

**Using Technology to Convince -- And Not Distract -- a Judge and Jury**  
**Utah Federal Bar**  
**Salt Lake City    April 18, 2013    David Nuffer**

This outline (with live links) and the accompanying PowerPoint presentation are both found at  
[http://www.utd.uscourts.gov/judges/nuffer\\_resources.htm#Continuing](http://www.utd.uscourts.gov/judges/nuffer_resources.htm#Continuing)

## **Goals as an Educator**

Content, delivered well, which engages

## **Barriers to Engagement**

Time Pressure, Distractions, Prior experience – or inexperience, Skepticism

## **Opportunities to Persuade**

Writing, Hearings, Trial

## **Goals of Written Submissions**

Excellent content, delivery and engagement:

- No sense of time pressure – “it’s not difficult”
- No distractions
- Information, to overcome listener’s prior experience – or inexperience
- Credibility, to overcome skepticism

## **Technology in Writing**

### **1. Finished PDF document must be entirely text-based to facilitate searching, copying, highlighting**

Computer created documents can be output to PDF, but all scanned documents must have text recognition through Optical Character Recognition (OCR). A [text based PDF](#) can be word-searched, highlighted as read, and copied into an order.

### **2. Begin with an outline that becomes a Table of Contents.**

The outline feature is built in to all word processors, and the table of contents will survive the conversion to PDF format. [Outline in MS Word.](#)

### **3. Create a List of Exhibits**

An exhibit list included with the memorandum (as a separate attachment) helps locate exhibits. The importance of exhibits is clarified if the exhibit list includes pages on which references to exhibits are made.

INDEX		
<u>Exhibit</u>		<u>Page</u>
<b>Exhibit “1”</b>	Declaration of Stephen Batzer Ph.D., P.E.	4-14, 16-18, 32, 34
<b>Exhibit “2”</b>	Novatek Drawing No. NFP-NP-0199 (release date 7/8/2010), Ex. 9 David Hall deposition.	4, 6-14, 16, 17
<b>Exhibit “3”</b>	Novatek Drawing No. NFP-NP-0211 (release date 8/17/2010), Ex. 19 David Hall deposition.	4, 6-14, 16, 17
<b>Exhibit “4”</b>	Exhibit A to Sollami Disclosure of Asserted Claims and Infringement Contentions [Doc. No 37].	4-13
<b>Exhibit “5”</b>	Exhibit B to Sollami Disclosure of Asserted Claims and Infringement Contentions [Doc. No 37].	4-13
<b>Exhibit “6”</b>	Exhibit C to Sollami Disclosure of Asserted Claims and Infringement Contentions [Doc. No 37].	4-13
<b>Exhibit “7”</b>	Counter Affidavit of Stephen Batzer Ph.D., P.E.	16, 17, 18, 19, 30, 31
<b>Exhibit “8”</b>	Patent No. US. D566,137 (“137 Patent”).	18
<b>Exhibit “9”</b>	Patent No. US. 8,118,371 (“371 Patent”).	19

**4. Use Photos and Diagrams**

Graphics clarify the written discussion. This is particularly true if tangible objects are at issue, such as in patent cases.

**5. Use Permissible Hyperlinks**

Hyperlinks may be internal to the document, such as table of contents; or to the filing, such as to exhibits filed simultaneously; or to the record, to other documents already filed in the case. [See DUCivR 7-5](#). See also [http://www.utd.uscourts.gov/judges/nuffer\\_resources.htm#E-Research](http://www.utd.uscourts.gov/judges/nuffer_resources.htm#E-Research).

**6. Attach deposition excerpts and other exhibits in text-based PDF format**

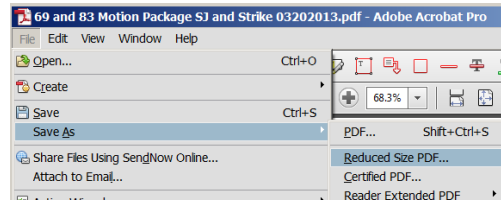
This requires that depositions be output from a word processing or text file provided by the reporter. If the excerpts or exhibits are scanned, Optical Character Recognition must be run to recognize text. [Recognize text in Acrobat X](#).

**7. Attach opinions in single column format (text based)**

West and Lexis allow single-column format downloads of cases, which are much easier to read on an iPad or computer. Make sure the cases you attach are text based PDF documents, which Lexis and Westlaw also allow you to download – or you may convert to PDF from a word processing version. It should never be necessary to scan an opinion for attachment to a brief. Note that if you use research hyperlinks (see no. 5 above) no opinion attachments are needed.

**8. Save As Reduced Size PDF**

As a last step before distribution of any PDF document, reduce its size by using [Save As Reduced Size PDF](#). You may accomplish a 50% or more size reduction.



**9. Attach a proposed order in PDF format – and email it in word processing format to chambers.**

Proposed orders [etc.] shall be (i) prepared as word processing documents; (ii) saved in WordPerfect or Word format, and (iii) transmitted to the assigned judge via email. . . . An additional copy . . . shall be saved as a PDF file and filed electronically as an attachment to the motion . . . [Admin E-Filing Procedures II. G. 1](#).

**10. File attachments individually, with full descriptions**

When filing in CM/ECF, take advantage of the ability to name your exhibits specifically rather than using generic names.

Document Number: <a href="#">26</a>		32 pages	190 kb
Attachment	Description		
<a href="#">1</a>	Appendix Exhibits	1 page	9 kb
<a href="#">2</a>	Exhibit "A"	18 pages	339 kb
<a href="#">3</a>	Exhibit "B"	14 pages	319 kb
<a href="#">4</a>	Exhibit "C"	9 pages	204 kb
<a href="#">5</a>	Exhibit "D"	5 pages	111 kb
<a href="#">6</a>	Exhibit "E"	3 pages	18 kb
<a href="#">7</a>	Exhibit "F"	4 pages	35 kb

Document Number: <a href="#">19</a>		6 pages	17 kb
Attachment	Description		
<a href="#">1</a>	Exhibit 1 - Lawsuits for Asserted Patents	26 pages	97 kb
<a href="#">2</a>	Exhibit 2 - Complaint AT&T, Verizon and EarthLink case	39 pages	1.1 mb
<a href="#">3</a>	Exhibit 3 - Order Severing Claims	5 pages	52 kb
<a href="#">4</a>	Exhibit 4 - Complaint AT&T	19 pages	0.8 mb

## Hearing Goals

Excellent content, delivery and engagement

### 1. Make a great transcript

Use the ideas in [Creating the Best Transcript Possible](http://www.utd.uscourts.gov/judges/nuffer_resources.htm#Continuing) (from [http://www.utd.uscourts.gov/judges/nuffer\\_resources.htm#Continuing](http://www.utd.uscourts.gov/judges/nuffer_resources.htm#Continuing)).

### 2. Consider Real Time Reporting for a client with a disability or language barrier.

### 3. Submit summaries to the court in word processing format

Patent claim construction charts

Discovery dispute summaries

[Deposition designation form](http://www.utd.uscourts.gov/judges/nuffer.html) (from <http://www.utd.uscourts.gov/judges/nuffer.html>)

[Proposed Jury Voir Dire, Instructions and Verdict](http://www.utd.uscourts.gov/judges/nuffer.html) (same as above source)

[Exhibit and Witness Lists](http://www.utd.uscourts.gov/documents/formpage.html) (from <http://www.utd.uscourts.gov/documents/formpage.html>)

### 4. Bring tangible objects

### 5. Use Powerpoint CAREFULLY.

I am usually prepared to pose specific questions to counsel at motion hearings, so counsel should not prepare for conventional argument or repeat contents of memoranda. PowerPoint presentations are usually disfavored because they are pre-determined and linear. If a PowerPoint presentation is proposed, please bring a print of the slides for me to review and evaluate before the hearing.

### 6. Audio Conferencing etiquette

- Use a headset!
- Avoid a speaker phone but if you must use it, mute when not speaking.
- Don't expect to call in on a cell phone as your reception and background noise will interfere with the call. If you must use a cell phone, use a headset and, mute when not speaking.
- Give your name when speaking so the court reporter may identify you.
- Pause regularly when speaking so that the judge may regain control of the hearing.

### 7. Video Conferencing is coming

The courts will soon have multipoint video conferencing available based on [Cisco Jabber Video for TelePresence](http://www.cisco.com). A National Video Conference Bridge will allow video calls from any location using H.323 compliant systems such as Polycom and Tandberg, and from PC, Mac, and iOS devices. Get a web cam enabled device and know how to use it.

## Technology at Trial

**1. Prepare exhibits in text-based PDF format and provide them to the court in advance.**

Remember, if they are scanned, recognize text in them before submission. This will allow the judge and law clerks to search and annotate.

**2. Verify available Courtroom Technology**

Be sure the technology you intend to use is available. (And that you know how to use it!) <http://www.utd.uscourts.gov/documents/CourtroomTechnology.html>

**3. Use a trial presentation assistant**

Trying to question and simultaneously run presentation equipment will frustrate the judge and jury.

**4. Rehearse with a script with exhibit numbers**

Questioning appears more effortless if the attorney and assistant and witness are prepared to work with exhibits.

**5. Consider using Acrobat for exhibit presentation**

Acrobat has zoom, navigation and annotation tools that allow it to be an effective presenter.

**6. Use effective deposition presentation**

A jury is much more engaged by a video deposition with text subtitles. If you must use a reader, find a professional actor. The reader should not be an afterthought.