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for the declarations in the IPR cases, correct?

A. Yes, that's correct.

Q. All right. Now, there was a question or some questions at the start of the deposition about the contents of your respective declarations, and so if you have those with you, they were Exhibit 1055 which was your declaration in the 1622 case and Exhibit 1055 which was your exhibit in the 1621 case.

Now, I believe there was some testimony about some omissions in the 1621 case from your declaration. Can you tell us what the omissions were?

A. Yes. As submitted and in the version in front of me, there was a chart on page 9 that appears to have been omitted for a printing issue and the attachments from page 26 to page 45 which are present in Exhibit 1055 in the 1622 case are not present in my declaration in Exhibit 1055 in the 1621 case. Yet the attachments are identical to those in the 1622 case.

Q. Okay. So the 1622 case at the

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end of paragraph 15 has a chart in it; is that right?

A. Yes.

Q. And that chart is omitted in the 1621 case?

A. In the declaration there, yes.

Q. But it should have been the identical chart is that correct?

A. Yes.

MR. DELAFIELD: Objection.

BY MR. MATHAS:

Q. All right. What chart should have been there?

MR. DELAFIELD: Same objection.

BY THE WITNESS:

A. The same chart that is in the 1622 declaration as well as in the underlying materials cited in footnote 6 in the 1621 declaration.

BY MR. MATHAS:

Q. All right. And the exhibits that were omitted in the 1621 case, how, if at all, were they different from the exhibits submitted in the 1622 case?

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A. They were identical.

MR. MATHAS: All right. Can we mark this as Exhibit 3, please -- or 4 for the record, please.

MR. DELAFIELD: I am going to object to this exhibit.

MR. MATHAS: Fine, I am making a record.

(WHEREUPON, a certain document was marked McDuff Deposition Exhibit No. 4, for identification, as of 4/6/18.)

BY MR. MATHAS:

Q. Dr. McDuff, the court reporter has handed you what's been marked for identification purposes as McDuff Exhibit 4 which I will represent to you is a corrected version of Exhibit 1055 that was sent to counsel for the patent owner last evening. This has not been filed in the IPR proceeding as of today.

Would you turn with me, please, to page 9 the end of paragraph 15. Does paragraph 15 in Exhibit 4 that I just

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handed you correctly show the chart that was omitted from your original Exhibit 1055 and 1621?

A. Yes.

Q. And if you will turn with me to page 26 through 45 of this Exhibit 4 that I have handed you, do pages 26 through 45 of Exhibit 4 correctly reflect the omitted exhibit from the original Exhibit 1055?

A. Yes.

Q. Are you aware of any other differences between the document I have handed you as Exhibit 4 and the document that was filed as Exhibit 1055 in IPR 1621?

A. No, I am not.

MR. MATHAS: I have no further questions.

FURTHER EXAMINATION

BY MR. DELAFIELD:

Q. I have a couple of questions.

So this new declaration that we received yesterday, do you see at the bottom it says page 1 of 25?

A. I do.

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Q. But there's 45 pages, correct?

A. Yes, there are 45 pages in the declaration including the declaration and the attachments.

Q. So the page numbering is off for the first 25 pages with respect to how many total pages, correct?

A. Yes, I suppose that could say page 1 of 45, and it would say 45 consistently throughout as it does in the attachments.

Q. Did you --

A. Either way I think it represents the full declaration.

Q. Did you yourself prepare this replacement declaration?

A. I did not do so personally. I did so through discussion and assistance from counsel.

Q. And you said you first noticed the missing exhibits and graph yesterday as well?

A. Yes.

MR. DELAFIELD: Okay. I have no further questions.

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MR. MATHAS: One follow up.

FURTHER EXAMINATION

BY MR. MATHAS:

Q. Dr. McDuff, do the -- does the additional information in Exhibit 4 or the absence of the information in Exhibit 4 change your opinions with respect to the '240 patent in case 1621?

A. No, they are all the same either way regardless of whether it's the full document with all of the attachments and chart or the abridged document that omits those.

MR. MATHAS: Thank you. I have no further questions.

FURTHER EXAMINATION

BY MR. DELAFIELD:

Q. One question. You were asked if the information in Exhibit 4 or the absence of information of Exhibit 4 would change your opinions with respect to the '240 patent, correct?

A. More or less.

Q. So if your declaration did not have any of the exhibits or the chart, then you

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couldn't rely on those in your declaration or cite them, correct?

MR. MATHAS: Object to the form.

BY THE WITNESS:

A. I don't agree with that. The most relevant charts from my attachments are in both copies of the declaration. The charts themselves are in line in paragraphs 24 and 25 -- sorry -- 23 and 24, and the attachments simply provide the supporting calculations underlying those charts, but the fundamental opinions are the same.

BY MR. DELAFIELD:

Q. And so without the attachments, there would be no supporting calculations for the '240 declaration, correct?

MR. MATHAS: Object to the form.

BY THE WITNESS:

A. There would be no details underlying how the calculations were performed. However, they are described in the declaration itself.

MR. DELAFIELD: Okay. I have no further questions.

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MR. MATHAS: Thank you, Dr. McDuff.

THE VIDEOGRAPHER: The time is now 4:18 p.m. This is the end of media 4. This concludes this deposition. We are off the record.

(WHEREUPON, the deposition was concluded at 4:18 p.m.)

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STATE OF _____)
) :ss
COUNTY OF _____)

I, DEFOREST MCDUFF, the witness herein, having read the foregoing testimony of the pages of this deposition, do hereby certify it to be a true and correct transcript, subject to the corrections, if any, shown on the attached page.

_____
DEFOREST MCDUFF

Sworn and subscribed to before me,
this _____ day of _____, 2018.

_____
Notary Public

CERTIFICATE

OF

CERTIFIED SHORTHAND REPORTER

I, ANDREA L. KIM, a State of Illinois Licensed Certified Shorthand Reporter, License number 84-3722, do hereby certify:

That previous to the commencement of the examination of the aforesaid witness, the witness was duly sworn or affirmed to testify the whole truth concerning the matters herein;

That the foregoing deposition transcript was reported stenographically by me, was thereafter reduced to typewriting under my personal direction and constitutes a true and accurate record of the testimony given and the proceedings had at the aforesaid deposition;

That the said deposition was taken before me at the time and place specified;

That I am not a relative or employee or attorney or counsel for any of the parties herein, nor a relative or employee of

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such attorney or counsel for any of the parties hereto, nor am I interested directly or indirectly in the outcome of this action.

IN WITNESS WHEREOF, I do hereunto set my hand and affix my seal of office at Chicago, Illinois, this 9th day of April, 2018.

Andrea L. Kim

ANDREA L. KIM, CSR
License No. 84-3722.

INSTRUCTIONS TO WITNESS

Please read your deposition over carefully and make any necessary corrections. You should state the reason in the appropriate space on the errata sheet for any corrections that are made.

After doing so, please sign the errata sheet and date it.

You are signing same subject to the changes you have noted on the errata sheet, which will be attached to your deposition.

It is imperative that you return the original errata sheet to the deposing attorney within thirty (30) days of receipt of the deposition transcript by you. If you fail to do so, the deposition transcript may be deemed to be accurate and may be used in court.

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E R R A T A

I wish to make the following changes, for the following reasons:

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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.

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