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

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4 BMW OF NORTH AMERICA, LLC,

5 Petitioner,

6 v.

7 NORTHSTAR SYSTEMS LLC,

8 Patent Owner.
Patent No. 8,478,527

9 Filing Date: July 5, 2011
Issue Date: July 2, 2013

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12 Examination of CRAIG ROSENBERG, Ph.D.,
13 an Expert Witness, who is located in
14 Seattle, Washington on February 2, 2024
15 at 11:37 Eastern Time before Dawn Matera,
16 a Certified Shorthand Reporter and Notary
17 Public for the State of New York.

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1 CRAIG ROSENBERG
2 C R A I G R O S E N B E R G, the
3 Witness herein, having first been duly
4 sworn by the Notary Public, was examined
5 and testified as follows:
6 EXAMINATION BY MR. RUBINO:
7 Q. Good morning, Dr. Rosenberg.
8 A. Good morning.
9 Q. Have you ever been deposed
10 before?
11 A. I have, yes.
12 Q. About how many times?
13 A. Approximately 50 times.
14 Q. Can you please state your whole
15 name for the record?
16 A. Craig Stuart Rosenberg.
17 Q. And since you have been deposed
18 before, I would like to go over some
19 ground rules but they will probably be
20 fairly old hat for you, okay?
21 A. That sounds good to me.
22 Q. Throughout the course of the
23 deposition today I will be asking
24 questions. The court reporter on video
25 will be taking down your answers. She

CRAIG ROSENBERG

can't record hand gestures or head nods. All of your answers have to be verbal; do you understand that?

A. I do.

Q. And if I ask you a question and it's unclear, please ask me throughout the course of the day to rephrase it; is that fair?

A. Yes, it is.

Q. And otherwise if you don't ask me to rephrase or indicate that it's unclear, we will have assumed that you understood the question; is that fair?

A. That's also fair.

Q. Is there any reason why you can't provide truthful and accurate testimony today?

A. No.

Q. Dr. Rosenberg, for whom do you work in this case, who has employed you?

A. Well, I am working with the law firm of Finnegan for their client BMW.

Q. Are you engaged by BMW or by Finnegan?

CRAIG ROSENBERG

A. I believe I would need to go back and look at the engagement agreement, which I haven't revisited since I was engaged. But I believe it's Finnegan for the benefit of BMW, for their client BMW. So I believe I'm engaged by Finnegan. The agreement is with Finnegan.

Q. Dr. Rosenberg, about how many hours have you spent in these cases?

A. I would estimate between 150 and 200 hours.

Q. What's your hourly rate?

A. 650 per hour.

Q. Is it fair to say that you've been compensated approximately $130,000 for this case so far?

A. Again, that's an estimate. An estimate. But I would estimate about 150, perhaps as much as 200 hours times 650 an hour. So, yes, I have been working on this case, I believe since March of 2023.

Q. And when we say this case, are

1 CRAIG ROSENBERG
2 we referring to the three IPRs, IPR
3 numbers 202300890, 202300934 and
4 202301017?
5 A. That is all correct.
6 Q. And it's your understanding
7 that we're here today to provide your
8 deposition in relation to those three
9 petitions, correct?
10 A. Yes, that's my understanding.
11 Q. And in the context of those
12 three proceedings, you submitted expert
13 declarations, right?
14 A. I did.
15 Q. Now, was it one declaration or
16 three declarations?
17 A. It was three different
18 declarations.
19 Q. Did you draft it three times or
20 did you draft it once and then modify it
21 for subsequent declarations?
22 A. Well, as you know there is
23 similarities between the three patents at
24 issue. So there was some reuse between
25 the -- between various passages in the

CRAIG ROSENBERG

declarations where we used just because of similarities in the claims and the claim limitations.

Q. Have you ever testified at trial before?

A. I have.

Q. How many times?

A. Eight times.

Q. Do you recall who those -- who you were engaged by each of those eight times?

A. No. I mean I haven't memorized all of them but if we looked at my CV and we go to the back there is testifying experience. I could go back down through those and point out which ones were trial testimony.

Q. Dr. Rosenberg, do you have any anything with you in terms of documentation?

A. Yes. I've got my paper copies of my declarations. I've got electronic copies of the declarations. I have some paper copies of the prior art and

CRAIG ROSENBERG

electronic copies of the prior art. I have one sheet that is excerpts from my declarations. And a couple of sheets that basically just show how various grounds are mapped to the claims for the three different patents at issue.

Q. Is that a document that you have submitted to the Patent Office already or is that a new document that you generated?

A. I believe -- this is a new document, correct?

MS. SPECHT: Yes, I can help clarify, Vincent. It's a new document. It's basically the tables in each of Dr. Rosenberg's declarations that say what the grounds are.

A. They would correspond to the table of contents that show which grounds, which prior art is used for which grounds.

MS. SPECHT: If you want to mark them, we are happy to pop them in

1 CRAIG ROSENBERG
2 Exhibit Share folder.
3 MR. RUBINO: I am not quite sure
4 what they are. I would like to -- I
5 would like to ask questions of your
6 witness about the documents in this
7 proceeding and not to have him, you
8 know, bringing new documents to a
9 deposition. That's a little kind of
10 ridiculous, honestly.
11 MS. SPECHT: Well, Vincent,
12 that's not ridiculous. Dr. Rosenberg
13 is entitled to bring summary documents
14 that he prepared himself in
15 preparation for this deposition.
16 You're of course welcome to ask him
17 questions. You're welcome to mark
18 them as exhibits. But he can have
19 whatever he wants to rely on with him.
20 MR. RUBINO: I don't think
21 that's right. He can't just take new
22 testimony with him and introduce it at
23 deposition, that's just not correct.
24 MS. SPECHT: Vincent, continue
25 asking your questions at all. But it

1 CRAIG ROSENBERG
2 is not new testimony. As
3 Dr. Rosenberg said, and I confirmed,
4 it is the charts from the grounds
5 presented in each of his declarations.
6 There is no new information. So maybe
7 proceed with your questions and then
8 you can decide whether you object or
9 not.
10 MR. RUBINO: I object. Sounds
11 like new information to me. It sounds
12 highly inappropriate.
13 MS. SPECHT: And we disagree
14 with your objection.
15 MR. RUBINO: Are you going to
16 insist that he uses these documents
17 throughout the course of the day
18 today?
19 MS. SPECHT: I am going to
20 insist that Dr. Rosenberg use any
21 materials that he wants to rely on
22 that he prepared in preparation for
23 this deposition, which is what he has
24 with him.
25 Q. Dr. Rosenberg, do you have any,

CRAIG ROSENBERG

any other electronic devices active that you can message people on? Are you pretty much locked down right now?

A. I am locked down. There is a cell phone at the end of the conference table but it's in airplane mode, and I just have this Zoom meeting up and no other messaging apps. No other communications other than you and I.

MR. RUBINO: So here is the deal, Kara, I am not going to mark these documents. I would like you to e-mail them to me and I can determine whether or not I want them to mark them. If I was sitting there in person I can take a look and decide whether I want to mark it. Is that fair?

MS. SPECHT: That's fair. We will have them sent to you right now.

Q. Dr. Rosenberg, you have testified at, you said in jury trials before, right?

A. I have, yes.

1 CRAIG ROSENBERG
2 Q. Of those eight times, how many
3 times has the jury held in your favor?
4 A. I really, I would need to go
5 back through, through the cases and -- I
6 mean in some cases it's not just so cut
7 and dry.
8 Let's see, I was working for a
9 defendant and the plaintiff wanted a
10 very, very large sum of money and the
11 jury decided on a very, very small sum of
12 money. So the attorneys I was working
13 with and their client was incredibly
14 happy. Does that count as in our favor
15 or not? It's not necessarily so binary
16 and cut and dry. And I don't know just
17 sitting back here. I would have to go
18 back and look through the trials and
19 think about it.
20 As far as damages, I really
21 haven't kept track or kept score, so to
22 speak.
23 Q. And so, Dr. Rosenberg, back to
24 your electronic devices. So you don't
25 have any electronic means of

CRAIG ROSENBERG

communicating with anyone else, right?

A. That's correct.

Q. And you don't have any other means of communicating with anyone else other than the people here on the Zoom, right?

A. That is also correct.

Q. So who is sitting in the room next to you?

A. Kara, Sneha and Lionel, the three attorneys working for Finnegan.

Q. I see.

MR. RUBINO: So Kara, you're physically in the room with him?

MS. SPECHT: Correct. As we represented to you by e-mail the other day.

MR. RUBINO: I am assuming the person whose head I see in the reflection on the screen is, it doesn't look like Lionel, but maybe it is.

MS. SPECHT: That's Sneha.

Q. So other than those attorneys,

CRAIG ROSENBERG

there is no one else in the room with you, right?

A. That's correct.

Q. About how long did you spend preparing for your deposition?

A. I met with these three attorneys over the course of two days, I am estimating, 10 to 12 hours over the course of Wednesday and Thursday of this week.

Q. Have you ever had the Patent Office disagree with any of your expert testimony?

A. When you say the Patent Office, I am not sure if it was the Patent Office or if it was a District Court case. But if you're asking about a Daubert challenge or something like that, that's happened once to my knowledge. I can describe that.

Q. Sure, can you please describe your Daubert challenge where the Court did not agree your analysis?

A. Sure. The case was Aatrix

1 CRAIG ROSENBERG
2 versus Green Shades. And I was asked to
3 do a 101 analysis.
4 A lower court had already
5 agreed -- so it was Alice Step 1 and Step
6 2. A lower court had already agreed that
7 Step 1 of Alice was satisfied. The
8 attorneys asked me to only do Step 2 of
9 Alice. I wrote a 230-page report, of
10 which three pages were describing how the
11 lower court had already determined that
12 Step 1 of Alice was satisfied and that I
13 agreed with the lower court. And the
14 vast majority of my report was all on
15 Step 2 of Alice. Opposing counsel filed
16 a Daubert challenge that I should have
17 done Step 1 and Step 2 Alice, even though
18 I was asked not to do Step 1. And the
19 appellate court agreed. And my report
20 was disallowed because of that.
21 The attorneys felt very bad
22 that they asked me not to do Step 1,
23 obviously. I felt bad. But anyway,
24 through no fault of my own, that report
25 was stricken.

1 CRAIG ROSENBERG
2 Q. How about the Patent Office
3 specifically, do you recall any times
4 when the Patent Office disagreed with
5 your analysis?
6 A. No, I am not aware.
7 Q. So you're unaware of any cases
8 in IPRs where in final written decisions
9 the Patent Office disagreed with your
10 analysis, right?
11 A. That's correct.
12 Q. Do you recall a case where you
13 represented somebody named Silver State
14 Intellectual Technologies?
15 A. I do. I do recall that case.
16 Q. Who did you represent in that
17 case?
18 A. Silver State.
19 Q. How about a case Valmont v.
20 Lindsay?
21 A. Yes, I recall that case, too.
22 It would be -- I know I had a deposition
23 in that case, so that would be in my CV
24 as far as which side I represented. I
25 can't recall right off. I believe it was

CRAIG ROSENBERG

ultimately successful. I remember the attorney contacting me and thanking me, because he was successful.

Q. So to your knowledge, that was a success, right?

A. Yes. I can't recall the particular details, but I have correspondence with him showing how they were notorious either -- again, I need to review, review my role in the case. I assume it was an IPR but I don't even know for sure. I need to go back and review.

Q. Do you recall the issue from that case as to whether a device was hand-held or not?

A. No, I don't recall that level of detail.

My recollection is that it had to do with farming equipment and specifically irrigation equipment, and perhaps user interfaces that allowed farmers to control their irrigation equipment from afar, like remote controls

1 CRAIG ROSENBERG
2 for it. So I recall that. That's what
3 the patents were about and what the
4 technology was. But I can't recall
5 specifically issues around hand-held or
6 not.
7 Q. Do you recall whether you
8 provided any opinions in that case as to
9 whether or not a personal computer could
10 be a hand-held computer?
11 A. I may have. I may have. Like
12 I said, that was probably six years ago
13 or more perhaps. Maybe -- you probably
14 have the date in front of you. But I am
15 guessing around 2016/2017 latest would be
16 my guess.
17 So I don't recall issues around
18 whether a personal computer can be
19 hand-held or not. I may have, but again
20 I would need to review that to determine.
21 Q. So you don't recall whether or
22 not the Patent Office agreed with your
23 claim construction analysis in that case;
24 is that fair?
25 A. Yes, that's fair. I hadn't

1 CRAIG ROSENBERG
2 heard that they disagreed and I don't
3 know the specific issues. I haven't
4 reviewed that case in a long, long time,
5 since the attorney called me and thanked
6 me for my work and said that, that they
7 were, he didn't use the word "notorious,"
8 but essentially that they prevailed.
9 Q. So you don't remember whether
10 or not the Patent Office criticized your
11 analysis based on your personal knowledge
12 of the technology at issue; is that fair?
13 A. That's right. Again, I keep
14 saying I really don't have knowledge of
15 the very specifics of that case. The
16 most I remember is the general area of
17 technology, which I described around the
18 irrigation equipment and remote control
19 of the irrigation equipment.
20 Q. Do you remember a case Fidelity
21 v. Groove Digital?
22 A. I do. But again, I have -- I
23 don't have specific knowledge of the
24 details of that. I believe it had -- it
25 may have had to do with applets in

CRAIG ROSENBERG

software but I may be wrong about that.

Q. Do you recall whether that case was a success?

A. I don't recall. No, I don't recall.

Q. Do you recall whether the Patent Office agreed or disagreed with your analysis in that case?

A. No, I do not.

Q. You don't recall any instance where the Patent Office did disagree with your analysis, right?

A. That's correct. Like I testified earlier, I believe this 101 issue in the Aatrix versus Green Shades case was not the Patent Office. That was likely a District Court case and not the Patent Office.

Q. So you wouldn't have gone back and reviewed decisions by the Patent Office to see what you had done wrong so you wouldn't do it again; is that fair?

MS. SPECHT: Objection to form.

Q. Let me restate it. If you had

CRAIG ROSENBERG

made a mistake, you didn't go back to review it to try to correct it going forward?

MS. SPECHT: Same objection.

A. I think your question assumes I was informed that I had made a mistake. If I was informed that I had made a mistake, I certainly, in an effort for continuous quality improvement, to use a phrase, would want to understand what happened and how that can be prevented in the future.

Q. Do you recall any cases where you represented a petitioner in an IPR proceeding and where the patents were held to be valid?

A. Not specifically, no. Not specifically. I don't recall it. I really don't keep score, so to speak. I don't have a document that shows the outcomes of the various cases that I've worked on in the past.

In general, I work almost a 50/50 split for plaintiffs and

CRAIG ROSENBERG

defendants.

Q. How often do you work with clients of Finnegan?

A. My recollection is I worked with Finnegan on two other cases prior. So this case and two other cases come to mind.

Q. Which cases were those?

A. It was Sony versus Arris and Pace, which was an IPC proceeding. And the FIS and Groove Digital case.

Q. Who did you represent in each of those cases?

A. Sony and -- let me just check my CV, but I think it was FIS. Yes, FIS and Sony.

Q. Do you recall whether you prevailed in that case?

A. I did not. And when you characterize it as whether I prevailed, it's not really the expert that prevails in a case, as you know. I am an independent expert and provide testimony. So I would characterize it more as

1 CRAIG ROSENBERG
2 whether the plaintiff prevailed or the
3 defendant prevailed rather than if I
4 prevailed.
5 MR. RUBINO: All right. I have
6 introduced an exhibit as Exhibit 1.
7 (Rosenberg Exhibit 1, Final
8 judgment in Fidelity Information
9 Services versus Groove Digital, was so
10 marked for identification, as of this
11 date.)
12 MR. RUBINO: Let me know if you
13 can see it.
14 And for the record, it's Exhibit
15 1 to his deposition. There will be
16 other Exhibit 1s in the proceeding
17 which I will refer to Exhibit -- as
18 Exhibit 001 for Petitioner's Exhibit,
19 or 1001 for Petitioner's Exhibit.
20 This is Rosenberg Exhibit 001.
21 Q. Dr. Rosenberg, are you able to
22 see the document?
23 A. I clicked on it and it says
24 "generating file preview" this may take a
25 while. I will just wait until this

1 CRAIG ROSENBERG
2 completes the preview.
3 All right. I see Fidelity
4 Information Services versus Groove
5 Digital, final written decision,
6 judgment.
7 Q. And this is a case you worked
8 on, right?
9 A. Yes, it is.
10 Q. And you were the petitioner's
11 expert in this case, correct?
12 A. Yes, I was.
13 Q. I would like you to look at the
14 bottom of page 60.
15 A. All right. I am on the bottom
16 of 60.
17 Q. Do you see where it says
18 "Petitioner's expert testifies"?
19 A. I do see that.
20 Q. That was you, right? You were
21 the petitioner's expert?
22 A. I was the petitioner's expert.
23 It's possible -- I see Rosenberg on the
24 top of the next page, yes, that's me.
25 Q. So do you recall giving the

1 CRAIG ROSENBERG
2 opinion, "In my opinion one of ordinary
3 skill in the art would understand that
4 the target audience criteria statements
5 would be stored in a second database
6 until they are transmitted to and
7 received by (the server)."
8 Do you recall that?
9 A. I see that statement. But it's
10 been so long since I revisited this case.
11 Again, my recollection is this
12 had something to do with applets. So I
13 really don't know the context of the
14 second database or transmitting and
15 receiving by servers. So I see the
16 statement, but I can't really piece
17 together what I was saying or what it
18 referred to, I should say.
19 Q. But you recall that this case
20 had to do with servers and transmitting
21 and receiving with servers, right?
22 A. My recollection is it had to do
23 with applets, but I'll take your
24 representation of what you're saying that
25 servers were involved.

CRAIG ROSENBERG

Q. Is an applet a kind of software?

A. Yes.

Q. So this case, this IPR 20190050, related to software?

A. Yes, it did relate to software.

Q. And you rendered opinions about how certain prior art references in the software space rendered obvious claims of a patent in the software space, right?

A. I assume so. Again, I haven't reviewed this but representing the Petitioner in an IPR proceeding, it would make sense that I'm analyzing prior art to look at anticipation of obviousness.

Q. If you can take a look at the next sentence on 61, do you see where it says, "Petitioner's expert opines that it would have been obvious to store the criteria statements in the campaign database 46-1."

Do you see that?

A. I do see that.

Q. So that confirms that this

CRAIG ROSENBERG

opinion related to be obviousness, right?

A. Yes, it does.

Q. And do you see a couple of sentences down where it says, "We are not persuaded by Dr. Rosenberg's conclusory testimony that an ordinary skilled artisan would have been motivated to store the criteria statements with the campaign database, which is already configured to store the results of the target audience comparison, in order to keep the query and results together."

Do you see that statement?

A. Yes, I do see that statement.

Q. So before today you hadn't known that the Patent Office determined that your obvious analysis was conclusory in this case; is that fair?

A. That's correct.

Q. So you wouldn't have done -- well, let me rephrase that.

You wouldn't have tried to fix any of the issues you had with your declaration in the 050 case going

CRAIG ROSENBERG

forward, right? You didn't know there was a problem?

A. The 050? Oh, this case.

Q. Let me ask you a different way. I think that was a little bit of a strange question. Let me reask it, okay?

A. Please do.

Q. So now that you know that the Patent Office determined that your arguments in the '050 proceeding were conclusory, would you try not to make those same mistakes going forward?

MS. SPECHT: Objection to form.

A. I always try to provide a good basis for my analysis. I try to provide detail and evidence to show the basis for my opinions and never try to say something that the Patent Office or any other reader of the report or declaration would find conclusory.

The fact that I worked on a large number of cases before, the fact that not all of them, not 100 percent of them have agreed with my analysis and may

1 CRAIG ROSENBERG
2 have agreed more with the other side or
3 there was a mix, I think that's purely to
4 be expected, just statistically, given
5 the number of cases that I've worked on.
6 This one statement, it seems
7 like the PTAB didn't seem to find enough
8 background evidence or analysis to make
9 that statement conclusory.
10 But to answer your question, I
11 always do my very best to show my basis
12 for my reasoning and not to provide just
13 overall conclusory statements. And I
14 don't believe I have done that with these
15 three proceedings.
16 Q. But you did your best in this
17 proceeding, as well, in the '050 case?
18 You still tried your best, didn't you?
19 You didn't, you know, purposefully lose
20 this one, right?
21 A. Of course not. I didn't
22 purposely lose it. And I always try my
23 best. And I always work with the
24 materials that are given to me, so to
25 speak. It reminds me of the phrase by

1 CRAIG ROSENBERG
2 McNamara, you go to war with the army
3 you're given, not the army you want.
4 So I was working with the
5 materials of this case and provided my
6 analysis, independent analysis given the
7 materials I had to work with, which were
8 a completely different set of facts and
9 materials that are in these three
10 proceedings.
11 Q. Do you have any reason to
12 believe that your analysis was different
13 in the '050 proceeding than it is in the
14 three BMW/NorthStar proceedings that
15 we're here to discuss today?
16 MS. SPECHT: Objection to form.
17 A. Yes, of course it was
18 different. Like I said, it's a
19 completely different case, around
20 different technology, with different
21 facts. So my analysis was necessarily
22 different.
23 Q. Sitting here today, do you know
24 whether you made the same mistakes in the
25 NorthStar cases that you made in the '050

1 CRAIG ROSENBERG
2 case?
3 MS. SPECHT: Objection to form.
4 A. Your question implies that I
5 made mistakes. I don't believe I made
6 mistakes.
7 Q. You don't believe the Patent
8 Office says you made a mistake here?
9 A. Yeah, let me just finish my
10 answer, please.
11 Your question implies that I
12 made mistakes on these three declarations
13 for BMW. A, I am not aware of mistakes I
14 made. I am not aware of any conclusory
15 statements that I've made. So your
16 question implies, well, how come you made
17 the same mistakes that you did in the
18 '050. And just because the Patent Office
19 determined that a single statement that
20 you're showing me, they deemed
21 conclusory, that's -- I wouldn't
22 necessarily characterize that as a
23 mistake that I made. That is they didn't
24 find enough basis for that statement and
25 chose to label it conclusory.

1 CRAIG ROSENBERG
2 But to take this, what you're
3 showing me here, which is a different
4 case with different technology, and to
5 say that, A, I made a mistake and, B,
6 therefore you must have made same
7 mistakes on these three BMW patents I
8 think is a fallacious conclusion that I
9 don't agree with at all.
10 Q. So you don't think you made a
11 mistake in the '050 case; is that right?
12 A. Whether you characterize it
13 as -- I wouldn't characterize it as a
14 mistake. I made a statement that it
15 looks like here, that the PTAB determined
16 was a conclusory statement.
17 Conclusory to me means it's
18 just a statement and it's not backed up
19 by enough detail or analysis or basis for
20 that decision. So the PTAB didn't seem
21 like there was enough there. That was
22 the PTAB's ruling, their judgment, their
23 opinion that ultimately turned into their
24 ruling.
25 Q. And sitting here today, you

CRAIG ROSENBERG

don't have any basis one way or the other, like you don't know whether the statements you made in the NorthStar proceedings are more or less robust than any of the statements you made in the '050 proceeding; you haven't done that analysis, right?

MS. SPECHT: Objection to form. Mischaracterization.

A. Well, I certainly didn't do an analysis of comparing this, the three declarations that I filed in this, in these three proceedings, with all of the other reports, declarations.

Q. That's all I was asking. That's all I was asking. I am not asking you about the differences between them. I was just asking if you made a comparison.

MS. SPECHT: Counsel, if you could please let Dr. Rosenberg complete his answers before cutting him off with additional statements that aren't even a question on the

1 CRAIG ROSENBERG
2 record.
3 MR. RUBINO: Let me rephrase it.
4 I will withdraw the question and I
5 will rephrase it.
6 Q. So Dr. Rosenberg, I would just
7 like to know have you, before today,
8 compared the statements in your
9 declarations in the NorthStar cases with
10 your statements in the '050 proceeding,
11 yes or no? That's all I am asking.
12 MS. SPECHT: Objection to form.
13 A. No, I haven't. I think it
14 would be unusual for an expert to compare
15 a report or a declaration that they filed
16 with every other previous declaration
17 that they previously filed, so. But the
18 direct answer to your question is no.
19 Q. Thank you. You can put that
20 document aside for now, sir.
21 A. Okay.
22 Q. Dr. Rosenberg, I would like to
23 ask you -- I would like you to take a
24 look at one of the patents, the
25 challenged patents, okay?

CRAIG ROSENBERG

A. Sure.

Q. Specifically U.S. Patent Number 8,032,297 which is Exhibit 1001 to the 00890 proceeding.

A. I have the '297 Exhibit up on the screen.

MR. RUBINO: Kara, for the record, Counsel, I want to -- I am not going to reintroduce each of these exhibits. He has copies of them. I am going to refer to them by their exhibit number that's in the proceeding; is that okay?

MS. SPECHT: That's acceptable.

Q. Dr. Rosenberg, I would like you to look at column 17 of the '297 patent, it's on page 33 and 34 of the pdf, and specifically Claim 1?

A. Okay. I have Claim 1 on my screen.

Q. I would like you to take a look at the two limitations that say "computing." They should be the third and fourth limitations of Claim 1.

CRAIG ROSENBERG

A. Okay. I see those two limitations.

Q. And you rendered opinions about Claim 1, right?

A. I did, yes.

Q. And you rendered an opinion that Claim 1 was obvious in view of several prior art references, right?

A. That's also correct.

Q. And to perform that prior art analysis and obviousness analysis you first had to understand the scope of the claims, right?

A. Yes.

Q. Sitting here today, you have an understanding what you believe the scope of these claim terms is, right?

A. Yes, I do.

Q. So within your understanding of what the scope of these claim terms is, can you tell me what it means to compute a distance?

MS. SPECHT: Objection. Calls for a legal conclusion.

1 CRAIG ROSENBERG
2 A. So on paragraph 93 of my
3 declaration for the '297 it says that
4 Krietler discloses that its system is
5 implemented in computer code executed by
6 a processor, stating that it is "Embodied
7 in the form of a computer program code
8 embodied in tangible media" such that
9 "When the computer program code is loaded
10 into and executed by the computer, 'the
11 computer becomes an apparatus for
12 practicing the disclosed method of
13 implementing' on a general purpose
14 processor." And all of that is in
15 Krietler column 25, 1 through 19.
16 So one would understand, a
17 POSITA would understand that Krietler
18 computes the obtained navigational
19 information because it determines with
20 that processor navigation and drive time
21 information. That's what I am trying to
22 say there.
23 Q. Help me here. Are you saying
24 the meaning of the term "computing" in
25 the context of Claim 1, you're referring

1 CRAIG ROSENBERG
2 to the Krietler reference; is that right?
3 A. Oh, no, I was describing how
4 Krietler renders obvious that limitation,
5 computing.
6 Q. So I am asking you a different
7 question. Which sitting here as an
8 expert who has ascertained the scope of
9 the claims as your first step in your
10 obvious analysis, what do you believe
11 "computing" means?
12 A. All right. One moment. If you
13 look at the bottom of column 4, around
14 line 64, it says, "The distance displayed
15 by the distance indicator may be computed
16 by an algorithm computing an imaginary
17 travel path."
18 So it's talking about the
19 distance that's being displayed is
20 computed by an algorithm. A POSITA would
21 understand that that algorithm is
22 executed on a processor.
23 I am sure there is more
24 disclosure about what computing means
25 relative to distance on the top of column

1 CRAIG ROSENBERG
2 5, lines 1 through 5, it says, "The
3 algorithm may include consideration such
4 as one-way streets, road conditions,
5 traffic patterns, user preferences, et
6 cetera, when computing the distance of
7 the optimal route." And I can go on.
8 There's several disclosures
9 related to how computing interacts with
10 computing the distance in the '297
11 patent.
12 Q. So I asked you about computing.
13 Is this also -- this is your context of
14 how you're understanding the computing
15 terms in Claim 1; is that right?
16 A. I believe it's most appropriate
17 to look at the intrinsic record when
18 understanding a claim term. So that's
19 exactly what I am doing here, is I am
20 looking at the specification of '297 to
21 understand how a POSITA would understand
22 these claim terms.
23 Q. So it's your opinion then that
24 the computing claim terms, you can
25 ascertain the scope of those claim terms

1 CRAIG ROSENBERG
2 by looking at, did you say column 4?
3 A. Well, I first started 4. I
4 forget, somewhere in 4 and then the top
5 of column 5. But it wasn't exhaustive.
6 I thought you were asking me
7 how would one understand in Claim 1 those
8 computing limitations. And specifically
9 computing distances. And a POSITA at the
10 time of the invention, when reading the
11 claim terms, would first look to the
12 intrinsic record, which is the
13 specification as pointing you to several
14 disclosures within the specification of
15 '297, to understand how a POSITA would
16 understand those terms and therefore what
17 the terms means, the scope of the terms.
18 I believe it's the appropriate way to
19 analyze what "computing" means.
20 Q. Sorry, I'm still confused. So
21 you're saying the computing claim terms,
22 in order to understand what one of skill
23 in the art would have thought the scope
24 of those claim terms were, you're saying
25 you would look back to the specification

1 CRAIG ROSENBERG
2 and more specifically as an example you
3 pointed me to column 4 lines 58 through
4 column 5 line 5; is that fair?
5 A. I searched for "computing" in
6 my searchable pdf. And those were the
7 first two hits that I found. There may
8 be more, like I said. But it seems very
9 reasonable to me and my understanding
10 very appropriate, when trying to
11 understand what claim terms mean and part
12 of what they mean is what the scope of
13 the claim term is, is to look in the
14 intrinsic record. So the specification
15 itself, the file history, and to see they
16 are used to understand how a POSITA at
17 the time of the invention would
18 understand them. And then perhaps after
19 that one could look to extrinsic evidence
20 as well.
21 So you're, I guess your
22 statements and your tone imply that what
23 I am doing is crazy. And it seems very
24 appropriate to me.
25 It does go on, you said into

1 CRAIG ROSENBERG
2 the record, column 5 line 5, but there is
3 more discussed about computing distance
4 and optimal routes that go down through
5 lines 18 of column 5.
6 Q. Is that also the portion of the
7 specification you're relying on for
8 computing a placement? Sorry, I am just
9 trying to understand where you are coming
10 from here.
11 A. I would need to review the
12 specification to point you to column and
13 line numbers in the specification that
14 would inform one of skill in the art as
15 to the various ways that placement of the
16 OVIs could be done. Because there is not
17 just one, there are several ways that
18 that can be done, and I can find out for
19 you, if you would like.
20 Q. Sure. That would be great if
21 you can find that. Because I would like
22 to understand how you're interpreting
23 these claim terms in your analysis, more
24 specifically the computing of placement
25 term.

1 CRAIG ROSENBERG
2 A. Sure. If we look at column 10,
3 lines 23 through 46, so an alternate
4 embodiment, other methods of applying
5 OVIs and GPS of OVIs make very different
6 shapes, colors and move in different
7 directions.
8 So I guess let's read before
9 that, and maybe displayed, I guess
10 starting, we'll probably end up referring
11 back to Figure 5A and 5B. But if you
12 look at 20 through 46, it describes how
13 OVIs could be positioned relative to the
14 direction that the user is facing. But
15 in that embodiment, if the user turned 90
16 degrees, all the OVIs would also rotate
17 90 degrees in the opposite direction. We
18 see that the '297 contemplates other ways
19 that that's done itself, other ways that
20 that's done.
21 I referred a moment ago to
22 Figure 5A and 5B, and they explain that
23 the OVI is computed to indicate the
24 location of the POI, and I think it was
25 the top of column 25 talks all about the

CRAIG ROSENBERG

computing resources that Krietler has to do the OVI placement.

There is one other place I am recalling. Let me find it for you, I would like to point out.

Q. You said Krietler, did you mean Krietler --

A. Oh, I am sorry, I keep going back to the prior art references.

Q. So when you said Krietler there, you meant Jacobson?

A. Yeah. I am not going to point to Krietler now because you're just asking me questions about '297, Jacobson. And I would point you to Figure 5A and 5B of '297. I would point you to column 10, lines 20 through 47.

And my recollection in reviewing the patent owner's preliminary response is that NorthStar had admitted that there are several methods of computing placement of OVIs, that there is not just one, one method for placing OVIs.

CRAIG ROSENBERG

Q. Do you have an opinion as to what can satisfy the computing part of the computing a placement? In other words, algorithm, can it be simpler than an algorithm? Do you have any opinion of the scope of the term "computing" in the context of placement?

A. Again, I would turn to the intrinsic record.

Q. Let me revise it here, let me ask you a simple question, okay?

A. Please.

Q. In order to compute the placement do you have to have an algorithm?

A. Let me look at the claim terms. I think it says computing, computing a placement position of an OVI. And I think I already pointed us to this section of '297 earlier in the deposition, this is the bottom of column 4, it says, "The distance displayed" -- never mind, that's distance. Let me move on here.

CRAIG ROSENBERG

So your question is, does one need an algorithm to compute? Like can you do computing without an algorithm?

Q. Well, let me rephrase it a bit more.

A. Sure.

Q. I am specifically asking you about the computing of placement. Can you do that without an algorithm?

A. In the context of this patent and the three patents in general, where the OVIs are placed, and I don't believe that I have read anything about where the position of the OVIs are prestored in some database and they are just fetched and retrieved and then placed at that position; I am not seeing -- I believe computing in the context of these patents would necessarily need to run an algorithm.

Now, does that mean there couldn't be systems out there that call it computing when really it was just fetching a pixel value and then using it?

1 CRAIG ROSENBERG
2 I am sure there could be systems there
3 and maybe in the context of the intrinsic
4 records of those systems they would refer
5 to that as computing. But what I have
6 read here is that computing typically and
7 generally involves running an algorithm
8 to determine a placement position.
9 Q. So you're saying computing is
10 different from just retrieving a stored
11 value; is that what you're saying?
12 A. Again, I am not seeing in this
13 patent anything about retrieving a stored
14 value as least as far as the OVIs are
15 concerned.
16 The OVIs are computed. The
17 position of the OVIs are computed. And
18 like I said before, there are multiple
19 ways to do that. There is not a single
20 way to do that. But you asked does it
21 involve running an algorithm, and I would
22 say in general for this patent, that's
23 what -- that's my understanding. I
24 don't -- I don't see anything in the
25 intrinsic record that is talking about

CRAIG ROSENBERG

the OVI position is grabbed from a database and just talked down to the location of the values of the database.

So I am agreeing with you, in general, that an algorithm seems to be required. The algorithm is run on the computing resources that you see at the top of column 25.

MR. RUBINO: We have been going about an hour. I need to take a break to make a phone call. Are you all okay with taking a break now?

MS. SPECHT: That's fine.

THE REPORTER: Back on the record.

Q. Good afternoon, Dr. Rosenberg.

A. I'm sorry, I missed what you said there.

Q. I said good afternoon.

A. Good afternoon to you as well.

Q. So before break we were talking about the computing terms. I would like to talk to you about the next term, the creating term, okay?

1 CRAIG ROSENBERG
2 A. Sure.
3 Q. So in your opinion, does the
4 creating term in Claim 1 of the '297
5 patent also require an algorithm or can
6 that just be something where you're
7 pulling and plopping from a database as
8 well?
9 A. An OVI can contain multiple
10 components. But maybe a figure would be
11 helpful here. Let me bring up a figure.
12 Let's look at Figure 5A. So on
13 5A we see three different OVIs; 512, 514
14 and 516 are the three different OVIs. So
15 when the claim limitation talks about --
16 let me go back so I am reading it
17 exactly -- "creating the OVI containing
18 the distance and travel-related
19 information." So I am going to go back
20 to 5A. We see three examples of OVIs,
21 which are elements 512, 414 and 516.
22 In 512 and 516, there is an
23 icon associated with the OVI, the
24 restaurant has it's fork and knife icon
25 which is a bit map. The gas -- 516 has a

1 CRAIG ROSENBERG
2 gasoline pump, presumably for a gas
3 station. So those pictorial components
4 would very likely not be computing on the
5 fly but would be grabbed from some form
6 of computer storage, whether it be a
7 database, on disk, across a network
8 resource, something like that.
9 There's other components that
10 can be included with an OVI as well.
11 Such as the vector that you see in item
12 512, which shows an arrow with the length
13 of the arrow. It's got a directionality.
14 It's got an arrowhead. That would likely
15 be computed. So the system would need to
16 compute the direction to element one and
17 draw that arrow in the proper
18 orientation.
19 Also the distance says 700 feet
20 in five minutes. Those two elements, the
21 distance and time, would need to be
22 computed, too, based on the distance to
23 the off-screen map object that this OVI
24 refers to.
25 Going now to 514 and 516, we

1 CRAIG ROSENBERG
2 don't have an arrow, essentially the
3 vector, because it's not required. It
4 may include a vector if we look at the
5 specification. And I can point you to
6 that if you want. It doesn't have that,
7 but it does have the icons that I pointed
8 out earlier, which correspond to a
9 restaurant and a gas station. And then
10 it also has a distance. Here it's shown
11 in a slightly different format than the
12 OVI of 512. But nonetheless, it's still
13 a distance. And that would be computed
14 as well.
15 So I believe a POSITA at the
16 time of the invention, in reading these
17 claims and reading the spec, would
18 understand that computation would be
19 part, but not necessarily 100 percent.
20 That everything would need to be fully
21 computed.
22 And I would point to the icons
23 themselves as being something that
24 wouldn't be computed, but would be stored
25 from some database or network storage or

1 CRAIG ROSENBERG
2 local storage of JPEGs or PNGs or maybe
3 even in a vector format. A file that
4 represents the pictorial element of the
5 OVI if it contains one, like it is in two
6 of the three OVIs that we see here.
7 Q. So it's your opinion that for
8 the creating an OVI limitation there
9 needs to be some algorithm, calculation,
10 computation, but not entirely; is that
11 fair?
12 A. I would like to rephrase your
13 question because I consider it slightly
14 imprecise and your question could be read
15 to me that, that there is also, that
16 purely an algorithm would not do it, but
17 could -- you also would need perhaps a
18 retrieval from a disk or from a database.
19 If you look at OVI in 512, I
20 want to make sure it's 5A, 5A, I believe
21 everything here on that OVI could be
22 computed. There would be no need to
23 store any pictorial elements for that.
24 And an algorithm that makes a call to a
25 graphics library could position, could

CRAIG ROSENBERG

point the number one in the upper left-hand corner. It could draw the arrow, it could put text in corresponding to the distance and time.

So I would say that it could be purely algorithmically with no retrieval or it could be a combination, as we see for elements 514 and 516.

Q. And 512, from what you just described as a distance, it has a time and then it has the direction, right?

A. That particular one has all three, yes. But 514 and 516 don't have the direction. The direction is implied by where it's positioned. But it doesn't have the vector that's drawn.

Q. And it doesn't have a time?

A. It doesn't have the time either, correct.

Q. So do you see in your understanding of these claims any difference between the direction to the OVI and the placement of the OVI, or do you think they both mean placement of the

CRAIG ROSENBERG

OVI and direction are the same thing?

MS. SPECHT: Objection to form.

A. I am looking at Claim 1 and I don't see the term. Point me to it if I am just missing it in my scan of Claim 1 in the '297.

I don't see direction. I see the limitation that's computing a placement position of the OVI, so I have an understanding of what that means. But if you can ask your question again, understanding that direction is within Claim 1.

Q. Sure. Let me ask you a different way then.

So we were talking about direction earlier as an example, but more specifically let's talk about travel-related information, okay?

A. Okay.

Q. In your view and the way you're applying the claims here, is travel-related information the same thing as placement position or is it something

1 CRAIG ROSENBERG
2 else?
3 A. Let's go, I believe it's at the
4 bottom of column 1. I am going to column
5 1 of the '297 patent.
6 So if we look at the bottom of
7 column 1, the line starting at 66, "The
8 OVI may include information referencing
9 the map object, as well as," I am reading
10 from the top of column 2, "information on
11 the map object's direction, distance,
12 travel time to the map object, estimated
13 time of arrival, et cetera."
14 So I think these are all
15 examples of travel-related information.
16 And if we look at the claims themselves,
17 Claim 1, creating an OVI, 1E, "Creating
18 the OVI containing the distance and
19 travel-related information."
20 So I just read from the bottom
21 of column 1 and the top of column 2.
22 Those are examples of what travel-related
23 information could contain.
24 And also Claim 8 is
25 constructive, too. It is "The method of

CRAIG ROSENBERG

Claim 1" -- I am reading Claim 8 of the '297 -- "The method of Claim 1 where computing the travel distance" -- I'm sorry, let me read it accurately.

"The method of Claim 1 wherein computing the distance and travel information includes at least one of the following: Aerial distance to the MO, the travel distance to the MO, a visual indicator pointing in the direction of the MO, and an estimated travel time."

So it's saying "at least one of the following" and it gives multiple examples that you could add to what we find at the bottom of column 1 and the top of column 2. I believe that's how a POSITA would understand what travel-related information is. So I think that's important to understand.

And now I think your question was, is the vector or the arrow, is that the same thing as the placement?

Q. No. I am asking a more general question. And maybe it would help if we

1 CRAIG ROSENBERG
2 put -- do you have the ability to have
3 Claim 1 in one hand and then maybe Figure
4 5 in the other hand.
5 A. Most likely.
6 Q. Let's go to 5A if we can, one
7 of the ones you were looking at. I would
8 like you to look at 5A and claim 1 at the
9 same time, okay?
10 A. Let me just bring up those
11 materials.
12 Q. You want Figure 5 of '297, 5A
13 rather?
14 A. Yes. And the other thing you
15 want me to look at is Claim 1 of '297.
16 Q. Yes.
17 A. I have 5A on a paper document
18 and Claim 1 on my screen.
19 Q. So for the first computing
20 limitation that says, "Computing distance
21 and travel-related information," right?
22 Do you see those?
23 A. I do.
24 Q. So in 512 you would agree that
25 the distance is the 700 feet and the

1 CRAIG ROSENBERG
2 travel-related information can include
3 five minutes and the little vector arrow,
4 right?
5 A. I just want to cross-reference,
6 I am already here, Claim 8. Travel
7 distance of visual indicator pointing in
8 the direction of the MO. I would agree
9 with that statement.
10 Q. The next limitation is
11 computing a placement position, right?
12 A. Yes, it is.
13 Q. And so that is essentially the
14 information about where to put the icon
15 on the screen, right?
16 A. I would agree with that in
17 general. Typically we see these OVIs on
18 the edge, on the edges, the north, south,
19 east or west boundary of the map. But
20 computing the placement position is where
21 the OVI is displayed on the screen.
22 Q. So for 514, for example, do you
23 see that one?
24 A. I see 514, yes.
25 Q. So looking back to the

CRAIG ROSENBERG

computing distance, so the distance there would be .7 miles, right?

A. That's correct.

Q. And computing a placement, that's where the icon is located on the screen, right?

A. That is also correct.

Q. And so for 514, there is no computing of travel-related information, right? There is nothing else in that icon other than its physical placement and the distance to it and the picture of the fork and the knife, right?

A. The distance to it is part of the travel-related information as we saw from Claim 8 as well as the bottom of column 1 and the top of column 2.

Q. So let me get this straight. You're saying that distance and travel-related information can be one thing, just the distance; is that what you're saying?

A. I am saying that distance is an example of what travel-related

1 CRAIG ROSENBERG
2 information is and I didn't see any
3 requirement in '297 that the OVI needs to
4 include every possible piece of travel
5 information that, I think it even used
6 the phrase "one or more." Let me go back
7 to column 1.
8 Well, actually "at least one or
9 more" is on Claim 8, when they are
10 talking about "Travel information
11 includes at least one of -- includes at
12 least one of the following," aerial
13 distance is what we are seeing in 5A.
14 Figure 5A, element 514, that .7 is the
15 aerial distance, travel distance to the
16 MO. The aerial distance to the MO versus
17 travel distance. So those can be
18 slightly different.
19 A visual indicator, it could
20 include a visual indicator because, like
21 I said, it's at least one of the
22 following, so all that's required is one
23 estimated travel time, that could be
24 there.
25 And again, let's look at the

1 CRAIG ROSENBERG
2 specific language at the bottom of column
3 1 and the top of column 2, it says, "The
4 OVI may include information referencing
5 the MO, as well as information on the MO;
6 its direction, distance, travel time,
7 estimated time of arrival, et cetera."
8 So your question implied that
9 it's necessary to have all of them, such
10 as distance, direction, travel time,
11 distance along the route versus -- I mean
12 these things are contemplated, but at
13 least in two different places, Claim 8
14 and the bottom of Claim -- the bottom of
15 column 1, the patent is clear that it
16 says these different components may be
17 included. It's not required that they
18 are included.
19 Q. I think we have a disconnect
20 because what I was asking -- because I
21 wasn't asking whether they all had to be
22 included. My reading is computing
23 distance and travel-related information.
24 So at least two things that are computed,
25 distance and travel-related information,

CRAIG ROSENBERG

in Claim 1. That's how I am reading it.

Are you reading it as distance or other travel-related information?

A. I am not an attorney, but I would say in my non-attorney that this claim is not drafted particularly well because distance is one type of travel-related information. So if you say distance and travel-related information, and travel-related information includes distance, I gave examples from the spec itself where the travel-related information includes distance. You see that on line 1 of column 2 of the '297.

So if I were drafting the claims -- and again, I am not an attorney -- I wouldn't say distance and travel-related information because travel-related information is a collection of possible items including distance.

Q. So in other words, your analysis for obviousness is based on your

CRAIG ROSENBERG

interpretation of this claim and your reading of this claim that distance alone can satisfy that computing limitation, correct?

MS. SPECHT: Objection to form.

A. If the claim said that computing distance and -- I was going to say distance and distance.

Q. I am not asking you for what the claim says. I am asking about when you analyzed the claims and applied the prior art, you were only looking for either distance or one or more other travel-related information to satisfy that computing element, right?

A. No, no.

Q. You were looking for two things?

A. I was looking for if the prior art satisfied the claim language and the claim language is specifying distance and it's also specifying travel-related information. Well, it turns out distance is part of travel-related information.

1 CRAIG ROSENBERG
2 So if there is prior art that
3 just shows distance, that meets the claim
4 language because it needs to show
5 distance, yes, we have that in the prior
6 art. And it needs to show travel-related
7 information. The travel-related
8 information includes distance.
9 And it's not a requirement that
10 every single piece of all of the
11 contemplated information are all used
12 together at the same time. Just one is
13 enough. And distance is in there, too.
14 So it follows if the prior art is showing
15 distance, then that meets the claim
16 language.
17 Q. And just confirming, that
18 understanding that distance alone
19 satisfies the computing limitation,
20 computing distance and travel-related
21 information, you applied that reasoning
22 in your obviousness analysis, correct?
23 A. I did. But there is, I mean, I
24 am also pointing, as you know, to prior
25 art that includes more than just distance

1 CRAIG ROSENBERG
2 as well.
3 Q. Did you state in your report,
4 in your declaration, that you believe the
5 term "computing distance and
6 travel-related information" is satisfied
7 by distance alone?
8 A. I would need to search through
9 my report to see if I said that specific
10 thing. But when you ask questions about
11 it I am telling you my opinion right now.
12 That it would be just based on the fact
13 that distance is part of travel-related
14 information and essentially it's and/or
15 combination, not an and combination.
16 Q. I would like to ask you a
17 couple of questions about the Suomela
18 reference, the Nokia reference.
19 A. All right.
20 Q. Do you understand what the
21 point is of the invention of Suomela?
22 And let me say this again, I am going to
23 call it Nokia, that way I don't
24 mispronounce it; is that okay?
25 A. If you like. I will understand

CRAIG ROSENBERG

what you mean if you refer to the '734 patent, Suomela as Nokia. I will understand that.

Q. Do you have an understanding as of one of skill in the art of what the invention was in the Nokia reference?

MS. SPECHT: Objection, foundation.

MR. RUBINO: That is a foundational question.

MS. SPECHT: Objection to form then.

A. Yes, I do have an understanding of what the general invention of the Nokia '734 patent is.

Q. So what is your understanding of that invention?

A. It is to provide context to a user of points of interest, you can call it map objects, points of interest that are outside the visual area of the map positioned appropriately so that the user can maintain orientation, when understanding what is shown in the

1 CRAIG ROSENBERG
2 detailed area of the map, they can used
3 OVIs essentially which Suomela/Nokia
4 calls them object icons. They can an
5 understanding of the relative orientation
6 of these off map objects.
7 So essentially it's the same as
8 '297, where you have OVIs that represent
9 off-map objects that are useful to the
10 user and understanding their orientation
11 in a broader sense and yet still be able
12 to be relatively zoomed in so they can
13 navigate in the local area that the map
14 is showing.
15 Q. So in the Nokia reference, for
16 example, if you look at Figure 5?
17 A. I am in Figure 5.
18 Q. According to the Nokia
19 reference, Figure 5 shows two scales, two
20 map scales, a zoomed-in scale and a
21 zoomed-out scale, right?
22 A. I would not characterize it in
23 that way. I would say there is a scale
24 associated with zoomed in but there is
25 not a scale associated with the object

1 CRAIG ROSENBERG
2 area, that border area.
3 There does not -- there is not
4 necessarily a scale. A scale wouldn't
5 imply a certain number of centimeters on
6 the screen corresponds to a certain
7 number of kilometers in the real world.
8 And I don't believe that that's required
9 in the object area to have a scale.
10 Q. So it's your opinion that when
11 you read the Nokia reference and looked
12 at the figures, you didn't see two map
13 scales, correct?
14 A. I guess you could call it two
15 different scales. But I am saying that
16 that one could practice the invention of
17 Nokia without having a specific scale
18 because the icons, the OVIs, and again
19 they are calling them object icons of
20 Nokia, they are not pushing them a little
21 bit closer to the -- if those mountains,
22 let's say, are much further, looking at
23 the mountains on Figure 5 of Nokia, if
24 those mountains are 99 miles away and the
25 lighthouse of, I'll use kilometers, if

CRAIG ROSENBERG

those mountains are 150 kilometers away and the lighthouse -- I'm sorry, 2.5 kilometers away, it would not be shown as it's shown right now, because the mountains would have to be further off to the northeast in that object area to represent a scale. So you would have a consistent scale.

But there is not a need for a scale associated with the object area. It's just showing the equivalent of -- these are OVIS, to use the language of the '297 patent. They are off the screen. They represent map objects that are off the area. And they may include a directional icon, like you see in 42, element 42 for all of them. They may include a distance as you see in element 44, for the lighthouse and the airport. They don't have to include it, but I guess I am just taking exception to -- they can call it two different scales. And I see that in the abstract they remove to it as two different scales as

1 CRAIG ROSENBERG
2 well as in other places.
3 But I am just telling you, as
4 one of skill in the art, that it doesn't
5 have to be a constant scale to show what
6 they are showing here. It's not a
7 requirement that it be a separate scale.
8 It's showing OVIs for off-map objects and
9 the fact that you can have very different
10 distances -- this will tell you right
11 here the lighthouse is 2.5 miles away
12 from element 28, which is your position
13 in the center. 2.5 kilometers away. The
14 airport is 5.5 kilometers away. Yet they
15 are both relatively equally close to the
16 corner of the map. You know, one is not
17 twice as far, the airport should be over
18 twice as far further. So that tells me
19 at least in this diagram, they are not
20 really paying much attention to the scale
21 of the object area, but that's neither
22 here nor there.
23 These claim terms that we are
24 dealing with don't have to do with scale.
25 They are not talking about the scales

CRAIG ROSENBERG

where the OVIs are placed when they are placed on borders. Really your question about scale, it certainly could be in scale but it doesn't have to be in scale.

I am trying to be responsive to your questions. I don't see anything in the subject patents that require that the OVIs be positioned in a given scale.

Q. Certainly the claims of the '297 patent have nothing to do with scale, right?

A. Not that I thought, I agree.

Q. And for this Nokia reference, it's your opinion that the inventive concept of the Nokia reference doesn't have to do with using multiple scales; is that fair?

A. They talk about multiple scales, and I was just saying the inventive concept of the Nokia patent has to do with visualizing off-map objects in the form of what they're calling object icons, which are essentially equivalent to OVIs, and placing those in the object

1 CRAIG ROSENBERG
2 area. And having optional information
3 such as distance, directionality, icons.
4 So I see it as being the same as what
5 '297 is practicing.
6 Q. And so you didn't see anything
7 in the Nokia reference indicating that
8 presenting a map with two scales was
9 important to the invention of the Nokia
10 reference, right?
11 MS. SPECHT: Objection to form.
12 A. That's not how I would
13 characterize it.
14 I would say the invention of
15 the Nokia reference could be done, easily
16 done, as I pointed out, because I think
17 the figures showed that there is not a
18 consistent scale for the object area.
19 Just looking at Figure 5, that airport is
20 over twice the distance away than the
21 lighthouse and yet they are both shown
22 approximately the same radius away from
23 element 28.
24 So I am just saying the
25 invention of Nokia doesn't require that

1 CRAIG ROSENBERG
2 the object area be in a consistent scale.
3 That's not the focus. The focus of the
4 Nokia invention and the focus of '297 are
5 not around the specifics of scales. I
6 guess that's not the focus of the
7 invention.
8 And the Nokia reference could
9 easily, as we see in Figure 5, be
10 presented where the object area is not
11 presented at a constant scale. I think
12 you see evidence in looking at that
13 figure.
14 Q. I am not asking you about
15 constant scale. What I am asking you is,
16 either it does or it doesn't. Does the
17 Nokia reference require two scales in
18 order to achieve its inventive concept or
19 does it not require two scales to achieve
20 its inventive concept? What is your
21 opinion on that?
22 MS. SPECHT: Objection to form.
23 Asked and answered.
24 Q. You were answering me why the
25 scales don't have to be consistent. I am

CRAIG ROSENBERG

just asking if the Nokia reference requires two scales in order to achieve the object of its invention?

MS. SPECHT: Same objection.

A. Yes, in the sense that the object area would have a different scale, a different scale than the detailed area. So I agree with that. The object area needs to have a different scale.

What I was talking about for the last 10 minutes or so is that the object area, all of the icons that are placed in the object area don't have to have the same scale as each other. So maybe we got off on a tangent having to do with constant scales.

But, yes, it would require two scales because the object area is necessarily a much more zoomed-out scale than the detailed area.

Q. Okay.

MR. RUBINO: I have no further questions.

MS. SPECHT: Can we take a quick

1 CRAIG ROSENBERG
2 break.
3 (Off the record.)
4 THE REPORTER: On the record.
5 BY MS. SPECHT:
6 Q. Dr. Rosenberg, do you recall
7 counsel for NorthStar asking you about
8 the computing limitations and
9 specifically computing of placement of
10 the OVI?
11 A. I do recall that, yes.
12 Q. And I believe you testified
13 that there should be an algorithm for
14 computing the placement; is that correct?
15 MR. RUBINO: Objection to form.
16 A. That's my recollection.
17 Q. Is it your opinion that the
18 prior art you've relied on in this case
19 discloses an algorithm for computing the
20 placement of the OVI?
21 MR. RUBINO: Objection to form.
22 Beyond the scope.
23 A. Yes, it is.
24 Q. And which reference discloses
25 an algorithm for computing placement?

CRAIG ROSENBERG

MR. RUBINO: Objection to form. Beyond the scope.

A. So I believe both Krietler as well as Suomela/Nokia teach that.

Q. And can you explain how those references disclose the algorithm you testified about?

MR. RUBINO: Objection to form. Beyond the scope. And let the record reflect I didn't ask him anything about how these limitations were met and you're going well beyond the scope of his declaration.

A. So I am looking at Krietler column 6, line 50. It says, "In some embodiments the links are shown visually." The links are the OVIs, are shown visually on the map.

For example, if the user is looking at the center of San Francisco, the San Francisco International Airport is to the south of the city. An icon may be displayed on the south border of the image that points in the general

1 CRAIG ROSENBERG
2 direction of San Francisco Airport, for
3 example, as shown in Figure 1, the
4 special icon 110 may be an arrow which is
5 easily distinguished from other types of
6 icons on the image. So if you look at
7 Figure 1 it talks about computing that
8 the San Francisco Airport is to the south
9 of where the user has indicated it's
10 placed on the south border. The arrow is
11 pointing in the proper direction; that
12 would be an example from Krietler.
13 Q. And you also testified that
14 Suomela discloses an algorithm for
15 computing placement, correct?
16 MR. RUBINO: Objection. Beyond
17 the scope of his questioning and his
18 declaration.
19 A. I did, yes.
20 Q. And can you explain how Suomela
21 discloses an algorithm in your opinion?
22 MR. RUBINO: Same objections.
23 A. I guess one point I could point
24 you to is column 4 of Suomela, which is
25 also referred to as Nokia. Column 4,

1 CRAIG ROSENBERG
2 lines, line 39.
3 The distance indicator of 44
4 shows the distance from the center of the
5 map or location indicator to each of the
6 objects 29 as the location is represented
7 by the location indicator 28 and objects
8 29 are known. The processor 14 is able
9 to determine both distance and direction
10 between these locations using, for
11 example, algorithms contained in the map
12 software 21.
13 So this is referring to Suomela
14 Figure 5. And we see that there is the,
15 algorithms are computing things such as
16 distance that we see in element 44 for
17 the lighthouse and the airport.
18 Q. Do you recall counsel for
19 NorthStar asking you about the proper
20 interpretation of the claim term distance
21 and travel-related information?
22 A. I recall that.
23 Q. And do you remember testifying
24 that distance alone may satisfy this
25 limitation?

CRAIG ROSENBERG

MS. SPECHT: Objection to form.

A. I do recall that, yes.

Q. Is it your opinion that additional travel information in addition to distance could also satisfy this limitation?

A. Absolutely, yes.

Q. And is it your opinion that the references you've relied on in your declaration disclose both distance as well as additional travel information?

MS. SPECHT: Objection to form.

A. Yes, we see that on Figure 5 of Suomela I was just referring to. The directionality element 42. The distance. The type of, the category, if you will, whether it's a light house or airport.

Q. So in your opinion does the interpretation of the term distance and travel-related information impact your analysis on obviousness at all?

MR. RUBINO: Objection to form. Beyond the scope.

A. No, it does not.

CRAIG ROSENBERG

Q. Do you recall counsel for NorthStar asking about the scaling in the Suomela or Nokia reference?

A. I recall that.

Q. And in your opinion does the scaling in Suomela have any impact on its ability to be combined with Krietler?

MR. RUBINO: Objection, form. Beyond the scope.

A. No, it does not.

Q. Would combining Suomela with Krietler destroy the purpose of the Suomela reference?

MR. RUBINO: Objection to form. Beyond the scope.

A. Not in the least. There is tremendous similarities between the three subject patents, Suomela and Krietler, and Suomela goes into more detail about travel-related information.

MS. SPECHT: Thank you, no further questions.

MR. RUBINO: A couple of follow-ups for me.

CRAIG ROSENBERG

BY MR. RUBINO:

Q. Dr. Rosenberg, did you discuss those answers with your counsel during the break?

A. I did not. They left the room. Shut the door. And I had, I had no idea what they were going to question me about.

Q. And nothing in your redirect there changes any of the answers that you have given earlier, right? You're not rescinding any of your answers, right?

A. That's correct.

MR. RUBINO: No further questions. Pass the witness.

MS. SPECHT: All right. I think no questions here. So I think we can conclude.

(Time noted: 1:56 p.m.)

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2 ACKNOWLEDGMENT OF DEPONENT
3
4 I have read the foregoing
5 transcript of my deposition and except
6 for any corrections or changes noted on
7 the errata sheet, I hereby subscribe to
8 the transcript as an accurate record of
9 the statements made by me.
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16 SUBSCRIBED AND SWORN before
17 and to me this ____ day of _____,
18 2024.
19 _____
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23 My Commission Expires:
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1
2 CERTIFICATION
3
4 I, DAWN MATERA, a Notary Public for
5 and within the State of New York, do
6 hereby certify:
7 That the witness whose testimony as
8 herein set forth, was duly sworn by me;
9 and that the within transcript is a true
10 record of the testimony given by said
11 witness.
12 I further certify that I am not
13 related to any of the parties to this
14 action by blood or marriage, and that I
15 am in no way interested in the outcome of
16 this matter.
17 IN WITNESS WHEREOF, I have hereunto
18 set my hand this 13th day of February,
19 2024.
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21
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23 DAWN MATERA
24 * * *
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1 I N D E X

Witness Page

2

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3

Examination by Mr. Rubino 3, 81

4 Ms. Specht 75

5

6 E X H I B I T S

Rosenberg Page

7

Exhibit 1 Final judgment in Fidelity 23

8 Information Services

versus Groove Digital

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ERRATA SHEET

2 VERITEXT

3 CASE NAME: BMW v. NorthStar

DATE OF DEPOSITION: February 2, 2024

4 WITNESS'S NAME: Craig Rosenberg

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001 23:18,20
00890 35:5
050 27:25 28:4 28:11 29:17 30:13,25 31:18 32:11 33:7 34:10

1

1 15:5,7,12,17 15:18,22 23:6 23:7,15 35:19 35:20,25 36:5 36:8 37:15,25 39:2,15 40:7 49:4 54:4,6,14 55:4,5,7,17,21 56:2,3,6,16 57:3,8,15,18 59:18 60:7 61:3,15 62:2 62:15 77:3,7 84:7
10 14:9 43:2 44:17 74:12
100 28:24 51:19
1001 23:19 35:4
101 15:3 20:15
10580 2:17
110 77:4
11:37 1:15
12 14:9
130,000 5:17
13th 83:18
14 78:8
1400 2:5
150 5:12,21 69:2
17 35:17
17th 2:4
18 42:5
1875 2:9
19 37:15
1:56 81:20
1e 55:17
1s 23:16

2

2 1:9,14 15:6,8 15:15,17 55:10 55:21 56:17 59:18 61:3 62:16 85:3
2.5 69:3 70:11 70:13
20 43:12 44:18
200 5:13,21
2011 1:9
2013 1:9
2016/2017 18:15
20190 2:10
20190050 26:6
2023 5:24
202300890 6:3
202300934 6:3
202301017 6:4
2024 1:14 82:18 83:19 85:3,22
206 2:17
21 78:12
212-257-5796 2:18
212-257-5797 2:18
23 43:3 84:7
230 15:9
25 37:15 43:25 48:9
271 2:4
28 70:12 72:23 78:7
29 78:6,8
297 35:6,17 37:3 39:10,20 40:15 43:18 44:15,17 45:21 49:4 54:7 55:5 56:3 57:12,15 60:3 62:16 67:8 69:14 71:11 72:5 73:4
2nd 2:12

3

3 84:3
30363-6209 2:5
33 35:18
3300 2:12
34 35:18
39 78:2

4

4 38:13 40:2,3 40:4 41:3 45:23 77:24,25
411 2:16
414 49:21
42 69:17,18 79:16
44 69:20 78:3 78:16
46 43:3,12
46-1 26:22
47 44:18

5

5 1:9 39:2,2 40:5 41:4,4 42:2,2,5 57:4 57:12 67:16,17 67:19 68:23 72:19 73:9 78:14 79:14
5.5 70:14
50 3:13 76:16
50/50 21:25
512 49:13,21,22 50:12 51:12 52:19 53:10 57:24
514 49:13 50:25 53:9,14

58:22,24 59:9 60:14
516 49:14,21,22 49:25 50:25 53:9,14
5777 83:22
58 41:3
5a 43:11,22 44:16 49:12,13 49:20 52:20,20 57:6,8,12,17 60:13,14
5b 43:11,22 44:16

6

6 76:16
60 24:14,16
61 26:18
64 38:14
650 5:15,22
66 55:7

7

7 59:3 60:14
700 50:19 57:25
734 66:2,16
75 84:4

8

8 55:24 56:2 58:6 59:17 60:9 61:13
8,032,297 35:4
8,478,527 1:8
800 2:9
81 84:3

9

90 43:15,17
93 37:2
94304 2:13
99 68:24

a

aatrix 14:25 20:16
ability 57:2 80:8
able 23:21 67:11 78:8
absolutely 79:8
abstract 69:24
acceptable 35:15
accurate 4:17 82:8
accurately 56:5
achieve 73:18 73:19 74:3
acknowledg... 82:2
action 83:14
active 11:2
actually 60:8
add 56:15
addition 79:5
additional 33:24 79:5,12
admitted 44:21
aerial 56:9 60:12,15,16
afar 17:25
afternoon 48:17,20,21
ago 18:12 43:21
agree 14:24 32:9 57:24 58:8,16 71:13 74:9
agreed 15:5,6 15:13,19 18:22 20:8 28:25 29:2
agreeing 48:5
agreement 5:4 5:8
airplane 11:7
airport 69:20 70:14,17 72:19 76:22 77:2,8 78:17 79:18
algorithm 38:16,20,21 39:3 45:5,6,16 46:3,4,10,21 47:7,21 48:6,7 49:5 52:9,16 52:24 75:13,19 75:25 76:7 77:14,21
algorithmically 53:7
algorithms 78:11,15
alice 15:5,7,9 15:12,15,17
allowed 17:23
alternate 43:3
alto 2:13
america 1:4
analysis 14:24 15:3 16:5,10 18:23 19:11 20:9,13 27:18 28:16,25 29:8 30:6,6,12,21 32:19 33:8,12 36:12,12 38:10 42:23 62:25 64:22 79:22
analyze 40:19
analyzed 63:12
analyzing 26:15
answer 29:10 31:10 34:18
answered 73:23
answering 73:24
answers 3:25 4:3 33:23 81:4 81:11,13
anticipation 26:16
anyway 15:23

apparatus 37:11
appeal 1:2
appearances 2:2
appellate 15:19
applet 26:2
applets 19:25 25:12,23
applied 63:12 64:21
applying 43:4 54:23
appropriate 39:16 40:18 41:10,24
appropriately 66:23
approximately 3:13 5:17 72:22
apps 11:9
area 19:16 66:22 67:2,13 68:2,2,9 69:7 69:11,16 70:21 72:2,18 73:2 73:10 74:7,8,9 74:13,14,19,21
arguments 28:11
army 30:2,3
arris 22:10
arrival 55:13 61:7
arrow 50:12,13 50:17 51:2 53:4 56:22 58:3 77:4,10
arrowhead 50:14
art 7:25 8:2,22 25:3 26:9,15 36:9,11 40:23 42:14 44:10 63:13,21 64:2 64:6,14,25 66:6 70:4 75:18
artisan 27:8
ascertain 39:25
ascertained 38:8
aside 34:20
asked 15:2,8,18 15:22 39:12 47:20 73:23
asking 3:23 9:25 14:18 33:16,17,17,19 34:11 38:6 40:6 44:15 46:8 56:24 61:20,21 63:10 63:11 73:14,15 74:2 75:7 78:19 80:3
associated 49:23 67:24,25 69:11
assume 17:12 26:12
assumed 4:13
assumes 21:6
assuming 13:19
atlanta 2:5
attention 70:20
attorney 17:3 19:5 62:5,6,19
attorneys 2:4 12:12 13:12,25 14:8 15:8,21
audience 25:4 27:12
avenue 2:12,16
aware 16:6 31:13,14

b

b 3:2 32:5 84:6
back 5:3 7:15 7:16 12:5,17 12:18,23 17:13 20:20 21:2 40:25 43:11 44:10 48:15 49:16,19 58:25 60:6
backed 32:18
background 29:8
bad 15:21,23
based 19:11 50:22 62:25 65:12
basically 8:5,16
basis 28:16,17 29:11 31:24 32:19 33:2
believe 5:2,5,7 5:23 8:12 16:25 19:24 20:15 29:14 30:12 31:5,7 36:17 38:10 39:16 40:18 46:13,18 51:15 52:20 55:3 56:17 65:4 68:8 75:12 76:4
benefit 5:6
best 29:11,16 29:18,23
beyond 75:22 76:3,10,13 77:16 79:24 80:10,16
binary 12:15
bit 28:6 46:5 49:25 68:21
blood 83:14
bmw 1:4 4:23 4:24 5:6,7 30:14 31:13 32:7 85:3
board 1:2
border 68:2 76:24 77:10

borders 71:3
bottom 24:14 24:15 38:13 45:22 55:4,6 55:20 56:16 59:17 61:2,14 61:14
boundary 58:19
break 48:11,13 48:22 75:2 81:5
bring 9:13 49:11 57:10
bringing 9:8
broader 67:11

c

c 3:2
calculation 52:9
california 2:13
call 46:23 48:12 52:24 65:23 66:20 68:14 69:23
called 19:5
calling 68:19 71:23
calls 36:24 67:4
campaign 26:21 27:10
case 4:21 5:18 5:23,25 14:17 14:25 16:12,15 16:17,19,21,23 17:11,16 18:8 18:23 19:4,15 19:20 20:3,9 20:17,18 22:7 22:12,19,23 24:7,11 25:10 25:19 26:5 27:19,25 28:4 29:17 30:5,19 31:2 32:4,11 75:18 85:3
cases 5:11 12:5 12:6 16:7 21:14,22 22:6 22:7,9,14 28:23 29:5 30:25 34:9
category 79:17
cell 11:6
center 70:13 76:21 78:4
centimeters 68:5
certain 26:9 68:5,6
certainly 21:9 33:11 71:4,10
certification 83:2
certified 1:16
certify 83:6,12
cetera 39:6 55:13 61:7
challenge 14:19 14:23 15:16
challenged 34:25
change 85:5
changes 81:11 82:6
characterize 22:21,25 31:22 32:12,13 67:22 72:13
charts 10:4
check 22:15
chose 31:25
city 76:23
claim 7:4 18:23 35:19,20,25 36:5,8,18,21 37:25 39:15,18 39:22,24,25 40:7,11,21,24 41:11,13 42:23 45:17 49:4,15 54:4,6,14 55:17,24 56:2 56:2,3,6 57:3,8 57:15,18 58:6 59:17 60:9 61:13,14 62:2 62:7 63:2,3,7 63:11,21,22 64:3,15 70:23 78:20
claims 7:3 8:6 26:10 36:14 38:9 51:17 53:22 54:23 55:16 62:18 63:12 71:10
clarify 8:15
clear 61:15
clicked 23:23
client 4:23 5:7 12:13
clients 22:4
close 70:15
closer 68:21
code 37:5,7,9
collection 62:22
colors 43:6
column 35:17 37:15 38:13,25 40:2,5 41:3,4 42:2,5,12 43:2 43:25 44:17 45:22 48:9 55:4,4,7,10,21 55:21 56:16,17 59:18,18 60:7 61:2,3,15 62:16 76:16 77:24,25
combination 53:8 65:15,15
combined 80:8
combining 80:12
come 22:7 31:16
coming 42:9

commission 82:23 85:24
communicating 13:2,5
communicati... 11:10
compare 34:14
compared 34:8
comparing 33:12
comparison 27:12 33:20
compensated 5:17
complete 33:23
completely 30:8,19
completes 24:2
components 49:10 50:3,9 61:16
computation 51:18 52:10
compute 36:22 45:14 46:3 50:16
computed 38:15,20 43:23 47:16,17 50:15 50:22 51:13,21 51:24 52:22 61:24
computer 18:9 18:10,18 37:5 37:7,9,10,11 50:6
computes 37:18
computing 35:24 37:24 38:5,11,16,24 39:6,9,10,12,14 39:24 40:8,9 40:19,21 41:5 42:3,8,24 44:2 44:23 45:3,4,7 45:18,18 46:4 46:9,19,24 47:5,6,9 48:8 48:23 50:4 54:9 56:4,7 57:19,20 58:11 58:20 59:2,5 59:10 61:22 63:4,8,16 64:19,20 65:5 75:8,9,14,19,25 77:7,15 78:15
concept 71:16 71:21 73:18,20
concerned 47:15
conclude 81:19
conclusion 32:8 36:25
conclusory 27:6,18 28:12 28:21 29:9,13 31:14,21,25 32:16,17
conditions 39:4
conference 11:6
configured 27:11
confirmed 10:3
confirming 64:17
confirms 26:25
confused 40:20
consider 52:13
consideration 39:3
consistent 69:9 72:18 73:2,25
constant 70:5 73:11,15 74:17
construction 18:23
constructive 55:25
contacting 17:3
contain 49:9 55:23
contained 78:11
containing 49:17 55:18
contains 52:5
contemplated 61:12 64:11
contemplates 43:18
contents 8:21
context 6:11 25:13 37:25 39:13 45:8 46:11,19 47:3 66:19
continue 9:24
continuous 21:10
control 17:24 19:18
controls 17:25
copies 7:22,24 7:25 8:2 35:11
corner 53:3 70:16
correct 6:5,9 8:13 9:23 13:3 13:8,16 14:4 16:11 20:14 21:3 24:11 27:20 36:10 53:20 59:4,8 63:5 64:22 68:13 75:14 77:15 81:14
corrections 82:6
correspond 8:20 51:8
corresponden... 17:9
corresponding 53:4
corresponds 68:6

counsel 2:16 15:15 33:21 35:9 75:7 78:18 80:2 81:4
count 12:14
couple 8:4 27:4 65:17 80:24
course 3:22 4:8 9:16 10:17 14:8,10 29:21 30:17
court 3:24 14:17,23 15:4 15:6,11,13,19 20:18
craig 1:12 3:1 3:16 4:1 5:1 6:1 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 49:1 50:1 51:1 52:1 53:1 54:1 55:1 56:1 57:1 58:1 59:1 60:1 61:1 62:1 63:1 64:1 65:1 66:1 67:1 68:1 69:1 70:1 71:1 72:1 73:1 74:1 75:1 76:1 77:1 78:1 79:1 80:1 81:1 82:12 84:2 85:4,20
crazy 41:23
creating 48:25 49:4,17 52:8 55:17,17
criteria 25:4 26:21 27:9
criticized 19:10
cross 58:5
cut 12:6,16
cutting 33:23
cv 7:14 16:23 22:16

d

d 84:1
damages 12:20
database 25:5 25:14 26:22 27:10 46:16 48:3,4 49:7 50:7 51:25 52:18
date 1:9,9 18:14 23:11 85:3
daubert 14:18 14:23 15:16
dawn 1:15 83:4 83:23
day 4:8 10:17 13:18 82:17 83:18 85:21
days 14:8
deal 11:12
dealing 70:24
decide 10:8 11:17
decided 12:11
decision 24:5 32:20
decisions 16:8 20:21
declaration 6:15 27:25 28:20 34:15,16 37:3 65:4 76:14 77:18 79:11
declarations 6:13,16,18,21 7:2,23,24 8:4 8:18 10:5 31:12 33:13,15 34:9
deemed 31:20
defendant 12:9 23:3
defendants 22:2
degrees 43:16 43:17
deponent 82:2
deposed 3:9,17
deposition 3:23 6:8 9:9,15,23 10:23 14:6 16:22 23:15 45:22 82:5 85:3
describe 14:21 14:22
described 19:17 53:11
describes 43:12
describing 15:10 38:3
destroy 80:13
detail 17:19 28:17 32:19 80:20
detailed 67:2 74:8,21
details 17:8 19:24
determine 11:14 18:20 47:8 78:9
determined 15:11 27:17 28:10 31:19 32:15
determines 37:19

device 17:16
devices 11:2 12:24
diagram 70:19
difference 53:23
differences 33:18
different 6:17 8:7 28:5 30:8 30:12,18,19,20 30:20,22 32:3 32:4 38:6 43:5 43:6 47:10 49:13,14 51:11 54:16 60:18 61:13,16 68:15 69:23,25 70:9 74:7,8,10
digital 19:21 22:12 23:9 24:5 84:8
direct 34:18
direction 43:14 43:17 50:16 53:12,15,15,23 54:2,8,13,18 55:11 56:11 58:8 61:6,10 77:2,11 78:9
directional 69:17
directionality 50:13 72:3 79:16
directions 43:7
disagree 10:13 14:13 20:12
disagreed 16:4 16:9 19:2 20:8
disallowed 15:20
disclose 76:7 79:11
disclosed 37:12
discloses 37:4 75:19,24 77:14 77:21
disclosure 38:24
disclosures 39:8 40:14
disconnect 61:19
discuss 30:15 81:3
discussed 42:3
disk 50:7 52:18
displayed 38:14,19 43:9 45:23 58:21 76:24
distance 36:23 38:14,15,19,25 39:6,10 42:3 45:23,24 49:18 50:19,21,22 51:10,13 53:5 53:11 55:11,18 56:4,7,9,10 57:20,25 58:7 59:2,2,13,15,20 59:22,24 60:13 60:15,15,16,17 61:6,10,11,23 61:25 62:3,8 62:10,12,15,19 62:23 63:3,8,9 63:9,14,22,24 64:3,5,8,13,15 64:18,20,25 65:5,7,13 69:19 72:3,20 78:3,4,9,16,20 78:24 79:6,11 79:16,20
distances 40:9 70:10
distinguished 77:5
district 14:17 20:18
document 8:8 8:10,13,16 21:21 23:22 34:20 57:17
documentation 7:21
documents 9:6 9:8,13 10:16 11:13
doing 39:19 41:23
door 81:7
dr 3:7 4:20 5:10 7:19 8:17 9:12 10:3,20 10:25 11:22 12:23 23:21 27:6 33:22 34:6,22 35:16 48:17 75:6 81:3
draft 6:19,20
drafted 62:7
drafting 62:17
draw 50:17 53:3
drawn 53:17
drive 37:20
dry 12:7,16
duly 3:3 83:8
dunner 2:3

e

e 3:2,2 11:14 13:17 84:1,6
earlier 20:15 45:21 51:8 54:18 81:12
easily 72:15 73:9 77:5
east 58:19
eastern 1:15
edge 58:18
edges 58:18
effort 21:9
eight 7:9,11 12:2

either 17:10 53:20 63:14 73:16
electronic 7:23 8:2 11:2 12:24 12:25
element 50:16 52:4 60:14 63:16 69:18,19 70:12 72:23 78:16 79:16
elements 49:21 50:20 52:23 53:9
embodied 37:6 37:8
embodiment 43:4,15
embodiments 76:17
employed 4:21
engaged 4:24 5:5,8 7:11
engagement 5:3
entirely 52:10
entitled 9:13
equally 70:15
equipment 17:21,22,25 19:18,19
equivalent 69:12 71:24
errata 82:7 85:1
esq 2:6,8,11,19
essentially 19:8 51:2 58:13 65:14 67:3,7 71:24
estimate 5:12 5:19,20,20
estimated 55:12 56:12 60:23 61:7
estimating 14:9
et 39:5 55:13 61:7
evidence 28:17 29:8 41:19 73:12
exactly 39:19 49:17
examination 1:12 3:6 84:3
examined 3:4
example 41:2 54:18 58:22 59:25 67:16 76:20 77:3,12 78:11
examples 49:20 55:15,22 56:15 62:13
except 82:5
exception 69:22
excerpts 8:3
executed 37:5 37:10 38:22
exhaustive 40:5
exhibit 9:2 23:6 23:6,7,14,16,17 23:18,18,19,20 35:4,6,13 84:7
exhibits 9:18 35:11
expected 29:4
experience 7:16
expert 1:13 6:12 14:13 22:22,24 24:11 24:18,21,22 26:19 34:14 38:8
expires 82:23 85:24
explain 43:22 76:6 77:20
explorer 2:9
extrinsic 41:19

f

fabricant 2:15
fabricantllp.c... 2:20
facing 43:14
fact 28:22,23 65:12 70:9
facts 30:8,21
fair 4:9,14,15 5:16 11:19,20 18:24,25 19:12 20:23 27:19 41:4 52:11 71:18
fairly 3:20
fallacious 32:8
far 5:18 12:20 16:24 47:14 70:17,18
farabow 2:3
farmers 17:24
farming 17:21
fault 15:24
favor 12:3,14
fax 2:18
february 1:14 83:18 85:3
feet 50:19 57:25
felt 15:21,23
fetched 46:16
fetching 46:25
fidelity 19:20 23:8 24:3 84:7
figure 43:11,22 44:16 49:10,11 49:12 57:3,12 60:14 67:16,17 67:19 68:23 72:19 73:9,13 77:3,7 78:14 79:14
figures 68:12 72:17
file 23:24 41:15 52:3
filed 15:15 33:13 34:15,17

filing 1:9
final 16:8 23:7 24:5 84:7
find 28:21 29:7 31:24 42:18,21 44:5 56:16
fine 48:14
finish 31:9
finnegan 2:3 4:23,25 5:6,8,9 13:12 22:4,6
finnegan.com 2:7,8,11
firm 4:23
first 3:3 36:13 38:9 40:3,11 41:7 57:19
fis 22:12,16,16
five 50:20 58:3
fix 27:23
floor 2:12
fly 50:5
focus 73:3,3,4,6
folder 9:2
follow 80:25
following 56:9 56:14 60:12,22
follows 3:5 64:14
foregoing 82:4
forget 40:4
fork 49:24 59:14
form 20:24 28:14 30:16 31:3 33:9 34:12 37:7 50:5 54:3 63:6 66:12 71:23 72:11 73:22 75:15,21 76:2 76:9 79:2,13 79:23 80:9,15
format 51:11 52:3
forth 83:8
forward 21:4 28:2,13
found 41:7
foundation 66:9
foundational 66:11
fourth 35:25
francisco 76:21 76:22 77:2,8
fremd 2:16
front 18:14
fully 51:20
further 68:22 69:6 70:18 74:23 80:23 81:15 83:12
future 21:13

g

g 3:2,2
garrett 2:3
gas 49:25 50:2 51:9
gasoline 50:2
general 19:16 21:24 37:13 46:12 47:22 48:6 56:24 58:17 66:15 76:25
generally 47:7
generated 8:11
generating 23:24
georgia 2:5
gestures 4:2
given 29:4,24 30:3,6 71:9 81:12 83:10
gives 56:14
giving 24:25
go 3:18 5:2 7:15,16 12:4 12:17 17:13 21:2 30:2 39:7 41:25 42:4 49:16,19 55:3 57:6 60:6
goes 80:20
going 10:15,19 11:12 21:3 27:25 28:13 35:10,12 44:9 44:13 48:10 49:19 50:25 55:4 63:8 65:22 76:13 81:8
good 3:7,8,21 28:15 48:17,20 48:21
gps 43:5
grabbed 48:2 50:5
graphics 52:25
great 42:20
green 15:2 20:16
groove 19:21 22:12 23:9 24:4 84:8
ground 3:19
grounds 8:6,18 8:22,23 10:4
guess 18:16 41:21 43:8,9 68:14 69:22 73:6 77:23
guessing 18:15

h

h 84:6
hand 4:2 17:17 18:5,10,19 53:3 57:3,4 83:18
happened 14:20 21:12
happy 8:25 12:14
hat 3:20
head 4:2 13:20
heard 19:2

held 12:3 17:17 18:5,10,19 21:17
help 8:14 37:23 56:25
helpful 49:11
henderson 2:3
hereunto 83:17
highly 10:12
hillview 2:12
history 41:15
hits 41:7
honestly 9:10
hour 5:15,22 48:11
hourly 5:14
hours 5:11,13 5:21 14:9
house 79:18

i

icon 49:23,24 58:14 59:6,12 69:17 76:23 77:4
icons 51:7,22 67:4 68:18,19 71:24 72:3 74:13 77:6
idea 81:7
identification 23:10
iii 2:19
image 76:25 77:6
imaginary 38:16
impact 79:21 80:7
implemented 37:5
implementing 37:13
implied 53:15 61:8
implies 31:4,11 31:16
imply 41:22 68:5
important 56:20 72:9
imprecise 52:14
improvement 21:10
inappropriate 10:12
include 39:3 51:4 55:8 58:2 60:4,20 61:4 69:16,19,21
included 50:10 61:17,18,22
includes 56:8 60:11,11 62:12 62:14 64:8,25
including 62:22
incredibly 12:13
independent 22:24 30:6
indicate 4:12 43:23
indicated 77:9
indicating 72:7
indicator 38:15 56:11 58:7 60:19,20 78:3 78:5,7
inform 42:14
information 10:6,11 23:8 24:4 37:19,21 49:19 54:20,24 55:8,10,15,19 55:23 56:8,19 57:21 58:2,14 59:10,16,21 60:2,5,10 61:4 61:5,23,25 62:4,9,11,12,14 62:20,21 63:15 63:24,25 64:7 64:8,11,21 65:6,14 72:2 78:21 79:5,12 79:21 80:21 84:8
informed 21:7 21:8
insist 10:16,20
instance 20:11
intellectual 16:14
interacts 39:9
interest 66:20 66:21
interested 83:15
interfaces 17:23
international 76:22
interpretation 63:2 78:20 79:20
interpreting 42:22
intrinsic 39:17 40:12 41:14 45:10 47:3,25
introduce 9:22
introduced 23:6
invention 40:10 41:17 51:16 65:21 66:7,15 66:18 68:16 72:9,14,25 73:4,7 74:4
inventive 71:15 71:21 73:18,20
involve 47:21
involved 25:25
involves 47:7
ipc 22:11
ipr 6:2 17:12 21:15 26:5,14

iprs 6:2 16:8
irrigation 17:22,24 19:18 19:19
issue 1:9 6:24 8:7 17:15 19:12 20:16
issues 18:5,17 19:3 27:24
item 50:11
items 62:22

j

j 2:19
jacobson 44:12 44:15
jpegs 52:2
judgment 23:8 24:6 32:22 84:7
july 1:9,9
jury 11:23 12:3 12:11

k

kara 2:6 11:12 13:11,14 35:8
kara.specht 2:7
keep 19:13 21:20 27:13 44:9
kept 12:21,21
kilometers 68:7 68:25 69:2,4 70:13,14
kind 9:9 26:2
knife 49:24 59:14
know 6:22 9:8 12:16 16:22 17:13 19:3 22:23 23:12 25:13 28:2,9 29:19 30:23 33:3 34:7 64:24 70:16
knowledge 14:20 17:5 19:11,14,23
known 27:17 78:8
krietler 37:4,15 37:17 38:2,4 44:2,7,8,11,14 76:4,15 77:12 80:8,13,19

l

label 31:25
language 61:2 63:21,22 64:4 64:16 69:13
large 12:10 28:23
latest 18:15
lavenue 2:8
law 4:22
lead 2:16
left 53:3 81:6
legal 36:25
length 50:12
level 17:18
library 52:25
light 79:18
lighthouse 68:25 69:3,20 70:11 72:21 78:17
likely 20:18 50:4,14 57:5
limitation 38:4 49:15 52:8 54:9 57:20 58:10 63:4 64:19 78:25 79:7
limitations 7:4 35:23,25 36:3 40:8 75:8 76:12
lindsay 16:20
line 38:14 41:4 42:2,13 55:7 62:15 76:16 78:2 85:5
lines 39:2 41:3 42:5 43:3 44:18 78:2
links 76:17,18
lionel 2:8 13:11 13:22
lionel.lavenue 2:8
little 9:9 28:6 58:3 68:20
llc 1:4,7
llp 2:3,15
loaded 37:9
local 52:2 67:13
located 1:13 59:6
location 43:24 48:4 78:5,6,7
locations 78:10
locked 11:4,5
long 14:5 19:4 19:4 25:10
look 5:3 11:17 12:18 13:22 24:13 26:16,17 34:24 35:17,22 38:13 39:17 40:11,25 41:13 41:19 43:2,12 45:17 49:12 51:4 52:19 55:6,16 57:8 57:15 60:25 67:16 77:6
looked 7:14 68:11
looking 39:20 40:2 54:4 57:7 58:25 63:13,18 63:20 68:22 72:19 73:12 76:15,21
looks 32:15

lose 29:19,22
lower 15:4,6,11 15:13

m

m 2:8
made 21:2,7,8 30:24,25 31:5 31:5,8,12,14,15 31:16,23 32:5 32:6,10,14 33:4,6,19 82:9
mail 11:14 13:17
maintain 66:24
majority 15:14
make 26:15 28:12 29:8 43:5 48:12 52:20
makes 52:24
map 49:25 50:23 55:9,11 55:12 58:19 66:21,22 67:2 67:6,9,13,20 68:12 69:15 70:8,16 71:22 72:8 76:19 78:5,11
mapped 8:6
march 5:24
mark 8:24 9:17 11:12,15,18
marked 23:10
marriage 83:14
matera 1:15 83:4,23
materials 10:21 29:24 30:5,7,9 57:11
matter 83:16
mcnamara 30:2
mean 7:13 12:6 41:11,12 44:7 46:22 53:25 61:11 64:23 66:2
meaning 37:24
means 12:25 13:5 32:17 36:22 38:11,24 40:17,19 54:11
meant 44:12
media 37:8
meeting 11:8
meets 64:3,15
memorized 7:13
message 11:3
messaging 11:9
met 14:7 76:12
method 37:12 44:24 55:25 56:3,6
methods 43:4 44:22
michael 2:22
miles 59:3 68:24 70:11
mind 22:8 45:24
minutes 50:20 58:3 74:12
mischaracteri... 33:10
mispronounce 65:24
missed 48:18
missing 54:6
mistake 21:2,7 21:9 31:8,23 32:5,11,14
mistakes 28:13 30:24 31:5,6 31:12,13,17 32:7
mix 29:3
mo 56:9,10,12 58:8 60:16,16 61:5,5
mode 11:7
modify 6:20
moment 38:12 43:21
mondelli 2:22
money 12:10 12:12
morning 3:7,8
motivated 27:8
mountains 68:21,23,24 69:2,6
move 43:6 45:24
multiple 47:18 49:9 56:14 71:17,19

n

n 3:2 84:1
name 3:15 85:3 85:4
named 16:13
navigate 67:13
navigation 37:20
navigational 37:18
necessarily 12:15 30:21 31:22 46:20 51:19 68:4 74:20
necessary 61:9
need 5:2 12:4 17:10,13 18:20 42:11 46:3,20 48:11 50:15,21 51:20 52:17,22 65:8 69:10
needs 52:9 60:3 64:4,6 74:10
neither 70:21
network 50:7 51:25
never 28:18 45:24

new 1:17 2:17 8:10,12,15 9:8 9:21 10:2,6,11 83:5
nods 4:2
nokia 65:18,23 66:3,7,16 67:3 67:15,18 68:11 68:17,20,23 71:14,16,21 72:7,9,15,25 73:4,8,17 74:2 76:5 77:25 80:4
non 62:6
north 1:4 58:18
northeast 69:7
northstar 1:7 30:14,25 33:4 34:9 44:21 75:7 78:19 80:3 85:3
notary 1:16 3:4 82:20 83:4 85:23
noted 81:20 82:6
notorious 17:10 19:7
number 28:23 29:5 35:3,13 53:2 68:5,7
numbers 6:3 42:13
nw 2:4
nyshadham 2:11

o

o 3:2
o0o 84:11
object 10:8,10 50:23 55:9,12 67:4,25 68:9 68:19 69:7,11 70:21 71:23,25 72:18 73:2,10 74:4,7,9,13,14 74:19
object's 55:11
objection 10:14 20:24 21:5 28:14 30:16 31:3 33:9 34:12 36:24 54:3 63:6 66:8 66:12 72:11 73:22 74:5 75:15,21 76:2 76:9 77:16 79:2,13,23 80:9,15
objections 77:22
objects 66:21 67:6,9 69:15 70:8 71:22 78:6,7
obtained 37:18
obvious 26:10 26:20 27:18 36:8 38:4,10
obviously 15:23
obviousness 26:16 27:2 36:12 62:25 64:22 79:22
office 1:2 8:9 14:13,15,16 16:2,4,9 18:22 19:10 20:8,12 20:17,19,22 27:17 28:10,19 31:8,18
oh 28:4 38:3 44:9
okay 3:20 28:7 34:21,25 35:14 35:20 36:2 45:12 48:13,25 54:20,21 57:9 65:24 74:22
old 3:20
once 6:20 14:20
ones 7:17 57:7
opines 26:19
opinion 25:2,2 27:2 32:23 36:7 39:23 45:2,6 49:3 52:7 65:11 68:10 71:15 73:21 75:17 77:21 79:4,9 79:19 80:6
opinions 18:8 26:8 28:18 36:4
opposing 15:15
opposite 43:17
optimal 39:7 42:4
optional 72:2
order 27:12 40:22 45:14 73:18 74:3
ordinary 25:2 27:7
orientation 50:18 66:24 67:5,10
outcome 83:15
outcomes 21:22
outside 66:22
overall 29:13
ovi 43:23 44:3 45:19 48:2 49:9,17,23 50:10,23 51:12 52:5,8,19,21 53:24,24 54:2 54:10 55:8,17 55:18 58:21 60:3 61:4 75:10,20
ovis 42:16 43:5 43:5,13,16 44:23,25 46:13

46:15 47:14,16 47:17 49:13,14 49:20 52:6 58:17 67:3,8 68:18 69:13 70:8 71:2,9,25 76:18
own 15:24
owner 1:8 2:16
owner's 44:20

p

p.m. 81:20
pace 22:11
page 15:9 24:14,24 35:18 84:1,6 85:5
pages 15:10
palo 2:13
paper 7:22,25 57:17
paragraph 37:2
park 2:12
part 41:11 45:3 51:19 59:15 63:25 65:13
particular 17:8 53:13
particularly 62:7
parties 83:13
pass 81:16
passages 6:25
past 21:23
patent 1:2,2,8,8 2:16 8:9 14:12 14:15,16 16:2 16:4,9 18:22 19:10 20:8,12 20:17,19,21 26:11 27:17 28:10,19 31:7 31:18 35:3,17 39:11 44:20 46:11 47:13,22 49:5 55:5 61:15 66:3,16 69:14 71:11,21
patents 6:23 8:7 18:3 21:16 32:7 34:24,25 46:12,19 71:8 80:19
path 38:17
patterns 39:5
paying 70:20
pdf 35:18 41:6
people 11:3 13:6
percent 28:24 51:19
perform 36:11
person 11:17 13:20
personal 18:9 18:18 19:11
persuaded 27:6
petitioner 1:5 2:4 21:15 26:14
petitioner's 23:18,19 24:10 24:18,21,22 26:19
petitions 6:9
ph.d. 1:12
phone 11:6 48:12
phrase 21:11 29:25 60:6
physical 59:12
physically 13:15
pictorial 50:3 52:4,23
picture 59:13
piece 25:16 60:4 64:10
pixel 46:25
place 44:4
placed 46:13,17 71:2,3 74:14 77:10
placement 42:8 42:15,24 44:3 44:23 45:4,8 45:15,19 46:9 47:8 53:24,25 54:10,25 56:23 58:11,20 59:5 59:12 75:9,14 75:20,25 77:15
places 61:13 70:2
placing 44:24 71:25
plaintiff 12:9 23:2
plaintiffs 21:25
please 3:14 4:7 14:22 28:8 31:10 33:22 45:13
plopping 49:7
pngs 52:2
poi 43:24
point 7:17 42:12 44:6,13 44:16,17 51:5 51:22 53:2 54:5 65:21 77:23,23
pointed 41:3 45:20 51:7 72:16
pointing 40:13 56:11 58:7 64:24 77:11
points 66:20,21 76:25
pop 8:25
portion 42:6
posita 37:17 38:20 39:21 40:9,15 41:16 51:15 56:18
position 45:19 46:15,18 47:8 47:17 48:2

52:25 54:10,25 58:11,20 70:12
positioned 43:13 53:16 66:23 71:9
possible 24:23 60:4 62:22
practice 68:16
practicing 37:12 72:5
preferences 39:5
preliminary 44:20
preparation 9:15 10:22
prepared 9:14 10:22
preparing 14:6
present 2:21
presented 10:5 73:10,11
presenting 72:8
prestored 46:15
presumably 50:2
pretty 11:4
prevailed 19:8 22:19,21 23:2 23:3,4
prevails 22:22
prevented 21:12
preview 23:24 24:2
previous 34:16
previously 34:17
prior 7:25 8:2 8:22 22:6 26:9 26:15 36:9,11 44:10 63:13,20 64:2,5,14,24 75:18
probably 3:19 18:12,13 43:10
problem 28:3
proceed 10:7
proceeding 9:7 21:16 22:11 23:16 26:14 28:11 29:17 30:13 33:7 34:10 35:5,14
proceedings 6:12 29:15 30:10,14 33:5 33:14
processor 37:6 37:14,20 38:22 78:8
program 37:7,9
proper 50:17 77:11 78:19
provide 4:17 6:7 22:24 28:15,16 29:12 66:19
provided 18:8 30:5
ptab 29:7 32:15 32:20
ptab's 32:22
public 1:17 3:4 82:20 83:4 85:23
pulling 49:7
pump 50:2
purely 29:3 52:16 53:7
purpose 37:13 80:13
purposefully 29:19
purposely 29:22
pushing 68:20
put 34:19 53:4 57:2 58:14

q

quality 21:10
query 27:13
question 4:6,14 21:6 28:7 29:10 31:4,11 31:16 33:25 34:4,18 38:7 45:12 46:2 52:13,14 54:12 56:21,25 61:8 66:11 71:3 81:8
questioning 77:17
questions 3:24 9:5,17,25 10:7 44:15 65:10,17 71:7 74:24 80:23 81:16,18
quick 74:25
quite 9:3

r

r 3:2,2,2
radius 72:22
rate 5:14
rather 23:3 57:13
read 43:8 46:14 47:6 52:14 55:20 56:5 68:11 82:4
reader 28:20
reading 40:10 49:16 51:16,17 55:9 56:2 61:22 62:2,3 63:3
real 68:7
really 12:4,20 19:14 21:20 22:22 25:13,16 46:24 70:20 71:3
reask 28:7
reason 4:16 30:11 85:5

reasonable 41:9
reasoning 29:12 64:21
recall 7:10 16:3 16:12,15,21,25 17:7,15,18 18:2,4,7,17,21 20:3,5,6,7,11 21:14,19 22:18 24:25 25:8,19 75:6,11 78:18 78:22 79:3 80:2,5
recalling 44:5
received 25:7
receiving 25:15 25:21
recollection 17:20 22:5 25:11,22 44:19 75:16
record 3:15 4:2 23:14 34:2 35:9 39:17 40:12 41:14 42:2 45:10 47:25 48:16 75:3,4 76:10 82:8 83:10
records 47:4
redirect 81:10
refer 23:17 35:12 47:4 66:2
reference 38:2 58:5 65:18,18 66:7 67:15,19 68:11 71:14,16 72:7,10,15 73:8,17 74:2 75:24 80:4,14
references 26:9 36:9 44:10 76:7 79:10
referencing 55:8 61:4
referred 25:18 43:21 77:25
referring 6:2 37:25 43:10 78:13 79:15
refers 50:24
reflect 76:11
reflection 13:21
reintroduce 35:10
relate 26:7
related 26:6 27:2 39:9 49:18 54:20,24 55:15,19,22 56:19 57:21 58:2 59:10,16 59:21,25 61:23 61:25 62:4,9 62:10,11,14,20 62:21 63:15,23 63:25 64:6,7 64:20 65:6,13 78:21 79:21 80:21 83:13
relation 6:8
relative 38:25 43:13 67:5
relatively 67:12 70:15
relied 75:18 79:10
rely 9:19 10:21
relying 42:7
remember 17:2 19:9,16,20 78:23
reminds 29:25
remote 17:25 19:18
remove 69:25
rendered 26:8 26:10 36:4,7
renders 38:4
rephrase 4:8,12 27:22 34:3,5 46:5 52:12
report 15:9,14 15:19,24 28:20 34:15 65:3,9
reporter 1:16 3:24 48:15 75:4
reports 33:15
represent 16:16 22:13 67:8 69:8,15
representation 25:24
represented 13:17 16:13,24 21:15 78:6
representing 26:13
represents 52:4
require 49:5 71:8 72:25 73:17,19 74:18
required 48:7 51:3 60:22 61:17 68:8
requirement 60:3 64:9 70:7
requires 74:3
rescinding 81:13
research 2:12
resource 50:8
resources 44:2 48:8
response 44:21
responsive 71:6
restate 20:25
restaurant 49:24 51:9
reston 2:10
results 27:11 27:13
retrieval 52:18 53:7
retrieved 46:17

retrieving 47:10,13
reuse 6:24
review 17:11 17:11,14 18:20 21:3 42:11
reviewed 19:4 20:21 26:13
reviewing 44:20
revise 45:11
revisited 5:4 25:10
ridiculous 9:10 9:12
right 6:13 9:21 11:4,21,24 13:2,7 14:3 16:10,25 17:6 19:13 20:13 23:5 24:3,8,15 24:20 25:21 26:11 27:2 28:2 29:20 32:11 33:8 36:5,9,14,18 38:2,12 39:15 53:12 57:21 58:4,11,15 59:3,7,11,14 63:16 65:11,19 67:21 69:5 70:10 71:12 72:10 81:12,13 81:17
road 39:4
robust 33:5
role 17:11
room 13:9,15 14:2 81:6
rosenberg 1:12 3:1,7,16 4:1,20 5:1,10 6:1 7:1 7:19 8:1 9:1,12 10:1,3,20,25 11:1,22 12:1 12:23 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1,7,20,21 24:1,23 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1,22 34:1,6,22 35:1 35:16 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 48:17 49:1 50:1 51:1 52:1 53:1 54:1 55:1 56:1 57:1 58:1 59:1 60:1 61:1 62:1 63:1 64:1 65:1 66:1 67:1 68:1 69:1 70:1 71:1 72:1 73:1 74:1 75:1,6 76:1 77:1 78:1 79:1 80:1 81:1 81:3 82:12 84:2,6 85:4,20
rosenberg's 8:17 27:6
rotate 43:16
route 39:7 61:11
routes 42:4
rubino 2:19 3:6 9:3,20 10:10 10:15 11:11 13:14,19 23:5 23:12 34:3 35:8 48:10 66:10 74:23 75:15,21 76:2 76:9 77:16,22 79:23 80:9,15 80:24 81:2,15 84:3
rules 3:19
ruling 32:22,24
run 46:20 48:7
running 47:7 47:21
rye 2:17

s

s 3:2 84:6 85:5
san 76:21,22 77:2,8
satisfied 15:7 15:12 63:21 65:6
satisfies 64:19
satisfy 45:3 63:4,15 78:24 79:6
saw 59:16
saying 19:14 25:17,24 37:23 40:21,24 47:9 47:11 56:13 59:20,23,24 68:15 71:20 72:24
says 23:23 24:17 26:19 27:5 31:8 37:3 38:14 39:2 45:18,23 50:19 57:20 61:3,16 63:11 76:16
scale 67:20,21 67:23,25 68:4 68:4,9,17 69:8 69:9,11 70:5,7 70:20,24 71:4 71:5,5,9,12 72:18 73:2,11 73:15 74:7,8 74:10,15,20
scales 67:19,20 68:13,15 69:23 69:25 70:25 71:17,20 72:8 73:5,17,19,25 74:3,17,19

scaling 80:3,7
scan 54:6
scope 36:13,17 36:21 38:8 39:25 40:17,23 41:12 45:7 75:22 76:3,10 76:13 77:17 79:24 80:10,16
score 12:21 21:20
screen 13:21 35:7,21 50:23 57:18 58:15,21 59:7 68:6 69:15
search 65:8
searchable 41:6
searched 41:5
seattle 1:14
second 25:5,14
section 45:21
see 12:8 13:13 13:20 20:22 23:13,22 24:3 24:17,19,23 25:9,15 26:18 26:23,24 27:4 27:14,15 36:2 41:15 43:18 47:24 48:8 49:13,20 50:11 52:6 53:8,21 54:5,8,8 57:22 58:17,23,24 60:2 62:15 65:9 68:12 69:17,19,24 71:7 72:4,6 73:9,12 78:14 78:16 79:14
seeing 46:18 47:12 60:13
seem 29:7 32:20
seems 29:6 41:8 41:23 48:6
sense 26:15 67:11 74:6
sent 11:21
sentence 26:18
sentences 27:5
separate 70:7
server 25:7
servers 25:15 25:20,21,25
services 23:9 24:4 84:8
set 30:8 83:8,18
several 36:9 39:8 40:13 42:17 44:22
shades 15:2 20:16
shapes 43:6
share 9:2
sheet 8:3 82:7 85:1
sheets 8:4
shorthand 1:16
show 8:5,21 28:17 29:11 64:4,6 70:5
showed 72:17
showing 17:9 31:20 32:3 64:14 67:14 69:12 70:6,8
shown 51:10 66:25 69:4,5 72:21 76:17,19 77:3
shows 21:21 50:12 64:3 67:19 78:4
shut 81:7
side 16:24 29:2
signature 83:22
silver 16:13,18
similarities 6:23 7:3 80:18
simple 45:12
simpler 45:5
single 31:19 47:19 64:10
sir 34:20
sitting 11:16 12:17 13:9 30:23 32:25 36:16 38:7
six 18:12
skill 25:3 40:22 42:14 66:6 70:4
skilled 27:7
slightly 51:11 52:13 60:18
small 12:11
sneha 2:11 13:11,24
sneha.nyshad... 2:11
software 20:2 26:3,6,7,10,11 78:12
somebody 16:13
sony 22:10,15 22:17
sorry 40:20 42:8 44:9 48:18 56:5 69:3
sounds 3:21 10:10,11
south 2:17 58:18 76:23,24 77:8,10
space 26:10,11
speak 12:22 21:20 29:25
spec 51:17 62:13
specht 2:6 8:14 8:24 9:11,24 10:13,19 11:20 13:16,24 20:24 21:5 28:14

30:16 31:3 33:9,21 34:12 35:15 36:24 48:14 54:3 63:6 66:8,12 72:11 73:22 74:5,25 75:5 79:2,13 80:22 81:17 84:4
special 77:4
specific 19:3,23 61:2 65:9 68:17
specifically 16:3 17:22 18:5 21:18,19 35:3,19 40:8 41:2 42:24 46:8 54:19 75:9
specification 39:20 40:13,14 40:25 41:14 42:7,12,13 51:5
specifics 19:15 73:5
specifying 63:22,23
spend 14:5
spent 5:11
split 21:25
stanford 2:12
started 40:3
starting 43:10 55:7
state 1:17 3:14 16:13,18 65:3 83:5
statement 25:9 25:16 27:14,15 29:6,9 31:19 31:24 32:14,16 32:18 58:9
statements 25:4 26:21 27:9 29:13 31:15 33:4,6 33:24 34:8,10 41:22 82:9
states 1:2
stating 37:6
station 50:3 51:9
statistically 29:4
step 15:5,5,7,8 15:12,15,17,17 15:18,22 38:9
storage 50:6 51:25 52:2
store 26:20 27:9,11 52:23
stored 25:5 47:10,13 51:24
straight 59:19
strange 28:7
street 2:4,9
streets 39:4
stricken 15:25
stuart 3:16
subject 71:8 80:19
submitted 6:12 8:9
subscribe 82:7
subscribed 82:16 85:21
subsequent 6:21
success 17:6 20:4
successful 17:2 17:4
suite 2:5,9,17
sum 12:10,11
summary 9:13
suomela 65:17 65:21 66:3 67:3 76:5 77:14,20,24 78:13 79:15 80:4,7,12,14,19 80:20
sure 9:3 14:16 14:22,25 17:13 35:2 38:23 42:20 43:2 46:7 47:2 49:2 52:20 54:15
sworn 3:4 82:16 83:8 85:21
system 37:4 50:15
systems 1:7 46:23 47:2,4

t

t 84:6
table 8:21 11:7
tables 8:16
take 9:21 11:17 23:24 25:23 26:17 32:2 34:23 35:22 48:11 74:25
talk 48:24 54:19 71:19
talked 48:3
talking 38:18 47:25 48:22 54:17 60:10 70:25 74:11
talks 43:25 49:15 77:7
tangent 74:16
tangible 37:8
target 25:4 27:12
teach 76:5
technologies 16:14
technology 18:4 19:12,17 30:20 32:4
tel 2:18
tell 36:22 70:10

telling 65:11 70:3
tells 70:18
term 37:24 39:18 41:13 42:25 45:7 48:24,25 49:4 54:5 65:5 78:20 79:20
terms 7:20 36:18,21 39:15 39:22,24,25 40:11,16,17,17 40:21,24 41:11 42:23 45:17 48:23 70:23
testified 3:5 7:5 11:23 20:15 75:12 76:8 77:13
testifies 24:18
testifying 7:15 78:23
testimony 4:18 7:18 9:22 10:2 14:14 22:24 27:7 83:7,10
text 53:4
thank 34:19 80:22
thanked 19:5
thanking 17:3
theodore 2:16
thing 54:2,24 56:23 57:14 59:21 65:10
things 61:12,24 63:19 78:15
think 9:20 12:19 21:6 22:16 28:6 29:3 32:8,10 34:13 43:24 45:18,20 53:25 55:14 56:19,21 60:5 61:19 72:16 73:11 81:17,18
third 35:24
thought 40:6 40:23 71:13
three 6:2,8,12 6:16,17,19,23 8:7 13:12 14:7 15:10 29:15 30:9,14 31:12 32:7 33:12,14 46:12 49:13,14 49:20 52:6 53:14 80:18
thursday 14:10
time 1:15 19:4 37:20 40:10 41:17 50:21 51:16 53:5,11 53:18,19 55:12 55:13 56:12 57:9 60:23 61:6,7,10 64:12 81:20
times 3:12,13 5:21 6:19 7:8,9 7:12 12:2,3 16:3
today 3:23 4:18 6:7 10:18 27:16 30:15,23 32:25 34:7 36:16
together 25:17 27:13 64:12
tone 41:22
top 24:24 38:25 40:4 43:25 48:9 55:10,21 56:17 59:18 61:3
track 12:21
trademark 1:2
traffic 39:5
transcript 82:5 82:8 83:9
transmitted 25:6
transmitting 25:14,20
travel 38:17 49:18 54:19,23 55:12,15,19,22 56:4,7,10,12,18 57:21 58:2,6 59:10,16,20,25 60:4,10,15,17 60:23 61:6,10 61:23,25 62:4 62:9,10,11,14 62:20,21 63:15 63:23,25 64:6 64:7,20 65:6 65:13 78:21 79:5,12,21 80:21
tremendous 80:18
trial 1:2 7:6,17
trials 11:23 12:18
tried 27:23 29:18
true 83:9
truthful 4:17
try 21:3 28:12 28:15,16,18 29:22
trying 37:21 41:10 42:9 71:6
turn 45:9
turned 32:23 43:15
turns 63:24
twice 70:17,18 72:20
two 14:8 22:6,7 35:23 36:2 41:7 50:20 52:5 61:13,24 63:18 67:19,19 68:12,14 69:23 69:25 72:8

73:17,19 74:3 74:18
type 62:8 79:17
types 77:5
typically 47:6 58:17

u

u.s. 35:3
ultimately 17:2 32:23
unaware 16:7
unclear 4:7,13
understand 4:4 21:11 25:3 36:13 37:16,17 38:21 39:21,21 40:7,15,16,22 41:11,16,18 42:9,22 51:18 56:18,20 65:20 65:25 66:4
understanding 6:6,10 36:17 36:20 39:14,18 41:9 47:23 53:22 54:11,13 64:18 66:5,14 66:17,25 67:5 67:10
understood 4:14
united 1:2
unusual 34:14
upper 53:2
ups 80:25
use 10:20 19:7 21:10 68:25 69:13
used 7:2 8:22 41:16 60:5 64:11 67:2
useful 67:9
user 17:23 39:5 43:14,15 66:20 66:23 67:10 76:20 77:9
uses 10:16
using 46:25 71:17 78:10

v

v 1:6 16:19 19:21 85:3
valid 21:17
valmont 16:19
value 46:25 47:11,14
values 48:4
various 6:25 8:5 21:22 42:15
vast 15:14
vector 50:11 51:3,4 52:3 53:17 56:22 58:3
verbal 4:3
veritext 85:2
versus 15:2 20:16 22:10 23:9 24:4 60:16 61:11 84:8
video 3:24
view 36:8 54:22
vincent 2:19 8:15 9:11,24
virginia 2:10
visual 56:10 58:7 60:19,20 66:22
visualizing 71:22
visually 76:18 76:19
vrubino 2:20

w

wait 23:25
want 8:24 11:15,18 21:11 30:3 35:9 51:6 52:20 57:12,15 58:5
wanted 12:9
wants 9:19 10:21
war 30:2
washington 1:14
way 28:5 33:2 39:4 40:18 47:20 54:16,22 65:23 67:23 83:15
ways 42:15,17 43:18,19 47:19
wednesday 14:10
week 14:11
welcome 9:16 9:17
west 58:19
whereof 83:17
withdraw 34:4
witness 1:13 3:3 9:6 81:16 83:7,11,17 84:1
witness's 85:4
word 19:7
words 45:5 62:24
work 4:21 19:6 21:24 22:3 29:23 30:7
worked 21:23 22:5 24:7 28:22 29:5
working 4:22 5:23 12:8,12 13:12 30:4
world 68:7
written 16:8 24:5
wrong 20:2,22
wrote 15:9

x
x 1:3,10 84:1,6
y
yeah 31:9 44:13 **years** 18:12 **york** 1:17 2:17 83:5
z
zoom 11:8 13:6 **zoomed** 67:12 67:20,21,24 74:20