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Transcript of Henry Houh, Ph.D.

Date: October 20, 2023

Case: Mapbear 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.

10
11 Case IPR2022-01356; Patent 8,244,594

12 Case IPR2022-01357; Patent 10,628,835

13 Case IPR2022-01358; Patent 10,115,067

14 Case IPR2022-01359; Patent 9,202,191

15
16 CONTAINS CONFIDENTIAL INFORMATION

17 Deposition of HENRY HOUH, PH.D.

18 Boston, Massachusetts

19 Friday, October 20, 2023, 9:17 a.m.

20
21 Job No.: 509574

22 Pages: 1 - 188

Reported By: Michelle Keegan, RMR, CRR, CSR

1 (1 to 4)

1	UNITED STATES PATENT AND TRADEMARK OFFICE	1	A P P E A R A N C E S
2	-----	2	
3	BEFORE THE PATENT TRIAL AND APPEAL BOARD	3	ON BEHALF OF PETITIONER
4	-----	4	MAPLEBEAR INC. D/B/A INSTACART:
5	MAPLEBEAR INC. D/B/A INSTACART,	5	SCOTT T. JARRATT, ESQ.
6	Petitioner,	6	HAYNES AND BOONE, LLP
7	v.	7	6000 Headquarters Drive
8	CONSUMERON, LLC,	8	Suite 200
9	Patent Owner.	9	Plano, Texas 75024
10	-----	10	(972) 739-6900
11	Case IPR2022-01356; Patent 8,244,594	11	
12	Case IPR2022-01357; Patent 10,628,835	12	RAGHAV BAJAJ, ESQ.
13	Case IPR2022-01358; Patent 10,115,067	13	HAYNES AND BOONE, LLP
14	Case IPR2022-01359; Patent 9,202,191	14	600 Congress Avenue, Suite 1300
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16	CONTAINS CONFIDENTIAL INFORMATION	16	(512) 867-8520
17	Deposition of HENRY HOUH, PH.D.	17	
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22	Pages: 1 - 188	22	
	Reported By: Michelle Keegan, RMR, CRR, CSR		
2		4	
1	Deposition of HENRY HOUH, PH.D., held at	1	APPEARANCES (continued):
2	the offices of:	2	
3		3	ON BEHALF OF PATENT OWNER CONSUMERON, LLC:
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16		16	ALSO PRESENT:
17		17	Michael Saffee, Planet Depos Monitor
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21		21	
22		22	

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5 C O N T E N T S EXAMINATION OF HENRY HOUH, PH.D. PAGE By Mr. Price 6 E X H I B I T S (None marked.) (Exhibit 2037 attached to transcript) PREVIOUSLY MARKED EXHIBITS Exhibit 1001..... 36 Exhibit 1005..... 153 Exhibit 1028..... 18 Exhibit 1035..... 23 Exhibit 1042..... 137 Exhibit 1043..... 147 Exhibit 1045..... 173 Exhibit 2015..... 165 Exhibit 2018..... 141 Exhibit 2037..... 161 ** Documents quoted on the record are transcribed as read **	7 deposed on. Q. What is a supplemental declaration? A. Well, it comes after my first one, and it's responsive to issues that were raised in patent owner and patent owner experts' report -- reports. Q. Okay. So you mentioned that you prepared a number of supplemental declarations. Is it right to say that you've prepared four of them? A. Yes. Q. Okay. And that this deposition today is going to cover your opinions in all four of the declarations that you prepared? A. That's my understanding. Supplemental ones. Q. I'm going to hand you those declarations now. MR. PRICE: Do you guys want copies? MR. BAJAJ: No. Q. The first declaration I'm handing you, in no particular order, is from Case IPR2022-01359, and it's regarding Patent Number 9,202,191.
6 P R O C E E D I N G S HENRY HOUH, PH.D., having been satisfactorily identified and duly sworn by the Notary Public, was examined and testified as follows: EXAMINATION BY COUNSEL FOR PATENT OWNER BY MR. PRICE: Q. Good morning, Dr. Houh. A. Good morning. Q. How are you today? A. I'm well. Thank you. Q. Could you please state your full name and address for the record. A. My name is Henry H. Houh. That's spelled H-O-U-H. And I live at 15 Ballard Terrace, with a B, in Lexington, Massachusetts. Q. Okay. And do you understand why you're here today? A. Generally, yes. Q. And what is your understanding? A. I submitted a number of supplemental declarations that I understand that I'm here to be	8 Have you seen this document before? A. Yes. Q. What is this document? A. This is the supplemental declaration I submitted for the '191 patent for the case ending in 1359. Q. And as of September 8th, 2023, does this declaration include all of the opinions that you have formed in this case since receiving patent owner's response and documents and Dr. Mitzenmacher's declaration in this case? A. This declaration would have all the opinions I've -- written opinions since that. Q. Have you formed any other opinions about this case since patent owner's response was filed that are not in this document? A. I mean, not that I can think of at the moment. I think this document would capture all -- certainly all the written opinions I've had since Dr. Mitzenmacher's and patent owner's reply. Q. Can you please turn to Paragraph 4. A. Okay.

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9 1 Q. Can you tell me generally what you meant 2 to convey in your testimony in Paragraph 4 of this 3 declaration? 4 A. Well, what I'm saying here in Paragraph 4 5 is that I'm responding to some of 6 Dr. Mitzenmacher's analysis and patent owner's 7 analysis. I'm discussing a little more of -- I 8 provide further details of a POSITA's 9 understanding of the references and how they teach 10 the limitations of the challenged claims. 11 And that if I don't respond to 12 Dr. Mitzenmacher's points, particular points, that 13 should not be construed as agreeing with him on 14 those points and that the points which I do not 15 respond to either are irrelevant to the analysis 16 or do not outweigh the clear disclosure and the 17 teachings of the cited references. 18 Q. Okay. So there are some opinions and 19 arguments, at least in Dr. Mitzenmacher's 20 declaration and in patent owner's response, that 21 you have not explicitly addressed in this 22 supplemental declaration. Correct?	11 1 the disclosures that I already originally laid 2 out. 3 Q. How are we supposed to know which of 4 Dr. Mitzenmacher's arguments you agree with and 5 which your silence is supposed to reflect 6 disagreement? 7 A. Well, I mean, my written opinions laid out 8 with respect to certain points that I do discuss 9 are laid -- are provided in these supplemental 10 declarations. 11 Q. Is it fair to say that there are some 12 arguments and evidence laid out in 13 Dr. Mitzenmacher's declarations that you do agree 14 with? 15 MR. BAJAJ: Objection to form. 16 A. Well, in the rebuttal report I wouldn't 17 necessarily say that. I mean, I may say that -- I 18 think I do say that I agree with certain 19 statements that he's made, for example, in his 20 deposition. And I laid that out in this report. 21 Q. My question is a little bit more general. 22 How are we supposed to know whether your
10 1 A. That's part of what I'm saying here. 2 Q. Did you form opinions about any of those 3 issues that you neglected to address in this 4 supplemental declaration that are not in your 5 report? 6 MR. BAJAJ: Objection to form. 7 A. Well, I mean, some of them at least are 8 either irrelevant to the analysis or do not 9 outweigh the clear disclosure in the teachings of 10 the cited references. 11 Q. But did you put the basis for those 12 opinions in this declaration or are we supposed to 13 guess which arguments you think are relevant or 14 are not outweighed by the clear disclosure in the 15 teachings of the references? 16 MR. BAJAJ: Objection to form. 17 A. I mean, I don't -- I didn't go point by 18 point through Dr. Mitzenmacher's points. 19 My point here is that any silence should 20 not be construed as agreement and that I could 21 think his analysis is just not on point or 22 relevant or that it wouldn't sufficiently overcome	12 1 silence about a particular issue reflects your 2 opinion that it's either irrelevant, already 3 taught, or that you agree with Dr. Mitzenmacher's 4 analysis? 5 MR. BAJAJ: Objection to form. 6 A. Well, I think the main points that I have 7 raised in these supplemental reports are the main 8 points that I do disagree with Dr. Mitzenmacher 9 on. And I lay out the basis for that. 10 But to the extent, you know, I haven't 11 specifically said anything about a point, it's 12 just not an issue with respect to this declaration 13 that would be -- that are taken up in written 14 form. 15 Q. How do you choose which disagreements with 16 Dr. Mitzenmacher you chose to put into this 17 declaration versus the ones that you chose to 18 leave out? 19 A. I mean, it was based on my review of 20 Dr. Mitzenmacher's declaration and discussions 21 with attorneys. 22 Q. And are those discussions with attorneys

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13 1 privileged in terms of what you decided to leave 2 in and what you decided to leave out? 3 MR. BAJAJ: Objection, to the extent it 4 calls for privileged information. 5 A. I mean, my understanding at that time, 6 discussions with attorneys are generally 7 considered privileged unless they may form the 8 basis for some of my opinions. 9 Q. Do you consider directions not to address 10 a particular issue to be privileged? 11 A. I mean, if they don't underlie my basis 12 for my opinions in my supplemental, I would 13 understand that all other -- well, I'm not a 14 lawyer, so I don't really -- my understanding is 15 the discussions would be privileged unless they 16 are the basis for my opinions in my supplemental 17 declaration. 18 But I don't think I've relied on the 19 attorney -- I've not relied on the attorneys for 20 my basis for these opinions in these supplemental 21 declarations. 22 Q. Is that true for all of the opinions that	15 1 A. What case number did you say this was 2 again? 3 Q. IPR2022-01356. 4 A. I do recognize this document. 5 Q. And is this a copy of the declaration that 6 you provided in this case? 7 A. This is a copy of the opening declaration 8 for the '594 case. 9 Q. I'm sorry. 10 A. Do you want me to keep this? 11 Q. If you want to keep it, you can. 12 Otherwise, I'll give it to you in due course. 13 All right. We'll come back to that one, I 14 hope. 15 And one more document I'm handing you 16 right now. It's from Case Number IPR2022-01357, 17 regarding Patent Number 10,628,835. 18 Do you recognize this document? 19 A. Yes, I do. 20 Q. Okay. And is this document a copy of the 21 declaration that you prepared in support of 22 plaintiff's reply in this case?
14 1 you render here? 2 A. I would say that that would be true, to my 3 recollection. 4 Q. Okay. I'm going to hand you the other 5 three declarations that you've prepared. And just 6 bear with me while I read them into the record. 7 MR. PRICE: The next document I'm handing 8 you is from Case Number IPR2022-01358, regarding 9 Patent Number 10,115,067. 10 A. Can I just ask that you show me this while 11 you're reading the number so I can just 12 double-check? 13 Q. Not a problem. 14 A. I mean, I think that's right. 15 Q. And do you recognize this document as the 16 declaration that you submitted in this case? 17 A. Yes. 18 Q. I'm going to hand you another document. 19 It is labeled -- it's from Case Number 20 IPR2022-01356, regarding U.S. Patent Number 21 8,224,594 [sic]. 22 Do you recognize this document?	16 1 A. Yes. This is a supplemental declaration 2 for the '835 case. 3 Q. And we'll have to track down a copy of the 4 '594 declaration, but for now we'll just move on. 5 Okay. Can you turn your attention to the 6 declaration that you prepared for the '835 patent, 7 Case Number 1357. 8 A. You're referring to the supplemental 9 declaration? 10 Q. The supplemental declaration that I handed 11 you. Yes. 12 A. Okay. 13 Q. Can you please turn to page 4 of the 14 declaration. 15 A. Okay. 16 Q. In this declaration, you refer to a number 17 of documents that you reviewed in preparing your 18 first and second declaration. Do you see that? 19 A. Well, I think what I'm saying here is that 20 these -- in addition to the materials I reviewed 21 in preparing my first declaration, I've also 22 reviewed the listed materials in preparing this

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17 1 supplemental declaration. 2 Q. Okay. I'm going to hand you your original 3 declaration for this case, Case Number 4 IPR2022-01357, regarding U.S. Patent Number 5 10,628,835. 6 Do you recognize this document, Dr. Houh? 7 A. Yes. This is my opening declaration for 8 the '835 case. 9 Q. Okay. Can you please turn to pages 4 10 through 6 of this declaration. 11 A. By the way, when I say "'835 case," I'm 12 not referring to the case number. I'm referring 13 to the last three digits of the patent. 14 Q. Thank you for that. 15 A. I'm sorry. What page again? 16 Q. Pages 4 through 6. 17 A. Okay. 18 Q. Is this a comprehensive list of the 19 documents that you reviewed when preparing your 20 original declaration? 21 A. It should be. There may be documents I've 22 cited in the body of this original declaration	19 1 cases? 2 A. I don't see it set forth on these lists. 3 Again, I don't remember if I was able -- if all 4 the documents cited later were listed here. 5 Q. What do you mean by "cited later"? 6 A. To the extent I might have cited documents 7 in the body of the report. But again, I don't 8 think I've seen this before, but I can't be sure. 9 Q. Can you confirm whether or not 10 Exhibit 1028 is listed in either of the lists of 11 materials cited -- considered in either of your 12 declarations? 13 MR. BAJAJ: Objection to form. 14 A. I didn't see it listed on pages 4 through 15 6 of my opening '835 declaration, nor do I see it 16 listed on page 4 of my supplemental '835 17 declaration. 18 Q. Would it surprise you if a text search for 19 "1028" in your declarations, both original and 20 supplemental, came up empty? 21 A. No, I don't think I would be surprised 22 necessarily.
18 1 that hopefully made it to this list. But I would 2 have said it in the declaration, if not. 3 Q. Are you aware of any documents that fall 4 into that category? 5 A. No, not off the top of my head. 6 (Exhibit 1028, previously marked, was 7 retained by counsel.) 8 Q. I'm about to hand you a document that has 9 been marked Exhibit 1028 in all four cases that 10 we're talking about today. 11 Dr. Houh, do you recognize this document? 12 You can keep that if you want to, but this 13 is the actual document that I'm referring to. 14 Just take a moment, and let me know if you've ever 15 seen this document before. 16 A. I mean, the format, it looks familiar 17 because I've reviewed many claim construction 18 briefs before. I'm not sure that I have seen this 19 before, but I can't be certain. 20 Q. Is this document referenced in either of 21 the lists of materials you considered in your 22 original or supplemental declarations in these	20 1 Q. What is the date -- the filing date of 2 this document as reflected on the heading? 3 A. It's dated June 27th, 2022. 4 Q. And can you tell me the date that you 5 filed your opening declaration in this case? 6 A. It's August 4th, 2022. 7 Q. So this claim construction brief filed by 8 defendant Maplebear was filed, what, roughly two 9 months before your -- sorry -- a month and a half 10 before your declaration was filed? 11 A. Yeah. Maybe around five weeks. 12 Q. Okay. And you don't know whether counsel 13 ever provided this for you? I'll leave it there. 14 A. I can't recall that. 15 Q. Okay. But you didn't cite it in your 16 opening report. Correct? 17 A. That appears correct. 18 Q. Turn to page 11 of this document. 19 A. Okay. 20 Q. Do you see the second paragraph on this 21 page and, in particular, its reference to 22 "intentional delay"?

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21 1 MR. BAJAJ: Objection to the scope. 2 A. I do. 3 Q. And do you read this paragraph as 4 Maplebear asserting that the meaning of "real 5 time" excludes intentional delay for storage for 6 later processing? 7 MR. BAJAJ: Objection to scope and form. 8 A. I mean, I see what it says here in this 9 paragraph. But I think I would like to review the 10 entire brief to understand -- to answer that. 11 Q. Well, Dr. Houh, this brief has been part 12 of the record since the filing date of the 13 petition. And you're telling me you haven't 14 actually reviewed this. Correct? 15 A. I said that I'm pretty sure -- I think I 16 didn't, but I can't be totally sure. 17 Q. Do you think parties' arguments about the 18 scope of a claim are relevant to the opinions 19 about validity of that claim? 20 A. Well, I'm not -- I don't think the 21 validity of these claims is at issue in this IPR. 22 As I understand, they're directed to the	23 1 Exhibit 1035. 2 (Exhibit 1035, previously marked, was 3 retained by counsel.) 4 Q. Great. I'm glad you brought that up. I'm 5 handing it to you right now. 6 Do you recognize this document, Dr. Houh? 7 A. Yes. 8 Q. Okay. And you reviewed this. Correct? 9 A. I did. 10 Q. And you reviewed this in preparing your 11 reply declaration. Correct? 12 A. I did. 13 Q. Did you review this in preparing your 14 original declaration? 15 A. No. This hadn't been issued at the time I 16 prepared my original declaration. 17 Q. I want you to turn to pages 25 to 26 of 18 this. 19 A. Okay. 20 Q. Okay. Do you see the little last sentence 21 on page 25 that begins "Instacart agreed"? 22 A. I do.
22 1 patentability of the claims. 2 Q. Do you perceive a difference between 3 validity and patentability? 4 A. I'm not a lawyer, but I think I understand 5 there may be one. 6 Q. And what is your understanding? 7 A. Well, invalidity cases are usually brought 8 in front of a court with respect to an issued 9 patent which are presumed invalid. And I 10 understand the bar for showing that a patent is 11 invalid is by clear and convincing evidence. 12 Again, I'm not a lawyer, so I don't really 13 know -- I'm not really sure if I'm getting all 14 this right. 15 But I understand that an IPR petition 16 challenges the patentability of claims and that 17 the evidence bar is different than for the court. 18 Q. So do you think that the proper 19 construction of a claim is less relevant in the 20 IPR context than it is in district court? 21 A. Well -- what is relevant and what I did 22 review is the actual claim construction order,	24 1 Q. Did you read this sentence when preparing 2 your declaration? 3 A. I believe I did. Yes. 4 Q. Did you comment on this sentence in 5 preparing your declaration? 6 A. Well, I have a reference to Exhibit 1035, 7 at page 26. But maybe that's referring to the PDF 8 page because the cover doesn't have a page number 9 here. It's referring to the page number at the 10 top. 11 So yes, I did cite to this page on page 6 12 of my supplemental '835 declaration. 13 Q. That wasn't my question. 14 My question is whether you read and/or 15 commented on this sentence that starts on page 25 16 and goes to page 26. 17 A. I mean, I cited to it. I'm not sure -- 18 Q. You cited to what, Doctor? 19 A. Data that is passed along as it is 20 gathered. So I cited to part of that sentence. 21 Q. Can you read the full sentence into the 22 record, please.

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25 1 MR. BAJAJ: Counsel, I'd just ask you to 2 allow the witness to answer the question in full 3 before -- 4 Q. I'm sorry, Dr. Houh. Did I cut you off? 5 A. Not right there, no. 6 It says, "Instacart agreed during the 7 Markman hearing that it would accept Consumeron's 8 proposed construction plain and ordinary meaning, 9 which is data that is passed along as it is 10 gathered, if Consumeron would concede that there 11 is no intentional delay. Consumeron then agreed 12 that its construction did not include any 13 intentional delay in data transmission." 14 Q. What does this sentence mean to you? 15 A. Sorry. I read two sentences. 16 It means that Instacart agreed during the 17 hearing that it would accept Consumeron's proposed 18 construction that plain and ordinary meaning is 19 data that is passed along as it is gathered, if 20 Consumeron would concede that there is no 21 intentional delay. 22 Q. Did you consider this sentence in	27 1 A. Do you mean what the court said? Or what 2 are you referring to when you say "did"? 3 Q. You understand that a judge wrote this. 4 Right? 5 A. Generally. I don't know who actually 6 writes it. It's signed by -- it's issued by the 7 court. 8 Q. And the court was remarking on Instacart's 9 statement that it would agree with the 10 construction of "real time" as data that is passed 11 along as it is gathered under the assumption that 12 there's no intentional delay. Is that right? 13 MR. BAJAJ: Objection to form. 14 A. Well, if Consumeron would concede there 15 was no intentional delay. 16 Q. Did Consumeron agree that there was no 17 intentional delay? 18 A. That's what the next sentence says, that 19 Consumeron then agreed that its construction did 20 not include any intentional delay in data 21 transmission. 22 Q. And this agreement came after Instacart
26 1 preparing your declaration? 2 A. I considered this and other -- and I cited 3 to other portions of this claim construction order 4 as well. 5 Q. You've commented on the claim construction 6 order, but you did not comment specifically on 7 this sentence, did you? 8 A. I mean, I cited to this sentence, and I 9 have other words that are referring to this part 10 of the direct quote from the sentence. 11 Q. Okay. So one of the things that you say 12 regarding this sentence is that Dr. Mitzenmacher 13 alleges that, quote, Consumeron agreed that its 14 construction does not include any, quote, 15 intentional delay in the transmission, which the 16 court accepted. Do you see that? 17 A. In Paragraph 11, I think that's what 18 you're looking at. I see something like that in 19 Paragraph 11. 20 Q. Do you disagree that Dr. Mitzenmacher 21 accurately described what the court did in this 22 claim construction?	28 1 explicitly argued that it would agree to the plain 2 and ordinary meaning construction if Consumeron 3 would concede that there is no intentional delay. 4 Correct? 5 A. I mean, the sentence you had me read into 6 the record originally says what it says. I'm not 7 disputing the words that are here. 8 Q. So Instacart argued that the plain and 9 ordinary meaning of this term as reflected by the 10 court's construction agreed upon by the parties 11 includes no intentional delay. Right? 12 MR. BAJAJ: Objection to form. 13 A. That's not exactly what it says here. 14 Instacart agreed during the hearing that 15 they would accept the proposed construction for 16 plain and ordinary meaning, which is that data is 17 passed along as it is gathered, if Consumeron 18 would concede that there is no intentional delay. 19 Q. Right. So Instacart asked for the 20 clarification to the claim construction that it 21 meant that there was no intentional delay. Right? 22 MR. BAJAJ: Objection to form.

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29 1 A. So I understand that this is one of the 2 issues that I'm specifically discussing in my 3 supplemental declaration. So I address these 4 issues. 5 But, I mean, the Markman order says what 6 it says in that paragraph. I'm not disputing 7 that. But I address these -- this particular 8 issue in each of my supplemental declarations. 9 Q. So one of the things that you say is that 10 you do not agree with the, quote, narrowing 11 limitations that Dr. Mitzenmacher alleges are part 12 of the construction. Correct? 13 A. Are you looking somewhere in my -- 14 Q. Paragraph 11. 15 A. Yeah, I do say something like that there 16 in Paragraph 11. 17 Q. Do you think this is inconsistent with the 18 position that Instacart took in its claim 19 construction order and which the court relied on 20 in construing the term "real time"? 21 MR. BAJAJ: Objection to form. 22 A. So I think it's actually Dr. Mitzenmacher	31 1 server 14, I discuss that in Paragraph 60. Okay? 2 This is where Dr. Mitzenmacher made a 3 statement during his deposition that web browsers 4 receive data from web servers when making 5 requests. 6 And thus, for the customer to obtain 7 real-time product images, the customer directs his 8 or her web browser to make a request to server 14 9 so that the browser and customer can retrieve the 10 data from the server 14, which would introduce 11 intentional delays, under Dr. Mitzenmacher's view. 12 So he's saying that what's introducing 13 intentional delays in the Park reference, that 14 same thing is -- that same process is being 15 described in the '835 patent, as I lay out in 16 Paragraph 60. 17 So I think that's the inconsistent view 18 that's being taken here. 19 I don't think I'm taking issue with 20 Dr. Mitzenmacher's interpretation of what is an 21 intentional delay because he says that the 22 intentional delay -- pointing to an intentional
30 1 that's reading in issues around intentional delay 2 that are inconsistent, especially with respect to 3 what's written in the specification of the 4 patents. 5 So if you look in my analysis starting 6 around Paragraph 56 going through Paragraph 60 or 7 so, maybe even a little further, I'm addressing 8 the point that Dr. Mitzenmacher is contending that 9 Park's disclosure of a live video feed did not 10 meet the claim language because Park sent the 11 video to the web server, which the construction 12 can choose to access by making a separate request 13 to the server. 14 And if you look at Paragraph 59, it 15 talks -- I talk about how the '835 patent 16 illustrates a server 14 that sits in the 17 communication path between the MDAS 42 and the 18 customer computer. 19 And I go on. I think there are some 20 statements from the deposition that I do agree 21 with that I point out somewhere in this section. 22 And with respect to the request made to	32 1 claim under Park. 2 But that same method of going through a 3 server is present in the '835 patent 4 specification -- I think all the patent 5 specifications. That's one inconsistency that I 6 do see with respect to intentional delay, but I 7 don't think I'm being inconsistent. 8 Q. Dr. Houh, do you understand the difference 9 between claim construction and unpatentability 10 analysis? 11 A. The difference? 12 Q. Uh-hmm. 13 A. My analysis as to the unpatentability of 14 the challenged claims here are -- absent the 15 claim -- explicit claim construction, I would 16 apply the plain and ordinary meaning of the terms. 17 But if the court has ruled in a separate 18 case, I would probably apply that and I would 19 apply that. And to the extent that's adopted by 20 the PTAB, that would be what the proper -- the 21 claim construction that my analysis should be done 22 under should be.

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33 1 Q. Do you understand there's a difference 2 between whether or not something counts as 3 intentional delay and whether or not intentional 4 delay properly belongs as part of the construction 5 of the claim? 6 A. I'm not sure what you mean by that 7 question. 8 Q. You're not? What's unclear? 9 A. What are you saying is different or what I 10 should understand? 11 Q. My question was, do you understand whether 12 there's a difference between whether something 13 counts as intentional delay and whether or not 14 intentional delay properly belongs as part of the 15 construction of the claim term. 16 And if you're not understanding that 17 question, my question is really are your 18 arguments -- is your disagreement with 19 Dr. Mitzenmacher over whether or not intentional 20 delay belongs in construction or whether or not 21 Park and Kim teach intentional delay? 22 MR. BAJAJ: Objection to form.	35 1 Because I don't think that's exactly what I'm 2 saying. 3 Q. You say that he adds additional, narrowing 4 limitations, which I do not agree with, and then 5 it goes on to say, his added requirement of, 6 quote, without intentional delay is not part of 7 the district court's construction. 8 A. Well, I mean, if you look at the district 9 court's construction at the bottom of page -- the 10 bottom of Section F, which is in the middle of 11 page 27 going by the page number at the top, it 12 says, "Thus, the Court construes real time to take 13 its plain and ordinary meaning, which is data that 14 is passed along as it is gathered." 15 So my point is that that doesn't say 16 anything about -- that doesn't use the word 17 "intentional delay" within the quotation that the 18 court construed. 19 Q. Dr. Houh -- 20 A. But my point here is that Dr. Mitzenmacher 21 interprets this intentional delay and applies that 22 to Park in an inconsistent manner -- well, in a
34 1 A. I guess my dispute with Dr. Mitzenmacher 2 is that he applied intentional delay that he said 3 was present in the system I think of Park in that 4 section. 5 However, the specification itself teaches 6 the exact same process of getting how a customer 7 can retrieve data from a server that is present 8 and disclosed in the '835 patent as the thing that 9 introduces intentional delay in the system of 10 Park. 11 And so my point is I think that's an 12 incorrect understanding of intentional delay, 13 based on the disclosures of the challenged 14 patents. 15 Q. Okay. So in Paragraph 11 when you're 16 talking about construction of the "real time" 17 term, you mention that you don't agree with the 18 idea that without intentional delay is part of or 19 at least explicitly implied by the construction. 20 Correct? 21 MR. BAJAJ: Objection to form. 22 A. Which sentence are you saying says that?	36 1 manner that's actually how the '865 patent 2 discloses -- sorry -- '835 patent discloses how 3 the user obtains real-time product images in the 4 '835 patent. 5 Which is for the customer to obtain 6 real-time product images, the customer directs his 7 or her browser to make a request to server 14 so 8 that the browser and customer can retrieve the 9 data from the server 14. 10 And that's the very thing Dr. Mitzenmacher 11 says would introduce intentional delays in Park as 12 to why Park isn't showing real time. 13 So my point is that. But that's the 14 way -- and I don't understand why Dr. Mitzenmacher 15 believes the '835 patent does not introduce 16 intentional delay by passing real-time product 17 images to a web severer while contending that 18 Park, which does the same thing, does introduce 19 intentional delay. 20 Q. Can you show me -- I'm passing you a copy 21 of the '835 patent, Exhibit 1001. 22 (Exhibit 1001, previously marked, was

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37 1 retained by counsel.) 2 Q. Tell me if you recognize that document. 3 A. Yes, I do. 4 Q. Is this a copy of the '835 patent? 5 A. Yes. 6 Q. Can you show me where in the '835 patent 7 it discloses that a user must make a request to a 8 web server to receive real-time data from the 9 agent? 10 A. So if you look at my supplemental 11 declaration, I discuss this in the paragraph 12 starting around 59. 13 But if you look at Figure 1, for example, 14 Figure 1 is the preferred embodiment of the 15 invention. That's how it's described in the 16 specification. It's a preferred embodiment of the 17 remote application and delivery system of the 18 present invention. 19 And so that shows the user the customer 20 computer having a browser connected to over the 21 Internet. There is a website in the middle. And 22 there's a server 14 interposed between the mobile	39 1 as introducing intentional delays. 2 I don't understand why he says that 3 intentional delays are caused by -- in Park, by 4 going to a web server when in the '835 patent and 5 all the patents there is a web server and a server 6 in between the customer computer and the imaging 7 device. 8 Q. Okay. So is your entire opinion on this 9 point based on the fact that there is no direct 10 line in Figure 1 between the mobile delivery agent 11 system and the customer computer? 12 A. No. That's not my -- that's not the only 13 thing it's based on. It's based on the 14 description of this process. It's based on the 15 '835 patent. And I lay out in this section the 16 various reasons why. 17 Q. So this is -- starting at Paragraph 59 is 18 where you begin to lay this out. Is that correct? 19 A. I mean, this whole section, I'll just read 20 for you the whole section starting at Paragraph 51 21 all the way to the end of it at Paragraph 71. 22 I mean, it's there. I may address it in
38 1 delivery agent system and the Internet. 2 And it talks about how the server 14 is in 3 contact with a plurality of multiple delivery 4 agent systems. 5 And so this is the system that the 6 preferred -- this is the preferred embodiment of 7 the system being described in the '835. 8 And there is no -- there's no 9 communication path disclosed in Figure 1 whereby 10 data from the digital image capture device 46 in 11 the mobile delivery agent system 42 does not pass 12 through server 14 before it reaches the customer 13 computer 30. 14 And so if you look at -- I mean, and this 15 is what -- this is what in Park Dr. Mitzenmacher 16 believes introduces intentional delay. But that's 17 what the preferred embodiment of the patents or at 18 least the '835 here, but I think all of them say 19 the same thing, are laid out. 20 And so that's why I think it's 21 Dr. Mitzenmacher that I believe is being 22 inconsistent with his application of what he views	40 1 other portions of the supplemental declaration. 2 Q. Is there any disclosure in the '835 patent 3 that talks about the customer making a request for 4 real-time images from the server or is that 5 assumed based on the architecture shown in 6 Figure 1? 7 A. What patent number did you say again? 8 Q. The '835. We're just talking about the 9 '835 now. 10 A. Could you repeat the question, please? 11 Q. Is there any disclosure in the '835 patent 12 that talks about the customer making a request for 13 real-time images from the server, or is that just 14 assumed based on the architecture shown in 15 Figure 1? 16 A. I don't think I'm assuming anything here, 17 really. It's based on the disclosure of what the 18 '835 patent is teaching that includes -- the 19 description of Figure 1 includes portions of the 20 spec that talk about how the images are stored at 21 the server. I just saw that. 22 So no, I'm not assuming anything when I

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41 1 reviewed the '835. 2 Q. But you didn't point me to any part of the 3 '835 that talks about a customer requesting images 4 from the server. Correct? 5 A. I think the POSITA, looking at this, this 6 is what they understand is what I've laid out in 7 my declaration. But no, I'm not making any 8 assumptions here. 9 Q. Okay. But you're not pointing to me 10 any -- to any explicit disclosure of that being 11 how the '835 actually works. Correct? 12 A. Well, I mean, the disclosure of the '835 13 talks about how the -- with respect to at least a 14 preferred embodiment, how it works, which is, for 15 example, Column 3, line 30, there are a plurality 16 of databases stored within server. 17 There's line 33, "A digital image capture 18 processor 38 is also preferably associated with 19 server 14. Server 14 is in contact with a 20 plurality of mobile delivery agent systems, such 21 as indicated at 42. Each mobile system 42 22 preferably includes a digital image capture device	43 1 cite to as my basis for what I say in my 2 supplemental declaration. 3 Q. So I just want to make sure I understand. 4 None of the things that you just talked to me 5 disclose at all the steps that a customer takes to 6 view the image. Correct? 7 A. Well, I mean, the teachings of the '835 8 patent, which I don't believe Dr. Mitzenmacher 9 cited any explicit teaching that showed otherwise, 10 that somehow there wasn't a server or that the 11 customer somehow obtained the real-time product 12 images not from the server. 13 But what my point is that the system as 14 described, it's describing that images are kept on 15 the server. It's describing that the MDAS is in 16 communication with the server. It does explicitly 17 describe those things. 18 And somehow Dr. Mitzenmacher views the 19 system that's described as somehow not having real 20 time -- it's not clear why he believes the '835 21 patent does not introduce intentional delays by 22 passing real-time images to a web server.
42 1 46, such as cell phone or other similar device 2 incorporating a digital camera for taking still or 3 video images." 4 It goes on here at the bottom of Column 8, 5 line 60, "Digital image capture device 46" -- and 6 that's the one that's earlier been described as 7 part of the mobile delivery agent system in 8 Figure 1 -- "is preferably utilized throughout the 9 transaction to show the location of the delivery 10 agent as the agent is driving to a desired 11 purchase location, to show the product at the 12 purchase location, and to verify delivery of the 13 product to the customer at the designated delivery 14 location. 15 "In certain preferred embodiments, a 16 series of still images or video footage is stored 17 on server 14 and can be accessed for delivery 18 agent evaluation, for liability and public safety 19 purposes, for delivery agent history or dispute 20 resolution purposes, for example." 21 And so the overall teaching of it is, you 22 know, why I conclude what I do in my -- in what I	44 1 And those are -- I think most of what I 2 discuss there are described as a preferred 3 embodiment of the invention. 4 And so if he is reading out this through a 5 server, it's unclear why he would read out the 6 preferred embodiment of the invention as disclosed 7 in the '835 patent. 8 But my point is that what's taught to a 9 person of ordinary skill by the '835 patent is 10 what he's accusing Park, which does the same 11 thing, of introducing intentional delays. That's 12 the inconsistency that I'm pointing out. 13 And I don't understand why he believes 14 that the '835 patent does not introduce 15 intentional delays while contending -- by passing 16 real-time product images to a web server while 17 contending at the same time that Park, which does 18 the same thing, does introduce intentional delays. 19 Q. If there was a disclosure in the '835 20 patent about a separate communication channel 21 between the customer and the delivery agent, would 22 that change your opinion?

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45 1 A. I think if Dr. Mitzenmacher pointed that 2 out, which I can't -- I don't -- I probably would 3 have addressed it. 4 Q. You probably would have. Right? Probably 5 should have. Right? 6 MR. BAJAJ: Objection to form. 7 A. I don't recall everything that 8 Dr. Mitzenmacher said that's in the report. 9 But my point is here that I think it's 10 Dr. Mitzenmacher that's being inconsistent about 11 what he believes is the intentional delay. And by 12 doing so, appears to be reading out the preferred 13 embodiment of the invention. 14 Q. Could you turn to Figure 3 of the '835 15 patent. 16 A. Figure what? 17 Q. Figure 3. 18 A. Okay. 19 Q. Did you review Figure 3 when forming your 20 opinions about the meaning of this term in the 21 context of the '835 patent? 22 A. I mean, I consider the meaning of the	47 1 A. I mean, I wouldn't dispute that in 2 particular. 3 Q. So up until step 110, you have actions 4 taken by the customer with respect -- I'm sorry -- 5 communications with the customer directly to a 6 server. Correct? For example, in step 100 where 7 the user contacts the service provider. 8 MR. BAJAJ: Objection to form. 9 A. I mean, I do address this particular 10 portion of the declaration with respect to 11 Dr. Mitzenmacher's opinions in the '191 12 supplemental declaration where Dr. Mitzenmacher -- 13 Q. I'm sorry. Could you tell me what 14 paragraph we're in? 15 A. I'm looking around page 27, 28 in this 16 section with respect to, I think, Dr. Mitzenmacher 17 citing to this portion with respect to a 18 limitation in the '191 about direct 19 communications. 20 I want to add to my point with respect to 21 the intentional delay aspect, if you go back -- I 22 think it's in the '191 as well. Another point
46 1 terms in the context of the whole specification. 2 So I would have, yes. 3 Q. So you would have. So can you tell me 4 what's happening at step 110 here in Figure 3? 5 A. So if you look at the '835 specification 6 around line -- Column 5, line 54, it talks about 7 Figure 3 in step 110. 8 It says "a customer shopping or 9 acquisition request and profile is sent to the 10 delivery agent at step 110, and a communications 11 link is established between the customer and the 12 selected delivery agent at step 111, such as 13 through a telephone or Internet connection. 14 Preferably, the customer account information is 15 sent to a communication device 48 in the form of a 16 portable Internet device," and it goes on. 17 But I think that's probably what you're 18 looking for. 19 Q. So step 110 -- and before we go on with 20 these questions, do you agree that these method 21 steps refer to methods taken via the system 22 generally shown in Figure 1?	48 1 that I raise about why -- in that same section 2 that we're looking at, I do raise other points 3 about why Dr. Mitzenmacher is incorrect about 4 intentional delay. 5 In the '191 patent and I think the '835 as 6 well -- let me just check. 7 So there's also what I talk about with 8 respect to making multiple clicks to receive a 9 transmission, that if Kim's customer must make one 10 or more clicks to receive the image or video of 11 the order product, the customer can still receive 12 the image in real time, as a POSITA would 13 understand the term. 14 That is, a customer can receive the image 15 as quickly as it is gathered. That's starting in 16 page 61 of the '191 supplemental declaration. 17 There's a corresponding paragraph in the '835 as 18 well. 19 Q. Okay. Dr. Houh, I'm sorry, that didn't 20 have anything to do with the question I just 21 asked. So let's start again. 22 I referred you to a portion of the '835

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49 1 patent, starting at step number 100. And I asked 2 you whether or not the initial steps -- the 3 initial communications between the customer and 4 the server up until step 111 are communications 5 directly between the user and the server. 6 A. Right. So I said that I addressed the 7 direct communication points in the '191 8 declaration. 9 Q. Dr. Houh, I'm sorry, I have to stop you 10 here because I need you to answer the question 11 that I asked. We can get to the '191 and your 12 discussions about direct communication. We're not 13 there right now. 14 Right now, I'm asking about communications 15 between the user and the server as reflected in 16 the '835 patent description of steps 100 to 110. 17 A. Okay. That was a statement. If there was 18 a question, can you repeat -- 19 Q. I've asked it twice. 20 MR. PRICE: Why don't we take a break. 21 We've been going an hour and 20 minutes. 22 Do you want to take 10, 15?	51 1 patent discloses occurs at step 100. You can look 2 at Figure 2. But I'll also direct your attention 3 to Column 4 starting around line 16. 4 A. Yeah. I mean, I don't specifically recall 5 discussing Figure 2, or at least step 100 in my 6 supplemental declarations. 7 Can you point me to a portion of one of 8 them where that may be the case? 9 Q. I don't think you have, which is why I'm 10 asking you questions about it today. 11 A. I understand I'm here to sit for a 12 deposition regarding the supplemental 13 declarations. So I'm not sure that I -- so if I 14 haven't, that's what I was prepared to do today 15 with respect to my supplemental declarations. 16 Q. You read this patent. Correct, Dr. Houh? 17 A. Yes. 18 Q. Okay. And you made certain 19 representations about what the patent does and 20 does not teach. Right? 21 A. Well, I have opinions based on what, in my 22 opinion, a person of ordinary skill would have
50 1 MR. BAJAJ: 10 is good. 2 (Recess, 10:52 a.m. to 11:01 a.m.) 3 BY MR. PRICE: 4 Q. Dr. Houh, before the break we were 5 discussing steps 100 through 110 of the method 6 described in Figures 2 and 3 of the '835 patent. 7 Do you recall that? 8 A. I thought we were talking mostly about 9 Figure 3. 10 Q. And then I referred you to Figure 2 where 11 it starts talking about step 100. Do you recall 12 that? 13 A. I'm not sure I remember the Figure 2 14 reference specifically right now. 15 Q. Do you recall when I asked you about 16 step 100? 17 A. Was that at the very end of the last 18 session? 19 Q. Yes. 20 A. Yeah. I don't think I remember that 21 question. 22 Q. Okay. Can you tell me what the '835	52 1 understood from this patent but also the -- really 2 the prior art references that render obvious the 3 challenged claims. 4 Q. Right now we're talking about the patent 5 itself. You understand that. Right? 6 A. Sure. Yes. 7 Q. So did you consider what happens between 8 steps 100 and 110 of the '835 patent when 9 preparing your declarations that you've submitted 10 in this case? 11 A. Well, I mean, with respect to my original 12 opening declarations, I considered that with 13 respect to the overall teachings of the '835 and 14 what the teachings of the prior art are. 15 Q. You understand that you're making certain 16 representations about what the '835 does and does 17 not teach in view of Figure 1 of the '835 patent. 18 Right? 19 A. Well, I'm not sure where in my 20 supplemental I'm addressing Figure 2. I think you 21 just said I don't. 22 Q. But you also agreed that the method steps

53 1 are generally taken in the context of the system 2 described in Figure 1. Didn't you just tell me 3 that before the break? 4 A. I think we had -- I think I generally 5 agreed to something similar to that. 6 Q. Is it your testimony today that you're not 7 prepared to talk about what goes on between 8 steps 100 and 110 of the '835 patent today? 9 A. Well, what I focused on preparing for was 10 with respect to my opinions in my supplemental 11 declarations. You could have asked me that at the 12 first one, I think. But here we are with respect 13 to the deposition for the supplemental 14 declarations. 15 Q. Yeah. And I just -- I'll give you some 16 insight into why I'm asking these questions, 17 because you make certain representations about 18 Figure 1 that may or may not be consistent with 19 other disclosures in the '835 patent. Do you 20 understand that? 21 A. I don't believe I am. I think you're -- 22 Q. I said "may or may not."	55 1 steps 100 through 110. Correct? 2 A. I don't think I said that. I think I 3 don't recall specifically addressing those steps 4 with respect to my rebuttal opinions. 5 Q. And you also told me that you were not 6 prepared to talk about it today. Correct? 7 A. No, that's not what I said either. I 8 said -- 9 Q. So can we start answering some questions, 10 please? 11 A. What I did prepare to talk about today was 12 what are my supplemental opinions. 13 Q. Dr. Houh, either you're prepared to talk 14 about this today or not. 15 Are you prepared to talk about this part 16 of the '835 patent which you are telling me is 17 unpatentable? 18 MR. BAJAJ: Counsel, I'd like you to allow 19 the witness to finish his answers before you talk 20 over him. 21 MR. PRICE: He's finished his answer. 22 A. I mean, I'll try to answer questions that
54 1 A. So which of my opinions in my supplemental 2 declarations do you believe is inconsistent with 3 some of these disclosures? 4 Q. Well, you make a big deal and you made a 5 big deal about there being no communication path 6 between the MDAS and the user based on what's 7 shown in Figure 1. Right? 8 A. I mean, I've made statements in my 9 supplemental declarations. I understand we 10 disagree about issues. But even that point about 11 the -- well, I mean, I certainly made statements 12 in my declarations, supplemental ones, that go to 13 the issues -- main issues that Dr. Mitzenmacher 14 and I disagree about. 15 I'm not sure if I've characterized them 16 all as a big deal. They're what my opinions are 17 with respect to rebutting Dr. Mitzenmacher's 18 statements. 19 Q. Uh-hmm. And you're telling me that when 20 coming to your opinions about rebutting 21 Dr. Mitzenmacher's statements, you didn't consider 22 the disclosure of the '835 patent with respect to	56 1 you ask. But to the extent I actually need to 2 think about things because the issues weren't what 3 I'm discussing in my supplemental, I might need to 4 take some time. 5 Q. That's totally fine. And I will give you 6 a reasonable amount of time for you to take to 7 give me a thoughtful answer to my questions. 8 Are you prepared to answer them now? 9 A. I'll do what I can to try to answer your 10 questions, but I understand that this is -- this 11 deposition was with respect to my supplemental 12 declarations. 13 Q. And if your attorneys think that any of 14 the questions that I'm asking today are beyond the 15 scope, they're free to object. That does not 16 relieve you of the duty to answer them. Is that 17 understood? 18 A. As I said, I'll do my best. 19 Q. That's all I can ask. 20 Referring to step 100 of Figure 2, can you 21 tell me what the customer does when they wish to 22 utilize system 10? And I'm on Column 4, line 16,

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57 1 to orient you. 2 A. What it says about Figure 2 there is it 3 talks about how "if a customer wishes to contact 4 the services provider for system 10, the customer 5 registers with the services provider by first 6 contacting the service provide" -- that should 7 read "provider" -- "through user interface 22 and 8 WAN 18, as indicated in 100." 9 So that's what the spec says about 10 step 100. 11 Q. If the customer wishes to use a service, 12 they access this website. Right? 22? That's 13 reflected as a website in Figure 1 and referred to 14 as user interface 22 in the specification. Right? 15 A. Sure. 16 Q. Okay. And then what happens at steps 101 17 through 103 in Figure 2? 18 A. So step 101 is described as "the customer 19 registering with the services provider," and then 20 "the customer information is stored in the 21 customer database 34," which is part of one of the 22 boxes below "website" in Figure 1.	59 1 interface 22 in this section. 2 Q. Okay. And then what happens at step 105? 3 A. With respect to step 105, this spec talks 4 about how the user may enter the area code -- the 5 area he or she is interested in obtaining services 6 through using the user interface, such as entering 7 their ZIP Code or address of a store where a 8 desired product is being sold, using a keyboard or 9 other input device. 10 Q. Okay. So again now we have the customer 11 providing information to the server via a 12 connection shown in Figure 1. Right? 13 A. Sure. 14 Q. And what happens in step 106? 15 A. Well, I think 106 there are some examples 16 given about how a map can be used to show the 17 location of one or more delivery agents near the 18 shopping and/or delivery location. 19 Q. Okay. And that information is 20 disseminated to the user via the same 21 communication link. Correct? 22 A. Well, it's talking about how it's
58 1 And then it talks about step 102 being a 2 credit check of the customer being conducted 3 before the customer is approved as a registered 4 customer. 5 And then at step 103, it talks about 6 preapproving a particular credit amount for the 7 customer. 8 Q. Okay. And then what happens in step 104? 9 A. In step 104, the customer logs into the 10 system via the website, using the name and 11 password generated during registration. 12 Q. Okay. So steps 101 through 104 generally 13 disclose how a user contacts the delivery service 14 and sets up an account. Correct? And then logs 15 in? 16 A. Sure. It addresses a few more things than 17 that, but that's at a high level. I wouldn't 18 dispute that. 19 Q. And these communications between the 20 customer and the service provider are mediated 21 through the Internet and website 22. Correct? 22 A. It does talk about the website and user	60 1 displayed using the user interface 22. 2 Q. Which is this Internet accessible website. 3 Right? 4 A. That's an example shown in Figure 1. 5 Q. Is there another example? 6 A. Not at -- well, Figure 1 shows 22 as a 7 website. That's all Figure 1 shows. 8 Q. Okay. And then Figure -- steps 107 and 9 108 are generally about how the delivery agent is 10 chosen. Correct? And 109. 11 A. Yeah. I think the labels may be backwards 12 on the figure or in the specification. It talks 13 about how the customer selects the delivery agent 14 based on a variety of factors, and it labels that 15 at 108. And Figure 2 talks about an algorithm. 16 And then the spec goes on to talk about 17 how in step 109 the processor is utilized to 18 select a delivery agent for a customer. And 19 that's actually labeled 108. So I think the 20 labels are just swapped. 21 Q. Okay. So in the specification, 108 is 22 really talking about the delivery agent being

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61 1 selected by the customer whereas 109 is about the 2 delivery agent being selected by an algorithm? 3 A. In the spec, those are the labels that are 4 used for those two different methods. 5 Q. Okay. Now, at step 110, can you tell me 6 what happens? 7 A. In step 110, it says that a customer 8 shopping or acquisition request and profile is 9 sent to the delivery agent. 10 Q. And would you agree that that occurs over 11 the communication link illustrated as the 12 double-sided arrow between server 14 and the MDAS 13 in Figure 1? 14 A. There is a communications device within 15 the mobile delivery agent system 48 that has a 16 transceiver system. 17 This is Column 3 in around line 48, "for 18 wirelessly accessing a wide area network or 19 virtual area network" . . . "and system servers." 20 So I think the description in Figure 1 21 does discuss the communications device accessing 22 servers through wide area network or virtual	63 1 information to server 14 by inputting that into 2 website 22. Correct? 3 A. Sure. Eventually the data that the user 4 input ends up in a database, just as some things 5 like the images retrieved from server 14 can be 6 shown to the computer, the customer's computer. 7 Q. Okay. So website 22 gives a way of at 8 least providing indirect communications between 9 the server 14 and customer computer. Correct? 10 A. I mean, one might think of that as a 11 relay. And I think the '835 specifically talks in 12 places about how information can be relayed. 13 Q. And then we also have a communication link 14 set up between the MDAS and server 14. Correct? 15 That we talked about with respect to step 110. 16 A. I think I did say the description in 17 Figure 1 talks about a communications device 48 18 which allows it to access the servers, wherever I 19 was reading from back then. 20 Q. Do you dispute that that's a communication 21 link? 22 A. I don't -- I think it can allow a
62 1 private network. 2 Q. Okay. So based on everything we just 3 talked about and your understanding of Figure 1, 4 do you agree at this point there is a connection 5 set up between the customer computer and 6 server 14? 7 A. I would say typically the customer 8 computers are communicating with, in this case, 9 the website here. I think typically the customer 10 computers never communicate with back-end servers 11 such as the database or things like that. 12 Q. Okay. But websites are served by servers. 13 Correct? 14 A. They're served by -- they are served by 15 servers. But we're talking about communicating 16 with website 22 initially. And it talks about 17 how, for example, when it receives customer 18 information, that it's stored in the database. So 19 typically a website would -- with back-end 20 software would store the data received from the 21 user in a database. 22 Q. Okay. So the user is able to send	64 1 communication link to be established. I wouldn't 2 say that the communication device itself is the 3 link. 4 Q. What is the link? 5 A. Well, once -- if it needs to contact the 6 server, then there may be a preexisting link or it 7 would open a new link from a particular server 8 from which to retrieve the information or access 9 or store. If it needs to contact a server, it can 10 do so over a link using the communication device. 11 Q. Okay. So whether or not the links are 12 persistent, Figure 1 in steps 100 through 110 13 disclose that there are links between a customer 14 computer and the server and there are links 15 between the server and the MDAS. Correct? 16 A. Well, I mean, as I said earlier, 17 information provided by the customer, such as 18 their registration info, can be relayed to the 19 customer database. 20 Q. And how does that happen? 21 A. Well, in the case of a website, generally, 22 a website might receive the information from a

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65 1 user that that -- through some form that is on a 2 web page. And then the code for the website would 3 have the ability to access the database and store 4 the data provided by the user. 5 Q. And what happens in step 111? 6 A. The spec at Column 5 around line 57 talks 7 about how a communication -- "communications link 8 is established between the customer and the 9 selected delivery agent" . . . "such as through a 10 telephone or Internet connection." 11 Q. Okay. So does that mean that since we're 12 establishing this at step 111 that that 13 communication link did not already exist up until 14 it was established, that step? 15 A. I mean, it doesn't say anything about 16 anything that did or did not exist. What it says 17 at step 111 is that a communications link is 18 established between a customer and a selected 19 delivery agent. 20 Q. Does that not mean that it was already 21 established? 22 A. Well, the spec doesn't say anything. It's	67 1 user interface 22. So that information is 2 relayed -- some of that information is relayed and 3 the profile was stored in the database. So that 4 profile is also relayed to the delivery agent. 5 Q. Okay. Over that communications link that 6 is already established at 110. Correct? 7 A. You mean step 111? 8 Q. No. Is there a communications link 9 between the MDAS and server 14 that enables the 10 shopping or acquisition request and profile to be 11 sent to the delivery agent at step 110? 12 A. I see your point. I mean, there's some -- 13 I mean, step 111 is coming after step 110. And in 14 step 110, it talks about how the information is 15 sent to the delivery agent. 16 Q. Okay. So that information is sent to the 17 delivery agent over an established communications 18 link. Right? 19 A. Yeah. I mean, the information coming from 20 the MDAS, going to the MDAS would be coming from 21 the system of servers in, for example, 14, 22. 22 From those servers to the delivery agent.
66 1 just in steps 108 and 109 that that particular 2 agent was selected. So it doesn't mean at some 3 point in the past that the customer could have 4 been in contact with the very same delivery agent. 5 But it's just saying here that at step 111 a 6 communications link is established between the 7 customer and the selected delivery agent. 8 Q. Is it your opinion that that 9 communications link already existed at the time 10 step 111 is performed? 11 A. No, I don't think I said that. I'm just 12 saying the agent wasn't selected until steps 108 13 or 109. 14 Q. That's not my question. 15 So the customer request is sent to the 16 agent at 110. Correct? 17 A. The customer shopping or acquisition 18 request and profile is sent to the delivery agent 19 at step 110. 20 Q. From where? 21 A. Well, it would be from the main system 22 that the user had initially used the web server	68 1 MR. BAJAJ: I'm sorry. Can we go off the 2 record. 3 (Off the record, 11:42 a.m. to 11:43 a.m.) 4 BY MR. PRICE: 5 Q. Okay. So now can you remind me what 6 happens then at step 111. 7 A. So 111 is where a communications link is 8 established between the customer and the selected 9 delivery agent. 10 Q. Okay. And the establishment of this 11 communications link at step 111 implies that it 12 didn't exist before step 111. Right? 13 A. Again, it doesn't say that exactly there, 14 but I wouldn't disagree with that. 15 Q. So would you agree that there is a 16 communications link disclosed in the '835 patent 17 that is not explicitly illustrated in Figure 1? 18 A. I mean, I don't see a telephone 19 illustrated in Figure 1 or telephone system. But 20 the Internet is there. And we've talked about how 21 data can be relayed through various parts of the 22 system.

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69 1 Q. Okay. But if these communications links 2 shown in Figure 1 already existed at the time that 3 a new one has been established at step 111, is it 4 safe to infer that the communications link that's 5 established doesn't refer to the communications 6 links that were already established? 7 A. I mean, I don't think the -- if you look 8 further down in the same disclosure, the '835 9 specifically talks about relaying data. For 10 example, Column 7, around line 29. 11 This is about the image capture process. 12 "The delivery agent will utilize digital image 13 capture device 46 to transmit real-time data to 14 customer computer 30. This data can be collected 15 and relayed in various forms." 16 And so for example, we talked earlier 17 about how the web server may collect data from the 18 user to relay to the database. And in many cases, 19 there might already be a link from the web server 20 to a database that that data can be relayed over. 21 So I think this is talking about 22 establishing a communications link between the	71 1 relayed in various forms. You have this image 2 processing -- image processor within server 14. 3 And so it's disclosing that these images can be 4 relayed. 5 For example, how the web server relays the 6 customer data collected in the form to the 7 database server. And so, I mean, that's what the 8 disclosure says. 9 Q. Doctor, there are further explanations of 10 what the inventors meant when they say that this 11 data can be collected and relayed in various 12 forms. Right? 13 A. Sure. 14 Q. Okay. Do any of those disclosures have 15 anything to do with transmitting data to the 16 server and then having the customer request it 17 from the server? 18 A. Well, it talks about using Skype 19 communications, and the customer has to request 20 the Skype communication for that to occur. 21 Q. Wouldn't that have happened when the 22 communications link was set up at step 111?
70 1 customer and selected delivery agent. And it's -- 2 the discussion herein with respect to the flow 3 from -- that section I read earlier is talking 4 about steps 117 and 118 in the same flow. 5 And so I don't think it necessarily 6 excludes situations where you're establishing a 7 link using some other link that may already be 8 established to relay the data, which it 9 specifically says it can be done with the data. 10 Q. Does any part of what you just pointed me 11 to in Figure 7 disclose that the real-time images 12 will be sent to the server at which point the 13 customer can receive them from the server? 14 A. There's no Figure 7. I didn't refer to 15 Figure 7. 16 Q. I'm sorry. Column 7. 17 A. Could you ask the question again, please? 18 Q. Does any part of what you just pointed me 19 to in Column 7 disclose that the real-time images 20 will be sent to the server, at which point the 21 customer can request it from the server? 22 A. It says the data can be collected and	72 1 A. I mean, it doesn't say anything about 2 setting up Skype at that point at 111. 3 Q. It does talk about -- I'm sorry. 4 A. But certainly a user still has to request 5 something like a Skype communication or accept a 6 call. But the user has to perform some actions 7 for a Skype communication to be set up. 8 And so the various forms of -- that the 9 data can be relayed to transmit real-time data 10 include these other types of methods where user 11 actions actually have to be performed. And it 12 talks about relaying the data, including those 13 real time -- those digital images that are 14 captured. 15 Q. So step 117 comes after step 111. Right? 16 A. In Figure 3 it's shown as after 111, step 17 117. 18 Q. So at this point we've already had a 19 communications link set up between the customer 20 and the delivery agent. Right? 21 A. Well, I mean, that's what it says in step 22 111, and step 117 is after 111. But step 117

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73 1 talks specifically about how the real-time data 2 transmitted to the customer computer can be 3 collected and relayed in various forms. And it's 4 explicitly giving this example of using a system 5 such as Skype, so where at some point there would 6 have to be some user actions taken to start a 7 Skype communication. 8 Q. Right. Didn't that happen six steps ago? 9 A. Well, six steps ago is not specific about 10 the link established between the customer and the 11 delivery agent. 12 Q. Is Skype a service that relies on a 13 communications link between two parties? 14 A. I mean, with respect to Skype, I'd have to 15 do a little research about it as to whether the 16 communications are relayed through Skype servers, 17 for example. I'm not sure I know that offhand, 18 one way or the other. 19 Q. Do you think Skype servers are part of 20 server 14? 21 A. Well, I think Skype is a separate company 22 that may have its own infrastructure. I don't	75 1 That's my understanding. 2 Q. So when the spec talks about establishing 3 a communication link via an Internet connection, 4 Skype, as also disclosed in the '835 patent, would 5 be an example. Correct? 6 A. I mean, the spec doesn't talk about links 7 specifically with respect to Skype at step 111, 8 but it does specifically talk to how data can be 9 collected and relayed in various forms with 10 respect to kind of steps 117 and 118. 11 Q. Do any of those forms include an MDAS 12 sending information to the server and then the 13 customer requesting that information from the 14 server? 15 A. So the '835 patent does discuss how the 16 server is in contact with a plurality of mobile 17 delivery agent systems and how the -- as we looked 18 at, that there are images stored from the mobile 19 delivery agent systems that are captured from that 20 stored on the server 14 and how these images may 21 be relayed in various forms, collected and relayed 22 in various forms.
74 1 know if they have servers that can be run by third 2 parties. I'd have to do some research with 3 respect to that. 4 But it's certainly saying here that it's a 5 separate -- it's a separate form of data -- sorry. 6 It can be -- that's how it's relayed in the 7 different form, which is using Skype, for example. 8 So I mean, to the extent Skype does 9 actually have these relays -- and I think -- I 10 mean, it's certainly -- the specs certainly talk 11 about relaying the data as we discussed earlier, 12 such as how a web server collecting data from a 13 form relays the data to a database. 14 And here it's just simply saying that 15 digital video can be employed in combination with 16 voice corresponding to Skype communications. 17 So that's an alternative -- well, not -- I 18 wouldn't say alternative. I'm saying it's part of 19 various forms that can be done in this embodiment. 20 Q. Are Skype calls carried over Internet 21 connections? 22 A. I think generally that would be the case.	76 1 Q. I'm sorry. Are you done? 2 A. No. 3 And so -- and that's -- what I -- that is 4 what I'm saying is the disclosure that's 5 consistent with what Park is doing, which is 6 having images on a server even if they are relayed 7 through that server or have to -- if the user has 8 to start some clicks to start a real-time stream, 9 as Park discloses. Or maybe that's Kim. It is a 10 combination of Park and Kim. 11 It's really similar to the way '835 -- the 12 '835 patent and all of them are disclosing the 13 process of capturing these images and relaying 14 them. 15 And one example is that they can be 16 relayed through Skype. And so I mean, my point 17 here is that that is what the '835 patent is 18 disclosing. 19 And that's similar to what 20 Dr. Mitzenmacher is criticizing in Park for 21 introducing intentional delay. 22 Q. Okay. So you mentioned that the '835

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77 1 patent discloses storing images on server 14. 2 Right? 3 A. Yes. 4 Q. Where is that disclosure? 5 A. At the bottom of Column 8 in the '835 it 6 says, "In certain preferred embodiments, a series 7 of still images or video footage is stored on 8 server 14." 9 Q. Does the '835 patent say that the customer 10 will receive those images from server 14 or 11 something else? 12 A. So what I'm saying here is that another 13 way to say it is the intentional delay 14 Dr. Mitzenmacher contends exists in Park would 15 also occur in the '835 patent. 16 I agree with Dr. Mitzenmacher's statement 17 during his deposition that web browsers receive 18 data from web servers by making requests. And 19 we've seen how the '835 shows that the server 14 20 data can be relayed through, you know -- back and 21 forth to the customer through the web server. 22 Q. I'm sorry. Where did we see that?	79 1 '835 supplemental declaration, that this is how 2 one retrieves data stored on a web server. 3 The web server has access to the images, 4 and you make a request of the web server. And the 5 images can be relayed through the web server from 6 server 14, as we see the '835 does talk about 7 relaying the data through a web server. 8 Q. I'm sorry. I have to stop you again. 9 Where does it say -- and I need you to 10 point me to column and line where this data is 11 relayed through a web server. You keep saying 12 this over again, but then you point me to this 13 word "relay" and then you talk about Skype. 14 Where is the support for your contention 15 that the data is stored on the web server and then 16 requested from the user? 17 MR. BAJAJ: Objection to form. 18 A. The bottom of Column 8 says "a series of 19 still images or video footage is stored on 20 server 14." 21 Q. What is that footage used for? Can you 22 please read the full sentence?
78 1 A. Well, we discussed that with respect to 2 the customer data registering, getting relayed 3 down to server 14 into the customer database. 4 And so, you know, there are websites that 5 can access images as well, and they're stored in 6 14, so they would be -- you know, web servers do 7 take the data from the file system and image 8 requests and the web server takes that image and 9 sends it to the customer. And that happens in all 10 websites pretty much. 11 Q. Where does the '835 patent ever say that 12 the customer requests these images from the 13 server? 14 A. So the '835 talks about how the images may 15 be relayed. Right here. Column 7, line 31, which 16 is specifically talking about the delivery agent 17 capturing digital images to transmit real-time 18 data to a customer computer. 19 It says, "This data can be collected and 20 relayed in various forms." 21 And one way -- and that is saying what I'm 22 saying here in, for example, Paragraph 60 of my	80 1 A. Well, it's describing how these images can 2 be additionally used, which is for things like 3 "delivery agent evaluation, for liability and 4 public safety purposes, for delivery agent history 5 or dispute resolution purposes." 6 But it's describing these images earlier 7 as one use -- for first use I think it's 8 describing it in Column 7 about how the delivery 9 agent is utilizing the digital image capture 10 device to transmit real-time data to customer 11 computer 30 -- 12 Q. Is the server -- 13 A. -- and the customer computer collected and 14 relayed in various forms. 15 And I think that's the part of it that 16 says here is how we're going to use some of the 17 images for. And the other part is saying we are 18 going to store those images and video footage on 19 server 14. 20 And additionally, they can be accessed for 21 all these other purposes as well. So there are 22 multiple purposes for storing the images and video

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81 1 footage on server 14. 2 Q. Show me where any of the purposes for 3 images stored on the server are used for real-time 4 communication of those images to the customer, 5 please. 6 MR. BAJAJ: Objection to form, to the 7 extent that's a question. 8 A. It says in Column 7, "If the customer 9 chooses to inspect the product, the customer will 10 communicate instructions to the delivery agent at 11 118, and the delivery agent will utilize a digital 12 image capture device" . . . "to transmit real-time 13 data to customer computer 30. This data can be 14 collected and relayed in various forms." 15 It says that there. And it's talking 16 about the same images or generally storing images 17 or video footage on server 14. 18 Q. Where? 19 A. In the bottom of Column 8, it talks about 20 storing a series of still images or video footage 21 on server 14. And it additionally says what these 22 images could be used for, in addition to what's	83 1 now you want to have the image relayed to the 2 customer. You can't do it through the telephone, 3 so you can do it through some of the existing 4 pathways that are already present. 5 And one of those pathways and really the 6 only one that's described in which an image can be 7 relayed is through server 14. 8 Q. Is it your testimony that there's no way 9 to transmit an image through a telephone 10 connection? 11 A. When you have a voice connection, you're 12 talking on the telephone, with an MDAS. 13 Q. I'm sorry. And where does it say that the 14 telephone connection is limited to a voice 15 connection? 16 A. Because when it's talking about a 17 telephone connection, we're not talking about the 18 modem connection of old days. There is no 19 telephone modem at 56K running over -- that's just 20 not what would be understood, I don't think, by a 21 person of ordinary skill. 22 It talks about establishing a telephone
82 1 already described as various forms of relaying the 2 image data. 3 And so for example, if a communication 4 link established was through the telephone, 5 there's no way -- it says it at step 111. And 6 then relaying the image, for example, through the 7 server 14 when requested by user would be the way 8 the -- that the user would be able to view the 9 image because they can't view it through a 10 telephone connection. Because it's describing 11 link 111 as through a telephone or Internet 12 connection. 13 So if you've now established a telephone 14 call, telephone connection, to the mobile agent, 15 the way to transmit an image that's captured would 16 be to relay it through server 14. 17 Q. Where does it say that, Dr. Houh? And I 18 really need to stress that you're under oath here. 19 A. So 111 teaches that the connection can be 20 through a telephone. It says "telephone or 21 Internet connection." 22 But say it's just through a telephone, and	84 1 connection. That's what it says. 2 Q. And it's your testimony that there's no 3 way to send an image over a telephone connection. 4 Is that correct? 5 A. That's not what would be understood, by 6 having modems at both ends over which real-time 7 video would be very slow using a modem over a 8 telephone over a mobile network. 9 So it's talking about establishing a 10 telephone connection. That's what it says. 11 And to do real-time video, even at the 12 time of this invention, it is disclosing the other 13 pathways; for example, relaying the image data. 14 And so there are -- if you have WiFi or something 15 like that, a modem on a telephone doesn't make any 16 sense. So I don't know why they wrote "telephone 17 connection." They wrote "telephone connection." 18 Q. Okay. So I just want to make sure I 19 understand your testimony. 20 Rather than using the communication link 21 set up at step 111, which is different from the 22 communication links that were already set up, it's

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85 1 your testimony that a person of ordinary skill in 2 the art reading the '835 patent would understand 3 that actually the user is going to send an 4 image -- the MDAS is going to send an image to the 5 server, even though that's not disclosed, 6 whereupon the user is going to request that from 7 the server, which is also not disclosed. Is that 8 correct? 9 MR. BAJAJ: Objection to form, misstates 10 prior testimony. 11 A. It is disclosed. Your question has some 12 incorrect assumptions. It is disclosed that 13 images and video are stored on the server, and 14 those images and videos are from the MDAS. 15 Q. Okay. And at the bottom of Column 8 and 16 the bottom of Column 9 tells the POSITA what those 17 images and videos are used for. Correct? In that 18 embodiment. 19 A. That gives some additional uses for the 20 video in addition to the -- 21 Q. Doesn't say additional, does it? 22 MR. BAJAJ: Counsel, I would ask you to	87 1 Q. Are any of the purposes so that the user 2 can download them in a way that counts as real 3 time or not? 4 A. Well, I mean, it says that it can be 5 accessed for delivery agent evaluation, for 6 example. And they may be choosing to evaluate 7 someone, some user. It wouldn't necessarily have 8 to do that later. That they could be doing it as 9 the information is provided and gathered and 10 provided. 11 Q. Okay. Do you have any other support for 12 your opinion that real-time video can be real 13 time -- can be video that is stored on a server 14 and requested later by a POSITA in the context of 15 the '835 patent? 16 MR. BAJAJ: Objection, form. 17 A. I mean, I don't know if I've covered 18 everything that was raised in my supplemental 19 declarations, but I would refer you to those. And 20 we can look at them one by one, if you want. 21 Q. Can you turn to Paragraph 12 of your 22 declaration, please.
86 1 allow the witness to finish the answer before you 2 continue. 3 MR. PRICE: I would appreciate truthful 4 answers. 5 A. It doesn't use the word "additional." But 6 it's describing other further uses of images and 7 video, in addition to what's already described in 8 Column 7. 9 Q. Right. So these additional uses of the 10 video are done in the context of the images that 11 are stored on the server. Correct? 12 A. Well, at the bottom of Column 8, it is 13 talking about these additional uses for the video 14 or images that are stored on the server. 15 Q. And these are all for later uses. Right? 16 "Delivery agent evaluation, liability and public 17 safety, delivery agent history or dispute 18 resolution purposes." Right? 19 MR. BAJAJ: Objection to form. 20 A. I don't see where all of them have to be 21 later uses. It doesn't say that. It just says 22 that it can be accessed for various purposes.	88 1 A. Okay. 2 Q. You're responding here to 3 Dr. Mitzenmacher's discussion of the meaning of 4 the claimed acquisition request. Right? 5 A. Sorry. Which declaration are you 6 referring to? 7 Q. In the '835. I'll be asking questions 8 about the '835 declaration unless I point you to 9 somewhere else. 10 A. Sorry. What paragraph? 11 Q. 12. 12 MR. BAJAJ: We've been going for another 13 hour and a half. 14 MR. PRICE: We can take a break now. 15 A. Do you want me to answer the pending 16 question? 17 Q. Go ahead and answer the question and then 18 we can go off the record. 19 A. Paragraph 12 does start the section where 20 I talk about the "acquisition request" term. 21 (Lunch recess, 12:24 p.m. to 1:08 p.m.) 22

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89 1 AFTERNOON SESSION 2 BY MR. PRICE: 3 Q. Welcome back, Dr. Houh. 4 A. Thank you. 5 Q. Did you speak to anybody about the 6 substance of your testimony during the break? 7 A. No. 8 Q. Did you have a nice lunch? 9 A. I did. Thank you. 10 Q. Okay. So I'd like to switch topics a bit 11 and move on to the -- your opinions about the 12 proper meaning of the term "acquisition request." 13 Okay? 14 A. Okay. 15 Q. So if you could turn to Paragraph 12 of 16 your declaration in the '835 patent case. 17 A. Okay. I'm there. 18 Q. So in Paragraph 13, you note that you 19 didn't provide an explicit construction for this 20 limitation in the original -- in your original 21 declaration. Right? 22 A. That's what I say at the beginning of	91 1 claim construction it's not typically helpful to 2 talk about what's in the scope but actually 3 determining what the scope is as the goal of claim 4 construction? 5 A. I don't think that's the -- the goal would 6 really be to address any disputes that arise 7 between the parties. And I don't think the goal 8 is necessary to cover all the possible boundaries 9 when there's no dispute except for at a particular 10 boundary. 11 Q. Do you think the goal of claim 12 construction is to arrive at the proper 13 interpretation that a person of ordinary skill in 14 the art would have accorded the term at the time 15 of the invention? 16 A. I understand generally that part of the 17 process. But oftentimes there is a dispute that 18 arises about a specific issue, such as in this 19 case where Dr. Mitzenmacher has construed it or is 20 saying what they -- I don't remember exactly how 21 he phrased it -- what the plain and ordinary 22 meaning of the term might be, in their view.
90 1 Paragraph 13. 2 Q. Why did you not provide any construction 3 of this term? 4 A. Typically I would not provide one if I 5 didn't feel there was a need to provide one. I 6 didn't know there would be an issue about the 7 interpretation of this term, which was raised 8 later in the patent owner maybe -- at some point. 9 Q. So Paragraph 13 says that you don't agree 10 with Dr. Mitzenmacher's proposed construction and 11 that you believe the term should be construed 12 according to its plain and ordinary meaning. 13 Right? 14 A. I do say that there. 15 Q. What is the plain and ordinary meaning of 16 "acquisition request"? 17 A. For example, it would be a request to 18 acquire. 19 Q. What do you mean "for example"? 20 A. That would at least be something that 21 would be in the scope of acquisition request. 22 Q. Do you understand that when we're doing	92 1 And so there is a particular dispute about 2 this. And this is what I'm addressing is that 3 where the dispute is, I understand that I'm 4 addressing the particular dispute that has arisen, 5 not necessarily to address some boundary where 6 there's at the moment no dispute. 7 Q. Okay. So you are telling me, then, that 8 you did not actually seek to determine where the 9 boundaries of the term "acquisition request" are. 10 Correct? 11 A. Well, with respect to this particular 12 dispute that has arisen, I think I am addressing 13 the boundary. 14 Q. What particular dispute are you referring 15 to? 16 A. Well, Dr. Mitzenmacher is contending that 17 the specification consistently uses the term I 18 think "acquisition request" in a manner to 19 describe an agent who is requested to shop for 20 requested goods on behalf of a customer. 21 So that's what I don't agree with. I 22 don't agree that the specification limits agent

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93 1 acquisition to shopping. 2 Q. Do you agree that the specification or -- 3 I'm sorry -- that the term "acquisition request" 4 encompasses a request for an agent to shop for 5 goods on a customer's behalf? 6 A. I'm not sure that I'm addressing that 7 particular issue. 8 The point is about this, I mean, I do talk 9 about somewhere how I think a provisional 10 application did use the term "shopping request," 11 but then the specification as filed changed that 12 to shopping or acquisition request. And this term 13 is specifically "acquisition request." 14 Q. That didn't answer my question, so I'll 15 ask it again. 16 Do you agree that the specification -- I'm 17 sorry. I'll say this again. 18 Do you agree that the term "acquisition 19 request" encompasses a request for an agent to 20 shop for goods on a customer's behalf? 21 A. I'm not sure that I've addressed that 22 specific question in my supplemental declaration.	95 1 about? 2 A. Do you mean in the '835 patent or do you 3 mean in my -- 4 Q. Yes. Paragraph 18 of your declaration. 5 A. One of the passages I'm citing to is in 6 Column 8, starting at line 15, where it says, 7 "Alternatively, the customer has the option of 8 paying the retailer or seller directly, in which 9 case the customer will only be billed for the 10 pick-up and delivery services provided." 11 It goes on to say, line 21, "If 12 pre-purchased by the customer, the delivery agent 13 obtains a receipt showing proof of prepayment by 14 the customer." 15 And so that's an example of how this 16 pick-up request is an example of an acquisition 17 request. It does not require the agent to shop or 18 the restrictive -- the phrase that 19 Dr. Mitzenmacher is using. 20 This is an example of an acquisition 21 request which is not requiring what 22 Dr. Mitzenmacher appears to say it requires.
94 1 But my point is that it's improper to 2 narrow it in the way Dr. Mitzenmacher is proposing 3 because there are actually examples of acquisition 4 requests given in the specification of the patents 5 which allow for acquisition to be performed by 6 means other than purchasing or shopping, including 7 an example from where there is a -- the customer 8 made prepurchase of goods at an agent -- that the 9 agent acquires by pick-up. 10 And that is specifically an example given 11 in the specification, and I have cited the various 12 portions of the '835 spec for that in 13 Paragraph 18. 14 And so that's why it's actually improper 15 to narrow the scope from its documents -- to 16 narrow the scope of "acquisition request" to 17 requiring an agent to shop for goods. 18 Q. In that answer, you said that there's an 19 example from where there is -- the customer made 20 prepurchase of goods at an agent -- that the agent 21 acquires by pick-up. 22 Can you point me to where you're talking	96 1 Q. You're saying that this is an example of 2 an acquisition request. Can you tell me where in 3 the patent the inventors describe this as an 4 acquisition request? 5 A. If you look at the context of this -- I 6 know we've been pointing to very specific 7 portions. A POSITA reads the spec as a whole to 8 understand its teachings. So while I'm pointing 9 to specific portions, it's how the POSITA is 10 looking with respect to the whole. 11 For example, it's talking about a purchase 12 order or acquisition request is scheduled for a 13 particular date and/or time, in Column 6, line 34. 14 And that's talking about a purchase order 15 or acquisition request. And it's discussing the 16 various processes involved, including that package 17 we talked about in Column 8, I think. Yes, in 18 Column 8 at those lines that I read. 19 That's part of what's being described in 20 the section describing an acquisition request. So 21 it may not be using the exact words right there, 22 but it's clear in the context and to a person of

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97 1 ordinary skill that this is describing an 2 acquisition request. 3 It's talking about -- the first part of 4 the paragraph at Column 8, line 8, talks about 5 conditions where acquisition, it cannot be made as 6 indicated, and that there's an alternative. 7 The customer has an option of paying the 8 retailer or seller directly and that this 9 acquisition request would be for the delivery 10 agent to simply pick up the good and deliver it 11 without having to shop or make any purchase by the 12 agent. 13 And furthermore, throughout the spec the 14 spec uses the phrase "purchase or otherwise 15 acquire in shopping or acquisition requests." 16 So I mean, that really confirms to a 17 POSITA that an acquisition can be performed by 18 means other than a purchase or shopping. 19 And this one where it's simply a pick-up 20 for a prepaid item is an example of such an 21 acquisition request that is not made by means of 22 the agent having to purchase or shop.	99 1 that this is another means of acquiring a good. 2 That is, the customer is paying the retailer or 3 seller directly and then that's prepurchased by 4 the customer. The agent simply is directed to 5 pick up the good that a user has prepurchased. 6 So it doesn't use those words in -- I 7 don't see those words being used between Column 8, 8 line 15 and 23. 9 But I don't think it has to, to teach 10 that. It is an authorization -- sorry -- an 11 acquisition request because a person of ordinary 12 skill looking at this understands the context of 13 the patent. 14 And so even though some words are not used 15 in some places, like it's what it's -- the overall 16 specification is teaching a person of ordinary 17 skill. 18 Q. But you understand right now we're trying 19 to determine what the term "acquisition request" 20 means. And you were pointing to this as an 21 example of an acquisition request. Right? 22 A. I do. That is an example of an
98 1 Q. Doesn't this passage in Column 8 say that 2 this is something that happens when "the 3 acquisition cannot be made as indicated"? 4 A. It's, for example, saying that -- the one 5 example it's giving is that the purchase price is 6 outside of the preapproved credit limit. So if 7 that's the case, then the user can simply pay for 8 it. 9 And it's disclosing that the user is going 10 to pay for it directly as an alternative to buying 11 it on credit and that the agent in that case would 12 not be required to shop or otherwise purchase the 13 good because a user has prepurchased the good and 14 that this acquisition request is simply for the 15 agent to pick up the prepurchased item. 16 Q. Where does it refer to this alternative 17 embodiment as an acquisition request? 18 A. It doesn't use those words in that passage 19 that I read. But this is what's understood. 20 You don't have to use all the words all 21 the time to describe that in the specification. 22 It's what a person of ordinary skill understands,	100 1 acquisition request. And it's one that doesn't 2 involve the agent purchasing or shopping. It's 3 simply a request for the agent to pick up the good 4 that's been prepurchased. 5 So that is an example of an acquisition 6 request as given by the -- in the spec. And in 7 the context of what the spec is discussing, a 8 person of ordinary skill would understand that's 9 an acquisition request. 10 I know Dr. Mitzenmacher seems to have a 11 different opinion about this, that somehow this is 12 not an acquisition request. But that's where we 13 disagree. 14 Q. In this example -- in this example, the 15 agent was not able to make the acquisition. 16 Right? 17 A. It does say that at the beginning of the 18 paragraph, that there might be a reason why "the 19 acquisition cannot be made as indicated at 122." 20 And some of the reasons would be that it 21 gives are that the customer is not qualified for 22 the amount of the desired purchase or simply if

101 1 the delivery agent cannot complete the transaction 2 for any reason. 3 But then it gives an alternative where the 4 customer has the option of paying the retailer or 5 seller directly, in which case the customer will 6 only be billed for the pick-up and delivery 7 services provided. 8 And that's within this flow. That step 9 122 is in this flow as described in Figure 3. And 10 this is providing an alternative to some of these 11 issues about the credit limit of the customer with 12 the service. 13 And certainly a person of ordinary skill 14 would understand that this is an example of an 15 acquisition request. It's one where the user 16 has -- is going to pay the retailer or seller 17 directly, in which case all the agent has to do is 18 pick up the item and deliver it to the user. 19 And that's what this is discussing. It's 20 an example of an acquisition request. 21 Q. So in this example, it says, "in which 22 case the customer will only be billed for the	103 1 So that's another thing that the 2 specification says that the delivery agent can do. 3 I mean, there's a lot of examples. 4 Q. Can I turn your attention to Column 7, 5 starting at line 54. 6 A. Okay. 7 Q. Can you read that sentence? 8 A. "Of course, the customer may choose to 9 terminate the acquisition services at any time, as 10 indicated at 119." 11 Q. Okay. So the '835 patent has the concept 12 of acquisition services. Right? 13 A. Well, that's the phrase that's used in 14 that line. 15 Q. And then in the next paragraph there are 16 two other services mentioned. Right? 17 A. Well, I'm not sure what you're referring 18 to. I mean, what two are you referring to? 19 Q. Specifically, the pick-up and delivery 20 services. 21 A. Well, I mean, the sentence is quite long. 22 And it talks initially about the delivery agent
102 1 pick-up and delivery services provided." Do you 2 see that? 3 A. Yes. 4 Q. What other services does the delivery 5 agent provide in the '835 patent? 6 A. Well, at line -- Column 7, line 51 or 2, 7 52, it talks about something -- it says that "the 8 delivery agent will move to other similar products 9 or may travel to another location in search of a 10 satisfactory product." 11 So it's talking about the agent can go to 12 a different location. I mean, I think there's 13 numerous disclosures of things that the delivery 14 agents do. 15 Another example is the delivery agent in 16 Column 7, line 27. "If the customer chooses to 17 inspect the product, the customer will communicate 18 instructions to the delivery agent at 118, and the 19 delivery agent will utilize the digital image 20 capture device" . . . "to transmit real-time data 21 to customer computer 30. This data can be 22 collected and relayed in various forms."	104 1 will purchase or otherwise acquire the product on 2 behalf of customer. And then it talks about 3 how -- 4 Q. I'm sorry. Where? 5 A. That's the first part of the sentence. 6 You're asking about this whole sentence 7 starting at line 56? 8 Q. No. 9 A. What are you asking me about? 10 Q. Oh, I think you might have thought I said 11 the next sentence. I said the next paragraph 12 references pick-up and delivery services. 13 A. Oh, so I don't know what paragraph you're 14 referring to, then. Where? 15 Q. Column 8, starting at line 15 is the 16 sentence. 17 A. That's the next paragraph you're referring 18 to? 19 Q. That's the next paragraph from the one 20 that mentions acquisition services. 21 A. If you mean line 17 of Column 8 and it 22 says "for the pick-up and delivery services

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105 1 provided." 2 I mean, they're being billed for the 3 pick-up and delivery. I'm not sure that you would 4 really think of it as pick-up of the product 5 that's already been prepurchased as one service 6 and delivery of a product as another service. I 7 think it's just talking about picking up the 8 prepurchased product and delivering it to wherever 9 the user specified. 10 Q. If a customer is only being billed for the 11 pick-up and delivery services, what services are 12 they not being billed for? 13 A. I mean, all the services which are not 14 part of that pick-up and delivery of the 15 prepurchased good, that may be -- that the service 16 may charge a fee for. 17 Q. Like what? 18 A. Well, the sentence doesn't specifically 19 say it. I mean, we can look through the '835 to 20 see, if you want me to do that. 21 Q. I mean, you just told me that one of the 22 other services that the agent provides is	107 1 And my point here about why I'm referring 2 to this, they're only being billed for the pick-up 3 and delivery services, is that the user has 4 prepurchased the product and paid the retailer or 5 seller directly. 6 So this is an example of an acquisition 7 request because the user wants to acquire the 8 goods that they prepurchased where the agent is 9 not required to shop or -- shop for goods on a 10 customer's behalf. So that's what my supplemental 11 declaration is directed to, is this basic dispute, 12 which is Dr. Mitzenmacher says acquisition costs 13 should be limited to situations that have the 14 agent shopping. 15 And my point is, right here it discusses a 16 situation in which an acquisition request is for 17 the agent to simply pick up and deliver an item 18 that has -- the user has already prepurchased and 19 paid the retailer or seller directly for. 20 And that's an example of an acquisition 21 request that Dr. Mitzenmacher appears to exclude 22 with his narrowed -- in his narrow definition of
106 1 acquisition services. Right? 2 MR. BAJAJ: Objection, mischaracterizes 3 the previous testimony. 4 A. I think I said that the delivery agent can 5 purchase or otherwise acquire the product on 6 behalf of customer and deliver the product based 7 on the delivery option specified in the customer's 8 profile. 9 Q. When a delivery agent purchases a product, 10 is that something that eventually gets billed to 11 the customer or did that come out of the delivery 12 agent's pocket? 13 A. I mean, my point here with respect to 14 what 8 says about what the user is billed for, I'm 15 not really discussing what the agent is not -- I'm 16 sorry -- what the user is not billed for. 17 Q. Right. So my question -- I'm sorry. 18 A. And that point is germane to the dispute 19 that we have, which is that Dr. Mitzenmacher is 20 narrowing the definition of "acquisition request" 21 to require -- to require, you know, an agent to 22 shop for goods on a customer's behalf.	108 1 "acquisition requests" because there is no 2 shopping by the agent here because all that the 3 agent is doing is what the user is requesting. 4 They're requesting for the pick-up and delivery of 5 a good that they've already paid for. 6 And it's a pretty good example from the 7 specification, which is an example of what a 8 POSITA would understand is an acquisition request 9 but appears to be -- and only being billed for the 10 pick-up and delivery services provided. 11 And that's an example where in this 12 example acquisition request the agent is not 13 required to shop for anything. It's simply a 14 request to pick up an item that has already been 15 paid for, which is an example that the POSITA 16 would recognize as an example of an acquisition 17 request. 18 Q. Again, I mean, this example comes directly 19 after the statement that says that the acquisition 20 cannot be made. Right? 21 A. No, I wouldn't say it's coming directly 22 after that.

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109 1 Q. There are two examples of what might 2 happen after it is determined that an acquisition 3 cannot be made. Right? 4 A. I'm not sure what you're referring to. 5 Q. Column 8 says that "If the customer is not 6 qualified for the amount of the desired purchase, 7 or if a delivery agent cannot complete the 8 transaction for any reason, the customer is 9 notified that the acquisition cannot be made." Do 10 you see that? 11 A. Yes. 12 Q. And then what does the next sentence says? 13 A. "It should be understood that this 14 step can be provided at any time during the 15 service period whenever it is established that the 16 purchase price is outside of the pre-approved 17 credit limit." 18 Q. Okay. And then as an alternative to that? 19 A. "The customer has the option of paying the 20 retailer or seller directly, in which case the 21 customer will only be billed for the pick-up and 22 delivery services provided."	111 1 example, the customer wants to buy a really 2 expensive item and wants to acquire it using the 3 service, they can just go pay for that item 4 directly at the retailer and make an acquisition 5 request to have the service pick up and deliver 6 that prepurchased item. And that's what this is 7 discussing. 8 Q. Where does the '835 patent ever equate 9 pick-up and delivery services with acquisition 10 services? 11 A. A person of ordinary skill would 12 understand that if -- that this is an example of 13 an acquisition request, to go -- please, would you 14 pick up the item they've already prepurchased and 15 deliver it to my delivery address. 16 And so a POSITA reading this specification 17 understands -- is looking at the way "acquisition" 18 is used. It's used in a way specifically many, 19 many times the specification uses "purchase or 20 otherwise acquire" and "shopping or acquisition 21 request." It uses that multiple times. 22 So it's clear to a POSITA an acquisition
110 1 Q. So is not this alternative embodiment an 2 embodiment that happens when the acquisition 3 cannot be made? 4 A. Well, I think it's an alternative option. 5 I wouldn't say that this is talking about -- it 6 doesn't say in an alternative embodiment. It says 7 "alternatively." 8 So what this is saying is that, you know, 9 there may be items that the user wishes to acquire 10 that are beyond the credit limit allowed by the 11 service provider. 12 So one way the customer can still make an 13 acquisition request is to pay the retailer or 14 seller directly and then ask the service to pick 15 up and deliver the prepurchased good. That's what 16 it's saying here. 17 It's saying that that's an alternative to 18 not being able to get this delivered through the 19 credit check mechanism and maybe for some other 20 reasons why that -- that are not explicitly 21 specified. 22 But if that's the case where -- that, for	112 1 request can be performed by other means other than 2 purchasing or shopping. 3 And this is an example given which is 4 pretty clear. Would you please -- I'm going to 5 make a request. I've already prepurchased this 6 item. Would you as the service please pick up and 7 deliver the item to the delivery address. And I'm 8 going to pay you only for the pick-up and delivery 9 services provided. 10 And that's an example of what a POSITA 11 would understand is an acquisition request. 12 Q. Am I right to conclude that you believe 13 the term "acquisition request" is not limited to a 14 request to shop for goods? 15 A. Well, I may capture the -- one of the main 16 points. But I disagree that "acquisition 17 requests" should be interpreted to mean as 18 Dr. Mitzenmacher is proposing, a request for an 19 agent to shop for goods on a customer's behalf or 20 that the plain and ordinary meaning of 21 "acquisition request" should be so limited in a 22 way that requires an agent to shop for goods on a

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113 1 customer's behalf. 2 Q. Okay. Now, your patentability analysis 3 assumes, however, that an acquisition request may 4 be a request merely to pick up and deliver items. 5 Right? 6 A. I'm not making an assumption. I'm saying 7 that the POSITA is reviewing the specification and 8 talking about acquisition requests. It starts 9 talking about that throughout -- starting around 10 Column 6. It's still talking about an acquisition 11 request. 12 A POSITA understands this specific example 13 given of a customer paying the retailer or seller 14 directly, and which the service is going to bill 15 for pick-up and delivery services, is an example 16 of an acquisition request. 17 I'm not making assumptions. That is how a 18 POSITA would understand this example in the 19 context of the specification, and especially in 20 the context of the flow that's being discussed as 21 an acquisition request. 22 Q. When an agent merely picks up and delivers	115 1 A. I mean, I don't understand what's wrong 2 with the customer will only be billed for the 3 pick-up and delivery services provided. 4 It doesn't say what you're asking. In 5 this case, the user in this example, acquisition 6 request, the customer has paid the retailer or 7 seller directly for an item. They've prepurchased 8 this item and are making a request. 9 It's an acquisition request to the system 10 to pick up and deliver the particular prepurchased 11 item that the user -- the customer has already 12 paid the retailer or seller directly. That's an 13 example of an acquisition request that can be made 14 as the system is being described. 15 The spec does describe this particular 16 option where they're only billed -- only being 17 billed for the pick-up and delivery services. 18 Because in that acquisition request, the customer 19 has already paid the retailer or seller directly, 20 prepurchased the item, and now are simply making 21 an acquisition request for the system to pick up 22 and deliver the item. And that's all they'll be
114 1 an item, what services are not being billed for? 2 A. When they're only billed by pick-up and 3 delivery service provided, as it says here, there 4 are no other services being billed for except for 5 the pick-up and delivery service. 6 So I don't think I need to enumerate them 7 here because it says explicitly that the user is 8 only billed for the pick-up and delivery services. 9 Q. What other services are not being billed 10 for? 11 A. You're not getting billed for lawn 12 cutting. You're not getting billed for 13 haircutting. You're being billed only for the 14 pick-up and delivery services provided. That's 15 what it says here. Those are the words that it 16 uses. 17 You're only -- the customer will only be 18 billed for the pick-up and delivery services 19 provided. That's what they are being billed for. 20 Q. Is the customer being billed for the 21 agent's time that he or she is -- might have been 22 spent shopping for the goods?	116 1 billed for, that service. 2 Q. And although the prior paragraph talks 3 about acquisition services, it's your opinion that 4 pick-up and delivery services are acquisition 5 services? 6 A. The request for pick-up and delivery for a 7 prepurchased good is an example, as would be 8 recognized by a person of ordinary skill as an 9 example given in the specification of the '835 10 patent -- and I think this is in all the rest as 11 well -- of an acquisition request. 12 Q. Can you point me to a single location 13 where -- in the specification where it refers to 14 pick-up and delivery services as acquisition 15 services? 16 A. I can read it from the top, if you want me 17 to, but that will take a while. Let me see if I 18 can answer your question. 19 What was your question again, please, just 20 to make sure I have the right -- 21 Q. Can you point me to a single location in 22 the specification where it refers to pick-up and

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117 1 delivery services as acquisition services? 2 A. So I've seen a couple of things. For 3 example, in Column 6 it's talking about -- line 7, 4 it says, "A website tool allows the user to select 5 the delivery services of system 10." 6 In that context, if you're looking down, 7 down to line 34, it then talks about the "purchase 8 order or acquisition request is scheduled." 9 And so one of the examples are selecting 10 delivery services. And as I said earlier, you 11 know, even though in Column 8 it says "pick-up and 12 delivery services," I think it's understood that I 13 didn't think of those as two services. 14 But if you're providing a delivery service 15 like you are -- like the spec talks about the 16 website tool allowing the user to select the 17 delivery service of system 10, then that would be 18 picking up and delivering a particular item. 19 And then later on it talks about purchase 20 order or acquisition requests, still in the 21 context of the same flow of a user selecting a 22 delivery service.	119 1 potential for a confrontation or, at the very 2 least, a dissatisfied purchaser who now also has 3 lost significant time in acquiring the desired 4 product." 5 So this is describing these errands 6 generally, a specific example where a person 7 running an errand purchases something. 8 But I think it's a person of ordinary 9 skill would understand that another example of an 10 errand like that is where someone prepurchases an 11 item and asks someone to go out and run an errand 12 for them so that the -- that they can also acquire 13 the desired product or food. 14 I mean, sometimes my wife may order dinner 15 and ask me to go pick it up that she's already 16 prepaid for. That's an errand. That is generally 17 being discussed here. 18 And there is a specific example of that 19 kind of delivery service in Paragraph 8. So I 20 think those two locations, at least, describe -- 21 actually, one explicitly talks about delivery 22 services and in the context talks later about an
118 1 So that's an example of a delivery service 2 and described in the context as an acquisition 3 request. 4 Q. What is a purchase order? 5 MR. BAJAJ: Counsel, I'm going to ask you 6 to please not interrupt the witness while he's 7 trying to answer a question. 8 MR. PRICE: I thought he was done. 9 A. I don't want to forget the other thing, 10 which is that the background talks about there 11 exist services which are designed to run errands 12 for individuals and companies. Sorry. That's 13 line -- Column 1, line about 54. 14 And that goes on to say at line 62 -- let 15 me give some intervening context so that this 16 makes sense. 17 So it talks about running errands, down 18 through line 57, 58, 59. And it does say, "if the 19 person running" -- this is line 59 -- "if the 20 person running the errand purchases the wrong 21 product, the person placing the order will not 22 know until the item is delivered. This creates a	120 1 acquisition request. 2 Q. I guess I'll have a couple of questions 3 about this. My first one is, what is a purchase 4 order? 5 A. Well, I mean, one understanding that I 6 have of a purchase order would be that purchase 7 orders are sometimes things issued by companies. 8 They're documents that indicate to another company 9 that the first company is making an order. 10 And again, I'm not a lawyer, so I don't 11 really understand the legal bearing it has. It's 12 a request for the products with the expectation 13 that there will be -- they're delivered and then 14 paid for. 15 So I think that's what I think of as a 16 purchase order in some cases. 17 Q. Okay. So this is referenced at Column 6, 18 line 34. Do you see the specification equating 19 purchase orders or an acquisition request or 20 distinguishing between the two? 21 A. Well, I don't think that's phrased a 22 purchase order or acquisition request is defining

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121 1 one to be the other. I think it's saying these 2 are the things that can be scheduled for a 3 particular date or time, as the specification goes 4 on to say. 5 Q. So is a purchase order a kind of 6 acquisition request? Is it excluded from the 7 definition of "acquisition request"? Is it -- can 8 a purchase order in some circumstances be an 9 acquisition request? What is your understanding? 10 MR. BAJAJ: Objection to form. 11 A. Well, I mean, I don't think that's a 12 specific issue I discussed in my supplemental 13 declarations. I'm pretty sure I didn't talk about 14 this distinction. And I'm not sure it would 15 affect my opinion regardless of what that would be 16 because the focus is on the phrase "acquisition 17 request." 18 Q. So you don't think it is relevant to know 19 whether a purchase order is a type of acquisition 20 request or if it's something completely different 21 from an acquisition request when you're trying to 22 determine the scope of the term "acquisition	123 1 Dr. Mitzenmacher is -- and patent owner are 2 interpreting the term "acquisition request" to 3 mean a request for an agent to shop for goods on a 4 customer's behalf. 5 I don't know how the PTAB or any other 6 party would -- what they would do in the future to 7 settle this question or whether it would lead to 8 further disputes. So I understand there's a 9 process. I understand there's a legal case that 10 involves further disputes in the claim 11 construction process. I forget what that's 12 called. O2 Micro or something like that. 13 (Reporter interrupted) 14 A. I understand that -- I think the point of 15 claim construction is to try to resolve these 16 disputes. If it's resolved one way or the other, 17 I don't know that -- to what extent that would 18 resolve all the disputes, whether there could be 19 further disputes. So I don't know what's going to 20 happen here. 21 But my point is -- by what we have in 22 front of us right now, which is Dr. Mitzenmacher
122 1 request"? 2 A. The dispute about acquisition request is 3 whether, as Dr. Mitzenmacher claims, is that it 4 requires the agent to shop for -- whatever he 5 said -- let me get that exact language -- is that 6 a request that Dr. Mitzenmacher is interpreting 7 the term "an acquisition request" to mean a 8 request for an agent to shop for goods on a 9 customer's behalf. 10 Q. Do you understand that if the board 11 rejects this construction that they're not bound 12 to find that merely picking up and delivering a 13 good falls under the proper construction of the 14 term "acquisition request"? 15 A. Well, I understand that in some cases, you 16 know, the request to attempt to settle disputes 17 leads to further disputes. And so I understand 18 that there may be further clarification. 19 But certainly -- and we're at the point 20 where there is a specific dispute which is with 21 respect to "acquisition requests." 22 The specific dispute now is that	124 1 and Consumeron are interpreting the term 2 "acquisition request" to mean a request for an 3 agent to shop for goods on a customer's behalf. 4 And I'm providing my reasons why I 5 disagree with that, that construction that's been 6 set forth. 7 So I've laid out the reasons. I've given 8 examples within the specification of things that a 9 person of ordinary skill would understand are 10 examples of an acquisition request that do not 11 require the agent to shop for goods. 12 The example given is just one where the 13 agent simply picks up and delivers goods that have 14 been paid for by the customer or prepurchased and 15 paid for directly to the seller and retailer. I 16 don't know what the PTAB is going to say about 17 that. 18 Q. Do you understand whether there's a 19 dispute over whether or not merely pick-up and 20 delivery services count as acquisitions? 21 A. Well, I mean, that's an example of what 22 I'm saying in this spec as an example of an

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125 1 acquisition request. That would be understood by 2 a POSITA. 3 So that may not be -- I mean, that's part 4 of the evidence of what I'm citing to say that 5 it's improper to limit the term -- interpretation 6 of the term "acquisition request" to mean a 7 request for an agent to shop for goods on a 8 customer's behalf. 9 So I don't know if the dispute is really 10 specifically over whether that's an example or 11 not. I mean, maybe the dispute would move to 12 that. I mean, I'm providing what I'm -- in 13 rebuttal to Dr. Mitzenmacher my reasons why I 14 think it's improper and why I disagree with the 15 proposed -- Mitzenmacher's documents and 16 Mitzenmacher's proposed interpretation of the term 17 "acquisition request." 18 Q. Would you turn to Paragraph 15 from your 19 declaration. 20 MR. BAJAJ: Whenever we can take a break. 21 MR. PRICE: If you want one now, that's 22 fine.	127 1 or otherwise acquire" and "shopping or acquisition 2 requests," which really confirms to a POSITA that 3 an acquisition can be performed by means other 4 than purchase or shopping. 5 Q. That didn't answer my question. 6 My question is, is a purchase one example 7 of an acquisition? 8 A. I'm not sure that that was a dispute that 9 I understood was being raised by Dr. Mitzenmacher. 10 I don't think I addressed that question 11 specifically in any of my supplemental 12 declarations. But if you know of a place where I 13 may have talked about that, I'd appreciate a 14 pointer. There's -- 15 Q. Doctor -- 16 A. -- a number of different supplemental 17 declarations I've submitted. 18 Q. Dr. Houh, you are citing a portion of the 19 '835 patent for the proposition that an 20 acquisition can be performed by means other than 21 purchase or shopping. Do you agree? 22 A. I'm citing repeated use of the phrase --
126 1 (Recess, 2:20 p.m. to 2:28 p.m.) 2 BY MR. PRICE: 3 Q. Before the break I asked you to turn to 4 Paragraph 15 of your declaration. 5 A. Okay. I'm there. 6 Q. So in Paragraph 15, you are citing a 7 portion of the '835 patent for the proposition 8 that -- in Paragraph 14, "An acquisition can be 9 performed by means other than purchase or 10 shopping." Do you see that? 11 A. Sorry. Are you reading from here? 12 Q. That was Paragraph 14. 13 A. Oh, 14. At the end of 14, I wasn't 14 looking there, but it says, "An acquisition 15 confirms to a POSITA that an acquisition can be 16 performed by means other than purchase or 17 shopping." 18 Q. Do you agree that purchasing goods is one 19 way that you can acquire goods? 20 A. That's not specifically what I'm saying 21 here. This is with respect to the '835 patent's 22 repeated use of various phrases, such as "purchase	128 1 of the phrases "purchase or otherwise acquire" and 2 "shopping or acquisition request" and help confirm 3 to a POSITA that an acquisition can be performed 4 other than by means of purchase or shopping. 5 It's in the context of the actual dispute, 6 which is Dr. Mitzenmacher is interpreting the term 7 "acquisition request" to mean a request for an 8 agent to shop for goods on a customer's behalf. 9 We've been talking about this dispute. 10 That's the dispute, as I understand it. And 11 that's one reason why I disagree with 12 Dr. Mitzenmacher's attempt at interpretation of 13 the term "acquisition request." 14 Q. And for that, you've cited three portions 15 of the '835 patent. Correct? Paragraphs 15 16 through 17? 17 A. I have cited three specific portions of 18 the spec in those passages. I mean, I believe 19 there's more than just those three, though. I can 20 look for that now, if you want. I've cited at 21 least those three. 22 Q. Are you unwilling to answer questions

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129 1 about these portions of the specification that you 2 cited? 3 A. Well, if you want to ask me a question 4 about any of these portions, I'd be happy to 5 answer it. 6 Q. I literally just did. And you told me you 7 can't answer it because it's not part of your 8 opinion that you prepared in this case. 9 A. The question you asked was different. I 10 didn't say I couldn't answer it. It's that I'm 11 not addressing the question as you -- I wasn't -- 12 this supplemental declaration was with respect to 13 the issues that arose that I disagree with, and 14 some of them, I specifically wrote disagreements 15 here. 16 And I'm citing these three passages 17 because it shows that a POSITA would understand 18 that an acquisition can be performed by means 19 other than purchase or shopping because of the use 20 of the phrase "purchase or otherwise acquire." 21 You asked me a different question about 22 that. If you want to ask me about any specific of	131 1 And so that's the point of these citations 2 is that the specification repeatedly uses the 3 phrase "purchase or otherwise acquire." 4 And so that's part of my reason that I'm 5 citing to support why Dr. Mitzenmacher's 6 interpretation of the term "acquisition request" 7 should not be limited to a request for an agent to 8 shop for goods on a customer's behalf. 9 Q. Does the term "purchase or otherwise 10 acquire" mean that purchasing is one way to 11 acquire a product? 12 A. I'm citing these passages because it 13 confirms to a POSITA that an acquisition can be 14 performed by means other than purchase or 15 shopping. 16 Q. Dr. Houh, you are here to answer the 17 questions that I'm asking. If any of my questions 18 are out of scope, your attorneys can object to the 19 question. They have not objected to the questions 20 because my questions are within the scope. 21 I understand why you've cited it. I have 22 different questions about what it means, and I
130 1 these phrases? I didn't hear a question about 2 specifically one of these passages. 3 Q. Let's talk specifically about the phrase 4 "purchase or otherwise acquire." Are you with me? 5 A. Yes. 6 Q. What does "purchase or otherwise acquire" 7 mean? 8 A. So for example, if you look at the 9 citation from -- in Paragraph 15, it's talking 10 about the user specifies the exact location from 11 which the selected delivery agent is to purchase 12 or otherwise acquire the product, such as a retail 13 store location. 14 So what -- that's telling a person of 15 ordinary skill in the art that there are means 16 other than purchasing by which an item can be 17 acquired. 18 For example, this says "otherwise 19 acquire." It uses "purchase or otherwise 20 acquire." So it's saying that there are -- that 21 there are means other than purchasing or shopping 22 that an acquisition can be performed by.	132 1 expect an answer. 2 Do you understand me? 3 A. I will try to answer the question you ask. 4 Q. Does "purchase or otherwise acquire" mean 5 a purchase is one way to acquire? 6 A. So if you look at Column 8, it's talking 7 about this process, line 15, of -- that "the 8 customer has the option of paying the retailer or 9 seller directly, in which case the customer will 10 only be billed for the pick-up and delivery 11 services provided." And he describes this as a 12 prepurchase or prepurchase by the customer. 13 So I think it's saying here this is 14 describing a situation where even though an item 15 has been prepurchased, there's still an 16 acquisition request to go pick up and deliver it. 17 I haven't -- and that's what it's teaching here in 18 Column 8. 19 Q. Dr. Houh, I had a very specific question 20 and you are not giving me an answer. I will stop 21 this deposition and keep it open unless you can 22 give me an answer to the question that I am

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1 asking. 2 I will ask it again. Does "purchase or 3 otherwise acquire" mean that a purchase is one way 4 to acquire? 5 A. So the example in Column 8 starting at 6 line 15 -- 7 MR. PRICE: Counsel, we have to stop this 8 deposition. He's not giving an answer to the 9 question that I'm asking. And I'm entitled to an 10 answer. 11 I'm not sitting here for another three 12 hours waiting on the witness to give an answer to 13 the question that I'm asking. 14 MR. BAJAJ: Counsel, perhaps you can ask 15 it in a different way. He's entitled to answer 16 the way that he's answering. 17 I understand this is the question you 18 would like an answer to, but perhaps there's 19 another way to ask it. 20 Q. I'll try to ask my question in another 21 way. Do you agree that there's more than one way 22 to acquire goods?	133 1 And that's described as a prepurchased 2 good by the customer. That's one way that's 3 described, prepurchasing and having the request 4 for -- an acquisition request for the agent to 5 pick up and deliver the item to the user. 6 There are other examples given where -- 7 well, that's one example given. 8 MR. PRICE: Counsel, what am I supposed to 9 do? He's not answering the question. It's a very 10 simple question. 11 Do we need to stop the deposition? Do we 12 need to call the board? I'm at a loss. It's a 13 simple question and I'm not getting an answer. 14 MR. BAJAJ: You're entitled to call the 15 board if you'd like. I don't know that you'll get 16 an answer that will satisfy you. But again, I can 17 only suggest what I can suggest. 18 Q. I'll ask the question a different way. 19 Is purchasing a product excluded from the 20 meaning of "acquiring a product"? 21 If it helps, I'll hand you Exhibit 1042 22 which you cited. 135
134 1 A. I mean, I think the spec does provide 2 examples of acquiring goods that are different 3 ways. 4 Q. Is one way of acquiring goods to purchase 5 the goods? 6 A. So if you look at Paragraph -- in the '835 7 supplemental declaration, I talk about how the 8 Collins English Dictionary, which Dr. Mitzenmacher 9 relied upon, defines "acquire" as simply coming 10 into possession or obtaining something. 11 So similarly, the Merriam-Webster 12 Dictionary defines "acquire" as "to get as one's 13 own" or "to come into possession or control of 14 something, often by unspecified means." 15 Now, I will say that the '835 spec does 16 talk about different ways upon which the user can 17 acquire something. 18 One of the ways is given in Paragraph 8 at 19 line 15 where the customer had the option of 20 paying the retailer or seller directly, in which 21 case the customer will only be billed for the 22 pick-up and delivery service supplied them.	136 1 MR. BAJAJ: I'm fine without a copy. 2 A. So I think if you look at this example 3 given in Column 8 where it talks about this 4 prepurchased item, I think in that case that's a 5 precursor to the actual acquisition request in 6 this particular example. The acquisition request 7 is for the user or agent to go and pick up and 8 then deliver the item. 9 So simply by making a prepurchase, there's 10 no -- there's no possession of the item. So I 11 don't think it's -- if you're asking if they're 12 identically similar, I would say no because simply 13 prepurchasing doesn't show any possession, which 14 the -- which these dictionaries are saying is -- 15 part of the definition of "acquire," to come into 16 possession. 17 So if I prepurchase the item, I haven't 18 come into possession. But when the agent picks up 19 and delivers the item, then the customer has 20 possession. 21 Q. Dr. Houh, that did not even come close to 22 answering my question. My question is, is

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137 1 purchasing a product excluded from the scope of 2 acquiring a product? Can you answer that yes or 3 no? 4 A. I think I just did answer that question -- 5 Q. You literally didn't. 6 A. -- which is the specification talks about 7 this prepurchase of an item as one way of a kind 8 of -- making a kind of acquisition request to pick 9 up and deliver the item. 10 So I think a person of ordinary skill 11 would understand looking at the description of 12 this particular acquisition request given in the 13 '835 patent, they would understand that simply by 14 prepurchasing item there is not -- the user has 15 not acquired the item. 16 The user is still having to make an 17 acquisition request for the pick-up and delivery 18 of the item after which the user will possess the 19 item. 20 (Exhibit 1042, previously marked, was 21 retained by counsel.) 22 Q. Can we turn to Exhibit 1042, please. Can	139 1 Q. If I buy something for myself, is that 2 acquiring it? 3 A. Well, not in the sense that you actually 4 possess it if you bought it, for example, at -- 5 for example, by sending something -- purchasing it 6 or by paying a seller or retailer directly but not 7 yet having possession. 8 Q. Do you have any idea of when title for 9 goods transfers to the buyer in an online purchase 10 or do you not have any idea of when that happens? 11 A. So I understand that some -- I'm not sure 12 if this is a purchase order or something. There's 13 either -- it can occur -- I'm not a lawyer -- 14 either at the shipping dock, at shipped, or at the 15 receiving dock where it's received. 16 But I think maybe some contractual terms 17 may spell that out. But I don't know of any case 18 where it actually occurs before it hits the 19 shipping dock. At least I've not seen that 20 before. 21 So again, I'm not a lawyer. 22 Q. So if a product shifts title when the
138 1 you read me the definition that you relied on as 2 establishing the meaning of the term "acquire"? 3 A. If you acquire something, this is I think 4 Number 1, you buy or obtain it for yourself or 5 someone gives it to you. 6 And then I cite to dictionary 1043, which 7 defines the acquirer as "to get as one's own" or 8 "to come into possession or control of something, 9 often by unspecified means." 10 Q. The first definition you read to me says 11 that if you acquire something, quote, you buy 12 it -- you buy or obtain it for yourself. Do you 13 see that? 14 A. I see that. 15 Q. Is buying something a way to acquire 16 something or do we need to throw out this 17 definition? 18 A. Well, if I buy something for someone else, 19 that's not me acquiring it. And that's 20 contemplated by this definition. It's that you 21 buy it for yourself. So simply buying it is not 22 acquiring something, according to this definition.	140 1 seller puts it on the shipping dock and it's been 2 paid for, is that acquiring? 3 A. I'm not a lawyer. Again, at a high level 4 I understand that there's some cases where it's on 5 the shipping dock and that title can be 6 transferred at the shipping dock. I understand 7 that sometimes it may occur at the receiving dock 8 as well. 9 Q. Is a purchase carried out by an agent on 10 behalf of a customer within the scope of acquiring 11 the product as disclosed in the '835 patent? 12 A. I mean, I think the dispute is really over 13 whether an acquisition request should be limited 14 to that, and my opinion is why that's not correct. 15 I haven't addressed in my supplemental 16 declaration the question you're asking, I don't 17 think. 18 Q. I know. That's why I'm asking you. Do I 19 need to ask it again? 20 A. I mean, I didn't analyze that specific 21 situation specifically with respect to my 22 supplemental declaration, which is in reply to

141 1 Dr. Mitzenmacher's positions. 2 What I did analyze was whether it should 3 be limited to that kind of -- only that and 4 exclude other example -- exclude other examples, 5 such as I give in -- from the spec of the '835, 6 which specifically says that there are other ways 7 to make an acquisition request, specifically 8 describe to a POSITA other ways of making an 9 acquisition request that do not involve the agent 10 having to shop or purchase. 11 In fact, I don't think any of the claims 12 require purchasing by the agent. 13 (Exhibit 2018, previously marked, was 14 retained by counsel.) 15 Q. I'm handing you Exhibit 2018. Do you see 16 examples in this exhibit of ways that someone can 17 acquire something besides purchasing it? 18 A. You're referring to, like, it says "sale, 19 trade, exchange"? 20 Q. Uh-hmm. 21 A. I mean, those are means to come into 22 possession of, whether directly or indirectly	143 1 comes from the U.S. code on forestry and the 2 protection of timber, which is not a source that a 3 POSITA would use to interpret a term in the 4 electronic commerce arts pertaining to the '835 5 patent. 6 Q. Is the term "acquire" as used in the '835 7 patent a technical term that has a special meaning 8 in the electronic commerce arts? 9 A. I just don't understand why the statute in 10 the U.S. code on forestry and the protection of 11 timber would be a source to which Dr. Mitzenmacher 12 would want to refer to when trying to interpret 13 the claims -- the claim in the '835 patent, which 14 isn't about forestry or protection of timber. 15 Q. Does this definition of "acquire" depend 16 on the intricacies of the U.S. code on forestry? 17 A. I mean, it's not exactly the same as some 18 of these other dictionaries. So I don't know why 19 the term arose in the U.S. statutes to include 20 these specific terms, or the U.S. code. But some 21 of these words are not part of these other 22 definitions and I think just regular dictionaries.
142 1 through a sale, trade, exchange, or other 2 transaction. 3 And is this the one that comes from this 4 legal statute in -- 5 Q. It is. 6 A. I see what it says. 7 Q. Can you answer my question, then? 8 A. Well, I mean, I see where it says "come 9 into possession through." I don't think it says 10 that all those are sufficient. 11 And furthermore, it's my opinion that I 12 don't understand why Dr. Mitzenmacher is citing to 13 this legal statute in forestry because that's not 14 just what a person of ordinary skill in the art 15 would look to when they're trying to -- when 16 they're looking for definitions. 17 I have that somewhere. I discuss that 18 somewhere in my supplemental declarations. 19 Q. Do you disagree that this is what the term 20 "acquire" means? 21 A. I mean, my dispute is that this is from a 22 statute -- a specific statute in an area. And it	144 1 Q. Is a trade for goods a way to obtain the 2 goods for myself? 3 A. A trade where we exchange items and I have 4 the item traded? I think that that shows 5 possession. 6 Q. Is a sale of goods one way that I can 7 acquire goods? 8 A. You know, if I go into a store and I -- 9 the item is in the bag and I take the bag with me 10 after I've paid for it, I think I'm possessing 11 those goods. 12 Q. Is an exchange for goods one method for 13 obtaining goods? 14 A. I mean, even this notion of the dictionary 15 for forestry includes the notion of possession. 16 And that if you exchange goods and possess them, 17 that would apparently meet this U.S. code on 18 forestry's definition. 19 Q. Does "possession" mean that I am holding 20 the item in my hand? 21 A. I think that's one example of how someone 22 can think of possession.

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145 1 Q. Does "possession" refer to legal 2 possession? 3 A. Perhaps in some contexts there's the 4 notion of a legal possession. 5 Q. Is there anything in this definition in 6 Exhibit 2018 that from the point of view of the 7 plain and ordinary meaning of "acquire" is 8 inconsistent with that plain and ordinary meaning? 9 A. Well, I mean, I understand that 10 Dr. Mitzenmacher is using this definition from the 11 U.S. code on forestry and then, I think, chaining 12 the fact that it uses the word "transaction" and 13 then relying on another definition from another 14 source about the word "transaction" as an instance 15 of buying or selling something. 16 That's, again, I think how I view 17 Dr. Mitzenmacher's logic there in his report, and 18 to come up with this definition, which as I said 19 is supported by these various citations he used, 20 including the U.S. code on forestry, to say that 21 somehow acquisition should be limited and require 22 an agent to shop.	147 1 one to further define it to eventually get to 2 the -- to limit acquisition requests to require an 3 agent to shop. 4 Q. Okay. So to be clear, you don't have any, 5 quote, disagreement with the specific dictionary 6 definition. Right? 7 A. Well, I mean, I do disagree with why a 8 POSITA would look at this U.S. code on forestry to 9 start with or even at all. 10 And why not just any other, you know, lay 11 dictionary, for example, as what I've cited to in 12 my declarations, my supplemental declaration, such 13 as the Collins English Dictionary, which 14 Dr. Mitzenmacher also relied on, or the 15 Merriam-Webster Dictionary. 16 Q. So the Merriam-Webster definition says "to 17 get as one's own." Right? 18 A. I think that's one of them, if you have a 19 copy. 20 Q. I thought I gave it to you. This is 21 Exhibit 1043. 22 (Exhibit 1043, previously marked, was
146 1 And that's the basis of my disagreement. 2 It's a fact that he seemed to use "or other 3 transaction" here to then go to another definition 4 that talks about transaction as an instance of 5 buying or selling something to then support his 6 contention that that should require "acquisition 7 request" to be limited to the situation where an 8 agent is shopping for a good. 9 And my disagreements aren't with the 10 specific dictionary definition. It's just that 11 his whole chain of logic that it leads up to his 12 support of limiting an acquisition request to 13 require the adding for shopping seems a little -- 14 well, made up in the sense that you have to go 15 from one dictionary definition from the U.S. code 16 on forestry to another reference which uses 17 "transaction" in the sense of an instance of 18 buying or selling something, to now requiring 19 acquisition to require an agent shop. 20 And that's really the disagreement is that 21 this whole series of using various dictionary 22 definitions one after another, using words from	148 1 retained by counsel.) 2 Q. What are the different ways a person can 3 get a product as one's own? 4 A. I think the dictionary has two sentences 5 listed. And the one I cited in my declaration is, 6 A, "to come into possession or control of, often 7 by unspecified means." 8 Q. And we're specifically talking about 9 acquiring goods and products. Right? 10 A. You mean in the '835? 11 Q. Uh-hmm. 12 A. I think those are the examples given. 13 Q. Okay. So you've gotten products before. 14 Right? 15 A. I mean, generally speaking, sure. I've 16 also not gotten products that I've ordered online 17 as well. I hope it doesn't happen to everyone, 18 but I think it happens to a lot of people, that I 19 order something online and it never shows up. And 20 then I have to go get a refund. 21 Q. Okay. Is purchasing a product one way to 22 get the product as one's own?

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149 1 A. You know, I think if I then actually get 2 the product -- actually, one time I got an empty 3 envelope from Amazon. They said I got the 4 product. I don't know what happened there. But I 5 would not have said I got the product just because 6 I made the purchase on Amazon, that I got on one's 7 own. 8 Q. But presumably if you did get it as your 9 own, purchasing it is one way to do it. Right? 10 A. Once I actually got the product delivered 11 properly, I would have gotten what I ordered 12 online. 13 Q. When the '835 patent talks about an agent 14 acquiring a product, does it talk about that agent 15 acquiring the product by having delivered it to 16 the customer? And I can give you a point in the 17 specification to turn to. 18 So let's go to Column 7, lines 56 through 19 62. 20 A. Sorry. Could you say the line -- 21 Column 7, lines 56 to 62? 22 Q. Uh-hmm.	151 1 Q. Doesn't this say that the agent acquires a 2 product on behalf of the customer and then 3 delivers the product based on the delivery options 4 specified in the customer's profile? 5 A. Yeah. I mean, it does say that "If the 6 product is approved at 120, the delivery agent 7 will purchase or otherwise acquire the product on 8 behalf of the customer at 121." 9 And it goes on, but then it talks about 10 how this is with respect to a particular shopping 11 request. 12 Q. So what? 13 A. That's just part of the context of what 14 this is being talked about in. 15 Q. But so what? What's your point? 16 A. My point is that's part of the context 17 that this statement is in. It's in the same 18 sentence. It's that there's -- that it delivers 19 the product based on the delivery options 20 specified in the customer's profile or amended 21 delivery instructions provided by the customer at 22 the beginning of a particular shopping request or
150 1 A. Okay. 2 Q. Doesn't this talk about the agent 3 acquiring the product "on behalf of the customer" 4 and then delivering "the product based on the 5 delivery options specified in the customer's 6 profile"? 7 A. Well, that's described as in the context 8 of a particular shopping request. 9 Q. It specifically uses the term "acquire," 10 doesn't it? 11 A. It does start out using the word "acquire" 12 in line 57 or so, but it talks about how that's 13 because the customer provided at the beginning of 14 a particular shopping request -- they may have 15 changed delivery instructions. It's talking about 16 this with respect to this being a shopping 17 request. 18 Q. We're talking right now about the term 19 "acquire." Right? 20 A. Sure. I suppose. We've been talking 21 about dictionary definitions that are about the 22 word "acquire."	152 1 at some time during the particular shopping 2 request. 3 Q. Again, you keep saying this, but I don't 4 know what your point is or how it relates to my 5 question. 6 My question was, doesn't this say that the 7 agent acquires the product before delivering the 8 product based on the delivery options specified? 9 Question mark. 10 A. So I'm just clarifying the context of this 11 sentence in which it does say that, that this is 12 with respect to a particular shopping request. 13 Q. What does that have anything to do with my 14 question? 15 A. It's providing the appropriate context for 16 the statement -- 17 Q. What context does it provide? 18 A. It is providing a context that says that 19 this is part of a shopping request. 20 Q. Okay. And so the agent is acquiring a 21 product pursuant to a shopping request. Yeah? 22 A. That would be the context for this.

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153 1 Q. And the acquiring happens before it's 2 actually delivered to the customer. Yeah? 3 A. It says that it's otherwise acquired -- it 4 does say that the delivery agent will purchase or 5 otherwise acquire the product as part of the 6 shopping request. 7 Q. And the acquisition does not require that 8 the customer actually receive the acquired good in 9 his or her hands, does it? 10 A. I mean, it does say "acquire the product 11 on behalf of the customer." 12 Q. Okay. So the acquisition happens before 13 the customer receives the product. Yeah? 14 A. In the context of this particular shopping 15 request that's being discussed here, there is a 16 delivery agent who will purchase or otherwise 17 acquire the product on behalf of the customer. 18 This particular example doesn't negate the 19 other example we've been discussing throughout 20 this deposition. 21 (Exhibit 1005, previously marked, was 22 retained by counsel.)	155 1 the one-hour window. Do you see that? 2 A. Yeah, I see some of that discussion. 3 Q. And part of your opinion here is that 4 one-hour delivery is not the primary objective of 5 Park. Right? 6 A. Well, I say that it's not correct to state 7 that it is a primary objective. Dr. Mitzenmacher 8 seems to not only say it's primary but it 9 overrides all other considerations in Park. I say 10 what I say in my supplemental declaration. 11 Q. Can you turn to page 31 of Park. And do 12 you see on page 31 the line where it says, "A 13 logic process operates under certain given 14 constraints"? 15 A. I see that. 16 Q. What is a constraint? 17 A. I mean, it is -- I'm not sure how to 18 define it without using the same word. It's a 19 thing that constrains -- how to constrain things. 20 I don't know what you're looking for there other 21 than it means what it says. 22 Q. And do you see how it says that "one-hour
154 1 Q. I'm handing you a document labeled 1005. 2 Do you recognize this document? 3 A. Yes, I do. 4 Q. And what document is this? 5 A. It's the Park reference that I cite to 6 often in my supplemental declaration. 7 Q. Do you recall providing an opinion on 8 Park's discussion of the one-hour delivery? 9 A. Sorry. Was the question with respect to a 10 discussion we've had or what's in Park? 11 Q. No. What's in Park and what's in your 12 declaration. 13 A. Yeah. I think in my supplemental 14 declaration I do talk about portions of Park that 15 talk about one-hour delivery, in rebuttal to 16 Dr. Mitzenmacher's point that that's the primary 17 objective or really the -- yes, something like 18 that. 19 I'll refer you to my supplemental 20 declarations for the exact wording. 21 Q. So you have some discussions in 22 Paragraphs 27 through 29 generally that talk about	156 1 delivery window based on actual order time" is a 2 constraint under which the larger process 3 operates? 4 A. I see that as the words of the first 5 bullet. 6 Q. And so do you agree that Park says that 7 the one-hour delivery window is a constraint of 8 its system? 9 A. Well, I am not denying in this section it 10 is talking about some of the constraints and that 11 a one-hour delivery window is based upon the 12 actual order time. That's one of the things 13 listed. 14 But Park, for example, in the abstract 15 talks about how the user can have the selected 16 items delivered within the hour or within the 17 customer-specified delivery window. 18 Q. Okay. So if the customer can ask them to 19 be delivered within the hour, doesn't that mean 20 that Park needs to be able to deliver it within 21 the hour? 22 A. Well, I think that that is one of the

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157 1 things it states, but I don't think it's 2 necessarily -- it overrides other considerations 3 in Park, such as the user can select a different 4 delivery window, it can specify a delivery window, 5 or that Park says one of its objectives is also 6 100 percent customer satisfaction, which I 7 discussed in my supplemental declaration. 8 Q. Sure. Let's talk about 100 percent 9 customer satisfaction. Can you turn to page 34 of 10 Park. Would you read that entire paragraph that 11 talks about 100 percent customer satisfaction. 12 A. "As a result, given a set of manifests 13 clustered as a route in a geographic zone, the 14 estimated travel and delivery time for each route 15 can be determined and compared to the required 16 delivery time. Manifest deliveries can be 17 resequenced to allow delivery in required time 18 blocks to ensure 100 percent customer 19 satisfaction." 20 Q. What is it about this paragraph that makes 21 a customer 100 percent satisfied? 22 A. Well, it starts out that the deliveries	159 1 centers worked at the time of the invention is 2 irrelevant to this case? 3 A. I'm trying to understand your use of the 4 word "contemporary." Do you mean now or do you 5 mean -- what do you mean? 6 Q. Well, your declaration talks about 7 present -- quote, present-day articles describing 8 Amazon's fulfillment center. That's what I meant 9 by "contemporary." 10 A. Well, I mean, partly because Park is a -- 11 a person reviewing Park is the POSITA at the time 12 of the invention, which is the invention of the 13 challenged claims, the priority of those, which 14 isn't now. 15 And so I -- I don't see how describing 16 something -- how Amazon works today is relevant to 17 how a person of ordinary skill would understand 18 Park at the time of the invention because that's 19 the appropriate time for a POSITA to be performing 20 the analysis. 21 And things that arise later wouldn't be 22 part of that person of ordinary skill's knowledge
158 1 can be resequenced to allow delivery in required 2 time blocks. And so Park discloses a number of 3 things directed towards ensuring customer 4 satisfaction. 5 Q. And you specifically cited this one. 6 Right? 7 A. I did, in Paragraph 28. 8 Q. Paragraph 30 of your declaration talks 9 about a warehouse delivery model. Do you see 10 that? 11 A. I do. 12 Q. You characterize Dr. Mitzenmacher's 13 evidence, including a video of Webvan's warehouse 14 performance center, the E-Dreams film, and 15 present-day articles describing Amazon's 16 fulfillment center as being, quote, irrelevant and 17 that this characterization is incorrect. Do you 18 see that? 19 A. You mean the last sentence? I do say 20 that. 21 Q. Okay. Why do you think contemporary 22 disclosures of how warehouse-based fulfillment	160 1 set at the time of the invention. 2 Q. Are you aware of concepts that might have 3 been known 20 years ago that are also known today? 4 A. Sure. There are concepts that were known 5 in the same way. 6 But that's not what Dr. Mitzenmacher is 7 citing to. If he pointed to articles that were 8 around or before the priority date of invention 9 that said the same thing as present-day articles, 10 I think those would be appropriate to show a 11 person of ordinary skill's understanding at the 12 time. 13 Q. Yeah. Did you actually read 14 Dr. Mitzenmacher's use of this evidence and how he 15 explained how it was relevant to Park's 16 disclosures at the time of Park? 17 A. I did review Dr. Mitzenmacher's report. I 18 don't remember every word of it, though. 19 Q. Okay. Did you actually address the 20 technical arguments that he raised or did you not 21 address them because you didn't think that after- 22 arising disclosures are relevant?

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161 1 A. I don't remember exactly, but I did review 2 Dr. Mitzenmacher's reports and the documents he 3 cited to. 4 Q. Is his technical analysis on this point 5 one of the things that you in Paragraph 4 referred 6 to as something that you didn't respond to? 7 A. I mean, I don't see any further details 8 around Paragraph 30, if that's what you're asking. 9 Q. Are you aware of whether Webvan predated 10 the claimed invention? 11 A. Not sitting here right now. 12 Q. Okay. I'm going to hand you a document 13 that's been labeled Exhibit 2037. 14 (Exhibit 2037, previously marked, is 15 attached to the transcript.) 16 MR. PRICE: And let's mark this deposition 17 now confidential, just in case there end up being 18 disputes over whether or not the excerpts of 19 information in this document are confidential. 20 MR. BAJAJ: I'm going to object under 21 37 CFR 42.23(b). New evidence can't be included 22 in the surreply.	163 1 report of Dr. Sandeep Chatterjee regarding the 2 invalidity of the '594, '191, '067, and '835 3 patents, which was filed in the district court 4 case, Consumeron v. Maplebear, on February 17th, 5 2023. 6 Do you agree that my characterization at 7 least based on the cover page is correct? 8 A. I wouldn't because I think this is 9 incomplete. This appears to be only excerpts. 10 Q. It is excerpts. And I will tell you that 11 this is an excerpted version of the declaration. 12 And I have very limited questions about the 13 excerpted portions. 14 MR. BAJAJ: Consistent with the 15 recognition that this is an excerpt of the 16 documents, I'm going to object under FRE 106, 17 which requires the remainder of the related 18 writing. 19 MR. PRICE: And we are happy to serve that 20 on you, but I believe you have it already. 21 Q. Dr. Houh, can you turn to the table of 22 contents, please.
162 1 MR. PRICE: You're entitled to that 2 objection, but the board has on multiple occasions 3 stated that documents may be introduced into 4 evidence at a deposition, including a deposition 5 on a reply declaration. 6 I can give you some citations if you'd 7 like or we can just leave it at that on the 8 record. 9 MR. BAJAJ: I'll just keep the objection 10 on the record. 11 BY MR. PRICE: 12 Q. Dr. Houh, have you ever seen this 13 document? 14 A. No, I don't think so. 15 Q. Okay. Do you know who Dr. Sandeep 16 Chatterjee is? 17 A. I think I do. I recognize the name. 18 Q. Have you ever spoken with Dr. Sandeep 19 Chatterjee about this case? 20 A. No. 21 Q. I will represent to you, as shown on the 22 face of this, that this is the opening expert	164 1 A. Okay. 2 Q. On page 3, do you see a section of the 3 table of contents referring to overview of the 4 prior art? 5 A. Yes. 6 Q. Do you see Webvan listed there? 7 A. Yes. 8 Q. Do you see Cosmo.com listed there? 9 A. Yes. 10 Q. Do you see Park listed there? 11 A. Yes. 12 Q. Do you see Kim listed there? 13 A. Yes. Although I can't be sure what Park 14 or Kim are specifically or what Webvan is 15 referring to based on these headings. 16 Q. I understand. Would you agree that 17 Dr. Chatterjee has referenced Webvan, Cosmo.com, 18 Kim, and Park as prior art to the '835, '594, 19 '191, and '067 patents? 20 MR. BAJAJ: Objection to form. 21 A. The table of contents showed sections that 22 are directed to Webvan, Cosmo.com, Kim, and Park.

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165 1 Q. So let's turn to page 138. Do you see 2 some paragraphs describing an overview of what 3 Webvan is? 4 A. I don't know. If you're referring to the 5 whole Section D, I agree there are a number of 6 paragraphs in Section D. 7 Q. Is it your opinion that Webvan is 8 irrelevant to the patentability of the '191, '594, 9 '067, and '835 patents? 10 MR. BAJAJ: Objection to form. 11 (Exhibit 2015, previously marked, was 12 retained by counsel.) 13 A. Well, what I said in my declaration is 14 that an undated video of Webvan's warehouse 15 fulfillment center, Exhibit 2015, as 16 Dr. Mitzenmacher provided, I didn't see how an 17 undated video would necessarily be relevant. 18 Q. Is that because of date or the content of 19 the video? 20 A. I think Dr. Mitzenmacher wanted to have 21 shown that there was. I have often seen 22 declarations of various sorts attesting to	167 1 priority date of a patent are per se irrelevant? 2 A. Well, I'm not a lawyer, as I stated. But 3 with respect to invalidity analyses, I've been 4 instructed that prior art for the purpose of 5 showing anticipation or obviousness should not be 6 later than any priority date of the challenged 7 patents. 8 Q. What were you told in terms of the 9 relevance of documents arising after the priority 10 date in terms of demonstrating the state of the 11 art at the time of the invention? 12 MR. BAJAJ: Objection to the extent it 13 calls for privileged information. 14 A. I mean, my legal understanding is laid out 15 within my declarations. 16 Q. Okay. Is there anything in your legal 17 understanding that's laid out in your declarations 18 that tells you that a document arising after the 19 priority date of the -- of a patent is irrelevant 20 to understanding the state of the art at the time 21 of the invention? 22 A. Well, what my understanding of the law is
166 1 availability of videos or other references on 2 particular dates. 3 But I don't recall if that was part of 4 what Dr. Mitzenmacher cited to. I don't think so. 5 Otherwise, I don't think I would have talked about 6 this here in my declaration. 7 Q. Dr. Houh, are you a lawyer? 8 A. I'm not. No. 9 Q. You are a technical expert. Right? 10 A. Sure. 11 Q. Did you address the technical points that 12 Dr. Mitzenmacher made with respect to Webvan, the 13 E-Dreams film, or the present-day articles 14 describing Amazon's fulfillment center? 15 A. Well, I don't see where I found that 16 around Paragraph 30. But when I'm doing -- citing 17 documents, I try to ensure that I can provide 18 documents that are around the priority date or 19 before of whatever patent at issue that I'm 20 discussing. 21 Q. Is that because as a lawyer you have the 22 understanding that documents that arise after the	168 1 was provided to me by practitioner's attorney and 2 set forth in my first declaration. So if you'd 3 look at that, that lays out what I was told. And 4 that's my understanding. 5 Q. Okay. If you'd turn to pages 156 through 6 160 of Dr. Chatterjee's expert report. 7 A. Okay. 8 Q. Despite Dr. Chatterjee's citation to 9 Cosmo.com, is it your opinion that Cosmo.com is 10 irrelevant to the patentability issues raised in 11 this case? 12 MR. BAJAJ: Objection to form. 13 A. What I cite to with respect to the Park 14 reference are actually the portions of the 15 reference as disclosed in the Park reference 16 itself. 17 Q. And Park is the CEO of Cosmo.com, or was 18 at the time. Right? 19 A. I think that sounds right. 20 Q. So descriptions of how Cosmo.com operated 21 are or are not relevant to how a person of 22 ordinary skill in the art might interpret the Park

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169 1 reference? 2 A. Well, I mean, the Park reference is read 3 in the context of -- at the time of the invention 4 of the challenged claims in the context of the 5 specification of the challenged claims. 6 Sorry. That's the POSITA. The POSITA is 7 that person. And they're interpreting the '835 8 patent that way. But it's the same POSITA that's 9 looking at the Park reference. 10 But the Park reference discloses what it 11 discloses. And I've cited to the portions of the 12 Park reference that talk about various portions. 13 I think specifically how Park talks about just 14 putting items in bags or something, I've cited 15 that in my declaration. It still says that. 16 And so I'm not sure that the -- that 17 there's -- so with respect to the video about the 18 E-Dreams film, I think Dr. Mitzenmacher is using 19 that for part of his opinion as to why the goods 20 are meticulously packaged for delivery. 21 And my point is that Park does disclose 22 certain things. It does say, for example, how it	171 1 Park are, for example, wrapped in bubble wrap, 2 boxed, taped. It simply says that the goods are 3 taken from the carton and placed into one or more 4 bags. 5 So that's why I'm saying that in that 6 particular case, that's a mischaracterization 7 based on applying the video to Park. The video is 8 not the Park reference. 9 Q. Is it your opinion that the Park 10 reference -- that the video shows goods being 11 wrapped in bubble wrap, boxed, and taped? 12 A. So what I cite here are excerpts from 13 Dr. Mitzenmacher's deposition. So we can look at 14 what he's saying there, if you want. 15 Q. That's okay. I'll move on. 16 I'm going to hand you another document. 17 Dr. Houh, do you recognize this document? 18 A. Yes, I do. 19 Q. And what document is this? 20 A. This is a certified translation of the Kim 21 reference. But I will note that there was a 22 correction submitted later which doesn't appear to
170 1 discloses that goods are placed and ready to 2 deliver fast. 3 In fact, the portion of the spec of the 4 Park spec on page 16, starting at line 24, says, 5 "The clerk takes the items from the carton in the 6 assembly area 36 and places them with the order 7 ticket 33 into one or more bags suitable for being 8 carried by a delivery agent to the customer's 9 delivery location. The ready-to-deliver bags are 10 then placed into a delivery staging area 38 until 11 the delivery agent is ready to leave and make the 12 deliveries." 13 So my point is that that video, which is 14 not the Park reference, that Dr. Mitzenmacher 15 cites to I believe as support for his allegation 16 that Park's goods are meticulously packaged for 17 delivery, the portion of the Park spec there 18 doesn't say that. 19 He may be pointing to the video for his 20 support, but I think that would be a 21 mischaracterization of what Park says. 22 Park doesn't say here that the goods in	172 1 be in this document with respect to Figure 2. 2 Q. Okay. I will not ask you questions about 3 Figure 2. 4 Do you recall the first time I depose 5 you, Dr. Houh, about this piece? 6 A. Vaguely. I think I do. 7 Q. Do you recall testifying that a florist 8 with a website who delivered products to customers 9 who ordered goods through that website is an 10 example of a delivery service provider, as 11 disclosed in Kim? 12 A. I don't remember specifically what I said 13 in my deposition. 14 Q. Did you review your deposition testimony 15 when you prepared your second declaration here? 16 A. I don't remember one way or the other. 17 Q. You don't remember talking about florists 18 in Kim at all? 19 A. Vaguely. I just don't remember all the 20 words I said about it. 21 Q. Can we turn to page 2. Would it surprise 22 you if what you said during your first deposition

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173 1 was directly contrary to the testimony that you're 2 giving in your second declaration? 3 A. I don't know if it would surprise me or 4 not. I don't know what you're saying that is 5 contradictory. 6 Q. Would you turn to Paragraph 5 of your 7 declaration. 8 A. Okay. 9 (Exhibit 1045, previously marked, was 10 retained by counsel.) 11 Q. So here you state specifically that you 12 reviewed Exhibit 1045, which is the transcript of 13 the deposition of Dr. Michael Mitzenmacher. 14 Right? 15 A. Yes. 16 Q. I don't see on here any evidence that you 17 reviewed your own transcript before providing your 18 opinions in this supplemental declaration. Is 19 that an oversight or did you not review it? 20 A. I don't remember if I reviewed it or not, 21 so I'm not sure if it's an oversight or not. 22 Q. Did you review it in preparation for your	175 1 try to explain your testimony from your deposition 2 in your second declaration. Correct? Even though 3 that happened first? 4 A. Not that I can recall in my supplemental 5 declarations. 6 Q. We are on page 2. Right? 7 A. Okay. 8 Q. Page 2 talks about the technical field of 9 the invention and conventional art. Right? 10 A. There is a red heading on page 2 that says 11 that. 12 Q. So I'd like first to focus a little bit of 13 time and attention on this section, if we can. 14 Do you see the portion of the section that 15 begins, "Recently, a rapid penetration of the 16 Internet"? 17 A. Yes. 18 Q. So is this describing websites which 19 display and sell products that differ from 20 existing selling methods? 21 A. You left out a whole bunch of words there 22 when you were reading it. It's saying what it's
174 1 testimony today? 2 A. No. 3 Q. So you don't recall testifying that a 4 florist with a website that allows a user to order 5 products and have them delivered was an example of 6 a delivery service provider, as disclosed by Kim? 7 A. I don't remember exactly what I said in my 8 first declaration. 9 Q. This wasn't your declaration. This was 10 your deposition. 11 A. I mean, sure, in the deposition. I don't 12 remember all the words that I said. 13 Q. You don't remember the words. And you 14 also didn't try to explain why the words that you 15 used were consistent with the opinions that you 16 now hold in your second declaration. Right? 17 A. I couldn't explain at my deposition 18 something I'm explaining in my supplemental 19 declaration because I hadn't yet written the 20 supplemental declaration at the time of my 21 deposition. 22 Q. My question was the opposite. You didn't	176 1 saying. It didn't exactly say what you said it 2 said. 3 Q. Can you read the next paragraph about what 4 these websites do? 5 A. Okay. 6 Q. Okay. So can you tell me your 7 understanding of that paragraph? 8 A. So this paragraph talks about websites 9 that have images or videos of products that can be 10 viewed by customers who may want to purchase the 11 products. 12 And that when customers visit the 13 websites, order the products they want, and pay 14 for those products they ordered, the products, if 15 the payments have actually gone through correctly, 16 are delivered to the customers or the people that 17 the customers want the product delivered to. 18 Q. Okay. The next paragraph begins with, "In 19 particular." Right? 20 A. Yes. 21 Q. So this is talking in more particularity 22 about these websites. Right?

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177 1 A. I mean, it's giving maybe specific 2 examples of gifts for special occasions. 3 Q. Okay. Do you see the word "seller" in 4 this paragraph? 5 A. Yes. 6 Q. Who was the seller here? 7 A. Well, I think in this particular 8 paragraph, this example given, the seller would be 9 the seller of the product. 10 Q. The seller of the product that was 11 purchased via the website. Right? 12 A. So this is an example of things we were 13 talking about earlier where -- you don't have to 14 use those words, but I think it would be 15 understood that in the context of the overall spec 16 that, in fact, they are talking about, for 17 example, the products that were -- images were 18 displayed or videos or products on websites. 19 Q. Okay. So the seller here refers to 20 whatever entity runs the website that displays the 21 images or videos so that they can be purchased. 22 Right?	179 1 Q. Okay. But the seller is the one who has 2 the product and delivers it. Right? 3 A. The seller is the one that has the product 4 and provides delivery. 5 Q. Okay. Moving on to the next two 6 paragraphs of the "Field of the Invention" 7 section, there are described a few problems with 8 this method of selling goods. Correct? 9 A. I don't know how I characterized it. 10 There are a number of problems. But one of the 11 problems discussed in the next paragraph is that 12 customers often end up receiving products which 13 are not identical to the products ordered. 14 Q. I want to move on to the technical 15 problems to be solved by the invention. 16 Do you see where it says, "Against the 17 backdrop of the problems stated above, this 18 invention is intended to enhance the reliability 19 of the delivery services"? Do you see that? 20 A. Yes. 21 Q. What are the delivery services that Kim is 22 referring to here?
178 1 A. Well, the seller is referring to the 2 actual seller of the product. I don't know that 3 necessarily means the owner of the particular 4 website. But it would have been offered through a 5 website. 6 Q. The seller is who the customer purchases 7 the product from. Right? 8 A. I think that's what a person of ordinary 9 skill would understand. 10 Q. Okay. And then this paragraph goes on to 11 say that the seller has the product delivered at a 12 specific day of celebration specified by the 13 customer. Right? 14 A. I think it does go on to say that. 15 Q. So is it fair to say that the seller in 16 this case is the entity that operates the website 17 and facilitates the purchase and delivery of the 18 product? 19 A. Again, I don't see that. The seller 20 doesn't necessarily have to be the owner or 21 operator of a website. It's not saying that 22 specifically.	180 1 A. So it does talk about the delivery service 2 process, which is starting from a scene in which 3 the product is being received, and then 4 transmitting images in real time to the customer 5 who ordered the product. 6 And when I said provide services earlier, 7 provide delivery, I meant provide for or arrange 8 for delivery with respect to the seller. 9 And then so here the scene in which the 10 product is being received that the -- as part of 11 the process it's talking about. 12 Q. I'm sorry, Dr. Houh. That didn't answer 13 my question. 14 What are the delivery services that Kim is 15 referring to when it says that the invention is 16 intended to enhance the reliability of the 17 delivery services? 18 A. It's talking about the delivery services 19 of when products are ordered and delivered. And 20 it's going on to discuss an improved advance over 21 the traditional method described in the 22 background.

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181 1 Q. Okay. And specifically the part that we 2 talked about. Right? Those paragraphs that begin 3 "These websites display" and "In particular"? 4 Those are the delivery services that are being 5 improved. Right? 6 A. And that's what's described in the 7 background. 8 Q. Okay. How does Kim disclose improving 9 those delivery services on page 2 here? 10 A. Well, Kim is explaining that its advance 11 over the traditional method described in the 12 background is the use of a distinct delivery 13 service provider that can receive a customer order 14 for a product identified -- for example, in an 15 advertisement -- capture an image of the actual 16 product for the customer confirmation, and deliver 17 the product. 18 Q. I'm sorry. Where are you reading from? 19 A. That's in my supplemental declaration. 20 I'm maybe paraphrasing a little bit. 21 Q. That wasn't my question, Dr. Houh. 22 My question was, how does Kim disclose	183 1 of Kim. Do you understand? 2 A. Okay. 3 Q. What does Kim describe as addressing -- as 4 being intended to enhance the reliability of the 5 delivery services discussed in the "Technical 6 Field of the Invention" section? 7 MR. BAJAJ: Objection, form. 8 A. Well, one thing it's discussing is this 9 one paragraph at the bottom of page 2, which is 10 really just the beginning of the description of 11 the rest of the invention and how it operates. 12 This section is just one paragraph. 13 (Interruption) 14 Q. It should be very easy for you to answer 15 my question. 16 A. I'm sorry. I wasn't done with my answer. 17 I was waiting for the phone to stop ringing. 18 So this section is talking about enhancing 19 the reliability of the delivery services and allow 20 the sense of joy and emotions felt by the 21 recipient to be confirmed by capturing images of 22 the entire delivery process, such as a product
182 1 improving those delivery services on page 2 here? 2 A. Well, the part about where a customer 3 places an order of a product to a delivery service 4 provider is right here on page 2 in step 1. 5 Q. Dr. Houh, there's no step 1 on page 2. 6 I'm asking you specifically about page 2. Can you 7 focus there, please. 8 A. I mean, there's only one paragraph 9 about -- as an introduction to what Kim is talking 10 about here. So page 2 is primarily about the 11 background and the conventional art. 12 Q. There's also a section called "Technical 13 Problems to Be Solved by the Invention." Do you 14 see that? 15 A. Yes, I see it. But there's three or four 16 more pages of the patent. 17 Q. I agree. My question is about what is on 18 page 2. Can we please focus on page 2. If you 19 need to talk about other parts after you answer my 20 questions to give more context to your answer, you 21 will be free to do so. But now I'm asking you a 22 very specific question about a very specific part	184 1 order, a scene in which the product is being 2 received through the delivery service provider's 3 mobile communication terminal equipped with a 4 digital camera, et cetera, and transmitting the 5 images in real time to the customer who ordered 6 the product via phone, fax, or online. 7 Q. Does this paragraph say anything about 8 setting up a delivery service provider that is 9 distinct from the seller? 10 A. They knew how to talk about seller in the 11 background. It's not using the term "seller" 12 here. It's using the term "the delivery service 13 provider." 14 Q. Does the term "seller" come up in Kim 15 anywhere other than in the background? 16 A. I mean, I don't see the term "seller" from 17 the portion at the bottom of page 2 through the 18 end. 19 Q. So there are no express disclosures of the 20 delivery server -- service provider distinct from 21 a seller. Correct? 22 A. I mean, it uses a different phrase from

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185 1 "seller" in this portion. 2 Q. You also told me that the delivery 3 services referred to in the background are the 4 ones associated with the websites that sell 5 products to customers. Right? 6 A. In the background, the seller can provide 7 for or arrange for delivery services. That's what 8 the background is saying. That's the traditional 9 model I think that it's talking about. 10 Q. And there's no disclosure of improving 11 upon that system by creating a delivery service 12 provider that's distinct from and interacts with a 13 seller, is there? 14 A. I mean, it is describing as part of the 15 invention starting at the construction and 16 operation of the invention. And I do say that Kim 17 is explaining how it's advanced over the 18 traditional method described in the background is 19 the use of a distinct delivery service provider. 20 I mean, that's what I'm saying in Paragraph 36. 21 Q. I understand where you're saying that, but 22 where does Kim say that?	187 1 seller. And what the construction, operation, and 2 invention, Kim is talking about now that there's a 3 delivery service provider. 4 Q. Do you recall telling me that the seller 5 referenced in the background was the one -- was 6 the delivery service provider that is being 7 improved on here? 8 A. I mean, I don't recall exactly what I 9 said. The background is the background. But what 10 Kim is teaching about the actual invention is that 11 there's now a delivery service provider. Whatever 12 I said about the background, I don't remember 13 exactly what I said. I don't hear any conflict 14 with anything I'm saying now. 15 MR. PRICE: Okay. I have no further 16 questions today. 17 MR. BAJAJ: We have no questions of the 18 witness. Thank you. 19 (Off the record at 4:36 p.m.) 20 21 22
186 1 A. Kim is saying the invention is intended to 2 enhance the reliability of the delivery services. 3 That's part of what it's saying. And it's doing 4 so by saying that a customer places an order of a 5 product to a delivery service provider and then 6 that can receive a customer order for a product 7 and then as part of the process can capture an 8 image of the actual product customer 9 confirmation -- that's step 5, for example, listed 10 on page 3 -- and then deliver the product. 11 Q. How is that any different from the 12 background where a customer purchased a product by 13 ordering the product via phone, fax, et cetera, or 14 ordering the product via the Internet and having 15 the product delivered? 16 What about those disclosures tells you 17 that there's a distinct delivery service provider 18 who is now going to visit sellers in person? 19 MR. BAJAJ: Objection, form. 20 A. Well, Kim is talking about two distinct 21 entities, a delivery service provider and a 22 seller. So the traditional model is there's the	188 1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC 2 I, Michelle Keegan, Registered Merit 3 Reporter and Notary Public within and for the 4 Commonwealth of Massachusetts, do hereby certify: 5 That HENRY HOUH, PH.D., the witness whose 6 deposition is hereinbefore set forth, was duly 7 sworn by me before the commencement of such 8 deposition and that such deposition was taken 9 before me and is a true record of the testimony 10 given by such witness. 11 12 I further certify that the adverse party, 13 MAPLEBEAR INC. D/B/A INSTACART, was represented by 14 counsel at the deposition. 15 16 I further certify that the deposition of 17 HENRY HOUH, PH.D. occurred at the offices of 18 Regus - Prudential Tower, 800 Boylston Street, 19 Boston, Massachusetts 02199, on Friday, 20 October 20, 2023, commencing at 9:17 a.m. to 21 4:36 p.m. 22 I further certify that I am not related to any of the parties to this action by blood or marriage, I am not employed by or an attorney to any of the parties in this action, and that I am in no way interested, financially or otherwise, in the outcome of this matter. IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of October, 2023. My commission expires May 15, 2026.  NOTARY PUBLIC IN AND FOR THE COMMONWEALTH OF MASSACHUSETTS

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