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# Transcript of Henry Houh, Ph.D.

**Date:** February 13, 2024

**Case:** Maplebear Inc., d/b/a Instacart -v- Consumeron, LLC (PTAB)

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WORLDWIDE COURT REPORTING & LITIGATION TECHNOLOGY

1 UNITED STATES PATENT AND TRADEMARK OFFICE

2  
3 BEFORE THE PATENT TRIAL AND APPEAL BOARD

4  
5 MAPLEBEAR INC. D/B/A INSTACART,

6 Petitioner,

7 v.

8 CONSUMERON, LLC,

9 Patent Owner.

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11  
12 Case No. IPR2023-00865

13  
14 Deposition of HENRY HOUE, Ph.D.

15 Boston, Massachusetts

16 Tuesday, February 13, 2024

17 9:22 a.m.

18  
19  
20 Job No.: 524493

21 Pages: 1 - 99

22 Reported by: Darlene M. Coppola, RMR, CRR

Transcript of Henry Houh, Ph.D.  
Conducted on February 13, 2024

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| UNITED STATES PATENT AND TRADEMARK OFFICE<br><br>BEFORE THE PATENT TRIAL AND APPEAL BOARD<br><br>MAPLEBEAR INC. D/B/A INSTACART,<br>Petitioner,<br>v.<br>CONSUMERON, LLC,<br>Patent Owner.<br><br>Case No. IPR2023-00865<br><br>Deposition of HENRY HOUH, Ph.D.<br>Boston, Massachusetts<br>Tuesday, February 13, 2024<br>9:22 a.m.<br><br>Job No.: 524493<br>Pages: 1 - 99<br>Reported by: Darlene M. Coppola, RMR, CRR | INDEX<br><br>EXAMINATION<br><br>Witness Name<br>HENRY HOUH, Ph.D.<br>Direct By Mr. Price ..... 4<br><br>EXHIBITS<br>**None offered                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                         |                                                                                                                         |
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| APPEARANCES:<br>Representing the Petitioner:<br>KRAMER LEVIN NAFTALIS & FRANKEL LLP<br>1177 Avenue of the Americas<br>New York, NY 10036<br>BY: JEFFREY PRICE, ESQUIRE<br>T 212.715.9100<br>E jprice@kramerlevin.com<br>Representing the Patent Owner:<br>HAYNES BOONE<br>98 San Jacinto Boulevard<br>Suite 1500<br>Austin, TX 78701<br>BY: RAGHAV BAJAJ, ESQUIRE<br>T 512.867.8520<br>E raghav.bajaj@haynesboone.com    | PROCEEDINGS<br><br>(Commencing at 9:22 a.m.)<br><br>HENRY HOUH, Ph.D.,<br>a witness called for examination by<br>counsel for the Petitioner, having been<br>satisfactorily identified by the production of<br>his driver's license and being first duly<br>sworn by the Notary Public, was examined and<br>testified as follows:<br><br>THE STENOGRAPHER: Thank you.<br>You may proceed.<br><br>DIRECT EXAMINATION<br>BY MR. PRICE:<br>Q. Good morning, Dr. Houh.<br>A. <b>Good morning.</b><br>Q. How are you today?<br>A. <b>I'm well. Thanks. How are you?</b><br>Q. Good. Thanks. |                                                                                                                         |                                                                                                                         |

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| <p>5</p> <p>1 Do you know why we're here today?</p> <p>2 <b>A. To -- I'm being deposed on a report</b></p> <p>3 <b>that I wrote -- a declaration that I wrote in</b></p> <p>4 <b>a matter.</b></p> <p>5 Q. Okay. And can you confirm that that</p> <p>6 matter is Maplebear, Inc., d/b/a Instacart v.</p> <p>7 Consumeron, LLC, IPR 2023-00865?</p> <p>8 <b>A. Yeah. I'm not sure I know the</b></p> <p>9 <b>number -- the matter number from memory, but</b></p> <p>10 <b>it's what it says on my report -- or</b></p> <p>11 <b>declaration.</b></p> <p>12 Q. I'll hand you a copy of your</p> <p>13 declaration right now.</p> <p>14 MR. PRICE: I only brought</p> <p>15 copies for the witness.</p> <p>16 MR. BAJAJ: Yes.</p> <p>17 THE WITNESS: Thank you.</p> <p>18 BY MR. PRICE:</p> <p>19 Q. Can you please confirm that that is</p> <p>20 the declaration that you provided in this</p> <p>21 case?</p> <p>22 <b>A. (Witness reviews document.)</b></p>       | <p>7</p> <p>1 Sound good?</p> <p>2 <b>A. Yes, I'll do my best. Thank you.</b></p> <p>3 Q. I'm going to hand you a document</p> <p>4 labeled Exhibit 1001 in this matter.</p> <p>5 <b>A. Thank you.</b></p> <p>6 Q. Do you recognize this document?</p> <p>7 <b>A. (Witness reviews document.)</b></p> <p>8 <b>Yes.</b></p> <p>9 Q. What document is that?</p> <p>10 <b>A. This is the patent that's challenged</b></p> <p>11 <b>in the -- in this matter.</b></p> <p>12 Q. It's U.S. Patent 11,238,465?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. I'll be referring to this as the '465</p> <p>15 patent today.</p> <p>16 <b>A. Sure.</b></p> <p>17 Q. Did you read the '465 patent?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. Can you give me a summary of what</p> <p>20 the '465 patent discloses?</p> <p>21 <b>A. (Witness reviews document.)</b></p> <p>22 <b>Well, it's what the abstract says.</b></p>                                                                                                                                                |
| <p>6</p> <p>1 <b>Yes, this is the declaration I</b></p> <p>2 <b>provided in this case.</b></p> <p>3 Q. Can you confirm that this is Case</p> <p>4 IPR 2023-00865?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. Have you ever been deposed before,</p> <p>7 Dr. Houh?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. Roughly how many times?</p> <p>10 <b>A. I lost count, but it's probably 120 or</b></p> <p>11 <b>more times.</b></p> <p>12 Q. And I've deposed you a couple of</p> <p>13 times, right?</p> <p>14 <b>A. I -- I do remember at least one time.</b></p> <p>15 Q. So since you're so practiced, I think</p> <p>16 we can dispense with some of the preliminaries</p> <p>17 and just jump right in.</p> <p>18 The only thing I'll ask is just to</p> <p>19 make sure that I have the opportunity to</p> <p>20 finish my question before you start answering,</p> <p>21 and I'll extend you the same courtesy and let</p> <p>22 you finish your answer before I jump in.</p> | <p>8</p> <p>1 <b>It's about a system and method for remote</b></p> <p>2 <b>acquisition and delivery of goods and that it</b></p> <p>3 <b>includes a server in communication with</b></p> <p>4 <b>customer computers such as through a user</b></p> <p>5 <b>interface via the Internet.</b></p> <p>6 <b>That's how the abstract starts out.</b></p> <p>7 Q. What do you understand the phrase</p> <p>8 "acquisition and delivery of goods" to mean in</p> <p>9 the context of the '465 patent?</p> <p>10 <b>A. I mean, it really means what it</b></p> <p>11 <b>says.</b></p> <p>12 Q. Dr. Houh, have you ever gone shopping</p> <p>13 before?</p> <p>14 <b>A. Sure, yes.</b></p> <p>15 Q. Have you ever gone shopping in a store</p> <p>16 before?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. How do you acquire goods if you walk</p> <p>19 into a store and wish to leave -- leave the</p> <p>20 store with the goods legally?</p> <p>21 <b>A. I might have preordered them online,</b></p> <p>22 <b>in which case I go to the customer service</b></p> |

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| <p>9</p> <p>1 desk, maybe present an ID or a receipt, and<br/>2 then take the goods with me.<br/>3 I might go into a store, locate an<br/>4 item, and then go to the register and pay for<br/>5 it.<br/>6 Those are at least two ways I can<br/>7 think of.<br/>8 Q. In both of those ways, there is a<br/>9 transaction for the goods, correct?<br/>10 A. Sure, I suppose, in those examples.<br/>11 Q. Can you think of a way to acquire<br/>12 goods without there being a transaction?<br/>13 A. Someone might grab a shopping bag from<br/>14 someone else and run off with it.<br/>15 Q. Can you think of any legal way to<br/>16 acquire goods without there being a<br/>17 transaction?<br/>18 A. Someone might make something and give<br/>19 it to me.<br/>20 Q. That requires that the person who is<br/>21 giving it to you offered it to you for free,<br/>22 correct?</p>                                                                                                                                                         | <p>11</p> <p>1 goods?<br/>2 A. Well, I mean some people seem to value<br/>3 four-leaf clovers.<br/>4 Q. Would you consider a four-leaf clover<br/>5 on the ground a product or goods?<br/>6 A. If someone sold four-leaf clovers in<br/>7 the store, then -- then I would say that<br/>8 even -- even if you picked one from the<br/>9 ground, it would -- it would be a good. I<br/>10 mean, if you -- if you saw a, you know, an<br/>11 apple tree on some public area, that doesn't<br/>12 change the apple from a good, not -- into not<br/>13 a good because it's -- it's there on a -- on<br/>14 public land.<br/>15 Q. But what makes it a good is that it's<br/>16 being sold, right?<br/>17 A. Well, someone might be selling it.<br/>18 Q. But you are not contending that<br/>19 picking up the apple off the ground is<br/>20 acquiring goods, correct?<br/>21 A. Well, in that example, I'm not sure I<br/>22 see what the difference is between going into</p>                                                    |
| <p>10</p> <p>1 A. Well, I mean, if they gave it to me,<br/>2 but there wouldn't be a receipt or anything<br/>3 necessarily.<br/>4 Q. What do you mean "a receipt"?<br/>5 A. If -- if what you mean by transaction<br/>6 is, you know, I have to go to a -- that there<br/>7 is an exchange of some form of payment in that<br/>8 example and I get a receipt back for it, like<br/>9 at a cash register or a register at a store.<br/>10 Q. Do you think that every transaction<br/>11 requires payment and a receipt?<br/>12 A. Well, I mean, you originally asked<br/>13 about -- well, I mean, it depends, the context<br/>14 of the meaning of the word "transact," I<br/>15 suppose. So in commerce, I generally can't<br/>16 think of something like that.<br/>17 But if I pick a four-leaf clover and<br/>18 hand it to my friend, I don't -- I think some<br/>19 people wouldn't necessarily think of that as a<br/>20 transaction.<br/>21 Q. When you pick a four-leaf clover and<br/>22 give it to your friend, are you acquiring</p> | <p>12</p> <p>1 a store and buying an apple versus picking one<br/>2 off the tree that -- that is on public land or<br/>3 otherwise on land, that you're not actually,<br/>4 you know, stealing the -- considered stealing<br/>5 the apple.<br/>6 Q. What makes an item a product?<br/>7 A. One example of that might be something<br/>8 that's available to purchase in a store, an<br/>9 item that a store makes available to its<br/>10 customers to purchase. I would say that item<br/>11 can be thought of in that example as a<br/>12 product.<br/>13 Q. Do you consider an apple that fell to<br/>14 the ground in a public park a product?<br/>15 A. I mean, I think that -- I mean, I<br/>16 guess I haven't really considered that exact<br/>17 question before. I don't see why it's not a<br/>18 good in the earlier use of your -- that phrase<br/>19 in your question because it is something that<br/>20 can be -- that you can go into a store and<br/>21 buy.<br/>22 It just happens to be available, just</p> |

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| <p>13</p> <p>1 sitting there on the ground or in the tree,<br/>2 assuming that tree is -- it's legal to<br/>3 actually take fruit from the tree in that<br/>4 case.<br/>5 Q. Would you expect fruit on a tree to<br/>6 have a barcode or QR code on it?<br/>7 A. I wouldn't expect that, no.<br/>8 Q. Aside from this example where you're<br/>9 picking up something from a public location,<br/>10 can you think of any other way of acquiring<br/>11 goods that does not require a transaction?<br/>12 A. When I'm driving around town,<br/>13 sometimes I see stuff on the curb that has a<br/>14 sign next to it that says "free." I think I<br/>15 could go and take those things from the curb.<br/>16 Q. The previous owner has to relinquish<br/>17 their ownership of the goods when they put<br/>18 them on the curb, right, and say -- and says,<br/>19 quote, free?<br/>20 A. Well, they may have done that at some<br/>21 point or hours or days before -- before I came<br/>22 by. So I think, yeah, the owner is putting</p>                  | <p>15</p> <p>1 you know, yes, the owner, you know, did put<br/>2 something on the curb and put a sign that says<br/>3 "free."<br/>4 Actually, there are plenty of times<br/>5 where I've put something on the curb as trash<br/>6 and -- or recyclables, and I've seen people,<br/>7 you know, taking those kinds of things from<br/>8 the trash, you know, like cans and things like<br/>9 that. Or I've on occasion put out large items<br/>10 that have apparently been taken before the<br/>11 large item collector comes to take large<br/>12 items.<br/>13 Q. Would you agree that putting something<br/>14 out on your curb is an example of<br/>15 relinquishing your ownership interest in it?<br/>16 A. I'm not a lawyer. I don't really<br/>17 understand the legalities of these types of<br/>18 things.<br/>19 Q. Would you agree that putting -- when<br/>20 you put something out on your curb, you are no<br/>21 longer claiming ownership of it?<br/>22 A. I mean, I don't think that's how I</p>                                                                                                                           |
| <p>14</p> <p>1 them out on the curb.<br/>2 Q. Is that any less of a transaction than<br/>3 the owner put it on the curb and wrote \$5 and<br/>4 had a little jar on the side for somebody to<br/>5 put \$5 in?<br/>6 A. I mean, I can't recall that I've ever<br/>7 seen that situation driving around my town.<br/>8 But, you know, there -- other than the owner<br/>9 actually placing something on the curb, there<br/>10 is no direct exchange. You know, the owner<br/>11 didn't hand it to me and say, Hey, this is<br/>12 free. The owner just put it on the curb and<br/>13 left it there, and anyone that came along, you<br/>14 know, one minute later and -- you know, or<br/>15 three hours later, assuming it's still there,<br/>16 could have just taken it. So I'm not sure<br/>17 what I could think of as a transaction.<br/>18 Q. Isn't the placement of an item on the<br/>19 curb an offer for somebody to pick it up for<br/>20 free?<br/>21 A. Well, I'm not sure I think of an<br/>22 actual transaction taking place other than,</p> | <p>16</p> <p>1 think of putting out trash personally. I<br/>2 think I just think of getting rid of, you<br/>3 know, trash. I'm not a lawyer. I don't think<br/>4 about the legalities of things like that.<br/>5 Q. Do you have any -- if you put<br/>6 something out in the trash and the garbage man<br/>7 takes it away, do you have any expectation<br/>8 that you might be able to get it back?<br/>9 A. Well, I've heard of some people that<br/>10 have done so, like -- and they tried to get it<br/>11 back. And I heard of one case where someone<br/>12 put apparently a disc drive of cryptocurrency<br/>13 on it that they believed was worth a large sum<br/>14 of money, that they spent a lot of money, you<br/>15 know, hiring people to sort through trash at a<br/>16 dump before. So, I mean, I think there's<br/>17 always situations like that where someone<br/>18 might think they have the capability to get<br/>19 something back that they put in the trash.<br/>20 Q. Okay. But typically if you put<br/>21 something out on your curb and it disappears<br/>22 the next day, regardless of whether somebody</p> |

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| <p>17</p> <p>1 took it or the trash collector came, you don't<br/>2 expect to see that again, do you?<br/>3 <b>A. Well, most of the things I wouldn't<br/>4 expect to see again. But maybe some of these<br/>5 things that I put out that someone, like a<br/>6 neighbor, takes, maybe they put it out on the<br/>7 curb, you know, at some point in the future,<br/>8 and I might see it again.</b><br/>9 Q. In developing your opinions about the<br/>10 patentability of the '465 patent, did you come<br/>11 to an understanding of what a person of<br/>12 ordinary skill in the art understands by the<br/>13 term "acquire"?<br/>14 <b>A. Sorry. Just to -- just to supplement<br/>15 that last answer, there are actually times<br/>16 I've put stuff in the trash or recycling that,<br/>17 after the trash or recycling comes, I actually<br/>18 do see it again because it might have fallen<br/>19 out of the bin, or it also is common -- well,<br/>20 not common, but it happens occasionally --<br/>21 squirrels get into my trash, and they leave<br/>22 some litter behind of stuff that I recognize</b></p> | <p>19</p> <p>1 patentability of the '465 patent, did you come<br/>2 to an understanding of what a person of<br/>3 ordinary skill in the art understands by the<br/>4 word "acquire"?<br/>5 <b>A. Well, I think -- I approached my<br/>6 declaration from the point of view of a person<br/>7 of ordinary skill in that, in reviewing Carr,<br/>8 it's my opinion that Carr does disclose<br/>9 certain of the claim elements that have the<br/>10 word or a variation of the word "acquire," and<br/>11 so those things are understood by a person of<br/>12 ordinary skill to be an example of something<br/>13 that's within the scope. And so that is<br/>14 certainly determining at least these examples,<br/>15 which are within the scope.</b><br/>16 Q. Do you understand that there's a<br/>17 difference between interpretation of the claim<br/>18 and arguments that the claim is properly<br/>19 interpreted as disclosed in the prior art?<br/>20 MR. BAJAJ: Objection to form.<br/>21 <b>A. Could you repeat the question, please.</b><br/>22 <b>BY MR. PRICE:</b></p>         |
| <p>18</p> <p>1 <b>was in my trash but -- even after the trash or<br/>2 recycling came.</b><br/>3 <b>I'm sorry. Could you repeat the last<br/>4 question, please.</b><br/>5 Q. Yes.<br/>6 In developing your opinions about the<br/>7 patentability of the '465 patent, did you come<br/>8 to an understanding of what a person of<br/>9 ordinary skill in the art understands by the<br/>10 term "acquire"?<br/>11 <b>A. (Witness reviews document.)<br/>12 Well, if you look in my declaration,<br/>13 you know, I do -- with respect to claims that<br/>14 use a form of the word "acquire," such as<br/>15 acquiring the replacement product, that my<br/>16 opinion is that Carr discloses acquiring a<br/>17 replacement product, and I discuss that in my<br/>18 declaration. So I did come to an<br/>19 understanding that there were examples in the<br/>20 prior art that fell within the scope.</b><br/>21 Q. Okay. That wasn't my question.<br/>22 In developing your opinions about the</p>                                                                                                                       | <p>20</p> <p>1 Q. Do you understand whether there's a<br/>2 difference between interpretation of a claim<br/>3 term and arguments that the claim term, as<br/>4 properly interpreted, is disclosed in the<br/>5 prior art?<br/>6 MR. BAJAJ: Same objection.<br/>7 <b>A. Well, I mean, what I say is that, for<br/>8 the purposes of this matter, the claims are to<br/>9 be given their ordinary and customary meaning<br/>10 as would be understood by one of ordinary<br/>11 skill in the art in light of the specification<br/>12 and prosecution history unless the inventor<br/>13 has set forth a special meaning for the term.<br/>14 And that's how I interpreted the words that I<br/>15 then provide -- discuss further.</b><br/>16 <b>And with respect to one other term<br/>17 which is not the word "acquire," I do have<br/>18 some discussion in the claim construction<br/>19 section of my declaration.</b><br/>20 <b>But -- but the -- and given that, one<br/>21 example of what would fall within the scope of<br/>22 acquiring the replacement product is what I</b></p> |

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| <p>21</p> <p>1 discuss partly in -- starting around page 59<br/>2 of my declaration, which is that found in the<br/>3 prior art in Carr is disclosed in this claim<br/>4 element, or rendering obviousness claim<br/>5 element, rather.<br/>6 Q. Is it your opinion that the term<br/>7 "acquire" has a plain and ordinary meaning in<br/>8 the art?<br/>9 A. I mean, for the purposes of this<br/>10 matter, what I say is that, because I haven't<br/>11 explicitly discussed the meaning of the word<br/>12 "acquire," that the approach I take is that<br/>13 those words to a POSITA would have their<br/>14 ordinary and customary meaning.<br/>15 Q. What is the ordinary and customary<br/>16 meaning of the term "acquire"?<br/>17 A. Well, with respect to the phrase<br/>18 "acquiring the replacement product," a person<br/>19 of ordinary skill would understand that the<br/>20 examples that I've given in my declaration,<br/>21 for example, starting on 59, are rendering<br/>22 obvious the whole element that that phrase is</p> | <p>23</p> <p>1 a -- acted as a lexicographer for the word<br/>2 "acquire," so I applied the customary and<br/>3 ordinary meaning to a person of ordinary<br/>4 skill, and that would have included the<br/>5 example that I discuss in my declaration.<br/>6 Q. Dr. Houh, does acquiring a product<br/>7 require physical possession of the product?<br/>8 A. Well, with respect to this particular<br/>9 matter, I don't see, at least in this section<br/>10 on page 59 and 60, a discussion of that<br/>11 particular item. But because Carr actually<br/>12 discloses that the agent gets the item and<br/>13 then delivers the item so that the person<br/>14 eventually gets the item, so -- but the<br/>15 question you asked is -- I don't think I<br/>16 specifically discuss that in my declaration.<br/>17 Q. I'm sorry. The claim says "acquiring<br/>18 the replacement product via the agent."<br/>19 Do you see that?<br/>20 A. I do see that.<br/>21 Q. Do you agree that acquiring the<br/>22 replacement product via the agent requires</p> |
| <p>22</p> <p>1 within.<br/>2 Q. Dr. Houh, we can get to your opinions<br/>3 about the prior art. I'm asking you a very<br/>4 specific question, which is what is the<br/>5 ordinary and customary meaning of the term<br/>6 "acquire" that you applied in your<br/>7 declaration?<br/>8 MR. PRICE: Can we go off the<br/>9 record for just one second?<br/>10 MR. BAJAJ: Yes.<br/>11<br/>12 (Off-the-record discussion.)<br/>13<br/>14 MR. PRICE: Okay. Sorry about<br/>15 that, Dr. Houh.<br/>16 BY MR. PRICE:<br/>17 Q. I'll just reread the pending question,<br/>18 which is what is the ordinary and customary<br/>19 meaning of the term "acquire" that you used in<br/>20 your declaration?<br/>21 A. Well, I don't recall seeing an express<br/>22 definition where the patent or patentee act as</p>                                                                                                                                                                                                                                         | <p>24</p> <p>1 that the agent have physical possession of the<br/>2 product?<br/>3 A. Well, I do say here that in this<br/>4 example in Carr, because Carr then states that<br/>5 "The alternative good is communicated back to<br/>6 the assembler, and the assembler includes the<br/>7 alternative good in the customer order and,<br/>8 thus, teaches, upon receiving approval,<br/>9 acquiring the replacement product via the<br/>10 agent."<br/>11 So that's what I'm saying here with<br/>12 respect to this example in Carr. And, of<br/>13 course, in Carr, the agent actually does<br/>14 deliver the customer order in the end.<br/>15 Q. What is it about this disclosure in<br/>16 Carr that tells you that the agent is<br/>17 acquiring a product?<br/>18 A. Since now you're asking me about Carr,<br/>19 could you -- could I get a copy of Carr,<br/>20 please?<br/>21 Q. I'm handing you a document that's been<br/>22 marked Exhibit 1005.</p>                                                                                           |

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| <p>25</p> <p>1     <b>A. Thank you.</b></p> <p>2     Q. Dr. Houh, do you recognize this</p> <p>3 document?</p> <p>4     <b>A. (Witness reviews document.)</b></p> <p>5         <b>Yes, I do.</b></p> <p>6     Q. And what document is that?</p> <p>7     <b>A. This is the Carr prior art reference</b></p> <p>8 <b>that I refer to in my declaration.</b></p> <p>9     Q. Okay. So my previous question was</p> <p>10 what is it about this disclosure in Carr that</p> <p>11 tells you that the agent is acquiring a</p> <p>12 product?</p> <p>13   <b>A. (Witness reviews document.)</b></p> <p>14         <b>Sorry. Could you repeat the question,</b></p> <p>15 <b>please.</b></p> <p>16    Q. What is it about this disclosure in</p> <p>17 Carr that tells you the agent is acquiring a</p> <p>18 product?</p> <p>19   <b>A. So Carr talks about something it calls</b></p> <p>20 <b>an assembler, and that may be, for example, a</b></p> <p>21 <b>store employee. And this assembler may</b></p> <p>22 <b>collect items throughout the store and arrange</b></p>                                                                                                                                                                                                                          | <p>27</p> <p>1     Q. Is it sufficient for Carr's assembler</p> <p>2 to include the substitute good in the</p> <p>3 assembled and ready-for-delivery order to be</p> <p>4 acquiring?</p> <p>5     <b>A. Well, in the section -- in Paragraphs</b></p> <p>6 <b>131 to 133, I am talking about that the -- the</b></p> <p>7 <b>assembler has now including -- has now</b></p> <p>8 <b>included the alternative good in the customer</b></p> <p>9 <b>order and that, you know, in the context of my</b></p> <p>10 <b>discussion of this as a whole, this is for the</b></p> <p>11 <b>delivery of goods.</b></p> <p>12         <b>And -- and, you know, that's the -- if</b></p> <p>13 <b>you look back at Paragraph 98, which I think</b></p> <p>14 <b>you were -- I have a citation there you also</b></p> <p>15 <b>read at one point -- that it is the -- that</b></p> <p>16 <b>Carr is collecting the items throughout the</b></p> <p>17 <b>store and arrange -- arranging for those items</b></p> <p>18 <b>-- I'm paraphrasing slightly to get the</b></p> <p>19 <b>sentence to come out right with the verbs --</b></p> <p>20 <b>arranging for those items to be assembled and</b></p> <p>21 <b>ready for delivery to one or more customer</b></p> <p>22 <b>locations.</b></p> |
| <p>26</p> <p>1 for those items to be assembled and ready for</p> <p>2 delivery to one or more customer locations.</p> <p>3 So that's what Carr is disclosing, for</p> <p>4 example, in Paragraph 53.</p> <p>5         <b>And if you look at Paragraph 101, it</b></p> <p>6 <b>talks about how there could be a substitute</b></p> <p>7 <b>good chosen by the -- by the customer under</b></p> <p>8 <b>certain circumstances, which I also discuss</b></p> <p>9 <b>elsewhere in my declaration, and that that</b></p> <p>10 <b>substitute or alternative good, that's</b></p> <p>11 <b>communicated back to the assembler.</b></p> <p>12         <b>Then -- and then the assembler</b></p> <p>13 <b>includes the alternative good in the customer</b></p> <p>14 <b>order and that the order and system modifies</b></p> <p>15 <b>the order to include the alternative good</b></p> <p>16 <b>and -- and stores that update to the</b></p> <p>17 <b>alternative order.</b></p> <p>18         <b>And then that Carr is teaching that</b></p> <p>19 <b>the assembler is the one that is now arranging</b></p> <p>20 <b>for those items, including -- including the</b></p> <p>21 <b>substitute good, to be assembled and ready for</b></p> <p>22 <b>delivery to one or more customer locations.</b></p> | <p>28</p> <p>1         <b>And so that, I think -- I think for</b></p> <p>2 <b>the purposes of this declaration, I believe</b></p> <p>3 <b>this is -- what I'm disclosing is sufficient</b></p> <p>4 <b>to show that the challenged claims are</b></p> <p>5 <b>unpatentable.</b></p> <p>6     Q. So is it your opinion that it is</p> <p>7 sufficient for someone to arrange for those</p> <p>8 items to be assembled and ready for delivery</p> <p>9 in order to meet the plain and ordinary</p> <p>10 meaning of the term "acquire"?</p> <p>11    <b>A. Well, the -- the whole phrase in --</b></p> <p>12 <b>what I call Element 1.7 of -- of Claim 1 is</b></p> <p>13 <b>"upon receiving approval of the purchase from</b></p> <p>14 <b>the customer, acquiring the replacement</b></p> <p>15 <b>product via the agent."</b></p> <p>16         <b>And so I am showing here how there is</b></p> <p>17 <b>an alternative good, and that's the -- that</b></p> <p>18 <b>would be the replacement product in this</b></p> <p>19 <b>example. And I talk else -- like, in --</b></p> <p>20 <b>that -- that it is also -- that the customer</b></p> <p>21 <b>approves the purchase and that -- that the</b></p> <p>22 <b>agent has now included that -- that</b></p>                 |

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| <p style="text-align: right;">29</p> <p>1 alternative good in the customer order.<br/>2 And Carr – I discuss this elsewhere,<br/>3 but Carr is on a route, walking through the<br/>4 store – sorry.<br/>5 In Carr, the assembler is on a route,<br/>6 walking through the store, and is assembling<br/>7 the order by walking through the store. And<br/>8 so when the – you know, and the assembler's<br/>9 actually including this alternative good in<br/>10 the order. And so I think that is disclosing,<br/>11 you know, "upon receiving approval, acquiring<br/>12 the replacement product via the agent."<br/>13 I think – I think this whole<br/>14 discussion – but in the context of the<br/>15 overall discussion in my declaration, it is<br/>16 that, you know, Carr is rendering obvious this<br/>17 Claim Element 1.7.<br/>18 Q. And, Dr. Houh, that didn't even come<br/>19 close to answering my question.<br/>20 Is it your opinion that it is<br/>21 sufficient for someone to arrange for those<br/>22 items to be assembled and ready for delivery</p> | <p style="text-align: right;">31</p> <p>1 you know, if one of the – one or more of the<br/>2 goods in the customer order is unavailable.<br/>3 And so that there – there's<br/>4 discussion elsewhere in some figures and on<br/>5 the previous page, for example, where the user<br/>6 can then, you know, choose an alternative good<br/>7 to the one that's unavailable and substitute<br/>8 it. And then upon approval of a substitute<br/>9 good, the assembler includes this alternative<br/>10 good in the customer order. And that's as<br/>11 they're walking through the store.<br/>12 So that's how I show that – the part<br/>13 of the claim element "acquiring the<br/>14 replacement product via the agent."<br/>15 And then we know in Carr that – that<br/>16 once the order gets fully assembled and – for<br/>17 delivery to the customer, which is to one or<br/>18 more customer locations, which is what we<br/>19 talked about earlier, and I cite to that back<br/>20 in Paragraph 98.<br/>21 So certainly, in the context of<br/>22 this – my whole analysis, that is what I'm</p> |
| <p style="text-align: right;">30</p> <p>1 to meet the plain and ordinary meaning of the<br/>2 term "acquire"?<br/>3 MR. BAJAJ: Objection. Asked<br/>4 and answered.<br/>5 A. So the phrase in the claim element<br/>6 that I'm analyzing, or at least the second<br/>7 part of the Claim Element 1.7, is "acquiring<br/>8 the replacement product via the agent."<br/>9 And what I show meets that claim<br/>10 element requirement in – you know, as stated<br/>11 in the claim is – is that the alternative<br/>12 good is communicated back to the sender, and<br/>13 the assembler includes the alternative good in<br/>14 the customer order. And – and that's<br/>15 teaching "upon receiving approval, acquiring<br/>16 the replacement product via the agent."<br/>17 And in the context of Carr that –<br/>18 where I have this discussion, I mean, you<br/>19 know, Carr does have the assembler walking<br/>20 through the store on a route, and they get<br/>21 approval to – to – you know, to substitute<br/>22 in something for a product that – in Carr,</p> | <p style="text-align: right;">32</p> <p>1 saying. A person of ordinary skill in the art<br/>2 would understand, discloses, or renders<br/>3 obvious the "acquiring the replacement product<br/>4 via the agent" part of Claim 1.7.<br/>5 Q. Dr. Houh, I'm going to ask you a<br/>6 yes-or-no question.<br/>7 Is it your opinion, yes or no, that it<br/>8 is sufficient for someone to arrange items to<br/>9 be assembled and ready for delivery to meet<br/>10 the plain and ordinary meaning of the term<br/>11 "acquire"?<br/>12 MR. BAJAJ: Objection to form.<br/>13 Asked and answered.<br/>14 A. The actual claim term is "acquiring<br/>15 the replacement product via the agent," and I<br/>16 analyze overall the elements using the plain<br/>17 and ordinary meaning of – or plain and<br/>18 customary meaning of the words as understood<br/>19 by a POSITA at the time of the invention.<br/>20 And – and it's my opinion that a<br/>21 person of ordinary skill would understand that<br/>22 this example from Carr where there's an</p>                                                    |

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| <p>33</p> <p>1 alternative good communicated back to the<br/>2 assembler and the assembler includes the<br/>3 alternative good in the customer order. In --<br/>4 in the context of Carr, I mean -- and meets<br/>5 the claim element requirement of "upon<br/>6 receiving approval, acquiring the replacement<br/>7 product via the agent." The whole phrase is<br/>8 "acquiring the replacement product via the<br/>9 agent." And I analyze -- the examples are<br/>10 disclosing the understanding of the -- of<br/>11 these phrases "acquiring" -- like, for<br/>12 example, "acquiring the replacement product<br/>13 via the agent."<br/>14 And I'm showing that in Carr that a<br/>15 person of ordinary skill would understand that<br/>16 that is an example from Carr that would<br/>17 disclose or render obvious the actual claim<br/>18 term itself with the whole phrase in the<br/>19 claim.<br/>20 By Carr's disclosures, though, for<br/>21 example, how the assembler includes the<br/>22 alternative good in the customer order -- and</p>         | <p>35</p> <p>1 replacement product via the agent."<br/>2 Q. Do you remember earlier when you told<br/>3 me that requiring -- acquiring a product that<br/>4 you buy at a store requires a transaction?<br/>5 MR. BAJAJ: Objection.<br/>6 Mischaracterizes previous testimony.<br/>7 A. I don't think I said exactly that, so<br/>8 I'm -- I don't remember saying exactly those<br/>9 words.<br/>10 BY MR. PRICE:<br/>11 Q. Do you recall earlier when you<br/>12 couldn't think of an example of buying a<br/>13 product from a store -- I'm sorry -- acquiring<br/>14 a product from a store that did not require a<br/>15 transaction?<br/>16 MR. BAJAJ: Objection to form.<br/>17 A. I think I generally recall the --<br/>18 that, the way you phrased it.<br/>19 BY MR. PRICE:<br/>20 Q. Does the assembler in Carr engage in a<br/>21 transaction for the replacement product?<br/>22 A. (Witness reviews document.)</p>                                                                                                                                                                                                                |
| <p>34</p> <p>1 that's -- that's the phrase that I cite -- one<br/>2 of them, in Paragraph 132 -- that there is<br/>3 overall discussion in the context of Carr,<br/>4 which is that this assembler is arranging<br/>5 those items -- and is assembling those items<br/>6 to be ready for delivery to one or more<br/>7 customer locations. And that's the overall<br/>8 context of Carr.<br/>9 And I discuss in more detail in other<br/>10 sections about how the various parts of this<br/>11 claim element come to be -- we get to this<br/>12 point. And so it's the overall claim phrase<br/>13 that I'm discussing here in 132, and I<br/>14 believe -- and I think it's -- what I outline<br/>15 in this declaration is sufficient to show this<br/>16 unpatentability of the challenged claims.<br/>17 BY MR. PRICE:<br/>18 Q. You are aware I just asked you a<br/>19 yes-or-no question, correct?<br/>20 A. I try to explain these things, and<br/>21 I -- I've been trying to explain it to you,<br/>22 that the phrase in the claim is "acquiring the</p> | <p>36</p> <p>1 So if you look back at my previous<br/>2 analysis, there is a situation in which if a<br/>3 particular good or item is not available at<br/>4 the store or facility -- and this is from<br/>5 Paragraph 95 of Carr -- "The assembler may<br/>6 establish a list of substitute goods. In one<br/>7 embodiment, the assembler may choose the<br/>8 substitute goods from goods that are<br/>9 available. In one embodiment, the assembler<br/>10 may establish the list of goods by using the<br/>11 UPC reader to read the UPC of the goods the<br/>12 assembler has chosen to include."<br/>13 And then that list of -- "The list of<br/>14 substitute goods may then be communicated to<br/>15 the customer and the customer allowed to<br/>16 choose one of the goods to be included in the<br/>17 order, that the order server may be configured<br/>18 to communicate the list of substitute goods to<br/>19 the device." And then the approval -- that<br/>20 the customer then can then select one of those<br/>21 substitute goods from the list the assembler<br/>22 assembled or put together to send to the user.</p> |

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| <p>37</p> <p>1 And then based on the user selection,<br/>2 the assembler can include that selected<br/>3 alternative good in the customer order.<br/>4 And then also, Carr is teaching that<br/>5 the order fulfillment system modifies the<br/>6 customer order to include the alternative good<br/>7 and stores the revised customer order in the<br/>8 database.<br/>9 So I think that's what's happening in<br/>10 Carr, as I'm -- as I'm disclosing in my<br/>11 declaration.<br/>12 Q. And who pays for the customer order<br/>13 once it's in the database?<br/>14 A. (Witness reviews document.)<br/>15 Well, Carr talks about a customer --<br/>16 this is in Paragraph 51. The customer<br/>17 purchasing items from the store -- "A customer<br/>18 purchasing items from the store, 20, for<br/>19 delivery to a customer location, 22, or pickup<br/>20 at a store, 20, will typically view an<br/>21 Internet web page or access an application or<br/>22 app corresponding to the store. The customer</p>                    | <p>39</p> <p>1 Q. Is that understanding consistent with<br/>2 the disclosure that Carr has in Paragraph 118?<br/>3 A. Well, I mean, if you're referring to,<br/>4 you know, the web or application, Module 96 --<br/>5 this is from 118 -- "may present a store<br/>6 interface and item information to a customer,<br/>7 receive customer information and order<br/>8 information, and otherwise handle the purchase<br/>9 transaction with the customer, as described<br/>10 herein."<br/>11 Yeah, I don't think there's anything<br/>12 that conflicts between, you know, back at<br/>13 Paragraph 50 -- 50 whatever it was and<br/>14 Paragraph 118. I think there's stuff in 118<br/>15 that's addressed that I don't think I saw it<br/>16 specifically discussed in the earlier<br/>17 paragraph.<br/>18 MR. PRICE: We've been going for<br/>19 about an hour. Let's take a break.<br/>20 MR. BAJAJ: Sure.<br/>21<br/>22</p> |
| <p>38</p> <p>1 may have an account with the store and may<br/>2 sign into the system, 10. A customer account<br/>3 may include information about the customer<br/>4 such as name, address, past purchase history,<br/>5 et cetera. The web page or app may also<br/>6 display to the customer items at the store<br/>7 which are available for pickup or delivery."<br/>8 And it goes on.<br/>9 But it doesn't specifically say here<br/>10 in this paragraph who's paying, but<br/>11 presumably, the online account with the store<br/>12 also would require some form of payment. So<br/>13 whatever form of payment attached to the<br/>14 account, whoever is paying for that would be<br/>15 paying for orders that the customer using<br/>16 their account might make.<br/>17 And, you know, I -- I only looked up<br/>18 through here, but I didn't see any discussion<br/>19 of exactly the question that you asked, but<br/>20 this is about having an account -- the<br/>21 customer having an account.<br/>22 BY MR. PRICE:</p> | <p>40</p> <p>1 (Recess taken from 10:33 a.m.<br/>2 to 10:42 a.m.)<br/>3<br/>4 BY MR. PRICE:<br/>5 Q. Dr. Houh, can you open up the '465<br/>6 patent and turn to Column 8, please.<br/>7 A. Okay.<br/>8 Q. Do you see the disclosure here,<br/>9 lines 18 through 21, starting "if the<br/>10 customer's not qualified"?<br/>11 A. Yes.<br/>12 Q. Do you see the phrase in this sentence<br/>13 that says "or if the delivery agent cannot<br/>14 complete the transaction for any reason"?<br/>15 A. Yes.<br/>16 Q. What happens when the agent cannot<br/>17 complete the transaction for any -- any<br/>18 reason?<br/>19 A. Well, it goes on to say that "The<br/>20 customer is notified that the acquisition<br/>21 cannot be made as indicated at 122."<br/>22 Q. Does this sentence tell a person of</p>                                                                                                                    |

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| <p>41</p> <p>1 ordinary skill in the art that an acquisition<br/>2 requires a transaction?<br/>3 <b>A. I think in -- I don't think this is a<br/>4 definition. It's worded as a definition that<br/>5 an acquisition requires a transaction.</b><br/>6 Q. Does something need to be worded as a<br/>7 definition in order for a person of ordinary<br/>8 skill in the art to understand what the<br/>9 sentence means?<br/>10 <b>A. Well, I understand that an inventor<br/>11 can be their own lexicographer and set forth a<br/>12 special meaning for a particular term or<br/>13 phrase. I think this phrase you're pointing<br/>14 to in Column 8, again, it's not an express<br/>15 definition of anything. It's just an example.</b><br/>16 Q. Does this sentence suggest that an<br/>17 acquisition can be made if the delivery agent<br/>18 cannot complete the transaction?<br/>19 <b>A. (Witness reviews document.)<br/>20 Well, the remainder of this paragraph<br/>21 is really focusing on the payment and<br/>22 methods-to-pay aspect of the way -- of the way</b></p> | <p>43</p> <p>1 <b>or seller directly, in which case the customer<br/>2 will only be billed for the pickup and<br/>3 delivery services provided.</b><br/>4 <b>And then there's payment by proxy<br/>5 where the delivery agent may utilize a printer<br/>6 to produce a preauthorization purchasing<br/>7 document, including billing information, which<br/>8 allows the delivery agent to pay at pickup.<br/>9 There's other options to -- that if the item<br/>10 is prepurchased by the customer, the delivery<br/>11 agent obtains a receipt showing proof of<br/>12 prepayment by the customer.</b><br/>13 <b>There's another one about how the<br/>14 delivery agent can debit the customer's credit<br/>15 card for the amount of the purchase price and,<br/>16 upon successfully receiving funds for the<br/>17 customer -- from the customer account,<br/>18 utilizes the printer to print out a check as<br/>19 legal tender for the goods to be purchased.</b><br/>20 <b>And those are all ways that it's<br/>21 discussing that the reasons, you know -- there<br/>22 are -- you know, if initially the delivery</b></p> |
| <p>42</p> <p>1 <b>this paragraph is starting out in the section<br/>2 you were directing me to. It's really talking<br/>3 about, you know, the amount of credit that the<br/>4 customer may have and if they're over -- if<br/>5 they're -- if what they're trying to order is<br/>6 over their credit limit, and then there's all<br/>7 these alternative options laid out as to how<br/>8 the customer can pay for the -- for what<br/>9 they're ordering.</b><br/>10 Q. I'm sorry, Dr. Houh. I need you to<br/>11 stick to answering the questions that I'm<br/>12 asking you.<br/>13 Does this sentence suggest that an<br/>14 acquisition can be made if the delivery agent<br/>15 cannot complete the transaction?<br/>16 MR. BAJAJ: Objection. Asked<br/>17 and answered.<br/>18 <b>A. Well as I said, the remainder of the<br/>19 paragraph does talk about how the delivery can<br/>20 be made. For example -- and it gives a bunch<br/>21 of options for doing so. For example, the<br/>22 customer has the option of paying the retailer</b></p>                            | <p>44</p> <p>1 <b>agent cannot complete the transaction or that<br/>2 the customer is not qualified for the amount,<br/>3 that these are alternative options to<br/>4 completing the order.</b><br/>5 <b>BY MR. PRICE:</b><br/>6 Q. You can't answer my question?<br/>7 <b>A. I did explain the answer to your<br/>8 question.</b><br/>9 Q. I need you to focus, Dr. Houh, on the<br/>10 question that I asked and the sentence that I<br/>11 am pointing you to.<br/>12 The sentence is "If the customer is<br/>13 not qualified for the amount of the desired<br/>14 purchase or if the delivery agent cannot<br/>15 complete the transaction for any reason, the<br/>16 customer is notified that the acquisition<br/>17 cannot be made as indicated at 122."<br/>18 My question again, does this sentence<br/>19 suggest that an acquisition can be made if the<br/>20 delivery agent cannot complete the<br/>21 transaction?<br/>22 MR. BAJAJ: Objection to the</p>                                                                                                                                                              |

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| <p>45</p> <p>1 form. Asked and answered.</p> <p>2 <b>A. I mean, what this is suggesting is</b></p> <p>3 <b>that – you know, it says, "If the customer is</b></p> <p>4 <b>not qualified for the amount of the desired</b></p> <p>5 <b>purchase," and then it goes on right after</b></p> <p>6 <b>that sentence you read in your question, "it</b></p> <p>7 <b>should be understood that this step can be</b></p> <p>8 <b>provided at any time during the service period</b></p> <p>9 <b>whenever it is established that the purchase</b></p> <p>10 <b>price is outside of the preapproved credit</b></p> <p>11 <b>limit."</b></p> <p>12 <b>And then it goes on in the same</b></p> <p>13 <b>paragraph to talk about alternatives.</b></p> <p>14 <b>"Alternatively, the customer has the option of</b></p> <p>15 <b>paying the retailer or seller directly, in</b></p> <p>16 <b>which case the customer will only be billed</b></p> <p>17 <b>for the pickup and delivery services</b></p> <p>18 <b>provided."</b></p> <p>19 <b>And so this is suggesting that, even</b></p> <p>20 <b>if the customer is not qualified for the</b></p> <p>21 <b>amount of the desired purchase, they have an</b></p> <p>22 <b>alternative, to pay the retailer or seller</b></p>                                   | <p>47</p> <p>1 <b>pickup and delivery.</b></p> <p>2 <b>Q. Is it your contention that pickup and</b></p> <p>3 <b>delivery services are acquisition services?</b></p> <p>4 <b>A. I mean, this is part of the paragraph</b></p> <p>5 <b>that starts out "If the customer is not</b></p> <p>6 <b>qualified for the amount of the desired</b></p> <p>7 <b>purchase or if the delivery agent cannot</b></p> <p>8 <b>complete the transaction for any reason, the</b></p> <p>9 <b>customer is notified that the acquisition</b></p> <p>10 <b>cannot be made as indicated."</b></p> <p>11 <b>And then this gives alternatives in</b></p> <p>12 <b>the event of the – of the purchase price</b></p> <p>13 <b>outside the preapproved credit limit where the</b></p> <p>14 <b>customer can pay for it – just pay the agent</b></p> <p>15 <b>or the company the agent's working for for</b></p> <p>16 <b>just the pickup and delivery service provided,</b></p> <p>17 <b>but the customer pays for – pays the retailer</b></p> <p>18 <b>or seller directly for the item. And that's</b></p> <p>19 <b>an alternative to the customer not qualifying</b></p> <p>20 <b>for the amount of the desired purchase based</b></p> <p>21 <b>on the account they have with the agent or the</b></p> <p>22 <b>agent's employer.</b></p> |
| <p>46</p> <p>1 <b>directly, in which case the customer is only</b></p> <p>2 <b>billed for the pickup and delivery services</b></p> <p>3 <b>provided.</b></p> <p>4 <b>BY MR. PRICE:</b></p> <p>5 <b>Q. In that example, does it say that the</b></p> <p>6 <b>delivery agent is acquiring the product?</b></p> <p>7 <b>A. Well, it's saying that the agent –</b></p> <p>8 <b>the delivery agent is going to be – the</b></p> <p>9 <b>customer will be billed for the pickup and</b></p> <p>10 <b>delivery services provided. And then there</b></p> <p>11 <b>are – it goes on to give all these other</b></p> <p>12 <b>alternatives where the agent picks up a used</b></p> <p>13 <b>good. Around line 34, "If a customer wishes a</b></p> <p>14 <b>delivery agent to pick up a used good such as</b></p> <p>15 <b>from a yard sale, the delivery agent debits</b></p> <p>16 <b>the customer's credit card for the amount of</b></p> <p>17 <b>the purchase price and, upon successfully</b></p> <p>18 <b>receiving funds from the customer account,</b></p> <p>19 <b>utilizes printer to print out a check as legal</b></p> <p>20 <b>tender for the goods to be purchased."</b></p> <p>21 <b>So it is talking about how the</b></p> <p>22 <b>delivery agent is providing services such as</b></p> | <p>48</p> <p>1 <b>Q. In any of these alternatives, is what</b></p> <p>2 <b>the agent doing referred to as acquiring a</b></p> <p>3 <b>product?</b></p> <p>4 <b>A. (Witness reviews document.)</b></p> <p>5 <b>I don't see that it uses "required" –</b></p> <p>6 <b>the word "acquired" [sic] or any form of it,</b></p> <p>7 <b>but I – I mean, I'm not seeing it now, you</b></p> <p>8 <b>know, starting, you know, around line 21,</b></p> <p>9 <b>going to the end of that paragraph. But it's</b></p> <p>10 <b>talking about situations where – for example,</b></p> <p>11 <b>the last example is the agent debits the</b></p> <p>12 <b>customer's credit card, and they print out a</b></p> <p>13 <b>check for the goods to be purchased.</b></p> <p>14 <b>And there are other – the other</b></p> <p>15 <b>example is that the customer pays the retailer</b></p> <p>16 <b>or seller directly for the item but that the</b></p> <p>17 <b>customer is billed for the pickup and delivery</b></p> <p>18 <b>services provided by the agent.</b></p> <p>19 <b>Q. What in that example is the customer</b></p> <p>20 <b>not billed for?</b></p> <p>21 <b>A. Well, the customer is paying the</b></p> <p>22 <b>retailer or seller directly, and it says that</b></p>                                            |

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| <p>49</p> <p>1 the customer is only -- will only be billed<br/>2 for the pickup and delivery service<br/>3 provided -- delivery services provided. But<br/>4 it's still -- the customer is still paying the<br/>5 retailer or seller directly. It's just that<br/>6 the bill from the agent only includes the<br/>7 pickup and delivery services provided.</p> <p>8 Q. If the agent was able to complete the<br/>9 transaction, what would the customer be billed<br/>10 for in addition to the pickup and delivery<br/>11 services provided?</p> <p>12 A. And you're referring only to that<br/>13 example?</p> <p>14 Q. Only to that example.</p> <p>15 A. Well, it's saying here that the<br/>16 customer will only be billed for the pickup<br/>17 and delivery services provided, and that would<br/>18 be a bill from the agent. But if the<br/>19 customer's already paid the retailer or seller<br/>20 directly at that time, I don't see what bill<br/>21 they'd get in the future since they've already<br/>22 paid the retailer or seller.</p> | <p>51</p> <p>1 Q. You're telling me that this<br/>2 alternative example in which the customer pays<br/>3 for the goods directly is also an example<br/>4 where the agent is able to complete the<br/>5 transaction?</p> <p>6 What transaction do you think the<br/>7 agent -- is being discussed here in Column 8?</p> <p>8 MR. BAJAJ: Objection to form.</p> <p>9 A. Well, there are all these alternative<br/>10 examples. That's partly being discussed in<br/>11 Column 8.</p> <p>12 BY MR. PRICE:</p> <p>13 Q. Dr. Houh, I need you to focus on the<br/>14 question that I am asking.</p> <p>15 Do you understand me?</p> <p>16 A. I mean, you're asking about Column 8.<br/>17 I'm telling you what lines --</p> <p>18 Q. I'm asking you about a specific<br/>19 hypothetical --</p> <p>20 A. I'm telling you what lines I was<br/>21 referring to in Column 8 that we were<br/>22 discussing.</p> |
| <p>50</p> <p>1 Q. I'm sorry, Doctor. So my question<br/>2 was, if the agent was able to complete the<br/>3 transaction, what would the customer be billed<br/>4 for in addition to the pickup and delivery<br/>5 services provided?</p> <p>6 A. Well, I mean, I think that example in<br/>7 line 25 through 28 of Column 8 is an example<br/>8 where the customer ultimately gets the item<br/>9 from the retailer or seller, so in that sense,<br/>10 that -- the customer is getting the item.</p> <p>11 And it's saying here that, in this<br/>12 alternative way of getting what the customer<br/>13 wants, the customer -- you know, if they've<br/>14 already paid the retailer or seller directly,<br/>15 the only bill they'll get after that from the<br/>16 delivery agent will be for the pickup and<br/>17 delivery services.</p> <p>18 Q. Dr. Houh, we're talking about a<br/>19 circumstance where the delivery agent is able<br/>20 to complete the transaction.</p> <p>21 Do you understand that?</p> <p>22 A. That was an example.</p>   | <p>52</p> <p>1 Q. And I'm telling you that the lines<br/>2 that you are referring to are not the lines<br/>3 that I am asking about. I need you to stay<br/>4 focused.</p> <p>5 Can you do that?</p> <p>6 A. I am --</p> <p>7 Q. I'm asking you about a --</p> <p>8</p> <p>9 (Parties speaking simultaneously.)</p> <p>10</p> <p>11 A. You asked about Column 8, and I'm<br/>12 directing you exactly to lines in Column 8.<br/>13 If you have some other specific lines in<br/>14 Column 8, you need to be more specific about<br/>15 what lines you're asking about.</p> <p>16 BY MR. PRICE:</p> <p>17 Q. Dr. Houh, I am asking you about a<br/>18 circumstance where the agent is able to<br/>19 complete the transaction, and you are pointing<br/>20 me to other locations where the agent is not<br/>21 able to complete the transaction.</p> <p>22 Do you understand the difference?</p>          |

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| <p>53</p> <p>1 A. These are alternatives where the<br/>2 customer ultimately gets what they – what<br/>3 they wanted. And so there's a point in time<br/>4 where the transaction may not have been<br/>5 completed but then ultimately the customer<br/>6 gets what they want.<br/>7 Q. And when the transaction is not<br/>8 completed by the agent, what is the outcome of<br/>9 that in terms -- as disclosed in lines 20<br/>10 to 21 of Column 8 of the '465 patent?<br/>11 A. It says, "The customer is notified<br/>12 that the acquisition cannot be made as<br/>13 indicated at 122."<br/>14 Q. Thank you.<br/>15 So in a circumstance where the agent<br/>16 is able to complete the transaction, what<br/>17 would the customer be billed for in addition<br/>18 to the pickup and delivery services?<br/>19 A. (Witness reviews document.)<br/>20 If you look down in Column 8, at<br/>21 line 50, it says, "If no product is purchased<br/>22 and no delivery is made, an invoice for</p> | <p>55</p> <p>1 A. Yes.<br/>2 Q. Have you ever gone to the store and<br/>3 realized when you got there that the product<br/>4 you wanted was not in stock?<br/>5 A. I can remember examples where I've<br/>6 gone to the customer service desk to ask about<br/>7 that, and I've been told it's not in stock.<br/>8 Q. Do you think that's a relatively<br/>9 common occurrence?<br/>10 A. Well, it may be obvious that that<br/>11 could occur, but it's not mentioned anywhere<br/>12 in the specification of the application that<br/>13 the '465 patent – I think it's the '858 or<br/>14 something like that – the '840. It's the one<br/>15 I talk about in my declaration.<br/>16 Q. I'm sorry. I don't think I know what<br/>17 you're referring to.<br/>18 My question was do you think that's a<br/>19 relatively common occurrence?<br/>20 A. I don't know how to judge how common<br/>21 it is.<br/>22 Q. You've had that experience, correct?</p>                       |
| <p>54</p> <p>1 services rendered may be generated utilizing<br/>2 Billing Database 35 and information provided<br/>3 by the delivery agent with the invoice being<br/>4 sent to the customer either electronically,<br/>5 e.g., via designated e-mail address, or<br/>6 through standard mail delivery method. The<br/>7 services rendered may be charged directly to a<br/>8 designated customer credit card or utilizing<br/>9 some other designated electronic payment<br/>10 method.<br/>11 "In one embodiment of the invention,<br/>12 each delivery agent has his or her own<br/>13 designated checking account and/or credit card<br/>14 which is utilized to purchase the desired<br/>15 goods, and the customer is billed for services<br/>16 and product purchased upon delivery of the<br/>17 product to the customer."<br/>18 So that's what the spec says about –<br/>19 about that.<br/>20 Q. Thank you.<br/>21 Dr. Houh, you said you've been<br/>22 shopping before, right?</p>        | <p>56</p> <p>1 A. As I mentioned, I have gone to the<br/>2 customer service desk to ask about a specific<br/>3 item and – and be told it's not in stock.<br/>4 Q. Can you turn to Column 1 of the '465<br/>5 patent.<br/>6 Do you see, starting at line 65 in<br/>7 Column 1, the sentence that begins "however"?<br/>8 A. Yes.<br/>9 Q. Can you read that sentence.<br/>10 A. "However, if the person running the<br/>11 errand purchases the wrong product, the person<br/>12 placing the order will not know until the item<br/>13 is delivered."<br/>14 Q. As someone who's gone shopping before,<br/>15 what are some of the reasons that somebody<br/>16 purchasing a product purchases the wrong<br/>17 product?<br/>18 A. Well, nothing here in the – the '465<br/>19 patent or in the '848 application says what<br/>20 happens. But it might be obvious that I<br/>21 simply just grabbed, you know, Heinz ketchup<br/>22 instead of the other brand that – or creamy</p> |

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| <p style="text-align: right;">57</p> <p>1 peanut butter instead of chunky peanut butter,<br/>2 but I might not know that until -- until I got<br/>3 home.<br/>4 And I -- if I realized that I grabbed<br/>5 the wrong product in the store, I would put it<br/>6 back. Actually, I do remember a specific<br/>7 instance where I was trying to grab a bunch of<br/>8 cans of cream of celery soup, and mixed in<br/>9 with that, just on the shelf as I was grabbing<br/>10 and I didn't notice, I got a can of cream of<br/>11 mushroom that happened to be together or<br/>12 behind the cream of celery, and I didn't<br/>13 realize that until I got home.<br/>14 Q. Can you think of other reasons that<br/>15 someone who's shopping for a product might<br/>16 purchase the wrong product?<br/>17 A. So again, nothing in the '465 or the<br/>18 '848 application goes into this in any more<br/>19 detail that I recall sitting here. But, I<br/>20 mean, the product -- you know, I have a<br/>21 shopping list, and sometimes it might just say<br/>22 "yogurt," and I'll get some yogurt, but it</p> | <p style="text-align: right;">59</p> <p>1 a wrong product or any situation certainly not<br/>2 that describes the follow-up actions as<br/>3 claimed in Claim 1 of the '465. But, I mean,<br/>4 if I were -- if I was -- wanted creamy peanut<br/>5 butter and I stood there and I wanted a<br/>6 specific brand because I like that brand and<br/>7 then if it was me that was standing at the<br/>8 counter, I wouldn't say I got the wrong one<br/>9 because it was -- I got the one that I -- even<br/>10 though I wanted one version, I picked a<br/>11 version that I would -- I, you know -- right<br/>12 there, so...<br/>13 BY MR. PRICE:<br/>14 Q. Would you say the '465 patent<br/>15 discloses a solution to that problem?<br/>16 A. What are you referring to in the '465<br/>17 patent?<br/>18 Q. So, for example, in Column 2, there is<br/>19 a disclosure of the customer being allowed to<br/>20 interact with the delivery agent to inspect a<br/>21 product remotely.<br/>22 A. Where is that in Column 2?</p>                                                                           |
| <p style="text-align: right;">58</p> <p>1 actually wasn't the yogurt that, you know --<br/>2 if my wife put on the shopping list that --<br/>3 but, you know -- so for her, she maybe didn't<br/>4 want the yogurt that I actually picked, but I<br/>5 got the yogurt off the shopping list. So<br/>6 again, I wouldn't know that until I got home.<br/>7 It -- or more likely -- and, now, if<br/>8 it just says "yogurt," I stand and wonder<br/>9 which yogurt I should get. And maybe I'll<br/>10 text my wife, Which yogurt did you want?<br/>11 So I can think of those kinds of<br/>12 situations that's happened to me.<br/>13 Q. And would you say that sometimes, you<br/>14 know, if they didn't have the creamy peanut<br/>15 butter that was on your list and you got<br/>16 chunky instead, you know, that would<br/>17 technically be ordering the -- purchasing the<br/>18 wrong product?<br/>19 MR. BAJAJ: Objection to form.<br/>20 A. Again, the '848 application doesn't --<br/>21 the best of -- I don't have it memorized, but<br/>22 I don't recall anything about what constitutes</p>  | <p style="text-align: right;">60</p> <p>1 Q. Starting at line 46.<br/>2 A. (Witness reviews document.)<br/>3 I mean, I wouldn't characterize it in<br/>4 the -- as solving -- you know -- you know, the<br/>5 way you asked the question. I mean, it simply<br/>6 says what it says here, which is that the --<br/>7 "There is a digital image capture device<br/>8 utilized to deliver real-time digital images<br/>9 of the delivery agent on the way to the<br/>10 location as well as images captured during the<br/>11 execution of a purchase process."<br/>12 Q. What do you think this interaction<br/>13 between the customer and the agent is for in<br/>14 the context of the '465 patent?<br/>15 A. Well, for example, in the, you know,<br/>16 discussion of the prior art section, at the<br/>17 top of Column 2, it's talking about a<br/>18 situation where the customer may want<br/>19 something like a dress, designer shoes or a<br/>20 painting. That's line 6. This is now<br/>21 allowing -- once the agent, like, finds the<br/>22 dress, allows the agent to show the customer a</p> |

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| <p>61</p> <p>1 picture of the dress because they might see<br/>2 the picture of the dress online but they want<br/>3 to -- actually want to take a look at the<br/>4 dress once it's been located, or a designer<br/>5 shoe or a painting, and that this allows the<br/>6 customer to look at that.<br/>7 So maybe, for example, the agent --<br/>8 the customer wanted bananas, and the agent<br/>9 found the bananas, and -- but the -- the<br/>10 customer likes a specific level of doneness.<br/>11 Like, maybe they don't like green bananas.<br/>12 They don't like overly bruised bananas. So<br/>13 they can look at the bananas and say, Okay.<br/>14 Those are good, or look at the dress and maybe<br/>15 decide, Oh, I don't like the way that looks<br/>16 now that I'm seeing more images of it. So I<br/>17 think that's -- that's generally also what's<br/>18 being discussed in Figure 3, that kind of<br/>19 situation and in the specification description<br/>20 of Figure 3.<br/>21 Q. Would that be an example of the agent<br/>22 picking up the wrong product?</p>                         | <p>63</p> <p>1 item.<br/>2 Q. Is it your contention that the '465<br/>3 patent does not disclose a solution to the<br/>4 wrong item problem?<br/>5 A. (Witness reviews document.)<br/>6 Well, as I said earlier, the '465 or<br/>7 the -- and the '848 specifications, they don't<br/>8 have any further discussion of wrong products<br/>9 or what to do when the wrong item is -- when<br/>10 the customer ultimately realized that they've<br/>11 received the wrong item.<br/>12 And certainly, if you look in Section<br/>13 -- starting on -- the section starting on<br/>14 page 22 of my declaration, I talk there about<br/>15 how the '848 application, to which the '465<br/>16 claims priority to, doesn't support and does<br/>17 not provide written description support for a<br/>18 phrase which is -- is different, but the<br/>19 actual claim phrase I'm looking at here is<br/>20 "failing to locate an identified product of<br/>21 the set of one or more goods or determining<br/>22 that the identified product is not available."</p> |
| <p>62</p> <p>1 A. (Witness reviews document.)<br/>2 I mean, in the specification of the<br/>3 '465 and the earlier '848 application, I<br/>4 believe that's the -- the only place that it<br/>5 talks about the wrong product is in the<br/>6 discussion of the prior art section, which is<br/>7 the portion you asked me to read into the<br/>8 record earlier, is that the person running the<br/>9 errand purchased the wrong product. But in<br/>10 that case, the person placing the order will<br/>11 not know until the item is delivered. That's<br/>12 the example I got the wrong yogurt. I mean, I<br/>13 thought I got the right one, but I didn't find<br/>14 out until I got home.<br/>15 But -- but what's described in the<br/>16 specification, in particular with regard to<br/>17 the flowchart of Figure 3, is that the -- that<br/>18 the -- there is no discussion there about the<br/>19 wrong item. It's about -- for example,<br/>20 Column 7, line 15, "finds the desired product<br/>21 to be acquired." So there's no discussion in<br/>22 this flowchart with respect to the wrong</p> | <p>64</p> <p>1 And, you know, a POSITA would have<br/>2 interpreted the '848 application as assuming<br/>3 that products ordered by the customer are<br/>4 available. And a POSITA would not have<br/>5 recognized that the '848 application as<br/>6 contemplating scenarios in which the products<br/>7 cannot be located or in which the products are<br/>8 not available. And the '848 application<br/>9 similarly does not contemplate what actions to<br/>10 take in those scenarios or in the scenario of<br/>11 a wrong product. It just -- it doesn't say<br/>12 anything about that in the '848 application.<br/>13 Q. Do you recall a few minutes ago, when<br/>14 I pointed you to Columns 1 and 2 of the '465<br/>15 patent, that you read me a sentence from<br/>16 there?<br/>17 A. Yes, I do.<br/>18 Q. And that talks about how there is a<br/>19 problem in the art of somebody purchasing a<br/>20 wrong product, right?<br/>21 A. Well, that phrase doesn't use the word<br/>22 "problem." What I read doesn't include the</p>             |

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| <p>65</p> <p>1 word "problem."<br/>2 Q. You don't think that that's a problem,<br/>3 that the person purchases the wrong product<br/>4 even though it, quote, "creates the potential<br/>5 for a confrontation or, at the very least, a<br/>6 dissatisfied purchaser who has now also lost<br/>7 significant time in acquiring the desired<br/>8 product"?<br/>9 A. I mean, it's just describing the<br/>10 situations in the prior art. And so, as I<br/>11 said, it doesn't use the word "problem."<br/>12 Q. Do you think that's not a statement of<br/>13 a problem?<br/>14 A. (Witness reviews document.)<br/>15 Well, there's a number of issues that<br/>16 are mentioned in the discussion of the prior<br/>17 art. For example, up above, around line 39,<br/>18 it talks about "Most Internet retailers rely<br/>19 on third-party services such as UPS and<br/>20 Federal Express to deliver the products<br/>21 purchased on their websites. From an<br/>22 environmental standpoint, delivering select</p>                               | <p>67</p> <p>1 cover all of the issues that are raised in the<br/>2 discussion of the prior art.<br/>3 Q. Dr. Houh, that had literally nothing<br/>4 to do with the question I asked.<br/>5 My question was talking about the<br/>6 disclosure at Column 1, starting at line 65,<br/>7 through Column 2, line 3. My question is do<br/>8 you think that's not a statement of a problem?<br/>9 A. I mean, there are many, many<br/>10 issues --<br/>11 Q. Dr. Houh --<br/>12 A. -- raised in the prior art --<br/>13 Q. -- I need to cut you off right now.<br/>14 MR. BAJAJ: Counsel, I would ask<br/>15 you to let the --<br/>16 MR. PRICE: He's not answering<br/>17 the question. He's pointing me to other<br/>18 things that have literally nothing to do with<br/>19 the question that I'm asking. It's a very<br/>20 simple question about a very simple<br/>21 disclosure, and he's not giving me an answer.<br/>22 He's reading reams of evidence from unrelated</p>                                                                   |
| <p>66</p> <p>1 goods purchased over the Internet to<br/>2 individual customers using conventional<br/>3 methods creates a large carbon footprint and<br/>4 is often not cost effective.<br/>5 "For example, when various goods are<br/>6 transported from one or more warehouses across<br/>7 the country to individual customers rather<br/>8 than to a single store from where the items<br/>9 can be purchased, certain inefficiencies are<br/>10 realized."<br/>11 So the claims need not cover all of<br/>12 the issues that are raised in the discussion<br/>13 of prior art. For example, while the abstract<br/>14 talks about a delivery system that includes an<br/>15 energy-efficient vehicle, the claims -- at<br/>16 least Claim 1 doesn't require an<br/>17 energy-efficient vehicle nor does it require a<br/>18 person to order all their, you know -- the<br/>19 things they desire in one order from the same<br/>20 warehouse or a store. There's no requirement<br/>21 about that.<br/>22 So again, the claims don't have to</p> | <p>68</p> <p>1 parts of the patent.<br/>2 These are not answers that are<br/>3 answering the question that I have asked.<br/>4 I -- and in the interest of time and not<br/>5 allowing this deposition to go on for hours<br/>6 and hours and hours because I'm getting<br/>7 irrelevant answers, I need answers to the<br/>8 questions that I'm asking because that's what<br/>9 I am entitled to today.<br/>10 BY MR. PRICE:<br/>11 Q. Can you answer my question, Dr. Houh?<br/>12 MR. BAJAJ: Objection to form.<br/>13 A. So the spec does say in line 38 that<br/>14 there are many potential problems associated<br/>15 with ordering goods over the Internet, and it<br/>16 goes on to list a number of the issues such as<br/>17 using these third-party services. And from an<br/>18 environmental standpoint, there's a large<br/>19 carbon footprint -- I'm paraphrasing here.<br/>20 And it goes on -- and down below, it<br/>21 does talk about the person running the errand<br/>22 purchased the wrong product. But my point</p> |

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| <p>69</p> <p>1 here, in addition, is also that the claims<br/>2 need not cover all of the issues or problems<br/>3 even that are described in the patent. Again,<br/>4 Claim 1 doesn't address the issue of -- of --<br/>5 of the carbon footprint using FedEx. It -- it<br/>6 doesn't require that another problem that's<br/>7 mentioned, or issue, is that there are --<br/>8 various goods are transported from one or more<br/>9 warehouses to customers. It doesn't require<br/>10 that orders be consolidated in a way that, you<br/>11 know, addresses that issue.<br/>12 And there's -- it doesn't -- it<br/>13 doesn't -- the claim doesn't talk about -- so<br/>14 it doesn't -- it's not addressing -- it<br/>15 doesn't -- the claim -- Claim 1 doesn't have<br/>16 to address all the problems or -- or sometimes<br/>17 any of the problems that are listed. The<br/>18 claims are what they are, and they don't<br/>19 mention anything about a wrong product.<br/>20 BY MR. PRICE:<br/>21 Q. You pointed me to a sentence, starting<br/>22 at line 38, which says, "There are many</p> | <p>71</p> <p>1 Column 2, lines 7 through 12, disclose a<br/>2 solution to the problems that were identified<br/>3 in the rest of the background section?<br/>4 A. (Witness reviews document.)<br/>5 I mean, it's using some words that are<br/>6 associated with other of the issues that I<br/>7 mentioned.<br/>8 For example, explicitly talks about<br/>9 the need in the art for remote acquisition and<br/>10 delivery system which provides rapid delivery<br/>11 of goods without creating a large footprint.<br/>12 And it also talks about providing a customer<br/>13 with detailed information needed to make an<br/>14 informed purchase or acquisition.<br/>15 That -- that need doesn't explicitly<br/>16 use the word "wrong product" in lines 7<br/>17 through 12 of Column 2.<br/>18 Q. You don't think that these lines which<br/>19 immediately follow the problem of the wrong<br/>20 product are meant to provide a solution to<br/>21 that problem?<br/>22 A. The need that's expressed based on</p>                                                                                                                                  |
| <p>70</p> <p>1 potential problems associated with ordering<br/>2 goods over the Internet," correct?<br/>3 A. Yes.<br/>4 Q. Is one of those problems that the<br/>5 person running the errand purchases the wrong<br/>6 product?<br/>7 A. That is a statement that's made below<br/>8 that -- that sentence at line 38, along with<br/>9 other issues such as a large carbon footprint,<br/>10 getting goods from different warehouses across<br/>11 the country.<br/>12 And again, the claim isn't discussing<br/>13 those issues. It's not talking about the<br/>14 wrong product. It's not addressing directly<br/>15 the carbon footprint. It's not requiring that<br/>16 orders must be consolidated.<br/>17 The claims require what they require,<br/>18 and they don't necessarily have to address the<br/>19 problems as laid out, including the wrong<br/>20 product, which the claim doesn't use the<br/>21 phrase "wrong product" at all.<br/>22 Q. Does the '465 patent, in lines --</p>                                                                                                     | <p>72</p> <p>1 these reasons listed above is that there's a<br/>2 need -- "There seemed to be a need in the art<br/>3 for a remote acquisition and delivery system<br/>4 which provides a customer with detailed<br/>5 information needed to make an informed<br/>6 purchase or acquisition and which provides<br/>7 rapid delivery of the goods without creating a<br/>8 large carbon footprint." That's what it says<br/>9 the need is, and it focuses on this rapid<br/>10 delivery of goods without it creating --<br/>11 without creating a large carbon footprint.<br/>12 Claim 1 doesn't address that directly<br/>13 by requiring an energy-efficient vehicle or<br/>14 that -- that orders have to be made from only<br/>15 one -- like, all the orders -- items in an<br/>16 order must come from one warehouse, which are<br/>17 the kind of issues that are discussed in this<br/>18 background section. So the claims need not<br/>19 cover and, in fact, don't appear to directly<br/>20 address the part of the express need that's --<br/>21 without creating a large carbon footprint.<br/>22 Q. You, in your answer, skipped over the</p> |

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| <p>73</p> <p>1 part of the solution that talks about<br/>2 providing a customer with detailed information<br/>3 needed to make an informed purchase or<br/>4 acquisition.<br/>5 Do you think that those steps are not<br/>6 in the independent claims of the '465 patent?<br/>7 <b>A. Well, I mean, I think the claim –</b><br/>8 <b>Claim 1 does have in the claims failing to</b><br/>9 <b>locate an identified product of a set of one</b><br/>10 <b>or more goods. And Claim 14 does use the</b><br/>11 <b>phrase "determining that the identified</b><br/>12 <b>product is not available." My point here is</b><br/>13 <b>that the '848 application does not – does not</b><br/>14 <b>provide written description support for</b><br/>15 <b>those – those items in the claims.</b><br/>16 <b>And so the claims can say it. I'm not</b><br/>17 <b>disputing that the claims don't say what they</b><br/>18 <b>say. My analysis that I provide here is how</b><br/>19 <b>the '848 application does not provide written</b><br/>20 <b>support for those two claim elements.</b><br/>21 Q. Dr. Houh, are you a lawyer?<br/>22 <b>A. No, I'm not a lawyer.</b></p>   | <p>75</p> <p>1 applied in your declaration?<br/>2 <b>A. I mean, I applied my understanding of</b><br/>3 <b>how – what I've been informed of as to the</b><br/>4 <b>written description requirement.</b><br/>5 Q. Did counsel inform you of whether or<br/>6 not a claim limitation is supported by the<br/>7 written description if it is something that is<br/>8 well known in the art?<br/>9 <b>A. Well, again, I'm not a lawyer, but I</b><br/>10 <b>understand that the written description</b><br/>11 <b>requirement cannot be satisfied by things that</b><br/>12 <b>a person of art in the skill would have found</b><br/>13 <b>obvious.</b><br/>14 <b>And what it says here is that, if it's</b><br/>15 <b>not expressly disclosed – well, "The full</b><br/>16 <b>scope of the claim or any particular</b><br/>17 <b>limitation of a claim need not be expressly</b><br/>18 <b>disclosed in the original patent application</b><br/>19 <b>provided a POSITA would have understood that</b><br/>20 <b>the full scope or missing limitation is</b><br/>21 <b>inherently contained in the written</b><br/>22 <b>description of the application."</b></p> |
| <p>74</p> <p>1 Q. Are you aware of the legal standards<br/>2 for how to determine whether or not an<br/>3 application provides written description<br/>4 support for claim elements?<br/>5 <b>A. So I've – I'm not a lawyer, but I've</b><br/>6 <b>laid out that understanding at least in</b><br/>7 <b>Paragraphs 30 and 31 and 32 of my declaration.</b><br/>8 Q. Is it your understanding that a claim<br/>9 element has to be described expressly or<br/>10 inherently in order to satisfy the written<br/>11 description requirement?<br/>12 <b>A. Well, I mean, I do say in Paragraph 31</b><br/>13 <b>"the full scope of a claim" – and this is</b><br/>14 <b>what I've been informed of and understand.</b><br/>15 <b>"The full scope of a claim or any particular</b><br/>16 <b>limitation of a claim need not be expressly</b><br/>17 <b>disclosed in the original patent application</b><br/>18 <b>provided a POSITA would have understood that</b><br/>19 <b>the full scope or missing limitation is</b><br/>20 <b>inherently contained in the written</b><br/>21 <b>description of the application."</b><br/>22 Q. And that's the standard that you</p> | <p>76</p> <p>1 <b>And so I think unless it's inherently</b><br/>2 <b>contained in the written description that a</b><br/>3 <b>POSITA simply finding something obvious</b><br/>4 <b>would – would not satisfy the inherency to</b><br/>5 <b>the extent that the missing limitation is not</b><br/>6 <b>expressly disclosed.</b><br/>7 MR. PRICE: We've been going for<br/>8 about another hour. Do you want to break now?<br/>9 MR. BAJAJ: Yes.<br/>10<br/>11 (Recess taken from 11:52 a.m.<br/>12 to 12:03 p.m.)<br/>13<br/>14 BY MR. PRICE:<br/>15 Q. Dr. Houh, can you turn to Column 8,<br/>16 line -- lines 18 through 21 again, please, of<br/>17 the '465 patent.<br/>18 <b>A. At what – what lines again, please?</b><br/>19 Q. 18 through 21.<br/>20 <b>A. Okay.</b><br/>21 Q. Do you see where it says, "If the<br/>22 delivery agent cannot complete the transaction</p>                                                                                                                                                                                                                                                                             |

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| <p>77</p> <p>1 for any reason, the customer is notified that<br/>2 the acquisition cannot be made as indicated at<br/>3 122"?<br/>4 <b>A. Yes.</b><br/>5 Q. As someone who's gone shopping before,<br/>6 what are some of the reasons that a<br/>7 transaction for goods cannot be completed?<br/>8 <b>A. Well, I went grocery shopping one</b><br/>9 <b>time, and when I got to the register, I</b><br/>10 <b>realized I didn't have my wallet with me.</b><br/>11 Q. Can you think of any other reasons?<br/>12 <b>A. I imagine my car could break down on</b><br/>13 <b>my way to the store, and I never make it to</b><br/>14 <b>the store.</b><br/>15 Q. What if the product's not available at<br/>16 the store? Is that a reason that the<br/>17 transaction for the product couldn't be<br/>18 made?<br/>19 <b>A. I mean, neither the '465 or the '848</b><br/>20 <b>application specification say anything about</b><br/>21 <b>that. I mean, it could be obvious to a person</b><br/>22 <b>that that could be the case, but the -- but</b></p> | <p>79</p> <p>1 <b>A. Yeah. I mean, I think I do remember</b><br/>2 <b>at least one instance of that vaguely.</b><br/>3 Q. Were you able to buy that product that<br/>4 day from the store?<br/>5 <b>A. I don't remember what happened after,</b><br/>6 <b>if I went to another store. But I probably</b><br/>7 <b>would have been happy -- or -- well, I'm -- I</b><br/>8 <b>wasn't happy, but I was satisfied that the</b><br/>9 <b>product was not at the store when told that it</b><br/>10 <b>was not in stock.</b><br/>11 Q. And then when that product was not at<br/>12 the store, you didn't purchase it, correct?<br/>13 <b>A. I mean, I don't remember if I</b><br/>14 <b>purchased other things that day, but I</b><br/>15 <b>wouldn't have purchased an item that was not</b><br/>16 <b>in stock.</b><br/>17 Q. Turn to Column 7, line 55 of the '465<br/>18 patent.<br/>19 <b>A. Okay.</b><br/>20 Q. You see -- can you read that first<br/>21 sentence starting on line 55.<br/>22 <b>A. "Next the customer either approves or</b></p>                                                                                                                                                |
| <p>78</p> <p>1 <b>the specifications don't say that nor do they</b><br/>2 <b>say what to do -- any detailed steps to do in</b><br/>3 <b>the event that that occurs.</b><br/>4 Q. You told me that you had that<br/>5 experience before, right?<br/>6 <b>A. I mean, I just told you that I had</b><br/>7 <b>gotten to the register with all of my things</b><br/>8 <b>on the belt, and I realized I didn't have my</b><br/>9 <b>wallet with me.</b><br/>10 Q. I'm sorry. I'm referring to the<br/>11 product not being available at the store.<br/>12 MR. BAJAJ: Objection to form.<br/>13 <b>A. I don't recall you asking exactly</b><br/>14 <b>using those words, but, I mean, I don't</b><br/>15 <b>remember every word in every question you</b><br/>16 <b>asked me today.</b><br/>17 <b>BY MR. PRICE:</b><br/>18 Q. Didn't you tell me earlier that there<br/>19 was one time you went to the store, and you<br/>20 had to go to the customer service counter, and<br/>21 they told you that the product wasn't in<br/>22 stock?</p>                | <p>80</p> <p>1 <b>rejects acquisition of the inspected product."</b><br/>2 Q. How does the customer inspect the<br/>3 inspected product?<br/>4 <b>A. Well, if you look at the steps leading</b><br/>5 <b>up to that and how that occurs higher up in</b><br/>6 <b>Column 7, "First of all, the delivery agent</b><br/>7 <b>travels to the store location" -- this is</b><br/>8 <b>starting at the beginning around line 13 of</b><br/>9 <b>Column 7 -- "and finds the desired product to</b><br/>10 <b>be acquired."</b><br/>11 <b>And then I'm going to jump down to</b><br/>12 <b>line 31.</b><br/>13 <b>"The delivery agent then enters the</b><br/>14 <b>shopping location and identifies the product</b><br/>15 <b>of interest. The delivery agent then</b><br/>16 <b>communicates to the customer that the product</b><br/>17 <b>has been identified, and the customer has the</b><br/>18 <b>option of inspecting the product in real time</b><br/>19 <b>at 117. If the customer chooses to inspect</b><br/>20 <b>the product, the customer will communicate</b><br/>21 <b>instructions to the delivery agent at 118, and</b><br/>22 <b>the delivery agent will utilize Digital Image</b></p> |

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| <p>81</p> <p>1 <b>Capture Device 46 to transmit real-time data</b><br/>2 <b>to Customer Computer 30. This data can be</b><br/>3 <b>collected and relayed in various forms. For</b><br/>4 <b>instance, a digital picture could be captured</b><br/>5 <b>and sent to the customer. Along the same</b><br/>6 <b>lines, digital video can be employed perhaps</b><br/>7 <b>in combination with voice transmissions</b><br/>8 <b>corresponding to Skype communications."</b><br/>9 <b>And I think those are examples of the</b><br/>10 <b>way that the -- that the customer can inspect</b><br/>11 <b>the product.</b><br/>12 <b>Q. And then further down in Column 7</b><br/>13 <b>starting at 55, the customer has the choice to</b><br/>14 <b>either approve or reject acquisition of the</b><br/>15 <b>inspected product, right?</b><br/>16 <b>A. I think that's about what it says at</b><br/>17 <b>line 55.</b><br/>18 <b>Q. Do you agree that one of the reasons</b><br/>19 <b>the customer might reject acquisition of the</b><br/>20 <b>inspected product is if it's the wrong</b><br/>21 <b>product?</b><br/>22 <b>A. It doesn't say that in that paragraph,</b></p>         | <p>83</p> <p>1 customer -- on why the customer might reject<br/>2 the acquisition of an inspected product,<br/>3 right?<br/>4 <b>A. Well, there's no express disclosure of</b><br/>5 <b>any reasons why here, at least in this</b><br/>6 <b>paragraph, and I don't think I remember</b><br/>7 <b>anything in the rest of the -- well, certainly</b><br/>8 <b>there's no disclosure right here of what the</b><br/>9 <b>reasons are. There's no express disclosure.</b><br/>10 <b>And it wouldn't be inherent that,</b><br/>11 <b>like, just because there's a bruise on a</b><br/>12 <b>banana, that I would reject the product. It</b><br/>13 <b>might be fine. Or, you know, I might be</b><br/>14 <b>making banana bread, in which sometimes, you</b><br/>15 <b>know, more ripe-side bananas are easier to</b><br/>16 <b>mash up.</b><br/>17 <b>So there's no express disclosure, and</b><br/>18 <b>there's no inherent -- inherency for what the</b><br/>19 <b>reasons are for rejecting an inspected</b><br/>20 <b>product. This disclosure doesn't talk, at</b><br/>21 <b>least in this paragraph, about any express</b><br/>22 <b>reasons why a user or customer may reject</b></p>                                                        |
| <p>82</p> <p>1 <b>I don't think. It's just saying the customer</b><br/>2 <b>can either approve or reject the acquisition</b><br/>3 <b>of an inspected product.</b><br/>4 <b>Q. Okay. My question wasn't about what</b><br/>5 <b>was disclosed in this column about the</b><br/>6 <b>reasons.</b><br/>7 <b>My question is do you agree that one</b><br/>8 <b>reason a customer might reject a product is</b><br/>9 <b>because it's the wrong product?</b><br/>10 <b>A. (Witness reviews document.)</b><br/>11 <b>Well, I mean, first of all, the -- you</b><br/>12 <b>know, leading up to here, it is the product --</b><br/>13 <b>the product that is found is the desired</b><br/>14 <b>product to be acquired -- that's what it says</b><br/>15 <b>in this -- in the above paragraph -- and that</b><br/>16 <b>the product has been identified. And there's</b><br/>17 <b>no reasons here about -- there's no</b><br/>18 <b>explanation of any possible reasons that -- in</b><br/>19 <b>the -- in the specification about what would</b><br/>20 <b>cause the user to reject the inspected</b><br/>21 <b>product.</b><br/>22 <b>Q. So there's no limitation on what the</b></p> | <p>84</p> <p>1 <b>acquisition of the inspected product.</b><br/>2 <b>Q. But the '465 patent does talk about</b><br/>3 <b>the problem of customers receiving the wrong</b><br/>4 <b>product, right?</b><br/>5 <b>A. I mean, it does say that the person</b><br/>6 <b>placing the order will not know until the item</b><br/>7 <b>is delivered. But it also talks in the</b><br/>8 <b>discussion, the prior art section, about, you</b><br/>9 <b>know, minimizing the carbon footprint, and</b><br/>10 <b>this section is now talking about sending the</b><br/>11 <b>agent to a different store and -- you know,</b><br/>12 <b>and that's not really -- you know, doing more</b><br/>13 <b>traveling is going to -- you know, is not</b><br/>14 <b>addressing that particular issue.</b><br/>15 <b>Q. Is sending an agent to two</b><br/>16 <b>supermarkets within the same town more carbon</b><br/>17 <b>efficient than ordering a product from a</b><br/>18 <b>warehouse across the country?</b><br/>19 <b>A. I mean, I think you'd need a lot more</b><br/>20 <b>data to analyze that. I mean, a lot of -- and</b><br/>21 <b>I don't see why a product has to come from a</b><br/>22 <b>warehouse across the country if it's available</b></p> |

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| <p>85</p> <p>1 in a warehouse nearby.</p> <p>2 And so if I -- and I've read, for</p> <p>3 example, that actually shipping fruit from --</p> <p>4 you know, in an airplane from a different</p> <p>5 country actually can be more efficient in many</p> <p>6 ways even in the carbon impact than certain</p> <p>7 methods of acquiring them otherwise.</p> <p>8 And so, you know, I think -- I</p> <p>9 think -- I think you need the data to analyze</p> <p>10 that because the people who do analyze these</p> <p>11 things sometimes come up with statements that</p> <p>12 you wouldn't immediately recognize as better</p> <p>13 in terms of carbon footprint.</p> <p>14 Q. Doesn't the '465 patent disclose the</p> <p>15 problem of the carbon footprint and disclose</p> <p>16 as a solution to the carbon footprint having</p> <p>17 the user be able to determine where the agent</p> <p>18 goes to shop?</p> <p>19 A. Where are you referring to? I don't</p> <p>20 know this from memory. If you could, direct</p> <p>21 me to some place where it's talking about</p> <p>22 that.</p>                                                    | <p>87</p> <p>1 my street or somewhere nearby on the same day,</p> <p>2 is actually more efficient in terms of carbon</p> <p>3 footprint than me getting in my car to drive</p> <p>4 to Target to acquire the same good or set of</p> <p>5 goods. Or -- you know, so I think you need to</p> <p>6 look at the data.</p> <p>7 And certainly at scale, you know, when</p> <p>8 there are multiple deliveries nearby, it may</p> <p>9 actually be more efficient to have a</p> <p>10 delivery -- like a service or company, like</p> <p>11 Amazon, provide a large set of goods than</p> <p>12 individuals paying agents to drive to stores</p> <p>13 for individual orders.</p> <p>14 Q. Returning to Column 7, line --</p> <p>15 starting line 50 -- sorry -- line 55.</p> <p>16 Let's say that when the customer</p> <p>17 inspects the product, it turns out not to be</p> <p>18 the product that was identified in the</p> <p>19 acquisition request.</p> <p>20 A. Okay. This is a hypothetical?</p> <p>21 Q. This is a hypothetical.</p> <p>22 Would the customer be able to reject</p> |
| <p>86</p> <p>1 Q. Column, 1, line 42.</p> <p>2 A. (Witness reviews document.)</p> <p>3 Well, I mean, 42 does say, "From an</p> <p>4 environmental standpoint, delivering select</p> <p>5 goods purchased over the Internet to</p> <p>6 individual customers using conventional</p> <p>7 methods creates a large carbon footprint and</p> <p>8 is often not cost effective." But it doesn't</p> <p>9 say that it's never.</p> <p>10 And, you know, if I order something</p> <p>11 from, say, Amazon and I'm getting a delivery,</p> <p>12 you know, where I otherwise would drive to a</p> <p>13 Target or a Best Buy or some other store,</p> <p>14 they -- I used to drive 20 minutes to a</p> <p>15 Target. Now there's a closer one, but I can</p> <p>16 think of a time certainly back around the time</p> <p>17 of -- you know, an earlier point in time such</p> <p>18 as around the, you know, 2000s or so, that if</p> <p>19 you actually did the analysis, it might be</p> <p>20 true that the Amazon driver stopping at my</p> <p>21 house to deliver a good when they're also</p> <p>22 stopping nearby in the neighborhood, maybe on</p> | <p>88</p> <p>1 the inspected product?</p> <p>2 A. I mean, again, it's -- I think this is</p> <p>3 a hypothetical question -- hypothetical</p> <p>4 question because I don't -- I don't think</p> <p>5 there was any disclosure of this situation in</p> <p>6 the '465 specification.</p> <p>7 Q. Do you think the background of the</p> <p>8 invention section of the '465 patent is part</p> <p>9 of the '465 application?</p> <p>10 MR. BAJAJ: Counsel, I would</p> <p>11 like to ask you to let the witness finish his</p> <p>12 answer.</p> <p>13 MR. PRICE: I'm sorry. I</p> <p>14 thought he was done.</p> <p>15 A. Yeah, I -- I was going to say more,</p> <p>16 which is that this doesn't -- doesn't say what</p> <p>17 happens in the event, you know, you get</p> <p>18 delivered something and maybe the agent leaves</p> <p>19 because she doesn't have time to look through</p> <p>20 everything, and later you find out that there</p> <p>21 was an error in the order. I don't think the</p> <p>22 '465 specification talks about what to do in</p>                       |

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| <p style="text-align: right;">89</p> <p>1 that instance at all.</p> <p>2 <b>BY MR. PRICE:</b></p> <p>3 Q. You don't think that the disclosure in</p> <p>4 Column 2 of having "the customer be provided</p> <p>5 with detailed information needed to make an</p> <p>6 informed purchase or acquisition" addresses</p> <p>7 the issue of having the wrong product</p> <p>8 delivered?</p> <p>9 A. It doesn't say what to do in the event</p> <p>10 that a customer, after the delivery, discovers</p> <p>11 that they got a wrong product or maybe a whole</p> <p>12 wrong order or who knows? I mean, there are</p> <p>13 things that might be obvious, but it --</p> <p>14 nothing here says -- it does talk about the</p> <p>15 wrong order or wrong product and that there is</p> <p>16 a -- providing customer with detailed</p> <p>17 information.</p> <p>18 But if -- if the customer chose not to</p> <p>19 inspect something -- I mean, there's no</p> <p>20 discussion here about the flow for what</p> <p>21 happens when a wrong product is delivered. It</p> <p>22 only talks about that that can happen. And a</p> | <p style="text-align: right;">91</p> <p>1 in the specification of the '465 is directed</p> <p>2 to -- is described, for example, in Figure 3,</p> <p>3 where it's described as actually finding the</p> <p>4 desired product to be acquired and identifying</p> <p>5 the product of interest.</p> <p>6 It doesn't talk about -- about the</p> <p>7 wrong product there. It's -- it's talking</p> <p>8 about the situation, assuming that products --</p> <p>9 that POSITA would have interpreted this as</p> <p>10 assuming that the product ordered -- products</p> <p>11 ordered by the customer are available.</p> <p>12 Q. Okay. And if the product is not</p> <p>13 available, is the customer just stuck with the</p> <p>14 wrong product?</p> <p>15 A. I mean, the specification doesn't give</p> <p>16 any details about -- about what to do in a</p> <p>17 case it's -- it's not available. It</p> <p>18 doesn't -- it doesn't talk about that</p> <p>19 situation, at least not in the flow in</p> <p>20 Figure 3 that's described -- which is</p> <p>21 described as actually locating or finding --</p> <p>22 the agent finds the desired product and --</p> |
| <p style="text-align: right;">90</p> <p>1 POSITA wouldn't recognize that the -- the '848</p> <p>2 application and the spec of the '465, they</p> <p>3 wouldn't have recognized that as contemplating</p> <p>4 scenarios in which the products cannot be</p> <p>5 located or in which the products are not</p> <p>6 available.</p> <p>7 And it doesn't have any discussion</p> <p>8 about what to do in case a wrong product is --</p> <p>9 is received. So there's no discussion about</p> <p>10 what to do in that event.</p> <p>11 Q. I'm sorry, Dr. Houh. My question was</p> <p>12 not about what happens if the wrong item is</p> <p>13 received.</p> <p>14 My question is doesn't the disclosure</p> <p>15 in Column 2, lines 7 through 12, which</p> <p>16 provides a customer with detailed information</p> <p>17 needed to make an informed purchase or</p> <p>18 acquisition, address the problem of a</p> <p>19 dissatisfied purchaser who otherwise would</p> <p>20 have lost significant time in acquiring the</p> <p>21 wrong product?</p> <p>22 A. Well, the workflow actually described</p>                    | <p style="text-align: right;">92</p> <p>1 that the agent enters the shopping location</p> <p>2 and identifies the product of interest. There</p> <p>3 isn't a discussion that I recall, and I</p> <p>4 don't -- it's not there. I don't think a</p> <p>5 POSITA recognized it because there's no</p> <p>6 disclosure of what happens if -- if the user</p> <p>7 can't -- fails to locate an identified product</p> <p>8 or determines that the identified product is</p> <p>9 not available. It's simply not described as</p> <p>10 the sequence of steps that occurs in that</p> <p>11 situation.</p> <p>12 Q. And a person of ordinary skill in the</p> <p>13 art, you know, having, you know, skill -- I'm</p> <p>14 sorry. Withdrawn.</p> <p>15 So in the hypothetical where the wrong</p> <p>16 product is shown to the customer, is it your</p> <p>17 testimony that a person of ordinary skill in</p> <p>18 the art would have no idea, based on the</p> <p>19 disclosure of the '465 patent, what either the</p> <p>20 customer or the agent would do in that</p> <p>21 situation?</p> <p>22 A. If the idea that the POSITA had --</p>                           |

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| <p style="text-align: right;">93</p> <p>1 would have been something that necessarily<br/>2 would have had to have been done, then it<br/>3 would be an inherent, and I think -- I think<br/>4 if there's no express disclosure of steps<br/>5 that -- that a POSITA would take, then it's<br/>6 okay if there's -- if it's necessarily the way<br/>7 it would have to be done.<br/>8 But in this case, if you don't find --<br/>9 fail to locate an identified product, there's<br/>10 not anything in particular that you have to do<br/>11 in that situation, and so there's no<br/>12 inherency.<br/>13 And if you're saying it could be<br/>14 obvious, then I think you're saying it's<br/>15 simply not disclosed in -- in the<br/>16 specification, and you have to depend on what<br/>17 things are obvious to a POSITA, and that's not<br/>18 my understanding of the proper written<br/>19 description support to claim the priority date<br/>20 of the '848 application.<br/>21 Q. And that's because you don't think<br/>22 that those limitations are expressly or</p>                                                                        | <p style="text-align: right;">95</p> <p>1 A. I mean, it says that, but it doesn't<br/>2 give expressly any of the possible reasons,<br/>3 and there might be some reasons that might be<br/>4 obvious to a POSITA, but they're not disclosed<br/>5 here.<br/>6 Q. Is it your understanding that a --<br/>7 withdrawn.<br/>8 MR. PRICE: I have no further<br/>9 questions.<br/>10 MR. BAJAJ: Just give me five<br/>11 minutes.<br/>12<br/>13 (Recess taken from 12:40 p.m.<br/>14 to 12:44 p.m.)<br/>15 MR. BAJAJ: We have no questions<br/>16 for the witness.<br/>17 MR. PRICE: Okay.<br/>18 MR. BAJAJ: I don't need<br/>19 either.<br/>20 MR. PRICE: We should have an<br/>21 order. We have a standing order.<br/>22 (Deposition concluded at 12:44 p.m.)</p>                                                                                                                                                                                                               |
| <p style="text-align: right;">94</p> <p>1 inherently disclosed?<br/>2 A. I mean, there is no express disclosure<br/>3 of what to do in case you fail to locate -- in<br/>4 case the agent fails to locate an identified<br/>5 product or determines that the identified<br/>6 product is not available because the<br/>7 application of -- the '848 application, those<br/>8 scenarios described, the POSITA would have<br/>9 interpreted those as assuming the products are<br/>10 ordered by the customer are available.<br/>11 There's no express disclosure of what<br/>12 to do in the case of failing to locate an<br/>13 identified product or determining that the<br/>14 identified product is not available, and<br/>15 there's nothing that the agent necessarily has<br/>16 to do as a result of those items and certainly<br/>17 not what's claimed as, you know, the steps<br/>18 following that failure, as claimed in Claim 1.<br/>19 Q. Well, if the delivery agent can't<br/>20 complete the transaction, doesn't that tell<br/>21 you something that the delivery agent does?<br/>22 And pointing to Column 8, lines 18 through 21.</p> | <p style="text-align: right;">96</p> <p>1 CERTIFICATE OF REPORTER - NOTARY PUBLIC<br/>2<br/>3 I, DARLENE M. COPPOLA, Registered Merit Reporter<br/>4 and Notary Public within and for the State of<br/>5 Massachusetts do hereby certify:<br/>6<br/>7 That HENRY H. HOUH, Ph.D., the witness whose<br/>8 deposition is hereinbefore set forth, was duly sworn<br/>9 by me before the commencement of such deposition and<br/>10 that such deposition was taken before me and is a true<br/>11 record of the testimony given by such witness.<br/>12<br/>13 I further certify that the adverse party,<br/>14 CONSUMERON, LLC, was represented by counsel at the<br/>15 deposition.<br/>16<br/>17 I further certify that the deposition of<br/>18 HENRY H. HOUH, Ph.D., occurred at the offices<br/>19 of Spaces Newbury Street, 361 Newbury Street, Boston,<br/>20 Massachusetts, 02115, on Tuesday, February 13, 2024,<br/>21 commencing at 9:22 a.m. to 12:44 p.m.<br/>22</p> |

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| <div>97</div> <div>1 I further certify that I am not related to</div> <div>2 any of the parties to this action by blood or</div> <div>3 marriage, I am not employed by or an attorney to any</div> <div>4 of the parties to this action, and that I am in no way</div> <div>5 interested, financially or otherwise, in the outcome</div> <div>6 of this matter.</div> <div>7</div> <div>8 IN WITNESS WHEREOF, I have hereunto set my</div> <div>9 hand this 22nd day of February, 2024.</div> <div>10 My commission expires:</div> <div>11 November 2, 2029</div> <div>12</div> <div>13</div> <div>14</div> <div>15 </div> <div>16 NOTARY PUBLIC IN AND FOR THE</div> <div>17 STATE OF MASSACHUSETTS</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> | <div>99</div> <div>1 CORRECTION PAGE</div> <div>2 DEPONENT: HENRY HOUH, Ph.D.</div> <div>3 DATE TAKEN: FEBRUARY 13, 2024</div> <div>4 CASE: MAPLEBEAR, INC. VS. CONSUMERON, LLC</div> <div>5 *****</div> <div>6 PAGE / LINE / SHOULD READ</div> <div>7 ____ / ____ / ____</div> <div>8 ____ / ____ / ____</div> <div>9 ____ / ____ / ____</div> <div>10 ____ / ____ / ____</div> <div>11 ____ / ____ / ____</div> <div>12 ____ / ____ / ____</div> <div>13 ____ / ____ / ____</div> <div>14 ____ / ____ / ____</div> <div>15 ____ / ____ / ____</div> <div>16 ____ / ____ / ____</div> <div>17 ____ / ____ / ____</div> <div>18 ____ / ____ / ____</div> <div>19 ____ / ____ / ____</div> <div>20 ____ / ____ / ____</div> <div>21 ____ / ____ / ____</div> <div>22 ____ / ____ / ____</div> |
| <div>98</div> <div>1 UNITED STATES PATENT AND TRADEMARK OFFICE</div> <div>2</div> <div>3 BEFORE THE PATENT TRIAL AND APPEAL BOARD</div> <div>4</div> <div>5 MAPLEBEAR INC. D/B/A INSTACART,</div> <div>6 Petitioner,</div> <div>7 v.</div> <div>8 CONSUMERON, LLC,</div> <div>9 Patent Owner.</div> <div>10</div> <div>11</div> <div>12 I, HENRY HOUH, Ph.D., say that I have read</div> <div>13 the foregoing deposition and hereby declare under</div> <div>14 penalty of perjury the foregoing is true and correct:</div> <div>15 (as prepared) (as corrected on errata.)</div> <div>16 Executed this ____ day of _____,</div> <div>17 2024, at _____,</div> <div>18 _____.</div> <div>19</div> <div>20</div> <div>21</div> <div>22 HENRY HOUH, Ph.D.</div>                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |

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