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1
        IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
 2
            BEFORE THE PATENT TRIAL AND APPEAL BOARD
 3
     APPLE, INC.,
                             )
 4
 5
             Petitioner,
                            ) Case No. IPR2016-01520:
6
          vs.
 7
     PERSONALIZED MEDIA ) U.S. Patent No. 8,559,635
8
     COMMUNICATIONS, LLC,
9
           Patent Owner.
10
11
12
13
          Videotaped Deposition of ANTHONY J.
     WECHSELBERGER, called for examination, taken
14
15
     pursuant to the rules of the United States Patent
16
     and Trademark Office, pertaining to the taking of
17
     depositions, taken before Lynn A. McCauley, CSR
18
     No. 84-003268, RPR, a Certified Shorthand Reporter
19
     of the State of Illinois, at 300 North LaSalle
20
     Street, 7th Floor, Chicago, Illinois, on May 4, 2017,
21
     at 9:18 a.m.
22
23
24
     JOB No. 2604091
     PAGES 1 - 129
25
                                                     Page 1
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1	APPEARANCES:	1 THE VIDEOGRAPHER: We're now on the record. 09:18
3	Appeared on behalf of Petitioner:	2 Please note that the microphones are 09:18 3 sensitive and may pick up whispering and private 09:18
4	rippedied on senan of remoner.	4 conversations. 09:18
5	KIRKLAND & ELLIS LLP	5 Please turn off all cellphones or 09:18
6	BY: MR. JOEL R. MERKIN	6 place them away from the microphones, as they can 09:18
7	300 North LaSalle Street	7 interfere with the deposition audio. 09:18
8	Chicago, Illinois 60654	8 Recording will continue until all 09:18
9	312-862-2179	9 parties agree to go off the record. 09:18
10	joel.merkin@kirkland.com	10 My name is Eric Campbell 09:18
11	•	11 representing Veritext. 09:18
12	Appeared on behalf of Patent Owner:	12 The date is today is May 4, 2017, 09:18
13		13 and the time is approximately 9:18 a.m. 09:18
14	GOODWIN PROCTER LLP	14 This deposition is located at 09:18
15	BY: MR. DOUGLAS J. KLINE	15 300 North LaSalle Street in Chicago, Illinois. 09:18
16	MR. STEVE SCHREINER	16 The caption of this case is Apple 09:18
17	100 Northern Avenue	17 Incorporated versus Personalized Media 09:18
18	Boston, Massachusetts 02210	18 Communications, LLC. 09:18
19	617-570-1209	The name of the witness is Anthony 09:18
20	e	20 Wechselberger. 09:18
21	sschreiner@goodwinlaw.com	21 At this time the attorneys present 09:18
22	ALGO PREGENT	22 in the room will identify themselves and the parties 09:18
23		23 they represent, after which our court reporter, Lynn 09:18
24	MR. ERIC CAMPBELL, Videographer	24 McCauley, representing Veritext, will swear in the 09:18
25	Page 2	25 witness, and we can proceed. 09:18 Page 4
1		
$\begin{vmatrix} 1 \\ 2 \end{vmatrix}$	INDEX	1 MR. KLINE: Doug Kline of Goodwin for 09:19
$\begin{vmatrix} 2 \\ 3 \end{vmatrix}$	WITNESS:	2 Personalized Media Communications, LLC; and with me 09:19
1	ANTHONY J. WECHSELBERGER	3 is my partner Steve Schreiner. 09:19 4 MR. MERKIN: Joel Merkin of Kirkland & Ellis 09:19
5		5 on of behalf of the petitioner, Apple. 09:19
6	MR. KLINE 5	6 (WHEREUPON, the witness was
7		7 duly sworn.)
8		8 ANTHONY J. WECHSELBERGER
	EXHIBITS: DESCRIPTION PAGE	9 called as a witness herein, having been first duly
10		10 sworn, was examined and testified as follows:
11	Exhibit 2019 Declaration of 111	11 EXAMINATION
12	Anthony J.	12 BY MR. KLINE:
13	Wechselberger Under	13 Q. Good morning, Mr. Wechselberger. 09:19
14	37 C.F.R. 1.68 In	14 A. Good morning. 09:19
15	Support OF Petition	15 Q. As you just heard, my name is Doug Kline, 09:19
16	for Inter Partes	16 and I represent Personalized Media Communications, 09:19
17	Review of U.S.	17 LLC, which I'll often refer to as PMC, in connection 09:19
18	Patent No. 8,559,635	18 with the Petition for Inter Partes review that Apple 09:19
19		19 filed against PMC's United States Patent 8,559,635. 09:19
20		20 Could you tell us your name for the 09:19
21		21 record, please? 09:19
22		22 A. Anthony Wechselberger. 09:19
23		
104		Q. Where do you live, Mr. Wechselberger? 09:19
24		24 A. I live in Escondido, California. 09:19
24 25	Page 3	



2 (Pages 2 - 5)

1	A. About 35 years. 09:19	1 K-h-a-n-n-a; and, from time to time, on the phone, we 09:21
2	Q. Any plans to move? 09:19	2 had Mr. Alan Rabinowitz, who was dialing in I believe 09:21
3	A. Not from there. 09:19	3 from New York. 09:21
4	Q. Sure. 09:19	4 Q. Anybody else attend those meetings? 09:21
5	I understand you've been deposed 09:19	5 A. No. 09:21
6	several times before; is that correct? 09:19	6 Q. So you mentioned something that I'm 09:21
7	A. Yes. 09:20	7 interested to know. 09:21
8	Q. Right. So I'm sure anything I say to you 09:20	8 When's the last time you reviewed 09:21
9	in the next moment is going to be familiar with you, 09:20	9 your declaration that you submitted in connection 09:21
10	but I'm going to ask you a series of questions and 09:20	10 with this IPR? 09:21
11	ask that you answer the questions audibly as opposed 09:20	11 A. The last time would have been last night. 09:21
12	to by physical gesture. Fair enough? 09:20	12 MR. KLINE: Okay. And maybe what we should 09:21
13	A. Yes. 09:20	13 do is I'm going to show it to you because you've 09:21
14	Q. If you don't understand a question I ask 09:20	14 submitted a few declarations for Apple adverse to 09:21
15	you, please tell me that, and I'll try and rephrase 09:20	15 PMC, so I want to make sure we're focused properly. 09:22
	it, or we can have the court reporter reread it or do 09:20	16 And, Joel, I think and you if 09:22
	whatever else we can to get it into a form that you 09:20	17 you disagree, tell me, because I want to make sure we 09:22
	understand it. 09:20	18 do this right. 09:22
19	Fair enough? 09:20	19 We're not going to remark these. 09:22
20	A. Fair enough. 09:20	20 We're just going to refer to these as previously 09:22
21	Q. And I will violate this as often as maybe 09:20	21 marked. 09:22
	you will, but let's try to give one another an 09:20	22 MR. MERKIN: That's perfectly acceptable by 09:22
	opportunity to complete what each of us is saying 09:20	23 me. 09:22
	before the other begins to speak. 09:20	24 MR. KLINE: Right. All right. Thanks. 09:22
25	Fair enough? 09:20	25 So I'm going to ask the court 09:22
23	Page 6	
1	A. Yes. 09:20	1 reporter to hand to you a document previously marked 09:22
2	Q. Right. And if you'd like to take a 09:20	2 as Apple Exhibit 1001. 09:22
	break, just let me know, and we'll like to if 09:20	3 BY MR. KLINE: 09:22
	there's a question pending, we'll try to hear an 09:20	4 Q. Do you recognize that document, 09:22
	answer to the question and take a break at the 09:20	5 Mr. Wechselberger? 09:22
	-	Č
	•	
7	Fair enough? 09:20 A. Yes. Fair. 09:20	
8		3
9	Q. Thank you. 09:20	9 of today's deposition. 09:22
10	Did you do anything to prepare for 09:20	10 Q. Right. Thank you. 09:22
	your deposition here today? 09:20	So if you turn to the last page, 09:22
12	A. Yes. 09:20	12 this is a little confusing, the page numbers on your 09:22
13	Q. What did you do? 09:20	13 declaration vary just a little from the page number 09:23
14	A. When I first got notice that the 09:20	14 of the exhibit, so I will try consistently to refer 09:23
	deposition was going to happen, since I hadn't worked 09:20	15 to the exhibit page number, but we'll try also 09:23
	on these materials in a while, I started doing some 09:20	16 consistently to refer to paragraph numbers so that 09:23
	homework back at my home office, reviewing my 09:21	17 we're on the same page. And, again, if there's 09:23
	declaration, the prior art. 09:21	18 confusion, just let me know. 09:23
19	And then most recently I flew out on 09:21	But on the last page of Apple 09:23
	Tuesday for meetings here in Chicago with the 09:21	20 Exhibit 1001, Page 96, is that your signature? 09:23
21	Kirkland Ellis Group, so a day and a half of 09:21	21 A. It is. 09:23
22	meetings.	Q. And did you sign it on or around July 29 09:23
23	Q. Who was at those meetings? 09:21	23 of 2016? 09:23
	A. In person was Mr. Merkin, Joel, here to 09:21	24 A. Yes. 09:23
24	1	
	my right; another attorney named Rajat Khanna, 09:21 Page 7	25 Q. Great. 09:23 Page





1	1 Covehan when is the last time you 00.22	11 11 14 11 1 1 1 1 00 25
3	So when when is the last time you 09:23	1 basically made them mine by tweaking them or 09:25
4		
5 declaration includes a section concerning your 09:26 6 time you had read it start to finish? 09:23 7 A. On the airplaner ideo uther on Tuesday, 09:23 8 Q. Great. Thank you. 09:23 10 A. It was a collaborative effort. It's my 09:23 11 deposition. I own all the opinions in it. I didn't 09:24 12 write every word that's in this personally. 09:23 13 Q. And you if I heard you right, you said 09:24 14 it was a collaborative effort. Who participated in 09:24 15 that collaborative effort. Who participated in 09:24 16 A. I think primarily Mr. Khanna. 09:24 17 Q. He's the autorney at Kirkland you 09:24 18 mentioned a moment ago? 09:24 19 A. He is. 09:24 20 Q. All right. Who wrote the first draft of 09:24 21 it? Was there a first draft? 09:24 22 A. There was a draft, which is my typical 09:24 23 modus operandi is to modify the draft as we go 09:24 24 forward. 09:24 25 Q. So did you write the first draft, or did 09:24 25 Q. So did you write the first draft, or did 09:24 26 A. Portions of it I typed, portions of it he 09:24 27 pyped. 09:24 28 Q. Who actually typed it out? 09:24 29 the first draft for 09:24 29 the first draft for 09:25 20 Q. Who actually typed it out? 09:24 21 art of the first draft of 09:25 22 A. More than perhaps half. 09:25 23 a whine, did you do to make sure those sections 09:25 24 described your personal opinions? 09:25 25 anything, did you do to make sure those sections 09:25 26 A. I though have a defined that we both 09:25 27 A. I tough a contract of your operation of that operation of your operation operation includes a section mocrenting your opinion related to the priority date that the claims in 09:26 10 Q. Ist in trio say that your declaration 09:26 11 includes a section concerning your opinion related to 09:26 12 be priority date that the claims in PMC's 635 09:26 13 patent are noticled to? 09:26 14 A. Yes. And opinion would be pluml. 1 09:26 15 whether three claims a section of concerning your opinion related to the priority date that the claims in 09:26 14 A. Yes. And opinion would be		
6 time you had read it start to finish?   09:23   7 A. On the airplane ride out here on Tuesday.   09:23   7 PMCs '635 patent are entitled to?   09:26   09:26   10 A. It was a collaborative effort. It's my   09:23   11 deposition. I own all the opinions in it. I didn't   09:24   12 write every word that's in this personally.   09:24   13 Q. And you — if I heard you right, you said   09:24   14 it was a collaborative effort. Who participated in   09:24   15 that collaborative effort. Who participated in   09:24   15 that collaborative effort. Who participated in   09:24   16 A. I think primarily Mr. Khanna.   09:24   17 Q. He's the attorney at Kirkland you   09:24   18 mentioned a moment ago?   09:24   18 mentioned a moment ago?   09:24   19 A. He's.   09:24   22 A. There was a draft, which is — my typical   09:24   23 motos operandi is to modify the draft as we go   09:24   24 forward.   09:24   25 Q. So did you write the first draft or did   09:24   26 A. Like I say, it was a collaborative   09:24   27 typed.   09:24   28 Q. What percentage of it did you type out   09:24   29 Q. And we have an invalidity, section of your   09:27   29 Q. Kay. The parts of your declaration that   09:25   19 Q. What percentage of it did you type out   09:25   19 Q. Was. The parts that you didn't type   09:25   10 Q. Sure.   09:25   11 Q. Word than half?   09:25   12 Q. Sure.   09:25   13 Bry Mrk. Kl.line: Was action of your opinions oncerning to poinion   09:27   12 diaris of PMC's '635   09:27   13 part are entitled to?   09:28   14 A. Yes.   09:27   14 A. Yes.   09:27   15 mkm ferth of the claims in   09:25   15 mkm ferth of the claims in   09:25   15 mkm ferth of the claims in   09:25   16 primions?   09:25   17 Doy ou need that back? I might have   09:25   18 Bry Mrk. Kl.line: Was actio		
7   A. On the airplane ride out here on Tuesday.   09:23     8   Q. Great. Thank you.   09:23     9   Who wrote the declaration?   09:23     10   A. It was a collaborative effort. It's my   09:23     11   deposition. I own all the opinions in it. I didn't   09:24     12   write every word that's in this personally.   09:24     13   Q. And you if I heard you right, you said   09:24     14   twas a collaborative effort. Who participated in   09:24     15   that collaborative effort. Who participated in   09:24     16   A. I think primarily Mr. Khanna.   09:24     17   Q. He's the attorney at Kirkland you   09:24     18   mentioned a moment ago?   09:24     19   A. He is.   09:24     20   Q. All right. Who wrote the first draft of   09:24     21   ir? Was there a first draft?   09:24     22   A. That row as a draft, which is my typical   09:24     23   modus operandi is to modify the draft as we go   09:24     24   forward.   09:24     25   Q. So did you write the first draft, or did   09:24     4   participated in it.   09:24     4   participated in it.   09:24     5   Q. Who actually typed it out?   09:25     6   A. Portions of it I typed, portions of it he   09:25     10   Q. Kore than harf?   09:25     11   Q. More than harf?   09:25     12   Q. So what percentage of it did you type out   09:25     13   Q. Kapt than the claims of PMC's 635   09:26     14   A. Yes. And optinion would be plural. I   09:26     15   bave opinions.   09:26     15   bave opinions.   09:26     16   Q. Sure.   09:24     20   Q. All right. Who wrote the first draft of   09:24     21   A. That took awhile to get out. Could 1   09:26     15   bave opinions on over a critical too.   09:26     15   bave opinions.   09:26     15   bave opinions.   09:26     15   bave opinions.   09:26     16   Q. Sure.   09:24     17   And you have another section of your   09:26     18   declaration that expresses your opinions concerning   09:26     19   whether he claims - certain claims of PMC's 635   09:26     21   A. That took awhile to get ou	5 Q. Okay. And before that when is the last 09:23	5 declaration includes a section concerning your 09:26
8 Q. Great. Thank you.   09:23   9   Who wrote the declaration?   09:23   10   40   A. It was a collaborative effort. If smy   09:23   11   40   40   40   40   40   40   40	6 time you had read it start to finish? 09:23	6 opinion related to the priority date the claims in 09:26
9	7 A. On the airplane ride out here on Tuesday. 09:23	7 PMC's '635 patent are entitled to? 09:26
10	8 Q. Great. Thank you. 09:23	8 A. That took awhile to get out. Could I 09:26
11   deposition   Lown all the opinions in it. I didn't   09:24   12 write every worth that's in this personally.   09:24   13   Q. And you — if I heard you right, you said   09:24   14 it was a collaborative effort. Who participated in   09:24   15 that collaborative effort. Who participated in   09:24   16   A. I think primarily Mr. Khanna.   09:24   17   And you have another section of your   09:26   18   declaration that expresses your opinions concerning   09:27   18   declaration that expresses your opinions on   09:27   18   declaration that expresses your opinions on   09:27	9 Who wrote the declaration? 09:23	9 hear it one more time. 09:26
12 write every word that's in this personally.   09:24   13	10 A. It was a collaborative effort. It's my 09:23	10 Q. Is it fair to say that your declaration 09:26
12 write every word that's in this personally.   09:24   13	11 deposition. I own all the opinions in it. I didn't 09:24	11 includes a section concerning your opinion related to 09:26
13   q. And you if I heard you right, you said   09:24   14 it was a collaborative effort. Who participated in   09:24   15 hat collaborative effort. Who participated in   09:24   16   A. I think primarily Mr. Khanna.   09:24   17   Q. He's the attorney at Kirkhand you   09:24   18 mentioned a moment ago?   09:24   19   A. He is.   09:24   19   A. There was a draft, which is my typical   09:24   22   A. There was a draft, which is my typical   09:24   23 modus operandi is to modify the draft as we go   09:24   24   forward.   09:24   25   Q. So did you write the first draft, or did   09:24   26   A. Like I say, it was a collaborative   09:24   27   28   A. Like I say, it was a collaborative   09:24   29   Marticipated in it.   09:24   29   What percentage of it did you type out   09:24   29   What percentage of it did you type out   09:25   10   A. Gee, I don't - I don't remember.   09:25   10   A. Gee, I don't - I don't remember.   09:25   14 out, did you discuss - what did you do to ensure   09:25   15 have equitions.   09:27   10   A. Gee, I don't - I don't remember.   09:25   14 out, did you discuss - what did you do to ensure   09:25   15   when the equation in the synerses your opinions concentring   09:26   19   whether the claims - certain claims of PMC's '635   09:27   19   Q. More than half?   09:24   24   So we have a priority section of   09:27   25   26   Q. And we have an invalidity section of   09:27   27   28   Q. And we have an invalidity section of   09:27   29   Q. Right.   09:27   29   Q. R		
14   it was a collaborative effort. Who participated in   09:24   15 that collaborative effort.   09:24   15 that collaborative effort.   09:24   16   A. I think primarily Mr. Khanna.   09:24   16   Q. Sure. Thank you. Fair enough.   09:26   17   And you have another section of your   09:26   18 mentioned a moment ago?   09:24   18 mentioned a moment ago?   09:24   19   A. He is.   09:24   19   A. He is.   09:24   19   Whether the claims certain claims of PMC's   635   09:26   19   Whether the claims certain claims of PMC's   635   09:26   19   Whether the claims certain claims of PMC's   635   09:26   19   24   27   28   A. There was a draft, which is my typical   09:24   29   28   20   29   24   27   29   28   29   29   29   29   29   29		
15 that collaborative effort?   09:24   16		
16		1
17		
18 mentioned a moment ago?	1	
19		
20		
21 it? Was there a first draft? 09:24 22 A. There was a draft, which is my typical 09:24 23 modus operandi is to modify the draft as we go 09:24 24 forward. 25 Q. So did you write the first draft, or did 09:24 25 Q. So did you write the first draft? 09:24 26 A. Like I say, it was a collaborative 09:24 27 a effort. I think it's fair to say that we both 09:24 28 participated in it. 09:24 29 participated in it. 09:24 20 Q. Who actually typed it out? 09:24 21 fyped. 09:24 22 Q. And we have an invalidity, section of your 09:27 23 eclaration; right? 09:27 24 A. Yes. 09:27 25 Q. And then we also have some general 09:27 26 A. Portions of it I typed, portions of it he 09:24 29 the first draft for? 09:25 20 Q. More than half? 09:25 21 A. More than perhaps half. 09:25 21 O. A. Gee, I don't I don't remember. 09:25 21 O. A. Yes, please. 09:25 22 you did not type out declaration that 09:25 23 anything, did you do to make sure those sections 09:25 24 described your personal opinions? 09:25 25 Q. So did you write the first draft for? 09:25 26 Q. Who actually typed it out? 09:24 27 A. Yes. 09:27 28 Q. And we have an invalidity section of your 09:27 29 Q. And then we also have some general 09:27 29 Q. Right. 09:27 29 Q. Right. 09:27 29 Q. And we have an invalidity section of your 09:27 29 Q. Sure. 09:27 29 Q. And then we also have some general 09:27 29 Q. Right. 09:27 20 Q. Nore than half? 09:25 21 Gopinions? 09:25 22 you did not type out the first draft for, what, if 09:25 23 anything, did you do to make sure those sections 09:25 24 described your personal opinions? 09:25 25 A. I would have read them. I would have 09:25 26 A. I would have read them. I would have 09:25 26 Concerning the priority date that the challenged claims, 09:28 27 Can And the nea a invalidity section of your 09:27 28 A. A. Think I was asked to provide opinions 09:28 29 Octavated		19 whether the claims certain claims of PMC's '635 09:26
22 A. There was a draft, which is my typical 09:24 23 modus operandi is to modify the draft as we go 09:24 24 forward. 09:24 25 Q. So did you write the first draft, or did 09:24 25 Q. So did you write the first draft, or did 09:24 26 So we have a priority section of 09:27 27 29 your declaration; right? 09:27 29 your declaration; right? 09:27 29 your declaration; right? 09:27 29 Q. And we have an invalidity, yes. 09:27 29 your declaration; right? 09:27 29 Q. And we have an invalidity section of your 09:27 30 declaration; right? 09	Q. All right. Who wrote the first draft of 09:24	20 patent are novel and un-obvious over certain prior 09:26
23 modus operandi is to modify the draft as we go 24 forward.  Q. So did you write the first draft, or did 25 Q. So did you write the first draft, or did 26 Q. So did you write the first draft?  Q. Who actually typed it out?  Q. What percentage of it did you type out  Q. What percentage of it did you type out  Q. What percentage of it did you type out  Q. What percentage of it did you type out  Q. Whore than half?  Q. More than half?  Q. Okay. The parts that you didn't type  Q. Q. So did you write the first draft for, what, if  Q. Oy. So we have a priority section of  Q. A. Yes.  Q. A. Yes.  Q. And we have an invalidity section of your  Q. A. Yes.  Q. And we have an invalidity section of your  Q. A. Yes.  Q. And then we also have some general  Q. A. Yes.  Q. A. A. Yes.  Q. A. A. Yes.  Q. A. A. Yes.  Q. And then we also have some general  Q. Sure.  Q. Right.  Q. A. Yes.  Q. And then we also have some general  Q. A. Yes.  Q. Q. And then we also have some general  Q. Sure.  Q. Right.  Q. A. Yes.  Q. A. A. Yes.  Q. A. Yes.  Q. A. A. Yes.  Q. A. A. Yes.  Q. A. Yes.  Q. A. A. Yes.  Q. A. A. Yes.  Q. A. Hubden we also have some general  Q. Yes.  Q. Right.  Q. Whore than half's in a section of your  Q. Right.  Q. More than half?  Q. Okay. The parts that you didn't type  Q. Okay. The parts that you didn't type  Q. Okay. The parts that you didn't ty	21 it? Was there a first draft? 09:24	21 art; right? 09:27
24   So we have a priority section of   09:27   25   Q. So did you write the first draft, or did   09:24   25   your declaration; right?   09:27   Page 12     1   Mr. Khanna write the first draft?   09:24   2   Q. And we have an invalidity section of your   09:27   2   Q. And we have an invalidity section of your   09:27   3   declaration; right?   09:27   4   participated in it.   09:24   5   Q. And we have an invalidity section of your   09:27   3   declaration; right?   09:27   4   A. Yes.   09:27   4   A. Yes.   09:27   6   background information that's in a section of your   09:27   7   declaration; right?   09:27   7   declaration; righ	A. There was a draft, which is my typical 09:24	22 A. Opinions on invalidity, yes. 09:27
25 Q. So did you write the first draft, or did Page 10  1 Mr. Khanna write the first draft? 09:24 2 A. Like I say, it was a collaborative 09:24 3 effort. I think it's fair to say that we both 09:24 4 participated in it. 09:24 5 Q. Who actually typed it out? 09:24 6 A. Portions of it I typed, portions of it he 09:24 7 typed. 09:25 9 the first draft for? 09:25 10 A. Gee, I don't I don't remember. 09:25 11 Q. More than half? 09:25 12 A. More than perhaps half. 09:25 13 Q. Okay. The parts that you didn't type 09:25 14 out, did you discuss what did you do to ensure 09:25 15 that they accurately reflected your own personal 09:25 16 opinions? 09:25 17 Do you need that back? I might have 09:25 18 bungled it a little. 09:25 19 A. Yes, please. 09:27 10 Q. Okay. The parts of your declaration that 09:25 20 Q. Sure. 09:25 21 The parts of your declaration that 09:25 22 you did not type out omake sure those sections 09:25 23 anything, did you do to make sure those sections 09:25 24 described your personal opinions? 09:25 25 A. I would have read them. I would have 09:25 26 C. And we have an invalidity section of your 09:27 2 Q. And we have an invalidity section of your 09:27 2 Q. And we have an invalidity section of your 09:27 2 Q. And then we also have some general 09:27 2 Q. And then we also have some general 09:27 4 A. Yes. 09:27 4 A. Yes. 09:27 5 Q. And then we also have some general 09:27 6 background information that's in a section of your 09:27 7 declaration; right? 09:27 8 A. That is correct. 09:27 10 How did you go about forming an 09:27 11 Opinion concerning the priority date that PMC's '635 09:27 12 patent claims are entitled to? 09:27 13 MR. MERKIN: What's the objection. Joel. 09:27 14 MR. KLINE: What's the objection Joel. 09:27 15 that they accurately reflected your own personal 09:25 16 MR. KLINE: What's the objection op:27 17 THE WITNESS: What's the standing question? 09:27 18 BY MR. KLINE: 09:27 19 Q. How did you go about forming an opinion 09:28 20 A. I would have read them. I would have 09:25 21 Calm	23 modus operandi is to modify the draft as we go 09:24	23 Q. Right. So that's great. 09:27
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4 (Pages 10 - 13)

1 and having been asked about them, I would then study 09:28	1 the priority date of the challenged claims of the 09:31
2 the the two patents at issue, which is the '635 09:28	2 '635 patent, you considered the perspective of a 09:31
3 and comparing it to the '490, the original November 09:28	3 person of ordinary skill in the art in 1987; correct? 09:31
4 '81 patent, and then develop my opinions from there. 09:28	4 A. Reading the '635 patent, yes, in '87. 09:31
5 BY MR. KLINE: 09:28	5 Q. All right. You did not consider the 09:31
6 Q. Did you take into consideration in your 09:28	6 perspective strike that. 09:31
7 priority analysis how the claims how any terms of 09:28	7 Your declaration does not report 09:31
8 the challenged claims ought to be construed? 09:28	8 that you considered the perspective of a person of 09:31
9 A. I was provided with when it came to 09:28	9 ordinary skill in the art as of 1981; isn't that 09:31
10 claim construction issues, I was provided 09:28	10 correct? 09:32
11 constructions to assume. Otherwise I used plain and 09:29	11 MR. MERKIN: Objection to form. 09:32
12 ordinary meaning. 09:29	12 THE WITNESS: Question again, please. 09:32
13 Q. Plain and ordinary to whom? 09:29	13 BY MR. KLINE: 09:32
14 A. To one of ordinary skill in the art. 09:29	Q. Your declaration does not report that you 09:32
15 Q. When? 09:29	15 considered the perspective of a person of ordinary 09:32
16 A. Under the BRI principles. 09:29	16 skill in the art as of the 1981 filing date; isn't 09:32
17 Q. I'm sorry. 09:29	17 that correct? 09:32
18 Plain and ordinary meaning to one of 09:29	18 MR. MERKIN: Objection to form. 09:32
19 ordinary skill in the art under the BRI principles 09:29	19 BY THE WITNESS: 09:32
20 when? 09:29	20 A. Not entirely. 09:32
21 A. Well, the '635, the argument was whether 09:29	21 As I explain in Paragraph 80 on 09:33
22 the '635 had a was eligible for an '87 priority 09:29	22 Page 36 of my declaration where I explain that, for 09:33
23 date, and so I would have looked at it from that 09:29	23 the reasons explained below, the challenged claims of 09:3
24 that point in time. 09:30	24 the '635 patent are not supported by the written 09:33
Q. Well, in truth, the dispute is whether 09:30	25 description in the '490 patent; and are, therefore, 09:33
Page 14	Page 16
1 the '635 challenged claims are entitled to an '81 09:30	1 not entitled to a priority date earlier than 09:33
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