

Arrived at 8:57am Day 6 - Last Day.

(some attorney left a pile of docs, open next to me, I'm busily ignoring them).  
where I set down → I want it gone

Patterned Bowtie on the Judge. 9-12, 1-4

Chris - Sealing issues M.S.

2366, 2370, 2374, 2372, 2377 - New redacted versions.

Brenner also has material for the court.

provisionally seal this list of exhibits. Long list of docs of 60 docs from MS. RIM, QCOM, Nokia, Sony, Samsung.

Samsung - currently saving not waiting stuff for the record.

Alert/Remind court that there will be periods of closed courtroom.

Ideally do this in 2 blocks.

Walecki/Danski then Danaher sealed session.

Letter re XBOX from main MS author.

2 Motions - 585 - Evesh subpoena of MRCORVANA - structure as moot - 7  
581 - case of rotated data - structure

→ Done get it?

Going through 3 key factors.

5082 Graph of licensed product revenues.

Projected out to 2017.

↳ Plus revenues related to XBOX wireless adapter and the sales under from XBOX Surface.

\$37.4 Bn → sales XBOX, looks like \$7 Bn to date.

\$57.4 Bn Surface Projected.

2466 → baseline data.

2467 → Schedule 7.3.1 of report - Not published at MS Attorney request,

2468 → but appeared briefly.

→ Surface projections.

Skip over XBOX accessories/sealed.

Doks described Marvel's portfolio being valuable, and giving royalty free cross license.

MS's 802.11 patents.

Patents. MT wouldn't get much at all by comparison.

MS would derive sig value from MT's

5085 MT ~~802.11~~ H.264 → slide of not published

4572 Report by BAC on using 360 with video. There challenges regarding the types of codes available. MS has crippled the playback functions so it only comes from Windows Media Center.

2515 - Tech crunch report. H.264 moved to 66% of video by 2010?

Another doc - what is H.264 and how is it used.

2794 - 2011 H.264 most widely used, W7, Android most new devices.

P.1.



2718 - Media Post publication. on how people use tablets.  
Primary activity is watching video.

5086 Value of Interlaced Video.

WMLG - maintaining interlaced is of increasing importance in the streaming world.

2249 VC-1 codec widely used in TV broadcast.

2724 Y2007 - CNET - Xbox 360 H.264 in Xbox puts it at head of PS3/Apple TV bundle.

Y2012 - JVT document. Large broadcasters saying: remeas Ubiquitous.  
Everywhere in TV infrastructure.

Witnesses said: not valuable but doesn't match what has been said/ actions, about what MS does.

2342 - We all understand it's moving to progressive, but so much out there (and equipment). Indicate some

3448 - Letter from Mr. Flannigan to court last night.

Del Cestero determined, he was wrong, IE on Xbox will play interlaced, after Drabit's testimony to the contrary.  
↳ as one expects.

me → I would hope they do the same for Orchard CCE too, though he did not recall.

MS Not an expert on a bunch of stuff from a technical perspective.

Cross And not an expert... No ~~text~~ expert on standards setting/working on stds.

5080 - WiFi and Xbox market share → More ~~next~~ slides not published.

Xbox 360 WiFi not only change.

↳ Don't know if new games. Kinect not available until Nov.

Seemed to make no change. June - Nov big increase in market share. Kinect had impact later.

Increase not solely WiFi. - MS expected WiFi to have a presence on sales.

There are other standards owner. 2002 - WiFi into mainstream.

Didn't try and say how much MT patents contribute to 802.11/H.264

Expert on valuing IP. Didn't do it for this case / Place price tag on things.

Kurt Dreyer - Main MT Lawyer this time.

Dalley at Google head of Patent transactions

Sept 2012 - previously at Motorola, corp VP of IP.

↳ I left my coat at Security.

Responsible for licensing, etc. Run business since Oct 2006.

First became involved with MT in 1991.

MT is a product company - in the business of selling set top boxes, phones, tablets.

Involved with 802.11 cellular, cable boxes.

20 years ~~25~~ 50B in R&D. 10 years ~~30~~ 30B last 10 Home SB → smartphone?

Involved in all cellular/wireless. H.264

examples of stds MT isn't in, China's stds. MT needed to declare them all RAND at the time else Royalty Free.

all ~~all~~ or just std RAND.



Worship RAND/FRAND to care about here. -2839.

LOAs for MT for IEEE on 802.11.

"Agreed to grant license" Never been told by IEEE that they haven't complied

2835 similar for ITU/H.264. Agreeing to grant license  
Tickbox on reciprocity, on same terms for some stds.  
Common in all of his experience with product businesses.

Aware that MS asserts breach of license.

1  
2 → letters to MS offering 802.11, H.264 licenses.

Invited by MS to put patents on the table. Refers to 2.25% per unit.  
2.25% is std opening offer for 802.11/H.264. Why is it std, it's  
historical. In cellular had \$9 per unit for 2000 ish<sup>CD</sup> phones,  
as prices dropped converted to % MSP.

3 areas. - core wireless, core video - use 2.25%, std since mid 90s.

Negotiating parties use MSP pricing, since it's an easy way to check royalty  
payments. MT also pays many on % MSP. It's standard 2.25% standard.

2. H.264 2.25% again, subject to reciprocal grantback.

In the midst of conversation with MS, so they could negotiate - MS asked for info  
and got letters, filed complaint of breach. They heard battle that it was  
negotiation, object to settlement discussions, and inappropriate rule 408,  
and relevance. Settlement discussions don't have relevance, rule 408?

Also shouldn't hear about offers/counter offers.

In limine rulings<sup>108</sup> has a focus, not est. liability / amount  
Some has kind of terms. The nature of the way negotiations proceed.

Important to understand that normal negotiations proceed.  
Documents has specific proposals, if we get into it will be current negotiations.

"Don't think I asked for response" Sustain in part, overrule in part.  
will allow to establish context. will look at Docs one by one.

Oct 2010 - did you continue to have negotiations. As many as several dozen.  
Term sheets contained which patents/products, financial, Defensive suspension,  
change of control. etc

→ Financial terms included cap, payment terms, were cross licenses.  
up until past weekend.

In your experience up to 2 years. Renewals typically shorter 6-12 months.  
LIC key teams tech experts, legal people, financial experts, ~~total~~ negotiators.

You need to discuss lots of complex things.

Negotiated dozens and dozens, all bilateral none 2 people 1 day over table.  
All with product companies are cross licensed want to make sure they  
can build some products. Licenses, often have non-monetary comp. Def  
Suspension, product purchase commitments, cross license,

→ If customer gives, then pass through license is suspended i.e. lets you use  
patents defensively. These are very common.



Doing unsealed cross now, but MS wants to defer cross as it'll be very difficult, so doing it in secret bit.

Ended at about 10:00 looks like lots of people left. I picked up my coat from security. There are power sockets towards the ~~court~~ Judge's chambers.

10:27 or so they take the 15 minute break.

There's a weird amount of traffic for a sealed court room, or so it seems. 2:00pm or so we think it's back in session.

Rebuttal case  
Dr. Matthew Lyne - Finally back on the public record.

Demonstrative of expected expirations of MT patents for 2011.

Donaho wanted percentage royalty - not really clear. Having 90 royalty with patents expiration is all that makes sense.

Taken grant back into a grant back. Doing MS cross license/grant back using pool calculations.

4096 → not available on paper for some reason.

	Per unit to MS	Per unit to MS	MS AP	MT Annual	Net Payment
As if MT pool	0.187	1.12	\$502k	248k	254k
MT + other Patents	0.185	1.05	\$471k	231k	243k
Rates +10%	0.204	1.15	\$521k	254k	267k

↳ 70 MT      ↳ From MT to MS.  
MPEG-L4 Pool

This is sticking grant back in, is this all ~~802k~~ pool to 264 patents?  
Idea is that MT doesn't ship many VHS.

11@2 - write paper.

4097 - RAND Royalties based on Uia.

	Per unit to MS	Per unit to MT	MS Annual	MT Annual	Net Payment
Current Rates	\$0.0515	\$0.0045	736k	97k	639k
+20% Rate	\$0.0645	\$0.0056	920k	121k	799k

↑ TO MT FROM MS      ↑ TO MS FROM MT

↳ as before max pool rate increase.

Did MS include their patents in total pool #s and re calc?

6 years of past Patent damages → MS CROSS.

"can't watch two minutes of football without a surface advertisement" → shared lead.  
"my teams aren't doing that well I'm afraid"

Economists have  
out of time

4099 - 2010 column. XBRX 5 June 2010.

No more MS witness Rest.  
Not withstanding Rest.



## Post trial Briefs.

should know - not bound by what already submitted. (Not sure what it is).  
change staff. Got quiet.

Will accept Fri Dec 14 2012 - as hard deadline.

Mr. Pepe.

Page limits ~~22~~? got quiet.  
24

As a separate document (not counting 24) things popped out despite not being discussed before.

Some Google license (MPEG-LA?) upto 10 pages of briefing with factual back ground. + AVC agreement. What impact does Google MPEG-LA language would pick up MT or not, and its significance.  
H264.

in the 24 pages  
Don't feel well advised re legal basis for high/low range in a contract negotiation.  
Done best to put words in wit's mouths but all resisted.  
No choice of Law issue since you all cited with law.  
CROSS out 3rd area - opening bids.  
Checking with Clerk.

3rd/4th Lastly advise us why plant <sup>plant</sup> ex 16 is sealed. Manual didn't cure. MT thought covered. Court may unseal

Mr. Namigan - not here.

Mr. Jenner - hoping for more guidance.

Is a high 3x highest rate? > How does the law require it.  
Low end?

Under submission.

Staff will shift staff at Pam Trow.