GLOBAL ISSUE HERE WHETHER OR NOT DEPENDS ON HOW YOU'RE GOING TO CONSTRUE THE FUNCTION.

IF YOU'RE GOING TO REQUIRE TIME COMPRESSION AS APPLE PROPOSES, THEY TAKE THE POSITION THERE'S NO STRUCTURE, THAT'S WHY THEY HAVE KNOWN FOR STRUCTURE, IT'S BECAUSE BASED ON THEIR INTERPRETATION OF TIME OF THE LANGUAGE COMPRESSING SAID AUDIO/VIDEO SOURCE INFORMATION INTO A TIME-COMPRESSED REPRESENTATION BECAUSE THEY SAY THAT MEANS TIME COMPRESS.

NOW, WE'RE INTO A SITUATION THERE NOT BEEN DISCLOSED IN THE SPECIFICATION, THE SPECIFICATION IS FOCUSED ON DATA COMPRESSION.

WITH RESPECT TO BURST CONSTRUCTION, THE COMPRESSING IS FOR THE AUDIO/VIDEO STORES INFORMATION. PARTIES AGREE THAT'S AUDIO AND/OR VIDEO, EITHER ONE.

DR. HEMAMI HAS IDENTIFIED THAT THE STRUCTURE THAT'S USED TO PERFORM THE VIDEO COMPRESSION, THE VIDEO DATA COMPRESSION, IS THE COMPRESSOR DECOMPRESSION OR KODAK THAT'S IMPLEMENTING EITHER THE CATEGORY ONE TYPE OF COMPRESSION AND/OR THE CATEGORY TWO TYPE OF COMPRESSION.

EITHER OF THOSE WOULD BE SUFFICIENT FOR THE DATA COMPRESSION FOR THE '995 CLAIM 1 OR BECAUSE THIS CLAIM COULD ALSO COVER AUDIO, JUST AUDIO AND NOT VIDEO, WITH RESPECT TO AUDIO DR. HEMAMI HAS IDENTIFIED THE COMPRESSOR DECOMPRESS OR 26, AGAIN, AND CATEGORY TWO TYPE COMPRESSION FOR THE AUDIO, THAT'S ALL THAT'S DISCLOSED IN THE BURST PATENT.

SITUATION IS A LITTLE DIFFERENT IN THE '932 PATENT. THE REASON IS THAT THE FUNCTIONAL LIMITATION IS A LITTLE DIFFERENT. THE VERY FIRST LIMITATION REQUIRES THAT THE AUDIO/VIDEO STORES INFORMATION, COMPRISES VIDEO MULTIPLICITY OF VIDEO FRAMES.

WHEN WE GET DOWN TO THE FUNCTION FOR COMPRESSING SAID AUDIO/VIDEO SOURCE INFORMATION WE KNOW IT HAS TO HAVE VIDEO, RIGHT?

SO THE FUNCTION, I MEAN, THE STRUCTURE THAT WE ARE IDENTIFYING DOES NOT INCLUDE AUDIO. IN THIS EXAMPLE IT'S LIMITED TO JUST VIDEO. AND, AGAIN, DR. HEMAMI HAS IDENTIFIED EITHER CATEGORY ONE AND/OR CATEGORY TWO COMPRESSION TO BE IMPLEMENTED ON THAT KODAK.

AND THEN FOR THE THIRD TERM, YOUR HONOR, THE COMPRESSION MEANS, '705, CLAIM 1, AGAIN, THIS CLAIM HAS A LITTLE BIT DIFFERENT STRUCTURE.

AGAIN, IT RECITES VIDEO JUST AS DID THE '932, BUT THIS CLAIM IS A LITTLE DIFFERENT BECAUSE IT REQUIRES THAT THE TRANSMISSION TIME PERIOD IS SUBSTANTIALLY SHORTER, SUBSTANTIALLY SHORTER.

SO THE FUNCTION HERE IS NARROWER, RIGHT, REQUIRES SUBSTANTIALLY SHORTER AND TO ACCOUNT FOR THAT NARROWER FUNCTIONAL LANGUAGE IN THE '705 PATENT, YOUR HONOR, DR. HEMAMI HAS IDENTIFIED AS THE STRUCTURE THE COMPRESSOR DECOMPRESSOR AND BOTH CATEGORY ONE AND CATEGORY TWO ALGORITHMS TO BE IMPLEMENTED

ON THAT CODEC TO GET THE SUBSTANTIAL SHORTER TRANSMISSION PERIOD. SO YOU HAVE TO USE THEM BOTH WITH RESPECT TO THOSE TERMS.

WITH RESPECT TO THE ISSUES BETWEEN THE PARTIES, REALLY TWO ISSUES. ONE IS -- ONE I JUST IDENTIFIED, AND THAT IS, WHETHER OR NOT THE DESCRIPTIONS IN THE SPECIFICATIONS ADEQUATE TO APPRIZE ONE SKILLED IN THE ART OF THE STRUCTURE FOR IMPLEMENTING THAT CLAIM FUNCTION. THAT'S THE FIRST ISSUE.

THE SECOND ISSUE APPLE HAS A FALLBACK POSITION, APPLE TAKEN THE POSITION IF THEY'RE WRONG ON TIME COMPRESSION AS BEING THE FUNCTION, THAT THEN THE STRUCTURE SHOULD BE LIMITED TO THE A AND D COMPRESSION PROCESSOR THAT WAS IDENTIFIED IN THE '995 PATENT SPECIFICATION.

BUT NOT IN EITHER OF THE TWO, EITHER OF THE OTHER TWO PATENTS. IT'S NOT MENTIONED IN THE '932, IT'S NOT MENTIONED IN THE '705. WE'LL GO THROUGH THAT IN JUST A SECOND AND WE'LL POINT OUT THE DIFFERENCE BETWEEN THE TWO.

BUT APPLE'S POSITION THERE'S NO STRUCTURE, EVEN IF WE'RE RIGHT ON THE DATA COMPRESSION, STILL NO STRUCTURE IN '705 AND '932, AND THE ONLY STRUCTURE IN THE '995 IS THIS COMPRESSION PROCESSOR THAT'S MENTIONED AS AN EXAMPLE.

OKAY. THE STANDARD HERE. IN A SITUATION WHERE A PARTY IS TAKING THE POSITION THAT A CLAIM IS IN -- THAT A CLAIM DOESN'T HAVE ANY STRUCTURE, THEY'RE REALLY TAKING AN INVALIDITY POSITION.

THAT'S WHAT THE COURTS HAVE RECOGNIZED, BUDDY VERSUS HARLEY DAVIDSON, A NUMBER OF CASES THAT HAVE SAID THAT. WITH RESPECT TO THIS ISSUE THE BURDEN OF PROOF IS CLEAR AND CONVINCING EVIDENCE.

LET'S SKIP THE NEXT SLIDE. THE TEST, YOUR HONOR, TWO PART TEST. FIRST, WE HAVE TO ASK WHETHER OR NOT THEIR STRUCTURE THAT IS DESCRIBED IN THE SPECIFICATION, AND THEN SECONDLY FROM THAT IDENTIFICATION OF STRUCTURE WHAT WOULD ONE SKILLED IN THE ART DETERMINE THAT THE STRUCTURE WAS TO IMPLEMENT THE CLAIMED FUNCTION.

THERE ARE A NUMBER OF CASES THAT ARE INSTRUCTIVE ON THIS ISSUE THE IN RE DOSELL CASE A CASE DECIDED A COUPLE YEARS BACK, THE FEDERAL CIRCUIT CONCLUDED THERE WAS A FLUENT STRUCTURE IN A SITUATION WHERE THE MATHEMATICAL ALGORITHM WAS NOT IDENTIFIED AND NEITHER WAS THE UNIT WAS GOING TO -- THAT WAS GOING TO IMPLEMENT THAT ALGORITHM.

IN THAT SITUATION NONETHELESS THE FEDERAL CIRCUIT FOUND THAT THE DESCRIPTION WAS SUFFICIENT. THE REASON IS, IT REALLY TURNS ON THE UNDERSTANDING OF SOMEBODY OF ORDINARY SKILL IN THE ART.

THIS SITUATION A LITTLE DIFFERENT THAN MOST CLAIM CONSTRUCTION ISSUES REALLY BECAUSE WE'RE BRINGING IN EXPERT TESTIMONY, I THINK, A LOT MORE THAN WE NORMALLY DO.

NEXT CASE THE S3 CASE, IT WAS A SELECTOR IN THAT CASE AND WHAT THE FEDERAL CIRCUIT SAID THERE IN A SITUATION WHERE

THE EVIDENCE IS UNCONTRADICTED, THAT THE STRUCTURE IS WELL-KNOWN, PERFORMS A COMMON FUNCTION, THAT'S SUFFICIENT, DOESN'T MATTER WHETHER A LAY PERSON WOULD KNOW HOW TO IMPLEMENT IT OR NOT, HAVE TO LOOK AT IT FROM THE EYES OF SOMEBODY ORDINARY SKILL IN THE ART.

THEN IN THE ATMEL CASE, WAS THE CASE THAT SAID IF YOU INCORPORATE BY ATMEL THAT DOESN'T CUT IT FOR 1126, YOU DON'T GET TO BRING IN AN ARTICLE IF YOU SAY I'M GOING TO INCORPORATE BY REFERENCE.

IN ATMEL WHAT HAPPENED IS THEY HAD A VERY BRIEF STATEMENT THAT SAID THAT KNOWN CIRCUIT TECHNIQUES ARE USED TO IMPLEMENT HIGH VOLTAGE CIRCUIT, THEN THEY CITED TO AN ARTICLE THEY INCORPORATE BY REFERENCE. FEDERAL CIRCUIT SAID, LISTEN, DON'T GET TO USE THAT ARTICLE, YOU DON'T GET TO LOOK IN THAT ARTICLE TO SEE WHAT THE STRUCTURE WAS.

NONETHELESS IN THAT CASE THE FEDERAL CIRCUIT SAID THE STRUCTURE WAS SUFFICIENT BECAUSE THE TESTIMONY WAS THAT AN EXPERT VIEWING THE TITLE ALONE WOULD BE ABLE TO DETERMINE WHAT THE STRUCTURE WAS.

SO LET'S LOOK AT THE FACTS HERE. THE STRUCTURE THAT'S USED TO PERFORM THE DATA COMPRESSION IS KODAK 26. I DON'T THINK THERE'S ANY DISPUTE ABOUT THAT. THE KODAK 26 HAS INDICATED IN THE SPECIFICATION PERFORM BOTH COMPRESSION AND DECOMPRESSION BY IMPLEMENTING VARIOUS ALGORITHMS. IT SAYS VARIOUS ALGORITHMS MAYBE EMPLOYED IN THE COMPRESSION PROCESS.

DR. HEMAMI IDENTIFIED COLUMNS 4 AND 5 AS THE RELEVANT SECTION, SO IF WE TURN TO THOSE SECTIONS THERE ARE TWO DIFFERENT CATEGORIES THAT ARE GIVEN, THESE ARE THE CATEGORIES 1 AND 2 THAT WE TALKED ABOUT LAST WEEK AND DR. HEMAMI IDENTIFIED.

THERE'S THE COMPRESSION ALGORITHMS LIKE THE CCI, THE GROUP FOUR THAT'S TYPICAL OF THE GROUP ONE, THE INDEPENDENT TYPE OF COMPRESSION ARE INTRAFRAMED TYPE COMPRESSION, THEN THE FURTHER DESCRIPTION FURTHER DOWN IN COLUMN FIVE DESCRIBES THE OTHER CATEGORY, THE OTHER CLASS OF VIDEO COMPRESSION, WHICH IS THE DEPENDENT TYPE OF COMPRESSION, ALSO KNOWN AS TEMPORAL COMPRESSION OR INTERFRAME COMPRESSION, SO BOTH OF THOSE TWO TYPES OF ALGORITHMS DESCRIBED IN THE PATENT.

DR. HEMAMI IDENTIFIED THOSE TWO CATEGORIES THAT WE GOT OUR EXPERT REPORT CITED THERE, AND ALSO IN ADDITION TO THAT DR. HEMAMI IDENTIFIED NOT ONLY COULD BE USED, EITHER ONE OF THOSE COMPRESSION TECHNIQUES YOU COULD USE THEM TOGETHER, AND THE SPECIFICATION SAYS THE SAME THING FURTHER DOWN IN COLUMN FIVE ABOUT LINES 15 TO 20, INDICATES THAT YOU CAN USE THE GROUP THAT CATEGORY ONE WITH THE CATEGORY TWO, IF YOU USE THEM BOTH TOGETHER YOU'RE GOING GET GREATER COMPRESSION.

APPLE ESSENTIALLY CONCURS THAT THOSE TWO TYPES OF ALGORITHMS DISCLOSED IN THE PATENT LAST WEEK, MR. POWERS INDICATED THE PATENTS DISCLOSED BOTH INTRAFRAME AND INFRAFRAME TYPE COMPRESSION ALGORITHMS. THAT'S ON PAGE 88 AND 9 OF THE TRANSCRIPT.

APPLE'S EXPERT HAS ADMITTED THAT THESE COMPRESSION TECHNIQUES WERE KNOWN IN 1988 AND THAT THEY WERE DISCLOSED IN THE PATENT.

OKAY. DR. HEMAMI HAS TESTIFIED, IF YOU KNOW THOSE COMPRESSION ALGORITHMS AND KNOW YOU WANT TO IMPLEMENT THEM IN CODEC IT MUST BE STRAIGHTFORWARD FOR SOMEBODY OF ORDINARY SKILL IN THE ART TO DO THAT.

IT COULD BE DONE IN A NUMBER OF DIFFERENT WAYS, AND SHE IDENTIFIED SPECIFICALLY FOUR DIFFERENT WAYS IT CAN BE DONE. IF YOU'LL RECALL FROM LAST WEEK SHE SAID IT COULD BE DONE IN A SIX PROGRAMMABLE LOGIC LINK FIELD PROGRAMMER DATA ARRAY, IT COULD BE DONE IN SOFTWARE RUNNING OFF PROGRAMMABLE CHIPS OR CHIP SETS.

AN EXAMPLE SHE GAVE WERE DSP TYPE PROCESSORS WERE KNOWN AT THE TIME OR CPU'S OR YOU COULD USE A COMBINATION. SO AT THIS POINT IN TIME IN 1988 THOSE ALGORITHMS ARE KNOWN, THEY'RE KNOWN HOW TO BE IMPLEMENTED, IT'S WELL WITHIN THE REALM OF ONE OF ORDINARY SKILL IN THE ART.

THIS IS AN EXCERPT FROM DR. HEMAMI'S DEPOSITION TESTIMONY WHERE SHE SAYS, IT'S UNQUESTIONABLE THERE'S HARDWARE IN THE BOX 26, THAT'S THE COMPRESSOR DECOMPRESSOR FROM THE SPECIFICATION, AND THEN SHE GOES ONTO SAY IT COULD BE CPU, DSP CHIP HARDWARE, SHE'S SAYING ALL THE SAME THINGS WE SAW ON THE SLIDE BEFORE.

SO WHERE DOES THAT LEAVE US? THE PATENT DISCLOSED

USING CODEC, THEY DISCLOSED SPECIFIC ALGORITHMS FOR DESIGNING CODEC. SHE TESTIFIED, DR. HEMAMI TESTIFIED ALGORITHMS IN THE MANNER OF IMPLEMENTING THOSE ALGORITHMS WERE IN CODECS IN 1998, THAT'S ALL THAT'S REQUIRED.

THIS INFORMATION FAR MORE DETAILED THEN WE SAW IN THE IN RE DOSELL CASE, THE S3 CASE, THE ATMEL CASE. THE ONLY CASE, I BELIEVE THE PRIMARY CASE THAT APPLE RELYING ON, I BELIEVE, THE DEFAULT CASE. THAT CASE IS DIFFERENT, IT INVOLVED A SITUATION FOR A MEANS FOR DISPOSING THESE CARDS.

AND INSTEAD OF ARGUING THAT THE STRUCTURE WAS THE DISPOSING MEANS THAT WAS IN THE BLACK BOX, THEY ARGUED IT WAS SOMETHING ELSE SOMEWHERE ELSE IN THE DESIGN IN THE SYSTEM.

THE FEDERAL CIRCUIT WAS PUZZLED BY THAT, BUT THEY SAID YOU DON'T HAVE ENOUGH STRUCTURE THEN, IF YOU'RE GOING TO POINT TO SOMETHING OTHER THAN WHAT YOU'VE SHOWN US THE BOX, SO THE DEFAULT PROOF IS EASILY DISTINGUISHABLE FROM IN RE DOSELL, ATMEL, S3 WHICH WE RELY.

THE ISSUE WHETHER OR NOT THE AMD CHIP SHOULD BE STRUCTURE, THIS IS WHERE IT COMES FROM. THIS IS THE 9935 SPECIFICATION, THE AMD 7971 CHIP CITED IN THAT SPECIFICATION AS AN EXAMPLE OF A SINGLE INTEGRATED CHIP SOLUTION FOR IMPLEMENTING THE CATEGORY ONE, THE CCITT GROUP FOUR ALGORITHM, THAT'S THE ONLY PLACE IT'S MENTIONED.

NOW WHEN WE FAST FORWARD TO THE LATTER PATENTS, THE '932 AND THE '705, WE CAN SEE THAT THAT CHIP IS NO LONGER

DESCRIBED. IT'S NOT MENTIONED ANYMORE. OKAY. IT'S NOT CITED IN THE SUBSEQUENT PATENTS. SO WHAT DO WE TAKE AWAY FROM THAT?

IT WAS MENTIONED IN THE '995 AN EXAMPLE OF CATEGORY ONE, IT'S NOT MENTIONED AT ALL LATER. THINK A LOGICAL THING TO TAKE AWAY FROM THAT IS, YOU KNOW, WASN'T DEEMED TO BE A CRITICAL FEATURE, IT WASN'T CONSIDERED TO BE A NOVEL ASPECT.

SO IF WE START WITH THE '932 AND THE '705 PATENT, WHAT IS THE STRUCTURE? WELL, INTELVIA INVOLVED A -- MR. POWERS WAS INVOLVED IN THAT SITUATION REPRESENTING INTEL AND IN THAT CASE THE FEDERAL CIRCUIT RULED THAT THE FAILURE TO DISCLOSE CIRCUITRY THAT SHOWED HOW A CORE LOGIC WAS MODIFIED, SO THE FAILURE TO SHOW THAT CIRCUITRY DID NOT RENDER THE MEANS PLUS FUNCTION CLAIM INVALID OR INDEFINITE.

WHAT THE COURT SAID, THIS IS QUOTE, "THE NOVELTY OF THE INVENTION AS CLAIMED LIES IN THE SIGNAL PROTOCOL, NOT IN UNCLAIMED CIRCUITRY FOR CARRYING OUT THE SPECIFIED PROTOCOL."

THE FACT THE AM&D CHIP IS NOT MENTION IN THE '705 OR '932 SHOULD NOT INVALIDATE THOSE CLAIMS OR RENDER THEM TO BE INDEFINITE. THAT WAS NOT CONSIDERED TO BE THE NOVEL ASPECT OF THE INVENTION, THAT'S WHY IT WAS TAKEN OUT, THE PATENTS DON'T CLAIM A SINGLE IC SOLUTION.

WITH RESPECT TO THE '995 ADMITTEDLY IT'S A TOUGHER QUESTION WHETHER OR NOT THE AM&D CHIP DOES COMES IN. IT IS MENTIONED THERE, BUT ONLY MENTIONED AS AN EXAMPLE, IT'S ONLY MENTIONED AS AN EXAMPLE FOR THE CATEGORY ONE TYPE OF

COMPRESSION.

IN OUR VIEW, YOUR HONOR, LOOKING AT THE BIG PICTURE, GIVEN THE FACT IT WAS JUST AN EXAMPLE, WE BELIEVE IT SHOULD NOT COME IN.

WITH RESPECT TO THE COMPRESSION MEANS IN THE '995. AND JUST BRIEFLY ON THE DECOMPRESSION MEANS, YOUR HONOR, ESSENTIALLY THE SAME ISSUE, I JUST WANT TO POINT SOMETHING OUT AGAIN.

WE HAVE THE SAME ORDER ISSUE THAT COMES INTO PLAY AGAIN ON THE DECOMPRESSION MEANS, AND IT'S PERHAPS EVEN MORE GLARING HERE. IT IS APPARENT WHEN YOU LOOK AT THE DECOMPRESSION MEANS THAT THIS WHOLE NOTION THAT YOU'RE GOING TO STORE SOME SORT OF TIME COMPRESSION JUST DOESN'T MAKE SENSE.

THIS CLAIM REQUIRES THAT THE DECOMPRESSION MEANS IS COUPLED TO THE RANDOM ACCESS STORAGE MEANS WHICH IS DIGITAL BY NATURE, SELECTIVELY DECOMPRESSES THE TIME-COMPRESSED REPRESENTATION AND IT DOES IT FOR THE PURPOSE OF EDITING, SO THAT YOU CAN THEN EDIT THE SIGNAL.

WELL, IN THE TIME COMPRESSION DOMAIN, IN THE TIME COMPRESSION WORLD THAT WOULD MAKE NO SENSE. THERE'S NO REASON TO DECOMPRESS BECAUSE THE BITS ARE IDENTICAL, IT'S ALL THE ZEROES AND ONES, ARE IDENTICAL BETWEEN THE COMPRESSED SIGNAL, IF YOU WILL, AND THE UNCOMPRESSED SIGNAL.

SO THERE'S NO REASON TO GO THROUGH THIS PROCESS IN ORDER TO DECOMPRESS BEFORE EDITING, NOR IS THERE ANY REASON TO

DO WHAT'S DESCRIBED IN THE CLAIM 21 WHERE THE COMPRESSION MEANS COMES BACK IN AND THEN RECOMPRESSES AGAIN.

SO WE GOT MULTIPLE STEPS INVOLVED HERE IN CLAIMS 20 AND 21 OF THE '995 WHERE THE CLAIM, WHERE YOUR DECOMPRESSING THE TIME-COMPRESSED REPRESENTATION THAT'S STORED IN THE DIGITAL MEMORY, YOU'RE EDITING IT AND THEN YOU'RE RECOMPRESSING IT. YOU DON'T GO THROUGH ALL THOSE STEPS IN THE TIME COMPRESSION AREA.

AND, YOUR HONOR, THAT'S ALL I HAVE. THANK YOU.

THE COURT: WELL, IT SAYS, THOUGH, UNLESS I MISUNDERSTOOD SOMETHING YOU SAID FOR EDITING MEANS COUPLED TO, ET CETERA, FOR EDITING SAID SELECTIVELY DECOMPRESSED TIME-COMPRESSED REPRESENTATIONS, RIGHT?

MR. HEIM: YES.

THE COURT: SO WHAT ARE YOU DECOMPRESSING THERE, THE TIME-COMPRESSED REPRESENTATION, RIGHT?

MR. HEIM: ABSOLUTELY. ABSOLUTELY. THE TIME COMPRESSION WORLD YOU DON'T SAVE ANY OF THAT TIME COMPRESSION INFORMATION WHEN YOU STORE IT, ALL YOUR SAVING ARE THE ZEROES AND ONES.

THERE'S NO REASON TO GO UNDO ANYTHING TO DECOMPRESS ANYTHING BECAUSE ALL YOU HAVE IN THE TIME COMPRESSION DOMAIN, TIME COMPRESSION WORLD, APPLE'S TIME COMPRESSION SITUATION ARE JUST ZEROES AND ONES, THERE'S NO REASON TO GO IN AND DO DECOMPRESSION IN THAT SITUATION.

THE COURT: WELL, AND IN DOING DECOMPRESSION SOMEONE SKILLED IN THE -- ORDINARY SKILL IN THE ART WOULD KNOW HOW TO DO THAT AS WELL BY WHAT, REVERSE ALGORITHMS?

MR. HEIM: EXACTLY, YOUR HONOR. DR. HEMAMI SAID THE APPROPRIATE STRUCTURE FOR THE DECOMPRESSION MEANS IS A COMPRESSOR DECOMPRESSOR, THAT SAME KODAK EXECUTING THE DECOMPRESSION ALGORITHM CONSISTENT WITH THE COMPRESSION ALGORITHM, JUST THE SAME PROCESS.

THE COURT: OKAY. LET'S TRY TO KEEP IT TO FIVE. TAKE ME THAT LONG GET OFF THE BENCH.

(RECESS TAKEN.)

(PROCEEDINGS RESUMED.)

MR. STEPHENS: GARLAND STEPHENS FOR APPLE.

THE COURT: I'M GOING TO ATTEMPT TO COMPRESS. ARE YOU GOING TO BE ABLE TO WRAP IT UP QUICKLY?

MR. STEPHENS: I'M GOING TO GO IN A SLIGHTLY DIFFERENT ORDER. I'M GOING TO START WITH DISPUTES ABOUT -- ONLY ABOUT STRUCTURE AND THEN SAVE THE DISPUTES ABOUT 1126 APPLIES FOR LAST.

AND I'M GOING TO START WITH COMPRESSION DECOMPRESSION MEANS. THIS IS SOMEWHAT MORE COMPLICATED THAN MR. HEIM MADE IT SOUND. WE ARE PROPOSING ALTERNATIVE CONSTRUCTIONS UNDER OUR CONSTRUCTION, WE SAY THERE'S NO CORRESPONDING STRUCTURE UNDER A CONSTRUCTION WHERE ONLY DATA COMPRESSION IS REQUIRED, NOTHING MORE THAN DATA COMPRESSION IS REQUIRED, THEN HAVE ALTERNATIVE

CONSTRUCTION WHICH IS THE AMD 7971 CHIP FOR THE '995 PATENT AND NOTHING FROM THE OTHER TWO.

THE COURT: WELL, HOLD ON JUST A MINUTE. I HAVE TO GET MY PATENT OUT. LOOK AT THE LANGUAGE OF THE PATENT.

MR. STEPHENS: NO SHORTAGE OF THOSE HERE.

THE COURT: BUT IT SAYS IN COLUMN FIVE AFTER TALKING ABOUT THE COMPRESSION ALGORITHM, ET CETERA, ONE EXAMPLE OF AN APPROPRIATE COMPRESSION SLASH DECOMPRESSION CIRCUIT, TO ME THAT MEANS, OKAY, HERE'S AN EXAMPLE, THIS ISN'T THE ONLY WAY TO DO IT?

MR. STEPHENS: THAT'S CORRECT, THERE'S A COUPLE PROBLEMS WITH THAT. THE FIRST ONE IS THE RECITED FUNCTION FOR THE MEANS THAT WE'RE TALKING ABOUT IS NOT DATA COMPRESSION, IT'S COMPRESSING INTO A TIME-COMPRESSED REPRESENTATION HAVING AN ASSOCIATED BURST TIME PERIOD, ALL THAT LANGUAGE WHICH YOU HEARD ABOUT ALL DAY.

IF THIS WERE SIMPLY A MEANS FOR PERFORMING DATA COMPRESSION, THEN THAT MIGHT MAKE SENSE. THE PROBLEM, OF COURSE, WHAT'S DESCRIBED THERE ONLY PERFORMS DATA COMPRESSION, THAT'S THE --

THE COURT: THAT'S THE IF CLAUSE THAT WE HAVE TO GET RESOLVED.

MR. STEPHENS: INDEED, EXCEPT THAT WE HAVE STATEMENTS MADE HERE TODAY AND IN THE BRIEFING FROM BURST THAT THE CLAIMS ACTUALLY REQUIRE SOMETHING MORE THAN DATA COMPRESSION AND THAT

DATA COMPRESSION IS NOT THE EQUIVALENT OF THE CLAIMED TIME COMPRESSION.

AND, I THINK, YOU HEARD MR. HEIM THIS MORNING MANY HOURS AGO NOW SAY, THAT DATA COMPRESSION WAS A PART OF IT, BUT THERE WAS SOMETHING ELSE THAT, I THINK, WAS THIS UNABLE OR ALLOWING KIND OF THING THAT CLEAR UNDER THE CLAIM LANGUAGE WE'RE CONSTRUING HERE IS PART OF THE PERFORMED FUNCTION.

SO DATA COMPRESSION IS NOT ENOUGH TO PERFORM THE RECITED FUNCTION FOR THE COMPRESSION MEANS. THAT'S, I THINK, THE BIGGEST PROBLEM WITH THE PROPOSAL THAT BURST HAS MADE. BECAUSE THEIR PROPOSAL IS NOTHING BUT DATA COMPRESSION.

QUITE EXPLICITLY, COMPRESSOR DECOMPRESS ARE EXECUTING ONE OR BOTH OF FOLLOWING DATA COMPRESSION ALGORITHMS, WERE -- SO WHERE IS THE SOMETHING ELSE THAT THEY ADMIT IS REQUIRED TO CREATE A TIME-COMPRESSED REPRESENTATION?

NOW, AS I JUST MENTIONED, THE ONLY THING THAT'S IN ANY OF THE PATENTS ACTUAL STRUCTURE FOR PERFORMING COMPRESSION IS A BLACK AND WHITE FAX CHIP, THAT'S THE 7971 CHIP, AND IT WORKED WITH TWO TONE IMAGES, NOT VIDEO.

IT WAS DESIGNED TO WORK INSIDE OF A TYPICAL FAX MACHINE, YOU PUT IN A BLACK AND WHITE IMAGE ON ONE END AND GET IT OUT ON THE OTHER AND THERE'S SOME PROBLEMS WITH THAT CHIP WHICH WE'LL ADDRESS IN A MOMENT.

BUT DR. HEMAMI ADMITTED THAT IS, IN FACT, THE ONLY EXAMPLE OF A COMPRESSOR DECOMPRESSOR GIVEN IN THE ENTIRE

PATENT. SHE ADMITTED THAT COMPRESSION IS NOT DONE BY THE CPU WHICH ARE DISCLOSED, SO THE ONLY ACTUAL STRUCTURE, WHETHER IT'S LABELED AN EXAMPLE OR NOT THE ONLY ACTUAL STRUCTURE DISCLOSED IN THE '995 PATENT IS THIS FAX CHIP. NOW, THERE'S ADDITIONAL --

THE COURT: ONE OF ORDINARY SKILL IN THE ART, COULD ONE OF ORDINARY SKILL IN THE ART USE THESE ALGORITHMS?

ASSUME THIS INFORMATION WITH RESPECT TO THE AMD DEVICE IS NOT IN THE PATENT, JUST IS NOT THERE, COULD ONE OF ORDINARY SKILL IN THE ART TAKE THIS LANGUAGE WITH RESPECT TO THE COMPRESSION ALGORITHMS THAT ARE RECITED THERE AND PERFORM DATA COMPRESSION?

MR. STEPHENS: I BELIEVE THE ANSWER TO THAT IS, YES, YOU COULD PERFORM DATA COMPRESSION WITH IT AS OPPOSED TO DATA COMPRESSION.

I WASN'T CORRECT, YOUR HONOR, MAY DO OVER?

THE COURT: THERE YOU GO.

MR. STEPHENS: YOU COULD PERFORM DATA COMPRESSION OF SOME SORT, WHAT YOU COULD NOT DO COMPRESSION DECOMPRESSION INTO A TIME-COMPRESSED REPRESENTATION OF VIDEO THAT'S DESCRIBED IN THE PATENT BECAUSE THE CPU'S, FOR EXAMPLE, THAT ARE DESCRIBED IN THE SPECIFICATION SIMPLY AREN'T FAST ENOUGH.

IF YOU HAVE A SUPER COMPUTER YOU CAN IMPLEMENT IT, THERE'S NO HARDWARE DISCLOSED IN THIS PATENT FOR EXECUTING ALGORITHMS DESCRIBED IN THIS PATENT OR ALLUDED TO IN THIS

PATENT THAT'S ACTUALLY CAPABLE OF PERFORMING THE KIND OF VIDEO COMPRESSION DESCRIBED IN THE PATENT.

THAT, BY THE WAY, APPLIES TO THE FAX CHIP AS WELL, WASN'T FAST ENOUGH AS DR. HEMAMI ADMITTED DURING HER DEPOSITION.

THE COURT: WELL, THEN THE AMD CIRCUIT THAT IS REFERRED TO HERE, THE AMD 971 PERFORMS SOMETHING DIFFERENT FROM WHAT THESE ALGORITHMS THAT ARE CITED HERE PERFORM?

MR. STEPHENS: WELL, IT DID IMPLEMENT THE CCITT GROUP FOUR ALGORITHM, THAT ALGORITHM IS FOR FAX MACHINES. THAT IS NOT A VIDEO COMPRESSION ALGORITHM, THERE'S NO DISPUTE ABOUT THAT, PARTIES HAVE AGREED THAT'S A FAX CHIP.

MR. LANGE THE INVENTOR ADMITTED IT'S A FAX CHIP, IT'S NOT A CHIP THAT'S DESIGNED TO DO VIDEO COMPRESSION. IN FACT, THERE'S REALLY NO -- THAT THERE WAS A CHIP AVAILABLE AT THE TIME THAT COULD PERFORM THE KIND OF REAL TIME VIDEO COMPRESSION THAT'S DESCRIBED IN THE PATENT, THERE'S PRETTY GOOD EVIDENCE THERE WASN'T.

THE COURT: INCLUDING -- LET ME MAKE SURE I UNDERSTAND, INCLUDING THE 7971 THAT'S CITED HERE?

MR. STEPHENS: THAT'S CORRECT.

THE COURT: THAT COULDN'T PERFORM THAT AS WELL. AS FAR AS --

MR. STEPHENS: DR. HEMAMI ADMITTED THAT WE SEE THAT IN THE SLIDE. THERE'S ALSO A CALCULATION HERE WHICH REFLECTS THE

INFORMATION IN THE PATENT ABOUT THE AMOUNT OF DATA PER FRAME IN THE VIDEO THAT'S DESCRIBED THERE.

SO YOU HAVE 1.89 MILLION BITS PER FRAME TIMES 30 FRAMES PER SECOND AND THAT YIELDS 56.7 MEGABYTES PER SECOND OF DATA THAT YOU HAVE TO PROCESS IN ORDER TO PERFORM THE COMPRESSION THAT'S DESCRIBED IN THE PATENT.

NOW, IF YOU LOOK AT THE SPECIFICATION FOR THE AMD CHIP, PUBLICLY AVAILABLE SPECIFICATION DESCRIBING HOW THE CHIP WORKS, IT WOULD ONLY PROCESS 12 MILLION PIXEL PER SECOND, SO IT'S SIMPLY WASN'T FAST ENOUGH.

AND DURING HER DEPOSITION DR. HEMAMI WAS ASKED IF THE DATA RATE WAS HIGHER THAN THE FAX CHIP AND SHE ADMITTED THAT IT WAS. SO THAT FAX CHIP IS NOT CAPABLE OF PERFORMING THE COMPRESSION THAT'S DESCRIBED, AND THAT'S PROBABLY WHY IT WAS DELETED FROM THE LATER PATENT, NOT THE REASON MR. HEIM GAVE. BECAUSE THEY REALIZED THAT THAT EXAMPLE WAS SIMPLY INOPERABLE.

THE COURT: WELL, IS THIS -- WAS THIS LANGUAGE ALSO DELETED?

LET ME ASK YOU A COMPOUND QUESTION, SO I CAN GET IT OVER WITH. AND IS THIS LANGUAGE CORRECT, WHEN YOU GO ON IN THE NEXT PARAGRAPH, WHEN PATENT GOES -- CONTINUES IN THE NEXT PARAGRAPH TO SAY, IT IS ALSO ESTIMATED THAT ON THE AVERAGE THE CCITT GROUP FOR ALGORITHMS COULD CUT MEMORY REQUIREMENT BY 5 PERCENT THUS NO DATA COMPRESSION, ET CETERA, BUT USING THE ABOVE COMPRESSION TECHNIQUE ESTIMATED THAT MEMORY WILL REQUIRE

ONLY 250 MEGABYTES, IS ALL OF THAT CORRECT?

MR. STEPHENS: NO, IT'S DEFINITELY NOT CORRECT. SO IT IS NOT POSSIBLE USING THE TECHNIQUES DESCRIBED HERE TO GET A 200 TO ONE DATA COMPRESSION RATIO. THAT IS FAR HIGHER THAN ANYTHING THAT'S ACHIEVED EVEN TODAY, MANY YEARS LATER IN COMMERCIAL VIDEO COMPRESSION MECHANISM. YOU MIGHT DO IT IN SOME THEORETICAL SENSE, BUT CERTAINLY AS A PRACTICAL MATTER WOULD NOT WORK.

THIS WAS VERY MUCH A BAILING WIRE TWINE KIND OF DISCLOSURE HERE BECAUSE IT'S A FAX CHIP, IT'S NOT FOR VIDEO COMPRESSION.

THE COURT: DOES THAT LANGUAGE SHOW UP IN THE LATER, ANY OF THE LATER PATENTS?

MR. STEPHENS: YES, MA'AM, IT DOES. SO THERE'S A DESCRIPTION OF THE CCITT GROUP FOUR ALGORITHM AND THEN, IN FACT, WE HAVE THE REDACTION SHOWN HERE, YOUR HONOR, ON THE SCREEN. IT TALKS ABOUT EXISTING COMPRESSION ALGORITHMS. IF YOU SEE THAT PHRASE THERE -- BEAR WITH ME FOR A MOMENT.

THE COURT: SHOWS UP IN THE LANGUAGE I JUST REFERRED TO, SHOWS UP IN THE '705 IN COLUMN FIVE AS WELL.

MR. STEPHENS: THAT'S DELETED IS THE CHIP ITSELF, WHICH IS THE ONLY ACTUAL HARDWARE THAT'S DESCRIBED IN ANY OF THE PATENTS FOR ACTUALLY PERFORMING COMPRESSION.

SO THE REST OF THEM ARE ALGORITHMS, IF YOU HAD THE RIGHT KIND OF HARDWARE, WHICH IS NOT DISCLOSE AS ADMITTED, THEN

YOU MIGHT BE ABLE TO PERFORM DATA COMPRESSION, BUT NOT IN SOMETHING EXTRA THAT WE'VE HEARD ABOUT BEING NECESSARY TO CREATE A TIME-COMPRESSED REPRESENTATION.

THE COURT: I'LL LET YOU MOVE ON.

MR. STEPHENS: NOW, YOU HEARD MR. HEIM, I THINK, ADMIT JUST A FEW MINUTES AGO, THAT THE AMD CHIP WAS REALLY ONLY THE ABOUT PART ONE OF THE VIDEO COMPRESSION THAT THEIR PROPOSING IS PART OF THEIR CONSTRUCTION.

SO PART 2 OF THE VIDEO COMPRESSION AND THE AUDIO COMPRESSION THERE'S SIMPLY NO DISCLOSURE OF ANY STRUCTURE AT ALL. THERE'S NO CHIPS, NO A6, NO CHIP SETS, THE CPU'S ARE NOT TIED TO IT, THERE'S NO STRUCTURE AT ALL TIED TO PERFORMING THESE ADDITIONAL COMPRESSION ALGORITHMS WHICH ARE MENTIONED.

AND THAT'S CERTAINLY TRUE IN THE LATER PATENTS WHERE THE AMD CHIP WERE REMOVED, NO STRUCTURE AT ALL FOR ANY OF THE ALGORITHMS THAT ARE DESCRIBED.

ALGORITHMS ARE NOT STRUCTURE, BURST ADMITS THAT IN ITS BRIEFING, THAT THEY'RE NOT CLAIMING ALGORITHMS BY ITSELF ARE SUFFICIENT STRUCTURE, HAS TO BE EXECUTED SOMEHOW. WHAT THEY SAY INSTEAD IS THAT THIS BOX HERE LABELED COMP DECOM 26 BY ITSELF ALONG THE MINIMALISTIC DESCRIPTION OF IT IN THE TEXT IS ENOUGH, TO BE THE STRUCTURE THAT CORRESPONDS TO THE CLAIMED COMPRESSION MEANS.

AND THEY RELY ON THIS CASE AS S3 VERSUS VIDEO FOR THAT PROPOSITION WHERE, INDEED, THERE WAS A COMPARABLE KIND OF BOX

WITH A LABEL ON IT, THAT WAS HELD TO BE SUFFICIENT STRUCTURE, BUT THE CRITICAL DIFFERENCE IS THAT IN S3 THAT WAS A STANDARD ELECTRONIC COMPONENT YOU COULD JUST GO OUT AND BUY AND HERE THERE'S NO SUCH THING. WE HAVE A DISCLOSURE OF A FAX CHIP THAT WOULDN'T WORK AND NO OTHER HARDWARE DISCLOSURE.

SO YOU DON'T HAVE A SITUATION HERE WHERE THE COMPRESSOR THAT IS THE SUBJECT OF THAT BOX 26 IS SOMETHING THAT'S A STANDARD COMPONENT WHO'S STRUCTURE WELL-KNOWN.

AND IF YOU THINK ABOUT IT, THAT COULDN'T VERY WELL BE SINCE THE FUNCTION THAT IT'S PERFORMING IS CREATING THAT TIME-COMPRESSED REPRESENTATION WHICH IS PRECISELY WHAT BURST SAYS ITS INVENTION IS.

SO IF YOU COULD BUY OFF-THE-SHELF THE COMPRESSOR FOR CREATING A TIME-COMPRESSED REPRESENTATION YOU COULD HARDLY CLAIM THAT WAS AN INVENTION. SO THEY'RE KIND OF STUCK HERE, THEY HAVE A BOX THAT'S THE ONLY STRUCTURE, BUT IT CAN'T POSSIBLY BE AN OFF-THE-SHELF PRODUCT OR THERE'S NO INVENTION.

NOW, EVEN IF YOU ASSUME THAT THERE'S NOTHING MORE THAN DATA COMPRESSION THAT'S REQUIRED THEN, AGAIN, THE ONLY STRUCTURE IS THIS AMD 7971 CHIP WHICH WAS NOT FAST ENOUGH, AND THAT'S PRECISELY WHAT JUDGE MOTZ HELD WAS THE ONLY CORRESPONDING STRUCTURE IN ANY OF THE PATENTS. HE SAYS THE ONLY MEANS LINKED TO THE COMPRESSION FUNCTION WAS THE AMD 7971 HARDWARE CHIP, THERE'S NO REFERENCE TO THAT STRUCTURE IN THE '705 PATENT.

AND, INDEED, THE OTHER PATENTS, THIS CASE HE SAID SPECIFICALLY UNLESS AN ALGORITHM COMBINED WITH SUCH EXECUTED MEANS IT DOES NOT CONSTITUTE A STRUCTURE WITHIN THE MEANING OF SECTION 116.

SO THAT'S WHAT I HAVE FOR COMPRESSION MEANS. I'LL MOVE ON, UNLESS YOUR HONOR HAS ANYMORE QUESTIONS ABOUT IT.

THE COURT: NO, THAT'S FINE.

MR. STEPHENS: THE NEXT SECTION IS TRANSMISSION MEANS. AGAIN, THERE'S NO DISPUTE HERE SECTION 1126 APPLIES. THE DISPUTE HERE ABOUT WHETHER OR NOT AUXILLARY DIGITAL PORT SHOULD BE INCLUDED IN THE CORRESPONDING STRUCTURE.

AND THE PROBLEM HERE IS WE'RE TALKING ABOUT TRANSMISSION AWAY AS YOUR HONOR HEARD QUITE A BIT ABOUT EARLIER TODAY, AND WHAT THEY'RE POINTING TO EXPRESSLY LABELED AS AN INPUT, NO DESCRIPTION OF THIS AUXILIARY DIGITAL INPUT ANYWHERE IN THE PATENT AND AS ALSO BEING AN OUTPUT, THERE JUST SIMPLY ISN'T.

SO THERE'S NO CONCEIVABLE WAY THAT THAT SHOULD BE AN APPROPRIATE CORRESPONDING STRUCTURE FOR TRANSMISSION AWAY, IT'S NOT LINKED TO THE FUNCTION OF TRANSMITTING. IT'S ONLY LINKED TO THE FUNCTION RECEIVING INPUTTING.

THE COURT: WELL, IT REFERS TO TRANSCEIVER, RIGHT?

MR. STEPHENS: THE PATENT AS A WHOLE DOES AND THE CLAIMS DO, AND THERE ARE, OF COURSE, OTHER PORTS, FOR EXAMPLE, USE A DIFFERENT POINTER HERE.

THE COURT: YOU'RE NOT SAYING THAT THE DEVICES PARTICULARLY AS --

MR. STEPHENS: THIS DEVICE IS OVER HERE.

THE COURT: ARE INPUT ONLY, THEY HAD INPUT AND OUTPUT?

MR. STEPHENS: THE DEVICE AS A WHOLE CERTAINLY HAD BOTH, NO QUESTION. THIS 21 HERE, FOR EXAMPLE, CLEARLY AN OUTPUT. ALSO, HIDDEN BEHIND THIS BOX IS THE FIBEROPTIC PORT WHICH YOU HEARD SO MUCH ABOUT AND THAT CLEARLY COULD SEND OR RECEIVE.

BUT I'M TALKING ABOUT NOW IS ONLY THE AUXILIARY DIGITAL INPUT, AND THE QUESTION FOR YOUR HONOR TO RESOLVE, WHETHER THAT IS ALSO AN OUTPUT AND, THEREFORE, SHOULD BE INCLUDED IN THE TRANSMISSION MEANS CORRESPONDING STRUCTURE.

THE COURT: I SEE.

MR. STEPHENS: MOVING ONTO EDITING MEANS, HERE WE HAVE A SUBSTANTIAL DISCLOSURE IN THE PATENT ABOUT STRUCTURE THAT IS LINKED EXPRESSLY TO EDITING, AND BURST REALLY WANTS TO LIMIT IT JUST TO SOFTWARE IN THE PROCESSOR.

NOW, THE PRECISE STRUCTURE VARIES WITH THE PATENT THAT WE'RE TALKING ABOUT, BUT THE BASIC ISSUE IS PRETTY MUCH THE SAME. THIS IS THE DISCLOSURE FROM THE '975 PATENT WHERE IT SAYS THROUGH THE USE OF DCU 14 VIDEO SEGMENTS MAYBE EDITED AND REARRANGED. THERE OTHER PLACES WHERE THE FUNCTION OF EDITING IS TIED EXPRESSLY TO THIS DCU OR DIGITAL CONTROL UNIT, IT'S LABELED 14 AS IT SAYS RIGHT THERE IN THE TEXT, YOU CAN SEE THE

BOX LABELED 14 WE COLORED YELLOW AND BLOWN IT UP THERE.

IF, FOR EXAMPLE, INCLUDES THE ROM THAT MR. PAYNE WAS SUGGESTING TO YOUR HONOR WAS NOT PART OF THE MEANS FOR EDITING, HERE IT'S CLEARLY LINKED AND, THEREFORE, MUST BE PART OF THE STRUCTURE FOR PERFORMING THAT.

THE COURT: WHAT FUNCTION DOES IT PERFORM?

MR. STEPHENS: EDITING, YOUR HONOR.

THE COURT: NO, I'M TALKING ABOUT SPECIFICALLY THE ROM, WHAT FUNCTION DOES THAT PERFORM?

MR. STEPHENS: OKAY. IT STORES THE EDITING PROGRAM AND THE PROCESSOR, THE CPU THERE, YOU CAN SEE THAT BY THE LINE THERE THAT JOINS 31 WITH 32, RETRIEVES INSTRUCTIONS FROM THE ROM AS IT'S EXECUTING THE EDITING PROGRAM AND DISPLAYING THE IMAGES ON THE SCREEN THAT THE USER INTERACT WITH IN ORDER TO ACTUALLY EDIT PICTURES.

SO THOSE INSTRUCTIONS ARE STORED IN THE ROM, THEY'RE RETRIEVED BY THE CPU IN THE PROCESS OF PERFORMING THE EDITING FUNCTION.

THE COURT: WELL, DO YOU -- YOU DON'T REALLY DISAGREE WITH WHAT FUNCTION IT -- YOU DON'T AGREE -- DISAGREE WITH BURST WHAT FUNCTION IT PERFORMS, YOU ONLY DISAGREE AS TO WHETHER OR NOT THAT IS PART OF THE EDITING MEANS?

MR. STEPHENS: I THINK, THAT'S A FAIR CHARACTERIZATION OF IT, YES. I DON'T THINK THERE'S A FUNDAMENTAL DISAGREEMENT

WITH THE FACT THE EDITING PROGRAM IS SO -- EDITING PROGRAM STORED IN THE ROM RETRIEVED BY THE CPU DURING THE EDITING PROCESS.

THE ONLY DISPUTE THAT IS THEN LINKED BY THE PATENT TO THE FUNCTION OF EDITING WHICH SAY IT CLEARLY IS. AND THE SLIDES, I THINK, CLEARLY SHOW, THEREBY EXPRESSLY TYING DCU 14 TO EDITING AND THEN SPELLING OUT EXACTLY WHAT'S IN IT.

AND TALKING FURTHER BELOW ABOUT THERE -- ABOUT THE USER INTERFACE THAT IS PART OF THE PROGRAM AND THE INPUTS THAT ARE USED WITH THE PROGRAM, LIKE THE LIGHT PEN OR A MOUSE THAT THE USER USES TO INTERACT WITH THAT EDITING PROGRAM. SO IT'S OUR VIEW THAT UNDER SECTION 1126 THOSE ARE ALL CLEARLY TIED TO THE FUNCTION OF EDITING AND, THEREFORE, PART OF THE CORRESPONDING STRUCTURE.

MR. STEPHENS: NOW, THAT BRINGS ME TO THE SECTION WHERE THERE'S A DISPUTE ABOUT WHETHER SECTION 1126 ACTUALLY APPLIES. AND, I GUESS, I WANT TO START HERE BY SAYING THAT THIS IS REALLY ANOTHER EXAMPLE OF BURST SAYING ONE THING TO THE PATENT OFFICE AND THEN COMING TO THE COURT WANTING TO CHANGE THEIR MIND.

THEY USED THE WORD MEANS IN THE CLAIMS REPEATEDLY, BUT NOT EXCLUSIVELY, WE'LL GET TO THAT IN A MOMENT. NOW, THEY WANT TO SAY, WELL, WE DIDN'T REALLY MEAN IT, SO DON'T USE 1126 TO INTERPRET THESE CLAIMS, EVEN THOUGH THAT'S THE PRESUMPTION BECAUSE WE DIDN'T REALLY MEAN IT.

NOW, ANOTHER THING I WANT TO ADDRESS IS YOU HEARD MR. PAYNE SAY THAT APPLE HAS ADMITTED IN ITS BRIEF THAT THESE WORDS THAT WE'RE GOING TO TALK ABOUT IN A MINUTE ALL STRUCTURAL AND THAT SHOULD BE THE END THE MATTER. I WANT TO READ FOR YOU FROM PAGE 44 WHICH MR. PAYNE CITED WE DO SAY.

THE TERMS AT ISSUE INPUT MEANS, OUTPUT MEANS, STORAGE MEANS ARE ALL LIKE THE TOP MEANS THE FEDERAL CIRCUIT FOUND TO BE SUBJECT TO 1126. INPUT, OUTPUT AND STORAGE ARE ALL FUNCTIONAL NOUNS THAT IDENTIFIED GENERICALLY THE COMPLETE CLASS OF STRUCTURES THAT PERFORM THEIR FUNCTION.

THAT'S WHAT WE SAID. THAT'S NOT AN ADMISSION THAT THERE'S ENOUGH STRUCTURE THERE THAT THEY'RE TAKING OUT OF 1126. NOW, I DON'T WANT BELABOR THE LAW TOO MUCH, I KNOW YOUR HONOR KNOWS IT, BUT THERE ARE A FEW POINTS, I THINK, WE NEED TO TOUCH ON.

THE ISSUE HERE REALLY IS WHETHER OR NOT THE PRESUMPTIONS HAS BEEN REBUTTED BY BURST, AND WE OBVIOUSLY CLAIM IT HAS NOT, IT CAN BE REBUTTED WHERE THE CLAIM ITSELF RECITES A FUNCTION AND THEN ELABORATE SUFFICIENT STRUCTURE TO PERFORM ENTIRELY THE RECITED FUNCTION.

IT'S NOT ENOUGH JUST HAVE SOME STRUCTURE RECITED IN COMBINATION WITH THE MEANS, AND I THINK THAT IS A FUNDAMENTAL DISAGREEMENT WITH THE LAW.

IF I UNDERSTOOD MR. PAYNE CORRECTLY, BURST'S POSITION IS THAT ANY STRUCTURE AT ALL IS ENOUGH TO REBUT THE

PRESUMPTION, AND THE CASE LAW CLEARLY DOES NOT GO ALONG WITH THAT PROPOSITION.

SO ANOTHER IMPORTANT ISSUE HERE WHETHER OR NOT A CLAIM THAT USES THE WORD MEANS CAN BE CONSTRUED SO BROADLY AS TO COVER EVERY POSSIBLE WAY TO PERFORM THE FUNCTION, THAT'S EXPRESSLY WHAT 1126 FORBIDS, THAT'S WHY YOU'RE LIMITED TO THE STRUCTURES DISCLOSE IN THE PATENT ITSELF.

SO YOU KIND OF HAVE A CHOICE, 1126 GIVES YOU A CHOICE, EITHER PUT STRUCTURE IN THE CLAIM OR YOU CAN FUNCTIONALLY CLAIM EVERY POSSIBLE WAY OF PERFORMING THAT FUNCTION, BUT THEN YOU'RE LIMITED TO WHAT'S DISCLOSED IN THE SPECIFICATION FOR PERFORMING THOSE FUNCTIONS. IT'S A QUID PRO QUO, YOU MAKE YOUR CHOICE AND YOU LIVE WITH IT.

THE COURT: BUT THE BOTTOM LINE QUESTION, EVEN IF THE CLAIMS DOES NOT GIVE A DETAILED DESCRIPTION OF THE STRUCTURE, IF -- IF THE TERM IS ONE THAT A PERSON OF ORDINARY SKILL IN THE ART WOULD KNOW WHAT IT MEANS AND WOULD UNDERSTAND WHAT ITS STRUCTURE IS AND IN ADDITION TO WHATEVER FUNCTION THEY PERFORM, BUT MOSTLY UNDERSTANDS THE STRUCTURE WOULD BE ABLE TO CONSTRUCT SUCH A DEVICE.

MR. STEPHENS: SORRY, GO AHEAD.

THE COURT: THEN A SINGLE WORD MAY BE SUFFICIENT, RIGHT?

MR. STEPHENS: UNDER SOME CIRCUMSTANCES, PERHAPS. BUT IT'S A DIFFERENT QUESTION THEN ENABLEMENT WHAT ONE OF ORDINARY

SKILL WOULD BE ABLE TO FIGURE OUT.

IT'S REALLY WHETHER THE WORD CARRIES WITH IT OR DESCRIBES ENOUGH STRUCTURE TO PERFORM THE RECITED FUNCTION. AND IT HAS TO BE A STRUCTURE THAT'S SUFFICIENTLY DEFINITE THAT YOU'RE NOT GETTING BY ADDING THIS ONE ADDITIONAL WORD, WHAT 1126 SAYS YOU CAN'T HAVE, THAT IS EVERY POSSIBLE WAY OF PERFORMING THE RECITED FUNCTION.

THE COURT: BUT THE PERSON -- THE STANDARD BY WHICH YOU DETERMINE WHETHER IT SENDS THAT STRUCTURE SIGNAL TO SOMEONE IS SOMEONE OF ORDINARY SKILL IN THE ART?

MR. STEPHENS: THAT IS CORRECT, YOUR HONOR, YES. NOW, IT'S OUR POSITION, I'LL TALK MORE SPECIFICALLY ABOUT THE TERMS IN A MOMENT, BUT ALL OF THESE TERMS THAT WE'RE TALKING ABOUT HERE, THAT THEY ARE FUNCTIONAL NOUNS THAT -- REALLY THEY'RE NOUNS, BUT THEY'RE DESCRIBING THE FUNCTION OF THE UNDERLYING DEVICES, THEREFORE, THEY ARE NOT SUFFICIENT STRUCTURE.

AND THEY'RE DESCRIBED -- AND THEY DON'T DESCRIBE A SINGLE WELL DEFINED CLASS OF STRUCTURES LIKE YOU MIGHT BE ABLE TO GO OUT AND BUY, THAT WOULD ALLOW YOU TO FULLY UNDERSTAND WHAT'S BEING CLAIMED. SO, THEREFORE, YOU NEED TO LOOK AT WHAT'S DESCRIBED IN THE SPECIFICATION FOR PERFORMING THOSE FUNCTIONS.

NOW, I WANT TO ADDRESS A COUPLE OF OTHER REASONS BURST GAVE FOR NOT APPLYING 1126 HERE. THE FIRST ONE, THE DRAFTER WAS CLEARLY ENAMORED OF THE WORD MEANS. I THINK, BURST IS

ENAMORED OF THE WORD ENAMORED, BUT I WOULD CALL THIS MY PATENT LAWYER A DUMMY DEFENSE, YOU USE THE WORD MEANS BUT HE DIDN'T REALLY MEAN IT OR DIDN'T KNOW WHAT IT MEANT, SO YOU SHOULD NOT HOLD US TO IT.

THE SECOND ONE IS THE ELEMENTS CAN BE REWRITTEN TO REMOVE THE WORD MEANS WHILE RETAINING THEIR MEANING. I DIDN'T HEAR THAT ARTICULATED HERE TODAY. I DIDN'T SPEND MUCH TIME ON IT, IT IS IN THE BRIEFS, I WANT TO TOUCH ON IT BRIEFLY.

LASTLY, THE TERMS ITSELF DESCRIBE SUFFICIENT STRUCTURE. THE FIRST ISSUE ABOUT WHETHER OR NOT THE DRAFTER WAS ENAMORED WITH THE WORD MEANS, I THINK, IS BELIED BY THE FACT SOMETIMES THEY USE MEANS AND SOMETIMES HE DIDN'T.

THIS IS JUST ONE EXAMPLE, THERE ARE MANY OTHERS, THIS HAPPENS TO BE AN EXAMPLE WHERE HE SAID THAT SOMETHING THAT WAS CLAIMED AS A MEANS IN A DEPENDENT CLAIM IS THEN NARROWED SPECIFICALLY TO ONE OF THE STRUCTURES DESCRIBED IN THE PATENT.

BUT THE POINT IS THIS WAS NOT AN EXAMPLE WHERE HE JUST PUT MEANS, WHERE IT WAS A CONSCIOUS DECISION MADE BY THE DRAFTER. HE UNDERSTOOD WHAT HE WAS DOING AND INTENTIONALLY AVAILED HIMSELF OF 1126 AND SHOULD BE HELD TO IT.

THE SECOND ARGUMENT IS THAT YOU COULD REWRITE THESE ELEMENTS, TAKE THE WORD MEANS OUT AND THE MEANING OF THOSE PHRASES DOESN'T CHANGE. THE PROBLEM WITH THAT, OF COURSE, IS THAT THERE ARE PLENTY OF CASES OUT THERE WHERE PHRASES HAVE BEEN HELD TO BE SUBJECT TO 1126 WHERE YOU COULD DO THE SAME

THING.

SO, FOR EXAMPLE, IN THE GREENBURG VERSUS ETHICAL CASE WHICH WE CITE IN OUR BRIEF, AT THE MEANS FOR MOVING, MAINTAINING THE MOVABLE MEMBER, TAKE THE MEANS OUT OF THAT YOUR STILL GOING TO HAVE SOMETHING SENSIBLE. FOR MOVING, MAINTAINING MOVABLE MEMBER, YET THE COURT HELD THAT WAS SUBJECT TO 1126.

SPRING MEANS INTENDING TO KEEP THE DOOR CLOSE. THERE'S STRUCTURE DESCRIBED IN BOTH OF THOSE, SUFFICIENT STRUCTURE THAT YOU COULD ACTUALLY TAKE THE WORD MEANS OUT AND STILL UNDERSTAND WHAT'S BEING CLAIMED, AND YET IN BOTH CASES THE COURT HELD THAT STRUCTURE DID NOT TAKE THOSE ELEMENTS OUT OF SECTION 1126, THEY WERE NOT SUFFICIENT TO REBUT THE PRESUMPTION.

NOW, THAT REALLY IS THE SAME POINT THIS SLIDE MAKES. THAT IS -- IT'S PRETTY COMMON, IN FACT, TO PUT SOME STRUCTURE INTO 1126 MEANS CLAIMS, AND THAT BY ITSELF IS NOT ENOUGH TO REBUT THE PRESUMPTION.

I ALREADY ALLUDED TO THIS, THIS IS THE UNIDYNAMICS CASE WHERE THE PHRASE AT ISSUE WAS SPRING MEANS TENDING TO KEEP THE DOOR CLOSE, AND THE COURT SAID, WE DISAGREE WITH THE DISTRICT COURT THAT RECITATION OF SPRING WHICH IS STRUCTURAL LANGUAGE TAKES THE LIMITATION OUT OF THE AMBIT OF SECTION 1126.

YOU HEARD MR. PAYNE SAY THE PHRASE PERFORATION MEANS HAD BEEN HELD, THIS IS THE COLE CASE, IS TO BE SUFFICIENT

STRUCTURE. THAT IS, IN FACT, NOT REALLY WHAT COLE SAYS. THERE IS A LOT MORE STRUCTURE IN THE LIMITATION THAT WAS BEING CONSTRUED IN COLE THEN JUST PERFORATION MEANS. IT'S PERFORATION MEANS EXTENDING TO THE MEANS THROUGH THE OUTER IMPERMEABLE LAYER MEANS FOR TEARING A LOT OF STRUCTURE THERE.

IT'S DESCRIBING FOR YOU ALMOST A PICTURE THAT'S BEING CLAIMED, SO FAR FROM PERFORATION MEANS BEING HELD SUFFICIENT, WHAT WAS REALLY HELD SUFFICIENT WAS THERE VERY ELABORATE STRUCTURE THAT'S DESCRIBED UNIDYNAMICS CASE WE CITE.

THE COURT: I'M SORRY, BUT I HAVEN'T HAD A CHANCE TO READ THE COLE CASE. IT IS KIMBERLY CLARK. OKAY. SO EXACTLY WHAT WAS IT DEFINING, FOR REMOVING THE TRAINING BRIEF, SO WAS SOMETHING ALONG THE LINES OF WHAT YOU WERE JUST DESCRIBING.

MR. STEPHENS: THAT'S RIGHT. ONCE YOU KNOW THAT YOU CAN KIND OF READ THAT AND GET A SENSE FOR WHAT'S BEING DESCRIBED.

THE COURT: WHY DON'T I GET THOSE SIMPLE CASES.

MR. STEPHENS: OKAY. SO THAT BRINGS US TO THE ACTUAL TERMS HERE, AND THE POINT I WANT TO MAKE, THESE WORDS THAT WE'RE LOOKING AT HERE ARE ALL REALLY FUNCTIONAL NOUNS. THEY REALLY -- THEY DON'T DESCRIBE SOME, YOU KNOW, BAR OR PIECE OF METAL, OR PIECE OF SILICON THEY'RE, DESCRIBING A FUNCTION STORAGE. RIGHT. THAT SOMETHING YOU STORED THINGS IN.

AND WE'LL SEE WHAT BURST IS PROPOSING FOR NON-1126 CONSTRUCTION FOR THESE TERMS SHOWS THAT DIRECTLY RANDOM ACCESS

STORAGE MEANS, INPUT MEANS, OUTPUT MEANS. HOW DO GO BUY AN INPUT, YOU CAN'T, INPUT MEANS SOMETHING YOU PUT THINGS INTO, IT'S A FUNCTIONAL DESCRIPTION OF SOMETHING, SAME THING WITH OUTPUT.

SO STARTING WITH STORAGE MEANS WE SEE THAT WHAT BURST SAYS THAT IT SHOULD MEAN, NOT 1126 NOW, BUT CONSTRUCTION APART FROM THAT IS A MEDIUM IN WHICH DATA IS RETAINED FOR SUBSEQUENT RETRIEVAL.

NOW, IF THAT STRUCTURE THAT'S IT'S PRE-ETHERIAL, ESSENTIALLY ATTEMPTING TO CLAIM EVERY POSSIBLE WAY OF STORING DATA, AND THAT'S WHAT THEY'RE SAYING IS MEANT BY STORAGE MEANS.

SO, I THINK, THAT THEIR PROPOSED CONSTRUCTION SHOWS YOU THAT THE WORD STORAGE BY ITSELF CAN'T POSSIBLY BE ENOUGH STRUCTURE TO REBUT THE 1126 PRESUMPTION RAISED BY USING THE WORD MEANS.

SAME THING FOR RANDOM ACCESS STORAGE MEANS, WHAT --

THE COURT: WITH EACH OF THESE IF, IN FACT, YOU HAVE TO COME UP WITH A DEFINITION OF -- IF IT IS A MEANS PLUS FUNCTION, I DON'T SEE THAT YOUR DEFINITIONS ARE ALL THAT DIFFERENT OTHER THAN THE PLUS EQUIVALENCE ASPECTS OF IT.

MR. STEPHENS: THE PLUS EQUIVALENCE, YOUR HONOR, THAT'S NOT CORRESPONDING STRUCTURE. WE DON'T DISAGREE UNDER 1126 THEY'RE ENTITLED TO EQUIVALENCE OF THE DISCLOSURE STRUCTURES, WE ARE JUST NOT SAYING THAT'S DISCLOSED, THE STRUCTURE THAT'S A DIFFERENT PIECE OF THE ANALYSIS.

THE COURT: I UNDERSTAND. IN FACT, YOU HAVE TO DEFINE THESE, YOU DON'T DISAGREE ALSO WHAT THAT STORAGE MEANS, ESSENTIALLY THESE ARE THE KIND OF STORAGE MEANS THAT WOULD BE EMBRACED.

MR. STEPHENS: I BELIEVE THAT'S RIGHT. I DON'T THINK THERE'S A DISAGREEMENT ON THE ACTUAL STRUCTURE THAT'S DISCLOSED FOR THESE TERMS, WE'RE GOING TO GET TO SOME WHERE THERE ARE, BUT NOT FOR THESE TERMS.

THE COURT: NOT FOR STORAGE OR RANDOM ACCESS?

MR. STEPHENS: I BELIEVE THAT'S RIGHT. YEAH, I BELIEVE THAT'S RIGHT. ALTHOUGH, THERE MAYBE AN ISSUE ABOUT MAGNETIC DISK WHICH APPEARS IN THE LATER PATENTS AND NOT IN THE '995 PATENT.

SO, I THINK, THERE MAYBE AN ATTEMPT, I'M NOT CERTAIN OF THIS, BY BURST TO SAY THAT THE MAGNETIC DISK WHICH IS NOT DISCLOSED IN THE '995 SHOULD STILL BE CORRESPONDING STRUCTURE FOR THE '995, WE DISAGREE WITH THAT.

INPUT MEANS '995. HERE'S FIVE DIFFERENCES ON STRUCTURE EVEN IF WE GET PAST THE 1126 NOTION. AGAIN, I THINK IF YOU'RE TALKING ABOUT INPUT BEING SUFFICIENT STRUCTURE JUST DOESN'T MAKE SENSE. SO I GOT A FOCUS INSTEAD ON THE STRUCTURE THAT WE'RE TALKING ABOUT HERE, THE PRIMARY DIFFERENCE IS A MICROWAVE SATELLITE TRANSCEIVER.

AND I SHOULD POINT OUT THAT FOR INPUT MEANS THERE'S ACTUALLY TWO DIFFERENT KINDS OF INPUT. I DON'T THINK THERE'S A

DISPUTE ABOUT THIS. SOME OF THE CLAIMS TALK ABOUT AN INPUT MEANS FOR RETRIEVING INFORMATION THAT'S NOT COMPRESSED AND SOME OF THEM TALK ABOUT AN INPUT MEANS FOR RECEIVING INFORMATION THAT IS TIME-COMPRESSED.

AND AS YOU'LL SEE, I THINK, THERE ARE MEANINGFUL DIFFERENCES IN THE APPROPRIATE CORRESPONDING STRUCTURE FOR THOSE AS WE GO THROUGH THEM.

SO STARTING WITH THE NON-TIME COMPRESSED VERSION OF THE INPUT MEANS, THIS IS AN EXAMPLE WHERE IT APPEARS IN CLAIM 1, IF THAT'S THE '995 PATENT. HERE ARE THE STRUCTURES THAT ARE DISCLOSED FOR RECEIVING UNCOMPRESSED FILES.

AND SO YOU SEE THE VARIOUS INPUTS INCLUDING THE AUXILIARY DIGITAL INPUT THAT WE TALKED ABOUT EARLIER ON THE LEFT SIDE, THERE'S ALSO A MODEM 22 ON THE LOWER RIGHT SIDE.

NOW, BURST PROPOSED CONSTRUCTION FOR THE '995 PATENT ADDS A MICROWAVE SATELLITE TRANSCEIVER, WE DISAGREE WITH THAT, JUST NOT PRESENT IN THE '995 PATENT AT ALL.

THE COURT: TRANSCEIVER, WERE SUCH TRANSCEIVERS IN THE SYSTEM IN 1998?

MR. STEPHENS: YES, THEY CERTAINLY WERE. THEY DIDN'T NECESSARILY USE MICROWAVES AND THERE'S NO DESCRIPTION OF MICROWAVE OR SATELLITE TRANSCEIVER HERE. WHAT IT SAYS, YOU MIGHT HAVE AN EXTERNAL DIGITAL MEANS SUCH AS SATELLITE TRANSCEIVER OR RECEPTION. IT'S COMPARING IT TO TELEPHONE LINES.

THEY'RE NOT SAYING TELEPHONE LINES ARE AN INPUT MEANS FOR RECEIVING UNCOMPRESSED REPRESENTATION, AND THE SATELLITE TRANSMISSION RECEPTION THAT'S DESCRIBED IN THE '995 THAT'S DESCRIBED IN THE SAME WAY. JUST SOME MEDIUM OUT THERE EXTERNAL TO THE DEVICE, IT'S NOT AN INPUT TO THE DEVICE, IT'S SOMETHING YOU MIGHT HOOKUP TO AN INPUT ON THE DEVICE, PERHAPS, BUT IT'S NOT ITSELF AN INPUT. THE WORD MICROWAVE DOESN'T APPEAR AT ALL.

THE COURT: BACKING UP, THOUGH, WITH RESPECT TO CLAIM 1 AND AUDIO/VIDEO TRANSCEIVER APPARATUS.

MR. STEPHENS: YES.

THE COURT: COMPRISING INPUT MEANS FOR RECEIVING AUDIO VISUAL SOURCE INFORMATION. NOW, DOESN'T THAT SUGGEST THAT THE INPUT MEANS IS A PART OF THIS TRANSCEIVER APPARATUS?

MR. STEPHENS: ABSOLUTELY.

THE COURT: OKAY.

MR. STEPHENS: I AGREE WITH THAT.

THE COURT: SOME GREAT MYSTERY AT THAT TIME AS TO, YOU KNOW, WHAT A TRANSCEIVER WAS?

MR. STEPHENS: I DON'T THINK SO.

THE COURT: OKAY. CERTAINLY YOU THOUGHT THAT NOT BEEN UP FOR GRABS AS FAR AS THE DEFINITION IS CONCERNED, YOU'RE NOT ASKING FOR CONSTRUCTION.

MR. STEPHENS: I THINK, IT'S CONSTRUCTION FOR CONTRACTION, MEANING SINGLE UNIT THAT DOES BOTH.

THE COURT: AND THE INPUT MEANS THAT IS A PART OF OR

OF THAT TRANSCEIVER IS THERE SOME MYSTERY ABOUT WHAT THAT WOULD BE?

ANY DIFFERENT FROM, YOU KNOW, THE PORTS THAT EVERY ONE OF THESE DEVICES WOULD HAVE?

MR. STEPHENS: NO, IN FACT --

THE COURT: INPUT PORT, OUTPUT PORT?

MR. STEPHENS: FIGURE 2 SHOWS THEM QUITE EXPLICITLY. THERE ARE INPUT MEANS THAT ARE DISCLOSED AND EXTREMELY DESCRIBED AS SUCH. FOR EXAMPLE, THE AUXILIARY DIGITAL INPUT THAT WE TALKED ABOUT EARLIER.

THE COURT: BUT WOULD ANYONE NOT UNDERSTAND WHAT IS MEANT, SOMEONE -- STRIKE THAT. ONE OF ORDINARY SKILL IN THE ART UNDERSTAND IN 1988 WHAT THE INPUT OF A TRANSCEIVER WAS?

MR. STEPHENS: I THINK, THE PROBLEM, YOUR HONOR, WHAT STRUCTURE THAT WOULD CORRESPOND TO, THAT COULD TAKE ON MANY DIFFERENT FORMS. AND THE WORD INPUT BY ITSELF DOES NOT CONNOTE A STRUCTURE FOR SOMEBODY TO KNOW WHAT IS BEING REFERRED TO BY THAT.

IF YOU REFERRED TO THE FIGURES IN THE PATENT, THEN IT'S NO PROBLEM. ONE OF THE THINGS I THINK BURST SAID IN THE BRIEFING PEOPLE WHO HAVE TELEVISION AND VCR KNOW WHAT INPUT ARE, THE THINGS ON THE BACK YOU GO PLUG IT INTO.

IF YOU'RE TALKING ABOUT THE VCR-LIKE DEVICE THAT'S DESCRIBE IN THE PATENT, SURE, IT'S ONE OF THESE PORTS THAT'S LISTED THERE IN FIGURE 2. IF YOU'RE TALKING ABOUT WHETHER THE

WORD INPUT ON ITS OWN EVEN IN THE CONTEXT OF VIDEO DATA TRANSMISSION --

THE COURT: BUT IT'S NOT -- IT'S IN THE CONTEXT OF THE TRANSCEIVER, RIGHT, NOT SOME FREE FLOATING INPUT OUT THERE OR OUTPUT.

MR. STEPHENS: YOUR QUITE RIGHT ABOUT THAT, BUT EVEN WITHIN THE CONTEXT OF AUDIO/VIDEO TRANSCEIVER APPARATUS, I DON'T THINK THAT THERE'S ANY SORT OF INPUT YOU CAN GO OUT AND BUY. YOU DON'T LIKE LOOK UP IN A CATALOG AND SAY, YOU KNOW, I NEED AN INPUT FOR AN AUDIO/VIDEO TRANSCEIVER WHERE DO I FIND THAT, THAT DOESN'T CONNOTE STRUCTURE LIKE THAT.

THE COURT: WOULD YOU SAY, ESSENTIALLY, GO OUT AND GET A TRANSCEIVER THAT HAS AN INPUT PORT?

MR. STEPHENS: YOU COULD DO THAT.

THE COURT: AND AN OUTPUT PORT?

MR. STEPHENS: YOU COULD DO THAT. THEY MAY TAKE MANY DIFFERENT KIND OF FORMS. THERE'S NO SINGLE CLASS OF STRUCTURE THAT IS DESCRIBED IN THAT CONTEXT BY THAT WORD. NOT A WELL DEFINED CLASS OF STRUCTURES.

THE COURT: WELL, MOVE ALONG. I'M TRYING NOT TO SAY, OKAY, I DON'T WANT TO SUGGEST WHETHER I AGREE WITH YOU OR NOT.

MR. STEPHENS: UNDERSTOOD.

THE COURT: BUT LET'S MOVE ALONG.

MR. STEPHENS: I JUST WANTED TO FINISH UP THIS SLIDE ABOUT THE SATELLITE TRANSMISSION OR RECEPTION. IT EXPRESSLY

SAYS IT'S EXTERNAL, IT'S NOT PART OF THE TRANSCEIVER, SO REALLY CAN'T BE ONE OF THE CORRESPONDING STRUCTURES BECAUSE IT'S NOT A PART OF THE TRANSCEIVER, IT'S EXTERNAL TO IT.

AND WE'VE TALKED ABOUT HOW THERE'S TWO DIFFERENT STRUCTURES, MOVING ONTO THE INPUT FOR RECEIVING TIME-COMPRESSED REPRESENTATIONS, IT'S CLAIMED DIFFERENTLY AND EXPRESSLY LIMITED TO INPUT MEANS FOR RECEIVING AUDIO/VIDEO SOURCE INFORMATION AS A TIME-COMPRESSED REPRESENTATION.

I DON'T THINK THERE'S ANY DISPUTE ABOUT THE FACT THERE ARE TWO DIFFERENT KINDS OF INPUTS HERE. WE AGREE, PARTIES AGREE THERE'S ONE STRUCTURE THAT'S CLEARLY LINKED TO THAT, THAT'S THE FIBEROPTIC INPUT OUTPUT 18.

AND THE REASON WHY APPLE AGREES THAT IS APPROPRIATE DISCLOSED CORRESPONDING STRUCTURE FOR RECEIVING COMPRESSED MEDIA IS THAT IT ACTUALLY HAS A DATA RATE ASSOCIATED WITH IT.

WE HEARD DISCUSSION EVEN FROM BURST HOW THE TIME-COMPRESSED REPRESENTATION IS SOMETHING MORE THAN DATA COMPRESSION AND IT IS ALLOWING TRANSMISSION FASTER THAN REAL TIME ACCORDING TO BURST.

SO YOU CAN'T TELL FROM LOOKING AT A PARTICULAR INPUT DESCRIPTION IN THE PATENT WHETHER OR NOT IT CAN RECEIVE DATA FASTER THAN REAL TIME, UNLESS IT TELLS YOU HOW FAST YOU CAN RECEIVE IT.

AND THE ONLY PORT OR THE ONLY INPUT MEANS DESCRIBED IN THE PATENT THAT HAS A DATA RATE ASSOCIATED WITH IT WHERE YOU

CAN RECEIVE A -- WHERE YOU CAN RECEIVE FASTER THAN REAL TIME IS THE FIBEROPTIC PORT.

SO BURST HAS THESE ADDITIONAL STRUCTURES WHICH WE DISAGREE WITH, MICROWAVE SATELLITE TRANSCEIVER. THE MICROWAVE TRANSCEIVER IS NOT IN THE '995 PATENT AS WE TALKED ABOUT, ALSO NEITHER OF THESE PORTS ARE TIED TO ANY KIND OF DATA RATE, SO YOU JUST CAN'T TELL WHETHER OR NOT THEY CAN RECEIVE COMPRESSED REPRESENTATION BECAUSE YOU DON'T KNOW IF THEY CAN RECEIVE IT FASTER THAN REAL TIME.

AND WITH THE '932 PATENT WE HAVE SOMEWHAT DIFFERENT ISSUES, AND THIS IS A FILE WRAPPER ESTOPPEL ISSUE, BECAUSE DURING PROSECUTION OF THE '932 PATENT THEY, BURST, EXPRESSLY DISCLAIMED COVERAGE OF ANYTHING BUT MICROWAVE TRANSCEIVER MEANS.

AND YOU CAN SEE THIS HERE THEY CANCELED ALL THE CLAIMS IN THE PATENT IN RESPONSE TO A REJECTION, ADDED NEW CLAIMS, EXCUSE ME, AND EXPRESSLY SAID THAT THESE CLAIMS HAVE THE ABILITY TO RECEIVE AUDIO/VIDEO SOURCE INFORMATION OVER THE MICROWAVE LINK.

AND THEY SAID THAT REPEATEDLY MAKING CLEAR THAT ALL THE CLAIMS THAT WE'RE NOW TALKING ABOUT IN THIS CASE ARE ABOUT MICROWAVE TRANSCEIVER. SO THE POINT HERE THE '932 PATENT HAS BEEN LIMITED BY DISCLAIMER DURING THE FILE HISTORY TO MICROWAVE.

AT THE SAME TIME THEY MADE THOSE AMENDMENTS AND HID

THOSE STATEMENTS THEY AMENDED THE TITLE OF THE PATENT. THIS IS IN THE SAME AMENDMENT AND THIS WAS THE TITLE CHOSEN BY BURST, AUDIO/VIDEO TRANSCEIVER APPARATUS INCLUDING COMPRESSION MEANS, RANDOM ACCESS STORAGE MEANS, MICROWAVE TRANSCEIVERS MEANS.

SO, AND IN OUR VIEW THERE WAS A FILE WRAPPER ESTOPPEL FOR THE '932, ALL THE CLAIM SHOULD BE LIMITED TO MICROWAVE.

GOING ONTO OUTPUT MEANS, THESE ISSUES ARE REALLY PRETTY SIMILAR IN A LOT OF WAYS. YOU CAN SEE THE STRUCTURES THAT WE DISAGREE WITH ON THE RIGHT SIDE HERE. THE REASONING IS LARGELY SIMILAR, IF YOU'RE TALKING ABOUT TRANSMITTING TIME-COMPRESSED YOU HAVE TO HAVE SOME SORT OF DATA RATE ASSOCIATED WITH IT.

BURST ADDS AUXILIARY DIGITAL INPUT OUTPUT PORT SATELLITE TRANSCEIVER, THERE NO DISCLOSURE THAT THE MICROWAVE SATELLITE TRANSCEIVER FROM '995, NO TIE INTO THE -- TO A DATA RATE.

ALSO, THE POINT TO THIS AUXILIARY DIGITAL INPUT AS AN OUTPUT, THIS IS EXACTLY THE SAME ISSUE WE HAD WITH TRANSMISSION, WHETHER AN INPUT CAN BE A CORRESPONDING STRUCTURE.

FOR AN OUTPUT, AGAIN, THERE'S NO DISCLOSURE OF THAT INPUT ACTUALLY BEING AN OUTPUT ANYWHERE. THIS SHOWS HOW IN THE CONTINUATION IN PART APPLICATION, THE '932 APPLICATION THERE WAS A LOT OF MATERIAL ABOUT MICROWAVE SATELLITE NOT PRESENT IN THE '995, THAT'S WHY THERE'S A DIFFERENCE BETWEEN THE

CORRESPONDING STRUCTURE OF THE '995 AND '932 PATENT.

THAT'S IT, YOUR HONOR. I HOPE THAT WAS COMPRESSED ENOUGH FOR YOU.

THE COURT: I'M NOT SURE HOW IT WILL COME OUT IN REAL TIME OR ANYTHING ELSE. WE'LL SEE HOW IT COMES OUT. I THINK, IT WAS APPLE THAT WAS USING THE MODERN DICTIONARY OF ELECTRONICS SOMETIMES IN ITS --

MR. FOLSE: YES, YOUR HONOR.

THE COURT: -- TO ASSIST IN THIS EFFORT. AND WITH RESPECT TO INPUT DEVICES THAT ARE LISTED IN THAT DICTIONARY, COULD THOSE DEVICES PERFORM ALL OF THE FUNCTIONS THAT ARE DESCRIBED IN THE PATENT?

MR. STEPHENS: LET ME TAKE A LOOK, YOUR HONOR.

MR. FOLSE: WHILE MR. STEPHENS IS LOOKING, IT DOES OCCUR TO ME THAT WE HAVE IN THE COURTROOM MR. HALPERN AND DR. HEMAMI.

THE COURT: I KNOW THAT.

MR. FOLSE: CERTAINLY ADDRESS QUESTIONS.

THE COURT: I'M TRYING TO SHORT CIRCUIT ALL OF THIS.

MR. FOLSE: OKAY.

THE COURT: RIGHT NOW. IT'S IN THEIR PAPERS, SO.

MR. FOLSE: WE CITED IT FOR BURST TRANSMISSION AND I NOW HAVE THE DEFINITION HERE. I THOUGHT I DID. SO WE CITED IT FOR BURST, BUT NOT FOR INPUT, SO I DON'T HAVE IN OUR PAPERS, AT LEAST, THE DEFINITION FOR INPUT.

THE COURT: OKAY.

MR. STEPHENS: IT MAY HAVE BEEN CITED IN BURST'S MATERIALS FOR OUTPUT.

THE COURT: EITHER DR. HEMAMI -- AND I'M GOING TO ASK ONE OF YOU, I'M GOING TO ASK BOTH OF YOU, DO YOU KNOW THE ANSWER TO THAT?

DR. HEMANI: I'M GOING TO ASK TO YOU REPEAT THE QUESTION?

THE COURT: WITH RESPECT TO INPUT DEVISES, THERE IS A LIST OF THEM THAT WAS CITED BY SOMEONE.

MR. HEIM: IT'S EXHIBIT 17.

THE COURT: THAT ARE LISTED IN THE MODERN DICTIONARY OF ELECTRONICS. MY QUESTION IS, COULD ALL OF THOSE DEVICES THAT ARE INCLUDED IN THAT DEFINITION PERFORM THE FUNCTIONS DESCRIBED IN THE CLAIMS?

MR. STEPHENS: I FOUND IT IN BURST'S BRIEF WHERE THEY REFERRED TERMINALS JACK OR RECEPTACLE, IS THAT WHAT YOU'RE REFERRING TO?

THE COURT: YES.

MR. STEPHENS: I THINK, THE ANSWER TO THAT DEPENDS. A JACK, OR TERMINAL, OR RECEPTACLE, SEEMS, YOU KNOW, MAY OR MAY NOT BE SOMETHING YOU CAN PLUG A FIBER INTO. FIBER IS THE ONLY DISCLOSED MEDIUM IN THE PATENT FOR TRANSMITTING FASTER THAN REAL TIME, SO YOU WOULD NEED SOME SORT OF THING YOU COULD PLUG THE FIBER INTO AND IT'S NOT CLEAR TO ME WHETHER THOSE WORDS

WOULD INCLUDE THAT.

THE COURT: MR. HALPERN, WHAT IS YOUR -- DO YOU AGREE WITH WHAT HE JUST SAID?

MR. HALPERN: YOUR HONOR, I AGREE WITH WHAT HE SAID. I WOULD GO FURTHER THAN THAT. EVEN FOR ELECTRICAL SIGNAL TO BE ABLE TO RECEIVE, FOR EXAMPLE, AN UNCOMPRESSED AUDIO AND VIDEO SIGNAL, I NEED ONE THAT HAD QUITE A BIT OF CAPACITY, AND THERE WERE RELATIVELY FEW ELECTRICAL CONNECTIONS, NONE AT ALL, A TELEVISION CONNECTION WORD.

BUT RS 232 PORT, FOR EXAMPLE, WHICH WAS ANOTHER KIND OF PORT AVAILABLE AT THAT TIME COULD NOT SEND AN UNCOMPRESSED VIDEO SIGNAL, FOR EXAMPLE, AS AN IMPORT, COULD NOT ACCEPT SUCH A THING OR TRANSMITTING.

SO THE EXACT QUESTION OF WHAT KIND OF STRUCTURE YOU NEED AND WHAT WOULD BE GOOD ENOUGH TO MEET THE REQUIREMENTS OF THE DIFFERENT ASPECTS OF THE CLAIM I COULDN'T JUST TAKE THIS AND SAY IF I DID THAT IT WOULD WORK, OBVIOUSLY, NOT.

THE COURT: YOU CAN'T SAY YOU TAKE ANY ONE OF THESE OR THESE IN PARTICULARITY WOULD WORK?

MR. HALPERN: I WOULD NEED SOMETHING MUCH MORE SPECIFIC, SOME SPECIFIC SUB-SET THAT WAS GOOD ENOUGH. JUST EVERYTHING THAT MEETS THIS DEFINITION HERE ELECTRICAL JACK, THERE'S A LOT OF ELECTRICAL JACKS IN DIFFERENT KINDS THAT WERE USED AT THAT TIME.

THE COURT: DR. HEMAMI, DO YOU UNDERSTAND MY QUESTION

AND WHAT IS YOUR RESPONSE TO THAT?

DR. HEMANI: YES, YOUR HONOR. I THINK, I UNDERSTAND YOUR QUESTION AND I THINK I WOULD ALSO ANSWER A LITTLE BIT DIFFERENTLY.

AS ONE OF ORDINARY SKILL TO ME, AND YOU POINTED OUT THAT IT'S NOT JUST ANY RANDOM INPUT, IT'S AUDIO/VIDEO SOURCE INFORMATION, IT'S COMPRESSED OR IT'S UNCOMPRESSED, AND THE FACT THAT I KNOW THIS MEANS THAT I CAN IMMEDIATELY PICK UP WHICH INPUT PORTS ARE GOING TO BE RELEVANT THAT I WOULD BE ABLE TO USE.

I COULD GO TO FRY'S AND IMMEDIATELY LOOK AT THINGS AND SAY THESE ARE NOT IN THE CLASSES THAT I WOULD USE AND THESE ARE. ETHERNET AND RS 449 WERE TWO EXAMPLES AT THE TIME FOR THE AUXILIARY DIGITAL PORT THAT WE COULD CERTAINLY ACHIEVE THE FASTER THAN REAL TIME TRANSMISSION.

SO IT'S NOT EVERY INPUT UNDER THE SUN, BUT WHEN WE LIMIT IT TO THE CLASS OF INPUT THAT WE'RE DEALING WITH HERE, THE INFORMATION AND WHAT WE WANTED TO DO WITH IT, I THINK, IT IS CLEAR THAT THIS IS DESCRIPTIVE, I WOULD KNOW WHAT TO SELECT.

THE COURT: COULD USING THE DICTIONARY, THE MODERN DICTIONARY OF ELECTRONICS, USING THAT AS A GUIDE, FOR EXAMPLE, AND THE DEVICES THAT ARE LISTED THERE, ITEMS THAT ARE LISTED THERE, COULD ONE OF ORDINARY SKILL IN THE ART PICK OUT FROM THAT THE DEVICES THAT WOULD, IN FACT, PERFORM THESE FUNCTIONS?

DR. HEMANI: YES, I BELIEVE ONE OF ORDINARY SKILL

COULD DO SUCH A THING.

THE COURT: OKAY. THAT IS IT.

MR. STEPHENS: IF I MAY, I NEGLECTED TO -- I'M NOT GOING TO MAKE ANYMORE ARGUMENT.

THE COURT: NO, WE'RE GOING TO FINISH THIS NOW. IT'S QUARTER TO 5:00, THIS GENTLEMAN HAS BEEN AT IT ALL DAY. HIS FINGERS ARE TIRED, HIS BRAIN IS RATTLED AND MAYBE ALL OF US ARE TIRED.

MR. STEPHENS: I WANT TO HAND-OUT THE DOCUMENT, I DON'T WANT TO TALK ABOUT IT AT ALL.

THE COURT: FINE, AS LONG AS YOU SHOW IT TO OPPOSING COUNSEL, WHAT I DO IT WITH IS ANOTHER MATTER.

MR. STEPHENS: UNDERSTOOD.

THE COURT: I DON'T KNOW WHETHER YOU HAVE ANOTHER DATE IN THIS CASE, I SORT OF FORGOTTEN THE SCHEDULE, BUT I WILL TRY TO GET AN ORDER OUT RELATIVELY SOON AND THEN FIGURE OUT WHERE TO GO FROM THERE, I GATHER.

MR. POWERS: TWO MINOR HOUSEKEEPING MATTER. WITH REGARD TO THE SUMMARY JUDGMENT MOTION YOU SAID YOU WERE GOING TO SET THAT DATE TODAY.

THE COURT: DID I SAY THAT? THAT'S SUMMARY, TO BE HONEST I HAVEN'T EVEN LOOKED AT THE SUMMARY JUDGMENT MOTION. I DECIDED I DIDN'T WANT TO BE DISTRACTED BY ACCUSED DEVICES AND OTHER POSSIBLE THINGS THAT WERE NOT RELEVANT TO DECIDING THIS, ALBEIT ULTIMATELY ONE HAS TO DECIDE THAT DOWN THE ROAD.

MR. FOLSE: SPEAKING WHAT MAY OR MAY NOT BE RELEVANT, I HAVE A QUESTION ABOUT THIS DOCUMENT. MAYBE I'M TOO MUCH OF A LAWYER, MR. STEPHENS JUST SHOVELED UP WHETHER THAT IS ALREADY IN THE MARKMAN RECORD OR NOT.

MR. STEPHENS: YOUR HONOR, IT'S NOT, THIS IS AN EXHIBIT TO THE DEPOSITION OF MR. LANG THAT --

MR. FOLSE: I WOULD OBJECT TO ITS RECEIPT.

MR. STEPHENS: MAY I FINISH, PLEASE, WE HAVE A MOTION PREPARED, YOUR HONOR, SUPPLEMENTAL SUBMISSION TO PROVIDE TO YOUR HONOR. BOTH THOSE TRANSCRIPTS AND THIS EXHIBIT SINCE THAT DEPOSITION WAS NOT MADE AVAILABLE TO US UNTIL AFTER THE BRIEFING WAS COMPLETED.

THE COURT: THAT'S IN CONNECTION WITH, THIS IS IN CONNECTION WITH THE CLAIM CONSTRUCTION?

MR. STEPHENS: THIS DOCUMENT SHOWS THERE WAS NO KNOWN COMPRESSION CHIP.

THE COURT: NO, THIS IS IN CONNECTION WITH THE CLAIM CONSTRUCTION?

MR. STEPHENS: YES, MA'AM.

MR. FOLSE: THIS RECORD HAS BEEN MADE FOR SOME TIME, IF WE'RE GOING TO BE TALKING ABOUT REOPENING IT, IT OUGHT TO BE A TWO-WAY STREET.

THE COURT: THAT'S WHAT I'M AFRAID OF.

MR. POWERS: WE SHOULD HAVE BEEN ALLOWED TO DEPOSE THE INVENTOR BEFORE THE MARKMAN, WE COULDN'T.

THE COURT: I THINK, YOU HAVE TO TOSS IT WITH THAT DEGREE OF --

MR. HEIM: I'M SORRY.

MR. POWERS: WE DIDN'T COMPLAIN ABOUT THAT.

MR. FOLSE: I SHOULD TAKE IT BACK.

MR. POWERS: SEEMS TO ME NORMALLY THE COURT HAS THE BENEFIT OF THE INVENTOR'S THOUGHT ABOUT CLAIM CONSTRUCTION, AND WE REFERRED TO THE INVENTOR'S DEPOSITION IN THE PROCEEDING, SO WE THOUGHT IT PRUDENT TO SUBMIT THE INVENTOR'S DEPOSITION TO YOU. IT SEEMS A BIT CHURLISH TO DENY US THE INVENTOR'S DEPOSITION UNTIL AFTER MARKMAN BRIEFING, THEN TO OBJECT TO ITS SUBMISSION TO YOU.

THE COURT: HOW DID IT HAPPEN?

MR. FOLSE: THERE'S SOME HISTORY TO THIS THAT'S WORTH LEARNING ABOUT. AND IN, BY THE WAY, THE REFERENCES TO THE INVENTOR'S DEPOSITION, MR. POWERS' PRESENTATION WERE JUST AS OBJECTIONABLE, HE SHOWED YOU SOME SLIDES OF DOCUMENTS THAT ARE NOT IN THE MARKMAN RECORD THAT ARE NOW IN FRONT OF THE COURT.

IN THESE SLIDES WITHOUT ADVANCE WARNING TO US, WITHOUT AN OPPORTUNITY FOR US TO ADDRESS IT BECAUSE THERE WAS NO REBUTTAL TO WHAT MR. POWERS SAID. THE DEPOSITION WAS SCHEDULED AT A TIME WHEN WE ALREADY HAD THE MARKMAN SCHEDULE IN PLACE AND THE DEPOSITION WAS SET TO ACCOMMODATE THE SCHEDULES OF A WHOLE BUNCH OF PEOPLE, NOT THE LEAST OF WHICH WAS MR. LANG.

THE ORIGINAL DATE WAS PUT OFF BECAUSE HIS FATHER HAD

SERIOUS HEART TROUBLE AND HE FLEW TO LAS VEGAS TO BE WITH HIS MOTHER. FATHER IN THE HOSPITAL FOR A PERIOD OF SEVERAL DAYS, THAT WAS THE REASON WHY THE DEPOSITION WAS POSTPONED.

IT'S UP TO APPLE IF THEY WANTED BECAUSE IT DELAY IN TAKING MR. LANG'S DEPOSITION TO RAISE IT FIRST WITH US AND THEN WITH THE COURT WHETHER THAT SHOULD JUSTIFY SUPPLEMENTAL BRIEFING.

THE COURT: I TELL YOU WHAT I'M GOING TO DO.

MR. FOLSE: NONE OF THAT HAPPENED.

THE COURT: I HATE TO HEAR THIS KIND OF STUFF, I JUST HATE IT AND IT COMES UP MORE IN PATENT CASES THEN ANY OTHER CASES.

MR. FOLSE: ALL I'M SAYING, THE FIRST I HEARD ABOUT THIS.

THE COURT: I WILL GIVE YOU GIVE ALL A CHANCE TO RESPOND TO THIS WITH APPROPRIATE EXCERPTS OF MR. LANG'S DEPOSITION, LANG'S DEPOSITION AND DOCUMENTS RELATED THERETO, BUT ONLY INSOFAR AS RELATES TO THE DOCUMENTS THAT'S BEEN HANDED UP.

MR. FOLSE: VERY WELL.

THE COURT: OKAY

MR. POWERS: MAY WE SUBMIT MR. LANG'S DEPOSITION TO YOU?

THE COURT: NO, THAT'S ENOUGH. JUST THE EXCERPTS RELATED TO THIS. I WANT THE WHOLE DEPOSITION I'LL LET YOU

KNOW.

MR. FOLSE: THANK YOU.

THE COURT: THEN THE MOTION FOR SUMMARY JUDGMENT IS PREMISED ON WHAT?

MR. POWERS: TWO ISSUES. ONE IS INVALIDITY AND ONE IS NON-INFRINGEMENT.

THE COURT: INVALIDITY IS BASED UPON?

MR. POWERS: INVALIDITY IS BASED ON PRIOR ART, WHICH IF THEIR CONSTRUCTION IS ADOPTED IT'S CLEARLY INVALID. NON-INFRINGEMENT IS BASED ON OUR CONSTRUCTION OF TIME COMPRESSION.

THE COURT: OF WHAT?

MR. BROWN: TIME COMPRESSION.

THE COURT: LACK OF ENABLEMENT?

MR. POWERS: NON-INFRINGEMENT. THAT IF OUR CONSTRUCTION OF TIME COMPRESSION IS ADOPTED CLEARLY NOT INFRINGEMENT, IF THEIR CONSTRUCTIONS ARE ADOPTED ON VARIOUS ISSUES THE CLAIMS ARE CLEARLY INVALID. THAT'S THE ESSENCE OF THOSE TWO MOTIONS.

MR. FOLSE: THE REASON WE THOUGHT THEN AND THINK NOW THAT THE MOTION SHOULD BE PUT OFF WAS BECAUSE UNTIL WE KNOW WHAT THE COURT'S RULING WILL BE ON THESE CLAIM CONSTRUCTION PRINCIPLES, ONE OR BOTH OF THESE MOTIONS COULD BE RENDERED MOOT.

AND, I THINK, WHAT APPLE HAS DONE BY PUTTING THESE

MOTIONS IN FRONT OF THE COURT IS AN ATTEMPT TO INFLUENCE THE COURT'S CLAIM CONSTRUCTION BASED --

THE COURT: WHAT DO YOU MEAN THE SUMMARY JUDGMENT MOTION?

MR. FOLSE: YES.

THE COURT: I HAVE NOT TAKEN A SINGLE LOOK.

MR. FOLSE: I UNDERSTAND THAT.

THE COURT: BELIEVE ME IT'S NOT -- IT'S NOT A MOTION I CALENDARED, I'M NOT SPENDING MY TIME ON THE WEEKEND AND ANY OTHER TIME TAKING A LOOK AT THINGS I DON'T HAVE TO LOOK AT.

MR. FOLSE: I THINK, OUR PROPOSAL 30 DAYS AFTER THE COURT ISSUES THE RULING, IF IT'S STILL NECESSARY TO RESPOND TO IT. RATHER THAN TRYING TO PICK AN EXACT DATE AT THIS POINT, WE DON'T KNOW WHAT TIME WILL BE REQUIRED FOR THE COURT.

THE COURT: HOW LONG WILL IT PREPARE -- TAKE YOU TO PREPARE YOUR OPPOSITION? I GATHER, YOU GOT ALL OF YOUR INITIAL BRIEFING IN?

MR. POWERS: YES, THE INITIAL BRIEFING WAS FILED A MONTH AGO.

MR. FOLSE: THE NATURE OF THE OPPOSITION SOME OF IT IS QUITE -- DEPEND WHAT THE COURT, IN FACT, PROBABLY WILL DEPEND WHAT THE COURT RULES ON THESE MATTERS ARGUED HERE TODAY. AND WE WON'T WANT TO CHANCE --

THE COURT: 30 DAYS, HOW MUCH TIME TO RESPOND?

MR. POWERS: TWO WEEKS.

THE COURT: OKAY. SO 30 DAYS FROM THE DATE OF THE FILING OF THE ORDER BECAUSE EVERYTHING GETS FILED YOU CAN PICK IT UP IMMEDIATELY, AND I UNDERSTAND YOU GOT SOMETHING THAT COMES ON YOUR E-MAIL AND TELLS YOU GOT LIKE WHAT I GET FROM THE NINTH CIRCUIT, THEY LET ME KNOW WHAT THEY'VE DONE TO ME.

MR. POWERS: WE THINK IT SORT OF LIKE PAVLOV'S DOGS SORT OF LINK A SEPARATE QUESTION.

THE COURT: AND THEN TWO WEEKS FOR THE REPLY AND THEN APPROXIMATELY TWO WEEKS LATER, BUT I DON'T KNOW WHETHER WE'LL DO THEM ON A MONDAY, WE MAY. I THINK WE SHOULD PROBABLY ESPECIALLY SET IT. SO LET'S SEE WHEN THEY COME IN WE CAN SET A DATE, IT BE EITHER A MORNING OR AFTERNOON DEPENDING ON MY TRIAL CALENDAR, BUT IT WON'T BE ON A MONDAY.

I THINK, BETTER MAKE A NOTE NOT TO PUT IT ON THE MONDAY CALENDAR BECAUSE WE HAVE TOO MANY OTHER THINGS ON MONDAY CALENDAR TO ACCOMMODATE THIS. OKAY.

MR. POWERS: THANK YOU.

MR. FOLSE: THANK YOU.

(PROCEEDINGS ADJOURNED.)

CERTIFICATE OF REPORTER

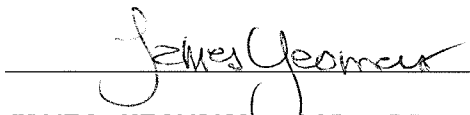
I, THE UNDERSIGNED, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS WERE REPORTED BY ME, A CERTIFIED SHORTHAND REPORTER, AND WERE THEREAFTER TRANSCRIBED UNDER MY DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS.

I FURTHER CERTIFY THAT I AM NOT OF COUNSEL OR ATTORNEY FOR EITHER OR ANY OF THE PARTIES IN THE FOREGOING PROCEEDINGS AND CAPTION NAMED, OR IN ANY WAY INTERESTED IN THE OUTCOME OF THE CAUSE NAMED IN SAID CAPTION.

THE FEE CHARGED AND THE PAGE FORMAT FOR THE TRANSCRIPT CONFORM TO THE REGULATIONS OF THE JUDICIAL CONFERENCE.

FURTHERMORE, I CERTIFY THE INVOICE DOES NOT CONTAIN CHARGES FOR THE SALARIED COURT REPORTER'S CERTIFICATION PAGE.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND THIS 5TH DAY OF MARCH, 2007.



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