

1 THE DATA.

2 LANGUAGE IS A LITTLE AWKWARD, RIGHT. THE MONITOR, THE
3 AUDIO SIGNAL, THE EXAMINER SAID, TOO, THE EXAMINER SAID CLAIM
4 11 IS A LITTLE CONFUSING, I'M NOT QUITE SURE WHAT YOU MEAN BY
5 THAT.

6 IT'S NOT CLEAR WHETHER THE MONITORING FUNCTION OCCURS
7 AND IT'S NOT CLEAR WHAT THE TIME RELATIONSHIP IS. SO WHAT DO
8 THEY DO?

9 LET ME JUST ADD, YOUR HONOR, AGAIN, APPLE IS SAYING
10 THAT THESE CLAIMS WERE AMENDED TO OVERCOME DATA COMPRESSION.
11 THEY IDENTIFIED TWO PATENTS WORKMAN AND FABRE. THESE CLAIMS
12 WEREN'T REJECTED BASED ON WORKMAN AND FABRE, THEY WERE REJECTED
13 BASED ON ANOTHER PATENT, THE PALMER PATENT.

14 OKAY. SO THEY CANCEL THE CLAIMS, THEY PUT IN NEW
15 CLAIMS 26 THROUGH 29. AND, YOUR HONOR, AGAIN, THEY TALK ABOUT
16 IN CLAIM ORDER, RECEIVING, COMPRESSING, STORING, TRANSMITTING.
17 TRANSMITTING RIGHT THERE.

18 THEY GO BACK TO THE CLAIM ORDER. SO ONCE AGAIN WE
19 HAVE A SITUATION THEY'RE NOT LIMITING THESE CLAIMS TO OVERCOME
20 THE DATA COMPRESSION PRIOR ART THAT APPLE IS TALKING ABOUT,
21 IT'S A SITUATION WHERE THEY'RE CLARIFYING THE CLAIMS. AND
22 THEY'RE THEN FOCUSING IN ON THIS ORDER.

23 '705 PROSECUTION HISTORY. DURING THE LITTLE WALKING
24 TOUR WE'VE HAD LAST WEEK APPLE GAVE US WE FOCUS ON A SENTENCE,
25 YOUR HONOR, WHAT WE NEED TO DO IT TELLS US WE HAVE TO BE VERY

1 MINDFUL IN THE PROSECUTION HISTORY, THIS IS AN ONGOING
2 NEGOTIATION.

3 THERE'S SOME BACK AND FORTH, REALLY DANGEROUS IF YOU
4 DON'T FOLLOW IT THROUGH AND LOOK AT THE FINAL PRODUCT. SO,
5 YOUR HONOR, WHAT WE NEED TO DO, GO THROUGH AND SEE WHAT
6 HAPPENED ALL ALONG THE WAY AND NOT JUST IN ONE SENTENCE.

7 HERE'S WHAT HAPPENED. THE ENTIRE FOCUS OF THE
8 DISCLAIMER ON THIS IZEKI REFERENCE, AND THE FIRST TIME IT'S
9 MENTIONED IS IN THE THIRD OFFICE ACTION IN THE '542. OKAY.
10 AND THERE SOMETHING THAT'S REAL IMPORTANT ABOUT THAT OFFICE
11 ACTION.

12 WHAT'S IMPORTANT, IT'S REALLY CRYSTAL CLEAR, THAT THE
13 EXAMINER INTERPRETING TIME-COMPRESSED REPRESENTATION TO BE
14 ACHIEVED THROUGH DATA COMPRESSION. WHY DO I SAY THAT?

15 WELL, I SAY IT FOR THIS REASON. I'M NOT GOING TO READ
16 THIS ENTIRE PASSAGE, IT'S HERE WE CAN GO BACK AND LOOK AT IT
17 LATER.

18 WE KNOW THEY'RE REFERRING TO DATA COMPRESSION, EVEN
19 THOUGH THE EXAMINER'S REFERRING TO DATA COMPRESSION, EVEN
20 THOUGH HE SAYS TIME-COMPRESSED, HE TALKS ABOUT INCREASING THE
21 CAPACITY OF THE STORAGE MEDIA.

22 TIME COMPRESSION DOESN'T DO THAT, IT'S BIT-FOR-BIT
23 IDENTICAL. IT DOESN'T INCREASE THE CAPACITY OF THE STORAGE
24 MEDIUM, THAT'S WHAT DATA COMPRESSION DOES.

25 NEXT, THE EXAMINER POINTS OUT THAT SORT OF COMPRESSION

1 IS ADMITTED BY THE APPLICANT IN THE SPECIFICATION 7 AND 8 TO BE
2 KNOWN.

3 WELL, THE ONLY THING THAT'S DESCRIBED AT PAGES 7 AND
4 8, PAGE 8 IS DATA COMPRESSION, IT'S THAT SAME REDUCED NUMBER OF
5 BITS. SO WHEN THE EXAMINER MAKING THE FIRST REJECTION BASED ON
6 IZEKI, IZEKI DOESN'T DO THE TIME-COMPRESS.

7 BUT OBVIOUS TO DO THAT, OBVIOUS TO DO THAT TO INCREASE
8 THE STORAGE CAPACITY, TO BE ABLE TO SEND IT FASTER THAN REAL
9 TIME, ADMITTED THESE DATA COMPRESSION TECHNIQUES ARE KNOWN,
10 THAT'S THE BASIS OF THE REJECTION.

11 IN RESPONSE, THIS IS WHAT BURST SAYS, AND THAT
12 SENTENCE THAT I'VE HIGHLIGHTED HERE IS THE CRUX REALLY OF
13 APPLE'S DISCLAIMER CASE. THIS IS WHERE IT ALL IS RIGHT HERE.

14 WHILE IZEKI MENTIONS DATA COMPRESSION IS ONE TYPE OF
15 CONVERSION PROCESS, THIS IS NOT EQUIVALENT BY ANY MEANS OF
16 APPLICANT'S SPECIFICALLY CLAIMED TIME COMPRESSION.

17 OKAY. WHAT DOES THAT MEAN?

18 WE GOT TO LOOK AT THAT. WELL, BEFORE WE DO THAT,
19 LET'S REMEMBER WHAT BURST SAYS TIME-COMPRESSED REPRESENTATION,
20 WHAT THAT PHRASE MEANS.

21 TWO STEP PROCESS, REMEMBER DATA COMPRESSION, FIRST TO
22 REDUCE THE NUMBER OF BITS TO GET A COMPRESSED REPRESENTATION.

23 BUT THERE'S A SECOND STEP, THERE'S SOMETHING MORE,
24 SOMETHING MORE THAN JUST DATA COMPRESSION. RIGHT. IT'S THAT
25 TO ENABLE THAT IS FASTER THAN REAL TIME TRANSMISSION TO ANOTHER

1 DEVICE, THAT'S THE SECOND STEP OF THE TIME-COMPRESSED
2 REPRESENTATION. SO, LET'S GO BACK AND LOOK AT THIS PHRASE
3 AGAIN.

4 THIS IS WHAT THEY SAID, YOUR HONOR. I'D LIKE TO POUR
5 THROUGH IN A BIT OF DETAIL BECAUSE THAT IS IMPORTANT. THIS IS
6 WHAT THEY SAY. THEY SAY, AND I JUST RETYPED WHAT WE SAW ON THE
7 PREVIOUS PAGE. I LEFT OUT THE FIRST SENTENCE AND LEFT OUT THE
8 IMPORTANT SENTENCE.

9 THE DIFFERENCE BETWEEN THIS SLIDE 72 AND WHAT WE SAW
10 BACK HERE IN 69, IT'S MEANT TO BE IDENTICAL. I JUST TOOK THAT
11 FIRST SENTENCE AND LEFT OUT THIS PART HERE. IT'S A LITTLE
12 EASIER TO SEE. THIS IS WHAT THEY SAID.

13 IZEKI CONTAINS ABSOLUTELY NO SHOWING OR SUGGESTION
14 WHATSOEVER OF COMPRESSING AUDIO/VIDEO SOURCE INFORMATION INTO A
15 TIME-COMPRESSED REPRESENTATION THEREOF, HAVING AN ASSOCIATED
16 BURST TIME PERIOD THAT'S SHORTER THAN THE TIME REQUIRED TO
17 AFFECT REAL TIME VIEWING. RIGHT.

18 THEY PARROT THE WHOLE CLAIM LANGUAGE THERE. RIGHT.
19 JUST NOT THE TIME-COMPRESSED REPRESENTATION, IT'S THE WHOLE
20 THING.

21 GOES ONTO SAY ABOUT IZEKI, ELEMENT 46 OF IZEKI, A
22 CONVERSION UNIT THAT DOES NOTHING MORE, NOTHING MORE THAN
23 CONVERT THE INPUTTED VIDEO AND/OR AUDIO DATA INTO A PRESCRIBED
24 FORMAT.

25 THIS IS THE SENTENCE. WHILE -- WHY DO WE USE THE

1 WORD -- WHILE WE GET BACK TO THAT -- WHILE IZEKI MENTIONS DATA
2 COMPRESSION, ONE TYPE OF CONVERSION PROCESS, THIS IS NOT THE
3 EQUIVALENT BY ANY MEANS OF APPLICANT'S SPECIFICALLY CLAIMED
4 TIME COMPRESSION.

5 OKAY. YES, IZEKI DOES DATA COMPRESSION, BUT IT DOES
6 NOTHING MORE THAN DATA COMPRESSION. THIS IS WHAT THEY SAY
7 NEXT. WHY DOESN'T IT?

8 BECAUSE IT CONTAINS ABSOLUTELY NO RECOGNITION OF THE
9 NEED FOR TIME COMPRESSION OF AUDIO/VIDEO SOURCE INFORMATION OR
10 OF THE TRANSMISSION OF TIME-COMPRESSED AUDIO/VIDEO SOURCE
11 INFORMATION IN A BURST TIME PERIOD.

12 SO, YES, IT DOES DATA COMPRESSION, BUT DOESN'T DO
13 ANYTHING MORE. AND IN PARTICULARITY, DOESN'T EVEN RECOGNIZE
14 THIS CONCEPT OF SENDING FASTER THAN REAL TIME AND DOESN'T
15 TRANSMIT FASTER THAN REAL TIME.

16 THAT'S WHAT THAT SAYING IN THE CONTEXT. IN FACT, WHEN
17 YOU GO TO THE NEXT SENTENCE IT'S EVEN CLEARER. IZEKI TEACHES
18 AWAY FROM THE CLAIMED INVENTION BY FOCUSING ON THE END RESULT
19 OF PRODUCING ANALOG MASTER TYPE WITHIN THE APPARATUS.

20 NOT ONLY DOES NOT TRANSMIT AWAY FASTER THAN REAL TIME,
21 IT'S A QUESTION WHETHER EVEN TRANSMITS AWAY. THAT'S WHAT THEY
22 SAY. WHAT HAPPENS NEXT?

23 LET'S BACK UP. HERE'S WHAT THEY'RE SAYING. THEY'RE
24 SAYING, LISTEN, YES, IZEKI DOES DATA COMPRESSION, DOESN'T DO
25 DATA, BUT IZEKI DOES NOTHING MORE THAN THAT.

1 THAT'S ALL IZEKI DOES IS DATA COMPRESSION, IT DOESN'T
2 DO THIS PIECE IT DOESN'T DO -- EVEN TO ENABLE THE FASTER THAN
3 REAL TIME TRANSMISSION THEY DON'T RECOGNIZE THE NEED TO DO
4 THAT.

5 THEY'RE STUCK IN A DIFFERENT WORLD, THEY'RE IN A
6 DIFFERENT PLACE, THEY'RE DOING THIS EDITING AND PUTTING IT ON A
7 MASTER TAPE THING, THEY'RE NOT TRYING TO SEND IT FASTER THAN
8 REAL TIME.

9 THAT'S WHY IZEKI IS DIFFERENT THAN THESE CLAIMS.
10 THAT'S WHAT THAT PASSAGE SAYS WHEN YOU READ IT IN ITS ENTIRE
11 CONTEXT. WHAT HAPPENS NEXT?

12 WELL, IN THE FOURTH OFFICE ACTION AND THAT SAME '542
13 APPLICATION THE EXAMINER SURE DIDN'T THINK THERE WAS A
14 DISCLAIMER. HOW DO WE KNOW THAT?

15 THE EXAMINER STILL TALKING ABOUT DATA COMPRESSION.
16 EXAMINER STILL TALKING ABOUT OBVIOUS TO DO THIS TO SAVE SPACE
17 ON THE STORAGE MEDIUM, TO INCREASE THE STORAGE CAPACITY, STILL
18 REFERRING TO THE PATENT SPECIFICATIONS. WE ONLY TALKED ABOUT
19 DATA COMPRESSION, THE EXAMINER STILL THINKING WE'RE TALKING
20 ABOUT DATA COMPRESSION.

21 HE DIDN'T THINK THERE WAS A DISCLAIMER '542 GETS
22 ABANDONED FILE WRAPPER, THE CONTINUATION '958 APPLICATION GETS
23 FILED. WHAT HAPPENS THERE?

24 EXAMINER ISSUES ANOTHER REJECTION, EXACT SAME THINGS
25 ARE POINTS -- EXACT SAME POINT TALKS ABOUT THIS ADDRESSING THE

1 CAPACITY OF THE STORAGE MEANS, TALKS ABOUT WHAT'S DISCLOSED IN
2 THE SPECIFICATION, WHICH WE ALL KNOW, WE ALL KNOW IT'S ONLY
3 DATA COMPRESSION.

4 SO THE EXAMINER IS STILL SAYING, LISTEN, IT BE OBVIOUS
5 BECAUSE OF THE DATA COMPRESSION, HE'S NOT TALKING ABOUT A TIME
6 COMPRESSION AT ALL. WHAT HAPPENS NEXT?

7 ANOTHER FILE WRAPPER CONTINUATION, NOW WE'RE DOWN TO
8 THE '727, THIS IS THE ONE THAT ULTIMATELY ISSUED AS THE '705
9 PATENT. WHAT DO THEY SAY ABOUT IZEKI?

10 THEY DON'T COME OUT AND SAY, LISTEN, EXAMINER, YOUR
11 ALL WRONG. YES, WE ADMIT DATA COMPRESSION IS OPENED, BUT WE
12 GOT SOMETHING NEW HERE, WE GOT THIS TIME COMPRESSION THING,
13 THAT'S NOT WHAT THEY SAY HERE.

14 THIS IS ALL THEY SAY ABOUT IZEKI. IZEKI TEACHES A
15 COMPRESSION TECHNIQUE WITHOUT TRANSMISSION, THAT'S IT. HE
16 DOESN'T -- NOT ONLY DOES HE NOT SAY FASTER THAN REAL TIME, HE
17 DOESN'T TRANSMIT AT ALL.

18 YES, HE DOES PART ONE, BUT HE DOES NOTHING MORE THAN
19 THAT COMPRESSION TECHNIQUE. HE DOESN'T SEND IT FASTER THAN
20 REAL TIME.

21 THEY GO ONTO TALK ABOUT SOME OF THE OTHER ART, TALK
22 ABOUT HASKEL WHICH IS ANOTHER ONE OF THOSE TCM TYPE REFERENCES.
23 THEY SAY, BIG DEAL, JUST DOES IT IN REAL TIME, THEN BURST GOES
24 BACK AGAIN TO THE SPECIFICATION. RIGHT.

25 SAYS, SPECIFICATION ADMITS THAT COMPRESSION ALONE IS

1 NOT NEW, BUT THAT'S NOT ALL OF IT. IT'S NOT JUST COMPRESSION,
2 IT'S COMPRESSION TO SEND IT FASTER THAN REAL TIME.

3 OKAY. IT'S A DELIVERY TECHNIQUE THAT USES
4 COMPRESSION, DOESN'T SAY TIME COMPRESSION, IT USES COMPRESSION
5 TO TRANSMIT A TIME-COMPRESSED REPRESENTATION IN A BURST TIME
6 PERIOD.

7 OKAY. SAYS, FROM THE ADVENT OF COMPRESSION TECHNIQUES
8 SYSTEM DESIGNERS NOTED A SYSTEM IMPLEMENTING COMPRESSION CAN
9 SERVICE MORE CLIENTS IN REAL TIME. THIS IS THAT WHOLE REAL
10 TIME BROADCAST PARADIGM WE TALKED ABOUT BEFORE.

11 THEY SAY, THIS IS WHAT THEY DIDN'T RECOGNIZE, THEY
12 DIDN'T RECOGNIZE TIME-COMPRESSED REPRESENTATIONS COULD BE SENT
13 IN THE BURST TIME PERIOD. OKAY. EXAMINER, SAME REJECTION,
14 STILL TALKING ABOUT CAPACITY OF THE STORAGE MEANS, STILL
15 FOCUSED ON THE SPECIFICATION, EXAMINER STILL FOCUSED ON DATA
16 COMPRESSION.

17 THEN THE LAST RESPONSE BURST CANCELS THE CLAIMS, PUTS
18 IN NEW CLAIMS, MAKES THESE ARGUMENTS. OKAY. AGAIN, IT'S
19 FOCUSING ON THE BURST TRANSMISSION PERIOD PART 2 OF THAT
20 TIME-COMPRESSED REPRESENTATION STEPS, YOUR HONOR.

21 AND THE LAST SENTENCE DOWN HERE, THE LAST SENTENCE IN
22 THE, LAST -- REALLY THE LAST SUBSTANTIVE RESPONSE THIS IS WHAT
23 BURST SAID. IT SAYS, SINCE IZEKI DEALS WITH STILL PICTURE
24 INFORMATION, COMPRESSION OF THE INFORMATION WOULD STILL NOT
25 REPRESENT TIME COMPRESSION THEREOF, AS DEFINED IN THE

1 SPECIFICATION OF THE APPLICATION.

2 THEY'RE SAYING THE TIME COMPRESSION DEFINED IN
3 SPECIFICATION OF THE APPLICATION THAT'S THAT DATA COMPRESSION,
4 THAT'S WHAT IT'S GOT TO BE, THAT'S ALL DEFINED IN THE
5 APPLICATION.

6 SAYS, SINCE THE TIME COMPRESSION NECESSARILY REQUIRES
7 THAT THE INFORMATION TO BE COMPRESSED HAS A TEMPORAL DIMENSION.
8 SO THIS IS THE POINT. THERE'S NO DISCLAIMER HERE OF DATA
9 COMPRESSION.

10 YOU CAN GO STEP BY STEP THROUGH THAT PROSECUTION
11 HISTORY, A LABORIOUS PROCESS I KNOW WHEN YOU GO THROUGH STEP BY
12 STEP, AND LOOK AT IT IN IT'S ENTIRETY, IT BECAME CLEAR EXAMINER
13 AND BURST ON THE SAME PAGE, EVERY STEP OF THE WAY.

14 THEY'RE TALKING ABOUT DATA COMPRESSION, THEY'RE NOT
15 TALKING ABOUT THIS TCN TIME COMPRESSION, THEY'RE FOCUSED ON
16 DATA COMPRESSION, THAT'S WHAT THEY'RE TALKING ABOUT.

17 THEY'RE ESPECIALLY FOCUS ON THE SECOND PART OF THE
18 DEFINITION WHICH IS TRANSMITTING FASTER THAN REAL TIME, GETTING
19 AWAY FROM THE BROADCAST PARADIGM.

20 OKAY. IN ORDER FOR THERE TO BE THIS SORT OF
21 DISCLAIMER THAT APPLE IS ASKING THE COURT FOR IN THIS CASE
22 THERE HAS TO BE A CLEAR UNMISTAKABLE DISCLAIMER, YOUR HONOR,
23 AND THE COURT HAS SAID IN SANDDISK, FEDERAL CIRCUIT SAID IN
24 SANDDISK AN ARGUMENT IS SUBJECT TO MORE THAN ONE REASONABLE
25 INTERPRETATION.

1 THAT'S NOT A DISCLAIMER, WE SUBMIT, THERE IS ONLY ONE
2 REASONABLE INTERPRETATION WHAT HAPPENED. IT'S ALL FOCUSED ON
3 DATA COMPRESSION, BUT THERE'S NO WAY YOU CAN READ THAT ONE
4 SENTENCE AND SAY THAT IT CLEARLY SHOWS A DISCLAIMER, JUST NOT
5 THE CASE WHEN YOU LOOK AT IT CLOSELY.

6 OKAY. APPLE HAS A LOT OF OTHER THINGS THEY POINT TO,
7 IN THE INTEREST OF TIME I'M NOT GOING GO INTO IT, WE ADDRESSED
8 ALL THOSE POINTS IN OUR BRIEFS.

9 IT'S CLEAR WHEN YOU LOOK AT THOSE TCN REFERENCES ARE
10 DIFFERENT THE STORAGE ISSUE, AND BECAUSE OF THE REAL TIME ISSUE
11 BURST'S ARTICLE SHOW THEY DIDN'T GIVE UP THE DATA COMPRESSION,
12 THE EPO COULDN'T BE CLEARER. BURST WAS VERY CLEAR THAT THE
13 CLAIMS, THIS TIME-COMPRESSED REPRESENTATION WAS THE RESULT OF
14 DATA COMPRESSION, CLEAR ABOUT THAT.

15 OKAY. SO IN SUMMARY, ON THE TIME-COMPRESSED
16 REPRESENTATION, THE PREFERRED EMBODIMENT ONLY DESCRIBES, ONLY
17 DISCLOSES DATA COMPRESSION CONTEXT OF CLAIMS, ESTABLISH A CLAIM
18 ORDER THAT EXCLUDES THE TCM TYPE OF COMPRESSION, AND THE
19 PROSECUTION HISTORY IS CONSISTENT WITH BURST'S CONSTRUCTION
20 THAT THESE CLAIMS MEAN, THAT THESE CLAIMS MEAN DATA COMPRESSION
21 TO ENABLE FASTER THAN REAL TIME TRANSMISSION.

22 AND SECOND ISSUE REAL QUICK, YOUR HONOR, BECAUSE WE'VE
23 REALLY GONE ON FOR AWHILE HERE, IS THE DEFINITE DURATION ISSUE.
24 I THINK, IT REALLY RISES AND FALLS WITH THIS WHOLE
25 TIME-COMPRESSED, TCM TIME-COMPRESSSION MULTIPLEXING ISSUE.

1 THE REASON THEY SAY THERE'S A DEFINITE DURATION IN
2 THOSE REFERENCES, YOU GOT TO KNOW EXACTLY HOW MUCH FASTER YOU
3 BRING THIS SIGNAL OUT OVER HERE, YOU GOT TO KNOW THAT, YOU GOT
4 TO KNOW THE SPECIFIC DURATION OF YOUR TRANSMISSION, SO YOU CAN
5 FIT IT IN THIS LITTLE WINDOW.

6 THOSE ARE ALL ASPECTS OF THE TCM TYPE STUFF. SO THE
7 DEFINITE DURATION I REALLY BELIEF RISES AND FALLS WITH THE MORE
8 GLOBAL ISSUE.

9 THERE'S SEVERAL REASONS WHY THEY'RE WRONG ON THE
10 DEFINITE DURATION. THEY ADMIT THE CLAIMS AREN'T LIMITED TO A
11 FIXED BANDWIDTH TRANSMISSION LINK. THERE'S NOTHING IN THE
12 PATENT SPECIFICATION THAT SAYS YOU GOT TO HAVE A DEFINITE
13 DURATION, AND THE CLAIMS ONLY REQUIRES, THE CLAIMS ONLY
14 REQUIRES TRANSMISSION RECEPTION THAT OCCURS IN LESS THAN THE
15 PLAYBACK TIME.

16 YOUR HONOR, THIS IS DR. HEMAMI'S SLIDE THAT SHOWS WHAT
17 HAPPENS WHEN THE BANDWIDTH VARY, YOU ONLY GET AN PROXIMATE
18 BANDWIDTH, YOU ONLY GET A PROXIMATE BANDWIDTH, ONLY PROXIMATE
19 TRANSMISSION, YOU CAN'T HAVE A DEFINITE, THE BANDWIDTH GOES UP
20 THE TRANSMISSION TIME GOES DOWN.

21 SPECIFICATION NEVER USES DEFINITE DURATION LANGUAGE
22 WHEN IT'S TALKING ABOUT TRANSMISSION RATES, USES THE AAB TYPE
23 THINGS ABOUT LANGUAGE.

24 AND, LASTLY, GOING BACK TO THE CLAIMS, YOUR HONOR, THE
25 TIME PERIOD THAT IS SPECIFIED IN THE CLAIMS, THE DURATION OF

1 THE TRANSMISSION IT'S CAPABLE OF BEING TRANSMITTED IN A BURST
2 TRANSMISSION TIME PERIOD SUBSTANTIALLY SHORTER THAN THE TIME
3 PERIOD ASSOCIATED WITH REAL TIME VIEWING.

4 DOESN'T SAY YOU HAVE TO HAVE A DEFINITE DURATION, YOU
5 KNOW, IT'S THE LESS THAN SIGN. RIGHT. TRANSMISSION TIME IS
6 LESS THAN THE REAL TIME PLAYBACK PERIOD, JUST A BOUNDARY, NO
7 DEFINITE DURATION.

8 AND ANOTHER WAY TO STATE THAT IS YOU ONLY HAVE TO KNOW
9 THE AUDIO/VIDEO INFORMATION HAS BEEN COMPRESSED SUFFICIENTLY TO
10 ENABLE FASTER THAN REAL TIME TRANSMISSION. THAT'S ALL THAT'S
11 REQUIRED BY THE CLAIMS.

12 **THE COURT:** OKAY

13 **MR. HEIM:** YOUR HONOR, BURST TIME PERIOD SAME ISSUES,
14 THE MEANING OF BURST TIME PERIOD, YOUR HONOR, IS REALLY
15 SPECIFIED IN THE CLAIMS. BURST TIME PERIOD THAT IS SHORTER
16 THAN THE REAL TIME PERIOD.

17 WHEN WE SAID BURST TIME PERIOD, THAT'S WHAT WE'RE
18 REFERRING TO, IS THE SHORTER THAN THE REAL TIME PERIOD. SO ALL
19 THAT'S REQUIRED IS THE TRANSMISSION PERIOD LESS THAN THE REAL
20 TIME PLAYBACK. WITH THAT I'M GOING TO SIT DOWN AND LET APPLE
21 ADDRESS THESE TERMS.

22 **THE COURT:** THANK YOU. WE'LL TAKE 10 MINUTES, OKAY,
23 THEN WE'LL RECONVENE. THANK YOU.

24 (RECESS TAKEN.)

25 (PROCEEDINGS RESUMED.)

1 **THE COURT:** OKAY. MR. POWERS, THAT'S WHY I DON'T TAKE
2 A BREAK BECAUSE YOU GET TIED UP IN OTHER MATTERS.

3 **MR. POWERS:** IF I MAY.

4 **THE COURT:** IS THIS SOMETHING NEW AND DIFFERENT FROM
5 WHAT WE HAD BEFORE?

6 **MR. POWERS:** THIS IS A COPY OF THE SLIDES, WHICH IS
7 NEW AND DIFFERENT.

8 **THE COURT:** OKAY.

9 **MR. POWERS:** AND, YOUR HONOR, AS WITH BURST WE HAVE
10 OUR HELPER HERE SHOULD YOU HAVE ANY QUESTIONS ANY OF US ARE
11 UNABLE TO ANSWER.

12 **THE COURT:** ARE YOU GOING TO MAKE THE ENTIRE
13 PRESENTATION?

14 ARE YOU GOING TO GIVE SOME OF THE REST OF THESE PEOPLE
15 AN OPPORTUNITY?

16 **MR. POWERS:** BUT, OF COURSE, I'LL BE COVERING THE TIME
17 COMPRESSION MODULE, IF YOU WILL, AND THEN MR. BROWN WILL BE
18 COVERING THE TRANSMISSION MODULE AND MR. STEPHENS WILL BE
19 COVERING THE MEANS PLUS FUNCTION MODULE.

20 **THE COURT:** OKAY.

21 **MR. POWERS:** I'D LIKE TO BEGIN WITH, IF I MAY, WITH
22 EXACTLY THE QUESTION YOUR HONOR ASKED OF MR. HEIM. WHICH IS,
23 WHAT IS THIS INVENTION?

24 IF YOU LOOK AT THE SUMMARY OF THE INVENTION, WHICH IS
25 ONLY -- YOU ARE EXPECTED TO LOOK AT THE LAYOUT WHAT THEY

1 INVENTED. THIS PATENT WHAT WE CALL A LAWYER'S PATENT RATHER
2 THAN AN INVENTOR'S PATENT.

3 AN INVENTOR'S PATENT IS ONE WHERE YOU READ THE
4 SPECIFICATION, PARTICULARLY USUALLY THE SUMMARY OF THE
5 INVENTION AND YOU UNDERSTAND WHAT IS IT THAT PERSON THOUGHT
6 THEY INVENTED.

7 AND IT'S NOT JUST ONE THING, MAYBE A COUPLE OF THINGS
8 AND YOU READ THE FILE HISTORY AND YOU READ THE FINAL CLAIMS AND
9 YOU SAY, ALL RIGHT, I SEE THERE'S BEEN A LITTLE NARROWING, A
10 LITTLE CLARIFICATION, BUT WHAT ISSUE DOES THE CLAIMS MATCHES
11 WHAT'S IN THE SPECIFICATION.

12 A LAWYER'S PATENT IS DIFFERENT. A LAWYER'S PATENT
13 SOMEWHERE ALONG THE PROSECUTION THERE'S A SUDDEN RIGHT TURN AND
14 A LAWYER FIGURES I CAN'T GET THESE CLAIMS, SO I'M GOING TO TRY
15 TO GET SOMETHING ELSE, USUALLY BY ADDING AN ENTIRELY NEW
16 CONCEPT.

17 THE RIGHT TURN IN THIS PATENT CAME IN 1990 WHEN BURST
18 DECIDED IT WASN'T GETTING WHAT IT WANTED WITH ITS OLD PATENT
19 ATTORNEY AND HIRED A NEW ONE. MR. HEIN, APPARENTLY NOT MICHAEL
20 HEIM'S LONG LOST BROTHER, BUT HE WAS THE SOURCE OF THE RIGHT
21 TURN.

22 BECAUSE IN 1990 ALL OF A SUDDEN AFTER NOT GETTING THE
23 CLAIMS THEY WANTED HE INTRODUCED THIS CONCEPT OF
24 TIME-COMPRESSED REPRESENTATION FOR THE FIRST TIME.

25 A TERM NOT FOUND IN THE SPECIFICATION, A TERM NOT

1 DISCUSSED ANYWHERE PRIOR TO THAT TIME. IT IS THAT RIGHT TURN
2 THAT IS CAUSING THE PROBLEMS WE'RE HAVING HERE TODAY.

3 AND IT'S THAT RIGHT TURN THAT WHEN YOU LOOK AT THE
4 CURRENT CLAIMS YOU EXPERIENCE COGNITIVE DISTANCE BETWEEN THE
5 CLAIMS AND WHAT YOU SEE IN THE SUMMARY OF THE INVENTION.

6 AND THE POINT THAT YOUR HONOR MADE, I THINK, IS A
7 CRITICAL ONE. WHICH IS, THE SPECIFICATION SAYS "FIXED", IT
8 DOESN'T AND IT CAN'T CHANGE, BUT FOR A CIP THROUGHOUT THE
9 COURSE OF PROSECUTION AND BUT FOR SOME MINOR TYPOGRAPHICAL
10 TYPES OF CHANGES AND THE ISSUANCE.

11 THE CLAIMS CAN CHANGE, TOO, SO THE RIGHT TURN ONLY
12 OCCURRED IN THE CLAIMS, THAT'S WHY IN THIS CASE THERE'S A
13 DISCONNECT BETWEEN THE CLAIMS AS THEY ISSUED AND THE
14 SPECIFICATION AS THOSE CLAIMS WERE FILED AND ULTIMATELY ISSUED.

15 AND WHEN YOU LOOK AT THE SUMMARY OF THE INVENTION, I'D
16 LIKE TO PUT THAT UP BECAUSE I THINK IT IS ILLUSTRATIVE OF THE
17 POINT THAT WE'RE MAKING.

18 WHEN YOU LOOK AT THE SUMMARY OF THE INVENTION YOU SEE
19 A VERY GENERAL STATEMENT ABOUT THIS IMPROVED AUDIO/VIDEO
20 RECORDER, WHICH YOU'LL RECALL FROM THE TUTORIAL THIS THING THAT
21 LOOKED LIKE A VCR TAPE DRIVE, THEN YOU GO ON AND YOU SAY, OKAY,
22 WHAT IS THE PURPOSE OF THIS INVENTION? WHAT IS MY INVENTION?
23 THAT'S WHERE THE INVENTOR SUPPOSED TO LAY IT OUT.

24 AND VERY FIRST ONE SAYS ITS OBJECT TO HAVE AN IMPROVED
25 AUDIO/VIDEO RECORDER FOR USE IN AN ORDINARY TELEVISION SET.

1 ALL RIGHT. THAT IS LAID OUT VERY CLEARLY IN THE SPECIFICATION.
2 IT'S DISCUSSED AT LENGTH AS TO HOW YOU USE THAT, IT HAS NOTHING
3 TO DO WITH THE CLAIMS THAT WE'RE TALKING ABOUT NOW.

4 YOU GO TO THE NEXT ONE. WELL, ANOTHER OBJECT IS
5 PROVIDE AN IMPROVED AUDIO/VIDEO RECORDER, AGAIN, WITH THE
6 CAPABILITY OF TRANSFER FROM ONE PROGRAM, FROM ONE MEDIUM TO
7 ANOTHER. SO YOU'RE TRANSFERRING FROM ONE TAPE TO ANOTHER TAPE,
8 FROM A TAPE TO A HARD DRIVE, AGAIN, THE SAME BASIC IDEA.

9 THAT HAS NOTHING TO DO WITH WHAT WE'RE TALKING ABOUT
10 HERE. YOU KEEP GOING, OKAY, WE'RE GOING TO DO THE SAME THING,
11 YOU DON'T HAVE TO HAVE TWO TAPE DECKS. REMEMBER THIS THE GUY
12 INVENTOR OF THE DUAL DECK VCR, THAT'S REALLY WHAT HE'S THINKING
13 ABOUT, THAT'S THE OBJECT OF THE INVENTION.

14 YOU HAVE TO GO ALL THE WAY DOWN TO NUMBER 11, OBJECT
15 OF THE INVENTION NUMBER 11, WHICH IS THE ONE THEY CITE TO.
16 LET'S GO TO THAT. AND THEY'RE SAYING, THIS IS WHERE YOU'RE
17 GOING TO FIND COMPRESSION PLUS FASTER THAN REAL TIME, THIS IS
18 WHERE THE INVENTOR LAID OUT THE INVENTION AS IT'S CURRENTLY IN
19 THE CLAIMS.

20 WELL, DOESN'T SAY THAT. IT SAYS IT HAS DATA
21 COMPRESSION TECHNIQUES FOR EFFICIENT STORAGE. AS YOUR HONOR
22 POINTED OUT COMA, TRANSMISSION AND RECEPTION OVER TELEPHONE
23 LINES OR OTHER DIGITAL MEANS, SUCH AS SATELLITE TRANSMISSION.

24 DOESN'T SAY ANYWHERE FASTER THAN REAL TIME. AND, IN
25 FACT, THE REFERENCE TO TELEPHONE LINES IS INCONSISTENT WITH

1 THAT BECAUSE YOU'LL RECALL FROM THE TUTORIAL THAT THE TELEPHONE
2 LINE TRANSMISSION WAS SLOWER THAN REAL TIME AS DESCRIBED IN THE
3 SPECIFICATION.

4 APROPOS YOUR HONOR'S COMMENT ABOUT GRAMMAR, LET'S GO
5 UP TO THE PRIOR OBJECT OF THE INVENTION WHICH ALSO DISCUSSES
6 DATA COMPRESSION, WHICH IS THE 10TH ONE ON THE PAGE. IT
7 SAYS -- ONE JUST ABOVE THAT PLEASE, CHRIS. HERE WE GO.

8 PROVIDE AN IMPROVED AUDIO/VIDEO RECORDER WHICH
9 MAXIMIZES A GIVEN STORAGE CAPACITY THROUGH THE USE OF DATA
10 COMPRESSION TECHNIQUE.

11 IT IS NO DOUBT THAT ONE PURPOSE OF THIS INVENTION AS
12 IT WAS ORIGINALLY CONCEIVED AND DRAFTED WAS YOU'RE GOING TO USE
13 DATA COMPRESSION, SO YOU HAVE SUFFICIENT STORAGE. THAT
14 PERVADES THE SPECIFICATION, IT PERVADES SOME OF THE CLAIMS,
15 THAT'S AGAIN NOT WHAT -- ANYTHING WHAT THESE CURRENTS CLAIMS
16 ARE ABOUT.

17 THEY WERE TRYING TO SAVE SPACE ON HARD DRIVES WHICH
18 WERE EXPENSIVE BACK THEN. WHEN YOU GO THROUGH ALL OF THIS YOU
19 SAY, WELL, THERE'S ABSOLUTELY NOTHING IN THE OBJECTS OF THE
20 INVENTION UNDER THE SUMMARY OF THE INVENTION SECTION WHICH SAYS
21 WE'RE TRYING TO USE DATA COMPRESSION TO QUOTE "ENABLE BURST
22 TERM FASTER THAN REAL TIME TRANSMISSION". NOTHING REMOTELY
23 LIKE IT.

24 SO THEY SAY, AHA, THE ONE PLACE YOU HAVE TO LOOK TO IS
25 VOLUME SEVEN WHERE THEY TALK ABOUT USING AN OPTICAL DISK DRIVE.

1 LET'S GO THERE. THIS IS COLUMN 7, LINES 55 TO 65. THIS IS THE
2 EXACT PORTION MR. FOLSE POINTED TO YOU WHEN YOU SAID WHERE IS
3 IT.

4 WHEN YOU READ THIS IT DOES SAY THAT AN OPTICAL
5 FIBEROPTIC LINE CAN CARRY IT VERY QUICKLY. IT SAYS NOTHING,
6 THOUGH, ABOUT WHETHER THERE'S A LINK OR RELATIONSHIP BETWEEN
7 ANY FORM OF COMPRESSION DATA OR OTHERWISE AND SENDING IT FASTER
8 THAN REAL TIME.

9 AND, IN FACT, ALTHOUGH, IF YOU DO THE MATH THAT
10 FIBEROPTIC LINE IS FASTER THAN REAL TIME, IT DOESN'T EVEN
11 BOTHER TO MENTION THAT, OTHER THAN IN ONE LINE WHERE IT SAYS AT
12 ACCELERATED RATE FROM THE FIRST VCR TO A SECOND VCR IN LESS
13 TIME WOULD TAKE TO VIEW THE PROGRAM.

14 THIS IS COPYING FROM ONE DISK TO ANOTHER DISK, ONE VCR
15 DECK TO ANOTHER VCR DECK, IN LESS TIME THAN IT TAKES TO VIEW
16 IT. IF YOU HAVE TO FIND IN COLUMN 7 ONE PARTICULAR EMBODIMENT,
17 THE MAIN PURPOSE OF THE INVENTION, YOU ALREADY KNOW YOU'RE IN
18 TROUBLE.

19 BUT THE MORE IMPORTANT PART OF THIS PORTION OF COLUMN
20 7, WHICH YOU'LL RECALL WAS THE ONLY PART UPON WHICH THEY
21 RELIED, IS THAT IT WAS -- HAS NO BEARING, NO RELATIONSHIP TO
22 COMPRESSION.

23 THAT FIBEROPTIC LINE, AS YOU RECALL FROM THE TUTORIAL,
24 WILL TAKE THAT VIDEO PROGRAM FASTER THAN REAL TIME, WHETHER
25 IT'S COMPRESSED OR UNCOMPRESSED. SO THE VERY ARGUMENT THEY'RE

1 MAKING TO YOU TODAY IS ABSOLUTELY NOWHERE REFLECTED IN THAT
2 SPECIFICATION.

3 I -- THAT THERE'S SOMETHING ABOUT DATA COMPRESSION
4 WHICH ENABLES OR IS A NECESSARY PREREQUISITE TO COMMUNICATION
5 OR TRANSMISSION FASTER THAN REAL TIME. THAT DOESN'T EXIST IN
6 THE SPECIFICATION.

7 SO WHEN WE START TALKING ABOUT WHAT CLAIM CONSTRUCTION
8 SUPPORTED BY THE SPECIFICATION, IT'S IMPORTANT TO UNDERSTAND
9 THERE'S NOT EITHER. SO THIS ISN'T A SITUATION WHERE THEY HAVE
10 AN EMBODIMENT WHICH SQUARELY REFLECTS THEIR CONSTRUCTION AND
11 SAID, WELL, OUR EMBODIMENT, OUR CONSTRUCTION WILL COVER THAT
12 EMBODIMENT, IT DOESN'T.

13 UNDER THE EMBODIMENTS IN THIS PATENT YOU COULD HAVE
14 COMPRESSED THAT GOES SLOWER THAN REAL TIME OR UNCOMPRESSED THAT
15 GO FASTER THAN REAL TIME. AND THERE'S NO LINK BETWEEN THE TWO.
16 YET THEIR CONSTRUCTION REQUIRES A LINK.

17 THE PRIMARY ARGUMENT THEY MAKE ABOUT OUR CONSTRUCTION,
18 AND I WANT TO CLEAR THIS UP RIGHT NOW IS THAT WE QUOTE "EXCLUDE
19 THE PREFERRED EMBODIMENT". WE DON'T EXCLUDE THE PREFERRED
20 EMBODIMENT, THE PREFERRED EMBODIMENT HAS DATA COMPRESSION, AS I
21 SAID THE TUTORIAL, YOU HAVE IN CONJUNCTION WITH TIME
22 COMPRESSION.

23 OUR POINT TIME COMPRESSION REQUIREMENT OF THE CLAIMS
24 IS NOT SATISFIED MERELY BY DATA COMPRESSION, AND IT'S NOT
25 SATISFIED MERELY BY DATA COMPRESSION PLUS TRANSMISSION FASTER

1 THAN REAL TIME.

2 **THE COURT:** WHEN IF YOU HAVE SIGNIFICANT DATA
3 COMPRESSION IN AND OF ITSELF, REGARDLESS OF HOW THE
4 TRANSMISSION OCCURS BY WHAT MEANS, WILL THAT INEVITABLY MEAN
5 THAT IT WILL BE FASTER THAN THE REAL TIME, IN WHICH THAT WILL
6 TRANSMIT FASTER THAN THE REAL TIME?

7 **MR. POWERS:** NO.

8 **THE COURT:** PLAY IT BACK?

9 **MR. POWERS:** CONCLUSIVE EVIDENCE FROM THAT OF THE
10 SPECIFICATION IS COMPARISON OF THE 2,400 BAUD MODEM, WHICH IS
11 ONE OF THE TRANSMISSION MEANS SHOWN IN THE SPECIFICATION. AND
12 YOU COULD HAVE THE MAXIMUM PIE IN THE SKY COMPRESSION YOU WANT
13 WHICH IS 200 TO ONE RATIO THEY SHOWED IN THE SPECIFICATION,
14 WHICH IS NOT BEING ACHIEVED TODAY.

15 YOU COULD HAVE 200 TO ONE COMPRESSION RATIOS THAT
16 MAXIMUM PIE IN THE SKY COMPRESSION, IT'S STILL MUCH SLOWER THAN
17 REAL TIME OVER THAT 2,400 BAUD MODEM WHICH WAS, IN FACT, BEING
18 USED EXTENSIVELY BACK IN 1988.

19 BY THE SAME TOKEN YOU COULD HAVE ZERO COMPRESSION IT
20 WOULD BE MUCH FASTER THAN REAL TIME IF YOU SENT IT OVER THE
21 FIBEROPTIC LINE, THAT'S WHY IN THE SPECIFICATION AND, IN FACT,
22 THERE IS NO LINK BETWEEN THE TWO.

23 **THE COURT:** WELL, IS THE KEY TO WHY THIS WOULD MOVE
24 FASTER AFTER DATA COMPRESSION, IF IT'S NOT BECAUSE OF THE DATA
25 COMPRESSION THE USE OF THE FIBEROPTIC LINE?

1 **MR. POWERS:** IT IS OUR VIEW THAT'S EXACTLY WHAT THE
2 SPECIFICATION TEACHES I.E. A LAW OF NATURE THAT AS TRANSMISSION
3 RATES INCREASE IT WILL BE EASIER TO SEND THINGS FASTER THAN
4 REAL TIME. AND THAT'S JUST TRUE.

5 AND ANOTHER FACT OF NATURE IS IF SOMETHING IS
6 COMPRESSED IN SPACE, I.E. DATA COMPRESSED, IF YOU'RE SENDING IT
7 OVER THE SAME METHOD IT WILL TAKE LESS TIME TO SEND IT OVER
8 THAT SAME METHOD IF IT HAS FEWER BITS. BUT THAT'S FEWER BITS,
9 THAT'S MERELY A LAW OF NATURE THAT SAYS SENDING LESS TAKES LESS
10 TIME THAN SENDING MORE ALL THINGS EQUAL.

11 THE SPECIFICATION TEACHES ZERO CONNECTION BETWEEN
12 THOSE TWO. SO THEIR PROPOSED CONSTRUCTION WHICH HAS DATA LINK
13 IS NOT DISCLOSED IN THAT SPEC.

14 **THE COURT:** IS THERE ANYTHING IN THE SPECIFICATION
15 THAT DISCLOSES TIME COMPRESSION?

16 **MR. POWERS:** NO. THERE'S NOT.

17 **THE COURT:** IS THERE SUCH A THING AS TIME COMPRESSION?

18 **MR. POWERS:** YES.

19 **THE COURT:** A PART FROM, YOU KNOW, FASTER THAN THE
20 SPEED OF LIGHT TRANSMISSION, THINGS LIKE THAT, WHATEVER IT MAY
21 BE, FIBEROPTIC CABLE OR WHATEVER OTHER MEANS.

22 **MR. POWERS:** TIME COMPRESSION HAS NOTHING TO DO, IN
23 FACT, WITH THE WAY THAT YOU'RE SENDING IT. YOU CAN TIME
24 COMPRESSION OVER SOMETHING THAT'S SLOW AND YOU CAN TIME
25 COMPRESSION OVER SOMETHING THAT'S FAST, THE QUESTION IS, ARE

1 YOU SQUEEZING IN TIME THE SAME DATA?

2 AND, AS I SAID BEFORE, YOU COULD COMPRESS THE DATA,
3 TOO, IF YOU WANT, THAT'S WHY WE'RE NOT EXCLUDING THE PREFERRED
4 EMBODIMENT. THE PREFERRED EMBODIMENT WITH DATA COMPRESSION
5 LESS STORAGE SPACE, ALL OF THOSE OBJECTS OF THE INVENTION THAT
6 SAYS HERE WHY DATA COMPRESSION IS A GOOD THING.

7 BUT THE SPEC DOES NOT LINK DATA COMPRESSION TO THIS
8 FASTER THAN REAL TIME AND TIME COMPRESSION. AS YOU'LL RECALL
9 WE GAVE YOU EXAMPLES FROM DIGITAL AND ANALOG, ANYTHING THAT
10 INCREASES THE SIGNALING RATE OR IF IT'S ANALOG JUST INCREASING
11 THE FREQUENCY, THOSE ARE TIME COMPRESSION AS WELL UNDERSTOOD IN
12 THE ART.

13 AND AS ADMITTED BY THEIR EXPERT AND OURS, THIS ISN'T A
14 DEBATE BETWEEN THE EXPERTS THAT IS IN THIS SPACE HOW TIME
15 COMPRESSION USED, THAT'S ONE OF THE POINT I WANT TO GET TO WHEN
16 WE GET INTO THE PRESENTATION.

17 SO WHEN THEIR STARTING PLACE FOR ANY CLAIM
18 CONSTRUCTION ANALYSIS, WHEN THERE'S A TERM OF ART THAT'S IN THE
19 PATENT IT'S HOW DO ONE SKILLED IN THE ART UNDERSTAND THAT TERM
20 IN THIS FIELD.

21 THAT'S A STARTING PLACE ANYWHERE, IT'S AN IMPORTANT
22 ISSUE ANYWHERE. AND IT'S MORE IMPORTANT WHEN THAT TERM IS NOT
23 PRESENT IN THE SPECIFICATION ANYWHERE AS IS HERE BECAUSE THE
24 RIGHT TURN MR. HEIN TOOK IN 1990.

25 **THE COURT:** AS I READ IT, TIME-COMPRESSED, WHICH

1 REALLY SHOULD HAVE A HYPHEN, DRIVE EVERYBODY NUTS BY PEOPLE WHO
2 REALLY BESIDES LEARNING THE TECHNOLOGY WHICH, OF COURSE,
3 INVENTOR LAWYERS HAVE TO DO, WHICH THEY WOULD ALSO LEARN
4 ENGLISH GRAMMAR, SHOULD BE TIME HYPHEN COMPRESSED --

5 **MR. POWERS:** YOU'LL GET NO DEBATE FROM ME.

6 **THE COURT:** -- REPRESENTATION, BECAUSE AS I UNDERSTAND
7 IT, TIME -- DO YOU AGREE TIME-COMPRESSED MODIFIES
8 REPRESENTATION?

9 **MR. POWERS:** EXACTLY.

10 **THE COURT:** WHAT DO YOU UNDERSTAND?

11 WHAT DO YOU UNDERSTAND REPRESENTATION TO MEAN IN THIS
12 CONTEXT?

13 **MR. POWERS:** THERE'S NOT A DEBATE BETWEEN THE PARTIES
14 REPRESENTATION, OTHER THAN THE SECOND HALF WHAT HEIM SAID,
15 THE -- A REPRESENTATION IS ANOTHER VERSION, IT'S A WAY OF QUOTE
16 "REPRESENTING", IF YOU WILL, THAT ORIGINAL WORK AND --

17 **THE COURT:** SO IT'S A COPY OR SOMETHING AND THAT'S
18 PROBABLY NOT A GOOD WORD TO USE, BUT SOMETHING LIKE THAT.

19 **MR. POWERS:** ANOTHER FORM OF IT. SO, FOR EXAMPLE, IF
20 I -- IF WE'RE PLAYING THAT SONG THAT'S 33 1/3 AND WE SPEED IT
21 UP TO 45, IT'S THE SAME SONG, YOU'RE HEARING IT DIFFERENTLY,
22 IT'S JUST SPED UP, THE FREQUENCY INCREASED, THAT IS A
23 TIME-COMPRESSED REPRESENTATION.

24 IF YOU -- WHAT PLAYS -- WHERE WE DO PART COMPANY,
25 MR. HEIM SAYS REPRESENTATION MEANS A DIFFERENT VERSION, WHICH

1 MEANS FEWER BITS, NO, THAT -- NOTHING ABOUT IT THAT MEANS THAT.

2 OUR WHOLE POINT IS THAT THE WORD TIME MUST BE GIVEN
3 MEANING. IF THEY MEANT DATA COMPRESSED OR JUST COMPRESSED AS
4 THEY STARTED OFF WITH, THEN WE WOULD BE IN A DIFFERENT PLACE.

5 THEY'RE READING THIS CLAIM AS IF THE WORD TIME ISN'T
6 THERE, AS IT WASN'T IN THE BEGINNING. IT'S JUST COMPRESSING
7 AND TO A COMPRESSED REPRESENTATION, ET CETERA, ET CETERA, OKAY,
8 THEN, OF COURSE, THEY WOULD BE RIGHT.

9 THAT YOU LOOK AT THE SPECIFICATION THE NORMAL WORD OF
10 COMPRESS JUST TO MAKE SMALL. THERE'S NO RESTRICTION THAT IT'S
11 MAKING SMALLER IN TIME AS OPPOSED TO SPACE.

12 YOU LOOK AT THE SPEC, THE SPEC TALKS ABOUT DATA
13 COMPRESSION, YOU SAY, BINGO, WE'RE TALKING ABOUT DATA
14 COMPRESSION, THEY WOULD BE RIGHT.

15 THE PROBLEM IS THAT PESKY LITTLE WORD TIME WHICH WAS
16 ADDED IN 1990 AND MR. HEIN'S RIGHT TURN WHEN THEY WERE TRYING
17 TO GET PREVIOUSLY DATA COMPRESSED CLAIMS.

18 **THE COURT:** NOW, WITH RESPECT TO CLAIM ONE OF THE
19 '995, SAYS "COMPRESSION MEANS" AND THERE'S THE COMAS AND A
20 COUPLE OF SAID INPUT MEANS FOR COMPRESSING SAID AUDIO/VIDEO
21 SOURCE INFORMATION, THAT MEANS DATA COMPRESSION, RIGHT?

22 **MR. POWERS:** NO. DOES NOT.

23 **THE COURT:** NO?

24 **MR. POWERS:** DOES NOT.

25 **THE COURT:** INTO A WHAT?

1 **MR. POWERS:** IF THE WORD, IF THE PHRASE INTO A
2 TIME-COMPRESSED REPRESENTATION THEREOF WEREN'T THERE, I WOULD
3 AGREE WITH YOU. THAT'S HOW IT WOULD LOGICALLY BE CONSTRUED.
4 YOU CAN'T JUST CONSTRUE IT IN ABSTRACT.

5 THE PHRASE ISN'T COMPRESSING SAID AUDIO/VIDEO SOURCE
6 REPRESENTATION INFORMATION, IT IS COMPRESSING THAT INFORMATION
7 INTO A TIME-COMPRESSED REPRESENTATION THEREOF.

8 SO THE QUESTION IS, WHAT DOES THAT WHOLE PHRASE MEAN?
9 BECAUSE YOU CAN'T CONSTRUE IT WITHOUT SAYING WHAT TYPE OF
10 COMPRESSION IT IS, AND IT TELLS YOU WHAT TYPE OF COMPRESSION IT
11 IS RIGHT AFTERWARDS, INTO A TIME-COMPRESSED REPRESENTATION.

12 NOW, AS WE SAY, THAT DOESN'T MEAN YOU CAN'T ALSO BE
13 DOING DATA COMPRESSION.

14 **THE COURT:** YOU DON'T THINK THAT YOU COULD SAY THAT
15 THAT'S DATA COMPRESSION THAT IS THEN BEING COMPRESSED INTO A
16 TIME-COMPRESSED REPRESENTATION?

17 **MR. POWERS:** THERE IS NO DOUBT YOU COULD HAVE DATA
18 COMPRESSION AND THEN TIME-COMPRESS THAT DATA COMPRESSED
19 REPRESENTATION, THERE'S NO DOUBT ABOUT THAT.

20 AND, IN FACT, THAT'S WHAT HAPPENED IN EUROPE. THAT'S
21 PRECISELY HOW THESE CLAIMS HAVE EVOLVED IN EUROPE. YOU HAD TO
22 HAVE TWO THINGS. YOU COULD HAVE DATA COMPRESSION AND THEN IT
23 HAD TO BE TIME COMPRESSED AFTER THAT. BECAUSE YOU CAN, OF
24 COURSE, TIME COMPRESS A DATA COMPRESSED REPRESENTATION.

25 THERE'S NO REASON WHY YOU CAN'T, YOUR JUST TAKING THAT

1 SAME AMOUNT OF COMPRESSED DATA AND SQUEEZING IT IN TIME. AND
2 THAT'S IT, IS THAT WORD TIME THAT THEY'RE TRYING TO READ IT
3 OUT, THAT'S THE PROBLEM WITH THIS CASE.

4 IT'S THAT WORD TIME THAT WAS ADDED IN 1990 TO ALL THE
5 CLAIMS TO TRY TO GET OVER ALL THIS PRIOR ART AND THAT'S EXACTLY
6 WHY WE'RE HERE.

7 AND, I THINK, THE MOST ILLUMINATING ANSWER IN YOUR
8 COLLOQUY WITH MR. HEIM, WHEN YOU SAID, WELL, WHERE IS THE PLACE
9 IN THE PATENT, IN THE SPECIFICATION WHERE YOU WERE, THE
10 INVENTOR LAYS OUT THIS IS MY INVENTION?

11 I'M GOING TO HAVE SOME RELATIONSHIP BETWEEN DATA
12 COMPRESSION, WHICH IS THEIR POSITION, AND SENDING IT FASTER
13 THAN REAL TIME, THAT EXPLAINS TO ME THEIR VERSION OF TIME
14 COMPRESSION IS REALLY WHAT HE MEANT, THAT'S WHAT HE INVENTED.

15 AND THE ANSWER WAS QUOTE "IT'S NOT IN A SINGLE PLACE
16 YOU HAVE TO PIECE IT TOGETHER". THAT'S A CLASSIC PATENT
17 LAWYER'S PATENT, NOT A CLASSIC INVENTOR PATENT.

18 IF YOU DON'T, IF YOU HAVE TO PIECE IT TOGETHER AND, IN
19 FACT, IT'S NOT ACTUALLY THERE, THERE IS NO PLACE IN THAT
20 SPECIFICATION AND THEY ARE UNABLE TO SHOW YOU ONE, AND THERE
21 ISN'T ONE WHERE THERE'S A LINK, WHICH IS WHAT THEY ADMIT HAS TO
22 BE THERE BETWEEN THE DATA COMPRESSION UNDER THEIR CONSTRUCTION
23 AND THE FACT YOU ARE NOW QUOTE "ENABLED" TO SEND IT FASTER THAN
24 REAL TIME.

25 AND THE REASON THERE'S NO LINK IS BECAUSE THAT'S

1 ENTIRELY DEPENDENT ON THE SPEED OF THE TRANSMISSION MEDIUM.
2 YOU CAN COMPRESS ALL YOU WANT, BUT IF YOU'RE SENDING IT
3 ANOTHER -- THAT BAUD MODEM WHICH 11 OF THE PORTS ON HIS DEVICE
4 IT'S GOING TO GO SLOWER THAN REAL TIME.

5 AND YOU CAN COMPRESS NOT AT ALL AND IT WILL GO WAY
6 FASTER THAN REAL TIME IF YOUR USING A FIBEROPTIC PORT. AND IF
7 YOU'RE USING ONES IN BETWEEN IT WILL EITHER GO FASTER OR NOT
8 DEPENDING ON THAT TRANSMISSION MEDIUM.

9 THAT'S WHY WE'RE GOING THROUGH AT LENGTH THAT MATRIX
10 IN THE TUTORIAL ABOUT WHAT COMPRESSED UNCOMPRESSED FILES WOULD
11 GO, HOW THEY WOULD GO FASTER OR NOT DEPENDING UPON THE
12 TRANSMISSION MEDIA.

13 SO THAT LINK WHICH THEY'RE ARGUING FOR DOESN'T EXIST
14 IN THE SPECIFICATION, AND THEY NEED THAT LINK BECAUSE THERE HAS
15 TO BE SOME MEANING TO THIS.

16 THEY ADMITTED SQUARELY THE FILE HISTORY AND HERE THAT
17 THEY DIDN'T INVENT DATA COMPRESSION, AND THEY DIDN'T INVENT
18 SENDING SOMETHING FASTER THAN REAL TIME. THAT FIBEROPTIC PORT
19 EXISTED, SO YOU COULD SEND IT FASTER THAN REAL TIME.

20 YOU CAN COMPRESS IT, HAS TO BE SOMETHING THEY DID
21 WHICH WE CAN DEFINE IN CLAIM CONSTRUCTION, SO THE WORLD KNOWS
22 WHAT'S INSIDE AND OUTSIDE OF THESE CLAIMS.

23 AND THAT'S WHERE THEIR CONSTRUCTION FAILS. THEY GIVE
24 YOU NO FIRM STAKE IN THE GROUND TO SAY, I UNDERSTAND WHAT'S
25 INSIDE AND OUTSIDE OF THESE CLAIMS, ALL THEY SAID IS, WELL, IF

1 YOU HAVE DATA COMPRESSION WHICH ENABLES FASTER THAN REAL TIME
2 YOU INFRINGE.

3 YOU DON'T PROVE THAT BY SHOWING YOU HAVE DATA
4 COMPRESSION AND FASTER THAN REAL TIME. THEY ADMITTED BOTH OF
5 THOSE WERE IN THE ART.

6 THAT WORD ENABLES WHAT DOES THAT MEAN? THAT'S WHERE
7 THEIR CONSTRUCTION FALLS APART, BOTH BECAUSE IT'S NOT SUPPORTED
8 IN THE SPECIFICATION AND BECAUSE IT'S NOT SUPPORTED BY THE
9 TECHNOLOGY.

10 WHY DON'T WE GO -- LET'S START WITH A LITTLE BIT OF
11 HISTORY. WE'VE DONE MUCH OF THIS.

12 OUR ESSENTIAL POINT, THIS GOES EXACTLY TO YOUR HONOR'S
13 QUESTION, IS THAT THERE WAS AN ORIGINAL MATCH BETWEEN THE
14 SPECIFICATION AND THE CLAIMS. THE ORIGINAL SPECIFICATION
15 TALKED ABOUT DATA COMPRESSION, THE CLAIMS TALKED ABOUT DATA
16 COMPRESSION AND SENDING FASTER THAN REAL TIME. THOSE MATCHED.

17 THE CURRENT CLAIMS DON'T MATCH THE SPECIFICATIONS,
18 THAT'S BECAUSE OF MR. HEIN'S RIGHT TURN IN 1990. THE CLAIMS AS
19 FILED, WELL, THE FIRST CLAIM NO COMPRESSION AT ALL, BUT FASTER
20 THAN REAL TIME.

21 THAT'S AN EXPRESSION, UNDERSTANDING THAT SAYS YOU JUST
22 PLUG IT UP TO THAT OPTICAL PORT YOU CAN SEND IT FASTER, WHETHER
23 YOU'RE COMPRESSING OR NOT, CLAIM 4 SAYS, WELL, YOU HAVE TO
24 COMPRESS IT, TOO.

25 SO THEY UNDERSTOOD, AT LEAST, AS ORIGINALLY FILED,

1 THERE WASN'T A LINK BETWEEN THOSE TWO BECAUSE CLAIM 1 SAID
2 THERE'S NO LINK, YOU DON'T HAVE TO COMPRESS.

3 THEN THEY FILED THE CIP CLAIMS AND, AGAIN, NO LINK,
4 CLAIM 9 IS FILED YOU COMPRESS IT, BUT DOESN'T HAVE TO GO FASTER
5 THAN REAL TIME. THAT WOULD ACHIEVE, IF THEY WERE ABLE TO GET
6 THIS CLAIM, ALL THOSE ADVANTAGES OF EFFICIENT STORAGE THAT THEY
7 TALKED ABOUT, REDUCING THE AMOUNT OF MEMORY YOU HAVE TO USE,
8 THEY SAID, BY THE WAY, YOU COULD ALL SEND IT FASTER THAN REAL
9 TIME, AGAIN, NO LINK.

10 NOW, THOSE CLAIMS WERE REJECTED, SHOWS DATA
11 TRANSMISSION IN A DATA TRANSMISSION CONTEXT, PTO CITED THE
12 WORKMAN REFERENCE FABRIS, F-A-B-R-I-S. WHAT HAPPENS?

13 WELL, HERE'S WHAT -- WHERE THE RIGHT TURN HAPPENS.
14 THEY HIRE MR. HEIN, HE SUBMITS THOSE TWO REFERENCES, BOTH
15 FABRIS AND WORKMAN.

16 IN BOTH APPLICATIONS, REMEMBER THAT WAS BEING CITED
17 ONLY IN THE CIP, HE CANCELS BOTH APPLICATIONS, ALL THE CLAIMS,
18 REFILES ALL NEW CLAIMS ALL WITH TIME-COMPRESSED IN IT NOW.
19 THAT IS THE RIGHT TURN.

20 MARCH OF '90, THIS IS IN THE '995 AND HERE'S WHERE
21 THEY EXPLAIN WHAT THEY'RE DOING. THEY SAY WORKMAN TEACHES AN
22 APPARATUS FOR TRANSMITTING A DIGITAL IMAGE OR LIMITED BANDWIDTH
23 CHANNEL, COMMUNICATIONS CHANNEL IN WHICH A BLOCK TRANSFORMATION
24 TECHNIQUE INVOLVING TRANSFORM COEFFICIENTS IS EMPLOYED, THAT'S
25 DATA COMPRESSION.

1 THERE SAYS, OKAY, THERE'S DATA COMPRESSION IN WORKMAN,
2 AND NOW THE QUESTION IS, WHAT DO WE DO WITH THAT?

3 THEN, OF COURSE, THE CLAIMS ARE ALL CHANGED, NOW WE'RE
4 TALKING ABOUT TIME COMPRESSION, WE'LL DO MUCH MORE IN THE FILE
5 HISTORY LATER.

6 A LITTLE BIT OF LEGAL PRINCIPLES. I THINK, WE DON'T
7 REALLY DISAGREE WITH ABOUT 98 PERCENT ABOUT THE LEGAL CONCEPTS
8 THAT MR. FOLSE PUT UP. OF COURSE, THE SPECIFICATION IS USUALLY
9 THE SINGLE BEST GUIDE. WHY?

10 BECAUSE THERE'S USUALLY A MATCH BETWEEN THE
11 SPECIFICATION AND THE INVENTION. THE CONTEXT OF THE CLAIM, THE
12 CLAIM LANGUAGE IS CRITICAL, AND MR. HEIM ARGUES WE IGNORE THE
13 CLAIM LANGUAGE. ACTUALLY, NO, THAT'S WHERE WE START BECAUSE
14 THAT WORD TIME IS IN THE CLAIMS.

15 AND BECAUSE OF THE PRESENCE OF THAT WORD TIME THAT WAS
16 ADDED, YOU HAVE TO GIVE THAT WORD MEANING. AND THAT IS THE
17 STARTING POINT, IF YOU WILL, OF OUR ANALYSIS AND THE WORD
18 TIME-COMPRESSED REPRESENTATION. AND THEN WE HAVE TO UNDERSTAND
19 WHAT THAT MEANS.

20 THE ONE PLACE WHERE WE DO DISAGREE, I DON'T THINK WE
21 NEED TO SPEND MUCH TIME, THEY TAKE US TO TASK BECAUSE THEY
22 CLAIM THAT THERE'S THIS HIERARCHY THAT PHILLIPS ESTABLISHES
23 THAT YOU MUST FOLLOW OR YOU'RE DOING THE LAW WRONG.

24 THAT'S NOT WHAT PHILLIPS SAYS. IF YOU READ PHILLIPS
25 ITSELF SAYS THIS COURT IN VITRONICS, THIS COURT SET FORTH

1 GUIDELINES THAT HOW YOU REACH THE CURRENT CLAIM CONSTRUCTION
2 AND DON'T HAVE PROPER LIMITATION YOU WANT TO HAVE, INCREASE THE
3 LIKELIHOOD COURT COULD COMPREHEND HOW A PERSON OF ORDINARY
4 SKILL IN THE ART WILL UNDERSTAND THE CLAIM TERMS IN THAT
5 PROCESS.

6 WE RECOGNIZE THERE IS NO MAGIC FORMULA OR CATAclysms
7 FOR CONDUCTING CLAIM CONSTRUCTION, SO THERE ISN'T A HIERARCHY.
8 WHAT PHILLIPS TEACHES, IF ANYTHING, PHILLIPS DIDN'T CLARIFY A
9 WHOLE LOT IN THE LAW, IT CLARIFIED A COUPLE OF THINGS, ONE OF
10 WHICH IS ALL THE DISTRICT COURTS WHO ARE WORRIED ABOUT WHETHER
11 THEY HAD TO LOOK AT THIS FIRST OR THAT FIRST, ALL THAT'S GONE.
12 JUST LOOK AT IT ALL AND REACH THE CLAIM CONSTRUCTION
13 EFFECTIVELY WHAT THEY SAID, THEN DON'T HAVE THE EXCESSIVE
14 RELIANCE ON DICTIONARIES THAT TEXAS DIGITAL HAD GIVEN US.

15 **THE COURT:** IT'S REACHING THE RIGHT CLAIM
16 CONSTRUCTION.

17 **MR. POWERS:** PRECISELY, YOU COULD LOOK AT ALL THE
18 SOURCES.

19 **THE COURT:** THAT IS THE KEY AND, OF COURSE, WE KNOW
20 THAT IF WE DON'T IT'S REVIEWED IN DE NOVO AND THEY'LL GET THE
21 RIGHT CLAIM.

22 **MR. POWERS:** THEY'LL EXPLAIN WHY WE'RE WRONG. NOW,
23 THE ONE PLACE WHERE WE HAVE A DISAGREEMENT IS ON THE EFFECT OF
24 THE SPECIFICATION IN THIS CASE.

25 AND, I THINK, PROBABLY WAS USED IN THEIR SLIDES 15 OR

1 20 TIMES AND CERTAINLY MANY, MANY TIMES IN THE BRIEFS, THAT WE
2 ARE EXCLUDING THE PREFERRED EMBODIMENT AND, AGAIN, THERE'S JUST
3 TWO POINTS ON THAT.

4 FIRST, WE'RE NOT EXCLUDING IT, THE PREFERRED
5 EMBODIMENT. SAYS NOTHING ABOUT TIME COMPRESSION. HERE'S HOW
6 YOU DATA COMPRESS AND HOW YOU SEND IT FASTER THAN REAL TIME.
7 YOU CAN DO BOTH OF THOSE UNDER OUR CONSTRUCTION.

8 OUR POINT IS ONLY THAT TIME COMPRESSION IS A CONCEPT
9 WELL-KNOWN IN THE ART, WHICH NEEDS TO BE ADDED TO THAT, BECAUSE
10 TIME COMPRESSION IS NOT DISCUSSED IN THE SPECIFICATION, JUST AS
11 THEIR CONSTRUCTION IS NOT SUPPORTED BY THE SPECIFICATION.

12 AND THEIR ARGUMENT THAT YOU CAN'T HAVE A CLAIM
13 CONSTRUCTION THAT DOESN'T MATCH THE DISCLOSURE IN SPEC, THAT
14 ARGUMENT FAILS HERE BECAUSE OF THE RIGHT TURN THAT MR. HEIN
15 TOOK.

16 WHERE WE ARE IS THAT YOU HAVE A TERM ADDED OUT OF THE
17 BLUE NOT SHOWN IN THE SPECIFICATION, A TERM THAT HAS MEANING TO
18 THOSE IN THE ART AS ACKNOWLEDGED BY BOTH EXPERTS HERE AND THERE
19 YOU HAVE TO GIVE MEANING TO IT, EVEN IF THAT'S NOT IN THE
20 SPECIFICATION.

21 AND CASE AFTER CASE AFTER CASE DOES EXACTLY THAT. THE
22 SCHOENHAUS CASE IS A CASE WE BRIEFED AND DISCUSSED, I DON'T
23 PURPORT TO GO THROUGH IT BECAUSE OF TIME AND DETAIL, BUT THE
24 KEY LANGUAGE IS WHERE THE SPECIFICATION INCLUDES A DESCRIPTION
25 LACKING A FEATURE, AS HERE.

1 DOESN'T TALK ABOUT TIME COMPRESSION WE ALL AGREE ON
2 THAT, IT TALKS ABOUT DATA COMPRESSION, TWO FORMS OF DATA
3 COMPRESSION, BUT NO TIME COMPRESSION, WE BOTH AGREE ON THAT
4 POINT, SO IT'S SPOT ON HERE.

5 BUT THE CLAIM RECITES THAT FEATURE AS IT DOES HERE
6 TIME COMPRESSION. THE LANGUAGE OF THE CLAIM CONTROLS AND IN
7 THIS CASE EXCLUDES THE PREFERRED EMBODIMENT, THAT PREFERRED
8 EMBODIMENT IS DEEMED DEDICATED TO THE PUBLIC AS IT WAS HERE,
9 THEY TRIED THE ORIGINAL CLAIM, JUST DATA COMPRESSION, THEY
10 FAILED.

11 WHAT THEY'RE TRYING TO DO NOW IS THROUGH CLAIM
12 CONSTRUCTION RECAPTURE THE CLAIMS THEY HAD TO GIVE UP IN THE
13 PROSECUTION. THAT'S PRECISELY WHAT IS OCCURRING IN THIS
14 PROCEEDING.

15 AND SCHOENHAUS THE ISSUE IS EXACTLY THAT, THE ISSUE IS
16 RIGID. RIGID A PARTICULAR MEANING, JUST AS TIME COMPRESSION
17 DOES, THE SPECIFICATION WAS INCONSISTENT WITH IT. COURT SAID,
18 I'M SORRY, IT DOESN'T MATTER THAT EMBODIMENT, THAT PREFERRED
19 EMBODIMENT IS EXCLUDED.

20 THE PLASTIPAK CASE IS ANOTHER EXAMPLE OF THE FEDERAL
21 CIRCUIT DOING EXACTLY WHAT WE SAY SHOULD BE DONE HERE, THERE
22 THE APPLICANT DISTINGUISH A PATENT, A PRIOR ART REFERENCE ON
23 THE GROUND THAT REFERENCE WAS SLIGHTLY CONCAVE.

24 AND THERE'S NO DEBATE IN THIS PATENT, THE PLASTIC PACK
25 PATENT, THE SPECS SHOWED SLIGHTLY CONCAVE EMBODIMENT. THE

1 DEBATE ON CLAIM CONSTRUCTION THE PATENT OWNER ARGUED, JUST AS
2 BURST DOES HERE, SAYS, WAIT A MINUTE, YOUR CONSTRUCTION WOULD
3 EXCLUDE THESE EMBODIMENTS.

4 THE COURT SAYS, SORRY, THAT'S WHAT YOU HAVE, NOT FILE
5 HISTORY, YOUR DONE, DESPITE WHAT THE SPECIFICATION SAYS BECAUSE
6 THE SPECIFICATION HAD ONE CONCEPT WHAT THE INVENTION WAS AS IT
7 DID HERE WHICH THEY LOST OVER TIME AND CHANGED.

8 AND THAT'S WHY THERE'S OFTEN NOT A MISMATCH BETWEEN,
9 NOT A MATCH, IF YOU WILL, BETWEEN THE SPECIFICATION AND THE
10 CLAIMS BECAUSE IT HAS TO BE NARROWED OR THERE'S A RIGHT TURN.

11 THE ELEKTA CASE, THE FINAL CASE, THE SPECIFICATION
12 SHOWED PREFERRED EMBODIMENT RIGHT IN THE MIDDLE OF A RANGE THAT
13 THE CLAIM EXCLUDED, THE CLAIM EXCLUDED IT BECAUSE OF FILE
14 HISTORY THEY HAD TO NARROW THE CLAIMS.

15 PATENTEE ARGUED THERE, AS HERE, SORRY, THAT CLAIM
16 CONSTRUCTION WRONG, IT WOULD EXCLUDE OUR PREFERRED EMBODIMENT.
17 THE COURT SAID, SORRY, THE CLAIM LANGUAGE MEANS WHAT IT MEANS.

18 SO HERE'S THE DEBATE BETWEEN US. I DON'T WANT TO GO,
19 ACTUALLY, INTO THE SPECIFICATION IN THE FILE HISTORY WITH THAT
20 LEGAL FRAMEWORK IN MIND.

21 THE REDUCED NUMBER OF BITS THAT'S JUST A WAY OF SAYING
22 IN THE DIGITAL WORLD YOU'RE HAVING DATA COMPRESSION, BUT THE
23 KEY WORD IS ALLOWS BECAUSE THEY ADMITTED THEY HAVE TO, OF
24 COURSE, THAT THE CLAIM CONSTRUCTION CAN'T JUST BE THAT, YOU
25 HAVE DATA COMPRESSION AND FASTER THAN REAL TIME. BECAUSE THAT

1 WAS IN THE PRIOR ART.

2 THEY ADMITTED THAT, SO THIS KEY WORD WHAT DOES ALLOWS
3 MEAN. AND THE CHALLENGE FOR YOU, I THINK, THIS PROCEEDING IS
4 GOING TO BE FIGURING OUT PRECISELY WHAT THE WORD ALLOWS
5 INCLUDES AND EXCLUDES.

6 IT CERTAINLY ISN'T EVEN 200 TO ONE DATA COMPRESSION,
7 THAT DOESN'T ALLOW IF YOU HAVE TO USE A 2,400 BAUD MODEM, YET
8 UNDER THEIR CONSTRUCTION REDUCING ONE BIT OF -- OUT OF A 17
9 BILLION BIT FILE, YOU TAKE AWAY ONE BIT UNDER THEIR
10 CONSTRUCTION THAT'S ENOUGH FOR THIS IF YOU'RE SENDING IT
11 SUFFICIENTLY FAST TO SEND IT FASTER THAN REAL TIME.

12 I WOULD SUGGEST THAT EITHER OF THOSE IS AN ABSURD
13 RESULT. SO THAT'S THE DEBATE, OUR CONSTRUCTION IS COMPRESSION
14 IN TIME, GIVING MEANING TO THE WORD TIME, AND THERE'S TWO WAYS
15 TO DO THAT, ANALOG INCREASING THE FREQUENCY IN YOUR -- IN THE
16 DIGITAL WORLD YOUR INCREASING THE SIGNALING RATE, NO DEBATE
17 FROM THE EXPERTS THAT'S HOW YOU COMPRESS IN TIME IF, IN FACT,
18 THAT'S WHAT YOU CONCLUDED IT MEANT.

19 HERE'S THE FIVE ISSUES WE BELIEVE YOUR HONOR HAS TO
20 ADDRESS IN ORDER TO RESOLVE THIS DEBATE BETWEEN THE PARTIES.
21 FIRST, WHETHER IT HAS AN ORDINARY MEANING.

22 THEY CHOSE IN THIS RIGHT TURN IN 1990 TO ADD A TERM OF
23 ART, IF THAT TERM OF ART HAS MEANING TO THE EXPERTS THEY'RE
24 STUCK WITH IT, EVEN IF THEY DON'T LIKE IT, NOW THEY'RE STUCK
25 WITH IT, THAT THE WAY THE RULES WORK.

1 SECOND, WHICH CONSTRUCTION MORE CONSISTENT WITH THE
2 CLAIM LANGUAGE. AGAIN, THE CLAIM LANGUAGE IS AN IMPORTANT PART
3 OF DECIDING WHICH CONSTRUCTION IS RIGHT.

4 THIRD, WHETHER THE SPECIFICATION REQUIRES VARIATION
5 FROM THAT ORDINARY MEANING.

6 FOURTH, WHAT'S THE EFFECT OF THE TIME HISTORY.

7 AND, FIFTH, THE ISSUE I WAS ALLUDING TO JUST EARLIER,
8 WHETHER THEIR CONSTRUCTION IS INDEFINITE, BECAUSE YOU NEVER
9 KNOW WHETHER A CERTAIN AMOUNT OF COMPRESSION IS ALLOWING OR
10 ENABLING COMMUNICATION FASTER THAN REAL TIME.

11 LET'S TALK ABOUT ORDINARY MEANING, NO DEBATE ABOUT THE
12 LAW, PRE-PHILLIPS POST-PHILLIPS. IN PHILLIPS ORDINARY MEANING
13 TO ONE SKILLED IN THE ART IS CRITICAL. THERE'S NO DEBATE ABOUT
14 THAT AT ALL. LET'S GO TO -- AND THERE'S A PRESUMPTION THAT
15 AFFORDS THAT.

16 NOW, HERE WE HAVE A FAIRLY UNUSUAL SITUATION.
17 NORMALLY YOU HAVE, AS YOUR HONOR KNOWS BETTER THAN WE DO,
18 COMPETING EXPERTS BATTLING BACK AND FORTH WHAT THE ORDINARY
19 MEANING WAS IN THE RELEVANT PERIOD, IN THE RELEVANT FIELD AT
20 THE TIME.

21 HERE WE HAVE SURPRISING AGREEMENT BETWEEN THE TWO
22 SIDES' EXPERTS. MR. HALPERN SAYS SQUARELY THAT'S WHAT IT
23 MEANS, INCREASE FREQUENCY OF THE SIGNAL DECREASING DURATION
24 SQUEEZING IT IN TIME, IF YOU WILL, EXACTLY WHAT WE SHOWED YOU
25 IN THE TUTORIAL.

1 DR. HEMAMI HAS IDENTIFIED FIVE MEANINGS THAT SHE COULD
2 FIGURE OUT AND SHE DID AN EXHAUSTIVE SEARCH. SHE TESTIFIED AT
3 HER DEPOSITION SHE FOUND EVERY SINGLE ONE THAT SHE COULD THINK
4 OF THAT MIGHT POSSIBLY MEAN AT THE RIGHT TIME PERIOD IN 1981
5 ONE THROUGH FIVE.

6 NOW, HERE'S WHAT SHE SAYS. I WANT TO MAKE SURE I CAST
7 A BROAD NET ANY POSSIBLE MEANING OF THE TERM TIME COMPRESSION
8 IN ANY FIELD IS IN HER LIST OF FIVE.

9 OKAY. LOOK AT ONE AND FOUR. ONE AND FOUR ANALOG,
10 REDUCING THE DURATION OF THE SIGNAL RELATIVE TO OUR ORIGINAL
11 DURAYS (PHONETIC) THAT'S RIGHT DOWN MAIN STREET, THAT'S OUR
12 CONSTRUCTION IN THE CONTEXT OF ANALOG.

13 NUMBER FOUR, IS OUR CONSTRUCTION IN THE CONTEXT OF
14 DIGITAL. INCREASING THE DIGITAL SIGNALING RATE. SO THOSE ARE
15 TWO MEANINGS WHICH ARE EXACTLY OURS. IT'S THE SAME MEANING,
16 JUST WHETHER YOU TALK ABOUT DIGITAL OR ANALOG AND SHE ADMITS
17 THAT'S RIGHT IN THE RIGHT FIELD, IN THE FIELD OF COMMUNICATION
18 OF AUDIO OR VIDEO INFORMATION.

19 NOW, IF YOU CAN DESCRIBE THE FIELD OF THIS PATENT, THE
20 COMMUNICATION OF AUDIO/VIDEO INFORMATION IS PERFECT, IT FITS
21 BETTER THAN OJ'S GLOVE. SO WHAT'S THE ARGUMENT?

22 WELL, THE ARGUMENT WAS THERE'S ALL THESE OTHER
23 MEANINGS, YOU JUST SAW MR. HEIM'S SLIDE SAYING THERE'S LOTS OF
24 MEANINGS, RIGHT, THOSE ARE MEANINGS THAT AREN'T IN THESE
25 FIELDS. AND TWO AND THREE FROM DR. HEMAMI'S LIST OF FIVE THOSE

1 AREN'T THE AREA OF BURST PATENT, THEY'RE IN DIFFERENT AREA OF
2 TECHNOLOGY, YEAH, THAT'S RIGHT.

3 NUMBER FIVE SHAPING RADAR PULSES, SHE HAD TO CAST A
4 PRETTY BROAD NET TO FIND THAT ONE. ADMITTED PRETTY EASILY
5 THAT'S IN THE FIELD OF BURST PATENT'S SOURCE, THE ONLY MEANINGS
6 THAT EITHER SIDE EXPERTS COULD IDENTIFY AT THE RIGHT TIME
7 PERIOD OF THIS TERM IT'S A TERM OF ART IN THE RIGHT FIELD, IS
8 APPLE'S CONSTRUCTION SQUARELY. NO DEBATE ABOUT THAT. THAT'S
9 OUR CONSTRUCTION. SO WHAT IS THEIR RESPONSE?

10 THEIR RESPONSE IS, WELL, THAT MEANING OF TIME
11 COMPRESSION IS JUST CALLED, THEY'RE TRYING TO LABEL AT THE TIME
12 COMPRESSION MULTIPLEXING DEFINITION, AND HERE WE'VE GOTTEN A
13 LITTLE BIT OFF THE FIELD BECAUSE TIME COMPRESSION MULTIPLEXING
14 A COMBINATION OF TWO CONCEPTS, ONE IS TIME COMPRESSION AND ONE
15 IS MULTIPLEXING.

16 TIME COMPRESS WITHOUT MULTIPLEXING, WHEN I PLAY MY 33
17 1/3 RECORD AT 45 I'M NOT MULTIPLEXING AT ALL, I AM TIME
18 COMPRESSING, AS WE ALL AGREE. TIME COMPRESSION MULTIPLEXING
19 JUST HAPPENS TO BE ONE APPLICATION OF TIME COMPRESSION.

20 SO WHEN BURST TRIES TO SAY THAT OUR DEFINITION IS A
21 TIME-COMPRESS MULTIPLEXING OR TCM DEFINITION, THAT REALLY IS A
22 RED HERRING. HAPPENS TO BE USED IN TCM, BUT IT'S NOT LIMITED
23 TO TCM AS THE EXPERTS HAVE ALL AGREED.

24 IT'S THE RELEVANT FIELD IN THE COMMUNICATION OF AUDIO
25 AND VIDEO. AND WE'VE SHOWN YOU MANY, MANY USES IN THE ART AT

1 THE RIGHT TIME WHERE THE CONCEPT SQUEEZING DATA, EITHER ANALOG
2 OR DIGITAL IN TIME, IS EXACTLY WHAT'S USED IN THE TERM TIME
3 COMPRESSION, AND EVEN MORE INTERESTINGLY IT'S USED IN
4 CONJUNCTION WITH THE CONCEPT OF BURSTING DATA.

5 THE OTHER CONCEPT IN THIS CLAIM. THE PRIOR ART IN THE
6 PATENT FILE HISTORY COMPRESSED IN TIME, THAT'S EXACTLY OUR
7 DEFINITION. AND WHEN YOU LOOK AT ALL OF THE USES OF THE TERM
8 TIME COMPRESSED IN THE FILE HISTORY, IN ALL OF THE OTHER USES
9 IN THE ART IT'S ALL CONSISTENT WITH APPLE'S USE.

10 THERE IS NOT A SINGLE REFERENCE, NOT A SINGLE INSTANCE
11 IN THE PRIOR ART IN THE FIELD GENERALLY IN WHICH BURST CAN SHOW
12 TO TIME COMPRESSION BEING USED TO DESCRIBE SIMPLE DATA
13 COMPRESSION, YET THAT IS THEIR ARGUMENT.

14 HERE'S THEIR FOUR RESPONSES TO THAT ORDINARY MEANING.
15 WELL, FIRST, IT'S NOT APPLICABLE TO BURST'S INVENTION BECAUSE
16 OF THIS TIME COMPRESSION MULTIPLEXING IDEA.

17 WELL, IN FACT, THAT'S NOT TRUE, DR. HEMAMI'S REPORT
18 SAYS INCREASING THE DIGITAL SIGNAL RATE TO REDUCE TRANSMISSION
19 TIME, THAT IS THE ORDINARY MEANING ACCORDING TO DR. HEMAMI IN
20 THAT FIELD.

21 NOW, IF THERE'S A BETTER DESCRIPTION OF WHAT EVEN THEY
22 THINK THEIR PATENT IS I COULDN'T HAVE WRITTEN IT. THAT'S
23 SQUARE ON THEIR DESCRIPTION OF THIS PATENT.

24 THEIR ARGUMENT IS, WELL, THESE TCM SYSTEMS TRY TO MOVE
25 MORE DATA, NOT FASTER DATA, THEREFORE, THEY'RE TRYING TO DO

1 SOMETHING DIFFERENT. SOMETIMES THAT'S RIGHT, BUT IT'S
2 IRRELEVANT.

3 THE POINT WE'RE NOT TALKING ABOUT TIME COMPRESSION
4 MULTIPLEXING, THAT'S JUST ONE APPLICATION OF TIME COMPRESSION
5 IN A MULTIPLEX ENVIRONMENT.

6 THE WORD TIME COMPRESSION AS YOU SEE FROM THE USES IN
7 THE ART, WHEN YOU LOOK AT THE HASKEL PATENT, YOU LOOK AT THE
8 ARNON PATENT, IT'S NOT USED EXCLUSIVELY IN THE TIME COMPRESSION
9 MULTIPLEXING ENVIRONMENT, BUT IN ADDITION THEY'RE WRONG.

10 TIME COMPRESSION MULTIPLEXING IS, IN FACT, USED TO
11 SEND DATA FASTER. AND THIS GOES TO THE ROADBLOCK ARGUMENT THAT
12 WE WERE SETTING UP IN THE TUTORIAL. IF YOU RECALL THE SPEEDS
13 OF THE INDIVIDUAL RAM CHIPS WERE SLOWER THAN THE SPEEDS OF THAT
14 OPTICAL FIBER AND, THEREFORE, YOU'RE NOT USING THAT WIDE
15 OPTICAL FIBER, THE WAY YOU USE IT FASTER IS TIME COMPRESSION
16 MULTIPLEXING.

17 AND, IN FACT, THAT'S EXACTLY WHAT THIS INVENTOR
18 MR. LANG DID. WHAT HE DID WHEN HE TRIED TO BUILD AN ACTUAL
19 PROTOTYPE WAS, HE FOUND OUT YOU COULDN'T. HE HAD EXACTLY THE
20 ROADBLOCK PROBLEM WE WERE DESCRIBING, WHICH IS HERE, EVEN
21 THOUGH HE HAD THAT OPTICAL FIBER THAT WENT VERY FAST, HE CAN'T
22 FILL IT JUST WITH THOSE RAM CHIPS.

23 SO WHAT DID HE DO? HE FOUND, ACTUALLY, HAD SOMEONE DO
24 IT FOR HIM. HE FOUND A CHIP CALLED A HOT ROD CHIP AND THE HOT
25 ROD CHIP LET HIM TAKE 40 OF THOSE DRAM CHIPS, AT LEAST, PUT

1 THEM TOGETHER AND THAT'S HOW HE DID HIS PROTOTYPE.

2 HERE'S A PRESS RELEASE ABOUT THE PROTOTYPE, MR. HEIN'S
3 PROTOTYPE, HE DEMONSTRATED THIS CES SHOWS IN 1991. HE USED
4 THAT HOT ROD CHIP, WHAT DID IT DO, DID EXACTLY WHAT TIME
5 COMPRESSION MULTIPLEXING IS.

6 SO FOR BURST NOW TO SAY TIME COMPRESSION MULTIPLEXING
7 IS IRRELEVANT IS ODD AT BEST IN LIGHT OF THE FACT THAT'S
8 EXACTLY WHAT MR. LANG HAD TO USE TO MAKE IT WORK IN HIS FIRST
9 PROTOTYPE.

10 THE SECOND ARGUMENT THEY MAKE IT'S IMPOSSIBLE TO STORE
11 DIGITAL TIME-COMPRESSED REPRESENTATION. AND THEY'RE ARGUING
12 THAT'S THE SEQUENCE OF STEPS, AS YOU RECALL, FROM THE CLAIM
13 THEY KEEP FOCUSING ON.

14 WELL, CERTAINLY NOT TRUE, WE'VE SHOWN YOU AN EXAMPLE
15 WHERE YOU CAN EASILY STORE ANALOG TIME-COMPRESSED SIGNAL. I
16 TAKE MY 33 1/3 RECORD, I PLAY AT 45, I HAVE A TAPE RECORDER
17 GOING WHILE I DO IT, I HAVE STORED REPRESENTATION OF THAT
18 TIME-COMPRESSED SIGNAL.

19 AND THERE IS NO DEBATE IT'S TIME COMPRESSED UNDER
20 ANYBODY'S DEFINITION, THERE'S NO DEBATE IT'S STORED AFTER THE
21 TIME COMPRESSION. SO WHAT'S THEIR RESPONSE TO THAT?

22 THEIR RESPONSE IS, WELL, THIS IS REALLY ABOUT DIGITAL,
23 YOU CAN'T DO THAT BECAUSE IT'S ALL ABOUT DIGITAL. THIS CASE IS
24 ABOUT DIGITAL.

25 WELL, THE CASE ISN'T ABOUT DIGITAL, THE CLAIMS AREN'T

1 ABOUT DIGITAL, THE PATENT IS ABOUT DIGITAL. WHEN YOU READ THE
2 CLAIMS IT'S QUITE CLEAR THAT IN SOME CASES, THEIR DIGITAL CLAIM
3 IS A GOOD EXAMPLE, VERY CLEAR, BUT COMPARE WITH CLAIM 1, DOESN'T
4 HAVE DIGITAL AT ALL, ANALOG DIGITAL, COULD BE EITHER.

5 NOW, THEIR ARGUMENT THIS IS ALL ABOUT DIGITAL BECAUSE
6 THAT'S WHAT THE WORLD IS NOW IN 2007, IS YET ANOTHER EXAMPLE OF
7 THEM LOOKING AT THEIR PATENT FROM PERSPECTIVE OF 2007 AND
8 SAYING IT'S ABOUT WHAT WE WANT TO BE ABOUT NOW AS OPPOSED TO
9 WHAT IT'S ABOUT WHEN IT WAS WRITTEN.

10 WHEN IT WAS WRITTEN IT WAS ANALOG AND DIGITAL, THEIR
11 ARGUMENT DOESN'T REALLY WORK. IN ANY EVENT, NOT POSSIBLE TO
12 STORE DIGITAL TIME-COMPRESSED FILE EVEN UNDER TCM MEANING. WE
13 HAD A VERY CUTE ANIMATION FOR THIS, I THINK, WE'LL WAIT FOR
14 THAT AT THE END IF WE HAVE TIME.

15 BUT YOU CAN EASILY DO IT, MR. BROWN CAN GET UP HERE
16 AND DO IT IN 30 SECONDS. IT IS SOMETHING THAT CAN BE DONE
17 QUITE EASY TO DO, THEY'RE JUST WRONG.

18 IN FACT, WE CHANGED DIGITAL SAMPLING RATE, YOU CAN
19 STORE IT AND IT WILL SOUND JUST LIKE THAT 33 1/3 RECORD THAT'S
20 BEING PLAYED AT 45, AND YOU CAN STORE IT AFTER YOU DO IT.
21 THERE'S NO DEBATE ABOUT THAT.

22 THE THIRD ARGUMENT THEY MAKE, AND THIS IS THE NEXT TO
23 THE LAST ARGUMENT, WELL, THE ORDER OF TIME COMPRESSION IS
24 DIFFERENT FROM THE ORDER OF THE CLAIMS. AND REMEMBER THAT'S
25 WHERE THEY'RE TALKING ABOUT THIS PARTICULAR REFERENCE, AND IN

1 THIS REFERENCE THEY'RE RIGHT, STORAGE IS BEFORE THE TIME
2 COMPRESSION.

3 BUT THAT'S IRRELEVANT BECAUSE THE ISSUE IS WHAT DOES
4 TIME COMPRESSION MEAN, NOT WHETHER THIS REFERENCE INVALIDATES.
5 IN ANY EVENT, YOU COULD PUT IT IN THE RIGHT ORDER EASILY IF YOU
6 WISH TO, RECEIVE, COMPRESS, STORE, TRANSMIT.

7 AN EXAMPLE WE'VE BEEN GIVEN ALL ALONG, THEY SAY THAT'S
8 ANALOG, SO THERE'S THEIR PATENT. THE LAST ARGUMENT THEY MAKE
9 YOU HEARD THEM MAKE TODAY. JUDGE MOTZ IN MARYLAND FOUND
10 TIME-COMPRESSED MULTIPLE ORDINARY MEANING, THAT'S TRUE BUT NOT
11 NECESSARILY IN THE CONTEXT OF THIS PATENT.

12 AND THE CLAIM CONSTRUCTION JUDGE MOTZ DID IN MARYLAND
13 WAS THE TIME COMPRESSION MEANS REDUCED IN TEMPORAL QUALITY. I
14 DON'T -- PERSONALLY DON'T FIND THAT HELPFUL IN CONSTRUING THE
15 CLAIMS, IF YOUR HONOR DOES YOU MAY FIND IT USEFUL. I DON'T
16 THINK IT'S HELPFUL AND I DON'T THINK IT HELPS CONSTRUE THE
17 CLAIMS.

18 **THE COURT:** WHAT DOES IT MEAN?

19 **MR. POWERS:** I HAVE NO IDEA. I LOOKED AT IT FROM
20 EVERY SINGLE ANGLE I CAN THINK OF AND I'VE TALKED TO THE PEOPLE
21 IN THAT CASE, AND I THINK NOBODY KNEW WHAT IT MEANT.

22 I DON'T KNOW, IT WAS A HYBRID DEFINITION THROWN
23 TOGETHER THAT WAS NEVER ACTUALLY TRIED, SO WE'LL NEVER KNOW
24 WHAT IT MEANT. BUT YOU HAVE TO LOOK AT WHAT JUDGE MOTZ WAS
25 DECIDING, WHAT WAS BEFORE JUDGE MOTZ.

1 JUDGE MOTZ WAS DECIDING ACTUALLY SOME DIFFERENT
2 ISSUES. HERE'S THE EXACT QUOTE WHAT JUDGE MOTZ SAID, AND YOU
3 SEE THAT THERE'S THIS DISCUSSION OF DROPPING VIDEO FRAMES, AND
4 IT APPEARS THAT THAT'S WHAT JUDGE MOTZ REFERRING TO.

5 AND YOU'LL RECALL THE CONFUSION WE HAD FOR A LITTLE
6 WHILE IN THE TUTORIAL WHERE DR. HEMAMI WAS REFERRING TO THIS
7 TEMPORAL COMPRESSION OF WHAT WAS INTERFRAME COMPRESSION,
8 SOUNDED LIKE THAT WAS TIME COMPRESSION AND THERE WAS A LITTLE
9 BIT OF CONFUSION FOR AWHILE ABOUT THAT ISSUE UNTIL DR. HEMAMI
10 CLEARED IT UP AND SAID I'M NOT TALKING ABOUT TIME COMPRESSION,
11 THAT'S A FORM OF DATA COMPRESSION.

12 SO WE HAVE NO DEBATE ABOUT THAT NOW, BUT LOOKS LIKE
13 JUDGE MOTZ HAD A LITTLE BIT OF CONFUSION ABOUT THAT BECAUSE
14 THAT'S EXACTLY WHAT HE'S TALKING ABOUT. THE DROPPING OF VIDEO
15 FRAMES, WHICH IS DATA COMPRESSION, THERE'S NO DEBATE IN THIS
16 COURTROOM THAT DROPPING OF VIDEO FRAMES IS DATA COMPRESSION, AS
17 MR. HEIM JUST ACKNOWLEDGED.

18 SO LET'S LOOK AT WHAT JUDGE WAS WEIGHING. BURST
19 CONSTRUCTION THERE WHICH IS NOT SAME AS HERE, WAS THEY PROPOSE
20 INFORMATION STRUCTURE THAT REDUCES A TEMPORAL QUALITY OF THE
21 INFORMATION. MAYBE THEY CAN TELL US WHAT THAT MEANT? I DON'T
22 THINK SO.

23 MICROSOFT WAS DIFFERENT AS WELL, HE WAS REALLY
24 DECIDING A DIFFERENT ISSUE. THEN YOU WHEN YOU LOOK AT THE ART
25 THE REFERENCE THAT JUDGE MOTZ HAD BEFORE HIM, THOSE ACTUALLY

1 SUPPORT THE CLAIM CONSTRUCTION WE ARE OFFERING HERE DECIDED BY
2 JUDGE MOTZ IN HIS ORDER, TO SPEED UP THE RATE AT WHICH RECORDED
3 SOUNDS ARE PRESENTED TO A LISTENER, THESE TIME-COMPRESSION
4 ALGORITHMS. THAT'S JUST SINGLE RANGE, THAT'S EXACTLY WHAT
5 WE'RE TALKING ABOUT, THAT IS OUR DEFINITION.

6 ALSO, CITED BY JUDGE MOTZ TIME COMPRESSION,
7 COMPRESSING AUDIO AND VIDEO IN TIME. THAT'S OUR CONSTRUCTION.
8 WHILE PRESERVING THE PITCH IS PROMISING, TIME COMPRESSION OF
9 AUDIO PLAYING THE AUDIO AT A LOWER SAMPLING RATE THAN THAT AT
10 WHICH IT WAS RECORDED, THAT'S OUR CONSTRUCTION.

11 ALSO, CITED BY JUDGE MOTZ TIME COMPRESSION PLUGS TO
12 ACCELERATE A VIDEO STREAM. EVERYTHING THAT'S BEING CITED BY
13 JUDGE MOTZ SUPPORTS CONSTRUCTION, SUPPORTS APPLE'S CONSTRUCTION
14 IN THIS CASE, WHICH IS DIFFERENT FROM ANY OF THE CONSTRUCTIONS
15 THAT WERE ARGUED TO HIM AND DIFFERENT FROM BURST THERE, THEN
16 HERE.

17 OTHER CITED REFERENCES SIMILAR NOW WHEN WE LOOK AT
18 WHAT JUDGE MOTZ CITED, BUT WHAT BURST DIDN'T POINT YOU TO IT'S
19 INTERESTING.

20 ONE, IS THE PTO CLASSIFICATION MANUAL. YOU SEE, OKAY,
21 TIME COMPRESS, TIME COMPRESS IS A SUBJECT MATTER INCLUDING
22 MEANS TO RECORD A MOTION PICTURE SEQUENCE AT A TIME RATE
23 SUBSTANTIALLY DIFFERENT THAN THE NORMAL RANGE OF SUCH RECORDING
24 RATES. THAT'S OUR DEFINITION. SQUEEZING IT IN TIME.

25 NOW, YOU LOOK AT THE DEFINITION OF TIME-COMPRESSION

1 MULTIPLEXING AS WHERE INFORMATION IS READ OUT AT A FASTER RATE
2 THAN IT IS STORED. SO THAT THE PTO CLASSIFICATION MANUAL HAS
3 DEFINITIONS THAT'S BEING USED FOR, THOSE DEFINITIONS PRESUMABLY
4 THE EXAMINER WAS FOLLOWING. THOSE DEFINITIONS SUPPORT APPLE'S
5 CONSTRUCTION HERE.

6 SO IN AN ORDINARY MEANING THE ANSWER IS, YES, IT HAS
7 AN ORDINARY MEANING IN THIS ART AT THE RIGHT TIME, BOTH EXPERTS
8 ACTUALLY AGREE WHAT IT IS, AND IT'S APPLE'S CONSTRUCTION.

9 NOW, THE CLAIM LANGUAGE IS, OF COURSE, BLACK LETTER
10 LAW AGREED UPON BY BOTH SIDES. THE CLAIM LANGUAGE IS CRITICAL
11 TO THE DECIDING CLAIM CONSTRUCTION.

12 YOU CAN'T IGNORE IT, YOU CAN'T GLOSS OVER IT, YOU
13 CAN'T MAKE SOME PART SUPERFLUOUS AND READ IT ALL TOGETHER AS IF
14 IT'S ONE MEANING, THAT'S EXACTLY WHAT THEY DO.

15 THEIR CONSTRUCTION READS THE WORD TIME, IF YOU ADOPT
16 THEIR CONSTRUCTION YOU WOULD NOT NEED THE WORD TIME. AND YOU
17 WOULDN'T NEED A LOT OF OTHER WORDS EITHER, BUT THE WORD TIME
18 WAS SPECIFICALLY ADDED AND IT WAS ADDED TOGETHER WITH PRIOR
19 ART.

20 SO IT HAS TO BE GIVEN MEANING, AND CASE, AFTER CASE,
21 AFTER CASE, THIS IS THE NOVA CASE WHERE THE PHRASE WAS
22 OPERATIVELY CONNECTED SIMILAR TO TIME-COMPRESS.

23 THE PLAINTIFF THERE WAS SAYING OPERATIVELY YOU DON'T
24 REALLY NEED THAT, CONNECTED IS ALL YOU NEED, AND THE COURT
25 SAYS, NO, YOU CAN'T READ IT OUT. YOU CAN'T MAKE IT

1 UNNECESSARY, YOU CAN'T MAKE IT SUPERFLUOUS, HAS TO BE GIVEN
2 MEANING AND THAT'S WHAT MUST BE DONE HERE AS WELL.

3 THE NETWORK COMMERCE CASE IS INTERESTING AS WELL. THE
4 SPECIFICATION THERE, THE SPECIFICATION USED A BROAD TERM WHICH
5 WAS DOWNLOAD. AND THEY SAID, WELL, DOWNLOAD IS USED VERY
6 BROADLY IN THE SPECIFICATION, JUST AS HERE, BUT THE CLAIM TERM
7 WAS DOWNLOADED COMPONENT.

8 SO THE COURT SAID, WELL, YOU CAN'T JUST SAY DOWNLOAD
9 COMPONENT MEANS THE SAME THING AS DOWNLOAD. HERE THE
10 SPECIFICATION DIDN'T HAVE THE CLAIM TERM EITHER, JUST AS HERE.

11 TIME COMPRESSION NOT IN THIS SPECIFICATION, DOWNLOAD
12 COMPONENT WASN'T IN THAT SPECIFICATION. IN THAT CASE THE
13 PLAINTIFF MADE EXACTLY THE SAME ARGUMENT BURST IS MAKING HERE.

14 WELL, THE SPEC SAYS DOWNLOAD, VERY BROAD, AND THE
15 COURT SAID, YES, BUT IT DOESN'T SAY DOWNLOAD COMPONENT IS VERY
16 BROAD, YOU HAVE TO GIVE IT MEANING, AND EXACTLY THE SAME
17 ANALYSIS APPLIES HERE.

18 NOW, LET'S TALK ABOUT THE EUROPEAN PROSECUTION BECAUSE
19 IT'S QUITE ILLUMINATING. JUST SHOWS IN A WAY HOW THESE ARE
20 LAWYER'S PATENTS, NOT INVENTOR'S PATENTS.

21 HERE, OF COURSE, THEY HAD CLAIMS EXPLICITLY COVERING
22 JUST DATA COMPRESSION AND THEN DROPPED THEM. CHANGED TIME
23 COMPRESSION. IN EUROPE MANY WAYS IT'S THE OPPOSITE.

24 IN EUROPE HERE'S WHERE THEY STARTED THE ORIGINAL
25 CLAIMS. THEY FILED IN EUROPE, FILE LATER IN EUROPE, THEY FILED

1 THE ORIGINAL TIME-COMPRESSED CLAIMS THAT MR. HEIN DID IN HIS
2 RIGHT TURN IN 1990, SAME CLAIMS, THAT'S WHERE THEY'RE STARTING.

3 WELL, THE EUROPEAN EXAMINER WHO APPEARS TO BE A LITTLE
4 SHARPER THEN OURS, TIME COMPRESSION SUPPORTED BY THE
5 DESCRIPTION, IS NOT SUPPORTED BY THE DESCRIPTION. YOU GO TO
6 PAGE SEVEN ALL IT SAYS REDUCTION OF THE NUMBER OF DIGITS.

7 YOU RECALL PAGE SEVEN EXACTLY THE SAME PAGE BURST
8 KEEPS CITING. IN FACT, WHEN THEY PUT UP THEIR SPECIFICATION
9 SLIDE IT WAS CITING TO PAGE SEVEN, THE SAME QUOTE "REDUCTION TO
10 NUMBER OF DIGITS".

11 SO THE EUROPEAN EXAMINER SAYS, SORRY, YOU DON'T GET
12 TIME-COMPRESSED CLAIMS, YOU DON'T HAVE A SPEC THAT TALKS ABOUT
13 TIME COMPRESSION.

14 THEIR ANSWER EXACTLY THE SAME ANSWER THEY MADE HERE.
15 WELL, NO, NO, THEIR ANSWER WAS COMPRESSION, PAGE SEVEN, THAT
16 TALKS ABOUT THE CLAIM TIME-COMPRESSED REPRESENTATION.

17 THE EXAMINER SAYS, NO, NOT RIGHT, THE PASSAGE ON PAGE
18 SEVEN DESCRIBES DATA COMPRESSION, NO TIME COMPRESSION IS
19 MENTIONED. SOMETHING WE ALL NOW AGREE ON. SO WHAT DO THEY DO?

20 DO THEY SAY, NO, TIME COMPRESS IS DATA COMPRESSION?
21 NO, THEY DELETED IT. THEY DELETED TIME FROM TIME-COMPRESSED
22 REPRESENTATION AND THEY AGREED THAT PAGE SEVEN IS JUST DATA
23 COMPRESSION, NOT TIME COMPRESSION.

24 AND HERE'S THE ACTUAL CONSTRUCTION THAT THEY ADDED.
25 YOU SEE THIS MARK OUT RIGHT THERE, AND THERE, AND THERE, THESE

1 ARE THE EXAMINER'S MARKS, NOT OURS. THEY MARKED OUT TIME AND
2 TIME COMPRESSED.

3 THIS IS THE RESPONSE TO THE EXAMINER, AND THEY ADDED
4 SO THE CLAIM NOW READS, COMPRESSION MEANS FOR COMPRESSING SAID
5 AUDIO/VIDEO SOURCE INFORMATION INTO A, NOT TIME COMPRESSED, BUT
6 JUST COMPRESSED REPRESENTATION THEREOF. AND THESE CARROTS
7 INDICATE IN ADDITION WHICH IS CAPABLE OF BEING TRANSMITTED IN A
8 TIME-COMPRESSED FORM.

9 SO NOW THEY'VE CHANGED WHAT MR. HEIM'S ARGUING THEIR
10 MAGIC SEQUENCE. THEY'RE SAYING, AHA, YOU HAVE TO HAVE TIME
11 COMPRESSION BEING STORED FIRST, NOW IT'S JUST BEING CAPABLE OF
12 BEING SENT LATER IN TIME-COMPRESSED REPRESENTATION. BUT WHAT'S
13 BEING DONE FIRST IS DATA COMPRESSION.

14 **THE COURT:** AFTER THEREOF?

15 **MR. POWERS:** YES.

16 **THE COURT:** WITH THE BRACKETS, HAVING AN ASSOCIATED,
17 WHAT ARE THE WORDS THERE, SOMETHING TRANSMISSION?

18 **MR. POWERS:** BURST TRANSMISSION.

19 **THE COURT:** BURST TRANSMISSION TIME PERIOD.

20 **MR. POWERS:** EXACTLY. SO IN THE EUROPEAN PROSECUTION
21 ACTUALLY GOT STARTED OUT A LITTLE BETTER, THAN IT GOT SORTED
22 OUT.

23 HERE THEY ADMITTED, AND THAT ADMISSION IS RIGHT HERE,
24 THIS IS BURST SAYING ON THESE AMENDED CLAIMS, OKAY, WE NOW
25 AMENDED THE CLAIMS, IT'S SUBMITTED, NOW CLAIM THAT -- THE

1 CLAIMS RELATE TO DATA COMPRESSION AS DESCRIBED ON PAGE SEVEN.

2 SO THEY'RE NOW ADMITTING PAGE SEVEN JUST DISCLOSES
3 DATA COMPRESSION, NOT TIME COMPRESSION AS THEY PREVIOUSLY
4 ARGUED. BUT STILL THE CLAIM REQUIRES SEPARATELY, NOT ONLY ARE
5 THEY DATA COMPRESSED, BUT THAT THEY CAN BE SENT IN A
6 TIME-COMPRESSED TRANSMISSION.

7 CAPABLE OF TRANSMITTED IN TIME-COMPRESSED FORM, SO
8 THEY'RE DIFFERENT THINGS. IT'S ALREADY BEEN DATA COMPRESSED,
9 BUT SEPARATELY IT HAS TO BE CAPABLY TRANSMITTED IN A
10 TIME-COMPRESSED FORM.

11 THAT FILE HISTORY IN EUROPE WHICH IS, AS I SAY, WAS A
12 LITTLE MORE CLOSELY LOOKED AT THEN OURS, IS SQUARE AND CLEAR
13 THAT DATA COMPRESSION AND TIME COMPRESSION ARE DIFFERENT
14 THINGS.

15 AND THEY'RE TRYING, BASICALLY, NOW JUST TO RUN TO GET
16 WHATEVER CLAIM CONSTRUCTION THEY CAN IN EITHER COUNTRY, THAT
17 WILL HELP THEM FIND INFRINGEMENT. BUT THEY CAN'T RUN FROM WHAT
18 THEY ADMITTED WAS AND IS NOT DISCLOSED IN THAT SPECIFICATION.

19 **THE COURT:** THE LANGUAGE THAT -- GOING BACK TO ONE OF
20 YOUR -- I HAVE IT ON 63 IN MY BOOK HERE, BUT --

21 **MR. POWERS:** 63.

22 **THE COURT:** PROPOSED CONSTRUCTIONS, BURST PROPOSED
23 CONSTRUCTION BEFORE JUDGE MOTZ.

24 **MR. POWERS:** YES.

25 **THE COURT:** RIGHT HERE. WAS THAT INCLUDED, THAT

1 LANGUAGE?

2 **MR. POWERS:** THAT IS --

3 **THE COURT:** REDUCES A TEMPORAL QUALITY IN THE
4 INFORMATION.

5 **MR. POWERS:** PRECISELY. WHICH, OF COURSE, IS NOT
6 THEIR PROPOSED CONSTRUCTION NOW.

7 **THE COURT:** NO. I'M AWARE OF THAT.

8 **MR. POWERS:** ALL RIGHT. LET'S --

9 **THE COURT:** DID JUDGE MOTZ BUY THAT?

10 **MR. POWERS:** HE ADOPTED A VERSION THAT -- WHAT HE
11 ENDED UP DOING, WAS TAKING A LITTLE BIT FROM EACH SIDE. WHAT
12 HE USED THE LANGUAGE TEMPORAL QUALITY, BUT ALSO THEN HELD THAT
13 YOU HAD TO KNOW THE BURST TIME PERIOD AT THE TIME, WHICH IS
14 PART OF MICROSOFT'S, SO HE TOOK A LITTLE BIT OF EACH AND
15 DRAFTED THEM.

16 **THE COURT:** HAD TO BE DEFINITE.

17 **MR. POWERS:** THAT'S, ACTUALLY, WHY DON'T WE GO TO THAT
18 SLIDE RIGHT NOW. IT'S IN THE ASSOCIATED TIME BURST SECTION.
19 WHAT'S THE NUMBER? 175, YOUR HONOR.

20 **THE COURT:** HOLD ON. WAY BACK.

21 **MR. POWERS:** DIFFERENT TERM. HERE'S JUDGE MOTZ'
22 EXPLANATION, HE SAYS THE PARTICIPLE HAVING AN ASSOCIATED BURST
23 TIME PERIOD, IF SOMETHING HAS SOMETHING IT HAS TO HAVE IT AT
24 THE TIME.

25 AND HE SAYS HAVING IMPLIES THE QUALITY BEING SHORTER