

1 IN THE UNITED STATES DISTRICT COURT IN AND FOR THE DISTRICT OF DELAWARE GAN (UK) LIMITED, -----Plaintiff, vs. MGM RESORTS INTERNATIONAL, et al., -----Defendants. INQUISIENT, INC., -----Plaintiff, vs. SERVICE NOW, INC., -----Defendant. TOPIA TECHNOLOGY, INC., -----Plaintiff, vs. EGNYTE, INC., -----Defendant. TRANSCRIPT OF MOTIONS TO DISMISS MOTIONS TO DISMISS had before the Honorable Christopher J. Burke, U.S.M.J., in Courtroom 2A on the 20th of December, 2022. DEANNA WARNER, CSR 202 Ashfield Court, Smyrna DE 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	3 THE COURT: All right. As we go on the record, let me welcome you all to our 101 Day hearings today here in three different cases. And I know we have our court reporter with us today, so thank you for your service. And the parties are here with us as well. Just for the record, I'll say that our first case today is <i>GAN UK Limited versus MGM</i> <i>Resorts International, et al.</i> That is Civil Action Number 22-361-CJB. We've been referring to it as GAN, but the plaintiffs can correct me if I'm wrong, if we need to use the initials. Our second case today is going to be <i>Inquisient, Inc., versus Service Now Inc.</i> That is Civil Action 22-900-CJB. And our third case today is -- we've been calling it Topia, but may be Topia (pronouncing). So again, I'll ask Plaintiff's counsel when we get there to correct me if I'm wrong. <i>Topia Technology Inc. versus Egnyte</i> <i>Inc.</i> That is Civil Action Number 21-1821-MN-CJB. Before we get started, let me go over a couple of ground rules for our hearings today, which should be familiar to the parties, but by DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com
2 APPEARANCES DUANE MORRIS LLP BY: MONTE SQUIRE, ESQ. DIANA SANGALLI, ESQ. THOMAS SANKEY, ESQ. Counsel for GAN (UK) RICHARDS, LAYTON & FINGER, P.A. BY: KELLY E. FARNAN, ESQ. SARA METZLER, ESQ. -and- ARNOLD & PORTER KAYE SCHOLER LLP BY: EVAN ROTHSTEIN, ESQ. PATRICK HALL, ESQ. Counsel for MGM FISH & RICHARDSON P.C. BY: JASON WOLFF, ESQ. GRAYSON SUNDERMEIR Counsel for InQuisient MORRIS NICHOLS ARSHT & TUNNELL BY: JENNIFER YING, ESQ. -and- QUINN EMMANUEL URQUHART & SULLIVAN, LLP BY: JODIE CHENG, ESQ. Counsel for Service Now DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	4 way of reminder, the schedule we'll have today is we'll have argument first in the GAN case and then InQuisient, and then the after the arguments are completed, we'll adjourn for lunch and for time for us to process what's been said by the parties, and then we'll return in the afternoon. Now, the court reporter, Ms. Warner, has a change of plea hearing at 2:30 which we expect to be over no later than 3:30, so I'll ask all of our participants to return to the courtroom by 3:30, either then or shortly after then. Whenever we're ready, I'll come back out, and the goal will be to provide decisions in many if not all the cases today orally if I can. After providing the decisions, I may have a couple of questions for counsel, if you're able to stick around beyond then. Secondly, we've told the parties that for each case, we'll allow 25 minutes per side for argument today. Third, we've received electronic copies of folks' slides, and we've gotten hard copies of some, but if you have hard copies with you that you want to and can hand up, go ahead and DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

5 1 do that before you begin your presentations. 2 Lastly, in terms of the presentations, as 3 I noted in a prior order, because there's 4 25 minutes per side, and obviously I have some 09:28AM 5 questions for the parties for which I'd like 6 answers, probably a lot of the time will be 7 focused on me asking those questions. I'll try 8 to let you, of course, be able to make the 9 points you really want to make. I did see some 09:29AM 10 folks have quite a lot of slides, and I'm not 11 sure I'm going to get to all the slides today. 12 I have reviewed the slides, for what it's 13 worth, before today's hearing. 14 So I think that's the preliminary stuff I 09:29AM 15 just wanted to cover. Let's then, unless 16 there's anything else we need to address 17 beforehand, let's turn to our first case, the 18 GAN or GAN case. Let's have counsel identify 19 themselves for the record who are here for that 09:29AM 20 matter, and we'll start first with counsel on 21 the plaintiff's side and begin there with 22 Delaware counsel. 23 Mr. Squire. 24 MR. SQUIRE: Good morning, Your 09:29AM 25 Honor. And it is pronounced, the plaintiff, as DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	7 1 motion, so I'll call on their counsel first. 2 If you don't tell me otherwise, I'll let you 3 know when you have five minutes left of 4 argument, and I'm sure each side wants to 09:30AM 5 reserve a few minutes of time. 6 MR. ROTHSTEIN: Your Honor, just one 7 question. I think we had already provided hard 8 copies of the presentation. I wanted to 9 confirm Your Honor had them for this case. 09:30AM 10 THE COURT: One second. I can tell 11 you we got them from your side. I'm not sure I 12 have the hard copies from the other side. If 13 there are, maybe Defendants' counsel has extra 14 copies. 09:31AM 15 Okay. 16 MR. ROTHSTEIN: If I could reserve 17 seven minutes for rebuttal. 18 THE COURT: We'll let you know. 19 MR. ROTHSTEIN: Good morning, Your 09:31AM 20 Honor. Again, Evan Rothstein from Arnold and 21 Porter on behalf of Defendants today. We're 22 here today because the asserted patent against 23 my clients, the '296 patent, failed the 101 24 test from <i>Alice</i> and <i>Mayo</i> at both steps, and is 09:31AM 25 accordingly invalid, and we ask the Court at DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com
6 1 GAN. 2 My name is Monté Squire on behalf of 3 Plaintiff GAN from the law firm Duane Morris, 4 and I'm joined at counsel table with Diana 09:29AM 5 Sangalli and Thomas Sankey, and Ms. Sangalli is 6 going to be actually arguing the motion, Your 7 Honor. 8 And behind counsel table is my colleague 9 Gilbert Brooks, and all of us are from Duane 09:30AM 10 Morris. 11 THE COURT: Okay. Thank you. Be 12 seated. 13 We'll do the same for counsel for the 14 defendants' side and again begin with Delaware 09:30AM 15 counsel. 16 MS. FARNAN: Yes. Good morning, Your 17 Honor. Kelly Farnan from Richards, Layton, and 18 Finger on behalf of Defendants MGM Resorts 19 International and MGM. I'm joined by Sara 09:30AM 20 Metzler from my office and for my co-counsel at 21 Arnold and Porter, Evan Rothstein and Patrick 22 Hall. Mr. Rothstein is going to handle the 23 arguments for the Court. 24 THE COURT: Thank you. Good to see 09:30AM 25 you all. So obviously, it's Defendants' DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	8 1 the end of our presentation to dismiss the case 2 with prejudice, given that the plaintiff here 3 has had multiple opportunities to amend, and 4 there is no amendment possible at this stage of 09:31AM 5 the case that would save this patent or save 6 this case under the 101 test, so we ask for 7 dismissal with prejudice. 8 The first thing the Court must decide on 9 the 101 motions, as Your Honor knows, is what 09:32AM 10 are the claims directed to. Before we get 11 there, there is an issue of representativeness, 12 and, as the Court knows, when a party or when a 13 patentee has not meaningfully challenged 14 representativeness, which we believe to be the 09:32AM 15 case here, the Court can simply align with the 16 defendant's assertion that Claim 1 here is the 17 representative claim. 18 Now, I have reviewed the slide deck of 19 the plaintiff here, and it appears that we may 09:32AM 20 have some debate about representativeness, but 21 for the purposes of the papers and the 22 plaintiff's answering brief, they didn't 23 meaningfully challenge representativeness. 24 When that happens, the Court, as I said, can 09:33AM 25 side with the defendants. DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

9 1 Now, the representativeness test is when 2 the claims are substantially similar and linked 3 to the same abstract idea. Here, in the 4 answering brief, as GAN argued, the dependent 09:33AM 5 claims, which apparently they now may argue 6 take us out of having Claim 1 be 7 representative, that dependent claims are all 8 linked to the same idea. And I don't mean to 9 use the term "link" as GAN uses it in the 09:33AM 10 directed to definition, but "link" under the 11 test for representativeness. 12 Now, we posited that Claim 1 is 13 representative of all the claims in the single 14 patent. There's 19 claims. There's three 09:33AM 15 independent claims, Claim 1, Claim 11, and 16 Claim 18. Claim 1 is the method claim. Claim 17 11 is the method of -- excuse me, the storage 18 medium, and Claim 18 is the system claim, but 19 it's all the same method, and it's essentially 09:34AM 20 all the same steps. 21 The dependent claims merely add a little 22 bit, and I'm not talking about patentability. 23 I'm talking about certain steps or variations 24 of the independent claims and that, we believe, 09:34AM 25 all fall under the same abstract idea, which we DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	11 1 Claim 1 was representative. Were GAN to 2 challenge that assertion, typically with an 3 answering brief that says something along the 4 lines of what Your Honor is saying, "Claim 1 is 09:35AM 5 net representative for the following reasons," 6 either independent claims add steps or 7 dependent claims add steps, and we would 8 respond and reply. That did not happen here. 9 As Your Honor notes several times and Federal 09:35AM 10 Circuit ordains, when that occurs, it's 11 appropriate for the Court to simply adopt the 12 claim posited by the plaintiff, which is 13 Claim 1 here. 14 THE COURT: Let me try to cut to some 09:35AM 15 of the issues that I think are going to be most 16 substantial here. In their briefing, when it 17 comes to these three claims that you say are 18 representative, the plaintiff focused quite a 19 lot on two particular limitations, especially 09:36AM 20 at the Step 2 stage, but to some degree 21 overall. 22 In Claim 1, that's the step of the 23 application server determining the CMS -- that 24 there's not a second account with the CMS, and, 09:36AM 25 if not, creating one. When it comes to Claims DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com
10 1 have identified as this: Coordination of a 2 user's loyalty credits between an online gaming 3 service loyalty account and a casino loyalty 4 account. 09:34AM 5 THE COURT: And I take it, 6 Mr. Rothstein, you would say when it comes to 7 what it takes to amount to a meaningful 8 argument as to why the dependent claims should 9 be grouped with an allegedly representative 09:34AM 10 claim, you'd say you have to do something more 11 than at least note the number of the dependent 12 claim and point out that it has different words 13 in it. Every dependent claim does have some 14 different words in it. They have to do 09:34AM 15 something more. I guess your argument here is 16 the plaintiff hasn't done in the brief -- they 17 have a paragraph where they know they have 18 dependent claims and they have parentheses 19 where they list some of the words in those 09:35AM 20 claims, but they haven't made certain arguments 21 as to why it's meaningful and why those should 22 be treated differently for purposes of 101 23 analysis. Is that your point? 24 MR. ROTHSTEIN: That's correct, Your 09:35AM 25 Honor. We, in the opening brief, alleged that DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	12 1 11 and 18, it's what we call PIMS, the Partner 2 Integration Management System, that's 3 represented in the claims and the action it 4 takes to determine what I'll call communication 09:36AM 5 preference of the particular CMS based on the 6 identity of the user. 7 They also pointed these out. They said 8 they exist in the claims and the limitations. 9 They've also pointed to the fact that the 09:37AM 10 examiner, during reexamination, distinguished a 11 piece of prior art which I gather otherwise is 12 relatively within the realm of the abstract 13 idea at issue, knowing the prior art didn't 14 have the limitations. Obviously, to the extent 09:37AM 15 the examiner was doing that and suggesting that 16 the claim was novel from a Section 102, 103 17 perspective, that would have relevance to 18 patentability. But wouldn't the fact at least 19 that this piece of prior art -- is it Mishkin? 09:37AM 20 MR. ROTHSTEIN: Mush kin. 21 THE COURT: But it is -- you don't 22 deny it's a piece of art that's in this realm 23 that we're talking about. It's a solution to, 24 I gather, to communicating between these two 09:37AM 25 entities with loyalty credits, but it doesn't DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

13 09:38AM 1 have these particular limitations. Can't that 2 be a piece of evidence that helps demonstrate 3 at least that these claims certainly don't 4 preempt the entire field of the abstract idea? 09:38AM 5 And maybe, depending on what it really tells 6 us, might be so non-preemptive, maybe they 7 could survive, say at a Step 2 analysis later 8 on? How come it's not at least a good piece of 9 evidence the plaintiffs can point to for 10 preemption purposes? 11 MR. ROTHSTEIN: Short answer is it's 12 not a good piece of evidence, and let me 13 explain why. First, the preemption point Your 14 Honor makes is viewed in the entire <i>Alice</i> 09:38AM 15 analysis and not necessarily just at Step 2. 16 And I think that preemption for eligibility -- 17 excuse me -- for ineligibility preemption 18 doesn't necessarily mean it doesn't preempt the 19 field; therefore, it's eligible. But if it 09:38AM 20 doesn't preempt the field, then it means it is 21 ineligible. 22 THE COURT: Wouldn't you say 23 though -- I know all the parties talked about 24 this because I asked about preemption in my 09:38AM 25 letters. On the one hand, we have federal DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	15 09:40AM 1 and Claim 18 change the application server and 2 it's now what you call PIMS or the management 3 system. Neither of those devices or pieces of 4 computer code or software are disclosed or 5 described in any meaningful form in the patent 6 specification. 7 THE COURT: My guess is if I asked 8 you, "What is the PIMS?" I bet you would say, 9 "It's a black box. It's not some term that has 10 additional, independent limitations to it that 11 are going to add narrowness and specificity." 12 I can't imagine you're going to say the claim 13 is going to say my construction of this term 14 is, and then provide five limitations that have 15 to present for something to be PIMS. Is that 16 your view of it? 17 MR. ROTHSTEIN: Yes, and the reason I 18 say that is because there's no disclosure or 19 description of any kind in the specification to 20 tell us what it means. So had Plaintiff wanted 21 to challenge that, for example, as a claim 22 construction issue that would prevent the 23 granting of this motion, that is something they 24 could have posited in their answering brief but 09:41AM 25 didn't. So we're left with looking at the DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com
14 09:39AM 1 caselaw that says preemption is an important 2 concept with regard to the eligibility 3 analysis. On the other hand, I could certainly 4 have caselaw that says just because a 5 particular claim doesn't preempt the entire 6 field that's described in the abstract idea, 7 that doesn't mean it's eligible. If the former 8 is right, if preemption has got something to do 9 with the inquiry, then there must be claims 09:39AM 10 that are so particularized, real-world 11 "applicationy" that it's clear that they don't 12 preempt enough of that abstract idea and all 13 the solutions out there within the realm of the 14 abstract idea that the claim could survive. I 09:39AM 15 know total preemption is not the requirement 16 here, but preemption has something to do with 17 that stip in the waiver, doesn't it? 18 MR. ROTHSTEIN: I agree. I think 19 preemption underpins the analysis, but I don't 09:39AM 20 think it's dispositive here. Let me talk about 21 the two things you mentioned, and we'll skip 22 right ahead to Step 2 to address these 23 questions. 24 You're right. Claim 1 has an application 09:40AM 25 server that does the discerning step. Claim 11 DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	16 09:41AM 1 specification. 2 Obviously, we look at the claims first 3 when we see "application server" and "PIMS," 4 and they pointed out that's the inventive 5 concept, so to speak, that takes these out of 6 Step 2 and makes them inventive. We go to 7 specification for guidance, as Your Honor and 8 the Federal Circuit has told us, and there is 9 no explanation for what it means. So I agree 09:41AM 10 with you, yes, this is a black box piece of 11 equipment or software that is not being infused 12 into the claims to add any inventive concept or 13 change that would take it out of the 101 <i>Alice</i> 14 two-step process. 15 If you look at, as you said, the <i>Muskin</i> 16 reference, which we don't have, so we don't 17 know what problem <i>Muskin</i> is solving or even the 18 way it was solving it, the challenge from the 19 examiner during the re-exam during <i>Muskin</i> was a 09:42AM 20 102, 103 challenge, so we're dealing with 21 obviousness and anticipation and not novelty. 22 Under many cases, the <i>SAP</i> case, <i>Take II</i> 23 case, novelty doesn't equal inventiveness. You 24 can have an argument that you navigated a piece 09:42AM 25 of prior art for the application process, but DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

17 1 you still haven't changed the patent claims in 2 a 101 analysis to make them eligible. 3 THE COURT: On the second of the two 4 limitations, the PIMS limitation, the 09:42AM 5 limitation describes how the PIMS determined a 6 communication preference of the CMS based on 7 the identity of the user. Do you have a view 8 or understanding of what it means to determine 9 a communication preference of the CMS and how 09:42AM 10 it is that one might do that based on a user's 11 identity? 12 MR. ROTHSTEIN: I have an 13 understanding of that but not from this patent 14 and not from the claims. 09:43AM 15 THE COURT: Do you want to tell me 16 what that is? 17 MR. ROTHSTEIN: What I would argue is 18 the concept that we have said is what the claim 19 is directed to, which is the coordination of 09:43AM 20 loyalty credits from one account to another. 21 If one entity is saying, "I know this user, I 22 identify this user; therefore, I'm changing my 23 communication preference," to me, that's just 24 overlaying another abstract idea of user 09:43AM 25 identification, and there's a slew of Federal DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	19 1 time. 2 THE COURT: By the way, we were 3 talking about this before yesterday. The whole 4 "human analog" piece of this, why the Courts 09:45AM 5 look at it, I've always had the sense that, 6 well, if the -- what the claim is basically 7 about is something that humans have done for a 8 while, it's a shorthand almost of saying that's 9 likely something that is a broad enough concept 10 that it is probably an abstract idea. But is 09:45AM 11 that right? Why do we even care whether humans 12 have done X before? What does it tell us about 13 Step 1 of the 101 inquiry? 14 MR. ROTHSTEIN: I think it's the 09:45AM 15 three things that have been identified by the 16 Court as under the purview of things that can't 17 be patented. So the 101 is very broad. 18 Typically, it was easy to pass the 101 test, 19 but then there were certain categories, the 09:45AM 20 abstract concept, natural phenomenon, and said 21 you're adding, in our time, a computer or more 22 recently an internet to things people were 23 doing for a long time. And it goes to the 24 preemption point Your Honor was talking about 09:46AM 25 earlier. You don't want to monopolize an DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com
18 1 Circuit cases about how user identification is 2 an abstract concept. We cited one in the <i>Boon</i> 3 <i>Payments</i> case in our letter to Your Honor that 4 it just layers over another level of 09:43AM 5 abstraction on top of the coordination we have 6 identified which the claims are directed to, 7 which is another abstract idea. 8 So perhaps using a human analog example 9 here for Your Honor that we have put together 09:43AM 10 that I think may help me, at least, explain it 11 is this, and I will put it up on the screen 12 here. So what's depicted on the screen is an 13 example, essentially, of what we believe the 14 claims cover from a human analog perspective. 09:44AM 15 And I know Your Honor has identified in 16 numerous cases areas or examples where humans 17 could perhaps or may have done something that 18 is now attempting to be patented but may not 19 have actually done. And in those instances, 09:44AM 20 Your Honor typically sides with the patentee 21 and says this really wasn't done by humans. 22 But in this case, I believe this case falls 23 into the category of cases where there are 24 actual examples of the patent occurring in the 09:44AM 25 human space and did happen for a very long DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	20 1 entire area or entire field by taking something 2 people were doing, whether it's a fundamental 3 economic practice or commerce or a business 4 method, and say now we have a better a way of 09:46AM 5 doing it because we can do it faster with 6 computers. We can do it easier in a 7 communications context because of networking 8 capabilities, and now we've taken that away 9 from what was normally in the public realm and 10 allowing folks to patent it. 09:46AM 11 THE COURT: It sounds like you're 12 saying that if the claim is to what humans do, 13 it helps you with the whole "is this a 14 do-it-on-a-computer patent." Like, is the 09:46AM 15 computer add really meaningful? If the claim 16 is or sounds like something a human did or 17 could do, that's a piece of evidence suggesting 18 that whatever the computerization of this is, 19 is it meaningful from a Step 1 or Step 2 09:46AM 20 analysis? Is that's kind of what you're 21 saying? 22 MR. ROTHSTEIN: That's correct, and I 23 think this patent is done on a computer and a 24 do-it-on-the-internet patent more so than this 09:47AM 25 is something humans have done and now we do it DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

21 1 on the computer. It's humans and then 2 computers were doing it and now we want to do 3 it over a network. 4 THE COURT: You were going to explain 09:47AM 5 the human analog. 6 MR. ROTHSTEIN: Before we get to 7 this, let me drill down on this point because 8 the preamble of the claims is a method for 9 communicating. The title of the patent 09:47AM 10 nominally says "A Network Gaming and Casino 11 Management Link." I suppose it's 12 understandable on one level why the plaintiff 13 wants to focus on the link, or what we're now 14 going to hear, based on their deck, that is now 09:47AM 15 a connection mechanism, which is somewhat of a 16 pivot from their answering brief, but there is 17 no connection mechanism or link that's actually 18 in the claims. The claims, I believe, and the 19 specification supports this, is there has 09:48AM 20 already been a connection made between the 21 offline server, the casino management system, 22 and the online server. And then this explains 23 how the communication is going to go between 24 them. 09:48AM 25 THE COURT: They talked about this DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	23 1 someone calls one casino to the other and they 2 speak in Spanish, and the guy on the other line 3 or the woman on the other line says, "This 4 person speaks Spanish. I have to get a Spanish 09:49AM 5 speaker. Now I'll be able to communicate." 6 THE COURT: But in the computerized 7 claims, it might be a particular computer 8 language. 9 MR. ROTHSTEIN: Or the API, however 09:49AM 10 they want to get their data. If you walked 11 into the saloon or casino with a pit boss 12 50 years ago and you only spoke Portuguese, you 13 may not be able to communicate with them, but 14 maybe there was someone else at the casino who 09:49AM 15 could. 16 THE COURT: You're at the 17 seven-minute mark. Is there an extra point you 18 want to make? 19 MR. ROTHSTEIN: That means I've been 09:49AM 20 speaking too much, so I'm going to reserve my 21 time. 22 THE COURT: All right. Thank you. 23 Let's hear from Plaintiff's side. 24 Ms. Sangalli, good morning to you. 09:50AM 25 MS. SANGALLI: Good morning. May it DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com
22 1 communication mechanism piece quite a lot in 2 their brief. I gather your point in response 3 was if a communication mechanism is literally 4 kind of the physical or software-based 09:48AM 5 structure of communicating between these two 6 entities, the port, the way the data comes 7 through, there isn't much in the claim that 8 seems to relate to that. Is that kind of what 9 you were saying? 09:48AM 10 MR. ROTHSTEIN: That's correct. 11 Whether it's -- what I struggled with when I 12 walked in here this morning, the HDMI cable 13 that I couldn't find to connect to the iPad to 14 the system or whether it's the handshaking 09:48AM 15 analog I'm going to go through right now or 16 whether it's the software or the API, that 17 connection mechanism, if it's truly what they 18 wanted to invent, isn't claimed in any respect 19 whatsoever. 09:49AM 20 THE COURT: One of the PIMS 21 limitations talks about a communication 22 preference that's going to be the focus. What 23 do you think a communication preference is? 24 What would be an example of it? 09:49AM 25 MR. ROTHSTEIN: Again, in my analog, DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	24 1 please the Court. Defendants today have asked 2 the Court to invalidate 19 claims of this 3 patent based on what they are now saying is a 4 single representative claim that differs 09:50AM 5 significantly from the other 18 that are in 6 this patent. That they have done so reflects 7 the problem with their entire analysis. That 8 analysis rests on a fundamentally incorrect 9 characterization of the subject matter of the 09:50AM 10 19 claims that they have asked the Court to 11 invalidate. That incorrect characterization of 12 the claims are directed to coordination of a 13 user's loyalty credit is not the focus of the 14 specification or the claim language, and it 09:51AM 15 ignores the inventive features individually and 16 in the ordered composition. 17 That incorrect analysis -- that incorrect 18 overgeneralization taints their entire 19 analysis. It's why their representative claim 09:51AM 20 analysis is wrong. It's why Step 1 is wrong, 21 and it's why Step 2 is wrong. 22 THE COURT: Ms. Sangalli, in your 23 briefing, you talked a lot about the Step 1 24 stage about knowing it wasn't wrong because the 09:51AM 25 claims are not directed to that broad abstrict DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

25 09:51AM 1 idea. Instead, they're directed to a 2 communication mechanism between the online 3 gaming casino and the CMS, the brick-and-mortar 4 casino. If I were to ask you what is the 5 connection mechanism in your view, and using 6 one of our alleged representative claim, 7 whether it's Claim 1 or Claims 11 and 18, what 8 portion of those claims actually get to the 9 substance of what the communication mechanism 10 is in your view? 09:52AM 11 MS. SANGALLI: And it's different in 12 Claim 1 than it is in Claims 11 and 18. In 13 Claim 1, the way that these two systems are 14 connected together is by this application 15 server that first determines if there is an 16 account in the casino management system to 17 communicate with. If there's not, it creates 18 the account. Once the account is created, it 19 accesses the account, and from then, the 20 communication can proceed to transfer the 21 loyalty credits. 09:52AM 22 THE COURT: The work that the 23 application server is doing there to determine 24 whether there is a second account, if not, 25 create one, that's key to your view of what the DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	27 09:54AM 1 connect to one or more variety of different 2 casino management systems. By putting the 3 application server in between, it solves that 4 problem. Now there's no need for the online 5 system to be aware of anything that's going on 6 in the offline system, and the application 7 server takes care of all those problems for it. 8 It creates the account if it doesn't exist. 09:54AM 9 Likewise, the Partner Integration 10 Management System also performs that function. 11 By putting that piece in the middle of these 12 two systems, it can now handle the 13 communications between them. It can determine 14 how they should communicate and then implement 15 that communication. 09:54AM 16 THE COURT: Just to kind of circle 17 back to the point though, in their briefing, 18 Defendants noted that, where you want to look 19 at when a patent should really what is this 20 really about, often you want to go to the 21 background section, the summary of the 22 invention section. What is the problem? 23 What's the solution? 09:54AM 24 And they noted that a lot of that the 25 last piece of the background section, what it DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com
26 09:52AM 1 communication mechanism is? 2 MS. SANGALLI: Correct. And I think 3 that's supported by the specification, which 4 talks about the account creation as being part 5 of the linking mechanism. 09:53AM 6 THE COURT: If it was so important in 7 terms of what this claim and the patents are 8 about, why wouldn't there be more discussion 9 about it in the spec or the abstract or the 10 summary of the invention section? Why wouldn't 11 we be talking there a lot about "Let me tell 12 you about the work this application server 13 does, and how we have problems where sometimes 14 these CMSes, they don't have accounts, and we 15 need to find a way to solve it." The patent 16 doesn't give you that, I don't think, to any 17 great degree, nor, I think, does your claim, 18 does it? 09:53AM 19 MS. SANGALLI: What I would say is if 20 you focus on the correct portions of the 21 patent, that there is some discussion about 22 that. In the very beginning, in both the 23 summary and description of the patent, there is 24 a description that there is an inability of 25 these online gaming systems to be able to DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	28 09:55AM 1 kinds of seems to say is, "Do you know what's a 2 big problem? This online casino can't 3 communicate with the brick-and-mortar casino. 4 It would be great if they could communicate." 5 If that, at a pretty high level, was the 6 problem and solution, and then you go to the 7 summary section and it's not talking about an 8 application server, it's not talking about the 9 PIMS, it's not talking about the intricacies of 10 figuring out whether a CMS has a new account. 11 It's not talking about communication 12 preferences. In other words, it's not talking 13 about the stuff that I think now and in your 14 briefing you say really is the heart of the 15 patent. I guess, how come it's not doing that? 09:55AM 16 MS. SANGALLI: And I would agree with 17 you, Your Honor, that the specification is 18 broadly written. It is. It encompasses many 19 different ways of creating the accounts as well 20 as determining the communication preferences. 21 What the patent does do is that it sets up the 22 structure where, again, we have the application 23 server. It has databases that have user 24 account information in there. That's described 25 in the patent. The user account information 09:56AM DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

29 1 that's in that database that describes the 2 various fields that are in there, the patent 3 also -- 4 On my slide eight here, the -- says that 09:56AM 5 these applications that are on the application 6 server can include one or more modules which 7 implement the logic that connects the systems 8 together, and that logic can include accessing 9 that information in the database, which is the 09:56AM 10 user account information, so that it could 11 either modify the information or create new 12 accounts. 13 Part of that logic also is incorporated 14 in the Partner Integration Management System. 09:56AM 15 And I think that's the name. We've been 16 short-handing it as PIMS, and it kind of 17 glosses over what that particular module is, 18 that Partner Integration Management System. 19 That PIMS enables on online gaming system to 09:57AM 20 communicate with any of a variety of different 21 types of CMSes. 22 THE COURT: In that regard, as 23 Mr. Rothstein said, in your brief, it's not 24 like you said, "Judge, look. This PIMS is key, 09:57AM 25 and, more particularly, at claim construction DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	31 1 words, right now, Claims 11 and 18, they 2 require a PIMS to determine a communication 3 preference of a Casino Management System based 4 on the identity of a user. At claim 09:58AM 5 construction, are going to say PIMS is 6 something that does just that, it determines a 7 communication preference of the CMS using -- 8 based on the identity of the user, or are you 9 going to say not only that, but the PIMS itself 09:58AM 10 has certain requirements; a PIMS is actually a 11 type of software which must utilize X or Y or 12 whatever? Is there going to be any more 13 particularity to what a PIMS is beyond the 14 function that the claims require it to carry 09:59AM 15 out? 16 MS. SANGALLI: Yes, Your Honor. We 17 would propose a construction of PIMS that would 18 include more structure on that. And I think 19 that's supported by the specification. The 09:59AM 20 specification, again, talks about this idea of 21 this abstracted integration, which is a 22 technical term, but anyway, at the end of the 23 day, what we have here is this middle man in 24 between the online service and the offline 09:59AM 25 services. That middle man includes the Partner DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com
30 1 we're going to argue that the construction of 2 that term is blank. And the construction of 3 that term is going to include specificity. A 4 PIMS is not just going to be a black box. It's 09:57AM 5 not going to be any old thing that does what 6 the claim says the PIMS does. It's going to be 7 something more specific, more narrow, more 8 particularized, which in some way is going to 9 lend to our 101 argument because the more 09:57AM 10 specificity, the more requirements that the 11 claims have for what is a PIMS, presumably not 12 every solution in this realm is going to have 13 that." 14 I guess the question for you is, what is 09:58AM 15 a PIMS? And at claim construction in this 16 case, are you going to argue that PIMS has a 17 narrow construction that's going to help your 18 101 argument or no? 19 MS. SANGALLI: No -- that -- yes, we 09:58AM 20 do believe that "PIMS" does raise a claim 21 construction issue and that that would be -- 22 given the functions that are performed that are 23 defined in the specification, that those are 24 going to impact what the scope of a PIMS is. 09:58AM 25 THE COURT: In what way? In other DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	32 1 Integration Management System that establishes 2 this connection. In a certain way, it looks up 3 and receives the request from the application 4 server. It looks up account information. It 09:59AM 5 accesses account information. That account 6 information includes information about the user 7 as well as some of the loyalty program 8 information that's associated with that user, 9 and based on the information that that PIMS 10:00AM 10 accesses, it can then establish this connection 11 between any particular CMS based on the 12 identity of the user. So this isn't a system 13 where you're assuming you have a connection and 14 these two pieces already talk to each other. 10:00AM 15 That would be in the <i>Muskin</i> reference. 16 Instead, what you have now is this PIMS that 17 sits in between them, that is abstract in 18 integration, that provides functionality such 19 that if the online system doesn't have to know 10:00AM 20 how to talk to the offline system, the PIMS 21 does it for it. 22 THE COURT: You said the PIMS is 23 going to require more structure. I'm 24 struggling to hear what is this structure. I 10:00AM 25 think you said something about abstracted, DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

33 1 abstraction. I would say it's not something 2 you talk about much in the briefs, and the 3 other side is going to say it's news to us if 4 there's some construction of PIMS that goes 10:01AM 5 beyond the functionality the claims are 6 required to have. 7 If you were to say, Judge, look, in 8 addition to a PIMS, whatever it is, whatever a 9 PIMS is besides a middle man black box thing, 10:01AM 10 it's got to determine communication preference 11 based on the user at the CMS, beyond that, 12 we're going to say it also requires that a PIMS 13 is blank, how would you fill in that blank? 14 MS. SANGALLI: And I think at this 10:01AM 15 point, we would need expert testimony on the 16 understanding of how this abstracted 17 integration also functions and what a person of 18 skill in the art at the time would understand 19 that to be. 10:01AM 20 THE COURT: But it's not something 21 you're prepared to say today, what that 22 testimony is going to be? 23 MS. SANGALLI: Other than the PIMS is 24 a software module that sits on the application 10:02AM 25 server in between the online system and offline DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	35 1 you want to have the flexibility in this online 2 gaming system that GAN invented to be able to 3 communicate with any particular one of those 4 many different types of systems that are out 10:03AM 5 there. 6 THE COURT: And I guess lastly on 7 this term, it has to do with based on the 8 identity of the user. If the PIMS is saying 9 how does the CMS prefer to communicate, maybe 10:03AM 10 through a VPN, it's also got to make that 11 determination based on the user's identity, how 12 does the user's identity come into play in your 13 view? 14 MS. SANGALLI: User's identity would 10:04AM 15 be information in the database that provides 16 information about the user account, so looking 17 up the information in the database is also 18 going to give information about what Casino 19 Management Systems that user is affiliated with 20 or associated with, and based on that, based on 10:04AM 21 knowing that that user is associated or has 22 accounts associated with particular types of 23 particular Casino Management Systems, then the 24 Partner Integration Management System can make 10:04AM 25 a determination on communication preference. DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com
34 1 system that is configured to provide certain 2 functionality. That functionality is to look 3 at account information, determine communication 4 preferences, determine communication types, and 10:02AM 5 then based on that information then send 6 messages to, for example, a web server and tell 7 the web server to communicate according to the 8 preferences. 9 THE COURT: What's a communication 10:02AM 10 preference that the PIMS would be determining? 11 What's an example of that? 12 MS. SANGALLI: And the patent 13 describes a description of different types of 14 communication preferences. For example, it 10:02AM 15 could be a VPN. It could be an XML connection. 16 Could be SOAPConnection. Could be synchronous 17 or asynchronous. Different examples in the 18 specification. 19 THE COURT: Sounds like there could 10:03AM 20 be lots of different communication preferences. 21 MS. SANGALLI: And the reason there 22 could be many different ones is because these 23 Casino Management Systems traditionally could 24 have proprietary types of software to help how 10:03AM 25 they interface with other types of systems. So DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	36 1 THE COURT: It almost seems like the 2 term "based on the identity of the user" part 3 is saying, where is the user's account here? 4 I'm struggling to see how you use the user's 10:04AM 5 identity to help you figure what is the 6 communication preference. What you were 7 describing was two separate steps. First, 8 figure out how does the CMS prefer to talk to 9 the online gaming system? Maybe through XML. 10:05AM 10 And also we want to make sure we find that 11 there's a user account there. Are those two 12 steps related to each other? The claims seem 13 to say they should be. 14 MS. SANGALLI: Yes, because the claim 10:05AM 15 does talk about accessing the information about 16 the user accounts. And, again, the 17 specification describes user account 18 information being stored in the database, so 19 the user identity could be -- and again, I 10:05AM 20 think this is going to be the subject of expert 21 testimony -- could be used as an index about 22 this other types of information about 23 communication preferences. 24 THE COURT: If the defendant were to 10:05AM 25 say, Judge, we think the claims are directed to DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

37 1 the abstract idea, basically, of just 2 communicating, communicating writ large, 3 between one system and another, the online 4 gaming system and the CMS. We don't think it's 10:06AM 5 much more than that. If in response, you were 6 to say no because there's this PIMS that's a 7 middle man or this application server, but I'm 8 not going to tell you anything about what those 9 things are or what they do, there just is one, 10:06AM 10 the defendant will say just saying there's a 11 thing that kind of doesn't have any 12 understandable requirements or narrowness or 13 particularity, that can't take you out of the 14 abstract idea that we just asserted, which is 10:06AM 15 just about communication, basically any old way 16 of communicating, with minor tweaks, between 17 these two things. 18 If you were to say no, I'm not just 19 saying that the thing that takes us out of the 10:06AM 20 abstract idea that these claims are directed to 21 is that there happens to be an application 22 server that does something or a PIMS that does 23 something, it's more than that, it's more 24 specific than that, there's more requirements 10:07AM 25 than that, is there anything more you can say DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	39 1 further to that. 2 THE COURT: Before you move on, the 3 Claim 1 determining step, application server 4 determining if the CMS doesn't have an account 10:08AM 5 for the user and creating one, is there 6 anything more the determining is going to 7 require other than the functionality that's 8 addressed in the claims? In other words, are 9 you going to be saying later at claim 10:08AM 10 construction, what's required there by the 11 determining step, it's going to have to 12 determine in a more particular way, not just 13 any old way, just determine whether there's an 14 account, actually, what the identifier is 10:08AM 15 determining by using a blank or by doing a 16 blank. Will there be any more particularity 17 besides that? 18 MS. SANGALLI: With respect to the 19 determining stuff, I would say there's already 10:09AM 20 particularity in the claim on that. That's 21 part of accessing the second account 22 information, second account in Claim 1. It's 23 second account when you access second account 24 information comprising determining by the 10:09AM 25 application server that an account doesn't DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com
38 1 today about what fills in those blanks? What's 2 the particularity beyond the fact that there 3 happens to exist server or a PIMS that's part 4 of the systems? Do you know what I'm asking? 10:07AM 5 MS. SANGALLI: Yes, and the claims do 6 have broad language in it, but the claims -- 7 when you're looking at the breadth of the 8 claims, the inquiry would be is it just simply 9 claiming a result. And these claims aren't 10:07AM 10 just simply claiming the result. They're not 11 claiming connecting an online system to another 12 system and allowing communications to go 13 between them. Instead, what the claims include 14 in addition is actually how that connection is 10:07AM 15 implemented. In Claim 1, it is when the 16 application server that accesses information 17 determines that an account does not exist and 18 automatically creates that account for the 19 user. In Claims 11 and 18, that connection is 10:08AM 20 done by a Partner Integration Management System 21 which, yes, it determines communication 22 preferences based on the identity of the user 23 and then it communicates according to that 24 communication preference. There's other 10:08AM 25 limitations in the claims, too, that add DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	40 1 exist. So the application server is -- part of 2 that step is going to be accessing the 3 information about the user, that there is a 4 second account there. Either the online 10:09AM 5 database associated with the online gaming 6 system, does that indicate that the user has an 7 account in the CMS? Does the database in the 8 CMS, does that indicate there's an account 9 there? 10:09AM 10 If there is no indication there is a 11 second account for the user, then the 12 application server uses that information to 13 create the account. One way it can create an 14 account, and this is described in the 10:10AM 15 specification, that it can use the information 16 that the user input during the online 17 registration process. So using -- when the 18 user registered for an online account, the user 19 provided information like name, birth date, 20 other type of identifying information that 21 would be important to creating that account. 22 That same information then can be used by the 23 application server to create the account in the 24 CMS. 10:10AM 25 THE COURT: You've got about five DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

41

1 minutes left. And one other question about
2 these two, I think it's fair to say both in the
3 briefing and here today, if there was something
4 that's key to your 101 argument with regard to
10:10AM 5 these, at least, assertedly representative
6 claims, it's the work the application server is
7 doing in Claim 1 with regard to determining
8 whether the CMS has a second account, and it's
9 the work the PIMS is doing in the other two
10:10AM 10 claims, 11 and 18, to determine the
11 communication preference of the CMS. Is that
12 fair to say?
13 MS. SANGALLI: That's a fair
14 characterization, Your Honor.
10:11AM 15 THE COURT: In this regard, as the
16 other side notes, you already had a second
17 amended complaint. You had a bunch of chances
18 to amend. One of the things you could have
19 done -- today you talked a lot about how many
10:11AM 20 of the answers here today relate to expert
21 testimony. One thing you could have done is
22 either attach a declaration from an expert or
23 reference an expert's testimony and say let me
24 explain through the words of this expert why it
10:11AM 25 is that in the realm of the abstract idea that
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42

1 the other side has put at issue here, that is,
2 simply coordinating loyalty credits between an
3 online gaming service and CMS, let me explain
4 to you why it is that a solution that has a
10:11AM 5 step that requires you to see if the CMS has a
6 second account and, if not, to create it, let
7 me explain why it is that does not unduly
8 preempt the field, why it is that in the field
9 of all the possible solutions in out there in
10:11AM 10 the abstract idea realm, there's only a few
11 that take this step. It's incredibly narrow.
12 And similarly, you could have done that with
13 regard to Claims 11 and 18 talking about PIMS,
14 and you didn't.
10:12AM 15 Why didn't you? And should that be held
16 against you if I determine that I need some
17 more particularity? Because the other side is
18 going to say, "Don't let them amend. They've
19 had their chances." Why didn't you do that
10:12AM 20 kind of work in the second amended complaint?
21 MS. SANGALLI: In the second amended
22 complaint, we attached a very important
23 document, which was the R&D tax credit, and I
24 know the defendants will infer that Your Honor
10:12AM 25 hasn't looked at that document. The document
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43

1 is attached as an exhibit. It doesn't
2 necessarily establish inventiveness or what was
3 routine and conventional, but it certainly
4 raises issues about it.
10:12AM 5 That document was prepared by GAN for
6 business purposes back in the 2015-2016 time
7 frame, so closer in time to the time of the
8 invention, and indicates what they perceived to
9 be a problem at that time, was this inability
10:13AM 10 of these online systems to be able to
11 communicate with many different types of Casino
12 Management Systems. It also reflected that
13 there was a question -- that there was none of
14 this automatic account creation by these
10:13AM 15 systems.
16 Seeing that problem, the challenge that
17 they undertook was to create a new system that
18 could do this and do it in a flexible manner.
19 That information is in that description that
10:13AM 20 they provided in the R&D tax claims. The
21 solution that they came up, with which is shown
22 on, I believe, page 11 of the R&D tax claim, is
23 the patented system where there is that
24 application server that sits in between the
10:13AM 25 online system and the Casino Management System.
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44

1 It includes the Partner Integration Management
2 System there. And importantly, what they
3 wanted to do was they wanted to provide a
4 system that was flexible, that could flexibly
10:14AM 5 accommodate and connect to the many different
6 types of CMSes that would be out there. The
7 Partner Integration Management System does
8 that. They wanted it to be able to
9 automatically create accounts if none existed.
10:14AM 10 This application server does that. They also
11 wanted it to be resilient against
12 unavailability of the Casino Management System.
13 This system, as claimed in some of the
14 dependent claims, does that by queueing
10:14AM 15 information based on unavailability. So --
16 THE COURT: I'm sorry. I was going
17 to ask you about the tax credit allegation. I
18 guess the big question I had there was, so, you
19 know, in issuing the tax credit, the complaint
10:14AM 20 alleges that the tax authority acknowledged
21 that GAN had -- was developing or attempting to
22 develop work that, as a resolution of
23 scientific or technological uncertainty, that
24 was not routine. Obviously, whatever it is
10:15AM 25 that that tax authority is talking about or the
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45 1 analysis that they're using, it's not going to 2 neatly overlay. It's not as if they were 3 looking at what does Section 101 law require in 4 terms of unconventionality? It's sort of a 10:15AM 5 blunt instrument in that respect. 6 And I guess what's the most focused way 7 you could say, "Judge, if you look at what we 8 alleged about what that authority had 9 necessarily determined, the most focused link 10:15AM 10 between what they had to determine and what 101 11 law requires, say when it comes to Step 2, is 12 blank," what would you say? 13 MS. SANGALLI: I would say that what 14 they had to determine, that this was a solution 10:15AM 15 that was not -- it's difficult because I don't 16 want to use words that implicate 102 or 103. 17 That's not what they were doing. 18 THE COURT: Right. That's the 19 question. 10:16AM 20 MS. SANGALLI: It was a scientific 21 advance over the technology that was then 22 available, and it wasn't just a minor 23 scientific advance. It's just not a simple 24 variation on technology that was already out 10:16AM 25 there. It had to represent more than that in DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	47 1 nervous, Your Honor, but I'll try to go for 2 seven minutes. 3 I'm going to start here, which is the 4 newest Federal Circuit case on 101 10:17AM 5 jurisprudence identified by the plaintiff as 6 analogous to this case, and in reality what I 7 think it does is it demonstrates why this case 8 is different and why this patent should die at 9 101. And it's because of things that Your 10:17AM 10 Honor identified in your questioning of 11 Plaintiff's counsel, which is where is the 12 specificity or the "how" in these claims and 13 this specification? Where is the language such 14 as "the present invention comprises" or "this 10:18AM 15 is the innovation over prior art" or "this is 16 the most important or essential piece of my 17 patent and why I'm applying for it"? 18 That language doesn't appear in the '296 19 patent, but it does and did appear in the 10:18AM 20 patent at issue in <i>Collective</i>. In <i>Collective</i>, 21 that case involved content distribution 22 networks and a new and novel and inventive idea 23 to transmit high amounts of data over a network 24 in a different way. The patentee there said, 10:18AM 25 "Here are the prior art systems and how they DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com
46 1 order for them to issue the tax credit. And 2 that is what the inventors were trying to 3 convey in their description of the problems 4 they were facing and the solution they came up 10:16AM 5 with. 6 THE COURT: Ms. Sangalli, you're out 7 of time. One thing I'll ask of you, we won't 8 have surrebuttal, but after Mr. Rothstein 9 finishes, of the allegations in the complaint 10:16AM 10 that relate to the tax credit, is there a 11 particular paragraph or paragraphs that you 12 would say, "Judge, I want you to focus on the 13 allegation we made in that paragraph"? I'm not 14 putting you on the spot right now. I'm giving 10:16AM 15 you a chance to say, after they finish, "Judge, 16 please look at paragraph 22 and 23," if you 17 would do that. 18 MS. SANGALLI: I will do that. Thank 19 you, Your Honor. 10:17AM 20 THE COURT: We'll have defendants 21 back for seven minutes of rebuttal. 22 Mr. Rothstein, I'm going to try to let 23 you speak uninterrupted because I didn't let 24 you do that last time. 10:17AM 25 MR. ROTHSTEIN: That will make me DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	48 1 did it typically, but my claims do it 2 differently." And in the <i>Collective</i> case, the 3 Federal Circuit found two different pieces of 4 invention, two different inventive concepts, 10:18AM 5 that were so stark and stood out so much that 6 they didn't need to get to the abstract idea. 7 The judges, and I believe it was Chief 8 Judge Moore, found there was the peer-to-peer 9 networking outside the CDM: Inventive. The 10:19AM 10 trace networking, the trace routing, in that 11 process: Inventive. And those things were 12 described in the specification as inventive and 13 solving a problem that was identified. 14 Juxtapose that against the patent we have 10:19AM 15 here. This is Figure 1. The patent we have 16 here and the description of the claims here 17 have none of what I just said was in the 18 <i>Collective</i> case. Instead, we have what Your 19 Honor identified as black box devices. 10:19AM 20 Standard, off-the-shelf pieces of computing 21 that are talking to one another. The arrows on 22 the screen there, I have big red Xes through 23 them because there are no explanation 24 whatsoever, either in the claims or in the 10:19AM 25 specification, about how any of this is DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

49

1 supposed to happen.
2 And that's because this is an abstract
3 concept. This is supposed to happen, in the
4 '140 on the right side, the network. This is
10:20AM 5 just the internet connecting two systems. This
6 is a fundamental practice of commerce that's
7 been around for a hundred years, and this is
8 simply a communication style of how this is
9 happening.
10:20AM 10 Now, if we focused on one of the black
11 boxes, which is the PIMS, which is the question
12 Your Honor had for myself and for opposing
13 counsel first, as well as the application
14 server, first, they're denoted as two different
10:20AM 15 things here in the black box on the left. But
16 if you look at the specification, they aren't
17 described, the PIMS nor the application server,
18 as important in any way. They're not even
19 described at all. They're simply identified as
10:20AM 20 PIMS. "The PIMS may do this" or "the
21 application may do that." And then they're
22 added to the claims that overcame the *Muskin*
23 reference.
24 I think if I were to step back and say
10:20AM 25 what happened here, the original application
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50

1 was attempting to claim a method of
2 communication, how one server was going to talk
3 to another, whether it's an online Casino
4 Management System and then an online server,
10:21AM 5 and got an office action rejection or, excuse
6 me, rejection by examiner because of *Muskin*,
7 and then they added the PIMS and to Claims 11
8 and 18 overcome the 102, 103 rejection. But
9 they didn't describe it or disclose it in any
10:21AM 10 manner in the specification.
11 THE COURT: It's talked about once or
12 twice in a couple of paragraphs, as you said,
13 often by describing functionally what they do.
14 Column 3 talked about it a little bit.
10:21AM 15 MR. ROTHSTEIN: Paragraph column 2,
16 it's identified, just identified. And then at
17 column 3, lines 15 through 25, it's identified.
18 But it doesn't say this is the most important
19 part of the invention, here's what it's going
10:21AM 20 to do. And I will say this to Your Honor's
21 question about should they be allowed to amend
22 again -- this is why I started here. At page
23 two of our reply brief --
24 THE COURT: Mr. Rothstein, before you
10:22AM 25 do that, because it will take you close to the
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51

1 time, obviously, the Federal Circuit has, at
2 times, criticized district courts for not
3 allowing the patentee every opportunity to make
4 that argument, knowing it's early stage and
10:22AM 5 without a record, it's hard to make, so if you
6 were to explain here why, if I agree with you
7 that at this stage, you have made out your
8 motion, why it is that the claims are patent
9 ineligible, why should the patentee not get one
10:22AM 10 more chance to try to amend?
11 MR. ROTHSTEIN: That's precisely
12 where I was going, so thank you, Your Honor.
13 Here's why: We're talking about a second
14 amended complaint. They had an original
10:22AM 15 complaint, first amended complaint, and second
16 amended complaint. So this would be the fourth
17 complaint and attempt to plead a plausible case
18 and a case that would survive 101. I don't
19 think there is anything, are any amendments or
10:23AM 20 anything that the patentee can do to create a
21 fact issue that would allow this patent to
22 survive 101.
23 On August 10th, we filed our reply. On
24 page two, we identified the fact Plaintiff had
10:23AM 25 not raised at all any fact issues, any claim
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52

1 construction issues, or anything that would
2 take this out of a 101 context. They had the
3 opportunity on the second amended complaint to
4 address that assertion that we made in our
10:23AM 5 reply. They didn't.
6 Your Honor said, "What happens if you
7 have an expert come in here and say, 'Here's
8 what the PIMS does, and here's why it's so
9 important, and here's why I should consider
10:23AM 10 what this expert says and what the tax credit
11 document says,'" I don't think that the expert
12 can change anything because the claims say what
13 they say, and the specification describes what
14 it describes, and in many cases, including the
10:23AM 15 *cxLoyalty* case, which we identified for Your
16 Honor as most the analogous because it's the
17 abstract concept of loyalty credits, expert
18 testimony and expert ideas may come in and may
19 give you what the POSITA had at the time, but
10:24AM 20 it still can't change what the claims say. And
21 if there's no description in the claims or the
22 specification and they're merely providing
23 their own external, extrinsic thoughts on what
24 it could do, but if the patent is in the
10:24AM 25 abstract realm and they haven't identified
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53 1 anything inventive, it can't create that issue 2 for them. 3 THE COURT: Mr. Rothstein, you're out 4 of time. I thank you for your arguments and 10:24AM 5 opposing counsel for their arguments. I'll 6 take them under consideration, and we'll move 7 on. 8 But I asked Ms. Sangalli if there are 9 particular parts of the complaint that have 10:24AM 10 allegations about the tax credit that she 11 wanted me to focus on as we review things 12 during our break. 13 Ms. Sangalli. 14 MS. SANGALLI: Your Honor, thank you. 10:25AM 15 I would direct Your Honor to paragraphs 24 16 through 28. 17 THE COURT: All right. Thank you. 18 All right, counsel. Thank you. Let's 10:25AM 19 ask counsel from our first case if they'll help 20 us make the transition to counsel from our 21 second. While we do that, why don't we take a 22 five-minute break to let folks stretch their 23 legs, transition, go to the restroom if you 24 need to. We'll take a five-minute break and 10:25AM 25 then we'll come back for argument. The Court DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	55 1 representative in the back, Patrick Salceda. 2 THE COURT: All right. Thank you, 3 Counsel. 4 It's Defendant's motion, so I'm going to 10:33AM 5 turn to Defendant's counsel to start. I'll 6 have a bunch of questions, but let me do that 7 and begin with Ms. Cheng. Thank you. 8 MS. CHENG: Good morning, Your Honor. 9 I'd like to reserve five minutes for rebuttal. 10:33AM 10 THE COURT: Will do. Okay. 11 MS. CHENG: Today, I'd like to start 12 with the claim language if we could look at 13 slide 14, please. And the claim language here 14 is directed to processing, receiving, and 10:33AM 15 storing data and metadata using generic 16 groupings of metadata, which the claim 17 describes as various modules. For example, you 18 see here a recitation of an attribute module, 19 which, according to the claims, is a grouping 10:34AM 20 and storage of attributes. Similarly, there 21 are also element module and class module. 22 There's no dispute here that "metadata" 23 is just information or characteristics 24 describing other data, and that's exactly what 10:34AM 25 the patents say. DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com
54 1 will stand in a five-minute recess. 2 (A recess was taken, after which the 3 following proceedings were had:) 4 THE COURT: Let's move on to our 10:32AM 5 second case for argument. It's the InQuisient 6 matter. Before we get started, let's have 7 counsel identify themselves for the record. 8 We'll start first with counsel for Plaintiff's 9 side and begin there with Delaware counsel. 10:32AM 10 MR. SUNDERMEIR: Good morning, Your 11 Honor. Grayson Sundermeir from Fish and 12 Richardson on behalf of Plaintiff InQuisient. 13 Joined with me today is my colleague Jason Wolff 14 from Fish's San Diego office. We also have 10:32AM 15 with us today Mr. Randy Dewolfson who is 16 InQuisient's chief technology officer. 17 THE COURT: Thank you. 18 We'll do the same for counsel on 19 Defendant's side. Again, we'll begin with 10:32AM 20 Delaware counsel. 21 MS. YING: Good morning, Your Honor. 22 Jennifer Ying from Morris, Nichols, Arsht, and 23 Tunnell on behalf of the defendant Service Now. 24 With me at counsel table is Jodie Cheng from 10:33AM 25 Quinn Emmanuel, and we also have a client DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	56 1 If we could get slide 15, please. 2 THE COURT: Ms. Cheng, while you have 3 the slide up, so I get a very base and 4 thousand-foot-view level, the abstract idea 10:34AM 5 that you put forward that the claims, Claim 1 6 here of the '468 as an example, are said to be 7 directed to is storing, managing, indexing, and 8 retrieving datasets based on metadata or 9 descriptions of the data. If you look at the 10:34AM 10 claim, obviously, quite a lot of it, 80 percent 11 of its real estate, is devoted to these 12 particular modules that are utilized in some 13 way by the data repository or the database 14 structure at issue. 10:35AM 15 I guess at a stepping-back, fundamental 16 level, one thing the plaintiff is going to say 17 rhetorically is, how can it be that this claim 18 is said to be directed simply to the concept of 19 storing and managing, indexing data or metadata 10:35AM 20 when, look, our whole claim is way more 21 specific than that? It's got all these modules 22 that have all these different requirements 23 about a type of data that they must contain, 24 and they all in some way interrelate to each 10:35AM 25 other, says the plaintiff, because the DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

57 1 different types of modules rely on each other 2 with regard to what they track. 3 At a fundamental level, how can a claim 4 that looks this specific be really directed to 10:35AM 5 the broad abstract idea that you set out? 6 MS. CHENG: Because these modules are 7 actually not specific. When we look at 8 something, and I use "attribute module" as an 9 example, the claim says that it is configured 10:36AM 10 to define one or more attributes and store the 11 attributes. It is not disclosing or reciting 12 what an attribute is, how it would relate to 13 other types of metadata. Instead, when we look 14 at the specification, the patent is actually 10:36AM 15 saying it's going to leave it up to the user, 16 the human user, to fill in all the gaps. What 17 is an attribute? How does it relate? How do 18 we store or configure it for the module? 19 The module is essentially a conceptual 10:36AM 20 way of thinking of grouping the metadata which 21 themselves are not specified what that metadata 22 is. If we look at slide 32, please, as an 23 example of the specification from the patent, 24 and here it states that "a user may create the 10:37AM 25 class and its attributes by creating a table." DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	59 1 "status"? 2 MS. CHENG: It is -- the description 3 of the patents say it is whatever the user 4 defines them to be or whatever the user of that 10:38AM 5 system finds of interest to describe. So the 6 term "attribute" really is a generic 7 description of just a grouping. It could be 8 said that you could call it metadata type A. 9 THE COURT: Is what you're saying 10:39AM 10 that actually, like, kind of metaphysically, 11 the construction in your mind of "element" or 12 "class" or "attribute" or "state" is basically 13 all the same. It's all, like, any type of 14 metadata that the user wants it to be. Is that 10:39AM 15 what you're saying it is? Otherwise, couldn't 16 you understand them to at least have some 17 requirements to them, like a state machine 18 module, whatever it is that's going to be the 19 type of data stored in the module, isn't there 10:39AM 20 something inherent in that that's a different 21 kind of data than, say, what's stored in an 22 element module? 23 MS. CHENG: There can be, but they 24 all relate to data, and all that is different 10:39AM 25 forms of metadata which the patents are not DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com
58 1 So here in this implementation, the module 2 supposedly is represented by a table, but if we 3 go to the next slide, please -- sorry 31. The 4 attributes here are what the user decides them 10:37AM 5 to be, and the relationship is also what the 6 user decides them to be. 7 So this patent is actually -- while it 8 does devote, as Your Honor said, a lot of real 9 estate or a lot of words to different types of 10:37AM 10 modules, those modules aren't specific at all, 11 and there's no actual specific technique 12 recited in the patent claims themselves. In 13 that way, it's claiming only the functional 14 result of using metadata and data and grouping. 10:38AM 15 THE COURT: But they can be said to 16 be specific in that each type of module has a 17 name and presumably a name that reflects a type 18 of, I guess, metadata that it must store. As 19 you said, element, module class, module 10:38AM 20 attribute module. Presumably an element, an 21 attribute, or an attribute and a class of 22 attributes, for example, those are different 23 types of metadata. Is that right in your 24 understanding? What do you understand those to 10:38AM 25 mean, "element," "attribute," "class," and DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	60 1 specifying exactly what kind. If you look at 2 slide 15, we see that the description of 3 "metadata," which is in the patent claims, is 4 data that's used to describe other data. And 10:40AM 5 metadata can have many different layers. It 6 can be data about data about data and so on and 7 so forth. 8 The patent claims do not specify what 9 layer of metadata is an attribute or what layer 10:40AM 10 of metadata would a status be or an element. 11 Instead, as mentioned, it is leaving it up to 12 whoever is the user of this system to define 13 those things, and the patent claims are, 14 instead, just -- what they claim is the 10:40AM 15 functional result. 16 So now we already have a system that is 17 supposed to process, retrieve, and store data 18 and metadata, and it goes on to list the 19 different modules, but the modules themselves 10:40AM 20 are recited to be configured to define and 21 store a particular type of metadata that the 22 user would configure. It doesn't tell us how 23 to define an attribute or how to configure the 24 module to store an attribute. 10:41AM 25 THE COURT: Thinking about <i>Enfish</i>, DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

61 1 the case the other side is focused on, the 2 claim there at issue wasn't long, and it 3 recited a data storage and retrieval system 4 that included rows that included an object 10:41AM 5 identification number and it responded to 6 records of information, including columns that 7 intersected those rows to define a bunch of 8 cells. Each column included an object 9 indication number and a means for indexing data 10:41AM 10 stored in the table. And your response to 11 <i>Enfish</i> said the claims here are distinguishable 12 because the claimed modules are defined by 13 generic functional language. Unspecified 14 associations is kind of what you're saying now. 10:42AM 15 But I guess as we talk about, the claims at 16 least say what these modules must include and 17 they describe some interrelationship between 18 them. I guess, how is that so different than 19 the type of data structure that was described 10:42AM 20 in <i>Enfish</i>? What are the -- again, it's not a 21 long claim. It's not like it had incredible 22 particularity. What is different about the 23 structure of the data structure in <i>Enfish</i> 24 versus the one here? 10:42AM 25 MS. CHENG: So <i>Enfish</i>, the <i>Enfish</i> DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	63 1 I'm not seeing, like, why is there so much more 2 specificity in that claim versus the claims 3 here? 4 MS. CHENG: In the claims here, we 10:44AM 5 don't see a specific database structure. We 6 see a reference to a module, which is a 7 conceptual idea. 8 THE COURT: That doesn't count as 9 structure? A module is not a piece of 10:44AM 10 structure? 11 MS. CHENG: We would say the 12 specification certainly does not support that. 13 If we go back to slide 15, which we see how the 14 patent is defining and describing "metadata," 10:44AM 15 the second sentence of that there says, 16 "Examples of metadata include schema, tables, 17 indices, views, column definitions, et cetera." 18 It's an open-ended list of potential formats 19 for metadata, which is in the claim -- patent 10:44AM 20 claims could take, and table is just one of 21 them. So when there's no -- sorry. 22 THE COURT: I was going to say to 23 your point back at slide 17, if you could, to 24 the <i>Enfish</i> claim, I think you said 26. Sorry. 10:45AM 25 You said, well, that's got structure. Is the DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com
62 1 claim, which is slide 26, does disclose a 2 specific type of database structure, a logical 3 table, and it provides how to configure and 4 construct that table. It tells us exactly what 10:42AM 5 should be in each row and how to populate it as 6 well as what should be in each column. 7 THE COURT: Well, what's the 8 difference between explaining what should be in 9 each row and what should be in each column -- 10:43AM 10 again, it's not like they have 17 requirements 11 up there in <i>Enfish</i>. There's few. It could be 12 said that Claim 1 of the '468 tells you what's 13 got to be in this structure, what particular 14 modules, and requires that the content of those 10:43AM 15 modules in some way interrelates to the content 16 of other modules. Why isn't the specificity 17 there, an OID must be required, much different 18 from the specificity here? 19 Put differently <i>Enfish</i>, the benefit of 10:43AM 20 the patent was it described in real detail why 21 it is that particular type of table was a big 22 step forward in terms of way databases work. 23 It did a great job explaining why those adds 24 added something to the art. It seems like 10:43AM 25 that's what the case turned on, not so much -- DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	64 1 structure you're talking about is that it's got 2 rows and columns? 3 MS. CHENG: It specifies a logical 4 table, and it says that there's a single 10:45AM 5 logical table. 6 THE COURT: I guess I'm trying to 7 figure out what's enough in your mind to make 8 Claim 17 in <i>Enfish</i> about a database structure 9 but that's not present in our claim. There, it 10:45AM 10 makes reference to a logical table that has 11 particular kinds of rows and particular kinds 12 of columns; am I right? That are required? 13 MS. CHENG: Yes. 14 THE COURT: Whereas you would say 10:45AM 15 Claim 1 of the '468, although the claim 16 requires a data repository, and that that 17 repository have certain modules, those modules 18 don't count as structure or particularized 19 structure because really this is a way of 10:46AM 20 saying storing data about data, i.e. metadata; 21 is that right? 22 MS. CHENG: Correct. Those modules 23 are groupings, and that is why the patent 24 specification was before us. There is no 10:46AM 25 definition or no there's no real structure DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

65

1 associated with the term "module."
2 THE COURT: Do you think modules
3 means just grouping of data?
4 MS. CHENG: That is what the patent
10:46AM 5 specification would support. It is how, also,
6 Plaintiffs have alleged infringement in the
7 complaint against Service Now.
8 THE COURT: When you say what the
9 specification supports, is that the prior piece
10:46AM 10 of the specification we were looking at that
11 you showed me, on slide 15?
12 MS. CHENG: Slide 15, yes, has one
13 example.
14 THE COURT: That doesn't say the word
10:46AM 15 "modules are." It says "metadata is." It
16 sounds like you're saying "modules" is just a
17 synonym for "pieces of metadata."
18 MS. CHENG: Correct, and that is how
19 the specification of the patent is written.
10:47AM 20 There are embodiments of modules, but they are
21 also examples taken from possible schema,
22 tables, from this list.
23 THE COURT: I guess another argument
24 you made in your briefing was that the claimed
10:47AM 25 modules don't save the claims because they

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66

1 don't specify how to construct a module or
2 database as a whole. Did the claims in *Enfish*
3 specify how to construct the table beyond
4 requiring that it have certain columns and rows
10:47AM 5 that are described?
6 MS. CHENG: I would posit that that
7 is in *Enfish*, Claim 17, specifying what the
8 rows and columns need to be populated with is
9 constructing the logical table there.
10:47AM 10 THE COURT: So specifying what the
11 rows and columns need to be populated with in
12 Claim 17 in *Enfish* amounts to describing
13 particularized structure, but specifying what
14 these modules need to be populated with doesn't
10:48AM 15 because "module," to you, means grouping of
16 metadata, and you don't think the words
17 "element module" or "class module" add anything
18 to it. Sounds like you're saying that's
19 another word, but that just means any type of
10:48AM 20 metadata that the user wants. Is that what
21 you're saying?
22 MS. CHENG: Yes, and I would add that
23 in the claims here -- actually, if we could go
24 back to slide 14, put up Claim 1, this module
10:48AM 25 is not only not -- the claims not only fail to

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67

1 disclose how to construct a module, but it also
2 just claims the functional result. It claims,
3 already, an element -- for example, an
4 attribute module that is already configured to
10:48AM 5 define and store the attributes. So it does
6 not provide that how, and that is what *Enfish*,
7 in contrast, does do. It does tell us how does
8 that table be constructed to represent the data
9 by populating with such-and-such rows and
10:49AM 10 columns here.
11 THE COURT: By populating with
12 certain kinds of rows and columns, that's the
13 how of how to construct the structure that's
14 present in *Enfish*. It's not like *Enfish* says,
10:49AM 15 "Let me tell you how the make the table.
16 Create software that actually" -- in some more
17 specific way than "we want it to have a row
18 with an identification number and column with
19 identification number." It's not like it went
10:49AM 20 to the next level of how in *Enfish*. The
21 structure is the particular rows and columns
22 the claim calls for; is that right?
23 MS. CHENG: Correct.
24 THE COURT: Which you think is
10:49AM 25 distinguishable from the required modules here?

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68

1 MS. CHENG: Correct, on two levels,
2 Your Honor, because "module" here is not even
3 restricted to a specific structure. It could
4 be a table. It could be schemas, but it
10:50AM 5 appears Plaintiff's slides are going to
6 suggest. And as a second layer, it does not
7 tell us how that module, whatever that
8 structure might be, is configured.
9 THE COURT: I guess this is a
10:50AM 10 question I'm going to have repeatedly for
11 Plaintiff's counsel, but I'll give you a chance
12 to tell me what you think about it. Obviously,
13 a key point of the inquiry is not just
14 understanding what it is -- what type of
10:50AM 15 structure the claims require, i.e., to have
16 certain modules and understand what those
17 modules are and if they are interrelate or work
18 together, but it's helpful for this process to
19 say, okay, I see what the claim requires. I
10:50AM 20 see what the patent saying in column 1 about
21 what was happening in the art and what problem
22 it's meant to solve, and I can see how it is
23 that the particular modules that are claimed
24 and the way they work together actually solve
10:51AM 25 that problem that's being talked about. I'm

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69 1 going to be asking Plaintiff a lot of questions 2 like how does that work and how do these 3 modules -- how are they going to solve whatever 4 problem it is that's being described in column 10:51AM 5 1, which I think is written in pretty 6 inscrutable language, but I'm going to give you 7 a chance to say, what do you think the patent 8 is trying to say about that? Maybe you think 9 it's not saying it well enough. But in what 10:51AM 10 way -- how do you link what's in the claims to 11 what is described as the problem that needs a 12 solution, say, in column 1? 13 MS. CHENG: We believe that, 14 basically, what the patent is trying to say is 10:51AM 15 that it is actually taking existing database 16 systems and structures and expanding them to 17 incorporate, possibly incorporate, additional 18 types of metadata, but that, we would say, is 19 not any different -- that does not get us out 10:52AM 20 of the abstract idea of essentially what we're 21 doing is organizing data based on grouping its 22 metadata and whether that is the first layer 23 metadata or a tertiary layer of metadata, it's 24 still just information about data. 10:52AM 25 THE COURT: The last sentence of the DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	71 1 think it means that we're actually not just 2 going to identify what data needs to be 3 utilized but store it. 4 Ms. Cheng, you have about five minutes 10:53AM 5 left, and you wanted to save five minutes. Is 6 there any other point you want to make before 7 we turn it over to your colleague on the other 8 side? 9 MS. CHENG: No, we'll save the rest 10:53AM 10 of the time for rebuttal. 11 THE COURT: Okay. We'll call up 12 Plaintiff's counsel, Mr. Wolff. 13 And, Mr. Wolff, maybe as you begin, I 14 have a lot of questions for you, but they 10:54AM 15 really all get to what I just kind of described 16 as kind of my big questions from reading this 17 patent and the briefs, which is in an ideal 18 world, you would have a patent claim that says, 19 "This is a type of database structure or data 10:54AM 20 repository. Here are all the claimed 21 requirements. In my patent, I'm going to 22 describe the kinds of structures that existed 23 at certain times. I'm going to tell you stuff 24 that was problematic with them, bad from a user 10:54AM 25 perspective, it didn't allow for efficient DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com
70 1 background section which leads into the summary 2 says, "Accordingly, there's a need for systems 3 and methods that store, manage, index 4 interrelated and/or retrieved datasets in a 10:52AM 5 manner independent of the data model." That 6 phrase, "independent of the data model," I 7 think is meant to reflect back a bit on what's 8 been described earlier in the column. What do 9 you understand the phrase "independent of the 10:52AM 10 data model" to be or to mean? What do you 11 understand the patent to be saying this is what 12 was done or this is what we're trying to do 13 different? What do you think that term means. 14 MS. CHENG: "Independent of the data 10:52AM 15 model" could be what we would interpret to be 16 referring to the storage aspect of this patent 17 because we also have these modules and each are 18 configured to not only -- sorry -- configured 19 not only to define whatever type of metadata is 10:53AM 20 in that module but to store it, and storing is, 21 of course, conventional, and that is 22 acknowledged in the patent itself, that 23 conventional databases would store datasets 24 locally as well as remotely. 10:53AM 25 THE COURT: So you're saying that you DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	72 1 integration of data, and then I'm going to 2 clearly explain how it is that this claimed 3 repository with these particular modules, how 4 it is that that actually solves the problem I'm 10:54AM 5 talking about, because if you see the way these 6 modules store data and the way it relates to 7 each other, it's going to help in the sense 8 that and it solves this problem that's 9 described here." 10:55AM 10 We've read it a lot of times, and we just 11 really have a difficult time making that 12 connection. Including that last sentence that 13 leads from the background section to the 14 summary section, what the heck does 10:55AM 15 "independent of the data model" mean? How do 16 the modules work in a way that's independent of 17 the data model? Et cetera, et cetera. Maybe a 18 good place to start is helping us navigate 19 through the difficulty we're navigating. The 10:55AM 20 Federal Circuit in <i>Enfish</i> didn't have that 21 problem. The patent there made it easy for 22 them. 23 MR. WOLFF: May I approach? 24 THE COURT: You may. 10:55AM 25 MR. WOLFF: How many paper copies? DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

73 1 THE COURT: Two, please. 2 MR. WOLFF: So the background of the 3 patent talks about conventional database 4 systems. Our client, InQuisient, as well as 10:56AM 5 the defendant in this case make what are called 6 enterprise management systems. They are 7 systems that look at collections of data or 8 collections of databases and tries to build 9 another data structure to manage those 10:56AM 10 collections of data and those collections of 11 database systems. Sometimes, in the briefing, 12 we call them -- in the complaint, it talks 13 about an enterprise management system. 14 The problem with the conventional 10:56AM 15 database systems is that you have to write a 16 lot of dedicated code to try to manage the data 17 in the database system. You have to write 18 specific kinds of procedural code. You need to 19 write code that triggers different things to 10:57AM 20 happen in the database, and are were built on a 21 very specific data model that was defined at 22 the time the database was written. The problem 23 is that you had to write custom data modules, 24 you had to write custom code to make sure the 10:57AM 25 databases could work. You had to write DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	75 1 interrelate to each other. What the heck does 2 that have to do with avoiding the problem of a 3 database system that's created through use of a 4 lot of dedicated code? 10:58AM 5 MR. WOLFF: What it does is it takes 6 the code away, in a sense. It allows the 7 people managing these various collections of 8 databases and datasets to write code that will 9 specify how the data interacts with each other 10:58AM 10 and allow the user who's going to need to get 11 in and access a bunch of heterogeneous 12 databases or different kinds of organization of 13 data, it gives them a tool and resource to go 14 in with this new data structure and pull out 10:59AM 15 the information that was in the database. 16 It looks around and says, "I've got a 17 table here with this information in it. I've 18 got another table somewhere else with more 19 information in it." These would be datasets in 10:59AM 20 the claims. And then what I do is I've gone 21 out and looked at each one of the tables and 22 said, "I'm going to build a new data 23 dictionary, a new data structure, that's going 24 to allow me to manage across all the different 10:59AM 25 tables and all the data structures in my system DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com
74 1 dedicated code for specific purposes within -- 2 however the database was running or however the 3 purpose it was being used, and they were not 4 flexible and portable. You couldn't just 10:57AM 5 change something in the database or you 6 couldn't manage the collection of databases 7 more efficiently if you didn't have some code 8 mechanism that you had written to manage this 9 process. 10:57AM 10 THE COURT: "Specific data model" is 11 a synonym for "dedicated code" or "a model 12 created with dedicated code"? 13 MR. WOLFF: The data models were 14 specified ahead of time and one of the things 10:57AM 15 you had to do to manage the data model and 16 manage the different things you wanted to do 17 with your database was you had to write 18 specific, dedicated code to do that. 19 THE COURT: So we have this data 10:58AM 20 system, data structure that's described, say, 21 in Claim 1 of the '468. I see it. I see that 22 it has certain things that require -- certain 23 things called "modules." I see the modules 24 have names and different names, and I can see 10:58AM 25 how the names of the modules in some way DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	76 1 in one place." 2 THE COURT: Still not solved. In my 3 mind, I'm thinking, okay, old system. Problem: 4 Required a lot of dedicated code. I'm thinking 10:59AM 5 about a computer programmer having to type out 6 code, and that it has to be very specific code 7 that effectuated very specific ways of either 8 storing or comparing data. I'm thinking, okay, 9 this repository that's claimed, Plaintiff's 11:00AM 10 counsel is telling me, it's going to avoid that 11 problem. It's going to avoid the need for as 12 much dedicated code to be used. How is it 13 going to avoid the need for as much dedicated 14 code to be used? Again, still not 11:00AM 15 understanding the answer. 16 MR. WOLFF: The way it's going to do 17 it is because we created a data structure, this 18 EMR, this data repository, that has these 19 different modules in it, and each one of those 11:00AM 20 modules has specific tasks and specific 21 requirements and relates to the other modules. 22 Once we define that structure, then we can 23 populate data into the structure, and the 24 structure itself with the data in it will 11:00AM 25 reduce the need for the code that was required DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

77 1 in the past that had to be dedicated, 2 procedural-type code. 3 THE COURT: How? In order for the 4 structure to work to be able to utilize the 5 data or to make comparisons to it, wouldn't 6 code need to be written that allows it to do 7 that? 8 MR. WOLFF: Code is needed in the 9 sense that you have to, basically, take 10 information out of the data structure, but you 11 don't have to do it for each instantiation of a 12 database that someone's written. You may have 13 a human resources database, that's an example 14 in the patent, and it gives an example of the 15 state machine in the patent that shows kind of 16 how you would populate the different statuses 17 in the state module to build this repository so 18 that once you're running your database and 19 you're using the ERM to manage your various 20 database processes, it can look at the code 21 that's in the database structure itself and 22 say, "I cannot transition from someone who's 23 interviewing position to somebody who's been 24 terminated unless I first require them to be 25 hired." DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	79 1 that you have the ability to dynamically adjust 2 the data. It's been added an example in the 3 patent specification that if you wanted to add 4 a new column to a table you can do that, or new 5 information or repository, you could do that 6 with the data structure that's been specified 7 in the claim, and here's the claim. 8 A good example of the claim and how it's 9 implemented is the schema, the structural 10 diagram that's found in Figure 1 of the patent 11 and most of the patent figures. It shows each 12 one of the elements. We color-coded them up 13 with the claim limitations, and it shows that 14 each one of the modules, there's an example in 15 the patent specification. There's, like, a 16 primary key. There's a foreign key. There's 17 arrows that connect the different tables that 18 show what their relationships are, and that's 19 all the kind of stuff that's reflected in the 20 claim itself. If you don't have one of these 21 modules and it doesn't have one of the 22 relationships that's specified in the body of 23 the claim, you're not going to practice the 24 claim. 25 THE COURT: Sure, but maybe at a base DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com
78 1 Could I walk you through the claim a 2 little bit? I think maybe the claim will help 3 a little bit in this respect. 4 THE COURT: I'm looking at it right 5 now. Even at a base level, we have questions, 6 like, an element module. The other side says 7 there's nothing to that. There's no 8 requirement. I think Ms. Cheng was saying 9 that's another way of saying a module that has 10 metadata in it, any kind of metadata, whatever 11 the user wants, who cares. Is it that? 12 MR. WOLFF: It's not. It's more 13 specific than that. This claim has a very 14 specific data dictionary. It's got particular 15 structures. The modules that are referred to 16 in the claim, an example that's used in the 17 specification is a table or a portion of a 18 table. A table is a structure that people know 19 how to build. A table is a structure that is 20 known in the art. There's been no evidence 21 that people don't know what a table is or how 22 to build a table that a table may have a column 23 or row or as many rows as someone wants to 24 specify. 25 And, again, some of the damages here were DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	80 1 level, if you were describing there's an 2 element module, what that limitation requires 3 is that this module include elements. There's 4 also an attribute model. That's a part of the 5 model that includes attributes. There's a 6 difference between those things. There are 7 certain kinds of data that cannot be an 8 attribute but can be an element and vice versa. 9 MR. WOLFF: Right. 10 THE COURT: Give me an example. 11 MR. WOLFF: An example is in the 12 element module, there's got to be something 13 that uniquely identifies the plurality of 14 elements. So the element module would be kind 15 of like your primary key for most of the 16 various data structures in here. And then the 17 other modules that kind of hang off of it are 18 things that specify what can you have and what 19 sort of relationships can be stored with 20 respect to the elements that you specified. 21 The element module is probably the single most 22 important module of these claims with respect 23 to its structure because it is the thing that 24 goes in and says, "This is when I want to store 25 my unique identifiers for all my different data DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

81 1 pieces that I'm going to store in my data 2 dictionary." And each one of the other modules 3 is specifying some other class or type of 4 information that would be built into this data 11:05AM 5 structure to help manage the database 6 management systems. 7 THE COURT: I can see that these 8 modules have some relationship to each other. 9 They interrelate. They -- for example, an 11:05AM 10 element relation model stores relationships 11 between elements which, in turn, relies on the 12 element module to tell you what the elements 13 are. Is there something about the 14 interrelationship of those different types -- 11:06AM 15 stepping back, are elements and attributes, are 16 they all types of metadata? 17 MR. WOLFF: Yes, they are generally 18 types of metadata. 19 THE COURT: Is there something about 11:06AM 20 the requirement that there be some 21 interrelationship between the types of metadata 22 that each module stores that gets in some way 23 at this dynamism that you're talking about 24 that's different than the dedicated code piece 11:06AM 25 of the prior art? If so, can you explain it in DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	83 1 various relationship diagrams. These arrows 2 are one to many. If you look at the class 3 attribute module 112, there may be class IDs or 4 attribute IDs and it points out the attribute 11:08AM 5 table. So the attribute tables constrain the 6 ability of some of the classes that you put in 7 the class attribute table to be one of the 8 things found in the table. So you're putting 9 all that logic into the database structure 11:08AM 10 itself and constraining the ability of someone 11 to do it, so what the described modules find. 12 THE COURT: Is there a place in the 13 patent that you would say best explains -- that 14 does the equivalent of the following: Say, "I 11:08AM 15 told you already the limitations with the prior 16 art, that the database structures referred to 17 therein require tons of dedicated code and 18 that's problematic." Is there a best sentence 19 or sentences that you would say that I should 11:08AM 20 look at this in the break that in effect does 21 the type of following: And so the types of 22 modules that the claims require and their 23 interrelationship with each other solves that 24 problem because they do X or because they allow 11:09AM 25 for Y. What's the best spot in the patent that DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com
82 1 language I can understand? 2 MR. WOLFF: I'll do my best. So 3 there's a difference between those things. The 4 reason the data structure is defined in the 11:06AM 5 claim is to build an organization, build a tool 6 that allows you to improve the way the database 7 itself operates. So instead of having a bunch 8 of procedural code that might say "If 9 such-and-such a relationship in such-and-such a 11:06AM 10 table has a certain value, then I need to go 11 and find some other attribute or class or 12 something else that would help me perform some 13 function." And the example could be as simple 14 as the hiring an employee and then having the 11:07AM 15 various state transitions that are shown in the 16 figures of the patent. 17 What it's doing is it's enforcing -- with 18 the data structure itself, it's enforcing the 19 constraints to the database, it's enforcing 11:07AM 20 constraints on the ability of people to add 21 data to the database, as well as to help them 22 have a resource to take information out without 23 writing all of this code. There is code that 24 has to be written to do this, and this is why 11:07AM 25 we've got the schema drawn in here and the DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	84 1 spells that out in words? 2 MR. WOLFF: Two spots in the patent 3 that I think are good are column 4 of the '468 4 patent beginning at line 22. It goes through a 11:09AM 5 series of explanations that talks about some of 6 the advantages that are obtained by the fact 7 that you have these different data structures 8 or you have this particular type of data 9 structure managing your system. 11:09AM 10 THE COURT: There were two parts of 11 the patent I wanted to ask about. One was 12 column 4, lines 23 to 25, and the other is 13 columns 8 and 9 lines 61 through 8, so you're 14 on the first one. 11:09AM 15 MR. WOLFF: And that was the second 16 one I highlighted in here. 17 THE COURT: Not in your briefs, 18 though; right? As far as I could tell, did you 19 talk about these parts of the patent in your 11:09AM 20 brief? 21 MR. WOLFF: I thought we did, but I 22 have to check and see. 23 THE COURT: To step back, as I've 24 said, I think you want these claims and this 11:09AM 25 patent to be seen as analogous to <i>Enfish</i>, and a DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

85 1 huge part of <i>Enfish</i> was the Court being able to 2 point to the parts of the specification that 3 explain clearly why it is that what is claim 4 solved a problem with prior art databases. 11:10AM 5 They made that link, the link I'm asking you 6 about right now, and I don't know that the 7 briefs did it. They pointed to a couple 8 paragraphs in the complaint that are very hard 9 to understand language, kind of like what's in 11:10AM 10 column 1. I think you're doing it now, but 11 let's see if we understand what it says. 12 This part of column 4: "Unlike a 13 conventional relational database, the EMR 14 extends the notion of available attribute text 11:10AM 15 beyond the standard string number of data 16 links," and it goes on from there. What does 17 that mean, and how does it get to the answer 18 I've been asking? 19 MR. WOLFF: Well, what it means is 11:10AM 20 that it allows more flexibility and 21 extensibility to the way that you define your 22 database, and it does it through the data 23 structure itself. So in this particular 24 instance, it's the type definition table 102. 11:11AM 25 And then if you skip down to line 29 through DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	87 1 types, whatever, how does the database use that 2 different information to actually make a more 3 efficient table or more efficiently process 4 data? Or what does it do with the specificity 11:12AM 5 once the claim requires that it be there? 6 MR. WOLFF: Once you have the data 7 dictionary specified, you can use the data 8 dictionary as your entry point to both access 9 and retrieve and analyze data that you can pull 11:12AM 10 out of the database. Instead of going back to 11 the database itself to do it in the first 12 instance, write a bunch of procedural code and 13 write a bunch of specialized user interfaces, 14 because the structure is defined the way it is, 11:12AM 15 we have a way to dynamically generate the user 16 interface that helps people go in and use the 17 data dictionary specified as the key to get 18 into various pieces of information in the 19 database itself. 11:13AM 20 THE COURT: Let's take a look at the 21 bottom of column 8 starting line 61. I think 22 that's the other place we had a question about 23 and I think you were going to direct me to. 24 It's a place where the patent talks about 11:13AM 25 several drawbacks to conventional systems. DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com
86 1 31, it says, "By using the type of the person's 2 name, the attribute user can declare more than 3 what a normal relational database may store? 4 THE COURT: What does that mean, "by 11:11AM 5 using the type of the person's name for an 6 attribute, the user can declare more than what 7 a normal relational database may store"? What 8 does that mean? 9 MR. WOLFF: It means that you can 11:11AM 10 extend the ability of the database to specify 11 more information or maybe even types of people 12 in your database when the original data model 13 that you agreed on when you built your database 14 didn't specify that. So this is a way to 11:11AM 15 extend the ability of the database to manage 16 and -- 17 THE COURT: It allows for the input 18 of more specific kinds of data about X? 19 MR. WOLFF: It allows you to further 11:11AM 20 specify the structure of the database so that 21 you can have more information about the 22 different things that you're managing across 23 these different heterogeneous databases. 24 THE COURT: Once you have the more 11:12AM 25 information, element types, attributes, class DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	88 1 That's how it starts. What is said there that 2 helps me understand how the claimed structure 3 solves the problem? 4 MR. WOLFF: Well, this actually 11:13AM 5 starts at 50 and it runs to the top of column 6 9, line 2, but it's describing some of the 7 drawbacks of the prior art and how, if you use 8 the data model in the prior art system, you 9 would have to write a bunch of dedicated code 11:13AM 10 to build the user interface and manage the 11 inputs. 12 THE COURT: I guess the piece I'm 13 not -- like, the thing I'm not quite 14 understanding is -- I was a liberal arts major 11:14AM 15 in college. I'm not quite understanding how 16 the claimed modules and what they require 17 eliminates the need for lots of dedicated code. 18 There's something about -- I think you're 19 trying to tell me there's something about the 11:14AM 20 nature of these modules and the specificity 21 they require that eliminates the need for lots 22 of dedicated code because there is something 23 that happens with them, and I'm not 24 understanding. What is it that the modules 11:14AM 25 have or do per the claim that eliminates that DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

89 1 need that's said to be bad? 2 MR. WOLFF: I apologize. I'm not 3 doing a good job of it. An analogy might work, 4 but you can think of the modules -- you can 11:14AM 5 think of the invention, the overall invention, 6 as a machine. And you can think of the modules 7 in the claim as a gear and each of the 8 specificity that's required in the claim as 9 teeth on those gears, saying this is an 11:15AM 10 attribute module, and this is the 11 information -- I'm defining what the attribute 12 module is. And then the relationships that are 13 defined in the claim are like where the teeth 14 for the different gears interconnect. And when 11:15AM 15 you populate the data into the system and 16 you've got this particular organization of 17 data, all the gears are going to turn, and it's 18 going to help the user manage the data in their 19 enterprise management system that could be 11:15AM 20 spread out among many different databases. 21 THE COURT: How does the way these 22 gears connect and they turn and they 23 interrelate, how does that get to the problem 24 of you don't need a lot of dedicated code? 11:15AM 25 MR. WOLFF: Because instead of DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	91 1 slide eight. And it shows -- there's various 2 keys. Primary keys and foreign keys relate to 3 other tables in the deal. What it's basically 4 enforcing as a constraint in the logic of the 11:17AM 5 database and the logical organization structure 6 of it is to say if I have one status and I want 7 to move to a different status, I cannot do that 8 unless my State Machine transition table 9 specifies that that transition is allowed, and 11:17AM 10 I do that by just adding data in the table in 11 the data structure. I don't have to do that by 12 writing some conditional logic that says, "If 13 A, not B. If C, then B." 14 THE COURT: That kind of "if A, not 11:18AM 15 B" isn't required -- because of what is 16 claimed, it's got to be in the claims. Look at 17 the two limitations in the claim. What words 18 in those claims does the work of "if A, then 19 B"? 11:18AM 20 MR. WOLFF: The status module would 21 be part of that, and the status module is, in 22 this particular instance, defining what the 23 status was for whatever the state machine that 24 was specified in the prior element. You could 11:18AM 25 have five different state machines specified in DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com
90 1 writing procedural code -- I'm probably not 2 doing a good job of it because the question 3 keeps coming up. Instead of writing procedural 4 code that's analyzing, making conditional 11:16AM 5 logic, or it's defining abstract data types and 6 procedures -- I don't know how familiar you are 7 with those things. We don't have to do all 8 that work because now I know what the structure 9 of the database looks like. I know how the 11:16AM 10 data is organized database, and because I know 11 that structure, I can go in and look at 12 specific things in the structure of the data 13 itself and the way it's organized and I can 14 pull out that information without doing all the 11:16AM 15 thing. 16 The state module is probably the best 17 example of that. I think it's back on this 18 particular slide. You might have to write a 19 bunch of procedural code to implement a state 11:16AM 20 machine. It would say, if you are in this 21 particular -- you have one particular status. 22 You're allowed to -- this is your state machine 23 transition, so this particular instance, 24 there's a state machine transition table 122. 11:17AM 25 That's shown on the right side of the figure on DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	92 1 this particular example and there would be a 2 status for each of the state machines that you 3 would specify, and that's going to help you 4 manage these transitions. The state machine 11:18AM 5 transition module is not specifically claimed 6 in this particular example. This is an 7 independent claim. 8 THE COURT: A couple quick questions. 9 You're just about out of time. More than a few 11:18AM 10 times in your brief, you cited to column 3, 11 lines 37 to 41, which to us looked like a 12 description of Figure 13. It seems important, 13 but we didn't understand why you were citing to 14 that. 11:19AM 15 MR. WOLFF: I'm sorry. What was the 16 column? 17 THE COURT: In your briefs two or 18 three times, you cited -- you seemed to 19 emphasize, this is at DI 16 and 5 and 18, that 11:19AM 20 we should look particularity to columns 3, 21 lines 37 to 41 of the '468 patent. When you go 22 there, it looks like it's the lines that 23 describe Figure 13. We felt like you were 24 trying to tell us something about the patent, 11:19AM 25 but we didn't understand what that was meant to DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

93 1 refer to. 2 MR. WOLFF: I wish I had an answer. 3 THE COURT: Why don't you take that. 4 Again, like I did in the last case, after I 11:19AM 5 hear from the other side on rebuttal, if 6 there's anything more on that that you want to 7 share, let me know before we conclude. 8 The last thing I want to ask you was 9 Ms. Cheng, when I asked her what do you think 11:19AM 10 is module is, I think she said it's a grouping 11 of metadata. It's not a structure, she said. 12 She was contrasting it to the structure in 13 <i>Enfish</i>. What structure? Well, that database 14 had rows and columns that had particular 11:20AM 15 requirements, inputs. Module is not structure. 16 It's a group of metadata. Is that wrong? 17 MR. WOLFF: It is a type of 18 structure, and the type of structure is going 19 to be a table or portion of a table. The 11:20AM 20 difference with <i>Enfish</i> and our particular 21 claims, and I've got them here on slide 17, 22 <i>Enfish</i> dealt with a table or a database 23 structure that improved the operation of a 24 database that has a single table. Our claim 11:20AM 25 has eight different tables or portions of DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	95 1 modules can only be used for specific types of 2 metadata, that somehow these modules are 3 defined -- that them themselves define and 4 categorize some types of metadata or that the 11:22AM 5 relationships are constrained. That 6 representation is not supported in the 7 specification. We saw in slide 31 and 32 the 8 portions of the '468 patent, I believe, calls 9 for, lines 9 through 22, that dictate that a 11:22AM 10 user creates and defines the class and the 11 attributes, for example, and in the -- in that 12 same excerpt, that the user then may be able to 13 construct that table however he or she wants. 14 And further, there are other examples of 11:22AM 15 this in the specification. If we look in the 16 '468 patent, column 5 starting at line 66 17 through column 6, line 8, and just one excerpt 18 of that is "an element stored in element table 19 implies that the user can find similarity 11:23AM 20 between anything that the user would like to 21 discuss, report, store, or manage." 22 THE COURT: I'm sorry, Ms. Cheng. 23 What column and lines were you at? 24 MS. CHENG: So that was column 5, 11:23AM 25 lines 66 through column 6, line 8, and the DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com
94 1 tables specified in it. In each instance, it's 2 doing the same type of work that <i>Enfish</i> did in 3 one table. It's different, but it's looking at 4 the -- it's looking at each of the tables and 11:20AM 5 saying what the relationship is, what needs to 6 be specified in the table, and what the 7 relationships are. The structure is the table. 8 The structure is the table, what the table 9 contains, and how the tables relate to the 11:21AM 10 other tables in the claim. 11 THE COURT: Okay. Mr. Wolff, you're 12 out of time, but I appreciate your argument. 13 Thank you. Let me turn back to Defendant's 14 counsel who has about five minutes left for 11:21AM 15 rebuttal, and I'll try to give Ms. Cheng a 16 chance to make whatever points she wants to 17 make without asking too many questions. 18 MS. CHENG: So Plaintiff's counsel 19 used an analogy of a machine and modules are 11:21AM 20 teeth and relationships being gears, but 21 there's no explanation how, how somebody who 22 wants to actually implement or avoid 23 implementing the so-called machine in the 24 database structure would be able to do that. 11:21AM 25 Plaintiff's counsel said that each of the DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	96 1 excerpt I read is specifically column 6, line 1 2 through 4. 3 THE COURT: "An element stored in 4 element table 160 implies that the user can 11:23AM 5 find similarity between anything that the user 6 would like to discuss, report, store, or 7 manage." You think that articulation speaks to 8 what the breadth of what an element is? 9 MS. CHENG: Exactly. Plaintiff's 11:24AM 10 counsel mentioned that an element -- what is an 11 element? The element module is particularly 12 important here, and there was a representation 13 that these modules, in this case, the element 14 module, is constrained to a specific type of 11:24AM 15 metadata. This excerpt as well as the one we 16 show on slide 31 and 32 and in other places 17 throughout the specification indicate that 18 that's not true. These modules are -- and the 19 relationship between the modules are whatever 11:24AM 20 the user determines or decides that they want 21 to use to categorize or group the data. 22 THE COURT: In terms of whether an 23 element module, a class module, a state module, 24 or an attribute module are required to contain 11:24AM 25 different types of metadata and what the nature DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

97

1 of that difference is, wouldn't the principle
2 of claim construction say that different words
3 in the claim likely have different meanings
4 indicate there is a difference between the
11:25AM 5 types of data that's stored in the modules?
6 Wouldn't that tell us that's right?
7 MS. CHENG: Sure. So while each
8 module can be used for different metadata,
9 different types of metadata, that specific what
11:25AM 10 type of metadata is not defined in the patent.
11 What we're left with is just the idea of
12 organizing data based on characteristics from
13 the metadata of that data. So there's an
14 illustration that we had put together on slide
11:25AM 15 17. Well, we can start here.
16 THE COURT: I saw this in the slides
17 and thought they're never going to get to this
18 because they have 50 slides. You have a few
19 minutes left. Why don't we make your point.
11:26AM 20 MS. CHENG: Sure. That is
21 processing, retrieving, and storing data based
22 on grouping information or characteristics
23 about these things or data, something people
24 have been doing forever. This is the core
11:26AM 25 concept of organizing.
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98

1 And in the next slide, we show it's
2 really no surprise that certain things or data
3 may have more than one characteristic or
4 metadata. Here, we've got color and shape and
11:26AM 5 the relationship between these characteristics
6 is that any one item shown there could only
7 have one color and one shape. And as the user,
8 you could choose to organize these items based
9 on whatever buckets you define.
11:26AM 10 And now the next slide.
11 The fact these patents --
12 One more again.
13 The fact these patents attribute or
14 assign some generic name to each of the buckets
11:27AM 15 does not take it out of the abstract idea of
16 organizing based on characteristics, and that's
17 all we have here.
18 THE COURT: Okay. Thank you,
19 Ms. Cheng, for your time. I thank Plaintiff's
11:27AM 20 counsel for their argument.
21 Thinking about these slides, I was once
22 an associate putting together slides for a
23 Markman hearing, spent weeks on it, and we got
24 to the Markman hearing in front of Judge Brown
11:27AM 25 in the District of New Jersey, and the clerk
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99

1 came out and said, "The judge doesn't like
2 slides." So I'm thinking whoever put this
3 together, we got to it, so that's a good thing.
4 I want you to know I saw it and evaluated it.
11:27AM 5 I do think it was helpful, and I think I
6 understand what the issue here is. Counsel's
7 arguments were helpful.
8 Let's do the same we did last time.
9 We'll take a five-minute break, come back after
11:27AM 10 that. We'll hear the last argument, and we'll
11 end, take a couple hours for us to process what
12 we said and more instructions about when we
13 come back. Let's take a five-minute recess.
14 (A recess was taken, after which the
11:37AM 15 following proceedings were had:)
16 THE COURT: Good morning once again,
17 and we're here for our last case. Is it Topia?
18 MR. LYTLE: Your Honor, it's Topia.
19 THE COURT: Sorry about that. Let's
11:38AM 20 have counsel for plaintiff's side first
21 identify themselves for the record, starting
22 with Delaware counsel.
23 MR. SCHOENBAUM: Your Honor, Griffin
24 Schoenbaum from Richards, Layton, and Finger.
11:38AM 25 I'm here with Kelly Farnan from my office, and
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100

1 at co-counsel table, from Sughrue Mion, the
2 firm, we have Jay Lytle. We have Janvi Shah.
3 We have Chid Iyer. We have Raja Saliba.
4 THE COURT: Thank you. We'll do the
11:38AM 5 same for counsel for Defendant's side, again
6 beginning with Delaware counsel.
7 MR. NEFF: Good morning, Your Honor.
8 Carl Neff from Fisher Broyles, and I'm joined
9 here with Heidi Keefe from the law firm of
11:38AM 10 Cooley, LLP, and Ryan Beard from Fisher Broyles
11 as well, and Ms. Keefe will be taking the
12 presentation for defense.
13 THE COURT: All right, counsel. It's
14 defense motion again. Let's turn to
11:38AM 15 Defendant's counsel Ms. Keefe so start.
16 MS. KEEFE: Thank you, Your Honor,
17 and I'd like to reserve seven minutes or so for
18 rebuttal. If Your Honor has more questions,
19 you're the reason I'm here, so I will do that
11:39AM 20 instead of rebuttal. No problem.
21 This case, actually, in many ways, has
22 some resemblance to the first argument that we
23 heard. This is definitely one of those black
24 box, "do it on the computer" cases. How do we
11:39AM 25 know that? The first way we know that is we
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101 1 look to the specification to figure out what 2 are the claims directed to? What is the 3 problem that's being solved? And the patent 4 tells us that the problem is, essentially, file 11:39AM 5 management because we all have too many 6 devices. So we want to make sure that the 7 document you have on one device gets updated to 8 match a document that you have on a second 9 device. 11:39AM 10 I can illustrate that, Your Honor, with 11 something as simple as you have a document. It 12 could be something like, perhaps, a medical 13 record, something that has information that you 14 need to be as current as possible. That 11:40AM 15 medical record has three lines in it. All of a 16 sudden, you want to make sure the doctor is in, 17 say, two different offices, and you visit the 18 doctor in the second office. You want to be 19 sure that if there's a change in those 11:40AM 20 documents, they get that information. So if 21 the doctor adds the prescription, I'll use that 22 as a star, somehow we need to make sure that 23 that document is sent with a "please update it" 24 with a star down to the second document. 11:40AM 25 It's no more complicated than that, and DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	103 1 the key piece of them, the piece that's being 2 said to be replaced by the automatic updating, 3 is something that involves significant manual 4 work by a human. 11:41AM 5 MS. KEEFE: That's exactly right, 6 Your Honor, and that's one of the things that's 7 disparaged in column 1 of the specification. 8 And even when they talk about other prior art 9 which they claim are solutions that, therefore, 11:42AM 10 don't preempt the field, that's not true at 11 all. All of those purported problem pieces of 12 prior art were not automatic. They were things 13 where someone had to take a thumb drive and 14 walk over to another place. That's not the 11:42AM 15 automatic updating of the files. 16 THE COURT: Or one of those doctor's 17 office might say, "I've updated a file. I'm 18 going to e-mail it to someone at Office 2." So 19 that the person at Office 2 would manually open 11:42AM 20 up the file and then save a new version of the 21 file to that office's server. 22 MS. KEEFE: That's exactly right, 23 Your Honor. Exactly. 24 What we have instead, here, is we have a 11:42AM 25 patent that claims the simple abstraction of DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com
102 1 this is something that's existed in document 2 usage since documents have been in existence. 3 Once you have more than one copy, you need to 4 make sure that those copies are reconciled or 11:40AM 5 synchronized. 6 What we have in this case is a patent 7 that tries to simply say, "Do it on a 8 computer." In fact, it talks about the fact 9 that one of the problems in the prior art is 11:40AM 10 that you might be able to do this process 11 manually, where you're updating the record, but 12 that could end up with some potential errors 13 because of human input. Or it might take too 14 long to take a disk drive and walk over and 11:41AM 15 plug it into something else. Now we want to 16 use the computer as a tool to do as quickly as 17 possible, or in other words, synchronize those 18 things, but we are never told how to do that. 19 THE COURT: The prior art disparaged 11:41AM 20 solutions, as you say, they're described in 21 significant part as manual solutions. I guess 22 in some way they're a combination of manual, 23 that people-focused action and computer action. 24 MS. KEEFE: That's correct. 11:41AM 25 THE COURT: I guess the idea would be DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	104 1 "update the files." Do it automatically on a 2 computer, but it never, ever tells us how to do 3 it. It's all functional language of make sure 4 the documents get to the right place and make 11:42AM 5 sure they get updated. 6 What we have is Figure 2 is very helpful. 7 Figure 2 shows us what is the system. Well, 8 the system is two different user devices, 280 9 and 210, connected through a network common. 11:43AM 10 In fact, we're told in the specification that 11 those devices can be any electronic device, 12 doesn't matter what they are. Columns 3, 4, 13 and 5 give you every single device there could 14 listed and then it says "or others." The 11:43AM 15 network can be any network. We're told that 16 again in column 4. And then we have a server, 17 230, which, again, can be any hardware that 18 allows for these things to be stored. 19 Now, what do we know about what happens 11:43AM 20 in the actual claims? So Figure 2, as we know, 21 it set up the two user devices talking to a 22 server and that's how they're going to work 23 together. Figure 3, which is described in 24 column 7, goes on to give us the ultimate black 11:43AM 25 box system, and the specific does nothing DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

105 1 further for the that black box system. 2 I don't know why, but user devices 270 3 and 280 got flipped from Figure 2, but they're 4 still the exact same thing. 210 is a user 11:44AM 5 device. That's here on the left. And 280 is a 6 user device on the right. 230 is the server, 7 so 230 is the guy in the middle who's going to 8 make all this happen. 9 THE COURT: I should say for the 11:44AM 10 record we're using the '561 patent as our 11 exemplary specification for these purposes. 12 MS. KEEFE: That's correct, Your 13 Honor. And in fact, the specification is 14 identical for all of the patents. 11:44AM 15 THE COURT: Identical for all to a 16 great degree, but there is some differences. 17 Like, for example, in some of the abstracts and 18 some of the invention sections for a couple of 19 patents. 11:44AM 20 MS. KEEFE: Very minor, Your Honor, 21 but we don't think to any extent that takes it 22 out of the realm of abstract. 23 THE COURT: Let me let you continue. 24 MS. KEEFE: Here, again, this is all 11:44AM 25 about this black box system. What we know from DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	107 1 black box application, which is 320, which is 2 used magically for some unknown programming to 3 figure out whether or not to send its own 4 documents back over to 210, and, again, somehow 11:46AM 5 the guy in the middle figures out magically, no 6 explanation given, how that's going to happen. 7 THE COURT: In the '561, the server 8 itself is a device. 9 MS. KEEFE: In the '561, it's 11:46AM 10 ambiguous. It calls it a device. 11 THE COURT: There's three devices 12 referenced. 13 MS. KEEFE: They call them separately 14 devices, but the specification, all the 11:47AM 15 embodiments in the specification, use that as a 16 server that sits in the middle. 17 But even if it were something else, say 18 it was another phone, it would still have to 19 have the magic application on it that helps 11:47AM 20 figure out how to send it to these other 21 devices, and we never know how that works or 22 what it does. So what we really have is the 23 abstract concept of synchronizing data, which 24 is just like the <i>Ameranth</i> case that we gave 11:47AM 25 you. In that case, you had a situation where DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com
106 1 column 7 and, frankly, the claim itself is that 2 you have a figure in the middle that's 3 configured to accept information from two other 4 guys, these devices, that themselves have 11:45AM 5 received applications. So the application 6 here, we have user device 210 and on user 7 device 210, 310 is described as an application 8 that is sent down by the server, but that's all 9 we know about it. It's just an application, 11:45AM 10 meaning it's some form of programming that 11 should do something to something, but we don't 12 know what it is, and we're never told. 13 Then that application somehow, magically 14 figures out how to take the document, the file, 11:45AM 15 370, and magically it figures out when and how 16 to send it over to the centralized server. The 17 centralized server then has on it a 18 synchronization application, 380, which, again, 19 magically, we don't know what it is or how it 11:46AM 20 functions. We have zero programming for it, 21 but that application is going to magically 22 determine whether or how it's going to send or 23 forward that same Document 370 on to the second 24 device. 11:46AM 25 Meanwhile, the second device has its own DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	108 1 there were handheld devices being used by 2 waiters and then you had centralized 3 reservations and centralized kitchen staff, and 4 they said, "Wow. We really need to make sure 11:47AM 5 there's a way for all these devices to be 6 synchronized because if someone orders a food 7 that's been 86ed by the kitchen, you need to 8 know so you're not offering it." So that 9 patent was held invalid, ineligible rather, 11:47AM 10 because again it never explained how or how any 11 of that happens. 12 As I was preparing for today -- 13 THE COURT: Before you go on, in your 14 brief, you articulated the abstract slightly 11:48AM 15 differently in different pieces. Sometimes you 16 use the phrase "synchronizing versions of 17 documents. . ." Sometimes you use the phrase 18 "automatically transferring modified documents. 19 . ." Are those meant to get to the same 11:48AM 20 concept? 21 MS. KEEFE: They absolutely are, Your 22 Honor, and, in fact, that is consistent with 23 the way that the patent itself talks about what 24 is being done and what's intended by the 11:48AM 25 patent. In column 7, lines 47 through 50, the DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

109 1 patent describes itself saying that the problem 2 the invention was solving was allowing a user, 3 not shown, who owns or otherwise controls 4 devices 210, 280 to automatically maintain file 11:48AM 5 synchronization between at least devices 210 6 and 280. 7 That language, Your Honor, is also wildly 8 consistent with the language used in the 9 complaint by Plaintiffs at paragraph 12 for the 11:49AM 10 '561 and paragraphs 33, 44, 55, 66 -- 67, 11 rather, and 77 for the remaining patents with 12 only minor modifications that are themselves 13 abstract, such as maybe prioritizing a piece of 14 information over others. That's a rule. 11:49AM 15 <i>Eccentric</i> tells us applying rules to data is 16 abstract in and of itself, or the possibility 17 of perhaps displaying a little sticker to say 18 this has been modified, which, again, abstract. 19 And again, we're never told how to do it. 11:49AM 20 In <i>Two-Way Media</i>, we had far more 21 concrete things that were said to be happening. 22 In <i>Two-Way Media</i>, you had to control, you had 23 to access, you had to transfer, you had to 24 send, and there were more concrete terms being 11:50AM 25 thrown around and still the Court said you're DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	111 1 of synchronizing -- the idea of synchronizing 2 multiple versions of a file across different 3 network computers. There must be a lot of 4 possible solutions that could be within that 11:51AM 5 world, a lot of possible ways to approach that. 6 Presumably, a patent claim that was to that 7 idea, in essence, directed to it, and that 8 soaked up a very, very large percentage of all 9 those possible solutions would be problematic. 11:51AM 10 The other side says, when it comes to at 11 least the process of modifying versions of 12 files across the network, the patent has a 13 bunch of solutions it describes that involve 14 manual work. This is different. I guess one 11:51AM 15 question I had was, in terms of your 16 articulation of the abstract idea, 17 synchronizing multiple versions of a file 18 across network computers, are those manual 19 solutions? Do they fall within your abstract 11:52AM 20 idea, or is your abstract idea about the 21 automatic ways to do that? 22 MS. KEEFE: It's the automatic ways 23 to do that, Your Honor. In fact, that's in all 24 the claims, that it has to be automatic. In 11:52AM 25 fact, the whole gist of the patent, what the DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com
110 1 never really told how to get the information 2 from the point-cast environment down to the 3 devices because all you're doing is saying 4 functionally get it there. Analyze it and make 11:50AM 5 sure it gets there. That's exactly the same as 6 we have in this case here. 7 Your Honor also asked about preemption, 8 and preemption, we explained in the letter 9 briefing, is not the essential issue here 11:50AM 10 because once an abstraction is found and there 11 is no inventive addition -- here, absolutely 12 nothing inventive. It's basic hardware, basic 13 software. Columns 4, 5, and 6 reiterate that 14 over and over. As such, total preemption is 11:50AM 15 not the issue, but, truthfully, there still is 16 preemption here of all the ways of 17 automatically synchronizing files. 18 THE COURT: So if I were to think 19 about it, so the abstract idea is synchronizing 11:51AM 20 multiple words or files across network 21 computers. 22 MS. KEEFE: Correct. 23 THE COURT: So from a preemption 24 perspective, one thing I kept think about is, 11:51AM 25 okay. That's this world. There's this world DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	112 1 claims are directed to, is that automatic 2 notion because the patent says the nonautomatic 3 guys are the problem. They're the ones where 4 you might have it manual, and it takes too 11:52AM 5 long. You might have it manual, and it will 6 introduce some errors. It's been automated. 7 And we also know that simply automating 8 something by putting it on a computer in and of 9 itself is not eligible. 11:52AM 10 THE COURT: Then we have the world 11 where if you're correct that the abstract idea 12 is an abstract idea and if you're correct that 13 the computer add amounts to little more than 14 doing it automatically, then you would say that 11:52AM 15 it's a claim that's directed to an abstract 16 idea and whatever else there is in the claims 17 doesn't get you out of abstract-idea land. In 18 other words, it's a claim to an abstract idea. 19 That's why preemption doesn't matter, because 11:53AM 20 you end up with a claim to the abstract idea 21 and the only addition, as the law has said, of 22 computerization can't be enough. 23 MS. KEEFE: That's absolutely 24 correct, Your Honor, and then we have a step 11:53AM 25 further where the specification goes to painful DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

11:53AM 1 lengths to tell us that the hardware and the 2 software don't matter. It can be any hardware, 3 and it is a computer running -- general purpose 4 or special purpose computer. It can be 5 anything. We have that in the specification, 6 Your Honor, at column -- getting old is no fun 7 with the glasses, Your Honor. 8 So we talk all through column 4 about 9 generic computing system environments and how 10 many of those we can use. Column 5 we talk 11 about any software being any program modules 12 that can be used. Column 5, line 31, 13 computer-readable media can be any available 14 media, et cetera, et cetera. So we're not 15 adding anything invented on the computer as 16 well. 17 THE COURT: You talk about the '561, 18 but of the six patents in suit, four of them in 19 the assertedly representative claims utilize 20 this concept of prioritizing metadata relating 21 to a file and accepting that metadata to a 22 device before the file itself is sent. And as 23 to two of those patents, the '787 and '823, the 24 concept of prioritizing metadata is actually 25 referenced in the title of the patent. It's DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	115 1 piece because at the end we want to make sure 2 you're using the properly synchronized piece." 3 The way I envision that in the real world 4 would be if we had these medical offices and we 5 knew it would take a little too long to get the 6 other information there, someone would pick up 7 the phone and call and say, "Put a flag on it 8 that there's a new prescription coming." In 9 other words, make sure you wait to see what 10 that update is. That's no different than the 11 rules in <i>Accenture</i> or in <i>IV versus Symantec I</i>, 12 and in <i>IV versus Symantec I</i>, what we had was 13 rules about forwarding documents, e-mails in 14 that case, where the message would come in, 15 someone would read a rule that would be a rule 16 like "send the metadata first," the metadata 17 would over and basically just say, "If anyone 18 grabs this before it's synchronized, just 19 wait." 20 THE COURT: What if the patent told 21 us that sending the metadata first was actually 22 a real advance in the way computers operate, 23 transfer, or synchronize data? In that regard, 24 one of the problems is in the comment 25 specification, there's very little portion of DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com
114 1 actually referenced in the abstract of the 2 patent. It's referenced in summary of the 3 invention section of the patent, yet that 4 concept is, at least to say as to those two 5 patents, for example, for the prioritizing 6 metadata piece of it, it's not specifically 7 referenced in your articulation of the abstract 8 idea. There must be lots of ways to 9 synchronize files where you wouldn't have to 10 prioritize by data, for example. So how does 11 your abstract idea capture what the claims are 12 directed to, say, when the claims that are the 13 '727 and '823 patents? 14 MS. KEEFE: No problem, Your Honor. 15 The gist of the claim is still automatically 16 synchronizing data. That's just one step to 17 help get you there. Because what it's saying 18 is our end goal is still, the gist of what the 19 claim is and what it's directed to, is the end 20 result of synchronizing data across this 21 network. One of the ways, one of the steps 22 that's used to do that is to say I'll send 23 metadata, which is just information. It's a 24 rule, and that rule says, "Send this first and 25 pay attention to it so you don't use the wrong DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	116 1 it that talks about prioritizing metadata. 2 There is a part of the patent at the bottom of 3 column 8, and I'll ask Plaintiff's counsel 4 about this, that maybe I think is nodding 5 towards this issue. There's a reference there 6 to the relationship between documents and 7 metadata, and then there's a bunch of sentences 8 which appear to be talking about efficiencies 9 gained from the patented invention as compared 10 to prior art strategies. 11 It's a little hard to understand, is this 12 column telling me how the prior art metadata 13 and sending that metadata and in some cases 14 having metadata update a file representation or 15 some other icon on the computer, is that in 16 some way making the process more efficient or 17 not or what? What do you make of this part of 18 the patent? 19 MS. KEEFE: Absolutely not, Your 20 Honor. It's not making it more efficient in 21 any way. All it's doing is it's saying that if 22 you had systems with FTPs, there might be 23 latency, and the latency just meant someone 24 might be using the wrong document before it's 25 been synchronized so put a flag on it. It's DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

11:57AM 1 almost like using Westlaw and having a yellow 2 flag. Just, caution, you might not want to use 3 this one. That's not making the system work 4 any differently. It's not any tremendous 5 advantage over the prior art other than the 6 abstract notion of putting a tape flag on that 7 says be careful. 8 It goes on to say that an indicator 9 signifying the document's availability may be 11:58AM 10 prominently displayed adjacent to the 11 document's representation so the customer is 12 aware of the document's availability. That 13 doesn't improve the way anything works. It 14 doesn't make it faster, doesn't make it more 11:58AM 15 efficient. It just shows that the user is now 16 alerted that it might not be as automatic as we 17 thought it was going, so maybe wait a minute. 18 You might want to use the one that comes 19 synchronized after. 11:58AM 20 Again, Your Honor, we're never told how 21 to do that. There's not explanation of how. 22 There's not explanation of the programming that 23 would be required to make that happen. So 24 we're back into a media land, even if Your 11:58AM 25 Honor were to find that this is something DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	119 1 an overview of the patents, there's six patents 2 in this case and different ones cover different 3 inventive aspects, and there's four inventive 4 aspects here. And we'll talk mostly about the 12:00PM 5 file transfer and the metadata priority, but 6 there are other features as well. 7 Your Honor, this case really is not about 8 an abstract idea. The other side has posed 9 this as synchronizing multiple files with 12:00PM 10 users. In actuality what these patents are 11 trying to do is go from a device-centric 12 paradigm, which back at the time these patents 13 were written, 2007, 2008, that was kind of the 14 predominant paradigm at the time. 12:00PM 15 This figure shows a representation of 16 that. In this figure, different users would 17 interact with a computer system, a server, 18 somehow. Maybe sharing a document. Maybe 19 something like counsel mentioned with a medical 12:01PM 20 record. Maybe the doctor posted the patient's 21 report on the server and then the nurse needs 22 to get access to it, so they go to the same 23 device, maybe a server, to get that file. 24 What the inventors here were doing was 12:01PM 25 changing the paradigm. They were going to DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com
118 1 important, which it's not. It's just another 2 piece of information. 3 THE COURT: Okay. You have about 4 five minutes left. I know you want to save at 11:58AM 5 least that. Why don't I stop you there and 6 give you time for rebuttal, and we'll hear from 7 Plaintiff's counsel on the motion. 8 MS. KEEFE: Thank you, Your Honor. 9 THE COURT: Thank you. 11:59AM 10 Mr. Lytle. 11 MR. LYTLE: Good morning, Your Honor. 12 I'm Jay Lytle representing Topia technologies. 13 THE COURT: Mr. Lytle, I may, as I've 14 done, just to help frame things, jump in to say 11:59AM 15 I do want to spend some time talking about this 16 concept that I was discussing with Ms. Keefe at 17 the end that is how at least certain of the 18 patents utilize, prioritize metadata in a way 19 that may arguably be said to be helpful in the 11:59AM 20 process of updating files across networks and 21 multiple devices. I want to let you start 22 where you want to start, which may be more 23 broadly with the '561 or otherwise, but I do 24 want to make sure we get that. 12:00PM 25 MR. LYTLE: Okay. And just to give DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	120 1 instead of a device-based paradigm to a 2 user-based or user-centric paradigm. In this 3 case, it was really directed to back at the 4 time, 2007, 2008, people were starting to have 12:01PM 5 a proliferation of electronic devices. Maybe 6 you recall Palms and Blackberrys and those 7 kinds of things. And it was a real problem if 8 a user was working on the document, let's say 9 at their office on the office computer and then 10 running to the airport to get on a plane. They 11 would have to, as the patent talks about, put 12 it on a thumb drive or e-mail it to themselves 13 or something, and that's because the document 14 was all on the device. It was device-centric, 12:02PM 15 not user-centric. 16 What the inventors came up with was a 17 network architecture that allowed this 18 user-centric concept to be able to be 19 implemented. 12:02PM 20 THE COURT: I guess the defendant 21 might say, if we look at the '561 for example, 22 that someone came up with the idea, "You know 23 what would be great? If a user modifies a 24 document, it would be great if that document 12:02PM 25 was automatically transferred to a bunch of DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

121 1 devices." 2 And someone said, "How are you going to 3 do that." 4 "Who cares? Don't worry about it." The 12:02PM 5 idea that once the user modifies a document, 6 let's have it transfer automatically to a bunch 7 of different devices. The defendant would say 8 that's what's happening with the '561, that's 9 the idea of let's automatically get this 12:03PM 10 document to a bunch is places is all the claims 11 claim. 12 You talk about, no, there's network 13 architecture involved. You use that phrase a 14 lot. In the '561, for example, what's a part 12:03PM 15 of the particularized network architecture 16 that's claimed? 17 MR. LYTLE: If we go back one slide, 18 this is Figure 3. I annotated it to show 19 different devices that might be there. What 12:03PM 20 the architecture is, is placing an application 21 so that it's executable on three different 22 devices. What I've highlighted in green here 23 are what are claimed are the first, second, and 24 third applications. 12:03PM 25 THE COURT: Is an application just a DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	123 1 desktop or on a -- what's called in the patent 2 a distributed file server, where the document 3 sits on the host computer, well, if you didn't 4 have a network connection, you couldn't get to 12:05PM 5 the document. 6 So what the inventors did is they put 7 these applications on the user's devices as 8 well as on the server in the middle. And the 9 application programs, why those are important, 12:05PM 10 is because they are executing on the user's 11 devices, they know what's happening on the 12 user's devices. They can tell through 13 application programming interfaces and other 14 interfaces with the device what's going on with 12:05PM 15 that device. So they can tell, has the user 16 made a change to the document? Yes. Okay, now 17 let's transfer the document, the file, up to 18 the -- 19 THE COURT: But none of the specifics 12:05PM 20 about how they tell are claimed. There just 21 has to be an application on a device that 22 somehow knows that. 23 MR. LYTLE: So, Your Honor, I would 24 say that patents are written for a person of 12:06PM 25 ordinary skill in the art. A person of DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com
122 1 file? 2 MR. LYTLE: No, an application is a 3 program, like an application program. Maybe on 4 your phone, you might have apps, for example, 12:03PM 5 applications. So this architecture -- and it's 6 claimed this way. 7 And in the next slide, I'll show how we 8 map the claim to the architecture. By having 9 these different applications executable on the 12:04PM 10 first device, which was shown in the middle, 11 which may be a server, and on the second and 12 third devices, each one of those has an 13 application that's executable. So the second 14 and third devices, maybe that's the user's 12:04PM 15 office computer. Maybe the third one is the -- 16 one is a laptop, one is a cell phone. Maybe 17 one is an office computer, maybe one is a 18 laptop. 19 By having these applications executable 12:04PM 20 on the devices themselves, that now takes away 21 a lot of the problems that were back in the 22 day. Back in 2007, 2008 networks just were not 23 as reliable, as fast. They were much more 24 intermittent, so to be able to have the file 12:05PM 25 stored centrally somewhere, maybe on a remote DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	124 1 ordinary skill in the art in this case would be 2 some type of computer programmer, somebody 3 who's a network engineer and understands that 4 application programs have these interfaces with 12:06PM 5 the devices that they're executing on. 6 THE COURT: In our world, is there 7 any kind of electronic computer device that 8 wouldn't have some kind of application on it? 9 MR. LYTLE: Yeah, many devices would. 12:06PM 10 But in this, the claims don't say any 11 application. 12 THE COURT: What kind of device would 13 have no applications on it, no groupings of 14 code that tell the device to do something or 12:06PM 15 not do something? 16 MR. LYTLE: Well, there's different 17 types of programs. There's operating 18 system-type software. That's running the 19 computer the way it runs. And then there's 12:07PM 20 applications, which are doing something using 21 the computer. 22 THE COURT: I guess my point is, I'm 23 trying to understand. It sounds like what 24 you're saying is the fact that each of these 12:07PM 25 devices has a "application" on it is really DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

125 1 central to the patentability of '561, and one 2 thought I have and question I have is I don't 3 know how you can get too much more ubiquitous 4 than a device or computer or file or, I think, 5 application on a device. I'm just trying to 6 picture a device that doesn't have an 7 application on it such that -- in essence, the 8 worry is the claims would be saying a computer, 9 just about any old computer. I'm trying to 10 understand why that's not what this is. 11 MR. LYTLE: So I would say if we put 12 up the slide that shows the claim language, 13 what we've tried to do is take Claim 1 of the 14 '561 patent and highlight it with colors to 15 match the previous slide that shows the 16 Figure 3. In this case, we have -- it's not 17 just any application. It's an application 18 that, for example, in step number one, received 19 from a cell connect application that's 20 executable in the second electronic device a 21 copy of the first file automatically 22 transferred from the second application when 23 the user modifies the content of the electronic 24 file. That's not any application. It's an 25 application that can transfer the file when a DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	127 1 underscoring words, in what way did you do 2 that? 3 MR. LYTLE: So I'm looking at DI 45, 4 which is our answering brief. 5 THE COURT: On page six, for example, 6 the limitations of Claim 1 of the '561 are 7 listed and the words "first application" and 8 "second application," "third application" are 9 bolded. But beyond doing that, I guess I'm 10 struggling to see how the argument you're 11 making isn't just that, attorney argument, as 12 opposed to something that was articulated more 13 forcefully or specifically in the briefs or in 14 your complaint or in the patent itself. 15 MR. LYTLE: So I believe it's in our 16 answer in the answering brief, and I can find 17 it in a moment. 18 THE COURT: Maybe this is one thing, 19 Mr. Lytle, maybe I could ask after we hear 20 rebuttal if you and your colleagues have a 21 chance to look and say, Judge, when you go 22 back, I want to point you to this part of our 23 that will explain what I was saying at oral 24 argument in detail, that would maybe use your 25 time better. DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com
126 1 user modifies the content of the file. So 2 again, this is -- because the application is 3 executing on that second device, the 4 application can know, was there a change? Did 5 the user modify the file? And with that 6 information can then transfer it back to the 7 first device. 8 THE COURT: The argument you're 9 making now, that the fact that these devices 10 have an application on them and what these 11 particular applications can do and how it is 12 that what they can do, the applications 13 themselves are really central to understanding 14 why the things are patentable. I know in your 15 briefs that there was the words "application" 16 in the '561 that you would highlight, but did 17 you ever make this argument in this kind of 18 detail? Does your complaint make it? Does a 19 POSITA in the patent or application or anywhere 20 else explain in a record way what you're 21 articulating now? 22 MR. LYTLE: Certainly, in our 23 response to the motion we describe that. 24 THE COURT: Other than listing out 25 the elements of, say, the '561 and, like, DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	128 1 I do want to talk about, obviously, there 2 are different patents here, as you say. Four 3 of the six patents and even the allegedly 4 representative claims utilize the concept of 5 prioritizing metadata over the copied file 6 itself, sending the prioritized metadata to the 7 device before the copy of the file is sent. 8 And as to two of the patents, the sending of 9 the prioritized metadata causes other things to 10 happen on the device in which the metadata is 11 sent to. 12 I think you talk about that concept a bit 13 in your briefs. There are certain lines where 14 you make reference to the prioritization of 15 metadata, but one thing I'm trying to get a 16 better handle on is, does this use of 17 prioritized metadata and sending the 18 prioritized metadata to a device before the 19 file is sent, it would be great if the patent 20 said, "Let me explain to you how doing that 21 really helps to solve the problem we've been 22 describing in the art because, you see, when 23 the device gets the prioritized metadata, what 24 that does is the device does blank, it makes 25 more efficient the process of et cetera." DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

129 1 I'm having a hard time finding that in 2 the patent or in the briefing. I thought maybe 3 there was a nod to this in column 8, but maybe 4 not. How would you explain, what is the 12:12PM 5 prioritized metadata doing in these claims and 6 where does that tell us the work it's doing? 7 MR. LYTLE: I think it's in column 8 8 going into column 9, and again, putting 9 ourselves back at the time of the patent, 2007, 12:12PM 10 2008, where networks were slower or they were 11 intermittent. There was this problem of 12 latency. "Latency" means you send something 13 and it takes a while to get there. So with this 14 idea of using the metadata, prioritizing the 12:13PM 15 metadata, was metadata is small, whereas 16 computer files can be very large, big picture 17 or video or something, and it might take a 18 while to get through the network, for the file 19 to get through the network. 12:13PM 20 What the inventors came up with was let's 21 have this priority scheme where we prioritize 22 metadata, and it's got a higher priority than 23 the file. Then we're going to send the 24 metadata first, and that way, it can get 12:13PM 25 through the network and get to the user's DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	131 1 the user is now made aware more quickly in a 2 way that latency might have interrupted that 3 there is, in fact, a modified file? 4 MR. LYTLE: That's right, Your Honor. 12:14PM 5 THE COURT: One of the confusing 6 things about column 8 is middle of the column 7 in paragraph around lines 61 to 63 talks about 8 this problem with latency. It says, "As 9 alluded earlier, the problem with distributed 10 file systems and FTPs is the latency between a 12:15PM 11 file being put onto a file system and showing 12 up on a remote machine." I get that now. And 13 I know the word "metadata" was used a sentence 14 or two before, but the next sentence says, "To 12:15PM 15 prevent this problem, the embodiment directory 16 is decoupled from the movement of the files." 17 When I'm reading that, I'm thinking it's going 18 to tell me about how we take metadata from this 19 file and send it. It uses a phrase like 12:15PM 20 "embodiment directory." What's an embodiment 21 directory? Is that a reference to the metadata 22 or something else? 23 MR. LYTLE: So think of like if 24 you're using your computer and you might go 12:15PM 25 to -- I don't know what operating system you DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com
130 1 device and then somehow we can notify the user, 2 hey, there's been a change on the file. Don't 3 use it. Wait for the file to get there. And 4 that may appear as a graphical indicator to the 12:13PM 5 user. Some of the patents deal with displaying 6 the graphical indicator. That's the benefit, 7 is -- 8 THE COURT: In some way doing that, 9 the device getting the metadata relating to the 12:14PM 10 file or gets the file, that does what? It then 11 helps, what, the file to be transferred to the 12 device thereafter faster, or does it -- is it 13 something different? 14 MR. LYTLE: No, it informs the user. 12:14PM 15 It informs the user about what happened in the 16 file. 17 THE COURT: That there's a new copy? 18 MR. LYTLE: There's been a change to 19 the file. Don't use it. Wait for the file to 12:14PM 20 get here. 21 THE COURT: So although, just the 22 informing the user wouldn't itself be an 23 example of having a fully modified file on that 24 device, you just have the metadata first, but 12:14PM 25 you're saying there's a benefit to that, that DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	132 1 use, maybe Apple. You can find with the 2 directory of the files. That's the kind of 3 directory we're talking about, is being able to 4 transfer in metadata this information about 12:15PM 5 file directories. That's what it's referring 6 to. 7 THE COURT: So the embodiment 8 directory there is a type of metadata that 9 relates to a file? 12:16PM 10 MR. LYTLE: Right. That's really 11 what a directory is. It's information about 12 the file. 13 THE COURT: One question about the 14 utilization of the prioritized metadata and 12:16PM 15 what it accomplishes, there are two patents 16 where the phrase "prioritized metadata" is used 17 in the title and the concept of prioritizing 18 metadata and how it works to help the 19 synchronization process is referenced in the 12:16PM 20 abstract and summary of the invention section. 21 The other four patents, it's not. I think the 22 only reference to this concept is really in the 23 part of the patent we've been talking about. 24 As to the other two patents, which I 12:16PM 25 think are the -- I think it's the '622 and DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

133 1 '607. So you have two patents where 2 prioritized metadata talked about at it in the 3 title, talked about in the abstract, talked 4 about in the summary of invention section, 5 shows up in the claims, and shows up with a 6 fair amount of specificity. You have two 7 patents, the '561 and '942, where it didn't 8 show up at all. And then you've got the '607 9 and '622, and in those patents, in the alleged 10 representative claims, the prioritized metadata 11 concept shows up in there. Little less 12 specificity than the latter two. Not really 13 described in the patent except in column 8. I 14 guess as to those two patents, it couldn't be 15 said, could it, that the claims are directed to 16 something that includes the concept of using 17 prioritized metadata? If they were, why would 18 the patent hardly talk about it? 19 MR. LYTTLE: They're using -- again, 20 they're continuation applications, so they 21 would be using the same -- pretty much the same 22 specification other than the abstract and, as 23 you pointed out, summary sections. But I would 24 say what's described in column 8 is enough 25 description to be able to support this priority DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	135 1 is like <i>DDR</i> or this is like the recent Federal 2 Circuit case <i>Collaborative Entertainment</i>. It's 3 necessarily rooted in computer technology. 4 THE COURT: Also going back to the 5 '561, of course, it can be said to be rooted in 6 computer technology because the claims utilize 7 computers, but that's not all <i>DDR</i> was about. 8 It wasn't just that computers were being used. 9 It was that it was fairly clear to the Court 10 how the particular utilization of computer 11 technology solved a problem in the computer 12 arts, a particular technology used in the 13 claims. Just the fact that the claims involve 14 computers isn't enough to be rooted in computer 15 technology, is it? 16 MR. LYTTLE: No, but these claims and 17 these patents are -- they're not directed to 18 synchronizing paper document. They're 19 synchronizing or the network is set up to be 20 able to operate on electronic files. They're 21 necessarily electronic files, and that's what 22 this set of patents and the claims is really 23 pretty narrowly focused on, is dealing with 24 electronic files and transferring them between 25 a particular user's electronic device. DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com
134 1 concept. 2 THE COURT: One question there would 3 be like, as to those two patents, for example, 4 you all might see yourself in a bit of a 5 problem. Like, look, on the one hand, we think 6 these claims are directed to something that's 7 different, maybe more specific, than what the 8 defendant says they are. On the other hand, we 9 have a problem that we have patents to work 10 with that really hardly ever talk about the 11 concept. Maybe it's because we're dealing with 12 a continuation application. 13 One way to deal with that is when you're 14 facing a serious 101 challenge is use your 15 complaint to do that with. Amend it and refer 16 to what a POSITA would know based on your 17 discussions with your expert. You didn't do 18 that here. How come? Is it because you think 19 there's enough in the patent otherwise to make 20 that claim? 21 MR. LYTTLE: Quite honestly, Your 22 Honor, when we filed the complaint, this didn't 23 seem like the type of invention where subject 24 matter eligibility really would come up. This 25 is an improvement to network computers. This DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	136 1 That's another point. There's several 2 limitations in these claims, particularly the 3 network architecture claims, that are directed 4 to this whole system, and it's very 5 specifically called out in the claims. 6 First of all, it's -- all of these 7 devices are associated with a user. It's the 8 same user. It's not like counsel was talking 9 about the doctor putting it on the server such 10 that the nurse can get it. These claims are 11 limited to a user's devices, and they're also 12 talking about transferring a file. They're not 13 talking about transferring pieces of a file or 14 just information. I mean, there's evidence in 15 the file record of -- that was one of the 16 reasons the patent examiner allowed the '561 17 patent, was the limitations in the claim were 18 different than some other prior art that also 19 was automatically transferring files. I guess 20 to our point of there absolutely no preemption 21 here, there's many other ways to automatically 22 transfer the files. 23 THE COURT: Does the patent itself 24 talk about those many other ways? It talks 25 about disparaged prior art solutions, but those DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

137 1 seem to be ones involving manual work which 2 these claims are not about. These claims are 3 about automatically doing it. 4 MR. LYTLE: There are, Your Honor. 12:21PM 5 Yes, they do talk about the problem of manually 6 with thumb drives and e-mailing, but they also 7 talk about two in particular, and they're at 8 column 2. Column 2, line 10, talks about 9 remote desktop software, and this is where the 12:21PM 10 user of the device can have an image of the 11 remote desktop on the server. In these cases, 12 the files reside on the server. This is 13 nothing manual about this. 14 THE COURT: You say that, but there 12:22PM 15 does need to be a human user who's on the 16 server. I wonder if even this disparaged 17 solution can't be said to be one of those 18 manual solutions in the sense that the reason 19 why remote desktop software as a solution is 12:22PM 20 disparaged is because it requires that the host 21 machine has to be turned on and connected to 22 the internet at all times. One could say a 23 human being has to push that button to make 24 sure the server is on all the time. That's the 12:22PM 25 old manual in part solution here. Not right to DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	139 1 manual work. Now I'm going to claim something 2 that doesn't do that." Is that wrong? 3 MR. LYTLE: I would say that's not 4 complete, Your Honor. Yes, in column 1, it's 12:23PM 5 talking about the manual systems. But in 6 column 2, line 4 at the top, problems still -- 7 after talking about the manual solutions, 8 problems still exist with how these newer 9 customer interfaces are implemented and not 12:24PM 10 completely integrated with applications, for 11 one thing, they suffer from performance 12 problems and do not generally work outside the 13 device's local system. There's several other 14 solutions to these problems that are in one way 12:24PM 15 or another inadequate to the task. That's 16 lines 8 and 9 of column 2. And then it starts 17 talking about these other ways that are not 18 really user driven. They are systems for 19 synchronizing the files, and one is the remote 12:24PM 20 desktop. That begins with line 10. 21 THE COURT: You would say using 22 remote desktop software in the way that the 23 patent describes it is a prior art solution 24 that involves the automatic transfer and 12:24PM 25 synchronization of files across devices. It's DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com
138 1 look at it that way? 2 MR. LYTLE: I don't think so, Your 3 Honor. This patent, a fair reading of it, back 4 at that time, there was issues with 12:22PM 5 communication and latency, whatever, and the 6 problem that's described in the patent is 7 sometimes you wouldn't have a connection to the 8 host computer where your file resided, and that 9 was the problem. 12:23PM 10 THE COURT: I say that wondering 11 about what's really described in columns 1 and 12 2 are really what the patent talks about are 13 these manual solutions. The patent sure uses 14 the word "manually" quite a lot. In the 12:23PM 15 lead-in to all those disparaged solutions, the 16 last paragraph of column 1, the customer has to 17 manually move files around. The prior 18 paragraphs. What's the problem here? Well, 19 the problem is the customer has to manually 12:23PM 20 handle many aspects of the connection. With 21 regard to file management, customers must 22 manually move files. 23 It sure looks like what the patentee is 24 saying is, "I'm going to tell you a whole bunch 12:23PM 25 of prior art solutions out there that require DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	140 1 just one that has problems associated with it 2 that the patent claim intends to solve. 3 MR. LYTLE: That's correct, and the 4 second one would be line 23 called distributed 12:25PM 5 file systems. 6 THE COURT: Mr. Lytle, you're at your 7 time, and I forgot to say you're getting close. 8 Let me ask, is there an extra point you want to 9 make? 12:25PM 10 MR. LYTLE: Just one point. When you 11 asked us to submit our cases that are most 12 relevant to it, I point out that counsel's case 13 was an unpublished decision. We were relying 14 on precedential decisions from the Federal 12:25PM 15 Circuit. I'm talking about the <i>Domino's Pizza</i> 16 case. 17 And the last point I'd like to make is 18 there are other ways of doing this automatic 19 sync, over and above what's in the columns in 12:25PM 20 the patent. In the file history, there's a 21 prior art reference to <i>Walter</i>, which is another 22 different way of synchronizing files call delta 23 sync where you only transmit the changes to the 24 file, not the file itself. 12:26PM 25 THE COURT: All right. Thank you. DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

141 1 Let me give Defendant's counsel their five 2 minutes for rebuttal. 3 MS. KEEFE: Thank you, Your Honor. 4 Let me briefly. 12:26PM 5 In terms of the concept of this metadata 6 and prioritization, again, we have no how. 7 There's no how that is accomplished. Even if 8 that were to be an important part of the claim, 9 there's literally nothing in the claim that 12:26PM 10 describes how that is accomplished. 11 THE COURT: I think there, though, 12 one of the tricks with the Federal Circuit 13 caselaw is sometimes it's a question of how 14 many levels of how there are. For example, one 12:26PM 15 could say that a claim just to synchronization 16 of files across networks, that captures X. But 17 if the claim is just to that, there's no how, 18 how are we going to do that, then one could say 19 some of these claims, they provide a next level 12:26PM 20 of how. We're going to do it because here's 21 what we're going to do first. We're going to 22 take a piece of metadata from the file. We're 23 going to send it to the device, and then that 24 metadata is going to do some work for us on 12:27PM 25 that device, and then we're going to send the DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	143 1 go to guy number 2; and it gets displayed. 2 THE COURT: Mr. Lytle says column 8 3 tells us that there is a benefit to it. It's a 4 way of attacking the problem of latency by 12:28PM 5 giving the user an early heads-up about 6 modification. Isn't that piece some way that 7 the patent is telling us this add helps make a 8 better process? 9 MS. KEEFE: No, absolutely not, Your 12:28PM 10 Honor. The <i>University of Florida</i> case tells us 11 simply making the enduser's experience 12 different by displaying something is not in and 13 of itself eligible. The whole notion that all 14 you're doing with this prioritization is you're 12:28PM 15 saying "heads up," that's literally just follow 16 the piece of information. There may or may not 17 be a rule that says send it on. But then when 18 it gets there, all it does is display itself. 19 The user now just knows something else is 12:29PM 20 coming. The system hasn't changed at all. We 21 haven't made anything better, and again, 22 there's still no how. If the system is made 23 better, we have to know how that's happening, 24 and we don't. 12:29PM 25 The problem being solved is simply "I DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com
142 1 file. That's one level of how. Now, of 2 course, there's not a second level of how. How 3 are you going to do that? In a lot of Federal 4 Circuit cases, there is no second level of how. 12:27PM 5 Like, there's no how the sensors are going to 6 get put on an airplane beyond saying they're 7 going to be put in a particular configuration, 8 et cetera. Where does the how stop? 9 MS. KEEFE: The problem Your Honor 12:27PM 10 made was you said the metadata did some of the 11 work for you on the other end. It does 12 nothing. It's literally just a piece of 13 information coming into a centralized server 14 and then being displayed somewhere else. 12:27PM 15 That's it. It does not say, "Let's get the bed 16 ready for the guy to lay in so it's happy and 17 will be easier for the file to come in." Not 18 at all, Your Honor. All it is, is it says, 19 "Hey, I'm going to write down on a Post-it Note 12:27PM 20 a piece of information and I'm going to send it 21 along that's it and then send it along." 22 That's it. And then that's displayed, which is 23 no different from <i>Electric Power</i> or <i>Content</i> 24 <i>Extraction</i> that says you receive information, 12:28PM 25 the Post-it; you analyze it, okay, it needs to DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	144 1 wish the user knew." And "I wish the user 2 knew" just means send me a piece of information 3 and that's what <i>Content Extraction</i> and <i>Electric</i> 4 <i>Power</i> say is per se ineligible. That's just 12:29PM 5 information getting from one place to another. 6 Nothing has changed. The information didn't 7 change. The information on the other end 8 didn't change. The file comes over exactly 9 like it was. 12:29PM 10 THE COURT: The way the information 11 is communicated changed. The process utilized 12 to communicate changed, but that's not enough 13 of a claim? 14 MS. KEEFE: The claim tells us 12:29PM 15 absolutely zero about that. The claim just 16 says there is a priority. Doesn't say how or 17 doesn't say what. The spec tells us maybe the 18 way we do that is we separate the metadata from 19 the directory structure. The directory 12:30PM 20 structure isn't claimed at all. That's what 21 Your Honor was looking at at column 8. And 22 even if it were, it doesn't tell you how that 23 happens either. So we're simply back in the 24 realm of I've got some information that I'm 12:30PM 25 going to piece out and send over so that DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

145

1 someone learns something new. That in and of
2 itself is abstract. It does nothing to the
3 information. It just grabs it and sends it.
4 It doesn't change the way the computer works.
12:30PM 5 It doesn't change the way the file is
6 perceived. There's a small perception on
7 behalf of the user that's a little bit helpful,
8 and the *University of Florida* case cited in our
9 briefing tells you very emphatically that
12:30PM 10 simply displaying something for the benefit of
11 the user is not in and of itself --
12 THE COURT: The argument is it
13 doesn't make a big difference, it's not that
14 big a deal, it's not much more.
12:30PM 15 MS. KEEFE: I say it's nothing.
16 THE COURT: Is that the kind of thing
17 I should hear from the experts about as opposed
18 to attorney arguing?
19 MS. KEEFE: Absolutely not, Your
12:31PM 20 Honor. In fact, here, the specification
21 doesn't tell you anything. The *Domino* case
22 tells us that simply having an expert who
23 contradicts the specification -- the
24 specification has no information on this other
12:31PM 25 than this is just information that we're going

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146

1 to send over. You absolutely don't need an
2 expert for that because there's nothing in the
3 claims that then recites anything about how
4 that functions. It just says prioritize. It
12:31PM 5 doesn't tell you how.
6 THE COURT: The specs were written,
7 this one particularly, way before *Alice*. No
8 one is thinking about these issues in this way
9 at the time, and the patentee, it doesn't have
12:31PM 10 much to work with by way of a record. It's got
11 its patents that are attached. Now, of course,
12 you could amend your complaint to make more of
13 a record.
14 MS. KEEFE: It could have. They
12:31PM 15 didn't. They got our motion. They could have
16 moved to amend after they got our motion and
17 saw what the problems were.
18 THE COURT: But for the judge, you
19 have a very small record, which maybe has a
12:32PM 20 clue or hint about something that may be
21 important. The question is, is it enough of a
22 hint or clue that it creates a fact issue that
23 might make the case not suitable for deciding
24 at a Rule 12 stage? Or not? And who do you
12:32PM 25 fault for the fact there's not much of a

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147

1 record?
2 MS. KEEFE: Here, Your Honor, you
3 have to fault the plaintiff because they've
4 done nothing. They've given you no evidence.
12:32PM 5 There's absolutely nothing in this record, and
6 frankly, Your Honor, I think any amendment or
7 any attempt to now bolster it with something
8 else would itself be futile, just like in the
9 *Domino's* case and in the *Ameranth* case where
12:32PM 10 the expert declarations went far beyond any
11 scope of anything that was actually disclosed
12 in the claims or the specification.
13 Here, Your Honor, the fact that this was
14 done way pre *Alice*, it doesn't change the fact
12:32PM 15 that there is no invention here. There is
16 nothing that takes this idea of automatic
17 synchronization of files out of the realm of
18 the abstract, especially when done with any
19 computer. We even heard that somehow all of
12:33PM 20 the magic was in the application and placing
21 the application on a device, but we have
22 absolutely zero information about those apps,
23 so we're still in the realm of the abstract,
24 Your Honor.
12:33PM 25 THE COURT: Thank you, Counsel.

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148

1 You're out of time, and I appreciate your
2 argument as well as Plaintiff's counsel's.
3 Those are the argument portions of the
4 day. What I'm going to do now is take the
12:33PM 5 information you've given me, consider it in
6 light of the work I've previously done to look
7 at the patents and briefs and the relevant
8 record.
9 We'll take a break. Folks can grab
12:33PM 10 lunch, do whatever. I'll ask everyone to be
11 back and ready to go by 3:30. If our court
12 reporter is finished with her other hearing and
13 is able to be ready to go by then, we'll get
14 started likely at 3:30. If not, we'll do it
12:34PM 15 whenever as soon as we can. And my hope is to
16 be able to provide decisions on all of these
17 cases orally today and to do so when we return.
18 One last thing I would say is that I also
19 realize, though, that it's beneficial to me to
12:34PM 20 have had lots of able counsel here today to
21 make good argument on these issues. It's not
22 often I have so many different counsel in one
23 place at one time. So I always like for my own
24 purposes to get the benefit of that, so after I
12:34PM 25 finish giving whatever decisions I have, we'll

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149 1 go off the record, and I usually ask counsel a 2 question or two about patent litigation. 3 So just to kind of preview that, what I 4 would probably ask today is, is there something 12:34PM 5 that you would say, I have always thought or we 6 have always thought that patent litigation in 7 federal courts would be much more efficient or 8 smoother if the Courts would entertain the idea 9 of X or do more Y in a way that would be better 12:34PM 10 and more efficient, not just for a defendant or 11 plaintiff or both. If there's anything like 12 that you all think is something the Court 13 should think about, utilize, or obtain that 14 they're not doing, I'm not doing, I'm 12:35PM 15 interested in hearing your thoughts about what 16 that might be and try to take it into account. 17 I'll ask that thought at the end of the day. 18 With that said, let's take our break. 19 The Court will stand in recess. Thank you. 12:36PM 20 (A recess was taken, after which the 21 following proceedings were had:) 22 THE COURT: All right. We have our 23 court reporter back with us. We thank her, and 24 I know we have at least one representative from 03:35PM 25 all the parties, and I think more than that, DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	151 1 oral decisions today will be quite lengthy, and 2 this is going to take a while, and while length 3 is not always an indicator of rigorous 4 analysis, I hope that you will conclude that in 03:36PM 5 these cases it is. 6 Additionally, I should also note that I 7 found there to be real efficiencies in holding 8 argument in these various cases in which patent 9 eligibility is challenged at one time, as we 10 have done today. In many of the briefs across 03:36PM 11 the cases, the same Federal Circuit and Supreme 12 Court decisions have been cited, and having the 13 experience of reading those decisions again and 14 again over the span of the last two weeks has 03:37PM 15 been helpful for me. It helps reinforce in my 16 mind what facts of those decisions really are 17 and what aspects of those cases made a 18 difference in their outcomes. It also helps me 19 to see patterns across the various cases, and 03:37PM 20 I've also benefitted by being able to discuss 21 issues regarding Section 101 law here today at 22 oral argument with a large number of excellent 23 representing these various parties. I thank 24 you all for your efforts today. 03:37PM 25 The Court has often set out the relevant DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com
150 1 who are still with us today, so we'll go on the 2 record. As we go back on the record, let me 3 say for the record that we're here for the 4 continuation of our series of 101 Day hearings 03:35PM 5 in these three cases, which I'll refer to in 6 shorthand as the <i>GAN</i> case, the <i>InQuisient</i> case 7 and the <i>Topia</i> case. 8 As I begin this afternoon, let me first 9 make a few introductory comments. Today, I'll 03:35PM 10 be providing decisions in these three cases 11 orally here in court. For those decisions that 12 I announce orally today, I also intend, for 13 purposes of clarity and convenience, to shortly 14 issue a written opinion on the docket that 03:36PM 15 simply transcribes what I said here today and 16 that adds relevant citations where needed. 17 Although I'm issuing decisions orally 18 today, I want to assure the parties that the 19 process I've used to assess these motions has 03:36PM 20 been a rigorous one. I personally spent 21 somewhere between 50 and 100 hours of my time 22 reviewing the briefs, analyzing the case and 23 record citations, and formulating these 24 decisions in these three cases, to say nothing 03:36PM 25 of the time my law clerk spent as well. My DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	152 1 legal standards for review of the Section 2 101-related 12(b)(6) motion at the pleading 3 stage, including in <i>Genedics, LLC, versus Meta</i> 4 <i>Company</i>, a case in this court. The Court 03:37PM 5 hereby incorporates by reference its discussion 6 in <i>Genedics</i> of these legal standards and will 7 follow the standards herein as to all the 8 matters that I will discuss today, unless 9 otherwise noted. 03:38PM 10 With that, let me move on to our first 11 case. 12 The first case today is <i>GAN (UK) Limited</i> 13 <i>versus MGM Resorts International, et al.</i> 14 Defendants MGM Resorts International and MGM 03:38PM 15 LLC, which I'll refer to as Defendants, have 16 filed a motion to dismiss pursuant to Rule 17 12(b)(6) arguing that the operative second 18 amended complaint should be dismissed on 19 Section 101-related subject matter eligibility 03:38PM 20 grounds. 21 Here, the asserted relevant patent in 22 suit is owned by Plaintiffs GAN (UK) Limited, 23 which I'll refer to as Plaintiff. The 24 patent-in-suit in U.S. Patent Number 8,821,296 03:38PM 25 or the '296 patent. The patent is titled DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

153 03:39PM 1 "Network Gaming System and Casino Management 2 System Link." The '296 patent originally had 3 20 claims, but the patent went through 4 reexamination, and the United States Patent and 5 Trademark Office ultimately issued a 6 reexamination certificate that canceled three 7 claims, amended five claims, and added two. 8 Claim 1, a method claim; Claim 11, a 9 computer-readable storage medium claim; and 10 Claim 18, a system claim, were amended, and 11 those three claims are the only independent 12 claims in the patent. They are also the only 13 three claims that Plaintiff references in the 14 count of infringement in its operative 15 complaint. 16 In light of this, Defendants assert that 17 Claims 1, 11, and 18, three claims that 18 facially contain many similar requirements 19 regarding the communication of loyalty credit 20 information between a person's online gaming 21 account and an account at a casino, are 22 representative of all the claims in the patent 23 for purposes of its Section 101 arguments. To 24 that, Plaintiff does briefly argue that certain 25 of the dependent claims in the patent could DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	155 03:41PM 1 however, that the '296 patent is not actually 2 directed to this abstract idea. Instead, 3 Plaintiff asserts that the claims are directed 4 to "specific technological solutions" that 5 "link a server providing an online gaming 6 service with machines that provide one or more 7 casino management systems, or CMSes, so that if 8 possible, a patron's loyalty credits can be 9 communicated between the online service and 10 offline system and used regardless of whether 11 the patron is gaming online or at a 12 bricks-and-mortar casino." 13 Plaintiff contends this "targeted way of 14 linking" the online and offline systems which 15 Plaintiffs refer to as the "connection 16 mechanism" is the crux of the claims at issue. 17 The directed-to inquiry applies a Stage 1 18 filter to claims considered in light of the 19 specification based on whether their character 20 as a whole of their focus is directed to 21 excluded subject matter. As to how that 22 inquiry should proceed, the Federal Circuit has 23 provided some guidance in cases like <i>Internet 24 Patents Corp. v. Active Network, Inc.</i> There, 25 in order to ascertain at Step 1 whether the DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com
154 03:40PM 1 have additional relevance to the Court's 2 Section 101 analysis today. I'll discuss that 3 issue as to the dependent claims later. For 4 now, though, I'll address the eligibility of 5 Claims 1, 11, and 18 together, pointing out 6 their differences where necessary. For ease of 7 reference, I'll refer to these three claims as 8 the asserted claims. 9 At Step 1, Defendants argue that the 10 asserted claims are directed to the abstract 11 idea of "coordination of a customer's loyalty 12 credits between an online gaming service 13 loyalty account and a casino loyalty account." 14 The plaintiff does not contest in its briefing 15 that the purported abstract idea here is, in 16 fact, an abstract idea, and the Court concludes 17 that it is. A claim to an abstract idea has 18 been described by the United States Court of 19 Appeals for the Federal Circuit as one directed 20 to a disembodied concept, a basic building 21 block of human ingenuity untethered from any 22 real-world application, and Defendant's 23 proffered abstract idea fits that 24 characterization. 25 Plaintiff does contend at Step 1, DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	156 03:42PM 1 claims character as a whole was directed to an 2 abstract idea, the <i>Internet Patents</i> Court 3 examined the specification of the patent at 4 issue. In doing so, it cited to what the 5 patentee had described in the specification as 6 the innovation over the prior art and the 7 essential, most important aspect of the patent. 8 The Federal Circuit has also stated, however, 9 that reliance on the specification must always 10 yield to the claim language in identifying what 11 a claim is directed to because the concern that 12 drives the judicial exceptions to patentability 13 is one of preemption, and that claim language 14 defines the breadth of each claim. 15 Thus, the Court begins its analysis by 16 looking at the asserted claims themselves. The 17 asserted claims each include a few common steps 18 or elements. First, they require the accessing 19 of a person's online and casino loyalty 20 accounts. 21 Second, they require communicating 22 loyalty credit information between those two 23 accounts, which includes first determining 24 whether loyalty credits are transferable from 25 the online account to the casino account and DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

157 03:43PM 1 then transmitting the available credits. 2 There are also a few differences between 3 these three claims. Claim 1, but not Claims 11 4 and 18, includes the step wherein an 5 application server determines that the user 6 does not have a casino loyalty account and then 7 creates that account. And Claims 11 and 18, 8 but not Claim 1, include the step wherein a 9 Partner Integration Management System, or PIMS 10 as we referred to it here today, determines a 11 communication preference of the CMS based on an 12 identity of the user. 13 It's not hard to see, just by looking at 14 these claims, why Defendants assert their focus 15 simply on coordination of a customer's loyalty 16 credits between two types of accounts. After 17 all, to a great degree, the claims utilize 18 broad functional language that seems to relate 19 to accomplishing just this result at a high 20 level. Even the preamble of the asserted 21 claims seems to track this high level of focus 22 on the coordination of loyalty credits itself. 23 The preamble explains the method or medium or 24 system are for "communicating loyalty credit 25 information." DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	159 03:46PM 1 determines whether the user has a CMS account 2 and creates such an account or how in the other 3 two asserted claims that PIMS determines the 4 communication preference of the CMS based on 5 the user's identity or how the claims determine 6 if the first loyalty credits are transferable 7 to the CMS. If there had been additional 8 significant detail in the claims about how the 9 claims accomplish these steps, it might be 10 easier to conclude that the claims are directed 11 to those specific implementation mechanisms as 12 opposed to to the broader concept of 13 coordination of loyalty credits between two 14 gaming platforms, full stop. 15 Beyond the claim language, the 16 specification also appears to support 17 Defendant's argument at Step 1. Specifically, 18 the patent's background section notes that 19 "casino loyalty programs and online gaming 20 services are two separate entities with no way 21 to communicate with each other." What is 22 "needed," according to the patent, is simply 23 "an approved matter for enjoying a combined 24 online gaming experience and an offline casino 25 loyalty program." That's a broad, non-concrete DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com
158 03:44PM 1 With that said, are the claims instead 2 more specifically focused on a particular type 3 of connection mechanism used to accomplish this 4 coordination, as Plaintiff claims? It's hard 5 to conclude that just from looking at the 6 claims alone. As Defendants note, the concept 7 of coordinating between two entities in order 8 to exchange loyalty credits is necessarily 9 going to involve some type of communication 10 between those two entities. The real question 11 is whether the claims are focused on and 12 directed to the specifics or particulars of 13 that connection mechanism as opposed to the 14 high-level concept of communication per se. 15 And here, the claims themselves suggest that 16 they are directed to the latter, not the 17 former. 18 For example, there's surely no reference 19 to the claims to a "connection mechanism," and 20 the claims don't contain much in the way of 21 particularity about how such a mechanism is 22 required to work. That is, the claims do not 23 explain much about how information should be 24 communicated from an online gaming service to a 25 CMS or how in Claim 1 the application server DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	160 03:47PM 1 articulation of the purported 2 communication-based solution to the problem in 3 the art. 4 The summary section of the patent comes 5 next, and it summarizes what the invention is. 6 Yet to a great degree, this section discusses 7 only what the invention may include, and it 8 does so at a high level of generality, similar 9 to what's found in the asserted claims. Now, 10 there is one portion of the summary section 11 that does reference the "connection mechanism" 12 that connects the network-based gaming system 13 to the CMS, but all that section simply says is 14 that this mechanism "may be synchronous, such 15 as, for example, via a web service using XML 16 over SOAP, or asynchronous, such as, for 17 example, using a message sender/listener 18 system, such as a system-to-system or S2S." 19 That description just seems to further 20 underscore that the patent as a whole is not 21 overly concerned with specific, particularized 22 technical requirements that any connection 23 mechanism covered in the claims must have in 24 order for the claimed communication systems, 25 mediums, and methods to do their jobs. In all, DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

161 03:48PM 1 these portions of the specification indicate 2 that the claims are directed to the general 3 concept of coordinating a customer's loyalty 4 credits between an online gaming service and 5 CMS, not to a more specific or particularized 6 means of doing so. 7 In supporting its position to the 8 contrary, Plaintiff had noted that the term 9 "connection mechanism" does appear in the 03:48PM 10 abstract, and that's true. It does. And that 11 after explaining that the patent describes how 12 an internet-based gaming system and a CMS are 13 connected to each other, the abstract goes on 14 to note that the "connection mechanism" may be 03:48PM 15 used to connect the network. But instead of 16 then further touting the importance of this 17 connection mechanism or further describing some 18 required particularity that the connection 19 mechanism must have in order to do its job, the 03:48PM 20 abstract again just simply notes that the 21 mechanism may either be synchronous or 22 asynchronous, in just the same way that concept 23 is referenced in the summary section of the 24 patent. To the Court, this, again, just 03:49PM 25 underscores that the patent claims are not DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	163 1 With regard to the former, perhaps it 2 could be said that creating an account with a 3 CMS amounts to something more or different than 4 the abstract idea at issue. But even if it 03:50PM 5 does, can Claim 1 be argued to be directed to 6 that step? It does not seem so. The 7 specification does reference this step a few 8 times in columns 3 to 6, when it notes, for 9 example, that such an account must be created. 03:50PM 10 It can be created using user contact 11 information stored in the online account. But 12 this step is not referenced in the summary or 13 the abstract section of the patent, and nothing 14 that the Court has seen in the patent nor that 03:50PM 15 the plaintiff has cited suggests that the focus 16 of the claim is on the "creating an account" 17 element. 18 As for the latter element, it's also hard 19 to see how a PIMS, whatever it includes or 03:51PM 20 requires, and its work in determining the 21 communication preference of the CMS amounts to 22 the focus of Claims 11 and 18. The PIMS is 23 also mentioned only a handful of times in the 24 specification in columns 2 and 3. But as was 03:51PM 25 set out earlier, the patent in general seems to DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com
162 03:49PM 1 directed to some particular form of connection. 2 The overall end result of connection in and of 3 itself is what seems to be celebrated instead. 4 Plaintiff also pointed to the prosecution 5 history of the patent at Step 1. Here, it's 6 not disputed that the Court can consider this 7 prosecution history, which is a public record, 8 in assessing the defendant's motion to dismiss. 9 With regard to the asserted claims, Plaintiff 03:49PM 10 noted that during the reexamination proceeding, 11 it had emphasized, first, that Claim 1 included 12 the step of using an allocation server to 13 create an account with a CMS once it is 14 determined that the user doesn't have one; and 03:49PM 15 second, that Claims 11 and 18 require a step 16 wherein a PIMS determines a communication 17 preference of the CMS based on the identity of 18 a user. 19 And again today at oral argument, when I 03:50PM 20 asked Plaintiff's counsel what in the claims 21 made up this connection mechanism, counsel 22 again referenced these two claim elements. 23 From here on out, I'll refer to these two 24 limitations as the "creating an account" 03:50PM 25 limitation and the PIMS limitation. DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	164 1 be touting the higher-level concept of 2 communication between two systems writ large. 3 Plaintiff did not provide any further 4 explanation as to why the PIMS' work can be 03:51PM 5 said to be the heart of Claims 11 and 18, and 6 the Court cannot see why that is. Indeed, 7 today at oral argument, Plaintiff's counsel all 8 but acknowledged that the patent specification 9 doesn't really highlight or tout these two 03:51PM 10 claim elements in any great detail. 11 In sum, Plaintiff has not convinced the 12 Court that the asserted claims are directed to 13 a coordination mechanism of some kind. 14 Instead, for the reasons set out, the Court 03:51PM 15 concludes that these claims are directed to the 16 abstract idea of coordination of a customer's 17 loyalty credits between an online gaming 18 service loyalty account and a casino loyalty 19 account. 20 I'll now turn to Step 2 of the Alice 21 framework. At Step 2, Courts are required to 22 assess what else is in the claim beyond the 23 abstract idea in order to determine whether the 24 additional elements transform the nature of the 03:52PM 25 claim into a patent-eligible application of the DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

165 1 abstract idea. 2 With respect to 3 computer-functionality-based claims, like those 4 at issue here today, the Federal Circuit has 03:52PM 5 stated that such claims can include an 6 inventive concept where they provide a 7 technological solution to a technological 8 problem. At Step 2, for the role of the 9 computer to be deemed meaningful in the context 03:52PM 10 of the Section 101 analysis, it must involve 11 more than the performance of well-understood, 12 routine, and conventional activities previously 13 known to the industry. 14 In its answering brief, in the section 03:52PM 15 where it sought to explain why the patent's 16 claims do include an inventive concept, 17 Plaintiff focused exclusively on the two claim 18 limitations that I've already described, the 19 "creating an account" limitation and the PIMS 03:53PM 20 limitation. It did so again today here at oral 21 argument. Plaintiff argued these two 22 limitations, when considered along with the 23 other aspects of the claims, showed how the 24 claims require a "unconventional operation of a 03:53PM 25 computer-based system to link two previously DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	167 1 its eligibility argument. Today, for example, 2 when asked about what a PIMS requires, 3 Plaintiff's counsel said only that this would 4 be the subject of expert discovery. 03:54PM 5 Now, Plaintiff could have filled in these 6 gaps by amending its complaint, and, indeed, 7 Plaintiff did file a second amended complaint 8 in an attempt to do so, but like with its 9 briefing, the second amended complaint added 03:54PM 10 little to work with. For example, in paragraph 11 26 of the second amended complaint, Plaintiff 12 asserted that the "connection mechanism can 13 include a Partner Integration Management System 14 that receives an abstract request from an 03:55PM 15 online application to perform certain actions 16 associated with an online user with respect to 17 a land-based casino management system" and that 18 this was an "unconventional approach." But 19 Plaintiff never pleaded any additional facts 03:55PM 20 explaining why or how the PIMS limitation 21 amounted to an unconventional technological 22 solution, but it could have attached or 23 referenced a declaration from an expert 24 explaining why it is that these limitations, 03:55PM 25 considered in light of the claims, are DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com
166 1 disparate offline and online systems so that 2 loyalty credit information can be shared to 3 provide a combined offline/online gaming 4 experience for the user." 03:53PM 5 Ultimately, however, the Court concludes 6 that the record does not contain enough for it 7 to conclude that these two limitations, 8 considered in light of the rest of the asserted 9 claims, could plausibly amount to inventive 03:53PM 10 concepts. In arguing to the contrary, 11 Plaintiff failed to point to sufficient record 12 support for its assertions at Step 2. For 13 example, Plaintiff claimed in its briefing that 14 both of these limitations, when considered 03:54PM 15 along with the remaining claim language, 16 amounted to a "unconventional approach which 17 did not exist prior to GAN's invention," but 18 Plaintiff provided no citation for this 19 statement or further explanation for why 03:54PM 20 precisely a POSITA would understand that the 21 use of these solutions amounts to the 22 unconventional use of computer technology to 23 solve a computer-based problem. Nor did 24 Plaintiff say that certain words in these two 03:54PM 25 claim limitations, if construed, would bolster DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	168 1 unconventional or why a POSITA would understand 2 that their inclusion in the claims did not 3 unduly preempt solutions in the realm of the 4 abstract idea at issue. But Plaintiff did not 03:55PM 5 do that. 6 Now, Plaintiff did point in support to 7 one piece of evidence in its favor that could 8 possibly be right, the prosecution history. 9 Specifically, the plaintiff noted that during 03:55PM 10 reexamination, the examiners concluded that the 11 "creating the account" and PIMS limitation were 12 not taught by a prior art reference known as 13 <i>Muskin</i>. Defendant acknowledges that <i>Muskin</i>, 14 like the asserted claims at issue, discloses an 03:56PM 15 online gaming service that coordinates or 16 communicates with a land-based casino provider. 17 Plaintiff used this portion of the 18 prosecution history to argue that the 19 reexamination panel relied on these two 03:56PM 20 limitations to "find the claims to be inventive 21 over the prior art." But as Defendants note, 22 there's a difference between the concept of 23 novelty and patent eligibility in federal 24 patent law. The Federal Circuit has explained 03:56PM 25 that whether a particular element is novel does DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

169 1 not necessarily go to whether that element is 2 patent eligible. Put differently, "a claim for 3 a new abstract idea is still an abstract idea," 4 as the Federal Circuit said in cases like 03:56PM 5 <i>Synopsis, Inc., versus Mentor Graphics Corp.</i> 6 Thus, to the extent what the Patent Office was 7 saying here is that the existence of these two 8 limitations meant that <i>Muskin</i> did would not 9 anticipate or render obvious the claims at 03:57PM 10 issue, that would knock it down to the 11 plaintiff's benefit here at the Section 101 12 analysis stage. 13 Now, there may be a way that this piece 14 of the prosecution history could meaningfully 03:57PM 15 help Plaintiff at Step 2. As it is, the Court 16 cannot glean enough from the record to make it 17 so. As the Supreme Court has explained, the 18 concern that drives Section 101 law is one of 19 preemption. If Plaintiff had provided more 03:57PM 20 information, such as in its second amended 21 complaint, supporting the decision that the 22 panel's reference to <i>Muskin</i> helps show how it 23 is that these claims do not unduly preempt the 24 relevant field or amount to the unconventional 03:57PM 25 use of computer technology to solve a problem DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	171 1 the UK tax authority extended a tax credit to 2 plaintiff because its research on the subject 3 matter of the patent was not "routine" does not 4 speak directly to the concept of patent 03:59PM 5 eligibility under U.S. patent laws. Again, had 6 this context been melded with declarations from 7 an expert which helped explain why the tax 8 authority's conclusions shed light on 9 eligibility issues and not novelty issues, the 03:59PM 10 Court's decision might have been different. 11 Therefore, at Step 2, the Court finds that 12 Defendants have met their burden to demonstrate 13 that the claims do not include an inventive 14 concept. 03:59PM 15 The Court will now make brief mention of 16 the dependent claims in the patent. After 17 Defendant articulated why the asserted claims 18 were representative of the other claims in the 19 patent, Plaintiff did make reference to those 03:59PM 20 dependent claims in one paragraph of its 21 answering brief, but it did not make a 22 "meaningful argument" as to why the content of 23 those claims was material for Section 101 24 purposes. Instead, all it did was note the 03:59PM 25 claim numbers for those claims and reproduce a DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com
170 1 in the computer arts, the outcome here may have 2 been different, but without more, the Court 3 cannot so find. 4 Similarly, the plaintiff also sought to 03:57PM 5 support its position by including a few 6 allegations in the second amended complaint 7 about a November 2016 research and development 8 tax credit for what I'll call the R&D credit 9 that it submitted to a United Kingdom tax 03:58PM 10 advisor. The plaintiff asserted that the 11 authority provides an R&D tax credit where the 12 R&D "directly contributes to achieving an 13 advance in the overall knowledge or capability 14 in a field of science or technology through the 03:58PM 15 resolution of scientific or technological 16 uncertainty." In the complaint, Plaintiff 17 relied on the grant of the tax credit as a 18 recognition that its work was a "resolution of 19 scientific or technological uncertainty that 03:58PM 20 was not routine or that could not be readily 21 resolved by a professional in the field at the 22 time." 23 Again here, though, this bare citation to 24 the R&D claim is not sufficient to demonstrate 03:58PM 25 a plausible inventive concept at Step 2. That DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	172 1 few words in those claims, nothing more. That 2 cannot be enough to put these dependent claims 3 distinctly at issue for purposes of this 4 motion. For all these reasons, the Court 04:00PM 5 grants Defendant's motion. 6 In its briefing, Plaintiff did not 7 expressly request the opportunity to amend, and 8 it has already done so two times, as defense 9 counsel noted. In light of this, the Court 04:00PM 10 will not automatically allow Plaintiff the 11 chance to further amend. However, the Court is 12 also cognizant of the Federal Circuit's 13 admonition, as discussed in cases like <i>Realtime</i> 14 <i>Data, LLC, versus Reduxio Systems, Inc.</i>, that 04:00PM 15 when it comes to the issue of resolving the 16 difficult question of patent eligibility, a 17 district court should freely grant leave to 18 amend the complaint if it's possible that 19 additional allegations might change the 04:00PM 20 calculus of such an inquiry. 21 Mindful of that, and in light of the fact 22 that this is the first time the Court has found 23 a relevant complaint wanting on Section 101 24 grounds at the motion to dismiss stage, I will 04:00PM 25 order that if Plaintiff believes that it can DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

173 04:01PM 1 amend in such a way to address the Court's 2 concerns as articulated today, then no later 3 than 21 days from today's date, Plaintiff shall 4 submit a motion for leave to amend along with a 5 letter brief of no more than four single-spaced 6 pages in support in addition to the proposed 7 further amended complaint. The Court will then 8 set a further limited letter briefing schedule 9 on any such a motion. If no such motion is 10 filed, the Court will consider the case to need 11 to be closed. 12 Additionally, pursuant to my comments in 13 my October 3, 2022 oral order, the Court orders 14 that this case is now stayed in the interim. 04:01PM 15 I'll now move on to the second case, 16 <i>InQuisient, Inc., versus Service Now, Inc.</i>, 17 Civil Action Number 22-900-CJB. In this case, 18 we again have Defendant's Rule 12(b)(6) motion. 04:02PM 19 Most, though not all, of the motion is premised 20 on the grounds that the operative complaint 21 should be dismissed on Section 101 eligibility 22 grounds. I will address only those grounds 23 now, and for reasons I'll explain, I will deny 24 the motion as it relates to Section 101 for the 04:02PM 25 reasons I will now set out today. DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	175 04:03PM 1 claims are directed to the abstract idea of 2 "storing, managing, indexing, and retrieving 3 datasets based on metadata or descriptions of 4 the data." The Court agrees that this is an 5 abstract idea. Indeed, Plaintiff does not 6 really dispute this. And the Federal Circuit 7 has held, in cases like <i>Content Extraction and 8 Transmission, LLC, versus Wells Fargo Bank, 9 National Association</i>, that the concept of "data 10 collection, recognition, and storage," a 11 similar concept, was an abstract idea. 12 Plaintiff, for its part, argues that the 13 claims, though, are not directed to this 14 abstract idea and that Defendant has 04:04PM 15 over-generalized the claims. According to the 16 plaintiff, the claims of the asserted patents 17 are directed to a "data repository with a 18 specific set of interrelated data structures, 19 the modules, defining how that structure is 04:04PM 20 implemented." Thus, Plaintiff's argument goes 21 with the claims purportedly reciting "new data 22 structures that improve the operation and 23 efficiency of a database system," the claims 24 are not abstract but instead are directed 04:04PM 25 toward a technological improvement in database DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com
174 04:02PM 1 Plaintiff asserts in its complaint that 2 Defendant infringes at least Claim 1 of each of 3 three patents, United States Patent Number 4 7,979,468, which I'll refer to as the '468; 5 United States Patent Number 8,219,585, which 6 I'll refer to as the '585 patent; and United 7 States Patent Number 8,224,855, which I'll 8 refer the as the '855 patent. The three 9 asserted patents share the same title, 04:02PM 10 "Database Data Dictionary." The '585 patent 11 and the '855 patent are continuations of the 12 '468 patent, and the three patents share the 13 same written description. 14 Defendant asserts that Claim 1 of each of 04:03PM 15 the asserted patents are representative of the 16 remainder of the claims in each patent, and 17 Plaintiff does not contest there. Therefore, 18 the Court will analyze only Claim 1 of each 19 asserted patent, and because the Court will 04:03PM 20 deny the motion respect to Claim 1 of each of 21 those patents, the Court will also deny the 22 motion with respect to all claims in the 23 asserted patents. 24 I'll now turn to the <i>Alice</i> analysis at 04:03PM 25 Step 1. Defendant says the representative DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	176 1 management. 2 In cases like <i>CardioNet, LLC, versus 3 Infobionic, Inc.</i>, the Federal Circuit has 4 instructed Courts to be careful to avoid 04:04PM 5 oversimplifying a claim by looking at it 6 generally and failing to account for its 7 specific requirements in Step 1. For the 8 reasons I'll discuss now, I think the defendant 9 has oversimplified what the focus of the claims 10 is. For that reason, the Court finds that 04:05PM 11 Plaintiff has the better of the arguments at 12 Step 1. 13 Looking first to the claim language 14 itself, Claim 1 of each of the asserted patents 04:05PM 15 generally claims a computerized system for 16 manipulating datasets comprised of a processor 17 and a data repository that processes, 18 retrieves, and stores data contained in the 19 datasets and one or more layers of metadata of 04:05PM 20 the data in the datasets. Stopping here, that 21 does sound a lot like Defendant's asserted 22 abstract idea. That is, storing, managing, 23 indexing, and retrieving datasets based on 24 metadata or descriptions in the data. 04:05PM 25 But importantly, the claims do not stop DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

177 04:06PM 1 there. They go on to recite what it is that 2 makes up the claimed data repositories. That 3 is, several different modules that are 4 configured to store, identify, define, 5 generate, and/or transmit various types of 6 information. These claimed modules constitute 7 the bulk of the claims, and, as Plaintiff 8 points out, the modules are configured such 9 that they have relationships to one another. 04:06PM 10 For example, looking to Claim 1 of the 11 '467 patent, the claimed data repository 12 contains eight modules. First, an element 13 module that's configured to store and uniquely 14 identify a plurality of elements. 04:06PM 15 Second, an element relation module 16 configured to store one or more relationships 17 between the element and the element module. 04:06PM 18 Third, a class module configured to 19 define at least one class of the elements and 20 store the class. 21 Fourth, an attribute module configured to 22 define and store one or more attributes. 23 Fifth, a class attribute module 24 configured to define and store one or more 04:06PM 25 class attribute associations between at least DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	179 04:08PM 1 Defendant intended the "based on metadata" 2 aspect of its articulation of the abstract idea 3 to appropriately capture the utilization and 4 presence of these various modules. But if so, 5 Defendant's description of what the claims are 6 about still seems to be selling the claim 7 short. 04:08PM 8 Just simply based on the modules' 9 prominence in the claims and the somewhat 10 intricate way in which the modules must 11 interrelate to one another, it seems that the 12 particular nature of the metadata in these 13 modules is not an afterthought in the claims, 14 which is what it sounds like in Defendant's 04:08PM 15 articulation of the abstract idea. Instead, 16 it's the star of the claims. In other words, 17 the claim language suggests that the claims are 18 directed to a data repository that, as 19 Plaintiff points out on page 18 of its 04:08PM 20 answering brief, is "composed of multiple 21 substructures configured to hold particular 22 information which are tied to other claimed 23 structures in a specified manner." 04:09PM 24 Defendant also argued at page three of 25 its reply brief that although Plaintiff claims DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com
178 04:07PM 1 one of the attributes in the class. 2 Sixth, a type definition module 3 configured to define and store one or more 4 types of the class, the attributes related to 5 the class, and the relationships between the 6 elements. 04:07PM 7 Seventh, a state machine module 8 configured to store one or more state machine 9 types associated with at least one of the 10 elements. 11 And eighth, a status module configured to 12 store one or more statuses of each state 13 machine. 04:07PM 14 So sure, the claims certainly involve the 15 concept of storing, managing, indexing, and 16 retrieving datasets based on metadata or 17 descriptions of the data, but Defendant's 18 articulation of what the claims are directed to 19 seems to skim over the modules themselves. 04:07PM 20 That is, what appears to be the key aspect of 21 the claims. 22 For example, on page eight of its opening 23 brief, Defendant stated that the various 24 recited modules "merely describe groupings of 04:07PM 25 metadata." In that regard, it might be that DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	180 04:09PM 1 that the "definitions and interrelationships" 2 of the modules are key to the improvements to 3 computer technology advanced by the claims, 4 that, in fact, the patents are "silent" on what 5 the relationships are among the claimed 6 modules. 04:09PM 7 But in the Court's view, that's not true. 8 The claim limitations, on their face, do not 9 seem to be silent about what are the 10 relationships between the modules. Instead, 11 the claims tell us how certain modules are 12 related to one another. For example, the state 13 machine module is configured to store state 14 machine types associated with at least one of 04:09PM 15 the elements, elements that are stored by the 16 element module. 17 The Court notes that today at oral 18 argument, the parties appeared to have 19 different views about what these claimed 04:09PM 20 modules really are or consist of. Defendant, 21 on the one hand, seemed to be suggesting that 22 although the modules facially are required to 23 contain different types of data, like elements 24 or attributes or state machine types, in 04:10PM 25 reality, they all simply require groupings of DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

181 1 merely any type of metadata, and Defendants 2 suggested that these modules were not actually 3 part of the data structure, just grouping of 4 data themselves. 04:10PM 5 But Plaintiff's counsel argued that the 6 modules, as their names would appear to 7 suggest, do require utilization of different 8 types of metadata and that a module is a 9 portion of a data table or a data table itself. 04:10PM 10 That is, a structure or type of structure. At 11 this stage of the case, without claim 12 construction having occurred, Plaintiff's 13 arguments as to what the claimed modules are 14 seem plausible, so I must credit them. 04:10PM 15 At page two of its reply brief, Plaintiff 16 also suggested that the fact that each module 17 is defined by functional language means that 18 the claims amount simply to instructions that 19 apply it with a computer in order to carry out 20 the claimed functions. While it is true that 21 the claims dictate that the modules are 22 configured to store and identify or define 23 certain information, Defendant's argument 24 ignores that the claims themselves, 04:11PM 25 particularly if Plaintiff is correct about the DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	183 1 patent does this. That is by claiming a system 2 that includes an element module that's 3 configured to store uniquely identified 4 elements and an element relation module 04:12PM 5 configured to show relationships between the 6 elements and the element module and then by 7 further containing various additional types of 8 modules. These concepts are, in turn, captured 9 by the claims. 04:12PM 10 Turning to the written description of the 11 asserted patents, column 1's background 12 information section explains that at the time 13 of the invention, a conventional data storage 14 system would implement its own data model 04:12PM 15 according to the system's user interface and 16 business role specification. These prior art 17 systems depended on a specific data model, one 18 that the system's developers create by writing 19 dedicated code. However, these systems were 04:13PM 20 said to lack flexibility and portability. The 21 section ends with the patent stating that there 22 is a "need for systems and method that store, 23 manage, index, interrelate, and/or retrieve 24 datasets in a manner independent of the data 04:13PM 25 model." DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com
182 1 previously referenced claim construction issue 2 as to module, would be directed to a new system 3 for manipulating datasets that includes 4 particular modules that must store, identify, 04:11PM 5 and/or define particular information and that 6 have certain relationships to one another. The 7 claims, therefore, would not simply amount to 8 instructions to store, manage, index, and/or 9 retrieve data based on metadata or descriptions 04:11PM 10 of the data on a computer, full stop. Rather, 11 they would recite specific data structures for 12 doing so. 04:11PM 13 Now, the patent specification, though not 14 a model of clarity, also sheds some light on 15 the "directed to" Step 1 inquiry. For example, 16 the abstract explains that the patents claim a 17 computerized system for "storing, managing, 18 indexing, interrelating, and/or retrieving 19 datasets in a manner independent of the data 04:12PM 20 model." This suggests that the patents will be 21 claiming a new system for managing, indexing, 22 interrelating, and/or retrieving datasets. 23 That is, one that is independent of the data 24 model. 04:12PM 25 The abstract then goes on to note how the DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	184 1 Then in the summary of the invention 2 section, the patent describes the claimed 3 systems and methods that are said to address 4 this problem in some way. In doing so, the 04:13PM 5 summary section pointedly notes that these 6 systems and methods are ones containing various 7 modules of the types that are found in the 8 asserted representative claims at issue. 04:13PM 9 Now, candidly, the patent does not, in 10 the Court's view, understandably articulate how 11 it is that a claimed system, like those in the 12 purportedly representative claims, actually 13 solve the problems in the prior art that are 14 called out in the background information 04:13PM 15 section of the patent. Nor, in the Court's 16 view, was that answer particularly clear after 17 reading Plaintiff's briefing or its current 18 operative complaint. And despite many 19 questions here today at oral argument, the 04:14PM 20 Court was left wondering about this connection 21 between what is claimed on the one hand and how 22 what is claimed solves the types of 23 computer-based problems described by the patent 24 on the other hand. This lack of clarity, if it 04:14PM 25 continues, may well be harmful to the DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

185 04:14PM 1 plaintiff's case at some point in the future, 2 but it does not affect my Step 1 decision here 3 today. That's because all I'm doing at Step 1 4 today is asking myself, first, what is the 5 focus of these claims, and, second, is that 6 concept captured in the abstract idea put 7 forward by the defendant? 8 For the reasons that I've explained here 9 today, it is not. The claim language itself 10 and the patent specification tell us repeatedly 11 that the focus of these patent claims is on the 12 particular nature of the data structure at 13 issue, including its use of particular modules 14 that store different types of metadata that are 15 interrelated in a particular way. Defendant's 16 abstract idea was simply too broad. It 17 oversimplifies the claims, so it doesn't 18 capture this important concept. 19 Finally, the caselaw that the parties 20 highlight as similar to the claims at issue 21 also helps, at least in part, to demonstrate 22 that Plaintiff's position appears to be the 23 right one. For its part, Defendant asserted 24 that the claims here were most analogous to 25 those found to be patent eligible in <i>BSG Tech</i> DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	187 04:16PM 1 Federal Circuit found that these claims were 2 directed to the abstract idea of "considering 3 historical usage information while inputting 4 data." The Court noted that the patentee did 5 not purport to have invented a new database 6 structure. Rather, the focus of the claims was 7 guiding users by presenting summary comparison 8 information to them before they inputted data 9 in order to achieve more consistent item 10 descriptions. The Federal Circuit reiterated 11 throughout the opinion that the claimed 12 databases themselves were well known at the 13 time of the invention. While the focus of the 14 claims would improve the quality of the 15 information added to the database, this is not 16 the same as improving the database's 17 functionality. Indeed, the database would 18 serve in its ordinary capacity of storing the 19 resulting information, and thus the claims were 20 unrelated to how databases function. 21 One claimed issue in <i>BSG Tech</i> recited a 22 database system, and the patentee pointed to a 23 limitation requiring that users can add 24 additional parameters without modifying the 25 predefined structure of the database as DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com
186 04:15PM 1 <i>LLC versus Buyseasons, Inc.</i>, a Federal Circuit 2 case. The plaintiff says that its claims were 3 more similar to the claims found to be patent 4 eligible in <i>Enfish, LLC, versus Microsoft</i> 5 <i>Corp.</i>, another Federal Circuit case. The Court 6 finds that the claims are more like those in 7 <i>Enfish</i> than those in <i>BSG Tech.</i>, which is 8 another reason why the defendant's motion must 9 be denied at Step 1. 10 In <i>BSG Tech.</i>, the Federal Circuit 11 affirmed the district court's determination 12 that the patents at issue were not patent 13 eligible. Notably, there, the district court's 14 decision was issued after the Court accepted 15 the plaintiff's proposed claim constructions 16 and converted the defense motion to dismiss 17 into a motion for summary judgment. The claims 18 at issue in that case recited methods and 19 systems for indexing and retrieving data being 20 posted by a plurality of users to a wide area 21 network that entailed, as the claimed advanced 22 over the prior art, providing the users with 23 summary comparison usage information 24 corresponding to previously used parameters and 25 values for use in posting the data. The DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	188 04:17PM 1 constituting an improvement in computer 2 functionality. However, the Court explained 3 that the specification said nothing about how 4 to construct such a database structure, which 5 suggested that this feature of the claimed 6 system was not the focus of the claim. 7 Moreover, the patent did not suggest that 8 conventional databases required structural 9 modifications to add new paramaters. At Step 2 10 of the <i>Alice</i> test, the <i>BSG</i> Court explained that 11 the only alleged unconventional feature of the 12 claims was the requirement that the user be 13 guided by the summary comparison usage 14 information, which, again, simply restated the 15 abstract idea at issue. As to patentee's 16 argument there that the claims supplied an 17 inventive concept because they required a 18 specific database structure that did not 19 preempt consideration of usage information 20 while inputting data into other types of 21 databases, the Court again explained that the 22 claimed specific database structures were well 23 understood and conventional, and accordingly 24 did not supply an inventive concept. 25 So while in <i>BSG Tech</i> the claimed advance DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

189 04:18PM 1 in the patents was simply having users consider 2 certain information while inputting information 3 into the index, here in contrast the focus of 4 the claims seems to be on a data repository 5 that includes particular data structures that 6 have relationships among one another. That is, 7 the particular claimed database structures are 8 the focus of the claims. And unlike <i>BSG Tech.</i>, 9 it's not clear that the recited structures were 10 well understood and conventional. As the Court 11 has previously noted, the patent itself seems 12 to say they were not. Indeed, the fact that 13 the patentee obtained a patent on these claims 14 would appear to indicate that they were not. 04:19PM 15 For this reason, the Court agrees with 16 the plaintiff that the claims seem more similar 17 to those found to be patent eligible in <i>Enfish</i>, 18 which, again, not for nothing, was the case 19 where the Section 101 issue was not decided 20 until a more full record was made on summary 21 judgment. In <i>Enfish</i>, the Federal Circuit 22 deemed the claims at issue to be patent 23 eligible because they recited "nonabstract 24 improvements to the computer technology." The 25 Court explained that "much of the advancement DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	191 04:20PM 1 claims, that is, that the focus was on an 2 improvement to computer functionality itself, 3 the <i>Enfish</i> Court found the claims passed 4 <i>Alice's Step 1</i> test. 04:20PM 5 As in <i>Enfish</i>, the claims here are 6 directed to data repositories that appear to 7 include specific sets of data structures, that 8 is, modules, that are configured to store 9 particular kinds of information and that have 10 relationships with one another. For these 11 reasons, the Court finds that the claims at 12 issue are not directed to the abstract idea put 13 forward by Defendant. Therefore, Defendant's 14 motion must be denied. 04:21PM 15 Defendant's motion also moves to dismiss 16 Plaintiff's claims for indirect and willful 17 infringement. The Court will take that portion 18 of the motion under advisement without argument 19 and will issue a forthcoming order on that 20 portion of the motion soon. 04:21PM 21 That brings us to our last case today, 22 <i>Topia Technology, Inc., versus Egnyte, Inc.</i> 23 It's Civil Action Number 21-1821-CJB. 24 Defendant Egnyte, Inc., which I'll refer 25 to as Defendant, has filed a motion for DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com
190 04:19PM 1 made in computer technology consist of 2 improvements to software, that, by their very 3 nature, may not be defined by particular 4 physical features, but rather by logical 5 structures and processes." 04:20PM 6 The patent at issue in <i>Enfish</i> claimed a 7 particular type of logical model for a computer 8 database described as a "self-referential" 9 table. Finding that the focus of the claims 10 was on the specific improvement to the way 11 computers operate, the Court emphasized that 12 the claims did not broadly cover any form of 13 storing tabular data, but rather specifically 14 taught the claim's self-referential data for a 15 computer database. This specificity was 16 reflected in the claim language, which 17 described in some detail the table's 18 attributes, and also in the teaching of the 19 specification. There, the specification 20 emphasized how the self-referential table 21 improved upon conventional database structures, 22 such as by providing increased flexibility, 23 faster search times, and smaller memory 24 requirements. In light of what this 25 demonstrated about the plain focus of the DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	192 04:21PM 1 judgment on the pleadings pursuant to Federal 2 Rule of Civil Procedure 12(c), which I'll refer 3 to as the motion. With the motion, Defendant 4 is asserting that the complaint should be 5 dismissed because the patents-in-suit are 6 subject-matter ineligible pursuant to Section 7 101. At the outset, the Court will address a 8 few procedural issues. 04:22PM 9 First, there are six patents-in-suit at 10 issue in this case, which are all relevant to 11 the motion. For ease of reference here today, 12 I'll refer to each of the patents by the last 13 three numbers of their respective Patent 14 Numbers. 04:22PM 15 Second, although the motion is brought 16 here pursuant to Rule 12(c), the nature of the 17 Court's analysis of that motion will not differ 18 as compared to its analysis of the other 19 motions it addressed today. That is because 20 although those other motions were brought 21 pursuant to Rule 12(b)(6), not Rule 12(c), the 22 standard of review for a Rule 12(c) for 23 judgment on the pleadings is the same as that 24 for deciding Rule 12(b)(6) motions. 04:22PM 25 Third, Defendants asserted that Claim 1 DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

193 04:22PM 1 in each of the representative patents -- I'm 2 sorry -- of each of the respective patents is 3 representative of all the other claims of those 4 patents for purposes of Section 101 analysis at 5 issue here. 04:23PM 6 In its answering brief, Plaintiff Topia 7 Technology, Inc., which I'll refer to as 8 Plaintiff, never really contests that 9 assertion. Although at one point in its 10 briefing, Plaintiff makes a quick reference to 11 the content of two dependent claims, that is, 12 Claim 5 of the '942 patent and Claim 4 of the 13 '607 patent, it does so only to show why the 14 content of those claims are similar in kind to 15 the content of Claim 1 of those respective 16 patents. 04:23PM 17 The Federal Circuit has held, as I've 18 noted, that Courts may treat a claim as 19 representative if the patentee does not present 20 any meaningful argument for the distinctive 21 significance of any claim limitations not found 22 in the representative claim. In light of this, 23 herein, the Court will primarily only address 24 Claim 1 of each of the respective 25 patents-in-suit, understanding for our purposes DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	195 04:24PM 1 patents-in-suit today, are directed to an 2 abstract idea that Defendant refers to in 3 similar, if slightly different terms, 4 throughout the briefing. Defendant 5 alternatively refers to this abstract idea as 6 "storing and synchronizing versions of 7 documents and other files" or "synchronizing 8 multiple versions of a file across network 9 computers" or "synchronizing document versions" 10 or "automatically transferring modified files 11 and information across multiple generic 12 computer systems" or "automatically 13 transferring modified electronic files to 14 network devices." I understand Defendant to 15 treat each of these slightly different 16 articulations of the abstract idea as carrying 17 the same basic meaning. So for ease of 18 reference, I'll utilize "synchronizing multiple 19 versions of the file across network computers" 20 as the shorthand for the abstract idea at issue 21 here. 04:25PM 22 Plaintiff, for its part, doesn't dispute 23 that synchronizing multiple versions of a file 24 across network computers is an abstract idea, 25 and the Court agrees that it is. Again, in the DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com
194 04:23PM 1 here that Claim 1 of the patent is 2 representative of all the claims of that same 3 patent. 04:24PM 4 Fourth, because each of the six patents 5 are related, they largely share the same 6 specification with only a few differences. 7 Today, when I make reference to the 8 specification, unless indicate otherwise, I'll 9 be referring to the specification of the '561 10 patent. When I do so, it should be understood 11 that the specifications of all five other 12 patents are the same in the respect, again 13 unless I advise specifically to the contrary. 04:24PM 14 And fifth, for reasons that will become 15 clearer shortly, I'm going to address the 16 patents-in-suit in four distinct groupings, as 17 the Court's decisions regarding the Alice test 18 will differ depending on which grouping of 19 patents is at issue. 04:24PM 20 The first grouping I'll address is 21 actually a grouping of one, the '561 patent. 22 The patent is titled "Architecture for 23 Management of Digital Files Across a 24 Distributed Network." In Step 1, Defendant 25 argues that this patent, and indeed all six DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	196 04:26PM 1 parlance of the Federal Circuit, it appears to 2 be a disembodied concept or a basic building 3 block of human ingenuity untethered from any 4 real-world application. Plaintiff contends at 5 Step 1, however, that the claims of the '561 6 patent are directed not to the abstract idea 7 but, instead, are "directed to a specific 8 computer network architecture for a useful and 9 improved file management system that includes a 10 dedicated software system configured to 11 automatically provide the user with the most 12 recent version of the file to be accessed from 13 any of the user's devices." Plaintiff contends 14 that the claims of all the patents are directed 15 to that more specific concept. 04:26PM 16 Plaintiff goes on to address what each 17 patent is individually directed to more 18 specifically in light of the specification. As 19 I noted earlier today, in order to determine 20 what a claim really is directed to, the Federal 21 Circuit explained that the Court should consult 22 both the claim language and the specification. 23 In doing so, it becomes clear that Claim 1 of 24 the '561 patent is directed to the abstract 25 idea at issue. DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

197 04:27PM 1 Turning first to the text of Claim 1, it 2 does seem that the focus of that claim is on a 3 high-level concept of synchronizing multiple 4 versions of a file across network computers. 5 Nearly the entirety of the claim's text could 6 be said to be devoted to this general concept. 7 The claim explains that, first, the system 8 requires the use of a first electronic device, 9 a second electronic device, and a third 10 electronic device, each associated with a user. 11 Each of those three devices must contain an 12 application. 13 The claim then explains how the second 14 device's application automatically transfers a 15 copy of the first electronic file from the 16 second device to the first device at the point 17 where the user modified the content of that 18 first file and how it does so upon determining 19 that a save operation has been performed on the 20 file. 21 Next, the claim explains that the first 22 device is also configured to automatically 23 receive a copy of a second electronic file from 24 a third device's application at the point when 25 the user modifies the content of that file. DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	199 04:29PM 1 detail how these file transfers are to be 2 accomplished, but instead simply conveying the 3 "aspirational result of automatically 4 transferring updated versions" of the file in 5 the first place. 6 The specification only further supports 7 this conclusion. The abstract and the summary 8 of the invention section of the patent describe 9 what the patent is said to be all about. In 10 doing so, those sections simply parrot back the 11 content of Claim 1, nothing more. The content 12 and background of the invention section also 13 supports Defendant's position. Therein, the 14 patentee explained the problems in the prior 15 art that the patent needs to solve. Here, the 16 patent notes that conventional computing 17 systems allow for users' various devices to be 18 easily connected, but that such systems had 19 drawbacks in that "they do not provide the 20 customer a seamless environment" in that "the 21 customer must manually handle many aspects of 22 that connection." And then as to file 23 management, customers must "manually move files 24 between their devices" using various protocols. 25 The patent further expounds on these problems, DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com
198 04:28PM 1 Then the claim notes that the first device's 2 application is configured to automatically 3 transfer the modified version of the copy of 4 the first file to the third device in order to 5 replace an older version of that file. And the 6 claim also states that the first device 7 automatically transfers a copy of the second 8 file to the second device in order to replace 9 an older version of that file. 10 Simply by laying out how Claim 1 11 describes the claimed system, one can see that 12 the focus of nearly the entire claim is on the 13 concept of automatically transferring computer 14 files from one electronic device to another so 15 that the respective three devices all contain 16 the same modified and updated versions of those 17 files. Put differently, the claim reads as if 18 it is all about the abstract idea at issue, 19 synchronizing multiple versions of a file 20 across network computers, and not on some more 21 specific or particularized real-world 22 application of that idea. 23 As Defendant notes, the claims uses 24 "highly generalized, result-oriented terms." 25 Its focus seems to be not on explaining in any DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	200 04:30PM 1 which include the proliferation of redundant 2 file copies, the proliferation of an 3 error-prone environment, and unnecessary 4 complexity. 5 The patent then describes a number of 6 possible solutions in the art to this problem 7 that, for one reason or another, are not 8 satisfactory. These include remote desktop 9 software, which is problematic because it does 10 not use the utilize the local resources of a 11 client database; distributed file systems, 12 which have drawbacks, including that the 13 customer always had to be connected to the 14 system and that accessing files in the system 15 tended to be a slow process; FTP, which in 16 addition to sharing some of the same problems 17 as distributed file systems also had the 18 problem that the customer was required to 19 manually use client software to perform the 20 operations of a distributed file system as a 21 separate task; e-mail, which was "even worse 22 than FTP because the process is even more 23 manual" and then among other reasons the 24 customer has a find an e-mail message 25 containing a file before it can access the DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

201 1 file; and flash drives or external disk drives 2 which had the downside that they had to be 3 "physically connected to the computer on which 4 the files would be accessed." 04:31PM 5 In other words, in this portion of the 6 specification, the patentee seems to be 7 explaining that the claims are meant to allow 8 for automatically transferring computer files 9 between devices, which was an improvement over 04:31PM 10 the art because at least certain of these prior 11 art options heavily require the user to perform 12 a solution manually in a more burdensome way. 13 However, the Federal Circuit has made 14 clear that the mere automation of otherwise 04:31PM 15 manual processes using generic computers does 16 not constitute a patentable improvement in 17 computer technology. In <i>The University of</i> 18 <i>Florida Research Foundation, Inc., versus</i> 19 <i>General Electric, Inc.</i>, for example, the 04:32PM 20 Federal Circuit noted that when a patent's 21 claims simply seek to automate an otherwise 22 manual methodology in order to conserve human 23 resources and minimize errors, this 24 demonstrates that the patent is a 04:32PM 25 "quintessential 'do it on a computer' patent." DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	203 1 application of the abstract idea. 2 Here, however, it's hard to see what more 3 there is in Claim 1 of this patent beyond those 4 things that relate to the abstract idea itself. 04:33PM 5 All or nearly all of the claim's language seems 6 to be focused on the general concept of 7 automatically transferring modified electronic 8 files between network devices, and Plaintiff 9 did not add allegations to its complaint that 04:33PM 10 addresses the 101 question at Step 2 in a 11 manner that might suggest otherwise. 12 Nor is there anything about any hardware, 13 such as the respective devices referenced by 14 Claim 1 or the nature of the computer system 04:33PM 15 itself, or any software, such as the claimed 16 files or applications in the claims, that 17 appear to amount to the inventive concept here. 18 The patent, as Defendant noted, makes clear 19 that exemplary systems for implementing the 04:34PM 20 invention simply include a "general purpose 21 computing device" and that "embodiments of the 22 invention are operational with numerous other 23 general purpose or special purpose computing 24 system environments or configurations." 04:34PM 25 In support of its argument for patent DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com
202 1 These claims are directed to an abstract idea. 2 Moreover, it would seem hard for the 3 plaintiff to contest that Claim 1 of the '561 4 patent is directed to merely automatically 04:32PM 5 synchronizing multiple versions of the file 6 across network computers because in its 7 complaint, Plaintiff essentially said as much. 8 There, Plaintiff stated that the '561 patent is 9 "generally directed to systems and methods for 04:32PM 10 sharing electronic files between multiple 11 devices, for even when a user modifies an 12 electronic file on a device, a copy of the 13 modified electronic file is automatically 14 transferred to at least one other device." The 04:32PM 15 Court is hard-pressed to see much daylight 16 between that description and Defendant's 17 articulation of the abstract idea at issue 18 here. 19 I now turn to Step 2 of the <i>Alice</i> 04:33PM 20 framework. As I noted earlier, at Step 2 the 21 Court is required to assess what else is in the 22 claim beyond the abstract idea and whether 23 those additional elements can amount to an 24 inventive concept, such that they transform the 04:33PM 25 nature of the claim into a patent-eligible DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	204 1 eligibility, Plaintiff argued in part that the 2 claim does not preempt the field of 3 synchronizing electronic files across multiple 4 systems because the patent, as I've already 04:34PM 5 discussed, distinguishes between the system in 6 Claim 1 and other conventional approaches, at 7 least some of which tended to rely on the 8 user's manual work in order to update the 9 respective files. Since there remain available 04:34PM 10 alternatives, according to the plaintiff, the 11 "claims do not preempt every application of the 12 alleged abstract idea." 13 The problem, however, for Plaintiff here 14 as it relates to the '561 patent particularly 04:35PM 15 is that in order to survive at Step 2, a 16 plaintiff cannot simply rely on generic 17 computer elements to carry out an abstract idea 18 automatically. If a claim's only inventive 19 concept is the application of an abstract idea 04:35PM 20 using conventional and well-understood 21 techniques, the claim has simply not been 22 transformed into a patent-eligible application 23 of an abstract idea. As the Federal Circuit 24 has noted, where a patent's claims are deemed 04:35PM 25 only to disclose patent-ineligible subject DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

205 1 matter under the <i>Alice</i> frame work, as they are 2 as to this patent, preemptions concerns are 3 fully addressed and made moot. 4 Plaintiff additionally argues in Step 2 04:35PM 5 that prior to 2007, there "was no computer 6 network architecture using a server between 7 different user devices to perform automatic 8 file synchronization whenever a user modifies a 9 file on a device associated with a file 04:35PM 10 management system." But in the Court's view, 11 that's simply another way of saying the claimed 12 system was new in the relevant time frame. As 13 the Federal Circuit has noted, eligibility and 14 novelty are separate inquiries. Simply because 04:36PM 15 the claimed system may have been novel does not 16 mean that it will survive <i>Alice's</i> test. 17 Finally, the Court takes a moment to 18 address some of the cases cited by both sides. 19 First, the Court agrees with Defendant that the 04:36PM 20 '561 patent is similar to the claims at issue 21 in <i>Ameranth, Inc., versus Domino's Pizza</i>, a 22 Federal Circuit case, a case the defendant 23 called out as the most similar to the 24 challenged conduct here. In that case, the 04:36PM 25 Federal Circuit found that claims which were DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	207 1 <i>Technology, Inc.</i>, another Federal Circuit case. 2 Ironically, the Court concludes that this case 3 is, in fact, as to the '561 patent, more 4 helpful for Defendant than it is for Plaintiff. 04:37PM 5 In <i>Cooperative Entertainment</i>, the 6 district court had ruled that the claims in the 7 patent at issue were directed to the abstract 8 idea of the preparation and transmission of 9 content to peers through a computer network. 04:38PM 10 The Federal Circuit reversed, concluding at 11 Step 2 that the claims could contain inventive 12 concepts. This is because the claims did more 13 than merely implement the abstract idea with 14 generic computer components using conventional 04:38PM 15 technology. 16 Importantly, unlike as to the '561 patent 17 here, there was evidence in the record in 18 <i>Cooperative Entertainment</i> to support that 19 conclusion. The <i>Cooperative Entertainment</i> 04:38PM 20 Court found there were at least two limitations 21 in the claims, one that required a dynamic 22 peer-to-peer network wherein multiple nodes 23 consume the same content and were configured to 24 communicate outside the content distribution 04:38PM 25 networks, and another that required the use of DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com
206 1 directed to configuring and transmitting 2 hospitality-menu-related information using a 3 system that's capable of synchronous 4 communications and automatic format were 04:36PM 5 directed to an abstract idea at Step 1, in part 6 because the claims provided only result-focused 7 and functional language without setting out the 8 specifics of a particular conception that it 9 actually carried out the concept. At Step 2, 04:37PM 10 the Federal Circuit concluded that the claims 11 did not include an inventive concept because 12 they did no more than "instruct the 13 practitioner to implement the abstract idea, 14 which was routine, conventional activity." As 04:37PM 15 I've just described, the representative claim 16 of the '561 patent seems just like the 17 representative claims in <i>Ameranth</i>. It relies 18 on routine computer elements of users to simply 19 carry out the abstract idea at issue. 04:37PM 20 Plaintiff, in identifying what it thought 21 was the most analogous case in the supplemental 22 letter brief, actually picked the case that it 23 had not cited in its briefing and instead cited 24 after the briefing closed, <i>Cooperative</i> 04:37PM 25 <i>Entertainment, Inc., versus Collective</i> DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	208 1 trace routes in content segmentation that 2 potentially amounted to inventive concepts, and 3 the Court explained how the specification and 4 the operative complaint discussed these 04:38PM 5 limitations in significant detail, articulating 6 how their inclusion of the claims amounted to 7 an improvement to the computer technology that 8 was in the prior art. 9 Here, while the specification does 04:39PM 10 discuss how the claimed invention amounts to an 11 improvement over the prior to art, the claimed 12 content issue involves only the use of generic 13 and conventional conventional computer 14 components, it seems, to effectuate the 04:39PM 15 abstract idea contained in the claims. There's 16 no showing here in the patent or in the 17 operative complaint that anything in Claim 1 18 amounts to the representative inventive 19 concept. 04:39PM 20 For all these reasons, the Court finds 21 that the motion should be granted as to the 22 claims relating to the '561 patent. 23 The Court now turns to the second 24 grouping, again a grouping of one, the '942 04:39PM 25 patent. The '942 patent, whose title is the DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

209 04:39PM 1 same as the '561 patent, is otherwise also very 2 similar to the '561 patent. The only 3 identified key difference between the two as 4 described by Plaintiff in the answering brief 04:40PM 5 on pages 4 and 11 is the fact that Claim 1 of 6 the '942 patent additionally requires that the 7 claimed systems determines whether the 8 respective devices are in communication with 9 each other before sending an electronic file 04:40PM 10 from one device to the other. Claim 5, which 11 ultimately depends from Claim 1, relatedly 12 requires that the modified first file is stored 13 on a memory device associated with the first 14 electronic device responsive to a determination 04:40PM 15 that the first electronic device is not in 16 communication with the third electronic device. 17 For ease of reference, I'll refer to these 18 claim limitations as the determining steps for 19 elements. 04:40PM 20 Claim 1 of the '942 patent does not 21 appear materially different to the Court from a 22 Section 101 perspective as compared to Claim 1 23 of the '561 patent. Indeed, I note that on 24 page 17 of Plaintiff's answering brief, 04:40PM 25 Plaintiff lumped together these two patents for DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	211 1 invention are "in communication" with each 2 other, they never suggest the step of 3 determining whether such communication exists 4 is central to the focus of the patent or its 04:42PM 5 claims. 6 Moreover, the concept that two devices 7 actually must be in communication with each 8 other before one transfers an electronic file 9 to the other appears to the Court to be one 10 that is fairly considered to be part of the 04:42PM 11 abstract idea itself. After all, one cannot 12 synchronize multiple versions of a file across 13 network computers if those computers aren't in 14 communication with each other in the first 04:42PM 15 place. 16 As for Step 2, Plaintiff did not make any 17 arguments there that were specific to the '942 18 patent's determining steps. There's nothing in 19 the record to suggest that the inclusion of the 20 steps would transform Claim 1 into one 04:42PM 21 amounting to the unconventional use of 22 technology to solve a problem in the computer 23 arts such that the steps would help make up an 24 inventive concept. Thus, for the same reasons 04:42PM 25 as the '561 patent, the Court concludes that DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com
210 1 purposes of its eligibility analysis. 2 Plaintiff nevertheless argues that the 3 determining steps are features that are 4 "additional nonabstract improvements" as they 04:41PM 5 "are necessarily rooted in computer technology 6 because they focus on addressing 7 computer-network-centric issues related to the 8 network unavailability." The reminder of 9 Plaintiff's Step 1 argument, however, simply 04:41PM 10 restates the wording of the elements recited in 11 Claims 1 and 5 that I've just described. 12 While the claim determining steps in the 13 '942 patent do involve the use of computer 14 technology, that bare fact alone does not 04:41PM 15 require that the outcome of the eligibility 16 analysis be any different. At Step 1, 17 plaintiff has pointed to nothing in the '942 18 patent suggesting that these determining steps 19 are actually what the claims are directed to. 04:41PM 20 The '942 patent specification, including the 21 abstract and the summary of the invention 22 section, are essentially the same as that of 23 the '561 patent. And while the abstract and 24 summary of the invention section of the patent 04:41PM 25 do note that the devices in the claimed DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	212 1 the '942 patent is also directed to 2 patent-ineligible subject matter. The motion 3 should be granted as to the claims relating to 4 that patent as well. 04:43PM 5 The next grouping of patents I'll discuss 6 are the '787 and '823 patents. Claim 1 of 7 these patents is similar to Claim 1 of the '561 8 patent in the sense that all are claims to 9 systems that automatically transfer files 04:43PM 10 between multiple devices after a user modifies 11 those files, but the respective claims also 12 have some differences which, in the Court's 13 view, will turn out to be material. 14 Specifically, Claim 1 of the '787 patent 04:43PM 15 additionally requires that after a user 16 modifies an electronic file on a device, the 17 first metadata associated with that file must 18 be assigned a first priority that is greater 19 than a second priority assigned to the copy of 20 the file itself. And the claim requires that, 04:43PM 21 based on the fact that this metadata has a 22 higher priority than a copy of the file itself, 23 the metadata is automatically transferred from 24 a first device to a second device before the 04:44PM 25 copy of that file is transferred to the second DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

213 1 device. 2 Moreover, the claim requires that when 3 this metadata is transferred to the second 4 device, this causes a file representation of 04:44PM 5 the file on that second device to be updated 6 based on that metadata. And it requires that 7 this now-updated file representation represents 8 the updated version of the file stored on the 9 first device that is not currently stored on 04:44PM 10 the second device. 11 As for Claim 1 of the '823 patent, it has 12 similar language to Claim 1 of the '787 patent 13 except that the transfer of the metadata to the 14 second device causes a graphical availability 04:44PM 15 indication of the updated version of the file 16 to be presented on the second device based on 17 that metadata and that this graphical 18 availability indication is presented proximate 19 to the file icon representing that file. And 04:45PM 20 the claim requires that the graphical 21 availability indication indicates that the 22 updated version of the file is available to be 23 downloaded to the second device. 24 At Step 1, the Court does think it's 04:45PM 25 correct as a legal matter to conclude that DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	215 1 are directed to, that concept has to include 2 reference to the system's utilization of 3 prioritized metadata. For one thing, look at 4 the patent titles. The title of the '787 04:46PM 5 patent is "Pre File Transfer Update Based on 6 Prioritized Metadata." And the title of the 7 '823 patent is "Pre File Transfer Availability 8 Indication Based on Prioritized Metadata." It 9 is permissible to look at a patent's title in 04:46PM 10 assessing what a claim is directed to, and here 11 the titles emphasize that you simply can't 12 articulate what these patents are all about 13 without including some reference to the claimed 14 system and method's use of prioritized 04:47PM 15 metadata. Despite this, Defendant's abstract 16 idea does not mention this concept. 17 Additionally, the abstract and summary of 18 the invention sections of these two patents 19 also support Plaintiff's position at Step 1. 04:47PM 20 Unlike with the other four patents-in-suit, 21 these key sections of the '787 and '823 patents 22 make prominent reference to the importance of 23 the use of prioritized metadata in file 24 synchronization. As the Court will note in a 04:47PM 25 moment, what these patents and other DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com
214 1 these two patents are directed simply to the 2 bare abstract idea that Defendant has put 3 forward. The Court so concludes for a few 4 reasons. 04:45PM 5 First, Defendant's proposed abstract 6 idea, again, synchronizing multiple versions of 7 the file across network computers, does not 8 include a concept that seems key to these 9 patents, that is, that certain metadata related 04:45PM 10 to the file must get transferred to the device 11 before the copy of the electronic file gets 12 transferred to the device. A significant 13 portion of Claim 1 of both the patents discuss 14 this requirement and how this transferred 04:45PM 15 metadata and this prioritization over the file 16 copy itself otherwise impacts the 17 synchronization process. Surely one could 18 synchronize multiple versions of a file across 19 network computers without utilizing this type 04:46PM 20 of prioritized metadata process. So this 21 metadata-related aspect of the claims has to be 22 viewed as something narrower and really 23 distinct from the broad abstract idea itself. 24 Moreover, these two patents provide a 04:46PM 25 number of other clues that whatever the claims DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	216 1 patents-in-suit are a little less clear about 2 is exactly how it is that the use of the 3 prioritized metadata actually helps to improve 4 computer functionality. There is some 04:47PM 5 discussion of that, as I'll explain, though not 6 a lot. Nevertheless, the Step 1 inquiry asks 7 what is the focus of these claims. Given that 8 it's clear that these two patents are focused 9 in significant part on transferring metadata 04:48PM 10 prior to the transfer of electronic files, the 11 Court cannot conclude that the claims are 12 simply directed to the much broader abstract 13 idea of synchronization of multiple versions of 14 the file across network devices. So for that 04:48PM 15 reason, the Court will deny Defendant's motion 16 at Step 1 as to the '787 and '823 patents. 17 Finally, the Court turns to the last 18 patent grouping, the '607 and '622 patents. 19 These patents, which share the same title as 04:48PM 20 the '561 patent, seem to fall somewhere between 21 the '561 patent on the one hand and the '787 22 and '823 patents on the other as it relates to 23 the Section 101 calculus. 24 Like the '787 and '823 patents, the '607 04:48PM 25 and '622 patents do include in their respective DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

217 04:49PM 1 Claim 1s, among other things, the concept that 2 metadata about a file must be transferred to a 3 location prior to the transfer of the 4 electronic file itself. For example, Claim 1 5 of the '607 is a system claim that requires 6 after a user modifies an electronic file on a 7 device first metadata is generated relating to 8 the file. The system automatically transfers 9 that metadata to a second device prior to the 10 copy of the file being transferred to that same 11 device. And Claim 1 of the '622 patent has a 12 similar requirement. 13 Unlike the '787 and '823 patents, 14 however, the title of the patent did not make 04:49PM 15 reference to the claim's use of prioritized 16 metadata with respect to file transmitting. 17 Nor did the patent's abstract or summary of the 18 invention section discuss this concept. 19 Instead, the content of the '607 and '622 04:49PM 20 patent specification is essentially the same as 21 the content of the '561 patent specification. 22 So at Alice Step 1, although the claims of the 23 '607 and '622 patents do seem to make some 24 prominent use of prioritized metadata, it's 04:50PM 25 much more difficult to say here than it was as DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	219 04:51PM 1 problem experienced by distributed file systems 2 and FTP for example, two prior art options that 3 the patent derides, was a "latency" problem. 4 That is, the delay "between a file being put 5 onto a file system and its showing up on a 6 remote machine." In explaining how the patent 7 helps solve this problem, the specification 8 notes that "in an embodiment the user 9 interfaces may include a list of the customer's 10 documents and related metadata as well as any 11 one-to-one or one-to-many relationships between 12 the documents and metadata" and it describes 13 how, for example, an "embodiment directory," 14 which the Court understands from Plaintiff's 04:51PM 15 counsel's statements at oral argument to be a 16 particular type of metadata, can be "decoupled 17 from the user files" such that the "directory 18 update system updates at a higher priority than 19 the documents can be synchronized." 20 Although the patent's language here is 04:52PM 21 far from complete, the Court thinks it can see 22 how the patent here is describing how the 23 prioritization of metadata over the file copy 24 itself and the sending of that metadata to a 04:52PM 25 device before the file copy is said to help DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com
218 04:50PM 1 to the '787 and '823 patents that these claims 2 are directed to a system that must include this 3 concept. 4 In such a circumstance, where there's a 5 close call as to what a claim is directed to at 6 Step 1, the Federal Circuit noted in <i>Enfish</i> 7 that an analysis of whether there are arguably 8 concrete improvements in the recited computer 9 technology may better take places at Step 2, so 04:50PM 10 the Court will go that route here as to these 11 two patents. 12 At Step 2, however, the Court believes 13 there is just enough in the record to suggest a 14 plausible factual dispute about whether these 04:50PM 15 patents in fact contain an inventive concept. 16 Therefore, for that reason, the Court will deny 17 Defendant's motion as to the '607 and '622 18 patents. More specifically, there is at least 19 one portion of the patents' common 04:50PM 20 specification that appears to discuss how this 21 use of metadata can play a helpful role in 22 solving the problems relating to file 23 synchronization that are discussed in the 24 patent. 04:51PM 25 According to the specification, a common DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	220 04:52PM 1 overcome latency issues. Plaintiff's counsel 2 explained today that one way that it does so is 3 by alerting the user to a modification of a 4 file more quickly prior to the file copy itself 5 being received by the device. 6 Additionally, as I noted, at column 1 and 7 2, the patent describes negatively certain 8 prior art file synchronization options. As I 9 noted, among those are remote desktop software 10 and distributed file systems. Today, 04:52PM 11 Plaintiff's counsel argued that it may be 12 correct to view those solutions as a type of 13 automated or synchronized method of updating 14 files across network devices. In other words, 04:53PM 15 that those two solutions are other unclaimed 16 approaches that can be taken in the realm of 17 the abstract idea at issue. I can't say that 18 Plaintiff is wrong to characterize these 19 solutions as automated solutions in this way, 20 so this could be some evidence that the claimed 04:53PM 21 solution does not significantly preempt the 22 field of the abstract idea, which would also 23 relevant evidence at Step 2. 24 Now, the Court acknowledges that the 04:53PM 25 patent says little more about how the DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

221 04:53PM 1 prioritization of metadata and the file 2 synchronization process can amount to an 3 inventive concept in the computer space, but 4 this is the pleading stage. And in the Court's 5 view, this record information is just 6 sufficient to at least create a fact issue as 7 to whether the '607 and '622 patents can meet 8 Step 2's requirement by way of their reliance 9 on prioritized metadata in the claimed file 10 transfer process. 04:53PM 11 Thus, for all the reasons that I've set 12 out, the Court finds the '561 and '942 patents 13 are directed to patent-ineligible subject 14 matter based on the record before me and will 04:54PM 15 grant the motion based on those patents. The 16 Court will otherwise deny the motion as to 17 remainder of the patents in suit. In its 18 briefing, Plaintiff did not specifically seek 19 the ability to further amend its complaint to 04:54PM 20 attempt to address eligibility issues were the 21 motion granted in some way. Though the Court 22 has some doubt that the plaintiff can do so 23 successfully with regard to the '561 and '942 24 patents, to the extent plaintiff believes it 04:54PM 25 can, and can properly amend its complaint to DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	223 04:56PM 1 forward to an opportunity to file a motion for 2 leave to amend to provide some of the evidence 3 that Your Honor had mentioned both this morning 4 and in the decision this afternoon. However, 5 in light of the holidays and actually trying to 6 gather that information, we respectfully 7 request instead of 21 days, could that time be 8 extended to 30 days? 9 THE COURT: That seems very 04:56PM 10 reasonable, especially in light of the 11 holidays, and so I'll grant that request, and 12 I'll grant it, as well, in the other matter in 13 which I've allowed the potential for such a 14 motion. So thank you for raising that. 04:56PM 15 MR. SQUIRE: Thank you, Your Honor. 16 THE COURT: Okay. Yes. 17 MR. LYTLE: Counsel for Topia. I 18 think you just said we also may take -- 19 THE COURT: You may. And although I 04:56PM 20 do want to finally resolve, if there is to be 21 any further argument about these 101 issues as 22 to the aspects of the motions that I granted 23 today, that's why I do want to set this 24 requirement to be a quick one, and I'm only 04:56PM 25 going to have very truncated letter briefing DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com
222 04:54PM 1 demonstrate how these two patents are patent 2 eligible, then for the reasons I stated in our 3 first case today, no later than 21 days from 4 today's date, Plaintiff shall submit a motion 5 for leave to amend along with a letter brief of 6 no more than four single-spaced pages in 7 support. The Court will then set a further 8 limited letter briefing schedule if necessary. 9 Absent the filing of such motion or other court 04:55PM 10 order, the Court will consider those two 11 patents no longer to be a part of this case. 12 So nearly one and a half hours later, the 13 Court has now set out its decisions with regard 14 to the three motions at issue on the record. 04:55PM 15 Before we conclude our record presentation 16 today, I'll just give any party the chance, 17 understanding the Court's decision, if it 18 believes that I've been unclear in any way by 19 way of process about the decision or the 04:55PM 20 process from here, to ask for further 21 clarification. 22 MR. SQUIRE: Yes, Your Honor. This 23 is Monté Squire on behalf of the plaintiff, 24 GAN, in the first case, Your Honor. We 04:55PM 25 understand Your Honor's decision, and we look DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com	224 04:57PM 1 about it. I understand that we are right on 2 the cusp of the holiday season now, so the 3 request for 30 days seems appropriate. 4 All right. With that said, the Court's 5 decisions today, as I said, are reflected in 6 the transcript, and I will issue written 7 opinions that transcribe the content of today's 8 oral decisions and provide appropriate 9 citations where necessary. 04:57PM 10 With all that said, we'll end our hearing 11 today, go off the record, allow our court 12 reporter to end her day, and we hit 5:00. 13 (Thereupon, a discussion was held off 14 the record.) 15 16 17 18 19 20 21 22 23 24 25 DEANNA WARNER, CSR 202 Ashfield Court, Smyrna, Delaware 19977 Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

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

2 STATE OF DELAWARE)

) ss:

3 COUNTY OF NEW CASTLE)

4 I, Deanna L. Warner, a Certified
5 Shorthand Reporter, do hereby certify that as
6 such Certified Shorthand Reporter, I was
7 present at and reported in Stenotype shorthand
8 the above and foregoing proceedings in Case
9 Number 22-361-CJB, *GAN (UK) LIMITED vs. MGM*
10 *RESORTS INTERNATIONAL, et al.*; Case Number
11 22-900-CJB, *InQuisient, Inc., vs. Service Now,*
12 *Inc.*, and Case Number 21-1821-MN-CJB, *Topia*
13 *Tech, Inc., vs. Egnyte, Inc.*, heard on
14 December 20, 2022.

15 I further certify that a transcript of
16 my shorthand notes was typed and that the
17 foregoing transcript, consisting of 225
18 typewritten pages, is a true copy of said
19 MOTIONS TO DISMISS.

20 SIGNED, OFFICIALLY SEALED, and FILED
21 with the Clerk of the District Court, NEW
22 CASTLE County, Delaware, this 3rd day of
23 January, 2023.

24
25 Deanna L. Warner, CSR, #1687
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#	217:13, 218:1 '855 [2] - 174:8, 174:11 '942 [13] - 133:7, 193:12, 208:24, 208:25, 209:6, 209:20, 210:13, 210:17, 210:20, 211:17, 212:1, 221:12, 221:23 'do [1] - 201:25	218:6, 220:6 1's [1] - 183:11 10 [2] - 137:8, 139:20 100 [1] - 150:21 101 [39] - 3:2, 7:23, 8:6, 8:9, 10:22, 16:13, 17:2, 19:13, 19:17, 19:18, 30:9, 30:18, 41:4, 45:3, 45:10, 47:4, 47:9, 51:18, 51:22, 52:2, 134:14, 150:4, 151:21, 153:23, 154:2, 165:10, 169:11, 169:18, 171:23, 172:23, 173:21, 173:24, 189:19, 192:7, 193:4, 203:10, 209:22, 216:23, 223:21 101-related [2] - 152:2, 152:19 102 [5] - 12:16, 16:20, 45:16, 50:8, 85:24 103 [4] - 12:16, 16:20, 45:16, 50:8 10th [1] - 51:23 11 [21] - 9:15, 9:17, 12:1, 14:25, 25:7, 25:12, 31:1, 38:19, 41:10, 42:13, 43:22, 50:7, 153:8, 153:17, 154:5, 157:3, 157:7, 162:15, 163:22, 164:5, 209:5 112 [1] - 83:3 12 [2] - 109:9, 146:24 12(b)(6) [5] - 152:2, 152:17, 173:18, 192:21, 192:24 12(c) [4] - 192:2, 192:16, 192:21, 192:22 122 [1] - 90:24 13 [2] - 92:12, 92:23 14 [2] - 55:13, 66:24 15 [6] - 50:17, 56:1, 60:2, 63:13, 65:11, 65:12 16 [1] - 92:19 160 [1] - 96:4 17 [8] - 62:10, 63:23, 64:8, 66:7, 66:12, 93:21, 97:15, 209:24 18 [22] - 9:16, 9:18, 12:1, 15:1, 24:5, 25:7, 25:12, 31:1, 38:19, 41:10, 42:13, 50:8, 92:19, 153:10,	153:17, 154:5, 157:4, 157:7, 162:15, 163:22, 164:5, 179:19 19 [3] - 9:14, 24:2, 24:10 1s [1] - 217:1	2 2 [43] - 11:20, 13:7, 13:15, 14:22, 16:6, 20:19, 24:21, 45:11, 50:15, 88:6, 103:18, 103:19, 104:6, 104:7, 104:20, 105:3, 137:8, 138:12, 139:6, 139:16, 143:1, 163:24, 164:20, 164:21, 165:8, 166:12, 169:15, 170:25, 171:11, 188:9, 202:19, 202:20, 203:10, 204:15, 205:4, 206:9, 207:11, 211:16, 218:9, 218:12, 220:7, 220:23 2's [1] - 221:8 20 [2] - 153:3, 225:14 2007 [5] - 119:13, 120:4, 122:22, 129:9, 205:5 2008 [4] - 119:13, 120:4, 122:22, 129:10 2015-2016 [1] - 43:6 2016 [1] - 170:7 2022 [3] - 1:23, 173:13, 225:14 2023 [1] - 225:23 20th [1] - 1:23 21 [3] - 173:3, 222:3, 223:7 21-1821-CJB [1] - 191:23 21-1821-MN-CJB [3] - 1:16, 3:22, 225:12 210 [7] - 104:9, 105:4, 106:6, 106:7, 107:4, 109:4, 109:5 22 [3] - 46:16, 84:4, 95:9 22-361-CJB [3] - 1:5, 3:10, 225:9 22-900-CJB [4] - 1:11, 3:15, 173:17, 225:11	225 [1] - 225:17 23 [3] - 46:16, 84:12, 140:4 230 [3] - 104:17, 105:6, 105:7 24 [1] - 53:15 25 [4] - 4:20, 5:4, 50:17, 84:12 26 [3] - 62:1, 63:24, 167:11 270 [1] - 105:2 28 [1] - 53:16 280 [5] - 104:8, 105:3, 105:5, 109:4, 109:6 29 [1] - 85:25 2:30 [1] - 4:9 2A [1] - 1:23
	1 1 [106] - 8:16, 9:6, 9:12, 9:15, 9:16, 11:1, 11:4, 11:13, 11:22, 14:24, 19:13, 20:19, 24:20, 24:23, 25:7, 25:12, 25:13, 38:15, 39:3, 39:22, 41:7, 48:15, 56:5, 62:12, 64:15, 66:24, 68:20, 69:5, 69:12, 74:21, 79:10, 85:10, 96:1, 103:7, 125:13, 127:6, 138:11, 138:16, 139:4, 153:8, 153:17, 154:5, 154:9, 154:25, 155:17, 155:25, 157:3, 157:8, 158:25, 159:17, 162:5, 162:11, 163:5, 174:2, 174:14, 174:18, 174:20, 174:25, 176:7, 176:12, 176:14, 177:10, 182:15, 185:2, 185:3, 186:9, 191:4, 192:25, 193:15, 193:24, 194:1, 194:24, 196:5, 196:23, 197:1, 198:10, 199:11, 202:3, 203:3, 203:14, 204:6, 206:5, 208:17, 209:5, 209:11, 209:20, 209:22, 210:9, 210:11, 210:16, 211:20, 212:6, 212:7, 212:14, 213:11, 213:12, 213:24, 214:13, 215:19, 216:6, 216:16, 217:4, 217:11, 217:22,				3 3 [11] - 50:14, 50:17, 92:10, 92:20, 104:12, 104:23, 121:18, 125:16, 163:8, 163:24, 173:13 30 [2] - 223:8, 224:3 31 [5] - 58:3, 86:1, 95:7, 96:16, 113:12 310 [1] - 106:7 32 [3] - 57:22, 95:7, 96:16 320 [1] - 107:1 33 [1] - 109:10 37 [2] - 92:11, 92:21 370 [2] - 106:15, 106:23 380 [1] - 106:18 3:30 [4] - 4:10, 4:12, 148:11, 148:14 3rd [1] - 225:22
					4 4 [11] - 84:3, 84:12, 85:12, 96:2, 104:12, 104:16, 110:13, 113:8, 139:6, 193:12, 209:5 41 [2] - 92:11, 92:21 44 [1] - 109:10 45 [1] - 127:3 47 [1] - 108:25
					5 5 [10] - 92:19, 95:16, 95:24, 104:13,

DEANNA WARNER, CSR

202 Ashfield Court, Smyrna DE 19977

Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

110:13, 113:10, 113:12, 193:12, 209:10, 210:11 50 [5] - 23:12, 88:5, 97:18, 108:25, 150:21 55 [1] - 109:10 5:00 [1] - 224:12	132:3, 133:25, 135:20, 148:13, 148:16, 148:20, 151:20 absent [1] - 222:9 absolutely [11] - 108:21, 110:11, 112:23, 116:19, 136:20, 143:9, 144:15, 145:19, 146:1, 147:5, 147:22 abstract [125] - 9:3, 9:25, 12:12, 13:4, 14:6, 14:12, 14:14, 17:24, 18:2, 18:7, 19:10, 19:20, 26:9, 32:17, 37:1, 37:14, 37:20, 41:25, 42:10, 48:6, 49:2, 52:17, 52:25, 56:4, 57:5, 69:20, 90:5, 98:15, 105:22, 107:23, 108:14, 109:13, 109:16, 109:18, 110:19, 111:16, 111:19, 111:20, 112:11, 112:12, 112:15, 112:17, 112:18, 112:20, 114:1, 114:7, 114:11, 117:6, 119:8, 132:20, 133:3, 133:22, 145:2, 147:18, 147:23, 154:10, 154:15, 154:16, 154:17, 154:23, 155:2, 156:2, 161:10, 161:13, 161:20, 163:4, 163:13, 164:16, 164:23, 165:1, 167:14, 168:4, 169:3, 175:1, 175:5, 175:11, 175:14, 175:24, 176:22, 179:2, 179:15, 182:16, 182:25, 185:6, 185:16, 187:2, 188:15, 191:12, 195:2, 195:5, 195:16, 195:20, 195:24, 196:6, 196:24, 198:18, 199:7, 202:1, 202:17, 202:22, 203:1, 203:4, 204:12, 204:17, 204:19, 204:23, 206:5, 206:13, 206:19,	207:7, 207:13, 208:15, 210:21, 210:23, 211:11, 214:2, 214:5, 214:23, 215:15, 215:17, 216:12, 217:17, 220:17, 220:22 abstract-idea [1] - 112:17 abstracted [3] - 31:21, 32:25, 33:16 abstraction [4] - 18:5, 33:1, 103:25, 110:10 abstracts [1] - 105:17 abstrict [1] - 24:25 Accenture [1] - 115:11 accept [1] - 106:3 accepted [1] - 186:14 accepting [1] - 113:21 access [6] - 39:23, 75:11, 87:8, 109:23, 119:22, 200:25 accessed [2] - 196:12, 201:4 accesses [4] - 25:19, 32:5, 32:10, 38:16 accessing [6] - 29:8, 36:15, 39:21, 40:2, 156:18, 200:14 accommodate [1] - 44:5 accomplish [2] - 158:3, 159:9 accomplished [3] - 141:7, 141:10, 199:2 accomplishes [1] - 132:15 accomplishing [1] - 157:19 according [8] - 34:7, 38:23, 55:19, 159:22, 175:15, 183:15, 204:10, 218:25 accordingly [3] - 7:25, 70:2, 188:23 account [66] - 10:3, 10:4, 11:24, 17:20, 25:16, 25:18, 25:19, 25:24, 26:4, 27:8, 28:10, 28:24, 28:25, 29:10, 32:4, 32:5, 34:3, 35:16, 36:3, 36:11, 36:17, 38:17, 38:18, 39:4, 39:14, 39:21, 39:22, 39:23, 39:25, 40:4, 40:7, 40:8, 40:11, 40:13, 40:14, 40:18, 40:21,	40:23, 41:8, 42:6, 43:14, 149:16, 153:21, 154:13, 156:25, 157:6, 157:7, 159:1, 159:2, 162:13, 162:24, 163:2, 163:9, 163:11, 163:16, 164:18, 164:19, 165:19, 168:11, 176:6 accounts [9] - 26:14, 28:19, 29:12, 35:22, 36:16, 44:9, 156:20, 156:23, 157:16 achieve [1] - 187:9 achieving [1] - 170:12 acknowledged [3] - 44:20, 70:22, 164:8 acknowledges [2] - 168:13, 220:24 action [7] - 3:10, 3:15, 12:3, 50:5, 102:23, 173:17 Action [2] - 3:21, 191:23 actions [1] - 167:15 active [1] - 155:24 activities [1] - 165:12 activity [1] - 206:14 actual [3] - 18:24, 58:11, 104:20 actuality [1] - 119:10 add [16] - 9:21, 11:6, 11:7, 15:11, 16:12, 20:15, 38:25, 66:17, 66:22, 79:3, 82:20, 112:13, 143:7, 187:23, 188:9, 203:9 added [7] - 49:22, 50:7, 62:24, 79:2, 153:7, 167:9, 187:15 adding [3] - 19:21, 91:10, 113:15 addition [6] - 33:8, 38:14, 110:11, 112:21, 173:6, 200:16 additional [11] - 15:10, 69:17, 154:1, 159:7, 164:24, 167:19, 172:19, 183:7, 187:24, 202:23, 210:4 additionally [7] - 151:6, 173:12, 205:4, 209:6, 212:15, 215:17, 220:6 address [14] - 5:16,	14:22, 52:4, 154:4, 173:1, 173:22, 184:3, 192:7, 193:23, 194:15, 194:20, 196:16, 205:18, 221:20 addressed [3] - 39:8, 192:19, 205:3 addresses [1] - 203:10 addressing [1] - 210:6 adds [3] - 62:23, 101:21, 150:16 adjacent [1] - 117:10 adjourn [1] - 4:4 adjust [1] - 79:1 admonition [1] - 172:13 adopt [1] - 11:11 advance [5] - 45:21, 45:23, 115:22, 170:13, 188:25 advanced [2] - 180:3, 186:21 advancement [1] - 189:25 advantage [1] - 117:5 advantages [1] - 84:6 advise [1] - 194:13 advisement [1] - 191:18 advisor [1] - 170:10 affect [1] - 185:2 affiliated [1] - 35:19 affirmed [1] - 186:11 afternoon [3] - 4:7, 150:8, 223:4 afterthought [1] - 179:13 ago [1] - 23:12 agree [4] - 14:18, 16:9, 28:16, 51:6 agreed [1] - 86:13 agrees [4] - 175:4, 189:15, 195:25, 205:19 ahead [3] - 4:25, 14:22, 74:14 airplane [1] - 142:6 airport [1] - 120:10 al [4] - 1:7, 3:9, 152:13, 225:10 alerted [1] - 117:16 alerting [1] - 220:3 Alice [12] - 7:24, 13:14, 16:13, 146:7, 147:14, 164:20, 174:24, 188:10, 194:17, 202:19, 205:1, 217:22
6				
6 [5] - 95:17, 95:25, 96:1, 110:13, 163:8 61 [3] - 84:13, 87:21, 131:7 63 [1] - 131:7 66 [3] - 95:16, 95:25, 109:10 67 [1] - 109:10				
7				
7 [3] - 104:24, 106:1, 108:25 7,979,468 [1] - 174:4 77 [1] - 109:11				
8				
8 [14] - 84:13, 87:21, 95:17, 95:25, 116:3, 129:3, 129:7, 131:6, 133:13, 133:24, 139:16, 143:2, 144:21 8,219,585 [1] - 174:5 8,224,855 [1] - 174:7 8,821,296 [1] - 152:24 80 [1] - 56:10 86ed [1] - 108:7				
9				
9 [5] - 84:13, 88:6, 95:9, 129:8, 139:16				
A				
ability [7] - 79:1, 82:20, 83:6, 83:10, 86:10, 86:15, 221:19 able [22] - 4:18, 5:8, 23:5, 23:13, 26:25, 35:2, 43:10, 44:8, 77:4, 85:1, 94:24, 95:12, 102:10, 120:18, 122:24,				

DEANNA WARNER, CSR

202 Ashfield Court, Smyrna DE 19977

Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

Alice's [2] - 191:4, 205:16 align [1] - 8:15 allegation [2] - 44:17, 46:13 allegations [5] - 46:9, 53:10, 170:6, 172:19, 203:9 alleged [7] - 10:25, 25:6, 45:8, 65:6, 133:9, 188:11, 204:12 allegedly [2] - 10:9, 128:3 alleges [1] - 44:20 allocation [1] - 162:12 allow [10] - 4:20, 51:21, 71:25, 75:10, 75:24, 83:24, 172:10, 199:17, 201:7, 224:11 allowed [6] - 50:21, 90:22, 91:9, 120:17, 136:16, 223:13 allowing [4] - 20:10, 38:12, 51:3, 109:2 allows [7] - 75:6, 77:6, 82:6, 85:20, 86:17, 86:19, 104:18 alluded [1] - 131:9 almost [3] - 19:8, 36:1, 117:1 alone [2] - 158:6, 210:14 alternatively [1] - 195:5 alternatives [1] - 204:10 ambiguous [1] - 107:10 amend [17] - 8:3, 41:18, 42:18, 50:21, 51:10, 134:15, 146:12, 146:16, 172:7, 172:11, 172:18, 173:1, 173:4, 221:19, 221:25, 222:5, 223:2 amended [16] - 41:17, 42:20, 42:21, 51:14, 51:15, 51:16, 52:3, 152:18, 153:7, 153:10, 167:7, 167:9, 167:11, 169:20, 170:6, 173:7 amending [1] - 167:6 amendment [2] - 8:4, 147:6 amendments [1] - 51:19	Ameranth [4] - 107:24, 147:9, 205:21, 206:17 amount [9] - 10:7, 133:6, 166:9, 169:24, 181:18, 182:7, 202:23, 203:17, 221:2 amounted [4] - 166:16, 167:21, 208:2, 208:6 amounting [1] - 211:21 amounts [8] - 47:23, 66:12, 112:13, 163:3, 163:21, 166:21, 208:10, 208:18 analog [6] - 18:8, 18:14, 19:4, 21:5, 22:15, 22:25 analogous [5] - 47:6, 52:16, 84:25, 185:24, 206:21 analogy [2] - 89:3, 94:19 analysis [25] - 10:23, 13:7, 13:15, 14:3, 14:19, 17:2, 20:20, 24:7, 24:8, 24:17, 24:19, 24:20, 45:1, 151:4, 154:2, 156:15, 165:10, 169:12, 174:24, 192:17, 192:18, 193:4, 210:1, 210:16, 218:7 analyze [4] - 87:9, 110:4, 142:25, 174:18 analyzing [2] - 90:4, 150:22 AND [1] - 1:2 annotated [1] - 121:18 announce [1] - 150:12 answer [6] - 13:11, 76:15, 85:17, 93:2, 127:16, 184:16 answering [13] - 8:22, 9:4, 11:3, 15:24, 21:16, 127:4, 127:16, 165:14, 171:21, 179:20, 193:6, 209:4, 209:24 answers [2] - 5:6, 41:20 anticipate [1] - 169:9 anticipation [1] - 16:21 anyway [1] - 31:22	API [2] - 22:16, 23:9 apologize [1] - 89:2 appeals [1] - 154:19 appear [10] - 47:18, 47:19, 116:8, 130:4, 161:9, 181:6, 189:14, 191:6, 203:17, 209:21 APPEARANCES [1] - 2:1 appeared [1] - 180:18 apple [1] - 132:1 application [84] - 11:23, 14:24, 15:1, 16:3, 16:25, 25:14, 25:23, 26:12, 27:3, 27:6, 28:8, 28:22, 29:5, 32:3, 33:24, 37:7, 37:21, 38:16, 39:3, 39:25, 40:1, 40:12, 40:23, 41:6, 43:24, 44:10, 49:13, 49:17, 49:21, 49:25, 106:5, 106:7, 106:9, 106:13, 106:18, 106:21, 107:1, 107:19, 121:20, 121:25, 122:2, 122:3, 122:13, 123:9, 123:13, 123:21, 124:4, 124:8, 124:11, 124:25, 125:5, 125:7, 125:17, 125:19, 125:22, 125:24, 125:25, 126:2, 126:4, 126:10, 126:15, 126:19, 127:7, 127:8, 134:12, 147:20, 147:21, 154:22, 157:5, 158:25, 164:25, 167:15, 196:4, 197:12, 197:14, 197:24, 198:2, 198:22, 203:1, 204:11, 204:19, 204:22 applications [14] - 29:5, 106:5, 121:24, 122:5, 122:9, 122:19, 123:7, 124:13, 124:20, 126:11, 126:12, 133:20, 139:10, 203:16 applicationy [1] - 14:11 applies [1] - 155:17	apply [1] - 181:19 applying [2] - 47:17, 109:15 appreciate [2] - 94:12, 148:1 approach [4] - 72:23, 111:5, 166:16, 167:18 approaches [2] - 204:6, 220:16 appropriate [3] - 11:11, 224:3, 224:8 appropriately [1] - 179:3 approved [1] - 159:23 apps [2] - 122:4, 147:22 architecture [10] - 120:17, 121:13, 121:15, 121:20, 122:5, 122:8, 136:3, 194:22, 196:8, 205:6 area [2] - 20:1, 186:20 areas [1] - 18:16 arguably [2] - 118:19, 218:7 argue [7] - 9:5, 17:17, 30:1, 30:16, 153:24, 154:9, 168:18 argued [7] - 9:4, 163:5, 165:21, 179:24, 181:5, 204:1, 220:11 argues [4] - 175:12, 194:25, 205:4, 210:2 arguing [4] - 6:6, 145:18, 152:17, 166:10 argument [45] - 4:2, 4:21, 7:4, 10:8, 10:15, 16:24, 30:9, 30:18, 41:4, 51:4, 53:25, 54:5, 65:23, 94:12, 98:20, 99:10, 100:22, 126:8, 126:17, 127:10, 127:11, 127:24, 145:12, 148:2, 148:3, 148:21, 151:8, 151:22, 159:17, 162:19, 164:7, 165:21, 167:1, 171:22, 175:20, 180:18, 181:23, 184:19, 188:16, 191:18, 193:20, 203:25, 210:9, 219:15, 223:21 arguments [10] - 4:4,	6:23, 10:20, 53:4, 53:5, 99:7, 153:23, 176:11, 181:13, 211:17 ARNOLD [1] - 2:9 Arnold [2] - 6:21, 7:20 arrows [3] - 48:21, 79:17, 83:1 ARSHT [1] - 2:17 Arsht [1] - 54:22 art [46] - 12:11, 12:13, 12:19, 12:22, 16:25, 33:18, 47:15, 47:25, 62:24, 68:21, 78:20, 81:25, 83:16, 85:4, 88:7, 88:8, 102:9, 102:19, 103:8, 103:12, 116:10, 116:12, 117:5, 123:25, 124:1, 128:22, 136:18, 136:25, 138:25, 139:23, 140:21, 156:6, 160:3, 168:12, 168:21, 183:16, 184:13, 186:22, 199:15, 200:6, 201:10, 201:11, 208:8, 208:11, 219:2, 220:8 articulate [2] - 184:10, 215:12 articulated [4] - 108:14, 127:12, 171:17, 173:2 articulating [2] - 126:21, 208:5 articulation [8] - 96:7, 111:16, 114:7, 160:1, 178:18, 179:2, 179:15, 202:17 articulations [1] - 195:16 arts [4] - 88:14, 135:12, 170:1, 211:23 ascertain [1] - 155:25 aspect [5] - 70:16, 156:7, 178:20, 179:2, 214:21 aspects [7] - 119:3, 119:4, 138:20, 151:17, 165:23, 199:21, 223:22 aspirational [1] - 199:3 assert [2] - 153:16, 157:14 asserted [28] - 7:22,
--	---	--	---	--

DEANNA WARNER, CSR

202 Ashfield Court, Smyrna DE 19977

Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

37:14, 152:21, 154:8, 154:10, 156:16, 156:17, 157:20, 159:3, 160:9, 162:9, 164:12, 166:8, 167:12, 168:14, 170:10, 171:17, 174:9, 174:15, 174:19, 174:23, 175:16, 176:14, 176:21, 183:11, 184:8, 185:23, 192:25 assertedly [2] - 41:5, 113:19 asserting [1] - 192:4 assertion [4] - 8:16, 11:2, 52:4, 193:9 assertions [1] - 166:12 asserts [3] - 155:3, 174:1, 174:14 assess [3] - 150:19, 164:22, 202:21 assessing [2] - 162:8, 215:10 assign [1] - 98:14 assigned [2] - 212:18, 212:19 associate [1] - 98:22 associated [15] - 32:8, 35:20, 35:21, 35:22, 40:5, 65:1, 136:7, 140:1, 167:16, 178:9, 180:14, 197:10, 205:9, 209:13, 212:17 Association [1] - 175:9 associations [2] - 61:14, 177:25 assuming [1] - 32:13 assure [1] - 150:18 asynchronous [3] - 34:17, 160:16, 161:22 attach [1] - 41:22 attached [4] - 42:22, 43:1, 146:11, 167:22 attacking [1] - 143:4 attempt [4] - 51:17, 147:7, 167:8, 221:20 attempting [3] - 18:18, 44:21, 50:1 attention [1] - 114:25 attorney [2] - 127:11, 145:18 attribute [32] - 55:18, 57:8, 57:12, 57:17,	58:20, 58:21, 58:25, 59:6, 59:12, 60:9, 60:23, 60:24, 67:4, 80:4, 80:8, 82:11, 83:3, 83:4, 83:5, 83:7, 85:14, 86:2, 86:6, 89:10, 89:11, 96:24, 98:13, 177:21, 177:23, 177:25 attributes [16] - 55:20, 57:10, 57:11, 57:25, 58:4, 58:22, 67:5, 80:5, 81:15, 86:25, 95:11, 177:22, 178:1, 178:4, 180:24, 190:18 August [1] - 51:23 authority [5] - 44:20, 44:25, 45:8, 170:11, 171:1 authority's [1] - 171:8 automate [1] - 201:21 automated [3] - 112:6, 220:13, 220:19 automatic [14] - 43:14, 103:2, 103:12, 103:15, 111:21, 111:22, 111:24, 112:1, 117:16, 139:24, 140:18, 147:16, 205:7, 206:4 automatically [33] - 38:18, 44:9, 104:1, 108:18, 109:4, 110:17, 112:14, 114:15, 120:25, 121:6, 121:9, 125:21, 136:19, 136:21, 137:3, 172:10, 195:10, 195:12, 196:11, 197:14, 197:22, 198:2, 198:7, 198:13, 199:3, 201:8, 202:4, 202:13, 203:7, 204:18, 212:9, 212:23, 217:8 automating [1] - 112:7 automation [1] - 201:14 availability [6] - 117:9, 117:12, 213:14, 213:18, 213:21, 215:7 available [6] - 45:22, 85:14, 113:13, 157:1, 204:9, 213:22 avoid [5] - 76:10,	76:11, 76:13, 94:22, 176:4 avoiding [1] - 75:2 aware [3] - 27:5, 117:12, 131:1	B background [9] - 27:21, 27:25, 70:1, 72:13, 73:2, 159:18, 183:11, 184:14, 199:12 bad [2] - 71:24, 89:1 Bank [1] - 175:8 bare [3] - 170:23, 210:14, 214:2 base [3] - 56:3, 78:5, 79:25 based [54] - 12:5, 17:6, 17:10, 21:14, 22:4, 24:3, 31:3, 31:8, 32:9, 32:11, 33:11, 34:5, 35:7, 35:11, 35:20, 36:2, 38:22, 44:15, 56:8, 69:21, 97:12, 97:21, 98:8, 98:16, 120:1, 120:2, 134:16, 155:19, 157:11, 159:4, 160:2, 160:12, 161:12, 162:17, 165:3, 165:25, 166:23, 167:17, 168:16, 175:3, 176:23, 178:16, 179:1, 179:8, 182:9, 184:23, 212:21, 213:6, 213:16, 215:5, 215:8, 221:14, 221:15 basic [5] - 110:12, 154:20, 195:17, 196:2 Beard [1] - 100:10 become [1] - 194:14 becomes [1] - 196:23 bed [1] - 142:15 beforehand [1] - 5:17 begin [8] - 5:1, 5:21, 6:14, 54:9, 54:19, 55:7, 71:13, 150:8 beginning [3] - 26:22, 84:4, 100:6 begins [2] - 139:20, 156:15 behalf [7] - 6:2, 6:18, 7:21, 54:12, 54:23,	145:7, 222:23 behind [1] - 6:8 believes [4] - 172:25, 218:12, 221:24, 222:18 beneficial [1] - 148:19 benefit [7] - 62:19, 130:6, 130:25, 143:3, 145:10, 148:24, 169:11 benefitted [1] - 151:20 best [5] - 82:2, 83:13, 83:18, 83:25, 90:16 bet [1] - 15:8 better [9] - 20:4, 127:25, 128:16, 143:8, 143:21, 143:23, 149:9, 176:11, 218:9 between [65] - 10:2, 12:24, 21:20, 21:23, 22:5, 25:2, 27:3, 27:13, 31:24, 32:11, 32:17, 33:25, 37:3, 37:16, 38:13, 42:2, 43:24, 45:10, 61:17, 62:8, 80:6, 81:11, 81:21, 82:3, 95:20, 96:5, 96:19, 97:4, 98:5, 109:5, 116:6, 131:10, 135:24, 150:21, 153:20, 154:12, 155:9, 156:22, 157:2, 157:16, 158:7, 158:10, 159:13, 161:4, 164:2, 164:17, 168:22, 177:17, 177:25, 178:5, 180:10, 183:5, 184:21, 199:24, 201:9, 202:10, 202:16, 203:8, 204:5, 205:6, 209:3, 212:10, 216:20, 219:4, 219:11 beyond [14] - 4:18, 31:13, 33:5, 33:11, 38:2, 66:3, 85:15, 127:9, 142:6, 147:10, 159:15, 164:22, 202:22, 203:3 big [8] - 28:2, 44:18, 48:22, 62:21, 71:16, 129:16, 145:13, 145:14 birth [1] - 40:19 bit [8] - 9:22, 50:14,	70:7, 78:2, 78:3, 128:12, 134:4, 145:7 black [12] - 15:9, 16:10, 30:4, 33:9, 48:19, 49:10, 49:15, 100:23, 104:24, 105:1, 105:25, 107:1 blackberrys [1] - 120:6 blank [7] - 30:2, 33:13, 39:15, 39:16, 45:12, 128:24 blanks [1] - 38:1 block [2] - 154:21, 196:3 blunt [1] - 45:5 body [1] - 79:22 bolded [1] - 127:9 bolster [2] - 147:7, 166:25 boon [1] - 18:2 boss [1] - 23:11 bottom [2] - 87:21, 116:2 box [11] - 15:9, 16:10, 30:4, 33:9, 48:19, 49:15, 100:24, 104:25, 105:1, 105:25, 107:1 boxes [1] - 49:11 breadth [3] - 38:7, 96:8, 156:14 break [7] - 53:12, 53:22, 53:24, 83:20, 99:9, 148:9, 149:18 brick [2] - 25:3, 28:3 brick-and-mortar [2] - 25:3, 28:3 bricks [1] - 155:12 bricks-and-mortar [1] - 155:12 brief [28] - 8:22, 9:4, 10:16, 10:25, 11:3, 15:24, 21:16, 22:2, 29:23, 50:23, 84:20, 92:10, 108:14, 127:4, 127:16, 165:14, 171:15, 171:21, 173:5, 178:23, 179:20, 179:25, 181:15, 193:6, 206:22, 209:4, 209:24, 222:5 briefing [23] - 11:16, 24:23, 27:17, 28:14, 41:3, 65:24, 73:11, 110:9, 129:2, 145:9, 154:14, 166:13, 167:9, 172:6, 173:8, 184:17, 193:10,
---	---	---	--	--	--

DEANNA WARNER, CSR

202 Ashfield Court, Smyrna DE 19977

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195:4, 206:23, 206:24, 221:18, 222:8, 223:25 briefly [2] - 141:4, 153:24 briefs [11] - 33:2, 71:17, 84:17, 85:7, 92:17, 126:15, 127:13, 128:13, 148:7, 150:22, 151:10 brings [1] - 191:21 broad [9] - 19:9, 19:17, 24:25, 38:6, 57:5, 157:18, 159:25, 185:16, 214:23 broaden [2] - 159:12, 216:12 broadly [3] - 28:18, 118:23, 190:12 Brooks [1] - 6:9 brought [2] - 192:15, 192:20 Brown [1] - 98:24 Broyles [2] - 100:8, 100:10 BSG [7] - 185:25, 186:7, 186:10, 187:21, 188:10, 188:25, 189:8 buckets [2] - 98:9, 98:14 build [8] - 73:8, 75:22, 77:17, 78:19, 78:22, 82:5, 88:10 building [2] - 154:20, 196:2 built [3] - 73:20, 81:4, 86:13 bulk [1] - 177:7 bunch [15] - 41:17, 55:6, 61:7, 75:11, 82:7, 87:12, 87:13, 88:9, 90:19, 111:13, 116:7, 120:25, 121:6, 121:10, 138:24 burden [1] - 171:12 burdensome [1] - 201:12 Burke [1] - 1:22 business [3] - 20:3, 43:6, 183:16 button [1] - 137:23 buyseasons [1] - 186:1 BY [4] - 2:2, 2:13, 2:17, 2:20	C cable [1] - 22:12 calculus [2] - 172:20, 216:23 canceled [1] - 153:6 candidly [1] - 184:9 cannot [10] - 77:22, 80:7, 91:7, 164:6, 169:16, 170:3, 172:2, 204:16, 211:11, 216:11 capabilities [1] - 20:8 capability [1] - 170:13 capable [1] - 206:3 capacity [1] - 187:18 capture [3] - 114:11, 179:3, 185:18 captured [2] - 183:8, 185:6 captures [1] - 141:16 CardioNet [1] - 176:2 care [2] - 19:11, 27:7 careful [2] - 117:7, 176:4 cares [2] - 78:11, 121:4 Carl [1] - 100:8 carried [1] - 206:9 carry [4] - 31:14, 181:19, 204:17, 206:19 carrying [1] - 195:16 Case [6] - 1:5, 1:10, 1:15, 225:8, 225:10, 225:12 case [84] - 3:8, 3:13, 3:16, 4:2, 4:20, 5:17, 5:18, 7:9, 8:1, 8:5, 8:6, 8:15, 16:22, 16:23, 18:3, 18:22, 30:16, 47:4, 47:6, 47:7, 47:21, 48:2, 48:18, 51:17, 51:18, 52:15, 53:19, 54:5, 61:1, 62:25, 73:5, 93:4, 96:13, 99:17, 100:21, 102:6, 107:24, 107:25, 110:6, 115:14, 119:2, 119:7, 120:3, 124:1, 125:16, 135:2, 140:12, 140:16, 143:10, 145:8, 145:21, 146:23, 147:9, 150:6, 150:7, 150:22, 152:4, 152:11, 152:12,	173:10, 173:14, 173:15, 173:17, 181:11, 185:1, 186:2, 186:5, 186:18, 189:18, 191:21, 192:10, 205:22, 205:24, 206:21, 206:22, 207:1, 207:2, 222:3, 222:11, 222:24 caselaw [4] - 14:1, 14:4, 141:13, 185:19 cases [27] - 3:4, 4:15, 16:22, 18:1, 18:16, 18:23, 52:14, 100:24, 116:13, 137:11, 140:11, 142:4, 148:17, 150:5, 150:10, 150:24, 151:5, 151:8, 151:11, 151:17, 151:19, 155:23, 169:4, 172:13, 175:7, 176:2, 205:18 casino [32] - 10:3, 21:10, 21:21, 23:1, 23:11, 23:14, 25:3, 25:4, 25:16, 27:2, 28:2, 28:3, 31:3, 34:23, 35:18, 35:23, 43:11, 43:25, 50:3, 153:1, 153:21, 154:13, 155:7, 155:12, 156:19, 156:25, 157:6, 159:19, 159:24, 164:18, 167:17, 168:16 Casino [1] - 44:12 cast [1] - 110:2 CASTLE [2] - 225:3, 225:22 categories [1] - 19:19 categorize [2] - 95:4, 96:21 category [1] - 18:23 causes [3] - 128:9, 213:4, 213:14 caution [1] - 117:2 CDM [1] - 48:9 celebrated [1] - 162:3 cell [2] - 122:16, 125:19 cells [1] - 61:8 central [3] - 125:1, 126:13, 211:4 civilized [5] - 106:16, 106:17, 108:2, 108:3, 142:13	centrally [1] - 122:25 centric [6] - 119:11, 120:2, 120:14, 120:15, 120:18, 210:7 certain [28] - 9:23, 10:20, 19:19, 31:10, 32:2, 34:1, 64:17, 66:4, 67:12, 68:16, 71:23, 74:22, 80:7, 82:10, 98:2, 118:17, 128:13, 153:24, 166:24, 167:15, 180:11, 181:23, 182:6, 189:2, 201:10, 214:9, 220:7 certainly [6] - 13:3, 14:3, 43:3, 63:12, 126:22, 178:14 certificate [1] - 153:6 Certified [2] - 225:4, 225:6 certify [2] - 225:5, 225:15 cetera [7] - 63:17, 72:17, 113:14, 128:25, 142:8 challenge [7] - 8:23, 11:2, 15:21, 16:18, 16:20, 43:16, 134:14 challenged [3] - 8:13, 151:9, 205:24 chance [8] - 46:15, 51:10, 68:11, 69:7, 94:16, 127:21, 172:11, 222:16 chances [2] - 41:17, 42:19 change [17] - 4:9, 15:1, 16:13, 52:12, 52:20, 74:5, 101:19, 123:16, 126:4, 130:2, 130:18, 144:7, 144:8, 145:4, 145:5, 147:14, 172:19 changed [5] - 17:1, 143:20, 144:6, 144:11, 144:12 changes [1] - 140:23 changing [2] - 17:22, 119:25 character [2] - 155:19, 156:1 characteristic [1] - 98:3 characteristics [5] - 55:23, 97:12, 97:22, 98:5, 98:16 characterization [4] -	24:9, 24:11, 41:14, 154:24 characterize [1] - 220:18 check [1] - 84:22 Cheng [8] - 54:24, 56:2, 71:4, 78:8, 93:9, 94:15, 95:22, 98:19 CHENG [27] - 2:20, 55:8, 55:11, 57:6, 59:2, 59:23, 61:25, 63:4, 63:11, 64:3, 64:13, 64:22, 65:4, 65:12, 65:18, 66:6, 66:22, 67:23, 68:1, 69:13, 70:14, 71:9, 94:18, 95:24, 96:9, 97:7, 97:20 cheng [1] - 55:7 Chid [1] - 100:3 chief [2] - 48:7, 54:16 choose [1] - 98:8 Christopher [1] - 1:22 circle [1] - 27:16 circuit [1] - 165:4 Circuit [38] - 11:10, 16:8, 18:1, 47:4, 48:3, 51:1, 72:20, 135:2, 140:15, 141:12, 142:4, 151:11, 154:19, 155:22, 156:8, 168:24, 169:4, 175:6, 176:3, 186:1, 186:5, 186:10, 187:1, 187:10, 189:21, 193:17, 196:1, 196:21, 201:13, 201:20, 204:23, 205:13, 205:22, 205:25, 206:10, 207:1, 207:10, 218:6 Circuit's [1] - 172:12 circumstance [1] - 218:4 citation [2] - 166:18, 170:23 citations [3] - 150:16, 150:23, 224:9 cited [10] - 18:2, 92:10, 92:18, 145:8, 151:12, 156:4, 163:15, 205:18, 206:23 citing [1] - 92:13 civil [3] - 3:9, 3:15, 173:17 Civil [3] - 3:21,
--	---	---	--	--

DEANNA WARNER, CSR

202 Ashfield Court, Smyrna DE 19977

Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

191:23, 192:2 Claim [63] - 8:16, 9:6, 9:12, 9:15, 9:16, 11:4, 11:13, 11:22, 14:24, 25:7, 25:12, 25:13, 38:15, 39:3, 39:22, 41:7, 56:5, 62:12, 64:15, 66:12, 66:24, 74:21, 125:13, 127:6, 153:8, 153:10, 157:3, 157:8, 158:25, 162:11, 163:5, 174:2, 174:14, 174:18, 174:20, 176:14, 177:10, 192:25, 193:15, 193:24, 194:1, 196:23, 197:1, 199:11, 202:3, 203:3, 203:14, 204:6, 208:17, 209:5, 209:11, 209:20, 209:22, 211:20, 212:6, 212:7, 212:14, 213:11, 213:12, 214:13, 217:4, 217:11 claim [172] - 8:17, 9:16, 9:18, 10:10, 10:12, 10:13, 11:1, 11:12, 12:16, 14:5, 14:14, 14:25, 15:1, 15:12, 15:21, 17:18, 19:6, 20:12, 20:15, 22:7, 24:4, 24:14, 24:19, 25:6, 26:7, 26:17, 29:25, 30:6, 30:15, 30:20, 31:4, 36:14, 39:9, 39:20, 43:22, 50:1, 51:25, 55:12, 55:13, 55:16, 56:10, 56:17, 56:20, 57:3, 57:9, 60:14, 61:2, 61:21, 62:1, 63:2, 63:19, 63:24, 64:8, 64:9, 64:15, 66:7, 67:22, 68:19, 71:18, 78:1, 78:2, 78:13, 78:16, 79:7, 79:8, 79:13, 79:20, 79:23, 79:24, 82:5, 85:3, 87:5, 88:25, 89:7, 89:8, 89:13, 91:17, 92:7, 93:24, 94:10, 97:2, 97:3, 103:9, 106:1, 111:6, 112:15, 112:18, 112:20, 114:15, 114:19, 121:11,	122:8, 125:12, 134:20, 136:17, 139:1, 140:2, 141:8, 141:9, 141:15, 141:17, 144:13, 144:14, 144:15, 153:8, 153:9, 153:10, 154:17, 156:10, 156:11, 156:13, 156:14, 159:15, 162:22, 163:16, 164:10, 164:22, 164:25, 165:17, 166:15, 166:25, 169:2, 170:24, 171:25, 176:5, 176:13, 179:6, 179:17, 180:8, 181:11, 182:1, 182:16, 185:9, 186:15, 188:6, 190:16, 193:12, 193:18, 193:21, 193:22, 196:20, 196:22, 197:2, 197:7, 197:13, 197:21, 198:1, 198:6, 198:10, 198:12, 198:17, 202:22, 202:25, 204:2, 204:21, 206:15, 209:10, 209:18, 210:12, 212:20, 213:2, 213:20, 215:10, 217:1, 217:5, 218:5 claim's [5] - 190:14, 197:5, 203:5, 204:18, 217:15 claimed [50] - 22:18, 44:13, 61:12, 65:24, 68:23, 71:20, 72:2, 76:9, 88:2, 88:16, 91:16, 92:5, 121:16, 121:23, 122:6, 123:20, 144:20, 160:24, 166:13, 177:2, 177:6, 177:11, 179:22, 180:5, 180:19, 181:13, 181:20, 184:2, 184:11, 184:21, 184:22, 186:21, 187:11, 187:21, 188:5, 188:22, 188:25, 189:7, 190:6, 198:11, 203:15, 205:11, 205:15, 208:10, 208:11,	209:7, 210:25, 215:13, 220:20, 221:9 claiming [6] - 38:9, 38:10, 38:11, 58:13, 182:21, 183:1 Claims [1] - 50:7 claims [289] - 8:10, 9:2, 9:5, 9:7, 9:13, 9:14, 9:15, 9:21, 9:24, 10:8, 10:18, 10:20, 11:6, 11:7, 11:17, 11:25, 12:3, 12:8, 13:3, 14:9, 16:2, 16:12, 17:1, 17:14, 18:6, 18:14, 21:8, 21:18, 23:7, 24:2, 24:10, 24:12, 24:25, 25:7, 25:8, 25:12, 30:11, 31:1, 31:14, 33:5, 36:12, 36:25, 37:20, 38:5, 38:6, 38:8, 38:9, 38:13, 38:19, 38:25, 39:8, 41:6, 41:10, 42:13, 43:20, 44:14, 47:12, 48:1, 48:16, 48:24, 49:22, 51:8, 52:12, 52:20, 52:21, 55:19, 56:5, 58:12, 60:3, 60:8, 60:13, 61:11, 61:15, 63:2, 63:4, 63:20, 65:25, 66:2, 66:23, 66:25, 67:2, 68:15, 69:10, 75:20, 80:22, 83:22, 84:24, 91:16, 91:18, 93:21, 101:2, 103:25, 104:20, 111:24, 112:1, 112:16, 113:19, 114:11, 114:12, 121:10, 124:10, 125:8, 128:4, 129:5, 133:5, 133:10, 133:15, 134:6, 135:6, 135:13, 135:16, 135:22, 136:2, 136:3, 136:5, 136:10, 137:2, 141:19, 146:3, 147:12, 153:3, 153:7, 153:11, 153:12, 153:13, 153:17, 153:22, 153:25, 154:3, 154:5, 154:7, 154:8, 154:10, 155:3, 155:16, 155:18, 156:1, 156:16, 156:17, 157:3,	157:7, 157:14, 157:17, 157:21, 158:1, 158:4, 158:6, 158:11, 158:15, 158:19, 158:20, 158:22, 159:3, 159:5, 159:8, 159:9, 159:10, 160:9, 160:23, 161:2, 161:25, 162:9, 162:15, 162:20, 163:22, 164:5, 164:12, 164:15, 165:3, 165:5, 165:16, 165:23, 165:24, 166:9, 167:25, 168:2, 168:14, 168:20, 169:9, 169:23, 171:13, 171:16, 171:17, 171:18, 171:20, 171:23, 171:25, 172:1, 172:2, 174:16, 174:22, 175:1, 175:13, 175:15, 175:16, 175:21, 175:23, 176:9, 176:15, 176:25, 177:7, 178:14, 178:18, 178:21, 179:5, 179:9, 179:13, 179:16, 179:17, 179:25, 180:3, 180:11, 181:18, 181:21, 181:24, 182:7, 183:9, 184:8, 184:12, 185:5, 185:11, 185:17, 185:20, 185:24, 186:2, 186:3, 186:6, 186:17, 187:1, 187:6, 187:14, 187:19, 188:12, 188:16, 189:4, 189:8, 189:13, 189:16, 189:22, 190:9, 190:12, 191:1, 191:3, 191:5, 191:11, 191:16, 193:3, 193:11, 193:14, 194:2, 196:5, 196:14, 198:23, 201:7, 201:21, 202:1, 203:16, 204:11, 204:24, 205:20, 205:25, 206:6, 206:10, 206:17, 207:6, 207:11,	207:12, 207:21, 208:6, 208:15, 208:22, 210:11, 210:19, 211:5, 212:3, 212:8, 212:11, 214:21, 214:25, 216:7, 216:11, 217:22, 218:1 clarification [1] - 222:21 clarity [3] - 150:13, 182:14, 184:24 class [23] - 55:21, 57:25, 58:19, 58:21, 58:25, 59:12, 66:17, 81:3, 82:11, 83:2, 83:3, 83:7, 86:25, 95:10, 96:23, 177:18, 177:19, 177:20, 177:23, 177:25, 178:1, 178:4, 178:5 classes [1] - 83:6 clear [9] - 14:11, 135:9, 184:16, 189:9, 196:23, 201:14, 203:18, 216:1, 216:8 clearer [1] - 194:15 clearly [2] - 72:2, 85:3 Clerk [1] - 225:21 clerk [2] - 98:25, 150:25 client [4] - 54:25, 73:4, 200:11, 200:19 climbs [1] - 7:23 climbs [1] - 153:7 close [3] - 50:25, 140:7, 218:5 closed [2] - 173:11, 206:24 closer [1] - 43:7 clue [2] - 146:20, 146:22 clues [1] - 214:25 CMS [33] - 11:23, 11:24, 12:5, 17:6, 17:9, 25:3, 28:10, 31:7, 32:11, 33:11, 35:9, 36:8, 37:4, 39:4, 40:7, 40:8, 40:24, 41:8, 41:11, 42:3, 42:5, 157:11, 158:25, 159:1, 159:4, 159:7, 160:13, 161:5, 161:12, 162:13, 162:17, 163:3, 163:21
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202 Ashfield Court, Smyrna DE 19977

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CMSes [4] - 26:14, 29:21, 44:6, 155:7 co [2] - 6:20, 100:1 co-counsel [2] - 6:20, 100:1 code [38] - 15:4, 73:16, 73:18, 73:19, 73:24, 74:1, 74:7, 74:11, 74:12, 74:18, 75:4, 75:6, 75:8, 76:4, 76:6, 76:12, 76:14, 76:25, 77:2, 77:6, 77:8, 77:20, 81:24, 82:8, 82:23, 83:17, 87:12, 88:9, 88:17, 88:22, 89:24, 90:1, 90:4, 90:19, 124:14, 183:19 coded [1] - 79:12 cognizant [1] - 172:12 collaborative [1] - 135:2 colleague [1] - 54:13 colleague [2] - 6:8, 71:7 colleagues [1] - 127:20 collection [2] - 74:6, 175:10 collections [5] - 73:7, 73:8, 73:10, 75:7 collective [5] - 47:20, 48:2, 48:18, 206:25 college [1] - 88:15 color [3] - 79:12, 98:4, 98:7 color-coded [1] - 79:12 colors [1] - 125:14 column [56] - 50:14, 50:15, 50:17, 61:8, 62:6, 62:9, 63:17, 67:18, 68:20, 69:4, 69:12, 70:8, 78:22, 79:4, 84:3, 84:12, 85:10, 85:12, 87:21, 88:5, 92:10, 92:16, 95:16, 95:17, 95:23, 95:24, 95:25, 96:1, 103:7, 104:16, 104:24, 106:1, 108:25, 113:6, 113:8, 113:10, 113:12, 116:3, 116:12, 129:3, 129:7, 129:8, 131:6, 133:13, 133:24, 137:8, 138:16, 139:4, 139:6, 139:16, 143:2,	144:21, 183:11, 220:6 columns [18] - 61:6, 64:2, 64:12, 66:4, 66:8, 66:11, 67:10, 67:12, 67:21, 84:13, 92:20, 93:14, 104:12, 110:13, 138:11, 140:19, 163:8, 163:24 combination [1] - 102:22 combined [2] - 159:23, 166:3 coming [4] - 90:3, 115:8, 142:13, 143:20 comment [1] - 115:24 comments [2] - 150:9, 173:12 commerce [2] - 20:3, 49:6 common [4] - 104:9, 156:17, 218:19, 218:25 communicate [14] - 23:5, 23:13, 25:17, 27:14, 28:3, 28:4, 29:20, 34:7, 35:3, 35:9, 43:11, 144:12, 159:21, 207:24 communicated [3] - 144:11, 155:9, 158:24 communicates [2] - 38:23, 168:16 communicating [8] - 12:24, 21:9, 22:5, 37:2, 37:16, 156:21, 157:24 communication [50] - 12:4, 17:6, 17:9, 17:23, 21:23, 22:1, 22:3, 22:21, 22:23, 25:2, 25:9, 25:20, 26:1, 27:15, 28:11, 28:20, 31:2, 31:7, 33:10, 34:3, 34:4, 34:9, 34:14, 34:20, 35:25, 36:6, 36:23, 37:15, 38:21, 38:24, 41:11, 49:8, 50:2, 138:5, 153:19, 157:11, 158:9, 158:14, 159:4, 160:2, 160:24, 162:16, 163:21, 164:2, 209:8, 209:16, 211:1, 211:3, 211:7, 211:14	communication-based [1] - 160:2 communications [4] - 20:7, 27:13, 38:12, 206:4 Company [1] - 152:4 compared [3] - 116:9, 192:18, 209:22 comparing [1] - 76:8 comparison [3] - 186:23, 187:7, 188:13 comparisons [1] - 77:5 complaint [43] - 41:17, 42:20, 42:22, 44:19, 46:9, 51:14, 51:15, 51:16, 51:17, 52:3, 53:9, 65:7, 73:12, 85:8, 109:9, 126:18, 127:14, 134:15, 134:22, 146:12, 152:18, 153:15, 167:6, 167:7, 167:9, 167:11, 169:21, 170:6, 170:16, 172:18, 172:23, 173:7, 173:20, 174:1, 184:18, 192:4, 202:7, 203:9, 208:4, 208:17, 221:19, 221:25 complete [2] - 139:4, 219:21 completed [1] - 4:4 completely [1] - 139:10 complexity [1] - 200:4 complicated [1] - 101:25 components [2] - 207:14, 208:14 composed [1] - 179:20 composition [1] - 24:16 comprised [1] - 176:16 comprises [1] - 47:14 comprising [1] - 39:24 computer [81] - 15:4, 19:21, 20:14, 20:15, 20:23, 21:1, 23:7, 76:5, 100:24, 102:8, 102:16, 102:23, 104:2, 112:8, 112:13, 113:3, 113:4, 113:13, 113:15, 116:15, 119:17, 120:9,	122:15, 122:17, 123:3, 124:2, 124:7, 124:19, 124:21, 125:4, 125:8, 125:9, 129:16, 131:24, 135:3, 135:6, 135:10, 135:11, 135:14, 138:8, 145:4, 147:19, 153:9, 165:3, 165:9, 165:25, 166:22, 166:23, 169:25, 170:1, 180:3, 181:19, 182:10, 184:23, 188:1, 189:24, 190:1, 190:7, 190:15, 191:2, 195:12, 196:8, 198:13, 201:3, 201:8, 201:17, 203:14, 204:17, 205:5, 206:18, 207:9, 207:14, 208:7, 208:13, 210:5, 210:7, 210:13, 211:22, 216:4, 218:8, 221:3 computer [1] - 201:25 computer-based [3] - 165:25, 166:23, 184:23 computer-functionality-based [1] - 165:3 computer-network-centric [1] - 210:7 computer-readable [2] - 113:13, 153:9 computerization [2] - 20:18, 112:22 computerized [3] - 23:6, 176:15, 182:17 computers [22] - 20:6, 21:2, 110:21, 111:3, 111:18, 115:22, 134:25, 135:7, 135:8, 135:14, 190:11, 195:9, 195:19, 195:24, 197:4, 198:20, 201:15, 202:6, 211:13, 214:7, 214:19 computing [5] - 48:20, 113:9, 199:16, 203:21, 203:23 concept [69] - 14:2, 16:5, 16:12, 17:18, 18:2, 19:9, 19:20,	49:3, 52:17, 56:18, 97:25, 107:23, 108:20, 113:20, 113:24, 114:4, 118:16, 120:18, 128:4, 128:12, 132:17, 132:22, 133:11, 133:16, 134:1, 134:11, 141:5, 154:20, 158:6, 158:14, 159:12, 161:3, 161:22, 164:1, 165:6, 165:16, 168:22, 170:25, 171:4, 171:14, 175:9, 175:11, 178:15, 185:6, 185:18, 188:17, 188:24, 196:2, 196:15, 197:3, 197:6, 198:13, 202:24, 203:6, 203:17, 204:19, 206:9, 206:11, 208:19, 211:6, 211:24, 214:8, 215:1, 215:16, 217:1, 217:18, 218:3, 218:15, 221:3 conception [1] - 206:8 concepts [5] - 48:4, 166:10, 183:8, 207:12, 208:2 conceptual [2] - 57:19, 63:7 concern [2] - 156:11, 169:18 concerned [1] - 160:21 concerns [2] - 173:2, 205:2 conclude [8] - 93:7, 151:4, 158:5, 159:10, 166:7, 213:25, 216:11, 222:15 concluded [2] - 168:10, 206:10 concludes [6] - 154:16, 164:15, 166:5, 207:2, 211:25, 214:3 concluding [1] - 207:10 conclusion [2] - 199:7, 207:19 conclusions [1] - 171:8 concrete [4] - 109:21,
--	---	---	---	--

DEANNA WARNER, CSR

202 Ashfield Court, Smyrna DE 19977

Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

109:24, 159:25, 218:8 conditional [1] - 90:4 conditional [1] - 91:12 conduct [1] - 205:24 configuration [1] - 142:7 configurations [1] - 203:24 configure [4] - 57:18, 60:22, 60:23, 62:3 configured [28] - 34:1, 57:9, 60:20, 67:4, 68:8, 70:18, 106:3, 177:4, 177:8, 177:13, 177:16, 177:18, 177:21, 177:24, 178:3, 178:8, 178:11, 179:21, 180:13, 181:22, 183:3, 183:5, 191:8, 196:10, 197:22, 198:2, 207:23 configuring [1] - 206:1 confirm [1] - 7:9 confusing [1] - 131:5 connect [7] - 22:13, 27:1, 44:5, 79:17, 89:22, 125:19, 161:15 connected [7] - 25:14, 104:9, 137:21, 161:13, 199:18, 200:13, 201:3 connecting [2] - 38:11, 49:5 connection [31] - 21:15, 21:17, 21:20, 22:17, 25:5, 32:2, 32:10, 32:13, 34:15, 38:14, 38:19, 72:12, 123:4, 138:7, 138:20, 155:15, 158:3, 158:13, 158:19, 160:11, 160:22, 161:9, 161:14, 161:17, 161:18, 162:1, 162:2, 162:21, 167:12, 184:20, 199:22 connects [2] - 29:7, 160:12 conserve [1] - 201:22 consider [6] - 52:9, 148:5, 162:6, 173:10, 189:1, 222:10	consideration [2] - 53:6, 188:19 considered [6] - 155:18, 165:22, 166:8, 166:14, 167:25, 211:10 considering [1] - 187:2 consist [2] - 180:20, 190:1 consistent [3] - 108:22, 109:8, 187:9 consisting [1] - 225:17 constitute [2] - 177:6, 201:16 constituting [1] - 188:1 constrain [1] - 83:5 constrained [2] - 95:5, 96:14 constraining [1] - 83:10 constraint [1] - 91:4 constraints [2] - 82:19, 82:20 construct [7] - 62:4, 66:1, 66:3, 67:1, 67:13, 95:13, 188:4 constructed [1] - 67:8 constructing [1] - 66:9 construction [17] - 15:13, 15:22, 29:25, 30:1, 30:2, 30:15, 30:17, 30:21, 31:5, 31:17, 33:4, 39:10, 52:1, 59:11, 97:2, 181:12, 182:1 constructions [1] - 186:15 construed [1] - 166:25 consult [1] - 196:21 consume [1] - 207:23 contact [1] - 163:10 contain [10] - 56:23, 96:24, 153:18, 158:20, 166:6, 180:23, 197:11, 198:15, 207:11, 218:15 contained [2] - 176:18, 208:15 containing [3] - 183:7, 184:6, 200:25 contains [2] - 94:9, 177:12 contend [1] - 154:25 contends [3] - 155:13, 196:4, 196:13	Content [2] - 142:23, 175:7 content [22] - 47:21, 62:14, 62:15, 125:23, 126:1, 144:3, 171:22, 193:11, 193:14, 193:15, 197:17, 197:25, 199:11, 207:9, 207:23, 207:24, 208:1, 208:12, 217:19, 217:21, 224:7 contest [3] - 154:14, 174:17, 202:3 contests [1] - 193:8 context [4] - 20:7, 52:2, 165:9, 171:6 continuation [3] - 133:20, 134:12, 150:4 continuations [1] - 174:11 continue [1] - 105:23 continues [1] - 184:25 contradicts [1] - 145:23 contrary [3] - 161:8, 166:10, 194:13 contrast [2] - 67:7, 189:3 contrasting [1] - 93:12 contributes [1] - 170:12 control [1] - 109:22 controls [1] - 109:3 convenience [1] - 150:13 conventional [20] - 43:3, 70:21, 70:23, 73:3, 73:14, 85:13, 87:25, 165:12, 183:13, 188:8, 188:23, 189:10, 190:21, 199:16, 204:6, 204:20, 206:14, 207:14, 208:13 converted [1] - 186:16 convey [1] - 46:3 conveying [1] - 199:2 convinced [1] - 164:11 Cooley [1] - 100:10 cooperative [3] - 206:24, 207:18, 207:19 Cooperative [1] - 207:5	coordinates [1] - 168:15 coordinating [3] - 42:2, 158:7, 161:3 coordination [11] - 10:1, 17:19, 18:5, 24:12, 154:11, 157:15, 157:22, 158:4, 159:13, 164:13, 164:16 copied [1] - 128:5 copies [9] - 4:22, 4:23, 4:24, 7:8, 7:12, 7:14, 72:25, 102:4, 200:2 copy [19] - 102:3, 125:21, 128:7, 130:17, 197:15, 197:23, 198:3, 198:7, 202:12, 212:19, 212:22, 212:25, 214:11, 214:16, 217:10, 219:23, 219:25, 220:4, 225:18 core [1] - 97:24 Corp [3] - 155:24, 169:5, 186:5 correct [21] - 3:11, 3:19, 10:24, 20:22, 22:10, 26:2, 26:20, 64:22, 65:18, 67:23, 68:1, 102:24, 105:12, 110:22, 112:11, 112:12, 112:24, 140:3, 181:25, 213:25, 220:12 corresponding [1] - 186:24 counsel [60] - 2:4, 2:11, 3:19, 4:17, 5:18, 5:20, 5:22, 6:4, 6:8, 6:13, 6:15, 6:20, 7:1, 7:13, 47:11, 49:13, 53:5, 53:18, 53:19, 53:20, 54:7, 54:8, 54:9, 54:18, 54:20, 54:24, 55:3, 55:5, 68:11, 71:12, 76:10, 94:14, 94:18, 94:25, 96:10, 98:20, 99:20, 99:22, 100:1, 100:5, 100:6, 100:13, 100:15, 116:3, 118:7, 119:19, 136:8, 141:1, 148:20, 148:22, 149:1, 162:20, 162:21, 164:7, 167:3, 172:9,	181:5, 220:1, 220:11, 223:17 Counsel [3] - 2:15, 2:21, 147:25 counsel's [4] - 99:6, 140:12, 148:2, 219:15 count [3] - 63:8, 64:18, 153:14 COUNTY [1] - 225:3 County [1] - 225:22 couple [7] - 3:24, 4:17, 50:12, 85:7, 92:8, 99:11, 105:18 course [5] - 5:8, 70:21, 135:5, 142:2, 146:11 Court [94] - 6:23, 7:25, 8:8, 8:12, 8:15, 8:24, 11:11, 19:16, 24:1, 24:2, 24:10, 53:25, 85:1, 109:25, 135:9, 149:19, 151:12, 151:25, 152:4, 154:16, 156:15, 161:24, 162:6, 163:14, 164:6, 164:12, 164:14, 166:5, 169:15, 169:17, 170:2, 171:11, 171:15, 172:4, 172:9, 172:11, 172:22, 173:7, 173:10, 173:13, 174:18, 174:19, 174:21, 175:4, 176:10, 180:17, 184:20, 186:5, 186:14, 187:4, 188:2, 188:10, 188:21, 189:10, 189:15, 189:25, 190:11, 191:11, 191:17, 192:7, 193:23, 195:25, 196:21, 202:15, 202:21, 205:17, 205:19, 207:2, 207:20, 208:3, 208:20, 208:23, 209:21, 211:9, 211:25, 213:24, 214:3, 215:24, 216:11, 216:15, 216:17, 218:10, 218:12, 218:16, 219:14, 219:21, 220:24, 221:12, 221:16, 221:21, 222:7,
---	---	--	---	--

DEANNA WARNER, CSR

202 Ashfield Court, Smyrna DE 19977

Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

222:10, 222:13, 225:21 court ^[14] - 3:4, 4:8, 148:11, 149:12, 149:23, 150:11, 152:4, 154:18, 156:2, 172:17, 191:3, 207:6, 222:9, 224:11 COURT ^[157] - 1:1, 3:1, 6:11, 6:24, 7:10, 7:18, 10:5, 11:14, 12:21, 13:22, 15:7, 17:3, 17:15, 19:2, 20:11, 21:4, 21:25, 22:20, 23:6, 23:16, 23:22, 24:22, 25:22, 26:6, 27:16, 29:22, 30:25, 32:22, 33:20, 34:9, 34:19, 35:6, 36:1, 36:24, 39:2, 40:25, 41:15, 44:16, 45:18, 46:6, 46:20, 50:11, 50:24, 53:3, 53:17, 54:4, 54:17, 55:2, 55:10, 56:2, 58:15, 59:9, 60:25, 62:7, 63:8, 63:22, 64:6, 64:14, 65:2, 65:8, 65:14, 65:23, 66:10, 67:11, 67:24, 68:9, 69:25, 70:25, 71:11, 72:24, 73:1, 74:10, 74:19, 76:2, 77:3, 78:4, 79:25, 80:10, 81:7, 81:19, 83:12, 84:10, 84:17, 84:23, 86:4, 86:17, 86:24, 87:20, 88:12, 89:21, 91:14, 92:8, 92:17, 93:3, 94:11, 95:22, 96:3, 96:22, 97:16, 98:18, 99:16, 99:19, 100:4, 100:13, 102:19, 102:25, 103:16, 105:9, 105:15, 105:23, 107:7, 107:11, 108:13, 110:18, 110:23, 112:10, 113:17, 115:20, 118:3, 118:9, 118:13, 120:20, 121:25, 123:19, 124:6, 124:12, 124:22, 126:8, 126:24, 127:5, 127:18, 130:8, 130:17, 130:21, 131:5, 132:7, 132:13,	134:2, 135:4, 136:23, 137:14, 138:10, 139:21, 140:6, 140:25, 141:11, 143:2, 144:10, 145:12, 145:16, 146:6, 146:18, 147:25, 149:22, 223:9, 223:16, 223:19 court's ^[2] - 186:11, 186:13 Court's ^[13] - 154:1, 171:10, 173:1, 180:7, 184:10, 184:15, 192:17, 194:17, 205:10, 212:12, 221:4, 222:17, 224:4 Courtroom ^[1] - 1:23 courtroom ^[1] - 4:12 courts ^[2] - 51:2, 149:7 Courts ^[5] - 19:4, 149:8, 164:21, 176:4, 193:18 cover ^[4] - 5:15, 18:14, 119:2, 190:12 covered ^[1] - 160:23 create ^[15] - 25:25, 29:11, 40:13, 40:23, 42:6, 43:17, 44:9, 51:20, 53:1, 57:24, 67:16, 162:13, 183:18, 221:6 created ^[6] - 25:18, 74:12, 75:3, 76:17, 163:9, 163:10 creates ^[7] - 25:17, 27:8, 38:18, 95:10, 146:22, 157:7, 159:2 creating ^[10] - 11:25, 28:19, 39:5, 40:21, 57:25, 162:24, 163:2, 163:16, 165:19, 168:11 creation ^[2] - 26:4, 43:14 credit ^[18] - 24:13, 42:23, 44:17, 44:19, 46:1, 46:10, 52:10, 53:10, 153:19, 156:22, 157:24, 166:2, 170:8, 170:11, 170:17, 171:1, 181:14 credits ^[17] - 10:2, 12:25, 17:20, 25:21, 42:2, 52:17, 154:12, 155:8, 156:24,	157:1, 157:16, 157:22, 158:8, 159:6, 159:13, 161:4, 164:17 criticized ^[1] - 51:2 crux ^[1] - 155:16 CSR ^[1] - 225:24 current ^[2] - 101:14, 184:17 cusp ^[1] - 224:2 custom ^[2] - 73:23, 73:24 customer ^[9] - 117:11, 138:16, 138:19, 139:9, 199:20, 199:21, 200:13, 200:18, 200:24 customer's ^[5] - 154:11, 157:15, 161:3, 164:16, 219:9 customers ^[2] - 138:21, 199:23 cut ^[1] - 11:14 cxLoyalty ^[1] - 52:15	97:13, 97:21, 97:23, 98:2, 107:23, 109:15, 114:10, 114:16, 114:20, 115:23, 174:10, 175:4, 175:9, 175:17, 175:18, 175:21, 176:17, 176:18, 176:20, 176:24, 177:2, 177:11, 178:17, 179:18, 180:23, 181:3, 181:4, 181:9, 182:9, 182:10, 182:11, 182:19, 182:23, 183:13, 183:14, 183:17, 183:24, 185:12, 186:19, 186:25, 187:4, 187:8, 188:20, 189:4, 189:5, 190:13, 190:14, 191:6, 191:7 Data ^[1] - 172:14 database ^[72] - 29:1, 29:9, 35:15, 35:17, 36:18, 40:5, 40:7, 56:13, 62:2, 63:5, 64:8, 66:2, 69:15, 71:19, 73:3, 73:11, 73:15, 73:17, 73:20, 73:22, 74:2, 74:5, 74:17, 75:3, 75:15, 77:12, 77:13, 77:18, 77:20, 77:21, 81:5, 82:6, 82:19, 82:21, 83:9, 83:16, 85:13, 85:22, 86:3, 86:7, 86:10, 86:12, 86:13, 86:15, 86:20, 87:1, 87:10, 87:11, 87:19, 90:9, 90:10, 91:5, 93:13, 93:22, 93:24, 94:24, 174:10, 175:23, 175:25, 187:5, 187:15, 187:17, 187:22, 187:25, 188:4, 188:18, 188:22, 189:7, 190:8, 190:15, 190:21, 200:11 database's ^[1] - 187:16 databases ^[15] - 28:23, 62:22, 70:23, 73:8, 73:25, 74:6, 75:8, 75:12, 85:4, 86:23, 89:20, 187:12, 187:20, 188:8, 188:21	datasets ^[15] - 56:8, 70:4, 70:23, 75:8, 75:19, 175:3, 176:16, 176:19, 176:20, 176:23, 178:16, 182:3, 182:19, 182:22, 183:24 date ^[3] - 40:19, 173:3, 222:4 daylight ^[1] - 202:15 days ^[5] - 173:3, 222:3, 223:7, 223:8, 224:3 DDR ^[2] - 135:1, 135:7 deal ^[4] - 91:3, 130:5, 134:13, 145:14 dealing ^[3] - 16:20, 134:11, 135:23 dealt ^[1] - 93:22 Deanna ^[2] - 225:4, 225:24 debate ^[1] - 8:20 December ^[2] - 1:23, 225:14 decide ^[1] - 8:8 decided ^[1] - 189:19 decides ^[3] - 58:4, 58:6, 96:20 deciding ^[2] - 146:23, 192:24 decision ^[9] - 140:13, 169:21, 171:10, 185:2, 186:14, 222:17, 222:19, 222:25, 223:4 decisions ^[17] - 4:14, 4:16, 140:14, 148:16, 148:25, 150:10, 150:11, 150:17, 150:24, 151:1, 151:12, 151:13, 151:16, 194:17, 222:13, 224:5, 224:8 deck ^[2] - 8:18, 21:14 declaration ^[2] - 41:22, 167:23 declarations ^[2] - 147:10, 171:6 declare ^[2] - 86:2, 86:6 decoupled ^[2] - 131:16, 219:16 dedicated ^[18] - 73:16, 74:1, 74:11, 74:12, 74:18, 75:4, 76:4, 76:12, 76:13, 77:1, 81:24, 83:17, 88:9, 88:17, 88:22, 89:24,
---	--	---	--	---

DEANNA WARNER, CSR

202 Ashfield Court, Smyrna DE 19977

Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

183:19, 196:10 deemed [3] - 165:9, 189:22, 204:24 defendant [34] - 36:24, 37:10, 54:23, 73:5, 120:20, 121:7, 134:8, 149:10, 168:13, 171:17, 174:2, 174:14, 174:25, 175:14, 176:8, 178:23, 179:24, 180:20, 185:7, 185:23, 191:13, 191:24, 191:25, 192:3, 194:24, 195:2, 195:4, 195:14, 198:23, 203:18, 205:19, 205:22, 207:4, 214:2 Defendant [3] - 1:13, 1:18, 179:1 defendant's [26] - 8:16, 54:19, 55:4, 55:5, 94:13, 100:5, 100:15, 141:1, 154:22, 159:17, 162:8, 172:5, 173:18, 176:21, 178:17, 179:5, 179:14, 181:23, 185:15, 186:8, 191:15, 202:16, 214:5, 215:15, 216:15, 218:17 Defendant's [2] - 191:13, 199:13 Defendants [4] - 1:8, 6:18, 27:18, 152:15 defendants [14] - 7:21, 8:25, 24:1, 42:24, 46:20, 152:14, 153:16, 154:9, 157:14, 158:6, 168:21, 171:12, 181:1, 192:25 defendants' [3] - 6:14, 6:25, 7:13 defense [4] - 100:12, 100:14, 172:8, 186:16 define [18] - 57:10, 60:12, 60:20, 60:23, 61:7, 67:5, 70:19, 76:22, 85:21, 95:3, 98:9, 177:4, 177:19, 177:22, 177:24, 178:3, 181:22, 182:5 defined [10] - 30:23,	61:12, 73:21, 82:4, 87:14, 89:13, 95:3, 97:10, 181:17, 190:3 defines [3] - 59:4, 95:10, 156:14 defining [5] - 63:14, 89:11, 90:5, 91:22, 175:19 definitely [1] - 100:23 definition [4] - 9:10, 64:25, 85:24, 178:2 definitions [2] - 63:17, 180:1 degree [5] - 11:20, 26:17, 105:16, 157:17, 160:6 DELAWARE [2] - 1:2, 225:2 Delaware [7] - 5:22, 6:14, 54:9, 54:20, 99:22, 100:6, 225:22 delay [1] - 219:4 delta [1] - 140:22 demonstrate [5] - 13:2, 170:24, 171:12, 185:21, 222:1 demonstrated [1] - 190:25 demonstrates [2] - 47:7, 201:24 denied [2] - 186:9, 191:14 denoted [1] - 49:14 deny [7] - 12:22, 173:23, 174:20, 174:21, 216:15, 218:16, 221:16 depended [1] - 183:17 dependent [15] - 9:4, 9:7, 9:21, 10:8, 10:11, 10:13, 10:18, 11:7, 44:14, 153:25, 154:3, 171:16, 171:20, 172:2, 193:11 depicted [1] - 18:12 derides [1] - 219:3 describe [9] - 50:9, 59:5, 60:4, 61:17, 71:22, 92:23, 126:23, 178:24, 199:8 described [33] - 14:6, 15:5, 28:24, 40:14, 48:12, 49:17, 49:19, 61:19, 62:20, 66:5, 69:4, 69:11, 70:8, 71:15, 72:9, 74:20, 83:11, 102:20,	104:23, 106:7, 133:13, 133:24, 138:6, 138:11, 154:18, 156:5, 165:18, 184:23, 190:8, 190:17, 206:15, 209:4, 210:11 describes [17] - 17:5, 29:1, 34:13, 36:17, 52:13, 52:14, 55:17, 109:1, 111:13, 139:23, 141:10, 161:11, 184:2, 198:11, 200:5, 219:12, 220:7 describing [10] - 36:7, 50:13, 55:24, 63:14, 66:12, 80:1, 88:6, 128:22, 161:17, 219:22 description [18] - 15:19, 26:23, 26:24, 34:13, 43:19, 46:3, 48:16, 52:21, 59:2, 59:7, 60:2, 92:12, 133:25, 160:19, 174:13, 179:5, 183:10, 202:16 descriptions [6] - 56:9, 175:3, 176:24, 178:17, 182:9, 187:10 desktop [8] - 123:1, 137:9, 137:11, 137:19, 139:20, 139:22, 200:8, 220:9 despite [2] - 184:18, 215:15 detail [8] - 62:20, 126:18, 127:24, 159:8, 164:10, 190:17, 199:1, 208:5 determination [4] - 35:11, 35:25, 186:11, 209:14 determine [18] - 12:4, 17:8, 25:23, 27:13, 31:2, 33:10, 34:3, 34:4, 39:12, 39:13, 41:10, 42:16, 45:10, 45:14, 106:22, 159:5, 164:23, 196:19 determined [3] - 17:5, 45:9, 162:14 determines [11] - 25:15, 31:6, 38:17, 38:21, 96:20, 157:5, 157:10, 159:1,	159:3, 162:16, 209:7 determining [20] - 11:23, 28:20, 34:10, 39:3, 39:4, 39:6, 39:11, 39:15, 39:19, 39:24, 41:7, 156:23, 163:20, 197:18, 209:18, 210:3, 210:12, 210:18, 211:3, 211:18 develop [1] - 44:22 developers [1] - 183:18 developing [1] - 44:21 development [1] - 170:7 device [82] - 101:7, 101:9, 104:11, 104:13, 105:5, 105:6, 106:6, 106:7, 106:24, 106:25, 107:8, 107:10, 113:22, 119:11, 119:23, 120:1, 120:14, 122:10, 123:14, 123:15, 123:21, 124:7, 124:12, 124:14, 125:4, 125:5, 125:6, 125:20, 126:3, 126:7, 128:7, 128:10, 128:18, 128:23, 128:24, 130:1, 130:9, 130:12, 130:24, 135:25, 137:10, 141:23, 141:25, 147:21, 197:8, 197:9, 197:10, 197:16, 197:22, 198:4, 198:6, 198:8, 198:14, 202:12, 202:14, 203:21, 205:9, 209:10, 209:13, 209:14, 209:15, 209:16, 212:16, 212:24, 213:1, 213:4, 213:5, 213:9, 213:10, 213:14, 213:16, 213:23, 214:10, 214:12, 217:7, 217:9, 217:11, 219:25, 220:5 device's [4] - 139:13, 197:14, 197:24, 198:1 device-based [1] - 120:1 device-centric [2] -	119:11, 120:14 devices [52] - 15:3, 48:19, 101:6, 104:8, 104:11, 104:21, 105:2, 106:4, 107:11, 107:14, 107:21, 108:1, 108:5, 109:4, 109:5, 110:3, 118:21, 120:5, 121:1, 121:7, 121:19, 121:22, 122:12, 122:14, 122:20, 123:7, 123:11, 123:12, 124:5, 124:9, 124:25, 126:9, 136:7, 136:11, 139:25, 195:14, 196:13, 197:11, 198:15, 199:17, 199:24, 201:9, 202:11, 203:8, 203:13, 205:7, 209:8, 210:25, 211:6, 212:10, 216:14, 220:14 devote [1] - 58:8 devoted [2] - 56:11, 197:6 Dewolfson [1] - 54:15 DI [2] - 92:19, 127:3 diagram [1] - 79:10 diagrams [1] - 83:1 DIANA [1] - 2:3 Diana [1] - 6:4 dictate [2] - 95:9, 181:21 dictionary [7] - 75:23, 78:14, 81:2, 87:7, 87:8, 87:17, 174:10 die [1] - 47:8 Diego [1] - 54:14 differ [2] - 192:17, 194:18 difference [10] - 62:8, 80:6, 82:3, 93:20, 97:1, 97:4, 145:13, 151:18, 168:22, 209:3 differences [5] - 105:16, 154:6, 157:2, 194:6, 212:12 different [93] - 3:3, 10:12, 10:14, 25:11, 27:1, 28:19, 29:20, 34:13, 34:17, 34:20, 34:22, 35:4, 43:11, 44:5, 47:8, 47:24, 48:3, 48:4, 49:14, 56:22, 57:1, 58:9,
---	--	--	---	--

DEANNA WARNER, CSR

202 Ashfield Court, Smyrna DE 19977

Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

58:22, 59:20, 59:24, 60:5, 60:19, 61:18, 61:22, 62:17, 69:19, 70:13, 73:19, 74:16, 74:24, 75:12, 75:24, 76:19, 77:16, 79:17, 80:25, 81:14, 81:24, 84:7, 86:22, 86:23, 87:2, 89:14, 89:20, 91:7, 91:25, 93:25, 94:3, 96:25, 97:2, 97:3, 97:8, 97:9, 101:17, 104:8, 108:15, 111:2, 111:14, 115:10, 119:2, 119:16, 121:7, 121:19, 121:21, 122:9, 124:16, 128:2, 130:13, 134:7, 136:18, 140:22, 142:23, 143:12, 148:22, 163:3, 170:2, 171:10, 177:3, 180:19, 180:23, 181:7, 185:14, 195:3, 195:15, 205:7, 209:21, 210:16 differently [7] - 10:22, 48:2, 62:19, 108:15, 117:4, 169:2, 198:17 differs [1] - 24:4 difficult [4] - 45:15, 72:11, 172:16, 217:25 difficulty [1] - 72:19 digital [1] - 194:23 direct [2] - 53:15, 87:23 directed [73] - 8:10, 9:10, 17:19, 18:6, 24:12, 24:25, 25:1, 36:25, 37:20, 55:14, 56:7, 56:18, 57:4, 101:2, 111:7, 112:1, 112:15, 114:12, 114:19, 120:3, 133:15, 134:6, 135:17, 136:3, 154:10, 154:19, 155:2, 155:3, 155:17, 155:20, 156:1, 156:11, 158:12, 158:16, 159:10, 161:2, 162:1, 163:5, 164:12, 164:15, 175:1, 175:13, 175:17, 175:24,	178:18, 179:18, 182:2, 182:15, 187:2, 191:6, 191:12, 195:1, 196:6, 196:7, 196:14, 196:17, 196:20, 196:24, 202:1, 202:4, 202:9, 206:1, 206:5, 207:7, 210:19, 212:1, 214:1, 215:1, 215:10, 216:12, 218:2, 218:5, 221:13 directed-to [1] - 155:17 directly [2] - 170:12, 171:4 directories [1] - 132:5 directory [11] - 131:15, 131:20, 131:21, 132:2, 132:3, 132:8, 132:11, 144:19, 219:13, 219:17 discerning [1] - 14:25 disclose [4] - 50:9, 62:1, 67:1, 204:25 disclosed [2] - 15:4, 147:11 discloses [1] - 168:14 disclosing [1] - 57:11 disclosure [1] - 15:18 discovery [1] - 167:4 discuss [11] - 95:21, 96:6, 151:20, 152:8, 154:2, 176:8, 208:10, 212:5, 214:13, 217:18, 218:20 discussed [4] - 172:13, 204:5, 208:4, 218:23 discusses [1] - 160:6 discussing [1] - 118:16 discussion [5] - 26:8, 26:21, 152:5, 216:5, 224:13 discussions [1] - 134:17 disembodied [2] - 154:20, 196:2 disk [2] - 102:14, 201:1 DISMISS [3] - 1:19, 1:21, 225:19 dismiss [6] - 8:1, 152:16, 162:8, 172:24, 186:16, 191:15	dismissal [1] - 8:7 dismissed [3] - 152:18, 173:21, 192:5 disparaged [6] - 102:19, 103:7, 136:25, 137:16, 137:20, 138:15 disparate [1] - 166:1 display [1] - 143:18 displayed [4] - 117:10, 142:14, 142:22, 143:1 displaying [4] - 109:17, 130:5, 143:12, 145:10 dispositive [1] - 14:20 dispute [4] - 55:22, 175:6, 195:22, 218:14 disputed [1] - 162:6 distinct [2] - 194:16, 214:23 distinctive [1] - 193:20 distinctly [1] - 172:3 distinguishable [2] - 61:11, 67:25 distinguished [1] - 12:10 distinguishes [1] - 204:5 distributed [9] - 123:2, 131:9, 140:4, 194:24, 200:11, 200:17, 200:20, 219:1, 220:10 distribution [2] - 47:21, 207:24 DISTRICT [2] - 1:1, 1:2 district [5] - 51:2, 172:17, 186:11, 186:13, 207:6 District [2] - 98:25, 225:21 do-it-on-a-computer [1] - 20:14 do-it-on-the-internet [1] - 20:24 docket [1] - 150:14 doctor [5] - 101:16, 101:18, 101:21, 119:20, 136:9 doctor's [1] - 103:16 document [26] - 42:23, 42:25, 43:5, 52:11, 101:7, 101:8, 101:11, 101:23, 101:24, 102:1, 106:14, 116:24,	119:18, 120:8, 120:13, 120:24, 121:5, 121:10, 123:2, 123:5, 123:16, 123:17, 135:18, 195:9 Document [1] - 106:23 document's [3] - 117:9, 117:11, 117:12 documents [12] - 101:20, 102:2, 104:4, 107:4, 108:17, 108:18, 115:13, 116:6, 195:7, 219:10, 219:12, 219:19 Domino [1] - 145:21 domino's [2] - 140:15, 205:21 Domino's [1] - 147:9 done [22] - 10:16, 18:17, 18:19, 18:21, 19:7, 19:12, 20:23, 20:25, 24:6, 38:20, 41:19, 41:21, 42:12, 70:12, 108:24, 118:14, 147:4, 147:14, 147:18, 148:6, 151:10, 172:8 dorm [1] - 162:1 doubt [1] - 221:22 down [7] - 21:7, 85:25, 101:24, 106:8, 110:2, 142:19, 169:10 downloaded [1] - 213:23 downside [1] - 201:2 drawbacks [4] - 87:25, 88:7, 199:19, 200:12 drawn [1] - 82:25 drill [1] - 21:7 drive [3] - 102:14, 103:13, 120:12 driven [1] - 139:18 drives [5] - 137:6, 156:12, 169:18, 201:1 Duane [2] - 6:3, 6:9 DUANE [1] - 2:2 during [7] - 12:10, 16:19, 40:16, 53:12, 162:10, 168:9 dynamic [1] - 207:21 dynamically [2] - 79:1, 87:15 dynamism [1] - 81:23	E e-mail [4] - 103:18, 120:12, 200:21, 200:24 e-mailing [1] - 137:6 e-mails [1] - 115:13 early [2] - 51:4, 143:5 ease [4] - 154:6, 192:11, 195:17, 209:17 easier [3] - 20:6, 142:17, 159:10 easily [1] - 199:18 easy [2] - 19:18, 72:21 eccentric [1] - 109:15 economic [1] - 20:3 effect [1] - 83:20 effectuate [1] - 208:14 effectuated [1] - 76:7 efficiencies [2] - 116:8, 151:7 efficiency [1] - 175:23 efficient [8] - 71:25, 87:3, 116:16, 116:20, 117:15, 128:25, 149:7, 149:10 efficiently [2] - 74:7, 87:3 efforts [1] - 151:24 EGNYTE [1] - 1:17 Egnyte [4] - 3:20, 191:22, 191:24, 225:13 eight [5] - 29:4, 91:1, 93:25, 177:12, 178:22 eighth [1] - 178:11 either [9] - 4:12, 11:6, 29:11, 40:4, 41:22, 48:24, 76:7, 144:23, 161:21 electric [2] - 142:23, 144:3 Electric [1] - 201:19 electronic [32] - 4:22, 104:11, 120:5, 124:7, 125:20, 125:23, 135:20, 135:21, 135:24, 135:25, 195:13, 197:8, 197:9, 197:10, 197:15, 197:23, 198:14, 202:10, 202:12, 202:13, 203:7, 204:3, 209:9, 209:14, 209:15,
--	---	--	---	--

DEANNA WARNER, CSR

202 Ashfield Court, Smyrna DE 19977

Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

209:16, 211:8, 212:16, 214:11, 216:10, 217:4, 217:6 element [41] - 55:21, 58:19, 58:20, 58:25, 59:11, 59:22, 60:10, 66:17, 67:3, 78:6, 80:2, 80:8, 80:12, 80:14, 80:21, 81:10, 81:12, 86:25, 91:24, 95:18, 96:3, 96:4, 96:8, 96:10, 96:11, 96:13, 96:23, 163:17, 163:18, 168:25, 169:1, 177:12, 177:15, 177:17, 180:16, 183:2, 183:4, 183:6 elements [26] - 79:12, 80:3, 80:14, 80:20, 81:11, 81:12, 81:15, 126:25, 156:18, 162:22, 164:10, 164:24, 177:14, 177:19, 178:6, 178:10, 180:15, 180:23, 183:4, 183:6, 202:23, 204:17, 206:18, 209:19, 210:10 eligibility [17] - 13:16, 14:2, 134:24, 151:9, 152:19, 154:4, 167:1, 168:23, 171:5, 171:9, 172:16, 173:21, 204:1, 205:13, 210:1, 210:15, 221:20 eligible [15] - 13:19, 14:7, 17:2, 112:9, 143:13, 164:25, 169:2, 185:25, 186:4, 186:13, 189:17, 189:23, 202:25, 204:22, 222:2 eliminates [3] - 88:17, 88:21, 88:25 embodiment [6] - 131:15, 131:20, 132:7, 219:8, 219:13 embodiments [3] - 65:20, 107:15, 203:21 Emmanuel [1] - 54:25 EMMANUEL [1] - 2:19 emphasize [2] - 92:19, 215:11 emphasized [3] -	162:11, 190:11, 190:20 emphatically [1] - 145:9 employee [1] - 82:14 EMR [2] - 76:18, 85:13 enables [1] - 29:19 encompasses [1] - 28:18 end [15] - 8:1, 31:22, 99:11, 102:12, 112:20, 114:18, 114:19, 115:1, 118:17, 142:11, 144:7, 149:17, 162:2, 224:10, 224:12 ended [1] - 63:18 ends [1] - 183:21 enduser's [1] - 143:11 Enfish [32] - 60:25, 61:11, 61:20, 61:23, 61:25, 62:11, 62:19, 63:24, 64:8, 66:2, 66:7, 66:12, 67:6, 67:14, 67:20, 72:20, 84:25, 85:1, 93:13, 93:20, 93:22, 94:2, 186:4, 186:7, 189:17, 189:21, 190:6, 191:3, 191:5, 218:6 enforcing [4] - 82:17, 82:18, 82:19, 91:4 engineer [1] - 124:3 enjoying [1] - 159:23 entailed [1] - 186:21 enterprise [3] - 73:6, 73:13, 89:19 Enterprises [1] - 225:25 entertain [1] - 149:8 entertainment [5] - 135:2, 206:25, 207:5, 207:18, 207:19 entire [8] - 13:4, 13:14, 14:5, 20:1, 24:7, 24:18, 198:12 entirety [1] - 197:5 entities [5] - 12:25, 22:6, 158:7, 158:10, 159:20 entity [1] - 17:21 entry [1] - 87:8 environment [3] - 110:2, 199:20, 200:3 environments [2] - 113:9, 203:24 envision [1] - 115:3	equal [1] - 16:23 equipment [1] - 16:11 equivalent [1] - 83:14 ERM [1] - 77:19 error [1] - 200:3 error-prone [1] - 200:3 errors [3] - 102:12, 112:6, 201:23 especially [3] - 11:19, 147:18, 223:10 ESQ [10] - 2:2, 2:3, 2:3, 2:6, 2:7, 2:9, 2:10, 2:13, 2:17, 2:20 essence [2] - 111:7, 125:7 essential [3] - 47:16, 110:9, 156:7 essentially [8] - 9:19, 18:13, 57:19, 69:20, 101:4, 202:7, 210:22, 217:20 establish [2] - 32:10, 43:2 establishes [1] - 32:1 estate [2] - 56:11, 58:9 et [11] - 1:6, 3:9, 63:17, 72:17, 113:14, 128:25, 142:8, 152:13, 225:10 evaluated [1] - 99:4 EVAN [1] - 2:9 Evan [2] - 6:21, 7:20 evidence [12] - 13:2, 13:9, 13:12, 20:17, 78:20, 136:14, 147:4, 168:7, 207:17, 220:20, 220:23, 223:2 exact [1] - 105:4 exactly [10] - 55:24, 60:1, 62:4, 96:9, 103:5, 103:22, 103:23, 110:5, 144:8, 216:2 exam [1] - 16:19 examined [1] - 156:3 examiner [5] - 12:10, 12:15, 16:19, 50:6, 136:16 examiners [1] - 168:10 example [54] - 15:21, 18:8, 18:13, 22:24, 34:6, 34:11, 34:14, 55:17, 56:6, 57:9, 57:23, 58:22, 65:13, 67:3, 77:13, 77:14, 78:16, 79:2, 79:8,	79:14, 80:10, 80:11, 81:9, 82:13, 90:17, 92:1, 92:6, 95:11, 105:17, 114:5, 114:10, 120:21, 121:14, 122:4, 125:18, 127:5, 130:23, 134:3, 141:14, 158:18, 160:15, 160:17, 163:9, 166:13, 167:1, 167:10, 177:10, 178:22, 180:12, 182:15, 201:19, 217:4, 219:2, 219:13 examples [6] - 18:16, 18:24, 34:17, 63:16, 65:21, 95:14 excellent [1] - 151:22 except [2] - 133:13, 213:13 exceptions [1] - 156:12 excerpt [4] - 95:12, 95:17, 96:1, 96:15 exchange [1] - 158:8 excluded [1] - 155:21 exclusively [1] - 165:17 excuse [3] - 9:17, 13:17, 50:5 executable [5] - 121:21, 122:9, 122:13, 122:19, 125:20 executing [3] - 123:10, 124:5, 126:3 exemplary [2] - 105:11, 203:19 exhibit [1] - 43:1 exist [7] - 12:8, 27:8, 38:3, 38:17, 40:1, 139:8, 166:17 existed [3] - 44:9, 71:22, 102:1 existence [2] - 102:2, 169:7 existing [1] - 69:15 exists [1] - 211:3 expanding [1] - 69:16 expect [1] - 4:10 experience [4] - 143:11, 151:13, 159:24, 166:4 experienced [1] - 219:1 expert [17] - 33:15, 36:20, 41:20, 41:22, 41:24, 52:7, 52:10,	52:11, 52:17, 52:18, 134:17, 145:22, 146:2, 147:10, 167:4, 167:23, 171:7 expert's [1] - 41:23 experts [1] - 145:17 explain [19] - 13:13, 18:10, 21:4, 41:24, 42:3, 42:7, 51:6, 72:2, 81:25, 85:3, 126:20, 127:23, 128:20, 129:4, 158:23, 165:15, 171:7, 173:23, 216:5 explained [13] - 108:10, 110:8, 168:24, 168:17, 185:8, 188:2, 188:10, 188:21, 189:25, 196:21, 199:14, 208:3, 220:2 explaining [8] - 62:8, 62:23, 161:11, 167:20, 167:24, 198:25, 201:7, 219:6 explains [8] - 21:22, 83:13, 157:23, 182:16, 183:12, 197:7, 197:13, 197:21 explanation [8] - 16:9, 48:23, 94:21, 107:6, 117:21, 117:22, 164:4, 166:19 explanations [1] - 84:5 expounds [1] - 199:25 expressly [1] - 172:7 extend [2] - 86:10, 86:15 extended [2] - 171:1, 223:8 extends [1] - 85:14 extensibility [1] - 85:21 extent [4] - 12:14, 105:21, 169:6, 221:24 external [2] - 52:23, 201:1 extra [3] - 7:13, 23:17, 140:8 Extraction [2] - 142:24, 175:7 extraction [1] - 144:3 extrinsic [1] - 52:23
---	---	--	---	---

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F				
face [1] - 180:8	141:12, 149:7, 165:4, 168:23, 186:10, 192:1, 201:13, 205:13	125:24, 125:25, 126:1, 126:5, 128:5, 128:7, 128:19, 129:18, 129:23, 130:2, 130:3, 130:10, 130:11, 130:16, 130:19, 130:23, 131:3, 131:10, 131:11, 131:19, 132:5, 132:9, 132:12, 136:12, 136:13, 136:15, 138:8, 138:21, 140:5, 140:20, 140:24, 141:22, 142:1, 142:17, 144:8, 145:5, 167:7, 195:8, 195:19, 195:23, 196:9, 196:12, 197:4, 197:15, 197:18, 197:20, 197:23, 197:25, 198:4, 198:5, 198:8, 198:9, 198:19, 199:1, 199:4, 199:22, 200:2, 200:11, 200:17, 200:20, 200:25, 201:1, 202:5, 202:12, 202:13, 205:8, 205:9, 209:9, 209:12, 211:8, 211:12, 212:16, 212:17, 212:20, 212:22, 212:25, 213:4, 213:5, 213:7, 213:8, 213:15, 213:19, 213:22, 214:7, 214:10, 214:11, 214:15, 214:18, 215:5, 215:23, 216:14, 217:2, 217:4, 217:6, 217:8, 217:10, 217:16, 218:22, 219:1, 219:4, 219:5, 219:23, 219:25, 220:4, 220:8, 220:10, 221:1, 221:9, 223:1	131:16, 132:2, 135:20, 135:21, 135:24, 136:19, 136:22, 137:12, 138:17, 138:22, 139:19, 139:25, 140:22, 141:16, 147:17, 194:23, 195:7, 195:10, 195:13, 198:14, 198:17, 199:23, 200:14, 201:4, 201:8, 202:10, 203:8, 203:16, 204:3, 204:9, 212:9, 212:11, 216:10, 219:17, 220:14	209:13, 209:15, 211:14, 212:17, 212:18, 212:24, 213:9, 214:5, 217:7, 222:3, 222:24
facially [2] - 153:18, 180:22	Federal [35] - 11:9, 16:8, 17:25, 47:4, 48:3, 51:1, 72:20, 135:1, 140:14, 142:3, 151:11, 154:19, 155:22, 156:8, 168:24, 169:4, 172:12, 175:6, 176:3, 186:1, 186:5, 187:1, 187:10, 189:21, 193:17, 196:1, 196:20, 201:20, 204:23, 205:22, 205:25, 206:10, 207:1, 207:10, 218:6	File [1] - 215:7	fill [2] - 33:13, 57:16	Fish [1] - 54:11
facing [2] - 46:4, 134:14	felt [1] - 92:23	filed [5] - 51:23, 134:22, 152:16, 173:10, 191:25	filled [1] - 167:5	FISH [1] - 2:13
fact [36] - 12:9, 12:18, 38:2, 51:21, 51:24, 51:25, 84:6, 98:11, 98:13, 102:8, 104:10, 105:13, 108:22, 111:23, 111:25, 124:24, 126:9, 131:3, 135:13, 145:20, 146:22, 146:25, 147:13, 147:14, 154:16, 172:21, 180:4, 181:16, 189:12, 207:3, 209:5, 210:14, 212:21, 218:15, 221:6	few [14] - 7:5, 42:10, 62:11, 92:9, 97:18, 150:9, 156:17, 157:2, 163:7, 170:5, 172:1, 192:8, 194:6, 214:3	FILED [1] - 225:20	fills [1] - 38:1	fish's [1] - 54:14
facts [2] - 151:16, 167:19	field [13] - 13:4, 13:19, 13:20, 14:6, 20:1, 42:8, 103:10, 169:24, 170:14, 170:21, 204:2, 220:22	files [44] - 103:15, 104:1, 110:17, 110:20, 111:12, 114:9, 118:20, 119:9, 129:16,	filter [1] - 155:18	Fisher [2] - 100:8, 100:10
factual [1] - 218:14	fields [1] - 29:2		finally [4] - 185:19, 205:17, 216:17, 223:20	fist [1] - 198:6
fail [1] - 66:25	fifth [2] - 177:23, 194:14		FINGER [1] - 2:6	fits [1] - 154:23
failed [2] - 7:23, 166:11	figure [13] - 36:5, 36:8, 64:7, 90:25, 92:12, 92:23, 101:1, 104:23, 106:2, 107:3, 107:20, 119:15, 119:16		Finger [2] - 6:18, 99:24	five [17] - 7:3, 15:14, 40:25, 53:22, 53:24, 54:1, 55:9, 71:4, 71:5, 91:25, 94:14, 99:9, 99:13, 118:4, 141:1, 153:7, 194:11
failing [1] - 176:6	figures [5] - 79:11, 82:16, 106:14, 106:15, 107:5		finish [2] - 46:15, 148:25	five-minute [5] - 53:22, 53:24, 54:1, 99:9, 99:13
fair [5] - 41:2, 41:12, 41:13, 133:6, 138:3	figuring [1] - 28:10		finished [1] - 148:12	flag [4] - 115:7, 116:25, 117:2, 117:6
fairly [2] - 135:9, 211:10	file [135] - 101:4, 103:17, 103:20, 103:21, 106:14, 109:4, 111:2, 111:17, 113:21, 113:22, 116:14, 119:5, 119:23, 122:1, 122:24, 123:2, 123:17, 125:4, 125:21,		finishes [1] - 46:9	flash [1] - 201:1
fall [3] - 9:25, 111:19, 216:20			firm [3] - 6:3, 100:2, 100:9	flexibility [4] - 35:1, 85:20, 183:20, 190:22
falls [1] - 18:22			First [1] - 13:13	flexible [3] - 43:18, 44:4, 74:4
familiar [2] - 3:25, 90:6			first [69] - 3:8, 4:2, 5:17, 5:20, 7:1, 8:8, 16:2, 25:15, 36:7, 49:13, 49:14, 51:15, 53:19, 54:8, 69:22, 77:24, 84:14, 87:11, 99:20, 100:22, 100:25, 114:24, 115:16, 115:21, 121:23, 122:10, 125:21, 126:7, 127:7, 129:24, 130:24, 136:6, 141:21, 150:8, 152:10, 152:12, 156:18, 156:23, 159:6, 162:11, 172:22, 176:13, 177:12, 185:4, 192:9, 194:20, 197:1, 197:7, 197:8, 197:15, 197:16, 197:18, 197:21, 198:1, 198:4, 199:5, 205:19, 209:12,	flipped [1] - 105:3
far [4] - 84:18, 109:20, 147:10, 219:21				Florida [3] - 143:10, 145:8, 201:18
Fargo [1] - 175:8				focus [28] - 21:13, 22:22, 24:13, 26:20, 46:12, 53:11, 155:20, 157:14, 157:21, 163:15, 163:22, 176:9, 185:5, 185:11, 187:6, 187:13, 188:6, 189:3, 189:8, 190:9, 190:25, 191:1, 197:2, 198:12, 198:25, 210:6, 211:4, 216:7
Farnan [2] - 6:17, 99:25				focused [14] - 5:7, 11:18, 45:6, 45:9, 49:10, 61:1, 102:23, 135:23, 158:2, 158:11, 165:17, 203:6, 206:6, 216:8
FARNAN [2] - 2:6, 6:16				folks [4] - 5:10, 20:10, 53:22, 148:9
fast [1] - 122:23				folks' [1] - 4:23
faster [4] - 20:5, 117:14, 130:12, 190:23				follow [2] - 143:15, 152:7
fault [2] - 146:25, 147:3				following [6] - 11:5, 54:3, 83:14, 83:21, 99:15, 149:21
favor [1] - 168:7				
feature [2] - 188:5, 188:11				
features [4] - 24:15, 119:6, 190:4, 210:3				
federal [9] - 13:25,				

DEANNA WARNER, CSR

202 Ashfield Court, Smyrna DE 19977

Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

food [1] - 108:6 foot [1] - 56:4 FOR [1] - 1:2 forcefully [1] - 127:13 foregoing [2] - 225:8, 225:17 foreign [2] - 79:16, 91:2 forever [1] - 97:24 forgot [1] - 140:7 form [3] - 15:5, 106:10, 190:12 format [1] - 206:4 formats [1] - 63:18 former [3] - 14:7, 158:17, 163:1 forms [1] - 59:25 formulating [1] - 150:23 forth [1] - 60:7 forthcoming [1] - 191:19 forward [7] - 56:5, 62:22, 106:23, 185:7, 191:13, 214:3, 223:1 forwarding [1] - 115:13 foundation [1] - 201:18 four [8] - 113:18, 119:3, 128:2, 132:21, 173:5, 194:16, 215:20, 222:6 fourth [3] - 51:16, 177:21, 194:4 frame [4] - 43:7, 118:14, 205:1, 205:12 framework [2] - 164:21, 202:20 frankly [2] - 106:1, 147:6 freely [1] - 172:17 front [1] - 98:24 FTP [3] - 200:15, 200:22, 219:2 FTPs [2] - 116:22, 131:10 full [3] - 159:14, 182:10, 189:20 fully [2] - 130:23, 205:3 fun [1] - 113:6 function [4] - 27:10, 31:14, 82:13, 187:20 functional [8] - 58:13, 60:15, 61:13, 67:2, 104:3, 157:18, 181:17, 206:7 functionality [10] - 32:18, 33:5, 34:2, 39:7, 165:3, 187:17, 188:2, 191:2, 216:4 functionally [2] - 50:13, 110:4 functions [5] - 30:22, 33:17, 106:20, 146:4, 181:20 fundamental [4] - 20:2, 49:6, 56:15, 57:3 fundamentally [1] - 24:8 futile [1] - 147:8 future [1] - 185:1	G gained [1] - 116:9 gaming [25] - 10:2, 21:10, 25:3, 26:25, 29:19, 35:2, 36:9, 37:4, 40:5, 42:3, 153:1, 153:20, 154:12, 155:5, 155:11, 158:24, 159:14, 159:19, 159:24, 160:12, 161:4, 161:12, 164:17, 166:3, 168:15 GAN [20] - 1:3, 2:4, 3:8, 3:11, 4:2, 5:18, 6:1, 6:3, 9:4, 9:9, 11:1, 35:2, 43:5, 44:21, 150:6, 152:12, 152:22, 222:24, 225:9 GAN's [1] - 166:17 gaps [2] - 57:16, 167:6 gather [4] - 12:11, 12:24, 22:2, 223:6 gear [1] - 89:7 gears [5] - 89:9, 89:14, 89:17, 89:22, 94:20 Genedics [2] - 152:3, 152:6 general [7] - 113:3, 161:2, 163:25, 197:6, 203:6, 203:20, 203:23 General [1] - 201:19 generality [1] - 160:8 generalized [2] - 175:15, 198:24 generally [5] - 81:17, 139:12, 176:6, 176:15, 202:9 generate [2] - 87:15, 177:5 generated [1] - 217:7 generic [10] - 55:15, 59:6, 61:13, 98:14, 113:9, 195:11, 201:15, 204:16, 207:14, 208:12 Gilbert [1] - 6:9 gist [3] - 111:25, 114:15, 114:18 given [6] - 8:2, 30:22, 107:6, 147:4, 148:5, 216:7 glasses [1] - 113:7 glean [1] - 169:16 glosses [1] - 29:17 goal [2] - 4:14, 114:18 grab [1] - 148:9 grabs [2] - 115:18, 145:3 grant [5] - 170:17, 172:17, 221:15, 223:11, 223:12 granted [4] - 208:21, 212:3, 221:21, 223:22 granting [1] - 15:23 grants [1] - 172:5 graphical [5] - 130:4, 130:6, 213:14, 213:17, 213:20 graphics [1] - 169:5 Grayson [1] - 54:11 GRAYSON [1] - 2:14 great [10] - 26:17, 28:4, 62:23, 105:16, 120:23, 120:24, 128:19, 157:17, 160:6, 164:10 greater [1] - 212:18 green [1] - 121:22 Griffin [1] - 99:23 ground [1] - 3:24 grounds [5] - 152:20, 172:24, 173:20, 173:22 group [2] - 93:16, 96:21 grouped [1] - 10:9 grouping [17] - 55:19, 57:20, 58:14, 59:7, 65:3, 66:15, 69:21, 93:10, 97:22, 181:3, 194:18, 194:20, 194:21, 208:24, 212:5, 216:18 groupings [6] - 55:16, 64:23, 124:13, 178:24, 180:25, 194:16 guess [23] - 10:15, 15:7, 28:15, 30:14, 35:6, 44:18, 45:6, 56:15, 58:18, 61:15, 61:18, 64:6, 65:23, 68:9, 88:12, 102:21, 102:25, 111:14, 120:20, 124:22, 127:9, 133:14, 136:19 guidance [2] - 16:7, 155:23 guided [1] - 188:13 guiding [1] - 187:7 guy [5] - 23:2, 105:7, 107:5, 142:16, 143:1 guys [2] - 106:4, 112:3	H half [1] - 222:12 HALL [1] - 2:10 Hall [1] - 6:22 hand [9] - 4:25, 13:25, 14:3, 134:5, 134:8, 180:21, 184:21, 184:24, 216:21 handful [1] - 163:23 handheld [1] - 108:1 handing [1] - 29:16 handle [5] - 6:22, 27:12, 128:16, 138:20, 199:21 handshaking [1] - 22:14 hang [1] - 80:17 happy [1] - 142:16 hard [14] - 4:23, 4:24, 7:7, 7:12, 51:5, 85:8, 116:11, 129:1, 157:13, 158:4, 163:18, 202:2, 202:15, 203:2 hard-pressed [1] - 202:15 hardly [2] - 133:18, 134:10 hardware [5] - 104:17, 110:12, 113:1, 113:2, 203:12 harmful [1] - 184:25 HDMI [1] - 22:12 heads [2] - 143:5, 143:15 heads-up [1] - 143:5 hear [8] - 21:14, 23:23, 32:24, 93:5, 99:10, 118:6, 127:19, 145:17 heard [3] - 100:23, 147:19, 225:13 hearing [7] - 4:9, 5:13, 98:23, 98:24, 148:12, 149:15, 224:10 hearings [3] - 3:3, 3:24, 150:4 heart [2] - 28:14, 164:5 heavily [1] - 201:11 heck [2] - 72:14, 75:1 Heidi [1] - 100:9 held [5] - 42:15, 108:9, 175:7, 193:17, 224:13 help [18] - 18:10, 30:17, 34:24, 36:5, 53:19, 72:7, 78:2, 81:5, 82:12, 82:21, 89:18, 92:3, 114:17, 118:14, 132:18, 169:15, 211:23, 219:25 helped [1] - 171:7 helpful [9] - 68:18, 99:5, 99:7, 104:6, 118:19, 145:7, 151:15, 207:4, 218:21 helping [1] - 72:18 helps [14] - 13:2, 20:13, 87:16, 88:2, 107:19, 128:21, 130:11, 143:7, 151:15, 151:18, 169:22, 185:21, 216:3, 219:7 hereby [2] - 152:5, 225:5 herein [2] - 152:7, 193:23 heterogeneous [2] - 75:11, 86:23 high [7] - 28:5, 47:23, 157:19, 157:21, 158:14, 160:8, 197:3 high-level [2] - 158:14, 197:3 higher [4] - 129:22, 164:1, 212:22, 219:18 higher-level [1] - 164:1 highlight [4] - 125:14, 126:16, 164:9, 185:20
--	--	--

DEANNA WARNER, CSR

202 Ashfield Court, Smyrna DE 19977

Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

highlighted [2] - 84:16, 121:22 highly [1] - 198:24 hint [2] - 146:20, 146:22 hired [1] - 77:25 hiring [1] - 82:14 historical [1] - 187:3 history [6] - 140:20, 162:5, 162:7, 168:8, 168:18, 169:14 hit [1] - 224:12 hold [1] - 179:21 holding [1] - 151:7 holiday [1] - 224:2 holidays [2] - 223:5, 223:11 honestly [1] - 134:21 Honor [80] - 5:25, 6:7, 6:17, 7:6, 7:9, 7:20, 8:9, 10:25, 11:4, 11:9, 13:14, 16:7, 18:3, 18:9, 18:15, 18:20, 19:24, 28:17, 31:16, 41:14, 42:24, 46:19, 47:1, 47:10, 48:19, 49:12, 51:12, 52:6, 52:16, 53:14, 53:15, 54:11, 54:21, 55:8, 58:8, 68:2, 99:18, 99:23, 100:7, 100:16, 100:18, 101:10, 103:6, 103:23, 105:13, 105:20, 108:22, 109:7, 110:7, 111:23, 112:24, 113:6, 113:7, 114:14, 116:20, 117:20, 117:25, 118:8, 118:11, 119:7, 123:23, 131:4, 134:22, 137:4, 138:3, 139:4, 141:3, 142:9, 142:18, 143:10, 144:21, 145:20, 147:2, 147:6, 147:13, 147:24, 222:22, 222:24, 223:3, 223:15 Honor's [2] - 50:20, 222:25 Honorable [1] - 1:22 hope [2] - 148:15, 151:4 hospitality [1] - 206:2 hospitality-menu-related [1] - 206:2 host [3] - 123:3	137:20, 138:8 hours [3] - 99:11, 150:21, 222:12 huge [1] - 85:1 human [15] - 18:8, 18:14, 18:25, 19:4, 20:16, 21:5, 57:16, 77:13, 102:13, 103:4, 137:15, 137:23, 154:21, 196:3, 201:22 humans [7] - 18:16, 18:21, 19:7, 19:11, 20:12, 20:25, 21:1 hundred [1] - 49:7	204:19, 204:23, 206:5, 206:13, 206:19, 207:8, 207:13, 208:15, 211:11, 214:2, 214:6, 214:23, 215:16, 216:13, 220:17, 220:22 ideal [1] - 71:17 ideas [1] - 52:18 identical [2] - 105:14, 105:15 identification [5] - 17:25, 18:1, 61:5, 67:18, 67:19 identified [17] - 10:1, 18:6, 18:15, 19:15, 47:5, 47:10, 48:13, 48:19, 49:19, 50:16, 50:17, 51:24, 52:15, 52:25, 183:3, 209:3 identifier [1] - 39:14 identifiers [1] - 80:25 identifies [1] - 80:13 identify [9] - 5:18, 17:22, 54:7, 71:2, 99:21, 177:4, 177:14, 181:22, 182:4 identifying [3] - 40:20, 156:10, 206:20 identity [17] - 12:6, 17:7, 17:11, 31:4, 31:8, 32:12, 35:8, 35:11, 35:12, 35:14, 36:2, 36:5, 36:19, 38:22, 157:12, 159:5, 162:17 IDs [2] - 83:3, 83:4 ignores [2] - 24:15, 181:24 II [1] - 16:22 illustrate [1] - 101:10 illustration [1] - 97:14 image [1] - 137:10 imagine [1] - 15:12 impact [1] - 30:24 impacts [1] - 214:16 implement [7] - 27:14, 29:7, 90:19, 94:22, 183:14, 206:13, 207:13 implementation [2] - 58:1, 159:11 implemented [5] - 38:15, 79:9, 120:19, 139:9, 175:20 implementing [2] - 94:23, 203:19 implicate [1] - 45:16	implies [2] - 95:19, 96:4 importance [2] - 161:16, 215:22 important [17] - 14:1, 26:6, 40:21, 42:22, 47:16, 49:18, 50:18, 52:9, 80:22, 92:12, 96:12, 118:1, 123:9, 141:8, 146:21, 156:7, 185:18 importantly [3] - 44:2, 176:25, 207:16 improve [5] - 82:6, 117:13, 175:22, 187:14, 216:3 improved [3] - 93:23, 190:21, 196:9 improvement [9] - 134:25, 175:25, 188:1, 190:10, 191:2, 201:9, 201:16, 208:7, 208:11 improvements [5] - 180:2, 189:24, 190:2, 210:4, 218:8 improving [1] - 187:16 IN [2] - 1:1, 1:2 inability [2] - 26:24, 43:9 inadequate [1] - 139:15 Inc [24] - 3:14, 3:20, 3:21, 155:24, 169:5, 172:14, 173:16, 176:3, 186:1, 191:22, 191:24, 193:7, 201:18, 201:19, 205:21, 206:25, 207:1, 225:11, 225:12, 225:13 INC [4] - 1:9, 1:12, 1:14, 1:17 include [25] - 29:6, 29:8, 30:3, 31:18, 38:13, 61:16, 63:16, 80:3, 156:17, 157:8, 160:7, 165:5, 165:16, 167:13, 171:13, 191:7, 200:1, 200:8, 203:20, 206:11, 214:8, 215:1, 216:25, 218:2, 219:9 included [4] - 61:4, 61:8, 162:11 includes [12] - 31:25, 32:6, 44:1, 80:5,	133:16, 156:23, 157:4, 163:19, 182:3, 183:2, 189:5, 196:9 including [9] - 52:14, 61:6, 72:12, 152:3, 170:5, 185:13, 200:12, 210:20, 215:13 inclusion [3] - 168:2, 208:6, 211:19 incorporate [2] - 69:17 incorporated [1] - 29:13 incorporates [1] - 152:5 incorrect [4] - 24:8, 24:11, 24:17 increased [1] - 190:22 incredible [1] - 61:21 incredibly [1] - 42:11 Indeed [1] - 164:6 indeed [6] - 167:6, 175:5, 187:17, 189:12, 194:25, 209:23 independent [15] - 9:15, 9:24, 11:6, 15:10, 70:5, 70:6, 70:9, 70:14, 72:15, 72:16, 92:7, 153:11, 182:19, 182:23, 183:24 index [5] - 36:21, 70:3, 182:8, 183:23, 189:3 indexing [9] - 56:7, 56:19, 61:9, 175:2, 176:23, 178:15, 182:18, 182:21, 186:19 indicate [7] - 40:6, 40:8, 96:17, 97:4, 161:1, 189:14, 194:8 indicates [2] - 43:8, 213:21 indication [6] - 40:10, 61:9, 213:15, 213:18, 213:21, 215:8 indicator [4] - 117:8, 130:4, 130:6, 151:3 indices [1] - 63:17 indirect [1] - 191:16 individually [2] - 24:15, 196:17 industry [1] - 165:13 ineligibility [1] - 13:17 ineligible [8] - 13:21, 51:9, 108:9, 144:4,
--	--	---	---	--

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202 Ashfield Court, Smyrna DE 19977

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192:6, 204:25, 212:2, 221:13 infer [1] - 42:24 Infobionic [1] - 176:3 information [103] - 28:24, 28:25, 29:9, 29:10, 29:11, 32:4, 32:5, 32:6, 32:8, 32:9, 34:3, 34:5, 35:15, 35:16, 35:17, 35:18, 36:15, 36:18, 36:22, 38:16, 39:22, 39:24, 40:3, 40:12, 40:15, 40:19, 40:20, 40:22, 43:19, 44:15, 55:23, 61:6, 69:24, 75:15, 75:17, 75:19, 77:10, 79:5, 81:4, 82:22, 86:11, 86:21, 86:25, 87:2, 87:18, 89:11, 90:14, 97:22, 101:13, 101:20, 106:3, 109:14, 110:1, 114:23, 115:6, 118:2, 126:6, 132:4, 132:11, 136:14, 142:13, 142:20, 142:24, 143:16, 144:2, 144:5, 144:6, 144:7, 144:10, 144:24, 145:3, 145:24, 145:25, 147:22, 148:5, 153:20, 156:22, 157:25, 158:23, 163:11, 166:2, 169:20, 177:6, 179:22, 181:23, 182:5, 183:12, 184:14, 186:23, 187:3, 187:8, 187:15, 187:19, 188:14, 188:19, 189:2, 191:9, 195:11, 206:2, 221:5, 223:6 informing [1] - 130:22 informs [2] - 130:14, 130:15 infringement [3] - 65:6, 153:14, 191:17 infringes [1] - 174:2 infused [1] - 16:11 ingenuity [2] - 154:21, 196:3 inherent [1] - 59:20 initials [1] - 3:12 innovation [2] - 47:15, 156:6 input [3] - 40:16,	86:17, 102:13 inputs [2] - 88:11, 93:15 inputted [1] - 187:8 inputting [3] - 187:3, 188:20, 189:2 inquiries [1] - 205:14 inquiry [9] - 14:9, 19:13, 38:8, 68:13, 155:17, 155:22, 172:20, 182:15, 216:6 InQuisient [9] - 2:15, 3:14, 4:3, 54:5, 54:12, 73:4, 150:6, 173:16, 225:11 INQUISIENT [1] - 1:9 InQuisient's [1] - 54:16 inscrutable [1] - 69:6 instance [5] - 85:24, 87:12, 90:23, 91:22, 94:1 instances [1] - 18:19 instantiation [1] - 77:11 instead [28] - 25:1, 32:16, 38:13, 48:18, 57:13, 60:11, 60:14, 82:7, 87:10, 89:25, 90:3, 100:20, 103:24, 120:1, 155:2, 158:1, 161:15, 162:3, 164:14, 171:24, 175:24, 179:15, 180:10, 196:7, 199:2, 206:23, 217:19, 223:7 instruct [1] - 206:12 instructed [1] - 176:4 instructions [3] - 99:12, 181:18, 182:8 instrument [1] - 45:5 integrated [1] - 139:10 Integration [5] - 27:9, 35:24, 44:7, 157:9, 167:13 integration [10] - 12:2, 29:14, 29:18, 31:21, 32:1, 32:18, 33:17, 38:20, 44:1, 72:1 intend [1] - 150:12 intended [2] - 108:24, 179:1 intends [1] - 140:2 interact [1] - 119:17 interacts [1] - 75:9 interconnect [1] - 89:14	interest [1] - 59:5 interested [1] - 149:15 interface [4] - 34:25, 87:16, 88:10, 183:15 interfaces [6] - 87:13, 123:13, 123:14, 124:4, 139:9, 219:9 interim [1] - 173:14 intermittent [2] - 122:24, 129:11 INTERNATIONAL [2] - 1:6, 225:10 international [3] - 3:9, 6:19, 152:13 International [1] - 152:14 internet [7] - 19:22, 20:24, 49:5, 137:22, 155:23, 156:2, 161:12 internet-based [1] - 161:12 interpret [1] - 70:15 interrelate [7] - 56:24, 68:17, 75:1, 81:9, 89:23, 179:11, 183:23 interrelated [3] - 70:4, 175:18, 185:15 interrelates [1] - 62:15 interrelating [2] - 182:18, 182:22 interrelationship [4] - 61:17, 81:14, 81:21, 83:23 interrelationships [1] - 180:1 interrupted [1] - 131:2 intersected [1] - 61:7 interviewing [1] - 77:23 intricacies [1] - 28:9 intricate [1] - 179:10 introduce [1] - 112:6 introductory [1] - 150:9 invalid [2] - 7:25, 108:9 invalidate [2] - 24:2, 24:11 invent [1] - 22:18 invented [3] - 35:2, 113:15, 187:5 invention [32] - 26:10, 27:22, 43:8, 47:14, 48:4, 50:19, 89:5, 105:18, 109:2, 114:3, 116:9, 132:20, 133:4, 134:23, 147:15,	160:5, 160:7, 166:17, 183:13, 184:1, 187:13, 199:8, 199:12, 203:20, 203:22, 208:10, 210:21, 210:24, 211:1, 215:18, 217:18 inventive [32] - 16:4, 16:6, 16:12, 24:15, 47:22, 48:4, 48:9, 48:11, 48:12, 53:1, 110:11, 110:12, 119:3, 165:6, 165:16, 166:9, 168:20, 170:25, 171:13, 188:17, 188:24, 202:24, 203:17, 204:18, 206:11, 207:11, 208:2, 208:18, 211:24, 218:15, 221:3 inventiveness [2] - 16:23, 43:2 inventors [5] - 46:2, 119:24, 120:16, 123:6, 129:20 involve [6] - 111:13, 135:13, 158:9, 165:10, 178:14, 210:13 involved [2] - 47:21, 121:13 involves [3] - 103:3, 139:24, 208:12 involving [1] - 137:1 iPad [1] - 22:13 Ironically [1] - 207:2 issue [55] - 8:11, 12:13, 15:22, 30:21, 42:1, 46:1, 47:20, 51:21, 53:1, 56:14, 61:2, 99:6, 110:9, 110:15, 116:5, 146:22, 150:14, 154:3, 155:16, 156:4, 163:4, 165:4, 168:4, 168:14, 169:10, 172:3, 172:15, 182:1, 184:8, 185:13, 185:20, 186:12, 186:18, 187:21, 188:15, 189:19, 189:22, 190:6, 191:12, 191:19, 192:10, 193:5, 194:19, 195:20, 196:25, 198:18,	202:17, 205:20, 206:19, 207:7, 208:12, 220:17, 221:6, 222:14, 224:6 issued [2] - 153:5, 186:14 issues [15] - 11:15, 43:4, 51:25, 52:1, 138:4, 146:8, 148:21, 151:21, 171:9, 192:8, 210:7, 220:1, 221:20, 223:21 issuing [2] - 44:19, 150:17 item [2] - 98:6, 187:9 items [1] - 98:8 itself [46] - 31:9, 70:22, 76:24, 77:21, 79:20, 82:7, 82:18, 83:10, 85:23, 87:11, 87:19, 90:13, 106:1, 107:8, 108:23, 109:1, 109:16, 112:9, 113:22, 127:14, 128:6, 130:22, 136:23, 140:24, 143:13, 143:18, 145:2, 145:11, 147:8, 157:22, 162:3, 176:14, 181:9, 185:9, 189:11, 191:2, 203:4, 203:15, 211:11, 212:20, 212:22, 214:16, 214:23, 217:4, 219:24, 220:4 IV [2] - 115:11, 115:12 lyer [1] - 100:3
J				
January [1] - 225:23 Janvi [1] - 100:2 Jason [1] - 54:13 JASON [1] - 2:13 Jay [2] - 100:2, 118:12 Jennifer [1] - 54:22 JENNIFER [1] - 2:17 Jersey [1] - 98:25 job [4] - 62:23, 89:3, 90:2, 161:19 jobs [1] - 160:25 Jodie [1] - 54:24 JODIE [1] - 2:20 joined [4] - 6:4, 6:19, 54:13, 100:8 judge [3] - 48:8, 99:1,				

DEANNA WARNER, CSR

202 Ashfield Court, Smyrna DE 19977

Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

146:18 Judge [8] - 29:24, 33:7, 36:25, 45:7, 46:12, 46:15, 98:24, 127:21 judges [1] - 48:7 judgment [4] - 186:17, 189:21, 192:1, 192:23 judicial [1] - 156:12 jump [1] - 118:14 jurisprudence [1] - 47:5 juxtapose [1] - 48:14	73:18, 75:12, 80:7, 86:18, 120:7, 191:9 Kingdom [1] - 170:9 kitchen [2] - 108:3, 108:7 knock [1] - 169:10 knowing [4] - 12:13, 24:24, 35:21, 51:4 knowledge [1] - 170:13 known [4] - 78:20, 165:13, 168:12, 187:12 knows [4] - 8:9, 8:12, 123:22, 143:19	Latency [1] - 129:12 latter [3] - 133:12, 158:16, 163:18 law [9] - 6:3, 45:3, 45:11, 100:9, 112:21, 150:25, 151:21, 168:24, 169:18 laws [1] - 171:5 lay [1] - 142:16 layer [5] - 60:9, 68:6, 69:22, 69:23 layers [3] - 18:4, 60:5, 176:19 laying [1] - 198:10 LAYTON [1] - 2:6 Layton [2] - 6:17, 99:24 lead [1] - 138:15 lead-in [1] - 138:15 leads [2] - 70:1, 72:13 learns [1] - 145:1 least [26] - 10:11, 12:18, 13:3, 13:8, 18:10, 41:5, 59:16, 61:16, 109:5, 111:11, 114:4, 118:5, 118:17, 149:24, 174:2, 177:19, 177:25, 178:9, 180:14, 185:21, 201:10, 202:14, 204:7, 207:20, 218:18, 221:6 leave [5] - 57:15, 172:17, 173:4, 222:5, 223:2 leaving [1] - 60:11 left [11] - 7:3, 15:25, 41:1, 49:15, 71:5, 94:14, 97:11, 97:19, 105:5, 118:4, 184:20 legal [3] - 152:1, 152:6, 213:25 legs [1] - 53:23 lend [1] - 30:9 length [1] - 151:2 lengths [1] - 113:1 lengthy [1] - 151:1 less [2] - 133:11, 216:1 letter [8] - 18:3, 110:8, 173:5, 173:8, 206:22, 222:5, 222:8, 223:25 letters [1] - 13:25 level [19] - 18:4, 21:12, 28:5, 56:4, 56:16, 57:3, 67:20, 78:5,	80:1, 141:19, 142:1, 142:2, 142:4, 157:20, 157:21, 158:14, 160:8, 164:1, 197:3 levels [2] - 68:1, 141:14 liberal [1] - 88:14 light [14] - 148:6, 153:16, 155:18, 166:8, 167:25, 171:8, 172:9, 172:21, 182:14, 190:24, 193:22, 196:18, 223:5, 223:10 likely [3] - 19:9, 97:3, 148:14 likewise [1] - 27:9 limitation [10] - 17:4, 17:5, 80:2, 162:25, 165:19, 165:20, 167:20, 168:11, 187:23 limitations [29] - 11:19, 12:8, 12:14, 13:1, 15:10, 15:14, 17:4, 22:21, 38:25, 79:13, 83:15, 91:17, 127:6, 136:2, 136:17, 162:24, 165:18, 165:22, 166:7, 166:14, 166:25, 167:24, 168:20, 169:8, 180:8, 193:21, 207:20, 208:5, 209:18 LIMITED [2] - 1:3, 225:9 limited [6] - 3:8, 136:11, 152:12, 152:22, 173:8, 222:8 line [15] - 23:2, 23:3, 84:4, 85:25, 87:21, 88:6, 95:16, 95:17, 95:25, 96:1, 113:12, 137:8, 139:6, 139:20, 140:4 lines [15] - 11:4, 50:17, 84:12, 84:13, 92:11, 92:21, 92:22, 95:9, 95:23, 95:25, 101:15, 108:25, 128:13, 131:7, 139:16 link [12] - 9:9, 9:10, 21:11, 21:13, 21:17, 45:9, 69:10, 85:5, 153:2, 155:5, 165:25	linked [2] - 9:2, 9:8 linking [2] - 26:5, 155:14 links [1] - 85:16 list [5] - 10:19, 60:18, 63:18, 65:22, 219:9 listed [2] - 104:14, 127:7 listing [1] - 126:24 literally [4] - 22:3, 141:9, 142:12, 143:15 litigation [2] - 149:2, 149:6 LLC [8] - 152:3, 152:15, 172:14, 175:8, 176:2, 186:1, 186:4, 225:25 LLP [4] - 2:2, 2:9, 2:19, 100:10 local [2] - 139:13, 200:10 locally [1] - 70:24 location [1] - 217:3 logic [7] - 29:7, 29:8, 29:13, 83:9, 90:5, 91:4, 91:12 logical [8] - 62:2, 64:3, 64:5, 64:10, 66:9, 91:5, 190:4, 190:7 look [35] - 16:2, 16:15, 19:5, 27:18, 29:24, 33:7, 34:2, 45:7, 46:16, 49:16, 55:12, 56:9, 56:20, 57:7, 57:13, 57:22, 60:1, 73:7, 77:20, 83:2, 83:20, 87:20, 90:11, 91:16, 92:20, 95:15, 101:1, 120:21, 127:21, 134:5, 138:1, 148:6, 215:3, 215:9, 222:25 looked [3] - 42:25, 75:21, 92:11 looking [16] - 15:25, 35:16, 38:7, 45:3, 65:10, 78:4, 94:3, 94:4, 127:3, 144:21, 156:16, 157:13, 158:5, 176:5, 176:13, 177:10 looks [7] - 32:2, 32:4, 57:4, 75:16, 90:9, 92:22, 138:23 loyalty [32] - 10:2, 10:3, 12:25, 17:20, 24:13, 25:21, 32:7, 42:2, 52:17, 153:19, 154:11, 154:13,
K	L			
KAYE [1] - 2:9 Keefe [4] - 100:9, 100:11, 100:15, 118:16 KEEFE [24] - 100:16, 102:24, 103:5, 103:22, 105:12, 105:20, 105:24, 107:9, 107:13, 108:21, 110:22, 111:22, 112:23, 114:14, 116:19, 118:8, 141:3, 142:9, 143:9, 144:14, 145:15, 145:19, 146:14, 147:2 keeps [1] - 90:3 Kelly [2] - 6:17, 99:25 KELLY [1] - 2:6 kept [1] - 110:24 key [14] - 25:25, 29:24, 41:4, 68:13, 79:16, 80:15, 87:17, 103:1, 178:20, 180:2, 209:3, 214:8, 215:21 keys [3] - 91:2 kin [1] - 12:20 kind [31] - 15:19, 20:20, 22:4, 22:8, 27:16, 29:16, 37:11, 42:20, 59:10, 59:21, 60:1, 61:14, 71:15, 71:16, 77:15, 78:10, 79:19, 80:14, 80:17, 85:9, 91:14, 119:13, 124:7, 124:8, 124:12, 126:17, 132:2, 145:16, 149:3, 164:13, 193:14 kinds [11] - 28:1, 64:11, 67:12, 71:22,	lack [2] - 183:20, 184:24 land [4] - 112:17, 117:24, 167:17, 168:16 land-based [2] - 167:17, 168:16 language [30] - 23:8, 24:14, 38:6, 47:13, 47:18, 55:12, 55:13, 61:13, 69:6, 82:1, 85:9, 104:3, 109:7, 109:8, 125:12, 156:10, 156:13, 157:18, 159:15, 166:15, 176:13, 179:17, 181:17, 185:9, 190:16, 196:22, 203:5, 206:7, 213:12, 219:20 laptop [2] - 122:16, 122:18 large [5] - 37:2, 111:8, 129:16, 151:22, 164:2 largely [1] - 194:5 last [16] - 27:25, 46:24, 69:25, 72:12, 93:4, 93:8, 99:8, 99:10, 99:17, 138:16, 140:17, 148:18, 151:14, 191:21, 192:12, 216:17 lastly [2] - 5:2, 35:6 latency [10] - 116:23, 129:12, 131:2, 131:8, 131:10, 138:5, 143:4, 219:3, 220:1			

DEANNA WARNER, CSR

202 Ashfield Court, Smyrna DE 19977

Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

155:8, 156:19, 156:22, 156:24, 157:6, 157:15, 157:22, 157:24, 158:8, 159:6, 159:13, 159:19, 159:25, 161:3, 164:17, 164:18, 166:2 lumped [1] - 209:25 lunch [2] - 4:5, 148:10 lytle [1] - 140:6 LYTLE [27] - 99:18, 118:11, 118:25, 121:17, 122:2, 123:23, 124:9, 124:16, 125:11, 126:22, 127:3, 127:15, 129:7, 130:14, 130:18, 131:4, 131:23, 132:10, 133:19, 134:21, 135:16, 137:4, 138:2, 139:3, 140:3, 140:10, 223:17 Lytle [6] - 100:2, 118:10, 118:12, 118:13, 127:19, 143:2	74:8, 74:15, 74:16, 75:24, 77:19, 81:5, 86:15, 88:10, 89:18, 92:4, 95:21, 96:7, 182:8, 183:23 management [33] - 12:2, 15:2, 21:11, 21:21, 25:16, 27:2, 29:14, 29:18, 31:3, 32:1, 34:23, 35:19, 35:23, 35:24, 38:20, 43:12, 43:25, 44:1, 50:4, 73:6, 73:13, 81:6, 89:19, 101:5, 138:21, 153:1, 155:7, 167:17, 176:1, 194:23, 196:9, 199:23, 205:10 Management [5] - 27:10, 44:7, 44:12, 157:9, 167:13 managing [10] - 56:7, 56:19, 75:7, 84:9, 86:22, 175:2, 176:22, 178:15, 182:17, 182:21 manipulating [2] - 176:16, 182:3 manner [7] - 43:18, 50:10, 70:5, 179:23, 182:19, 183:24, 203:11 manual [19] - 102:21, 102:22, 103:3, 111:14, 111:18, 112:4, 112:5, 137:1, 137:13, 137:18, 137:25, 138:13, 139:1, 139:5, 139:7, 200:23, 201:15, 201:22, 204:8 manually [11] - 102:11, 103:19, 137:5, 138:14, 138:17, 138:19, 138:22, 199:21, 199:23, 200:19, 201:12 map [1] - 122:8 mark [1] - 23:17 Markman [2] - 98:23, 98:24 match [2] - 101:8, 125:15 material [2] - 171:23, 212:13 materially [1] - 209:21 matter [17] - 5:20, 24:9, 54:6, 104:12,	112:19, 113:2, 134:24, 152:19, 155:21, 159:23, 171:3, 192:6, 205:1, 212:2, 213:25, 221:14, 223:12 matters [1] - 152:8 Mayo [1] - 7:24 mean [11] - 9:8, 13:18, 14:7, 58:25, 70:10, 72:15, 85:17, 86:4, 86:8, 136:14, 205:16 meaning [2] - 106:10, 195:17 meaningful [8] - 10:7, 10:21, 15:5, 20:15, 20:19, 165:9, 171:22, 193:20 meaningfully [3] - 8:13, 8:23, 169:14 meanings [1] - 97:3 means [17] - 13:20, 15:20, 16:9, 17:8, 23:19, 61:9, 65:3, 66:15, 66:19, 70:13, 71:1, 85:19, 86:9, 129:12, 144:2, 161:6, 181:17 meant [7] - 68:22, 70:7, 92:25, 108:19, 116:23, 169:8, 201:7 meanwhile [1] - 106:25 mechanism [27] - 21:15, 21:17, 22:1, 22:3, 22:17, 25:2, 25:5, 25:9, 26:1, 26:5, 74:8, 155:16, 158:3, 158:13, 158:19, 158:21, 160:11, 160:14, 160:23, 161:9, 161:14, 161:17, 161:19, 161:21, 162:21, 164:13, 167:12 mechanisms [1] - 159:11 media [4] - 109:20, 113:13, 113:14, 117:24 Media [1] - 109:22 medical [4] - 101:12, 101:15, 115:4, 119:19 medium [3] - 9:18, 153:9, 157:23 mediums [1] - 160:25 meet [1] - 221:7 melled [1] - 171:6	memory [2] - 190:23, 209:13 mention [2] - 171:15, 215:16 mentioned [6] - 14:21, 60:11, 96:10, 119:19, 163:23, 223:3 Mentor [1] - 169:5 menu [1] - 206:2 mere [1] - 201:14 merely [6] - 9:21, 52:22, 178:24, 181:1, 202:4, 207:13 message [3] - 115:14, 160:17, 200:24 messages [1] - 34:6 met [1] - 171:12 Meta [1] - 152:3 Metadata [1] - 215:8 metadata [137] - 55:15, 55:16, 55:22, 56:8, 56:19, 57:13, 57:20, 57:21, 58:14, 58:18, 58:23, 59:8, 59:14, 59:25, 60:3, 60:5, 60:9, 60:10, 60:18, 60:21, 63:14, 63:16, 63:19, 64:20, 65:15, 65:17, 66:16, 66:20, 69:18, 69:22, 69:23, 70:19, 78:10, 81:16, 81:18, 81:21, 93:11, 93:16, 95:2, 95:4, 96:15, 96:25, 97:8, 97:9, 97:10, 97:13, 98:4, 113:20, 113:21, 113:24, 114:6, 114:23, 115:16, 115:21, 116:1, 116:7, 116:12, 116:13, 116:14, 118:18, 119:5, 128:5, 128:6, 128:9, 128:10, 128:15, 128:17, 128:18, 128:23, 129:5, 129:14, 129:15, 129:22, 129:24, 130:9, 130:24, 131:13, 131:18, 131:21, 132:4, 132:8, 132:14, 132:16, 132:18, 133:2, 133:10, 133:17, 141:5, 141:22, 141:24, 142:10, 144:18, 175:3, 176:19, 176:24,	178:16, 178:25, 179:1, 179:12, 181:1, 181:8, 182:9, 185:14, 212:17, 212:21, 212:23, 213:3, 213:6, 213:13, 213:17, 214:9, 214:15, 214:20, 214:21, 215:3, 215:6, 215:15, 215:23, 216:3, 216:9, 217:2, 217:7, 217:9, 217:16, 217:24, 218:21, 219:10, 219:12, 219:16, 219:23, 219:24, 221:1, 221:9 metadata-related [1] - 214:21 metaphysically [1] - 59:10 method [10] - 9:16, 9:17, 9:19, 20:4, 21:8, 50:1, 153:8, 157:23, 183:22, 220:13 method's [1] - 215:14 methodology [1] - 201:22 methods [6] - 70:3, 160:25, 184:3, 184:6, 186:18, 202:9 Metzler [1] - 6:20 METZLER [1] - 2:7 MGM [9] - 1:6, 2:11, 3:8, 6:18, 6:19, 152:13, 152:14, 225:9 Microsoft [1] - 186:4 middle [12] - 27:11, 31:23, 31:25, 33:9, 37:7, 105:7, 106:2, 107:5, 107:16, 122:10, 123:8, 131:6 might [31] - 13:6, 17:10, 23:7, 68:8, 82:8, 89:3, 90:18, 102:10, 102:13, 103:17, 112:4, 112:5, 116:22, 116:24, 117:2, 117:16, 117:18, 120:21, 121:19, 122:4, 129:17, 131:2, 131:24, 134:4, 146:23, 149:16, 159:9, 171:10, 172:19, 178:25, 203:11
M				
machine [20] - 59:17, 77:15, 89:6, 90:20, 90:22, 90:24, 91:8, 91:23, 92:4, 94:19, 94:23, 131:12, 137:21, 178:7, 178:8, 178:13, 180:13, 180:14, 180:24, 219:6 machines [3] - 91:25, 92:2, 155:6 magic [2] - 107:19, 147:20 magically [6] - 106:13, 106:15, 106:19, 106:21, 107:2, 107:5 mail [4] - 103:18, 120:12, 200:21, 200:24 mailing [1] - 137:6 mails [1] - 115:13 maintain [1] - 109:4 major [1] - 88:14 man [4] - 31:23, 31:25, 33:9, 37:7 manage [18] - 70:3, 73:9, 73:16, 74:6,				

DEANNA WARNER, CSR

202 Ashfield Court, Smyrna DE 19977

Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

42:16, 48:6, 53:24, 66:8, 66:11, 66:14, 70:2, 73:18, 75:10, 76:11, 76:13, 76:25, 77:6, 82:10, 88:17, 88:21, 89:1, 89:24, 101:14, 101:22, 102:3, 108:4, 108:7, 137:15, 146:1, 173:10, 183:22 needed [3] - 77:8, 150:16, 159:22 needs [6] - 69:11, 71:2, 94:5, 119:21, 142:25, 199:15 NEFF [1] - 100:7 Neff [1] - 100:8 negatively [1] - 220:7 nervous [1] - 47:1 net [1] - 11:5 network [48] - 21:3, 21:10, 47:23, 49:4, 104:9, 104:15, 110:20, 111:3, 111:12, 111:18, 114:21, 120:17, 121:12, 121:15, 123:4, 124:3, 129:18, 129:19, 129:25, 134:25, 135:19, 136:3, 153:1, 155:24, 160:12, 161:15, 186:21, 194:24, 195:8, 195:14, 195:19, 195:24, 196:8, 197:4, 198:20, 202:6, 203:8, 205:6, 207:9, 207:22, 210:7, 210:8, 211:13, 214:7, 214:19, 216:14, 220:14 network-based [1] - 160:12 networking [3] - 20:7, 48:9, 48:10 networks [6] - 47:22, 118:20, 122:22, 129:10, 141:16, 207:25 never [12] - 97:17, 102:18, 104:2, 106:12, 107:21, 108:10, 109:19, 110:1, 117:20, 167:19, 193:8, 211:2 nevertheless [2] - 210:2, 216:6 new [20] - 28:10,	29:11, 43:17, 47:22, 75:14, 75:22, 75:23, 79:4, 103:20, 115:8, 130:17, 145:1, 169:3, 175:21, 182:2, 182:21, 187:5, 188:9, 205:12 New [1] - 98:25 NEW [2] - 225:3, 225:21 newer [1] - 139:8 newest [1] - 47:4 news [1] - 33:3 next [10] - 58:3, 67:20, 98:1, 98:10, 122:7, 131:14, 141:19, 160:5, 197:21, 212:5 NICHOLS [1] - 2:17 Nichols [1] - 54:22 nodes [1] - 207:22 nominally [1] - 21:10 non [2] - 13:6, 159:25 non-concrete [1] - 159:25 non-preemptive [1] - 13:6 nonabstract [2] - 189:23, 210:4 nonautomatic [1] - 112:2 none [4] - 43:13, 44:9, 48:17, 123:19 normal [2] - 86:3, 86:7 normally [1] - 20:9 notably [1] - 186:13 note [10] - 10:11, 151:6, 158:6, 161:14, 168:21, 171:24, 182:25, 209:23, 210:25, 215:24 Note [1] - 142:19 noted [20] - 5:3, 27:18, 27:24, 152:9, 161:8, 162:10, 168:9, 172:9, 187:4, 189:11, 193:18, 196:19, 201:20, 202:20, 203:18, 204:24, 205:13, 218:6, 220:6, 220:9 notes [12] - 11:9, 41:16, 159:18, 161:20, 163:8, 180:17, 184:5, 198:1, 198:23, 199:16, 219:8, 225:16 nothing [21] - 78:7, 104:25, 110:12,	137:13, 141:9, 142:12, 144:6, 145:2, 145:15, 146:2, 147:4, 147:5, 147:16, 150:24, 163:13, 172:1, 188:3, 189:18, 199:11, 210:17, 211:18 notify [1] - 130:1 notion [4] - 85:14, 112:2, 117:6, 143:13 novel [4] - 12:16, 47:22, 168:25, 205:15 novelty [5] - 16:21, 16:23, 168:23, 171:9, 205:14 November [1] - 170:7 NOW [1] - 1:12 now-updated [1] - 213:7 Number [6] - 3:21, 174:7, 191:23, 225:9, 225:10, 225:12 number [16] - 3:10, 10:11, 61:5, 61:9, 67:18, 67:19, 85:15, 125:18, 143:1, 151:22, 152:24, 173:17, 174:3, 174:5, 200:5, 214:25 numbers [3] - 171:25, 192:13, 192:14 numerous [2] - 18:16, 203:22 nurse [2] - 119:21, 136:10	off-the-shelf [1] - 48:20 offering [1] - 108:8 Office [2] - 103:18, 103:19 office [12] - 6:20, 50:5, 54:14, 99:25, 101:18, 103:17, 120:9, 122:15, 122:17, 153:5, 169:6 office's [1] - 103:21 officer [1] - 54:16 offices [2] - 101:17, 115:4 OFFICIALLY [1] - 225:20 offline [9] - 21:21, 27:6, 31:24, 32:20, 33:25, 155:10, 155:14, 159:24, 166:1 offline/online [1] - 166:3 often [4] - 27:20, 50:13, 148:22, 151:25 OID [1] - 62:17 old [7] - 30:5, 37:15, 39:13, 76:3, 113:6, 125:9, 137:25 older [2] - 198:5, 198:9 once [13] - 25:18, 50:11, 76:22, 77:18, 86:24, 87:5, 87:6, 98:21, 99:16, 102:3, 110:10, 121:5, 162:13 one [163] - 7:6, 7:10, 11:25, 13:25, 17:10, 17:20, 17:21, 18:2, 21:12, 22:20, 23:1, 25:6, 25:25, 27:1, 29:6, 35:3, 37:3, 37:9, 39:5, 40:13, 41:1, 41:18, 41:21, 46:7, 48:21, 49:10, 50:2, 51:9, 56:16, 57:10, 61:24, 63:20, 65:12, 74:14, 75:21, 76:1, 76:19, 79:12, 79:14, 79:20, 79:21, 81:2, 83:2, 83:7, 84:11, 84:14, 84:16, 90:21, 91:6, 94:3, 95:17, 96:15, 98:3, 98:6, 98:7, 98:12, 100:23, 101:7, 102:3, 102:9, 103:6, 103:16, 110:24,	111:14, 114:16, 114:21, 115:24, 117:3, 117:18, 121:17, 122:12, 122:15, 122:16, 122:17, 125:1, 125:18, 127:18, 128:15, 131:5, 132:13, 134:2, 134:5, 134:13, 136:15, 137:17, 137:22, 139:11, 139:14, 139:19, 140:1, 140:4, 140:10, 141:12, 141:14, 141:18, 142:1, 144:5, 146:7, 146:8, 148:18, 148:22, 148:23, 149:24, 150:20, 151:9, 154:19, 155:6, 156:13, 160:10, 162:14, 168:7, 169:18, 171:20, 176:19, 177:9, 177:16, 177:19, 177:22, 177:24, 178:1, 178:3, 178:8, 178:9, 178:12, 179:11, 180:12, 180:14, 180:21, 182:6, 182:23, 183:17, 184:21, 185:23, 187:21, 189:6, 191:10, 193:9, 194:21, 198:11, 198:14, 200:7, 202:14, 207:21, 208:24, 209:10, 211:8, 211:9, 211:11, 211:20, 214:17, 215:3, 216:21, 218:19, 219:11, 220:2, 222:12, 223:24 one-to-many [1] - 219:11 one-to-one [1] - 219:11 ones [5] - 34:22, 112:3, 119:2, 137:1, 184:6 online [41] - 10:2, 21:22, 25:2, 26:25, 27:4, 28:2, 29:19, 31:24, 32:19, 33:25, 35:1, 36:9, 37:3, 38:11, 40:4, 40:5, 40:16, 40:18, 42:3, 43:10, 43:25, 50:3,
O				
object [2] - 61:4, 61:8 obtain [1] - 149:13 obtained [2] - 84:6, 189:13 obvious [1] - 169:9 obviously [9] - 5:4, 6:25, 12:14, 16:2, 44:24, 51:1, 56:10, 68:12, 128:1 obviousness [1] - 16:21 occurred [1] - 181:12 occurring [1] - 18:24 occurs [1] - 11:10 October [1] - 173:13 OF [4] - 1:2, 1:19, 225:2, 225:3				

DEANNA WARNER, CSR

202 Ashfield Court, Smyrna DE 19977

Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

ServiceNow Ex. 1013 Page 77 of 89

01/02/2023 03:01:06 PM

50:4, 153:20, 154:12, 155:5, 155:9, 155:11, 155:14, 156:19, 156:25, 158:24, 159:19, 159:24, 161:4, 163:11, 164:17, 166:1, 167:15, 167:16, 168:15 open [2] - 63:18, 103:19 open-ended [1] - 63:18 opening [2] - 10:25, 178:22 operate [3] - 115:22, 135:20, 190:11 operates [1] - 82:7 operating [2] - 124:17, 131:25 operation [4] - 93:23, 165:24, 175:22, 197:19 operational [1] - 203:22 operations [1] - 200:20 operative [6] - 152:17, 153:14, 173:20, 184:18, 208:4, 208:17 opinion [2] - 150:14, 187:11 opinions [1] - 224:7 opportunities [1] - 8:3 opportunity [4] - 51:3, 52:3, 172:7, 223:1 opposed [4] - 127:12, 145:17, 158:13, 159:12 opposing [2] - 49:12, 53:5 options [3] - 201:11, 219:2, 220:8 oral [11] - 127:23, 151:1, 151:22, 162:19, 164:7, 165:20, 173:13, 180:17, 184:19, 219:15, 224:8 orally [5] - 4:15, 148:17, 150:11, 150:12, 150:17 ordains [1] - 11:10 order [20] - 5:3, 46:1, 77:3, 155:25, 158:7, 160:24, 161:19, 164:23, 172:25, 173:13, 181:19,	187:9, 191:19, 196:19, 198:4, 198:8, 201:22, 204:8, 204:15, 222:10 ordered [1] - 24:16 orders [2] - 108:6, 173:13 ordinary [3] - 123:25, 124:1, 187:18 organization [4] - 75:12, 82:5, 89:16, 91:5 organize [1] - 98:8 organized [2] - 90:10, 90:13 organizing [4] - 69:21, 97:12, 97:25, 98:16 oriented [1] - 198:24 original [3] - 49:25, 51:14, 86:12 originally [1] - 153:2 otherwise [14] - 7:2, 12:11, 59:15, 109:3, 118:23, 134:19, 152:9, 194:8, 201:14, 201:21, 203:11, 209:1, 214:16, 221:16 ourselves [1] - 129:9 outcome [2] - 170:1, 210:15 outcomes [1] - 151:18 outset [1] - 192:7 outside [3] - 48:9, 139:12, 207:24 over-generalized [1] - 175:15 overall [4] - 11:21, 89:5, 162:2, 170:13 overcame [1] - 49:22 overcome [2] - 50:8, 220:1 overgeneralization [1] - 24:18 overlay [1] - 45:2 overlaying [1] - 17:24 overly [1] - 160:21 oversimplified [1] - 176:9 oversimplifies [1] - 185:17 oversimplifying [1] - 176:5 overview [1] - 119:1 own [5] - 52:23, 106:25, 107:3, 148:23, 183:14 owned [1] - 152:22 owns [1] - 109:3	P P.A [1] - 2:6 P.C [1] - 2:13 page [9] - 43:22, 50:22, 51:24, 127:5, 178:22, 179:19, 179:24, 181:15, 209:24 pages [4] - 173:6, 209:5, 222:6, 225:18 painful [1] - 112:25 palms [1] - 120:6 panel [1] - 168:19 panel's [1] - 169:22 paper [2] - 72:25, 135:18 papers [1] - 8:21 paradigm [5] - 119:12, 119:14, 119:25, 120:1, 120:2 paragraph [10] - 10:17, 46:11, 46:13, 46:16, 50:15, 109:9, 131:7, 138:16, 167:10, 171:20 paragraphs [6] - 46:11, 50:12, 53:15, 85:8, 109:10, 138:18 paramaters [1] - 188:9 parameters [2] - 186:24, 187:24 parentheses [1] - 10:18 parlance [1] - 196:1 parrot [1] - 199:10 part [29] - 26:4, 29:13, 36:2, 38:3, 39:21, 40:1, 50:19, 80:4, 85:1, 85:12, 91:21, 102:21, 116:2, 116:17, 121:14, 127:22, 132:23, 137:25, 141:8, 175:12, 181:3, 185:21, 185:23, 195:22, 204:1, 206:5, 211:10, 216:9, 222:11 participants [1] - 4:11 particular [58] - 11:19, 12:5, 13:1, 14:5, 23:7, 29:17, 32:11, 35:3, 35:22, 35:23, 39:12, 46:11, 53:9, 56:12, 60:21, 62:13, 62:21, 64:11, 67:21, 68:23, 72:3, 78:14, 84:8, 85:23, 89:16,	90:18, 90:21, 90:23, 91:22, 92:1, 92:6, 93:14, 93:20, 126:11, 135:10, 135:12, 135:25, 137:7, 142:7, 158:2, 162:1, 168:25, 179:12, 179:21, 182:4, 182:5, 185:12, 185:13, 185:15, 189:5, 189:7, 190:3, 190:7, 191:9, 206:8, 219:16 particularity [10] - 31:13, 37:13, 38:2, 39:16, 39:20, 42:17, 61:22, 92:20, 158:21, 161:18 particularized [8] - 14:10, 30:8, 64:18, 66:13, 121:15, 160:21, 161:5, 198:21 particularly [7] - 29:25, 96:11, 136:2, 146:7, 181:25, 184:16, 204:14 particulars [1] - 158:12 parties [11] - 3:6, 3:25, 4:6, 4:19, 5:5, 13:23, 149:25, 150:18, 151:23, 180:18, 185:19 Partner [4] - 27:9, 44:7, 157:9, 167:13 partner [7] - 12:1, 29:14, 29:18, 31:25, 35:24, 38:20, 44:1 parts [4] - 53:9, 84:10, 84:19, 85:2 party [2] - 8:12, 222:16 pass [1] - 19:18 passed [1] - 191:3 past [1] - 77:1 Patent [1] - 174:7 patent [262] - 7:22, 7:23, 8:5, 9:14, 15:5, 17:1, 17:13, 18:24, 20:10, 20:14, 20:23, 20:24, 21:9, 24:3, 24:6, 26:15, 26:21, 26:23, 27:19, 28:15, 28:21, 28:25, 29:2, 34:12, 47:8, 47:17, 47:19, 47:20, 48:14, 48:15, 51:8, 51:21, 52:24, 57:14, 57:23, 58:7, 58:12, 60:3,	60:8, 60:13, 62:20, 63:14, 63:19, 64:23, 65:4, 65:19, 68:20, 69:7, 69:14, 70:11, 70:16, 70:22, 71:17, 71:18, 71:21, 72:21, 73:3, 77:14, 77:15, 79:3, 79:10, 79:11, 79:15, 82:16, 83:13, 83:25, 84:2, 84:4, 84:11, 84:19, 84:25, 87:24, 92:21, 92:24, 95:8, 95:16, 97:10, 101:3, 102:6, 103:25, 105:10, 108:9, 108:23, 108:25, 109:1, 111:6, 111:12, 111:25, 112:2, 113:25, 114:2, 114:3, 115:20, 116:2, 116:18, 120:11, 123:1, 125:14, 126:19, 127:14, 128:19, 129:2, 129:9, 132:23, 133:13, 133:18, 134:19, 136:16, 136:17, 136:23, 138:3, 138:6, 138:12, 138:13, 139:23, 140:2, 140:20, 143:7, 149:2, 149:6, 151:8, 152:21, 152:24, 152:25, 153:2, 153:3, 153:4, 153:12, 153:22, 153:25, 155:1, 156:3, 156:7, 159:22, 160:4, 160:20, 161:11, 161:24, 161:25, 162:5, 163:13, 163:14, 163:25, 164:8, 164:25, 168:23, 168:24, 169:2, 169:6, 171:3, 171:4, 171:5, 171:16, 171:19, 172:16, 174:3, 174:5, 174:6, 174:8, 174:10, 174:11, 174:12, 174:16, 174:19, 177:11, 182:13, 183:1, 183:21, 184:2, 184:9, 184:15, 184:23, 185:10, 185:11, 185:25, 186:3, 186:12,
---	--	--	--	--

DEANNA WARNER, CSR

202 Ashfield Court, Smyrna DE 19977

Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

188:7, 189:11, 189:13, 189:17, 189:22, 190:6, 192:13, 193:12, 193:13, 194:1, 194:3, 194:10, 194:21, 194:22, 194:25, 196:6, 196:17, 196:24, 199:8, 199:9, 199:15, 199:16, 199:25, 200:5, 201:24, 201:25, 202:4, 202:8, 202:25, 203:3, 203:18, 203:25, 204:4, 204:14, 204:22, 204:25, 205:2, 205:20, 206:16, 207:3, 207:7, 207:16, 208:16, 208:22, 208:25, 209:1, 209:2, 209:6, 209:20, 209:23, 210:13, 210:18, 210:20, 210:23, 210:24, 211:4, 211:25, 212:1, 212:2, 212:4, 212:8, 212:14, 213:11, 213:12, 215:4, 215:5, 215:7, 216:18, 216:20, 216:21, 217:11, 217:14, 217:20, 217:21, 218:24, 219:3, 219:6, 219:22, 220:7, 220:25, 221:13, 222:1 patent's [8] - 159:18, 165:15, 201:20, 204:24, 211:18, 215:9, 217:17, 219:20 patent-eligible [3] - 164:25, 202:25, 204:22 patent-in-suit [1] - 152:24 patent-ineligible [3] - 204:25, 212:2, 221:13 patentability [4] - 9:22, 12:18, 125:1, 156:12 patentable [2] - 126:14, 201:16 patented [4] - 18:18,	19:17, 43:23, 116:9 patentee [15] - 8:13, 18:20, 47:24, 51:3, 51:9, 51:20, 138:23, 146:9, 156:5, 187:4, 187:22, 189:13, 193:19, 199:14, 201:6 patentee's [1] - 188:15 patents [100] - 26:7, 55:25, 59:3, 59:25, 98:11, 98:13, 105:14, 105:19, 109:11, 113:18, 113:23, 114:5, 114:13, 118:18, 119:1, 119:10, 119:12, 123:24, 128:2, 128:3, 128:8, 130:5, 132:15, 132:21, 132:24, 133:1, 133:7, 133:9, 133:14, 134:3, 134:9, 135:17, 135:22, 146:11, 148:7, 155:24, 156:2, 174:3, 174:9, 174:12, 174:15, 174:21, 174:23, 175:16, 176:14, 180:4, 182:16, 182:20, 183:11, 186:12, 189:1, 192:5, 192:9, 192:12, 193:1, 193:2, 193:4, 193:16, 193:25, 194:4, 194:12, 194:16, 194:19, 195:1, 196:14, 209:25, 212:5, 212:6, 212:7, 214:1, 214:9, 214:13, 214:24, 215:12, 215:18, 215:20, 215:21, 215:25, 216:1, 216:8, 216:16, 216:18, 216:19, 216:22, 216:24, 216:25, 217:13, 217:23, 218:1, 218:11, 218:15, 218:18, 221:7, 221:12, 221:15, 221:17, 221:24, 222:1, 222:11 patents' [1] - 218:19 patents-in-suit [7] -	192:5, 192:9, 193:25, 194:16, 195:1, 215:20, 216:1 patient's [1] - 119:20 PATRICK [1] - 2:10 Patrick [2] - 6:21, 55:1 patron [1] - 155:11 patron's [1] - 155:8 patterns [1] - 151:19 pay [1] - 114:25 payments [1] - 18:3 peer [4] - 48:8, 207:22 peer-to-peer [2] - 48:8, 207:22 peers [1] - 207:9 people [11] - 19:22, 20:2, 75:7, 78:18, 78:21, 82:20, 86:11, 87:16, 97:23, 102:23, 120:4 people-focused [1] - 102:23 per [5] - 4:20, 5:4, 88:25, 144:4, 158:14 perceived [2] - 43:8, 145:6 percent [1] - 56:10 percentage [1] - 111:8 perception [1] - 145:6 perform [5] - 82:12, 167:15, 200:19, 201:11, 205:7 performance [2] - 139:11, 165:11 performed [2] - 30:22, 197:19 performs [1] - 27:10 perhaps [5] - 18:8, 18:17, 101:12, 109:17, 163:1 permissible [1] - 215:9 person [5] - 23:4, 33:17, 103:19, 123:24, 123:25 person's [4] - 86:1, 86:5, 153:20, 156:19 personally [1] - 150:20 perspective [5] - 12:17, 18:14, 71:25, 110:24, 209:22 phenomenon [1] - 19:20 phone [4] - 107:18, 115:7, 122:4, 122:16 phrase [7] - 70:6, 70:9, 108:16, 108:17, 121:13, 131:19, 132:16	physical [2] - 22:4, 190:4 physically [1] - 201:3 pick [1] - 115:6 picked [1] - 206:22 picture [2] - 125:6, 129:16 piece [34] - 12:11, 12:19, 12:22, 13:2, 13:8, 13:12, 16:10, 16:24, 19:4, 20:17, 22:1, 27:11, 27:25, 47:16, 63:9, 65:9, 81:24, 88:12, 103:1, 109:13, 114:6, 115:1, 115:2, 118:2, 141:22, 142:12, 142:20, 143:6, 143:16, 144:2, 144:25, 168:7, 169:13 pieces [10] - 15:3, 32:14, 48:3, 48:20, 65:17, 81:1, 87:18, 103:11, 108:15, 136:13 PIMS [57] - 12:1, 15:2, 15:8, 15:15, 16:3, 17:4, 17:5, 22:20, 28:9, 29:16, 29:19, 29:24, 30:4, 30:6, 30:11, 30:15, 30:16, 30:20, 30:24, 31:2, 31:5, 31:9, 31:10, 31:13, 31:17, 32:9, 32:16, 32:20, 32:22, 33:4, 33:8, 33:9, 33:12, 33:23, 34:10, 35:8, 37:6, 37:22, 38:3, 41:9, 42:13, 49:11, 49:17, 49:20, 50:7, 52:8, 157:9, 159:3, 162:16, 162:25, 163:19, 163:22, 165:19, 167:2, 167:20, 168:11 PIMS' [1] - 164:4 pit [1] - 23:11 pivot [1] - 21:16 pizza [2] - 140:15, 205:21 place [11] - 72:18, 76:1, 83:12, 87:22, 87:24, 103:14, 104:4, 144:5, 148:23, 199:5, 211:15 places [3] - 96:16, 121:10, 218:9	placing [2] - 121:20, 147:20 plain [1] - 190:25 plaintiff [91] - 5:25, 6:3, 8:2, 8:19, 10:16, 11:12, 11:18, 15:20, 21:12, 47:5, 51:24, 56:16, 56:25, 147:3, 149:11, 152:23, 153:13, 153:24, 154:14, 154:25, 155:3, 155:13, 158:4, 161:8, 162:4, 162:9, 163:15, 164:3, 164:11, 165:17, 165:21, 166:11, 166:13, 166:18, 166:24, 167:5, 167:7, 167:11, 167:19, 168:4, 168:6, 168:9, 168:17, 169:15, 169:19, 170:4, 170:10, 170:16, 171:2, 171:19, 172:6, 172:10, 172:25, 173:3, 174:1, 174:17, 175:5, 175:12, 175:16, 176:11, 177:7, 179:19, 179:25, 186:2, 189:16, 193:6, 193:8, 195:22, 196:13, 196:16, 202:3, 202:7, 202:8, 203:8, 204:1, 204:10, 204:13, 204:16, 205:4, 206:20, 207:4, 209:25, 210:2, 210:17, 211:16, 220:18, 221:18, 221:22, 221:24, 222:4, 222:23 Plaintiff [10] - 1:4, 1:10, 1:15, 54:12, 69:1, 181:15, 181:25, 193:10, 196:4, 209:4 Plaintiff's [1] - 175:20 plaintiff's [35] - 3:18, 5:21, 8:22, 23:23, 47:11, 54:8, 68:5, 68:11, 71:12, 76:9, 94:18, 94:25, 96:9, 98:19, 99:20, 116:3, 118:7, 148:2, 162:20, 164:7, 167:3, 169:11,
--	---	--	---	---

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202 Ashfield Court, Smyrna DE 19977

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181:5, 181:12, 184:17, 185:1, 185:22, 186:15, 191:16, 209:24, 210:9, 215:19, 219:14, 220:1, 220:11 Plaintiffs [1] - 109:9 plaintiffs [5] - 3:11, 13:9, 65:6, 152:22, 155:15 plane [1] - 120:10 platforms [1] - 159:14 plausible [4] - 51:17, 170:25, 181:14, 218:14 plausibly [1] - 166:9 play [2] - 35:12, 218:21 plea [1] - 4:9 plead [1] - 51:17 pleaded [1] - 167:19 pleading [2] - 152:2, 221:4 pleadings [2] - 192:1, 192:23 plug [1] - 102:15 plurality [3] - 80:13, 177:14, 186:20 point [31] - 10:12, 10:23, 13:9, 13:13, 19:24, 21:7, 22:2, 23:17, 27:17, 33:15, 63:23, 68:13, 71:6, 85:2, 87:8, 97:19, 110:2, 124:22, 127:22, 136:1, 136:20, 140:8, 140:10, 140:12, 140:17, 166:11, 168:6, 185:1, 193:9, 197:16, 197:24 point-cast [1] - 110:2 pointed [8] - 12:7, 12:9, 16:4, 85:7, 133:23, 162:4, 187:22, 210:17 pointedly [1] - 184:5 pointing [1] - 154:5 points [5] - 5:9, 83:4, 94:16, 177:8, 179:19 populate [4] - 62:5, 76:23, 77:16, 89:15 populated [3] - 66:8, 66:11, 66:14 populating [2] - 67:9, 67:11 port [1] - 22:6 portability [1] - 183:20 portable [1] - 74:4	Porter [1] - 6:21 porter [1] - 7:21 PORTER [1] - 2:9 portion [12] - 25:8, 78:17, 93:19, 115:25, 160:10, 168:17, 181:9, 191:17, 191:20, 201:5, 214:13, 218:19 portions [5] - 26:20, 93:25, 95:8, 148:3, 161:1 Portuguese [1] - 23:12 posed [1] - 119:8 posit [1] - 66:6 POSITA [5] - 52:19, 126:19, 134:16, 166:20, 168:1 posited [3] - 9:12, 11:12, 15:24 position [6] - 77:23, 161:7, 170:5, 185:22, 199:13, 215:19 possibility [1] - 109:16 possible [11] - 8:4, 42:9, 65:21, 101:14, 102:17, 111:4, 111:5, 111:9, 155:8, 172:18, 200:6 possibly [2] - 69:17, 168:8 Post [2] - 142:19, 142:25 Post-it [2] - 142:19, 142:25 posted [2] - 119:20, 186:20 posting [1] - 186:25 potential [3] - 63:18, 102:12, 223:13 potentially [1] - 208:2 power [1] - 142:23 Power [1] - 144:4 practice [3] - 20:3, 49:6, 79:23 practitioner [1] - 206:13 Pre [1] - 215:7 pre [2] - 147:14, 215:5 preamble [3] - 21:8, 157:20, 157:23 precedential [1] - 140:14 precisely [2] - 51:11, 166:20 predefined [1] -	187:25 predominant [1] - 119:14 preempt [13] - 13:4, 13:18, 13:20, 14:5, 14:12, 42:8, 103:10, 168:3, 169:23, 188:19, 204:2, 204:11, 220:21 preemption [20] - 13:10, 13:13, 13:16, 13:17, 13:24, 14:1, 14:8, 14:15, 14:16, 14:19, 19:24, 110:7, 110:8, 110:14, 110:16, 110:23, 112:19, 136:20, 156:13, 169:19 preemptions [1] - 205:2 preemptive [1] - 13:6 prefer [2] - 35:9, 36:8 preference [18] - 12:5, 17:6, 17:9, 17:23, 22:22, 22:23, 31:3, 31:7, 33:10, 34:10, 35:25, 36:6, 38:24, 41:11, 157:11, 159:4, 162:17, 163:21 preferences [8] - 28:12, 28:20, 34:4, 34:8, 34:14, 34:20, 36:23, 38:22 prejudice [2] - 8:2, 8:7 preliminary [1] - 5:14 premised [1] - 173:19 preparation [1] - 207:8 prepared [2] - 33:21, 43:5 preparing [1] - 108:12 prescription [2] - 101:21, 115:8 presence [1] - 179:4 present [6] - 15:15, 47:14, 64:9, 67:14, 193:19, 225:7 presentation [4] - 7:8, 8:1, 100:12, 222:15 presentations [2] - 5:1, 5:2 presented [2] - 213:16, 213:18 presenting [1] - 187:7 pressed [1] - 202:15 presumably [4] - 30:11, 58:17, 58:20, 111:6 pretty [4] - 28:5, 69:5,	133:21, 135:23 prevent [2] - 15:22, 131:15 preview [1] - 149:3 previous [1] - 125:15 previously [6] - 148:6, 165:12, 165:25, 182:1, 186:24, 189:11 primarily [1] - 193:23 primary [3] - 79:16, 80:15, 91:2 principle [1] - 97:1 prioritization [6] - 128:14, 141:6, 143:14, 214:15, 219:23, 221:1 prioritize [4] - 114:10, 118:18, 129:21, 146:4 prioritized [21] - 128:6, 128:9, 128:17, 128:18, 128:23, 129:5, 132:14, 132:16, 133:2, 133:10, 133:17, 214:20, 215:3, 215:6, 215:8, 215:14, 215:23, 216:3, 217:15, 217:24, 221:9 prioritizing [8] - 109:13, 113:20, 113:24, 114:5, 116:1, 128:5, 129:14, 132:17 priority [9] - 119:5, 129:21, 129:22, 133:25, 144:16, 212:18, 212:19, 212:22, 219:18 problem [61] - 16:17, 24:7, 27:4, 27:22, 28:2, 28:6, 43:9, 43:16, 48:13, 68:21, 68:25, 69:4, 69:11, 72:4, 72:8, 72:21, 73:14, 73:22, 75:2, 76:3, 76:11, 83:24, 85:4, 88:3, 89:23, 100:20, 101:3, 101:4, 103:11, 109:1, 112:3, 114:14, 120:7, 128:21, 129:11, 131:8, 131:9, 131:15, 134:5, 134:9, 135:11, 137:5, 138:6, 138:9, 138:18, 138:19,	142:9, 143:4, 143:25, 160:2, 165:8, 166:23, 169:25, 184:4, 200:6, 200:18, 204:13, 211:22, 219:1, 219:3, 219:7 problematic [4] - 71:24, 83:18, 111:9, 200:9 problems [18] - 26:13, 27:7, 46:3, 102:9, 115:24, 122:21, 139:6, 139:8, 139:12, 139:14, 140:1, 146:17, 184:13, 184:23, 199:14, 199:25, 200:16, 218:22 procedural [8] - 73:18, 77:2, 82:8, 87:12, 90:1, 90:3, 90:19, 192:8 procedural-type [1] - 77:2 Procedure [1] - 192:2 procedures [1] - 90:6 proceed [2] - 25:20, 155:22 proceeding [1] - 162:10 proceedings [4] - 54:3, 99:15, 149:21, 225:8 process [27] - 4:5, 16:14, 16:25, 40:17, 48:11, 60:17, 68:18, 74:9, 87:3, 99:11, 102:10, 111:11, 116:16, 118:20, 128:25, 132:19, 143:8, 144:11, 150:19, 200:15, 200:22, 214:17, 214:20, 221:2, 221:10, 222:19, 222:20 processer [1] - 176:16 processes [4] - 77:20, 176:17, 190:5, 201:15 processing [2] - 55:14, 97:21 professional [1] - 170:21 proffered [1] - 154:23 program [5] - 32:7, 113:11, 122:3, 159:25 programmer [2] -
--	---	--	---	--

DEANNA WARNER, CSR

202 Ashfield Court, Smyrna DE 19977

Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

76:5, 124:2 programming [5] - 106:10, 106:20, 107:2, 117:22, 123:13 programs [4] - 123:9, 124:4, 124:17, 159:19 proliferation [3] - 120:5, 200:1, 200:2 prominence [1] - 179:9 prominent [2] - 215:22, 217:24 prominently [1] - 117:10 prone [1] - 200:3 pronounced [1] - 5:25 pronouncing [1] - 3:18 properly [2] - 115:2, 221:25 propose [1] - 31:17 proposed [3] - 173:6, 186:15, 214:5 proprietary [1] - 34:24 prosecution [5] - 162:4, 162:7, 168:8, 168:18, 169:14 protocols [1] - 199:24 provide [16] - 4:14, 15:14, 34:1, 44:3, 67:6, 141:19, 148:16, 155:6, 164:3, 165:6, 166:3, 196:11, 199:19, 214:24, 223:2, 224:8 provided [7] - 7:7, 40:19, 43:20, 155:23, 166:18, 169:19, 206:6 provider [1] - 168:16 provides [4] - 32:18, 35:15, 62:3, 170:11 providing [6] - 4:16, 52:22, 150:10, 155:5, 186:22, 190:22 proximate [1] - 213:18 public [2] - 20:9, 162:7 pull [3] - 75:14, 87:9, 90:14 purport [1] - 187:5 purported [3] - 103:11, 154:15, 160:1 purportedly [2] - 175:21, 184:12 purpose [6] - 74:3,	113:3, 113:4, 203:20, 203:23 purposes [14] - 8:21, 10:22, 13:10, 43:6, 74:1, 105:11, 148:24, 150:13, 153:23, 171:24, 172:3, 193:4, 193:25, 210:1 pursuant [6] - 152:16, 173:12, 192:1, 192:6, 192:16, 192:21 purview [1] - 19:16 push [1] - 137:23 put [24] - 18:9, 18:11, 42:1, 56:5, 62:19, 66:24, 83:6, 97:14, 99:2, 115:7, 116:25, 120:11, 123:6, 125:11, 131:11, 142:6, 142:7, 169:2, 172:2, 185:6, 191:12, 198:17, 214:2, 219:4 putting [9] - 27:2, 27:11, 46:14, 83:8, 98:22, 112:8, 117:6, 129:8, 136:9	170:24 raise [1] - 30:20 raised [1] - 51:25 raises [1] - 43:4 raising [1] - 223:14 Raja [1] - 100:3 Randy [1] - 54:15 rather [6] - 108:9, 109:11, 182:10, 187:6, 190:4, 190:13 re [1] - 16:19 re-exam [1] - 16:19 read [3] - 72:10, 96:1, 115:15 readable [2] - 113:13, 153:9 readily [1] - 170:20 reading [5] - 71:16, 131:17, 138:3, 151:13, 184:17 reads [1] - 198:17 ready [4] - 4:13, 142:16, 148:11, 148:13 real [13] - 14:10, 56:11, 58:8, 62:20, 64:25, 115:3, 115:22, 120:7, 151:7, 154:22, 158:10, 196:4, 198:21 real-word [1] - 154:22 real-world [3] - 14:10, 196:4, 198:21 reality [2] - 47:6, 180:25 realize [1] - 148:19 really [37] - 5:9, 13:5, 18:21, 20:15, 27:19, 27:20, 28:14, 57:4, 59:6, 64:19, 71:15, 72:11, 98:2, 107:22, 108:4, 110:1, 119:7, 120:3, 124:25, 126:13, 128:21, 132:10, 132:22, 133:12, 134:10, 134:24, 135:22, 138:11, 138:12, 139:18, 151:16, 164:9, 175:6, 180:20, 193:8, 196:20, 214:22 realm [14] - 12:12, 12:22, 14:13, 20:9, 30:12, 41:25, 42:10, 52:25, 105:22, 144:24, 147:17, 147:23, 168:3, 220:16	Realtime [1] - 172:13 reason [11] - 15:17, 34:21, 82:4, 100:19, 137:18, 176:10, 186:8, 189:15, 200:7, 216:15, 218:16 reasonable [1] - 223:10 reasons [16] - 11:5, 136:16, 164:14, 172:4, 173:23, 173:25, 176:8, 185:8, 191:11, 194:14, 200:23, 208:20, 211:24, 214:4, 221:11, 222:2 rebuttal [11] - 7:17, 46:21, 55:9, 71:10, 93:5, 94:15, 100:18, 100:20, 118:6, 127:20, 141:2 receive [2] - 142:24, 197:23 received [4] - 4:22, 106:5, 125:18, 220:5 receives [2] - 32:3, 167:14 receiving [1] - 55:14 recent [2] - 135:1, 196:12 recently [1] - 19:22 recess [6] - 54:1, 54:2, 99:13, 99:14, 149:19, 149:20 recitation [1] - 55:18 recite [2] - 177:1, 182:11 recited [10] - 58:12, 60:20, 61:3, 178:24, 186:18, 187:21, 189:9, 189:23, 210:10, 218:8 recites [1] - 146:3 reciting [2] - 57:11, 175:21 recognition [2] - 170:18, 175:10 reconciled [1] - 102:4 record [38] - 3:2, 3:7, 5:19, 51:5, 54:7, 99:21, 101:13, 101:15, 102:11, 105:10, 119:20, 126:20, 136:15, 146:10, 146:13, 146:19, 147:1, 147:5, 148:8, 149:1, 150:2, 150:3, 150:23, 162:7,	166:6, 166:11, 169:16, 189:20, 207:17, 211:19, 218:13, 221:5, 221:14, 222:14, 222:15, 224:11, 224:14 records [1] - 61:6 red [1] - 48:22 reduce [1] - 76:25 redundant [1] - 200:1 Reduxio [1] - 172:14 reexamination [6] - 12:10, 153:4, 153:6, 162:10, 168:10, 168:19 refer [16] - 93:1, 134:15, 150:5, 152:15, 152:23, 154:7, 155:15, 162:23, 174:4, 174:6, 174:8, 191:24, 192:2, 192:12, 193:7, 209:17 reference [28] - 16:16, 32:15, 41:23, 49:23, 63:6, 64:10, 116:5, 128:14, 131:21, 132:22, 140:21, 152:5, 154:7, 158:18, 160:11, 163:7, 168:12, 169:22, 171:19, 192:11, 193:10, 194:7, 195:18, 209:17, 215:2, 215:13, 215:22, 217:15 referenced [12] - 107:12, 113:25, 114:1, 114:2, 114:7, 132:19, 161:23, 162:22, 163:12, 167:23, 182:1, 203:13 references [1] - 153:13 referential [3] - 190:8, 190:14, 190:20 referred [3] - 78:15, 83:16, 157:10 referring [4] - 3:10, 70:16, 132:5, 194:9 refers [2] - 195:2, 195:5 reflect [1] - 70:7 reflected [4] - 43:12, 79:19, 190:16, 224:5 reflects [2] - 24:6,
Q				
quality [1] - 187:14 questioning [1] - 47:10 questions [13] - 4:17, 5:5, 5:7, 14:23, 55:6, 69:1, 71:14, 71:16, 78:5, 92:8, 94:17, 100:18, 184:19 queueing [1] - 44:14 quick [3] - 92:8, 193:10, 223:24 quickly [3] - 102:16, 131:1, 220:4 Quinn [1] - 54:25 QUINN [1] - 2:19 quintessential [1] - 201:25 quite [9] - 5:10, 11:18, 22:1, 56:10, 88:13, 88:15, 134:21, 138:14, 151:1	R			
R&D [7] - 42:23, 43:20, 43:22, 170:8, 170:11, 170:12,				

DEANNA WARNER, CSR

202 Ashfield Court, Smyrna DE 19977

Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

ServiceNow Ex. 1013 Page 81 of 89

01/02/2023 03:01:06 PM

58:17 regard [14] - 14:2, 29:22, 41:4, 41:7, 41:15, 42:13, 57:2, 115:23, 138:21, 162:9, 163:1, 178:25, 221:23, 222:13 regarding [3] - 151:21, 153:19, 194:17 regardless [1] - 155:10 registered [1] - 40:18 registration [1] - 40:17 reinforce [1] - 151:15 reiterate [1] - 110:13 reiterated [1] - 187:10 rejection [3] - 50:5, 50:6, 50:8 relate [10] - 22:8, 41:20, 46:10, 57:12, 57:17, 59:24, 91:2, 94:9, 157:18, 203:4 related [9] - 36:12, 178:4, 180:12, 194:5, 206:2, 210:7, 214:9, 214:21, 219:10 relatedly [1] - 209:11 relates [6] - 72:6, 76:21, 132:9, 173:24, 204:14, 216:22 relating [6] - 113:20, 130:9, 208:22, 212:3, 217:7, 218:22 relation [3] - 81:10, 177:15, 183:4 relational [3] - 85:13, 86:3, 86:7 relationship [8] - 58:5, 81:8, 82:9, 83:1, 94:5, 96:19, 98:5, 116:6 relationships [18] - 79:18, 79:22, 80:19, 81:10, 89:12, 94:7, 94:20, 95:5, 177:9, 177:16, 178:5, 180:5, 180:10, 182:6, 183:5, 189:6, 191:10, 219:11 relatively [1] - 12:12 relevance [2] - 12:17, 154:1 relevant [10] - 140:12, 148:7, 150:16, 151:25, 152:21,	169:24, 172:23, 192:10, 205:12, 220:23 reliable [1] - 122:23 reliance [2] - 156:9, 221:8 relied [2] - 168:19, 170:17 relies [2] - 81:11, 206:17 rely [3] - 57:1, 204:7, 204:16 relying [1] - 140:13 remain [1] - 204:9 remainder [2] - 174:16, 221:17 remaining [2] - 109:11, 166:15 reminder [2] - 4:1, 210:8 remote [10] - 122:25, 131:12, 137:9, 137:11, 137:19, 139:19, 139:22, 200:8, 219:6, 220:9 remotely [1] - 70:24 render [1] - 169:9 repeatedly [2] - 68:10, 185:10 replace [2] - 198:5, 198:8 replaced [1] - 103:2 reply [6] - 11:8, 50:23, 51:23, 52:5, 179:25, 181:15 report [3] - 95:21, 96:6, 119:21 reported [1] - 225:7 reporter [5] - 3:4, 4:8, 148:12, 149:23, 224:12 Reporter [2] - 225:5, 225:6 repositories [2] - 177:2, 191:6 repository [14] - 56:13, 64:16, 64:17, 71:20, 72:3, 76:9, 76:18, 77:17, 79:5, 175:17, 176:17, 177:11, 179:18, 189:4 represent [2] - 45:25, 67:8 representation [7] - 95:6, 96:12, 116:14, 117:11, 119:15, 213:4, 213:7 representative [30] - 8:17, 9:7, 9:13, 10:9,	11:1, 11:5, 11:18, 24:4, 24:19, 25:6, 41:5, 55:1, 113:19, 128:4, 133:10, 149:24, 153:22, 171:18, 174:15, 174:25, 184:8, 184:12, 193:1, 193:3, 193:19, 193:22, 194:2, 206:15, 206:17, 208:18 representativeness [6] - 8:11, 8:14, 8:20, 8:23, 9:1, 9:11 represented [2] - 12:3, 58:2 representing [3] - 118:12, 151:23, 213:19 represents [1] - 213:7 reproduce [1] - 171:25 request [6] - 32:3, 167:14, 172:7, 223:7, 223:11, 224:3 require [21] - 31:2, 31:14, 32:23, 39:7, 45:3, 68:15, 74:22, 77:24, 83:17, 83:22, 88:16, 88:21, 138:25, 156:18, 156:21, 162:15, 165:24, 180:25, 181:7, 201:11, 210:15 required [21] - 33:6, 39:10, 62:17, 64:12, 67:25, 76:4, 76:25, 89:8, 91:15, 96:24, 117:23, 158:22, 161:18, 164:21, 180:22, 188:8, 188:17, 200:18, 202:21, 207:21, 207:25 requirement [8] - 14:15, 78:8, 81:20, 188:12, 214:14, 217:12, 221:8, 223:24 requirements [14] - 30:10, 31:10, 37:12, 37:24, 56:22, 59:17, 62:10, 71:21, 76:21, 93:15, 153:18, 160:22, 176:7, 190:24 requires [20] - 33:12, 42:5, 45:11, 62:14, 64:16, 68:19, 80:2,	87:5, 137:20, 163:20, 167:2, 197:8, 209:6, 209:12, 212:15, 212:20, 213:2, 213:6, 213:20, 217:5 requiring [2] - 66:4, 187:23 research [2] - 170:7, 171:2 Research [1] - 201:18 resemblance [1] - 100:22 reservations [1] - 108:3 reserve [5] - 7:5, 7:16, 23:20, 55:9, 100:17 reside [1] - 137:12 resided [1] - 138:8 resilient [1] - 44:11 resolution [3] - 44:22, 170:15, 170:18 resolve [1] - 223:20 resolved [1] - 170:21 resolving [1] - 172:15 resorts [2] - 3:9, 6:18 Resorts [2] - 152:13, 152:14 RESORTS [2] - 1:6, 225:10 resource [2] - 75:13, 82:22 resources [3] - 77:13, 200:10, 201:23 respect [12] - 22:18, 39:18, 45:5, 78:3, 80:20, 80:22, 165:2, 167:16, 174:20, 174:22, 194:12, 217:16 respectfully [1] - 223:6 respective [10] - 192:13, 193:2, 193:15, 193:24, 198:15, 203:13, 204:9, 209:8, 212:11, 216:25 respond [1] - 11:8 responded [1] - 61:5 response [4] - 22:2, 37:5, 61:10, 126:23 responsive [1] - 209:14 rest [2] - 71:9, 166:8 restated [1] - 188:14 restates [1] - 210:10 restricted [1] - 68:3 restroom [1] - 53:23 rests [1] - 24:8	result [11] - 38:9, 38:10, 58:14, 60:15, 67:2, 114:20, 157:19, 162:2, 198:24, 199:3, 206:6 result-focused [1] - 206:6 result-oriented [1] - 198:24 resulting [1] - 187:19 retrieval [1] - 61:3 retrieve [4] - 60:17, 87:9, 182:9, 183:23 retrieved [1] - 70:4 retrieves [1] - 176:18 retrieving [8] - 56:8, 97:21, 175:2, 176:23, 178:16, 182:18, 182:22, 186:19 return [3] - 4:6, 4:11, 148:17 reversed [1] - 207:10 review [3] - 53:11, 152:1, 192:22 reviewed [2] - 5:12, 8:18 reviewing [1] - 150:22 rhetorically [1] - 56:17 RICHARDS [1] - 2:6 Richards [2] - 6:17, 99:24 Richardson [1] - 54:12 RICHARDSON [1] - 2:13 rigorous [2] - 150:20, 151:3 role [3] - 165:8, 183:16, 218:21 rooted [4] - 135:3, 135:5, 135:14, 210:5 ROTHSTEIN [21] - 2:9, 7:6, 7:16, 7:19, 10:24, 12:20, 13:11, 14:18, 15:17, 17:12, 17:17, 19:14, 20:22, 21:6, 22:10, 22:25, 23:9, 23:19, 46:25, 50:15, 51:11 Rothstein [9] - 6:21, 6:22, 7:20, 10:6, 29:23, 46:8, 46:22, 50:24, 53:3 route [1] - 218:10 routes [1] - 208:1 routine [7] - 43:3, 44:24, 165:12, 170:20, 171:3, 206:14, 206:18
---	--	--	---	---

DEANNA WARNER, CSR

202 Ashfield Court, Smyrna DE 19977

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routing [1] - 48:10 row [4] - 62:5, 62:9, 67:17, 78:23 rows [12] - 61:4, 61:7, 64:2, 64:11, 66:4, 66:8, 66:11, 67:9, 67:12, 67:21, 78:23, 93:14 Rule [9] - 146:24, 152:16, 173:18, 192:2, 192:16, 192:21, 192:22, 192:24 rule [6] - 109:14, 114:24, 115:15, 143:17 ruled [1] - 207:6 rules [4] - 3:24, 109:15, 115:11, 115:13 running [5] - 74:2, 77:18, 113:3, 120:10, 124:18 runs [2] - 88:5, 124:19 Ryan [1] - 100:10	65:21, 79:9, 82:25 schemas [1] - 68:4 scheme [1] - 129:21 SCHOENBAUM [1] - 99:23 Schoenbaum [1] - 99:24 SCHOLER [1] - 2:9 science [1] - 170:14 scientific [5] - 44:23, 45:20, 45:23, 170:15, 170:19 scope [2] - 30:24, 147:11 screen [3] - 18:11, 18:12, 48:22 se [2] - 144:4, 158:14 SEALED [1] - 225:20 seamless [1] - 199:20 search [1] - 190:23 season [1] - 224:2 seated [1] - 6:12 second [68] - 3:13, 7:10, 11:24, 17:3, 25:24, 39:21, 39:22, 39:23, 40:4, 40:11, 41:8, 41:16, 42:6, 42:20, 42:21, 51:13, 51:15, 52:3, 53:21, 54:5, 63:15, 68:6, 84:15, 101:8, 101:18, 101:24, 106:23, 106:25, 121:23, 122:11, 122:13, 125:20, 125:22, 126:3, 127:8, 140:4, 142:2, 142:4, 152:17, 156:21, 162:15, 167:7, 167:9, 167:11, 169:20, 170:6, 173:15, 177:15, 185:5, 192:15, 197:9, 197:13, 197:16, 197:23, 198:7, 198:8, 208:23, 212:19, 212:24, 212:25, 213:3, 213:5, 213:10, 213:14, 213:16, 213:23, 217:9 secondly [1] - 4:19 Section [8] - 12:16, 151:21, 152:19, 165:10, 169:18, 173:24, 189:19, 209:22 section [40] - 26:10, 27:21, 27:22, 27:25,	28:7, 45:3, 70:1, 72:13, 72:14, 114:3, 132:20, 133:4, 152:1, 153:23, 154:2, 159:18, 160:4, 160:6, 160:10, 160:13, 161:23, 163:13, 165:14, 169:11, 171:23, 172:23, 173:21, 183:12, 183:21, 184:2, 184:5, 184:15, 192:6, 193:4, 199:8, 199:12, 210:22, 210:24, 216:23, 217:18 sections [5] - 105:18, 133:23, 199:10, 215:18, 215:21 see [33] - 5:9, 6:24, 16:3, 36:4, 42:5, 55:18, 60:2, 63:5, 63:6, 63:13, 68:19, 68:20, 68:22, 72:5, 74:21, 74:23, 74:24, 81:7, 84:22, 85:11, 115:9, 127:10, 128:22, 134:4, 151:19, 157:13, 163:19, 164:6, 198:11, 202:15, 203:2, 219:21 seeing [2] - 43:16, 63:1 seek [2] - 201:21, 221:18 seem [11] - 36:12, 134:23, 137:1, 163:6, 180:9, 181:14, 189:16, 197:2, 202:2, 216:20, 217:23 segmentation [1] - 208:1 self [3] - 190:8, 190:14, 190:20 self-referential [3] - 190:8, 190:14, 190:20 selling [1] - 179:6 send [20] - 34:5, 106:16, 106:22, 107:3, 107:20, 109:24, 114:22, 114:24, 115:16, 129:12, 129:23, 131:19, 141:23, 141:25, 142:20, 142:21, 143:17,	144:2, 144:25, 146:1 sender/listener [1] - 160:17 sending [7] - 115:21, 116:13, 128:6, 128:8, 128:17, 209:9, 219:24 sends [1] - 145:3 sense [6] - 19:5, 72:7, 75:6, 77:9, 137:18, 212:8 sensors [1] - 142:5 sent [6] - 101:23, 106:8, 113:22, 128:7, 128:11, 128:19 sentence [6] - 63:15, 69:25, 72:12, 83:18, 131:13, 131:14 sentences [2] - 83:19, 116:7 separate [5] - 36:7, 144:18, 159:20, 200:21, 205:14 separately [1] - 107:13 series [2] - 84:5, 150:4 serious [1] - 134:14 serve [1] - 187:18 server [60] - 11:23, 14:25, 15:1, 16:3, 21:21, 21:22, 25:15, 25:23, 26:12, 27:3, 27:7, 28:8, 28:23, 29:6, 32:4, 33:25, 34:6, 34:7, 37:7, 37:22, 38:3, 38:16, 39:3, 39:25, 40:1, 40:12, 40:23, 41:6, 43:24, 44:10, 49:14, 49:17, 50:2, 50:4, 103:21, 104:16, 104:22, 105:6, 106:8, 106:16, 106:17, 107:7, 107:16, 119:17, 119:21, 119:23, 122:11, 123:2, 123:8, 136:9, 137:11, 137:12, 137:16, 137:24, 142:13, 155:5, 157:5, 158:25, 162:12, 205:6 SERVICE [1] - 1:12 Service [6] - 2:21, 3:14, 54:23, 65:7, 173:16, 225:11 service [12] - 3:5, 10:3, 31:24, 42:3,	154:12, 155:6, 155:9, 158:24, 160:15, 161:4, 164:18, 168:15 services [2] - 31:25, 159:20 set [14] - 57:5, 104:21, 135:19, 135:22, 151:25, 163:25, 164:14, 173:8, 173:25, 175:18, 221:11, 222:7, 222:13, 223:23 sets [2] - 28:21, 191:7 setting [1] - 206:7 seven [5] - 7:17, 23:17, 46:21, 47:2, 100:17 seven-minute [1] - 23:17 seventh [1] - 178:7 several [5] - 11:9, 87:25, 136:1, 139:13, 177:3 Shah [1] - 100:2 shall [2] - 173:3, 222:4 shape [2] - 98:4, 98:7 share [5] - 93:7, 174:9, 174:12, 194:5, 216:19 shared [1] - 166:2 sharing [3] - 119:18, 200:16, 202:10 shed [1] - 171:8 sheds [1] - 182:14 shelf [1] - 48:20 short [3] - 13:11, 29:16, 179:7 short-handing [1] - 29:16 shorthand [5] - 19:8, 150:6, 195:20, 225:7, 225:16 Shorthand [2] - 225:5, 225:6 shortly [3] - 4:12, 150:13, 194:15 show [9] - 79:18, 96:16, 98:1, 121:18, 122:7, 133:8, 169:22, 183:5, 193:13 showed [2] - 65:11, 165:23 showing [3] - 131:11, 208:16, 219:5 shown [6] - 43:21, 82:15, 90:25, 98:6, 109:3, 122:10 shows [12] - 77:15,
S				
S2S [1] - 160:18 Salceda [1] - 55:1 Saliba [1] - 100:3 saloon [1] - 23:11 san [1] - 54:14 Sangalli [7] - 6:5, 23:24, 24:22, 46:6, 53:8, 53:13 SANGALLI [22] - 2:3, 23:25, 25:11, 26:2, 26:19, 28:16, 30:19, 31:16, 33:14, 33:23, 34:12, 34:21, 35:14, 36:14, 38:5, 39:18, 41:13, 42:21, 45:13, 45:20, 46:18, 53:14 Sankey [1] - 6:5 SANKEY [1] - 2:3 SAP [1] - 16:22 SARA [1] - 2:7 Sara [1] - 6:19 satisfactory [1] - 200:8 save [8] - 8:5, 65:25, 71:5, 71:9, 103:20, 118:4, 197:19 saw [4] - 95:7, 97:16, 99:4, 146:17 schedule [3] - 4:1, 173:8, 222:8 schema [4] - 63:16,				

DEANNA WARNER, CSR

202 Ashfield Court, Smyrna DE 19977

Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

ServiceNow Ex. 1013 Page 83 of 89

01/02/2023 03:01:06 PM

79:11, 79:13, 91:1, 104:7, 117:15, 119:15, 125:12, 125:15, 133:5, 133:11 side [25] - 4:20, 5:4, 5:21, 6:14, 7:4, 7:11, 7:12, 8:25, 23:23, 33:3, 41:16, 42:1, 42:17, 49:4, 54:9, 54:19, 61:1, 71:8, 78:6, 90:25, 93:5, 99:20, 100:5, 111:10, 119:8 sides [2] - 18:20, 205:18 SIGNED [1] - 225:20 significance [1] - 193:21 significant [6] - 102:21, 103:3, 159:8, 208:5, 214:12, 216:9 significantly [2] - 24:5, 220:21 signifying [1] - 117:9 silent [2] - 180:4, 180:9 similar [15] - 9:2, 153:18, 160:8, 175:11, 185:20, 186:3, 189:16, 193:14, 195:3, 205:20, 205:23, 209:2, 212:7, 213:12, 217:12 similarity [2] - 95:19, 96:5 similarly [3] - 42:12, 55:20, 170:4 simple [4] - 45:23, 82:13, 101:11, 103:25 simply [41] - 8:15, 11:11, 38:8, 38:10, 42:2, 49:8, 49:19, 56:18, 102:7, 112:7, 143:11, 143:25, 144:23, 145:10, 145:22, 150:15, 157:15, 159:22, 160:13, 161:20, 179:8, 180:25, 181:18, 182:7, 185:16, 188:14, 189:1, 198:10, 199:2, 199:10, 201:21, 203:20, 204:16, 204:21, 205:11, 205:14,	206:18, 210:9, 214:1, 215:11, 216:12 single [8] - 9:13, 24:4, 64:4, 80:21, 93:24, 104:13, 173:5, 222:6 single-spaced [2] - 173:5, 222:6 sits [5] - 32:17, 33:24, 43:24, 107:16, 123:3 situation [1] - 107:25 six [7] - 113:18, 119:1, 127:5, 128:3, 192:9, 194:4, 194:25 sixth [1] - 178:2 skill [3] - 33:18, 123:25, 124:1 skim [1] - 178:19 skip [2] - 14:21, 85:25 slew [1] - 17:25 slide [26] - 8:18, 29:4, 55:13, 56:1, 56:3, 57:22, 58:3, 60:2, 62:1, 63:13, 63:23, 65:11, 65:12, 66:24, 90:18, 91:1, 93:21, 95:7, 96:16, 97:14, 98:1, 98:10, 121:17, 122:7, 125:12, 125:15 slides [10] - 4:23, 5:10, 5:11, 5:12, 68:5, 97:16, 97:18, 98:21, 98:22, 99:2 slightly [3] - 108:14, 195:3, 195:15 slow [1] - 200:15 slower [1] - 129:10 small [3] - 129:15, 145:6, 146:19 smaller [1] - 190:23 smoother [1] - 149:8 so-called [1] - 94:23 soaked [1] - 111:8 SOAP [1] - 160:16 SOAPConnection [1] - 34:16 software [21] - 15:4, 16:11, 22:4, 22:16, 31:11, 33:24, 34:24, 67:16, 110:13, 113:2, 113:11, 124:18, 137:9, 137:19, 139:22, 190:2, 196:10, 200:9, 200:19, 203:15, 220:9 software-based [1] - 22:4 solution [18] - 12:23,	27:23, 28:6, 30:12, 42:4, 43:21, 45:14, 46:4, 69:12, 137:17, 137:19, 137:25, 139:23, 160:2, 165:7, 167:22, 201:12, 220:21 solutions [24] - 14:13, 42:9, 102:20, 102:21, 103:9, 111:4, 111:9, 111:13, 111:19, 136:25, 137:18, 138:13, 138:15, 138:25, 139:7, 139:14, 155:4, 166:21, 168:3, 200:6, 220:12, 220:15, 220:19 solve [12] - 26:15, 68:22, 68:24, 69:3, 128:21, 140:2, 166:23, 169:25, 184:13, 199:15, 211:22, 219:7 solved [5] - 76:2, 85:4, 101:3, 135:11, 143:25 solves [6] - 27:3, 72:4, 72:8, 83:23, 88:3, 184:22 solving [5] - 16:17, 16:18, 48:13, 109:2, 218:22 someone [14] - 23:1, 23:14, 77:22, 78:23, 83:10, 103:13, 103:18, 108:6, 115:6, 115:15, 116:23, 120:22, 121:2, 145:1 sometimes [6] - 26:13, 73:11, 108:15, 108:17, 138:7, 141:13 somewhat [2] - 21:15, 179:9 somewhere [5] - 75:18, 122:25, 142:14, 150:21, 216:20 soon [2] - 148:15, 191:20 sorry [9] - 44:16, 58:3, 63:21, 63:24, 70:18, 92:15, 95:22, 99:19, 193:2 sort [2] - 45:4, 80:19 sought [2] - 165:15, 170:4	sound [1] - 176:21 sounds [7] - 20:11, 20:16, 34:19, 65:16, 66:18, 124:23, 179:14 space [2] - 18:25, 221:3 spaced [2] - 173:5, 222:6 span [1] - 151:14 Spanish [3] - 23:2, 23:4 speaker [1] - 23:5 speaking [1] - 23:20 speaks [2] - 23:4, 96:7 spec [2] - 26:9, 144:17 special [2] - 113:4, 203:23 specialized [1] - 87:13 specific [46] - 30:7, 37:24, 56:21, 57:4, 57:7, 58:10, 58:11, 58:16, 62:2, 63:5, 67:17, 68:3, 73:18, 73:21, 74:1, 74:10, 74:18, 76:6, 76:7, 76:20, 78:13, 78:14, 86:18, 90:12, 95:1, 96:14, 97:9, 104:25, 134:7, 155:4, 159:11, 160:21, 161:5, 175:18, 176:7, 182:11, 183:17, 188:18, 188:22, 190:10, 191:7, 196:7, 196:15, 198:21, 211:17 specifically [14] - 92:5, 96:1, 114:6, 127:13, 136:5, 158:2, 159:17, 168:9, 190:13, 194:13, 196:18, 212:14, 218:18, 221:18 specification [81] - 15:6, 15:19, 16:1, 16:7, 21:19, 24:14, 26:3, 28:17, 30:23, 31:19, 31:20, 34:18, 36:17, 40:15, 47:13, 48:12, 48:25, 49:16, 50:10, 52:13, 52:22, 57:14, 57:23, 63:12, 64:24, 65:5, 65:9, 65:10, 65:19, 78:17, 79:3, 79:15, 85:2, 95:7, 95:15, 96:17, 101:1, 103:7,	104:10, 105:11, 105:13, 107:14, 107:15, 112:25, 113:5, 115:25, 133:22, 145:20, 145:23, 145:24, 147:12, 155:19, 156:3, 156:5, 156:9, 159:16, 161:1, 163:7, 163:24, 164:8, 182:13, 183:16, 185:10, 188:3, 190:19, 194:6, 194:8, 194:9, 196:18, 196:22, 199:6, 201:6, 208:3, 208:9, 210:20, 217:20, 217:21, 218:20, 218:25, 219:7 specifications [1] - 194:11 specificity [13] - 15:11, 30:3, 30:10, 47:12, 62:16, 62:18, 63:2, 87:4, 88:20, 89:8, 133:6, 133:12, 190:15 specifics [3] - 123:19, 158:12, 206:8 specified [12] - 57:21, 74:14, 79:6, 79:22, 80:20, 87:7, 87:17, 91:24, 91:25, 94:1, 94:6, 179:23 specifies [2] - 64:3, 91:9 specify [10] - 60:8, 66:1, 66:3, 75:9, 78:24, 80:18, 86:10, 86:14, 86:20, 92:3 specifying [5] - 60:1, 66:7, 66:10, 66:13, 81:3 specs [1] - 146:6 Speedbudget [1] - 225:25 spells [1] - 84:1 spend [1] - 118:15 spent [3] - 98:23, 150:20, 150:25 spot [2] - 46:14, 83:25 spots [1] - 84:2 spread [1] - 89:20 SQUIRE [4] - 2:2, 5:24, 222:22, 223:15 squire [1] - 5:23 Squire [2] - 6:2, 222:23 ss [1] - 225:2
--	---	---	---	--

DEANNA WARNER, CSR

202 Ashfield Court, Smyrna DE 19977

Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

staff [1] - 108:3 stage [12] - 8:4, 11:20, 24:24, 51:4, 51:7, 146:24, 152:3, 155:17, 169:12, 172:24, 181:11, 221:4 stand [2] - 54:1, 149:19 standard [3] - 48:20, 85:15, 192:22 standards [3] - 152:1, 152:6, 152:7 star [3] - 101:22, 101:24, 179:16 stark [1] - 48:5 start [10] - 5:20, 47:3, 54:8, 55:5, 55:11, 72:18, 97:15, 100:15, 118:21, 118:22 started [4] - 3:23, 50:22, 54:6, 148:14 starting [4] - 87:21, 95:16, 99:21, 120:4 starts [3] - 88:1, 88:5, 139:16 state [21] - 59:12, 59:17, 77:15, 77:17, 82:15, 90:16, 90:19, 90:22, 90:24, 91:8, 91:23, 91:25, 92:2, 92:4, 96:23, 178:7, 178:8, 178:12, 180:12, 180:13, 180:24 STATE [1] - 225:2 statement [1] - 166:19 statements [1] - 219:15 STATES [1] - 1:1 States [5] - 153:4, 154:18, 174:3, 174:5, 174:7 states [2] - 57:24, 198:6 stating [1] - 183:21 status [10] - 59:1, 60:10, 90:21, 91:6, 91:7, 91:20, 91:21, 91:23, 92:2, 178:11 statuses [2] - 77:16, 178:12 stayed [1] - 173:14 Stenotype [1] - 225:7 Step [55] - 11:20, 13:7, 13:15, 14:22, 16:6, 19:13, 20:19, 24:20, 24:21, 24:23, 45:11, 154:9, 154:25,	155:25, 159:17, 162:5, 164:20, 164:21, 165:8, 166:12, 169:15, 170:25, 171:11, 174:25, 176:7, 176:12, 182:15, 185:2, 185:3, 186:9, 188:9, 191:4, 194:24, 196:5, 202:19, 202:20, 203:10, 204:15, 205:4, 206:5, 206:9, 207:11, 210:9, 210:16, 211:16, 213:24, 215:19, 216:6, 216:16, 217:22, 218:9, 218:12, 220:23, 221:8 step [23] - 11:22, 14:25, 16:14, 39:3, 39:11, 40:2, 42:5, 42:11, 49:24, 62:22, 84:23, 112:24, 114:16, 125:18, 157:4, 157:8, 162:12, 162:15, 163:6, 163:7, 163:12, 211:2, 218:6 stepping [2] - 56:15, 81:15 stepping-back [1] - 56:15 steps [17] - 7:24, 9:20, 9:23, 11:6, 11:7, 36:7, 36:12, 114:21, 156:17, 159:9, 209:18, 210:3, 210:12, 210:18, 211:18, 211:20, 211:23 stick [1] - 4:18 sticker [1] - 109:17 still [18] - 17:1, 52:20, 69:24, 76:2, 76:14, 105:4, 107:18, 109:25, 110:15, 114:15, 114:18, 139:6, 139:8, 143:22, 147:23, 150:1, 169:3, 179:6 stip [1] - 14:17 stood [1] - 48:5 stop [5] - 118:5, 142:8, 159:14, 176:25, 182:10 stopping [1] - 176:20 storage [7] - 9:17, 55:20, 61:3, 70:16,	153:9, 175:10, 183:13 store [35] - 57:10, 57:18, 58:18, 60:17, 60:21, 60:24, 67:5, 70:3, 70:20, 70:23, 71:3, 72:6, 80:24, 81:1, 86:3, 86:7, 95:21, 96:6, 177:4, 177:13, 177:16, 177:20, 177:22, 177:24, 178:3, 178:8, 178:12, 180:13, 181:22, 182:4, 182:8, 183:3, 183:22, 185:14, 191:8 stored [15] - 36:18, 59:19, 59:21, 61:10, 80:19, 95:18, 96:3, 97:5, 104:18, 122:25, 163:11, 180:15, 209:12, 213:8, 213:9 stores [3] - 81:10, 81:22, 176:18 storing [14] - 55:15, 56:7, 56:19, 64:20, 70:20, 76:8, 97:21, 175:2, 176:22, 178:15, 182:17, 187:18, 190:13, 195:6 strategies [1] - 116:10 stretch [1] - 53:22 string [1] - 85:15 structural [2] - 79:9, 188:8 structure [77] - 22:5, 28:22, 31:18, 32:23, 32:24, 56:14, 61:19, 61:23, 62:2, 62:13, 63:5, 63:9, 63:10, 63:25, 64:1, 64:8, 64:18, 64:19, 64:25, 66:13, 67:13, 67:21, 68:3, 68:8, 68:15, 71:19, 73:9, 74:20, 75:14, 75:23, 76:17, 76:22, 76:23, 76:24, 77:4, 77:10, 77:21, 78:18, 78:19, 79:6, 80:23, 81:5, 82:4, 82:18, 83:9, 84:9, 85:23, 86:20, 87:14, 88:2, 90:8, 90:11, 90:12, 91:5, 91:11, 93:11, 93:12, 93:13, 93:15, 93:18, 93:23, 94:7, 94:8, 94:24,	144:19, 144:20, 175:19, 181:3, 181:10, 185:12, 187:6, 187:25, 188:4, 188:18 structures [18] - 69:16, 71:22, 75:25, 78:15, 80:16, 83:16, 84:7, 175:18, 175:22, 179:23, 182:11, 188:22, 189:5, 189:7, 189:9, 190:5, 190:21, 191:7 struggled [1] - 22:11 struggling [3] - 32:24, 36:4, 127:10 stuff [5] - 5:14, 28:13, 39:19, 71:23, 79:19 style [1] - 49:8 subject [11] - 24:9, 36:20, 134:23, 152:19, 155:21, 167:4, 171:2, 192:6, 204:25, 212:2, 221:13 subject-matter [1] - 192:6 submit [3] - 140:11, 173:4, 222:4 submitted [1] - 170:9 substance [1] - 25:9 substantial [1] - 11:16 substantially [1] - 9:2 substructures [1] - 179:21 successfully [1] - 221:23 such-and-such [3] - 67:9, 82:9 sudden [1] - 101:16 suffer [1] - 139:11 sufficient [3] - 166:11, 170:24, 221:6 suggest [8] - 68:6, 158:15, 181:7, 188:7, 203:11, 211:2, 211:19, 218:13 suggested [3] - 181:2, 181:16, 188:5 suggesting [4] - 12:15, 20:17, 180:21, 210:18 suggests [3] - 163:15, 179:17, 182:20 Sughrue [1] - 100:1 suit [11] - 113:18, 152:22, 152:24, 192:5, 192:9, 193:25, 194:16,	195:1, 215:20, 216:1, 221:17 suitable [1] - 146:23 SULLIVAN [1] - 2:19 sum [1] - 164:11 summarizes [1] - 160:5 summary [26] - 26:10, 26:23, 27:21, 28:7, 70:1, 72:14, 114:2, 132:20, 133:4, 133:23, 160:4, 160:10, 161:23, 163:12, 184:1, 184:5, 186:17, 186:23, 187:7, 188:13, 189:20, 199:7, 210:21, 210:24, 215:17, 217:17 Sundermeir [1] - 54:11 SUNDERMEIR [2] - 2:14, 54:10 supplemental [1] - 206:21 supplied [1] - 188:16 supply [1] - 188:24 support [12] - 63:12, 65:5, 133:25, 159:16, 166:12, 168:6, 170:5, 173:6, 203:25, 207:18, 215:19, 222:7 supported [3] - 26:3, 31:19, 95:6 supporting [2] - 161:7, 169:21 supports [4] - 21:19, 65:9, 199:6, 199:13 suppose [1] - 21:11 supposed [3] - 49:1, 49:3, 60:17 supposedly [1] - 58:2 Supreme [2] - 151:11, 169:17 surely [2] - 158:18, 214:17 surprise [1] - 98:2 surrebuttal [1] - 46:8 survive [6] - 13:7, 14:14, 51:18, 51:22, 204:15, 205:16 Symantec [2] - 115:11, 115:12 sync [2] - 140:19, 140:23 synchronization [13] - 106:18, 109:5, 132:19, 139:25,
--	---	---	---	--

DEANNA WARNER, CSR

202 Ashfield Court, Smyrna DE 19977

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141:15, 147:17, 205:8, 214:17, 215:24, 216:13, 218:23, 220:8, 221:2 synchronize [5] - 102:17, 114:9, 115:23, 211:12, 214:18 synchronized [8] - 102:5, 108:6, 115:2, 115:18, 116:25, 117:19, 219:19, 220:13 synchronizing [24] - 107:23, 108:16, 110:17, 110:19, 111:1, 111:17, 114:16, 114:20, 119:9, 135:18, 135:19, 139:19, 140:22, 195:6, 195:7, 195:9, 195:18, 195:23, 197:3, 198:19, 202:5, 204:3, 214:6 synchronous [4] - 34:16, 160:14, 161:21, 206:3 synonym [2] - 65:17, 74:11 synopsis [1] - 169:5 System [5] - 27:10, 44:7, 44:12, 157:9, 167:13 system [106] - 9:18, 12:2, 15:3, 21:21, 22:14, 25:16, 27:5, 27:6, 29:14, 29:18, 29:19, 31:3, 32:1, 32:12, 32:19, 32:20, 33:25, 34:1, 35:2, 35:24, 36:9, 37:3, 37:4, 38:11, 38:12, 38:20, 40:6, 43:17, 43:23, 43:25, 44:2, 44:4, 44:13, 50:4, 59:5, 60:12, 60:16, 61:3, 73:13, 73:17, 74:20, 75:3, 75:25, 76:3, 84:9, 88:8, 89:15, 89:19, 104:7, 104:8, 104:25, 105:1, 105:25, 113:9, 117:3, 119:17, 124:18, 131:11, 131:25, 136:4, 139:13, 143:20, 143:22, 153:1, 153:2, 153:10, 155:10,	157:24, 160:12, 160:18, 161:12, 165:25, 167:17, 175:23, 176:15, 182:2, 182:17, 182:21, 183:1, 183:14, 184:11, 187:22, 188:6, 196:9, 196:10, 197:7, 198:11, 200:14, 200:20, 203:14, 203:24, 204:5, 205:10, 205:12, 205:15, 206:3, 215:14, 217:5, 217:8, 218:2, 219:5, 219:18 system's [3] - 183:15, 183:18, 215:2 system-to-system [1] - 160:18 system-type [1] - 124:18 systems [54] - 25:13, 26:25, 27:2, 27:12, 29:7, 34:23, 34:25, 35:4, 35:19, 35:23, 38:4, 43:10, 43:12, 43:15, 47:25, 49:5, 69:16, 70:2, 73:4, 73:6, 73:7, 73:11, 73:15, 81:6, 87:25, 116:22, 131:10, 139:5, 139:18, 140:5, 155:7, 155:14, 160:24, 164:2, 166:1, 172:14, 183:17, 183:19, 183:22, 184:3, 184:6, 186:19, 195:12, 199:17, 199:18, 200:11, 200:17, 202:9, 203:19, 204:4, 209:7, 212:9, 219:1, 220:10	90:24, 91:8, 91:10, 93:19, 93:22, 93:24, 94:3, 94:6, 94:7, 94:8, 95:13, 95:18, 96:4, 100:1, 181:9, 190:9, 190:20 table's [1] - 190:17 tables [12] - 63:16, 65:22, 75:21, 75:25, 79:17, 83:5, 91:3, 93:25, 94:1, 94:4, 94:9, 94:10 tabular [1] - 190:13 taints [1] - 24:18 talks [15] - 22:21, 26:4, 31:20, 73:3, 73:12, 84:5, 87:24, 102:8, 108:23, 116:1, 120:11, 131:7, 136:24, 137:8, 138:12 tape [1] - 117:6 targeted [1] - 155:13 task [2] - 139:15, 200:21 tasks [1] - 76:20 taught [2] - 168:12, 190:14 tax [18] - 42:23, 43:20, 43:22, 44:17, 44:19, 44:20, 44:25, 46:1, 46:10, 52:10, 53:10, 170:8, 170:9, 170:11, 170:17, 171:1, 171:7 teaching [1] - 190:18 Tech [6] - 185:25, 186:10, 187:21, 188:25, 189:8, 225:13 tech [1] - 186:7 technical [2] - 31:22, 160:22 technique [1] - 58:11 techniques [1] - 204:21 technological [8] - 44:23, 155:4, 165:7, 167:21, 170:15, 170:19, 175:25 technologies [1] - 118:12 TECHNOLOGY [1] - 1:14 technology [25] - 3:20, 45:21, 45:24, 54:16, 135:3, 135:6, 135:11, 135:12, 135:15, 166:22, 169:25, 170:14,	180:3, 189:24, 190:1, 191:22, 193:7, 201:17, 207:1, 207:15, 208:7, 210:5, 210:14, 211:22, 218:9 teeth [3] - 89:9, 89:13, 94:20 tended [2] - 200:15, 204:7 term [12] - 9:9, 15:9, 15:13, 30:2, 30:3, 31:22, 35:7, 36:2, 59:6, 65:1, 70:13, 161:8 terminated [1] - 77:24 terms [10] - 5:2, 26:7, 45:4, 62:22, 96:22, 109:24, 111:15, 141:5, 195:3, 198:24 tertiary [1] - 69:23 test [9] - 7:24, 8:6, 9:1, 9:11, 19:18, 188:10, 191:4, 194:17, 205:16 testimony [6] - 33:15, 33:22, 36:21, 41:21, 41:23, 52:18 text [3] - 85:14, 197:1, 197:5 THE [158] - 1:1, 1:2, 3:1, 6:11, 6:24, 7:10, 7:18, 10:5, 11:14, 12:21, 13:22, 15:7, 17:3, 17:15, 19:2, 20:11, 21:4, 21:25, 22:20, 23:6, 23:16, 23:22, 24:22, 25:22, 26:6, 27:16, 29:22, 30:25, 32:22, 33:20, 34:9, 34:19, 35:6, 36:1, 36:24, 39:2, 40:25, 41:15, 44:16, 45:18, 46:6, 46:20, 50:11, 50:24, 53:3, 53:17, 54:4, 54:17, 55:2, 55:10, 56:2, 58:15, 59:9, 60:25, 62:7, 63:8, 63:22, 64:6, 64:14, 65:2, 65:8, 65:14, 65:23, 66:10, 67:11, 67:24, 68:9, 69:25, 70:25, 71:11, 72:24, 73:1, 74:10, 74:19, 76:2, 77:3, 78:4, 79:25, 80:10, 81:7, 81:19, 83:12, 84:10, 84:17, 84:23, 86:4, 86:17,	86:24, 87:20, 88:12, 89:21, 91:14, 92:8, 92:17, 93:3, 94:11, 95:22, 96:3, 96:22, 97:16, 98:18, 99:16, 99:19, 100:4, 100:13, 102:19, 102:25, 103:16, 105:9, 105:15, 105:23, 107:7, 107:11, 108:13, 110:18, 110:23, 112:10, 113:17, 115:20, 118:3, 118:9, 118:13, 120:20, 121:25, 123:19, 124:6, 124:12, 124:22, 126:8, 126:24, 127:5, 127:18, 130:8, 130:17, 130:21, 131:5, 132:7, 132:13, 134:2, 135:4, 136:23, 137:14, 138:10, 139:21, 140:6, 140:25, 141:11, 143:2, 144:10, 145:12, 145:16, 146:6, 146:18, 147:25, 149:22, 223:9, 223:16, 223:19 themselves [18] - 5:19, 54:7, 57:21, 58:12, 60:19, 95:3, 99:21, 106:4, 109:12, 120:12, 122:20, 126:13, 156:16, 158:15, 178:19, 181:4, 181:24, 187:12 thereafter [1] - 130:12 therefore [8] - 13:19, 17:22, 103:9, 171:11, 174:17, 182:7, 191:13, 218:16 therein [2] - 83:17, 199:13 Thereupon [1] - 224:13 they've [4] - 12:9, 42:18, 147:3, 147:4 thinking [9] - 57:20, 60:25, 76:3, 76:4, 76:8, 98:21, 99:2, 131:17, 146:8 thinks [1] - 219:21 third [13] - 3:16, 4:22,
---	---	--	---	---

DEANNA WARNER, CSR

202 Ashfield Court, Smyrna DE 19977

Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

121:24, 122:12, 122:14, 122:15, 127:8, 177:18, 192:25, 197:9, 197:24, 198:4, 209:16 THOMAS [1] - 2:3 Thomas [1] - 6:5 thoughts [2] - 52:23, 149:15 thousand [1] - 56:4 thousand-foot-view [1] - 56:4 three [25] - 3:3, 9:14, 11:17, 19:15, 92:18, 101:15, 107:11, 121:21, 150:5, 150:10, 150:24, 153:6, 153:11, 153:13, 153:17, 154:7, 157:3, 174:3, 174:8, 174:12, 179:24, 192:13, 197:11, 198:15, 222:14 throughout [3] - 96:17, 187:11, 195:4 thrown [1] - 109:25 thumb [3] - 103:13, 120:12, 137:6 tied [1] - 179:22 title [11] - 21:9, 113:25, 132:17, 133:3, 174:9, 208:25, 215:4, 215:6, 215:9, 216:19, 217:14 titled [2] - 152:25, 194:22 titles [2] - 215:4, 215:11 TO [3] - 1:19, 1:21, 225:19 today [63] - 3:3, 3:5, 3:8, 3:13, 3:16, 3:24, 4:1, 4:15, 4:21, 5:11, 7:21, 7:22, 24:1, 33:21, 38:1, 41:3, 41:19, 41:20, 54:13, 54:15, 55:11, 108:12, 148:17, 148:20, 149:4, 150:1, 150:9, 150:12, 150:15, 150:18, 151:1, 151:10, 151:21, 151:24, 152:8, 152:12, 154:2, 157:10, 162:19, 164:7, 165:4,	165:20, 167:1, 173:2, 173:25, 180:17, 184:19, 185:3, 185:4, 185:9, 191:21, 192:11, 192:19, 194:7, 195:1, 196:19, 220:2, 220:10, 222:3, 222:16, 223:23, 224:5, 224:11 today's [4] - 5:13, 173:3, 222:4, 224:7 together [11] - 18:9, 25:14, 29:8, 68:18, 68:24, 97:14, 98:22, 99:3, 104:23, 154:5, 209:25 tons [1] - 83:17 tool [3] - 75:13, 82:5, 102:16 top [3] - 18:5, 88:5, 139:6 TOPIA [1] - 1:14 Topia [11] - 3:17, 3:20, 99:17, 99:18, 118:12, 150:7, 191:22, 193:6, 223:17, 225:12 total [2] - 14:15, 110:14 tout [1] - 164:9 touting [2] - 161:16, 164:1 toward [1] - 175:25 towards [1] - 116:5 trace [3] - 48:10, 208:1 track [2] - 57:2, 157:21 trademark [1] - 153:5 traditionally [1] - 34:23 transcribe [1] - 224:7 transcribes [1] - 150:15 TRANSCRIPT [1] - 1:19 transcript [3] - 224:6, 225:15, 225:17 transfer [19] - 25:20, 109:23, 115:23, 119:5, 121:6, 123:17, 125:25, 126:6, 132:4, 136:22, 139:24, 198:3, 212:9, 213:13, 215:5, 215:7, 216:10, 217:3, 221:10 transferable [2] - 156:24, 159:6	transferred [12] - 120:25, 125:22, 130:11, 202:14, 212:23, 212:25, 213:3, 214:10, 214:12, 214:14, 217:2, 217:10 transferring [12] - 108:18, 135:24, 136:12, 136:13, 136:19, 195:10, 195:13, 198:13, 199:4, 201:8, 203:7, 216:9 transfers [5] - 197:14, 198:7, 199:1, 211:8, 217:8 transform [3] - 164:24, 202:24, 211:20 transformed [1] - 204:22 transition [8] - 53:20, 53:23, 77:22, 90:23, 90:24, 91:8, 91:9, 92:5 transitions [2] - 82:15, 92:4 transmission [1] - 207:8 Transmission [1] - 175:8 transmit [3] - 47:23, 140:23, 177:5 transmitting [3] - 157:1, 206:1, 217:16 treat [2] - 193:18, 195:15 treated [1] - 10:22 tremendous [1] - 117:4 tricks [1] - 141:12 tried [1] - 125:13 tries [2] - 73:8, 102:7 triggers [1] - 73:19 true [6] - 96:18, 103:10, 161:10, 180:7, 181:20, 225:18 truly [1] - 22:17 truncated [1] - 223:25 truthfully [1] - 110:15 try [8] - 5:7, 11:14, 46:22, 47:1, 51:10, 73:16, 94:15, 149:16 trying [13] - 46:2, 64:6, 69:8, 69:14, 70:12, 88:19, 92:24, 119:11, 124:23, 125:5, 125:9,	128:15, 223:5 Tunnell [1] - 54:23 TUNNELL [1] - 2:17 turn [13] - 5:17, 55:5, 71:7, 81:11, 89:17, 89:22, 94:13, 100:14, 164:20, 174:24, 183:8, 202:19, 212:13 turned [2] - 62:25, 137:21 turning [2] - 183:10, 197:1 turns [2] - 208:23, 216:17 tweaks [1] - 37:16 twice [1] - 50:12 Two [1] - 109:22 two [80] - 11:19, 12:24, 14:21, 16:14, 17:3, 22:5, 25:13, 27:12, 32:14, 36:7, 36:11, 37:17, 41:2, 41:9, 48:3, 48:4, 49:5, 49:14, 50:23, 51:24, 68:1, 73:1, 84:2, 84:10, 91:17, 92:17, 101:17, 104:8, 104:21, 106:3, 109:20, 113:23, 114:4, 128:8, 131:14, 132:15, 132:24, 133:1, 133:6, 133:12, 133:14, 134:3, 137:7, 149:2, 151:14, 153:7, 156:22, 157:16, 158:7, 158:10, 159:3, 159:13, 159:20, 162:22, 162:23, 164:2, 164:9, 165:17, 165:21, 165:25, 166:7, 166:24, 168:19, 169:7, 172:8, 181:15, 193:11, 207:20, 209:3, 209:25, 211:6, 214:1, 214:24, 215:18, 216:8, 218:11, 219:2, 220:15, 222:1, 222:10 two-step [1] - 16:14 two-way [1] - 109:20 Two-Way [1] - 109:22 type [42] - 31:11, 40:20, 56:23, 58:16, 58:17, 59:8, 59:13,	59:19, 60:21, 61:19, 62:2, 62:21, 66:19, 68:14, 70:19, 71:19, 76:5, 77:2, 81:3, 83:21, 84:8, 85:24, 86:1, 86:5, 93:17, 93:18, 94:2, 96:14, 97:10, 124:2, 124:18, 132:8, 134:23, 158:2, 158:9, 178:2, 181:1, 181:10, 190:7, 214:19, 219:16, 220:12 typed [1] - 225:16 types [43] - 29:21, 34:4, 34:13, 34:24, 34:25, 35:4, 35:22, 36:22, 43:11, 44:6, 57:1, 57:13, 58:9, 58:23, 69:18, 81:14, 81:16, 81:18, 81:21, 83:21, 86:11, 86:25, 87:1, 90:5, 95:1, 95:4, 96:25, 97:5, 97:9, 124:17, 157:16, 177:5, 178:4, 178:9, 180:14, 180:23, 180:24, 181:8, 183:7, 184:7, 184:22, 185:14, 188:20 typewritten [1] - 225:18 typically [4] - 11:2, 18:20, 19:18, 48:1
U				
U.S [2] - 152:24, 171:5 U.S.M.J [1] - 1:22 ubiquitous [1] - 125:3 UK [7] - 1:3, 2:4, 3:8, 152:12, 152:22, 171:1, 225:9 ultimate [1] - 104:24 ultimately [3] - 153:5, 166:5, 209:11 unavailability [3] - 44:12, 44:15, 210:8 uncertainty [3] - 44:23, 170:16, 170:19 unclaimed [1] - 220:15 unclear [1] - 222:18 unconventional [9] - 165:24, 166:16, 166:22, 167:18,				

DEANNA WARNER, CSR

202 Ashfield Court, Smyrna DE 19977

Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

167:21, 168:1, 169:24, 188:11, 211:21 unconventionality [1] - 45:4 under [9] - 8:6, 9:10, 9:25, 16:22, 19:16, 53:6, 171:5, 191:18, 205:1 underpins [1] - 14:19 underscore [1] - 160:20 underscores [1] - 161:25 underscoring [1] - 127:1 understandable [2] - 21:12, 37:12 understandably [1] - 184:10 understood [5] - 165:11, 188:23, 189:10, 194:10, 204:20 undertook [1] - 43:17 unduly [3] - 42:7, 168:3, 169:23 uninterrupted [1] - 46:23 unique [1] - 80:25 uniquely [3] - 80:13, 177:13, 183:3 UNITED [1] - 1:1 United [6] - 153:4, 154:18, 170:9, 174:3, 174:5, 174:6 University [3] - 143:10, 145:8, 201:17 unknown [1] - 107:2 unless [6] - 5:15, 77:24, 91:8, 152:8, 194:8, 194:13 unlike [5] - 85:12, 189:8, 207:16, 215:20, 217:13 unnecessary [1] - 200:3 unpublished [1] - 140:13 unrelated [1] - 187:20 unspecified [1] - 61:13 untethered [2] - 154:21, 196:3 up [40] - 4:25, 18:11, 28:21, 32:2, 32:4, 35:17, 43:21, 46:4, 56:3, 57:15, 60:11, 62:11, 66:24, 71:11,	79:12, 90:3, 102:12, 103:20, 104:21, 111:8, 112:20, 115:6, 120:16, 120:22, 123:17, 125:12, 129:20, 131:12, 133:5, 133:8, 133:11, 134:24, 135:19, 143:5, 143:15, 162:21, 177:2, 211:23, 219:5 update [7] - 101:23, 104:1, 115:10, 116:14, 204:8, 215:5, 219:18 updated [10] - 101:7, 103:17, 104:5, 198:16, 199:4, 213:5, 213:7, 213:8, 213:15, 213:22 updates [1] - 219:18 updating [5] - 102:11, 103:2, 103:15, 118:20, 220:13 URQUHART [1] - 2:19 usage [5] - 102:2, 186:23, 187:3, 188:13, 188:19 useful [1] - 196:8 user [122] - 12:6, 17:7, 17:21, 17:22, 17:24, 18:1, 28:23, 28:25, 29:10, 31:4, 31:8, 32:6, 32:8, 32:12, 33:11, 35:8, 35:16, 35:19, 35:21, 36:2, 36:11, 36:16, 36:17, 36:19, 38:19, 38:22, 39:5, 40:3, 40:6, 40:11, 40:16, 40:18, 57:15, 57:16, 57:24, 58:4, 58:6, 59:3, 59:4, 59:14, 60:12, 60:22, 66:20, 71:24, 75:10, 78:11, 86:2, 86:6, 87:13, 87:15, 88:10, 89:18, 95:10, 95:12, 95:19, 95:20, 96:4, 96:5, 96:20, 98:7, 104:8, 104:21, 105:2, 105:4, 105:6, 106:6, 109:2, 117:15, 120:2, 120:8, 120:15, 120:18, 120:23, 121:5, 123:15, 125:23, 126:1, 126:5, 130:1, 130:5, 130:14, 130:15,	130:22, 131:1, 136:7, 136:8, 137:10, 137:15, 139:18, 143:5, 143:19, 144:1, 145:7, 145:11, 157:5, 157:12, 159:1, 162:14, 162:18, 163:10, 166:4, 167:16, 183:15, 188:12, 196:11, 197:10, 197:17, 197:25, 201:11, 202:11, 205:7, 205:8, 212:10, 212:15, 217:6, 219:8, 219:17, 220:3 user's [18] - 10:2, 17:10, 24:13, 35:11, 35:12, 35:14, 36:3, 36:4, 122:14, 123:7, 123:10, 123:12, 129:25, 135:25, 136:11, 159:5, 196:13, 204:8 user-based [1] - 120:2 user-centric [3] - 120:2, 120:15, 120:18 users [8] - 119:10, 119:16, 186:20, 186:22, 187:7, 187:23, 189:1, 206:18 users' [1] - 199:17 uses [5] - 9:9, 40:12, 131:19, 138:13, 198:23 utilization [5] - 132:14, 135:10, 179:3, 181:7, 215:2 utilize [10] - 31:11, 77:4, 113:19, 118:18, 128:4, 135:6, 149:13, 157:17, 195:18, 200:10 utilized [3] - 56:12, 71:3, 144:11 utilizing [1] - 214:19	various [19] - 29:2, 55:17, 75:7, 77:19, 80:16, 82:15, 83:1, 87:18, 91:1, 151:8, 151:19, 151:23, 177:5, 178:23, 179:4, 183:7, 184:6, 199:17, 199:24 versa [1] - 80:8 version [8] - 103:20, 196:12, 198:3, 198:5, 198:9, 213:8, 213:15, 213:22 versions [18] - 108:16, 111:2, 111:11, 111:17, 195:6, 195:8, 195:9, 195:19, 195:23, 197:4, 198:16, 198:19, 199:4, 202:5, 211:12, 214:6, 214:18, 216:13 versus [20] - 3:8, 3:14, 3:20, 61:24, 63:2, 115:11, 115:12, 152:3, 152:13, 169:5, 172:14, 173:16, 175:8, 176:2, 186:1, 186:4, 191:22, 201:18, 205:21, 206:25 via [1] - 160:15 vice [1] - 80:8 video [1] - 129:17 view [14] - 15:16, 17:7, 25:5, 25:10, 25:25, 35:13, 56:4, 180:7, 184:10, 184:16, 205:10, 212:13, 220:12, 221:5 viewed [2] - 13:14, 214:22 views [2] - 63:17, 180:19 visit [1] - 101:17 VPN [2] - 34:15, 35:10 vs [6] - 1:5, 1:11, 1:16, 225:9, 225:11, 225:13	102:14, 103:14 walked [2] - 22:12, 23:10 Walter [1] - 140:21 wants [9] - 7:4, 21:13, 59:14, 66:20, 78:11, 78:23, 94:16, 94:22, 95:13 Warner [1] - 225:24 warner [2] - 4:8, 225:4 ways [13] - 28:19, 76:7, 100:21, 110:16, 111:5, 111:21, 111:22, 114:8, 114:21, 136:21, 136:24, 139:17, 140:18 web [3] - 34:6, 34:7, 160:15 weeks [2] - 98:23, 151:14 welcome [1] - 3:2 well-understood [2] - 165:11, 204:20 Wells [1] - 175:8 Westlaw [1] - 117:1 whatsoever [2] - 22:19, 48:24 whereas [2] - 64:14, 129:15 wherein [4] - 157:4, 157:8, 162:16, 207:22 whole [11] - 19:3, 20:13, 56:20, 66:2, 111:25, 136:4, 138:24, 143:13, 155:20, 156:1, 160:20 wide [1] - 186:20 wildly [1] - 109:7 willful [1] - 191:16 wish [3] - 93:2, 144:1 WOLFF [27] - 2:13, 72:23, 72:25, 73:2, 74:13, 75:5, 76:16, 77:8, 78:12, 80:9, 80:11, 81:17, 82:2, 84:2, 84:15, 84:21, 85:19, 86:9, 86:19, 87:6, 88:4, 89:2, 89:25, 91:20, 92:15, 93:2, 93:17 Wolff [3] - 71:12, 71:13, 94:11 wolff [1] - 54:13 woman [1] - 23:3 wonder [1] - 137:16 wondering [2] - 138:10, 184:20
		V	W	
		value [1] - 82:10 values [1] - 186:25 variation [1] - 45:24 variations [1] - 9:23 variety [2] - 27:1, 29:20	wait [5] - 115:9, 115:19, 117:17, 130:3, 130:19 waiters [1] - 108:2 waiver [1] - 14:17 walk [3] - 78:1,	

DEANNA WARNER, CSR

202 Ashfield Court, Smyrna DE 19977

Phone: (302) 893-1158 E-mail: warnerdeanna@gmail.com

word ^[5] - 65:14, 66:19, 131:13, 138:14, 154:22 wording ^[1] - 210:10 words ^[25] - 10:12, 10:14, 10:19, 28:12, 31:1, 39:8, 41:24, 45:16, 58:9, 66:16, 84:1, 91:17, 97:2, 102:17, 110:20, 112:18, 115:9, 126:15, 127:1, 127:7, 166:24, 172:1, 179:16, 201:5, 220:14 works ^[4] - 107:21, 117:13, 132:18, 145:4 world ^[10] - 14:10, 71:18, 110:25, 111:5, 112:10, 115:3, 124:6, 196:4, 198:21 worry ^[2] - 121:4, 125:8 worse ^[1] - 200:21 worth ^[1] - 5:13 Wow ^[1] - 108:4 writ ^[2] - 37:2, 164:2 write ^[13] - 73:15, 73:17, 73:19, 73:23, 73:24, 73:25, 74:17, 75:8, 87:12, 87:13, 88:9, 90:18, 142:19 writing ^[5] - 82:23, 90:1, 90:3, 91:12, 183:18 written ^[15] - 28:18, 65:19, 69:5, 73:22, 74:8, 77:6, 77:12, 82:24, 119:13, 123:24, 146:6, 150:14, 174:13, 183:10, 224:6	yourself ^[1] - 134:4
	Z
	zero ^[3] - 106:20, 144:15, 147:22
X	
Xes ^[1] - 48:22 XML ^[3] - 34:15, 36:9, 160:15	
Y	
years ^[2] - 23:12, 49:7 yellow ^[1] - 117:1 yesterday ^[1] - 19:3 yield ^[1] - 156:10 Ying ^[1] - 54:22 YING ^[2] - 2:17, 54:21	

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