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

CLOUDOFCHANGE, LLC * May 17, 2021
*
VS. * CIVIL ACTION NO. W-19-CV-513
*
NCR CORPORATION *

BEFORE THE HONORABLE ALAN D. ALBRIGHT
JURY TRIAL PROCEEDINGS
Volume 1 of 4

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(May 17, 2021, 8:44 a.m.)

THE BAILIFF: All rise.

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

What do we have to take up? Mr. Barr?

MR. BARR: Yes, Your Honor. For the plaintiff, we have a couple of disputes about some of the opening exhibits that the defendants would like to use.

THE COURT: Okay. If you'd just hand them up.

Okay. I've got 2.36.

MR. BARR: Yes, sir. So in 2.36 what we object to is they've got "building a POS terminal" in quotations which is a construed term. And then below it they say "computer programmers writing thousands of lines of code." That's not how the Court construed the term. The Court just said plain and ordinary meaning.

So we believe that suggesting that that's the way it should be construed in opening statement would be inappropriate.

THE COURT: I'm going to overrule that.

What's next?

MR. BARR: Next one is 6.2. And that one is the -- 6.2 is some code, and it violates the motion in limine from the defendants about using an expert -- using a fact witness as an expert. This is a document that's never been produced in the case. They want to use it with their employee witness,

Mr. McGill Quinn.

We've never seen that code before. We don't know what it is. And we think it violates that motion in limine. It's also unauthenticated hearsay.

THE COURT: What do you intend to say about this code, Counsel?

MR. BAKER: Your Honor, we're just using it as a demonstrative. He's going to try -- as a fact witness -- again, he's a software engineer and he's going to say this is what software looks like.

THE COURT: I will allow you to say that about this slide, that this is what software looks like. Not anything about what this -- what is on this slide.

MR. BAKER: Okay. Yes, Your Honor.

MR. BARR: And the last one, Your Honor, is 6.9. That is another document that they want to use with Mr. McGill Quinn, their fact witness. And that is a document that hadn't been produced in the case. We believe it was created by their expert witness, Dr. Chatterjee, and that Dr. Chatterjee created that document for this case.

He's got -- added things to that document such as what he's going to argue as an application server. It's hearsay, it's unauthenticated. We don't think Mr. Quinn should be talking about it. It also violates the motion in limine that Mr. Quinn is not supposed to be testifying as an expert.

MR. BAKER: Your Honor, if I may. Again, he's a fact witness. This is his software, this is how it works. And he's going to say this is how it works.

MR. BARR: It wasn't produced and no one's ever said that was the software in the case.

THE COURT: We'll see what he's going to say. I mean, I'll tell you all -- I'll put on the record, the hardest job I have during a patent case is trying to figure out what the boundary is on a person who sounds like one of your employees or engineers who is a fact witness and has expertise that's -- and so the way I deal with that during trial is I just -- you know, you'll ask a question. Mr. Barr can object if he thinks it's inappropriate expert testimony rather than just whatever.

And so I'm going to exclude 6.9 just because it's easier to not bring it in during opening. And then -- but I have no idea what I'm going to do when your witness is on the stand.

MR. BAKER: Okay, Your Honor. And 6.9 is -- which one is --

THE COURT: This --

MR. BAKER: Okay. That's fine. That's fine. That's fine.

THE COURT: And I don't care what you -- much what you say about it with broad brush in opening. I mean, you can talk about the NCR Silver and how it operates. It's just I don't want you attaching that yet to what someone's going to say.

I'm not sure -- I'm not sure that that's --

MR. BAKER: Mr. Barr is right. That has -- our expert has been prepared to use that as a demonstrative in his --

THE COURT: And if he has -- I'm sure he has. If he's adequately laid the groundwork in his report to do it, then I won't have a problem with it. It's just easier -- I tend to exclude things during openings.

You all -- I was in your position for a long time. I've learned that you all, as I did, think there's much greater power to the openings and closings than I think that there is. And that what is in the PowerPoints that you all show them, the impact it has on people, I'm skeptical of that, I will tell you.

I'm not sure after -- if I allowed the defendant to show the slide on the NCR Silver, I'm not sure that by lunch anyone on the jury would be able to recall that they saw it.

By the way, as far as I'm concerned, I'm going to -- this has nothing to do with the slides. I've thought long and hard. I'm not -- because I don't know how the jurors will feel about wearing masks, I worry that there will be jurors who will be unhappy if we are wearing masks. I figure there are jurors who will be unhappy if we are not wearing masks. But I don't want to -- but I don't want to ask, put the jurors on the spot. I am perfectly okay with people not wearing masks when the jury is not in here. If you all are comfortable not wearing masks,

that's up to you when the jury's in here.

I think this is going to be my last trial where I maintain requiring everyone to wear masks when the jury is in here. I'm going to talk -- this doesn't matter to you all. I'm going to talk to them at the end of the week and find out how they felt about wearing masks and y'all wearing masks, and that may help me go forward. But I certainly don't want to talk to them about wearing masks now before you all --

I thought long and hard about asking the jury -- so you know, I thought really hard about asking the jury what they thought. But, again, I'm just worried that there'll be someone who's either happy you're wearing masks or unhappy you're wearing masks. And because I was in your shoes, I don't want -- I worried about what color tie I wore.

(Laughter.)

THE COURT: So I don't want people -- I don't want you all worrying about whether, you know, the mask thing. It'll be my -- I'll let them know it's my rule and my protocol that we are wearing masks despite the current debate that's going on in the nation about whether or not you have to wear masks, and that you all are complying with my edict to wear them. So if they're unhappy with someone, they're unhappy with me and not you all. But when the jury's not in here, you all do what you want to in terms of masks.

Is there anything else we need to take up before the jury

comes in?

MR. BARR: Yes, Your Honor. Just one thing we wanted to -- Mr. Baker and I have agreed and wanted to put on the record so it was clear, that the joint exhibits that the parties have agreed to are pre-admitted and that we don't have to offer the joint exhibits.

THE COURT: That's the way I always do it. Now, here's the catch -- there's no catch, but here's -- to protect you all because, you know, again, it doesn't affect me.

What we'll do at some point tomorrow, and I don't care when, this will be on you because plaintiff goes first. At some point tomorrow before we start or sometime you need to make sure you read into the record a list of everything that you think got into evidence today, and defense will listen and make sure they agree that it did get into evidence today. And we have a record every day of what you all think the day before got into the record. That way you all are protected.

And if there's a discrepancy, if you say I think I got in 45 and the defendant thinks you didn't, we'll figure that out, but I just -- to protect you all at some point tomorrow remind me and have someone read into the record. And then obviously when defendants put on their case, we'll do the same thing.

I tend to -- I don't know. I assume Jeff read the -- Judge Manske read the preliminary deal. I tend to tell the jury a couple of times during the trial, when I think of it, to

remember that when you all are using demonstrative exhibits that they don't go into -- that they don't go into evidence. And the reason I do that is in virtually every trial the first -- the second or third -- first question is who the jury foreperson is. But the second or third is we want to see Exhibit 19, and it was a demonstrative, and they don't get to see it.

So I tell them if you all identify something as a demonstrative, that doesn't make it more or less credible, but they're not going to get it. And so they -- you know, that solves that problem.

Anything else we need to take up?

MR. BARR: Not for plaintiff, Your Honor.

THE COURT: I don't know if I told you or not, hopefully I did. You have 30 minutes of opening that does not get credited against your time. After that whatever you use will be credited against your time.

MR. BAKER: Yes, sir.

THE COURT: So I don't know if I told you all this, but maybe I did. I'll stop -- remind me to stop if I did. I had a trial a couple weeks ago where we had -- it was a bad faith claim. Did I tell you all this? I did a pretrial hearing in it. And I asked the lawyers how long they wanted on opening argument, and one of them said, Judge, we just need 10 or 15 minutes. I said that'll be nice because the last trial I

had they each took about two hours. And one of the lawyers said, well, Judge, if I was making $700 an hour like those fancy lawyers do, I'd take two hours too. I told him there wasn't a lawyer in that courtroom who would have shown up for just $700 an hour.

(Laughter.)

THE COURT: And then he was -- I don't know if he was offended or jealous or what, but anyways. So...

Okay. We will -- I'll make sure --

The jurors are all here?

THE BAILIFF: Yes, sir.

THE COURT: Then you all get ready. If you have to do anything, a little break. I'll come in pretty much exactly at 9:00.

And here -- one more thing I'll tell -- hopefully I'll remember to tell the jury this. I tend -- a couple of quirks I have. One is -- well, it isn't a quirk -- I take a break. Everyone does that mid morning, mid afternoon. That's not a quirk.

What I try my very best to do though is to not take a big break with someone left on the witness stand. Sometimes that's unavoidable, like at lunch or whatever. But in the evening, so you all know, around -- just depending how it breaks, if we start Mr. Barr's witness at 4:00, I'm going to do my very best to make sure he's complete before we leave. I don't like

people being held overnight.

Now, what I will do also though, just to get a little bit of time in, is let's say at the end of the day today you tell me, we're about to put on our technical expert. I'll let you prove him up as an expert, which is pretty rote. And then we'll take the break just to get a little time in, but nothing substantive.

So I try to do my very best to do everything that's substantive and get that done without -- I'm not talking about the five-minute break for morning or afternoon. But at the end of the day I really try and get someone done, because I just don't like people being held overnight. And so that -- if I can't do that, I can't.

And so it's not, I guess -- this will eventually -- well, for the moment it's the plaintiff but eventually for the defendant as well, whenever it is that the plaintiff finishes -- and we'll know better in a day or two -- you all -- defendants -- need to have someone ready to go.

And, again, I say all this because I've had problems with it where Mr. Barr will finish and you'll stand up and say, oh, we didn't think he was going to finish until 5:00 so we don't have anyone here. That will not be a good thing. So, you know -- by here, I mean in Waco in the courthouse ready to go. They don't -- if they can't be in the courtroom, they can't.

Are you all invoking the rule, by the way?

MR. BARR: I don't think so, Your Honor. We're not going to invoke the rule.

MR. BAKER: Oh, really? Okay. That's fine with us.

THE COURT: Fine with me too. Easier on me.

Okay. I'll be back in about five minutes.

THE BAILIFF: All rise.

(Recess taken from 8:59 to 9:05.)

THE BAILIFF: All rise.

THE COURT: Please remain standing for the jury.

(The jury entered the courtroom at 9:05.)

THE COURT: Thank you. You may be seated.

Good morning, everyone. You may be seated.

Ladies and gentlemen of the jury, welcome.

Suzanne, would you call the case, please?

DEPUTY CLERK: Jury trial proceedings in Civil Action W-19-CV-513, styled CloudofChange, LLC versus NCR Corporation.

THE COURT: If I could have announcements from counsel, starting with plaintiff.

MR. BARR: Your Honor, John Barr --

THE COURT: And when you all talk, I appreciate the mask protocol, but the only way at least I can hear you is if you'll take the mask off at least when you're speaking to me.

And, ladies and gentlemen of the jury, I've done this a couple of times now. Again, the reason everyone's wearing a mask is because I've asked everyone to wear a mask. But

oftentimes I'll have to remind the lawyers that they have to take the mask off to talk to me. So you'll see that happen a couple of times.

Mr. Barr, I apologize for interrupting you. If you'd introduce everyone at your table.

MR. BARR: Thank you, Your Honor. John Barr with Jay Yates and Kyrie Cameron for the plaintiff, CloudofChange.

THE COURT: And for defendant?

MR. PHIPPS: Your Honor, I'm Charles Phipps with the law firm of Locke Lord, proud to represent NCR Corporation.

Also with me is Mark Rogers, senior litigation counsel. He is the corporate representative of NCR Corporation here throughout the trial.

Also with me with Locke Lord is Mr. Charles Baker and Ms. Scarlett Collings.

Thank you, Your Honor.

THE COURT: Ladies and gentlemen, just a very short housekeeping. What you should plan on for your days, we tend to start at 9:00 unless at the end of the day I typically will ask you all if you'd like to start earlier. I'm happy to start like at 8:30. I have some sympathy for -- I don't know how far you all have to drive, some far, some not. But we may go as late as 6:00 to get witnesses finished.

I do my very best throughout the course of the trial, because you all are the judges here, to defer as much as

possible to whatever you all think is best for you and your schedule.

We will take -- by the way, the first thing you should know is that clock's wrong. So not by much, but I keep getting confused by it. But typically in the morning somewhere around mid morning we'll take a short break. And then in the afternoon we'll take a short break as well. And that's what you can expect to have during the course of the day until the trial is complete.

Mr. Barr, if you'd like to make your opening -- Mr. Barr or Mr. Yates, whoever's making the opening argument.

MR. BARR: Thank you, Your Honor.

THE COURT: And, again, if you'd favor us by taking your mask down so we can hear you.

OPENING STATEMENT ON BEHALF OF THE PLAINTIFF

MR. BARR: Good morning. This is a case that's about an idea that forever changed the way that merchants do business. An idea so novel that the United States government granted two patents on it. An idea so valuable that NCR Corporation has made over $100 million since 2016 using it.

In the time that I have for opening statement today, I'd like to go through several things about what the evidence will show in this case. I'll start with the background. We're going to talk about the background of the inventors, Mr. Baratta and Mr. Olson. We'll talk about their invention

that became the '640 and the '012 patents.

Next, we'll tell you what we believe that the evidence will show in this case that you'll hear from this witness stand.

After that we'll talk about damages. We'll discuss the damages that we believe that NCR Corporation owes to CloudofChange for their unauthorized infringement of the patents-in-suit.

And last we'll preview some of the arguments that we believe that NCR will give you to try to excuse their conduct in this case.

Patents are so important to this country that they're in the United States Constitution. They're in Article 1, Section 8. Article 1 is the same one that has the freedom of speech and the freedom of religion.

The reason that the founding fathers put the patents in the Constitution is because the founding fathers recognized that having a patent system would encourage inventors to publish their ideas to the rest of the country so that those ideas would spur innovation and progress.

The bargain that the patent system is in America is that inventors like Mr. Baratta and Mr. Olson publish their ideas by filing a United States patent on them which people can then read. But in exchange for publishing their ideas, the United States government gives the inventor a monopoly, for 20 years

usually, where they have the exclusive right to use their ideas.

You may remember on Thursday in jury selection when I previewed for you that a point-of-sale system, which you're going to be hearing a lot about in this case, that's the thing that happens between a merchant and a customer in coffee shops and stores and restaurants all over the country, where the sale occurs and items are exchanged in commerce.

In this case the point-of-sale systems are going to be the computer software and the equipment that's used by those merchants to execute these point-of-sale transactions.

The evidence is going to show that before Mr. Baratta and Mr. Olson's inventions, merchants had to have local computer servers in their stores for every store where they had a point-of-sale device. The evidence will also show that before the inventions in this case that merchants had to call in computer programmers to program computer code if they wanted to change or customize their point-of-sale systems.

The inventions of Mr. Baratta and Mr. Olson changed all that.

So the story of the ideas that Mr. Olson and Mr. Baratta had goes back to 2008, as I mentioned in jury selection. Back in 2008 you'll remember that stores had -- most stores had old-fashioned cash registers like the ones that were manufactured by NCR.

The cash register was invented back in the 1800s, and NCR was one of the first companies that made cash registers back in those days. And they didn't change that much in the next 100 years.

You'll hear from Quentin Olson in this case. Quentin Olson was a computer scientist. He's been work -- or is a computer scientist. He's been working with computers since the 1970s. And his experience with computers got him a job at Starbucks back in the 1990s where he managed the entire support system, the store support system, for the entire Starbucks operation, over 3,000 stores. And he managed that from the company headquarters in Seattle, Washington.

Back then the Starbucks computer support system consisted of a big bank of modems that had to call up the stores, the 3,000 stores, every night and send that information about all the lattes that had been sold that day back to company headquarters.

Mr. Olson saw that every time Starbucks wanted to modify their point-of-sale systems in a particular store to add a new item or to change the prices, that they had to call a group in called the configuration group, that had trained computer folks who could do that for the store owners. It was expensive and it was time consuming.

Mr. Olson left Starbucks around 2002 and he started his own computer consulting company. As a side project for

himself, he started working on trying to develop his own point-of-sale system.

Now, Mr. Olson will tell you that he had two goals for his point-of-sale system. The first thing that he wanted was for his system to be flexible. By flexible, Mr. Olson meant that the point-of-sale system could be changed easily and work in any kind of a restaurant or store, whether it was just a coffee shop or a big chain store with lots of different locations.

The next goal that Mr. Olson had for his invention was that it would have enterprise functionality. And what that means is that it could support multiple locations. So if you had stores like Starbucks that have 3,000 locations back then, you could use the same system and it could be supported by the same system.

The evidence will show that Mr. Olson was contacted by Mr. Baratta back in 2005. Mr. Baratta was a gentleman who had decades of experience owning convenience stores. Mr. Baratta initially contacted Mr. Olson about asking Mr. Olson to see if he could help do some computer work for Mr. Baratta with electronic cash registers.

After they got to know each other, Mr. Olson told Mr. Baratta about an idea that Mr. Olson had about his point-of-sale project. And so back about 2005 they started talking about this idea, and Mr. Baratta will tell you that he thought it was an amazing idea that Mr. Olson had, to have

remote servers that were accessible through the Internet in the Back Office. And you could use that to get rid of the server, the local server that I told you about, that all those Starbucks had to have in their 3,000 stores.

Now, the system that Mr. Olson had put together back in 2005 at the time that he originally started talking with Mr. Baratta was fairly rudimentary. At that point it was pretty much a standalone system, and he hadn't really developed all the Back Office part and the other inventions that you're going to hear about in this case.

But he and Mr. Baratta started working together from this idea about the remote servers. And later you'll hear that when they were working together that Mr. Baratta and Mr. Olson came up with the idea of a way to get rid of these computer programmers that you would have to have customize the point-of-sale screens. And the way that they did that is they had the idea to come up with what's called a point-of-sale builder. And you're going to hear a lot about that in the case, because that's one of the very disputed issues that NCR has here. They disagree that we have a -- that they have a point-of-sale builder.

And you'll hear that the advantage of the point-of-sale builder is that it allows the merchants, the mom and pops, to make changes to their own point-of-sale systems in their stores as they want them, to customize them their way to meet their

business without having to call in expensive computer programmers to do that work for them.

So the first patent is the '640 patent. And it was -- the evidence will show that it was filed in 2008. And by that time Mr. Olson had been working on his idea for about six years. And I think Mr. Baratta had been working on the idea for about three years. And so the bottom line is the inventors spent a lot of time working on these ideas that showed up in these patents.

And the old way of doing things before -- as I said, before Mr. Olson or Mr. Baratta's idea, were the way that things were done in Starbucks back in 1999 with the local computer servers in the store and computer experts to make changes.

The evidence will show that the point-of-sale builder that Mr. Olson and Mr. Baratta came up with was new. It was a new idea at the time of their invention. Nobody else was doing it this way. And it allowed remote servers, and as I mentioned, point-of-sale builders.

Mr. Olson and Mr. Baratta were the first people to come up with the idea that's going to be described in this courtroom, and that's why the United States government has granted them two patents on it.

Now, no one questions that the Internet has changed the way that we all do business. Mr. Olson and Mr. Baratta did not

invent the Internet. I'm sure that they wish that they had. But what they did invent is a web-based point-of-sale system.

So as you can see on this demonstrative we have the old cash registers from back in the 1800s. Then we move on to what's called an electronic cash register, or an ECR. You'll hear a little bit about those in this case. And then last, the invention in this case which utilizes the cloud to do these transactions.

Now, at this point you're probably wondering, as I was when I first started working on this case, what is the cloud? So the cloud refers to computer servers that are accessed over the Internet and software and databases that run on those servers. And the evidence will show that by using cloud computing the merchants don't have to keep these computer servers in their stores.

The evidence will show that a good analogy for cloud computing is shown on this demonstrative here. So what we have here is if you can think about cloud computing kind of like a water utility. So you can see we've got the water tower on the left side. And the water tower is a utility that provides water to your home or your business through the plumbing pipes. Now, you can open up your tap and you can have just as much water as you need. You may need a glass of water. You might want a whole bathtub full of water. You're allowed to do that.

A good analogy for cloud computing, you'll hear companies

like Google Cloud Services, Amazon Web Services. These are companies that provide cloud computing. They're like the water utility. They provide cloud computing to you through the pipes of the Internet. And similar to the utility, you can have just as much cloud computing as you need or just as little as you need.

So how do we use the cloud? Well, the way we use the cloud -- and most of you will probably recognize this -- is with your iPhone. Before the cloud and with the old phones, you had to -- when you take pictures with your phone and download them onto your phone, you had to erase them or you had to take some pictures off before you could take any new pictures. Well, now with the cloud, as I'm sure you notice as I do, Apple charges you $0.99 a month for the privilege of storing your pictures in the cloud on their servers. And so that's how we use the cloud.

In addition to your photos, your photos up there in the cloud are actually kept on these computer servers, these cloud computer servers that are out there in the world that are being utilized. There's banks of computers all over the world.

And that's what we refer to as the cloud. They're not really up there in space. They're not in the clouds. But they do go through the Internet, through the worldwide web, and enables you to use all these computers that people like Google and Amazon have, and to leverage the power of those computers

not only to store your family photos but to run software like the software that's used on these point-of-sale systems in this case.

So let's talk for a little bit about the invention. As I mentioned, there were two patents that were issued in this case. And you've got them in your notebooks there, you've got some juror notebooks in your chair when you came in this morning. They've got copies of the patents in them.

They've also got copies of the Court's claim construction, where the Court has gone in and looked at some of the terms in the -- that are in the claims of the patent. And the Court has given you definitions for those terms to help you in deciding this case.

There's also a tab in those notebooks that has a picture of all the witnesses that we believe will testify in this case and a picture to help you remember who you've heard from. I think there's even some space where you can take some notes if you'd like to when each witness is testifying.

Now, you're going to be hearing from both of the inventors in this case, Mr. Olson and Mr. Baratta. You're going to hear the story of their invention. And you're going to hear a little bit from Mr. Olson about the -- just a general explanation of the invention.

We're also going to have some experts in this case. We're going to have Mr. Crouse who's sitting in the back right now.

Mr. Crouse is a technical expert. He's going to come in and talk to you about the technology at issue in this case.

But let me go ahead and just kind of walk you through what you're seeing here from the -- kind of the 30,000-foot level. So if you have a look at -- on the -- let's start with Figure 3. So right in the middle you see a little drawing. That is actually a figure from the patents. It's Figure 3 which is right there in the patents. And the patent figure shows you kind of an overview of how the patent works.

So what we see on the Figure 3 it shows the overall system for how the point-of-sale terminals interact with the web-based Back Office. And in the boxes that are shaded green you can see that the point-of-sale terminals can send or receive information over the Internet, at the top there, to the web servers that are in the cloud shown in blue on the right-hand side.

And the orange box, a local or remote workstation, accesses the Back Office through this web browser using HTTPS. You've probably -- you've certainly seen it, whether you've noticed it or not. But any time you get on a web browser and you try to, you know, do some shopping or anything, if you look up in the left-hand corner in that little skinny box, it says HTTP or HTTPS. And that's going to be important to this case, because that's how the web browser communicates with the Back Office.

The information seen or sent or received by the point-of-sale terminals or the workstations, as you'll hear, is going to include things like transaction data, you know, what's happening, the buying and the selling of coffee. You're going to hear things that are -- these are other things that are kept in those servers, the inventory management, let's keep track of how many pizzas we sold so we know what we need to order.

And then there's going to be content management. So this is how the point-of-sale systems are managed, what they look like, the creative and unique point-of-sale system that each merchant gets to use in their store.

So now what we're showing you is an actual tablet. This is the tablet that's going to be referred to as the point-of-sale terminal. This is the -- actually an NCR Silver one. So this is the product that's -- or the system that we've accused in this lawsuit of infringement. And we can -- you can see what it looks like.

So let's just try to imagine for a minute that you have a pizza restaurant and that you have a menu with different items at your pizza restaurant. You sell pizzas, you sell calzones, you sell salads, you sell soft drinks. And you need to change those food offerings from time to time. You want to add new items, you want to take things off.

You need to keep track of all those items so that you can keep track of your inventory, what you've sold, what you need

to order.

You need to process the sales transactions so that you can get paid. That's important to everybody.

And you may have different locations that you need to manage, so you might own one or more. Maybe you've got two or three pizza restaurants.

The evidence will show in this case that the '640 and the '012 patents enables the merchants to do all those things. It enables them to customize their own menus so that no two menus might look the same. I might have a pizza restaurant that my point-of-sale menus look one way. Ms. Cameron or Mr. Yates might have another one. They may sell pizzas too but they want their menu to look different. They get to decide what their menu looks like. They get to customize those menus.

And that is what you're going to hear in this case, is point-of-sale building.

I previewed a little bit for you in jury selection last Thursday that Mr. Baratta and Mr. Olson were not commercially successful when they initially tried to sell their product. The evidence is going to show that Mr. Baratta and Mr. Olson and other investors spent 2 to $3 million trying to develop their idea and their product and sell it and have people buy it. And they operated under a couple of different companies. One of those companies was called Tyramm, another one was called InteRegister.

The evidence will show that today Mr. Olson, Mr. Baratta and their investors are the owners of the company called CloudofChange which we represent in this case and which is now the owner of the patents. So the inventors are owners of the company that owns the patents, along with some of the investors that helped them pay to do all this work.

Now, although Mr. Olson and Mr. Baratta were able to get a few customers to try out their system, they really weren't able to do it, despite all this money that they spent and despite years of trying to work on it.

Now, as I previewed in voir dire, or jury selection, Mr. Baratta will tell you that he believes that they were not successful because they were ahead of their time. You recall that I told you that they were ahead of their time because of two things. One was cost.

This was before 2010 when these patents were filed. 2008. At that time the iPad had not been invented yet. Inexpensive tablets were not available. So in order to implement these point-of-sale systems, merchants had to go out and buy expensive hardware to use them.

And that hardware was -- it cost a lot of money. So if you had a small restaurant, which is what you'll hear most of these point-of-sale systems are really focused, more at the small business environment. You had to come forth with a lot of money before you saw whether you even liked it or not. So

that made it hard.

The second thing that made it hard was Internet security. Back in 2008 the Internet was thought about differently than it is as we sit here in 2021, especially after going through the last year of the COVID lockdown where everything you bought was bought at Amazon.

Today people are different than they were back in 2008. Back in 2008 people were concerned about putting their credit cards on the Internet. People were concerned about putting their pictures on the Internet.

What's changed today? Why is this a successful product today that's allowed NCR to earn $100 million? Two things: Today we can buy inexpensive hardware instead of those terminals that cost thousands or hundreds -- many hundreds of dollars to buy. Now you can go out and you can buy an iPad or a Toshiba or a Samsung. There's lots of tablets out there, and they're only a few hundred dollars.

The second thing is Internet security. After the Internet has been in use all these years, people are much more comfortable with buying things on the Internet and using their -- putting their financial information on the Internet. They're even comfortable with putting their pictures on the Internet and pictures of their families on there.

So let's talk a little bit about infringement. We believe that the evidence is going to show in this case that NCR

infringes every claim that we've asserted of both patents in this case.

Now, you may remember from the Court's video that you were shown on Thursday that it's the claims that matters in the patent. We talked about -- I think the judge that talked to you in that video talked -- used a fence analogy and explained how the claims are like the fence on the property and they define the invention, much like a fence might define land that you own.

Now, the first time that you see these patent claims it's going to be a lot of complex technical language. Don't worry about that. Juries just like you have been deciding patent cases for 200 years. And we're going to do our best to help you understand what you need to understand in order to decide this case.

You'll be hearing from the inventors, as I mentioned. You're also going to be hearing from experts like Mr. Crouse, who are going to come into this case and explain the technology to you. We're going to do our best to help you understand what you need to understand so that you can decide this case.

As I mentioned, Mr. Crouse, he's a technical expert. He has nearly 40 years of experience in computers and with point-of-sale systems. And he's going to tell you that a point-of-sale system consists of six general components: Transaction management, inventory management, POS

infrastructure, reporting and security.

Transaction management is getting paid. That's handling the transaction. The merchant needs to sell what they're selling and take in the money from the buyer.

The inventory management feature is how the owner keeps up with their inventory. What have they sold? What do they need to buy?

The content management is how the owner of the point-of-sale decides what their point-of-sale system's going to look like. What do I want my system to look like for my personal store? I get to manage the content that's going to appear on that iPad and what those buttons are going to say and what's going to happen when you push them and how many buttons are going to pop up after you push the first one.

The next thing is the point-of-sale infrastructure, and that's the part that makes it all work together. The point-of-sale infrastructure is the part that lets the point-of-sale terminal in the coffee shop communicate through the Internet to the servers up there in the cloud that are running the Back Office software.

So these are the four things that you absolutely must have for a point-of-sale system. These are need-to-have items.

The next two things, reporting and security, those are nice to have. Certainly it's nice to have reporting so you can print out the kind of reports you want to run your business.

And certainly it's nice to have additional security features in your point-of-sale. But those are not required to have for the point-of-sale system to work.

What you're going to learn in this case from the evidence is that those four features that are highlighted, the first four, those are the patented features. Those are the features that are covered by Mr. Baratta and Mr. Olson's patents asserted against NCR. And importantly, those are the four features that drive customer demand for this product that NCR sells. The customers buy NCR Silver product and system because of those four features that were invented by Mr. Olson and Mr. Baratta.

Now, let's talk about damages for a minute. What will the evidence be on damages? The Court, we believe, will instruct you that if you find that these patents are infringed that you must award a reasonable royalty to CloudofChange in this case.

Now, in determining the reasonable royalty, you'll be given information from -- you'll hear things from NCR. You're going to hear things from additional expert witnesses that we're going to bring into the case to talk about damages. And all of this is going to go into the fair compensation that CloudofChange seeks for NCR's unauthorized infringement of these patents in this case.

As I mentioned, and as you saw on the video on Thursday, the patent claims are much like a fence to land. And land, we

have rent. If you own land and somebody wants to use it, somebody wants to use your farm to have their cows, they got to pay you something for that. That's rent.

In the patent world we call that royalties. So the rent that somebody pays for using your patent means they need to pay you royalties for that use.

Your jobs in this case -- one of your jobs in addition to deciding infringement and validity will be to determine what the reasonable royalty that you need to award, in the event you find infringement and that the patents are valid, to CloudofChange in this case.

You're going to see NCR's own internal documents, financial documents in this case, that will let you see how their business works and how much money that they've made on this product. As I've mentioned, we've talked about some numbers. $100 million in revenue. That's since 2016, to be fair. You'll hear about that. You'll see that number in their documents. You'll hear that from their witnesses on the stand.

The second thing you're going to hear is, as I mentioned, experts. We're going to bring you an expert witness named Ambreen Salters. She happens to be a Baylor graduate. She's going to come into this case and she's going to testify regarding her analysis of these NCR documents regarding financial information. And she's going to tell you, and we're going to show you in this case, that we believe that you'll

conclude at the end of the evidence that CloudofChange is entitled to damages in the amount of at least $20 million to compensate them for the use of these patents in this case.

Now, NCR is going to come into this case with some defenses. What are they going to try to do to excuse their conduct? Well, the first thing they're going to say is, we're not infringing. The next thing they're going to say is, well, if we're infringing, the patents are invalid, both of them. And last they'll say, well, even if we're infringing and the patents are valid, you know, we really don't owe you very much money.

Let's briefly talk about these excuses and what we believe the evidence will show.

First we'll talk about the noninfringement excuse. We believe that NCR is going to provide you with a laundry list of reasons why they claim they don't infringe in this case. I don't have time, unfortunately, in opening statement this morning to go through all of those reasons. You'll have the opportunity to hear them, I'm quite sure, and consider them.

But the first thing I will talk about, and I mentioned it in jury selection, is this prebuilt notion. Remember that word, "prebuilt."

We believe that the evidence will show that this prebuilt argument is something that NCR's lawyers came up with in this litigation. Not one single document before this lawsuit was

filed at NCR describes this software system as prebuilt. And in any event, prebuilt software is not a get out of jail free card. The evidence will show that even if the software is prebuilt, it still infringes the patent claims.

Do you remember when I told you on Thursday that my 82-year-old father always says actions speak louder than words? It's important for you in this case to look at NCR's actions and see what their software really does, not be distracted by what they say their software does. Let's look at what it really does, not what they say it does.

We believe that NCR will also bring you a technical expert named Dr. Chatterjee. We believe that Dr. Chatterjee is going to sit on that witness stand and try to convince you that the POS software that NCR makes does not infringe, does not build terminals as required by the patents, because of this prebuilt notion.

But the evidence is going to show that prebuilt is meaningless and it's just a diversion.

The evidence is going to show that when a merchant opens up the box with the NCR Silver system software in it, there's not a prebuilt point-of-sale terminal for their pizza shop in there. They don't pull it out of the box and it already says pizzas and calzones and Dr Pepper. That merchant has to open up that box, take that software out. Sure, the software does things, that's what it's intended to do. But the merchant has

to customize it to meet their needs the way they want it. It's not prebuilt for them.

So it's important for you in this case to listen to all of the evidence and make a decision based on the evidence from the witness stand, not what the lawyers are arguing.

Let's talk about the invalidity excuse, the next excuse. NCR's going to argue, and you heard this in jury selection, that both patents are invalid. They're going to say that the United States Patent Office made a mistake, not once but twice. Both patents are invalid. Neither one should be enforced in this case.

Two things to keep in mind as you hear that argument. And you heard this from Mr. Baker. He admitted that an issued United States patent is presumed valid. And because an issued United States patent is presumed valid, a higher burden of proof applies to NCR's argument that these patents are invalid. They have to prove their case on invalidity by clear and convincing evidence, which is a much higher burden than the burden that the plaintiffs have, that CloudofChange has in this case, to prove infringement which is merely by a preponderance of the evidence.

You can think about it at the -- just getting over the 50-yard line on a football field, whereas the clear and convincing might take you into the red zone, past the 20.

Now, it's very important as you're hearing this invalidity

argument to remember and listen for this. NCR's never going to tell you that they invented this point-of-sale system. They're going to tell you probably that they have thousands of patents, and they do. But you're going to hear from at least one NCR executive that none of those thousands of patents apply to this. Another diversion. Look over here. We've got thousands of patents. We're really innovative. But they didn't invent the patents at issue in this case.

Instead, NCR's going to tell you that the '640 and the '012 patents are invalid because of other companies' patents. They're going to say that other people have patents earlier than these and those patents make these patents invalid.

Now, the judge is going to instruct you as to what you have to evaluate in order to determine invalidity. He's going to -- there's a legal test for this. You're going to be handed instructions at the end of this case that you're going to go through to help you determine invalidity by clear and convincing evidence.

But the judge is going to instruct you that you cannot evaluate whether something is obvious. And obviousness is going to be one of the grounds for invalidity. There's two. Anticipation, which means some reference -- one of these patents has to have everything in it that is in the claim -- in the patents asserted. And then there's obviousness, whether or not you think it's obvious.

But for obviousness, you can't use hindsight. Hindsight's 20/20. We can all look back and decide what things should be like based on what we know today. But you can't do that in this courtroom. You've got to put yourself back in 2008.

Remember back in the day, 2008, the Motorola Razr was the number one selling phone back in 2008. It doesn't look much like an iPhone. George W. Bush was president. Y'all probably remember when George W. Bush would fly Air Force One right here into Waco to go out and visit his ranch out there in Crawford. We've had several presidents since George W. Bush.

Myspace. Probably haven't heard that in a while. Myspace was the number one social media platform back in 2008. It wasn't Facebook, it was Myspace.

So things have changed a lot since 2008 in technology. So when you're evaluating the technology in this case and whether or not it's obvious, you've got to put your blinders on and think about what would this be like if I was looking at it in 2008?

The next thing we're going to talk to you about is willfulness. We believe that NCR is not only infringing these patents, but they're doing so willfully.

What do I mean by that? Well, we sent NCR a letter to their office, to their general counsel by certified mail, where somebody had to sign for it to acknowledge that they received it, telling them about our patents. Before we ever filed this

lawsuit, we did that back in 2018. This case wasn't filed until 2019.

Here's the letter. It was addressed to Edward Gallagher, general counsel. We sent it on January 19, 2018. Came from our law firm, a letter from some lawyers. The first thing we tell them is infringement of United States Patent 9,400,640 covering a web-based point-of-sale builder.

And later in the letter we tell them that we think they infringe. And specifically that this system that we've accused in this case, the NCR Silver, point-of-sale system infringes the '640 patent.

And we also told them in the letter -- and you'll have the letter in your -- in evidence. It's going to be Joint Exhibit 5. And in that letter we also tell them that we have other patents that we've filed. At that point the '012 had not issued yet, so it wasn't a live patent that could be asserted. But we told them we had other applications and we were just waiting for them to be issued by the U.S. Patent Office.

Now, we've got the certified letter receipt. This is what, when we had the letter delivered to the NCR office, somebody had to sign for it so it would send a card back to our office so we would know that the letter hadn't been lost and that NCR had actually received it. It was signed for somebody -- signed by somebody named R. Brees.

Now, NCR's going to come into this courtroom, we believe,

and try to tell you that they never got this letter. But it was sent to their office. And it was signed for by somebody at their office.

They may try to tell you that this was some kind of satellite office. They're a big company, they've got a lot of offices. You heard about that from Mr. Baker, 134 countries. But no one's going to come into this courtroom, I don't think, and tell you that this was not a legitimate NCR office that we sent the letter to.

Second, no one at NCR's going to come into this courtroom and swear that they did not receive the letter. Nobody's going to tell you we swear we never got that letter.

The evidence is going to show that nobody ever bothered to ask Mr. Gallagher, the general counsel who the letter was sent to, if he got it. Nobody ever called him.

The evidence will also show that nobody ever asked R. Brees. Nobody ever bothered to find out who that was. Never asked R. Brees, hey, R. Brees, did you get the letter? Is it Roger Brees or Rachel Brees? We don't know, because they never asked.

They didn't do any investigation to find R. Brees. They didn't check the employee directory for NCR. They didn't call the human resources department. They didn't check with payroll to see if there was an employee named R. Brees who was getting a check. They didn't do anything, the evidence will show, to

find out whether -- what happened to that letter that we sent, that certified notice letter. It might still be sitting there on Mr. Gallagher's desk.

The evidence will show that NCR never responded to our letter, and they never stopped infringing. Think about that. When we tried to have a negotiation with NCR before filing this lawsuit, and we contacted their top lawyer in writing, what did we hear?

(Cricket sounds.)

MR. BARR: So that's the summary of what you're going to hear this week from the evidence.

America's one of the few countries in the world that guarantees a trial by jury. We take that extremely seriously. And we believe that we brought you a very serious and important case to decide this week.

We look forward to showing you our evidence and having you decide this case. Thank you.

OPENING STATEMENT ON BEHALF OF THE DEFENDANT

MR. BAKER: Good morning, ladies and gentlemen.

If you recall, I'm Charles Baker. I'm here on behalf of NCR Corporation and proudly representing them in this lawsuit.

Now, you heard earlier from Judge Albright that there's two sides of the story, and we want you to keep an open mind. And now it's my time to tell you about what our side of the story is. You heard Mr. Barr and now I'm going to present NCR,

and you're going to hear what we believe what the evidence is going to show.

But before we go into this, I'm going to tell you a little bit about what this case is really about. It's different technologies, okay? We talked about the patents. Let's talk about what they are.

These patents talk about that systems need to be built, okay? The systems must allow users to build a POS terminal. And that's going to be very important. This has been kind of broad-brushed by Mr. Barr, but we're going to get into the details in this case, ladies and gentlemen, because that's what counts, is what these words talk about, what these claims talk about in these patents, and do they match up to our product?

These patents also require that the software must run on a web server. And you're going to find out evidence from our expert that that is certainly not the case.

So let's talk about what NCR Silver is.

Yes. It's a fully-built system. It's like most of the software that you and I download these days from apps to whatever is on a computer, to Word from Microsoft Word.

These things come prebuilt together, and it's already there, and all you have to do is just, you know, add things to it, change it so that you can use it the way you want to do it.

Again, this is a closed system. It does not allow users to change the software programming. It's not a builder

software.

NCR Silver runs on an application server, and you're going to hear how that's completely different from a web server, and then because of that, we don't infringe either.

Now, talked a little bit about NCR, the corporation, and NCR Silver.

Now, NCR Silver, as Mr. Barr alluded to, they've been around a long time. They were founded in 1884 by Mr. John Henry Patterson. And it was based upon the old mechanical register. That was an inventive concept there, and that was the backbone of that company back in 1884. It launched them to where they are today.

But they didn't stop there, ladies and gentlemen. They continued to innovate. Years later, they come up with the first electric power register, and that's the next generation. Again, launched them into the '20s and '30s.

That register was around for a long, long time.

But what did that register allow them to do? It allowed them to go into other areas. It allowed them to launch into the computer area.

In 1958 NCR invented the first commercially available computer. Look at that, ladies and gentlemen. You see where the man is sitting there with that computer? I promise you you've got more capacity, more computing capacity on your phone today than you did back then, but that was the first one that

came out with solid state processors. No one else had done that.

In 1961, NCR came out with the optical scanner.

1974, NCR commercialized the barcode scanner. I think we all know what that is, ladies and gentlemen. We use them all the time when we go into grocery stores, convenience stores. That allows the cashier to quickly itemize and calculate what you owe for this product. I mean, I even use them when I go into H-E-B these days and I'm checking out. It sure does make life a lot easier, and NCR was the one who first commercialized this back in 1974.

They didn't stop there, ladies and gentlemen. They continued to plow money into innovation. They helped develop the first ATMs.

I don't know about you, but that's been a great thing for me. I can't remember the last time I've had to step into a bank and actually go get money. I drive through these days, and that's in part because of what NCR helped develop. They didn't stop there.

More on the computing side.

1982, first NCR tower super microcomputer system was launched.

They even got into the personal computer world back in 1985. I don't know if that was a great decision. They're not around in that today, but they had a lot of competition coming

out. But they certainly decided to invest in that back in 1985, and, again, they continued to improve the ATMs.

2011, world's first hybrid laser and imaging bioptic scanner was introduced by NCR.

Now, 2011 is also an important year for what's happening in this lawsuit. Because in 2011, NCR acquired a company called Radiant System, which at that time was the developer of the Aloha POS System.

Now, the Aloha is a little different from Silver, but at that time, Silver was being developed within Radiant. And NCR bought Radiant, they took what was going on, they applied their engineers.

In 2012 they rolled out Silver on their own. They came up with it and released it and it's been in operation ever since then. So this is something that they, again, they just didn't pluck out of the sky, or they didn't, you know, take it from someone else. They built it themselves internally.

Now, again, NCR's a big company. And we talked about that in our jury selection.

They've got 34,000 employees, 140 countries, and they're headquartered in Atlanta. They've got offices all over here in Texas. They've got one in Austin. They have one in College Station, Houston and Dallas. Okay?

But what -- imagine, how has this company been around for over 130 years? We all know a lot of companies have gone out

of business, right? And why is that? It's innovation.

NCR, yes, today has over 1,000 patents. They believe in investing in technology, and that's what's kept them alive today. But for investing in these patents they probably wouldn't be around.

But for them investing in these new purchases of companies like Radiant, they probably wouldn't be in existence. But they do that. They are innovative. They are the American way.

I prepared a short little outline here of key dates here, timeline. And I'm not going to spend a lot of time on this, but you'll notice how, again, how technology has changed over the years.

You know, you started back in the old National Cash Register, and then you've got, again, what's happening. Point-of-sale systems, ladies and gentlemen, you're going to hear this from Dr. Chatterjee, they've been around a long time. Okay?

The inventors over here didn't invent that, and I think they would agree, it's been around a long, long time.

So -- and also we're talking about cloud technology. About the time these inventions were coming out, the cloud was coming out too. You'll see that. In 2008 they filed their patent application.

Well, what happened two years later? The iPad was released. And you're going to hear testimony that they never

incorporated or tried to incorporate the iPad into their business model. Why? We don't know. They stuck with the old hardware, the old expensive PCs. They could have gone down and used the iPad at the time. They chose not to.

All right. I want to talk a little bit about the accused products here. We've got two components of NCR Silver. We've got this front end where we have these terminals, these POS terminals.

I think we're all familiar with that. We go into the stores, and we see these terminals. There's two types for the NCR Silver program.

First of all, it's an Apple device. And that's when you decide you want to buy your own and use your own iPad. You go to the iPad store, the App Store and you download it and, boom, there's the app on your iPad.

The second way you do it, if you don't want to use an iPad, you can go purchase an Android™ tablet directly from NCR. It's already preloaded. It's already on the tablet and you receive it as a merchant and you fire it up. And it looks just like -- the screens look just like they do on the Apple and on the Android™ devices.

Now, the second part of the system is called the back end or what we call it at NCR the Back Office.

And this is where the merchant, okay, is allowed to go in. They go in and they have their own PC computer back in their

office, say, and let's say they've got -- the store owner has got multiple terminals and multiple stores throughout a location and they want to change. They want to modify. They want to update a price on a menu item, or they want to add one.

What they do is they go in this back server. You see that there's the PC browser, and they connect through the web server which shows them a page and then connects them to the application server, which is where our software resides.

That's where the merchant is now making changes. You can see it on the screen, and we're going to show you screenshots of how a merchant changes and enters this data back on these menu items. He does it. He saves it. And then he gets off the system and automatically the iPads are updated, or the terminals are updated with this new information.

So one point I just want to make clear to make sure there's no confusion. The customers here of NCR are not you and me, unless you own a store or retail place.

The customers are the merchants, and they purchase these products from NCR. They receive a complete prebuilt package.

They also receive what's called a concierge service. And that allows them to call up NCR and ask, with help, with this software.

And it's a great little service, and its offer is part of the program. Because this system is prebuilt, and they're going to need help, you know, changing and modifying and things

like the menu items.

And we're going to talk about a little bit later, one of the NCR employees, McGill Quinn, is a software engineer, is going to talk about part of his day-to-day job, unfortunately, is dealing with merchants who are constantly calling up and asking them to change these terminals. Okay? To change the software because they want to add different functionality.

It's something that cannot be done. They want to change a template. They want to see how they enter stuff.

The merchants cannot do that. They have to come back to NCR to add those changes to it.

Now, the software releases are also done by NCR, because, once again, the stuff is already on the tablets. It's prebuilt, and if you want to change it to get bugs, NCR's the one who has to send out this information.

I'm going to show you a little clip here of an actual real-world user of the NCR Silver.

(Video played.)

MR. BAKER: Ladies and gentlemen, I actually hand picked this one because I've been to this place. It's a barbecue place in Tomball. It's a little north of town -- of Houston, and if you're ever in that area, stop by. Their barbecue is very good, and the chocolates, you can't imagine they're mixing those together, but make sure you leave with a nice little chocolate to take home.

All right. So let's talk about when NCR -- what it's been accused of. And we're going to go into the details in this case.

You didn't hear much details from Mr. Barr. That's because when you get into the details, you're going to find we don't infringe.

And also we're going to prove to you by clear and convincing evidence that these patents are invalid. He said, well, you know, two patents are invalid.

Well, that's because they're the same patent basically. They -- it's the same specifications. The same language with some slight modifications in the '012 when they had that issue.

So its same prior art is going to invalidate those same two patents.

Now, let's talk a little bit about patent claims.

Mr. Barr briefly mentioned them. They're important. Probably the most important part of this case are the patent claims, and you heard that Judge Fogel, when you guys saw that -- the video on how the patent system works when you're in the jury selection part. He talked about how important the patent claims are.

And I'm going to give you a little example, a simple example of a soccer ball patent. And here's a claim and the elements of this claim. You've got a preamble there of a ball comprising, made of leather, stitched together, filled with

compressed air and round.

Now, we're going to come back to that in a second. Let's talk about what the important claims are in the patents here.

There's a lot of claims here, ladies and gentlemen, and I'm not going to waste your time or mine. We could spend here all day. I've got a limited amount of time, and I'm going to focus on what's the most important.

And there are going to be three claims we're going to be talking about very briefly here today. The first claim is going to be this POS software builder, okay? And that means that they're going to have to prove that we meet the POS builder software limitation as it's been defined by the Court.

The second one is a web server. We call it the web server location limitation. And, again, where is the software located? It has to be located on the web server.

Again, same language in the other patent, the same claim. Again, that is why we're focusing on these two because they are overlap.

And then the third claim we're going to talk about is the system claim, which talks about the fact whether or not NCR supplies all the components of this system. And we don't. We only supply the software. That's why we don't infringe.

Okay. Going back to Judge Fogel.

So the claims are the boundaries of what the patent owner owns. He explained that each and every element must exist in

the accused product for there to be infringement.

Claims are made of words that act like a fence. When you compare claims to accused products -- or in this case NCR Silver POS product.

If NCR Silver does not meet one of these boundaries or claims, then there is no infringement.

Let's go back to that soccer ball patent. And we have an accused football here. And let's see if it infringes. Okay.

Claim 1: Made of leather. Well, it's made of leather, ladies and gentlemen.

Claim 2: Stitched together. It's stitched together, isn't it?

Element 3: Filled with compressed air? Meets that limitation.

The fourth one: Round. No. The football is oval. So it doesn't infringe.

Yes. It meets three of them, but the last one, it doesn't. So under our patent laws -- this -- there is no infringement.

Now, let's go back to the builder limitation and how it's been construed.

It says, system that includes POS builder software, which software must build POS terminals, ladies and gentlemen. It's a very important language we're going to keep emphasizing.

And why is that? Because CloudofChange here is arguing

that if you just merely enter this data into the iPad or on the Back Office, that's building the terminal.

That's not what building a terminal is under -- the way the Court has defined these things.

NCR's POS Silver is prebuilt, yes; but you're going to hear testimony, undisputed testimony. You can't change it. Even their own experts are going to say there's no software code that's being changed here.

Again, data entry is not building. See on the right? That's when you build something. You're actually changing the template. You're getting into the software code and you're moving things around.

You're going to hear testimony from the NCR engineer. You can't move things around, okay? Unless you call up NCR and ask them to do that for you.

McGill Quinn, he's the NCR software engineer. He's going to come testify. He's a -- worked for NCR for several years. He's got a BA in computer science, and he -- before that, he worked for IBM for 19 years. He's a co-inventor on five patents.

And what he's going to talk about is this, and these are facts. These are not opinions. He's going to tell you exactly how the NCR software works. He's going to say, merchants can't move buttons around on the screen. Simply can't do it. Merchants can't change menu layout, templates, fields for menu

items. And in order to make these changes, merchants would have to make a request to NCR to make these changes.

Now, data entry is so simple on these software programs, you could do it on a thumb. But if you want to change things more on the software on the template itself, you got to go get a software engineer. You got to change those lines of code and you've got to make these changes through NCR.

Now, here is an example of a screenshot we've been talking about. You probably are going to want to know, what does this back end look like? What does it look like when a merchant wants to make additions and changes to different fields here?

And you'll see this. Some of it, ladies and gentlemen, is not the greatest. It's hard to read some of this, like in category. It actually says dessert there, and there's a little button you can click on. And that gives you menu items you can scroll through and decide what type of category you want to put in.

That's already built in. You just choose which one it is.

Then you can put in pricing. That's the same thing. How much am I going to charge them? That's all saved as data and it goes back into our -- into the back end, and it updates the POS terminal system.

Same thing here. Again, another screenshot of what a user looks like. Now, it's important. Do you see all those template, all those items there? Like at the very top, it

says, extended items setup. And all these other varied menu items, how they're listed there: Availability, description, variation.

Those boxes, all that cannot be changed. Only NCR can move those things around and change them.

Now, Dr. Chatterjee, who Mr. Barr mentioned, yes. He is our expert. And he's a very good expert, in the sense that he's got Ph.D. at MIT. He's well-known in this industry, and he's been working in POS for most of his career. And he's going to come and testify and explain to you in greater detail how we do not infringe the -- all of the claims of the patents.

Now, Mr. Barr talked about this fact that prebuilt language is not in any of our manuals.

Well, of course it's not. That's -- it's really just because everybody knows it's prebuilt. It's just magical language.

But what is in our manuals -- when we describe how we're changing these menu items -- are this language here.

Look at this. Configure, edit, type, click, select. The same thing again from our manual. These are all words taken directly out -- showing how a merchant, if you want to change these -- what's in your menus, this is how you go about doing it.

Do you see the word "build" anywhere? No. It's not in there.

Let's talk about the second limitation. It's got to be installed where it runs on a web server. Our software, in order to meet this limitation, has to reside on a web server.

You're going to hear undisputed evidence from our -- you're going to hear evidence, that is, from our side that this application server is one where it's hosted. It runs on and it's installed on the application server, and Dr. Chatterjee's going to show you how that happens to be the case.

Now, I'm going to show you a little slide that Dr. Chatterjee's going to show you the difference in the web server versus an application server.

And this is important, ladies and gentlemen. A web server does certain things. It has software. It's very limited, and it pushes out these web pages through HTTP. And you see it there.

An application server though performs computations. It's where the brains -- it's got all the capability to perform all these very detailed software applications, and that's where our software resides. It can't reside on a web server. Web servers can't handle the computation needs of our software.

So because, ladies and gentlemen, we don't meet these two limitations, we don't infringe.

Now, the third claim is the system claims. Again, I alluded to this. Very quickly, we don't infringe because plaintiff must prove that NCR supplied all of these elements,

all the claims, in the asserted claims, all these products.

We only supplied part of the system, the software. And everything else is provided by others. For example, the cloud that Mr. Barr talks about, that's provided by Google. We don't provide that.

The PCs you saw working on the -- the works -- the merchants. We don't provide that. The merchants go out and buy it from somebody.

And finally Internet access, which is required of the claims. Again, NCR doesn't provide Internet access. The merchants have to go get that.

So because of that, NCR doesn't infringe.

Let's take a second to talk about invalidity, ladies and gentlemen.

Yes. These patents are presumed to be valid. There's no doubt about it. And we have a high hurdle to prove invalidity, clear and convincing evidence. That's okay, because, yes. These patents were issued by the United States government. But sometimes some things happen, and we are allowed, okay, as Judge Fogel said, as a party accused of infringement is entitled to challenge whether these asserted claims, patent claims are sufficiently new or nonobvious in light of the art.

That's all right. Just like if you're right, if you've been accused of trespassing on someone's land, you have the right to say, wait. I can't -- I didn't trespass. I didn't

cross the fence. Or, wait, that person doesn't own the property.

That's your right and that's a right that cannot be taken away.

This is no excuse, ladies and gentlemen. This is our right to defend ourselves in this lawsuit.

Now, Judge Fogel also talked about our patent system and what goes on. These patent examiners have a lot of work, and they have a lot on their table. And they're supposed to be charged with going out in part to find prior art that could potentially, you know, invalidate.

And sometimes, you know, things happen. Sometimes the examiners, you know, overlook things. And this is exactly what happened in this instance.

The patent examiners missed three pieces of U.S. prior art, U.S. patents. And they didn't get to consider it. Well, ladies and gentlemen, you get to consider it as the jury this week on whether or not these patents invalidate.

I'm not going to spend time on one of them, only two, again. It's called -- one of them are called Woycik and one is Brown.

And I'm going to go very quickly through this because in detail, Dr. Chatterjee's going to talk about why these patents are invalid.

Brown and Woycik are both clearly prior art. They're U.S.

patents. They were filed before -- excuse me -- before the inventions here, the '640.

Again, Dr. Chatterjee is going to talk about in detail why these patents are invalid.

Woycik you see that there's a computer-based ordering system. And here's just a high level, just a kind of claim of -- you see the similarities, the prior art Woycik and what the patents cover; and, again, these are figures from both patents. You see the similarities. We've colored. We've highlighted them.

Woycik also talks about adding an item, as does the '640 and the '012 patents. The other patent, Brown, okay, it was again -- it was filed on January 23rd, 2007. And it too describes the same claim limitations we're going to show you that are in the patents in the '640 and the '012.

Let's talk a second about damages.

Now, let's just get straight to the point. No infringement means no damages. Patent's invalid, no damages. End of the story, ladies and gentlemen. We don't have to go any further than that in this case. But they've raised it, and I want to speak about it as we sit here today.

Now, Mr. Barr said they're going to bring Ms. Salters to come up on the stand and let her give her opinions of what she believes the plaintiffs are entitled to in this case, a reasonable royalty.

We've got our own expert, a Dr. Ikizler. He's a Ph.D. in economics from the University of Texas. And he's going to come in and say, she didn't do it right. All right? She was incorrect. She overstated what the amount of damage should be.

She ignored a lot of expenses that NCR uses every -- when they prepare their profit and loss statements, there's these expense items and Ms. Salters came along and said no, no, no, no, no.

And so what that did was it bolstered, it increased the amount of the gross profit margin. And because of that, she took a larger percentage of it.

She's saying that they are entitled to 38 percent of our gross margin on our products.

Yes. There may be hundreds of millions of sales, but at the end of the day, she's trying to grab a large chunk of it.

You're also going to hear from Kristin Schoonover. She is a long-time NCR employee. She's also worked on Radiant. She's not only going to tell you about the history of NCR -- excuse me -- the history of NCR Silver, but she's going to talk to you about these expense items and why Ms. Salters should not have deducted these, and why they were proper, and why NCR uses these expenses.

Just very briefly, ladies and gentlemen, I don't want to spend a lot of time on this notice letter. Not as much as Mr. Barr did.

There is a dispute on whether or not we received this notice letter. You're going to hear testimony that Mr. Gallagher -- that yes. He was the general counsel, but you're going to hear, was this the correct address? Was this the correct address for Mr. Gallagher? Okay.

There's a lot of unknowns here, and there's simply not sufficient evidence to say the fact that Mr. Gallagher got this letter. You saw. He didn't even sign for it. There was an R. Brees. Okay? There's no evidence, and this -- and it's their burden to prove that we got it and we received it and we didn't do anything about it.

Now, in summary, ladies and gentlemen, we're going to prove -- we're going to prove two things, that we don't infringe and these patents are invalid.

We don't infringe, and they're not invalid.

Now, you heard Mr. Barr talk about the fact that these inventions were not successful.

Ladies and gentlemen, I think we all know there's more unsuccessful inventions than successful inventions in this world. And unfortunately, theirs wasn't successful. But that doesn't mean NCR should have to pay a penny for their unsuccess.

They -- they're suing us, as you're going to hear, for millions of dollars. But we didn't do anything wrong. Okay? NCR, you're going to hear, did it the right way. They built

this product on their own. They launched it in 2012, and they get sued how many years later? Seven years later.

Now, CloudofChange is going to try to change things. What I mean by that is you remember when we talked about the boundaries of these claims, the fence and everything?

They're going to try to increase these boundaries so that they can try to include our product.

Don't let them do that. They're going to try to change the way they define these fences. You can't let them do that.

Just remember, ladies and gentlemen, there's all these separate differences in our product versus the claims. But at the end of the day, all that matters is, is there one missing? And we believe that, of course, we've met all of them. But just remember, if there's one missing, there's no infringement. Thank you, ladies and gentlemen.

THE COURT: Thank you, sir.

Mr. Barr, your first witness?

MR. BARR: Thank you, Your Honor. The plaintiffs call Quentin Olson.

(The witness was sworn.)

THE COURT: You can take your mask off from here, sir.

MR. BARR: May it please the Court?

THE COURT: Please.

MR. BARR: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. BARR:

Q. Could you please introduce yourself to the jury, sir?

A. I'm Quentin Olson.

Q. And what is your relation to this case, Mr. Olson?

A. I'm one of the co-inventors of the patent '640 and '012 patents.

Q. And you've got a notebook which we've handed you which has some of the exhibits that we're going to go over.

Do you have the patents in front of you?

A. Yes. I do.

Q. Okay. Is the -- which patent is the '640 patent? Do you see the number on that?

A. Oh, yes.

Q. What number is that, sir?

A. 064 (sic).

Q. And is that Joint Exhibit 1?

A. Yes, sir.

Q. Okay. And Joint Exhibit 2 -- let me, before we do that, let's look at that one.

MR. BARR: Sorry, Ms. Fastow. Put that back up. I apologize.

BY MR. BARR:

Q. So looking at the '640, we see a big, long number in the top right-hand corner, is that the full name or full number of the patent?

A. Yes. It is.

Q. And it says "date of the patent." What does that mean?

A. The date the patent issued.

Q. Okay. So let's go down. It has inventors?

A. Uh-huh. Okay.

Q. And who are the inventors of this patent, sir?

A. Wayne Baratta and Quentin Olson.

Q. And that's -- you're the -- you're that same Quentin Olson; is that right, sir?

A. Yes, sir.

Q. And what's the title of this patent?

A. Web-based point-of-sale builder.

Q. All right. And let's go to the next patent. That's the '012 patent. You see the full number in the right-hand corner 10,083,012. Do you see that, sir?

A. Yes.

Q. And, again, hitting the inventors. Who are the inventors of this patent?

A. Wayne Baratta and Quentin Olson.

Q. Okay. Now, also we haven't put in your notebook in front of you, but I want to draw your attention, remind you about what's called the file histories.

And I can ask Ms. Fastow, that I can perhaps put up the first file history for the '640 patent. And that is

Plaintiff's Exhibit 3 -- I'm sorry. Joint Exhibit 3. I apologize. Joint Exhibit 3.

Okay. What is the file history, sir?

A. That's all the actions that took place while the patent was being prosecuted.

Q. Okay. So when we say "prosecuted," that's not like a criminal case; is that right, sir?

A. No.

Q. The patent prosecution is the back-and-forth we've heard about between the Patent Office and the inventors; is that right?

A. That's correct, as I understand it. But I'm not an expert at that.

Q. Yes. Okay.

You're not an expert on patent law. Is that what you're saying?

A. Right, sir. Correct.

Q. So that's Joint Exhibit 3.

And we also have Joint Exhibit 4, the other prosecution history for the '012 patent. Okay. Do you recognize that, sir?

A. Yep.

Q. All right. Where do you live, sir?

A. I live in Port Townsend, Washington. That's kind of a small town out on the Olympic Peninsula in Washington State.

Q. And I'm sorry, I forgot to mention, and I've got it here. What did you bring with you today, sir? What is this document with the ribbon on it?

A. That's the actual issued patent.

Q. That's the '640 patent?

A. Yes.

Q. Is this the -- like the one you got from the Patent Office when it was awarded to you?

A. Yes, sir.

Q. Where in Washington do you live, sir?

A. It's probably -- it's up on the far northwest corner of the Continental U.S.

Q. How long have you lived there?

A. Port Townsend, I've lived six years.

Q. How far is Port Townsend from the Seattle area?

A. It's about a two-hour car drive and a half-hour boat ride.

Q. Is there a lot of water up there?

A. Everywhere.

Q. What do you like to do out there in Seattle -- in Port Townsend?

A. Well, of course there's a lot of water, so I do a lot of sea kayaking and hiking. The Olympic Peninsula's kind of interesting because it's a big mountain range that just kind of shoots up out of the ocean, so there's lots of good mountain

hikes and beach hikes and those kind of things.

Q. Do they have Killer Whales out there, sir?

A. Yeah. They do.

Q. Do you worry about that when you're out there in one of those kayaks?

A. No. Because I'm actually not very good at it, so I don't go out in the big water.

Q. Tell us where you grew up.

A. I grew up in Alaska. My family moved there in 1961 when I was four.

Q. What was the reason that your family moved to Alaska back in 1961?

A. My father was an architect, and he got a -- took a position with the BLM, Bureau of Land Management.

Q. What's the name of the town that you lived in in Alaska?

A. Eagle River, about 20 miles north of Anchorage.

Q. Does any of your family still live up there in Alaska?

A. Yes. I have one brother that lives in Washington and everybody else still lives in Alaska.

Q. Is your mother still with us?

A. Yeah. She's still there.

Q. Does she live in Alaska?

A. Yeah. She lives on her own. She's 95. Her and her

big dog.

Q. Do you have any other family?

A. Yes. I have two sons.

Q. Where do they live?

A. One lives in Seattle, he's a surveyor. And the other one lives in Phoenix, he's a would-be musician.

Q. What kind of jobs did you have in Alaska when you were growing up?

A. Lot of odd jobs. I really didn't do much until I left high school. After high school I took a year off and I got a really good job as -- in a freezer warehouse.

Q. Wait a minute. You're living in Alaska, but you wanted to work in a freezer; is that right, sir?

A. Yeah. The worst job I could find.

(Laughter.)

BY MR. BARR:

Q. So we've got a slide show here to just help show the jury a little bit more about you. It's kind of a timeline of your life and your work, starting with college. So did you go to college, Mr. Olson?

A. Yes. I did. I attended Oregon State University.

Q. Okay. What -- did you graduate from Oregon State?

A. Yes. In 1983.

Q. Okay. What year did you go to Oregon State?

A. I think I started in '78.

Q. What did you study there at Oregon State?
A. Mostly computer science and mathematics.
Q. Okay. Well, tell us about computers back in 1978.
A. There were no personal computers, only big mainframes. We started out working with card decks. That's where you punch a bunch of holes in a card in a -- something bigger than an index card, and you stack them all together and you hand them off to the computer operator --
Q. Hold on.
THE COURT: Why are you standing?
AUDIENCE MEMBER: I'm sorry, Your Honor. My back was hurting.
THE COURT: Thank you.
MR. BARR: Do you want us to proceed, Your Honor?
BY MR. BARR:
Q. Please proceed, Mr. Olson.
A. You hand those cards to a computer operator and about an hour later you get the results.
Q. How big were the computers that you were working with back in the '70s?
A. They were big. You know, they would fill this room.
Q. Were computers very common back in the 1970s?
A. Well, there were no personal computers. Really only in big corporations.
Q. What did you learn in your computer science class?

A. Back then, you know, computer science was obviously new, so they really didn't know how to teach it very well. So they mixed in a lot of math. They tried to teach you as much as they knew, which sometimes wasn't that much.

One thing I didn't do is take any public speaking courses.

Q. Well, when did you get your first computer?

A. I think it was in 1987.

Q. Do you remember what that computer -- what it was called, what brand name?

A. It was an Amiga which was actually a very great -- and it was a good computer, way ahead of its time.

Q. Let's talk a little bit about your jobs. So after you got out of college, what was your first job?

A. I got a job at a company called Advanced Control Technology which is right near where I went to school. And they did factory control systems.

Q. What is a factory control system, sir?

A. Everybody was trying to computerize at that point, so factories wanted to automate their operations, you know. They did wood mills and pipelines, those kind of things.

Q. And what particularly did you do for that system?

A. They had got a project with Amoco Oil who had an oil pipeline went -- ran from the south of Chicago up to Green Bay and then out to O'Hare Airport.

Q. Okay. We see on there that you left Advanced Control

Technology and went to a company called Control Systems International. Could you tell us about that experience, sir?

A. Control Systems was actually similar to -- they did the same kind of work. In fact, they were kind of competitors so the boss was kind of mad that I moved on, but...

Q. And what type of work did you do there at Control Systems International?

A. In the factory you've got a whole bunch of different kinds of devices on the floor, and a lot of them communicate in different ways. So I built them a mechanism that allowed them to plug in that communications so that they didn't have to rewrite their entire program every time somebody added a new device.

Q. Okay. How long did you work for Control Systems?

A. Just a year.

Q. Where did you go to work after that?

A. After that I moved to Denver and took a consulting job with Cap Gemini. Cap Gemini is one of the bigger accounting firms.

Q. How large is Cap Gemini location-wise?

A. Actually headquarters are in Italy. They're huge. Thousands of employees.

Q. And what was your job for Cap Gemini?

A. I took a couple of consulting projects. They also did IT consulting. So I -- first job was writing test scripts

for some application that I don't remember anything about.

Q. Could you tell us what a test script is?

A. When you write a computer program, you need to figure out if it works right. So you have to test it. Test scripts, just like it sounds, it's a script of processors or operations that you do so that you can repeat those tests so that, you know, one person can run them and then the other person can run them, and they're all running the same test and it's all consistent.

Q. What did you do when you left Cap Gemini?

A. After Cap Gemini I got a job with a company called JPMA which stands for James P. Magee Associates.

Q. Where were they located?

A. They were in Golden, Colorado.

Q. And what type of work did you do for JPMA?

A. JPMA developed point-of-sale systems. This was my first exposure to point-of-sale systems. They had cut a deal with Siemens Nixdorf in Germany where Siemens would license their software. So they were ramping up their team and that's how I got hired.

Q. So it was approximately in the late '80s that you first got involved with point-of-sale systems?

A. Yes.

Q. Okay. And what was your particular role there at JPMA?

A. You heard us talk about the point-of-sale. That's the device that the cashier uses. And then in the Back Office where all the data is accumulated and the reporting is done. I implemented the networking between the point-of-sale and the Back Office.

Q. So is that how -- when you talk about implementing the network, is that how the point-of-sale and the Back Office would communicate?

A. Correct.

Q. I see there's a picture of an airplane here on this slide. Can you tell us about that in your work for JPMA?

A. As I said, Siemens Nixdorf was, or is, kind of the IBM of Europe, so they had offices all over Europe. So as the product matured, we made a lot of trips over there to, you know, teach them about the system and gather requirements. So I ended up going to Switzerland, Germany, Netherlands.

Q. Did you like that travel?

A. Yes. I did.

Q. The jury's heard a lot from the lawyers about point-of-sale. Could you explain generally what a point-of-sale system is?

A. You know, a point-of-sale facilitates, you know, a monetary and product transaction between a retail store or a restaurant and a person like us.

Q. Where did you work after you left JPMA?

A. After JPMA I took a job for a company called TCI, Telecommunications, Inc., and they were the biggest cable TV operator in the country at that time.

Q. What was your job for TCI?

A. That was during the transition from analog to digital television. So they ramped up or started a new team to take on that effort.

Q. Were these those set-top boxes that we used to see?

A. Correct.

Q. Okay. And did you have a team there at TCI?

A. Yeah. There was about 50 of us programmers and testers to implement the project.

Q. Tell us the kind of computers that you were using back in the '90s at TCI.

A. Well, they were smaller than the ones I used in college, but they were still about seven foot tall and three feet across. And we had about half a dozen of them.

Q. Was it easy to work on those computers, sir?

A. You really had to know what you were doing.

Q. Starting in 1999, on your timeline there we see a logo there that everybody's familiar with, and that's the Starbucks logo. Could you tell us about your work at Starbucks, sir?

A. Yeah. I took a position at Starbucks. You know, I'd been programming my whole life. I thought I would try

something in the support or administration range, or area.

Q. So we're going back to 1999. That's when you worked for Starbucks?

A. Yes.

Q. How big was Starbucks back in 1999?

A. They had just gone over 3,000 stores.

Q. Now, explain to us what you did over there at Starbucks.

A. So they had 3,000 stores. Each store had a number of point-of-sales in them and a server in the back room where all the sales went and where they were able to control the POS. And then they needed to get all the sales data to corporate in Seattle.

So a consultant had implemented a store support system which was basically a whole bunch of modems. If you don't know what a modem is, you have to have a modem on -- to talk between two computers. You know, one would dial up the other and move data back and forth. But you got to be at least 40 years old to know what that means.

Q. Is a modem one of those things that makes that funny little high-pitched noise when you use it?

A. Yep, yep. So we had a bank of 60 of them. Yeah. You didn't want to be in that room.

Q. And what were the point-of-sale terminals like in the early days at Starbucks?

A. Actually, the -- what a cashier sees is really pretty similar to what you see today, but they were bigger, a little bit slower. The overall application between the server and the point-of-sales was really pretty old. It was kind of like a dinosaur.

Q. Did the Starbucks stores have -- each of those stores have a server back then?

A. Yes.

Q. Where were those servers located?

A. If they had a back room, back office, you know, or another room, they'd put it in there. Sometimes they just had it under the counter.

Q. And what did those servers that were in those local stores do?

A. In this particular point-of-sale architecture they were required. They had to be up and running all the time in order for the POS to work. So they enabled the POS operation, but they also provided reporting.

Q. What was the name of the team that worked on the POS servers -- or POSs in the Starbucks stores?

A. This -- the POS was actually developed by a third party so there were no programmers working for Starbucks that messed with the POS.

Q. Who would handle problems with the point-of-sale systems at Starbucks?

A. They had a big technical team.

Q. Did that team have a name?

A. Well, the -- there was a configuration team that managed what was going on in the store. You know, Starbucks, since they're all over the country and they source all their things locally, their muffins and all that kind of stuff, you had to be able to manage all that information from corporate. So there was a configuration team that handled that, along with how the POS worked.

Q. Okay. I know you weren't on the configuration team, but did you work in conjunction with them or work with them?

A. Right. Since I was responsible for getting all that data back and forth, I had many meetings with them, you know. If they had a big update going out, I would have to plan for that and make sure everything was working correctly.

Q. What types of training did those people on the configuration team have to have?

A. They were pretty technical. You know, there was a lot of stuff to take care of. Like I say, there was the screen layouts, there was the items, you know, the items specific to locations.

Starbucks was pretty good at -- is pretty good at promoting from within. So a lot of the people were, you know, people had worked in stores and worked their way up into corporate, but they were highly trained.

Q. So Starbucks back in those days, if Starbucks needed to change, add a new menu item or change something on their point-of-sale menu, could you just generally tell us how that would go about happening?

A. Yeah. Marketing would come up with the new products. There was always the seasonal stuff, the egg nog lattes, you know, in wintertime and all that. So marketing would push those requests down to the configuration team, and they'd figure out how to -- how to add it and what kind of data needed to be modified.

And then they would tell me what their plans were as far as pushing those changes out. Typically what they'd do is they would just do a few stores at first, and then they'd let that sit for a while and make sure nothing breaks. And then they'd start pushing out in larger increments.

Q. Was that a quick process that you just described?

A. No. It was very cumbersome.

Q. How long did you work for Starbucks?

A. About three years.

Q. Why did you decide to leave Starbucks?

A. I lived in Poulsbo, Washington at the time which was about a one-hour car drive and then a boat ride over to Seattle. I had two young kids at the time and I was just kind of getting tired of that commute, even though I did like going to Seattle. And the other thing, I kind of wanted to break out

on my own. I had a lot of ideas I wanted to stretch out.

Q. So after you left Starbucks --

THE COURT: Mr. Barr?

MR. BARR: Yes, Your Honor.

THE COURT: I was trying to find a good place to take a short break. And this, as we transition from Starbucks, maybe this is it.

Ladies and gentlemen of the jury, a couple of things. We're about to take a short recess. You may not discuss the case amongst yourselves while you're on a break. You can talk about whatever else you like, the Cowboys or whatever it is you all talk about back there, I don't know. But you can't talk about the case until you begin your deliberations.

Other than that, though, you are dismissed for a few minutes.

THE BAILIFF: All rise.

(Jury exited the courtroom at 10:35.)

THE COURT: You may step down, sir.

Anything we need to take up, Mr. Barr?

MR. BARR: I was just wondering how long the break was going to be, Your Honor.

THE COURT: Ten or 15 minutes. I let you guys go, do whatever you need to do, and I check and make sure you're all back in. And when you are, shorter the better, but whatever. Y'all have stuff to do on break, so...

MR. BARR: Thank you.

(Recess taken from 10:36 to 10:48.)

THE BAILIFF: All rise.

THE COURT: Please remain standing for the jury.

(The jury entered the courtroom at 10:49.)

THE COURT: Thank you. You may be seated.

Mr. Barr, if you'd recall your witness.

BY MR. BARR:

Q. Mr. Olson, I'm going to ask you to speak up a little bit. You're behind all that glass, and I'm having a little hard time hearing you.

A. Okay.

Q. So try to speak into the microphone.

A. Okay.

Q. Right before we broke we were talking about what happened after you left Starbucks. Do you recall that, sir?

A. Right. I wanted to go out on my own and work for myself.

Q. And what type of work did you want to do as a private consultant?

A. Well, practically, anything I could make money at. But I initially found a couple of contracts to develop device drivers, you call them. Point-of-sale systems have different kinds of printers and different kind of devices, scanners, scales. So I found a contract with a couple of companies to

build those device drivers, programming them.

Q. Did you work on any other point-of-sale systems as a consultant?

A. Yeah. As a side project I decided to start working on my own point-of-sale. You know, I'd been exposed to point-of-sale over the years so I knew what they did, how they needed to work. And I thought that would be a good long-term money-making proposition.

Q. What were the goals that you had for your point-of-sale system, sir?

A. Flexibility and enterprise functionality. Flexibility means that the POS could support multiple business types. Grocery stores, you know, coffee shops, without a whole lot of modification.

Q. What about enterprise functionality? What does that mean, sir?

A. Enterprise functionality is what you need if you're ever going to move into -- work with the big guys. You know, companies that have hundreds of stores or thousands of stores, you need to be able to manage your data so that you can change it, modify it across those different stores. That's kind of what I learned from Starbucks.

Q. Could you tell us generally what you did in regard to your early point-of-sale system?

A. Well, first I designed the data structures. You

know, I -- to be flexible. You had to have a flexible way to hold all your data. Retailing or point-of-sales can get really complicated. You've got a lot of different ways to handle your pricing, the different item types. And so your system had to be -- the database is kind of the fundamental piece that kind of defines -- takes -- tells you how far you can go.

So after that I developed the user interface which I wanted to be flexible so I could move things around and -- without changing too many -- too many things.

MR. BARR: Could I ask if y'all could publish the -- our little demonstrative to the jury, the one that we were looking at? I don't know if they can see the timeline. Can they see the timeline? We had it earlier on, I think, before the break.

There we go. Thanks.

BY MR. BARR:

Q. So after the interface display, what did you work on next?

A. Well, I started to realize that I needed a Back Office. Right now all I had was a standalone POS system, which is really just the box that a cashier uses. So I started thinking about how to -- how I might want the Back Office to work.

And right around that time I got the idea that, you know, I don't really want to build a server. I didn't want to put it in the store, because that was a, you know, major expenses for

other retailers. They -- you know, they had to have that server. It was just more expensive. And then they also had to learn how to use it. And a lot of them -- a lot of the systems out there -- and, again, I learned this through Starbucks, the Back Office server was complicated to use.

So I decided to put that server function in a web server out in the Internet.

Q. And what would putting the server function on a web server in the Internet allow you to do if you're a store owner?

A. Well, from a store owner's standpoint, it's great. You know, all they have is that one POS in their store, and they don't have to worry about complex networking, you know, in their office breaking and all that kind of stuff. So they save the money and they save the time and the hassle.

The other good piece about having an application on the Internet is that you don't have to update all of these servers if you change something. You change it once and everybody gets the modifications at once.

Q. If you're using a server on the Internet, does the merchant have to have a server locally in their store?

A. No. They don't. That's the whole point.

Q. Did you do anything to try to promote your business as a computer consultant?

A. Yeah. As a computer person, I read this -- read a few magazines, and there's one in particular called the Linux

Journal.

So I wrote them a e-mail and said, hey, I got an idea for an article. And they said, that's great. Send it to us. So they published it, and then a year or so later, O'Reilly Magazine published it on their website.

Q. So after you got some publicity out there, I see we've got on our timeline a reference in the 2003 to 2005 period to eTaxi USA. Can you tell us about that?

A. Yeah. A father-son team in New York City had been doing a lot of work with Medallion Taxi Cabs, those are the cabs that you hail, you don't call them up on the phone.

And they wanted to put a payment system in cabs, right -- you know, at that time you could only pay with cash. So they wanted to put a credit card system in their cab, and that consisted of a large screen in the back seat for the passenger, and then a smaller screen up front for the driver to input fares. So when the ride was over, the driver would put -- input the fare.

The passenger, you know, got -- saw all that stuff. He was able to input a tip and then swipe their card.

Q. I see there on the timeline you've got 2003 to 2005 with eTaxi, and then you've got 2003 with a little light bulb, idea for remote server.

Were those things happening pretty close in time?

A. Yeah. Everything was -- you know, I would work

remote. So nobody really knew what I was doing. So it was easy to overlap things.

Q. So when you were working for the eTaxi in New York City, where were you working?

A. I was in Poulsbo, Washington.

Q. So you were on the West Coast, and the eTaxi was on the East Coast?

A. Right.

Q. How did that taxi system work, generally?

A. As I said, the driver would input the fare. The passenger would see the fare on his screen. He could put a tip, swipe his card. It also had a lot of content, you know, latest shows, that kind of stuff. Movie theaters.

Q. Was the system that you worked on for eTaxi ever implemented?

A. We built a prototype. Mr. Bloomberg took a ride in it. He liked it. But about that same time New York put out an RFP, basically saying, here's what we want the system to do. And they sent it out to all -- everywhere. So at that point we were kind of overwhelmed by big companies, so we weren't even in the bidding.

Q. Tell us about when you met -- the first time you met Wayne Baratta.

A. Wayne contacted me awhile after that. I think he was -- actually, he said he'd done a web search and maybe he

found my articles or something. But anyway, he called me up and he had this idea -- and he's a store owner, so he had cash registers, the ECRs that we've seen.

And he had an idea to capture the output of those and input them into a spreadsheet. He was -- every night he was printing out a receipt report that showed his daily sales, and he would input that into a spreadsheet to figure out what happened. And he did -- you know, that was not fun work.

Q. So did Mr. Baratta contact you about doing some computer consulting to help him?

A. Yeah. He wanted me to build something that would automatically capture that data and populate a receipt or a spreadsheet.

Q. Did you end up doing that project for Mr. Baratta?

A. No. At the same time, again, currently, I was developing my POS and Back Office, and I started talking to him about that. And he got pretty excited.

Q. Okay. Did you and Mr. Baratta then start working on the POS together?

A. Yes. I was, you know, teaching him how it worked. We -- he'd say, okay.

He was a store owner, so he knew what a store owner needed to run his business. You know, I was a computer programmer, and even though I'd seen a lot of POS systems, I'd never, you know, run a store 24 hours a day. So his input was mainly

around how to make this thing really usable by a real person or real store owner.

Q. So you've talked to us about the web-based Back Office. Can you talk to us about what you guys developed together when Mr. Baratta got involved with you?

A. We continued to develop the Back Office.

The POS was pretty much done and worked for the most part. But what we really needed to work on was the Back Office and making it usable. You know, they needed to edit items and add items and departments, employees. So primarily we worked on getting that Back Office to a state where it could be used in the real world.

Q. So we look and get back to our timeline, we go to April of 2007 and we see something called Pretzelmaker. Can you tell us about that, sir?

A. Right. We finally got it to a point where we thought it was ready to go, and Wayne -- or found a man who owned about five Pretzelmaker stores. Now, these are the Pretzelmaker stores you see in a mall. You know, you go open them and buy a pretzel, and sell them for whatever.

So we installed it in his stores.

Q. So the Pretzelmaker stores in the -- in April of 2007, was the system that you installed in the Pretzelmaker stores, did it have the point-of-sale builder part yet?

A. No. Not at that point.

The POS arrived at the stores with all the software installed, prebuilt. And then in order for them to have the keys, the buttons on the screen that they -- to run their business, I would connect remotely into the POS and apply those modifications.

This was pretty cumbersome. Somewhat stressful. Because, you know, I didn't want to break their store, so they wake up the next morning and nothing works. So I -- there was a lot of pretesting. You know, the installation process was very manual.

Q. So if I owned a pretzel store back in those days, using your first iteration of your system, if I wanted to customize my menu like I talked about in opening statement, what would I have had to do back then?

A. You'd have to call Quentin.

Q. I'd have to call Quentin Olson?

A. Yes.

Q. And then what would you have done if I said, well, I want my menu to look like this and work like this, what would you have done back then?

A. I had a file that basically told the system how the buttons should work. But it wasn't anything that anyone would want to use, except...

Q. But you would have been the guy that if I wanted to hit my pizza button, and then have it ask me next about

toppings, and then have it ask me next about different cheeses, and then have it ask me next if I wanted anchovies or not, would you have been the guy that had to make all those decisions in putting that point-of-sale system together back then?

A. Yes.

Q. Okay. So how many stores did you guys get the pretzel -- well, how many pretzel stores were you able to put your early system without the builder in?

A. Well, we actually ended up hitting a couple of different businesses. We got into a few Little Caesar stores. A sandwich shop called Rising Roll. Maybe a couple of others. So I think we had like 15 to 20 stores online at one point.

Q. Tell us about how you got the idea, you and Mr. Baratta got the idea for the point-of-sale builder piece of this invention.

A. Well, because updates required manual intervention, we realized that, you know, 15 to 20 stores is fine. A hundred stores would be difficult. A thousand stores would be impossible.

So we said we've got to give the ability to the merchant to set up his system.

Q. So how did that come about that the idea came about for the builder?

A. Necessity. You know, Wayne and I worked a lot in

figuring out how to make the interface. That was probably the hardest part. How to make something that's easy to use for the merchant and easy to learn.

Q. Were you trying to take the programmer like you out of the picture essentially?

A. Yeah. Absolutely. Like I said, you know, the system would never scale to a thousand stores. Without them that -- without giving them that ability.

Q. And what types of things did you learn from Mr. Baratta about what needed to be developed into this point-of-sale builder?

A. Well, fortunately he was a store owner. He wasn't a technical person. So he was a good guinea pig as far as how the system should work.

Q. So would you guys talk about -- Mr. Baratta tell you how the system would work and then you'd figure out how to make it work with the computer?

A. Exactly.

Q. So next on our timeline we see 2008 as an important date. That's when the '640 patent was filed, February the 5th, 2008; is that right, sir?

A. Correct.

Q. And why did you decide, you and Mr. Baratta decide to file a patent on your idea?

A. Because we thought it was unique, and it was a lot of

work and we wanted to protect our intellectual property.

Q. How did you believe that your idea was unique from other things that were out there?

A. As I said, you know, I had a lot of experience in point-of-sale systems. And we looked around, did research and we really didn't see anybody else doing this particular architecture.

Q. When you say "architecture," you're not talking about this courthouse, right, sir?

A. No. Architecture in the computer world can mean a lot of things, but in this case, it means a point-of-sale in the store, talking to the -- over the Internet to a server, and then a web browser owned by the merchant managing his operation through that server. And not being in the store, he could be anywhere.

Q. And what about the builder part? How does that figure into the architecture?

A. Each merchant would have his own login to the website where he could manage his prices and get his reporting. The builder was an add-on to that website.

Q. Now, did you ever use this builder idea publicly or tell anybody about it before you filed your patent?

A. No. We were pretty good at working in parallel, working on the patents in parallel as our development.

Q. So I'm going to put up Figure 3. If we could publish

that. I think we have to the jury. Thank you.

This was what we showed in opening statement. Could you walk us through what we see here?

A. Well, let's look at the big boxes on the outside, the orange, blue and green.

Start with the orange box. That's the merchant accessing our website through a web browser. So he could be anywhere. He could be on vacation. He could be in the back room of the store. And that's where he manages his operations. So that -- that web browser is pointed at our web servers, where the Back Office application runs, including the web-builder application.

So once he makes his changes, adds his buttons or whatever, he presses save. And those changes go immediately to the POS, where that -- those changes take effect. So you could be standing there in front of your POS, he adds a new type of pretzel, and that pretzel button would appear on the POS.

Q. Kind of walk us through the rest of -- so we started with the, I guess, orange box. What are we seeing in the cloud-shaped box?

A. Yeah. In the cloud is where our web servers run. That's where our application is installed. And the green boxes on the left are the -- that's -- those are those POS terminals that are installed in the store.

Q. So the POS terminal, those iPads that we see there, is that the -- that's the piece that the merchant in the store

is operating and flipping back towards the customer so they can see that they ordered a cheeseburger?

A. Yeah. The cashier -- that's the cashier's interface to the sales operations.

Q. So the '640 patent issued in 2016. Do you recall that from the last slide we looked at?

A. That's right.

Q. What was your -- was that your first patent that you ever got?

A. Oh, yeah.

Q. How'd you feel about that?

A. Well, I was surprised because it took awhile for it to make its way through the Patent Office.

So I was surprised. You know, after awhile it sunk in. I got -- felt pretty proud and happy. Called my mother. Told her about it. She didn't believe me.

Q. Did you and Mr. Baratta assign your rights to the '640 patent later?

A. Yes. We did.

Q. And who did you assign those right to?

A. CloudofChange.

Q. I'd like to put up Plaintiff's Exhibit 185. If you could identify that. I think it's in your book, if you could flip to it.

A. Okay.

Q. Okay. Flip through -- is that the patent assignment, sir?

A. Yes. It is.

Q. And could you find if your signature is on there?

A. It's on the -- on the third page.

Q. All right. That's your signature.

So today who owns the '640 patent?

A. CloudofChange.

Q. And also the '012 patent, is it also referenced in this same assignment agreement?

A. That's correct. It's a little bit hard to understand, but it's referenced on the first paragraph on the final page.

Q. Okay.

MR. BARR: If you could highlight that first paragraph.

BY MR. BARR:

Q. Now, who owns CloudofChange? Are you one of the owners of CloudofChange?

A. Yes. A part owner.

Q. All right. Is Mr. Baratta one of the owners?

A. Yes. He is.

Q. And there's some investors that -- and owners as well?

A. That's correct.

Q. Did you -- after you got the '640 patent, did you and

Mr. Baratta continue to work together on point-of-sale systems?

A. Yes. We did. You know, as we -- it was -- the system was always evolving. Customers would have requests for modifications.

Q. Did you continue to try to develop other patents?

A. Yes. We did do a couple of additional patents.

We added some additional video processing functionality to the system, and we patented that.

Q. Okay. And the '012 patent we already talked about. Could you tell us just a little bit about that patent?

A. Well, it's -- it's really, it's pretty much the same specification between the two patents. The big difference in the '012 is that we tie in transaction processing and how the builder provides that functionality.

MR. BARR: Your Honor, at this time the plaintiffs would offer Plaintiff's Exhibit 185.

MR. PHIPPS: Your Honor, no objection.

THE COURT: Sustained.

MR. BARR: Thank you, Your Honor.

BY MR. BARR:

Q. Now, you mentioned that CloudofChange owns the patents today and that you are one of the owners of CloudofChange. So if you're successful in this lawsuit, do you benefit from that, sir?

A. Yes.

Q. Are you still working to develop technology in the point-of-sale area, sir?

A. Yes. I am. I've got a completely new product, point-of-sale again, and it really runs on more modern hardware.

Q. Why are you doing that, sir?

A. Because there's still a need.

Q. You still see a need for the technology?

A. Yes.

MR. BARR: Pass the witness.

THE COURT: Mr. Phipps?

MR. PHIPPS: Yes. Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. PHIPPS:

Q. Mr. Olson, good morning.

A. Good morning.

Q. You gave a deposition in this case in January of 2021, correct?

A. Yes.

Q. And you testified on behalf of --

THE COURT: Counsel, just ask him a question. If he says something that's inconsistent with the deposition, you can bring it in then.

MR. PHIPPS: Okay. Thank you, Your Honor.

THE COURT: It's of no moment.

MR. PHIPPS: Okay.

BY MR. PHIPPS:

Q. You observed web-based architecture being deployed in 2002, didn't you?

A. That would be called the Internet.

Q. Yes.

MR. PHIPPS: And if we could pull up Slide 5 from the presentation of the opening -- or I'm sorry. Slide 5 with the timeline that you used with Mr. Barr.

A. Should I be seeing something?

BY MR PHIPPS:

Q. Yes.

A. I'm sorry. Okay.

Q. Let's see if we can get that up here.

MR. PHIPPS: On Slide 5. Do we have that?

MR. BARR: I think that's the one that's up, sir.

BY MR. PHIPPS:

Q. I don't see it on the screen. Oh, there it is.

So in 2002, you observed that there was prior art web-based activity that included Amazon, and they were a web-based seller, correct?

A. Can I judge that it was prior art? No.

Q. Okay. In 2002, you observed web-based architecture being deployed, correct?

A. Yes.

Q. And that prior art activity included Amazon, correct?

A. I don't know -- I wouldn't say so.

Q. Could we look at your transcript, Page 83, Lines 9 through 14?

Okay. Mr. Olson, Line 9, I asked you this question: You had observed web-based architecture being deployed in commerce in 2002?

Correct?

A. Yes.

Q. And you answered: Yes, but really only in the guise of what Amazon was doing and other web-based sellers.

Correct?

A. Correct.

Q. Okay. And so going back to the timeline, I've put an "A" in there for Amazon in 2002 doing web-based activity. And you admitted that there was a lot of activity then, didn't you?

A. Yes.

Q. Now, during your days in college, you didn't do any studies that related to POS systems, did you?

A. No.

Q. In 1999, you moved to Seattle to work for Starbucks?

A. Correct.

Q. And Starbucks already had --

THE COURT: Mr. Phipps, at least I'm -- maybe not the jury, but at least I am having a hard time hearing you. Could

you pull the microphone over?

MR. PHIPPS: Yes. Thank you, Your Honor.

THE COURT: Just, if you'll try it one time. I just -- I'm having a hard time.

Are you all able to hear him? Okay. They're having a hard time too. I'm sorry. I hate interrupting people.

MR. PHIPPS: Oh, no problem, Your Honor.

THE COURT: That's much better.

MR. PHIPPS: Okay. Great.

BY MR. PHIPPS:

Q. And Starbucks already had a POS system in 1999, correct?

A. Yes.

Q. Okay. If we could go to Slide 4.

Okay. So I need to erase this.

And I'm just going to put a coffee cup there. I'm not an artist. Okay.

So we have Starbucks in 1999. They already had a POS system. And did that system allow them to manage transactions?

A. Yes.

Q. Did it allow them to manage their inventory?

A. Yes.

Q. Did it allow them to manage their content?

A. Yes.

Q. Did they have POS infrastructure?

A. Yes.

Q. Okay. So let's look at Slide 11 from the opening.

Okay. I'm sorry. It's the next slide I believe.

Okay. So we had just talked about Starbucks having transaction management, inventory management, content management and POS infrastructure. And that existed, as you testified, in 1999, and that was in the prior art, correct? That was before you were awarded, correct?

A. It was before. Yes.

Q. Okay. I'm just typing in prior art.

Okay. POS devices that displayed a menu did exist in the prior art before you started working on your POS system, correct?

A. Yes.

Q. You did not invent the Internet, did you?

A. No.

Q. You did not invent the worldwide web, did you?

A. No.

Q. You did not invent any technology concerning Internet access, did you?

A. You mean any of the core worldwide web technologies? No.

Q. Okay. When you set out to develop your POS system, one of your objectives was to build a very flexible system which you testified meant that it could be changed easily to

work in a grocery store or a barber shop or whatever, correct?

A. Yes.

Q. And one of the items in the opening slide was that it should be flexible, correct?

A. Yes.

Q. When you first contacted Mr. Baratta, you were located in -- and I'm sorry. I can't pronounce it correctly. Poulsbo?

A. Poulsbo, as in the name Paul.

Q. Thank you, Mr. Olson.

And that was located in -- and Mr. Baratta was located in Poughkeepsie, New York?

A. Correct.

Q. Okay. As part of your initial effort with Mr. Baratta, you mentioned to him that you had a standalone POS, but it was really just the POS part. It didn't have a Back Office, correct?

A. Correct.

Q. In 2005 you and Mr. Baratta started kicking around the idea of a web-based Back Office, correct?

A. Well, actually, I had a very elementary start on a Back Office in the 2003 time frame.

Q. Okay. But in terms of you and Mr. Baratta, you started working with him in 2005?

A. Yes.

Q. Okay. But you weren't the only ones using the web to, you know, get things done, and you acknowledged the existence of Amazon, didn't you?

A. Yes.

Q. You believe that you had the only web-based POS systems in existence at that time, correct?

A. Yes.

Q. You did acknowledge the existence of Amazon, but indicated you believe that you were the only POS system using the web to get things done, correct?

A. Correct.

Q. At that time you were not aware of any other POS system that had a remote server, were you?

A. No.

Q. Okay. At the time you filed your patent application that led to the two asserted patents, and even as of the date of the '640 patent issued on July 16, 2016, neither you nor Mr. Baratta were aware of the existing prior art Woycik patent or the prior art Brown published patent application, were you?

A. That's correct.

Q. The Woycik prior art reference was filed on May 1st, 2007, but neither you nor Mr. Baratta were aware of it even as late as 2016, correct?

A. Correct.

Q. As of July 26, 2016, which is when your '640 patent

issued, neither you nor Mr. Baratta were aware of NCR's own prior art patents concerning POS technology, were you?

A. Correct.

MR. PHIPPS: Okay. Those are DTX-51 and DTX-52, if we could pull those up.

And I don't know how to --

(Off-the-record discussion.)

BY MR. PHIPPS:

Q. You can see here that this is a prior art patent in 2003 by NCR Corporation. Do you see that, Mr. Olson?

A. Yes.

Q. And that's DTX Exhibit 52. And then we have another prior art NCR Corporation patent, DTX-60 -- or 51.

A. Yes.

Q. Okay. And you weren't aware of either of those patents, correct?

A. No. But I would say that these patents --

Q. Mr. Olson, I'm sorry. Could you just answer yes or no?

A. No.

Q. Your counsel will have a chance to come back and ask questions. Okay.

MR. PHIPPS: And then if we could look at DTX-50, which is the Woycik prior art patent. Okay.

BY MR. PHIPPS:

Q. And you see DTX-50?

A. Yes.

Q. Okay. And that is the Woycik prior art patent application that we'll refer to during this case as prior art.

And then also as to the Brown prior art reference, which was filed in January of 2007, neither you nor Mr. Baratta were aware of its existence even as late as 2016, correct?

A. Correct.

Q. All right.

MR. PHIPPS: And that is DTX-58. If we could pull that up here.

BY MR. PHIPPS:

Q. And this is the Brown prior art reference that we're going to be relying on.

MR. PHIPPS: And, Your Honor, these are government records. And I'll move the admissions of DTX-50, -51, -52 and -58.

MR. BARR: No objection, Your Honor.

THE COURT: They'll be admitted.

MR. PHIPPS: Thank you, Your Honor.

BY MR. PHIPPS:

Q. Now, let's talk about your development efforts, Mr. Olson.

In terms of your role in the asserted patents compared to Mr. Baratta, you're the technical programmer. And you would

consider Mr. Baratta to be the idea guy, correct?

A. Sure. Yes.

Q. In terms of development efforts by you and Mr. Baratta, you got together, decided how you both wanted things to work. But there's really no documentation, no drawings. That was kind of -- it was kind of a low-key operation, correct?

A. That's correct.

Q. Your first pilot with Mr. Baratta was at a Pretzelmaker store, correct?

A. Yes.

Q. Okay. There were a couple models of Pretzelmaker stores in Connecticut, correct?

A. Correct.

Q. In those Pretzelmaker stores, you installed POS terminals made by IBM, correct?

A. Yes.

Q. Those IBM terminals included integrated touch screens, correct?

A. Correct.

Q. You placed that IBM POS in a pretzel store in late 2005, maybe 2006, correct?

A. Correct.

Q. You had a remote server connected to those stores, correct?

A. Yes.

Q. Okay. Your remote server was in your office in Washington, correct?

A. Yes.

Q. Okay. The IBM POS hardware was -- with an integrated touchscreen that was in a pretzel store in Connecticut communicated with your remote server in Washington over the web, correct?

A. Yes.

Q. You didn't have to modify the IBM POS terminal in order for it to be able to communicate over the web, did you?

A. Yes. To some extent. We installed our own operating system on it.

Q. Okay. And if I could look at your deposition testimony, Page 40, Lines 8 through 10.

A. Okay.

Q. And I asked you this question, Mr. Olson: Did you have to modify the IBM SurePOS to communicate over the web?

And you answered: No.

Correct?

A. Well --

Q. Mr. Olson, did you answer no to that question?

A. I did answer no.

Q. Thank you, Mr. Olson.

It came with the ability to communicate over the web,

correct?

A. Yes.

Q. Okay. That was not a POS builder system, was it?

A. No.

Q. The owner could change prices in the system, couldn't he?

A. Yes.

Q. And he could also add tax rate, correct?

A. Yes.

Q. You don't consider that data entry to be building, do you?

A. You want a yes or no?

Q. Yes.

A. No.

Q. Okay. You did not invent the protocols that were necessary for the IBM POS terminals at the pretzel stores to communicate with your remote server, did you?

A. Say that again, please.

Q. You did not invent the protocols that were used?

A. No.

Q. Okay. Thank you.

In terms of your efforts to develop a product with Mr. Baratta, there were only two products, an InteRegister and a VideoRegister, correct?

A. Yes.

Q. Okay. You admit that both of those products were discontinued before the '640 patent issued, correct?

A. Yes.

Q. To your knowledge, at the time of your deposition those products were not profitable, were they?

A. No. They weren't.

THE COURT: Maybe it's just me. Are y'all able to hear him?

If you'll stay close to the microphone.

BY MR. PHIPPS:

Q. You and Mr. Baratta did not develop an iOS version of your products, did you?

A. No.

Q. No one has licensed your patents, correct?

A. No.

Q. You acknowledge that the business plan of your company, Tyramm, listed three entities as competitors, don't you?

A. Yes.

Q. Tyramm is a predecessor of plaintiff CloudofChange. It listed three competitors, Micros, Radiant Aloha and Maitre'D, correct?

A. Yes.

Q. You acknowledged that the competitor, Micros, was in the prior art and was an old well-entrenched POS system, didn't

you?

A. Yes.

Q. You understand that the prior art, Micros POS system, was an all-in-one POS that had a local server, correct?

A. Yes.

Q. You acknowledge that Micros had a lot of systems deployed, correct?

A. Yes.

Q. Okay. You acknowledge that Radiant Aloha was a competitor and had an all-in-one POS with a local server, correct?

A. Yes.

Q. You acknowledge that Maitre'D had an all-in-one POS and a local server, correct?

A. Yes.

Q. You didn't consider any of those three competitors' POS systems with local servers to be web-based, did you?

A. No.

Q. Let's talk about NCR. You first became aware of NCR by seeing NCR POS systems in grocery stores, correct?

A. Correct.

Q. When I asked you during your deposition when you first received -- recall seeing an NCR POS system, you indicated that it may have been 40 years ago, correct?

A. Correct.

Q. And essentially that NCR POS systems have been there forever?

A. Yes.

Q. You consider NCR to be an innovator for POS systems, don't you?

A. Yes.

Q. You were not aware of NCR's own patents at the time you filed your patent application, were you?

A. Correct.

Q. Let's look at JTX-5 which is the letter sent by your counsel. At the time of this letter you had never heard of Mr. Ed Gallagher, had you?

A. No. I had not.

Q. In fact, during the entire course of your career prior to this lawsuit, you've never personally known anyone that worked for NCR; is that correct?

A. Not that I know of.

Q. At the time of your deposition you didn't know who selected the address for Mr. Gallagher, did you?

A. No.

Q. You don't know if the address was correct or if there'd been any followup by CloudofChange as to the letter, did you?

A. No.

Q. You admit that the letter mentioned only the '640

patent, correct?

A. Correct.

Q. Prior to sending the letter to NCR, no one at CloudofChange, including yourself, actually used NCR Silver, correct?

A. Not that I know of.

MR. PHIPPS: No further questions, Your Honor.

THE COURT: Mr. Barr?

MR. BARR: Thank you, Your Honor.

THE COURT: If you'll take your mask off, please.

MR. BARR: Yes, sir. Sorry. Kind of getting used to wearing it.

REDIRECT EXAMINATION

BY MR. BARR:

Q. Since there appears to be a little confusion with Mr. Phipps, let's just get something out of the way right off the top. Are you and Mr. Baratta claiming that you invented the point-of-sale system?

A. Not in any way.

Q. Okay. And to your knowledge did Starbucks, back in 1999, use the -- your invention for a point-of-sale system?

A. Did they use my invention?

Q. Back in 1999.

A. No, no. My visibility into Starbucks is what told us that a new solution was needed.

Q. Okay. And in 2008 when you filed your patent, did you have any reason to believe that Starbucks or Amazon was using your new invention before you filed your patent, sir?

A. No. No.

Q. And do you have any knowledge to believe that today, sir, at this time?

A. No.

Q. Okay. Now, going back to the Pretzelmaker stores, the early Pretzelmaker stores, did they have the builder part at that time?

A. No.

Q. Okay. Now, Mr. Phipps mentioned a couple other companies, Micros, Radiant and Maitre'D. Do you recall that?

A. Yes.

Q. To your knowledge, did any of those companies do it your and Mr. Baratta's way in accordance with your patents?

A. No. And, you know, we mentioned them as competitors because, you know, we wanted to go after their business because we knew we potentially had a better solution.

MR. BARR: Pass the witness, Your Honor.

MR. PHIPPS: No followup, Your Honor.

THE COURT: May this witness be excused?

MR. PHIPPS: Yes, sir.

MR. BARR: Thank you, Your Honor.

THE COURT: What that means is that you're -- occasionally

I will tell people that they are free to leave, but then it made it sound like I was asking you to leave. What it means is you're done as a witness. You're welcome to get off the witness stand. You're welcome to stay in the courtroom. You're welcome to leave. You're welcome to do whatever you'd like.

THE WITNESS: Okay. Thank you, Your Honor.

THE COURT: You're welcome, sir.

Next witness?

MR. BARR: Your Honor, the Court's procedures directed us to clean up the witness stand before we switch witnesses. Would you like us to do that now?

THE COURT: That'd be great.

MR. BARR: Thank you, Your Honor.

(Pause in proceedings.)

MR. BARR: Your Honor, at this time the plaintiffs would call Wayne Baratta.

THE COURT: You can take your mask off.

MR. BARR: Oh, sorry. Could we turn this mic down a little bit? I feel like I'm blowing everybody out when I'm standing close to it. Or maybe turn it off.

THE COURT: We can do that.

(The witness was sworn.)

DIRECT EXAMINATION

BY MR. BARR:

Q. Could you please introduce yourself to the jury, sir?
A. Yes. My name is Wayne Baratta.
Q. And what is your relation to this case, sir?
A. I'm a co-inventor of the '640 the '012 patents.
Q. Okay. And those are the patents that we see on the screen right now, sir; is that right?
A. That's correct.
Q. In your notebook, are those Joint Exhibits 1 and 2?
A. I don't -- do not have my notebook.
Q. I neglected to hand you a witness notebook. I apologize for that. And we've already shown the jury these patents. I'd like to ask you because I can't remember if I offered them.
MR. BARR: Could we throw up Exhibits 3 and 4, Plaintiff's Exhibits 3 and 4?
BY MR. BARR:
Q. These were the file histories that Mr. Olson spoke about. First, have a quick look at Exhibit 3 and Exhibit 4. Were these the prosecution involved, the prosecution of the patents, sir?
A. Yes, sir.
Q. So tell us where you're from, Mr. Baratta.
A. I'm from Poughkeepsie, New York. It's about halfway between Albany and New York City on the Hudson River, about an hour and a half from both of those.

Q. Is that's what's called Upstate New York?
A. Yeah. I believe it's considered upstate. Hudson Valley is what it's really known as also. Because the Hudson River runs through there.
Q. Okay. So it's not New York City that we hear about?
A. No.
Q. It's more rural?
A. That's right.
Q. Okay. Did you grow up there, sir?
A. I did. I grew up in Hyde Park, New York which is just north of Poughkeepsie. It's actually --
Q. Go ahead. I'm sorry.
A. It's actually where Franklin Roosevelt is from too. That's where people might have heard of that.
Q. Okay. Are you married, sir?
A. I am.
Q. Do you have any children?
A. I do. I have three children. I have an 18-year-old daughter, and I have identical 16-year-old boys.
Q. Do those twins keep you pretty busy, sir?
A. They do, yes.
Q. Are your parents still living?
A. Yeah. I'm lucky enough to have both parents alive. They're in their late 80s, and they live in Poughkeepsie also.
Q. Do you have any other family?

A. I have one brother who lives in Cary, North Carolina.
Q. What kind of jobs did you have growing up, sir?
A. My first job was a dishwasher at a restaurant.
Q. Okay. After that what types of jobs did you have?
A. Then I moved into -- I actually -- through that job, I connected with another store owner that had a convenience store in Fishkill, New York, and I ended up working for him. And I continued to work for him through the years.
And I attended college. I went to Cortland State which is in Upstate New York.
Q. Well, let's slow down for a second, because we've got to do this in a question and answer.
A. I got you. I'm sorry, sir.
Q. Maybe we could put the timeline on the screen.
Now, before we get to Cortland State, what do you like to do for fun?
A. Well, I enjoy like coaching my kids, my daughter's softball and my sons' baseball teams. I am a songwriter. I write some country music.
Q. Can you tell us about that, your country music songs?
A. Well, I've written over 100 songs. No great success. I did write one with James Otto, who's a country star. And that song actually made it as the theme song for a show called Nashville.
Q. Is that the famous -- is that the famous Nashville,

sir?

A. No. Unfortunately it's not the real successful show. It only lasted a few shows on Fox.

Q. I hate to say this, sir, but did it fail because of your song?

A. No. It did not.

(Laughter.)

BY MR. BARR:

Q. Mr. Otto, James Otto, does he have any other hits that we might have heard of?

A. "Just Got Started Loving You" he wrote. He's co-written a couple other songs too, like "In Color" by Jamey Johnson who's one of the co-writers on that also.

Q. All right. So now we're on the timeline. Let's talk about Cortland State University in 1984. Could you tell us about your college experience?

A. Sure. So I had no major going into my junior year, but I graduated with a dual major in economics and history.

Q. What year did you graduate?

A. In 1984.

Q. Did you work during college?

A. I did.

Q. What type of work did you do?

A. Well, I came right back to that store, because it worked out that it was busier in the summer. And also on the

holidays I was able to come home and work there also, like on Christmas break and other things.

Q. So you went back in college in the summer and you worked in this convenience store back in Fishkill, New York?

A. That's correct.

Q. Okay. What were your duties at that store?

A. I was a cashier, stocker, really whatever it took at the time. We had bottle redemptions there too, so I counted some empty bottles when they came in and gave receipts out. So a little bit of everything.

Q. Okay. What did you do after you graduated from college?

A. Well, I worked that same summer as I would normally to go back to school and save money. And a buddy and I went over to Europe, and we traveled around, did some backpacking. It was easy to do in those days, and really got some great experiences.

Q. Like when you could travel before COVID?

A. Yeah. That's right.

Q. So after you got back from your travels over in Europe and backpacking around with your buddy, what did you do next?

A. Well, I went back to the store and checked in with my old boss. And it turned out he was ready to retire and he liked me. He knew that I could run the store, so he wasn't

really interested in selling it outright. And so he held the mortgage for me. And I was able to pay him in time. I convinced my parents to mortgage their house to buy the inventory. That's the money we had to come up with, but --

Q. Let me stop you right there. So your parents were willing to make a loan to you to try to buy this business?

A. That's correct.

Q. And did -- were your parents involved with the business after they loaned you the money?

A. They were involved. They were, you know, parentally in it, you know, like watching over things and stuff like that. I was still a kid. But we worked as a team well.

Q. Do you still own that store today?

A. No. I do not.

Q. Why did you sell that store?

A. I essentially sold it so that my parents could retire. We kept it for about 20 years or so. And I was appreciative of what they did, and I wanted them to be able to kind of ride off in the sunset a little bit, so that's what we did.

Q. Were you able to purchase other convenience stores after your first one?

A. Yes. So that's another reason I was able to sell. I did have a few other stores at the time too.

Q. Okay. I'd like to ask you a little bit about your

experience as far as your duties at the store. What type of duties would you have in your convenience stores?

A. Well, as I said, like I was a cashier most of the time. Again, I was younger. But when I owned it, you know, then it was a matter of, you know, keeping track of things. Luckily when you're in a place and you're working there, you see things that maybe an older owner doesn't see that's been there forever. So I had a lot of good ideas and systems that I wanted to put in. So when I took over the store, I started -- I actually kept a lot better eye on it even than he did. And, you know, I was able to develop some systems because we did the same things over and over again.

Q. Well, let me stop you there. You heard when Mr. Olson was on the stand, you heard him mention that you had contacted him back in 2005. Could you tell us about why you did that?

A. Yes. So I used to take these register tapes out of the cash register at the end of the night. You'd turn the key to a Z and then you would print out a report. And that report was really just a piece of paper, and it's hard to look at it and figure out what you're doing. Now, when you have a bunch of them, it's confusing too.

So we -- I developed a system that we would put it into a spreadsheet, every day all the different sales. And then I would add up across for the week and for the month and made

like accounting. So we did -- like I said, we did the same things over and over again, and I realized that.

Q. What did you ask Mr. Olson -- or what did you want Mr. Olson to help you do?

A. I wanted him to help me get the information out of those registers in a more efficient way than me having to just do it by hand and type in and all those things.

Q. And what was -- how did you find out about Mr. Olson? Because you were on the East Coast in New York and he was on the West Coast, right?

A. Yeah. Just over the Internet I did a little bit of a search, looking for kind of realtime, you know, information thing and I came up with Quentin Olson. I don't remember the exact words, but fortunately I found the only guy in the world that was doing something like this.

Q. Well, your first idea, when you called Mr. Olson, it was really to do something with electronic cash registers; is that right?

A. That's correct.

Q. And was Mr. Olson interested in developing that idea?

A. No. He was not.

Q. Okay. So did -- what was Mr. Olson working on at that time?

A. Well, he mentioned that he had a POS terminal. It was kind of like a -- a little bit of an all-in-one, but it was

a touchscreen and -- with a computer in it and everything was in realtime when you did things. And he actually sent me out a terminal, and I was able to play around with it and was really impressed by it.

Q. Okay. So did you start working with Mr. Olson at that time? Working together to try to work on some ideas?

A. Yes. We did. Yes.

MR. BARR: Let's see the next page of our timeline.

BY MR. BARR:

Q. So we're starting here with Quentin Olson, and that was around 2005 when you met him; is that right, sir?

A. That's correct.

Q. Okay. So at the time that you met Mr. Olson in 2005, at that point did he have this point-of-sale builder that merchants could use to customize their own screens?

A. No. He did not.

Q. Okay. So tell us about -- we see on the slide it's got the Hudson Valley Center for Innovation 2007. Can you tell us about that?

A. Yeah. So that was like a government -- or a sponsor that -- incubator for people that are trying to develop businesses. And they give you some mentorship and some space and help you try to be successful.

Q. And did you -- well, first let me ask you. How'd you find out about that incubator?

A. I was mentioning it to a buddy of mine that actually worked at one of the banks that I banked with, and he told me about it. And I went and introduced myself to them and they liked --

Q. So did you and Mr. Olson -- did y'all -- or I guess Hudson Valley, did you set up in that incubator?

A. We did. Yes.

Q. And what did you do there when you were in the incubator?

A. We talked about getting that -- his POS ready to go, to be able to sell it to folks. And as Quentin mentioned, I have this store owner background, and it's just one of the things that I happen to be good at and know what people want. So we worked together developing some -- the POS to a point where it would be valuable for people.

Q. Did the incubator provide any money to help you guys out in the store?

A. No. They did not.

Q. Where did the money come from to get started?

A. A lot of it was my own money when I had it. And then eventually I brought friends and family into it to help out.

Q. Did you form a company to -- with Mr. Olson to sell your original point-of-sale system?

A. I did.

Q. What was the name of that company?

A. That company was Tyramm International.

Q. How did that name come about, sir?

A. It was kind of -- we were sitting around trying to think of things. And at the time -- you'd be surprised how many names are already taken. So it was an acronym. And I believe it stood for transactions remote access management and monitoring.

Q. Did you like that name, that acronym, sir?

A. No. I really did not like that.

Q. So when did you change the name?

A. We changed that in 2009.

Q. What did you change it to?

A. To InteRegister.

Q. And what does that name stand for?

A. It's kind of short for Internet register.

Q. Next thing we see on your slide is April 2007. We see the Pretzelmaker logo. Can you tell us about what you did with Pretzelmaker at that time?

A. Sure. So initially we were, you know, looking for -- we were -- I was thinking about my stores initially.

We started to work on those, and then it was, you know, a little bit of a bear with a thousand items or more in that type of store. And when we got the opportunity to get into a Pretzelmaker, and they had 20 items, it really was something that was attractive to us to be able to go.

And also the fact that the Pretzelmakers were all the same. It's kind of like an Auntie Anne's I guess around here. So if you did one, we felt that they could duplicate over and over again in other places too.

Q. Let me stop you there. So this is April, just to put us where we are in time, April 2007, you are trying to sell or sell your idea, I guess it was the point-of-sale system that you guys were working on, the early version to Pretzelmaker; is that right?

A. That's correct.

Q. And at that time did that early system have this point-of-sale builder yet?

A. No, sir.

Q. Okay. So next we look on, going down the timeline again, we see it 2007, 2008 was this idea for the builder. Can you tell us about that?

A. Sure. As Quentin mentioned, whenever someone needed a new button, like if they came out with a caramel pretzel or a type of different pretzel nugget or something, we would have to get in touch with Quentin and he would have to go in and build that key remotely.

And it was, you know, really cumbersome to do that and for him to do that, and we knew that if we really wanted to get big, if we wanted this thing to get out there, that people would -- needed that ability to go in and to be able to build

their own keys on the register. So that was...

Q. Okay. So what did you add to the idea then?

What were you -- you know, what was your -- you feel like you did to help Mr. -- you know, we talked about Mr. Olson. We've heard from him and his computer expertise. What were you bringing to the party, Mr. Baratta?

A. Well, I brought the store owner's perspective and really the idea of how it could work and how it should look, and we talked it out and figured out a way that was simple for people to be able to build their own keys. So, and like Quentin mentioned, I was kind of the guinea pig because I'm not, you know, an inventor, or I'm not technical rather, or a programmer at all. But I have a lot of ideas.

Q. You're an idea guy?

A. That's right.

Q. It's nice to have Mr. Olson to help.

A. That's right. Yeah.

Q. All right. So we see next along our timeline, we're now in 2008. And that's when you filed the '640 patent application; is that right, sir?

A. That's correct.

Q. Okay. And at that time tell us what was going on with the Pretzelmaker system.

A. Well, you know, as I mentioned, we were building the key. So we needed to be able to do that ourselves, for the

store to do it themselves. So we figured it out and we basically, you know, presented it to them and got it working.

Q. Okay. So after you had your patent filed in February of 2008, what did you do next?

A. We went kind of on a little bit of a tour. We knew we had something special. We had seen nothing like it.

So we went to IBM, which was a -- some of my mentors worked for IBM. I'm in an IBM area in Poughkeepsie, and we --

Q. Let me stop you real quick. Let's try to do it more question and answer.

A. Okay. Sorry.

Q. So tell us about, where did you go meet with IBM, sir?

A. Well, we met with them -- the first meeting we had was actually over the phone, which was nice because our program translates well because there's a Back Office that you can go in and you put a password in. You log in and you can see your store right there.

So we were able to give them a password and let them go in and look at what we were doing. And then --

Q. Hold on just a second. So first thing you did is you sent IBM -- you made a phone call to IBM, right?

A. Yes.

Q. And then you gave them a password so they could look at what you had with your early POS system?

A. Yes. But we walked them through that --
Q. Okay.
A. -- too.
Q. And then after you walked IBM through that on the phone and remotely, what happened next?
A. They invited us down to North Carolina to Research Triangle and --
Q. So who did -- did you and Mr. Olson go to North Carolina to meet with IBM at their offices?
A. We did. Yes.
Q. Who did you meet with with IBM?
A. There was a fellow named Alan Outlaw who was the head of that department, but they flew people in from Texas and from Colorado and people came from South Carolina.
So there was a pretty diverse group there, and they were -- you know, they came to see us, which was pretty cool, kind of let us know if we had something.
Q. And what was the -- what was your intent in meeting with IBM at that time?
A. It was to be able to buy their hardware, to be able to go out and sell IBM stuff.
Q. And were you able to form any type of a relationship with IBM?
A. We were. They actually made us partners, which the requirements before that were that you needed to have over

500,000 in sales and you needed to be in business for two years, and we had --

Q. Let me stop you right there. At that point when you met with IBM, had you been in business for two years with this product?

A. No.

Q. Did you have $500,000 in sales at that time, sir?

A. No. We did not.

Q. Okay. So you were able to get IBM to accept you guys as a partner who could buy their hardware; is that right, sir?

A. That's correct.

Q. So who did you -- did you meet with anybody after you met with IBM?

A. Yeah. We also met with folks at Sharp.

Q. Tell us about that meeting. Where did it occur?

A. Well, they're a little more local to us, so they're in New Jersey. So we went there and we, you know, met with the head of that department. We actually met with the president of Sharp a couple of times also. He was impressed with what we had.

Q. You met with the president of Sharp Corporation?

A. That's right, of America. Yeah.

Q. Of America. Okay. Because Sharp's based in Japan?

A. That's correct.

Q. You didn't go to Japan?

A. No. But we did speak to people from Japan.
Q. Well, after these meetings with Sharp, what happened with Sharp and your company at that time?
A. They made a couple of introductions to us. They helped us get into the Rising Roll.
Q. What is Rising Roll?
A. It's a sandwich store in -- I think it's in the Georgia area.
Q. Okay. Did you also, like IBM, form a relationship with Sharp where you could buy their hardware?
A. Yes. We did.
Q. Okay. Who else did you meet with after Sharp?
A. Panasonic is another company that we met with.
Q. Okay. And was it a similar type of meeting to talk about hardware?
A. That's right. Yeah.
Q. And where -- where's Panasonic located, where you met with them?
A. They were out in Michigan.
Q. Did you meet with executives from Panasonic?
A. We did.
Q. Did you explain your invention -- or did you explain what you had at that time for the --
A. We did. We were always a little bit careful even though, you know, we had the patents. We were always careful,

a little bit careful with --

Q. At that point your patent hadn't issued?

A. I'm not so sure about Panasonic.

Q. But it had been filed?

A. That's right.

Q. Okay. So it was protected as far as filing?

A. That's right.

Q. Now, the -- were you able to get a similar deal with Panasonic where you could sell their hardware?

A. Yes. We were.

Q. After they saw it and evaluated your idea?

A. That's correct.

Q. Who else did you meet with after Panasonic?

A. Well, as far as like hardware people, or --

Q. Well, I'm looking at your timeline. I see a logo for HP. So I was wondering if you could tell us --

A. I'm sorry. I'm sorry. Yes.

So we also met with Hewlett-Packard also, and they again were impressed with what we had, and we were able to buy their hardware too. I'm not sure we did too much with that though.

Q. All right. We've heard -- the jury's heard us talk about your commercial venture. I see on 2010 it says you got Little Caesars. Tell us about that.

A. So I had a way with store owners because I spoke the same language as them. So I was able to walk into a Little

Caesars in the Bronx and show them what we had. And they loved it also, and they were able to deploy it at that time. So we deployed it in that store and a few other Little Caesars also.

Q. So we talked about some of your early efforts to commercialize your idea. Would you characterize those efforts as financially successful for you and Mr. Olson?

A. Unfortunately, no.

Q. And do you have any understanding of -- or why do you think that it wasn't financially successful for you?

A. Well, you know, looking back now, we were just way ahead of our time.

There was, you know, huge terminals that we needed to use that were very expensive. And they're also -- that was kind of one of the main reasons, I think.

Because we were getting people to try to switch from a cash register to a POS too. So that was a little difficult. And then also the encryption wasn't there for security. A few different store owners told me that they didn't trust the Internet and didn't want their information out there. Again, this is 2008. So it was a different world back then.

Q. Okay. So when did the '640 patent issue?

A. It issued in July of 2016.

Q. And what about the '012 patent? When did that issue?

A. That issued in 2018, September, I believe.

Q. Had you ever gotten a patent before you got the '640

patent?

A. No. I did not.

Q. Could you describe how you reacted to finding out that you had been awarded the United States patent?

A. I was very happy. You know, I just, you know, I felt vindicated a little bit that, you know, we were acknowledged for what we had done. So...

Q. About how much money do you think that you and the -- and Mr. Olson, other investors, put into trying to develop this invention?

A. I'd say close to $3 million.

Q. Who owns the -- we talked earlier about the assignments of the patents. So we've got CloudofChange. They own the patents today; is that right, sir?

A. That's correct.

Q. So similar to Mr. Olson, I want to put PTX-185, it's in front of you. We can put it on the screen. This is the assignment document for the two patents, the '012 and the '640; is that right, sir?

A. I have, sir.

Q. Could you look on there and identify if your signature appears on that document?

A. Sure.

Q. Is that your signature?

A. Yes. It is.

MR. BARR: At this time the plaintiffs would offer Plaintiff's Exhibit --

MR. PHIPPS: No objection, Your Honor.

MR. BARR: -- 185. Okay. I think we maybe just admitted the Olson one, but okay. Anyway, is it accepted, Your Honor?

THE COURT: Yes, sir.

MR. BARR: Thank you, sir.

BY MR. BARR:

Q. All right. I'd like to show you another document in your notebook. You mentioned a company called InteRegister; is that right?

A. That's correct.

Q. And InteRegister was one of your early companies involved in trying to sell this technology?

A. Yes, sir.

Q. Could you look in your notebook for Joint Exhibit 95? What is that document?

A. That's a quitclaim document.

Q. And why was that done?

A. Just to ensure that CloudofChange didn't have any -- it wasn't making any claims to the patent. We wanted to make it clear.

Q. So to the extent InteRegister might have claimed that they owned part of this patent, this was to quit their claim and say that they don't?

A. Exactly. Yeah.

Q. Okay. How did this, the name, CloudofChange come about?

A. Actually my wife came up with the name. We were discussing names for, again, another name we were looking for. I liked Cloud of Control at first, but I thought we were able to control things in the cloud and, you know, it was pretty good.

And she said CloudofChange, and then I realized that, you know, that's really what it is too. We're going to the cloud and changing things. I also believe that we changed the way the cloud is used with our invention too, by being able to program things from there.

Q. So ended up going with your wife's suggestion. Probably a good idea.

A. Yes.

Q. Happy wife, happy life, right?

A. That's right.

Q. Do you own an interest in CloudofChange?

A. I do.

Q. Okay. So similar to Mr. Olson, in the event CloudofChange is successful in this lawsuit, do you personally stand to benefit from that, sir?

A. I do.

Q. Now, before you filed this lawsuit in 2019, did you

send a letter to cloud -- I mean to NCR?

A. Yes. I did.

Q. If we could have Joint Exhibit --

MR. BAKER: Your Honor, I believe this letter -- he needs to establish foundation. He didn't send this letter. This was sent through the lawyers. So I think -- I believe that needs to be corrected.

MR. BARR: I can handle that, Your Honor.

BY MR. BARR:

Q. Mr. Baratta, did you ask your lawyers to send a letter to NCR and give them notice of your patents?

A. Yes. I did.

Q. And did they do that for you?

A. Yes. They did.

Q. Did you get a copy of it?

A. Yes. I did.

MR. BARR: Can we throw up Joint Exhibit 5, please?

BY MR. BARR:

Q. Is this the letter that you directed our law firm to write to NCR Corporation on behalf of CloudofChange?

A. Yes, sir.

Q. Okay.

MR. BARR: Could we blow up who it was sent to, please?

BY MR. BARR:

Q. And this letter was sent to Mr. Edward Gallagher,

General Counsel, 3925 Brookside Parkway, Alpharetta, Georgia 30022; is that right, sir?

A. That's correct.

Q. And it says: Regarding Infringement of United States Patent 9,400,640 covering a web-based point-of-sale builder, right?

A. Correct.

Q. Okay. And at the time that you sent this letter --

MR. BARR: If we could go back to the page and hit the date, please, Ms. Fastow, at the top.

BY MR. BARR:

Q. -- January 19th of 2018, at that time had the '012 patent yet issued?

A. It had not.

Q. Okay. So did -- to your understanding, did you ask your -- I won't ask what you asked your lawyers -- but to your understanding, did your lawyers include the fact that there were applications pending as well as the '640?

A. Yes. They did.

THE COURT: About where are you at with this gentleman?

MR. BARR: I'm almost done. I've got a couple more questions.

THE COURT: Okay.

BY MR. BARR:

Q. Now, if we could go to the last page of the letter.

What were you hoping --

MR. BARR: I'm sorry. Not that page. Go to the last page of the actual letter, not the attachment to the letter.

Last paragraph. I'm sorry. I misspoke. Last paragraph.

BY MR. BARR:

Q. So with this letter that you sent to NCR, what were you hoping to do, hoping to be able to accomplish by sending this letter?

A. We were hoping that they would take a license and pay us a fair royalty for our invention.

Q. Once you sent this letter to NCR, did you ever hear anything back from them?

A. No. We did not.

Q. Did NCR ever call you and say they'd like to have a negotiation with you?

A. No. They did not.

Q. Now, I see you offered in this letter to a license for a simplified pricing scheme for early adopters at $5 per register per month; is that right?

A. That's correct.

Q. Okay. Do you think that $5 per register per month would be a reasonable royalty for you, as we sit here today in this courtroom?

A. I do.

Q. Okay. You do or you do not?

A. Well, you know, at this point, not necessarily.

Q. Okay. Why not?

A. Because we were trying to get them to come to the table, and so we wouldn't have to go through all this and spend all the money that, you know...

Q. And did you -- were you able to ever talk to anyone at NCR before you filed the lawsuit?

A. No.

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

THE COURT: Ladies and gentlemen of the jury, we're going to take our lunch recess.

So we are bringing lunch in for you. If you really like it, I take credit. If you don't, I don't know where they got it from. So I'll ask you afterwards.

We try and vary it. We've learned that you all are happier if we don't give you the same boxed sandwich lunch every day, and I think at least one day we get to do George's, so maybe today.

At any rate, remembering my instructions not to discuss the case amongst yourselves, we will probably start somewhere right around 1:15.

THE BAILIFF: All rise.

(Jury exited the courtroom at 12:02.)

THE COURT: You may be seated.

You may step down, sir.

Mr. Barr, is there anything to take up?

MR. BARR: No, Your Honor.

THE COURT: Mr. Phipps?

MR. PHIPPS: No, Your Honor.

THE COURT: Mr. Phipps, I would suggest -- and this is for everyone. I tend to keep a pretty strict leash on witnesses on cross, and so you all should probably let me admonish witnesses to answer yes or no.

I think it looks better coming from me than from you all. But I -- so everyone knows, I like yes or no answers generally speaking too. I'm listening to the answers, and if I think that they are not answering you directly, I will give them the same admonition that you did, which is they need to answer the question and their counsel will be able to follow up. So typically I prefer to handle that myself.

I certainly understand the frustration, and I try and alleviate that from you all and I think it looks better coming from me. We'll see you after lunch.

THE BAILIFF: All rise.

(Recess taken from 12:03 to 1:17.)

THE BAILIFF: All rise.

THE COURT: Please remain standing for the jury.

(The jury entered the courtroom at 1:17.)

THE COURT: Mr. Baker, are you taking this witness?

MR. BAKER: Yes, Your Honor.

THE COURT: You may proceed.

MR. BAKER: Thank you.

CROSS-EXAMINATION

BY MR. BAKER:

Q. Good morning, Mr. Baratta.

A. Good afternoon.

Q. We've never met before today, have we?

A. No. We have not.

Q. I'm Charles Baker, and I know you're Mr. Baratta.

A. Thank you. Nice to meet you.

Q. All right. So you're listed as a co-inventor of the patents in this case, correct?

A. That's correct.

Q. And other than your activity with Mr. Olson, you've never operated a POS system, correct?

A. That's correct.

Q. Okay. And you claim you're one of the inventors of the POS builder software video system, correct?

A. That's correct.

Q. Okay. And you claim you came up with the idea of using a video with a POS system, correct?

A. That's correct.

Q. Okay. Now, you started working with Mr. Olson in 2006, first on an endeavor trying to get data out of an electronic cash register, correct?

A. Correct.
Q. And that second endeavor related to a POS system, correct?
A. It did.
Q. And that was in 2006, mid 2006?
A. Yeah. Towards the end of 2006.
Q. And that second endeavor eventually led to you all developing a POS product called the InteRegister, correct?
A. That's correct.
Q. You installed the InteRegister POS system in one of your stores in 2009, 2010, correct?
A. That's correct.
Q. Okay. And the first company you formed, you moved forward with Mr. Olson in this endeavor was named Tyramm International, correct?
A. Correct.
Q. And then you changed it to InteRegister?
A. That's correct.
Q. And now it's CloudofChange in 216 -- 2016; is that right?
A. CloudofChange was formed in 2016, yes.
Q. And it's correct it was formed to monetize these patents, correct?
A. That's correct.
Q. Okay. And other than owning these patents and trying

to monetize them, CloudofChange has no other commercial activities engaged in, right?

A. That's correct.

Q. Okay. Now, has anyone agreed to pay CloudofChange anything for licensing these patents today?

A. Not as of yet.

Q. Okay. And you've invested around $3 million of your own money in this project to date?

A. Mine and my family and friends, yes.

Q. Okay. You've never turned a profit, correct?

A. No. We have not.

Q. And I think you've -- the project has generated less than $100,000 in revenue?

A. That's true.

Q. And you ceased any further efforts in that business to commercialize it in 2014, right?

A. Yes. It was more towards 2015.

Q. Okay. Now, you said you were -- a while ago you said you were ahead of your time with respect to this invention, right?

A. Yes.

Q. And the equipment was too expensive at that time, correct?

A. That's correct.

Q. What was your average cost for a sale if a merchant

was going to install a POS system on the InteRegister? Do you remember?

A. Well, for one POS system it would be about $3,000. Most had two.

Q. And you also said earlier that one of the other reasons why you believed you weren't successful is that people were hesitant to put their stuff, their financial information, on the Internet, correct?

A. That's correct.

Q. Now, you've also said, haven't you, that you would have been more successful if you were a bigger company, right?

A. I may have speculated that that's a possibility, but...

Well, I'll go with if we were a bigger company, we would have been more -- yes. I guess.

Q. And, in fact, Staples did not use your POS system because you needed more sales, correct?

A. Well, we weren't looking for Staples to use our system.

Q. But Staples turned you down because you didn't have enough sales, correct?

A. They turned us down to sell our product with us until we had more sales.

Q. Right. They were looking for more sales before they'd sell your product?

A. That's correct.

Q. And, in fact, the biggest hurdle you all established -- excuse me. The biggest hurdle for you all was establishing yourself to be able to get people to use your stuff, correct?

A. Correct.

Q. And you agree, don't you, that there's several factors that one needs to have to having a successful product in the POS industry, including having a help desk?

A. Correct.

Q. Having programmers?

A. Correct.

Q. Having sales personnel?

A. Correct.

Q. And having the ability to train customers?

A. Correct.

Q. Okay. And you didn't consider NCR a competitor to your InteRegister POS product, correct?

A. I considered everybody that was out there a competitor.

Q. But do you remember -- do you recall testifying whether or not you considered NCR a competitor of the InteRegister product, POS product?

A. I guess I wasn't that keyed in on NCR, so yeah. I would agree with that.

MR. BAKER: Okay. If we could go to Joint Exhibit 96, please.

BY MR. BAKER:

Q. Do you recognize Joint Exhibit 96?

A. I do.

Q. Okay. And what is this?

A. You know, I actually -- I'm sorry, but I didn't bring my reading glasses up with me.

Q. I think we all do for this one.

A. That's very small. I don't know if it can be blown up a little bit.

MR. BAKER: I think there might be some in that podium right here.

MR. BARR: Well, this was here before we started the trial.

MR. BAKER: May I approach, Your Honor?

THE COURT: Of course.

BY THE WITNESS:

A. So it appears to be a timeline.

BY MR. BAKER:

Q. Okay. Does this look like a list of people that you all have worked with?

A. It does.

Q. Okay. All right. Let's go to Page 2. And up at the -- I think you can see up at the upper left-hand, the name

of the company. I think it's called NewScent (sic) Franchise Agreement. Yeah, right there, that's right, in the middle.

A. Yes. I mean, NexCen.

Q. Do you see that?

A. I do.

Q. And this was with the Pretzelmaker stores that you had your system in?

A. That's correct.

Q. And you tried to expand that relationship, right?

A. We did.

Q. And that didn't happen, did it?

A. No. It did not.

Q. And that was because they were concerned about the size of your company, right?

A. That was one of the concerns, yes.

Q. Okay. Do you see that note in the fourth column from Raj Ghosh text?

A. Yes.

Q. Is that your notes that's inserted there?

A. You know, that's -- that was one of the store owners that was using our stuff. He was on the advisory committee for NexCen for the store owners.

Q. Who's Raj Ghosh?

A. That's who Raj Ghosh is.

Q. Okay. And Gerald Brouillette, is that somebody from

NexCen franchise or Pretzelmaker?

A. That's correct. Yes.

Q. Okay. What was Mr. Ghosh texting there?

A. He was texting that they really liked our system, that they saw it and thought it -- they had looked at a bunch of other systems and they thought ours was the best.

Q. Okay. All right.

MR. BAKER: And if we could go to the next page, please. And under IBM. Okay.

BY MR. BAKER:

Q. You talked about earlier today that you viewed IBM as a partner; is that correct?

A. That's correct.

Q. Why did you view them as a partner?

A. Well, because we had a partner agreement with them.

Q. Weren't you just buying goods from them?

A. That was part of it, yeah.

Q. Okay. Anything else?

A. We were talking to them about what we were doing all the time.

Q. I'm sorry. What did you say?

A. We were talking to them about what we were trying to do and who we were working with.

Q. But that partnership never really got anywhere, did it?

A. No. It didn't really.

Q. Okay. All right. In this -- there's a reference here on Page 2 of Exhibit JTX-96, looks like a meeting -- a second meeting with IBM. Do you see that?

A. I do.

Q. And if you'll go across, second meeting, it says, update on technology and sales opportunities. IBM asks for proof of scalability for the product offering. Do you see that?

A. That's correct.

Q. Were you in attendance at that second meeting?

A. I was.

Q. And is that what IBM said?

A. Yes.

Q. What was your understanding of the proof they were seeking for in scalability?

A. Well, they told us that they had worked with other partners before that said that they could scale to large numbers, and they were able to do so. And they said that they had a lab that they could test the scalability of our product in.

Q. Okay. And did you all ever provide that scalability proof?

A. Yes. We simply sent them a copy of the patent application, a drawing from the patent application. And by

looking at it they knew we were scalable.

Q. But nothing ever happened with IBM at this meeting, right?

A. No.

Q. So you're guessing -- you're speculating what IBM thought, right?

A. Oh, they told -- they said there's no need to go farther. We can see that you're scalable.

Q. Okay. All right. And we talked a little bit about Staples earlier.

MR. BAKER: If you could go to Page 3, Bruce.

No. It's the one before that. Yeah. Down at the bottom.

BY MR. BAKER:

Q. All right. And I don't recall if -- let's see. Did you -- we talked a little bit earlier about Staples. And did you testify earlier that they wanted you to come back when you had more sales, right?

A. Yes.

Q. All right.

MR. BAKER: Let's go to Defendant's Exhibit 118. All right.

BY MR. BAKER:

Q. All right. Do you recognize this document?

A. I do.

Q. Okay. And what is this document?

A. It's a business plan.
Q. For Tyramm?
A. Yes.
Q. Dated around July 24, 2018?
A. 2008. Yes.
Q. I'm sorry. I couldn't hear you.
A. 2008.
Q. I'm sorry. 2008. Sorry about that.
A. No problem.
Q. And the purpose of this was drawn up for investors to raise funds?
A. I can't say exactly, but that's most likely what it was for.
Q. Okay.
MR. BAKER: Your Honor, I'd like to move this -- to offer this into evidence, please.
MR. BARR: No objection, Your Honor.
THE COURT: It'll be admitted.
BY MR. BAKER:
Q. So this document was to be given to potential investors in order to entice them to invest in your company, correct?
A. I can't say that it was 100 percent. No.
Q. Okay. How much percentage was it then?
A. Well, I didn't draw up this document and I really

didn't see it till like the last time that we were talking about it. I don't remember. It was drawn up by someone else in the company.

Q. Okay. But you're not saying that this was not a product of the company -- of the company itself. In other words, someone within the company was authorized to prepare this document, correct?

A. Probably -- yes.

Q. Who was that? Do you recall?

A. I think it would have been Todd Steinard.

Q. All right.

MR. BAKER: Let's go to Page 3 of this exhibit. 1130. Thank you.

BY MR. BAKER:

Q. Under the history paragraph. First paragraph.

A. Okay.

Q. If you can read that paragraph, please.

A. Tyramm was founded by Wayne Baratta, a store owner, as he experimented in developing a better way to prevent employee theft at the POS level. Yet he discovered not only a solution for lessening theft but in the process began to discover a far more efficient way to manage store operations and inventory.

Q. Okay. And that paragraph's for the most part correct?

A. For the most part.

Q. Okay.

MR. BAKER: All right. And if you could go down then to the fourth paragraph that starts with First product, Bruce, highlight that.

BY MR. BAKER:

Q. And if you could read that paragraph, please.

A. Okay.

The first product currently operating at a number of beta sites and poised to be released worldwide is called RAMM-VU, taken from the corporate name meaning remote access management and monitoring, is a realtime Linux-based quick service restaurant software program packaged and sold within an extremely limited amount of hardware. The hardware is so limited that the software itself can be installed on most popular brands of POS hardware that a restaurant franchisor and franchisee may already have invested in.

Q. So is it true that in addition to selling, for example, an IBM POS terminal, it was the vision of the company to also be able to have your software downloaded and used on the existing POS terminal by a customer?

A. That was a good possibility for us. Yes.

Q. Did y'all ever test that system?

A. Well, in fact, we had operated on five or six different types of POS. Yes.

Q. Five or six what?

A. Different types of POS.

Q. Okay.

A. So we would adapt it for each one.

MR. BARR: Your Honor, we object to these questions. These deal with a different patent that's not at issue in this case, the VideoRegister patent, so we object based on relevance.

MR. BAKER: This is -- has to do with the background information on this product that he's eventually getting out there. This product is going to be evolving into the patented product.

THE COURT: So?

MR. BAKER: Just trying to find some information about how he's dealing and promoting this product, Your Honor.

THE COURT: I would wrap this --

MR. BAKER: And they opened the door. They asked him --

THE COURT: I didn't say they didn't open the door.

MR. BAKER: Okay.

THE COURT: I'm just saying I don't find it very relevant.

MR. BAKER: Okay. All right.

THE COURT: But if you want to continue to ask him about patents that are not involved in this case, I guess you can do so.

MR. BAKER: Okay.

All right. You can take that down. Thank you.

BY MR. BAKER:

Q. So I believe you testified earlier you quit trying to commercialize your invention around 2014, '15, correct?

A. It was definitely '15.

Q. And do you know, were iPads in existence at that time?

A. They were.

Q. Okay. Did you ever consider using an iPad as part of your system?

A. No. We did not. No.

Q. Why not?

A. Because it's a closed system and we were using open source stuff like Linux stuff so we weren't using iPads. We weren't -- we didn't -- we didn't -- we weren't using Linux at the time and we weren't, you know, interested in the i -- again, I'm not a technical guy, but if there had been a Linux tablet, we would have used it.

Q. Okay. And by 2014, which is eight years after your invention, the product still was not successful, correct?

A. That's correct.

Q. Okay. Had time caught up with you by then?

A. I'd say the tablets really weren't popping then either. There -- you know, there wasn't a lot of it, and I think, you know, a lot of -- some people were doing what we

were doing then potentially, including NCR.

Q. And your company never deployed an iOS product, right?

A. No. We did not.

Q. And you admit, don't you, that at the time of the '640 patent issued, your company had no value, correct?

A. Not a great value. No. I mean, I wouldn't say none.

MR. BAKER: If we could go back to the demonstrative for Baratta. The last page.

BY MR. BAKER:

Q. A few questions there. You met with some of these companies on the right-hand side you testified earlier, correct?

A. Correct.

Q. Okay. Now, did you ever ask Sharp to take a license for any of your patents?

A. We didn't have patents at that point.

Q. Have you ever asked Sharp to take a license for your patents?

MR. BARR: Objection, Your Honor. This gets in the limine issue.

MR. BAKER: These are companies talked with. I just want to ask if they've ever asked -- had gotten any license from these individuals.

THE COURT: Overruled.

BY THE WITNESS:

A. Okay. So we didn't have a patent when we were -- when we were working with Sharp. No.

BY MR. BAKER:

Q. I understand, but after the patent issued?

A. No. Sharp kind of went out of the POS business actually too.

Q. How about IBM? Have you had -- since the patent has issued, have you had any license discussions with IBM?

A. No.

Q. Okay. How about HP?

A. No.

Q. Little Caesars?

A. No.

Q. Panasonic?

A. I don't know. I don't think any of those people have software that infringes, not that I'm -- those are hardware companies.

Q. Right.

THE COURT: Excuse me. You just need to answer his question with a yes or no.

THE WITNESS: Sorry, sir.

THE COURT: And your counsel will be able to follow up afterwards.

THE WITNESS: Thank you, sir.

MR. BAKER: All right. Would you pull up the notice letter, please?

Thank you. Go to the second page, Bruce. Thank you.

BY MR. BAKER:

Q. Now, your counsel asked you some questions earlier about this letter, correct?

A. Correct.

Q. Okay. You know who Ed Gallagher is?

A. No.

Q. Never met him, correct?

A. No.

Q. And the address here, 3925 Brookside Parkway, Alpharetta, Georgia, do you know what that is?

A. No, sir.

Q. You don't know what kind -- you don't know who -- what company or anybody resides there, right?

A. No, sir.

Q. Okay. Do you know if Ed Gallagher was the general counsel of NCR on January 19th, 2018?

A. After I saw the letter, I knew that.

Q. No. But do you know for a fact he was general counsel January 19th, 2018?

A. No, sir.

Q. All right. Do you know where Mr. Gallagher's office was located on January 19th, 2018?

A. No, sir.

Q. Now, we talked about the fact that NCR never contacted you at any point in time subsequent to this letter, correct?

A. Correct.

Q. Okay. Did you or your lawyers ever reach out to NCR following up on this letter?

A. Not that I'm aware of.

Q. Okay. Now, you mentioned also you thought that there was a reference in here in this letter to $5, $5 offer to license your patents, correct?

A. Yes.

Q. Okay. And I believe you said this $5 per register per month for the early adopters of its licensing terms, correct?

A. Correct.

Q. And this was a starting point, would you agree, with what you thought was -- a fair royalty would be?

A. Yes. At that point. Yeah.

Q. Yeah. In other words, you were starting high and you expected this to come down lower, correct?

A. Not necessarily.

Q. Okay. But it was a starting point and it could go down?

A. Potentially.

Q. All right. Now, just one last thing. I believe you testified earlier today that one of the reasons why you all came up with this POS builder software was to allow the merchant to add buttons, correct?

A. Correct.

Q. All right. Thank you.

MR. BAKER: No further questions, Your Honor?

MR. BARR: No further questions for this witness, Your Honor.

THE COURT: You may be excused.

THE WITNESS: Thank you, sir.

THE COURT: Mr. Baker?

Who's your next witness?

MR. BARR: McGill Quinn.

THE COURT: Are you Mr. Quinn or Doctor? You're welcome to come up here and be sworn.

(The witness was sworn.)

DIRECT EXAMINATION

BY MR. BARR:

Q. Ready to proceed, sir?

A. Yes, sir.

Q. Could you state your name for the record, please?

A. McGill Quinn.

Q. And you're a senior executive at NCR Corporation; is that correct, sir?

A. I'm the executive director at NCR.

Q. Okay. You're -- in fact, are you the director of engineering for the Silver products, sir?

A. Yes, sir.

Q. And for some other things at NCR; is that right, sir?

A. That's correct.

Q. How many people report to you, sir, directly and indirectly?

A. At the current moment, I have 121 people with another 121 that are dotted line in India.

Q. So over 240 people report to you, sir?

A. That's correct.

Q. And your team in Atlanta, Georgia is in charge of maintaining, updating and modifying all the software that is involved with the NCR Silver product; is that right, sir?

A. There's been a slight change, but yes. The Atlanta team as well as a team in Prague that is responsible for the NCR Silver products.

Q. And the NCR Silver product is the product that's accused of infringement in this case; is that right, sir?

A. There are multiple products for Silver, but yes. Silver's included.

Q. Okay. Is it your understanding that the NCR Silver system came on the market in 2012?

A. I believe that's correct.

Q. And when did you go to work for NCR, sir?
A. I started in 2019.
Q. Okay. Now, you're aware I think we've heard today a few times about the different expert witnesses that have been hired by NCR in this case. Were you here for that, sir?
A. I was not.
Q. Okay. Your counsel has mentioned a gentleman by the name of Dr. Devrim Ikizler. Have you ever heard of his name before?
A. Just in the context of the trial.
Q. Okay. You haven't met with Mr. Ikizler; is that correct, sir?
A. I don't think so.
Q. Okay. And do you know or have you learned or heard that Dr. Ikizler has been hired by NCR to offer damages analysis that's going to be different from the damages analysis that CloudofChange's damages expert Ms. Salters will put on?
A. I've heard.
Q. Okay. Now, you're the director of engineering for this entire product line; is that right, sir?
A. That's correct.
Q. The product line that's accused of infringement in this case, right, sir?
A. That's correct.
Q. Yet Dr. Ikizler, the damages expert who's going to

come into this courtroom and tell the jury what the damages should be related to the product line that you're the director of engineering for, never talked to you; is that correct, sir?

A. I've met with many people. I'm not sure if I met with Dr. Ikizler. But he would have probably talked to the product team before he talked to me, who's responsible for the finance sides of things.

Q. Okay. Well, certainly if you had met a gentleman named Devrim Ikizler, you would probably remember that, right, sir?

A. I meet a lot of people, so some names don't stay with me. But as I said, I may have met with him and I just don't remember the name.

Q. Well, if Dr. Ikizler tells us that he never met with you, would you have any reason to argue with him about that?

A. I would not.

Q. Okay. You're also aware that NCR hired an expert on the technical side to tell the jury that they don't infringe these patents; is that right, sir?

A. That's correct.

Q. And I believe we've also heard his name. He's Dr. Chatterjee; is that correct?

A. That's correct.

Q. Now, would it surprise you to know that Dr. Chatterjee's expert report saying why NCR doesn't infringe

these two patents is over 100 pages long?

A. It would not surprise me at all.

Q. Okay. That's including the appendices, of course.

Now, Dr. Chatterjee's noninfringement report was submitted -- and you'll just have to take my word for this, but it was submitted on February the 24th of 2021. Okay?

A. Okay.

Q. Now, you and Dr. Chatterjee did have a conversation, right?

A. That's correct.

Q. And the only one, right? You only had one conversation with Dr. Chatterjee?

A. I've had a couple conversations with Dr. Chatterjee, yes.

Q. Well, before Feb -- before February 24th of 2021, you only had one conversation with Dr. Chatterjee?

A. Correct.

Q. Correct?

A. Correct.

Q. Okay. And you're the head of engineering, right?

A. Correct.

Q. A guy that might be important to talk to if you want to know, technically, how the NCR Silver system operates, right?

A. Correct.

Q. Okay. But this single conversation that you had with Dr. Chatterjee the night before his 100-page report was turned in only lasted 30 minutes; isn't that right?

A. I would say, yes.

Q. Do you think that Dr. Chatterjee was just checking the box so that he could say that he talked to you?

A. I do not. He would have also talked to other leaders on the team.

Q. But you would think, wouldn't you, sir, that if you really wanted to learn how a technical system worked, that you would talk to the head of engineering?

A. I would think that you would want to look at the code and understand how to use it before you talked to the head of engineering and get your own perception.

Q. But certainly you wouldn't disagree that you as head of engineering would have valuable things that you could teach Dr. Chatterjee about how NCR Silver software works?

A. That's correct. I agree with that.

Q. Do you think that Dr. Chatterjee already knew where he wanted to end up on the technical analysis before he talked to you, sir?

A. He's an expert. I would believe that he would want to know about the technology and get a feel of how things are working.

Q. Okay. But in order to figure that out, he didn't

bother to talk to you for very long, did he, sir?

A. No. He would have used the software.

MR. BARR: Can we pull up Joint Exhibit 80?

BY MR. BARR:

Q. Can you see that on your screen, sir? And also we've given you a notebook which has the exhibits, hopefully has all the exhibits that we're going to talk to you about today.

A. Okay.

Q. So you recognize this document to be the NCR Silver merchant agreement; is that right, sir?

A. That's correct. That's correct.

Q. And that's the agreement between NCR and its customers related to the NCR Silver product, right?

A. That's correct.

Q. And if we look at the first paragraph of that agreement, the paragraph provides --

MR. BARR: And if you can follow along with me, Ms. Fastow, highlighting it --

BY MR. BARR:

Q. It provides that this agreement governs your use of the NCR Silver software as a service suite of applications.

Do you see that? So at the very top, the first sentence. Let's just start with that. I may have paraphrased it a little bit. It actually says --

A. No. I found it.

Q. Oh, you found it? Okay.

A. Yeah.

Q. This agreement between you and NCR Corporation, or one of its designated affiliates, NCR, governs your use of the NCR Silver software as a service suite of applications service. Do you see that, sir?

A. I do.

Q. Okay. And there's no dispute here in this case, is there, sir, that NCR provides its software to customers under the software as a service business model?

A. No dispute.

Q. So if Dr. Chatterjee comes in here and tells us that NCR does not sell Silver software as a service, he's wrong about that. Would that be correct?

A. That would be correct.

Q. NCR Silver -- I'm sorry. NCR refers to its Silver product as a point-of-sale solution; is that right, sir? And that's not in this particular -- it may be in this document, but I'm just asking you generally, is it your understanding that NCR refers to the NCR Silver product as a point-of-sale solution?

A. Yes. That's generally right.

Q. And in addition to the monthly subscription service for the software, NCR also sells hardware, right?

A. That's correct.

Q. And NCR Corporation benefits from charging its customers for the NCR Silver system; is that right, sir?

A. I think it's said in the agreement what we charge for, but that's generally correct.

Q. Okay. And $149 per month would represent one of the monthly subscription fees that would be charged by NCR to a customer for the NCR Silver product, right?

A. That's correct.

Q. Now, is it correct that the NCR Silver is the retail application and the NCR Silver Pro is the restaurant application?

A. Some people often refer to NCR Silver Essentials as the retail, so I'm just -- a little distinction, but you're correct, basically correct.

Q. And these are both similar software systems. It's just the Pro is more customized for restaurant use; is that fair?

A. That's correct.

Q. Would you agree that both the NCR Silver and the NCR Silver Pro are cloud-based solutions that consist of two applications, a point-of-sale and a Back Office?

A. Correct.

Q. Okay. And the way that the customer accesses the Back Office part is through a web browser, right?

A. That's correct.

Q. And, in fact, the customer can access the Back Office through the web browser to configure the majority of the store settings to track transactions and to market to the store owner's customers, right?

A. That's correct.

Q. And the customer can also access the Back Office through the web browser to update the store owner's menus, right?

A. It depends on the definition of "menu," but in this context, I believe you're correct.

Q. And is it also true, sir, that the NCR point-of-sale application and the Back Office application are offered together to the customer, one package?

A. The NCR Back Office and the point-of-sale application are one service. Yes.

Q. And that's because the point-of-sale and the Back Office of NCR Silver work together, right, sir?

A. That's correct.

Q. And NCR benefits from the sale of the entire NCR Silver Solution, which includes both the point-of-sale and the Back Office, right?

A. That's correct.

Q. And there's no specialized hardware that's necessary to implement the NCR Silver in a retail store, correct, sir?

A. So there is a hardware you have to purchase either an

iPad yourself, or you have to purchase the hardware from NCR, which is specialized for running the retail solution.

Q. Okay. Fair enough.

So you have the option, a merchant has the option of either purchasing something like an iPad, which we would say is not specialized hardware, right?

A. Well, it is specialized in that I can't buy a PC. I have to buy an iPad.

Q. Okay. And you're also saying, though, that the customer has the option of buying hardware from NCR that NCR sells also, right?

A. That's correct.

Q. And NCR, in fact, sells the Android™ products, right, sir?

A. It does.

Q. And that's the Google system; is that right?

A. It isn't the Google system. There's specific hardware. It could be a Samsung device, or it could be another tablet that we sell.

Q. Okay. But a customer could use their own iPad if they've already got one. They could use their own iPad to operate the NCR point-of-sale system, right?

A. As long as they purchase it through -- the use of the software through the agreement through our sales portal, yes.

Q. And all of the versions of the NCR Silver that have

been released are based on the same computer code; is that right, sir?

A. The computer code changes from release to release, so it -- the source code changes based upon updates. So technically I could say yes, but technically I could say no.

Q. Well, it's the same code but it gets updated as you guys update it, right?

A. That's correct.

Q. And if it's updated, all the code gets updated, right, sir?

A. That's correct.

MR. BARR: Could we have Joint Exhibit 5, please?

BY MR. BARR:

Q. We've pulled up Joint Exhibit 5, which you also have in front of you in your notebook if you prefer to look at it in paper form.

A. Thank you.

Q. You're aware, aren't you, that NCR Corporation was put on notice by CloudofChange of patent infringement back in January of 2018?

A. I was made aware during the lawsuit.

Q. Okay. And you've now read this notice letter; is that right, sir?

A. I have.

Q. And you don't disagree that the notice specifically

refers to the '640 patent there in the first -- in the re line?

A. No disagreement.

Q. Excuse me?

A. No disagreement.

Q. Thank you. Sorry. I couldn't hear you.

And you'd also agree that the notice refers to or it specifically references patents claiming priority to the '640 patent, which is in the third paragraph of that letter.

We'll pull that up for you. Do you see that?

A. I see it.

Q. And you're familiar with that term claiming priority, in the context of patents, aren't you, sir?

A. I believe so.

Q. Okay. And what is your understanding of what that means in the context of patents?

A. It means in the context of the patent -- and I'll try to read it in the sentence and then I'll say it again.

CloudofChange is interested in licensing the '640 patent, including any patents that granted from the pending continuations --

THE COURT: You need to slow down just a little bit.

THE WITNESS: I am sorry.

BY THE WITNESS:

A. Granted from the pending continuation patent application claiming priority to the '640 patent, so that you

may continue to offer for sale and sell your POS solution software solution.

BY MR. BARR:

Q. Okay. So if the '012 patent is one of these pending continuation patent applications, you would understand that that falls under that sentence, right, sir?

A. That's correct.

Q. And now you know, in fact, you don't dispute that the '012 is a continuation of the '640 patent, correct, sir?

A. I do not disagree with that.

Q. Do you think that it's important for NCR to avoid infringing other people's patents?

A. I think NCR should never infringe on anyone's patents.

Q. Do you think that it's important for NCR to take a letter from a law firm telling them about patent infringement, to take that letter seriously?

A. I do.

Q. But to your knowledge, no one at NCR ever bothered to respond to this notice letter, did they, sir?

A. If NCR received the notice letter, I would imagine that they would have responded. But to my knowledge I'm not aware of anyone who has responded to the notice letter prior to the legal agreement, legal matter at hand.

Q. Okay. So you're not aware -- you haven't heard of

anybody at NCR that actually responded to this notice letter; is that fair?

A. I'm not aware.

Q. Okay. And you see that it was sent -- our law firm sent this letter to a gentleman named Edward Gallagher, the general counsel. Do you see that, sir?

A. I do see it.

Q. You're not testifying that Mr. Gallagher was never general counsel of NCR, are you?

A. I am not.

Q. Okay. And it was sent to Mr. Gallagher at 3925 Brookside Parkway, Alpharetta, Georgia. Do you see that?

A. I do see that.

Q. And it's not your testimony that 3925 Brookside Parkway, Alpharetta, Georgia was never an office occupied by NCR, is it?

A. It is not my testimony.

Q. Okay. As the director of engineering and senior executive of NCR with 240 people reporting to you, did you ever reach out to Mr. Gallagher and ask him if he received this letter?

A. I looked for Mr. Gallagher in our employee system, and he was not our counsel at the time when I was there.

Q. Okay. But you still didn't try to find Mr. Gallagher, even though he may have left the company, and

ask him if he'd gotten this letter?

A. I would think that would be the job of our counsel to do that.

Q. But that's not what I asked you, sir. I asked you if you did it. Did you do it?

A. I did not personally do it.

MR. BARR: Could we see the certified receipt?

BY MR. BARR:

Q. Now, what we're showing you now is a certified receipt. Sometimes it's called a green card because the square one is green, if it was a better copy. You're familiar with those, right, sir?

A. Yeah.

Q. And a certified receipt is something that requires the recipient of a letter or a package to sign for it, right, sir?

A. That's correct.

Q. And when they do that, the little green card, that gets sent back to the person who sent it, right?

A. That's right.

Q. And we see that in this case, this letter, the notice letter was signed for by someone named R. Brees. Do you see that?

A. I do see that on the screen, yes.

Q. And that the date of delivery is in the right-hand

corner. It says January 23rd, 2018, right?

A. That's correct.

Q. Now, do you know who R. Brees is?

A. I do not.

Q. And you didn't do any type of investigation to find out who R. Brees was?

A. I looked in our employee system to identify if there was an R. Brees, and I did not have an R. Brees.

Q. When did you do that? When did you look at the employee system?

A. I'd say --

(Clarification by the reporter.)

BY THE WITNESS:

A. I looked right before my deposition because I wanted to be able to give a correct answer.

BY MR. BARR:

Q. Okay. So you're telling us that you went and looked at the employee list prior to your deposition in this case to see if there was an R. Brees there?

A. Yep, to look for an R. Brees.

Q. And you didn't find one, right?

A. I did not find one.

Q. And, in fact, in that same deposition you believe -- you said in the past that R. Brees might be a maintenance man who happened to be there that day.

A. Yep.
Q. Was that a joke, sir?
A. No, sir. I don't know who's in the office every day. I don't know who signs for records. So it wasn't a joke.
Q. Do you think that a -- in your experience, that random maintenance men or workers that happen to be in a building would sign for a letter from a law firm and put their name on it?
A. I've seen a lot of things in my time, sir.
Q. Have you ever seen that?
A. I have.
Q. You've seen that. You've seen a maintenance man --
A. A maintenance man signing for stuff.
Q. Okay.
A. Because they were being pestered, and the person wanted to get through with their job just like everyone else.
Q. Well, as a senior executive of NCR, what would you do if a nonemployee of NCR signed for a letter from a law firm that was addressed to the NCR general counsel?
A. If that -- if I knew that, then we would take immediate action on that.
Q. Did you ever call the human resources department to see if perhaps R. Brees wasn't on the list you looked at because it was a former employee?
A. No. I did not.

Q. You could have done that, couldn't you?
A. I could have.
Q. Did you check with the payroll department to see if perhaps R. Brees was a former employee?
A. I did not.
Q. Because to be fair, when you did your investigation into who R. Brees was, that was years later after the letter was sent, right?
A. That's correct.
Q. So even if R. Brees was working there at the time the letter was delivered, they may not have been working there years later?
A. That's correct. That's possible.
Q. And the fact that R. Brees was not working there when you looked years later doesn't mean that R. Brees was not an employee of NCR back in 2018, does it?
A. It does not.
Q. Now, NCR Silver offers cloud-based services, including access to enter a merchant's menu, the merchant's data and the merchant's inventory, right?
A. The inventory, the merchant data, yes, is available in NCR Silver.
Q. And the merchant's menus, right?
A. That's correct.
MR. BARR: Can we have Joint Exhibit 80, please?

BY MR. BARR:

Q. So this is the document we were looking at. I'm sorry. A moment ago. This is the NCR Silver merchant agreement, and I'd like to direct your attention to Paragraph 1.2.

It says in the first sentence of 1.2 of Joint Exhibit 80 that NCR will use commercially reasonable efforts to make the service available to you 24 hours per day via Internet access, correct?

A. It does.

Q. Okay. Let's have a look at Paragraph 8.1, the same agreement.

Have a look at the second sentence right after the word "Jetpay" and we can highlight "you will provide."

It says, you will provide NCR access to your network system, data and relevant information as reasonably required to perform the service. Do you see that?

A. I do see that.

Q. And these are things that NCR is requiring of the merchant who has this contract with NCR for the NCR Silver system, right?

A. That's correct.

MR. BARR: Could we have a look at Paragraph 8.2 of Joint Exhibit 80?

BY MR. BARR:

Q. 8.2, the very first sentence says, to use the service, you must maintain Internet access at your own expense. Do you see that, sir?

A. I do.

Q. So NCR requires its customers to provide Internet access in order to use the NCR Silver system, right?

A. That's correct.

Q. And is it true that merchants can enter their menu through the web? Is that right, sir?

A. So -- yes.

Q. Okay.

MR. BARR: You can take that down.

BY MR. BARR:

Q. The hardware and software that's used by the NCR Silver system uses HTTPS to communicate back and forth, right?

A. The point-of-sale software does not require HTTPS to communicate back and forth. The Back Office software, you have to connect to it through HTTPS through the web browser in order to access it.

Q. Okay. So you would agree with me that the hardware and software of the NCR Silver system can use HTTPS to communicate, right?

A. Technically, yes.

Q. And what is your understanding of HTTPS?

A. It's hypertext transport language used for connecting

to the web, so you enter a web address and you route it to that web location.

Q. Okay. So in order to go to a web page, typically you would go through HTTPS, right?

A. You can go to -- through HTTP. You don't have to go through HTTPS, but yes.

Q. And the HTTPS part, the S part, that's just a secure version of HTTP?

A. That's correct.

Q. So for financial transactions like we're doing with the point-of-sale system, you would typically go through the HTTPS, right?

A. For viewing the sales transactions, yes.

Q. But you could also do it through HTTP; is that correct?

A. You can access some of the other pages through HTTP. Yes.

Q. Okay. This cloud software and hardware serves data or files, correct?

A. Correct.

Q. And the traffic that's running across the Internet is standard HTTPS traffic between the point-of-sale system and the cloud-based services, right, sir?

A. That's not necessarily true.

Q. Is that incorrect?

A. It is technically incorrect because there is also other traffic and data that is sent over the web to the point-of-sale, so I don't have to go through HTTP.

Q. But you can, right? You can go through HTTP?

A. The point-of-sale does not talk to the Back Office through HTTP.

Q. Okay.

A. The customers access the web pages through HTTP.

Q. All right. The --

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

THE COURT: Sure.

BY MR. BARR:

Q. Mr. Quinn, could you please take a look at your -- I've handed you your deposition.

A. Yes, sir.

Q. I'm sorry. I'm making it a little loud here.

A. That's okay.

Q. Would you turn to Page 71? It will be in the top right-hand box.

A. Okay.

Q. Have you found Page 71?

A. Yes. I have.

Q. Okay. And specifically, if you'd look at Line 21 of Page 71, the question that you were asked was: And the traffic that's running across the Internet is standard HTP (sic)

traffic between the point-of-sale system and the cloud-based services.

And what was your answer, sir?

A. It says yes.

Q. Your answer was correct, right?

A. That's right.

Q. Have a look in your notebook at Joint Exhibit 94.

A. 94.

Q. Have you found it, Mr. Quinn?

A. I have, sir.

Q. Joint Exhibit 94 is the installation guide for the Silver Pro Restaurant software, correct?

A. It appears to be so, yes.

Q. Okay. And the idea behind or one of the primary reasons for this software is to help merchants make sales; is that fair?

A. That's correct.

Q. Why go through the trouble of throwing up the pizza and making dough and putting it in the oven if you're not going to get paid for it, right?

A. Well, that's correct.

Q. Now, have you heard Dr. Chatterjee that he claims that NCR Silver doesn't need the Internet?

A. That's correct.

Q. It's correct that Dr. Chatterjee said that, right?

A. That's correct.

Q. But it's not a correct statement, is it, sir?

A. It doesn't need the Internet for long periods of time. You can operate the point-of-sale without the Internet. Food trucks, gut trucks, that don't require -- that are driving around selling food, don't have to be on the Internet until they are connecting to share their sales with the Back Office.

Q. And the devil's in the details, right?

A. That's correct.

Q. When you said they don't have to use the Internet until they want to hook up to the Back Office, download their transactions and get paid, right?

A. That's correct.

Q. So at some point those food trucks need to use the Internet, right?

A. Unless they're taking cash only.

Q. Okay. So if Dr. Chatterjee says that the Internet is never required, that wouldn't be right, would it?

A. That's correct. It wouldn't be right.

Q. And, in fact, on the exhibit I just showed you, if you could -- if you look in the bottom right-hand corner, there's some little numbers. And then we're going to be seeing a lot of these numbers this week.

It says NCR-00504. Do you see those numbers?

A. I do.

Q. We call those Bates numbers. I don't know why they call them that.

But all that means is one of the parties produced this document in this case, and we use those numbers to keep track of the documents produced. Do you understand that?

A. I do.

Q. Okay. In this case obviously NCR produced this, because it's an NCR document. I'd like you to turn, if you would, to Page 5057. So you can ignore the first two zeros.

A. Okay.

Q. All right. So do you see there's a bullet there that says "Internet connectivity"?

A. I do see that.

Q. And like what you just said, the NCR Silver Pro can operate in a limited capacity with no Internet connection. However, you must access the Internet for cloud-based functions to work, right?

A. That's correct.

Q. And if Dr. Chatterjee had bothered to spend more than 30 minutes with you, you would have told him that, wouldn't you have, sir?

A. I would have told him that.

Q. And the same is true for NCR Silver Essentials, that it can operate in limited capacity with no Internet. But you've got to access the Internet for cloud-based functions to

work?

A. That's correct.

Q. Okay. Could you flip to Joint Exhibit 81? This is another NCR document. In this case, the Silver Pro Restaurant manager's guide.

A. Okay.

Q. You've seen that before, right, sir?

A. I have seen it before.

Q. This is one of NCR's own manuals to how to operate the NCR Silver software, right?

A. Correct.

Q. Have you heard that Dr. Chatterjee also says that NCR Silver cannot use a web server to change pizza menus?

A. I haven't heard him say that.

Q. Can you have a look at Page 5602?

A. 5602.

Q. 5602. There's an area there called "adding a menu item."

A. Okay.

Q. It says "managing your menu on a device." I'm sorry.

A. Yeah.

Q. And it says, on a device you can add items and categories. To edit or remove an item or category, access Silver Back Office through a web browser, right?

A. Correct.

Q. So there's no question that you can use a web browser to operate this software, right?

A. Correct. But it's not required.

Q. Okay. But it is usable?

A. It is usable.

Q. Okay. And while we're talking about it, we can both agree that a web browser uses the Internet, right?

A. Yes.

Q. Now, if Mr. Chatterjee had come to you and said that he didn't think that NCR Silver had to use the Internet, would you have questioned his knowledge of the technology?

A. We would have had a definite conversation about whether or not it needs the Internet or not.

Q. You would have set him straight about it?

A. I would have set him straight about that. Correct.

MR. BARR: Can we have Joint Exhibit 82, A through B?

BY THE WITNESS:

A. Where's 82?

BY MR. BARR:

Q. I believe that's in front of you as well, sir. I'm not going to spend a lot of time on this, because it's very similar to the others. But would you just confirm for me that this is the manual that shows you how to use the NCR Silver Back Office?

A. Give me one second. I don't see it in the notebook.

Q. Oh, I apologize. Well, have a look on the screen.
A. Okay.
Q. It says Guide to Silver Back Office. Would you agree with me that this Joint Exhibit 82 is the manual for how to use the Back Office?
A. I do agree with that.
Q. Thank you, sir.
The merchants use the Silver software to operate their point-of-sale, right?
A. Could you repeat?
Q. Sure. The merchants who are your customers, right?
A. Uh-huh.
Q. They use this Silver software to operate their points-of-sale system, right?
A. Yes.
Q. Okay. And from a merchant's point of view, he or she would use a web browser and NCR would give him link information. And he could then go in and enter his menu items up into the cloud; is that right?
A. That's correct.
Q. And then that cloud would communicate with the hardware and the software that the merchant has in his store and make his menu available there in the store, right?
A. That's correct.
Q. And when a merchant's communicating with NCR using a

web browser to upload information, that merchant is querying the NCR database which returns information, right?

A. That's correct.

Q. And a web browser would be used to display the data that comes back from the query to the NCR database?

A. That's correct.

Q. So would you agree that there's no question that NCR is serving a web page to the merchant web browser?

A. NCR is serving a web page to the merchant web browser. So technically the web browser is on the device and so NCR is not technically serving the page. The web browser's the one that is rendering the page.

But to your point, the web page is building the web page based on the data that's coming back from NCR.

Q. Okay. And could you have a look at Page 66 of your deposition in front of you?

A. Say again?

Q. It's your deposition I handed you just a moment ago. It's a little booklet with the really small and hard to read pages on it.

A. I didn't hear the first word.

Q. Sorry about that.

A. All right.

Q. And the court reporter will also blow it up if you, like Mr. Baratta, need reading glasses. Specifically we're

looking at Page 67. I'm sorry. 66.

A. 66.

Q. And look at Line 14.

The question that you were asked at Line 14 is, Right. And somehow you're serving to my browser a web page; is that correct?

And what was your answer?

A. That's correct.

Q. And as part of putting the menu -- as part of putting the menu information through a web browser, the merchants can modify the images related to the buttons, right?

A. So we don't actually allow images, but we can modify the label that is on the button.

Q. Okay. All right. So you're saying that you could modify images related to the buttons, right?

A. I'm saying that we can modify the text on the button. There is no specific image on the button.

Q. Okay. Let's have a look at Page 66 in your deposition.

A. Okay.

Q. And this is going to start at Line 21 on the bottom of 66, and it's going to continue to Page 67.

A. Okay.

Q. Line 2.

A. Okay.

Q. So question, And as part of me putting my menu -- in my menu information through the web browser, I can add buttons or add a new item to my menu.

And your answer was, You cannot add new buttons. The solution is already prebuilt. You would be modifying the images related to the buttons but not adding a button. So you're not changing the solution.

Do you see that, sir?

A. I see that.

Q. Okay. So you told us that you could be modifying images related to the buttons, right?

A. I did.

Q. Thank you.

So the merchant could, through the web browser, go in and add a menu item. And then when the merchant looks at his point-of-sale system, he would have that new menu item reflected on its screen, right?

A. That's correct.

Q. And there can be a button associated with that new item on the menu, right?

A. That's correct.

Q. So both the NCR Silver and the Silver Pro would allow a merchant to add menu items, right?

A. That's correct.

Q. Add prices, right?

A. That's correct.
Q. Change prices --
A. That's correct.
Q. -- right?
Alter the menu that's displayed on the terminal?
A. That's correct.
Q. Now, NCR uses some videos to teach its employees and customers about the NCR Silver product; is that right, sir?
A. They do.
Q. In fact, NCR e-mailed you a link to the videos within the first two weeks that you started work at NCR, right?
A. I did have someone send me videos, yes.
Q. And some of these videos were given to customers, right?
A. That's correct.
Q. And, in fact, a customer could pull any video related to NCR Silver off of YouTube, right?
A. That's correct.
Q. And one of the links to the videos that you've seen is actually called NCR University, correct?
A. That's correct.
Q. And you've looked at these videos yourself, right?
A. I have looked at many of them, yes.
Q. And on behalf of NCR you certainly have no reason to dispute the authenticity of any of these videos; is that right?

A. Excuse me. There may be -- there's many videos that are posted on YouTube. NCR produces a subset of those, but there are other companies and people that produce their own videos.

Q. Okay. Certainly if we're talking about official NCR videos, we can trust those, right?

A. That's correct.

Q. So I'd like to pull up -- well, let me ask you this. Just quickly --

MR. BARR: Is it possible to just pull up the first screen on the videos? So, for example, if we could pull up JTX-21.

BY MR. BARR:

Q. It's -- without playing it, JTX-21, you recognize this to be one of the NCR training videos, right?

A. It appears to be the case.

Q. Okay.

MR. BARR: Could we see JTX-23?

BY MR. BARR:

Q. Does this look like an NCR training video?

A. I don't think I've seen this, but based upon seeing the logo, it could be an NCR video.

Q. Okay.

MR. BARR: Let's have JTX-30.

BY MR. BARR:

Q. Does JTX-30 appear to be an NCR training video?

A. It does appear to be.

Q. Looks like it has the same Amber Kelley that we saw on JTX-23?

A. Yep.

MR. BARR: And can we see at JTX-52?

BY MR. BARR:

Q. Is this an NCR training video?

A. Appears to be.

Q. JTX-69? Is that an NCR training video?

A. Again, it appears to be.

Q. JTX-70? Does that look like an NCR training video or part of one? There's a web address at the top, https://mystore.ncrsilver.com. Do you see that?

A. It appears to be an image from the Back Office. But I don't -- I can't tell that there's an NCR logo or anything associated with it.

Q. Okay. But you do recognize the NCR web address?

A. Correct.

Q. What about -- I'm sorry. Go ahead.

A. That web address is associated with an account, so anyone could produce that video is what I'm saying.

Q. All right. Well, that's NCR -- it has Silver point-of-sale at the top. And it says "Pro Demo - Concierge Team," right?

A. Correct.

Q. Do you know -- it has a name there, Michael Alberty. Do you know him?

A. I don't know that name.

Q. Do you have any reason to believe that this would not be a pro demo for the concierge team for NCR?

A. I do not.

Q. Okay. Have you seen pro demos?

A. I have not seen their demos.

MR. BARR: Can we see NCR -- I'm sorry. JTX-76?

BY MR. BARR:

Q. Does this look like an NCR video?

A. It does appear to follow the format for the NCR videos.

Q. How about JTX-77? Does that look like an NCR video?

A. It appears to be.

Q. Okay. So I'm going to show you a screenshot from this last one that we just pulled up, JTX-77, at one minute, 59 seconds. So this is just an excerpt. We're not going to play a video, we'll just show you the screenshot. You're familiar with this video; is that right, sir?

A. I'm not -- this is a screenshot. I don't know where it came from.

Q. Okay. Well...

A. I assume that it could be from an NCR video.

Q. All right. Well, you recall we've shown you some of

these before, right?

A. I do.

Q. Okay.

A. I don't see a Bates number on it. That's why I'm a little bit concerned. Yeah.

Q. Good question. I think the issue with these videos is that the Bates numbers don't always show up. But I can assure you this is the actual document that was used in your --

A. Okay.

Q. -- deposition. It was specifically Deposition Exhibit No. 9. And the number was actually here in your deposition, NCR-005899.

A. Okay.

Q. Now, I think you told us in your deposition this shows an earlier version of the hardware, but the Silver software is the same. Does the hardware change from time to time?

A. The hardware does change.

Q. Okay. What I'd like to ask you about is the first icon on the left side. It's labeled point-of-sale. Do you see that?

A. I do.

Q. And that allows the merchant to go into the point-of-sale view; is that right?

A. That's correct.

Q. And the point-of-sale view would allow the merchant to start taking transactions and payments, true?

A. That's correct.

Q. Do you know how long this video is?

A. I do not.

MR. BARR: Ms. Fastow, are you able to tell us how long this video is?

So it looks like this video is 12 minutes; is that right? Two minutes? Okay. This is a two minute, 58 second video. All right.

BY MR. BARR:

Q. Now, if a customer wanted to set up their POS, they would need to watch some of these videos; is that right, sir?

A. That's correct.

Q. But once they've watched the videos, they would be able to do that, right, set it up?

A. They would watch the videos or they can go through the manual.

Q. Okay. So let's look at another one. This is another excerpt from the same JTX-77. And it's two minutes, 36 seconds. Again, we're just going to show you the screen.

A. Uh-huh.

Q. I'd like you to --

MR. BARR: Well, let me go back one screen. I'm sorry. Got ahead of myself there. Two screens back to that screen

that had the icons on it. Okay. Next one.
BY MR. BARR:
Q. So we see "Item Look-Up." That's the second icon, right?
A. That's correct.
Q. And that would allow merchants to look up inventory items; is that true?
A. That's correct.
MR. BARR: So now if we could go back to the JTX-77 at 2 minutes, 36 seconds.
BY MR. BARR:
Q. So on the right side of the screen, we see these buttons that we've been hearing about today, right?
A. Correct.
Q. Now, you see a lot of stuff on the buttons like athletic shorts, kids black shirt, scarf, right?
A. I see it.
Q. Now, when you open up the box for the NCR Silver software, there's no buttons that say scarf or athletic shorts or kids black shirt on them, are there?
A. No. There are not.
Q. These are the buttons that the merchant gets to customize to meet their specific needs for their store, right?
A. That's correct.
Q. And the merchant would get to choose how many buttons

that he wants on his point-of-sale, right?

A. There's a limit, but yes.

Q. Within reason, right?

A. Yes.

Q. Couldn't have a million buttons on there, right?

A. Correct.

Q. But he gets to choose what the buttons are going to say on them, correct?

A. Correct.

Q. He's going to get to choose what the buttons do when you push them, i.e., if I hit adult black t-shirt and I'm the merchant, I could ask, do you want a V-neck or a crew neck or a long-sleeve or short-sleeve, those are things I could put on there if I wanted to, right?

A. That's correct, except for you can't tell it to drive a car by pushing a button, but...

Q. I understand your point. But fair enough. The merchant gets to use his creativity to set up the point-of-sale system, right? That's the point.

A. Right. Within limits. Yes.

Q. I'm -- obviously within limits of the software, right?

A. Correct.

Q. If he wanted the point-of-sale to spit out a pizza, he couldn't do that, could he?

A. Correct.

Q. But when we're talking about how he wants his point-of-sale to look, what the buttons are going to say, what the buttons are going to ask for, that's within the merchant's realm of creativity, isn't it?

A. That's correct.

Q. Now, there's -- I won't keep flipping back, but there's another icon that says, Customer Look-Up, right, on that -- back on that screen we looked at a second ago?

A. That's correct.

Q. And that would allow a merchant to -- she did it quickly -- to look up a customer, right?

A. Correct. If the customer has assigned the -- his e-mail address or phone number for loyalty, yes. He would be able to look him up.

Q. And customers -- I'm sorry. Merchants may do that because they like to have loyalty systems where they can reward customers for being loyal to them, right?

A. That's correct.

Q. Now, the next icon that we see on the right is what's called Silver Back Office; is that right?

A. That's correct.

Q. What does that do?

A. It allows you to connect to the Silver Back Office.

Q. Okay. So that would allow the merchant to view the

Back Office inventory management on the menu, right?

A. Correct.

Q. And the Silver Back Office icon would also allow the merchant to modify or add things to the menu, right?

A. Correct.

MR. BARR: Let's have a look at JTX-23 at one minute, 54 seconds.

BY MR. BARR:

Q. This is a video excerpt from a video that's called U.S. Training NCR Silver Essentials. Do you recognize it, sir?

A. I recognize the screenshot. Yes.

Q. Okay. Do you know how long this video is?

A. I do not.

Q. This video's kind of a long one, 55 minutes and 58 seconds; is that right?

A. That's correct.

Q. So if a customer wants to learn the U.S. training from the NCR Silver Essentials to learn how to do all this, he might need to watch a 55, almost 56-minute video, right?

A. That's correct.

Q. Almost an hour, right?

A. That's correct.

Q. Just to set up these buttons, right?

A. To learn more about the product. Yes.

Q. Okay. Now, what we're seeing here is a summary

screen that summarizes the inventory for this particular merchant, right? For a particular period of time?

A. That's correct.

Q. It's a -- it's called an activity summary, right? Correct, sir?

A. Correct.

Q. And on the right-hand side, you see a number that says $3,836.31. Do you see that?

A. I do.

Q. And above it, it says, During the last six months, your promotions generated sales of. Do you see that?

A. I do.

Q. So one of the things that the merchant gets to do in exercising his creativity is decide whether he wants to offer promotions at his stores, right?

A. That's correct.

Q. He gets to decide when he wants to offer them, right?

A. Correct.

Q. What kind of promotion he wants to offer, right?

A. Yes.

Q. What kind of discount that he wants to offer?

A. Correct.

Q. What products he wants to offer the promotions on?

A. That's correct.

Q. And all of that can be built in by the merchant

himself into the point-of-sale system?

A. That's correct.

Q. Now, if we look at the top menu bar at the very top, we see that the merchant is using HTTPS to access the NCR Back Office software.

A. That's correct.

Q. So you do not dispute that the hardware and software that we're looking at on this screen, JTX-23, is, in fact, using HTTPS.

A. Sir, you said the hardware and software. I don't know what hardware is being used on this screen, but I agree that they connected to the Back Office using HTTPS.

Q. Okay. And certainly you would agree that the merchant's using the web to access the Back Office, right?

A. I do agree.

Q. Okay. And that web could be presented by a web server, right?

A. Correct.

MR. BARR: Let's have a look at one more screen. This is JTX-23 at 15:49. I think this may be one we saw in opening statement for NCR's counsel.

A. Okay.

Q. This item says -- this says Basic Item Setup, right?

A. Correct.

Q. Okay. This is one of the -- you recognize this to be

one of the video excerpts from this almost one hour long U.S. training video?

A. Correct.

Q. And we can -- the merchant can set up items on his menu from this screen, right?

A. Correct.

Q. So he can pull down -- in the category he can -- there's lots of different categories to choose from. The one that we can see actually that's above at the top, the -- that's the taxes. We get to that later. The first category, there's a drop-down menu that has lots of different things. In this instance it's dessert, right?

A. Correct.

Q. And I assume that out of the box with the -- the merchant would have to decide what kind of desserts that he offers, right?

A. Correct.

Q. Okay. And if we were going to use this in an auto parts store, we probably wouldn't care about dessert, would we?

A. Not at all.

Q. Okay. So the merchant gets to choose whether he's going to offer key lime pie or pecan pie, right?

A. Correct.

Q. He's going to get to decide what he's going to charge for that pie, right?

A. That's correct.
Q. He's going to decide whether he's going to sell it by the piece or by the weight, right?
A. Correct.
Q. He's going to decide, you know, what kind of taxes apply to it, right?
A. Correct.
Q. So this is just one of the things that the merchant's going to do in setting up his menu, right?
A. That's correct.
Q. This isn't the only thing, this screen, is it, sir?
A. No. It's not.
Q. Because we've already seen before this, the screen that has all the different buttons on it and we talked about how those buttons do different things depending on what the merchant wants the buttons to do, right?
A. It's in the context of you can't do more than what the POS provides today.
Q. Yeah. Let's just get that out of the way. We can agree -- I'll agree with you --
A. Yes.
Q. -- that if it's not -- if the POS system can't do it, the merchant can't make it happen.
A. That's correct.
Q. So he can't spit out a pizza with his POS, correct?

A. Agreed.
Q. So we're talking about software, right?
A. Right.
Q. So in the context of the software, the merchant gets to use his creativity in building his point-of-sale, right?
A. Yes.
Q. Okay. And all of this is happening through a web browser communicating across the web, right?
A. That's correct.
Q. And we see it at the top of this screen too. It has that same HTTPS, right?
A. That's correct.
Q. And if the merchant makes changes, he can make changes while he's connected to the Internet, right?
A. That's correct.
MR. BARR: Let's go to the next slide. This one is JTX-23 at 28:05.
BY MR. BARR:
Q. Another slide out of the hour long training video. This one -- this shows that all of this work is happening through a web browser communicating across the web, fair?
A. Am I looking -- supposed to be looking at the screen?
Q. Is it not showing?
A. I'm trying to figure out -- yes. This is a picture of a point-of-sale that says it's connected to the web. Yes.

Q. Says NCR Silver is currently online, right?

A. That's correct.

Q. And we recognize that little green symbol that looks like a -- I don't know, some kind of a symbol. I don't know what you'd call it, a signal going out. That's an online signal, right?

A. Yep.

MR. BARR: Let's have a look at JTX-23 at 32:49. Another slide from the hour long video for training.

BY MR. BARR:

Q. In this slide we have different categories and different colors, right?

A. That's correct.

Q. And in this case I don't know what kind of store. This guy's got a Dodge Charger and he's got wine and he's got rubber bands. Do you see that?

A. I do see it.

Q. All right. But, again, this -- whoever this person is, they get to sell what they want to sell, don't they? And they get to set up a button for what they want to sell, don't they?

A. That's correct.

Q. He can sell Dodge Chargers and he can sell frozen yogurt, right?

A. That's correct.

MR. BARR: Let's have a look at JTX-23, same video at 47 minutes, 26 seconds, U.S. training video.

BY MR. BARR:

Q. What is this slide showing us, sir?

A. It shows the point-of-sale transactions for February the 22nd, 2017 and the type of customer that came in.

Q. So this is telling the merchant basically what happened in his store that day, right?

A. Yes.

Q. It's keeping track of the sales transactions?

A. That's correct.

Q. And it tells us what type of customer, if it was a walk-in customer, right?

A. That's correct.

Q. And the amount that was spent by that customer, correct?

A. Correct.

Q. And, again, this is all using HTTPS to go across the web, right?

A. Correct.

Q. Have you heard that Dr. Chatterjee claims that NCR Silver is prebuilt and never discusses building anything?

A. That's correct.

Q. But I think we've gone through many categories that you don't dispute that all these categories on the

point-of-sale are defined by the merchant with their own creativity, right?

A. But the solution isn't changing, so it's already built. You're changing the color of a screen as opposed to -- or the contents of a screen as opposed to building the software.

Q. Okay. I understand that that's your argument in this litigation, right, sir?

A. That's part of the argument. Yes.

Q. NCR disagrees that all these things that we call -- that we, CloudofChange, calls point-of-sale building, all the things I've just gone through, NCR disagrees that those are, in fact, point-of-sale building, right?

A. That's correct.

Q. NCR wants to call those things data entry, right?

A. And that's exactly what it is.

Q. Okay. And NCR wants to say that all of -- that this is not building because the NCR software is prebuilt, right?

A. That's correct. When you purchase an application from the App Store, you get it already built.

Q. Okay.

A. You don't get it, modify it and then put it back in the App Store. It's already prebuilt for you.

Q. Okay. But by the way, this word "prebuilt" that we've been hearing today from NCR and its lawyers, that word

doesn't appear in any of these manuals that I showed you about how to work this system, does it?

A. It does not.

Q. It doesn't appear in any of these hour-long videos that we've been looking at, does it, sir?

A. It does not.

Q. Do you think that if NCR considered prebuilt to be an important aspect of its software, that it might put it in its documents, in its marketing materials to tell its customers and its people that are using it about it?

A. If NCR considered that to be a key word when the app -- is an applet or an app that runs on a point-of-sale that runs on an iPad, we use the language of the product that we're selling to.

Q. Okay.

THE COURT: It would help us a lot if you would answer Mr. Barr's questions directly.

THE WITNESS: I'm sorry.

BY MR. BARR:

Q. To your knowledge, does NCR have the word "prebuilt" in any of its marketing documents or training documents anywhere?

A. It does not.

Q. Okay. And, in fact, Mr. Baker said prebuilt was a magic word, right, in his opening?

A. I wasn't here for the opening.

Q. Okay. Now, like Mr. Olson and Mr. Baratta, you are also an inventor; is that right, sir?

A. That's correct.

Q. I believe Mr. Baker told us in the opening that you yourself have five patents?

A. I do.

Q. And I expect that you're proud of the fact, like Mr. Olson and Mr. Baratta, that you are a recognized inventor with five patents to your name?

A. I am.

Q. And not to diminish your achievement in any way, because I don't have any patents, your patents don't have anything to do with point-of-sale systems, do they?

A. It does not.

Q. But we can all agree that being awarded a United States patent is significant, right?

A. That's correct.

Q. You have something to justifiably be proud of, don't you, sir?

A. I do.

Q. How long ago was your patent -- your first patent awarded by the United States Patent Office?

A. I believe it was around 2004.

Q. Do you still remember that day and how it felt?

A. I do. It was exciting.

MR. BARR: Pass the witness, Your Honor.

THE COURT: Counsel?

MR. BAKER: Your Honor, you want to take a short break --

THE COURT: I was going to ask you if you think now's a good time. That would be fine with me. Yes, sir.

Ladies and gentlemen of the jury, please remember my instructions not to discuss the case amongst yourselves. We'll take a short recess of about ten minutes, and then we'll come back and continue with the trial.

THE BAILIFF: All rise.

(Jury exited the courtroom at 2:43.)

THE COURT: Mr. Baker, thank you for that suggestion. I'm never sure what works best for you all, so I'm always happy --

Is there anything, Mr. Barr, we need to take up?

MR. BARR: No, Your Honor.

THE COURT: Mr. Baker?

MR. BAKER: No, Your Honor.

THE COURT: If y'all would be back in ten minutes or so, we'll get started.

And you can step down, sir.

THE WITNESS: Thank you, sir.

(Recess taken from 2:44 to 3:00.)

THE BAILIFF: All rise.

THE COURT: Please remain standing for the jury.

(The jury entered the courtroom at 3:00.)

THE COURT: Thank you so much. You may be seated.

Mr. Baker, is this your witness?

MR. BAKER: Yes. Thank you, Your Honor.

THE COURT: You may proceed, sir.

CROSS-EXAMINATION

BY MR. BAKER:

Q. Good afternoon, Mr. Quinn. We'll cover a few things Mr. Barr didn't have a chance to do. Tell us a little bit about yourself. Where do you live?

A. I live in Lawrenceville, Georgia. I've been there about a year and a half. Just recently relocated from Durham, North Carolina.

Q. Okay. And you work at NCR, correct?

A. I do.

Q. How long have you worked there?

A. I've been there for two years and three months.

Q. Okay. And where did you work before that?

A. I worked at IBM for 19 years.

Q. And what did you do generally at IBM?

A. I was a -- I held various roles at IBM, but my -- I was a software engineer and later became a software manager and became a director.

From 2000 to 2004 I was a software engineer on the z/OS platform which is a mainframe.

From 2004 to about 2008 I worked on the WebSphere extended deployment product, which I served as a quality assurance or tester for -- some of the technical people would understand that. Also I converted from a tester back into development where I wrote Java code for the UI for the WebSphere extended deployment product.

In 2008 I moved over to be a manager -- I'm sorry -- a leader for the WebSphere eXtreme Scale product where I focused on the -- again, back to the mainframe. I focused on the mainframe side of it, but I continued to do all of the UI.

And then from 2011 -- in 2011 I became the manager of the team and took on more responsibility around that, with supporting the software, serving as the L3, or the level 3, which is the focal manager responsible for the support and update and maintenance that goes out with the product.

And then I moved over to the IBM Worklight product which was a product designed to actually allow customers to build -- to actually build mobile applications for their product. And so we wrote the tool, we coded it up. And customers would then take that tool and build their own mobile application.

And so from there I moved over to work on the -- IBM's API Connect product where you are a consumer or a -- another enterprise company that has their own APIs that they want to sell and expose out. We provided them with an opportunity to build their own portal, and then they can actually sell their

APIs or make them available for other developers to use.

And so after that I moved over to manage the block chain solutions team where we built solutions in the cloud that allows you to store documents or in a block chain. So three entities had to agree that -- they all agree that the documents are equal. We all signed, we agreed with it, and so that shared information in the block chain is what we produce. And then we use that in other products like IBM Food Trust and IBM TradeLens. And so I worked with those teams, partnered with those teams. And then I left IBM and came to NCR.

Q. Okay. And you have a degree?

A. I have a degree in computer science from Jackson State University in Mississippi where I grew up.

Q. And what year was that?

A. I got my degree in '99, but that was after serving in the military. I spent time at Fort Hood here in Texas serving as a 71Lima, which is an administrative specialist, prior to going to college.

Q. Now, how would you best describe NCR Silver?

A. And so NCR Silver is a point-of-sale application that runs on Silver -- Silver Pro and Silver Essentials both run on Android™ and iOS applications. They run on the actual devices. We sell it as a solution, complete solution with a Back Office that allows you to modify the configurations associated with your account.

Q. What do you mean by the word "solution"?

A. A solution is -- when you think about the products that you buy, you buy them to solve a problem. And so NCR Silver solves the problem of a point-of-sale.

So some companies, when they start out, they don't have a point-of-sale. And so what they want to be able to do is, I need to buy something that's simple and easy that allows me to get on board.

So we looked at the documentation earlier and it showed us how quickly and easy a customer can purchase the Silver. They can download the application from the App Store if they have an iPad. And then they would sign the merchant agreement with NCR, and they can get the other hardware, for example, a cash register -- I'm sorry -- a cash drawer, a scanner, a printer and a payment device.

Q. Now, does a customer have to buy hardware from NCR to operate NCR Silver?

A. They don't. A customer can actually -- so purchase their own iPad. And then, like I said earlier, download the app after they sign the merchant agreement. But they have to go and get a payment processor or a payment provider. So a third party that is responsible for their payments. NCR has one, but it doesn't necessarily have to purchase from NCR. But it has to be a payment processor that we support.

So they can take cash transactions, but they can't take

payment transactions through credit cards without a payment processor.

Q. All right. Let me pull up document Joint Exhibit 92.

A. 92?

Q. And if you could go to Page 5.

A. Yes, sir.

Q. Tell me what this is.

A. This is a PX10 hardware. It supports Silver Essentials and Silver Pro Restaurant. But it has the cash drawer, the scanner, the customer-facing display and the payment device, and the printer for printing receipts.

Q. And is this an iPad or an Android™ terminal?

A. This is an Android™ terminal.

Q. I believe you testified earlier that these terminals can come preloaded; is that correct?

A. That's correct. So as I said about the iPad, the iPad you can download it from the App Store. For the PX10 hardware which is the Androids™, it comes already installed on the device.

Q. Okay. So when a customer receives the Android™ tablet or after an iPad user downloads the NCR Silver app from the App Store, do the user screens look fairly similar?

A. They do. They do look fairly similar.

Q. And do you see a picture of one there in Exhibit -- Joint Exhibit 92, Page 5? Is that a fair rendition of what the

screen would look like on a POS terminal?

Just go back to -- yeah, what you had. You see it right there to your screen? That.

A. Oh, so the screen up here --

Q. Yes.

A. -- on this? Yes. That's a fair representation.

Q. All right.

A. I was looking for a close-up of the screen. Sorry.

Q. So does the NCR Silver app that's on these terminals, do you consider that to be software program?

A. I do.

Q. Okay. Why is that?

A. So a program is designed and created to run and perform a specific action.

Q. Okay. You're a software engineer, correct?

A. I am.

Q. Just by trade, right?

A. That's correct.

Q. All right. And what I wanted to get from you is what -- can you explain to us what is software, based upon your experience?

A. So software is a set of programs coded using a programming language that are built to solve a specific problem. For example, Microsoft has Microsoft Word. It is software. And I'll tie this to software as a service because

Microsoft changed the way -- their model. But you would buy a CD that would have a program that is installed on the CD, and then you would use that CD to upload into your device. And that software would be on your device to perform a particular action. Then I can write a paper or article or anything using that Microsoft Word program.

Q. Go ahead.

A. As a solution, we no longer have the ability to keep that software. Before we would get a license key that was associated with it. You would own that CD and that key. Now software as a solution, you have to pay for that service continuously, and so you don't own the license anymore. And so you get the maintenance and upgrades and new features as they come out that are associated with that particular software.

Q. So as part of your job, have you actually worked, you know, with the NCR code -- maybe not directly but maybe indirectly?

A. Yes. I have. I've worked with a team on the development and identifying of features and capabilities, and prioritization of the features. And then I also have to identify if we need new engineers that take on more work. So, you know, what can we afford? What do we do from a process perspective to be able to deliver that particular functionality?

Q. So when the customer downloads the NCR Silver app, is

there software coded into that app?

A. The app is actual software. And so if you think about an iPad or an iPhone, the application is actually software. So if you download a game on the phone, like a lot of people used to play Subway Surfer. That's a software program that is running. And so when a customer downloads that game, they're entitled to use that game and get the software maintenance. And so some of those games are free, but for NCR, we charge for the service for using that software.

Q. Okay. Talking about this code, the NCR Silver code, do users -- does a merchant have access to that code?

A. They do not. And so in our employee agreement -- I'm sorry -- in our merchant's agreement, we actually tell them not to touch or do anything with the software directly.

MR. BAKER: Let's go to Joint Exhibit 80, please, Section 1.5, Page 2.

BY MR. BAKER:

Q. Can you just briefly summarize, what is this -- what do you recall this particular paragraph to provide?

A. This -- excuse me. I'll just read a little bit of it because I think it kind of lays it out. "You are licensed to possess and use only the object code form of the software. Except as the agreement expressly permits, you may not use, copy, modify, publish, or display the software or disclose, rent, loan, or transfer it to any other parties."

And so the object code of software for -- the software engineers would understand this more, but you build or create software. You create software by writing a -- using a programming language. And so a lot of people have written "Hello, World!" as their first program and so that "Hello, World!" program is then compiled and then it's translated into object code. And that object code can be run on specific hardware.

So you can't run the same object code for Apple on an Android™ device. So the object code has to be specific for the device that it's being built on.

Q. All right. And what is source code?

A. Source code is the original code that is used to create the software.

Q. So in order to change the actual NCR Silver POS program, one would have to gain the source code; is that correct?

A. That's correct.

Q. And so --

A. And so we do not allow any entities outside of NCR employees or within the specific team to be able to access that. So if I hire an employee today, they would have to -- they still couldn't access the software without going through and getting access.

MR. BAKER: Excuse me one second. Can we go to DDX-6?

BY MR. BAKER:

Q. And I have just one quick question for you. Is this an example of codes of line -- excuse me -- lines of code?

A. That's correct. This looks like -- so there's many different programming languages. This is Pascal, and it's --

THE COURT: No.

BY MR. BAKER:

Q. No. That's it. No more. Just wanted you to identify that.

A. Okay.

Q. All right. Thank you.

A. All right.

Q. So does NCR on occasion make changes to the NCR Silver software?

A. It does.

Q. Can you kind of give us some real world examples?

A. So -- well, we are -- our customers cannot change the source code directly, as we just spoke about. What we have to do is get feature requirements from them, and then our engineering team will create the source code and compile it and deliver the solution.

Waffle House, for example, they want to have a button that allows you to go to the screen and the -- their customer -- their consumer will give their telephone number, and you can text them the receipt. They just want to click the button with

the telephone number and send the receipt. So that's not something that you can -- that the Waffle House can do themselves, so we have to do that for them.

Q. And that's a real world request that Waffle House has made to NCR?

A. That's correct. And so they have multiple requests similar. They want to be able to add additional payment providers, as well as support other loyalty providers as well. And so that's work that NCR has to do within the point-of-sale.

Q. How much time did your team spend answering requests from NCR customers to change or modify NCR Silver?

A. We get requests through our support channels daily with feature enhancements as well as actual defects in the product. And so we're -- there is an actual -- we couldn't perform this task because there is an error message that's showing up. And the customers can't resolve those themselves, and so we have to resolve them for them.

Q. I think there's been some discussion with Mr. Barr about a service called a Back Office. Are you familiar with that?

A. I am.

Q. Okay. And just in general terms, what is NCR Back Office?

A. So the NCR Back Office is a customer portal that allows them to change the configurations associated with the

point-of-sale. And so if they want to add a hamburger, for example, as a part of their menu, they can actually go in and add a hamburger. And then there's this terminology of variations, and so we as a consumer typically says, I don't want no pickle, no lettuce. Those are variations of the type of hamburger that you would want, take off these different variations of that, and so of those things, the variations, that ticket reporting are available in the Back Office.

MR. BAKER: If you could go to Joint Exhibit Number 30. I believe it's -- that's all right. That's all right.

BY MR. BAKER:

Q. So if you're a merchant and you're using Back Office and you're trying to add new data to a menu, how would you go about doing that?

A. So I would go to a PC and enter the web address for the Back Office. And then I would use my credentials to log in, and then I would go in and change the menu configuration for the point-of-sale or the Back Office itself.

Q. So Mr. Barr was asking you a lot of questions -- a lot of questions about this use as a web browser. Do you remember those questions?

A. I do.

Q. Okay. So when a merchant wants to make these changes to the menu, the -- clearly the merchant is going through a web browser, correct?

A. That's correct.

Q. Okay. But where are the changes actually being made?

A. So the changes are in the data, and so the web browser only renders the page that has the data so the back-end data exists in the database. And that database is where the data is stored. All of the action for this changing of the data are done on the application server that resides in the Back Office. And so you have an -- a web browser that is just bringing forth the data that is being displayed so all that does is display the HTML and the data that comes back from reading it through the database.

Q. So just for simplicity's sake, what is a web browser?

A. So a web browser is just an application that routes to a web location and displays the HTML data that it gets back.

Q. And so what is a web server?

A. The web server is what's serving --

MR. BARR: Objection, Your Honor. This gets into the limine that we talked about earlier about expert testimony.

MR. BAKER: I'm actually -- on his factual basis as an engineer for NCR, what is a web server, in his experience?

THE COURT: I'll let him say at the high level or macro level what it is.

MR. BAKER: Okay, Your Honor. Thank you.

BY THE WITNESS:

A. So a web server is just the -- the host that is

hitting the back-end application and bringing forth the HTML and server to the web browser.

BY MR. BAKER:

Q. Okay. And when an NCR merchant is again updating or adding to their menu, are they using the web server to make that particular addition or change?

A. They're actually hitting the web server, and that web server's hitting the back-end application that is making the change to the data, and that data resides in a database.

Q. Now, just very quickly, does NCR on occasion issue release notes?

A. Yes. We release -- issue release notes at the end of every major release. So a release note describes a change in functionality that we're producing.

MR. BAKER: Okay. Could we go to Plaintiff's Exhibit 151, please?

BY MR. BAKER:

Q. Can you identify Exhibit 151, please?

A. Yes. This is a page from the release notes for NCR Silver Version 4.6.

Q. And, in general, what's the purpose of these release notes?

A. It informs the customer of the changes that NCR are making to the point-of-sale. So we could change the actual point-of-sale. We can change the Back Office. We're adding

new capability or we're fixing defects, as I mentioned earlier, where there's a bug in the actual product.

Q. Okay. You talked earlier about there's two different versions of Silver. There's Essentials, and then there's Pro, correct?

A. That's correct.

Q. Okay. Can a merchant use NCR Essentials to build NCR Silver Pro?

A. They cannot.

Q. Can you explain?

A. They're two different products. The solution is design -- the Silver Essentials is designed for retail, and Silver Pro is designed for restaurants.

Q. So does the NCR Silver Solution, is there a cloud-based component of it?

A. Yes. It also -- the NCR Silver Solution leverages the Back Office as well.

Q. Okay. And what do you mean by that, leverage it?

A. And so the configuration changes -- the access to the same data for the tickets and the reporting that were used for Silver Pro Restaurant, we also get with Silver Essentials.

Q. Now, who's providing this cloud service?

A. So our Google Cloud service is -- I said Google. Google Cloud service. We leverage Google to -- they provide a cloud hosting solution. All of our application servers, our

IHS servers all reside in Google Cloud.

Q. Okay. Let's go back to -- this is similar to, I think, some of the exhibits that Mr. Barr was showing you. This is DDX-6.

MR. BAKER: All right. And if we could go to, let's see, 6.3.

BY MR. BAKER:

Q. All right. Do you remember Mr. Barr asked you some questions about this?

A. Yes. I do.

Q. All right. So my question to you is -- he asked you about these categories, the little box there, the check box. Do you see that? This says a dessert. This is a much better rendition than -- I mean, his was much better than mine.

A. Yeah.

Q. Do you see that?

A. I do.

Q. Okay. Now, if a user wants to add an item like dessert, how would you go about doing that?

A. So I would select a category. Then I would select dessert as the category. And then I would define what the item is.

Q. All right. And once a user makes that decision, can they then save that decision?

A. That's correct. And so once they've made the

decision, the -- so, again, we're on the -- the web server has brought forth the web page. And so we're going to make a change which is going to make a call to our back-end application that is going to modify the data and then save it in the database.

Q. All right.

MR. BAKER: Let's go to 6.7 -- DDX-6.7.

BY MR. BAKER:

Q. All right. Mr. Barr was asking you some questions about this particular screenshot. And I want to ask you some too. So he was asking you about the various menu items there. You know, you've got cupcakes and various -- you've got ice cream, horchata ice cream up at the top. And you've got prices and things like that. And so those menu items there, you could change the description and the price in the Back Office, correct?

A. That's correct.

Q. Okay. But, again, where is it that the change is actually happening? Is it happening on the web browser?

A. No. The web browser, again, is just rendering the change. The actual change in updates are performed in the back-end. There's API calls that reach out to the back-end that makes modification of the data.

Q. All right.

A. And so that work has to be done by the application

server.

Q. It's not done on a web server, is it?

A. Not at all.

Q. So the actual buttons here, the menu, those can't be changed by the merchant, can they? The physical location?

A. The physical -- no. The physical location can't be changed. The solution has those predefined.

Q. Pre what?

A. Predefined.

Q. Okay.

A. So I couldn't -- looking at this diagram, I couldn't take the cupcake button and drop it down right below the blue -- what is that? Blue poles? I can't read it. Or the ice cream. I can't just maneuver those around. It has to follow this layout that's already predefined for us.

Q. Now, can a user add a button?

A. They can add a button. But, again, it doesn't change the layout. The layout's already predefined. That button is going to be there for the item that is being created.

Q. What do you mean by that?

A. I mean that I can't just arbitrarily add buttons to -- as I was saying before, I can't go and create -- come up with an idea of a button that starts up a car engine and make that button work. I actually have to use the system-specific predefined actions for that. So it's a dessert. A cake. And

I can't go beyond the limits of the screen either.

However, if I want to purchase a race car, I could do that, right? I could put that on there and say race car, which I think we saw in the last one.

Q. Okay. Does NCR sell PC workstations to its merchants as part of the NCR Silver Solution?

A. It does not.

Q. Does it provide Internet access?

A. It does not.

Q. Does it provide the Google Cloud's services?

A. It does not.

Q. What does it just provide?

A. Per the diagram that we saw earlier, you have the point-of-sale application with the actual software that goes along with it. So you get Silver Pro Restaurant or you get Silver Essentials. And then if the customer has purchased the hardware, then the hardware would come with it, the cash register, scanner, or printer. And then they get all of the maintenance that goes along with that as well.

Q. Mr. Barr asked you a series of questions about maybe some opinions Dr. Chatterjee may have given or may not have given in this case. Do you recall those questions?

A. I do.

Q. Okay. As you sit here today, do you know exactly what opinions Mr. Chatterjee's given -- Dr. Chatterjee's given?

A. I do.

Q. Okay. And are you familiar with some discussions about whether or not these -- this system can work on a stand-alone basis?

A. I am familiar with the discussions. Yes.

Q. All right. And are you familiar with Dr. Chatterjee actually saying that that could never be the situation? In other words, it always had to have Internet access?

A. I believe the conversation was we need the Internet only when we want to have the reporting capability. And if I'm running a cash -- I mean, if I'm running cash only, I don't need the Internet. I can just use the point-of-sale system.

But if I'm trying to keep records and keep track of those things, I would need the Internet to upload that data to the Back Office.

MR. BAKER: Can we pull up DDX-6.9?

BY MR. BAKER:

Q. Have you seen this before?

A. I have.

Q. All right. What is this generally?

A. This is a view of the architecture for Silver --

Q. Okay.

A. -- at a high level.

Q. All right. And we've been asking questions, so has Mr. Barr. We've all been asking questions on how a merchant or

a user enters data on the back end. And can you explain this, using this diagram, what is going on here?

A. So the iPad -- and so if you have the Silver Pro Restaurant and you are actually modifying tickets or taking transactions and sales, then what happens is it makes an API call, JSON, over to the point-of-sale API server. And then that data is modified at the back-end database.

So, for example, if I'm taking a ticket transaction and I want to process the ticket, I don't open up a browser to process the ticket. There's already communication happening to the point-of-sale that talks to the point-of-sale API server, and then that updates the back-end database.

And so from the web browser, which we talked about extensively, you access the web server from the point-of-sale. It talks to the web browser. And then it makes modifications to the application server, or it brings back data that is pulling directly from the database, but it doesn't modify the data. Any modifications have to go through the application server.

Q. Right. There were some questions asked of you about what do you know about marketing material. Do you know any marketing material that contains the word "prebuilt"?

A. I'm not familiar with all of the marketing material that are -- that NCR has. So I'm not aware of any that says "prebuilt" in it.

Q. Okay. And Mr. Barr was making a point that these videos -- some of these training videos were an hour long. Do you know if those videos -- what all they contain?

A. So I haven't looked at all of the videos, but if you look at the capability of the product from the Back Office perspective, we have to explain a lot of things to the customer. Our concierge's team can work with them directly or they can actually do a lot of things on their own. And so if they're like me, I like to figure things out for myself, and so I watch the videos or I go to the documentation and understand it.

MR. BAKER: So let's turn again to the last but not least most favored topic, the notice letter.

BY MR. BAKER:

Q. So Mr. Barr asked you some questions about the notice letter. And I think you may have mistestified earlier about when NCR actually received the letter; is that correct?

A. That's correct.

Q. Okay. When is it that NCR first received the letter?

A. So the -- from my understanding they didn't receive it until August of 2019, I believe. Or 20 -- yeah, 2019. And it was given over to the legal team to address. And so nothing that I've seen -- because it came right in as a lawsuit as opposed to the actual letter itself like we see here.

Q. Okay. Now, in August -- excuse me -- January of 2018

when this letter was supposedly sent out, what was the -- where was the world headquarters of NCR located?

A. It was located in Duluth, Georgia. The team was also moving to Springfield Street in Atlanta where we got the new building.

Q. So what is NCR's position as to where this address -- this letter should have been addressed?

A. This -- from my understanding, Edward Gallagher was located in the -- his New York office. And so he either should have got it at his New York office or it should have been sent to the corporate headquarters.

Q. Okay.

MR. BAKER: Your Honor, no further questions.

MR. BARR: Recross (sic), Your Honor?

THE COURT: Please.

REDIRECT EXAMINATION

BY MR. BARR:

Q. Mr. Quinn, you're not trying to suggest, are you, that this address that the Joint Exhibit 5 notice letter was sent to was not, in fact, an NCR office in Alpharetta, Georgia, are you, sir?

A. I'm not suggesting it was an NCR office. It just wasn't the corporate headquarters or to the location of Mr. Gallagher's office.

Q. How do you know where Mr. Gallagher's office was?

A. The -- if you look at the website, per my understanding, it was located there. But also we post that all legal matters should be sent to the corporate headquarters.

Q. Okay. Well, hold on. You didn't get -- you didn't start working at NCR till 2019, right?

A. I did not start working at NCR until 2019. That's correct.

Q. You weren't in any position to know where Mr. Gallagher's office was back in 2018, to be fair, right?

A. That's correct.

Q. Okay. Now, a minute ago you were being asked about code.

A. Yes.

Q. And it's not necessary for a merchant to get into the NCR source code to build a menu for their point-of-sale at the pizza store, is it?

A. To build a menu? It's not necessarily building a menu. It is modifying the existing menu that is present in the application, yes. They do not have to get into the source code to modify the menu.

Q. Right. That's the beauty of the NCR Silver, right, that it's easy for the merchants to use it? We've gone through several slides where we've seen how the merchants can make it -- the menu look like they want, the point-of-sale like they want for their particular store?

A. Right. But they can't modify the layout. They can just change the -- as we talked about, the description, the pricing, and the colors.

Q. Well, that's not all they can change, right? They can decide how many buttons they want, right?

A. Within limits of the application.

Q. We talked about that. Within limits. They can't have a million buttons, right?

A. So they can't go out and just unilaterally just keep adding. Right.

Q. Well, let's assume that one pizza store wants 50 buttons and another pizza store wants ten buttons. They can do that, right?

A. No. There's a limitation on the size of the buttons that they can put on the screen.

Q. Well, how many buttons can they can put on their screen?

A. It varies, based upon whether it's Silver Pro or Silver Essentials.

Q. Well, can they have buttons and sub-buttons and sub-buttons to the sub-buttons, sir?

A. Within limits, yes.

Q. If they want to, right?

A. Within limits, right.

Q. And nobody has to modify any of those numbers that

you were telling us are software code to do that, do they, sir?

A. That's correct.

Q. And, in fact, if a merchant was to try to modify that software code, they'd be in breach of contract and lose their system, wouldn't they?

A. That is correct.

Q. Now, when Mr. Baker was asking you about buttons, he said that the physical location can't be changed; is that right?

A. I did.

Q. But that doesn't mean, as we were just saying, that the buttons can't be changed or the number of buttons can't be changed or what the buttons do can't be --

A. You can sort through all of the buttons. You can change the pricing for a particular item. Yes. You can change those.

THE COURT: Let's do this. Let's him ask a question, then you answer.

THE WITNESS: I'm sorry.

BY MR. BARR:

Q. And I'm not trying to beat a dead horse here, sir. But when you were talking about the buttons, you described that the reason that those buttons couldn't be changed without changing the software, you said, was because the buttons were predefined. Do you recall that?

A. I do.
Q. You meant to say prebuilt, didn't you?
A. No.
Q. Does that word "predefined" appear anywhere in any of the NCR documents?
A. It could.
Q. Have you seen it?
A. Have you searched it?
Q. Sir, have you? I'm asking you. You're NCR.
A. I have not searched --
Q. So you can't --
A. -- for the word "predefined."
Q. All right. So you can't sit here in this courtroom and tell this jury that "predefined" is how NCR defines its software, right?
A. I cannot.
Q. Okay. Now, NCR Silver has sold over $100 million worth of the -- or NCR has sold over $100 million worth of this NCR software, the Silver, because it's easy to use by a merchant, right?
A. I'm not sure of the exact amount that has sold, but it is ease of use that allows for us to sell it.
Q. Certainly ease of use is one of the popular things about NCR Silver, right?
A. That's correct.

Q. And another thing that's popular about NCR Silver is that you don't have to have a bunch of computer servers in your own store, your own pizza store, right?

A. That's correct.

Q. You get to use the Internet to use the servers in the cloud, right?

A. That's correct.

Q. That's another reason that people buy NCR Silver, correct?

A. Correct.

Q. Now, you mentioned another word, "application servers," right?

A. Correct.

Q. That's another Dr. Chatterjee word, isn't it, sir?

A. I don't know how to answer that. Words are used by everyone, right?

Q. Okay. Well, this word "application server" is used a lot by Dr. Chatterjee in this lawsuit, isn't it, sir?

A. It's also used in our documentation as well, but, yes.

Q. Well, that document -- you bring up a good point, Mr. Quinn.

That document that Mr. Baker was just showing you -- maybe we could pull that up on the screen again. It was from Mr. Baker's opening.

This document, you see it on the screen? I don't if it is in your notebook.

A. I've got it in my book. DDX-6.9.

Q. Yes, sir.

You were -- Mr. Baker was asking you to describe the NCR Silver application through this document, wasn't he?

A. That's correct.

Q. This is not an NCR document, is it?

A. It is not an NCR document, but it was produced for the trial.

Q. It was produced by Dr. Chatterjee, right?

A. As the expert for NCR.

Q. That's right. This came right out of Dr. Chatterjee's report, didn't it?

A. That's correct.

Q. This is a document -- and, in fact, if you want to look to the left, that's the page from Dr. Chatterjee's report. I've got it right here. That's Dr. Chatterjee's 100-page report that he completed after your 30-minute conversation the night before it was due.

Do you recall that, Mr. Quinn?

A. I do.

Q. So this document that Mr. Baker was using, asking you to explain how this application server works, is not an NCR document used in NCR to explain how NCR Silver works to

anybody, is it?

A. It is not.

Q. You just used it in this jury -- in this courtroom to explain it to the jury, right?

A. That's correct.

Q. With Dr. Chatterjee behind it, right?

A. That's correct.

MR. BARR: Pass the witness.

RECROSS-EXAMINATION

BY MR. BAKER:

Q. That document is fair and correct, right?

A. That's correct.

Q. Nothing misleading in it?

A. Nothing misleading.

Q. You've reviewed it?

And that's how our system works?

A. Correct.

Q. All right. One last question. Hate to beat a dead horse.

This notice letter, right, you were asked a series of questions in your depositions about how you obtained certain information, right?

A. That's correct.

Q. And you were the corporate representative on that topic; is that correct?

A. That's correct.

Q. And as the corporate representative, what did you do to obtain that information?

A. I researched it through looking at our internal website as well as talking to our counsel as well.

Q. Okay. And through this -- your research, you were able to determine where Mr. Gallagher was in August of -- January of 2018, correct?

A. That's correct.

Q. Thank you.

MR. BAKER: No further questions.

MR. BARR: Nothing further, Your Honor.

THE COURT: May this witness be dismissed?

MR. BARR: Yes, sir.

THE COURT: What that means is you're free to stay or free to go, whichever you want.

(Conference between counsel.)

MR. BARR: Plaintiff calls Kristin Schoonover of NCR Corporation.

(The witness was sworn.)

DIRECT EXAMINATION

BY MR. BARR:

Q. Could you please state your name for the record?

A. Yes. Kristin Schoonover.

Is that volume okay?

Q. It's perfect. I can hear you. Thank you.
And where do you work, ma'am?
A. I work at NCR.
Q. What is your job there? What's your title?
A. My title is executive director of product management.
Q. Can you tell us what you do in that job?
A. Yes. I manage the -- well, I used to manage the NCR Silver point-of-sale solution, and that means I develop the road maps, I define the strategy for going to market, prioritize the features that we'll develop. I spend time talking with customers and understanding the market and what their needs are and define how the products should work.
Q. Okay. You said you've recently -- fairly recently changed products, but you used to work on the -- you were in charge of the NCR Silver product?
A. Yes. I was in charge until October of 2020.
Q. And, in fact, you're probably the person at NCR who's been working with the NCR Silver product the longest, correct?
A. One of. Yes.
Q. Because you came to NCR from a prior company called Radiant?
A. Yes.
Q. And Radiant had a product called Silver; is that right?
A. It wasn't called Silver, but, yes. That's where the

product idea originated.

Q. Okay. And NCR bought this Radiant company, right?

A. That's correct.

Q. Okay. So when we heard this morning about how innovative that NCR is and all these inventions that they had back in the 1800s, up to about 1985, Radiant company wasn't one of them, was it?

A. Well, Radiant is a company.

Q. Right. Radiant had a product that NCR bought?

A. Yes. That's correct.

Q. NCR wasn't the inventor of the Radiant product, right?

A. The initial idea. That's right.

Q. They bought that idea from Radiant, right?

A. Yes.

Q. And you said that Radiant was a company that developed software for restaurants, retail, and fuel; is that right?

A. Yes.

Q. Now, I believe that we've heard already that the -- from Mr. Quinn, that he believed it was 2012 that the Silver product was put on the market.

But since you were there, could you tell us when Silver came on the market?

A. Yes. It was released to market in the summer of

2012.

Q. Okay. And, in fact, to your knowledge, NCR did not start working on development of the NCR Silver product until they bought Radiant and you went to work at NCR; is that correct, ma'am?

A. I'm not sure I understand that question.

Q. Okay. Well, NCR, to your knowledge, didn't start working on the -- on this product that became NCR Silver until after you joined the company in 2011, right?

A. They acquired the asset of that product. That's correct.

Q. Okay. So NCR bought Radiant, Radiant had a product, you came along with the Radiant employees, right?

A. Yes. That's right.

Q. Kept working on the product?

A. Yes. That's right.

Q. Okay. Thank you for that.

Now, you haven't worked on any patent since you joined NCR back in 2011, have you?

A. Not under NCR. That's correct.

Q. Did Radiant have patents?

A. Yes.

Q. But NCR hadn't had any patents, for you?

A. For me personally, no.

Q. Yes.

And, in fact, you're not aware of any patents at NCR that cover this NCR Silver product, are you?

A. I'm not personally aware, no.

Q. And you were the person that was in charge of the product line, right?

A. Yes. That's right.

Q. So if there was a patent that covered the NCR Silver system, you would probably be someone who would know about it, fair?

A. Most likely. Yes.

Q. Now, the NCR Silver product was developed to sell to small and independent business owners, right?

A. Yes.

Q. Like the pizza shop we've been talking about today?

A. Yes.

Q. And, in fact, NCR has an abbreviation for that business segment, SMB, correct?

A. Small business. Yes.

Q. So let me show you -- and before we put this on the screen, it's not in evidence yet.

I'm going to show you -- ask you to look in your book at PTX-100. And before we throw it on the screen, I've got to offer it, so give me a minute to ask you a few questions about it.

A. I'm sorry. In the binder book?

Q. Yes, ma'am.
A. On what page?
Q. In the notebook binder, there should be a tab that has 100 on it. PTX-100.
A. Okay.
Q. Okay. You found that?
All right. That is an NCR document, right?
A. Yes.
Q. It's an NCR document dated August 2019, right?
A. Yes.
Q. On the bottom of the page -- of each page, it says, "NCR Confidential - Internal Use Only," right?
A. Yes.
Q. And it has one of those Bates numbers on the bottom with "NCR" on it, doesn't it?
A. Yes.
Q. You have no basis to deny that this is a document that was prepared and used by NCR in connection with its business, right?
A. I do not.
Q. And it relates to NCR Silver, according to the document, right? Or it relates to the NCR point-of-sale business, right?
A. The small business market. Yes.
MR. BARR: Your Honor, at this time we would offer

Plaintiff's Exhibit 100.

MS. COLLINGS: No objection.

THE COURT: It'll be admitted.

BY MR. BARR:

Q. Now, would you turn to Page --

MR. BARR: Yes. Now we can throw it up on the screen, and we can see it.

BY MR. BARR:

Q. If you would please turn to -- and the little Bates numbers are at the bottom. You'll see that the numbers have "NCR" on them. I'd like to ask you to look at Page 6426. Those are the last four numbers.

And at the very top we see that NCR is saying that 54 percent of SMBs -- that's those small and medium-size businesses -- intend to spend on tech in 2019, right?

A. It says that, yes.

Q. That's good news for a tech company, isn't it? If they want to -- if that many people want to buy tech, right?

A. Yes.

Q. Okay. Now, I'd like to turn to Page 6430. Now, 6430, in the top left corner, we have market opportunity. See that?

A. Yes.

Q. Okay. And NCR is saying that the NCR available market in 2023 for this product is $19.5 billion, right?

A. Yes.
Q. That's a pretty big market, isn't it?
A. I -- it's -- yes.
Q. Yes. Have a look down at the bottom right-hand corner where we've got the little target with the dart in it. Do you see that?
A. Yes.
Q. And it says there that over 20 million sites are in alignment with NCR Silver. What does that mean?
A. It means that there are 20 million small businesses.
Q. Does that mean that NCR has over 20 million customers, potential customers, out there in the world for this product?
A. No. It's saying that there's 20 million businesses, not necessarily addressable to NCR Silver. They may not be spending money. They may not be well-suited. It's just saying 20 million small businesses.
Q. Well, it says more than that, doesn't it, Ms. Schoonover? It actually says over 20 million sites in alignment with NCR Silver, right?
A. In the small business market, that's right.
Q. So doesn't that mean that there's over 20 million businesses out there who are actually in alignment and might be a potential customer for NCR Silver?
A. They might be. Yes.

Q. Let's take a look at the next page, 6431. And let's just hit the first sentence at the top. It says "Cloud POS hitting its stride in Restaurant sector," right? See that?

A. Yes.

Q. And that's good news too, because NCR Silver is and offers a cloud POS, right?

A. It's a tablet point-of-sale.

Q. It's a what?

A. Tablet point-of-sale.

Q. That's what -- that's what you're calling NCR Silver, a tablet point-of-sale?

A. So cloud point-of-sale can mean a lot of different things.

Q. Well, but here in this slide, an NCR slide where it's talking about NCR Silver, is it fair to assume that NCR was discussing cloud point-of-sale in the context of NCR Silver?

A. It's saying the cloud point-of-sale solutions in the marketplace, not necessarily NCR Silver, is -- it uses cloud components but is not a cloud point-of-sale. It's a tablet-based point-of-sale.

Q. Okay. So you disagree with the NCR document here that says cloud point-of-sale; is that right?

A. I'm saying it means a lot of different things.

Q. Okay. Well, I know what you're saying. It can mean a lot of different things. But in this document that NCR has

talking about NCR Silver, is it fair to assume that it can apply in that context to NCR Silver?

A. It's saying the cloud point-of-sale market.

Q. Okay.

A. So competitors, NCR Silver, all POS solutions in the cloud point-of-sale market space.

Q. Will you at least agree with me that NCR Silver is a product or system that competes in the cloud point-of-sale market?

A. Yes.

Q. Thank you.

So let's have a look at the second bullet there on 6431.

And it says: The total purchases of POS systems for the past year indicate that over 60 percent of the new systems were cloud systems, which is the first time that legacy POS platforms were overtaken by cloud-based solutions.

Did I read that right, ma'am?

A. Yes. That's what it says.

Q. That's good news for NCR Silver also, right?

A. Yes.

Q. And the really good news, the best news, is the last thing in green at the bottom of the page, right? Because there NCR tells us that the overall global cloud POS market size is expected to almost triple from U.S. $1.34 billion in 2018 to U.S. $3.73 billion by 2023, right?

A. Yes.

Q. When we get up in that number, we're talking about real money, aren't we?

Now, let me ask you another question about this. Let's go to -- NCR thinks that its Silver Solution should be purchased by customers because it offers advantages over other point-of-sale systems on the market, right?

A. I'm sorry. Are you on a page?

Q. No. I'm just asking you a question.

A. Oh, sorry.

MR. BARR: We can turn this off.

BY MR. BARR:

Q. Sorry about that.

A. That's okay.

Q. Let me restate my question.

A. Okay.

Q. Sorry to distract you. My question was: NCR thinks that its Silver Solution should be purchased by customers because it has advantages over other point-of-sale systems on the market. Fair?

A. Yes.

Q. And isn't it also true that at NCR over 100 people work on the NCR Silver product?

A. Yes.

Q. And, in fact, you're not aware of any other project

at NCR that has more people working on it than NCR Silver, right?

A. No. That's incorrect.

Q. Have a look at your deposition that's right in front of you, specifically page -- let me find it here.

So Page 90 at Line 3 through 9, the question that I asked you was: Are there any products at NCR under development that you're aware of that have more than 100 people working on them as NCR Silver does?

A. I'm sorry. I'm --

Q. Oh, I'm sorry.

A. That's okay. Page --

Q. And the writing is kind of small. But you can look at it on your screen there if you want to.

A. Oh.

Q. The question said -- was, again: Are there any products at NCR under development that you're aware of that have more than 100 people working on them as NCR Silver does?

And what was your answer?

MS. COLLINGS: Objection, Your Honor. Improper impeachment.

THE COURT: I don't know what that means.

MS. COLLINGS: Improper impeachment, Your Honor. He's trying to ask the witness a question from her deposition that is different from the question he just asked the witness on the

stand.

MR. BARR: I certainly didn't intend to ask a different question. Maybe I can ask the question exactly like I asked it in the deposition.

THE COURT: Why don't you -- let's do that.

BY MR. BARR:

Q. Are there any products at NCR under development that you're aware of that have more than 100 people working on them as NCR Silver does?

A. Today I'm aware of products. Yes.

Q. Okay. But when I asked you the question --

A. Yes.

Q. -- in your deposition, what was your answer then, ma'am?

A. At that point I did not have knowledge of how many people were working on other products. And today I do with the product that I'm currently working on.

Q. Well, when I asked you the question, to be fair, Ms. Schoonover, you didn't say: I don't know about other products. What you said was that you don't know if there's any products at NCR under development?

A. You asked if I was aware of any, and I said I don't.

Q. Okay. So you're saying you misunderstood my question?

A. I'm saying you asked if I was aware, and I said I

wasn't.

Q. I don't want to fight with you about it. If you understood my question, that's okay. You misunderstood it in the deposition. Is that what you're saying?

A. I'm saying you asked if I was aware, and I said I was not.

Q. Okay. So at the time I asked you in the deposition, you didn't know of any other products under development that had more people working on them than NCR Silver, right?

A. I did not have that knowledge. That's right.

Q. Okay. If I'd asked you to name one, you couldn't have, right? You couldn't have given me another product that had more people working on it than NCR Silver, right?

A. At that time or today?

Q. At that time, ma'am.

A. No. That's right.

Q. Okay. Certainly it would be fair to say that NCR Silver is an important product for NCR, right?

A. All of our products are important. Yes.

Q. And we can agree that point-of-sale systems such as the NCR Silver product are replacing the traditional cash registers at stores, right?

A. Yes.

Q. And NCR Silver stores data in the cloud that is acquired in connection with transactions that are performed by

its customers for NCR Silver, right?

A. The sales transactions upload to the cloud. Yes.

Q. Now, a minute ago when Mr. Quinn was up there, you were sitting in the courtroom, right?

A. Yes.

Q. Okay. Well, Mr. Baker asked Mr. Quinn about this app. Do you remember hearing that? App?

A. Yes.

Q. Okay. An app is something like you might have on your phone if you've got a Netflix app, right?

A. That's right.

Q. Or an MLB baseball app, right?

A. Yes.

Q. Okay. But to be perfectly -- and to be clear, part of NCR's point-of-sale software is on an app, right?

A. All of the point-of-sale software is on an app.

Q. Well, we also have -- NCR also has software in the Back Office, right?

A. For data entry. Yes.

Q. And that's on -- okay. For data entry; is that right?

A. That's right.

Q. That's another one of these words we've heard in this case, right?

A. Yes. A lot.

Q. There aren't any documents, by the way, or any of these manuals we've been looking at today that describe what we've been seeing in regard to building point-of-sale menus as data entry, are there?

A. I don't know if it specifically says data entry, but it says entering your items. Yes.

Q. Okay. So -- but you can't name anything that -- any document at NCR that you've seen as head of the product line that promotes the fact that this is just data entry, right?

A. Well, we use friendlier terms, so item entry is entered items.

Q. Okay. So what we should look for, when we're looking through all these manuals, we should look for item entry; is that right?

A. Yes.

Q. Okay. And that, to you, is the same as data entry; is that right?

A. You enter the items. It's the same as entering the data, yes.

Q. I see.

So if I'm trying to order something on the Internet, for example, and I'm putting in my credit card information on the Amazon site, for example, you'd call that item entry. If I'm entering my personal data, that's item entry, right?

A. Well, I say item entry because it's the items that

merchants sell so they think of them as items which is why we call them items, right? They sell items in their store. But the example you just gave is credit card data, right, the numbers, so that would be more data entry.

Q. So you're using item entry because that's the language that the merchants are used to hearing. Is that what you're telling us?

A. That's right.

Q. Okay. So when we look at these videos, we should look for item entry when they -- when they're discussing building point-of-sale menus, right?

A. Yes. That's right.

Q. Okay. Dr. Chatterjee uses data entry, though, right?

A. Well, it's a technical term. So when we talk with our merchants, we try to -- sorry.

THE COURT: Ma'am.

BY THE WITNESS:

A. Yes. Well, I think he does.

THE COURT: Just answer his questions.

THE WITNESS: Okay. Sorry.

BY MR. BARR:

Q. To be absolutely clear, these apps have software code on them, right?

A. They are software code. Yes.

Q. And the software code on the app is software code

written by NCR, right?

A. By the engineers. Yes.

Q. Yes. And we can agree that the Back Office part is not an app, right?

A. That's right.

Q. And we can also agree that the NCR Silver Back Office is accessed by the customer through the Internet, right?

A. It's a web page. Yes.

Q. And those customers access that website through a web browser, don't they?

A. Yes.

Q. Now, if we were looking at a restaurant, as we were earlier today, and the customer wanted to add things or subtract things from their menu, the customer could do that directly on the point-of-sale in the store, right?

A. Yes.

Q. They could also do it on the Back Office part of the system, right?

A. Yes.

Q. And we can agree that these devices don't display just blank buttons when they're being used by the merchants, right?

A. They're hidden.

Q. Well, hopefully to be used, they've got something written on them like pizza or anchovy, right? If a pizza guy's

using his point-of-sale, he needs to have some buttons that meet his business on there, doesn't he?

A. To ring them up, yes.

Q. To use it, right?

A. Yes. Or he can scan a barcode, yes. Either way.

Q. But blank buttons aren't going to work in a point-of-sale when you're trying to sell something, right?

A. They -- I'm not sure I understand blank buttons. Hidden buttons? We hide them until an item is entered.

Q. Okay. I think we both agree that the buttons have to have items on there that meet with what's being sold by the merchant --

A. Yes.

Q. -- right?

Okay. I'll move on from that.

Now, you're not a coder, fair?

A. That is right.

Q. You leave that to Mr. Quinn, right?

A. Yes.

Q. And the 240 people that work for Mr. Quinn, right?

A. Yes.

Q. And the ability for a customer to enter the product name and the price of a product and to be able to do that from the Back Office or from the tablet, that's an attractive feature for customers, right?

A. All point-of-sale systems have the item name and price.

Q. That wasn't the question I asked you.

A. Oh, okay.

Q. Let me try again.

A. Yes.

Q. The ability for the customer to enter the product name and the price of a product and to be able to do that from the Back Office or the tablet is an attractive feature?

A. Yes.

Q. Now, we've got another document I want to show you. We're not going to publish it until you identify it. Okay?

A. Okay.

Q. So if you look at your notebook in front of you to PTX-117.

A. Okay. I found it.

Q. Take a second to familiarize yourself with that document. I'll ask you a couple of questions about it before I offer it.

A. Okay.

Q. Okay. So this is a study that was performed for NCR Corporation by a company called The Strawhecker Group, right?

A. I know The Strawhecker Group created it. I don't know that it was only for NCR.

Q. Okay. Well, that wasn't my question.

A. Oh.

Q. I didn't say it was only for NCR. I just asked: Did NCR hire The Strawhecker Group and pay them some money to do that study for NCR?

A. I'm not aware of us paying them money, but I assume. Yes.

Q. Okay. And it was produced by NCR in this litigation, correct, the report?

A. Yes. It was provided.

Q. And the title of this study is Definitive Cloud-Based POS Report, right?

A. That is the title. Yes.

Q. No argument that that's relevant to the cloud-based POS NCR Silver, right?

A. This report? Yes.

Q. Yes, ma'am.

And, in fact, you know that NCR used that report in connection with its business, right?

A. I know that we reviewed it. Yes.

MR. BARR: We would offer Plaintiff's 117, Your Honor.

MS. COLLINGS: No objection.

THE COURT: It's admitted.

MR. BARR: Now, if we could please put on the screen the first page of the Strawhecker report.

BY MR. BARR:

Q. So there we have the title that I read you that says Definitive Cloud-Based Point-of-Sale Report, right?

Do you see that, ma'am?

A. Yes.

Q. Okay. So let's look to the last page of the report real quick to see who The Strawhecker Group is.

Well, it says that The Strawhecker Group is a fast-growing analytics and consulting firm focused on the electronic payments industry. The company serves the entire payments ecosystem. From Fintech start-ups to Fortune 500 companies, the firm provides its clients with advisory services, research, and analytics to help them plan and execute their strategic initiatives. Based in Omaha, a recognized payments industry hub, TSG is an established leader in this high growth, ever-evolving space.

Did I read that right, ma'am?

A. Yes.

Q. And certainly it is fair to say that if NCR Corporation hired The Strawhecker Group to come in and provide them with a study, that NCR felt like The Strawhecker Group knew what they were talking about, fair?

A. Yes.

MR. BARR: So let's look at NCR 006493. Well, wait. Go back a minute. Well, that's fine. Go ahead. Thanks. Getting late in the day.

BY MR. BARR:

Q. So this page -- first of all, let's look at the title. POS Technology Trends. So we know that it's discussing trends in the point-of-sale technology, right?

And the common denominator, Strawhecker says, is the software heart -- very next bullet, right?

And then we see --

MR. BARR: Let's go down to the first bullet underneath the bold letters. Right there.

BY MR. BARR:

Q. Integration has made the consumer and merchant experience more seamless, more convenient, and less time consuming, right?

A. Yes.

Q. And that's what NCR Silver is intended to do, right? Is that right, ma'am?

A. To do?

Q. To make the merchant experience and the consumer experience more seamless, more convenient, and less time consuming?

A. Yes. That's correct.

Q. And merchants -- I think you've already told us, small business owners are exactly the kind of customers that NCR is directing this product to, right?

A. Yes.

Q. The next bullet says: Elegant, integrated cloud-based software is a driving characteristic of the payments industry. Do you agree with that?

A. Of the payment industry, yes.

Q. And last but not least, the third bullet talks about merchant demand for this product. Do you see that it says in the third bullet that merchant demand is -- requires payments capability, integrated with inventory control, order management, and POS functions across in store, online, and mobile devices. Do you see that, ma'am?

A. Yes.

Q. Those are the four things that drive merchant demand according to The Strawhecker Group, right?

A. Payments capability integrated with those things. Yes.

Q. Payments capability is something that the POS needs to do, right? That's why we have a point-of-sale, right?

A. Yes.

Q. To get paid for our pizza, right?

A. Yes.

Q. Then we need to be able to control inventory. That's important -- that's an important core feature of a payments system, wouldn't it be?

A. Of a point-of-sale system, yes.

Q. Okay. Order management, that's important. We need

to be able to manage the orders, right, in a point-of-sale system, right?

A. Yes.

Q. And then POS functions, that's all the stuff that we saw that makes it work from the front office to the Back Office through the cloud, right?

A. Yes.

Q. And that's what Strawhecker Group was paid to come in and tell NCR drives merchant demand, right?

MS. COLLINGS: Object to form. Misstating the evidence, Your Honor.

THE COURT: Overruled.

BY MR. BARR:

Q. And merchant demand is an important thing to NCR Silver, right -- or to NCR Corporation, right?

A. Yes.

Q. Because if you don't have any merchant demand, you can't sell anything, can you?

A. That's right.

Q. So you want to tailor your products towards the drivers of merchant demand, correct?

A. Yes. We look at what our customers want.

Q. Because if you make what the customers want, hopefully they'll buy it, right?

A. Yes.

Q. And NCR would make a whole lot of money, right?
A. Yes.
Q. Now, NCR also sells hardware to go along with the NCR Silver; is that correct?
A. Yes.
MR. BARR: So if we could pull up Joint Exhibit 85.
BY MR. BARR:
Q. If you could take a moment to just look at this document. It's another document that was produced by NCR in this case. So this document simply has a summary of annual sales of the NCR Silver product for only two years. Do you see that?
A. Yes.
Q. 2018 and 2019, right?
A. Yes.
Q. And we can see from this document, this summary, that in 2018 NCR had over $6.8 million worth of hardware sales that went along with the NCR Silver, right?
A. Yes.
Q. And then in 2018, the software sales for NCR Silver were over $16 million, correct?
A. Correct.
Q. And then in 2019, there was $5.4 million in hardware sales and $18.8 million in software sales, right?
A. Yes.

Q. Now, NCR sells these card or chip readers that go along with the point-of-sale systems, right?
A. Yes.
Q. We see them in the store. It's got the tablet, and it usually has a little box that you stick your credit card in. Sometimes it's hard to find the right slot, but usually you get it in there eventually, right?
A. That's right.
Q. That's the card reader?
A. Yes.
Q. Can you also call it a chip reader?
A. Yes.
Q. Now, you would agree that the purchase of the software, the NCR Silver software, also drives the purchase of these chip-reader hardware things, right?
A. The -- yes. Merchants need to buy the chip readers.
Q. And they often buy them from NCR if they're buying your software, right?
A. Yes.
Q. NCR sells the NCR Silver products all over the world, right?
A. Yes.
Q. But all of the NCR Silver products are created here in the United States, aren't they?
A. Well, I -- so -- created it -- NCR is a U.S. company.

We have developers in the U.S. and other locations too.

Q. So you're disagreeing with me that the NCR Silver products are created in the U.S. but sold globally; is that incorrect?

A. I'm saying, I'm clarifying "created." The idea, the engineering. I'm trying to clarify "created."

Q. Okay. Can we agree that NCR Silver products are created in the U.S.?

A. Yes. And we have developers elsewhere too. Yes.

MR. BARR: So if we could look at Joint Exhibit 88. And I think it's A through D. Let's start with this one, though. We can start with this one. This is Joint Exhibit C since it's on the screen.

BY MR. BARR:

Q. Joint Exhibit C is showing us a larger summary of NCR revenue, costs, et cetera, for the years 2016 through 2020, right?

A. It is showing revenue and costs for those years. Yes.

Q. And gross margin and selling expense and total general administrative expenses and total research and development, operating expenses?

A. Yes.

Q. And at the bottom it shows operating income, right?

A. Yes.

Q. And the more that NCR can say its costs are, the less that NCR can say that its profits are, right?

A. Well, we don't -- it is the financial reporting of the costs and the revenue that we generate.

Q. Okay. We don't know that Joint Exhibit 88 was prepared as any kind of official government report document, do we, ma'am?

A. Well, it's based on our financial reporting systems.

MR. BARR: Let's have a look at -- well, hold on just a second before we get off of that. Yeah.

Let's go back to joint exhibit -- same joint exhibit, 88, and let's look at B.

BY MR. BARR:

Q. So 88 -- this is all part of Exhibit 88 which is a big group of spreadsheets prepared by NCR and given to us in this case. Do you understand that, ma'am?

A. Yes.

Q. Okay. And this is telling us --

MR. BARR: If you can -- can we blow up the bottom of the screen that has a tab on it so we can see what it was?

BY MR. BARR:

Q. We printed these off to use as exhibits, but it was one of those native spreadsheets, you know, in a computer that was produced to us, so it had tabs at the bottom that you'd hit. Do you remember that, ma'am?

A. Yes.

Q. That's how that works.

Okay. Well, this particular one is called -- the tab is called Customer Account-USD tab, right?

A. Yes.

Q. So let's go back to the numbers. The numbers that we see on here are, in fact, customer counts, numbers of customers; is that right, ma'am?

A. Yes.

Q. Okay. So when we see -- it looks like the customer -- the number of customers is -- and I guess it's really the number of point-of-sale systems, right? That's what you're keeping track of?

A. It's the number --

MS. COLLINGS: Objection, form.

BY THE WITNESS:

A. -- of customer --

THE COURT: What is your objection?

MS. COLLINGS: I'm sorry, Your Honor. May I proceed with my objection?

THE COURT: Yes.

MS. COLLINGS: Okay. Counsel's misstating the evidence. He's assuming facts not in evidence. He said: I assume this means the number of registers out there. But that's not what it says. It says customers.

THE COURT: I think you can deal with that on cross. Overruled.

BY MR. BARR:

Q. I'm trying to understand this NCR document, ma'am. I didn't write it. You work for NCR. I assume you can help me. Can you help me?

A. These are small business merchants, customers that subscribe to the NCR Silver Solution.

Q. Okay. So -- but when we look at the top where it says "current," for example, does that mean that there are 11,419 customers? Is that what we're seeing there?

A. Yes. Subscribing customers.

Q. Okay.

A. Yes.

Q. And I think we've heard from other witnesses and maybe from you that the way that NCR sells this software is software as a service, right?

A. That's correct.

Q. And the customers are charged on a monthly basis for the software as a service, right?

A. Yes.

Q. And so if we looked at that 11,419 number to determine how many for an -- for a -- if we wanted to look at it more annually, would you multiply that by month? Would it be 11,419 times 12?

A. No. It's 11,000 customers paying monthly.

Q. Okay. But as far as the revenue -- okay. I'm sorry. But as far as the revenue goes, you got 11,000 customers paying whatever they're paying you monthly, right?

A. That's right.

Q. Okay. So if we wanted to say that 11,000 customers each had one point-of-sale system, right, we want to assume that then it would be at least 11,000 per month, right?

A. 11,000 paying customers. Yes.

Q. Per month, right?

A. Yes.

Q. So times 12?

A. Right.

Q. Right?

A. Yes.

Q. Okay. So we'd get to about 600,000 a year if we were doing it on that basis?

A. Based on what monthly?

Q. 11,000 per month times 12, and then -- and I'm sorry. 11,000 per month times 12 for this five-year period that we are talking about in this case, 2016 to 2020?

A. 11,000 customers that make 12 payments per year. Yes.

Q. Right.

A. Yes.

Q. About 600,000, right?
A. 600,000 --
Q. If you did it times a five-year period?
A. 600,000 payments.
Q. Yes.
A. Not dollars. Yes.
Q. No. I understand that. Payments. It's going to be more than $600,000, a whole lot more.
A. For sure.
Q. Over $100 million, right?
MR. BARR: All right. So now let's go to 88C. Okay. We talked about that one. Let's skip that one.
Can we look at -- let's see here. No. That is the one I want to talk about.
Okay. Sorry.
BY MR. BARR:
Q. Total revenue. Let's look at the top line. Total revenue. This is the Silver revenue data tab from this same big document, Exhibit 88 from NCR, right? Right, ma'am?
A. Yes. Total revenue.
Q. It's keeping up with the revenue -- total revenue for each year on here. Total revenue in fiscal year 2016 was over $12 million, right?
A. Yes.
Q. Total revenue for fiscal year 2017 was over 16 --

almost $17 million, right?

A. Yes.

Q. Increased again in 2018 to over $22 million, right?

A. Yes.

Q. Increased again in 2019 to over $23 million, right?

A. Yes.

Q. Increased again in 2020 to over $24 million, right?

A. Yes.

Q. And we don't have the numbers on here for 2021, do we?

A. No.

Q. Do you have any reason to believe that the revenue wouldn't continue to increase for NCR Silver for the year 2021 so that 2021 would be at least $24 million?

A. I don't see any reason.

Q. Reasonable to assume that, right?

A. Yes.

Q. Revenue's gone up every year, hasn't it?

A. Yes.

Q. Thank you.

And NCR's certainly still selling its Silver product today, as we sit here in 2021, right?

A. Yes.

Q. NCR's never stopped selling its Silver product, even after being told of patent infringement, has it?

A. It has not stopped selling it.

Q. Now, I'm confident there's going to be some discussion of costs in this case, because Mr. Baker's already previewed that for us in his opening statement. But would you agree with me that it would not be appropriate to charge the NCR Silver product line with costs that may relate to other product lines as well as NCR Silver? Wouldn't be fair to charge it all to NCR Silver, would it?

A. We charge to NCR -- well, no. Yes. That's correct.

Q. We ought to charge NCR Silver for what it actually costs to sell NCR Silver, right?

A. Yes.

Q. Shouldn't charge NCR Silver for stuff that it costs to sell these cash registers that you guys have been making for over 100 years, right?

A. That's right.

Q. Okay. Now, you're not an accountant, are you?

A. I am not a CPA. No.

Q. And you yourself, if we get into costs, you don't have any personal knowledge whatsoever, looking at costs for NCR Silver, to say whether or not all these costs relate only to NCR Silver and no other product line, do you?

A. I know that these come from our financial systems and that they are -- I'm not sure what your question is.

Q. Well, I'm asking: You didn't go back and look and

try to get a check -- and you see these summaries of numbers, but you didn't ask to go back and see the charges, look at the invoices to determine if any of these costs were erroneously charged to NCR Silver, did you?

A. I know that they come out of our financial system.

Q. That wasn't my question.

My question was: Did you do anything -- did you yourself get the summary, go back and ask the accounting department to send you some invoices so that you could make a check to see if these were costs that were properly charged to NCR Silver?

A. I did not look at the detailed invoices. No.

Q. Okay. You don't even know what all the cost categories are -- and I'm not criticizing you, but you don't know what all the cost categories are that may be on these documents that are attributed to NCR Silver, right?

A. That's incorrect.

Q. You do know what they all are?

A. I do know. Yes.

Q. Okay. What about "internal service charges to" and "internal service charges from," do you know what those charges are?

A. Is that a line item on here?

Q. Not on this page, but we can pull it up.

A. Yeah.

Q. Okay. Here we go. All right.

What we see here, some --

MR. BARR: Let's look at the next -- very next page.

BY MR. BARR:

Q. All right. Okay. Here we go.

Do you see at the top, internal -- it's under the word "close," in the top blank, about a half an inch from the top.

MR. BARR: Nope. Let's -- okay. There you go. Let's get to the "internal service charges from" and "internal service charges to."

BY THE WITNESS:

A. And this is for costs of goods sold, correct?

BY MR. BARR:

Q. I'd have to go back -- we'd have to pull it back out again.

MR. BARR: Can you pull it back out so she can see the full page?

BY MR. BARR:

Q. That's my understanding, that it has to do with costs of goods sold. If you'd like to see another page, --

A. Cost of revenue --

Q. -- you let us know.

A. The cost of revenue?

Q. Okay.

A. Yes. I see that.

Q. Now, you don't know --

MR. BARR: Let's go back and highlight those again. Internal service charges from and to.

BY MR. BARR:

Q. You don't know what those are, do you, ma'am?

A. I do know. Yes. I do know.

Q. Okay. Well, let's go back to your deposition.

A. Okay.

Q. All right. Page 151 at Line 20 --

A. Okay. Hold on.

Q. -- through 23.

A. Hold on.

Q. Just let me know when you've found it.

A. Page 151?

Q. Yes, ma'am. Page 151. It's in the top right-hand corner, if you're looking at the deposition.

A. Okay. Yes.

Q. Okay. And I'm asking you on -- and you can also look at it on the screen, if that's easier for you.

My question at Line 20: "What are the internal service charges that you have in here? There's some from and some to. Do you know what those are -- represent?"

And what was your answer when I asked you that, ma'am?

A. I said, "I don't know." Those were for selling expenses.

Q. Your answer was what?

A. I said, "I don't know," but you were asking selling expenses.

Q. Okay.

MR. BARR: Let's go back to that page before.

BY MR. BARR:

Q. So which ones do you say that you were referring to when you told me you didn't know what they were? You're saying it wasn't these here?

A. It's lower down under -- below the line, for selling expenses.

MR. BARR: Okay. Let's go to those.

BY THE WITNESS:

A. Yes.

MR. BARR: Can we find that one to highlight it?

BY MR. BARR:

Q. Where down there does it say "internal service charges to" and "internal service charges from," ma'am?

A. Keep going. There it is.

MR. BARR: Keep going down. Keep going down.

BY MR. BARR:

Q. So these were the ones you were talking about that you didn't know when I asked you in the deposition?

A. You asked about the selling expense. Yes. Line -- yes.

Q. Okay. I just want to make sure we got the right ones

on the screen, okay? I don't want anybody --

A. Yes.

Q. -- to be misled or just confused, all right?

So just to be clear, the ones that are highlighted in yellow now are the ones that you were looking at when I asked you at the deposition -- in the deposition, the question that you just answered, right?

A. Yes.

Q. So you didn't know what these charges were. So we see several million dollars in charges there, and you're saying you didn't know what those were, right?

A. I didn't know the details behind them. That's right.

Q. Okay. Have a look -- also, it's interesting that you -- I guess you don't know this either.

Those charges don't appear in fiscal year 2016 or 2017 or 2018, do they?

A. There are no charges there. That's correct.

Q. They just pop up in 2019, don't they?

A. They were zero during those previous years. That's --

Q. 2019 is the year that NCR got sued by CloudofChange for this case, isn't it, ma'am?

A. Yes.

Q. That's when those charges appeared, didn't they?

A. That is when they're on the -- yes. That's the year

that there were expenses.

Q. Now, have you heard that NCR claims in this lawsuit that all of these so-called costs that we were seeing on these -- Exhibit 88 should be deducted from revenue before damages are calculated? Is that right?

Do you understand that?

A. Yes.

Q. All right. And you're aware that CloudofChange has a financial damages expert named Ambreen Salters who has questioned whether all of these costs should properly be attributed to the NCR Silver product? Are you aware of that?

A. The cost of revenue? Yes.

Q. Okay. And the cost of goods sold too. Do you know that?

A. Yes.

Q. Okay. And you're aware that -- well, let me ask you this: Are there documents that would show revenue at NCR by software version or specific hardware?

A. Not that I'm aware of.

Q. And are there documents at NCR that would show costs by specific version of hardware?

A. Version of hardware?

Q. Yes, ma'am.

A. So our -- you mean the hardware products that we sell?

Q. Probably shouldn't have said hardware. Maybe software.

A. Okay.

Q. I probably made a typo there.

A. Okay.

Q. Are you aware of any documents that would show costs by a specific version of software?

A. Not by specific version. No.

Q. All right.

MR. BARR: Let's move on to Exhibit 89. 89. Sorry. It's a different exhibit.

BY MR. BARR:

Q. Exhibit 89, I think it's in your book in front of you, ma'am. It's Joint Exhibit 89.

You can set aside your deposition. Thank you.

A. I'm sorry. Tell me the number again.

Q. I'm sorry. Joint -- JTX-89 is what it says on the tab, and it's a "Google Cloud Addendum."

A. Okay. I have it.

Q. All right. So this is the agreement between Google and NCR for cloud hosting services; is that right?

A. Yes.

Q. And is the Silver Back Office hosted in the Google Cloud platform?

A. Yes.

Q. And those Google Cloud hosting services would include servers in the Google Cloud hosting center; is that right?

A. Yes.

Q. And those are web servers, correct, Ms. Schoonover?

A. They are servers. Yes.

Q. They're web servers, aren't they, ma'am?

A. Technically, I don't know the technical term for them. Yes.

Q. All right. Well, let's look at your deposition again. Page 199.

Look at Page 199, and this is a short one. It's at Line 12 through 13.

A. Okay. Yes.

Q. It says, "Are those web servers?"

And what was your answer?

A. "Yes."

Q. Now, you know that NCR has hired its own damages expert in this case, fair?

A. Yes.

Q. And I think Mr. Baker told us in jury selection that his name is Dr. Devrim Ikizler?

A. Yes.

Q. And you know that Dr. Ikizler has been hired to offer a different damages analysis than Ms. Salters is going to talk about, right?

A. Yes.
Q. But Dr. Ikizler never talked to you about NCR's business while he was working on his damages opinion, did he?
A. No. He didn't.
Q. You were the person that was in charge of this product line from 2011, right?
A. Yes.
Q. You were the person who had more experience at this product line than anybody else at the NCR Corporation, right?
A. Yes.
Q. You're the person who decided what features are important to the customers of NCR for the NCR Silver product, right?
A. Yes.
Q. And Dr. Ikizler never bothered to ask you any questions; is that right?
A. I did not speak with him. That's right.
Q. So we've already heard that Dr. Ikizler never talked to Mr. Quinn. Did you hear that?
A. I --
Q. Do you know if Dr. Ikizler ever talked to Mr. Quinn?
A. I don't know.
Q. Okay. But you know he never talked to you, right, Dr. Ikizler?
A. Not before this week. That's right.

Q. Okay.

MR. BARR: Let's look -- let's see JTX-98.

BY MR. BARR:

Q. I apologize in advance for this document. But it's an NCR document. It's got a lot of small words on it and letters and numbers.

You're familiar with this document?

Let me know when you've had a chance to look at it.

A. Yes.

Q. This document was created at NCR to show relative value of point-of-sale solutions against the price of those solutions among competitors, correct?

A. Yes.

Q. And the weights to be given to each feature in this document were determined by a summer intern; is that right?

A. The summer intern compiled the data. That's correct.

Q. The summer intern decided the weights to be given to each feature, right?

A. The summer intern compiled the data.

Q. All right. Let's have a look at your deposition again.

Page 162, ma'am. And I'd like to ask you about 162 at Lines 3 through 5.

"Question: Do you know who determined the weights for each feature?"

What was your answer, ma'am?

A. "A summer intern."

Q. You don't know how the features were classified as standard or nonstandard, do you?

A. I'm not sure. Is there -- are they classified that way in that document?

Q. You know I asked you -- I don't know.

Do you know whether they're classified in the document as standard or nonstandard?

A. I don't see that there. No.

Q. Okay. But you do know that this document was not used to determine what features would be offered or what features would be considered necessary by NCR, was it?

A. This document? That --

Q. Yes, ma'am.

A. Yes.

Q. It -- you do not -- you're not in this courtroom telling us that this document, Exhibit 98, was used to determine what features would be offered or would be considered necessary by NCR?

A. The list was pulled from our list of features, but we didn't use this to determine that.

Q. You did not use this document to determine that, did you, ma'am?

A. No.

Q. This document was simply intended to assess the relative value of a feature against the price that you -- that was being charged for that feature, right?

A. Correct.

Q. And you know that no relative determination was ever made based on this document, Joint Exhibit 98, right?

A. I'm sorry. Say that again.

Q. Sure. No relative value determination was ever made based on this document?

A. That I'm aware of, no.

Q. And, in fact, you did not use this document at all in your work at NCR, did you?

A. My personal work, no.

Q. And your personal work dealt with the features, didn't it, ma'am? Priority of features. Didn't you tell us that a minute ago?

A. Yes. This is a pricing document. That's correct.

Q. It's a pricing document. So you didn't use it, right?

A. I did not use it.

Q. Your department didn't use it, right?

A. We did not.

Q. Okay. And you're the department that determines what features would be attractive to customers, right?

A. Yes.

Q. You're the one who determines what features are going to drive demand for a product, right?

A. Well, this document was generated off --

THE COURT: Ma'am, could you --

BY THE WITNESS:

A. Yes. That's correct.

BY MR. BARR:

Q. Answer my question, please.

A. Yes.

Q. Thank you.

Are you aware that NCR's expert, Dr. Ikizler, bases his damages opinion on this document from your department that he never bothered to ask you about?

A. On the list of features, yes.

Q. Do you know -- you don't know why Dr. Ikizler thought this would be a reliable basis for anything, do you, ma'am?

A. I do know why.

Q. You never talked to Dr. Ikizler, do you -- did you?

A. Before this week, no.

Q. Okay. Before this week is when he gave us his opinions in this case, right?

A. Yes.

Q. He did his report long before we got here today, right?

A. Yes.

Q. We talked about Dr. Chatterjee's report a long time ago, and it was filed back in February, right?

A. Yes.

Q. Okay. So you never talked to Dr. Ikizler before he prepared his report, right?

A. That's right.

Q. So you never talked to Dr. Ikizler before he decided what he's going to come talk about in this courtroom, right?

A. I did not talk with him personally. No.

Q. So if you had anything to say about Exhibit 98, Dr. Ikizler didn't hear it, did he?

A. Not directly from me.

Q. Now, let's talk about pricing. You're one of the most knowledgeable people at NCR to discuss the pricing of the hardware and software that relates to the accused products, right, NCR Silver?

A. I am familiar with the pricing. Yes.

Q. Okay. So, again, I'm going to ask you to look at something in your book before I offer it, all right?

A. Okay.

Q. So this is going to be Plaintiff's Exhibit 111. Just let me know when you've looked at it --

A. I have it.

Q. -- enough to answer questions.

A. Yes. I see it.

Q. Okay. Can we agree that Plaintiff's Exhibit 111 is an NCR United States price list for NCR Silver?

A. Yes.

Q. And that these are prices that are charged to customers on a monthly basis for NCR Silver?

A. The software.

Q. Right.

A. There's hardware prices here too.

Q. No question this is an NCR Silver document from its business, right?

A. Yes.

Q. Produced by NCR in this litigation?

A. Yes.

MR. BARR: Plaintiffs would offer Exhibit -- Plaintiff's Exhibit 111.

MS. COLLINGS: Your Honor, I object. We have a stipulation. The parties have a stipulation of what the MSRP is on NCR Silver. And so this document, Plaintiff's Exhibit 111, is not relevant because we already have a stipulation that would cover any issue in dispute.

THE COURT: Overruled.

MR. BARR: Put it on the screen, please.

BY MR. BARR:

Q. Now, we can see from the NCR Silver price list -- and it says SaaS MSRP USD, right?

A. Yes.
Q. What does that mean?
A. It means it is the monthly SaaS, the subscription, monthly subscription standard price, published price in the U.S.
Q. Okay. So what we can see from this NCR price list is that the prices varied from $79 to $169 for the initial license; is that right?
A. Yes.
Q. And then there's some other prices for add-ons, like some additional licenses or additional things that you might want to put onto your POS, right?
A. Yes.
Q. Okay. Now, let's look at the second page of the document.
MR. BARR: Blow up that second page. All right. Can you make it a little bit bigger? Thank you.
BY MR. BARR:
Q. So what we're seeing here on the second page of Exhibit 111 is a list of hardware and the prices for that hardware that customers might want to buy along with their NCR Silver, right?
A. Yes.
Q. What are those numbers that we see percentage wise out next to the categories? You've got Category A is 5

percent, and Category B is 15 percent. What do those represent?

A. I don't know actually.

Q. Okay. Well, can we agree that the hardware revenue that NCR would make off of this hardware that we see represented in this price list, that would be additional money that NCR would make in connection with the NCR Silver system?

A. Yes.

Q. Okay. Now, in addition to selling software as a service or SaaS, NCR sells its Silver system and hardware through resellers, right?

A. Yes.

Q. What is a reseller?

A. A reseller is somebody who buys a license from us, and then they resell it to merchants themselves. So they typically are local -- in local markets where they can resell to small businesses.

Q. Okay. How many resellers does NCR have for the Silver product?

A. I don't know the exact number.

Q. But you do know that NCR makes enough money on its Silver product that it can have a revenue share arrangement with resellers, right? Right?

A. Yes.

Q. And in that revenue share, NCR's willing to give the

resellers anywhere from 18 to 35 percent of its revenue and still keep an acceptable profit for NCR, right?

A. I don't know the exact numbers with the resellers, but, yes. It's a share, rev share.

Q. Okay. Let's -- I'm going to ask you again. If you'd look in your notebook, there's a document that has PTX-159 on it. I'd like you, once again, to look at it and let me know when you've familiarized yourself with it.

A. Okay.

Q. Okay. So Plaintiff's Exhibit PTX-159 is another NCR document that shows NCR's reseller pricing for NCR Silver, right?

A. Yes.

Q. And resellers are an important part of NCR's business for NCR Silver, correct?

A. They are a portion of it, yes.

Q. And PTX-159 that you have in your notebook lists the revenue share between NCR and its resellers for the NCR Silver product, correct, ma'am?

A. Yes.

Q. Certainly PTX-159, that agreement there, is used by NCR in its business; is that right, sir -- ma'am?

A. I believe so. Yes.

Q. Okay.

MR. BARR: Plaintiffs would offer PTX-159.

MS. COLLINGS: No objection.

THE COURT: It'll be admitted.

BY MR. BARR:

Q. So looking at this document, Plaintiff's Exhibit 159, it's actually titled NCR Reseller (on Account) Pricing and Sales Promotion Incentive Fund Payments. And they've defined that Sales Promotion Incentive Fund Payments as SPIFS, right?

A. Yes.

Q. Did the marketing department come up with that, SPIFS?

A. No. It's a sales...

Q. Okay. Sales thing?

A. Yes.

Q. All right. Well, we can see that there's several tiers for the resellers, revenue tiers, right?

A. Yes.

Q. And it shows that NCR's willing to have a share -- in other words, give those resellers anywhere from 18 to 35 percent of NCR's revenue in connection with NCR Silver, right?

A. Right.

Q. So NCR is making enough money on NCR Silver that it could give up to 35 percent of its total revenue away to somebody who's just selling that product, right?

A. Well, they -- it's a portion of the license fee.

Q. Well, the license fee is the revenue, isn't it?
A. Yes.
Q. So if NCR made $100 on their license fee, they're willing to give $35 to the reseller, right?
A. Yes.
Q. Now, let's go down to the bottom and talk about these SPIFS. A SPIF, or sales promotion incentive, is a one-time payment to the reseller, right?
A. Yes.
Q. And in this case, the -- NCR's willing -- in addition to that 18 to 35 percent revenue share, NCR's willing to give on top of that another $100 per sale for selling NCR Silver, right?
A. It's like a sales commission. Yes.
Q. And $150 for the Silver Pro Restaurant Edition, correct?
A. Yes.
Q. And this SPIF cash bonus is not all that NCR's willing to give away to people who help it sell NCR Silver, is it?
A. I don't know. Is there more?
Q. There is.
A. Okay.
Q. Not on this document.
A. Okay.

Q. But do you know that NCR's willing to pay referral fees of up to 21 percent of annual contract value as a percentage of revenue to referral sources for NCR Silver?

A. I know that we pay referrals. Yes.

Q. Same drill. I'd like you to look in your notebook. There's a document that is PTX-156. Let me know when you've had a chance to look at it.

A. I have it.

Q. Okay. This is a -- PTX-156 is a contract that NCR agrees to with referral sources for NCR Silver; is that right?

A. I believe so. I have not seen.

Q. And it was produced by NCR in this litigation, has an NCR Bates number on it, right?

A. Okay. Yes.

Q. And it's something that NCR uses in its business related to NCR Silver, right?

A. Yes.

MR. BARR: Offer Plaintiff's Exhibit 156.

MS. COLLINGS: No objection.

THE COURT: It'll be admitted.

MR. BARR: So if we could pull up specifically Page 698 -- I'm sorry -- 6891, I think it's the last page of the document.

Let's blow up that little box.

BY MR. BARR:

Q. So it's telling us here on this page that we have

blown up, on Exhibit 150 -- PTX-156, is that NCR is willing to pay a referral fee of 21 percent of ACV to someone who refers a customer to them for the NCR Silver product, right?

A. Yes. That's the cost of the sales. Yes.

Q. And, helpfully, the document defines what ACV stands for in the very next sentence under the box, doesn't it?

A. Yes.

Q. And that is "annual contract value of the SaaS," right?

A. Yes.

Q. So if somebody's paying NCR -- a pizza shop or a chain of pizza shops is paying NCR on monthly basis for every one of their POS terminals, that would be the annual -- when you add it up by 12 months, that would be the annual contract value of the SaaS, correct?

A. That's correct.

Q. All right. Another document in your book, PTX-157.

A. Okay.

Q. Okay. This is another document -- NCR document produced by NCR in this litigation, relates to the NCR Silver business, right?

A. I'm sorry. 157?

Q. PTX-157.

A. That's the one we looked at already.

Q. Oh, is it?

A. On SPIFS?

Q. I might have made another typo. I thought that was PTX-156. We might have looked at the wrong one. Okay.

A. I have 157 is the Tier 1, 2, 3, 4.

Q. Okay.

A. And I have 156 is the referral agreement.

Q. All right. I think they're very similar documents. Yes.

A. Okay.

Q. 156, I believe, deals with the resellers, and that has the revenue share for the resellers.

157 --

A. 156 is the -- oh, okay.

Q. 157 looks almost exactly like it, but it relates to referral sources revenue share; is that right?

A. Oh, okay.

Q. Okay.

MR. BARR: Offer Plaintiff's Exhibit 157.

BY THE WITNESS:

A. Oh, I see. Okay. Yes.

MS. COLLINGS: No objection.

THE COURT: It'll be admitted.

BY MR. BARR:

Q. All right. So now we're back on the referral sources, similar to the contract that we just looked at a

minute ago, with the 21 percent. And this one has, again, a revenue share at varying tiers for the software part, going from 18 percent to 35 percent, right?

A. Yes.

Q. And, again, a one-time SPIF or cash bonus of $100 for Silver and $150 for Restaurant Pro, right?

A. Yes.

Q. So this is more money from its profits that NCR is willing to give away to people that either sell their software or refer somebody to them that wants to buy it, right?

A. Yes. We're giving up some of our revenue.

Q. And NCR makes enough money to be able to happily do that, right?

A. Well, we make revenue. We'll have to look at the costs applied to that.

Q. NCR certainly wouldn't pay 18 to 35 percent of its profits if it couldn't afford to do it, right?

A. It's the cost of sales. That's right.

Q. All right. Let's have a look at -- you've told us in the past -- sorry. Let me switch to a different topic.

Now, we've talked a little bit about NCR -- these iPads that are used in the stores, right?

A. Yes.

Q. And is it correct that an NCR workstation can include an iPad?

A. An NCR workstation can include an iPad?
Q. Yes, ma'am.
A. I don't understand that question. What's a workstation?
Q. You don't know what a workstation is?
A. No.
Q. You've never heard anybody that sells NCR Silver refer to the iPad part as the workstation?
A. Oh, okay. I thought you were saying they were two different things.
Yes. The iPad is the point-of-sale device.
Q. And that can be called a workstation, right?
A. Sure.
Q. And it often is, right?
A. Okay. Yes.
Q. Now, these resellers for NCR are allowed to sell the NCR software and also hardware that goes along with it, right?
A. Yes.
Q. And are you familiar with the reseller called "Striker"?
A. Striker?
Q. Yes, ma'am.
A. Not specifically. No.
Q. Okay. But you know that Striker sells these iPads with NCR Silver and refers to them as workstations, right?

A. I know that we have resellers. I'm not familiar specifically with Striker.

Q. But you know that your resellers refer to the iPad as a workstation, correct?

A. I've heard that term. Yes.

Q. You've heard that term in reference to an iPad, right?

A. Not specifically. I mean, we -- it's the point-of-sale station, and it's an iPad device.

Q. And it's called a workstation by some people in the industry, such as your resellers, right?

A. I have not specifically heard that term used widely.

Q. Okay. Have a look at, in your book, again, Plaintiff's Exhibit 88.

A. Okay.

MR. BARR: Oh, don't put it on the screen yet.

BY THE WITNESS:

A. You said PTX-88?

BY MR. BARR:

Q. PTX-88.

A. Okay.

Q. Okay. This is an advertisement for NCR Silver from one of NCR -- NCR's resellers, right?

A. It looks like it. Yes.

Q. And this reseller, Striker, discusses in bold on the

left side of the document a comparison of NCR Silver versus NCR Silver Pro, right?

A. It looks like it. Yes.

Q. So we know that Striker is selling NCR Silver?

MS. COLLINGS: Objection, Your Honor.

He's not laid a foundation for this document, and he's acting like he already has. And he's basically testifying in the document.

We object to the document. There is no foundation. This was not produced by NCR. And it's hearsay.

There's been nothing established that this is a business record or otherwise admissible, and he's asking --

THE COURT: Counsel, I've got it.

MS. COLLINGS: Thank you.

THE COURT: Yes. Yes, sir.

MR. BARR: Your Honor, I'm using this for impeachment. I believe that the witness has said that she --

THE COURT: Well, we don't know what the document is. You have to --

MR. BARR: I was trying to lay the foundation. That's why I wasn't reading the part --

THE COURT: Will this witness know what this document is?

MR. BARR: I think she will, Your Honor. Let me try to lay the foundation.

THE COURT: Lay the foundation with this witness. If this

witness doesn't know what the document is, then we need to move on.

THE BARR: Okay.

THE COURT: If she does know what this document is, then that'll be different.

But was this listed as one of the pretrial exhibits?

MR. BARR: It's been produced in the case, and it was CloudofChange --

THE COURT: If you -- if it was not --

MR. BARR: It was PTX-88. Yes. It was listed on our exhibit list as a plaintiff's exhibit.

THE COURT: Okay. You can lay the foundation.

MR. BARR: Okay.

BY MR. BARR:

Q. Certainly NCR does not allow its resellers to have misleading information in it -- in their marketing materials, right?

A. I don't know what action we take, but we -- in general, that's correct.

Q. Certainly NCR teaches its resellers about its NCR Silver products before it allows those resellers to sell the products, right?

A. Yes.

Q. Because if the seller misrepresented something about NCR Silver, that could hurt NCR, right?

A. Yes.

Q. And is it also true that the way that the NCR Silver product is marketed, whether it's by NCR itself or by a reseller, is very important?

A. Yes.

Q. So looking at -- without reading it, I would like you to look at Page 1980 in this reseller document and tell me if there's a description there for NCR Silver.

A. So I've never seen this document before.

I -- are you -- you're asking me if it describes --

Q. The NCR Silver products.

THE COURT: If she hasn't seen this document, let's move on.

MR. BARR: Excuse me, Your Honor?

THE COURT: If she hasn't seen this document, --

MR. BARR: Okay.

THE COURT: -- then let's move on.

MR. BARR: All right. We'll move on.

THE WITNESS: Okay.

THE COURT: Now, if -- here's the problem, is if you can establish this through a different NCR witness, you'll be able to call her back at that time.

MR. BARR: Okay.

THE COURT: But for right now, if she doesn't know what is in this document, let's move on.

MR. BARR: Thank you, Your Honor. It is getting late in the day and --

THE COURT: Well, we've still got the cross to -- I mean, the -- or the -- I guess whatever you would call this, the redirect or the cross, but --

MR. BARR: Yes, Your Honor. I will move on.

BY MR. BARR:

Q. Now, NCR claims in this lawsuit that the size and location of the buttons can't be changed, but the name and the price of the item can be changed by the customer; is that correct?

A. That's correct.

Q. And you've heard in this lawsuit that Dr. Chatterjee calls that work in creating and customizing menus by the customer mere data entry.

Are you familiar with that?

A. Yes.

THE COURT: Did you say mere, m-e-r-e, or mirror? I couldn't understand you.

MR. BARR: I'm sorry, Your Honor. I said, m-e-r-e, mere.

THE COURT: Okay.

BY MR. BARR:

Q. And you, who used to be in charge of the product line for NCR Silver, cannot identify any manuals or other NCR Silver documents that call this data entry, can you?

A. We call it item entry.

Q. Okay. So none of them say "data entry," right?

A. That's a technical term. That's correct.

Q. So if Dr. Chatterjee says what this is called is data entry, it's not called data entry by NCR.

Can we agree on that?

A. In our -- in our marketing material, probably not.

Q. And in your manuals, not called data entry, is it?

A. I'm not -- I can't specifically say if we've never, in any of our documentation, said "data entry."

Q. But as you sit here today, you certainly can't identify --

A. I cannot.

Q. Specifically remember any that do, right?

A. That's true.

Q. Okay. And you agree that the ability to change the content on the point-of-sale system is something that must be offered because your competitors also are trying to sell these point-of-sale systems, right?

A. The item names and prices, yes.

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

THE COURT: Counsel?

CROSS-EXAMINATION

BY MS. COLLINGS:

Q. Good afternoon, --

A. Hello.

Q. -- Ms. Schoonover. I realize we're getting a little long in the day.

Can you introduce yourself -- or reintroduce yourself to the jury this afternoon?

A. Yes. Hello. I'm Kristin Schoonover, and I'm executive director of product management at NCR. And I've worked at NCR -- I came with an acquisition from Radiant Systems, which I worked for Radiant Systems also in product management, and NCR acquired that company in 2011 for about $1.2 billion. And I have been working for NCR since the acquisition in 2011.

Q. And where do you live now, Ms. Schoonover?

A. I live in a suburb of Atlanta, Georgia.

Q. And have you ever testified --

A. I have not.

Q. -- in trial?

A. No.

Q. And certainly not behind --

A. No.

Q. -- a Plexiglass?

A. Plexiglass.

Q. Okay. And your date of birth, Ms. Schoonover?

A. Today, but a long time ago. Do I have to say the year?

Q. And not everyone gets cross-examined by Mr. John Barr on their birthdays, but bon anniversaire to you in that regard.

A. Thank you.

Q. You said that you were employed at Radiant. Can you tell us a little bit about -- what kind of business was Radiant?

A. Radiant developed point-of-sale solutions for restaurants and retailers and convenience stores and fuel as well. Yes. That was the primary business.

Q. And was it a publicly-traded company?

A. Yes. So it was a publicly-traded company, yes.

Q. Is NCR a publicly-traded company?

A. Yes. NCR's a publicly-traded company as well.

Q. And does Radiant exist today?

A. No. When NCR acquired Radiant, they fully acquired the company, all of its assets, patents, products, people, everything.

Q. At the time of the acquisition of Radiant by NCR, what was your specific role at Radiant?

A. I was a director of product management over point-of-sale solutions.

Q. Were you working on something that eventually became known as Silver at NCR? Were you working on that technology while you were working at Radiant?

A. No. So I was actually working on a loyalty consumer

app at Radiant when the acquisition occurred, and then after the acquisition, a few months later, I moved over to work on what is now known as NCR Silver, but at the time it was a conceptual point-of-sale that was developed by Radiant, and then when NCR acquired, put a lot of investment into the product to take it to market and build that product, to continue.

Q. Now, while you were at Radiant, were you familiar with the product at Radiant called Aloha?

A. Yes.

Q. What is Aloha?

A. Aloha is a point-of-sale solution for the restaurant industry.

Q. And that was developed by Radiant?

A. No. It was -- actually, it was -- Radiant acquired the company that developed Aloha and then became a Radiant product.

Q. And when -- do you know when the Aloha point-of-sale product that Radiant acquired -- do you know when that was developed or when that was released? Excuse me.

A. I do not.

Q. Okay. Do you know when Radiant acquired the company that had developed Radiant -- Aloha?

A. I don't know the exact year. It was probably in the mid-2000s.

Q. Before 2008?
A. Potentially.
Q. Okay.
MR. BARR: Your Honor, I object to questions about Aloha based on relevance. It is a product that is not at issue in this case, and I believe I could probably pull up discovery responses objecting to requests about Aloha.
MS. COLLINGS: Your Honor, the inventors raised Radiant Aloha earlier today in their testimony, that those were competitors.
THE COURT: Overruled.
BY MS. COLLINGS:
Q. I think you said that when NCR acquired Radiant, it acquired its intellectual property rights.
A. Yes.
Q. Is that right?
And does that include patents?
A. Yes.
Q. Do you have a patent?
A. I do.
Q. Oh. Can -- where is your patent today? Who owns it?
A. NCR owns it. So when they acquired Radiant, that then becomes the property of NCR.
Q. And what is your patent?
A. It's for an interactive customer display that

connects to a point-of-sale. So you've all seen customer displays on the back of a point-of-sale. This was one that customers could actually interact with and touch buttons and get information.

Q. Is your patent used today?

A. No. It's not.

Q. Was Silver started then? NCR Silver Solution, now, was that released at Radiant?

A. No. It was released after the acquisition. So we were acquired in 2011, and NCR Silver was launched into market in the summer of 2012.

Q. And the idea that you -- that you referenced that was generated at Radiant, when did that idea that eventually became NCR Silver, when was that idea originated at Radiant?

A. In 2011, early in 2011. Under the Radiant company, started to work on the proof of concept and conceptual idea of a tablet point-of-sale.

Q. And then NCR Silver was released by NCR in 2012?

A. Right. And released means that that's when we actually start going live in customer sites. So it takes a long time to develop the code and the functionality to a point where it's usable in a customer's store.

Q. Now, talking about NCR Silver, and as executive director of the product, how would you describe the NCR Silver suite of solutions other than alliterative?

A. So it's a -- I mean, it's a tablet-based point-of-sale, right? It's an app that you download from the store, and it's sold to small business merchants who want something easy out of the box that they can easily install and start using right away.

And so it is a -- it's a prebuilt solution that out of the box, they can download it from the App Store, register the device and start using it, entering items directly on the point-of-sale, or they can log into the Back Office and do that, but they can do everything on the point-of-sale.

Q. And how --

A. And we sell to small business merchants. So we've talked about a couple of examples today, but cake shops, food trucks. Yes. Go ahead.

Q. Let me ask you about that, selling to small business and specifically with NCR Silver.

When NCR acquired Radiant and then NCR finalized and released this NCR Silver suite of solutions, was NCR Silver simply a product line at that time, or did NCR Silver have a different role in NCR Corporation?

A. So we have divisions like hospitality that sells to restaurants, retail that sells to retail, clothing shops and furniture stores, and then we started a small business unit that specifically -- NCR Silver was part of that business unit, and we focused primarily on small business.

Q. And what was -- what was the name of that segment?
A. The SMB market, small business.
Q. And NCR Silver was the only product?
A. That's right. It was centered around the NCR Silver product.
Q. Does that business segment exist today at NCR?
A. No. It has since been rolled into the hospitality division at NCR.
Q. So as a product line, then NCR Silver is sold under the hospitality business segment at NCR?
A. That's correct. Yes.
Q. Okay. And how is NCR Silver sold?
A. NCR Silver is sold as a monthly subscription. So the app itself you can download for free from the App Store. And then you pay a monthly subscription, which includes the point-of-sale solution as well as the customer support. So we provide 24-by-7 customer support, and that is included in the subscription price.
Q. Are you familiar with the term "software as a service"?
A. Yes.
Q. What is your understanding of software -- the term "software as a service"?
A. So it really is just a pricing model. It's not really the software. It just means that we charge customers on

a monthly subscription versus charging them one license fee upfront and then they never pay again. It's a way of -- they pay monthly, so that it's a pricing model.

Q. And so is there a difference between the software that is provided by NCR as part of NCR Silver and the service that NCR provides?

A. So we -- it's one monthly subscription, and it includes the use of the software as well as the support -- access to the support help desk.

Q. Do you charge -- does NCR charge its customers for its software?

A. It charges -- so the point-of-sale app itself is free to download, and then they pay a monthly subscription fee for the service.

Q. Okay. And we've talked a lot about different hardware today. What type of device does NCR -- NCR Silver's point-of-sale, what type of device does that run on?

A. Okay. So about 75 percent of our customers use iPad devices, and those devices are bought directly from Apple, or if they have iPads themselves, they can use them. But the majority of our customers run on iPad tablets. We also run on the Android™ operating system, so either Samsung tablets or Android™ hardware that NCR manufactures and sells.

Q. Okay.

MS. COLLINGS: Could we bring up Plaintiff's Exhibit 111,

and specifically Page 6396?
BY MS. COLLINGS:
Q. Do you see that, Ms. Schoonover?
A. Yes.
Q. And you recall Mr. Barr asked you about the hardware that was offered for sale as reflected in this document that's Plaintiff's Exhibit 111?
A. Yes.
Q. Are any of the items that are set out in this, are those necessary to run the NCR Silver point-of-sale solution?
A. The only thing that's necessary is the device that the point-of-sale app runs on, and so that can be, like I said, an iPad device. I do see the Android™, like the PX10. But most of these are not required.
MS. COLLINGS: Okay. And you can turn it off now? Thank you.
BY MS. COLLINGS:
Q. So there -- I'm getting a sense there are multiple -- there are different types of hardware?
A. Right. We sell cash drawers, printers, the payment readers, and so really to run the point-of-sale, the only thing you need is the tablet. You ring up items. You could take cash. You can e-mail a digital receipt. You don't have to print the receipt. You don't have to use a cash drawer. So all of those are optional.

Q. Is there a particular term that you use with an NCR Silver?

A. Peripherals.

Q. Peripherals?

A. Right.

Q. Are those like add-ons?

A. Yeah. So a printer is a peripheral. It's something that's additional.

Q. And none of that is necessary to actually run the point-of-sale --

A. That's right.

Q. -- solution?

Is there anything else that NCR provides to its customers as part of its solution?

A. Yes. So part of the service is also a concierge service that we offer for new merchants. The concierge service does the data entry for them to enter their items and their prices. So that is a service we provide to new customers to help them get up and running. And that is included in the monthly subscription.

Q. Okay. And the very first NCR Silver Solution, I think you said, was released in 2012?

A. Yes.

Q. And that was an Essentials --

A. Yes. So Silver Essentials was released in 2012, and

then a couple years later, the Pro Restaurant version where we added restaurant features. It's a separate app. We sell to restaurants like quick service, sit-down dining, just has more functionality.

Q. Do you recall who the very first customer was for NCR Silver?

A. Yes. Cakes by Darcy, she runs a cake and cupcake shop, and she was our first customer.

Q. Cakes by Darcy, and she runs the shop. Is she -- is that a retail, or is that a restaurant business, Cakes by Darcy?

A. Yeah. So Silver Essentials is sold primarily what we call retail. Now, some of them are food providers, like Cakes by Darcy provides food, but it's prepared, right? You walk in, you buy cupcakes off the shelf. So that's typically considered more retail, even though she's selling a food product. Like a chocolate shop is considered a retail even though it sells food.

Q. And that would be more for the NCR Silver Essentials version?

A. That's correct.

Q. Okay. Now, how is -- how is NCR Silver, that point-of-sale solution, how is it designed to add value to the merchant customer like Cakes for Darcy -- Darcy's Cakes?

A. So the value is for merchants, they are small

business operators, right? They don't have a lot of upfront cash to spend. And so the monthly subscription is very helpful. It's not a lot of capital that they have to spend, the fact that it runs on tablet devices, which are a lot less expensive than these bigger computer systems. So it's minimal upfront investment. So that's a benefit.

It's an out-of-the-box solution. So they -- you know, we develop it to be inexpensive out of the box. It works the same for every customer. They don't customize it. They don't change how it works. It's very easy. They just enter their items, and they're able to use the solution.

Q. Okay. So to recap that, prebuilt out of the box -- I'm sorry. You said it was out of the box.

A. Yes.

Q. Not a lot of setup time?

A. That's correct.

Q. Ready made. One size fits all --

A. Yeah.

Q. -- merchants?

A. That's right.

Q. Little to no setup time? That was the third.

And did you say -- did you talk about expense, relative expense?

A. Yeah. It's a -- it's a small capital investment upfront, right? Because the hardware's inexpensive. The

tablet device, sometimes they have their own, and it's a monthly subscription versus paying a big license fee upfront.

Q. And it doesn't -- does it need a full computer to run on?

A. No. Just the tablet.

Q. And does the point-of-sale application, the solution, does it need a PC workstation to run on?

A. No.

Q. And I think we just touched on it, but to be clear, what are the primary markets for NCR Silver's point-of-sale solution?

A. The primary markets are restaurant, retailers, small business operators, right? So independent owners of businesses.

Q. And who are NCR Silver's main competitors?

A. Well, it's a very crowded space. So, you know, running on a tablet is very -- building these apps, it's easy to do. So there are a lot of competitors in the space we have. People like Square, Clover. Even Groupon started its own point-of-sale solution. I mean, there are tons of point-of-sale providers in this space.

And like Square started out as a payment processor, if you're familiar with Square, where you could just -- it was just on a phone, and you have the dongle, and it was for hobbyists, right? Farmer's market, people that had a difficult

time applying for payment processing and wouldn't qualify, Square made it very easy for them to now qualify and take payments.

So I have a daughter who sells Girl Scout cookies, and we could apply for a payment processing now with Square and be able to sell Girl Scout cookies.

And what they realized is that more money -- there's not a lot of money because there's not a lot of transactions going on with hobbyists. So they extended to start building a point-of-sale solution on a tablet so they could start selling to small business merchants. So that is one of our largest competitors.

Q. And your competitors aren't all like Square. Are these -- there are big competitors and small competitors of NCR Silver, correct?

A. That's right. Yes. So that's an example of a large competitor. And then we have -- there's tons of new entrants in the market that are smaller companies.

Q. Are there a large number of new entrants to the point-of-sale market every year?

A. Yes. Yes. So Toast is an example that just came out a couple years ago in the restaurant business. Same thing, tablet point-of-sale. Rebel is another one. Clover. Yes. Ever year there's new entrants in this market, very competitive.

Q. Do you recall just a minute ago Mr. Barr was asking you about some potential market projections of what the -- you know, this point-of-sale market might look like in the future. And I think it said in the bottom right-hand corner of one of those documents it was like, you know, $20 million where the potential point-of-sale market, besides the market might be $20 million. Was that at all referencing NCR Silver's piece of that market?

A. Yeah. So I think that's at 20 million sites. And really it just means there's 20 million small businesses in the U.S. And when we look at available market versus we talk about addressable market, which is who can we actually sell to. So a point-of-sale system typically lasts five to seven years. And so merchants are not spending money -- even though there's 20 million businesses, they may not necessarily be looking to spend money because they've already purchased something and so that will last for seven years.

So you start -- that market starts to shrink. And how many people are spending money? How many people are actually good candidates for Silver? And then the competitive space of who do we think we can actually sell to? And so it's -- we -- that's how many small business sites, but not necessarily what our addressable market is.

Q. So there might be a lot of business, like potential, that they're just small businesses?

A. Yes.

Q. And combined with just the fact that there are these small businesses. It's a pond, right? And there are a number of point-of-sale proprietors, if you will, similar to NCR Silver and all of its competitors that are competing for just whatever that pie of small business consumers is?

A. That's right. And the other thing, small business -- like 20 percent of small businesses fail. So there's a high amount of attrition and turnover where businesses just don't -- that we may sell to them, but because we're on a monthly subscription, we may only -- they may only be in business for a year or two and then they're no longer a customer.

And that's why you see there's -- when you looked at that current and past, there -- we spend a lot of money selling to customers and have to keep winning new sales because a lot of customers close their doors unfortunately and don't continue paying.

Q. And so what does that mean for NCR Silver? You're --

A. It just means it's a high turnover -- I'm sorry. Go ahead.

Q. I'm sorry. You're targeting only the small business and you're saying there's a lot of turnover or attrition within the small business market, and so what is that effect on NCR Silver?

A. It means we're constantly trying to get new customers

to replace customers that are no longer paying.

Q. And is that hard?

A. Yes.

Q. How hard is it? What are some of the things that are involved in trying to --

A. So, I mean, these are small business -- independent owners. So we have to a lot of times try to make personal connection and sell to these individual business owners. It's not selling once with thousands of sites. Every site is a new sale, right? Every store we sell to is a new sale, a new cost for us to sell to that customer. And trying to reach customers in different markets and independent owners is -- takes a lot of effort.

Q. Would you describe that cost sort of fishing for new clients or new customers within this small business market would be a low cost, medium cost, high cost relative to --

A. It's a high cost.

Q. You work hard for the money?

A. Yes.

Q. So when you transitioned then from Radiant to NCR, what was your job title?

A. So executive director of product management.

Q. Okay. And what were your primary responsibilities as executive director of the product?

A. So I'm responsible for defining the roadmap, the

features, the priority. I spend a lot of time talking with customers and understanding what they need and what's important to them. Especially with this product, it's talking to a lot of customers, making sure that we're building the features that work in a way that's consistent for most of our customer base. Because it works the same for everybody. And so that's primarily understanding the market space, defining the features, how they should work, how they add value and prioritizing the order in which we develop those.

And we release about four times a year. We're continually adding new features and pushing out releases four times a year to the point-of-sale.

Q. When you say you release four times a year, what are you releasing?

A. It's updates to the app. So if you're familiar with the App Store, right, when you get new updates in the App Store, you -- it's new software code, right? New features. And then you download that to the device, and now you have a new release.

Q. So you mentioned three main responsibilities, developing the roadmap, prioritizing features and developing a go-to-market strategy?

A. Right.

Q. And so with respect to the development of the -- development and prioritization of the features, what is the

biggest impact with respect to how these features are selected? What impacts your decision the most in prioritizing features that are to be included in the NCR Silver Solution?

A. It's based on mostly conversations with customers, understanding what they need. You know, we have to build something that our customers -- is useful to them in order for them to continue to want to use the product.

So because it's a monthly subscription, we need to make sure we work hard to keep those customers. And so it's continually adding new features and assessing changes that may be in their business and the market space, and how we take advantage of those for our customers.

Q. Are most of the features then customer driven?

A. Yes.

Q. And why is that?

A. Because that's who's paying us. So we want to keep them happy and make sure that we have a product that is usable by our customers.

And our customers, you know, they make cakes. They have a dress shop. It's -- their passion is their business, and they don't want to spend time figuring out the system. They want it to just work. They want it to be easy to use. And so they give up a lot of the ability to customize because they want it to be easy to use, right? And so that means these features work the same for all customers.

MS. COLLINGS: So let's pull up Joint Exhibit 49, if we could.

BY MS. COLLINGS:

Q. Talking about what the customer wants and making cakes. I'm going to show you --

(Video played.)

BY MS. COLLINGS:

Q. Ms. Schoonover, what was the name of that video?

I'm sorry. I didn't get to introduce it before it just popped up on the screen. What's the name of it?

A. Built for Speed.

Q. Okay. And who was speaking in that video?

A. I was.

Q. And do you recall when that video was released?

A. I think it was -- well, in 2016, roughly.

Q. And how do you know that?

A. Well, it said four years ago which is when we first -- it said four years ago we introduced the Silver point-of-sale. So that was in 2012, so that was probably 2016.

Q. Okay. And Mr. Barr's been looking for the word "built" or "prebuilt." He's been looking for that word all day, and we finally found that word for him, did we not?

A. Yes. Built for speed.

Q. And so what did that mean? What is it that NCR Silver was doing and putting out this fourth -- this fourth

version and what they had built for the customer?

A. Yeah. So the point-of-sale app itself, it's really important to our customers that they help their customers quickly and that their cashiers can get the customers through fast and give them good service. And so if they're spending a lot of time hitting buttons or struggling with how to ring up the customers, then that makes it difficult. So we optimize on the point-of-sale app itself, removing clicks, making it more streamlined and making it easy for them to check out their customers and get through the transaction.

Q. And we heard a lot today, and we saw some screenshots of what the point-of-sale -- what the tablet actually looks like. And there's been some discussion about whether buttons can be added, buttons can be added or not added. Can buttons actually be added to the point-of-sale?

A. So the buttons already exist, right? They're the same size, same position. They're just hidden until you enter an item price and an item name. And then the button shows.

Q. And so in your experience as being executive director of the product in point-of-sale -- I mean, a point-of-sale related patent, when you hear the term "builder software," just from your perspective, what does that mean to you?

A. It means that you configure --

MR. BARR: Objection, Your Honor. This is getting into claim construction.

MS. COLLINGS: Plain and ordinary meaning, Your Honor.

MR. BARR: She's not a --

THE COURT: She's not an expert.

MS. COLLINGS: I know, but she's been in the business. She works in --

THE COURT: I don't care. She's not an expert.

Sustained.

BY MS. COLLINGS:

Q. The buttons are already on the point-of-sale solution, correct?

A. Right. The buttons are on the point-of-sale. They work the way they work. When you tap the button, we have already programmed exactly what's going to happen. That is not customizable. The merchant cannot change what happens. When you press that button, we've already -- it's static code. It works the way it works. There's nothing you can change, right?

And so that is, the buttons are already there, and they're already programmed to function a certain way. The only thing that changes is you add an item name, an item price and then that button shows. Every time you add a new item, the next button is displayed and then the next button.

Q. All right. Let's focus on that for just a minute.

When you said you cannot change the button, could you make the button a different color?

A. Cosmetic changes, you can select a color. That's the

one thing you can change. That's it.

Q. When you change the button color, does that change the way the solution works?

A. No. It doesn't change functionally anything that happens. When I press that button, it rings up the item the same way. There's nothing programatically that can be changed.

MS. COLLINGS: Can we bring up Joint Exhibit 2A, and I'm looking for the Page 2.41.

Well, that's not what I thought it was. I didn't mean to talk about claim construction or the patent with you. I'll come back to that, and I apologize.

BY MS. COLLINGS:

Q. When -- so what are the particular -- as executive director of the product, in your experience, what are the features of NCR Silver that make it commercially appealing to its merchant customers?

A. So the -- do you mean specific features of the point-of-sale itself?

Q. When you are -- when you are working on prioritizing features that might be added or you're developing the roadmap for what features are going to be included, in your experience, what are some of the most important features or functionality of the NCR Silver point-of-sale?

A. So selling is very important, right, so being able to sell all the different types of items that our customers need

to sell, whether they're weighted items or they are variations, like I sell a shirt that's red and small and short sleeve or long sleeve.

Being able to tax correctly, right, and so setting the right tax rate, tax by location for food trucks, because they move around.

Being able to support future orders, house accounts. We do a lot with customers, tracking who the customers are that you sell to, being able to market to those customers. We have an e-mail marketing solution.

Loyalty, so tracking rewards and being able to apply rewards and discounts for those customers.

Are those -- do we want to keep listing features?

MS. COLLINGS: All right. Let's try Joint Trial Exhibit 98-C, please.

BY MS. COLLINGS:

Q. Okay. And this document has been admitted as Joint Exhibit 98-C.

And I believe Mr. Barr was questioning you about this document, and you described it as a pricing document?

A. Yes.

Q. What did you mean by that, it was -- it was a -- for pricing purposes?

A. Well, this particular document, with the weighting and it had competitor pricing, was used to understand the value

of the solution relative to the price that's charged, our sales and competitors.

But the list of features are a comprehensive list of everything we support in the product and is taken directly from our -- we use a standard -- industry standard called JIRA, which is where we manage all of the features that we have put in the product, we want to put in the product and set the priority.

And there's a database, we use it every day. And it's a database of all of the features of the solution, right, that we've put in or considering.

And this list of capabilities is -- was pulled from that to reflect what is in the product and then some additional features that maybe our competitors have.

Q. So, to slow it down a little bit, within this spreadsheet, there are different tabs. And this particular one you see is "US Features Comparison Tab." That's what we're looking at in Exhibit 98-C.

And are you talking about the features that are on the far left side?

A. Yes.

Q. Where did that column of information come from?

A. So that database of features that we store, it was -- these capabilities were based on all of the features in that database.

So, for example, like future orders is a good example, right? That is a capability. But underneath there, there's a lot of sub-features. So the fact that you can set -- and future orders are like, I want to order a cake for two weeks from now. And so I want to be able to set the date I want to pick up the cake, whether I can pay for it now or pay for it when I pick it up. There's a lot of features underneath that that make up that feature, future orders capability.

And so this is a comprehensive list, out of that feature database, to show the type of capabilities that we support in our solution.

Q. Once a feature is included in the -- I think you called it the JIRA?

A. Yes.

Q. Can you spell it?

A. J-I-R-A.

Q. Once a feature's included in that JIRA database, is it ever -- what happens -- what happens to that feature?

A. Yeah. So that's what we use on a daily basis to define how the feature should work, prioritize customers that are asking for it, and then we use that to prioritize for the upcoming release exactly what features we want to develop. And then development and engineering uses that to now define their work in support of that feature, and then that tracks all of the development work all the way through.

So we track the status from -- if it's in progress, development, if it's being tested and then once it's completed. And so that's how we know all of the features that are completed and then all of the features that are pending.

Q. Are all the NCR Silver point-of-sale features -- all the features that are included in the NCR Silver point-of-sale, are they all included in this JIRA database?

A. Yes. Now, there may be some from the first year or two. We were using a different tool, but most of those have been ported over and archived in that database, so yes.

Q. But are all the features that are listed here in this Exhibit 98-C, are these all the features that are in JIRA?

A. They represent the features that are in JIRA. Yes. It's a comprehensive list.

Q. Are there any subcategories of features that are included in JIRA that might not be specified in 98-C?

A. I can't think of any. I mean, that doesn't mean there's not one, but this is a comprehensive list of all of the capabilities.

Q. How often do you use JIRA?

A. I use it every day. So product management uses it every day. Developers use it every day. It's how we manage the work.

Q. Would you say these are all of the primary features that are included in NCR Silver's point-of-sale?

A. Yes.

MS. COLLINGS: Can we bring up Plaintiff's Exhibit -- I'm sorry. Plaintiff's Slide 12? Do we have that?

BY THE WITNESS:

A. So just to clarify, or being considered. Some of these are -- and you can see the asterisks -- ones that we don't support, but they've been asterisked.

MS. COLLINGS: And if we can't find the slide -- okay.

BY MS. COLLINGS:

Q. Ms. Schoonover, I don't think that you were in the courtroom earlier today, but plaintiffs, in their opening statement, showed this slide. And it says, Point-of-sale consists of six components. Transaction management, inventory management, content management, point-of-sale infrastructure, reporting, security.

What is your understanding of what is itemized? These six things that are itemized here on Slide 12, do you have an understanding of what those -- those descriptors apply to?

A. Well, I know what inventory management is, reporting, security. I'm not sure I understand transaction --

Q. Well, what is inventory management?

A. Inventory management is managing your items in the store. So if I purchase ten T-shirts to sell in my store, I need to know I have ten in my store. If I sell five of them, I need to know that I sold five and that I should still have five

in the store.

So that tells me when I need to order more, right, when I'm running low. It lets me track if I have maybe theft, because I should have five, but when I count my inventory, I only have four. That's inventory management.

Q. And is inventory management a part of point-of-sale?

A. It's -- no. I mean, it -- so sales transactions will feed into an inventory management system, because this is what we sold. So if you had ten on hand, you sold five. But the inventory management is usually a Back Office solution, that you're purchasing your items, you're entering them, receiving them, and you're tracking your costs in an inventory management system separate from the point-of-sale.

Q. As executive director of the product, are the descriptions included on this Slide 12, are these things that drive demand for the NCR Silver Solution in your experience?

A. Reporting is important, and security. The others, I'm not exactly sure what all of those are.

Q. Can you give an example of what you mean by "reporting"?

A. Yeah. So our customers want to know how much they've sold of their items so they know what's selling, what's not selling. They want to know how their employees are performing. And so those all use sales transactions from the point-of-sale, and they report, after the fact, the performance of the store.

And so that's how they manage how well their business is doing, by looking at reports.

MS. COLLINGS: Can we look at Plaintiff's Exhibit 117 that you were shown by Mr. Barr earlier today? Page 6493.

BY MS. COLLINGS:

Q. Do you see where it says, "Merchant demand for payments capability," the third bullet in the top section?

A. Yes.

Q. Merchant demand, is there anything in this presentation that's talking about what is driving demand or what is not driving demand for the NCR Silver Solution?

A. No. It's talking about payments capability integrated with those other features, is my --

Q. Is anything in this document talking about NCR Silver Solutions?

A. No.

Q. So does anything in this document tell you anything about what drives demand for NCR Silver Solutions?

A. Not specifically. No. That I saw. No.

Q. Okay.

MS. COLLINGS: If we can pull up Joint Exhibit 88-C.

BY MS. COLLINGS:

Q. Okay. And do you recognize this document, Ms. Schoonover?

A. Yes.

Q. Okay. And this is -- this is the first page of that document. How would you describe this document in 98-C (sic)?

A. So this is a summary of our financials for the NCR Silver Solution in the U.S., and it's pulled from our -- we have -- you know, we're a publicly-traded company, right? So we have very strict reporting rules, and we have financial systems where we track all of our revenue and costs. And we record them as they come in.

And so this is generated out of those financial systems. It's a report of our revenue and costs.

Q. Okay. Are you familiar with this document?

A. Yes.

Q. So when it talks about -- I tell you what, this might be easier.

MS. COLLINGS: If we can go to Defense Exhibit 7.2. Okay.

BY MS. COLLINGS:

Q. So Defense Exhibit 7.2 is a blowup. It's kind of a screenshot from the native document from which Exhibit 90 -- the exhibit -- the Joint Exhibit 88-C was taken.

A. Okay.

Q. Okay. So in -- in this rendering, essentially, of that exhibit, I'm going to point out line items and then you can point out line items to me, so that we're real clear about what we're talking about in these financials.

A. Okay.

Q. So do you see at the top, Line 5 of this document, what is -- what does that represent?

A. That is the revenue that we generate from software license subscription fee that we charge our customers.

Q. So when you sell a point of solution -- I'm sorry. When you sell an NCR Silver point-of-sale solution, you sell it using a subscription. You're saying this Line 5 is representing the revenue from that -- all the subscription sales between 16 and 17?

A. Yes. That's correct.

Q. Okay. Then if you look at Lines 20 to 46, what are those line items?

A. Those are all of the costs that we incur, costs of the revenue. So everything related to the revenue that we've brought in for --

Q. When you say we, who is the we?

A. NCR. NCR Silver.

Q. Is it NCR or is it NCR Silver?

A. No. NCR Silver.

Q. Okay. And so Lines 20 through 46, these are the costs of the revenue that you identified in Line 5; is that correct?

A. That's correct.

Q. Okay. And do you know if -- do those costs roll up or add up to any particular line item on this exhibit?

A. They roll up to the services cost of revenue, Line 47.

Q. Okay. So the cost of revenue roll-up to Line 47 services cost of revenue, and then you see the notation EXCLDA?

A. Yes.

Q. Do you know what that is referring to?

A. Yeah. So below, it says, depreciation and amortization. That is just an abbreviation of DA.

Q. And can you identify on this exhibit the software costs of goods that are incurred by NCR Silver?

A. I don't know that I can see.

Q. Oh, can't see that far down on it?

A. Right. Maybe if you make it a little smaller, it will scroll up.

Q. There you go. How about that callout?

A. Yes. Line 49 is the software cost of goods.

Q. Okay. Again, based on this exhibit and the information that's included in this exhibit and your experience within NCR Silver and NCR for almost a decade, can you tell me how, within this document that Line 49 software cost of goods, how is that derived?

A. So software cost of goods is Line 47, the services cost of revenue plus the depreciation amortization, 48.

Q. And 47 plus 48 equals 49?

A. That's correct.

Q. Okay. And on the cost of goods sold, are you familiar with the categories of costs of goods sold generally at NCR Silver?

A. Yes.

Q. Okay. And if we just take a couple of the line items, for example, indirect labor compensation, Line 29.

A. Yeah.

Q. Can you briefly describe what would be included in that cost category?

A. Yes. So we're a very labor intensive solution, right? It takes a lot of people to support the revenue and the product and the cost of that. And that is all of the employees, the support personnel to support the product that we're selling, that's their wages, their taxes, everything, basically their pay, and that is all those employees.

Q. And then if we go down a little bit, let's pick out another, cost of goods sold. Do you see the technology go to market at Line 37?

A. Yes.

Q. What is that?

A. So we've talked about how the Back Office is hosted in the Google Cloud platform, and so NCR corporate has a contract and commitment with Google Cloud services to run our hosted solutions, and NCR Silver uses -- runs in the Google Cloud platform. So we're charged a portion of that, and that's

what this line reflects is that that is a cost of the product that we sell.

Q. Okay.

A. And that is our hosted -- the hosting costs for Google Cloud.

Q. And in fiscal year '20, for example, under technology go to market, what is the amount of the cost for the technology go to market at Line 37?

A. I'm sorry. Say that again.

Q. Line 37.

A. Yeah.

Q. What is the amount of the fiscal year in 2020? What were the costs for technology go to market?

A. In 2020 it was $5.4 million.

Q. Okay. And you said those costs are associated with the Google Cloud hosting agreement?

A. Yes. That's right.

MS. COLLINGS: Can we bring up quickly Joint Exhibit 89?

BY MS. COLLINGS:

Q. And you recognize this. This is the Google Cloud agreement we talked about earlier today, correct?

A. Yes.

Q. And this agreement is between NCR Corp and Google?

A. Yes. That's right.

Q. Well, how do you know that NCR Silver's amount there,

5.4 million that you saw under technology go to market, how do you know that that's actually the amount of the Google Cloud services agreement that's a portion to NCR Silver?

A. Well, our finance team has an algorithm that they use to determine the relative apportionment that every business and every product that is used -- that uses Google Cloud is allocated out of that $22 million. And NCR Silver is allocated $5.4 million for 2020.

Q. Okay.

THE COURT: Counsel, how much longer do you have on your exam?

MS. COLLINGS: Not long, Your Honor.

THE COURT: I'm sorry?

MS. COLLINGS: Can I have five minutes?

THE COURT: Yes, ma'am. I'm just trying to figure out, if you're going to finish yours today, we're going to go when you're done.

MS. COLLINGS: Thank you.

THE COURT: Okay.

MS. COLLINGS: Thank you, Your Honor.

BY MS. COLLINGS:

Q. If you turn the page of this document to the next page, now, you see up at the top where it says Commitment, the minimum commitment. So what is that minimum commitment? Do you see the value there under the Google hosting agreement?

A. Yes. It says 24 months is the commitment period.

Q. Right. So for a 24-month commitment period, what's going to be that charge?

A. $22 million.

Q. And who's being charged that overall $22 million?

A. NCR Corporation.

Q. And did NCR Silver book $22 million for its technology go to market in 2020?

A. No.

Q. What did it book?

A. It booked 5.4 million.

Q. Okay. NCR Silver's portion part?

A. Yes. That's right.

Q. Okay.

MS. COLLINGS: If we could bring up Joint Exhibit 80.

BY MS. COLLINGS:

Q. This is the merchant agreement we talked about earlier. Do you recognize this document?

A. Yes.

Q. If you look at the first paragraph, it's the first unnumbered paragraph. The merchant agreement starts out, certain defined terms that are used. Is your understanding of this merchant agreement, how this operates, is it consistent with how these terms are defined here in the top paragraph?

A. Yes.

Q. What is meant by the term "product"?

A. By the term "product" is NCR Silver product.

Q. Okay. And are those -- and that's comprised of what?

A. It's comprised of the point-of-sale app and the Back Office solution.

Q. Okay. And the hardware, the hardware you mentioned earlier, that may or may not be sold by NCR?

A. That's correct.

Q. And, in fact, did you say that the majority of the hardware tablet sales from NCR -- I'm sorry. It's getting late in the day. NCR provides only what kind of tablet?

A. NCR provides only the Android™ tablet.

Q. Okay.

A. But the majority of our customers run on Apple devices.

Q. Now, if you look at Section 2 of the merchant agreement, Section 2. You see the reference to service suite of applications? I'm sorry. This is on the first page. We can stop the document.

Are you familiar with the term "service suite" of applications?

A. "Service" what?

Q. "Service suite."

A. Yes.

Q. Okay. And what is that referring to?

A. It means it's a suite of solutions that we sell so not just the point-of-sale but we sell a analytics solution as well, advance analytics, so these are add-on. It's the suite of products that we offer.

Q. Okay. But those are not part of the point-of-sale solution?

A. That's right. They're add-ons.

Q. Like the -- a lot of the hardware, other than the tablet, are add-ons, correct?

A. Yes. That's right.

Q. Are there any other things that NCR Silver provides the merchant as part of the point-of-sale solution besides the software and the service and it -- sometimes the hardware tablet?

A. Just the support and concierge service.

MS. COLLINGS: Nothing further, Your Honor.

THE COURT: You may -- ladies and gentlemen of the jury, we're going to stop for the evening. Remember my instructions not to discuss the case amongst yourselves, including -- and now I will also tell you, you can't discuss them when you get home either. If someone asks, what did you do today, you can let them know you were in court and not out playing hookey, but you can't talk to them about what you heard in court today.

Also, you can't go do any Google searches or anything like that. You also can't post anything on social media about what

you heard during the trial. And you're thinking, I would never do that. Why is he telling me this? And it's because in the past when I haven't told it, people did that. So remember, don't talk to anyone, don't do any investigation yourself, and don't post anything on social media. We'll see you tomorrow. If you'll be here by about 8:45, we'll start at 9 o'clock with the evidence.

THE BAILIFF: All rise.

(Jury exited the courtroom at 6:05.)

THE COURT: You may step down, ma'am.

Mr. Barr, is there anything we need take up?

MR. BARR: No, Your Honor.

THE COURT: Counsel?

MS. COLLINGS: No, Your Honor.

THE COURT: I'll see you tomorrow morning at -- like this morning, I'm usually here early. So if anything crops up overnight, just let Jun know, and we'll take it up in the morning before the trial.

And also as far as I'm concerned, if nothing does crop up, you can get here whenever, you know, at 8:40 -- you don't need to be here any earlier than the jury will be here. If something -- you need me, though, get here early enough so I can take it in the morning before the jury comes in.

(Hearing adjourned at 6:06 p.m.)

UNITED STATES DISTRICT COURT)
WESTERN DISTRICT OF TEXAS)

I, Kristie M. Davis, Official Court Reporter for the United States District Court, Western District of Texas, do certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

I certify that the transcript fees and format comply with those prescribed by the Court and Judicial Conference of the United States.

Certified to by me this 8th day of June 2021.

/s/ Kristie M. Davis
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