

1 THAN THE REAL TIME VIEWING TIME OF THE AUDIO/VIDEO SOURCE  
2 INFORMATION EXISTS AT THE TIME THE TIME-COMPRESSED  
3 REPRESENTATION IS MADE.

4 SO THAT WAS THE HOLDING BY JUDGE MOTZ ON THAT PART OF  
5 THE QUESTION. WHICH, OF COURSE, IS PART OF THE QUESTION  
6 PRESENTED HERE AND THAT IS THE SAME REASONING WE URGE HERE AS  
7 WELL.

8 LET'S GO BACK TO WHERE WE WERE. SO BURST'S ARGUMENTS  
9 TO YOUR HONOR TODAY ARE SQUARELY INCONSISTENT WITH WHAT THEY  
10 TOLD THE EXAMINE IN EUROPE.

11 FIRST THEY TRIED TO MAKE THE SAME ARGUMENT, OH, NO,  
12 IT'S TIME COMPRESSION BACK THERE ON PAGE SEVEN, AND THEN THEY  
13 SAID, OKAY, YOU'RE RIGHT, IT'S JUST DATA COMPRESSION, SO WE'LL  
14 CHANGE THE CLAIMS TO MAKE CLEAR THAT IT'S DATA COMPRESSION, BUT  
15 THEN SEPARATELY, IT'S NOT JUST DATA COMPRESSION SEPARATELY  
16 CAPABLE OF BEING TRANSMITTED IN THE TIME-COMPRESSED  
17 REPRESENTATION.

18 AND NOW HERE'S WHAT WAS ON PAGE SEVEN EVERYBODY WAS  
19 TALKING ABOUT IN THE EUROPEAN FILE HISTORY. IT JUST SAYS,  
20 REDUCED NUMBER OF DIGITS, EXACTLY THE SAME PORTION WE'RE  
21 TALKING ABOUT HERE.

22 SO LET'S GO TO ASSOCIATED BURST TIME PERIOD BECAUSE,  
23 IN OUR VIEW, ASSOCIATED BURST TIME PERIOD IS DIRECTLY RELEVANT  
24 TO CONSTRUING TIME-COMPRESSED REPRESENTATION.

25 BECAUSE, OF COURSE, THE LAW IS CLEAR, YOU HAVE TO

1 CONSTRUE ALL THE WORDS OF A CLAIM SO THEY'RE ALL CONSISTENT  
2 WITH EACH OTHER, THEY ALL FIT WITH EACH OTHER AND THEIRS  
3 DOESN'T REALLY FIT WITH ASSOCIATED BURST TIME PERIOD.

4 A TRUE TIME COMPRESSION, AS THOSE IN THE ART USE IT,  
5 HAS, OF COURSE, AND ASSOCIATED BURST TIME PERIOD. AND IF YOU  
6 LOOK ANY -- BECAUSE YOUR SQUEEZING IT IN TIME, THE ASSOCIATED  
7 BURST TIME PERIOD, WHATEVER YOUR SQUEEZING IT INTO, THAT IS THE  
8 BURST TIME PERIOD BY DEFINITION. YOU HAVE AN ASSOCIATED BURST  
9 TIME PERIOD WHICH IS WHY TIME COMPRESSION MUST MEAN WHAT IT  
10 DOES.

11 THE PROBLEM, OF COURSE, IS THAT BURST'S PROPOSED  
12 CONSTRUCTION OF TIME COMPRESSION HAS NO ASSOCIATED BURST TIME  
13 PERIOD AS REQUIRED BY THE CLAIM. WHY?

14 BECAUSE IT'S -- THEY'RE JUST TALKING ABOUT DATA  
15 COMPRESSION, AND KNOWING HOW SMALL OR LARGE A FILE SIZE IS  
16 TELLS YOU NOTHING ABOUT HOW FAST IT'S GOING TO GO. NOTHING  
17 BECAUSE YOU HAVE TO KNOW BY WHAT PIPE IT'S GOING TO GO.

18 SO THEY EVEN ADMIT THAT, THEY ADMIT THAT IN THE REPLY  
19 BRIEF. THEY SAY, DURATION CAN ONLY BE KNOWN IF BOTH THE FILE  
20 SIZE AND TRANSMISSION SPEED ARE KNOWN, BUT YOU DON'T KNOW THE  
21 TRANSMISSION SPEED, OF COURSE, AT THE TIME YOU'RE DOING THE  
22 COMPRESSION.

23 SO THAT'S SQUARELY INCONSISTENT WITH THE WAY THE  
24 MODERN DICTIONARY ELECTRONICS AND THE OTHER PEOPLE USE THE  
25 WORD. BURST TRANSMISSION IS A RADIO TRANSMISSION SENT 10 TO A

1 HUNDRED TIMES MORE THAN NORMAL SPEED RECORDED AND RETURNED AT  
2 NORMAL RATE. I THINK, WE TALKED ABOUT THAT.

3 SO, REALLY WHEN YOU GET TO THE CLAIM, THE CLAIM WE'VE  
4 REPEATED ON THE LEFT, THEIR PROPOSED CONSTRUCTION FIRST, JUST  
5 READS TIME OUT. IF YOU JUST READ IT WITHOUT THE WORD TIME, IT  
6 WOULD BE DIRECTLY CONSISTENT WITH THEIR CONSTRUCTION.

7 BUT, ACTUALLY, ACCORDING TO THEIR CONSTRUCTION WHOLE  
8 CHUNKS OF THIS CLAIM YOU DON'T NEED. YOU DON'T EVEN NEED  
9 HAVING ASSOCIATED BURST TIME PERIOD THAT IS SHORT, ET CETERA,  
10 ET CETERA. YOU DON'T NEED ANY OF THAT, ALL OF NEED ACCORDING  
11 TO THEIR CONSTRUCTION IS THIS.

12 BURST UNDER THEIR VIEW TIME COMPRESSION MEANS SENDING  
13 IT FASTER THAN REAL TIME. BURST TIME PERIOD MEANS SENDING IT  
14 FASTER THAN REAL TIME. AN ASSOCIATED BURST TIME PERIOD MEANS  
15 SENDING IT FASTER THAN REAL TIME.

16 ALL THOSE THREE THINGS, THREE DIFFERENT SETS OF THAT  
17 CLAIM ARE ALL -- SHOULD JUST BE CONSTRUED TO MEAN EXACTLY THE  
18 SAME THING, RENDERING ALL SUPERFLUOUS AND NECESSARY, THAT'S  
19 EXACTLY WHAT THEY DO.

20 THESE ARE JUST -- THESE QUOTES FROM THEIR REPLY BRIEF  
21 THEY SAY TIME AND TIME COMPRESSED JUST MEANS IT'S LESS TIME  
22 THEN PLAYBACK. OKAY. SO THAT'S WHAT THAT MEANS ACCORDING TO  
23 THEM. BURST TIME PERIOD IS, ALL RIGHT, JUST LESS TIME THAN  
24 PLAYBACK, AND ASSOCIATION JUST MEANS LESS TIME THEN PLAYBACK.

25 SO THEY -- THEIR PROPOSED CONSTRUCTION VIOLATES

1 SQUARELY THE RULE THAT YOU CAN'T INTERPRET A CLAIM THAT RENDERS  
2 IN THIS CASE ABOUT 30 PERCENT OF THE WORDS IRRELEVANT.

3 OTHER CLAIMS. I THINK, WE COVERED THIS. THEIR OTHER  
4 CLAIMS, WE COVERED THIS PROPOSED CONSTRUCTION. CLEARLY IN THE  
5 DIGITAL WORLD REDUCED NUMBER OF BITS, THERE ARE NO BITS IN THE  
6 ANALOG WORLD, YET MANY OF THEIR CLAIMS HAVE NO CONVERSION.

7 THERE'S NO COMPRESSION AND THERE'S NO DIGITALIZATION  
8 OF IT, YET THEIR PROPOSED CONSTRUCTION ACTS AS IF THEIR  
9 INVENTION IS PURELY DIGITAL, IT'S NOT TRUE AS WE DESCRIBED  
10 BEFORE.

11 TAKE, FOR EXAMPLE, CLAIM 1, WHICH HAS NO A TO D  
12 CONVERSION, NO EXPRESSION OF DIGITAL ANYWHERE, YET THEIR  
13 PROPOSED CONSTRUCTION WOULDN'T APPLY TO IT. THERE ARE NO BITS,  
14 THERE'S NO BITS AT ALL IN THE REPRESENTATION. A BIT WHAT  
15 HAPPENS WHEN YOU CONVERT IT TO DIGITAL.

16 NOW, INTERESTING ISSUES IS A SEPARATE CLAIM, NOW  
17 THERE'S A SEPARATE CLAIM THAT SAYS MERELY CAPABLE OF, DOESN'T  
18 HAVE AN ASSOCIATED BURST TIME PERIOD, BUT CAPABLE OF BEING  
19 SENT.

20 AND I FOUND THEIR SLIDES INTERESTING BECAUSE ONE OF  
21 THE POINTS THEY TRY TO MAKE WAS, WELL, CAPABLE JUST MEANS JUST  
22 CAPABLE, THAT'S ALL IT MEANS, BUT THAT'S NOT WHAT THE CLAIMS  
23 SAY.

24 THEIR CONSTRUCTION SAYS SUFFICIENTLY COMPRESSED TO  
25 PERMIT TRANSMISSION. AGAIN, THAT DOESN'T MEAN ANYTHING.

1 ACCORDING TO THEM YOU COULD TAKE OUT ONE BIT OF A 17 BILLION  
2 BIT FILE AND THAT'S SUFFICIENT IF YOU HAVE A FAST ENOUGH MODEM  
3 OR YOU COMPRESS 200 TO ONE FASTER THAN MORE COMPRESSION THEN  
4 ANYBODY BEEN ABLE TO ACHIEVE COMMERCIALY AND THAT'S NOT  
5 SUFFICIENT.

6 SO YOU DON'T REALLY KNOW WHAT SUFFICIENTLY MEANS EVER,  
7 YET THAT'S WHAT CLAIM CONSTRUCTION SUPPOSE TO DO. THE PROBLEM  
8 IS, THERE'S A CLAIM THAT SAYS CAPABLE OF BEING TRANSMITTED, YET  
9 THEIR CONSTRUCTION SAYS ALL IT HAS TO DO IS BE CAPABLE.

10 AND, OF COURSE, THAT VIOLATES A RULE OF CLAIM  
11 CONSTRUCTION THAT SAYS IF YOU WRITE DIFFERENT CLAIMS IN  
12 DIFFERENT WAYS, THOSE ARE PRESUMED TO MEAN SOMETHING DIFFERENT.

13 SO WHEN IT SAYS CAPABLE OF BEING TRANSMITTED, THAT  
14 MUST MEAN SOMETHING THAT HAVING AN ASSOCIATED BURST TIME PERIOD  
15 THAT'S SHORTER, YET BURST WOULD CONSTRUE THEM THE SAME. AND  
16 THEY CLEARLY MEAN SOMETHING DIFFERENT, ASSOCIATED CLEARLY HAS  
17 TO BE GIVEN MEANING.

18 NOW, THE SPECIFICATION. SPECIFICATION, OF COURSE,  
19 WE'VE ALL AGREED IT'S IMPORTANT, YOU HAVE TO LOOK AT IT. IT'S  
20 SUPPOSE TO DEFINE THE CLAIM TERMS. IT DOESN'T HERE, DOESN'T  
21 EVEN CONTAIN THE CLAIM TERMS AND THE QUESTION IS, WHAT ROLE  
22 DOES THE SPECIFICATION HAVE HERE?

23 AND AS I FORESHADOWED EARLIER, THE ODD THING ABOUT  
24 THIS CASE, IS THAT NEITHER PARTY'S CONSTRUCTION SUPPORTED BY  
25 THE SPEC. AND BURST ARGUES THEIRS IS BECAUSE THEIRS RELATES TO

1 DATA COMPRESSION AND THE SPEC HAS DATA COMPRESSION.

2 THAT MUCH IS TRUE, BUT WHAT THE SPEC DOESN'T HAVE,  
3 DOESN'T DISCLOSE THAT ALLOWS POINT. THIS IS THE POINT I WAS  
4 MAKING EARLIER, THAT THEY -- ISN'T THE CLAIM, THEIR CLAIM  
5 CONSTRUCTION MERELY DATA COMPRESSION PLUS THAT'S FASTER THAN  
6 REAL TIME. THEY ADMITTED THAT'S NOT WHAT THEY INVENTED, THAT  
7 WAS CLEARLY IN THE PRIOR ART.

8 WHAT MEANING, WHAT EFFECT, WHAT TEETH DOES THAT WORD  
9 ALLOWS HAVE. WE STILL HAVEN'T HEARD THAT FROM BURST, BUT  
10 THAT'S WHAT A CLAIM CONSTRUCTION SUPPOSE TO DO, IT'S SUPPOSE TO  
11 DEFINE WHAT'S INSIDE THE CLAIM AND WHAT'S OUTSIDE THE CLAIM,  
12 BUT ALLOWS DOESN'T DO THAT.

13 ANOTHER VARIANT IS THIS VARIANT I SHOWED YOU EARLIER,  
14 SUFFICIENTLY COMPRESSED. WELL, WHAT DOES THAT MEAN?

15 IS IT ONE BIT?

16 BECAUSE YOU CAN CERTAINLY HAVE ONE BIT COMPRESSION OUT  
17 OF 17 BILLION AND SEND IT OUT FASTER THAN REAL TIME. THAT  
18 DIDN'T ALLOW IT WOULD HAVE GONE FASTER THAN REAL TIME IF YOU  
19 HADN'T COMPRESSED AT ALL IF IT'S A FIBEROPTIC LINE. YOU  
20 COMPRESS IT A TONE AND THAT STILL WOULDN'T ALLOW IT IF YOUR  
21 TRANSMISSION MEDIUM WASN'T FAST ENOUGH.

22 EVEN, PERHAPS, MORE THE POINT, LET'S SAY, YOU HAVE A  
23 NORMAL FORM OF COMPRESSION, STANDARD MP3 FOR AUDIO FILES, AND  
24 IF I AM TRYING TO DOWNLOAD OVER MY DSL MODEM, MY DSL MODEM IF  
25 IT'S FUNCTIONING WELL WILL DEFINITELY SEND IT OVER FASTER THAN

1 REAL TIME.

2 IF MY DSL MODEM HAPPENS TO BE FUNCTIONING BADLY THAT  
3 DAY, AS IT IS OFTEN, IT WON'T. SO UNDER THEIR CONSTRUCTION  
4 SOMETHING THAT'S IN OR OUTSIDE THE CLAIM RELIES ON THE VAGARIES  
5 OF WHAT'S HAPPENING DAY TO DAY, HOUR TO HOUR, MINUTE TO MINUTE  
6 ON THE WHOLE NETWORK SYSTEM, YET THAT APPEARS TO BE WHAT  
7 THEY'RE TALKING ABOUT.

8 THEY NEVER TOLD US, AND CAN'T FRANKLY WHAT TEETH, WHAT  
9 MEANING, WHAT EFFECT SHOULD BE GIVEN TO THAT WORD ALLOWS. THEY  
10 USED THE WORD ENABLES AS A SYNONYM, BUT NOT THE SPECIFICATION  
11 SHOWS ENABLEMENT.

12 WHAT THEY WANT TO DO IS JUST SHOW THE JURY THERE'S  
13 DATA COMPRESSION AND SHOW THE JURY THAT THERE'S FASTER THAN  
14 REAL TIME TRANSMISSION AND SAY, AHA, WE'RE DONE.

15 BUT THAT ISN'T THEIR INVENTION, THEY ADMITTED THAT'S  
16 NOT THEIR INVENTION. BUT THEY'RE TRYING TO KEEP THE  
17 CONSTRUCTION SUFFICIENTLY VAGUE THAT WILL LOOK LIKE THAT'S  
18 THEIR INVENTION, BUT IT'S NOT.

19 **THE COURT:** WELL, IF YOU GO BACK THERE, IF YOU LOOK AT  
20 THE STRUCTURE OF THAT SENTENCE. ESSENTIALLY A VERSION OF THIS  
21 SOURCE INFORMATION THAT HAS A REDUCED NUMBER OF BITS AND  
22 SOMEHOW THAT ALLOWS, THAT IS WHAT IS ALLOWING THE DATA  
23 TRANSFER, ET CETERA, ET CETERA.

24 **MR. POWERS:** THE SOMEHOW IS WHERE THE RUB IS, EXACTLY.  
25 AND YOUR HONOR PUT YOUR FINGER ON EXACTLY WHERE THE AWKWARD

1 TENSION IS INSIDE THE BURST CONSTRUCTION IS BECAUSE, AS I SAY,  
2 THEY KNOW THEY CAN'T JUST SAY IT'S THE COMBINATION OF DATA  
3 COMPRESSION AND FASTER THAN REAL TIME. BECAUSE THERE WAS DATA  
4 COMPRESSION AND FIBEROPTIC LINES THAT WOULD HAVE SENT IT FASTER  
5 THAN REAL TIME. SO THAT'S NOT WHAT THEY INVENTED, THEY  
6 ADMITTED THAT.

7 SO THIS WORD ALLOWS OR ENABLES, WHICH IS THE OTHER  
8 FRAMING THEY USED IN THEIR SLIDES TODAY, REQUIRES BECAUSE THEY  
9 KNOW THEY HAVE TO SAVE THE CLAIM, SOME VAGUE LINK BETWEEN THE  
10 FACT OF THE COMPRESSION AND THE FACT THAT IT GOES FASTER THAN  
11 REAL TIME.

12 SO THERE'S SOMETHING ABOUT THE COMPRESSION, WE DON'T  
13 KNOW WHAT, THAT ALLOWS OR ENABLES IT GOING FASTER THAN REAL  
14 TIME, BUT THERE'S TWO PROBLEMS WITH THAT.

15 THE FIRST PROBLEM, IT'S EITHER TRYING TO PATENT THE  
16 LAW OF NATURE WHICH SAYS YOU IF YOU GOT A FASTER COMMUNICATION  
17 LINK, OF COURSE, IT'S GOING TO SEND SOMETHING SMALLER FASTER  
18 THAN IT'S GOING TO SEND SOMETHING BIGGER.

19 AND THEY DIDN'T INVENT DATA COMPRESSION, THEY CAN'T  
20 PATENT THAT. THEY NOW -- THAT'S WHY THEY GOT THAT WORD ALLOWS  
21 THERE OR THEY WANT TO KEEP IT, AS I SAID EARLIER, THEY WERE  
22 TRYING TO KEEP IT VAGUE TO SAY, WELL, WE'RE NOT JUST SAYING IF  
23 THEY WERE NAKED ABOUT IT AND SAID IT'S JUST DATA COMPRESSION  
24 FASTER THAN REAL TIME, THIS PATENT INVALID IN THE FIRST SUMMARY  
25 JUDGMENT MOTION THEY KNOW THAT.



1 SO THEY HAVE TO HAVE SOMETHING TO SAVE IT, BUT THEY  
2 DON'T WANT TO HAVE IT TOO CLEAN BECAUSE THEN THERE WON'T BE ANY  
3 INFRINGEMENT, BECAUSE THE FACT OF THE MATTER IS IN TODAY'S --  
4 MOST OF TODAY'S TRANSMISSION MEDIUMS, IT'S SO FAST THAT IT  
5 COULD BE COMPLETELY UNCOMPRESSED AND IT WILL BE FASTER THAN  
6 REAL TIME.

7 SO THERE'S NO LINK TODAY BETWEEN COMPRESSION THE LEAST  
8 NUMBER BITS AND FASTER THAN REAL TIME.

9 **THE COURT:** MAYBE I MISSED SOMETHING. THIS LANGUAGE  
10 GO BACK TO, WELL, THE WORD BURST ASSOCIATED BURST TIME PERIOD.

11 **MR. POWERS:** THE ONE IN EUROPE OR HERE?

12 **THE COURT:** HERE. FIRST SHOWS UP IN THE '839.

13 **MR. POWERS:** YES.

14 **THE COURT:** DOESN'T SHOW UP IN THE '995, NOR IN THE  
15 '932, CORRECT?

16 **MR. POWERS:** IT HAS.

17 **THE COURT:** AND IS THERE ANYTHING ABOUT THE  
18 PROSECUTION HISTORY OF THESE PATENTS THAT TELLS US WHY THAT  
19 SHOWED UP IN THE '839?

20 **MR. POWERS:** LET ME ANSWER FIRST, THAT IN THE '995 THE  
21 VERY FIRST PATENT, THE WORD BURST IS NOT IN THE CLAIM, BUT AN  
22 ASSOCIATED TIME PERIOD THAT IS SHORTER THAN THE TIME PERIOD IS.

23 **THE COURT:** YES, RIGHT, RIGHT.

24 **MR. POWERS:** EVERYBODY AGREES THAT THAT'S THE SAME  
25 THING IN THIS CASE AS BURST.

1           **THE COURT:** IS THAT WHAT IS AGREED TO?

2           **MR. POWERS:** I BELIEVE, THAT'S AGREED TO. CERTAINLY  
3 WHAT THEIR POSITION IS, BURST IS FASTER THAN REAL TIME AND THE  
4 ADDITION OF THE WORD BURST DIDN'T CHANGE THAT.

5           I THINK, WHAT HAPPENED, THEY CHANGE THE NAME OF THE  
6 COMPANY BY THAT POINT.

7           **MR. FOLSE:** I REALLY APOLOGIZE FOR INTERJECTING. I  
8 JUST WANT TO MAKE CLEAR, THE PHRASE ASSOCIATED BURST TIME  
9 PERIOD DOES APPEAR IN THE CLAIMS IN THE '995 PATENT, JUST NOT  
10 IN CLAIM 1.

11           **THE COURT:** NOT IN CLAIM 1?

12           **MR. FOLSE:** RIGHT.

13           **THE COURT:** REFERRING TO ESSENTIALLY THE SAME LANGUAGE  
14 IN THE '839, BUT THE WORD BURST IS ADDED.

15           **MR. FOLSE:** FOR EXAMPLE, CLAIM 17 OF THE '995.

16           **THE COURT:** BUT IS, IN FACT, WHAT IS MEANT, DO YOU  
17 AGREE, WHAT IS MEANT BY BURST IS SHORTER THAN THE TIME PERIOD  
18 OF ASSOCIATED WITH REAL TIME REPRESENTATION?

19           **MR. FOLSE:** I THINK, THAT THE ADDITION OF THE WORD  
20 BURST, ALTHOUGH, IT IS NOT, I DON'T THINK THAT HAS BEEN A  
21 DISPUTED ISSUE AMONG THE PARTIES IN CLAIM CONSTRUCTION, THAT  
22 THE REAL ISSUE, DOES THE TIME PERIOD FOR TRANSMISSION HAVE TO  
23 BE KNOWN.

24           **THE COURT:** I UNDERSTAND THAT.

25           **MR. FOLSE:** BUT, I THINK, THE REFERENCES YOU SEE IN

1 THE CLAIMS TO ASSOCIATED TIME PERIODS AND THE ASSOCIATED BURST  
2 TIME PERIODS ARE REFERRING TO A TRANSMISSION THAT IS  
3 ACCOMPLISHED IN FASTER THAN THE REAL TIME PERIOD ASSOCIATED.

4 **THE COURT:** IN OTHER WORDS, WHAT THE DEFINITION IS IN  
5 THE FIRST, SO, IN ESSENCE, BY INSERTING IT THEN IN THAT  
6 PARTICULAR CLAIM IN THE '839 REALLY, THE TERM BURST, THEN IF  
7 THAT'S THE DEFINITION IS REALLY REDUNDANT, RIGHT?

8 **MR. POWERS:** YES, UNDER THEIR CONSTRUCTION THAT'S  
9 TRUE.

10 **THE COURT:** IT ALREADY SAYS THAT.

11 **MR. POWERS:** EXACTLY.

12 **THE COURT:** SHORTER THAN PERIOD OF TIME. ALSO, TO  
13 WHAT EXTENT CAN A PARTY, IF A PARTY IS -- AND YOU CAN ADDRESS  
14 IF PART OF IT AS WELL OR YOU CAN ADDRESS IT LATER, CAN A PARTY  
15 GO BEFORE ONE COURT AND OFFER ONE CONSTRUCTION OF A TERM IN A  
16 CLAIM AND THEN INTERPRETING THE VERY SAME CLAIM, THE VERY SAME  
17 TERM, GO BEFORE ANOTHER COURT AND PROFFER A DIFFERENT  
18 INTERPRETATION?

19 **MR. POWERS:** WE HAVE NOT ARGUED ESTOPPEL IN THIS CASE  
20 BECAUSE --

21 **THE COURT:** THAT WOULD BE THE MAGIC WORD, YES, I WAS  
22 AVOIDING THAT.

23 **MR. POWERS:** WE HAVE NOT ARGUED THAT BECAUSE WE  
24 THOUGHT THAT WHEN WE LOOKED AT THE WAY BOTH PARTIES ARGUED THE  
25 CLAIM CONSTRUCTION IN MARYLAND BEFORE JUDGE MOTZ, WE THOUGHT IT

1 WASN'T ARGUED VERY WELL BY EITHER SIDE.

2 SO WE THOUGHT OUR JOB HERE TO GET IT RIGHT, AND SO  
3 WE'LL ARGUE IT RIGHT. SO WE HAVEN'T OBJECTED TO THEM CHANGING  
4 THEIR CONSTRUCTION FROM WHAT THEY ARGUED BEFORE JUDGE MOTZ.

5 **THE COURT:** I FIND IT TROUBLING BECAUSE -- AND THIS IS  
6 ONE OF THE PROBLEMS WITH HAVING, YOU HAVE CLAIM CONSTRUCTION  
7 FIRST AND NOW I KNOW THE CIRCUIT SAYS, WELL, YOU CAN TAKE A  
8 PEEK, YOU CAN EVEN LOOK AT IT AND CONSIDER, YOU KNOW, THE  
9 ACCUSED DEVICE.

10 WELL, YOU KNOW, I FIND THAT TROUBLING AS WELL BECAUSE,  
11 WELL, THEY HAVEN'T QUITE SAID THAT, OKAY, BUT ALMOST. AND  
12 BECAUSE THEN IT'S LIKE PUTTING YELLOW OVER THE WALL, AS THEY  
13 SAY, IT BECOMES -- REALLY THE CLAIMS BECOME A MOVING TARGET  
14 BECAUSE THEY COULD MEAN ONE THING FOR ONE DEVICE AND ONE THING  
15 FOR ANOTHER.

16 BUT IF IT'S THE VERY SAME CLAIM TERMS AND THE VERY  
17 SAME CLAIM, WHY SHOULD IT MEAN ONE THING IN CONNECTION WITH ONE  
18 DEVICE AND SOMETHING ELSE IN CONNECTION WITH ANOTHER?

19 BECAUSE THEN YOU'RE DEFINING IT AND YOU REALLY ARE  
20 DEFINING IT IN TERMS OF THE, YOU KNOW, IN TERMS OF THE DEVICE,  
21 AND THAT'S NOT WHAT WE'RE SUPPOSE TO BE DOING.

22 **MR. POWERS:** OBVIOUSLY, NOT. MEAN ONE THING IN  
23 CONTEXT AND ANOTHER IN ANOTHER. WE VIEW THAT AS GOING TO THE  
24 CREDIBILITY OF THE POSITIONS.

25 WE GO THAT AS BEING FURTHER EVIDENCE OF BURST, BOTH

1 HERE, AND IN EUROPE, AND IN THE PTO, AND THIS COURT, SAYING AND  
2 DOING WHATEVER IT CAN SAY OR DO TO GET SOMETHING THAT WILL  
3 ACCOMPLISH ITS PURPOSES AT THE TIME. BUT AS A TECHNICAL  
4 ESTOPPEL WE HAVE NOT ARGUED IT.

5 **THE COURT:** BUT I'M ASKING YOU MORE IN TERMS OF JUST A  
6 PHILOSOPHICAL AND THEN -- BUT IT SEEMS TO ME, IT DOES COME INTO  
7 PLAY IN CLAIM CONSTRUCTION BECAUSE, YOU KNOW, IT'S LIKE, WAIT A  
8 MINUTE, I JUST THOUGHT OF ANOTHER WORD, AND SORT OF MOVING  
9 AROUND.

10 IT'S THE SAME PATENT, IT'S GOT TO MEAN THE SAME THING  
11 FOR ALL PURPOSES. CAN'T BE SOMETHING DIFFERENT FOR SOME OTHER,  
12 SOME PURPOSE AND NOT FOR OTHERS.

13 NOW, THERE MAY BE DIFFERENT CLAIMS THAT ARE ALLEGED  
14 ARE INFRINGED, BUT THEN THAT WOULD IMPLICATE DIFFERENT  
15 TERMINOLOGY WITHIN A DIFFERENT CLAIM.

16 **MR. POWERS:** THIS CASE THAT DOESN'T APPLY.

17 **THE COURT:** BUT IF, IN FACT, YOUR -- IT'S THE SAME  
18 CLAIM AND THE SAME TERMS YOU OUGHT TO HAVE ONE MEANING AND  
19 STICK TO IT.

20 **MR. POWERS:** WE DON'T DISAGREE. WE THINK THERE'S A  
21 PATTERN OF THAT OCCURRING. WE LAID OUT IN THE FILE HISTORY IN  
22 THE COURTS IN EUROPE VERSUS HERE, AND WE THINK WHEN LOOKED AT  
23 PROPERLY SHOULD BE CONSTRUED AS WE ARGUE IT.

24 BEFORE YOUR HONOR IN THEIR REPLY BRIEF HERE, THIS IS  
25 ON THIS LINKAGE POINT, THIS IS THEIR ENTIRE CITATION OF

1 PORTIONS FROM THE SPECIFICATION TO SUPPORT THE IDEA THAT QUOTE  
2 "THE DATA COMPRESSION ALLOWS OR ENABLES FASTER THAN REAL TIME  
3 TRANSMISSION."

4 THIS IS THE PORTION FROM THEIR BRIEF WHERE THEY  
5 ATTEMPT TO ADDRESS THAT. YOU NOTICE THEIR THREE EXCERPTS THEY  
6 CITED, I'M GOING TO GO THROUGH EACH OF THE THREE QUICKLY, BUT  
7 NONE OF THE THREE DO THAT.

8 THE FIRST, DATA COMPRESSION MAXIMIZES STORAGE  
9 CAPACITY. SAYS NOTHING ABOUT FASTER THAN REAL TIME, SAYS  
10 NOTHING ABOUT DATA COMPRESSION ENABLING FASTER THAN REAL TIME.

11 THE SECOND ONE, ALSO FROM COLUMN TWO, THE ONE WE  
12 LOOKED AT EARLIER, DATA COMPRESSION FOR EFFICIENT STORAGE. WE  
13 JUST TALKED ABOUT THAT.

14 TRANSMISSION AND RECEPTION BY SATELLITE OR TELEPHONE  
15 LINES, THAT SAYS NOTHING ABOUT FASTER THAN REAL TIME. AND, IN  
16 FACT, THE USE OF TELEPHONE LINES IMPLICIT WOULDN'T BE FASTER  
17 THAN REAL TIME NECESSARILY.

18 THE THIRD AND LAST, THIS IS THEIR PORTION THAT THEY  
19 QUOTE, USING THE ABOVE COMPRESSION TECHNIQUES THE MEMORY WILL  
20 ONLY REQUIRES 250 MEGABYTES.

21 WELL, THAT'S JUST SAYING YOU HAVE DATA COMPRESSION  
22 THAT REDUCES IT FROM A 50 GIGABYTE FILE 250 MEGABYTES, SAYS  
23 NOTHING ABOUT THAT ENABLING, OR FACILITATING, OR ALLOWING  
24 TRANSMISSION FASTER THAN REAL TIME.

25 THAT'S REALTY, RIGHT, BECAUSE ALLOWING IT TO BE GIVEN

1 TEETH MUST REALLY MEAN THAT. BUT FOR THE COMPRESSION IT  
2 WOULDN'T HAVE GONE FASTER THAN REAL TIME, BUT IN THEIR OPTICAL  
3 FIBER THAT'S NOT TRUE TOTALLY, UNCOMPRESSED GO WAY FASTER THAN  
4 REAL TIME, UNDER MOST MODERN MEANS OF TRANSMISSION TOTALLY  
5 UNCOMPRESSED IT WILL GO FASTER THAN REAL TIME.

6 THIS IS FROM THE SPECIFICATION, THAT 200-MEGABYTE  
7 350-MEGABYTE MOVIE IT WILL GO IN FOUR MINUTES, TWO-HOUR MOVIE  
8 GOES IN FOUR MINUTES, TOTALLY UNCOMPRESSED, MUCH FASTER THAN  
9 REAL TIME COMPRESSED GOES IN ONE SECOND. BUT WASN'T THE  
10 COMPRESSION THAT MADE IT, THAT ALLOWED IT TO GO FASTER THAN  
11 REAL TIME, IT WENT REGARDLESS.

12 NOW, PHONE LINES, TWO-HOUR MOVIE IF IT WAS  
13 UNCOMPRESSED TOOK 6,000 HOURS, IF IT'S COMPRESSED IT TAKES 29  
14 HOURS. IN NEITHER CASE WAS COMPRESSION ENABLING, ALLOWING,  
15 FACILITATING, SENDING IT FASTER THAN REAL TIME. SO, I THINK,  
16 WE'VE TALKED ABOUT THAT.

17 WE DON'T NEED TO DO THIS.

18 AND THIS IS -- THIS PART FROM THE TUTORIAL WHERE  
19 EXPLAINED THE DATA RATES FROM THE VARIOUS PARTS OF THE FIGURE 2  
20 AND SET UP THIS PROBLEM.

21 IF YOU HAD DRAM CHIPS OR SRAM CHIP OPERATING SLOW,  
22 RIGHT, GOING ON THE BUS OPERATING FASTER RATE, GOING OUT A  
23 FIBEROPTIC CHANNEL YOU CAN'T GET IT OUT FAST ENOUGH.

24 WHEN THEY WERE BUILDING THE PROTOTYPE THEY CREATED,  
25 THIS IS THE ACTUAL WORDS THEY USED IN THEIR DOCUMENTS, A SEA OF

1 DRAM. NOT JUST ONE DRAM CHIP, THEY CALLED IT A SEA OF DRAM.

2 SO THEY GET IT UP TO A 500 MEGABYTES FOR SECOND  
3 FIBEROPTIC LINE, THEY USE THAT MULTIPLEXER, THAT HOT HOD CHIP  
4 SET THEY TALKED ABOUT THAT HAD 40 BITS INSTEAD OF ONE, THEY  
5 CREATED A MULTIPLEX CHANNEL, THAT'S EXACTLY WHAT THEY DID.

6 SO LOOKING AT FIGURE 2 WHERE IT SAYS MEMORY RIGHT DOWN  
7 THERE, THAT BECAME THE SEA OF DRAM, BUT IT HAD A WHOLE BUNCH OF  
8 THOSE CHIPS.

9 NOW, YOU HAVE TO MULTIPLEX IT USING TIME-COMPRESSION  
10 MULTIPLEXING TO GET IT OUT TO THE FIBEROPTIC PORT. SO THEY HAD  
11 TO USE TIME-COMPRESSION MULTIPLEXING, ACTUALLY, IN ORDER TO  
12 MAKE THEIR PROTOTYPE WORK.

13 TALKED ABOUT THAT FILE HISTORY. FILE HISTORY EXCLUDES  
14 ANY INTERPRETATION THAT WAS DISCLAIMED DURING PROSECUTION. AND  
15 YOU HAVE TO LOOK AT WHAT THEY'RE SAYING IS IN THEIR PATENTS AND  
16 IS NOT.

17 I FOUND ONE COMMENT BY MR. HEIM INTERESTING. HE SAID,  
18 THAT WHEN HE'S LOOKING AT THE BEGINNING OF THE CLAIMS, HE SAID,  
19 YEAH, SOMETHING WAS DISCLAIMED, BECAUSE THEY AMENDED THE CLAIMS  
20 TO TAKE OUT SOMETHING. NOW, WE'RE JUST DEBATING WHAT WAS  
21 DISCLAIMED.

22 IT'S CLEAR THAT THE ORIGINAL CLAIMS COVERED DATA  
23 COMPRESSION AND FASTER THAN REAL TIME, THEY DROPPED THOSE  
24 CLAIMS. THEY'RE NOW TRYING TO GET THOSE CLAIMS BACK UNDER THE  
25 GUISE OF CLAIM CONSTRUCTION. AND THAT'S EXACTLY WHAT THE LAW



1 DOESN'T ALLOW.

2           HERE'S IZEKI. THIS IS THE QUOTE THEY'RE TRYING TO  
3 DISTINGUISH, BUT IT'S UNAMBIGUOUS AND CLEAR. WHILE IZEKI  
4 MENTIONED DATA COMPRESSION, THAT IS NOT THE EQUIVALENT BY ANY  
5 MEANS.

6           THEY'RE NOT JUST CASUAL ABOUT THIS, THEY'RE DRAWING A  
7 LINE IN THE SAND. DATA COMPRESSION IS NOT OUR TIME  
8 COMPRESSION, WHICH IS EXACTLY CONSISTENT WHAT THEY DO IN  
9 EUROPE.

10           THEY SAY, OKAY, WE'RE CHANGING IT FROM TIME  
11 COMPRESSION TO DATA COMPRESSION, BUT WE'RE GOING TO ADD STILL  
12 SEPARATELY THE CONCEPT OF TIME COMPRESSION IN. THEY'RE  
13 SEPARATE DIFFERENT CONCEPTS, THEY'RE TRYING TO MAKE THEM THE  
14 SAME CONCEPT HERE.

15           NOW, THERE'S, I THINK, WE COVERED THIS IN THE  
16 SPECIFICATION DISCUSSION AND THE FILE HISTORY DISCUSSION.  
17 THERE'S NO DEBATE IZEKI DISCLOSED DATA COMPRESSION.

18           NOW, HERE'S THE ONE THING THAT I DO WANT TO ADDRESS,  
19 IS THEIR ARGUMENT THE EXAMINER INTERPRETED TIME COMPRESSION TO  
20 BE DATA COMPRESSION. AND IF YOU GO TO SLIDE 67 IN THEIR BOOK,  
21 I THINK, THAT'S WHERE THEY WERE MAKING THAT POINT.

22           IF YOU GET THAT PARTICULAR SLIDE OUT.

23           **THE COURT:** WHAT NUMBER IS IT?

24           **MR. POWERS:** 67, YOUR HONOR.

25           **THE COURT:** YES.

1           **MR. POWERS:** NOT FROM THE -- IS THAT THE TUTORIAL?  
2 THE ONE JUST HANDED YOU UP TODAY?

3           **THE COURT:** I THINK, WE HAVE THAT. DO YOU HAVE THAT?  
4 YEAH. THANK YOU. OKAY.

5           **MR. POWERS:** NOW, MR. HEIM ARGUED SEVERAL TIMES THAT  
6 EVERYBODY KNEW THAT TIME COMPRESSION, DATA COMPRESSION WERE  
7 EXACTLY THE SAME THING IN THE FILE HISTORY, AND THAT'S THE  
8 TITLE OF THIS SLIDE, IS EXAMINER INTERPRETS TIME COMPRESSED AS  
9 DATA COMPRESSION.

10           BUT IF YOU READ IT, THAT'S NOT WHAT'S GOING ON. LOOK  
11 AT THE FIRST PARAGRAPH. THE EXAMINER SAYS SQUARELY IZEKI FAILS  
12 TO TEACH THE COMPRESSED AUDIO/VIDEO INFORMATION IS THE  
13 TIME-COMPRESSED INFORMATION.

14           SO FIRST OFF, IZEKI, WHICH IS DATA COMPRESSION,  
15 EVERYBODY AGREE ON THIS, THAT EXAMINER DOESN'T SAY EQUALS TIME  
16 COMPRESSION, EXAMINER SAYS IZEKI TEACH TIME COMPRESSION.

17           THE NEXT PARAGRAPH MAKES OBVIOUS ARGUMENT HERE.  
18 EMPLOY MEANS FOR TIME COMPRESSING, ET CETERA, IS WELL-KNOWN AND  
19 AS ADMITTED BY THE APPLICANT SOMETHING OBVIOUS TO ONE OF  
20 ORDINARY SKILL IN THE ART, EMPLOY MEANS FOR TIME COMPRESS --  
21 HOWEVER, EMPLOYING MEANS FOR TIME COMPRESSING AUDIO/VIDEO  
22 INFORMATION, SO THAT THE COMPRESSED AUDIO/VIDEO INFORMATION CAN  
23 BE TRANSMITTED AT HIGH SPEED IN FLASH OR BURST PERIOD, AN  
24 INCREASE IN THE CAPACITY OF THE STORAGE MEDIUM IS WELL-KNOWN IN  
25 THE ART AND AVAILABLE IN THE MARKET, IN MARKET AT THE TIME THE

1 INVENTION WAS MADE.

2 THAT IS ADMITTED BY THE APPLICANT IN THE  
3 SPECIFICATION, PAGE SEVEN AND EIGHT. THEREFORE, IT WOULD HAVE  
4 BEEN OBVIOUS TO ONE OF ORDINARY SKILL IN THE ART TO EMPLOY  
5 MEANS FOR TIME COMPRESSING AUDIO/VIDEO INFORMATION AS  
6 ALTERNATIVE COMPRESSED DEVICE FOR THE COMPRESSING MEANS OF  
7 IZEKI TO TIME COMPRESS.

8 SO WHAT THE EXAMINER'S SAYING, THERE IS NOT THAT DATA  
9 COMPRESSION EQUALS TIME COMPRESSION. HE'S SAYING IT WOULD,  
10 OBVIOUS, TO USE IN HIS VIEW, TIME COMPRESS AS ALTERNATIVE OR  
11 INSTEAD OF DATA COMPRESSION.

12 NOW, ULTIMATELY HE GAVE THEM CLAIMS TO TIME  
13 COMPRESSION, BUT THAT'S NOT WHAT -- THE EXAMINER WAS NOT SAYING  
14 WHAT BURST WAS SAYING HE WAS SAYING. SO, I THINK, WE'VE DONE  
15 THAT.

16 NOW, BURST'S RESPONSE HERE TO YOUR HONOR IN THEIR  
17 REPLY BRIEF, SAYS THAT EXACT STATEMENT I JUST SHOWED YOU FROM  
18 IZEKI, SAYING IT'S NOT EQUIVALENT BY ANY MEANS, TIME  
19 COMPRESSION.

20 THAT STATEMENT INDICATES DATA COMPRESSION ALONE  
21 INSUFFICIENT TO MEAN THE CLAIMS IF THE RESULTING COMPRESSION  
22 CANNOT BE SENT FASTER THAN REAL TIME.

23 THAT GOES BACK TO THIS, WHERE THE LINE BETWEEN THE  
24 RELATIONSHIP BETWEEN DATA COMPRESSION AND SENDING FASTER THAN  
25 REAL TIME. THE SPEC DOESN'T GIVE YOU THAT LINE. TOTALLY

1 UNCOMPRESSED GO WAY FASTER OR REALLY SERIOUSLY COMPRESSED AND  
2 NOT GO WAY FASTER, NOT GO FASTER AT ALL.

3 SO THEIR BRIEF STILL DOESN'T HELP YOU DRAW THAT LINE.  
4 YET THAT'S WHAT THE CLAIM CONSTRUCTION MUST DO. IT MUST GIVE  
5 YOU A STAKE IN THE GROUND THAT SAYS, HERE'S WHAT'S INSIDE THE  
6 CLAIM AND HERE'S WHAT'S OUT.

7 THEIRS JUST SAYS DATA COMPRESSION SOMEHOW ALLOWS IT TO  
8 BE SENT FASTER THAN REAL TIME. THAT DOESN'T TELL YOU ANYTHING  
9 ABOUT WHAT'S IN OR OUT.

10 **THE COURT:** CAN WE WIND IT UP.

11 **MR. POWERS:** YES. I THINK, WE COVERED THAT.

12 AND, I THINK, WE COVERED THAT.

13 THE ONLY OTHER POINT I WANT -- I WANTED TO SHOW YOUR  
14 HONOR, JUST REMIND YOU THIS CHART THAT WE SHOWED YOU IN THE  
15 TUTORIAL, WHICH DEMONSTRATES THERE'S NO RELATIONSHIP AT ALL  
16 BETWEEN COMPRESSION AND FASTER THAN REAL TIME. IT'S ALL DRIVEN  
17 BY HOW FAST THE TRANSMISSION MEDIUM IS AT, I THINK, TIME IN ANY  
18 LEVEL OF COMPRESSION.

19 ONE INTERESTING POINT FROM THEIR BRIEF, I THOUGHT THIS  
20 WAS WORTH MAKING, BECAUSE IT SHOWS THE INDEFINITENESS OF THEIR  
21 POSITION.

22 THEY SAY, EVEN COMPRESSED DATA MAY REQUIRE MORE TIME  
23 TO TRANSMIT OVER CONVENTIONAL PHONE LINES. THAT'S FROM, OF  
24 COURSE, THE SPEC.

25 THEY SAY, THE CONTEXT SUCH COMPRESSED REPRESENTATION

1 WOULD NOT BE A TIME COMPRESSED REPRESENTATION BECAUSE THE  
2 TRANSMISSION TIME IS GREATER THAN PLAYBACK TIME.

3 WHAT THAT MEANS, YOU'RE NOT GOING TO KNOW IN A CLAIM  
4 WHETHER IT'S TIME COMPRESSED UNTIL IT'S TRANSMITTED, MAYBE  
5 YEARS LATER, SO EVEN UNDER THEIR CONSTRUCTION, AND MR. LANG'S  
6 DEPOSITION IS QUITE FRANK ABOUT ADMITTING IT, YOU COULD HAVE  
7 COMPRESSION THAT EXISTS, SAY, IN THE 1950'S, NOTHING COULD GO  
8 FASTER THAN REAL TIME, AND JUST WAIT, YOU COMPRESS IT, YOU  
9 STORE IT AND WAIT 20 YEARS, LO AND BEHOLD, SOMEONE COMES UP  
10 WITH A NEW FIBEROPTIC CHANNEL, NOW THEY CAN SEND IT FASTER THAN  
11 REAL TIME UNDER THEIR CONSTRUCTION BECAUSE NOW IT'S BEING  
12 TRANSMITTED FASTER. THAT'S -- THE THING WAS NOT TIME  
13 COMPRESSED FOR 25 YEARS IS ALL OF A SUDDEN TIME COMPRESSED.

14 MY STORED FILE, MY SONG I STORED IN COMPRESSED FORM,  
15 IF ANY DSL LINE IS WORKING WELL ON TUESDAY IS TIME COMPRESSED,  
16 BUT IT WAS WORKING BADLY ON WEDNESDAY IT'S NOT TIME COMPRESSED.  
17 WHY?

18 BECAUSE IT'S NOT SENT FASTER THAN REAL TIME. THAT'S,  
19 OBVIOUSLY, AND INDEFINITE CLAIM CONSTRUCTION, YET IT IS THEIR  
20 CLAIM CONSTRUCTION.

21 IF I MAY SPEND ONLY THREE MINUTES ON THE ASSOCIATED  
22 BURST TIME PERIOD? I THINK, WE TALKED ABOUT MOST OF THIS.

23 **THE COURT:** YES. OKAY.

24 **MR. POWERS:** THE KEY WORD IS HAVING. THEIR PROPOSED  
25 CONSTRUCTION DOESN'T ADDRESS THAT, BUT THE KEY WORD IS HAVING.

1 WHAT DOES THAT MEAN?

2 JUDGE MOTZ SAID IN MARYLAND HAVING HAS TO BE GIVEN A  
3 MEANING, IT IS AN -- IN THE TENSE, AS WE GRAMMARIANS WOULD  
4 KNOW, THAT APPLIES EXISTED AT TIME, SO THEY'RE STUCK WITH THAT  
5 WORD, THEY'RE STUCK WITH THAT MEANING.

6 WHAT DOES IT MEAN? THAT'S TOTALLY CONSISTENT WITH  
7 TIME COMPRESSION. WHEN YOU DO ACTUALLY TIME COMPRESS THE WAY  
8 ALL THE EXPERTS KNOW THAT TERM IS USED, DO YOU HAVE ASSOCIATED  
9 BURST TIME PERIOD, YOU KNOW EXACTLY WHAT IT IS, IT'S EITHER THE  
10 TWO, DIVIDED BY THREE, WHATEVER IT WAS, DATA COMPRESSION DOES  
11 NOT. WE'VE SHOWN THAT.

12 I THINK, WE DON'T NEED TO DO THAT.

13 WE COVERED THAT.

14 NOW, THEIR PROPOSED CONSTRUCTION THAT REALLY READS OUT  
15 ASSOCIATED BURST TIME PERIOD AND PARTICULARLY HAVING ONE, BUT  
16 BECAUSE THEIR CONSTRUCTION SAYS IS EVENTUALLY, IF IT'S SENT  
17 FASTER THAN REAL TIME, THEN WE'RE GOING TO STAY BACK, HOWEVER  
18 LONG AGO IT WAS STORED IT HAD AN ASSOCIATED BURST TIME PERIOD.  
19 AND WE THINK THAT READS THAT LANGUAGE OUT OF THE CLAIM AND  
20 IMPROPERLY SO.

21 **THE COURT:** WE THINK THAT'S THREE MINUTES.

22 **MR. POWERS:** AND, I THINK, THAT'S THREE MINUTES.

23 **THE COURT:** OKAY. I HAVE COUPLE OF -- I HAVE A  
24 QUESTION OF THE EXPERTS. START WITH DR. HEMAMI AND THEN IS IT  
25 MR., OR DR., OR WHATEVER, HALPERN?

1           **MR. HALPERN:** MR. HALPERN, YOUR HONOR.

2           **THE COURT:** OKAY. BY REDUCING THE NUMBER OF BITS THAT  
3 INFORMATION THAT'S GOING TO GO BY, THAT'S GOING TO BE  
4 TRANSMITTED; IN OTHER WORDS, BY THIS DATA COMPRESSION, USING  
5 THE SAME EXACT SAME METHOD OF TRANSMISSION FOR THE UNCOMPRESSED  
6 AND THE COMPRESSED, WILL THE COMPRESSED GET THERE MORE QUICKLY,  
7 GET, YOU KNOW, TO THE RECEPTION POINT MORE QUICKLY?

8           PROBABLY, SO THAT'S PROBABLY A GOOD IDEA.

9           **DR. HEMANI:** LET ME REPEAT THE QUESTION TO MAKE SURE I  
10 HAVE IT CORRECT.

11           **THE COURT:** GOOD TEACHER DOES THAT.

12           **DR. HEMANI:** SORRY. WE HAVE THE FILE AND WE DATA  
13 COMPRESS IT, SO IT BECOMES SMALLER, AND THE QUESTION IS, WILL  
14 THE COMPRESSED FILE BE TRANSMITTED IN A SHORTER TIME PERIOD  
15 THAN THE UNCOMPRESSED FILE?

16           **THE COURT:** YES. USING THE SAME METHOD OF  
17 TRANSMISSION.

18           **DR. HEMANI:** USING THE EXACT SAME DIGITAL  
19 COMMUNICATION LINK, YES, IT WILL BE FASTER. SIMPLY BECAUSE IT  
20 IS SMALLER AND HAS FEWER BITS.

21           **THE COURT:** OKAY. BUT IS IT THEN A FUNCTION, WHETHER  
22 IT GETS THERE FASTER OR NOT, IS IT A FUNCTION OF THE  
23 TRANSMISSION?

24           **DR. HEMANI:** THAT IS EXACTLY CORRECT. IT'S THE  
25 FUNCTION OF THE SPEED OF THE PIPE. SO IF WE CONSIDER THE TWO

1 EXTREMES, THE FIBEROPTIC LINK EVERYTHING GETS THERE FASTER THAN  
2 REAL TIME BECAUSE IT'S SO FAST, AND THE TELEPHONE EVERYTHING  
3 GETS THERE SLOWER THAN REAL TIME, WHETHER UNCOMPRESSED OR  
4 COMPRESSED BECAUSE IT'S SO SLOW.

5 WHAT BECOMES INTERESTING, ARE THOSE TRANSMISSION  
6 BANDWIDTHS IN THE MIDDLE OF THE TWO EXTREMES, WHERE THE  
7 UNCOMPRESSED FILE IS SO LARGE THAT IT CAN'T GET THERE FASTER  
8 THAN REAL TIME, BUT THE COMPRESSION OPERATION GETS THE FILE  
9 SMALL ENOUGH SUCH THAT IT'S NOW GONE BELOW THE THRESHOLD AT  
10 WHICH IT CAN GET THERE FASTER THAN REAL TIME.

11 **THE COURT:** OKAY. THANK YOU. THAT'S VERY, VERY  
12 HELPFUL.

13 MR. HALPERN, WOULD YOU ANSWER THAT ANY DIFFERENTLY?  
14 FINALLY WILL GET THEIR MONIES WORTH.

15 **MR. HALPERN:** THANK YOU, YOUR HONOR.

16 **THE COURT:** I'M SURE THEY GOT THEIR MONIES WORTH. ALL  
17 RIGHT.

18 **THE WITNESS:** THE ANSWER IS STILL THE SAME ANSWER THAT  
19 DR. HEMAMI JUST GAVE. ALL OTHER THINGS BEING EQUAL, A LARGER  
20 FILE WILL TAKE LONGER TO SEND THEN A SMALLER FILE.

21 SO, IF I TAKE A FILE AND I DATA COMPRESS IT AND I SHIP  
22 IT OVER A NETWORK WHERE EVERYTHING IS BEHAVING THE SAME WAY,  
23 AND SOMETIMES THAT'S A LOT OF DIFFERENT FACTORS, AND INTERNET  
24 IN PARTICULAR, PREDICTING HOW LONG THINGS WILL TAKE GETS VERY  
25 COMPLICATED, BUT ASSUMING EVERYTHING ELSE WAS THE SAME, THEN BY



1 DEFINITION, A SHORTER FILE WILL GET THROUGH FASTER THAN THE  
2 LONGER FILE.

3 **THE COURT:** OKAY. THANK YOU VERY MUCH. AND, I  
4 GATHER, YOU KNOW, I HEARD YOU USE THE WORD, THE EXPERTS,  
5 INCLUDING THE EXPERTS, USED THE WORD PIPES, I GUESS, THAT WE'RE  
6 ALL LAUGHING ABOUT SENATOR STEVENS REFERRING TO COMPUTERS AND  
7 PIPES AND WE ALL HAD A CHUCKLE, BUT I GUESS MAYBE HE KNEW MORE  
8 THAN WE THOUGHT HE DID.

9 **MR. POWERS:** IT'S FREQUENTLY USED AS WITH SOMETIMES  
10 TRYING TO EXPLAIN AS A WATER ANALOGY WHERE THE SIZE OF PIPE  
11 WILL ALLOW YOU TO PUMP MORE WATER THROUGH MORE BANDWIDTH.

12 **THE COURT:** BUT IT IS A TERM THAT IS USED BY EVEN THE  
13 EXPERTS.

14 NOW, THE NEXT PERSON IN LINE ON BEHALF OF BURST IS  
15 YOU. AND HOW LONG DO YOU EXPECT YOU WILL BE IN YOUR  
16 PRESENTATION?

17 **MR. FOLSE:** I THINK, I CAN'T BE LONGER THAN 30  
18 MINUTES. AND STILL A LOW --

19 **THE COURT:** I THINK, YOU CAN'T BE. SO WHY DON'T WE GO  
20 AHEAD AND DO THAT NOW AND THEN WE'LL TAKE A BREAK AT 1:00  
21 O'CLOCK FOR LUNCH AND COME BACK AND WE'LL JUST HAVE TO KEEP  
22 GOING UNTIL WE FINISH.

23 **MR. FOLSE:** SO, YOUR HONOR, THE NEXT GROUP OF TERMS  
24 THAT WE'RE TURNING TO ARE TERMS RELATED TO TRANSMISSION.

25 **THE COURT:** RIGHT.

1           **MR. FOLSE:** THESE COME UP WITH A VARIETY OF FLAVORS.  
2           THERE ARE A COUPLE OF THREE OR FOUR TERMS THAT REFER TO  
3           TRANSMISSION OF SOMETHING AWAY FROM THE TRANSCIEVER APPARATUS.

4           THERE IS A ONE CLAIM THAT REFERS TO TRANSMITTING USING  
5           THE PARTICIPLE "AWAY." THERE ARE SOME CLAIMS THAT REFER TO  
6           TRANSMITTING SOMETHING TO A SELECTED DESTINATION.

7           AND SO WITH RESPECT TO THE TERMS, THE CLAIMS THAT USE  
8           THE TRANSMISSION AWAY LANGUAGE AND THE TRANSMISSION TO A  
9           SELECTED DESTINATION LANGUAGE, THERE'S AN ISSUE ABOUT WHERE IS  
10          THE INFORMATION BEING TRANSMITTED.

11          THE PARTIES AGREE THAT TRANSMISSION REFERS TO SENDING  
12          INFORMATION OUTSIDE THE TRANSMITTING DEVICE. THE ISSUE IS  
13          WHERE?

14          FIRST POSITION, IS THAT WITH RESPECT TO THE CLAIM  
15          TERMS THAT REFER TO TRANSMISSION AWAY FROM THE DEVICE OR  
16          TRANSMISSION TO A SELECTED DESTINATION, THAT WHAT IS BEING  
17          REFERRED TO WITHIN THE CONTEXT OF THE PATENT IS AN EXTERNAL  
18          DEVICE THAT IS CAPABLE OF PLAYBACK.

19          APPLE'S POSITION IS THAT TRANSMISSION UNDER ALL  
20          CIRCUMSTANCES IS SENDING TO A REMOTE LOCATION. THEN WE HAVE A  
21          SPECIFIC CARVE OUT THAT THEY WANT THE COURT TO ADOPT, WHICH IS  
22          TO EXCLUDE TRANSFERS THROUGH AN INTERFACE TO A STORAGE DEVICE,  
23          WHICH IS NOT SUGGESTED BY THE CLAIM LANGUAGE OR THE  
24          SPECIFICATION AT ALL.

25          AND WHAT I'VE DONE IS, AND THE INTEREST OF TIME I

1 WON'T GO THROUGH THESE ONE-BY-ONE, BUT THE SLIDES INCLUDE THE  
2 VARIOUS ITERATIONS OF THESE TRANSMISSION TERMS AND THE PARTYS'  
3 PROPOSED CONSTRUCTION.

4 THIS IS AN EXAMPLE OF CLAIM 1 OF THE '995 PATENT WHICH  
5 REFERS TO TRANSMISSION OF THE TIME-COMPRESSED AUDIO/VIDEO  
6 SOURCE INFORMATION THAT HAS BEEN STORED AND THEN TRANSMITTED  
7 AWAY FROM SAID AUDIO/VIDEO TRANSCEIVER APPARATUS. SO THAT'S A  
8 AN EXAMPLE OF THE TRANSMITTING AWAY TERM.

9 AND THERE'S ONE, AS I SAID, ONE CLAIM THAT TALKS ABOUT  
10 TRANSMITTING AWAY, WHICH IS CLAIM 1 OF THE '705 PATENT, WHICH  
11 REFERS TO TRANSMISSION MEANS COUPLED TO STORAGE MEANS FOR  
12 TRANSMITTING SAID DIGITAL TIME-COMPRESSED REPRESENTATIONS BY  
13 SAID AUDIO/VIDEO SOURCE INFORMATION AWAY FROM THE APPARATUS IN  
14 SAID BURST TRANSMISSION TIME PERIOD.

15 **THE COURT:** BUT THAT TRANSMITTING AWAY ESSENTIALLY IS  
16 THE SAME AS THE TRANSMISSION AWAY IN THE '995 CLAIM 1, IN THAT  
17 IT IDENTIFIES MOST OF THESE, EITHER IDENTIFY WHAT IT IS AWAY  
18 FROM, AND IT HAS TO BE TAKEN IN CONTEXT THEN, AWAY FROM  
19 SOMETHING, OR AWAY TO, OR TRANSMITTING TO SOMETHING.

20 SO WHEREVER YOU'RE USING THE WORD TRANSMISSION OR  
21 TRANSMITTING, IT CAN'T BE ESSENTIALLY CONSTRUED IN A VACUUM,  
22 YOU HAVE TO LOOK AT IT IN THE CONTEXT. NAMELY, WHAT IS BEING  
23 TRANSMITTED AWAY FROM OR TRANSMITTED TO, RIGHT?

24 **MR. FOLSE:** I THINK, THAT IS CORRECT. AND THE  
25 PARTIES, FOR EXAMPLE, WE DO BELIEVE THE CLAIM TERMS WHICH REFER

1 TO TRANSMISSION AWAY -- LET ME FIND ONE THAT SHOWS TRANSMITTED  
2 TO A SELECTED DESTINATION.

3           HERE'S AN EXAMPLE. CLAIM 1 OF THE '839, TRANSMITTING  
4 IN SAID BURST TIME PERIOD THE STORED TIME-COMPRESSED  
5 REPRESENTATION OF THE RESET AUDIO/VIDEO SOURCE INFORMATION TO A  
6 SELECTED DESTINATION. SO THE ISSUE IS, WHERE?

7           **THE COURT:** EXACTLY. IN BOTH CASES.

8           **MR. FOLSE:** I THINK, IN BOTH CASES.

9           **THE COURT:** IT'S NOT WHAT, IT'S PRETTY CLEAR WHAT IT  
10 IS, AND THAT'S NOT IN DISPUTE, I THINK. WHERE IS IT GOING?

11           **MR. FOLSE:** SO LOOKING AT THE INTRINSIC EVIDENCE AT  
12 THE SPECIFICATION, THE BURST PATENT DESCRIBE TRANSMISSION TO  
13 PLAYBACK DEVICES. THE EXAMPLE GIVEN AT COLUMN 7, LINE 58 OF  
14 THE '995 PATENT REFERS TO A VCRET, WHICH IS THE NAME, SHORTHAND  
15 NAME FOR THE APPARATUS DESCRIBED IN THE PREFERRED EMBODIMENT,  
16 CAN RECEIVE A VIDEO PROGRAM AT AN ACCELERATED RATE VIA  
17 FIBEROPTIC PORT 18 FROM A VARIETY OF SOURCES.

18           FOR EXAMPLE, A VIDEO PROGRAM MAYBE COMMUNICATED AT AN  
19 ACCELERATED RATE FROM THE FIRST VCRET TO A SECOND IN LESS TIME  
20 THAN IT WOULD TAKE TO VIEW THE PROGRAM.

21           NOW, WHAT DOES THE SECOND VCRET DO?

22           AT COLUMN 10, LINE ONE, ONCE SERVED IN THE SECOND  
23 VCRET MEMORY 13, THE DIGITIZED PROGRAM CAN EITHER BE VIEWED  
24 DIRECTLY FROM MEMORY OR TRANSFERRED TO STORAGE MEDIUM 23,  
25 EITHER IN ITS ENTIRETY OR IN RANDOM SEGMENTS BASED ON USER

1 PREFERENCE.

2 THIS IS GOING TO BE IMPORTANT A BIT LATER IN MY  
3 DISCUSSION BECAUSE THE VCRET, AS IS CLEAR FROM THE  
4 SPECIFICATION, AS IS CLEAR FROM THE PATENT CLAIMS, IS A DEVICE  
5 THAT IS CAPABLE OF DOING MANY THINGS, BUT IT'S CAPABLE OF DOING  
6 TWO THINGS RELEVANT HERE.

7 IT'S CAPABLE OF PERMITTING THE INFORMATION TO BE  
8 VIEWED THAT IS PLAYED BACK AND IT IS CAPABLE OF STORING IT, IT  
9 CAN DO BOTH THINGS. AND THAT'S THE CONTEXT IN WHICH  
10 TRANSMISSION IS DISCUSSED.

11 THE PROSECUTION HISTORY ALSO SUPPORTS THE SAME IDEA.  
12 AND THESE ARE STATEMENTS FROM THE PROSECUTION HISTORY OF THE  
13 '705 PATENT.

14 IN THE FIRST THERE IS A REFERENCE, AND YOU SEE THIS  
15 COMING UP ON MANY OCCASIONS, PARTICULARLY IN THE CONTEXT OF  
16 BURST'S EFFORTS TO DISTINGUISH THE IZEKI PATENT, WHICH I'M  
17 ACTUALLY GOING TO COME TO IN A SLIGHTLY DIFFERENT CONTEXT THEN  
18 THE ONE JUST DISCUSSED, WHEN THERE'S A CONSTANT EMPHASIS ON THE  
19 NOTION THAT THE PATENTS ARE BEING DIRECTED TO THE TRANSMISSION  
20 OF AUDIO AND VIDEO IN A BURST TRANSMISSION TIME PERIOD, WHICH  
21 IS SUBSTANTIALLY SHORTER THEN THE TIME ASSOCIATED WITH REAL  
22 TIME VIEWING OF THE PROGRAM BY A RECEIVER.

23 IT IS THAT THE OBJECT OF THE INVENTION WAS TO TRANSMIT  
24 AUDIO AND VIDEO, SO THAT IT ULTIMATELY COULD BE VIEWED, AND  
25 THAT THE TECHNOLOGY THAT WAS BEING CLAIMED WOULD PERMIT THE

1 TRANSMISSION TO OCCUR IN A WAY THAT WOULD BE FASTER THAN IT  
2 WOULD TAKE TO VIEW THE PROGRAM IN A CONTINUOUS BROADCAST TYPE  
3 FEED.

4 AND IN ADDITION, BURST DISTINGUISHED REAL TIME  
5 TRANSMISSION BY EXPLAINING, AND THIS IS, I THINK, SOMETHING I  
6 QUOTED AT THE VERY BEGINNING OF TODAY, THAT SYSTEM DESIGNERS  
7 DID NOT RECOGNIZE THAT TIME-COMPRESSED REPRESENTATIONS COULD BE  
8 SENT IN A BURST TIME PERIOD SHORTER THAN THE TIME NEEDED FOR  
9 REAL TIME VIEWING BY THE RECEIVER.

10 AND IT REFERS TO THE ABILITY OF THE RECEIVER TO PAUSE  
11 OR REWIND THE PROGRAM WHICH, AGAIN, ASSUMES THE RECEIVING  
12 DEVICE IS CAPABLE OF PLAYBACK, SO IN THE CONTEXT OF  
13 TRANSMITTING TO SELECTED DESTINATION IS TRANSMITTING AWAY THE  
14 CONTEXT OF THE PATENT IS TALKED ABOUT A DEVICE THAT PLAYS BACK.

15 IF YOU LOOK AT THE EMBODIMENT THAT'S REFLECTED IN  
16 FIGURE 2, THERE ARE A VARIETY OF PORTS HERE. I GOT YELLOW  
17 LINES NEXT TO 17, 18 AND 22 WHICH ARE DIFFERENT MECHANISMS FOR  
18 TRANSMITTING INFORMATION. LOOK AT TWO EXAMPLES, 18 AND 22,  
19 WHAT DOES THE PATENT SAY ABOUT THEM?

20 IT SAYS, THE INCORPORATION OF FIBEROPTIC PORT 18 IN  
21 THE VCRET PROVIDES THE CAPABILITY FOR DELIVERING THE  
22 AUDIO/VIDEO SIGNALS FOR THE FIBEROPTIC LINE. FOR EXAMPLE, A  
23 VIDEO PROGRAM MAYBE COMMUNICATED AT AN ACCELERATED RATE FROM  
24 THE FIRST VCRET TO A SECOND VCRET IN LESS TIME THAN IT WOULD  
25 TAKE TO VIEW THE PROGRAM. THAT'S ONE OF THE THREE PORTS.

1 SECOND OUTPUT PORT 22, IS DATA FROM MEMORY 13, IS THEN  
2 ROUTED TO LINE 43, TRANSMITTER RECEIVER 22 AND TO A PHONE LINE.  
3 AT THE OTHER END OF THE PHONE LINE THE SIGNALS RECEIVED ARE  
4 PROCESSED BY ANOTHER VCRET.

5 ONCE RECEIVED IN THAT VCRET'S MEMORY THE DIGITAL  
6 PROGRAM CAN THEN BE VIEWED DIRECTLY FROM MEMORY. IT'S TALKING  
7 ABOUT PLAYBACK.

8 **THE COURT:** THE PATENT, AT LEAST, INSOFAR AS LOOK IN  
9 THE '995, HOLDING TO CLAIM 1 HERE FOR AWHILE, THE TRANSCIEVER  
10 OR TRANSMITTER RECEIVER WHICH, I ASSUME, THAT'S WHAT THAT  
11 MEANS?

12 **MR. FOLSE:** YES.

13 **THE COURT:** IS A DEVICE, WHICH BOTH HAS THE INPUT FOR  
14 RECEIVING AND THEN ALL OF THESE OTHER THINGS ARE HAPPENING  
15 INCLUDING STORAGE, ET CETERA, ET CETERA, THEN TRANSMITTING IN  
16 THE OUTPUT MEANS, IT HAS THE OUTPUT MEANS ALSO?

17 **MR. FOLSE:** CORRECT.

18 **THE COURT:** IS ABLE TO TRANSMIT, BUT IT'S TRANSMITTING  
19 AWAY FROM THE, YOU KNOW, THAT PARTICULAR DEVICE?

20 **MR. FOLSE:** YES.

21 **THE COURT:** SO CONTEMPLATES SOME OTHER KIND OF DEVICE  
22 SOMEWHERE ELSE. COULD BE RIGHT NEXT DOOR, COULD BE MILES AWAY,  
23 RIGHT?

24 **MR. FOLSE:** EXACTLY. BOTH SIDES AGREE TRANSMISSION IN  
25 THE CONTEXT OF THESE CLAIMS MEANS SENDING THE INFORMATION AWAY,

1 AND WE THEN RUN INTO THIS DISAGREEMENT ABOUT WHERE?

2 AND OUR POSITION WHICH IS, I THINK, YOUR HONOR JUST  
3 ARTICULATED QUITE WELL, IS THAT THE CLAIM TERMS WHICH USE THOSE  
4 REFERENCES, USE THAT TERMINOLOGY, ARE TALKING ABOUT SENDING THE  
5 OTHER DEVICES THAT ARE CAPABLE OF PLAYBACK, AND THERE'S NOTHING  
6 IN THE PATENT LANGUAGE THAT SUGGESTS IT HAS TO BE AT A QUOTE  
7 "REMOTE LOCATION," THIS IS JUST AN EXTRANEIOUS GRAFTING ON.

8 **THE COURT:** WHEN YOU SAY CAPABLE OF PLAYBACK OR WOULD  
9 YOU SAY CAPABLE OF RECEIVING, WHATEVER IT DOES WITH IT. COULD  
10 BE RESTORING IT, IT COULD -- IT COULD PLAY IT BACK, DO ANY OF  
11 NUMBER OF THINGS.

12 **MR. FOLSE:** IT COULD DO ANY NUMBER OF THINGS. IN  
13 FACT, THERE ARE DEVICES SUCH AS THE VCRT ITSELF THAT CAN  
14 STORE, BUT THAT IS CAPABLE OF PLAYING BACK.

15 AND WE THINK THAT GIVEN THE FREQUENT REFERENCES IN THE  
16 PATENTS THEMSELVES, IN THE PROSECUTION HISTORY THAT THE REAL  
17 OBJECT OF THIS FASTER THAN REAL TIME TRANSMISSION WAS TO ENABLE  
18 VIEWING, THAT THE DEVICE HAS TO BE CAPABLE OF PLAYBACK,  
19 REGARDLESS OF WHAT ELSE IT MIGHT DO.

20 **THE COURT:** NOW, IS THAT IN THE CLAIM OR IS THAT  
21 ESSENTIALLY WHAT WE READ FROM THE SPECS?

22 **MR. FOLSE:** IT'S WHAT WE READ FROM THE SPECIFICATION,  
23 TO ANSWER THE QUESTION OF WHAT DOES TRANSMISSION AWAY FOR A  
24 SELECTED DESTINATION REFER TO.

25 **THE COURT:** THAT WOULD EXCLUDE MR. POWERS' DEVICE



1 WHERE HE'S GOING TO HOLD ONTO SOMETHING THAT HE RECORDED BACK  
2 IN THE 80'S AND THEN WAIT FOR THE DAY WHEN HE CAN SPEED IT UP  
3 AND PLAY IT BACK AND --

4 **MR. FOLSE:** YOUR HONOR, I HAVE --

5 **THE COURT:** -- AND JUST STORED FOR HALF AN ETERNITY.

6 **MR. FOLSE:** I HAVE TO SAY AND I --

7 **THE COURT:** I'M BEING SOMEWHAT FACTITIOUS HERE,  
8 OBVIOUSLY.

9 **MR. FOLSE:** I FEEL LISTENING TO MR. POWERS I GO DOWN  
10 THE RABBIT HOLES, UP WAS DOWN AND DOWN WAS UP. I WAS HEARING  
11 DESCRIPTION THINGS REGARDING A 33 AT 45, THEN STORING IT ON  
12 SOME FORM OF DIGITAL FORMAT, AS IF ANYONE WOULD EVER WANT TO DO  
13 THAT, BUT IN FACT --

14 **THE COURT:** HE WAS DOING THAT BECAUSE HE DIDN'T --  
15 EXCUSE ME, HE WAS DOING THAT BECAUSE HE DIDN'T THINK I  
16 UNDERSTAND ANYTHING MORE COMPLICATED THAN THAT.

17 **MR. FOLSE:** IT'S MORE THAN THAT. IT'S THE ONLY  
18 EXAMPLE THEY EVER TRIED TO COME UP WITH HOW THEIR VERSION OF  
19 TIME COMPRESSION COULD ACTUALLY MAKE SENSE IN OUR CLAIMS, WHICH  
20 REQUIRES STORAGE FIRST.

21 AND NONE OF THE REFERENCES THEY CITE TO ESTABLISH THE  
22 MEANING OF THE TERM TIME COMPRESSION REFER TO ANYTHING REMOTELY  
23 LIKE THAT. THEY DON'T REFER TO THE ORDER OF STEPS THAT ARE  
24 REFLECTED IN THESE PATENT CLAIMS.

25 SO IF YOU ASKING, WELL, WHAT DOES TIME COMPRESSION

1 MEAN? ACTUALLY, THE WRONG QUESTION BECAUSE THE PATENT TERMS  
2 DON'T USE, THE PATENT CLAIMS DON'T USE THE WORD TIME  
3 COMPRESSION, WHATEVER THAT WAS MEANT IN THE ART.

4 AND, IN FACT, I ALSO WANT TO CLARIFY SOMETHING ELSE  
5 MR. POWERS SAID, DR. HEMAMI DOES NOT AGREE, HE IMPLIED THE  
6 EXPERTS ARE IN AGREEMENT THAT THE TERM TIME COMPRESSION HAD  
7 THIS ACCEPTED MEANING IN THE ART IN 1988 AND IT IS APPLE'S  
8 DEFINITION --

9 **THE COURT:** WE'RE NOT GOING TO GO BACK TO TIME  
10 COMPRESSION, SORRY TO INTERRUPT YOU THERE. I THOUGHT IT WAS  
11 PRETTY CLEAR AS TO WHAT TRANSMITTING TO AND TRANSMITTING AWAY  
12 MEANS, BUT SO GO AHEAD.

13 **MR. FOLSE:** APPLE'S POSITION ON REMOTE LOCATION IS, I  
14 THINK, AGAIN, AN ATTEMPT TO GRAPH A LIMITATION ONTO THE CLAIM,  
15 WHICH IS NOWHERE SUGGESTED IN THE LANGUAGE AT ALL.

16 THERE ARE PLACES THAT THEY SAY PATENTS REPEATEDLY  
17 ASSOCIATED TRANSMISSION WITH REMOTE LOCATION, IN THEIR BRIEF  
18 THEY MADE THREE CITES FOR THIS NOTION OF REPEATED REFERENCE.  
19 ONE IS THE ABSTRACT WHICH IS DOES REFER TO TRANSMITTING  
20 PROGRAMS TO A REMOTE LOCATION USING A SECOND VCET.

21 THEY REFER TO THE '995 PATENT AT CLAIM 10, THAT  
22 LANGUAGE APPEARS IN THE SPECIFICATION OF THE OTHER PATENTS AS  
23 WELL, TALKING ABOUT AN OPTIONAL EMBODIMENT WHERE DIGITIZED  
24 VIDEO AND AUDIO SIGNAL FROM THE REMOTE VCET AT THE FAR END OF  
25 A PHONE LINE MAYBE RECEIVED.

1            THAT'S AN EXAMPLE, WHAT THEY WANT TO DO IS TAKE THE  
2 REFERENCES TO REMOTE LOCATION IN THE PATENT AND ADD THEM ONTO  
3 THE CLAIM, SO THAT THEY MODIFY THE CLAIM LANGUAGE. IT'S A  
4 CLASSIC EXAMPLE OF TRYING TO TAKE SOMETHING FROM ONE EMBODIMENT  
5 AND LIMIT THE CLAIM BY THE LANGUAGE.

6            THE THIRD CITATION I WOULD ADD, YOUR HONOR, DOESN'T  
7 ACTUALLY MAKE A REFERENCE TO REMOTE LOCATION AT ALL. THAT JUST  
8 UNDERSCORES THE TERM REMOTE DOESN'T APPEAR ANYWHERE IN ANY OF  
9 THE TRANSMISSION LIMITATIONS OF THE CLAIMS THEMSELVES.

10           THE CLAIMS, OF COURSE, CAN BE BROADER THEN THE  
11 DESCRIPTION OF THE PREFERRED EMBODIMENT.

12           THE OTHER PROBLEM THE WORD REMOTE IT INTRODUCE THESE  
13 AMBIGUITIES, WHICH THEIR EXPERT MR. HALPERN HAS AGREED WITH THE  
14 BURST PATENTS THEMSELVES REFER TO ON THE ONE HAND, RECEIVING  
15 DEVICE ON THE OTHER END OF THE PHONE LINE, BUT THEY ALSO TALK  
16 ABOUT A TRANSCEIVER COUPLED WITHIN THE SAME NETWORK, WHICH  
17 COULD BE NEXT DOOR IN YOUR HOUSE, COULD BE NEXT TO THE DEVICE  
18 ON A SINGLE DESK. THEY WANT TO CARVE OUT STORAGE DEVICES.

19           AND THE REASON IS BECAUSE THEY ARGUE THE IPOD IS A  
20 STORAGE DEVICE. THEY'RE THE ONES INTRODUCING INFRINGEMENT  
21 ISSUES INTO CLAIM CONSTRUCTION. THEY'VE BEEN FAIRLY OVERT  
22 ABOUT IT.

23           THEY WANT TO TAKE THE POSITION THE IPOD IS A STORAGE  
24 DEVICE, THAT'S WHY THEY WANT THE COURT TO EXPRESSLY CARVE OUT  
25 FROM TRANSMISSION, TRANSMISSION OF AUDIO AND VIDEO TO A STORAGE

1 DEVICE.

2 AND WE'VE GOT SOME LEGAL CITATIONS HERE WHICH POINT  
3 OUT THAT IS A FORM, THAT IS AN APPROACH TO CLAIM CONSTRUCTION  
4 WHICH IS FROWNED ON. HERE IS THE REAL IMPACT OF THIS  
5 DISAGREEMENT.

6 IT'S A DIAGRAM, WHAT WE HAVE DONE IS TO SUGGEST THAT  
7 TRANSMISSION TERMS BE CONSTRUED IN THE WAY THAT MAKE REFERENCE  
8 TO TRANSMISSION TO DEVICE CAPABLE OF PLAYBACK.

9 THEY SAY TRANSMISSION TO REMOTE LOCATIONS, SO ANY  
10 DEVICES THAT ARE LESS THAN REMOTE, WHATEVER THAT MEANS, GO OUT  
11 THE WINDOW, AND THE OTHER THING THAT GOES OUT THE WINDOW IS ANY  
12 DEVICE, ANY STORAGE DEVICE.

13 SO THERE ARE DEVICES LIKE THE VCRET THAT DO BOTH, I  
14 WOULD SUGGEST, BY THE WAY, I THINK, THE IPOD DOES BOTH. BUT  
15 THEY WOULD TRY TO DO, I ASSUME, WHAT THEY'RE TRYING TO DO, IS  
16 TO DEVELOP A BASIS FOR ARGUING THAT ANY DEVICE THAT STORES,  
17 REGARDLESS OF WHAT ELSE IT DOES, IT IS EXCLUDED, EVEN IF IT  
18 ALSO PLAYS BACK.

19 THEIR SOLE BASIS FOR THIS IS REPEAT OF MR. POWERS  
20 ATTEMPT TO TALK ABOUT LEFT TURNS AND RIGHT TURNS IN THE  
21 PROSECUTION HISTORY, WHEN IN FACT THAT IS NOT AT ALL SUPPORTED  
22 BY CAREFUL READING OF THE HISTORY, EITHER IN THIS CASE OR IN  
23 THE OTHER ONE.

24 THE IZEKI INVENTION, BY THE WAY, THAT'S BEEN TALKED  
25 ABOUT A LOT, I DON'T THINK ANYBODY REALLY EXPLAINED TO THE

1 COURT WHAT THE THING WAS. EXPLICITLY DESCRIBED BY THE INVENTOR  
2 IN THE BACKGROUND AS AN APPARATUS FOR EDITING INFORMATION,  
3 INCLUDING PICTURES, SOUNDS, CHARACTERS AND OTHERS AND PROVIDES  
4 FOR A FILLING SYSTEM.

5 THE INFORMATION IS SOMETIMES EDITED AND PROCESSED  
6 BEFORE BEING FILLED INTO A RECORDING MEDIUM OR A STORAGE UNIT.  
7 THIS BECOMES A KEY POINT OF DISTINCTION WITH THIS PATENT ALL  
8 THE WAY THROUGH THE PROSECUTION HISTORY. THIS DEVICE, THIS  
9 INVENTION WAS NOT DESIGNED TO TRANSMIT AUDIO AND VIDEO OUTSIDE  
10 THE DEVICE FOR VIEWING BY OTHER USERS.

11 AND THIS IS A -- THIS PREMASTERING UNIT AT THE BOTTOM  
12 HERE WHICH IS CONNECTED TO THIS INTERFACE 80, WHAT IS IT FOR?  
13 IT OUTPUTS THE INFORMATION FOR FILES IN THE FORM OF A MASTER  
14 TAPE.

15 THE FINAL PROGRAM AND THE FINAL DATA FILES ARE  
16 TRANSFERRED FROM THE HARD DISK UNIT TO THE PREMASTERING UNIT  
17 VIA THE INTERFACES 79 AND 80, AND THE SYSTEM BUS IT PRODUCES A  
18 MASTER TAPE HOLDING THE TRANSFERRED FILES, WHICH IS THEN USED  
19 IN MANUFACTURING A RECORDING MEDIUM.

20 THE ONLY WAY THE IZEKI DEVICE YOU COULD TRANSMIT  
21 INFORMATION IN FASTER THAN REAL TIME, I SUPPOSE, WOULD BE TO  
22 PULL THE MASTER TAPE OUT OF THE APPARATUS AND RUN REALLY FAST  
23 NEXT DOOR WITH IT. IT DID NOT TEACH TRANSMISSION AWAY FROM THE  
24 APPARATUS FOR EITHER STORAGE OR PLAYBACK. SO IT DOES COME UP  
25 IN THE PROSECUTION HISTORY.

1 THE VERY FIRST, THE FEBRUARY 27TH '95 OFFICE ACTION  
2 THE EXAMINER SIMPLY ASSOCIATED, THIS IS PORTION THAT IS CITED  
3 BY APPLE, THAT IZEKI DEVICES AN OUTPUT MEANS FOR OUTPUTTING THE  
4 EDITING INFORMATION AWAY FROM THE APPARATUS. DOESN'T SAY WHERE  
5 MR. POWERS SAID, EXAMINER REJECTED ON THE BASIS TRANSMITTED  
6 INFORMATION AWAY FROM THE DEVICE.

7 HERE'S IZEKI FIGURE ONE AND DOWN HERE THIS IS THE  
8 OUTPUT PORT 80, WHICH IS THE SOLE REFERENCE THAT APPLE REFERS  
9 TO. AND WHERE DOES IT GO? THIS PREMASTERING UNIT WHICH MAKES  
10 THE TAPE. SO BURST RESPONDED TO THAT. I'M GOING TO HAVE TO  
11 FLY THROUGH THIS.

12 **THE COURT:** YES, YOU'RE RIGHT.

13 **MR. FOLSE:** WHAT HAPPENS IN A NUTSHELL, YOUR HONOR, IS  
14 WHICH SEEMS TO HAPPEN A LOT, THE EXAMINER MAKES A REJECTION,  
15 THE APPLICANT COMES BACK AND EXPLAINS WHY IT'S NOT, WHY THE  
16 PRIOR ART, IN FACT, IS DISTINGUISHABLE.

17 THE EXAMINER COMES BACK MAKES THE EXACT SAME REJECTION  
18 AGAIN, IT'S LIKE NO DIALOGUE HAPPENING AT ALL. THIS GOES ON  
19 SEVERAL TIMES HERE, BUT WHAT BURST IS POINTING OUT IS THAT THE  
20 STORAGE DEVICE, WHAT IZEKI DOES TRANSFERRING INFORMATION FROM  
21 INTERFACE TO A STORAGE DEVICE SUCH AS A MAGNETIC TAPE.

22 AND IT CONTRASTS THAT WITH THE BURST INVENTION WHICH  
23 DOES STORE BUT ALSO TRANSMITS A TIME-COMPRESSED REPRESENTATION  
24 OF THE INFORMATION AWAY FROM THE TRANSCEIVER, IN THIS BURST  
25 TIME PERIOD THAT'S SHORTER THAN THE TIME PERIOD ASSOCIATED WITH

1 REAL TIME VIEWING.

2 EXAMINER REJECTS AGAIN, BURST AGAIN RESPONDS BY  
3 EMPHASIZING, COMES BACK AND MAKES SOME AMENDMENTS EMPHASIZING  
4 THAT THE INFORMATION CAN BE RECEIVED AND VIEWED BY A RECEIVER  
5 UNDER THE BURST PATENT. AND, IN FACT, THE EXAMINER AGREES THAT  
6 THAT AMENDMENT, WHICH ACTUALLY ADDED THE WORD RECEIVER,  
7 OVERCOMES THE ART.

8 BUT GOES ON, BURST GOES ON AFTER MAKING THESE  
9 AMENDMENTS, TO EMPHASIZE THE INVENTION IS A DELIVERY TECHNIQUE  
10 THAT USES COMPRESSION TO TRANSMIT A TIME-COMPRESSED  
11 REPRESENTATION IN A BURST TIME PERIOD FOR VIEWING BY A  
12 RECEIVER.

13 THE EXAMINER AGAIN REJECTS AND MAKES THIS POINT, THAT  
14 ACCORDING TO THE EXAMINER IT WOULD HAVE BEEN OBVIOUS TO MODIFY  
15 IZEKI BY PROVIDING SOME FAST TRANSFER MEANS THAT WOULD ALLOW  
16 DATA TO BE TRANSFERRED WITH HIGH SPEED.

17 IN RESPONSE TO THAT BURST CANCELLED ALL ITS ORIGINAL  
18 CLAIMS AND ADDED NEW ONES AND SAID AS FOLLOWS:

19 "THE PRESENT INVENTION TEACHES A SYSTEM AND METHOD  
20 FOR TRANSMITTING AUDIO/VIDEO SOURCE INFORMATION,  
21 NAMELY, FULL MOTION VIDEO PROGRAMS."

22 REMEMBER THERE IS THE '705 PATENT BETWEEN DEVICES,  
23 IT'S TIME COMPRESSED TO ALLOW TRANSMISSION IN A BURST  
24 TRANSMISSION TIME PERIOD, WHICH IS SUBSTANTIALLY SHORTER THAN  
25 THE TIME ASSOCIATED WITH VIEWING.

1 GOES ONTO STAY ABOUT WHAT IZEKI TEACHES, WHICH IS  
2 CONVEYANCE VIA INTERFACE TO A STORAGE DEVICE SUCH AS A TAPE,  
3 DOESN'T PROVIDE FOR BURST TRANSMISSION OF VIDEO PROGRAMS OVER  
4 COMMUNICATIONS CHANNEL, IT'S INTENDED TO FACILITATE PRODUCTION  
5 OF A MASTER TAPE.

6 IT REFERS TO REPEATEDLY TO THE NOTION OF TRANSFERRING  
7 CONTENT THAT HAS AN INHERENT ELEMENT, YOU HAVE TO TAKE TIME TO  
8 PROCESS IT, TO LISTEN TO IT, TO VIEW IT, AND IT CORRELATES THAT  
9 WITH THE COMPRESSION AND THE FASTER THAN REAL TIME  
10 TRANSMISSION. AND IT SAYS IZEKI JUST DOESN'T TEACH THIS, NOT  
11 CONCERNED WITH TRANSMITTING AUDIO/VIDEO INFORMATION AWAY FROM  
12 THE APPARATUS TO ONE OR MORE RECEIVERS.

13 SO EVENTUALLY THE CLAIMS ARE ALLOWED AND THESE ARE THE  
14 CONCLUSIONS, AND THE SLIDES LAYOUT THE FILE HISTORY IN SOME  
15 DETAIL, THOUGH, I'M NOT TAKING TIME TO READ THEM.

16 BUT WHAT YOU SEE FROM IT, IS THAT BURST EMPHASIZED THE  
17 TEMPORAL ASPECT OF THE AUDIO/VIDEO SOURCE INFORMATION TO WHICH  
18 THE INVENTION WAS DIRECTED, IT HAS A TEMPORAL CONTENT.

19 IT EMPHASIZED THE TRANSMISSION OF THE INFORMATION TO A  
20 RECEIVER FOR THE PURPOSE OF PLAYBACK OR VIEWING. IT EMPHASIZED  
21 THE INVENTION PROVIDED FOR TRANSFERRED INFORMATION BETWEEN  
22 DEVICES AND IT DISTINGUISHED IZEKI ON THOSE GROUNDS THAT IZEKI  
23 DID NOT TEACH TRANSMISSION OF TEMPORAL CONTENT BETWEEN DEVICES  
24 FOR VIEWING, BUT SOLELY PROVIDED FOR CREATION OF A STORAGE  
25 MEDIUM WITHIN THE APPARATUS.



1 BURST DID NOT CLEARLY DISCLAIM TRANSFERS OF  
2 INFORMATION TO THE DEVICES CAPABLE OF -- ONLY OF STORING  
3 INFORMATION AND IT CLEARLY DID NOT DISCLAIM TRANSFERS TO  
4 DEVICES THAT WERE CAPABLE OF BOTH STORAGE AND PLAYBACK.

5 IN FACT, THE PATENT AS I'VE SHOWN TALKS REPEATEDLY  
6 ABOUT TRANSFERS OF INFORMATION TO THE DEVICES THAT BOTH STORE  
7 AND PLAYBACK. THERE'S NOTHING IN THE PATENT THAT REQUIRES AN  
8 EXCLUSION OF TRANSFERS TO DEVICES THAT STORE.

9 NOW, WHAT APPLE DOES IS TO SAY, WELL, THE STORAGE  
10 DEVICE YOU CAN DEDUCE FROM THE FIGURES OF THE IZEKI PATENT THAT  
11 IZEKI DID PROVIDE FOR TRANSFERS TO AN EXTERNAL DEVICE. SO  
12 LET'S LOOK.

13 WE'RE GOING TO LOOK AT EACH OF THE FIGURES IN THE  
14 IZEKI PATENT, IN EACH OF THE FIGURES THAT DESCRIBE THE ENTIRE  
15 APPARATUS AND ALTERNATIVE EMBODIMENTS THERE ARE COMPONENTS THAT  
16 HAVE DOTTED LINES AROUND IT. IN FIGURE ONE I'VE GOT YELLOW  
17 ARROWS THAT SHOW TWO COMPONENTS THAT HAVE DOTTED LINES AROUND  
18 IT.

19 WHAT APPLE WANTS TO SAY THIS COMPONENT DOWN HERE ON  
20 THE LEFT-HAND CORNER IS A SEPARATE DEVICE BECAUSE IT HAS A  
21 DOTTED LINE AROUND IT. BUT I THINK ONE THING YOU CAN NOTICE  
22 FROM THIS FIGURE, YOUR HONOR, IS THAT ONE THING THAT  
23 DISTINGUISHES THESE COMPONENTS WITH DOTTED LINES AROUND THEM  
24 FROM EVERYTHING ELSE IS THAT THEY HAVE MULTIPLE COMPONENTS  
25 INSIDE THEM.

1           FIGURE 3 THERE'S AGAIN ONE COMPONENT THAT HAS A DOTTED  
2 LINE AROUND IT, IT HAS MORE THAN ONE COMPONENT INSIDE.

3           SAME FOR FIGURE 4.

4           FIGURE 5 HAS THREE COMPONENTS WITH DOTTED LINES AROUND  
5 IT.

6           THE ONLY THING JUST LOOKING AT IT THAT THEY HAVE IN  
7 COMMON IS THAT THEY HAVE MULTIPLE COMPONENTS INSIDE THEM, WHICH  
8 ARE CLEARLY DESIGNED TO WORK TOGETHER.

9           APPLE WANTS TO REACH THE CONCLUSION BECAUSE THEY HAVE  
10 A DOTTED LINE AROUND IT THEY MUST BE A SEPARATE DEVICE. JUST  
11 SUGGESTED THAT IS NOT AT ALL A NECESSARY CONCLUSION.

12           FIGURE 6, AGAIN, HAS GOT THE ONE THING THAT HAS DOTTED  
13 LINES AROUND IT, HAS MULTIPLE COMPONENTS.

14           SO GOING BACK TO THIS REPRODUCTION DEVICE 55, WHAT THE  
15 IZEKI PATENT DOES IN DESCRIBING THE PRE-PRODUCTION DEVICE, IT  
16 PERFORMS STEPS THAT ARE OCCURRING WITHIN THE APPARATUS AS A  
17 WHOLE, AND IT TAKES FILES, IT THEN DOES CHECKS ON THE FINAL  
18 STORING SEQUENCE AND ARRANGEMENT, RETURNS THE FILES BACK TO THE  
19 HARD DISK UNIT AND TO THE PREMASTERING UNIT.

20           THERE ARE SOME DEVICES DESCRIBED IN IZEKI THAT CLEARLY  
21 ARE EXTERNAL TO THE APPARATUS. IT REFERS TO AN IMAGE PICK UP  
22 DEVICE NOT SHOWN, SUCH AS A TELEVISION CAMERA GENERATING A  
23 VIDEO SIGNAL WHICH IS APPLIED TO THE VIDEO INPUT UNIT 43.

24           JUST REMEMBER THAT NUMBER 43 IT REFERS TO AN EXTERNAL  
25 UNIT NOT SHOWN WHICH GENERATES A VIDEO SIGNAL REPRESENTATIVE OF

1 A GRAPH ANIMATION AND ALIKE. WHERE DOES THAT COME? IN INPUT  
2 UNIT 43.

3 REFERS TO AUDIO REPRODUCTION DEVICE NOT SHOWN AS SUCH  
4 AS AUDIO TAPE RECORDER, WHICH GENERATES AN AUDIO SIGNAL THAT  
5 COMES IN THROUGH AUDIO INPUT UNIT 45.

6 SO WE GOT 45 AND 43 WHICH IS WHERE TRULY EXTERNAL  
7 DEVICES CONNECT TO THE APPARATUS AND, THERE'S 43 AND 45 AND YOU  
8 CAN SEE THESE ARE EXTERNAL DEVICES THEY DON'T HAVE DOTTED LINES  
9 AROUND THEM. THEY'RE CLEARLY DEEMED TO BE EXTERNAL TO THE  
10 APPARATUS.

11 HERE'S A DEVICE THAT ARGUABLY IS EXTERNAL, IT'S A  
12 PRINTER. YOU CAN CONCEIVE OF A MACHINE BEING BUILT WITH A  
13 PRINTER INSIDE THE HOUSING, SO DOESN'T NECESSARILY MEAN THAT  
14 IT'S EXTERNAL, BUT IT COULD BE. AND YET IT DOESN'T HAVE A  
15 DOTTED LINE AROUND IT. THE POINT IS THAT THE DOTTED LINES IN  
16 IZEKI DO NOT CLEARLY INDICATE EXTERNAL DEVICES.

17 THE POINT OF WHICH IS THAT THIS, LIKE MANY OF APPLE'S  
18 ARGUMENTS, PUTS A TREMENDOUS AMOUNT OF WEIGHT ON A PROSECUTION  
19 HISTORY, THAT AT THE ABSOLUTE BEST FOR THEM IS AMBIGUOUS.

20 AND, IN FACT, I THINK, IT IS NOT AMBIGUOUS, I THINK,  
21 IF THE PROSECUTION HISTORY AS READ IT'S QUITE CLEAR WHERE BURST  
22 IS DRAWING THE DISTINCTION WITH IZEKI PATENT, BOTH IN THE  
23 CONTEXT OF TRANSMISSION AND IN THE CONTEXT OF WHAT MR. POWERS  
24 DISCUSSED EARLIER.

25 AND WHAT THEY'RE ATTEMPTING TO DO IS MANIPULATE THE

1 PROSECUTION HISTORY, WHICH IF YOU READ IT IS ABSOLUTELY CLEAR  
2 THAT BURST WAS NOT EMBRACING THIS CONCEPT OF TIME COMPRESSION  
3 WHICH IS REFERRED TO NOWHERE IN THE PATENT, WHICH BURST DOES  
4 NOT REFER TO ANYWHERE IN THE FILE HISTORY AS A TECHNICIAN  
5 INTENDS TO EMPLOY.

6 HE USED THE PHRASE TIME-COMPRESSED REPRESENTATION AND  
7 REFERS TO TRANSMISSION FOR THE PURPOSE OF PLAYBACK. SO, YOUR  
8 HONOR, THAT CONCLUDES THAT SECTION ON TRANSMISSION TERMS.

9 I THINK, THERE'S WAS A SECOND PIECE I WAS GOING TO  
10 COME TO, I THINK, IT'S -- PROBABLY SINCE IT'S FIVE AFTER 1:00  
11 I'M GOING TO GO THROUGH IT IN MAYBE FIVE OR 10 MINUTES. IT  
12 RELATES TO AUDIO VISUAL SOURCE INFORMATION AND THE HANDLING OF  
13 THAT INFORMATION.

14 **THE COURT:** WELL --

15 **MR. FOLSE:** I CAN DO IT NOW, IF YOU PREFER.

16 **THE COURT:** DO IT VERY QUICKLY.

17 **MR. FOLSE:** LET'S MOVE TO THAT. THESE ARE THE FOUR  
18 TERMS. I THINK, FRANKLY, I'LL SAY NOTHING ABOUT THIS LAST  
19 MAYBE TWO SENTENCES, ABOUT THAT ONE.

20 AND SO THE AUDIO VISUAL SOURCE INFORMATION THIS IS A  
21 TERM THAT COMES UP OFTEN, THE PARTIES ARE IN AGREEMENT THAT  
22 AUDIO/VIDEO ARE THE SAME THING AND THEY MEAN AUDIO ONLY, VIDEO  
23 ONLY OR AUDIO AND VIDEO. AND HENCE THE TERM AUDIO AND/OR  
24 VIDEO.

25 AND I THINK THE PARTIES ALSO AGREE, IF I'M READING THE

1 BRIEFS CORRECTLY, THAT AUDIO/VIDEO SOURCE INFORMATION AT A  
2 MINIMUM MEANS THIS. AN AUDIO AND/OR VIDEO WORK THAT HAS A  
3 TEMPORAL DIMENSION.

4 **THE COURT:** SOMEBODY WENT TO GET THE LUNCH.

5 **MR. FOLSE:** LET ME GET BACK TO THAT. BOTH PARTIES  
6 AGREE TO THIS EXTENT. THAT IT IS AN AUDIO AND/OR VIDEO WORK  
7 THAT HAS A TEMPORAL DIMENSION.

8 APPLE THINKS TEMPORAL DIMENSION REALLY ISN'T  
9 NECESSARY, THAT THE TERM AUDIO/VIDEO WORK EVERYBODY WOULD  
10 UNDERSTAND THAT TO MEAN SOMETHING THAT HAS A TEMPORAL  
11 DIMENSION.

12 BUT, AT LEAST, THEY DON'T OBJECT TO IT, THEY JUST  
13 THINK IT'S SUPERFLUOUS. SO WE REFER, WE USE THIS SAME BASIC  
14 TERMINOLOGY THAT HAS A TEMPORAL INVENTION THAT CAN BE RECEIVED  
15 FROM ONE OR MORE SOURCES, WHICH WE THINK IS AN IMPORTANT  
16 CLARIFICATION.

17 THEY DISAGREE WITH THAT AND THEY WANT TO, AGAIN,  
18 ENGRAFT THIS PROVISIO ONTO THE DEFINITION, SUCH THAT IT SAYS THE  
19 ENTIRETY OF THE DATA INTENDED TO BE TRANSMITTED, NOT SEGMENTS  
20 OF THAT DATA.

21 AND, I THINK, I'M GOING TO SKIP PAST -- THAT WAS JUST  
22 ONE EXAMPLE WHERE AUDIO/VIDEO SOURCE INFORMATION SHOWS UP, BUT  
23 IT SHOWS UP IN EACH OF THE STEPS THAT IS PERFORMED IN THE  
24 PATENT.

25 SO THE BASIS FOR OUR REQUEST THAT THE CONSTRUCTION

1 INCLUDE A REFERENCE TO WORKS THAT CAN BE RECEIVED FROM ONE OR  
2 MORE SOURCES, THAT HAS TWO CONNOTATIONS, YOUR HONOR.

3 ONE IS THAT A SINGLE WORK, LET'S SAY, A MOVIE CAN BE  
4 OBTAINED BY THE APPARATUS FROM MULTIPLE SOURCES, THE SAME  
5 MOVIE, DOESN'T ONLY HAVE TO COME FROM ONE PLACE. AND, IN FACT,  
6 THERE IS A DESCRIPTION IN THE PATENT OF ALL OF THESE DIFFERENT  
7 METHODS FOR RECEIVING INPUT THAT THE APPARATUS EMBODIES. AND  
8 THEY'RE LISTED ON THIS SLIDE HERE.

9 IT'S ALSO -- THERE'S ANOTHER ISSUE AND, BY THE WAY, I  
10 DON'T KNOW THIS IS REALLY CONTESTED, I THINK, APPLE CONCEDES  
11 THAT THE PROSECUTION HISTORY, THE PATENTS THEMSELVES REFER TO  
12 THE FACT THAT WORKS CAN BE OBTAINED FROM MULTIPLE, FROM MORE  
13 THAN ONE SOURCE, THOUGH, EVEN THE CLAIM LANGUAGE JUST TALKS  
14 ABOUT AUDIO/VISUAL SOURCE INFORMATION COULD COME FROM MULTIPLE  
15 SOURCES.

16 BUT THEY ARGUE THAT THERE'S NO SUPPORT FOR THE CONCEPT  
17 THAT A SINGLE WORK COULD BE RECEIVED FROM A VARIETY OF SOURCES.  
18 I'M NOT A HUNDRED PERCENT SURE I UNDERSTAND WHAT THAT MEANS. I  
19 THINK, THE IDEA OF WORKS COMING FROM MORE THAN ONE SOURCES TWO  
20 CONNOTATION. ONE THE SAME WORK CAN BE ACCESSED FROM MULTIPLE  
21 SOURCES, ONE IS THAT PART OF A SINGLE WORK COULD BE RECEIVED  
22 FROM DIFFERENT SOURCES.

23 AND, I THINK, IT'S THE LATTER THAT APPLE OBJECTS TO,  
24 DESPITE THE FACT THAT THERE ARE EXAMPLES IN WHICH VIDEO INPUT  
25 COULD COME FROM A CAMERA AND AUDIO INPUT FOR THE SAME SCENE

1 COME FROM A PHONE.

2 THE PATENTS THEMSELVES AND THE SPECIFICATION TALK  
3 ABOUT TAKING PARTS OF WORKS AND BLENDING THEM TOGETHER, USES  
4 THE TERM MIXING. TAKING AUDIO FROM ONE FILE, VIDEO FROM  
5 ANOTHER FILE, CALLING UP ONLY APART OF THE VIDEO, EDITING  
6 PARTICULAR FRAMES FROM THE VIDEO, THEN PUTTING IT BACK TOGETHER  
7 INTO SOMETHING ELSE THEN TRANSMITTING THAT'S DESCRIBED IN THE  
8 SPECIFICATION.

9 THERE IS CERTAINLY NOTHING IN THE CLAIM LANGUAGE WHICH  
10 SUGGESTS THAT WHAT IS BEING TRANSMITTED, OR WHAT IS BEING  
11 EDITED, OR WHAT IS BEING STORED HAS TO CONSTITUTE THE ENTIRETY  
12 OF WHAT SOMEBODY CHOOSES TO DEFINE AS A WORK, AND YET, THAT IS  
13 WHAT APPLE INTENDS TO ENGRAFF.

14 IT IS A CONCEPT THAT IS NOT PRESENT OR SUGGESTED BY  
15 THE CLAIMS, SUPPORTED BY THE SPECIFICATION OR BY THE FILE  
16 HISTORY. AND, I THINK, I PROBABLY LEAVE IT AT THAT.

17 THEY DO REFER REPEATEDLY THEIR FAVORITE PART OF THE  
18 SPECIFICATION IS REFERENCE TO A TWO-HOUR MOVIE, WHICH IS AN  
19 EXAMPLE THAT'S GIVEN. BUT THERE'S NO -- THERE'S NOTHING IN THE  
20 SPECIFICATION, MUCH LESS THE PATENT CLAIMS WHICH SUGGESTS THAT  
21 THE TWO-HOUR MOVIE BECOMES THE TEMPLATE FOR CLAIM CONSTRUCTION.

22 YES, THE PATENT TALKS ABOUT PEOPLE VIEWING ENTIRE  
23 MOVIES, AND HOW THAT COULD BE MADE EASIER BY HAVING FASTER THAN  
24 REAL TIME TRANSMISSION OF MOVIE FILES, AND THEN THEY CAN VIEW  
25 IT AT THEIR PLEASURE, THEY CAN SAVE ON A DEVICE LIKE THIS, BUT

1 IT IN NO WAY SUGGESTS THAT THE ONLY THING THAT CLAIMS COVERED  
2 ARE FASTER THAN REAL TIME TRANSMISSION OF WHOLE MOVIES, OR  
3 WHOLE SONGS, IT REFERS TO AUDIO/VISUAL INFORMATION.

4 **THE COURT:** I GUESS, WE'LL HEAR FROM THEM ON THAT AS  
5 TO WHAT IT IS THAT THEY HAVE IN MIND.

6 **MR. FOLSE:** THE ONLY THING THAT I WANT TO SAY ABOUT  
7 EDITING --

8 **THE COURT:** DOES THIS DEVICE, ESSENTIALLY, THAT IS  
9 CONTEMPLATED BY THE PATENT, SLICE AND DICE AND ALL THAT KIND OF  
10 STUFF? DO ALL KINDS OF ELABORATE MIXING AND SO FORTH?

11 IF THAT -- IS IT DISCLOSED EITHER IN THE CLAIMS FOR  
12 THE SPECIFICATION?

13 **MR. FOLSE:** I ONLY WANT TO SAY ONE THING ABOUT  
14 EDITING. THIS IS ANOTHER KIND OF OUT OF LEFT FIELD ATTEMPT TO  
15 GRAPH ON LIMITATION TO THE CLAIM LANGUAGE.

16 WE DON'T THINK THE WORD EDITING NEEDS TO BE CONSTRUED.  
17 IF THEY DO, WE THINK IT MEANS MODIFYING. THEY THINK IT MEANS  
18 MODIFYING, THAT'S PART OF THEIR CONSTRUCTION.

19 BUT THEY WANT TO ADD THIS PARENTHETICAL: MODIFYING  
20 PAREN DOES NOT INCLUDE THE FUNCTION OF CREATING A PLAY LIST.  
21 WHY WOULD THEY WANT TO PUT THAT PARENTHETICAL?

22 **THE COURT:** WITH THAT, WE'LL STOP.

23 **MR. FOLSE:** THANK YOU.

24 **THE COURT:** WE'LL SEE YOU, WHAT DO WE NEED, 45  
25 MINUTES?



1           **MR. POWERS:** UP TO YOU.

2           **THE COURT:** IT'S -- WE'LL COME BACK, IS THAT RIGHT,  
3 1:15? 2:00 O'CLOCK.

4   (RECESS TAKEN.)

5   (PROCEEDINGS RESUMED.)

6           **MR. BROWN:** GOOD AFTERNOON.

7           NICK BROWN FOR APPLE. I'M GOING TO BE ADDRESSING --

8           **THE COURT:** DID YOU PUT YOUR NAME ON THE RECORD?

9           I JUST DIDN'T HEAR IT. MAKE SURE THAT COURT REPORTER  
10 GETS IT DOWN, PLEASE.

11          **MR. BROWN:** NICK BROWN FOR APPLE, YOUR HONOR.

12          **THE COURT:** OKAY. THANK YOU.

13          **MR. BROWN:** AND I'M GOING TO BEGIN BY ADDRESSING THE  
14 TRANSMISSION TERMS. THE DISPUTE HERE, AS THE COURT WILL  
15 RECALL, IS WHERE THE TRANSMISSION GOES. THERE'S NO ARGUMENT  
16 ABOUT WHAT THE DISPUTE IS.

17                   THERE'S ANOTHER DISPUTE, WHICH IS A SECONDARY DISPUTE  
18 IN MY MIND, WHICH IS WHETHER THE TRANSMISSION HAS TO BE A  
19 DEVICE THAT IS CAPABLE OF PLAYBACK. AND I'LL COME TO THAT  
20 NEXT, THE MAJOR ISSUE IS THE EFFECT OF THE FILE HISTORY.  
21 THERE'S NO ARGUMENT THERE WAS A DISCLAIMER IN THE FILE HISTORY  
22 AND THE QUESTION IS THE SCOPE OF THAT DISCLAIMER.

23                   I'M GOING TO BEGIN BY TALKING ABOUT THAT. AS YOUR  
24 HONOR WILL RECALL FROM THE TUTORIAL, DURING THE PROSECUTION OF  
25 THE PATENT BURST DISTINGUISHED THE IZEKI REFERENCE, AND THE

1 EXAMINER FOCUSED PARTICULARLY ON INTERFACE 80 TO A PREMASTERING  
2 UNIT WHICH WAS A TAPE DRIVE.

3 AND BURST MADE VARIOUS REMARKS TO DISTINGUISH THE  
4 EXAMINER'S COMMENTS, BUT BURST DIDN'T LIMIT ITS REMARKS TO THAT  
5 PARTICULAR INTERFACE FOR THE PREMASTERING UNIT. HERE'S WHAT  
6 THE EXAMINE SAID TO BEGIN WITH.

7 THE EXAMINE SAID THAT IZEKI DISCLOSED THE LIMITATION  
8 TO THE CLAIM, INCLUDING RECEIVING, COMPRESSING, STORING,  
9 TRANSMITTING.

10 EXAMINER EMPHASIZED THAT THE OUTPUT MEANS 80 OF IZEKI  
11 OUTPUT THE EDITED AUDIO INFORMATION AWAY FROM THE AUDIO/VIDEO  
12 APPARATUS TO ANOTHER AUDIO/VIDEO APPARATUS.

13 IN RESPONSE TO THAT REJECTION BURST STATED THAT THAT  
14 ELEMENT 80 OF IZEKI IS NOTHING MORE THAN INTERFACE TO A FORAGE  
15 DEVICE SUCH AS MAGNETIC TAPE.

16 THEN SAID NEITHER INTERFACE 80 OF IZEKI OR ANY OTHER  
17 EMBODIMENT DESCRIBED IN THAT REFERENCE HAS THE CAPABILITY OF  
18 APPLICANT'S OUTPUT MEANS TO SERIALY TRANSMIT A TIME-COMPRESSED  
19 REPRESENTATION.

20 GO BACK TO THE CONSTRUCTION WE'VE PROPOSED, THAT IS  
21 THE SOURCE OF THE LANGUAGE EXCLUDES TRANSFERRING THROUGH AN  
22 INTERFACE TO A STORAGE DEVICE.

23 WHAT BURST TOLD THE EXAMINER IS THAT ITS INVENTION DID  
24 NOT INVOLVE TRANSFERRING THROUGH AN INTERFACE TO A STORAGE  
25 DEVISE SUCH AS MAGNETIC TAPE.

1           **THE COURT:** WHICH OF THE PAGES OF OUR SLIDES IS THIS?

2           **MR. BROWN:** I APOLOGIZE, YOUR HONOR, LET ME HAND THAT  
3 UP.

4           **THE COURT:** THAT IS A ATTACHMENT TO A -- I SEE, OKAY.  
5 YOU HAVE YOUR OWN BOOK HERE.

6           **MR. BROWN:** I HAVE MY OWN BOOK, WHICH I FORGOT. I  
7 APOLOGIZE. WE'RE PAGE SIX, THERE'S A SEVEN AND THERE IS A  
8 CITATION THERE. IT'S IN ALL OF THESE REMARKS THAT WE'RE GOING  
9 TO BE WALKING THROUGH OCCUR IN THE FILE HISTORY OF THE '705  
10 PATENT.

11           BUT THERE'S NO DISPUTE BETWEEN THE PARTIES THAT THESE  
12 REMARKS PERTAIN TO THE INTERPRETATION OF ALL THE ASSERTED  
13 CLAIMS.

14           **THE COURT:** WITH RESPECT TO THAT PARTICULAR PAGE, IT'S  
15 TALKING ABOUT ESSENTIALLY THE TRANSCEIVER OR THE -- STRIKE  
16 THAT.

17           THE OUTPUT -- WHERE THE OUTPUT COMES FROM, NOT WHERE  
18 IT DOESN'T, DOES IT SAY BECAUSE ONLY HAVE PART OF THIS WAS  
19 BURST -- DID BURST RESPONSE ALSO SAY WHERE IT WAS GOING TO?

20           **MR. BROWN:** NO, IT DID NOT. I WILL COME TO THAT  
21 POINT. I THINK, YOUR EXACTLY RIGHT ABOUT THAT, TALKS ABOUT  
22 WHERE IT COMES FROM.

23           AND THE EMPHASIS THERE IT WASN'T AN INTERFACE TO A  
24 STORAGE DEVICE, BURST REPEATED THAT SEVERAL TIMES BECAUSE THE  
25 EXAMINER REPEATED THE SAME REJECTION I JUST SHOWED YOU AND