

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

NETFLIX, INC.,	)	
	)	
Petitioner,	)	Case
	)	IPR2023-00630
vs.	)	
	)	Patent No.
VL COLLECTIVE IP LLC,	)	7,440,559
	)	
Patent Owner.	)	
	)	

Deposition of ANTHONY WECHSELBERGER, taken remotely via Zoom, in the above-captioned cause, before Rachel F. Gard, CSR, CCR, RPR, CRR, commencing at the hour of 7:56 a.m. Pacific on Friday, December 8, 2023.

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WITNESS

PAGE

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ANTHONY WECHSELBERGER

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Cross-Examination

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By Mr. Matulewicz-Crowley

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Redirect Examination

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By Ms. Carrano

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E X H I B I T S

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(NONE REFERENCED)

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1 (Witness sworn.)

2 MS. CARRANO: Should we introduce
3 ourselves for the record?

4 MR. MATULEWICZ-CROWLEY: This is Michael
5 Matulewicz-Crowley with Reichman Jorgensen Lehman
6 & Feldberg on behalf of patent owner.

7 MS. CARRANO: Aliza George Carrano on
8 behalf of petitioner Netflix of Willkie Farr &
9 Gallagher.

10 WHEREUPON:

11 ANTHONY WECHSELBERGER,
12 called as a witness herein, having been first duly
13 sworn, was examined and testified as follows:

14 CROSS-EXAMINATION

15 BY MR. MATULEWICZ-CROWLEY:

16 Q Okay. Mr. Wechselberger, thank you for
17 coming back today. I understand you have some
18 documents there with you?

19 A Yes.

20 Q Okay. Can you tell me what those are?

21 A I have clean copies of the '559 patent,
22 the prior reference that I refer to as Cassin in

1 my declaration, and another one that I refer to as
2 Huston. And I've got a binder that I was given
3 that has my declaration, has the petition, the
4 patent, a petition, yeah, and the board's
5 institution decision. And I'm taking my
6 declaration out of the binder so I have it handy.

7 Q Sounds good. Can you turn to open up
8 Cassin?

9 A Cassin, okay. I have Cassin.

10 Q Okay. Can you turn to paragraph 164?

11 A I'm there.

12 Q So Cassin describes in paragraph 164 and
13 below that, two different protocols, right?

14 A Yes.

15 Q So then if we look at paragraph 163, let
16 me know when you're there.

17 A Yeah, it's right above 164. I'm looking
18 at it.

19 Q Okay. Does Cassin, paragraph 163, does
20 its description there apply to the first protocol,
21 the second protocol, or both?

22 A It appears to be the model of Figure 8

1 that's described in paragraph 164. 164 opens by
2 saying: Although generally described above, which
3 would include 163, the client and server computers
4 may interact in accordance with one of two
5 protocols.

6 So certainly, 163 would certainly be --
7 because 164 talks about the client server
8 computers may interact with one of two protocols,
9 that 163 would be under one of those two
10 protocols.

11 Q So does 163 describe both the first and
12 the second protocol? Or strike that. I can ask
13 it less -- slightly more clearer.

14 Does the description in paragraph 163
15 apply to both the first and second protocol?

16 MS. CARRANO: Objection. Form.

17 A I would say the model that's described in
18 163 appears more like the protocol of Figure 8 in
19 164 and less like the protocol of Figure 9, which
20 is the second protocol.

21 Q Okay. So the descriptions in paragraph
22 163 don't apply to how the second protocol works;

1 is that right?

2 A Well, again, I'll just cite from the
3 opening of 164, although the generally described
4 above, the client -- although generally described
5 above, the client and server computers may
6 interact in accordance with one of two protocols.

7 So I take that to mean that 163 is the
8 general description, and then 164, 165, 166, et
9 cetera, then elaborate on the two protocols that
10 are shown in Figure 8 and Figure 9. So I don't
11 think this was any intention to constrain 163
12 either way. It just says what it says.

13 Q Okay. So 163 describes how the system
14 works regardless of which protocol you use,
15 whether you use protocol 1 or protocol 2?

16 MS. CARRANO: Objection. Same objection.

17 A I don't have an opinion upon that. Like I
18 say, it says what it says. And opening 164 says
19 that although generally described above, the
20 client and server computers may interact in
21 accordance with one of two protocols.

22 Q Right. And so I'm trying to understand

1 what that sentence means. Because you rely on
2 disclosures from paragraph 163 in your
3 declaration, right?

4 A I know I rely on the disclosures of 164.
5 I don't recall -- I wouldn't deny that I rely on
6 163, but you'd have to point me to it.

7 Q Okay. But so you understand that Cassin
8 describes two different protocols, right?

9 A Yes.

10 Q Okay. And so it's important for us to
11 understand what's being disclosed in one protocol
12 and what's being disclosed in the other protocol;
13 do you agree?

14 A Yes.

15 Q Okay. So what I'm trying to understand is
16 if the description, the disclosure in
17 paragraph 163, does that apply to the functioning
18 of both the first protocol and the second
19 protocol?

20 MS. CARRANO: Objection. Form.

21 A I don't have an opinion upon that.

22 Q Okay. You don't know?

1 A I don't have an opinion. I know what it
2 says. I understand what it says. I've
3 acknowledged that it appears to model more closely
4 to the protocol of Figure 8. But because the
5 opening sentence of the paragraph that describes
6 Figure 8 begins with although generally described
7 above, the client and server computers interact in
8 accordance with one of two protocols, so that's
9 all-encompassing because it's talking about two
10 protocols and 163 is generally above 164.

11 Q Okay. So the first sentence of paragraph
12 164 seems to imply paragraph 163 applies to both
13 the first and the second protocol?

14 A It's just non-limiting.

15 Q What does that mean?

16 A I don't think that it constrains -- by
17 non-limiting, I don't think the opening sentence
18 constrains 163 in any way.

19 Q Okay. So if I'm reading Cassin and I look
20 at the disclosures of what it says of how the
21 system works in paragraph 163, how do I know
22 whether those descriptions apply to how the first

1 protocol works, how the second protocol works, or
2 how they both work?

3 A I would say it doesn't matter. If you
4 read 163, you can understand what's being
5 disclosed there. And if you want more
6 information, you go to the next paragraph where it
7 begins to talk about two protocols in greater
8 detail.

9 Q But how do I know what's disclosed in
10 paragraph 163 applies to the protocols described
11 in paragraphs 164 through 166?

12 MS. CARRANO: Objection. Form.

13 A I would say you don't need to know that.
14 It could be a different embodiment. It says:
15 Although generally described above, and then it
16 goes on in great detail to talk about Figure 8 and
17 Figure 9.

18 Q Okay. So what's disclosed in
19 paragraph 163? That could be a third protocol?

20 MS. CARRANO: Objection. Form.

21 A I just said, 163 says what it says. It's
22 more disclosure. It's not limiting. It doesn't

1 say anything about which protocol it applies to,
2 and I'm not going to provide an opinion on that
3 because it is what it is.

4 Q Okay. But to go back, you'd agree that
5 the first sentence of paragraph 164 seems to imply
6 that the description above, including in
7 paragraphs 162 and 163, would apply to both of the
8 specific protocols laid out in paragraphs 164
9 through 166?

10 MS. CARRANO: Objection. Form.

11 A That opening sentence is not limiting. It
12 just says there was a general description above
13 but be advised, and then it goes on to describe
14 two protocols in great detail.

15 Q And do those two protocols fall within the
16 system described in paragraphs 162 and 163?

17 MS. CARRANO: Objection. Form.

18 A Ask the question again.

19 Q And so the first and second protocol fall
20 within the system described in paragraphs 162 and
21 163?

22 MS. CARRANO: Same objection.

1 A I would say that 162, 163 as it says at
2 the opening of 164 are general descriptions.

3 Q And then paragraphs 164 through 166
4 provide kind of more specific implementations of
5 that general descriptions in the first and second
6 protocol?

7 A No. 164 and 1 through 5 and 6 talk about
8 the protocols that are provided in Figures 8 and
9 Figure 9.

10 Q And those protocols are specific protocols
11 that apply to the system generally described in
12 paragraphs 162 and 163?

13 MS. CARRANO: Objection. Form.

14 A The only linkage between 162 and 163 we
15 have is the opening sentence of 164. So I
16 wouldn't say that -- since those paragraphs we're
17 talking about, 162, 163 don't, in fact, limit
18 themselves to either the first or second protocol,
19 they are just additional disclosure from Cassin.

20 Q Well, you understand that you can't just
21 look at a reference in the abstract, isolated from
22 each other, right? You have to understand what

1 the whole reference discloses?

2 A Well, it can disclose lots of things,
3 though.

4 Q Right. So is the disclosure in paragraphs
5 162 and 163, is that a different embodiment than
6 the first and second protocols disclosed in 164
7 through 167?

8 MS. CARRANO: Objection to form.

9 A They don't refer to the embodiments.
10 They're just disclosing some data processing
11 formats, which the opening in 164 says that is a
12 general description.

13 Q Okay. So the paragraphs 162 and 163,
14 those are untethered from the disclosures of the
15 first and second protocols in paragraphs 164
16 through 167?

17 MS. CARRANO: Objection. Form.

18 A There's a great deal of what I read in 162
19 and 163, which is lined with Figures 8, but
20 there's certainly no discontinuity between them.
21 They just disclose what they disclose, and they're
22 referred to as a general description.

1 Q Okay. So the general description in
2 paragraphs 162 and 163 can be used to understand
3 how the systems that are described in 164 through
4 167 work?

5 MS. CARRANO: Same objection.

6 A Ask again.

7 Q The general description in paragraphs 162
8 and 163 can be used to understand how the systems
9 that are described in 164 through 167 work, right?

10 MS. CARRANO: Same objection.

11 A I would say that they don't disagree with
12 164, 165, and 166, but they do not indicate that
13 they're supposed to be in any way -- that the
14 information is constrained to being tied to
15 Figure 8 or Figure 9.

16 Q So it's a little bit backwards from what
17 I'm asking. What I'm asking is: Can the
18 descriptions in paragraph 162 and 163 be used to
19 understand the protocols described in 164 through
20 167 and Figures 8 and 9?

21 MS. CARRANO: Same objection.

22 A I, once again, just say the information in

1 162 and 163 is what it is. If you really want to
2 understand the protocols, you'll read the
3 information about Figure 8 and Figure 9.

4 Q Well, so, I think you can see the
5 difficulty here, Mr. Wechselberger, we're looking
6 at this disclosure from Cassin holistically and
7 everything it discloses, right? So I need to
8 understand, you know, are you just pointing to
9 those paragraphs 164 through 167 as what's the
10 relevant disclosure? Or are these surrounding
11 paragraphs, are these relevant to this disclosure
12 at all?

13 MS. CARRANO: Same objection.

14 A The declaration where I would have cited
15 to 163 and I would have included that information,
16 like I said, I don't know. I haven't memorized my
17 declaration. If there's something that appears to
18 be a disconnect in my testimony in the declaration
19 where I cited to both of them, we can talk about
20 that. But your questions are in the hypothetical.
21 All I'm saying 162 and 163, they disclose what
22 they disclose. You haven't tied any question to a

1 feature that is being claimed. So I'm not going
2 to limit my testimony about what these paragraphs
3 mean.

4 Q So to be clear, my questions are in no way
5 hypothetical. They're about what Cassin literally
6 discloses.

7 So just to be clear, you do not have an
8 opinion sitting here today about whether
9 paragraphs 162 and 163 relate to how the protocols
10 1 and 2 that are described in paragraphs 164 to
11 167 work?

12 MS. CARRANO: Same objection.

13 A The opening sentence of paragraph 164
14 says: Although generally described above, that
15 would be paragraphs 162 and 163, the client and
16 server computers may interact in accordance with
17 one of two protocols.

18 So that indicates that there's a general
19 description of the operation above. And then
20 following that general description is details of
21 the two protocols.

22 Q Okay. Can you turn to paragraph 169 of

1 Cassin? Let me know when you're there.

2 A I'm sorry?

3 Q Can you turn to paragraph 169 of Cassin?

4 A I'm there.

5 Q Okay. Cassin teaches how to manually
6 delete content, right?

7 A What was the question again?

8 Q Cassin teaches that the user can manually
9 delete content, right?

10 A Yes, that's disclosed in paragraph 169.

11 Q Can you turn to Figure 8 in Cassin? And
12 let me know when you're there.

13 A I have Figure 8.

14 Q Okay. Figure 8 describes the first
15 protocol, correct?

16 A Yes.

17 Q For the first protocol, the server
18 computer attempts to send a first media content
19 item on the list to the client computer, right?

20 A The server computer attempts to send a
21 first media content item on the list to the client
22 computer is Step 850 of Figure 8.

1 Q Okay. So in the first protocol, the
2 server computer attempts to send a first media
3 content item on the list to the client computer,
4 right?

5 A Yes.

6 Q And if the client computer does not have
7 that item, it accepts the media content that has
8 already been sent, right?

9 A Ask again.

10 Q If the client computer does not have that
11 item already, it accepts the media content that's
12 been sent, right?

13 MS. CARRANO: Objection. Form.

14 A You're saying -- you're asking if it sends
15 the media content that has been sent. That
16 doesn't make sense.

17 Q No, sorry, I'll repeat the question
18 because I think you misheard it.

19 If the client computer does not have that
20 content item already, the client computer accepts
21 the media content that's been sent, right?

22 A That's been sent.

1 MS. CARRANO: Same objection.

2 A Your question still doesn't make sense.

3 Q Well, okay. Let me ask this: If the
4 client computer does not have the media content
5 that the server computer is attempting to send,
6 then the client computer accepts that content,
7 right?

8 MS. CARRANO: Same objection.

9 A I think that's right. Read it back one
10 more time. Or ask me one more time.

11 Q If the client computer does not have the
12 media content that the server computer is
13 attempting to send, then the client computer
14 accepts that content?

15 A Yes.

16 MS. CARRANO: Objection. Form.

17 Q In that scenario, the client computer does
18 not send an indication, correct?

19 MS. CARRANO: Objection. Form.

20 A I don't understand that question out of
21 any context.

22 Q Well, it's in the context of the first

1 protocol.

2 A If we go back to paragraph 164 that we
3 were talking about earlier, it is disclosed that
4 if the client computer does have the media content
5 item, then in Step 870, the client computer
6 provides an indication to the server computer that
7 it currently has the media content item.

8 Q And so the client computer does not
9 provide that indication if the client computer
10 does not already have the media content item,
11 right?

12 MS. CARRANO: Objection. Form.

13 A What was the question again?

14 Q The client computer does not provide the
15 indication if the client computer does not already
16 have the media content item?

17 MS. CARRANO: Objection. Form.

18 A I've lost track of the question again.

19 Q The client computer does not provide the
20 indication if the client computer does not already
21 have the media content item?

22 MS. CARRANO: Same objection.

1 A Well, I would say it's clearly stated that
2 if it provides an indication to the server
3 computer that it currently has the media content,
4 that's an indication. If it doesn't, it goes on
5 to say the server will offer the next media item
6 on the list. If the computer does not have the
7 media item, then the Step 870, the content
8 computer accepts the media content. In accepting
9 the media content, I would say that's another
10 indication to the server computer that it does not
11 have that content.

12 Q But Cassin doesn't disclose that when the
13 client computer accepts the media content, that it
14 also sends a separate message to the server with
15 any indication, correct?

16 A It doesn't say there's a separate message.
17 All I said was that by accepting content, the
18 server would understand that that's an indication
19 that the client does not already have that
20 content.

21 Q Okay. The client computer's decision to
22 accept the content or not is based on whether or

1 not the client computer determines that it has the
2 content, correct?

3 A Ask again.

4 Q The client computer's decision to accept
5 the content or not is based on whether or not the
6 client computer determines that it has the
7 content?

8 A Yes, whether it already has the content.

9 Q Okay. So if you turn back to Figure 8, so
10 regardless of whether or not the client computer
11 has the content, the server attempts to send the
12 first media content on the list before the user
13 provides any indication about whether it has that
14 content or not?

15 A That was a long, drawn-out question. Can
16 you read it to me again?

17 Q Regardless of whether the client computer
18 has the content, the server attempts to send the
19 first media content to the user before the user
20 provides any indication about whether it has that
21 content?

22 A That's the way -- yes, that's the way the

1 data flow is in Figure 8.

2 Q Okay. Let's discuss the scenario where
3 the client computer does have the first media
4 content, okay?

5 A Does have it, yes.

6 Q So the decision to send the indication
7 back to the client computer is based on the fact
8 that the client computer has determined that it
9 already has the content?

10 A Ask again.

11 Q The client computer's decision to send the
12 indication to the server computer that it has the
13 media content item is based on the fact that the
14 client computer has determined that it has that
15 content, right?

16 A Well, the client computer is offered
17 content by the server. So a decision to send an
18 indication isn't based upon whether -- it has to
19 respond to that offer. And so the indication is I
20 already have it or I don't have it, in which case
21 it accepts the media content. And I said that's
22 an indirect form of a different indication.

1 Q Okay. And that tree of whether it says
2 yes, I have it or no, I don't is just based on it
3 looking into its own storage and determining
4 whether or not it has it?

5 A Yes.

6 Q Okay. So then after that, the server
7 computer sends the next piece of content, right?

8 A Yes. There will either have been an
9 acceptance of the first offer or not, and the last
10 sentence of paragraph 164 says: Thereafter, Steps
11 850 through 880 are repeated for each media
12 content as necessary.

13 Q Okay. And so that happens in response to
14 the indication from the client that it currently
15 has the media content item stored, right?

16 A What is -- you said "that happens." What
17 is "that"?

18 Q The server repeating the steps.

19 A I understand 163 to mean where it says,
20 "Thereafter steps 850 through 880 are repeated,"
21 they're repeated for each item that the server has
22 that the terminal is eligible for, regardless of

1 whether the terminal accepted or did not accept
2 the first, second, or third or whatever offering
3 we're on.

4 Q Okay. Can you turn to paragraph 166 of
5 Cassin?

6 A I'm there.

7 Q So 166 concerns the second protocol,
8 correct?

9 A Yes.

10 Q So Cassin describes that the client
11 identifies the media content that it does not have
12 in the local repository 685, right?

13 A What's the question again?

14 Q One moment. Cassin describes that the
15 client identifies the media content that it does
16 not have in the local repository 685, right?

17 A I read Step 945 of Figure 9, the client
18 computer identifies those media content items on
19 the first list that it does not already have in
20 the local content repository.

21 Q So is that a yes?

22 MS. CARRANO: Objection. Form.

1 A That was the question you asked me. So if
2 it wasn't, read the question back again.

3 Q Cassin describes that the client
4 identifies the media content that it does not have
5 in the legal repository 685, right?

6 MS. CARRANO: Objection. Form.

7 A Yes.

8 Q And Cassin discloses identifying the media
9 content that it does not have after the server
10 sends the first list of all content to which that
11 user is entitled, right?

12 A The question again?

13 Q Cassin discloses identifying the media
14 content that the client does not have after the
15 server sends the first list of all content to
16 which that user is entitled, right?

17 A Yes. The first list is Step 930. There's
18 a Step 940. And then the Step 945 is when the
19 client identifies the media it does not have, so
20 it's after the first list.

21 Q The user's response to the first list is
22 just based on determining the media contents that

1 it does not have in the local content repository

2 685, right?

3 A What do you mean by the terminal's
4 response? It says it identifies it. Is that what
5 you mean by response?

6 Q Well, no. Figure 9 says that the client
7 computer sends a second list of only those media
8 content items contained in the first list that it
9 currently does not have stored in the local
10 content repository, correct?

11 A I agree.

12 Q Okay. And so that response that the
13 client computer sends, that's based on determining
14 the media contents that the client does not have
15 in the local content repository 685, right?

16 A I agree with that too.

17 Q So then the server sends a second list of
18 only those media content items contained in the
19 first list -- oh, sorry, strike that.

20 Then the server computer delivers those
21 media content items contained in the second list
22 to the client computer, correct?

1 A Yes, Step 950.

2 Q The client computer does not re-check if
3 it already has those media content items that the
4 server computer delivers, correct?

5 A I didn't understand the question.

6 Q What about it did you not understand?

7 A Well, we were generally following the flow
8 of Figure 9. And your question seems
9 disconnected, so maybe you could ask it again.

10 Q Okay. The client computer does not
11 re-check if it already has the media content items
12 before the server computer delivers those items,
13 correct?

14 A There's nothing disclosed about such a
15 re-check.

16 Q Okay. The server automatically delivers
17 the media content items contained in the second
18 list to the client computer without any further
19 information from the client, correct?

20 A Again, the question?

21 Q The server automatically delivers the
22 media content items contained in the second list

1 to the client computer without receiving any
2 further information from the client, correct?

3 A Well, the delivery is not automatic
4 because there is a step before delivery. The
5 client computer sends a second list of only those
6 media items contained in the first list that it
7 currently does not have stored in local content
8 memory. So in response to that, the server
9 computer then delivers the media items in the
10 second list that the terminal indicated it did not
11 already have. So that's not -- you used the word
12 "automatic," so there's a succession of
13 back-and-forth transactions.

14 Q Okay.

15 A It wasn't necessarily automatic either.

16 Q So -- but after the client computer sends
17 a second list, this server delivers the media
18 content items contained in that second list to the
19 client computer without receiving any further
20 information from the client, correct?

21 A I'm just looking in detail at
22 paragraph 166. The text in there says that

1 Step 947, the client computer sends a second list
2 of only those media content items contained in the
3 first list that it currently does not have stored
4 in local content repository 685. In Step 950, the
5 server computer delivers those media content items
6 contained in the second list, so it doesn't say
7 anything about other information.

8 Q Okay. Did you rely on both Figures 8 and
9 Figures 9 for your analysis?

10 A At certain points, yes. Not all
11 instances, but yes.

12 Q Do you need both Figures 8 and Figure 9 to
13 satisfy the limitations of the independent claims
14 of the '559 patent?

15 A Where I cited to both, it's my opinion
16 that it read on the claims. In cases I cited to
17 both of them, they both read on the claims, but in
18 some cases they were complementary in reading on
19 the claims.

20 Q But do you need both Figures 8 and 9 to
21 satisfy the limitations of the independent claims
22 of the '559 patent?

1 A I'd have to look at each independent claim
2 and what I said.

3 Q Okay.

4 MS. CARRANO: Is there a question pending?

5 MR. MATULEWICZ-CROWLEY: Yes.

6 Q The pending question is: Did you need
7 both Figures 8 and 9 to satisfy the limitations of
8 the independent claims of the '559 patent?

9 A For the first independent claim 1, I used
10 both figures. Either figure by itself would
11 have -- I have to each one.

12 Q Was it your full answer, or are you still
13 looking?

14 A No, this is going to take a while. I'm
15 going to have to go page by page to see -- to
16 answer it. So I'm saying I used both of them in
17 independent claim 1.

18 Q Okay. I think you can limit the question
19 to claim 1 for now.

20 So just to be clear, the question is: Do
21 you need both Figures 8 and 9 to satisfy claim 1
22 of the '559 patent?

1 A No.

2 Q Okay. Can you turn back to paragraph 164
3 of Cassin?

4 A I'm there.

5 Q So paragraph 164 talks about an indication
6 that the client computer provides to the server
7 computer, right?

8 A Yes.

9 Q Cassin doesn't disclose exactly what data
10 is in that indication, right?

11 MS. CARRANO: Objection. Form.

12 A The question again?

13 Q Cassin doesn't disclose what data exactly
14 is in the indication that the client computer
15 sends to the server computer in paragraph 164?

16 MS. CARRANO: Same objection.

17 A It doesn't define the structure or
18 contents of the indication, but it tells --
19 informs what the indication indicates.

20 Q Right. But in Cassin, it can be any
21 indication as long as it indicates to the server
22 computer that the client computer currently has

1 the media content item, right?

2 A The question again?

3 Q In Cassin, it can be any sort of an
4 indication, any data, as long as it indicates to
5 the server computer that the client computer
6 currently has the media content item, right?

7 A Well, that sounds like you're asking me to
8 construe the indication. The paragraph says what
9 it says. I understand what it says. I understand
10 when I find that in the prior art -- I'm sorry, I
11 understand -- well, I understand what it
12 discloses.

13 Q Okay. And so I'm trying to gain that
14 understanding as well by asking you questions.

15 So in Cassin, the indication can be any
16 sort of data, can be anything, right, as long as
17 it indicates to the server computer that the
18 client computer currently has the media content
19 item?

20 A Well, it has to be an indication that
21 informs at least that much.

22 Q Okay. And how it accomplishes that, what

1 data it sends, that's not specified in Cassin,
2 right?

3 MS. CARRANO: Objection. Form.

4 A It certainly isn't in 164. It just says
5 that there's an indication sent.

6 Q Okay. So in Cassin, the indication could
7 just be a message that says denied, right?

8 A Well, it has to be an indication -- it has
9 to meet what Cassin says. And Cassin says it
10 provides an indication to the server computer that
11 it currently has the media content. So however it
12 does that, however it does that, whatever details
13 it does that, it has to do at least that.

14 Q Right. So it could be a message that just
15 says denied in response to the server computer
16 trying to send the content to the user, right?

17 A Well, again, you're asking me to flesh
18 out, unnecessarily flesh out whatever -- however
19 Cassin achieves its goals, and I don't have an
20 opinion upon that.

21 Q You don't have an opinion either way
22 whether the indication could just be a message

1 that says denied?

2 A No, I don't have an opinion on that.

3 Q Okay. Can you turn to paragraph 57 of
4 your declaration?

5 A Paragraph 57, five seven, I'm there.

6 Q I see here you acknowledge that the Court
7 in a different litigation construed "download" to
8 mean copy and store in memory of the terminal for
9 subsequent use. Right?

10 A Yes.

11 Q Do you agree with that construction?

12 MS. CARRANO: Objection. Form. Outside
13 the scope.

14 A I haven't thought about whether or not I
15 agreed with it. I was provided this information
16 and asked to consider and apply that construction
17 as an additional part of my analysis. It was
18 unnecessary for me to think about whether I agreed
19 upon it or not.

20 Q So you have no opinion about whether copy
21 and store in memory of the terminal for subsequent
22 use is the correct construction of the term

1 "download" in the '559 patent?

2 A I don't have an opinion on that. I wasn't
3 asked to generate an opinion. I was asked to
4 accept that construction and consider it.

5 Q Okay. And did you consider whether -- or
6 strike that.

7 Did you separately render your opinion
8 both under the Court's construction of download
9 from the Starz case and the plain and ordinary
10 meaning of the term "download"?

11 A What's the question again?

12 Q Did you render your opinion -- or strike
13 that.

14 Did you render opinions both under the
15 Court's construction of "download" from the Starz
16 case and the plain and ordinary meaning of the
17 term "download"?

18 A I did.

19 Q Actually, all of the independent claims of
20 the '559 patent require a content status,
21 including terminal status information, right?

22 A Ask the question again, please.

1 Q All of the independent claims of the '559
2 patent include a content status, including
3 terminal status information, right?

4 A Yes.

5 Q What do you understand "content status,
6 including terminal status information" to mean?

7 MS. CARRANO: Objection. Form. Scope.

8 A That question is asking me to construe
9 that term. I use the -- I interpreted the claims
10 through their plain and ordinary meaning. I
11 didn't need to provide a specific construction for
12 that in order to render my opinions, nor do I
13 offer one now.

14 Q Okay. So what is the plain and ordinary
15 meaning of a content status, including terminal
16 status information?

17 MS. CARRANO: Same objection.

18 A In construing claims according to the
19 plain and ordinary meaning, you don't need -- one
20 doesn't need to develop a specific meaning. So
21 I'm not going to -- I wasn't asked to do that, and
22 I'm not going to do it today.

1 Q Okay. So you have no idea what the term
2 "content status, including terminal status
3 information" means?

4 MS. CARRANO: Objection to form.

5 A I understand how to interpret the scope of
6 the claims where that appears.

7 Q Okay. So what is that understanding?

8 MS. CARRANO: Same objection.

9 A And when I find that feature in the prior
10 art, I can point it out. But again, you're still
11 asking me to construe the term.

12 Q I'm not asking you to construe it. I'm
13 asking you, what does it mean?

14 MS. CARRANO: Same objection.

15 A That's -- you're asking me to construe the
16 term.

17 Q Do you have any understanding whatsoever
18 sitting here today of what content status,
19 including terminal status information means, yes
20 or no?

21 MS. CARRANO: Same objection.

22 A I can -- I understand the scope of the

1 claim where that term appears.

2 Q Then please describe that to me.

3 MS. CARRANO: Same objection.

4 A In describing that, I'll read from the
5 claim.

6 Claim 1, for example, says there's a
7 processor to receive from the terminal located
8 remote from the apparatus, a content status,
9 including terminal status information.

10 I understand what that means. I read in
11 detail the '559 patent, so I understand how that
12 term is developed in the patent. And when I find
13 that term in the prior art, I point to it in my
14 declaration. And that doesn't need any specific
15 construction.

16 Q And again, I'm not asking for a specific
17 construction. You just said: I understand what
18 that means. I read in detail the '559 patent, so
19 I understand how that term is developed in the
20 patent.

21 I'm asking you: What does that term mean?

22 MS. CARRANO: Same objection.

1 A That question to me is asking me for -- to
2 construe the term, and I interpreted it under the
3 plain and ordinary meaning, which doesn't require
4 a specific meaning that I construe it in any
5 specific meaningful way. I just need to
6 understand it.

7 Q So what is that understanding of it?

8 MS. CARRANO: Same objection.

9 A I understand the claims that use that
10 term. And when I find that feature in the prior
11 art, I point it out in my declaration.

12 Q Have you ever taught, Mr. Wechselberger?

13 A Can you be more specific?

14 Q What about that question do you not
15 understand?

16 A If you're asking me if I ever taught
17 school, I have not. Was the question, have I ever
18 taught? Was that the question?

19 Q Yes.

20 A Yes.

21 Q Okay. In what capacity?

22 MS. CARRANO: Objection. Form.

1 Relevance.

2 A I've lectured on panels about various
3 technical things over the years. I consider that
4 a form of teaching. I've taught about
5 communication systems. I've taught about digital
6 cinema projection systems, so I've done many
7 different kinds of functions where I guess one
8 could consider that teaching an audience or a
9 person.

10 Q And when somebody asks you a question when
11 you're teaching and they ask you what a term
12 means, do you just say "It means what the term
13 means? I can't explain it further"?

14 MS. CARRANO: Objection. Form.

15 A That hypothetical has little to do with
16 what we're doing today, so it's out of context and
17 out of scope of my declaration or any testimony
18 about the '559 patent, so ...

19 Q And that's an objection your counsel can
20 make, but you can't refuse to answer my questions.

21 A All right. What's your question again?

22 Q When somebody asks you what a term means

1 when you're teaching, do you just say "The term
2 means what it means. I can't explain it further"?

3 MS. CARRANO: Objection. Argumentative.

4 A I don't recall an example, and so I don't
5 have an answer for that. I can't recall whether
6 I've been asked that or how I responded to it.

7 Q Okay. So I'm asking you now: Do you have
8 any understanding of what the phrase a content
9 status, including terminal status information,
10 means?

11 MS. CARRANO: Same objection.

12 A That question, I've explained I cannot
13 answer without developing -- without construing
14 the term, and I observed it through its plain and
15 ordinary meaning, which means I don't need to
16 develop a specific construction for it.

17 Q Okay. So on the record, under oath, you
18 cannot tell me or describe to me or explain in any
19 way what the plain and ordinary meaning of a
20 content status, including terminal status
21 information is?

22 MS. CARRANO: Same objections.

1 A You're asking me to do something that I
2 didn't do as part of developing my testimony in my
3 declaration and --

4 Q And to be very clear, I'm not asking for a
5 construction. I'm only asking for the plain and
6 ordinary meaning.

7 MS. CARRANO: Please let the witness
8 answer his questions.

9 Q Okay. Apologies. You can continue.

10 A I hear the question, but I also have done
11 this before. And I don't need to provide a
12 specific meaning on that term. I didn't do that
13 in the development of my testimony in my
14 declaration, nor do I offer one now.

15 Q Okay. And to be clear, I'm not asking for
16 a specific meaning, so I'll just ask once more.
17 Under oath right here, you cannot tell me or
18 describe or explain in any way what the plain and
19 ordinary meaning of a content status, including
20 terminal status information is; is that right?

21 MS. CARRANO: Same objections.

22 A So in paragraph 67 of my declaration, I

1 talk about the two protocols as depicted in
2 Cassin's Figure 8 and 9. And as part of that
3 explanation, I explain that the client computer
4 sends user information, parentheses, information
5 about the user of the client computer, to the
6 server that's both Figure 8 and Figure 9, and can
7 also request the list of content from the server
8 that should be delivered, and that's from
9 Figure 9, both user information from the client
10 and the request for a list of content are content
11 status, including terminal status information. So
12 there's an example.

13 Q Can you tell me how that answers my
14 question about what the term means in the '559
15 patent?

16 MS. CARRANO: Same objections.

17 A Well, those items I pointed out of
18 Figure 8 and Figure 9 would fall under the plain
19 and ordinary meaning of that term as claimed.

20 Q Okay. And I understand your assertion
21 with regards to what Cassin discloses. And I
22 think you understand that what I'm asking is not

1 related to what's disclosed in Cassin but about
2 what the claim terms that you say are anticipated
3 or rendered obvious here. So I'm asking just
4 about the '559 patent. I just want to be clear,
5 can you tell me any description or explanation in
6 any way in any sort of length or words what the
7 plain and ordinary meaning of the content status,
8 including terminal status information is?

9 MS. CARRANO: Same objections.

10 A Well, again, you are asking me to construe
11 that term, what it means in the scope. When I
12 apply the plain and ordinary meaning, I provide
13 examples of features in the prior art that would
14 meet that claim limitation, and I just did in
15 paragraph 67.

16 Q Okay. So you say you applied the plain
17 and ordinary meaning of content status, including
18 terminal status information, right?

19 A Yes.

20 Q So that means that there is a plain and
21 ordinary meaning of content status, including
22 terminal status information, right?

1 A There's not a plain and ordinary meaning.
2 That is an umbrella term, but it doesn't mean that
3 there's a construed meaning of it. You just
4 simply understand under that term how it's used in
5 the claim under its plain and ordinary meaning.
6 In paragraph 67, I pointed to where that claim
7 element is met.

8 Q I'm not quite sure I understand what you
9 mean by there's no plain and -- how did you apply
10 the plain and ordinary meaning if there is no
11 plain and ordinary meaning?

12 MS. CARRANO: Objection. Form.

13 A I heard in the question what is a plain
14 and ordinary meaning. And I said there's not "a."
15 The word "a" there sounds to me again like you
16 were getting me to construe the term.

17 Q I'm not. I will say emphatically I'm not
18 asking for a construction of the term. Please
19 don't try and guess what I'm getting at. If you
20 could just answer the question I'm actually
21 asking.

22 So to start again, you say you applied the

1 plain and ordinary meaning of content status,
2 including terminal status information, right?

3 MS. CARRANO: Objection. Argumentative.
4 Form. And just watch your tone, Counsel.

5 Q So that means there is a plain and
6 ordinary meaning of content status, including
7 terminal status information, correct?

8 MS. CARRANO: Same objections.

9 A So there's that term a, quote/unquote,
10 again. You asked me, there is a plain and
11 ordinary meaning. To respond to that question is
12 construing the phrase.

13 Q So there is no plain and ordinary meaning
14 of content status, including terminal status
15 information?

16 MS. CARRANO: Same objections.

17 A There is a claimed scope associated with
18 that there is a scope associated with the way the
19 claim appears, the way that term appears in the
20 claim. And one can find features in the prior art
21 that would fall under that scope, and that's what
22 I read in paragraph 67.

1 Q So there's a claimed scope associated with
2 the plain and ordinary meaning of content status,
3 including terminal status information?

4 MS. CARRANO: Same objection.

5 A All claims have a scope, and that term
6 appears within claim 1.

7 Q So there's a claim scope associated with
8 the plain and ordinary meaning of content status,
9 including terminal status information?

10 MS. CARRANO: Same objections.

11 A A claim, all claims and claim elements
12 have a scope. And since that term appears within
13 claim 1, there will be some scope associated with
14 it, yes.

15 Q In your own term, can you describe what
16 the claim scope associated with the plain and
17 ordinary meaning of content status, including
18 terminal content information is?

19 MS. CARRANO: Same objections.

20 A By doing so, I would be construing the
21 claim phrase, which I didn't do so in forming my
22 declaration and which I didn't need to do.

1 Q So you will not?

2 A So I will what?

3 Q So you will not?

4 A I will not construe the claim, and your
5 questions, the claim, and phrase and questions are
6 asking me to do that.

7 Q So you will not describe in your own words
8 what the claim scope of the plain and ordinary
9 meaning of content status, including terminal
10 content information is?

11 MS. CARRANO: Same objections.

12 A That would have me construing the phrase.
13 I wasn't asked to do that.

14 Q Can you please just answer yes or no?

15 MS. CARRANO: Same objections.

16 A What's the question?

17 Q You will not describe in your own words
18 what the claim scope of the plain and ordinary
19 meaning of content status, including terminal
20 status information is?

21 MS. CARRANO: Same objections.

22 A To do so would have me construing the

1 claim terms and not use -- and not willing -- and
2 not using its plain and ordinary meaning.

3 Q So you will not?

4 MS. CARRANO: Same objections. Asked and
5 answered.

6 A So I will not.

7 MR. MATULEWICZ-CROWLEY: It's been a bit.
8 Let's take a break.

9 (A short break was taken.)

10 Q Can you turn to the Huston reference, I
11 think you called it.

12 MR. MATULEWICZ-CROWLEY: And that's
13 spelled H U S T O N.

14 Q Let me know when you have that.

15 A I'm there.

16 Q Can you turn to the bottom of the sixth
17 column?

18 A Yes.

19 Q Okay. So do you see on the second line
20 from the bottom on the sixth column, there's a
21 sentence, it's the last sentence that begins:
22 Differencing engine 240 may use a variety of

1 techniques to determine differences between
2 content stored on traffic servers 216, 218, and
3 origin servers 202, 204, 206?

4 A I see that.

5 Q And then it says, for example,
6 differencing engine 240 may request from origin
7 servers 202, 204, 206 information about versions
8 of data stored on origin servers 202, 204, 206,
9 that are also stored on traffic servers 216, 218?

10 A I see that.

11 Q Okay. So Huston doesn't disclose how the
12 differencing engine gets the versions of content
13 stored on the traffic server, correct?

14 A What is disclosed is that it can use a
15 variety of techniques to determine differences
16 between content stored on traffic servers and
17 origin servers. And then it gives at the top of
18 column 7 an example, but I'd also noticed -- an
19 example of where it goes, may request from the
20 origin servers information about versions of data
21 that are also stored on the traffic server.

22 But I'll also noticed -- notice that if

1 you look at Figure 2A, for example, of Huston,
2 which shows you the origin servers, the Internet,
3 the differencing engine, traffic servers, you can
4 see that there's a line between -- a
5 communications line between the differencing
6 engine and the traffic servers.

7 So there is a communications coupling, the
8 direct coupling between the differencing engine
9 and the traffic servers.

10 I'll also then cite to, back on column 7
11 beginning at line 38, Huston provides additional
12 information. It says: For purposes of
13 explanation, differencing engine is depicted and
14 described in the context of being communicatively
15 coupled to the traffic servers 216 and 218 to
16 perform the described functions. So when I look
17 as a ordinary person of skill in the art, when I
18 look at what is disclosed at bottom of column 6 at
19 the top of page 7, together with the
20 communicatively coupled nature of the differencing
21 engine directly with the traffic server, it's at
22 least obvious to me that it could, for example,

1 get the information about what's in the traffic
2 server by requesting it from the origin server as
3 disclosed at the top of column 7, but it would be
4 very obvious to get it directly from the traffic
5 servers through that communicatively coupled
6 line 242 and 244.

7 Q Okay. But Huston doesn't actually
8 disclose that, right?

9 A Huston does disclose that there's a direct
10 communicatively coupled line that goes between the
11 differencing engine and the traffic server, and I
12 am asserting that it's obvious they could get the
13 information more directly about what's on the
14 traffic server's cache by using that line to
15 simply ask for it.

16 Q Okay. Mr. Wechselberger, that was a long
17 answer for a simple question, but I'm not sure you
18 answered it.

19 My question is just that Huston does not
20 disclose that the differencing engine gets the
21 information of what's in the traffic server by
22 requesting it from the traffic server, right?

1 MS. CARRANO: Objection. Argumentative
2 again.

3 A It's not explicitly disclosed in Huston,
4 but it is my opinion it would be obvious to do
5 that using the direct coupling.

6 Q Okay. It's possible that the differencing
7 engine already had information regarding the
8 content stored on the traffic servers from when it
9 sent that content to the traffic server, right?

10 A Read the question again, please.

11 Q It's possible in Huston that the
12 differencing engine already has the information
13 regarding the content stored on the traffic
14 servers from when the differencing engine sent
15 that content to the traffic servers?

16 A The Huston disclosure, I'm looking at
17 column 5, line 56, it says: From the Internet
18 content is provided to traffic servers over
19 communication links 220, 222 from the Internet by
20 way -- from the origin servers by way of the
21 Internet. So I didn't find disclosure of another
22 or a different way where content is provided to

1 the traffic server by the differencing engine.

2 Q Do you understand that the differencing
3 engine is aware of the content that is sent from
4 the origin servers to the traffic servers, right?

5 MS. CARRANO: Objection. Form.

6 A Yes, it is aware. And I would add a
7 caveat to what my previous answer was because I
8 had just remembered, there is an embodiment where
9 the differencing engine would be co-located with
10 the origin servers, at which time, so I'll correct
11 my previous statement. It would in effect in an
12 integrated combined embodiment between the origin
13 server and differencing engine, then that combined
14 integrated unit would, in fact, supply content to
15 the traffic servers. And that --

16 Q Okay. So it's possible -- sorry.

17 A Excuse me. And that would also mean that
18 the combined functionality of the differencing
19 engine and the origin server would also be aware
20 of what content was provided to the traffic
21 servers.

22 Q Okay. So it's possible in Huston that the

1 differencing engine already has the information
2 regarding the content stored on the traffic
3 servers from when that content was sent to the
4 traffic servers?

5 MS. CARRANO: Objection. Form.

6 A It's possible it might in that integrated
7 fashion. But in the non-integrated fashion, it
8 might not without asking for it as I explained
9 earlier.

10 Q Well, I think you said before that the
11 differencing engine is aware of the content that
12 is sent from the origin servers to the traffic
13 servers, even in the non-integrated embodiment,
14 correct?

15 MS. CARRANO: Objection. Form.

16 A No, I don't believe that was my testimony.

17 Q What about that?

18 MS. CARRANO: Objection to form.

19 A My testimony was that it would be obvious
20 for the differencing engine to get that
21 information what information is in the traffic
22 server cache by way of communication link 242

1 since it's disclosed that the two are
2 communicatively coupled to perform the described
3 functions.

4 Q Mr. Wechselberger, you understand the
5 differencing engine is aware of the content that
6 is sent from the origin servers to the traffic
7 servers, right?

8 MS. CARRANO: Same objections.

9 A I testified in my expert report in
10 paragraph 209 that Huston discloses that the
11 differencing engine may request that origin
12 servers provide information about the versions of
13 data stored at the origin servers and the traffic
14 servers and thereby determine differences between
15 content.

16 Q That doesn't answer my question.

17 A The information received from the origin
18 servers and the information received by the --
19 from the traffic servers to be the claim processor
20 receiving server status and content status. So
21 it's not aware of it until it receives it.

22 Q Okay. So in your opinion, in Huston, the

1 differencing engine is not aware of any of the
2 content that's sent to the traffic servers when
3 it's sent?

4 MS. CARRANO: Same objections.

5 A I do not find what your question asks
6 disclosed as we've been discussing about on the
7 bottom of column 6 to the top of column 7 that the
8 differencing engine must determine differences
9 between the content by requesting -- by, for
10 example, requesting from origin servers
11 information about versions of data stored on the
12 origin servers that are also stored on the traffic
13 server. So it has to ask for it, getting around
14 to your question, it wasn't automatically or in
15 front of that aware of it. So it's been informed
16 about that.

17 Q Okay. And your opinions about Huston are
18 based on your understanding that the differencing
19 engine is not aware of the content that's sent to
20 the traffic servers when it's sent?

21 MS. CARRANO: Objection. Form.

22 A So again, looking at Huston, column 6

1 around line -- the second paragraph beginning with
2 arrangement 200, includes a differencing engine
3 that is communicatively coupled to the traffic
4 servers via the communications link. According to
5 one embodiment of the invention, differencing
6 engine is configured to selectively cause content
7 on traffic servers 216 to be refreshed. More
8 specifically, differencing engine is configured to
9 selectively cause content to be deleted from
10 traffic servers.

11 So in the case where it's being refreshed,
12 it says it causes content to be refreshed, so it
13 would be aware it caused that content to be
14 refreshed. So that would be an example of it
15 knowing when the traffic servers received content
16 that it was refreshed.

17 Q So Huston does disclose that the
18 differencing engine could be aware of the content
19 that's sent to traffic servers when it's sent?

20 MS. CARRANO: Objection. Form.

21 A Well, I don't know if it's aware whenever
22 it's sent, but it's certainly going to be aware

1 when it causes it to be sent.

2 Q Okay. So in Huston, the differencing
3 engine is aware of the content that's sent to the
4 traffic servers in some situations?

5 A In the -- what is expressly disclosed is
6 in the situation where the differencing engine
7 causes content on traffic servers to be refreshed,
8 it would be aware of that.

9 Q Okay. So in some situations in Huston,
10 the differencing engine is aware of the content
11 that's sent to the traffic servers when that
12 content is sent to the traffic servers?

13 A That isn't what I said. I said the
14 differencing engine would be aware when it causes
15 content on the traffic servers to be refreshed.

16 Q I'm not asking you to just repeat the
17 thing, so I'm not just asking you what you said.
18 I'm asking its own independent question.

19 So the question is: In some situations in
20 Huston, the differencing engine is aware of the
21 content that's sent to the traffic servers when
22 that content is sent to the traffic servers?

1 MS. CARRANO: Objection. Form.

2 A So there's an additional disclosure
3 further down in column 6, which may further
4 respond to your question. Line 62 says
5 differencing engine -- line 60 talks about
6 differencing engine, the text, the first version
7 of the particular electronic document stored in
8 cache 236, that's on the traffic server, is
9 different than the second more recent version of
10 the particular electronic document stored on
11 origin server 202. Differencing engine then may
12 cause the first version of the particular
13 electronic document to be deleted from cache 236
14 and replaced with the second more recent version
15 of the particular electronic document from origin
16 server.

17 So there again, it caused refreshed
18 content to be provided to the traffic server, and
19 since it caused that, it would be aware of that.
20 But this is the particular area where it goes on
21 to say the differencing engine may use a variety
22 of techniques to determine between content stored

1 on traffic servers and origin servers that we
2 already discussed.

3 So in some cases, it may request
4 information from origin servers, which indicates
5 it's not fully aware of content that the origin
6 servers and the traffic servers have.

7 Q In some situations in Huston, the
8 differencing engine is aware of the content that's
9 already been sent to the traffic servers when that
10 content is sent to the traffic servers, right?

11 A Huston discloses in two locations that the
12 differencing engine is configured to selectively
13 cause content on traffic servers to be refreshed.
14 Both of those disclosures with the word "cause"
15 are in column 6.

16 Q So is that a yes?

17 A No, it's not. I'm simply -- I'm answering
18 your question in a more precise way, which is a
19 little bit narrower like in Huston.

20 Q I'm not sure you're answering my question
21 at all. It's a yes-no question, and so I'm asking
22 in some situations in Huston, a differencing

1 engine is aware of the content that's sent to the
2 traffic servers when that content is sent to the
3 traffic servers, yes or no?

4 MS. CARRANO: Same objections.

5 A Again, I'll read from the spec:
6 Differencing engine 240 causes the first version
7 of the particular electronic document to be
8 deleted from cache 236 and replaced with a second
9 more recent version of the particular electronic
10 document from the origin server. One would
11 understand from that since it's causing the
12 content to be refreshed that it should be aware of
13 what's being refreshed.

14 And the disclosure goes on immediately
15 after this to say that in -- that to determine the
16 differences between content stored on traffic
17 servers and origin servers, it may request
18 information. In that case, it's clear it's not
19 fully aware.

20 Q In some situations, the differencing
21 engine is aware of the content that's sent to the
22 traffic servers at the time that the content is

1 sent to the traffic servers?

2 MS. CARRANO: Objection. Form.

3 A I don't find something like that expressly
4 disclosed. I find what I've read into the record
5 to be disclosed.

6 Q Okay. And you don't know otherwise either
7 way?

8 MS. CARRANO: Same objections.

9 A What was the question?

10 Q And you don't know otherwise either way?

11 MS. CARRANO: Same objection.

12 A Well, there's some additional information
13 in column 7.

14 Q It doesn't respond to my question.

15 A Huh?

16 Q It doesn't respond to my question.

17 A I'm about to. At line 41, differencing
18 engine may be located elsewhere and the invention
19 is not limited to any particular location. For
20 example, according to one embodiment of the
21 invention, differencing engine is co-located with
22 or at least communicatively coupled to the origin

1 servers. In this situation, differencing engine
2 interacts directly with the origin servers to
3 determine when new content is available and to
4 push the new content to traffic servers.

5 Q How does that respond to my question?

6 MS. CARRANO: Objection. Form.
7 Argumentative.

8 A Can you read back the question?

9 Q In some situations, the differencing
10 engine is aware of the content that's sent to the
11 traffic servers at the time that the content is
12 sent to the traffic servers?

13 MS. CARRANO: Same objection.

14 A So what I read to you in column 7, lines
15 43, approximately, to 49 is an example of where
16 the differencing engine would be aware at the time
17 it was provided because of the push disclosure.

18 Q Okay. So there are some such examples?

19 A There is an embodiment where because the
20 differencing engine is co-located with the content
21 source, then it expressly says it interacts
22 directly with the origin servers to determine when

1 new content is available and to push that content
2 to traffic servers. So it would be aware at that
3 time it was delivered.

4 Q Okay.

5 A I didn't cite to the push embodiment in my
6 declaration, however, so this is -- I'm just doing
7 my best to answer your question about what Huston
8 discloses.

9 Q I understand that you did not.

10 Can you turn to Figure 2B of Huston?

11 A I have it.

12 Q Okay. So in Step 260, Huston discloses
13 the differencing engine detects that a second
14 version of content has been created, right?

15 A The question again?

16 Q In Step 260, Huston discloses that the
17 differencing engine detects that a second version
18 of content has been created, right?

19 A That's what Step 260 says, yes.

20 Q And then it's based on that detecting that
21 the differencing engine causes content to be
22 deleted from the cache shown in Step 262, right?

1 A That's what Figure 2B says, yes.

2 MR. MATULEWICZ-CROWLEY: I'm close to
3 wrapping up. Can we take a quick break? It will
4 just be 5 minutes.

5 MS. CARRANO: Sure.

6 (A short break was taken.)

7 MR. MATULEWICZ-CROWLEY: Okay. I pass the
8 witness.

9 MS. CARRANO: I have just a couple
10 questions for Mr. Wechselberger.

11 REDIRECT EXAMINATION

12 BY MS. CARRANO:

13 Q Mr. Wechselberger, you were asked -- do
14 you recall being asked questions relating to a
15 paragraph 164 of the Cassin reference?

16 A I do.

17 Q And do you recall specifically being asked
18 questions relating to the indication that's
19 mentioned in paragraph 64 of Cassin and what
20 information might be disclosed in that indication?

21 A Just one moment.

22 Q What was your question?

1 A Just a moment, please. I wanted to look
2 at 164. I recall being asked about the indication
3 disclosed in that paragraph.

4 Q And paragraph 164 of Cassin states that if
5 the client computer does not have the media
6 content item, then in Step 870, the client
7 computer provides an indication to the server
8 computer that it currently has the media content
9 item.

10 Do you recall being asked questions about
11 that indication in paragraph 64 of Cassin?

12 A Yes.

13 Q Is there any disclosure in Cassin that
14 provides an example of what information would be
15 provided in that indication?

16 MR. MATULEWICZ-CROWLEY: Objection.
17 Scope.

18 A I'm looking at that in conjunction with my
19 declaration testimony associated with that. In
20 particular, I'm looking at page 63, paragraph 108
21 of my dec, and I'll get there in a second. But I
22 would point out that the indication to the server

1 computer that it currently has the media content
2 item, so it's identifying a media content item
3 that it already has.

4 And in my declaration, I testify that
5 associated with this, the client computer -- I'm
6 looking at paragraph 108 now. The client computer
7 determines whether it has the media content item
8 already stored in memory of its local content
9 repository and, if so, the client computer sends
10 an indication, which is a contest status including
11 terminal status information, to the server
12 computer that it currently has the content media
13 content item stored in its memory.

14 I add that the indication received by the
15 server computer includes a list of media content
16 items already stored on the client computer. When
17 it's referring to the media item, so that the
18 indication here is a list of one, I can say that
19 because in the '559 patent itself, at the
20 abstract, it says: The terminal is capable of
21 sending a content status, including terminal
22 status information, having a listing of one or

1 more pieces of content stored in the memory.

2 And so what's going on in paragraph 164 by
3 the indication is exactly that.

4 Q Are there any other disclosures in Cassin
5 that teach that the indication in paragraph 164
6 includes a list of items that the client computer
7 already has?

8 MR. MATULEWICZ-CROWLEY: Same objection.
9 Scope.

10 A In the declaration that I just pointed to,
11 the following paragraphs beginning with 109
12 further explain that the indication sent by the
13 client computer and received by the computer,
14 server computer, is a listing of at least one
15 piece of content stored in the memory of the
16 terminal.

17 And in this section of my dec, I turn to
18 claims 130 through 133 of Cassin. And I can go
19 through those. But in particular, I think the
20 punch line is claim 130 being an independent
21 claim, followed by dependent claims that I cite to
22 claim 132 and 133.

1 Claim 132 says: Further describes that,
2 quote, second indication includes a second list,
3 so it is a list, of a second group of media
4 content items, including at least a second media
5 content item.

6 So claim 132 describes the delivery of a
7 list but isn't specific about what that list is.
8 And further down in my declaration, we can add
9 color to what it is because of claim 33, which
10 depends from -- excuse me, 133, which depends from
11 132 and thus further narrows the scope of the
12 second group of media content items to be, quote,
13 a group of media content items that the remote
14 devices will accept for delivery from the device.

15 So we know that from claim 130, it says
16 that the remote device will accept the media
17 content delivery unless the remote already has the
18 media content. So claim 133 narrows the scope of
19 the second group of media content items from claim
20 132 to be a group of media content items that the
21 remote device will accept for delivery, which
22 necessarily means that claim 132, which is broader

1 than 133, can include either a group of media
2 content items that the remote device will or will
3 not accept for delivery from the device. Because
4 recall I said, for claim 132, it describes the
5 second indication includes a list but it doesn't
6 tell exactly what that list is, whether it's a
7 positive or negative list, for example.

8 But we learn about that by, again,
9 studying what claim 133 claims and recognizing
10 claim 132 must be broader.

11 MS. CARRANO: No further questions.

12 MR. MATULEWICZ-CROWLEY: All right. No
13 further questions.

14 (Witness excused, 9:13 a.m. Pacific.)

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1 C E R T I F I C A T E

2 I, RACHEL F. GARD, RPR, CCR, CRR, CSR No.
3 084-3324 and No. 9315, a Certified Shorthand
4 Reporter in and for the States of Illinois and
5 Michigan, and CCR No. 1010 in and for the State of
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7 ANTHONY WECHSELBERGER, the deponent herein, was
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9 truth, and nothing but the truth in the
10 aforementioned matter;

11 That the foregoing deposition was taken on the
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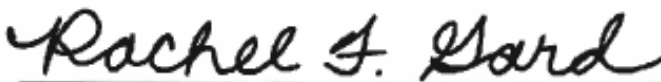
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31 December, 2023.

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1 Anthony Wechselberger, c/o
WILLKIE FARR & GALLAGHER LLP
2 787 7th Avenue
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3
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