1   UNITED STATES PATENT AND TRADEMARK OFFICE

2   BEFORE THE PATENT TRIAL AND APPEAL BOARD

3

    COXCOM, LLC,

4

            Petitioner,

5   CASE IPR2015-01760

      vs.   PATENT 6,549,130

6

    JOAO CONTROL & MONITORING

7   SYSTEMS, LLC,

8   Patent Owner.

9

10

11

12   VOLUME I

13   DEPOSITION OF

                    RICHARD BENNETT

14

                    April 28, 2016

15   9:44 A.M.

16   1100 Peachtree Street, NE

                    Suite 1100

17   Atlanta, Georgia

18   Lee Ann Barnes, CCR-1852, RPR, CRR

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24

25   Job No. CS2300074

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19   42.1-.80 & 42.100-.123
20   (Original exhibits are attached to the
21   Original transcript.)
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23
24
25

1   Deposition of RICHARD BENNETT

           April 28, 2016

2

3   (Reporter disclosure made pursuant to

4   Article 8.B of the Rules and Regulations of the

5   Board of Court Reporting of the Judicial

6   Council of Georgia.)

7

8   RICHARD BENNETT, having been first duly sworn,

9   was examined and testified as follows:

10   EXAMINATION

11   BY-MR. RITCHESON:

12   Q.   Could you state and spell your name for

13   the record, please?

14   A.   Richard Bennett, B-E-N-N-E-T-T.

15   Q.   Thank you, Mr. Bennett. My name is Steven

16   Ritcheson. I introduced myself earlier. I'm one of

17   the attorneys representing a company known as Joao

18   Control and Monitoring Systems.

19   Do you understand that?

20   A.   Yes.

21   Q.   Okay. I'm going to refer to that entity

22   as "JCMS" today.

23   Is that all right with you?

24   A.   That's fine.

25   Q.   Okay. My understanding is that you are

1   a -- an expert that has been retained by Cox

2   Communications; is that accurate?

3   A.   That's correct.

4   Q.   Were you actually retained by Cox or by a

5   law firm on behalf of Cox?

6   A.   By a law firm on behalf of Cox.

7   Q.   And what law firm is that?

8   A.   Kilpatrick Townsend & Stockton.

9   Q.   Have you been retained by any other law

10   firms to act as an expert on behalf of any entity

11   with respect to a JCMS patent?

12   A.   Yes, I have.

13   Q.   What other entities?

14   A.   Venable and K&L Gates.

15   Q.   And who is or was Venable's client?

16   A.   Theirs was Verizon and some entities

17   associated with Verizon.

18   Q.   Does Terremark sound familiar?

19   A.   Yeah, Terremark.

20   Q.   And that's T-E-R-R-E-M-A-R-K?

21   A.   I believe so.

22   Q.   And who is or was the K&L client?

23   A.   Time Warner Cable or some entity

24   affiliated with Time Warner Cable.

25   Q.   Have you heard of a company named Icontrol

1   Networks?

2   A.   Yes, I have.

3   Q.   Is that one of the entities that you were

4   also --

5   A.   Could be.

6   Q.   Okay. One of the things that -- you've

7   been deposed before; correct?

8   A.   Yes.

9   Q.   And, in fact, you've been deposed with

10   respect to some of the JCMS patents before?

11   A.   Yes, I have.

12   Q.   One of the key things I'd like to remind

13   you of, and it's for our sake, as well as the court

14   reporter's, make sure we give each other time to

15   finish our questions and answers before we start

16   again; okay?

17   A.   That's great.

18   Q.   Okay. Roughly how many times have you

19   been deposed before?

20   A.   Just the times that -- on the two patents

21   that I was deposed on relative to JCMS.

22   Q.   Okay. Do you have any -- do you have any

23   questions about the -- this process that I can

24   answer for you?

25   A.   No.

1   Q.   Okay. During the day today, we're going

2 to take breaks occasionally, and tomorrow. We'll

3 take breaks occasionally, but you're not allowed to

4 speak with counsel about your testimony, either the

5 testimony you've given or the testimony you expect

6 to give.

7   Do you understand that?

8   MR. RITCHESON: Objection. Form.

9   THE WITNESS: I wasn't aware of that.

10   Q. (By Mr. Ritcheson) Okay. If -- in light

11 of that, will you follow my instruction not to speak

12 with your counsel about your testimony or would you

13 like me to inquire about it as we go ahead?

14   MR. HOLLOWAY: There's no bar. If you

15   want to ask him questions after the break if we

16   talked about stuff, you're allowed to do that.

17   MR. RITCHESON: There is a bar, as you

18   probably know or you may not know. There is a

19   bar that prohibits you from speaking with

20   Mr. Bennett regarding his testimony.

21   MR. HOLLOWAY: There is a rule that states

22   if I talk to him while he's on the stand, you

23   are allowed to ask him about that.

24   MR. RITCHESON: We'll find the rule for

25   you.

1   MR. HOLLOWAY: Okay.

2   Q.   (By Mr. Ritcheson) With respect to any

3 breaks we take, I'll ask you what you said to your

4 attorneys if you spoke with him; okay? Okay?

5   A.   You're welcome to ask me that.

6   Q.   Now, this isn't your first time acting as

7 an expert; correct?

8   A.   Correct.

9   Q.   How many times have you acted as an expert

10 before?

11   A.   I acted as an expert in two previous cases

12 with Kilpatrick Townsend and I filed expert

13 declarations, and I've -- yeah, that's it as an

14 expert. I've worked as a consultant with law firms,

15 as well.

16   Q.   It's true that you've never testified at a

17 trial before?

18   A.   That's correct.

19   Q.   Okay. Are you paid hourly for your

20 services as an expert in this case?

21   A.   Yes, I am.

22   Q.   And how much do you charge for an hour?

23   A.   I don't actually remember the rate for

24 this case. I think it's 5- to $600 an hour,

25 something like that.

1   Q.   Is that the same amount that was

2   applicable to the other proceedings that you

3   mentioned involving the JCMS patents?

4   A.   On JCMS, yes, it's the same rate as the

5   previous JCMS cases.

6   Q.   We're here today to discuss two IPRs. Do

7   you understand what I mean by "IPR," inter partes

8   review?

9   A.   Yes.

10   Q.   So if I say "IPR," you understand what I'm

11   talking about?

12   A.   Yes, although it's ambiguous.

13   Intellectual property rights also means IPRs.

14   Q.   Okay. For the purposes of today, let's

15   have it be inter partes view.

16   A.   Yeah.

17   Q.   There's two IPRs that we're here to talk

18   about today.

19   You understand that; correct?

20   A.   Uh-huh (affirmative).

21   Q.   That's a "yes"?

22   A.   Yes.

23   Q.   One of the other rules, by the way, is to

24   give an actual verbal response so that she knows

25   what to write down; okay?

1   A.   Okay.

2   Q.   You understand that those IPRs relate to

3   the '130 patent and the '363 patent?

4   A.   Yes, I do.

5   Q.   With respect to those two matters, you

6   submitted a declaration?

7   A.   Yes, I did.

8   Q.   Two declarations --

9   A.   Yes.

10   Q.   -- one for each?

11   A.   Yes.

12   Q.   Roughly how much time did you spend

13   preparing those two declarations?

14   I should ask a foundational question. Did

15   you prepare those declarations?

16   A.   Yes.

17   Q.   How much time did you spend preparing

18   those declarations?

19   A.   I think it was roughly on the order of 20

20   hours.

21   Q.   20 hours each or 20 hours total?

22   A.   I think probably about 20 hours total. It

23   could have been more. I'd have to check my records.

24   Q.   And how much time have you spent in --

25   with respect to the '363 and '130 IPRs?

1   A.   About the same.

2   Q.   So you haven't done anything since you did

3   your declaration?

4   A.   You mean how much time did I spend, say,

5   preparing for this deposition?

6   Q.   Or anything you've done in the interim

7   since you completed the declaration.

8   A.   Since I completed those, the only thing

9   I've done is prepared for this deposition, which I

10   did by simply rereading all the exhibits that were

11   filed.

12   Q.   And how much time did you spend in

13   preparing for today's deposition?

14   A.   I spent about 10 to 15 hours.

15   Q.   That's total, right, not per IPR?

16   A.   Yes.

17   Q.   When were you actually retained by an

18   entity with respect to the JCMS patents?

19   A.   With respect to the ones we're dealing

20   with today?

21   Q.   Yes.

22   A.   That would have been last July.

23   Q.   And who initially retained you last July?

24   A.   I believe it was Mr. Holloway, wasn't it?

25   MR. RITCHESON: What was the question?

1   I'm sorry.

2   THE WITNESS: Were you the one who

3   retained me?

4   MR. HOLLOWAY: My name may have been on

5   the letter.

6   THE WITNESS: Yeah, I got an e-mail from

7   somebody in the -- in the office here.

8   Q.   (By Mr. Ritcheson) And that was on behalf

9   of Cox Communications; is that correct?

10   A.   Yes.

11   Q.   Were you then subsequently retained by the

12   Venable and K&L firms?

13   A.   That was a previous matter.

14   Q.   That was a previous matter. Okay.

15   When were you retained by those firms?

16   A.   That was some months prior to being

17   retained on this matter.

18   Q.   With respect to the declaration that you

19   provided in this case, did you provide copies of

20   that, drafts of that, for comment to Venable and

21   K&L?

22   MR. HOLLOWAY: Could you read that back?

23   (Whereupon, the record was read by the

24   reporter as follows:

25   Question, "With respect to the

1   declaration that you provided in this case, did

2   you provide copies of that, drafts of that, for

3   comment to Venable and K&L?")

4   THE WITNESS: So you're asking me about

5   the process and the preparation of my expert

6   declaration and what sort of communication I

7   had with the attorney?

8   Q.   (By Mr. Ritcheson) I'm asking you if you

9   had communication with attorneys at the Venable and

10   K&L firm with respect to your declarations?

11   MR. HOLLOWAY: You can answer that "yes"

12   or "no."

13   THE WITNESS: Yes.

14   Q.   (By Mr. Ritcheson) Who?

15   MR. HOLLOWAY: Wait, wait, wait. Just so

16   we're clear, he's asking about the declarations

17   in the Cox-only IPRs.

18   THE WITNESS: Okay.

19   MR. RITCHESON: Yes.

20   MR. HOLLOWAY: So I just want to make sure

21   the question's clear.

22   Q.   (By Mr. Ritcheson) Yes. Do you

23   understand what I'm getting at?

24   A.   You want to know who I talked to at

25   Kilpatrick about the --

1   Q.   Well, first I want to make sure that any

2   ambiguity is clarified.

3   With respect to the declarations that you

4   submitted in these IPRs that we're here to talk

5   about today -- you know what, strike that. We've

6   had these marked, so let's actually --

7   MR. HOLLOWAY: Let's use numbers or names

8   for them.

9   MR. RITCHESON: Exactly. Exactly.

10   MR. HOLLOWAY: Thank you.

11   Q.   (By Mr. Ritcheson) With respect to -- and

12   I've got -- I'm sorry it's disorganized, but there's

13   a pile in front of you that --

14   MR. HOLLOWAY: Is this for me?

15   MR. RITCHESON: That is for you.

16   MR. HOLLOWAY: Okay.

17   MR. RITCHESON: It was arranged hastily.

18   MR. HOLLOWAY: That's fine. Thank you.

19   (Patent Owner's Exhibit 2 was marked for

20   identification.)

21   Q.   (By Mr. Ritcheson) With respect to

22   Exhibit No. 2, this is a Declaration of Richard

23   Bennett in Support of Petition for Inter Partes

24   Review of U.S. Patent No. 6,549,130.

25   Let me hand this to you and ask you if you

1   recognize that?

2   A.   Yes, I do.

3   Q.   Okay. As a matter of convention, we

4   frequently refer to patents by the last three

5   numbers.

6   A.   Yes, I'm familiar with that.

7   Q.   So we'll refer to this, okay, as the '130

8   declaration.

9   A.   That's fine.

10   Q.   Okay. So with respect to Exhibit 2, did

11   you provide Exhibit 2 in draft form to the attorneys

12   at Venable or K&L Gates for comment?

13   A.   Yes, I did.

14   Q.   Okay. There's also another declaration

15   that you provided with respect to the '363 patent.

16   I don't think we marked that. We might as well take

17   care of that while we're here.

18   (Patent Owner's Exhibit 8 was marked for

19   identification.)

20   Q.   (By Mr. Ritcheson) Exhibit 8 that we've

21   had marked for identification is the Declaration of

22   Richard Bennett in Support of Petition for Inter

23   Partes Review of U.S. Patent No. 7,397,363.

24   Have you seen this document before?

25   A.   Yes, I have.

1   Q.   Okay. And are Exhibit 2 and Exhibit 8,

2   are those the declarations that you submitted with

3   respect to the '130 and '363 patents, respectively?

4   A.   They appear to be.

5   Q.   With respect to Exhibit 8, did you provide

6   drafts of Exhibit 8 to attorneys at Venable and/or

7   K&L Gates for comment?

8   A.   Yes, I did.

9   Q.   Did you actually receive comments from

10   Venable and K&L Gates attorneys with respect to

11   Exhibits 2 and 8?

12   A.   Yes, I did.

13   Q.   And did you incorporate those comments

14   into the final version of the declaration that you

15   submitted in this matter?

16   A.   Some I did; some I didn't.

17   Q.   Okay.

18   MR. HOLLOWAY: I'm going to object to this

19   entire line because the witness is actually

20   wrong.

21   THE WITNESS: Oh.

22   MR. RITCHESON: Well, I object to your

23   objection.

24   Q.   (By Mr. Ritcheson) With respect to the --

25   strike that.

1   With respect to the Venable and K&L Gates

2   attorneys, do you remember which attorneys you

3   interacted with with respect to Exhibit 2 and

4   Exhibit 8?

5   MR. HOLLOWAY: Objection. Foundation.

6   THE WITNESS: What's the question?

7   Q.   (By Mr. Ritcheson) Who at K&L Gates

8   and/or Venable did you --

9   A.   K&L Gates and Venable, what does that have

10   to do with this case?

11   MR. HOLLOWAY: Objection. Foundation.

12   Q.   (By Mr. Ritcheson) You can answer my

13   question.

14   A.   Huh?

15   Q.   You can answer my question.

16   A.   I don't see the relevance of it.

17   Q.   It's all right. You don't have to.

18   The process, just so you're clear, is I

19   get to ask questions and you get to answer them.

20   There are certain occasions where your attorney may

21   instruct you not to answer, but at all other times,

22   you're required to answer.

23   A.   Oh. So the attorney at K&L Gates is

24   Jackson Ho and at Venable was Megan Woodworth, I

25   think it is.

1   Q.   Are you aware that there was a petition

2   for inter partes review that was submitted with your

3   declaration to the Patent Trial and Appeal Board?

4   A.   Yes, I was.

5   Q.   Did you review that document before it was

6   submitted?

7   A.   I don't believe I did.

8   Q.   Okay. With respect to the two other

9   matters -- and this is just foundational -- with

10   respect to the two other matters that you -- where

11   you acted as an expert, those were cases in which

12   you provided expert reports?

13   MR. HOLLOWAY: Objection. Form.

14   THE WITNESS: I'm not clear about what

15   you're asking.

16   MR. HOLLOWAY: Can I request that we

17   identify these by IPR number or, at the very

18   least, petitioner party? Because the witness

19   is confused as to what you are asking him about

20   the declaration.

21   MR. RITCHESON: Okay. You don't have to

22   have a speaking objection. It's clear.

23   MR. HOLLOWAY: I know, but the record

24   isn't clear at all. You're using pronouns and

25   numbers and not identifying the actual IPR

1   number or the petitioners.

2   MR. RITCHESON: With respect to the

3   declarations, you're wrong. I identified it

4   exactly by exhibit number. Your objections are

5   inappropriate. You need to stop.

6   MR. HOLLOWAY: Okay. I'm just objecting

7   to all of this --

8   MR. RITCHESON: Okay.

9   MR. HOLLOWAY: -- because there's no

10   clarity in what we're talking about.

11   MR. RITCHESON: That's fine.

12   Q.   (By Mr. Ritcheson) And if I'm unclear at

13   any point, let me know. I'm not here to trick you

14   or surprise you or anything; I'm just trying to get

15   your testimony. Okay? Trust me.

16   When I was talking about the two other

17   matters, I'm sorry, I don't know what they're

18   called. You testified that there were two cases

19   that you were retained by -- by K&L -- by Kilpatrick

20   previously --

21   A.   Uh-huh (affirmative).

22   Q.   -- is that correct?

23   A.   Yes.

24   Q.   And those aren't IPRs, were they?

25   A.   One -- well, I worked with Kilpatrick on a

1   previous expert report on JCMS in which I was

2   deposed by Mr. Joao --

3   Q.   Right. Okay.

4   A.   -- in Washington when -- a month or two

5   ago.

6   Q.   Okay.

7   A.   And before that, I worked on some other

8   cases that were for Kilpatrick Townsend clients that

9   are not relevant to JCMS.

10   Q.   Those were the ones that I was talking

11   about. What were those cases --

12   MR. HOLLOWAY: Objection. Form.

13   Q.   (By Mr. Ritcheson) -- that did not have

14   anything to do with JCMS? I don't know what else to

15   call them.

16   MR. HOLLOWAY: Objection. Form.

17   THE WITNESS: They were about Ethernet

18   patents.

19   Q.   (By Mr. Ritcheson) And did you submit --

20   those were two cases?

21   A.   Well, it was -- it was actually -- there

22   was one case that went through two phases, so -- and

23   the initial -- it was an Ethernet patents case that

24   dealt with some patents that had originally been

25   granted to 3Com, to some people that I worked with

```
 1    at 3Com.
 2              And in the initial phase, there was a
 3    joint defense group of, oh, at least eight different
 4    law firms that had different clients who had been
 5    charged by the current patent owner.  The patent's
 6    been through two or three different owners and the
 7    current one is -- was about to expire, and so they
 8    were trying to extract some license fees from
 9    various companies, including clients of Kilpatrick
10    Townsend.
11         Q.    Who was the patent owner?
12              MR. HOLLOWAY:  Objection.  Form.
13              THE WITNESS:  I don't recall.  I mean, the
14         patent was originally a 3Com patent and 3Com
15         was acquired by HP.  It became an HP patent and
16         HP sold it to a patent assertion entity --
17         Q.    (By Mr. Ritcheson)  Okay.
18         A.    -- who was the -- and -- that had some
19    obscure name that it's hard for me to remember.
20         Q.    Have you ever had any of your opinions
21    stricken by a court or other judicial or
22    quasi-judicial body?
23         A.    No.
24         Q.    Have you ever had your testimony or
25    declarations limited by any court or judicial or
```

1   quasi-judicial body?

2   A.   No.

3   Q.   Have you had any -- other than in this

4   case, have you had any occasion when a court or a

5   judicial or quasi-judicial body has found your

6   testimony to be insufficient?

7   A.   No.

8   Q.   With respect to -- I'd like to talk about

9   a couple of things having to do with -- let me back

10   up.

11   MR. RITCHESON: Let me just for the record

12   so, Clay, you can maybe mark on your copies,

13   you know, what we have done with respect to

14   marking of documents, Exhibit 1 is Notice of

15   Deposition of Richard Bennett.

16   (Patent Owner's Exhibit 1 was marked for

17   identification.)

18   Q.   (By Mr. Ritcheson) Have you seen this

19   document before?

20   A.   Yes, I have.

21   Q.   What do you understand that document to

22   be?

23   A.   Huh?

24   Q.   What do you understand that document to

25   be?

1   A.   It's a notice that the deposition -- wait

2   a minute. At the top, it says "Notice of Deposition

3   of Scott Andrews," so I'm a bit confused.

4   No, I haven't seen this before.

5   Q.   Okay. Let me look.

6   The cover page reads "Notice of Deposition

7   of Richard Bennett." In the body of it, it says

8   that "patent owner, by and through its attorneys,

9   will conduct cross-examination by deposition of

10   Richard Bennett...."; correct?

11   A.   That's what it says.

12   Q.   And you're Richard Bennett?

13   A.   Yes, I am.

14   Q.   Do you understand this -- notwithstanding

15   a -- apparently a typographical error that appears

16   at the very top of the second page, you understand

17   this to be the notice of deposition that required

18   you to come here and appear today?

19   A.   Yes.

20   Q.   Okay. With respect to Exhibit 2, we've

21   previously identified that as the declaration you

22   submitted in the '130 IPR; correct?

23   A.   Correct.

24   MR. HOLLOWAY: Objection. Form. It's

25   a -- can we not call it the '130 IPR? Let's

1   call it by its IPR number or the '130 patent in

2   IPR number blank, because he has another '130

3   IPR declaration, which is the source of all of

4   this confusion.

5   MR. RITCHESON: I don't think anybody's

6   confused.

7   MR. HOLLOWAY: Okay.

8   (Patent Owner's Exhibit 3 was marked for

9   identification.)

10   Q.   (By Mr. Ritcheson) With respect to

11   Exhibit No. 3, have you seen this document before?

12   MR. HOLLOWAY: Which one's Exhibit 3?

13   THE WITNESS: It's the --

14   MR. HOLLOWAY: I got it.

15   THE WITNESS: What is this? The initial

16   application? Is that what this is?

17   Yes. Yeah. This is an application, a

18   patent disclosure, for -- that was the --

19   apparently the initial document that became the

20   '130 patent, but unlike the actual '130 patent,

21   the initial disclosure related solely to a

22   vehicle monitoring system, and I believe what I

23   have here is the initial filing.

24   Q.   (By Mr. Ritcheson) Okay. And this is the

25   filing dated -- am I reading this correctly on the

1   front page -- March 27, 1996?

2   A.   Yes.

3   Q.   Okay. And in your declaration, you state

4   that you believe that there is no disclosure of

5   premises control in this application; is that

6   accurate?

7   A.   That's correct.

8   Q.   Okay. With respect to Exhibit No. 3, is

9   it true that there is disclosure of the remote

10   access by a -- an owner, there's remote access to a

11   central office computer?

12   MR. HOLLOWAY: Objection. Form.

13   THE WITNESS: "Central office computer,"

14   I'm not sure what that means.

15   Q.   (By Mr. Ritcheson) A computer at the --

16   let's call it the central security office.

17   A.   As I recall, this disclosure primarily

18   deals with systems that are inside a motor vehicle

19   or a vehicle that relate to a server computer that

20   hosts the website. Figure 5B shows a website.

21   Q.   Just for clarification, there are a couple

22   of numbers that appear. Let's use the -- you see at

23   the very bottom of the page, it says, "Petitioner

24   Coxcom, LLC - Exhibit 1004," and I think it says

25   "page 8"?

1   Do you see that?

2   A.   Yes, I do.

3   Q.   Let's use that number, because later on

4   there's other numbers on pages. Let's use that

5   number.

6   So on page 8 at 5B, you said?

7   A.   Yes.

8   Q.   Okay. With respect to the disclosures in

9   Exhibit 3, is this a three-control device system?

10   MR. HOLLOWAY: Objection. Form.

11   THE WITNESS: Is this a three-device

12   system?

13   Q.   (By Mr. Ritcheson) Three-control device.

14   A.   Three-control device.

15   MR. HOLLOWAY: Same objection.

16   THE WITNESS: I'm not really sure how to

17   answer that, because it -- primarily, it -- it

18   appears that there are two control device.

19   There's a control device, a sensing -- there's

20   sensing that takes place in the vehicle and

21   reporting to this website through a

22   communication mechanism, and I think the

23   communication mechanism is said to include a

24   communication processor that facilitates

25   communication between the vehicle system and

1   the website.

2   So like -- essentially, any process

3   control system that involves a controller and a

4   control device that are separate and distinct

5   from each other physically, where there is a

6   communication that takes place between the

7   controller and the control device, we can say

8   there are three parts to that system. In fact,

9   I'd be hard pressed to describe a process

10   control system that operates from afar that

11   does not have three components.

12   Q.   (By Mr. Ritcheson) With respect to the

13   specific disclosures here, looking at, for example,

14   the figure you pointed us to, Figure 5B on page 8,

15   is it true that the vehicle systems can be

16   controlled by a communication pathway that goes from

17   the home or personal computer 150 to the server

18   computer 510, obviously through the website, to the

19   CPU 4? Is that what's disclosed in Exhibit 3?

20   A.   I believe --

21   MR. HOLLOWAY: Objection. Form.

22   THE WITNESS: -- that is disclosed in this

23   exhibit.

24   Q.   (By Mr. Ritcheson) Okay. With respect to

25   the -- the control device -- strike that.

1   Is the home and/or personal computer 150 a

2   control device as that term is used in this exhibit?

3   MR. HOLLOWAY: Objection. Form.

4   THE WITNESS: I understand a home or

5   personal computer to be the controller.

6   Q.   (By Mr. Ritcheson) Okay. Or control

7   device? Is that the term that's used in Exhibit 3?

8   A.   Yeah. It's the same thing.

9   Q.   Okay. And is the home and/or personal

10   computer presumably located at a home?

11   MR. HOLLOWAY: Objection. Form.

12   THE WITNESS: I don't see any reason why

13   it would have to be. Home computer and

14   personal computer are essentially synonyms --

15   Q.   (By Mr. Ritcheson) Understood.

16   With respect to --

17   A.   -- so home computer could travel.

18   Q.   Okay. With respect to the server computer

19   510, where is that located?

20   MR. HOLLOWAY: Objection. Form.

21   THE WITNESS: It's -- it is located

22   wherever it's located. It's not inside the

23   vehicle.

24   Q.   (By Mr. Ritcheson) If you add to the --

25   our discussion the Figure 11B on page 15, you see a

1   similar group of images, and I'd like to

2   particularly talk about the on-line service and/or

3   Internet processing site.

4   Do you see that?

5   A.   Yes, I do.

6   Q.   And next to it there is a central security

7   office.

8   Do you see that?

9   A.   Yes, I do.

10   Q.   Do you understand that those are two

11   alternative forms of providing an intermediary

12   control device between the personal computer 150 and

13   the vehicle controller CPU 4?

14   MR. HOLLOWAY: Objection. Form.

15   THE WITNESS: I'm not sure that I do

16   understand that.

17   Q.   (By Mr. Ritcheson) Okay. Do you

18   understand -- is it your understanding that the home

19   and/or personal computer 150 can transmit control

20   signals to computer 970 in the central security

21   office?

22   MR. HOLLOWAY: Objection. Form.

23   THE WITNESS: There -- it's -- the

24   diagram's a bit unclear, because there are --

25   okay. I see there are the jagged lines with

1   the arrows on them that interconnect these

2   three major boxes. So in the top left, we have

3   the on-line service and/or Internet processing

4   site; on the top right, we have the central

5   security office; and then on the lower left, we

6   have both a home and personal computer inside a

7   box with a CPU and a number of vehicle systems.

8   And it's not clear from the diagram

9   whether that is meant to depict the home and/or

10   personal computer as being inside the vehicle

11   or outside the vehicle. We have a number of

12   communication pathways. We have communication

13   pathways between the home and personal computer

14   and/or personal computer. There's one

15   communication pathway that is -- that connects

16   the personal -- let's just call it the personal

17   computer to the vehicle positioning and

18   locating system device.

19   We have another one that is connected to a

20   transmitter -- I mean to a receiver, but there

21   is no transmitter -- oh, the transmitter does

22   not seem to be connected to the home and/or

23   personal computer. So the transmitter points

24   in the general direction of the on-line service

25   and/or Internet processing site, but it doesn't

1   actually cross the boundary around this

2   combination of the computer -- the personal

3   computer and the vehicle.

4   But then there is another set of

5   communication pathways between this box in the

6   lower left that encompasses both the computer

7   and the car with the server computer, there's a

8   communication pathway that connects this entire

9   collection of devices with the central security

10   office, and then there's a stray line labeled

11   950 that looks like a communication pathway but

12   there's no head on that arrow. So the figure,

13   it's not abundantly clear what 950 is supposed

14   to represent.

15   And then we have a communication pathway

16   between the on-line service and/or Internet

17   processing site and the central security

18   office.

19   So what we have here appears to be a

20   depiction of a system of four elements, not

21   three, because we have on-line service and/or

22   Internet processing, server computer. We

23   have -- that's one.

24   The second is central security office,

25   which also has a computer, transmitter,

1   receiver, a special position data system

2   receiver, display device, output device, and

3   user interface device.

4   And then third we have the home and/or

5   personal computer and then fourth we have the

6   vehicle system, which includes the CPU, the

7   ignition system interface, fuel pump system

8   interface, ROM, RAM, voice synthesizer, and a

9   transmitter and a receiver.

10   So this appears to describe a system of

11   four elements that communicate with each other.

12   Q.   (By Mr. Ritcheson) Have you read

13   Exhibit 3 before?

14   A.   I've -- I have read it, but I -- I've

15   certainly skimmed it, I'd say that. I haven't

16   studied it in depth.

17   Q.   Do you understand how the system is

18   disclosed as operating from your review of

19   Exhibit 3?

20   A.   In a general way.

21   Q.   Is it consistent with the testimony you

22   just provided?

23   A.   My testimony is not actually about this

24   disclosure; my testimony is about the actual patent,

25   the '130 patent.

1   And this is an early -- this document, as

2   I understand it, was the initial document in a

3   process in which the inventor had extraordinary

4   interaction with the patent examiner and modified

5   his initial disclosure several times before the '130

6   patent was issued. In this document, there's no

7   description of a premises system. This is a vehicle

8   system.

9   Q.   Well, that's what I'm trying to get to,

10   actually, is where is the computer -- regardless of

11   the testimony you just gave with respect to three

12   devices or four devices, focusing on device 970,

13   where's that located?

14   A.   970 is inside a box that says "Central

15   Security Office."

16   Q.   Is it a fair conclusion, then, that the

17   computer 970 is located at the central security

18   office premises?

19   A.   I think --

20   MR. HOLLOWAY: Objection. Form.

21   THE WITNESS: -- that's the intent -- that

22   appears to be the intent of the diagram.

23   Q.   (By Mr. Ritcheson) Is it true that the

24   patent discloses control of computer 970 from the

25   personal computer 150?

1   MR. HOLLOWAY: Objection. Form.

2   THE WITNESS: You said "the patent." This

3   is not a patent. This is an initial disclosure

4   that did not become a patent.

5   Q.   (By Mr. Ritcheson) If I said "patent,"

6   I'm sorry, but isn't it true that the application --

7   that Exhibit 3 discloses the fact that computer 150

8   controls the computer 970, which is located at a

9   premises known as the central security office?

10   MR. HOLLOWAY: Objection. Form.

11   THE WITNESS: I don't believe that the

12   personal computer controls the central security

13   office.

14   Q.   (By Mr. Ritcheson) What do you think the

15   personal computer does with respect to the computer

16   970 at the central security office?

17   MR. HOLLOWAY: Objection. Form.

18   THE WITNESS: I believe the personal

19   computer reports status to the central security

20   office.

21   Q.   (By Mr. Ritcheson) I'm sorry. You think

22   what?

23   A.   It reports status.

24   Q.   The home computer reports status?

25   MR. HOLLOWAY: Objection. Form.

1   THE WITNESS: Well, it's really not clear

2   because, like I said, the -- because the home

3   computer is inside the vehicle box and a

4   communication -- we have a communication

5   pathway that goes to the central -- to and from

6   the central security office from the vehicle

7   box.

8   The diagram itself doesn't make it clear

9   whether the communication from this lower

10   left-hand box to the upper right-hand box, what

11   that communication consists of and whether it

12   comes from the vehicle system itself or whether

13   it comes from the home and/or personal

14   computer.

15   Q.   (By Mr. Ritcheson) I'm not asking --

16   A.   The diagram is not helpful with respect to

17   that.

18   Q.   I'm not asking you to rely solely on the

19   diagram; I'm asking you to rely on your review of

20   Exhibit 3.

21   A.   I did not --

22   MR. HOLLOWAY: Objection. Form. If you

23   need to look at the documents to answer his

24   questions, you can do that.

25   MR. RITCHESON: You've got to stop

1   objecting like that, Mr. Holloway. You don't

2   get to object like that.

3   THE WITNESS: Well, the thing is my expert

4   declaration didn't deal with this petition. It

5   dealt with the patent.

6   Q.   (By Mr. Ritcheson) It dealt with the

7   petition, too.

8   MR. HOLLOWAY: That's not even a question.

9   MR. RITCHESON: You mean this -- you mean

10   the application.

11   THE WITNESS: Yeah.

12   MR. HOLLOWAY: Objection. Form.

13   Q.   (By Mr. Ritcheson) Okay. You -- you have

14   said in your declaration, am I not correct, that you

15   believe that control of premises equipment is not

16   disclosed in the -- in Exhibit 3; correct?

17   MR. HOLLOWAY: Objection. Form.

18   THE WITNESS: Could you tell me where I

19   did that? I'm looking at the -- at the

20   declaration. This initial petition is not

21   something I spent an enormous amount of time

22   on.

23   Q.   (By Mr. Ritcheson) And it's certainly

24   listed on page I as being a -- one of the documents

25   that you considered, correct, Exhibit 104?

1   A.   Well, page I lists exhibits that I

2   understand to have been attached to my declaration

3   as part of the petition for the IPR.

4   Q.   Okay. With respect --

5   A.   That doesn't say that I studied it.

6   Q.   With respect to the '130 patent, what is

7   your understanding that -- of the priority date?

8   MR. HOLLOWAY: Objection to form.

9   Q.   (By Mr. Ritcheson) Do you know what a

10   priority date is?

11   A.   Yes, I do.

12   Q.   What is a priority date?

13   A.   It's the date at which -- that we are to

14   consider -- it's essentially the cutoff point for

15   prior art.

16   Q.   And what is your understanding of the

17   priority date of the '130 patent?

18   MR. HOLLOWAY: Objection. Form.

19   THE WITNESS: So there is a -- I believe

20   there's an explicit statement in my declaration

21   about that. On page 4 of my declaration in

22   paragraph 16, I said, "I have been told to

23   assume that the date of invention for the

24   claims of the '130 patent is July 18, 1996."

25   Q.   (By Mr. Ritcheson) Is that the date that

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 1      you assumed was the priority date for your

 2      declaration?  That's actually the date you used;

 3      correct?

 4           A.   Yes, July 18, 1996.

 5           Q.   So that means that any prior art that's

 6      used to challenge the '130 patent has to be after

 7      July 18, 1996; is that your understanding?

 8               MR. HOLLOWAY:  Objection.

 9               THE WITNESS:  No.  That means any prior

10          art that's used to challenge the '130 patent

11          would be before that date, hence the term

12          "prior."

13           Q.   (By Mr. Ritcheson)  What is that based on,

14      the July 18, 1996, date?

15               MR. HOLLOWAY:  Objection.  Form.

16               THE WITNESS:  I was told to assume that

17          date by the lawyers --

18           Q.   (By Mr. Ritcheson)  Okay.

19           A.   -- I think as a result of their analysis

20      of the -- the patent.

21           Q.   If the prior --

22           A.   And that's a legal matter, as far as I'm

23      concerned, and I'm not an expert on legal matters.

24           Q.   Okay.  Fair enough.

25               Let's talk just a little bit more about
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1   the -- about the disclosures of the Exhibit 3,

2   because it's relevant to your assumption that

3   July 18, 1996, is the priority date.

4   With respect to -- turning to the -- back

5   to the -- well, I guess 11B, is it your

6   understanding of the disclosures of Exhibit 3 that a

7   user can access and control computer 970 at the

8   central security office?

9   MR. HOLLOWAY: Objection. Form.

10   THE WITNESS: I don't have an opinion

11   about that.

12   Q.   (By Mr. Ritcheson) Okay. Drawing your

13   attention to page 32 of the same document, reads in

14   the middle of the second -- the middle paragraph

15   there, the bottom half of it reads, "The apparatus

16   which is utilized at the central security office

17   and/or other entity has the same control

18   capabilities over the vehicle as that of the

19   apparatus utilized in the vehicle"; correct?

20   MR. HOLLOWAY: Objection. Form.

21   THE WITNESS: "The -- the apparatus which

22   is utilized at the central security office

23   and/or other entity has the same control

24   capabilities over the vehicle as that of the

25   apparatus...." The sentence is unclear.

1   Q.   (By Mr. Ritcheson) Okay. Is it your

2   understanding based on the disclosures that the

3   server at the central security office has control

4   over the vehicle systems?

5   A.   I don't have an opinion about that.

6   Q.   Do you dispute that that is, in fact, the

7   case?

8   MR. HOLLOWAY: Objection. Form.

9   THE WITNESS: I have no opinion about

10   that.

11   Q.   (By Mr. Ritcheson) Do you dispute the

12   fact that the prior sentence here says that "upon

13   the occurrence of a vehicle theft, or the discovery

14   thereof, the authorized user or operator can access

15   the apparatus so as to provide control over same

16   while, at the same time, providing for a monitoring

17   and/or controlling function to be performed by the

18   central security office or other entity"?

19   MR. HOLLOWAY: Objection. Form.

20   Q.   (By Mr. Ritcheson) Did I read that

21   correctly?

22   A.   Where did you read that from?

23   Q.   Immediately preceding sentence.

24   MR. HOLLOWAY: Same objection.

25   THE WITNESS: So what's the question?

1   Q.   (By Mr. Ritcheson) Did I read that

2   correctly?

3   A.   Did you read it correctly? "Upon the

4   occurrence of a vehicle theft, or the discovery

5   thereof, the authorized user or operator can access

6   the apparatus...."

7   What's the apparatus?

8   Q.   Do you have an understanding of what the

9   apparatus is that is referenced in this document?

10   A.   No. The apparatus is a -- that's a very

11   broad term.

12   Q.   Do you have an understanding of the fact

13   that the -- that a user can access the server at the

14   central security office?

15   MR. HOLLOWAY: Objection. Form.

16   Q.   (By Mr. Ritcheson) Just "yes" or "no."

17   A.   The question -- I don't know that there is

18   a server at the central security office. There's a

19   server at the online service and/or Internet

20   processing site, but --

21   Q.   Is computer 970 not frequently referred to

22   as the server?

23   MR. HOLLOWAY: Objection. Form.

24   THE WITNESS: I don't know why it would be

25   referred to as the server. A server performs

1   certain functions and I don't know that the

2   central security office computer performs the

3   functions that I would identify with a server.

4   Q.   (By Mr. Ritcheson) You don't know what

5   the 970 does --

6   MR. HOLLOWAY: Objection. Form.

7   Q.   (By Mr. Ritcheson) -- correct?

8   A.   No.

9   Q.   Okay. The bottom of page 32, there's a

10   paragraph. Could you read that into the record,

11   please, and tell me when you're done -- or read that

12   to yourself and tell me when you're done.

13   A.   The final paragraph on page 32?

14   Q.   Yes. Actually, just so there's no

15   confusion, why don't you read that into the record,

16   please.

17   A.   Okay. "Figure 2 illustrates the vehicle

18   positioning and locating device 13 of Figure 1" --

19   Q.   I'm sorry. Are you at the bottom of

20   page 32?

21   A.   Yes.

22   Q.   I asked you to read that into the record.

23   Is that possible?

24   A.   Yes. "...Figure 1, illustrating the main

25   components thereof in block diagram" --

 1   Q.   I'm sorry. The bottom of page 32. At the

 2   very bottom of the page, it says "Petitioner CoxCom,

 3   LLC" --

 4   MR. HOLLOWAY: He means this page number.

 5   THE WITNESS: Oh, "Petitioner Coxcom,

 6   LLC - Exhibit 1004 Page 37"?

 7   MR. HOLLOWAY: He wants page 32.

 8   Q.   (By Mr. Ritcheson) 32.

 9   A.   Page 32?

10   MR. HOLLOWAY: Right. This page No. 32.

11   THE WITNESS: Oh, okay.

12   MR. HOLLOWAY: It's page No. 17 of the

13   spec.

14   THE WITNESS: So, "The apparatus which is

15   utilized at the central security office may

16   also be utilized in connection with an on-line

17   service and/or on, or over, the Internet and/or

18   the World Wide Web so as to provide for a means

19   by which the authorized user or operator may

20   utilize the apparatus in conjunction with a

21   home and/or a personal computer."

22   Q.   (By Mr. Ritcheson) Is it your

23   understanding from reading that that the intention

24   expressed there was to allow a user to access the

25   central security office computer on or over the

1   Internet?

2   MR. HOLLOWAY: Objection. Form.

3   THE WITNESS: "May also" -- let's see.

4   The central security office apparatus may be

5   utilized in connection with an on-line service

6   or over the Internet or over the Worldwide Web

7   so -- provide -- yeah, an authorized user or

8   operator may utilize the central security

9   apparatus in conjunction with a home or

10   personal computer.

11   I believe -- it's -- yeah, the thing

12   that's throwing me off here is the -- the use

13   "in conjunction with." So I -- I don't exactly

14   know what behavior would -- does that mean that

15   the -- the authorized user of the central

16   security -- at the central security office

17   would use the personal computer to access this

18   apparatus through the home or personal computer

19   or from the home or personal computer?

20   So it's -- I'd have to say that I'm -- I'm

21   confused about what this sentence is -- what

22   this paragraph is trying to say. I mean, it

23   implies there's some connection between the

24   central security office and the home and/or

25   personal computer and an apparatus which

1   apparatus seems to be distinct from the

2   vehicle.

3   So we have an apparatus at the central

4   security office and then we have -- the word

5   "apparatus" occurs again in the -- at the end

6   of the paragraph. Is the "apparatus" that is

7   the second word of this paragraph and the

8   "apparatus" on the second-to-the-last line in

9   the paragraph the same apparatus or are these

10   different apparatuses?

11   Q.   (By Mr. Ritcheson) Do you know?

12   A.   I don't know.

13   Q.   It refers to "the apparatus."

14   Does it not make sense that we refer to

15   the preceding reference to an apparatus?

16   A.   Well, you have an --

17   MR. HOLLOWAY: Objection. Form.

18   THE WITNESS: -- apparatus in the central

19   security office, but it's my understanding that

20   you designate the control systems inside the

21   vehicle also as "apparatus."

22   Q.   (By Mr. Ritcheson) In this paragraph?

23   MR. HOLLOWAY: Objection. Form.

24   THE WITNESS: As I said, this paragraph is

25   unclear to me.

1   Q.   (By Mr. Ritcheson) What does the phrase

2   "in conjunction with" mean as that term is used in

3   that paragraph?

4   MR. HOLLOWAY: Objection. Form.

5   THE WITNESS: As I said, it -- it implies

6   there's some sort of communication, but it

7   doesn't tell me specifically what kind of

8   activities are enabled by that communication.

9   Q.   (By Mr. Ritcheson) Isn't it true that in

10   response to the owner's interaction with the central

11   control -- or central security office, that the

12   central security office can thereafter send control

13   signals to the vehicle?

14   MR. HOLLOWAY: Objection. Form.

15   THE WITNESS: Could you repeat the

16   question?

17   MR. RITCHESON: Could you read it back?

18   (Whereupon, the record was read by the

19   reporter as follows:

20   Question, "Isn't it true that in

21   response to the owner's interaction with the

22   central control -- or central security office,

23   that the central security office can thereafter

24   send control signals to the vehicle?")

25   MR. HOLLOWAY: Same objection.

1   THE WITNESS: I suppose -- I suppose it

2   could. I don't -- I mean, I'd have to -- to

3   read this in detail to determine whether that's

4   the case.

5   Q.   (By Mr. Ritcheson) Is it your

6   understanding from your review of Exhibit 3, "yes"

7   or "no," that the user computer that we've been

8   discussing is located at a place that is remote from

9   the vehicle?

10   MR. HOLLOWAY: Objection. Form.

11   THE WITNESS: As I've already said, it's

12   unclear where the home and/or personal

13   computer's located, because in Figure 5 --

14   Q.   (By Mr. Ritcheson) I'm not talking about

15   the figures.

16   A.   -- b --

17   Q.   I'm talking about from the actual

18   specification.

19   MR. HOLLOWAY: Objection. Form.

20   THE WITNESS: From the specification, I

21   don't know -- I don't have an opinion about

22   that.

23   Q.   (By Mr. Ritcheson) Is it true -- is it

24   your understanding, according to the specification,

25   that the computer at the central security office is

1 located at a place that is remote from the vehicle

2 and remote from the user PC?

3   MR. HOLLOWAY: Objection. Form.

4   THE WITNESS: It's my understanding that a

5   central security office is not a motor vehicle,

6   so it would be -- it would be distinct.

7   Q. (By Mr. Ritcheson) And it's a premises,

8 correct --

9   MR. HOLLOWAY: Objection. Form.

10   Q. (By Mr. Ritcheson) -- as that term is

11 used?

12   MR. HOLLOWAY: Objection. Form.

13   THE WITNESS: Is an office a premises?

14   Q. (By Mr. Ritcheson) Yes.

15   A. I think in terms of the general structure

16 of the English language, you would say an office is

17 a premises.

18   Q. And is the server or the computer that's

19 located at that office, is that equipment located at

20 a premises?

21   MR. HOLLOWAY: Objection. Form.

22   THE WITNESS: I think it's fair to say

23   that a computer in the central security office

24   would be a computer in a premises.

25   Q. (By Mr. Ritcheson) Turning to page 96 --

1   again, this is at the bottom -- not at the bottom of

2   the document --

3   A.   Okay.

4   Q.   -- the bottom -- the Coxcom designation --

5   is it true that on page 96, the patent applicant

6   discloses the use of the apparatus in premises?

7   MR. HOLLOWAY: Objection. Form.

8   THE WITNESS: In which paragraph?

9   Q.   (By Mr. Ritcheson) The second paragraph,

10   first full paragraph.

11   A.   Well, there are three paragraphs on this

12   page.

13   Q.   First full paragraph.

14   A.   "In the above manner" --

15   Q.   Oh, I'm sorry. I cut it off. Second

16   paragraph. "It is also envisioned that the

17   apparatus and method of the present invention may

18   find applications in areas other than in vehicle

19   antitheft and/or recovery -- vehicle recovery. For

20   example, the present invention may also find

21   application in home, boat and/or other security

22   systems, and the like, wherein a long-range

23   remote-controlled and interactive system may be

24   utilized in order to provide an immediate, or a

25   deferred, response to a theft situation and/or to

1   provide control over desired items or devices from a

2   remote location."

3   Did I read that correctly?

4   A.   I believe you did, yes.

5   Q.   Is a -- is a boat a vehicle?

6   MR. HOLLOWAY: Objection. Form.

7   THE WITNESS: Is a boat a vehicle? I

8   don't know.

9   Q.   (By Mr. Ritcheson) In 1996, would a

10   person of ordinary skill in the art have understood

11   that a houseboat was a premises?

12   MR. HOLLOWAY: Objection. Form.

13   THE WITNESS: I have no opinion about

14   that.

15   Q.   (By Mr. Ritcheson) In 1996, would one

16   have understood -- a PHOSITA have understood that a

17   boat was a premises?

18   MR. HOLLOWAY: Objection. Form.

19   THE WITNESS: A person in the -- of

20   ordinary skill in which art?

21   Q.   (By Mr. Ritcheson) The art that is --

22   that is the subject matter of this application.

23   A.   I can't recall -- I mean, in 30 years of

24   doing product development and engineering, I can't

25   recall a single conversation I had with any of my

1   colleagues on the question of whether a boat is a

2   premises.

3   Q.   Is a motor home a premises?

4   MR. HOLLOWAY: Objection. Form.

5   THE WITNESS: I -- it's a premises, yeah,

6   in the sense that people can live in it.

7   Q.   (By Mr. Ritcheson) Is it also a vehicle?

8   MR. HOLLOWAY: Objection. Form.

9   THE WITNESS: Yes.

10   Q.   (By Mr. Ritcheson) Would a person of

11   ordinary skill in the art in 1996 -- and we'll get

12   into the exact definition of that, but would a

13   person of ordinary skill in the art in 1996 have

14   understood how to take a vehicle control system and

15   modify it to provide premises control?

16   MR. HOLLOWAY: Objection. Form.

17   THE WITNESS: Yes, I think so. Some of

18   the -- some of the features wouldn't map,

19   obviously, like there's not an ignition switch

20   in a home. There's not a fuel pump. There --

21   there are -- I mean, there are things that are

22   sort of -- in terms of the abstract idea of a

23   vehicle control system, the abstract idea and

24   that being an instance of the abstract idea of

25   control systems, there are certain common

1   properties in all control systems such that if

2   one started with control system A, through a

3   series of modifications, a person could

4   transform control system A into control system

5   B.

6   But that would involve discarding the

7   features that made control system A uniquely

8   useful for controlling a vehicle, discarding

9   those features and then replacing them with a

10   new set of features that were applicable in a

11   home context.

12   Q.   (By Mr. Ritcheson) Would one of ordinary

13   skill in the art have known how to do that?

14   MR. HOLLOWAY: Objection. Form.

15   THE WITNESS: If one had -- if one starts

16   with a system that controls a motor vehicle, a

17   regular car, and it has features that allow for

18   control over the ignition system, say turn the

19   car off in case it's stolen, it would be

20   trivial for that person to apply that system to

21   a motor home, because the motor home shares

22   certain characteristics in common with other

23   motor vehicles. So that would be

24   straightforward.

25   And I think a person of ordinary skill

1   could create additional features to add to the

2   system. I think this is one of the things that

3   engineers are really good at. If you start

4   with a system that does A, B, and C, probably

5   the most common tasks performed by engineers is

6   to add support for features D, E, and F to that

7   system.

8   (Patent Owner's Exhibit 4 was marked for

9   identification.)

10   Q.   (By Mr. Ritcheson) Thank you.

11   With respect to the '130 patent, we've had

12   that marked as Exhibit 4.

13   You've seen that document before; correct?

14   A.   Yes, I have.

15   Q.   One of the things I'm trying to understand

16   is -- do you understand the term "claim

17   construction"?

18   A.   Yes, I do.

19   Q.   Okay. One of the things I want to

20   understand from you are the constructions that you

21   used in -- that you relied on in preparing your

22   declaration; okay?

23   A.   Okay.

24   Q.   Now, my understanding when you start,

25   sir -- one at a time -- my understanding is that

1   Claim 1 of the '130 patent is at issue in this

2   proceeding; correct?

3   And just so I'm clear, besides giving Clay

4   a hard time, by "this proceeding," I mean -- when

5   I'm talking about the '130 -- the '130 IPR in this

6   case, let's call it by the designation provided,

7   which is the --

8   MR. RITCHESON: Stand by.

9   MR. HOLLOWAY: What do you want, the IPR

10   number?

11   MR. RITCHESON: Yeah. 1760, is that what

12   you have?

13   MR. HOLLOWAY: This is the 1760.

14   Q.   (By Mr. Ritcheson) Okay. The IPR itself

15   is actually -- we're going to refer to it as the

16   1760 so that we distinguish this proceeding from the

17   other proceeding involving the '130; okay?

18   A.   Uh-huh (affirmative).

19   Q.   "Yes"?

20   A.   Yes.

21   Q.   Okay. With respect to the 1760

22   proceeding, I understand that, for example, Claim 1

23   is at issue.

24   Is that your understanding?

25   A.   Yes.

1   Q.   And going to Claim 1, which I can't tell

2   what page it is. It's approximately 59 -- page 59.

3   If I could ask you to turn to that.

4   A.   Page 59 of what?

5   Q.   Of the '130 patent, which I believe I just

6   said was Exhibit 4.

7   Do you have that?

8   A.   Yes.

9   Q.   Okay. Unfortunately, patents don't seem

10 to provide page numbers, unhelpfully. So it's -- if

11 you just --

12   A.   Well, we have column numbers and line

13 numbers.

14   Q.   We do. I didn't want to jump the gun for

15 you there.

16   It's Column 74. Are you with me so far?

17   A.   Yes, I am.

18   Q.   All right. You see Claim 1 that begins at

19 the bottom of Column 74?

20   A.   Yes, I do.

21   Q.   With respect to the language used in the

22 first line, do you understand that that's called a

23 preamble?

24   A.   In the -- "What is claimed is: A control

25 apparatus, comprising"?

1   Q.   Yeah. You see the "control apparatus,

2   comprising"? Do you see that?

3   A.   Yes.

4   Q.   And that's referred to as a preamble.

5   Do you understand that?

6   A.   Yes.

7   Q.   When it refers -- when -- the language

8   control apparatus then lists three control devices,

9   is that correct, that the comprise the apparatus?

10   A.   Yes. We have a first control device,

11   second control device, and a third control device

12   all within the body of Claim 1.

13   Q.   Okay. With respect to the preamble, did

14   you consider the term "control" as it's used there

15   to be a limitation?

16   MR. HOLLOWAY: Objection. Form.

17   THE WITNESS: A limitation?

18   Q.   (By Mr. Ritcheson) Do you understand what

19   a limitation is of a claim?

20   MR. HOLLOWAY: Objection. Form.

21   THE WITNESS: No, I don't.

22   Q.   (By Mr. Ritcheson) Did you understand

23   that the "control" as it's used in the preamble was

24   a term that was required to be met in order for

25   there to be infringement?

1   MR. HOLLOWAY: Objection. Form.

2   Q.   (By Mr. Ritcheson) That is, that the

3   apparatus had to provide control?

4   A.   The apparatus -- I -- I really didn't

5   think about that.

6   Q.   Were you advised what claim construction

7   to use with respect to the 1760 IPR?

8   A.   I was advised to use the plain, ordinary

9   meaning.

10   Q.   Are you familiar with the phrase "broadest

11   reasonable interpretation"?

12   A.   I am familiar with that phrase.

13   Q.   What does that phrase mean?

14   A.   It means the broadest meaning of the term

15   that would be used by a reasonable person.

16   Q.   Do you understand that to be different

17   than "plain and ordinary meaning"?

18   A.   Not necessarily different. I think in

19   many instances, the -- the issue here is that a

20   reasonable person, I think, would tend to use the

21   plain and ordinary meaning of a term unless the term

22   is defined in a particular way as a term of art.

23   So the plain and ordinary meaning to a

24   person of ordinary skill in the art would be

25   different from the plain and ordinary meaning to

1   a -- to a person who is unskilled, for example.

2   Q.   Did you -- just "yes" or "no," did you

3   discuss your -- the constructions you intended to

4   use with counsel?

5   A.   Yes.

6   Q.   Do you understand that Cox has taken

7   the -- took the position in their petition that the

8   proper standard for construction was the broadest

9   reasonable interpretation?

10   A.   Did I -- I don't recall. I would have to

11   look at their petition and see if they did that.

12   I have read the institution decision by

13   the PTO on this matter in which they address the

14   question of claim construction, and there was a -- I

15   think an inconsistency between some of the

16   constructions that had been requested on behalf of

17   the inventor and what the file history showed.

18   And what the Court -- the Court

19   essentially ruled that for a number of terms, the

20   plain and ordinary meaning was adequate. There were

21   a few terms that needed to be construed by the -- by

22   the Court, and their constructions were consistent

23   with the ones that I used in my analysis.

24   Q.   Those constructions aren't in your

25   declaration, though, are they?

1   MR. HOLLOWAY: Objection. Form.

2   THE WITNESS: Are they?

3   Q.   (By Mr. Ritcheson) You said that you used

4   the same constructions that were adopted by the --

5   A.   By the petition in Section 4.

6   Q.   What?

7   A.   "As part of my analysis of the prior art,"

8   I say in paragraph 20, "I have adopted the claim

9   constructions described in Section IV of the

10   Petition to the challenged claims of the '130

11   patent."

12   Q.   Okay. I thought you just testified that

13   you adopted the claim construction -- that you used

14   the claim constructions that were adopted by the

15   PTAB or the Patent Trial and Appeal Board in the

16   institution decision.

17   MR. HOLLOWAY: Objection. Form.

18   Q.   (By Mr. Ritcheson) Did you not testify to

19   that?

20   MR. HOLLOWAY: Objection. Form.

21   THE WITNESS: These -- the claim

22   constructions that I used, which are initially

23   described in Section IV of the petition to the

24   challenged claims, are, I believe, consistent

25   with the constructions that the PTAB issued in

1   the institution decision.

2   One of the specific issues was the

3   definition of the term "premises," and my use

4   of the term "premises" in this expert

5   declaration is completely consistent with the

6   definition -- the construction of "premises"

7   that the PTAB issued, in which it can refer to

8   a portion of a building or a portion of a room.

9   Q.   (By Mr. Ritcheson) You noted that the --

10   you noted that the patentee proposed certain

11   constructions or definitions during prosecution;

12   correct?

13   A.   Yes.

14   Q.   And that wasn't prosecution of this

15   application or the prosecution that led to the '130

16   patent; is that correct?

17   A.   That's not what I meant. What I meant was

18   that they had --

19   Q.   No, no, no. I'm just trying to get a

20   foundational point.

21   That was a different application; correct?

22   MR. HOLLOWAY: Objection. Form.

23   THE WITNESS: The -- the patent owner has

24   used two different definitions of the term

25   "premises" at various stages in the life of

1   this patent.

2   Q.   (By Mr. Ritcheson) With respect to the

3   prosecution that led up to the '130 patent -- let's

4   talk about that for a moment; okay?

5   A.   Okay.

6   Q.   -- did the patentee provide a definition

7   of the term "premises" in that prosecution; that is,

8   the application that ultimately issued as the '130

9   patent?

10   MR. HOLLOWAY: Objection. Form.

11   THE WITNESS: I believe that we should

12   look at the PTAB institution decision to answer

13   that question.

14   Q.   (By Mr. Ritcheson) Do you have an answer

15   independent of that decision?

16   A.   My recollection --

17   MR. HOLLOWAY: Objection. Form.

18   THE WITNESS: -- is that he did.

19   Q.   (By Mr. Ritcheson) That he did offer

20   the --

21   A.   He offered a construction of "premises"

22   while he was negotiating with the patent examiner to

23   find out what the patent examiner would allow, and

24   then he offered a different -- in the -- in the

25   defense against this PTAB motion, offered a

1   different definition.

2   Q.   What PTAB motion are you talking about?

3   A.   The petition -- in response to the

4   petition for PTAB institution.

5   Q.   You think that Mr. Joao offered a

6   different definition of "premises"?

7   A.   Yes. In the second instance, he wanted

8   "premises" to be defined as -- by a parcel of land,

9   a structure that was on a parcel of land.

10   And in the prior history, there was no --

11   the parcel of land issue was not there and, in fact,

12   the initial construction that the patent examiner

13   bought off on was -- could be a portion of a

14   building, structure, room, et cetera.

15   Q.   Sir, I'm just drilling down, because there

16   seems to be sort of a drifting of issues here.

17   With respect to your testimony that the

18   definition of "premises" was offered during the '130

19   prosecution, if you could turn to page 6 of -- let

20   me give it to you -- Exhibit 5.

21   (Patent Owner's Exhibit 5 was marked for

22   identification.)

23   THE WITNESS: Is this the institution

24   decision? Yes.

25   Q.   (By Mr. Ritcheson) That is the

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1      institution decision for the 1760 IPR; correct?
2           A.    Uh-huh (affirmative).
3           Q.    "Yes"?
4           A.    Yes.
5           Q.    With respect to page 6, does that say that
6      the definition of "premises" was made during the
7      '130 patent or at some other time?
8           A.    It describes an ancestor of the '130
9      patent, which would be the '1 -- the '010 patent.
10          Q.    Okay.  So your testimony that it was
11     during the '130 was incorrect; is that true?
12               MR. HOLLOWAY:  Objection.  Form.
13               THE WITNESS:  No.  My statement was
14          correct.  My statement was based on the file
15          history.
16          Q.    (By Mr. Ritcheson)  Okay.  Drawing your
17     attention to the second-to-last sentence of that
18     paragraph reads, "This statement" -- which is the --
19     the definition -- "This statement was made several
20     years after the issuance of the '130 patent."
21               Did I read that correctly?
22          A.    Yes.
23          Q.    So is it not true that your testimony that
24     the definitions were provided during the '130
25     prosecution was not inaccurate?
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1   MR. HOLLOWAY: Objection. Form.

2   THE WITNESS: I think there would be

3   definitions offered at every one of these

4   stages. I don't think one precludes the other.

5   Q.   (By Mr. Ritcheson) And is that the

6   understanding you relied on in issuing the

7   declaration that you have provided in the 1760 IPR?

8   MR. HOLLOWAY: Objection. Form.

9   THE WITNESS: Again, I'm -- there seems to

10   be some sort of a false dichotomy behind your

11   question. Could you rephrase the question?

12   Q.   (By Mr. Ritcheson) Is your understanding

13   that the term "premises" was defined during the '130

14   patent an underlying fact that you relied upon in

15   providing the declaration in the 1760 IPR?

16   MR. HOLLOWAY: Objection to form.

17   THE WITNESS: It was not an underlying

18   fact, no.

19   Q.   (By Mr. Ritcheson) Isn't it true that the

20   definition of "premises" was provided in the

21   prosecution of a patent other than the '130 patent?

22   MR. HOLLOWAY: Objection. Form.

23   THE WITNESS: I'm sure the definition of

24   the term "premises" has been offered in

25   connection with hundreds of patents.

1   Q.   (By Mr. Ritcheson) I'm talking about the

2   specific definition provided by Mr. Joao.

3   MR. HOLLOWAY: Same objection.

4   THE WITNESS: That -- in the prosecution

5   of the '010 patent, whether or not "premises"

6   was defined there, I don't know.

7   Q.   (By Mr. Ritcheson) I'm talking about

8   '130.

9   A.   '130? In the file -- it's my recollection

10   of the file history for the '130 patent is that

11   there was a construction of the term "premises"

12   issued in connection with that patent, which we see

13   on the -- on the following page. On page 7, we see

14   the Court's construction of the term "premises."

15   Q.   When you say "Court," what do you mean?

16   A.   The PTAB.

17   Q.   Okay. I just want to make sure I

18   understand.

19   A.   Administrative -- yeah, Patent Trial and

20   Appeal Board.

21   Q.   Okay. In providing the -- whenever

22   Mr. Joao provided the definitions, did he provide

23   definitions that were consistent with the plain and

24   ordinary meaning of the terms?

25   MR. HOLLOWAY: Objection. Form.

1   Q.   (By Mr. Ritcheson) If your answer is no,

2   we can do it separately.

3   MR. HOLLOWAY: Objection. Form.

4   THE WITNESS: It's the whenever.

5   That's -- that's the word. Because I think

6   Mr. Joao has offered constructions of "premise"

7   multiple times.

8   Q.   (By Mr. Ritcheson) Let me just -- the

9   definition of "premises" that appears on page 7 of

10   the institution decision -- you see that?

11   A.   Uh-huh (affirmative).

12   Q.   "Yes"?

13   A.   Yes.

14   Q.   -- is that construction consistent with

15   the plain and ordinary meaning that one of ordinary

16   skill in the art in 1996 would have understood that

17   term to mean?

18   MR. HOLLOWAY: Objection. Form.

19   THE WITNESS: You're asking me if the

20   construction of the term "premises" is

21   consistent with plain and ordinary meaning?

22   Q.   (By Mr. Ritcheson) Yes.

23   MR. HOLLOWAY: Same objection.

24   THE WITNESS: Yes, I believe this

25   construction is consistent with the plain and

1   ordinary meaning. I believe it's also

2   consistent with the broadest reasonable

3   interpretation.

4   Q.   (By Mr. Ritcheson) With respect to the

5   term "remote," is that definition that's on that

6   same page right underneath the definition of

7   "premises," is that consistent with the plain and

8   ordinary meaning that a person of ordinary skill in

9   the art would have had in 1996?

10   A.   Yes, I believe it is consistent.

11   Q.   And with respect to the term "located at,"

12   is the definition that is provided there consistent

13   with the plain and ordinary meaning that a person of

14   ordinary skill in the art at the time -- that is,

15   1996 -- would have had?

16   MR. HOLLOWAY: Objection. Form.

17   THE WITNESS: I believe it's -- it's

18   consistent, "located at," "situated at." It's

19   a synonym.

20   MR. HOLLOWAY: You doing okay or do you

21   want a break?

22   THE WITNESS: I'm doing okay. Actually, I

23   could use a bathroom break.

24   MR. RITCHESON: Okay. Take five minutes.

25   MR. HOLLOWAY: Sure.

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 1            (Thereupon, there was an interruption in

 2        the proceedings.)

 3        Q.   (By Mr. Ritcheson)  Mr. Bennett, did you

 4   speak with your counsel about the testimony that you

 5   provided or that you anticipate providing?

 6        A.   No, I did not.

 7        Q.   Okay.

 8        A.   We did, however, discuss the Warriors and

 9   the Braves.

10            MR. HOLLOWAY:  Go Braves.

11            MR. RITCHESON:  Go Warriors.  California.

12        I take responsibility for it.

13        Q.   (By Mr. Ritcheson)  With respect to --

14   start at Claim 1, at least, of the '130 patent.

15   Were there any terms that are used -- if you look at

16   Column 74 and Column 75, were there any terms that

17   you had to define in a special -- or in a way other

18   than the plain and ordinary meaning of the term?

19            MR. HOLLOWAY:  Objection.  Form.

20            THE WITNESS:  Were there any terms -- the

21        terms that were most relevant, I think, are

22        "premises," "remote," "located at" that were

23        construed by the PTAB, the administrative

24        judges.  Those weren't difficult.

25            The other terms like "control," "control
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1   system," "control apparatus," they didn't raise

2   any particular issues, no.

3   Q.   (By Mr. Ritcheson) Okay. So you used a

4   plain and ordinary meaning of a person of ordinary

5   skill in the art in 1996 with respect to each of the

6   terms in Claim 1, for example?

7   MR. HOLLOWAY: Objection. Form.

8   THE WITNESS: Yeah. I used the

9   definitions that I or my colleagues, I think,

10   would have -- would have used.

11   Q.   (By Mr. Ritcheson) And when you say

12 "colleagues," who are you referring to? Do you mean

13 work --

14   A.   The engineers that I worked with.

15   Q.   Okay. So let's -- let's start talking

16 about one of the pieces of -- of art that you have

17 relied upon, which is the Koether reference.

18   MR. RITCHESON: Koether is K-O-E-T-H-E-R.

19   (Patent Owner's Exhibit 6 was marked for

20   identification.)

21   Q.   (By Mr. Ritcheson) I'm handing you

22 Koether, which has been marked as Exhibit 6.

23   Do you recognize that as the Koether

24 reference that you're relying on in your

25 declaration?

1   MR. HOLLOWAY: It's going to be hard with

2   a different pronunciation.

3   THE WITNESS: Yeah, we usually pronounce

4   it Koether.

5   MR. RITCHESON: K-O-E-T-H-E-R.

6   MR. HOLLOWAY: It's going to throw me off

7   all day.

8   THE WITNESS: It's German. We could say

9   Koether, but there's no umlaut, so --

10   Q.   (By Mr. Ritcheson) I'll go with Koether.

11   Generally speaking -- and we'll get to

12   it -- what is generally disclosed in the Koether

13   reference?

14   A.   Koether describes or discloses a system

15   for managing kitchens -- well, as the title says,

16   "smart commercial kitchen network." So it's a

17   system that consists of sensors that are located in

18   kitchens that communicate status information and

19   permit control of various kitchen appliances, such

20   as deep fryers and ovens and heating and cooling

21   systems for the buildings.

22   It's typically -- these apparatuses that

23   are integrated with the kitchen appliances

24   communicate typically wirelessly through a base

25   station, cellular base station or a wireless base

1   station, that has limited coverage.

2   And those base stations, in turn, are

3   connected to a data network that allows the base

4   stations to communicate with a central control

5   office that is able to view the status of the

6   various appliances in the various kitchens and to

7   turn devices on and off, to dispatch repair

8   personnel when a device is deemed to be in a state

9   of disrepair, and perform various accounting

10   functions.

11   It actually provides for the -- an

12   optional connection to an ATM network, so it can not

13   only dispatch a repair person to make a repair, but

14   also get him paid.

15   Q.   And drawing your attention to Figure 1,

16   can you describe those elements? Because I think

17   it's consistent with what you just said, but just so

18   I can get an understanding of what Figure 1 is and

19   how it relates to your testimony there.

20   MR. HOLLOWAY: Objection. Form.

21   THE WITNESS: So in Figure 1, we have a --

22   sort of a high-level overview of the system in

23   which we have a local area network that's

24   designated No. 225. Local area network would

25   be -- for each kitchen, there would be a

1   distinct one. It has a number of devices

2   attached to it.

3   Q.   (By Mr. Ritcheson) I'm sorry, Figure 1.

4   It's on the next page. Yeah, there's a different

5   figure on the cover page.

6   A.   Oh, I'm looking at the -- yeah, on the

7   cover page.

8   Q.   You started to use numbers I just wasn't

9   seeing.

10   A.   Yeah. Good point.

11   Okay. So Figure 1, yeah, actually gives a

12   more reasonable overview of the system. So we

13   have -- at the top of the diagram labeled 100, we

14   have a number of cells, 105 cells, which are --

15   cells are defined by the coverage area of a wireless

16   base station, and with any cell we have various

17   kitchen appliances and the appliances are As, Bs,

18   and Cs.

19   Each of these base stations connects

20   through 175, which I don't recall what that is at

21   the moment, through a data network to a control

22   center. Control center has a database point of sale

23   ATM network interface and then the second -- that

24   specialized network is designated under 210. It has

25   terminals for operators to view. It has a database,

1   a mobile kitchen center, and service vehicles.

2   Service vehicles are connected wirelessly to the

3   control center.

4   Q.   So I'm trying to understand the lines

5   here.

6   Where is the control center generally?

7   Where is that located?

8   A.   That would be separate and apart from the

9   restaurants and the kitchens.

10   Q.   And maybe if there's a part of your

11   declaration that can help or there's a part of the

12   specification of Koether that can help.

13   I'm just trying to get sort of placed in

14   my mind where that is and what that has attached to

15   it, just so I can tell you exactly where I'm headed;

16   okay?

17   MR. HOLLOWAY: Objection. Form.

18   Q.   (By Mr. Ritcheson) The question is: The

19   control center, where is that located?

20   A.   So in paragraph 29 of my declaration, I

21   say --

22   Q.   Hold on. Let us all get there. 29.

23   Okay.

24   A.   I say the control center of Koether is in

25   a separate or remote physical location from the

1   kitchens, the restaurants and the kitchens.

2   Q.   All right. Let me break this down a

3   little bit.

4   And I think that with respect to Koether,

5   what are the three elements of Koether that

6   correspond to the first, second, and third control

7   devices of Claim 1?

8   MR. HOLLOWAY: Objection. Form.

9   THE WITNESS: So this is -- I address that

10   question in paragraph 27 of my declaration on

11   the previous page from where we were.

12   So there's -- "As the figures and

13   description of Koether make clear, there are

14   three critical devices that make up the system.

15   First, [there's] a microprocessor controller

16   140 that's in -- that is a part of, or

17   connected to, a specific kitchen appliance."

18   And I'll skip the parenthetical.

19   Second, we have a base station, a kitchen

20   base station 150, which may be wirelessly

21   connected to the microprocessor controller.

22   And third, the third part is the control

23   center 170 that monitors, processes, and

24   responds to signals from the kitchen appliances

25   and base stations.

1   So those are the three elements of the

2   control system.

3   Q.   (By Mr. Ritcheson) So we have 140, 150,

4   and 170; is my recollection correct?

5   A.   Yes, 140, 150, and 170.

6   And this would be -- they are relative to

7   the diagram on page 10 of my declaration, which is

8   taken from the Koether patent and Figure 8 on

9   page 10 of the exhibit that consists of the Koether

10   patent. Those are the numbers in the paragraph that

11   I just read.

12   Q.   Okay. With respect to Figure 2 of the

13   Koether patent, can you describe for us what you

14   believe is depicted in Figure 2?

15   A.   Well, in Figure 2 at the top, we have a

16   kitchen appliance and a microprocessor-based

17   controller, a receiver, and transmitter, and so this

18   is the appliance 110 that would -- yeah, the

19   appliance -- yeah. It uses the same numbers. So

20   appliance 110, the 140 controller, and the 120 and

21   130 transmitter receivers.

22   And in the previous, those wireless

23   transmitters and wireless transmitter receivers are

24   identified as infrared. In this one they're not

25   identified by a technology, so it could -- it is

1   generally understood to be preferably wireless for

2   all the obvious reasons that you would want devices

3   in a kitchen to be wireless, say you don't want

4   people tripping over cables and that sort of thing.

5   Q.   So using, I guess -- you referred to

6   Figure 8 of Koether, the appliance is connected to

7   the controller, which is connected to a transmitter

8   receiver, which connects to base station 150 --

9   A.   Uh-huh (affirmative).

10   Q.   -- is that correct?

11   A.   Yes.

12   Q.   And the arrow connecting infrared

13   transmitter receiver 820 to element 810, what is

14   that?

15   A.   That's a communication pathway.

16   Q.   Is there a reason there's a person there?

17   A.   I think it's an indication that a person

18   could view status locally, as well as at the control

19   center. You have a wireless network and so

20   anything -- you can connect various other devices,

21   personal computers. In 1996, it was possible to

22   connect personal computers to wireless networks. It

23   was actually possible in the late '80s to connect

24   personal computers to wireless networks using

25   infrared.

1   Q.   Okay. Now, using the language of -- Claim

2   1 indicates that the first control device is, if you

3   look at the bottom of Column 74, is located at the

4   premises.

5   Do you see that?

6   A.   Yes.

7   Q.   Okay. With respect to your mapping of

8   Koether onto the Claim 1, what is the premises of

9   Koether?

10   MR. HOLLOWAY: Objection to form.

11   THE WITNESS: The premises of Koether

12   would be portions of the kitchen in which

13   appliances were located.

14   Q.   (By Mr. Ritcheson) What do you mean by

15   "portions"?

16   A.   Well, an appliance doesn't occupy the

17   entire kitchen in most instances. An appliance is

18   distinct from contained in, situated at, a kitchen.

19   Q.   In your reading, then, there are multiple

20   premises in the single kitchen?

21   A.   As consistent with the PTAB construction

22   of the term "premises." They said --

23   Q.   It's okay. I don't have a question.

24   With respect to the term or phrase -- the

25   terms or phrases "activating, deactivating,

 1   disabling, and reenabling" -- do you see that in

 2   Claim 1?

 3   A.   Yes, I do.

 4   Q.   It's true that you used the plain and

 5   ordinary meaning of those terms in reaching the

 6   conclusions expressed in your declaration?

 7   A.   Yes.

 8   Q.   Okay. What is -- what does "activate"

 9   mean to you?

10   A.   In the context of, say, a kitchen

11   appliance or, say, a heating or cooling system, is

12   cycling -- cycling on.

13   Q.   And is "deactivate," then, cycling off?

14   A.   Cycling off.

15   Q.   Okay. With respect to those two terms,

16   what does the term "cycling" mean?

17   A.   Well, when you -- you understand how a

18   kitchen oven works, you have a heating element --

19   say an electric kitchen oven, there's a heating

20   element in the kitchen oven that can be in one of

21   two states. It can be either fully on or fully off.

22   And so the control system that enables the

23   oven to come to the temperature that you set it at

24   through the controls on the oven includes a

25   temperature sensor that -- that detects what the

1   temperature is inside the oven, and it turn -- and

2   when that temperature's -- the sensed temperature is

3   below the threshold that the user has selected by

4   some number of degrees, the heating element will be

5   turned on. Once it reaches the desired set point or

6   perhaps exceeds it by a few degrees, then the

7   heating element will be turned off.

8   So activation is turning it on;

9   deactivation is turning it off.

10   Q.   My question actually had to do with the

11   word you used, which was "cycling." I was just

12   trying to understand "cycling."

13   A.   Well, in the course of -- say you're

14   baking a loaf of bread and it takes 30 minutes to

15   bake. In the course of that baking, that -- of that

16   30 minutes, the heating element will cycle -- go

17   between off and on and on and off several times.

18   And so "cycling" means going between -- changing

19   state.

20   Q.   Changing state.

21   A.   Changing state.

22   Q.   And just for clarification, in

23   paragraph 34 of your declaration for the 1760 IPR,

24   if you could turn to that, I have a question about

25   the first two sentences in particular --

1   A.   Which page?

2   Q.   -- as a cause of confusion.

3   Paragraph 34.

4   A.   Of my declaration?

5   Q.   Yes.

6   A.   Okay.

7   Q.   Just one second.

8   First two sentences of 34 say that "Claim

9   1 requires" -- or "also requires that the second

10   control device be remote from the premises," and

11   then the next sentence is, "In Koether, this would

12   mean the kitchen base station would be remote from

13   kitchen appliance."

14   Do you see that?

15   A.   Yes, I do.

16   Q.   Okay. That seemed to suggest that the

17   kitchen appliance was the premises.

18   That's not an accurate reading; correct?

19   That's not what you're saying?

20   A.   Well, remote from the -- the premises

21   would be the portion of the kitchen in which the

22   appliance is located.

23   Q.   Not the appliance itself; is that correct?

24   You see why I'm confused; right?

25   A.   Well, the -- there's sort of a larger

 1   disconnect here, in that the -- the way that the

 2   term "premises" is used in the '130 patent is

 3   with -- is somewhat different from the way -- well,

 4   there's -- there's -- there's sort of a very poor

 5   fit between the notion of "premises" and the nature

 6   of wireless networks.

 7   So wireless -- a wireless base station has

 8   a certain coverage area; right? The signal

 9   propagates from a wireless base station and --

10   according to a certain pattern, and the pattern of

11   propagation, you know, you can graphically map it

12   for any given radio transmitter.

13   And while we -- ideally, we like to

14   portray that as like a series of hexagons or

15   something that kind of looks like a beehive, which

16   is the way that the diagrams are done in the Koether

17   patent. That's sort of a conventional way of

18   depicting it.

19   But in reality, it's never that perfect

20   propagation pattern, so -- because there are

21   different sources of interference that can cause the

22   signal -- can block the signal or can reflect the

23   signal.

24   So signals don't always propagate

25   according to where the walls are in a building, so

1   you could have -- I could have a wireless base

2   station against this wall and if there were a

3   wireless station on the other side of the wall, that

4   wireless station would have a closer proximity to

5   the wireless base station in this room than it might

6   have to a wireless base station in the room with the

7   device that was on the other side of the room.

8   So the geographic proximity of a wireless

9   device and a -- the base station and antenna that

10   serves it doesn't correspond to where the walls are

11   in buildings.

12   So the thing that Koether is concerned

13   about is that he wants to have as many base stations

14   as are required to obtain coverage over all the

15   wireless transmitters and receivers in a coverage

16   region, irrespective of where the walls are in the

17   structure.

18   Q.   With respect to your conclusions regarding

19   Koether, all I'm trying to find out is if the

20   appliance -- if your position is the appliance is

21   the premises or whether it's the appliance located

22   in the room -- that is in a portion of a room that

23   is the premises. That's all I'm trying to find out.

24   MR. HOLLOWAY: Objection to form.

25   THE WITNESS: I think the way I would

1   apply the term "premises" as found in the '130

2   patent in the Koether context would be the

3   radio coverage area that is defined by the

4   wireless transmitter, the base station.

5   Q.   (By Mr. Ritcheson) Okay.

6   A.   And the '130 patent also includes wireless

7   communication, so it would actually have to be, you

8   know, viewed in that -- in a similar light.

9   Q.   Understood. And I'm sorry to -- the horse

10 is dead, but there's still twitching.

11   A.   Okay.

12   Q.   Because I just want to have it absolutely

13 clear that, for example, the blender in the -- the

14 blender itself in the kitchen is not the premises as

15 you're understanding that term?

16   A.   The premises would be the portion of the

17 room in which the blender is located at any given

18 time.

19   Q.   Thank you.

20   A.   The blender could be movable, though.

21   Q.   Understood. Understood. I just needed to

22 get some clarification on those first two sentences

23 because of the way the language was used there.

24   With respect to the -- I think it's called

25 the -- strike that.

1   Is it your understanding that the

2   transmission of data is the same as a control

3   signal?

4   MR. HOLLOWAY: Objection. Form.

5   THE WITNESS: Transmission of data is a

6   much larger abstraction than control signal.

7   Control signal would be a particular form of

8   data, a data that is -- that is transmitted in

9   order to perform a particular purpose.

10   Q.   (By Mr. Ritcheson) Okay. Sorry. Just

11   one moment.

12   With respect to -- this is from

13   paragraph 3, the discussion of the kitchen base

14   station, which you've designated as a second control

15   device.

16   A.   Paragraph 3 in my declaration?

17   Q.   I'm sorry. 33.

18   A.   Oh, okay.

19   Q.   You read there that -- it reads there that

20   "a person of ordinary skill in the art prior to July

21   1996, would have understood that the kitchen base

22   station (the second control device) provided a

23   signal to the appliance, which when received

24   executes an operation."

25   Do you see that?

1   A.   Yes.

2   Q.   And then you have a citation to Koether,

3   Column 5, lines 20 to 35 --

4   A.   Uh-huh (affirmative).

5   Q.   -- is that correct?

6   A.   Yes.

7   Q.   What is the -- what do you mean by

8   "execute an operation" as it's used there?

9   And if you want to look at your Koether

10   cite, that's fine, too, but what do you mean by

11   "executes an operation"?

12   A.   Well, what Koether says in the -- in the

13   cited portion is that a bidirectional communication

14   takes place at -- as he puts it, "so as to monitor

15   and track the maintenance, repair, and energy

16   management of kitchen appliances by means of

17   information transmitted to and received from those

18   appliances."

19   So -- and then he clarifies or expands it,

20   "Information may include cooking parameters, billing

21   information, appliance ID, diagnostic info,

22   maintenance instructions." So the operations would

23   include a request for status, would include a

24   request for diagnostics, would include instructions

25   of a operational or diagnostic nature.

1   One of the things that Koether describes

2   is cooking parameters, which I would think would be

3   temperature profiles. Say in the case of an oven,

4   it would be temperature profiles to use while a

5   particular food item is being cooked.

6   Q.   That's one of my questions, is that -- and

7   I may be misreading this, but the citation that you

8   gave us at Column 5, lines 20 to 35, appear to be

9   relating to monitoring functionality.

10   Is that not correct?

11   MR. HOLLOWAY: Objection. Form.

12   THE WITNESS: It's not limited to

13   monitoring functionality; it includes

14   monitoring functionality. So it's monitoring

15   and tracking in this particular citation.

16   Q.   (By Mr. Ritcheson) Okay. With respect to

17   the control center, the control center is the remote

18   facility that's overseeing all this.

19   Am I generally getting it right?

20   A.   Uh-huh (affirmative).

21   Q.   "Yes"?

22   A.   Yes.

23   Q.   The -- I think we have -- paragraph 36 I

24   have some questions about. It says, "The Koether

25   system was designed to allow for automatic

1   monitoring and control" --

2   A.   Yes.

3   Q.   -- is that correct?

4   A.   Yes.

5   Q.   And there's a citation to Column 2, lines

6   23 through 36.

7   A.   Yes.

8   Q.   And turning to that, there's a description

9   of the base station -- it's not designated as 150,

10   but the base station interrogating the appliance.

11   Do you see that?

12   A.   Yes.

13   Q.   And that's the request to transmit

14   diagnostic information?

15   A.   Yes.

16   Q.   Okay. Where is the -- what is the control

17   functionality that you're relying on in this

18   passage?

19   A.   In the control -- one example of the

20   control functionality was cited in the previous

21   paragraph, cooking parameters.

22   Q.   That's from somewhere else, not in this

23   patent. I'm just trying to tie it -- your statement

24   that "the Koether system was designed to allow for

25   automatic monitoring and control," and you cite to

1   this passage. I'm wondering if, in this passage,

2   there's something that I may have missed that you're

3   relying on for the "control," as opposed to

4   "monitoring."

5   A.   So the kitchen --

6   MR. HOLLOWAY: Objection to form.

7   THE WITNESS: The kitchen base station,

8   when -- the act of interrogating the appliance

9   is exercising control over the appliance. It's

10   telling -- when the base station interrogates

11   the appliance for diagnostic information

12   relative to operating conditions, that is --

13   that's an act of control.

14   Q.   (By Mr. Ritcheson) Okay. So is it a true

15   statement, then, that "monitoring" and "control" are

16   the same thing, in your opinion?

17   MR. HOLLOWAY: Objection. Form.

18   THE WITNESS: No, they're not the same

19   thing.

20   Q.   (By Mr. Ritcheson) How are they

21   different?

22   A.   Monitoring is -- monitoring can be

23   performed either actively or passively. So a

24   monitor can request -- monitoring can be

25   accomplished by interrogating -- by actively

1   interrogating the device and saying, "What is your

2   state," and getting a response.

3   It can also be accomplished by the device

4   that is being monitored having triggers set in which

5   when a certain parameter exceeds a threshold or

6   crosses a threshold -- it could be either up or

7   down -- that it will automatically -- without --

8   without interrogation, it will voluntarily, of its

9   own initiative or according to its own operational

10   logic, send a message, an unsolicited message.

11   So these reports of state can take place

12   in response to an actual request immediately

13   preceding the response or it can be accomplished

14   through operational parameters that are programmed

15   into the device that causes it to report certain

16   conditions.

17   Q.   With respect to the interrogation that

18   you -- that you discussed and that's referenced in

19   this section, does that change the state of the base

20   station?

21   MR. HOLLOWAY: Objection. Form.

22   THE WITNESS: It doesn't inherent --

23   intrinsically necessarily change the

24   operational state, other than, you know,

25   it's -- it may cause a subtle change.

1   For example, the device may be programmed

2   to report its temperature every 10 seconds and

3   if it's interrogated about its temperature say

4   at second six, then that may reset the timer so

5   that the next report takes place 10 seconds

6   after the interrogation rather than, say, 10 --

7   rather than at the time in which it would have

8   taken place without the interrogation.

9   Q.   (By Mr. Ritcheson) Other than with

10   respect to that particular circumstance that you

11   just discussed -- well, strike that.

12   It's true that with respect to the passage

13   that you cited, that there isn't any change in state

14   contemplated at the base station by virtue of the --

15   I'm sorry, at the appliance by virtue of the

16   interrogation by the base station?

17   A.   The interrogation may be -- may be

18   something that takes place in order for some control

19   function to follow it.

20   So, for example -- I mean, if you continue

21   to read in the -- in the Koether patent after -- at

22   line 25 -- line 27, "The control center may take

23   action as appropriate, including, among others,

24   downloading updated, operating and/or diagnostic

25   software," et cetera.

1   Before the control center downloads the

2   software, it wants to see -- it wants to make sure

3   that the appliance is in a state of good repair so

4   that the -- it's very important that the download is

5   successful. So you don't want to download software

6   to a device in which -- in such a condition that you

7   may fear that the download would destroy the

8   operational software in the device and fail to

9   supply it with a completely operational software

10   image.

11   Q.   And you're relying on your experience, as

12   opposed to anything that's actually disclosed in

13   Koether?

14   A.   No. I'm reading the patent. This is what

15   the patent -- I mean, the patent says you can do

16   this and then after you've done that, you can -- you

17   may want to do things like downloads.

18   Q.   Okay. In your opinion, is downloading

19   information exercising control?

20   A.   Yes, it is.

21   MR. HOLLOWAY: Objection. Form.

22   Q.   (By Mr. Ritcheson) And what aspect of the

23   device 140 is controlled by a download?

24   MR. HOLLOWAY: Objection. Form.

25   THE WITNESS: The -- the operational

1   software in the device is affected by the

2   download. That's the operational software

3   which defines the capabilities of the device,

4   its operating parameters. It could be all

5   these other things, like cooking parameters

6   could be part of that download. So it's the

7   entire body of logic that controls the way the

8   device operates.

9   Q.   (By Mr. Ritcheson) But just to be clear,

10   you're equating downloading of data with control?

11   MR. HOLLOWAY: Objection. Form.

12   THE WITNESS: I'm equating downloading of

13   software with control. The software controls

14   the operation of the --

15   Q.   (By Mr. Ritcheson) Oh, I understand the

16   software controls the operation.

17   A.   Yeah.

18   Q.   My question was whether the -- within this

19   context, the control center that is downloading

20   software is controlling, for example, a base

21   station.

22   MR. HOLLOWAY: Objection. Form.

23   THE WITNESS: Well, I think we're talking

24   about downloading software to the appliance,

25   right, to the controller that's part of the

1   appliance?

2   Q.   (By Mr. Ritcheson) Well, it says the

3   control center, which is 170 --

4   A.   Oh, base station?

5   Q.   You tell me.

6   A.   Well, the base station interrogates the

7   appliance and it may request -- the base station may

8   interrogate the appliance or the appliance may

9   request to transmit diagnostic, so there's the

10   two-way communication.

11   Q.   Sure.

12   A.   And that diagnostic information may be

13   immediately communicated to the control center.

14   Q.   Right.

15   A.   So we have the three parts of the

16   system --

17   Q.   Sure.

18   A.   -- and then the control center can take

19   action as appropriate, including, among others,

20   downloading updated operating and/or diagnostic

21   software to the appliance, and it can also take

22   other -- other action such as dispatching a service

23   vehicle or updating the accounting and inventory.

24   Q.   Okay.

25   A.   And it says most of these functions are

1   automatically controlled by the control center that

2   may also be performed manually by a control center

3   operator.

4   So the patent, I mean, it explicitly

5   describes this as exercising control over the

6   appliance.

7   Q.   No, I -- I hear your -- I see the use of

8   the word "control." I'm just trying to figure out

9   whether it's your understanding that control, as you

10   understood it -- when you're thinking about -- you

11   said that this allows for automated monitoring or

12   control. All I want to know is whether the control

13   functionality that you were referring to by your --

14   by your reference here was to the downloading of

15   updated operating and/or diagnostic software to the

16   appliance or whether there was something else you

17   were pointing to as supporting that?

18   MR. HOLLOWAY: Objection. Form.

19   THE WITNESS: I think the operational

20   software, which would include device parameters

21   in most -- in most instances, and as well as

22   these cooking parameters.

23   Q.   (By Mr. Ritcheson) I'm just looking at

24   this citation that you provided. The cooking

25   parameters, device parameters, that's not mentioned

1   here; correct?

2   A.   Well, when you're telling the device that

3   you're going to download software to it and it has

4   to be ready for that, you're controlling the device.

5   And the device, in response to that --

6   that command, really, from the control center, will

7   put itself in a state where it can accept a download

8   and will replace its operating software and will

9   reboot to a new image and, you know, get the update.

10   It's like, you know, when you apply patches to your

11   personal computer.

12   Q.   I'm not arguing with you whether you're

13   right or wrong; I'm just trying to make sure I

14   understand --

15   A.   Right.

16   Q.   -- the totality of the control

17   functionality that you're referring to --

18   A.   In this particular.

19   Q.   Hold on.

20   -- in paragraph 36 of your declaration.

21   A.   Yeah.

22   Q.   Okay. With respect to -- I have a

23   question here on the next sentence in that same

24   paragraph 36 of your declaration in 1760 proceeding,

25   which talks about "automatic control of the system

1   by the control center, which is claimed in the '130

2   patent Claim 1, as the third control device, as well

3   as Koether's -- the Koether patent's...base

4   station."

5   This is control by the control center. If

6   we could just turn briefly to your citation,

7   Column 5, line 60 to 67.

8   Am I correct that the portion of the

9   Koether patent that you cited as control was the

10   interrogation of the controller 140 by base station

11   150?

12   MR. HOLLOWAY: Objection to form.

13   Q.   (By Mr. Ritcheson) Do you have them side

14   by side?

15   A.   Yeah. Kitchen base station 150 --

16   Q.   Okay. That's the intermediate, the second

17   device; right?

18   A.   Second device.

19   Q.   Okay.

20   A.   -- interrogates the corresponding

21   controller 140, which is the first or third. I

22   mean, the --

23   Q.   The appliance?

24   A.   Yeah, it's the appliance. The '130 patent

25   uses the first and third device in different ways.

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 1      It flip-flops them.  So --
 2          Q.   So base station interrogates the
 3      appliance?
 4          A.   Uh-huh (affirmative).
 5          Q.   "Yes"?
 6          A.   Yes.
 7          Q.   Okay.  And then that information is -- am
 8      I reading this correctly, may be communicated to the
 9      control device 170?
10          A.   Yes.
11          Q.   What I'm trying to do is match up the
12      statement you made in paragraph 36 about automatic
13      control of the system by the control center.  And my
14      specific question is:  Is it your opinion that the
15      receipt -- by receiving diagnostic information,
16      control center 170 is exercising control over the
17      system?
18          A.    I wouldn't consider the receipt of
19      information to constitute control.
20          Q.    Is there any other part of this passage
21      that you've cited us to that demonstrates control of
22      the system by 170?  And I'm limiting it to this
23      citation.
24              MR. HOLLOWAY:  Objection.  Form.
25              THE WITNESS:  So we don't want to talk
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1   about the control that was in the previous

2   citation, where in the previous citation --

3   Q.   (By Mr. Ritcheson) I just want to talk

4   about this citation that you provided for this

5   statement.

6   A.   So you want to know the --

7   MR. HOLLOWAY: Objection. Form.

8   THE WITNESS: -- the boundaries of this

9   citation?

10   Q.   (By Mr. Ritcheson) This is the citation I

11   have a question about because I'm trying to match it

12   up to what you said in your declaration.

13   You understand?

14   So in your declaration, you talked about

15   "automatic control of the system by the control

16   center"; correct?

17   A.   Yes.

18   Q.   And then you cite to this passage; yes?

19   So I'm just trying to tie off what it is in this

20   passage that leads you to believe that there is

21   control of the system by the control center, just

22   this passage. I just want to know what this passage

23   says to you.

24   MR. HOLLOWAY: Objection. Form.

25   THE WITNESS: So in this passage, what you

1   have is the base station interrogating the

2   appliance for diagnostic, and it may -- that

3   interrogation may include -- may be a request

4   of -- to transmit diagnostic information, but

5   it comes back to the base station -- well, no,

6   it -- well, it says it may be immediately

7   communicated to control center 170, and that

8   information would have to pass through the base

9   station 150.

10   So the automatic control of the system by

11   the control center -- so the control center

12   always has to go through the base station to

13   get to the controller that's on the appliance

14   so that the overall controller, for -- well,

15   there isn't -- there isn't any control being

16   exercised by the control center in the case

17   where the base station has, of its own accord,

18   requested diagnostic information from the

19   appliance.

20   But if the request for diagnostic

21   information originated at the control center,

22   was passed to the base station because the base

23   station is the gateway to the appliance, and

24   then the base station forwarded that to the

25   appliance and, in response to that, the

1   appliance responded with its status and that

2   response would go through the base station and

3   then back to the control center.

4   So in that instance, there is an exercise

5   of control originating at the control center.

6   Q.   (By Mr. Ritcheson) That's not disclosed

7   in this passage, though; right?

8   MR. HOLLOWAY: Objection. Form.

9   THE WITNESS: It's neither disclosed

10   nor -- I mean, it's -- it's -- this passage

11   relates to the automatic character of -- of a

12   transaction that takes -- that these -- it's

13   saying that these kinds of transactions take

14   place automatically without human -- without

15   human intervention.

16   So the pertinence of this particular

17   passage is on the notion of automatic. The

18   emphasis would be on automatic resident

19   control, but, I mean, there are control

20   operations -- I mean, a request for status is a

21   control.

22   Q.   (By Mr. Ritcheson) I understand. I'm

23   justify trying to drill down into your statement

24   that the control of the system by the control center

25   is disclosed here.

1   And that's just not the case; right?

2   MR. HOLLOWAY: Objection. Form.

3   THE WITNESS: Well, the beginning the

4   first sentence in paragraph 36, what I said

5   was, "The Koether system was designed to allow

6   for automatic monitoring and control."

7   Q.   (By Mr. Ritcheson) Yes, and we talked

8   about that.

9   A.   And in some instances, monitoring is

10 control. I mean, it's sort of light control, but

11 when I request your status, I'm exercising control

12 over you.

13   Q.   I understand your argument, but that isn't

14 in the reference that you provided to support the

15 position that the control center is disclosed at

16 Column 5, line 60 to 67, as exercising control over

17 the system --

18   MR. HOLLOWAY: Objection. Form.

19   Q.   (By Mr. Ritcheson) -- correct?

20   A.   There's nothing in that sentence that is

21 inconsistent with what you're suggesting.

22   Q.   I'm not suggesting anything. You stated

23 that the -- this passage supports your conclusion

24 that the control center 170 exercises control, but

25 in reality, all the control center's doing in this

1   passage is receiving information.

2   MR. HOLLOWAY: Objection. Form.

3   THE WITNESS: No, that's not true, because

4   why does the -- why does the base station ask

5   the -- ask the appliance for its state? It

6   does that because the control center has

7   downloaded software to the base station that

8   tells it to do that.

9   Q.   (By Mr. Ritcheson) I thought you said

10   that somebody could interact with it directly.

11   MR. HOLLOWAY: Objection. Form.

12   Q.   (By Mr. Ritcheson) Did you previously say

13   that?

14   MR. HOLLOWAY: Objection. Form.

15   THE WITNESS: They can operate with it

16   directly; they can also program it to operate

17   automatically, which is the primary mode in

18   which this automatic system would operate.

19   Q.   (By Mr. Ritcheson) Okay. Have you

20   answered the question regarding this passage to the

21   best of your ability?

22   MR. HOLLOWAY: Objection. Form.

23   THE WITNESS: I'm not sure you're hearing

24   what I'm saying.

25   Q.   (By Mr. Ritcheson) I've heard exactly

 1   what you've said.

 2   A.   So the passage says the basis --

 3   Q.   I don't have a question pending anymore

 4   other than have you -- let me ask --

 5   MR. HOLLOWAY: Objection. Form.

 6   Q.   (By Mr. Ritcheson) -- are you done with

 7   your answer?

 8   MR. HOLLOWAY: Objection. Form.

 9   THE WITNESS: I'm prepared to move on.

10   Q.   (By Mr. Ritcheson) And this is an

11   unsupported statement and I understand why it may

12   be, but at the last sentence -- I just have a small

13   flag here on the end of 36 of your declaration in

14   the 1760 proceeding.

15   It says, "Even in Koether's discussion of

16   the network types for data transmission, there is no

17   discussion of human or user intervention in the

18   access or receipt of the communications between

19   various devices."

20   Is that sentence accurate?

21   MR. HOLLOWAY: Objection. Form.

22   THE WITNESS: Yes, I think that's an

23   accurate sentence, "in the discussion of

24   network types," which would include wireless

25   and wired networks. The network types are

1   independent of whether there is human

2   intervention or not.

3   Q.   (By Mr. Ritcheson) So what did you mean

4   to -- what did you mean to convey with this

5   sentence?

6   A.   The automatic nature of the system. This

7   whole paragraph is really on the fact that this is a

8   system designed to allow for automatic monitoring

9   and control, and so there are two examples. The

10   following two sentences are both examples of the

11   automatic nature of this system, which does both

12   monitoring and control.

13   So it's able to function automatically,

14   because the control center puts software in the base

15   stations that have them do various things

16   autonomously, but -- they're acting autonomously,

17   but in accordance with the operational parameters

18   dictated by the control center and the operation of

19   the networks doesn't depend on human intervention.

20   So the networks function as networks wherever the --

21   whatever the humans are doing.

22   Q.   Okay. It may not be entirely dispositive.

23   It's just that whenever there are absolutes, my

24   alarm bells go off.

25   And you say that there's no discussion of

1   human or user intervention in the access or receipt

2   of communications between various devices, and I'm

3   just trying to just internally square that with the

4   depiction in Figure 8 of the individual that is

5   connected wirelessly to the appliance.

6   MR. HOLLOWAY: Is that a question?

7   Q.   (By Mr. Ritcheson) How would you help me

8   square that?

9   MR. HOLLOWAY: Objection. Form.

10   THE WITNESS: The human is not the

11   network; the human is the user of the network.

12   It's not -- the human is not the network.

13   Q.   (By Mr. Ritcheson) Understood.

14   A.   The network does not depend on the human.

15   Q.   Understood. It says there is no

16   discussion of human intervention in the access of

17   the communications.

18   A.   Yeah. It's in the context of Koether's

19   discussion of network types. So where Koether --

20   where and in the context of Koether's discussion of

21   network types, human is not one of the network

22   types.

23   Q.   That's what you intend to convey?

24   A.   That's what I was trying to say. It's an

25   automatic system that is subject to manual override.

1   Q.   Okay. And in Figure 8, the human here --

2   the human interaction is via a handheld terminal

3   having, for example, a palm/laptop computer linked

4   to 140 --

5   A.   Right.

6   Q.   -- correct?

7   But you didn't mean that humans are

8   completely out of the equation, only that what?

9   A.   We have a network that supports both

10   automatic and manual operation.

11   Q.   Okay. That's what I would have thought

12   you'd said there.

13   A.   We have an automatic network that supports

14   both human and -- I mean, the human is not actually

15   on the network. The palm is on the network.

16   Q.   It's not plugged into his head.

17   MR. HOLLOWAY: Objection. Form.

18   THE WITNESS: Right. Right. I'm sure

19   there's prior art about that, but maybe not in

20   this time frame.

21   MR. RITCHESON: It's 12:15. Why don't we

22   take a break.

23   MR. HOLLOWAY: Okay.

24   (Thereupon, there was an interruption in

25   the proceedings.)

1   Q.   (By Mr. Ritcheson) Mr. Bennett, did you

2   speak with anybody about your testimony that you

3   gave or that you expect to give in this case?

4   A.   No, I did not.

5   Q.   Okay. With respect to the institution

6   decision for the '130 that's actually the 1760

7   proceeding, if you could turn to page 11 of that.

8   I'm sorry. I've forgotten the exhibit number. Can

9   you read that off the front?

10   A.   That would be Exhibit 5.

11   Q.   Okay. Page 11.

12   Okay. You there?

13   A.   Yes.

14   Q.   It's the -- starting with the second full

15   paragraph, which begins --

16   A.   "We are persuaded..."?

17   Q.   Yes, relating to Claim 8.

18   Do you see that?

19   A.   Yes.

20   Q.   It says there that Koether's

21   microprocessor 140 communicates with the kitchen

22   appliance using RF communications.

23   Do you see that?

24   A.   Yes.

25   Q.   Where is that -- where is the support for

1   that in Koether?

2   A.   It's all over it.

3   Q.   Well, let's -- while we're -- before we

4   get to that, can you verify for me, looking at the

5   '130 patent, Claim 1 -- Claim 8, rather, that the --

6   that claim, 8, requires the first control device to

7   communicate with the appliance via a wireless

8   device?

9   A.   So Claim 8 is, "The apparatus of Claim 1,

10   wherein the first signal is transmitted from the

11   first control device to at least one of," a list of

12   many types of devices, "via a wireless device."

13   Q.   Okay.

14   A.   So it's a wireless device.

15   Q.   And so then we have the institution

16   decision, then, that says that they're persuaded

17   that Koether discloses a microprocessor 140

18   communicating with kitchen appliance 110 using RF

19   communications.

20   Do you see that?

21   A.   Yes.

22   Q.   And it cites to Figures 1 and 2 and to

23   Column 4, lines 25 to 26.

24   Do you see that?

25   A.   Yes.

1   Q.   Taking that out of order for a second,

2   looking at Column 4, lines 25 to 26, that reads,

3   "Each kitchen appliance...is preferably provided

4   with a RF transmitter..., RF receiver... and

5   microprocessor based controller 140, as illustrated

6   in Figure 2."

7   Did I read that correctly?

8   A.   Yes, "Each kitchen appliance...is

9   preferably provided with an RF transmitter...."

10   Q.   Okay. But in Figure 2, I only have one

11   set of transmitters and receivers by which the

12   controller communicates with the base station; isn't

13   that true?

14   MR. HOLLOWAY: Objection. Form.

15   THE WITNESS: Figure 1 and 2, and -- I

16   don't understand the question.

17   Q.   (By Mr. Ritcheson) Sure. Let's look at

18   Figure 2 --

19   A.   Okay.

20   Q.   -- by way of example.

21   What is the significance of the box that's

22   drawn around the kitchen appliance controller and

23   transmitter receiver elements?

24   MR. HOLLOWAY: Objection. Form.

25   THE WITNESS: The box -- kitchen appliance

1   controller and transmitter receiver, I think

2   that's the -- you have one-to-one relationship

3   between an appliance and a controller and you

4   have a one-to-one relationship between

5   controller and transmitter receiver, and the

6   collection of those three elements would

7   constitute a device or an apparatus or a

8   system. That's the way I'd read that diagram.

9   Q.   (By Mr. Ritcheson) And is the CPU or the

10   controller 140, is that a part of the kitchen

11   appliance?

12   MR. HOLLOWAY: Objection. Form.

13   THE WITNESS: It's a -- in a one-to-one

14   relationship. The patent makes it clear that

15   the microprocessor controller could be

16   integrated into the kitchen appliance or it

17   could be connected to the kitchen appliance.

18   But for every microprocessor controller,

19   there's one and only one kitchen appliance.

20   Q.   (By Mr. Ritcheson) Okay. So my question

21   is not whether the controller 140 communicates with

22   the base station via RF receiver -- RF transmitter

23   120 and receives from RF receiver 130, my question

24   is: Where is it disclosed that the microprocessor

25   140 communicates to the appliance 110 via RF?

1   MR. HOLLOWAY: Objection. Form.

2   THE WITNESS: I don't know that the

3   microprocessor controller would communicate

4   with the appliance itself using RF.

5   Q.   (By Mr. Ritcheson) Okay.

6   A.   I think what the diagram illustrates is

7 there's an antenna on the controller that's pointed

8 in the direction of the base station.

9   Q.   And that's using RF to connect the

10 controller 140 to the base station 150?

11   A.   Right.

12   Q.   Okay.

13   A.   But in the case where the controller is

14 integrated with the kitchen appliance, then you

15 could effectively say that the kitchen appliance is

16 communicating over RF with the base station, because

17 in that instance, the controller and the appliance

18 would be indistinguishable.

19   Q.   Okay.

20   A.   Yeah. I think what this diagram is meant

21 to represent is the functional decomposition of a

22 system --

23   Q.   I understand.

24   A.   -- in a -- you know, a circuit diagram.

25   Q.   I appreciate that.

1   Okay. With respect to Claim 12, which is,

2   I believe, the next one down, if you look at

3   page 11, it says that "we are persuaded that the

4   present record supports the contention that

5   Koether's control center receiving diagnostic

6   information...teaches the limitations of Claim 12."

7   A.   Uh-huh (affirmative).

8   Q.   Do you see that?

9   A.   Yes.

10   Q.   So let's unpack that a little bit.

11   Claim 12, let's go to Claim 12 so that we

12   can have a common understanding of that.

13   Can you read that to yourself?

14   A.   I've read it.

15   Q.   Okay. And that claim is where the

16   system -- that is 110; correct? If we're looking at

17   Koether, Koether 110 is the system?

18   MR. HOLLOWAY: Object to form.

19   Q.   (By Mr. Ritcheson) Do you know what I

20   mean?

21   A.   So we're on -- in the '130 patent, Claim

22   12 of the '130 patent, and your question is?

23   Q.   What element of Koether are you calling

24   the premises appliance for the purposes of Claim 12?

25   If you want to look at your declaration, that's

1   fine.

2   A.   The combination of the appliance, the

3   microprocessor controller, and the RF communication

4   system would be the -- the element that corresponds

5   to the premises system, a device, equipment,

6   et cetera.

7   Q.   Okay. Now, that is -- is that the same

8   device that you're calling a control device, the

9   first control device?

10   MR. HOLLOWAY: Objection. Form.

11   THE WITNESS: That's the device I'm

12   calling the premises device.

13   Q.   (By Mr. Ritcheson) Do you understand

14   the -- the term "dependent claim"?

15   A.   Yes.

16   Q.   Okay. Is it your understanding that a

17   dependent claim includes limitations from another

18   claim?

19   A.   It would include the limitations in the

20   primary claim, the independent claim.

21   Q.   And in this case --

22   A.   Claim 1 is an independent claim; Claim 12

23   is a dependent claim.

24   Q.   Depending from Claim 1?

25   A.   Yes.

1   Q.   So in Claim 1, we've got a first control

2   device that generates a signal to control -- and I'm

3   alighting this -- a premises appliance --

4   MR. HOLLOWAY: Objection. Form.

5   Q.   (By Mr. Ritcheson) -- is that correct?

6   MR. HOLLOWAY: Same objection.

7   THE WITNESS: Yeah. Control device --

8   well, we have a first control device --

9   Q.   (By Mr. Ritcheson) Yes.

10   A.   -- we have a second control device, and

11   then we have a third control device.

12   Q.   Yes.

13   With respect to the first control device,

14   it's true that the first control device generates or

15   transmits a signal to a premises appliance, for

16   example?

17   MR. HOLLOWAY: Objection. Form.

18   THE WITNESS: Well, it at least one of

19   generates and transmits a first signal for at

20   least one of activating, deactivating,

21   disabling, and reenabling at least one of a

22   premises system, a premises device.

23   So that implies that it is different from

24   a premises system.

25   Q.   (By Mr. Ritcheson) Okay.

1   A.   The premises system in Claim 1 is also

2   held to be a control device. The premises system, I

3   think, would be the third control device, which is

4   held to be a control device.

5   Q.   So with respect to Claim 12, it says that

6   the premises device is a monitoring device.

7   Do you see that?

8   MR. HOLLOWAY: Objection. Form.

9   THE WITNESS: "Where the third control

10   device is a monitoring device." So when --

11   Q.   (By Mr. Ritcheson) Where do you see,

12   "Where the third control" --

13   A.   Well, it refers back -- "the apparatus of

14   Claim 1." The apparatus of Claim 1 consists of

15   three control devices.

16   Q.   And -- and an appliance?

17   MR. HOLLOWAY: Objection. Form.

18   THE WITNESS: I don't think Claim 1

19   uses -- does Claim 1 use the term "appliance"?

20   Q.   (By Mr. Ritcheson) It's the third-to-last

21   line.

22   A.   Oh, "premises appliance."

23   Q.   Okay.

24   A.   Yeah. Okay. So the premises appliance.

25   So you're asking about Claim 12. "The

1   apparatus of Claim 1, wherein the at least one

2   of" -- this is -- the sentence is obscure --

3   "wherein the at least one of a premises system, a

4   premises device, a premises equipment, a premises

5   equipment system, and a premises appliance, is a

6   monitoring device for at least one of" -- multiple

7   purposes.

8   So we've identified the appliance of Claim

9   1, and I believe the intent of this very awkward

10   paragraph is to limit Claim 1 to one of the

11   components in which it's doing monitoring of various

12   parameters and, as a result of that monitoring, the

13   apparatus provides information regarding -- either

14   information -- either data and information that's

15   either recorded or read by the monitoring device.

16   So there is some sense of an appliance.

17   Q.   This is where the appliance is a

18   monitoring device; correct?

19   MR. HOLLOWAY: Objection. Form.

20   THE WITNESS: Yes.

21   Q.   (By Mr. Ritcheson) Okay. In Koether,

22   what is the monitoring device of Koether?

23   MR. HOLLOWAY: Objection. Form.

24   THE WITNESS: The monitoring device -- I

25   don't really understand Koether as having a

1   single monitoring device.

2   Q.   (By Mr. Ritcheson) I agree.

3   MR. HOLLOWAY: Is that a question?

4   MR. RITCHESON: Nope.

5   Q.   (By Mr. Ritcheson) Thank you.

6   With respect to Claim 15, your

7   understanding is that the PTAB is -- declined to

8   institute a review of Claim 15; is that correct?

9   A.   I believe that's -- that's the way -- I'm

10   not a lawyer, but that's what it -- that's what --

11   my reading of the -- of this document, this

12   institution decision. Well, it says they don't

13   believe there's a high likelihood of success in a

14   challenge to 15.

15   Q.   Where are you reading from?

16   A.   On page 14 of the institution decision,

17   the first paragraph, the Court says, "...we have

18   reviewed the proposed ground challenging Claim 15 as

19   obvious over Koether and level of ordinary

20   skill...," and the conclusion is, "...we are not

21   persuaded, that petitioner has established a

22   reasonable likelihood of prevailing in its challenge

23   to Claim 15 on this ground."

24   I don't know whether that means they've

25   declined -- they've declined to consider Claim 15 or

1   simply that their preliminary judgment is they're

2   not persuaded as of yet that Claim 15 is disputable.

3   Q.   You understand that Claim 15 is not within

4   the 1760 proceeding?

5   MR. HOLLOWAY: Objection. Form.

6   THE WITNESS: I don't know whether that's

7   the case or not. If you tell me -- is it the

8   case?

9   Q.   (By Mr. Ritcheson) I'm just wondering

10   what your understanding is.

11   MR. HOLLOWAY: Same objection.

12   THE WITNESS: I'm unsure.

13   Q.   (By Mr. Ritcheson) Okay. Drawing your

14   attention to '130, the '130 patent, Claim 17, can

15   you read that to yourself?

16   A.   Okay. I've read it.

17   Q.   So is it your understanding that this is

18   also a dependent claim depending from Claim 1?

19   A.   It says -- yes, begins with, "The

20   apparatus of Claim 1...."

21   Q.   And this claim requires that the first

22   control device generate a confirmation or

23   notification signal; is that correct?

24   A.   That's correct.

25   Q.   And this signal is to provide information

1   regarding, and then there's a list of -- of events;

2   correct?

3   A.   That's correct.

4   Q.   With respect to your -- your declaration,

5   you say -- and it's the first time that I saw it in

6   your declaration, which is why it jumped out at me.

7   I believe it's -- paragraph 42 and 43 deal

8   with Claim 17; is that accurate?

9   MR. HOLLOWAY: Objection. Form.

10   THE WITNESS: Paragraph 42 begins with the

11   word "claim" and the number 17, yes.

12   Q.   (By Mr. Ritcheson) And 43 also relates to

13   Claim 17?

14   A.   Yes, it does.

15   Q.   Okay. And the reason that it jumped out

16   at me is paragraph 42 doesn't have any citations to

17   the Koether patent, does it?

18   MR. HOLLOWAY: Object to the form.

19   THE WITNESS: It refers to -- paragraph 42

20   refers to Koether's discussion of, for example,

21   the realtime control of the kitchen appliance

22   by the remote control center. So there's not a

23   specific -- there's not a specific reference,

24   there's a general reference to the Koether

25   discussion of the -- of that topic.

1   Q.   (By Mr. Ritcheson) With respect to

2   Koether, are you aware of -- do you know if the word

3   "confirmation" appears anywhere in that entire

4   patent?

5   MR. HOLLOWAY: Objection. Form.

6   THE WITNESS: "Confirmation"?

7   Q.   (By Mr. Ritcheson) Yep.

8   A.   I would have to look for the -- I didn't

9   look for the word "confirmation."

10   Q.   "Confirmation" or "notification," either

11   one. I've searched. I didn't find it.

12   MR. HOLLOWAY: Object to form.

13   THE WITNESS: "Notification" -- there's

14   bidirectional communication, and in my

15   experience as a designer of network protocols,

16   notification -- there's a common network

17   technique called automatic request repeat, ARQ,

18   in which --

19   Q.   (By Mr. Ritcheson) AR- --

20   A.   ARQ, automatic repeat request.

21   Q.   ARQ is automatic repeat request?

22   A.   Yeah.

23   Q.   ARQ?

24   A.   ARQ. You can look it up in Wikipedia.

25   Repeat request, yeah.

1   So -- in which a transmitter sends a unit

2   of information, a packet or a frame, to a receiver

3   and the receiver sends an acknowledgment saying that

4   it received it correctly, and it knows it received

5   it correctly because there's a checksum that's

6   computed on the transmitted packet before

7   transmission that allows the receiver to verify

8   correct reception.

9   Q.   And this says, "I received your message

10   with no errors."

11   A.   "I received your message without an

12   error," and there are some instances in which

13   there's a negative response that says, "I've

14   received a message, I think it's from you, but I

15   can't decode it."

16   And then there's another scenario in

17   which -- and you have a point to multipoint network

18   like this wireless network in Koether, where there's

19   no negative response, to where essentially the

20   negative response is the absence of a positive

21   response.

22   And so because wireless networks have a

23   high error rate -- the typical error rate for an

24   Ethernet, for example, is one lost frame out of

25   every million frames, but in a Wi-Fi network, for

1   example, the typical error rate is about one lost

2   frame out of 100.

3   So Wi-Fi has an automatic repeat request

4   designed into the structure of Wi-Fi, so you can't

5   really communicate across it -- a Wi-Fi network

6   without getting notifications from the receiver of

7   the message it received when it received -- whenever

8   it receives it correctly.

9   And so it's so basic to the notion of

10   wireless networks that when someone describes a

11   network that is bidirectional and wireless, I would

12   assume that unless he says otherwise, there's a

13   system of acknowledgments.

14   Q.   Is that what you're relying on to support

15   the declaration that you've provided in this 1760

16   proceeding?

17   A.   That's part of it. That's part of it, and

18   the other part is the notion of sending queries,

19   asking for status, and then getting a response to

20   the query that asked for status.

21   So when I -- if the controller sends a

22   message to the appliance that disables it, I would

23   expect a -- an acknowledgment at both the network

24   and the application layer saying it's been disabled.

25   But in the absence of that, the controller would be

```
 1      able to find out that the device had disabled itself

 2      in response to that command by querying its status

 3      subsequently.

 4           Q.    So you have two instances --

 5           A.    Three.

 6           Q.    Sorry?

 7           A.    Three instances.

 8           Q.    Tell me.  The query, the ARQ --

 9           A.    The network-level acknowledgment that the

10      message was received correctly, a potential concrete

11      response from the device saying that it is now going

12      to disable itself, and then a third, which would be

13      a request for status that either doesn't get a

14      response or gets a response that says the device has

15      been disabled.

16                And each of these would occur without

17      human intervention.  Each of these could be an

18      automatic.

19           Q.    That's fine.  There's no question.

20                So the network-level message, is that also

21      the ARQ?  Is that the same thing?

22           A.    Yes.

23           Q.    Okay.  And then the response to status?

24           A.    Would be a response to a --

25           Q.    Okay.  Got it.
```

1   A.   Well, it's a response to a control

2   request, to a command.

3   Q.   And then, I'm sorry, what was the third

4   one?

5   A.   A non-response or an elicited response.

6   Q.   And that's different than a query as to

7   status?

8   A.   No, it's a query as to status. That's a

9   query as to status.

10   Q.   So I still end up with two, query as to

11   status and ARQ.

12   A.   The third one is a response to the

13   request, an application layer response to the

14   request to disable from the device saying, "I am now

15   going to disable myself."

16   Presumably, a disabled system is not

17   capable of notifying that it is now disabled. The

18   closest you could get to that in the real world

19   would be the device saying, "I'm now going -- I'm

20   going to try to disable myself."

21   Q.   Okay. With respect to ARQ, where in

22   Koether is ARQ disclosed?

23   A.   He doesn't go into that level of detail on

24   describing the wireless network, because what he's

25   doing is he's trying to describe an application that

1   uses a wireless network.

2   Q.   The application --

3   A.   So he has references. There's a textbook

4   that he references that describes the design of

5   wireless networks, and in that textbook, which I

6   haven't read, I'd be willing to bet that ARQs are

7   described in that textbook.

8   Q.   But it's true, isn't it, that in

9   paragraphs 42 and 43, none of what you just

10   testified to is present in there, is it?

11   A.   In those particular paragraphs?

12   Q.   Right.

13   A.   I wouldn't say that. He describes the

14   method of requesting status from a device.

15   Q.   Let's have a look at that. What citation

16   are you looking at?

17   A.   Where does Koether describe the

18   diagnostic -- the capability for the controller to

19   request status?

20   Q.   No, where did you point the PTAB to in

21   paragraph 43?

22   MR. HOLLOWAY: Objection. Form.

23   THE WITNESS: Well, this follows a

24   discussion of the status monitoring and status

25   requesting, so I didn't -- there's not a

1   repetition of -- okay. So there is, however,

2   in 43, a reference to Column 13, lines 2

3   through 8, of Koether.

4   Q.   (By Mr. Ritcheson) Okay. And that

5   section, 2 through 8, reads, "Inasmuch as controller

6   140 and thus control center 170 knows whether the

7   appliance is in idle or cook mode, the appliance can

8   judiciously be turned off without affecting the

9   operation of the appliance."

10   A.   Yes.

11   Q.   "Alternatively, base station 105 may place

12   the appropriate kitchen appliance in the power cycle

13   'off' state and inform control center 170 of its

14   actions."

15   Did I read that correctly?

16   A.   Yes.

17   Q.   And that's the section you're relying on?

18   MR. HOLLOWAY: Objection. Form.

19   THE WITNESS: Yes.

20   Q.   (By Mr. Ritcheson) Any other section of

21   Koether that is identified by you in paragraph 43?

22   A.   I also refer to Column 4, lines 60 through

23   63, and to Column 12, lines 5 through 8.

24   Q.   And those are at the bottom of that

25   paragraph; correct?

1   A.   Yeah, the last line.

2   Q.   Okay. And if we look at those sections,

3   is there an explicit discussion of the control

4   device, the first control device, sending a

5   notification or confirmation signal?

6   MR. HOLLOWAY: Objection. Form.

7   Q.   (By Mr. Ritcheson) We can start with

8   paragraph -- Column 4.

9   MR. HOLLOWAY: Same objection.

10   THE WITNESS: Column 4 --

11   Q.   (By Mr. Ritcheson) I believe that's,

12 "Moreover, such controllers may include built-in

13 intelligence sensing and diagnostic equipment, which

14 coupled through an interface board, detect and

15 identify various types of failures."

16   Did I read that correctly?

17   A.   Yes.

18   Q.   And then Column 12, lines 5 through 8 is

19 part of a sentence. "In accordance with principles

20 of the invention, it is further contemplated that

21 the control center may, if desired, alternatively

22 control in realtime the peak power demand of the

23 kitchen appliances...."

24   Did I read that portion of the sentence

25 correctly?

1   MR. HOLLOWAY: Objection. Form.

2   THE WITNESS: Yes.

3   Q.   (By Mr. Ritcheson) Other than those two

4 passages, is it true that no other support for your

5 position is taken in paragraph 43 of your

6 declaration?

7   MR. HOLLOWAY: Objection. Form.

8   THE WITNESS: It's true that paragraph 43

9   only includes three specific references to the

10   Koether patent. Those would be the Column 13

11   reference, the Column 4 reference, and the

12   Column 12 reference.

13   But it is also true that the discussion of

14   notifications that spans paragraph 42 and 43

15   refers to the discussion of realtime control of

16   kitchen appliances by the remote control

17   center, as well as the bidirectional

18   communication between the elements of the

19   Koether system.

20   Q.   (By Mr. Ritcheson) Okay.

21   A.   So the Koether system enables the control

22 center to inquire about status, to query the device

23 about status -- the appliance device, the appliance

24 controller, about status and receive a variety of

25 information, which is really what I say in my

1   concluding sentence, that the -- "...it would have

2   been obvious to a person of ordinary skill in the

3   art prior to [the priority date] to incorporate such

4   a confirmation signal from the kitchen appliance

5   controller upon such an occurrence given the express

6   sensing and diagnostic capabilities of the

7   controllers, as well as the stated benefits,"

8   et cetera.

9   Q.   Okay. I didn't have any question, but I

10   appreciate you reading that again. I was pausing to

11   look at the claim again.

12   Now, those claims that we've discussed I

13   think are claims where you have said that the

14   disclosure of Koether, when combined with the

15   knowledge of one of ordinary skill in the art, is

16   sufficient to render the '103 [sic] claims obvious;

17   is that correct?

18   MR. HOLLOWAY: Objection. Form.

19   THE WITNESS: '103 claims?

20   Q.   (By Mr. Ritcheson) '130. Sorry.

21   MR. HOLLOWAY: Same objection.

22   Q.   (By Mr. Ritcheson) Let me just -- that

23   was botched up. I apologize.

24   With respect to Claims 1, 8, 12, 17, 98,

25   145, and 149, your position is that Koether,

1   combined with the knowledge of one of ordinary skill

2   in the art, renders those claims obvious; is that

3   correct?

4   MR. HOLLOWAY: Objection. Form.

5   Can you read that back one more time?

6   Sorry.

7   (Whereupon, the record was read by the

8   reporter as follows:

9   Question, "With respect to

10   Claims 1, 8, 12, 17, 98, 145, and 149, your

11   position is that Koether, combined with the

12   knowledge of one of ordinary skill in the art,

13   renders those claims obvious; is that

14   correct?")

15   MR. HOLLOWAY: Same objection.

16   THE WITNESS: My position is that Claims

17   1, 8, 12, 15, 17, 98, and 145 and not 149, as

18   you put in your question, are rendered obvious

19   to a person of ordinary skill in the art by

20   Koether, in combination with the knowledge that

21   I would expect a person of ordinary skill in

22   the art to have in the subject matter of the

23   claims. So I don't know about whether -- did

24   you mean to include 149 or is that --

25   Q.   (By Mr. Ritcheson) If you want to say not

1   149, that's fine.

2   MR. HOLLOWAY: Objection. Form.

3   MR. RITCHESON: If he says not 149 --

4   MR. HOLLOWAY: You know, I'm getting tired

5   of you just like blatantly making

6   misrepresentations --

7   MR. RITCHESON: About what?

8   MR. HOLLOWAY: -- and mistakes as actual

9   testimony. So --

10   MR. RITCHESON: You know what, I'm getting

11   tired of you interrupting, Clay, so keep your

12   mouth shut.

13   MR. HOLLOWAY: Well, you make comments

14   constantly and I have to ask you if you're

15   asking a question, and several times it's been

16   no.

17   MR. RITCHESON: You don't have to, and, in

18   fact, this whole thing you're doing right now

19   is inappropriate and you need to stop. Pretend

20   you're in court. Can you remember that?

21   MR. HOLLOWAY: I would make the same

22   objection on your questions that are really

23   statements.

24   MR. RITCHESON: Okay. You've got to stop

25   talking now.

1   MR. HOLLOWAY: Okay.

2   Q.   (By Mr. Ritcheson) Okay. Do you have an

3   opinion as to 149, Claim 149?

4   MR. HOLLOWAY: Objection. Form.

5   THE WITNESS: I don't believe I've offered

6   one. Did I offer one in my declaration.

7   Q.   (By Mr. Ritcheson) I'm asking you.

8   A.   I don't recall offering an opinion on 149.

9   Q.   Do you have any opinion as to whether

10   Claim 149 is invalid?

11   MR. HOLLOWAY: Objection. Form.

12   THE WITNESS: I haven't offered one.

13   Now, I did review Claim 149. On page 1 of

14   my declaration, in paragraph 2 I did list 149.

15   Q.   (By Mr. Ritcheson) I agree.

16   MR. RITCHESON: There's no question

17   pending, Clay. Don't throw your hands up.

18   MR. HOLLOWAY: Then don't talk. If he's

19   giving an answer, you don't need to say, "I

20   agree," or, "That's right."

21   MR. RITCHESON: If there is no question

22   pending, there is, by definition, no answer.

23   MR. HOLLOWAY: Well, that's --

24   MR. RITCHESON: Yes. It's called English;

25   all right? Okay. There's no question pending.

1   MR. HOLLOWAY: He was giving an answer.

2   MR. RITCHESON: There is no answer. I

3   asked him if he had an opinion as to 149.

4   MR. HOLLOWAY: You may continue your

5   answer to the question as to whether you have

6   an opinion on Claim 149.

7   Q.   (By Mr. Ritcheson) Have you expressed an

8 opinion in your declaration as to Claim 149,

9 Mr. Bennett?

10   MR. HOLLOWAY: Were you done answering the

11   question the first time?

12   THE WITNESS: I don't recall -- I mean, I

13   said I don't recall giving -- rendering an

14   opinion on 149, and looking through my

15   declaration, I don't see anything that

16   refreshes my memory on that.

17   Q.   (By Mr. Ritcheson) One way or the other?

18   A.   Well, let me keep paging through here.

19   So, no, I didn't offer an opinion on 149.

20 I said I was going to, but I didn't.

21   Q.   Okay. Thank you.

22   There are a number of claims that you

23 believe are obvious over Koether in combination with

24 another reference, I believe, called Crater; is that

25 correct?

1   A.   That's correct.

2   (Patent Owner's Exhibit 7 was marked for

3   identification.)

4   Q.   (By Mr. Ritcheson) Let's look at Crater,

5   which we've marked as Exhibit 7.

6   Are you familiar with that reference?

7   A.   Yes, I am.

8   Q.   Generally speaking, as you did for the

9   Koether reference, can you tell us what the Crater

10   patent is directed to?

11   A.   The Crater patent describes an integrated

12   control system that includes sensors, controllers,

13   storage media, and a communications module for

14   facilitating communication between control devices

15   and a web server.

16   Q.   How is Koether different from -- or is

17   Crater different from Koether?

18   MR. HOLLOWAY: Objection. Form.

19   THE WITNESS: The answer to that question

20   would be very long. I think a complete

21   analysis of how --

22   Q.   (By Mr. Ritcheson) Not thorough, just

23   from a high level.

24   MR. HOLLOWAY: Objection. Form.

25   THE WITNESS: At a high level, the utility

1   of the Crater patent in terms of prior art is

2   the -- it's very explicit in describing a web

3   server as a portion of a three-part control

4   system.

5   Q.   (By Mr. Ritcheson) Okay.

6   A.   There are references in -- there are

7   places where Koether gets very close to describing a

8   web server, but he doesn't use the term -- the terms

9   "Internet" and "web."

10   For example, he has an ISDN system and he

11   says "the ISDN," which is a digital telephony

12   system.

13   Q.   This isn't in Crater; right?

14   A.   No. I'm telling you what -- where -- the

15   boundary. You asked me the differences between the

16   two patents.

17   Q.   Fair enough.

18   A.   And so what Koether does is he describes

19   an ISDN system, which is a digital telephone

20   networking technology, and he says the ISDN system

21   could use X.25, and X.25 is a network-layer protocol

22   that is similar in function to TCP/IP.

23   Q.   It's an alternative to TCP/IP.

24   MR. HOLLOWAY: Object to form.

25   THE WITNESS: Yeah. And at the time in

1   the 1990s, especially in the early '90s, from

2   the early '90s to the mid '90s to the --

3   actually, to the time of the filing of these

4   patents, there was quite an active competition

5   going on in the networking community between

6   X.25 and TCP/IP in terms of deciding what the

7   future standard protocol would be for the

8   worldwide public network, digital data network.

9   And actually there was a lot of politics

10   in it. X.25 was preferred by the telephone

11   companies because it gave them a position of

12   control and TCP/IP was more preferred by

13   computer people because they believed it

14   allowed them greater flexibility for

15   experimentation, and then there was a third

16   effort called the Open Systems Interconnection

17   standards process that was sponsored by the

18   International Standards Organization, ISO, that

19   charted a middle ground where they proposed to

20   move forward with a network layer called the

21   connection-oriented network layer, CONS, that

22   was based on the design of X.25 and a

23   connectionless network layer, CLNS, that was

24   based on the datagram model that IP implements

25   and it also had been implemented in previous

1   networks such as Secloud and DECnet -- Secloud,

2   DECnet, and Xerox Network Systems, XNS.

3   And so when a networking person sees a

4   reference in the mid '90s to a system that says

5   it could use X.25 on top of ISDN, then that --

6   then I think the thought that would come to

7   mind is that, well, if it could use X.25, it

8   could also use TCP/IP, and if it uses TCP/IP,

9   then it would typically be a member of the

10   public Internet.

11   Q.   (By Mr. Ritcheson) So the question was:

12   How is Crater different? You seem to be

13   defending --

14   A.   So Crater very explicitly endorses TCP/IP

15   as the option of choice to perform the function that

16   could also be performed by X.25.

17   Q.   Any other differences between Crater and

18   Koether?

19   MR. HOLLOWAY: Objection. Form.

20   THE WITNESS: There are many other

21   differences, some major and some minor, but

22   the -- the primary significance of Crater is

23   that it's very explicit about web pages and the

24   Internet.

25   Q.   (By Mr. Ritcheson) Are they directed --

1   are those two references directed to different

2   industries?

3   MR. HOLLOWAY: Objection. Form.

4   THE WITNESS: Those two references?

5   Q.   (By Mr. Ritcheson) Crater and Koether.

6   A.   Well, you know, the question of how you

7   define an industry is always interesting, but if

8   we -- if -- one of the industry -- if the industry

9   in question is the control systems industry, then I

10   think they're both directed at the control systems

11   industry.

12   Koether is very obviously very

13   specifically directed at food service control

14   systems --

15   Q.   Right.

16   A.   -- but Koether -- the principles in the

17   system that Koether teaches are generally applicable

18   across an entire range of industries in which

19   control systems can perform a meaningful role.

20   Q.   I understand where you're trying to get.

21   I'm just trying to find out on a fundamental level

22   whether these patents are directed to different

23   industries.

24   Assuming for the sake of argument that

25   Koether is directed to the food services industry,

1   what is the industry that Crater is directed to?

2   MR. HOLLOWAY: Objection. Form.

3   THE WITNESS: Well, the title of the

4   Crater patent is, "Distributed interface

5   architecture for programmable industrial

6   control systems," so the industry that -- and

7   Crater was apparently an employee of Control

8   Technology Corporation, the assignee of the

9   patent. So this is directed at the industry

10   that provides control systems.

11   Q.   (By Mr. Ritcheson) And is it true that

12   Crater is directed to specific industrial

13   applications, such as, you know, hostile

14   environments like oil rigs?

15   MR. HOLLOWAY: Object to the form.

16   THE WITNESS: I don't think there is

17   anything in Crater that would preclude it from

18   being utilized across a general range of

19   industries.

20   Q.   (By Mr. Ritcheson) I didn't mean to

21   suggest preclude; I'm just asking if it was true

22   that it was directed to those specific types of

23   industrial applications?

24   MR. HOLLOWAY: Same objection.

25   THE WITNESS: I think it's directed at

1   industrial control systems generally. And the

2   reason that I think that is that in -- the

3   title of his patent uses the term

4   "architecture," and so architecture is a

5   synonym, more or less, for design or structure.

6   And the architecture of a control system tells

7   us how broad its application can be, and the --

8   rather than a specific use case.

9   And so you design a system according to an

10   architecture to allow it to expand and to be

11   improved upon and to become more robust than it

12   is, perhaps, in its initial embodiment. The

13   architecture has to have enough flexibility

14   designed into it to allow that to happen, and I

15   believe that's his intent. It's a very brief

16   patent. He doesn't try to confuse us with

17   excessive ornamentation and detailing, he

18   simply gives a straightforward description of a

19   control system that would utilize the Worldwide

20   Web.

21   Q.   (By Mr. Ritcheson) Right.

22   But looking at the --

23   MR. HOLLOWAY: Were you done with your

24   answer?

25   THE WITNESS: What?

1   MR. HOLLOWAY: Were you done with your

2   answer?

3   THE WITNESS: Yeah.

4   MR. HOLLOWAY: Okay.

5   MR. RITCHESON: Are you happy now?

6   MR. HOLLOWAY: If he was done with his

7   answer, I'm happy.

8   MR. RITCHESON: Well, then stop

9   interrupting.

10   THE WITNESS: Well, you interrupted me.

11   MR. HOLLOWAY: That's my point.

12   THE WITNESS: That's why he did it.

13   Q.   (By Mr. Ritcheson) No, you paused. It

14   was fairly --

15   A.   Well, I pause a lot.

16   Q.   Me too.

17   With respect to Crater, the very first

18   sentence in the "Background of Invention"

19   indicates -- or reads, "Sophisticated industrial

20   processes, such as oil refining, automobile assembly

21   or power generation, require the cooperative

22   execution of numerous interdependent tasks by many

23   different pieces of equipment."

24   Did I read that correctly?

25   A.   Yes, you did.

1   Q.   Do you think Crater was patentable when

2   the patent issued?

3   MR. HOLLOWAY: Objection. Form.

4   THE WITNESS: It's hard to say. I mean, I

5   haven't really looked at it -- I haven't really

6   examined it from that standpoint and I don't

7   have an enormous expertise in patentability.

8   I mean, most of what I learned about

9   patentability, frankly, came up in reading the

10   recent District Court decision on the '363

11   patent that deemed it unpatentable.

12   Q.   (By Mr. Ritcheson) Do you understand

13   there's a difference between patentability and

14   patent eligibility?

15   MR. HOLLOWAY: Objection. Form.

16   THE WITNESS: I can't say that I do, no.

17   Q.   (By Mr. Ritcheson) Let me ask it in a

18   different form.

19   A.   So were you asking me about

20   patentability --

21   Q.   Yes.

22   A.   -- or about patent eligibility?

23   Q.   Patentability. That is, for example,

24   is -- was -- in your opinion, was Crater novel?

25   MR. HOLLOWAY: Objection. Form.

1   THE WITNESS: I'm not aware of a prior

2   patent that addresses the use of the Worldwide

3   Web in a control system.

4   It strikes me as it would have been rather

5   obvious to use the Worldwide Web as a portion

6   of a control system in terms of the goals and

7   general aspirations that the designers of the

8   Web -- and I don't mean just Tim Berners-Lee,

9   but the people from the broader Internet

10   community who developed the RFC for HTTP/1.1.

11   It was -- some of the people I worked with at

12   Enterprise Integration Technologies worked on

13   that -- to develop that standard to improve the

14   original Tim Berners-Lee design for the Web

15   protocol into something that used network

16   resources more efficiently.

17   They had broad aspirations for the

18   application of web technology, so I think it

19   would have been a fairly -- it would have been

20   fairly intuitive for someone who was a student

21   or a practitioner of control systems to have

22   considered incorporating the web into the

23   control system in some fashion.

24   Q.   (By Mr. Ritcheson) Which is what you

25   stated in your declaration?

1   A.   Uh-huh (affirmative).

2   Q.   "Yes"?

3   A.   Yes.

4   Q.   With respect to the Internet, you have

5   some familiarity with the use of the Internet in

6   1996; correct?

7   A.   Yes.

8   Q.   Okay.

9   A.   I personally used the Internet and worked

10   on the design of Internet protocols since the mid

11   '80s.

12   Q.   Okay. So are you aware of any concerns

13   regarding the security of the Internet in 1996?

14   MR. HOLLOWAY: Objection. Form.

15   THE WITNESS: There were concerns about

16   the security of the Internet from the very

17   beginning that persist until this very day.

18   Q.   (By Mr. Ritcheson) In 1996, were you

19   aware of any teachings by any industry leaders that

20   suggested that the use of the Internet should be

21   avoided because it was insecure?

22   MR. HOLLOWAY: Objection. Form.

23   THE WITNESS: There were concerns about

24   the resiliency of the Internet in the 1990s

25   that were expressed by prominent figures such

1   as Bob Metcalfe, who predicted famously that

2   the Internet would rapidly grind to a halt

3   because it couldn't deal with congestion. Was

4   that in -- that may have been in the '80s.

5   There was an incident that occurred in

6   the -- in 1985 time frame called Internet

7   congestion collapse, in which the -- what

8   happened was the Internet -- when Internet --

9   TCP/IP and the public Internet was first rolled

10   out, the long-haul links were all provided by

11   ARPANET, by the ARPANET NCP in particular,

12   which is a communications -- it was called a

13   gateway at the time, we used the term "gateway"

14   and now we would call devices like that

15   routers -- as a communication processor that

16   interconnects sites that are distant from each

17   other.

18   And the ARPANET had a flow control

19   mechanism that prevented an ARPANET node

20   gateway from receiving more information than it

21   could process in any given unit of time, so it

22   was a self-limiting system with respect to

23   congestion.

24   But when people stopped using ARPANET

25   nodes to connect from -- oh, and the design of

1   ARPANET is very similar to X.25, as a matter of

2   fact. X.25 is based on the ARPANET design.

3   When the Lawrence Livermore National Lab

4   stopped using ARPANET to connect to the

5   Berkeley campus -- the Lawrence Livermore Lab's

6   in Livermore, California and Berkeley's some

7   70 miles away, more or less -- they discovered

8   a situation in which a -- the data link between

9   the two sites would slow to a crawl. So it was

10   a high capacity, had at least -- was at least a

11   T1 capacity, 1-1/2 megabit per second line,

12   maybe more, maybe BS3, and it would -- it would

13   crawl to a halt because data was being offered

14   to the data link so much faster than it could

15   process it that packets were constantly being

16   discarded.

17   And the response of those systems to a

18   lost packet when they didn't receive their

19   positive acknowledgment, the ARQ that I was

20   talking about earlier, it would immediately

21   resend the packet. And so if packets are being

22   lost because of congestion and then they're

23   being immediately resent, then the congestion

24   situation will never resolve because every- --

25   everyone who's lost a packet is slamming the

1   network with more traffic.

2   So the only way to actually resolve the

3   situation was to turn -- was to unplug the

4   computers from the network and reboot them so

5   that they came up in a state where they weren't

6   trying to retransmit a packet that had already

7   been -- had failed several times.

8   And so this is called Internet congestion

9   collapse, and so it was sort of a crisis in the

10   Internet engineering community and there were a

11   couple of proposals that were put forward for

12   how to resolve it, one by Ross, Jeng of DEC and

13   another by a fellow named Van Jacobson, who

14   worked at the Livermore lab, in which

15   essentially -- and the Jacobson approach won.

16   And so what he did was he developed a

17   software patch that went into BSD, and it

18   switches the operating system that most folks

19   were using on the Internet at this time -- this

20   is like '85 -- such that when a -- when a

21   computer started to transmit using TCP, that at

22   the beginning, it would go in -- begin in a

23   state called slow start and then it would

24   gradually ramp up the rate in which it

25   transmitted information in response to each

1   successful acknowledgment, and then if it

2   failed to get an acknowledgment, it would

3   radically reduce its transmission rate. So the

4   radical reduction in the transmission rate

5   allowed the congestion scenario to resolve.

6   And so this is one of the instances in

7   which it was found that the design of TCP/IP

8   was lacking in terms of -- of this one

9   particular scenario, congestion management, as

10   TCP/IP had not really been designed with the

11   intention of becoming the worldwide global

12   network that everybody and his brother, you

13   know, uses for everything.

14   But the response of the Internet community

15   was to improve the protocols. And so while

16   there were -- there were similar concerns --

17   the security was known to be weak in the early

18   days of the Internet. Security was known to be

19   weak at that time because the way you secure

20   endpoints on a network is through encryption

21   and authentication, and encryption is a highly

22   CPU-intensive activity and the CPUs that we had

23   to work with in the 1970s and '80s were so much

24   less powerful than the ones we have today that

25   while the computer scientists who designed the

1   Internet knew what was necessary to secure it,

2   they literally did not have the physical

3   computation resources available at a reasonable

4   price to do it.

5   But what's happened is as we've gone

6   along, we've been able to improve the security

7   by leaps and bounds from what it was initially

8   so that there's very -- today, for example, a

9   majority of the traffic that traverses the

10   public Internet is encrypted, and in 1996,

11   virtually none of it was encrypted.

12   I mean, even passwords would go across the

13   Internet in plain text, and that doesn't happen

14   anymore. It's pretty much impossible to find a

15   system that sends passwords in clear text.

16   So there have always been concerns about

17   security and there have been various efforts to

18   solve security as a -- not as an

19   industry-specific problem, but as a general

20   problem -- well, actually in both ways. The

21   banking industry has always been in the --

22   taken the leadership position on Internet

23   security.

24   Q.   (By Mr. Ritcheson) Are you familiar with

25   a Morgan Stanley report called the Internet report?

1   A.   No, I'm not.

2   Q.   Do you know if in 1996, X.25 was

3   considered to be more secure than the Internet?

4   A.   It was marketed as being more secure.

5   Q.   Why? I think I intuitively understand,

6   but I would love to know why.

7   A.   Well, it was a telephone company product,

8   so the telephone companies had a great deal of

9   control over the X.25. Certainly, the initial wave

10   of X.25 networks were all telephone company devised

11   and developed and supported.

12   And it was widely believed, certainly at

13   the time, that the scientists working at Bell Labs

14   knew more about networking than anybody else did. I

15   mean, they certainly believed that and there were a

16   lot of bright people working at Bell Labs in the

17   '80s and '90s, and they were probably -- probably

18   had more resources to work with. And the more

19   resources you have -- and it's a more centralized

20   system, so it was possible to exercise control over

21   points of the network and to limit the behavior of

22   bad actors.

23   Q.   What would have been the reason that you

24   would have combined Koether with Crater? What were

25   the -- what do you see as the advantages?

1   A.   Well, X.25 -- I mean, Koether uses --

2   teaches X.25 as a network layer protocol for the

3   distribution of his functions. And while X.25 was

4   very aggressively promoted by the phone companies,

5   X.25 is not as well distributed or as inexpensive as

6   TCP/IP is.

7   And so the -- the belief that -- if you

8   were inclined to believe that TCP/IP was going to

9   win over X.25 and you were inclined to believe that

10   the web was a truly transformative technology that

11   would soon be built into every device, then you

12   would be attracted to take the option -- the other

13   path that Koether refers to but doesn't explore,

14   which is to use the Internet and the web as the

15   vehicle for -- in which to incorporate the control

16   functions that he teaches. You'd be inclined to

17   follow Crater's advice on incorporating the web into

18   the -- or incorporating the control system into the

19   web.

20   For convenience, he -- Koether also -- he

21   discusses the formatting of messages and that the

22   messages that flow to the control center from the

23   base stations have to have a specific syntax and a

24   specific kind of formatting in order for them to

25   display on the screens in the control center.

1   And the question of the syntax that these

2   messages -- these operator-oriented messages had to

3   have a particular form of presentation is also

4   discussed in Crater. So they both talk about the

5   syntax of the messages that flow.

6   Q.   When you speak about a convenience, let me

7   drill into that a little bit, if you'll pardon the

8   pun.

9   Did more people in 1996 have phone lines

10   or Internet connections?

11   A.   In 1996, way more people had phone lines

12   than had Internet connections.

13   Q.   When did Internet become more -- as

14   popular as it is today? Is there something that

15   happened that caused it to become --

16   A.   Well, there were two things that happened

17   that made the Internet -- that transformed the

18   Internet from its original incarnation in which it

19   was a research network to the general-purpose

20   network that it is today.

21   And the first of those was a decision by

22   the Clinton administration to decommission NSFNET,

23   which is the backbone that the research Internet

24   used. It was encumbered by an acceptable use policy

25   that forbade the use of -- forbade commercial

1   activities.

2   So in decommissioning NSFNET, the Clinton

3   administration opened the Internet to the public

4   because it could only run on commercial facilities.

5   Q.   When was that?

6   A.   This was in the 1994, '5, '6 -- mid '90s.

7   And the plan was -- this was when Al Gore

8   is alleged to have said he invented the Internet.

9   What he was talking about is that he took the

10   initiative within the Clinton administration to

11   enact this policy of making the Internet open to the

12   public and he did secure some funding for -- you

13   know, for that to happen, so he's kind of been

14   maligned for that. So there was a policy decision

15   that was made by the White House and accepted by the

16   Congress.

17   There was a technology that made something

18   like the Internet necessary, and that was the

19   personal computer. Because before, people -- if you

20   don't have a computer in your home, you certainly

21   don't -- aren't going to achieve much benefit from

22   having an Internet connection --

23   Q.   Right.

24   A.   -- which the Internet being a

25   computer-oriented network, unlike the telephone

1   network.

2   Q.   Right.

3   A.   And the third thing was the advent of --

4   actually, the third thing is the advent of broadband

5   networking capabilities like DSL and cable modem and

6   high-speed wireless that also made it more useful by

7   increasing the bandwidth.

8   Q.   And if we put sort of a timeline of that

9   together, what are we talking about in terms of when

10   those events happened?

11   A.   Well, so the Worldwide Web was invented in

12   the very early '90s and could really only be used in

13   research institutions because nobody else was

14   connected to the Internet.

15   The Clinton administration decision was

16   made around -- let's say they started talking it up

17   publicly around '93.

18   The personal computer, the IBM personal

19   computer was introduced in 1981 and was initially

20   designed to be a home computer, achieved its first

21   wave of popularity actually as a business computer

22   and then -- because it's too expensive for people to

23   have at home. The original design used a television

24   display and had 40 characters on a line and used an

25   audiotape for storage medium, didn't have a floppy

1   disk.

2   They became cheaper, so they became more

3   plentiful, so more people had them in their homes

4   and more people were dialing up to services like

5   CompuServe and the Source and America On-Line and

6   doing networking kinds of things.

7   And then those services ultimately opened

8   up to the public Internet after the White House

9   decision.

10   So America On-Line, I mean, that would

11   have been -- and CompuServe -- I mean, I got my

12   first Macintosh in 1984 and the first thing I did

13   was connected it to CompuServe with a modem.

14   Q.   So we've talked a little bit about Crater

15   and Koether together.

16   What are the disadvantages that would come

17   from combining those?

18   MR. HOLLOWAY: Objection. Form.

19   THE WITNESS: The security thing would be

20   a disadvantage.

21   Q.   (By Mr. Ritcheson) And any other

22   disadvantages that you can think of?

23   A.   Not in a meaningful sense. I think

24   actually -- even if you -- if you built a system

25   like the Koether system, even if you didn't want to

1   be part of the public Internet for security reasons,

2   you might want to have a private Internet like the

3   one that Ford Aerospace built in the '80s, when Ford

4   Aerospace wanted to use TCP/IP to connect all of

5   their facilities. But because it was a commercial

6   activity, there was -- they couldn't use the same

7   facilities that the actual Internet used, the

8   NSFNET, so they leased their own lines and simply

9   used TCP/IP to run a private network.

10   Q.   Thinking about those sorts of options, let

11   me ask you a question this way: What cost impact

12   would there be to introducing -- in 1996 to

13   introducing -- or combining, rather, Crater with

14   Koether?

15   A.   It would be less expensive to use a

16   combination of Crater and Koether than to use ISDN

17   and a strictly closed network.

18   Q.   That would include the costs of a leased

19   line?

20   A.   The leased line and the equipment, the

21   interconnection equipment to get you on the -- ISDN

22   coverage was pretty spotty.

23   I would think as a designer, the primary

24   benefit of going with the web was the fact that it

25   made user interface design very easy.

1   So the -- in the -- in the mid to late

2   '90s and early 2000s, I did a lot of contract

3   programming work involving the creation of network

4   diagnostics and equipment diagnostics. I worked for

5   companies like Cisco and -- 3Com and Cisco and

6   Network Equipment Technologies.

7   And at -- the system that I created for

8   Network Equipment Technologies, I used HTML to lay

9   out the operator screens that the diagnostic ran

10   under, just because it was easier to describe those

11   screens with HTML and use the tools for page

12   creation that had been created for the web than to

13   code all that stuff by hand, which is the way we

14   would have done it before the web.

15   Q.   How important is user interface to

16   Koether?

17   MR. HOLLOWAY: Objection. Form.

18   THE WITNESS: It's sort of an open-ended

19   question, isn't it? Certainly, user interface

20   is part of the system. He describes the

21   requirements of user interface, of how to

22   implement it in terms of formatting the

23   messages and that the messages have to have a

24   particular syntax, but it's not a teaching on

25   what makes one user interface preferable to

1   another.

2   Q.   (By Mr. Ritcheson) Is the -- is the --

3   the user that is interfacing with the Koether system

4   is an employee of the -- the rental company --

5   MR. HOLLOWAY: Objection. Form.

6   Q.   (By Mr. Ritcheson) -- am I right?

7   A.   Koether describes a number of different

8   users. I think even a franchise owner is one of the

9   users that he -- so you have people that work in the

10   kitchen, people that work at the central office that

11   are monitoring a number of different kitchens, and

12   he even has franchise owners, if I'm not

13   misremembering that.

14   Q.   Let's look back at Koether.

15   A.   So in the background of the invention,

16   Column 1, Koether mentions a concern about a labor

17   shortage and the low efficiency of people in the

18   food service industry to perform the tasks that are

19   essentially necessary for just about any industry,

20   that aren't specific to food service, that when

21   they -- he seems to suggest that once people in the

22   food service industry get away from simply preparing

23   food, their efficiency drops and they're 20 percent

24   as efficient as they might be. So his concern is

25   about work allocation, primarily, so he devised a

1   system to allocate labor more effectively for this

2   industry.

3   And he -- in that connection, he -- I do

4   recall that he described a number of different

5   users. So on -- in paragraph -- in Column 2, line

6   60, he has some -- so line 63, "Advantageously, this

7   allows service personnel as well as control center

8   operators" to perform various functions. So --

9   Q.   I'm not seeing the user.

10   A.   Well, I would consider those personnel to

11   be users.

12   Q.   Oh. Why do you understand that to be

13   true? It says that "The service" -- I mean,

14   continuing on, "[The] service personnel may request

15   the control center to generate and transmit various"

16   messages. I just -- it's a minor point, but I'm

17   trying to figure out who the intended user is of the

18   Koether system. It seems to be the control -- the

19   control center --

20   A.   I remember reading a paragraph

21   specifically on your -- on your question.

22   Q.   Okay.

23   A.   I have to -- and it wasn't something I

24   opined on --

25   Q.   Right.

1   A.   -- so I don't have a specific reference.

2   I have to search for it.

3   Q.   I'm with you.

4   A.   But it's my understanding that -- it's my

5   recollection, anyway, that Koether -- Koether refers

6   to a number of different users --

7   Q.   Okay.

8   A.   -- including -- including, I do recall, a

9   reference to franchise owners. If I had -- if I

10   could do a text search for "franchise."

11   Q.   I did a text search for "franchise" and

12   it's not coming up.

13   A.   Oh, really?

14   MR. HOLLOWAY: Objection. Form.

15   Q.   (By Mr. Ritcheson) Is there something

16   else? Let me try "owner."

17   A.   But I would -- you know, look at his

18   diagrams. I mean, he's got pictures of terminals,

19   and my assumption is that anywhere where you have a

20   terminal, you have a user.

21   Q.   I concede that there's a user somewhere.

22   My question --

23   A.   So he has a terminal that's attached to a

24   base station and he has another terminal that's

25   attached to the control center, and we also --

1   Q.   Where are you looking at?

2   A.   He also describes people walking around

3 with these handheld devices --

4   Q.   Right.

5   A.   -- that are in the kitchen.

6   Q.   Right. But they're not connected via the

7 Internet; right?

8   A.   Yeah, it's unclear.

9   MR. RITCHESON: All right. Why don't we

10   take a break. Maybe if you have a chance, you

11   can have a peek and see if you can find the

12   section you're referring to. I didn't

13   immediately see it and I'm curious if we can

14   tie a bow around it.

15   MR. HOLLOWAY: Objection. If you want to

16   do it on the record, that's fine.

17   MR. RITCHESON: Okay. Stay on the record.

18   MR. HOLLOWAY: So do you want him to look

19   for this?

20   MR. RITCHESON: Sure.

21   MR. HOLLOWAY: Okay. He wants you to find

22   the section that talks about the multiple

23   users.

24   THE WITNESS: Okay. The system primary --

25   the most common references I find users in

1   referring to the portions of this -- of the

2   Koether patent that precede the recitation of

3   claims address service personnel.

4   Q.   (By Mr. Ritcheson) Where are you pointing

5   to?

6   A.   Well, he talks -- in Column 2, line 2,

7   "Maintenance and repair, once initialized, are

8   monitored...." So those are -- that maintenance and

9   repair are performed by maintenance and repair

10   people, who are dispatched by the system.

11   He says in Column 2, lines 32, 33, the

12   following, "Most of the functions are automatically

13   controlled by the control center, but may also be

14   performed manually by a control center operator."

15   The control center operator is one of the users that

16   is described as using the system.

17   We have service personnel again on line

18   56, service personnel and control center operators

19   in the previous lines that I referenced at 66 or so

20   following.

21   Then there is -- there's some discussion

22   of the kitchen personnel.

23   Q.   Where?

24   A.   Column 6, lines 47, and following we have

25   a -- well, line -- beginning with line 49, "Data

1   transmitted through communication controller...can

2   be displayed on a communication display...The

3   display controller...is provided with a map display

4   which displays information regarding the kitchen

5   appliances in a graphical manner" -- graphical

6   manner the way a web page might -- "preexisting maps

7   of arbitrarily large" -- so it's Google Maps circa

8   1996 with the location so that people could be

9   dispatched to it.

10   (Thereupon, there was an interruption in

11   the proceedings.)

12   THE WITNESS: Column 10, line 1,

13   "Referring to Figure 8 on-site repair is

14   enhanced through the...portable" -- so there's

15   a user there, the portable -- the user of the

16   portable device that interrogates the system

17   and gets various information so it helps the

18   repair person do their thing.

19   We have -- also, when we drop down here to

20   lines -- well, lines 53 and following, we're

21   talking about transfers of funds from the

22   customers' and subscribers' financial

23   institution to the service agency. I don't

24   know that there's a -- if that really means

25   that the -- the customers' or the subscribers'

1   accounting people are users. I mean, they're

2   sort of implicated. There's money transfers

3   taking place that would otherwise have to be

4   done immediately by humans. So I guess you

5   wouldn't technically call them users.

6   Q.   (By Mr. Ritcheson) Anything else?

7   A.   So -- and there is in here -- somewhere

8   there's -- when the system has decided that a piece

9   of equipment in the kitchen is defective, it puts up

10   a notice to the kitchen personnel not to use that

11   appliance. I forget where I saw that, but it's in

12   this portion that precedes the claims.

13   Q.   Anything else?

14   A.   The discussion of cooking profiles leads

15   me to believe that the --

16   Q.   Where are you looking?

17   A.   Cooking profiles are, for example,

18   mentioned in Claim 18, where a cooking profile can

19   be -- can be modified -- cooking profiles are

20   mentioned maybe a half dozen times, if not more, in

21   this -- in the Koether patent, suggests that when

22   a -- when a kitchen personnel is using an appliance

23   that has had a cooking profile installed in it,

24   unbeknownst to the user, they're actually using the

25   system, because the cooking profile would be

1   controlling the device.

2   So presumably -- there's not much detail

3   on what a cooking profile is, but if it's what I

4   think it is, it's like the "popcorn" button on a

5   microwave that -- you know, that just runs the

6   microwave for some period of time that it thinks is

7   correct for cooking popcorn. So I'm using a cooking

8   profile every time I punch that button.

9   But, yeah, I think actually the best

10   answer is that as the diagrams -- in every place

11   where there's a terminal in a diagram, there's a

12   user.

13   Q.   Okay.

14   A.   So the overview diagram, the Diagram 1,

15   Diagram -- I mean Figure 2, Figure 3. Figure 4 is a

16   graphical description of the map with a location,

17   which would be used by the service personnel.

18   Q.   When we're talking about the display

19   controller 220, where is that located? That's on

20   Figure 3. I think you referenced it earlier.

21   A.   This is in the control center.

22   Q.   And the terminals 185 are also in the

23   control center?

24   MR. HOLLOWAY: Objection. Form.

25   THE WITNESS: Yeah. In Figure 1, we have

1   a terminal 185 that it has a direct line to the

2   control center, and in Figure 3 we have

3   terminals 185 that are on a local area network

4   that attaches to a communication controller and

5   a display controller.

6   MR. RITCHESON: Okay. All right. Why

7   don't we take a break.

8   (Thereupon, there was an interruption in

9   the proceedings.)

10   Q.   (By Mr. Ritcheson) All right. Let's

11 continue with Claim 10 of the '130 patent.

12   I believe the portion of your -- you treat

13 them together, 10 and 119, I believe, in

14 paragraph 52 of your declaration; is that correct?

15   A.   Let me get the right document here.

16   Yep. Paragraph 52?

17   Q.   Yeah. And I think that deals collectively

18 with Claims 10 and 119.

19   A.   Yeah.

20   Q.   And in this case, if you turn to -- I'm at

21 119 of the '130 patent so that you can actually see

22 the language that's involved. I have that at

23 Column 95.

24   A.   Okay.

25   Q.   And this is a dependent claim depending

1   from Claim 98; correct?

2   A.   Yes.

3   Q.   All right. Seems to be a similar

4   configuration of three control devices.

5   A.   But this is where the roles have been

6   reversed, and so the first control device is the

7   thing that used to be called the third control

8   device.

9   Q.   Okay. So the first control device is used

10   for activating the premises equipment?

11   A.   It's the control center.

12   Q.   You sure?

13   A.   Wait a minute. No, no. It's at the

14   premises.

15   Q.   Okay.

16   A.   Well, it's capable -- yeah, capable of

17   operating on a premises device. Let me see. You

18   can't ever take anything for granted.

19   Q.   Yeah, right. All right.

20   A.   Oh, yeah, and the third control device is

21   at the remote location. So, yeah, the first one is

22   at the premises and then the intermediate system is

23   some unknown location and the third is remote, is

24   basically the control center.

25   Q.   Okay.

1   A.   And so when you get to --

2   Q.   119?

3   A.   -- 119, we've presumed all of that, and on

4   the premises we have a video recording device

5   instead of some other kind of sensor, video

6   recording device and a camera -- oh, one of -- oh,

7   one of A and B. It would have been easier just to

8   say one to be either A or B, but that's what we

9   have, either video recording device or camera for

10 obtaining video information at the premises.

11   Q.   Okay.

12   A.   Yeah.

13   Q.   And that feature -- that is, the video

14 recording device -- is not in Koether; correct?

15   MR. HOLLOWAY: Objection to form.

16   THE WITNESS: Koether -- Koether has the

17   typical kind of open-ended claim that -- what

18   he's describing is an architecture that is

19   built on certain principles, and he's given us

20   one embodiment of it.

21   But if we substitute in a video camera for

22   a temperature sensor, we haven't really changed

23   the principles in the architecture; we've just

24   changed the embodiment.

25   Q.   (By Mr. Ritcheson) Right. And I probably

1   asked a poor question, but it seems, from my reading

2   of your declaration, that you're adding Crater to

3   Koether in order to get Claim 119.

4   Am I misreading that?

5   MR. HOLLOWAY: Objection. Form.

6   THE WITNESS: It is kind of a belt and

7   suspender situation. I think Koether actually

8   covers 119, but the addition of Crater covers

9   it twice.

10   Q.   (By Mr. Ritcheson) And I don't know this.

11   In your report for 119, do you rely solely on the

12   combination of Koether and Crater?

13   A.   Knowledge of person of ordinary skill of

14   the art is also something that my report's based on.

15   Q.   Okay. I'm sorry. It's the end of the

16   day. I'm asking bad questions.

17   My reading of your declaration is that

18   Claim 119 is addressed only in paragraph 52.

19   Is that accurate?

20   MR. HOLLOWAY: Objection. Form.

21   THE WITNESS: Paragraph 52 addresses Claim

22   119 more directly than the rest of my report

23   does.

24   Q.   (By Mr. Ritcheson) I mean, I'm trying to

25   pin this down.

1   A.   No, I don't think there's a specific

2   reference to 119 in my report other than in

3   paragraph 52.

4   Q.   Okay. And paragraph 52 relies on Crater

5   in order to provide the video --

6   A.   In order to make the -- in order to

7   make -- oh, go ahead and ask your question. I'm

8   sorry. I interrupted you.

9   Q.   No, it's okay.

10   A.   Go ahead and ask the question.

11   Q.   -- to add the camera for obtaining video

12   information or video recording device; correct?

13   A.   I rely on Crater to make that crystal

14   clear. The video -- I say Crater teaches the --

15   expressly teaches the transmission of realtime video

16   to the monitoring station, because Crater's very

17   heavy on the multimedia aspect. But it is

18   multimedia for a purpose, it's not entertainment

19   multimedia, so Crater, as I explain towards the end

20   of -- on page 25 on the third line, that he has a

21   motivation for this. The reason that he wants video

22   at the premises is for monitoring purposes.

23   So the video camera enables the personnel

24   in the control center to be able to see what's going

25   on in the monitored station, which is, you know,

1   additional information to what they would know with

2   the Koether system as it's described.

3   Q.   So why would you combine -- why would you

4   add Crater to Koether?

5   MR. HOLLOWAY: Objection. Form.

6   THE WITNESS: Because Crater mentions the

7   word "video." 119 tries to distinguish itself

8   from the other claims by mentioning video.

9   But video is a particular -- it's a

10   sensor. A video camera is a sensor, just like

11   a temperature sensor is a sensor, only instead

12   of sensing heat, it senses light.

13   So if you design the architecture of the

14   system that enables you to sense temperature,

15   it's a fairly trivial modification of that

16   system to have it sense light.

17   Q.   (By Mr. Ritcheson) In the smart kitchen

18   environment, why would you want to have -- I could

19   understand why you want to have appliances that you

20   could -- that you could monitor, but why would you

21   want to have video?

22   A.   I think there are some -- well, it's

23   always a good idea to have multiple sensors if you

24   can, because sensors are prone to failure. And so

25   if you wanted to have another level of

```
1     confirmation -- if you have a sensor that says

2     there's been a particular kind of failure in the --

3     in the deep fryer and you can look at it, you can

4     discern whether the visual evidence confirms the

5     sensor evidence.

6          Q.   What sort of visual indicia of that

7     failure would you see?

8          A.   Oh, bubbling oil, an absence of oil in the

9     deep fat fryer, maybe the presence of a cat in it.

10    I mean, there are lots of things that you can see

11    that would tell you things that your sensor wasn't

12    designed to report.

13         Q.   Sort of an operational issue?

14         A.   Uh-huh (affirmative).

15         Q.   "Yes"?

16         A.   Yes.

17         Q.   Isn't that the sort of thing that a cook

18    would see, the cat in the deep fryer?

19              MR. HOLLOWAY:  Objection.  Form.

20              THE WITNESS:  Well, I think anything the

21         eye can perceive through a video camera, the

22         eye can perceive directly, unless it's a

23         infrared or something like that.  There's a

24         spectra of light that are not visible to the

25         human eye.
```

1   Q. (By Mr. Ritcheson) Other than the cat in

2   the deep fryer -- and I know that was a joke --

3   A.   Well, I mean, this -- you know, Koether

4   teaches fast food restaurants and kids that work in

5   fast food restaurants have been known to do some

6   weird things.

7   Q.   Would the addition of a video camera make

8   the equipment more reliable than, for example, using

9   the controller that's already disclosed in Koether?

10   MR. HOLLOWAY: Objection. Form.

11   THE WITNESS: More? I don't believe it

12   would make it more reliable. I don't think

13   that's the motivation. I think the motivation

14   is to make the repairs and maintenance more

15   efficient.

16   The efficient allocation of personnel is

17   Koether's goal. The more information you have,

18   the more efficiently you can assign the

19   personnel.

20   Q. (By Mr. Ritcheson) Any other reason for

21   combining Koether with adding a video --

22   A.   Additional information. It makes the

23   video thing crystal clear.

24   Q.   It makes what?

25   A.   The video thing crystal clear.

1   Q.   What other observable conditions do you

2   believe might be visible through a video camera in

3   the kitchen?

4   MR. HOLLOWAY: Objection. Form.

5   THE WITNESS: That's a totally open-ended

6   question.

7   Q.   (By Mr. Ritcheson) Okay.

8   A.   I mean, I've already said anything you can

9   see with the eye, you can see through a video

10 camera.

11   Q.   Is there anything that you can see through

12 the eye that you couldn't also detect through

13 sensors at the equipment? I'm trying to find the

14 reason to add the video camera to all of this.

15   MR. HOLLOWAY: Objection. Form.

16   THE WITNESS: I think I've already

17   answered that.

18   Q.   (By Mr. Ritcheson) It's additional

19 information?

20   A.   Additional information.

21   Q.   Okay. Let's leave it there, then.

22   And I think this is true, that -- let me

23 just double check -- Claim 10 is a similar -- yes.

24   If you look at Claim 10, you'll agree, I

25 think, that this is a claim that depends from Claim

```
1     1 and includes the same language with respect to

2     video recording device or a camera?

3          A.   It does appear to be the case that Claim

4     10 and 119 are redundant.

5          Q.   Well, similar.

6          A.   Extremely similar.

7          Q.   Okay.  Let me double check here.  I think

8     I've got one more, Claim 124.  Does that sound

9     right?  I believe it's Claim -- paragraph 55 of your

10    declaration.

11         A.   124.  Yep, paragraph 55 addresses 124,

12    storage media.

13         Q.   Now, this is a -- 124, I have is a

14    dependent -- a dependent dependent claim.  This

15    is -- if you look at it, I believe -- we've talked

16    about Claim 119, which depends from Claim 98.  I

17    believe this says that 124 depends also from Claim

18    119, which depends from Claim 98.

19         A.   Why make it straightforward when you can

20    make it complicated?

21              Yeah, the apparatus of 119 where, in

22    addition to the video recording device or camera,

23    there's a storage medium for recording videos or

24    pictures --

25         Q.   Okay.
```

1   A.   -- translating that into English.

2   Q.   Now, that means that there's some --

3   there's not just a broadcast of the image to the

4   control center, but there's also a -- some sort of

5   storage media at the camera itself?

6   A.   Yeah. So this is your security camera in

7   7-Eleven that the cops look at to figure out who

8   robbed you.

9   Q.   Now, it's true that the -- that the

10   Koether patent discloses sending information to the

11   control center so that the control center can, for

12   example, send repair personnel, maintenance people;

13   yes?

14   A.   Yes.

15   MR. HOLLOWAY: Objection. Form.

16   Q.   (By Mr. Ritcheson) Why, then, would you

17   want to have storage medium at the kitchen, which is

18   not where the repair and maintenance people are

19   being sent from?

20   MR. HOLLOWAY: Objection. Form.

21   THE WITNESS: Why would I want -- why

22   would I want to record the video --

23   Q.   (By Mr. Ritcheson) Yes.

24   A.   -- at the kitchen?

25   Q.   Yes.

1   A.   There's plenty of reasons. One of them is

2   for redundancy. So it's good to have a copy of all

3   the video that's captured at the site so that people

4   can play it back and look at it, even though it may

5   not have been completely and correctly transferred

6   to the control center. So we have a distributed

7   network here, and the value of distributed networks

8   is resiliency, right, among other things.

9   There are going to be situations in which

10   the communications link between the kitchen and the

11   control center is down or is overloaded or has

12   got -- experiencing some sort of problem. In any

13   case like that, you wouldn't want information that

14   was captured in the kitchen to be lost.

15   So you retain that information so that

16   whenever the link is restored, you can upload the

17   information to the control center and get the

18   control center up to date on what's happening in the

19   kitchen.

20   Or if, say, there's an earthquake, it may

21   be a long time until service is restored at the

22   control center, but you still need to have that --

23   it's good to have that information at the kitchen so

24   that you can make immediate repairs.

25   Q.   But Koether has all that information --

1   that is, the information that's gathered at the

2   kitchen -- stored at the base station; correct?

3   A.   It's -- I think that's an optional

4   scenario.

5   Q.   There isn't any disclosure in Koether of

6   storage of any of the information elsewhere -- I

7   mean, in the kitchen, for example, is there?

8   A.   So you're making a distinction between

9   storing it on the base station versus storing it on

10   the microprocessor controller in Koether?

11   Q.   Well, we know that the base station is

12   remote from the kitchen, or at least from the

13   kitchen appliance.

14   A.   It's remote from the appliance, yes, but

15   it could be just at the far end of the kitchen.

16   Q.   But in this case, the video camera is

17   actually in the kitchen --

18   A.   Okay.

19   Q.   -- because it's -- isn't that how --

20   A.   Yes.

21   Q.   -- am I reading that correctly?

22   A.   Yes.

23   Q.   And the camera would be storing this

24   information at the kitchen even though all the other

25   information is stored at the base station --

1   MR. HOLLOWAY: Objection. Form.

2   Q.   (By Mr. Ritcheson) -- is that true?

3   A.   As a general -- I mean, I don't think that

4   limitation necessarily applies.

5   Q.   Which one?

6   A.   That Koether -- Koether's pretty flexible

7   in terms of allocating functions to devices; right?

8   So you have these three devices and a lot of the

9   functions that are performed by the individual

10   devices can be performed also as easily by another

11   one of the devices.

12   So in real life, you often tend to let --

13   if the chip that you built your base station out of

14   has some sort of storage interface built into it,

15   then it would be natural to just sort of plug a hard

16   drive into that and let that be your storage.

17   But if you had some other kind of flash

18   memory or something that you wanted to use on an

19   appliance controller, you might store a video there.

20   I mean, cameras nowadays store video internally, so

21   it could very well be that you had a camera that's

22   stored -- where the storage was done by the camera

23   itself.

24   Q.   For how long?

25   MR. HOLLOWAY: Objection. Form.

1   THE WITNESS: Well, today it could be

2   hours.

3   Q.   (By Mr. Ritcheson) In 1996?

4   MR. HOLLOWAY: Same.

5   THE WITNESS: In 1996, it was not that

6   long. But with low-resolution pictures, it

7   could be long enough to be useful.

8   Q.   (By Mr. Ritcheson) In this scenario where

9 you've added the video camera of Crater to Koether,

10 that's -- that's a redundancy, as well, isn't it?

11   A.   Uh-huh (affirmative). In control systems,

12 there's nothing wrong with redundancy. Redundancy's

13 how we achieve our reliability.

14   Q.   At what -- from an engineering perspective

15 in 1996, at what point is there a cost/benefit

16 analysis of -- why would I add this level of

17 redundancy?

18   MR. HOLLOWAY: Objection. Form.

19   THE WITNESS: Well, I think that question

20   actually comes up in the -- in Claim 124

21   itself. In 124, you have a video recording

22   device and a camera, as well as a storage

23   medium for storing the video -- the recorded

24   video.

25   Q.   (By Mr. Ritcheson) Okay.

1   A.   So "video recording device" implies the

2   storage media. You don't have a -- you don't have a

3   VCR without a tape.

4   So is the -- is the intent of 124 to

5   distinguish the videotape from the video recording,

6   the VCR?

7   Q.   Which one's the VCR? I'm sorry.

8   A.   The video recording device.

9   Q.   That's -- VCR is --

10   A.   Video recording device. A VCR is a video

11   recording device.

12   Q.   You think that within the context of the

13   '130 patent that the video recording device is a

14   VCR?

15   A.   I'm using the term as an equivalent for a

16   video -- as an example of a video recording device.

17   So I don't know, "video recording device," does it

18   have a special meaning?

19   Q.   Does it have a special meaning?

20   A.   I don't see a special meaning defined to

21   it. I don't see it defined anywhere. So we're just

22   to take video recording device according to its

23   plain and ordinary meaning or broadest possible

24   reasonable interpretation, so we have a recording

25   device and then we also have a storage medium.

1   So how is the storage medium -- how is

2   that distinguishable from a video recording device?

3   Recording is storage. Committing information to

4   storage, that's recording.

5   So I -- I can only guess as to what the

6   purpose of having a storage medium added to a

7   storage -- a device that already has a storage

8   medium. When I have a storage medium, then we're

9   not realtime anymore, are we?

10   Q.   That's correct.

11   What does "realtime" mean to you?

12   MR. HOLLOWAY: Objection. Form.

13   THE WITNESS: What does "realtime" mean to

14   me in the context of?

15   Q.   (By Mr. Ritcheson) Is it Crater?

16   A.   The field of invention that we're talking

17   about here?

18   Q.   In the context of Crater. Wasn't Crater

19   the one that you said had -- yes, "realtime video

20   information," paragraph 55 of your declaration.

21   What did you mean when you called that

22   realtime video information?

23   A.   Realtime video is video information that's

24   transmitted from the point of capture to the point

25   of viewing with minimal delay over the propagation

1   inherent in the speed of light and which can be

2   processed and viewed at the same rate at which it's

3   recorded.

4   MR. RITCHESON: Wow. Could you read that

5   back?

6   (Whereupon, the record was read by the

7   reporter as follows:

8   Answer, "Realtime video is video

9   information that's transmitted from the point

10   of capture to the point of viewing with minimal

11   delay over the propagation inherent in the

12   speed of light and which can be processed and

13   viewed at the same rate at which it's

14   recorded.")

15   Q.   (By Mr. Ritcheson) There's a reason I

16   couldn't hear that the first time.

17   MR. RITCHESON: Let me take a break and

18   see if we're -- if we can wrap for the

19   afternoon.

20   MR. HOLLOWAY: Okay.

21   (Thereupon, there was an interruption in

22   the proceedings.)

23   MR. RITCHESON: We're done for the day.

24   (Whereupon, the deposition was suspended

25   at 3:37 p.m.)

1   (Pursuant to Rule 30(e) of the Federal

2   Rules of Civil Procedure and/or O.C.G.A.

3   9-11-30(e), signature of the witness has been

4   reserved.)

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 5      To:  Clay Holloway, Esq.

 6      Case Name: Coxcom LLC  v. Joao Control & Monitoring  Systems LLC

 7      Veritext Reference Number: 2300074

 8      Witness:  Richard Bennett     Deposition Date:  4/28/2016

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11      review the transcript and note any changes or corrections on the

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20      Sincerely,

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22      Production Department

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24      Encl.

25      cc:   Steven Ritcheson, Esq.
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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THE ABOVE RULES ARE CURRENT AS OF SEPTEMBER 1, 2014. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.