

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

CLOUDOFCHANGE, LLC * May 18, 2021
 *
VS. * CIVIL ACTION NO. W-19-CV-513
 *
NCR CORPORATION *

BEFORE THE HONORABLE ALAN D ALBRIGHT
JURY TRIAL PROCEEDINGS
Volume 2 of 4

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1 (May 18, 2021, 8:37 a.m.)

2 THE BAILIFF: All rise.

3 THE COURT: Thank you. You may be seated.

4 I understand there's some issues we need to take up.

5 Happy to do it.

6 MR. BARR: Yes, Your Honor.

7 There's an evidentiary issue, and then I think the parties
8 have a few disputes about some slides today.

9 THE COURT: Okay.

10 MR. BARR: So in regard to the evidentiary issue, the
11 Court had granted NCR first set of Motion in Limine No. 5 which
12 kept out any testimony about NCR's overall economic status of
13 the company, company-wide, as opposed to just the product line.

14 Yesterday we believe that Ms. Collings opened the door on
15 NCR Corporation's total revenue in her questioning of
16 Ms. Schoonover, specifically when she was asking Ms. Schoonover
17 about the company-wide enterprise Google license of \$22 million
18 a year. And she got Ms. Schoonover to testify -- and by the
19 way, this is the first time we've heard this in this case --
20 that NCR attributes \$5.4 million of that total license to the
21 NCR Silver product. And I have the testimony here from --

22 THE COURT: I remember. I was listening.

23 MR. BARR: Yes. Since the costs are a hotly debated issue
24 and we've argued that the costs that they're attributing to
25 this product line are overstated, that we believe that we are

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1 deprived of an opportunity to cross-examine on this issue
2 without being able to draw the comparison of the \$22 million --

3 THE COURT: Mr. Barr, you are able to cross-examine on
4 anything that was raised by opposing counsel during her direct
5 of this witness.

6 MR. BARR: Thank you, Your Honor.

7 THE COURT: It's cross-examination. If either side of
8 you -- let me explain something. Here's the way I see the
9 world. If you keep out -- in fact, I'm just going to -- I'm
10 going to pick on this witness just for -- this is a
11 hypothetical. But for example, if this witness had a DWI in
12 her past and I said it doesn't come in, it's not relevant. And
13 you put her on and we got through it. And then the other side
14 on cross says something that makes her answer something and
15 then says, oh, she opened the door by answering it. That's not
16 opening the door in my opinion.

17 However, in the case where you have put on -- it's your
18 motion in limine, and you ask a question that opens the door,
19 that's when I see opening the door.

20 And so in other words, as I've allowed counsel for
21 defendant, Ms. Collings, to ask this witness anything about
22 anything you asked her in your direct or cross, however you
23 want to look at it, you were free to cross-examine this witness
24 on anything that Ms. Collings brought out on her examination.

25 MR. BARR: Thank you, Your Honor.

1 Then we had a few arguments about slides. I think
2 Ms. Cameron was going to handle those.

3 MS. CAMERON: May I approach, Your Honor?

4 THE COURT: Yes, ma'am.

5 MR. BAKER: Your Honor, I just wanted to -- revenue was
6 not raised yesterday. I just want to make sure all of our
7 revenue was not raised. I want to make sure Mr. Barr
8 understands that when it comes time to cross-examine him.

9 THE COURT: You all keep coming here and saying, I want
10 you to tell the other side what they can do. I can't. If
11 Mr. Barr asks a question that you think is objectionable, say,
12 I object. Or --

13 MR. BAKER: Yes, Your Honor.

14 THE COURT: In this case Ms. Collings will.

15 Now, what has, in my opinion, been waived is the sense
16 that this issue can't be touched on at all, because it's so --
17 that's the limine.

18 MR. BAKER: Oh, yes, Your Honor.

19 THE COURT: I get that. If Mr. Barr or any of you asks a
20 question the other side thinks is -- and by the way, I hate to
21 say this, but you're really not the right person to be standing
22 up and arguing this. It's really Ms. Collings. But since
23 you're there anyway, I'll go ahead and make my point.

24 Whoever's -- just stand up and object that it's not
25 relevant. I heard the testimony yesterday. And if I think

1 it's relevant, I'll let it in, and if I don't -- but all that's
2 happening here is Mr. Barr won't be violating the limine in the
3 sense he had to approach the bench first.

4 MR. BAKER: Yes, Your Honor.

5 THE COURT: He can ask whatever questions he wants that --
6 as can all of you on cross. You can ask whatever questions you
7 legitimately think were raised on the other person's
8 examination, and you will not be in trouble with me because it
9 was something that was covered by a limine.

10 Now, that doesn't mean what Mr. Barr asks this witness I
11 think will be relevant. If he asks something that is objected
12 to as irrelevant and the reason is stated why it's irrelevant,
13 I might sustain the objection. But you don't have to worry
14 that you will run afoul of the motion in limine. And so that's
15 all I'm ruling.

16 MR. BAKER: All right. Thank you, Your Honor.

17 THE COURT: Yes, ma'am.

18 MS. CAMERON: Good morning, Your Honor.

19 THE COURT: Good morning.

20 MS. CAMERON: I've handed to you a copy of the slides
21 that -- for NCR's examination of Dr. Ikizler we've objected to
22 in our objection exchange last night. Specifically we're
23 objecting to the design-around discussion in Dr. Ikizler's
24 slides. It was our understanding during the Daubert motion
25 discussion of Dr. Ikizler that the Court said the design-around

1 would only come in if they could identify paragraphs in
2 Dr. Chatterjee's report where he specifically addressed
3 customer acceptance of the design-around.

4 THE COURT: Correct.

5 MS. CAMERON: We've scoured those reports and we have not
6 found any reference to customer acceptance.

7 THE COURT: Well, help me out here again. I can't
8 remember these things. Whose witness is -- it's their witness,
9 right?

10 MS. CAMERON: Yes, Your Honor.

11 THE COURT: Dr. Ikizler -- the fight here is over
12 Dr. Ikizler, which is I-k-i-z-l-e-r.

13 MS. CAMERON: Yes, Your Honor.

14 THE COURT: I'm assuming that the defendant is going to
15 put their -- Dr. Chatterjee on before they put on Dr. Ikizler,
16 right?

17 MS. CAMERON: I believe that's correct, Your Honor.

18 THE COURT: So why am I taking this up now? Because if
19 they don't lay a foundation through Dr. Chatterjee, then
20 Dr. Ikizler's not going to get to talk about it if there's an
21 objection. And Dr. Chatterjee's not going to get to talk about
22 it unless there's something in his report.

23 So we're going to cross that bridge, I think, during
24 Dr. Chatterjee's direct, is my guess.

25 MS. CAMERON: Okay.

1 THE COURT: So unless -- I mean, I'm happy to rule on
2 something, but my guess is we will not be taking this up until
3 Dr. Chatterjee is on the stand. And if he -- this isn't
4 limited to this subject. If any of your experts try to put on
5 evidence during direct that is not in their report, it's not
6 coming in.

7 And if I haven't told you all this -- I've lost track of
8 who I've told these things to. Here's the way I anticipate you
9 all being able to react in this situation. Mr. Barr is putting
10 on --

11 Mr. Barr, who's your first expert?

12 MR. BARR: My first expert will be Ms. Salters.

13 THE COURT: Okay. Mr. Barr's putting on Ms. Salters. I'm
14 assuming Ms. Collings is going to be cross-examining her, but
15 it doesn't matter. Whoever is cross-examining her.
16 Ms. Collings stands up and says, I object, Your Honor. That's
17 not in Ms. Salters' expert report.

18 I expect that Mr. Barr -- whoever's putting on
19 Ms. Salters -- to be able to say, oh, yes, it is, Judge,
20 because it's on Page 61. Because right next to the question
21 that you're asking on direct you will have referenced where in
22 the expert report it is.

23 And if Ms. Collings says, no, it isn't, then you'll show
24 me Page 61, or whatever it was, of the expert report. And if
25 it's in there, then I assume we will not have a lot

1 more it's-not-in-his-report objections because the person
2 putting the witness on on direct will be able to immediately
3 identify where in the report something that would just -- is
4 the foundation for that testimony would come from.

5 But that is the way I anticipate it will go on direct of
6 the experts.

7 Is there anything else we need to take up?

8 MS. COLLINGS: Your Honor, I have one objection, and it's
9 along those same lines.

10 THE COURT: You're better off at this microphone.

11 MS. COLLINGS: May I approach?

12 THE COURT: Yes, ma'am. Of course.

13 MS. COLLINGS: Thanks. Briefly, Your Honor. In the
14 demonstrative slide presentation that plaintiffs provided us
15 last night --

16 THE COURT: For who?

17 MS. COLLINGS: For Ms. Salters.

18 THE COURT: Uh-huh.

19 MS. COLLINGS: There was included in those slides an
20 opinion that we do not feel was included in her report. And so
21 we have an objection to that part of the slide presentation.

22 THE COURT: Well, let's do this. How soon will we see
23 Ms. Salters?

24 MR. BARR: She will be after Mr. Crouse. The issue I have
25 with this, Your Honor, the parties had agreed --

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1 THE COURT: I'm just saying, here's what I'm going to do.
2 I'm sorry. So we have --

3 MR. BARR: Ms. Schoonover then Crouse then Salters.

4 THE COURT: So what we'll do is before we take up
5 Ms. Salters, I'll just look at the slide, and you all can tell
6 me what the issue is. I'll take it up at that time.

7 MR. BARR: One other question I had in the -- due to the
8 Court's -- the pretrial rulings, Your Honor, related to
9 Ms. Crouse and Ms. Salters, the plaintiffs may want to make an
10 offer of proof. And I was wondering, do we just -- can we wait
11 till the end of the day after these witnesses testify to do
12 that?

13 THE COURT: Sure. Yes.

14 Do you want these back?

15 MR. BARR: Thank you, Your Honor.

16 MS. CAMERON: We have one more issue.

17 MR. BARR: The exhibits we were going to read into the
18 record.

19 THE COURT: Okay. Before we get there, let me ask you all
20 a question. And I feel like at this point that I'm being a
21 tattletale, but I'll say it anyway. It's my understanding
22 that our jury is sitting in the jury room feeling very
23 comfortable and none of them are wearing masks. If they feel
24 comfortable, it seems to me, in a jury room, which is much
25 smaller than where they're sitting most of the time not wearing

1 masks, seems to me they would feel comfortable not wearing
2 masks in here, which I'm happy to accommodate them. I'm happy
3 to accommodate all of you.

4 However, if either of you has -- it's your case, not mine.
5 If either of you have an objection to me allowing them to be
6 unmasked and you all to be unmasked, I need to hear it now
7 rather than when someone's unhappy however this case turns out.

8 So if you all are okay with me allowing the jurors not to
9 wear masks, I'm okay with that. If either side wants to
10 continue the practice we've had of requiring everyone to wear
11 masks, I'm happy to do that. In other words, the veto will
12 work here.

13 So, Mr. Barr, where are you on the mask question?

14 MR. BARR: The plaintiffs have no objection to dispensing
15 with the masks, Your Honor.

16 THE COURT: Ms. Collings?

17 MS. COLLINGS: Your Honor, defendants have no objection.

18 THE COURT: Okay. Then I'm going to let them know.

19 Is there anything else we need to take up?

20 Oh, I'm sorry. Yes, ma'am.

21 Here's what we're going to do. I don't need to be here
22 for this, as exciting as it is. I'm going to go back after you
23 finish reading -- and by the way, actually, go ahead, because
24 occasionally someone says, no, I don't agree that that's in
25 there. So if you'll go ahead and read them in.

1 If defendants will listen, and then I'll listen to
2 defendant's list as well. So this is defendant's opportunity
3 to tell me if the list is wrong.

4 MS. CAMERON: Good morning, Your Honor. And we did share
5 and exchange this list and double-check --

6 THE COURT: Well, in that case, are you all both okay with
7 the list you've exchanged?

8 MR. PHIPPS: Yes, Your Honor.

9 THE COURT: Okay. Then I'm going to go back for just a
10 second. You all get ready, and we're going to bring the jury
11 back in in about five minutes.

12 Does that work for everyone?

13 MS. COLLINGS: Yes, Your Honor.

14 MR. BARR: Yes, Your Honor.

15 THE COURT: Okay. I'm going to let the jury know they
16 don't have to wear masks.

17 THE BAILIFF: All rise.

18 (Recess taken from 8:49 to 8:55.)

19 THE BAILIFF: All rise.

20 THE COURT: Please remain standing for the jury.

21 (The jury entered the courtroom at 8:56.)

22 THE COURT: Good morning, everyone. You may be seated.

23 If we could have the witness back on the witness stand,
24 please.

25 MR. BARR: May I approach, Your Honor, with the witness

1 binder?

2 THE COURT: Yes, sir.

3 And just a friendly reminder, you're still under oath from
4 yesterday.

5 THE WITNESS: Okay.

6 MR. BARR: May I proceed, Your Honor?

7 THE COURT: Yes, sir.

8 REDIRECT EXAMINATION

9 BY MR. BARR:

10 Q. Good morning, Ms. Schoonover.

11 A. Good morning.

12 Q. Ms. Schoonover, do you recall --

13 (Simultaneous speakers.)

14 BY MR. BARR:

15 Q. Yesterday afternoon, do you recall when Ms. Collings
16 was asking you about your work with the Radiant company?

17 A. Yes.

18 Q. And Radiant was the company, I think you told us,
19 that was purchased by NCR; is that right?

20 A. That's correct.

21 Q. And I believe you said that you worked at Radiant for
22 awhile, and then in 2011, when NCR purchased Radiant, you came
23 along with the company and had basically the same job at NCR
24 with the Silver product; is that right?

25 A. Yes.

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1 Q. Now, when you were at Radiant company, the address of
2 the office that Radiant had was 3925 Brookside Parkway,
3 Alpharetta, Georgia; is that right?

4 A. I believe that's the address.

5 Q. Okay. And isn't it true that that office building,
6 where Radiant had been occupying and the Radiant Silver product
7 had been worked on, that same office was then used by NCR as
8 one of their corporate offices after the acquisition of
9 Radiant, right?

10 A. Yes.

11 Q. Now, yesterday Ms. Collings also asked you about the
12 technology go-to-market expense.

13 Do you remember that?

14 A. Yes.

15 MR. BARR: And if we could put up Exhibit -- Joint
16 Exhibit 89, please.

17 BY MR. BARR:

18 Q. And you recall that these questions that she was
19 asking you about the technology go-to market were in the
20 context of this Google Cloud addendum, which Google -- or NCR
21 Corporation, the company, the whole company, has agreed to pay
22 Google for cloud services and other computer-related services
23 for the entire NCR company; is that right?

24 A. Yes.

25 Q. And I think we talked about yesterday, Ms. Collings

1 in her questions, she asked you to confirm the \$22 million a
2 year that NCR Corporation pays to Google for those services.

3 Do you recall that?

4 A. Yes. That's for NCR corporate, that's the money that
5 we pay. Yes.

6 Q. And that's for the whole company, NCR, right?

7 A. Yes.

8 Q. That's not just for this product line that we've
9 accused of infringement in this litigation; is that right,
10 ma'am?

11 A. That's right.

12 Q. And I think you already told me yesterday that it
13 wouldn't be fair to charge costs to the NCR Silver product line
14 alone that benefit the entire NCR Corporation, right?

15 A. Yes.

16 Q. And I believe you also told us yesterday that the
17 percentage of that \$22 million that NCR is charging as costs to
18 the NCR Silver product line was about \$5.4 million, right?

19 A. I'm sorry. Can you repeat -- repeat that?

20 Q. Yes. I'd be happy to.

21 I believe you told us yesterday that the percentage of the
22 total \$22 million annual costs for the Google license, that of
23 that 22 million, over 5 million was being charged to the NCR
24 Silver product line alone?

25 A. Yes. So that 5.4 million reflects hosting costs. A

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1 large portion of it is the Google hosting costs.

2 Q. And I think you told us that the way that that
3 5.4 million was calculated was some algorithm that the
4 accountants did; is that right?

5 A. Our finance team allocates a percentage. Yes.

6 Q. And to be fair, an algorithm is just a fancy word for
7 math, isn't it, ma'am, in this case?

8 A. It is a math calculation. Yes.

9 Q. It's a pretty simple math calculation, isn't it,
10 here?

11 A. It is relative use of that service, each product is
12 allocated.

13 Q. And how it works out, how this math works out,
14 according to NCR, is that they're charging the NCR product
15 line -- NCR Silver product line, which we've heard has 100
16 people working on it, right, and which we've heard earns about
17 \$25 million a year in total revenue, right?

18 A. Yes.

19 Q. NCR decided to allocate costs of \$5.4 million to that
20 \$25 million product line, right?

21 A. A portion of the 5.4 million. Yes.

22 Q. No. The total is 5.4 million, which is a portion of
23 the 22 million, right?

24 A. Yes. But that's our total hosting costs, it's not
25 all Google. A majority of it is Google, for the Google Cloud.

1 I'm just -- yeah.

2 Q. I don't want to quibble with you about what it is.

3 A. I'm just being --

4 Q. The point is --

5 A. -- precise. Okay.

6 Q. -- \$22 million in costs that relate to something that
7 NCR Corporation, with 34,000 employees and 140 locations, is
8 benefitting from, right?

9 A. Yes. 20,000 employees. Yes.

10 Q. Okay. There's only 20,000 employees, not 34,000?

11 A. Roughly. I think so.

12 Q. Okay. I think Mr. Baker told us a different number,
13 but...

14 A. Oh, okay. I could be wrong.

15 Q. You would know better than me and probably him.

16 A. Okay.

17 Q. But the point is, again, 22 million a year paid to
18 Google by NCR Corporation, right?

19 A. Yes.

20 Q. For something that benefits -- for some services that
21 benefit NCR Corporation, right?

22 A. Yes.

23 Q. Those services also benefit NCR Silver as a part of
24 that corporation, right?

25 A. Yes.

1 Q. But you're charging NCR Silver with 25 percent of the
2 total costs that's paid to Google, right?

3 A. Yes.

4 MS. COLLINGS: Object, Your Honor. That mischaracterizes
5 her testimony that she just gave today.

6 THE COURT: Counsel, handle it on redirect.

7 This witness is perfectly capable -- if Mr. Barr -- she
8 hasn't -- she hasn't yet directly answered a question he's
9 asked this morning with a yes or no.

10 If she feels that he is misrepresenting to her what she
11 said, she's perfectly capable of letting us know. She's been
12 doing that all morning so far. And frankly, I would probably
13 appreciate it if her answers were a little more direct with a
14 yes or no.

15 BY MR. BARR:

16 Q. So what we're talking about in these questions that
17 Ms. Collings asked you was the percentage of the Google costs
18 that's charged for the entire company should be charged to this
19 small product line, right?

20 A. To the product line. Yes.

21 Q. And you would agree with me that NCR Silver is not
22 even close to 25 percent of the total revenues of the NCR
23 Corporation, right?

24 A. I don't know the exact number, but yes.

25 Q. But you know it's not close to 25 percent, right?

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1 A. Yes.

2 Q. And, in fact, if we looked at the \$26.6 million of
3 revenue that NCR Silver made, according to Joint Exhibit 86,
4 for the year 2020, that would be less than one-half of
5 1 percent of NCR Corporation's annual revenues in 2020 of
6 \$6.2 billion, right?

7 MS. COLLINGS: Object, Your Honor. There's been no
8 evidence. There's no foundation for what NCR Corporation's
9 revenue has been in 2020 or any other year.

10 And frankly, Your Honor, that's not relevant to the issues
11 pertaining to NCR Silver particularly.

12 THE COURT: Overruled.

13 BY MR. BARR:

14 Q. So your argument is -- or NCR's argument, to be fair,
15 is that a product line that makes less than one-half of
16 1 percent of NCR Corporation's \$6.2 billion in revenue should
17 pay 25 percent of a cost that is attributable to the entire NCR
18 Corporation; is that correct?

19 A. It's not based on revenue percentage.

20 Q. Now, does NCR host any of its software in-house?

21 A. Not that I'm aware of.

22 Q. Does NCR have any servers?

23 A. Not for NCR Silver.

24 Q. All right.

25 MR. BARR: Could we have a look at the Exhibit 88?

1 BY MR. BARR:

2 Q. I'd like to go back to what Ms. Collings was asking
3 you about yesterday when she was asking you about the D&A
4 costs.

5 Do you remember that?

6 A. Depreciation amortization. Yes.

7 Q. Okay. So you know that D&A means depreciation and
8 amortization; is that right, ma'am?

9 A. Yes.

10 Q. But you -- when did you learn that?

11 A. I see the line depreciation and amortization on the
12 detailed cost line.

13 Q. So what is depreciation and amortization in the
14 context of costs?

15 A. In the context of costs, we -- so the way R&D works
16 is, research and development, developers develop features. And
17 that's a high cost to develop those features, all the costs for
18 the engineering time.

19 And so when we're developing those features, accounting
20 rules allow us to capitalize that, which means we don't have to
21 incur that cost in that year in the financials.

22 We can then wait until the feature is ready to go to
23 market, and then we amortize those costs over five years
24 against that revenue.

25 So that's why you don't see that cost in the year we incur

1 it. We capitalize it over future years.

2 Q. And in that -- and in the example you just gave, that
3 is depreciation and amortization of employee costs that were
4 actually working on the NCR Silver product, correct?

5 A. That's correct.

6 Q. But I believe NCR's financial statements also
7 attribute a depreciation and amortization of hardware costs to
8 NCR Silver; is that right?

9 A. There are like office equipment and employee
10 equipment that gets amortized over years too. Yes. That's a
11 small percentage of it.

12 Q. So to make sure we're clear on this, if we see
13 millions of dollars in depreciation and amortization in
14 Exhibit 88, you're saying all of that relates only to employee
15 costs and none of that relates to any computers or equipment or
16 buildings or anything like that?

17 A. I'm saying the majority of it is for the engineering
18 costs, but it does include other depreciation as well, office,
19 equipment.

20 Q. Because we could agree that it would be double
21 counting, wouldn't it, if you charged NCR Silver with this
22 25 percent of the Google license for web server hosting in the
23 cloud, and then also depreciated and amortized the cost of a
24 bunch of old computer servers that NCR Silver has, right?

25 A. If -- I'm not sure why it would be double counting.

1 It's -- if you're amortizing it, those are costs incurred in
2 previous years, and then you are showing the costs on the
3 financial statement when it's ready to be depreciated.

4 Q. So you're telling us that in the event we see
5 depreciation and amortization in the financials of NCR, that we
6 can count on it that you're not trying to double count
7 depreciation and amortization for any of the computers that
8 you're getting from Google, right?

9 A. No. We don't pay for those -- we pay for the hosting
10 service.

11 Q. Okay.

12 MR. BARR: Pass the witness, Your Honor.

13 RECROSS-EXAMINATION

14 BY MS. COLLINGS:

15 Q. Good morning, Ms. Schoonover.

16 A. Hello.

17 Q. The \$5.4 million go-to-market -- technology
18 go-to-market costs that counsel was just asking you about.

19 A. Yes.

20 Q. Is 100 percent of that \$5.4 million technology
21 go-to-market costs attributable to the Google Cloud agreement
22 that counsel referenced?

23 A. No. Not 100 percent.

24 Q. Okay. What else is included in that \$5.4 million?

25 A. So we transitioned from Amazon Web Services hosting

1 to Google Cloud, and so there was some additional charges for
2 the Amazon Web Service hosting included in those numbers while
3 we were transitioning.

4 Q. So between 2019 and 2020 NCR Silver transitioned
5 hosting services from AWS to Google?

6 A. Yes.

7 Q. So a portion of the \$5.4 million that you see for
8 technology go-to-market and 5.4, some part of that is the
9 Google Cloud NCR Silver-apportioned costs and some of that is
10 sort of residual AWS hosting?

11 A. Yes. Well, yes.

12 Q. Does NCR Silver get any computers from Google?

13 A. No.

14 Q. Okay. So NCR Silver is not taking a depreciation or
15 amortization charge against any Google computers?

16 A. Not that I'm aware of. No.

17 Q. Counsel asked you about the old Radiant address. Do
18 you recall that?

19 A. Yes.

20 Q. Do you know -- back in 2018 do you know what was
21 housed in that old Radiant address that became part of NCR's
22 real estate?

23 A. So it was employees that were part -- worked for
24 Radiant Systems stayed in that building when they acquired
25 Radiant Systems. So it's a small building. It's not a

1 headquarters or -- it's --

2 Q. Thank you.

3 A. Yeah.

4 MR. BARR: Nothing further, Your Honor.

5 THE COURT: May this witness be dismissed?

6 MS. COLLINGS: Yes.

7 THE WITNESS: Thank you.

8 MR. YATES: Your Honor, plaintiff calls Gregory Crouse to
9 the stand.

10 (The witness was sworn.)

11 DIRECT EXAMINATION

12 BY MR. YATES:

13 Q. Good morning.

14 A. Good morning, sir.

15 Q. Would you please introduce yourself to the jury?

16 A. Good morning. I'm Greg Crouse.

17 Q. And where do you live?

18 A. I live in Flower Mound, Texas which is a suburb of
19 Dallas.

20 Q. And why are you here?

21 A. I'm here as a technical expert.

22 Q. Can you please describe your formal education after
23 high school?

24 A. My formal education out of high school is I attended
25 the University of Texas at Austin. I achieved a bachelor of

KRISTIE M. DAVIS, OFFICIAL COURT REPORTER
U.S. DISTRICT COURT, WESTERN DISTRICT OF TEXAS (WACO)

1 business administration in finance, and I graduated in 1992.

2 Q. Did you start computer programming at the University
3 of Texas?

4 A. No, sir. I did not. My father, who's an absolutely
5 amazing man, learned -- and knew in the '70s that computers
6 were going to be a big deal. And so he, much to my chagrin at
7 the time when I was eight, made me go to computer camp. And so
8 in 1978 I was beginning to program, and I've programmed pretty
9 much since then nonstop.

10 Q. Where did you go to work immediately after UT?

11 A. Straight out of UT I went to a company called
12 Andersen Consulting which is now Accenture. And one of the
13 things I did there was I coded for the first two years, as many
14 do when they start out at Accenture, especially back then. So
15 I coded for a number of -- for two years then.

16 Q. So you were a professional programmer for Andersen
17 Consulting?

18 A. I was. Yes.

19 Q. And after that what did you do at Andersen
20 Consulting?

21 A. I moved up through the ranks; I was there for about
22 12 years. Moved up through the ranks and began doing technical
23 architecture work, then I became a program manager. And then
24 by the time I had left, I had -- I was what we called a project
25 executive which is a person who ran entire large, you know, big

KRISTIE M. DAVIS, OFFICIAL COURT REPORTER
U.S. DISTRICT COURT, WESTERN DISTRICT OF TEXAS (WACO)

1 engagements.

2 Q. And what have you done since then?

3 A. Since then I've moved around the big four -- big four
4 style consulting, big technology consulting companies like
5 BearingPoint, KPMG, Perot Systems, Navigant, et cetera, all the
6 while doing technology consulting.

7 Q. Two of your former employers are bolded on this
8 slide. Why are BearingPoint and Dell/Perot Systems bolded?

9 A. These are bolded because at this period of time I was
10 actually hands-on building point-of-sale solutions for clients.
11 And we'll talk about specifically which clients I was building
12 those for in a bit. But that's what I was doing, was hands-on
13 building pretty expansive point-of-sale solutions for clients.

14 Q. And that would have been in the time frame from 2004
15 to 2009?

16 A. Yes, sir. Roughly. About 2005 to 2009.

17 Q. Tell me about your first point-of-sale project.

18 A. Sure. My first one was a company called Washington
19 Mutual which is now owned by Chase Bank.

20 (Clarification by Reporter.)

21 BY THE WITNESS:

22 A. My first implementation was for a company called
23 Washington Mutual which is now Chase Bank. I was working for
24 BearingPoint. One of the things Washington Mutual wanted to do
25 was eliminate all the paper within their branch banking

1 operations. And so what they wanted to do was employee
2 point-of-sale terminals within all throughout their branch in
3 all the different activities that a branch would perform and
4 use point-of-sale devices to remove paper from the branch
5 operating environment.

6 BY MR. BARR:

7 Q. And what vendor of point-of-sale systems did you
8 evaluate for this project?

9 A. When we started we evaluated about seven. I don't
10 remember all of them. I do remember the three finalists, which
11 were Hypercom, VeriFone and IBM. And of those three finalists
12 in this implementation we chose a company called Hypercom to be
13 the point-of-sale solution throughout the branch banking
14 environment for Washington Mutual.

15 Q. And at this time who actually built the terminals for
16 this project?

17 A. Myself and my team of programmers were building the
18 screens and building all the interfaces with all the various
19 systems. It was us.

20 Q. Tell the jury about your second point-of-sale
21 project.

22 A. My second project was with BearingPoint, which was
23 the spin-off of KPMG's technology consulting firm. And the
24 client here is Hibernia Bank which is now owned by Capital One.
25 Hibernia had a very similar situation. They had a dire need to

1 get rid of the paper, because they had lost a lot of paper in
2 their branch operations through Hurricane Katrina. And so that
3 gave them an impetus to just remove paper so that kind of
4 damage would never occur to their operations.

5 So, again, we were looking at different point-of-sale
6 solutions to remove paper from the operations and improve
7 overall customer feel and customer interaction with that
8 project.

9 Q. And did this system handle transactions?

10 A. Yes, sir. It did. There's a number of transactions
11 that were performed. It was used in the teller line to do
12 deposits and withdrawals, which I consider a transaction. It
13 did loan transactions. It did on-boarding documentation for
14 clients or for on-boarding customers. So it certainly was very
15 transaction-enabled.

16 Q. Tell the jury about your third point-of-sale project.

17 A. My third point-of-sale was with Perot Systems, and
18 this is with Chase Bank. And what Chase was looking to do was
19 speed up the teller line. And so what they wanted to do was
20 they wanted to have customers pre-authenticate. So they would
21 insert a -- swipe or insert their debit card and that would
22 pre-authenticate them for the environment. And then they
23 wouldn't have to go through the whole point of showing an ID
24 and all that fun stuff. And it pretty much -- it very well
25 improved the branch operations or the teller operations.

1 Q. And who built the terminals for this project?

2 A. Myself and my team of technologists did.

3 Q. And do you recall the terminal vendor?

4 A. In this one the IBM terminal was the winner in that
5 one.

6 Q. And these first two projects were when you were at
7 BearingPoint; is that correct?

8 A. Yes, sir. That is correct.

9 Q. And the third was when you were at Perot Systems
10 which is now Dell?

11 A. Yes, sir. That's correct.

12 Q. And what was the time frame again?

13 A. The whole period of time is roughly 2005 to 2010 for
14 all of these.

15 Q. And did any of these projects use the technology
16 described in the patents?

17 A. No, sir. They did not.

18 MR. YATES: Your Honor, I'd like to tender Mr. Crouse as
19 an expert.

20 MR. PHIPPS: Your Honor, we maintain our objections to the
21 Daubert motion. We move the Court to --

22 THE COURT: He'll be tendered as an expert.

23 MR. YATES: Thank you, Your Honor.

24 BY MR. YATES:

25 Q. So let's transition to talking about the patents.

1 What can you tell me about the '640 patent and the '012 patent?

2 A. The '640 and '012 patents we've talked about
3 throughout this case so far, these are titled the web-based
4 point-of-sale builder. They share a common specification.
5 They share a priority date of February 5th of 2008, and the
6 Joint Exhibits 3 and 4 contain the file histories for these
7 patents.

8 Q. And what did you do to analyze the patents?

9 A. I of course read the patents. I also examined the
10 file history to see the back and forth between the Patent
11 Office and the filers. I also looked at all of the
12 documentation -- well, not all the documentation, but most of
13 the documentation that was submitted through the production
14 through this case.

15 Q. And did you review the Court's claim construction?

16 A. I absolutely reviewed the Court's claim
17 construction --

18 MR. YATES: Next slide.

19 BY THE WITNESS:

20 A. -- yes, sir.

21 MR. YATES: Next slide, please.

22 BY MR. YATES:

23 Q. Now, is this the same construction that the jurors
24 should have in their juror notebook?

25 A. I believe so. Yes, sir.

1 MR. YATES: We can go to the next slide, please.

2 BY MR. YATES:

3 Q. So what does this slide show us?

4 A. This slide is Figure 3 from the patents. I believe
5 it's been shared before. What it shows is the -- what I would
6 call the technology architecture for the patents that are in
7 suit here.

8 MR. YATES: Can we go to the next slide, please?

9 BY MR. YATES:

10 Q. And here we have Figures 4A, 4B and 5 from both
11 patents. And what do these slides teach us? What do these
12 figures teach us?

13 A. These slides teach us the operation of building,
14 using these -- the web-based builder to build. So on the right
15 in Figure 5 this is the overall workflow that in this case a
16 merchant would go through to build -- to build screens. And as
17 you can see, they are selecting, they are editing, they are
18 selecting, editing, doing a number of items through this
19 workflow to create -- to create the screens and the
20 point-of-sale terminal.

21 On the left side we show an abstract of the point-of-sale
22 terminal itself. On the top we see basically a design
23 specification for what the screens should look like on the top
24 in 4A. And 4B is an abstract of what the screen, as an
25 abstract, would really look for. It would contain an item

1 name, it would contain a price, it would contain a cost,
2 et cetera.

3 Q. So is 4A the before?

4 A. Yes, sir. The 4A's the before.

5 Q. And is 4B the after?

6 A. 4B is the after. Yes, sir.

7 Q. And is that described in the patent?

8 A. It is. Yes, sir.

9 MR. YATES: We'll move to the next slide, please.

10 BY MR. YATES:

11 Q. Can you briefly describe some of the innovations in
12 the patent?

13 A. Yes, sir. I can.

14 Roughly, there were four major innovations in the patents.
15 The first one being a web-based point-of-sale builder. It's
16 important to note that at the time of the invention, in 2008,
17 it was important to note that web-based -- building web-based
18 point-of-sale solutions weren't really big in the market yet.
19 So this was a major innovation at the time.

20 Q. And what's the next innovation in the patent you want
21 to talk about?

22 A. The next innovation is around open-source
23 technologies, using languages and products that are more open
24 in nature versus closed. And I think this is an interesting
25 innovation because at the time, as I mentioned, in 2008, all of

1 the solutions that I dealt with in the point-of-sale world were
2 all very proprietary. You have proprietary languages, closed
3 hardware, and those were the solutions you had to choose from.

4 And so this was, again, another major innovation in the
5 fact that you could buy -- you could basically use components
6 that are relatively much less expensive.

7 Q. And what's the third innovation in the patents you'd
8 like to talk about?

9 A. The third major benefit is merchant configurability.
10 This is -- this is a -- this is a case where the merchant is in
11 control of his own destiny, if you will, in developing
12 point-of-sale solutions, point-of-sale screens.

13 As I mentioned, in my time of building these solutions,
14 from 2005 to 2010, roughly, my team and myself were actually
15 the people who were hired to build these, and enabling a
16 merchant to be able to not use people like me is incredibly
17 powerful.

18 Q. And what's the last of the innovations that you want
19 to discuss this morning?

20 A. The last innovation I want to discuss this morning is
21 it's -- this is a hostable -- a hostable solution, which means
22 that components of hardware could be put in different locations
23 that don't necessarily have to be the merchant.

24 Again, at the time, it was very prominent for most of the
25 hardware, if not all the hardware, to be on site at a merchant

1 location. Merchants aren't technologists. They don't want to
2 maintain servers and a bunch of hardware, and this is a nice
3 innovation where the merchant doesn't have to maintain those
4 servers anymore.

5 Q. Did you also analyze NCR Silver as part of your
6 assignment for this case?

7 A. Yes, sir. I did.

8 Q. And did you reach any conclusions about whether NCR
9 Silver infringed the asserted claims of the '640 and the '012
10 patent?

11 A. I do. I find that NCR Silver, the accused product,
12 does infringe on the patents, '640 and '012.

13 Q. And what did you look at during your investigation of
14 NCR Silver?

15 A. I looked at a number of things. One thing I did do
16 was I went -- I traveled to Atlanta and went to the NCR
17 headquarters and put hands on keyboard, if you will, and
18 actually used the system in their environment, using their
19 hardware and software, and actually observed, inspected, used
20 NCR Silver there.

21 Q. And you were able to use your laptop during your
22 inspection?

23 A. Yes, sir. That was one thing -- was one thing I was
24 told to do, is when I used the Back Office function, where I
25 did the majority of the building functions, I was instructed to

1 use my personal laptop, which is nothing special. And that's
2 what I used.

3 Q. What else, besides your inspection, did you do to
4 analyze NCR Silver?

5 A. I analyzed the NCR Silver videos that are on YouTube,
6 many of them. I used extensively the Joint Exhibit No. 30,
7 which is a U.S. training video. I found that to be very
8 helpful, but I have examined numerous videos that instruct or
9 teach how to use NCR Silver.

10 Q. On your inspection, were there any surprises?

11 A. No, sir. No surprises. I found the system to be, as
12 I expected, from -- I did view the videos before I used the
13 system, and I found it -- I found it to be within my
14 expectations.

15 Q. And you read the product documentation as well?

16 A. Yes, sir. I did. I did read that again before my
17 inspection. I had read the product documentation, and I found
18 it all to be very consistent with my experience using the
19 system.

20 Q. Can you walk us through the asserted claims?

21 A. Yes, sir. I'd be happy to.

22 Q. So what are the asserted claims of the '640 patent?

23 A. The asserted claims of the '640 patent are Claims 1,
24 3, 4, 5, 6, 11, 12 and 13.

25 Q. All right.

1 MR. YATES: If we can go to the next slide, please.

2 BY MR. YATES:

3 Q. What does this slide show us?

4 A. This slide shows us Claim 1 of the '640 patent.

5 Q. And what does the next slide show us?

6 A. The next slide shows us the preamble of Claim 1 of
7 '640, and this is titled "Web-Based Point-of-Sale Builder,
8 System Comprising."

9 Q. So there in the heading we have a web-based
10 point-of-sale builder system comprising?

11 A. Yes, sir.

12 MR. YATES: And if we could go back one slide.

13 BY MR. YATES:

14 Q. We see that that's the first element here on this
15 chart when we walk through the claims?

16 A. Yes, sir. That's correct.

17 Q. All right.

18 MR. YATES: If we could go ahead one more.

19 BY MR. YATES:

20 Q. And did the Court construe any of the terms in the
21 preamble?

22 A. Yes, sir. It did. The Court construed a web-based
23 point-of-sale builder system to mean "a point-of-sale
24 system" -- "a point-of-sale builder system that requires the
25 Internet."

1 Q. And does NCR Silver satisfy this claim element?

2 A. Yes, sir. It does.

3 Q. And did you observe the NCR Silver includes this
4 element during your inspection?

5 A. Yes, sir. I did. As I mentioned, when I was using
6 my laptop to do building functions, I did experience a
7 web-based builder requiring Internet -- well, web-based
8 builder. Sorry.

9 Q. And what other evidence, besides your inspection,
10 shows that NCR Silver meets this claim element?

11 A. There was -- there were many pieces of evidence. One
12 I like to use was Joint Exhibit 30, which is the U.S. training
13 video. And what it shows very clearly here is a web-based
14 builder.

15 So what we see here on the screen is we see a web browser,
16 a standard web browser. We see this web browser displaying a
17 web page. This web page also has HTTPS in the URL line. And
18 what we're seeing here specifically is we're seeing that we're
19 adding a category. And as we add a new category, we see the
20 pop-up pop up, and we can add a new category.

21 Q. And this would be part of building, correct?

22 A. Absolutely. Yes, sir.

23 MR. YATES: Next slide, please.

24 BY MR. YATES:

25 Q. What do we see here?

1 A. I'm still on the same screen. I'm sorry. Oh, my
2 apologies.

3 This is the next -- my apologies. This is the next screen
4 of building.

5 So what we did before was we added a category, and now
6 what we've -- we're adding items into that category. And so
7 this would roll up to what we just did before in the previous
8 screen.

9 So again, this is further building. We're at the point
10 where we're adding an item at this point.

11 Q. So there's actually a button that says "add item"?

12 A. Yes, sir. And that's what we've highlighted here, is
13 the "add an item" button.

14 MR. YATES: Can we go to the next slide, please?

15 BY THE WITNESS:

16 A. Yeah. So this is the next screen in the workflow of
17 adding an item, and what we're doing is we're doing a basic
18 item setup. And what we're doing here is we are entering the
19 item name. In this case we're entering -- we're adding
20 horchata ice cream, and that's going to be our item that we're
21 going to add. And so that's this portion, the basic item setup
22 portion of building.

23 MR. YATES: Go to the next slide.

24 BY MR. YATES:

25 Q. What is this slide showing us now?

1 A. This slide is showing us that the elements of
2 Claim 1, that we just discussed in the preamble, have been met.

3 Q. And so that's why the box is checked?

4 A. Yes, sir. That's why the box is checked.

5 Q. What is the next claim element?

6 A. The next claim element is "one or more point-of-sale
7 terminals that display POS screens."

8 Q. And did the Court construe any of these terms?

9 A. Yes, sir. It did. It construed POS screens to mean
10 "a POS terminal's visual display depicting selection keys or
11 buttons."

12 Q. And does NCR Silver include this element?

13 A. Yes, sir. It does.

14 Q. And did you observe this on your inspection?

15 A. Yes, sir. I did. I was able to use -- as I
16 mentioned, at the NCR site, I was able to use multiple
17 point-of-sale terminals, and they were all displaying
18 point-of-sale screens.

19 Q. And what other evidence shows that NCR Silver meets
20 this claim element?

21 A. What we've shown here is, again, Joint Exhibit 30,
22 which is a training video.

23 This screen is showing -- this is the "my device" screen,
24 so this is basically what a merchant would look at to see all
25 the point-of-sale devices that they are using within their

1 environment, and they would be able to name them and control
2 what is within their environment to be used.

3 Q. So this is how the Back Office software gives you the
4 list of your devices, your point-of-sale terminals?

5 A. Yes, sir. That's correct.

6 MR. YATES: Next slide.

7 BY MR. YATES:

8 Q. What does this slide show us?

9 A. This slide shows us an actual point-of-sale terminal.
10 This is the point-of-sale device itself. So this is basically
11 the output of the building process that we went through.

12 And so what we see here is, we see the point-of-sale
13 screen. That's what's here on the right. This is this visual
14 display. And what we can see here with the -- we're talking
15 about, you know, tea and frozen yogurt, these are the selection
16 keys or buttons that are part of the point-of-sale device.

17 Q. What does the next slide show us?

18 A. The next slide shows us that the elements that we
19 just discussed of Claim 1 have been met by NCR Silver.

20 Q. What's the next claim element to discuss?

21 A. The next claim element we're going to discuss is an
22 "Internet connection from said one or more point-of-sale
23 terminals to a web server."

24 Q. And did the Court construe any of these terms?

25 A. Yes, sir. The Court did construe a web server to

1 mean "hardware and software that uses HTTP, or hypertext
2 transfer protocol, to serve data or files that form web pages."

3 This construction also includes the secure version, HTTPS,
4 and the insecure version of just HTTP.

5 Q. And is this definition why a bunch of the slides have
6 web browser indicated or HTTP pointed out or highlighted or red
7 arrows?

8 A. Absolutely correct. That's why we've done that.

9 Q. And does NCR Silver satisfy this claim element?

10 A. Yes, sir. It does.

11 Q. Did you observe this claim element during your
12 inspection?

13 A. I did. As I mentioned, as I used my laptop, I was
14 connected to the Internet. I was connected to the Internet and
15 I was able to -- so that was the builder environment. And for
16 the point-of-sales themselves, we're also connected to the
17 Internet. And I saw what we very similarly see on the screen,
18 the point-of-sale denoting that it was connected to the
19 Internet.

20 Q. So besides what you observed personally, what other
21 evidence shows that NCR Silver meets this claim element?

22 A. Right. So, again, this is Joint Exhibit 30, the
23 training video. And this is showing what I saw on my
24 observation, that there's a little cloud icon in the top right
25 and it's a green icon and it says you're connected. And it

1 requires an Internet connection, and it is connected.

2 MR. YATES: Next slide, please.

3 BY MR. YATES:

4 Q. What does this show us?

5 A. This shows us that the elements of Claim 1 that we
6 just discussed have been met by NCR Silver.

7 Q. And the box is checked?

8 A. Yes, sir. The box is checked.

9 Q. What's the next claim element?

10 A. The next claim element is "one or more local or
11 remote PC workstations."

12 Q. And does NCR Silver satisfy this claim element?

13 A. Yes, sir. It does.

14 Q. And did you observe this claim element with NCR
15 Silver during your inspection?

16 A. I did. Yes, sir. As I mentioned, I was using my
17 laptop which is a workstation. And I was able to leverage that
18 workstation within the NCR Silver environment.

19 Q. And what other evidence?

20 A. The other evidence was that, as I mentioned earlier,
21 there was NCR hardware there set up as workstations, and I was
22 able to use those workstations that were set up to build
23 screens.

24 Q. And what other evidence shows?

25 A. The other evidence here, again, is Joint Exhibit 30,

1 the training video. What this is, again, showing, we're
2 showing a web browser, we're showing the web browser on a
3 workstation, we're showing here the Back Office. And this
4 specific example is around the activity summary, and it's
5 showing activity that would happen to the Back Office, just a
6 listing of transactions or activity that has occurred in the
7 environment.

8 Q. Now, can an iPad function as both a PC workstation as
9 claimed and a point-of-sale device?

10 A. Yes, sir. It can function as both, either
11 individually or together.

12 Q. And what does this slide show us?

13 A. This slide shows us the various types of PC
14 workstations that could be used within the NCR Silver
15 environment. We've got computers and tablets, and we have the
16 more standard point-of-sale terminal-type devices on the right
17 four.

18 MR. YATES: Next slide, please.

19 BY MR. YATES:

20 Q. And what is this showing us?

21 A. This slide is showing us that the claim -- the
22 components in Claim 1 that we just discussed have been met by
23 NCR Silver.

24 Q. So what's the next claim element?

25 A. The next one is a "point-of-sale builder software

1 that runs on said web server, wherein said local or remote
2 workstations are utilized to build or edit said POS terminals
3 in realtime from anywhere in the world and over the worldwide
4 web."

5 Q. And did the Court construe any of these terms?

6 A. Yes, sir. It did. The Court construed
7 "point-of-sale builder" to mean its plain and ordinary meaning,
8 wherein the plain and ordinary meaning means software that
9 builds the POS terminals.

10 Q. And does NCR Silver satisfy this claim element?

11 A. Yes, sir. It does.

12 Q. And did you observe this element during your
13 inspection?

14 A. Yes, sir. I did. I was able to, as I mentioned, use
15 my laptop to build the screens. And these screens -- as I
16 mentioned, I was connected to an Internet connection, and when
17 I made changes on my device, the changes were propagated
18 immediately to the rest of the devices within the environment.

19 Q. And you were able to do this over the worldwide web?

20 A. Yes, sir.

21 Q. And what other evidence shows that NCR Silver meets
22 this claim element?

23 A. There was quite a bit. I've centered here, again, on
24 Joint Exhibit 30 which is a training video. And what we show
25 here is, again, a web browser displaying a web page performing

1 building functions. And, again, this is connected to the
2 Internet. You can see the URL -- you can see the HTTPS URL in
3 the URL line which is connected over the Internet. And in this
4 case, again, we are performing building functions. And in this
5 case we're adding a new category.

6 MR. YATES: Next slide.

7 BY MR. YATES:

8 Q. So continuing on in the video, what does this show
9 us?

10 A. Yes, sir. This is similar to what we've talked
11 before. This is, again, continuing on in the build process.
12 We're doing it over the worldwide web, we are doing it over --
13 we are doing it in a web browser. And we're doing the next
14 step here, after adding a category, we are adding items that
15 roll up into that category. And in this case, again, we're
16 adding horchata ice cream.

17 Q. And what does the next slide show us?

18 A. The next slide shows us our completed product, if you
19 will. This is the point-of-sale terminal itself. And as you
20 can see, the button here is horchata ice cream. You can see
21 its price. And this is -- again, this is our completed product
22 that we just did when we did the add-an-item function.

23 MR. YATES: Next slide.

24 BY MR. YATES:

25 Q. What do we have here?

1 A. We have here the claim elements that we just
2 discussed have been met by NCR Silver.

3 Q. And so the box is checked?

4 A. Yes, sir. The box is checked.

5 Q. What's the next claim element?

6 A. Next claim element is "wherein said web servers are
7 provided as a vendor subscription service, wherein web server
8 software resides and is hosted on said vendor's remote
9 servers."

10 Q. And did the Court construe any of these terms?

11 A. Yes, sir. The Court did construe "said web servers
12 are provided as a vendor subscription service" to mean "wherein
13 a web server is provided by a vendor to a subscriber as a
14 subscription service."

15 Q. And did you observe this during your inspection?

16 A. Yes, sir. I did. When I -- as I mentioned, I was in
17 the NCR environment. I noticed that there were no -- there
18 wasn't any big fancy servers in the room. I do understand,
19 from reading earlier in the case, that the Google Cloud is
20 being leveraged for this environment. So not seeing servers in
21 that room was not a surprise to me.

22 Q. And does NCR Silver satisfy this claim element?

23 A. Yes, sir. NCR Silver does satisfy this claim
24 element.

25 Q. And when you used your laptop, did you need to get

1 credentials or something?

2 A. Yes. That's a good point. When I -- I was
3 instructed to use my personal laptop. As I mentioned, it was
4 nothing fancy, just as a standard laptop with a standard web
5 browser. And to perform the building functions I was giving --
6 given another individual's log-in credentials to perform those
7 building functions.

8 Q. And what other evidence shows that NCR Silver meets
9 this claim limitation?

10 A. Yes, sir. We had -- there was quite a bit. But here
11 what we're showing on Joint Exhibit 80 is an excerpt of the NCR
12 Silver merchant agreement. And what this says very clearly, it
13 says NCR Silver -- and we've underlined it. NCR Silver
14 software as a service suite of applications and the related
15 hardware and software.

16 Q. And so the merchant agreement, this is the same
17 merchant agreement that was discussed among several witnesses
18 yesterday; is that correct?

19 A. Yes, sir. It is.

20 Q. And the merchant agreement has an agreement that
21 covers not only software as a service but also hardware?

22 A. Yes, sir. That's correct.

23 Q. And that's the related hardware that makes the whole
24 NCR system work?

25 A. Yes, sir. That's correct.

1 Q. And --

2 MR. PHIPPS: Objection, Your Honor. Mischaracterizes the
3 document. I believe that Mr. Yates is testifying as to what it
4 means.

5 THE COURT: Overruled.

6 MR. PHIPPS: Thank you, Your Honor.

7 MR. YATES: If we could go to the next slide, please.

8 BY MR. YATES:

9 Q. So you've highlighted NCR websites, servers and
10 systems. Again, we're still in the merchant agreement in
11 Section 9.1. What are you wanting to show here?

12 A. We're trying to show here that this is NCR's
13 websites, NCR servers and NCR systems that they are requiring
14 someone to subscribe to.

15 Q. And so NCR clearly has websites if they put it in
16 their contract?

17 A. Yes, sir.

18 Q. And they clearly have servers?

19 A. Yes, sir.

20 Q. And the relationship with the merchant governs the
21 NCR websites and servers, at least with respect to that
22 merchant?

23 A. Yes, sir. That's clear to me.

24 MR. YATES: Can we go to the next slide?

25 BY MR. YATES:

1 Q. What is this slide showing us?

2 A. This slide shows us an excerpt, again, of the Joint
3 Exhibit 30 which is the training video. And what we're seeing
4 here is we're seeing the "my account" screen, which is what a
5 merchant would look at to see the status of their account.
6 They can see their account number, et cetera.

7 What we're highlighting here is the fact that the account
8 status is active. And so the system is able to be used by the
9 merchant at this point.

10 Q. And can NCR disconnect your -- based on your
11 subscription?

12 A. Yes, sir. If you refer again to the merchant
13 agreement, there are instances in which they can shut off the
14 system and this would go to inactive.

15 MR. YATES: Next slide, please.

16 BY MR. YATES:

17 Q. What is this showing us?

18 A. This is showing that the claim elements of Claim 1
19 that we just discussed have been met by NCR Silver.

20 Q. And so we've checked the box?

21 A. Yes, sir. We've checked the box.

22 MR. YATES: Next slide, please.

23 BY MR. YATES:

24 Q. So what is the next element?

25 A. The next element of Claim 1 is "wherein subscriber

1 company's point-of-sale terminals access and repeatedly
2 interact with said web server software from said vendor's
3 remote servers in order to perform the subscriber's desired
4 terminal function over a network wherein the network comprises
5 the Internet."

6 Q. And did you observe this claim element on your
7 inspection in Atlanta?

8 A. Yes, sir. I did. As I mentioned, I was able to use
9 my laptop, connect it to the Internet. But what I was able to
10 do is see the transactions that I was doing on the physical
11 workstations that NCR provided, and was able to compare what
12 was happening between all the various technologies and witness
13 the transactions occurring over a network.

14 Q. And so on this slide we have a browser; is that
15 correct?

16 A. Yes, sir. On this slide -- this is an excerpt of
17 again Joint Exhibit 30, the training video. This is showing
18 again in a browser. It's displaying a web page, and it's
19 showing the transactions that have occurred in that environment
20 at the period of time that we wanted to look at.

21 Q. And we're using HTTPS, and there's an arrow up there
22 showing that?

23 A. Yes, sir. That's correct. So as I mentioned, this
24 is a web page in a browser. And in the URL line we're seeing
25 very clearly again this is HTTPS which is a URL connection to

1 the Internet.

2 Q. And so in this video the evidence we see under this
3 POS transactions, those are transactions that are taking place
4 on a point-of-sale terminal. And that information's being
5 reflected back here in the Back Office?

6 A. Yes, sir. That's correct. If we look at the station
7 that says it's Silver's iPad. So these transactions occurred
8 at that station on the date of 2/22/2017, and these are the
9 transactions that had occurred at that time.

10 Q. Is there any doubt that this is a web server?

11 A. No, sir. There is no doubt.

12 MR. YATES: Next slide, please.

13 BY MR. YATES:

14 Q. What does this show us?

15 A. This shows us that the claim elements that we just
16 discussed of Claim 1 have been met.

17 Q. So that's why the box is checked?

18 A. Yes, sir. That's why the box is checked.

19 Q. And so is Claim 1 of the '640 patent infringed by NCR
20 Silver?

21 A. Yes, sir. It is.

22 Q. All right. Let's move on to Claim 3 of the '640
23 patent.

24 What's the next asserted claim element?

25 A. So this is Claim 3. It is dependent on Claim 1, so

1 it's dependent on Claim 1. So it brings in the components of
2 Claim 1 that we've just discussed.

3 It adds the claim language of "wherein use of said builder
4 requires no special training."

5 Q. And so because this is a dependent claim, it brings
6 in all of the elements we went through from Claim 1; is that
7 correct?

8 A. Yes, sir.

9 Q. And all of your analysis from Claim 1 and all the
10 claim constructions would apply here as well?

11 A. Yes, sir. That's correct.

12 Q. All right. Does NCR Silver satisfy this claim
13 element?

14 A. Yes, sir. It does.

15 As I mentioned, in my -- in my experience using the
16 system, I came to Atlanta armed with reading some documentation
17 and watching some training videos. And I was able to, within
18 seconds, be able to start building -- building screens, and I
19 had no special training to use the system.

20 Q. And what other evidence shows that NCR Silver meets
21 this claim element?

22 A. There's quite a bit, but here we've highlighted the
23 NCR Silver website itself. And it's using some marketing
24 terms, and they highlight the fact that it's easier, it's
25 simple to use, no more days of training new employees, you can

1 use the system in minutes.

2 All of these things are consistent with my experience.

3 MR. YATES: Next slide.

4 BY MR. YATES:

5 Q. And what does this show us?

6 A. This is showing us that Claim 3, what we've just
7 discussed, the elements of Claims 3, have been met through NCR
8 Silver.

9 Q. And so the box is checked?

10 A. Yes, sir. The box is checked.

11 Q. What's the next asserted claim?

12 A. The next asserted claim is Claim 4. And it again is
13 dependent on Claim 1. It adds the language "wherein the
14 testing of said POS screens is done iteratively in realtime
15 while said POS terminals are simultaneously in use during store
16 and business operation hours."

17 Q. And does NCR Silver satisfy this claim element?

18 A. Yes, sir. It does.

19 Q. And did you observe this in your inspection in
20 Atlanta?

21 A. I did. And again, I used my laptop to perform
22 building functions, and I was able to immediately see the
23 functions that I built show up on the terminals that were there
24 on site.

25 Q. And what other evidence shows that NCR Silver meets

1 this claim element?

2 A. There was quite a bit, but we've looked at -- we've
3 taken an excerpt from Joint Exhibit No. 70 and shown the
4 synchronization activity. And what this means is all of the
5 various devices within an environment need to have the same
6 menu items on them.

7 And so what this is showing is a synchronization activity,
8 and it's happening relatively consistently. As you can see,
9 there's a -- three minutes later, their devices are syncing.

10 And what it's doing is taking the information that has
11 been entered and all the screens that have been built and
12 propagating them out to all the various devices.

13 Q. And in your working of the system, if you made
14 changes, did those things sync like immediately?

15 A. Yes, sir. If you press that button, it will -- it
16 will trigger an immediate synchronization.

17 MR. YATES: Next slide.

18 BY MR. YATES:

19 Q. So what does this show us?

20 A. This shows us that the elements of Claim 4 that we
21 just discussed have been met by NCR Silver.

22 Q. So what's the next asserted claim?

23 A. The next asserted claim is Claim 5. It is again
24 dependent on Claim 1. It adds the claim language of "wherein
25 no specialized hardware or software was required to implement

1 said POS builder and wherein no one on site" -- sorry --
2 "wherein no on-site in-store server is required."

3 Q. So to make sure on that last part, it's "wherein no
4 on-site in-store server is required"?

5 A. Yes, sir. That's correct.

6 Q. And does NCR Silver satisfy this claim element?

7 A. Yes, sir. It does.

8 Q. And did you observe this during your inspection in
9 Atlanta?

10 A. I did. Yes, sir.

11 As I mentioned, I used my laptop, which was, again,
12 nothing special, a nothing special browser, completely off the
13 shelf, and was able to use the system. In addition, the
14 hardware that was provided by NCR was all standard -- standard
15 stuff that one would buy off the shelf.

16 Q. And what other evidence shows that NCR Silver meets
17 this claim element?

18 A. In this instance, we've shown the NCR Silver U.K.
19 site, and it talks about how it's using off-the-shelf
20 technology. It talks about how it used to be your business had
21 a computer on site. It talks about consumer-grade,
22 off-the-shelf hardware, such as the iPad, as a POS device.

23 Q. And when we look at the screen, this is NCR saying,
24 remember how things were before the cloud?

25 A. Yes, sir. That's correct.

1 MR. YATES: Next slide.

2 BY MR. YATES:

3 Q. And what does this show us?

4 A. This slide shows us that the elements of Claim 5 that
5 we've just discussed are met by NCR Silver.

6 Q. So the box is checked?

7 A. Yes, sir. The box is checked.

8 Q. What's the next asserted claim?

9 A. The next claim is Claim 6. Again, it's dependent on
10 Claim 1. It adds the claim language of "wherein said POS
11 builder is usable to deliver POS application solutions using
12 software as a subscription service, or SaaS."

13 Q. And does NCR Silver satisfy this element of the
14 claim?

15 A. Yes, sir. It does.

16 Q. And what evidence shows that NCR Silver meets this
17 claim element?

18 A. The major element is -- as we discussed here, is the
19 merchant agreement. And what the merchant agreement says is --
20 as we discussed before, it says clearly, as we -- and we've
21 highlighted here, NCR Silver software as a service suite of
22 applications, the related hardware and the software.

23 MR. YATES: Next slide.

24 BY MR. YATES:

25 Q. And again, this shows that NCR's merchant agreement

1 refers to NCR websites and servers and systems?

2 A. Yes, sir. That's correct. And we've highlighted
3 that here.

4 MR. YATES: Next slide.

5 BY MR. YATES:

6 Q. And what are we showing here?

7 A. This is a screen we've looked at before. This is the
8 Back Office "My Account" screen. And again, it is showing that
9 the account -- the account status, in this case, is active. So
10 their subscription is active, and they're able to use the
11 service which is subscribed to.

12 Q. And Ms. Schoonover testified about subscription and
13 other information yesterday, correct?

14 A. Yes, sir. That's correct.

15 MR. YATES: Next slide.

16 BY MR. YATES:

17 Q. What does this show?

18 A. This slide is showing that the elements that we've
19 just discussed of Claim 6 are met through NCR Silver.

20 Q. And what is the next asserted claim?

21 A. The next asserted claim is Claim 11. It is again
22 dependent on Claim 1. It adds the language "wherein said POS
23 builder adds items to be associated with said keys or buttons."

24 Q. And does NCR Silver satisfy this claim element?

25 A. Yes, sir. It does.

1 Q. And did you observe this claim element during your
2 inspection in Atlanta?

3 A. I did. Yes, sir.

4 As I mentioned, using my laptop, I was able to perform
5 building functions. I was able to add items. These items then
6 appeared with associated buttons. So yes, sir.

7 Q. And what other evidence are you offering?

8 A. The other evidence we have here is -- and we've seen
9 this screen before, it's Joint Exhibit 30, the training video.
10 Again, we're doing a basic item setup here.

11 We are adding the item horchata ice cream, and we can see
12 that there's associated buttons -- that there's going to be an
13 associated button that we've created here by doing this item
14 setup.

15 MR. YATES: Next slide.

16 BY MR. YATES:

17 Q. And what are we seeing here?

18 A. This is what I was alluding to here. This is again
19 Joint Exhibit 30, the training video. This is showing the
20 point-of-sale screen itself, and it is showing the associated
21 key or button that we've just created. And we can see here
22 it's again horchata ice cream. And we can see as we click it,
23 here's the variations we can pick. We can pick a small, medium
24 or large size horchata ice cream.

25 MR. YATES: Next slide.

1 BY MR. YATES:

2 Q. And what is this showing us?

3 A. This slide is showing us that the elements of Claim 1
4 that we've just discussed have been met through NCR Silver.

5 Q. Of Claim 11?

6 A. Claim 11. I'm sorry. Did I misspeak? My apologies.

7 Q. And so the box is checked?

8 A. Yes, sir. The box is checked.

9 Q. What's the next asserted claim?

10 A. The next claim is Claim 12. It is dependent on
11 Claim 1 that we just discussed. It adds the language "wherein
12 said POS builder assigns attributes such as item name, price,
13 cost, group, taxable and inventory status to said items."

14 Q. And does NCR Silver satisfy this element of the
15 claim?

16 A. Yes, sir. It does.

17 Q. And did you observe this on your inspection?

18 A. I did. Yes, sir. As I noted previously, using my
19 laptop building point-of-sale screens, I was able to add -- I
20 think the number is 15 or so -- different attributes for each
21 of these associated menu items. So it gets pretty detailed on
22 what you can add to these items.

23 Q. And what other evidence do you have?

24 A. We have again the training video in front of us.
25 Again, this is the basic item setup screen, but we're

1 highlighting a few different things here. We're highlighting
2 the fact that it has inventory, it has categories or groups, it
3 has price information, it has tax categories. And so it has
4 many of the elements that we've discussed.

5 MR. YATES: Next slide.

6 BY MR. YATES:

7 Q. So I don't think we've seen this slide before. What
8 is this slide showing us?

9 A. Yes, sir. This is a new slide for us. This is --
10 this is the extended item setup. This is where we get to more
11 detailed information that one would add to each associated
12 item. And so you're adding things like variations. Do you
13 want to have, as we just saw, the small, medium or large
14 modifiers? Do we want to add a topping on our ice cream?
15 Et cetera. We can add bar codes, et cetera. But there's quite
16 a bit of extended data we can add here through this screen.

17 Q. And this is still all building; is that correct?

18 A. This is all still building, absolutely, sir.

19 MR. YATES: Next slide.

20 BY MR. YATES:

21 Q. And what is this showing us?

22 A. This slide is showing us that the elements of
23 Claim 12 that we've just discussed have been met.

24 Q. So we've checked the box?

25 A. We have checked the box.

1 Q. What's the next asserted claim?

2 A. The next claim is Claim 13. It is dependent on
3 Claim 12 that we've just discussed. It adds the language,
4 "wherein said attributes are stored, retrievable and changeable
5 from a Back Office database stored on said web server."

6 Q. And does NCR Silver satisfy this claim element?

7 A. NCR Silver does satisfy this claim requirement.

8 Q. And did you observe this during your inspection?

9 A. I did. I was able to, as I mentioned, use my laptop,
10 make -- add items, et cetera. I was able to see these items on
11 different devices, make changes to these items in different --
12 on different devices. And they were all clearly stored on --
13 clearly stored in a database, and it was clearly with a web
14 server.

15 Q. And what other evidence shows that NCR Silver meets
16 this claim element?

17 A. As we've shown before, this is again the training
18 video. We're showing the basic items setup screen again, and
19 we're showing a web page, a web browser, the HTTP in the URL
20 line. We're -- you know, we're adding the item horchata ice
21 cream, and we're showing that all these attributes are
22 retrievable and changeable.

23 MR. YATES: Next slide.

24 BY MR. YATES:

25 Q. And again, we've seen this slide before?

1 A. Yes, sir. Again, this is again an example of how one
2 could retrieve and change details that one had previously built
3 for these menu items.

4 Q. And does NCR specifically mention having a database?

5 A. It does, absolutely. Yes.

6 MR. YATES: Can we go to the next slide?

7 BY MR. YATES:

8 Q. What is this slide showing us?

9 A. This slide shows us -- and this is Joint
10 Exhibit 69 -- overview of NCR point-of-sale, and the video
11 here, the voiceover says, "Back Office," which is really just a
12 website you log into, that's where you find customer management
13 page and database.

14 Q. So this is one of the YouTube videos that we've
15 discussed?

16 A. Yes, sir. It's one of the YouTubes that one could
17 find on YouTube posted by NCR.

18 MR. YATES: Next slide.

19 BY MR. YATES:

20 Q. So what is this showing us?

21 A. This shows us the elements of Claim 13, that we've
22 just discussed, have been met through NCR Silver.

23 Q. And the box is checked?

24 A. Yes, sir. The box is checked.

25 Q. What are your opinions about the asserted claims of

1 the '640 patent?

2 A. As we've discussed, my opinion on the claims of '640,
3 1, 3, 4, 5, 6, 11, 12 and 13, have all been met by NCR Silver.

4 Q. Well, let's transition to the '012 patent.

5 What are the asserted claims of the '012 patent?

6 A. The asserted claims of the '012 patent are Claims 1
7 through 4 and 9.

8 Q. Can you show us Claim 1? Is this Claim 1?

9 A. Yes, sir. This is Claim 1 of the '012 patent.

10 Q. And what is the preamble of Claim 1?

11 A. The preamble of Claim 1 is, a web-based point-of-sale
12 builder comprising.

13 Q. And did the Court construe any of these terms?

14 A. The Court did construe web-based point-of-sale
15 builder system to mean a point-of-sale builder system that
16 requires the Internet.

17 Q. And this is the same construction as used in the
18 other patent?

19 A. Yes, sir. It is.

20 Q. And does NCR Silver satisfy this element of the
21 claim?

22 A. Yes, sir. It does.

23 Q. And did you observe that NCR Silver includes this
24 element during your inspection?

25 A. I did. As I mentioned -- as I mentioned before, I

1 was using my laptop with a browser, and I was performing
2 building functions using the web.

3 Q. And what other evidence shows NCR Silver meets this
4 element?

5 A. As we discussed before, this is a training video, and
6 we're showing here an excerpt from that video. And it's
7 showing, very clearly, a web browser displaying a web page
8 using HTTPS. And in this case, we are again adding a category.
9 And in this case, when we add a category, we get the pop-up of
10 where one would add a new category.

11 MR. YATES: Next slide.

12 BY MR. YATES:

13 Q. And what is this slide showing us?

14 A. This slide is showing us a different video. It's
15 Joint Exhibit 76. And what this is is this is from the
16 marketing team, I would presume. Marketing teams have a -- do
17 a good job of taking pretty complex topics and making them
18 relatively simple. And what it's saying here is, it's
19 powered -- it's powered by cloud-based software.

20 Q. So over here, on the right, it's saying, powered by
21 cloud-based software?

22 A. Yes, sir.

23 MR. YATES: Next slide.

24 BY MR. YATES:

25 Q. And what is this slide showing us?

1 A. This shows us the elements that we've just discussed
2 of the preamble of Claim 1 of '012 have been met by NCR Silver.

3 Q. And so the box is checked?

4 A. Yes, sir. The box is checked.

5 Q. What's the next claim element?

6 A. The next claim element is, a web server including a
7 POS builder software installed therein -- therein -- thereon.

8 Q. And did the Court construe any of these terms?

9 A. Yes, sir. The Court construed a point-of-sale
10 builder software to mean its plain and ordinary meaning,
11 wherein plain and ordinary meaning means "software that builds
12 the POS terminals."

13 It also construed the web server to mean "hardware and
14 software that uses HTTP, or hypertext transfer protocol, to
15 serve data or files that form web pages."

16 And as we discussed, this construction includes the secure
17 and insecure version of HTTP.

18 Q. So HTTP and HTTPS?

19 A. Yes, sir.

20 Q. And does NCR Silver satisfy this claim element?

21 A. Yes, sir. It does.

22 Q. And did you observe this claim element with NCR
23 Silver during your inspection?

24 A. Yes, sir. I did. As I mentioned before, using my
25 laptop with its standard browser I was able to -- I was able to

1 build screens, and I was definitely interacting with the web
2 server in doing so.

3 Q. And what other evidence shows that NCR Silver meets
4 this claim element?

5 A. As we discussed a few times, we're looking at the
6 training video here, and we are showing clearly that it's a web
7 browser displaying a web page. It's got HTTP in the URL line.
8 And in this case we're again adding a new category.

9 Q. And adding a new category's part of building?

10 A. Absolutely. Yes, sir.

11 MR. YATES: Next slide.

12 BY MR. YATES:

13 Q. And what is this showing us?

14 A. This is -- this is the guide to NCR Silver, Joint
15 Exhibit 82A. And what it is showing, what we've highlighted
16 here, is NCR Silver Pro is a cloud-based point-of-sale
17 solution. You access Silver Back Office through a web browser
18 to configure the majority -- a majority of your store settings,
19 track transactions, market to your customers and update your
20 menu.

21 Q. And configuring the majority of your store settings
22 and updating your menu, those are building?

23 A. Yes, sir.

24 MR. YATES: Next slide.

25 BY MR. YATES:

1 Q. So what is this showing us?

2 A. This slide is showing the claim element of Claim 1
3 that we just discussed have been met through NCR Silver.

4 Q. What is the next claim element?

5 A. The next claim element is one or more POS terminals
6 generated by said POS builder software and said one or more POS
7 terminals configured to be accessible at one or more terminal
8 devices. Said POS terminals configured to accept POS
9 transactions and collect corresponding transaction data.

10 Q. And does NCR Silver satisfy this element of the
11 claim?

12 A. Yes, sir. It does.

13 Q. And did you observe this claim element on your
14 inspection?

15 A. Yes, sir. I did. As I mentioned, I was able to use,
16 you know, my laptop and perform building functions. And as I
17 was building screens, I could see -- I could see the various --
18 various devices display those screens. And I could see the
19 transaction data as I performed transactions on my -- again,
20 back on my laptop from the Back Office.

21 Q. And so what other evidence shows NCR Silver meets
22 this limitation?

23 A. We have two excerpts here. We have Joint Exhibit 69
24 which is the left, which is the image of the workstation here.
25 And on the right we see an extract from the training video

1 again of the finished product of a point-of-sale terminal. And
2 we're seeing our -- that we're ready to start accepting
3 transactions here.

4 MR. YATES: Next slide.

5 BY MR. YATES:

6 Q. What are we seeing here?

7 A. One thing we're seeing here is we're seeing the --
8 again, the -- as we've discussed, we've seen the builder
9 software in a web browser with HTTP, and we're going through
10 the extended item setup functionality.

11 MR. YATES: Next slide.

12 BY MR. YATES:

13 Q. What do we see here?

14 A. What we see here is, again, we've seen a screen like
15 this before, and this is the Back Office. This is the
16 point-of-sale transaction screen. And what this is showing is
17 all the transaction data that has occurred within that
18 environment at the time one would want to look at it. And
19 specifically we're looking at the station iPad and the
20 transactions that occurred in September of 2015.

21 Q. And this is being done through a browser with HTTP
22 through a web page?

23 A. Yes, sir. It's consistent with the rest of the
24 slides we've shown. This is a standard browser with a web page
25 doing HTTPS and displaying all this information in a web page.

1 MR. YATES: Next slide.

2 BY MR. YATES:

3 Q. And what does this show us?

4 A. This shows us again marketing, simplifying an
5 important term. And what we're saying here is they -- NCR
6 Silver tracks sales.

7 Q. So tracking sales is how a marketing guy would
8 simplify the POS transactions and transaction data?

9 A. Yes, sir. That's correct.

10 MR. YATES: Next slide.

11 BY MR. YATES:

12 Q. What do we see here?

13 A. What we see here is the claim elements of Claim 1,
14 that we just discussed, have been met through NCR Silver.

15 Q. What's the next claim element?

16 A. The next element is "a POS builder interface
17 configured to be accessible via network communication with said
18 web server over a communications network."

19 Q. And did the Court construe any of these terms?

20 A. Yes, sir. It did.

21 It construed POS builder interface to mean plain and
22 ordinary meaning, wherein plain and ordinary means "an
23 interface, the POS builder software."

24 Q. And does NCR Silver satisfy this element of the
25 claim?

1 A. Yes, sir. It does.

2 Q. And did you observe this claim element with NCR
3 Silver when you were in your inspection?

4 A. Yes, sir. I did.

5 As I mentioned, I used my laptop with an Internet
6 connection, and I was using that browser with an Internet
7 connection, using -- connecting to a web server. And again, as
8 I mentioned, it's -- I had an Internet connection, so it was
9 connected over a network.

10 Q. And is there other evidence, besides your inspection,
11 that shows this claim element is met?

12 A. Yes, sir. Again, focusing on the training video,
13 Joint Exhibit 30, what we show here is, the builder interface,
14 again, you know, we're adding a category. And we have -- we
15 have here a web browser displaying a web page using HTTPS in
16 the URL line; and as we've discussed previously, this is the
17 function of adding a category.

18 MR. YATES: Next slide.

19 BY MR. YATES:

20 Q. What does this show us?

21 A. This shows us the elements of Claim 1 that we just
22 discussed have been met through NCR Silver.

23 Q. And what's the next claim element?

24 A. The next claim element is "wherein said POS builder
25 interface is configured to be utilized to access said builder

1 software for programatically creating or modifying said one or
2 more POS terminals in realtime over the communications
3 network."

4 Q. And does NCR Silver satisfy this claim element?

5 A. Yes, sir. It does.

6 Q. And did you observe this claim element during your
7 inspection?

8 A. I did, sir. As I mentioned, I used my laptop to do
9 building functions. And as I -- as I added screens and items,
10 I was able to look at the point-of-sale terminals, and they had
11 the information that I had created, all the menu items,
12 et cetera, instantaneously over the network that I was
13 connected to.

14 Q. And were you able to go back in and modify those same
15 items?

16 A. I was. Yes, sir.

17 Q. Is there other evidence, besides your inspection?

18 A. Yes, sir. There was a bit. And we looked at --
19 we've excerpt -- created an excerpt from Joint Exhibit 69, and
20 what we're seeing here is the -- we've seen this before, but
21 this is another -- this is the extended item setup screen in a
22 browser with the web page with HTTPS. And what we're showing
23 here is, we're adding variations or adding line -- adding item
24 modifiers.

25 Q. And compared to other versions of this picture,

1 they've scrolled down a little bit from some of the other snips
2 from other videos?

3 A. Very good point. What we're highlighting here, the
4 other thing is, we're showing more of the functionality in the
5 extended item setup. We're showing that we can do a barcode.
6 We can assign printers, and we can look at different, you know,
7 tax regimes that might exist for different categories of items
8 that are sold.

9 MR. YATES: Next slide.

10 BY MR. YATES:

11 Q. And what is this showing us?

12 A. This slide is showing us the elements of Claim 1 that
13 we've just discussed have been met by NCR Silver.

14 Q. What's the next claim element?

15 A. The next claim element is: "Wherein said POS builder
16 software is configured to interact with said one or more POS
17 terminals over the communications network in order for the
18 web-based point-of-sale builder system to perform functions in
19 accordance with instructions sent from the POS builder
20 interface."

21 Q. And does NCR Silver satisfy this claim element?

22 A. Yes, sir. It does.

23 Q. And did you observe this during your inspection?

24 A. Yes, sir. I did.

25 And what I saw was, I was able to -- as I've mentioned, I

1 was able to perform building functions, and those builder
2 functions were propagated to all the devices on the network.

3 Q. And is there other evidence that shows this claim
4 element?

5 A. Yes, sir. There is.

6 We've picked an extract of Joint Exhibit 70. And what --
7 again, we've seen a similar screen here. We've seen -- this is
8 the synchronization activity that occurs within the Silver
9 environment, ensuring that all the devices on the network are
10 synchronized or have the same items that I previously built.
11 And we're showing how that's synchronized.

12 MR. YATES: Next slide.

13 BY MR. YATES:

14 Q. And what is this slide showing us?

15 A. This slide shows us that the claim element that we
16 just discussed in Claim 1 have been met through NCR Silver.

17 Q. So what's the next claim element?

18 A. The next claim element is wherein said POS
19 transactions and corresponding transaction data from said one
20 or more POS terminals are configured to be transmitted to said
21 web server by the communications network.

22 Q. And does NCR Silver satisfy this claim element?

23 A. Yes, sir. It does.

24 Q. And did you observe this claim element in NCR Silver
25 during your inspection?

1 A. I did. Yes, sir. As I mentioned a few times, I was
2 able to perform transactions on the various devices connected
3 to the network. And these transactions were communicated over
4 the network to the centralized Back Office.

5 Q. And what other evidence shows NCR Silver meets this
6 claim element?

7 A. What we picked here is Joint Exhibit 69. And this is
8 showing that -- again, we've seen this screen before. This is
9 showing -- the Back Office showing the list of transactions
10 that have occurred in that environment.

11 MR. YATES: Next slide, please.

12 BY MR. YATES:

13 Q. What does this show?

14 A. This slide is showing that the elements of Claim 1
15 that we've just discussed have been met through NCR Silver.

16 Q. And what's the next claim element?

17 A. The next claim element of Claim 1 is wherein each
18 point-of-sale transaction is correlated with corresponding
19 transaction data occurring at said one or more POS terminals.

20 Q. And does NCR Silver satisfy this claim element?

21 A. Yes, sir. It does.

22 Q. And did you observe this claim element during your
23 inspection?

24 A. Yes, sir. I did. As I've mentioned previously, I
25 was able to perform transactions and see those transactions

1 occur at different point-of-sale terminals. But each
2 point-of-sale terminal was able to do a transaction. I was
3 able to track where that transaction actually occurred.

4 Q. And here we see that it's being viewed by a web
5 server. So this is the Back Office, correct?

6 A. Yes, sir. So we have an excerpt here of Joint
7 Exhibit 69. And so this is, again, what we've shown before.
8 This is highlighted in the transaction screen that allows one
9 to look at the transactions that have occurred in that
10 environment.

11 MR. YATES: Next slide.

12 BY MR. YATES:

13 Q. So what does this show us?

14 A. This slide is showing us that the claim elements of
15 Claim 1 that we've just discussed have been met through NCR
16 Silver.

17 Q. So is Claim 1 of the '012 patent infringed by NCR
18 Silver?

19 A. Yes, sir. That's correct.

20 Q. And what is the next asserted claim?

21 A. The next asserted claim of '012 is Claim 2. It is
22 dependent again on Claim 1. It adds the claim elements of
23 wherein instructions to the POS builder interface for
24 programmatic creation and modification of the one or more POS
25 terminals are not formatted in programming code.

1 Q. Okay. Now, why is this claim important?

2 A. This is important again, as I explained, in my
3 experience of using these in the period of time here in 2005,
4 2010 roughly. It was important to use programming code to
5 create screens. And so this element of Claim 2 is saying
6 you're able to create or modify terminals without the use of
7 programming code which was very prevalent at the time.

8 Q. So the patents aren't limited to a particular
9 programming language or a particular source code?

10 A. No, sir. That's correct.

11 Q. And does NCR Silver satisfy this claim element?

12 A. NCR Silver does satisfy this claim element.

13 Q. And did you observe this claim element during your
14 inspection?

15 A. Yes, sir. Absolutely.

16 As I mentioned, in -- different than my experience of
17 building point-of-sale terminals a while ago, I was able to
18 build screens relatively quickly and easy without the use of
19 any programming code.

20 Q. And what other evidence shows that NCR meets this
21 claim element?

22 A. We've picked Joint Exhibit 30 again, and this is a
23 screen we've seen before. But this is again showing the
24 creation, the building process, occur without the use of
25 programming where we are going through and making decisions

KRISTIE M. DAVIS, OFFICIAL COURT REPORTER
U.S. DISTRICT COURT, WESTERN DISTRICT OF TEXAS (WACO)

1 about what we want to add from variations and modifiers and
2 et cetera, doing all these things, again, building screens
3 without using programming code.

4 MR. YATES: Next slide.

5 BY MR. YATES:

6 Q. And what does this show us?

7 A. This is a screen we've seen before from Joint
8 Exhibit 30, the -- the training video. And this is showing
9 again the finished product, if you will. We're showing the
10 point-of-sale terminal. We're showing the item that we built
11 before, that we created. And again, this is the horchata ice
12 cream that we built previously.

13 MR. YATES: Next slide.

14 BY MR. YATES:

15 Q. So what is this showing us?

16 A. This slide shows us the elements of Claim 2 that
17 we've just discussed have been met through NCR Silver.

18 Q. So the box is checked?

19 A. Yes, sir. The box is checked.

20 Q. What's the next asserted claim?

21 A. The next asserted claim is Claim 3. It is also
22 dependent on Claim 1. It adds the language of wherein said one
23 or more POS terminals are tested iteratively in realtime while
24 said one or more POS terminals are operable to accept POS
25 transactions.

1 Q. And does NCR Silver satisfy this claim element?

2 A. Yes, sir. That's correct.

3 Q. And did you observe this claim element in NCR Silver
4 during your inspection?

5 A. I did. Yes, sir.

6 As I mentioned, I was able to use my laptop, build
7 screens, then go to the -- then go to the point-of-sale
8 workstations that were provided by NCR and see those
9 being added -- see those being added instantaneously.

10 Q. And what other evidence shows that NCR Silver meets
11 this claim element?

12 A. We've seen this screen before. This is the extract
13 of Joint Exhibit 70. And what this is showing -- again, this
14 is showing the synchronization activity. Again, taking the
15 things that one had built -- in this case, me -- and show them
16 propagated to the various devices on the network.

17 MR. YATES: Next slide, please.

18 BY MR. YATES:

19 Q. And what is this showing us?

20 A. This is showing us -- again, this is the
21 point-of-sale terminal itself. And what it is showing us here
22 is there's an available training mode that one could enter from
23 the point-of-sale device itself.

24 Q. And that would be on Joint Exhibit JTX-21?

25 A. Yes, sir. That's correct.

1 Q. And that's another one of the YouTube videos?

2 A. Yes, sir. It is.

3 MR. YATES: Next slide.

4 BY MR. YATES:

5 Q. So what does this show us?

6 A. This shows us the claim elements of Claim 3 that
7 we've just discussed have been met through NCR Silver.

8 Q. And what is the next asserted claim?

9 A. The next asserted claim is Claim 4. It is also
10 dependent on Claim 1. It adds the claim language of wherein at
11 least one of said POS builder interface and said one or more
12 POS terminals are configured to be implemented without
13 specialized hardware or software at a given terminal device.

14 Q. And does NCR Silver satisfy this claim element?

15 A. Yes, sir. It does.

16 Q. And did you observe this during your inspection?

17 A. Yes, sir. I did. As I mentioned previously a few
18 times, I used my laptop which was a standard laptop, not
19 specialized hardware in any way. I was able to perform
20 building functions. Those building functions were then sent to
21 devices that were just standard off-the-shelf hardware
22 configured to be workstations.

23 Q. And what other evidence shows that NCR Silver meets
24 this claim element?

25 A. This is -- we've seen this before as well. This is

1 the UK site for NCR Silver. And it again highlights the fact
2 that NCR Silver uses off-the-shelf technology. Used to be your
3 business had a computer on site using consumer-grade
4 off-the-shelf hardware such as the iPad as a POS device.

5 MR. YATES: Next slide, please.

6 BY MR. YATES:

7 Q. What is this showing us?

8 A. Again, we've seen this slide before, but I wanted to
9 highlight something different that the marketing team had said.
10 And they say in the bottom right: NCR Silver turns your iPad
11 into a mobile POS.

12 Q. So that's how the marketing guys simplify this?

13 A. I believe so. Yes, sir.

14 MR. YATES: Next slide.

15 BY MR. YATES:

16 Q. What does this show us?

17 A. This slide shows us that Claim 4 that we've just
18 discussed has been met through NCR Silver.

19 Q. So we can check the box?

20 A. We can check the box.

21 Q. And what's the next asserted claim?

22 A. The next claim is Claim 9. It is dependent on
23 Claim 1. It adds the language wherein said one or more POS
24 terminals, once generated, are configured to operate
25 independently of said web server.

1 Q. And does NCR Silver satisfy this claim element?

2 A. Yes, sir. It does.

3 Q. And did you observe this behavior?

4 A. Not by my own hands, but we did look at a few videos
5 that do highlight the fact that NCR Silver will work in offline
6 mode, if you will, right? So we've talked about previously
7 food trucks and other items.

8 I think this is also important because at the time of, you
9 know, 2005 to 2010 when I was building these systems, merchants
10 typically didn't have a reliable Internet connection. So it
11 was -- or a reliable connection at all, really, to their
12 payment processor. And it was important to have processing
13 systems to have the ability to be able to go it alone, if you
14 will.

15 And so this is -- this is -- what this highlights here --
16 and we've heard it through testimony here -- here earlier -- is
17 that NCR Silver can function without a connection always being
18 on.

19 Q. And you're referring here to the JTX-21, again, one
20 of the videos that we've talked about before?

21 A. Right. This -- so what this is showing is, you
22 can -- you can operate over a WiFi network or a cellular
23 network, et cetera. Yes. That's what this video is pointing
24 out.

25 MR. YATES: Next slide, please.

1 BY MR. YATES:

2 Q. So --

3 A. And this -- sorry. Go ahead.

4 Q. What's this slide showing us?

5 A. This slide is a -- this is an extract of the NCR
6 website. The top part is an excerpt of the NCR website, and
7 what it says -- what that is saying is, it's answering the
8 question: Will the system, NCR Silver, work without an
9 Internet connection?

10 And the answer is: Yes. The system will work without an
11 Internet connection. Other transactions will sync when
12 Internet connectivity is restored.

13 Q. So bottom line is, you need to have the Internet in
14 order to have your transaction data show back up in the Back
15 Office?

16 A. That's correct. You would be in standalone mode, and
17 your information would be there until you connected to the Back
18 Office.

19 Q. But if the Internet's down or you're in a food truck,
20 NCR Silver can work -- once it's already been generated, can
21 operate independently of the web server?

22 A. Yes, sir. That is correct.

23 Q. And does the patent teach us anything about that?

24 A. The patent does, and what we've displayed here in the
25 bottom right is the extract from the '640 patent. And it says

1 very similar language: However, if the web goes down, the POS
2 terminals continues to operate. There is a "loose coupling" of
3 the POS to the Back Office.

4 MR. YATES: Next slide, please.

5 BY MR. YATES:

6 Q. So what does this show us?

7 A. This shows us that Claim 9, that we've just
8 discussed, have been -- the elements of Claim 9 have been met
9 through NCR Silver.

10 Q. And we can check the box?

11 A. Yes, sir. We can.

12 MR. YATES: Next slide.

13 BY MR. YATES:

14 Q. So do you have opinions about the asserted claims of
15 the '012 patent?

16 THE COURT: Mr. Yates, I think now, since we're shifting
17 to another patent, would be a good place to take a break.

18 MR. YATES: Be a great time to take a break, Your Honor.

19 THE COURT: Unless you all wanted to stay here a little
20 while longer. I'm kidding.

21 He got it at least.

22 MR. YATES: If I may, Your Honor, we are through going
23 through the claims of the patents, but it is still a great time
24 to take a break, Your Honor.

25 THE COURT: Very good.

1 Ladies and gentlemen of the jury, we'll take a recess of
2 10 to 15 minutes. Remembering my instructions that you may not
3 discuss the case amongst yourselves while you're in the jury
4 room, you are dismissed.

5 THE BAILIFF: All rise.

6 (Jury exited the courtroom at 10:20.)

7 THE COURT: Thank you. You may be seated.

8 Do we anticipate this gentleman taking the rest of the
9 day -- rest of the morning until lunch? And that's --

10 MR. YATES: On behalf of plaintiff, we have a few more
11 topics that are not slides, are not element-by-element analysis
12 that we'd like to walk through. And we are --

13 THE COURT: No. Here's --

14 MR. YATES: Very short amount of time.

15 THE COURT: I'm being too mystical. We had an issue to
16 take up regarding the next witness. If we're going to -- if
17 this witness will take all the way through lunch or close to
18 it, then we can wait to take up the slide if you think that --
19 if you think that this witness won't, then we should take it up
20 now. But my sense is he'll go through the morning.

21 MR. YATES: Strictly based on plaintiff, I can't commit
22 that to Your Honor.

23 THE COURT: No, no. I'm just saying.

24 MR. PHIPPS: Your Honor, I believe that I can finish up my
25 cross-examination by lunch.

1 THE COURT: That's fine. So what we'll do is we'll -- and
2 you don't have to -- we don't have to do anything. It's just,
3 I want to make sure we didn't have to take a weird break for me
4 to look at the document.

5 So whenever we finish with him, either before or after
6 lunch, what we'll do is after lunch before the jury comes in
7 I'll take up the issue of the slide for the next -- the next
8 witness is the damages expert, correct?

9 MR. BARR: Yes, Your Honor.

10 THE COURT: Okay.

11 Anything else, Mr. Yates or Barr, we need to take up
12 before I go back?

13 MR. BARR: No, Your Honor.

14 THE COURT: Counsel?

15 MR. PHIPPS: No, Your Honor.

16 THE BAILIFF: All rise.

17 (Recess taken from 10:22 to 10:36.)

18 THE BAILIFF: All rise.

19 THE COURT: Please remain standing for the jury.

20 (The jury entered the courtroom at 10:36.)

21 THE COURT: Thank you. You may be seated.

22 Mr. Yates, you may resume.

23 MR. YATES: If we could go to the next slide, please.

24 BY MR. YATES:

25 Q. And what is this, Mr. Crouse?

1 A. This is an excerpt of the patents. It's Figure 3,
2 and we've seen this before. As I've mentioned, this is
3 architecture, a high-level architecture diagram, that describes
4 the components within the patents-in-suit here.

5 MR. YATES: And could we go to the next slide?

6 BY MR. YATES:

7 Q. So what are we seeing here?

8 A. What we're seeing here -- I believe we've seen this
9 slide before as well -- is we've taken that same excerpt that
10 we've just talked about from the patents-in-suit and we've
11 added modern day components here. This is not trying to
12 replace the claim-by-claim analysis that we just went through,
13 but, again, we're trying to kind of show very modern components
14 with something that's, you know, a little older.

15 Q. So did you suggest this to help the jury visualize
16 what the patent, you know, teaches from 2008 to systems that
17 are here today in 2021?

18 A. Yes. That's an important point. I think some of
19 these diagrams and patents are -- they don't -- you know, they
20 might not make sense to, you know, the layperson or anybody.
21 But so what we've added -- tried to do is add components that
22 people would understand, right?

23 Q. And so if we look in the gold seal copy of the
24 patent, it's this picture here?

25 A. Yes, sir. That's correct.

1 Q. Okay. But infringement is actually determined by the
2 claims, which are in the back of the patent, correct?

3 A. Yes, sir. That's correct.

4 Q. And so the jurors have in their jury notebook a copy
5 of Joint Exhibit 1 and Joint Exhibit 2.

6 Is that your understanding?

7 A. That is my understanding. Yes, sir.

8 Q. They don't have a nice, pretty government one, do
9 they?

10 A. I don't believe so.

11 MR. YATES: We can go to the next slide.

12 BY MR. YATES:

13 Q. Do you have any other opinions related to this case?

14 A. Yes, sir. I do. I want to highlight two areas of
15 opinions.

16 Number one is, I've got some -- I have some opinions
17 around the validity of the patents. I expect to deliver that
18 testimony after Dr. Chatterjee testifies.

19 The other thing I want to discuss is, it's common for
20 me -- it happens often as a technical expert -- to advise or
21 assist damages experts. And I understand this to be common for
22 technical experts, to advise damages experts on technology.

23 Damages experts are not usually technology experts, and
24 one of the things I'm engaged to do is make technology concepts
25 understandable to accounting-type people.

1 Q. And before we get into that, I'd like to -- you know,
2 you were here when they showed a slide from Dr. Chatterjee of
3 an architecture diagram that was showing an application server.

4 You were in the courtroom when that happened?

5 A. Yes, sir. I was.

6 Q. And you're expected to answer some questions in a few
7 minutes from Mr. Phipps about that diagram and other thoughts?

8 A. I presume I would. Yes, sir.

9 Q. Okay. And did any of the claims that we went through
10 require an application server?

11 A. No, sir. They do not.

12 Q. And the claims only really required a web server; is
13 that correct?

14 A. Yes, sir. That is correct.

15 Q. And in this case we have a specific definition given
16 to us from the Court of the web server, correct?

17 A. Yes, sir. We do.

18 Q. And through all of this analysis, you applied to
19 whatever's up in the Google Cloud in the Back Office this
20 Court's particular construction about web server, correct?

21 A. Yes, sir. That is correct.

22 Q. And so regardless whether or not that web server is
23 assisted with application servers or database servers or other
24 technical components, do you believe that the claims are
25 infringed by NCR Silver?

1 A. Yes, sir. That's correct. It's common to have
2 assisting devices assist a web server to create web pages. So
3 yes, sir.

4 Q. Well, let's move on to your testimony that was -- and
5 your opinions that was asked out by the damages people.

6 MR. YATES: If we could go to the next slide.

7 BY MR. YATES:

8 Q. At a high level, can you please identify benefits of
9 the patent?

10 A. Yes, sir. As I mentioned before, one of the key
11 benefits of the patents here are the customers of any skill
12 level -- in this case, the customer is the merchant -- of any
13 skill level can manage their point-of-sale system directly.

14 As I mentioned previously, that is a big difference from
15 how I experienced it in the mid-2000s and I believe how most
16 people experienced point-of-sale terminals in the 2000s, is
17 they had to employ people like me to build these screens.

18 Q. And so that's one benefit. What are some other
19 benefits?

20 A. Yes, sir. Another benefit is the Back Office server
21 resides on a hosted platform. And again, that's a key benefit.
22 It was common for merchants to have server hardware locally to
23 manage communication traffic.

24 It goes on to say that that web-based builder is flexible,
25 easy to use and accurate. It -- the other great thing about

1 putting the Back Office somewhere else is, it makes it
2 available to be managed anywhere in the world, and it also
3 allows that it can be managed in realtime.

4 Q. So how do these benefits that you've just explained
5 to the jury relate to the innovations that we discussed on, oh,
6 I don't know, Slide 7 or 8 or 10, a long time ago?

7 A. Right. I think what they show is is these
8 innovations were innovative and, you know, NCR Silver is
9 employing these innovations within their offering.

10 Q. And so of most interest to the innovations would be
11 whom?

12 A. Merchants.

13 Q. Merchants.

14 And of most interest to the benefits would be?

15 A. Right. I think one of the key points here is, what
16 we've been talking about earlier is a benefit to a manufacturer
17 of a point-of-sale terminal. What are the -- you know, making
18 it easy to use makes it -- as we showed marketing screens. And
19 so that's marketed towards -- to merchants to buy something
20 from a manufacturer. These are benefits for the merchant
21 itself, right?

22 And so it's not benefitting -- these benefits are for the
23 merchant, not necessarily for a manufacturer like NCR.

24 MR. YATES: Now, if we go to the next slide.

25 BY MR. YATES:

1 Q. Can you explain to the jury your understanding of
2 point-of-sale systems generally?

3 A. Yes, sir. As I mentioned, I've built numerous
4 point-of-sale systems, and they're relatively complicated.
5 There's hundreds, if not thousands, of functions that occur
6 within a point-of-sale system.

7 And talking about hundreds of -- hundreds or thousands of
8 things is not very fun, and it's very hard to do. And so what
9 I endeavored to do was categorize all of these functions into
10 discrete categories, or buckets, if you will.

11 And I've categorized all the hundreds or thousands of
12 functions within a point-of-sale server -- point-of-sale system
13 within these six categories.

14 Q. Well, can you elaborate on your first bucket,
15 transaction management?

16 A. Yes, sir. So the transaction management is -- it's
17 the backbone, if you will, of a point-of-sale system. It is
18 what we all think about a point-of-sale system is, is giving a
19 credit card, doing a transaction, giving money, taking --
20 getting change back, all the things that happen with a
21 transaction. A point-of-sale system must do that. It is, as I
22 mentioned, the backbone of a point-of-sale system.

23 Q. And the next bucket is inventory management. What's
24 that?

25 A. Yes. So inventory management is a system -- and

1 we've heard this through some testimony earlier. The system
2 needs to understand what is being sold, right? It needs to
3 understand what items are being sold, if it's a pretzel, it's a
4 pizza, what have you. It also should understand if you run
5 out, right? You don't want to sell things that you don't have,
6 right? That makes people angry. So having the point-of-sale
7 system understand what's being sold is important.

8 Q. And that's a gigantic differentiator from, you know,
9 just a cash machine or a cash register that just understands
10 maybe the payment side of a transaction, correct?

11 A. Yes, sir. You're absolutely correct.

12 Q. What is your third bucket --

13 A. The third bucket --

14 Q. -- content management? Sorry.

15 A. Sorry. Yeah. The third bucket is what I call
16 content management. So this is what we discussed. The
17 information that's on the device, so the representation and the
18 data that goes along with the items, so the variations, the
19 prices, et cetera. And so being able to add, manipulate,
20 change those items, is what I'm terming content management.

21 Q. So that would include describing for the items?

22 A. Yes, sir. The items, the descriptors. And I think
23 in the NCR Silver case we have 15 describers or attributes, if
24 you will, of these items. And so all that, again, is content
25 that a merchant can manage.

1 Q. Please explain your fourth bucket, POS
2 infrastructure.

3 A. Yes, sir. The infrastructure is the physical
4 components. This is the things we're touching, whether it be
5 keyboards, whether it be tablets, whether it be cash registers.
6 It's the hardware -- the hardware, the things that are physical
7 that allow the system to operate.

8 Q. And your fifth bucket, reporting?

9 A. Yes, sir. Reporting. Reporting is -- and we've seen
10 some of the screens here through the presentation. Reporting
11 is showing transaction data. How much money did we make in
12 this store? How much is, you know, Susie at Terminal A -- you
13 know, how much did she ring up today? Understanding the
14 transactions that have happened in the environment is important
15 to a point-of-sale solution.

16 Q. And your sixth bucket is security?

17 A. Sixth bucket is security. I would be remiss if I
18 didn't talk about it. Security's important, as we all know.
19 And so protecting the information that you have in your system
20 is important.

21 Q. So you created these six buckets for a generic
22 point-of-sale system. And of the various features, hundreds of
23 features, you more or less mapped them into these six buckets?

24 A. Yes, sir. That's correct.

25 Q. Okay. And this applies to all point-of-sale systems?

1 A. Yes, sir. That's correct.

2 Q. Okay. Why are four of them highlighted in yellow?

3 A. The four that are highlighted in yellow are what I
4 would consider core components of a point-of-sale environment.

5 So transaction management, inventory management, content
6 management, the infrastructure. That's core to -- core to the
7 system itself.

8 The un-bolded items of reporting and security are
9 important, and I'm not saying they're not. What I am saying
10 is, there are other ways you can fulfill those components.

11 So for reporting, for instance, you can extract the data
12 from the system and perform your analytics in another analytics
13 engine. You could use Excel. You could use -- you know, if
14 you have another platform to do analytics on, you don't need to
15 rely on the point-of-sale system to do that for you.

16 And the same thing goes for security. As I mentioned,
17 security is very important, but there -- if you already have
18 security regimes in place to protect your environment, you have
19 physical security, you have workstation security or Windows
20 security, you can protect your environment in other ways. You
21 do not have to rely on your point-of-sale solution to do that
22 for you.

23 Q. So how do your buckets relate to NCR Silver?

24 A. So these buckets certainly do relate to NCR Silver.
25 NCR Silver does offer the components that we've discussed. It

1 clearly offers transaction handling. It clearly offers
2 inventory management. It clearly offers content management
3 and --

4 MR. PHIPPS: Your Honor, I object. I believe that this is
5 getting into the apportionment issue, which we dealt with
6 previously.

7 THE COURT: I can't hear what you're saying.

8 MR. PHIPPS: Oh. Your Honor, I object. I believe this is
9 getting into the apportionment issue that we dealt with
10 previously pretrial.

11 THE COURT: Let me hear the question again.

12 MR. YATES: I was asking how this relates to NCR Silver,
13 and Mr. Crouse was going over how the four items here on the
14 slide, that NCR Silver offers those components.

15 And we are very aware of Your Honor's guidance earlier.

16 THE COURT: And how would this violate it?

17 MR. PHIPPS: Yes, Your Honor. The last two bullet points
18 purport to indicate that those are factors that drive demand
19 for NCR Silver.

20 And again, this witness has not done any consumer surveys
21 nor spoken to consumers in connection with preparing his
22 report. And, therefore, we feel that he is not able to offer
23 an opinion on what drives demand based on these factors that he
24 has identified.

25 THE COURT: Mr. Yates?

1 MR. YATES: First of all, we believe that they tried to --
2 this on their motion, and that part of the motion was denied.

3 THE COURT: I agree.

4 MR. YATES: There's a technical apportionment --

5 THE COURT: The objection will be overruled.

6 MR. YATES: Thank you, sir.

7 BY MR. YATES:

8 Q. I believe we were talking about your first bullet,
9 which says, NCR Silver offers the following high level
10 components.

11 Was that where we were?

12 A. Yes, sir. I believe so. I've lost my place a little
13 bit, so I'll --

14 Q. I think you were on --

15 A. If I backtrack, I apologize.

16 Q. I think you were on content management.

17 A. Okay. Yes, sir.

18 As we've shown through a lot of the presentation here,
19 we've shown that NCR Silver does have content management. We
20 saw the items being shown, the items being changed, the items
21 being manipulatable, you know, changed and added, et cetera.

22 And so it's -- it does offer content management.

23 Q. And the fourth item there, POS infrastructure, how
24 does that relate to NCR Silver?

25 A. Yes, sir. As we've shown through the merchant

1 agreement and other exhibits here, that there is an
2 infrastructure that is acquired -- required for the system to
3 work, and NCR does provide that.

4 Q. These four components are covered by the inventions
5 and the patents. And by explanation, meaning the patents have
6 claim language that relates to NCR's implementation of those
7 four components; is that correct?

8 A. Yes, sir. That's correct.

9 Q. And do you have any other opinions about these four
10 components at NCR Silver?

11 A. So these four components are differentiating in
12 general, right? So the -- the patents have created
13 differentiators, as we discussed earlier, in these categories,
14 and by doing so have created demand.

15 And I think we've talked about, interestingly, earlier, I
16 forget the name of the consulting firm, but we talked about it.
17 And they highlight the same four factors as driving demand for
18 point-of-sale terminals -- point-of-sale systems generally.

19 So these innovations in these areas do drive demand.

20 MR. YATES: Can we move up into I think the first backup
21 slide?

22 BY MR. YATES:

23 Q. Sorry. Since you brought this up, we have something
24 that was shown yesterday.

25 This is PTX-117, and this is already, I believe, entered

1 into evidence.

2 Is this what you were talking about, Mr. Crouse?

3 A. Yes, sir. That is. And -- yes, sir. And I haven't
4 seen -- I didn't see the back of the slide -- the backup of
5 this slide until this week. And so it was just kind of
6 happenstance --

7 MR. PHIPPS: Objection, Your Honor. This is not in his
8 report. He admitted he just saw it this week.

9 MR. YATES: This exact exhibit was an exhibit to
10 Ms. Schoonover's deposition, which he did read.

11 I think, if I may say, that he hasn't seen a blowup of
12 this slide until this week, and we will concede he didn't see
13 or create the annotations on the slide until preparation for
14 this trial.

15 THE COURT: But has he addressed in his report each of
16 these issues?

17 MR. YATES: He's addressed all of these issues in his
18 report, Your Honor. He has not addressed them in the context
19 of this slide, to be candid.

20 THE COURT: I'll overrule the objection.

21 MR. YATES: Thank you.

22 BY MR. YATES:

23 Q. So this was the presentation that Mr. Barr, I
24 believe, went over with Ms. Schoonover and they went and talked
25 about yesterday, correct?

1 A. Yes, sir. That's correct.

2 Q. And so what's highlighted here is, merchant demand
3 for payments capability integrated with inventory control,
4 order management and POS functions across in-store, online and
5 mobile devices is forcing industry collaboration and opening up
6 opportunities?

7 A. Yes, sir. That's correct.

8 MR. YATES: And if we could go back to where we were in
9 the presentation before.

10 BY MR. YATES:

11 Q. And so you believe those map to the four high-level
12 components that you created and offered to opine on NCR Silver?

13 A. Yes, sir. That is correct.

14 Q. And that's what you mean when you say these four
15 components are significant infringing drivers of demand for NCR
16 Silver?

17 A. That's correct. And I would also highlight we
18 performed, as I mentioned, through my implementations of
19 point-of-sale systems, we did do market surveys with consumers
20 who use these devices, both the individuals in the stores or
21 the branches, as well as consumers, direct consumers
22 themselves. And they -- we discussed how -- is the ease of use
23 of systems -- easy to transact -- transaction handling
24 important. And that's one of the many things we would ask
25 consumers. And, indeed, this does --

1 MR. PHIPPS: Objection, Your Honor, hearsay.

2 THE COURT: Hearsay?

3 MR. PHIPPS: Yes. He says he's talking to consumers.

4 THE COURT: Is he not an expert?

5 MR. PHIPPS: Yes, Your Honor. But we have not seen these
6 discussions in his report.

7 THE COURT: Well, those are two -- your objection to
8 hearsay is overruled. Do you have another objection?

9 MR. PHIPPS: Yes, Your Honor. In terms of what's in his
10 report, he doesn't recount any discussions with consumers.

11 MR. YATES: We'll withdraw the question, Your Honor.

12 If we could go to the next slide, please.

13 BY MR. YATES:

14 Q. And I think these are your -- well, do you have any
15 other opinions that you'd like to share?

16 A. Yes, sir. I do. My first opinion -- my first other
17 opinion is while legacy POS systems continue to exist, I'm not
18 aware of any commercially acceptable noninfringing alternatives
19 that achieve the same benefits as the patents in suit.

20 Q. Are you aware of any cost effective alternate ways to
21 design around the patents-in-suit?

22 A. No, sir. I'm not aware of any cost-effective ways to
23 do that.

24 MR. YATES: Your Honor, subject to our offer of proof that
25 we'll make later today, pass the witness.

KRISTIE M. DAVIS, OFFICIAL COURT REPORTER
U.S. DISTRICT COURT, WESTERN DISTRICT OF TEXAS (WACO)

1 THE COURT: Ladies and gentlemen of the jury, whenever I
2 see, in these trials, these wonderful people who walk up each
3 time and do all the technical stuff, I always wish I had
4 someone at home who was as good that could fix everything for
5 me.

6 I never thank them, but we have -- always have great
7 technical help in here for the lawyers, you know, to make it
8 easier for all of us. So let me thank them for all of us.

9 You may proceed.

10 MR. PHIPPS: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. PHIPPS:

13 Q. Good morning, Mr. Crouse.

14 A. Good morning, Mr. Phipps.

15 Q. You just talked about four factors that you pulled
16 out in your report of general features that are relevant to POS
17 technology, correct?

18 A. Yes, sir. That's correct.

19 Q. And were you here when Mr. Olson testified?

20 A. Yes, sir. I was.

21 Q. Okay. And you heard him talk about his prior art
22 experience with Starbucks, correct?

23 A. Yes, sir. I heard that.

24 Q. And I went through all four of those factors with
25 him, and he admitted that the POS system that he used at

1 Starbucks had all those features, didn't he?

2 A. Yes. I believe he did admit that.

3 Q. Okay. If those features are common to POS systems
4 and they were in the prior art and they weren't invented by
5 Mr. Olson, those can't be relevant features that the plaintiff
6 can claim that they're entitled to revenue from because they
7 drive demand for NCR Silver, because, again, those are the same
8 factors and features that were available at the POS systems at
9 Starbucks when Mr. Olson started working there, correct?

10 A. No, sir.

11 Q. You disagree with that?

12 A. I do disagree with you, sir.

13 Q. All right. But you do agree that Mr. Olson conceded
14 that all of those four features were present in the Starbucks
15 POS system and the prior art, don't you?

16 A. I do agree that he said that. Yes, sir.

17 Q. Okay. Thank you, Mr. Crouse.

18 And did you see me cross out the word "patented features"
19 with respect to the opening slides of those four factors and
20 write in "prior art"? Did you see me do that?

21 A. I did not, sir. I'm sorry.

22 Q. Okay. Let's talk about your education.

23 You have a bachelor of business degree in finance,
24 correct?

25 A. Yes, sir. That's correct.

1 Q. And that's your only formal education is a degree in
2 finance, correct?

3 A. That's correct.

4 Q. But you're being offered in this case as a technical
5 witness, correct?

6 A. Yes, sir. That's correct.

7 Q. As a technical expert, correct?

8 A. Yes, sir. That's correct.

9 Q. But your only formal degree is in finance, correct?

10 A. Yes, sir. That's correct.

11 Q. You do not have a bachelor of science degree in
12 computer engineering, do you?

13 A. No, sir. I do not.

14 Q. You do not have a bachelor degree in software
15 engineering, do you?

16 A. No, sir. I do not.

17 Q. You do not have a bachelor of science degree in
18 computer science, do you?

19 A. No, sir. I do not.

20 Q. During your tenure at the University of Texas in
21 Austin, you did not take any courses on software coding, did
22 you?

23 A. No, sir. I did not.

24 Q. You do not have any patents, do you?

25 A. No, sir. I do not.

1 Q. You do not consider yourself to be an inventor, do
2 you?

3 A. No, sir. I do not.

4 Q. You did not design any new computer hardware in
5 connection with your work experience, did you?

6 A. No, sir.

7 Q. Prior to being involved in this case, you had not
8 reviewed any U.S. patents other than the ones your father had,
9 correct?

10 A. Yes, sir. That's correct.

11 Q. Prior to this lawsuit, you had never heard of or
12 reviewed the two asserted patents?

13 A. Yes, sir. That's correct.

14 Q. And prior to this lawsuit you had never heard of
15 Wayne Baratta or Quentin Olson; is that correct?

16 A. Yes, sir. That's correct.

17 Q. Prior to this lawsuit you had never heard of
18 CloudofChange, correct?

19 A. Yes, sir. That is correct.

20 Q. And you had never heard of any of their predecessor
21 entities such as InteRegister or Tyramm, correct?

22 A. Yes, sir. That is correct.

23 Q. In your work experience involving POS systems, you
24 never worked on a POS system involving an app from the Apple
25 Store or any system on an iPad, have you?

1 A. No, sir.

2 Q. This is the first case in which you are providing an
3 opinion on POS systems, correct?

4 A. Yes, sir.

5 Q. Okay. This is the first case in which you're
6 providing an opinion on patent infringement, correct?

7 A. Yes, sir.

8 Q. This is the first case in which you are opining, or
9 providing an opinion as to patent invalidity issues, correct?

10 A. Yes, sir. That's correct.

11 Q. This is the only case in which you have served as an
12 expert witness where the case involved a patent, correct?

13 A. Yes, sir. That's correct.

14 Q. In preparing your report in this case you did not
15 speak to any consumer who actually used NCR Silver, did you?

16 A. No, sir. I did not.

17 Q. Other than the HTML code on this login screen, you
18 have not reviewed any source code for NCR Silver, have you?

19 A. Yes, sir. That's correct.

20 Q. You inspected NCR Silver only once, and that occurred
21 on February 22, 2021 and lasted for about two hours, correct?

22 A. Yes, sir. That's correct.

23 Q. During that inspection you didn't review any source
24 code, did you?

25 A. No, sir. I did not.

KRISTIE M. DAVIS, OFFICIAL COURT REPORTER
U.S. DISTRICT COURT, WESTERN DISTRICT OF TEXAS (WACO)

1 Q. After graduating with your degree in finance, you
2 went to work for Andersen Consulting which is now called
3 Accenture, correct?

4 A. Yes, sir. That's correct.

5 Q. During your time at Accenture you did not work on POS
6 systems, did you?

7 A. No, sir. I did not.

8 Q. You were employed at Accenture for 12 years, from
9 1992 to 2004, correct?

10 A. Yes, sir. That's correct.

11 Q. And you didn't work on any POS systems during that
12 time frame?

13 A. No, sir. I did not.

14 Q. In 2004 you then went to work for BearingPoint,
15 correct?

16 A. Yes, sir.

17 Q. It was at BearingPoint that you alleged to have first
18 worked on your first point-of-sale system, correct?

19 A. Yes, sir.

20 Q. And that was in 2004?

21 A. Yes, sir.

22 Q. You describe the project as leveraging point-of-sale
23 solutions to help the bank go paperless when processing loan
24 documents, correct?

25 A. And other transactions, but yes, sir.

1 Q. You consider the bank essentially to be a merchant in
2 that scenario, correct?

3 A. Yes, sir. That's correct.

4 Q. You mentioned that you worked with most of the major
5 vendors of POS terminals, and that included IBM, Hypercom,
6 VeriFone and about five others, correct?

7 A. Yes, sir. That's correct.

8 Q. So at that time there were numerous POS vendors in
9 the market in 2004, including IBM, correct?

10 A. Yes, sir. That's correct.

11 Q. And those manufacturers also provided POS builder
12 software, correct?

13 A. Yes, sir. They did.

14 Q. And those system included POS terminals with touch
15 screens, POS builder software and PC workstations, correct?

16 A. Yes, sir. That's correct.

17 Q. You consider those commercially available POS builder
18 systems that were in the prior art time frame of 2004 to 2007
19 to be different from the web-based POS terminal systems of the
20 asserted patents, don't you?

21 A. Yes, sir. I do.

22 Q. Those prior art systems that included builder
23 software were used by you and your team back in the corporate
24 office to do the building, correct?

25 A. Yes, sir. That statement is correct.

1 Q. Those prior art systems that included builder
2 software were not used by the bank tellers to build their own
3 POS terminals, were they?

4 A. No, sir. They were not.

5 Q. You were employed with BearingPoint for about three
6 years, correct?

7 A. Yes, sir.

8 Q. You left BearingPoint in 2007?

9 A. Yes, sir. Correct.

10 Q. In 2007 you then became employed by Perot Systems?

11 A. Yes, sir. That's correct.

12 Q. You worked on one project that you called a POS
13 system, and that included a project for Chase Bank wherein they
14 wanted to speed up the teller process, correct?

15 A. Yes, sir. That's correct.

16 Q. You indicated that your team used a POS builder, but
17 it was you and your team that did the building, correct?

18 A. Yes, sir. That's correct.

19 Q. So if you, back in the corporate offices of Perot
20 Systems, were building a POS, that is different from the
21 asserted claims, correct?

22 A. Yes, sir. That's correct.

23 Q. And IBM made the POS builder software that you used
24 at Perot Systems, correct?

25 A. Yes, sir. That's correct.

1 Q. It was you and your team, back in the corporate
2 office, that used the IBM builder software to build the POS
3 screens, the look and feel of them, correct?

4 A. Yes, sir. That's correct.

5 Q. Your team of builders could use a test environment to
6 build the POS terminals, correct?

7 A. Yes, sir. That's correct.

8 Q. Those systems were fairly complex, difficult to use,
9 so you had to be very diligent in your level of testing,
10 correct?

11 A. Yes, sir. That's correct.

12 Q. Those systems used IBM POS terminals, IBM builder
13 software, IBM PC workstations and Dell servers on the back end,
14 didn't they?

15 A. Yes, sir. That's correct.

16 Q. Those Dell servers were hosted at a remote
17 centralized location, correct?

18 A. I'm sorry. Could you -- I wasn't following for a
19 moment.

20 Q. The Dell servers that were used in your prior art POS
21 activities, those were hosted at a remote, centralized
22 location, correct?

23 A. It's the word "hosted" I'm having an issue with. So
24 these were on-premises implementations, so they weren't
25 necessarily hosted, but...

1 Q. Okay. Could we look at your transcript, Page 45,
2 Lines 2 through 6?

3 And my question was, were those Dell servers?

4 And your answer was, if you could read that.

5 A. I think that's consistent with what I just said.

6 These were not hosted at a third party. It was hosted in a
7 centralized location for Chase.

8 Q. Correct. And I didn't ask you right now if it was a
9 third party, but I asked if they were hosted at a remote,
10 centralized location.

11 And that is true, correct, Mr. Crouse?

12 A. Hosting -- and I'm not trying to be difficult, and I
13 apologize.

14 Q. I understand.

15 A. But hosting is typically a relationship where a third
16 party is hosting it for you, and it was merely something that,
17 in this case, Chase owned.

18 Q. Okay. But does your answer say there that it was
19 hosted on the centralized location?

20 A. Yes, sir. It does.

21 Q. Okay. Thank you, Mr. Crouse.

22 To build those POS terminals, your team was involved in
23 coding, correct?

24 A. Yes, sir. Myself and the team. Yes.

25 Q. There was coding involved because you were actually

1 manipulating the look and feel of the device of what was being
2 represented on the device.

3 So the shape of the buttons, the location of the buttons,
4 all of that was programmatic, correct?

5 A. Yes, sir.

6 Q. You consider what the bank tellers or the merchants
7 were doing was more of a data entry exercise, correct?

8 A. I wouldn't say it was data entry.

9 Q. Okay. Can we look at your deposition, Page 46,
10 Lines 2 through 5?

11 And then on Lines 4 to 5, do you see the phrase "that was
12 more of a data entry exercise"?

13 A. Right. And this is talking about the transaction
14 itself, not the building.

15 Q. Correct. In other words, the transaction that the
16 tellers were doing, you consider that a data entry exercise?

17 A. Yes, sir. They would enter in the amount of data --
18 the amount of money being received. That's correct.

19 Q. Yes, sir. And that was a data entry exercise?

20 A. Yes, sir.

21 Q. Okay. Thank you.

22 If your team was building, because you -- certainly were
23 programming, because you -- again, you were changing the look
24 and feel of the entire enterprise. In other words, it was your
25 team that was programming, correct?

1 A. Yes, sir. That's correct.

2 Q. Your team that was programming, changing the look and
3 feel of the entire enterprise, they were involved in actual
4 computer coding, correct?

5 A. Yes, sir. That is correct.

6 Q. In connection with using that system for customer
7 on-boarding, you consider that adding the customer's name for
8 the first would be a data entry exercise.

9 I'm sorry. We've already covered that.

10 A. Yes, sir. That's correct.

11 Q. All right. And it was your centralized team that
12 performed the function of what you characterize as building
13 point-of-sale content, correct?

14 A. Yes, sir.

15 Q. The POS software that your team built was loaded onto
16 the POS terminal at a central location, and then the devices
17 were shipped to the branches, correct?

18 A. Yes, sir. That's correct.

19 Q. The teller or customers could not make changes to the
20 prebuilt POS terminal software that was preloaded or shipped to
21 the customers, could they?

22 A. You're right. Yes, sir.

23 Q. The customer could not build the POS terminal,
24 correct?

25 A. Correct.

1 Q. The customers who used the prebuilt terminal software
2 in this Chase example could not change the buttons or where
3 they went, correct?

4 A. Yes, sir. That's correct.

5 Q. IBM wrote that POS builder software, correct?

6 A. Yes, sir. It did.

7 Q. But you do not recall at your deposition the name of
8 the POS builder software from IBM, did you?

9 A. No, sir.

10 Q. The remote servers hosting that system that your team
11 built were IBM servers and those IBM servers were not web
12 servers, correct?

13 A. That is correct.

14 Q. Your prior work experience involving bank systems did
15 not involve the sale of food, did not involve the sale of
16 retail items and did not involve the processing of credit card
17 transactions, correct? And I'm talking about all of your prior
18 art experience.

19 A. Yes, sir. You're correct.

20 Q. Didn't involve any of those?

21 A. Yes, sir. You're correct.

22 Q. So no sale of food, no sale of retail items and no
23 processing of credit card transactions?

24 A. You're correct, sir.

25 Q. Instead, those banks were selling loans and

1 processing transactions around currency transactions and loans
2 and know-your-customer type transactions, correct?

3 A. Yes, sir.

4 Q. Let's talk about your inspection of NCR Silver.
5 During your inspection of NCR Silver, you were not able to
6 change the size or shape of the buttons, were you?

7 A. No, sir.

8 Q. I'm sorry?

9 A. No, sir.

10 Q. Okay. And you were not able to move the buttons
11 around relative to each other, were you?

12 A. I was.

13 Q. Okay. Let's look at your deposition testimony. Page
14 134, Line -- I'm sorry -- 10 through 13.

15 And I asked you this question and you gave this answer.

16 Mr. Crouse, but in terms of moving the buttons around
17 relative to each other, you could not do that with NCR Silver,
18 correct?

19 And your answer was?

20 A. My answer was, that is correct.

21 Q. You were not able to change the reference points
22 between a button and a database, were you?

23 A. No, sir.

24 Q. When you used the NCR Silver product during the
25 inspection, you didn't change the source code on the existing

1 POS devices, did you?

2 A. No, sir.

3 Q. Now, you mentioned that you reviewed some --
4 something in a GitHub repository. Do you remember that?

5 A. Yes, sir.

6 Q. Okay. But that did not include any source code, did
7 it?

8 A. No, sir. It did not.

9 Q. You understand that you -- and let's -- now that
10 we've talked about some of your experience and the inspection,
11 we're going to talk about your opinions on infringement of the
12 claims.

13 And would you agree that you have to use the Court's
14 construction in your analysis?

15 A. I would agree with that. Yes, sir.

16 Q. And the Court defined point-of-sale builder software
17 to mean software that builds the POS terminals, correct?

18 A. Yes, sir.

19 Q. All right. But in your word you used the word
20 "content" which is not in the Court's construction, correct?

21 A. That is correct.

22 Q. You chose not to use that construction, didn't you?

23 A. No, sir. That's not correct.

24 Q. And let's look at your transcript on Page 147,
25 Line 25. Let's see here. Okay. Starts off on Page 147.

1 My question, Mr. Crouse, is the Court's construction
2 broader than the definition that you're using with the word
3 "content"?

4 And you responded?

5 A. I don't have any disagreement with the Court's
6 construction.

7 Q. And then I said, Then why aren't you using it?

8 And your answer?

9 A. My answer was, I just chose not to. I'm not a robot.
10 I don't just pick. It's not a copy-and-paste exercise.

11 Q. So when I asked you why aren't you using the Court's
12 construction, you responded, I chose not to, correct? That was
13 your response?

14 A. Yes, sir. That was my response.

15 Q. Now, you define POS content to mean the data,
16 correct?

17 A. Yes, sir.

18 Q. And your use of the word "content" as compared to
19 data, you believe that there could be data in NCR Silver that
20 determines the size of the button. And you call that data,
21 correct?

22 A. I'm sorry. Could you repeat? My apologies.

23 Q. Yes, sir. Mr. Crouse, in your use of the word
24 "content" as compared to "data," you believe that there could
25 be data in NCR Silver that determines the size of the button,

1 and you call that data, correct?

2 A. Yes, sir.

3 Q. But you don't know if NCR Silver does that or not, do
4 you?

5 A. Yes, sir. That's correct.

6 Q. Okay. So you don't know?

7 A. That's correct.

8 Q. In your report you indicate that you believe that a
9 POS builder is something that has the ability to add, delete or
10 maintain items as well as the items related to metadata in a
11 POS system, correct?

12 A. Yes, sir.

13 Q. So you believe that the ability to simply add, delete
14 and maintain items is building the POS terminal, don't you?

15 A. Yes, sir. That's correct.

16 Q. You admit that the word "metadata" does not appear in
17 any of the asserted patents, don't you?

18 A. Yes, sir. That's correct.

19 Q. You admit that the word "metadata" is not included in
20 the Court's construction, don't you?

21 A. Yes, sir. That's correct.

22 Q. In your report, you reference open-source
23 technologies, correct?

24 A. Yes, sir. I do.

25 Q. And you agree that the asserted claims do not require

1 the use of open-source technologies, correct?

2 A. Correct.

3 Q. You define the asserted patents as being
4 merchant-configurable builder, and you consider that to be
5 allowing the end user to do the configuration building,
6 correct?

7 A. Yes, sir.

8 Q. You understand the asserted patents to allow the
9 merchant to build their own system, correct?

10 A. Yes, sir.

11 Q. You admit that the word "cloud" does not appear in
12 the asserted patents, don't you?

13 A. I do. That's correct, sir.

14 Q. You agree that Claim 1 of the '640 patent requires
15 that the builder run on a web server, don't you?

16 A. Yes, sir.

17 Q. Okay. So it has to be on a web server.

18 You agree that Claim 1 of the '012 patent requires that
19 the POS builder be installed on a web server?

20 A. Yes, sir. That's correct.

21 Q. So either installed on or runs on?

22 A. Or runs on. Yes, sir.

23 Q. But you don't know, with respect to NCR Silver, where
24 physically the alleged POS builder software resides, do you?

25 A. Correct.

1 Q. You do not know which aspects of the remotely hosted
2 software used with NCR Silver is hosted on a web server versus
3 an application server, do you?

4 A. No, sir.

5 Q. Okay. Let's look at the term "programatically
6 creating" in Claim 1 of the '012 patent. That's on Slide 80 of
7 your presentation.

8 You understand that that part of Claim 1 of the '012
9 patent to mean "through the efforts of developing code," don't
10 you?

11 A. I'm sorry. I wasn't following you.

12 Q. Oh, I'm sorry.

13 MR. PHIPPS: If we could get up Slide 80 --

14 BY THE WITNESS:

15 A. That would be helpful. I'm sorry. It's a lot of --

16 MR. PHIPPS: -- from the presentation that you used with
17 Mr. Yates. Sorry.

18 BY THE WITNESS:

19 A. Appreciate you.

20 Thank you.

21 MR. PHIPPS: Now, we just need -- oh, yeah. That's fine.
22 Okay.

23 BY MS. PHIPPS:

24 So Claim 1 is on Slide 12, but you remember that being a
25 limitation of Claim 1 of the '012 patent, correct --

1 A. Yes, sir. That's correct.

2 Q. -- "programmatically creating"? Okay.

3 And so my question to you was: As to that term, that is
4 in Claim 1 of the '012 patent, you understand that to mean
5 "through the effort of developing code," correct?

6 A. No, sir. I do not.

7 Q. Okay. So let's look at your deposition, your second
8 deposition.

9 MR. PHIPPS: So the second transcript, Page 94.

10 Okay. Lines 10 through 13.

11 BY MR. PHIPPS:

12 Q. And I asked you this question, and you gave this
13 answer.

14 Mr. Crouse, what do you understand programmatically
15 creating to mean?

16 A. My answer was, through the effort of developing code.

17 Q. Thank you, Mr. Crouse.

18 And in connection with your report in trying to determine
19 whether or not NCR Silver meets that limitation, you
20 observed -- you say that you observed that during your
21 inspection, correct?

22 A. Observed what? I'm sorry.

23 Q. You say that to determine whether or not NCR Silver
24 meets that limitation which is through the effort of developing
25 code, the basis for your opinion that NCR Silver meets this

1 limitation is your observation of using NCR Silver during the
2 inspection, correct?

3 A. Yes, sir.

4 Q. And then you had another slide on Slide 80 which is
5 just an output of an NCR Silver screen, correct?

6 A. Could you --

7 Q. We -- yeah.

8 MR. PHIPPS: If we can bring up 80 again.

9 BY THE WITNESS:

10 A. Yeah.

11 BY MR. PHIPPS:

12 Q. So during your testimony the only two things that I
13 heard about this limitation was you mentioned your inspection?

14 A. Yes, sir.

15 Q. And then you showed this slide, which is something
16 that a consumer can see. And you've already admitted that you
17 never reviewed any source code in connection with this case,
18 correct?

19 A. Correct.

20 Q. So what my question is to you is that the only basis
21 you have for that limitation in Claim 1 of the '012 patent, is
22 that you used the system, inspected it in Atlanta for about two
23 hours and that you looked at this screen which is a printout
24 from a YouTube video, correct?

25 A. Yes, sir.

1 Q. And that's the only thing you testified about the
2 basis for your opinion as to NCR Silver as to Claim 1 of the
3 '640 -- '012 patent as to this limitation, correct?

4 A. Yes, sir.

5 Q. Okay. Now, you talked a little bit about the
6 merchant agreement that is between NCR and a merchant, correct?
7 Do you remember that?

8 A. Yes, sir.

9 Q. JTX-80, the merchant agreement?

10 A. Yes, sir.

11 Q. Okay. And that's the contract that governs the
12 relationship between NCR and the merchants, correct?

13 A. Yes, sir.

14 Q. And then this morning you heard Ms. Schoonover talk
15 about the contract between NCR and Google, correct?

16 A. Yes, sir. I did.

17 Q. Okay. And so did you hear Ms. Schoonover say we,
18 NCR, pay for the hosting, correct?

19 A. Correct.

20 Q. When you went to the inspection of NCR Silver, you
21 brought your own PC which was a Dell laptop, correct?

22 A. Yes, sir.

23 Q. Now, let's talk about how the NCR Silver product is
24 used by a merchant, a consumer. Okay? So they get the
25 software from the Apple App Store, correct, to go on the POS

1 terminal?

2 A. Yes, sir.

3 Q. Okay. And if that software is going to be updated,
4 they have to get those updates from the Apple Store, correct?

5 A. Yes, sir.

6 Q. And so as part of the merchant agreement, NCR tells
7 customers that they need to get their own Internet access,
8 correct?

9 A. Yes, sir.

10 Q. Okay. And so it's the consumers, the merchants that
11 actually use NCR Silver, correct, in their retail operations?

12 A. Yes, sir.

13 Q. Okay. So you admit that a merchant who purchases the
14 NCR Silver has to obtain their own Internet access, don't you?

15 A. Yes, sir.

16 Q. Okay. You admit that the merchants put NCR Silver
17 into service, don't you?

18 A. Yes, sir.

19 Q. You admit that NCR places restrictions on what a
20 merchant can do. But within those restrictions a merchant
21 can -- controls its own use of NCR Silver, correct?

22 A. Yes, sir.

23 Q. You admit that merchants benefit from the use of NCR
24 Silver, don't you?

25 A. Yes, sir. I do.

1 Q. You admit that NCR Silver can be used with
2 third-party payment processing systems, don't you?

3 A. Yes, sir.

4 Q. You admit that NCR does not provide a web browser,
5 don't you?

6 A. Yes, sir.

7 Q. You admit that a merchant can use NCR Silver in a
8 standalone mode, such as food trucks that are not connected to
9 the Internet, don't you?

10 A. Correct.

11 Q. You admit that a merchant, in order to use NCR
12 Silver, would need to build content for it to work in their
13 environment, correct?

14 A. Correct.

15 Q. And you use the word "content" there, correct?

16 A. Correct.

17 Q. Okay. You mean that to be what you define as
18 building, inputting your inventory, what it is you're going to
19 sell, the prices and how much inventory you have, correct?

20 A. Yes, sir.

21 Q. Okay. You mean building to be basically uploading
22 what you're selling into the device, correct?

23 A. No, sir.

24 Q. Okay. Let's look at your transcript.

25 MR. PHIPPS: Page 173, Lines 7 through 13.

1 BY MR. PHIPPS:

2 Q. So I asked you, what does that mean?

3 And your answer was?

4 A. That means building, inputting your inventory,
5 talking about what it is you're going to sell, what are the
6 prices, what are the varieties, how much inventory you have,
7 basically upload what it is you're selling into the device for
8 it to function.

9 Q. And that's how you define building, correct?

10 A. Yes, sir.

11 Q. You admit that a merchant who has downloaded the app
12 from the App Store can input content from the iPad, don't you?

13 A. Yes, sir.

14 Q. Okay. You admit that a merchant cannot change the
15 source code of the app, correct?

16 A. Correct.

17 Q. Mr. Crouse, in terms of using NCR Silver, it's the
18 merchant or customer that actually uses it, correct?

19 A. Correct.

20 Q. You admit that the merchant benefits from using NCR
21 Silver, don't you?

22 A. Yes, sir.

23 Q. Okay. You admit that NCR Silver provides the benefit
24 to merchants, just like any point-of-sale solution, correct?

25 A. Correct.

1 Q. Merchants who use NCR Silver are able to perform
2 transactions, they're able to do the transaction process,
3 they're able to understand their inventory, they're able to
4 understand what they've sold, correct?

5 A. Correct.

6 Q. You agree that NCR places restrictions on how
7 merchants can use NCR Silver, including that merchants aren't
8 allowed to change source code, correct?

9 A. Correct.

10 Q. You agree that the merchant must obtain some of the
11 components that are necessary for a merchant to use NCR Silver
12 and that not all of those are provided by NCR Silver, correct?

13 A. Correct.

14 Q. If a merchant wants to use a PC workstation that's
15 not the iPad in which the app is downloaded, the merchant has
16 to provide that separate PC workstation themselves, correct?

17 A. Correct.

18 Q. When you did your inspection of NCR Silver, again,
19 you mentioned that you brought your own PC workstation in the
20 form of a Dell laptop, didn't you?

21 A. Yes, sir.

22 Q. Now, earlier when Mr. Yates was testifying -- and
23 again, we covered this at the beginning of my examination --
24 you listed six components, but you admitted that the asserted
25 patents did not contribute all of those to the POS industry,

1 didn't you?

2 A. Correct.

3 Q. So we heard Mr. Olson admit that those were in the
4 prior art and you yourself admit that the asserted patents did
5 not contribute all of those to the POS industry, correct?

6 A. Correct.

7 Q. With respect to Item No. 1, you admit that
8 transaction handling was available in POS systems that you
9 worked on, that existed in the prior art prior to the asserted
10 patents, don't you?

11 A. Yes, sir.

12 Q. With respect to Item No. 2, inventory management,
13 that was a feature of POS systems that you worked on and that
14 existed in the prior art to the asserted patents, correct?

15 A. Correct.

16 Q. The asserted patents require the use of the Internet,
17 don't they?

18 A. Yes, sir.

19 Q. The asserted patents did not contribute to the
20 Internet. They didn't introduce the concept of reporting to
21 the POS industry and they didn't introduce the concept of
22 reporting, did they?

23 A. No, sir.

24 Q. You believe that NCR Silver essentials and NCR Silver
25 Pro are separate and distinct?

1 A. Yes, sir.

2 Q. You agree that a merchant could not use NCR Silver
3 Essentials to build NCR Silver Pro, don't you?

4 A. Correct.

5 Q. Two separate versions of the product, and one can't
6 be used to build the other, correct?

7 A. That's a correct statement.

8 Q. You agree that there are features of NCR Silver Pro
9 that a merchant could not configure or build, correct?

10 A. Correct.

11 Q. You admit that during the prior art you purchased a
12 POS system to help you serve as a merchant for selling parts
13 for cars, correct?

14 A. Yes, sir. That's correct.

15 Q. And that you obtained a POS terminal that had a
16 keypad, that you got it from a bank and you inputted your sales
17 prices and you could swipe a card and send the transaction up
18 the network, correct?

19 A. Yes, sir. That's correct.

20 Q. You admitted that even though you inputted prices
21 into that terminal, you did not build the POS terminal software
22 in connection with your use of that POS system, correct?

23 A. That's correct.

24 Q. So when you inputted prices in that prior art POS
25 terminals, you didn't consider that building, did you?

1 A. No, sir.

2 Q. You admit that that system that you used to sell car
3 parts was connected to the merchant processor bank by a
4 dial-up, correct?

5 A. Yes, sir. It was.

6 Q. Okay. So even though prior to this case you had
7 never heard of the asserted patents or Mr. Baratta or Mr. Olson
8 or the plaintiff, CloudfChange, you were aware of NCR,
9 correct?

10 A. Yes, sir.

11 Q. You first heard about NCR a long, long, long time
12 ago, correct?

13 A. Yes, sir. That's correct.

14 Q. You have owned stock in NCR Corporation, correct?

15 A. A long, long time ago. Yes, sir.

16 Q. You admit that NCR is an inventive company, don't
17 you?

18 A. I would.

19 Q. You agree in terms of your infringement analysis that
20 if NCR Silver does not meet all of the limitations of an
21 independent claim, then it cannot infringe any of the dependent
22 claims, correct?

23 A. Correct.

24 Q. Okay. Now, we talked about this web server
25 subscription limitation that's in the '640 patent. And you

1 admit that NCR Silver obtains any servers that it does use from
2 Google, and that NCR does not charge merchants a fee for those
3 servers, correct?

4 A. Correct.

5 Q. You admit that there is no direct subscription
6 between Google and an NCR customer, correct?

7 A. Correct.

8 Q. Now, we talked about where some of the software is in
9 the Back Office, and you said you didn't know where it was.
10 But in terms of this concept of eliminating any use, however
11 minor, of a web server in connection within the NCR Silver, you
12 have admitted that a company would be able to place whatever
13 software it is hosting remotely on a non-web server and avoid
14 the asserted claims of the asserted patents, correct?

15 A. Yes, sir.

16 Q. In terms of timing, you testified that the amount of
17 time it would take to switch from a web server to a non-web
18 server would depend on how integral the web server components
19 were, correct?

20 A. Yes, sir. That's correct.

21 Q. You admitted that you don't know which aspects of a
22 remotely hosted server used with NCR Silver is hosted on a web
23 server versus an application server, didn't you?

24 A. That's correct, sir.

25 Q. You admit that you do not know the internal workings

1 of NCR, don't you?

2 A. That's a correct statement.

3 Q. You admit that you do not know how much it would cost
4 NCR to undertake whatever endeavor it would take to completely
5 eliminate any nominal use of a web server in connection with
6 its provision of NCR Silver, correct?

7 A. Correct.

8 Q. And it is possible to host remotely a POS builder
9 system, if there was one in this case, on a remote application
10 server, isn't it?

11 A. Yes, sir.

12 Q. In terms of the iPad, you understand that that came
13 out in 2010, correct?

14 A. Yes, sir.

15 Q. Okay.

16 MR. PHIPPS: No further questions at this time, Your
17 Honor, for Mr. Crouse. Thank you.

18 THE COURT: Mr. Yates?

19 REDIRECT EXAMINATION

20 BY MR. YATES:

21 Q. Now, Mr. Crouse, for your patent infringement
22 analysis, did you use and apply the Court's claim
23 constructions?

24 A. Yes, sir. I did.

25 MR. YATES: Can we bring up Page 6 of the slide?

1 And if you could, could you do 6 and 7? I don't know if
2 that'll show up or not.

3 BY MR. YATES:

4 Q. So we saw these slides before. These are the Court's
5 claim constructions. The jurors actually have them in their
6 notebook.

7 MR. YATES: And can you go to -- I believe it's on
8 Page 6 -- for the claim construction for point-of-sale builder
9 software?

10 BY MR. YATES:

11 Q. What is the construction of point-of-sale builder
12 software?

13 A. Plain and ordinary meaning, wherein plain and
14 ordinary meaning means software that builds the POS terminals.

15 Q. Now, by building, it doesn't say building software,
16 correct?

17 A. That is correct.

18 Q. It doesn't say building other programs, does it?

19 A. It does not.

20 Q. It says, software that builds POS terminals, correct?

21 A. Yes, sir. That's correct.

22 Q. Is anywhere in the claim constructions or the claims,
23 is source code a necessary element?

24 A. No, sir.

25 Q. So any arguments that you didn't look at source code,

1 you didn't opine on source code or anything, doesn't affect
2 anything associated with the claims or the Court's
3 construction; is that correct?

4 A. That is correct, sir.

5 Q. And if the Court had construed something as having to
6 deal with source code, we would have asked for that and looked
7 at it, wouldn't we?

8 A. We would have.

9 Q. Okay.

10 MR. YATES: We could look at the construction that's on
11 Page 7 of "programatically creating or modifying said one or
12 more POS terminals in realtime."

13 BY MR. YATES:

14 Q. And you applied the Court's construction there,
15 didn't you?

16 A. Yes, sir. The plain and ordinary meaning of that.

17 Q. Plain and ordinary meaning.

18 And what did the patent show us was the plain and ordinary
19 meaning or --

20 MR. YATES: Strike that, Your Honor.

21 Could we bring up the patents -- oh, it's -- can we bring
22 up Slide 9, please?

23 BY MR. YATES:

24 Q. So we're looking here at the patents. And is this
25 what the patent teaches us is programatically creating or

1 modifying said one or more POS terminals in realtime?

2 MR. PHIPPS: Your Honor, I object. I believe that you
3 have given your claim construction, and the witness has already
4 testified as to what he understands that to mean.

5 I'm not sure what this exercise is benefitting, the
6 analysis. We've already covered the topics in the testimony
7 with this witness.

8 THE COURT: This is cross.

9 MR. PHIPPS: I understand, Your Honor, but I believe this
10 is getting into a revision of claim construction.

11 MR. YATES: I don't believe it's a revision of claim
12 construction. I --

13 THE COURT: I'll overrule the objection.

14 MR. YATES: Thank you, Your Honor.

15 BY MR. YATES:

16 Q. So is Figure 5 what the patent teaches in terms of
17 programatically creating and modifying said one or more POS
18 terminals --

19 THE COURT: I'm sorry. I just have to put on the record.
20 This not cross. This is redirect. Sorry. For the record.
21 This is redirect after the cross, and that's why I'm allowing
22 him to testify. Sorry. Start over.

23 MR. YATES: I knew what you meant, sir.

24 THE COURT: But I want the people who grade my papers to
25 know what I was thinking, so thank you.

1 MR. YATES: We'll check that box.

2 BY MR. YATES:

3 Q. And, Your Honor, this -- excuse me, Mr. Crouse. And
4 this shows programatically creating and modifying said one or
5 more POS terminals in realtime?

6 A. Yes, sir. That's correct.

7 Q. And so we're using the builder program to create and
8 modify, and we end up with these terminals, correct?

9 A. Yes, sir. That's correct.

10 Q. And that's the language of the '012 patent, correct?

11 A. Yes, sir.

12 Q. This is also the example for the '640 patent that
13 uses the term "build," correct?

14 A. Yes, sir.

15 Q. And, in fact, the first entry here on Figure 5 says
16 begin POS build, doesn't it?

17 A. It does, sir. Yes.

18 Q. And did you apply the Court's construction when you
19 were doing your infringement analysis?

20 A. Yes, sir. I did.

21 Q. Okay.

22 MR. YATES: Can we go back to Slide 6?

23 BY MR. YATES:

24 Q. So again, at the Court's construction for web server,
25 did you apply the Court's construction of web server when you

1 looked at NCR Silver and their entire Back Office?

2 A. Yes, sir. I did.

3 Q. And NCR Back Office includes hardware and software;
4 is that correct?

5 A. Yes, sir. It does.

6 Q. And it uses HTTP or HTTPS to serve data or files that
7 form web pages?

8 A. Yes, sir. That's correct.

9 Q. And they refer to it as a web server in places,
10 correct?

11 A. They do. Yes.

12 Q. Even Dr. Chatterjee seems to admit there's a web
13 server, correct?

14 A. He does. Yes.

15 Q. Do we need to look further once we understand that
16 we've satisfied the Court's claim construction?

17 A. No, sir.

18 Q. Now, if we could go to JTX-1 which is the '640
19 patent, and I'd like to put in front of you Claim 10 which is
20 an unasserted claim.

21 MR. PHIPPS: Objection, Your Honor. This is outside the
22 scope of cross-examination.

23 MR. YATES: I believe I can connect it, Your Honor.

24 THE COURT: Overruled.

25 BY MR. YATES:

1 Q. Can you please read unasserted Claim 10?

2 A. Unasserted Claim 10 is, the web-based point-of-sale
3 builder system of Claim 1 wherein said point-of-sale builder
4 specifies and displays the number, shape and arrangement of
5 selection keys or buttons on said POS screens.

6 Q. Now, within your report or testimony --

7 THE COURT: Yes, sir.

8 MR. PHIPPS: Your Honor, this opinion testimony is not in
9 his report.

10 THE COURT: Overruled.

11 BY MR. YATES:

12 Q. I was just going to ask that. Did you opine in your
13 testimony or anywhere that NCR Silver was infringing this
14 claim?

15 A. No, sir. It's an unasserted claim.

16 Q. It's an unasserted claim. So any arguments that NCR
17 wants to make about changing the shape or arrangement of the
18 selection keys is outside the scope of the asserted claims that
19 we're talking about?

20 A. Yes, sir. That's correct.

21 MR. PHIPPS: Objection, Your Honor. This theory is not in
22 the report.

23 THE COURT: Overruled.

24 MR. YATES: We can remove that slide.

25 BY MR. YATES:

1 Q. And building does not require being able to change
2 the arrangement of the keys on a point-of-sale terminal, does
3 it?

4 A. No, sir. It does not.

5 MR. YATES: Now, if we could go to -- I believe it's Slide
6 109.

7 BY MR. YATES:

8 Q. Now, in your report you talk about content
9 management; is that correct?

10 A. Yes, sir.

11 Q. And when we went through your infringement analysis,
12 we didn't use the word "content management," or if we did, it
13 was only occasionally, correct?

14 A. That's right.

15 Q. So the opinions about content management were
16 requested by Ms. Salters, correct?

17 A. Yes, sir. That's correct.

18 Q. And they were requested to have the damages expert
19 have an understanding of the technology, as is quite common in
20 patent cases, correct?

21 A. Yes, sir. You're correct.

22 Q. So when you were describing content management, this
23 had to do with opinions and explanations of the technology, not
24 a claim-by-claim analysis; is that correct?

25 A. That is correct, sir.

1 Q. Now, the concepts do bleed over a little bit,
2 correct?

3 A. Yes, sir. They do.

4 Q. Now, these buckets were about POS systems generally,
5 correct?

6 A. Yes, sir.

7 Q. So these buckets have existed, but it's a way of --
8 you suggested, to explain how people look at point-of-sale
9 systems, correct?

10 A. Yes, sir. That's correct.

11 Q. So this wasn't meant to imply prior art or not?

12 A. Correct.

13 Q. And how Mr. Olson's Starbucks system satisfied these
14 particular buckets would be very different than how the patent
15 describes these buckets?

16 A. Yes, sir. That's a correct statement.

17 Q. And there are legacy systems that you would still use
18 these buckets to describe; is that correct?

19 A. Absolutely, sir.

20 Q. And yet these buckets are very important for
21 understanding how the innovations and how the patents and the
22 claim elements would be seen and -- by a consumer, by a
23 merchant, by someone who was investigating point-of-sale
24 systems, correct?

25 A. Yes, sir. That's a correct statement.

1 Q. In short, these buckets are a great way to look at
2 demand, right?

3 A. Yes, sir.

4 Q. And are these core features, 1, 2, 3, 4 here, drivers
5 of demand for the NCR Silver software and hardware, in your
6 opinion?

7 A. Yes, sir.

8 Q. And I'll just ask you one last time. You used the
9 Court's construction in your analysis, didn't you?

10 A. Absolutely, sir.

11 Q. Thank you, sir.

12 MR. YATES: Again, subject to our offer of proof, pass the
13 witness.

14 MR. PHIPPS: Your Honor, just briefly.

15 RECROSS-EXAMINATION

16 BY MR. PHIPPS:

17 Q. Just one question to clarify the record, Mr. Crouse.
18 You didn't mention Claim 10, a non-asserted claim, in your
19 report, did you?

20 A. Yes, sir. That's a correct statement.

21 MR. PHIPPS: No further questions, Your Honor.

22 THE COURT: May this witness be excused?

23 MR. YATES: Subject to the offer of proof, he will be back
24 as an invalidity --

25 THE COURT: Understood. That's fine.

1 MR. YATES: I mean -- sorry. A validity witness --

2 THE COURT: Got it.

3 MR. YATES: -- later in our rebuttal case, we presume.

4 THE COURT: Very good.

5 Thank you, sir.

6 THE WITNESS: Thank you, Your Honor.

7 THE COURT: Your next witness will be your damages expert?

8 MR. BARR: Yes, Your Honor.

9 THE COURT: Let's go ahead and do this, if we could.

10 Let's go ahead and -- is she here?

11 MR. BARR: She is here, Your Honor.

12 THE COURT: If you could bring her in and just qualify her
13 up, and then we'll take a break for lunch.

14 MR. BARR: Yes, Your Honor.

15 (The witness was sworn.)

16 DIRECT EXAMINATION

17 BY MR. BARR:

18 Q. Could you please introduce yourself to the jury?

19 A. Sure. My name is Ambreen Salters.

20 Q. And what subject are you appearing on today,
21 Ms. Salters?

22 A. I'm here as an expert on patent infringement damages.

23 Q. Have you created some slides to assist you in
24 presenting your testimony today?

25 A. Yes. I have. They're here on the screen.

KRISTIE M. DAVIS, OFFICIAL COURT REPORTER
U.S. DISTRICT COURT, WESTERN DISTRICT OF TEXAS (WACO)

1 Q. Before we get into your qualifications, could you
2 tell us a little bit about yourself?

3 Oh, I've got the slide clicker. Sorry.

4 A. Okay. Got it. Yes.

5 Q. Tell us a little bit about yourself, Ms. Salters.

6 A. Sure. So I grew up in Central Texas in an Army base
7 in Central Texas. My mother was a military doctor, so she was
8 stationed at Fort Hood.

9 Q. All right. And could you tell us about your
10 education, credentials and experience, please?

11 A. Sure. So I went to both college and graduate school
12 at Baylor University in Waco.

13 Q. What did you do after you graduated from Baylor?

14 A. Well, I first began doing financial and economic
15 analysis for the Federal Reserve Bank where I worked for five
16 years.

17 Q. And I forgot to ask you, when you graduated from
18 Baylor, what were your degrees in?

19 A. I got a bachelor of business administration degree
20 with a double major in finance and economics as well as a
21 masters of science degree in economics.

22 Q. Once you graduated, did you do any teaching?

23 A. I did. From time to time I would return to Baylor
24 and serve as a guest lecturer in their economics courses. In
25 addition, I've served as an adjunct professor of microeconomics

1 at Houston Baptist University.

2 Q. Could you describe generally to the jury your work
3 experience that's relevant to the work that you did in this
4 case?

5 A. Yeah. So right out of graduate school, just like I
6 mentioned previously, I began doing financial and economic
7 analysis for the Federal Reserve where I was for five years.

8 Q. What is the Federal Reserve Bank?

9 A. The Federal Reserve Bank is the central bank of the
10 United States. So it controls basically the U.S. economy by
11 adjusting the money supply and adjusting interest rates. When
12 you hear about it in the news, it's frequently called The Fed.

13 Q. And what did you do when you were there at The Fed?

14 A. So the Federal Reserve will hire a lot of economists
15 like myself to study and report on specific industries within
16 the economy. And so that's what I did for them.

17 Q. After you left The Fed, what did you do next?

18 A. About 20 years ago, in about 2000, I left the Federal
19 Reserve and I began serving as a financial -- or an economics
20 consultant. So I've primarily focused on patent infringement
21 matters like this one as well as assisting patent holders with
22 their licensing efforts of their technology.

23 Q. Have you been retained in this case by CloudofChange
24 to reach an expert opinion regarding reasonable royalty that
25 would be due to the inventors in this case due to NCR's use of

1 the patents in suit?

2 A. Absolutely. That is what I have done.

3 Q. In the past have you worked on other cases, other
4 patent cases similar to this one?

5 A. I have. Some examples are here on this slide. I've
6 worked on cases involving hardware and software and web-based
7 technologies. These cases have involved companies such as
8 Costco and Expedia, GEICO, Qualcomm, ZTE and APCON.

9 Q. And what do you do for fun, Ms. Salters?

10 A. Well, for fun I work on patent infringement matters.
11 For example, for the Microsoft Xbox gaming system, as well as a
12 matter involving the Nintendo Wii, as well as patent
13 infringement damages for the Steam gaming system platform. So
14 that's what I do for fun.

15 Q. Well, my 16-year-old son would probably enjoy
16 visiting with you about those cases.

17 Have you worked for both plaintiffs and defendants?

18 A. Yes. I have.

19 Q. And has all of the work that you've done, does it
20 relate to litigation?

21 A. No. It doesn't. As I mentioned previously, I also
22 assist patent holders in their licensing efforts of their
23 patents and their patent portfolios.

24 And so an example of that is Nortel that's here on this
25 slide. They had a patent portfolio that involved e-commerce

1 and some Internet patents, and I assisted them in their
2 licensing efforts of those.

3 Q. And did you use the same types of considerations in
4 your prior cases that you've used in this case?

5 A. Absolutely.

6 Q. And have you used the same types of methodologies in
7 other patent cases that you've used in this case?

8 A. Yes. 100 percent.

9 MR. BARR: At this point, Your Honor, we would tender
10 Ambreen Salters as an expert in economic damages.

11 MS. COLLINGS: No objection, Your Honor.

12 THE COURT: She'll be received as an expert.

13 Ladies and gentlemen of the jury, we're going to take our
14 lunch recess. And we'll -- let's see what time it really is.

15 Again, why don't -- we'll plan on -- if you'll plan on
16 being done by about 1:00, we'll get started relatively closely
17 after 1:00 resuming trial.

18 Remembering my instructions not to discuss the case
19 amongst yourselves, you are dismissed.

20 THE BAILIFF: All rise.

21 (Jury exited the courtroom at 11:49.)

22 THE COURT: You may be seated.

23 Mr. Barr, do you have anything else for me to take up?

24 MR. BARR: For this witness, I think there is an issue --
25 an objection they had. Other than that --

1 THE COURT: Why don't we go ahead and take that up now?

2 And you may step down.

3 William, will you help her out?

4 MR. BARR: I'm sorry.

5 MS. COLLINGS: May it please the Court.

6 Your Honor, this is an objection that NCR is making with
7 respect to plaintiff's demonstratives. Each evening, when we
8 exchange our demonstratives for the next day, we lodge any
9 objections, and we meet and confer. And we did that of course
10 last evening.

11 The objection -- the one objection to Ms. Salters'
12 demonstratives has to do with, for example, Slide 4, which is
13 labeled "NCR Silver software direct profits."

14 These are supposed to pertain to NCR Silver software's
15 direct profits. You have -- the third column is NCR's
16 calculation. The fourth column, essentially, is Ms. Salters'
17 calculation.

18 It's that second column, Your Honor, that we're objecting
19 to. This is software as a service industry, and this same
20 reference appears on Slides 4, 10, 12 and 21.

21 We object to any testimony from Ms. Salters and,
22 specifically, reference in the demonstratives about software
23 as a service companies having -- or what their gross profit
24 margins are, Your Honor. We're not suggesting that any -- that
25 this page should be removed, but we would like that column

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1 deleted.

2 In Ms. Salters' report, her opinion is that NCR Silver
3 realizes approximately 47 percent gross profit margin. That's
4 in Paragraph 54 of her report and Exhibit 1.

5 Ms. Salters' report, however, does not provide any opinion
6 that NCR Silver realizes a 70 to 95 percent gross profit
7 margin, and nowhere in her report does Ms. Salters opine that
8 NCR Silver has any margin above 47 percent.

9 Ms. Salters does not opine, in fact, on what the typical
10 gross profit margin of a software as a service company is or
11 should be.

12 She's not purported to be a qualified expert on SaaS
13 industry profits, yet plaintiff responds, or did last evening,
14 that they are not offering SaaS industry profits as
15 Ms. Salters' profits. They're simply using it as a marker.

16 But, Your Honor, that bolsters her. By including a SaaS
17 industry profit margin with these NCR Silver software direct
18 profits, it's as if she's putting her -- a parameter on the
19 information that's being included.

20 It's as if Ms. Salters is testifying that SaaS companies
21 generate or realize a 70 percent to 90 percent gross profit
22 margin, and that's not relevant to what NCR Silver's profit
23 margin is. It's not in her report. She's not purporting to
24 opine on SaaS industry profit margins, Your Honor.

25 And, therefore, we think it would be prejudicial to

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1 include that in a demonstrative that's going to at least be
2 shown in front of the jury, and it's confusing.

3 Thank you.

4 MR. BARR: Can I approach, Your Honor?

5 THE COURT: Sure.

6 MR. BARR: Your Honor, I've got here a copy of
7 Ms. Salters' report, which I think will be helpful during her
8 direct testimony.

9 We've highlighted for the Court everywhere in there that
10 we had a question for her on in her report, and I've tabbed
11 specifically the paragraph that I'm going to show you here.

12 I'm also going to hand the Court Exhibit 220, which is the
13 SaaS survey that's being complained about here.

14 THE COURT: Okay.

15 MR. BARR: So as Ms. Collings mentioned, the parties had a
16 procedure that we had agreed to on slides. And we did that
17 where the parties would provide each other their slides the
18 night before by a certain time, and then we would confer -- or
19 provide objections and then confer about it.

20 This particular slide that Ms. Collings is talking
21 about --

22 THE COURT: Mr. Barr, let me go a little quicker.

23 Ms. Collings, I'm looking at Paragraph 48 of Ms. Salters'
24 report, Page 13. And it has a paragraph that has --
25 specifically has this SaaS information in it.

1 MS. COLLINGS: Yes, Your Honor. It was background
2 information. It was background information. It wasn't her
3 opinion.

4 THE COURT: I'm overruling the objection.
5 Anything else?

6 MR. BARR: No, Your Honor. Do you want to keep the report
7 in case we have any fights?

8 THE COURT: That'll probably make sense.

9 And one other thing that was raised about -- I'm terrible
10 with names. The gentleman who was the expert.

11 MR. BARR: Greg Crouse.

12 THE COURT: Mr. Crouse. Again, here's the way I generally
13 see the world. On direct, and you've already done it, I expect
14 for lawyers to restrain themselves to what is in the expert
15 report. I think that's fair.

16 However, on redirect after someone on cross has raised an
17 issue with the expert, if that requires the other party on
18 redirect to go outside of the report to allow the expert to
19 explain something or answer something that was raised by the
20 other lawyer, I'm going to let them do it. I'm not going to
21 say, oh, it's not in his -- you did a very nice cross. I
22 thought you did a very nice cross.

23 MR. PHIPPS: Thank you, Your Honor.

24 THE COURT: But that is why I allowed the witness who your
25 cross may have given an impression that wasn't entirely

1 accurate -- I'm stumbling here, but I'm not going to allow
2 someone to do a cross and then tell the other side, oh, no, the
3 expert can't defend himself because he didn't think in advance
4 to put that in the report.

5 Part of the beauty of doing a really good cross, in my
6 opinion -- and, again, I thought you did a very nice cross --
7 is maybe coming up with some stuff that the expert hadn't
8 thought of before and trying to tie him down to that. And that
9 may require the other lawyer to have to go outside of the
10 report to explain it to the jury.

11 So that is the reason why on redirect I allowed counsel to
12 ask the expert about Claim 10 which might not have been in his
13 report. But I thought it was necessary, given what was raised
14 in the cross to allow the expert to explain to the jury why he
15 had done what he had done. So I just wanted that on the -- I
16 wanted the explanation.

17 Again, on direct I'm going to do the best I can to hold
18 people to what is in their reports. But on redirect if someone
19 has done a good cross and it's required to go outside of the
20 absolute metes and bounds -- I'm not going to allow something
21 in that's completely unfair or unexpected. But in a situation
22 where someone raises something, I'm going to allow an expert
23 to, you know, opine fully and explain to the jury why he gave
24 an opinion.

25 So that -- and that'll be the way it is going forward. I

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1 just didn't want you to not feel like I was allowing something
2 in despite it not being in the report. I wanted you to
3 understand why.

4 And of course you'll have -- this will all apply equally
5 when the shoe is on the other foot.

6 MR. PHIPPS: Understood. Thank you.

7 THE BAILIFF: All rise.

8 (Recess taken from 11:58 to 1:06.)

9 THE BAILIFF: All rise.

10 THE COURT: You may be seated.

11 Are you ready to go?

12 MR. BARR: Yes.

13 THE COURT: I thought there was an issue we were supposed
14 to --

15 MS. COLLINGS: Yes, Your Honor.

16 THE COURT: Hold on one second. Yes, ma'am.

17 MS. COLLINGS: Thank you, Your Honor. The purpose of this
18 is to simply ask Your Honor how you would like me to approach
19 it, because I don't -- I don't want to be disruptive. Or --
20 anyway, the issue is, we have a concern that Ms. Salters is off
21 model in two respects.

22 First of all, we have concerns that she's -- they're going
23 to elicit or attempt to elicit an entire market value, and
24 that -- there's no evidence of that. And instead of waiting
25 for the -- the testimony to proceed and then trying to backfill

1 what to do about an inappropriately -- potentially an
2 inappropriately delivered entire market value opinion, I'm --
3 we just wanted to know from Your Honor, how do you want us to
4 proceed at the time?

5 Would you want us to object and ask to take her on voir
6 dire? Or I'm just asking for queues, Your Honor.

7 THE COURT: Well, I don't know how to advise you what to
8 do. Typically, what I would recommend you do is just object if
9 you think something is irrelevant and say it's irrelevant, and
10 I'll hear the question. And if I think I need to hear, I'll
11 hear -- ask Mr. Barr, and he'll say why it is relevant, and
12 I'll make up my mind.

13 With regard to your taking anyone -- this is for everyone.
14 Your decision on whether or not to take someone on voir dire is
15 entirely up to you. However, if you take someone on voir dire
16 and are unsuccessful, I probably will make it clear to the jury
17 that I was unhappy about someone being taken up on voir dire
18 and interrupting the other lawyer to do it.

19 So I would caution everyone -- not you, everyone who might
20 choose to take someone on voir dire that you -- number one,
21 it'll be against your time; but, number two, because you're
22 interrupting what the other lawyer is doing, you had better be
23 successful.

24 Let me give you an example. In a trial I had recently,
25 there was a witness, a fact witness, on the witness stand to

1 testify about -- essentially, he was a corporate representative
2 just testifying about what the corporation does.

3 And he started to move from one area of what the company
4 did into another area and the lawyer for the other side said,
5 I'd like to take him on voir dire.

6 And the questions were: Mr. Smith, you've worked for the
7 company for a number of years?

8 Yes.

9 But you only worked in this division; is that right?

10 Yes.

11 You don't know anything about this other division you're
12 about to talk about, do you? Never worked in it.

13 No.

14 So everything you know about this other division is
15 what -- from what someone told you; is that fair?

16 Yes.

17 Objection, hearsay. Which I sustained, because it was
18 hearsay.

19 So if that gives you any guidance about how I feel about
20 it. However, I have some passing acquaintance with how damages
21 law works in patent cases. And I feel comfortable that if
22 you -- if Mr. Barr asks a question and you believe it is
23 irrelevant for any reason and you make an objection and I hear
24 his response, that I'll be able to rule on it as we go.

25 MR. BARR: Your Honor, if I could just address -- just one

1 point about this argument. Number one, I believe a little
2 sandbagging is going on here, Your Honor. First of all, the
3 parties filed Daubert motions in accordance with the Court's
4 scheduling order. There was never any questioning of any
5 entire market value rule of application by Ms. Salters which,
6 in fact, is discussed in her report at Page 51 --

7 THE COURT: If it's in her report and it wasn't addressed
8 during Daubert, then she's going to get to testify about it.

9 MR. BARR: Thank you, Your Honor. We have Bose versus JBL
10 on this issue as well.

11 THE COURT: That's --

12 MR. BARR: Thank you.

13 THE COURT: I had a case at trial just a week ago where
14 they had essentially the same argument about what someone was
15 going to testify about, and I said, did you file a Daubert?
16 And they said, no. And I said, well, then it's going to come
17 in.

18 MR. BARR: Thank you, Your Honor.

19 THE COURT: So if it's in her report and it wasn't --
20 there was no action to strike it ahead of time, then I see it
21 as something subject to cross-examination.

22 MR. BARR: Thank you.

23 THE COURT: Anything else we need to take up?

24 MR. BARR: Not from the plaintiff, Your Honor.

25 THE COURT: Counsel?

1 MR. PHIPPS: No, Your Honor.

2 THE COURT: Okay.

3 THE BAILIFF: All rise.

4 (Recess taken from 1:11 to 1:15.)

5 THE BAILIFF: All rise.

6 THE COURT: Please remain standing for the jury.

7 (The jury entered the courtroom at 1:15.)

8 THE COURT: Thank you. You may be seated.

9 Mr. Barr, you may proceed.

10 MR. BARR: Thank you, Your Honor.

11 BY MR. BARR:

12 Q. Ms. Salters, we've spoken about your experience. Now

13 I'd like to turn to the basis for your opinions in this case.

14 So could you please describe the type of information that

15 you've reviewed and considered in formulating your opinions?

16 A. Sure. Would you like to put the slide up on the

17 screen?

18 MR. BARR: Oh, sorry. Would y'all publish the slides

19 again?

20 (Off-the-record discussion.)

21 BY MR. BARR:

22 Q. There we go. Now, please describe the types of

23 information that you considered in connection with your

24 opinions in this case, Ms. Salters.

25 A. Well, we received a lot of documents in this case.

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1 We received thousands of pages of documents in the discovery
2 process from NCR as well as from CloudofChange. I also
3 reviewed the sworn testimony of NCR's witnesses as well as
4 CloudofChange's witnesses. I also reviewed the legal filings
5 that were produced in this case, including the expert reports
6 of Dr. Ikizler, of Mr. Crouse and Dr. Chatterjee as well as
7 some publicly available information that I did on my own, my
8 own research. So that was interesting research as well.

9 Q. Could you speak a little closer to the microphone?
10 I'm having a little hard time.

11 A. Yeah. Sorry about that.

12 Q. There you go.

13 A. How about now?

14 Q. That's perfect.

15 A. Okay.

16 Q. So let's talk for a minute about the accused products
17 in this case. Are you generally familiar with the NCR products
18 that are accused of infringement in this lawsuit?

19 A. Yes. I am. The products accused of infringement in
20 this lawsuit are the NCR Silver products, the hardware as well
21 as the software.

22 Q. Does NCR sell these products as one big system or
23 under a single price or sell them on a per item basis?

24 A. Well, for the most part, the hardware, NCR sells its
25 hardware on a per item basis.

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1 Q. Okay. And what about the software? Is it sold with
2 the hardware, or how is it sold?

3 A. Well, the software's typically sold under a SaaS
4 pricing model. So basically what that means is the merchant
5 consumer pays a monthly subscription fee for a software license
6 for access to the software.

7 Q. And are the hardwares -- is it your understanding
8 that the hardware and software is used together?

9 A. Yes. That's my understanding based on the deposition
10 testimony.

11 Q. Could you tell us what types of accused hardware
12 products that you understand NCR sells?

13 A. NCR sells a variety of hardware products. Here on
14 the screen are a few examples. Tablets, display screens,
15 payment processors as well as cash drawers and some printers
16 and scanners, and you see those there on the right-hand side of
17 the screen.

18 Q. I think you may have already said this, but how does
19 NCR sell its software?

20 A. It sells its software through a monthly subscription
21 for the software license.

22 Q. What types of software does NCR sell?

23 A. The software primarily is two types. The first one
24 is called Silver Essentials, and that seems to be the most
25 basic package. The second one is Silver Pro, and that appears

1 to be more of an upgraded version that maybe is a little more
2 restaurant-oriented.

3 Q. Now, we've heard this term in this trial, S-a-a-S, or
4 SaaS. Could you explain what that means?

5 A. Right. So as you've heard, SaaS relates to software
6 sold as a service.

7 Q. And what's your understanding of how the software and
8 hardware work together in this case?

9 A. Well, the software is sold -- the hardware is sold
10 along with the software. In addition, the hardware -- the
11 software only works on either NCR hardware or Apple devices.

12 Q. Now, I'd like to talk a little bit about the rules of
13 the road, the law that we believe the Court will instruct the
14 jury at the end of this case. Could you tell us if you
15 considered that?

16 A. Yes. So the rules of the road for the damages expert
17 really to figure out patent infringement damages is based on
18 the patent damages statute. And basically what that says is to
19 adequately compensate for patent infringement, the patent owner
20 should get no less than a reasonable royalty.

21 Q. And what does this statute tell us about patent
22 damages?

23 A. Just that it is no less than a reasonable royalty.
24 It could be more.

25 Q. Okay. And what is a reasonable royalty?

1 A. Well, a reasonable royalty, as you can guess, is the
2 most common form of patent infringement damages. It's
3 considered similar to rent if you were to use someone else's
4 property. It's compensation for the patent holder, in this
5 case CloudfChange, for use of their patented technology by the
6 infringer, which is alleged to be NCR in this case.

7 Q. How do you determine a reasonable royalty amount?

8 A. To determine a reasonable royalty amount for patent
9 damages, you determine what would be a hypothetical license, or
10 what sort of license would these two parties have entered into
11 if they had a hypothetical negotiation, or sat down and tried
12 to figure out what was reasonable for terms.

13 Q. Could you tell us in more detail about this
14 hypothetical negotiation?

15 A. Well, in the hypothetical negotiation, damages
16 experts like myself assume that both parties, so
17 representatives from NCR and representatives from
18 CloudfChange, sit down and they negotiate a license. A
19 license giving NCR the rights to use CloudfChange's patents in
20 exchange for compensation which is called the reasonable
21 royalty.

22 Q. And when is this hypothetical negotiation supposed to
23 have occurred?

24 A. Well, both parties agree that this would have
25 occurred in July 2016, and that's based on the issuance of the

1 '640 patent was in July 2016.

2 Q. Now, what factors do you take into account in
3 determining this hypothetical negotiation?

4 A. Well, I've considered, and the Court will instruct
5 the jury to consider, a list of factors that are commonly used
6 when patent owners and companies are negotiating a patent
7 license. And those are called the Georgia-Pacific factors.
8 They're just called the Georgia-Pacific factors because there
9 was a case a long time ago and one of the parties was
10 Georgia-Pacific where this came up. So that's why they're
11 called that.

12 Q. And what do you -- what have you put on this slide?

13 A. Well, the Georgia-Pacific factors are actually a
14 15-factor list. To make this a little bit more digestible,
15 I've put these into buckets.

16 So the buckets that I've included are the technology
17 factors, the financial and commercial considerations, licensing
18 factors and other business sort of miscellaneous factors as
19 well.

20 Q. Could you take us through the types of information
21 that you have in each bucket of factors, please?

22 A. Right. So some of these factors, the technology
23 factors, for example, you've heard quite a bit about already
24 from Mr. Crouse.

25 They would be considered utility and advantages of the

1 patented technology over prior art, the nature and benefits of
2 the technology to those who use them.

3 In addition, licensing factors. You would consider what
4 other royalties has CloudfChange earned for the
5 patents-in-suit, what other licenses has NCR entered into for
6 similar technology and then if there's a customary sort of
7 royalty rate that should be considered.

8 Then financial and commercial factors, you would look at
9 sales, whether the accused products have -- were commercially
10 successful, what the profitability of those accused products
11 were.

12 And, finally, other considerations or other business
13 factors would include the commercial relationship between the
14 parties. If these parties were competitors or if these parties
15 were just inventor or patent holder and licensee, as well as
16 the opinions of other experts.

17 And, ultimately, you come up with a commercially
18 reasonable willing license -- or willing licensee, what would
19 have been negotiated.

20 Q. Okay. Well, let's -- this looks like kind of a
21 restatement of your prior slide; is that right?

22 A. It did. So based on the facts that I've seen in this
23 case, in this slide, I just took all of those factor buckets
24 and included what seemed to be the most relevant points from
25 what I've seen in the case.

1 So from technology considerations, you can see that the
2 core functionality taught by the patents-in-suit drive demand
3 for the NCR Silver software as well as the NCR Silver hardware.
4 And you've heard that from Mr. Crouse already.

5 In addition, you've heard from him regarding the -- that
6 there are no acceptable noninfringing alternatives or cost
7 efficient ways to design around these patents.

8 Then looking at financial and commercial consideration.
9 The NCR Silver products, they're commercially successful as
10 well as profitable.

11 Licensing considerations, we've already talked about the
12 SaaS licensing model where the customers pay a monthly per-unit
13 fee.

14 And then finally, other considerations. CloudfChange and
15 NCR are not competitors.

16 Q. Let's move on to the technology considerations.

17 I'd like you to talk to us a little bit about your
18 understanding of what makes people buy this product and the
19 core features.

20 A. Right. So the core features of the NCR Silver
21 product are, one, transaction handling, then the inventory/item
22 management program, the point-of-sale content management and
23 then the point-of-sale infrastructure.

24 Q. And to be clear, you're not saying in this case that
25 you're a technical expert yourself; is that right?

1 A. I am not. You've already heard about this from
2 Mr. Crouse earlier.

3 Q. All right. Your wheelhouse is damages and economic
4 analysis; is that fair?

5 A. Absolutely.

6 Q. So you're relying on Mr. Crouse to tell you what the
7 important technological considerations are; is that correct?

8 A. Yes, sir.

9 Q. Okay. Are the features that you've just looked at,
10 the core features, are those taught by the patents-in-suit to
11 your understanding?

12 A. Yes. That is correct.

13 Q. Now, let's talk about the -- each one of these one by
14 one.

15 What's your understanding of transaction handling?

16 A. And I'm not going to be as eloquent as Mr. Crouse was
17 in his description, but my understanding of transaction
18 handling is related to the sales and the returns and the
19 credits that come through the point-of-sale system.

20 And my understanding is the way that NCR does this
21 function is taught by the patents-in-suit.

22 Q. So let's go to the next one, No. 2, inventory/item
23 management.

24 What's your understanding of that from Mr. Crouse?

25 A. Right. So it really relates to inventory management

1 and what goes in and out in their available inventory. And
2 again, my understanding is that the patents-in-suit teach the
3 way that NCR does this function.

4 Q. Next is the point-of-sale content management.
5 What's your understanding of that driver of demand?

6 A. Well, that relates to, for example, the item
7 depiction and the pricing that's put on the point-of-sale
8 system. And again, the way that NCR does it is taught by the
9 patents-in-suit.

10 Q. Last but not least, point-of-sale infrastructure.
11 What's your understanding of that?

12 A. That -- that's the entire system. That's the
13 hardware, that's the software as well as the network. And
14 it --

15 Q. So if you take -- I'm sorry. I didn't mean to cut
16 you off.

17 A. And, again, it is taught by the patents-in-suit.

18 Q. Okay. If we take all this together, what does it
19 mean for the merchant who might be buying these systems?

20 A. Well, these four core functionalities of NCR Silver
21 are taught by the patents-in-suit. But they're also drivers of
22 demand for merchant customers purchasing the NCR Silver
23 product.

24 Q. What other information did you get from Mr. Crouse
25 that was relevant to your analysis in this case?

1 A. Right. As we discussed previously, there are no
2 commercially acceptable noninfringing alternatives that achieve
3 the same benefits as the patents-in-suit. And there's no cost
4 effective alternative way to design around the patents-in-suit
5 and still provide those same benefits.

6 Q. Is technology considerations one of these
7 Georgia-Pacific factors that you were talking about earlier?

8 A. Absolutely. And it's in one of those buckets from
9 the earlier slide that we talked about.

10 Q. Which factors did you consider next?

11 A. Financial and commercial considerations.

12 Q. Okay. So if we take a step back from this, what are
13 we seeing here? What does this slide of yours depict?

14 A. Well, this slide just generally shows the snapshot of
15 the financial and commercial activity by NCR related to the NCR
16 Silver product. So overall, if you see, the accused NCR Silver
17 sales are over \$100 million.

18 Q. And so what does the \$100 million represent for NCR?

19 A. The NCR Silver product line, the hardware and the
20 software.

21 Q. How did the NCR Silver product -- how does their
22 growth compare to the overall cloud-based POS market?

23 A. Right. So the overall cloud-based POS market, it's a
24 very sort of rosy picture of that industry. I believe I've
25 seen it was \$1.3 billion in 2018, and it's set to triple by

1 2023. So in that five-year period the amount of revenues
2 earned by those companies is set to triple. So it has a very
3 steep growth rate as well.

4 Q. And we heard that from Ms. Schoonover of NCR who was
5 sitting there on the witness stand. And you had the
6 opportunity to listen to her testimony on that issue, correct?

7 A. Correct. And the bar chart at the bottom of this
8 screen really is showing the year-over-year sales by NCR of its
9 NCR Silver product. And you can see it's increasing and then
10 the annual growth rate, average growth rate's around
11 14 percent.

12 Q. In your opinion and based on what you've reviewed
13 from NCR, do you have an opinion about whether or not NCR
14 Silver is a commercially available product for NCR?

15 A. Commercially successful. Yes. I do.

16 Q. I misspoke. Yes. Commercially successful. Thank
17 you.

18 Now, I'd like to move on to some of your other financial
19 considerations. Could you discuss with us what we see on this
20 slide here?

21 A. Yeah. So this relates to the pricing or the sales
22 price of the NCR Silver software specifically.

23 Q. I think you mentioned earlier that NCR charges its
24 customers on a monthly basis for the software as a service; is
25 that correct?

1 A. That is correct.

2 Q. And is there one price that NCR charges its customers
3 for these monthly fees?

4 A. No. From the data that's been produced it really
5 seems to be all over the place. We received a set of data
6 which included every monthly subscription in there, and that
7 was a large range. And the top end of that was around 200 a
8 month. And then if we're looking at their website, for
9 example, the range of per-month pricing is \$108 to \$178,
10 depending on the version that they're purchasing.

11 And then finally there was a legal stipulation which was
12 entered by NCR, and in there they listed what their pricing
13 was. And so they talked about the \$79 pricing for the Silver
14 Essentials, and then for the Silver Pro it was 149.

15 So there was a lot of data points that we'd seen with
16 respect to historical sales or that invoice level or
17 subscription -- transaction-level data. I think there were
18 probably 500 different price points, the highest one being the
19 200.

20 Q. So how does NCR advertise its pricing on its website?

21 A. Well, it does it in that 108 to 178.

22 Q. Okay. How do you know the minimum manufacturer
23 suggested retail price of NCR's accused products?

24 A. Right. So that was in their legal stipulation of \$79
25 to \$149.

1 Q. Did you see any evidence of NCR's willingness to
2 share its revenue with other people?

3 A. As we discussed earlier -- or what we've heard
4 earlier from Ms. Schoonover -- I believe it was yesterday when
5 she discussed the revenue share agreements with their
6 resellers. And those revenue share agreements for the NCR
7 software is about 12 percent to 35 percent of that revenue.

8 Q. So from Ms. Schoonover's testimony you understand
9 that NCR's willing to share its revenue, the money that it
10 actually receives for its products, they're willing to give 12
11 to 35 percent of that revenue to the reseller?

12 A. Correct.

13 Q. So here we have some more of your financial and
14 commercial considerations. Could you explain what these are,
15 ma'am?

16 A. Right. First, the subscription transaction data,
17 which we received, appears to be approximately 700,000 software
18 subscriptions -- monthly software subscriptions sold, and
19 that's from the beginning of the damages period, July 2016
20 through the end of 2020.

21 Q. And are these subscriptions, does this just represent
22 United States sales?

23 A. Correct.

24 Q. Moving on to profits.

25 Can you explain what you've learned about NCR Silver

1 software direct profits?

2 A. Yeah. So I took a look at the NCR Silver
3 profitability because I was interested in what sort of money
4 that they earned from their sales.

5 Q. What is profitability?

6 A. Profitability, as I'm sure everybody knows, is really
7 just the profits, deducting the costs -- or the revenues
8 deducting the costs is how you get to profits.

9 Q. And what types of costs did you focus on?

10 A. Well, I focused on direct costs. So that's not
11 necessarily an accounting term. That's more of an economic
12 term. But direct costs really relate to sort of the day-to-day
13 profitability that that product enjoys.

14 Q. Could you give us some examples of some things that
15 are not considered to be direct costs?

16 A. So direct -- costs that are not direct costs are, for
17 example, if you were to buy a building as well as -- that's a
18 sunk cost from years ago or, for example, big research and
19 development project, and that would be a sunk cost from years
20 ago.

21 And ultimately, it really doesn't relate to the day-to-day
22 profitability of a product.

23 Q. The box that's shaded green discusses the SaaS
24 industry; is that correct?

25 A. Correct.

1 Q. And how did you go about understanding SaaS
2 profitability generally?

3 A. Well, that was based on my research of publicly
4 available information. I saw some articles that discussed the
5 SaaS profitability of SaaS companies and what their profits and
6 expense structure generally look like.

7 I also saw some -- a survey related to that, that was a
8 benchmark industry survey with like 1,200 respondents, that had
9 a profit range in there as well. And that range ends up being
10 70 to 95 percent.

11 And that's not necessarily surprising, knowing what we
12 know about software profitability generally, which is always
13 high.

14 Q. So looking at this analysis, your slide here, is it
15 telling us that other companies that sell software as a
16 service, like NCR, have normally 21 percent costs? Is that
17 right?

18 A. Yes. That's correct.

19 Q. And their profits -- the normal SaaS industry profits
20 would be expected to be in the 70 to 95 percent range; is that
21 correct?

22 A. Yes. That's absolutely correct.

23 Q. And if we compare that to NCR, we see that their
24 costs are a lot higher, more than three times as high,
25 72 percent costs, right?

1 A. Yes.

2 Q. But only 28 percent profits; is that correct?

3 A. That is correct.

4 Q. And do those high costs have anything to do with the
5 profit margin that NCR claims that it is making on this
6 product?

7 A. Right. And I think the next slide goes into the
8 detailed information, which I think was also discussed with
9 Ms. Schoonover.

10 Q. Okay. This is kind of hard for my 54-year-old eyes
11 to read.

12 Can you tell us what we're looking at here?

13 A. Yes. This is my summary of the costs -- the revenues
14 and the costs and the margins, profit margins, which were
15 produced in this case by NCR.

16 Q. Can you walk us through what the highlighted lines
17 are that you've got on your slide?

18 A. Sure. So let's start with the ones that are -- that
19 are highlighted in gray.

20 And so I know that there was a big discussion in opening
21 arguments related to the number of costs, which I did not
22 include in my analysis.

23 Q. Well, let me just stop you there.

24 So that was the part where Mr. Baker said you just went
25 through this list of costs and said, nope, nope, nope?

1 A. It was the nope, nope, nope one. Yes.

2 Q. You may proceed.

3 A. And so taking a look here, to be fair, these costs
4 and the descriptions of costs that are here are pretty vague.
5 It's difficult to tell whether these really have to do with
6 that software revenue product line that we're talking about.

7 So, for example, let's look at the gray ones to start
8 with. You have fees, you have public affairs, you have travel,
9 people, HR, you have something listed as hardware development,
10 under software revenue category.

11 And then there's outside service spend. So these aren't
12 the normal type of cost categories that companies produce
13 related to their product line.

14 However, when you take a look across, all the way to the
15 right, the ones that are grayed out, which I didn't include,
16 are primarily zero, right? They don't have that much effect.

17 But for some reason, they seem to be listed here in this
18 profit and loss statement which was produced.

19 Q. Are you aware of Ms. Schoonover's testimony when we
20 went over this cost information?

21 A. Yes. I did. I was specifically focused on her
22 testimony related to the yellow highlighted items, and those
23 are four. And those yellow highlighted items are the ones that
24 make up the lion's share of the costs that they're trying to
25 claim.

1 As we heard from Ms. Schoonover previously, out of those
2 four she still wasn't able to clarify what was in the internal
3 service charges from and internal service charges to. And I
4 think that's consistent with her deposition testimony. So
5 those two out of the four we just don't have any information
6 on, what they actually are and how they could relate to the
7 software.

8 Q. I think Ms. Collings asked Ms. Schoonover a lot about
9 the technology go-to-market. Did you look at that one?

10 A. I did. I heard that as well. And my understanding
11 of the technology go-to-market is based on Ms. Schoonover's
12 testimony. And that has to do with the hosting services which
13 you discussed with her this morning, so the 5 million out of
14 the 25 million discussion. And it's related to Google hosting
15 and perhaps some others as well.

16 Q. What about Ms. Schoonover's explanation of
17 depreciation and amortization that she gave us this morning?

18 A. Right. So I heard her explanation of depreciation
19 and amortization. And while I had included it as a deductible
20 cost, after hearing her explanation this morning, I do have
21 some concerns. Them being that these really were development
22 costs, in her own words I think, that were incurred years
23 earlier related to the software. So this wouldn't fit the
24 definition necessarily of the direct costs, the day-to-day
25 profitability considerations that a company like NCR would

1 evaluate their software on.

2 Q. So are you saying that it wouldn't be appropriate to
3 incur costs, say, in 2012 or 2014 and then throw them into your
4 balance sheet in 2019 or 2020?

5 A. Well, I think for tax purposes -- and I'm not a tax
6 expert. So for tax purposes and some accounting purposes that
7 is how it's treated. But from an economic point of view what
8 you're really trying to get to is direct costs, kind of
9 economic costs. And that wouldn't be an appropriate
10 consideration.

11 Q. So where does this leave us regarding the
12 profitability of the NCR Silver software product?

13 A. So I ultimately did deduct the depreciation and
14 amortization and ended up with a profitability of about -- of a
15 direct profitability of about 47 percent.

16 Q. Okay. And is that what we see on this slide?

17 A. Correct.

18 Q. So tell us what we see in the green box under the
19 SaaS industry again.

20 A. Right. So this slide I was just showing the various
21 data points, the first one being the SaaS industry information
22 which we have seen. And that has profitability for companies
23 that provide SaaS of 70 to 95 percent. Then I included the
24 fully-loaded NCR profitability number which is 28 percent. And
25 then finally my revised analysis of about 47, 50 percent.

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U.S. DISTRICT COURT, WESTERN DISTRICT OF TEXAS (WACO)

1 Q. So does your revised analysis of 47 percent, does
2 that just take the costs that you believed were not appropriate
3 and remove those questionable costs and recalculate
4 profitability?

5 A. Yes. It was my recalculation and primarily focused
6 on those four categories that we had discussed previously that
7 were highlighted in yellow.

8 Q. And how does this 47 percent profit figure compare to
9 the industry and to NCR's profit figures?

10 A. Right. So it's somewhere in the middle. If you're
11 looking at the industry overall you can see companies that have
12 software as a service, that's what they provide, their profits
13 are 70 to 95. NCR's is on the other end of the spectrum of
14 28 percent. And then finally I've come up with something in
15 the middle which I find to be reasonable.

16 Q. So you're not saying that NCR necessarily falls into
17 this 95 percent profit category; is that right?

18 A. No. I'm not.

19 Q. But you're also saying that if you look at the costs
20 correctly, they don't fall into the 28 percent category either;
21 is that right?

22 A. That's right. Because what you're really looking for
23 is those direct costs. It's not just everything that could
24 potentially be related. It's an economic concept of a direct
25 cost.

1 Q. So your revised number falls about in the middle of
2 the industry expected profit ratio versus the NCR, what they're
3 telling us in this lawsuit, profit ratio; is that right?

4 A. Correct.

5 Q. What factors did you consider next?

6 A. Next I looked at the licensing considerations. And
7 as we discussed before, there are no comparable licenses for
8 the patents-in-suit from CloudofChange. NCR did not produce
9 any patent licenses in this case. And then finally, as we
10 discussed previously, a hypothetical license that would have
11 been negotiated between these parties, it's reasonable to
12 assume that that would have a royalty rate which is on a
13 per-unit basis, just like their SaaS pricing modeling and how
14 they get their monthly subscriptions.

15 Q. Now, has CloudofChange licensed the asserted patents
16 to your knowledge?

17 A. They have not.

18 Q. If they had, would those licenses have been
19 comparable to the hypothetical license that you're looking at
20 here?

21 A. Well, it would be something that we would have to
22 consider. I believe that they had some very limited licenses
23 on a trial basis for some of their products previously, but
24 that is not comparable and that's not necessarily something I
25 would consider.

1 Q. So we can agree, certainly, no considerable or
2 significant licensing activity by CloudfChange, right?

3 A. No.

4 Q. How about NCR? Does NCR have any relevant licensing
5 agreements?

6 A. Well, they didn't produce any patent license
7 agreements.

8 Q. Is there anything with regard to licensing
9 considerations that would be relevant to the hypothetical
10 negotiation?

11 A. Right. Just related to the royalty rate structure
12 that we talked about previously.

13 Q. How about other business considerations? Could you
14 tell us about the other factors that you considered?

15 A. CloudfChange -- as we discussed previously,
16 CloudfChange and NCR are not competitors here. One is not
17 losing sales to another one. And from what I've seen, there's
18 no customary royalty or profit-sharing for this type of
19 technology.

20 Q. Did we miss any factors, Ms. Salters?

21 A. I think that covers it.

22 Q. So after considering all of the Georgia-Pacific
23 factors, did you determine a reasonable royalty?

24 A. I did.

25 Q. Okay. Could you go through a recap of how you got

1 there?

2 A. Right. So just explaining and starting with the big
3 picture and then talking about the revenue and how it got down
4 to my royalty. And I know this is a lot of data points here on
5 this slide, but I'll try to go through them quickly for you.

6 As we discussed previously, what's accused of infringement
7 here is the hardware and the software. Ultimately, what I
8 included for my royalty calculation was not both. It was just
9 the software, because what I wanted to focus on really was
10 those core functionality in the software that's covered by the
11 patents-in-suit.

12 In addition, from that transaction subscription level
13 information, which I received, as we saw earlier from that
14 prior slide, there were over 700,000 subscriptions, which I saw
15 in that data.

16 However, as I reviewed the detailed descriptions of those,
17 those didn't seem to all have sort of the full functionality or
18 the core features really of the patents-in-suit.

19 So instead, I did not include those which potentially had
20 a limited functionality, and I only included those which seemed
21 to have the full software product, Silver software product.
22 And those ultimately were about 550,000 versus the over
23 700,000, which were all of those subscriptions.

24 And then, finally, as we heard, their pricing was all over
25 the place. What we had really seen was \$79 to \$200, that was

1 the price range of their monthly subscriptions that they
2 charged their merchants.

3 And so what I considered within my royalty base, to be
4 conservative, really was just that \$79 number, right?

5 And then, finally, even though we saw industry profits of
6 over 75 to 90 percent industry profits, specific to NCR's level
7 of sales, it was actually 79 percent. I only considered
8 profits of that 28 percent, which NCR claims, to the
9 47 percent, which was my revised calculation to get to my
10 reasonable royalty.

11 Q. So I'd just like to ask you. Going back to your
12 first point, the first bullet there, hardware and software, you
13 said you considered only software.

14 Does NCR also sell hardware along with the software in
15 this case? Is that your understanding?

16 A. Correct.

17 Q. Okay. Did you consider what NCR makes from those
18 hardware sales in connection with your royalty opinion?

19 A. I do know that it is around \$21 million for the
20 damages period.

21 Q. Did you put that \$21 million number into your royalty
22 consideration?

23 A. I didn't include it in my calculations. Certainly,
24 as the parties sit down and negotiate, that \$21 million would
25 be relevant to their thought process.

1 Q. So if we're thinking about a hypothetical
2 negotiation, we have to picture in our minds NCR sitting down
3 on one side of the table and CloudfChange sitting on the other
4 side of the table. And in regard to this hardware part, you're
5 telling us that NCR would be thinking, when they're going into
6 the negotiation, that they're making \$21 million on hardware
7 and they're not going to have to pay anything for that; is that
8 correct?

9 A. Correct.

10 Q. So that'd be a benefit to NCR in the hypothetical
11 negotiation?

12 A. That's correct.

13 Q. So -- and the software -- okay. Let's see here.

14 Was there any other benefits that you considered about --
15 in the software for NCR?

16 A. Yes. We talked about the subscriptions that I didn't
17 include because they didn't seem to have the full functionality
18 of the patents-in-suit. So I had the 700,000, and I only
19 included the 500,000.

20 And then, ultimately, my assumption of taking that lowest
21 price of the software, the \$79, versus all the other higher
22 prices which we had seen.

23 Q. So NCR may sell this software for prices that range
24 up to \$200. You didn't just cherry pick the top dollar and use
25 that in your negotiation?

1 A. Correct.

2 Q. So let's bring this all together and tell us about
3 what your conclusion was on the -- from the relevant damages
4 point that you looked at and considered in this case.

5 A. Yeah. So here are the relevant data points that I
6 considered. I looked at the number of software subscriptions
7 which was the 547, that was the first cut that we made. Then
8 we considered the basic software pricing, that \$79. And then
9 ultimately it had both those profit margins in, the one that
10 NCR claims that they achieve which is the 28 percent, and the
11 47 percent that was based on my recalculation.

12 Q. So then what do we do with this information that we
13 see here on the screen?

14 A. Well, you can multiply it. So you can take a
15 calculator and multiply it down. I think the 28 percent ends
16 up to be about \$12 million, that column. And then the
17 47 percent, which is the other profitability number, ends up
18 about \$20 million. So you're given a range between 12 million
19 and 20 million. Again, and ultimately it's for the jury to
20 decide what they believe to be the appropriate profitability.

21 Q. Okay. And other than the vague financial data that
22 you looked at, was there any other information that you would
23 have liked to know more about in this case?

24 A. Yes. Absolutely. So what was -- what I was unable
25 to reconcile in this case was the number of subscriptions

1 information that I was given. I used that 700,000 or the
2 547,000 ultimately that was provided in that subscription
3 transaction-level data.

4 However, in that profit and loss statement which didn't
5 have that information on it, there was another revenue number.
6 So I believe it was maybe 38 million, which was all of the
7 revenues on that subscription transaction-level data. And in
8 their profit and loss statement which they're claiming for
9 their profit and loss -- for their margins, it was closer to 52
10 million.

11 So it was difficult for me to reconcile what happened with
12 that additional \$14 million. Were we just not given that
13 information? Why was there that discrepancy? Were there
14 additional subscriptions that were not -- that we weren't
15 provided that information for and were not able to include it
16 in our units?

17 Q. Okay. Before I sit down, I'd like to do -- ask you
18 one more thing if I can figure out how to work the document
19 camera. So this is the slide we were just looking at; is that
20 right, Ms. Salters?

21 A. Correct.

22 Q. So we have here on the first column the 28 percent,
23 that's the NCR profit number, right?

24 A. Yes.

25 Q. And the 47 percent is the NCR revised number, right?

1 MR. BARR: Sorry about that. Thank you.

2 THE COURT: See, I told you. We all need someone like
3 him.

4 MR. BARR: I may be a technology lawyer, but that doesn't
5 mean I understand technology.

6 BY MR. BARR:

7 Q. Okay. So -- and then if we wanted to draw a new box
8 for the industry, the SaaS that you talked about, plug in these
9 same numbers, we'd have the same 547,907 subscriptions that you
10 used in your analysis and we'd have the same price of \$79. And
11 then we would put in the SaaS software subscription which we
12 know our profitability which we heard was 70 to 95 percent.
13 Let's just be more on the -- more middle of that and hit
14 80 percent.

15 And if we did that math, we'd have \$12.1 million royalty
16 under the NCR profit margin. And then under the NCR revised
17 profit margin we'd have \$20.3 million. And then under the SaaS
18 profit margin we'd have \$34.6 million; is that correct, ma'am?

19 A. Correct.

20 Q. Thank you.

21 MR. BARR: Pass the witness, Your Honor.

22 CROSS-EXAMINATION

23 BY MS. COLLINGS:

24 Q. Good afternoon, Ms. Salters.

25 A. Good afternoon.

1 Q. You didn't talk to any NCR Silver customers in the
2 preparation of your report, correct?

3 A. Correct.

4 Q. You did not conduct any type of market survey
5 generally to ascertain what types of features users of
6 point-of-sale solutions value any higher or lower than other
7 sets of features, did you?

8 A. That's correct.

9 Q. Okay. And you didn't perform any tests or, again,
10 conduct any type of market survey in order to determine what
11 actually drives demand for NCR Silver customers, did you?

12 A. Correct.

13 Q. Okay. Ms. Salters, you don't actually have any
14 experience working for any software as a service business, do
15 you?

16 A. I do not.

17 Q. And you have no experience working for any
18 point-of-sale company, correct?

19 A. Correct.

20 Q. You don't have any experience -- you've not worked as
21 a consultant or in any capacity as an economist in calculating
22 a reasonable royalty for a point-of-sale company?

23 A. Not a point-of-sale company.

24 Q. You're not a certified public accountant?

25 A. I'm not.

KRISTIE M. DAVIS, OFFICIAL COURT REPORTER
U.S. DISTRICT COURT, WESTERN DISTRICT OF TEXAS (WACO)

1 Q. You're not any kind of accountant?

2 A. I'm an economist.

3 Q. You're not a bookkeeper?

4 A. Correct.

5 Q. You never worked as an accountant?

6 A. That's correct.

7 Q. Okay. You've never gained any study, you have no
8 experience in identifying labels for cost categories that
9 companies include on their balance sheets, do you?

10 A. I do.

11 Q. You do, or --

12 A. I do.

13 Q. Okay. You have not ascertained in this case
14 specifically what is included in any of the cost categories
15 that were found on the NCR Silver income statement, have you?

16 A. I was not able to get that information beyond
17 everything we've discussed.

18 Q. And sitting here today, you do not know whether the
19 costs that were included in NCR Silver's income statement are
20 direct costs or not, do you?

21 A. Well, I've already given my explanation.

22 Q. But if you don't know what the costs are, how do you
23 know if they're direct or not direct?

24 A. I've already given my explanation based on what
25 Mrs. Schoonover's discussion was related to these costs here at

1 this trial.

2 Q. Well, you heard Ms. Schoonover testify, correct?

3 A. Correct.

4 Q. Both days?

5 A. I did. I listened online to the one day -- or
6 yesterday. And then I was here in the courtroom for the one
7 today.

8 Q. So you must have heard Ms. Schoonover testify that
9 the costs appearing in Joint Exhibit 88-C, NCR Silver's income
10 statement, that those, in fact, are direct costs?

11 A. I don't remember her exact words, but if she said
12 that, her descriptions did not support it.

13 Q. So whether or not Ms. Schoonover testified that those
14 are actually direct costs, you don't believe it?

15 A. Her descriptions did not support categorization as
16 direct costs.

17 Q. You're not familiar with NCR Silver's accounting
18 software, are you?

19 A. I'm not.

20 Q. You're not familiar with any NCR corporate finance
21 policies about how they book costs, are you?

22 A. I'm not.

23 Q. Okay. But you do know that NCR -- as a
24 publicly-traded company, you do know that NCR does follow GAAP?

25 A. Correct.

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U.S. DISTRICT COURT, WESTERN DISTRICT OF TEXAS (WACO)

1 Q. You've not personally calculated a gross profit
2 margin for any software as a service company, have you?

3 A. Not personally.

4 Q. Or professionally?

5 A. Or professionally, beyond what we've discussed here.

6 Q. Now, you're aware that in the software as a service
7 point-of-sale market, it's highly competitive, correct?

8 A. Yes.

9 Q. And you'd agree with me that there are -- there are a
10 variety of merchants or customers that this very concentrated
11 and competitive market is going after, correct?

12 A. I'm not sure -- if you could explain a little bit
13 more --

14 Q. Potential merchants, they come in all kind of sizes.
15 They might be big companies, like Starbucks, or they might be a
16 mom and pop, like Darcy's Cakes.

17 So the potential merchant business that these competitors
18 are going after, there's a lot of different types of merchants
19 in the market?

20 A. Correct.

21 Q. Okay. So software as a service point-of-sale
22 companies, those -- the companies that make up the competition
23 in that market, they can vary by size, correct?

24 A. Yes.

25 Q. They can vary by the nature of the actual products or

1 services that they offer for sale, correct?

2 A. Yes.

3 Q. They can vary with respect to how long they've been
4 in business, whether it's been 100 years or a day, correct?

5 A. Yes.

6 Q. Okay. And they can also vary with respect to whether
7 they're publicly-traded or just a small start-up business,
8 correct?

9 A. Yes.

10 Q. So costs among software as a service companies can be
11 very different from one company to the next, correct?

12 A. I wouldn't necessarily agree with that.

13 Q. Well, if a software service company is offering
14 cupcakes, for example, they're not going to be -- if a
15 point-of-sale software as a service company is -- has that as a
16 merchant, right, a retailer that is selling cupcakes, that
17 company -- software as a service point-of-sale company is going
18 to be different, let's say, than one who has as its customers
19 residents, people like you and me, somebody like -- customers
20 of Netflix, for example.

21 Costs that Netflix incurs as a software as a service
22 point-of-sale company are going to be very different than costs
23 that software as a service company, like NCR, incurs.

24 Would you agree with that?

25 A. Not necessarily.

1 Q. So you say that the costs that Netflix incurs are
2 going to be identical to National Cash Register; is that your
3 opinion?

4 A. I'm happy to explain. My opinion is, it wouldn't be
5 all that different.

6 Q. So the cost of National Cash Register would not be
7 that different than, say, what Netflix costs -- Netflix's
8 internal costs are?

9 A. If what you're really looking for is the software as
10 a service, then it wouldn't be all that different. If you're
11 looking at the company level, then yes. It might.

12 Q. So let me ask you this. When you assume that
13 software as a service industry companies generate 70 to
14 95 percent gross profit margin, that's a generality, correct?

15 A. Correct. Based on survey.

16 Q. And that assumption may or may not apply to any
17 particular company that is a software as a service company?

18 A. It may not.

19 Q. Okay. Because it's a generality?

20 A. It would be unusual for it to not, but yes. That's a
21 general statement.

22 Q. But you don't have any experience in determining what
23 is usual or not usual with respect to software as a service
24 gross profit margins, do you?

25 A. I wouldn't agree with that.

1 Q. Well, you just testified that you've not performed
2 gross product -- you've not performed damage calculations for
3 software as a service companies?

4 A. Correct.

5 Q. Okay. So you've not performed any type of accounting
6 services for software as a service companies, have you?

7 A. No.

8 Q. Do you know of any accounting principle that provides
9 standards or defines how a particular company labels its cost
10 of goods?

11 A. Yes. So there's generally accepted accounting
12 principles that reside over the way companies provide their
13 financial information. And some of that related to -- relates
14 to cost of goods sold.

15 Q. And under GAAP -- so you would say that GAAP would be
16 some type of standard that would instruct how a company needs
17 to label its cost of goods. Is that what you're saying?

18 A. It's guidance, that's correct, based on their
19 financial information.

20 Q. You've not heard anything here at trial today that
21 would cause -- you've not heard any evidence to suggest that
22 NCR Silver's cost of goods sold that are included in its income
23 statements are incorrect, have you?

24 A. Not incorrect, but not direct costs either.

25 Q. And you've not heard any evidence in this case that

1 they're not direct costs, have you?

2 A. I have.

3 Q. Ms. Schoonover -- Ms. Schoonover, I'm sorry, who is
4 executive director of the product at NCR Silver, testified that
5 those actually are direct costs and -- didn't she?

6 A. Yes.

7 Q. And she also explained how those costs that were in
8 Joint Exhibit 88-C, those were cost of goods sold as contrasted
9 with selling costs, correct?

10 A. I disagree with your statement.

11 Q. You don't believe that -- you disagree that
12 Ms. Schoonover differentiated in her testimony between cost of
13 goods sold and selling costs?

14 A. In her deposition there was a different discussion.

15 MS. COLLINGS: Your Honor, there's -- that wasn't my
16 question. I object. Move to strike as nonresponsive.

17 THE COURT: I will sustain the objection.

18 MS. COLLINGS: If we could look at Slide 5 of the
19 demonstrative.

20 Your Honor, may I have --

21 (Conference between counsel.)

22 BY MS. COLLINGS:

23 Q. And you see on the right side you have hardware?

24 A. Yes.

25 Q. You heard Ms. Schoonover testify that over 75 percent

1 of the subscriptions for NCR Silver run on an Apple tablet, not
2 an Android™, correct?

3 A. Correct.

4 Q. And you agree with me that if a merchant can supply
5 its own tablet, whether it's an Apple or an Android™, that
6 merchant can supply its own tablet to run the NCR Silver
7 point-of-sale system, correct?

8 A. Correct.

9 Q. Okay. So a merchant need not purchase any hardware
10 from NCR Silver in order to use the point-of-sale solution,
11 correct?

12 A. Correct.

13 Q. You agree that the only hardware necessary to use the
14 point-of-sale solution is a tablet, correct?

15 A. Okay. Yes.

16 Q. Okay. So here on Slide 5 you have -- in the
17 hardware, you have the tablet at the top. Display screen,
18 that's not needed to run the NCR Silver point-of-sale system,
19 correct?

20 A. I'm not sure.

21 Q. Okay. And so I assume, equally, you are not sure
22 whether a payment processor is necessary to run a point-of-sale
23 solution such as NCR Silver's?

24 A. I know -- I'm not sure. I know that's hardware
25 that's sold.

1 Q. Sure. As far as you know, none of the hardware
2 that's listed in Slide 5 underneath tablets, none of that
3 hardware is actually necessary to run NCR Silver's
4 point-of-sale system, is it?

5 A. I'm not sure.

6 Q. And if it's not necessary to run the NCR Silver
7 point-of-sale solution, then that's not hardware that's
8 included in the accused product, is it?

9 A. I disagree.

10 Q. Well, the accused product is the NCR Silver
11 point-of-sale solution, correct?

12 A. The system, that's correct.

13 Q. Okay. And if these other add-ons -- hardware items
14 are not part of the system, then they're not part of the
15 accused product, are they?

16 A. I disagree.

17 MS. COLLINGS: And if you turn to Slide 10, please.

18 BY MS. COLLINGS:

19 Q. On this relevant data point I just want to make sure
20 I'm looking at this clearly. The plaintiff is asking -- well,
21 under your relevant data points, if 28 percent profit margin
22 was applied to the other relevant data points in awarding
23 reasonable royalty, that would effectively be asking NCR Silver
24 to pay 90 percent of its profits, correct?

25 A. Do you want to show me the math?

1 Q. I'm just -- do you know, sitting there, 28 percent
2 profit margin, that would represent 90 percent of NCR Silver's
3 profits, correct?

4 A. If you want to show me the document, I'm happy to
5 respond.

6 Q. You've not done that math before? You've not done
7 that analysis? You don't know what profit margin, what
8 percentage of NCR Corporation's profits that 28 percent gross
9 profit calculation would represent?

10 A. So I know that NCR sold system -- Silver system
11 revenue of \$100 million. I understand that their profit
12 margins, let's say, are 28 percent. Taking the 28 percent,
13 that'd be \$28 million. Using that 28 percent calculation on --
14 for \$12 million, which is what it came out to, based on the
15 math that we discussed previously, damages would be
16 \$12 million. So that would be less than half.

17 Q. Less than half?

18 A. Of the profits related to NCR Silver revenue.

19 Q. Related, is that --

20 MS. COLLINGS: If you look at Slide 13, please.

21 BY MS. COLLINGS:

22 Q. The drivers of demand that you're identifying here on
23 Slide 13, you're basing -- this observation of the technology
24 considerations for the drivers of demand, you're basing that
25 completely and exclusively on Mr. Crouse's opinions, correct?

1 A. Correct. I'm relying on Mr. Crouse.

2 Q. You're not referencing any other evidence that the
3 items listed here on Slide 13 are drivers of demand for NCR
4 Silver?

5 A. So while I didn't reference them necessarily in my
6 report --

7 MS. COLLINGS: Your Honor.

8 THE COURT: What do you want me to do, Counsel? You asked
9 her a question, she's responding.

10 MS. COLLINGS: I asked it -- I would ask, then, that
11 you --

12 THE COURT: Let her finish the answer.

13 MS. COLLINGS: Yes/no response, please.

14 THE COURT: I'll take care of that, ma'am. You asked her
15 a question.

16 You can finish your answer.

17 BY MS. COLLINGS:

18 Q. My question --

19 THE COURT: Ma'am.

20 MS. COLLINGS: Oh, sorry.

21 THE COURT: I've told you three times. She's going to get
22 a chance to answer the question that you just asked. I would
23 like for you to stop talking until she does.

24 Can we do that?

25 You can finish the answer.

1 BY THE WITNESS:

2 A. So while not necessarily listed in my report, I have
3 seen evidence. And I believe it's been out here -- discussed
4 previously in this trial as well, a report or a marketing
5 document that relates to merchant demand, and I think it lists
6 these features.

7 I know Mr. Crouse had talked about it in his testimony as
8 well. So I'm aware of that document.

9 BY MS. COLLINGS:

10 Q. Isn't it a fact that the items listed on Slide 13,
11 these are actually functions of all point-of-sale solutions?

12 A. I heard that testimony.

13 Q. And, now, can you identify for me specific features
14 of NCR Silver that include the transaction handling
15 point-of-sale solution functionality?

16 A. I'm sorry. I don't understand the question.

17 Q. You just agreed that the four components here on
18 Slide 13, that these are base functionalities of all
19 point-of-sale solutions.

20 And I'm asking you if you can identify a particular
21 feature of NCR Silver that is transaction handling?

22 A. I think you asked the question a little differently
23 this time. If you want to restate it, I didn't say base. I
24 didn't agree with base functionality.

25 Q. These are the base -- I'm sorry -- basic

1 functionalities of point-of-sale systems, these four items on
2 Slide 13.

3 Are you disagreeing that these are the core
4 functionalities of point-of-sale solutions?

5 A. I -- that's my understanding generally based on what
6 Mr. Crouse discussed.

7 Q. And I'm asking you for an example of a feature that's
8 in NCR Silver, NCR Silver's point-of-sale solution, that is
9 transaction handling.

10 A. So I really can't answer that question. It would be
11 much better suited for Mr. Crouse.

12 Q. But the core functions here, on Page 13, it's your
13 opinion that these are drivers of demand?

14 A. I relied on Mr. Crouse for that opinion.

15 Q. Okay. So it's not your opinion that -- the core
16 functionalities listed on this Slide 13, it's not your opinion
17 that these are drivers of demand?

18 A. I relied upon Mr. Crouse for that opinion.

19 Q. Is it -- quickly, if you look at Slide 16.
20 I think you described this as your -- this is U.S. Silver
21 sales, and it includes both the hardware and software; was that
22 correct?

23 A. No. I don't believe so.

24 Q. Okay.

25 A. Oh, the \$100 million does. I apologize. Yes.

1 Q. Okay. So Slide 16, this includes both hardware and
2 software sales of NCR Silver?

3 A. Correct.

4 Q. Okay. But you're aware that in 2020 NCR Silver's
5 software sales, its subscriptions, actually declined?

6 A. I would have to go look back and see.

7 MS. COLLINGS: No further questions, Your Honor.

8 THE COURT: Mr. Barr?

9 MR. BARR: Nothing further, Your Honor.

10 THE COURT: May this witness be dismissed?

11 MR. BARR: Yes, Your Honor.

12 THE COURT: Could I have counsel -- just one counsel from
13 each side up here?

14 (Off-the-record bench conference.)

15 THE COURT: Mr. Barr, who is the plaintiff's next witness?

16 MR. BARR: Your Honor, at this time, the plaintiff rests
17 subject to our motions and any offers that we need to make.

18 THE COURT: Understood. Ladies and gentlemen of the jury,
19 it is 2:30. We're going to take a 15-minute recess and then
20 come back, and the defendant will begin putting on their case.

21 Remembering my instructions not to discuss the case
22 amongst yourselves, you are dismissed until 2:45.

23 THE BAILIFF: All rise.

24 (Jury exited the courtroom at 2:28.)

25 THE COURT: You may be seated.

1 For those of you who are -- were not privy to all I was
2 doing at the bench, I was just trying to figure out if there
3 were more witnesses.

4 I think what we've agreed to do -- Mr. Baker and Mr. Barr,
5 tell me if I'm mistaken.

6 First I'll start and ask the defendant if they have any
7 motions to make at this time?

8 MR. BAKER: Yes, Your Honor. We have one motion to take
9 up.

10 THE COURT: If you'd come to the podium, please.

11 Yes, sir?

12 MR. BAKER: Your Honor, just to make it very quick, we're
13 going to be filing later this evening an actual motion. I'm
14 just going to summarize it.

15 THE COURT: Okay.

16 MR. BAKER: It's -- we believe NCR is entitled to a
17 judgment notwithstanding law on noninfringement, on damages
18 and on willful infringement, Your Honor. We just believe that
19 there's -- no reasonable jury could find that CloudofChange has
20 met its burden of proof to prove direct infringement of both
21 the '640 and the '012.

22 And then on damages, we believe that the damage theory,
23 there's no apportionment, and as a matter of law, that that
24 should not be given -- that damages should not go to the jury.

25 And then on the final point, on the willfulness, Your

1 Honor, there's no -- there's been -- all the evidence -- all
2 we've seen is a letter go out. There's nothing -- and then
3 that letter by itself was not sufficient to allow willfulness
4 to go to the jury. There's been no evidence of willfulness,
5 wanton disregard, maliciousness, bad faith, deliberate and
6 consciousness of wrongdoing or anything on behalf of the
7 defendant.

8 The letter was bare bones. It did not set out any
9 strength of their case or address the issues of validity.
10 There was no followup, no evidence of followup. There's
11 substantial arguments we made during the pretrial and trial
12 that would show that we had -- that we had validity and
13 infringement in doubt. And we believe that the -- every right
14 that these patents, even if they were -- excuse me -- the
15 products were covered, that the patents were valid (sic). So
16 there's just simply no evidence that it should go to the jury
17 at this point on that point, Your Honor.

18 THE COURT: I'm going to overrule that.

19 And just for purposes of the record, Mr. Barr has
20 intimated to me that they're -- that they may want to have
21 the proffer of the evidence that I excluded at the pretrial
22 conference.

23 Mr. Baker, are you okay with allowing them to decide by
24 the end -- whether or not they're going to do it by the end of
25 the day and leaving their case open only -- the jury's not

1 going to hear anything else, but leaving it open to let them
2 decide till the end of the day? And if they want to put that
3 witness on, we can do it at the end of the day -- end of the
4 day, that way we don't have to hold the jury up?

5 MR. BAKER: Yes, Your Honor. That's fine.

6 THE COURT: Anything else?

7 MR. BAKER: No, Your Honor.

8 THE COURT: Any other issues to take up?

9 MR. BARR: No, Your Honor.

10 THE COURT: Okay.

11 THE BAILIFF: All rise.

12 (Recess taken from 2:32 to 2:49.)

13 THE BAILIFF: All rise.

14 THE COURT: Please remain standing for the jury.

15 (The jury entered the courtroom at 2:49.)

16 THE COURT: Thank you. You may be seated.

17 Mr. Phipps, you're the closest to me, so I'll ask you.

18 Who will be calling the first witness?

19 MR. PHIPPS: Yes, Your Honor. Defendant NCR Corporation
20 calls to the stand Dr. Sandeep Chatterjee.

21 (The witness was sworn.)

22 DIRECT EXAMINATION

23 BY MR. PHIPPS:

24 Q. Dr. Chatterjee, good afternoon.

25 A. Good afternoon.

1 Q. If you could introduce yourself to the jury and then
2 begin by talking about your education and background.

3 A. Sure. Good afternoon. My name is Sandeep
4 Chatterjee.

5 My background -- I think that we have a slide here.

6 So my background, I have a bachelor of science in
7 electrical engineering and computer science from UC Berkeley.
8 I have a masters of science in electrical engineering and
9 computer science from MIT, and I have a Ph.D. in computer
10 science from MIT.

11 Q. Thank you, Dr. Chatterjee.

12 Could you then describe some of your past work experience
13 and some of your academic credentials?

14 A. Sure. So my Ph.D. work at MIT dealt with
15 intelligent -- intelligent environments, when you're looking at
16 intelligent homes, intelligent offices. And one of the key
17 things that we worked on was intelligent televisions.

18 So you can imagine an intelligent TV that can learn your
19 watching patterns, what TV programs you like to watch, when you
20 like to watch them. And the intelligent devices, they would
21 communicate with each other.

22 So if your children were playing with toys that would come
23 over and make noise when you're watching TV, it would
24 automatically raise the volume, or your -- it would control the
25 toys to make them quieter so you can actually continue watching

1 TV.

2 And I was actually thinking that the issue that Your Honor
3 had about technology, those would be solved by those
4 intelligent devices as well, because the problems in computing,
5 they would intelligently go out, get the software that's
6 needed, download it, install it and continue working.

7 Q. Dr. Chatterjee, did your research in connection with
8 your Ph.D. receive any distinction?

9 A. It did. I'm very proud that my Ph.D. was selected as
10 one of the top inventions in computing. And the dissertation
11 is preserved in a time capsule at the Museum of Science in
12 Boston.

13 Q. And have you authored any textbooks?

14 A. I have. I've coauthored a book on web services.

15 Q. Okay. And how many patents do you yourself hold?

16 A. I have seven U.S. patents and seven international
17 patents, foreign patents.

18 Q. Okay. And tell us about your recognition as a
19 Bloomberg Innovator.

20 A. So I'm very proud of this. We had created -- I had
21 created and then commercialized the technology on new
22 point-of-sale technology, and we were featured on the Bloomberg
23 TV program -- a news program called Bloomberg Innovators.

24 And here are some screenshots from the program. On the
25 left-hand side you see the Bloomberg news hostess. In the

1 middle there, it's a picture of the point-of-sale technology
2 that we created. It's a mobile device. You see that there's a
3 card stuck on the bottom of it. There's a credit card or debit
4 card slot toward the top. And you see a receipt, and that's
5 printing out automatically.

6 And so what we did with this technology was -- it was
7 really groundbreaking. We were able to impact the lives of
8 millions of people around the world with this new point-of-sale
9 technology. The concept -- and there's a photo on the top
10 right, and this was our deployment in India.

11 India, there are something like 300 million people that
12 live below the poverty line. So they're living on less than a
13 dollar per day. The entire family is living on less than a
14 dollar per day.

15 And these women in this photograph, they work on the farm,
16 so they're working 14, 15 hours a day on the farms, and then
17 they have to go home and take care of their family, their
18 children. They simply don't have the time to get onto a bus,
19 go for half an hour, 45 minutes into the downtown, where the
20 shops are, where the bank branches are, to perform their
21 transactions.

22 So what we did, we built this new point-of-sale
23 technology, the hardware, the software, everything, and it
24 enabled the bank branches and the pharmacy stores, the grocery
25 stores to send people out to the farms with this point-of-sale

1 device together with medicine, together with cash to allow
2 these people to perform transactions in the middle of a farm.

3 So the transactions were all performed on this
4 point-of-sale device. This has Internet built into it, so it's
5 connecting over a wireless connection to a remote server and
6 performing all of the transactions.

7 And like I mentioned, it was a game changer, because it
8 allowed these women who's working on a farm to perform
9 transactions without sitting on that bus, going into downtown,
10 performing transactions and then having to come back.

11 Q. Okay.

12 A. And then we actually have on the next slide a picture
13 from South America, in Nicaragua, if we go to the next slide.
14 Here this is a picture on the left-hand side of a web-based
15 point-of-sale technology that we had deployed. This is in
16 Nicaragua. And the web-based point-of-sale allows the people
17 to go to a bank branch, and they're simply interacting with a
18 touchscreen device and pressing these things on the screen to
19 perform their transactions.

20 On the right-hand side is an app-based point-of-sale. And
21 this, you can see a receipt is printing out. This one is
22 deployed at a cement factory, again, in Nicaragua. The cement
23 factory's about two hours outside of downtown. There's nothing
24 there.

25 And so by using this new point-of-sale technology, the

1 bankers, the retail stores, the pharmacies, they're able to
2 send people out there with the point-of-sale device and with
3 merchandise and perform transactions in the field.

4 And this distinction, my background in developing both
5 web-based and app-based, is very critical to the issues in this
6 case. Because as we'll talk about, the patents in this case
7 are directed to web-based point-of-sale technology. Whereas
8 the NCR technology is an app-based point-of-sale technology.
9 They're fundamentally different. And I'll talk about those
10 issues as we go on.

11 Q. Thank you, Dr. Chatterjee.

12 MR. PHIPPS: In view of the witness' academic credentials,
13 education and experience, we will tender him as an expert in
14 this case, Your Honor.

15 MR. YATES: No objection, Your Honor.

16 THE COURT: He'll be received as an expert.

17 MR. PHIPPS: Thank you, Your Honor.

18 BY MR. PHIPPS:

19 Q. Dr. Chatterjee, let's talk about the activities that
20 you performed to prepare to give your expert opinions in this
21 case.

22 A. Well, I spent a lot of time from last year into this
23 year. I've looked at and reviewed and analyzed lots and lots
24 of documents and materials and information. I've prepared this
25 slide that shows some of the documents and information that

1 I've reviewed. On the left top it shows of course I've
2 reviewed the asserted patents and the prosecution history of
3 those patents. I've reviewed a large number of prior art
4 patents and publications, and we'll talk about some of those
5 toward the end of my presentation today.

6 I've also spoken with a number of NCR employees, including
7 Mr. McGill Quinn from NCR. But I've also spoken with software
8 engineers, product marketing people at NCR as well, prior to
9 speaking with Mr. Quinn.

10 I've reviewed a lot of NCR technical documentation. And I
11 really find in doing my work as an independent expert that
12 looking at the black-and-white documentation is critical,
13 because that allows me to really gather the facts. What are --
14 what's really happening? How does this software really work?
15 How does the technology really work? So I spend a lot of time
16 looking at the documentation, that black-and-white information.

17 I also traveled to NCR headquarters in Atlanta to inspect
18 the actual NCR Silver product. I've reviewed of course
19 Mr. Crouse's reports. And I've reviewed lots of deposition
20 transcript testimony as well, including those that are listed
21 there.

22 Q. And, Dr. Chatterjee, one of the criticisms that we'll
23 expect to hear from opposing counsel is how brief of amount of
24 time you spent with Mr. McGill Quinn. But your purpose in this
25 case is to provide an independent expert analysis, correct?

1 A. Yes.

2 Q. You weren't hired to come in and meet with all of the
3 NCR employees and just repeat what they said, correct?

4 A. Exactly. And that's what I made the point about
5 looking at the documentation, that the documentation is black
6 and white and the documentation doesn't lie.

7 Q. Okay. And then how did you proceed after you did all
8 of that independent review?

9 A. Well, after performing all of my review and analysis,
10 I put together two very detailed expert reports. I believe
11 they're about 200 pages total between the two reports. I
12 prepared one expert report on noninfringement and then one
13 expert report on invalidity. And then I sat for two
14 depositions that lasted approximately 12 hours on the record
15 where I further explained and provided additional like
16 explanations to the opinions that are set forth in my two
17 expert reports.

18 Q. Okay. So just for the benefit of organizing our
19 continuing discussion here, we're going to talk about your
20 expert report on noninfringement first, correct?

21 A. Yes.

22 Q. And then we'll get into the issue of invalidity,
23 correct?

24 A. Yes. Yes.

25 Q. Okay. So with respect to your analysis of

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1 noninfringement, you've compared NCR Silver, as accused by the
2 plaintiff, to the asserted patents, the two patents in this
3 case, correct?

4 A. Specifically to the asserted claims of the asserted
5 patents.

6 Q. Correct.

7 A. Yes.

8 Q. And you understand that for an infringement analysis
9 for an independent claim, they have to prove that NCR Silver
10 has each and every one of those limitations in those
11 independent claims, correct?

12 A. Yes.

13 Q. And if it is your opinion that certain of those
14 independent -- those limitations in those independent claims
15 are not met, then it's not possible to infringe the dependent
16 claims, correct?

17 A. Exactly. And like we'll go into in my presentation
18 in a little bit, what I found when I was doing my analysis is
19 that there are at least four major things that are simply
20 missing from the NCR software, and, therefore, it cannot
21 infringe the independent claims.

22 And because it cannot infringe the independent claims, it
23 cannot infringe the dependent claims, because the dependent
24 claims depend on the independent claims.

25 You have to meet additional limitations of the dependent

1 claims in order to infringe those.

2 Q. Okay. And so the plaintiff's burden to prove
3 infringement is by preponderance of the evidence, correct?

4 A. Yes.

5 Q. And then we have a higher burden to prove our defense
6 of patent invalidity, correct?

7 A. Yes.

8 Q. Okay. And on our burden, we have to show that each
9 and every limitation of the asserted claims is found in the
10 prior art, correct?

11 A. Yes.

12 Q. And you believe that we've met that burden through
13 your analysis, correct?

14 A. Yes. I believe it's very clear.

15 Q. And even though we have a higher evidentiary burden
16 of clear and convincing evidence, correct?

17 A. Yes.

18 Q. You think we've met that burden, correct?

19 A. Yes. And as I go through my presentation, I believe
20 it'll come out very clear as well that the elements are clearly
21 in the prior art.

22 Q. And the two key prior art references that you,
23 Dr. Chatterjee, rely upon for your opinion of invalidity, which
24 shows each and every one of those limitations of the asserted
25 claims, those two patents were not considered by the Patent

1 Office, were they?

2 A. No. They were not. They -- the Patent Office did
3 not know about those prior art references.

4 Q. Okay. Now, let's talk about your analysis of the NCR
5 Silver product itself, please.

6 A. Okay. So I think we've all heard a lot about the NCR
7 Silver product. It's essentially an app that works on an iPad
8 or Android™ device. So just like every other app that all of
9 us have used on our iPhones or Android™ phones, it's an app
10 that runs on these terminals. There's nothing different. It's
11 just like a standard mobile app that you run on your tablet.

12 And, in fact, what I did as part of my review and
13 analysis, I believe this was last year, I believe in October
14 time frame, or September, I actually went to the Apple Store
15 and I located the NCR Silver app and I downloaded it onto my
16 iPad. So it works 100 percent the same way as you would
17 download any app onto your phone or tablet.

18 And the NCR Silver product, it consists of -- it's
19 essentially a point-of-sale product, like I'm saying here. As
20 I've stated, you can run it on an Apple iPad, or you can run it
21 on an Android™ tablet.

22 And the NCR Silver product also has what's called a Back
23 Office suite of applications, and the Back Office allows the
24 merchant to simply enter -- if you're selling pizzas, you're
25 able to enter that I'm selling pizzas. If you have large

1 pizzas, medium-size pizzas, small-size pizzas, you're able to
2 enter that information. You're simply entering data related to
3 your business, your shop. If you're selling tacos, you would
4 enter that you're selling tacos.

5 So the Back Office allows you to enter that kind of data
6 about your business or about your shop. And like I mentioned,
7 the actual NCR Silver POS is simply a standard application that
8 runs on an iPad tablet or an Android™ tablet.

9 Q. Okay. Now, how does a merchant obtain NCR Silver?

10 A. So --

11 THE COURT: Mr. Phipps, I'm -- could you pull the
12 microphone just a little closer?

13 MR. PHIPPS: Oh, yes. Sorry.

14 THE COURT: And could you ask your question again? I just
15 couldn't hear it.

16 MR. PHIPPS: Absolutely.

17 BY MR. PHIPPS:

18 Q. Dr. Chatterjee, how would a merchant obtain NCR
19 Silver?

20 A. So there are two ways of doing it. As I mentioned,
21 you can put it onto an Apple iPad product or an Android™
22 product. I'll start with the Apple approach.

23 In order to have the NCR Silver product work on your iPad,
24 you would first need to go to an Apple store or go to Apple and
25 purchase one or more iPads.

1 Once you do that, and consistent with what I explained to
2 you, I took my own iPad and I simply went to the Apple Store,
3 looked up the NCR Silver app and I downloaded it. And that's
4 exactly what a merchant would do.

5 After they get that iPad, they simply go to the Apple
6 Store, connect over the Internet to the Apple Store, locate the
7 NCR Silver app and then download it.

8 And NCR is the one that puts that software, the NCR
9 Silver -- the iOS version, the Apple iOS version of the NCR
10 Silver software, NCR gives it to Apple to put onto the Apple
11 Store. And that's it.

12 And then if there are updates -- so I think we've heard
13 testimony from, I believe, Mr. Quinn that there are periodic
14 updates that NCR does on its own. If there are updates, again,
15 it's the same process. NCR gives it to the Apple Store. And
16 as we've all used when we're using mobile apps on our tablets
17 or phones, when there's an update, it tells you that there is
18 an update or sometimes it'll automatically simply update the
19 application on its own.

20 But it's all done through the Apple Store. Nothing
21 different than what all of us use with our Android™ phones and
22 tablets and iPhones and iPads.

23 Q. Okay. So we've talked about the iOS version of NCR
24 Silver. Now let's talk about the Android™ version.

25 How do merchants obtain NCR Silver when they use it with

1 an Android™ product?

2 A. So this is very similar but slightly different. In
3 order for a merchant to use the Android™ version of the NCR
4 Silver product, they have to contact NCR. They call up NCR and
5 say, well, we'd like to use the Android™ version. And what NCR
6 does is that it purchases Android™ tablets from Samsung and
7 others, and then NCR takes the Samsung tablet, loads the actual
8 Android™ software onto the tablet and then ships it out to the
9 merchant.

10 And then after that, as I mentioned, if there are updates
11 that are released by NCR, it, again, comes into the tablet
12 using the Google Play Store. Again, 100 percent the same way
13 that all of us update our phones with either iPhone or an
14 Android™ phone by connecting to the Apple App Store or
15 connecting to the Google Play Store.

16 Q. Okay.

17 MR. PHIPPS: So next slide.

18 BY MR. PHIPPS:

19 Q. All right. Now we've talked about how NCR -- a
20 merchant will get NCR Silver, but now let's talk about how a
21 merchant will use NCR Silver.

22 A. Sure. So NCR Silver is simply a software product.
23 And in order for a merchant to actually use the NCR Silver
24 product, the merchant needs to first go and purchase other
25 components.

1 As I've already mentioned, if the merchant wants to use
2 the Apple version, it has to go and purchase an iPad, one or
3 more iPads. Then the merchant can also purchase PCs, for
4 example, from Dell or other companies.

5 The merchant also needs to go and get Internet access.
6 And I think we've heard some testimony earlier today as well as
7 yesterday about that. The merchant has to get Internet from
8 some company.

9 And then after the merchant has purchased those additional
10 third-party components, then what happens is that on the bottom
11 left the merchant, using that optional PC, would simply connect
12 to the Back Office. And remember I mentioned if you're a pizza
13 store, you're going to enter that you're selling pizzas. If
14 you have small, medium, large-size pizzas, you're going to be
15 entering that information through the Back Office. If you're a
16 taco store, you're going to be entering similar information
17 saying that you are selling tacos, putting those item
18 information into the Back Office.

19 And that PC, you're running a browser and that's hitting a
20 web server. And that web server simply takes that data. If
21 you enter that you are selling pizzas and you have small,
22 medium and large pizzas, that's simply data. And we'll talk
23 more about that later today. But that data is simply sent to a
24 web server, and that web server either puts it into a database
25 or gives it to an app server, and the app server can do other

1 things with it.

2 And then after you've entered the information that you're
3 selling pizzas or tacos or whatever else, that's it. It's
4 simply now living -- that information, that data that you
5 entered is simply living in the database on the far right-hand
6 side.

7 Then imagine a customer comes into your taco store. When
8 the customer comes into your taco store and actually orders two
9 tacos, then you're going to use your iPad. And then as the
10 customer places the order, you're going to ring up the customer
11 by pressing whatever tacos that they ordered.

12 And I think on the next slide we have something like that.
13 No. Maybe not. So I think we'll come back to that.

14 But if your customer's purchasing two tacos, you would
15 simply press the taco button. If they got chicken tacos or
16 beef tacos or vegetarian tacos, whatever, you would simply
17 press the appropriate button. And then it would ring up on the
18 left-hand side the price of each taco, add up the taxes,
19 whatever else, and then the customer performs the credit card
20 transaction or gives you cash.

21 Q. Thank you, Dr. Chatterjee.

22 So now we've talked about how a merchant gets NCR Silver,
23 how a merchant uses it, and now let's get into your opinions in
24 this case.

25 You have some opinions of noninfringement, correct?

1 A. Yes. I do.

2 Q. So let's go through those. Now, beginning analysis,
3 we know that these two patents are related to each other in
4 terms of the filing date. And so tell us about that and how
5 that's relevant to your analysis.

6 A. Well, the two patents are very closely related. If
7 you look at this slide, the titles of both patents are the
8 same. The listed inventors of the two patents are the same.
9 The owner of the two patents are the same.

10 Going on to the next page here, the abstracts which
11 provide a summary of what the invention of the two patents are,
12 they're 100 percent the same as well.

13 Going to the next slide, the two patents have the same
14 exact five figures.

15 Going to the next slide, the specification wording -- the
16 specification of a patent is the actual writing that discloses
17 what the invention is. The wording of the specification for
18 both patents is identical. And it has to be, because the '012
19 patent is what's known as a continuation.

20 Q. All right. All right. So now we have different
21 claims that are asserted from the patents. And as the jury saw
22 in a prior video, the claims define sort of the boundaries of
23 what's asserted in these patents, correct?

24 A. Yes.

25 Q. Okay. And they're specific claims out of these

1 patents that are asserted. And the number of claims are listed
2 here. And, again, only Claims 1 from each of the asserted
3 patents are independent claims. And so we'll be focusing on
4 those independent claims for your noninfringement analysis. So
5 let's talk about the claims and how they compare.

6 A. So we touched on this a little bit maybe about five,
7 ten minutes ago, that both Claims 1 from both patents are
8 independent. And then all of the other claims -- all of the
9 other asserted claims, they depend from Claim 1, which means
10 that Claim 1 sets forth a number of limitations that have to be
11 met. And then the dependent claims, they add limitations on
12 top of the independent claims.

13 And that's how I've graphically depicted them here. Where
14 you see that Claim 1 for both patents are at the top, they have
15 the base limitations, and then you're adding additional
16 limitations through the dependent claims.

17 And then Claims 12 and 13, they actually depend from
18 Claim 11, which also depends from Claim 1.

19 So the bottom line is that every asserted claim is based
20 on and depends on Claim 1 for both patents.

21 MR. PHIPPS: Next slide.

22 BY MR. PHIPPS:

23 Q. Okay. And then what is your ultimate opinion in this
24 case as to the issue of infringement as posed by the plaintiff?

25 A. So it says it right here that my opinion is that NCR

1 Silver does not and, in fact, it cannot. And that's what I'm
2 going to explain to you in the next several slides.

3 It's simply not possible for NCR Silver to infringe the
4 asserted claims of both the asserted patents.

5 Q. And that's true not only as it's used by the
6 merchants, but it's also true that -- as sold by NCR, correct?

7 A. Yes. There are different reasons, and I will cover
8 them all in my presentation. But it's true, both the merchants
9 as used -- using the system, as well as by NCR, cannot infringe
10 the asserted claims.

11 Q. Okay. So let's get into the details of your
12 noninfringement analysis, Dr. Chatterjee.

13 A. So here I'm setting the stage. This is really
14 important, because, as we've talked about, it's really the
15 claims -- the wording of the claims is critically important.
16 It's the claims that define the invention.

17 And so on the left-hand side, I've made a very basic
18 analogy. On the left-hand side, if there's a patent for, say,
19 a soccer ball, and the claims use the language that Claim 1 of
20 this made-up patent that I have here of a soccer ball, if
21 Claim 1 has four limitations and if those four limitations are
22 that, number one, it's made of leather; number two, it's
23 stitched together -- that actually rhymes; number three, it's
24 filled with compressed air; and number four, it's round, we
25 have to look for exactly those four limitations in the accused

1 product.

2 And here on the right-hand side, I'm saying, okay. Let's
3 consider the accused product being a football. A football may
4 be made of leather. Okay. We check the box for that.

5 A football may be stitched together. We check the box for
6 that.

7 A football may be filled with compressed air, but a
8 football is not round. A football is egg-shaped or oval or
9 whatever it is.

10 So what I'm trying to show here is, number one, each of
11 the claim limitations have to be met; and even more
12 importantly, we have to look at the actual words in the claims.
13 What do the words say? Not a subset, not just a couple of
14 words here and there, but all of the words of the claims has to
15 be looked at and analyzed.

16 Q. Okay. So let's take that understanding and apply it
17 to the claims in this case.

18 A. Well, so remember, I said there are approximately
19 four major things that are missing from the NCR Silver product
20 that makes it crystal clear to me -- and hopefully I'll be able
21 to show you as well -- that those four major things are missing
22 from the NCR Silver product.

23 And because those four major things are missing, the NCR
24 Silver product does not and, in fact, cannot infringe the
25 claims.

1 But here you can see the language on the left-hand side of
2 Claim 1 for the '640, I don't want to go into every little
3 word. I'm just going to show you these four huge missing
4 things from the NCR product.

5 And before I do that, I want to show you that -- remember
6 I told you that the '640 patent and the '012 patent, they're
7 related? They share the same specification, same figures,
8 same -- I forgot what else I said, the titles and things like
9 that.

10 So I'm going to show you that Claim 1 of the '640 patent
11 and Claim 1 of the '012 patent, they have these same
12 limitations. There are three limitations that I'm going to
13 show you are common between the two Claim 1s of the two
14 patents, and there's one additional limitation in the '640
15 patent as well.

16 So before we go into the '012 patent, what I've done here
17 is, on the left-hand side, I have Claim 1 for the '640 patent,
18 and I've color-coded these limitations.

19 So the first one that I have is point-of-sale builder
20 software. I've color-coded that on the left, so you're seeing
21 that I'm taking the exact wording from the claim,
22 "point-of-sale builder software," and I've made it my first
23 bullet on the right.

24 So this is the first point that I'm going to show you is a
25 major thing that's missing from the NCR Silver product.

1 The second point that I've made in this peach-brownish
2 color is that "the point-of-sale builder software that runs on
3 said web server."

4 Remember I said that you have to look at the actual words
5 of the claims? And this is really important, because it
6 doesn't say that there is simply a web server. It says that
7 "point-of-sale builder software runs on said web server."

8 So I've made that the second point, and I'll explain to
9 you why that's another huge thing, the second of the four huge
10 things that are missing from the NCR Silver product.

11 The third one, in this teal color, is a little bit further
12 down in the claim. And again, I've written it exactly verbatim
13 from the claim "web servers are provided as a vendor
14 subscription service."

15 Then the fourth point, in this purple color, again,
16 directly from the claim on the left, "POS terminals access and
17 repeatedly interact with said web server software."

18 So I've put them side by side, the actual claim of the
19 '640 patent, Claim 1 of the '640 patent, on the left-hand side,
20 and I've pulled out the exact verbatim language from the claim
21 language onto these four bullets on the right-hand side.

22 And if we go to the next slide, I'm going to show you
23 through the rest of my presentation that these four things,
24 these four huge limitations, that are required in Claim 1 of
25 the '640 patent are simply not there in the NCR Silver product.

*KRISTIE M. DAVIS, OFFICIAL COURT REPORTER
U.S. DISTRICT COURT, WESTERN DISTRICT OF TEXAS (WACO)*

1 Now, going to the '012 patent. Remember I told you that
2 they're related? So these same limitations are in the '012
3 patent. And I've used the same color-coding to show that those
4 same limitations are there.

5 So that first one, "POS builder software," remember in the
6 '640 I highlighted that point-of-sale builder software in
7 green? I've done that here as well.

8 In the '012 patent, I've highlighted in this light green
9 color, it has an additional limitation, that the "POS terminals
10 are generated by said POS builder software."

11 And then it goes on, that the "POS builder software for
12 programatically creating or modifying said one or more POS
13 terminals."

14 So not only does the '012 patent require that there is a
15 POS builder software, it specifically states that it has to do
16 what's stated in this light green requirement.

17 Now, before we go here, if we keep on the last slide,
18 here I've -- again, in that same peach and brownish color
19 there's that same corresponding limitation in the '012 patent
20 that it's not simply a web server. The '012 patent, just like
21 the '640 patent, it doesn't say that it's simply a web server
22 somewhere there. Even the '012 patent is saying there's a web
23 server, including POS builder software installed thereon.

24 So the claim language is crystal clear that the web server
25 has to have POS builder software installed thereon. Just like

1 in the '640 patent it said that the web server runs the POS
2 builder software.

3 And then in the purple color toward the bottom I have that
4 the POS builder software is configured to interact with said
5 one or more POS terminals.

6 So going to the next slide, I will show you through my
7 analysis that these four limitations are also missing from the
8 NCR Silver product.

9 Here what I've done is -- just to put both claims of both
10 patents on a single page. So on the top left I have Claim 1 of
11 the '640 patent. On the bottom left I have Claim 1 of the '012
12 patent. And I'm showing here through the color-coding that
13 these four limitations, they're three common limitations that
14 are in the green color, the brownish peach color and the purple
15 color. You see that they're both in the '012 and the '640
16 patent. And the '640 patent has that additional teal-colored
17 limitation as well.

18 So my point is I want to keep the analysis simple and not
19 waste anyone's time, and that is why I've done this to show
20 that there are common limitations across both claims of both
21 patents.

22 And I'm going to show you that these four limitations that
23 I've named, I've called this light -- the green limitation the
24 builder limitation. And I'm going to show you that the builder
25 limitation is missing from the NCR Silver product.

1 I've called the peach-colored limitation the installed
2 on/runs on a web server limitation. And I'm going to show you
3 that, again, that limitation is missing from the NCR Silver
4 product.

5 I've called the purple limitation the interaction
6 limitation. And, again, I'm going to show you that limitation
7 is also missing.

8 And the teal limitation I've called the subscription
9 limitation which only applies to the '640 patent. I'll also
10 explain that that limitation is missing.

11 Q. Okay. Thank you, Dr. Chatterjee.

12 Now that you've described how these limitations are
13 contained in the asserted claims, in the independent claims,
14 let's talk more about your analysis of how those have not been
15 found in NCR Silver.

16 A. Okay. So I wanted to show here first through -- now
17 that I've explained to you these big pieces of the claims, I
18 wanted to first sort of ground our discussion by showing Figure
19 3 from both patents. Both of the asserted patents have this
20 same figure.

21 And essentially what the patents are directed to is that a
22 merchant -- you see on the bottom left the web browsers. So a
23 merchant would use those web browsers and they would connect to
24 a POS builder software that's installed on a web server. And,
25 again, I've highlighted through the coloring on the right-hand

1 side of the figure, I've highlighted in the peach brownish
2 color that there's a web server there with POS software
3 installed on it. And the merchant, using the web browser and
4 through that green arrow, is connecting to the web server with
5 the POS builder software installed on it to build POS
6 terminals.

7 Then after the merchant has built the POS terminals, then
8 the POS terminals are then on the left-hand side, on the top
9 left. And then the POS terminals continue to interact with the
10 POS software that's on the web server. And that's what I'm
11 showing with the purple arrows going back and forth.

12 Q. Okay.

13 MR. PHIPPS: Next slide.

14 BY THE WITNESS:

15 A. So let's start with the builder limitation. And like
16 I said, I wanted to simplify the analysis and show you that the
17 builder limitation, which is in both Claim 1 of the '640 patent
18 and Claim 1 of the '012 patent, is not in the NCR Silver
19 product.

20 So the most important part of this analysis is the Court's
21 construction of the term "point-of-sale builder software." And
22 the Court construed this term. And "construed" means the Court
23 defined the meaning of this term to be its plain and ordinary
24 meaning, wherein plain and ordinary meaning means software that
25 builds the POS terminals.

1 And this is critical. This definition or construction of
2 the term "point-of-sale builder software" is critical, because,
3 as we go to the next slide and as I've already explained, you
4 cannot build anything with the NCR Silver product.

5 Remember I told you that NCR takes the software and gives
6 it to the Apple Store? And all you do with your iPad or your
7 Android™ tablet is you're simply downloading it, just like any
8 other app that you have on your phone or on your tablet. You
9 cannot build anything with it.

10 It's simply -- the NCR Silver product is already built.
11 You cannot build it when it's already built.

12 And if we go to the next slide, this is really important
13 in that, you know, software technology is not magic. Software
14 technology works by having software, which software consists of
15 lines of program code and the computer simply goes line by line
16 of the program, parses the program code, which are
17 instructions, and simply executes the instructions that are in
18 the program code.

19 And that's a really critical concept, because unless the
20 program code already has all of the functionality in it, there
21 can be no functionality in an app, right?

22 For example, whenever you're using an app, for example, if
23 you use the Uber app or whatever app, all of the functionality
24 that the Uber app can do or whatever app you're using is
25 already there. It has to be already there, because computers

1 simply go line by line of that program code and execute
2 whatever the program instruction says.

3 Like I said, it's not magic. The computer simply process
4 the program instructions and do what it says.

5 So when you see a button -- when you have a button for
6 tacos, because you're going to sell tacos, that functionality
7 for that button, all of the capability that that button can do,
8 it's already in the program code.

9 MR. YATES: Your Honor, can we have more question and
10 answers rather than a monologue? Objection.

11 THE COURT: Overruled.

12 MR. PHIPPS: Next slide, Dr. Chatterjee.

13 BY MR. PHIPPS:

14 Q. Did you hear any testimony from any of the listed
15 inventors concerning your understanding of what building is?

16 A. I did. So I was in the courtroom yesterday when
17 Mr. Olson, an inventor of -- or I guess a coinventor of both of
18 the patents, and he testified directly that data entry is not
19 building. And as the coinventor of the patent, he was
20 confirming exactly my analysis, that all of the functionality
21 is already there.

22 If you're simply entering data, for example, that you're
23 selling tacos, the button functionality, the capability, it's
24 already there. You're simply entering data that says taco, or
25 you're simply entering data that says medium-size pizza.

1 That's all that's happening.

2 And Mr. Olson, the coinventor of the patent, confirmed
3 that data entry is not building within the context of his
4 patent.

5 MR. PHIPPS: Next slide.

6 BY THE WITNESS:

7 A. So here I'm just showing that I've explained to you
8 why the builder limitation is simply not there in the NCR
9 Silver product. Like I said, it's a prebuilt application.
10 Whether you want to call it prebuilt or already built, all of
11 the functionality is in that application. You cannot do
12 something more with that application beyond what's already
13 there.

14 And so that's the key point. You're not building
15 anything. It's already there. You're simply entering data
16 about taco or pizza. That's all you're doing.

17 BY MR. PHIPPS:

18 Q. Okay.

19 A. And so I just put an X next to it just to keep track
20 that we're going to go through these four major limitations
21 that are simply missing.

22 Q. Okay. Dr. Chatterjee, let's talk about this next
23 limitation.

24 A. Sure. So this next limitation is "installed on or
25 runs on a web server." And remember I talked to you about

1 this. That -- we've talked a lot about and heard a lot about
2 web server in the testimony yesterday and also earlier this
3 morning, but the claim language is crystal clear.

4 It doesn't just say web server, period. It says web
5 server that has point-of-sale builder software either installed
6 on it, for the '640 patent, or that's running on it, for the
7 '012 patent.

8 And so if we go to the next slide, I've already explained
9 to you that there is no POS builder software, because the Court
10 construed -- said that the definition of POS builder software
11 is something, and I explained to you that something is not in
12 the NCR Silver product. It simply cannot, because it's an
13 already-built application.

14 And so because there is no POS builder, obviously there
15 cannot be a POS builder on a web server. If there's not a POS
16 builder to begin with, it cannot be on a web server.

17 So then there's an additional reason why this limitation,
18 the "installed on/runs on a web server" cannot be met and --

19 Q. And, Dr. Chatterjee, is there a Court construction
20 that's relevant for this analysis?

21 A. Yes. And that's what I'm showing here, that the
22 Court's construction of the term "web server" -- again, it's
23 the Court's definition of the term "web server" -- is critical
24 because it demonstrates very clearly that what plaintiff is
25 pointing to cannot meet the construction of this limitation as

1 construed by the Court.

2 And so the Court's construction of a web server is
3 "hardware and software that uses HTTP (hypertext transfer
4 protocol) to serve data or files that form web pages."

5 And I've underlined that part because it's critical. The
6 entire thing, this entire quotation is the Court's
7 construction.

8 And what I've explained to you is that the NCR Silver
9 product is an app. There's no web page. As we know from using
10 an app versus going to a website, they're two different things.
11 The NCR Silver product is an app. There's no website with it.
12 There's no web pages with it.

13 And so if we go to the next slide, what I've explained is
14 that plaintiff is pointing to NCR Silver's Back Office software
15 as allegedly being the POS builder software.

16 I've explained to you already that it's simply not
17 possible because the NCR Silver product is an app. All of the
18 capability is already there. You cannot build something more
19 with the NCR Silver app.

20 But before we go there, but even if you look at the NCR
21 Silver Back Office application, it doesn't run on a web server.
22 It runs on what's called an application server. And it's
23 critical because an application server is very different than a
24 web server.

25 And if we go to the next slide, I explain this. A web

1 server, on the left-hand side, in this -- I've put the actual
2 Court's construction, "a web server is hardware and software
3 that uses HTTP to serve data and files that form web pages."

4 And I've pointed to the web server in the diagram that I
5 created based on the analysis of documentation and talking with
6 the people at NCR.

7 And on the right-hand side I'm showing what an application
8 server is. An application server is completely different than
9 a web server. An application server simply performs
10 computations. An application server does not form web pages.
11 It doesn't do anything related to forming web pages, and,
12 therefore, it cannot meet the Court's construction of web
13 server.

14 Q. Okay. And, Dr. Chatterjee, so this is an important
15 point. And looking on the right side here, where we see the
16 cloud provided by Google, there's three separate types of
17 servers there, correct?

18 A. Yes.

19 Q. Okay. And you've talked about the web server and the
20 application server. And is there a reason why you have some
21 gears next to the application server?

22 A. Yes.

23 Q. Okay. What is that?

24 A. Well, the gears are meant to graphically denote that
25 the application server performs computations. It's like the

1 gears are moving. Whereas a web server simply has static web
2 pages in it that are sent out. An application server does
3 computation, it performs actions, it runs an application.

4 Q. Okay. So the application server that is used in
5 connection with NCR Silver is not a web server according to the
6 Court's claim construction, correct?

7 A. Yes. Without a doubt.

8 Q. And it's your understanding that all of the relevant
9 software that is used in the Back Office in connection with NCR
10 Silver is on an application server and not on a web server,
11 correct?

12 A. Yes.

13 Q. So even if the software that was there was a builder,
14 which you've said it is not, it doesn't meet the location
15 requirement of being installed on or running on a web server,
16 does it?

17 A. That's precisely my point. The claim language is
18 very clear that the web server has to have specific software
19 installed on or running on it, and it doesn't.

20 Q. Okay. Thank you, Dr. Chatterjee.

21 Okay. So you've covered how these first limitations that
22 are common between the two asserted independent claims are not
23 present in NCR Silver. What about the third one?

24 A. So this is the interaction limitation. And remember
25 the interaction limitation -- so on the left-hand side I've

1 summarized it. The claims for both patents, Claim 1 of both
2 patents, the claims require that the POS builder software
3 interacts with the POS terminal. And then as we just talked
4 about for the installed on/runs on web server limitation, the
5 claims also require that the POS builder software is installed
6 on or runs on a web server.

7 But if you look at the diagram that I created based on all
8 of my analysis of the technical material, technical documents
9 that I've reviewed, and also confirmed by my discussions with
10 NCR's engineers and Mr. Quinn and others, if you look at where
11 the iPad is in my picture -- remember the NCR Silver app runs
12 on the iPad -- whereas the iPad only communicates with what's
13 called a POS API server. And an API server is another kind of
14 server, again, fundamentally different from a web server.

15 And you can see --

16 Q. Dr. Chatterjee, let me just interrupt you there. So
17 the POS API server also does not meet the Court's definition of
18 a web server, correct?

19 A. Yes. It's fundamentally different.

20 Q. Thank you, Dr. Chatterjee.

21 A. And so you see this diagram. So on the iPad is where
22 the NCR Silver app is running. And the web server is on the
23 bottom there. There's no arrow, there's no connection between
24 the iPad and the web server. Clearly, then, there is no
25 interaction. The app running on the iPad, which is the NCR

1 Silver app, does not talk to the web server at all.

2 And therefore this is what I was explaining that it's not
3 simply that the NCR Silver product does not meet the claim
4 limitations. It's stronger than that. It's -- the NCR Silver
5 product cannot meet the claim limitations.

6 And I think on the next slide I actually go into a little
7 bit of detail about what is an API server and how that's
8 different than a web server. So, again, on the left-hand side
9 I've put the Court's construction or the definition of what a
10 web server is.

11 And remember that last part of the Court's construction
12 that says that form web pages? And then on the bottom I've
13 cited to the Microsoft computer dictionary which confirms my
14 understanding, as well as any person of skill in the art, that
15 a web page uses HTML.

16 And so what I've shown in the diagram here is that the web
17 server uses HTML on top of HTTP, whereas the API server, the
18 POS API server, uses what's called JSON. It's a completely
19 different technology. So that's another reason why the app,
20 the NCR Silver app, running on the iPad simply cannot meet the
21 interaction limitation, because it never interacts with, it
22 never communicates with, it has no connection with the web
23 server within the Back Office.

24 Q. Okay.

25 MR. PHIPPS: All right. Next slide.

1 BY MR. PHIPPS:

2 Q. So you've talked about how the first three
3 limitations are not present in the asserted independent claims,
4 even though noninfringement can be found by the absence of
5 merely one, as we saw with the soccer ball and football
6 analogy. But yet there's another common limitation or another
7 limitation from the '640 patent that's not present, correct?

8 A. Yes.

9 Q. And what is that?

10 A. Well, that's the -- what I call the subscription
11 limitation. And so if we go to the next slide -- so remember
12 the subscription limitation is only for the '640 patent, not
13 for the '012 patent. And the claim requires that the web
14 servers are provided as a vendor subscription service. That's
15 really important, because it's the web server that has to be
16 provided as a vendor subscription service.

17 But NCR provides only software. NCR does not provide the
18 web server. And, in fact, we've heard testimony, I believe
19 today and yesterday, that NCR uses Google. And so Google is
20 the one actually providing a web server as part of what NCR
21 uses in the cloud.

22 So NCR is only providing the software, and therefore NCR
23 cannot meet this web server provided as a vendor subscription
24 service.

25 Q. Okay. Thank you, Dr. Chatterjee.

1 And is that confirmed by your review of the merchant
2 agreement which governs the relationship between the merchants
3 and NCR?

4 A. Yes.

5 Q. And how is that?

6 A. Well, the NCR Silver merchant agreement is another
7 reason. So the first reason that I just gave you is based on
8 the technology. Because the servers are provided by Google,
9 NCR cannot be providing the servers as a vendor subscription
10 service. From a technical perspective, it's very clear.

11 The merchant agreement adds another reason why this claim
12 limitation cannot be met. If you look at this, I've blown
13 up -- I believe this is Page 1 from the NCR Silver merchant
14 agreement. It says at the top, where I've highlighted it, that
15 "NCR Silver software as a service suite of applications," and
16 then it has in parentheses "service." So it's saying that the
17 service is the NCR Silver software as a service suite of
18 applications.

19 And then further below it's expressly stating that what is
20 provided as a subscription is that software. There's no
21 hardware that's provided as a subscription.

22 And the Court has construed what a web server is. And
23 like I said, the web servers, all of the servers here, that are
24 used by NCR, are provided by Google.

25 So it's not possible for NCR to be providing a

1 subscription service to those hardware that are provided by
2 Google.

3 Q. Okay. Thank you, Dr. Chatterjee.

4 And so that covers the analysis of those four limitations.
5 And you've described your basis for how the plaintiff has not
6 met their burden to show that those limitations are met in NCR
7 Silver; is that correct?

8 A. Yes.

9 Q. Okay. Thank you, Dr. Chatterjee.

10 MR. PHIPPS: Next slide.

11 BY MR. PHIPPS:

12 Q. Okay. What is this slide about? In other words, why
13 are we talking about the word "system"?

14 A. So all of the asserted claims for both patents in
15 this case are what's known as a system claim. They -- I'll
16 show this to you in a moment, but they actually say the word
17 "system" in the claim.

18 And so, again, returning to that made-up patent example
19 that I ran through with you earlier of the soccer ball, imagine
20 that there's a system patent for the soccer ball that not only
21 talks about the soccer ball but also a goalie net with it.

22 And so in that system example of that soccer ball and
23 goalie net system patent, the claims might be something like
24 made of leather, stitched together, filled with compressed air,
25 round, which were all of the limitations for the actual soccer

1 ball, and then the system might be "and a goalie net."

2 So that's a system. You have the soccer ball and you have
3 the goalie net.

4 And then on the other side that -- remember we talked
5 about the football, which is not round, and so the football
6 cannot meet the limitation of the round -- the round
7 requirement of the soccer ball.

8 But in addition, in this example, if the goalie net is not
9 provided by that company that makes the football, that's
10 another reason why that system claim cannot be met.

11 So if somebody goes and buys a football and gets a goalie
12 net for another company and then puts it together themselves,
13 then the person -- the company that made the football has not
14 infringed.

15 Q. Thank you, Dr. Chatterjee.

16 So we've looked at how the merchant uses it and how they
17 put it into service and obtain the benefit from it. But then
18 we're just looking at it from a perspective of NCR. In other
19 words, there's a system claim out there, and what is NCR's role
20 in it?

21 So even if all of the limitations were met, so those were
22 met, but we didn't provide the goalie net, we couldn't infringe
23 that systems claim, correct?

24 A. Exactly.

25 Q. Okay. So let's go through that analysis, focusing on

1 how NCR is separate from how the merchant uses it as part of a
2 system.

3 A. Okay. So here what I've shown -- again, I've
4 reproduced Claim 1 from both the '640 patent and the '012
5 patent. And I've underlined and put into gray highlighting,
6 you can see that both of them recite "a web-based point-of-sale
7 builder system," right?

8 The Claim 1 of the '640 has that word "system" in it.
9 Claim 1 of the '012 also has that word "system" in it.

10 And then both of them say "a system comprising," and then
11 they enumerate a bunch of things that that system must
12 comprise.

13 And I've used the yellow highlighting to call out for you
14 that that system must comprise things like an Internet
15 connection, that system must comprise things like one or more
16 local or remote PC workstations.

17 And then in the '012 patent, that system must comprise
18 communications network.

19 And as I talked about earlier, NCR does not provide
20 Internet. NCR does not provide PCs. It's the merchant that
21 has to go out and get Internet connection. It's the merchant
22 that has to go out and get PCs.

23 And so if we go to the next slide, I've summarized this,
24 that all of the asserted claims of the two patents are system
25 claims.

1 NCR only supplies part of that system, and that part of
2 the system is the software. NCR does not provide any of the
3 other components of that system.

4 And I've highlighted -- or enumerated there that
5 everything else is provided by others. "Others" meaning third
6 parties to NCR. So the cloud, so the servers and things like
7 that are provided by Google. PCs are provided by others, for
8 example, Lenovo or Dell or ASUS. Internet access is also
9 provided by others, for example, AT&T or whoever else.

10 So as I explained with the soccer ball and the goalie
11 system claim example, NCR only provides the software. But the
12 claims are system claims, and they require all of these
13 different components. So NCR cannot infringe the system
14 claims.

15 Q. Okay. Thank you, Dr. Chatterjee.

16 MR. PHIPPS: Next slide.

17 BY MR. PHIPPS:

18 Q. So what does this slide highlight for the jury?

19 A. So here I've just sort of -- I wanted to summarize
20 that the '640 patent had all of these limitations. The '640
21 patent had these limitations that I've explained to you are
22 simply missing from the NCR Silver product.

23 And so I've simply put these limitations on the left-hand
24 side for the '640 patent, and I've shown you, based on what
25 I've discussed with you thus far, how those limitations are

1 missing. And, therefore, it's simply not possible for NCR
2 Silver to infringe the asserted claims of the '640 patent.

3 Q. Okay.

4 MR. PHIPPS: Next slide.

5 BY MR. PHIPPS:

6 Q. And do you provide the same analysis here for the
7 '012 patent?

8 A. Yes. Exactly. The -- on the left-hand side, I have
9 those limitations that are required of the claims of the '012
10 patent. And on the right-hand side I've shown you, based on
11 what I've discussed with you thus far, why those limitations
12 are missing and simply cannot be in the NCR product.

13 Q. Okay.

14 MR. PHIPPS: Next slide.

15 BY MR. PHIPPS:

16 Q. Okay. Now, we're going to go to sort of our side of
17 the case, where we have the higher burden to show that the
18 patents are invalid, and we have to do that by clear and
19 convincing evidence.

20 And you have reviewed patents that the Patent Office
21 didn't consider, and you have an opinion as to whether or not
22 that standard is met in this case, don't you, Dr. Chatterjee?

23 A. I do.

24 Q. Okay. And what are those opinions?

25 A. Well, my opinion is that, based on prior art -- and

1 prior art means publications, patents that were out there
2 before the asserted patents -- the prior art disclosed the same
3 concepts, the same claimed invention are found in the prior
4 art.

5 And so when I looked at it, it was very clear that the
6 patents are invalid because older patents, prior art patents,
7 disclose the same invention.

8 Q. And you prepared a separate report with a detailed
9 analysis to support your opinions of invalidity, correct?

10 A. I did. Very detailed, not only a body of the report,
11 but extensive tables and charts comparing the prior art
12 together with the actual claim language of the asserted
13 patents.

14 MR. PHIPPS: Okay. Next slide.

15 BY MR. PHIPPS:

16 Q. Okay. And so for the benefit of clarity, what is it
17 that we're doing here with these soccer balls?

18 A. We have a lot of soccer balls on my slides.

19 So what I'm trying to explain here is that the concept of
20 prior art is that if there's a prior art patent that disclosed
21 a soccer ball -- and remember, a soccer ball we're saying is
22 made of leather, stitched together, filled with compressed air
23 and round. If there's prior art that was done before the
24 asserted patents, the filing date of the asserted patents, then
25 the asserted patents are invalid because they're not new. It

1 was already known, these concepts, these claimed invention was
2 already known.

3 And so what I'm trying to show here is that if a prior art
4 discloses the soccer ball and the asserted patents are about a
5 soccer ball, the asserted patents which came after the prior
6 art are necessarily invalid. Because for a patent it cannot be
7 the same thing that the prior art already has.

8 Q. And the two main references that you rely on, those
9 were not considered by the Patent Office, correct?

10 A. They were not. I rely on the Woycik reference and
11 the Brown reference. And they were not considered by the
12 patent examiner at the U.S. Patent Office when these asserted
13 patents were being prosecuted and they were being reviewed.

14 Q. And those two prior art references predated the
15 asserted patents, correct?

16 A. Yes.

17 Q. They came before?

18 A. Yes.

19 Q. Okay. And they're in the prior art?

20 A. Yes.

21 MR. PHIPPS: All right. Let's go to the next slide.

22 BY MR. PHIPPS:

23 Q. Okay. Let's look at the timeline here. And then you
24 also have a reference that's Michaud which is -- was considered
25 by the Patent Office, correct?

1 A. The Michaud reference was considered by the Patent
2 Office, but not the way that I use it in my analysis. And
3 we'll get into this a little bit later. I'm simply pointing to
4 Michaud for a small little piece, and we'll talk about it
5 later, whereas Michaud, when the patent examiner looked at it,
6 they were looking -- the patent examiner looked at Michaud in a
7 very different way than the way that I'm using Michaud.

8 Q. Okay.

9 MR. PHIPPS: And just to lay the foundation for our
10 discussion, the Brown reference and the Woycik reference have
11 already been admitted into evidence as Defendant's Exhibit 50
12 and 58. And I would like to move into evidence the Michaud
13 reference which is Defendant's Trial Exhibit 133.

14 MR. YATES: No objection, Your Honor.

15 THE COURT: It'll be admitted.

16 MR. PHIPPS: Thank you, Your Honor.

17 BY MR. PHIPPS:

18 Q. Okay. What does this slide depict in terms of the
19 timeline?

20 A. Well, the bottom line is, like I mentioned, the
21 Woycik reference, the Brown reference and the Michaud
22 reference, they all came before the filing of the asserted
23 patents.

24 Q. Okay. And that's to delineate the vertical red line
25 there?

1 A. Yes. The red line I used to show February 5, 2008
2 which is the filing date of the '640 patent which is the first
3 of the two patents. And then I've used a timeline to show that
4 both Woycik and Brown came before that date as well as Michaud,
5 which also came before that date.

6 Q. Okay.

7 MR. PHIPPS: All right. Next slide.

8 BY MR. PHIPPS:

9 Q. Okay. So you consider that Brown independently is a
10 soccer ball, and Woycik independently is a soccer ball,
11 correct?

12 A. Yes. Exactly.

13 Q. Okay. So put it into your language, Dr. Chatterjee.

14 A. So what I'm doing here with the soccer balls is
15 essentially showing that all of the elements that are required
16 by the claims, the asserted claims of the asserted patent, are
17 found in the Woycik reference. Just looking at the Woycik
18 reference on its own -- and I'll explain this to you over the
19 next several minutes -- just looking at the Woycik reference on
20 its own discloses every element of the asserted claims of the
21 asserted patents.

22 And same thing with the Brown reference. The Brown
23 reference on its own discloses each and every element of the
24 claim. And that's why I put soccer balls next to them.

25 Q. Okay. Well, let's go through that analysis.

1 MR. PHIPPS: Next slide.

2 BY MR. PHIPPS:

3 Q. Okay. What is this slide?

4 A. It's basically a picture of the Woycik reference.

5 And I'm showing the screenshot that shows the actual filing
6 date of the Woycik reference, and it shows that it's May 1,
7 2007. And that obviously predated the February 2008 filing
8 date of the asserted patents.

9 Q. And Thomas Woycik is the first listed inventor there
10 on that reference?

11 A. Yes.

12 Q. And that's why we call it the Woycik reference?

13 A. Yes.

14 Q. Okay.

15 MR. PHIPPS: Next slide.

16 BY MR. PHIPPS:

17 Q. And then with the Brown reference, is this also a
18 depiction of the front page of the Brown reference?

19 A. Yes.

20 Q. Okay. And the listed inventor there is Michael James
21 Brown, correct?

22 A. Yes.

23 Q. And we'll refer to that as the Brown reference?

24 A. Yes.

25 Q. And that was also in the prior art, correct?

1 A. Yes.

2 Q. Okay.

3 A. And I've highlighted the filing date of January 23rd,
4 2007, which, again, predates the February 2008 filing date of
5 the first asserted patent.

6 Q. Okay.

7 MR. PHIPPS: Next slide.

8 BY MR. PHIPPS:

9 Q. And the Michaud patent. Again, the inventor is Gene
10 Michaud -- we'll refer to that as the Michaud reference -- and
11 that was filed in 2004, again, is in the prior art, correct,
12 Dr. Chatterjee?

13 A. Yes.

14 Q. Okay.

15 MR. PHIPPS: Next slide.

16 BY MR. PHIPPS:

17 Q. Okay. Now, focusing on the Woycik patent, what is
18 anticipation?

19 A. So anticipation means that this one reference
20 discloses either explicitly, expressly or inherently each and
21 every claim element. And that's what I explained to you
22 earlier, that if the asserted patents are a soccer ball, Woycik
23 is disclosing a soccer ball.

24 Q. Okay. So we have a figure from the Woycik prior art
25 reference on the left, and that came before, or Figure 1.

1 And then the Figure 3 from both patents, because, again,
2 the asserted patents have the same figure. So Figure 3 from
3 both patents, as referenced there, Joint Trial Exhibit 1 and
4 Joint Trial Exhibit 2.

5 And so there's some color-coding here between Figure 3 of
6 the asserted patents and the prior art figure.

7 So can you talk us through that, why you've highlighted
8 those components?

9 A. Sure. So remember when we talked about Figure 3
10 before, I explained that Figure 3, from the asserted patents,
11 it explains how the technology -- the claimed invention works.

12 So remember I explained that a merchant using the web
13 browsers on the bottom, that I've highlighted in green, a
14 merchant would use the web browser to connect to the POS
15 builder software that's living on the web server. That's
16 installed on or running on the web server that I've highlighted
17 in that teal color.

18 And then you use that to build a POS terminal. And then
19 after you've built that POS terminal, then they go on to the
20 left-hand side that I've highlighted in the yellow color. And
21 then the POS terminals are then able to interact with the POS
22 builder software.

23 So what I've done -- just before we go into the details,
24 I've taken, on the left-hand side, Figure 1 from the Woycik
25 reference. Remember I said that Woycik is a soccer ball, just

1 like the asserted patents are a soccer ball?

2 So I'm explaining to you that those same components of the
3 claimed invention appear in Woycik.

4 In the Woycik reference, I've used that same green color
5 to highlight this PC No. 20. And the specification, the actual
6 wording of the Woycik reference, explains very clearly that the
7 merchant or a user would use that PC shown in No. 20, that I've
8 highlighted in green, to connect to the central server that
9 I've highlighted in that teal color.

10 And then that user would connect to that central server
11 that has a builder running on it, and then they would build the
12 point-of-sale terminals.

13 And then the point-of-sale terminals would then be running
14 on the yellow color, 16, or the slightly darker brownish color,
15 16, on the right-hand side.

16 So what I'm trying to explain is that the concepts, the
17 technology, the claimed invention from Figure 3 and from the
18 asserted patents is exactly what is disclosed in the Woycik
19 reference to one of ordinary skill in the art.

20 Q. Okay.

21 MR. PHIPPS: Next slide.

22 BY MR. PHIPPS:

23 Q. Okay. Now, you've compared visually, graphically,
24 from figures from the prior art reference and then Figure 3
25 from the asserted patents, but you've also gone through the

1 language, the disclosures, the specifications of the Woycik,
2 Brown and Michaud references, correct?

3 A. Yes.

4 Q. And you've done the detailed analysis here, where you
5 believe -- it's your opinion that it's clear that these prior
6 art references anticipate the asserted claims.

7 And so we'd like you to walk us through which specific
8 references -- which in those -- are citations in those
9 references supports your opinion with respect to each of the
10 limitations of the asserted claims.

11 A. So in my report, like I mentioned, I provided a very
12 detailed analysis. Here I'm pointing to some exemplary
13 portions of my analysis that I believe are very clear, that the
14 Woycik reference anticipates the claims of the '640 patent.

15 Q. Okay. And so just for clarity, on the left is a
16 paragraph out of the Woycik prior art reference, correct?

17 A. Yes.

18 Q. And the Bracket 72, that means it's Paragraph 72 out
19 of that reference, correct?

20 A. Yes.

21 Q. So the Woycik reference had quite a few paragraphs in
22 it, correct?

23 A. Yes.

24 Q. Okay. But you're highlighting the portion out of
25 72 -- Paragraph 72 of Woycik that you believe meets the

1 limitation in the '640 Claim 1, correct?

2 A. Well, it's not that I believe the -- the analysis
3 that I performed is undertaken from the perspective of one of
4 ordinary skill in the art. So what I've done is, I've looked
5 at it from that perspective. What would one of ordinary skill
6 in the art, in reading the Woycik reference, understand that
7 disclosure to mean? And I've pointed to that by highlighting
8 the claim limitation on the right-hand side to the
9 corresponding disclosure in the Woycik reference that would, to
10 one of ordinary skill, meet that limitation.

11 Q. So, in other words, it's your expert opinion that
12 it's clear to one of skill in the art that the prior art Woycik
13 reference disclosed the limitation in Claim 1?

14 A. Yes.

15 Q. Okay. All right.

16 Please proceed, Dr. Chatterjee.

17 A. So for this first limitation which recites one or
18 more point-of-sale terminals that display POS screens, I've
19 pointed to this portion of the Woycik reference at Paragraph
20 72. And I'd explained this when I highlighted the relevant
21 portions of the Woycik figure as well. So I'm pointing to
22 Kiosk 16 in the Woycik reference that discloses the limitation
23 of one or more point-of-sale terminals that display POS
24 screens.

25 Q. Okay.

1 MR. PHIPPS: Next slide.

2 BY THE WITNESS:

3 A. So here this second limitation is an Internet
4 connection from said one or more point-of-sale terminals to a
5 web server. And I've highlighted in red -- or I'm sorry --
6 highlighted in yellow the corresponding disclosure from the
7 Wojcik reference that to one of ordinary skill would teach
8 that. And I've also underlined in red the word "Internet,"
9 very clearly showing that Wojcik is also disclosing an Internet
10 connection from said one or more point-of-sale terminals to a
11 web server.

12 BY MR. PHIPPS:

13 Q. And, Dr. Chatterjee, as you go through here, we're
14 going to see green checkmarks on the right, showing that we've
15 covered that?

16 A. Yes.

17 Q. Please proceed.

18 A. So the next one is one or more local or remote PC
19 workstations. And so the limitation here is "one or more." So
20 one would meet the limitation. And so what I've done is I've
21 pointed to -- remember I said that PC 20 in that figure, so I'm
22 pointing to that as meeting the one or more local or remote PC
23 workstations.

24 Q. Okay.

25 MR. PHIPPS: Next slide.

1 BY THE WITNESS:

2 A. The next limitation is "point-of-sale builder
3 software that runs on said web server wherein said local or
4 remote workstations are utilized to build or edit said POS
5 terminals in realtime from anywhere in the world and over the
6 worldwide web."

7 Here in the Woycik reference, there's disclosure of what's
8 called the administration tool. And the administration tool
9 allows the user in the Woycik reference to build point-of-sale
10 terminals. And so the administration tool in the Woycik
11 reference is the claimed point-of-sale builder software in this
12 reference.

13 The wording does not need to be the same. They're calling
14 it -- in Woycik they call it the administration tool. In the
15 asserted patent, the '640, it's called the point-of-sale
16 builder software. But the disclosure of what the
17 administration tool application does in the Woycik reference is
18 clearly understood by one of ordinary skill to be identical to
19 the point-of-sale builder software.

20 BY MR. PHIPPS:

21 Q. Okay.

22 MR. PHIPPS: Next slide.

23 BY THE WITNESS:

24 A. The next limitation is the "wherein said web servers
25 are provided as a vendor subscription service wherein web

1 server software resides and is hosted on said vendor's remote
2 servers."

3 So Woycik discloses this central server 22, which I had
4 also highlighted when I showed that Woycik diagram for you and
5 put some color-coding on it. And I believe it's very clear
6 that when you have a server, or if you have a car, or if you
7 have -- whatever you have, that you can monetize it in
8 different ways. You can sell it. You can sell a car, you can
9 lease a car. So just like that concept, I've been informed
10 that under the law, under the patent law, a prior art article
11 or a prior art item such as a remote server that can be sold is
12 inherently capable of being leased or provided under a
13 subscription.

14 And so that's what I'm pointing to here. The Woycik
15 central server is inherently capable of being provided as a
16 subscription -- vendor subscription service as required by this
17 claim limitation.

18 BY MR. PHIPPS:

19 Q. Okay.

20 MR. PHIPPS: Next slide.

21 BY THE WITNESS:

22 A. The second part of this limitation is "wherein
23 subscriber company's POS terminals access and repeatedly
24 interact with said web server software from said vendor's
25 remote servers in order to perform the subscriber's desired

1 terminal function, over a network, wherein the network
2 comprises the Internet."

3 And so here I'm pointing to the highlighted portion of
4 Paragraph 30 of the Woycik reference, and this is clearly
5 disclosing to one of ordinary skill that the point-of-sale
6 terminal is accessing and repeatedly interacting with the web
7 server software on the web server, as required by the claims.

8 BY MR. PHIPPS:

9 Q. Okay.

10 MR. PHIPPS: Next slide.

11 BY MR. PHIPPS:

12 Q. All right. So in addition to covering the
13 independent claims for invalidity, we're going to go through
14 the asserted dependent claims as well, correct?

15 A. Yes.

16 Q. Okay. And it's your opinion that one of skill in the
17 art would also find Woycik to anticipate those dependent claims
18 from the '640 patent, isn't it?

19 A. Yes.

20 Q. Okay. Please proceed, Dr. Chatterjee.

21 A. So here I'm looking at Claim 3. And Claim 3 --
22 remember I explained that dependent claims, they include all of
23 the limitations of the independent claims and then they add
24 some more?

25 So here I've -- I'm looking at Dependent Claim 3, and it

1 states, "The web-based point-of-sale builder system of
2 Claim 1," so it's saying you have to meet everything in Claim 1
3 and then add this additional requirement, this additional
4 wherein clause that says, "Wherein use of said builder requires
5 no special training."

6 And if you look at the corresponding portion on the
7 left-hand side that I've highlighted in yellow from the Woycik
8 reference, and I've underlined it, it's very clear. Woycik
9 also says, "The store owner or chain operator can carry out
10 administration of the system using a simplified user interface
11 that requires little, if any, training."

12 So the Woycik reference is clearly disclosing and teaching
13 the same requirement of Dependent Claim 3.

14 And then below that, I have Dependent Claim 4. And the
15 additional limitation in Dependent Claim 4 is "wherein the
16 testing of said POS screens is done iteratively in real time
17 while said POS terminals are simultaneously in use during store
18 and business operation hours."

19 And I've pointed to, on the left-hand side, Paragraph 122
20 of the Woycik reference, and that disclosure is talking exactly
21 about building the POS and then how you're able to deploy it
22 and that one of ordinary skill would understand that you have
23 to necessarily test them before you're deploying them.

24 And so on this slide I've put checkmarks on Claims 3 and
25 4, and I've put the corresponding citations, or at least

1 exemplary citations, from the Woycik reference that
2 demonstrates that Woycik anticipates these claims.

3 Q. Okay.

4 MR. PHIPPS: Next slide.

5 BY THE WITNESS:

6 A. So here I'm looking at Dependent Claim 5. And
7 Dependent Claim 5 adds the additional limitation "wherein no
8 specialized hardware or software is required to implement said
9 POS builder, and wherein no on-site in-store server is
10 required."

11 So on the left-hand side I've cited to Woycik at Paragraph
12 77 that says very clearly "most of the elements commonly found
13 in a general purpose computer."

14 So Woycik is saying very clearly and in simple words that
15 you're not using any specialized hardware. You're using
16 general-purpose PC computer hardware to do the system -- or the
17 disclosure of Woycik.

18 And then I've also pointed to Paragraph 72, because this
19 limitation of Claim 5 is also saying that there is no on-site
20 in-store server. And so at Paragraph 72, Woycik is saying,
21 "Rather than using a dedicated 'back room' computer as the
22 local server," Woycik is also saying the exact same thing.

23 You don't need to use a local server in the back room, and
24 you're able to use this Kiosk 16 to connect to the Internet and
25 connect to this remote server, which Woycik calls the central

KRISTIE M. DAVIS, OFFICIAL COURT REPORTER
U.S. DISTRICT COURT, WESTERN DISTRICT OF TEXAS (WACO)

1 server.

2 BY MR. PHIPPS:

3 Q. Okay. And so you've put a checkmark on 5.

4 Let's go to 6, Dependent Claim 6.

5 A. So here the claim -- the dependent claim requires the
6 additional limitation "wherein said POS builder is usable to
7 deliver POS application solutions using software as a
8 subscription (SaaS)."

9 And here, too, based on the disclosure in Woycik, one of
10 ordinary skill understands that the POS builder software, which
11 is running on that central server of Woycik, and which Woycik
12 says that a franchisor could use, one of ordinary skill would
13 understand that Woycik is disclosing that using a software as a
14 subscription basis for providing that central server, the
15 software running on that central server.

16 Q. Okay. All right.

17 MR. PHIPPS: Next slide.

18 BY MR. PHIPPS:

19 Q. So we have Claim -- Dependent Claims 11 and 12.

20 A. Yes. So Dependent Claim 11 recites the additional
21 requirement "wherein said POS builder adds items to be
22 associated with said keys or buttons."

23 And on the left-hand side I've cited to Woycik at
24 Paragraph 108, and I've highlighted the relevant portion of it.
25 It's saying to then edit the individual buttons and associate

1 them with food items. So it's very clearly stating the same
2 thing that is set forth in the Dependent Claim 11.

3 Dependent Claim 12, below that, recites the additional
4 limitation "wherein said POS builder assigns attributes such as
5 item name, price, cost, group, taxable and inventory status to
6 said items." And again I'm pointing to Woycik at
7 Paragraph 109, and I've highlighted the relevant portions of
8 Woycik that -- to one of ordinary skill would disclose that
9 teaching.

10 Q. Okay.

11 MR. PHIPPS: Next slide.

12 BY THE WITNESS:

13 A. Here we're looking Dependent Claim 13. And Dependent
14 Claim 13 has the additional limitation "wherein said attributes
15 are stored, retrievable and changeable from a Back Office
16 database stored on said web server."

17 And I've pointed to the corresponding disclosure and
18 teaching from Woycik at 122 and that it's talking about how
19 you're going to be able to connect to that central server,
20 which is a remote server, and with -- based on your building
21 your -- whatever you're building is then stored on a database.

22 BY MR. PHIPPS:

23 Q. Okay.

24 MR. PHIPPS: Next slide.

25 BY MR. PHIPPS:

1 Q. Okay. Now we've gone through the anticipation
2 analysis for the '640 patent. And now we're going to do that
3 same analysis for the '012 patent, correct?

4 A. Yes.

5 Q. Okay.

6 A. And perhaps I can -- I'll try to move a little bit
7 faster, given that they're highly related, as we talked about.
8 The claim language between the '640 and the '012 are very
9 closely related, so I'll try to move a little bit faster.

10 So is it okay if I don't read the entire limitation or --

11 Q. That's correct. You have highlighted it and compared
12 it there. If you can just, you know, efficiently go through
13 the slides, because we are talking about the asserted claims
14 that you've indicated are similar, and we're talking about the
15 same Woycik reference.

16 A. Yes. So the first limitation of Claim 1 of the '012
17 patent, which I've put a little label with an A next to it, I'm
18 pointing to Woycik at Paragraph 75 and also the abstract and
19 I've underlined the relevant portions as well.

20 Q. Okay.

21 A. The next limitation in Claim 1 of the '012 patent,
22 Limitation 1(b), I'm pointing to Woycik at Paragraphs 71 and
23 72. And again I've highlighted in yellow the relevant portions
24 from Woycik that would disclose to one of ordinary skill that
25 limitation.

1 Q. Okay.

2 A. Next slide, we're showing Claim 1(c) of the '012
3 patent. And again I'm pointing to Woycik at Paragraphs 73 and
4 75, and I've highlighted the relevant portions as well.

5 Q. Okay.

6 MR. PHIPPS: Next slide.

7 BY THE WITNESS:

8 A. Going to the next slide, I'm looking at the first
9 part of Limitation 1(d) and I have pointed to Woycik at
10 Paragraph 122.

11 And then if we go to the next slide, this is the second
12 portion of Limitation 1(d) of Claim 1 of the '012 patent. And
13 I'm pointing to Woycik at Paragraph 30.

14 Next slide.

15 Limitation 1(e) I'm pointing to Woycik at Claim -- or
16 Woycik at Paragraph 30, and I've highlighted the relevant
17 portions in yellow.

18 Next slide is Paragraph -- or Limitation 1(f) of the '012
19 patent, and I'm pointing to Woycik at Paragraph 128. And again
20 I've highlighted in yellow some of the relevant disclosure as
21 well.

22 BY MR. PHIPPS:

23 Q. Okay. And you believe that all of those disclosures
24 in Woycik are sufficient to anticipate Claim 1 of the '012
25 patent, correct?

1 A. Yes. To one of ordinary skill it's crystal clear
2 that the Woycik reference anticipates the asserted claims in
3 this matter.

4 Q. Okay. Thank you, Dr. Chatterjee.

5 And let's proceed also to go through the dependent claims
6 of the '012 patent.

7 A. Okay. So I'll try to go through it faster again like
8 I did for this one.

9 So here we're looking at Claim 2, and I'm pointing to
10 Woycik at Paragraph 80. Again I've highlighted the relevant
11 portions.

12 Claim 3 of the '012 patent, and I'm pointing to Paragraph
13 122. Again I've highlighted the relevant portions.

14 Q. Okay.

15 A. Here we have Claim 4 of the '012 patent, and I
16 have -- I'm pointing to Woycik at Paragraph 77 and Paragraph
17 81. And again I've highlighted the relevant disclosure.

18 Now we're on to Claim 9 of the '012 patent. I'm pointing
19 to Woycik at Paragraph 72, and I've highlighted the relevant
20 portion as well.

21 Q. Okay. So, Dr. Chatterjee, is it your opinion that
22 Woycik anticipates all of the asserted claims for the '012
23 patent?

24 A. Yes.

25 Q. Thank you.

1 Now let's proceed to your next opinion. Now, this is the
2 other soccer ball on the timeline, correct? Another soccer
3 ball that the Patent Office didn't see?

4 A. Yes.

5 Q. Okay. And you've also written this up in a report.
6 You've been examined under oath at a deposition about it. And
7 you're here to testify today about how Brown anticipates in
8 addition to Woycik, correct?

9 A. Yes.

10 Q. Okay. So please proceed.

11 A. So the Brown reference is very similar to the Woycik
12 reference. Brown is disclosing a web-based point-of-sale
13 terminal where a user can develop a website and then make that
14 website into a point-of-sale terminal.

15 And so that's what I've sort of highlighted the key
16 portions of it. So if you look on the right-hand side from
17 Paragraph 73, Brown is talking about what's called a website
18 builder and manager. And then further down in Paragraph 74 --
19 and, again, these are long references. I'm only pointing to
20 some salient portions of it. But Brown explains that after you
21 use the website builder, you can take that website and then
22 make it into a POS terminal.

23 And that's precisely what Brown has disclosed, and
24 that's -- those are the high-level components that I point to
25 in Brown.

1 Q. Okay.

2 MR. PHIPPS: Next slide.

3 BY THE WITNESS:

4 A. So here too, again, just like I did for the Woycik
5 reference, I've gone through limitation by limitation. And on
6 the left-hand side I've pointed to which paragraph at Brown,
7 and I've used highlighting to kind of call closer attention to
8 the salient portions of the paragraph as well.

9 So with regards to the preamble for Claim 1, I'm pointing
10 to Brown at Paragraph 9, which expressly states the system
11 includes a point-of-sale system.

12 BY MR. PHIPPS:

13 Q. Okay.

14 MR. PHIPPS: Next slide.

15 BY THE WITNESS:

16 A. Here this is Claim Limitation 1(a), and I'm pointing
17 to Brown at 25. Brown -- like Brown states clearly in
18 Paragraph 25 that Brown can set up a number of terminals. And
19 then as we looked at on the previous slide, Brown is expressly
20 teaching about point-of-sale terminals as well.

21 BY MR. PHIPPS:

22 Q. Okay.

23 MR. PHIPPS: Next slide.

24 BY THE WITNESS:

25 A. Here, Limitation 1(b) of Claim 1 of the '640 -- I'm

1 pointing to Brown at 25 -- you can see the word "Internet" in
2 there as well. And, again, there's a lot of disclosure in
3 Brown. I've just hand-picked one portion of it for you.

4 BY MR. PHIPPS:

5 Q. And, Dr. Chatterjee, just to make this more
6 efficient, we can see what's highlighted on the right and then
7 highlighted on the left and where the citation is. So maybe
8 you could just talk about the limitation and then the citation.
9 And then we'll know it's from Brown and we'll know what
10 paragraph it is, so we can just sort of track the substantive
11 analysis.

12 A. Okay. So the next limitation is 1(c), and I've
13 pointed to Brown at Paragraph 74.

14 Next limitation is 1(d), and I've pointed to Brown
15 Paragraph 26 and Brown Paragraph 73.

16 Q. And yeah, if you could just also, you know, talk
17 about the limitations. So let's go back a little bit. But
18 just in terms of whether it's C or, you know, the citation, do
19 say the paragraph for the record and the C for the record. But
20 if we could just go a little bit more expeditiously.

21 A. Okay. So here -- so for Limitation 1(c) I -- like I
22 said, I'm pointing to 74. And it's talking about how the
23 point-of-sale system is accessible through a web browser, and
24 one of ordinary skill would understand that would be on a PC.

25 Q. Okay. Thank you.

1 A. Here the limitation for 1(d) is point-of-sale builder
2 software that runs on a web server. As I explained earlier in
3 Brown, Brown is teaching this website builder. And then the --
4 and that's what I'm showing here. And then Brown also teaches
5 in that the website builder runs on this web server.

6 Q. Okay. And those are at Paragraphs 26 and 73 of
7 Brown, correct?

8 A. Yes.

9 Q. Okay.

10 MR. PHIPPS: Next slide.

11 BY THE WITNESS:

12 A. So here this is the first part of limitation 1(e).
13 And Brown teaches, or actually discloses what he calls the
14 UTOPA.com website. So Brown talks about this technology that
15 Brown invented, and then Brown also talks about an
16 implementation of that technology, which Brown calls it
17 www.UTOPA.com.

18 And so based on the disclosure in Brown, one of ordinary
19 skill would understand that UTOPA.com runs on a web server.
20 And then as I explained earlier that I've been informed that
21 under the patent laws, the applicable patent laws, if a prior
22 art article can be -- is capable of being sold, it would
23 inherently be capable of being leased.

24 And that's sort of like what I talked about earlier with
25 regards to the car. You can sell a car, you can lease a car.

1 It's well understood that you can do different things with a
2 prior art article.

3 BY MR. PHIPPS:

4 Q. Okay. And that's Brown Paragraphs 5 and 6, correct?

5 A. Yes.

6 Q. Okay.

7 MR. PHIPPS: Next slide.

8 BY THE WITNESS:

9 A. So here this is the second part of Claim 1(e), and
10 this is saying that the subscriber of POS terminals interact --
11 "repeatedly interact with said web server software."

12 Again, there's a lot of disclosure. I'm pointing to this
13 paragraph, Brown at 74, that teaches to one of ordinary skill
14 that the POS terminals in Brown repeatedly interact with the
15 web server.

16 BY MR. PHIPPS:

17 Q. Okay. So it's your testimony that, under your
18 opinion, the Brown reference anticipates Claim 1 of the '640
19 patent, correct?

20 A. Yes.

21 Q. Okay.

22 MR. PHIPPS: Next slide.

23 BY MR. PHIPPS:

24 Q. Now, we're talking about Brown anticipating Claim 1
25 of the '012 patent, correct?

1 A. Yes.

2 Q. Okay. And if you could walk us through your analysis
3 of anticipation of the Claim 1 of the '012 patent based on the
4 prior art Brown reference.

5 A. So again, I'll try to go through a little bit faster,
6 because the '012 patent is very similar.

7 So the preamble here for Claim 1 of the '012 patent, I've
8 pointed to Brown Paragraphs 9, 74 and 73. If you look at
9 Paragraph 9, it's clearly talking about a point-of-sale system.

10 Next slide.

11 Limitation 1(a), I'm pointing to Brown at 25. And again,
12 we -- like I mentioned, Brown talks about the UTOPA.com
13 website. And the disclosure of Brown of that UTOPA.com website
14 would be understood by one of ordinary skill to meet the
15 limitation of a web server, including POS builder software
16 installed thereon.

17 Next slide.

18 Limitation 1(b), I'm pointing to Brown at 6 and at 30, and
19 I've highlighted it. This is the limitation where, in the '012
20 patent, the POS terminals are generated by the POS builder
21 software. And because Brown is a website builder, one of
22 ordinary skill would understand that the POS terminals in Brown
23 are generated by that website builder.

24 Next slide.

25 Limitation 1(c), this is the POS builder interface

1 limitation, and Brown -- this is Figure 52. And again, Brown
2 has a lot of disclosure. Brown has more than 52 figures in it,
3 and I'm pointing to Figure 52 as showing the interface that one
4 of ordinary skill would understand to meet the POS builder
5 interface as recited by Claim 1(c).

6 Next slide is the first part of Limitation 1(d). And this
7 limitation is simply building on that POS builder interface,
8 and again, not only the Figure 52, but also the related
9 specification in Brown would disclose this limitation to one of
10 ordinary skill.

11 Q. And, Dr. Chatterjee, I just want to point out, do you
12 see on the Figure 52 from the Brown prior art reference where
13 it says there "add new item"?

14 A. Are you looking at the top?

15 Q. Yeah. Right there. It says, "add new item."

16 Do you see that?

17 A. Yes. I do see it.

18 Q. All right. Continue, Dr. Chatterjee.

19 A. Okay. Next slide.

20 This is the second part of Limitation (d), and I'm
21 pointing to Paragraph 73 here. And so, again, this limitation
22 is talking about the POS builder software. And again, I'm
23 pointing to Brown's website builder, which Brown clearly
24 explains that after you build the website, you can make it into
25 a POS terminal.

1 Next slide.

2 Limitation 1(e), this one, "wherein said POS transactions
3 and corresponding transaction data from said one or more POS
4 terminals are configured to be transmitted to said web server
5 via the communications interface."

6 And I'm pointing to Brown Paragraph 30, and Brown is
7 talking about how the POS system has a transaction engine. It
8 creates transactions. And Brown also talks about providing
9 those transactions to the server in Brown as well.

10 Limitation 1(f) is "wherein the POS transaction is
11 correlated."

12 Brown talks about accessing -- if you look at Brown 28,
13 he's talking about the customer could agree to buy a sofa
14 through a website, and then it's talking about Brown discloses
15 how you're able to access that transaction data related to
16 purchasing that sofa. And so one of ordinary skill in reading
17 Brown at 28, within the context of Brown, would understand
18 Limitation 1(f) to be met.

19 Q. Okay. Thank you, Dr. Chatterjee.

20 Now, is it your opinion that Brown also discloses all the
21 limitations in the dependent claims from the '640 patent and
22 the '012?

23 A. Yes. Yes.

24 Q. All right.

25 MR. PHIPPS: Next slide.

1 MR. YATES: Objection, Your Honor. That's a conclusory
2 statement, and we've not gone through any of the dependent
3 claims.

4 THE COURT: Overruled.

5 Ladies and gentlemen, we're going to take about a
6 ten-minute break. Just a nature break, and then we'll come
7 back in.

8 Remembering my instructions not to discuss the case
9 amongst yourselves.

10 THE BAILIFF: All rise.

11 (Jury exited the courtroom at 4:35.)

12 (Recess taken from 4:35 to 4:48.)

13 THE BAILIFF: All rise.

14 THE COURT: Please remain standing for the jury.

15 (The jury entered the courtroom at 4:48.)

16 THE COURT: Thank you. You may be seated.

17 Counsel, you may resume with the witness.

18 MR. PHIPPS: Thank you, Your Honor.

19 Oh, Dr. Chatterjee.

20 BY MR. PHIPPS:

21 Q. So, Dr. Chatterjee, we only have ten more slides in
22 your presentation. And we're going to talk about here the
23 prior art reference Michaud, okay?

24 And what are the key disclosures in Michaud that are
25 relevant to your opinions of invalidity of the asserted

1 patents?

2 A. So the key thing that I point to Michaud for is
3 something very small. So Michaud talks about hosting
4 point-of-sale software for access and use by subscribers. And
5 so remember that limitation that we talked about, the web
6 server is provided on a -- I forget the exact language, but the
7 web server provided as a subscriber subscription. That's the
8 only little tiny limitation that I point to Michaud for. And
9 Michaud has express disclosure about this.

10 Michaud talks about hosting point-of-sale software for
11 access and use by subscribers. And then Michaud talks about a
12 fee based on using the server, and also a subscriber for use of
13 the POS software.

14 So it's just that small little limitation that I talk
15 about -- or that I combine for Michaud.

16 Q. Okay. And then the figure from Michaud on the right.
17 Do you see that? It looks like lightning bolts going to --
18 what does that look like, a cloud?

19 A. Yes. So it's the cloud there. And then on the
20 bottom are the different subscribers that are able to access
21 that server from the cloud. And then Michaud talks about
22 paying a fee for that server as well.

23 Q. Okay. So this cloud reference, Michaud, is in the
24 prior art, correct?

25 A. Yes.

1 Q. Okay.

2 MR. PHIPPS: Next slide.

3 BY MR. PHIPPS:

4 Q. Okay. And here you are focusing on the teaching from
5 Michaud as it relates to the web server subscription limitation
6 from the '640 patent, correct?

7 A. Yes.

8 Q. Okay. And you're citing to Paragraph 12 of the
9 Michaud reference. Which disclosure out of Paragraph 12 do you
10 find particularly relevant?

11 A. Well, the portion that I've highlighted it's saying,
12 said fee being based on point-of-sale transactions processed
13 using the ASP server having point-of-sale software.

14 So the ASP software, ASP is an application service
15 provider. ASP software is what is being charged to the
16 subscriber, and so that's the portion of Paragraph 12 in
17 Michaud that I'm pointing to.

18 Q. Okay. And you said ASP software, but it actually
19 does say ASP server there, doesn't it?

20 A. Yes. I'm sorry. So it's -- ASP is application
21 service provider. And the language here is APS server. So
22 it's the server that is used to provide the software. Michaud
23 is expressly explicitly stating that he charges for the server,
24 and that's what I'm pointing to.

25 Q. Okay. All right.

1 MR. PHIPPS: Next slide.

2 BY THE WITNESS:

3 A. So here this was another dependent claim from the
4 '640 patent. And this dependent Claim No. 6 has the limitation
5 "wherein said POS builder is usable to deliver POS application
6 solutions using software as a subscription (SaaS)."

7 And here I'm pointing to the same paragraph in Michaud but
8 a different part of that paragraph. And this portion of the
9 paragraph is saying "providing an ASP server having
10 point-of-sale software for access and use by the subscriber."

11 So this dependent claim is talking about how you can use
12 software where software doesn't have to be owned by you to use
13 it. You can actually -- I can be hosting it and you can use
14 it. And so that's the exact disclosure that's in the Michaud
15 reference as well, and therefore it teaches -- or it renders
16 obvious Claim 6.

17 BY MR. PHIPPS:

18 Q. Okay. And specifically Paragraph 12 from Michaud
19 referencing dependent Claim 6 from the '640 patent.

20 MR. PHIPPS: Next slide.

21 BY MR. PHIPPS:

22 Q. Okay. So what is your opinion here as to obvious?
23 We've talked about anticipation, and how is that different
24 anticipation from -- how is anticipation different from
25 obviousness, first?

1 A. So anticipation, remember we talked about the soccer
2 balls? Anticipation means that there's a soccer ball and the
3 prior art is a soccer ball and the asserted patent is a soccer
4 ball.

5 So the detailed analysis that I ran through with you
6 before we took our break showed that there's express or
7 inherent teachings in the prior art for each asserted claim and
8 asserted claim limitation from the asserted patents.

9 Here I'm saying that on top of that, you can combine the
10 teaching of Woycik. Woycik has all this teaching, and you can
11 combine that teaching together with that small little portion
12 of Michaud about the ASP server and how you can charge
13 subscribers for it and how you can provide -- you can keep the
14 software on a cloud and provide it to subscribers.

15 I'm saying you can take the Woycik teaching and then
16 combine it with that small little teaching from Michaud and
17 also render obvious the '640 patent.

18 Q. Okay.

19 MR. PHIPPS: Next slide.

20 BY MR. PHIPPS:

21 Q. And then what is this opinion of obviousness?

22 A. So this one is saying, you know, based on everything
23 that I've told you about before our break, I showed you that
24 the Woycik reference teaches everything in the asserted
25 patents. I've told you that the Brown reference teaches

1 everything -- the asserted claims of the asserted patents.

2 Here I'm saying, if you take all of the teachings of
3 Woycik, Brown and Michaud, there is so much material there that
4 there is no doubt that the '640 patent is rendered invalid
5 because it's obvious based on that totality of the teaching
6 between Woycik, Brown and Michaud.

7 Q. Okay. And that no doubt sounds like it's well beyond
8 the clear and convincing evidence standard, correct?

9 A. Yes.

10 Q. All right.

11 MR. PHIPPS: Next slide.

12 BY MR. PHIPPS:

13 Q. All right. And this is a different combination.
14 What is this combination?

15 A. So remember I'm pointing to the Michaud reference
16 only for that subscription requirement, the web server
17 subscription requirement. And that requirement is not in the
18 '012 patent.

19 So for the same reason that I explained on the last slide
20 why Woycik, Brown and Michaud, when you combine all of that
21 teaching, there's so much material there that it's clearly
22 rendered obvious.

23 Here, because the '012 patent doesn't have that
24 subscription, the web server subscription requirement, there's
25 no need to include Michaud.

1 So here I'm saying, let's take the teachings of Woycik and
2 the teachings of Brown, there's so much material there, it's
3 clearly rendering obvious the '012 patent.

4 Q. Okay.

5 MR. PHIPPS: Next slide. All right. Let's go to the next
6 slide.

7 BY MR. PHIPPS:

8 Q. Okay. What is this design-around opinion that you
9 have, Dr. Chatterjee?

10 A. So I've already explained to you that because of at
11 least these four huge missing pieces, these four huge
12 limitations that are clearly not in the NCR Silver product, the
13 NCR Silver product cannot infringe.

14 But on top of that, if you remember, each of the asserted
15 claims have this requirement of a web server. I've explained
16 to you that the requirement of the web server is very specific.
17 You have to have a web server that has point-of-sale builder
18 software running on top of it. You have to have the web server
19 software interact repeatedly with the point-of-sale terminal.
20 And I've showed you that that's not there.

21 But on top of that, just like take away any doubt
22 whatsoever, a very simple way to eliminate any doubt is simply
23 get rid of the web server from the NCR Silver product.

24 The NCR Silver product, like I explained to you, does not
25 meet the web server limitations, but we can just very easily

1 remove the web server. And that's what I'm explaining here,
2 that -- that the web server can be removed, and an application
3 can be used from the NCR Silver product. And so there's no web
4 server.

5 And, in fact, Mr. Crouse, plaintiff's expert, has stated
6 that if you take away the web server, then there's no question
7 that there's infringement. NCR cannot infringe, Mr. Crouse has
8 also stated that, that NCR cannot infringe if there's no web
9 server.

10 So my design-around opinion is that it's simple. Let's
11 just get rid of the web server. It's very easy to do, and
12 customers -- the merchants can simply use an application, an
13 app running on their tablet or PC to simply enter information
14 like they're selling tacos or enter information that they're
15 selling pizzas.

16 And so that's the crux of my opinion here.

17 And if we go to the next slide, I can show you very
18 quickly a before and after picture.

19 Here this is the picture of how merchants use NCR Silver
20 today. And you see at the bottom, there's the web server.

21 As I explained to you, Mr. Crouse agrees that if you
22 remove the web server, there's zero question of infringement.
23 NCR cannot infringe if you remove the web server.

24 So if you go to the next slide, I've removed the web
25 server. And that's it. And the -- on the left-hand side, the

1 merchants are still able to do exactly the same thing. They're
2 able to enter that they're selling tacos or pizza, they're able
3 to, on top of that, actually use an app or an application,
4 which most people find more convenient.

5 In fact, the customers, the merchants that are using NCR
6 Silver, they obviously prefer an app. That's why they're going
7 with NCR Silver.

8 MR. YATES: Objection, Your Honor. That last statement
9 was not in his report. I'd like it struck.

10 MR. PHIPPS: Your Honor, I'll just show it -- the
11 statement's in his report.

12 THE COURT: What page?

13 MR. PHIPPS: It is Page 48 of his report.

14 THE COURT: Mr. Yates, if you -- is there -- are there
15 paragraphs?

16 MR. PHIPPS: Paragraph 161.

17 THE COURT: Mr. Yates, why don't you take a look at 161,
18 see if you want to maintain your objection.

19 MR. PHIPPS: In the last phrase, "easy to use."

20 MR. YATES: I don't believe Paragraph 161 comports with
21 his testimony, Your Honor.

22 THE COURT: Why don't you rephrase? Just rephrase the
23 question and try it again.

24 MR. PHIPPS: Okay.

25 BY MR. PHIPPS:

1 Q. Dr. Chatterjee, in your detailed report, Page 48,
2 Paragraph 161, do you indicate that this modification would be
3 easy to use for users?

4 A. I --

5 Q. I can put that up here.

6 So we're talking about modifications to NCR Silver. Do
7 you see that it says, "Simple and easy to use for users"?

8 A. I do.

9 Q. And then further on --

10 THE COURT: That's sufficient. If you want to ask your
11 questions, that's fine.

12 MR. PHIPPS: I'm sorry, Your Honor?

13 THE COURT: You don't have to keep going back to the
14 report. You can go back to the slide you were on.

15 MR. PHIPPS: Okay. Thank you, Your Honor.

16 Next slide. Okay.

17 BY MR. PHIPPS:

18 Q. Dr. Chatterjee, were you finished talking about your
19 design-around opinion?

20 A. Yes. The only other thing here is that removing the
21 web server is very simple. The web server doesn't do very much
22 right now, and so the removing it is very simple. And based on
23 my own experience in developing these kind of systems,
24 maintaining them, modifying them, I came up with that it would
25 take a couple of mid-level engineers, mid-level software

1 developers maximum of six months.

2 And of course I don't work at NCR, so what I did was I
3 confirmed this estimate that I had, that it would take simply
4 two or three mid-level engineers maximum of six months to
5 remove the web server from the entire NCR product. And I spoke
6 with Mr. Quinn, who you all heard from yesterday, and he also
7 confirmed my estimate that it would take at most six months for
8 two to three mid-level software engineers to make that change.

9 Q. Okay.

10 MR. PHIPPS: Next slide.

11 BY MR. PHIPPS:

12 Q. Okay. In terms of your report, there's certainly
13 more that we could get into, but this is your invalidity
14 report. And as you can see, there's -- it's a 68-page report.
15 It talks about 102 and 103. And Section 102 is anticipation,
16 correct?

17 A. Yes.

18 Q. Section 103 is obviousness?

19 A. Yes.

20 Q. Okay. So you've indicated your opinions of
21 invalidity of all the asserted claims from both the patents.
22 And in addition to this 68-page opinion with -- sorry -- with
23 228 paragraphs, you attached the appendices, correct?

24 MR. YATES: Objection, Your Honor. He's showing his
25 expert report to bolster the witness.

1 THE COURT: I don't know why you're even talking about the
2 expert report.

3 MR. PHIPPS: Oh, sorry, Your Honor.

4 No further questions.

5 THE COURT: Mr. Yates?

6 CROSS-EXAMINATION

7 BY MR. YATES:

8 Q. Dr. Chatterjee, let's begin with the design-around
9 you just spoke about. Did you conduct any survey to see
10 whether there would be any market acceptance of your
11 design-around?

12 A. I did not conduct a survey, no.

13 Q. Did you interview any users?

14 A. No.

15 Q. And at the time of your report, had you even talked
16 to Ms. Schoonover?

17 A. No. I spoke with Mr. Quinn.

18 Q. And you didn't talk to a user at all about your
19 design-around, correct?

20 A. No.

21 Q. So you have no understanding whether or not your
22 design-around would be acceptable to the consumers; is that
23 correct?

24 A. No. It's not correct.

25 Q. But you have no surveys, correct?

KRISTIE M. DAVIS, OFFICIAL COURT REPORTER
U.S. DISTRICT COURT, WESTERN DISTRICT OF TEXAS (WACO)

1 A. Do you want me to explain why?

2 Q. No. I'd like you to answer the question.

3 Do you have any surveys?

4 A. No.

5 Q. Did you talk to the head of marketing for the
6 product, head of design for the product?

7 A. I spoke with Mr. Quinn.

8 Q. You spoke with Mr. Quinn for 30 minutes?

9 A. Yes.

10 Q. After you had already written your report, the day
11 before it was due, correct?

12 A. Well, I had spoken with other people prior to that.
13 And like I mentioned for this design-around aspect, I simply
14 wanted to ask him, do you agree that it will take maximum of
15 six months for two to three middle-level engineers? It doesn't
16 take very much time to get that. But yes, it was within a
17 30-minute time frame.

18 Q. And to your knowledge, has NCR implemented this
19 design-around?

20 A. I don't know.

21 Q. So they've continued to behave just as before, even
22 if they have a design-around that you pointed out to them, to
23 your knowledge?

24 A. Like I said, I don't know what they're doing.

25 Q. Are you a University of Texas professor?

1 A. No.

2 Q. Are you aware that counsel for NCR introduced you to
3 this jury during voir dire as a University of Texas professor?

4 MR. PHIPPS: Objection, Your Honor, relevance.

5 THE COURT: Overruled.

6 BY MR. YATES:

7 Q. Are you aware of that? Were you here?

8 A. I was not here.

9 Q. Not here.

10 You have a 19-page resume that doesn't mention Texas once,
11 correct?

12 A. It probably doesn't.

13 Q. And do either your masters thesis or Ph.D. thesis
14 involve point-of-sale systems?

15 A. My Ph.D. certainly can be used with point-of-sale.

16 Q. Does your Ph.D. thesis even mention the word
17 "point-of-sale"?

18 A. As far as I remember, no.

19 Q. Okay. And you're a professional testifier, correct?

20 A. I'm not sure what that means.

21 Q. You testify in patent cases for a living?

22 A. Well, I do a lot of things. I have a lot of jobs.

23 Q. How much are you being paid for your time today?

24 A. Well, I get paid hourly.

25 Q. How much do you get paid by the hour?

1 A. 825.

2 Q. And how much have you billed NCR in this matter so
3 far?

4 A. I think -- like I mentioned, I've spent considerable
5 amount of time, several hundred hours.

6 Q. Several hundred hours?

7 A. Yes.

8 Q. At \$825 an hour?

9 A. That's my rate.

10 Q. Several hundred thousand dollars. Is that the math?

11 A. I believe so, but there's been significant work in
12 this case.

13 Q. Now, you contend that NCR doesn't infringe either
14 patent because the software is static or prebuilt, correct?

15 A. Well, I explained exactly that software runs by
16 running -- executing instructions. And so yes. Software only
17 does what the instructions that are already there tell it to
18 do.

19 Q. And so in that gigantic stack of manuals that you
20 said you looked at for documentation, did any one of those use
21 the term "prebuilt"?

22 A. Well, an application, by definition, is prebuilt.
23 You don't need to say prebuilt. An application, like I
24 mentioned, technology -- software technology is not magic. It
25 simply does what the software already is programmed to do.

1 Q. Can you answer the question, please?

2 A. What was the question?

3 Q. The question was, in any of that stack of manuals,
4 did any of them use the term "prebuilt"?

5 A. I couldn't tell you, but I don't recall seeing it.

6 Q. Do any of them use the phrase "application server"?

7 A. I couldn't tell you. I don't remember.

8 Q. So you don't know whether any of the NCR
9 documentation that you were paid \$825 an hour to review uses
10 any of your keywords as part of your noninfringement positions,
11 correct?

12 A. Are you talking about the user guides or the
13 technical documents?

14 Q. I'm talking about all the stack of paper you looked
15 at and produced -- that was produced in this litigation.

16 A. The technical documents make it clear that it's run
17 on an application server --

18 THE COURT: Doctor, you need to answer Mr. Yates'
19 questions.

20 THE WITNESS: Okay.

21 BY THE WITNESS:

22 A. I don't remember seeing "application server".

23 BY MR. YATES:

24 Q. So prebuilt and application server, in terms of
25 noninfringement positions, come from you; is that correct?

1 A. They were confirmed by NCR.

2 Q. But not NCR's documentation, correct?

3 A. Again, I can't tell you everything that's in there,
4 but these are -- that's the technical architecture of the NCR
5 product.

6 Q. And you said when you downloaded from the App Store
7 the NCR app, that it worked; is that correct?

8 A. I don't remember if I said it worked, but yes. You
9 download from the Apple App Store the app onto an iPad.

10 Q. I think you were talking about works the same way as
11 other apps.

12 And at that moment, if you've downloaded from the Apple
13 Store, what can you do?

14 A. You can do everything that the application is
15 programmed to allow you to do.

16 Q. So can you push a button and order a pizza?

17 A. Well, first, you need to be able to log into it.

18 Q. So when you say it works, there are other steps that
19 have to take place before you could actually order a pizza as a
20 merchant using NCR Silver, correct?

21 A. I think I'm not understanding. The merchant would be
22 ordering a pizza?

23 Q. Well, a merchant could do something, a user could put
24 something in on pizza.

25 In order to use NCR Silver, when you download the

1 application onto your iPad, it's a blank slate still, correct,
2 sir?

3 A. The -- if you look at it, the buttons are already
4 there. The labels on the buttons --

5 THE COURT: Are you able to answer his questions directly
6 with a yes or no? If you can't, then say I can't. But I gave
7 you two hours and allowed you to answer whatever questions you
8 wanted from your counsel. This is cross, and I want you to
9 answer his questions directly.

10 Do you understand?

11 THE WITNESS: Okay.

12 BY MR. YATES:

13 Q. If you download -- if a merchant downloads the app
14 from the App Store and puts it on their iPad, they are not able
15 to have a menu at that time, correct?

16 A. I haven't used it with a blank slate, so I couldn't
17 tell you.

18 Q. So you don't know?

19 A. I don't know.

20 Q. Okay. But that's your definition of prebuilt,
21 correct?

22 A. Which one? The application is prebuilt. Yes.

23 Q. But you don't know whether or not it works, correct?

24 A. The application works. I've used it.

25 Q. But you don't know what functions you can do in that

1 state, correct?

2 A. I'm not sure how to answer that question. I'm not
3 understanding the question.

4 Q. I'm trying to understand what prebuilt means to you.
5 There's no pizza button at that moment, correct?

6 A. Unless you enter that your store is selling pizzas,
7 the pizza button will not show up. But all the buttons are
8 there, simply the pizza button will not show up. Yes. I agree
9 with you.

10 Q. Now, you didn't talk to Ms. Schoonover before forming
11 your opinions; is that correct?

12 A. Yes. Before this week I'd never met her.

13 Q. And did you hear her yesterday testify about hidden
14 or invisible buttons?

15 A. I don't remember if she testified to that or
16 Mr. Quinn, but I remember that testimony.

17 Q. Was it your understanding that NCR Silver works that
18 way, now that you've heard that testimony?

19 A. Well, I've known that even before hearing that
20 yesterday.

21 Q. And yet your report contains no opinions on hidden or
22 invisible buttons, correct?

23 A. I couldn't tell you if the word "hidden" appears
24 there in my report.

25 Q. So you're not offering any opinions on hidden buttons

1 or invisible buttons, correct?

2 A. The buttons are already prebuilt. The capability of
3 an application, as I explained earlier, is there already.

4 Q. But you're not offering any opinions about hidden or
5 invisible buttons; is that correct?

6 A. I'm not sure how to answer that question. Like I
7 explained, the application can do only what the application can
8 do. The fact of the buttons -- the fact that you can say that
9 you're selling pizza and then a pizza button shows up confirms
10 without -- there's no doubt in my mind that the application
11 already has that capability. Otherwise a pizza button could
12 never show up.

13 Q. But you're not offering any opinions about hidden or
14 invisible buttons in this case, are you, sir?

15 A. Again, I'm not sure how to answer that. Like I've
16 told you, the application has the functionality that it has.

17 Q. That functionality requires customization by a
18 merchant, yes?

19 A. The merchant will enter data to specify they're
20 selling pizza or tacos or books or whatever. Yes.

21 Q. And the patents don't discuss entering data the way
22 you define it, correct?

23 A. I'm not sure what you mean the way I define it.
24 Entering data is simply entering data, typing in data.

25 Q. Can entering data ever be building?

1 A. Well, even Mr. Olson, the inventor of the patent, has
2 stated no, which I agree with him. He's the inventor of the
3 patent. I agree.

4 Q. Can you answer that question, please, sir?

5 A. I thought I did. I agree that data entry is not
6 building.

7 Q. And data entry can never be building in your opinion?

8 A. Are you asking within the context of the patents or
9 outside of the context?

10 Q. I'm asking about the context of the patents. We're
11 here talking about the patents. We're not talking about things
12 not in the patents --

13 A. Yes.

14 Q. -- except for you.

15 A. Yes. So like I stated, data entry is not building,
16 and Mr. Olson the inventor -- coinventor, confirmed that.

17 Q. And you agree that NCR Silver manual uses the word
18 "build" in the context of building a schedule, correct?

19 A. I vaguely remember that during my deposition. You
20 showed me something that says building a schedule.

21 Q. And so NCR uses the term "build" associated with the
22 accused product, NCR Silver, when it's talking about building a
23 schedule, correct?

24 MR. PHIPPS: Your Honor, I object. The scheduling feature
25 is part of a different product that's not accused in this case.

1 And Mr. Crouse does not have an opinion of infringement based
2 on NCR Console, which is a scheduling app.

3 THE COURT: Counsel?

4 MR. YATES: We can pull up -- it's the manual for the
5 accused product, and we're having a language fight over
6 "build," Your Honor.

7 THE COURT: Overruled.

8 BY MR. YATES:

9 Q. And you understand that the scheduling functionality
10 described is also prebuilt, correct?

11 A. I -- like I said, I vaguely remember you showed me a
12 document during my deposition that says building a schedule.

13 Q. And so I can show you a document that shows building
14 a schedule, but you can't show me a document that says
15 prebuilt; is that correct?

16 A. Building a schedule is building a schedule. It's
17 simply building a schedule. You can say building a schedule
18 for anything.

19 Q. But your understanding NCR's documentation for this
20 accused product used "build" in the context of a prebuilt
21 system, correct? Build from the manual, prebuilt from your
22 language, correct?

23 A. No. The NCR document that you showed me at my
24 deposition says building a schedule. It's not building a POS
25 terminal. It's not building buttons. It doesn't say any of

1 that. It just says building -- or build a schedule.

2 Q. And you agree that the training videos that have been
3 shown show web servers?

4 A. No.

5 Q. So you don't agree that the training videos that were
6 used with Mr. Crouse show evidence of a web server?

7 A. You asked me whether the training videos show a web
8 server. They do not.

9 Q. Fair enough. So they show a web browser
10 communicating through a web server using HTTP, and the web
11 browser rendering a web page that's served from that web
12 server; is that correct?

13 A. The training videos show a browser, yes, that
14 communicates to a web server.

15 Q. Well, it shows that you're communicating to a web
16 server; is that correct?

17 A. The web browser is communicating with the web server.

18 Q. And that web server houses or runs the Back Office
19 software, correct?

20 A. No.

21 Q. Now, NCR Silver Back Office is installed on Google
22 hardware and software; is that correct?

23 A. It's installed in the Google Cloud. Yes.

24 Q. Well, and that cloud's hardware and software, isn't
25 it, sir?

1 A. The Google -- depending on what you get from Google,
2 yes. You can get hardware, you can get software, you can get
3 both.

4 Q. Well, in NCR Silver case, it has both hardware and
5 software, correct, sir?

6 A. Yes.

7 Q. So the NCR Silver Back Office software runs on Google
8 hardware and software; is that correct?

9 A. The Back Office software. Yes.

10 Q. And the Google Back Office software on the Google
11 hardware and software uses HTTP and HTTPS; is that correct?

12 A. Say that again. The Google hardware and software
13 uses HTTPS. Is that what you --

14 Q. The Back Office NCR Silver software on the Google
15 hardware and software uses HTTP and HTTPS, correct?

16 A. No.

17 Q. No?

18 A. No.

19 Q. So when the video shows connecting to the Back Office
20 software and there's HTTPS, how is that not the Back Office
21 software on the Google hardware and software?

22 A. The HTTPS will go to the web server software that's
23 running on the Google Cloud. It's not the Back Office
24 software.

25 Q. So when we show a screenshot, you're disagreeing that

1 that's the Back Office software from NCR Silver?

2 A. That's not the Back Office application.

3 Q. Okay. Does the NCR Silver Back Office software on
4 the Google hardware and software use HTTP to serve data or
5 files that end up forming web pages?

6 A. Did you ask does the Back Office software do that?
7 Is that what you said?

8 Q. Yes, sir.

9 A. No.

10 MR. YATES: If we could pull up the drawing.

11 BY MR. YATES:

12 Q. Now, sir, this is the drawing from your expert
13 report; is that correct?

14 A. It looks like it. Yes.

15 Q. And we've seen versions of this before, correct?

16 A. You mean on my testimony earlier today?

17 Q. Testimony earlier today, opening slides and other
18 things.

19 A. Yes. Yes.

20 Q. Okay. Actually, I think this is the -- this -- so
21 you agree that the Google Back Office software, which is part
22 of the accused products, includes a web server, yes?

23 A. I didn't understand. You said the Google Back Office
24 software?

25 Q. Sorry. Do you understand that the Back Office

1 software from NCR Silver that's part of the accused product
2 that's running on the Google Cloud includes a web server?

3 A. The Back Office software does not include a web
4 server.

5 Q. So if I'm communicating with the merchant across --
6 using HTML to that web server, I'm not communicating to the
7 Back Office software supplied by NCR Silver?

8 A. I think you meant to say HTTP, not HTML.

9 But when you're using your browser to connect with the web
10 server, as shown here, you're not communicating with the Back
11 Office software. The Back Office software runs on the
12 application server, as I've explained.

13 The web server simply has static web pages on it that
14 allows the merchant to enter data.

15 Q. But that's all part of the NCR Silver Back Office,
16 isn't it, sir?

17 A. I'm not sure how to answer that question. The Back
18 Office software runs on the application server. The web server
19 simply allows data entry to happen. So I'm not sure how to
20 answer that question.

21 Q. Well, if you yank that web server, then, out
22 directly -- you said you don't need it because none of the Back
23 Office software's running there.

24 Is that what your testimony is?

25 A. Yes.

1 Q. Okay. So this whole system doesn't operate unless
2 you have the web server sitting there; is that correct?

3 A. The data entry -- as the system works right now, the
4 data entry happens through the web server.

5 Q. So the building portion of NCR Silver requires that
6 web server; is that correct?

7 A. There's no building in NCR Silver.

8 Q. And running reports and functionality, where I look
9 at the transaction data, that also requires that web server,
10 correct?

11 A. Running reports are done on the application server.
12 The web server simply formats that on a web page and sends it
13 back to you.

14 Q. So the Back Office software that's running on the
15 Google hardware and software, in order to look at my reports of
16 my transaction data, requires the web server you've put in your
17 drawing here, yes, sir?

18 A. The web server makes it viewable on your browser.
19 Yes.

20 Q. And would you agree that if devices are added through
21 the Back Office software so that I'm updating a menu, that
22 those changes propagate out to the POS terminals?

23 A. No.

24 Q. So if I make a change, that doesn't actually
25 propagate out an update of POS terminal?

1 A. Well, propagate means that you're using push
2 technology, and that's not what NCR does.

3 Q. It uses both push and time syncs, doesn't it?

4 A. My understanding, based on looking at all the
5 documentation, is that when the app is connected, so the app
6 running on the tablet will pull the data through the API
7 server.

8 Q. So the information that shows up on a transaction
9 goes from this tablet across -- all the way up through the
10 databases and back over to show up on the website of the
11 merchant; is that correct?

12 A. No. That is not how the technology works.

13 Q. And you understand that the NCR merchant -- the NCR
14 Silver merchant agreement requires the user to provide Internet
15 access as part of its obligations under the contract, correct?

16 A. I don't remember if it uses the word "required," but
17 yes. It says that you have to get Internet.

18 Q. And in order to deliver its obligations under the
19 contract, NCR has to pay Google 5 something million dollars a
20 year for the Back Office hardware and software; is that
21 correct?

22 A. NCR pays Google, like every other company pays
23 Google, for using that software. So it's not for the Back
24 Office software.

25 Q. Well, is it for other NCR software?

1 A. Well, what I'm saying is that NCR pays Google for
2 using the hardware that Google provides, not for the Back
3 Office software. Anyone can pay Google. It's not -- Google is
4 not providing the Back Office software.

5 Q. Moving on to some invalidity.

6 Woycik or "Woycik" identifies a local server in every of
7 the embodiments within Woycik; is that correct?

8 A. No.

9 Q. Woycik has a server identified as 16 in every single
10 embodiment, yes, sir?

11 A. The Woycik -- I'm sorry. I think we pronounce them
12 differently.

13 But the Woycik reference states that the number 16 in the
14 diagram is simply used to access the Internet to get to the
15 central or remote server.

16 MR. YATES: Can we pull up DTX-58, which I believe is the
17 Woycik reference?

18 And can we look at -- sorry -- Paragraph 71? It's on
19 Page 4, after the figures.

20 BY MR. YATES:

21 Q. And about the fifth or sixth line in that paragraph,
22 it says: "The system includes two store locations each having
23 a plurality of kiosks arranged in a client-server
24 configuration."

25 And then it continues to say, "In each store, the local

1 (on-site) server 16," correct?

2 A. Where are you reading from?

3 Q. I may have the wrong exhibit. I'm sorry.

4 MR. YATES: It's Exhibit 50. My apologies. DTX-50 is the
5 Woycik reference. Again, looking at Paragraph 71. It's on
6 Page 4.

7 BY MR. YATES:

8 Q. And again, if we look here on about the fifth line,
9 beginning "in each store," so 16 is a local, on-site server; is
10 that correct?

11 A. That's what it says, "The local (on-site) server 16."

12 Q. And so when you took 16 and put it color-coded on
13 your diagram, all you were doing is putting a local on-site
14 server in each store; is that correct?

15 A. No.

16 Q. But you were putting 16, the local on-site server,
17 into the stores in your diagram, correct?

18 A. Based on the disclosure in the specification of
19 Woycik, that 16 can be used to simply access the Internet to
20 get to the remote server which Woycik calls a central server.

21 MR. YATES: And if we could go to DTX-58, the Miller
22 reference -- sorry -- the Brown reference. And if we could
23 look at Paragraph 14 on Page 2 after the figures.

24 BY MR. YATES:

25 Q. Now, is Brown disclosing a point-of-sale terminal or

1 an Internet website for selling goods?

2 A. Both.

3 Q. So in the Brown system, if we look here in the
4 middle, if a customer selects an item to purchase, clicks the
5 item, adds to the customer's shopping basket and does not have
6 an account, the system will prompt the customer to log in. In
7 order to log in, the customer must provide an e-mail address
8 and password.

9 Is that your understanding of the disclosure in Brown?

10 A. Well, Brown explains that you can have a website, the
11 UTOPA.com website. And it expressly states that you can take
12 that website and make it into a point-of-sale. And that's
13 exactly what I pointed to, and that's what I explained to the
14 jury when I walked through the analysis for Brown.

15 Q. And your understanding is having to have an account
16 and a password and putting items on hold is a point-of-sale, is
17 understood by a person of skill in the art reading the '640 and
18 the '012 patents?

19 A. But this is not the only part of Brown. I pointed to
20 other parts of Brown. Brown has --

21 THE COURT: Doctor, I'm going to suggest to you again that
22 I would -- late in the day. I would really prefer you answer
23 Mr. Yates' questions.

24 BY MR. YATES:

25 Q. Now, Your Honor -- excuse me. Dr. Chatterjee, you're

1 not a legal expert, correct?

2 A. No.

3 Q. You're not an expert on burdens of proof?

4 A. No.

5 Q. You're not an expert on inherency?

6 A. No.

7 Q. You're not an expert on what it takes to infringe a
8 system claim in the patent?

9 A. With regards to the law, no.

10 Q. And so -- you're also not informed by this Court's
11 instructions on the law that are going to be provided to the
12 jury later this week, are you?

13 A. No.

14 Q. You haven't done any legal research?

15 A. No.

16 Q. So you don't know whether or not your opinions are
17 going to align with the legal instructions given from the Court
18 in this case, do you?

19 A. No. There's no way for me to know that. It seems to
20 be that that's going to happen later this week.

21 Q. And so your opinions on inherency and burden of proof
22 and whether something's obvious or not is really not informed
23 by the Court's instructions; is that correct?

24 A. It's informed by my understanding of the law as told
25 to me by counsel.

KRISTIE M. DAVIS, OFFICIAL COURT REPORTER
U.S. DISTRICT COURT, WESTERN DISTRICT OF TEXAS (WACO)

1 Q. And that was counsel for NCR?

2 A. Yes.

3 Q. Is that the same counsel that thinks you're a UT
4 professor?

5 A. I think it was a different counsel.

6 MR. YATES: Pass the witness.

7 REDIRECT EXAMINATION

8 BY MR. PHIPPS:

9 Q. Mr. Yates brought up employee scheduling, and that's
10 not in the asserted patents, but it is in the Brown reference.
11 Figure 21 of prior art, Brown reference. We can see that this
12 Brown prior art reference that Dr. Chatterjee has testified to
13 does talk about scheduling in Figure 21. Figure 20 -- no.
14 That's just a bleed through. And Figure 23 talks about
15 scheduling. Also talks about employee schedules in Paragraph
16 69 and scheduling in 62. So it's not as if scheduling hasn't
17 been done in the prior art. And, again, that's not part of NCR
18 Silver to your knowledge, is it?

19 A. Yes. I agree with you.

20 Q. Okay. And we apologize that Mr. Baker did misspeak
21 about Dr. Chatterjee's credentials, but we've gone over them
22 here today in great detail. I myself have been on the case
23 since the beginning. Mr. Baker is relatively new to the case,
24 so we apologize for that error during jury voir dire.

25 With that, Dr. Chatterjee, I have no further questions.

KRISTIE M. DAVIS, OFFICIAL COURT REPORTER
U.S. DISTRICT COURT, WESTERN DISTRICT OF TEXAS (WACO)

1 MR. YATES: Nothing further, Your Honor.

2 THE COURT: May he be excused?

3 MR. PHIPPS: Yes, Your Honor.

4 THE COURT: Doctor, thanks for being here.

5 Could I have one counsel up here for a second?

6 (Off-the-record bench conference)

7 THE COURT: Ladies and gentlemen, I discussed with the
8 lawyers and they insisted that I keep you here, but I said no.

9 (Laughter.)

10 THE COURT: I'm the judge. I'm kidding. They didn't say
11 that. Just joking.

12 No. We're actually way ahead of schedule. The lawyers in
13 this case have all done an exceptional job. You're very lucky
14 to have lawyers of this quality and, actually, I think the
15 witnesses too.

16 We're going to recess for the evening. If you all will be
17 here by 8:45 tomorrow, we will resume at 9:00. You all were
18 here earlier today. And if everyone gets here earlier, we'll
19 start earlier. But I'm happy if you're here at least by 8:45,
20 and we'll get started pretty shortly after that.

21 You can't talk about it at home. You can't do research at
22 home. And you can't post about the trial at home or do
23 anything else that might make me unhappy. But those are the
24 three things that would most make me unhappy that have happened
25 in the past.

KRISTIE M. DAVIS, OFFICIAL COURT REPORTER
U.S. DISTRICT COURT, WESTERN DISTRICT OF TEXAS (WACO)

1 And so have a good evening, and we'll see you all tomorrow
2 morning.

3 Be careful. I think it's raining, so be careful out
4 there.

5 THE BAILIFF: All rise.

6 (Jury exited the courtroom at 5:38.)

7 THE COURT: You may be seated.

8 Mr. Barr, do you still need to put on -- do you need to
9 recall your witness and put on anything about what was
10 excluded, any offer of proof?

11 MR. BARR: We do have two offers of proof that we're going
12 to make, and just -- I just want to be clear with what I said
13 at the bench I was thinking.

14 So on the rebuttal part, we obviously are -- we -- I
15 understand Mr. Ikizler is going to be called by defendant's
16 counsel. We do plan to put on our invalidity rebuttal case,
17 and then I wanted to think about whether we wanted to put any
18 additional on.

19 THE COURT: Understood. Again, let's just -- with y'all's
20 permission, because it's late and I know y'all have to go --
21 y'all would rather go and get ready for tomorrow, I'll allow
22 the plaintiff to put on their proffer tomorrow and -- because
23 I'm assuming it's going to be short.

24 MR. BARR: Yes.

25 THE COURT: But I'd assume, Mr. Barr, when you're up here

1 that you're also going to be putting on rebuttal of the
2 validity.

3 And so but it looks to me like we'll finish tomorrow
4 sometime in the morning. I don't care when. Whenever that is,
5 we'll do the jury charge, and we'll work that out.

6 And then, again, given that we're so far ahead, if you all
7 want to go a little longer than 30 minutes on closing, that's
8 fine. I can't stress to you how much better off you'd be if
9 you didn't go over 30 minutes, but that's just from sitting up
10 here watching.

11 And so here's another proposal: If you all will have for
12 me when you come in the -- wherever the jury charge is at with
13 the red and blue, while you are putting on the damages witness,
14 I'll go through it and I'll -- on a lot of it I'll probably be
15 able to just decide what I'm going to do.

16 Mr. Barr, is there anything we need to take up?

17 MR. BARR: No, Your Honor.

18 MR. PHIPPS: No, Your Honor.

19 THE COURT: Very good. Again, thank you all for your hard
20 work today, and we will see you tomorrow morning.

21 THE BAILIFF: All rise.

22 (Hearing adjourned at 5:41 p.m.)
23
24
25

1 UNITED STATES DISTRICT COURT)
2 WESTERN DISTRICT OF TEXAS)
3

4 I, Kristie M. Davis, Official Court Reporter for the
5 United States District Court, Western District of Texas, do
6 certify that the foregoing is a correct transcript from the
7 record of proceedings in the above-entitled matter.

8 I certify that the transcript fees and format comply with
9 those prescribed by the Court and Judicial Conference of the
10 United States.

11 Certified to by me 8th day of June 2021.

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