UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

_____

INTUIT INC.,

Petitioner

v.

SAMESURF, INC.,

Patent Owner.

Inter Partes Review No. IPR2023-00339

Patent 9,185,145 B2

Inter Partes Review No. IPR2023-00341

Patent 9,483,448 B2

Inter Partes Review No. IPR2023-00342

Patent 8,527,591 B2

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REMOTE VIDEOCONFERENCE DEPOSITION BY VIRTUAL ZOOM OF

STACY FRIEDMAN

WEDNESDAY, NOVEMBER 15, 2023

Stenographically Reported by Ashala Tylor, CRR, RPR

California CSR #2436 Oregon CSR #22-0118

JOB NO. 6298220

PAGES 1 - 252

Intuit / Samesurf, Inc.
Exhibit 1033
Page 1

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Videoconference deposition of STACY FRIEDMAN, taken via virtual Zoom, commencing at 9:12 a.m. and ending at 5:44 p.m., on Wednesday, November 15, 2023, before Ashala Tylor, Certified Shorthand Reporter.

APPEARANCES OF COUNSEL:

FOR THE PETITIONER INTUIT INC.:

FENWICK & WEST LLP

BY: MICHAEL J. SACKSTEDER, ESQ.

JENNIFER R. BUSH, ESQ.

801 California Street

Mountain View, California 94041

650.988.8500

msacksteder@fenwick.com

jbush@fenwick.com

FOR THE PATENT OWNER SAMESURF, INC.:

MCKOOL SMITH, P.C.

BY: RYAN B. MCBETH, ESQ.

ALAN BLOCK, ESQ.

600 Travis Street

Suite 7000

Houston, Texas 77002

713.485.7300

rmcbeth@mckoolsmith.com

ablock@mckoolsmith.com

Also Present:

David Pirnazar, Samesurf

I N D E X

WITNESS	EXAMINATION BY	PAGE
STACY FRIEDMAN		
	Mr. Sacksteder	5, 124

E X H I B I T S

NO.	DESCRIPTION	PAGE
Exhibit 1031	Excerpt from Microsoft Computer Dictionary, Fifth Edition	62
Exhibit 1032	Document titled "CLAIM 1 FROM EACH PATENT"	62

QUESTIONS INSTRUCTED NOT TO ANSWER

(None.)

Intuit / Samesurf, Inc.
Exhibit 1033
Page 4

Wednesday, November 15, 2023

9:12 a.m.

--o0o--

STACY FRIEDMAN,

being first duly sworn or affirmed to testify to the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

EXAMINATION

BY MR. SACKSTEDER:

Q. Good morning, Mr. Friedman.

A. Good morning.

Q. Good to see you.

A. You too.

Q. All right.

MR. MCBETH: Should we do introductions for the record?

MR. SACKSTEDER: My name is Michael Sacksteder. I am counsel for Intuit in this case. With me is my colleague Jennifer Bush. We are both at the law firm of Fenwick & West.

MR. MCBETH: Ryan McBeth. And also with me is Alan Block, both with McKool Smith, here on behalf of the patent owner Samesurf.

Also observing today is David Pirnazar,

Intuit / Samesurf, Inc.
Exhibit 1033
Page 5

the CEO of Samesurf.

You can proceed, Mike.

BY MR. SACKSTEDER:

Q. Good morning, again, Mr. Friedman.

Could you please state your name for the record and spell it?

A. Yes. My name is Stacy Friedman. S-T-A-C-Y, F-R-I-E-D-M-A-N.

Q. And where do you live?

A. Lake Oswego, Oregon.

Q. What's your address?

A. 13380 Streamside Court, Lake Oswego, O-S-W-E-G-O, Oregon 97035.

Q. Where do you work?

A. I own a company called Olympian Gaming. Physically I work most of the time out of my home office right here.

Q. What is Olympian Gaming?

A. Olympian Gaming is a game design and development consultancy. It does a lot of things. That's a rather long-winded answer, so I sort of want to break that up, depending on what specifically you'd want to know about it.

Q. What kind of consulting work do you do with Olympian Gaming?

A. It's basically two or three different types. One is -- the origin was it started out an online game development design consulting initially for the online casino space back in 2001, branching out into non-wagering video games subsequently. But, I mean, we're talking about mobile apps and online client server-type multiplayer games. And also --

Q. And -- sorry, go ahead.

A. Yes. And then so that's -- that's sort of the technology development piece.

And then I've also developed -- I guess another thrust of my consulting practice is intellectual property-related consulting where I work with attorneys as an expert helping courts and tribunals like the PTAB understand the technologies at issue in patent cases, but also sometimes trade secret copyrights and whatnot.

And I also provide similar kinds of consulting for non-litigation-related matters. For example, advising potential patent acquirers as to the -- what's the right word? I guess as to whether the patent, in my view, has value in the market that they are interested in -- in addressing.

Q. Can you walk me through your educational

background, please?

A. Yes. I have a degree in computer science from Harvard. I graduated in '96.

Q. A bachelor's degree?

A. That's right.

Q. Any advanced educational work?

A. Nothing formal.

Q. Anything informal?

A. Well, so I guess when I say "formal," I mean like no additional degrees. I took a couple of entrepreneur classes, at least one entrepreneur class at Stanford back in the day, and just sort of keeping up with the various technologies that are relevant to the work that I do. But like I said, nothing formal.

Q. If you could go to the first of the three exhibit 2004 exhibits in the Exhibit Share platform.

A. I don't know that I can tell which is first. Can you give me the associated patent number?

Q. The '591.

A. Okay.

Q. And I just meant first in what appears first in the list.

A. Okay. Sorry. I've already downloaded

everything so they're open on my computer.

Q. Okay.

A. So I'm there, Exhibit 2004 for the IPR ending in 342 for the '591 Patent.

Q. All right, correct.

And just for the record, we are taking this deposition today in three different inter partes review proceedings.

Do you understand that, Mr. Friedman?

A. I do, yes.

Q. One of them is IPR2023-00342. And one of them is, as I open the other two, IPR2023-00339, and the third is IPR2023-00341, correct?

A. That's what I see, yes.

Q. All right. And you understand that those three patents are, as we say in the business, related?

A. I do, yes.

Q. They claim priority to a common application?

A. Actually, I don't know if that's strictly true, but I'd have to go back and look at the very top of the patents to verify that.

Q. They're in the same patent family, correct?

A. Well, so when you say "patent family," I understood that to mean common parentage. And my recollection is that two of them were filed contemporaneously but not strictly continuing from one another. So I'm not sure whether what you said is true or not from a procedural standpoint.

Q. Okay. Can you open the '448 Patent, please?

A. Yes, I have that up.

Q. All right. And do you see the part that says "Related U.S. Application Data"? It's on the first page.

A. Yes. Yes, got it. First column -- left-hand column of the first page, number 63.

Q. And it says, "Continuation of Application Number 12/783735, filed on May 20th, 2010"; correct?

A. Yes, I do see that.

Q. And then if you go to the '145 Patent and look at the related application data, it's a continuation of an application 12/783743 filed on May 20, 2010, correct?

A. I do see that, yes.

Q. And that one is the '591 Patent, correct?

A. The -- the application --

Q. The application that is listed as the

Intuit / Samesurf, Inc.
Exhibit 1033
Page 10

priority information.

A. Yes. Okay, I do see that.

Okay. I guess I was misinformed.

Q. Let's go back to your Exhibit 2004 for the '591 Patent. And when I refer to the "'591 Patent," I'm referring to U.S. Patent number 8,527,591. Do you understand that?

A. 8,527,591. Yes, I understand that.

Q. So looking at your declaration for the '591 Patent, if you can turn to the first substantive page beyond the title page.

What were you asked to do with regard to the '591 Patent?

A. Well, as I note in paragraph 2, I was asked to review and provide opinions about the '591 Patent in connection with the IPR.

Q. And what specifically were you trying to accomplish with that review?

MR. MCBETH: Objection to form.

THE WITNESS: Well, I mean, I don't know that I was trying to accomplish anything in particular. The -- the counsel -- I mean without getting into the substance of conversations I had with counsel, I understood that -- or let me say it this way. I reviewed the petition and the board's

institution based on the petition. And -- and was asked to evaluate whether -- essentially whether I agreed with the points raised.

And there were several cases where I didn't, where I noted, I guess, errors, in my view. And so what I was -- what I did in this -- in this declaration is to address some of those.

BY MR. SACKSTEDER:

Q. You noted and addressed some of what you consider to be errors in the board's institution decision; is that correct?

MR. MCBETH: Objection to form.

THE WITNESS: In the documents that I reviewed, which includes the institution decision but also the petition.

BY MR. SACKSTEDER:

Q. My question was limited to the institution decision. Did you find what you considered to be errors by the board in the institution decision?

MR. MCBETH: Objection to form.

THE WITNESS: Well, I noted -- where did I talk about this? Hold on. Oh, you know what? I think I'm getting these three documents mixed up.

In the '591 IPR, I did not comment on the claim construction matter that I commented on in the

other two.
BY MR. SACKSTEDER:
Q. Did you find any what you considered errors by the board in your review concerning the '591 patent's IPR?
MR. MCBETH: Objection to form.
THE WITNESS: I guess I would -- with the caveat that my declaration speaks for itself, I don't recall any as I sit here right now. But again, if I -- I'm not intending for this to be a memory test. So if I say something in the declaration and I'm inadvertently remembering it right now, I don't want to constrain my opinion by my lack of memory.
BY MR. SACKSTEDER:
Q. If there's something that you need to check at any time, just tell me, and it's fine to check it as long as you don't take an hour doing it.
A. Understood.
Q. Is there anything you need to check in your declaration so you can respond confidently to the question that I asked you previously?
MR. MCBETH: Objection to form.
THE WITNESS: In rereviewing the opinion in the '591 IPR, I don't believe I characterized any

particular -- hold on. Let me pause it.

I don't believe that I characterized any particular statement by the board as an error. However, I explain why I believe a person of ordinary skill reading the applied prior art references would not have found the claims obvious as set forth in the petition.

So at least implicitly, I'm disagreeing with the institution decision.

BY MR. SACKSTEDER:

Q. That was going to be my next question.

Do you believe that the board made an error when it instituted the IPR regarding the '591 Patent?

MR. MCBETH: Objection to form.

THE WITNESS: I believe that a person of ordinary skill -- and just so we're clear, let me go back to that, because I defined a person of ordinary skill -- sorry. I didn't define it.

In paragraph 29 of my declaration, I note that the board applied its own definition of a person of ordinary skill, namely, someone that has "at least a bachelor's degree in computer science, computer engineering, electrical engineering or a similar field, and at least two years of work

Intuit / Samesurf, Inc.
Exhibit 1033
Page 14

experience in software development and/or web-based software."

So that part was a quote, and I was quoting the institution decision at page 11.

And I note here that I'm applying the board's definition of a POSITA, and also that I met that definition as of the date of the patent.

So the -- the conclusion, or some of my opinions near the end of this paper, are that, for example, a POSITA would -- let me just go find it.

As an example, I note that "A POSITA would not have been motivated to combine the Wang reference with either Lebrun or Prajapat due to the incompatible system architectures."

And because those combinations, as I understand it, were the only two grounds on which the petition argued for institution, it's inherent in my opinion that I don't think the petition should have been instituted.

BY MR. SACKSTEDER:

Q. In your opinion, was it a mistake for the board to institute the IPR on the '591 Patent?

MR. MCBETH: Objection to form.

THE WITNESS: So I think you're asking me a legal question. And to the extent "mistake" has

some meaning that I don't -- like in the law that I don't fully appreciate, I'm hesitant to answer.

I'm going to refer you back to my opinion, which is that in my view, applying the definition of a person of ordinary skill in the art that the board did, that POSITA would not have been motivated to combine the references as set forth in the grounds for petition.

Now, if there's some other procedural reason why institution was correct, I mean I can't speak to that because I'm not a lawyer.

But from a substantive standpoint, I disagree that the grounds presented in the petition demonstrate obviousness as alleged in the petition.

BY MR. SACKSTEDER:

Q. So in your opinion, the board got it wrong?

MR. MCBETH: Objection to form.

THE WITNESS: So it's my understanding that the board hasn't actually invalidated the patents on the grounds presented. So to that extent they haven't gotten it wrong yet.

But again, I don't know from a procedural standpoint whether the inquiry into obviousness should have gotten to the point where we currently

are in view of what I perceived as the failings in the petition.

BY MR. SACKSTEDER:

Q. In your opinion, it shouldn't have, correct?

MR. MCBETH: Objection to form.

THE WITNESS: Well, so from a substantive standpoint, I don't believe that the two grounds asserted in the petition demonstrate obviousness. I can't really speculate on what other factors the board may have been considering, so it's hard for me to answer as a lawyer because I'm not.

But from a substantive standpoint, I don't believe, as I just said, a person of ordinary skill wouldn't have been motivated to combine these references. So I basically disagree with the grounds you presented.

BY MR. SACKSTEDER:

Q. You raise other places where you think that the board made a mistake when it instituted the IPR besides the motivation for mine, correct?

MR. MCBETH: Objection to form.

THE WITNESS: Well, if you recharacterize that as that your petition made the mistake, then yes, I think that's -- that's a fair

characterization. There are several different, I guess, assertions in the petition which I don't believe are accurate.

BY MR. SACKSTEDER:

Q. Did the board make a mistake to accept those assertions?

MR. MCBETH: Objection to form.

THE WITNESS: Again, that's a procedural question that I don't know that I'm qualified to answer. But from a substantive standpoint, I don't believe that the -- the patent has been proven obvious in view of the assertions that you've made.

BY MR. SACKSTEDER:

Q. Paragraph 4 of your declaration, Exhibit 2004 regarding the '591 Patent, you say you're being compensated for your time.

A. Yes, I am.

Q. How much are you being compensated?

A. My rate is 650 an hour.

Q. 650. Are there any nuances to that where, you know, time spent testifying is a different rate or anything like that?

A. Generally my practice is to just half rate for nonworking travel. But other than that I don't parse things out. I'd have to go back and look at

the paperwork for this particular case.

Q. Who pays you? Where does the money come from?

A. Oh. Well, those are two different questions.

Q. Okay. Please answer both of them.

A. So I was placed through a search firm in this case called Patexia. And so they pay -- so I bill them, they pay me. I don't know who pays them.

Q. Okay. So -- and you don't know if Patexia is paid 650 an hour for your time?

A. I would assume they're not, but I don't actually know.

Q. Assuming that they get paid more because they are the ones who connected you with Samesurf in this case, correct?

A. Right. And I've worked with a bunch of different search firms or placement firms. It's my understanding that it's common practice for them to take an upcharge, but I don't know what that is.

Q. Okay. I believe your declaration also includes your CV at the end as Exhibit A.

A. Let me see.

Yes. Yes, that's here.

Q. Okay. And you mentioned doing

litigation-related consulting in part of your work for Olympian Gaming, correct?

A. Yes, that's correct.

Q. And you have a list of your consulting engagements that start on the first page of your CV and goes on to page 5.

A. Yes, that's right.

Q. And that includes doing what you're doing today, testifying as an expert, correct?

A. It does.

Q. Does that include the other engagements you mentioned that were not litigation-related or controversy-related?

A. Some of them -- well, let me say it this way. The ones where it was for a specific potential controversy, I try to list that in the same list.

Generally, though, unless it's a client where -- where I work pretty heavily with them and I'm part of their development team for a longer period of time and they're interested in having me be, I guess, publicly acknowledged as part of the effort, the non, I guess, patent or non-controversy-related stuff is generally lumped under just work experience under Olympian Gaming on page 6.

Q. So most if not all of the engagements that you list on pages 1 through 5 relate to some kind of dispute, is that accurate?

A. Most of them, yes, that's true.

Q. So there are about 60, or maybe a little more, different disputes that you've served in some kind of expert capacity, correct?

A. That's -- that's about right, yeah.

Q. Is your declaration -- strike that.

Does your declaration contain all of your opinions that you intend to express concerning the challenge to the validity of the '591 Patent?

MR. MCBETH: Objection to form.

THE WITNESS: It contains all of the opinions that I have expressed until now. To the extent I'm asked to render additional opinions based on new information, then I may do that.

BY MR. SACKSTEDER:

Q. Have you been asked to render any additional opinions based on new information?

MR. MCBETH: Objection to form.

THE WITNESS: Not at this time.

BY MR. SACKSTEDER:

Q. And when you say "new information," you mean something that you don't know about yet,

Intuit / Samesurf, Inc.
Exhibit 1033
Page 21

correct?

A. I think that's right. I mean I -- I don't know what I don't know, so it's hard for me to say what counsel might ask me to do down the road. And -- oh, I think I see what you're saying. Sorry.

To the extent counsel asks me to review materials based on other theories or, I guess, new thoughts, it may involve a review of the same materials that I've already looked at. So I can't, I guess, exclude being asked to provide additional analysis or opinions based on some of the same material that I've already reviewed.

Q. As you sit here today, there are no additional opinions that are in your head concerning the IPR of the '591 Patent that are not expressed in your declaration; is that fair?

MR. MCBETH: Objection to form.

THE WITNESS: As I sit here today, my opinions on this matter that I currently have are expressed in this declaration, that's -- that's fair.

BY MR. SACKSTEDER:

Q. And you said that what you have reviewed are the petition and the materials that were filed with the petition and the board's institution

decision. Did I get that right?

MR. MCBETH: Objection to form.

THE WITNESS: So I actually list the materials reviewed at the very end of this as Exhibit B, which included, I think, everything that you listed, but then several other -- several other references.

BY MR. SACKSTEDER:

Q. Did you become involved in this IPR, meaning were you retained to do work with regard to the IPR before the institution decision or after?

MR. MCBETH: Objection to form.

THE WITNESS: Oh, before the institution decision. Oh, I don't know. I would have to go check my records on -- on that.

BY MR. SACKSTEDER:

Q. You have also been retained in -- there is litigation between the parties to this IPR that relates to the same patents, correct?

A. Right. That's why I would have to go check my records, because I don't -- I didn't break things out by, like, IPR versus litigation.

Q. So just to make sure my question was clear. You are also retained as an expert consultant and potentially an expert witness

regarding the lawsuit in which Samesurf asserts infringement by Intuit of these three patents; correct?

A. Yes, that's right.

Q. And you were at least retained for that purpose before the institution decision in the IPR; is that correct?

A. I believe so. Yeah, I -- I think that's right.

Q. And you did some work regarding the litigation before it was stayed, correct?

A. Yes, that's correct.

Q. And part of that work was coming to our offices in Mountain View, California, and reviewing some source code, correct?

MR. MCBETH: Objection to form.

THE WITNESS: I think that was San Francisco, but -- but yes.

BY MR. SACKSTEDER:

Q. Oh, you're right. Okay. I wasn't there that day.

You came to the San Francisco office and you reviewed some of Intuit's source code; correct?

A. Yes, that's right.

Q. Do you have any involvement -- do you

understand that for one of these IPRs there is a request to amend the claims of the patent?

MR. MCBETH: Objection to form.

THE WITNESS: I do understand that.

BY MR. SACKSTEDER:

Q. How long have you had that understanding?

MR. MCBETH: Objection to form.

THE WITNESS: So I don't know the exact date when I first became aware of that fact.

BY MR. SACKSTEDER:

Q. Have you had any communications with the lawyers who are working on that amendment?

MR. MCBETH: Objection to form.

THE WITNESS: So I don't know who they are, so I can't answer that question.

BY MR. SACKSTEDER:

Q. Have all the lawyers that you have communicated with regarding these IPRs been from the firm of McKool Smith?

A. I think so.

Q. But you don't know for sure?

MR. MCBETH: (Indiscernible.)

THE REPORTER: I'm sorry, Mr. McBeth, was there objection? I can't hear you.

MR. MCBETH: Yes. Objection to form on

that question.

THE WITNESS: Can you ask the question again, please?

BY MR. SACKSTEDER:

Q. As soon as I figure out what I asked you.

I said, you didn't know for sure whether all of the lawyers that you have communicated with regarding these IPRs have been from the firm of McKool Smith?

MR. MCBETH: Objection to form.

THE WITNESS: Well, excluding the client, who I believe is also a lawyer, it's my understanding that all of the lawyers that I've been communicating with are from the same firm. But if there's a specific lawyer that you want to ask me questions about, I'm going to need the name.

BY MR. SACKSTEDER:

Q. When you say "the client is also a lawyer," who are you specifically referring to?

A. Mr. Pirnazar.

MR. MCBETH: Objection to form on that question.

THE WITNESS: Sorry.

BY MR. SACKSTEDER:

Q. Have you communicated -- I'm not asking

for the content of the communication at present -- have you communicated with Mr. Pirnazar concerning any substantive matters regarding any of these three IPRs?

MR. MCBETH: Objection to form.

THE WITNESS: Any substantive matters?

BY MR. SACKSTEDER:

Q. Let's say any matters.

Let me reask the question.

Have you communicate with Mr. Pirnazar concerning any matters relating to any of these three IPRs?

MR. MCBETH: Objection to form.

THE WITNESS: So my recollection is that he was an attendee at some of the conversations I had with counsel. You know, the question of what I said to who during those conversations is not something I can parse out.

BY MR. SACKSTEDER:

Q. What conversations are you referring to?

MR. MCBETH: Objection to form.

THE WITNESS: I mean I'm not sure how to label that. I've had many conversations with counsel relating to my analysis, the IPR generally. I mean just Zoom calls and whatnot.

BY MR. SACKSTEDER:

Q. Approximately how many of those have there been?

MR. MCBETH: Objection to form.

THE WITNESS: Over the whole time frame of the IPR, I'd have to go back and check my records.

At least -- well, certainly at least half a dozen. I mean I don't -- I don't have any specific recollection of individual conversations, per se.

BY MR. SACKSTEDER:

Q. Have you had any communications concerning any -- anything regarding the IPRs with anyone from the firm of Brooks Kushman?

MR. MCBETH: Objection to form.

THE WITNESS: No, not -- I don't -- no. No, I don't think so.

BY MR. SACKSTEDER:

Q. Have you had any communications with someone named Bernard Tomsa regarding any of the IPRs?

MR. MCBETH: Objection to form.

THE WITNESS: That name doesn't sound familiar to me, no.

BY MR. SACKSTEDER:

Intuit / Samesurf, Inc.
Exhibit 1033
Page 28

Q. Have you had any communication with someone named Andrew Turner regarding any of the IPRs?

MR. MCBETH: Objection to form.

THE WITNESS: No. Same answer, that name doesn't sound familiar to me.

BY MR. SACKSTEDER:

Q. Your declaration does not contain any discussion of whether Intuit's expert, Dr. Lieberman, is a person of ordinary skill in the art under the definition of the board, correct?

A. I don't believe I addressed that point, but let me just check. And we're still talking about just the '591 declaration, correct?

Q. I'm talking about all of them. There are three declarations. They're pretty similar, I think you'd agree.

And I'm just asking, do you at any point in any of these declarations, for instance, take a position that Intuit's expert is not -- does not meet the requirements for being a person of ordinary skill in the art?

A. Having just quickly scanned through, I do not take that position in any of the three declarations.

Q. Could you turn to paragraph 68 of your declaration regarding the '591.

A. 68, yes.

Q. In paragraph 68, you discuss the construction of the term "synchronized browsing session," correct?

A. I don't know that I characterize it that way. What I say is that "the plain and ordinary meaning of 'synchronized browsing session' necessarily excludes any 'browsing session' that is not 'synchronized.'"

I don't -- I don't know that I'd characterize that as a construction, per se, as opposed to simply an explanation of what a person of ordinary skill would understand the plain and ordinary meaning to be.

Q. So you mention that the parties have not taken a position on -- haven't proposed an actual construction, and then you say that means plain and ordinary meaning, correct?

MR. MCBETH: Objection to form.

THE WITNESS: Well, so what I say is that I understand the parties have not proposed a claim construction for the claim term "synchronized browsing session," which means it has its plain and

ordinary meaning in view of the specification.

And I would further note that that's what the board said as well. So I was applying the board's understanding of the terms, which I don't -- I don't think I talk about claim construction in this one.

But my recollection from the institution decision in all three of the IPRs is that the board didn't feel the need to construe anything and applied the plain and ordinary meaning to all terms.

BY MR. SACKSTEDER:

Q. Bud the one thing you say is that whatever that plain and ordinary meaning is, it doesn't -- it doesn't include something that's not synchronized.

MR. MCBETH: Objection to form.

BY MR. SACKSTEDER:

Q. Is that fair to say?

A. I'm sorry, can you say that again?

Q. Sure. One thing you do say is that whatever the plain and ordinary meaning of "synchronized browsing session" is, one of the things that it is not is not synchronized?

MR. MCBETH: Objection to form.

THE WITNESS: I -- sorry, go ahead.

BY MR. SACKSTEDER:

Intuit / Samesurf, Inc.
Exhibit 1033
Page 31

Q. The synchronized browsing session has to be synchronized; is that your opinion?

A. That's a fair restatement of the last sentence of paragraph 68.

"In my opinion, the plain and ordinary meaning of 'synchronized browsing session' necessarily excludes any 'browsing session' that is not 'synchronized.'"

Q. And you put quotation marks around "synchronized."

A. I put quotation marks in that sentence around the "synchronized browsing session" and "browsing session" and "synchronized."

Q. And in your opinion, what does it mean for a browsing session to be synchronized?

MR. MCBETH: Objection to form.

THE WITNESS: Well, so in the prior sentence, I note that there's significant discussion in the specification about the claimed synchronized browsing session, including how it is implemented by passing, quote, "'shared web browsing' interactions through a synchronization server." And there I cite the '591 Patent at column 3, lines 3 through 17.

However, I'm not intending in this declaration to opine on a claim construction for

what "synchronized" means, because thereto, that would have the plain and ordinary meaning in view of the specification.

BY MR. SACKSTEDER:

Q. As an expert, in your opinion, what is the plain and ordinary meaning of "synchronized" as it's used in the claims of these patents?

MR. MCBETH: Objection to form.

THE WITNESS: Well, I'm not going to proffer a claim construction. That might step outside the bounds of what the board had in its head when it asserted that these claim terms didn't need to be construed.

BY MR. SACKSTEDER:

Q. You have some meaning for "synchronized" that you have in your mind as it relates to these patents, correct?

MR. MCBETH: Objection to form.

THE WITNESS: I think it's fair to say that the patent uses the term "synchronized" in a certain way that would be readily apparent to a person of ordinary skill reading it. And so the person of ordinary skill, I think, would not need to rely on any particular construction to understand how the patent uses those terms.

Intuit / Samesurf, Inc.
Exhibit 1033
Page 33

BY MR. SACKSTEDER:

Q. Do you know one way or another whether the members of the board are persons of ordinary skill?

MR. MCBETH: Objection to form.

THE WITNESS: Wait. The members of the board themselves?

BY MR. SACKSTEDER:

Q. Yes.

A. I don't know that.

Q. How are they supposed to know what you mean by "synchronized" if you're saying that "synchronized" is what a person of ordinary skill in the art means by "synchronized," and you don't tell the board what you think it means?

MR. MCBETH: Objection to form.

THE WITNESS: Well, the board said -- okay. I need to open up the institution decision in order to see what the board said about that point. Which I don't know that you've given me yet. Can we have those?

BY MR. SACKSTEDER:

Q. If you think you need them. We'll do that on a break. Let's follow this line of questions and we can get back to it.

So is it your testimony that a person of

Intuit / Samesurf, Inc.
Exhibit 1033
Page 34

ordinary skill in the art would know what "synchronized" means, what the plain and ordinary meaning of "synchronized" as used in these three patents is?

MR. MCBETH: Objection to form.

THE WITNESS: The -- and specifically the '591 Patent. The '591 Patent gives -- I'm just clicking through it -- uses the word "synchronized" lots of times. I don't even know that I can count. And we -- of course I can count, but -- but just flipping through the patent, it's -- it's found dozens of times in the first handful of columns.

And the -- the whole invention is directed -- I mean the Claim 1, right, is directed to "Method for a guest device performing a synchronized browsing session administered by a synchronization server."

And the patent provides an awful lot of description about what those things are. And I have not in my analysis for this IPR, endeavored to come up with a claim construction for what that means because I didn't understand that to be a point of contention between the parties. And, in fact, as I understood it, the board noted that there wasn't any dispute over those claim terms.

BY MR. SACKSTEDER:

Q. Here's what my question was: Is it your testimony that a person of ordinary skill in the art would know what the plain and ordinary meaning of "synchronized" as used in these three patents is?

MR. MCBETH: Objection to form.

THE WITNESS: I think that's what the board said. Maybe I'm misunderstanding your question.

BY MR. SACKSTEDER:

Q. I'm not asking what the board said. I'm asking what you think. Is it your testimony that a person of ordinary skill in the art would know what the plain and ordinary meaning of "synchronized" as used in these three patents is?

MR. MCBETH: Objection to form.

THE WITNESS: I think in the context in which it's used, yes, I don't -- I don't think a person of ordinary skill would have any trouble understanding the word "synchronized" as used -- as applied to the other terms in the patent.

BY MR. SACKSTEDER:

Q. How would you explain that meaning of the term "synchronized" to a person who is not of ordinary skill in the art?

Intuit / Samesurf, Inc.
Exhibit 1033
Page 36

MR. MCBETH: Objection to form.

THE WITNESS: Oh. I did not opine on that in my report. I would need to -- if you want me to issue a claim construction opinion, I would need to spend some time doing that.

BY MR. SACKSTEDER:

Q. Look at paragraph 69 of your declaration.

You talk there about "embodiments of Lebrun labeled 'multiple group-surfing channels.'" And then you say, "However, a POSITA would have understood that none of the 'multiple group-surfing channels' embodiments in Lebrun are 'synchronized browsing sessions' per the '591 Patent."

Do you see that?

A. I do see that.

Q. And what -- when you rendered that opinion, what meaning were you ascribing to the term "synchronize"?

MR. MCBETH: Objection to form.

THE WITNESS: Well, so you didn't actually finish the sentence. What I say is "However, a POSITA would have understood that none of the 'multiple group-surfing channels' embodiments" -- and for the record, "multiple group-surfing channels" is in quotes -- "embodiments in Lebrun are

'synchronized browsing sessions' per the '591 Patent," but then I continue.

I say, "Merely optional methods for allowing users to share a list of pages or URLs they had browsed to -- that they had browsed to."

And as the claim term "synchronized browsing session" is used and described in the specification of the '591 Patent, sharing a list of links isn't -- isn't within the plain and ordinary meaning of a synchronized browsing session.

BY MR. SACKSTEDER:

Q. Why not?

A. So there -- well, hold on. Let me clarify.

Because earlier you were asking about the meaning of the word "synchronized." Here I'm specifically relating to the claim term "synchronized browsing session." And a "synchronized browsing session" -- well, let me say it this way.

The description of a "synchronized browsing session," for example, starting at column 6, line 22, and the multiple other embodiments don't relate to sending a list of links from one person to another and having that other

person do whatever they want with them.

Q. In paragraph 68 of your declaration, you establish that a synchronized browsing session in your opinion has to be synchronized, right?

A. Yes, I do.

Q. And in the example you just gave from Lebrun, you're saying that is not synchronized, right?

MR. MCBETH: Objection to form.

THE WITNESS: No. What I'm saying is that the embodiments described in Lebrun in column 43, lines 5 to 22, are not synchronized browsing sessions.

BY MR. SACKSTEDER:

Q. And when you made that determination, you had previously determined that the plain and ordinary meaning of "synchronized browsing session" has to be something that's synchronized, correct?

MR. MCBETH: Objection to form.

THE WITNESS: Well, that's -- that's what I said in paragraph 68.

BY MR. SACKSTEDER:

Q. Right. And so the example you gave in paragraph 69 -- well, let me ask this as a question.

Is the reason that the example you gave in

paragraph 69 is not, in your view, a synchronized browsing session, that it is not synchronized?

MR. MCBETH: Objection to form.

THE WITNESS: Oh, okay. I think I understand your question.

I'm distinguishing the synchronized browsing sessions described in the '591 Patent from what Lebrun discloses, which are optional methods for allowing users to share a list of pages or URLs they browsed to.

I'm not there sort of teasing apart the individual words of the claim term, whether it's "synchronized" or whether it's a "browsing session" or whatnot.

BY MR. SACKSTEDER:

Q. At the bottom of paragraph 70, last sentence, you say, "A POSITA would have understood that uncoordinated browsing of a shared list of pages is not within the scope of a 'synchronized browsing session.'" Correct?

A. I do see that, correct.

Q. Is the "uncoordinated browsing of a shared list of pages" not a synchronized browsing session because it is not synchronized?

MR. MCBETH: Objection to form.

Intuit / Samesurf, Inc.
Exhibit 1033
Page 40

THE WITNESS: I will give you the same answer that I just gave you for the last example, which is the scope of a synchronized browsing session, I think, would be as described in the '591 patent.

I have an example elsewhere in this declaration maybe. Hold on a second. Oh, it's not in this declaration. It's in a different one.

About the premise that simply using the Internet to tell people to go to a different page is not what the claimed invention is. Like if you're on the phone and you say, "Hey, check out this link that I just went to," that's plainly outside the scope of the claims. And I just can't find that right now.

BY MR. SACKSTEDER:

Q. For a browsing session to be a synchronized browsing session, do the browsing activities of the participants have to be coordinated?

MR. MCBETH: Objection to form.

THE WITNESS: So again, I think you're getting into a claim construction issue that I didn't render an opinion on.

The -- the patent describes a number of

embodiments of "synchronized browsing," or "synchronized browsing sessions," that relate to the invention that's described. And, you know, there's plenty of flowcharts and whatnot for explaining what the patent is about.

And I didn't understand the board to have found any sort of need to construe these terms and fully, you know, draw a line around what is and what isn't within the scope specifically. So I didn't render an opinion on that claim scope.

BY MR. SACKSTEDER:

Q. So you determined whether what was disclosed in Lebrun was a synchronized browsing session, but you can't tell me specifically what it is that makes a browsing session synchronized; is that correct?

MR. MCBETH: Objection to form.

THE WITNESS: I think it would be a fair characterization to say that it's self-evident that unsynchronized browsing is not synchronized browsing, but I was not asked to opine on what specifically synchronized browsing -- or a synchronized browsing session is.

BY MR. SACKSTEDER:

Q. So for the analysis you performed, you

Intuit / Samesurf, Inc.
Exhibit 1033
Page 42

know it when you see it, correct?

MR. MCBETH: Objection to form.

THE WITNESS: That characterization implies that there's a -- let me see. What's the right way to say this?

That characterization implies that there's -- that there's a bright line that I need to draw in order to evaluate the -- the question of whether "unsynchronized browsing" falls within the scope of a synchronized browsing session.

And I don't think it's required for the board to have a construction of "synchronized browsing session" in order for them to understand or for a person of ordinary skill to understand that embodiments that are completely outside the scope of what the patent is directed to fall outside the scope of the claimed invention.

BY MR. SACKSTEDER:

Q. You said you don't know if the board is a person -- the members of the board are persons of ordinary skill in the art or not, correct?

MR. MCBETH: Objection to form.

THE WITNESS: I don't know anything about the specific knowledge and background of the board members.

BY MR. SACKSTEDER:

Q. And if they are not persons of ordinary skill in the art and you can't tell them why a synchronized -- why a browsing session is synchronized or not, how are they supposed to know?

MR. MCBETH: Objection to form.

THE WITNESS: So that's why I wanted to look at the institution decision. Because my recollection is that they found that it wasn't necessary to even get into that level of detail, but I can't recall the phrasing that they used.

BY MR. SACKSTEDER:

Q. When you made your decision about whether these references disclose a synchronized browsing session and determined they aren't, did you not apply some definition of "synchronize"?

MR. MCBETH: Objection to form.

THE WITNESS: I mean I -- I applied, as the board instructed, what I -- the patent describes "synchronized browsing session" throughout the specification, and I didn't think that was controversial.

BY MR. SACKSTEDER:

Q. So you're analyzing the claims of the patent, correct, as they relate to, in this case,

the prior art?

A. Well, the prior art was alleging that the claims -- and again forgive me. I would need to -- I believe all of the petitions grounds for invalidating the -- their respective patents touched or asserted that all of the relevant claims were invalid as obvious. So I was looking at those claim terms.

Q. You don't need the claims to determine whether the prior art references disclosed all of the limitations of those claims, correct, that's what you did in your analysis?

MR. MCBETH: Objection to form.

THE WITNESS: I think maybe I'm not following your question.

So the petition walked through the prior art and said, for example, this reference discloses claim element 1.a, this reference discloses claim element 1.b, and so forth. So those claim elements were -- I mean that's what the petition directed me to. Maybe I don't understand your question.

BY MR. SACKSTEDER:

Q. You understand that when you determine whether a patent claim is obvious, in view of the prior art, that you focus on the claim that is

allegedly obvious and determine whether those limitations are disclosed either in a single reference or a combination of references? Is that the way you see this?

MR. MCBETH: Objection to form.

THE WITNESS: I think I -- well, I mean I discuss the standards that I applied in my declaration starting at page 4, paragraph 14. And here, just for the record, I'm in the '591 Patent IPR.

So I go through the standards that I applied between paragraphs 15 through 20 where I discuss the principles of claim construction, and then 21 through 28 where I discuss the standards that I applied for obviousness under 35 USC Section 103.

And then we already talked about the standards for a person of ordinary skill which was found by the board, and I talk about that at paragraphs 29 and 30.

So these are the sections in my report that -- sorry, my declaration, where I lay out the legal standards and principles that I applied.

BY MR. SACKSTEDER:

Q. Okay. Paragraph 21, you say, "To prove a

claim is invalid for obviousness under 35 USC Section 103 (the Pre-America Invents Act version), the challenger of its validity must proof that, for example, two or more prior art references in combination disclose, expressly or inherently, every claim limitation and also that the claim as a whole would have been obvious to a person of ordinary skill in the art at the time the alleged invention was made." Correct?

A. Yes, that's what I -- that's what this says, yes.

Q. And that's the standard you applied when you were determining in your opinion whether the references that were raised in the petitions rendered the claims of the challenged patents obvious, correct?

A. Yes, that's right.

Q. You talked about sort of the embodiments of the claimed invention in your discussion of how you performed this analysis, correct?

A. I think that's right. Maybe I misunderstood your question or didn't fully follow it. But the -- but I note, for example, in the prior section that -- in order to understand the claim terms as to what they -- what the

specification says about them.

Q. In your testimony today, I said, "When you made your decision about whether these references disclosed synchronized browsing session and determined they don't, did you not apply some definition of 'synchronized'?"

And you said you applied, as the board instructed, what the patent describes "synchronized browsing session" throughout the specification.

So basically is it your testimony that you determined the issue of whether the references disclose a synchronized browsing session by looking at the specification and determining whether the specific technique described in the references was disclosed in the specification of, in this case, the '591 Patent?

MR. MCBETH: Objection to form.

THE WITNESS: No, I don't think that's a fair characterization. I think the specification is useful to understand the thrust of the claims, but that the claim terms themselves ultimately control what the scope of -- what the scope of the claimed invention is, that is, what -- what's covered by the claims.

BY MR. SACKSTEDER:

Q. Could you turn to paragraph 32 of your declaration?

A. I'm there.

Q. The first sentence of paragraph 32 says, "The '591 Patent relates to a way of synchronizing multiple users' Internet browsing experiences."

Do you see that?

A. I do see that.

Q. Did you write that sentence?

A. I mean, I wrote a lot of sentences. I -- if that's a quote, then -- and I didn't put quotes around it, then I apologize for the misattribution. But --

Q. This is -- this is in your declaration, right?

A. It is.

Q. And I'm not saying you misquoted something or failed to attribute something. You wrote the words, or else whoever wrote this declaration that you signed wrote the words, "The '591 Patent relates to a way of synchronizing multiple users' Internet browsing experiences," correct?

MR. MCBETH: Objection to form.

THE WITNESS: So we're clear, I wrote my declaration.

BY MR. SACKSTEDER:

Q. So you wrote those words then. "The '591 Patent relates to a way of synchronizing multiple users' Internet browsing experiences"?

A. Yes.

Q. What did you mean by "synchronizing multiple users' Internet browsing experiences" when you wrote that sentence?

MR. MCBETH: Objection to form.

THE WITNESS: Well, I mean, I describe that to -- in the remainder of this paragraph and then dive into the overview.

So what I say here is that pursuant to the invention, a host device -- you know what, do you need me to read it into the record? Essentially what I mean by that is describing -- is the description that follows.

BY MR. SACKSTEDER:

Q. So when you said that "The '591 Patent relates to a way of synchronizing multiple users' Internet browsing experiences," then you go on in that paragraph to talk about the -- you have some quotes from the abstract of the patent, correct?

A. In this paragraph I think everything comes from the abstract. The subsequent paragraph cites

other portions of the patent.

Q. And the rest of paragraph 32 talks about "information related to a web browsing interaction performed by a host device being sent to a synchronization server," which then "sends the information onward to a guest device which uses it to perform its own web browsing interaction." Correct?

A. Yes, that's what it says.

Q. So that's the way of synchronizing multiple users in that browsing experience that you referenced in the first sentence, correct?

MR. MCBETH: Objection to form.

THE WITNESS: I mean there are multiple, I think, different embodiments, but at a high level, that's the process flow that's described in the abstract.

BY MR. SACKSTEDER:

Q. So it's not necessary to employ that process flow to synchronize multiple users' Internet browsing experiences, correct?

MR. MCBETH: Objection to form.

THE WITNESS: I think you're asking me whether, like, there are other ways to synchronize users' web browsing.

BY MR. SACKSTEDER:

Q. Right. That was my question there.

A. Yeah. I mean, sure. There are -- there are several other examples in the background of the patent that it describes as problematic for one reason or another.

And, in fact, I talk about that in paragraph 34 where -- this is partly including quotes from the patent that sort of denigrate prior art method, such as desktop or screen sharing, because those "work by broadcasting continuous screenshots of the host screen in large files or packets and require high levels of bandwidth and computer processing power."

So I'm going to end the quote there. But that's from the '591 Patent in column 2.

So I mean, the patent itself recognizes that there are prior art techniques for sharing screens or whatnot, but they have problems, and so this is an alternate approach that has lower bandwidth processing requirements than those prior art methods.

Q. You just testified, "I think you're asking me whether there are other ways to synchronize users' web browser." Do you recall that? It was

about a minute ago.

MR. MCBETH: Objection to form.

THE WITNESS: I think that's what you asked me.

MR. MCBETH: Mike, why don't we take a break in a second here. It's already been over an hour. Maybe do a five or ten-minute restroom break.

MR. SACKSTEDER: Sure, that's fine. Let me just ask this line of questions. Okay?

THE WITNESS: Sure.

BY MR. SACKSTEDER:

Q. When you said, "I think you're asking me whether there are other ways to synchronize users' web browsing," what did you mean by the word "synchronize"?

A. Well, that's -- the background of the patent talks about the alternatives that it is improving upon, things like screen sharing or desktop sharing.

Q. Not what I asked you, sir.

I asked you what you meant by the word "synchronize" when you said -- hold on.

What did you mean by the word "synchronize" when you said, "I think you're asking me whether there are otherwise -- other ways to

synchronize users' web browser"?

MR. MCBETH: Objection to form.

THE WITNESS: I -- I think I disagree that I'm not answering your question because I'm relating that question to what the patent is attempting to overcome.

BY MR. SACKSTEDER:

Q. Mr. Friedman, you gave an answer where you said -- referred to the meaning of the word "synchronize." And my question is, what did you mean by "synchronize" when you gave that answer? I'm not asking you about the patent right now.

MR. MCBETH: Objection to form.

THE WITNESS: Well, wait a minute, though. You have to be asking me about the patent. What I think "synchronize" means in some other context doesn't matter. The patent is about implementation of a synchronized browsing session. And in a way that overcomes the problems in the prior art, which just to give you one example, column 1, line 61 --

BY MR. SACKSTEDER:

Q. Mr. Friedman, you don't need to give this answer. You know what I asked you.

I said -- you said the sentence "I think you're asking me whether there are other ways to

Intuit / Samesurf, Inc.
Exhibit 1033
Page 54

synchronize users' web browsing," and I said, "In that sentence that you gave, what did you mean by the word 'synchronize'?"

MR. MCBETH: Objection to form.

BY MR. SACKSTEDER:

Q. And you answered that question.

A. I'm answering it with respect to the examples that the patent is improving on. Desktop sharing, screen sharing, the --

BY MR. SACKSTEDER:

Q. I'm asking a much more specific question. I'm not asking about the patent at all right now. I'm asking about this answer that you gave where you used the word "synchronize," and specifically "other ways to synchronize users' web browsing."

And my question is, what did you mean when you said the word "synchronize"? Can you answer that?

MR. MCBETH: Objection to form.

THE WITNESS: Right. So again there I think you're asking me to proffer a claim construction. And I'm not willing to do that in view of the board's application of the plain and ordinary meaning, which I think is discernable from the examples of the prior art systems that the

patent's invention is improving upon.
BY MR. SACKSTEDER:
Q. Mr. Friedman, I'm not a person of ordinary skill in the art. How would you explain what a "synchronized browsing session" is to me specifically with regard to what "synchronized" means?
MR. MCBETH: Objection to form.
THE WITNESS: So I -- again, if you want me to proffer a formal claim construction for the word "synchronized," I haven't done that. That's not in my declaration, and I would want to spend some more time, I guess, doing that in a more formal way than -- than during this conversation.
BY MR. SACKSTEDER:
Q. So to be clear, in forming your opinions in these three declarations, you did not consider what the term "synchronized" means with regard to the claims in the patents; is that correct?
MR. MCBETH: Objection to form.
THE WITNESS: No, that's not correct. I think it would be a fairer characterization to say that -- that I considered "not synchronized" to be outside the scope of the patents, but without doing -- but without doing any further analysis

because it wasn't necessary.
BY MR. SACKSTEDER:
Q. So you determined what is synchronized and what is not synchronized, but you cannot tell me, a person of ordinary skill -- a person who is not of ordinary skill in the art, what "synchronized" or "not synchronized" means?
MR. MCBETH: Objection to form.
BY MR. SACKSTEDER:
Q. Is that correct?
A. That is not accurate. No. I determined, if something is not synchronized, then which -- I mean that is a very straightforward evaluation.
BY MR. SACKSTEDER:
Q. Can you explain to me what that evaluation is?
A. What "not synchronized" means?
Q. Yeah. That is very straightforward. Explain it to me. I'm not a person of ordinary skill.
MR. MCBETH: Objection to form.
THE WITNESS: I mean, the -- the question -- I feel like we're getting into claim construction, and I don't have a formal definition and I wasn't asked to provide one.

And so when -- when I see a prior art reference, or really anything that talks about link sharing in an uncoordinated or unsynchronized manner, it is, I think, uncontroversial that those embodiments are outside the scope of the claimed invention.

It appears, based on the questions that you're asking me, that maybe there is a dispute about what "synchronized" means. So if that's true, then I would want to understand what both parties proffered claim constructions are and have the opportunity to opine on it.

And I don't have that right now because, as I understand it, the board simply said, "We're going to apply the plain and ordinary meaning."

So if that's changed, then I don't have enough information to go on at this point.

BY MR. SACKSTEDER:

Q. So you can't answer my question?

MR. MCBETH: Mike, let's take a break here. It's been an hour and 20 minutes now.

MR. SACKSTEDER: Okay.

(Recess.)

BY MR. SACKSTEDER:

Q. Mr. Friedman, did you discuss your

Intuit / Samesurf, Inc.
Exhibit 1033
Page 58

testimony with anyone over the break?

A. No.

Q. We were -- you may not recall this, but we were talking about "synchronized" before the break.

A. Yes.

Q. Do you recall that? Thank you.

So I'd like you to go to the Exhibit Share platform and look at the excerpt from the Microsoft Computer Dictionary, 5th Edition. Do you see that?

A. I do see that, yes.

Q. If you turn to the third page of the document, there is a definition for "synchronize." do you see that?

A. I do see that, yes.

Q. And it says it's a verb, "To cause to occur at the same time."

Do you agree with that definition as the term "synchronized" is used in the '591, '145, and '448 patents?

MR. MCBETH: Objection to form.

THE WITNESS: I'm not sure.

BY MR. SACKSTEDER:

Q. Would you agree that the definition of "synchronized" as it's used in the claims of those three patents at least includes "to cause to occur

at the same time"?

MR. MCBETH: Objection to form.

THE WITNESS: So as I said earlier, I did not opine on the claim construction of "synchronize."

And just for the record, I have not seen this document before, at least as it relates to this case, so I didn't form any opinions on it either.

When -- sorry. If it becomes necessary for me to opine on the meaning of the claim term in a formal claim construction, if counsel asks me to do that, then I will.

BY MR. SACKSTEDER:

Q. Okay. So I have repeatedly asked you to tell me what you -- what you considered the meaning of "synchronized" to be when you performed your analysis of these claims, correct?

MR. MCBETH: Objection to form.

THE WITNESS: You're asking me to characterize your questions. I think the record speaks for itself.

BY MR. SACKSTEDER:

Q. Did you understand me to be asking you to give me your opinion concerning what the term "synchronized" means in my previous questioning?

MR. MCBETH: Objection to form.

THE WITNESS: I understood you to be asking me to proffer a claim construction for the claim terms.

BY MR. SACKSTEDER:

Q. And specifically for the term "synchronized," correct?

MR. MCBETH: Objection to form.

THE WITNESS: I think that was part of the thrust of your questions.

BY MR. SACKSTEDER:

Q. I asked you what you meant by "synchronized" when you were performing your analysis, correct?

MR. MCBETH: Objection to form.

THE WITNESS: Again, if that's the specific phrasing you used, then it is.

BY MR. SACKSTEDER:

Q. You understood what I was asking you, right?

MR. MCBETH: Objection to form.

THE WITNESS: As I just stated, I believed you to be asking me to perform a claim construction.

BY MR. SACKSTEDER:

Q. And you declined to do that, correct?

MR. MCBETH: Objection to form.

THE WITNESS: I did not do that in my report, and I'm not going to do that here during this deposition.

BY MR. SACKSTEDER:

Q. All right. Could you look at the Exhibit Share. There is an exhibit --

MR. SACKSTEDER: For the record, by the way, Microsoft Computer Dictionary excerpt is Exhibit 1031 for all three IPRs.

(Exhibit 1031 was marked for identification and attached hereto.)

MR. SACKSTEDER: And then this will be Exhibit 1032 for all of them.

(Exhibit 1032 was marked for identification and attached hereto.)

BY MR. SACKSTEDER:

Q. If you look at -- there's a document in Exhibit Share that says "Intuit Claim No. 1 Each Patent.pdf."

Do you see that?

A. You said "Each Patent.pdf"?

Q. It says "Intuit Claim No. 1 Each

Patent.pdf."

A. I have that up.

Q. You've downloaded it so you can see all the pages?

A. I have -- I see four pages.

Q. And on the first page, it has the text of Claim 1 of the '591 Patent, correct?

MR. MCBETH: Objection.

THE WITNESS: Well, I mean, I would have to check.

BY MR. SACKSTEDER:

Q. If you would like to, that's fine. We attempted to accurately reproduce it, and it's mostly just because the print is less tiny than it would be on the actual patent.

A. So '591 --

Q. Actually, you can see that it's from Exhibit 1003, which was Dr. Lieberman's --

A. Ah.

Q. -- declaration. At least the first page is.

Let me know if you see any discrepancies between the --

A. I'm checking now. Thank you.

MR. SACKSTEDER: And Mr. McBeth, I'd be

happy if you -- if you care to let me know if there are any problems as well.

MR. MCBETH: I'm not checking it at this time, but I'll just, you know, reserve --

MR. SACKSTEDER: That's fine.

THE WITNESS: So based on my initial comparison, it appears to be an accurate replication of the text of the claims with -- in the first column I see the labels 1.pre, 1.a, and so forth.

BY MR. SACKSTEDER:

Q. Right. And you understand that those are for convenience so we can discuss the different limitations of the claim?

A. Yes, I understand that.

Q. And I'm referring specifically to your declaration. You don't discuss any specific areas where the preamble of Claim 1 of the '591 Patent is not disclosed, in your opinion, in the references that are asserted in the petition, correct?

MR. MCBETH: Objection to form.

THE WITNESS: Well, so with the caveat that my declaration speaks for itself, I can go through it if you'd like, or you can just take that as my answer.

BY MR. SACKSTEDER:

Q. Well, I'm afraid we're going to go through it a little bit.

Let me try and streamline it a little bit.

For the '591 Patent, your declaration discusses your opinion that parts of Claims 1.d, as in David, and 1.e, are not disclosed in the prior art references, correct?

A. Hold on.

I will agree that that is part of the scope of my declaration. It relates to 1.d and 1.e.

Q. And your declaration does not discuss whether the preamble or 1.a, 1.b or 1.c are disclosed in the references that are raised in the petition, correct?

MR. MCBETH: Objection to form.

THE WITNESS: No, that's incorrect.

BY MR. SACKSTEDER:

Q. In what way is it incorrect?

A. Well, so, for example, again with the caveat that my declaration speaks for itself. So if I didn't label a particular claim limitation using the same lettering but referred to the text thereof, then that's still a reference.

As an example, in paragraph 78, I note that the petition inconsistently identifies elements

in Prajapat when citing to claim elements of the '591 Patent, and relate that opinion to the preamble and element 1.c, which were two of the aspects you just asked me about.

Q. And is it your opinion that you're trying to express there in paragraph 78 that Prajapat does not disclose those limitations claim terms that you're discussing?

MR. MCBETH: Objection to form.

THE WITNESS: Well, my opinion there is that the petition inconsistently identifies aspects of Prajapat to be the same claimed synchronization server. And so if you look at the claims back to the preamble, the preamble and then elements 1.b, 1.c, 1.d, and 1.e all recite synchronization server. And it's the same synchronization server, it's not a different one.

And so the point that I'm making in paragraph 78 is that the petition points at different parts of Prajapat to fulfill that same synchronization server.

BY MR. SACKSTEDER:

Q. And you are saying that -- for that reason are you saying that Prajapat does not disclose a synchronization server?

Intuit / Samesurf, Inc.
Exhibit 1033
Page 66

MR. MCBETH: Objection to form.

THE WITNESS: Well, no. What I'm saying there is that the petition doesn't say what in Prajapat is the synchronization server because it's pointing at a couple of different things and then combining them.

BY MR. SACKSTEDER:

Q. So specifically you refer to web media server 14a and web media server 14b as being identified in the petition as being the synchronization server?

A. That's almost right. So this is with reference to the petition of 49, 52 and 55.

What I say is the petition identifies "web media server 14a" as the claimed synchronization server for the preamble, but then inconsistently identifies "web media server 14b" as the claimed synchronization server for element 1.c.

And then, as I note, apparently identifies both "web media server 14a" and "web media server 14b" as the claimed synchronization server in element 1.e.

Q. Is it your opinion that the synchronization server cannot be multiple servers?

MR. MCBETH: Objection to form.

THE WITNESS: The claimed sync- -- the claimed synchronization server -- sorry, I'm saying this badly.

It's my understanding that in order to identify a claim term in the prior art, you have to -- where that claim term exists in multiple limitations in the patent, you have to point to the same thing in the prior art.

And I'm pointing out here that that's not what the petition has done. It's identifying different -- different things in the prior art reference Prajapat.

BY MR. SACKSTEDER:

Q. So looking at the claim of the '591 Patent, Claim 1, the preamble refers to a synchronization server, correct?

A. It does.

Q. And then subsequent references say "the synchronization server," correct?

A. That's correct.

Q. Do you understand that there is a canon of claim interpretation in patent law that the word "A" or the article "A" can mean one or more?

MR. MCBETH: Objection to form.

THE WITNESS: I do understand that, yes.

BY MR. SACKSTEDER:

Q. So it is not your testimony that both the "web media server 14a" and "web media server 14b" could not be those one or more synchronization servers as claimed, correct?

MR. MCBETH: Objection to form.

THE WITNESS: Oh, I didn't understand that's -- I didn't understand the petition to be saying that.

What I read the petition to say is that, for the preamble, it had identified just the server 14a. It did not identify 14b. And then for element 1.c, it only identified web media server 14b but not 14a. So that's not the same identification as the earlier one.

And then, as I note for element 1.e, it identified both. So those are three different identifications as I read the petition.

BY MR. SACKSTEDER:

Q. And in your view, that means that in this case, Prajapat does not disclose the limitations that contain the term "synchronization server"; is that correct?

MR. MCBETH: Objection to form.

THE WITNESS: Well, I mean, my opinion is

what I'm saying here, is that the petition inconsistently identified what it would be. My opinion on that point doesn't go beyond what I've written here.

BY MR. SACKSTEDER:

Q. So you don't have any opinion over whether Prajapat discloses a synchronization server or not?

MR. MCBETH: Objection to form.

THE WITNESS: So my opinion is that the petition wasn't consistent on saying what in Prajapat was the synchronization server. So I didn't -- I didn't go beyond that in this paragraph. I didn't actually know which thing you were pointing at because you were pointing at multiple different things.

BY MR. SACKSTEDER:

Q. We started this conversation by talking about which of these claim limitations you think are not disclosed in either Lebrun or Prajapat or Wang. Do you recall that?

A. Yes.

Q. Besides 1.d and 1.e, which are clearly addressed in your declaration, which of the other limitations do you say are not disclosed in Prajapat or Lebrun or Wang?

MR. MCBETH: Objection to form.

THE WITNESS: And we're still only now talking about the '591 Patent?

BY MR. SACKSTEDER:

Q. Yeah, at present. We haven't moved on to the other ones yet.

A. Well, I think again, with the caveat that my declaration speaks for itself, I don't see any other references to those other limitations.

Q. So do you agree that those limitations are disclosed in one or more of Prajapat, Lebrun, and Wang?

MR. MCBETH: Objection to form.

THE WITNESS: I have not rendered that opinion.

BY MR. SACKSTEDER:

Q. But you don't have a contrary opinion to that?

MR. MCBETH: Objection to form.

THE WITNESS: The opinions that I expressed are set forth in my declaration.

BY MR. SACKSTEDER:

Q. And you have an understanding of what your declaration says, right?

MR. MCBETH: Objection to form.

Intuit / Samesurf, Inc.
Exhibit 1033
Page 71

THE WITNESS: I do, yes.
BY MR. SACKSTEDER:
Q. All right. Do you have any opinion that's expressed in your declaration that opines that either the preamble or 1.a or 1.b or 1.c is not disclosed in one or more of Prajapat, Lebrun or Wang?
MR. MCBETH: Objection to form.
THE WITNESS: So again with the caveat that my report -- sorry, declaration speaks for itself, without going through each paragraph, I don't know that I can characterize one way or the other.
BY MR. SACKSTEDER:
Q. So you don't know what your declaration says about that?
MR. MCBETH: Objection to form.
THE WITNESS: I don't have my declaration memorized. I would be happy to go through each paragraph if you believe there is a section where I am expressing a contrary opinion.
BY MR. SACKSTEDER:
Q. I actually believe there is not, but I'm asking you to confirm that.
A. So in order for me to --

Q. If there's any place that would contradict that statement, I would be interested in knowing about it.

A. And that's fair. In order for me to either confirm or deny affirmatively, I would have to go through each paragraph and make that evaluation.

Q. Okay. Would you mind doing that during your lunch break?

A. Well, I mean, kind of. I need to eat lunch. So I can -- I could spend some time, but --

Q. I'll ask you the question after the lunch break, okay? Is that okay with you?

A. You can ask me whatever questions you'd like.

Q. Thank you. I appreciate that.

Could you turn to paragraph 40 of your '591 declaration.

A. Yes, I'm there.

Q. You talk a lot about "middleman" in this part of your declaration. What do you mean by that?

MR. MCBETH: Objection to form.

THE WITNESS: Well, I describe that. The -- the idea that a prior art system might use a central system acting as a middleman or a proxy to

fetch web page data once from a server and then forward that to multiple browsers.

And so this -- let me give the context. This is in the context of me describing prior art ways of sharing links or web pages between users, which I start the description of on paragraph 38 of this declaration. So this is the second of the three categories.

The first would be link sharing, which is I can send you an address of a web page. The second is I can fetch the web page, which because the response from a web page comes back as HTML, I can fetch it once and then send the HTML out.

And then the third is I can render it, render the HTML, get an image or some other, you know, human viewable representation and then send that around.

So the one that you're asking me about is the second of the three, web page sharing, which is where one proxy fetches a web page, gets the -- gets the HTML, and then can forward that web page response data to multiple other users.

BY MR. SACKSTEDER:

Q. Okay. Is it your opinion that the technique that you described where a proxy fetches a

web page, gets the HTML, and then forwards the web page to multiple other users, that that does not practice the claims of the '591 Patent?

MR. MCBETH: Objection to form.

THE WITNESS: That's correct, it does not.

BY MR. SACKSTEDER:

Q. Is the same true for the claims of the '448 Patent?

MR. MCBETH: Objection to form.

THE WITNESS: Let me look. Let me go look at the '448.

Right. Yeah, it -- right. These are all prior art methods that work differently. They use a different system architecture and perform different functions.

BY MR. SACKSTEDER:

Q. Okay. I just wanted to make sure I understand your opinion for all three patents.

And for the '145 Patent, your answer would be the same, correct?

MR. MCBETH: Objection to form.

THE WITNESS: The '145 -- the -- this proxy approach that I'm talking about in paragraph 40 of my '591 declaration, the claims of the '145 Patent don't include that.

BY MR. SACKSTEDER:

Q. Okay. So a technique where a proxy fetches a web page, gets the HTML, then forwards the web page to multiple other users, that doesn't practice any of the claims of any of the three patents that are at issue here; is that correct?

MR. MCBETH: Objection to form.

THE WITNESS: Yes, that's my opinion.

BY MR. SACKSTEDER:

Q. Can we go to paragraph 33 of your declaration?

A. Yes, I'm there.

Q. Paragraph 33 discusses Figure 5(a) of the '591 Patent, correct?

A. Yes.

Q. And it references various places where the operation of what's shown in Figure 5(a) is discussed, correct?

A. I'm sorry, you broke up at the end there. Say that again, please.

Q. All right. Paragraph 33 discusses -- all right. It references various places in the specification where the operation of what's shown in 5(a) is discussed, correct?

A. Yes, there are a number of cites to the

'591 Patent at the end of paragraph 33.

Q. Okay. Can we walk through how -- and Figure 5(a) basically shows the architecture for what is claimed in these three patents, correct?

MR. MCBETH: Objection to form.

THE WITNESS: Well, that's -- that's a figure in the specification. So I mean, this is the -- as it walks through the description in the spec, it's related to this figure.

BY MR. SACKSTEDER:

Q. So the claims at least cover what's shown in Figure 5(a), correct?

MR. MCBETH: Objection to form.

THE WITNESS: Well, hold on. The claims are written from -- okay. So first of all, there's three different sets of claims. They're written from the perspective of different devices.

So, for example, claim -- or the '591 Patent is a method for a guest device, which in Figure 5(a) is labeled numeral 14. But the '145 Patent is also a method performed by a guest device.

The '448 Patent, Claim 1 is a method performed by a host device, which is a different thing in Figure 5(a). That's numeral 10.

BY MR. SACKSTEDER:

Q. Understood. But the overall system, I understand that we're standing in different places in the system in the different claims of the different patents, but the overall system is basically described in Figure 5(a) correct?

MR. MCBETH: Objection to form.

THE WITNESS: I think an embodiment of the overall system is described in Figure 5(a).

BY MR. SACKSTEDER:

Q. Fair enough.

Okay. Can we walk through how this system works?

A. Sure.

Q. So I think, as I read your paragraph 33, it looks as if the first thing that happens is that the host device sends a request to the website server. And that's shown as 60; is that correct?

A. Yes.

Q. And that's fairly straightforward. You're just entering a URL in your browser or something like that and asking for a web page, right?

A. That would be an example, yes.

Q. And then why don't you walk me through. What happens next?

A. Okay. Well, let me actually open up a different document to do this side by side.

Q. What document are you opening?

A. Oh, I'm sorry. I've got the '591 Patent in one window and my declaration paragraph 33 in another. I just wanted them side by side so I can look at -- I don't have --

Q. I see, okay.

A. Yeah.

Q. If you look at the bottom of paragraph 33, you do have the figure shown there. But if you need to look at --

A. Unfortunately, on my copy, that's on the next page.

Q. Okay. Doing it the old-fashioned way.

A. Yes. I don't have paper.

Okay. So numeral 60 is the host device makes a website request to website server. And that's number 12 on the figure.

And then, as I say in paragraph 30, information about that web request is forwarded in a message 61 to the synchronization server.

And an example of what that information can be is described in the spec, but it can comprise the URL, cookie information, form data, other

user-inputted info, that sort of thing.

That gets sent in message 61 to the synchronization server 13. And that's the diagonal arrow labeled "61."

Q. And you -- sorry. Go ahead.

A. Oh, no. If you have any questions, stop me.

Q. Yeah. You said "forwarded."

A. I mean it's -- okay. Go ahead.

Q. Usually when I think of something being forwarded in the Internet context, it came in from somewhere else. Is that what you meant by "forwarded" in your description here?

MR. MCBETH: Objection to form.

THE WITNESS: Actually, the -- the specification uses the word "forwarded." The -- the premise here is that the message that's sent -- the information in the message that's sent from Figure 60 -- sorry. That's not right.

The information in message 60 sent from the host device to the website server is forwarded through the synchronization server to the guest device.

And there's a quote in the patent where it talks about that, so let me just go there.

BY MR. SACKSTEDER:

Q. So it isn't forwarded through the host device, it originates at the host device, goes to the synchronization server, and that forwards it to the guest device?

MR. MCBETH: Objection to form.

THE WITNESS: Hold on a second. I have a quote on this somewhere.

Yeah. So the first actual passage of the spec that I quote is starting in column 15, line 42. Right, this is describing Figure 5(a).

And then at the bottom of column --

BY MR. SACKSTEDER:

Q. Can I help you?

A. -- 16, line 51, it says, "After host device transmits communication message 61 to synchronization server 13, synchronization server 13 forwards communication message 64 to guest devices."

Q. Okay. So if you look at the top of 16, it says -- I'm just making sure I understand what you're saying how this works. It says that "During an exemplary synchronized browsing session, after host device 10 transmits website address 60 to website server 12, host device 10 transmits communication message 61 to synchronization server."

So it looks like it's not saying that the -- that 61 originated somewhere else and was forwarded by the host device. It was transmitted by the host device to the synchronization server, which then forwards it in the part that you read to the guest device; is that correct?

MR. MCBETH: Objection to form.

THE WITNESS: Hold on a second.

So it uses -- and if you refer back to Figure 5(a), each -- if you see, each of these arrows is labeled with a different number. The passage in the specification that we're talking about here talks about what's in each of those message -- messages.

For example, starting at line 31, it says, "Communication message 64 is designed to be forwarded by synchronization server 13 to guests in the synchronized browsing session." But then it also talks about what's in the communication message.

BY MR. SACKSTEDER:

Q. I understand.

I'm just trying to clarify one thing from your paragraph 33 where you say that the information about the web request is forwarded in message 61 to

a synchronization server 13, and then the synchronization server then forwards that information to guest device 14 in message 64, correct?

MR. MCBETH: Objection to form.

BY MR. SACKSTEDER:

Q. My only point is that according to spec, it doesn't look as if the browsing interaction, the -- let me see -- the information about the web request is forwarded from the host device, it's actually just transmitted from the host device. It doesn't come from somewhere else.

MR. MCBETH: Objection to form.

THE WITNESS: Oh, I think I see the distinction you're making.

Well, so again, with reference to Figure 5(a), I'm actually not pointing at the message itself, the number 60. I'm pointing at the information that's in the message.

And so, as I say, information about the web -- the web request that was made, and, for example, I'm saying information related to the shared web browsing interaction performed by the host device, that information is what gets sent to the synchronization server and then onward to the

guest devices. And there's different messages that that information is wrapped in. That's why I said the figure uses different numbers for each of those arrows.

BY MR. SACKSTEDER:

Q. Okay. Okay. And so the content of 60, the information that's -- that's in 60, that is then -- the information is then sent to the synchronization server in message 61. You say it may comprise the URL of the server, cookie information, form data, JavaScript, and other user-inputted information or files. Correct?

MR. MCBETH: Objection to form.

THE WITNESS: That is actually, what you just read, is essentially a quote from column 16, lines 4 to 7.

BY MR. SACKSTEDER:

Q. Yeah, I understand. But that's what happens, right, in the embodiment?

MR. MCBETH: Objection to form.

THE WITNESS: Well, just to put everything in context, the top of column 16 which we have been reading says, "After host device 10 transmits the website request to the server, the host device transmits the communication message 61 to the

synchronization server." And that's what contains the information we just described.

BY MR. SACKSTEDER:

Q. Okay. And you listed various things that may be comprised in that message, correct, including the URL of the server, cookie information, form data, JavaScript, et cetera, correct?

MR. MCBETH: Objection to form.

THE WITNESS: In paragraph 33 I did, yes.

BY MR. SACKSTEDER:

Q. And then looking at the Claim 1 of the patent, of the '591 Patent, it -- the only two of those that have to be in there are the URL of the server -- actually, a URL of the website and cookie information associated with the website, correct?

MR. MCBETH: Objection to form.

THE WITNESS: Well, wait. You're -- you're looking at -- hold on. The 5 --

BY MR. SACKSTEDER:

Q. I'm looking at -- we put up the document with the Claim 1 of each patent.

A. Right.

Q. And I'm looking at Claim 1 of the '591 Patent.

A. Right. And specifically I think you're

looking at element 1.d; is that right?

Q. That is correct. And element 1.d says that the data has to comprise a URL of the website and cookie information associated with the website, correct?

A. That's what 1.d says, yes.

Q. Yeah. Okay. Can you explain to me what "cookie information" means?

A. Oh. Yeah, I talk about that in my declaration. Hold on.

So if you go ahead to paragraph 37. I refer to cookie and state information that allows client to maintain state across multiple requests and responses with the server.

And then point at the patent to the inventor of the cookie who was working at Netscape at the time back when this was in the very early days of web browsers. I can't remember the exact date, but it was in the mid-'90s, maybe even earlier.

Q. I'm not asking you to address all implementations of a cookie, but where does a cookie typically appear in a web interaction?

MR. MCBETH: Objection to form.

BY MR. SACKSTEDER:

Q. How is it transmitted?

MR. MCBETH: Objection to form.

THE WITNESS: I mean it's transmitted over the Internet. I don't -- I don't understand.

BY MR. SACKSTEDER:

Q. Looking at a -- a web page request, how would one determine whether it includes a cookie or not or --

MR. MCBETH: Objection to form.

THE WITNESS: Oh. So there's actually a bunch of different implementations. But if you're talking about a web request, I mean there's -- yeah, there's a couple of different implementations. You can actually send state data in a URL. You can send state data in like the header of the request. I can't recall how many of those embodiments are actually in the Montulli patent, which I'm citing in paragraph 37.

I don't know if than answers your question.

Q. We're on the right track.

So you mentioned it could appear on the URL. So you could literally look at a URL if it's -- if that's the way a cookie is transmitted, and you might see sort of a string of random-looking

numbers that appear somewhere in the -- in the web address, and that might transmit cookie information; is that accurate?

MR. MCBETH: Objection to form.

THE WITNESS: So I would need to refresh my memory on the '670 Patent as to exactly what it considers cookies. In the time since then there's been a number of different ways of communicating state information from client to a server. Microsoft was working on one for a while, which I don't know if they're still using much. But generally speaking, there are a number of ways to actually implement the transmission of client state to a server to indicate that there is more information than just the URL.

Q. And one of those ways is by appending additional characters to the URL?

MR. MCBETH: Objection to form.

THE WITNESS: Yeah, I think Microsoft calls that a view state, but don't hold me to that. It's been a while since I looked at that stuff.

BY MR. SACKSTEDER:

Q. I'm looking at the -- at the address for our Exhibit Share platform, and it has a whole bunch of characters in it. And it's possible that some of

those would be cookie information, correct?

MR. MCBETH: Objection to form.

THE WITNESS: Yeah, I can't remember the details. But let me -- let me open up the patent.

BY MR. SACKSTEDER:

Q. Oh, you don't need to. I'm not asking you to go back to the patent whose number begins with a "5" to do this. I'm just generally trying to get an idea for when the claim uses cookie information, I'm trying to figure out what you think that means.

MR. MCBETH: Objection to form.

THE WITNESS: Oh, you mean, like, whether cookie excludes or includes other ways of sending state back and forth? That's a really good question. I didn't really touch on that.

BY MR. SACKSTEDER:

Q. Okay. So you don't consider whether there are other ways of sending state information that might satisfy the use of the term "cookie information" in 1.d of point 1; is that correct?

MR. MCBETH: Objection to form.

THE WITNESS: Ask that again, please.

BY MR. SACKSTEDER:

Q. So I'm just trying to make sure I understood your previous answer. In your

declaration and your analysis for this -- these IPRs, you didn't consider whether there -- whether other ways of sending state information might satisfy the use of the term "cookie information" in 1.d of Claim 1; is that correct?

MR. MCBETH: Objection to form.

THE WITNESS: I think it's probably safer to say -- or more accurate, I guess -- to say that I didn't specifically attempt to construe cookie in -- as that was used in the claim, again because the board found that plain and ordinary meaning applied.

And so I don't have -- I don't have any other, really, sort of definitional opinion of what a cookie is or was in, you know, 2010 when this -- this patent was drafted.

Q. Is it commonplace to -- strike that.

In 2010, was it commonplace to include cookie information in a URL?

MR. MCBETH: Objection to form.

THE WITNESS: I would need to do research on that, actually.

BY MR. SACKSTEDER:

Q. Okay. So you don't know one way or another whether it was commonplace in 2010 whether to include cookie information in a URL?

MR. MCBETH: Objection to form.

THE WITNESS: As I sit here today, I don't -- I don't recall and I didn't opine on that in -- in my report.

BY MR. SACKSTEDER:

Q. But whatever cookie information means, if a system does not include cookie information in the information that is received from the synchronization server, then, in your view, that technique does not practice the claims of the '591 Patent, correct?

MR. MCBETH: Objection to form.

THE WITNESS: Oh, I talk about this. Hold on.

Yeah. For example, in paragraph 79 I note that, "The petition fails to identify element 1.d which requires data that," quote, "'comprises a URL of the website and cookie information,'" end quote, "to be," quote, "'received from the synchronization server,'" end quote.

And so back to your document with the claims of the '591 Patent, the wherein clause says that the data comprises a URL of the website and cookie information and, moreover, that it has to be associate with the website and the host device.

I think we agree if the data doesn't comprise the URL and cookie information associated with the website and the host device, then it wouldn't fall under the -- the literal text of element 1.d.

BY MR. SACKSTEDER:

Q. Okay. Just to make sure I -- sometimes the answers are kind of long. I want to make sure that I have that part of the answer.

It's your testimony and your opinion that if a system does not include a URL of the website and cookie information associated with the website and the host device, then it cannot practice the claims of the '591 Patent, correct?

MR. MCBETH: Objection to form.

THE WITNESS: I mean I -- I don't know how to answer that any differently than I just did. The claim language is -- it says that one of the required steps -- hold on.

Right. "One of the required steps in a method for guest device, performing a synchronized browsing session administered by a synchronization server, is receiving data from the synchronization server, the data relates to a website being accessed in realtime by a host device, and wherein that data

comprises a URL of the website and cookie information associated with the website and the host device."

So all of that is required in order to practice these claims -- this claim.

BY MR. SACKSTEDER:

Q. And if you don't have all of that, then you don't practice, correct?

MR. MCBETH: Objection to form.

THE WITNESS: Correct.

BY MR. SACKSTEDER:

Q. So going back to Figure 5(a), I just want to make sure we get through all of the, sort of, process that you were walking us through.

I think we got to the information, the data being forwarded from the synchronization server to the guest device.

A. Right. So that's three lines up from the bottom of page 11. I say, "The synchronization server then forwards that information to guest device 14 in message 64."

So that's where you have to go back, look at Figure 5(a). And so the synchronization server, there's an arrow down to the guest device labeled "64." So that's the message I'm talking about.

And then the guest device uses the information in that message to formulate its own website request, which is arrow labeled "65." And that website request goes to, excuse me, the same website server labeled "12" that the host device originally made a request to.

Q. And you say at the end of paragraph 33 that "both host and guest devices make identical website requests"?

A. Well, that's an exemplary embodiment. And the patent talks about that. Let me find out where.

Right. So in column 6, as an example, starting at line 40, it describes how -- you know, let's go to the next one. Sorry.

Q. And you're in the '591 Patent?

A. I am, yeah.

This is a better reference because we were just talking about this column. In column 16, starting at line 31, it says, "Communication message 64 is designed to be forwarded by synchronization server 13 to guests in the synchronized browsing session such as guest 14 to perform the synchronized browsing session. In exemplary embodiments communication message 64 may be a duplicate of website request 60." And then --

Intuit / Samesurf, Inc.
Exhibit 1033
Page 94

Q. Keep reading.
A. Yeah, I know. I'm trying to find it.
There is it is, yeah. At the bottom of the column, starting at line 60.
"In exemplary embodiments, website request 65," which is the one sent from the guest device to website server 12, "should be similar or identical to website request 60," which is the one sent by host device 10 to website server 12.
Q. Okay. So it doesn't have to be identical?
A. No, no, it's -- this is an exemplary embodiment.
Q. Okay. And the part that you read before up around line 35, you read, "In exemplary embodiments communication message 64 may be a duplicate of website request 60, or may comprise the URL address of website server 12."
You didn't read that last part, correct?
A. I did not, but that's what it says, yes.
Q. Okay. Go to paragraph 77 of your declaration.
A. I'm there.
Q. And you're discussing there "Prajapat's dynamic web page sharing embodiment," correct?
A. Yes, I am. Well, I mean -- so this

paragraph refers to several of the Prajapat embodiments, but the first sentence describes or relates to the dynamic one.

Q. And you say at the beginning of 77, "Moreover, Prajapat's dynamic web page sharing embodiment which is the only embodiment described as 'synchronized' or 'co-browsing,' uses the very same system architecture that the '591 Patent derides as 'less appealing' because it," quote, "'requires high levels of bandwidth and computer processing power.'"

Do you see that?

A. Yes, I do.

Q. All right. And then you cite to the '591 Patent column 2, lines 23 through 27, correct?

A. Yes, that's correct.

Q. And specifically lines 23 through 27 says, "Furthermore, these methods are also less appealing because they work by broadcasting continuous screenshots of the host stream in large files or packets and require high levels of bandwidth and computer processing power."

That's the part you referred to, correct?

A. Yes, that's correct.

Q. And then the previous sentence says, "While some current methods, such as desktop or

screen sharing, allow users simply to view the same Internet content, these methods do not enable all users in a session to click input and log into those experiences in a simultaneous or nearly simultaneous manner."

Do you see that?

A. I do.

Q. And so 23 through 27 is talking about desktop or screen sharing, correct?

MR. MCBETH: Objection to form.

THE WITNESS: From -- well, it's referring to the methods immediately above and denigrating their high levels of bandwidth and computer processing power.

BY MR. SACKSTEDER:

Q. And specifically it's talking about desktop or screen sharing, correct, in the preceding sentence?

MR. MCBETH: Objection to form.

THE WITNESS: That's the methods that this sentence is referring to, correct.

BY MR. SACKSTEDER:

Q. Right. Where the sentence that you quote, or you cite, says "these methods," it's talking about desktop or screen sharing, correct?

MR. MCBETH: Objection to form.

THE WITNESS: Those methods in the immediate preceding sentence are the -- well, I mean the preceding sentence actually says, "some current methods such as desktop or screen sharing." But it is certainly referring to at least desktop or screen sharing.

BY MR. SACKSTEDER:

Q. There's no specific reference to dynamic web page sharing such as is disclosed in Prajapat, correct?

MR. MCBETH: Objection to form.

THE WITNESS: Well, I think you're talking about the method. I'm referring here to the system architecture where there's a central thing that does a lot of processing.

That's the -- that's the reason, in my view, that person of ordinary skill wouldn't have looked at Prajapat because the central system of Prajapat -- and I say this forward in the paragraph, the -- the web page gets received by the central thing and then transformed into an intermediate form. And then for each of the clients transforming it again. And that requires, in my view, that requires a lot of bandwidth and processing power

which is precisely what the '591 Patent is attempting to avoid.

Q. Where does the paragraph that we've been looking at in the '591 Patent, and that you cite in your paragraph 77, refer to the system architecture that you just described?

MR. MCBETH: Objection to form.

THE WITNESS: I -- well, I mean I don't see a specific reference to architecture. Maybe that was -- maybe that wasn't the right phrase.

But the point is that Prajapat's reliance on -- on a system that requires high levels of bandwidth and computer processing power is, again, one of the things that the '591 Patent was attempting to overcome.

BY MR. SACKSTEDER:

Q. The portion of the '591 Patent that you cite says, "Furthermore, these methods are also less appealing" and then explains why, correct?

A. It does.

Q. And the "these methods" of that sentence is referring back to "some current methods such as desktop or screen sharing," correct?

A. That's what it says, correct.

MR. SACKSTEDER: Why don't we take a

break.

(Recess.)

BY MR. SACKSTEDER:

Q. Mr. Friedman, let's go back and look at Claim 1 of the '591 Patent again. And specifically with regard to your statements earlier that you can't have a middleman device providing the web pages. Do you know what I'm referring to?

MR. MCBETH: Objection to form.

THE WITNESS: Hold on. That's -- those are two different questions, I think.

BY MR. SACKSTEDER:

Q. I think I only asked one. But I'm asking you to first look at Claim 1 of the '591 Patent.

A. Right.

Q. And then you have been critical of the references here by saying that -- that they require a proxy to provide the web pages to the -- at least the guest device. Did I understand that correctly?

A. I mean at a high level, that's one of the things that I note about both -- both of the main references. But I mean, you know, as to any -- I don't think I used the word "proxy" anywhere else.

Q. You used website -- you used "middleman" and "proxy" sort of as the same thing earlier, I

Intuit / Samesurf, Inc.
Exhibit 1033
Page 100

believe, when you talked about it in your --

A. Correct, I'm in my '591 declaration. But the only place I actually used the word "middleman" is in paragraph 40. And I used the word "proxy" there as well.

You know, I also described my background where when I was at Oracle I wrote a debugging proxy that sat in the middle of a client in a web server. So in other words, I have, like, actual experience with proxies or these sort of middle tier-type systems. But I don't in my analysis of the prior art references use the words "proxy."

Can I pause really quick because I'm getting some feedback on someone's mic?

MR. SACKSTEDER: I was, too.

MR. MCBETH: If I mute, do you want to see if it keeps happening here.

(Off-the-record discussion.)

BY MR. SACKSTEDER:

Q. Mr. Friedman, I asked you to look at Claim 1 of the '591 Patent, correct?

A. Yes, that's right.

Q. And I was referring us back to our -- your previous testimony this morning where you said that, you know, a system cannot practice the -- the claims

Intuit / Samesurf, Inc.
Exhibit 1033
Page 101

of these three patents if they use a middleman or proxy server to serve the web pages to the guest user instead of having them served directly from the website server. That was your opinion, right?

MR. MCBETH: Objection to form.

THE WITNESS: What my opinion says at the end of paragraph 40 is that "using a middleman server to fetch web pages, especially one that performs processing on that web page data before forwarding it, introduces latency and additional resource usage."

And so one of the criticisms I have of the prior art references is that by fetching the web page data directly and then processing them, those -- that processing that happens at the middle tier introduces the latency and resources that the patent is criticizing in the prior art. And so that we just talked about that vis-a-vis the Prajapat reference.

BY MR. SACKSTEDER:

Q. I'm going to read from your testimony this morning and make sure that I understood it correctly.

I asked you, "So a technique where a proxy fetches the web page, gets the HTML, then forwards

the web page to multiple other users, that doesn't practice any of the claims of any of the three patents that are at issue here; is that correct?"

You said, "Yes, that's my opinion."

That's what I'm referring to. Do you remember that?

A. Yeah. I mean the -- the point is that -- and this is -- I discuss this more directly in the other declarations. But with respect of the -- the information that's coming back from a web server was considered by the board to be a claim term. And the patent distinguishes between the requests and the responses.

Q. Okay. So do you remember the passage that I just asked you if you remembered saying?

A. I mean, okay, yes.

Q. Okay. And do you disagree with your answer that you gave this morning?

MR. MCBETH: Objection to form.

THE WITNESS: I mean, I guess to the extent I fully appreciated your question, I don't think I do. But maybe I'm not understanding what you are asking exactly.

Q. Really?

A. Well, I --

Q. All right. So I guess this is all prologue anyway.

My question is, in the '591 Patent where is this requirement that the guest device get the web page information directly from the website server and not from a proxy?

MR. MCBETH: Objection to form.

THE WITNESS: Well, the limitations of Claim 1 of the '591 -- so this is a method performed by a guest device -- or method for a guest device performing a synchronized browsing session.

And you were asking me about element 1.d which says "receiving data from the synchronization server where the data comprises a URL of the website and cookie information associated with the website." And then 1.e is operating a browser by the guest device based on the data received from the synchronization server.

So those are the steps that have to be carried out in order to meet this claim limitation. And my analysis relates to the prior art references not performing those steps. I'm not really talking about what other steps those prior art references might perform because that's not part of the claim limitation.

Intuit / Samesurf, Inc.
Exhibit 1033
Page 104

Q. So is there a requirement in Claim 1 of the '591 Patent for the, you know, we were talking about HTML before. Let's just use that for now. Is there a requirement for the HTML to come from the website server and not from the device that is, you know, you called it a proxy -- but the synchronization server in the system. Is that required in the claims?

MR. MCBETH: Objection to form.

BY MR. SACKSTEDER:

Q. And specifically Claim 1 of the '591 Patent.

MR. MCBETH: Objection to form.

THE WITNESS: So I guess maybe I'm not following you. Because the claim requires that the data that's received from the synchronization server relates to a website and includes the URL and cookie information.

So I mean I feel like you're asking me a negative limitation, which is what doesn't it have to include, which I don't think I have an opinion on that point.

BY MR. SACKSTEDER:

Q. Okay. I think I understand what you're saying.

Intuit / Samesurf, Inc.
Exhibit 1033
Page 105

So as long as -- regardless of whether there's a proxy involved or not, if there is -- if data is not received from a synchronization server where the data comprises the URL of the website and cookie information associated with the website and the host device, then 1.d is not practiced regardless if there is a proxy involved; is that correct?

MR. MCBETH: Objection to form.

THE WITNESS: Well, so if you're talking about a proxy that sends, I mean I guess I would have to understand what that other proxy might do.

I think -- in other words, if you're asking me about functionality that isn't covered by the claims, then I mean necessarily that functionality isn't covered by the claims.

But I was looking at the prior art references and pointing out what the claims do require are not met by those prior art references.

Q. Is there any requirement in Claim 1 of the '591 Patent that the guest device receive the HTML or the website in question directly from the website server?

MR. MCBETH: Objection to form.

THE WITNESS: I don't know that I have an

opinion on that point. I don't think that was part of what you argued in your petition, and so I wouldn't have addressed that. Unless I'm misremembering what I said.

I mean going back to the analysis I did of Prajapat, I note where it fails to identify element 1.d. But element 1.d is not the -- the HTML. It's the URL of the website and the cookie information. In other words, it's the request information, not the response.

Q. And as long as the guest device receives the URL and the cookie information, then that limitation is satisfied, correct?

MR. MCBETH: Objection to form.

THE WITNESS: You have to add in the rest of the limitations of 1.d, right, where the URL and the cookie information, with all of the additional language that's in 1.d, has to be associated with website and the host device. The data has to be related to a website being accessed in realtime by a host device.

So you know, I don't want to mischaracterize or misquote the claim language, but that's the data that this claim limitation is relating to being received from synchronization

server.

Q. And as long as the guest device receives that information, as you've just described it, then element 1.d is satisfied, correct?

MR. MCBETH: Objection to form.

THE WITNESS: I -- I think we've talked about this already. But if element 1.d is performed, then it's performed. That's the requirement of the claim language is that the guest device receives that particular data from the synchronization server.

BY MR. SACKSTEDER:

Q. Can you go back to the '591 Patent, column 2, the portion we were looking at before.

A. I'm on column 2.

Q. And the same part -- well, the part about desktop or screen sharing. And then there's a contrast where it says those "methods do not enable all users in a session to click, input, and log into those experiences in a simultaneous or near simultaneous manner."

Do you see that?

A. What line are you on?

Q. 23. 22, 23. It refers to --

A. Yes.

Q. -- doing these actions "in a simultaneous or nearly simultaneous manner." Do you see that?

A. I see that, yes.

Q. And would -- would that be a good working definition of "synchronized," "simultaneous or nearly simultaneous"?

A. So again, I'm not going to proffer a construction of the word "synchronized" for the purposes of this -- this deposition because I wasn't asked to do that. And it wasn't my understanding that you had a dispute over what that meant.

So to the extent it becomes necessary to construe the word "synchronized" later, then I can do that, but I haven't at this point.

Q. Thought I'd give it a shot.

Going back to your discussion with Figure 5(a) in your '591 declaration, paragraph 33, and thereabouts. How is the synchronized browsing session in these -- these patents established?

MR. MCBETH: Objection to form.

THE WITNESS: I guess I'm not sure of -- I'm not sure what you mean by that.

BY MR. SACKSTEDER:

Q. So if you go to the '591 Patent and look at column 10, which is a discussion of figure 2(a).

Intuit / Samesurf, Inc.
Exhibit 1033
Page 109

A. Okay.

Q. And it goes through the steps of initializing a synchronized browsing session between host device and a guest device, correct?

A. I'm starting at line 3 of column 10, and I see that. I guess what's your question?

Q. First, it was do you see -- do you see that part, which you have answered in the affirmative.

A. I do see that, yes.

Q. Okay. At line 10 it says, "To initialize a synchronized browsing session, host device transmits initialization request 40 to synchronization server 13," correct?

A. I do see that, yes.

Q. And then at line 13 it says "In response to initialization request 40, synchronization server 13 may transmit confirmation message 41 to host device, and including session identifier 19 (not shown)."

And then farther down it says, "Once the synchronized browsing session is established and session identifier 19 is transferred to host device 10, host device 10 may transmit session invitation 42 to prospective guest devices, such as guest

device 14."

Do you see that?

A. I do see all of that, yes.

Q. So the synchronized browsing session is established before anything has been sent to -- to the guest device, correct?

MR. MCBETH: Objection to form.

THE WITNESS: Well, so I guess I'll say two things. One, is this passage in the patent is describing one embodiment. But your question was more of an absolute. But I guess second is, I don't recall addressing that question in my opinion because I don't remember you making any arguments about it. Or if you did, I don't recall me addressing them. So if you could point me at my declaration about where I'm discussing this because I don't remember doing so.

Q. I'm not asking you about your discussion of it in your declaration. I'm asking you about, admittedly, an embodiment in the patent. If you can't answer questions about it, then I guess you can't.

A. Oh, well, I mean I haven't answered, I think, questions about it. And so if it's not something I discussed in my report or my

declaration, then I don't know what you might want me to say about it here.

Q. The embodiment that is described in column 10 at least describes a circumstance where the synchronized browsing session is established before the guest device has received anything, correct?

MR. MCBETH: Objection to form.

THE WITNESS: I mean, I'll give you the same answer I just gave. I didn't -- let me just double-check my report because if I didn't talk about this, I don't know that it would be appropriate for me to ad-lib here. And I don't remember addressing that question in my declaration.

BY MR. SACKSTEDER:

Q. I'll agree with you that you did not address that question in your declaration.

A. Okay.

Q. Are you able to look at column 10 and determine whether in the embodiment described there the synchronized browsing session is -- is described as being established before the host device has received -- or established before the guest device has received anything?

MR. MCBETH: Objection to form.

THE WITNESS: Well, obviously you're

asking me whether I'm able to. I think the answer to that question is probably yes. But it's not something that I have an opinion on at this point because it wasn't part of the scope of my report.

Q. I'm asking you to answer the question.

In the embodiment that is described in column 10 of the '591 Patent, the synchronized browsing session can be established before the guest device has received an invitation, correct?

MR. MCBETH: Objection to form.

THE WITNESS: So I mean with all due respect, I think you're asking me to form new opinions on the stand. And I'm not going to do that because that's not what I was asked to do.

So if there's a -- if there's an opportunity, and I'm instructed to address a new theory or a new concept that I wasn't made aware of, at a later point in time, then, you know, to the extent counsel wants me to address that point then I will.

But if -- if that sort of, you know, outside-the-scope question is something that you want to have a conversation about, I don't believe this is the appropriate forum.

Q. You reference "synchronized browsing

Intuit / Samesurf, Inc.
Exhibit 1033
Page 113

sessions" repeatedly throughout all of your declarations, correct?

A. I do because that's a claim term.

Q. Right. And you discuss whether the prior art references that are relied on disclose synchronized browsing sessions, correct?

MR. MCBETH: Objection to form.

THE WITNESS: Well, specifically which paragraph are you looking at in my report?

BY MR. SACKSTEDER:

Q. You discuss synchronized browsing sessions and whether they are disclosed by the prior art references in your reports.

A. Well, just as one example, I note that the petition made a reference to -- let me amend that.

I know that Lebrun has a reference to an import-export message and importing or exporting information.

And I'm saying in paragraph 45 of my '591 declaration that a person of ordinary skill would not have thought that a process labeled "importing" or "exporting" was related to a synchronized browsing session.

MR. MCBETH: Objection to form.

THE WITNESS: Noting again that the claim

term is "synchronized browsing session."
BY MR. SACKSTEDER:
Q. And the claim term "synchronized browsing session" is also used throughout the specification of the patent, correct?
A. That's correct, yes.
Q. And you would expect the use of the claim term "synchronized browsing session," at least not to be inconsistent with the use throughout the specification, correct?
MR. MCBETH: Objection to form.
THE WITNESS: I'm sorry, maybe I don't follow. Can you ask that a different way?
BY MR. SACKSTEDER:
Q. Sure. One of the things that relates to the use of a term in a claim is the way the term is used throughout the specification, correct?
A. I understand that in order to understand what claim terms mean, looking at the specification is an important source of information.
Q. All right. And column 10 of the '591 Patent is part of the specification of the '591 Patent, correct?
A. It is.
Q. All right. Can you please look at column

Intuit / Samesurf, Inc.
Exhibit 1033
Page 115

10 and read lines 19 through 23?

A. "Once the synchronized browsing session is established in session identifier 19 is transferred to host device 10, host device 10 may transmit session invitation 42 to prospective guest devices such as guest device 14."

Q. Do you understand --

A. Is that where you want me to start -- or stop?

Q. Yes, that's all I wanted you to read.

Do you understand -- do you understand that sentence to indicate that in the embodiment, that is disclosed in column 10, that the synchronized browsing session is established before session -- the session invitation is sent to prospective guest devices?

MR. MCBETH: Objection to form.

THE WITNESS: Well, I mean I just read the one sentence that says, "Once the synchronized browsing session is established, the host device 10 may transmit session invitation 42 to prospective guest devices."

So at that point they're not having accepted -- that's why he uses the word "prospective."

BY MR. SACKSTEDER:

Q. Right. And at that point in time, the synchronized browsing session has been established, correct?

MR. MCBETH: Objection to form.

THE WITNESS: Well, I mean in this embodiment, I think that's -- line 19 says "Once the synchronized browsing session is established."

Q. So the invitation is sent to the -- strike that.

The invitation is not sent to the prospective guest devices until the synchronized browsing session has already been established, correct?

MR. MCBETH: Objection to form.

THE WITNESS: Well, I think you're asking me to recharacterize the sentence that we're reading here.

And I think it -- it simply says "Once the session is -- once the synchronized browsing session is established, the host device may transmit session invitations." That's -- I mean, we can -- I don't know what else you want me to say about it. It says what it says.

BY MR. SACKSTEDER:

Q. Do you understand the establishing of the synchronized browsing session to be the performance of the steps in the two paragraphs before the sentence I had you read?

MR. MCBETH: Objection to form.

THE WITNESS: I'm sorry, now I'm -- I need you to give me a little more context.

BY MR. SACKSTEDER:

Q. Okay. Read the paragraph -- you can read it to yourself -- that begins on line 10 and goes through line 18.

A. 10 to 18, okay. Hold on. Wait. Out loud or just to myself?

Q. (Inaudible).

A. I'm sorry, I didn't hear you.

Q. You may read it to yourself.

A. Okay.

Q. All right. So would you agree that in this embodiment, lines 10 through 18, describe the process of establishing the synchronized browsing session?

MR. MCBETH: Objection to form.

THE WITNESS: I mean, it's very clear that it talks about exemplary embodiment. So when you say "the process," I think that's an inaccurate

characterization. This is describing a process for initializing a synchronized browsing session.

Q. My question was, "So would you agree that in this embodiment, lines 10 through 18, describe the process of establishing the synchronized browsing session?"

MR. MCBETH: Objection to form.

BY MR. SACKSTEDER:

Q. Can you answer that question?

MR. MCBETH: Objection to form.

THE WITNESS: So I think -- I think that question implies that there's a single method for the embodiment that's being described here.

I would just refer you to, I guess, to further down the page where it talks about the method for initializing the synchronized browsing session and how it can be performed in other order of steps without deviating from the scope of the present invention. So I don't --

Q. Let me --

A. I don't want to --

Q. I'll rephrase my question.

A. Let me say two things. I don't want to mischaracterize what the patent says. And second, just to sort of bring this back full circle, I

haven't really addressed this issue in my opinion, or in my declaration, because I didn't understand it to be something that you had made any arguments about, or at least to the extent that I wasn't asked to opine on it. So I don't know what questions about my declaration that I'm answering when we're having this discussion.

Q. You opine concerning whether the prior art references disclose a synchronized browsing session. This relates to that. That's a statement, not a question.

I will rephrase my question slightly and maybe you'll be able to answer it then.

Would you agree that in this embodiment that we've been reading, line 10s -- lines 10 through 18 of column 10, that that embodiment describe a process of establishing the synchronized browsing session?

MR. MCBETH: Objection to form.

THE WITNESS: Let me go look at the figures.

BY MR. SACKSTEDER:

Q. This is figure 2(a).

A. I think between column 10 -- so I mean figure 2(a) is described as a block diagram of

exemplary data communications. Some of the other figures after 2(a), for example figure 2(b), illustrates a flowchart of the method for the initialization of a synchronized browsing session. I think this whole column is related to ways of initializing a synchronized browsing session.

Q. I'm going to change one more article and ask my question again.

Would you agree that, in lines 10 through 18 of column 10, there is a description of a process of establishing a synchronized browsing session as claimed in the patent?

MR. MCBETH: Objection to form.

THE WITNESS: I think that's part of an exemplary embodiment.

BY MR. SACKSTEDER:

Q. And one thing it says is that -- I think you read this the same way as I do. When it says, "Once the synchronized browsing session is established and session identifier 19 is transferred to host device 10, host device 10 may transmit session invitation 42 to prospective guest devices, such as guest device 14," correct?

A. I mean you just read lines 19 to 23.

Q. Correct. And when you read those lines

Intuit / Samesurf, Inc.
Exhibit 1033
Page 121

with 10 through 18, and specifically the portion that says, "Once the synchronized browsing session is established," at least in this embodiment, a synchronized browsing session can be established before any invitation is sent to a guest device, correct?

MR. MCBETH: Objection to form.

THE WITNESS: I mean, I'm just looking at these 10-plus lines in a vacuum, so...

BY MR. SACKSTEDER:

Q. Feel free to read the whole column.

A. Yeah, I think that's -- I think that's one way of looking at -- at at least one permutation of this embodiment -- or these embodiments.

Q. And you don't have any reason to believe that the claims do not cover this embodiment, correct?

MR. MCBETH: Objection to form.

THE WITNESS: Oh, I -- I don't know that I've spent any time looking at that question.

BY MR. SACKSTEDER:

Q. So you don't know one way or another?

A. I -- I -- in my declaration I don't recall addressing that, sort of, the scope issue. Again, with the caveat that my declaration speaks for

itself.

Q. Is there anywhere else in the patent that describes establishing a synchronized browsing session?

MR. MCBETH: Objection to form.

THE WITNESS: Well, I -- as I sit here right now, I don't know. I'd have to read through the patent and look for that question specifically.

I mean, the short answer is yes, it does further down in the column, but I don't know where else in the patent it does.

BY MR. SACKSTEDER:

Q. And you don't know whether somehow this embodiment that is described with regard to figures 2(a) and 2(b) would be excluded from the scope of the claims?

MR. MCBETH: Objection to form.

THE WITNESS: I have not evaluated that question.

MR. SACKSTEDER: Why don't we break for lunch.

(Whereupon, a luncheon recess was had.)

Wednesday, November 15, 2023

1:31 p.m.

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EXAMINATION (resumed)

BY MR. SACKSTEDER:

Q. Welcome back, Mr. Friedman.

Have you discussed your testimony with anyone during the breaks today?

A. No.

Q. All right. Could we go to your '591 declaration regarding -- well, your '591 declaration. Specifically let's go to paragraph 52.

A. I am there.

Q. And you begin that paragraph by saying, "Neither does Prajapat teach or suggest that either the simple or phone-to-phone web page sharing embodiments are synchronized in any way," correct?

A. I do say that, yes.

Q. All right. And then in the preceding paragraph 51, you say, "Only the co-browsing dynamic web page sharing embodiments of Prajapat are described as 'synchronized,'" correct?

A. I think you read that right, but just so we're clear, I say, "Furthermore, only the co-browsing, dynamic web page sharing embodiments of

Prajapat are described as 'synchronized,'" citing to paragraph 30.

Q. I left out the paragraph -- I left out the punctuation, but that was what I was attempting to say, so that's fine.

So Prajapat does describe the dynamic web paging -- dynamic web page sharing embodiments of Prajapat as synchronized, correct?

MR. MCBETH: Objection to form.

THE WITNESS: It definitely uses the word "sync." Let me go to Prajapat. Which one is that? That's Exhibit 1007.

Right. So I discuss that at -- where else do I talk about it? Well, I cite to paragraph 30 in Prajapat where it uses that term.

BY MR. SACKSTEDER:

Q. If you just look at paragraph 30 of Prajapat, I think you'll find it.

A. Right.

Yes, it describes an example of what this embodiment does relating to a rendering of multiple pages at the same time as the content tree. And says that, "As an example, changes to the content tree in browser 12a may then be synchronized with other browsers 12 in a web page sharing session.

Intuit / Samesurf, Inc.
Exhibit 1033
Page 125

"As a content tree associated with a browser 12 is updated on the web media server 14, multiple page load events may be generated to cause full content synchronization."

Q. Does the disclosure of synchronization in paragraph 30 of Prajapat disclose the kind of synchronization that is recited in the claims of the three Samesurf patents?

MR. MCBETH: Objection to form.

THE WITNESS: That's an interesting question. So Prajapat uses the terms or the words "synchronization" or "sync," and it also uses the words "co-browse," or word "co-browse," and so do the specifications of the three same Samesurf patents.

But it's not entirely clear whether those two uses of those two terms are coextensive. And I haven't, in my -- in my opinion, I haven't endeavored to provide a sort of comparison of the two sets of terms from one reference to the other to examine whether they are, in fact, coextensive.

So the short answer is I can't answer your question yet because I haven't done that analysis.

BY MR. SACKSTEDER:

Q. Okay. So you don't have an opinion about

whether the disclosure of "synchronization" in Prajapat is the same as the disclosure of "synchronized browsing sessions" in the asserted -- or the challenged patents, correct?

MR. MCBETH: Objection to form.

THE WITNESS: Unless I'm missing, I don't recall actually having compared the uses of those two terms specifically in the way that I just described.

I mean, I did -- if you click back a couple of paragraphs to paragraph 49, I talk about what -- how Prajapat applies the label "co-browsing," and earlier in my report describe several other examples of what Prajapat means by "co-browsing."

But I didn't go through and sort of say, well, here's what the Samesurf patents mean by "co-browse," here is what Prajapat means by "co-browse," to evaluate whether, again, the definitions of those terms are coextensive. So I have not done that analysis.

BY MR. SACKSTEDER:

Q. Okay. So you haven't done the analysis regarding the use in the challenged patents of "co-browsing" compared to Prajapat's use of the term

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Intuit / Samesurf, Inc.
Exhibit 1033
Page 127

"co-browsing," correct?

MR. MCBETH: Objection to form.

THE WITNESS: Not to that sort of -- not to answer the question of whether they're coextensive, that's correct.

BY MR. SACKSTEDER:

Q. And have you done any analysis to determine whether there's any overlap at all?

MR. MCBETH: Objection to form.

THE WITNESS: Let me go back to -- so on paragraph 46 where I describe the first embodiment in Prajapat of peer-to-peer dynamic web sharing, Prajapat discloses that "In general, web media servers 14 allow browser 12a to co-browse one or more web pages with browser 12b. The term 'co-browse' may include one or more of the following situations: Browser 12a and browser 12b display the same web pages at substantially the same time; browser 12a may alter web pages and browser 12b may view those alterations; browser 12b may alter web pages and browser 12a may view those alterations; or any other suitable situations."

That's the end of the quote from Prajapat, paragraph 12.

So there I'm noting where Prajapat defines

what it means by "co-browse." And I don't -- if memory serves, I don't think I cited to the '591 Patent. Let me just double-check.

I did not cite to the '591 Patent's recitation of "co-browse," so I did not do that comparison.

BY MR. SACKSTEDER:

Q. So again, just to streamline this a little bit if possible, you don't have an opinion about whether there is any overlap in the meaning of "co-browse" from Prajapat and the meaning of "co-browse" as it's used in the challenge patents, correct?

MR. MCBETH: Objection to form.

THE WITNESS: As -- I don't have that opinion in my declaration.

BY MR. SACKSTEDER:

Q. And you don't otherwise have that opinion as you sit here, correct?

A. Well, I wasn't asked to render an opinion on that sort of question of claim construction versus -- well, I guess it's not a claim term. But term construction between the prior art and the specification. So I get that's not in my -- in my declaration.

Intuit / Samesurf, Inc.
Exhibit 1033
Page 129

Q. And my question was, "and you don't have any other opinion concerning it beyond what's in your declaration?"

MR. MCBETH: Objection to form.

MR. SACKSTEDER: (Indiscernible.)

(Simultaneous speakers.)

THE WITNESS: Not at this time, that's correct.

THE REPORTER: I'm sorry. I didn't get the last part of yours. "Beyond what's in your declaration," and then there was an objection.

THE WITNESS: And then I said, "Not at this time, that's correct."

THE REPORTER: Thank you.

One at a time, please. Thanks. I appreciate it.

THE WITNESS: Apologies.

THE REPORTER: No problem.

BY MR. SACKSTEDER:

Q. So going back to what you just read from paragraph 46. You describe two browsers, 2a -- I'm sorry, you describe two browsers, 12a and 12b, in Prajapat, correct?

A. That's -- yes.

Q. And they display the same web pages at

substantially the same time, correct?

MR. MCBETH: Objection to form.

THE WITNESS: That is one of the examples of what Prajapat means by "co-browse."

BY MR. SACKSTEDER:

Q. And then browser 12a may alter web pages and browser 12b can see the alterations, correct?

A. That's another example, correct.

Q. And browser 12b can alter --

(Audio distortion.)

THE REPORTER: I'm sorry. Counsel, you were cutting out. "And browser 12b can alter"...

BY MR. SACKSTEDER:

Q. Browser 12b may alter web pages, and browser 12a may view those alterations, correct?

A. Yes, that's what it says.

Q. And in -- in the claimed invention of these three patents, the browser on the guest device can view the -- can view a web page at substantially the same time as the browser on the host device, correct?

MR. MCBETH: Objection to form.

THE WITNESS: Well, so you're asking about the three different patents at the same time. And as we discussed earlier, one of them is from the

viewpoint of the host and the other is from the view -- the other two are from the viewpoint of the guest. So -- and the claim limitations are different. So which one do you want to talk about?
BY MR. SACKSTEDER:
Q. Let's talk about the disclosure in the specification of all three, okay?
A. Okay.
Q. I haven't asked a question yet. I will ask it now.
So in -- in the technique that is disclosed in all three of the challenged patents, there are -- there's a browser on a host device and a browser on a guest device, correct?
A. That's fair, yes.
Q. And the system allows those two browsers and the users of those two browsers on those two devices to co-browse the same web page, correct?
MR. MCBETH: Objection to form.
THE WITNESS: Give me a second.
The '591 Patent uses the word "co-browse" three times, it looks like, in column 15, and gives an example where there may be a football public room where users discuss and co-browse online content related to college or professional football.

BY MR. SACKSTEDER:

Q. Okay. What's your point?

A. Well, you asked what the '591 Patent disclosed about co-browsing.

Q. Okay. In these three patents, there are claims and disclosure. The browser on the user -- strike that.

The browser on the guest device and the browser on the host device can view the same web page, correct?

MR. MCBETH: Objection to form.

THE WITNESS: If you're referring to what's in the specification, that's what the specification discloses. But if you're referring to the claims, the claims say different things depending on which viewpoint it's -- because the three patents are different.

So I don't think it's fair to characterize all three claims as covering the same thing because they're written differently.

BY MR. SACKSTEDER:

Q. I'm not trying to do that. I don't know if you know this, but the claims are part of the specification. So when I talk about "specification," I'm talking about the written

Intuit / Samesurf, Inc.
Exhibit 1033
Page 133

description of the invention and the claims.

Do you understand that?

A. I do, yes.

Q. All right. So each of these patents describes a system and method wherein a browser on a user's guest device and a browser on another user's host device can view the same web page at the same time, correct?

MR. MCBETH: Objection to form.

THE WITNESS: I mean with -- at the risk of oversimplifying the embodiments in the specification, that's part of what this invention is directed to.

BY MR. SACKSTEDER:

Q. Fair enough.

And in that system, the user of the guest device can make changes to, for instance, data on a web page, and the user on the host device can see those changes that -- that are being made, correct?

MR. MCBETH: Objection to form.

THE WITNESS: Can you point me where in the '591 Patent you're referring to?

BY MR. SACKSTEDER:

Q. I'm just asking for your general understanding of this invention. I mean a part of

Intuit / Samesurf, Inc.
Exhibit 1033
Page 134

the invention that, say, you and I -- you're the guest device user and I'm the host device user, and I want you to be able to see the same web page that I'm looking at.

Part of the idea of the invention of these patents is that you can do that. You can see the website that I am also visiting at the same time, correct?

A. That's a -- that's a fair characterization, yes.

Q. And if I make some change to some form, for instance, that appears on the website, you would be able to see that change on your browser, correct?

MR. MCBETH: Objection to form.

THE WITNESS: Well, so again, just so we're clear, we're talking about everything that's disclosed in the specification as opposed to what's claimed in the claims; is that right?

BY MR. SACKSTEDER:

Q. Correct. Yeah. Just the general invention that is disclosed in these patents.

A. I think there's an example that talks about that, so give me just a minute.

Yeah. So one of the examples in the '591 Patent in column 5, starting at line 19, is "In

Intuit / Samesurf, Inc.
Exhibit 1033
Page 135

a synchronized browsing session, two or more people may read the same article, watch the same video, or shop for the same item automatically, without the hassle of coordinating user input."

Q. Okay. So again, if I'm the host device and you're the guest device, then we can look at the same web page at the same time, correct?

A. Well, I mean like you and I are looking at the same web page at the same time right now on that screen share, but -- or the Exhibit Share, but that's not what "synchronized browsing" means. That's just because we both independently clicked on the same link.

Q. That wasn't my question.

In the technique that is disclosed in the three challenged patents, one of the ideas is that the guest device and the host device can view the same web page at the same time, correct?

MR. MCBETH: Objection to form.

THE WITNESS: Well, what it -- what it says just above where I just read in column 5 is that "The present invention allows two or more persons browsing the Internet to share their Internet browsing experience and have all users simultaneously browse and fully interact with

Intuit / Samesurf, Inc.
Exhibit 1033
Page 136

websites, games, virtual worlds, or other online applications in real-time."

And just for the record, that was column 5, lines 11 through 15.

I don't think it's a fair characterization of the invention to simply suggest that two people are looking at the same web page at the same time like we are right now.

BY MR. SACKSTEDER:

Q. I'm not saying that's the only thing you can do. I'm saying that's a thing you can do, correct?

MR. MCBETH: Objection to form.

THE WITNESS: I mean within the context of the invention, that would be an example of, you know, the -- sorry. A way for me to say this.

Two people browsing the same website simultaneously is a result of applying this invention.

BY MR. SACKSTEDER:

Q. And another thing that is a result of applying this invention is that if one user on the host device, for example, makes a change to the website that is being co-browsed, then the other user will be able to see that change on their

Intuit / Samesurf, Inc.
Exhibit 1033
Page 137

browser, correct?

MR. MCBETH: Objection to form.

THE WITNESS: That is one of the other -- I think that's -- that's fair, is that -- and I'll just point you further down in column 5 where it talks about "For purposes of this discussion, the term 'fully interact with' may comprise but is not limited to logging into or registering at certain sites or applications, filling in form data, performing multiple queries, having following participants click on links that open in new nonshared tabs."

There's several other that I'm not going to read. But that's column 5, starting at line 48 to line 56.

BY MR. SACKSTEDER:

Q. And so one of the things that you can do is have one user see the -- the changes that the other user makes online, correct?

MR. MCBETH: Objection to form.

THE WITNESS: I think the premise of filling in form data would -- would convey that, yes.

BY MR. SACKSTEDER:

Q. Okay. You read from column 5 previously

where "The invention allows two or more persons browsing the Internet to share their Internet browsing experience and have all users simultaneously browse and fully interact with websites, games, virtual worlds, or other online applications in real-time."

Is that your definition or the patent's definition of a "synchronized browsing session"?

MR. MCBETH: Objection to form.

THE WITNESS: I don't have a formal claim construction for "synchronized browsing session."

BY MR. SACKSTEDER:

Q. Would what I just read at least be encompassed within whatever a "synchronized browsing session" is?

MR. MCBETH: Objection to form.

THE WITNESS: I think that answer might depend on which set of claims you're looking at. So I don't know that I can give you a blanket answer for that right now. But regardless, I haven't opined on the question of claim construction in that way.

BY MR. SACKSTEDER:

Q. So what is it about Prajapat that you think is not -- strike that.

Intuit / Samesurf, Inc.
Exhibit 1033
Page 139

What is it about Claim 1 of the '591 Patent that you believe is not disclosed in Prajapat?

MR. MCBETH: Objection to form.

THE WITNESS: Oh. Well, I -- I describe that in my declaration. I can go through that if you'd like, but I would refer you to my declaration at paragraph 74 to 80.

BY MR. SACKSTEDER:

Q. Why don't you explain it to me and then I'll ask you some questions to, hopefully, elaborate on that, which is what this deposition is for.

MR. MCBETH: Objection to form.

THE WITNESS: Okay. Well, so the first paragraph 74 notes that it's my opinion that your reliance on the Prajapat reference is misplaced because it mixes and matches -- well, I say this between paragraph 74 and 75 -- mixes and matches references from across multiple embodiments even though there's a distinct architecture and there's no explanation of how a person of ordinary skill would have combined those distinct architectures and sort of made the combinations work.

The attempt to combine Prajapat's dynamic web page sharing embodiment with either of the other

two non-dynamic web page sharing embodiments, I discussed that earlier and I note that it would yield nonsensical results. And the --

BY MR. SACKSTEDER:

Q. Let me -- let me stop you there just so we can get on the right page.

What is -- in your view, what's missing from the disclosure of the dynamic web page sharing embodiment that is claimed in the '591 Patent?

MR. MCBETH: Objection to form.

THE WITNESS: Oh. Well, so, first of all, I -- I did not -- I did not evaluate the -- each of the embodiments in Prajapat and sort of under the assumption that it was my burden to go through each element and say this is or this isn't here.

The scope of my declaration is responsive to the arguments that you raised in the petition. So I didn't -- I didn't intend to respond to other arguments that you didn't make because I don't know what those might have been.

What the petition said was that Prajapat discloses, you know, various elements, and it picked the various elements. It used citations from Prajapat that were drawn from multiple different of these embodiments.

Intuit / Samesurf, Inc.
Exhibit 1033
Page 141

That's effectively what I'm saying in paragraph 75, that on the contrary, none of the grounds -- or the ground, I guess, that relates to Prajapat did not identify where all of the claim limitations were met for any one of the embodiments in Prajapat. It was always a combination.

So what I say earlier in my declaration is that the combination -- I mean it's not clear to me that you were aware that you were doing that because it doesn't sort of make any distinction between the multiple embodiments. But I point out in my declaration that, in fact, you can't combine them because they're different incompatible architectures and it doesn't make sense to even do that.

BY MR. SACKSTEDER:

Q. Would you look at your paragraph 80.

A. I am there.

Q. And in paragraph 80 you are talking about the dynamic web page sharing embodiment, correct?

A. I am, yes.

Q. All right. And it, as you say, characterizes itself as "co-browsing" and relates to two browsers displaying the same web page at substantially the same time.

And you say, "It is not taught to send any

URL or cookie information from the identified synchronization server (that is, web media server 14a or web media server 14b or both)."

So is that something that you say in that embodiment is not disclosed?

MR. MCBETH: Objection to form.

THE WITNESS: I mean I'm having a hard time parsing that question, but you basically just read what I wrote. So I mean, I agree with what I wrote.

BY MR. SACKSTEDER:

Q. Well, you said that you -- you know, that you were trying to respond to what the petitioner said, and so you didn't consider whether the individual embodiments disclose specific limitations or were missing specific limitations.

I just read you something where you said this embodiment is missing this limitation, right?

MR. MCBETH: Objection to form.

THE WITNESS: So I disagree with the premise of your question. I think that's an inaccurate characterization of what I said before.

What I said before was I did not go through each of the embodiments in Prajapat and identify where all of the claim limitations either

were or were not disclosed. As for example, I would have had to if I had the burden of proving invalidity.

So in other words, I didn't take Prajapat's dynamic web sharing system embodiment and say it does or doesn't disclose the preamble of Claim 1, it does or doesn't disclose element 1.a, it does or doesn't disclose element 1.b.

What I'm doing here is saying that -- and the limitation that we're looking at here is the URL or cookie information, which from the Claim 1 annotation is element 1.d.

So what I'm saying here is that Prajapat's dynamic web sharing system is not taught to send any URL or cookie information from what the petition has identified as the synchronization server. And so that would be an example of why the dynamic web sharing system embodiment can't disclose the limitations of Claim 1 of the '591 Patent.

BY MR. SACKSTEDER:

Q. Are there any other examples discussed in your declaration of anything from the '591 Patent, Claim 1, that is not disclosed by the dynamic web page sharing system embodiment of Prajapat?

MR. MCBETH: Objection to form.

Intuit / Samesurf, Inc.
Exhibit 1033
Page 144

THE WITNESS: I mean, I think -- in order for me to answer that question, I would have to do a sort of side by side of my declaration with the petition, because as I'm looking at this now, paragraph 78, 79 -- we just talked about 80 -- so 78 and 79 cite to the petition, but just by looking at this declaration I don't know what the petition was citing to.

So as I sit here right now without opening up everything, I can't answer that question.

BY MR. SACKSTEDER:

Q. You were talking about the different embodiments in Prajapat, do you recall that?

A. Yes.

Q. Do you know of any legal requirement that a person of ordinary skill cannot look at different embodiments in one reference and use a portion of one and a portion of another to render the challenged claim obvious?

MR. MCBETH: Objection to form.

THE WITNESS: Well, so I think the -- the basic answer to that question is as long as it makes sense, then -- then, sure, you can.

My point here is that with the specific combination of embodiments that the petition

identified in Prajapat, it doesn't make sense because they're incompatible.

BY MR. SACKSTEDER:

Q. Do you dispute that -- I understand what you're saying about the, in your view, incapability of the embodiments. But do you dispute that Prajapat as a whole, combined with Wang, discloses all the limitations of Claim 1 of the '591 Patent?

MR. MCBETH: Objection to form.

THE WITNESS: Well, I don't -- so again, to be clear, I addressed the petition's arguments to that point. And, for example, in paragraph 79, I say that the petition fails to identify element 1.d and explain why.

I didn't sort of independently answer the question which I think you're asking, which is setting aside the petition, does Wang plus Prajapat disclose all of the limitations? So I didn't do that analysis because I wasn't asked to. I was asked to respond to the analysis that the petition raised.

BY MR. SACKSTEDER:

Q. But you cannot point to any place in your declaration where you dispute that Prajapat plus Wang discloses all the limitations, correct?

MR. MCBETH: Objection to form.

THE WITNESS: Well, if you're talking about the thesis that Prajapat plus Wang may disclose the limitations in a way that wasn't set forth in the petition, then I did not address those because I don't know what those arguments are.

BY MR. SACKSTEDER:

Q. You do not dispute in your declaration that Prajapat plus Wang discloses all limitations in Claim 1, correct?

MR. MCBETH: Objection to form.

THE WITNESS: I think I just answered that question. But other than what the petition argued, I did not -- I did not address that point generally, but again with the caveat that my declaration speaks for itself.

BY MR. SACKSTEDER:

Q. Even with regard to what the petition argued, you don't have any place that you can point to in your declarations where you say that Prajapat plus Wang does not disclose all the limitations, correct?

MR. MCBETH: Objection to form.

THE WITNESS: Well, I know that Prajapat -- sorry.

Again, paragraph 79, I'm saying that the petition fails to identify element 1.d and 1.e consistently. So the -- I mean I -- I don't agree that this element is disclosed.

BY MR. SACKSTEDER:

Q. By Prajapat?

MR. MCBETH: Objection to form.

THE WITNESS: Paragraph 79 is relating to the petition failing to identify element 1.d and 1.e consistently in Prajapat. But I would have to go back to the petition in order to refresh my recollection as to what you actually did say there.

BY MR. SACKSTEDER:

Q. You don't have any place in your declaration -- if you consider Prajapat and Wang, you don't have any place where you say that there is any limitation that is not disclosed by at least one of those two, correct?

MR. MCBETH: Objection to form.

THE WITNESS: So what I say about Wang, and specifically with the combination of Wang and Prajapat, is that the petition hasn't actually set forth what it envisions the combination of Prajapat with Wang to be. So I don't know that I have any further analysis because you didn't actually say,

here's what that combination is, and therefore, why it discloses all of the limitations.

What I do say in paragraph 84 is that the "embodiment in Prajapat that is related to 'co-browsing' or 'displaying the same web pages at substantially the same time' is Prajapat's dynamic web page sharing embodiment, which relies upon sending 'intermediate forms' of web page data between multiple servers and to web clients," and that the combination would "result in a system where one or more central servers fetches web page data and sends that to web clients." And the claims of the '591 Patent are unrelated to that system.

BY MR. SACKSTEDER:

Q. You don't have any place in your declaration where you point out any limitations that are not disclosed by either Prajapat or Wang, correct, or both?

MR. MCBETH: Objection to form.

THE WITNESS: I mean I just pointed you at paragraph 79.

BY MR. SACKSTEDER:

Q. Yeah. That doesn't say that there's something missing in the combination of Prajapat and Wang, does it?

Intuit / Samesurf, Inc.
Exhibit 1033
Page 149

A. Well, paragraph 79 doesn't relate to Wang. That one is related to the petition's disclosure or identifications with respect to Prajapat.

Q. So regarding the embodiments in Prajapat, you take the same position regarding all three of the challenged patents, correct?

MR. MCBETH: Objection to form.

THE WITNESS: Well, I mean, there are several different positions, so you're going to need to be more specific.

BY MR. SACKSTEDER:

Q. Okay. Well, look at first paragraph 75 of your '591 declaration.

A. Okay.

Q. You begin by saying, "Further, the petition does not identify all elements of the claims in any one embodiment of Prajapat. Instead it cherry-picks references from across the multiple embodiments without attempting to harmonize these distinct architectures or explain how a POSITA would have combined them to arrive at the invention claimed in the '591 Patent," correct?

A. Yes, that's right.

Q. All right. And then if you look at your declaration for the '145 Patent, and go to the same

Intuit / Samesurf, Inc.
Exhibit 1033
Page 150

paragraph number, 75, you say the same thing, right?

The first sentence of paragraph 75 of your '145 Patent declaration says an identical thing except it refers to the '145 Patent instead of the '591, correct?

A. Yes, that's right.

Q. And then paragraph 76 of your '448 declaration says the same thing, correct?

A. It does, yes.

Q. So the board actually addressed this issue, correct?

A. In which document?

Are you there?

THE WITNESS: Can we go off the record? I think counsel is frozen.

MR. MCBETH: Off the record.

(Audio difficulty.)

(Recess.)

BY MR. SACKSTEDER:

Q. If you can look at the Institution decision for the '591.

A. Okay, got it.

Q. And if you look at the bottom of page 40, top of page 41, the board rejected the separate embodiments argument at that point, correct?

MR. MCBETH: Objection to form.

THE WITNESS: I'm sorry, where specifically?

BY MR. SACKSTEDER:

Q. The paragraph at the bottom of 40, top of 41.

A. Right. So what that says is -- it says a couple of things. "Patent owner contends that Prajapat's Figure 3 embodiment is limited to a simple web page sharing session."

And let me just open up Prajapat and make sure I'm talking about the same thing because I think that's right.

Prajapat -- hold on -- Figure 3. Right. That's -- that's the one that is described in Prajapat as the simple -- let me get there. I say this in my declaration. Give me a minute.

Right. So I'll refer you back to my declaration, paragraphs 46, 47 and 48 where I set out the three different systems of Prajapat that it describes.

The first one starts -- well, the first one includes paragraph 12 of Prajapat. The second one, which it describes as the simple web page sharing, is at paragraph 41. And the third one is

Intuit / Samesurf, Inc.
Exhibit 1033
Page 152

after that at 44 to 45.

So let me go to Prajapat again and get to that page.

Right. So Figure 3 is described in Prajapat 41, paragraph 41, as "an example communications system operable to provide peer-to-peer simple web page sharing."

And so that's what the board was referring to with respect to that second sentence, "Patent owner contends that Prajapat's Figure 3 embodiment is limited to a simple web page sharing session."

The board continued to say that "The patent owner does not explain the specific functional difference between web page sharing sessions and co-browsing, nor is any specific difference apparent to us in Prajapat's description."

So just to pause there for a second. Part of my declaration relates -- I mean, if patent owner didn't explain that earlier, that's whatever they did. But I explain that in my declaration. So that's part of what I'm describing.

And then they have another sentence that says, "Moreover, we know that Prajapat expressly indicates that the web page sharing of Figure 3 is

the same as that described in the dynamic web page sharing embodiment of Figures 1 and 2, according to paragraph 47 of Prajapat."

And that's actually not accurate. But that's --

Q. So you're saying that the board was wrong about that?

MR. MCBETH: Objection to form.

THE WITNESS: Well, so paragraph 47 is actually a reference to Prajapat Figure 4, not Figure 3.

BY MR. SACKSTEDER:

Q. So what I'm asking you is, was the board incorrect about that?

A. The board -- well, to the extent that they're saying, "Moreover, we note that Prajapat expressly indicates that the web page sharing of Figure 3 is the same as that described in the dynamic web page sharing embodiment," the citation to paragraph 47 doesn't relate to Figure 3. So in that regard that's not an accurate reference.

Q. So what 47, in your view, says is that the pages can be shared in a substantially similar manner between the -- the phone embodiment and the dynamic web page embodiment; is that correct?

Intuit / Samesurf, Inc.
Exhibit 1033
Page 154

MR. MCBETH: Objection to form.

THE WITNESS: Well, I mean just so we understand what 47 is talking about, it's describing the illustrated embodiment of Figure 4 that depicts browsers receiving web pages from web content server 18. But then it says, "The system may be constructed such that UA and web media controller 50a is operable to retrieve web pages from web content server 18," and then it continues with the sentence that the board quoted.

But that was a reference to Prajapat's Figure 4 which -- let me go back to look at that -- which talks about having a phone and a browser -- this is going to be difficult to explain, but I'll just, you know, point out that Figure 4 relates to a phone that contains a browser and something called a UA and media controller.

And that -- I don't remember anything in the petition specifically pointing at that, so I never -- well, I don't want to say never. But I don't recall that that was part of the references cited by the petition.

BY MR. SACKSTEDER:

Q. So Figures 1 and 2 are one embodiment, in your view, and Figure 3 is a second embodiment, and

Intuit / Samesurf, Inc.
Exhibit 1033
Page 155

Figure 4 is the third embodiment?

A. Let me go back to see.

Right. So I would refer you to page 1, paragraph 8 through 11, which describe Figure 1 as an example communication system for peer-to-peer dynamic web page sharing, Figure 2 is an example method for peer-to-peer dynamic web page sharing, Figure 3 is an example system for peer-to-peer simple web page sharing, and Figure 4 is an example system for peer-to-peer web page sharing using at least two phones.

So as I describe in my declaration at paragraphs 46, 47 and 48, those are three different systems disclosed in Prajapat.

Q. And it's your view that you can't combine, and someone of ordinary skill could not look at all three and combine elements of the three?

A. So my opinion on that topic is paragraph 54, where I note that the co-browsing dynamic web page sharing embodiment in Prajapat is incompatible with either of the other two, the simple web page sharing or what, for concision, I call phone-to-phone web page sharing. That's what's described in Figure 4.

And I explain that in order to render a

Intuit / Samesurf, Inc.
Exhibit 1033
Page 156

web page, the browser obviously has to get the content from somewhere.

In dynamic web page sharing, that's the system of Figure 1, the browser receives the content from a web media server that has already fetched it. But in the other two embodiments, the browser receives the content from the web content server directly.

So it doesn't make sense to combine those two because then you'd get the content fetched twice, turned into an intermediate form once by the web media server, and then forwarded to the browser at the same time that that browser is also receiving a non-intermediate form that it had fetched directly from the web content server, which that -- I don't even know what the browser would do in that case. That doesn't make any sense. The idea of retrieving two different versions of a web page and then trying to harmonize them. That's not explained how -- sorry. Prajapat doesn't explain how you would make that work.

Q. So do the challenged patents contain any explanation of how you would directly retrieve the -- the web page at the two browsers on the two devices from the web page server?

Intuit / Samesurf, Inc.
Exhibit 1033
Page 157

MR. MCBETH: Objection to form.

THE WITNESS: Well, if I understand -- if I understood your question, that's part of what we looked at before with the -- the flow -- I don't know if it's a flowchart. Figure 5(a) with the box and arrow diagram, and then the description of the subsequent flowcharts from the specification.

Figure 5(b) -- let me just make sure I'm getting this right in the spec. Hold on.

Yeah. So Figure 5(b) in the specification at column 17 is described -- step 401 talks about the host device transmitting the website request to the website server. And then the guest device is described with respect of Figure 5(d), and at column 19, line 7, talks but how the guest device transmits a website request to the website server.

So there's -- the Figures 5(a), (b), (c), (d) relate -- well, Figure 5(a) is the one that we talked about before, the flow of the messages between the various components. Figure 5(b), (c) and (d) are flowcharts for the different -- or some different components.

BY MR. SACKSTEDER:

Q. So is there anyplace where it describes how you keep these -- these communications

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Intuit / Samesurf, Inc.
Exhibit 1033
Page 158

synchronized, for want of a better term?

MR. MCBETH: Objection to form.

THE WITNESS: Well, what -- I mean if you're asking -- Figure 5 -- Figures 5(b), (c) and (d) relate to the different components performing their roles, basically. There's no, like, single flowchart that sort of combines all of them.

But the specification, starting at column 17, at line 37 is where it starts walking through the flowchart for the host device, and then it moves on to the synchronization server.

So it's describing the flowcharts of each of the three different devices, the host, the synchronization server, and the guest device.

BY MR. SACKSTEDER:

Q. And it shows how all this happens once. Does it explain anywhere how it gets repeated so that you can continue to be synchronized?

MR. MCBETH: Objection to form.

THE WITNESS: I don't know. I don't know that I -- I -- I'd have to go back and look through the patent for that specific question.

BY MR. SACKSTEDER:

Q. You don't identify it anywhere in your declaration or in anything that you have thought of

today, correct?

MR. MCBETH: Objection to form.

THE WITNESS: When you say "it," I think the phrase you used was "continue to be synchronized."

BY MR. SACKSTEDER:

Q. Right.

A. I -- I -- with the caveat that my declaration speaks for itself, I don't recall addressing the question of ongoing or continuous synchronization, at least as I'm understanding you asking that question.

Q. But isn't the whole point of the invention that the browsing remains synchronized? How is it synchronized continuously or how is it described in the patent that it's synchronized continuously?

MR. MCBETH: Objection to form.

THE WITNESS: Well, I mean, I don't -- the only use of the word "continuous" in the patent is in reference to desktop or screen sharing in the background section. The claim doesn't recite "continuous."

BY MR. SACKSTEDER:

Q. Okay. It doesn't do you much good if you can only view the same web page once and never

again, right, regardless of whether it changes?

A. I -- I don't -- I need more color on that.

Q. The point of the invention is that you can initially establish a synchronized browsing section -- session, but then that session continues, right, so that the browsing continues to be synchronized while the users of the two devices want it to be, correct?

MR. MCBETH: Objection to form.

THE WITNESS: Well, so I think to actually apply this to the claim language, at least as far as the '591 goes, it says it's a "method for a guest device performing a synchronized browsing session administered by a synchronization server."

You know, going to a web page once is not a synchronized browsing session. There's nothing about a session -- sorry. Navigating to a single web page would not be understood as a session in any sort of -- in any way. That's just going to a web page.

So if I -- if I show you the screen share of the -- sorry -- the Exhibit Share, like we did earlier today, we were looking at those web pages at the same time, but that's not performing a synchronized browsing session. That's just you

sending me a link.

BY MR. SACKSTEDER:

Q. Right. And what I -- and so you need to have it -- you need to have the synchronization be persistent, right? You don't want to just have -- just be -- you know, what if you make a -- you make a change in the website. There's a form to fill out, you fill it out, and you want the other user to be able to see that. Where is it described how you keep the synchronization going beyond the initialization?

MR. MCBETH: Objection to form.

THE WITNESS: Well, I think that's the -- the description of the steps in those flowcharts is how you do that.

I think maybe I'm not understanding your question.

BY MR. SACKSTEDER:

Q. Well, explain where you see that in the flowcharts.

MR. MCBETH: Objection to form.

THE WITNESS: I guess I'm -- I'm not understanding your question.

Between Figure 5(a), which is the sort of entity diagram or the block diagram that shows what

the things are and which direction the communications travel, and then the steps of 5(b), (c) and (d), which relate to each of those -- or relate to, other than the website server, relate to the host device synchronization server and guest device performing their respective steps, those are described, for example, in column 4 of the '591 Patent.

"Figure 5(a) is a block diagram of the communication transferred between exemplary components of the present invention during a synchronized browsing session."

And then Figures 5(b), (c) and (d) are described as flowcharts of the method utilized by respectively the host device, synchronization server, and guest device for the execution of a synchronized browsing session.

BY MR. SACKSTEDER:

Q. Does it say anywhere that you repeat the process over time?

MR. MCBETH: Objection to form.

THE WITNESS: You mean, like is there a higher level -- so there's no, like, higher level flowchart that basically says -- okay. I think I see your -- I understand your question now.

So Figure 5(a) reflects the message flow for a particular -- let me just go back to the description of Figure 5(a).

Okay. So column 15, line 42, starts with "Figure 5(a) illustrates a block diagram of exemplary data communication transferred between components of the present invention during a synchronized browsing session."

And it shows the host device 10, website server 12, synchronization server 13, and guest device 14 transmitting data communication for a synchronized browsing session.

And then the next four or so columns, five maybe -- no, it's more than that. Basically to the top of column 19 at line 4 from where we just were walks through not only what those components are in the communications, but the flowchart for each of 5(b), (c) and (d) that describe one of the particular communication, I guess, requests where the host device does something and how that request gets sent to the website server, but then what message gets sent to the synchronization server, and then forwarded to the guest device, and then what the guest device does with it.

BY MR. SACKSTEDER:

Q. There's nothing in there that says how frequently this is done or even whether you repeat it more than once, correct?

MR. MCBETH: Objection to form.

THE WITNESS: Well, Figure 5(a) is described as saying "data communication transferred between components of the present invention during a synchronized browsing session."

It doesn't say that sending one message is a synchronized browsing session.

I -- I -- I understand, I think, the point you're trying to make, but I don't agree that the idea of sending one thing is -- would be construed to be a session. This specifically uses the word "during."

BY MR. SACKSTEDER:

Q. The synchronized browsing session is established just by communications between the host device, the website server, and the synchronization server, right?

MR. MCBETH: Objection to form.

THE WITNESS: I think you pointed me earlier to a passage in the patent that talked about those devices being an embodiment of how to establish the -- the synchronized browsing session.

But I think, as I mentioned at the time, I didn't really go into the details of how that's established in my declaration because I don't remember you having dealt with that. And if I'm misremembering, then it's my apologies.

BY MR. SACKSTEDER:

Q. Let's look at your declaration for the '145 Patent. If you can go to paragraph 36.

A. Yes, I'm there.

Q. You kind of do take issue with the claim construction by the board even though it's not an express claim construction, right?

MR. MCBETH: Objection to form.

THE WITNESS: Well, what I say is that the board apparently found that the plain and ordinary meaning of the scope of the term "web browsing interaction data" encompassed the results of web queries. And I disagree that that would be understood by a person of ordinary skill as part of that claim term because the patent distinguishes between a request and a response.

BY MR. SACKSTEDER:

Q. You quote the board -- actually, you paraphrase the board in the last sentence of paragraph 36, correct?

A. I do.

Q. And the sentence reads, "However, the board found that the scope of the claim term 'web browsing interaction data' encompasses web pages or portions thereof." Correct?

MR. MCBETH: Objection to form.

THE WITNESS: I see that, yes.

BY MR. SACKSTEDER:

Q. And you cite to page 27 of the -- the decision on Institution, correct?

A. Yes.

Q. All right. So can you turn to that, the '145 Institution decision?

A. And I'm there, yes.

Q. Okay. And on page 27, the portion that you quote, it doesn't end at "web browser" -- "web browsing" -- hold on.

The quote doesn't end at "web pages or portions thereof," correct?

A. That's correct, yes.

Q. It goes on to say "related to a web browsing interaction," correct?

A. "Related to a browsing interaction."

Q. Okay. And in your declaration, it's your position that "web pages related to a browsing

interaction" does not fall within the scope of web browsing interaction, information or data, correct?

MR. MCBETH: Objection to form.

THE WITNESS: What I said was, that I disagree that web pages, or portions thereof, are within the plain and ordinary meaning of the claim term "web browsing interaction data," in view of the specification, and then gave some examples where the specification explicitly distinguishes between a website request and a web response, the former being the request made from a browser and sent to a website, and the response, which is web page data sent from the website in response to the browser request from the browser.

And the latter, that web response, is what web page data is -- as that term is used in the specification.

BY MR. SACKSTEDER:

Q. Let's look at the claim for a second.

A. Now we're on the '145?

Q. Correct.

A. Okay. I'm there.

Q. We're talking about 1.c here; is that correct?

A. Well, wait. What?

Intuit / Samesurf, Inc.
Exhibit 1033
Page 168

Q. Well, the term we're talking about is "web browsing interaction data," correct?

A. That's correct.

Q. And that appears initially in 1.c of Claim 1 of the '145?

A. Yes.

Q. And then 1.d also says, "Operating an application based on said web browsing interaction data," correct?

A. Well, that's the first line here. It goes on to say, "received from said synchronization server to access a website server independent of the synchronization server," and then there's a timing limitation, "subsequent to the activation of the session invitation."

Q. I'm just trying to establish where web browsing interaction data appears in the claim. And it appears in 1.c and 1.d, correct?

A. Yes, that's correct.

Q. And "web browsing interaction data" does not appear in the specification, correct?

A. Oh, the specific phrase? Oh, yeah. I think that's -- that's right from a, like, syntax standpoint. I address that in paragraph 40 of my report, 40 and 41.

Q. And what you say is that web -- web page interaction information in the specification is synonymous with web browsing interaction data in the claim; is that correct?

MR. MCBETH: Objection to form.

THE WITNESS: What I say is, "In my opinion, it is clear from the usage of the phrase 'web page interaction information' in the specification and figures that that term corresponds to the claimed web browsing interaction data found in the claims." And then I have a couple of sentences to explain why.

BY MR. SACKSTEDER:

Q. So there are two differences between those phrases, correct? There's -- the first one is "web page interaction information," and the second is "web browsing interaction data," correct?

A. Those are the two different phrases, that's right.

Q. So it says "page interaction information" for one, and it says" browsing interaction data" for the other. So it has -- one says "page," one says "browsing," and one says "data" and one says "information," correct?

A. That's correct.

Intuit / Samesurf, Inc.
Exhibit 1033
Page 170

Q. And your opinion is that those are the same thing, notwithstanding the fact that they have two different differences in words?

A. That's correct.

Q. What do you think "web browsing interaction data" means as used in the claim?

MR. MCBETH: Objection to form.

THE WITNESS: Oh. Well, that's -- so again, I think you're asking me to construe a claim term, and I'm not going to do that, nor have I proffered a formal claim construction, with the exception of the fact that I believe that the response data that comes back from a web request is outside the scope of that.

But I agree with the board that the plain and ordinary meaning is sufficient. I just think they included stuff that's outside the scope of the plain and ordinary meaning.

BY MR. SACKSTEDER:

Q. So the board is right about plain and ordinary meaning, but not about what the plain and ordinary meaning is?

A. I think that's fair.

Q. The primary way that a user interacts with a web page is through a web browser, correct?

Intuit / Samesurf, Inc.
Exhibit 1033
Page 171

MR. MCBETH: Objection to form.

THE WITNESS: That's what I see in paragraph 40. Yes, I agree.

BY MR. SACKSTEDER:

Q. You think interaction with a web page is the same thing as web browsing; is that correct?

MR. MCBETH: Objection to form.

THE WITNESS: I'm sorry, ask that again.

BY MR. SACKSTEDER:

Q. You think that interaction with a web page is synonymous with data about interaction with web browsing; is that correct?

MR. MCBETH: Objection to form.

THE WITNESS: I'm not quite sure I follow your question. But again, what I said is that a person of ordinary skill would have understood that the primary way a user interacts with a web page is with a web browser.

BY MR. SACKSTEDER:

Q. Would you agree that web page interaction information would include the web pages that are interacted with?

MR. MCBETH: Objection to form.

THE WITNESS: So it might -- that -- the way to answer that question requires me to clarify

what you mean by "the web pages."

And so if I, for example, say, "I need to submit a form to a URL," the URL is the address of a web page. But having done that, I might get back some HTML data in response that -- that reflects the response from the web server after I've done that interaction. The response is not the interaction, the response is the result of the interaction.

BY MR. SACKSTEDER:

Q. So is an interaction with a web page just requesting it?

MR. MCBETH: Objection to form.

THE WITNESS: Well, so there's -- I mean, I would say no, that's not the only way that you can interact with a web page. But again, to the extent that we're getting into what is exactly the scope of web page -- web browser interaction data, I don't have a formal claim construction for that.

So -- and I don't actually think one is necessary. I think the distinction is plain from the specification, where there's a distinction between the request and the response.

BY MR. SACKSTEDER:

Q. My question is, is the interaction with a web page just requesting it?

MR. MCBETH: Objection to form.

THE WITNESS: I don't know that I have a formal opinion on that point right now.

BY MR. SACKSTEDER:

Q. Is it fair to say that a web page is related to a web browsing interaction that results in that web page being returned?

MR. MCBETH: Objection to form.

THE WITNESS: Wait. Are you asking if the response is related to the request?

BY MR. SACKSTEDER:

Q. What is a web page? Is it just the HTML instructions and whatever scripts that are included in it that instruct the browser to display the web page?

MR. MCBETH: Objection to form.

THE WITNESS: Well, so I think the answer to that question depends on, I guess, what lens you're looking at it through.

I in my background section -- let me go there -- talk about three categories of techniques for sharing web pages. So I can give you the address of a web page. The data for that web page exists at a web server. And if I request it using a HTTP request, then I can get that data.

Intuit / Samesurf, Inc.
Exhibit 1033
Page 174

But the data itself is just text. It's in HTML for the most part. Sometimes there's other information that comes across in the request itself.

But for the most part, when you make a web request to a URL that represents a web page, you get HTML back, and then the browser renders that HTML in a human viewable form according to the capabilities of the browser.

So everyone today knows about browsers showing images and videos and whatnot, but back when -- and that -- by the way, that's true on your phone as well.

But back when the patent was written -- and, in fact, I talk about the example of rendered output. In the early days of the Internet, long before May of 2010, where only a few people had computers, and so the one person with the computer who might want to share a web page would actually have to print it out and then show it to you.

So the question of what is a web page kind of depends on are you just talking about the data or are you talking about the rendered form of that data or are you just talking about the address.

BY MR. SACKSTEDER:

Q. Hold on. You say, "Web browsing

interaction data in the claim is synonymous with web page interaction information," right?

MR. MCBETH: Objection to form.

THE WITNESS: Right. We're back on paragraph 40. Right. What I say is, "Therefore, a web page interaction is a web browsing interaction, and web page interaction information is web browsing interaction data."

BY MR. SACKSTEDER:

Q. In your view, that does not include the actual -- either the instructions that caused the web page to be displayed or the web page itself?

MR. MCBETH: Objection to form.

THE WITNESS: So I'm not entirely clear on what you mean by those terms. But the -- my opinion that I describe in the prior couple of paragraphs is that the patent distinguishes between the information that would be sent as part of a request to -- to a web server, and the information that is sent by the web server in response.

And on the prior page of the report that we're looking at, at the end of paragraph 39, I talk about Figure 5(d), which is the flowchart that's described in the patent as the flowchart of, I think, the method performed by the guest device,

Intuit / Samesurf, Inc.
Exhibit 1033
Page 176

which receives web page interaction information from the synchronization server, transmits a request to the web page server using or utilizing that web page interaction information, and then separately receives web page data from the web page server.

So the point that I'm making with respect to the board's understanding of the scope of the claim term, is that the web page data that's received from the web page server is described separately from the web page interaction information that is by the guest device that is received from the synchronization server and then used to make a request to the web server to receive that web page data.

BY MR. SACKSTEDER:

Q. In paragraph 40 you say, "The primary way that a user interacts with a web page is with a web browser."

Is that -- any interaction that a user has with a web page, is that not a web browsing interaction?

MR. MCBETH: Objection to form.

THE WITNESS: I think I don't understand the question. What I was intending to convey there is that there are other ways for users to interact

with web pages, but they are not -- I'm -- I'm specifically thinking about, you know, technical embodiments that aren't -- they are sort of outside the scope of what a user would normally do with a web page. Management stuff, administrative tasks, that sort of thing.

BY MR. SACKSTEDER:

Q. Your discussion here relies on Figures 5(c) and 5(d) from the patent; correct?

A. On pages 15 and 16 of my '145 Patent declaration, that's correct.

Q. And those help to illustrate an exemplary embodiment; correct?

MR. MCBETH: Objection to form.

THE WITNESS: I think that's how they're characterized, but let me just double-check that.

5(c) -- yeah. Well, 5(a) is the block diagram of exemplary data communications transferred between exemplary components, and then 5(c) and 5(d) are the flowcharts of those components.

And then again I believe the specification uses phrases like "exemplary," "synchronized browsing session." But I don't -- sure, okay. So -- no, that's 5(a). Give me a second.

I don't know if Figure 5(c) itself is

described as exemplary, per se. What it says in column 18 of the '145 Patent is that "In exemplary embodiments of the present invention, the synchronization server analyzes communication message 61."

So I think the -- the disclosure of column 18 -- and by the way, that was at line 42, just for the record.

With respect to Figure 5(C), as I'm just reading this, it -- it relates to multiple potential embodiments.

BY MR. SACKSTEDER:

Q. Is there any place in the description of any of these figures that said that they are the exclusive embodiments of the claims?

MR. MCBETH: Objection to form.

THE WITNESS: Oh, you mean that there's only one way of doing it?

BY MR. SACKSTEDER:

Q. Yes.

A. No. I think, in fact, it says the opposite of that.

In column 18, line 31, related to Figure 5(C) says, "However, the following steps may be taken in any other conceivable sequence without

Intuit / Samesurf, Inc.
Exhibit 1033
Page 179

deviating from the scope of the present invention."

And there's a similar statement for Figure 5(d) at column 19, starting at line 13.

Q. Can you look at your declaration for the '448 Patent?

A. I'm there.

Q. Looking at paragraph 37.

A. Yes, I'm there.

Q. Again we're talking about your disagreement with the board about what the plain and ordinary meaning of a claim limitation means, right, includes?

A. Yes, that's right.

Q. And you say that you disagree that "web pages or snapshot data are within the plain and ordinary meaning of 'information related to the shared web browsing interaction.'"

A. In view of the specification.

Q. So you disagree with the board on that?

A. For effectively the same reason that we were just discussing with respect to the '145 Patent. It's related to the difference between a request and a response.

Q. So in paragraph 41 you say, "In my opinion, a POSITA would have understood that 'web

Intuit / Samesurf, Inc.
Exhibit 1033
Page 180

page interaction information' was used equivalently to 'information related to a,'" and then you have brackets with nothing in them, "'web browsing interaction.'"

And you also say, "Similarly, that a 'shared web browsing interaction' was equivalent to a 'relayed web page interaction.'"

Do you see that?

A. Yes, I do.

Q. Okay. Why did you put in empty brackets? You deleted a word, correct?

A. My recollection -- let me go back to that. It's '448. It's -- this is the -- what is the phrase? Hold on.

Right. Because the patent makes a distinction between -- hold on.

Right. We're in the '448 Patent. And element 1.d relates to recording a -- or states, "Recording a shared web browsing interaction responsive to determining that a web browsing interaction of the host device within a web browsing window is a shareable web browsing interaction."

So the point here is that there are two types of interactions that are disclosed.

Let me just open up the '448 Patent on

Intuit / Samesurf, Inc.
Exhibit 1033
Page 181

this.

It distinguishes between -- I'll just refer you to claim 8, which distinguishes between a shared and a nonshared web browsing interaction.

So the point is there's two kinds. The -- so the phrase "web page interaction information," in the -- in the patent it describes determining whether an interaction is shared or not -- or shareable or not shareable that is intended to be relayed to others or kept by yourself effectively.

And then some of the dependent claims and some of the embodiments talk about where you display that information.

So the reason I put in the brackets there is that the claim language in page 31 of the Institution decision recites the claim term "information related to the shared web browsing interaction."

So I didn't want to imply that all web browsing interactions were shared because they're not. So that's why I omitted the word "shared" there, because if I had said that, then it would have implied that all web page interactions were shared.

But then when you keep reading in

paragraph 41, it's my opinion that a person of ordinary skill would have understood that a "shared web browsing interaction" is equivalent to a "relayed web page interaction." And those terms without any sort of edits are what are used in the patent specification.

Q. So the claim term we're actually talking about is "information related to the shared web browsing interaction," correct?

A. That's -- yes, that's the term.

Q. Okay. And I think I know the answer to this question, but what does that term mean, in your opinion?

MR. MCBETH: Objection to form.

THE WITNESS: Oh, so this is -- you're asking me to construe it again? I, again, did not proffer a formal construction for that. I'll give you the same answer I gave with respect of the '145 Patent.

BY MR. SACKSTEDER:

Q. All right. So you can't tell me what it means, but you can tell me that it doesn't include web pages or snapshot data; is that your opinion?

A. No. It's -- my opinion is that it doesn't include web pages or snapshot data and that I have

not told you what it means in terms of a formal claim construction.

Q. Okay. So -- so the one thing that you quibble with in my question was I said, "You can't tell me," and the real answer is you won't tell me?

MR. MCBETH: Objection to form.

BY MR. SACKSTEDER:

Q. Is that correct?

MR. MCBETH: Objection to form.

THE WITNESS: The real answer is that I have not told you.

BY MR. SACKSTEDER:

Q. Would you please tell me?

MR. MCBETH: Objection to form.

THE WITNESS: Not in this forum.

BY MR. SACKSTEDER:

Q. Okay. So you're referring to tell me?

MR. MCBETH: Objection to form.

THE WITNESS: So as we've previously discussed, I'm not proffering a claim construction for these terms because the board instructed that the plain and ordinary meaning applies.

I believe that's correct, except the board, in my view, misunderstood what that plain and ordinary meaning would be in view of the

distinctions in the specification between -- between requests and responses.

BY MR. SACKSTEDER:

Q. So you won't tell me what the plain and ordinary meaning of the term is, but you can tell me that it doesn't include web pages and -- and snapshot data?

MR. MCBETH: Objection to form.

BY MR. SACKSTEDER:

Q. Is that your position?

MR. MCBETH: Objection to form.

THE WITNESS: My position is that web pages and snapshot data are not within the plain and ordinary meaning of the claim term "information related to the shared web browsing interaction" as that term would be understood by a person of ordinary skill in view of the specification. But I'm not proffering a claim construction above and beyond that.

BY MR. SACKSTEDER:

Q. Okay. So you are not drawing any boundaries, but you're saying whatever the boundaries are, these two particular concepts fall outside the boundary, correct?

A. That's a fair characterization.

Intuit / Samesurf, Inc.
Exhibit 1033
Page 185

MR. SACKSTEDER: Let's take a break.

(Recess.)

BY MR. SACKSTEDER:

Q. All right. Mr. Friedman, can you turn to the Institution decision for the '591, and specifically page 10 of that decision.

A. Page 10. I'm there.

Q. The first sentence at the top of page 10 says, "The asserted prior art, like the challenged patent, presents high-level functional descriptions of web-based software with flowcharts and diagrams between server components," correct?

A. I see that, yes.

Q. Do you agree that the challenged patents present high-level functional descriptions of web-based software?

MR. MCBETH: Objection to form.

THE WITNESS: I don't know that I have an opinion on that point. I don't think I addressed that in my declaration.

BY MR. SACKSTEDER:

Q. And you don't have any opinion on it as you sit here today?

A. I haven't -- I haven't considered that point.

Intuit / Samesurf, Inc.
Exhibit 1033
Page 186

Q. If you were to consider it as you sit there, would you have an opinion about it?

MR. MCBETH: Objection to form.

THE WITNESS: Maybe. I mean, it's -- it's talking about high-level functional descriptions, flowcharts, diagrams.

I mean one of the things I'll note right now is that -- which figure? In fact, all of the figures involve communications not just related to server components.

So I mean, I don't know that this statement is necessarily all-inclusive. But, you know, at this point I feel like I'm going a little bit outside the -- the opinions that I rendered, which were related to, you know, the grounds for petition. So I, you know, I didn't spend a whole lot of time looking at the board's characterization of the prior art.

BY MR. SACKSTEDER:

Q. I'm more interested in your thoughts about the board's characterization of the challenged patents.

MR. MCBETH: Objection to form.

THE WITNESS: Oh, I see what you're saying. So right. I read this to be referring to

the prior art, which I think it is, but you're pointing --

BY MR. SACKSTEDER:

Q. It says "like the patents," or "like" --

A. You're saying -- you're pointing at the phrase "like the challenged patent," comma, "presents such and such."

I would want to go back and look at what the board said about the challenged patents -- patent, but I haven't done that.

Q. Okay. Well, you have the portion that I just referred you to in front of you, I assume.

A. I do, yes.

Q. Do you disagree with that?

MR. MCBETH: Objection to form.

THE WITNESS: I don't want to take this one sentence out of context and characterize that. I would want to do -- I would want to answer that question in a more considered, thoughtful way.

BY MR. SACKSTEDER:

Q. This is your chance, sir.

MR. MCBETH: Objection to form.

THE WITNESS: Well, I mean, I wasn't asked to do that in preparation for -- or in the drafting of my declaration. So I don't know that I have an

opinion on whether the board's characterization of the asserted prior art is, in fact, like the challenged patent, which is how I'm interpreting your -- your question.

BY MR. SACKSTEDER:

Q. I'm more interested in the description that they -- that all of them present high-level functional descriptions of web-based software.

MR. MCBETH: Objection to form.

BY MR. SACKSTEDER:

Q. Is it your testimony you don't have an opinion about that?

A. I've not formed an opinion. I would have to, you know, evaluate what the board was looking at when they made that statement and determine whether I agree or not. But I haven't done that.

Q. And there is a similar statement on page 44 of the Institution decision. Can you take a look at that?

A. So can you tell me where?

Q. Sure. Page 44.

It says here --

A. Are we on the '591 Institution decision?

Q. Yes, page 44.

A. Okay. I'm there.

Intuit / Samesurf, Inc.
Exhibit 1033
Page 189

Q. Last paragraph before the conclusion has a sentence that begins, "Here the invention and prior art are presented in high-level functional terms and are easily understandable, as we indicated previously in Section II A, and as shown by our discussion of the invention in prior art throughout this decision."

Do you agree with that characterization specifically of the claimed invention as being presented in high-level functional terms that are easily understandable?

MR. MCBETH: Objection to form.

THE WITNESS: Okay. So in order for me to answer that question, I would want to look at what the board indicated previously and as shown by their discussion throughout this decision. So I'd want to actually take into account what it is that they looked at to see if I agree or disagree with that characterization.

BY MR. SACKSTEDER:

Q. You reviewed the board's decision before preparing your declaration, correct?

A. I did.

Q. All right. And you did not put anything in your declaration to -- to dispute that

characterization by the board, correct?

MR. MCBETH: Objection to form.

THE WITNESS: In my declaration, other than, I think -- well, this is the '591 again.

I don't believe I addressed that, so I don't think I have an opinion in here in this declaration related to the question that you're answering -- asking.

BY MR. SACKSTEDER:

Q. All right. Let's look again at the document with Claim 1 from each patent.

A. Okay.

Q. Specifically let's start on the '591.

So Claim 1 is written from the perspective of the guest device, correct?

A. That's what it says in the preamble, yes.

Q. And that's the second device to join the synchronized browsing session, correct?

MR. MCBETH: Objection to form.

THE WITNESS: I mean, "second" isn't in the claim language. Element 1.a says, "Detecting an activation of a hyperlink associated with the synchronized browsing session by a guest device."

I don't know that you can make that characterization just by the -- I don't -- I don't

Intuit / Samesurf, Inc.
Exhibit 1033
Page 191

know.

BY MR. SACKSTEDER:

Q. Are you aware of any embodiment in the '591 Patent where the guest device joins the synchronized browsing session before the host device?

MR. MCBETH: Objection to form.

THE WITNESS: So -- hold on.

So the patent, I think, isn't as rigid in its descriptions as you're implying by your question.

One of the example embodiments in column 6 is "A synchronized browsing session can be conducted by more than one device where web page interactions performed by any controlling party will be forwarded to the other attendees."

And it -- this is at line 55 of column 6 -- describes that "A leading device, such as a host device, may be defined as a device that possesses control within the synchronized browsing session."

And then it goes on to continue that "Yet other embodiments, control within the synchronized browsing session may be passed from one attending device to another."

Intuit / Samesurf, Inc.
Exhibit 1033
Page 192

So I guess I disagree with the characterization that the host device, or what they're talking about as a leading device, is necessarily the same device all the time.

BY MR. SACKSTEDER:

Q. The only -- okay. Fair enough.

The only reference to "host device" in Claim 1 of the '591 Patent is in 1.d, correct? And it's talking --

A. Ah -- I'm sorry, go ahead.

Q. Well, do you agree that the only reference to "host device" in Claim 1 of the '591 is in 1.d?

A. Yes.

Q. And that portion of the claim talks about cookie -- "a URL of the website and cookie information associated with the website and the host device," correct?

A. Yes, that language is in Claim 1.d.

Q. 1.d does not recite a synchronized browsing session, correct?

A. By itself, no, it does not.

Q. And the same is true for 1.e, correct?

A. That is true.

Q. Nothing in Claim 1 of the '591 Patent recites anything happening either simultaneously or

nearly simultaneously, correct?

MR. MCBETH: Objection to form.

THE WITNESS: Well, the word "simultaneous" does not appear in Claim 1.

BY MR. SACKSTEDER:

Q. Nor do the words "nearly simultaneous," correct?

A. That's correct.

Q. And you don't have any proposed claim construction that would interpret any -- any limitation or term in Claim 1 as requiring anything to happen simultaneously or nearly simultaneously, correct?

MR. MCBETH: Objection to form.

THE WITNESS: I have not proffered any claim construction to that -- to that point, that's correct.

BY MR. SACKSTEDER:

Q. And the term "coordinated" does not appear in Claim 1, correct?

A. No, it does not.

Q. And you have not provided any construction of any term in Claim 1 that would require anything to be coordinated, correct?

MR. MCBETH: Objection to form.

THE WITNESS: I have not proffered such a claim construction, that's correct.

BY MR. SACKSTEDER:

Q. Or any argument that things have to be coordinated in a particular way in Claim 1, correct?

MR. MCBETH: Objection to form.

THE WITNESS: Well, that's a different question. You were asking about claim construction, and now I think you're asking about argument.

For example, in paragraph 70 of my '591 declaration, I discuss an embodiment in the Lebrun reference that relates to sending a shared list of pages from one place to another, and I say that a "Person of ordinary skill would have understood that uncoordinated browsing of a shared list of pages is not within the scope of a synchronized browsing session."

BY MR. SACKSTEDER:

Q. So one thing in your view that the plain and ordinary meaning of "synchronized browsing session" requires is coordination; is that correct?

MR. MCBETH: Objection to form.

THE WITNESS: No, that's not what I said.

What I said is that uncoordinated browsing of a shared list of pages is not within the scope of

Intuit / Samesurf, Inc.
Exhibit 1033
Page 195

that term.
BY MR. SACKSTEDER:
Q. Is there any requirement in Claim 1 for coordination in any way?
MR. MCBETH: Objection to form.
THE WITNESS: I don't know that I have a specific opinion about that question directly.
BY MR. SACKSTEDER:
Q. Is there anything in Claim 1 that requires any actions to occur simultaneously or nearly simultaneously?
MR. MCBETH: Objection to form.
THE WITNESS: I think I'll give you the same answer, which is I didn't construe the claims to include that limitation.
BY MR. SACKSTEDER:
Q. There is a reference in 1.d to real-time. Do you see that?
A. I do see that, yes.
Q. It is talking about data that's received from the synchronization server where the data relates to a website being accessed in real-time by a host device, correct?
A. Yes, that's what it says.
Q. And that refers to something the host

Intuit / Samesurf, Inc.
Exhibit 1033
Page 196

device is doing on its own, that is, accessing a website in real-time?

MR. MCBETH: Objection to form.

THE WITNESS: I mean, the claim clearly says the data relates to a website being accessed in real-time by a host device. I don't perceive the "on its own" modifier there.

BY MR. SACKSTEDER:

Q. Do you have an understanding of what "real-time" means?

MR. MCBETH: Objection to form.

THE WITNESS: I mean, I know what I think it means in general. I don't know that I formed an opinion as to what it means in the scope of the patent.

BY MR. SACKSTEDER:

Q. What do you think it means in general?

A. I mean, the context actually matters. In -- well, I'll just point you at my CV where in 2000 I was working for a supply chain company where, as I say, we delivered real-time intelligence to supply planning staff.

In context, that's a distinction between delivering real-time intelligence versus doing a batched processing overnight and delivering a report

in the morning.

So same word, but not relevant to the context of the '591 Patent. The '591 Patent relates to a website being accessed in real-time. And the title of the patent, in fact, also uses the word "real-time." And the background at column 2, line 7, uses the phrase "utilize the web to view online content with others in real-time." But that's mostly it.

Q. So those -- those uses in the patent regarding real-time, what -- what do you understand those to mean?

MR. MCBETH: Objection to form.

THE WITNESS: Again, you know, to the extent you're asking me for claim construction, I'm -- I feel like I'm not -- I feel like it's not appropriate for me to proffer one because the board has instructed that the plain and ordinary meaning applies.

BY MR. SACKSTEDER:

Q. Let me ask you this.

A. Okay.

Q. The use of "real-time" in the title of the patent -- that is not a claim -- what do you understand that to mean?

MR. MCBETH: Objection to form.

THE WITNESS: I mean at -- wait. I'm sorry. Ask that question again.

BY MR. SACKSTEDER:

Q. You just referenced the title of the patent, right, and its use of the term "real-time."

A. That's correct.

Q. What does it mean in that context?

MR. MCBETH: Objection to form.

THE WITNESS: Well, I mean that's a claim term.

BY MR. SACKSTEDER:

Q. Not in the title?

A. It's the same eight letters with a hyphen. I don't know -- are you suggesting that it has a different meaning?

Q. I don't know, but it's used in the title.

A. It is. It's also used in the specification.

Q. And in the -- in the claim it's specifically referring to a website being accessed in real-time by a host device. I don't think that's what the title was talking about.

MR. MCBETH: Objection to form.

THE WITNESS: Oh, okay. So I think now

Intuit / Samesurf, Inc.
Exhibit 1033
Page 199

you're asking me, what's the difference between the usage of the word "real-time" in the title and the usage of the word "real-time" in the claim.

BY MR. SACKSTEDER:

Q. I'm not asking you that at all, sir.

You yourself referenced the use of the term "real-time" in the title. Do you have no understanding of the meaning of the title of the patent that you're opining about?

MR. MCBETH: Objection to form.

THE WITNESS: Well, so at the risk of being circular, the title reads "Method and apparatus for the implementation of a real-time shareable browsing experience on a guest device." And the technical field of the invention recites "A shareable browsing experience, and more specifically to a method and apparatus for the implementation of a synchronized browsing session on a guest device utilizing the transfer of URL form data, script and other information."

So I would understand those to be referring to each other.

BY MR. SACKSTEDER:

Q. Okay. What do they mean?

MR. MCBETH: Objection to form.

THE WITNESS: So again, it's not in my purview to proffer a claim construction because the board has already indicated that the plain and ordinary meaning has to apply.

BY MR. SACKSTEDER:

Q. I'm not asking you for a claim construction. I'm asking you about other parts of the patent.

A. You're specifically asking me about what is a real-time browsing experience or a synchronized browsing session. That is, in fact, a claim term.

Q. Where is "real-time browsing experience" in Claim 1 of the '591 Patent?

A. Oh, no. I'm talking about the synchronized browsing session. That's at line 1 -- column 1, line 10 to 11.

Q. That's not what I was asking about. I was asking about the reference to "real-time."

A. Right. I believe the title of the patent refers to the claim term "synchronized browsing session."

Q. So "synchronized browsing session" then means a real-time interaction; is that correct?

MR. MCBETH: Objection to form.

THE WITNESS: So there's a difference

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Intuit / Samesurf, Inc.
Exhibit 1033
Page 201

between a reference and a definition. And I am -- I feel like you're attempting to constrain my opinions as -- or characterize my opinions as offering a claim construction when that is the opposite of what I'm intending to do. So --

BY MR. SACKSTEDER:

Q. I'm just trying to figure out what -- these claims are made of words, right? Can you agree with me on that?

A. Claims are, in fact, made of words, yes.

Q. And in your analysis, you had some meaning in mind for the words that you were applying, correct?

A. I -- I endeavored to apply the plain and ordinary meaning as would have been understood by a person of ordinary skill in the art.

Q. And you just referred to the title of the '591 Patent, "Method and apparatus or the implementation of a real-time shareable browsing experience on a guest device," correct?

A. I did refer to that.

Q. And then you said that that title refers to the synchronized browsing session that's recited in Claim 1 of the '591 Patent, correct?

A. I believe those phrases are related, yes.

Q. All right. And so a synchronized browsing session needs to be in real-time; is that correct?

MR. MCBETH: Objection to form.

BY MR. SACKSTEDER:

Q. I'm just trying to figure out what your opinion is.

A. Well, so again, I don't have a formal opinion on the claim construction of "synchronized browsing session." It's my understanding that I'm not permitted to because the board has said plain and ordinary meaning, and that there's no -- in other words, this isn't a claim construction declaration.

Q. You applied the plain and ordinary meaning as you understand it would be applied by a person of ordinary skill in the art, correct?

A. Yes, that's right.

Q. And to a -- as we said this morning, to a person who is not of ordinary skill in the art, how is a person who is not of ordinary skill in the art supposed to know what you had in mind as the plain and ordinary meaning for a term?

MR. MCBETH: Objection to form.

THE WITNESS: Well, so now we're getting back to what I said about the plain and ordinary

Intuit / Samesurf, Inc.
Exhibit 1033
Page 203

meaning of "synchronized browsing session." And there are several examples in my declaration of what I say is excluded from the plain and ordinary meaning, which, as I understand it, is a distinct question then, what is the formal claim construction for "synchronized browsing session"?

BY MR. SACKSTEDER:

Q. Is it fair to say at least that a synchronized browsing session would cover a real-time web browsing interaction?

MR. MCBETH: Objection to form.

THE WITNESS: Would cover a --

BY MR. SACKSTEDER:

Q. Let me rephrase that.

A. Okay.

Q. Is it fair to say that the claim term "synchronized browsing session" would encompass a real-time shareable browsing experience on a guest device?

MR. MCBETH: Objection to form.

THE WITNESS: Oh. I think it's actually fairer to say that a synchronized browsing session would include, as is claimed in element 1.d, a website being accessed in real-time by a host device. I think you misread the title.

Intuit / Samesurf, Inc.
Exhibit 1033
Page 204

BY MR. SACKSTEDER:

Q. So you think the title is just referring to the real-time access of the -- of a website by the host device and nothing else?

MR. MCBETH: Objection to form.

THE WITNESS: Well, I mean, if we are getting into the construction of the title, that's a little, like, weird to me. But the title, I think, is referring to the implementation of a real-time shareable browsing experience, and you're implementing that on a guest device.

BY MR. SACKSTEDER:

Q. And you just said that the title refers to the synchronized browsing session that's recited in the claims, correct? That was your whole reason for not providing me any definition of what "real-time" means in the title.

MR. MCBETH: Objection to form.

THE WITNESS: I mean, I don't understand that the title is limiting in any sort of way. But as I said earlier, I believe reading the title and then reading the description of the specification, that the phrase "real-time shareable browsing experience" is related to the invention that's described further on in the specification.

Intuit / Samesurf, Inc.
Exhibit 1033
Page 205

BY MR. SACKSTEDER:

Q. Well, you also specifically said that it referred to the synchronized browsing session of the claim, correct?

MR. MCBETH: Objection to form.

THE WITNESS: So I did. I mean to the extent that that's somehow limiting, I don't -- that wasn't my intent.

BY MR. SACKSTEDER:

Q. I'm actually not trying to limit anything. I'm just trying to figure out what you mean by "synchronized browsing session in real-time" and whether they are coextensive, as used in the claim, or whether the synchronized browsing session occurs -- includes interactions in real-time but is not limited to that.

MR. MCBETH: Objection to form.

THE WITNESS: So that is an excellent question, and the answer is I haven't actually evaluated it.

BY MR. SACKSTEDER:

Q. You have no idea.

MR. MCBETH: Objection to form.

THE WITNESS: That's not what my answer was.

Intuit / Samesurf, Inc.
Exhibit 1033
Page 206

BY MR. SACKSTEDER:

Q. Okay. You said you haven't evaluated it. So do you have an answer beyond that?

A. Not at this time, no. I haven't evaluated it.

Q. Okay. If something happens -- and I'm talking in your general experience. I think you said you had a general knowledge of real-time.

Does something happening in real-time, have to be at that very moment simultaneous or is there some wiggle room?

MR. MCBETH: Objection to form.

THE WITNESS: So again, context matters. In the -- in the context of you're coming from a supply chain management system, which does nightly batch runs on a mainframe computer and sends out a report in the morning, if there's a way for you to get reports on demand, the word "real-time" has been applied to that system even though it might actually take you half an hour to get the query back, because half an hour is faster than, you know, overnight.

So you can't sort of say that there's any one meaning of "real-time" generally. It really is context dependent.

BY MR. SACKSTEDER:

Q. And it's kind of a matter of degree; is that correct?

MR. MCBETH: Objection to form.

THE WITNESS: Well, I think it's relative to the alternatives.

BY MR. SACKSTEDER:

Q. If you are co-browsing a website with somebody and you want it to happen in real-time, how much wiggle room do you have there?

MR. MCBETH: Objection to form.

BY MR. SACKSTEDER:

Q. Before it's not real-time anymore?

MR. MCBETH: Same objection.

THE WITNESS: Oh, I don't know that I can quantify that, per se, or have attempted to.

The -- the example that I think I gave you earlier, which is if you send me a link and you're looking at a web page and then I look at it tomorrow, I mean, that's plainly not real-time because you're not even looking at it anymore. But I don't know that I have any more information than that.

BY MR. SACKSTEDER:

Q. What if you look at it in a minute? Is that real-time?

Intuit / Samesurf, Inc.
Exhibit 1033
Page 208

MR. MCBETH: Objection to form.

THE WITNESS: So one -- hold on.

In here one of the examples I give -- and this isn't -- I don't specifically use the word "real-time" in paragraph 52. But I'm describing Prajapat's other two embodiments, not the dynamic one, where it describes how a first browser doesn't forward the URL of the web page that it receives until after it's already received it.

And what that means is the user of the first browser can be clicking or scrolling at the same time as the URL is being sent to the second browser, which means the second browser doesn't even have the web page before -- before the first browser is starting to use it.

So even as the term "synchronized" is used in Prajapat, those -- that embodiment, those two browsers would not be synchronized. And that's where I talk to -- talk about Prajapat at paragraph 30.

BY MR. SACKSTEDER:

Q. So in -- in the claimed technique, is there a requirement for both the host and the guest device to be starting to view the web page at exactly the same time?

MR. MCBETH: Objection to form.

THE WITNESS: I would not say "exactly the same time" is a limitation here. I think the -- the distinction that I'm making vis-a-vis Prajapat is that the petition appeared to refer to all of the embodiments in Prajapat is synchronized. And I'm saying no, they're not. In fact, here's an explanation of why the simple web page sharing isn't synchronized.

BY MR. SACKSTEDER:

Q. So in your view, if the web page has to be sent to the guest user after the host user has already viewed it or accessed it, then that's not synchronize?

MR. MCBETH: Objection to form.

THE WITNESS: Not as that term is used in Prajapat.

BY MR. SACKSTEDER:

Q. Can you talk about how it's used in the claims of the '591 Patent?

MR. MCBETH: Objection to form.

THE WITNESS: Right. So I didn't answer that question. And again, to refer back to our earlier conversation, I didn't compare the use of the word "synchronized" in Prajapat with the use of

the word "synchronized" in the '591 Patent.

BY MR. SACKSTEDER:

Q. But you are saying that the embodiment that you just described in your paragraph 52 of Prajapat does not satisfy the requirement for interactions that are synchronized; is that correct?

A. As that term is used in Prajapat.

Q. Okay. And you're not saying anything about that with regard to as the term is used in the patent, in the '591?

MR. MCBETH: Objection to form.

THE WITNESS: I mean not in this paragraph. That's -- what I'm -- I mean the paragraph, I think, speaks for itself. But I say at the end, the two browsers aren't synchronized as Prajapat is using that term.

And the reason I say that is because if you look at the citations to Prajapat, the simple embodiment starts at paragraph 43, which -- let me just get back there.

MR. MCBETH: I just wanted to note that I had an objection there that's not coming through on the real-time.

THE REPORTER: I can't hear you. I'm sorry.

Intuit / Samesurf, Inc.
Exhibit 1033
Page 211

MR. MCBETH: So I just wanted to note that I had an objection there that's not coming through on the real-time. Thank you.

THE REPORTER: Please speak up, because if I'm not looking at you, I can't hear you.

MR. MCBETH: Okay. Thank you.

THE WITNESS: Right. Prajapat in paragraph 43 is relating to its simple -- or peer-to-peer simple web page sharing, which is introduced in paragraph 41 with respect to Figure 3. My paragraph 52 cites that.

And then I describe that that embodiment isn't disclosed to be synchronized as that term is used in Prajapat, with reference to Prajapat at paragraph 30 which says, for example -- or "As an example, changes to the content tree in browser 12a may then be synchronized with other browsers in a web page sharing session as a content tree associated with browser 12 is updated on the web media server 14 associated with the browser 12. Multiple page load events may be generated from the web media server 14 to the browser 12 to cause full content synchronization."

So that description is only in what Prajapat calls its dynamic web page sharing.

Intuit / Samesurf, Inc.
Exhibit 1033
Page 212

And the peer-to-peer --

BY MR. SACKSTEDER:

Q. That's enough. I mean you're --

A. Okay.

Q. Let's go to your description of Figure 5(a) in your '591 declaration. Let's walk through this again. There's a request 60 that goes from the host device to the website server, correct?

A. Host device -- yes, makes a website request to the website server, and that's 60.

Q. And 66 is the response. It provides some HTML so that the host device can draw its -- the web page in its browser, correct?

A. Yes. The '591 Patent calls that "website content reply."

Q. Right. And after that request is made to the website server, then the host device also sends a message to 61 to the synchronization server?

A. Yes, that's right.

Q. And then the synchronization server provides some information in message 64 to the guest device, and then the guest device makes a request to the website server as well using the information it got from the synchronization server, correct?

MR. MCBETH: Objection to form.

THE WITNESS: That's one of the embodiments reflected in Figure 5(a). One of the preferred -- or I can't remember what the phrase is -- "exemplary embodiments" is where the communication message 64 is a duplicate of website request 60, but it doesn't have to be.

BY MR. SACKSTEDER:

Q. And then -- fine. The request 65 goes to the website server, and then the reply to that is -- is 67, correct?

A. Hold on.

MR. MCBETH: Objection to form.

THE WITNESS: The guest device makes request 65 and receives content reply 67, that's correct.

BY MR. SACKSTEDER:

Q. All right. And it's entirely possible that the website server provides the HTML in response to 60, to the request from the host device, sometime before the -- the response to 65, that is 67, gets to the guest device and allows the guest device to render the same web page, correct?

MR. MCBETH: Objection to form.

THE WITNESS: When you say "it's possible," there are, I think, a number of

Intuit / Samesurf, Inc.
Exhibit 1033
Page 214

embodiments. I'd have to go back and look at the '591 Patent or the specification as to the timing on that. Hold on.

I want to say the -- I want to say that the figures talk about the timing, but let me just go check that. I guess I'm not seeing that in here right now.

Excuse me. Let me shut my door.

Can you ask your question again? I want to make sure I answered it correctly or thoroughly.

BY MR. SACKSTEDER:

Q. I will ask it again. My question was just there's nothing that -- in this flow that occurs, there's -- there's nothing that prevents the response to the request 60, so 66, from getting back to the host device and being rendered as a web page before the guest device gets the response 67 that it can render as a web page. So that some time can pass between 66 arriving at the host device and 67 arriving at the guest device, and each of them rendering the web page.

MR. MCBETH: Objection to form.

THE WITNESS: I don't -- I don't actually think I talked about that sort of timing question.

BY MR. SACKSTEDER:

Intuit / Samesurf, Inc.
Exhibit 1033
Page 215

Q. I'm not asking whether you talked about it. I'm asking what happens.

MR. MCBETH: Objection to form.

THE WITNESS: No, I understand that. I guess the point is that because I didn't talk about it, I haven't, I think, maybe considered that question in the context that you're asking it.

And so the short answer is I would have to reread the patent to -- with that question in mind to answer it.

BY MR. SACKSTEDER:

Q. You don't know whether there can be a lag in time between when the host device receives the website HTML and when the guest device receives it in order for it to be a synchronized browsing session?

MR. MCBETH: Objection to form.

THE WITNESS: Oh, that's a different question. First of all, a person of ordinary skill would understand that the Internet or networks generally can be lagging. So that's not -- that's not sort of an unknown concept. I -- but in view of that lag, or the possibility of a lag, I did not sort of render an opinion on, if I'm understanding your question, "how much lag is too 'laggy.'"

Intuit / Samesurf, Inc.
Exhibit 1033
Page 216

BY MR. SACKSTEDER:

Q. Okay. So you don't know how much of a delay there can be and it still be a synchronized browsing session, is that what you're saying?

MR. MCBETH: Objection to form.

THE WITNESS: I did not -- I don't have an opinion on that, that question.

BY MR. SACKSTEDER:

Q. There is some, at least in your paragraph 33, there's some indicators of relative timing. You know, you in the second sentence -- actually the third sentence -- strike that.

Second sentence says, "A host device 10 makes a website request 60 to a website server," correct, server 12?

A. Yes, that's right.

Q. And then the next sentence says, "Then information about that web request (i.e., information related to the shared web browsing interaction performed by the host device, which may comprise the URL of the server, cookie information, form data, JavaScript or other user-inputted information or files) is forwarded in message 61 to a synchronization server 13," correct?

A. Yes, that's right.

Q. So in your description, the request goes to the website server from the host device first, and then after that the -- the message 61 is sent to the synchronization server, correct?

MR. MCBETH: Objection to form.

THE WITNESS: In this description, that's -- that's what I relate. But I would again point out that I'm citing to specific passages in the specification which go into more detail --

BY MR. SACKSTEDER:

Q. I know. I'm --

A. -- including the sections that we talked about earlier where -- where the -- the order that I'm talking about isn't necessarily the only order that can occur.

Q. Right. But in your description, the next thing you say is "The synchronization server then forwards that information to guest device 14 and message 64," right?

A. That's correct.

Q. And then, obviously, guest device 14 has to receive that before it can use that information to formulate its own website request 65, correct?

MR. MCBETH: Objection to form.

THE WITNESS: Message 61 is sent from the

synchronization server to the guest device -- I'm sorry, that's backwards.

Message 61 gets to the synchronization server. The information in it is forwarded as message 64 to the guest device. That information is then used to formulate the website request 65.

BY MR. SACKSTEDER:

Q. Right. So these things, as you described them here, happen in this order: 60, 61, 64 and 65, correct?

MR. MCBETH: Objection to form.

THE WITNESS: That is the order that I related of those four messages in this paragraph. In my prose, again, referring to the specification which describes other orders. So I'm not intending this to limit the -- the invention, or the description of the invention.

BY MR. SACKSTEDER:

Q. So in that description, though -- I'm just talking about that order for now -- we don't know exactly how much time it's going to take for the website HTML 66 to come back to the host device, right?

A. That is true.

Q. We also don't know how long it's going to

Intuit / Samesurf, Inc.
Exhibit 1033
Page 219

take for 61 to get to the synchronization server, 64 to get to the guest device, 65 to be sent to the website server, and 67 to be sent back to the guest device, correct?

MR. MCBETH: Objection to form.

THE WITNESS: I think, generally speaking, we don't know -- I mean the patent doesn't -- let me -- let me unwind that.

As I noted earlier, a person of ordinary skill would understand that the Internet can be laggy, so there is no specific disclosure about how long these communications would take.

BY MR. SACKSTEDER:

Q. And so there's no way of telling whether there is sufficient lag that this is no longer a synchronized browsing session, correct?

MR. MCBETH: Objection to form.

THE WITNESS: I don't know that I can answer that question right now.

BY MR. SACKSTEDER:

Q. So if a POSITA is reading Claim 1 of the '591 Patent, and, you know, we were talking about real-time earlier, and there's the real-time -- hold on. Let me get the words of the claim.

There is the -- the website being accessed

in real-time by a host device in Claim 1 of the '591 Patent, correct?

MR. MCBETH: Objection to form.

THE WITNESS: Element 1.d, correct.

BY MR. SACKSTEDER:

Q. And if there is lag, how does the POSITA know whether the website is being accessed in real-time by the host device?

MR. MCBETH: Objection to form.

THE WITNESS: I don't know the answer to that question right now.

BY MR. SACKSTEDER:

Q. Let's look at Claim 1 of the '145 Patent, which is in our excerpt of the claims document.

A. I have that.

Q. All right. So this one is, again, this claim is again from the perspective of a guest device. It's a method that the guest device is performing the steps of, correct?

A. Yes.

Q. So the synchronized browsing session is recited in the preamble in 1.b, correct?

A. Yes, yes.

Q. And it is not recited in any other limitation of the claim, correct?

A. That is correct.

Q. And there is no express recital of anything occurring simultaneously or nearly simultaneously, correct?

A. That is correct.

Q. And there's no recitation of anything being coordinated, correct?

A. You said "coordinated"?

Q. Coordinated.

A. Coordinated, that's correct. There's no recitation of coordinated in this claim.

Q. And there's no recitation of the term "real-time" in this one, correct?

A. No there is not.

Q. Is there any particular requirement for timing in the -- anywhere in the claim, either explicit or implicit?

MR. MCBETH: Objection to form.

THE WITNESS: Well, let me -- we're back in '145. Hold on a second.

I, from memory, was making or had a discussion somewhere about what was not within the scope of the synchronized browsing session, but I think I didn't put that into this declaration.

BY MR. SACKSTEDER:

Q. Did you put it in any declaration regarding any of these patents?

MR. MCBETH: Objection to form.

THE WITNESS: Yes. In the '591 declaration, paragraph 71, related to the Lebrun reference, I note -- this is at the bottom of page 33 of my '591 declaration.

I note that "Lebrun discloses that a user may, after viewing a page herself, optionally decide to share it with others."

And I know that that's always the way the web has worked. But optionally sharing a web page with others and having those others view the same web pages is not a synchronized browsing session per the meaning of the '591 Patent.

BY MR. SACKSTEDER:

Q. So when we were talking about Claim 1 of the '591 and Figure 5(a) specifically, if you have a situation where -- if you can turn back to -- hoping not to go back to 5(a) anymore, but let's go back to 5(a).

If you have a situation where 66 gets back to the host device before the guest device received the invitation from the synchronization server at 64, then you have a situation where one person is

viewing the website and the other one is not, correct?

MR. MCBETH: Objection to form.

THE WITNESS: Hold on. Can you lay that out again?

BY MR. SACKSTEDER:

Q. Hold on. Yeah.

So again, the host device sends 60 to the website server.

A. Right.

Q. The website server is going to send 66 back, right?

A. Yes.

Q. Okay. Is there any requirement that the decision to send 62 to the synchronization server has to happen sort of automatically or simultaneously with sending 60 to the website server?

MR. MCBETH: Objection to form.

THE WITNESS: So a couple of points. You said 62, which is not the right -- I think you meant 61.

BY MR. SACKSTEDER:

Q. I'm sorry. I meant 61. You're right.

A. Then second, we're, I think, back to the

'591 Patent. If that's right, the claims don't -- the claims of the '591 don't relate to those arrows. They relate to other arrows.

Q. Oh, they relate to arrows being received by the guest device.

A. By the guest device, right. So we hadn't gotten that far. In your explanation, you were talking about website request 60 sent from the host device, and then the message 61 being sent from the host device to the synchronization server.

But 1.d, the correspondence of 1.d to Figure 5(a) is the element, or number 64 that -- the data that's received by the guest device -- excuse me -- from the synchronization server.

Q. So in your paragraph 71 you're saying, "... optionally sharing a web page with others (and having those others view the same web pages) is not a 'synchronized browsing session' per the meaning of the '591 Patent," correct?

MR. MCBETH: Objection to form.

THE WITNESS: Well, I mean that's a paraphrase, but --

BY MR. SACKSTEDER:

Q. I think I read it exactly.

A. Did you?

Intuit / Samesurf, Inc.
Exhibit 1033
Page 225

Q. I didn't say "open paren", close paren." But I think otherwise I read it verbatim.

A. I'm sorry. I think maybe I was looking at the line above that.

Q. I started with the word "optionally." I said, "... optionally sharing a web page with others (and having those others view the same web pages) is not a," quote, "'synchronized browsing session' per the meaning of the '591 Patent," correct?

A. Yeah, that's what it says, and I agree with that, that's right.

Q. And there you are talking about actions that are being taken by the -- what's asserted to be the host device in the petitioner's view of the reference, correct?

A. So at the top of paragraph 71 -- I'm quoting Lebrun from column 43 -- that "Lebrun teaches each such web client can have its own personalized group-surfing session, which a second web client can view and view the history thereof."

I note, in my view, "a person of ordinary skill would not have thought that viewing someone else's personalized browsing history was related to the claimed 'synchronized browsing session.'" And then I go on and explain. And note that, "In fact,

Lebrun characterizes this embodiment as page sharing."

So I describe page sharing in the background of my declaration. The idea of sending links around is old in the art, but that's not what this -- that's not what the '591 Patent is related to.

Q. "Optionally" -- you said, "optionally sharing a web page with others (and having those others view the same web pages) is not a 'synchronized browsing session' per the meaning of the '591 Patent," correct?

A. That's right.

Q. All right. So let's go back to Figure 5(a). And let's assume that the host device requests a web page and receives the response to the web page 66. And then decides I want to share this web page with the guest device.

And so begins the process that sends the message 61 to the synchronization server. And then the synchronization server sends the information to the guest device. Guest device requests the same web page and receives it back in 60.

Do you see that? That's something that could happen as contemplated by the challenged

Intuit / Samesurf, Inc.
Exhibit 1033
Page 227

patents?

MR. MCBETH: Objection to form.

THE WITNESS: Hold on a second. Let me see if I understand this right.

You're, I think, suggesting that Lebrun's disclosure of maintaining a list of my web browsing history, and then sending that to someone else, and having that someone else --

Q. I think you're going beyond what I was saying, so let me --

A. No. But I mean that's what the Lebrun reference teaches. It specifically says here's someone else's personalized browsing history or --

Q. I'm not asking you to answer a question I didn't ask you.

A. Okay.

Q. So it is possible in the -- the system that is disclosed and claimed in these patents, for a host device to issue a request to a website server, receive the response, and then decide to initiate a synchronized browsing session afterwards? Would you agree with that?

MR. MCBETH: Objection to form.

THE WITNESS: I don't know. I don't think I've contemplated that. It seems like you're

reordering the steps of the claim, and I don't know that I considered that theory.

BY MR. SACKSTEDER:

Q. Okay. I don't think I'm reordering anything. I'm just assuming that the decision to start a synchronized browsing session occurs after the website server returns the reply to the host device's request. Is that a possibility?

A. Well, wait a minute. I think you're conflating what's in Figure 5, which is sort of the flowchart -- not flow chart -- but block diagram of all of the components with what the claims say.

And the claims talk about the particular steps that include -- I mean 1.a says, "Activation of a hyperlink associated with the synchronized browsing session by a guest device."

(Reporter clarification.)

THE WITNESS: I'm sorry, I'm talking too fast. Hold on.

"Activation of a hyperlink associated with the synchronized browsing session by a guest device."

Figure 5(a), on the other hand, is characterized as the communications that go between the components after the synchronized browsing

Intuit / Samesurf, Inc.
Exhibit 1033
Page 229

session -- or during, I should say, a synchronized browsing session.

Q. There is no synchronized browsing session until 61 has been sent to the synchronization server; would you agree with that?

MR. MCBETH: Objection to form.

THE WITNESS: No, I don't think I would agree with that.

MR. SACKSTEDER: Why don't we take a break.

(Recess.)

BY MR. SACKSTEDER:

Q. Let's go back to Claim 1 of the '145 Patent. And if you'll look at limitation 1.d as in David.

A. Yes.

Q. It says, "Operating an application based on said web browsing interaction data received from said synchronization server to access a website server independent of the synchronization server subsequent to the activation of the session invitation."

Do you see that?

A. Yes, that's right.

Q. "Subsequent" means what in that clause?

MR. MCBETH: Objection to form.

THE WITNESS: I mean subsequent just means after.

BY MR. SACKSTEDER:

Q. All right. So it indicates timing of accessing the website server relative to the invitation activation, correct?

MR. MCBETH: Objection to form.

THE WITNESS: I mean it says what it says. I guess I don't -- what's -- what's the question?

BY MR. SACKSTEDER:

Q. It just means that the guest device basically accesses the website server after the activation of the session invitation, correct?

MR. MCBETH: Objection to form.

THE WITNESS: I mean, I -- I don't think I talked about this. Hold on.

I mean, I think in that regard the claim probably speaks for itself, but I didn't actually address that point in my declaration.

BY MR. SACKSTEDER:

Q. Are you able to tell me whether the claim requires the access of the website server by the guest device to occur after the activation of the session invitation?

Intuit / Samesurf, Inc.
Exhibit 1033
Page 231

MR. MCBETH: Objection to form.

THE WITNESS: So I think what I'll say is at first blush that appears to be right. But to the extent there's a claim construction fight over that, I don't want to get in the way of what the parties may have a dispute about. So I'm not going to argue that there's a -- there's a particular claim construction that should be applied because, again, as I understand it, the board specified plain and ordinary meaning.

BY MR. SACKSTEDER:

Q. Would you agree that the requirement for accessing a website server subsequent to the activation of the session invitation is a timing requirement in the claim?

A. It appears to be.

Q. There are no other timing requirements recited in this claim, correct?

A. Well, I think if you are referring to words like "subsequent" or "after" or "before" or "whatnot," I don't see any of those words elsewhere in the claim language.

Q. I guess maybe I'll amend my question a little bit. If you look at 1.a and 1.b.

1.a requires receiving a session

invitation from synchronization server. And then 1.b is activating the session invitation to send a request to join said synchronized browsing session.

So 1.a has to happen before 1.b, right, because otherwise the guest device wouldn't have received the invitation to activate it?

MR. MCBETH: Objection to form.

THE WITNESS: I mean, again I think, in view of the antecedent basis, where 1.b activates the session invitation that was received in step 1.a, I think that's probably right. Again with the caveat, that if there's all of a sudden a claim construction dispute about that, I'd want to understand the positions of the parties before I comment on it.

Q. Okay. Don't the claims mean what they mean, regardless of what your understanding is of the dispute between the parties?

MR. MCBETH: Objection to form.

THE WITNESS: No. My understanding is that the Court construes the claims -- sorry. In this case the PTAB. And so ultimately it doesn't matter what I think after the Court has made a construction because, regardless of what I may have thought beforehand, once the Court has issued a

Intuit / Samesurf, Inc.
Exhibit 1033
Page 233

construction I have to apply it.
BY MR. SACKSTEDER:
Q. Does 1.d have any other time restrictions about accessing the website server besides the one regarding the word "subsequent" that we talked about?
MR. MCBETH: Objection to form.
THE WITNESS: Well, I mean you're -- again just based on the antecedent basis of the terms, the operating of the application has to be based on said web browsing interaction data received from said synchronization server. That antecedent is what was received in element 1.c.
BY MR. SACKSTEDER:
Q. Okay. So 1.d has to happen after 1.c?
A. So again, as I -- as I read this, sort of, at first blush, that appears to be the order set out by the claims. Again with the caveat that if all of a sudden there's a dispute about that that I don't know about, then I'd need to evaluate that.
Q. Duly noted.
Is there any requirement in 1.d, or anywhere else in the claim, about when the guest device accesses the website server relative to when the host accesses the website server, the host

Intuit / Samesurf, Inc.
Exhibit 1033
Page 234

device?

MR. MCBETH: Objection to form.

THE WITNESS: The -- I don't see a limitation in this -- in this claim relating to when a host device -- or let me say it this way. I don't see a limitation of this claim relating to a host device accessing a website server.

BY MR. SACKSTEDER:

Q. So there's no time requirement regarding when the guest device accesses the website server relative to when the host device accesses the website server, correct?

MR. MCBETH: Objection to form.

THE WITNESS: Well, I mean you're asking me about relative timing on a claim limitation that I don't perceive. Where in here does it talk about the host device accessing a website server?

BY MR. SACKSTEDER:

Q. That's kind of my point. There's no requirement for the guest device to access the website server at any particular time in relation to when the host device has --

MR. MCBETH: Objection --

BY MR. SACKSTEDER:

Q. -- correct?

MR. MCBETH: -- to form.

THE WITNESS: I mean I don't see the limitation that you're talking about -- let me just look at the --

So I'm looking in the -- we're in the '145 Patent, right?

BY MR. SACKSTEDER:

Q. Yeah.

A. So the '145 Patent, the host device is found in element 1.a, which relates to a session invitation, including a session identifier associated with the host device.

And in element 1.c, sub 2 -- well, sorry. Element 1.c says that, "Web browsing interaction data is associated with element 1.c, sub 2, the host device that has initiated the session invitation." But that's the last disclosure of the host device in element 1 -- or Claim 1.

Q. There is not even any recitation of the host device accessing the website server at all in Claim 1, correct?

MR. MCBETH: Objection to form.

THE WITNESS: I -- I don't see that here.

BY MR. SACKSTEDER:

Q. Okay. Let's go to the '448 Patent,

Claim 1, which is also in the same document.

This is from Exhibit 1003 for the '448 Patent IPR, again from the expert declaration submitted by petitioner.

But the board when it issued its decision on institution, renumbered the limitations. And so the red mark-outs and typed in numbers reflect that renumbering by the board.

A. Got it.

Q. So Claim 1 of the '448 Patent is -- recites a method that's performed by the host device, correct?

A. It does.

Q. And the host device typically joins a synchronized browsing session before the guest device, correct?

MR. MCBETH: Objection to form.

THE WITNESS: Well -- so we talked about this already. The premise of who is the host or who is the guest can change depending on who is doing -- who is in control. What does it say? "Leading," I think, is the word that it uses. In other words, it wouldn't be accurate to characterize the host as always the host.

BY MR. SACKSTEDER:

Intuit / Samesurf, Inc.
Exhibit 1033
Page 237

Q. Well, in this case I'm not sure I would agree with you because it does not say "guest device." It says "invitee device."

Would you agree that that is the device that is invited by the host device?

MR. MCBETH: Objection to form.

THE WITNESS: Hold on.

Well, I think the -- if you look at element 1.c. The limitation reads, "Sending an invitation to an invitee device to join the synchronized browsing session."

And the preamble relates to, "a method performed by the host device for establishing a synchronized browsing session between the host device and an invitee device."

So I mean I think the invitee device is the device that's being invited.

Q. Right. And the host device is the device doing the inviting, correct?

MR. MCBETH: Objection to form.

THE WITNESS: That -- that's sending the invitation, yes.

BY MR. SACKSTEDER:

Q. So the synchronized browsing session is recited in 1.a and 1.b and 1.c, correct? And then

Intuit / Samesurf, Inc.
Exhibit 1033
Page 238

it is not anywhere beyond that.

A. And the preamble.

Q. Yeah, that, too.

A. And I don't see the synchronized browsing session after that. I think that's right.

Q. So similar to the other claims, I'm going to ask you whether any of the limitations recite any requirement for any actions to occur simultaneously or nearly simultaneously?

MR. MCBETH: Objection to form.

THE WITNESS: Well, the words "simultaneous" or "near simultaneous" are not in the claim language.

BY MR. SACKSTEDER:

Q. Is there a requirement for anything to happen simultaneously or near simultaneously regardless of whether those words appear in the claim language?

MR. MCBETH: Objection to form.

THE WITNESS: Well, I mean I think the answer to that question -- and this is probably true for all of the patents -- might hinge on claim construction arguments made in the future that I can't predict. So I think the answer is I don't know.

BY MR. SACKSTEDER:

Q. Same question regarding any requirement for any actions to be coordinated.

A. I think I'll give you the same answer. If there's a future claim construction that relates to a requirement that something is coordinated, then I have to apply that.

Q. But you have no opinion right now concerning that?

A. That's correct.

Q. And is the same true for any requirement for anything to occur in real-time?

MR. MCBETH: Objection to form.

THE WITNESS: Well, real-time isn't a claim term in -- well, I guess the other, "coordinated," wasn't a claim term either.

BY MR. SACKSTEDER:

Q. Neither was "simultaneous."

A. Fair. So I think -- I think the answer is the same. To the extent that the Court says real-time is a limitation of one of these claim elements, then that's the construction that I would have to apply going forward. But I haven't opined on that.

Q. Okay. All right. Let's look at 1.g. It

says that, "The host device receives responsive to sending the request for web page content to the website server and after transmitting the information related to the shared web browsing interaction to the synchronization server, the requested web page content from the website server."

Do you see that?

A. Yes, I do.

Q. Okay. So that has several timing requirements; would you agree with that?

A. Well, I mean there's at least one, the word "after."

Q. Well, there's "responsive to" is the first one I was going to talk about.

A. Yeah. So -- oh, I see what you're saying. Yeah, so the receiving -- the verb that's the first word in the claim, "The receiving," what you're receiving is the very end of the claim, "the requested web page content from the website server."

That reception or receiving is responsive to sending the request. So in other words, you send the request first and then you receive the requested content.

Q. And the request that's referenced there is the one in 1.e, correct?

A. Hold on. I believe so. Hold on. What claim are we on? This is --

Q. Claim 1 of the '448.

A. This is '448. Hold on. Let me -- this document isn't searchable, so...

"Sending the request -- perform the host device." Yes, so you labeled this as 1.e. Yeah, this is the device -- this is the request sent by the host, 1.e.

Q. Okay. So the requested web page content from the website server has to be received responsive to sending that request in 1.e, correct?

MR. MCBETH: Objection to form.

THE WITNESS: That's -- that's how I read 1.g.

BY MR. SACKSTEDER:

Q. All right. And the -- the receiving of the requested website -- web page content also has to be received after the host device transmits the information related to the shared web browsing interaction to the synchronization server, correct?

MR. MCBETH: Objection to form.

THE WITNESS: I see that here, yes.

BY MR. SACKSTEDER:

Q. So the claim specifically recites that the

host received the web page content after both of those other things happened. Request is sent and the information related to the shared web browsing interaction is transmitted to the synchronization server, correct?

MR. MCBETH: Objection to form.

THE WITNESS: I think to the extent that the word "responsive" is inherently something that happens after whatever it is you're responding to, then both of those events, sending the request and transmitting the information, I think the receiving would happen after both of those, that's right.

BY MR. SACKSTEDER:

Q. And in 1.f(3), which is just above that, and actually starts above that little page break.

"Wherein the invitee device retrieves data from the website server in response to receiving the information related to the shared web browsing interaction from the synchronization server," et cetera.

So that's -- that's the step that relates to what the invitee device is able to retrieve from the website server, correct?

MR. MCBETH: Objection to form.

THE WITNESS: Well, I mean the claim says

wherein the invitee device receives data. So that's what's being -- sorry. Said that wrong.

"Wherein the invitee device retrieves data." So it's data that's being retrieved.

BY MR. SACKSTEDER:

Q. And that is in response to receiving the web browsing information from the synchronization server, correct?

MR. MCBETH: Objection to form.

THE WITNESS: Well, you didn't quite quote the claim correctly. It says, "In response to receiving the information related to the shared web browsing interaction from the synchronization server."

BY MR. SACKSTEDER:

Q. Okay. Yeah, I think it actually goes beyond that. I think those are commas dividing a series, so let's read the whole thing.

A. Wait. Are the commas not right? Hold on.

Q. No, the commas are correct. I think it's a three-part series, perhaps. Let me read it and we can figure out what we think it means.

"Wherein the invitee device retrieves data from the website server in response to receiving the information related to the shared web browsing

interaction from the synchronization server, the data associated with the web page content requested by the host device, and the information related to the shared web browsing interaction."

So are those the -- those three things that are received by the invitee device?

A. What? I don't --

Q. Took me a long time to figure this out.

Okay. The invitee device retrieves data from the website server, right? That's the first part there.

A. Yes.

Q. And then it's modified by "in response to." And then it says "receiving the information related to the shared web browsing interaction from the synchronization server," comma, "the data associated with the web page consent requested by the host device, and the information related to the shared web browsing interaction."

So those are three things, right? Information related to the shared web browsing interaction, the data associated with the web page content. That's the only way I can read this and --

A. No, no. Oh my gosh, no, I'm sorry. That's not at all how I'm reading this.

Q. Okay. How are you reading this?

A. I'm reading after the comma is descriptive of the data. So what you receive -- retrieving is data from the website server. You're retrieving it in response to receiving the information related to the shared web browsing interaction from the synchronization server, comma. And then everything else describes the data that you're receiving.

It's associated with the web page content requested by the host device and the information related to the shared web browsing interaction.

I think the way you're reading it would necessarily be redundant because -- and to be fair, this is the first time I've looked at this in the way that I think you are in, like, I guess in series where it's missing the last comma, but --

Q. (Indiscernible.)

THE REPORTER: I'm sorry, I didn't hear you, Michael.

THE WITNESS: Sorry.

MR. SACKSTEDER: I said, "They don't use an Oxford comma." I apologize for interrupting.

THE WITNESS: I think that's the point. Let's pretend that they did use an Oxford comma and it was intended to be read in series, as I think the

way you're suggesting.

What you would then be retrieving is data related to the shared web browsing interaction, the data associated with the web page content, and information related to the shared web browsing interaction. So that would be redundant. You'd be pointing at the same thing twice.

BY MR. SACKSTEDER:

Q. I don't agree with your reading, but it's late. I think -- I think in your reading there's a missing "is."

A. After the word "data." I think that's probably fair.

Q. "The data associated with the web page content requested by the host device and." Yeah. But the way you're reading it, it is "The data is associated," which is another wherein portion of this clause.

A. I think that's -- I think that's fair. I don't know that I considered the reading that you're applying.

Q. Okay. Fair enough.

Is there any time recitation for when the -- for -- is there any -- any requirement for timing between what is recited in 1.f(3) and what's

recited in 1.g?

MR. MCBETH: Objection to form.

THE WITNESS: Hold on.

Oh. I mean, like, short answer is I don't know. But I mean 1.f says -- oh, this is the host, right? So all of these top-level elements are performed by the host.

So the host sends the request for web page content to the website server. And subsequently to that, transmits information related to the shared web browsing interaction to the synchronization server.

And then there's a bunch of other steps, including -- okay. So your question is related specifically to 1.f(3) and 1.g, right?

BY MR. SACKSTEDER:

Q. Correct.

A. So with apologies, I think I would need to draw that out on a piece of paper. And I just -- I haven't done that. Because 1.f has three subparts and then there's 1.g. And so I just -- I mean you're right, it is getting late and I think maybe I can't do that in my head right now. So I'd want to draw it out and diagram that before I give you a proper answer.

Q. Okay. Well, let's -- let's table that because I was going to get even more complicated. Just a couple more questions.

Can we go to the '591 Patent specification, and specifically column 15?

A. I'm there.

Q. All right. And look at the paragraph that begins on line 25 and goes through 41.

A. Okay. I see that.

Q. It says, "In alternative embodiments, the link and browsing history for these publicly shared sessions, or single user browsing sessions, in general, may be recorded and made available both publicly or privately to users of the present invention."

Is that embodiment consistent with the claims of the three patents that are challenged in this IPR?

MR. MCBETH: Objection to form.

THE WITNESS: I don't recall considering that question. Hold on.

My reference to column 15 is related to Figure 5(a), which is immediately after that paragraph. I -- I don't have an answer to your question right now.

Intuit / Samesurf, Inc.
Exhibit 1033
Page 249

BY MR. SACKSTEDER:

Q. Okay. Can you read -- you don't have to read it out loud. But read the entirety of the paragraph that I referred you to that begins at line 25 of column 15.

A. Okay. So I've read all that. What's -- what's the question?

Q. Do you have any opinion concerning whether the embodiment that is described in that paragraph that you just read is something that practices any of the claims of the challenged patents?

MR. MCBETH: Objection to form.

THE WITNESS: Not as I sit here today, I don't recall evaluating that.

MR. SACKSTEDER: Okay. I don't have any more questions. Thank you.

MR. MCBETH: Okay. We don't have any questions today, so we can go ahead and end the deposition.

(At the time of 5:44 p.m., the deposition was concluded.)

Intuit / Samesurf, Inc.
Exhibit 1033
Page 250

DECLARATION

I hereby declare I am the deponent in the within matter; that I have read the foregoing transcript and know the contents thereof; and I declare that the same is true of my knowledge except as to the matters which are therein stated upon my information or belief, and as to those matters, I believe them to be true.

I declare under the penalties of perjury under the laws of the United States that the foregoing is true and correct.

This declaration is executed this _____ day of _____, 20___, at

_____ _____

CITY STATE

_____

STACY FRIEDMAN

Intuit / Samesurf, Inc.
Exhibit 1033
Page 251

C E R T I F I C A T E

I, the undersigned, a Certified Shorthand Reporter for the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that a verbatim record of the proceedings was made by me using machine shorthand, which was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription thereof.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney of any of the parties.

IN WITNESS THEREOF, I have this date subscribed my name this 20th day of November 2023.



ASHALA TYLOR, CLR, RPR, CRR, CSR #2436

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& 3:3 5:21

1

1 1:25 4:15 21:2 35:14 54:20 62:21,25 63:7 64:17 68:15 77:23 85:11,21,23 89:20 90:5 100:5,14 101:21 104:9 105:1,11 106:20 140:1 144:7,11,19,23 146:8 147:10 154:2 155:24 156:3,4 157:4 169:5 191:11 191:14 193:8 193:12,24 194:4,11,20,23 195:5 196:3,9 201:13,15,16 202:24 220:21 221:1,13 223:17 230:13 236:18,18,21 237:1,10 242:3

1.a 45:18 64:9 65:12 72:5 144:7 191:21 229:14 232:24 232:25 233:4 233:11 236:10 238:25

1.b 45:19 65:12 66:14 72:5 221:22 233:2,4 233:9 238:25

1.b. 144:8 232:24

1.c 65:12 66:3 66:15 69:13 72:5 168:23 169:4,18 234:15 236:13 236:14,15 238:25

1.c. 67:18 234:13 238:9

1.d 65:5,10 66:15 70:22 86:1,2,6 89:20 90:5 91:16 104:12 106:6 107:7,16,18 108:4,7 146:13 148:2,9 169:7 169:18 181:18 193:8,12,19 196:17 204:23 221:4 225:11 225:11 230:14 234:3,15,22

1.d. 92:5 107:7 144:12 193:18

1.e 65:6 66:15 69:16 70:22 104:16 148:2,9 193:22 241:25 242:12

1.e. 65:10 67:22 242:7,9

1.f 243:14 247:25 248:5 248:15,20

1.g 248:1,15

1.g. 240:25 242:15 248:21

1.pre 64:9

10 77:25 81:23 81:24 84:23 95:9 109:25 110:5,11,24,24 112:4,18 113:7 115:21 116:1,4 116:4,13,20 118:10,12,19 119:4 120:15 120:16,24 121:9,10,21,21 122:1,9 164:9 186:6,7,8 201:16 217:13

1003 63:18 237:2

1007 125:12

103 46:16 47:2

1031 4:10 62:10,11

1032 4:14 62:15,16

10s 120:15

11 15:4 93:19 137:4 156:4 201:16

11625 252:19

12 79:19 81:24 94:5 95:7,9,17 125:25 126:2 128:24 152:23 164:10 212:19 212:20,22 217:15

12/783735 10:16

12/783743 10:20

124 4:4

12a 125:24 128:14,17,19 128:21 130:22 131:6,15 212:16

12b 128:15,17 128:19,20 130:22 131:7,9 131:12,14

13 80:3 81:17 81:17 82:17 83:1 94:21 110:14,16,18 164:10 180:3 217:24

13380 6:12

14 46:8 77:20 83:3 93:21 94:22 111:1

116:6 121:23 126:2 128:14 164:11 212:20 212:22 218:18 218:21
145 10:18 59:18 75:19,22 75:25 77:21 150:25 151:3,4 166:8 167:13 168:20 169:5 178:10 179:2 180:22 183:19 221:13 222:20 230:13 236:5,9
14a 67:9,15,20 69:3,12,14 143:3
14b 67:9,17,21 69:3,12,13 143:3
15 1:20 2:21 5:1 46:12 81:10 124:1 132:22 137:4 164:4 178:10 249:5,22 250:5
16 81:15,19 84:15,22 94:18 178:10
17 32:23 158:11 159:9
18 118:11,12,19 119:4 120:16 121:10 122:1 155:6,9 179:2 179:7,23
19 110:19,23 116:1,3 117:7 121:20,24 135:25 158:15 164:15 180:3
1:31 124:2

2

2 11:14 52:16 96:14 108:14 108:15 109:25 120:23,25 121:2,2 123:15 123:15 154:2 155:24 156:6 198:6 236:13 236:15
20 10:21 46:12 58:21 251:14
2000 197:20
2001 7:4
2004 8:17 9:3 11:4 18:15
2010 10:16,21 90:14,17,24 175:16
2023 1:20 2:21 5:1 124:1 252:16
20th 10:16 252:16
21 46:14,25
22 38:23 39:12 108:24
22-0118 1:23
23 96:14,16 97:8 108:24,24 116:1 121:24
2436 1:23 252:20
25 249:8 250:5
252 1:25
27 96:14,16 97:8 167:9,15
28 46:14
29 14:20 46:20
2a 130:21

3

3 32:23,23 110:5 152:9,14 153:4,10,25 154:11,18,20 155:25 156:8 212:10 243:14 247:25 248:15
30 46:20 79:20 125:2,14,17 126:6 209:20 212:15
31 82:15 94:19 179:23 182:15
32 49:1,4 51:2
33 76:10,13,21 77:1 78:15 79:5,10 82:24 85:9 94:7 109:17 217:10 223:7
34 52:8
342 9:4
35 46:15 47:1 95:14
36 166:8,25
37 86:11 87:18 159:9 180:7
38 74:6
39 176:22

4

4 18:14 46:8 84:16 154:10 155:4,12,15 156:1,9,24 163:7 164:15
40 73:17 75:24 94:13 101:4 102:7 110:13 110:17 151:23 152:5 169:24 169:25 172:3 176:5 177:16
401 158:11
41 110:18 151:24 152:6 152:25 153:5,5 169:25 180:24 183:1 212:10 249:8
42 81:10 110:25 116:5 116:21 121:22 164:4 179:7
43 39:11 211:19 212:8

226:17
44 153:1
189:18,21,24
448 10:7 59:19
75:8,11 77:23
151:7 180:5
181:13,17,25
236:25 237:2
237:10 242:3,4
45 114:19
153:1
46 128:11
130:21 152:19
156:13
47 152:19
154:3,9,20,22
155:3 156:13
48 138:14
152:19 156:13
49 67:13
127:11

5

5 4:4 20:6 21:2
39:12 76:13,17
76:24 77:3,12
77:20,25 78:6
78:9 81:11
82:10 83:17
85:18 89:8
93:12,23
109:17 135:25
136:21 137:4
138:5,14,25
158:5,8,10,14
158:17,18,20
159:4,4 162:24
163:2,9,13
164:1,3,5,18
165:5 176:23
178:9,9,17,17
178:19,19,24
178:25 179:9
179:24 180:3
213:6 214:2
223:18,20,21
225:12 227:15
229:10,23
249:23
50a 155:8
51 81:15
124:20
52 67:13
124:12 209:5
211:4 212:11
54 156:19
55 67:13
192:17
56 138:15
591 8:21 9:4
10:23 11:5,5
11:10,13,16
12:24 13:5,25
14:14 15:22
18:15 21:12
22:15 29:14
30:2 32:23
35:7,7 37:13
38:1,8 40:7
41:5 46:9
48:16 49:5,20
50:2,19 52:16
59:18 63:7,16
64:17 65:4
66:2 68:15
71:3 73:18
75:3,24 76:14
77:1,19 79:4
85:12,23 91:10
91:22 92:14
94:15 96:8,13
99:1,4,14,17
100:5,14 101:2
101:21 104:3,9
105:2,11
106:21 108:13
109:17,24
113:7 114:19
115:21,22
124:10,11
129:3,4 132:21
133:3 134:22
135:25 140:2
141:9 144:19
144:22 146:8
149:13 150:13
150:22 151:5
151:21 161:12
163:8 186:5
189:23 191:4
191:13 192:4
193:8,12,24
195:11 198:3,3
201:13 202:18
202:24 210:20
211:1,10 213:6
213:14 215:2
220:22 221:2
223:4,7,15,18
225:1,2,19
226:9 227:6,12
249:4
5:44 2:21
250:20
5th 59:9

6

6 20:25 38:23
94:12 192:12
192:18
60 21:5 78:18
79:17 80:19,20
81:23 83:18
84:6,7 94:25
95:4,8,16
213:7,10 214:6
214:19 215:15
217:14 219:9
224:8,17 225:8
227:23
600 3:16
61 54:20 79:22
80:2,4 81:16
81:25 82:2,25
84:9,25 179:5
213:18 217:23
218:3,25 219:3
219:9 220:1
224:22,24
225:9 227:20
230:4

62 4:10,14 224:15,21
6298220 1:24
63 10:14
64 81:18 82:16 83:3 93:21,25 94:20,24 95:15 213:21 214:5 218:19 219:5,9 220:1 223:25 225:12
65 94:3 95:6 214:8,14,20 218:23 219:6,9 220:2
650 18:19,20 19:11
650.988.8500 3:8
66 213:11 215:15,19 219:22 223:22 224:11 227:17
67 214:10,14,21 215:17,19 220:3
670 88:6
68 30:1,3,4 32:4 39:2,21
69 37:7 39:24 40:1

7

7 84:16 158:15 198:7
70 40:16 195:10
7000 3:17
71 223:5 225:15 226:16
713.485.7300 3:19
74 140:8,15,18
75 140:18 142:2 150:12 151:1,2
76 151:7
77 95:20 96:4 99:5
77002 3:18
78 65:24 66:6 66:19 145:5,5
79 91:15 145:5 145:6 146:12 148:1,8 149:21 150:1

8

8 156:4 182:3
8,527,591 1:16 2:16 11:6,8
80 140:8 142:16,18 145:5
801 3:6
84 149:3

9

9,185,145 1:12 2:12
9,483,448 1:14 2:14
90s 86:19
94041 3:7
96 8:3
97035 6:13
9:12 2:20 5:2

a

a.m. 2:20 5:2
able 112:18 113:1 120:13 135:3,13 137:25 162:9 231:22 243:22
ablock 3:21
above 97:12 136:21 185:18 226:4 243:14 243:15
absolute 111:11
abstract 50:23 50:25 51:17
accept 18:5
accepted 116:24
access 169:12 205:3 230:19 231:23 235:20
accessed 92:24 107:20 196:22 197:5 198:4 199:21 204:24 210:13 220:25 221:7
accesses 231:13 234:24,25 235:10,11
accessing 197:1 231:6 232:13 234:4 235:7,17 236:20
accomplish 11:18,21
account 190:17
accurate 18:3 21:3 57:11 64:7 88:3 90:8 154:4,21 237:23 252:11
accurately 63:13
acknowledged 20:21
acquirers 7:21
act 47:2
acting 73:25
action 252:13
actions 109:1 196:10 226:12 239:8 240:3
activate 233:6
activates 233:9
activating 233:2
activation 169:14 191:22 229:14,20 230:21 231:7 231:14,24

232:14
activities 41:19
actual 30:18 63:15 81:9 101:9 176:11
actually 9:21 16:20 19:13 23:3 37:20 63:17 70:13 72:23 79:1 80:15 83:11,17 84:14 85:14 87:10,14,17 88:13 90:21 98:4 101:3 127:7 148:12 148:22,25 151:10 154:4 154:10 161:10 166:23 173:19 175:18 183:7 190:17 197:18 204:21 206:10 206:19 207:19 215:23 217:12 231:19 243:15 244:16
ad 112:12
add 107:15
additional 8:10 21:16,20 22:10 22:14 88:17 102:10 107:17
address 6:11 12:7 74:10 81:23 86:21 88:2,23 95:17 112:16 113:16 113:19 147:5 147:14 169:24 173:3 174:23 175:23 231:20
addressed 12:9 29:12 70:23 107:3 120:1 146:11 151:10 186:19 191:5
addressing 7:24 111:12,15 112:13 122:24 160:10
administered 35:16 92:22 161:14
administrative 178:5
admittedly 111:20
advanced 8:6
advising 7:21
affirmative 110:9
affirmatively 73:5
affirmed 5:6
afraid 65:1
ago 53:1
agree 29:17 59:17,23 65:9 71:10 92:1 112:15 118:18 119:3 120:14 121:9 143:9 148:3 165:12 171:15 172:3 172:20 186:14 189:16 190:8 190:18 193:11 202:9 226:10 228:22 230:5,8 232:12 238:2,4 241:10 247:9
agreed 12:3
ah 63:19 193:10
ahead 7:9 31:24 80:5,9 86:11 193:10 250:18
alan 3:15 5:23
alleged 16:14 47:8
allegedly 46:1
alleging 45:2
allow 97:1 128:14
allowing 38:4 40:9
allows 86:12 132:16 136:22 139:1 214:21
alter 128:19,20 131:6,9,12,14
alterations 128:20,21 131:7,15
alternate 52:20
alternative 249:10
alternatives 53:17 208:5
amend 25:2 114:15 232:23
amendment 25:12
america 47:2
analysis 22:11 27:24 35:20 42:25 45:12 47:20 56:25 60:17 61:14 90:1 101:11 104:21 107:5 126:23 127:21 127:23 128:7 146:19,20 148:25 202:11
analyzes 179:4
analyzing 44:24
andrew 29:2
annotation 144:12
answer 4:19 6:21 16:2 17:12 18:10 19:6 25:15 29:5 41:2 54:8 54:11,23 55:13 55:17 58:19

64:24 75:19 89:25 92:9,17 103:18 111:21 112:9 113:1,5 119:9 120:13 123:9 126:22 126:22 128:4 139:17,19 145:2,10,22 146:15 172:25 174:17 183:11 183:18 184:5 184:10 188:18 190:14 196:14 206:19,24 207:3 210:22 216:8,10 220:19 221:10 228:14 239:21 239:24 240:4 240:19 248:4 248:25 249:24
answered 55:6 110:8 111:23 147:12 215:10
answering 54:4 55:7 120:6 191:8
answers 87:19 92:8
antecedent 233:9 234:9,12
anymore 208:12,20 223:20
anyplace 158:24
anyway 104:2
apart 40:11
apologies 130:17 166:5 248:18
apologize 49:12 246:22
apparatus 200:13,17 202:18
apparent 33:21 153:16
apparently 67:19 166:15
appeal 1:3 2:3
appealing 96:9 96:17 99:19
appear 86:23 87:22 88:1 169:21 194:4 194:19 239:17
appearances 3:1
appeared 210:5
appears 8:23 58:7 64:7 135:12 169:4 169:17,18 232:3,16 234:17
appending 88:16
application 9:20 10:11,15 10:19,20,24,25 55:23 169:8 230:17 234:10
applications 137:2 138:9 139:6
applied 14:5,21 31:10 36:21 44:18 46:7,12 46:15,23 47:12 48:7 90:11 203:14,15 207:19 232:8
applies 127:12 184:22 198:19
apply 44:16 48:5 58:15 161:11 201:4 202:14 234:1 240:7,23
applying 15:5 16:4 31:3 137:18,22 202:12 247:21
appreciate 16:2 73:16 130:16
appreciated 103:21
approach 52:20 75:23
appropriate 112:12 113:24 198:17
approximately 28:2
apps 7:6
architecture 75:14 77:3 96:8 98:15 99:5,9 140:20
architectures 15:14 140:22 142:13 150:20
areas 64:16
argue 232:6
argued 15:17 107:2 147:13 147:19
argument 151:25 195:4,9
arguments 111:13 120:3 141:17,19 146:11 147:6 239:23
arrive 150:21
arriving 215:19 215:20
arrow 80:4 93:24 94:3 158:6
arrows 82:11 84:4 225:2,3,4
art 14:5 16:5 29:11,22 34:13 35:1 36:3,13 36:25 43:21 44:3 45:1,2,10

45:17,25 47:4 47:8 52:10,18 52:22 54:19 55:25 56:4 57:6 58:1 65:7 68:5,8,11 73:24 74:4 75:13 101:12 102:13,17 104:21,23 106:17,19 114:5,12 120:8 129:23 186:9 187:18 188:1 189:2 190:3,6 202:16 203:16 203:19,20 227:5
article 68:23 121:7 136:2
ascribing 37:17
ashala 1:22 2:22 252:20
aside 146:17
asked 11:12,15 12:2 13:22 21:16,19 22:10 26:5 42:21 53:4,20,21 54:23 57:25 60:14 61:12 66:4 100:13 101:20 102:24 103:15 109:10 113:14 120:4 129:20 132:9 133:3 146:19 146:20 188:23
asking 15:24 26:25 29:18 36:11,12 38:15 51:23 52:23 53:12,24 54:12 54:15,25 55:11 55:12,13,21 58:8 60:19,23 61:3,19,23 72:24 74:18 78:22 86:21 89:6 100:13 103:23 104:12 105:19 106:14 111:18,19 113:1,5,12 117:16 131:23 134:24 146:16 154:13 159:4 160:12 171:9 174:9 183:16 191:8 195:8,9 198:15 200:1,5 201:6,7,9,17,18 216:1,2,7 228:14 235:14
asks 22:6 60:11
aspects 66:3,11
asserted 17:9 33:12 45:6 64:19 127:3 186:9 189:2 226:13
assertions 18:2 18:6,12
asserts 24:1
associate 91:25
associated 8:19 85:15 86:4 92:2,12 93:2 104:15 106:5 107:18 126:1 191:22 193:16 212:19,20 229:15,20 236:12,15 245:2,17,22 246:9 247:4,14 247:17
assume 19:12 188:12 227:15
assuming 19:14 229:5
assumption 141:14
attached 62:12 62:17
attempt 90:9 140:24
attempted 63:13 208:15
attempting 54:5 99:2,15 125:4 150:19 202:2
attendee 27:15
attendees 192:16
attending 192:24
attorney 252:14
attorneys 7:15
attribute 49:18
audio 131:10 151:17
automatically 136:3 224:16
available 249:13
avoid 99:2
aware 25:9 113:17 142:9 192:3
awful 35:18

b

b 3:14 4:8 23:5 121:2 123:15 158:8,10,17,20 159:4 163:2,13 164:18
b2 1:12,14,16 2:12,14,16
bachelor's 8:4 14:23
back 7:4 8:12 9:22 11:4 14:18 16:3 18:25 28:6 34:24 66:13 74:12 82:9

86:17 89:7,14 91:21 93:12,22 99:22 100:4 101:23 103:10 107:5 108:13 109:16 119:25 124:6 127:10 128:10 130:20 148:11 152:18 155:12 156:2 159:21 164:2 171:13 173:4 175:6,10,13 176:4 181:12 188:8 203:25 207:20 210:23 211:20 215:1 215:15 219:22 220:3 222:19 223:19,20,20 223:22 224:12 224:25 227:14 227:23 230:13

background 8:1 43:24 52:4 53:16 101:6 160:21 174:20 198:6 227:4

backwards 219:2

badly 68:3

bandwidth 52:13,21 96:10 96:20 97:13 98:25 99:13

based 12:1 15:1 21:16,20 22:7 22:11 58:7 64:6 104:17 169:8 186:11 186:16 189:8 230:17 234:9 234:10

basic 145:22

basically 7:1 17:16 48:10 77:3 78:6 143:8 159:6 163:24 164:14 231:13

basis 233:9 234:9

batch 207:16

batched 197:25

beginning 96:4

begins 89:7 118:10 190:2 227:19 249:8 250:4

behalf 5:24

belief 251:7

believe 13:25 14:2,4,12,16 17:8,14 18:3 18:11 19:21 24:8 26:12 29:12 45:4 72:20,23 101:1 113:23 122:15 140:2 171:12 178:21 184:23 191:5 201:19 202:25 205:21 242:1 251:8

believed 61:22

bernard 28:20

better 94:17 159:1

beyond 11:11 70:3,12 130:2 130:10 162:10 185:19 207:3 228:9 239:1 244:17

bill 19:9

bit 65:2,3 129:9 187:14 232:24

blanket 139:19

block 3:15 5:23 120:25 162:25 163:9 164:5 178:17 229:11

blush 232:3 234:17

board 1:3 2:3 12:19 13:4 14:3,12,21 15:22 16:5,16 16:20 17:11,20 18:5 29:11 31:3,8 33:11 34:3,6,14,16,18 35:24 36:8,11 42:6 43:12,19 43:20,24 44:19 46:19 48:7 58:14 90:11 103:11 151:10 151:24 153:8 153:12 154:6 154:13,15 155:10 166:11 166:15,23,24 167:3 171:15 171:20 180:10 180:19 184:21 184:24 188:9 189:14 190:15 191:1 198:17 201:3 203:10 232:9 237:5,8

board's 11:25 12:10 15:6 22:25 31:4 55:23 177:7 187:17,21 189:1 190:21

bottom 40:16 79:10 81:12 93:19 95:3 151:23 152:5 223:6

boundaries 185:22,23

boundary 185:24

bounds 33:11

box 158:5

brackets 181:3 181:10 182:14

branching 7:4
break 6:22
23:21 34:23
53:6,7 58:20
59:1,4 73:9,13
100:1 123:20
186:1 230:10
243:15
breaks 124:8
bright 43:7
bring 119:25
broadcasting
52:11 96:18
broke 76:19
brooks 28:14
browse 126:13
126:13 127:18
127:19 128:14
128:16 129:1,5
129:11,12
131:4 132:18
132:21,24
136:25 139:4
browsed 38:5,5
40:10 137:24
browser 52:25
54:1 78:21
104:16 125:24
126:2 128:14
128:15,17,17
128:19,19,20
128:21 131:6,7
131:9,12,14,15
131:18,20
132:13,14
133:6,8,9
134:5,6 135:13
138:1 155:13
155:16 157:1,4
157:6,12,13,16
167:16 168:11
168:13,14
171:25 172:18
173:17 174:14
175:6,8 177:18
209:7,11,13,13
209:14 212:16
212:19,20,22
213:13
browsers 74:2
86:18 125:25
130:21,22
132:16,17
142:23 155:5
157:24 175:9
209:18 211:15
212:17
browsing 30:5
30:9,10,25
31:21 32:1,6,7
32:12,13,15,20
32:21 35:16
37:13 38:1,7
38:10,18,19,22
39:3,12,17
40:2,7,13,18,20
40:22,23 41:3
41:17,18,18
42:1,2,13,15,20
42:21,22,23
43:9,10,13
44:4,14,20
48:4,9,12 49:6
49:22 50:4,7
50:21 51:3,7
51:11,21,25
53:14 54:18
55:1,15 56:5
81:22 82:18
83:8,23 92:22
94:21,23 96:7
104:11 109:18
110:3,12,22
111:4 112:5,20
113:8,25 114:6
114:11,23
115:1,3,8
116:2,14,20
117:3,8,13,20
118:2,20 119:2
119:6,16 120:9
120:18 121:4,6
121:11,19
122:2,4 123:3
124:20,25
127:3,13,15,25
128:1 133:4
136:1,11,23,24
137:17 139:2,3
139:8,11,14
142:22 149:5
153:15 156:19
160:14 161:4,6
161:13,16,25
163:12,17
164:8,12 165:8
165:10,17,25
166:16 167:4
167:17,22,23
167:25 168:2,7
169:2,8,17,20
170:3,10,17,21
170:23 171:5
172:6,12 174:6
175:25 176:6,7
177:20 178:23
180:17 181:3,6
181:19,20,21
181:22 182:4
182:17,20
183:3,9 185:15
191:18,23
192:5,13,20,24
193:20 195:15
195:17,20,24
200:14,16,18
201:10,11,12
201:15,20,22
202:19,23
203:1,9 204:1
204:6,9,10,17
204:18,22
205:10,14,23
206:3,12,14
208:7 216:15
217:4,19
220:16 221:21
222:23 223:14
225:18 226:8
226:23,24

227:11 228:6 228:13,21 229:6,16,21,25 230:2,3,18 233:3 234:11 236:14 237:15 238:11,14,24 239:4 241:4 242:20 243:3 243:18 244:7 244:13,25 245:4,15,19,21 246:6,11 247:3 247:5 248:11 249:11,12
bud 31:12
bunch 19:17 87:11 88:24 248:13
burden 141:14 144:2
bush 3:5 5:20
business 9:16

c

c 6:8 158:17,20 159:4 163:3,13 164:18 178:9 178:17,19,25 179:9,24 252:1 252:1
california 1:23 3:6,7 24:14 252:4
call 156:23
called 6:15 19:8 105:6 155:16
calls 27:25 88:20 212:25 213:14
canon 68:21
capabilities 175:7
capacity 21:7
care 64:1
carried 104:20
case 5:19 19:1 19:8,16 44:25 48:15 60:8 69:21 157:16 233:22 238:1
cases 7:17 12:4
casino 7:4
categories 74:8 174:21
cause 59:15,25 126:3 212:22
caused 176:11
caveat 13:8 64:21 65:20 71:7 72:9 122:25 147:15 160:8 233:12 234:18
central 73:25 98:15,19,21 149:11
ceo 6:1
certain 33:21 138:8
certainly 28:7 98:6
certified 2:22 252:3
certify 252:5,12
cetera 85:7 243:20
chain 197:20 207:15
challenge 21:12 129:12
challenged 47:15 127:4,24 132:12 136:16 145:19 150:6 157:22 186:9 186:14 187:21 188:6,9 189:3 227:25 249:17 250:11
challenger 47:3
chance 188:21
change 121:7 135:11,13 137:23,25 162:7 237:20
changed 58:16
changes 125:23 134:17,19 138:18 161:1 212:16
channels 37:9 37:12,23,25
characterizati... 18:1 42:19 43:3,6 48:19 56:22 119:1 135:10 137:5 143:22 185:25 187:17,21 189:1 190:8,19 191:1,25 193:2
characterize 30:7,13 60:20 72:12 133:18 188:17 202:3 237:23
characterized 13:25 14:2 178:16 229:24
characterizes 142:22 227:1
characters 88:17,25
chart 229:11
check 13:17,18 13:20 23:15,21 28:6 29:13 41:12 63:10 112:10 129:3 178:16 215:6
checking 63:24 64:3
cherry 150:18
circle 119:25
circular 200:12
circumstance 112:4
citation 154:19

citations 141:23 211:18
cite 32:22 96:13 97:24 99:4,18 125:14 129:4 145:6 167:9
cited 129:2 155:22
cites 50:25 76:25 212:11
citing 66:1 87:17 125:1 145:8 218:8
city 251:16
claim 4:15 9:19 12:25 30:23,24 31:5 32:25 33:10,12 35:14 35:21,25 37:4 38:6,17 40:12 41:23 42:10 45:7,18,18,19 45:24,25 46:13 47:1,6,6,25 48:21 55:21 56:10 57:23 58:11 60:4,10 60:11 61:3,4 61:23 62:21,25 63:7 64:13,17 65:21 66:1,7 68:5,6,14,15,22 70:18 77:18,23 85:11,21,23 89:9 90:5,10 92:18 93:5 100:5,14 101:21 103:11 104:9,20,24 105:1,11,15 106:20 107:23 107:24 108:9 114:3,25 115:3 115:7,16,19 129:21,22 132:3 139:10 139:21 140:1 142:4 143:25 144:7,11,19,23 145:19 146:8 147:10 160:21 161:11 166:10 166:12,20 167:3 168:6,19 169:5,17 170:4 171:6,9,11 173:18 176:1 177:8 180:11 182:3,15,16 183:7 184:2,20 185:14,18 191:11,14,21 193:8,12,14,18 193:24 194:4,9 194:11,16,20 194:23 195:2,5 195:8 196:3,9 197:4 198:15 198:24 199:10 199:20 200:3 201:2,6,11,13 201:20 202:4 202:24 203:8 203:12 204:5 204:16 206:4 206:13 220:21 220:24 221:1 221:13,17,25 222:11,16 223:17 229:1 230:13 231:18 231:22 232:4,7 232:15,18,22 233:12 234:23 235:4,6,15 236:18,21 237:1,10 239:13,18,22 240:5,15,16,21 241:17,18 242:2,3,25 243:25 244:11
claimed 32:19 41:11 43:17 47:19 48:22 58:5 66:12 67:15,17,21 68:1,2 69:5 77:4 121:12 131:17 135:18 141:9 150:22 170:10 190:9 204:23 209:22 226:24 228:18
claims 14:6 25:2 33:7 41:14 44:24 45:3,6,9,11 47:15 48:20,24 56:19 59:24 60:17 64:8 65:5 66:13 75:3,7,24 76:5 77:11,14,16 78:4 91:10,22 92:14 93:5 101:25 103:2 105:8 106:15 106:16,18 122:16 123:16 126:7 133:6,15 133:15,19,23 134:1 135:18 139:18 149:12 150:17 170:11 179:15 182:11 196:14 202:8 202:10 205:15 210:20 221:14 225:1,2 229:12 229:13 233:16 233:21 234:18 239:6 249:17 250:11
clarification 229:17
clarify 38:14 82:23 172:25

class 8:12
classes 8:11
clause 91:22 230:25 247:18
clear 14:17 23:24 49:24 56:16 118:23 124:24 126:16 135:16 142:8 146:11 170:7 176:14
clearly 70:22 197:4
click 97:3 108:19 127:10 138:11
clicked 136:12
clicking 35:8 209:11
client 7:7 20:17 26:11,18 86:13 88:9,13 101:8 226:18,20
clients 98:23 149:9,12
close 226:1
clr 252:20
code 24:15,23
coextensive 126:17,21 127:20 128:5 206:13
colleague 5:20
college 132:25
color 161:2
column 10:13 10:14 32:23 38:23 39:11 52:16 54:20 64:9 81:10,12 84:15,22 94:12 94:18,18 95:4 96:14 108:13 108:15 109:25 110:5 112:3,18 113:7 115:21 115:25 116:13 120:16,24 121:5,10 122:11 123:10 132:22 135:25 136:21 137:4 138:5,14,25 158:11,15 159:9 163:7 164:4,15 179:2 179:7,23 180:3 192:12,18 198:6 201:16 226:17 249:5 249:22 250:5
columns 35:12 164:13
combination 46:3 47:5 142:6,8 145:25 148:21,23 149:1,10,24
combinations 15:15 140:23
combine 15:12 16:7 17:15 140:24 142:12 156:15,17 157:9
combined 140:22 146:7 150:21
combines 159:7
combining 67:6
come 19:2 35:20 83:12 105:4 219:22
comes 50:24 74:12 171:13 175:3
coming 24:13 103:10 207:14 211:22 212:2
comma 188:6 245:16 246:2,7 246:16,22,24
commas 244:17 244:19,20
commencing 2:20
comment 12:24 233:15
commented 12:25
common 9:19 10:2 19:19
commonplace 90:16,17,24
communicate 27:10
communicated 25:18 26:7,25 27:2
communicating 26:14 88:8
communication 27:1 29:1 81:16,18,25 82:16,19 84:25 94:19,24 95:15 156:5 163:10 164:6,11,19 165:6 179:4 214:5
communicati... 25:11 28:12,19 121:1 153:6 158:25 163:2 164:17 165:18 178:18 187:9 220:12 229:24
company 6:15 197:20
compare 210:24
compared 127:7,25
comparison 64:7 126:19 129:6

compensated 18:16,18
completely 43:15
complicated 249:2
components 158:20,22 159:5 163:11 164:7,16 165:7 178:19,20 186:12 187:10 229:12,25
comprise 79:24 84:10 86:3 92:2 95:16 138:7 217:21
comprised 85:5
comprises 91:17,23 93:1 104:14 106:4
computer 4:11 8:2 9:1 14:23 14:24 52:14 59:9 62:9 96:10,21 97:13 99:13 175:17 207:16
computers 175:17
conceivable 179:25
concept 113:17 216:22
concepts 185:23
concerning 13:4 21:11 22:14 27:2,11 28:12 60:24 120:8 130:2 240:9 250:8
concision 156:22
concluded 250:21
conclusion 15:8 190:1
conducted 192:13
confidently 13:21
confirm 72:24 73:5
confirmation 110:18
conflating 229:10
connected 19:15
connection 11:16
consent 245:17
consider 12:10 56:17 89:17 90:2 143:14 148:15 187:1
considered 12:18 13:3 56:23 60:15 103:11 186:24 188:19 216:6 229:2 247:20
considering 17:11 249:20
considers 88:7
consistent 70:10 249:16
consistently 148:3,10
constrain 13:13 202:2
constructed 155:7
construction 12:25 30:5,13 30:19,24 31:5 32:25 33:10,24 35:21 37:4 41:23 43:12 46:13 55:22 56:10 57:24 60:4,11 61:3 61:23 109:8 129:21,23 139:11,21 166:11,12 171:11 173:18 183:17 184:2 184:20 185:18 194:10,16,22 195:2,8 198:15 201:2,7 202:4 203:8,12 204:5 205:7 232:4,8 233:13,24 234:1 239:23 240:5,22
constructions 58:11
construe 31:9 42:7 90:9 109:13 171:9 183:16 196:14
construed 33:13 165:13
construes 233:21
consultancy 6:20
consultant 23:25
consulting 6:24 7:3,13,14,20 20:1,4
contain 21:10 29:8 69:22 157:22
contains 21:14 85:1 155:16
contemplated 227:25 228:25
contemporan... 10:4
contends 152:8 153:10
content 27:1 84:6 97:2 125:22,23

126:1,4 132:24 155:5,9 157:2 157:4,7,7,10,15 198:8 212:16 212:18,23 213:15 214:14 241:2,6,19,23 242:10,18 243:1 245:2,23 246:9 247:4,15 248:9
contention 35:23
contents 251:5
context 36:17 54:16 74:3,4 80:11 84:22 118:7 137:14 188:17 197:18 197:23 198:3 199:8 207:13 207:14,24 216:7
continuation 10:15,20
continue 38:2 159:18 160:4 192:22
continued 153:12
continues 155:9 161:5,6
continuing 10:4
continuous 52:11 96:18 160:10,19,22
continuously 160:15,16
contradict 73:1
contrary 71:17 72:21 142:2
contrast 108:18
control 48:21 192:20,23 237:21
controller 155:7,17
controlling 192:15
controversial 44:22
controversy 20:13,16,23
convenience 64:12
conversation 56:14 70:17 113:23 210:24
conversations 11:23 27:15,17 27:20,23 28:9
convey 138:22 177:24
cookie 79:25 84:10 85:6,14 86:4,8,12,16,22 86:22 87:7,24 88:2 89:1,9,13 89:19 90:4,9 90:14,18,25 91:6,7,18,24 92:2,12 93:1 104:15 105:17 106:5 107:8,12 107:17 143:1 144:11,15 193:15,15 217:21
cookies 88:7
coordinated 41:20 194:19 194:24 195:5 222:7,8,9,10,11 240:3,6,16
coordinating 136:4
coordination 195:21 196:4
copy 79:13
copyrights 7:18
correct 9:5,13 9:25 10:16,21 10:23 12:11 16:10 17:5,21 19:16 20:2,3,9 21:7 22:1 23:19 24:3,7 24:11,12,15,23 29:11,14 30:6 30:20 33:17 39:18 40:20,21 42:16 43:1,21 44:25 45:11 47:9,16,20 49:22 50:23 51:8,12,21 56:19,21 57:10 60:17 61:7,14 61:25 63:7 64:19 65:7,14 68:16,19,20 69:5,23 75:5 75:20 76:6,14 76:18,24 77:4 77:12 78:6,18 82:6 83:4 84:12 85:5,7 85:15 86:2,5 89:1,20 90:5 91:11 92:14 93:8,10 95:18 95:24 96:14,15 96:22,23 97:9 97:17,21,25 98:11 99:19,23 99:24 101:2,21 103:3 106:8 107:13 108:4 110:4,14 111:6 112:6 113:9 114:2,6 115:5 115:6,10,17,23 117:4,14 121:23,25 122:6,17 124:17,22 125:8 127:4 128:1,5 129:13

129:19 130:8
130:13,23
131:1,7,8,15,21
132:14,18
133:10 134:8
134:19 135:8
135:13,20
136:7,18
137:12 138:1
138:19 142:19
146:25 147:10
147:22 148:18
149:18 150:6
150:22 151:5,8
151:11,25
154:25 160:1
161:8 165:3
166:25 167:5
167:10,19,20
167:22 168:2
168:21,24
169:2,3,9,18,19
169:21 170:4
170:15,17,24
170:25 171:4
171:25 172:6
172:12 178:9
178:11,13
181:11 183:9
184:8,23
185:24 186:12
190:22 191:1
191:15,18
193:8,17,20,22
194:1,7,8,13,17
194:20,24
195:2,5,21
196:23 199:7
201:23 202:13
202:20,24
203:2,16
205:15 206:4
208:2 211:6
213:8,13,24
214:10,15,22
217:15,24
218:4,20,23
219:10 220:4
220:16 221:2,4
221:19,22,25
222:1,4,5,7,10
222:13 224:2
225:19 226:9
226:15 227:12
231:7,14
232:18 235:12
235:25 236:21
237:12,16
238:19,25
240:10 241:25
242:12,21
243:5,23 244:8
244:20 248:17
251:11
correctly
100:19 102:23
215:10 244:11
corresponden...
225:11
corresponds
170:9
counsel 3:1
5:19 11:22,24
22:4,6 27:16
27:24 60:11
113:19 131:11
151:15
count 35:9,10
couple 8:10
67:5 87:13
127:11 152:8
170:11 176:16
224:20 249:3
course 35:10
court 6:12
233:21,23,25
240:20
courts 7:15
cover 77:11
122:16 204:9
204:12
covered 48:23
106:14,16
covering
133:19
critical 100:16
criticisms
102:12
criticizing
102:17
crr 1:22 252:20
csr 1:23,23
252:20
current 96:25
98:4 99:22
currently 16:25
22:19
cutting 131:12
cv 19:22 20:5
197:19

d

d 4:1 6:8
158:14,18,21
159:5 163:3,13
164:18 176:23
178:9,19 180:3
data 10:11,19
74:1,22 79:25
84:11 85:7
86:3 87:14,15
91:17,23 92:1
92:23,24,25
93:16 102:9,14
104:13,14,17
105:16 106:3,4
107:19,24
108:10 121:1
134:17 138:9
138:22 149:8
149:11 164:6
164:11 165:6
166:17 167:4
168:2,7,12,16
169:2,9,17,20
170:3,10,17,21
170:23 171:6
171:13 172:11
173:5,17

174:23,25
175:1,21,22
176:1,8 177:5
177:8,14
178:18 180:15
183:23,25
185:7,13
196:20,21
197:5 200:19
217:22 225:13
230:18 234:11
236:15 243:16
244:1,4,4,23
245:2,9,16,22
246:3,4,8
247:2,4,12,14
247:16
date 15:7 25:9
86:19 252:15
david 3:24 5:25
65:6 230:15
day 8:12 24:21
251:13 252:16
days 86:18
175:15
dealt 166:4
debugging
101:7
decide 223:9
228:20
decides 227:17
decision 12:11
12:14,18,19
14:9 15:4 23:1
23:11,14 24:6
31:8 34:17
44:8,13 48:3
151:21 167:10
167:13 182:16
186:5,6 189:18
189:23 190:7
190:16,21
224:15 229:5
237:5
declaration
11:9 12:7 13:8
13:12,21 14:20
18:14 19:21
21:9,10 22:16
22:20 29:8,14
30:2 32:25
37:7 39:2 41:7
41:8 46:8,22
49:2,14,19,25
56:12 63:20
64:16,22 65:4
65:10,11,20
70:23 71:8,21
71:24 72:4,10
72:15,18 73:18
73:21 74:7
75:24 76:11
79:5 86:10
90:1 95:21
101:2 109:17
111:16,19
112:1,13,16
114:20 120:2,6
122:23,25
124:11,12
129:16,25
130:3,11 140:6
140:7 141:16
142:7,12
144:22 145:3,7
146:24 147:8
147:15 148:15
149:16 150:13
150:25 151:3,8
152:17,19
153:19,21
156:12 159:25
160:9 166:3,7
167:24 178:11
180:4 186:20
188:25 190:22
190:25 191:3,7
195:11 203:13
204:2 213:6
222:24 223:1,5
223:7 227:4
231:20 237:3
251:1,13
declarations
29:16,19,25
56:17 103:9
114:2 147:20
declare 251:3,5
251:9
declined 61:25
define 14:19
defined 14:18
192:19
defines 128:25
definitely
125:10
definition
14:21 15:6,7
16:4 29:11
44:16 48:6
57:24 59:12,17
59:23 109:5
139:7,8 202:1
205:16
definitional
90:13
definitions
127:20
degree 8:2,4
14:23 208:1
degrees 8:10
delay 217:3
deleted 181:11
delivered
197:21
delivering
197:24,25
demand 207:18
demonstrate
16:14 17:9
denigrate 52:9
denigrating
97:12
deny 73:5
depend 139:18
dependent
182:11 207:24
depending 6:22
133:16 237:20

depends 174:18 175:21
depicts 155:4
deponent 251:3
deposition 1:18 2:19 9:7 62:4 109:9 140:12 250:19,20
derides 96:8
describe 50:10 73:23 118:19 119:4 120:17 125:6 127:13 128:11 130:21 130:22 140:5 156:4,12 164:18 176:16 212:12 227:3
described 38:7 39:11 40:7 41:4 42:3 48:14 51:16 74:25 78:6,9 79:24 85:2 96:6 99:6 101:6 108:3 112:3,19,20 113:6 119:13 120:25 123:14 124:22 125:1 127:9 152:15 153:4 154:1,18 156:24 158:11 158:14 160:15 162:9 163:7,14 165:6 176:24 177:9 179:1 205:25 211:4 219:8 250:9
describes 41:25 44:19 48:8 52:5 94:13 96:2 112:4 123:3 125:20 134:5 152:21 152:24 158:24 182:7 192:18 209:7 219:15 246:8
describing 50:16 74:4 81:11 111:10 119:1 153:22 155:3 159:12 209:5
description 4:9 35:19 38:21 50:17 74:6 77:8 80:13 121:10 134:1 153:17 158:6 162:14 164:3 179:13 189:6 205:22 212:24 213:5 218:1,6 218:16 219:17 219:19
descriptions 186:10,15 187:5 189:8 192:10
descriptive 246:2
design 6:19 7:3
designed 82:16 94:20
desktop 52:10 53:19 55:8 96:25 97:9,17 97:25 98:5,6 99:23 108:17 160:20
detail 44:10 218:9
details 89:4 166:2
detecting 191:21
determination 39:15
determine 45:9 45:23 46:1 87:7 112:19 128:8 189:15
determined 39:16 42:12 44:15 48:5,11 57:3,11
determining 47:13 48:13 181:20 182:7
developed 7:12
development 6:20 7:3,11 15:1 20:19
deviating 119:18 180:1
device 35:15 50:14 51:4,6 77:19,22,24 78:17 79:17 80:21,23 81:3 81:3,5,16,23,24 82:3,4,6 83:3 83:10,11,24 84:23,24 91:25 92:3,13,21,25 93:3,17,21,24 94:1,5 95:6,9 100:7,19 104:4 104:10,10,17 105:5 106:6,21 107:11,19,21 108:2,10 110:4 110:4,12,19,23 110:24 111:1,6 112:6,21,22 113:9 116:4,4 116:6,20 117:21 121:21 121:21,23 122:5 131:18 131:20 132:13 132:14 133:8,9 134:6,7,17,18 135:2,2 136:5 136:6,17,17 137:23 158:12 158:13,15 159:10,14

161:13 163:5,6 163:15,16 164:9,11,20,23 164:24 165:19 176:25 177:11 181:21 191:15 191:17,23 192:4,6,14,18 192:19,19,25 193:2,3,4,7,12 193:17 196:23 197:1,6 199:22 200:14,18 202:20 204:19 204:25 205:4 205:11 209:24 213:8,9,12,17 213:22,22 214:13,19,21 214:22 215:16 215:17,19,20 216:13,14 217:13,20 218:2,18,21 219:1,5,22 220:2,4 221:1 221:8,18,18 223:23,23 224:8 225:5,6 225:9,10,13 226:14 227:15 227:18,22,22 228:19 229:16 229:22 231:12 231:24 233:5 234:24 235:1,5 235:7,10,11,17 235:20,22 236:9,12,16,17 236:20 237:12 237:14,16 238:3,3,4,5,10 238:13,15,15 238:16,17,18 238:18 241:1 242:7,8,19 243:16,22 244:1,3,23 245:3,6,9,18 246:10 247:15

device's 229:8

devices 77:17 81:18 84:1 94:8 110:25 116:5,16,22 117:12 121:22 132:18 157:25 159:13 161:7 165:24

diagonal 80:3

diagram 120:25 158:6 162:25,25 163:9 164:5 178:18 229:11 248:24

diagrams 186:11 187:6

dictionary 4:12 59:9 62:9

difference 153:14,16 180:22 200:1 201:25

differences 170:14 171:3

different 7:1 9:7 18:1,21 19:4,18 21:6 41:8,10 51:15 64:12 66:17,20 67:5 68:11,11 69:17 70:14 75:14,14 77:16 77:17,24 78:3 78:4,5 79:2 82:11 84:1,3 87:11,13 88:8 100:11 115:13 131:24 132:4 133:15,17 141:24 142:13 145:12,16 150:9 152:20 156:13 157:18 158:21,22 159:5,13 170:18 171:3 195:7 199:16 216:18

differently 75:13 92:17 133:20

difficult 155:14

difficulty 151:17

directed 35:14 35:14 43:16 45:20 134:13

direction 163:1 252:10

directly 102:3 102:14 103:8 104:5 106:22 157:8,14,23 196:7

disagree 16:13 17:16 54:3 103:17 143:20 166:18 168:5 180:14,19 188:14 190:18 193:1

disagreeing 14:8

disagreement 180:10

discernable 55:24

disclose 44:14 47:5 48:12 66:7,24 69:21 114:5 120:9 126:6 143:15 144:6,7,8,18 146:18 147:4 147:21

disclosed 42:13 45:10 46:2

48:4,15 64:18 65:6,13 70:19 70:24 71:11 72:6 98:10 114:12 116:13 132:12 133:4 135:17,21 136:15 140:2 143:5 144:1,23 148:4,17 149:17 156:14 181:24 212:13 228:18
discloses 40:8 45:17,18 70:7 128:13 133:14 141:22 146:7 146:25 147:9 149:2 223:8
disclosure 126:5 127:1,2 132:6 133:6 141:8 150:2 179:6 220:11 228:6 236:17
discrepancies 63:22
discuss 30:4 46:7,13,14 58:25 64:12,16 65:11 103:8 114:4,11 125:13 132:24 195:11
discussed 76:18 76:24 111:25 124:7 131:25 141:2 144:21 184:20
discusses 65:5 76:13,21
discussing 66:8 95:23 111:16 180:21
discussion 29:9 32:18 47:19 101:18 109:16 109:25 111:18 120:7 138:6 178:8 190:6,16 222:22
display 128:17 130:25 174:14 182:12
displayed 176:12
displaying 142:23 149:5
dispute 21:3 35:25 58:8 109:11 146:4,6 146:24 147:8 190:25 232:6 233:13,18 234:19
disputes 21:6
distinct 140:20 140:22 150:20 204:4
distinction 83:15 142:10 173:20,21 181:16 197:23 210:4
distinctions 185:1
distinguishes 103:12 166:20 168:9 176:17 182:2,3
distinguishing 40:6
distortion 131:10
dive 50:12
dividing 244:17
document 4:15 59:12 60:7 62:20 79:2,3 85:20 91:21 151:12 191:11 221:14 237:1 242:5
documents 12:13,23
doing 13:18 19:25 20:8,8 37:5 56:13,25 56:25 73:8 79:15 109:1 111:17 142:9 144:9 179:18 197:1,24 237:20 238:19
door 215:8
double 112:10 129:3 178:16
downloaded 8:25 63:3
dozen 28:8
dozens 35:12
dr 29:10 63:18
drafted 90:15
drafting 188:24
draw 42:8 43:8 213:12 248:19 248:24
drawing 185:21
drawn 141:24
due 15:13 113:11
duly 5:6 234:21
duplicate 94:24 95:16 214:5
dynamic 95:24 96:3,5 98:9 124:20,25 125:6,7 128:12 140:24 141:1,8 142:19 144:5 144:14,17,23 149:6 154:1,19 154:25 156:6,7 156:20 157:3 209:6 212:25

e
e 4:1,8 6:8,13 252:1,1
earlier 38:15 60:3 69:15 86:20 100:6,25 127:13 131:25 141:2 142:7 153:20 161:23 165:23 205:21 208:17 210:24 218:13 220:9 220:23
early 86:17 175:15
easily 190:4,11
eat 73:10
edition 4:12 59:9
edits 183:5
educational 7:25 8:6
effectively 142:1 180:20 182:10
effort 20:22
eight 199:14
either 15:13 46:2 60:8 70:19 72:5 73:5 124:15 140:25 143:25 149:17 156:21 176:11 193:25 222:16 240:16
elaborate 140:11
electrical 14:24
element 45:18 45:19 66:3 67:18,22 69:13 69:16 86:1,2 91:16 92:5 104:12 107:6,7 108:4,7 141:15 144:7,8,12 146:13 148:2,4 148:9 181:18 191:21 204:23 221:4 225:12 234:13 236:10 236:13,14,15 236:18 238:9
elements 45:19 65:25 66:1,14 141:22,23 150:16 156:17 240:22 248:6
else's 226:23 228:13
embodiment 78:8 84:19 94:10 95:12,24 96:6,6 111:10 111:20 112:3 112:19 113:6 116:12 117:7 118:19,24 119:4,13 120:14,16 121:15 122:3 122:14,16 123:14 125:21 128:11 140:25 141:9 142:19 143:5,18 144:5 144:18,24 149:4,7 150:17 152:9 153:10 154:2,19,24,25 155:4,24,25 156:1,20 165:24 178:13 192:3 195:11 209:17 211:3 211:19 212:12 227:1 249:16 250:9
embodiments 37:8,12,23,25 38:24 39:11 42:1 43:15 47:18 51:15 58:5 87:16 94:23 95:5,15 96:2 122:14 124:17,21,25 125:7 134:11 140:19 141:1 141:13,25 142:5,11 143:15,24 145:13,17,25 146:6 150:4,19 151:25 157:6 178:3 179:3,11 179:15 182:12 192:12,23 209:6 210:6 214:2,4 215:1 249:10
employ 51:19
employee 252:13
empty 181:10
enable 97:2 108:18
encompass 204:17
encompassed 139:14 166:17
encompasses 167:4
endeavored 35:20 126:19 202:14
engagements 20:5,11 21:1
engineering 14:24,24
entering 78:21
entirely 126:16 176:14 214:17
entirety 250:3
entity 162:25
entrepreneur 8:11,11
envisions 148:23

equivalent 181:6 183:3
equivalently 181:1
error 14:3,13
errors 12:5,10 12:19 13:4
especially 102:8
esq 3:4,5,14,15
essentially 12:2 50:15 84:15
establish 39:3 161:4 165:25 169:16
established 109:19 110:22 111:5 112:5,21 112:22 113:8 116:3,14,20 117:3,8,13,21 121:20 122:3,4 165:18 166:3
establishing 118:1,20 119:5 120:17 121:11 123:3 238:13
et 85:7 243:20
evaluate 12:2 43:8 127:19 141:12 189:14 234:20
evaluated 123:18 206:20 207:2,4
evaluating 250:14
evaluation 57:13,15 73:7
events 126:3 212:21 243:10
evident 42:19
exact 25:8 86:18
exactly 88:6 103:23 173:16 209:25 210:2 219:21 225:24
examination 4:2 5:9 124:4
examine 126:21
examined 5:8
example 7:21 15:10,11 38:22 39:6,23,25 41:2,6 45:17 47:4,23 54:20 65:19,24 77:18 78:23 79:23 82:15 83:22 91:15 94:12 114:14 121:2 125:20,23 131:8 132:23 135:22 137:15 137:23 144:1 144:17 146:12 153:5 156:5,6 156:8,9 163:7 173:2 175:14 192:12 195:10 208:16 212:15 212:16
examples 52:4 55:8,25 127:14 131:3 135:24 144:21 168:8 204:2 209:3
excellent 206:18
except 151:4 184:23 251:6
exception 171:12
excerpt 4:11 59:8 62:9 221:14
exclude 22:10
excluded 123:15 204:3
excludes 30:10 32:7 89:13
excluding 26:11
exclusive 179:15
excuse 94:4 215:8 225:13
executed 251:13
execution 163:16
exemplary 81:22 94:10,23 95:5,11,14 118:24 121:1 121:15 163:10 164:6 178:12 178:18,19,22 179:1,2 214:4
exhibit 4:10,14 8:17,17 9:3 11:4 18:15 19:22 23:5 59:7 62:6,7,10 62:11,15,16,21 63:18 88:24 125:12 136:10 161:22 237:2
exhibits 8:17
exists 68:6 174:24
expect 115:7
experience 15:1 20:24 51:11 101:9 136:24 139:3 200:14 200:16 201:10 201:12 202:20 204:18 205:10 205:24 207:7
experiences 49:6,22 50:4,7 50:21 51:21 97:4 108:20
expert 7:15 20:9 21:7 23:24,25 29:9 29:20 33:5

237:3
explain 14:4 36:23 56:4 57:15,19 86:7 140:10 146:14 150:20 153:13 153:20,21 155:14 156:25 157:20 159:17 162:19 170:12 226:25
explained 157:19
explaining 42:4
explains 99:19
explanation 30:14 140:21 157:23 210:8 225:7
explicit 222:17
explicitly 168:9
export 114:17
exporting 114:17,22
express 21:11 66:6 166:12 222:2
expressed 21:15 22:15,20 71:21 72:4
expressing 72:21
expressly 47:5 153:24 154:17
extent 15:25 16:21 21:16 22:6 103:21 109:12 113:19 120:4 154:15 173:15 198:15 206:7 232:4 240:20 243:7

f

f 6:8 252:1
fact 25:9 35:23 52:7 126:21 142:12 171:2 171:12 175:14 179:21 187:8 189:2 198:5 201:11 202:10 210:7 226:25
factors 17:10
failed 49:18
failing 148:9
failings 17:1
fails 91:16 107:6 146:13 148:2
fair 17:25 22:16,21 31:17 32:3 33:19 42:18 48:19 73:4 78:11 132:15 133:18 134:15 135:9 137:5 138:4 171:23 174:5 185:25 193:6 204:8,16 240:19 246:13 247:13,19,22
fairer 56:22 204:22
fairly 78:20
fall 43:16 92:4 168:1 185:23
falls 43:9
familiar 28:24 29:6
family 9:24 10:1
far 161:11 225:7
farther 110:21
fashioned 79:15
fast 229:19
faster 207:21
feedback 101:14
feel 31:9 57:23 105:19 122:11 187:13 198:16 198:16 202:2
fenwick 3:3 5:21
fenwick.com 3:9,10
fetch 74:1,11 74:13 102:8
fetched 157:5 157:10,14
fetches 74:20 74:25 76:3 102:25 149:11
fetching 102:13
field 14:25 200:15
fifth 4:12
fight 232:4
figure 26:5 76:13,17 77:3 77:7,9,12,20,25 78:6,9 79:11 79:19 80:19 81:11 82:10 83:17 84:3 89:10 93:12,23 109:16,25 120:23,25 121:2 152:9,14 153:4,10,25 154:10,11,18 154:20 155:4 155:12,15,25 156:1,4,6,8,9 156:24 157:4 158:5,8,10,14 158:18,20 159:4 162:24 163:9 164:1,3 164:5 165:5 176:23 178:25 179:9,24 180:3 187:8 202:7 203:5 206:11 212:10 213:6

214:2 223:18 225:12 227:14 229:10,23 244:22 245:8 249:23
figures 120:21 121:2 123:14 154:2 155:24 158:17 159:4 163:13 170:9 178:8 179:14 187:9 215:5
filed 10:3,16,20 22:24
files 52:12 84:12 96:19 217:23
fill 162:7,8
filling 138:9,22
financially 252:12
find 12:18 13:3 15:10 41:14 94:11 95:2 125:18
fine 13:17 53:8 63:12 64:5 125:5 214:8
finish 37:21
firm 5:21 19:7 25:19 26:8,14 28:14
firms 19:18,18
first 5:6 8:16 8:19,23,24 10:12,13,14 11:10 20:5 25:9 35:12 49:4 51:12 63:6,20 64:8 74:9 77:15 78:16 81:9 96:2 100:14 110:7 128:11 140:14 141:11 150:12 151:2 152:22,22 169:10 170:15 186:8 209:7,11 209:14 216:19 218:2 232:3 234:17 241:13 241:16,22 245:10 246:14
five 53:7 164:13
flipping 35:11
flow 51:16,20 158:4,19 164:1 215:13 229:11
flowchart 121:3 158:5 159:7,10 163:24 164:17 176:23,24 229:11
flowcharts 42:4 158:7,21 159:12 162:14 162:20 163:14 178:20 186:11 187:6
focus 45:25
follow 34:23 47:22 115:13 172:14
following 45:15 105:15 128:16 138:10 179:24
follows 5:8 50:17
football 132:23 132:25
foregoing 251:4,11 252:6 252:10
forgive 45:3
form 11:19 12:12,20 13:6 13:23 14:15 15:23 16:18 17:6,22 18:7 21:13,21 22:17 23:2,12 24:16 25:3,7,13,25 26:10,21 27:5 27:13,21 28:4 28:15,22 29:4 30:21 31:15,23 32:16 33:8,18 34:4,15 35:5 36:6,16 37:1 37:19 39:9,19 40:3,25 41:21 42:17 43:2,22 44:6,17 45:13 46:5 48:17 49:23 50:9 51:13,22 53:2 54:2,13 55:4 55:19 56:8,20 57:8,21 59:20 60:2,8,18 61:1 61:8,15,21 62:1 64:20 65:15 66:9 67:1,25 68:24 69:6,24 70:8 71:1,13,19,25 72:8,17 73:22 75:4,9,21 76:7 77:5,13 78:7 79:25 80:14 81:6 82:7 83:5 83:13 84:11,13 84:20 85:6,8 85:16 86:24 87:2,9 88:4,18 89:2,11,21 90:6,19 91:1 91:12 92:15 93:9 97:10,19 98:1,12,23 99:7 100:9 102:5 103:19 104:7 105:9,13 106:9,24 107:14 108:5 109:20 111:7 112:7,24

113:10,12 114:7,24 115:11 116:17 117:5,15 118:5 118:22 119:7 119:10 120:19 121:13 122:7 122:18 123:5 123:17 125:9 126:9 127:5 128:2,9 129:14 130:4 131:2,22 132:19 133:11 134:9,20 135:11,14 136:19 137:13 138:2,9,20,22 139:9,16 140:4 140:13 141:10 143:6,19 144:25 145:20 146:9 147:1,11 147:23 148:7 148:19 149:19 150:7 152:1 154:8 155:1 157:11,14 158:1 159:2,19 160:2,17 161:9 162:7,12,21 163:21 165:4 165:21 166:13 167:6 168:3 170:5 171:7 172:1,7,13,23 173:3,12 174:1 174:8,16 175:7 175:22 176:3 176:13 177:22 178:14 179:16 183:14 184:6,9 184:14,18 185:8,11 186:17 187:3 187:23 188:15 188:22 189:9 190:12 191:2 191:19 192:7 194:2,14,25 195:6,22 196:5 196:12 197:3 197:11 198:13 199:1,9,24 200:10,19,25 201:24 203:3 203:23 204:11 204:20 205:5 205:18 206:5 206:17,23 207:12 208:3 208:10 209:1 210:1,15,21 211:11 213:25 214:12,23 215:22 216:3 216:17 217:5 217:22 218:5 218:24 219:11 220:5,17 221:3 221:9 222:18 223:3 224:3,19 225:20 228:2 228:23 230:6 231:1,8,15 232:1 233:7,19 234:7 235:2,13 236:1,22 237:17 238:6 238:20 239:10 239:19 240:13 242:13,22 243:6,24 244:9 248:2 249:19 250:12

formal 8:7,9,15 56:10,13 57:24 60:11 139:10 171:11 173:18 174:3 183:17 184:1 203:7 204:5

formed 189:13 197:13

former 168:10

forming 56:16

forms 149:8

formulate 94:2 218:23 219:6

forth 14:7 16:7 45:19 64:9 71:21 89:14 147:5 148:23 252:7

forum 113:24 184:15

forward 74:2 74:21 98:20 209:8 240:23

forwarded 79:21 80:8,11 80:13,16,21 81:2 82:3,17 82:25 83:10 93:16 94:20 157:12 164:23 192:15 217:23 219:4

forwarding 102:10

forwards 75:1 76:3 81:4,18 82:5 83:2 93:20 102:25 218:18

found 14:6 35:11 42:7 44:9 46:19 90:11 166:15 167:3 170:10 236:10

four 63:5 164:13 219:13

frame 28:5

francisco 24:18 24:22

free 122:11

frequently 165:2

friedman 1:19 2:19 4:3 5:5,11

6:4,7 9:9 54:8 54:22 56:3 58:25 100:4 101:20 124:6 186:4 251:19
front 188:12
frozen 151:15
fulfill 66:20
full 119:25 126:4 212:22
fully 16:2 42:8 47:22 103:21 136:25 138:7 139:4
functional 153:14 186:10 186:15 187:5 189:8 190:3,10
functionality 106:14,16
functions 75:15
further 31:2 56:25 119:15 123:10 138:5 148:25 150:15 205:25 252:10 252:12
furthermore 96:17 99:18 124:24
future 239:23 240:5

g

g 6:13
game 6:19 7:3
games 7:5,7 137:1 139:5
gaming 6:15,18 6:19,25 20:2 20:24
general 128:13 134:24 135:20 197:13,17 207:7,8 249:13
generally 18:23 20:17,23 27:24 88:12 89:8 147:14 207:23 216:21 220:6
generated 126:3 212:21
getting 11:23 12:23 41:23 57:23 101:14 158:9 173:16 203:24 205:7 215:15 248:22
give 8:19 41:1 54:20,22 60:24 74:3 109:15 112:8 118:7 132:20 135:23 139:19 152:17 174:22 178:24 183:17 196:13 209:3 240:4 248:24
given 34:19
gives 35:7 132:22
go 7:9 8:16 9:22 10:18 11:4 14:17 15:10 18:25 23:14,20 28:6 31:24 41:10 46:11 50:21 58:17 59:7 64:22 65:1 70:3,12 72:19 73:6 75:10 76:10 80:5,9 80:25 86:11 89:7 93:22 94:14 95:20 100:4 108:13 109:24 120:20 124:10,12 125:11 127:16 128:10 140:6 141:14 143:23 148:10 150:25 151:14 153:2 155:12 156:2 159:21 164:2 166:2,8 174:20 181:12 188:8 193:10 213:5 215:1,6 218:9 223:20,20 226:25 227:14 229:24 230:13 236:25 249:4 250:18
goes 20:6 81:3 94:4 110:2 118:10 161:12 167:21 169:10 192:22 213:7 214:8 218:1 244:16 249:8
going 14:11 16:3 26:16 33:9 52:15 58:15 62:3 65:1 72:11 93:12 102:21 107:5 109:7,16 113:13 121:7 130:20 138:13 150:9 155:14 161:15,19 162:10 171:10 187:13 219:21 219:25 224:11 228:9 232:6 239:6 240:23 241:14 249:2
good 5:11,12 5:13 6:4 89:14 109:4 160:24
gosh 245:24
gotten 16:22,25 225:7
graduated 8:3
ground 142:3

grounds 15:16 16:7,13,21 17:8,17 45:4 142:3 187:15
group 37:9,11 37:23,24 226:19
guess 7:12,22 8:9 11:3 12:5 13:7 18:2 20:21,22 22:7 22:10 56:13 90:8 103:20 104:1 105:14 106:11 109:21 110:6 111:8,11 111:21 119:14 129:22 142:3 162:22 164:19 174:18 193:1 215:6 216:5 231:10 232:23 240:15 246:15
guest 35:15 51:6 77:19,21 80:22 81:5,18 82:6 83:3 84:1 92:21 93:17,20 93:24 94:1,8 94:22 95:6 100:19 102:2 104:4,10,10,16 106:21 107:11 108:2,9 110:4 110:25,25 111:6 112:6,22 113:8 116:5,6 116:16,22 117:12 121:22 121:23 122:5 131:18 132:3 132:14 133:8 134:6,16 135:2 136:6,17 158:13,15 159:14 161:12 163:5,16 164:10,23,24 176:25 177:11 191:15,23 192:4 200:14 200:18 202:20 204:18 205:11 209:23 210:12 213:21,22 214:13,21,21 215:17,20 216:14 218:18 218:21 219:1,5 220:2,3 221:17 221:18 223:23 225:5,6,13 227:18,22,22 229:16,21 231:12,24 233:5 234:23 235:10,20 237:15,20 238:2
guests 82:17 94:21

h

h 4:8
half 18:23 28:7 207:20,21
hand 10:14 229:23
handful 35:12
happen 194:12 208:8 219:9 224:16 227:25 233:4 234:15 239:16 243:12
happened 243:2
happening 101:17 193:25 207:9
happens 78:16 78:25 84:19 102:15 159:16 207:6 216:2 243:9
happy 64:1 72:19
hard 17:11 22:3 143:7
harmonize 150:19 157:19
harvard 8:3
hassle 136:4
head 22:14 33:11 248:23
header 87:15
hear 25:24 118:15 211:24 212:5 246:18
heavily 20:18
help 81:14 178:12
helping 7:15
hereto 62:13,18
hesitant 16:2
hey 41:12
high 51:15 52:13 96:9,20 97:13 99:12 100:20 186:10 186:15 187:5 189:7 190:3,10
higher 163:23 163:23
hinge 239:22
history 226:20 226:23 228:7 228:13 249:11
hold 12:22 14:1 38:13 41:7 53:22 65:8 77:14 81:7 82:8 85:18 86:10 88:20 91:13 92:19 100:10 118:12 152:14 158:9 167:17 175:25 181:14,16 192:8 209:2

214:11 215:3 220:23 222:20 224:4,7 228:3 229:19 231:17 238:7 242:1,1 242:4 244:19 248:3 249:21
home 6:16
hopefully 140:11
hoping 223:19
host 50:14 51:4 52:12 77:24 78:17 79:17 80:21 81:2,3 81:15,23,24 82:3,4 83:10 83:11,24 84:23 84:24 91:25 92:3,13,25 93:2 94:5,8 95:9 96:19 106:6 107:19 107:21 110:4 110:12,18,23 110:24 112:21 116:4,4,20 117:21 121:21 121:21 131:20 132:1,13 133:9 134:7,18 135:2 136:5,17 137:23 158:12 159:10,13 163:5,15 164:9 164:20 165:18 181:21 192:5 192:19 193:2,7 193:12,16 196:23,25 197:6 199:22 204:24 205:4 209:23 210:12 213:8,9,12,17 214:19 215:16 215:19 216:13 217:13,20 218:2 219:22 221:1,8 223:23 224:8 225:8,10 226:14 227:15 228:19 229:7 234:25,25 235:5,6,11,17 235:22 236:9 236:12,15,17 236:20 237:11 237:14,19,23 237:24 238:5 238:13,14,18 241:1 242:6,9 242:19 243:1 245:3,18 246:10 247:15 248:5,7,8
hour 13:18 18:19 19:11 53:7 58:21 207:20,21
houston 3:18
html 74:12,13 74:15,21 75:1 76:3 102:25 105:3,4 106:21 107:7 173:5 174:12 175:2,6 175:6 213:12 214:18 216:14 219:22
http 174:25
human 74:16 175:7
hyperlink 191:22 229:15 229:20
hyphen 199:14

i

i.e. 217:18
idea 73:24 89:9 135:5 157:17 165:13 206:22 227:4
ideas 136:16
identical 94:8 95:7,10 151:3
identification 62:12,17 69:14
identifications 69:18 150:3
identified 67:10 69:11,13 69:17 70:2 143:1 144:16 146:1
identifier 110:19,23 116:3 121:20 236:11
identifies 65:25 66:11 67:14,17 67:19
identify 68:5 69:12 91:16 107:6 142:4 143:25 146:13 148:2,9 150:16 159:24
identifying 68:10
ii 190:5
illustrate 178:12
illustrated 155:4
illustrates 121:3 164:5
image 74:15
images 175:10
immediate 98:3
immediately 97:12 249:23
implement 88:13
implementati... 54:17 200:13 200:17 202:19 205:9
implementati... 86:22 87:11,13

implemented 32:20
implementing 205:11
implicit 222:17
implicitly 14:8
implied 182:23
implies 43:4,6 119:12
imply 182:19
implying 192:10
import 114:17
important 115:20
importing 114:17,21
improving 53:18 55:8 56:1
inaccurate 118:25 143:22
inadvertently 13:12
inaudible 118:14
incapability 146:5
include 20:11 31:14 75:25 90:17,25 91:7 92:11 105:21 128:16 172:21 176:10 183:22 183:25 185:6 196:15 204:23 229:14
included 23:5 171:17 174:13
includes 12:14 19:22 20:8 59:25 87:7 89:13 105:17 152:23 180:12 206:15
including 32:20 52:8 85:5 110:19 218:12 236:11 248:14
inclusive 187:12
incompatible 15:14 142:13 146:2 156:21
inconsistent 115:9
inconsistently 65:25 66:11 67:16 70:2
incorrect 65:16 65:18 154:14
independent 169:12 230:20
independently 136:12 146:15
indicate 88:14 116:12
indicated 190:4 190:15 201:3
indicates 153:25 154:17 231:5
indicators 217:10
indiscernible 25:22 130:5 246:17
individual 28:9 40:12 143:15
info 80:1
informal 8:8
information 11:1 21:17,20 21:24 51:3,6 58:17 79:21,23 79:25 80:18,20 82:24 83:3,9 83:19,20,22,24 84:2,7,8,11,12 85:2,6,15 86:4 86:8,12 88:2,9 88:15 89:1,9 89:18,20 90:3 90:4,18,25 91:6,7,8,18,24 92:2,12 93:2 93:15,20 94:2 103:10 104:5 104:15 105:18 106:5 107:8,9 107:12,17 108:3 114:18 115:20 143:1 144:11,15 168:2 170:2,8 170:16,20,24 172:21 175:3 176:2,7,18,19 177:1,4,10 180:16 181:1,2 182:6,13,17 183:8 185:14 193:16 200:20 208:21 213:21 213:23 217:18 217:19,21,23 218:18,22 219:4,5 227:21 241:4 242:20 243:3,11,18 244:7,12,25 245:3,14,18,21 246:5,10 247:5 248:10 251:7
infringement 24:2
inherent 15:17
inherently 47:5 243:8
initial 64:6
initialization 110:13,17 121:4 162:11
initialize 110:11
initializing 110:3 119:2,16 121:6

initially 7:3 161:4 169:4
initiate 228:21
initiated 236:16
input 97:3 108:19 136:4
inputted 80:1 84:12 217:22
inquiry 16:24
instance 29:19 134:17 135:12
institute 15:22
instituted 14:13 15:19 17:20
institution 12:1 12:10,14,17,19 14:9 15:4,17 16:10 22:25 23:11,13 24:6 31:7 34:17 44:8 151:20 167:10,13 182:16 186:5 189:18,23 237:6
instruct 174:14
instructed 4:19 44:19 48:8 113:16 184:21 198:18
instructions 174:13 176:11
intellectual 7:14
intelligence 197:21,24
intend 21:11 141:18
intended 182:9 246:25
intending 13:10 32:24 177:24 202:5 219:15
intent 206:8
inter 1:11,13 1:15 2:11,13 2:15 9:7
interact 136:25 138:7 139:4 173:15 177:25
interacted 172:22
interaction 51:3,7 83:8,23 86:23 166:17 167:4,22,23 168:1,2,7 169:2,8,17,20 170:2,3,8,10,16 170:17,20,21 171:6 172:5,10 172:11,20 173:7,7,8,10,17 173:24 174:6 176:1,2,6,6,7,8 177:1,4,10,19 177:21 180:17 181:1,4,6,7,19 181:21,22 182:4,6,8,18 183:3,4,9 185:15 201:23 204:10 217:20 230:18 234:11 236:14 241:5 242:21 243:4 243:19 244:13 245:1,4,15,19 245:22 246:6 246:11 247:3,6 248:11
interactions 32:21 181:24 182:20,23 192:14 206:15 211:6
interacts 171:24 172:17 177:17
interested 7:24 20:20 73:2 187:20 189:6 252:13
interesting 126:10
intermediate 98:22 149:8 157:11,14
internet 41:10 49:6,21 50:4,7 50:21 51:20 80:11 87:4 97:2 136:23,24 139:2,2 175:15 216:20 220:10
interpret 194:10
interpretation 68:22
interpreting 189:3
interrupting 246:22
introduced 212:10
introduces 102:10,16
introductions 5:16
intuit 1:5 2:5 3:2 5:19 24:2 62:21,25
intuit's 24:23 29:9,20
invalid 45:7 47:1
invalidated 16:20
invalidating 45:5
invalidity 144:3
invention 35:13 41:11 42:3 43:17 47:8,19 48:23 50:14

56:1 58:6 119:19 131:17 134:1,12,25 135:1,5,21 136:22 137:6 137:15,19,22 139:1 150:21 160:13 161:3 163:11 164:7 165:7 179:3 180:1 190:2,6 190:9 200:15 205:24 219:16 219:17 249:15
inventor 86:16
invents 47:2
invitation 110:24 113:9 116:5,15,21 117:9,11 121:22 122:5 169:15 223:24 230:22 231:7 231:14,25 232:14 233:1,2 233:6,10 236:11,16 238:10,22
invitations 117:22
invited 238:5 238:17
invitee 238:3 238:10,15,16 243:16,22 244:1,3,23 245:6,9
inviting 238:19
involve 22:8 187:9
involved 23:9 106:2,7
involvement 24:25
ipr 9:3 11:16 12:24 13:5,25 14:13 15:22 17:21 22:15 23:9,11,18,22 24:6 27:24 28:6 35:20 46:10 237:3 249:18
ipr2023-00339 1:11 2:11 9:12
ipr2023-00341 1:13 2:13 9:13
ipr2023-00342 1:15 2:15 9:11
iprs 25:1,18 26:8 27:4,12 28:13,21 29:3 31:8 62:10 90:2
issue 7:17 37:4 41:23 48:11 76:6 103:3 120:1 122:24 151:11 166:10 228:19
issued 233:25 237:5
item 136:3

j

j 3:4
javascript 84:11 85:7 217:22
jbush 3:10
jennifer 3:5 5:20
job 1:24
join 191:17 233:3 238:10
joins 192:4 237:14

k

keep 95:1 158:25 162:10 182:25
keeping 8:13
keeps 101:17
kept 182:10
kind 6:24 21:2 21:7 73:10 92:8 126:6 166:10 175:20 208:1 235:19
kinds 7:19 182:5
know 6:23 8:18 9:21 11:20 12:22 16:23 18:9,21 19:9 19:10,13,20 21:25 22:3,3 23:14 25:8,14 25:21 26:6 27:16 30:7,12 34:2,9,10,19 35:1,9 36:4,13 42:3,8 43:1,19 43:23 44:5 50:14 54:23 63:22 64:1,4 70:13 72:12,15 74:16 87:19 88:11 90:14,23 92:16 94:13 95:2 100:8,22 101:6,25 105:2 105:6 106:25 107:22 112:1 112:11 113:18 113:21 114:16 117:23 120:5 122:19,22 123:7,10,13 133:22,23 137:16 139:19 141:19,22 143:12 145:7 145:15 147:6 147:24 148:24 153:24 155:15 157:16 158:5 159:20,20 161:15 162:6 174:2 178:2,25

183:11 186:18 187:11,13,15 187:16 188:25 189:14 191:24 192:1 196:6 197:12,13 198:14 199:15 199:17 203:21 207:21 208:14 208:21 216:12 217:2,11 218:11 219:20 219:25 220:7 220:18,22 221:7,10 223:11 228:24 229:1 234:20 239:25 247:20 248:5 251:5
knowing 73:2
knowledge 43:24 207:8 251:6
knows 175:9
kushman 28:14

l

label 27:23 65:21 127:12
labeled 37:9 77:20 80:4 82:11 93:24 94:3,5 114:21 242:7
labels 64:9
lack 13:14
lag 216:12,23 216:23,25 220:15 221:6
lagging 216:21
laggy 216:25 220:11
lake 6:10,12
language 92:18 107:18,23 108:9 161:11 182:15 191:21 193:18 232:22 239:13,18
large 52:12 96:19
late 247:10 248:22
latency 102:10 102:16
law 5:21 16:1 68:22
laws 251:10
lawsuit 24:1
lawyer 16:11 17:12 26:12,15 26:19
lawyers 25:12 25:17 26:7,13
lay 46:22 224:4
leading 192:18 193:3 237:21
lebrun 15:13 37:9,12,25 39:7,11 40:8 42:13 70:19,25 71:11 72:6 114:16 195:12 223:5,8 226:17 226:17 227:1 228:11
lebrun's 228:5
left 10:14 125:3 125:3
legal 15:25 46:23 145:15
lens 174:18
lettering 65:22
letters 199:14
level 44:10 51:15 100:20 163:23,23 186:10,15 187:5 189:7 190:3,10 248:6
levels 52:13 96:10,20 97:13 99:12
lib 112:12
lieberman 29:10
lieberman's 63:18
limit 206:10 219:16
limitation 47:6 65:21 104:20 104:25 105:20 107:13,24 143:18 144:10 148:17 169:14 180:11 194:11 196:15 210:3 221:25 230:14 235:4,6,15 236:3 238:9 240:21
limitations 45:11 46:2 64:13 66:7 68:7 69:21 70:18,24 71:9 71:10 104:8 107:16 132:3 142:5 143:15 143:16,25 144:19 146:8 146:18,25 147:4,9,21 149:2,16 237:6 239:7
limited 12:17 138:8 152:9 153:11 206:16
limiting 205:20 206:7
line 34:23 38:23 42:8 43:7 53:9 54:20 81:10,15 82:15 94:13,19 95:4,14 108:23 110:5,11,16 117:7 118:10 118:11 120:15

135:25 138:14 138:15 158:15 159:9 164:4,15 169:10 179:7 179:23 180:3 192:17 198:7 201:15,16 226:4 249:8 250:4
lines 32:23 39:12 84:16 93:18 96:14,16 116:1 118:19 119:4 120:15 121:9,24,25 122:9 137:4
link 41:12 58:2 74:9 136:13 162:1 208:17 249:11
links 38:9,24 74:5 138:11 227:5
list 8:24 20:4 20:16,16 21:2 23:3 38:4,8,24 40:9,18,23 195:13,16,25 228:6
listed 10:25 23:6 85:4
literal 92:4
literally 87:23
litigation 7:20 20:1,12 23:18 23:22 24:11
little 21:5 65:2 65:3 118:7 129:8 187:13 205:8 232:24 243:15
live 6:9
llp 3:3
load 126:3 212:21
log 97:3 108:19
logging 138:8
long 6:21 13:18 25:6 92:8 106:1 107:11 108:2 145:22 175:15 219:25 220:12 245:8
longer 20:19 220:15
look 9:22 10:19 18:25 37:7 44:8 59:8 62:6 62:20 66:13 75:10,10 79:7 79:10,12 81:19 83:8 87:23 93:22 100:4,14 101:20 109:24 112:18 115:25 120:20 123:8 125:17 136:6 142:16 145:16 150:12,24 151:20,23 155:12 156:16 159:21 166:7 168:19 180:4 188:8 189:19 190:14 191:10 208:18,24 211:18 215:1 221:13 230:14 232:24 236:4 238:8 240:25 249:7
looked 22:9 88:21 98:19 158:4 190:18 246:14
looking 11:9 45:7 48:12 68:14 85:11,18 85:20,23 86:1 87:6,25 88:23 99:4 106:17 108:14 114:9 115:19 122:8 122:13,20 135:4 136:8 137:7 139:18 144:10 145:4,6 161:23 174:19 176:22 180:7 187:17 189:14 208:18,20 212:5 226:3 236:5
looks 78:16 82:1 132:22
lot 6:20 35:18 49:10 73:20 98:16,25 187:17
lots 35:9
loud 118:12 250:3
lower 52:20
lumped 20:23
lunch 73:9,11 73:12 123:21
luncheon 123:22

m

m 6:8
machine 252:9
made 14:12 17:20,24 18:12 39:15 44:13 47:9 48:3 83:21 94:6 113:17 114:15 120:3 134:19 140:23 168:11 189:15 202:8 202:10 213:16 233:23 239:23 249:13 252:8
main 100:21
mainframe 207:16
maintain 86:13
maintaining 228:6

make 18:5 23:23 73:6 75:17 89:24 92:7,8 93:13 94:8 102:22 134:17 135:11 141:19 142:10 142:14 146:1 152:11 157:9 157:17,20 158:8 162:6,6 165:12 175:4 177:12 191:24 215:10
makes 42:15 79:18 137:23 138:19 145:22 181:15 213:9 213:22 214:13 217:14
making 66:18 81:20 83:15 111:13 177:6 210:4 222:21
management 178:5 207:15
manner 58:4 97:5 108:21 109:2 154:24
mark 237:7
marked 62:11 62:16
market 7:23
marks 32:9,11
matches 140:17 140:18
material 22:12
materials 22:7 22:9,24 23:4
matter 12:25 22:19 54:17 208:1 233:23 251:4
matters 7:20 27:3,6,8,11 197:18 207:13 251:6,8
mcbeth 3:14 5:16,22,22 11:19 12:12,20 13:6,23 14:15 15:23 16:18 17:6,22 18:7 21:13,21 22:17 23:2,12 24:16 25:3,7,13,22,23 25:25 26:10,21 27:5,13,21 28:4,15,22 29:4 30:21 31:15,23 32:16 33:8,18 34:4 34:15 35:5 36:6,16 37:1 37:19 39:9,19 40:3,25 41:21 42:17 43:2,22 44:6,17 45:13 46:5 48:17 49:23 50:9 51:13,22 53:2 53:5 54:2,13 55:4,19 56:8 56:20 57:8,21 58:20 59:20 60:2,18 61:1,8 61:15,21 62:1 63:8,25 64:3 64:20 65:15 66:9 67:1,25 68:24 69:6,24 70:8 71:1,13 71:19,25 72:8 72:17 73:22 75:4,9,21 76:7 77:5,13 78:7 80:14 81:6 82:7 83:5,13 84:13,20 85:8 85:16 86:24 87:2,9 88:4,18 89:2,11,21 90:6,19 91:1 91:12 92:15 93:9 97:10,19 98:1,12 99:7 100:9 101:16 102:5 103:19 104:7 105:9,13 106:9,24 107:14 108:5 109:20 111:7 112:7,24 113:10 114:7 114:24 115:11 116:17 117:5 117:15 118:5 118:22 119:7 119:10 120:19 121:13 122:7 122:18 123:5 123:17 125:9 126:9 127:5 128:2,9 129:14 130:4 131:2,22 132:19 133:11 134:9,20 135:14 136:19 137:13 138:2 138:20 139:9 139:16 140:4 140:13 141:10 143:6,19 144:25 145:20 146:9 147:1,11 147:23 148:7 148:19 149:19 150:7 151:16 152:1 154:8 155:1 158:1 159:2,19 160:2 160:17 161:9 162:12,21 163:21 165:4 165:21 166:13 167:6 168:3 170:5 171:7 172:1,7,13,23 173:12 174:1,8

174:16 176:3
176:13 177:22
178:14 179:16
183:14 184:6,9
184:14,18
185:8,11
186:17 187:3
187:23 188:15
188:22 189:9
190:12 191:2
191:19 192:7
194:2,14,25
195:6,22 196:5
196:12 197:3
197:11 198:13
199:1,9,24
200:10,25
201:24 203:3
203:23 204:11
204:20 205:5
205:18 206:5
206:17,23
207:12 208:3
208:10,13
209:1 210:1,15
210:21 211:11
211:21 212:1,6
213:25 214:12
214:23 215:22
216:3,17 217:5
218:5,24
219:11 220:5
220:17 221:3,9
222:18 223:3
224:3,19
225:20 228:2
228:23 230:6
231:1,8,15
232:1 233:7,19
234:7 235:2,13
235:23 236:1
236:22 237:17
238:6,20
239:10,19
240:13 242:13
242:22 243:6
243:24 244:9
248:2 249:19
250:12,17
mckool 3:13
5:23 25:19
26:9
mckoolsmith....
3:20,21
mean 7:6 8:10
10:2 11:20,22
16:10 21:25
22:2 27:22,25
28:8 32:14
34:11 35:14
44:18 45:20
46:6 49:10
50:6,10,16
51:14 52:3,17
53:14,23 54:11
55:2,16 57:13
57:22 63:9
68:23 69:25
73:10,21 77:7
80:9 87:3,12
89:12 92:16
95:25 98:3
99:8 100:20,22
103:7,16,20
105:19 106:11
106:15 107:5
109:22 111:23
112:8 113:11
115:19 116:18
117:6,22
118:23 120:24
121:24 122:8
123:9 127:10
127:17 134:10
134:25 136:8
137:14 142:8
143:7,9 145:1
148:3 149:20
150:8 153:19
155:2 159:3
160:18 163:22
173:1,13
176:15 179:17
183:12 187:4,7
187:11 188:23
191:20 197:4
197:12,18
198:12,25
199:2,8,10
200:24 205:6
205:19 206:6
206:11 208:19
211:12,13
213:3 220:7
225:21 228:11
229:14 231:2,9
231:16,18
233:8,16,17
234:8 235:14
236:2 238:16
239:20 241:11
243:25 248:4,5
248:21
meaning 16:1
23:10 30:9,16
30:20 31:1,10
31:13,20 32:6
33:2,6,15 35:3
36:4,14,23
37:17 38:10,16
39:17 54:9
55:24 58:15
60:10,15 90:11
129:10,11
166:16 168:6
171:16,18,21
171:22 180:11
180:16 184:22
184:25 185:5
185:14 195:20
198:18 199:16
200:8 201:4
202:11,15
203:11,14,22
204:1,4 207:23
223:15 225:18
226:9 227:11
232:10
means 30:19,25
33:1 34:13,14

35:2,21 54:16 56:7,18 57:7 57:17 58:9 60:25 69:20 86:8 89:10 91:6 127:14,18 129:1 131:4 136:11 171:6 180:11 183:22 184:1 197:10 197:13,14,17 201:23 205:17 209:10,13 230:25 231:2 231:12 244:22
meant 8:23 53:21 61:12 80:12 109:11 224:21,24
media 67:8,9 67:15,17,20,20 69:3,3,13 126:2 128:13 143:2,3 155:7 155:17 157:5 157:12 212:20 212:22
meet 29:21 104:20
members 34:3 34:5 43:20,25
memorized 72:19
memory 13:11 13:14 88:6 129:2 222:21
mention 30:17
mentioned 19:25 20:12 87:22 166:1
merely 38:3
message 79:22 80:2,17,18,20 81:16,18,25 82:14,16,20,25 83:3,18,19 84:9,25 85:5 93:21,25 94:2 94:19,24 95:15 110:18 114:17 164:1,22 165:9 179:5 213:18 213:21 214:5 217:23 218:3 218:19,25 219:3,5 225:9 227:20
messages 82:14 84:1 158:19 219:13
met 15:6 106:19 142:5
method 35:15 52:10 77:19,21 77:23 92:21 98:14 104:9,10 119:12,16 121:3 134:5 156:7 161:12 163:14 176:25 200:12,17 202:18 221:18 237:11 238:12
methods 38:3 40:8 52:22 75:13 96:17,25 97:2,12,20,24 98:2,5 99:18 99:21,22 108:18
mic 101:14
michael 3:4 5:18 246:19
microsoft 4:11 59:8 62:9 88:10,19
mid 86:19
middle 101:8 101:10 102:15
middleman 73:20,25 100:7 100:24 101:3 102:1,7
mike 6:2 53:5 58:20
mind 33:16 73:8 202:12 203:21 216:9
mine 17:21
minute 53:1,7 54:14 135:23 152:17 208:24 229:9
minutes 58:21
misattribution 49:12
mischaracteri... 107:23 119:24
misinformed 11:3
misplaced 140:16
misquote 107:23
misquoted 49:17
misread 204:25
misremember... 107:4 166:5
missing 127:6 141:7 143:16 143:18 149:24 246:16 247:11
mistake 15:21 15:25 17:20,24 18:5
misunderstan... 36:8
misunderstood 47:22 184:24
mixed 12:23
mixes 140:17 140:18
mobile 7:6
modified 245:13
modifier 197:7
moment 207:10

money 19:2
montulli 87:17
morning 5:11 5:12 6:4 101:24 102:22 103:18 198:1 203:18 207:17
motivated 15:12 16:6 17:15
motivation 17:21
mountain 3:7 24:14
moved 71:5
moves 159:11
msacksteder 3:9
multiplayer 7:7
multiple 37:9 37:11,23,24 38:23 49:6,21 50:3,7,20 51:11,14,20 67:24 68:6 70:14 74:2,22 75:2 76:4 86:13 103:1 125:21 126:3 138:10 140:19 141:24 142:11 149:9 150:18 179:10 212:21
mute 101:16

n

n 4:1 6:8
name 5:18 6:5 6:7 26:16 28:23 29:5 252:16
named 28:20 29:2
navigating 161:17
near 15:9 108:20 239:12 239:16
nearly 97:4 109:2,6 194:1 194:6,12 196:10 222:3 239:9
necessarily 30:10 32:7 106:15 187:12 193:4 218:14 246:13
necessary 44:10 51:19 57:1 60:9 109:12 173:20
need 13:16,20 26:16 31:9 33:12,23 34:17 34:22 37:3,4 42:7 43:7 45:3 45:9 50:15 54:22 73:10 79:11 88:5 89:6 90:20 118:6 150:9 161:2 162:3,4 173:2 234:20 248:18
needs 203:2
negative 105:20
neither 124:15 240:18 252:12
netscape 86:16
networks 216:20
never 155:20 155:20 160:25
new 21:17,20 21:24 22:7 113:12,16,17 138:11
nightly 207:15
non 7:5,20 20:22,23 141:1 157:14
nonsensical 141:3
nonshared 138:12 182:4
nonworking 18:24
normally 178:4
note 11:14 14:20 15:5,11 31:2 32:18 47:23 65:24 67:19 69:16 91:15 100:21 107:6 114:14 141:2 154:16 156:19 187:7 211:21 212:1 223:6,8 226:21 226:25
noted 12:5,9,21 35:24 220:9 234:21
notes 140:15
noting 114:25 128:25
notwithstandi... 171:2
november 1:20 2:21 5:1 124:1 252:16
nuances 18:20
number 8:20 10:14,16 11:6 41:25 76:25 79:19 82:11 83:18 88:8,12 89:7 151:1 214:25 225:12
numbers 84:3 88:1 237:7
numeral 77:20 77:25 79:17

o

o 6:13,13
o0o 5:3 124:3
objection 11:19 12:12,20 13:6

13:23 14:15
15:23 16:18
17:6,22 18:7
21:13,21 22:17
23:2,12 24:16
25:3,7,13,24,25
26:10,21 27:5
27:13,21 28:4
28:15,22 29:4
30:21 31:15,23
32:16 33:8,18
34:4,15 35:5
36:6,16 37:1
37:19 39:9,19
40:3,25 41:21
42:17 43:2,22
44:6,17 45:13
46:5 48:17
49:23 50:9
51:13,22 53:2
54:2,13 55:4
55:19 56:8,20
57:8,21 59:20
60:2,18 61:1,8
61:15,21 62:1
63:8 64:20
65:15 66:9
67:1,25 68:24
69:6,24 70:8
71:1,13,19,25
72:8,17 73:22
75:4,9,21 76:7
77:5,13 78:7
80:14 81:6
82:7 83:5,13
84:13,20 85:8
85:16 86:24
87:2,9 88:4,18
89:2,11,21
90:6,19 91:1
91:12 92:15
93:9 97:10,19
98:1,12 99:7
100:9 102:5
103:19 104:7
105:9,13 106:9
106:24 107:14
108:5 109:20
111:7 112:7,24
113:10 114:7
114:24 115:11
116:17 117:5
117:15 118:5
118:22 119:7
119:10 120:19
121:13 122:7
122:18 123:5
123:17 125:9
126:9 127:5
128:2,9 129:14
130:4,11 131:2
131:22 132:19
133:11 134:9
134:20 135:14
136:19 137:13
138:2,20 139:9
139:16 140:4
140:13 141:10
143:6,19
144:25 145:20
146:9 147:1,11
147:23 148:7
148:19 149:19
150:7 152:1
154:8 155:1
158:1 159:2,19
160:2,17 161:9
162:12,21
163:21 165:4
165:21 166:13
167:6 168:3
170:5 171:7
172:1,7,13,23
173:12 174:1,8
174:16 176:3
176:13 177:22
178:14 179:16
183:14 184:6,9
184:14,18
185:8,11
186:17 187:3
187:23 188:15
188:22 189:9
190:12 191:2
191:19 192:7
194:2,14,25
195:6,22 196:5
196:12 197:3
197:11 198:13
199:1,9,24
200:10,25
201:24 203:3
203:23 204:11
204:20 205:5
205:18 206:5
206:17,23
207:12 208:3
208:10,13
209:1 210:1,15
210:21 211:11
211:22 212:2
213:25 214:12
214:23 215:22
216:3,17 217:5
218:5,24
219:11 220:5
220:17 221:3,9
222:18 223:3
224:3,19
225:20 228:2
228:23 230:6
231:1,8,15
232:1 233:7,19
234:7 235:2,13
235:23 236:22
237:17 238:6
238:20 239:10
239:19 240:13
242:13,22
243:6,24 244:9
248:2 249:19
250:12
observing 5:25
obvious 14:6
18:12 45:7,24
46:1 47:7,16
145:19
obviously
112:25 157:1
218:21

obviousness 16:14,24 17:9 46:15 47:1
occur 59:16,25 196:10 218:15 231:24 239:8 240:12
occurring 222:3
occurs 206:15 215:13 229:6
offering 202:3
office 1:1 2:1 6:17 24:22
offices 24:14
oh 12:22 19:4 22:5 23:13,14 24:20 37:2 40:4 41:7 69:7 79:4 80:6 83:14 86:9 87:10 89:6,12 91:13 111:23 122:19 140:5 141:11 169:22 169:22 171:8 179:17 183:15 187:24 199:25 201:14 204:21 208:14 216:18 225:4 241:15 245:24 248:4,5
okay 8:22,25 9:2 10:7 11:2,3 19:6,10,21,25 24:20 34:17 40:4 46:25 53:9 58:22 60:14 73:8,13 73:13 74:24 75:17 76:2 77:2,15 78:12 79:1,8,15,17 80:9 81:19 84:6,6 85:4 86:7 89:17 90:23 92:7 95:10,13,20 103:14,16,17 105:24 110:1 110:11 112:17 118:9,12,17 126:25 127:23 132:7,8 133:2 133:5 136:5 138:25 140:14 150:12,14 151:22 160:24 163:24 164:4 167:15,24 168:22 178:23 181:10 183:11 184:3,17 185:21 188:11 189:25 190:13 191:12 193:6 198:22 199:25 200:24 204:15 207:2,6 211:8 212:6 213:4 217:2 224:14 228:16 229:4 233:16 234:15 236:25 240:25 241:9 242:10 244:16 245:9 246:1 247:22 248:14 249:1,9 250:2,6,15,17
old 79:15 227:5
olympian 6:15 6:18,19,25 20:2,24
omitted 182:21
once 74:1,13 110:21 116:2 116:19 117:7 117:19,20 121:19 122:2 157:11 159:16 160:25 161:15 165:3 233:25
ones 19:15 20:15 71:6
ongoing 160:10
online 7:3,4,7 132:24 137:1 138:19 139:5 198:8
onward 51:6 83:25
open 9:1,12 10:7 34:17 79:1 89:4 138:11 152:11 181:25 226:1
opening 79:3 145:9
operable 153:6 155:8
operating 104:16 169:7 230:17 234:10
operation 76:17,23
opine 32:25 37:2 42:21 58:12 60:4,10 91:3 120:5,8
opined 139:21 240:23
opines 72:4
opining 200:9
opinion 13:13 13:24 15:18,21 16:3,16 17:4 32:2,5,14 33:5 37:4,17 39:4 41:24 42:10 47:13 60:24 64:18 65:5 66:2,5,10 67:23 69:25 70:3,6,9 71:15 71:17 72:3,21 74:24 75:18 76:8 90:13 92:10 102:4,6 103:4 105:21 107:1 111:12

113:3 120:1 126:18,25 129:9,16,18,20 130:2 140:15 156:18 170:7 171:1 174:3 176:15 180:25 183:1,13,23,24 186:19,22 187:2 189:1,12 189:13 191:6 196:7 197:14 203:6,8 216:24 217:7 240:8 250:8
opinions 11:15 15:9 21:11,15 21:16,20 22:11 22:14,19 56:16 60:8 71:20 113:13 187:14 202:2,3
opportunity 58:12 113:16
opposed 30:14 135:17
opposite 179:22 202:4
optional 38:3 40:8
optionally 223:9,12 225:16 226:5,6 227:8,8
oracle 101:7
order 34:18 43:8,13 47:24 68:4 72:25 73:4 93:4 104:20 115:18 119:17 145:1 148:11 156:25 190:13 216:15 218:13,14 219:9,12,20 234:17
orders 219:15
ordinary 14:5 14:17,18,22 16:5 17:14 29:10,21 30:8 30:15,16,20 31:1,10,13,20 32:5 33:2,6,22 33:23 34:3,12 35:1,2 36:3,4 36:13,14,19,25 38:9 39:17 43:14,21 44:2 46:18 47:7 55:24 56:3 57:5,6,19 58:15 90:11 98:18 114:20 140:21 145:16 156:16 166:15 166:19 168:6 171:16,18,21 171:22 172:16 180:11,16 183:2 184:22 184:25 185:5 185:14,17 195:14,20 198:18 201:4 202:15,16 203:11,14,16 203:19,20,22 203:25 204:3 216:19 220:9 226:21 232:10
oregon 1:23 6:10,13
origin 7:2
originally 94:6
originated 82:2
originates 81:3
oswego 6:10,12
output 175:15
outs 237:7
outside 33:11 41:13 43:15,16 56:24 58:5 113:22 171:14 171:17 178:3 185:24 187:14
overall 78:2,5,9
overcome 54:6 99:15
overcomes 54:19
overlap 128:8 129:10
overnight 197:25 207:21
oversimplifyi... 134:11
overview 50:12
own 6:15 14:21 51:7 94:2 197:1,7 218:23 226:18
owner 1:9 2:9 3:12 5:24 152:8 153:10 153:13,19
oxford 246:22 246:24

p

p.c. 3:13
p.m. 2:21 124:2 250:20
packets 52:13 96:20
page 4:2,9 10:12,14 11:11 11:11 15:4 20:5,6,25 41:10 46:8 59:11 63:6,20 74:1,10,11,12 74:19,20,21 75:1,2 76:3,4 78:22 79:14 87:6 93:19 95:24 96:5 98:10,21 102:9 102:14,25

103:1 104:5
119:15 124:16
124:21,25
125:7,25 126:3
131:19 132:18
133:10 134:7
134:18 135:3
136:7,9,18
137:7 140:25
141:1,6,8
142:19,23
144:24 149:7,8
149:11 151:23
151:24 152:10
152:24 153:3,7
153:11,14,25
154:1,17,19,25
156:3,6,7,9,10
156:20,22,23
157:1,3,18,24
157:25 160:25
161:15,18,20
167:9,15
168:12,16
170:1,8,16,20
170:22 171:25
172:5,10,17,20
173:4,10,15,17
173:25 174:5,7
174:12,15,23
174:23 175:5
175:18,20
176:2,6,7,12,12
176:21 177:1,3
177:3,5,5,8,9
177:10,13,17
177:20 178:5
181:1,7 182:6
182:15,23
183:4 186:6,7
186:8 189:18
189:21,24
192:14 208:18
209:8,14,24
210:8,11 212:9
212:18,21,25
213:13 214:22
215:16,18,21
223:7,9,12
225:16 226:6
227:1,3,9,16,17
227:18,23
241:2,6,19
242:10,18
243:1,15 245:2
245:17,22
246:9 247:4,14
248:8

pages 1:25 21:2
38:4 40:9,19
40:23 63:4,5
74:5 100:8,18
102:2,8 125:22
128:15,18,19
128:21 130:25
131:6,14 149:5
154:23 155:5,8
161:23 167:4
167:18,25
168:5 172:21
173:1 174:22
178:1,10
180:15 183:23
183:25 185:6
185:13 195:13
195:16,25
223:14 225:17
226:7 227:10

paging 125:7

paid 19:11,14

paper 15:9
79:16 248:19

paperwork
19:1

paragraph
11:14 14:20
18:14 30:1,4
32:4 37:7 39:2
39:21,24 40:1
40:16 46:8,25
49:1,4 50:11
50:22,24,25
51:2 52:8
65:24 66:6,19
70:12 72:11,20
73:6,17 74:6
75:24 76:10,13
76:21 77:1
78:15 79:5,10
79:20 82:24
85:9 86:11
87:18 91:15
94:7 95:20
96:1 98:20
99:3,5 101:4
102:7 109:17
114:9,19 118:9
124:12,14,20
125:2,3,14,17
126:6 127:11
128:11,24
130:21 140:8
140:15,18
142:2,16,18
145:5 146:12
148:1,8 149:3
149:21 150:1
150:12 151:1,2
151:7 152:5,23
152:25 153:5
154:3,9,20
156:4,19 166:8
166:25 169:24
172:3 176:5,22
177:16 180:7
180:24 183:1
190:1 195:10
209:5,20 211:4
211:13,14,19
212:8,10,11,15
217:10 219:13
223:5 225:15
226:16 249:7
249:24 250:4,9

paragraphs
46:12,20 118:3
127:11 152:19
156:13 176:16

paraphrase
166:24 225:22

paren 226:1,1
parentage 10:2
parse 18:25 27:18
parsing 143:8
part 10:10 15:3 20:1,19,21 24:13 61:9 65:9 73:21 82:5 92:9 95:13,18 96:22 104:24 107:1 108:16,16 110:8 113:4 115:22 121:14 130:10 133:23 134:12,25 135:5 153:18 153:22 155:21 158:3 166:19 175:2,4 176:18 244:21 245:11
partes 1:11,13 1:15 2:11,13 2:15 9:8
participants 41:19 138:11
particular 11:22 14:1,3 19:1 33:24 65:21 108:10 164:2,19 185:23 195:5 222:15 229:13 232:7 235:21
parties 23:18 30:17,23 35:23 58:10 232:5 233:14,18 252:14
partly 52:8
parts 65:5 66:20 201:7
party 192:15
pass 215:19
passage 81:9 82:12 103:14 111:9 165:23
passages 218:8
passed 192:24
passing 32:21
patent 1:1,3,9 1:12,14,16 2:1 2:3,9,12,14,16 3:12 4:16 5:24 7:17,21,23 8:19 9:4,24 10:1,7,18,23 11:5,5,6,10,13 11:16 14:14 15:7,22 18:11 18:15 20:22 21:12 22:15 25:2 32:23 33:20,25 35:7 35:7,11,18 36:21 37:13 38:2,8 40:7 41:5,25 42:5 43:16 44:19,25 45:24 46:9 48:8,16 49:5 49:20 50:3,19 50:23 51:1 52:5,9,16,17 53:17 54:5,12 54:15,17 55:8 55:12 63:7,15 64:17 65:4 66:2 68:7,15 68:22 71:3 75:3,8,19,25 76:14 77:1,19 77:21,23 79:4 80:24 85:12,12 85:21,24 86:15 87:17 88:6 89:4,7 90:15 91:11,22 92:14 94:11,15 96:8 96:14 99:1,4 99:14,17 100:5 100:14 101:21 102:17 103:12 104:3 105:2,12 106:21 108:13 109:24 111:9 111:20 113:7 115:5,22,23 119:24 121:12 123:2,8,11 129:3 132:21 133:3 134:22 135:25 140:2 141:9 144:19 144:22 146:8 149:13 150:22 150:25 151:3,4 152:8 153:9,13 153:19 159:22 160:16,19 163:8 165:23 166:8,20 175:13 176:17 176:24 178:9 178:10 179:2 180:5,22 181:15,17,25 182:7 183:6,19 186:10 188:6 188:10 189:3 191:11 192:4,9 193:8,24 197:15 198:3,3 198:5,10,24 199:6 200:9 201:8,13,19 202:18,24 210:20 211:1 211:10 213:14 215:2 216:9 220:7,22 221:2 221:13 223:15 225:1,19 226:9 227:6,12 230:14 236:6,9 236:25 237:3 237:10 249:4
patent's 13:5 56:1 129:4

139:7
patent.pdf 62:24
patent.pdf. 62:22 63:1
patents 9:16,23 16:21 23:19 24:2 33:7,17 35:4 36:5,15 45:5 47:15 56:19,24 59:19 59:25 75:18 76:6 77:4 78:5 102:1 103:3 109:19 126:8 126:15 127:4 127:17,24 129:12 131:18 131:24 132:12 133:5,17 134:4 135:6,21 136:16 150:6 157:22 186:14 187:22 188:4,9 223:2 228:1,18 239:22 249:17 250:11
patexia 19:8,10
pause 14:1 101:13 153:18
pay 19:8,9
pays 19:2,9
peer 128:12,12 153:7,7 156:5 156:5,7,7,8,8 156:10,10 212:9,9 213:1 213:1
penalties 251:9
people 41:10 136:1 137:6,17 175:16
perceive 197:6 235:16
perceived 17:1
perform 51:7 61:23 75:14 94:22 104:24 242:6
performance 118:2
performed 42:25 47:20 51:4 60:16 77:21,24 83:23 104:9 108:8,8 119:17 176:25 192:15 217:20 237:11 238:13 248:7
performing 35:15 61:13 92:21 104:11 104:22 138:10 159:5 161:13 161:24 163:6 221:19
performs 102:9
period 20:20
perjury 251:9
permitted 203:10
permutation 122:13
persistent 162:5
person 14:4,16 14:18,22 16:5 17:14 29:10,21 30:14 33:22,23 34:12,25 36:3 36:13,19,24 38:25 39:1 43:14,20 46:18 47:7 56:3 57:5 57:5,19 98:18 114:20 140:21 145:16 166:19 172:16 175:17 183:1 185:16 195:14 202:16 203:15,19,20 216:19 220:9 223:25 226:21
personalized 226:19,23 228:13
persons 34:3 43:20 44:2 136:23 139:1
perspective 77:17 191:14 221:17
petition 11:25 12:1,15 14:7 15:17,18 16:8 16:13,14 17:2 17:9,24 18:2 22:24,25 45:16 45:20 64:19 65:14,25 66:11 66:19 67:3,10 67:13,14 68:10 69:8,10,18 70:1,10 91:16 107:2 114:15 141:17,21 144:15 145:4,6 145:7,25 146:13,17,20 147:5,13,18 148:2,9,11,22 150:16 155:19 155:22 187:16 210:5
petition's 146:11 150:2
petitioner 1:6 2:6 3:2 143:13 237:4
petitioner's 226:14
petitions 45:4 47:14
phone 41:12 124:16,16 154:24 155:13 155:16 156:23

156:23 175:12
phones 156:11
phrase 99:10 160:4 169:22 170:7 181:14 182:6 188:6 198:7 205:23 214:3
phrases 170:15 170:18 178:22 202:25
phrasing 44:11 61:17
physically 6:16
picked 141:22
picks 150:18
piece 7:11 248:19
pirnazar 3:24 5:25 26:20 27:2,10
place 73:1 101:3 146:23 147:19 148:14 148:16 149:15 179:13 195:13 252:7
placed 19:7
placement 19:18
places 17:19 76:16,22 78:3
plain 30:8,15 30:19,25 31:10 31:13,20 32:5 33:2,6 35:2 36:4,14 38:9 39:16 55:23 58:15 90:11 166:15 168:6 171:15,18,20 171:21 173:20 180:10,15 184:22,24 185:4,13 195:19 198:18 201:3 202:14 203:10,14,21 203:25 204:3 232:9
plainly 41:13 208:19
planning 197:22
platform 8:17 59:8 88:24
please 6:5 8:1 10:8 19:6 26:3 76:20 89:22 115:25 130:15 184:13 212:4
plenty 42:4
plus 122:9 146:17,24 147:3,9,21
point 16:25 29:12,18 34:18 35:22 58:17 66:18 68:7 70:3 83:7 86:15 89:20 99:11 103:7 105:22 107:1 109:14 111:15 113:3,18,19 116:23 117:2 133:2 134:21 138:5 142:11 145:24 146:12 146:23 147:14 147:19 149:16 151:25 155:15 160:13 161:3 165:11 174:3 177:6 181:23 182:5 186:19 186:25 187:13 194:16 197:19 216:5 218:8 231:20 235:19 246:23
pointed 149:20 165:22
pointing 67:5 68:9 70:13,14 83:17,18 106:18 155:19 188:2,5 247:7
points 12:3 66:19 224:20
portion 99:17 108:14 122:1 145:17,18 167:15 188:11 193:14 247:17
portions 51:1 167:5,19 168:5
posita 15:6,10 15:11 16:6 37:10,22 40:17 150:20 180:25 220:21 221:6
position 29:20 29:24 30:18 150:5 167:25 185:10,12
positions 150:9 233:14
possesses 192:20
possibility 216:23 229:8
possible 88:25 129:9 214:17 214:25 228:17
potential 7:21 20:15 179:10
potentially 23:25
power 52:14 96:10,21 97:14 98:25 99:13
practice 7:13 18:23 19:19 75:3 76:5 91:10 92:13 93:5,8 101:25 103:2
practiced 106:6

practices 250:10
prajapat 15:13 66:1,6,12,20,24 67:4 68:12 69:21 70:7,11 70:19,24 71:11 72:6 96:1 98:10,19,20 102:18 107:6 124:15,21 125:1,6,8,11,15 125:18 126:6 126:11 127:2 127:12,14,18 128:12,13,23 128:25 129:11 130:23 131:4 139:24 140:3 140:16 141:13 141:21,24 142:4,6 143:24 144:24 145:13 146:1,7,17,24 147:3,9,20,25 148:6,10,15,22 148:23 149:4 149:17,24 150:3,4,17 152:11,14,16 152:20,23 153:2,5,24 154:3,10,16 156:14,20 157:20 209:17 209:19 210:4,6 210:17,25 211:5,7,16,18 212:7,14,14,25
prajapat's 95:23 96:5 99:11 127:25 140:24 144:5 144:13 149:6 152:9 153:10 153:16 155:11 209:6
pre 47:2
preamble 64:17 65:12 66:2,14 66:14 67:16 68:15 69:11 72:5 144:6 191:16 221:22 238:12 239:2
preceding 97:17 98:3,4 124:19
precisely 99:1
predict 239:24
preferred 214:3
premise 41:9 80:17 138:21 143:21 237:19
preparation 188:24
preparing 190:22
present 3:23 27:1 71:5 119:19 136:22 163:11 164:7 165:7 179:3 180:1 186:15 189:7 249:14
presented 16:13,21 17:17 190:3,10
presents 186:10 188:7
pretend 246:24
pretty 20:18 29:16
prevents 215:14
previous 60:25 89:25 96:24 101:24
previously 13:22 39:16 138:25 184:19 190:5,15
primary 171:24 172:17 177:16
principles 46:13,23
print 63:14 175:19
prior 14:5 32:17 45:1,2 45:10,16,25 47:4,24 52:9 52:18,21 54:19 55:25 58:1 65:6 68:5,8,11 73:24 74:4 75:13 101:11 102:13,17 104:21,23 106:17,19 114:4,12 120:8 129:23 176:16 176:21 186:9 187:18 188:1 189:2 190:2,6
priority 9:19 11:1
privately 249:14
probably 90:7 113:2 231:19 233:11 239:21 247:13
problem 130:18
problematic 52:5
problems 52:19 54:19 64:2
procedural 10:6 16:9,23 18:8
proceed 6:2
proceedings 9:8 252:6,8
process 51:16 51:20 93:14

114:21 118:20 118:25 119:1,5 120:17 121:10 163:20 227:19
processing 52:14,21 96:10 96:21 97:14 98:16,25 99:13 102:9,14,15 197:25
professional 132:25
proffer 33:10 55:21 56:10 61:3 109:7 183:17 198:17 201:2
proffered 58:11 171:11 194:15 195:1
proffering 184:20 185:18
prologue 104:2
proof 47:3
proper 248:25
property 7:14
proposed 30:18 30:23 194:9
prose 219:14
prospective 110:25 116:5 116:16,21,25 117:12 121:22
prove 46:25
proven 18:11
provide 7:19 11:15 22:10 57:25 100:18 126:19 153:6
provided 194:22
provides 35:18 213:11,21 214:18
providing 100:7 205:16
proving 144:2
proxies 101:10
proxy 73:25 74:20,25 75:23 76:2 100:18,23 100:25 101:4,7 101:12 102:2 102:24 104:6 105:6 106:2,7 106:11,12
ptab 7:16 233:22
public 132:23
publicly 20:21 249:11,14
punctuation 125:4
purpose 24:6
purposes 109:9 138:6
pursuant 50:13
purview 201:2
put 32:9,11 49:11 84:21 85:20 181:10 182:14 190:24 222:24 223:1

q

qualified 18:9
quantify 208:15
queries 138:10 166:18
query 207:20
question 12:17 13:22 14:11 15:25 18:9 23:23 25:15 26:1,2,22 27:9 27:16 36:2,9 39:24 40:5 43:8 45:15,21 47:22 52:2 54:4,5,10 55:6 55:11,16 57:23 58:19 73:12 87:20 89:15 103:21 104:3 106:22 110:6 111:10,12 112:13,16 113:2,5,22 119:3,9,12,22 120:11,12 121:8 122:20 123:8,19 126:11,23 128:4 129:21 130:1 132:9 136:14 139:21 143:8,21 145:2 145:10,22 146:16 147:13 158:3 159:22 160:10,12 162:17,23 163:25 172:15 172:25 173:24 174:18 175:20 177:24 183:12 184:4 188:19 189:4 190:14 191:7 192:11 195:8 196:7 199:3 204:5 206:19 210:23 215:9,12,24 216:7,9,19,25 217:7 220:19 221:11 228:14 231:10 232:23 239:21 240:2 248:14 249:21 249:25 250:7
questioning 60:25
questions 4:19 19:5 26:16 34:23 53:9 58:7 60:20 61:10 73:14 80:6 100:11

111:21,24 120:5 140:11 249:3 250:16 250:18
quibble 184:4
quick 101:13
quickly 29:23
quite 172:14 244:10
quotation 32:9 32:11
quote 15:3 32:21 49:11 52:15 80:24 81:8,10 84:15 91:17,18,19,20 96:9 97:23 128:23 166:23 167:16,18 226:8 244:10
quoted 155:10
quotes 37:25 49:11 50:23 52:9
quoting 15:4 226:17

r

r 3:5 6:8 252:1
raise 17:19
raised 12:3 47:14 65:13 141:17 146:21
random 87:25
rate 18:19,21 18:23
rather 6:21
read 50:15 69:10,18 78:15 82:5 84:15 95:13,14,18 102:21 116:1 116:10,18 118:4,9,9,16 121:18,24,25 122:11 123:7 124:23 130:20 136:2,21 138:14,25 139:13 143:9 143:17 187:25 225:24 226:2 234:16 242:14 244:18,21 245:23 246:25 250:2,3,3,6,10 251:4
readily 33:21
reading 14:5 33:22 84:23 95:1 117:17 120:15 179:10 182:25 205:21 205:22 220:21 245:25 246:1,2 246:12 247:9 247:10,16,20
reads 167:2 200:12 238:9
real 137:2 139:6 184:5,10 196:17,22 197:2,6,10,21 197:24 198:4,6 198:8,11,23 199:6,22 200:2 200:3,7,13 201:10,12,18 201:23 202:19 203:2 204:10 204:18,24 205:3,9,16,23 206:12,15 207:8,9,18,23 208:8,12,19,25 209:5 211:23 212:3 220:23 220:23 221:1,8 222:13 240:12 240:14,21
really 17:10 58:2 89:14,15 90:13 101:13 103:24 104:22 120:1 166:2 207:23
realtime 92:25 107:20
reask 27:9
reason 16:10 39:25 52:6 66:23 98:17 122:15 180:20 182:14 205:15 211:17
recall 13:9 44:11 52:25 59:3,6 70:20 87:16 91:3 111:12,14 122:23 127:7 145:13 155:21 160:9 249:20 250:14
receive 106:21 177:13 218:22 228:20 241:22 246:3
received 91:8 91:19 98:21 104:17 105:16 106:3 107:25 112:6,22,23 113:9 169:11 177:9,11 196:20 209:9 223:23 225:4 225:13 230:18 233:6,10 234:11,13 242:11,19 243:1 245:6
receives 107:11 108:2,10 157:4 157:7 177:1,5 209:8 214:14 216:13,14 227:16,23 241:1 244:1

receiving 92:23 104:13 155:5 157:13 232:25 241:16,17,18 241:20 242:17 243:11,17 244:6,12,24 245:14 246:5,8
reception 241:20
recess 58:23 100:2 123:22 151:18 186:2 230:11
recharacterize 17:23 117:17
recital 222:2
recitation 129:5 222:6,11 222:12 236:19 247:23
recite 66:15 160:21 193:19 239:7
recited 126:7 202:23 205:14 221:22,24 232:18 238:25 247:25 248:1
recites 182:16 193:25 200:15 237:11 242:25
recognizes 52:17
recollection 10:3 27:14 28:9 31:7 44:9 148:12 181:12
record 5:17 6:6 9:6 37:24 46:9 50:15 60:6,20 62:8 101:18 137:3 151:14 151:16 179:8 252:8
recorded 249:13
recording 181:18,19
records 23:15 23:21 28:6
red 237:7
redundant 246:13 247:6
refer 11:5 16:3 67:8 82:9 86:12 99:5 119:14 140:7 152:18 156:3 182:3 202:21 210:5,23
reference 15:13 45:17,18 46:3 58:2 65:23 67:13 68:12 83:16 94:17 98:9 99:9 102:19 113:25 114:15,16 126:20 140:16 145:17 154:10 154:21 155:11 160:20 193:7 193:11 195:12 196:17 201:18 202:1 212:14 223:6 226:15 228:12 249:22
referenced 51:12 199:5 200:6 241:24
references 14:6 16:7 17:16 23:7 44:14 45:10 46:3 47:4,14 48:3 48:11,14 64:18 65:7,13 68:18 71:9 76:16,22 100:17,22 101:12 102:13 104:21,23 106:18,19 114:5,13 120:9 140:19 150:18 155:21
referred 54:9 65:22 96:22 188:12 202:17 206:3 250:4
referring 11:6 26:19 27:20 64:15 97:11,21 98:6,14 99:22 100:8 101:23 103:5 133:12 133:14 134:22 153:8 184:17 187:25 199:21 200:22 205:2,9 219:14 232:19
refers 68:15 96:1 108:24 151:4 196:25 201:20 202:22 205:13
reflect 237:7
reflected 214:2
reflects 164:1 173:5
refresh 88:5 148:11
regard 11:12 23:10 56:6,18 100:6 123:14 147:18 154:21 211:9 231:18
regarding 14:13 18:15 24:1,10 25:18 26:8 27:3 28:13,20 29:2 30:2 124:11 127:24 150:4,5 198:11 223:2 234:5 235:9 240:2
regardless 106:1,7 139:20

161:1 233:17 233:24 239:17
registering 138:8
rejected 151:24
relate 21:2 38:24 42:2 44:25 66:2 150:1 154:20 158:18 159:5 163:3,4,4 218:7 225:2,3 225:4
related 7:14,20 9:17 10:11,19 20:1,12,13,23 51:3 77:9 83:22 107:20 114:22 121:5 132:25 149:4 150:2 167:21 167:23,25 174:6,10 179:23 180:16 180:22 181:2 182:17 183:8 185:15 187:9 187:15 191:7 202:25 205:24 217:19 219:13 223:5 226:23 227:6 241:4 242:20 243:3 243:18 244:12 244:25 245:3 245:15,18,21 246:5,11 247:3 247:5 248:10 248:14 249:22
relates 23:19 33:16 49:5,20 50:3,20 60:7 65:10 92:24 96:3 104:21 105:17 115:15 120:10 142:3 142:22 153:19 155:15 179:10 181:18 195:12 196:22 197:5 198:3 236:10 238:12 240:5 243:21
relating 27:11 27:24 38:17 54:4 107:25 125:21 148:8 212:8 235:4,6
relation 235:21
relative 208:4 217:10 231:6 234:24 235:11 235:15 252:13
relayed 181:7 182:10 183:4
relevant 8:14 45:6 198:2
reliance 99:11 140:16
relied 114:5
relies 149:7 178:8
rely 33:24
remainder 50:11
remains 160:14
remember 86:18 89:3 103:6,14 111:13,17 112:13 155:18 166:4 214:3
remembered 103:15
remembering 13:12
remote 1:18
render 21:16 21:19 41:24 42:10 74:14,15 129:20 145:18 156:25 214:22 215:18 216:24
rendered 37:16 47:15 71:14 175:14,22 187:14 215:16
rendering 125:21 215:21
renders 175:6
renumbered 237:6
renumbering 237:8
reordering 229:1,4
repeat 163:19 165:2
repeated 159:17
repeatedly 60:14 114:1
rephrase 119:22 120:12 204:14
replication 64:7
reply 213:15 214:9,14 229:7
report 37:3 46:21 62:3 72:10 91:4 111:25 112:10 113:4 114:9 127:13 169:25 176:21 197:25 207:17
reported 1:22
reporter 2:22 25:23 130:9,14 130:18 131:11 211:24 212:4 229:17 246:18 252:4
reports 114:13 207:18
representation 74:16

represents 175:5
reproduce 63:13
request 25:2 78:17 79:18,21 82:25 83:10,21 84:24 87:6,12 87:15 94:3,4,6 94:25 95:5,8 95:16 107:9 110:13,17 158:12,16 164:20 166:21 168:10,11,14 171:13 173:22 174:10,24,25 175:3,5 176:18 177:2,13 180:23 213:7 213:10,16,22 214:6,8,14,19 215:15 217:14 217:18 218:1 218:23 219:6 225:8 228:19 229:8 233:3 241:2,21,22,24 242:6,8,12 243:2,10 248:8
requested 241:6,19,22 242:10,18 245:2,17 246:10 247:15
requesting 173:11,25
requests 86:13 94:9 103:12 164:19 185:2 227:16,22
require 52:13 96:20 100:17 106:19 194:23
required 43:11 92:19,20 93:4 105:8
requirement 104:4 105:1,4 106:20 108:9 145:15 196:3 209:23 211:5 222:15 224:14 232:12,15 234:22 235:9 235:20 239:8 239:15 240:2,6 240:11 247:24
requirements 29:21 52:21 232:17 241:10
requires 91:17 96:9 98:24,25 99:12 105:15 172:25 195:21 196:9 231:23 232:25
requiring 194:11
reread 216:9
rereviewing 13:24
research 90:20
reserve 64:4
resource 102:11
resources 102:16
respect 55:7 103:9 113:12 150:3 153:9 158:14 177:6 179:9 180:21 183:18 212:10
respective 45:5 163:6
respectively 163:15
respond 13:21 141:18 143:13 146:20
responding 243:9
response 74:12 74:22 107:10 110:16 166:21 168:10,12,13 168:15 171:13 173:5,6,7,8,22 174:10 176:20 180:23 213:11 214:19,20 215:15,17 227:16 228:20 243:17 244:6 244:11,24 245:13 246:5
responses 86:14 103:13 185:2
responsive 141:16 181:20 241:1,13,20 242:12 243:8
rest 51:2 107:15
restatement 32:3
restrictions 234:3
restroom 53:7
result 137:18 137:21 149:10 173:8
results 141:3 166:17 174:6
resumed 124:4
retained 23:10 23:17,24 24:5
retrieve 155:8 157:23 243:22
retrieved 244:4
retrieves 243:16 244:3 244:23 245:9
retrieving 157:17 246:3,4 247:2

returned 174:7
returns 229:7
review 1:11,13 1:15 2:11,13 2:15 9:8 11:15 11:18 13:4 22:6,8
reviewed 11:25 12:14 22:12,23 23:4 24:23 190:21
reviewing 24:14
right 5:15 6:17 7:22 8:5 9:5,15 10:10 13:9,13 19:17 20:7 21:8 22:2 23:1 23:20 24:4,9 24:20,24 35:14 39:4,8,23 41:15 43:5 47:17,21 49:15 52:2 54:12 55:12,20 58:13 61:20 62:6 64:11 67:12 71:24 72:3 75:12,12 76:21 76:22 78:22 80:19 81:11 84:19 85:22,25 86:1 87:21 92:20 93:18 94:12 96:13 97:23 99:10 100:15 101:22 102:4 104:1 107:16 114:4 115:21,25 117:2 118:18 123:7 124:10 124:19,23 125:13,19 134:4 135:18 136:9 137:8 139:20 141:6 142:21 143:18 145:9 150:23 150:24 151:1,6 152:7,13,14,18 153:4 156:3 158:9 160:7 161:1,6 162:3 162:5 165:20 166:12 167:12 169:23 170:19 171:20 174:3 176:2,4,5 180:11,13 181:15,17 183:21 186:4 187:7,25 190:24 191:10 199:6 201:19 202:8 203:1,17 210:22 212:7 213:16,19 214:17 215:7 217:16,25 218:16,19 219:8,23 220:19 221:11 221:16 224:10 224:12,21,24 225:1,6 226:11 227:13,14 228:4 230:24 231:5 232:3 233:4,11 236:6 238:18 239:5 240:8,25 242:17 243:12 244:19 245:10 245:20 248:6 248:15,22,23 249:7,25
rigid 192:9
risk 134:10 200:11
rmcbeth 3:20
road 22:4
roles 159:6
room 132:23 207:11 208:9
rpr 1:22 252:20
runs 207:16
ryan 3:14 5:22

s

s 4:8 6:8,13
sacksteder 3:4 4:4 5:10,18,19 6:3 12:8,16 13:2,15 14:10 15:20 16:15 17:3,18 18:4 18:13 21:18,23 22:22 23:8,16 24:19 25:5,10 25:16 26:4,17 26:24 27:7,19 28:1,11,18,25 29:7 31:11,16 31:25 33:4,14 34:1,7,21 36:1 36:10,22 37:6 38:11 39:14,22 40:15 41:16 42:11,24 43:18 44:1,12,23 45:22 46:24 48:25 50:1,18 51:18 52:1 53:8,11 54:7 54:21 55:5,10 56:2,15 57:2,9 57:14 58:18,22 58:24 59:22 60:13,22 61:5 61:11,18,24 62:5,8,14,19 63:11,25 64:5 64:10,25 65:17 66:22 67:7 68:13 69:1,19 70:5,16 71:4 71:16,22 72:2 72:14,22 74:23 75:6,16 76:1,9 77:10 78:1,10

81:1,13 82:21
83:6 84:5,17
85:3,10,19
86:25 87:5
88:22 89:5,16
89:23 90:22
91:5 92:6 93:6
93:11 97:15,22
98:8 99:16,25
100:3,12
101:15,19
102:20 105:10
105:23 108:12
109:23 112:14
114:10 115:2
115:14 117:1
117:25 118:8
119:8 120:22
121:16 122:10
122:21 123:12
123:20 124:5
125:16 126:24
127:22 128:6
129:7,17 130:5
130:19 131:5
131:13 132:5
133:1,21
134:14,23
135:19 137:9
137:20 138:16
138:24 139:12
139:23 140:9
141:4 142:15
143:11 144:20
145:11 146:3
146:22 147:7
147:17 148:5
148:13 149:14
149:22 150:11
151:19 152:4
154:12 155:23
158:23 159:15
159:23 160:6
160:23 162:2
162:18 163:18
164:25 165:16
166:6,22 167:8
168:18 170:13
171:19 172:4,9
172:19 173:9
173:23 174:4
174:11 175:24
176:9 177:15
178:7 179:12
179:19 183:20
184:7,12,16
185:3,9,20
186:1,3,21
187:19 188:3
188:20 189:5
189:10 190:20
191:9 192:2
193:5 194:5,18
195:3,18 196:2
196:8,16 197:8
197:16 198:20
199:4,12 200:4
200:23 201:5
202:6 203:4
204:7,13 205:1
205:12 206:1,9
206:21 207:1
207:25 208:6
208:11,23
209:21 210:10
210:18 211:2
213:2 214:7,16
215:11,25
216:11 217:1,8
218:10 219:7
219:18 220:13
220:20 221:5
221:12 222:25
223:16 224:6
224:23 225:23
229:3 230:9,12
231:4,11,21
232:11 234:2
234:14 235:8
235:18,24
236:7,24
237:25 238:23
239:14 240:1
240:17 242:16
242:24 243:13
244:5,15
246:21 247:8
248:16 250:1
250:15
safer 90:7
samesurf 1:8
2:8 3:12,24
5:24 6:1 19:15
24:1 126:8,14
127:17
san 24:18,22
sat 101:8
satisfied 107:13
108:4
satisfy 89:19
90:4 211:5
saying 22:5
34:11 39:7,10
49:17 66:23,24
67:2 68:2 69:9
70:1,10 81:21
82:1 83:22
100:17 103:15
105:25 114:19
124:14 137:10
137:11 142:1
144:9,13 146:5
148:1 150:15
154:6,16 165:6
185:22 187:25
188:5 210:7
211:3,8 217:4
225:15 228:10
241:15
says 10:11,15
47:11 48:1
49:4 51:9
59:15 62:21,25
71:24 72:16
81:15,20,21
82:15 84:23
86:2,6 91:22
92:18 94:19
95:19 96:16,24
97:24 98:4

99:18,24 102:6
104:13 108:18
110:11,16,21
116:19 117:7
117:19,23,24
119:24 121:17
121:18 122:2
125:23 131:16
136:21 151:3,8
152:7,7 153:24
154:22 155:6
161:12 163:24
165:1 169:7
170:20,21,22
170:22,23,23
179:1,21,24
186:9 188:4
189:22 191:16
191:21 196:24
197:5 212:15
217:13,17
226:10 228:12
229:14 230:17
231:9,9 236:14
238:3 240:20
241:1 243:25
244:11 245:14
248:5 249:10
scanned 29:23
science 8:2
14:23
scope 40:19
41:3,14 42:9
42:10 43:10,15
43:17 48:22,22
56:24 58:5
65:10 113:4,22
119:18 122:24
123:15 141:16
166:16 167:3
168:1 171:14
171:17 173:16
177:7 178:4
180:1 195:16
195:25 197:14
222:23
screen 52:10,12
53:18 55:9
97:1,9,17,25
98:5,6 99:23
108:17 136:10
160:20 161:21
screens 52:19
screenshots
52:12 96:19
script 200:19
scripts 174:13
scrolling
209:11
se 28:10 30:13
179:1 208:15
search 19:7,18
searchable
242:5
second 41:7
53:6 74:7,10
74:19 81:7
82:8 111:11
119:24 132:20
152:23 153:9
153:18 155:25
168:19 170:16
178:24 191:17
191:20 209:12
209:13 217:11
217:13 222:20
224:25 226:19
228:3
secret 7:18
section 46:15
47:2,24 72:20
160:21 161:5
174:20 190:5
sections 46:21
218:12
see 5:13 9:14
10:10,17,22
11:2 19:23
22:5 34:18
37:14,15 40:21
43:1,4 46:4
49:7,8 58:1
59:9,10,13,14
62:23 63:3,5
63:17,22 64:9
71:8 79:8
82:10 83:9,14
87:25 96:11
97:6 99:9
101:16 108:22
109:2,3 110:6
110:7,7,10,15
111:2,3 131:7
134:18 135:3,6
135:13 137:25
138:18 156:2
162:9,19
163:25 167:7
172:2 181:8
186:13 187:24
190:18 196:18
196:19 227:24
228:4 230:23
232:21 235:3,6
236:2,23 239:4
241:7,15
242:23 249:9
seeing 215:6
seems 228:25
seen 60:6
self 42:19
send 74:10,13
74:16 87:14,14
142:25 144:14
208:17 224:11
224:15 233:2
241:21
sending 38:24
89:13,18 90:3
149:8 162:1
165:9,13
195:12 224:17
227:4 228:7
238:9,21 241:2
241:21 242:6
242:12 243:10
sends 51:5
78:17 106:11
149:12 207:16
213:17 224:8

227:19,21 248:8
sense 142:14 145:23 146:1 157:9,17
sent 51:4 80:2 80:17,18,20 83:24 84:8 95:6,8 111:5 116:15 117:9 117:11 122:5 164:21,22 168:11,13 176:18,20 209:12 210:12 218:3,25 220:2 220:3 225:8,9 230:4 242:8 243:2
sentence 32:4 32:11,18 37:21 40:17 49:4,9 50:8 51:12 54:24 55:2 96:2,24 97:18 97:21,23 98:3 98:4 99:21 116:12,19 117:17 118:4 151:2 153:9,23 155:10 166:24 167:2 186:8 188:17 190:2 217:11,12,13 217:17
sentences 49:10 170:12
separate 151:24
separately 177:4,10
sequence 179:25
series 244:18 244:21 246:15 246:25
serve 102:2
served 21:6 102:3
server 7:7 32:22 35:17 51:5 66:13,15 66:16,21,25 67:4,9,9,11,15 67:16,17,18,20 67:20,21,24 68:2,16,19 69:3,3,12,13,22 70:7,11 74:1 78:18 79:18,22 80:3,21,22 81:4,17,17,24 81:25 82:4,17 83:1,2,25 84:9 84:10,24 85:1 85:6,14 86:14 88:9,14 91:9 91:20 92:23,24 93:16,20,23 94:5,21 95:7,9 95:17 101:8 102:2,4,8 103:10 104:6 104:14,18 105:5,7,16 106:3,23 108:1 108:11 110:14 110:17 126:2 143:2,2,3 144:16 155:5,9 157:5,7,12,15 157:25 158:13 158:16 159:11 159:14 161:14 163:4,5,16 164:10,10,21 164:22 165:19 165:20 169:12 169:12,13 173:6 174:24 176:19,20 177:2,3,5,9,12 177:13 179:4 186:12 187:10 196:21 212:20 212:22 213:8 213:10,17,18 213:20,23,24 214:9,18 217:14,15,21 217:24 218:2,4 218:17 219:1,4 220:1,3 223:24 224:9,11,15,18 225:10,14 227:20,21 228:20 229:7 230:5,19,20,20 231:6,13,23 232:13 233:1 234:4,12,24,25 235:7,10,12,17 235:21 236:20 241:3,5,6,19 242:11,21 243:5,17,19,23 244:8,14,24 245:1,10,16 246:4,7 248:9 248:12
servers 67:24 69:5 128:14 149:9,11
serves 129:2
session 30:6,9 30:10,25 31:21 32:1,6,7,12,13 32:15,20 35:16 38:7,10,18,19 38:22 39:3,17 40:2,13,20,23 41:4,17,18 42:14,15,23 43:10,13 44:4 44:15,20 48:4 48:9,12 54:18 56:5 81:22 82:18 92:22 94:22,23 97:3 104:11 108:19

109:19 110:3
110:12,19,22
110:23,24
111:4 112:5,20
113:8 114:23
115:1,4,8
116:2,3,5,14,15
116:15,20,21
117:3,8,13,20
117:20,21
118:2,21 119:2
119:6,17 120:9
120:18 121:4,6
121:11,19,20
121:22 122:2,4
123:4 125:25
136:1 139:8,11
139:15 152:10
153:11 161:5,5
161:13,16,17
161:18,25
163:12,17
164:8,12 165:8
165:10,14,17
165:25 169:15
178:23 191:18
191:23 192:5
192:13,21,24
193:20 195:17
195:21 200:18
201:11,15,21
201:22 202:23
203:2,9 204:1
204:6,9,17,22
205:14 206:3
206:12,14
212:18 216:16
217:4 220:16
221:21 222:23
223:14 225:18
226:8,19,24
227:11 228:21
229:6,16,21
230:1,2,3,21
231:14,25
232:14,25
233:2,3,10
236:10,11,16
237:15 238:11
238:14,24
239:5
sessions 37:13
38:1 39:13
40:7 42:2
114:1,6,11
127:3 153:15
249:12,12
set 14:7 16:7
71:21 139:18
147:4 148:22
152:19 234:17
252:7
sets 77:16
126:20
setting 146:17
several 12:4
18:1 23:6,6
52:4 96:1
127:14 138:13
150:9 204:2
241:9
share 8:17 38:4
40:9 59:7 62:7
62:21 88:24
136:10,10,23
139:2 161:21
161:22 175:18
223:10 227:17
shareable
181:22 182:9,9
200:14,16
202:19 204:18
205:10,23
shared 32:21
40:18,22 83:23
154:23 180:17
181:6,19 182:4
182:8,17,20,21
182:24 183:2,8
185:15 195:12
195:15,25
217:19 241:4
242:20 243:3
243:18 244:12
244:25 245:4
245:15,19,21
246:6,11 247:3
247:5 248:10
249:11
sharing 38:8
52:10,18 53:18
53:19 55:9,9
58:3 74:5,9,19
95:24 96:5
97:1,9,17,25
98:5,7,10
99:23 108:17
124:16,21,25
125:7,25
128:12 140:25
141:1,8 142:19
144:5,14,18,24
149:7 152:10
152:25 153:7
153:11,14,25
154:2,17,19
156:6,7,9,10,20
156:22,23
157:3 160:20
174:22 210:8
212:9,18,25
223:12 225:16
226:6 227:2,3
227:9
shop 136:3
short 123:9
126:22 216:8
248:4
shorthand 2:22
252:3,9
shot 109:15
show 161:21
175:19
showing 175:10
shown 76:17,23
77:11 78:18
79:11 110:20
190:5,15
shows 77:3
159:16 162:25

164:9
shut 215:8
side 79:2,2,6,6 145:3,3
signature 252:19
signed 49:20
significant 32:18
similar 7:19 14:25 29:16 95:7 154:23 180:2 189:17 239:6
similarly 181:5
simple 124:16 152:10,16,24 153:7,11 156:9 156:22 210:8 211:18 212:8,9
simply 30:14 41:9 58:14 97:1 117:19 137:6
simultaneous 97:4,4 108:20 108:21 109:1,2 109:5,6 130:6 194:4,6 207:10 239:12,12 240:18
simultaneously 136:25 137:18 139:4 193:25 194:1,12,12 196:10,11 222:3,4 224:17 239:8,9,16,16
single 46:2 119:12 159:6 161:17 249:12
sir 53:20 188:21 200:5
sit 13:9 22:13 22:18 91:2 123:6 129:19 145:9 186:23 187:1 250:13
sites 138:9
situation 223:19,22,25
situations 128:17,22
skill 14:5,17,19 14:22 16:5 17:14 29:10,22 30:15 33:22,23 34:3,12 35:1 36:3,13,19,25 43:14,21 44:3 46:18 47:8 56:4 57:5,6,20 98:18 114:20 140:21 145:16 156:16 166:19 172:16 183:2 185:17 195:14 202:16 203:16 203:19,20 216:19 220:10 226:22
slightly 120:12
smith 3:13 5:23 25:19 26:9
snapshot 180:15 183:23 183:25 185:7 185:13
software 15:1,2 186:11,16 189:8
somebody 208:8
someone's 101:14
soon 26:5
sorry 7:9 8:25 14:19 22:5 25:23 26:23 31:18,24 46:22 60:9 68:2 72:10 76:19 79:4 80:5,19 94:14 115:12 118:6,15 130:9 130:22 131:11 137:16 147:25 152:2 157:20 161:17,22 172:8 193:10 199:3 211:25 219:2 224:24 226:3 229:18 233:21 236:13 244:2 245:24 246:18,20
sort 6:21 7:10 8:12 40:11 42:7 47:18 52:9 80:1 87:25 90:13 93:13 100:25 101:10 113:21 119:25 122:24 126:19 127:16 128:3 129:21 140:23 141:13 142:10 145:3 146:15 159:7 161:19 162:24 178:3,6 183:5 205:20 207:22 215:24 216:22 216:24 224:16 229:10 234:16
sound 28:23 29:6
source 24:15,23 115:20
space 7:4
speak 16:11 212:4
speakers 130:6
speaking 88:12 220:6
speaks 13:8 60:21 64:22 65:20 71:8 72:10 122:25 147:15 160:9

211:14 231:19
spec 77:9 79:24 81:10 83:7 158:9
specific 20:15 26:15 28:9 43:24 48:14 55:11 61:17 64:16 98:9 99:9 143:15,16 145:24 150:10 153:13,15 159:22 169:22 196:7 218:8 220:11
specifically 6:23 11:17 26:19 35:6 38:17 42:9,14 42:22 55:14 56:6 61:6 64:15 67:8 85:25 90:9 96:16 97:16 100:5 105:11 114:8 122:1 123:8 124:12 127:8 148:21 152:3 155:19 165:14 178:2 186:6 190:9 191:13 199:21 200:16 201:9 206:2 209:4 223:18 228:12 242:25 248:15 249:5
specification 31:1 32:19 33:3 38:8 44:21 48:1,9 48:13,15,19 76:23 77:7 80:16 82:12 115:4,10,17,19 115:22 129:24 132:7 133:13 133:14,24,25 134:12 135:17 158:7,10 159:8 168:8,9,17 169:21 170:2,9 173:21 178:21 180:18 183:6 185:1,17 199:19 205:22 205:25 215:2 218:9 219:14 249:5
specifications 126:14
specified 232:9
speculate 17:10
spell 6:6
spend 37:5 56:12 73:11 187:16
spent 18:21 122:20
stacy 1:19 2:19 4:3 5:5 6:7 251:19
staff 197:22
stand 113:13
standard 47:12
standards 46:7 46:11,14,18,23
standing 78:3
standpoint 10:6 16:12,24 17:8,13 18:10 169:24
stanford 8:12
start 20:5 74:6 116:8 191:13 229:6
started 7:2 70:17 226:5
starting 38:22 46:8 81:10 82:15 94:13,19 95:4 110:5 135:25 138:14 159:8 180:3 209:15,24
starts 152:22 159:9 164:4 211:19 243:15
state 6:5 86:12 86:13 87:14,15 88:9,13,20 89:14,18 90:3 251:16 252:4
stated 61:22 251:7
statement 14:3 73:2 120:10 180:2 187:12 189:15,17
statements 100:6
states 1:1 2:1 181:18 251:10
stayed 24:11
stenographic... 1:22
step 33:10 158:11 233:10 243:21
steps 92:19,20 104:19,22,23 110:2 118:3 119:18 162:14 163:2,6 179:24 221:19 229:1 229:14 248:13
stop 80:6 116:9 141:5
straightforward 57:13,18 78:20
stream 96:19
streamline 65:3 129:8
streamside 6:12
street 3:6,16
strictly 9:21 10:4

strike 21:9 90:16 117:9 133:7 139:25 217:12
string 87:25
stuff 20:23 88:21 171:17 178:5
sub 236:13,15
submit 173:3
submitted 237:4
subparts 248:20
subscribed 252:16
subsequent 50:25 68:18 158:7 169:14 230:21,25 231:2 232:13 232:20 234:5
subsequently 7:5 248:9
substance 11:23
substantially 128:18 131:1 131:19 142:24 149:6 154:23
substantive 11:11 16:12 17:7,13 18:10 27:3,6
sudden 233:12 234:19
sufficient 171:16 220:15
suggest 124:15 137:6
suggesting 199:15 228:5 247:1
suitable 128:22
suite 3:17
supply 197:20 197:22 207:15
supposed 34:10 44:5 203:21
sure 10:5 23:23 25:21 26:6 27:22 31:19 52:3 53:8,10 59:21 75:17 78:14 81:20 89:24 92:7,8 93:13 102:22 109:21,22 115:15 145:23 152:12 158:8 172:14 178:23 189:21 215:10 238:1
surfing 37:9,11 37:23,24 226:19
sworn 5:6
sync 68:1 125:11 126:12
synchronizati... 32:22 35:17 51:5 66:12,15 66:16,21,25 67:4,11,15,18 67:21,24 68:2 68:16,19 69:4 69:22 70:7,11 79:22 80:3,22 81:4,17,17,25 82:4,17 83:1,2 83:25 84:9 85:1 91:9,19 92:22,23 93:16 93:19,23 94:20 104:13,18 105:7,16 106:3 107:25 108:11 110:14,17 126:4,5,7,12 127:1 143:2 144:16 159:11 159:14 160:11 161:14 162:4 162:10 163:5 163:15 164:10 164:22 165:19 169:11,13 177:2,12 179:4 196:21 212:23 213:18,20,24 217:24 218:4 218:17 219:1,3 220:1 223:24 224:15 225:10 225:14 227:20 227:21 230:4 230:19,20 233:1 234:12 241:5 242:21 243:4,19 244:7 244:13 245:1 245:16 246:7 248:11
synchronize 37:18 44:16 51:20,24 52:24 53:13,15,22,24 54:1,10,11,16 55:1,3,14,15,17 59:12 60:5 210:14
synchronized 30:5,9,11,24 31:14,21,22 32:1,2,6,8,10 32:12,13,15,19 33:1,6,15,20 34:11,12,13 35:2,3,8,16 36:5,14,20,24 37:12 38:1,6 38:10,16,18,19 38:21 39:3,4,7 39:12,17,18 40:1,2,6,13,19 40:23,24 41:3 41:18 42:1,2 42:13,15,20,22 42:23 43:10,12

44:4,5,14,20
48:4,6,8,12
54:18 56:5,6
56:11,18,23
57:3,4,6,7,12
57:17 58:9
59:4,18,24
60:16,25 61:7
61:13 81:22
82:18 92:21
94:21,22 96:7
104:11 109:5,8
109:13,18
110:3,12,22
111:4 112:5,20
113:7,25 114:6
114:11,22
115:1,3,8
116:2,14,19
117:3,8,12,20
118:2,20 119:2
119:5,16 120:9
120:17 121:4,6
121:11,19
122:2,4 123:3
124:17,22
125:1,8,24
127:3 136:1,11
139:8,11,14
159:1,18 160:5
160:14,15,16
161:4,7,13,16
161:25 163:12
163:17 164:8
164:12 165:8
165:10,17,25
178:22 191:18
191:23 192:5
192:13,20,23
193:19 195:17
195:20 200:18
201:10,15,20
201:22 202:23
203:1,8 204:1
204:6,9,17,22
205:14 206:3
206:12,14
209:16,18
210:6,9,25
211:1,6,15
212:13,17
216:15 217:3
220:16 221:21
222:23 223:14
225:18 226:8
226:24 227:11
228:21 229:6
229:15,21,25
230:1,3 233:3
237:15 238:11
238:14,24
239:4

synchronizing
49:5,21 50:3,6
50:20 51:10

synonymous
170:3 172:11
176:1

syntax 169:23

system 15:14
73:24,25 75:14
78:2,4,5,9,12
91:7 92:11
96:8 98:14,19
99:5,12 101:25
105:7 132:16
134:5,16 144:5
144:14,18,24
149:10,13
153:6 155:6
156:5,8,10
157:4 207:15
207:19 228:17

systems 55:25
101:11 152:20
156:14

t

t 4:8 6:8 252:1
252:1

table 249:1

tabs 138:12

take 13:18
19:20 29:19,24
53:5 58:20
64:23 99:25
144:4 150:5
166:10 186:1
188:16 189:18
190:17 207:20
219:21 220:1
220:12 230:9

taken 2:20
30:18 179:25
226:13 252:6

talk 12:22 31:5
37:8 46:19
50:22 52:7
73:20 86:9
91:13 112:10
125:14 127:11
132:4,6 133:24
174:21 175:14
176:22 182:12
209:19,19
210:19 215:5
216:5 229:13
235:16 241:14

talked 46:17
47:18 101:1
102:18 108:6
145:5 158:19
165:23 215:24
216:1 218:12
231:17 234:5
237:18

talking 7:6
29:13,15 59:4
70:17 71:3
75:23 82:12
87:12 93:25
94:18 97:8,16
97:24 98:13
104:22 105:2
106:10 133:25
135:16 142:18
145:12 147:2
152:12 155:3
168:23 169:1
175:21,22,23

180:9 183:7 187:5 193:3,9 196:20 199:23 201:14 207:7 218:14 219:20 220:22 223:17 225:8 226:12 229:18 236:3
talks 51:2 53:17 58:2 80:25 82:13,19 94:11 118:24 119:15 135:22 138:6 155:13 158:11,15 193:14
tasks 178:5
taught 142:25 144:14
teach 124:15
teaches 226:18 228:12
team 20:19
teasing 40:11
technical 178:2 200:15
technique 48:14 74:25 76:2 91:10 102:24 132:11 136:15 209:22
techniques 52:18 174:21
technologies 7:16 8:13
technology 7:11
tell 8:18 13:17 34:13 41:10 42:14 44:3 57:4 60:15 183:21,22 184:5,5,13,17 185:4,5 189:20 231:22
telling 220:14
ten 53:7
term 30:5,24 33:20 36:24 37:17 38:6,17 40:12 56:18 59:18 60:10,24 61:6 68:5,6 69:22 89:19 90:4 103:11 114:3 115:1,3 115:8,16,16 125:15 127:25 128:15 129:22 129:23 138:7 159:1 166:16 166:20 167:3 168:7,16 169:1 170:9 171:10 177:8 182:16 183:7,10,12 185:5,14,16 194:11,19,23 196:1 199:6,11 200:7 201:11 201:20 203:22 204:16 209:16 210:16 211:7,9 211:16 212:13 222:12 240:15 240:16
terms 31:4,10 33:12,25 35:25 36:21 42:7 45:8 47:25 48:21 61:4 66:7 115:19 126:11,17,20 127:8,20 176:15 183:4 184:1,21 190:3 190:10 234:9
test 13:11
testified 5:8 52:23
testify 5:6
testifying 18:21 20:9
testimony 34:25 36:3,12 48:2,10 59:1 69:2 92:10 101:24 102:21 124:7 189:11
texas 3:18
text 63:6 64:8 65:22 92:4 175:1
thank 59:6 63:24 73:16 130:14 212:3,6 250:16
thanks 130:15
theories 22:7
theory 113:17 229:2
thereabouts 109:18
thereof 65:22 167:5,19 168:5 226:20 251:5 252:11,15
thereto 33:1
thesis 147:3
thing 31:12,19 68:8 70:13 77:25 78:16 80:1 82:23 98:15,22 100:25 121:17 133:19 137:10 137:11,21 151:1,3,8 152:12 165:13 171:2 172:6 178:6 184:3 195:19 218:17 244:18 247:7
things 6:20 18:25 23:22 31:22 35:19 53:18 67:5 68:11 70:15 85:4 99:14 100:21 111:9

115:15 119:23
133:15 138:17
152:8 163:1
187:7 195:4
219:8 243:2
245:5,20
think 12:23
15:18,24 17:19
17:25 22:2,5
23:5 24:8,17
25:20 28:17
29:16 31:5
33:19,23 34:14
34:22 36:7,12
36:17,18 40:4
41:4,22 42:18
43:11 44:21
45:14 46:6
47:21 48:18,19
50:24 51:15,23
52:23 53:3,12
53:24 54:3,16
54:24 55:21,24
56:22 58:4
60:20 61:9
70:18 71:7
78:8,15 80:10
83:14 85:25
88:19 89:10
90:7 92:1
93:15 98:13
100:11,13,23
103:22 105:21
105:24 106:13
107:1 108:6
111:24 113:1
113:12 117:7
117:16,19
118:25 119:11
119:11 120:24
121:5,14,17
122:12,12
124:23 125:18
129:2 133:18
135:22 137:5
138:4,21
139:17,25
143:21 145:1
145:21 146:16
147:12 151:15
152:13 160:3
161:10 162:13
162:16 163:24
165:11,22
166:1 169:23
171:5,9,16,23
172:5,10
173:19,20
174:17 176:25
177:23 178:15
179:6,21
183:11 186:19
188:1 191:4,6
192:9 195:9
196:13 197:12
197:17 199:22
199:25 204:21
204:25 205:2,8
207:7 208:4,16
210:3 211:14
214:25 215:24
216:6 220:6
222:24 224:21
224:25 225:24
226:2,3 228:5
228:9,24 229:4
229:9 230:7
231:16,18
232:2,19 233:8
233:11,23
237:22 238:8
238:16 239:5
239:20,24
240:4,19,19
243:7,11
244:16,17,20
244:22 246:12
246:15,23,25
247:10,10,12
247:19,19
248:18,22
thinking 178:2
third 9:13
59:11 74:14
152:25 156:1
217:12
thoroughly
215:10
thought 109:15
114:21 159:25
226:22 233:25
thoughtful
188:19
thoughts 22:8
187:20
three 7:1 8:16
9:7,16 12:23
24:2 27:3,12
29:16,24 31:8
35:3 36:5,15
56:17 59:25
62:10 69:17
74:8,19 75:18
76:5 77:4,16
93:18 102:1
103:2 126:8,14
131:18,24
132:7,12,22
133:5,17,19
136:16 150:5
152:20 156:13
156:17,17
159:13 174:21
244:21 245:5
245:20 248:20
249:17
thrust 7:13
48:20 61:10
tier 101:10
102:16
time 6:16 13:17
18:16,21 19:11
20:20 21:22
28:5 37:5 47:8
56:13 59:16
60:1 64:4
73:11 86:17
88:7 113:18
117:2 122:20
125:22 128:18

130:7,13,15
131:1,20,24
134:8 135:7
136:7,9,18
137:2,7 139:6
142:24 143:8
149:6 157:13
161:24 163:20
166:1 187:17
193:4 196:17
196:22 197:2,6
197:10,21,24
198:4,6,8,11,23
199:6,22 200:2
200:3,7,13
201:10,12,18
201:23 202:19
203:2 204:10
204:18,24
205:3,9,16,23
206:12,15
207:4,8,9,18,23
208:8,12,19,25
209:5,12,25
210:3 211:23
212:3 215:18
216:13 219:21
220:23,23
221:1,8 222:13
234:3 235:9,21
240:12,14,21
245:8 246:14
247:23 250:20
252:7

times 35:9,12
132:22
timing 169:13
215:2,5,24
217:11 222:16
231:5 232:14
232:17 235:15
241:9 247:25
tiny 63:14
title 11:11
198:5,23 199:5
199:13,17,23
200:2,7,8,12
201:19 202:17
202:22 204:25
205:2,7,8,13,17
205:20,21
titled 4:15
today 5:25 9:7
20:9 22:13,18
48:2 91:2
124:8 160:1
161:23 175:9
186:23 250:13
250:18
told 184:1,11
tomorrow
208:19
tomsa 28:20
took 8:10 245:8
top 9:23 81:19
84:22 151:24
152:5 164:15
186:8 226:16
248:6

topic 156:18
touch 89:15
touched 45:5
track 87:21
trade 7:17
trademark 1:1
2:1
transcribed
252:9
transcript
251:4
transcription
252:11
transfer 200:19
transferred
110:23 116:3
121:20 163:10
164:6 165:6
178:18
transformed
98:22
transforming
98:23
transmission
88:13
transmit 88:2
110:18,24
116:4,21
117:21 121:21
transmits
81:16,23,24
84:23,25
110:13 158:16
177:2 242:19
248:10

transmitted
82:3 83:11
87:1,3,24
243:4
transmitting
158:12 164:11
241:3 243:11
travel 18:24
163:2
travis 3:16
tree 125:22,24
126:1 212:16
212:18
trial 1:3 2:3
tribunals 7:16
trouble 36:19
true 9:22 10:6
21:4 58:9 75:7
175:11 193:22
193:23 219:24
239:21 240:11
251:6,8,11
truth 5:7,7,8
try 20:16 65:3
trying 11:17,21
66:5 82:23
89:8,10,24
95:2 133:22
143:13 157:18
165:12 169:16
202:7 203:5
206:10,11
turn 11:10 30:1
49:1 59:11
73:17 167:12

186:4 223:19
turned 157:11
turner 29:2
twice 157:11 247:7
two 7:1 9:12 10:3 13:1 14:25 15:16 17:8 19:4 47:4 66:3 85:12 100:11 111:9 118:3 119:23 126:17,17,20 127:8 130:21 130:22 132:2 132:16,17,17 136:1,22 137:6 137:17 139:1 141:1 142:23 148:18 156:11 156:21 157:6 157:10,18,24 157:24 161:7 170:14,18 171:3 181:23 182:5 185:23 209:6,17 211:15
tylor 1:22 2:22 252:20
type 7:7 101:10
typed 237:7
types 7:2 181:24
typically 86:23 237:14

u

u.s. 10:11 11:6
ua 155:7,17
ultimately 48:21 233:22
uncontrovers... 58:4
uncoordinated 40:18,22 58:3 195:15,24
under 20:24,24 29:11 46:15 47:1 92:4 141:13 251:9 251:10 252:10
undersigned 252:3
understand 7:16 9:9,15 11:7,8 15:16 25:1,4 30:15 30:23 33:24 35:22 40:5 42:6 43:13,14 45:21,23 47:24 48:20 58:10,14 60:23 64:11,14 68:21,25 69:7 69:8 75:18 78:3 81:20 82:22 84:18 87:4 100:19 105:24 106:12 115:18,18 116:7,11,11 118:1 120:2 134:2 146:4 155:3 158:2 163:25 165:11 177:23 198:11 198:25 200:21 203:15 204:4 205:19 216:4 216:20 220:10 228:4 232:9 233:14
understandable 190:4,11
understanding 16:19 19:19 25:6 26:13 31:4 36:20 68:4 71:23 103:22 109:10 134:25 160:11 162:16,23 177:7 197:9 200:8 203:9 216:24 233:17 233:20
understood 10:2 11:24 13:19 35:24 37:11,22 40:17 61:2,19 78:2 89:25 102:22 158:3 161:18 166:19 172:16 180:25 183:2 185:16 195:15 202:15
unfortunately 79:13
united 1:1 2:1 251:10
unknown 216:22
unrelated 149:13
unsynchroniz... 42:20 43:9 58:3
unwind 220:8
upcharge 19:20
updated 126:2 212:19
url 78:21 79:25 84:10 85:6,13 85:14 86:3 87:14,23,23 88:15,17 90:18 90:25 91:17,23 92:2,11 93:1 95:17 104:14 105:17 106:4 107:8,12,16 143:1 144:10 144:15 173:3,3 175:5 193:15 200:19 209:8 209:12 217:21
urls 38:4 40:9

usage 102:11 170:7 200:2,3
usc 46:15 47:1
use 73:24 75:13 89:19 90:4 101:12 102:1 105:3 115:7,9 115:16 127:24 127:25 145:17 160:19 198:23 199:6 200:6 209:4,15 210:24,25 218:22 246:21 246:24
used 33:7 35:3 36:5,15,18,20 38:7 44:11 55:14 59:18,24 61:17 90:10 100:23,24,24 101:3,4 115:4 115:17 129:12 141:23 160:4 168:16 171:6 177:12 181:1 183:5 199:17 199:18 206:13 209:16 210:16 210:19 211:7,9 212:14 219:6
useful 48:20
user 80:1 84:12 102:3 133:6 134:16,18 135:2,2 136:4 137:22,25 138:18,19 162:8 171:24 172:17 177:17 177:19 178:4 209:10 210:12 210:12 217:22 223:8 249:12
user's 134:6,6
users 38:4 40:9 49:6,21 50:4,7 50:20 51:11,20 51:25 52:25 53:13 54:1 55:1,15 74:5 74:22 75:2 76:4 97:1,3 103:1 108:19 132:17,24 136:24 139:3 161:7 177:25 249:14
uses 33:20,25 35:8 51:6 80:16 82:9 84:3 89:9 94:1 96:7 116:24 125:10,15 126:11,12,17 127:7 132:21 165:14 178:22 198:5,7,10 237:22
using 41:9 65:21 88:11 102:7 156:10 174:24 177:3 211:16 213:23 252:8
usually 80:10
utilize 198:7
utilized 163:14
utilizing 177:3 200:19

v

v 1:7 2:7
vacuum 122:9
validity 21:12 47:3
value 7:23
various 8:13 76:16,22 85:4 141:22,23 158:20
verb 59:15 241:16
verbatim 226:2 252:8
verify 9:23
version 47:2
versions 157:18
versus 23:22 129:22 197:24
video 7:5 136:2
videoconfere... 1:18 2:19
videos 175:10
view 3:7 7:23 12:5 16:4 17:1 18:12 24:14 31:1 33:2 40:1 45:24 55:23 69:20 88:20 91:9 97:1 98:18,24 128:20,21 131:15,19,19 132:2 133:9 134:7 136:17 141:7 146:5 154:22 155:25 156:15 160:25 168:7 176:10 180:18 184:24 184:25 185:17 195:19 198:7 209:24 210:11 216:22 223:13 225:17 226:7 226:14,20,20 226:21 227:10 233:9
viewable 74:16 175:7
viewed 210:13
viewing 223:9 224:1 226:22
viewpoint 132:1,2 133:16
virtual 1:18 2:20 137:1 139:5

vis 102:18,18 210:4,4
visiting 135:7

w

w 6:13
wagering 7:5
wait 34:5 54:14 85:17 118:12 168:25 174:9 199:2 229:9 244:19
walk 7:25 77:2 78:12,24 213:6
walked 45:16
walking 93:14 159:9
walks 77:8 164:16
wang 15:12 70:19,25 71:12 72:7 146:7,17 146:25 147:3,9 147:21 148:15 148:20,21,24 149:17,25 150:1
want 6:22,23 13:13 26:15 37:3 39:1 56:9 56:12 58:10 92:8 93:12 101:16 107:22 112:1 113:23 116:8 117:23 119:21,23 132:4 135:3 155:20 159:1 161:7 162:5,8 175:18 182:19 188:8,16,18,18 190:14,16 208:8 215:4,4 215:9 227:17 232:5 233:13 248:23
wanted 44:7 75:17 79:6 116:10 211:21 212:1
wants 113:19
watch 136:2
way 11:25 20:15 30:8 33:21 34:2 38:20 43:5 46:4 49:5,21 50:3,20 51:10 54:18 56:14 62:9 65:18 72:12 79:15 87:24 90:23 115:13,16 121:18 122:13 122:22 124:17 127:8 137:16 139:22 147:4 161:19 171:24 172:17,25 173:14 175:11 177:16 179:7 179:18 188:19 195:5 196:4 205:20 207:17 220:14 223:11 232:5 235:5 245:23 246:12 246:15 247:1 247:16
ways 51:24 52:24 53:13,25 54:25 55:15 74:5 88:8,12 88:16 89:13,18 90:3 121:5 177:25
we've 99:3 108:6 120:15 184:19
web 15:1 32:21 51:3,7,25 52:25 53:14 54:1 55:1,15 67:8,9,14,17,20 67:20 69:3,3 69:13 74:1,5 74:10,11,12,19 74:20,21 75:1 75:1 76:3,4 78:22 79:21 82:25 83:9,21 83:21,23 86:18 86:23 87:6,12 88:1 95:24 96:5 98:10,21 100:7,18 101:8 102:2,8,9,13,25 103:1,10 104:5 124:16,21,25 125:6,7,25 126:2 128:12 128:13,15,18 128:19,20 130:25 131:6 131:14,19 132:18 133:9 134:7,18 135:3 136:7,9,18 137:7 140:25 141:1,8 142:19 142:23 143:2,3 144:5,14,17,23 149:5,7,8,9,11 149:12 152:10 152:24 153:7 153:11,14,25 154:1,17,19,25 155:5,5,7,8,8 156:6,7,9,10,20 156:22,23 157:1,3,5,7,12 157:15,18,24 157:25 160:25 161:15,18,19 161:23 166:16 166:17 167:3,4 167:16,16,18 167:21,25 168:1,5,7,10,12 168:15,16 169:1,8,16,20

170:1,1,3,8,10
170:15,17
171:5,13,25,25
172:5,6,10,11
172:17,18,20
172:21 173:1,4
173:6,10,15,17
173:17,25
174:5,6,7,12,14
174:22,23,23
174:24 175:4,5
175:18,20,25
176:1,6,6,7,7
176:12,12,19
176:20 177:1,3
177:3,5,5,8,9
177:10,13,13
177:17,17,20
177:20 178:1,5
180:14,17,25
181:3,6,7,19,20
181:21,22
182:4,6,17,19
182:23 183:3,4
183:8,23,25
185:6,12,15
186:11,16
189:8 192:14
198:7 204:10
208:18 209:8
209:14,24
210:8,11 212:9
212:18,19,22
212:25 213:12
214:22 215:16
215:18,21
217:18,19
223:12,12,14
225:16,17
226:6,7,18,20
227:9,10,16,17
227:18,23
228:6 230:18
234:11 236:14
241:2,4,6,19
242:10,18,20
243:1,3,18
244:7,12,25
245:2,4,15,17
245:19,21,22
246:6,9,11
247:3,4,5,14
248:8,11
website 78:17
79:18,18 80:21
81:23,24 84:24
85:14,15 86:3
86:4 91:18,23
91:25 92:3,11
92:12,24 93:1
93:2 94:3,4,5,9
94:25 95:5,7,8
95:9,16,17
100:24 102:4
104:5,14,15
105:5,17 106:4
106:5,22,22
107:8,19,20
135:7,12
137:17,24
158:12,13,16
158:16 162:7
163:4 164:9,21
165:19 168:10
168:12,13
169:12 193:15
193:16 196:22
197:2,5 198:4
199:21 204:24
205:3 208:7
213:8,9,10,14
213:17,23
214:5,9,18
216:14 217:14
217:14 218:2
218:23 219:6
219:22 220:3
220:25 221:7
224:1,9,11,17
225:8 228:19
229:7 230:19
231:6,13,23
232:13 234:4
234:24,25
235:7,10,12,17
235:21 236:20
241:3,6,19
242:11,18
243:17,23
244:24 245:10
246:4 248:9
websites 137:1
139:5
wednesday
1:20 2:21 5:1
124:1
weird 205:8
welcome 124:6
went 41:13
west 3:3 5:21
whatnot 7:18
27:25 40:14
42:4 52:19
175:10 232:21
wiggle 207:11
208:9
willing 55:22
winded 6:21
window 79:5
181:22
witness 4:2
11:20 12:13,21
13:7,24 14:16
15:24 16:19
17:7,23 18:8
21:14,22 22:18
23:3,13,25
24:17 25:4,8
25:14 26:2,11
26:23 27:6,14
27:22 28:5,16
28:23 29:5
30:22 31:24
32:17 33:9,19
34:5,16 35:6
36:7,17 37:2
37:20 39:10,20
40:4 41:1,22
42:18 43:3,23
44:7,18 45:14

46:6 48:18
49:24 50:10
51:14,23 53:3
53:10 54:3,14
55:20 56:9,21
57:22 59:21
60:3,19 61:2,9
61:16,22 62:2
63:9 64:6,21
65:16 66:10
67:2 68:1,25
69:7,25 70:9
71:2,14,20
72:1,9,18
73:23 75:5,10
75:22 76:8
77:6,14 78:8
80:15 81:7
82:8 83:14
84:14,21 85:9
85:17 87:3,10
88:5,19 89:3
89:12,22 90:7
90:20 91:2,13
92:16 93:10
97:11,20 98:2
98:13 99:8
100:10 102:6
103:20 104:8
105:14 106:10
106:25 107:15
108:6 109:21
111:8 112:8,25
113:11 114:8
114:25 115:12
116:18 117:6
117:16 118:6
118:23 119:11
120:20 121:14
122:8,19 123:6
123:18 125:10
126:10 127:6
128:3,10
129:15 130:7
130:12,17
131:3,23
132:20 133:12
134:10,21
135:15 136:20
137:14 138:3
138:21 139:10
139:17 140:5
140:14 141:11
143:7,20 145:1
145:21 146:10
147:2,12,24
148:8,20
149:20 150:8
151:14 152:2
154:9 155:2
158:2 159:3,20
160:3,18
161:10 162:13
162:22 163:22
165:5,22
166:14 167:7
168:4 170:6
171:8 172:2,8
172:14,24
173:13 174:2,9
174:17 176:4
176:14 177:23
178:15 179:17
183:15 184:10
184:15,19
185:12 186:18
187:4,24
188:16,23
190:13 191:3
191:20 192:8
194:3,15 195:1
195:7,23 196:6
196:13 197:4
197:12 198:14
199:2,10,25
200:11 201:1
201:25 203:24
204:12,21
205:6,19 206:6
206:18,24
207:13 208:4
208:14 209:2
210:2,16,22
211:12 212:7
214:1,13,24
215:23 216:4
216:18 217:6
218:6,25
219:12 220:6
220:18 221:4
221:10 222:19
223:4 224:4,20
225:21 228:3
228:24 229:18
230:7 231:2,9
231:16 232:2
233:8,20 234:8
235:3,14 236:2
236:23 237:18
238:7,21
239:11,20
240:14 242:14
242:23 243:7
243:25 244:10
246:20,23
248:3 249:20
250:13 252:15
word 7:22 35:8
36:20 38:16
53:14,21,23
54:9 55:3,14
55:17 56:11
68:22 80:16
100:23 101:3,4
109:8,13
116:24 125:10
126:13 132:21
160:19 165:14
181:11 182:21
194:3 198:2,5
200:2,3 207:18
209:4 210:25
211:1 226:5
234:5 237:22
241:12,17
243:8 247:12
words 40:12
49:19,20 50:2
101:9,12
106:13 107:9

126:11,13
144:4 171:3
194:6 202:8,10
202:12 203:12
220:24 232:20
232:21 237:22
239:11,17
241:21
work 6:14,16
6:24 7:15 8:6
8:14 14:25
20:1,18,24
23:10 24:10,13
52:11 75:13
96:18 140:23
157:21
worked 19:17
223:12
working 25:12
86:16 88:10
109:4 197:20
works 78:13
81:21
worlds 137:1
139:5
wrapped 84:2
write 49:9
written 70:4
77:15,16
133:20,25
175:13 191:14
wrong 16:17,22
154:6 244:2
wrote 49:10,18
49:19,20,24
50:2,8 101:7
143:9,10

x

x 4:1,8

y

y 6:8
yeah 21:8 24:8
52:3 57:18
71:5 75:12
79:9 80:8 81:9
84:18 86:7,9
87:12 88:19
89:3 91:15
94:16 95:2,3
103:7 122:12
135:20,24
149:23 158:10
169:22 178:17
224:7 226:10
236:8 239:3
241:15,16
242:7 244:16
247:15
years 14:25
yield 141:3

z

zoom 1:18 2:20
27:25