMINATION

KEVIN G. BERMEISTER

(By Mr. Galvin)

8, 158

(By Mr. Rhoa)

161

P. M. Session

90

## DEPOSITION EXHIBITS

KEVIN G. BERMEISTER

NUMBER	DESCRIPTION	PAGE
Exhibit 1	Warrant to Purchase Common Stock of Brilliant Digital Entertainment, Inc.	53
Exhibit 2	SEC Form S-3 Registration Statement	57
Exhibit 3	SEC Form 10-KSB for Fiscal Year Ended 12/31/02	71
Exhibit 4	SEC Form 10-KSB for Fiscal Year Ended 12/31/03	104

## DEPOSITION EXHIBITS (Continued)

KEVIN G. BERMEISTER

NUMBER	DESCRIPTION	PAGE
Exhibit 5	SEC Amendment No. 3 to Form S-1 Registration Statement	121
Exhibit 6	SEC Form 10-KSB for Fiscal Year 12/31/05	146
Exhibit 7	Joint Enterprise Agreement Exhibit 10.6	154
Exhibit 8	Hoovers SEP Investments PTY Limited Profile	155

## PREVIOUSLY-MARKED EXHIBITS

NUMBER	DESCRIPTION	PAGE
Exhibit 2009		19
Exhibit 2010		115
Exhibit 2011		34
Exhibit 2012		97
Exhibit 2014		19

1 LOS ANGELES, CALIFORNIA; TUESDAY, AUGUST 27, 2013

2 10:02 A.M.

3  
4 VIDEO OPERATOR: Good morning. We are on  
5 the record at 10:02 a.m. on August 27th, 2013. This  
6 is the video-recorded deposition of Kevin  
7 Bermeister.

8 My name is Julian Shine, here with our  
9 court reporter, Wendy Schreiber. We are here from  
10 Veritext Legal Solutions at the request of counsel  
11 for Petitioner.

12 This deposition is being held at WilmerHale,  
13 LLP, at 350 South Grand Avenue, Suite 2100, in  
14 Los Angeles, California. The caption of this case  
15 is Patent Owners: PersonalWeb Technologies, LLC and  
16 Level 3 Communications versus Petitioners EMC  
17 Corporation and VMware, Incorporated, Case No. IPR  
18 2013-000823 through 2013-00087.

19 Please note that audio and video recording  
20 will take place unless all parties agree to go off  
21 the record. Microphones are sensitive and may pick  
22 up whispers, private conversations, and cellular  
23 interference.

24 I am not authorized to administer an oath.  
25 I am not related to any party in this action nor am

1 I financially interested in the outcome in any way.

2 May I please have an agreement from all  
3 parties that we can proceed?

4 MR. GALVIN: Yes.

5 MR. RHOA: Sure.

6 VIDEO OPERATOR: At this time will counsel  
7 and all present identify themselves for the record.

8 MR. GALVIN: Rob Galvin on behalf of  
9 Petitioners EMC and VMware.

10 MR. RHOA: Joe Rhoa for PersonalWeb.

11 MR. HADLEY: Larry Hadley.

12 VIDEO OPERATOR: Thank you. The witness  
13 will be sworn in and counsel may begin the  
14 examination.

15  
16 KEVIN G. BERMEISTER,  
17 having been first placed under oath, testified as  
18 follows:

19  
20 EXAMINATION

21 BY MR. GALVIN:

22 Q. Good morning, Mr. Bermeister.

23 A. Good morning.

24 Q. Would you please state your full name.

25 A. Kevin Bermeister. Kevin Glen Bermeister.

1 Q. And where do you reside?

2 A. Sydney, Australia.

3 Q. Are you currently employed?

4 A. I am.

5 Q. And who do you work for?

6 A. My personal management company, Merada  
7 Holdings.

8 Q. How do you --

9 A. M-E-R-A-D-A.

10 Q. Do you work for any other companies?

11 A. I'm the Chairman of a company called  
12 Brilliant Digital Entertainment, a Non-Executive  
13 Chairman of PersonalWeb, and a board director of  
14 several other companies.

15 Q. What other companies are you on the Board of  
16 Directors of?

17 A. A company called Manta Holdings, BUI  
18 Limited, SEP Holdings, some family trusts and that's  
19 all I can recall right now.

20 Q. Do any of the entities that you just named  
21 have any interest direct or indirect in PersonalWeb?

22 A. Sorry, Jerusalem Management Limited is  
23 another one.

24 Q. So do any of these entities that you just  
25 named have any direct or indirect interest in

1 PersonalWeb?

2 A. Yes, I believe so.

3 Q. Which of them have --

4 A. I believe Manta Holdings and Brilliant  
5 Digital Entertainment.

6 Q. How about SEP Holdings?

7 A. No, I don't think so.

8 Q. Is there a company called SEP Investments?

9 A. There may be. It may be SEP Holdings is SEP  
10 Investments. It's quite possible.

11 Q. Did SEP Investments at one time have an  
12 interest in PersonalWeb or Brilliant Digital?

13 A. You know, I may be confusing Manta and SEP.  
14 It could be held in either one of those companies.  
15 I doubt that the holdings of PersonalWeb are held in  
16 both of those companies but probably one of those  
17 and I'm not sure -- I may be mistaken as to exactly  
18 which ones. They both relate to companies in which  
19 I hold various investments so it's quite possible  
20 that you may be right and I may be wrong.

21 Q. Other than you, who else has an interest in  
22 SEP Investments or SEP Holdings?

23 MR. RHOA: Objection: relevance.

24 THE WITNESS: SEP is primarily a company  
25 that is established for my family interests, my

1 immediate family interests, and so that's -- that's  
2 how the holdings are structured.

3 BY MR. GALVIN:

4 Q. And so the only people that would have an  
5 interest in SEP Investments would be you or members  
6 of your immediate family?

7 A. All corporations which are involved with my  
8 immediate family.

9 Q. Do you have any ownership interest currently  
10 in Brilliant Digital Entertainment?

11 A. I do.

12 Q. And what percentage of ownership do you have  
13 in Brilliant Digital?

14 A. I don't recall -- I don't recall right now  
15 but a relatively -- personally I have a relatively  
16 small percentage at present.

17 Q. Who has the majority of Brilliant, if anyone?

18 A. I don't believe there is a majority control  
19 of the company.

20 Q. Is there anyone who has voting control of  
21 Brilliant?

22 A. I don't believe so.

23 Q. How about Altnet? Do you have any ownership  
24 interest in Altnet currently?

25 A. No.

1 Q. Do you have any ownership interest in  
2 Kinetech currently?

3 A. You're talking about me personally?

4 Q. Yes.

5 A. No.

6 Q. Is Altnet a 100-percent-owned subsidiary of  
7 Brilliant Digital at this time?

8 A. I believe so.

9 Q. And is Kinetech a 100-percent-owned  
10 subsidiary of Brilliant Digital at this time?

11 A. I believe so. Yes, I think so. I can't  
12 recall whether or not we actually sold the assets of  
13 Kinetech to PersonalWeb or whether or not we sold  
14 the corporate entity, but I believe Kinetech is  
15 actually retained by Brilliant Digital.

16 Q. Okay. Have you ever owned any interest  
17 direct or indirect in Skype?

18 A. In -- in -- I held some shares in Skype in  
19 the beginning, in the early formation of the  
20 company. I answer the question reservedly because  
21 I'm just not sure exactly which entities I held  
22 those shares in or whether or not your question  
23 relates to today or at what point in time the  
24 question relates.

25 Q. So when did you first have any direct or

1 indirect interest in Skype?

2 A. In about 2002, 2003 was my first interest in  
3 the company.

4 Q. And was that approximately when the company  
5 was founded?

6 A. Roughly, yes.

7 Q. And at some time did your interest cease to  
8 exist?

9 A. Correct.

10 Q. When was that?

11 A. I can't recall exactly the date but  
12 somewhere in the -- somewhere around 2006 or  
13 thereabouts, 2007.

14 Q. Is that when Skype was sold to eBay?

15 A. Correct.

16 Q. And when it was sold to eBay after it was  
17 sold to eBay you had no -- you no longer had an  
18 interest in Skype?

19 A. Correct.

20 Q. After 2006 did you ever acquire any direct  
21 or indirect interest in Skype?

22 A. I -- after -- you're talking about once it  
23 was sold to eBay?

24 Q. Yes.

25 A. No. Well, sorry. I need to understand. So

1 once the company was sold -- after it was sold to  
2 eBay I had no interest in Skype.

3 Q. Any time after 2006 did you acquire a direct  
4 or indirect interest in Skype?

5 A. No.

6 Q. After 2006 did you ever acquire a direct or  
7 indirect interest in warrants in Skype?

8 A. No.

9 Q. Currently do you have any interest held  
10 directly or indirectly in Skype?

11 A. No.

12 Q. Have you ever had any direct or indirect  
13 interest in Sharman Networks Limited?

14 A. I -- just explain indirect interest. I'm  
15 not sure whether or not it relates to a company --  
16 contracts that I have with Sharman through my  
17 company or how are you --

18 Q. Any ownership interest. So either directly  
19 owning stock or owning an entity that owns stock.

20 A. No.

21 Q. What interests broadly or what relationship  
22 have you had with Sharman Networks Limited?

23 A. Back to inception?

24 Q. Yes.

25 A. We had a -- my company Brilliant Digital

1 Entertainment had a relationship with Sharman to  
2 distribute technologies and to operate a business  
3 venture with Sharman.

4 Q. So Brilliant Digital had contractual  
5 relationships with Sharman?

6 A. Correct.

7 Q. Besides these contractual relationships, any  
8 other relationships between the two companies?

9 A. No. Sharman may have -- Sharman may have  
10 had some equity in Brilliant, if I'm not mistaken,  
11 or some warrants, one of the two.

12 Q. How about Joltid Ltd., J-O-L-T-I-D, Ltd.?  
13 Have you ever had any direct or indirect ownership  
14 interest in Joltid Ltd.?

15 A. No.

16 Q. Have you or your -- or companies that you've  
17 been associated with had any contractual  
18 relationships with Joltid Ltd.?

19 A. Yes.

20 Q. What contractual relationships have you had?

21 A. Altnet, which was a subsidiary of Brilliant  
22 today, but was originally formed as a joint venture  
23 with Joltid.

24 Q. Oh, Altnet had contractual relationships  
25 with Joltid Ltd.; is that correct?

1 A. Correct.

2 Q. Were there any contractual relationships  
3 between Brilliant and Joltid?

4 A. I can't recall.

5 Q. Are there any other companies that you've  
6 had an interest in which have had a contractual  
7 relationship with Joltid Ltd. other than Altnet and  
8 Brilliant?

9 A. At one stage I had a -- a management  
10 agreement with Joltid. I can't recall whether that  
11 was personally or through my management service  
12 company.

13 Q. And what services did you provide Joltid  
14 Ltd. pursuant to that contract?

15 A. Consulting services, management services.

16 Q. And approximately what time frame did that  
17 consulting relationship exist?

18 A. I can't recall exactly. Sometime 2007.

19 Q. Did you have any consulting relationship  
20 before 2003 with Joltid?

21 A. No.

22 Q. What are your duties and responsibilities as  
23 a Non-Executive Chairman of PersonalWeb?

24 A. I -- I provide advice to management and I  
25 provide it when they need it and we discuss matters

1 that are all public to the Board and then reach  
2 resolutions accordingly.

3 Q. You've had your deposition taken before,  
4 correct?

5 A. I have.

6 Q. Have you ever testified in court before?

7 A. I have.

8 Q. Where did you testify in court?

9 A. In Sydney, Australia.

10 Q. Was this in connection with the lawsuit  
11 involving the KaZaA technology?

12 A. No.

13 Q. Did it have any relationship to any work  
14 that was done by Brilliant, Altnet or Kinetech?

15 A. No.

16 Q. Now, one thing I wanted -- I don't think I  
17 need to go through the rules of this examination but  
18 one thing I wanted to make you aware of and in case  
19 your attorney didn't is that under the U.S. Patent  
20 and Trademark Office's rules for inter parties  
21 review, once my questioning begins until it is  
22 concluded you're not allowed to consult or confer  
23 with your counsel regarding the substance of your  
24 testimony except for conferring on whether to assert  
25 a privilege against testifying. Do you understand

1 that rule?

2 A. Yes.

3 Q. And do you intend to comply with it?

4 A. I do.

5 Q. Are you taking any medication that would  
6 interfere with your ability to provide truthful and  
7 accurate testimony today?

8 A. No.

9 Q. Could you briefly describe your educational  
10 background.

11 A. I completed high school.

12 Q. In Australia?

13 A. In South Africa.

14 Q. What, if anything, did you do to prepare for  
15 your deposition testimony today, examination?

16 A. We had a meeting yesterday and -- in which  
17 we discussed the deposition today.

18 Q. And who did you meet with?

19 A. With my lawyers.

20 Q. And did you review any documents?

21 A. I did.

22 Q. What did you review?

23 MR. RHOA: Objection. The question calls  
24 for work product, attorney-client privilege.

25 The witness is instructed not to answer.

1 BY MR. GALVIN:

2 Q. Did you review any agreements?

3 MR. RHOA: Same objection.

4 MR. GALVIN: Are you instructing him not to  
5 answer?

6 MR. RHOA: Yep.

7 (Exhibit 2009 previously marked.)

8 (Exhibit 2014 previously marked.)

9 BY MR. GALVIN:

10 Q. Let me hand you what's been previously  
11 marked as Exhibit 2009 --

12 MR. RHOA: And, by the way, Rob, whenever I  
13 say "privileged" today, that covers both  
14 attorney-client privilege and work product. Is that  
15 okay?

16 MR. GALVIN: That is okay. Understood.

17 Q. I'm handing you what's been previously  
18 marked as Exhibit 2009 and 2014, the Declaration of  
19 Kevin Bermeister and the Supplemental Declaration of  
20 Kevin Bermeister. Start with Exhibit 2009. Do you  
21 recognize --

22 MR. RHOA: Rob, do you have copies for me?

23 MR. GALVIN: Sorry.

24 MR. RHOA: Thank you.

25 //

1 BY MR. GALVIN:

2 Q. Do you recognize Exhibit 2009 as the  
3 Declaration that you submitted in this inter parties  
4 review?

5 A. I do.

6 Q. And is that your signature on page 3?

7 A. It is.

8 Q. And looking at Exhibit 2014, is that the  
9 Supplemental Declaration that you submitted in this  
10 proceeding?

11 A. Yes, it is.

12 Q. Are there any corrections or errors that  
13 you're aware of in Exhibit 2009 and Exhibit 2014  
14 that you wish to make at this time?

15 MR. RHOA: Objection: form.

16 THE WITNESS: I believe 2014 corrects 2009  
17 in at least one place.

18 BY MR. GALVIN:

19 Q. Other than that correction, do you have any  
20 other corrections to Exhibit 2009?

21 A. No, I don't believe so.

22 Q. Does Europlay Capital currently own any  
23 interest in Brilliant Digital?

24 A. I don't know. I don't know.

25 Q. Does Europlay Capital own any interest in

1 PersonalWeb at this time?

2 A. I believe it does.

3 Q. Does Europlay Capital own any interest in  
4 Altnet?

5 A. No.

6 Q. Does Europlay Capital own any interest in  
7 Kinetech?

8 A. No.

9 Q. Who are the original shareholders of Altnet?

10 A. I believe that was Brilliant Digital and  
11 Joltid.

12 Q. And who are the principal investors behind  
13 Joltid?

14 A. I don't know. I don't know who the  
15 investors were.

16 Q. Were there two individuals that are  
17 associated with Joltid that you're aware of?

18 A. There are. There were.

19 Q. And who were they?

20 A. Niklas Zennstrom and Janus Friis.

21 Q. And were they two of the founders of KaZaA?

22 A. I believe so.

23 Q. And were they two of the founders of Skype?

24 A. I believe so.

25 Q. Turning to Exhibit 2009, your declaration,

1 you're currently the Chief Executive Officer and  
2 Director of Brilliant Digital, correct?

3 A. Correct.

4 Q. Are there any other employees of Brilliant  
5 Digital at this time?

6 A. Yes, yes.

7 Q. And who else is employed by Brilliant  
8 Digital?

9 A. The names?

10 Q. Yes.

11 A. Anthony Neumann and one other. I just can't  
12 recall whether or not he's an employee or a  
13 contractor but I think he's a contractor.

14 Q. And what's Anthony Neumann's position at  
15 Brilliant?

16 A. He's a Vice President.

17 Q. Does he have a particular area of  
18 responsibility?

19 A. No, business development.

20 Q. Does -- is Brilliant Digital an operating  
21 company at this time?

22 A. Not really.

23 Q. Why do you say not really?

24 A. Well, because mostly its interests are  
25 really operated through other -- through its

1 subsidiaries or other companies.

2 Q. Now, in paragraph 3 you refer to the  
3 TruNames patents and you say that you are referring  
4 to the U.S. Patent Nos. 5,978,791 and all  
5 continuations thereof. If I use the name "TruNames  
6 patents" during this examination, will you  
7 understand that I'm referring to it in a way that  
8 you defined it in paragraph 3?

9 A. Yes.

10 Q. Is that fair? Now, in paragraph 3 you talk  
11 about the fact that the TruNames patents were  
12 originally owned by a company called Kinetech. To  
13 your knowledge was Kinetech the only owner of the  
14 TruNames patents?

15 MR. RHOA: Objection: form.

16 THE WITNESS: I don't know how you define  
17 "owner." Can you perhaps describe it a little bit  
18 more?

19 BY MR. GALVIN:

20 Q. Well, you say in paragraph 3 that the  
21 TruNames patents were originally owned by a company  
22 called Kinetech. In the way that you described it  
23 there, was it your understanding that Kinetech  
24 solely owned the TruNames patents originally?

25 A. Look, I know that Kinetech owned the patents

1 and they also had an agreement with Level 3. I  
2 don't know -- I'm not a lawyer and I don't  
3 understand the -- the nature of ownership. So you  
4 used the term "own" and I'm just not sure whether or  
5 not I'm qualified to answer the question.

6 Q. Then how -- do you know if -- did Kinetech  
7 own the patents --

8 A. I certainly know that Kinetech were an owner  
9 of the patents when we acquired them -- I acquired  
10 them from Kinetech.

11 Q. And you entered into a license agreement  
12 first with Kinetech in 2002, correct?

13 MR. RHOA: Objection to the form.

14 BY MR. GALVIN:

15 Q. Is that correct?

16 A. In 2002 we -- Brilliant Digital licensed the  
17 patent in a field -- limited field of use from  
18 Kinetech.

19 Q. Now, prior to entering into the license  
20 agreement, was there any relationship between  
21 Kinetech and Brilliant Digital?

22 A. No.

23 Q. Prior to entering into the license  
24 agreement, was there any relationship between -- let  
25 me withdraw that.

1           Who were the officers or directors of  
2 Kinetech when you entered into the license in 2002?

3           MR. RHOA: Objection: form.

4           THE WITNESS: I don't know who they were. I  
5 know -- I don't know who they were. I know who I  
6 negotiated with but I don't know what positions they  
7 held in the company.

8 BY MR. GALVIN:

9           Q. And who did you negotiate the Brilliant  
10 license with Kinetech?

11          A. With a gentleman called Ezra Goldman and Ron  
12 Lachman.

13          Q. And did you understand Ron Lachman to have  
14 an ownership interest in Kinetech?

15          A. I believe so, yeah.

16          Q. Did you understand Ezra Goldman to have an  
17 ownership interest?

18          A. I don't know.

19          Q. Was --

20          A. I don't know.

21          Q. Was Ezra Goldman an attorney?

22          A. I don't believe so. He appeared to be  
23 working for the company.

24          Q. Prior to entering into -- prior to the  
25 license agreement being signed between Brilliant and

1 Kinetech, was there any relationship between  
2 Mr. Lachman and Brilliant Digital?

3 A. No, I don't believe so.

4 Q. Now, the agreement between Kinetech and  
5 Brilliant Digital license agreement was signed in  
6 October 2002; is that correct?

7 A. You have the agreement there? I believe it  
8 was but maybe I said that in the declaration. Yes,  
9 that's correct. I believe so. Yes.

10 Q. So prior to October 18th, 2002, there was no  
11 relationship between Mr. Lachman and Brilliant  
12 Digital?

13 A. I don't believe so.

14 Q. Mr. Lachman had no ownership interest in  
15 Brilliant Digital prior to October 18th, 2002?

16 A. Don't think so.

17 Q. Mr. Lachman didn't have any contractual  
18 relationship with Brilliant Digital prior to October  
19 18th, 2002?

20 A. I don't believe so. I don't recall but I  
21 don't believe so.

22 Q. What do you recall about the negotiations  
23 between Kinetech and Brilliant Digital that led to  
24 the license agreement in 2002?

25 A. That's a long time ago. I don't recall very

1 much but -- more than ten years ago now -- so  
2 perhaps if you ask me specific questions I can try  
3 and recall but, you know, we -- we held meet -- a  
4 meeting probably telephonically. We held -- I  
5 recall having one or two meetings at my office with  
6 Ron Lachman and negotiating an agreement to license.  
7 Pretty much it -- that's it.

8 Q. Do you recall an exchange of drafts?

9 A. I don't specifically recall an exchange of  
10 drafts. I'm absolutely sure that there have been --  
11 there would have been an exchange of drafts but I  
12 don't specifically recall one event.

13 Q. Do you recall any particular points of being  
14 in contention in the negotiation?

15 A. I think the field of use was -- was a -- you  
16 know, probably the most complex aspect of the  
17 agreement.

18 Q. Do you recall any discussions during the  
19 negotiation about the consideration that Brilliant  
20 would pay --

21 A. Yeah, there were some discussions about  
22 consideration but I don't specifically recall, you  
23 know, any one of those. I mean, I generally have a  
24 recollection of -- of a discussion about duration as  
25 well as contract generally and, you know, I do

1 recall field of use is one of those areas that we  
2 spent quite a lot of time on.

3 Q. Do you recall any discussion in negotiations  
4 about what royalties Brilliant should pay?

5 A. I don't.

6 Q. Do you recall how it was decided that  
7 Brilliant would issue warrants to Kinetech in  
8 exchange for the license?

9 A. You know, again, I have some vague  
10 recollection of board meetings and discussions at  
11 board meetings but I don't recall the specifics.

12 Q. Were you communicating via e-mail with  
13 Mr. Lachman or Mr. Goldman during this time of the  
14 negotiations?

15 A. Quite possibly.

16 Q. And would you still have those?

17 A. No, I wouldn't.

18 Q. Now, originally in paragraph 7 you said that  
19 the consideration for the Kinetech license was  
20 approximately \$5 million and then in your  
21 Supplemental Declaration, Exhibit 2014, you  
22 corrected it to say it was \$1 million.

23 A. Correct.

24 Q. What's that valuation based on?

25 A. The \$1 million?

1 Q. Yes.

2 A. If I recall, it was based on the value of  
3 Brilliant's shares at the time or shortly  
4 thereafter.

5 Q. So how did you arrive at that number?

6 A. Warrants times shares. Warrants times share  
7 value, I think. I just can't recall exactly how we  
8 arrived at that number but I think that's how I  
9 calculated it.

10 Q. So you performed this calculation in July of  
11 2013 when you submitted this declaration?

12 A. I really -- I looked back at the share price  
13 at that time and then I poured the calculation in.

14 Q. And where do you look to see the share  
15 price?

16 A. On one of the websites.

17 Q. Do you remember what website you looked at?

18 A. No, I can't recall exactly.

19 Q. And is there a site that keeps historic  
20 values for Brilliant?

21 A. There are a few of them and I think I went  
22 back -- I just can't recall which one I used.

23 Q. Okay. Which ones are you aware of that you  
24 could get this information?

25 A. I Googled one or two and found a few of them

1 and I looked back at the website, the history. It  
2 may have been NB -- CNBC or Yahoo! or one of the  
3 websites that I found.

4 Q. And so you recall in July 2013 doing a  
5 search and looking up the historic price of  
6 Brilliant Digital --

7 A. I spoke with Anthony Neumann as well and he  
8 validated that the -- you know, my information was  
9 correct.

10 Q. What did Anthony Newman tell you?

11 A. That the price was what I told him.

12 Q. So just going back, so you recall looking at  
13 some site, you can't recall what site?

14 A. Yeah, I can't recall the site now.

15 Q. And you -- what date did you look up the  
16 valuation?

17 A. It was -- I looked back at the ten-year  
18 history of BDLN was the -- was the last code I  
19 believe and then that BD used on the AMEX or I think  
20 at that time we were a pink sheet traded company and  
21 then I did some research. I used quite a few  
22 sites -- actually, two or three different sites.  
23 That's why I just can't recall the name of any one  
24 of them. There's several sites that offer services  
25 to go back and look at historical prices.

1 Q. But you don't remember any of them?

2 A. As I said, may have been Yahoo!, CNBC, one  
3 of those. I seem to recall that it had a specific  
4 name that related to the services that had offered  
5 historical stock prices or something.

6 Q. So what was the Google search you ran?

7 A. I want to try to find it and say historical  
8 stock prices for public companies.

9 Q. And then you entered in --

10 A. It gave -- Google gave me back a list of  
11 site options and I used one of them.

12 Q. And then you entered in -- what ticker code  
13 did you use?

14 A. I think BDLN and I may have also used BDE,  
15 Brilliant Digital. I tried a few options.

16 Q. And you personally did this?

17 A. I did, yes.

18 Q. And what date did you use to assess the  
19 valuation that you ascribe to --

20 A. Roughly the October 2002 period.

21 Q. And so if I understand your methodology, if  
22 there were warrants for 5 million shares, if you  
23 arrived at a valuation of approximately \$1 million,  
24 then what was the share price, historical share  
25 price?

1           A.    If I recall correctly, it was something in  
2           the range of 30 cents, 35 cents, or something like  
3           that.  It fluctuated a little bit around those days.

4           Q.    So if it was 30 or 35 cents, how did you  
5           reach a \$1 million valuation on an issuance of 5  
6           million warrants or 5 million dollars worth of  
7           warrants?

8           A.    You know, there was some fluctuation in the  
9           share price around that time so I took -- I took a  
10          valuation.  I made an approximate valuation and just  
11          estimated what I thought they were valued out  
12          because I know there's some calculation for -- you  
13          know, historically I've looked at things like  
14          Black-Scholes and various methods of valuing shares  
15          so -- but I thought that the fairest way to do that  
16          was to multiply it by the share price that was  
17          fluctuating at that time.  It was lower before we  
18          made the announcement and higher after we made the  
19          announcement so I picked a range and -- and gave my  
20          best estimate of the value.

21          Q.    And do you recall what the approximate range  
22          of variation was around the October 2002 time frame?

23          A.    It went -- maybe from 15 cents up to 35  
24          cents or something like that, if I recall correctly.  
25          It was from a low point to a high point.

1 Q. And so what value did you give to each of  
2 the warrants that were issued?

3 A. Something that arrived at a million as a  
4 valuation. I just can't remember exactly.

5 Q. Now, previously you had valued it at 5  
6 million. What caused you to change the valuation?

7 A. I didn't actually value it at 5 million, I  
8 really made 5 million warrants. When I saw this  
9 after I had signed it I realized that there was an  
10 error.

11 Q. Now, you mentioned something about a  
12 Black-Scholes method for valuing warrants. You've  
13 used that before --

14 A. No, I've never used it before. I mean, I've  
15 had other people use it but I've never used it  
16 before. I'm not familiar with its machinations.

17 Q. And you didn't provide any Black-Scholes  
18 valuation?

19 A. No.

20 Q. Were there any restrictions on the warrants  
21 that Brilliant issued to Kinetech?

22 A. There may have been. I just don't recall.

23 Q. Would the restrictions on the warrants  
24 affect the valuation?

25 A. Possibly.

1 Q. And did you consider any restrictions and  
2 the effect it had on valuation?

3 A. I did not.

4 Q. Did you look at the warrant agreement in  
5 arriving at your calculations?

6 MR. RHOA: Object to form.

7 THE WITNESS: I looked at the -- the -- if  
8 I'm not mistaken, I don't believe there was -- I'm  
9 not sure there is a warrant agreement. Is there?  
10 Can you be a little bit more explicit about "warrant  
11 agreement" because I don't believe that there was  
12 such a -- an agreement. I can't recall specifically  
13 whether or not it was only covered in the agreement  
14 with Kinetech or whether there was a separate  
15 warrant agreement.

16 BY MR. GALVIN:

17 Q. When a company -- when a public company  
18 issues warrants, is there a document that's created  
19 to grant the warrants?

20 A. I'm sure there's a certificate.

21 Q. And -- but you don't recall looking at any  
22 such document?

23 A. I didn't look at a certificate, no.

24 (Exhibit 2011 previously marked.)

25 //

1 BY MR. GALVIN:

2 Q. Let me hand you what's been previously  
3 marked as Exhibit 2011, the Patent License Agreement  
4 between Kinetech, Brilliant and Altnet. Now,  
5 Mr. Bermeister, do you recognize this as the patent  
6 license agreement between Kinetech, Brilliant and  
7 Altnet with an effective date of October 18th, 2002,  
8 that you attached to your declaration?

9 A. Yes, I do.

10 Q. And if you look at the end of -- or actually  
11 on the page that ends 6660, about three pages from  
12 the end, two or three pages from the end, there's  
13 some signatures.

14 A. Uh-huh.

15 Q. Do you recognize those signatures?

16 A. I recognize mine.

17 Q. And did you sign on behalf of Brilliant  
18 Digital and Altnet?

19 A. I did.

20 Q. And is the signature under Kinetech Ronald  
21 Lachman?

22 A. I don't know. It looks like it could say  
23 Ronald but I'm not sure.

24 Q. Now, if you turn to the second page of  
25 Exhibit 2011, paragraph 1.4 has a heading

1 "Consideration."

2 A. Uh-huh.

3 Q. And do you recall reviewing this paragraph  
4 when you were coming up with your valuation of the  
5 consideration that Brilliant paid to Kinetech for  
6 this license?

7 A. I recall looking at the paragraph, yes.

8 Q. And you'll notice that there is a phrase  
9 here that says in the bottom of that page,  
10 "...('Warrant') pursuant to the Warrant Agreement  
11 attached as Exhibit A ('Consideration')."

12 Do you see that?

13 A. I do.

14 Q. But you didn't look at the warrant  
15 agreement?

16 A. I did not.

17 Q. And you didn't include it in your submission  
18 to the USPTO, correct?

19 A. That is correct, I believe.

20 Q. Now, when you look at the exercise price, it  
21 says the exercise price is the greater of \$0.0 0001  
22 per share or par value."

23 A. Uh-huh.

24 Q. What's the par value for these warrants?

25 A. I don't know.

1 Q. Do you think that would affect the  
2 valuation?

3 A. I don't know.

4 Q. Do you know if Kinetech ever exercised this  
5 warrant?

6 A. I can't recall. I seem to -- I just can't  
7 recall.

8 Q. At the time that Brilliant Digital and  
9 Altnet entered into this agreement with Kinetech,  
10 did Brilliant or Altnet intend to practice the  
11 inventions claimed in the TruNames patents?

12 MR. RHOA: Object to form and foundation.

13 THE WITNESS: What -- what does "practice"  
14 mean? What do you mean by "practice"?

15 BY MR. GALVIN:

16 Q. Did Brilliant or Altnet intend to make  
17 products or provide services that would fall within  
18 the scope of the claims of the TruNames patents?

19 MR. RHOA: Objection: form and foundation.

20 THE WITNESS: Look, I -- I know why -- I  
21 mean, Brilliant licensed this patent because it was  
22 involved in -- in the business for which it was  
23 developing products which it thought would be  
24 covered by the field of use and -- so I don't  
25 understand your question specifically. I can -- you

1 know, I don't really know why we went ahead and  
2 licensed it.

3 BY MR. GALVIN:

4 Q. What products were Brilliant or Altnet  
5 developing that you thought would be relevant to the  
6 TruNames patents?

7 A. Altnet was one of the companies -- one of  
8 the products that we were developing.

9 Q. And what product was Altnet developing that  
10 you thought you needed a license or wanted a license  
11 for the TruNames patents?

12 A. It was a peer-to-peer network application  
13 and perhaps some other elements of it. Peer-to-peer  
14 network.

15 Q. Was that called Peer Enabler?

16 A. Peer Enabler was one term that applied to  
17 the product.

18 Q. And did you think that Peer Enabler  
19 practiced the inventions claimed in the TruNames  
20 patents?

21 MR. RHOA: Objection: form and foundation.

22 THE WITNESS: I'd prefer not to use the term  
23 "Peer Enabler" because I just don't recall exactly  
24 what we applied Peer Enabler to. In my mind Altnet  
25 was really the application that we were -- we were

1 building.

2 BY MR. GALVIN:

3 Q. So there is an Altnet application?

4 A. I just -- you know, we -- we refer to it by  
5 different names at different times so Altnet was  
6 founded originally to build this application, to  
7 build an application which it proceeded to do. And  
8 although it may have been referred to as Peer  
9 Enabler at some point in time, it was one of the  
10 same thing but I just don't know when Peer Enabler  
11 was used as a term during the period that we  
12 marketed the product.

13 Q. Do you recall any other names for the  
14 product other than Peer Enabler?

15 A. Top Search, Altnet, Peer Enabler. There  
16 were various terms generically applied to the  
17 product at the time.

18 Q. Do you recall previously testifying that  
19 Peer Enabler didn't practice the inventions claimed  
20 in the TruNames patents?

21 A. I don't specifically recall.

22 Q. In the RIAA case you don't recall testifying  
23 to that?

24 A. I don't recall.

25 Q. If you turn to the second-to-last page of

1 Exhibit 2009 --

2 MR. RHOA: What exhibit was that?

3 MR. GALVIN: 2009.

4 MR. RHOA: Oh, you're switching. Sorry.

5 THE WITNESS: Yep.

6 BY MR. GALVIN:

7 Q. I'm sorry, 2011. I apologize. My fault.  
8 Second-to-the-last page of the license agreement.

9 A. 6661, right?

10 Q. Yes. There's a definition of "permitted  
11 use" and under it there are some specific software  
12 applications that are identified. Do you see that?  
13 Paragraph No. 2.

14 A. Yes, I do.

15 Q. Was it your understanding that these  
16 software applications practiced the inventions  
17 claimed in the TruNames patents?

18 MR. RHOA: Objection: form and foundation.

19 THE WITNESS: I don't know.

20 BY MR. GALVIN:

21 Q. Did Brilliant Digital or Altnet ever provide  
22 notice to any of these companies that they infringed  
23 the TruNames patents?

24 MR. RHOA: Objection: beyond the scope,  
25 form, foundation.

1 THE WITNESS: What does "notice" mean? You  
2 mean by notifying them of legal or litigation or  
3 something like that? Is that what you're referring  
4 to?

5 BY MR. GALVIN:

6 Q. Did you ever -- did Brilliant Digital or  
7 Altnet ever tell any of these companies that they  
8 needed to take a license to the TruNames patents?

9 MR. RHOA: Objection: beyond the scope of  
10 the declarations, form, foundation.

11 THE WITNESS: I know we litigated against  
12 one or -- one or two of these companies but I can't  
13 recall whether or not -- you know, how the  
14 litigation was worded.

15 BY MR. GALVIN:

16 Q. And who did you litigate against?

17 A. I believe LimeWire. Possibly -- possibly  
18 Crockster but LimeWire for sure I recall.

19 Q. Now, Brilliant and Altnet eventually entered  
20 into a sublicense agreement with Sharman Networks  
21 regarding the TruNames patents, correct?

22 A. That is correct.

23 Q. Did Brilliant or Altnet ever enter into a  
24 license agreement for the TruNames patents with any  
25 of the other companies that are listed on page 6661

1 of Exhibit 2011?

2 MR. RHOA: Objection: beyond the scope of  
3 the declarations.

4 Rob, if I just say "beyond the scope," is  
5 that -- are you agreeable that that means beyond the  
6 scope of the direct that we've -- in the  
7 declarations so I can just shorten?

8 MR. GALVIN: I will agree that you have  
9 preserved your objection.

10 MR. RHOA: "Beyond the scope" is okay?

11 MR. GALVIN: Yes.

12 MR. RHOA: Thank you.

13 THE WITNESS: Sorry, can you repeat the  
14 question?

15 BY MR. GALVIN:

16 Q. Sure. Did -- other than Sharman Networks  
17 Limited, did Brilliant or Altnet ever enter into a  
18 license agreement regarding the TruNames patents  
19 with any of the other companies listed on page  
20 BDE 6661 of Exhibit 2011?

21 MR. RHOA: Objection: beyond the scope.

22 THE WITNESS: I can't specifically recall.  
23 We may have entered into one with LimeWire but I  
24 can't recall.

25 //

1 BY MR. GALVIN:

2 Q. Now, in your declaration, Exhibit 2009,  
3 you've selected three license or sublicense  
4 agreements that you brought the USPTO's attention  
5 to, correct?

6 A. Correct.

7 MR. RHOA: Objection: form.

8 BY MR. GALVIN:

9 Q. Now, were there any other licenses that  
10 you're aware of that have been entered into relating  
11 to the TruNames patents?

12 A. Yes.

13 Q. And what other companies have licensed the  
14 TruNames patents that you're aware of?

15 A. Audible Magic, as I said possibly LimeWire,  
16 I just can't recall, Caringo and Nexsan.

17 Q. What was the last one?

18 A. Nexsan.

19 Q. How do you spell that?

20 A. N-E-X-S-A-N, I believe. This -- obviously  
21 the three that are here. There may be others, I  
22 just can't recall.

23 Q. Now, in your declaration why did you include  
24 the licenses -- the agreements in which Brilliant,  
25 Sharman and Skype were a licensee and not include

1 these other licensees?

2 A. Because the -- the gross amount of money was  
3 bigger in these three.

4 Q. So what consideration, if any, did Brilliant  
5 or Altnet receive for licensing the TruNames patents  
6 to Audible Magic?

7 MR. RHOA: Objection: beyond the scope.

8 THE WITNESS: I can't recall but it would  
9 have been less than a million.

10 BY MR. GALVIN:

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

12 MR. RHOA: Same objection.

13 THE WITNESS: I don't recall.

14 BY MR. GALVIN:

15 Q. Are you certain that money was exchanged?

16 MR. RHOA: Objection: beyond the scope.

17 THE WITNESS: No.

18 BY MR. GALVIN:

19 Q. So you're not sure if Audible Music even  
20 paid a dollar to get a license to --

21 MR. RHOA: Objection: beyond the scope.

22 THE WITNESS: I don't recall.

23 BY MR. GALVIN:

24 Q. Now, when was the Audible license entered  
25 into?

1 MR. RHOA: Objection: beyond the scope.

2 THE WITNESS: Sometime in two thousand and  
3 maybe 7 or something like that.

4 BY MR. GALVIN:

5 Q. And you were involved in the negotiations of  
6 that license?

7 MR. RHOA: Objection: beyond the scope.

8 THE WITNESS: I was involved in some of the  
9 negotiations, yes.

10 BY MR. GALVIN:

11 Q. But you have no idea what the, if any,  
12 royalty was paid?

13 MR. RHOA: Objection: beyond the scope.

14 THE WITNESS: You know, it was -- the --  
15 the -- the discussion and the license was negotiated  
16 around a -- some technology sharing and information  
17 sharing. I can't recall whether or not there was  
18 value applied to specific aspects of that agreement.

19 BY MR. GALVIN:

20 Q. Do you recall -- as CEO of Brilliant  
21 Digital, do you recall Brilliant or Altnet receiving  
22 any revenue from Audible Magic, the Audible Magic  
23 license?

24 MR. RHOA: Objection: beyond the scope.

25 THE WITNESS: Don't recall.

1 BY MR. GALVIN:

2 Q. And this license was entered into after the  
3 Kinetech and Sharman licenses, correct?

4 MR. RHOA: Objection: beyond the scope and  
5 form.

6 THE WITNESS: In 2002 you're talking about?  
7 After 2002.

8 BY MR. GALVIN:

9 Q. Well, the Audible --

10 A. You're talking about the Kinetech and  
11 Sharman meaning the 2002 agreements? Is that what  
12 you're referring to?

13 Q. The Kinetech license was entered into in  
14 2002, correct?

15 A. You're saying -- the agreement you've been  
16 talking about with Kinetech?

17 Q. Yes.

18 A. Yes.

19 Q. And the Audible Magic license was --

20 A. The Sharman also you're saying was 2002,  
21 correct?

22 Q. I didn't --

23 A. Oh, I'm asking you the question. Is that  
24 what you're referring to?

25 Q. My only -- let me just restate the question.

1 The Sharman sublicense and the Kinetech license were  
2 negotiated and executed before the Audible Magic  
3 license, correct?

4 A. The agreements with Sharman and with  
5 Kinetech entered into in 2002 were -- were entered  
6 before the license agreement with Audible Magic.

7 Q. So how come you recall the details of the  
8 valuations of the Sharman sublicense and the  
9 Kinetech license but not for Audible Magic?

10 A. Because --

11 MR. RHOA: Objection: beyond the scope.

12 THE WITNESS: Because I looked at those.

13 BY MR. GALVIN:

14 Q. How about LimeWire? Did LimeWire pay any  
15 consideration for a license to the TruNames patents?

16 MR. RHOA: Objection: beyond the scope.

17 THE WITNESS: I -- I believe so.

18 BY MR. GALVIN:

19 Q. Do you recall approximately how much?

20 MR. RHOA: Objection: beyond the scope.

21 THE WITNESS: No. But, again, it would have  
22 been under a million.

23 BY MR. GALVIN:

24 Q. Would it have been potentially under  
25 \$100,000?

1 MR. RHOA: Objection: beyond the scope.

2 THE WITNESS: Just don't recall.

3 BY MR. GALVIN:

4 Q. Do you remember when the LimeWire license  
5 was executed?

6 MR. RHOA: Objection: beyond the scope.

7 THE WITNESS: Maybe 2008 or '9, something  
8 like that.

9 BY MR. GALVIN:

10 Q. So relatively recently, correct?

11 MR. RHOA: Objection: beyond the scope.

12 THE WITNESS: Possibly.

13 BY MR. GALVIN:

14 Q. Certainly more recent than 2002?

15 A. Yes, more recent than 2002.

16 Q. But you don't recall how much consideration  
17 LimeWire paid for a license?

18 MR. RHOA: Objection: beyond the scope.

19 THE WITNESS: I don't recall the specific  
20 amounts, no.

21 BY MR. GALVIN:

22 Q. How about Caringo?

23 MR. RHOA: Objection: beyond the scope.

24 BY MR. GALVIN:

25 Q. Did Caringo pay any consideration for a

1 license --

2 A. I believe they did.

3 Q. What did they pay?

4 MR. RHOA: Objection: beyond the scope.

5 THE WITNESS: Again, I -- I don't

6 specifically recall exactly what they paid.

7 BY MR. GALVIN:

8 Q. And when was the Caringo license executed?

9 MR. RHOA: Objection: beyond the scope.

10 THE WITNESS: Six months ago, a year ago.

11 BY MR. GALVIN:

12 Q. And as the CEO of Brilliant Digital, you  
13 have no idea what Caringo paid when it licensed the  
14 TruNames patents?

15 A. I have a rough idea.

16 MR. RHOA: Objection to form.

17 BY MR. GALVIN:

18 Q. What's your rough idea?

19 MR. RHOA: Objection: beyond the scope.

20 THE WITNESS: Again, under a million dollars  
21 it would have been.

22 BY MR. GALVIN:

23 Q. Under \$500,000?

24 A. Probably.

25 MR. RHOA: Objection: beyond the scope.

1 THE WITNESS: In that case, yes.

2 BY MR. GALVIN:

3 Q. Under \$200,000?

4 MR. RHOA: Objection: beyond the scope.

5 THE WITNESS: I don't know.

6 BY MR. GALVIN:

7 Q. Were you involved in the negotiation of the  
8 Caringo license?

9 MR. RHOA: Objection: beyond the scope.

10 THE WITNESS: Not really.

11 BY MR. GALVIN:

12 Q. Did you have to approve the execution of the  
13 Caringo license as CEO of Brilliant?

14 MR. RHOA: Objection: beyond the scope.

15 BY MR. GALVIN:

16 Q. And as Non-Executive Chairman of  
17 PersonalWeb?

18 MR. RHOA: Same objection.

19 THE WITNESS: When you say "approve," what  
20 do you mean "approve"?

21 BY MR. GALVIN:

22 Q. Did you have to consent?

23 MR. RHOA: Objection: beyond the scope.

24 THE WITNESS: With my lawyers? Is that what  
25 you're asking?

1 BY MR. GALVIN:

2 Q. As the Non-Executive Chairman of  
3 PersonalWeb, did you have to approve PersonalWeb  
4 entering into a settlement with Caringo for the  
5 TruNames patents?

6 MR. RHOA: Objection: beyond the scope.

7 THE WITNESS: I don't know if I had to  
8 approve. I don't know if I was required to approve.

9 BY MR. GALVIN:

10 Q. But you certainly were aware of the  
11 negotiations before the agreement was executed,  
12 correct?

13 MR. RHOA: Same objection.

14 THE WITNESS: I was aware of negotiations  
15 taking place, yes.

16 BY MR. GALVIN:

17 Q. And you were aware of the terms before it  
18 was executed, correct?

19 MR. RHOA: Same objection.

20 THE WITNESS: Some of the terms.

21 BY MR. GALVIN:

22 Q. How about Nexsan? How much consideration,  
23 if any, did Nexsan pay to license the TruNames  
24 patents?

25 MR. RHOA: Objection: beyond the scope.

1 THE WITNESS: Somewhere under a million  
2 dollars.

3 BY MR. GALVIN:

4 Q. Under \$500,000?

5 MR. RHOA: Same objection.

6 THE WITNESS: I can't recall.

7 BY MR. GALVIN:

8 Q. You can't recall?

9 A. I can't specifically recall it.

10 Q. And when was the Nexsan license entered  
11 into?

12 MR. RHOA: Objection: beyond the scope.

13 THE WITNESS: Also about six months. Within  
14 the range of a year.

15 BY MR. GALVIN:

16 Q. So the Nexsan license was executed six  
17 months to a year ago; is that correct?

18 MR. RHOA: Objection: beyond the scope.

19 THE WITNESS: Approximately, yes.

20 BY MR. GALVIN:

21 Q. And --

22 A. It may have been less -- less than -- yes,  
23 six to 12 months ago, correct.

24 Q. And other than the fact that it was under a  
25 million dollars, you have no idea what consideration

1 was paid?

2 A. I mean, I do have an idea. I just can't  
3 recall specifically what consideration was paid.

4 MR. RHOA: Same objection.

5 BY MR. GALVIN:

6 Q. And what is your idea?

7 MR. RHOA: Same objection.

8 BY MR. GALVIN:

9 Q. What's your best recollection?

10 MR. RHOA: Same objection.

11 THE WITNESS: In the range of -- I think  
12 again somewhere under \$500,000.

13 BY MR. GALVIN:

14 Q. Any other companies that you're aware of  
15 that have licensed the TruNames patents other than  
16 the ones that you've now identified?

17 MR. RHOA: Objection: beyond the scope.

18 THE WITNESS: Don't recall specifically.

19 (Deposition Exhibit 1 was marked for  
20 identification and is annexed hereto.)

21 BY MR. GALVIN:

22 Q. I'll ask the reporter to mark as Bermeister  
23 Exhibit 1 -- it would be hard to identify -- a  
24 document printed from the SEC website with the  
25 heading, "Exhibit 10.43 Warrant to Purchase Common

1 Stock of Brilliant Digital, Inc."

2 Mr. Bermeister, do you recognize Exhibit 1?

3 A. Not particularly.

4 Q. I'll represent to you it was printed from  
5 the SEC site.

6 A. Well, I don't recognize it.

7 Q. Okay. If you look at it, it says, "Warrant  
8 to Purchase Common Stock of Brilliant Digital  
9 Entertainment, Inc., October 18, 2002."

10 Do you see that?

11 A. Where are you reading?

12 Q. The top of the page under the line -- the  
13 first line. A little bit lower. The title here.

14 A. Oh, in the title? Oh, "Warrant to Purchase  
15 Common Stock of Brilliant Digital," yes.

16 Q. And October 18, 2002, is the date that the  
17 license agreement between Kinetech and Brilliant and  
18 Altnet was signed, right?

19 A. Yes, I believe so.

20 Q. And this is a Warrant to Purchase Common  
21 Stock of Brilliant Digital that was granted to  
22 Kinetech, Inc., correct?

23 A. Appears that way.

24 Q. And it's for 5 million shares of common  
25 stock, correct?

1 MR. RHOA: Objection: foundation.

2 THE WITNESS: It says up to 5 million shares  
3 of common stock.

4 BY MR. GALVIN:

5 Q. This is the warrant agreement that was  
6 attached -- a form of it -- to the license  
7 agreement, correct?

8 A. I don't know.

9 Q. If you turn to page 3, at the bottom there's  
10 a "Vested Shares" and "Non-Vested Shares." Do you  
11 see that?

12 A. I see that.

13 Q. And do you recall there being any notion  
14 that the shares that would be granted to Kinotech or  
15 the warrants that would be granted to Kinotech would  
16 be vested or non-vested? Any restrictions on  
17 vesting?

18 A. I don't recall.

19 Q. Turn to the next page and it's sort of -- I  
20 guess I have to continue on. If you turn back to  
21 page 3, the last sentence on page 3 that's going to  
22 continue on says, "The shares of Common Stock that  
23 are 'Non-Vested Shares' shall be determined solely  
24 on the basis of the length of time that Ronald  
25 Lachman ('RL'), a beneficial owner of Kinotech,

1 Inc., remains in employment with the Company, as  
2 follows:"

3 Do you see that?

4 A. Yes.

5 Q. Does this refresh your recollection that  
6 the warrants that were issued to Kinetech in  
7 consideration for the license of the TruNames  
8 patents was conditioned on Mr. Lachman's continued  
9 employment?

10 A. I don't specifically recall.

11 Q. Do you recall that Mr. Lachman joined  
12 Brilliant or Altnet at the time as an employee at  
13 the time that the license agreement was signed?

14 A. I know that we referred to Mr. Lachman as  
15 the chief scientist of Brilliant at some point in  
16 time. I don't know -- and I can't recall whether or  
17 not we employed him or we had some kind of an  
18 agreement with him, but I do recall we referred to  
19 him as the chief scientist.

20 Q. And when did he assume that role?

21 A. I don't specifically recall.

22 Q. Was it before the license agreement was  
23 signed?

24 A. As I say, I don't recall.

25 Q. So you don't recall one way or another

1 whether Mr. Lachman was an employee of Altnet or  
2 Brilliant at the time the license agreement between  
3 Kinetech, Brilliant and Altnet was signed?

4 A. No. As I say, I do recall the company  
5 referred to him as its chief scientist but I don't  
6 recall whether or not the company entered into an  
7 employment agreement with him.

8 (Deposition Exhibit 2 was marked for  
9 identification and is annexed hereto.)

10 BY MR. GALVIN:

11 Q. I'll ask the reporter to mark as Exhibit 2 a  
12 printout of a Form S-3 for Brilliant Digital  
13 Entertainment, Inc. filed with the SEC on December  
14 23, 2002.

15 Now, Mr. Bermeister, do you recall that at  
16 some point Brilliant Digital filed registration  
17 statements to sell shares in the 2002 time frame?

18 MR. RHOA: Objection: form.

19 THE WITNESS: I don't specifically recall.

20 BY MR. GALVIN:

21 Q. Do you recall Brilliant ever submitting a  
22 Form S-3 Registration Statement to the SEC?

23 A. I'm sure we would have done so, yes, at some  
24 point, yes.

25 Q. And given your position as CEO of Brilliant,

1 would you have reviewed that submission?

2 A. Yes, I would have.

3 Q. And you would have made sure that it was as  
4 accurate as possible, correct?

5 A. To the best of my knowledge.

6 Q. Do you know -- do you recall any demand by  
7 any of the shareholders in the 2002 time frame for  
8 Brilliant to file a registration statement with the  
9 SEC?

10 A. I don't recall.

11 Q. Now, in 2002, late 2002, would you -- how  
12 would you describe the financial status, financial  
13 health of Brilliant and Altnet?

14 A. Again, it's -- I just don't recall 2002  
15 specifically. I don't know, you know, what we were  
16 doing at that point -- I can't recall what we were  
17 doing so I really can't answer your question  
18 specifically about 2002.

19 Q. Had Brilliant been profitable?

20 A. Rarely.

21 Q. When was the last time looking back from --  
22 starting from 2002, was there any year prior to 2002  
23 that Brilliant was profitable?

24 A. I don't believe so.

25 Q. By the fall of 2002, Brilliant had an

1 accumulated loss of close to \$60 million, correct?

2 A. That may be correct.

3 Q. By the fall of 2002, Brilliant's auditors  
4 had expressed -- had stated that they have concern  
5 that they were uncertain whether Brilliant would be  
6 able to continue as a going concern given its  
7 financial situation, correct?

8 MR. RHOA: Objection: relevant and outside  
9 the scope.

10 THE WITNESS: Is that stated in this  
11 document?

12 BY MR. GALVIN:

13 Q. I'm asking if you recall that.

14 MR. RHOA: Objection: beyond the scope and  
15 relevance.

16 THE WITNESS: Specifically to 2002? Is that  
17 what you're asking me?

18 BY MR. GALVIN:

19 Q. Do you recall your auditors for Brilliant  
20 ever telling you that they had concern whether  
21 Brilliant would be able to continue in business?

22 MR. RHOA: Objection: beyond the scope and  
23 relevance.

24 THE WITNESS: I -- I do recall that  
25 Brilliant was told by its auditors at some point in

1 its history, probably early, that they had concerns.

2 BY MR. GALVIN:

3 Q. And in the fall of 2002, Brilliant had  
4 received notification from the American Stock  
5 Exchange that it was going to be de-listed, correct?

6 MR. RHOA: Same objections.

7 THE WITNESS: I don't recall the date.

8 BY MR. GALVIN:

9 Q. It was eventually de-listed, correct?

10 A. It was -- I don't believe it was de-listed.  
11 I think it came -- we took it off the Exchange and  
12 privatized the company. I'm not sure that the AMEX  
13 ever listed a de-listing notice. I can't recall.

14 Q. You don't recall it?

15 A. No.

16 Q. Now, in -- you went back and looked at the  
17 stock for the fall of 2002 and I believe you said  
18 that it was trading within a range of 15 cents to 35  
19 cents.

20 A. That's correct. It was -- it was a very  
21 wide range. I just can't remember what the low end  
22 of that range was.

23 Q. Now, trading at that range, are there stocks  
24 trading on the American Stock Exchange that trade  
25 in -- with that kind of valuation for their shares?

1 A. It was low.

2 Q. If you turn to page 5, under the heading,  
3 "We have a history of losses, a negative net worth  
4 and may never attain profitability," do you see that  
5 heading?

6 A. I do.

7 Q. The Form S-3 statement that Brilliant  
8 submitted to the SEC stated in the second sentence  
9 after that, "Since inception, we have incurred  
10 significant losses and negative cash flow, and as of  
11 September 30, 2002, we had an accumulated deficit of  
12 \$59.2 million."

13 Do you see that?

14 A. I do.

15 Q. And does that comport with your recollection  
16 of the financial state of Brilliant Digital?

17 A. I'm sure that this statement is accurate.

18 Q. At the end of that paragraph, the last  
19 sentence, Brilliant told the SEC, "Primarily as a  
20 result of our continued losses, our independent  
21 public accountants modified the opinion on our  
22 December 31, 2001, financial statements to include  
23 an explanatory paragraph wherein they expressed  
24 substantial doubt about our ability to continue as a  
25 going concern."

1 Does that refresh your recollection of the  
2 timing in which you received this notice from your  
3 independent public accountants?

4 MR. RHOA: Objection: beyond the scope and  
5 relevance.

6 THE WITNESS: It doesn't refresh my -- my  
7 memory but it says so in this statement and I  
8 believe it.

9 BY MR. GALVIN:

10 Q. If you turn to page 13 of the S-3 statement.  
11 Now, was there a company called Crestview Capital  
12 that had an interest in Brilliant?

13 MR. RHOA: Objection: beyond the scope and  
14 relevance.

15 THE WITNESS: There may have been.

16 BY MR. GALVIN:

17 Q. You don't recall it?

18 MR. RHOA: Rob, can we go off the record for  
19 a second after he answers this? Same objections.

20 Go ahead and answer the question. You can  
21 answer the question.

22 THE WITNESS: I can answer?

23 MR. RHOA: Same objection.

24 THE WITNESS: I'm sorry, your question was?

25 //

1 BY MR. GALVIN:

2 Q. Do you recall Crestview Capital having an  
3 interest in Brilliant?

4 MR. RHOA: Same objections.

5 THE WITNESS: I don't recall.

6 MR. RHOA: Can --

7 MR. GALVIN: Let's go off the record.

8 VIDEO OPERATOR: We are off the record at  
9 11:13 a.m.

10 (Recess taken.)

11 VIDEO OPERATOR: We are back on the record  
12 at 11:16 a.m.

13 BY MR. GALVIN:

14 Q. Mr. Bermeister, do you recall that Ronald  
15 Lachman was a general partner in Crestview Capital?

16 A. I don't recall, no.

17 Q. Now, I mean, it states here, "In April and  
18 May 2002, we sold an aggregate of 2,276,045  
19 shares..." and it lists a number of people including  
20 entities such as Crestview Capital Fund, Crestview  
21 Capital Fund II, Crestview Capital Offshore Fund,  
22 and you don't recall who the principals for  
23 Crestview were?

24 A. No.

25 Q. And if you turn to the next paragraph on

1 page 13 of the SEC -- of the S-3 statement it says,  
2 "In September -- it's the same page, I'm sorry, page  
3 13. Just the next paragraph down. "In September  
4 2002, we sold an aggregate of 7,123,836 shares of  
5 our common stock to Harris Toibb, Markev Services,  
6 LLC, Ronald Lachman..."

7 Do you see that?

8 A. I do.

9 Q. Does that refresh your recollection that  
10 Mr. Lachman, the inventor listed on the TruNames  
11 patents, was a shareholder of Brilliant Digital in  
12 September 2002?

13 A. It doesn't refresh my memory but it says  
14 that in the document.

15 Q. So Mr. Lachman was a shareholder prior to  
16 the execution of the license agreement between  
17 Kinetech and Brilliant Digital and Altnet, correct?

18 A. Apparently so.

19 Q. And Mr. Lachman had in 2002 voting control  
20 over Kinetech, correct?

21 A. I don't know that.

22 Q. If you turn to page 15, there are a list of  
23 the selling stockholders table chart.

24 A. Uh-huh.

25 Q. Do you see that?

1 A. I do.

2 Q. Do you recall seeing something like this  
3 before?

4 A. Only to the extent that this document is --  
5 you know, in this document.

6 Q. If we look at Kinetech on the bottom of the  
7 page there's a number 5 in parentheses. Do you see  
8 that?

9 A. I do.

10 Q. And that's a note. You've seen that  
11 notation used before on SEC forms, correct?

12 A. I have.

13 Q. And if you turn to page 17 --

14 A. Yep.

15 Q. -- you can see footnote 5.

16 A. Yes.

17 Q. And for the Kinetech shares they are  
18 described in Brilliant's S-3 statement as "Consists  
19 of 5,000,000 shares that may be acquired upon  
20 exercise of warrants. Ronald Lachman, our Chief  
21 Scientist, exercises voting and investment authority  
22 over the securities beneficially owned by Kinetech,  
23 Inc."

24 Do you see that?

25 A. Okay, yes.

1 Q. And you have no reason to dispute that,  
2 correct?

3 A. No.

4 Q. As far as you know, it's accurate?

5 A. Correct.

6 Q. So at the time that the license agreement  
7 was granted for the TruNames patents from Kinetech  
8 to Brilliant and Altnet, Mr. Lachman was not only a  
9 shareholder of Brilliant, he also exercised voting  
10 and investment authority over Kinetech, correct?

11 A. It appears to be.

12 Q. If we go back to page 16 --

13 A. Well, I'm sorry, can you go back to that  
14 question? You say he exercised his voting and --

15 Q. Investment authority.

16 A. Over Kinetech? Is that what you were  
17 saying?

18 Q. Yes.

19 A. I'm not sure how you derive that from this  
20 agreement though.

21 Q. What do you understand Mr. Lachman to have  
22 had voting and investment authority over?

23 A. I don't know.

24 Q. You knew he formed Kinetech, right?

25 A. I don't know that either. I knew he was

1 involved in the formation of Kinetech. I don't know  
2 who formed it or who was around when he formed it,  
3 but I do know that he was a founder, yes.

4 Q. And when you negotiated the license  
5 agreement from Kinetech, you negotiated with  
6 Mr. Lachman, right?

7 A. That is correct.

8 Q. And when you purchased Kinetech --  
9 eventually when Brilliant purchased Kinetech --

10 A. Yes.

11 Q. -- who did you negotiate with then?

12 A. With Mr. Goldman and Mr. Lachman.

13 Q. And was any consideration paid to  
14 Mr. Goldman or Mr. Lachman?

15 A. In the -- I believe so, yes.

16 Q. What did Mr. Lachman receive?

17 MR. RHOA: Objection: form.

18 THE WITNESS: I can't -- well, firstly, let  
19 me just go back. I just can't recall whether it was  
20 directly paid or whether it was paid to any of their  
21 entities. I don't specifically recall exactly how  
22 it was paid or to whom it was paid.

23 BY MR. GALVIN:

24 Q. What was paid, if anything?

25 MR. RHOA: Same objections.

1 THE WITNESS: An amount of money was paid.  
2 And -- but I don't recall exactly to whom.

3 BY MR. GALVIN:

4 Q. Do you have any approximate sense of how  
5 much was paid?

6 A. Something around about a million dollars, if  
7 I recall correctly. The -- yes.

8 Q. So if you go back to page 16 then -- I'm  
9 referring to the numbers at the top of the page --  
10 there's a reference to Crestview Capital.

11 A. Right.

12 Q. And it has a footnote 15 or 15 in  
13 parentheses. Do you see that?

14 A. I'm sorry, a footnote 15. I see  
15 Crestview -- yes, I see that, yes. Oh, Crestview  
16 Capital Offshore Fund. Is that what you're talking  
17 about?

18 Q. Actually, let's -- Crestview Capital Fund --

19 A. I see 10.

20 Q. -- up by No. 7. Let's do the first one.

21 A. No. 7, yes.

22 Q. Do you see No. 7?

23 A. I do.

24 Q. And if you look at the -- I think I'm giving  
25 you the wrong one. Sorry. 1 and 6. Ronald

1 Lachman, No. 6. It states here that Mr. Lachman had  
2 common stock owned prior to the offering of  
3 3,698,772 shares of Brilliant Digital.

4 A. In 6?

5 Q. Yes. It's on the chart.

6 A. Oh, on the chart, yes, yes.

7 Q. Correct?

8 A. Yes.

9 Q. And did you recall Mr. Lachman having an  
10 equity stake in Brilliant?

11 A. You know, I think that -- I mean, this -- I  
12 do recall -- this is refreshing some memories.  
13 Apparently -- I mean, and I -- I can only imagine  
14 how but I don't have a specific recollection of --  
15 of -- of him being a shareholder at that point in  
16 time. You know, if we made him -- yeah, I can only  
17 by conjecture imagine how we would have negotiated  
18 this. Anyway to answer your question, I don't  
19 specifically recall.

20 Q. Continuing on to -- on page 16 still,  
21 there's a reference to KaZaA, B.V. Do you recall  
22 KaZaA having stock or warrants in Brilliant Digital?

23 A. I do recall that.

24 Q. And Europlay Capital also was a shareholder  
25 in Brilliant, correct?

1 A. I don't know.

2 Q. It would be on page 15.

3 A. Yes, I see that.

4 Q. And you don't dispute that Europlay --

5 A. No, I don't dispute that.

6 Q. And Mark Dyne, your cousin, was  
7 associated -- was one of the principals at Europlay,  
8 correct?

9 MR. RHOA: Objection: foundation,  
10 relevance.

11 THE WITNESS: How do you define "cousin"?

12 BY MR. GALVIN:

13 Q. Well, have you ever called him your cousin?

14 MR. RHOA: Same objection.

15 THE WITNESS: I may have.

16 BY MR. GALVIN:

17 Q. Okay. He was and is a principal at Europlay  
18 Capital, correct?

19 A. I believe so.

20 Q. And you've co-invested with Mr. Dyne on a  
21 number of different deals, correct?

22 A. I have.

23 Q. From very early on in your career you  
24 partnered with him on different projects, correct?

25 A. Yes, I have. Partner is -- I've co-invested

1 with him. I've never really partnered with him. So  
2 we have co-invested in multiple projects.

3 Q. And in December 2002 Mr. Dyne was Chairman  
4 of the Board of Directors of Brilliant Digital,  
5 correct?

6 A. That is correct, I believe.

7 Q. And if you would just turn to page 25 of  
8 Exhibit -- Exhibit 2, you were one of the  
9 signatories to the S-3 statement, correct? You  
10 reviewed the S-3 statement?

11 A. I probably would have been, yes.

12 (Deposition Exhibit 3 was marked for  
13 identification and is annexed hereto.)

14 BY MR. GALVIN:

15 Q. I will ask the reporter to mark as Exhibit 3  
16 a Form 10-KSB of Brilliant Digital Entertainment,  
17 Inc. for the fiscal year ended December 31st, 2002.

18 Now, Mr. Bermeister, when Brilliant was a  
19 public company, it regularly submitted 10-K  
20 statements every year to the SEC, correct?

21 A. That is correct.

22 Q. And you would review these when they were  
23 submitted, correct?

24 A. Yes.

25 Q. And you would certify that they were

1 accurate as far as you knew?

2 A. Correct.

3 Q. Now, if you look at the first page, and it's  
4 about two-thirds of the way down, it says, "At March  
5 19, 2003, the aggregate market value of the voting  
6 stock held by non-affiliates of the issuer was  
7 \$3,099,754."

8 A. Okay.

9 Q. Do you see that?

10 A. I do.

11 Q. Any reason to doubt that that was correct?

12 A. No.

13 Q. Now, if the aggregate value of the stock in  
14 March 2003 held by non-affiliates was \$3 million,  
15 did Mr. -- did Kinetech have a million of that --  
16 hold a million of that \$3 million?

17 A. I don't know how the valuations were  
18 calculated at that point in March 2003. I told you  
19 how I calculated mine for my statement but I'm not  
20 sure how these valuations were created at that time.

21 Q. Turn to page 43.

22 A. Uh-huh.

23 Q. Under heading 5. "Significant Agreements,"  
24 there's Kinetech, Inc. Do you see that?

25 A. Yes.

1 Q. And there's the description of the Patent  
2 License Agreement of October 2002 between Kinetech  
3 and Brilliant, correct?

4 A. I see that. I see that reference to it,  
5 yes.

6 Q. And in this paragraph it states, "In  
7 connection with the transaction, Ronald Lachman, a  
8 principal with Kinetech, agreed to become and now  
9 serves as Chief Scientist for our Altnet  
10 subsidiary."

11 Do you see that?

12 A. I do.

13 Q. Any reason to doubt that's not correct?

14 A. No.

15 Q. It also says, "The warrants vest in two  
16 equal annual installments so long as Ronald Lachman  
17 continues to serve as our Chief Scientist."

18 Do you see that?

19 A. I do.

20 Q. Does that refresh your recollection that the  
21 warrants that issued to Kinetech were conditioned  
22 upon Mr. Lachman's continued employment?

23 A. I just need to see where you're reading just  
24 to make sure I understand where you're reading.

25 "...so long as Ronald Lachman continues to serve as

1 our Chief Scientist." I see that, yes.

2 Q. And did you take that into consideration  
3 when assessing a valuation for the value of the  
4 warrants that Brilliant issued to Kinetech in  
5 exchange for the license to the TruNames patents?

6 A. I don't believe I did.

7 Q. If you continue on there it says,  
8 "Mr. Lachman also is a partner in Kingsport Capital,  
9 LLC, the general partner of Crestview Capital Fund,  
10 LP and Crestview Capital Fund II, LP, each selling  
11 shareholders."

12 Do you see that?

13 A. I do.

14 Q. Does that refresh your recollection that  
15 Mr. Lachman through his partnership in Kingsport  
16 Capital was associated with Crestview?

17 A. It states it here but it doesn't refresh my  
18 memory about it.

19 Q. We saw earlier Crestview was also a  
20 shareholder of Brilliant prior to the execution of  
21 the license agreement in October of 2002.

22 A. That's what it said, yes.

23 Q. And if you continue, "For the year ended  
24 December 31, 2002, the Company has recognized  
25 \$30,000 of expense related to the issuance of the

1 warrants based on valuation of the warrants using a  
2 Black Scholes model."

3 Do you see that?

4 A. I do.

5 Q. I believe earlier you talked about a  
6 Black-Scholes model is often used to value things  
7 like warrants, correct?

8 A. I said, yes, it has been used and I did  
9 refer to them.

10 Q. You said you didn't use the Black-Scholes  
11 model to create the values you submitted in your  
12 declaration, correct?

13 A. That is correct.

14 Q. Now, in 2002 for your 2002 10-K Brilliant  
15 told the SEC that the warrants that were issued had  
16 a value of \$30,000, correct?

17 MR. RHOA: Objection: form.

18 THE WITNESS: It says they had an expense  
19 related to that issuance of \$30,000.

20 BY MR. GALVIN:

21 Q. So what does that tell you, if anything,  
22 about the valuation?

23 A. I don't know.

24 Q. How do you square Brilliant reporting  
25 \$30,000 of expense related to issuance of the

1 warrants based on the valuation of the warrants  
2 using a Black-Scholes model with your valuation of  
3 \$1 million that you submitted in your declaration?

4 A. I told you how I realized value of \$1  
5 million in my declaration and -- and I'm not an  
6 expert in Black-Scholes model nor am I a banker or a  
7 lawyer and so I -- I wouldn't even know how to begin  
8 there.

9 Q. If you would look at Exhibit -- in the  
10 section "Significant Agreements," what kind of  
11 significant agreements was Brilliant required to  
12 disclose in its 10-K?

13 A. Anything required by the SEC, I guess. I  
14 took advice from my lawyers on what they recommended  
15 are significant and which are not and we followed  
16 those guidelines.

17 Q. If you would look just at Section 5. It's  
18 on this page and continues on the next page. Would  
19 you confirm for me that the Kinotech license that  
20 was executed in October 2002 was disclosed as a  
21 significant agreement?

22 A. Where do you see that?

23 Q. The first listing on page 43.

24 A. No. 5, yes. I see that, yes.

25 Q. So the Kinotech license was disclosed as a

1 significant agreement, correct?

2 A. Yes. It says that, yes.

3 Q. And if you'll look through this Section 5 --  
4 it goes on to page 43 and 44 -- will you confirm for  
5 me that there's no disclosure of any sublicense  
6 agreement between Brilliant and Altnet and Sharman  
7 Networks, LLC relating to the TruNames patents?

8 A. That's correct, it doesn't show that here.

9 Q. So if the sublicense agreement between  
10 Brilliant, Altnet and Sharman had been executed  
11 within calendar year 2002, it would have been  
12 disclosed in the 10-K, correct?

13 A. It's not disclosed here so I don't know. It  
14 was obviously not disclosed.

15 Q. Would you agree that in 2002 the execution  
16 of the sublicense agreement between Sharman,  
17 Brilliant and Altnet would have been material to  
18 Brilliant since it involved a substantial amount of  
19 royalty revenue listed?

20 A. To the extent that it would be -- it would  
21 be continued to be paid I presume it would have been  
22 material.

23 Q. Isn't it true that the sublicense agreement  
24 between Brilliant, Altnet and Sharman was executed  
25 in 2003?

1 A. 2003?

2 Q. Yes, even though it has an effective date of  
3 October 2002.

4 A. It's -- I don't specifically recall. I  
5 don't know. I guess it's possible but it's not -- I  
6 don't recall.

7 Q. Do you specifically recall when the  
8 sublicense agreement between Sharman, Altnet and  
9 Brilliant was executed?

10 A. I don't.

11 Q. It could have been in 2002, it could have  
12 been 2003 as far as you're concerned?

13 A. It's quite possible, yes.

14 Q. If you turn to page 46, the first full  
15 paragraph, it says, "In September 2002..."

16 A. Yes.

17 Q. This is referring to a number of people  
18 purchasing Brilliant shares including Ronald  
19 Lachman, correct?

20 A. I see that.

21 Q. And it states here that those individuals  
22 paid 15 cents -- \$0.1502 for each share of  
23 Brilliant, correct?

24 A. Yes.

25 Q. So in September Mr. Lachman purchased

1 Brilliant shares for 15 cents a share, correct?

2 A. Okay.

3 Q. Do you agree that's correct?

4 A. Yes. I'd say that, yes.

5 Q. Now, your valuation -- you value the -- in  
6 your declaration the warrants being worth more than  
7 15 cents a share, correct?

8 A. Yes, that's correct.

9 Q. And what is your basis for saying that the  
10 warrants that had a series of restrictions that were  
11 issued to Kinetech in October 2002 are more valuable  
12 than the common shares that were purchased in  
13 September 2002 in a transaction?

14 A. I didn't really form an opinion on that. I  
15 didn't have a basis.

16 Q. If you turn to page 2 --

17 A. Which is page 2?

18 Q. Page 2 of --

19 A. Oh, of this exhibit? Or at the beginning?

20 Q. Yes. The third paragraph down, "We own 51%  
21 of the outstanding capital stock of Altnet and  
22 manage all of its day-to-day operations, and the  
23 remaining 49% is owned by Joltid, Ltd. (formally  
24 known as Blastoise, Ltd.), the company from whom we  
25 license a substantial portion of Altnet peer-to-peer

1 technology."

2 A. Correct.

3 Q. And that was the state of affairs in 2002,  
4 correct?

5 A. Correct.

6 Q. Now, what's the relationship between Joltid  
7 Ltd. and Sharman Networks Limited?

8 A. I don't know.

9 Q. You have no idea?

10 A. They had a relationship, I believe, but I  
11 don't specifically know what it was.

12 MR. RHOA: Rob, we've been going an hour and  
13 40 minutes. Are you going to have a break time  
14 coming up any time soon?

15 MR. GALVIN: Sure, we can.

16 MR. RHOA: Whatever you want. I'm just  
17 raising it. You can keep going for a little bit if  
18 you want.

19 BY MR. GALVIN:

20 Q. Would you like a break?

21 A. Whatever you guys want to do.

22 Q. Maybe like ten more minutes?

23 A. Ten minutes is fine. I wouldn't mind  
24 getting something to eat. What time is it, by the  
25 way?

1 MR. RHOA: It is 11:40.

2 BY MR. GALVIN:

3 Q. Now, Joltid -- who are the individuals that  
4 were associated with Joltid?

5 A. Niklas Zennstrom and Janus Friis who I  
6 mentioned earlier.

7 Q. And they were the founders of KaZaA,  
8 correct?

9 A. I don't know that. I believe so.

10 Q. And KaZaA was sold to Sharman Networks  
11 Limited, correct?

12 A. KaZaA was sold, yes.

13 Q. Now, what was your role in the formation of  
14 Sharman Networks Limited?

15 A. I didn't have a specific role.

16 Q. No involvement?

17 A. I knew the woman who acquired -- who was  
18 involved in setting up that company but I had no  
19 specific involvement beyond my relationship with  
20 her.

21 Q. And who was that woman?

22 A. Nikki Hemming her name was.

23 Q. And other than knowing her, you had no  
24 involvement with the formation of Sharman Networks?

25 A. That is correct.

1 Q. Isn't it true that you introduced  
2 Ms. Hemming to the KaZaA founders?

3 A. That is correct.

4 Q. You heard they were going to try to sell the  
5 KaZaA business, correct?

6 A. I heard they were trying to sell the KaZaA  
7 business. They had said to me they wanted to sell  
8 the KaZaA business, yes.

9 Q. And you approached Ms. Hemming and told her  
10 about the opportunity, correct?

11 A. That is correct.

12 Q. And then she formed Sharman Networks?

13 A. I believe so.

14 Q. So it's your understanding that Ms. Hemming  
15 owns Sharman Networks Limited?

16 A. I don't know.

17 Q. Who owns Sharman Networks Limited?

18 A. I presume she had -- or entities that she  
19 knew or were associated with Sharman.

20 Q. Do you know of anyone else that was  
21 associated with Sharman Networks other than  
22 Ms. Hemming?

23 A. In terms of the -- the -- Sharman -- the  
24 company Sharman?

25 Q. Yes.

1 A. No.

2 Q. Were there any -- was Ms. Hemming an  
3 employee of Sharman Networks?

4 A. I don't know.

5 Q. When you negotiated the agreement with  
6 Sharman Networks, the sublicense agreement, who did  
7 you negotiate with?

8 A. With Ms. Hemming.

9 Q. Was it your understanding she was an  
10 employee of Sharman Networks or she had her own  
11 management business?

12 A. I recall she had a management company but I  
13 don't know whether or not she was an employee. I  
14 don't know the relationship between both companies  
15 and Sharman.

16 Q. Do you recall the name LEF Interactive?  
17 Does that sound familiar?

18 A. I do.

19 Q. Was that Ms. Hemming's company?

20 A. She certainly acted with me through that  
21 company on one or two occasions.

22 Q. Sharman was set up to run -- let me withdraw  
23 that.

24 Prior to the formation of Sharman, Altnet  
25 had a relationship with Joltid Ltd., correct?

1           A.    Say that again or are you saying prior to  
2 the formation of Sharman?

3           Q.    Altnet had a relationship with Joltid Ltd.?

4           A.    I believe so.

5           Q.    Joltid had an ownership interest in Altnet  
6 Ltd. in -- as of 2002, correct?

7           A.    You know, I'm not -- had we formed a company  
8 yet? I don't specifically recall but -- just  
9 because you cut off on that specific date I don't  
10 particularly recall if we were either side of that  
11 date but I do know that -- that we did enter into a  
12 relationship.

13          Q.    Do you recall -- since you don't  
14 specifically recall when Altnet was formed --

15          A.    No, no. Probably -- no. I don't  
16 specifically recall.

17          Q.    But eventually -- or when it was formed, at  
18 its inception Joltid owned 49 percent of Altnet,  
19 correct?

20          A.    I believe so.

21          Q.    In addition Altnet and Joltid entered into a  
22 series of contractual relationships, correct?

23          A.    That is correct.

24          Q.    Altnet licensed technology from Joltid,  
25 correct?

1 A. I believe so.

2 Q. Altnet provided certain business services to  
3 Joltid, correct?

4 A. Yes, I believe so.

5 Q. Now, Altnet had a contractual relationship  
6 with KaZaA BV, correct?

7 A. I see KaZaA BV in this document that you  
8 showed me but I don't recall specifically who we  
9 entered into the relationship with. I know we  
10 entered into it with KaZaA but I can't recall  
11 specifically whether it was with KaZaA BV.  
12 Notwithstanding the fact that I did see cites in  
13 this document something to KaZaA BV.

14 Q. You don't recall having a bundling agreement  
15 with KaZaA BV by which certain 3-D animation  
16 technology from either Brilliant or Altnet --

17 A. Aah, yeah, yeah, I do recall that. Yes.

18 Q. Now, when KaZaA BV sold the KaZaA business  
19 to Sharman Networks, they assigned -- and you  
20 consented to the assignment of their contracts with  
21 Brilliant and Altnet, correct?

22 A. Say that again?

23 Q. When KaZaA BV sold the KaZaA business to  
24 Sharman Networks, KaZaA assigned and you really --  
25 and Altnet consented to the assignment of their

1 contracts?

2 A. I believe we would have done that, yes.

3 Q. So Sharman stepped in and took the place of  
4 KaZaA BV, correct?

5 A. Yes, as far as our contracts are concerned,  
6 that's right.

7 Q. And Sharman was created with the intention  
8 of working jointly with Altnet to develop a business  
9 by which peer-to-peer file sharing could be used to  
10 distribute copyright licensed content for profit,  
11 correct?

12 A. That sounds correct.

13 Q. In addition to Ms. Hemming, you had worked  
14 with Ms. Hemming in the past?

15 A. I had.

16 Q. There were other employees of Sharman who  
17 previously had worked with Brilliant, correct?

18 A. There may have been. There may have been.

19 Q. Wasn't the Chief Technology Officer of  
20 Sharman a former Brilliant or Altnet employee?

21 A. Who are you referring to? Do you have a  
22 name?

23 Q. I can look for it if it will help.

24 A. I just don't recall unless I have a name.

25 Q. Prior to June 2003, Sharman and Altnet were

1 sharing revenue derived from the joint use of  
2 Sharman and Altnet's technology pursuant to an oral  
3 agreement?

4 MR. RHOA: Objection: form.

5 THE WITNESS: That may be the case. I can't  
6 recall absolutely.

7 BY MR. GALVIN:

8 Q. But you recall at some point when Sharman  
9 stepped in the shoes of KaZaA there was an oral  
10 agreement and then later there were agreements  
11 entered into memorializing that contractual  
12 relationship?

13 A. There may have.

14 Q. Sharman and Altnet had joint commercial  
15 goals, correct?

16 MR. RHOA: Objection: form.

17 THE WITNESS: To the extent the agreements  
18 defined those goals I guess they did.

19 BY MR. GALVIN:

20 Q. Sharman and Altnet shared profits from their  
21 joint enterprise?

22 MR. RHOA: Objection: form.

23 THE WITNESS: Of the agreements specifically  
24 you're referring to?

25 //

1 BY MR. GALVIN:

2 Q. There was a joint enterprise between Sharman  
3 and Altnet, correct?

4 A. Defined by the agreement? That is correct.

5 Q. Sharman and Altnet were working together  
6 pursuing joint commercial goals before Sharman  
7 licensed the TruNames patents from Altnet and  
8 Brilliant, correct?

9 A. That -- I -- there were -- yes, there  
10 were -- there were some business between Sharman and  
11 Brilliant before we entered into the 2002 agreement  
12 with -- with Sharman.

13 Q. Altnet was Sharman's exclusive business  
14 agent for certain activities, correct?

15 MR. RHOA: Objection: form, outside the  
16 scope.

17 THE WITNESS: I believe we had some  
18 exclusive rights in the agreements. That's what I  
19 can refer to.

20 BY MR. GALVIN:

21 Q. In June 2003 Sharman received a warrant to  
22 purchase 14 million shares of Brilliant as part of  
23 the Joint Enterprise Agreement between the  
24 companies.

25 A. Okay.

1 Q. Is that correct?

2 A. It sounds correct. It sounds like -- if  
3 it's in these documents it will be correct.

4 MR. GALVIN: Why don't we take a break.

5 VIDEO OPERATOR: We are off the record at  
6 11:52 a.m. and this concludes disk 1 in the  
7 continuing deposition of Kevin Bermeister.

8

9 (At the hour of 11:52 a.m. the luncheon  
10 recess was taken.)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 (At the hour of 12:21 p.m. the following  
2 proceedings were had at the same place with the same  
3 persons present:)

4  
5 VIDEO OPERATOR: We are back on the record  
6 at 12:21 p.m. and this is the beginning of disk 2  
7 and the continuing deposition of Kevin Bermeister.

8  
9 EXAMINATION (Resumed)

10 BY MR. GALVIN:

11 Q. Mr. Bermeister, if you look back at Exhibit  
12 3 which is the 2002 10-K for Brilliant Digital, at  
13 page 19 --

14 A. Yep.

15 Q. -- there is a report of the revenues that  
16 Brilliant Digital reported for 2002. Do you see  
17 that?

18 A. I do.

19 Q. What kind of business development -- there's  
20 an entry for Sharman Business Development. What  
21 services was Altnet or Brilliant providing to  
22 Sharman to secure that revenue?

23 A. I believe it was to do with the sale of  
24 advertising and other bundled services that were  
25 being provided by Brilliant to Sharman.

1 Q. And was Brilliant receiving a commission if  
2 it was able to sell advertising, for example, for  
3 Sharman?

4 A. I don't know if it was a commission. I  
5 can't recall the specifics of the revenue stream but  
6 I believe there were certain transactions that  
7 Brilliant did introductions or, you know, bringing  
8 certain offers to Sharman that they accepted and  
9 executed or Brilliant may have been required to  
10 assist them in that process.

11 Q. And if you look on the revenue here, there's  
12 no entry -- separate entry for licensing revenue  
13 listed in this table, is there?

14 A. I don't see one, no.

15 Q. And do you recall if Brilliant had received  
16 any licensing revenue for the TruNames patents by  
17 the close of 2002?

18 A. I don't recall.

19 Q. In addition to providing certain business  
20 development services, there's a reference to Altnet  
21 sales. Was Altnet generating revenue in conjunction  
22 with sales being made over the KaZaA network?

23 A. You have to just be careful how -- I'm just  
24 trying to understand what you mean by "KaZaA  
25 network."

1 Q. Was -- in the second half of 2002, was  
2 Brilliant generating revenue from the distribution  
3 and sale of digital files over the Altnet network to  
4 users of the KaZaA media desktop file-sharing  
5 software application?

6 A. Yes, I believe it was.

7 Q. And the KaZaA media desktop file-sharing  
8 software application was being distributed by  
9 Sharman Networks, correct?

10 A. That's correct.

11 Q. And the Altnet network, was that also being  
12 hosted by Sharman Networks?

13 A. No, no.

14 Q. Was it being -- was Sharman providing any  
15 technological support or services for the Altnet  
16 network?

17 A. They were providing services, distribution  
18 services, yes.

19 Q. Let's turn back to your declaration which is  
20 Exhibit 2009.

21 A. Uh-huh.

22 Q. And I'd like to ask you about paragraph 9 --

23 A. Yes.

24 Q. -- regarding the Patent Sublicense Agreement  
25 with Sharman. Now, in your declaration you said

1 Sharman paid approximately \$7,200,000 for this  
2 license.

3 A. Yes.

4 Q. How did you arrive at that number?

5 A. I -- I recall the monthly amount that was  
6 being paid and calculated that out of the years that  
7 I anticipated they would continue to pay for it. I  
8 don't recall specifically at the time when they  
9 were -- when the last payments were but I checked  
10 with Anthony Neumann and verified that the number  
11 was correct and he -- he advised me that it was.

12 Q. When was the last payment made by Sharman?

13 A. I don't recall exactly.

14 Q. What did you look at to see that last  
15 payment date?

16 A. I think I looked at it about -- I think if I  
17 remember something like 2007 or thereabouts was the  
18 last time -- maybe I'm wrong, it was 2008, but  
19 something in that range.

20 Q. And was there something in the document you  
21 referred to to identify that date?

22 A. No, I just -- initially I -- I just  
23 calculated the dates from my memory or I took a stab  
24 at it and calculated the date. I think I remember  
25 ending it in 2007 or 2008. I just can't remember

1 exactly which year end I picked.

2 Q. So sitting here today you don't recall when  
3 Sharman stopped paying?

4 A. I don't know.

5 Q. And you don't recall -- and you did this  
6 from memory, you didn't look at any --

7 A. Initially I did it from memory and then I  
8 checked with Anthony.

9 Q. Did he look at a document?

10 A. He may have.

11 Q. But you don't know what document?

12 A. I don't know.

13 Q. Does Brilliant keep records of royalty  
14 payments it receives?

15 A. Yeah. I'm sure it does, yeah.

16 Q. Now, did you calculate only moneys that  
17 Sharman actually paid or that it was obligated to  
18 pay?

19 A. Only what we received, only what Brilliant  
20 received.

21 Q. So your testimony is that Sharman Networks  
22 paid Brilliant \$7.2 million in royalties for the  
23 TruNames patents?

24 A. For the agreements -- the 2002 agreement,  
25 yes, correct. Under the 2002 agreement, that is

1 correct.

2 Q. And you took steps to verify that there was  
3 actually receipt of that money, not --

4 A. That's correct.

5 Q. But you didn't look at any documents  
6 personally?

7 A. If there were any documents, I didn't look  
8 at them. I checked with Anthony Neumann and he -- I  
9 presumed he would have looked at a document.

10 Q. What did you tell Mr. Neumann?

11 A. I told him that I expected the royalties  
12 were -- you know, I calculated the royalties at sort  
13 of rough amounts -- I thought it was going to be  
14 something in this range, \$7 million, and he came  
15 back and verified that the amounts were correct.

16 Q. Did he do his own calculation?

17 A. He may have.

18 Q. But you don't know?

19 A. I don't know.

20 Q. Did you ask him to verify it with actual  
21 numbers and then --

22 A. I asked him to make sure that my  
23 statements -- you know, my statement was correct;  
24 that it wouldn't be in -- grossly incorrect. I  
25 didn't ask him to be more specific than that but I

1 was more interested to know that my calculations  
2 were correct.

3 Q. So -- but you can't recreate how you  
4 calculated this number for me?

5 A. I can roughly. I can probably recreate how  
6 I did it. So it's \$120,000 a year times I think six  
7 or seven years -- six years, I think. \$120,000 a  
8 month per annum for six years, something like that.

9 Q. So you think -- you took it for six years is  
10 the period?

11 A. I believe so. I can't recall where I took  
12 it to.

13 Q. How did you account for the up-front  
14 payments that were made?

15 A. I don't think I did. I just took a  
16 calculation of \$120,000 a month. I don't know if  
17 there were payments made.

18 Q. Did you go back and look at the  
19 cross-license agreement?

20 A. Subsequently I did, yes.

21 Q. But not when you submitted your declaration?

22 A. Not when I made the calculation.

23 Q. So you made the calculation without looking  
24 at the agreement?

25 A. Yes.

1 (Exhibit 2012 previously marked.)

2 BY MR. GALVIN:

3 Q. Let me hand you what's been marked as  
4 Exhibit 2012 titled, "Patent Sublicense Agreement"  
5 and 2002 is the copy of the document that you  
6 attached to your declaration, correct?

7 A. I believe so, yes.

8 Q. Just so you know, this calculation, if you  
9 turn to the third page under Section 1.5 there's a  
10 "Consideration" paragraph. Do you see that?

11 A. I do.

12 Q. And it says, "Upon signing of this  
13 Agreement, a lump-sum payment of \$500,000.00 for the  
14 period from the Effective date through and including  
15 March 31, 2003; provided that Sublicensee may deduct  
16 from such payment all amounts that are currently due  
17 to Sublicensee from Brilliant as of the date of such  
18 payment."

19 How, if at all, did you apply that provision  
20 in coming up with your estimate?

21 A. I didn't.

22 Q. So you didn't apply \$500,000 for the  
23 period -- well, what date did you start with?

24 A. As I say, 2002 somewhere. I finished in --  
25 I can't recall 7 -- 2007 perhaps I finished.

1 Q. But you don't know what date you started,  
2 what month you started?

3 A. October 2002 I believe it was, so the end of  
4 2002. I know it was at the beginning of 2003 but it  
5 was in that time frame.

6 Q. And did you account for any deductions that  
7 Sharman may have made from that initial lump-sum  
8 payment under -- as specified under the agreement?

9 A. No, I did not.

10 Q. And then paragraph 2 it says, "Upon signing  
11 of this Agreement, a lump-sum payment of \$150,000.00  
12 representing the monthly fee for the month of April  
13 2003;"

14 Did you apply that provision?

15 A. No. No, I didn't. Oh, April 2003, yeah? I  
16 didn't -- I didn't -- no, I didn't apply the  
17 \$150,000. I would have applied most likely 120 for  
18 that month but not 150 and certainly not that  
19 provision. I see, so it started -- yeah, maybe  
20 2003.

21 Q. Now, if you turn to the last page of Exhibit  
22 2012 --

23 A. Yep.

24 Q. -- there's a signature for Sharman Networks  
25 Limited, a company incorporated in Vanuatu.

1 A. On the second-to-last page? Yes.

2 Q. And who signed on behalf of Sharman?

3 A. I don't know.

4 Q. Do you know who Global Nominees Limited is?

5 A. No.

6 Q. So I take it you don't recall any  
7 interactions with anyone from Global Nominees  
8 Limited, correct?

9 A. I don't know.

10 Q. Did you negotiate this with anyone other  
11 than Nikki Hemming?

12 A. No. Maybe her lawyers but -- but at the  
13 company, no.

14 Q. Now, this document is not signed by  
15 Brilliant Digital, correct?

16 A. That's correct.

17 Q. And have you looked for a version that was  
18 signed?

19 A. I have.

20 Q. And you have been unable to find one?

21 A. I could not find one.

22 Q. Do you have any explanation why you don't  
23 have a signed --

24 A. I can only -- no, I don't have an  
25 explanation. I don't know why I cannot find one.

1 Q. Is it possible that Brilliant didn't sign  
2 it?

3 A. It's unlikely that Brilliant didn't sign it.  
4 I believe Brilliant did sign it and I believe that  
5 it submitted a version with its signature on to  
6 Sharman Networks or Global Nominees, I don't know  
7 exactly which one, but it's highly unlikely that  
8 Brilliant did not sign this document.

9 Q. Now, I notice on the top of this document  
10 there's a fax header and it says, "LEF Interactive."

11 A. Uh-huh.

12 Q. What was LEF Interactive?

13 A. I think that was Nikki Hemming's management  
14 company.

15 Q. Now, is the only copy that you've been able  
16 to locate of this agreement this faxed copy that was  
17 sent from LEF Interactive on May 22, 2003?

18 A. I don't know. I think it's the only copy  
19 with a signature on it that we've been able to  
20 locate.

21 Q. Isn't it true that Sharman Networks or its  
22 designee did not sign this agreement prior to May  
23 2003?

24 A. That they did not sign the agreement?

25 Q. Let me restate that.

1           Are you testifying that Brilliant executed  
2 this agreement prior to May 2003?

3           A.    Why May 2003? I don't understand what  
4 you -- why you --

5           Q.    Do you see the header date on the fax?

6           A.    Oh, I see. I see.

7           Q.    So they sent this over on May 2003 after  
8 they signed it, right?

9           A.    I don't know that. I don't know when they  
10 signed it.

11          Q.    Could be May 2003?

12          A.    It says October 2002 but the header says --  
13 the fax header says, you know, May 2003. It could  
14 have been sent along for some other reason at a  
15 later date. It's possible. I don't know.

16          Q.    Isn't it true that the effective date was  
17 back-dated on this agreement?

18          A.    I don't -- no.

19          Q.    Isn't that clear from the "Consideration"  
20 section, Section 1.5, which states that upon signing  
21 of this agreement a lump sum payment of \$500,000 for  
22 the period of time from the effective date through  
23 and including March 31st, 2003, would be paid?

24          A.    On page 5?

25          Q.    Page 450, Section 1.5.

1           A.    It could have been an advance.  I don't  
2 know.

3           Q.    Do you recall why Sharman would agree to pay  
4 in advance for the period from October to March --  
5 October 2002 to March 31st, 2003?

6           A.    No, I don't recall.

7           Q.    Why upon signing this agreement would a lump  
8 sum be paid for April 2003 if it was executed in  
9 October 2002?

10          A.    It's a six-month period after signing.  I  
11 have no recollection as to exactly why we would have  
12 done it that way.  There may have been some other --  
13 I just can't recall at the time exactly why we did  
14 it that way.

15          Q.    If the existence of the Patent Sublicense  
16 Agreement was never disclosed in any of your SEC  
17 filings for Brilliant for 2002, would you agree that  
18 the most likely date of its execution was in 2003?

19          A.    No, I don't -- I wouldn't say that.  I just  
20 don't know.  I just don't know why.

21          Q.    You don't know why -- why was the date  
22 October 18th, 2002, selected?

23          A.    I -- I don't specifically recall why.  I  
24 don't know.

25          Q.    Isn't that the date that you -- that

1 Brilliant received a license from Kinetech for the  
2 TruNames patents?

3 A. I believe it's the same date.

4 Q. So did you execute them on the same day?

5 A. Did I execute them on the same day? I don't  
6 recall. I don't recall. It's possible, I just  
7 don't recall it.

8 Q. Were there -- did Brilliant receive consent  
9 or provide notice to Kinetech when it sublicensed  
10 the TruNames patents to Sharman Networks?

11 A. Did Brilliant receive consent?

12 Q. Did Brilliant provide notice to Kinetech  
13 when it sublicensed the TruNames patents to Sharman?

14 MR. RHOA: Objection: form.

15 THE WITNESS: Did Brilliant provide notice  
16 to Kinetech?

17 BY MR. GALVIN:

18 Q. Yes.

19 MR. RHOA: Same objection.

20 THE WITNESS: When it entered into this  
21 agreement?

22 BY MR. GALVIN:

23 Q. Yes.

24 A. I can't recall. I can't recall.

25 Q. Were there any other agreements executed

1 between Brilliant and Sharman in the May, June 2003  
2 time frame?

3 A. There may have been. I -- I -- there may  
4 have been.

5 Q. Wasn't the Joint Enterprise Agreement  
6 between Sharman and Brilliant, Altnet executed in  
7 June 2003?

8 A. If that's the date on the agreement, then it  
9 would have been executed at that time.

10 Q. Wasn't it the case that the Patent  
11 Sublicense Agreement was negotiated and executed in  
12 approximately the same time frame?

13 A. I don't recall.

14 (Deposition Exhibit 4 was marked for  
15 identification and is annexed hereto.)

16 BY MR. GALVIN:

17 Q. I'll ask the reporter to mark as Exhibit 4  
18 the Form 10-KSB for Brilliant Digital Entertainment,  
19 Inc. for the fiscal year ended December 31st, 2003.  
20 Mr. Bermeister, does this appear to be the 10-K for  
21 December 2003 for Brilliant Digital Entertainment?

22 A. It does.

23 Q. If you turn to page 3, it says -- I think  
24 it's the third paragraph down -- "We own 75.5% of  
25 the outstanding capital stock of Altnet and manage

1 all of its day-to-day operations, and the remaining  
2 24.5% is owned by Joltid, Ltd."

3 Do you see that?

4 A. I do.

5 Q. And it says, "We increased our ownership of  
6 Altnet from 51% to the present 75.5% in May 2003..."

7 Do you see that?

8 A. I do.

9 Q. Do you recall that transaction?

10 A. Vaguely.

11 Q. And in exchange for acquiring Joltid's  
12 shares of Altnet Joltid received shares in Brilliant  
13 Digital, correct?

14 A. I believe so.

15 Q. Eventually was the remaining portion of  
16 Joltid's interest in Altnet purchased by Brilliant?

17 A. Yes, I believe so.

18 Q. And, again, did Brilliant issue more stock  
19 to Joltid?

20 A. It may have.

21 Q. Does Joltid still own that stock in  
22 Brilliant?

23 A. Yes, I think it does.

24 Q. Turn to page 4. Under the heading  
25 "Significant Developments in 2003" --

1 A. Yes.

2 Q. -- if you can just read that first  
3 paragraph. I just want to ask you a couple of  
4 questions.

5 A. Okay.

6 Q. Was it true that in June in -- well, prior  
7 to June 2003, did Brilliant act as Sharman's  
8 representative for the sale, licensing or commercial  
9 exploitation of index search results using Sharman  
10 Networks' KaZaA Media Desktop?

11 A. I don't believe so. I don't think so.

12 Q. That relationship started in the mid-2003?

13 A. Most likely, yes.

14 Q. Turn to page 17.

15 A. Okay.

16 Q. If you look at the chart under "Revenues"  
17 again that we looked at previously, do you see the  
18 entry for licensing and other services?

19 A. I do.

20 Q. Does that -- and then if you see under the  
21 paragraph it says, "Licensing and other services  
22 revenues increased in 2003 to \$1.758,000 from  
23 \$74,000 in 2002, due to sublicense revenue."

24 Do you see that?

25 A. Yes, I do.

1 Q. Does that refresh your recollection that  
2 Brilliant didn't receive any revenue associated with  
3 licensing the TruNames patents until 2003?

4 A. Doesn't really but it's what it says here.

5 Q. If you turn to page 21, under the heading,  
6 "Related Party Transactions" --

7 A. Yes.

8 Q. -- it says, "In June 2003, we entered into a  
9 Joint Enterprise Agreement with Sharman Networks,  
10 our largest distributor and source of over 90% of  
11 our revenues, to act as their exclusive  
12 representative for the sale, license and/or  
13 commercial exploitation of its search technology."

14 A. Yeah.

15 Q. Why was Sharman Networks a related party to  
16 Brilliant Digital?

17 A. Don't know.

18 Q. Do you know what the concept of a related  
19 party is in an SEC disclosure?

20 A. I presume it -- it means parties who hold  
21 equity in each other or one way or the other. I'm  
22 not a lawyer. I don't really understand exactly but  
23 that's my presumption.

24 Q. In -- were you aware of any relationship of  
25 owning shares in each other that existed in June

1 2003?

2 A. I'm not -- I don't recall. Other than  
3 what's in these documents I don't believe there  
4 would be anything else.

5 Q. But you recall that Sharman was issued  
6 warrants to purchase Brilliant stock, correct?

7 A. In the previous document, yes.

8 Q. And also in this paragraph here, correct?

9 A. Yes.

10 Q. Were there any other overlapping ownership  
11 interests between Sharman and Brilliant or Altnet?

12 A. No.

13 Q. Turn to page 22. It says, "As of December  
14 31, 2003 we have an outstanding accounts payable  
15 balance to Sharman Networks of \$3,064,000. "

16 Do you see that?

17 A. Where are you looking at?

18 Q. Top of the page.

19 A. Yes.

20 Q. Any reason to doubt that that's not  
21 accurate?

22 A. No.

23 Q. Do you know why Brilliant was running an  
24 accounts payable balance to Sharman Networks?

25 A. No.

1 Q. Do you know if Sharman Networks deducted any  
2 of its license fees that it was supposed to pay  
3 Brilliant for the TruNames patents in light of these  
4 accounts payable balances?

5 A. I don't recall.

6 Q. Turn to page 28. In the middle of the page  
7 under "Current Litigation" --

8 A. Yes.

9 Q. -- I think the last line in that paragraph,  
10 the last sentence, "For the twelve months ended  
11 December 31, 2003, we generated approximately 90.9%  
12 of our total revenues from activities dependent upon  
13 the availability of the KMD to computer users."

14 Do you see that?

15 A. I do.

16 Q. Is that an accurate statement as of December  
17 31, 2003, to your knowledge?

18 A. I don't have any reason to dispute it.

19 Q. On page 40 --

20 A. The payable may have been related to the  
21 negotiation expenses now that I see this, yeah, but  
22 I just can't confirm whether it was or not. Okay.

23 Q. If you look at page 40, the very last  
24 sentence says, "The company entered into a Patent  
25 Sublicense Agreement with Sharman Networks Limited,

1 the distributor KaZaA Media Desktop file sharing  
2 software application..."

3 Do you see that?

4 A. At the bottom here?

5 Q. Yes.

6 A. Yes, yes.

7 Q. So the disclosure of the Patent Sublicense  
8 Agreement with Sharman Networks Limited occurs in  
9 the 2003 10-K of Brilliant but not in the 2002 10-K  
10 of Brilliant, correct?

11 A. Seems that way.

12 Q. Does that lead you to believe that the  
13 agreement was not executed until 2003?

14 A. No, not particularly.

15 Q. So if it had been executed before, it  
16 wouldn't have been material that Brilliant was going  
17 to be entitled to hundreds of thousands of dollars  
18 of licensing revenue?

19 MR. RHOA: Objection: form.

20 THE WITNESS: I don't know. I mean, you  
21 know, these were documents put together by my  
22 lawyers which I reviewed. We offered the  
23 information and I don't know what was considered  
24 material or not.

25 //

1 BY MR. GALVIN:

2 Q. And do you know why the Patent Agreement  
3 with Sharman Networks Limited was identified as a  
4 related party transaction in Brilliant Digital's  
5 2003 10-K to the SEC?

6 A. No. Brings back old memories looking at  
7 this thing.

8 Q. Now, did there come a time when Sharman  
9 Networks ceased operations?

10 A. Yes.

11 Q. And why did it cease operations?

12 A. I don't know.

13 Q. Was Sharman found liable for copyright  
14 infringement in Australia --

15 A. Yes.

16 Q. -- and was Altnet found liable for copyright  
17 infringement in Australia?

18 A. I believe so.

19 Q. And were you personally found liable for  
20 copyright infringement in Australia in the same  
21 case?

22 A. I believe so.

23 Q. And did that have any effect on why Sharman  
24 ceased operations?

25 A. I don't know.

1 Q. Let's go back to your declaration, 2009.

2 A. I'll find it somewhere in this pile. Here  
3 we go.

4 Q. I'd like to ask you about paragraph 6.

5 A. Yes.

6 Q. You stated that -- you identify a Patent and  
7 Software License Agreement entered into between BDE  
8 and affiliates and Skype Technologies, correct?

9 A. Correct.

10 Q. And you said that Skype paid approximately  
11 \$4 million for this license.

12 A. Correct.

13 Q. What did you base that on?

14 A. My recollection of what they paid.

15 Q. And who did they pay it to?

16 A. I believe to -- either Kinetech or  
17 Brilliant. I'm not sure which one.

18 Q. And so there was a check or a wire of funds?

19 A. Most likely, yes.

20 Q. From Skype to Kinetech or Brilliant?

21 A. One of the two.

22 Q. And it was for \$4 million?

23 A. I recall that amount, yes.

24 Q. Did you look at any documents to confirm  
25 that amount?

1 A. No.

2 Q. Are there any records of this?

3 A. I believe there would be.

4 Q. But you didn't consult them?

5 A. I did not consult those records, no.

6 Q. And when was the payment received?

7 A. Sometime at the signing of the agreement.

8 Commensurate with signing of the agreement, I

9 believe.

10 Q. And were you involved in the negotiations of  
11 this license?

12 A. I was.

13 Q. Who did you negotiate with?

14 A. Really I negotiated through my lawyers. I  
15 had some preliminary discussions with Skype but the  
16 agreement was negotiated by my lawyers.

17 Q. And who did you have preliminary discussions  
18 with at Skype?

19 A. I had a discussion with a -- with a Josh  
20 Silverman who was the CEO of Skype, I believe.

21 Q. And when did you first approach  
22 Mr. Silverman?

23 A. I think in -- it must have been 2007 or  
24 2008.

25 Q. Now, in -- did you approach Mr. Silverman

1 when Skype was owned by eBay?

2 A. I believe so.

3 Q. Now, at some point eBay was going to sell  
4 Skype to a group of investors, correct?

5 A. I presume so.

6 Q. You were aware of that in the 2008-2009 time  
7 frame?

8 A. I read the press, yes.

9 Q. And you were also aware that Joltid or the  
10 shareholders of Brilliant sued Skype around that  
11 time?

12 A. I was aware of that.

13 Q. And eventually their dispute was settled and  
14 Joltid acquired a substantial equity interest in  
15 Skype, correct?

16 A. I was aware of that, yes.

17 Q. Now, what connection, if any, did your  
18 license agreement, Brilliant's license agreement  
19 with Skype, have to the under -- to the Joltid  
20 litigation fight?

21 A. None.

22 Q. Completely unrelated?

23 A. Totally, as far as I'm aware.

24 Q. Why did you -- why did you qualify as far as  
25 you're aware?

1 A. Because I'm not aware of anything else.

2 Q. And if you look at your Exhibit 2014 --

3 A. Yes.

4 Q. -- in paragraph 2 you said, "...I had no  
5 personal interest in Skype at the time the Skype  
6 license was agreed to."

7 Do you see that?

8 A. That's correct.

9 Q. And that's true?

10 A. That is true.

11 Q. After the transaction -- after the license  
12 was agreed to, did you acquire any direct or  
13 indirect interest in Skype?

14 A. No.

15 (Exhibit 2010 previously marked.)

16 BY MR. GALVIN:

17 Q. I'll hand you what's been previously marked  
18 as Exhibit 2010, the Patent and Software License  
19 Agreement. And Exhibit 2010 is the Patent License  
20 Agreement between Skype and Brilliant and Altnet,  
21 correct?

22 A. I believe so, yes.

23 Q. And this is what you attached to your  
24 declaration.

25 A. That is correct, yes.

1 Q. Now, was this the sole agreement executed by  
2 you, Brilliant or Altnet, on -- that was effective  
3 November 19, 2009?

4 MR. RHOA: Objection: form.

5 THE WITNESS: I mean, this -- it states  
6 2009. It was signed apparently November 16, 2009,  
7 by Skype Technologies. I have no recollection of  
8 anything else.

9 BY MR. GALVIN:

10 Q. So you don't remember any other related  
11 agreements being signed at or near the date of  
12 November 19, 2009, involving you, Brilliant or  
13 Altnet?

14 MR. RHOA: Objection: form.

15 THE WITNESS: I have no recollection of  
16 anything other than this agreement being signed at  
17 that time.

18 BY MR. GALVIN:

19 Q. And you don't recall any other agreements  
20 being signed or having an effective date of November  
21 19, 2009, in any other companies that you had a  
22 direct or indirect interest in?

23 MR. RHOA: Objection: form.

24 THE WITNESS: I don't recall.

25 //

1 BY MR. GALVIN:

2 Q. Did you sign this in person or was it faxed?

3 A. It looks like it was a personal signature.

4 Q. Was there a closing meeting where you came  
5 and signed it?

6 A. I don't believe so.

7 Q. Now, do you know who signed on behalf of  
8 Skype?

9 A. No.

10 Q. Now, when you look at page 2 of the  
11 agreement --

12 A. Uh-huh.

13 Q. -- under Roman V, "Consideration," there's a  
14 paragraph --

15 A. Yes.

16 Q. -- and it says, "In consideration of the  
17 licenses, releases, and covenants granted herein,  
18 Licensee has received good and valuable  
19 consideration (the 'Fee'), receipt of which is  
20 hereby acknowledged by the Licensor."

21 Where is the fee defined in this agreement?

22 A. I guess that is the definition.

23 Q. So where was it specified that Skype would  
24 pay Brilliant and Altnet \$4 million?

25 A. It doesn't look like it is.

1 Q. So was that in another agreement?

2 A. I don't believe so.

3 Q. Was there a schedule or an exhibit attached  
4 to this?

5 A. No, I don't believe so.

6 Q. So -- we're not missing anything? This is  
7 the complete agreement?

8 A. I think that's correct.

9 Q. And so Skype and Brilliant and Altnet and  
10 its lawyers negotiate an agreement that would  
11 require and obligate Skype to pay \$4 million and  
12 they never specified it in writing?

13 A. The check probably specified it or the wire  
14 transfer. I don't know how -- I can't recall  
15 exactly how the wire or the funds were transferred  
16 but it was probably specific to acknowledge the fee.

17 Q. But it was never specified in writing?

18 A. I don't believe so. It doesn't appear to  
19 be.

20 Q. And the only thing that we have as evidence  
21 that it was a \$4 million fee is your recollection?

22 MR. RHOA: Objection: form.

23 THE WITNESS: It was a pretty big event at  
24 the time so I recall that -- that for us we received  
25 \$4 million and -- so I do have a recollection that

1 we received it, yes.

2 BY MR. GALVIN:

3 Q. And you're sure it came from Skype?

4 A. Yes, I recall. I mean, at the time, you  
5 know, it was confirmed to me that the fee was  
6 received.

7 Q. You don't find it a bit odd that the fee  
8 wasn't specified in the agreement?

9 A. No, not really.

10 Q. Were there tax reasons why it wasn't listed?

11 A. No, not at all.

12 Q. Were there any other discussions about why  
13 you wouldn't list the fee? Isn't the fee sort of  
14 the most important part of the agreement?

15 A. It's -- the fee -- the check is the most  
16 important part of the agreement.

17 Q. And when did you receive the check?

18 A. I don't recall exactly which day or whether  
19 it was a wire transfer, but I recall, you know,  
20 hearing from my lawyers that the money had been  
21 received.

22 Q. Now, if you look at the "Consideration"  
23 paragraph, it says, "...Licensee has received good  
24 and valuable consideration (the 'Fee')..."

25 Who is the licensee in this agreement?

1 A. Where does it say that?

2 Q. Paragraph 5, "Consideration." "...Licensee  
3 has received good and valuable consideration..."

4 A. It says here in the agreement "Skype, Inc.  
5 and Affiliates thereof (hereinafter called  
6 'Licensee')."

7 Q. So the agreement says that Skype was  
8 receiving consideration, not Brilliant and Altnet,  
9 correct?

10 MR. RHOA: Objection: form.

11 THE WITNESS: I'm not a lawyer. I don't  
12 know really what these agreements are really saying  
13 but I presume based on your question that "Licensee"  
14 is defined as Skype and that's what the agreement  
15 says.

16 BY MR. GALVIN:

17 Q. So the agreement says that Skype is going to  
18 receive good and valuable consideration as a fee,  
19 correct?

20 MR. RHOA: Objection to form.

21 THE WITNESS: It says, "In consideration of  
22 the licenses, releases and covenants granted herein,  
23 Licensee has received good and valuable  
24 consideration (the 'Fee'), receipt of which is  
25 hereby acknowledged by Licensor." I don't really

1 know what that means in legal terms but that's what  
2 it says.

3 BY MR. GALVIN:

4 Q. But you're certain Skype paid \$4 million to  
5 Brilliant?

6 A. I recall my lawyers telling me that we  
7 received the money.

8 Q. And do you know what entity it went to?

9 A. I don't recall. Either Brilliant or  
10 Kinetech, one of the two.

11 Q. And you don't recall any other agreements or  
12 transactions associated with the license of the  
13 TruNames patents to Skype?

14 A. At that time?

15 Q. Yes.

16 A. No.

17 (Deposition Exhibit 5 was marked for  
18 identification and is annexed hereto.)

19 BY MR. GALVIN:

20 Q. I'll ask the reporter to mark as Exhibit 5  
21 Amendment No. 3 to Form S-1 Registration Statement  
22 of Skype S.a r.l.

23 MR. RHOA: Bob, can I run to the men's room?

24 MR. GALVIN: Sure.

25 VIDEO OPERATOR: We are off the record at

1 1:08 p.m.

2 (Recess taken.)

3 VIDEO OPERATOR: We are back on the record  
4 at 1:12 p.m.

5 BY MR. GALVIN:

6 Q. Mr. Bermeister, have you ever seen Exhibit 5  
7 before?

8 A. No.

9 Q. Did you ever have any communications with  
10 Mr. Dyne about the eBay -- the Skype license?

11 A. About the Skype license? Which Mr. Dyne  
12 you're referring to?

13 Q. Mark Dyne.

14 A. And the Skype license you're referring to is  
15 the one -- the agreement that Brilliant entered  
16 into, yes, with Skype?

17 Q. Yes.

18 A. Possibly, yes.

19 Q. Do you recall anything about those  
20 conversations?

21 A. I think really they were me indicating my  
22 intent to them that Brilliant was prepared to enter  
23 into a license agreement. I don't think there was  
24 anything else that I can recall.

25 Q. And why wouldn't Mr. Dyne be interested in

1 that?

2 MR. RHOA: Objection: form.

3 THE WITNESS: I don't specifically know.  
4 You would have to ask him that but he was working  
5 with Skype at the time.

6 BY MR. GALVIN:

7 Q. And -- and Mr. Dyne, Mark Dyne, still has  
8 direct or indirect interests in Brilliant, correct?

9 A. I believe that's correct.

10 Q. Did you know that Skype was acquired by a  
11 group of investors including Joltid in a transaction  
12 that closed with an effective date of November 19th,  
13 2009, the same day that the license agreement was  
14 entered into between Skype and Brilliant and Altnet?

15 A. I didn't know that.

16 Q. You didn't know that that was going on?

17 A. Well, I knew that there was a transaction  
18 going on but I didn't know that the dates were the  
19 dates you stated.

20 Q. You don't recall any discussion date to  
21 align the closing date of the license agreement  
22 between Skype and Brilliant and Altnet and the  
23 closing date for the investor group including Joltid  
24 Ltd's acquisition of Skype?

25 A. I don't, no.

1 Q. And the group of people who acquired Skype  
2 included Europlay Capital, Mark Dyne's company,  
3 correct?

4 A. I don't know that.

5 Q. You never discussed that with him about  
6 how --

7 A. Well, I knew that it was involved with them  
8 and I knew it was involved in that transaction. I  
9 just don't know which companies of his had an  
10 interest in Skype.

11 Q. You knew Joltid secured an ownership in  
12 Skype as part of that transaction, correct?

13 A. Yes.

14 Q. And Joltid similarly continues to have an  
15 ownership interest in Brilliant?

16 A. I believe that's correct.

17 Q. So two of your shareholders were involved in  
18 the acquisition of Skype in a transaction that  
19 closed on November 19th, 2009, correct?

20 A. If they closed in 2009, their transaction,  
21 then that is correct, yes.

22 Q. And that's the same date that you executed  
23 the license agreement between Skype --

24 A. Well, the license agreement looks like it  
25 was executed on the 16th of November if I'm not

1 mistaken.

2 Q. It had an effective date of November 19th?

3 A. That's what the agreement says, yes.

4 Q. You didn't date where you signed the Skype  
5 license, correct?

6 A. I don't believe I did, no.

7 Q. And you don't know if it was November 16th  
8 or November 19th?

9 A. I can't recall.

10 Q. If you turn to page 85 of Exhibit 5 --

11 A. Okay.

12 Q. -- under "Warrants" --

13 A. Yes.

14 Q. -- it says, "In connection with the Joltid  
15 Transaction, Joltid received warrants to purchase an  
16 additional 98,680 Skype Global shares, equivalent to  
17 a 1% equity stake at such time, exercisable until  
18 the earlier of November 19, 2019 or the closing of a  
19 reorganization event, as defined in the warrant  
20 agreement."

21 On April 15th, 2010, the warrants were  
22 transferred to SEP Investments PTY Limited, an  
23 entity unaffiliated with Joltid. Do you see that?

24 A. I see that.

25 Q. Now, SEP Investments PTY Limited is your

1 company, correct?

2 A. It's not my company, no. No, I'm a director  
3 of that company, I believe.

4 Q. Okay. So you're a director of it?

5 A. Correct.

6 Q. SEP Investments PTY Limited has an ownership  
7 interest in Brilliant, correct? We did discuss this  
8 earlier.

9 A. SEP has an interest in Brilliant? Is that  
10 what you're asking?

11 Q. Yes.

12 A. I don't know. I don't know.

13 Q. Do you recall when you were deposed --

14 A. It may. I'm not saying that it doesn't, I  
15 just don't know.

16 Q. Okay. And I thought you said before that  
17 SEP Investments, that the owners of SEP Investments  
18 were you or your immediate family. Is that correct?

19 A. Yeah, I -- I think that is -- I think that  
20 is correct but I'm not sure at this time whether  
21 that was correct.

22 Q. Okay. When did that change?

23 A. I don't know. I don't know.

24 Q. So you're a director of SEP Investments PTY  
25 Limited, correct?

1 A. I believe so.

2 Q. And on April 15th, 2010, SEP Investments  
3 received warrants that were equivalent to a 1  
4 percent equity stake in Skype, right?

5 A. Yes, but I'm not sure -- first, I'm not sure  
6 at the time that I was a director of SEP Investments  
7 and I don't know that SEP is a shareholder in  
8 Brilliant. I'm just not sure.

9 Q. Why did SEP Investments receive 1 percent of  
10 Skype in April of 2010?

11 A. I can't tell you that. I don't know the  
12 answer to that. I don't even know if it did but it  
13 says here that it did.

14 Q. If you were a director, wouldn't you know?

15 A. Firstly, I'm not sure that I was a director  
16 at that time. I believe I'm presently a director  
17 but I don't believe I was a director at that time.

18 Q. When do you think you became a director?

19 A. Recently. I believe I recently became a  
20 director.

21 Q. When?

22 A. Maybe this year.

23 Q. And how did you become a director?

24 A. We had a director resign. I believe I  
25 replaced that director.

1 Q. So you weren't a director of SEP when it was  
2 formed?

3 A. I can't answer that question now. Well, I  
4 don't believe I was, no. I just don't recall.

5 Q. If there were records showing that you were  
6 listed as a director when SEP Investments PTY  
7 Limited was formed --

8 A. They would be public records in Australia.

9 Q. And -- so you're just not certain whether  
10 you were?

11 A. I'm just not certain. I can't at this  
12 moment in time give you the accurate information.

13 Q. Do you have any idea when SEP Investments  
14 was formed?

15 A. No, no.

16 Q. And you have no idea --

17 A. All of this, by the way, would be public  
18 information in Australia. You could get these  
19 accurate responses by looking at the public record  
20 there.

21 Q. And you don't have any understanding why 1  
22 percent of Skype was transferred to SEP Investments  
23 months after the execution of the patent license?

24 A. I don't, no.

25 Q. Who else has any ownership interest in SEP

1 Investments besides you and your immediate family as  
2 you said at the beginning of your deposition?

3 A. Several companies but, you know, they --  
4 there have been quite a few changes to -- to my  
5 family structure in the last few years. My tax  
6 advisors -- my lawyers have been advising us on  
7 changes but I can't give you -- I couldn't even tell  
8 you right now exactly who the shareholders of SEP  
9 Investments were. There are probably four or five  
10 different shareholders.

11 Q. Do you know any of them? Let me withdraw  
12 that.

13 When I asked you about SEP Investments  
14 before, you thought it was just your immediate  
15 family.

16 A. I said family trusts as well so -- so -- and  
17 I can't -- sitting here today I can't tell you -- I  
18 know there are four or five family re trusts  
19 involved in the structure. I just couldn't tell you  
20 exactly which ones are involved in the structure of  
21 SEP Investments and I don't know exactly what time  
22 those entities became shareholders of SEP  
23 Investments sitting here today.

24 Q. Now, are all those family trusts, are the  
25 members of the beneficiaries of those family trusts

1 members of your immediate family?

2 A. The beneficiaries are specified in each  
3 trust agreement and they generally include members  
4 of my immediate family.

5 Q. Do they include anyone else other than  
6 members of your immediate family?

7 A. Yes.

8 Q. And -- and who else is included as a  
9 beneficiary?

10 A. I can't tell you now, I don't know, but I  
11 know that there are others.

12 Q. You have no idea who they are?

13 A. No.

14 Q. Why don't you know?

15 A. It's a trust agreement as thick as this  
16 agreement and, you know, other than agreeing with my  
17 lawyers to get it done, I don't make it my business  
18 to -- I've never really used those beneficiaries  
19 other than from time to time, I know I agree with my  
20 accountants to make distributions to my family  
21 members and there are others I know -- I can recall  
22 that we discussed that there would be others,  
23 corporate entities and a long list of others, but --  
24 including my brothers, my mother, my father and  
25 sisters.

1 Q. Who set up these trusts?

2 A. My lawyers.

3 Q. But there's usually someone who puts money  
4 or property into a trust, right?

5 A. Yeah.

6 Q. And so who put the money or property into --

7 A. Other companies.

8 Q. And as a director at least at some period of  
9 time of SEP -- strike that.

10 While you were a director of SEP  
11 Investments, who were beneficiaries or shareholders  
12 in SEP Investments?

13 A. You mean since I've become a director or --

14 Q. At any time while you were director.

15 A. Any time. The same list of -- I mean,  
16 presumably SEP beneficiaries are only -- I think SEP  
17 is a PTY Limited Company so its shareholders would  
18 be the only beneficiaries.

19 Q. And so who -- when you were director -- when  
20 you recall being director, who were the shareholders  
21 of SEP Investments PTY Limited?

22 A. I don't know.

23 Q. You have no idea?

24 A. I just -- I mean, there could be -- I could  
25 guess at any one of the number of companies. I just

1 don't know.

2 Q. Well, you realize that 1 percent of an  
3 equity stake in Skype is a lot of money, worth a  
4 lot, right?

5 A. It became a lot of money, yes.

6 Q. And it went into a company that you said was  
7 controlled by you or your immediate family?

8 A. Well, I don't know at that time but anyway,  
9 yes. I can't recall whether or not at that time it  
10 was, in fact, controlled by me or my immediate  
11 family as you've stated.

12 Q. Was there a change in control of SEP that  
13 you recall?

14 A. Yes, I think there has been a change in  
15 control of SEP.

16 Q. And who was controlling it before you got  
17 involved?

18 A. I believe there were, if I'm not mistaken,  
19 two directors other than myself.

20 Q. And who are the other two directors?

21 A. I believe a lawyer and an accountant.

22 Q. And what was the lawyer's name?

23 A. I think his name is John Landerer.

24 Q. And who is the accountant?

25 A. His name was, if I'm not mistaken, John

1     Leece.

2           Q.     And did they represent someone else?

3           A.     Don't know.

4           Q.     So why would John Landerer get 1 percent of  
5 Skype?

6           A.     I don't know.

7           Q.     Why would John Leece get 1 percent of Skype?

8           A.     I have no -- I know that -- let me think  
9 about this. Was Landerer involved earlier? I -- I  
10 just don't have a recollection. I don't know.

11          Q.     Did Mark Dyne ever have any interest in SEP  
12 Investments PTY Limited?

13          A.     I don't -- no.

14          Q.     Did the two founders of Skype have any  
15 interest in SEP Investments Limited, directly or  
16 indirectly?

17          A.     I don't know.

18          Q.     Any reason to believe that they would?

19          A.     Not really, no, but I say no. It's possible  
20 but I just don't have knowledge of whether or not  
21 they did.

22          Q.     How would it -- how would it be possible  
23 that they would have an interest?

24          A.     I couldn't answer your question. I don't  
25 know. Don't know.

1 Q. So your testimony is you have no idea why on  
2 April 15, 2010, Joltid transferred 1 percent --  
3 warrants equal to a 1 percent equity stake in Skype  
4 to SEP Investments PTY Limited, a company that at  
5 least for a period of time you were a director of?

6 A. I -- I have become, I believe, a director of  
7 SEP very recently so I'm not familiar with the  
8 period prior to this -- this time and it's true  
9 that -- there is a period of time that I am -- that  
10 I have been a director of SEP. I believe that to be  
11 true, but I couldn't answer why this was done. I  
12 don't know.

13 Q. Have you ever heard of a company called  
14 Suebeau PTY Limited, S-U-E-B-E-A-U?

15 A. Yes, I have.

16 Q. Did you ever have any direct or indirect  
17 interest in that company?

18 A. No.

19 Q. Who controls Suebeau Limited?

20 A. I believe Leece and Landerer control that  
21 company.

22 Q. And are they doing that on behalf of any  
23 beneficiaries to your knowledge?

24 A. I don't know.

25 Q. Are Mr. Landerer and Mr. Leece, are they

1 very wealthy men?

2 A. They are reasonably, I mean, yes.

3 Q. Have you ever heard of a John -- so  
4 Landerer, is it Landerer, L-A-N-D-E-R --

5 A. Yes, yes, yes.

6 Q. And Leece is L-E-E-C-E?

7 A. Correct.

8 Q. Now, was SEP Investments PTY Limited formed  
9 in 1986?

10 A. It may have been. 1986?

11 Q. Uh-huh.

12 A. I doubt it.

13 Q. Were you involved in the formation of SEP  
14 Investments PTY Limited in 1986?

15 A. I can't tell you 1986 because I mentioned at  
16 the beginning of my deposition it may be SEP  
17 Holdings and SEP Investments. I just don't know  
18 whether or not they are one and the same company but  
19 you're talking 1986 formation. It sounds highly  
20 unlikely that SEP would have been formed in 1986.

21 Q. Do you have -- why did you become a director  
22 of SEP Investments at the time?

23 A. As I mentioned -- as I mentioned, one of the  
24 directors had resigned, I think it was Leece or  
25 Landerer, one of the two, and there was some

1 restructuring that had taken place in terms of my  
2 various holdings and family interests and if I'm not  
3 mistaken I became a director recently as a result of  
4 that.

5 Q. And who asked you to join?

6 A. The vacancy became available and one of my  
7 lawyers in the restructuring of my tax affairs gave  
8 me advice.

9 Q. And what was the name of that lawyer?

10 A. Gelski, Richard Gelski.

11 Q. Is he in the U.S. or --

12 A. Australia.

13 Q. Did you put up any capital when you joined  
14 SEP?

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

16 Q. Why did they want you to be a director?

17 A. As I've stated.

18 Q. What was in it for you to accept? Do you  
19 get paid?

20 A. I may get paid a small nominal fee.

21 Q. But --

22 A. A director's fee.

23 Q. You don't know what happened to these  
24 warrants that went to SEP?

25 A. I don't know how those warrants vested or

1 not or if, in fact, SEP is the same company.

2 Q. Is there anything else you can tell me about  
3 your or your family's involvement in SEP Investments  
4 PTY Limited that you haven't told me already?

5 MR. RHOA: Objection: relevance, form,  
6 outside the scope.

7 THE WITNESS: It's very difficult to answer  
8 that question. I -- I know that we recently  
9 restructured the companies. I know I took over some  
10 I believe directorship as I said to you. I can't be  
11 specific because I don't recall exactly which  
12 company that it is. It may be SPE Investments, it  
13 may be SEP Holdings. I believe it's SEP something,  
14 I believe -- but, you know, I follow the advice of  
15 my tax advisors on SEP. I do discuss these things  
16 with them at the time. And if they give me advice,  
17 I follow their advice. So I don't believe I have  
18 facts that I can give you here today that I have  
19 personal knowledge of.

20 Q. To your knowledge are there any other  
21 beneficiaries or investors in SEP Investments PTY  
22 Limited other than yourself?

23 A. Yes, I believe that there are.

24 Q. And what are their names?

25 A. I think I said that already. I don't know

1 exactly what their names are. I believe Suebeau  
2 which you mentioned was -- had some relationship  
3 with SEP. I could guess at a number of different  
4 names that I -- that could be connected to SEP but  
5 it would be pure speculation on my part that I -- I  
6 just don't know exactly which companies own or  
7 control SEP.

8 Q. Now, I understand that there may be complex  
9 corporate structures here but do you have any names  
10 of any individuals that you know have an association  
11 with SEP Investments PTY Limited other than  
12 yourself, Mr. Leece and Mr. Landerer that you  
13 identified?

14 A. No, I don't. My family -- my immediate  
15 family through the trust structure, but there are no  
16 individuals involved with SEP. They're all  
17 corporate structures.

18 Q. And you don't know when you started to  
19 become a director of PTY Limited?

20 A. I believe recently. Maybe in the last six  
21 months.

22 Q. And you don't know who controlled -- what  
23 persons -- put apart corporate entities. You didn't  
24 know what persons were involved in SEP Investments  
25 PTY Limited before you became a director other than

1 Mr. Landerer and Mr. Leece?

2 A. Correct.

3 Q. And it's your testimony that Mr. Landerer  
4 and Mr. Leece weren't representing to your knowledge  
5 any other interest or persons?

6 A. Correct.

7 Q. If you turn to page 169. We have a top 169.  
8 I guess it's internally 160. There's a heading,  
9 "Intellectual Property." Do you see that?

10 A. Yes, I do.

11 Q. It says, "In November 2009, in connection  
12 with the Joltid Transaction we acquired ownership of  
13 software and related intellectual property rights,  
14 which we refer to as the 'Global Index'."

15 Did Brilliant ever contend that Skype's  
16 Global Index technology was covered by the TruNames  
17 patents?

18 MR. RHOA: Objection: beyond the scope.

19 THE WITNESS: When you say "contend," other  
20 than what's written in this agreement? I don't  
21 believe we've ever had any other discussions about  
22 it.

23 BY MR. GALVIN:

24 Q. Did you have any discussions with anyone --  
25 withdraw that.

1           Why don't you turn to page 231, please. At  
2 the top of 231 it says, "On November 1, 2009, prior  
3 to the completion of the Skype Acquisition, we  
4 entered into a transaction with Joltid Limited which  
5 comprised three components:"

6           Do you see that sentence?

7           A. I do.

8           Q. Did you have any discussions with any  
9 persons affiliated with Joltid Ltd. in connection  
10 with the license of the TruNames patents to Skype in  
11 November 2009?

12          A. With Joltid Ltd.?

13          Q. Yes.

14          A. No. In November 2009? What was the date of  
15 this? No, no.

16          Q. If you could turn to page -- the next page,  
17 232. Does Janus Friis or Niklas Zennstrom have or  
18 had any interest in SEP Investments PTY Limited, to  
19 your knowledge?

20          A. I don't know.

21          Q. And I believe --

22          A. I don't believe. You mean individually?  
23 SEP has only ever had corporate entities that are  
24 associated with it.

25          Q. What corporate entities that you're involved

1 with have been associated with SEP Investments?

2 A. As I said, I don't recall exactly how -- how  
3 the structure works. I could be that anything that  
4 I would tell would be a real guess on my part.  
5 It's -- it's a complex structure. I just don't  
6 understand it.

7 Q. If you go to the third bullet, "Euroskoon  
8 Patent License and Purchase Agreement," "We entered  
9 into an agreement with Euroskoon, E-U-R-O-S-K-O-O-N,  
10 LLC pursuant to which Euroskoon granted us a  
11 non-exclusive, irrevocable license to a number of  
12 patents."

13 Do you see that?

14 A. I do.

15 Q. Have you had any connection or involvement  
16 with Euroskoon, LLC?

17 A. No.

18 Q. Now, Euroskoon -- have you ever heard of  
19 Euroskoon, LLC?

20 A. I may have heard of it once or twice but  
21 it's -- I don't know anything about it really.

22 Q. And Brilliant and Altnet have never entered  
23 into any agreements with Euroskoon, LLC?

24 A. No.

25 Q. And Kinetech has entered into no agreements

1 with Euroskoon, LLC?

2 A. I don't believe so, no.

3 Q. And PersonalWeb hasn't entered into any  
4 agreements with Euroskoon, LLC?

5 A. I don't believe so.

6 Q. Have you heard of a company called CAA  
7 Holdings?

8 A. No.

9 Q. Now, in the second-to-last sentence of this  
10 paragraph it says, "In return, we agreed to make an  
11 initial payment of \$2.5 million and an annual  
12 royalty payment of \$1.5 million."

13 Do you see that?

14 A. Yes.

15 Q. And that equals \$4 million, right?

16 A. Okay.

17 Q. But you don't think that the Euroskoon  
18 Patent License and Purchase Agreement between  
19 Euroskoon and Skype had anything to do -- any  
20 relationship to the patent license between Brilliant  
21 Digital and Altnet and Skype?

22 A. No, I don't believe so.

23 Q. Have you ever had any interest in Atomico  
24 Ventures?

25 A. I have not.

1 Q. Direct or indirect?

2 A. Indirect, yes. No interest.

3 Q. Have you ever had any direct or indirect  
4 interest in Charleston Investment Holdings, Limited?

5 A. No.

6 Q. Any direct or indirect interest in  
7 Shearwater Investment Holdings, Limited?

8 A. No.

9 Q. Any direct or indirect interest in Fitchberg  
10 Corporation?

11 A. No.

12 Q. To your knowledge have you participated or  
13 owned any direct or indirect interests in any of the  
14 entities that acquired Skype in November -- on  
15 November 19th, 2009?

16 A. I don't -- I don't -- I'm sorry, just ask  
17 the question again.

18 Q. To your knowledge have you participated in  
19 or owned any direct or indirect interest in any of  
20 the entities that acquired Skype in -- on November  
21 19th, 2009?

22 MR. RHOA: Objection: form.

23 THE WITNESS: I mean, you highlighted for me  
24 this SEP potential issue which as we've discussed  
25 here today I don't know whether or not I have

1 participated in -- through that company in a  
2 transaction that involved Skype. It's quite  
3 possible.

4 BY MR. GALVIN:

5 Q. But you don't recall any of the -- any  
6 involvement?

7 A. I don't recall how that's -- you know,  
8 before me becoming a director of that company I  
9 would have been involved.

10 Q. And you never had any discussions -- well,  
11 let me withdraw that.

12 Prior to entering into the agreement with --  
13 this license agreement with Skype, had you had any  
14 conversations with others, other than attorneys,  
15 regarding Joltid's litigation against Skype?

16 A. No.

17 Q. Have you ever had any direct or indirect  
18 interest in Europlay Capital Advisors?

19 A. No.

20 Q. Any direct or indirect interest in Europlay  
21 Acquisition I, Limited?

22 A. No.

23 Q. Any direct or indirect interest in RDIO,  
24 Inc.?

25 A. I believe BD is a shareholder in RDIO.

1 Q. And when did BD become a shareholder in  
2 RDIO?

3 A. Perhaps in 2010 or '11.

4 Q. And the KaZaA founders, Janus Friis and  
5 Niklas Zennstrom, are also founders of RDIO,  
6 correct?

7 A. I believe they -- they're involved with  
8 entities that founded that company. They're  
9 involved with the company. I don't know how they  
10 manifest their involvement.

11 Q. And your cousin Mark Dyne is a director of  
12 RDIO as well?

13 A. I believe so.

14 Q. And --

15 A. I don't know, by the way. I don't know.

16 Q. And do you know when -- can you nail down  
17 when you -- when Brilliant became an investor in  
18 RDIO?

19 A. I think it was around 2010 if I'm not  
20 mistaken. Something around that time frame.

21 Q. April 2010?

22 A. Very possibly. I don't know.

23 Q. And if you look on page 232 --

24 A. Uh-huh. 232?

25 Q. Yes. I think we were on it before.

1 A. Sorry, yes.

2 Q. You see that as part of the acquisition of  
3 Skype that Skype agreed to invest \$6.0 million in  
4 RDIO?

5 A. I see.

6 Q. Do you know if any of that money was  
7 transferred from RDIO to Brilliant?

8 A. No.

9 Q. It wasn't or you don't know?

10 A. No, I don't believe it was. It would have  
11 been nice but...

12 MR. GALVIN: Why don't we take a break and  
13 I'll figure out if I have any more questions.

14 VIDEO OPERATOR: We are off the record at  
15 1:47 p.m.

16 (Recess taken.)

17 VIDEO OPERATOR: We are back on the record  
18 at 1:56 p.m.

19 (Deposition Exhibit 6 was marked for  
20 identification and is annexed hereto.)

21 BY MR. GALVIN:

22 Q. Mr. Bermeister, I've handed you what's been  
23 marked as Exhibit 6 which is the Form 10-KSB for  
24 Brilliant Digital Entertainment dated December 31st,  
25 2005.

1 A. Yes.

2 Q. Does it appear to be the 10-K for Brilliant  
3 Digital?

4 A. It does.

5 Q. Is this the last 10-K that Brilliant Digital  
6 ever filed?

7 A. I don't know.

8 Q. Did there come a time when Brilliant stopped  
9 filing 10-Ks?

10 A. Yes.

11 Q. And why was that?

12 A. I think we changed our status and we weren't  
13 required to file public reports any longer.

14 Q. In -- if you turn to page 3, see midway on  
15 the page it says, "We now own 100% of the  
16 outstanding capital stock of Altnet having  
17 acquired..."

18 A. Yes.

19 Q. Is it your understanding based on this 10-K  
20 that Brilliant acquired the remaining stake of  
21 Altnet from Joltid Ltd. on May 17th, 2005?

22 A. Yes.

23 Q. And I believe you said before that was an  
24 exchange for Brilliant issuing stock to Joltid.

25 A. I wasn't sure before but now I'm pretty

1 certain that that's what we did.

2 Q. And to your knowledge Joltid has not sold or  
3 transferred its interests -- its shares in Brilliant  
4 Digital?

5 A. I don't believe so. I'm not sure though. I  
6 don't know.

7 Q. Would they have to notify you?

8 A. I don't believe so.

9 Q. If you turn to page 13, at the top do you  
10 see, "On February 25, 2004, our common stock ceased  
11 trading on the American Stock Exchange because we  
12 failed to meet the exchange's continued listing  
13 requirements"?

14 A. I do.

15 Q. And is that the correct date that Brilliant  
16 stopped trading on the American Stock Exchange,  
17 February 25th, 2004?

18 A. That's what it says here. I believe it's  
19 correct.

20 Q. And that's about four months after the date  
21 that Brilliant issued 5 million warrants -- warrants  
22 for 5 million shares to Kinotech in exchange for the  
23 license?

24 A. Humm?

25 Q. I'm sorry.

1 A. No.

2 Q. Two years.

3 A. 2002, correct, yes.

4 Q. Midway down the page it says, "As of March  
5 13, 2006, there were 238 holders of record of our  
6 Common Stock." Do you see that? Right above  
7 "Dividends."

8 A. Above "Dividends." On March -- yes, I see  
9 that.

10 Q. Does Brilliant still maintain a record of  
11 the holders of record of the common stock?

12 A. I don't believe we do. I think we have an  
13 agent -- a listing agent that does or maybe we even  
14 acquired back all that stock, I don't know. I'm not  
15 sure what our present status is. Either we've  
16 acquired all back the stock and we -- and we don't  
17 have as many shareholders of record or we have a  
18 listing agent that would have a record of the  
19 shareholders.

20 Q. And do you know who that listing agent would  
21 be?

22 A. Don't know offhand.

23 Q. Now, if you turn to page 18, there's a  
24 reporting of licensing and other services revenue on  
25 this page. Do you see that?

1 A. Yes.

2 Q. Did you -- withdraw that.

3 Page 22.

4 A. Okay.

5 Q. Under "Related Party Transactions," at the  
6 bottom of the page you see again a paragraph, "We  
7 entered into a Patent Sublicense Agreement with  
8 Sharman..." Do you see that?

9 A. Yes.

10 Q. And do you know why Sharman was listed --  
11 the Patent Sublicense Agreement was listed under the  
12 heading "Related Party Transactions" in Brilliant's  
13 2005 10-K?

14 A. Don't know.

15 Q. Turn to page 23, at the end of the first  
16 paragraph. "As of December 31, 2005, we had an  
17 outstanding accounts receivable balance from Sharman  
18 of \$1,153,000, which is classified on the Balance  
19 Sheet as Accounts receivable related parties."

20 A. I see that, yes.

21 Q. What was the accounts receivable based on?

22 A. Only the agreements that were in place at  
23 that time with Sharman.

24 Q. And what agreements required Sharman to pay  
25 Brilliant?

1 A. The -- I think the 2002 or 2003 agreement.

2 Q. The Patent Sublicense?

3 A. I believe it was the Patent Sublicense and  
4 then there was a joint venture agreement as well  
5 after that.

6 Q. And did the -- did the Joint Enterprise  
7 Agreement require money to flow from Sharman to --

8 A. I just can't recall.

9 Q. Do you know if a portion of that outstanding  
10 accounts receivable from Sharman related to patent  
11 royalty fees it had failed to pay?

12 A. It's -- I don't know. I don't know. Don't  
13 know.

14 Q. Sharman was in pretty bad financial straits  
15 by 2005, correct?

16 A. You could say that it was being hammered  
17 from left, right and center, yeah.

18 Q. But when you created your value for the  
19 Sharman sublicense, you didn't base it on fees that  
20 were actually paid, you based it on an estimate,  
21 correct?

22 A. No, I did an estimate of the years that the  
23 pays -- the fees were paid and then I verified with  
24 Anthony Neumann that that was correct.

25 Q. Did you go back and look at the accounts

1 receivable to determine --

2 A. I did not.

3 Q. And so the fact that there's an account --  
4 there was an accounts receivable in the end of  
5 December 2005 of over \$1 million, a portion of that  
6 could have been a patent sublicense fee?

7 A. It's possible but it's also possible that it  
8 was paid.

9 Q. You just don't know one way or the other,  
10 correct?

11 A. I believe that we were fully settled up at  
12 the end of our agreement -- at the end of our  
13 relationship and to my full satisfaction.

14 Q. Turn to page 41.

15 A. Okay.

16 Q. Right above "Significant Agreements" it  
17 says, "Sharman Networks Limited agreed to indemnify  
18 the Company for certain uninsured legal expenses and  
19 related costs incurred in connection with the  
20 ongoing litigation in Australia in which both  
21 Sharman Networks Limited and the Company are  
22 defendants."

23 A. Correct.

24 Q. Why was Sharman indemnifying Brilliant?

25 A. I don't know why they finally decided to

1 indemnify Brilliant but we asked them for an  
2 indemnification, Brilliant did.

3 Q. If you turn to page 51, it reports the  
4 revenue for the year ended December 31st, 2005, and  
5 it breaks it up between revenues from unaffiliated  
6 customers and revenues from affiliated customers,  
7 correct?

8 A. Yes, I see it.

9 Q. And if you look down under the chart it says  
10 two paragraphs under, "For the twelve months ended  
11 December 31, 2005, Sharman contributed 31% of the  
12 Company's revenue from content sales, patent  
13 licensing, advertising and payment processing."  
14 Correct?

15 A. Okay.

16 Q. So Brilliant reported to the SEC that  
17 Sharman was an affiliated customer, correct?

18 A. You mean because 31 percent is \$1.8 million?

19 Q. Yes.

20 A. Yes, that seems about right.

21 Q. And why did you consider Sharman to be an  
22 affiliated customer and not an unaffiliated  
23 customer?

24 A. I don't know.

25 Q. Was it because of overlapping ownership?

1           A.    It could have been many reasons.  I just  
2 don't know why my lawyers would have decided that.

3                   (Deposition Exhibit 7 was marked for  
4 identification and is annexed hereto.)

5 BY MR. GALVIN:

6           Q.    I'll ask the reporter to mark as Exhibit 7 a  
7 document entitled, "Exhibit 10.6 Joint Enterprise  
8 Agreement."  Mr. Bermeister, do you recognize  
9 Exhibit 7 as a redacted copy filed with the SEC of  
10 the Joint Enterprise Agreement between Altnet and  
11 Sharman Networks Limited?

12           A.    How would I know that?  I mean, it appears  
13 to have come from the SEC archives.  Redacted copies  
14 normally have like black lines on them, don't they?

15           Q.    I just -- if you, for example, looked at  
16 page 3, you'll see some -- on the second paragraph  
17 it has some asterisks "Terms represented by this  
18 symbol are considered confidential.  These..." --

19           A.    I see.  These ones, yes.

20           Q.    I'm just asking if from looking at the  
21 context --

22           A.    Yeah.  I know we would have filed presumably  
23 a redacted copy so I presume this is accurate, yeah.

24           Q.    If you turn to page 16 --

25           A.    Okay.

1 Q. -- there is a Section 10.13. It says, "This  
2 Agreement, together with the License Agreement, is  
3 the complete and exclusive agreement between the  
4 Parties with respect to the subject matter  
5 hereof..."

6 Do you understand that the license agreement  
7 was referencing the joint sublicense agreement that  
8 we looked at, the Patent Sublicense Agreement?

9 A. The 2002 document?

10 Q. The one that had an effective date of  
11 October 2002.

12 A. I don't believe there was anything else.

13 (Deposition Exhibit 8 was marked for  
14 identification and is annexed hereto.)

15 BY MR. GALVIN:

16 Q. Let me ask the reporter to mark as Exhibit 8  
17 a Hoovers report of SEP Investments PTY Limited  
18 Profile. This one I only have one copy of. And,  
19 Mr. Bermeister, if you would just turn to I guess  
20 the fourth page of Exhibit 8.

21 A. Yes.

22 Q. The Company Overview page.

23 A. Yes.

24 Q. Do you recognize the address L 677  
25 Castlereagh Street?

1 A. I believe I do.

2 Q. And what is it?

3 MR. RHOA: I'm going to object to this  
4 document, Exhibit 8, to the extent that it's not a  
5 complete copy of the document.

6 THE WITNESS: I -- I don't know exactly.  
7 Actually, I don't know. I don't know.

8 BY MR. GALVIN:

9 Q. Do you have any lawyers or financial  
10 advisors at that address?

11 A. Well, I know that John Leece is on  
12 Castlereagh Street but I just don't know his  
13 address.

14 Q. There's a reference to -- I think we  
15 discussed this -- Suebeau. How do you pronounce --

16 A. Suebeau I think.

17 Q. And have you ever had any interest in  
18 Suebeau?

19 A. No.

20 Q. Do you know of any persons who would have  
21 companies or trusts affiliated with Suebeau?

22 A. No.

23 Q. There's a reference here to sales of \$3.4  
24 million.

25 A. Yes.

1 Q. Are you -- are you aware of SEP Investments  
2 PTY Limited having any sales?

3 A. I'm not.

4 Q. And listed on this page are Kevin  
5 Bermeister, John Landerer and John Leece. Those are  
6 the individuals we spoke about briefly previously,  
7 correct?

8 A. Yes, yes.

9 Q. And you're not aware of any other directors  
10 or you can't name any right now any other directors?

11 A. No.

12 Q. And I believe you said previously that --  
13 that under Australian law the list of shareholders  
14 for SEP Investments PTY Limited should be publicly  
15 available?

16 A. I believe so.

17 Q. And do you have any records or tax returns  
18 or any information related to SEP Investments PTY  
19 Limited?

20 A. Do I have any? No, I don't believe I do.

21 Q. Who would maintain those?

22 A. What, my -- my legal tax advisors or my  
23 lawyers, yeah.

24 MR. GALVIN: I have no further questions.

25 MR. RHOA: We have a few questions on behalf

1 of the patent owner.

2

3

FURTHER EXAMINATION

4

BY MR. RHOA:

5

Q. Mr. Bermeister, could you please look at

6

Exhibit 4.

7

A. Yes.

8

Q. What is Exhibit 4 again?

9

A. It says 10-KSB of Digital for the year ended

10

December 31, 2003.

11

Q. So when would the information contained in

12

here have been put together in general?

13

A. Probably in the quarter following.

14

Q. So does that mean early 2004?

15

A. Yes, most likely.

16

Q. Can you please turn to page 39 of 58.

17

A. Uh-huh.

18

Q. Do you see a paragraph under the heading,

19

"License Rights"?

20

A. Yes.

21

Q. Can you please review that paragraph.

22

A. Okay.

23

Q. Are the 5 million shares in this paragraph

24

the same as the 5 million warrants in your

25

declaration or is that something different?

1 A. That would be the same.

2 Q. Is there a value in this paragraph for those  
3 5 million warrants?

4 A. It says, "The value of these warrants was  
5 determined to be \$2,096,000 and will be amortized  
6 over the remaining useful life of the patent  
7 agreement, or 3 years."

8 Q. Is that consistent with your recollection or  
9 not?

10 A. I don't specifically recall at the time but  
11 it says it here in the document.

12 Q. Any reason to believe that's not true?

13 A. No.

14 Q. Can you please look at the document  
15 identified as Exhibit 2011. What is Exhibit 2011  
16 again?

17 A. It's headed, "Patent License Agreement"  
18 between Kinetech and Brilliant Digital.

19 Q. Do you recall counsel for Petitioner asking  
20 you questions about this?

21 A. I do.

22 Q. How did the deal between these companies  
23 come about?

24 A. It was -- the board -- the company was  
25 taking a direction to becoming involved in the -- in

1 peer-to-peer or distributing computer technology and  
2 we had taken various steps to go in that direction  
3 and one of the board directors at the company  
4 introduced us to Kinetech and we entered into the  
5 license agreement.

6 Q. Was this deal a sham or was it a real deal?

7 A. No.

8 MR. GALVIN: Objection.

9 THE WITNESS: No, it was a real deal.

10 BY MR. RHOA:

11 Q. What do you base that on?

12 A. You know, we -- we -- we were building a  
13 product and we were acquiring a license that suited  
14 that product and -- the patent license that suited  
15 that product and we proceeded to -- to -- we were  
16 very excited about the business and we proceeded in  
17 that direction.

18 Q. Were you ever negotiating on both sides of  
19 this deal or not?

20 A. What do you mean "both sides"? For  
21 Kinetech?

22 Q. Yeah.

23 A. No.

24 Q. There is a gentleman that I believe someone  
25 referred to as a chief engineer or something --

1 A. Scientist.

2 Q. Chief scientist. Yeah, what was his name?

3 A. Ron Lachman.

4 Q. Did he ever conduct any negotiation on  
5 behalf of Brilliant Digital or Altnet?

6 A. No.

7 Q. Please look at Exhibit 2012. Which  
8 agreement is this?

9 A. Patent Sublicense Agreement entered between  
10 Brilliant and Sharman Networks Limited.

11 Q. Was this a real deal or was it a sham?

12 A. It was a real deal.

13 Q. Did you negotiate on both sides of this or  
14 not?

15 A. No, I did not.

16 MR. RHOA: No further questions.

17 MR. GALVIN: Couple questions.

18

19 FURTHER EXAMINATION

20 BY MR. GALVIN:

21 Q. If you would turn back to Exhibit 4, the  
22 2003 10-K, and turn back to the page 39 that counsel  
23 referred you to --

24 A. Okay.

25 Q. Now, the valuation that is reflected on page

1 39 was the valuation as of December 31st, 2003, of  
2 the warrants, correct?

3 A. This is -- the document was -- was of that  
4 date and the value of these warrants was determined  
5 at that date, yes.

6 Q. We had seen an earlier 10-K from 2002 which  
7 had a different valuation for the warrants, correct?

8 A. Well --

9 MR. RHOA: Objection: form.

10 THE WITNESS: It didn't have a different  
11 valuation for the warrants. If I'm not mistaken, it  
12 was talking about the way that the warrants are  
13 being expensed.

14 BY MR. GALVIN:

15 Q. Isn't that what's occurred here on page 39  
16 as well?

17 A. It may be but there's an explicit statement  
18 here about valuation which I think was absent from  
19 the previous document.

20 Q. So are you referring to the phrase, "The  
21 value of these warrants was determined to  
22 be \$2,096,000..." --

23 A. Correct.

24 Q. -- "...and will be amortized over the  
25 remaining useful life of the patent license

1 agreement...?"

2 A. Correct.

3 Q. And you think that was different than what  
4 you saw in --

5 A. I don't know.

6 Q. Okay. There's a reference here to in July  
7 2003 the company modified the terms of the warrant  
8 to purchase common stock with Kinetech.

9 A. Where does it say that?

10 Q. About fourth line -- fourth or fifth line.

11 A. From the top?

12 Q. Under "License Rights."

13 A. "...the company" -- yes, okay.

14 Q. How did the company modify the terms of the  
15 warrant?

16 A. I don't know.

17 Q. Have you reviewed that?

18 A. I did not review it, no.

19 Q. Why did the company modify the warrant in  
20 July 2003?

21 A. I just can't recall.

22 Q. Did the modification increase or decrease  
23 the value of the warrants?

24 A. Well, it says that it accelerated the  
25 vesting.

1 Q. Would accelerating the vesting increase the  
2 value?

3 A. I don't know what the value was at that  
4 time. I presume it may. Yes, I presume it would,  
5 yes.

6 Q. Was Brilliant's financial position better or  
7 worse in July 2003 compared to October 2002?

8 A. The reports would state. I just don't know.  
9 I can't recall. It would probably have been better,  
10 at least perceivably so.

11 Q. If you turn to Exhibit 3, which is the 2002  
12 10-K --

13 A. Sorry?

14 Q. Exhibit 3.

15 A. Yes.

16 Q. Excuse me while I find the page. Page 43 of  
17 58.

18 A. Okay.

19 Q. Was the valuation or the expense  
20 recognized -- let me just restate this.

21 As we looked at this previously, it says,  
22 "...the Company has recognized \$30,000 of expense  
23 related to the issuance of the warrants based on  
24 valuation of the warrants used in a Black Scholes  
25 model." Do you see that?

1           A.    I do see that.

2                   MR. RHOA:  Objection:  beyond the scope of  
3 the redirect.

4 BY MR. GALVIN:

5           Q.    Was the Black-Scholes model also used to  
6 create a valuation in the 2003 10-K that we just  
7 looked at?

8           A.    I -- I don't know.  I presume so but I don't  
9 know.

10                   MR. GALVIN:  No further questions.

11                   VIDEO OPERATOR:  We are off the record at  
12 2:24 p.m. and this concludes today's testimony given  
13 by Kevin Bermeister.  Total number of media used was  
14 2 DVDs and will be retained by Veritext Legal  
15 Solutions.

16                               (TIME NOTED:  2:24 P.M.)

17

18

19

20

21

22

23

24

25



1 I, the undersigned, a Certified Shorthand  
2 Reporter of the State of California, do hereby  
3 certify:

4 That the foregoing proceedings were taken  
5 before me at the time and place herein set forth;  
6 that any witnesses in the foregoing proceedings,  
7 prior to testifying, were administered an oath; that  
8 a record of the proceedings was made by me using  
9 machine shorthand which was thereafter transcribed  
10 under my direction; that the foregoing transcript is  
11 a true record of the testimony given.

12 Further, that if the foregoing pertains to  
13 the original transcript of a deposition in a Federal  
14 Case, before completion of the proceedings, review  
15 of the transcript [ ] was [X] was not requested.

16 I further certify I am neither financially  
17 interested in the action nor a relative or employee  
18 of any attorney or any party to this action.

19 IN WITNESS WHEREOF, I have this date  
20 subscribed my name.

21  
22 Dated: August 31, 2013

23  
24 \_\_\_\_\_  
WENDY S. SCHREIBER

25 CSR No. 3558, RPR