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

FINTIV, INC.,
Plaintiff,

VS. NO. 6:22-cv-00288

PAYPAL HOLDINGS, INC.,

Defendant.

****

ZOOM VIDEOTAPED DEPOSITION OF KAI JOHNSON
Thursday, November 17, 2022
9:00 a.m. CST

****

TAKEN BY:
ROBERT KANG, ESQ.
ATTORNEY FOR DEFENDANT

REPORTED BY:

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WA/CO/NM-CCR
NATIONALLY CERTIFIED REALTIME
COURT REPORTER
VERITEXT LEGAL SOLUTIONS
JOB NO. 5582283
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EXHIBIT 10
WIT Johnson
DATE: 3.7.24
HANNA KIM, CSR NO. 13083

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A P P E A R A N C E S

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Testimony of:

KAI JOHNSON

MR. KANG..... 8

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Directions to Witness Not to Answer

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THE VIDEOGRAPHER: Good morning. 00:08:27
We are on the record at 9:02 a.m. on 09:02:24
November the 17th of 2022. Please 09:02:28
note this deposition is being 09:02:34
conducted virtually and the quality of 09:02:36
recording depends on the quality of 09:02:37
the camera and Internet connection of 09:02:39
all participants. What is seen from 09:02:41
the witness and heard on screen is 09:02:43
what will be recorded. 09:02:44
This is media unit 1 of the 09:02:46
recorded deposition of Kai Johnson 09:02:48
taken by counsel for the plaintiff in 09:02:52
the matter of PayPal Holdings, Inc. -- 09:02:55
sorry, Fintiv, Inc., versus PayPal 09:03:01
Holdings, Inc., filed in the U.S. 09:03:04
District Court for the Western 09:03:05
District of Texas, Waco Division, 09:03:06
6:22-cv-00288. 09:03:15
My name is Kimberlee Decker from 09:03:15
Veritext Legal Solutions and I am the 09:03:17
videographer. The court reporter is 09:03:18
Belle Vivienne. I am not related to 09:03:21
any party in this action, nor am I 09:03:23
financially interested in the outcome. 09:03:25

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Counsel and all present will now state their appearances and affiliations for the record. If there are any objections to proceeding, please state them at the time of your appearance, beginning with the noticing attorney. 09:03:29 09:03:29 09:03:31 09:03:32 09:03:33 09:03:35

MR. KANG: This is Robert Kang with Winston & Strawn LLP on behalf of defendant. And just to clarify, this deposition was noticed by defendants. 09:03:37 09:03:43 09:03:44 09:03:46

MR. DOWNING: This is John Downing from Kasowitz Benson Torres and I'm representing the plaintiff Fintiv. 09:03:51 09:03:53 09:03:56 09:03:58

KAI JOHNSON, 09:03:58

having been first duly sworn by the Certified Stenographic Realtime Reporter, testified as follows: 09:03:58 09:03:58 09:04:16

THE VIDEOGRAPHER: I'd just like to make a note that we have an also present, Jeceaca An. 09:04:16 09:04:17 09:04:20

MR. DOWNING: Yeah, sorry, my colleague here also representing Fintiv is -- is Jeceaca An for plaintiff Fintiv. 09:04:22 09:04:24 09:04:26 09:04:32

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THE VIDEOGRAPHER: Thank you. 09:04:34
Please proceed. 09:04:35
EXAMINATION 09:04:35
BY MR. KANG: 09:04:16
Q. Good morning, Mr. Johnson. 09:04:36
A. Good morning. 09:04:37
Q. Have you ever been deposed 09:04:38
before? 09:04:39
A. I have. 09:04:40
Q. How many times? 09:04:40
A. Just once. 09:04:43
Q. Okay. Were you being -- in that 09:04:43
deposition, were you testifying as a fact 09:04:46
witness or an expert witness? 09:04:48
A. As an expert witness. 09:04:51
Q. Since you've done this before, 09:04:52
I'll very briefly go over the rules. 09:04:55
Do you understand that this is 09:04:57
being recorded and transcribed? 09:04:58
A. Yes. 09:04:59
Q. And will you agree to try and 09:05:00
answer verbally rather than nodding or 09:05:01
grunting so that we have a clear record? 09:05:04
A. Sure. 09:05:08
Q. And you understand that -- let 09:05:11

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me -- if you under -- if you don't understand my question, will you please ask for clarification? Otherwise, I will assume you understood it; is that fair? 09:05:14 09:05:16 09:05:18 09:05:20

A. Yes. 09:05:22

Q. And you understand that the oath that you've just taken is the same oath that you would take if testifying in a court of law? 09:05:24 09:05:26 09:05:28 09:05:32

A. Yes. 09:05:33

Q. And is there any reason you cannot give true and accurate testimony today? 09:05:33 09:05:38 09:05:39

A. No. 09:05:40

Q. All right. Now, is there anyone else in the room with you currently? 09:05:41 09:05:44

A. No, there's not. 09:05:47

Q. Do you have access to any other applications other than the Zoom application and the Exhibit Share web browser? 09:05:48 09:05:50 09:05:53 09:05:56

A. No, just those. 09:05:56

Q. Now, you graduated with a degree in computer science, correct? 09:06:02 09:06:04

A. Yes. 09:06:06

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Q. And when did you graduate? 09:06:06
A. Oh, boy, I'd have to have a look. It was somewhere around -- I guess it would have been '93 or '94. 09:06:10 09:06:14 09:06:17
Q. And you're not a professor, correct? 09:06:20 09:06:22
A. No. 09:06:22
Q. Okay. And you've -- you have not taught any undergraduate level engineering or computer science classes, true? 09:06:22 09:06:25 09:06:27 09:06:30
A. No. 09:06:30
Q. Do you have any understanding of the types of undergraduate courses taught in computer science or electrical engineering since the time you graduated? 09:06:33 09:06:35 09:06:38 09:06:40
A. I've looked at some curriculums, but, no, I haven't taken any courses. 09:06:45 09:06:48
Q. And when were you first engaged in this matter? 09:06:50 09:06:52
MR. DOWNING: Objection to form. 09:06:55
A. I'm sorry, do you want me to answer that one? 09:07:02 09:07:04
BY MR. KANG: 09:07:04
Q. Yeah, I'm sorry. If I get -- 09:07:05

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Mr. Johnson, you have to answer unless your counsel instructs you not to on the basis of privilege. 09:07:05 09:07:07 09:07:10

A. Sure. I don't remember the exact date, but it was late in October. 09:07:11 09:07:15

Q. October of 2022? 09:07:17

A. Yes, of this year. 09:07:21

Q. And have you previously served as an expert witness on behalf of Fintiv? 09:07:23 09:07:25

A. I have not. 09:07:29

Q. Have you done any consulting work on behalf of Fintiv? 09:07:29 09:07:31

A. No. 09:07:33

Q. Have you -- have you done any consulting work on Fintiv's predecessor Mozido, Inc.? 09:07:34 09:07:38 09:07:42

A. No. 09:07:42

Q. Okay. Have you previously been engaged by the law firm of Kasowitz Benson Torres? 09:07:43 09:07:46 09:07:49

A. No. 09:07:49

Q. Have you worked with any of the other Fintiv attorneys representing Fintiv prior to being engaged on this case? 09:07:49 09:07:55 09:08:00

A. Not that I know of. 09:08:02

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Q. Okay. And do you know Michael I. Shamos? 09:08:03 09:08:06

A. I'm familiar with his name. I've seen some of his work previously. 09:08:10 09:08:12

Q. Have you ever spoken with him? 09:08:14

A. I have not. 09:08:16

Q. And how are you familiar with his name? 09:08:16 09:08:17

A. He was the -- he was one of the other expert witnesses in the -- one of the previous cases I was engaged with. 09:08:19 09:08:23 09:08:25

Q. And what case was that? 09:08:27

A. Amdocs v. Vesta, I guess -- 09:08:32

(Reporter clarification.) 09:08:32

A. Would be Vesta v. Amdocs, I believe, if I'm remembering correctly. We can look it up if you'd like. 09:08:40 09:08:42 09:08:44

BY MR. KANG: 09:08:44

Q. Was that a patent litigation? 09:08:47

A. Trade secret. 09:08:51

Q. And were you on opposite sides with Mr. Shamos or on the same side? 09:08:52 09:08:57

A. On the same side. 09:09:01

Q. I'd like to introduce Exhibit Number 1. 09:09:02 09:09:16

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(Exhibit 1, Copy of LinkedIn Projects page of Kai Johnson, marked for identification.) 09:09:17 09:09:17 09:09:40

BY MR. KANG: 09:09:40

Q. A document with the text "Projects," "Kai Johnson LinkedIn" at the top. 09:09:40 09:09:42 09:09:46

Mr. Johnson, can you see Exhibit Number 1? 09:09:48 09:09:50

A. No. Let me see if I can get that. 09:09:51 09:09:59

Q. Sure. 09:10:01

A. It looks like it might be coming up. Okay. 09:10:02 09:10:05

Q. Do you recognize what's been marked as Exhibit Number 1? 09:10:05 09:10:07

A. This looks like attached or some of the information that's on my LinkedIn profile. 09:10:17 09:10:21 09:10:23

Q. And did you write the information in your LinkedIn profile? 09:10:24 09:10:24

A. Yes. 09:10:27

Q. And so -- I just wanted to talk a little bit about your litigation experience. In the first line under 09:10:27 09:10:32 09:10:34

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"Projects," the text reads "Expert Witness For a Trade Secret Infringement Case." 09:10:37 09:10:40

Do you see that? 09:10:42

A. Yes. 09:10:45

Q. All right. And is this the trade secret case that you mentioned earlier? 09:10:46 09:10:48 09:10:51

A. No, it is not. 09:10:53

Q. Okay. And this case is currently ongoing? 09:10:54 09:10:56

A. As far as I know, yes. 09:10:58

Q. Okay. Were you deposed in this case? 09:11:00 09:11:02

A. No, no. 09:11:04

Q. Did you provide an expert report in this case? 09:11:04 09:11:06

A. No, I have not. 09:11:07

Q. Okay. And are there any patents involved in this litigation? 09:11:09 09:11:11

A. Not that I'm aware of. 09:11:14

Q. The next entry down reads "Expert Witness For a Patent Infringement Case." 09:11:16 09:11:20 09:11:22

Did I read that correctly? 09:11:23

A. Yeah. 09:11:24

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Q. Okay. And you served as an expert witness for the defendants in this case? 09:11:25 09:11:27 09:11:30

A. Yes. 09:11:32

Q. Okay. And by "defendants," is that the accused infringer? 09:11:33 09:11:35

A. Sorry, say that again. 09:11:38

Q. Did you represent -- were you engaged by the accused infringer in this case? 09:11:40 09:11:42 09:11:46

A. I suppose so, yeah. 09:11:47

Q. Okay. Not the party asserting the patents, correct? 09:11:49 09:11:52

A. Right, right. 09:11:53

Q. And were you deposed in that case? 09:11:54 09:11:56

A. No. 09:11:57

Q. All right. If you turn to page 3 of Exhibit 1 -- 09:11:57 09:12:09

A. Uh-huh. 09:12:10

Q. -- the third entry from the bottom reads "Expert Witness For a Trade Secret Lawsuit." 09:12:11 09:12:13 09:12:15

Do you see that? 09:12:20

A. Yes. 09:12:21

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Q. And is that the -- sorry. 09:12:21
Is this entry referring to the 09:12:24
trade secret lawsuit that you previously 09:12:27
mentioned? 09:12:30
A. Vesta v. Amdocs, yes. 09:12:30
Q. Okay. And did you -- were you 09:12:34
rep -- sorry -- were you engaged by the 09:12:35
plaintiff or the defendant in this 09:12:37
litigation? 09:12:39
A. The defendant. 09:12:42
Q. And were there any patents 09:12:43
involved in this litigation? 09:12:48
A. No. 09:12:49
Q. And here it says you were 09:12:49
"deposed by opposing counsel"; is that 09:12:53
right? 09:12:56
A. Yes. 09:12:56
Q. All right. Did you testify at 09:12:57
any hearings or trial in this litigation? 09:12:58
A. No. 09:13:02
Q. Now, are there any other 09:13:02
litigation engagements in which you've 09:13:21
provided a report that are not listed in 09:13:24
this Exhibit 1? 09:13:26
A. No. 09:13:29

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Q. So only three times -- there's only been three times you've been engaged in litigation? 09:13:32 09:13:34 09:13:37

A. Yeah, that's correct. 09:13:39

MR. KANG: I'd like to mark as Exhibit 2 -- 09:14:10 09:14:11

A. Actually, I should say four since I don't believe that this engagement is on the LinkedIn document. 09:14:13 09:14:15 09:14:18

BY MR. KANG: 09:14:20

Q. Okay. Thank you for that clarification. 09:14:20 09:14:22

So I'd like to mark as Exhibit Number 2 the November 9, 2022 Declaration of Kai Johnson. 09:14:36 09:14:38 09:14:41

(Exhibit 2, Declaration of Kai Johnson dated November 9, 2022, marked for identification.) 09:14:43 09:14:43 09:14:44

BY MR. KANG: 09:14:44

Q. Mr. Johnson, are you able to see Exhibit 2 on Exhibit Share? 09:14:44 09:14:46

A. Okay. Yeah, looks like that's come through. 09:14:48 09:15:04

Q. And this is a declaration you submitted in this case on November 9th? 09:15:05 09:15:06

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A. Yes, it is. 09:15:22
Q. And that's your signature on the page 31? 09:15:22 09:15:26
A. Yes. 09:15:28
Q. Okay. And this is the second declaration you've submitted in this litigation, correct? 09:15:29 09:15:33 09:15:35
A. Sorry. You were breaking up a bit there. 09:15:38 09:15:39
Q. This is the second declaration that you submitted in this case, correct? 09:15:40 09:15:42
A. Yes. 09:15:46
Q. Okay. Are you aware of any corrections or errors -- sorry. 09:15:47 09:15:49
Are you aware of any errors in this Exhibit Number 2 that need to be corrected? 09:15:51 09:15:52 09:15:55
MR. DOWNING: Objection to form. 09:15:56
A. No, I don't know of anything that's substantive in here that needs to be corrected. 09:16:03 09:16:04 09:16:07
BY MR. KANG: 09:16:08
Q. Do you know of anything that's not substantive that needs to be corrected? 09:16:08 09:16:09 09:16:14

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A. I don't know. It's possible I might have seen a comma out of place, but I'm not sure, so -- but it doesn't seem like that's important. 09:16:14 09:16:15 09:16:17 09:16:18

Q. Sitting here today, you're not aware of any errors that need to be corrected to this Exhibit Number 2, correct? 09:16:20 09:16:21 09:16:23 09:16:25

A. Yeah, nothing substantive. 09:16:25

Q. Now, you provided opinions, if you look at paragraph 3, on five patents in this litigation, correct? 09:16:28 09:16:37 09:16:44

A. Yes. 09:16:48

Q. And if I refer to the patents by their last three digits, you'll understand that I'm referring to the patents that you've outlined here in paragraph 3? 09:16:50 09:16:53 09:16:55 09:16:57

A. Yeah. 09:17:01

Q. All right. And you understand that -- well, do you know that the '488 patent and the '196 patent are part of the same family? 09:17:02 09:17:04 09:17:08 09:17:12

A. So I understand there's some relationship between the patents, you know; which patents are in which family, 09:17:20 09:17:22 09:17:23

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I'm not exactly certain, no. 09:17:26

Q. Okay. 09:17:28

MR. DOWNING: I'm sorry, for Exhibit Share, I think that you introduced his declaration. I'm just not seeing it. Is that Exhibit 3? 09:17:36 09:17:40 09:17:41 09:17:43

MR. KANG: It's Exhibit 2. I don't think I mentioned Exhibit 3. Yeah, I only -- there's only two in the marked exhibits folder for me. 09:17:46 09:17:46 09:17:49 09:17:50

MR. DOWNING: Okay. No, I see it now. Thank you. 09:17:53 09:17:54

BY MR. KANG: 09:17:54

Q. Okay. So if I could direct your attention to paragraph 14. 09:18:06 09:18:08

What priority dates did you apply in forming your opinions on claim construction? 09:18:25 09:18:26 09:18:34

(Reporter clarification.) 09:18:34

MR. KANG: On claim construction. 09:18:34 09:18:37

MR. DOWNING: Objection to form. 09:18:37

A. I just want to confirm, did you say that you were asking in relation to paragraph 14? 09:18:43 09:18:44 09:18:46

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BY MR. KANG: 09:18:46

Q. Yes. 09:18:47

A. Okay. So I used the dates that are on the patents. 09:18:47 09:18:54

Q. Okay. And so did you apply the same date for all five patents? 09:18:55 09:18:57

MR. DOWNING: Objection to form. 09:19:03

A. You know, where it matters, I might have looked at the patents differently, but in general, I was looking for information that was available prior to any of the dates of the patents. 09:19:09 09:19:14 09:19:16 09:19:17 09:19:20

BY MR. KANG: 09:19:24

Q. And when you say you're "looking for information that was available prior to any of the dates of the patents," what kind of information were you looking for? 09:19:31 09:19:33 09:19:34 09:19:37

A. Well, so any of the things that are cited here in the declaration. 09:19:41 09:19:43

Q. Thank you. 09:19:46

And so you were looking for information as of the time of the inventions or prior to the time of the inventions? 09:19:53 09:19:54 09:20:00 09:20:02

MR. DOWNING: Objection to form. 09:20:03

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A. Generally, prior to the time of the inventions. 09:20:06 09:20:07

BY MR. KANG: 09:20:08

Q. Okay. And so did you apply the same priority date for the '488 patent and the '845 patent? 09:20:08 09:20:12 09:20:15

A. I don't even know. Let me -- hold on. Let me have a look. 09:20:26 09:20:28

Q. You're not supposed to have any other documents. If you need to see the patents, I can introduce them. I guess that should have been a predicate question. 09:20:30 09:20:32 09:20:34 09:20:36 09:20:38

Mr. Johnson, do you have any notes or any documents in front of you right now? 09:20:38 09:20:40 09:20:41

A. No, I do not. 09:20:42

Q. Okay. If you need to see the patents, I'll go ahead and mark -- 09:20:43 09:20:45

A. Yeah, yeah, let's -- let's have a look at the patents. I don't recall the dates off the top of my head. 09:20:48 09:20:49 09:20:52

Q. It's not a memory test. 09:20:55

MR. KANG: I'll mark as 09:21:09

Exhibit Number 3, U.S. Patent No. 09:21:10

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8,538,845. 09:21:15

(Exhibit 3, U.S. Patent No. 09:21:24

8,538,845, marked for identification.) 09:21:24

MR. KANG: And then I'll mark as 09:21:39

Exhibit Number 4, U.S. Patent No. 09:21:40

9,208,488. 09:21:49

(Exhibit 4, U.S. Patent No. 09:21:49

9,208,488, marked for identification.) 09:21:49

BY MR. KANG: 09:22:06

Q. Mr. Johnson, can you see 09:22:06

Exhibits 3 and 4? 09:22:09

A. Yeah. 09:22:10

Q. Okay. And so what is the 09:22:10

priority date you applied for the '845 09:22:13

patent? 09:22:20

MR. DOWNING: Objection to form. 09:22:24

A. So the -- what appears to me is 09:22:26

that the -- the patent is claiming 09:22:31

priority to a provisional application that 09:22:32

was filed August 10, 2011. 09:22:34

BY MR. KANG: 09:22:34

Q. Okay. 09:22:39

(Cross talk.) 09:22:39

BY MR. KANG: 09:22:39

Q. Go ahead, Mr. Johnson. 09:22:49

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A. Oh, would you like me to continue? 09:22:50 09:22:52

Q. Yeah. I'll re-ask the question. What is the priority date you applied in your analysis of the '845 patent? 09:22:52 09:22:56 09:22:56

A. '845. 09:22:59

MR. DOWNING: Objection. Hold on. Hold on. Objection to form. 09:22:59 09:23:00

A. Yeah, so it -- it appears it's claiming priority to provisional applications filed August 10, 2011 and June 3, 2011. 09:23:06 09:23:09 09:23:10 09:23:13

BY MR. KANG: 09:23:13

Q. Okay. And so my question is, what is the priority date that you applied in forming your opinion on the '845 patent? 09:23:17 09:23:18 09:23:21 09:23:23

MR. DOWNING: Objection to form. 09:23:25

A. So, again, earliest date would be June 3, 2011. 09:23:32 09:23:36

BY MR. KANG: 09:23:36

Q. Okay. And that's the date of invention that you refer to in paragraph 14 for the '845 patent? 09:23:38 09:23:40 09:23:43

A. Sorry, that was a little 09:23:48

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garbled. 09:23:51

Q. Sorry. Is June 3, 2011 the time 09:23:51

of invention of the '845 patent that you 09:23:57

referred to in paragraph 14 of your 09:24:00

declaration, Exhibit 2? 09:24:02

A. Yeah. 09:24:05

Q. What priority date did you apply 09:24:07

in forming your opinions on the '488 09:24:10

patent, Exhibit 4? 09:24:14

A. So '488 patent appears to claim 09:24:23

priority to provisional application filed 09:24:27

November 21, 2011. So that would be the 09:24:30

date that I used. 09:24:33

Q. Mr. Johnson, did you account for 09:24:35

the differences in the viewpoint of a 09:24:43

person of ordinary skill in the art in 09:24:47

November 11 -- 2011 and June 2011 in 09:24:50

forming your opinions? 09:24:56

MR. DOWNING: Objection to form. 09:24:57

A. I don't know that there would be 09:25:09

any significant difference in viewpoint 09:25:10

between those time periods. 09:25:13

BY MR. KANG: 09:25:13

Q. So is it your opinion sitting 09:25:20

here today that there's no distinction 09:25:22

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between the viewpoint of a person of ordinary skill in the art between November 2011 and June 2011? 09:25:23 09:25:25 09:25:27

MR. DOWNING: Objection to form. 09:25:30

A. Yeah, in relation to the -- to the research I've done and the information I've cited, no, I think that -- that what a person of skill in the art would -- would understand at the time would not have changed substantially in that time period. 09:25:36 09:25:39 09:25:43 09:25:46 09:25:49 09:25:50 09:25:50

BY MR. KANG: 09:25:50

Q. Would it have changed at all? You keep saying "substantially." Sorry, let me rephrase. 09:25:53 09:25:55 09:25:58

MR. DOWNING: Objection to form. 09:25:58

BY MR. KANG: 09:25:58

Q. Would it have changed at all between June 2011 and November 2011? 09:25:59 09:26:00

MR. DOWNING: Objection to form. 09:26:02

A. Would it have changed in any way at all? Perhaps. 09:26:09 09:26:11

BY MR. KANG: 09:26:11

Q. Okay. In what way? 09:26:16

A. Well, perhaps there are some 09:26:20

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minor developments in that time period that might have -- that someone might have noticed. Would that have made a substantial difference? I don't really think so. 09:26:21 09:26:24 09:26:26 09:26:29 09:26:31

Q. Have you considered that question? 09:26:32 09:26:33

MR. DOWNING: Objection to form. 09:26:34

A. Considered which question? 09:26:38

BY MR. KANG: 09:26:38

Q. In forming your opinions on claim construction in this case, did you consider the difference between the level of ordinary skill between November 2011 and June 2011? 09:26:39 09:26:41 09:26:42 09:26:44 09:26:49

MR. DOWNING: Objection to form. 09:26:50

A. Yes. 09:26:54

BY MR. KANG: 09:26:54

Q. And what did you do to perform that analysis? 09:26:56 09:27:01

MR. DOWNING: Objection to form. 09:27:05

A. Considered some of the things that may have happened at the time. 09:27:08 09:27:09

BY MR. KANG: 09:27:09

Q. Can you give me an example of 09:27:12

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the kind of things you considered at the time? 09:27:14 09:27:17

MR. DOWNING: Objection to form. 09:27:18

A. Well, for example, whether there were, you know, significant product releases in the field, that, you know, someone might have known about. 09:27:22 09:27:26 09:27:27 09:27:31

BY MR. KANG: 09:27:31

Q. Did you identify any significant product releases in the field between June 2011 and November 2011? 09:27:33 09:27:35 09:27:40

MR. DOWNING: Objection to form. 09:27:42

A. I don't recall. I'd have to go back and have a look at notes. 09:27:43 09:27:45

BY MR. KANG: 09:27:45

Q. Sitting here today, you don't recall any significant product releases between June 2011 and November 2011, fair? 09:27:49 09:27:50 09:27:53

MR. DOWNING: Objection to form, misstates testimony. 09:27:57 09:27:59

A. As I said, I'd be happy to have a look at notes. 09:28:08 09:28:11

BY MR. KANG: 09:28:11

Q. Mr. Johnson, I'm just trying to get the scope of your opinion. It's okay 09:28:14 09:28:16

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if you don't know. My point -- my question is, sitting here today, you do not recall whether you identified any significant product releases in the field between June 2011 and November 2011, fair?

MR. DOWNING: Objection to form, asked and answered.

A. Yeah, you know, I don't try and memorize the dates of every product release that happened ten years ago, so, you know, those are the types of things that I would look up in -- in either research or notes.

BY MR. KANG:

Q. Right. So Mr. Johnson, you testified that you considered the difference and skill level between a person of ordinary skill in the art in June 2011 and November 2011, correct?

A. Yeah.

Q. And one of the things you considered was whether there were any significant product releases between those two dates, correct?

A. Uh-huh.

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Q. I'm asking you, sitting here right now, can you recall identifying any significant product releases between those two dates that affected your opinions? 09:29:13 09:29:16 09:29:19 09:29:21

MR. DOWNING: Objection to form, asked and answered. 09:29:23 09:29:24

A. As I said, there might have been. I can have a look at my notes. 09:29:28 09:29:30

BY MR. KANG: 09:29:34

Q. Okay. Now, Mr. Johnson, does a hypothetical person of ordinary skill in the art have a higher degree of knowledge in November 2011 or June 2011? 09:29:34 09:29:37 09:29:41 09:29:42

MR. DOWNING: Objection to form. 09:29:44

A. So as I understand it, a hypothetical person of ordinary skill in the art has a complete understanding of the universe of information and so anything that was new between June and November, the hypothetical person would know. So that would be an accumulation of knowledge. However, I also understand this hypothetical person doesn't necessarily exist. 09:29:48 09:29:50 09:29:52 09:29:55 09:30:00 09:30:04 09:30:06 09:30:08 09:30:10 09:30:14

BY MR. KANG: 09:30:14

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Q. Well, I don't think you answered my question, Mr. Johnson. Would a hypothetical person of ordinary skill in the art have a higher degree of knowledge in November 2011 or June 2011? 09:30:16 09:30:17 09:30:22 09:30:24 09:30:26

A. I believe -- 09:30:30

MR. DOWNING: Objection to form, asked and answered. 09:30:31 09:30:31

A. Yeah, I did answer that one. 09:30:33

BY MR. KANG: 09:30:33

Q. And so the hypothetical person of ordinary skill in the art in November 2011 would be aware of all developments from June 2011 to November 2011, correct? 09:30:36 09:30:37 09:30:40 09:30:42

A. Hypothetically, yeah. 09:30:48

Q. Yeah. And so hypothetically, the person of ordinary skill's knowledge in November 2011 is higher than that of June of 2011, correct? 09:30:49 09:30:51 09:30:56 09:31:01

MR. DOWNING: Objection to form. 09:31:02

THE WITNESS: Sorry, John? 09:31:04

MR. DOWNING: No, it's okay, Kai. Just the -- the questions are getting kind of fast. Can you just take some time and allow me to -- 09:31:05 09:31:11 09:31:12 09:31:13

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to -- to put my objection in, but you can -- you can answer the question. 09:31:15 09:31:18

THE WITNESS: Sure. 09:31:19

A. Yeah, I think that was one more hypothetical. Sure. 09:31:19 09:31:22

BY MR. KANG: 09:31:22

Q. I'm sorry. So I'm not sure the transcript is very clear here. A person of ordinary skill's knowledge in November 2011 is higher than that of a person in June 2011, correct? 09:31:28 09:31:31 09:31:34 09:31:37 09:31:42

MR. DOWNING: Objection to form, asked and answered. 09:31:45 09:31:45

A. I'm going to ask you to rephrase that question. 09:31:52 09:31:54

BY MR. KANG: 09:31:54

Q. What don't you understand about that question, Mr. Johnson? 09:31:56 09:31:57

A. Well, are we talking about a hypothetical person of ordinary skill in the art or a specific person of ordinary skill in the art? 09:32:00 09:32:03 09:32:05 09:32:07

Q. Do you understand that your analysis in this case is from the perspective of a specific person of 09:32:09 09:32:12 09:32:14

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ordinary skill in the art? 09:32:16
MR. DOWNING: Objection to form. 09:32:19
A. Yeah. 09:32:23
BY MR. KANG: 09:32:23
Q. That's the standard you applied, 09:32:26
you applied the standard -- the person of 09:32:27
ordinary skill in the art is a specific 09:32:31
person? 09:32:33
MR. DOWNING: Objection to form, 09:32:33
misstates testimony. 09:32:34
A. Let's have a look at the 09:32:39
declaration. Sorry, this is just a little 09:32:41
slow. 09:33:02
BY MR. KANG: 09:33:02
Q. Without looking at your 09:33:07
declaration, you can't tell me whether you 09:33:08
applied the level of ordinary skill as a 09:33:09
hypothetical person or a specific person? 09:33:13
MR. DOWNING: I'm sorry. I'm 09:33:15
sorry. Robert, I think that you had a 09:33:17
question pending. Are you asking 09:33:19
another question? 09:33:21
MR. KANG: Yes. 09:33:22
MR. DOWNING: So you withdrew 09:33:23
the -- the prior question? 09:33:25

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MR. KANG: Yeah. 09:33:27

BY MR. KANG: 09:33:27

Q. Mr. Johnson, without looking at 09:33:29

your declaration, can you tell me whether 09:33:32

you applied the level of ordinary skill 09:33:34

from the perspective of a hypothetical 09:33:35

person or a specific person? 09:33:38

MR. DOWNING: Objection to form. 09:33:40

A. Yes. 09:33:45

BY MR. KANG: 09:33:45

Q. Which did you apply? 09:33:46

A. Sorry. Do you want to ask me -- 09:33:56

Q. Did you form -- sorry. Are you 09:33:59

done? 09:34:01

A. Go ahead. 09:34:01

Q. Did you perform your analysis 09:34:02

from a perspective of a hypothetical 09:34:03

person or a specific person? 09:34:06

MR. DOWNING: Objection to form. 09:34:09

A. From the analysis -- from the 09:34:16

perspective of a hypothetical person. 09:34:17

BY MR. KANG: 09:34:17

Q. Okay. What level of ordinary 09:34:19

skill did you apply in forming your 09:34:26

opinions on claim construction? 09:34:28

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A. That was the level of ordinary skill that we determined that was -- sorry. Let me try that again. I used the -- the definition of a person of -- a person of ordinary skill in the art that was supplied by Dr. Chatterjee. 09:34:35 09:34:36 09:34:39 09:34:43 09:34:46 09:34:47

Q. Okay. And do you agree that that definition is appropriate? 09:34:50 09:34:53

A. Yes. 09:34:56

Q. I'd like to direct your attention to paragraph 18 of Exhibit 2. 09:35:07 09:35:08

A. Uh-huh. 09:35:12

Q. Do you see in the second full sentence it reads "A patentee can become his or her" -- "his or her own 'lexicographer' by defining terms, within the patent, however he or she chooses, as long as it is done explicitly." 09:35:13 09:35:14 09:35:17 09:35:22 09:35:23 09:35:26

Do you see that? 09:35:28

A. Yes. 09:35:29

Q. What is the -- what is your understanding of what a lexicographer is? 09:35:29 09:35:31

MR. DOWNING: Objection to form. 09:35:37

A. This is someone who is defining terms. 09:35:39 09:35:41

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BY MR. KANG: 09:35:41

Q. Okay. And can you give me an example of what you would consider an explicit definition of a term within a patent? 09:35:42 09:35:46 09:35:48 09:35:50

MR. DOWNING: Objection to form. 09:35:52

A. Yeah, well, it would be a clear definition of the term that's consistent with the claims and specification. 09:36:01 09:36:02 09:36:05

BY MR. KANG: 09:36:05

Q. Okay. And so can you give me an example of language that would suggest to you that there's a clear definition of the term? 09:36:07 09:36:12 09:36:14 09:36:15

MR. DOWNING: Objection to form. 09:36:15

A. It's kind of hypothetical. It would have to be language that is both clear in terms of the definition and consistent with the claims in the specification. 09:36:16 09:36:23 09:36:25 09:36:28 09:36:31

BY MR. KANG: 09:36:31

Q. And so can you give me an example of language that you would consider an explicit definition in the specification? 09:36:38 09:36:42 09:36:45 09:36:49

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MR. DOWNING: Objection to form. 09:36:50
A. Is that the same question you 09:36:54
just asked me? 09:36:55
BY MR. KANG: 09:36:55
Q. No. 09:36:57
A. Sorry, what was the difference 09:37:00
between those two questions? 09:37:02
Q. Mr. Johnson, can you give me an 09:37:04
example of language that you believe would 09:37:15
suggest an express definition of a term in 09:37:19
the specification of a patent? 09:37:23
MR. DOWNING: Objection to form. 09:37:26
A. You know, I don't have an 09:37:28
example to hand, if that's what you're 09:37:30
looking for. 09:37:34
BY MR. KANG: 09:37:34
Q. Okay. Have you ever provided an 09:37:35
opinion on claim construction that a 09:37:38
patentee acted as his or her own 09:37:39
lexicographer? 09:37:43
A. Well, I think you know that this 09:37:52
is the only time I provided an opinion on 09:37:53
claim construction in a patent lawsuit. 09:37:55
Q. You also provided patent -- or 09:38:02
I'm sorry. You've done patent portfolio 09:38:04

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reviews, correct? 09:38:06
A. Yes. 09:38:07
Q. All right. In your reviews of 09:38:07
patents, do you ever opine on the meaning 09:38:09
of "claims"? 09:38:13
A. I don't recall whether I did or 09:38:17
not. 09:38:19
Q. Okay. Now, I'd like to direct 09:38:19
you to the sentence five lines from the 09:38:25
bottom of paragraph -- the bottom of 09:38:35
page 5 that begins "I understand that." 09:38:37
Are you with me? 09:38:40
A. Okay. 09:38:44
Q. Now, you -- you write here that 09:38:46
"I understand that, if no explicit 09:38:51
definition is provided for a term in the 09:38:54
patent specification, the claim term must 09:38:56
be given its plain meaning unless that 09:38:59
would be plainly inconsistent with how the 09:39:02
term is being used in the claim or the 09:39:04
patent specification." 09:39:07
Did I read that correctly? 09:39:08
A. Yes. 09:39:11
Q. And this is the legal 09:39:11
understanding that you applied in forming 09:39:14

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your analysis on claim construction, correct? 09:39:16 09:39:18

A. Yes. 09:39:19

Q. Okay. And so is it your opinion, Mr. Johnson, that all term -- let me strike that. 09:39:20 09:39:26 09:39:33

Is it your opinion that it's improper to construe the claims of a patent if the plain meaning is not plainly inconsistent with the claims or specification? 09:39:34 09:39:35 09:39:38 09:39:42 09:39:45

MR. DOWNING: Objection to form. 09:39:46

A. You might have to just run that one by me again. There are a couple -- too many double negatives there. 09:39:52 09:39:54 09:39:56

BY MR. KANG: 09:39:56

Q. Your legal understanding here in paragraph 18 reads that "The claim term must be given its plain meaning unless that plain meaning is inconsistent with the specification of the claims," right? 09:40:02 09:40:04 09:40:06 09:40:08 09:40:11

A. Yes. 09:40:15

Q. All right. And so claim construction where you define terms outside of the plain meaning is improper 09:40:16 09:40:18 09:40:22

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unless the plain meaning is inconsistent with the specification, correct? 09:40:27 09:40:30

MR. DOWNING: Objection to form. 09:40:31

BY MR. KANG: 09:40:31

Q. Let me ask it this way, Mr. Johnson. Is it your understanding that the default for claims is plain and ordinary meaning? 09:40:43 09:40:45 09:40:46 09:40:52

A. Yes. 09:40:52

Q. Okay. Now, Mr. Johnson, is it your opinion that "plain and ordinary meaning" is defined within the context of a patent specification? 09:40:53 09:41:08 09:41:14 09:41:19

MR. DOWNING: Objection to form. 09:41:24

A. Yes. 09:41:26

BY MR. KANG: 09:41:26

Q. Okay. Now, in your Legal Understanding section, you actually do not provide an understanding of means-plus-function terms, correct? 09:41:27 09:41:35 09:41:38 09:41:41

A. Oh, is that not in here? Hold on. No, I don't suppose so. 09:41:50 09:41:56

Q. And I want to understand your methodology in reaching your opinions in this case. So what is your understanding 09:42:18 09:42:19 09:42:21

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of what a means-plus-function claim term is? 09:42:23 09:42:27

A. In the first instance, if the claim language uses the term "means," then it is assumed to be means-plus-function term. And if not, then it's assumed not and, you know, means-plus-function term is a way of describing claim limitation without being -- without being explicit of the -- the exact implementation that's used. 09:42:29 09:42:32 09:42:37 09:42:43 09:42:48 09:42:55 09:43:03 09:43:08 09:43:11

Q. And so in forming your opinions in this case, if a claim language -- sorry. In forming your opinions in this case, if a claim did not use the word "means," you assume that it was not a means-plus-function term; is that fair? 09:43:11 09:43:17 09:43:24 09:43:26 09:43:30 09:43:32

A. That's the starting assumption, yes. 09:43:37 09:43:38

Q. Okay. And are you aware that claims that do not use the word "means" can nonetheless be means-plus-function claims? 09:43:39 09:43:46 09:43:49 09:43:51

A. Yes. 09:43:52

Q. And so your opinion is that none 09:43:52

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of the terms you analyzed in this case are means-plus-function claim terms, right? 09:44:01 09:44:03

A. I've provided an opinion on some specific terms in the case -- that were at issue. 09:44:07 09:44:09 09:44:12

Q. Right. But your -- your ultimate conclusion is that they are not governed by section 112F, correct? 09:44:12 09:44:15 09:44:17

A. I'm not familiar with section 112. 09:44:26 09:44:27

Q. So let me ask you this, Mr. Johnson, are any of the claim terms you looked at today -- or I'm sorry -- are any of the claim terms that you provide an opinion on in your declaration means-plus-function claim terms? 09:44:28 09:44:31 09:44:33 09:44:34 09:44:35 09:44:36

A. No, I don't believe so. 09:44:40

Q. Okay. And how did you perform your analysis to reach that conclusion? 09:44:42 09:44:44

A. So I read the claims and specification and looked to the specification to see if there was -- well, I should add to that. First looked to the -- to the plain and ordinary meaning of the terms to see if that would be clear 09:44:50 09:44:52 09:44:55 09:44:58 09:45:01 09:45:03

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to a person of ordinary skill in the art, which often it would be. And other than that, I also looked at the specification to see if that plain and ordinary meaning would be consistent with the specification. And if it was clear enough that a person of the ordinary -- ordinary skill in the art would understand exactly what the claim term was referring to as a -- as a definite aspect of the invention. 09:45:05 09:45:07 09:45:09 09:45:10 09:45:12 09:45:15 09:45:19 09:45:21 09:45:24 09:45:29 09:45:31

Q. Okay. Now, in that answer, I did not hear you identify the function of the claim term. 09:45:32 09:45:38 09:45:43

Was that part of your analysis in forming your opinions in this case? 09:45:44 09:45:45

MR. DOWNING: Objection to form. 09:45:50

A. So there are some specific things that I did look at in relation to means-plus-functions terms particularly. So first, whether there's -- whether the claim itself provides sufficient structure to define the term; second, whether the -- the term itself would be well understood by person of ordinary skill in the art; 09:46:00 09:46:03 09:46:05 09:46:24 09:46:28 09:46:33 09:46:40 09:46:42

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and, third whether the -- the additional description and usage of the term in the specification provided additional structure that would make it clear to exactly what the -- what the term referred to and how the term -- how that -- how that aspect of the invention would operate. 09:46:43 09:46:48 09:46:50 09:46:52 09:46:55 09:47:00 09:47:02 09:47:06

Q. Okay. And so in that previous answer, I didn't hear anything about function. And I'll ask my question again, Mr. Johnson. 09:47:07 09:47:09 09:47:12 09:47:15

In forming your opinions on means-plus-function claim terms in this case, did you seek to identify the function of the claim term? 09:47:15 09:47:16 09:47:18 09:47:22

MR. DOWNING: Objection to form. 09:47:26

A. Yeah. So I would look to -- and I did look to both claim language and specification to determine the function that was associated with the claim terms. 09:47:29 09:47:35 09:47:38 09:47:39

BY MR. KANG: 09:47:42

Q. Okay. And so what did you do first in your analysis? Did you look for the structure or the function first? 09:47:42 09:47:44 09:47:47

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MR. DOWNING: Objection to form. 09:47:52

A. Yeah. I don't recall a specific 09:47:54
sequence of events. 09:47:56

BY MR. KANG: 09:47:57

Q. Okay. So, Mr. Johnson, you 09:47:58
performed your analysis. You gave 09:48:01
opinions on whether certain claim terms 09:48:03
provide sufficient structure to perform 09:48:07
particular functions in the claims, 09:48:10
correct? 09:48:15

A. Yes. 09:48:16

Q. All right. And so I'm asking 09:48:17
you, did you start your analysis by 09:48:18
looking for structure or function? 09:48:21

MR. DOWNING: Objection to form, 09:48:25
asked and answered. 09:48:26

A. Yeah. I can't tell you which 09:48:28
one happened first. 09:48:30

BY MR. KANG: 09:48:31

Q. So let me ask you something. If 09:48:48
we take, for example, your opinions on 09:48:51
payment handler starting at page 17, are 09:48:53
you with me? 09:49:06

A. Yeah. 09:49:07

Q. All right. You see that there 09:49:08

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is -- under "Fintiv's Construction" in the chart, there's a block -- or sorry, there's text "Function: Operable to interact with payment processors." 09:49:10 09:49:12 09:49:14 09:49:17

Do you see that? 09:49:21

A. Uh-huh. 09:49:21

Q. Did you come up with this language? 09:49:22 09:49:24

A. No. 09:49:25

Q. Who did? 09:49:25

A. Sorry? 09:49:30

Q. Who came up with this language? 09:49:30

A. I believe lawyers at Kasowitz did. 09:49:38 09:49:40

Q. Okay. And so you were not tasked, if I'm understanding correctly, with identifying the function for the claim terms at issue here, correct? 09:49:41 09:49:43 09:49:45 09:49:49

MR. DOWNING: I'm just going to -- objection to form, calls for attorney-client privileged -- 09:49:51 09:49:52 09:49:55

Mr. Johnson, you're not to testify regarding what you were tasked with and what you were not tasked with. I'm going to instruct you not 09:49:59 09:50:00 09:50:02 09:50:04

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to answer. 09:50:06

MR. KANG: All right. 09:50:07

BY MR. KANG: 09:50:07

Q. So, Mr. Johnson, I'll ask it a 09:50:08
different way: Are you offering opinions 09:50:10
as to what the proper function is 09:50:12
within -- for these claim terms that are 09:50:17
disputed as means-plus-function terms? 09:50:19

A. I think my argument here in the 09:50:23
declaration is that the function of this 09:50:33
payment handler component of the invention 09:50:36
is clear, both from the claims and the 09:50:38
specification. 09:50:40

Q. Right. And so my question is, 09:50:40
are you offering that opinion or are you 09:50:43
assuming the function that you learned 09:50:44
from -- from elsewhere is correct in your 09:50:47
analysis? 09:50:51

MR. DOWNING: Objection to form. 09:50:51

Mr. Johnson, I'll -- again, I'll 09:50:55
instruct you not to -- to answer 09:50:57
questions about what you were and what 09:50:59
you were not tasked with. I believe 09:51:01
that the last part of the question was 09:51:03
directed towards that, and I instruct 09:51:06

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you not to answer. 09:51:07

MR. KANG: All right. 09:51:09

BY MR. KANG: 09:51:10

Q. So Mr. Johnson, are you offering an opinion as to what the correct function is for the claims that are disputed as means-plus-function terms in your declaration? 09:51:10 09:51:15 09:51:18 09:51:23 09:51:27

A. Yes. 09:51:28

Q. Okay. And how did you -- but you didn't come up with this function here "operable to interact with payment processors," correct? 09:51:29 09:51:35 09:51:38 09:51:41

A. No, that's correct. 09:51:47

Q. Okay. So you're offering the opinion that this function is correct, but you did not come up with it; is that fair? 09:51:49 09:51:51 09:51:55

A. I reviewed it, and I agree with that conclusion. 09:51:59 09:52:08

Q. Okay. Now, we'll talk a bit more in detail about this, but I wanted to go back to your kind of general methodology in -- in forming your opinions on means-plus-function. 09:52:09 09:52:11 09:52:18 09:52:20 09:52:24

You list -- using this as an 09:52:29

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example, on page 17, you list several claims and figures and, you know, portions of the specification under "Structure." 09:52:31 09:52:38 09:52:40

Do you see that? 09:52:41

A. Yes. 09:52:43

Q. Now, is it your opinion that each one of these entries provides structure for performing the function that you've identified? 09:52:44 09:52:47 09:52:53 09:52:56

A. Yeah, I believe so. 09:52:59

Q. Okay. And each one alone or in combination? 09:53:01 09:53:04

A. That's an interesting question. I'm not sure what you mean by that. 09:53:17 09:53:18

Q. So does, for example, '386 patent figure 1 alone, in your opinion, provide adequate structure to perform the function that you've identified? 09:53:21 09:53:28 09:53:32 09:53:35

MR. DOWNING: Objection to form. 09:53:38

A. I'd have to go look at figure 1. We can do that and discuss it if you like. 09:53:42 09:53:44

BY MR. KANG: 09:53:44

Q. Okay. And so my point is -- my question was, and perhaps we'll have to do this one -- one line at a time, but your 09:53:47 09:53:49 09:53:51

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opinion -- you can't tell me without looking specifically whether each one of these alone provides sufficient structure? 09:53:56 09:53:58 09:53:59

A. No, I'd have to go review the -- I'd have to go review these references. 09:54:06 09:54:09

Q. Okay. I'd like to turn your attention to paragraph 52, which is on the next page. 09:54:12 09:54:32 09:54:39

A. Sorry, was that 52? 09:54:43

Q. Yeah, that's right. Are you there? 09:54:45 09:55:05

A. Yeah. 09:55:05

Q. Sorry. So you write here that "The architectural style apparent from the terminology used in Figure 1 is known as a service-oriented architecture." 09:55:05 09:55:08 09:55:09 09:55:12

Do you see that? 09:55:14

A. Yes. 09:55:15

Q. Now, what is the basis for that opinion? 09:55:17 09:55:20

A. Sorry, you cut out at the end of the question there. Could you repeat it? 09:55:21 09:55:23

Q. Sorry. What is the basis for that opinion? 09:55:26 09:55:28

A. Oh, well, so there are several 09:55:28

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things that you can see in figure 1 that relate to service-oriented architecture. First is number of components labeled as services, and second is the -- the pattern of interconnections in this multitier architecture where services, toward the front end at the top of the diagram, feed into ultimately common integration layer, and that integration layer then is interconnected to services on the back end, the lower part of the diagram. 09:55:35 09:55:36 09:55:40 09:55:42 09:55:49 09:55:52 09:55:58 09:56:00 09:56:05 09:56:08 09:56:11

Also, the term "business process services" in the center of the diagram at that -- at its particular point in the integration layer is kind of a dead giveaway. It's exactly the type of jargon that was used in service-oriented architecture. 09:56:13 09:56:18 09:56:21 09:56:23 09:56:25 09:56:28 09:56:34

Q. Sorry. The specifications of the asserted patents do not include the term "service-oriented architecture," correct? 09:56:35 09:56:37 09:56:39 09:56:44

A. I don't believe so. 09:56:45

Q. Okay. And the provisional applications that you reviewed in forming 09:56:46 09:56:49

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your opinions do not include the term "service-oriented architecture," correct? 09:56:50 09:56:53

A. I don't recall that, but that's -- that's entirely possible. 09:56:55 09:56:55

Q. You didn't look? 09:56:57

A. I don't remember if I looked, but it's possible that it might not be there. 09:57:00 09:57:01 09:57:08

Q. You didn't think it would be important to see whether the intrinsic record said anything about service-oriented architectures? 09:57:08 09:57:10 09:57:12 09:57:14

A. I just said -- 09:57:18

MR. DOWNING: Objection to form. Hold on, Mr. Johnson. 09:57:19 09:57:21

Objection to form. Misstates testimony. 09:57:23 09:57:24

A. As I said, I might have looked. I don't recall. 09:57:24 09:57:26

BY MR. KANG: 09:57:28

Q. You didn't cite anything from the specification in this paragraph 52 that mentioned service-oriented architecture, correct? 09:57:30 09:57:32 09:57:36 09:57:39

A. No. 09:57:42

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Q. Okay. And in -- in paragraph 52, you say that there are services in figure 1 that provide "a business capability and can communicate with each other across platforms and languages," right? 09:57:42 09:57:46 09:57:49 09:57:51 09:57:54 09:57:56

A. Yeah, that sounds like a reasonable paraphrasing. 09:58:03 09:58:05

Q. All right. And that's not language from the patent specification, correct? 09:58:06 09:58:12 09:58:14

(Reporter clarification.) 09:58:14

BY MR. KANG: 09:58:14

Q. -- patent specification, correct? 09:58:14 09:58:14

A. No. 09:58:17

Q. It's not language from the provisional patent applications, fair? 09:58:18 09:58:20

A. I don't believe so. 09:58:25

Q. All right. Now, you give a couple examples of services in this paragraph, right? 09:58:26 09:58:31 09:58:34

A. Yes. 09:58:38

Q. And one of them is notification services, right? 09:58:39 09:58:41

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A. Uh-huh. 09:58:43
Q. And that's "Notification 09:58:44
Services 102" in figure 1; is that 09:58:46
correct? 09:58:48
A. Sorry. Let me just have a look. 09:58:53
That looks to be correct. 09:59:03
Q. And you identify "Business 09:59:05
Process Services" as an example service, 09:59:19
correct? 09:59:26
A. Yes. 09:59:26
Q. And that is "Business Process 09:59:27
Services 104" in figure 1? 09:59:30
A. Yeah. 09:59:34
Q. And you also mention a security 09:59:34
service in the paragraph 52, right? 09:59:44
A. Yes. 09:59:51
Q. All right. And that in figure 1 09:59:52
is "Security Services 106"? 09:59:54
A. Yes. 09:59:56
Q. All right. And you -- you also 09:59:57
identified database services, correct? 10:00:02
A. Yes. 10:00:05
Q. And in figure 1, that is 10:00:06
"Database 108"? 10:00:08
A. I believe it's 108, yeah. 10:00:12

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Q. Okay. And is there anything other than Database 108 in figure 1 that makes up the database services? 10:00:13 10:00:16 10:00:20

MR. DOWNING: Objection to form. 10:00:23

A. Sorry. The -- the figure itself in the Exhibit Share is not particularly clear. I'm just trying to see if I can get a better view of it. 10:00:32 10:00:36 10:00:39 10:00:41

BY MR. KANG: 10:00:42

Q. I think you can zoom in and out. 10:00:42

A. Yeah. That's what I'm trying to do, although that's -- only helps so much. 10:00:45 10:00:47

Sorry that took me a little bit. Can you just restate the question? 10:01:09 10:01:12

Q. Sure. Is the database service that you give an example in paragraph 52 made up of anything other than Database 108 in figure 1? 10:01:13 10:01:14 10:01:16 10:01:18

A. That looks like it. 10:01:20

MR. DOWNING: Objection to form. 10:01:25

BY MR. KANG: 10:01:25

Q. Okay. And so are there any other services in figure 1 other than the four we just went through? 10:01:25 10:01:29 10:01:31

MR. DOWNING: Objection to form. 10:01:33

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A. Yeah, so there's "Authorization Services 107." 10:01:40 10:01:43

BY MR. KANG: 10:01:45

Q. Uh-huh. 10:01:45

A. Typically, within a service-oriented architecture, you would probably consider other components to be services as well. So it's entirely possible that rule -- the "Rules Engine 109," "Name Matching Engine 110" could also be -- 10:01:46 10:01:55 10:01:57 10:01:59 10:02:03 10:02:06 10:02:06

(Reporter clarification.) 10:02:06

A. Name Matching Engine 110. 10:02:06

I note that there's a service connecters component 103, which is -- provides integration connections to third-party systems. Those may also be -- that may also be an example of a service. 10:02:17 10:02:18 10:02:21 10:02:22 10:02:26

BY MR. KANG: 10:02:26

Q. Okay. So maybe it's easier if we just take it the other way. 10:02:29 10:02:32

Is there anything in this figure that is not a service? 10:02:34 10:02:35

MR. DOWNING: Objection to form. 10:02:37

A. So that depends on the 10:02:42

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implementation. Almost anything in this figure could be. Some things are less likely to be services. 10:02:47 10:02:50 10:02:56

BY MR. KANG: 10:02:57

Q. Okay. So anything in this figure, regardless of whether it's labeled services or not, could be a service; is -- that's your opinion? 10:02:57 10:02:59 10:03:01 10:03:06

A. Yeah -- 10:03:08

MR. DOWNING: Objection to form. 10:03:09

A. Almost. 10:03:10

BY MR. KANG: 10:03:10

Q. Is there -- okay. So what is -- you said "almost," and I'm just trying to get to where -- where we're on the same page. 10:03:11 10:03:13 10:03:17 10:03:19

Is there anything in this figure 1 that could not be implemented as a service? 10:03:19 10:03:20 10:03:25

MR. DOWNING: Objection to form. 10:03:26

A. If you choose to do so, you could implement any of these things as services. 10:03:31 10:03:32 10:03:34

BY MR. KANG: 10:03:35

Q. Okay. And so regardless of 10:03:35

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whether it's labeled as service or not, your opinion is that any of these could be services, correct?

MR. DOWNING: Objection to form.

A. Given the context of the figure, yeah, yes.

MR. DOWNING: Robert, we've been going for about an hour. At some point in the next five minutes, I need to take a -- take a short break.

MR. KANG: I mean, can we go an hour and a half? I'd really like to not break this up too much.

MR. DOWNING: Right, I mean, I'm just -- I'm just saying in the next five minutes or so, I need to take a five-minute break at least.

MR. KANG: All right.

BY MR. KANG:

Q. All right. So maybe I can handle this more -- more efficiently.

Mr. Johnson, you refer to figures 20-A through 22-J of the '386 patent as "data flows," right? If you need to see the '386 patent, I'll just

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mark that now. 10:04:53

A. All right. Sorry? We're good. 10:04:59

So the question was figures 20-A 10:05:01

through 22-J are referred to? 10:05:03

Q. You refer to them as "data 10:05:08

flows," correct? 10:05:09

A. Yeah. 10:05:10

Q. What is a "data flow"? 10:05:10

A. So let's look at one of the 10:05:13

figures, for example, if you don't mind. 10:05:18

MR. KANG: I'll mark -- 10:05:21

introduce as Exhibit Number 5, U.S. 10:05:23

Patent No. 9,892,386. 10:05:25

(Exhibit 5, U.S. Patent No. 10:05:30

9,892,386, marked for identification.) 10:05:49

BY MR. KANG: 10:05:49

Q. Can you see Exhibit Number 5, 10:05:49

Mr. Johnson? 10:05:51

A. I'm just opening it up. Let me 10:05:52

see if I can find one of these figures. 10:05:53

Give me just a minute to cross-reference 10:06:12

this. There's something I wanted to look 10:06:16

at. 10:06:18

Okay. So we can take any of 10:07:00

these figures as an example. 10:07:03

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Q. Why don't we take 20-A, the first one that starts on PDF page 27. 10:07:05 10:07:07

A. I was just going to say as soon as I got there. Okay. So now that we have this as a reference, do you want to just repeat the question? 10:07:10 10:07:12 10:07:20 10:07:22

Q. What is a data flow? 10:07:24

A. So one aspect of this diagram shows the flow of data between components in the system and, particularly, it's showing these arrows in the diagram showing messages sent from one component to another, and the labels on the diagram indicate the data that's exchanged in those messages; the solid arrows being requests and the dashed arrows being responses. 10:07:25 10:07:31 10:07:33 10:07:36 10:07:39 10:07:42 10:07:45 10:07:46 10:07:54 10:07:57

Q. Okay. These data flows show communication between components within the overall system, correct? 10:08:02 10:08:04 10:08:06

A. Yes. 10:08:08

Q. Is it your opinion that the data flows are an algorithm? 10:08:09 10:08:15

MR. DOWNING: Objection to form. 10:08:18

A. I suppose this is one way to 10:08:26

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represent an algorithm. 10:08:32
BY MR. KANG: 10:08:33
Q. And so what executes the 10:08:33
algorithm -- so let me start over. 10:08:36
Is it your opinion that figure 10:08:39
20-A depicts an algorithm? 10:08:40
MR. DOWNING: Objection to form, 10:08:44
asked and answered. 10:08:44
A. Yes, as a whole, figure 20-A 10:08:57
does depict -- is -- I should say it's 10:09:00
a -- it's a representation of an 10:09:03
algorithm. 10:09:04
BY MR. KANG: 10:09:05
Q. Okay. And what executes the 10:09:05
algorithm that is represented in figure 10:09:08
20-A? 10:09:11
A. Each of the components is 10:09:16
responsible for executing certain -- 10:09:17
certain aspects of this algorithm. 10:09:19
Q. Is there a single point of 10:09:21
execution or coordination for the overall 10:09:29
algorithm? 10:09:33
MR. DOWNING: Objection to form. 10:09:36
A. The single point of coordination 10:09:37
for the algorithm is the system as a 10:09:48

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whole. 10:09:52
BY MR. KANG: 10:09:53
Q. Okay. And so the system as a 10:09:54
whole is implemented as -- well, let me 10:09:56
start over. 10:10:01
How does the specification 10:10:02
describe the hardware that implements the 10:10:03
system as a whole? 10:10:07
A. I believe the specification is 10:10:10
relatively open-ended on the particular 10:10:14
hardware and software implementations that 10:10:15
might be used for the implementation. 10:10:17
Q. Okay. And so your testimony is 10:10:18
that each of these components is 10:10:23
responsible for executing some part of the 10:10:25
algorithm represented on figure 20-A, 10:10:31
correct? 10:10:34
A. Yeah. 10:10:35
MR. DOWNING: Objection to form. 10:10:35
BY MR. KANG: 10:10:35
Q. Okay. And so, for example, what 10:10:36
does -- what parts of the algorithm of 10:10:49
figure 20-A does database services 10:10:51
implement or execute? 10:10:54
A. So database services is 10:11:01

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responsible for processing each of the messages it receives and generating each of the responses, and there are several examples of that in this diagram. 10:11:04 10:11:09 10:11:12 10:11:16

Q. Okay. And would an example be the line that goes from Business Process Services to Database Services that reads "Ensure That Caller is Active"? 10:11:19 10:11:22 10:11:25 10:11:28

A. Yeah, that's an example. 10:11:31

Q. Okay. Is it fair to say that each component of the system depicted in figure 20-A executes the portions of the algorithm where there are arrows or messages being passed out of it? 10:11:32 10:11:35 10:11:42 10:11:44 10:11:47

MR. DOWNING: Objection to form. 10:11:51

A. So the way you read the diagram or, in fact, any diagram of this form, is that the systems are responsible for receiving and processing the messages where there -- where the arrow ends at that system's line and for generating and sending the messages where the arrow originates of that system's line. 10:11:56 10:12:00 10:12:03 10:12:08 10:12:10 10:12:13 10:12:17 10:12:19

BY MR. KANG: 10:12:19

Q. Okay. 10:12:23

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MR. KANG: All right. We can take a break for five minutes or however long you need. 10:12:23 10:12:24 10:12:27

MR. DOWNING: Okay. Thank you, Robert. 10:12:28 10:12:29

THE VIDEOGRAPHER: Off the record at 10:12 a.m. 10:12:29 10:12:30

(Whereupon, a brief recess is taken.) 10:12:30 10:22:07

THE VIDEOGRAPHER: On the record at 10:23 a.m. 10:22:07 10:22:51

BY MR. KANG: 10:22:51

Q. Welcome back, Mr. Johnson. I'd like to turn to your opinions on the term "payment handler" and "payment handler service" on page 17 of Exhibit 2. 10:22:55 10:22:58 10:23:01 10:23:03

And in the interest of time, I marked Exhibit 6 U.S. Patent No. 11,120,413, and Exhibit 7 U.S. Patent No. 10,438,196. 10:23:16 10:23:18 10:23:23 10:23:28

(Exhibit 6, U.S. Patent No. 11,120,413, marked for identification.) 10:23:28 10:23:28 10:23:32

(Exhibit 7, U.S. Patent No. 10,438,196, marked for 10:23:32 10:23:32

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identification.) 10:23:32

BY MR. KANG: 10:23:32

Q. Mr. Johnson, are you at page 17 of your declaration? 10:23:42 10:23:45

A. Okay. Yeah. 10:23:54

Q. So you offer opinions on the "payment handler" or "payment handler service" terms, right? 10:23:57 10:23:59 10:24:02

A. Yes. 10:24:05

Q. And your opinion is that this term is not a means-plus-function term, correct? 10:24:05 10:24:07 10:24:17

A. Correct. 10:24:19

Q. Your opinion is that this term is to be given its plain and ordinary meaning, right? 10:24:21 10:24:25 10:24:27

A. Yes. 10:24:29

Q. Okay. And if you turn to page 21 of your -- your declaration, the very first line reads "A POSITA" -- P-O-S-I-T-A -- "would understand the claimed payment handler service/payment handler component to refer to computer circuitry and programming for processing data to perform operations." 10:24:30 10:24:39 10:24:54 10:24:56 10:24:57 10:25:01 10:25:04 10:25:06

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Did I read that correctly? 10:25:07
A. Yes. 10:25:09
Q. Okay. Is that the plain and 10:25:10
ordinary meaning for the term "payment 10:25:12
handler service" or "payment handler"? 10:25:14
MR. DOWNING: Objection to form. 10:25:16
A. I don't believe that's what it 10:25:22
says. 10:25:23
BY MR. KANG: 10:25:23
Q. Right. So I'm trying to 10:25:24
understand what your opinion is because 10:25:25
it's not clear from your declaration to 10:25:26
me. So are you offering an opinion on 10:25:28
what the plain and ordinary meaning of 10:25:32
"payment handler" or "payment handler 10:25:35
service" is? 10:25:37
MR. DOWNING: Objection to form, 10:25:40
argumentative. 10:25:42
A. As I said in the declaration, I 10:25:49
think that the understanding of the 10:25:50
payment handler service would be clear to 10:25:53
anyone who's reading the claims and 10:25:54
specifications in their entirety. 10:25:57
BY MR. KANG: 10:25:57
Q. Right. And so my question is, 10:25:59

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Mr. Johnson, are you offering an opinion what the plain and ordinary meaning of the term "payment handler" or "payment handler service" is? 10:26:02 10:26:05 10:26:08 10:26:10

MR. DOWNING: Objection to form. 10:26:14

A. I think I just answered that question. The term is defined by the claims and specification. 10:26:16 10:26:18 10:26:20

BY MR. KANG: 10:26:20

Q. All right. So what I'm pointing to in paragraph -- sorry, at the top of page 21, the definition or the -- the sentence you give here that says "Refer[s] to computer circuitry and programming for processing data to perform operations," is that the plain and ordinary meaning of "payment handler"? 10:26:22 10:26:24 10:26:28 10:26:32 10:26:34 10:26:36 10:26:40 10:26:41

MR. DOWNING: Objection to form. 10:26:43

A. No, that's a reference to an -- an aspect of the implementation. 10:26:48 10:26:51

BY MR. KANG: 10:26:51

Q. Okay. And so what is the plain and ordinary meaning of "payment handler"? 10:26:53 10:26:57

MR. DOWNING: Objection to form. 10:27:01

A. Have we not answered this one 10:27:05

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already? 10:27:08
BY MR. KANG: 10:27:08
Q. No, we have not. Please answer, 10:27:08
Mr. Johnson. 10:27:12
A. Sure. The -- the term "payment 10:27:14
handler" is defined by the claims and 10:27:16
specifications in the patents. 10:27:18
Q. I understand what you say it's 10:27:20
defined by. I'm asking what is that 10:27:21
definition, Mr. Johnson? 10:27:24
A. Shall we read the claims and 10:27:25
specifications of the patents? 10:27:27
Q. Yeah. If you can give me a 10:27:28
definition for the term -- the plain and 10:27:30
ordinary meaning of "payment handler," 10:27:31
please do. 10:27:34
MR. DOWNING: Objection to form. 10:27:35
BY MR. KANG: 10:27:35
Q. Mr. Johnson, you've read -- 10:27:44
you've read the patents, correct? 10:27:45
A. Yes. 10:27:46
Q. You've read the claims? 10:27:47
A. Yes. 10:27:49
Q. All right. And so you've 10:27:49
performed an analysis on the term "payment 10:27:51

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handler," correct? 10:27:55
A. Yes. 10:27:57
Q. All right. What is the plain 10:27:58
and ordinary meaning of the term "payment 10:28:01
handler"? 10:28:04
MR. DOWNING: Objection to form. 10:28:05
A. I'll just say it one more time. 10:28:20
The "payment handler" term is defined by 10:28:23
the claims and specifications in the 10:28:25
patents. 10:28:27
BY MR. KANG: 10:28:27
Q. You're telling me what the -- 10:28:29
the term is defined by. I'm asking you 10:28:30
what is the definition? 10:28:33
A. Uh-huh. 10:28:33
Q. Do you understand the 10:28:34
difference, Mr. Johnson? 10:28:35
A. Yeah. 10:28:36
Q. All right. So -- 10:28:37
MR. DOWNING: Objection to form. 10:28:38
Argumentative. 10:28:41
(Cross talk.) 10:28:45
BY MR. KANG: 10:28:45
Q. So, Mr. Johnson, what is the 10:28:47
plain and ordinary meaning of the term 10:28:50

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"payment handler"? 10:28:54
MR. DOWNING: Objection to form, 10:28:57
asked and answered. 10:28:58
A. So the term "payment handler" is 10:29:08
defined by the claims and specifications 10:29:11
in the patent. 10:29:13
BY MR. KANG: 10:29:13
Q. Mr. Johnson, you understand 10:29:15
you're telling me what the term is defined 10:29:16
by and I'm asking you what the definition 10:29:18
is. Do you understand there's a 10:29:22
difference between those two questions? 10:29:23
MR. DOWNING: Objection, just 10:29:26
real quick, Mr. Johnson. Objection to 10:29:28
form, asked and answered, 10:29:30
argumentative. 10:29:32
BY MR. KANG: 10:29:32
Q. Do you understand there's a 10:29:44
difference between what something is 10:29:45
defined by and the definition? 10:29:47
A. I do. 10:29:50
Q. Okay. 10:29:50
MR. DOWNING: Same objections. 10:29:51
BY MR. KANG: 10:29:51
Q. Now, what is the definition of 10:29:52

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the term "payment handler" under the plain and ordinary meaning of the term? 10:29:55 10:29:57

MR. DOWNING: Objection to form, asked and answered. 10:30:00 10:30:01

A. The term "payment handler" is defined by the claims and specifications in the patents. 10:30:08 10:30:10 10:30:12

BY MR. KANG: 10:30:12

Q. Mr. Johnson, if you're not offering an opinion, that's fine. I asked you, are you offering an opinion on the plain and ordinary meaning of the term "payment handler." Now, if you're not offering an opinion on it, that's fine. I don't need to belabor the point, but if you are going to offer an opinion on what the plain and ordinary meaning of the term "payment handler" is, I need to know what that definition is. 10:30:14 10:30:16 10:30:18 10:30:20 10:30:22 10:30:24 10:30:27 10:30:29 10:30:31 10:30:33 10:30:35

MR. DOWNING: Objection to form, asked and answered, argumentative. 10:30:38 10:30:39

A. It's not even a question. Would you like to ask a question? 10:30:47 10:30:49

BY MR. KANG: 10:30:49

Q. What is the definition of the 10:30:51

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term "payment handler" under the plain and ordinary meaning of the term? 10:30:55 10:30:59

MR. DOWNING: Same objections. 10:31:02

A. A payment handler is defined by the claims and specifications in the patents. 10:31:08 10:31:09 10:31:11

BY MR. KANG: 10:31:11

Q. And what is that definition? 10:31:12

A. Shall we read the patents? 10:31:15

MR. DOWNING: Same objections. 10:31:17

BY MR. KANG: 10:31:17

Q. I'm sorry? 10:31:18

A. Shall we read the patents? Would you like to read them in their entirety? 10:31:21 10:31:23 10:31:24

Q. Mr. Johnson, you've performed this analysis, correct? 10:31:25 10:31:28

A. Yes, I have. 10:31:32

MR. DOWNING: Objection to form. 10:31:33

BY MR. KANG: 10:31:33

Q. Sorry. 10:31:34

MR. DOWNING: Hold on, hold on. 10:31:35

Objection to form, misstates testimony. 10:31:37 10:31:38

BY MR. KANG: 10:31:38

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Q. You have formed an opinion on what the plain and ordinary meaning of "payment handler" is, correct? 10:31:40 10:31:44 10:31:47

MR. DOWNING: Objection to form, asked and answered. 10:31:51 10:31:55

A. Yes. 10:31:57

BY MR. KANG: 10:31:57

Q. Okay. Now, what is the plain and ordinary meaning of the term "payment handler"? 10:31:58 10:32:02 10:32:05

MR. DOWNING: Objection to form, asked and answered. 10:32:09 10:32:10

A. The term "payment handler" is defined by the claims and the specifications in the patents. 10:32:16 10:32:18 10:32:20

BY MR. KANG: 10:32:20

Q. Okay. Sitting here today, can you tell me what that definition is? 10:32:22 10:32:24

MR. DOWNING: Objection to form, asked and answered. 10:32:28 10:32:29

A. Sure. Would you like me to read the patents to you? 10:32:33 10:32:35

BY MR. KANG: 10:32:35

Q. Mr. Johnson, you can't tell me what that definition is without reading 10:32:37 10:32:39

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the patents? 10:32:41
MR. DOWNING: Objection to form, 10:32:42
asked and answered. 10:32:43
A. The patents are the source of 10:32:47
the definition. 10:32:49
BY MR. KANG: 10:32:49
Q. Is that a no? You can't tell me 10:32:52
sitting here today what the definition is 10:32:54
without reading the patent in its 10:32:56
entirety? 10:32:58
MR. DOWNING: Objection to form. 10:32:59
A. I have not -- 10:33:04
MR. DOWNING: Hold on. Hold on. 10:33:05
Sorry, objection to form, asked and 10:33:06
answered for the tenth time, 10:33:10
argumentative. 10:33:12
A. I haven't memorized the patents 10:33:16
in their entirety. 10:33:18
BY MR. KANG: 10:33:18
Q. You've memorized your opinions 10:33:20
on what the plain and ordinary meaning of 10:33:21
the term "payment handler" is, correct? 10:33:23
A. I think I've told you what that 10:33:26
is. 10:33:28
MR. DOWNING: I mean, do you 10:33:29

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want to point him to a particular part in his declaration, but this is like -- 10:33:32 10:33:35 10:33:35

(Cross talk.) 10:33:35

MR. KANG: Sorry, sorry, I thought I did, but he told me what was at the top of para -- page 21 was not the plain and ordinary meaning, so I'm trying to -- 10:33:37 10:33:38 10:33:42 10:33:42 10:33:46

(Cross talk.) 10:33:47

MR. DOWNING: Just point him to the place in his declaration where he provides an opinion of what the plain and ordinary meaning of the term is and maybe we can move along. 10:33:47 10:33:48 10:33:49 10:33:51 10:33:52

MR. KANG: Well, that's my question. 10:33:54 10:33:57

BY MR. KANG: 10:33:57

Q. So, Mr. Johnson, do you have any place in your declaration where you provide the plain and ordinary meaning of the term "payment handler"? 10:33:57 10:34:00 10:34:02 10:34:05

A. It said -- the construction says that it's the plain and ordinary meaning is sufficient, the plain and ordinary 10:34:45 10:34:46 10:34:48

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meaning is defined by claims and specification. 10:34:50 10:34:52

Q. Where are you reading, Mr. Johnson? 10:34:52 10:34:54

A. At the top of the table on page 17 under heading D where the proposed construction is plain and ordinary meaning. 10:34:56 10:35:01 10:35:04 10:35:06

Q. Okay. And so I'm asking you, in the interest of time, Mr. Johnson, can you find anyplace in your declaration where you explain or provide opinions on what that plain and ordinary meaning is? 10:35:08 10:35:13 10:35:16 10:35:19 10:35:23

MR. DOWNING: Objection to form, asked and answered. 10:35:26 10:35:27

A. So as I said, "payment handler" is defined by the claims and specifications in the -- in the patents. 10:35:38 10:35:43 10:35:44

BY MR. KANG: 10:35:44

Q. So, Mr. Johnson, again, listen to my question very carefully. I asked you where in your declaration you provide an opinion on the plain and ordinary meaning of "payment handler." 10:35:47 10:35:50 10:35:52 10:35:54 10:35:56

MR. DOWNING: Objection to form, 10:36:02

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asked and answered, argumentative. 10:36:05
BY MR. KANG: 10:36:05
Q. Mr. Johnson, where in your 10:36:08
declaration do you provide the plain and 10:36:09
ordinary meaning of "payment handler"? 10:36:11
And if it's not there, it's fine. I'm 10:36:13
just trying to get the scope of your 10:36:16
opinions. 10:36:18
MR. DOWNING: Same objections. 10:36:19
A. Yeah. You can start with 10:36:21
line -- first line of paragraph 51, it's 10:36:23
my opinion that it's understood by a 10:36:27
person of the ordinary skill in the art as 10:36:29
a component of the monetary transaction 10:36:32
system -- that's in quotes -- were 10:36:34
referring back to the claims and 10:36:37
specifications of the patents. 10:36:38
BY MR. KANG: 10:36:38
Q. Okay. And so is the -- is the 10:36:39
plain and ordinary meaning of "payment 10:36:42
handler" a component of the monetary 10:36:44
transaction system? 10:36:47
MR. DOWNING: Objection to form, 10:36:49
misstates testimony. 10:36:49
A. Yeah, it's not what I said. 10:36:54

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BY MR. KANG: 10:36:54

Q. Is the answer no? 10:36:59

A. Sorry, can you restate the question? 10:37:03 10:37:05

Q. I'm just trying to understand what you've written here in paragraph 51, Mr. Johnson. 10:37:05 10:37:07 10:37:10

Is the plain and ordinary meaning of "payment handler" a component of the monetary transaction system? 10:37:14 10:37:15 10:37:19

MR. DOWNING: Objection to form, asked and answered, argumentative. 10:37:22 10:37:23

A. As I've said, it's a reference to the claims and specifications of the patents. 10:37:26 10:37:28 10:37:31

BY MR. KANG: 10:37:31

Q. Where in that sentence does it reference the claims and specification of the patents? 10:37:37 10:37:39 10:37:42

MR. DOWNING: Same objections. 10:37:43

A. As I've described, payment handler service in quotes is a reference to the patents, monetary transaction systems is a reference to the patents. 10:37:47 10:37:50 10:37:52 10:37:55

BY MR. KANG: 10:37:55

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Q. So using any word from the claims to you is a reference to the patents; is that -- is that your opinion? 10:37:57 10:37:59 10:38:01

MR. DOWNING: Objection to form, misstates testimony. 10:38:04 10:38:05

BY MR. KANG: 10:38:05

Q. All right. Let me rephrase. When you put, quote, payment handler service, your testimony today is that is a reference to the patent specification in claims, correct? 10:38:08 10:38:09 10:38:12 10:38:15 10:38:17

MR. DOWNING: Objection to form, misstates testimony. 10:38:18 10:38:19

A. Yeah, so as I said, this sentence is referring to the claims and specifications in the patents as the -- the source of the definition for the payment handler service. 10:38:27 10:38:30 10:38:31 10:38:33 10:38:34

BY MR. KANG: 10:38:34

Q. This sentence does not reference a particular claim, fair? 10:38:36 10:38:37

A. It does not reference any specific claim. 10:38:40 10:38:42

Q. And this sentence doesn't reference any specific portion of the 10:38:43 10:38:44

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specification, correct? 10:38:48
A. Correct. 10:38:49
Q. So, turning back to your 10:38:49
opinions on page 17. Now, you've read -- 10:38:58
now, the term "payment handler" appears in 10:39:06
claims 1 through 3 of the '386 patent, 10:39:10
claims 1 and 2 of the '413 patent, claim 1 10:39:14
of the '488 patent, and claim 1 of the 10:39:18
'196 patent; is that correct? 10:39:22
A. I believe so. 10:39:23
Q. All right. And you've read all 10:39:24
those claims? 10:39:25
A. I have. 10:39:25
Q. All right. It's your opinion 10:39:26
that the claim language of all these 10:39:28
claims only seeks to allow the mFS to 10:39:31
interact with payment processors, correct? 10:39:37
MR. DOWNING: Objection to form. 10:39:40
A. Yeah. My opinions are in the 10:39:42
declaration. 10:39:45
BY MR. KANG: 10:39:45
Q. So if you turn to page 21, the 10:39:46
second paragraph, last sentence, you write 10:39:53
"Dr. Chatterjee overcomplicates the claim 10:39:57
language which only seeks to allow the mFS 10:40:02

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to interact with payment processors." Do you see that?

A. I do.

Q. Do you agree with that statement?

A. I do.

Q. All right. And so "The claim language...only seeks to allow the mFS to interact with payment processors"; that's your opinion, correct?

MR. DOWNING: Objection to form.

A. Let's take a look at Chatterjee's paragraph 58.

BY MR. KANG:

Q. Mr. Johnson, I'm asking you if you agree with the sentence you allegedly wrote here.

A. Yes.

Q. "The claim language...only seeks to allow the mFS to interact with payment processors."

MR. DOWNING: And so I just -- I just want to object generally. Kai, if you need to -- to reference information, you're -- you're free to

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do that. 10:40:55

THE WITNESS: Thank you. 10:40:57

A. I'd like to make the point that this is in the context of a particular paragraph that's referring to Dr. Chatterjee's paragraph 58. 10:40:58 10:41:00 10:41:02 10:41:03

MR. KANG: We'll go ahead and mark it. 10:41:07 10:41:08

A. I'd like to -- I'd like to point to the -- the text there. 10:41:09 10:41:11

BY MR. KANG: 10:41:11

Q. I'm introducing as Exhibit 8, the declaration of Sandeep Chatterjee, Ph.D. 10:41:26 10:41:29 10:41:31

Do you see Exhibit 8, Mr. Johnson? 10:42:03 10:42:05

A. Yes. 10:42:11

(Exhibit 8, Declaration of Sandeep Chatterjee, Ph.D., marked for identification.) 10:42:11 10:42:11 10:42:11

BY MR. KANG: 10:42:11

Q. I'll re-ask my question. Do you agree with the statement you wrote at the bottom -- bottom of the second paragraph, page 21 of your declaration "The claim 10:42:13 10:42:13 10:42:17 10:42:18

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language which only seeks to allow the mFS to interact with payment processors"? 10:42:18 10:42:21

A. Is there a way for me to look at two documents side by side when we're working with this stuff? 10:42:29 10:42:30 10:42:34

THE COURT REPORTER: You can download them. 10:42:38 10:42:39

THE WITNESS: Okay. Give me just a minute to do that. 10:42:42 10:42:43

A. Sorry, we were at paragraph or page -- 10:43:56 10:43:58

BY MR. KANG: 10:43:59

Q. 21? 10:43:59

A. -- 21? 10:44:00

Q. Of your declaration, yes. 10:44:01

A. Yeah. Thank you. 10:44:03

So you're asking about the second sentence in that last paragraph of section D, which I'd like you to consider in the context of the entire paragraph and not in isolation. Chatterjee 58 -- Chatterjee's paragraph 58 on page 23, he gets lost. He says a person of ordinary skill in the art "would not have understood whether the 'wrapping' of APIs 10:44:11 10:44:13 10:44:15 10:44:19 10:44:21 10:44:29 10:44:32 10:44:40 10:44:46

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occurs" -- 10:44:46
(Reporter clarification.) 10:44:46
A. Sorry. Maybe I won't read all 10:44:47
this to you since we probably don't need 10:44:49
to -- to copy all of that, but -- 10:44:51
MR. DOWNING: Kai, just make 10:44:56
sure that you -- that you -- you know, 10:44:59
if you need to take time. Take time. 10:45:01
THE WITNESS: Yeah. 10:45:01
MR. DOWNING: If you need to 10:45:03
give a complete thing -- I don't want 10:45:05
you to worry about, you know, rushing. 10:45:07
Just say what you need to say to get 10:45:09
your point across, please. 10:45:11
MR. KANG: Counsel, I'm going to 10:45:12
please ask you to limit the speaking 10:45:14
objection. 10:45:15
MR. DOWNING: Right. I'm 10:45:16
just -- I'm just helping out. From 10:45:19
time to time, I need to instruct the 10:45:22
witness on Zoom, you know, about the 10:45:24
parameters of the deposition, and I'll 10:45:27
try to limit it just to those -- those 10:45:29
specific issues. 10:45:31
A. So let's just summarize 10:45:37

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Chatterjee's paragraph 58. He gets lost in his confusion of it. He doesn't apparently understand what these APIs are or where they'd be implemented, where they'd be wrapped, who's using them. And that's my comment in the first part of that paragraph that we're referring to. 10:45:40 10:45:45 10:45:48 10:45:52 10:45:55 10:45:59 10:46:02

My second sentence in that paragraph is I think he got lost. He's overcomplicated the issue. It's clear from the claims that one aspect of the payment handler is to provide an interface to payment processors, and somehow he's lost that thread. 10:46:08 10:46:10 10:46:14 10:46:19 10:46:23 10:46:28 10:46:33

BY MR. KANG: 10:46:33

Q. Okay. Are you done? 10:46:34

A. I just want you to -- I want -- I want you to be clear that you understand that sentence in the context of Chatterjee's confusion in paragraph 58. 10:46:37 10:46:38 10:46:40 10:46:43

Q. Right. And, Mr. Johnson, you write that "the claim language...only seeks to allow the mFS to interact with payment processors." 10:46:46 10:46:49 10:46:51 10:46:53

Do you see that? 10:46:55

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A. That's what the sentence says. 10:46:57
Q. Right. And is that a true -- is 10:46:59
that consistent with your opinion of these 10:47:03
claims? 10:47:05
MR. DOWNING: Objection to form. 10:47:07
A. As I've just explained to you, 10:47:10
that's my opinion about Dr. Chatterjee's 10:47:13
argument in his paragraph 58. 10:47:15
BY MR. KANG: 10:47:15
Q. So outside of the context of the 10:47:22
paragraph 58 of Dr. Chatterjee's 10:47:26
declaration, does the claim language only 10:47:30
seek to allow the mFS to interact with 10:47:32
payment processors? 10:47:35
MR. DOWNING: Objection to form. 10:47:40
A. I don't have the claims 10:47:44
memorized, but as I recall, it says more 10:47:45
than that. 10:47:48
BY MR. KANG: 10:47:48
Q. Okay. The claims required more 10:47:49
than just allowing the mFS to interact 10:47:55
with payment processors, correct? 10:47:57
A. Shall we have a look at the 10:48:02
claims? 10:48:03
Q. If you need to, yeah. Actually, 10:48:04

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I don't want to belabor this point too much. 10:48:11 10:48:13

So if you go back to page 17 of your declaration, Exhibit 2. 10:48:14 10:48:16

A. Yeah, sorry, I'm just switching documents again. Page 17 is what you're asking for? 10:48:25 10:48:28 10:48:31

Q. Correct. 10:48:31

A. Okay. 10:48:36

Q. All right. So you applied the same function "operable to interact with payment processors" across all of the claims that include the term "payment handler," correct? 10:48:37 10:48:39 10:48:42 10:48:46 10:48:49

A. Yes. 10:48:53

Q. Okay. And the function you identified is "operable to interact with payment processors," right? 10:48:54 10:49:03 10:49:05

A. Sorry, the first part of that question wasn't clear. 10:49:06 10:49:08

Q. Now, the language you chose for the function "operable to interact with payment processors" does not appear in any of the claims in which the term "payment handler" or "payment handler service" 10:49:09 10:49:19 10:49:23 10:49:27 10:49:31

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appear, correct? 10:49:34
A. I don't have the claims 10:49:37
memorized. 10:49:39
Q. Sure. Let's look at the '488 10:49:39
patent. That's Exhibit 4. If we can take 10:49:43
a look at claim 1; are you there? 10:50:16
A. Sorry, was that claim 1? 10:50:18
Q. Correct. If you'd direct your 10:50:24
attention to column 23, line 50. 10:50:38
A. Okay. 10:50:47
Q. Do you see the language here in 10:50:48
claim 1 reads "A payment handler that 10:50:49
exposes a common API for interacting with 10:50:51
different payment processors." 10:50:54
Did I read that correctly? 10:50:56
A. Yes. 10:50:57
Q. Okay. And so the function you 10:51:01
identified "operable to interact with 10:51:03
payment processors" -- 10:51:14
(Reporter clarification.) 10:51:14
BY MR. KANG: 10:51:14
Q. -- "to interact with different 10:51:14
payment processors" does not appear in 10:51:16
'488 patent claim 1, correct? 10:51:20
A. Not that specific language, 10:51:27

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that's correct. 10:51:29

Q. If we can turn to the '196 10:51:43

patent, which is Exhibit 7, and then 10:51:52

column 24, around line 13. 10:52:17

Are you there, Mr. Johnson? 10:52:22

A. '196, column 24, line 13? 10:52:26

Q. Yes. 10:52:31

Do you see the language in this 10:52:41

claim reads "A payment handler that 10:52:43

exposes a common API for interacting with 10:52:47

different payment processors"; do you see 10:52:50

that? 10:52:52

A. Yes. 10:52:52

Q. And so the language you chose 10:52:54

for your function "operable to interact 10:52:56

with payment processors," does not appear 10:52:57

in claim 1 of the '413 patent, correct? 10:53:00

A. Correct. 10:53:06

Q. Your function omits the portion 10:53:06

"exposes a common API," correct? 10:53:08

MR. DOWNING: Objection. 10:53:11

(Cross talk.) 10:53:11

A. Yes. Yes. 10:53:12

BY MR. KANG: 10:53:12

Q. Okay. And so the function you 10:53:14

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identified is broader than the claims of the '413 -- I'm sorry. 10:53:16 10:53:21

The function you identified is broader than the claims of the '488 and '196 patent, correct? 10:53:25 10:53:27 10:53:29

MR. DOWNING: Objection to form. 10:53:31

A. Yeah, I don't know that it's necessarily broader. 10:53:36 10:53:37

BY MR. KANG: 10:53:37

Q. Well, Mr. Johnson, is interacting with -- or let me start over. 10:53:40 10:53:46

"Operable to interact with different payment processors" could include exposing a common API to interact with different payment processors, right? 10:53:50 10:53:51 10:53:54 10:53:58

MR. DOWNING: Objection to form. 10:54:05

A. I suppose so. 10:54:11

BY MR. KANG: 10:54:13

Q. It could also not include that, correct, right? There could be some other way you could operate with different -- sorry. 10:54:13 10:54:15 10:54:17 10:54:19

There is a -- you can interact with different payment processors without exposing a common API, correct? 10:54:20 10:54:23 10:54:26

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MR. DOWNING: Objection to form. 10:54:30
A. Yes. 10:54:31
BY MR. KANG: 10:54:31
Q. Okay. And so the function 10:54:35
you've identified "operable to interact 10:54:37
with different payment processors," is 10:54:41
broader than the payment handler 10:54:44
limitation in the claim language of the 10:54:48
'488 and '196 patents, correct? 10:54:51
MR. DOWNING: Objection to form. 10:54:54
A. It sounds like you're making a 10:55:00
legal distinction. I'm not a lawyer, as 10:55:02
you're aware. 10:55:04
BY MR. KANG: 10:55:05
Q. Mr. Johnson, you're offering 10:55:07
opinions on claim construction, right? 10:55:08
A. Yes. 10:55:09
Q. You understand the scope of the 10:55:10
claims at issue here? 10:55:13
A. Yes. 10:55:15
Q. Okay. And so you can't tell me 10:55:17
whether "operable to interact with 10:55:20
different payment processors" is broader 10:55:23
or narrower in scope than "exposing a 10:55:27
common API to interact with different 10:55:30

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payment processors"? 10:55:32
MR. DOWNING: Objection to form. 10:55:38
A. Sorry. Can you just restate 10:55:47
that question? 10:55:49
BY MR. KANG: 10:55:50
Q. Can you tell me, sitting here 10:55:52
today, whether the term "operable to 10:55:54
interact with different payment 10:56:00
processors" is broader or narrower in 10:56:01
scope than "exposing a common API to 10:56:05
interact with different payment 10:56:09
processors"? 10:56:10
MR. DOWNING: Objection to form. 10:56:13
A. I suppose exposing a common API 10:56:39
for interacting with different payment 10:56:41
processors could be more specific. 10:56:42
BY MR. KANG: 10:56:46
Q. Now, if we could turn to 10:56:49
Exhibit 5, the '386 patent. If you could 10:56:57
direct your attention to claim 1, column 10:57:23
31, line 8. 10:57:31
(Reporter clarification.) 10:57:31
BY MR. KANG: 10:57:31
Q. Column 31, line 8. 10:57:31
In claim 1 of the '386 patent at 10:57:57

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column 31, line 8, reads: "A payment handler service operable to use APIs of different payment processors including one or more APIs of banks, credit and debit cards processors, bill payment processors." 10:58:00 10:58:02 10:58:05 10:58:08 10:58:12 10:58:14

Did I read that correctly? 10:58:15

A. Yes. 10:58:17

Q. Okay. In claim 1 of the '386 patent also does not include the function you identified in your declaration "operable to interact with payment processors," correct? 10:58:18 10:58:24 10:58:26 10:58:29 10:58:32

MR. DOWNING: Objection to form. 10:58:34

A. Correct. 10:58:38

BY MR. KANG: 10:58:38

Q. Okay. The function you identified omits the portion that reads "to use APIs of different payment processors." 10:58:39 10:58:41 10:58:47 10:58:51

Do you see that? 10:58:52

A. Yes. 10:58:55

Q. Okay. And, again, the function you identified is broader than the claim language for payment handler in claim 1 of 10:58:58 10:59:02 10:59:07

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the '386 patent, fair? 10:59:11

MR. DOWNING: Objection to form. 10:59:13

A. In this context, I'm not sure 10:59:38
there's much of a distinction. 10:59:39

BY MR. KANG: 10:59:40

Q. Your testimony, sitting here 10:59:41
today, is that "operable to interact with 10:59:42
payment processors" does not have much of 10:59:45
a distinction as "operable to use APIs of 10:59:47
different payment processors," correct? 10:59:52

MR. DOWNING: Objection to form, 10:59:56
misstates testimony. 10:59:56

A. So what I think we need to do is 11:00:17
really go back to the declaration where 11:00:18
it's clear that what we're talking about 11:00:19
is -- is the function of the payment 11:00:22
handler service. 11:00:23

BY MR. KANG: 11:00:23

Q. Mr. Johnson, please answer the 11:00:27
question, okay? 11:00:29

I'm asking you, the function you 11:00:31
identified "operable to interact with 11:00:33
payment processors," is your testimony 11:00:36
today that it is not different than the 11:00:41
claim language of the '386 patent claim 1 11:00:44

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"a payment handler service operable to use APIs of different payment processors"? 11:00:49 11:00:52

A. Yeah. So what I have said in the declaration is that that function is appropriate in the context of -- that function -- sorry. 11:00:54 11:00:57 11:01:00 11:01:04

Can I pull up the declaration so I can just look at it? Give me a sec. Because presumably I have it downloaded now. 11:01:06 11:01:07 11:01:14 11:01:17

17? 11:01:29

Q. Correct. 11:01:30

A. Yeah. So what I said in the declaration is that payment handlers, the term is -- can be defined by its plain and ordinary meaning in the claims and specifications of the patents, and this function "operable to interact with payment processors" is appropriate only if this is found to be a means-plus-function term, in which case that language, the function, is part of the definition of payment handler in -- in combination with the structure that's provided in the additional references. 11:01:46 11:01:48 11:01:49 11:01:55 11:01:57 11:01:59 11:02:02 11:02:04 11:02:07 11:02:09 11:02:14 11:02:19 11:02:21

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Q. Let me unpack that a little bit, Mr. Johnson. 11:02:24 11:02:26

I'm talking about the function of payment handler. Do you understand that? 11:02:28 11:02:30 11:02:33

A. Yes. 11:02:34

Q. Okay. And what does the structure you've identified have to do with the function that you've identified here? 11:02:35 11:02:40 11:02:42 11:02:45

A. The function that I believe -- that I've identified here is -- is really only appropriate to be used in the definition of the payment handler if it's found to be a means-plus-function term, in which case, the function's part of the definition; the structure provides the rest. 11:02:51 11:02:53 11:03:00 11:03:03 11:03:05 11:03:07 11:03:10 11:03:17

(Reporter clarification.) 11:03:17

A. Provides the rest of the definition, if you will. 11:03:17 11:03:17

BY MR. KANG: 11:03:17

Q. And so the function you've identified for all claims, including the term "payment handler" or "payment handler 11:03:20 11:03:23 11:03:26

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service" doesn't mention APIs, correct? 11:03:29
A. Correct. 11:03:34
Q. Okay. And the claim language 11:03:35
that we looked at includes limitations 11:03:39
relating to the use of APIs, fair? 11:03:45
A. Yes. 11:03:51
Q. Okay. And there are ways to 11:03:53
interact with payment processors that do 11:03:57
not use APIs, correct? 11:04:00
MR. DOWNING: Objection to form. 11:04:06
A. Yeah. I presume there might be. 11:04:10
BY MR. KANG: 11:04:10
Q. You don't know for sure? 11:04:16
MR. DOWNING: Objection to form. 11:04:19
A. The -- sorry. Do you want to 11:04:26
just ask that one again? 11:04:36
BY MR. KANG: 11:04:37
Q. How much experience do you have 11:04:37
working in payments technology, 11:04:39
Mr. Johnson? 11:04:42
A. Many years. 11:04:45
Q. How many years? 11:04:47
A. I have to go back and look to 11:04:50
count. It's a long time. 11:04:51
Q. Over ten? 11:04:54

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A. Yeah. 11:04:55

Q. Okay. So sitting here today, in your ten years of experience working in the payment space, are you aware of ways to interact with payment processors that do not use APIs? 11:04:56 11:04:59 11:05:01 11:05:04 11:05:06

MR. DOWNING: Objection to form. 11:05:11

A. I might be able to come up with an example, but the common way of interacting with payment processors is through APIs. 11:05:15 11:05:17 11:05:20 11:05:22

BY MR. KANG: 11:05:23

Q. And so is it your opinion, your testimony sitting here today, that when you say "interact with payment processors," you mean through APIs? 11:05:24 11:05:27 11:05:28 11:05:30

MR. DOWNING: Objection to form, misstates testimony. 11:05:34 11:05:38

A. Yeah. I think I've given you my opinions in the declaration, and if you're asking about APIs and payment processors, that's the common way to interact with them. 11:05:39 11:05:46 11:05:48 11:05:52 11:05:54

BY MR. KANG: 11:05:54

Q. And so my question is: The 11:05:55

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term -- the function you've provided, "operable to interact with payment processors" is broader than "using a common API to interact with payment processors," fair? 11:06:00 11:06:01 11:06:03 11:06:09 11:06:12

A. So I think that function really only applies if you're using it in combination with the remaining structure, which cites the patent claims where the additional limitations are present. 11:06:16 11:06:18 11:06:20 11:06:23 11:06:25

Q. So are you telling me that this recitation "operable to interact with payment processors" is not the function for the term "payment handler" or "payment handler service"? 11:06:28 11:06:29 11:06:32 11:06:34 11:06:36

MR. DOWNING: Objection to form, mischaracterizes testimony. 11:06:37 11:06:39

A. I think it's pretty clear that it says the function -- if the term is a means-plus-function term, the function is operable to interact with payment processors. 11:06:43 11:06:45 11:06:48 11:06:51 11:06:53

BY MR. KANG: 11:06:54

Q. Okay. Well, let's go back to that paragraph at the top of page 21 where 11:07:17 11:07:18

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you say "A POSITA would understand the claimed payment handler service/payment handler component to refer to computer circuitry and programming for processing data to perform operations." 11:07:21 11:07:27 11:07:28 11:07:31 11:07:34

Do you see that? 11:07:36

A. Sorry, just catching up. 11:07:40

Page -- top of page 20 -- 11:07:41

Q. 1. 11:07:43

A. 21. Yes. 11:07:45

Q. Okay. Now, is this a description of the structure of payment handler? 11:07:51 11:07:54 11:07:56

MR. DOWNING: Objection to form. 11:07:59

A. In the declaration, I think I provided some pretty clear examples of the structure of the payment handler in the previous paragraphs. 11:08:04 11:08:06 11:08:08 11:08:11

BY MR. KANG: 11:08:11

Q. And, Mr. Johnson, what I'm asking you is, the sentence at the top of page 21, is that an example of structure for the payment handler term? 11:08:14 11:08:16 11:08:19 11:08:22

A. This is an example of how the payment handler could be implemented, that 11:08:30 11:08:32

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a person of ordinary skill in the art would understand that this could be a computing service of some sort, implemented with hardware or software or a combination of the both, which is what that sentence says. 11:08:36 11:08:37 11:08:40 11:08:42 11:08:44 11:08:47

Q. So this could be the structure that performs the function you identified, correct? 11:08:49 11:08:52 11:08:54

MR. DOWNING: Objection to form. 11:08:57

A. So the structures that I've identified for payment handler are first cited at the top of section D and explained with examples in the prior paragraphs. 11:09:00 11:09:02 11:09:09 11:09:12 11:09:14

BY MR. KANG: 11:09:14

Q. Okay. So this is not one of -- I mean, I'm just trying to figure out where this statement falls in your opinions, Mr. Johnson. 11:09:14 11:09:16 11:09:18 11:09:20

Is this an example of structure of -- for the term payment handler? 11:09:22 11:09:24

MR. DOWNING: Objection to form. 11:09:28

A. The examples of structure for the payment handler are in the claims and 11:09:36 11:09:39

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the specifications themselves. 11:09:40
BY MR. KANG: 11:09:40
Q. Okay. And so if I understand 11:09:44
your testimony and -- it's that this 11:09:45
sentence that you've provided at the top 11:09:50
of paragraph 21, is not an example of 11:09:52
structure for the payment handler term; is 11:09:55
that correct? 11:09:59
MR. DOWNING: Objection to form. 11:10:00
A. The sentence at the top of 11:10:03
paragraph -- sorry -- the first sentence, 11:10:07
top of page 21, is my opinion about a 11:10:10
person of ordinary skill's understanding, 11:10:14
and I've provided previous statements in 11:10:17
the declaration about the structure of the 11:10:19
payment handler. 11:10:21
BY MR. KANG: 11:10:21
Q. Okay. So let's look at the 11:10:22
actual structures you identify. 11:10:27
You identify '386 patent 11:10:42
figure 1 as structure for the term payment 11:10:45
handler or payment handler service, 11:10:50
correct? 11:10:52
A. Yes. 11:10:52
Q. And '386 patent, figure 1, shows 11:11:25

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a box labeled "Payment Handler 105," 11:11:29
correct? 11:11:32
A. Yes. 11:11:32
Q. The patent shows payment handler 11:11:34
connected to other components, correct? 11:11:37
A. Sorry, the first part of that 11:11:42
question was unclear. Could you just 11:11:43
repeat it? 11:11:45
Q. Figure 1 shows Payment Handler 11:11:45
105 connected to other components within 11:11:47
the system, right? 11:11:50
A. Yes. 11:11:52
Q. Is there anything in figure 1 11:11:54
that explains the internal structure of 11:11:56
Payment Handler 105? 11:12:00
MR. DOWNING: Objection to form. 11:12:03
A. Figure 1 makes some implications 11:12:12
about what the payment handler would be 11:12:14
doing by the nature of its connections to 11:12:16
other components and by the -- the nature 11:12:19
of those other components. 11:12:23
BY MR. KANG: 11:12:23
Q. What implications does it make, 11:12:25
Mr. Johnson? 11:12:27
A. Well, it's apparently 11:12:28

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responsible for interactions between the Service Connectors 103, Business Process Services 104, and Processor -- I can't quite read that -- 121, I guess, which I take to be the payment processor from the context of the diagram, you know, which makes it clear that the payment handler has some direct interactions with those components, direct interfaces with those components, and is presumably to be defined elsewhere in the specification responsible for certain actions that are related to those interfaces. 11:12:31 11:12:37 11:12:39 11:12:43 11:12:49 11:12:51 11:12:56 11:12:58 11:13:02 11:13:04 11:13:10 11:13:12 11:13:14

Q. Does figure 1 tell a person of ordinary skill in the art how to implement payment handler 105 to interact with different payment processors? 11:13:17 11:13:22 11:13:26 11:13:31

MR. DOWNING: Objection to form. 11:13:32

A. In order to determine how the payment handler interacts with these components, you need to read the entire specification and look at it in that context. 11:13:39 11:13:42 11:13:45 11:13:47 11:13:50

BY MR. KANG: 11:13:50

Q. Does figure 1 tell you how to 11:13:52

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implement the payment handler? 11:13:55

A. As I've said, not on its own. 11:13:58

You have to read figure 1 in the context 11:14:01

of the entire specification. 11:14:03

Q. Turning to the specification, 11:14:10

you point to two portions of '386 patent, 11:14:11

right, 13 -- column 13, lines 29 through 11:14:15

34 and fourth column -- sorry -- you point 11:14:21

to two portions of the specification as 11:14:25

providing structure for the payment 11:14:28

handler limitation, correct? 11:14:29

A. Sorry. Ask that question one 11:14:38

more time? 11:14:39

Q. On page 17 of your declaration, 11:14:40

you point to two portions of the 11:14:43

specification of the '386 patent as 11:14:45

containing structure for the payment 11:14:50

handler, correct? 11:14:52

A. Well, so there are references to 11:15:00

the claims figures and then two references 11:15:02

to the -- the body of the specification in 11:15:08

the '386 patent. 11:15:11

Q. Right. And so I wanted to talk 11:15:13

about the references to the body of the 11:15:15

specification. Do you understand? 11:15:16

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A. Sure. 11:15:20
Q. Okay. So the first one that you 11:15:20
reference is column 13, lines 29 to 34. 11:15:21
A. Uh-huh. 11:15:26
Q. Could you go there in Exhibit 6 11:15:26
and tell me when you're there? 11:15:28
A. Yeah, give me just a second. 11:15:30
Q. Sorry. It's Exhibit 5. 11:15:33
A. Exhibit 5, 13, 29 to 34? 11:15:35
Q. Yep. Are you there? 11:15:58
A. Yes. 11:16:36
Q. Do you see the sentence that 11:16:37
begins "Payment handler 105"? 11:16:38
A. Yes. 11:16:43
Q. Okay. And the specification 11:16:43
just reads "Payment handler 105 is 11:16:45
configured to wrap APIs of different 11:16:47
payment processors, such as, for example, 11:16:48
banking accounts, credit/debit cards or 11:16:50
processor 121. Payment handler 105 11:16:54
exposes a common API to facilitate 11:16:59
interactions with many different kinds of 11:17:01
payment processors." Did I read that 11:17:03
correctly? 11:17:06
A. Uh-huh. 11:17:06

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Q. So this is the claim language replicated, correct? 11:17:08 11:17:11

A. Oh, it may be. I'd have to double-check. 11:17:13 11:17:17

Q. So this paragraph doesn't mention how the payment handler exposes a common API, correct? 11:17:21 11:17:25 11:17:35

A. Sorry. It says "The payment handler 105 exposes a common API to facilitate interactions with many different kinds of payment processors." 11:17:43 11:17:45 11:17:51 11:17:52

Q. Right. And so the specification in this portion doesn't explain how you'd expose a common API, correct? 11:17:54 11:17:55 11:17:58

MR. DOWNING: Objection to form. 11:18:00

A. What do you mean by how you'd expose an API? 11:18:08 11:18:10

BY MR. KANG: 11:18:10

Q. Well, this doesn't tell you how to implement exposing a common API, correct? 11:18:13 11:18:15 11:18:19

MR. DOWNING: Objection to form. 11:18:19

A. I think a person of ordinary skill in the art would understand how to implement an exposed API. 11:18:25 11:18:26 11:18:28

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BY MR. KANG: 11:18:28

Q. Okay. And so you pointed to 11:18:32

this section of the specification. What 11:18:34

is the structure that's disclosed in 11:18:38

this -- this section of the specification? 11:18:42

MR. DOWNING: Objection to form. 11:18:46

A. These two sentences provide the 11:19:09

structure in the specification. 11:19:12

BY MR. KANG: 11:19:12

Q. What is the structure? 11:19:13

A. Sorry, that was unclear. Was 11:19:26

that a question? 11:19:29

Q. You said, "These two sentences 11:19:31

provide the structure," correct? 11:19:31

A. As part of the specification, 11:19:32

yeah. 11:19:34

Q. And so what is the structure 11:19:34

that is provided by these two sentences? 11:19:35

MR. DOWNING: Objection, form. 11:19:39

A. As it says, payment handler 11:19:43

wraps APIs at different payment 11:19:46

processors, with some examples, and 11:19:50

exposes a common API to interact with many 11:19:52

different kinds of payment processors. 11:19:54

BY MR. KANG: 11:19:56

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Q. And what is a structure? Is that hardware? Is that software? What is the structure, Mr. Johnson? Is it an algorithm? What is the structure? 11:19:57 11:19:59 11:20:01 11:20:03

MR. DOWNING: Objection, form. 11:20:05

A. Yeah, it's clear this could be implemented using any combination of hardware or software. 11:20:07 11:20:12 11:20:15

Q. Okay. It could be entirely hardware; is that your testimony today? 11:20:15 11:20:17

A. So the -- the patent itself was clear that any -- that many different forms of implementations are -- are possible. 11:20:23 11:20:26 11:20:29 11:20:31

Q. So, Mr. Johnson, I'm asking you a very simple question. Can you expose a common API to facilitate interactions with many different kinds of payment processors purely in hardware? 11:20:31 11:20:33 11:20:36 11:20:39 11:20:42

MR. DOWNING: Objection to form. 11:20:43

A. Yeah, you can implement this using any combination of hardware or software, so it could be hardware; it could be software. 11:21:01 11:21:02 11:21:05 11:21:07

BY MR. KANG: 11:21:07

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Q. It could be purely hardware, correct? 11:21:07 11:21:08

A. It could be purely hardware; it could be purely software. 11:21:08 11:21:11

Q. It could be purely software on a general process -- processor, correct? 11:21:12 11:21:14

MR. DOWNING: Objection to form, misstates testimony. 11:21:16 11:21:17

A. That's a combination of hardware and software. 11:21:18 11:21:20

BY MR. KANG: 11:21:20

Q. Right. And so it could be all hardware or a combination of hardware and software, correct? 11:21:20 11:21:24 11:21:27

MR. DOWNING: Objection to form. 11:21:28

A. So this common API that's exposed could be all hardware or it could be a combination of hardware and software. 11:21:35 11:21:39 11:21:42

BY MR. KANG: 11:21:42

Q. Okay. But it could not be purely software; is that your testimony today? 11:21:44 11:21:45 11:21:47

MR. DOWNING: Objection to form. 11:21:48

A. You know -- 11:21:54

BY MR. KANG: 11:21:54

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Q. Is there something funny, Mr. Johnson? I don't know why you keep smiling at my questions. I'm just asking you, could it be entirely software? 11:21:55 11:21:57 11:21:58 11:22:00

MR. DOWNING: I'm just going to stop you. I -- I -- I just don't like that -- that comment. That's just not appropriate for the deposition. I don't think you need to be making questions and -- and poking fun at the witness' appearance. 11:22:04 11:22:05 11:22:09 11:22:12 11:22:13 11:22:15 11:22:17

MR. KANG: I'm not. He's smiling at my questions. 11:22:19 11:22:21

MR. DOWNING: You need to let me finish my -- my statement. It's just -- it's just really inappropriate. He's asking {sic} your questions. He's being very polite. I just -- I just ask respectfully that you don't -- don't make comments about his appearance or him smiling. It's -- they're just not appropriate. Please let's just go on with the deposition. 11:22:22 11:22:23 11:22:28 11:22:29 11:22:30 11:22:33 11:22:34 11:22:36 11:22:39 11:22:41 11:22:43

MR. KANG: All right. Please 11:22:43

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limit your speaking objections, 11:22:44
Counsel. 11:22:46
MR. DOWNING: It's -- it's -- 11:22:46
it's not a speaking objection, 11:22:47
Counsel. It's not an objection. 11:22:51
It's -- it's -- it's -- it's a request 11:22:54
from you related to the parameters of 11:22:54
this deposition and how this 11:22:56
deposition is going to go forward. 11:22:57
They're very, very common. I -- I -- 11:23:00
I told you specifically what the issue 11:23:01
I had and I am just asking you 11:23:02
respectfully, please, let's -- let's 11:23:04
keep this and let's move on. Let's 11:23:07
not -- let's not do this type of stuff 11:23:09
where -- where we're -- where we're 11:23:11
making comments about the witness' 11:23:12
appearance on the record. It's just 11:23:13
not appropriate. You're -- you're 11:23:15
better than that. Let's just move on. 11:23:17
BY MR. KANG: 11:23:17
Q. Mr. Johnson, can the payment 11:23:22
handler be implemented in purely software? 11:23:24
MR. DOWNING: Objection to form. 11:23:32
A. Sure. As long as there's some 11:23:37

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hardware to run that software. 11:23:39
BY MR. KANG: 11:23:39
Q. Okay. And was wrapping an API 11:23:41
well known in 2011? 11:23:46
MR. DOWNING: Objection to form. 11:23:49
A. I suppose so. 11:23:54
BY MR. KANG: 11:23:54
Q. What does it mean to wrap an 11:23:56
API? 11:23:58
A. It means providing a translation 11:24:01
interface that -- that provides the 11:24:03
functionality or some subset of 11:24:08
functionality of the API in another form. 11:24:12
Q. And so when would you use API 11:24:14
wrapping? 11:24:20
MR. DOWNING: Objection to form. 11:24:22
A. When would I use it? 11:24:27
BY MR. KANG: 11:24:27
Q. Yeah. As a person -- as an 11:24:29
expert in the payments industry, when 11:24:33
would you use API wrapping? 11:24:37
A. Whenever -- 11:24:42
MR. DOWNING: Objection to form. 11:24:43
THE WITNESS: Sorry? 11:24:44
A. Yeah, so, you know, it's a 11:24:46

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common technique, could be used to translate an API from one form to another. So I -- if I had a scenario where that was appropriate, that's what I would do. 11:24:49 11:24:54 11:24:56 11:25:01

BY MR. KANG: 11:25:01

Q. And what does it mean to expose a common API? 11:25:07 11:25:08

MR. DOWNING: Objection to form. 11:25:11

A. Exposing an API means making it available to other components or services to use. 11:25:17 11:25:20 11:25:25

BY MR. KANG: 11:25:25

Q. Okay. So what does it mean to expose a common API? 11:25:26 11:25:27

MR. DOWNING: Objection to form. 11:25:30

A. In this context, the payment handler is wrapping APIs of different payment processors and exposing a common API to facilitate interactions with those payment processors; that is, an API that wraps the APIs of different payment processors. That's -- I mean, it's pretty clear from the text. 11:25:34 11:25:37 11:25:40 11:25:43 11:25:45 11:25:49 11:25:52 11:25:54

BY MR. KANG: 11:25:54

Q. So if I understand this 11:25:55

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correctly, it would be payment handler would be exposing a common API to multiple different payment processors; is that correct? 11:25:58 11:26:01 11:26:04 11:26:06

MR. DOWNING: Objection to form. 11:26:06

A. I think you want to read the text. 11:26:10 11:26:12

BY MR. KANG: 11:26:12

Q. No -- no, Mr. Johnson. I want to understand what your opinion is so -- 11:26:14 11:26:16

A. Would you perhaps not interrupt me then? 11:26:20 11:26:22

Q. So to what entity does the payment handler expose a common API? 11:26:22 11:26:26

MR. DOWNING: Objection to form. 11:26:29

A. The text here does not specify that. 11:26:37 11:26:39

BY MR. KANG: 11:26:39

Q. Okay. And when -- so could it be a common API exposed to the payment processors? 11:26:41 11:26:49 11:26:52

A. So I think what you need to do to understand the role of the payment processor is read the -- the claims and specifications in their entirety. And -- 11:27:07 11:27:09 11:27:10 11:27:14

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Q. Does the specification of the asserted patents describe exposing a common API to multiple different payment processors? 11:27:27 11:27:30 11:27:34 11:27:36

MR. DOWNING: Objection to form. 11:27:39

A. Sorry, I had to go look at a different part of the -- the specification for a second. We were on 13, 29 through 34? 11:27:51 11:27:53 11:27:54 11:27:58

BY MR. KANG: 11:27:58

Q. Correct. 11:27:59

A. And your question was? 11:28:07

Q. Does the specification of the '386 patent describe exposing a common API to different payment processors? 11:28:08 11:28:12 11:28:17

MR. DOWNING: Objection to form. 11:28:21

A. I think we'd have to read through the specification to see all of the references. I don't recall that off the top of my head, no. 11:28:26 11:28:27 11:28:29 11:28:32

BY MR. KANG: 11:28:32

Q. Okay. You can't tell me sitting here today, correct? 11:28:34 11:28:36

A. You know -- 11:28:37

(Reporter clarification.) 11:28:37

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A. I don't know if I was doing anything other than just mumbling at that point prior to the interruption. 11:28:55 11:28:57 11:28:59

Is there a question that I should answer? 11:29:07 11:29:09

BY MR. KANG: 11:29:10

Q. You can't tell me, sitting here today, whether the specification of the '386 patent describes exposing a common API to different payment processors without reading the specification, correct? 11:29:10 11:29:17 11:29:19 11:29:22 11:29:25 11:29:27

A. Yeah -- 11:29:28

(Cross talk.) 11:29:29

MR. DOWNING: Just let me -- let me get my objection out. Objection to form, argumentative. 11:29:29 11:29:33 11:29:35

You may answer. 11:29:40

A. I was going to say, I haven't memorized the specifications. To answer that, I would want to -- I would want to check the specifications. 11:29:42 11:29:44 11:29:46 11:29:48

BY MR. KANG: 11:29:48

Q. Now, Mr. Johnson, you also, on page 17, point to '386 patent, column 4, 11:29:50 11:29:52

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line 65 to column 7, line 3 as providing structure for the function operable to interact with payment processors, correct? 11:29:58 11:30:04 11:30:07

A. So '386 patent column 4 at 65 -- line 65 through column 7, line 3 is structure if the -- the term "payment handler" or "payment handler service" is found to be a means-plus-function term. 11:30:20 11:30:25 11:30:32 11:30:36 11:30:38

THE COURT REPORTER: I'm going to need a break soon. 11:30:41 11:30:42

MR. KANG: Just a few more questions on this. 11:30:45 11:30:46

BY MR. KANG: 11:30:46

Q. Mr. Johnson, can you direct me to any portion of this range you've cited that links or associates the structure to the function you recited "operable to interact with payment processors"? 11:30:49 11:30:51 11:30:53 11:30:56 11:31:00

MR. DOWNING: Objection to form. 11:31:01

A. The -- the reference in columns 4 through 7 is to a general description -- oh, hold on -- 4 through 7, that's a lot. 11:31:22 11:31:29 11:31:34 11:31:39

It may take me a little while to just read through this. Is there -- can 11:32:14 11:32:16

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you remind me again what we were looking for? 11:32:17 11:32:19

Q. Can you direct me to any portion of this range you've cited that links or associates the structure you allege is in this portion to the function you recited, "operable to interact with payment processors"? 11:32:20 11:32:21 11:32:25 11:32:28 11:32:32 11:32:34

MR. DOWNING: Objection to form. 11:32:37

A. There may be a reference to the payment handler in this section. I'd have to go through it line by line to figure out whether there is or not. The first part of this section, though, is a general description of computing technology, which it's clear from the context, any of which could be used to implement the payment handler. 11:32:51 11:32:52 11:32:56 11:32:58 11:32:59 11:33:04 11:33:08 11:33:10 11:33:12

BY MR. KANG: 11:33:12

Q. So anything in this paragraph or this range column 4, 65 to 7, 3 could be used to implement the payment handler, correct? 11:33:14 11:33:15 11:33:20 11:33:22

MR. DOWNING: Objection. 11:33:23

A. Yeah, as I've said, the first 11:33:27

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part of that is a general description of computer technology and the patent makes it clear that any of that could be used to implement the payment handler. 11:33:29 11:33:32 11:33:33 11:33:35

BY MR. KANG: 11:33:35

Q. Okay. So it could use, you know, in column 5, it talks about many types of computer system configurations at line 25. Do you see that? 11:33:37 11:33:39 11:33:44 11:33:48

A. Uh-huh. 11:33:49

Q. And it lists, you know "many types of computer systems configurations, including personal computers, desktop computers, laptop computers, message processors, hand-held devices, multi-processing systems, processor-based, microprocessor-based or programmable consumer electronics," et cetera, et cetera. Do you see that? 11:33:56 11:34:00 11:34:02 11:34:04 11:34:04 11:34:06 11:34:09 11:34:13 11:34:15

A. Yeah. 11:34:16

Q. And your testimony, sitting here today, is that any of those could be used to implement the payment handler, correct? 11:34:16 11:34:18 11:34:20

MR. DOWNING: Objection to form. 11:34:26

A. Yeah, what I've said is this 11:34:31

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first part of the citation from columns 4 through 7 is a general description of computing technology and the patent makes it clear that you could use any combinations of these things to implement the components of the system. So some of these things could be appropriate for implementation of the payment handler. 11:34:37 11:34:41 11:34:45 11:34:46 11:34:48 11:34:50 11:34:53 11:34:54

BY MR. KANG: 11:34:54

Q. Okay. And, you know, at the bottom of column 5, starting around line 40, it talks about cloud computing. Do you see that? 11:34:56 11:35:00 11:35:04 11:35:12

A. Yes. 11:35:12

Q. And the cloud computing architecture could be used to implement the payment handler, correct? 11:35:12 11:35:14 11:35:16

A. I suppose so. 11:35:17

Q. Yeah. That could provide the structure for the -- the function operable to interact with different payment processors, right? 11:35:19 11:35:20 11:35:22 11:35:24

A. What I've said is this is a general description of computing technology and the patent makes it clear 11:35:30 11:35:32 11:35:34

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that you could use any of this to implement the -- the payment handler. 11:35:36 11:35:38

Q. Okay. And, you know, similarly, at the top of column 6, the specification talks in the first paragraph about, you know, hardware or logic components such as ASICs and SOCs. Do you see that? 11:35:40 11:35:44 11:35:49 11:35:51 11:35:54

A. Yes. 11:35:58

Q. And, again, this is a general description of computing equipment that could be the structure for the payment handler; is that correct? 11:36:01 11:36:02 11:36:04 11:36:06

A. Yeah, as I've said, this -- this section is a general description of -- of computing technology and the patent makes it clear that any of it could be used to implement the components including the payment handler. 11:36:10 11:36:16 11:36:18 11:36:20 11:36:22 11:36:24

Q. Okay. And you cite this -- 11:36:25

MR. DOWNING: Hey, I'm sorry, Robert, to interrupt you. I believe that the court reporter had a need to take a break. I just wanted to remind you of that. 11:36:31 11:36:33 11:36:35 11:36:37 11:36:38

MR. KANG: Okay. I have two 11:36:40

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more questions and hopefully I can short circuit some -- some further questioning. 11:36:42 11:36:44 11:36:47

BY MR. KANG: 11:36:47

Q. Mr. Johnson, you cite this column 4, 65 to column 7, 3 for each of the means-plus-function terms in your declaration, right? If you look at page 22, you cite it for database services; is that right? 11:36:49 11:36:50 11:36:54 11:36:58 11:37:05 11:37:13

A. Page 22? 11:37:16

Q. Yeah. 11:37:17

A. Yeah. 11:37:17

Q. And on page 25, you cite it for the business process services; is that correct? 11:37:18 11:37:21 11:37:23

A. Yeah. 11:37:23

Q. And so is your answer the same for those terms that this column 4, 65 to column 7, 3 of the '386 patent is a general description of computing hardware and any of the structures disclosed there could be used to implement each of the terms "database services" or "business process services"? 11:37:24 11:37:25 11:37:33 11:37:37 11:37:38 11:37:40 11:37:41 11:37:45

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MR. DOWNING: Objection to form. 11:37:46

A. Yeah, so as I've said, this 11:37:49
section is a general description of 11:37:52
computing technology. The patent makes it 11:37:54
clear that any of these aspects of 11:37:56
computing could be used to implement the 11:37:59
components. That would include not just 11:38:01
the payment handler, but the other 11:38:04
components that we're discussing. 11:38:06

MR. KANG: Okay. We can take a 11:38:08
break. Thank you. 11:38:10

THE VIDEOGRAPHER: Off the 11:38:12
record at 11:38 a.m. 11:38:12

(Whereupon, a brief recess is 11:38:12
taken.) 11:51:09

THE VIDEOGRAPHER: On the record 11:51:09
at 11:52 a.m. 11:51:36

BY MR. KANG: 11:51:36

Q. Mr. Johnson, I wanted you to 11:51:43
take the time to read columns 4, line 65 11:51:45
to 7, line 3, and tell me whether this 11:51:50
portion of the '386 patent specifically 11:51:56
links or associated -- associates the 11:52:02
structures described there with 11:52:05
interacting with payment processors. 11:52:07

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A. Okay. So give me a few minutes just to read through that if you like. Okay. So I've reread patent '386, columns -- column 4 at line 65 through column 7 at line 3. 11:52:15 11:52:19 11:58:00 11:58:03 11:58:07

Q. And so I'll repeat the question. Is there anything in that portion of the '386 patent specification that talks about interacting with payment processors? 11:58:10 11:58:12 11:58:13 11:58:16

A. No, not specifically. 11:58:24

Q. And since you've just read it and it's fresh in your mind, is there anything in that portion of the '386 patent specification that talks about storing financial transaction details, storing customer profiles and managing money containers? 11:58:38 11:58:40 11:58:44 11:58:49 11:58:51 11:58:52 11:58:54

A. So those phrases are not specifically in this section, but as this is a general description of computing technology, it covers storage of -- of data of many types in various forms, and it's clear from the language here that that could be used to implement the components of the -- of the system and 11:59:07 11:59:09 11:59:13 11:59:15 11:59:19 11:59:22 11:59:24 11:59:27

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including, as I take the reference to be, database services or storage services. And -- 11:59:33 11:59:35 11:59:35

Q. I'm sorry. 11:59:35

A. -- I'd say the same thing about the payment handler as well, as this describes various forms of not just computing system implementation, but communications, and those could be used to implement the payment handler as well. 11:59:39 11:59:40 11:59:44 11:59:50 11:59:52 11:59:55

Q. And when you referenced "language" here in your previous answer, do you have any specific range within the larger range that we've been looking at? 11:59:57 11:59:59 12:00:03 12:00:07

A. Sorry, what are you asking? 12:00:14

Q. You referenced "the language here" talks about storing data generally, and so I wanted to know what language were you referring to in your previous answer? 12:00:17 12:00:19 12:00:23 12:00:26

A. I wasn't referring to anything specific, but there are -- there are a number of different references within the section to data storage and processing. 12:00:31 12:00:32 12:00:34 12:00:36

Q. Can you identify them for me because this is important, Mr. Johnson? 12:00:41 12:00:44

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A. Shall we read through this one line by line? 12:00:49 12:00:51

Q. If -- I mean, you just read it, but if that's what you need to do, please do. 12:00:52 12:00:55 12:00:58

A. Well, you wanted every reference that referred to data storage; is that correct? 12:00:58 12:01:01 12:01:03

Q. Yeah. 12:01:04

A. There's a reference to data storage on -- I guess that's column 4, line 66 to 67. 12:01:17 12:01:19 12:01:23

Q. Anything else? 12:01:30

A. Well, I'm just getting started. 12:01:32

Also -- let me see the extent of this. This is column 5, starting at line 4 through -- I guess that's line 8. 12:01:44 12:01:47 12:01:53

Q. Okay. Anything else? 12:02:11

A. Let's just take all of -- sorry, which column is this? 5, column 5, lines 24 through 40, as referring to a broad range of computing devices including storage, which is mentioned specifically, but which is implicit in a number of these other devices as well. 12:02:52 12:02:56 12:03:00 12:03:04 12:03:07 12:03:09 12:03:13

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Q. Okay. Anything else? 12:03:14
A. Again, column 5, that would be 12:03:25
line 41 through 47, which talks about 12:03:32
storage in the context of cloud computing. 12:03:37
Q. Anything else? 12:03:44
A. Yeah, I guess you could expand 12:03:57
that -- expand that previous reference 12:03:59
down to at least line 54 or even line 67, 12:04:01
broadly talking about the applications of 12:04:28
cloud computing in the context in which 12:04:30
storage is one of the functions that could 12:04:32
be provided. 12:04:34
Q. Mr. Johnson, anything else in 12:04:50
this range from 4, 65 to 7, 3? 12:04:51
A. First paragraph, lines 1 through 12:04:59
10 in column 6 is referring to various 12:05:01
types of hardware, including other types 12:05:04
of hardware, presumably some of which 12:05:06
could be used for storing data. 12:05:09
Q. Anything else? 12:05:24
A. So, again, column 6, line 11 12:05:39
through 24, this paragraph is broadly 12:05:42
talking about -- 12:06:03
(Reporter clarification.) 12:06:03
A. Yes, this paragraph is talking 12:06:03

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broadly about system architectures, which also apply to the methods of database management or storage systems. 12:06:06 12:06:07 12:06:13

BY MR. KANG: 12:06:13

Q. All right, Mr. Johnson, anything else? 12:06:41 12:06:50

A. The question was specifically in regards to database services and storage systems; is that right? 12:06:50 12:07:37 12:07:41

Q. The question was, is there anything in the range that you cited that ties these computing -- this computing hardware and software to the function of storing financial transaction details, customer profiles and managing money containers? 12:07:48 12:07:50 12:07:57 12:07:58 12:08:03 12:08:05 12:08:07

A. I think those are the sections that are specific to the -- the terms that you've mentioned. 12:08:12 12:09:29 12:09:36

Q. And my final question on this section -- 12:09:43 12:09:45

(Reporter clarification.) 12:09:45

BY MR. KANG: 12:09:45

Q. And my final question on this section of the '386 patent, column 4 at 12:09:45 12:09:46

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line 65 to column 7, line 3, is there anything in this portion of the specification that links the hardware and software described here to implementing business work flows, including at least one of executing financial transactions, auditing financial traction -- transactions, invoking third-party services, handling errors and logging platform objects? 12:09:49 12:09:54 12:09:56 12:10:01 12:10:04 12:10:07 12:10:10 12:10:13 12:10:15 12:10:17

A. So column 4, I guess the citation starts at 65, but you could start at 63, if you like, through 7 -- sorry -- through column 5, line 8. So there's a general description of executable code and some references to storage media, all of which is appropriate to the implementation of the functions you've described. 12:10:50 12:10:55 12:10:58 12:11:05 12:11:23 12:11:25 12:11:27 12:11:29

Q. Okay. Anything else? 12:11:34

A. So again, columns 5, lines 9 through 23, more description -- more general description of computing, including executable code, that's appropriate to the implementation of the functions you -- you mentioned. 12:11:52 12:11:55 12:12:02 12:12:05 12:12:10 12:12:13

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Q. Okay. Anything else? 12:12:15
A. Yeah. Column 5 again. That 12:12:17
will be line 24 through 40, the next 12:12:30
paragraph, describes various types of 12:12:33
networking systems and computer systems, 12:12:37
all of which are appropriate to implement 12:12:43
the functions that you -- that you 12:12:45
mentioned. 12:12:47
Q. All right. And the functions 12:12:48
that I mentioned, to be clear, aren't in 12:12:49
the paragraph you just cited, right? 12:12:51
A. Sorry. That -- I just didn't 12:12:55
quite hear you there. 12:12:58
Q. The functions I mentioned, which 12:13:00
is implementing business work flows, isn't 12:13:05
in this range from 4, 65 to 7, 3, correct? 12:13:09
A. No, not specifically, although 12:13:17
the language in this section makes it 12:13:19
clear that it could be applied to any 12:13:21
aspect of the -- of the patents. 12:13:23
Q. Okay. All right. So let's turn 12:13:29
to some of these data flow diagrams. 12:13:32
(Reporter clarification.) 12:13:32
BY MR. KANG: 12:13:32
Q. Sorry, data flow diagrams. 12:13:32

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Now, on page 17 of your declaration, Mr. Johnson, you wrote that '386 patent figure 20-A through J provides the structure for the function that you listed for the term "payment handler" or "payment handler service," correct?

A. The reference to figures 20-A through J in patent '386 on that page of the declaration is one of the references that provides structure for the payment handler service.

Q. Okay. And not only does it provide structure for the -- the payment handler service generally, you write -- well, let me ask you this: Does the figures 20-A through J provide structure -- the structure that performs the function "operable to interact with payment processors"?

MR. DOWNING: Objection to form.

A. I just had to go have a look at a couple of other diagrams. Could I ask you to repeat the question?

BY MR. KANG:

Q. The figures 20-A through J of

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the '386 patent identified the structure that performs the function of interacting with payment processors? 12:15:32 12:15:36 12:15:39

A. Yeah, '386 -- the -- well, so the figures that I've cited for '386 include -- do describe structure for the payment handler service and -- and its function of operating -- of interacting with payment processors. 12:15:46 12:15:52 12:15:55 12:15:59 12:16:09 12:16:12

Q. What is the structure in figure 20-A? 12:16:13 12:16:15

A. It's not clear to me what you're asking. 12:16:21 12:16:23

Q. Well, there's a structure that performs the function of interacting with payment processors, correct? 12:16:24 12:16:26 12:16:29

MR. DOWNING: Objection to form. 12:16:34

A. In the citations that I've provided, yes. 12:16:37 12:16:39

BY MR. KANG: 12:16:39

Q. So that's my question, Mr. Johnson. In figure 20-A, is there a structure disclosed that you can identify that performs the function of interacting with payment processors? 12:16:41 12:16:43 12:16:47 12:16:51 12:16:55

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A. Sorry. I'm just having some technical difficulties here for a moment. Give me a second. 12:17:11 12:17:14 12:17:16

So the figures -- you were asking about figure 20-A; is that correct? 12:18:30 12:18:35

Q. Right. 12:18:38

A. So figures 20-A through 20-F need to be taken in -- taken together. 12:18:39 12:18:44

Q. Okay. 12:18:48

A. And they depict the communications between the components in the system during a deposit of funds. 12:18:50 12:18:52 12:18:53

Q. Okay. And so your opinion is the payment handler performs the function of interacting with different payment processors, right? I'm sorry, let me restate. My mistake. 12:18:58 12:19:01 12:19:05 12:19:10 12:19:18

Your opinion is that the payment handler's function is "operable to interact with payment processors"; is that correct? 12:19:19 12:19:21 12:19:23 12:19:27

A. You know, if this is a means-plus-function term, yes. 12:19:28 12:19:29

Q. Okay. And you point to figure 20-A, or 20-A through F just now, as 12:19:31 12:19:33

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providing the structure for performing that function, right? 12:19:37 12:19:39

A. Yes. 12:19:41

Q. Okay. What -- and I'll use figure 20-A as an example, but what within figure 20-A through F is the structure that performs that function? 12:19:42 12:19:45 12:19:49 12:19:52

A. Well, so I wouldn't look at 20-A in isolation. It's 20-A through F as a -- as a group. 12:19:53 12:19:57 12:20:02

Q. Okay. And what within the figure 20-A through F can you identify as structure that performs the function "operable to interact with payment processors"? 12:20:02 12:20:03 12:20:06 12:20:09 12:20:12

A. In several of the figures -- we can just go through them. Sorry. This is sideways. I have to turn that; don't I? 12:20:15 12:20:20 12:20:22

20-C shows some direct interactions with -- between business service -- business process services and payment handler. And when you take that in the context to the specification, it's clear that what the payment handler is doing is loading funds to an account or -- 12:20:26 12:20:36 12:20:40 12:20:41 12:20:43 12:20:46 12:20:48

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and providing responses in relation to that, or potentially rolling back a transaction. 12:20:54 12:20:57 12:21:00

And as it's described, the payment handler performs those operations by interacting with payment processors. 12:21:02 12:21:04 12:21:06

You could say the same for figure 20-D or 20-E. 12:21:10 12:21:13

Q. Mr. Johnson, is the payment processor depicted in any of the figures 20-A through F? 12:21:19 12:21:24 12:21:27

MR. DOWNING: Objection. 12:21:32

A. No, it's not. 12:21:33

BY MR. KANG: 12:21:34

Q. And so the example you gave me previously in 20-C, there's a line from the business process services to the payment handler, and, for example, the first one reads "Hold Funds From Agent Balance (Amount + Fee)." 12:21:40 12:21:43 12:21:50 12:21:54 12:22:00 12:22:03

Do you see that? 12:22:06

A. Yes. 12:22:08

Q. Is that what you were referring to in your previous answer? 12:22:09 12:22:11

A. Yeah, that's one of the -- the 12:22:13

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aspects of this diagram that I was referring to. 12:22:15 12:22:17

Q. Okay. So this line from business process services to payment handler and accompanying text is the structure that actually performs the function "operable to interact with payment processors"; is that your opinion? 12:22:18 12:22:20 12:22:24 12:22:27 12:22:32 12:22:37

MR. DOWNING: Objection to form. 12:22:38

A. Yeah. So what I've said is these citations provide ample structure to support the -- the definition of the terms. So not this one line within this one diagram, but all of the -- 12:22:43 12:22:45 12:22:49 12:22:52 12:22:54

(Cross talk.) 12:23:01

BY MR. KANG: 12:23:01

Q. Go ahead. 12:23:01

(Reporter clarification.) 12:23:01

A. -- but all of the citations together. 12:23:02 12:23:04

BY MR. KANG: 12:23:04

Q. Okay. So Mr. Johnson, you've told me that these lines from business process services to payment handler provide the structure, correct? 12:23:05 12:23:11 12:23:16 12:23:19

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A. I don't believe that's what I've told you. If you'd like me to restate it, what I have told you is that the citations as a whole provide the structure for payment handler. 12:23:24 12:23:25 12:23:28 12:23:30 12:23:33

Q. And what is the structure, Mr. Johnson? That's what we're all here for. 12:23:33 12:23:35 12:23:38

MR. DOWNING: Objection. Objection, argumentative. 12:23:39 12:23:40

BY MR. KANG: 12:23:40

Q. What is the structure in figures 20-A through J of the '386 patent that performs the function "operable to interact with payment processors"? 12:23:46 12:23:49 12:23:53 12:23:56

MR. DOWNING: Objection to form, asked and answered. 12:23:59 12:24:00

A. So I've described how in these figures, what we're looking at is a sequence of interactions that shows a deposit and the interactions directly with the payment handler. 12:24:07 12:24:11 12:24:13 12:24:16 12:24:19

And that's part of the -- that's part of the documentation of the structure within the specification. 12:24:21 12:24:28 12:24:29

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BY MR. KANG: 12:24:29

Q. But what is the structure? 12:24:32

MR. DOWNING: Objection to form. 12:24:35

BY MR. KANG: 12:24:40

Q. Can you point to something on -- 12:24:41

on one of the figures 20-A through J that 12:24:43

you say actually implements the payment 12:24:46

handler's function of interacting with 12:24:49

payment processors? 12:24:52

MR. DOWNING: Objection to form. 12:24:53

A. The question is, is there 12:25:01

something in these -- this is 20-A through 12:25:03

J, that specifically implements the -- the 12:25:08

payment handler's interactions with the -- 12:25:17

with the payment processors? 12:25:22

BY MR. KANG: 12:25:23

Q. Correct. 12:25:23

A. So the payment -- the patents 12:25:30

made it clear that there are a variety of 12:25:34

implementations that could be sufficient 12:25:36

to perform these functions. I don't 12:25:39

expect to find all of them or, in fact, 12:25:42

any specific one other than as a -- as an 12:25:45

example in the specification at all. 12:25:48

Q. And so is there an example of a 12:25:54

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structure that performs the function of the payment handler interact with payment processors in any of figures A through J? 12:25:59 12:26:03 12:26:06

MR. DOWNING: Objection to form. 12:26:11

A. So as I've said before, you take figures A through J, 20-A through J -- or in this case 20-A through F, which are describing the -- depicting, I should say, the deposit transaction, what they show is direct interactions between business process services and the payment handler, which is part of the definition of the structure for the payment handler. And that definition includes all of the other references that I've cited in the declaration. 12:26:19 12:26:24 12:26:28 12:26:32 12:26:36 12:26:39 12:26:41 12:26:43 12:26:44 12:26:47 12:26:49 12:26:51

BY MR. KANG: 12:26:51

Q. And so the interactions between the business process services and the payment handler in figures 20-A through J, in your opinion, provide the structure that actually performs the function of interacting with payment processors, correct? 12:26:54 12:26:56 12:26:57 12:27:02 12:27:05 12:27:07 12:27:10

MR. DOWNING: Objection to form. 12:27:11

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A. So, I can give you the same answer. These figures are part of the definition of the structure of the payment handler in the specification, and I've cited the other -- the other places that provide structure for the payment handler. 12:27:17 12:27:19 12:27:24 12:27:26 12:27:28 12:27:32

BY MR. KANG: 12:27:33

Q. So, Mr. Johnson, I'm asking only about figures 20-A through J. 12:27:33 12:27:37

Do you understand that? 12:27:41

A. I thought your previous question was asking me if -- if it was my particular opinion about something, and so I've given you my opinion as it says in the declaration. 12:27:42 12:27:44 12:27:46 12:27:48 12:27:50

Q. I'm asking you your opinion about figures 20-A through J. 12:27:51 12:27:54

Do you understand? 12:27:58

A. Yes. 12:27:59

Q. Okay. What can you identify in figures 20-A through J is structure for performing the function of the payment handler that you have identified "operable to interact with payment processors"? 12:27:59 12:28:07 12:28:10 12:28:14 12:28:15

MR. DOWNING: Objection to form. 12:28:19

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A. Yeah, as I've said, these diagrams show the direct interactions with -- between business process services and payment handler. There might be some interactions with other components. I'd have to double-check that, but in the context of performing a deposit transaction, that provides part of the definition of the structure for the payment handler in -- in the context of its role of interacting with payment processors. 12:28:23 12:28:25 12:28:28 12:28:29 12:28:31 12:28:33 12:28:38 12:28:40 12:28:41 12:28:44 12:28:46 12:28:50

BY MR. KANG: 12:28:50

Q. And so when the payment handler interacts with payment processors, that is performed by messages exchanged between the business process services and payment handler; is that correct? 12:28:55 12:28:58 12:29:02 12:29:05 12:29:08

MR. DOWNING: Objection to form. 12:29:09

A. What we have here in the specification, looking at figures 20-A through F, is a depiction of the interactions between business process services and payment handler in the context of performing a deposit, and 12:29:15 12:29:16 12:29:20 12:29:22 12:29:24 12:29:26

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that's what the diagrams show. 12:29:29
BY MR. KANG: 12:29:31
Q. And where does it show 12:29:32
interacting with payment processors? 12:29:34
MR. DOWNING: Objection to form. 12:29:39
BY MR. KANG: 12:29:39
Q. You testified earlier that the 12:29:42
payment processor is not even in figures 12:29:44
20-A through J, correct? 12:29:46
A. Correct. 12:29:48
Q. Right. And so where does figure 12:29:49
20-A through J show interacting with 12:29:51
payment processors? 12:29:58
A. Payment processor is not present 12:29:58
in these diagrams. 12:30:02
Q. So does figure 20-A through J 12:30:05
show interacting with payment processors 12:30:09
through the payment handler? 12:30:11
MR. DOWNING: Objection to form. 12:30:13
A. Figures 20-A through J show the 12:30:20
interactions between business process 12:30:24
services and payment handler. 12:30:26
BY MR. KANG: 12:30:28
Q. I think you're answering a 12:30:28
slightly different question, Mr. Johnson. 12:30:29

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I'm asking you: Do figures 20-A through J of the '386 patent show the payment handler interacting with payment processors? 12:30:31 12:30:34 12:30:38 12:30:41

A. Would you like the answer to the question, or do you want to interrupt me? 12:30:41 12:30:42

Q. Mr. Johnson, please answer the question. 12:30:44 12:30:46

MR. DOWNING: Objection to form. 12:30:49

THE WITNESS: So -- sorry? 12:30:52

MR. DOWNING: You may answer. 12:30:53

A. Yeah, I am, happy to. 12:30:56

So figures 20-A through -- A through F in this particular case are -- are showing interactions between business process services and payment handler in the context of the payment handlers' interactions with payment processors. 12:31:00 12:31:05 12:31:08 12:31:11 12:31:14 12:31:16

BY MR. KANG: 12:31:16

Q. But there's no payment processor in figures 20-A through J, correct? 12:31:18 12:31:19

A. Correct. 12:31:23

Q. And there's no -- when the '386 patent describes figures 20-A through J in the specification, it doesn't mention a 12:31:25 12:31:31 12:31:35

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payment processor, correct? 12:31:39
MR. DOWNING: Objection to form. 12:31:39
A. I don't know. We'd have to have 12:31:40
a look. 12:31:42
BY MR. KANG: 12:31:42
Q. You didn't look in forming your 12:31:43
opinion for this Declaration? 12:31:45
MR. DOWNING: Objection to form. 12:31:46
Argumentative. 12:31:47
A. You know, I've read the patents. 12:31:53
I've read the specifications and the 12:31:54
claims, and that's what I used to inform 12:31:56
my opinions. 12:31:58
BY MR. KANG: 12:31:58
Q. Now, you also testified -- 12:32:01
sorry. 12:32:03
You also opine in your 12:32:04
declaration at paragraph 55 that the 12:32:05
claims themselves provide structure for 12:32:07
the payment handler; is that correct? 12:32:12
A. Sorry. You're referring to a 12:32:17
paragraph. Can you just repeat the 12:32:19
question? 12:32:21
Q. Paragraph 55 of Exhibit 2, 12:32:21
Mr. Johnson. 12:32:23

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A. And can you repeat the question? 12:32:30
Q. Your opinion, Mr. Johnson, is 12:32:32
that the claims themselves provide the 12:32:35
structure that performs the function of 12:32:40
the payment handler, correct? 12:32:43
A. As I said before, the claims 12:32:46
provide structure for the payment handler 12:32:49
in addition to the specification and I've 12:32:50
cited the references for that in the -- 12:32:53
the top of that section D on page 17. 12:32:56
Q. Right. And so my point is, even 12:32:59
if the specification didn't say anything, 12:33:03
your opinion is that the claims themselves 12:33:05
provide sufficient structure for the 12:33:08
structures that perform the function of 12:33:13
the payment handler, correct? 12:33:16
MR. DOWNING: Objection, form. 12:33:19
A. Yeah. I really only provided 12:33:21
opinions on the patents as they are, not 12:33:23
hypothetically about what they might be if 12:33:25
they were written differently. 12:33:28
BY MR. KANG: 12:33:28
Q. Mr. Johnson, do the claims alone 12:33:30
provide sufficient structure for the 12:33:32
payment handler? 12:33:35

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MR. DOWNING: Objection to form. 12:33:36
A. As I've said, I've -- my 12:33:39
opinions are about the patents as a whole. 12:33:41
BY MR. KANG: 12:33:41
Q. You can't answer that, sitting 12:33:44
here today, you don't have an opinion? 12:33:45
MR. DOWNING: Objection to form, 12:33:48
argumentative. 12:33:49
BY MR. KANG: 12:33:49
Q. If you don't have an opinion, 12:33:51
that's fine, Mr. Johnson. My question is, 12:33:53
do you have an opinion one way or the 12:33:56
other whether the claims of the '386 12:33:57
patent alone provide sufficient structure 12:34:00
for the payment handler term? 12:34:03
MR. DOWNING: Objection to form, 12:34:09
argumentative. 12:34:10
A. Yeah, can I ask you to repeat 12:34:17
that question? 12:34:19
BY MR. KANG: 12:34:19
Q. Are you providing an opinion one 12:34:20
way or the other on whether the claims 12:34:23
alone of the '386 patent provide 12:34:26
sufficient structure for the payment 12:34:30
handler term? 12:34:35

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A. My opinion, I think in the declaration is pretty clear, and what I've said is that when the limitation, that is the claims are read in view of the remaining claim language, including the other claim components and specifications, it provides sufficient structural meaning. That's my opinion. 12:34:45 12:34:47 12:34:51 12:34:56 12:34:57 12:35:00 12:35:02 12:35:05

Q. Have you read your declaration, Mr. -- Mr. Johnson? 12:35:07 12:35:09

A. Yes. 12:35:11

MR. DOWNING: Objection to form, argumentative. 12:35:12 12:35:13

BY MR. KANG: 12:35:13

Q. All right. So when was the last time you read your declaration before you -- before you sat for this deposition? 12:35:14 12:35:17 12:35:18

A. I don't recall if I did this morning or just last night. It could have been either. 12:35:30 12:35:31 12:35:35

Q. This is not the first declaration you've submitted in this case, right? 12:35:37 12:35:39 12:35:41

A. I'm sorry, no, this is the -- well, so, okay, there's a previous version 12:35:46 12:35:48

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of this declaration that's been submitted, but this is the first declaration. 12:35:50 12:35:53

Q. So this is your amended declaration, Exhibit 2; is that correct? 12:35:56 12:35:58

A. Correct, yeah. 12:36:00

Q. All right. 12:36:01

MR. DOWNING: Hey, Robert, just a heads up, we're six minutes past, I think, our 12:30 agreed-upon break for lunch. 12:36:03 12:36:05 12:36:08 12:36:10

THE WITNESS: Yeah, thank you for that. 12:36:10 12:36:11

MR. KANG: All right. We can take a break. How long do you guys want? 12:36:13 12:36:14 12:36:17

THE COURT REPORTER: Can we go off the record? 12:36:18 12:36:19

MR. KANG: Sure. 12:36:20

THE VIDEOGRAPHER: Off the record, 12:36 p.m. 12:36:20 12:36:21

(Whereupon, a brief recess is taken.) 12:36:21 13:09:14

THE VIDEOGRAPHER: On the record at 1:09 p.m. 13:09:14 13:09:22

BY MR. KANG: 13:09:22

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Q. Sorry about that. 13:09:26

Mr. Johnson, if you could turn 13:09:28

to paragraph 55 of your declaration, 13:09:30

Exhibit 2. You write that "The claims 13:09:33

themselves describe how the Payment 13:09:52

Handler operates within the claimed 13:09:57

invention [as] to achieve its objectives." 13:09:58

Do you see that? 13:10:01

A. Sorry, I was just catching up. 13:10:05

Which paragraph? 13:10:07

Q. Paragraph 55. 13:10:10

A. Oh. Yeah. 13:10:12

Q. What did you mean by "achieve 13:10:24

its objectives"? What is the objective of 13:10:26

the payment handler? 13:10:32

MR. DOWNING: Objection to form. 13:10:33

A. Yeah, I think you can find the 13:10:36

objective -- pardon me -- of the payment 13:10:38

handler in the claims and the 13:10:45

specification described above that if -- 13:10:47

if we're considering this as a 13:10:52

means-plus-function term, then the 13:10:54

function is operable to interact with 13:10:56

payment processors. 13:10:59

BY MR. KANG: 13:10:59

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Q. So is the objective of the payment handler the same as the function that you've defined? 13:11:00 13:11:02 13:11:04

MR. DOWNING: Objection to form. 13:11:06

A. If you read that whole sentence, it refers to the entire claims and the entire specification and that's what is necessary to provide the -- the structural meaning for the payment handler. 13:11:12 13:11:17 13:11:23 13:11:27 13:11:31

BY MR. KANG: 13:11:31

Q. Yeah, I'm not asking about the structural meaning at this point. You just said the payment handler has objectives, right, in this paragraph 55? It says "The claims themselves describe how the Payment Handler operates within the claimed invention to achieve its objectives." I'm just trying to find out what you're referring to by "its objectives" here. 13:11:32 13:11:34 13:11:35 13:11:39 13:11:43 13:11:47 13:11:49 13:11:52 13:11:54 13:11:56

MR. DOWNING: Objection to form, argumentative. 13:11:58 13:12:00

A. So what's important is to look at the entire context of that sentence as I wrote it in the declaration, that the 13:12:06 13:12:09 13:12:11

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claimed objectives of the -- sorry -- the objectives of the payment handler are apparent in the claim language and the specification. 13:12:16 13:12:19 13:12:26 13:12:29

BY MR. KANG: 13:12:29

Q. Okay. Mr. Johnson, I didn't ask whether they're apparent or where they're apparent. 13:12:31 13:12:33 13:12:35

A. Uh-huh. 13:12:36

Q. You wrote this sentence, right, that the payment handler -- "The claims describe how the payment handler operates within the claimed invention to achieve its objectives." You wrote that, right? 13:12:36 13:12:39 13:12:42 13:12:44 13:12:47

A. I'm going to ask you to clarify that question since you're asking about a sentence. 13:12:53 13:12:55 13:12:57

Q. Yeah. You wrote this, the latter part of this sentence "The claims themselves describe how the Payment Handler operates within the claimed invention to achieve its objectives," correct? 13:12:58 13:13:00 13:13:02 13:13:05 13:13:07 13:13:10

A. Yes, I wrote that phrase as part of a broader sentence in which the rest of 13:13:11 13:13:17

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the sentence is important to understand the meaning of that phrase. 13:13:19 13:13:21

Q. And so what did you mean by "its objectives"? 13:13:22 13:13:24

A. The objectives of the payment handler are described in the claims and with the context of the remaining claim language and the rest of the specification. 13:13:27 13:13:29 13:13:35 13:13:37 13:13:39

Q. Can you articulate to me what the objective of the payment handler is? 13:13:40 13:13:42

MR. DOWNING: Objection to form. 13:13:45

A. I would refer back to the claim language and the specification. 13:13:46 13:13:52

BY MR. KANG: 13:13:52

Q. Okay. So you can't articulate what the objective of the payment handler is that you refer to in this paragraph 55 without referring back to the claims in the specification? 13:13:53 13:13:55 13:13:57 13:14:00 13:14:02

MR. DOWNING: Objection to form, argumentative. 13:14:03 13:14:04

A. As I've said, I would refer back to the claims and the specification. 13:14:08 13:14:10

BY MR. KANG: 13:14:10

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Q. Okay. Now, the payment handler can perform several different operations, right? 13:14:12 13:14:15 13:14:18

A. Yes. 13:14:21

Q. Okay. One of them you put the bullet point here is "holding funds from the agent account balance," correct? 13:14:22 13:14:24 13:14:26

A. Yes. 13:14:31

Q. And another one is "loading the funds to the subscriber account using the" -- I'm sorry. Another -- let me start over. 13:14:31 13:14:33 13:14:35 13:14:38

Mr. Johnson, another operation the payment handler performs is "loading the funds to the subscriber account," correct? 13:14:40 13:14:42 13:14:45 13:14:47

A. Yes. 13:14:47

Q. Okay. And can the payment handler hold funds or load funds without interacting with a payment processor? 13:14:50 13:14:55 13:15:00

MR. DOWNING: Objection to form. 13:15:05

A. That's not something I considered in detail. I'd have to go back and look at the -- the patent claims and the specifications to determine that. 13:15:06 13:15:12 13:15:14 13:15:16

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BY MR. KANG: 13:15:16

Q. Okay. So you haven't considered that question, correct? 13:15:18 13:15:20

A. Sorry. Was that a question or a statement? 13:15:25 13:15:27

Q. Yeah. You have not considered that question, correct? 13:15:28 13:15:29

A. Yeah, I have not considered that particular question in detail, but I'd be happy to consider it. 13:15:32 13:15:33 13:15:36

Q. Okay. Now, on page 21 in the first paragraph, you write in the third sentence "The '386 and '413 patents reasonably inform a POSITA about the structure of the claimed payment handler and the operations and algorithm involved in performing the recited functions." 13:15:37 13:15:42 13:15:51 13:15:57 13:16:00 13:16:02 13:16:05

Do you see that? 13:16:08

A. Yes. 13:16:08

Q. Okay. And what is the algorithm you refer to in this sentence? 13:16:09 13:16:11

A. So we've talked about this before, that with the text and the specification and the depictions in the diagrams, it's clear that the payment 13:16:18 13:16:22 13:16:28 13:16:32

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handler is performing certain operations and that those operations are part of an algorithm that -- that performs certain functions. 13:16:35 13:16:37 13:16:40 13:16:42

Q. And where is the algorithm disclosed in the, for example, the '386 patent? 13:16:43 13:16:45 13:16:49

MR. DOWNING: Objection to form. 13:16:49

A. So there are various places in the '386 patent that refer to the payment handler including in the specifications and the diagrams and, indeed, in the claims, and all of those are important to understand the algorithm that the payment handler performs. 13:16:56 13:16:58 13:17:00 13:17:01 13:17:05 13:17:07 13:17:13

BY MR. KANG: 13:17:13

Q. Is it your testimony, Mr. Johnson, that there's no one place where the algorithm you referred to here on page 21 is disclosed? 13:17:14 13:17:16 13:17:17 13:17:19

MR. DOWNING: Objection to form. 13:17:21

A. So as I've cited above, there are various places where the -- the structure or the payment handler is described and those references will all be 13:17:26 13:17:30 13:17:36 13:17:39

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important to understand the algorithm of the payment handler. 13:17:41 13:17:43

BY MR. KANG: 13:17:43

Q. So you're referring to an algorithm, right, Mr. Johnson, in your previous answer? You said those sections would be important to understanding the algorithm of the payment handler, correct? 13:17:47 13:17:49 13:17:52 13:17:53 13:17:56

A. Yes. 13:17:59

Q. Where in the '386 patent is the algorithm disclosed? 13:17:59 13:18:04

A. In several places in the claims and specifications. 13:18:05 13:18:11

(Cross talk.) 13:18:11

BY MR. KANG: 13:18:11

Q. Can you please point out where the algorithm is disclosed in the '386 patent? 13:18:15 13:18:17 13:18:20

A. I believe I just did that for you except that you interrupted me. 13:18:24 13:18:26

Q. Please do it again. 13:18:29

MR. DOWNING: Objection to form. 13:18:35

A. So -- 13:18:40

MR. DOWNING: Just -- just -- just to clarify for the record, which 13:18:44 13:18:45

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question is he answering? 13:18:47
BY MR. KANG: 13:18:47
Q. Please identify for me where in 13:18:50
the '386 patent specification the 13:18:51
algorithm is disclosed? 13:18:54
MR. DOWNING: Objection to form. 13:18:58
A. So as I've said, the citations I 13:19:08
provided above are all important to 13:19:10
understand the algorithm of the payment 13:19:11
handler. 13:19:11
BY MR. KANG: 13:19:11
Q. And when you say citations you 13:19:15
provided above, you're referring to the 13:19:18
table on page 17 of your declaration? 13:19:19
A. Yes. 13:19:21
Q. Okay. And tell me one of those 13:19:24
citations that describes the algorithm 13:19:27
that you referred to on page 21? 13:19:29
MR. DOWNING: Objection to form. 13:19:32
A. There's actually a stated 13:19:37
premise in the question that I don't agree 13:19:40
with. 13:19:41
BY MR. KANG: 13:19:41
Q. And what is that premise, 13:19:44
Mr. Johnson? 13:19:46

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A. That there is one reference that -- that defines the algorithm. 13:19:47 13:19:49

Q. Okay. So you -- you agree there is an algorithm, right, for the payment handler? 13:19:51 13:19:53 13:19:56

A. Uh-huh. 13:19:56

Q. Is there more than one algorithm? 13:19:58 13:19:59

A. There may be, I believe. 13:20:05

Q. How many algorithms for the payment handler in your opinion are present in the specification of the '386 patent? 13:20:08 13:20:10 13:20:12 13:20:17

THE COURT REPORTER: Did you object? Was there an objection? 13:20:24 13:20:24

MR. DOWNING: Yeah, that was -- that was me, John Downing, objecting to form. 13:20:25 13:20:27 13:20:32

You -- you may answer, Mr. Johnson. 13:20:37 13:20:38

A. Yeah, happy to. 13:20:39

You know, I don't believe the specification makes it clear that there's any particular number of algorithms that are necessary for the payment handler to 13:20:42 13:20:44 13:20:46 13:20:48

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be implemented. 13:20:53
BY MR. KANG: 13:20:53
Q. The specification in your 13:20:54
opinion, Mr. Johnson, discloses at least 13:20:55
one algorithm, right? 13:20:57
A. Yes. 13:20:59
Q. And in your opinion, your 13:21:02
testimony -- sorry. Your testimony today, 13:21:04
Mr. Johnson, is that the specification 13:21:06
could disclose more than one algorithm for 13:21:08
the payment handler, correct? 13:21:11
A. Correct. 13:21:13
Q. Can you identify by column and 13:21:17
line number where the algorithm for the 13:21:20
payment handler is disclosed in the '386 13:21:24
patent? 13:21:27
A. Sure. 13:21:29
Q. Please do. 13:21:31
A. So in the '386 patent, the 13:21:39
algorithm for the payment handler is 13:21:42
disclosed in claims 1 through 3, in patent 13:21:44
figure 1, patent figures 20-A through J, 13:21:50
21-A through J, 22-A through J, and you 13:21:57
asked specifically -- well, I guess we 13:22:08
have to include these things too, also in 13:22:10

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associated provisional application since 13:22:14
that's included by reference, figures 2-A 13:22:16
through E, 7-A through E, 8-A through I, 13:22:20
9-A through J -- G, pardon me, 11-A 13:22:30
through J, and the other figures 1 13:22:38
through 11, and then as well in the '386 13:22:42
patent, column 13, lines 29 to 34, and as 13:22:48
we discussed in detail, '386 patent 13:22:54
column 4, lines 65 through 7, line 3. 13:22:58
Q. All right. Mr. Johnson, you 13:23:03
just read to me your listing of structure 13:23:04
in page 17, right? 13:23:06
A. Yeah. 13:23:11
Q. So you'd agree that any 13:23:11
component that is operable to interact -- 13:23:18
well, let me -- let me start over. 13:23:26
Would you agree that not every 13:23:28
single component that is operable to 13:23:30
interact with payment processors infringes 13:23:33
the payment handler limitation of the 13:23:37
asserted claims? 13:23:40
MR. DOWNING: Objection to form, 13:23:42
outside the scope. 13:23:44
A. Yeah, I haven't been asked to 13:23:46
consider, you know, infringement arguments 13:23:48

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that would be brought in any way, so. 13:23:53
BY MR. KANG: 13:23:53
Q. Mr. Johnson, I'm just telling -- 13:23:56
I'm just asking you, are you saying that 13:23:58
all you need to satisfy your construction, 13:24:00
if this is a means-plus-function term, is 13:24:04
a component operable to interact with 13:24:08
payment processors? 13:24:12
MR. DOWNING: Objection to form. 13:24:13
A. Yeah, so, no, I'm not saying 13:24:19
that. 13:24:21
BY MR. KANG: 13:24:21
Q. Okay. And so if you're -- there 13:24:23
are -- a component has to do more or it 13:24:28
has to have more than just the ability to 13:24:30
interact with payment processors to 13:24:32
satisfy your construction under the 13:24:34
means-plus-function regime, correct? 13:24:37
MR. DOWNING: Objection to form. 13:24:41
A. So I think I've been pretty 13:24:48
clear about what the -- the -- the 13:24:50
construction under means-plus-function 13:24:52
would be, the function statement is clear 13:24:55
and the references to structure in the 13:24:58
patents are clear. 13:25:01

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BY MR. KANG: 13:25:01

Q. So I would disagree, 13:25:03

Mr. Johnson, but that's fine. 13:25:05

What would someone -- what does 13:25:06

a payment handler have to do to satisfy 13:25:09

your construction? 13:25:13

MR. DOWNING: Objection to form, 13:25:15

argumentative. 13:25:17

A. So -- sorry -- was there an 13:25:22

interruption? No. Yeah, so a payment 13:25:26

handler has to satisfy the claims and -- 13:25:33

and do so in a way that's consistent with 13:25:36

the specifications in the patents. 13:25:38

BY MR. KANG: 13:25:38

Q. So we agree that the payment 13:25:41

handler -- if you have a component that's 13:25:45

operable to interact with payment 13:25:46

processors, that alone is not enough to 13:25:49

satisfy your construction of 13:25:51

means-plus-function, correct? 13:25:55

MR. DOWNING: Objection to form. 13:25:57

A. I'm not quite sure what that 13:26:03

question was about. 13:26:04

BY MR. KANG: 13:26:04

Q. I'm asking about your 13:26:06

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construction for the term "payment handler" under means-plus-function, Mr. Johnson. 13:26:07 13:26:09 13:26:11

A. Uh-huh. 13:26:12

Q. If we have a piece of software and it is operable to interact with payment processors; are you with me? 13:26:12 13:26:15 13:26:18

A. Okay. 13:26:20

Q. Is that enough information for you to determine whether it meets your means-plus-function construction for the term "payment handler"? 13:26:20 13:26:23 13:26:27 13:26:30

MR. DOWNING: Objection to form. 13:26:32

A. So I would look to both the claims and the specifications in their entirety to determine if -- if that met the definition of the payment handler. 13:26:35 13:26:38 13:26:40 13:26:45

BY MR. KANG: 13:26:45

Q. Would you need to know anything else about the software to see whether it meets your construction of the term "payment handler" under the means-plus-function regime? 13:26:46 13:26:49 13:26:52 13:26:57 13:26:58

MR. DOWNING: Objection to form, misstates testimony. 13:27:01 13:27:02

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A. The question appears to be vague. I'm not sure what you're asking for. 13:27:08 13:27:09 13:27:11

BY MR. KANG: 13:27:11

Q. So I have a component that it's a combination of hardware and software and it interacts with payment processors, right; are you with me? 13:27:12 13:27:14 13:27:18 13:27:20

A. Okay. 13:27:21

Q. Does that meet your construction of payment handler under means-plus-function? 13:27:22 13:27:24 13:27:26

A. I don't know. I would need to -- I'd need to know whether that particular component met the claims in the patents in -- in a way that is consistent with the specifications. 13:27:29 13:27:30 13:27:33 13:27:38 13:27:42

Q. What would you need to know about that component? 13:27:43 13:27:46

MR. DOWNING: Objection to form. 13:27:50

A. You know, I would want to know if it performs the -- the tasks that are identified in the claims and if it -- and if it's -- if it does those things in a way that's consistent with the 13:27:56 13:27:58 13:28:01 13:28:06 13:28:09

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specifications. 13:28:10
BY MR. KANG: 13:28:10
Q. Would you need to know the 13:28:13
internal structure of the component to 13:28:14
determine whether it meets your 13:28:17
construction under means-plus-function of 13:28:19
the term "payment handler"? 13:28:22
MR. DOWNING: Objection to form, 13:28:25
outside the scope. 13:28:25
A. Yeah, it's -- 13:28:28
MR. KANG: Please stop coaching 13:28:30
your witness. 13:28:31
MR. DOWNING: Sorry, Robert. 13:28:32
Under the Western District of Texas, 13:28:34
the OGP, I'm allowed to make an 13:28:37
objection and a short objection also 13:28:41
to clarify the purpose of my 13:28:43
objection. 13:28:44
If you want to challenge that, 13:28:45
I'm happy to discuss, you know, why -- 13:28:46
why I feel that way, but otherwise, 13:28:49
I'm going to continue making my 13:28:51
objections consistent with, you know, 13:28:53
what the court sets out for these 13:28:55
types of depositions. 13:28:57

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MR. KANG: I just note for the record every time you've objected outside of the scope, even when we're discussing Mr. Johnson's opinions on claim construction, he declines to answer. 13:28:58 13:28:59 13:29:01 13:29:04 13:29:06 13:29:09

BY MR. KANG: 13:29:09

Q. Now, Mr. Johnson -- 13:29:09

MR. DOWNING: So, Robert -- Robert, I won't -- I won't agree with you. I will note that you specifically asked him a question about infringement, and I believe you're asking him about -- a question about infringement. 13:29:10 13:29:13 13:29:14 13:29:15 13:29:17 13:29:19 13:29:20

As you know, this is a claim construction deposition. We don't have expert reports on infringement and things like invalidity, and so I'm trying to give you my -- you know, the basis because what I believe you're doing is -- is, you know, basically challenging my objections. And I don't want you to -- you know, to defame Mr. Johnson. I don't think 13:29:21 13:29:22 13:29:26 13:29:27 13:29:29 13:29:31 13:29:33 13:29:36 13:29:37 13:29:41

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that that's what he's doing. 13:29:43
I just think that you need to 13:29:45
clean up your questions a little bit, 13:29:46
and we can just move on and continue 13:29:47
this deposition. 13:29:49
BY MR. KANG: 13:29:49
Q. Mr. Johnson, outside of knowing 13:29:52
that a component which interacts with 13:29:56
payment processors performs the steps of 13:30:01
loading and holding funds, what else do 13:30:05
you need to know about that component in 13:30:09
order to determine whether it satisfies 13:30:13
the structures you have identified on 13:30:16
page 17? 13:30:20
MR. DOWNING: Objection to form. 13:30:22
A. Yeah, look, this is all 13:30:25
hypothetical. If you have something 13:30:27
specific that you'd like me to review at 13:30:28
some point, I'd be happy to do so, but I 13:30:31
haven't done so yet. 13:30:34
BY MR. KANG: 13:30:35
Q. Mr. Johnson, you understand that 13:30:36
in order to satisfy a means-plus-function 13:30:37
claim limitation, the function must be met 13:30:41
and the structure and corresponding 13:30:44

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equivalent must also be met, correct? 13:30:46
A. That sounds right to me. 13:30:50
Q. Okay. And so I'm asking you, 13:30:51
how does one determine whether a component 13:30:53
satisfies this list of structures that 13:30:58
you've provided? What does a payment 13:31:02
handler need beyond the ability to operate 13:31:05
or interact with payment processors to 13:31:08
satisfy this construction? 13:31:11
MR. DOWNING: Objection to form. 13:31:14
A. Yeah. So I would look again to 13:31:18
the claims and the specification to see if 13:31:20
a particular component satisfied those 13:31:22
requirements. 13:31:25
BY MR. KANG: 13:31:25
Q. You would not look to see if the 13:31:25
structure that you've identified here on 13:31:27
page 17 is satisfied or present in the 13:31:29
component? 13:31:33
A. Those structures are indeed in 13:31:37
the specification and in the claims. I 13:31:39
would be looking to those, yes. 13:31:42
Q. Okay. And so let's say I have a 13:31:43
component that interacts with payment 13:31:46
processors. 13:31:54

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How would you determine that the structure in '386 patent figure 1 is satisfied? 13:31:54 13:31:57 13:31:59

A. Again, it's a hypothetical question. If you have a specific component, I'd be happy to look at it at some point. 13:32:05 13:32:06 13:32:08 13:32:10

Q. So sitting here today, you can't tell me how you would do that? 13:32:11 13:32:13

MR. DOWNING: Objection to form. 13:32:16

A. Yeah, as I said, I'm happy to look at a specific component, if there's something you'd like me to look at. 13:32:19 13:32:21 13:32:24

BY MR. KANG: 13:32:25

Q. Okay. And just so I'm clear on your opinion, you've listed all of these structures in page 17 of your expert declaration. 13:32:25 13:32:28 13:32:33 13:32:35

Do all of these structures need to be present for a device to satisfy your means-plus-function construction of payment handler? 13:32:37 13:32:38 13:32:42 13:32:45

MR. DOWNING: Objection to form. 13:32:47

A. So, once again -- first off, what we're looking at here is claim 13:32:51 13:32:58

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construction, not infringement arguments. 13:33:01
I'm going to look to the claims in the 13:33:06
structure -- sorry, claims and 13:33:08
specification to determine whether 13:33:09
something meets those requirements. 13:33:11
BY MR. KANG: 13:33:12
Q. Mr. Johnson, I'm trying to 13:33:13
understand the contours of your 13:33:14
construction, right? 13:33:16
Let me ask you this: If a 13:33:17
device that interacts with payment 13:33:21
processors performs only the structure of 13:33:25
figure 20-A, is that sufficient to meet 13:33:31
your construction? 13:33:35
MR. DOWNING: Objection to form, 13:33:37
outside the scope. 13:33:38
A. Yeah, so once again, this is 13:33:41
hypothetical. If there is a specific 13:33:43
device that you'd like me to look at, I'd 13:33:45
be happy to do so. 13:33:47
BY MR. KANG: 13:33:48
Q. So how does one know if their 13:33:49
payment handler practices this claim? 13:33:51
MR. DOWNING: Objection to form, 13:33:55
outside the scope, calls for -- 13:33:56

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BY MR. KANG: 13:33:59

Q. I just want to know if you have a device that interacts with payment processors, whether it meets your construction. 13:33:59 13:34:01 13:34:03 13:34:04

MR. DOWNING: Objection to form, outside the scope. 13:34:05 13:34:06

A. Sorry, I'm not sure what the question was there. 13:34:11 13:34:13

BY MR. KANG: 13:34:13

Q. How does someone know if they have a device that interacts with payment processors, whether it satisfies your means-plus-function construction for payment handler? 13:34:15 13:34:18 13:34:23 13:34:27 13:34:31

MR. DOWNING: Objection to form, outside the scope. 13:34:32 13:34:32

A. And what I've said is, look at the -- the claims and the specifications in the patent. 13:34:36 13:34:39 13:34:42

BY MR. KANG: 13:34:42

Q. Right. And, Mr. Johnson, you're telling me -- can you tell me one thing that a payment handler must have in order to meet your construction under 13:34:44 13:34:48 13:34:50 13:34:52

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means-plus-function? 13:34:55

A. Sure. One thing is that it must 13:34:59

satisfy the claims in accordance with the 13:35:03

specifications of the patents. 13:35:05

Q. Mr. Johnson, does a payment 13:35:06

handler have to have a processor under 13:35:15

your construction? 13:35:19

MR. DOWNING: Objection to form, 13:35:21

outside the scope. 13:35:22

A. The question is actually 13:35:27

unclear. 13:35:29

BY MR. KANG: 13:35:29

Q. What is unclear about that 13:35:30

question, Mr. Johnson? 13:35:31

A. Well, what do you mean by 13:35:34

"processor"? 13:35:35

Q. A computer -- a micro -- a 13:35:36

microprocessor. 13:35:38

MR. DOWNING: Same objection. 13:35:41

A. You know, I think the patent's 13:35:44

clear that you can implement these things 13:35:46

in various forms, combinations of 13:35:48

hardware, software. 13:35:51

BY MR. KANG: 13:35:51

Q. Does the payment handler need to 13:35:53

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use APIs to meet your means-plus-function construction, Mr. Johnson? 13:35:55 13:35:57

MR. DOWNING: Objection to form. 13:36:01

A. So one of the claims does specify that the payment handler service is operable to use APIs, yes. 13:36:14 13:36:15 13:36:17

BY MR. KANG: 13:36:17

Q. Okay. And not just use APIs, a payment handler has to, for two of the claims, expose a common API, correct? 13:36:19 13:36:26 13:36:30

A. I don't recall exactly the language of that claim, but I suppose we could -- 13:36:39 13:36:40 13:36:43

(Cross talk.) 13:36:45

MR. DOWNING: Sorry, Mr. Johnson, can you finish your answer, please? 13:36:46 13:36:47 13:36:49

THE WITNESS: Yeah. 13:36:51

A. I -- I was going to say I don't recall the exact language of the claims, but I'm happy to go over it with you if you'd like. 13:36:54 13:36:58 13:36:59 13:37:01

BY MR. KANG: 13:37:01

Q. Mr. Johnson, to satisfy your construction under means-plus-function for 13:37:02 13:37:03

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the term payment handler, does a device that operates -- that is operable to interact with payment processors require memory? 13:37:06 13:37:10 13:37:13 13:37:16

MR. DOWNING: Objection to form. 13:37:16

A. So once again, the patent's pretty clear that this invention could be implemented using a variety of different computing technologies. 13:37:21 13:37:26 13:37:29 13:37:31

BY MR. KANG: 13:37:31

Q. And so is your answer yes or no? 13:37:35

A. That could mean -- 13:37:40

MR. DOWNING: Objection to form. 13:37:40

(Cross talk.) 13:37:46

(Reporter clarification.) 13:37:46

A. Yeah. The question was: Is the answer yes or no, and what I said was that it may include using memory or it may not because the -- this could be implemented in a variety of different ways. 13:37:50 13:37:52 13:37:57 13:38:01 13:38:03

BY MR. KANG: 13:38:03

Q. Okay. And then same question for a microprocessor. 13:38:06 13:38:09

MR. DOWNING: Objection to form. 13:38:14

BY MR. KANG: 13:38:14

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Q. Does your construction for the term payment handler under means-plus-function require a microprocessor? 13:38:15 13:38:17 13:38:18 13:38:21

MR. DOWNING: Objection to form, outside the scope. 13:38:25 13:38:26

A. And, likewise, the patent's pretty clear that you can implement these things with a variety of technologies, a microprocessor being one of them. 13:38:31 13:38:32 13:38:33 13:38:38

BY MR. KANG: 13:38:40

Q. And so, Mr. Johnson, your construction does not require a microprocessor, fair? 13:38:40 13:38:43 13:38:44

A. It could be implemented using a microprocessor. There might be other means of implementing this as well, using the -- you know, the computer technologies that are outlined -- should we get the reference? 13:38:46 13:38:47 13:38:50 13:38:52 13:38:54 13:38:58

That was '386 patent, column 4, 65 through column 7, line 3, which includes microprocessors and it includes a couple of other types of computing hardware. So any of those might be 13:39:01 13:39:04 13:39:08 13:39:11 13:39:13

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suitable and indeed any other type of computing hardware that could -- could satisfy the claims and meet the other requirements of the specifications. 13:39:15 13:39:17 13:39:19 13:39:24

Q. Okay. And in order for a device that interacts with payment processors to satisfy your means-plus-function construction of payment handler, is software required? 13:39:25 13:39:30 13:39:34 13:39:37 13:39:43

MR. DOWNING: Objection to form, outside the scope. 13:39:44 13:39:45

A. So this is pretty much the same answer. The patent's pretty clear that you can use a variety of computing technologies to implement any of these things; software is one of those things. 13:39:51 13:39:54 13:39:57 13:39:59 13:40:01

Payment handler could be implemented using software. There may be other ways to implement it using other things. 13:40:05 13:40:05 13:40:07 13:40:09

BY MR. KANG: 13:40:09

Q. Turn to your opinion on the term "Mobile Wallet" that starts at paragraph 24 of your declaration, Exhibit 2. 13:40:25 13:40:27 13:40:28 13:40:30

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A. Sorry, give me the reference again. 13:40:36 13:40:38

Q. Paragraph 24. 13:40:38

A. Paragraph 24, thank you. 13:40:40

Q. Are you there? 13:41:03

A. Yes. 13:41:04

Q. Now, your opinion is that this term is -- should be given its plain and ordinary meaning, right? 13:41:04 13:41:07 13:41:11

A. Yes. 13:41:12

Q. And are you providing a plain and ordinary meaning for the term "mobile wallet" in this declaration? 13:41:12 13:41:14 13:41:16

MR. DOWNING: Objection to form. 13:41:21

A. Yeah, it was my opinion that a person of ordinary skill in the art would understand this term normally. I can say actually not just through the context of the patents, but through the -- by the way the term was used at the time, so I don't think that a -- a specific definition was necessary. 13:41:40 13:41:45 13:41:46 13:41:53 13:41:55 13:41:58 13:42:00 13:42:04

BY MR. KANG: 13:42:04

Q. Okay. And do you have one in mind when you say the term should be given 13:42:06 13:42:07

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its plain and ordinary meaning? 13:42:12

MR. DOWNING: Objection to form. 13:42:14

A. So the term "mobile wallet" was 13:42:15
used to mean a whole bunch of different 13:42:17
things at the time, including services 13:42:19
exactly like those that are described in 13:42:21
the patent, but also a broad range of 13:42:24
other services, and I provided some 13:42:26
examples of those in paragraph 30. 13:42:29

BY MR. KANG: 13:42:29

Q. And so sitting here today, can 13:42:45
you articulate a plain and ordinary 13:42:48
meaning of the term mobile wallet? 13:42:50

MR. DOWNING: Objection to form. 13:42:53

A. As I've just said, it was 13:42:56
commonly used to mean a variety of 13:42:58
different things, you know, so there are 13:42:59
some examples of things it could mean. 13:43:01
You know, Google Wallet was a perfect 13:43:04
example of what people might consider as a 13:43:07
mobile wallet at the time. 13:43:09

I believe that anyone who was 13:43:13
working at the time would have recognized 13:43:15
these patents as referring to a mobile 13:43:16
wallet and have understood that term in 13:43:18

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context. And there was a industry overview provided by Merrill Lynch that listed a whole bunch of mobile wallets that were present at the time, and I think anyone would have recognized those as mobile wallets as well. 13:43:21 13:43:28 13:43:32 13:43:35 13:43:38 13:43:40

BY MR. KANG: 13:43:40

Q. So the term "mobile wallet" was used to mean a whole bunch of different things at the time of invention, right? 13:43:50 13:43:52 13:43:54

MR. DOWNING: Objection to form. 13:43:58

A. As I've said, the term was broadly used for a variety of things. 13:44:03 13:44:04

BY MR. KANG: 13:44:04

Q. Is there one consensus definition in the industry of what a mobile wallet is? 13:44:10 13:44:12 13:44:15

MR. DOWNING: Objection to form. 13:44:17

A. I think you'd be hard pressed to find a single definition that fits everything that -- that the term was used for at the time. 13:44:25 13:44:28 13:44:29 13:44:31

BY MR. KANG: 13:44:31

Q. Okay. In the context of the asserted patents, is there a difference 13:44:33 13:44:37

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between a "mobile wallet" and a "mobile wallet application"? 13:44:39 13:44:41

MR. DOWNING: Objection to form, outside the scope. 13:44:45 13:44:47

A. I'll just say that the terms that I've looked at are here are just the terms that I've looked at, and I haven't looked specifically at defining the other terms. 13:44:51 13:44:53 13:44:56 13:44:59 13:45:01

I'd be happy to do so if -- if that's something you want to consider. 13:45:06 13:45:09

BY MR. KANG: 13:45:09

Q. And so you haven't performed the analysis whether there's a distinction between mobile wallet and mobile wallet application in the asserted patents; is that fair? 13:45:13 13:45:15 13:45:16 13:45:17 13:45:20

MR. DOWNING: Objection to form, misstates testimony. 13:45:20 13:45:22

A. Yeah, I'd be happy to provide an opinion on the mobile wallet application, that term, if one is needed. 13:45:23 13:45:28 13:45:30

BY MR. KANG: 13:45:30

Q. Right. I'm not trying to be difficult here. I'm just trying to 13:45:33 13:45:35

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understand.
You have not done that analysis yet, correct?
A. Correct --
(Cross talk.)
MR. DOWNING: Objection to form. Objection to form, misstates testimony.
THE COURT REPORTER: And all I have from your answer is "correct."
A. Yeah, I have not performed the analysis on the term mobile wallet application.
BY MR. KANG:
Q. So sitting here today, do you have -- do you draw any distinction between a "mobile wallet" and a "mobile wallet application" as a person of ordinary skill in the art?
A. I would be happy to provide an opinion on that, but I haven't done so yet.
Q. Okay. Now, have you reviewed the Dill reference that Dr. Chatterjee references in forming your opinions on the

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term "mobile wallet"? 13:46:31
A. Could you be more specific? 13:46:36
Q. There's a prior art reference 13:46:37
called Dill. 13:46:40
Are you aware of that? 13:46:42
A. Yes. 13:46:43
Q. Okay. Do you know which one I'm 13:46:43
talking about when I refer to Dill? 13:46:45
A. Yes. 13:46:48
Q. Okay. Did you review that when 13:46:50
you were forming your opinions in this 13:46:53
case? 13:46:55
A. Yeah. 13:46:58
Q. And so if you look at your 13:47:04
declaration at paragraph 27, the last 13:47:07
sentence reads -- sorry, the last two 13:47:19
sentences read "In paragraphs 35-39, 13:47:26
Dr. Chatterjee performs his analysis on 13:47:29
what Dill teaches. His statements do not 13:47:31
appear to be relevant to the claim 13:47:33
construction issue, and therefore I do not 13:47:35
provide rebuttal." 13:47:37
Did I read that correctly? 13:47:38
A. Yes. 13:47:40
Q. And you understand that 13:47:41

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Dr. Chatterjee is saying that Fintiv, during IPR proceedings, distinguished the claims from the Dill reference, right? 13:47:42 13:47:46 13:47:51

MR. DOWNING: Objection to form. 13:47:57

A. Is there a specific reference in Dr. Chatterjee's report that you'd like us to review? 13:47:58 13:48:01 13:48:03

BY MR. KANG: 13:48:04

Q. Well, you provide opinions on why there's no express disclaimer over the Dill reference, right? 13:48:06 13:48:08 13:48:15

A. This is -- yeah, that's correct. There's no disclaimer in the Apple IPR. 13:48:19 13:48:22

Q. Right. And so in order to -- 13:48:32

(Reporter clarification.) 13:48:32

THE WITNESS: Apple IPR. 13:48:32

BY MR. KANG: 13:48:32

Q. And so in order to understand whether there's disclaimer, you have to know what Dill actually disclosed, right? 13:48:40 13:48:40 13:48:42

MR. DOWNING: Objection to form. 13:48:46

BY MR. KANG: 13:49:01

Q. I mean, Mr. Johnson, you have Dr. Chatterjee's declaration. You can take a look at paragraphs 35 to 39, if 13:49:02 13:49:06 13:49:08

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you'd like. 13:49:10
A. Sure. Okay. So 13:49:11
Dr. Chatterjee's declaration starting at 13:49:43
paragraph 35? 13:49:46
Q. Yep. In these paragraphs, 13:49:48
Dr. Chatterjee is describing what -- let 13:50:46
me put it this way: You write that "In 13:50:50
paragraphs 35-39, Dr. Chatterjee performs 13:50:52
his analysis on what Dill teaches," right? 13:50:55
A. Sorry. Let me get these -- 13:50:59
excuse me. Let me get these two documents 13:51:01
up side by side. 13:51:03
What paragraph in my declaration 13:51:05
were you referring to? 13:51:06
Q. The end of paragraph 27. 13:51:07
A. And the quote was what? 13:51:15
Q. You wrote, Mr. Johnson "In 13:51:19
paragraphs 35-39, Dr. Chatterjee performs 13:51:21
his analysis on what Dill teaches." 13:51:25
Do you see that? 13:51:28
A. Yes. 13:51:29
Q. All right. And you continue 13:51:30
"His statements do not appear to be 13:51:34
relevant to the claim construction issue, 13:51:36
and therefore I do not provide rebuttal." 13:51:38

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Do you see that? 13:51:41
A. Yes. 13:51:43
Q. Okay. And you have reviewed 13:51:44
Dill, though, correct? 13:51:46
A. Yeah. 13:51:48
Q. And so why did you not feel that 13:51:49
Dr. Chatterjee's statements on what Dill 13:51:52
teaches is relevant to claim construction? 13:51:56
A. Because the discussion was about 13:52:02
whether or not there is a clear and 13:52:04
unmistakable disclaimer made by Fintiv, 13:52:09
and I don't expect to find any disclaimers 13:52:13
made by Fintiv in Dill's patent. 13:52:17
Q. But you'd agree that what Dill 13:52:19
discloses is relevant to determining 13:52:22
whether there was a disclaimer by Fintiv, 13:52:24
right? 13:52:28
MR. DOWNING: Objection to form. 13:52:29
A. So if you want an opinion on 13:52:36
Dill, that's not something I provided. 13:52:38
Mr. Shamos has. I'd suggest that you look 13:52:42
at his declaration. 13:52:45
BY MR. KANG: 13:52:45
Q. Okay. And that's exactly my 13:52:46
point, Mr. Johnson. You don't provide an 13:52:47

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opinion one way or another as to what Dill discloses, right? 13:52:50 13:52:57

MR. DOWNING: Objection to form. 13:52:58

A. I've been asked to provide an opinion on claim construction, but not specifically on other patents. 13:52:59 13:53:01 13:53:02

BY MR. KANG: 13:53:02

Q. So do you -- so do you have an opinion on Dr. Chatterjee -- let me put it this way: Does Dill describe mobile wallets that reside on subscriber devices? 13:53:13 13:53:16 13:53:19 13:53:22

MR. DOWNING: Objection to form. 13:53:25

A. No. Again, if you'd like an opinion on Dill, I'd point you to Shamos' declaration. 13:53:26 13:53:30 13:53:35

BY MR. KANG: 13:53:35

Q. Right. So you're not offering an opinion one way or the other on what Dill discloses, right? 13:53:35 13:53:36 13:53:40

MR. DOWNING: Objection to form. 13:53:42

THE WITNESS: Sorry. 13:53:42

A. As I've said, I haven't offered an opinion on Dill. I'd be happy to if I'm asked to. 13:53:42 13:53:45 13:53:48

BY MR. KANG: 13:53:48

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Q. Okay. I'm introducing as 13:53:49
Exhibit Number 11 {sic}, United States 13:54:15
Patent Application Publication U.S. 13:54:20
2009/0265272 to Dill et al. 13:54:23
(Exhibit 9, United States Patent
Application Publication U.S.
2009/0265272, marked for
identification.)
BY MR. KANG:
Q. Do you see Exhibit 11, 13:54:42
Mr. Johnson? 13:54:45
A. Yeah. 13:54:45
Q. And you're familiar with this 13:54:56
reference? 13:54:57
A. I have reviewed this document. 13:54:59
Q. Okay. Let me direct your -- 13:55:00
so let me ask you this: Based off your 13:55:05
review, does the Dill reference, 13:55:08
Exhibit 9, disclose a mobile device with a 13:55:10
mobile wallet application residing on it? 13:55:15
A. I don't have any particular 13:55:20
opinions about Dill. I haven't performed 13:55:21
the analysis on this document, but I'd be 13:55:23
happy to do so if I'm asked to. 13:55:25
Q. All right. So if you could 13:55:27

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direct your attention to paragraph 10. 13:55:28

A. Paragraph 10 of -- 13:55:32

Q. Dill. 13:55:35

A. Okay. 13:55:41

Q. All right. So do you see the -- 13:55:42

the second sentence of this paragraph 10 13:55:48

reads "The mobile device can execute a 13:55:50

mobile wallet application"; do you see 13:55:52

that? 13:55:55

A. Yes. 13:55:56

Q. All right. Is that -- well, let 13:55:58

me ask it this way: Do the mobile devices 13:56:02

of Dill include mobile wallet 13:56:05

applications? 13:56:08

MR. DOWNING: Objection to form, 13:56:10

outside the scope. 13:56:11

A. Yeah, I -- I don't have an 13:56:13

opinion on this document, but I'd be happy 13:56:14

to provide one if I'm asked to do so. 13:56:16

BY MR. KANG: 13:56:16

Q. I'm asking you right now, 13:56:19

looking at this paragraph, can you tell me 13:56:20

whether the mobile devices of Dill include 13:56:22

mobile wallet applications? 13:56:26

A. Yeah -- 13:56:28

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MR. DOWNING: Objection to form, outside the scope.

A. In order to provide an opinion on this document, I need to perform an analysis on it and I have not done that, and I don't think it would be appropriate for me to do so on the spot.

BY MR. KANG:

Q. Would you agree that the mobile device of Dill can execute a mobile wallet application?

MR. DOWNING: Same objection.

A. As I've said, I haven't done an analysis on this document and -- but if I'm asked to do so, I'd be happy to do so.

BY MR. KANG:

Q. You wouldn't agree that the mobile device of Dill can execute a mobile wallet application, reading paragraph 10?

MR. DOWNING: Same objection.

A. As I've said, I don't have an opinion on this document and I'd be happy to perform the analysis if I'm asked to do so.

BY MR. KANG:

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Q. Reading paragraph 10 is insufficient for you to agree or disagree with the statement that "The mobile device can execute a mobile wallet application"; is that fair? 13:57:26 13:57:27 13:57:29 13:57:31 13:57:34

MR. DOWNING: Objection to form, outside the scope, mischaracterizes the witness' testimony. 13:57:38 13:57:39 13:57:40

A. So as I've said, I haven't reviewed this document. I'd be happy to do so if I'm asked to do so. 13:57:44 13:57:46 13:57:49

BY MR. KANG: 13:57:49

Q. So reading paragraph 10, the second sentence of paragraph 10, you still have no opinion on whether Dill -- the mobile devices of Dill include mobile wallet applications? 13:57:55 13:57:57 13:57:59 13:58:03 13:58:05

MR. DOWNING: Same objection. 13:58:07

A. Yeah, I'd be happy to perform that analysis. I have not been asked to do so, but, you know, at some point if that's the case, I may be -- I may be able to do so. 13:58:10 13:58:12 13:58:13 13:58:16 13:58:19

BY MR. KANG: 13:58:19

Q. You reviewed Dill, though, 13:58:20

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right? 13:58:22
A. Yeah, I read the document. 13:58:23
Q. Okay. And you have no opinion 13:58:24
whatsoever on whether Dill's mobile 13:58:26
devices execute mobile wallet applications 13:58:29
based off your review? 13:58:32
MR. DOWNING: Objection to form. 13:58:34
A. Yeah. Again, I'd be happy to 13:58:38
perform the analysis on this document and 13:58:40
give you an opinion. I haven't done that, 13:58:42
but if I'm asked to do so, I'd be happy to 13:58:44
do it. 13:58:46
BY MR. KANG: 13:58:46
Q. You told me you reviewed the 13:58:47
document just now. You told me you 13:58:48
reviewed Dill in forming your opinions on 13:58:51
claim construction, fair? 13:58:54
MR. DOWNING: Objection to form, 13:58:56
misstates the testimony. 13:58:58
A. I -- I have read this document. 13:59:01
BY MR. KANG: 13:59:01
Q. And so I'm asking you, do the 13:59:04
mobile devices of Dill execute mobile 13:59:07
wallet applications? 13:59:11
MR. DOWNING: Objection to form, 13:59:14

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asked and answered. 13:59:15

A. Yeah, so I haven't performed the analysis on this document. I'd be happy to do so. 13:59:19 13:59:22 13:59:24

BY MR. KANG: 13:59:24

Q. As someone who has reviewed the document, sitting here today, can you answer whether the mobile devices of Dill execute mobile wallet applications? 13:59:26 13:59:27 13:59:31 13:59:35

A. Yeah, I would -- I'd want to perform the analysis on the document thoroughly and I'm not prepared to do that on the spot, but I'd be happy to do that later. 13:59:40 13:59:42 13:59:43 13:59:46 13:59:49

Q. Sure. So, Mr. Johnson, what -- what does the Dill reference teach that's different from the '386 patent? 13:59:49 13:59:54 13:59:57

MR. DOWNING: Objection to form, outside the scope. 14:00:01 14:00:02

A. Once again, I'd be happy to perform an analysis on this document if I'm asked to do so. 14:00:05 14:00:07 14:00:09

BY MR. KANG: 14:00:09

Q. Well, your -- your -- your declaration provides opinions on whether 14:00:10 14:00:13

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there was disclaimer during the IPR, right? 14:00:16 14:00:19

A. Yes. 14:00:21

Q. And you had to review the Dill reference to determine whether there was disclaimer, right? 14:00:22 14:00:24 14:00:28

A. I did review the Dill reference. 14:00:31

Q. Okay. And so what's -- what was the difference that Mr. Shamos was making between the claims of the '386 patent and the Dill reference? 14:00:33 14:00:37 14:00:42 14:00:43

A. Oh, I'd refer you to Shamos. I thought he was pretty clear and -- and his opinions are his. 14:00:44 14:00:47 14:00:49

Q. Mr. Johnson, you know this is in your declaration, right? Have you read your declaration? 14:00:57 14:00:59 14:01:00

A. Of course, I have. 14:01:03

Q. So maybe if you read paragraph 27 to yourself, you can see what opinions you formed. Mr. Johnson, does reading paragraph 27 of your declaration refresh your recollection on whether you're offering an opinion on whether there was disclaimer in the IPR? 14:01:11 14:01:13 14:01:18 14:01:59 14:02:01 14:02:04 14:02:07

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MR. DOWNING: Objection to form, argumentative.

A. And I already answered, but I did not agree that there was a clear and unmistakable disclaimer in the Apple IPR.

BY MR. KANG:

Q. All right. And so you reviewed Mr. Shamos' declaration in forming your opinions on whether Fintiv disclaimed any claim scope, right?

A. I did review Shamos' declaration.

Q. Okay. And your reading of Fintiv's IPR response is that the distinction is clearly whether a mobile wallet application is present on the device, right?

A. That sounds familiar. I don't recall that being in the declaration.

Q. Okay. But you have not formed any opinion on whether Dill discloses whether a mobile wallet application is present on the device, right?

A. I haven't done an analysis of Dill, and I'd be happy to do so if I'm

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asked to do so. 14:04:05

Q. And so how can you opine on 14:04:06

whether there was disclaimer when the 14:04:08

distinction -- you wrote "The distinction 14:04:12

is clearly whether a mobile wallet 14:04:14

application is present on the device." 14:04:16

That's in paragraph 9 of -- 29 of your 14:04:18

declaration. Do you see that? 14:04:22

A. Yes. 14:04:28

Q. Okay. And so how can you opine 14:04:30

on whether there was this distinction when 14:04:34

you don't know whether there's a mobile 14:04:40

wallet application on the device of Dill? 14:04:42

A. So you have my -- sorry? You 14:04:51

have my opinions in the declaration. 14:04:55

They're based on the materials I reviewed 14:04:57

including Dill, Shamos and 14:05:00

Dr. Chatterjee's declarations. 14:05:03

Q. All right. So you understand 14:05:06

the -- the IPR proceeding from Mr. Shamos' 14:05:14

declaration, right? 14:05:20

MR. DOWNING: Objection to form. 14:05:22

BY MR. KANG: 14:05:22

Q. You understood the arguments 14:05:26

that Mr. Shamos was making, right? 14:05:28

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A. Yes. 14:05:30
Q. Okay. And his argument was that 14:05:30
Dill did not disclose a mobile wallet 14:05:36
application present on the mobile device, 14:05:40
fair? 14:05:43
MR. DOWNING: Objection to form. 14:05:44
A. Is there a particular paragraph 14:05:47
in Shamos that you're referring to? 14:05:48
BY MR. KANG: 14:05:48
Q. No, I'm asking you what you 14:05:51
remember from your review of the IPR 14:05:53
declaration? 14:05:56
MR. DOWNING: Objection to form. 14:05:59
BY MR. KANG: 14:05:59
Q. That forms your opinions in your 14:06:00
declaration? 14:06:02
A. So I'd like to answer your 14:06:07
question. To do so, I think we should 14:06:09
refer to Shamos. Would you like to -- 14:06:13
would you like to bring that up? 14:06:16
Q. You can't answer without 14:06:18
rereading the Shamos declaration? 14:06:20
A. As I said, I'd like to refer to 14:06:23
Shamos to answer your question. 14:06:25
Q. So, okay. 14:06:28

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The beginning -- paragraph 29 of your declaration reads "In my opinion, Dr. Chatterjee misreads the IPR response. The IPR at [page] 10 states 'In fact, Dill discloses that parties access the transaction system not necessarily through a mobile application running on their mobile devices, but instead by visiting a website of a money transfer facilitator,' where the distinction is clearly whether a mobile wallet application is present on the device." Do you see that? 14:06:31 14:06:32 14:06:36 14:06:39 14:06:43 14:06:46 14:06:48 14:06:51 14:06:55 14:06:58 14:07:01 14:07:03

A. Yes. 14:07:06

Q. Is that an accurate statement? 14:07:06

A. Is what an accurate statement? 14:07:10

Q. The sentence I just read from paragraph 29 of your declaration, Mr. Johnson. 14:07:11 14:07:13 14:07:15

A. Yeah. 14:07:17

Q. Okay. And you don't have any opinion on whether the mobile devices of Dill execute mobile wallet applications, fair? 14:07:18 14:07:20 14:07:26 14:07:28

MR. DOWNING: Objection to form. 14:07:30

Robert, I think the witness asked for 14:07:34

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a document. Are you not going to give it to him? 14:07:36 14:07:37

MR. KANG: I'd like to see what he remembers based off his review and his declaration. 14:07:39 14:07:40 14:07:42

MR. DOWNING: Didn't you say that -- earlier that this wasn't a memory test or were you not being sincere? 14:07:43 14:07:45 14:07:46 14:07:49

MR. KANG: Can you please stop with your speaking objections and let me continue the deposition? 14:07:49 14:07:50 14:07:52

MR. DOWNING: It's -- it's not a speaking objection. This is a multi-patent case. There are a number of issues. You told the witness that it's not a memory test earlier. That was your exact quote. The witness has asked for documents so that he can review it, and you're not giving it to him. So, I mean, you can continue to ask questions outside of that if you want, but it seems to me like the most efficient way to get the answer to your question is to give the witness 14:07:52 14:07:53 14:07:54 14:07:56 14:07:58 14:08:00 14:08:02 14:08:04 14:08:05 14:08:08 14:08:09 14:08:12 14:08:14

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what he wants so we can all go home. Are you going to do that or not? 14:08:16 14:08:18

MR. KANG: Counsel, I'm going to continue my deposition the way I plan to. 14:08:20 14:08:22 14:08:25

BY MR. KANG: 14:08:25

Q. Now, Mr. Johnson, the patent claims -- 14:08:27 14:08:40

MR. DOWNING: Madam Court Reporter, can you please mark the -- the transcript, please? 14:08:41 14:08:42 14:08:43

(Marked per Mr. Downing's request.) 14:08:44 14:08:45

MR. KANG: Mark the transcript with what? 14:08:48 14:08:49

MR. DOWNING: Just mark it. 14:08:51

BY MR. KANG: 14:08:51

Q. So if I understand your opinion, Mr. Johnson, you didn't form any opinions on what the Dill reference teaches, correct? 14:09:09 14:09:12 14:09:14 14:09:17

MR. DOWNING: Objection to form. 14:09:17

BY MR. KANG: 14:09:17

Q. I'll rephrase. 14:09:20

You didn't form any opinions on 14:09:21

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whether the Dill reference discloses a mobile device running a mobile wallet application, correct? 14:09:22 14:09:25 14:09:28

MR. DOWNING: Same objection. 14:09:30

A. As I said, I'd be happy to review Dill and provide opinions on it if I'm asked to do so. 14:09:33 14:09:35 14:09:38

BY MR. KANG: 14:09:38

Q. Right, but you haven't done that analysis yet, correct? 14:09:39 14:09:41

A. I have not done the analysis on Dill to -- to form opinions about that document. 14:09:43 14:09:44 14:09:47

Q. Right. And you opine that no disclaimer over Dill occurred, correct? 14:09:48 14:09:52

A. What I've said is that there was no -- there was clear and unmistakable disclaimer of claim scope in regards to mobile wallet in the Apple IPR. 14:10:03 14:10:05 14:10:08 14:10:11

Q. Over the Dill reference, correct? 14:10:12 14:10:14

A. No, what I said -- 14:10:16

MR. DOWNING: Objection to form. 14:10:18

A. -- is there was no clear and unmistakable disclaimer regarding mobile 14:10:20 14:10:22

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wallet term in the Apple IPR. 14:10:25
BY MR. KANG: 14:10:25
Q. And in the Apple IPR, the 14:10:27
reference being discussed with respect to 14:10:35
mobile wallets was the Dill reference, 14:10:36
fair? 14:10:37
A. Yeah, I understand that was one 14:10:38
of the references. 14:10:40
Q. And so you don't know whether 14:10:42
Dill teaches a mobile wallet application 14:10:47
on a mobile device, but you're also 14:10:50
providing an opinion that no disclaimer 14:10:53
with respect to that term occurred in the 14:10:56
Apple IPR, correct? 14:10:58
MR. DOWNING: Objection to form. 14:11:00
A. That was a multipart question. 14:11:05
Do you -- do you want answers to both 14:11:07
parts? 14:11:08
BY MR. KANG: 14:11:08
Q. I'll re-ask it. 14:11:16
You have no opinion on whether 14:11:18
Dill teaches a mobile wallet application 14:11:19
on a mobile device, nonetheless you are 14:11:23
providing an opinion that no disclaimer 14:11:27
occurred with respect to the mobile wallet 14:11:30

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term over the Dill reference in the Apple IPR, correct? 14:11:33 14:11:36

MR. DOWNING: Objection to form. 14:11:37

A. Yeah. You know, it's really just mischaracterizing what I've said. As I've said, there was no clear and unmistakable disclaimer of the term "mobile wallet" in the Apple IPR. 14:11:42 14:11:44 14:11:46 14:11:48 14:11:51

BY MR. KANG: 14:11:51

Q. And in the Apple IPR, they were discussing this term "mobile wallet" in the context of Dill, right? 14:11:53 14:11:55 14:11:57

A. Yes. 14:12:00

MR. DOWNING: Objection to form. 14:12:00

BY MR. KANG: 14:12:00

Q. Okay. So I'll go ahead and mark the Shamos declaration now. 14:12:01 14:12:20

MR. KANG: I'm marking as Exhibit 10 the declaration of Michael I. Shamos, Ph.D. 14:12:39 14:12:40 14:12:42

(Exhibit 10, Declaration of Michael I. Shamos, Ph.D., marked for identification.) 14:12:42 14:12:42 14:12:42

BY MR. KANG: 14:12:42

Q. Mr. Johnson, are you able to see 14:13:06

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Exhibit 10? 14:13:07

A. Sorry, yes, I do have Exhibit 10 open. 14:13:09 14:13:11

Q. If you could turn to paragraph 48 of Mr. Shamos' declaration. 14:13:25 14:13:29

A. Okay. 14:13:38

Q. It reads "It is immediately apparent from Figure 9 that the mobile devices used by Sender 105 and Recipient 110 do not host mobile wallets." 14:13:40 14:13:41 14:13:46 14:13:48

Do you see that? 14:13:52

A. Yes. 14:13:52

Q. And so Mr. Shamos is discussing the Dill reference here, correct? 14:13:52 14:13:55

A. Yes. 14:13:58

Q. Okay. And he's arguing that the mobile devices in Dill do not host mobile wallets, right? 14:13:59 14:14:02 14:14:05

A. Dill is providing a brief summary of -- sorry -- let me start over since I misspoke. 14:14:09 14:14:11 14:14:13

Shamos is providing a brief summary of Dill's patent in this section. 14:14:15 14:14:17

Q. Right. And he argues that "The mobile devices used by Sender 105 and 14:14:21 14:14:24

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Recipient 110 do not host mobile wallets," right? 14:14:28 14:14:38

A. I don't know if this is an argument so much as a summary. 14:14:40 14:14:41

Q. Mr. Shamos states that in the Dill reference the mobile devices do not host mobile wallets, fair? 14:14:42 14:14:50 14:14:53

A. Yes. 14:14:57

MR. DOWNING: Objection to form. 14:14:58

BY MR. KANG: 14:14:58

Q. Do you agree with Mr. Shamos' statement? 14:15:01 14:15:04

MR. DOWNING: Objection to form, outside the scope. 14:15:05 14:15:06

A. I take Mr. Shamos at his word here. 14:15:15 14:15:17

BY MR. KANG: 14:15:17

Q. Okay. At the bottom of page 16, Mr. Shamos writes "Dill does not disclose" -- sorry, I'll start over. 14:15:20 14:15:22 14:15:25

At the bottom of page 16, Mr. Shamos writes that "Dill does not disclose that any wallet at all resides on a user's mobile device," true? 14:15:29 14:15:30 14:15:32 14:15:36

A. Yes. 14:15:39

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Q. Okay. And do you have an opinion one way or another that Dill does not disclose that any wallet at all resides on the user's mobile device?

MR. DOWNING: Objection to form, outside the scope.

MR. KANG: Counsel, he's providing opinions on disclaimer in his declaration where he addresses these very paragraphs.

MR. DOWNING: He -- he's provided opinion, as he stated, regarding whether there was a clear and unmistakable disclaimer that was made and so he's reviewing what -- what your expert or what you pointed to and determining as a person of skill in the art whether there was a clear and unmistakable disclaimer. I think you're mixing up the concepts and you're slipping in, you know, invalidity arguments and having him characterize what happened to Dill, which is a completely different analysis and it's outside the scope.

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Now we're onto invalidity, before we were onto infringement. I don't think it's fair. I don't think it's a good use of our time and so we respectfully don't agree. 14:16:33 14:16:36 14:16:38 14:16:39 14:16:43

BY MR. KANG: 14:16:43

Q. Mr. Johnson, do you need the previous question read back to you? 14:16:46 14:16:49

A. Yeah, I suppose so. 14:16:55

Q. Do you have an opinion one way or another that Dill does not disclose that any wallet at all resides on the user's mobile device? 14:16:56 14:16:58 14:17:00 14:17:03

MR. DOWNING: Objection to form, outside the scope. 14:17:06 14:17:08

A. As I've said, I'd be happy to perform an analysis on Dill if I've been asked to do so. 14:17:11 14:17:15 14:17:16

BY MR. KANG: 14:17:16

Q. Do you understand the argument that Mr. Shamos was making in the IPR? 14:17:22 14:17:22

A. Yes. 14:17:25

Q. Okay. What was the argument? 14:17:28

MR. DOWNING: Objection to form, outside the scope. 14:17:31 14:17:32

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A. Yeah, I'd have to review Shamos' document to refresh my memory. 14:17:38 14:17:44

BY MR. KANG: 14:17:44

Q. You can't answer about what Mr. Shamos was arguing in the fin -- the Apple IPR without reviewing his declaration again? 14:17:47 14:17:52 14:17:56 14:17:57

A. Yeah, I -- you know, I wouldn't want to mischaracterize Shamos' argument, so I think it would be appropriate to review the document. 14:17:58 14:18:03 14:18:07 14:18:09

Q. It's not enough to review the paragraphs you wrote characterizing Mr. Shamos' argument in your own declaration? 14:18:13 14:18:16 14:18:19 14:18:23

MR. DOWNING: Objection to form, mischaracterizes the witness' testimony. 14:18:24 14:18:24 14:18:28

A. Can you actually just repeat the question? Maybe I'll ask you to restate the question so it's clear what you're asking. 14:18:38 14:18:39 14:18:44 14:18:45

BY MR. KANG: 14:18:46

Q. Are you able to explain to me what Fintiv argued during the Apple IPR by 14:18:46 14:18:47

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reviewing your own declaration? 14:18:52
MR. DOWNING: Objection to form. 14:18:57
A. I did not provide a summary of 14:18:58
Fintiv's arguments in the Apple IPR in my 14:19:01
declaration, so I don't think that's 14:19:09
sufficient. 14:19:10
BY MR. KANG: 14:19:10
Q. Is your testimony that what's in 14:19:10
paragraph 27 of your declaration is not a 14:19:12
summary of Fintiv's arguments in the Apple 14:19:15
IPR? 14:19:19
MR. DOWNING: Objection to form. 14:19:21
Robert, I'd just ask you -- you know, 14:19:22
there's been multiple times where, you 14:19:25
know, you've been kind of laughing at 14:19:27
the witness. I know you might think 14:19:28
it's funny, but let's just keep this 14:19:29
professional, please. Let's just ask 14:19:31
the questions -- 14:19:33
MR. KANG: I think it's funny -- 14:19:33
no, I think it's -- 14:19:34
MR. DOWNING: It's not funny -- 14:19:35
(Cross talk.) 14:19:39
MR. DOWNING: Mr. Johnson 14:19:40
deserves respect. Just ask him the 14:19:42

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question. He'll respond to you if he can, and then we can move on. Let's not -- 14:19:44 14:19:49 14:19:51

MR. KANG: I'm just surprised, John, that he doesn't know his own declaration. 14:19:51 14:19:53 14:19:54

MR. DOWNING: I don't -- I obviously don't agree with that at all. That may be your position, but I don't think that's true. Your witness -- your expert deserves respect. Mr. Johnson deserves respect. Let's just keep it that way. 14:19:55 14:19:55 14:19:57 14:19:59 14:20:00 14:20:03 14:20:05

I know that Judge Albright demands that out of the people in front of his court, and I know that your partner Mr. Shelton also does. 14:20:06 14:20:08 14:20:09 14:20:10

So let's just move -- move on and let's not laugh at each other, please. Thank you. 14:20:13 14:20:14 14:20:16

BY MR. KANG: 14:20:16

Q. So have you read paragraph 27 of your declaration, Mr. Johnson? 14:20:24 14:20:27

A. Yes. 14:20:31

Q. Would you like to change your 14:20:33

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previous answer that you don't provide a summary of the arguments Fintiv made during the Apple IPR? 14:20:34 14:20:36 14:20:40

A. Paragraph 27 is about whether the Apple IPR makes a clear and unmistakable disclaimer regarding the term "mobile wallet." 14:20:48 14:20:52 14:20:55 14:20:59

That's not a summary of the Apple IPR in and of itself. So I would prefer to refer to the documents rather than using that as a summary of the arguments. 14:21:00 14:21:02 14:21:04 14:21:06 14:21:10

Q. What's your understanding of what "disclaimer" is, Mr. Johnson? 14:21:10 14:21:14

A. So in the context of this term -- of the term -- of defining a term in the -- for a -- in the context of the patent, I should say, that there is a very clear statement that -- that limits the scope of that term. 14:21:26 14:21:28 14:21:30 14:21:35 14:21:41 14:21:45

Q. Okay. And you're providing the opinion in paragraph 27 that Mr. Shamos did not make a clear statement to limit the claims, right? 14:21:48 14:21:51 14:21:58 14:22:01

A. Correct. 14:22:03

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Q. And as part of that analysis, did you gain an understanding of how Mr. Shamos distinguished the Dill reference from the claims of the '386 patent? 14:22:06 14:22:08 14:22:12 14:22:17 14:22:20

A. So I read Shamos. I've read Dill. Shamos has got some opinions about that and I'd refer you to him. That's not something I've been asked to provide an opinion on. 14:22:25 14:22:28 14:22:30 14:22:34 14:22:35

Q. So you were not asked to provide an opinion on how Mr. Shamos distinguished the claims of the '386 patent from the Dill reference, correct? 14:22:45 14:22:46 14:22:50 14:22:53

A. Correct. 14:22:55

MR. DOWNING: Objection to form. 14:22:56

BY MR. KANG: 14:22:56

Q. And you conclude that whatever arguments Mr. Shamos made, they did not amount to a clear disclaimer of claim scope, correct? 14:22:58 14:23:01 14:23:05 14:23:09

A. Correct. 14:23:10

Q. Would you agree that a mobile wallet hosted by a mobile network operator would not qualify as the mobile wallet 14:23:10 14:24:10 14:24:14

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claimed in the asserted claims? 14:24:18
MR. DOWNING: Objection to form, 14:24:20
outside the scope. 14:24:21
A. So if I were to determine 14:24:28
whether a mobile wallet hosted by a mobile 14:24:30
operator satisfied the claims, I'd look to 14:24:34
the claims themselves and the 14:24:37
specification. 14:24:38
That's a pretty hypothetical 14:24:40
situation, and unless there's something 14:24:41
more specific, I don't think I'm going to 14:24:44
have an opinion on -- on that case. 14:24:46
BY MR. KANG: 14:24:48
Q. You have no opinion whether a 14:24:48
mobile wallet hosted by a mobile network 14:24:51
operator satisfies the mobile wallet terms 14:24:54
of the claims? 14:24:56
A. Is there a specific mobile 14:24:58
wallet that you'd like me to review? 14:24:59
Q. The one in Dill would -- would 14:25:02
come to mind. 14:25:06
MR. DOWNING: Objection to form, 14:25:07
outside the scope. 14:25:09
BY MR. KANG: 14:25:09
Q. Do the mobile wallets in Dill 14:25:21

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meet the limitations of the claims? 14:25:23

MR. DOWNING: Objection to form, 14:25:27

outside the scope. 14:25:28

A. Yeah, so once again, I'd be 14:25:31

happy to provide an opinion on Dill if 14:25:33

I've been asked to do so. 14:25:35

BY MR. KANG: 14:25:35

Q. You have -- so you understand 14:25:40

that several of the asserted claims 14:25:42

include the term "mobile wallet," correct? 14:25:45

A. Sorry. Some of that was 14:25:48

garbled. Could you repeat it? 14:25:49

Q. Several of the asserted claims 14:25:51

included the term "mobile wallet," 14:25:55

correct? 14:25:57

A. Yes. 14:25:57

Q. Does the mobile wallet of the 14:25:58

asserted patents need to reside on the 14:26:01

user's mobile device? 14:26:05

MR. DOWNING: Objection to form, 14:26:07

outside the scope. 14:26:08

A. Yeah. So I haven't considered 14:26:24

exactly where the mobile wallet resides. 14:26:26

That sounds like a pretty detailed 14:26:30

question about the specification and 14:26:32

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perhaps about the claims. 14:26:34

I'd be happy to review those and 14:26:35

provide an opinion on that. 14:26:37

BY MR. KANG: 14:26:37

Q. Okay. So based off your reading 14:26:39

of the patents, where are the places that 14:26:42

the mobile wallet could reside? 14:26:45

MR. DOWNING: Objection to 14:26:47

form -- objection to form, outside the 14:26:48

scope. 14:26:49

A. So as I said, I'd be happy to 14:26:53

provide an opinion more specifically about 14:26:55

the implementation of the mobile wallet if 14:26:58

I'm asked to do so. 14:27:03

BY MR. KANG: 14:27:04

Q. You weren't asked to do so, 14:27:04

correct? 14:27:06

A. No. I've been asked to 14:27:06

interpret the term "mobile wallet," but 14:27:08

not to provide opinions about the 14:27:09

implementation. 14:27:11

Q. What about the requirements of 14:27:12

the claim that includes mobile wallet? 14:27:15

A. What about them? 14:27:23

Q. Have you been asked to determine 14:27:24

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whether the claims require mobile wallets on mobile devices?

MR. DOWNING: Objection to form, outside the scope.

A. Again, no, I haven't been asked to consider specific implementations.

BY MR. KANG:

Q. I'm not asking about specific implementation, Mr. Johnson. I'm asking whether the claims require that the mobile wallet reside on the mobile device.

MR. DOWNING: Objection to form, outside the scope.

A. Yeah, and I'm sorry, it's not clear to me exactly what you wanted me to answer there.

BY MR. KANG:

Q. Have you been asked to opine on whether the claims require mobile wallets residing on mobile devices?

MR. DOWNING: Objection to form, outside the scope, vague and ambiguous.

A. No, as I've said, I'm -- not been asked to opine on the specific

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location of the mobile wallet. 14:28:37
BY MR. KANG: 14:28:39
Q. Where are mobile wallets 14:28:42
typically stored, Mr. Johnson? 14:28:43
MR. DOWNING: Objection to form, 14:28:44
outside the scope. 14:28:45
A. Yeah, so we've talked about the 14:28:50
term mobile wallet before. It's been used 14:28:51
very broadly -- it was used very broadly 14:28:54
at the time to encompass a wide range of 14:28:58
services, including services just like the 14:28:59
ones in the patents we have before us, and 14:29:01
there were a broad range of 14:29:07
implementations. 14:29:08
BY MR. KANG: 14:29:09
Q. Okay. And so you mentioned 14:29:10
Google Wallet in paragraph 30 of your 14:29:11
declaration, right? 14:29:14
A. Uh-huh. 14:29:14
Q. Are you familiar with Google 14:29:15
Wallet? 14:29:18
A. Yeah. 14:29:20
Q. As demonstrated in the early 14:29:23
2010s? 14:29:26
(Cross talk.) 14:29:28

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MR. DOWNING: Objection -- 14:29:28
THE WITNESS: Sorry? 14:29:29
MR. DOWNING: I just said 14:29:29
objection to form, but you may answer. 14:29:30
A. Yes, I'm familiar with Google 14:29:32
Wallet. 14:29:34
BY MR. KANG: 14:29:34
Q. Where is the mobile wallet in 14:29:35
Google Wallet stored? 14:29:39
MR. DOWNING: Objection to form, 14:29:41
outside the scope. 14:29:44
A. You want the long answer or the 14:29:57
short answer? 14:29:58
BY MR. KANG: 14:30:00
Q. I'd like your answer, 14:30:00
Mr. Johnson. 14:30:02
A. Well, so the short answer is, 14:30:05
the -- the Google Wallet, as it was 14:30:07
originally demonstrated in the early 14:30:11
2010s, was an unusual and hybrid approach, 14:30:13
and there are components of the mobile 14:30:19
wallet in various places both in the 14:30:22
mobile handsets and in Google's servers 14:30:25
and in other servers operated by third 14:30:29
parties. 14:30:34

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Q. And do you think that the hybrid approach of Google Wallet is contemplated by the asserted claims? 14:30:42 14:30:43 14:30:47

MR. DOWNING: Objection to form, outside the scope. 14:30:48 14:30:49

A. Yeah. I haven't considered whether these claims might apply to Google Wallet. 14:30:53 14:30:55 14:30:57

I'd be happy to consider that at some point if I'm asked to do so. 14:30:58 14:30:59

BY MR. KANG: 14:31:02

Q. Right. So you haven't considered where the mobile wallet can or needs to be in the context of these claims at all; is that correct? 14:31:02 14:31:04 14:31:05 14:31:08

MR. DOWNING: Objection to form, misstates witness' testimony. 14:31:11 14:31:11

A. Yeah, I haven't been asked to provide an opinion on that, but I'd be happy to do so if I am. 14:31:16 14:31:18 14:31:20

BY MR. KANG: 14:31:20

Q. Right now? You'd be happy to do it right now, I take it? 14:31:22 14:31:24

A. Oh, I would want to perform an analysis of the documents and review the 14:31:26 14:31:28

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claims and specifications to do that. 14:31:31

Q. How long would that take you, 14:31:32

Mr. Johnson? 14:31:34

A. Oh, I don't know. 14:31:36

Q. Can you ballpark it? 14:31:40

A. You know, if that's one specific 14:31:45

question, you know, it might be nice to 14:31:46

have a couple of days. I've got some 14:31:50

other things that do need attention so... 14:31:52

Q. Okay. So a couple of days is 14:31:53

how long it would take you to do that 14:31:58

analysis, correct? It would take you a 14:32:00

couple of days to do the analysis of 14:32:12

whether the mobile wallet of the claims 14:32:13

needs to be resident on the mobile device, 14:32:16

fair? 14:32:21

A. Yeah, I suppose -- 14:32:22

THE WITNESS: Sorry. 14:32:24

MR. DOWNING: Objection to form. 14:32:25

A. You know, I'd like to have a 14:32:28

couple of days to do the work because I do 14:32:30

have some other things that might need 14:32:32

attention during that time. 14:32:34

BY MR. KANG: 14:32:34

Q. And so your offer to do that 14:32:37

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analysis could not be done during this deposition, correct? 14:32:39 14:32:41

A. No, I don't think that would really do the topic justice. 14:32:43 14:32:45

Q. Okay. 14:32:47

Now, let's turn to your declaration, Exhibit 2 at page 11, your opinions on "Agent." 14:32:48 14:32:53 14:32:58

THE VIDEOGRAPHER: Could we take a break when you get to a stopping point, please? 14:33:01 14:33:02 14:33:03

MR. KANG: Yeah, this is a good time actually. 14:33:04 14:33:06

THE VIDEOGRAPHER: Off the record at 2:33 p.m. 14:33:07 14:33:07

(Whereupon, a brief recess is taken.) 14:33:07 14:44:06

THE VIDEOGRAPHER: Off the record at 2:45 p.m. -- on the record at 2:45 p.m. 14:44:06 14:44:35 14:44:41

BY MR. KANG: 14:44:45

Q. Mr. Johnson, I'd like to turn to your opinions on the term "Agent." Paragraph 38 of your declaration, Exhibit 2, you wrote in the third sentence 14:44:46 14:44:47 14:44:52 14:44:54

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"In addition, the term 'agent' has a broader plain and ordinary meaning that" anyone -- "any person would consider 'a person or business authorized to act on another's behalf.'"

Do you see that?

A. Yes.

Q. You continued "This plain and ordinary meaning is both sufficient and appropriate for the term 'agent' as it is used in the Fintiv patents."

Do you see that?

A. Yes.

Q. And so here you provide a plain and ordinary meaning for the term agent; is that correct?

MR. DOWNING: Objection to form.

A. Yes.

BY MR. KANG:

Q. Okay. Well, you discuss agents and entities in paragraph 32 of your declaration.

Do you see that?

A. Yes.

Q. Okay. In the context of the

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Fintiv patents, are all agents entities? 14:46:16
MR. DOWNING: Objection to form. 14:46:22
A. Yeah, so I haven't provided an 14:46:29
opinion specifically on the term "entity" 14:46:31
as it's used in the patents. 14:46:33
I would be happy to do so, but 14:46:36
that would be something I would like to go 14:46:38
back to the patents and review the 14:46:40
documents to perform the analysis on. 14:46:43
BY MR. KANG: 14:46:43
Q. So the claims say -- I mean, you 14:46:45
write this in paragraph 32, that "the '386 14:46:50
patent claim 1 says there's at least one 14:46:53
entity that is to be involved in the 14:46:56
specified transaction, be at least one 14:46:59
entity having a profile with the monetary 14:47:03
transaction system, wherein the at least 14:47:06
one entity is the agent." 14:47:08
Do you see that? 14:47:10
A. Yes. 14:47:12
Q. Okay. And so agents can be 14:47:13
entities in the Fintiv patents, right? 14:47:17
A. Yes. 14:47:23
Q. Okay. Are there -- does the 14:47:24
Fintiv -- sorry. 14:47:28

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Do the Fintiv patents contemplate non-agent entities? 14:47:29 14:47:30

A. Again, I'd be happy to provide an opinion on the term "entity," but I would want to perform the additional analysis on the documents. 14:47:36 14:47:41 14:47:43 14:47:46

Q. Mr. Johnson, you have no opinion on whether the term "entity" is broader than the term "agent" in the patents that you are providing claim construction opinions on? 14:47:47 14:47:50 14:47:53 14:47:55 14:47:58

MR. DOWNING: Objection to form. 14:47:59

A. Yeah, so I've been asked to provide specific opinions on specific terms. 14:48:02 14:48:04 14:48:05

I would be happy to provide opinions on additional terms, and I would like to be able to perform the analysis to do so. 14:48:06 14:48:08 14:48:11 14:48:15

BY MR. KANG: 14:48:16

Q. So you write that "the Asserted Patents' specifications also use the term 'agent' to encompass other entities such as businesses." 14:48:16 14:48:19 14:48:22 14:48:25

Do you see that? 14:48:26

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A. Sorry, you're referring to a specific reference in the document? 14:48:26 14:48:31

Q. I'm talking about paragraph 32 of the declaration you wrote. 14:48:35 14:48:38

A. Yeah, and you asked me if I saw it. Could you give me the quote again? 14:48:45 14:48:46

Q. "The Asserted Patents' specifications also use the term 'agent' to encompass other entities such as businesses." 14:48:49 14:48:51 14:48:54 14:48:57

Do you see that? 14:48:58

A. Yes. 14:48:59

Q. So do you have an opinion one way or another whether all entities are agents in the asserted patents? 14:49:01 14:49:04 14:49:08

MR. DOWNING: Objection to form. 14:49:11

A. So as regards to use of the term "entity" in the patents, I'd be happy to provide an analysis. I would like to be able to review the documents in detail to do so. 14:49:15 14:49:19 14:49:24 14:49:27 14:49:28

BY MR. KANG: 14:49:29

Q. And you haven't done that analysis, correct? 14:49:29 14:49:30

A. Not as it regards the term 14:49:31

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"entity" in the patents. 14:49:33

Q. All right. So you don't -- you 14:49:34

can't say, sitting here today, whether 14:49:39

there are entities that are not agents, 14:49:41

right? 14:49:43

MR. DOWNING: Objection to form. 14:49:49

A. So -- sorry. I think I'm just 14:49:51

getting a little bit of an echo. 14:49:55

As I've said, be happy to 14:49:58

provide an opinion on the use of the term 14:50:04

"entity" or "entities" in the -- in the 14:50:06

patents. 14:50:08

I would like to perform an 14:50:09

additional analysis on the documents to do 14:50:11

so. 14:50:12

BY MR. KANG: 14:50:12

Q. Maybe I'll walk you through 14:50:14

this, Mr. Johnson. Do you see that the 14:50:15

claim language you cite "at least one 14:50:17

entity that is to be involved in the 14:50:19

specified transaction"; do you see that 14:50:21

language? 14:50:23

A. Yes. 14:50:25

Q. And then later, there's a 14:50:26

wherein clause that says where at least -- 14:50:30

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"Wherein the at least one entity is the agent." 14:50:32 14:50:35

Do you see that? 14:50:35

A. Yes. 14:50:36

Q. Taking those two claim limitations in context, do you have an opinion on whether entities are co-extensive with agents? 14:50:36 14:50:40 14:50:42 14:50:46

MR. DOWNING: Objection to form, asked and answered. 14:50:48 14:50:50

A. You know, as I've said, I'd be happy to -- to provide analysis on the term "entity" as it's used in the patents. I would like the opportunity to refer to the documents and -- and do the appropriate analysis on it. 14:50:54 14:50:57 14:50:58 14:51:02 14:51:04 14:51:10

BY MR. KANG: 14:51:10

Q. So you can't tell me, sitting here today, whether from this claim language that you've cited whether entities is broader than agents? 14:51:12 14:51:14 14:51:16 14:51:18

A. As I've said, I've been asked to perform analysis on specific terms. Entity is not one of them, but I'd be happy to perform that analysis, and I'd 14:51:22 14:51:25 14:51:27 14:51:29

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like to review the documents to do so. 14:51:31

Q. My question, Mr. Johnson, is can you tell me, sitting here today, whether the claim term "entity" is broader than the claim term "agent" based on this claim language you've cited in paragraph 32? 14:51:34 14:51:38 14:51:41 14:51:43 14:51:47

MR. DOWNING: Objection to form, asked and answered. 14:51:50 14:51:52

A. So as I've said, I'd be happy to perform an analysis on the term "agent" -- sorry, "entity" as it's used in the patents. I haven't been asked to do so yet, but if I am, I would review -- review the documents in detail. 14:51:56 14:51:59 14:52:02 14:52:04 14:52:11 14:52:13

BY MR. KANG: 14:52:13

Q. So your -- it's your opinion that agents can be individuals, right? 14:52:17 14:52:19

A. Agents can be individuals, yes. 14:52:23

Q. All right. And it's your opinion that entities can be non-humans, right? 14:52:26 14:52:27 14:52:30

A. I haven't made an analysis on the term "entity" as it's used in the patents, and I'd be happy to review the documents and do so. 14:52:33 14:52:34 14:52:37 14:52:40

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Q. Well, the claim itself says the entity is the agent, right? The claim language you cite in paragraph 32 says "Wherein the...entity is the agent," correct? 14:52:41 14:52:43 14:52:48 14:52:50 14:52:53

A. Correct. 14:52:53

Q. And you say the agent can be non-humans, right? 14:52:53 14:52:57

A. The agent can be a person or an organization. 14:53:00 14:53:07

Q. Right. 14:53:07

A. It could possibly be other things as long as those things meet the -- the requirements of the claims and the specification. 14:53:08 14:53:09 14:53:12 14:53:14

Q. And as a matter of logic, Mr. Johnson, if an entity is the agent and the agent is a nonhuman, the patent contemplates nonhuman entities, fair? 14:53:14 14:53:18 14:53:21 14:53:25

MR. DOWNING: Objection to form, argumentative. 14:53:32 14:53:34

A. I'd just ask you to restate the question. 14:53:41 14:53:43

BY MR. KANG: 14:53:43

Q. So the claim says "Wherein 14:53:45

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the...entity is the agent," right? 14:53:47

A. "Wherein...at least one entity 14:53:53

is the agent." 14:53:55

Q. Okay. So in that -- that one 14:53:56

scenario, there's an entity and it's the 14:53:58

agent, right? 14:54:00

A. Yes. 14:54:03

Q. And you're saying that agents 14:54:04

can be non-humans, correct? 14:54:06

A. I said the agent could be an 14:54:11

individual or an organization or any other 14:54:14

thing that might meet the -- the 14:54:16

requirements of the claims and the 14:54:19

specifications. 14:54:20

Q. Right. And so the entity, which 14:54:21

is the agent, could be a nonhuman, 14:54:24

correct? 14:54:27

MR. DOWNING: Objection to form. 14:54:29

A. No, I haven't said that the 14:54:30

entity could be a nonhuman or not. 14:54:34

BY MR. KANG: 14:54:34

Q. All right. That's fine. 14:54:41

And so I guess, you know, I -- I 14:54:42

didn't think that was going to be a point 14:54:44

of contention, but where you disagree with 14:54:46

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Dr. Chatterjee on this claim limitation is whether agents can be nonhuman entities, right? 14:54:51 14:54:59 14:55:03

A. No, that's not the point that I disagreed with Chatterjee on. 14:55:11 14:55:13

Q. Okay. What is your point of disagreement, Mr. Johnson? 14:55:15 14:55:16

A. Chatterjee's assertion is apparently that the term "agent" should be restricted solely to an individual person and I believe that's too narrow. 14:55:21 14:55:23 14:55:25 14:55:28

Q. Okay. And so your -- your assertion is that the term "agent" can be something other than a human, correct? 14:55:31 14:55:32 14:55:38

A. No, that's not what I've said. 14:55:40

Q. I'm just trying to -- to figure out where the -- where the conflict is. I didn't think this was going to be controversial, Mr. Johnson. 14:55:45 14:55:47 14:55:51 14:55:54

A. But is it funny? 14:55:55

Q. Can you tell me your opinion on this term? Can -- under your construction of the term "agent," does it encompass things other than humans? 14:55:57 14:56:02 14:56:04 14:56:09

A. Yeah, so what I've said, 14:56:14

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clearly, is an agent could be an individual person or an organization and it's possible an agent could be something else if it meets the requirements of the claims and the specifications. 14:56:17 14:56:21 14:56:23 14:56:26 14:56:28

Q. Okay. Now, in paragraph 18, you wrote "A patentee can become his or her own 'lexicographer' by defining terms, within the patent, however he or she chooses, as long as it is done explicitly." Do you see that? 14:56:30 14:56:39 14:56:46 14:56:49 14:56:52 14:56:54

A. Yes. 14:56:57

Q. And it's your opinion that -- I guess we'll use the '386 patent as an example, so if you could turn to the '386 patent. I believe it was Exhibit 5, at column 6, line 28. 14:57:00 14:57:04 14:57:06 14:57:14 14:57:22

A. Column 6, line 28, okay. 14:57:51

Q. The specification reads "The term 'agent' is used to refer to an individual with mobile financial services (mFS) transaction system tools and training to support specific mFS functions." Do you see that? 14:58:00 14:58:04 14:58:09 14:58:13 14:58:18 14:58:22

A. Yes. 14:58:23

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Q. And if I understand your opinion correctly, that is not an explicit definition in your expert opinion, correct? 14:58:25 14:58:27 14:58:31 14:58:34

A. So -- sorry? I think it would be a mistake to use that sentence on its own to define the term and ignore the rest of the context in which that sentence is used, which is the remaining paragraph that provides additional description of what agents are. 14:58:41 14:58:45 14:58:48 14:58:52 14:58:54 14:58:55 14:58:57

Q. Okay. And so this is my question: If we used the rest -- from line 28 to the end of the paragraph -- 14:58:59 14:59:01 14:59:06

A. Uh-huh. 14:59:09

Q. -- would you consider that an express definition of the term "agent"? 14:59:09 14:59:12

MR. DOWNING: Objection to form. 14:59:15

A. Yeah, I -- the -- I think that provides an explanation of how the term "agent" is used, but it doesn't seem to be a clear definition per se in that the -- the remainder of the definition is determined by looking at the remainder of the specification and the way that the 14:59:19 14:59:22 14:59:25 14:59:27 14:59:34 14:59:35 14:59:40

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term is used. 14:59:41
BY MR. KANG: 14:59:41
Q. And your opinion is that the 14:59:42
plain and ordinary meaning should apply, 14:59:43
correct? 14:59:47
A. Yes. 14:59:47
Q. And the plain and ordinary 14:59:47
meaning you cited came from the Random 14:59:50
House Dictionary of the English Language, 14:59:53
2nd edition, correct? 14:59:55
MR. DOWNING: Objection to form. 14:59:57
A. Correct. Yeah, this is an 14:59:58
example of an ordinary definition of the 15:00:02
term "agent." 15:00:05
BY MR. KANG: 15:00:05
Q. Right. And so you think that 15:00:06
definition should control rather than what 15:00:10
we're looking at here in column 6, lines 15:00:13
28 to even 41 of the '386 patent, correct? 15:00:17
MR. DOWNING: Objection to form. 15:00:21
A. No, that's not what I've said. 15:00:22
If I may refer back to the declaration -- 15:00:28
sorry, which paragraph are we on? 15:00:32
BY MR. KANG: 15:00:32
Q. It's page 11 where you discuss 15:00:38

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the term "agent." 15:00:40
A. Well, no, I have to go find 15:00:41
the -- the reference to the dictionary 15:00:51
definition because -- 15:00:53
Q. The dictionary definition is 15:00:53
paragraph 38. 15:00:59
A. So there was a question again. 15:01:18
Do you mind repeating it? 15:01:20
Q. Your opinion is the dictionary 15:01:22
definition in paragraph 38 from the Random 15:01:25
House dictionary should control for the 15:01:30
definition of "agent" over what we looked 15:01:32
at in column 6, lines 28 to 41 of the 15:01:36
specification, correct? 15:01:39
MR. DOWNING: Objection to form. 15:01:41
A. No, the -- the definition of 15:01:46
agent as it's defined by the -- the claims 15:01:48
and specifications is -- is the definition 15:01:51
that's appropriate for the patents. As 15:01:56
I've argued in the declaration, the plain 15:02:01
and ordinary meaning of that term is 15:02:04
sufficient to understand the -- the term 15:02:06
"agent" in those contexts. 15:02:09
BY MR. KANG: 15:02:09
Q. Okay. So I just -- Mr. Johnson, 15:02:11

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I just want to be really clear on your opinion here. 15:02:12 15:02:15

A. Uh-huh. 15:02:15

Q. What is the proper construction of the term "agent"? 15:02:16 15:02:17

MR. DOWNING: Objection to form. 15:02:20

A. The proper construction of the term "agent" is the plain and ordinary -- sorry -- plain and ordinary meaning. 15:02:22 15:02:24 15:02:27

BY MR. KANG: 15:02:27

Q. And that's -- 15:02:30

A. Sorry. 15:02:31

MR. DOWNING: Go ahead. Finish, Mr. Johnson, if you're not finished. 15:02:33 15:02:35

A. I was going to say as it's -- as it's described in the claims and specifications. 15:02:37 15:02:40 15:02:41

BY MR. KANG: 15:02:41

Q. And so the definition you provide in paragraph 38, is that the plain and ordinary meaning of the term "agent"? Is that the proper construction of the term "agent"? 15:02:42 15:02:45 15:02:49 15:02:51 15:02:54

MR. DOWNING: Objection to form. 15:02:54

A. As I've said, the proper 15:02:57

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construction of the term "agent" is the plain and ordinary meaning as it's defined by the claims and specifications in the patent. 15:02:59 15:03:01 15:03:03 15:03:05

BY MR. KANG: 15:03:05

Q. So a person or business authorized to act on another's behalf, is that the plain and ordinary meaning of the term "agent"? 15:03:06 15:03:08 15:03:15 15:03:16

MR. DOWNING: Objection to form. 15:03:19

A. The plain and ordinary meaning is determined by the claims and specifications of the patents. 15:03:23 15:03:25 15:03:28

BY MR. KANG: 15:03:28

Q. So I don't think you're answering my question, Mr. Johnson. Is the proper construction of the term "agent," in your expert opinion, a person or business authorized to act on another's behalf? 15:03:31 15:03:32 15:03:35 15:03:36 15:03:40 15:03:43

MR. DOWNING: Objection to form, asked and answered. 15:03:44 15:03:46

A. So the -- sorry. What -- what was the question about again? 15:03:46 15:03:54

BY MR. KANG: 15:03:54

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Q. Is the proper construction of the term "agent," in your expert opinion, a person or business authorized to act on another's behalf? 15:03:58 15:04:00 15:04:04 15:04:08

MR. DOWNING: Same objection. 15:04:10

A. Yeah, so I've said pretty clearly in the declaration that I agree with the -- the conclusion that the plain and ordinary meaning is the appropriate construction for the term "agent." 15:04:15 15:04:17 15:04:20 15:04:23 15:04:25

BY MR. KANG: 15:04:25

Q. And what is the plain and ordinary meaning? 15:04:29 15:04:31

MR. DOWNING: Objection to form, asked and answered. 15:04:33 15:04:35

A. Yeah. It's the meaning of the term as it's defined by the claims and the specification. 15:04:36 15:04:38 15:04:41

BY MR. KANG: 15:04:41

Q. So it's not as defined by the Random House dictionary in paragraph 38, correct? 15:04:41 15:04:43 15:04:46

A. The Random House dictionary is extrinsic evidence and does not control over the intrinsic evidence. 15:04:49 15:04:51 15:04:54

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Q. Okay. So you wrote in paragraph 34 of your declaration "The qualification in the remainder of the paragraph makes it clear that 'agents' may also be 'other companies and organizations.'" Do you see that? 15:05:00 15:05:08 15:05:17 15:05:19 15:05:22 15:05:24

A. Yes. 15:05:26

Q. Okay. And you wrote this? 15:05:27

A. Yes. 15:05:31

Q. Okay. So if you take a look at the specification from column 6, line 34 to 37, and I'm talking about the specific -- specification of the '386 patent -- 15:05:32 15:05:37 15:05:43 15:05:48 15:05:50

A. Okay. 15:05:57

Q. -- the second -- sorry -- the second full sentence reads "Agents can be employees or contractors of the program provider," correct? 15:05:58 15:06:03 15:06:05 15:06:08

A. Were you referring to a phrase or a full sentence? 15:06:16 15:06:17

Q. Yeah, the beginning -- let me read the whole sentence for you, Mr. Johnson, since that's a -- that's an issue for you. This part -- 15:06:19 15:06:21 15:06:22 15:06:24

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MR. DOWNING: Just hold on. Hold on. Hold on. Hold on. Robert, I'm just going -- I'm just going to ask you again, the -- the laughter, the snide comments, they're very disrespectful. I'm just going to ask you again, please, let's keep this civil; let's give the witness respect. We will give your witness respect on his deposition. I don't want to hear any more of that. I'm going to shut the deposition down and we can meet and confer about it, but it's not right. 15:06:25 15:06:26 15:06:28 15:06:31 15:06:32 15:06:36 15:06:39 15:06:40 15:06:42 15:06:44 15:06:46 15:06:48 15:06:49 15:06:51

MR. KANG: Mr. Downing, with respect, your witness has been stonewalling at every single chance to try and -- 15:06:52 15:06:54 15:06:56 15:06:59

MR. DOWNING: I just do not agree at all, Robert. We don't have to have discussion. We will give your witness respect. Please give our witness respect. He's -- he's -- he's an accomplished person. He is a human being. He deserves respect. So no 15:07:00 15:07:01 15:07:03 15:07:05 15:07:06 15:07:08 15:07:11

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more snide comments, no more laughter. 15:07:15
Let's just get this thing done so 15:07:18
everybody can go home. Thank you. 15:07:18
BY MR. KANG: 15:07:18
Q. Mr. Johnson, you see the second 15:07:21
full sentence reads "Agents can be 15:07:23
employees or contractors of the program 15:07:23
provider, or other companies and 15:07:26
organizations that partner with the 15:07:28
program provider to provide these services 15:07:30
themselves." Do you see that? 15:07:35
A. Yes, I do. Thank you for 15:07:36
reading the entire sentence and not just 15:07:39
the first phrase. 15:07:41
Q. So is it a fair characterization 15:07:44
of this sentence that agents can be 15:07:48
employees of the program provider or 15:07:52
employees of other companies and 15:07:55
organizations that partner with the 15:07:58
program provider? 15:08:00
A. I don't read that sentence that 15:08:06
way. I believe there are other ways to 15:08:08
read that sentence. 15:08:10
Q. One way to read this sentence is 15:08:13
that agents can be employees of the 15:08:16

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program provider or employees of other companies and organizations that partner with the program provider, fair? 15:08:18 15:08:21 15:08:23

A. The way I read this sentence, agents can be employees or contractors of the program provider or agents can be companies or organizations that partner with the program provider to provide the services themselves. 15:08:37 15:08:42 15:08:44 15:08:47 15:08:48 15:08:50

Q. I understand that's how you read it, Mr. Johnson. I'm asking whether one way to read this sentence as a matter of grammar -- 15:08:52 15:08:54 15:08:57 15:08:59

A. Uh-huh. 15:08:59

Q. -- is that agents can be employees or contractors of the program provider or employees or contractors of other companies and organizations that partner with the program provider to provide these services themselves. 15:09:00 15:09:02 15:09:04 15:09:07 15:09:09 15:09:11

MR. DOWNING: Objection to form, asked and answered. 15:09:14 15:09:15

A. Yeah, I think you can read the sentence as it's written and what you've read back to me is not the sentence as 15:09:18 15:09:21 15:09:23

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it's written. Agents can be employees or contractors of program providers or other companies and organizations that partner with the program provider to provide these services themselves. 15:09:25 15:09:28 15:09:32 15:09:34 15:09:35

BY MR. KANG: 15:09:35

Q. And your opinion is that's the only way to read this sentence, fair? 15:09:37 15:09:39

MR. DOWNING: Objection to form, misstates the witness' testimony. 15:09:42 15:09:46

A. Yeah. You know, I think the plain language speaks for itself. 15:09:48 15:09:50

BY MR. KANG: 15:09:50

Q. My opinion -- or sorry. I'm interested in your opinion, Mr. Johnson, not whether the language speaks for itself. So is it your opinion that the only way to read this sentence is that agents can be employees of the program provider or agents can be companies and organizations? 15:09:54 15:09:58 15:10:00 15:10:02 15:10:05 15:10:10 15:10:14 15:10:17

MR. DOWNING: Objection to form, asked and answered. 15:10:17 15:10:18

A. Yeah. That's a restatement -- I should say not a restatement, but a 15:10:23 15:10:26

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rephrasing of the sentence as it stands. 15:10:29
I think the best way to read the sentence 15:10:31
is to read the language as it's written. 15:10:33
And so it's clear, that is my opinion. 15:10:35
BY MR. KANG: 15:10:35
Q. Okay. And you write in this 15:10:38
same paragraph, paragraph 34 of your 15:10:49
declaration "Dr. Chatterjee understands 15:10:50
this when he states that 'the excerpt 15:10:54
further describes that agents can be 15:10:57
employees or contractors or other 15:11:00
companies and organizations which are all 15:11:02
entities and associations.'" 15:11:05
Do you see that? 15:11:09
A. I do. 15:11:10
Q. And so if we could take a look 15:11:10
at what Dr. Chatterjee actually said in 15:11:15
paragraph 44 -- 15:11:18
A. This is -- sorry. I didn't hear 15:11:22
your reference. Dr. Chatterjee's 15:11:25
paragraph what? 15:11:27
Q. 44. 15:11:28
A. Sorry, I must have misheard the 15:11:55
number -- paragraph number. What number 15:11:57
were you referring to? 15:11:59

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Q. Are you having trouble finding it, Mr. Johnson? 15:12:01 15:12:30

A. Sorry, was that a question for me or was that a statement? 15:12:55 15:12:58

MR. DOWNING: Mr. Johnson, I believe he's looking for the -- the -- the paragraph number. Just hold on. 15:12:59 15:13:03 15:13:04

THE WITNESS: Okay. Yeah. Sorry. 15:13:05 15:13:05

BY MR. KANG: 15:13:05

Q. So are you at Chatterjee declaration paragraph 44? 15:13:06 15:13:08

A. Yes, Chatterjee 44. 15:13:10

Q. Okay. And you see the sentence that begins "The excerpt further describes"? Do you see that? 15:13:12 15:13:14 15:13:17

A. Yes. 15:13:19

Q. And this is the portion of Dr. Chatterjee's declaration that you were quoting in paragraph 34 of your declaration, fair? 15:13:20 15:13:22 15:13:24 15:13:30

A. Yes. 15:13:33

Q. And what Dr. Chatterjee actually wrote in paragraph 44 is that "The excerpt further describes that 'agents' can be 15:13:35 15:13:38 15:13:41

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'employees' or 'contractors,' or 'other companies and organizations,' which are all entities and associations consisting of individuals." Did I read that correctly? 15:13:43 15:13:45 15:13:48 15:13:51 15:13:52

A. That's what Chatterjee wrote. 15:13:54

Q. And so you left off the end of the sentence that you attributed to Dr. Chatterjee where he says "consisting of individuals," fair? 15:13:56 15:13:58 15:13:59 15:14:03

MR. DOWNING: Objection to form. 15:14:04

A. Yes. 15:14:10

BY MR. KANG: 15:14:10

Q. And do you feel like that's an accurate characterization of Dr. Chatterjee's opinion? 15:14:12 15:14:14 15:14:16

A. I feel like that's an accurate quote and I feel like if Chatterjee understands that agents can be companies and organizations, that that -- that's clearly stated in this quote. 15:14:22 15:14:24 15:14:28 15:14:32 15:14:34

Q. Consisting of individuals, you don't think that's an important part to include in this quote? 15:14:36 15:14:38 15:14:40

A. Companies and organizations do 15:14:45

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consist of individuals. 15:14:46

Q. Okay. Now, you relied on 15:14:48

figures 11-A and 11-B for depicting 15:14:52

situations where organizations act as 15:14:57

agents, right? 15:15:00

A. Yes. 15:15:02

Q. And you cite to the '845 patent 15:15:04

in paragraph 35 and 36, right? 15:15:08

A. Column 21 -- sorry, '845, column 15:15:14

21, 36 to 41; is that the reference you're 15:15:19

looking for? 15:15:22

Q. Yes. And so you -- you write 15:15:23

that the '845 patent describes figure 11-A 15:15:29

as "the employer acting as an 'agent,'" 15:15:33

right? 15:15:38

A. Yes. 15:15:39

Q. Now, figure 11-A doesn't include 15:15:39

the term "agent," correct? 15:15:41

A. Let me just have a look and 15:15:48

confirm that. So, no, the figure 11-A 15:15:49

does not include the term "agent." 15:16:20

Q. And the specification from 15:16:21

column 21, line 6 through line 41 doesn't 15:16:22

mention the term "agent" either, correct? 15:16:27

A. Correct, that citation does not 15:16:30

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refer to an agent directly. 15:17:18

Q. And so what's your basis for 15:17:20

your opinion that the employer is acting 15:17:22

as the agent under the claims in 15:17:25

figure 11-A? 15:17:27

A. It is the paragraph we reviewed 15:17:31

earlier, it's that citation. Give me just 15:17:33

a minute. This will be the '845 patent, 15:17:44

column 6, lines 7 through 20. 15:17:58

Q. And that's the definition where 15:18:11

the specification says agents can be 15:18:12

individuals, and then there's the disputed 15:18:16

language where it says -- where you claim 15:18:18

it says they can also be businesses and 15:18:22

organizations, right? 15:18:24

MR. DOWNING: Objection to form, 15:18:25

argumentative. 15:18:27

A. This is the paragraph describing 15:18:34

the term "agent." 15:18:35

BY MR. KANG: 15:18:35

Q. Okay. And so that is the basis 15:18:37

for you assuming that the employer in 11-A 15:18:45

is an agent, correct? 15:18:55

MR. DOWNING: Objection to form. 15:18:56

A. The employer in 11-A is acting 15:18:56

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as an agent as it's described here in column 6. 15:19:08 15:19:10

BY MR. KANG: 15:19:10

Q. Column 6 isn't -- doesn't reference figure 11-A, correct? 15:19:13 15:19:15

A. Correct. 15:19:18

Q. Okay. And so when you say column 6 is describing figure 11-A, what's your basis for that opinion? 15:19:18 15:19:21 15:19:24

A. That's not what I said. 15:19:27

Q. Your opinion is that because column 6 describes, in your opinion, organizations as agents, then the organization in 11-A is an agent? 15:19:34 15:19:35 15:19:39 15:19:42

MR. DOWNING: Objection to form. 15:19:46

A. No, what I've said is the employer in figure 11-A is acting as an agent as it's described here in column 6. 15:19:49 15:19:52 15:19:56

BY MR. KANG: 15:19:56

Q. What part of column 6 describes an employer acting as an agent? 15:19:58 15:20:00

A. Those are exactly the lines we've been talking about. 15:20:07 15:20:08

Q. Could you be a little more specific, please, what -- what lines? 15:20:11 15:20:12

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A. So 7 through 20. 15:20:14
Q. Is the term "employer" in this 15:20:32
portion of column 6, lines 7 through 20? 15:20:36
A. No, that term is not in this -- 15:20:52
in these lines. 15:20:53
Q. Okay. And so what ties 15:20:54
column 6, lines 7 through 20 to 15:21:00
figure 11-A in your opinion? 15:21:03
A. I think it's clear from -- from 15:21:07
this paragraph in column 6 -- 15:21:12
Q. I didn't ask you if you thought 15:21:17
it was clear, Mr. Johnson. I asked what 15:21:20
ties -- 15:21:22
MR. DOWNING: Can you let him 15:21:23
finish -- can you let him finish, 15:21:26
Robert? 15:21:27
Mr. Johnson, can you please 15:21:28
finish your answer. 15:21:28
THE WITNESS: Yeah. Thank you. 15:21:30
A. Yeah, so I thought it was clear 15:21:31
from this description of the term "agent" 15:21:33
that it applies to other organizations or 15:21:34
companies including one that might have 15:21:36
employees. 15:21:37
BY MR. KANG: 15:21:37

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Q. All right. And then so if you turn to paragraph 36 of your declaration, you write that the '845 patent describes figure 11-B as the government acting as the agent, correct? 15:21:42 15:21:43 15:21:46 15:21:49 15:21:52

A. Indeed. 15:21:54

Q. And figure 11-B doesn't include the term "agent," right? 15:21:54 15:21:59

A. Not that I recall. 15:22:02

Q. The citation that you include in paragraph 36 of the '845 patent, column 21, lines 42 to 64 also does not mention the term "agent," right? 15:22:03 15:22:06 15:22:09 15:22:13

A. No, it does not. 15:22:27

Q. Is your basis for your opinion that the government is the agent under the claims in figure 11-B the same as previously, column 6, lines 7 through 20? 15:22:28 15:22:29 15:22:32 15:22:35

MR. DOWNING: Objection to form. 15:22:38

A. Yeah, so maybe you can rephrase the question. 15:22:45 15:22:49

BY MR. KANG: 15:22:49

Q. What is your basis for your opinion that the government in figure 11-B is the agent of the claims? 15:22:51 15:22:52 15:22:56

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A. It is, again, this -- this explanation of the term "agent" in column 6. 15:22:59 15:23:04 15:23:06

Q. Okay. Anything else? Any other portion of the '845 patent specification inform your opinion that the government in figure 11-B is the agent? 15:23:07 15:23:12 15:23:15 15:23:20

MR. DOWNING: Objection to form. 15:23:23

A. Yeah, you know, when considering how the term "agent" is applied, I consider the entire specification and the claims and my opinion is based on that, and I believe that the government entity that's shown in figure 11-B is a representation of the agent as it's described in the specification. 15:23:24 15:23:26 15:23:28 15:23:29 15:23:33 15:23:37 15:23:43 15:23:45

BY MR. KANG: 15:23:45

Q. In figures 11-A and 11-B, is there an agent branch? 15:23:49 15:23:54

A. Sorry. 15:24:02

Q. So I mean, let's -- let's turn back. Let's look at figure 11-A of the '845 patent. You contend that the employer is the agent, correct? 15:24:02 15:24:09 15:24:12 15:24:13

A. Yeah, the employer -- 15:24:18

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MR. DOWNING: Objection to form.

A. -- is acting as the agent in figure 11-A.

BY MR. KANG:

Q. Okay. And so there's 1101 employer bank account, 1102 employer bank account at program bank. Which one of these is the agent?

A. The employer is the agent.

Q. So the agent -- is the agent depicted on figure 11-A in your opinion?

A. The employer is the agent depicted on figure 11-A.

Q. Which reference number is the agent?

A. None of these. The employer is implicit in the diagram.

Q. So the employer's the agent and the employer's not on figure 11-A, fair?

A. The employer is the agent as it's referenced in figure 11-A.

Q. But the employer is not explicitly drawn on figure 11-A, right?

A. Right. The employer is implicit in figure 11-A.

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Q. It's implicit, right? 15:25:35
A. Yes. 15:25:38
Q. It's not explicit in 15:25:38
figure 11-A? 15:25:40
A. Sorry? 15:25:42
Q. It's not explicitly drawn on 15:25:42
figure 11-A? 15:25:44
A. No, it's not. 15:25:46
Q. All right. And same for 11-B, 15:25:46
the government is not explicitly drawn on 15:25:49
figure 11-B, right? 15:25:54
A. No, it's not. 15:26:00
Q. Okay. So I want to turn your 15:26:00
attention to the '386 patent claim 1 at 15:26:26
column 31, 18 to 27. 15:26:39
A. '386 claim 1. Okay. 15:26:47
Q. And so the claim reads "At least 15:26:57
one entity that is to be involved in the 15:27:02
specified transaction." Do you see that? 15:27:05
A. Okay, at least one entity that 15:27:07
is to be involved in the specified 15:27:21
transaction, yes. 15:27:22
Q. And what is the specified 15:27:24
transaction in which the entity or agent 15:27:25
is involved? 15:27:28

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A. Claim 1 of the '386 patent refers to subscriber intending to deposit the amount of funds into the subscriber's account. 15:28:18 15:28:22 15:28:30 15:28:32

Q. Okay. That's the next limitation "Wherein the monetary transaction system is implemented to deposit funds at an agent branch, the funds being deposited by a subscriber at the agent branch using a mobile device"; is that what you're referring to? 15:28:32 15:28:42 15:28:44 15:28:46 15:28:48 15:28:51 15:28:53

A. What -- I was actually referring to lines 34 to 35. 15:29:02 15:29:03

Q. Okay. So the specified transaction in claim 1 of the '386 patent refers to a subscriber intending to deposit the amount of funds into the subscriber's account, correct? 15:29:11 15:29:22 15:29:24 15:29:26 15:29:30

A. Yes. 15:29:35

Q. If you turn to figure 11-A, here the employer is making the deposit, fair? 15:29:39 15:29:45

A. Yes, the employer is making the deposit in figure 11-A. 15:30:14 15:30:16

Q. Right. The subscriber is not making the deposit, correct? 15:30:18 15:30:20

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A. Correct. 15:30:21
Q. All right. And in 11-B, the 15:30:22
government is making the deposit, correct? 15:30:24
A. Correct. 15:30:31
Q. The subscriber is not making the 15:30:33
deposit in figure 11-B, correct? 15:30:34
A. Correct. 15:30:37
Q. And so you'd agree that the 15:30:39
transactions described or -- sorry, do you 15:30:42
agree that the transaction claimed in '386 15:30:45
patent claim 1 is not figure 11-A or 15:30:49
figure 11-B? 15:30:51
MR. DOWNING: Objection to form. 15:30:53
A. So I haven't considered whether 15:31:06
these particular -- whether a particular 15:31:08
claim applies to a particular figure in 15:31:10
the document. You know, I could give it 15:31:12
some more consideration. 15:31:16
BY MR. KANG: 15:31:16
Q. Okay. But you would agree that 15:31:17
in figure 11-A and 11-B, the subscriber is 15:31:19
not making the deposit, correct? 15:31:25
A. In 11-A and 11-B, the subscriber 15:31:27
is not making the deposit. 15:31:33
Q. Right. And you'd agree that in 15:31:34

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figures 11-A and 11-B the subscriber is not making a withdrawal, correct? 15:31:35 15:31:39

A. Correct, the subscriber is not making a withdrawal in 11-A or 11-B. 15:31:41 15:31:42

Q. And in figures 11-A and 11-B, the subscriber is not transferring funds to a recipient, correct? 15:31:45 15:31:52 15:31:56

MR. DOWNING: Objection to form. 15:31:59

A. Depends on how you read figure 11-A or 11-B. An alternate interpretation may be that the employer or government is the subscriber in figures 11-A or 11-B. 15:32:08 15:32:09 15:32:14 15:32:17

BY MR. KANG: 15:32:17

Q. Okay. So the government could be the agent or it could be the subscriber in your opinion, right? 15:32:21 15:32:22 15:32:25

A. Depending on the interpretation, it's possible it could be either. 15:32:27 15:32:29

Q. And the -- the employer could be the agent or the subscriber in your interpretation, correct? 15:32:32 15:32:39 15:32:41

A. If you're referring specifically to figure 11-A. 15:32:45 15:32:46

Q. Yeah. But you told me earlier that column 6, line 7 through 20 of the 15:32:48 15:32:56

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specification informed your opinion that the government in 11-B and the employer in 11-A are acting as agents, fair? 15:33:00 15:33:05 15:33:10

A. Yeah, I've said that -- that description of the term agent in column 6 is -- informed, I should say, my opinions about whether the -- the government organization and employer in figures 11-B and A, I guess respectively, were acting as agents. 15:33:16 15:33:21 15:33:27 15:33:34 15:33:36 15:33:40 15:33:44

Q. And what you're telling me, though, is another valid, alternate reading of these is that the government and employer are not agents but subscribers, fair? 15:33:44 15:33:47 15:33:50 15:33:54 15:33:57

A. That is another possible interpretation of the figures. 15:34:01 15:34:02

Q. Okay. Is that supported by the specification? 15:34:04 15:34:06

A. My -- my initial impression is that it is and I would -- I probably would review the specification in detail to confirm that. 15:34:09 15:34:12 15:34:15 15:34:17

Q. Okay. And you agree that figures 11-A and B do not depict 15:34:17 15:34:22

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presenting a purchase code to an agent, correct? 15:34:25 15:34:28

MR. DOWNING: Objection to form. 15:34:29

A. 11-A and 11-B -- here we go -- do not depict presenting a purchase form to an agent. Is that the question? 15:34:36 15:34:47 15:34:54

BY MR. KANG: 15:34:56

Q. Yes. 15:34:57

A. Okay. 15:34:57

MR. DOWNING: Same objection. 15:34:58

BY MR. KANG: 15:34:58

Q. Mr. Johnson, do you need me to repeat the pending question? 15:36:17 15:36:19

A. Sorry, I didn't hear a question. 15:36:21

Q. You would agree that figures 11-A and 11-B do not depict presenting a purchase code to an agent, right? 15:36:24 15:36:26 15:36:32

A. Yeah, I did answer that one. Did you not hear it? It's not a question about the -- about form. I'm just trying to make sure that the meaning is working properly. 15:36:37 15:36:39 15:36:41 15:36:46 15:36:49

Q. Okay. Let's just re-ask it one more time. 15:36:51 15:36:53

A. Sure. 15:36:54

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Q. You would agree that figures 11-A and 11-B do not depict a purchase code presented to an agent, correct? 15:36:55 15:36:57 15:37:01

A. Correct. 15:37:05

Q. All right. And you would agree that figures 11-A and 11-B do not depict presenting a withdrawal code to an agent, right? 15:37:06 15:37:08 15:37:12 15:37:15

A. Correct. 15:37:17

Q. Now, Mr. Johnson, you mentioned that you were retained in this case in late October; is that correct? 15:37:18 15:37:26 15:37:28

A. Yes. 15:37:29

Q. Do you have a more specific date or -- sorry, can you recall a more specific date on which you were retained? 15:37:31 15:37:35 15:37:37

A. I would have to refer to my documents to get the exact date for you. 15:37:39 15:37:40

Q. In paragraph 43 of your declaration, you cite an article from CGAP. 15:37:46 15:37:48 15:38:05

Do you see that? 15:38:06

A. Yes. 15:38:09

Q. Okay. Did you find this article? 15:38:10 15:38:11

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A. Yes. 15:38:14
Q. You personally located this 15:38:16
article? 15:38:17
A. Yes. 15:38:20
Q. Okay. When did you locate this 15:38:21
article? 15:38:23
A. I don't recall what day it was. 15:38:26
Q. And previously you submitted a 15:38:28
declaration in this case on October 27th; 15:38:32
is that right? 15:38:38
A. That sounds like the right date. 15:38:40
MR. KANG: I'd go ahead and mark 15:38:47
the October 27th Declaration of Kai 15:38:49
Johnson. 15:38:53
(Exhibit 11, Declaration of Kai 15:38:53
Johnson dated October 27, 2022, marked 15:38:53
for identification.) 15:39:12
BY MR. KANG: 15:39:12
Q. And this will be Exhibit 15:39:13
Number 11. 15:39:14
Do you recognize this document, 15:39:28
Mr. Johnson? 15:39:30
A. Yes, I do. 15:39:52
Q. Who contributed to the content 15:39:52
of this declaration? 15:39:57

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A. So I wrote the -- 15:39:58
MR. DOWNING: Objection to form, 15:40:00
I just want to caution the witness, 15:40:02
Mr. Johnson, you're not to disclose 15:40:04
any communications with your 15:40:07
attorneys. You can -- you can -- if 15:40:09
you can answer the question without 15:40:13
doing that, you're free to do so. If 15:40:14
you cannot, I instruct you not to 15:40:16
answer. 15:40:19
A. Okay. You know, I think I can 15:40:23
say some things without disclosing 15:40:26
communications. 15:40:29
I wrote the first draft of this, 15:40:31
and I worked with the counsel in an 15:40:32
iterative process, reviewed the final 15:40:39
version and signed it before it was sent 15:40:42
out. 15:40:45
BY MR. KANG: 15:40:46
Q. Do you recall which counsel you 15:40:46
worked with on this declaration? 15:40:47
A. With John Downing and Jeceaca 15:40:54
An, and there may have been other lawyers 15:41:00
at Kasowitz. 15:41:02
Q. Anyone other than yourself and 15:41:04

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counsel for Fintiv contribute to the content of this declaration? 15:41:06 15:41:10

A. No. 15:41:12

MR. DOWNING: Hold on. 15:41:13

Mr. Johnson, just the same instruction. If you can answer the question without divulging communications with -- with your counsel, you can do so. If you cannot, I instruct you not to answer the question. 15:41:15 15:41:16 15:41:17 15:41:19 15:41:20 15:41:23 15:41:25

THE WITNESS: Thank you. 15:41:27

A. Yeah, but no. 15:41:29

BY MR. KANG: 15:41:30

Q. When did you start working on this declaration Exhibit 11? 15:41:31 15:41:32

A. Can I look at a calendar? It was -- I'm trying to -- I'm trying to remember the dates in my head, but it was several days before the declaration was filed. 15:41:41 15:41:47 15:41:56 15:41:59 15:42:01

Q. Okay. And your declaration was filed October 27, 2022, correct? 15:42:02 15:42:05

A. Correct. 15:42:09

Q. How much time did you spend 15:42:14

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working on this declaration? 15:42:15
A. Several hours each day over the 15:42:19
time that I was working on it. 15:42:24
Q. So several hours for several 15:42:29
days? 15:42:30
A. Yes. 15:42:32
Q. Is it fair to say you spent 15:42:33
under 20 hours on this declaration? 15:42:36
A. I would have to go back and look 15:42:39
at my records to find out what -- the 15:42:41
amount of time I spent on it. 15:42:43
Q. Okay. And that's your signature 15:42:44
on page 31, correct? 15:42:49
A. Yes, it is. 15:43:00
Q. And you signed this on 15:43:01
October 27, 2022? 15:43:07
A. I believe so, yes. 15:43:14
Q. Do you recall -- sorry. 15:43:16
Do you recall what time you 15:43:17
signed this document? 15:43:19
A. No, I don't recall what time it 15:43:21
would have been. 15:43:24
Q. Morning, afternoon, evening? 15:43:26
A. Sometime in the evening. 15:43:28
Q. Did you read this document 15:43:31

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before you signed it? 15:43:32
A. Yes, I did. 15:43:34
Q. And you reviewed it carefully? 15:43:35
A. I did. 15:43:38
Q. So let's turn to paragraph 43. 15:43:39
Paragraph 43 reads: "Any article that 15:43:54
calls nonhuman Internet payment an agent?" 15:43:56
Do you see that? 15:44:00
A. Uh-huh. 15:44:00
Q. Who wrote paragraph 43? 15:44:01
A. That paragraph 43, I'm not sure. 15:44:06
It's something I might have written. It's 15:44:11
a note that was in the drafts that were 15:44:12
being worked on. 15:44:16
Q. So you don't recall whether you 15:44:17
wrote this or one of Fintiv's attorneys 15:44:20
wrote this? 15:44:23
A. No, I do not remember. 15:44:24
MR. DOWNING: Objection. 15:44:25
Objection. Again, I would caution the 15:44:26
witness, Mr. Johnson, if you can 15:44:29
answer the question without revealing 15:44:31
your discussions with your counsel, 15:44:33
you're free to do so. If you cannot, 15:44:35
then I instruct you not to answer. 15:44:37

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A. Sure, yeah. I don't recall. 15:44:44
BY MR. KANG: 15:44:45
Q. This is a question from someone 15:44:47
that is asking for an article that calls 15:44:49
nonhuman Internet payment an agent, fair? 15:44:52
A. That's what it says. 15:44:57
Q. Did you find any articles that 15:44:59
refer to nonhuman Internet payment an 15:45:02
agent? 15:45:19
A. So -- yeah. When I noticed that 15:45:21
this note was left in the document, I went 15:45:25
back and wrote the paragraph that you see 15:45:31
as paragraph 43 in the -- the amended 15:45:33
version of the declaration. 15:45:41
Q. Is it your testimony today that 15:45:50
the article cited in paragraph 43 calls a 15:45:52
nonhuman Internet payment an agent? 15:46:02
A. So my testimony is -- well, now, 15:46:05
my opinions are clear in the -- in the 15:46:08
declaration that the -- the use of the 15:46:10
term "agent" was more broad at the time 15:46:18
than -- than Dr. Chatterjee's proposed 15:46:20
construction of the term. 15:46:29
Q. Okay. I get it. 15:46:29
A. Sorry? 15:46:39

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Q. Oh, were you finished with your answer, Mr. Johnson? 15:46:40

A. Yeah, that's sufficient, I think. 15:46:41

Q. Okay. And so what I'm trying to find out is, is there anything in this article you cite in paragraph 43 of Exhibit 2 that refers to a nonhuman Internet payment as an agent? 15:46:43

A. I have to go back and refresh my memory as to what -- exactly what's in that article since there were several articles that we reviewed. 15:47:05

Do you mind if we look at it? 15:47:14

Q. Yeah, it's on page 37 of Exhibit 2, and it's a pretty voluminous article which is why I wanted to ask you rather than looking through it myself. 15:47:15

A. Page -- 15:47:27

Q. Sorry, there's page numbers at the very top of the Exhibit 2. 15:47:31

A. Yep. I've got it. Oh, am I looking at the right exhibit, Exhibit 2, you're saying page 37? No, I'm not -- I don't think that's quite the right 15:47:36

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reference. 15:47:58
Q. This is not the CGAP article. 15:47:59
A. This is the Bank of America 15:48:02
Merrill Lynch article. 15:48:04
Q. I see. Then it would be on page 15:48:06
124 of Exhibit 2. Sorry about that. 15:48:08
A. Sorry. Okay. 124. This is the 15:48:11
CGAP document. 15:48:36
Q. I believe so. 15:48:42
A. Was there a question that I 15:49:32
needed to answer? 15:49:34
Q. Yeah. Is there anything within 15:49:34
this CGAP article that refers to nonhuman 15:49:36
Internet payment as an agent? 15:49:42
A. Yeah, that phrase is not 15:49:49
particularly clear, but I do remember why 15:49:50
this article was important. 15:49:52
Q. Does anything in the CGAP 15:49:56
article refer to agents as software? 15:49:59
A. Oh, I don't know. I would have 15:50:02
to go back and look at this article a 15:50:05
little bit more closely. 15:50:06
Q. All right. So in paragraph 43 15:50:08
of your amended declaration, you cite this 15:50:10
article for the proposition that agent was 15:50:12

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used broadly, correct? 15:50:16

A. Yes. 15:50:18

Q. Okay. If you turn to page 131 of Exhibit 2. 15:50:19 15:50:41

A. 131 of Exhibit 2, okay. 15:50:42

Q. The paragraph on the left column at the bottom starting "Decongesting branches"; do you see that paragraph? 15:50:52 15:50:56 15:50:59

A. Yes. 15:51:03

Q. Part of the sentence, the first part of the sentence reads "Retail agents can be viewed merely as 'human ATMs' whose role is to provide greater customer convenience," and the sentence continues. 15:51:06 15:51:07 15:51:10 15:51:16 15:51:19

Do you see that? 15:51:21

A. Yes. 15:51:21

Q. In this sentence, you'd agree that the agents are individuals, right? 15:51:21 15:51:24

A. In this particular sentence, it appears to be referring to agents as individuals. 15:51:27 15:51:29 15:51:31

Q. If you look at page 128 of this article -- sorry -- of Exhibit 2, under the heading "The economic role of banking agents," bullet point one reads: "The 15:51:31 15:51:41 15:51:51 15:51:55

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agent offers front-line customer service (including physical space and operation of the POS device)."

Did I read that correctly?

A. Yes.

Q. And in this context, the agent is a human individual, correct?

A. I don't see that that's clear in this sentence.

Q. So "front-line customer service" does not suggest to you that the agent is human?

A. If I read this sentence "The agent offers front-line customer service," I'll just pause there, that can easily imply either an individual or an organization; an individual offering individual customer service, an organization offering, you know, a broader customer service organization, including many individuals.

Q. So when organization offers customer service, its employees are the ones that physically offer customer service, right?

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A. Employees, contractors, subcontractors, et cetera, perhaps. 15:53:15 15:53:17

Q. And they're humans, right? 15:53:20

A. Yes. 15:53:22

Q. Okay. And in the third bullet point, the first sentence reads: "The agent needs to go to the bank from time to time to rebalance its cash in the till versus its money in the bank account." 15:53:25 15:53:30 15:53:31 15:53:33 15:53:37

Did I read that correctly? 15:53:40

A. Yes. 15:53:41

Q. And you'd agree that in this context, this article is referring to human agents, correct? 15:53:43 15:53:44 15:53:48

A. In this context, the agent could refer to either an individual or an organization. 15:53:53 15:53:55 15:53:58

Q. Right. But the -- the part -- the entity that is going to the bank from time to time is a human, correct? 15:53:58 15:54:01 15:54:06

A. You know, I'd read this generally that an agent needs to have a supply of cash and that phrase "go to the bank" could mean any number of different things, including having cash delivered 15:54:09 15:54:18 15:54:24 15:54:27 15:54:30

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to -- to retail locations. 15:54:31

Q. So let me understand your 15:54:34

opinion, Mr. Johnson. 15:54:37

When you read this sentence "The 15:54:38

agent needs to go to the bank from time to 15:54:42

time," and it continues -- 15:54:44

A. Uh-huh. 15:54:46

Q. -- you read that as not 15:54:46

necessarily requiring the agent be a 15:54:48

human? 15:54:51

A. The agent could be an individual 15:54:53

or an organization. 15:54:54

Q. And so what does it mean for an 15:54:56

organization to go to the bank from time 15:54:58

to time? 15:55:01

A. It means that the organization 15:55:02

is -- we have to look at the rest of the 15:55:03

sentence -- getting cash supplies for its 15:55:07

retail allowance. 15:55:11

Q. Okay. And that procedure, 15:55:13

getting cash supplies for its retail 15:55:18

allowance, is that performed by a human? 15:55:22

A. Generally, the cash would be 15:55:30

delivered by a human. 15:55:32

Q. And this sentence doesn't say 15:55:37

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anything about cash being delivered, fair? 15:55:38
A. Oh, you know, that's one way to 15:55:41
consider it. 15:55:44
Q. Do you see the sentence two 15:55:45
sentences after the one we were just 15:55:50
looking at that begins "in effect"? It 15:55:52
reads -- 15:55:59
A. Yes. 15:55:59
Q. -- "in effect, the community 15:55:59
delegates the bothersome business of going 15:56:02
to the bank to the agent"; did I read that 15:56:04
correctly? 15:56:07
A. Yes. 15:56:07
Q. In this context, do you still 15:56:08
believe this paragraph could be referring 15:56:13
to receiving a delivery of cash? 15:56:15
A. Absolutely. 15:56:18
Q. The paragraph doesn't refer to 15:56:24
delivery, fair? 15:56:26
A. Not explicitly. 15:56:36
Q. Does it implicitly refer to 15:56:39
delivery, Mr. Johnson? 15:56:41
A. That's often how cash is 15:56:46
handled. 15:56:47
Q. Right. And so the -- the 15:56:48

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mention of cash, in your opinion, implicitly discloses delivery of cash, fair? 15:56:50 15:56:54 15:56:57

A. Yeah, I would -- you know, in a general sense, I would read this as that is one of the ways to interpret this paragraph. 15:57:00 15:57:02 15:57:05 15:57:07

Q. All right. At the bottom of the page, the paragraph, the last sentence of this page reads: "Many communities will actively contribute to the protection of their agent because they value convenient access to payment, savings and credit services." 15:57:07 15:57:11 15:57:15 15:57:19 15:57:22 15:57:25 15:57:28

Do you see that? 15:57:28

A. Yes. 15:57:29

Q. How do you interpret this sentence as a person of ordinary skill in the art? 15:57:29 15:57:32 15:57:36

A. So I'd have to look a little more broadly, I think, at the context of mobile money services -- and if you don't mind me just scrolling back up to the top of this document, the scope of what this is -- this document's talking about is 15:57:43 15:57:49 15:57:51 15:57:56 15:57:58 15:58:00

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generally mobile money services in developing countries -- 15:58:09 15:58:17

(Reporter clarification.) 15:58:17

A. Generally mobile money services in developing countries, where physical security is sometimes an issue, particularly when handling cash. 15:58:17 15:58:24 15:58:27 15:58:29

And in that context -- I've lost the reference -- we're at the top of page -- sorry, end of page 127, beginning of page 128? No. Sorry. 15:58:33 15:58:39 15:58:41 15:58:44

Can you give me the page numbers again for that sentence we're looking at? 15:58:55 15:58:57

Q. Bottom of 128. 15:59:00

A. There we go. Yeah, so in that context, physical security is important and, you know, an individual or organization that's handling cash, you know, needs to have that physical security, that protection, and, you know, so this statement says that communities appreciate the service that those individuals and organizations are providing, and that they contribute to the protection of those services, which makes 15:59:14 15:59:18 15:59:20 15:59:23 15:59:27 15:59:28 15:59:33 15:59:36 15:59:39 15:59:41 15:59:47

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sense in the context of this discussion about mobile money services in developing markets, which is a limited view of mobile money services or, you know, mobile financial services in general because it's a prospective that's limited to certain -- you know, certain markets and certain conditions that are not prevalent elsewhere in the world. 15:59:49 15:59:51 15:59:54 15:59:59 16:00:01 16:00:03 16:00:09 16:00:10 16:00:12

Q. Are agents humans in this -- in this portion of this article on page 128? 16:00:13 16:00:16

A. As I've said, the agent can be a human or an organization. 16:00:21 16:00:24

Q. And when you read that sentence where communities are willing to protect their agents, you read that as communities are willing to protect organizations, correct? 16:00:25 16:00:28 16:00:31 16:00:34 16:00:36

A. Yes. 16:00:38

Q. So I wanted to turn to your opinion on the unbanked subscriber term, and I don't think there's a whole lot of dispute here, but I'm not clear on your opinion. 16:00:42 16:00:44 16:00:48 16:00:52 16:00:55

MR. DOWNING: Hey, Robert is 16:00:55

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this a good place to stop? I think 16:00:56
we've been going for like over an hour 16:00:58
around a half, but I don't know how 16:01:03
much time you have left. Maybe -- 16:01:04
maybe if you have a little bit, we can 16:01:06
keep going, but I'm just -- it's just 16:01:08
getting late in the afternoon. 16:01:10
MR. KANG: Yeah, sure. Let's 16:01:12
take a break. 10 minutes okay? 16:01:21
MR. DOWNING: Yeah. How much 16:01:23
time is on the record? 16:01:25
THE VIDEOGRAPHER: Let's go off 16:01:31
the record. Off the record 4:01 p.m. 16:01:31
(Whereupon, a brief recess is 16:01:31
taken.) 16:13:11
THE VIDEOGRAPHER: We are on the 16:13:11
record at 4:13 p.m. 16:13:16
BY MR. KANG: 16:13:18
Q. Mr. Johnson, before we broke, I 16:13:21
was asking you about your opinions on the 16:13:23
term "unbanked subscriber." 16:13:25
I just have -- I'm having a 16:13:29
little bit of trouble understanding the 16:13:32
distinction you're making between having a 16:13:33
bank account and having access to a bank 16:13:36

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account. Is that kind of -- let me start over. 16:13:38 16:13:41

You say in paragraph 47 that an unbanked subscriber may have a bank account, correct? 16:13:44 16:13:48 16:13:50

A. Sorry, just catching up with you. Let me get to paragraph 47. 16:13:58 16:14:01

And your question again was? 16:14:17

Q. So at the end of paragraph 47, you opine that an unbanked subscriber may have a bank account, fair? 16:14:19 16:14:21 16:14:26

A. Yes. 16:14:28

Q. All right. And so is the point of contention between you and Dr. Chatterjee that "unbanked subscriber" to you means a subscriber that doesn't have access to a bank account rather than doesn't have a bank account? 16:14:29 16:14:34 16:14:36 16:14:42 16:14:44 16:14:48

MR. DOWNING: Objection to form. 16:14:51

A. So Chatterjee's construction is clearly too narrow since what he says is "an 'unbanked subscriber' is a subscriber that does not have...[a financial institution] account." 16:14:59 16:15:03 16:15:11 16:15:13 16:15:14

There are quite a few places in 16:15:17

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the patents that refer to the use of bank accounts, such as credit or debit or prepaid access or other types of accounts being used by subscribers, including by unbanked subscribers, so it's clear throughout the patents that they -- that even an unbanked subscriber may have a bank account and may indeed use it with the services. 16:15:19 16:15:26 16:15:29 16:15:33 16:15:37 16:15:40 16:15:43 16:15:45 16:15:48

BY MR. KANG: 16:15:50

Q. What does the term "unbanked" add to the term "subscriber"? 16:15:51 16:15:53

MR. DOWNING: Objection to form. 16:15:58

A. So I think you read this term in context of the claims and the specifications where it's clear that even an unbanked subscriber may have a bank account and may use a bank account with the services. 16:15:59 16:16:04 16:16:07 16:16:10 16:16:13 16:16:14

BY MR. KANG: 16:16:14

Q. So if I'm a subscriber, I can access the service, I can have a bank account, correct? 16:16:15 16:16:18 16:16:20

A. Yeah. 16:16:23

Q. And then if I'm an unbanked 16:16:24

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subscriber, your testimony today is I could still have a bank account and I could still use it with the service, right? 16:16:27 16:16:30 16:16:33 16:16:34

A. Indeed. 16:16:36

Q. And so when the patent claims, the '845 patent claims 1 and 5, talk about an unbanked subscriber, how is that different than a regular subscriber? 16:16:37 16:16:43 16:16:49 16:16:51

MR. DOWNING: Objection to form. 16:16:54

A. Yeah. You know, I don't think there's a -- I don't think there's an analysis of what a regular subscriber is here. 16:16:57 16:17:00 16:17:02 16:17:05

If you wanted me to compare the terms, I'd be happy to do so, but I'd want to go back to the documents to perform an analysis of that. 16:17:06 16:17:08 16:17:11 16:17:14

BY MR. KANG: 16:17:14

Q. All right. So I mean, Mr. Johnson, I'm kind of running out of time. You say that the term "unbanked subscriber" should be given its plain and ordinary meaning, right? But you don't say what that is in your declaration, 16:17:14 16:17:15 16:17:17 16:17:21 16:17:23 16:17:24

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fair? 16:17:27

A. So the plain and ordinary 16:17:31
meaning of a term in a patent is defined 16:17:34
by the claims and the specifications. 16:17:38

Q. Right. But I mean that's what 16:17:40
it's defined by, not the actual 16:17:41
definition. We've been talking about this 16:17:44
all day. You've given the same plain and 16:17:46
ordinary meaning for every term, which is 16:17:48
just defined by the claims and the 16:17:51
specification. I'm just trying to figure 16:17:52
out what you mean by "unbanked 16:17:54
subscriber," Mr. Johnson. 16:17:56

So when the '845 patent claims 1 16:17:57
and 5 refer to an unbanked subscriber, 16:18:02
what does the term "unbanked" add to the 16:18:04
term "subscriber"? 16:18:07

A. You're asking again for a 16:18:10
comparison between the terms "unbanked 16:18:12
subscriber" and "subscriber," and I 16:18:14
haven't done that analysis, but I'd be 16:18:17
happy to do so if I have an opportunity to 16:18:19
review the documents in detail. 16:18:23

Q. Mr. Johnson, you'd agree that as 16:18:24
a canon of claim construction, the term 16:18:29

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"unbanked subscriber" has to have a different meaning than the term "subscriber," fair? 16:18:32 16:18:34 16:18:37

A. I do understand that if a claim uses a different -- you know, two different terms that those terms have different meanings. 16:18:41 16:18:45 16:18:46 16:18:49

Q. Okay. And so what I'm asking you is, can you tell me what the meaning of "unbanked subscriber" is relative to "subscriber"? 16:18:50 16:18:52 16:18:58 16:19:03

A. Well, I'd have to go back and do an analysis of the term subscriber, which I had not done. That's not one of the terms that I've been asked to do an analysis of. 16:19:05 16:19:07 16:19:09 16:19:12 16:19:14

Q. Okay. So you haven't done that analysis, fair? 16:19:14 16:19:16

A. No, as I was saying, I'd be happy to do that if I had the opportunity to do so. 16:19:17 16:19:20 16:19:22

Q. Okay. You understand that I'm not going to get depose you again, right? 16:19:23 16:19:24

A. I guess that's up to you and the other lawyers. 16:19:30 16:19:33

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Q. So, Mr. Johnson, an unbanked subscriber, in your opinion, can have a bank account, fair? 16:19:34 16:19:39 16:19:40

A. I think it's clear from the -- the way the term is used in the claims and specifications in the patents that there are particular use cases that refer to even unbanked subscribers performing operations with bank accounts. 16:19:43 16:19:47 16:19:49 16:19:51 16:19:54 16:19:56

Q. Okay. And an unbanked subscriber, as used in the '845 patent claims 1 and 5, can perform transactions with the monetary transaction system using his or her bank account and still satisfy the claims; is that your opinion? 16:19:57 16:20:00 16:20:02 16:20:08 16:20:13 16:20:16

A. I have not performed an analysis specifically of how that -- how those claims apply in that case. This is patent '845. 16:20:22 16:20:25 16:20:28 16:20:33

Do you want to look at a specific claim? 16:20:34 16:20:35

Q. Sure. So claim 1 of the '845 patent reads at the beginning "1, A monetary transaction system for conducting monetary transactions between unbanked 16:20:37 16:20:57 16:21:04 16:21:06

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subscribers and other entities..." 16:21:10

Do you see that? 16:21:12

A. Yes. 16:21:13

Q. What does it mean to be an unbanked subscriber here? 16:21:15 16:21:18

A. Well, so the term "unbanked subscriber" is defined not just by this claim, but by the remainder of the specification, and there -- you know, there are particular use cases that describe how the unbanked subscriber interacts with the -- with this monetary transaction system. 16:21:20 16:21:25 16:21:26 16:21:29 16:21:31 16:21:34 16:21:36 16:21:39

Q. So, Mr. Johnson, what does that mean? 16:21:44 16:21:48

MR. DOWNING: Objection -- 16:21:48

BY MR. KANG: 16:21:48

Q. What's the definition of unbanked subscriber in the context of these claims? 16:21:54 16:21:55 16:21:57

MR. DOWNING: Objection to form, asked and answered. 16:21:58 16:21:58

A. So as I said, the definition of the term comes from the claims and the specification. 16:22:08 16:22:10 16:22:11

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BY MR. KANG: 16:22:11

Q. I'm not asking where the 16:22:11

definition comes from. Do you understand 16:22:13

that, Mr. Johnson? 16:22:14

Do you understand my question? 16:22:20

It's not where the definition comes from, 16:22:21

it's what the definition is. 16:22:23

A. Well, the definition is the 16:22:25

plain and ordinary meaning that's derived 16:22:28

from the claim and the specification. 16:22:30

Q. Can you provide me a definition 16:22:33

of unbanked subscriber that is not 16:22:37

circular? 16:22:40

MR. DOWNING: Objection to form. 16:22:42

A. I don't believe that's a 16:22:46

circular definition. 16:22:47

BY MR. KANG: 16:22:49

Q. The definition is a plain and 16:22:49

ordinary meaning, fair? 16:22:52

A. Yes. 16:22:53

Q. What's the plain and ordinary 16:22:53

meaning? 16:22:55

A. As defined by the claims and 16:22:56

specifications. 16:22:58

Q. The plain and ordinary is the 16:22:59

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definition, right? 16:23:00
A. That's the construction of the 16:23:01
term that -- that I believe is 16:23:07
appropriate. 16:23:12
Q. Mr. Johnson, do you plan on 16:23:13
testifying at trial in this case? 16:23:15
A. I have not been asked to testify 16:23:17
at trial. 16:23:19
Q. When you go up and tell the jury 16:23:20
what it means to be an unbanked 16:23:23
subscriber, what are you going to tell 16:23:26
them? 16:23:28
MR. DOWNING: Objection to form, 16:23:28
outside the scope. 16:23:30
A. Yeah, I think I'll consider that 16:23:33
when I get there. 16:23:35
BY MR. KANG: 16:23:35
Q. You haven't formed an opinion on 16:23:36
what you would tell the jury is the plain 16:23:38
and ordinary meaning of an unbanked 16:23:40
subscriber? 16:23:43
MR. DOWNING: Objection to form, 16:23:43
misstates the witness' testimony. 16:23:45
A. If I'm going to answer that -- 16:23:53
BY MR. KANG: 16:23:57

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Q. Have you heard of a doctrine called claim -- 16:23:57 16:24:03

(Reporter clarification.) 16:24:03

A. I'm sorry, say that again. 16:24:03

BY MR. KANG: 16:24:03

Q. Claim vitiation, V-I-T-I-A-T-I-O-N. 16:24:04 16:24:05

A. No, I'm not familiar with that. 16:24:09

Q. Okay. And so your opinion of unbanked subscriber is that a user that uses a bank account to deposit a specified amount of funds into its mobile wallet satisfies the limitation unbanked subscriber in claim 1 of the '845 patent, correct? 16:24:11 16:24:19 16:24:21 16:24:29 16:24:32 16:24:36 16:24:39

MR. DOWNING: Objection to form. 16:24:40

A. Yeah, as I said, you want to look at not only all the claims, but the entire specification. 16:24:44 16:24:47 16:24:49

BY MR. KANG: 16:24:51

Q. And you can't tell me, sitting here today, what an unbanked subscriber is, correct? 16:24:51 16:24:53 16:24:57

A. As I've said, the plain and ordinary meaning as determined by the 16:24:59 16:25:01

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claims and specification is sufficient here. 16:25:02 16:25:05

Q. But you can't tell me what that is, right? 16:25:05 16:25:07

MR. DOWNING: Objection to form. 16:25:09

A. I'll tell you where -- I can tell you that you can find it. 16:25:15 16:25:17

BY MR. KANG: 16:25:17

Q. Right. I know you can tell me where I can find it, Mr. Johnson. Can you tell me what it is? 16:25:19 16:25:20 16:25:24

MR. DOWNING: Objection to form. 16:25:25

A. Sorry, is there a question there? 16:25:34 16:25:36

BY MR. KANG: 16:25:36

Q. Can you tell me what the definition under the plain and ordinary meaning of "unbanked subscriber" is? 16:25:37 16:25:38 16:25:39

A. It's the meaning of the term as defined by the claims and specifications of the patents. 16:25:45 16:25:47 16:25:49

Q. And so for every term I've asked you today for the plain and ordinary meaning, you say it's the plain and ordinary meaning is the definition as 16:25:50 16:25:54 16:25:55 16:25:58

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defined by the claims and specifications, right? 16:25:59 16:26:02

A. I don't recall if that's the answer I've given you every time. 16:26:05 16:26:06

Q. For every time I've asked you about the plain and ordinary meaning, you've referenced me to the claims and the specification, correct? 16:26:13 16:26:15 16:26:17 16:26:19

MR. DOWNING: Objection to form. 16:26:21

A. I don't recall if that's the answer I've given you every time. 16:26:27 16:26:30

BY MR. KANG: 16:26:30

Q. For business process services, what is the plain and ordinary meaning of the term? You can answer, Mr. Johnson. What is the plain and ordinary meaning of the term "business process services"? 16:26:36 16:26:39 16:26:41 16:26:47 16:26:49

MR. DOWNING: Objection to form. 16:26:52

A. Yeah, that one's clearly defined by the claims and specifications. 16:26:54 16:26:58

BY MR. KANG: 16:26:58

Q. And what is the plain and ordinary meaning of "database services"? 16:27:00 16:27:02

MR. DOWNING: Same objections. 16:27:04

A. Yeah, that one is also clearly 16:27:08

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defined by claims and specifications. 16:27:10
BY MR. KANG: 16:27:10
Q. And what is the definition of 16:27:14
"payment handler"? 16:27:17
A. Again, clearly defined by 16:27:20
claims -- by claims and specifications. 16:27:22
MR. DOWNING: Same objections. 16:27:24
BY MR. KANG: 16:27:24
Q. What is the definition of 16:27:25
"agent"? 16:27:26
MR. DOWNING: Same objections. 16:27:30
A. Again, clearly defined by claims 16:27:33
and specifications. 16:27:37
BY MR. KANG: 16:27:37
Q. What is the plain and ordinary 16:27:38
meaning of "mobile wallet"? 16:27:40
A. Again, this is clearly defined 16:27:49
by the claims and specifications. 16:27:50
Q. What is the plain and ordinary 16:27:53
meaning of the term "agent branch"? 16:27:56
MR. DOWNING: Same objection. 16:27:58
A. Also defined by claims and 16:28:04
specifications. 16:28:05
BY MR. KANG: 16:28:05
Q. What is the plain and ordinary 16:28:09

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meaning of the term "presented to"? 16:28:11

MR. DOWNING: Same objections. 16:28:15

A. So this one I'll refer you back 16:28:57
to my opinion. I can also say that it's 16:28:59
clearly defined by the -- the -- its use 16:29:01
in the claims and specifications. But 16:29:03
PayPal has proposed this sort of absurd 16:29:07
construction that really isn't supported 16:29:11
by anything and, you know, it's clear that 16:29:13
even an ordinary reading of this term 16:29:17
using ordinary dictionary definitions 16:29:20
would be just fine. 16:29:23

BY MR. KANG: 16:29:23

Q. When you said -- sorry, go 16:29:25
ahead. 16:29:27

A. Yeah, you know, that's what I'm 16:29:31
saying. The -- the plain and ordinary 16:29:33
meaning here, again, defined by claims and 16:29:34
specifications and it's clear that even a 16:29:36
dictionary definition -- dictionary 16:29:41
definition is -- is better than this 16:29:44
artificial construction that seems to have 16:29:46
been pulled out of thin air in 16:29:48
Chatterjee's declaration. 16:29:50

Q. Mr. Johnson, so is the plain and 16:29:53

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ordinary meaning of "presented to," to give or bestow formally? 16:29:56 16:29:59

MR. DOWNING: Objection to -- to form. 16:30:02 16:30:05

A. Yeah, so, again, plain and ordinary meaning understood in the context of the claims and specifications, that's where you get it from. And the definitions of the -- the ordinary definitions of this word, in fact, in the references that were cited, I believe, in your declaration are appropriate, and so this construction of -- this sort of artificial construction of displayed -- 16:30:11 16:30:14 16:30:16 16:30:19 16:30:25 16:30:26 16:30:29 16:30:33 16:30:43 16:30:46

(Reporter clarification.) 16:30:46

A. So this artificial construction of displayed to or placed near really doesn't have any support in the intrinsic record, seems to be out of place. 16:30:56 16:30:58 16:31:03 16:31:06

BY MR. KANG: 16:31:06

Q. You've reviewed the provisional patent applications for the '386 patent, Mr. Johnson? 16:31:10 16:31:11 16:31:16

A. Yes. 16:31:17

Q. Do you recall whether there was 16:31:20

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a picture of a user displaying a bar code to an agent? 16:31:21 16:31:24

A. There may have been. 16:31:28

Q. Do you recall that there's a reference in the provisional applications to using MFC to present the code to an agent? 16:31:30 16:31:31 16:31:33 16:31:39

A. I recall that there was a depiction of that at some point, and I don't recall if it was specifically in that document. 16:31:42 16:31:44 16:31:46 16:31:47

Q. And so when you said there's no support in the intrinsic record for displayed to or presented, placed near, that's not accurate, right? 16:31:50 16:31:52 16:31:55 16:31:58

MR. DOWNING: Objection to form. 16:31:59

BY MR. KANG: 16:31:59

Q. The provisional is part of the intrinsic record? 16:32:00 16:32:02

MR. DOWNING: Objection to form. 16:32:05

A. Which question did you want me to answer? 16:32:07 16:32:08

BY MR. KANG: 16:32:08

Q. Mr. Johnson, sitting here today, is your opinion that the provisional 16:32:10 16:32:12

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patent application is part of the intrinsic record? 16:32:15 16:32:17

A. Yes. 16:32:19

Q. And so when you just testified that there's no support in the intrinsic record for displaying a code to an agent, that was wrong, fair? 16:32:20 16:32:23 16:32:26 16:32:31

MR. DOWNING: Objection to form, misstates the witness' testimony. 16:32:33 16:32:40

A. What I said is I don't think there's any support for that construction in the intrinsic -- in the intrinsic record. 16:32:42 16:32:43 16:32:45 16:32:48

BY MR. KANG: 16:32:48

Q. And so you don't think there's a picture of a user displaying a bar code to an agent in the provisional patent applications? 16:32:49 16:32:50 16:32:52 16:32:54

MR. DOWNING: Objection to form, misstates the witness' testimony. 16:32:55 16:32:56

A. Can you actually repeat that question? 16:33:09 16:33:10

BY MR. KANG: 16:33:10

Q. It's okay. I'll withdraw it. 16:33:11

Mr. Johnson, so would you -- 16:33:14

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would you be satisfied with a plain and ordinary meaning of the term "presented to" as to give or bestow formally, as you write in paragraph 72? 16:33:21 16:33:23 16:33:25 16:33:29

A. Pardon me. I think that's an appropriate understanding of the way that the term is used in the claims and specifications. 16:33:31 16:33:42 16:33:44 16:33:47

Q. Okay. And is to bring, offer or give, often in a formal or ceremonious way, also an appropriate understanding of the meaning of the term "presented to" as used in the claims and the specifications? 16:33:49 16:33:52 16:33:57 16:33:59 16:34:00

A. Yeah, I think that's another way to look at that term in the context of the claims and specifications. And, in fact, I think there's probably many other ways to look at that term that -- that are synonymous, that fit well with the claims -- claims and specifications. 16:34:03 16:34:05 16:34:07 16:34:09 16:34:14 16:34:15 16:34:19

Q. And so neither of those definitions that you cited in paragraph 72 use the word "communicate," right? 16:34:23 16:34:25 16:34:27

A. No. 16:34:29

Q. And so it's your opinion, 16:34:38

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though, in paragraph 73 and 74 that communicated is synonymous with presented to, right? 16:34:40 16:34:45 16:34:47

A. The term "presented to" as it's used in the patents is best defined by the claims and specifications and, as I've said in the declaration, really what the -- what the specification requires is that this code, if you will, is communicated from the subscriber to the agent. 16:34:53 16:34:56 16:34:58 16:35:03 16:35:10 16:35:14 16:35:20 16:35:23

Q. Right. And so when you -- when you read the claim term "presented to the agent," you interpret that as the code that's communicated to the agent, fair? 16:35:23 16:35:25 16:35:28 16:35:31

A. That's one way to -- 16:35:35

MR. DOWNING: Objection to form. 16:35:38

A. -- that is one way to interpret it. 16:35:42 16:35:45

BY MR. KANG: 16:35:45

Q. I want to talk to you about your opinion on database services at page 21. 16:35:53 16:35:57

A. Database services on page 21, okay. 16:36:11 16:36:13

Q. Now, you write that the function 16:36:14

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is "Operable to store at least financial transaction details, store customer profiles, and manage money containers," right? 16:36:15 16:36:18 16:36:20 16:36:26

A. Yes. 16:36:26

Q. Did you come up with this function? 16:36:28 16:36:32

A. I don't recall. This is -- this was part of the iterative process of working with counsel. 16:36:33 16:36:35 16:36:40

Q. All right. So when you got -- when you started on the declaration, were the functions for these means-plus-function terms already filled in? 16:36:42 16:36:43 16:36:46 16:36:55 16:36:58

MR. DOWNING: Kai -- Mr. Johnson, I'll just instruct you to not disclose the communications that you had with myself or any other attorneys at Kasowitz. If you're able to answer the question without divulging those communications, you may. If you cannot do that, I instruct you not to answer. 16:37:01 16:37:04 16:37:07 16:37:08 16:37:13 16:37:13 16:37:13 16:37:16 16:37:19

A. Yeah, I -- I don't recall in the 16:37:22

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process when this was written. 16:37:24
BY MR. KANG: 16:37:24
Q. Was the function for database 16:37:30
services written before or after the 16:37:32
structure was written? 16:37:35
A. I don't recall. 16:37:41
Q. It could be either before or 16:37:45
after? 16:37:46
A. Yeah. I -- I don't recall the 16:37:49
specific editing of this particular -- 16:37:52
those particular sections. 16:37:55
Q. Did you identify the structure 16:38:09
that's listed in this table on page 21 for 16:38:10
the term "database services"? 16:38:14
MR. DOWNING: Mr. Johnson, I 16:38:19
instruct you not to disclose any 16:38:21
communications with your attorneys, 16:38:23
myself or anyone else at Kasowitz. If 16:38:24
you can answer the question without 16:38:27
divulging that information, you may 16:38:29
answer it. If you cannot, I instruct 16:38:31
you not to answer. 16:38:33
A. Yeah, I don't think I can answer 16:38:39
that one. 16:38:41
BY MR. KANG: 16:38:41

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Q. And so for business process services on page 25, did you come up with the function that's listed here on page 25 of your declaration? 16:38:45 16:38:47 16:38:49 16:38:53

MR. DOWNING: Same -- without -- without describing it, again, at -- at length, Mr. Johnson, I instruct you with the same for the last question. 16:38:55 16:38:57 16:38:59 16:39:02

BY MR. KANG: 16:39:02

Q. Mr. Johnson, did you come up with the -- I'm sorry. Mr. Johnson, did you come up with the function that you list on page 25 for the term "business process services"? 16:39:24 16:39:26 16:39:26 16:39:28 16:39:31

MR. DOWNING: Mr. Johnson, same instruction. 16:39:35 16:39:37

A. Yeah, I -- I think I'm not going to answer this question. 16:39:41 16:39:43

BY MR. KANG: 16:39:43

Q. And, Mr. Johnson, did you come up with the struck -- I'm sorry. Let me rephrase. 16:39:47 16:39:48 16:39:51

Mr. Johnson, did you identify the structure that's listed in the table in page 25 for the term "business process 16:39:52 16:39:53 16:39:56

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services"? 16:40:01

MR. DOWNING: Mr. Johnson, if 16:40:03

you can answer the question without 16:40:06

divulging any communications with your 16:40:07

counsel, myself and -- and/or any 16:40:09

other Kasowitz attorneys, you may do 16:40:10

so. If you cannot, I instruct you not 16:40:12

to answer the question. 16:40:14

BY MR. KANG: 16:40:14

Q. Are you going to follow your 16:40:15

counsel's instruction? 16:40:16

A. Sorry? 16:40:17

Q. Are you going to follow your 16:40:17

counsel's instruction? 16:40:19

A. Yeah. You know, I think it's 16:40:22

pretty clear that I'm asked not to divulge 16:40:24

conversations with counsel. It's probably 16:40:27

better for me not to answer that question. 16:40:28

MR. DOWNING: So -- so, 16:40:31

Mr. Johnson, I just want to clarify. 16:40:32

I don't want you to -- to disclose 16:40:34

particular communications between 16:40:35

myself or any of the other attorneys 16:40:36

at Kasowitz. So I don't want you 16:40:38

to -- because this question is -- is 16:40:40

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poking at what happened during the creation of this declaration, I want to make sure that you don't accidentally disclose particular conversations with myself or any of the other attorneys which are privileged, but you can -- if you can answer the question without going into that detail, you can. If you cannot, I just instruct you not to answer the question. Do you -- do you understand my instructions or would you like to take a break so we can talk about it? 16:40:43 16:40:45 16:40:47 16:40:49 16:40:52 16:40:55 16:40:56 16:40:58 16:40:59 16:41:02 16:41:03 16:41:04 16:41:06

THE WITNESS: Yeah, it might be good to talk that through a little bit further as, you know, there are some things that I recall and some things I don't, but, you know, where to draw the line, it might be good for us to have a little discussion. 16:41:10 16:41:12 16:41:13 16:41:17 16:41:19 16:41:21 16:41:23

MR. DOWNING: Robert, can I have a five-minute break with Mr. Johnson? 16:41:24 16:41:25

MR. KANG: Sure. 16:41:28

THE VIDEOGRAPHER: Off the record at 4:41 p.m. 16:41:29 16:41:29

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(Whereupon, a brief recess is taken.)

THE VIDEOGRAPHER: On the record at 4:47 p.m.

BY MR. KANG:

Q. Mr. Johnson, did you identify the list of structures on page 25 for the term "business process services"?

A. Yeah, it was an iterative process. I don't recall when this was defined or by whom.

Q. Okay. Mr. Johnson, looking at page 21 of your declaration, when you talk about the function of database services, is it your opinion that the function requires each of storing financial transaction details, storing customer profiles and managing money containers or just one of them?

MR. DOWNING: Objection to form.

A. So I think the limitations of the term would be clear from the claims themselves and the specifications.

BY MR. KANG:

Q. Right. And so I'm looking at

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the function that says "store at least financial transaction details, store customer profiles, and manage money containers." Do you see that? 16:48:20 16:48:22 16:48:24 16:48:29

A. Yes. 16:48:30

Q. And so my question is, do you have an opinion on whether the function is operable to store all of those things or just one of those things? 16:48:30 16:48:32 16:48:34 16:48:36

MR. DOWNING: Objection to form. 16:48:39

A. I would look to the claims to make that determination. 16:48:39 16:48:41

BY MR. KANG: 16:48:41

Q. Okay. And so sitting here without looking at the claims, you can't make that determination, right? 16:48:43 16:48:45 16:48:47

A. Yeah, I have not memorized the claims. 16:48:48 16:48:50

Q. Okay. What is a money container? 16:48:50 16:48:52

MR. DOWNING: Objection to form, outside the scope. 16:48:56 16:48:59

A. So this is a term I haven't been asked to look at. It's a term that's used in the -- certainly in the specification 16:49:02 16:49:06 16:49:09

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and -- and may be used in the claims, if I recall, but, you know, I would look back to both claims and specifications to define that term. 16:49:13 16:49:16 16:49:21 16:49:24

BY MR. KANG: 16:49:24

Q. But you agree that this is the correct function for database services, right, what you have listed on 21? 16:49:25 16:49:26 16:49:28

A. Yes. 16:49:31

Q. Okay. But you just don't know what a money container is, right? 16:49:31 16:49:33

MR. DOWNING: Objection to form. 16:49:35

A. I haven't been asked to provide an opinion on that. 16:49:38 16:49:39

BY MR. KANG: 16:49:39

Q. You have no opinion right now, correct? 16:49:40 16:49:42

A. Sorry, did you mean to interrupt me? 16:49:43 16:49:44

Q. You have no opinion on what it means to manage a money container right now, sitting here today, correct? 16:49:45 16:49:47 16:49:50

A. I'd be happy to perform the analysis and provide that opinion if I'm asked to do so. 16:49:51 16:49:54 16:49:56

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Q. Mr. Johnson, I'm not asking whether you'd be happy to provide it. I'm asking, sitting here today, do you have an opinion on what it means to manage a money container? 16:49:57 16:49:58 16:50:01 16:50:03 16:50:06

A. Yeah, I haven't been asked to provide an opinion on that and I would be happy to do so. 16:50:07 16:50:08 16:50:09

Q. Okay. On page 25, you list the function for the business process services, correct? 16:50:10 16:50:17 16:50:18

A. Page 25, business process services, yes. 16:50:24 16:50:26

Q. Okay. And so the function you identify on this page is "Implementing business workflows, including at least one of executing financial transactions, auditing financial transactions, invoking third-party services, handling errors and logging platform objects." Did I read that correctly? 16:50:27 16:50:29 16:50:31 16:50:33 16:50:36 16:50:39 16:50:41 16:50:44

A. Yes. 16:50:44

Q. Okay. And so you agree this is the correct function for the term "business process services," right? 16:50:45 16:50:48 16:50:50

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A. Yes. 16:50:52
Q. Now, again, same question, 16:50:52
this -- this function says "including at 16:50:57
least one of"; do you see that? 16:50:59
A. Yes. 16:51:01
Q. And so my question is fairly 16:51:02
simple is, is it your opinion that the 16:51:04
function of the business process services 16:51:07
is to implement business workflows 16:51:11
including all of these items or just one 16:51:15
of them? 16:51:20
MR. DOWNING: Objection to form. 16:51:21
A. Yeah, the function as it's 16:51:25
written is to include at least one of 16:51:26
those items. 16:51:28
BY MR. KANG: 16:51:28
Q. And so your -- your opinion is 16:51:30
only one of these needs to be implemented, 16:51:31
right? 16:51:34
MR. DOWNING: Objection to form. 16:51:37
A. Are you asking about the 16:51:40
function of the business process services? 16:51:42
BY MR. KANG: 16:51:42
Q. Right. If I have a device that 16:51:45
implemented auditing financial tractions 16:51:46

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{sic} alone, that would meet the function that you have a described here on page 25, right? 16:51:50 16:51:53 16:51:55

MR. DOWNING: Objection to form, outside the scope. 16:51:58 16:51:59

A. Excuse me. Yeah, so if I were to consider, you know, some hypothetical device and whether it might fall under the claim term "business process services," I would look back to the claims and the structure of the patents. 16:52:04 16:52:09 16:52:11 16:52:17 16:52:19 16:52:21

BY MR. KANG: 16:52:21

Q. Mr. Johnson, I'm not asking you to consider a hypothetical device. I'm asking you what is the scope of the function that you provide in your declaration, okay? And so there are five items in this list that begins "including at least one of." Do you see that? 16:52:22 16:52:23 16:52:25 16:52:28 16:52:31 16:52:38 16:52:41

A. Yes. 16:52:44

Q. Does the function require the performance of only one of these items or all of them? 16:52:45 16:52:48 16:52:52

MR. DOWNING: Objection to form. 16:52:55

A. As the function says, the 16:52:56

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function of the business process services is to implement business workflows including at least one of those five items. 16:53:03 16:53:05 16:53:08 16:53:10

BY MR. KANG: 16:53:10

Q. Right. So it's just one of them, correct? 16:53:11 16:53:13

A. Do you want to rephrase that question? 16:53:17 16:53:18

Q. The -- the function you've specified here only requires implementing one of executing financial transactions, auditing financial transactions, invoking third-party services, handling errors and logging platform objects, correct? 16:53:19 16:53:21 16:53:25 16:53:28 16:53:31 16:53:33

A. As it says "including at least one of" those items. 16:53:36 16:53:38

Q. Right. And so the function that you specified here on page 25 does not require implementing all of these items, correct? 16:53:40 16:53:42 16:53:44 16:53:49

MR. DOWNING: Objection to form, outside the scope. 16:53:50 16:53:51

A. The function as it's written says "including at least one of" those 16:53:55 16:53:57

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items. 16:53:59
BY MR. KANG: 16:53:59
Q. Right. And so I -- I don't 16:54:01
think this is controversial. Then it does 16:54:03
not require all of the items, fair? 16:54:07
MR. DOWNING: Objection to form, 16:54:10
outside the scope. 16:54:11
A. So I think the function as it's 16:54:17
written is the way the function should be 16:54:21
written, which is that it requires at 16:54:23
least one of the items. 16:54:27
BY MR. KANG: 16:54:28
Q. Okay. What does it mean to 16:54:29
audit financial transactions in the 16:54:34
context of the asserted patents? 16:54:35
A. Sorry? 16:54:37
Q. What is auditing financial 16:54:38
transactions in the context of the 16:54:41
asserted patents? 16:54:44
A. It's not one of the terms I've 16:54:47
been asked to look at, but I would be 16:54:48
happy to do that analysis if I'm asked to 16:54:50
do so. 16:54:53
Q. You agree that this is part of 16:54:54
the correct function of the term business 16:54:55

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process services? 16:54:57
A. Yes. 16:54:59
Q. And you haven't looked at what it means to audit financial transactions? 16:55:00 16:55:01
A. I haven't been asked to provide a definition of that term. 16:55:06 16:55:07
Q. What does the specification describe about auditing financial transactions? 16:55:09 16:55:11 16:55:12
A. I don't recall all the references to that in the specification, but -- 16:55:15 16:55:18 16:55:19
Q. Was there more than one? 16:55:21
A. I don't know. I would have to go look. 16:55:23 16:55:25
Q. What is invoking third-party services in the context of the asserted patents? 16:55:25 16:55:27 16:55:30
A. Same again, I'm sure there are a few references to that in the specifications, and I would be happy to review them and provide an explanation of that if I'm asked to do so. 16:55:31 16:55:34 16:55:36 16:55:37 16:55:39
Q. You have no opinion on what invoking third-party services means in the 16:55:41 16:55:42

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context of the asserted patents, sitting here today, correct? 16:55:44 16:55:46

MR. DOWNING: Objection to form, outside the scope. 16:55:48 16:55:49

A. I'd be happy to go back and review the claims and specifications to provide an explanation of that term. 16:55:53 16:55:54 16:55:56

BY MR. KANG: 16:55:56

Q. Mr. Johnson, I'm asking you one more time. I don't -- I'm not asking you whether you'd be happy to provide it. 16:56:00 16:56:01 16:56:03

Do you have an opinion, sitting here today, on what invoking third-party services means in the context of these claims? 16:56:05 16:56:10 16:56:12 16:56:14

MR. DOWNING: Objection to form. Mr. Johnson, you can look at your declaration to -- if you need to refresh your recollection on any of the opinions that you've made. 16:56:15 16:56:15 16:56:17 16:56:19 16:56:21

BY MR. KANG: 16:56:21

Q. I'll withdraw the question. 16:56:40

Mr. Johnson, I'd like to talk to you about your opinions on the term "agent branch." You can turn to your declaration 16:56:42 16:56:46 16:56:49

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at page or paragraph 45. 16:56:56

A. Okay. 16:57:00

Q. Now, your opinion that an agent branch is not a physical location, right? Let me rephrase. 16:57:03 16:57:06 16:57:10

Your opinion is that agent branch is not limited to a physical location, fair? 16:57:11 16:57:12 16:57:14

A. So my opinion about the term "agent branch" is that the plain and ordinary meaning of that term as it's defined by the claims and specifications is appropriate. 16:57:35 16:57:38 16:57:42 16:57:44 16:57:47

Q. Is an agent branch limited to a physical location, Mr. Johnson? 16:57:48 16:57:51

A. So as I've said -- 16:58:05

Q. I direct you to paragraph 45, second sentence, you write: "Thus, I do not agree that a POSITA would find that an agent branch requires a physical location," and it continues on. 16:58:08 16:58:10 16:58:13 16:58:18 16:58:20

Do you see that? 16:58:22

A. If you hadn't interrupted me, I would have read it. But if you'd like to read that for me, I'm happy to have you do 16:58:24 16:58:26 16:58:28

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that. 16:58:30
Q. Is that your opinion? 16:58:30
A. Yes, it is. 16:58:31
Q. Okay. Now, you write at the beginning of paragraph 45: "The '845 patent explains that the 'functionality can also be made available on a website for easier access.'" 16:58:32 16:58:36 16:58:40 16:58:44 16:58:49
Do you see that? 16:58:51
A. Yes. 16:58:51
Q. What functionality are you referring to there? 16:58:51 16:58:52
A. Sorry, give me just a second to double-check a reference. 17:00:28 17:00:36
I think there might be a typo in that reference. I'd like to point you to the place that that's referring to in the patent, but it doesn't seem to be correct. 17:01:12 17:01:14 17:01:17 17:01:19
Q. Okay. So what functionality are you referring to in this -- in this sentence at the beginning of paragraph 45 of Exhibit 2? 17:01:23 17:01:25 17:01:31 17:01:33
A. This would be the functionality of the mobile financial service, I guess, it's called, the subject of the patents, 17:01:49 17:01:51 17:01:59

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available via website. 17:02:02

Q. Mr. Johnson, you include the 17:02:06

quote from the patent "functionality can 17:02:08

also be made available on a website for 17:02:11

easier access." 17:02:14

Do you see that? 17:02:15

A. Yes. 17:02:16

Q. Now, that language you cite as 17:02:17

being in '845 patent, column 6, 54 to 60, 17:02:22

right? 17:02:26

A. Yes. Yeah, I think that 17:02:27

citation must be incorrect. 17:02:29

Q. Right. Now, the language that 17:02:30

you cite is actually at column 7, lines 1 17:02:34

to 2 of the '845 patent, correct? 17:02:40

A. Let's have a look. 17:02:43

Column 7, lines 1 to 2, that -- 17:03:05

that appears to be the same sentence. 17:03:08

Q. Right. And so when you were 17:03:10

referring to column 6, lines 54 to 60, is 17:03:13

it correct that you meant to refer to 17:03:17

column 7, lines 1 to 2? 17:03:21

A. It looks like that may have been 17:03:38

a misplaced citation. I apologize. There 17:03:40

might have been an error there. 17:03:44

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Q. Okay. And so when I asked you what this functionality refers to, you said "this would be the functionality of the mobile financial service," correct? 17:03:46 17:03:48 17:03:52 17:03:57

A. If I said that, I probably meant to say "monetary transaction system," but okay. 17:04:07 17:04:10 17:04:11

Q. And so what functionality specifically within the monetary transaction system are you referring to in this sentence at the beginning of paragraph 45 of the declaration Exhibit 2? 17:04:14 17:04:16 17:04:18 17:04:20 17:04:25

A. I would have to go back to the documents to go find the reference. 17:04:31 17:04:35

Q. All right. So if we look at the sentence we've identified at column 7, lines 1 to 2, it reads: "This functionality can also be made available on a website for easier access." 17:04:39 17:04:45 17:04:48 17:04:50 17:04:51

Do you see that? 17:04:53

A. Sorry. It took me a while to get back to where we were after switching through documents. 17:05:22 17:05:24 17:05:26

Could you repeat the question? 17:05:27

Q. Column 7, lines 1 to 2 of the 17:05:29

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'845 patent reads: "This functionality can also be made available on a website for easier access." 17:05:35 17:05:39 17:05:39

Do you see that? 17:05:42

A. Yes. 17:05:42

Q. And that's the same sentence that you were referring to in paragraph 45 of your declaration, right? 17:05:42 17:05:44 17:05:46

A. Yeah, that's the one where I think the reference may not have been correct. 17:05:53 17:05:56 17:05:58

Q. Okay. And the functionality described in this paragraph is fund the transfers by an agent administrator, correct? Well, let me just ask it this way. The sentence preceding the one that you cited "This functionality can also be made available on a website for easier access," that sentence reads: "Any of the applications referred to above may be configured to provide tools used by the agent administrator to view the agent company balance, view the agent branch balances, and transfer funds into and out of agent branch mobile wallets." 17:05:58 17:05:59 17:06:13 17:06:16 17:06:22 17:06:24 17:06:26 17:06:28 17:06:32 17:06:34 17:06:37 17:06:40 17:06:43 17:06:46

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Did I read that correctly? 17:06:50
A. Yes. 17:06:51
Q. And so the functionality that's 17:06:53
referred to in the sentence you cited 17:06:55
relates to functions performed by an agent 17:06:57
administrator, correct? 17:07:02
A. Yes. 17:07:13
Q. These are not functions 17:07:14
performed by a subscriber, correct? 17:07:15
A. Correct. 17:07:19
Q. Okay. Now, Mr. Johnson, the 17:07:19
database services or the storage system 17:07:34
can perform multiple operations, correct? 17:07:36
If you turn to page 23 of your 17:07:52
declaration, Exhibit 2, you have a series 17:07:54
of bullet points at the bottom of page 23? 17:07:58
A. Just getting there. Okay. 17:08:02
Q. And so each one of these is an 17:08:12
operation that can be performed by a 17:08:16
database services or the storage system, 17:08:17
correct? 17:08:20
A. These are the claim limitations 17:08:23
referring to the storage system. 17:08:25
Q. Right. And these are operations 17:08:27
that can be performed by the storage 17:08:30

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system, right? The storage system can ensure that the subscriber has an active account; is that fair? 17:08:32 17:08:39 17:08:42

A. Yes. 17:08:43

Q. The storage system can create a new pending transaction history record; is that fair? 17:08:43 17:08:47 17:08:49

A. Yes. 17:08:50

Q. Okay. And so all of these bullets that span from the bottom of page 23 to 24 are operations that can be performed by database services or the storage system, correct? 17:08:51 17:08:53 17:08:55 17:08:59 17:09:01

A. That seems to be a reasonable way to characterize it. 17:09:07 17:09:08

Q. Okay. And similarly on page 28 to 29, you list a series of claim limitations, correct? 17:09:09 17:09:19 17:09:24

A. Yes. 17:09:29

Q. Okay. And you say above at the top of page 28, you say "Claim 1 discloses a wherein clause" -- 17:09:30 17:09:35 17:09:46

(Reporter clarification.) 17:09:46

BY MR. KANG: 17:09:46

Q. Sorry. 17:09:46

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"Claim 1 discloses a wherein clause that states 'wherein saving the pending transaction further compromises the following steps as orchestrated by the business process services?'" 17:09:46 17:09:48 17:09:50 17:09:52 17:09:56

Do you see that, Mr. Johnson? 17:09:57

A. Yes. 17:09:59

Q. And so these are all -- so A through G on page 28 are all steps orchestrated by the business process services, right? 17:09:59 17:10:02 17:10:06 17:10:09

A. Yes. 17:10:10

Q. And "orchestrated" means coordinating, correct? 17:10:10 17:10:16

A. I haven't provided you with a definition for that term. 17:10:25 17:10:26

Q. I can provide you -- Mr. Johnson, if you turn to page 65 -- sorry, page 26, paragraph 65 of your declaration. 17:10:27 17:10:29 17:10:32 17:10:36

MR. DOWNING: So, Robert, why don't you just do that then, why don't you just direct him to the part of the declaration you want him to testify about? Then we don't have to have all 17:10:39 17:10:41 17:10:42 17:10:44 17:10:45

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this laughing and this like mocking that you've been doing throughout the whole entire deposition. 17:10:48 17:10:50 17:10:52

I've asked you to stop doing that. I've told you it's disrespectful. I don't understand what this is or why you think it's appropriate. 17:10:54 17:10:55 17:10:56 17:10:59 17:11:01

MR. KANG: Mr. Downing -- 17:11:02

MR. DOWNING: You have a limited amount of time left. Ask him specific questions related to the declaration that he signed -- so you can get through this, but you're asking him broad questions and asking him to define all of these things outside of his declaration. 17:11:03 17:11:05 17:11:07 17:11:08 17:11:10 17:11:12 17:11:13 17:11:15

No more mocking at all. One more laugh, one more snide comment and we end the deposition and we meet and confer and we get in front of the court. 17:11:17 17:11:19 17:11:22 17:11:24 17:11:25

Is there anything I said that's not clear? 17:11:26 17:11:27

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BY MR. KANG: 17:11:27

Q. Mr. Johnson -- 17:11:30

MR. DOWNING: This is the fourth warning from you about this issue. It's not cool. Mr. Johnson is an accomplished person. He's a human being and he deserves respect. 17:11:31 17:11:32 17:11:34 17:11:36 17:11:38

If you don't like his questions, you can -- you can figure it out in your briefing. You can attack him in your briefing and you can -- you can do it that way, but do not mock him one more time. 17:11:40 17:11:41 17:11:43 17:11:45 17:11:47 17:11:49

MR. KANG: I'm just surprised he doesn't know his opinion. 17:11:52 17:11:54

BY MR. KANG: 17:11:54

Q. So Mr. Johnson, I'm going to direct you -- 17:11:54 17:11:54

MR. DOWNING: Object -- I object to more mocking of the witness, Mr. Johnson. I've asked you to stop doing it. Do not mock the witness one more time. 17:11:54 17:11:56 17:11:59 17:12:01 17:12:04

BY MR. KANG: 17:12:04

Q. Mr. Johnson, I'm going to direct 17:12:05

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you to paragraph 65, the fifth line up, the sentence beginning "The business process services component." 17:12:07 17:12:10 17:12:12

Do you see that sentence? 17:12:13

A. Yes. 17:12:19

Q. You write here: "The business processes service component" -- sorry, let me start over. 17:12:30 17:12:32 17:12:34

You wrote here: "The business process services component is responsible for 'orchestrating' (i.e. coordinating) the interactions among other components in the mobile financial services...to complete specific business 'workflows.'" 17:12:35 17:12:37 17:12:39 17:12:45 17:12:48 17:12:53

Do you see that? 17:12:58

A. Yes. 17:13:02

Q. And so you equate -- my original question is, you equate orchestrating with coordinating, correct? 17:13:04 17:13:07 17:13:10

A. The reference there to coordinating in the context where it's directly adjacent to orchestrating is a specific reference back to the terminology that's used in service-oriented architecture, where services are 17:13:16 17:13:18 17:13:20 17:13:24 17:13:26 17:13:30

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orchestrated or coordinated. 17:13:32

And, you know, I think you got a little twisted around before when you asked me for a definition of orchestrating because that's not the only way that you can define that term, but that's an important note to make when we're talking, as we are in this paragraph, about the architectural style in figure 1, service-oriented architecture, and the terminology that was adopted from that style in drafting the patents. 17:13:32 17:13:35 17:13:38 17:13:39 17:13:42 17:13:45 17:13:48 17:13:50 17:13:53 17:13:57 17:13:59 17:14:02

Q. All right. So, Mr. Johnson, turning back to page 28 -- 17:14:05 17:14:07

A. Uh-huh. 17:14:10

Q. -- in paragraph 67, you list limitations A through G and you state, these steps are "orchestrated by the business process services," right? 17:14:10 17:14:14 17:14:17 17:14:19

A. Sure. 17:14:22

Q. And the business process services, applying the definition you just explained, must coordinate these steps A through G, correct? 17:14:23 17:14:24 17:14:27 17:14:32

A. Now, the -- the claim language, 17:14:35

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I think, is the language that you want to use here, which is that the business process service is orchestrating these steps. 17:14:37 17:14:39 17:14:41 17:14:44

Q. Okay. And so the claims require that the business process services orchestrate these steps A through G, fair? 17:14:44 17:14:47 17:14:49

A. If I recall, that's what the claims say. 17:14:53 17:14:54

Q. Okay. And for the steps that begin in paragraph 68, A through K -- I'm sorry. 17:14:55 17:15:01 17:15:07

Looking at page 29 of your declaration, bullet point E includes the same language: "Wherein committing the pending transaction further comprises the following steps as orchestrated by the business process services." 17:15:10 17:15:13 17:15:21 17:15:23 17:15:27 17:15:31

Do you see that? 17:15:32

A. Yes. 17:15:33

Q. And then you list various steps, claim limitations that you've numbered F through K, correct? 17:15:33 17:15:37 17:15:39

A. Yes. 17:15:41

Q. And your opinion is that the 17:15:42

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business process services must orchestrate these limitations -- the performance of these limitations F through K, fair? 17:15:45 17:15:49 17:15:51

A. So I'm not providing, you know, sort of limitations on the claims here, but it's clear what the claims are saying that the business process service orchestrates these steps. 17:15:57 17:16:00 17:16:03 17:16:05 17:16:07

Q. Right. And by "these steps," you mean F through K? 17:16:10 17:16:11

A. Yes. 17:16:13

Q. Okay. And finally, Mr. Johnson, what did you do to prepare for your deposition today? 17:16:13 17:16:54 17:16:55

A. Sorry, the first part of that question was unclear. 17:16:59 17:17:01

Q. What did you do to prepare for your deposition today? 17:17:03 17:17:04

A. Reviewed the deposition document in its amended form and the documents that were cited and, you know, the other references that were -- that were made on -- 17:17:07 17:17:12 17:17:15 17:17:21 17:17:25

Q. When you say the "deposition document," do you mean the declaration? 17:17:26 17:17:28

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A. Declaration, yes. Thank you for the correction. 17:17:30 17:17:31

Q. And did you meet with counsel to prepare for your deposition? 17:17:33 17:17:34

A. Yes. 17:17:39

Q. When did you meet with counsel? 17:17:41

A. Was it yesterday or the day before? I forget. 17:17:51 17:17:52

Q. How many times did you meet with counsel in preparation for your deposition? 17:17:54 17:17:56 17:17:57

A. Twice, once before the original date and then briefly before today. 17:18:03 17:18:05

Q. And by "original date," do you mean November 10th or November 11th? 17:18:08 17:18:11

A. Oh, I don't know. You guys moved that around on me so much. Whatever date that was that we were originally going to go ahead with, it got changed at the last minute. 17:18:14 17:18:16 17:18:19 17:18:21 17:18:25

Q. And so you've met twice with counsel in preparation for your deposition, correct? 17:18:27 17:18:31 17:18:34

A. Yes. 17:18:37

Q. Did you meet in person? 17:18:39

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A. No.
THE COURT REPORTER: Eight minutes.
BY MR. KANG:
Q. Did you meet -- I'm sorry?
THE COURT REPORTER: Eight more minutes. Mr. Downing wanted an announcement.
MR. KANG: Okay.
MR. DOWNING: I note that we have four more minutes. We have -- there's eight more minutes?
THE VIDEOGRAPHER: I've got nine.
BY MR. KANG:
Q. How long did you meet with counsel in preparation for your deposition? 17:19:07 17:19:08 17:19:09
A. Oh, I don't recall. I'm sure I could look at my records and see. 17:19:11 17:19:14
Q. Was it all day? 17:19:17
A. No. 17:19:18
Q. Was it half a day? 17:19:23
A. Not exactly sure. I'd have to go look. 17:19:29 17:19:32

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Q. Okay. You don't recall how long you met with counsel in preparation for your deposition today? 17:19:32 17:19:34 17:19:35

A. Yeah, I try not to memorize those things when I can keep them written down in my calendar. 17:19:39 17:19:42 17:19:44

Q. Okay. Who did you meet with to prepare for your deposition? 17:19:45 17:19:49

A. John Downing and Jeceaca An. 17:19:54

Q. Okay. Did you speak with anyone else in preparation for your deposition today? 17:19:58 17:19:59 17:20:00

MR. DOWNING: You can answer yes or no. 17:20:04 17:20:05

A. Yes. 17:20:07

BY MR. KANG: 17:20:07

Q. Who did you speak with? 17:20:09

A. Another lawyer at Kasowitz, and I don't recall his name off the top of my head. 17:20:13 17:20:15 17:20:17

Q. Okay. When you talk about business process services orchestrating the performance of steps, is that the same as business process services executing an algorithm? 17:20:17 17:20:34 17:20:35 17:20:40 17:20:44

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MR. DOWNING: Objection to form. 17:20:46

A. I don't see that those terms are 17:21:03

congruent. 17:21:05

BY MR. KANG: 17:21:05

Q. All right. 17:21:09

MR. KANG: I have no further 17:21:10

questions. 17:21:11

MR. DOWNING: Okay. We'll take 17:21:12

a short break to see if there's any 17:21:13

redirect. 17:21:15

MR. KANG: If you're going to 17:21:16

redirect him, just redirect him now, 17:21:17

you're not going to take a break. 17:21:20

MR. DOWNING: We're going to 17:21:21

take a break. We're going to take a 17:21:23

break and I'll redirect if -- if I -- 17:21:24

if I -- if I have any questions, but 17:21:25

thanks. So I'll be back in five -- 17:21:27

five, ten minutes. Thank you. 17:21:33

THE VIDEOGRAPHER: Off the 17:21:36

record at 5:22 p.m. 17:21:37

(Whereupon, a brief recess is 17:21:37

taken.) 17:25:32

THE VIDEOGRAPHER: On the record 17:25:32

at 5:26 p.m. 17:26:13

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MR. DOWNING: We have no further questions. We -- we request the right to read and sign. 17:26:14 17:26:16 17:26:20

MR. KANG: I have no questions. 17:26:25

THE VIDEOGRAPHER: Off the record at 5:26 p.m. This concludes today's testimony given by Kai Johnson. The total number of media used was eight and will be retained by Veritext Legal Solutions. 17:26:27 17:26:29 17:26:32 17:26:35 17:26:37 17:26:40

MR. KANG: I would like a rush rough and, yeah, final as soon as you have it. 17:26:47 17:26:48 17:26:51

(Time noted: 5:26 p.m.)

_____
KAI JOHNSON

_____
Subscribed and sworn to
before me this _____
day of _____ 2022.

_____
Notary Public

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CERTIFICATION

I, BELLE VIVIENNE, a Nationally Certified Realtime Reporter, do hereby certify:

That the witness whose testimony as herein set forth, was duly sworn by me; and that the within transcript is a true record of the testimony given by said witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 22nd day of November 2022.



BELLE VIVIENNE, CRR, CCR, RPR

* * *

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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