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Transcript of Michael Smith, Ph.D.

Date: January 9, 2025

Case: Dropbox, Inc. -v- Motion Offense, LLC (PTAB)

Planet Depos

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DROPBOX 1028
DROPBOX v. MOTION OFFENSE
IPR2024-00286

WORLDWIDE COURT REPORTING & LITIGATION TECHNOLOGY

1 UNITED STATES PATENT AND TRADEMARK OFFICE

2 _____
3 BEFORE THE PATENT TRIAL AND APPEAL BOARD
4 _____

5 DROPBOX, INC.,

6 Petitioner,

7 v.

8 MOTION OFFENSE, LLC,

9 Patent Owner.
10 _____

11 Case IPR2024-00286; Case IPR2024-00287

12 U.S. Patent No. 11,611,520
13 _____

14
15 Video deposition of MICHAEL SMITH, PH.D.

16 Conducted Virtually

17 Thursday, January 9, 2025

18 12:03 p.m. EST

19 Job No.: 565947

20 Pages: 1 - 156

21 Stenographically reported by: Judith E. Bellinger,

22 RPR, CRR, CSR-TX CCR-WA, CCR-NM

1 Video deposition of MICHAEL SMITH, PH.D.,
2 conducted virtually.

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10
11 Pursuant to notice, before Judith E.
12 Bellinger, Registered Professional Reporter,
13 Certified Realtime Reporter, and Notary Public in
14 and for the State of Maryland.

A P P E A R A N C E S

ON BEHALF OF THE PETITIONER:

LIV HERRIOT, ESQUIRE

WILMER CUTLER PICKERING HALE AND DORR

LLP

2600 El Camino Real

Suite 400

Palo Alto, CA 94306

650.858.6000

TODD ZUBLER, ESQUIRE

TRISHAN ESRAM, ESQUIRE

WILMER CUTLER PICKERING HALE AND DORR

LLP

2100 Pennsylvania Avenue NW

Washington, DC 20037

202.663.6000

A P P E A R A N C E S C O N T I N U E D

ON BEHALF OF THE PATENT OWNER:

DEREK DAHLGREN, ESQUIRE

SRIKANT CHERUVU, ESQUIRE

DEVLIN LAW FIRM, LLC

1526 Gilpin Avenue

Wilmington, DE 19806

302.449.9010

ALSO PRESENT:

Lucas Shaker, Videographer

Lucien Newell, Planet Depos Technician

Transcript of Michael Smith, Ph.D.
Conducted on January 9, 2025

5

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By Mr. Dahlgren	150

E X H I B I T S

(Attached to the transcript)

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E X H I B I T S C O N T I N U E D

Exhibit 9 United States Patent Number 92

9,633,125 B1

Exhibit 10 Declaration of Dr. Michael Smith, 111

IPR2024-00287, U.S. Patent No.

11,611,520

Exhibit 11 United States Patent Application 120

Publication Number 2013/0046833 A1

P R O C E E D I N G S

THE VIDEOGRAPHER: Here begins Media

12:03:10

Number 1 in the videotaped deposition of

12:03:20

Michael Smith in the matter of Dropbox, Inc. v.

12:03:22

Motion Offense, LLC, in the United States Patent

12:03:25

and Trademark Office before the Patent Trial and

12:03:31

Appeal Board, Case Numbers IPR2024-00286 and

12:03:32

IPR2024-00287.

12:03:42

Today's date is January 9th, 2025. And

12:03:46

the time on the video monitor is 12:03 p.m.

12:03:50

Eastern.

12:03:54

The remote videographer today is

12:03:54

Lucas Shaker, representing Planet Depos.

12:03:56

All parties of this video deposition

12:03:58

are attending remotely.

12:04:00

Would counsel, please, voice-identify

12:04:02

themselves and state whom they represent, starting

12:04:03

with the taking attorney.

12:04:05

MS. HERRIOT: This is Liv Herriot with

12:04:07

WilmerHale on behalf of Dropbox. And with me

12:04:10

today is Trishan Esram and Todd Zubler, also of

12:04:12

Transcript of Michael Smith, Ph.D.
Conducted on January 9, 2025

8

1	WilmerHale.	12:04:18
2	MR. DAHLGREN: This is Derek Dahlgren	12:04:19
3	of Devlin Law Firm on behalf of Patent Owner	12:04:20
4	Motion Offense. And I'm joined by	12:04:25
5	Srikant Cheruvu, also of Devlin Law Firm.	12:04:26
6	THE VIDEOGRAPHER: Thank you, Counsel.	12:04:32
7	The court reporter today is Judy Bellinger,	12:04:32
8	representing Planet Depos.	12:04:34
9	The witness will now be sworn.	12:04:34
10	MICHAEL SMITH, PH.D.,	12:04:36
11	being first duly sworn, was examined	12:04:36
12	and testified as follows:	12:04:36
13	EXAMINATION BY COUNSEL FOR THE PETITIONER	12:04:36
14	BY MS. HERRIOT:	12:04:53
15	Q Dr. Smith, will you, please, state your	12:04:56
16	full name for the record.	12:04:58
17	A Michael John Sebastian Smith.	12:05:00
18	Q And where are you currently located for	12:05:07
19	today's deposition?	12:05:09
20	A I am in Palo Alto, California.	12:05:10
21	Q And is anyone else with you in the room	12:05:16
22	today?	12:05:17

1	A	No. Nobody else is with me in the room	12:05:18
2		today.	12:05:21
3	Q	And are you using any notes today?	12:05:22
4	A	No, I am not using any notes.	12:05:25
5	Q	Do you have any notes in front of you	12:05:28
6		or in the room with you?	12:05:30
7	A	No. I do not.	12:05:31
8	Q	Do you have any printed documents	12:05:35
9		relating to this deposition or the subject matter	12:05:37
10		thereof in the room with you?	12:05:40
11	A	I have nothing printed in the room with	12:05:43
12		me, no.	12:05:45
13	Q	And do you have any documents open on	12:05:46
14		your computer, other than this Zoom or, I guess,	12:05:48
15		just the Zoom session?	12:05:53
16	A	I have my email open because that is	12:05:55
17		where I got the Zoom link for the Zoom conference	12:05:57
18		that we're on right now. I have my phone with me	12:06:01
19		and that's open just to the text app for my group	12:06:05
20		family text.	12:06:09
21	Q	Do you need to have your Outlook, your	12:06:14
22		email open in order to be monitoring, and we'll	12:06:16

1 talk about that in a second, your group 12:06:19

2 communications or can you close your email? 12:06:21

3 A I can close my email, but if it's 12:06:24

4 possible, I will like to keep it open in case -- 12:06:26

5 we have a group family email as well. Up to you. 12:06:29

6 If you don't feel comfortable with that, then I 12:06:33

7 can close it. But I would rather keep it open. I 12:06:36

8 certainly don't intend to use email other than in 12:06:39

9 emergency or read email other than in an 12:06:42

10 emergency. 12:06:44

11 Q If you confirm that you will let me 12:06:45

12 know if you are reading email and that you are 12:06:47

13 keeping it minimized, that would be fine, sir. 12:06:50

14 A Okay. I will do that. I will keep the 12:06:56

15 email to the side so that I can see if an 12:06:58

16 emergency email comes in from my family. And I 12:07:01

17 will let you know if such an email comes in. 12:07:03

18 Otherwise, I will minimize it to avoid 12:07:07

19 distraction. 12:07:09

20 Q Perfect. I appreciate that. 12:07:10

21 And we'll talk about the group text in 12:07:12

22 a minute. But aside from the communications with 12:07:16

1	your family, do you agree to not have any	12:07:18
2	communications with anyone while we're on the	12:07:20
3	record during this deposition?	12:07:23
4	A I agree that I will not communicate	12:07:25
5	with anyone other than my family during the	12:07:26
6	deposition.	12:07:28
7	Q Now I understand, sir, and I'm very	12:07:28
8	sorry to hear it, that your family is under	12:07:30
9	potential evacuation in the Los Angeles area due	12:07:34
10	to the fires; is that correct?	12:07:37
11	A Yes. I have four family members in the	12:07:38
12	area that's affected.	12:07:42
13	Q Now, my understanding is that we have	12:07:44
14	agreed that you will have a text message	12:07:47
15	communication chain open with only those family	12:07:51
16	members, not with anybody relating to this	12:07:53
17	deposition; is that correct?	12:07:56
18	A Yes. The group text that we have is	12:07:58
19	the family members that are in LA, and we have	12:08:00
20	other family members here in the northern	12:08:03
21	California area also. So that group text is not	12:08:06
22	just with the members of my family in LA, but all	12:08:08

1 my family members.

12:08:11

2 Q Perfect. I appreciate that
3 clarification.

12:08:13

12:08:14

4 And your counsel is not on that group
5 communication, correct?

12:08:15

12:08:19

6 A No, my counsel is not on that family
7 chat list.

12:08:20

12:08:22

8 Q And you have agreed to let me know if
9 you receive any text message on that chain so we
10 can take a break from the deposition, correct?

12:08:23

12:08:27

12:08:29

11 A Yes. I will let you know if I receive
12 any text on that group chat message and for any
13 reason I need to stop or take care of that text,
14 possibly leave the deposition.

12:08:32

12:08:34

12:08:39

12:08:42

15 Q I appreciate that, sir.

12:08:44

16 Now, my understanding is
17 notwithstanding the understandable stress you are
18 under, there is nothing today that would prevent
19 you from providing accurate testimony, correct?

12:08:45

12:08:48

12:08:51

12:08:53

20 A I do not believe that the current
21 situation would warrant canceling of the
22 deposition or prevent me from testifying today.

12:08:58

12:09:00

12:09:03

1 Q And you will let me know if that 12:09:07
2 changes? 12:09:10

3 A I will let you know if anything changes 12:09:10
4 to affect that answer and would affect my ability 12:09:12
5 to testify in this deposition. 12:09:15

6 Q I appreciate that, sir. 12:09:17

7 You understand that under the PTAB 12:09:21
8 Consolidated Practice Guide, your counsel may not 12:09:24
9 consult or confer with you regarding the substance 12:09:27
10 of your testimony already given or anticipated to 12:09:30
11 be given, except for the purpose of conferring on 12:09:32
12 whether a privilege against testifying should be 12:09:34
13 asserted or on how to comply with a board order? 12:09:37

14 A I do not understand that question. It 12:09:41
15 sounds like a statement to me. 12:09:42

16 Q It was very long. I apologize. 12:09:44

17 But you understand that under the PTAB 12:09:46
18 Consolidated Practice Guide, you are not -- during 12:09:49
19 the course of your deposition, you're not to 12:09:52
20 consult with your attorney about the substance of 12:09:54
21 your testimony, except if you need to consult 12:09:55
22 about privilege? 12:09:59

1	A	I still don't understand that question.	12:10:02
2		It was a statement, not -- it started with you	12:10:04
3		understand.	12:10:08
4	Q	Do you understand, sir?	12:10:09
5	A	Do I understand what?	12:10:11
6	Q	That you should not consult with your	12:10:13
7		attorney about the substance of your testimony	12:10:17
8		during your deposition today?	12:10:18
9	A	Yes, I do understand that I should not	12:10:20
10		consult with my attorney during the deposition.	12:10:22
11	Q	Except when it comes to privilege?	12:10:26
12	A	Except when it -- I understand that I	12:10:28
13		should not consult with my attorney today except	12:10:29
14		where it concerns privilege.	12:10:33
15	Q	Perfect. Thank you.	12:10:35
16		And you will let me know if you have	12:10:37
17		any conversations about the substance of your	12:10:39
18		testimony today during the course of your	12:10:42
19		deposition, with your attorney or with anyone	12:10:44
20		else?	12:10:46
21	A	Again, that was a statement, not a	12:10:48
22		question.	12:10:49

1 Could you rephrase it as a question, 12:10:50
2 please? 12:10:52

3 Q Will you agree to let me know if you 12:10:52
4 have any communications, during the course of 12:10:55
5 today's deposition, with anybody regarding the 12:10:57
6 substance of your testimony? 12:11:00

7 A Yes, I will agree that if during the 12:11:02
8 testimony -- yes. Could you repeat the question 12:11:04
9 again, please? 12:11:08

10 Q Will you agree, if during the course of 12:11:09
11 today's deposition, at any point, say, on a break, 12:11:11
12 for example, you discuss the substance of your 12:11:16
13 testimony with anybody, you will tell me? 12:11:19

14 A Yes. I agree that if I discuss 12:11:23
15 anything related to the deposition outside the 12:11:25
16 deposition, I will let you know. 12:11:29

17 Q Perfect. Thank you. 12:11:30

18 Now, Dr. Smith, have you been deposed 12:11:32
19 before? 12:11:34

20 A Yes, I have been deposed before. 12:11:35

21 Q And how many times have you been 12:11:37
22 deposed before? 12:11:39

1	A	Approximately, ten.	12:11:42
2	Q	And how many of those depositions have	12:11:48
3		been for an IPR?	12:11:50
4	A	I believe the majority of those	12:11:55
5		depositions were IPR cases.	12:11:56
6	Q	Do you recall how many were for IPR	12:12:00
7		cases?	12:12:03
8	A	I would say seven or eight.	12:12:05
9	Q	And for those depositions that were for	12:12:10
10		IPR proceedings, how many of those were on behalf	12:12:14
11		of a patent owner?	12:12:18
12	A	The majority, if not all, of those were	12:12:21
13		on behalf of the patent owner.	12:12:24
14	Q	Do you recall any depositions in an IPR	12:12:28
15		proceeding that were not on behalf of the	12:12:30
16		patent owner?	12:12:31
17	A	No, I do not recall anything that was	12:12:33
18		not on behalf of Patent Owner.	12:12:34
19	Q	Now, I'm sure you've heard this before,	12:12:42
20		given that you've been deposed, approximately, ten	12:12:44
21		times, but I just want to reiterate, for the	12:12:47
22		record, that the court reporter will be writing	12:12:51

1	down everything we say. So I ask that you	12:12:54
2	continue to give me verbal answers to my questions	12:12:56
3	and avoid talking over me.	12:13:00
4	Is that okay?	12:13:02
5	A Yes. I understand that. I will try	12:13:04
6	and avoid talking over you.	12:13:07
7	Q And that you will try to give verbal	12:13:11
8	questions [sic] rather than nodding or shaking	12:13:14
9	your head?	12:13:16
10	A Again, if you could, please, keep	12:13:20
11	phrasing your questions as questions, it would	12:13:22
12	help me respond.	12:13:26
13	But to answer what I believe you asked,	12:13:28
14	yes, I will give verbal answers rather than	12:13:30
15	nonverbal answers.	12:13:34
16	Q Do you understand you took an oath	12:13:35
17	today to tell the truth?	12:13:36
18	A Yes, I do understand that I took an	12:13:38
19	oath.	12:13:39
20	Q And is there any reason you will not be	12:13:40
21	able to answer my questions truthfully today?	12:13:42
22	A No, I do not believe there is any	12:13:45

1 reason that I cannot answer truthfully. 12:13:48

2 Q Now, Dr. Smith, when was the first time 12:13:51
3 you became aware of Motion Offense? 12:13:54

4 A Working backwards from my first 12:14:06
5 declaration in this case, which I believe was in 12:14:12
6 February of 2021, and that is from memory, we can 12:14:14
7 bring up the document, if you -- if you would let 12:14:21
8 me, and I can confirm that. I can give you a 12:14:25
9 more -- a better answer to that question. 12:14:29

10 Q I can confirm that it was in 12:14:32
11 February 2021, sir, that you submitted your first 12:14:34
12 declaration. 12:14:36

13 A So, I would suspect that in the middle 12:14:38
14 of 2020 would be the first time that I became 12:14:41
15 aware of Motion Offense and the patents in this 12:14:49
16 case. 12:14:54

17 Q Are you referring, sir, to the patents 12:14:59
18 in that prior case or the patents at issue here in 12:15:01
19 the IPR? 12:15:04

20 A I was referring to the patents that I 12:15:06
21 analyzed in my first declaration in this case. 12:15:09

22 Q Thank you, sir. 12:15:16

1 I was seeking clarification because 12:15:17
2 that was actually a different case. 12:15:18

3 A Could I have the reporter read back 12:15:23
4 your question about exactly what I was aware of, 12:15:25
5 with regards to Motion Offense, please? 12:15:29

6 Q The question I asked was, when was the 12:15:36
7 first time you became aware of Motion Offense? 12:15:38

8 A And I gave you the answer that I did. 12:15:41

9 Q Correct. 12:15:44

10 A Can you, now, read back your comment on 12:15:45
11 my answer? 12:15:47

12 Q So, you stated, sir, "I was referring 12:15:51
13 to the patents that I analyzed in my first 12:15:53
14 declaration in this case." And I was seeking 12:15:56
15 clarification because the February 2021 12:15:59
16 declaration we were discussing was for a different 12:16:01
17 case. 12:16:04

18 A I would ask you to repeat, please, your 12:16:07
19 first question to me without adding your remarks 12:16:09
20 about this case. I do not believe you asked me 12:16:14
21 about this case. 12:16:16

22 Q I did not. I was asking clarification 12:16:17

1 about a subsequent answer you gave. My initial
2 question was, when did you first became aware of
3 Motion Offense? You answered that question, sir,
4 and then I asked you the question -- the answer
5 you provided referred to a declaration in this
6 case. And I was seeking clarification because
7 your February 2021 declaration was in a different
8 case on behalf of Motion Offense.

9 A I'm completely confused.

10 Q That's fine. We'll move on.

11 So, you understand that we are here
12 today to discuss two IPRs, IPR2024-00286 and
13 IPR2024-00287, correct?

14 A From memory, I believe those sound as
15 though they are the right IPR numbers for the
16 cases that I analyzed. I have no documents in
17 front of me to confirm that.

18 MS. HERRIOT: Can we introduce tabs 1
19 and 14 as Exhibits 1 and 2.

20 (Smith Exhibit 1 marked for
21 identification and attached to the transcript.)

22 PLANET DEPOS TECHNICIAN: Okay. Stand

12:16:19

12:16:23

12:16:28

12:16:29

12:16:31

12:16:33

12:16:36

12:16:39

12:16:42

12:16:44

12:16:46

12:16:49

12:16:58

12:17:03

12:17:06

12:17:08

12:17:11

12:17:13

12:17:14

12:17:17

12:17:17

12:17:20

1	by.	12:17:20
2	Showing Exhibit 1 on the screen.	12:17:29
3	Q So, Exhibit 1, you see here it has that	12:17:32
4	case number ending in 286 I mentioned.	12:17:36
5	A I do see 0286.	12:17:40
6	Q And it refers to U.S. Patent Number	12:17:43
7	11,611,520.	12:17:45
8	Do you see that?	12:17:49
9	A I do see 11,611,520.	12:17:49
10	Q Can we refer to that as the '520	12:17:54
11	patent?	12:17:56
12	A I have no objection to that, unless	12:18:00
13	there is some ambiguity about the numbers of the	12:18:02
14	patents.	12:18:06
15	(Smith Exhibit 2 marked for	12:18:06
16	identification and attached to the transcript.)	12:18:06
17	Q There's only one patent at issue here.	12:18:08
18	We can see that in a moment.	12:18:10
19	Let's go to Exhibit 2.	12:18:12
20	And that is the one ending in 287 and,	12:18:18
21	again, it's the '520 patent, correct?	12:18:20
22	A I do see 00287. And I do see	12:18:23

1 11,611,520.

12:18:29

2 I would ask, if it's possible, to
3 increase the size of the PDF that we're viewing.

12:18:34

4 Q We can. And I believe they've also
5 been put in the chat so you can download them, if
6 you'd prefer, sir.

12:18:36

12:18:42

12:18:43

12:18:46

7 A I would like to do that, if it's
8 possible, please.

12:18:48

12:18:49

9 Q Absolutely.

12:18:50

10 PLANET DEPOS TECHNICIAN: And you'd
11 like me to continue screen sharing?

12:19:02

12:19:02

12 MS. HERRIOT: Sure.

12:19:05

13 Q Let me know when you have them in front
14 of you, sir.

12:19:29

12:19:30

15 A I have two files that are titled Notice
16 of Deposition.

12:19:32

12:19:34

17 Q And you understand that those two
18 files, which are Exhibits 1 and 2, are the notices
19 of deposition for today? If you go to page 2 of
20 each of those, sir.

12:19:37

12:19:39

12:19:43

12:19:53

21 A I have page 2 of the 286 notice of
22 deposition.

12:20:01

12:20:03

1 Q And have you also looked at page 2 of 12:20:05
2 the 287 notice of deposition? 12:20:07

3 A I have opened both. Not both visible 12:20:26
4 at the same time, but I, if you need me to, can 12:20:29
5 look at both. 12:20:33

6 Q My question, sir, is you understand 12:20:35
7 that you are here today to testify pursuant to 12:20:37
8 both Exhibit 1 and 2, the two notices of 12:20:40
9 deposition? 12:20:43

10 A I understand that I'm looking at two 12:20:54
11 notices of deposition for the patent 11,611,520, 12:20:56
12 that I analyzed for cases ending in 00286 and 12:20:59
13 00287. 12:21:06

14 Q You submitted a declaration in support 12:21:10
15 of Motion Offense's Patent Owner response in both 12:21:12
16 the 286 and the 287 IPRs, correct? 12:21:16

17 A I did submit two declarations, one for 12:21:20
18 the IPR case ending in 00287 and one for the case 12:21:23
19 ending in 00286. 12:21:28

20 Q And who contacted you about serving as 12:21:33
21 an expert for these two IPRs? 12:21:36

22 A For these two IPRs, ending in 00286 and 12:21:44

1 00287, I was contacted by Derek Dahlgren. 12:21:48

2 Q And when did Derek Dahlgren contact you 12:21:55
3 about serving as an expert in these two IPRs? 12:21:58

4 A Without looking at my email, I would 12:22:08
5 estimate that it would be around four months ago, 12:22:10
6 maybe -- between four and six months ago. That's 12:22:14
7 an estimate. 12:22:20

8 Q So, sometime in July or later? 12:22:24

9 A That's my best recollection. 12:22:28

10 Q So, sir, now that we've established 12:22:35
11 that both your declarations -- 12:22:37

12 A In reflection, it may have been 12:22:41
13 slightly later than that. I can't remember 12:22:44
14 exactly. That would be approximately right. I 12:22:52
15 don't know if you need it to the nearest week, and 12:22:53
16 I could get you that information, but it's not 12:22:56
17 something that I commit to memory. 12:22:59

18 Q But fair to say it was in July or 12:23:02
19 later, you're not sure exactly when later, but 12:23:04
20 July would be the earliest? 12:23:07

21 A That's -- that's, I think, a fair 12:23:09
22 assessment of the time frame in which I was 12:23:11

1 contacted by Derek. 12:23:14

2 Q Thank you, sir. 12:23:22

3 So now that we've refreshed your 12:23:22

4 recollection that the patent at issue in the 286 12:23:24

5 and the 287 IPR proceedings is the same patent, is 12:23:27

6 it okay if I refer to it as the '520 patent? 12:23:32

7 A It is okay if you refer to the patent 12:23:36

8 at issue here as the '520 patent, as long as when 12:23:38

9 we get into other patents that might be relevant, 12:23:43

10 there's no confusion. 12:23:45

11 Q Perfect. Thank you so much. 12:23:47

12 Now, sir, when was the last time you 12:23:51

13 read the specification of the '520 patent? 12:23:53

14 A Probably yesterday. 12:24:01

15 Q And did you read the entirety of the 12:24:06

16 specification yesterday? 12:24:08

17 A I wouldn't say that I read the entirety 12:24:12

18 of the specification front to back, starting at 12:24:14

19 the abstract and ending on the last page. But I 12:24:18

20 read substantial portions of it yesterday. And, 12:24:23

21 of course, in previous times, I have read the 12:24:26

22 entire specification. 12:24:32

1 Q Now, focusing on the '520 patent, and 12:24:37
2 not on any other Motion Offense patents, when was 12:24:40
3 the first time you became aware of the '520 12:24:44
4 patent? 12:24:46

5 A The first time I believe that I became 12:24:53
6 aware of the '520 patent, and I'm trying to recall 12:24:57
7 if the '520 patent came up in any of my previous 12:25:04
8 work on Motion Offense patents, and I do not 12:25:07
9 believe it did. And if it did not, and I may be 12:25:10
10 wrong there, I may not be able to remember that it 12:25:13
11 would have come up, then it would have been when 12:25:16
12 Derek Dahlgren first contacted me about these two 12:25:19
13 IPR cases, 00286 and 00287. 12:25:22

14 Q Do you know Robert Paul Morris? 12:25:31

15 A I don't believe so, but I'm -- I didn't 12:25:35
16 get that last name, if you could spell it. 12:25:39

17 Q Morris, M-O-R-R-I-S? 12:25:42

18 A Oh, the inventor? 12:25:45

19 Q The named inventor. Yes. 12:25:47

20 A The inventor? I know who he is. I do 12:25:49
21 not know him. 12:25:52

22 Q You've never met him? 12:25:53

1	A	Maybe five minutes.	12:26:56
2	Q	Absolutely.	12:26:59
3	A	Maybe just come back at 9:30.	12:26:59
4	Q	We can do that, sir.	12:27:03
5	A	All right. Thank you.	12:27:04
6		THE VIDEOGRAPHER: We are going off the	12:27:07
7		record. The time is 12:27 p.m.	12:27:07
8		(Recess taken.)	12:27:11
9		THE VIDEOGRAPHER: We are back on the	12:30:53
10		record. The time is 12:30 p.m.	12:30:53
11		BY MS. HERRIOT:	12:30:56
12	Q	Now, Dr. Smith, is everyone okay with	12:30:58
13		your family still?	12:31:01
14	A	Yes. I haven't received any text	12:31:02
15		messages or updates yet.	12:31:04
16	Q	Okay. Perfect. Well, I hope	12:31:06
17		everything continues to be fine with them.	12:31:09
18	A	Thank you.	12:31:13
19		MS. HERRIOT: Can we introduce	12:31:16
20		Exhibit 3, tab 10.	12:31:17
21		PLANET DEPOS TECHNICIAN: Stand by.	12:31:21
22		(Smith Exhibit 3 marked for	12:31:21

1	identification and attached to the transcript.)	12:31:21
2	PLANET DEPOS TECHNICIAN: Showing	12:31:47
3	Exhibit 3 on the screen.	12:31:48
4	Q Now, Exhibit 3 is an image of several	12:31:50
5	national flags, correct?	12:31:53
6	A I see two flags.	12:31:55
7	Q Yes. An American -- you've seen these	12:31:57
8	flags before?	12:32:02
9	A Yes, I have seen these flags before.	12:32:03
10	MR. DAHLGREN: I just want to object to	12:32:08
11	this document, you know, relevancy.	12:32:09
12	Q Are you familiar with the flag of the	12:32:17
13	United States of America?	12:32:18
14	A Yes, I am familiar with the flag of the	12:32:22
15	United States of America.	12:32:24
16	Q You would agree that the first flag	12:32:26
17	represents the United States of America?	12:32:29
18	MR. DAHLGREN: Objection to form.	12:32:32
19	A I would say that, in certain contexts,	12:32:57
20	the flag may represent the country of the United	12:32:59
21	States of America.	12:33:02
22	Q And the flag is not the United States	12:33:05

1 of America itself, correct? 12:33:07

2 MR. DAHLGREN: Objection. Relevancy. 12:33:16

3 A I think, generally speaking, and I'm 12:33:23

4 not sure of the relevance to this case, but I 12:33:26

5 would say that that image presented on my screen 12:33:32

6 is not the same as the somewhat abstract notion of 12:33:36

7 a country. 12:33:43

8 Q And you would agree that the second 12:33:48

9 flag is the flag of the UK, correct? 12:33:50

10 A The United Kingdom. The flag is that 12:33:55

11 of the United Kingdom. 12:34:01

12 Q The flag represents the United Kingdom, 12:34:05

13 correct? 12:34:10

14 MR. DAHLGREN: Objection. Form. 12:34:10

15 Relevancy. 12:34:12

16 A I would say that, in general, if one 12:34:18

17 was to agree that the first flag represented the 12:34:20

18 United States of America, then you could logically 12:34:26

19 say that the second flag represented the United 12:34:30

20 Kingdom. 12:34:34

21 Q And the second flag is not the United 12:34:37

22 Kingdom itself, correct? 12:34:40

1	A	I think if you --	12:34:42
2		MR. DAHLGREN: Objection. Objection.	12:34:44
3		Form. Relevancy.	12:34:53
4	A	I think if you were to say that the	12:34:56
5		first flag did not represent the country of the	12:35:00
6		United States of America, you could also say that	12:35:07
7		the second flag did not represent the United	12:35:10
8		Kingdom.	12:35:13
9	Q	That was not what I asked, sir.	12:35:18
10	A	That's the best answer that I can give	12:35:20
11		you without knowing the relevance and purpose of	12:35:23
12		your question.	12:35:28
13	Q	I asked you, is the second flag the	12:35:34
14		same thing as the United Kingdom itself?	12:35:39
15	A	I believe I already answered that	12:35:43
16		question when you asked me the same question about	12:35:45
17		the flag of the United States of America.	12:35:48
18	Q	And there you said, "I would say that	12:35:55
19		the image presented on my screen is not the same	12:35:58
20		as the somewhat abstract notion of a country."	12:36:01
21		Is that also your answer with respect	12:36:04
22		to the flag of the United Kingdom that we see in	12:36:06

1	Exhibit 3?	12:36:09
2	A I believe I already answered that	12:36:11
3	question by explaining that if you were to say	12:36:13
4	that the first flag did not represent the tangible	12:36:16
5	country, then it would also be true that the	12:36:22
6	second flag did not represent the tangible	12:36:24
7	country.	12:36:28
8	MS. HERRIOT: Let's turn to tab 11. I	12:36:34
9	believe that's Exhibit 4.	12:36:39
10	(Smith Exhibit 4 marked for	12:36:42
11	identification and attached to the transcript.)	12:36:42
12	Q Let me know when you have that in front	12:37:00
13	of you, sir.	12:37:02
14	A I do not know what you mean by "that."	12:37:03
15	Q Do you see Exhibit 4 in front of you on	12:37:08
16	the screen?	12:37:09
17	A I do see an exhibit that's labeled	12:37:10
18	Smith 04.	12:37:14
19	Q Yes. Thank you.	12:37:16
20	And it has two computer icons on it,	12:37:18
21	correct?	12:37:22
22	A I do not know whether they are computer	12:37:23

1	icons. They could be computer icons.	12:37:25
2	Q Are you familiar with the computer	12:37:33
3	icons for Microsoft Word and Microsoft Excel?	12:37:34
4	A Yes, I am.	12:37:39
5	Q You've used the --	12:37:41
6	A I'm familiar with the icons that are	12:37:43
7	used for Microsoft Word and Microsoft Excel.	12:37:45
8	Q And have you used the Microsoft Word	12:37:54
9	application before?	12:37:56
10	A I have used Microsoft Word as an	12:37:58
11	application before.	12:38:02
12	Q And have you used Microsoft Excel as an	12:38:03
13	application before?	12:38:06
14	A I have used Microsoft Excel as an	12:38:08
15	application.	12:38:11
16	Q You would agree that the blue icon	12:38:14
17	represents the Microsoft Word application,	12:38:17
18	correct?	12:38:21
19	A In general, I think it's difficult to	12:38:36
20	say if that logo or shape, and let's describe what	12:38:38
21	it is, since we can't put visual references into	12:38:46
22	the transcript, what I'm looking at is a blue	12:38:50

1 rectangle and superimposed on that blue rectangle

12:38:59

2 is a blue square with the white letter W.

12:39:03

3 If that was smaller so that it was,

12:39:09

4 roughly, the same size as an icon on a screen and

12:39:12

5 it was in a place on the screen where I would

12:39:17

6 expect the operating system to present it and in

12:39:21

7 such a way that if I, for example, clicked on it,

12:39:25

8 that might -- in fact, would lead me to believe

12:39:28

9 that that was a means of accessing that Microsoft

12:39:35

10 Word application.

12:39:38

11 If it appeared on a coffee mug, I'm not

12:39:40

12 so sure that that would lead me to believe that

12:39:44

13 touching the mug would have much to do with the

12:39:48

14 Microsoft Word application.

12:39:51

15 So I think it depends on the context.

12:39:52

16 Q So let's take that context you put

12:39:58

17 forth. If it was smaller, roughly, the same size

12:40:01

18 as an icon on a screen, and in a place on the

12:40:05

19 screen where I would expect the operating system

12:40:08

20 to present it and in such a way that if I, for

12:40:11

21 example, clicked on it, that might -- in fact,

12:40:13

22 would lead me to believe that that was a means of

12:40:16

1	accessing the Microsoft Word application.	12:40:19
2	Do you have that context in mind, sir?	12:40:23
3	A I have what you just repeated to me in	12:40:29
4	my mind, yes.	12:40:33
5	Q In that context, it would represent the	12:40:36
6	Microsoft Word application, correct?	12:40:39
7	MR. DAHLGREN: Objection. Form.	12:40:44
8	A In general. And I'm not sure that this	12:42:29
9	applies to this case or how it would apply to that	12:42:33
10	case. I think it would depend on the context. I	12:42:36
11	think if a user, who wasn't familiar with how an	12:42:42
12	operating system launched an application, were to	12:42:49
13	look at the computer screen and they were to look	12:42:53
14	at an icon, they might think that that icon, and	12:42:56
15	you could use the word "represent" in that	12:43:05
16	context, that it might represent the application	12:43:08
17	itself. But I don't think that would be correct,	12:43:12
18	in a technical context, because that icon is not	12:43:15
19	the same as the application. It's a piece of a	12:43:23
20	user interface that's associated with a particular	12:43:28
21	application.	12:43:31
22	So I believe the answer depends on the	12:43:33

1	context.	12:43:35
2	MS. HERRIOT: Let's go to tab 12 and	12:43:50
3	introduce that as the next exhibit. Exhibit 5, I	12:43:54
4	believe.	12:44:01
5	(Smith Exhibit 5 marked for	12:44:01
6	identification and attached to the transcript.)	12:44:01
7	Q Now, Exhibit 5 is an excerpt from the	12:44:15
8	Microsoft computer dictionary fifth edition.	12:44:18
9	Do you have that in front of you?	12:44:22
10	A I have a page that says "Exhibit Smith	12:44:23
11	05," and that first page says "Microsoft Computer	12:44:28
12	Dictionary Fifth Edition."	12:44:34
13	Q You would agree that a Microsoft	12:44:37
14	computer dictionary is a dictionary from a	12:44:39
15	computer science perspective, correct?	12:44:41
16	A I would agree that the Microsoft	12:44:45
17	computer dictionary is, certainly, a dictionary	12:44:47
18	that is in the field of computer science and a	12:44:51
19	dictionary produced by Microsoft, presenting a	12:44:55
20	Microsoft view on terminology in the area of	12:44:58
21	computer science.	12:45:02
22	Q Please turn to page 2.	12:45:05

1 MS. HERRIOT: You might need to blow 12:45:11

2 this up for the witness. 12:45:13

3 Q Do you see where it says "Copyright 12:45:15

4 2002 by Microsoft Corporation"? 12:45:18

5 A I see copyright, copyright symbol, 2002 12:45:24

6 by Microsoft Corporation. 12:45:28

7 Q So this Microsoft Computer Dictionary 12:45:30

8 Fifth Edition is from 2002, correct? 12:45:33

9 A Everything that I have seen would lead 12:45:41

10 me to believe that this is a Microsoft -- a copy 12:45:43

11 or part of a copy of a Microsoft computer 12:45:47

12 dictionary from 2002. 12:45:51

13 Q Let's go to the last page. And if you 12:45:56

14 prefer to download this document, sir, that's 12:45:58

15 fine. 12:46:00

16 In the middle of the left-hand column 12:46:01

17 is a folder definition. 12:46:03

18 MS. HERRIOT: If we can just blow that 12:46:06

19 up on the screen. 12:46:07

20 Q Are you able to read that, sir? 12:46:13

21 A If I may, I will download that 12:46:16

22 folder -- that document. 12:46:18

1	Q	Of course.	12:46:20
2	A	I have downloaded the document that's	12:46:45
3		labeled "Tab 12- Microsoft Computer Dictionary	12:46:47
4		2002."	12:46:51
5	Q	And can you let me know when you've	12:46:54
6		gone to the last page of the definition of folder	12:46:56
7		and have that in front of you, sir.	12:46:57
8	A	I have page 220. And on that page, I	12:47:16
9		see an entry for folder.	12:47:20
10	Q	And are you able to read it, sir?	12:47:26
11	A	I am able to read the entry for folder	12:47:29
12		on page 220.	12:47:31
13	Q	Now, do you see that the definition for	12:47:41
14		folder, on that page, says "in the Mac OS, 32-bit	12:47:44
15		versions of Windows, and other operating systems,	12:47:51
16		a container for programs and files in graphical	12:47:55
17		user interfaces"?	12:47:59
18	A	I see that that is the beginning, but	12:48:04
19		not the entire first sentence of the entry for	12:48:07
20		folder.	12:48:15
21	Q	So the definition of folder, in this	12:48:15
22		document, includes the phrase "a container for	12:48:17

1	programs and files in graphical user interfaces,"	12:48:22
2	correct?	12:48:26
3	A The phrase "a container for programs	12:48:46
4	and files in graphical user interfaces" does	12:48:48
5	appear as part of the first sentence in the entry	12:48:55
6	for folder.	12:48:57
7	Q And would you agree that a folder in a	12:48:59
8	computer is a container for programs and files in	12:49:02
9	graphical user interfaces?	12:49:04
10	A No, I would not.	12:49:16
11	Q Why not?	12:49:17
12	A Because you didn't include the entire	12:49:21
13	definition. You extracted one phrase.	12:49:26
14	Q Would you agree that a folder in a	12:49:33
15	computer is a container for programs and files in	12:49:37
16	graphical user interfaces, symbolized on the	12:49:41
17	screen by a graphical image (icon) of a file	12:49:47
18	folder?	12:49:53
19	A Could you repeat that, please?	12:49:54
20	Q Would you agree that a folder in a	12:49:55
21	computer is a container for programs and files in	12:49:56
22	graphical user interfaces, symbolized on the	12:49:59

1	screen by a graphical image (icon) of a file	12:50:03
2	folder?	12:50:08
3	A No, I would not.	12:50:08
4	Q Why not?	12:50:09
5	A Because, again, you did not read out	12:50:10
6	the entire first sentence of this entry for	12:50:14
7	folder.	12:50:21
8	Q Would you agree that a folder in the	12:50:21
9	Mac OS and 32-bit versions of Windows, and other	12:50:24
10	operating systems, is a container for programs and	12:50:29
11	files in graphical user interfaces, symbolized on	12:50:31
12	the screen by a graphical image (icon) of a file	12:50:35
13	folder?	12:50:40
14	A Yes, I would agree that in the Mac OS,	12:50:41
15	32-bit versions of Windows, and other operating	12:50:43
16	systems, a container for programs and files and	12:50:49
17	graphical user interfaces, symbolized on the	12:50:51
18	screen by a graphical image (icon) of a file	12:50:53
19	folder.	12:50:57
20	I'd also note that the reason for my	12:50:59
21	disagreement was that the rest of the entry says	12:51:02
22	that this container is called a "directory" in	12:51:05

1 other systems, such as MS-DOS and UNIX.

12:51:08

2 Q And this definition also says "A folder
3 is a means of organizing programs and documents on
4 a disk and can hold both files and additional
5 folders."

12:51:16

12:51:19

12:51:23

12:51:27

6 Do you see that?

12:51:27

7 A I see the second sentence in this entry
8 for folder that says "A folder is a means of
9 organizing programs and documents on a disk and
10 can hold both files and additional folders."

12:51:29

12:51:32

12:51:35

12:51:38

11 Q And would you agree with that sentence,
12 sir?

12:51:41

12:51:43

13 A I would agree with the sentence "A
14 folder is a means of organizing programs and
15 documents on a disk and can hold both files and
16 additional folders," for the Mac OS, 32-bit
17 versions of Windows, and other operating systems.

12:51:48

12:51:51

12:51:54

12:51:57

12:52:00

18 Q Would you agree that a folder in a
19 computer can have files among folders?

12:52:05

12:52:07

20 MR. DAHLGREN: Objection. Form.

12:52:18

21 A Could you rephrase that question so
22 that it's a little clearer, please? And in

12:52:19

12:52:22

1 particular, I'm not sure what you mean by "among." 12:52:25

2 Q What does that word mean to you? 12:52:31

3 A It would very much depend on the 12:52:36

4 context, and I'm not sure why you wouldn't use the 12:52:37

5 same language as used in the entry for folder 12:52:39

6 here. 12:52:42

7 Q So, your testimony is you're not sure 12:52:48

8 what is meant by a folder in a computer can have 12:52:50

9 files among folders? 12:52:54

10 MR. DAHLGREN: Objection. Form. 12:52:56

11 A I think I have answered that question 12:53:20

12 in agreeing that a folder is a means of organizing 12:53:22

13 programs and documents on a disk and can hold both 12:53:25

14 files and additional folders. 12:53:28

15 Q So your testimony is, you're not sure 12:53:38

16 what is meant by a folder in a computer can have 12:53:40

17 files among folders? 12:53:45

18 MR. DAHLGREN: Objection. Form. 12:53:50

19 A If your statement that a folder can 12:54:03

20 contain files among folders is equivalent to the 12:54:08

21 statement "A folder is a means of organizing 12:54:12

22 programs and documents on a disk and can hold both 12:54:15

1	files and additional folders," then I agree with	12:54:18
2	your statement.	12:54:21
3	Q Returning to this definition of folder.	12:54:50
4	We discussed the first sentence, "In the Mac OS,	12:54:54
5	32-bit versions of Windows, and other operating	12:54:56
6	systems, a container for programs and files in	12:55:01
7	graphical user interfaces, symbolized on the	12:55:03
8	screen by a graphical image (icon) of a file	12:55:08
9	folder."	12:55:13
10	Do you see that sentence?	12:55:14
11	A I do see that sentence.	12:55:15
12	The first sentence in the entry for	12:55:18
13	folder reads "In the Mac OS, 32-bit versions of	12:55:21
14	Windows, and other operating systems, a container	12:55:24
15	for programs and files in graphical user	12:55:28
16	interfaces, symbolized on the screen by a	12:55:30
17	graphical image (icon) of a file folder."	12:55:33
18	MR. DAHLGREN: Liv, I want to note, on	12:55:45
19	the record, just an objection to the exhibit,	12:55:46
20	under 901, 401, 402 and 403, and 106, 801 in the	12:55:48
21	Federal Rules of Evidence. So I just wanted to	12:55:57
22	make sure that's on the record.	12:56:00

1	MS. HERRIOT: We disagree, but we can	12:56:02
2	take that up later.	12:56:03
3	Q So, returning to that sentence,	12:56:05
4	Dr. Smith.	12:56:07
5	What is a graphical user interface?	12:56:09
6	A In general, and this may or may not be	12:56:17
7	relevant to the case, a graphical user interface	12:56:19
8	is a means by which a user of a computer system	12:56:23
9	interacts with that computer system.	12:56:35
10	Q Let's go, now, to the previous page of	12:56:40
11	this document, so the second-to-last page of the	12:56:42
12	excerpt.	12:56:45
13	Now, on the left-handed side, there's	12:56:47
14	the word "file."	12:56:56
15	Can you look at that definition,	12:56:57
16	please, sir.	12:56:58
17	A I'm on page 211. And before we dive	12:57:04
18	into another long question, I note that it's	12:57:08
19	nearly 10:00. Is it appropriate to take another	12:57:12
20	two-minute break, please?	12:57:15
21	Q I think this one will go a little	12:57:18
22	faster. We can take a break, but I just have a	12:57:20

1	couple of questions here and then we can be done	12:57:23
2	with this exhibit, if you don't mind, sir.	12:57:26
3	A Go ahead, please.	12:57:29
4	Q Thank you.	12:57:29
5	So you do have the definition file in	12:57:30
6	front of you?	12:57:32
7	A I have the entry for file on page 211.	12:57:32
8	Q And you see the first sentence reads "A	12:57:37
9	complete, named collection of information, such as	12:57:41
10	a program, a set of data used by a program, or a	12:57:44
11	user-created document"?	12:57:48
12	A I see that as the first sentence in the	12:57:51
13	entry for file, "A complete, named collection of	12:57:54
14	information, such as a program, a set of data used	12:57:59
15	by a program, or a user-created document."	12:58:05
16	Q And would you agree with that sentence?	12:58:12
17	A No.	12:58:39
18	Q Why not?	12:58:41
19	A In some cases, a file does not need to	12:58:43
20	be named.	12:58:45
21	Q So if I removed the word "named" and I	12:58:51
22	said a file is a complete collection of	12:58:53

1	information, such as a program, a set of data used	12:58:55
2	by a program, or a user-created document, would	12:58:59
3	you agree?	12:59:02
4	A No.	12:59:03
5	Q Why not?	12:59:05
6	A I don't believe that is a complete list	12:59:06
7	of what a file could be.	12:59:09
8	Q Do you read the second sentence, "A	12:59:19
9	file is the basic union of storage that enables	12:59:21
10	the computer to distinguish one set of information	12:59:24
11	from another"?	12:59:30
12	A Yes, I see the second sentence in the	12:59:31
13	entry for file. A file is the basic unit of	12:59:33
14	storage that enables a computer to distinguish one	12:59:35
15	set of information from another.	12:59:38
16	Q Do you agree with that sentence?	12:59:41
17	A In general, in most contexts, yes, I do	13:00:08
18	agree that a file is the basic unit of storage.	13:00:12
19	But in other contexts, that is most definitely not	13:00:17
20	true, that there are other basic units of storage	13:00:20
21	other than files.	13:00:23
22	Q Thank you, sir.	13:00:27

Transcript of Michael Smith, Ph.D.
Conducted on January 9, 2025

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1	MS. HERRIOT: Would you like to take	13:00:28
2	your five-minute break?	13:00:29
3	THE WITNESS: Sure. Three minutes is	13:00:31
4	fine.	13:00:32
5	MS. HERRIOT: All right. Thank you.	13:00:32
6	THE VIDEOGRAPHER: We are going off the	13:00:34
7	record. The time is 1:00 p.m.	13:00:34
8	(Recess taken.)	13:00:38
9	THE VIDEOGRAPHER: We are back on the	13:03:23
10	record. The time is 1:03 p.m.	13:03:24
11	BY MS. HERRIOT:	13:03:26
12	Q Dr. Smith, is your family still okay?	13:03:31
13	A Yes. No updates since the last break.	13:03:33
14	Q I'm glad. Seems like, in this case, no	13:03:39
15	news is good news. So that's good.	13:03:41
16	A Yes. As long as they're not in the	13:03:44
17	middle of evacuating or something. Probably	13:03:46
18	wouldn't be hearing from them.	13:03:52
19	Q I trust that they would call.	13:03:54
20	A Yes, I would hear if they were.	13:03:57
21	Q Absolutely.	13:03:59
22	Now, Dr. Smith, you have received	13:04:02

1	emails, correct?	13:04:03
2	A I have received emails.	13:04:10
3	Q In fact, I believe we discussed earlier	13:04:12
4	that you have an email application open.	13:04:14
5	A I do have an email window open.	13:04:18
6	Q And is that Gmail or Outlook? What is	13:04:25
7	it, sir?	13:04:31
8	A I use, in this case, Gmail.	13:04:31
9	Q So it's displayed in a web browser?	13:04:36
10	A Gmail, on my laptop, is displayed in a	13:04:38
11	web browser.	13:04:41
12	Q And when you open your Gmail, the	13:04:48
13	contents are displayed in a web browser on your	13:04:49
14	computer screen, correct?	13:04:52
15	A They are displayed in a tab of a web	13:04:54
16	browser on my laptop computer screen.	13:04:57
17	MS. HERRIOT: I'm going to introduce	13:05:06
18	tab 28 as the next exhibit, Exhibit 6, I believe.	13:05:07
19	PLANET DEPOS TECHNICIAN: Stand by.	13:05:13
20	(Smith Exhibit 6 marked for	13:05:13
21	identification and attached to the transcript.)	13:05:13
22	Q This is a web page from the PC Magazine	13:05:31

1 website, and, specifically, it's an entry from the 13:05:34
2 PC Magazine Encyclopedia, and it's entitled "email 13:05:38
3 interfaces." 13:05:46

4 Do you have that in front of you, sir? 13:05:47

5 A I see Exhibit Smith 06. And the title 13:05:48
6 at the top of the page, that I can read most 13:05:52
7 easily, says "email interfaces." 13:05:55

8 Q And if you scroll up a little bit, you 13:06:01
9 see PC Magazine as well? 13:06:04

10 A No, I see a search box with PC 13:06:06
11 Magazine, or "Search PCMag Encyclopedia." I do 13:06:08
12 not see -- 13:06:08

13 Q You see a red box, PC Mag, also? 13:06:16

14 A I see a logo with PC Mag, a red, square 13:06:19
15 box at the top left. 13:06:22

16 MR. DAHLGREN: Just before the 13:06:25
17 question, I want to object to the exhibit. Same 13:06:25
18 objections as last time. Federal Rules of 13:06:28
19 Evidence 106, 401, 402, 403, 801, 901. 13:06:32

20 MS. HERRIOT: Okay. 13:06:41

21 Q And, Dr. Smith, do you see "Browse 13:06:42
22 Encyclopedia," and then below that, the letters A 13:06:45

1	through Z, followed by 0 through 9?	13:06:50
2	A Yes. Underneath the search box, what	13:06:52
3	looks like a search box with the words "Search	13:06:56
4	PCMag Encyclopedia," I see a heading "Browse	13:07:00
5	Encyclopedia," and then I see five rows of	13:07:02
6	letters, A through Z, and 0 to 9.	13:07:08
7	Q And then if you scroll down below those	13:07:15
8	letters and the number 0 to 9, there's a sentence.	13:07:19
9	Do you see that, there's actually two sentences,	13:07:23
10	"There are two ways to compose and retrieve email.	13:07:25
11	The first way is using a Web browser and the	13:07:29
12	second is to use a locally installed application	13:07:32
13	such as Outlook"?	13:07:35
14	Have I read that correctly?	13:07:38
15	A I didn't scroll down. It was scrolled	13:07:43
16	for me. I see -- I saw those two sentences appear	13:07:45
17	as you were reading. And I see "There are two	13:07:49
18	ways to compose and retrieve email. The first way	13:07:55
19	is using a Web browser and the second is to use a	13:07:59
20	locally installed application such as Outlook."	13:08:03
21	Q And I think that first way, using a web	13:08:09
22	browser, is what we were just discussing you do,	13:08:12

1	yourself, with Gmail, correct?	13:08:14
2	A No.	13:08:19
3	Q A web browser is used to access the	13:08:31
4	Gmail, correct?	13:08:35
5	A No.	13:08:39
6	MR. DAHLGREN: Form.	13:08:41
7	Q So you disagree with this PC Magazine	13:08:45
8	statement, "There are two way to compose and	13:08:48
9	retrieve email. The first way is using a Web	13:08:52
10	browser and the second is to use a locally	13:08:54
11	installed application such as Outlook"?	13:08:57
12	A No.	13:08:59
13	Q Do you agree with those sentences?	13:09:01
14	A Yes.	13:09:02
15	Q And method 1, do you see that heading	13:09:08
16	"Method 1- Webmail- From Anywhere"?	13:09:11
17	A Yes.	13:09:15
18	Q "Also called 'online email' or 'cloud	13:09:15
19	email [sic], ' Webmail is a Web-based email service	13:09:18
20	from Google, Yahoo!, Microsoft, and other	13:09:21
21	providers that is accessible from any Web	13:09:24
22	browser."	13:09:28

1	Do you see that?	13:09:30
2	A Yes. It's not what you read, but I see	13:09:31
3	that.	13:09:33
4	Q Do you agree with the sentence that	13:09:34
5	begins "also called," beneath Method 1?	13:09:36
6	MR. DAHLGREN: Objection. Form.	13:09:54
7	A Yes, in general, I would agree with	13:09:54
8	that sentence, "Also called 'online email' or	13:09:56
9	'cloud.mail.'" I believe you said cloud email.	13:09:59
10	"Webmail is a Web-based email service from Google,	13:10:02
11	Yahoo!, Microsoft, and other providers that is	13:10:07
12	accessible from any Web browser."	13:10:12
13	Q So when the web mail email service from	13:10:29
14	Google is used, that's Gmail, correct?	13:10:32
15	A I call it Gmail. I don't believe	13:10:36
16	anywhere else calls it web mail, but Gmail uses	13:10:39
17	this method, yes. Can use this method. It's not	13:10:43
18	the only method.	13:10:46
19	Q What other method does Gmail use?	13:10:48
20	A On my phone, for example, I use a Gmail	13:10:52
21	app.	13:10:54
22	Q When you're using the Gmail in the web	13:10:59

1 browser, as you're doing right now. 13:11:02

2 Do you have that context in mind? 13:11:06

3 A I do have the context in mind that you 13:11:09

4 are now referring to only Gmail on my laptop, when 13:11:11

5 used in a tab in a browser. 13:11:17

6 Q And in that context, that tab in the 13:11:23

7 browser that is used to access Gmail is an email 13:11:26

8 interface, correct? 13:11:29

9 A In general. And that may -- this may 13:11:31

10 or may not be applicable to this case. That is 13:11:35

11 true, that that is an interface to the Gmail 13:11:38

12 service. 13:11:44

13 Q And this document also talks about a 13:11:48

14 locally installed application, such as an Outlook. 13:11:50

15 Do you see that? 13:11:54

16 A If you are referring to the sentence 13:11:59

17 above method 1 -- 13:12:01

18 Q Yes. 13:12:04

19 A -- which is, "There are two ways to 13:12:04

20 compose and retrieve email. The first way is 13:12:06

21 using a Web browser and the second is to use a 13:12:08

22 locally installed application such as Outlook," 13:12:11

1	yes, I see that.	13:12:15
2	Q Are you familiar with Microsoft	13:12:17
3	Outlook?	13:12:19
4	A I am -- I have used Microsoft Outlook.	13:12:20
5	It is not my preferred method of using email.	13:12:23
6	Q Email applications like Microsoft	13:12:33
7	Outlook are email interfaces, correct?	13:12:34
8	MR. DAHLGREN: Objection. Form.	13:12:43
9	A No. Could you -- I don't think I agree	13:12:53
10	with that.	13:12:55
11	Could you repeat that question, please?	13:12:56
12	Q I said that email applications like	13:12:57
13	Microsoft Outlook are email interfaces, correct?	13:13:00
14	MR. DAHLGREN: Same objection.	13:13:06
15	A I think the answer to that, again,	13:13:12
16	similarly to a question that you asked earlier,	13:13:15
17	depends on context. And in general, a user, who's	13:13:17
18	not familiar with the terminology in computers,	13:13:21
19	might say that. And I think most people might	13:13:25
20	understand what you mean by that.	13:13:27
21	But I would not say that the	13:13:29
22	application is an interface.	13:13:37

1	Q	Email applications like Microsoft	13:13:49
2		Outlook provide email interfaces?	13:13:52
3	MR. DAHLGREN:	Objection. Form.	13:13:56
4	A	First, I would ask you to explain what	13:14:35
5		you mean by "applications like Outlook."	13:14:37
6	Q	Sure. Let's talk about Microsoft	13:14:42
7		Outlook in particular.	13:14:44
8		And Microsoft Outlook is an interface	13:14:46
9		to your email service, whichever email you've	13:14:51
10		chosen to access using Microsoft Outlook, correct?	13:14:55
11	MR. DAHLGREN:	Objection. Form.	13:14:59
12	A	No. I don't agree with that. I don't	13:15:00
13		agree that it is an interface.	13:15:04
14	Q	Does Microsoft Outlook provide an email	13:15:16
15		interface?	13:15:20
16	A	In general, I would -- I would say, to	13:15:21
17		an ordinary user, and this may or may not be	13:15:24
18		applicable in this case, that they would	13:15:27
19		understand what provides an interface means. But	13:15:29
20		I would not use the word "provide," I would use	13:15:31
21		the word "presents," for example.	13:15:34
22	Q	So, Microsoft Outlook presents an email	13:15:38

1 interface? 13:15:41

2 A It can be capable of doing that, in 13:15:42

3 that it is responsible providing -- for providing 13:15:46

4 that interface with which you interact with an 13:15:50

5 application on your computer. 13:15:54

6 Q And the Gmail app on your phone also 13:15:56

7 presents an email interface? 13:16:03

8 A Again, in general, and this may or may 13:16:22

9 not be relevant to this case, I think a normal 13:16:24

10 user would (indiscernible) what you said by that 13:16:27

11 sentence, but I don't believe that it is 13:16:33

12 completely accurate, technically. 13:16:34

13 Q Is it possible to access email other 13:16:46

14 than through an interface? 13:16:49

15 A Could you repeat the question, please? 13:17:24

16 Q Is it possible to access email other 13:17:28

17 than through an interface? 13:17:30

18 A Can you explain, please, what you mean 13:17:32

19 by "access"? 13:17:34

20 Q Is it possible to compose email without 13:17:51

21 using an email interface? 13:17:55

22 MR. DAHLGREN: Objection. Form. 13:18:23

1	A	I think the answer would depend on the	13:18:28
2		context. For example, it comes to mind that you	13:18:30
3		could say, hey, Siri, send email.	13:18:34
4		One might consider that to be an email	13:18:38
5		interface, one might not.	13:18:41
6	Q	Can you think of any example other than	13:18:50
7		Siri?	13:18:56
8	A	I can think of many.	13:18:57
9	Q	Is it possible to receive email without	13:18:58
10		using an interface?	13:19:03
11		MR. DAHLGREN: Objection. Form.	13:19:10
12	A	Again, yes, I can think of situations	13:19:19
13		where that might be considered possible.	13:19:21
14	Q	Dr. Smith, in the 286 IPR, you construe	13:20:29
15		the term "representation of the at least one	13:20:35
16		folder."	13:20:40
17		Do you remember that?	13:20:41
18	A	I can remember addressing that issue	13:20:43
19		in, I believe, the 286 IPR, from memory. I don't	13:20:53
20		have the document in front of me.	13:21:00
21	Q	As of today, your declaration lists all	13:21:06
22		the support for your construction for that claim	13:21:09

1 term, correct? 13:21:12

2 A I'm sorry. You were a little faint at 13:21:15
3 the end of that question. So I might ask you to 13:21:16
4 just repeat it again, please. 13:21:20

5 Q Of course. 13:21:22

6 As of today, your declaration lists all 13:21:24
7 the support for your construction for that claim 13:21:26
8 term, correct? 13:21:28

9 MR. DAHLGREN: Objection. Form. 13:21:30

10 A No. 13:21:34

11 Q You have support you did not list in 13:21:38
12 your declaration? 13:21:40

13 A Yes. 13:21:43

14 Q Did you have support, at the time you 13:21:48
15 prepared your declaration, that you chose to omit? 13:21:49

16 A Can you repeat that question, please? 13:21:54
17 There was a slight double negative, I believe, in 13:21:56
18 there. 13:21:59

19 Q At the time you prepared your 13:22:00
20 declaration, did you have support for your claim 13:22:02
21 construction that you chose not to include? 13:22:07

22 A No. 13:22:09

Transcript of Michael Smith, Ph.D.
Conducted on January 9, 2025

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1	Q	But you have subsequently identified	13:22:18
2		additional support?	13:22:21
3	A	No.	13:22:26
4		MS. HERRIOT: Let's introduce your	13:22:38
5		declaration, tab 2.	13:22:39
6		(Smith Exhibit 7 marked for	13:22:41
7		identification and attached to the transcript.)	13:22:41
8		MS. HERRIOT: Exhibit 7.	13:22:53
9	Q	And, sir, you may download it, if you	13:22:55
10		choose.	13:22:58
11	A	Thank you.	13:22:59
12	Q	Please let me know when you have it.	13:23:16
13	A	I have in front of me Tab 02- EX2051	13:23:25
14		2x -- 286 IPR Smith declaration.	13:23:32
15	Q	If you could, please, go to page 32,	13:23:43
16		paragraph 73.	13:23:46
17	A	Paragraph 32?	13:24:00
18	Q	No. Page 32, paragraph 73. It's	13:24:02
19		actually page 34. You're at the right page on the	13:24:09
20		screen there. Yeah.	13:24:13
21		MS. HERRIOT: Can you scroll up so we	13:24:18
22		can see the box above paragraph 73. Thank you.	13:24:19

1	Q	Let me know when you have that in front	13:24:28
2		of you, Dr. Smith.	13:24:30
3	A	I have paragraph 72B, representation of	13:24:32
4		the at least one folder.	13:24:37
5	Q	And there's a box there with the claim	13:24:43
6		term on the left and the construction on the	13:24:47
7		right; is that correct?	13:24:50
8	A	I have a box with -- on the	13:24:53
9		left-hand -- has two headings, term on the left,	13:24:56
10		and Patent Owner's proposed construction on the	13:25:00
11		right.	13:25:03
12	Q	Now, it says "Patent Owner's proposed	13:25:07
13		construction."	13:25:09
14		Does that mean you don't agree with it?	13:25:10
15	A	I'm not sure I understand that	13:25:36
16		question.	13:25:37
17	Q	I had understood -- is this also your	13:25:39
18		proposed construction, sir?	13:25:44
19	A	Yes. This is the construction that I	13:25:45
20		feel describes the term.	13:25:51
21	Q	You would agree that your proposed	13:26:03
22		construction requires that the file contents are	13:26:06

1 stored remotely and are not communicated to the 13:26:09

2 user till the user initiates the communication? 13:26:12

3 A I proposed that the term 13:26:23

4 "representation of the at least one folder," be 13:26:26

5 constructed as "A folder that can be displayed at 13:26:29

6 the user's node, but whose file contents are 13:26:35

7 stored remotely and are not communicated to the 13:26:38

8 user till the user initiates the communication." 13:26:41

9 And that construction should be as a 13:26:44

10 whole, no more and no less. 13:26:46

11 Q So, in other words, your construction 13:26:54

12 requires that the remote storage always happen, 13:26:56

13 correct? 13:27:00

14 MR. DAHLGREN: Objection. Form. 13:27:12

15 A I'm not sure I agree with that 13:27:15

16 characterization. And something as important as a 13:27:19

17 proposed construction, I don't feel it's 13:27:21

18 appropriate for me to comment on your attempt to 13:27:23

19 abbreviate, summarize, or alter the construction. 13:27:28

20 The construction's here for a reason. It is 13:27:32

21 supposed to explain the term, in clear terms, but 13:27:37

22 as a whole. 13:27:41

1	Q	I'm just trying to understand your	13:28:00
2		construction.	13:28:03
3		Are you unable to explain your	13:28:04
4		construction other than repeating it?	13:28:06
5	A	I don't think the construction needs	13:28:11
6		any explanation. If you want to point to a claim	13:28:12
7		and we can discuss its meaning in the context of	13:28:20
8		that claim, that would be fine.	13:28:23
9	Q	I'm just trying to understand your	13:28:28
10		construction.	13:28:29
11		Are you unable to explain it other than	13:28:31
12		repeating it?	13:28:33
13		MR. DAHLGREN: Objection. Form.	13:28:38
14	A	I do not understand which part of this	13:28:43
15		plain English expression you do not understand or	13:28:46
16		which needs further explanation.	13:28:51
17	Q	I asked you a question about your	13:28:55
18		construction and you refused to answer it.	13:28:57
19	A	I believe I did answer it.	13:29:00
20		MR. DAHLGREN: Objection. Form.	13:29:02
21	A	The explanation is the proposed	13:29:03
22		construction.	13:29:07

1	Q	And your proposed construction requires	13:29:07
2		that the remote storage always occurs, correct,	13:29:10
3		sir?	13:29:13
4	A	My construction requires the limitation	13:29:14
5		"but whose file contents are stored remotely and	13:29:16
6		are not communicated to the user till the user	13:29:21
7		initiates the communication."	13:29:24
8		I believe that is plain English. I	13:29:26
9		could not describe it any better or I would have	13:29:28
10		done so in this declaration.	13:29:31
11	Q	So, you're unable to explain your	13:29:36
12		construction other than repeating it?	13:29:38
13		MR. DAHLGREN: Objection. Form.	13:29:43
14	A	I believe I've answered that question	13:29:50
15		several times.	13:29:51
16	Q	"Are not communicated to the user till	13:29:54
17		the user initiates the communication."	13:29:58
18		In other words, the file contents are	13:30:02
19		required not to be communicated until the user	13:30:03
20		initiates the communication, correct?	13:30:06
21		MR. DAHLGREN: Objection. Form.	13:30:14
22	A	I'm sorry, but without the context, I	13:30:22

1 can't answer your question in the form that you've
2 asked it, other than to repeat the construction
3 here, which is supposed to be, and indeed is, the
4 definition of this term. It's quite clear to me
5 what this term means.

6 Q I'm trying to understand, and you seem
7 to be unable to explain it other than repeating
8 the construction.

9 A No. I feel that --

10 MR. DAHLGREN: Objection. Form.

11 THE WITNESS: Go ahead, Derek.

12 MR. DAHLGREN: Thank you, Dr. Smith.

13 I just want to make an objection to
14 form.

15 THE WITNESS: Thank you, Derek.

16 Q Go ahead, Dr. Smith. You were going to
17 say something.

18 A Would you repeat the last question you
19 gave me, please?

20 Q I'm trying to understand your
21 construction, and you seem to be unable to explain
22 it other than repeating the construction.

13:30:25

13:30:26

13:30:28

13:30:32

13:30:34

13:30:37

13:30:41

13:30:43

13:30:45

13:30:48

13:30:50

13:30:51

13:30:52

13:30:56

13:30:57

13:31:02

13:31:04

13:31:06

13:31:10

13:31:18

13:31:19

13:31:21

1 MR. DAHLGREN: Objection. Form. 13:31:25

2 A That was a statement rather than a 13:31:32

3 question. But I -- I think I am unwilling to give 13:31:34

4 you alternative proposed constructions. The 13:31:43

5 proposed construction that we are talking about is 13:31:46

6 quite clear. It's as clear as I can make it. I 13:31:48

7 conferred with my legal team in constructing this 13:31:55

8 declaration. It's as clear as we could make it. 13:31:58

9 Q And I'm trying to understand it. 13:32:05

10 So, when you say "are not communicated 13:32:07

11 to the user till the user initiates the 13:32:11

12 communication," does that mean the file contents 13:32:14

13 are required not to be communicated to the user 13:32:18

14 until the user initiates the communication? 13:32:20

15 A I'm going to turn to the applications 13:37:54

16 and specifications, and that might help us shed 13:37:56

17 some light on this question. 13:37:59

18 Can I look at the -- oh, I don't have 13:38:10

19 the application numbers. 13:38:15

20 Where will I find those? 13:38:17

21 Q So sitting here today, if someone said 13:38:32

22 that your construction meant that the file 13:38:35

1 contents are required not to be communicated to 13:38:40
2 the user until the user initiates the 13:38:42
3 communication, would that be correct? 13:38:45

4 A So, I note, in the table of exhibits, 13:39:05
5 if you want to turn to page IV of my declaration. 13:39:09
6 You'll see that the table of exhibits is blank. 13:39:19
7 That was a mistake, and that was part of the 13:39:23
8 problem that we had earlier, when you were asking 13:39:25
9 me about my list of sources and references. 13:39:27

10 Do you see that? 13:39:34

11 Q I'm not sure what you're referring to, 13:39:38
12 sir. 13:39:39

13 A We're looking at my declaration. I'm 13:39:41
14 trying to answer your question. 13:39:43

15 I'm trying to answer your question by 13:39:47
16 referring you to the two parent applications of 13:39:49
17 this patent. I can't find, easily, the two parent 13:39:54
18 applications of this patent because my table of 13:39:57
19 exhibits is blank. 13:40:00

20 Q So is it your testimony that the 13:40:02
21 question cannot be answered merely by reading the 13:40:06
22 paragraphs of your declaration? 13:40:09

1	A	No. I think the opposite is true. I	13:40:13
2		told you that the answer to your question is in	13:40:15
3		the construction of the term. But --	13:40:19
4	Q	And I have --	13:40:26
5	A	But you are asking me to explain it	13:40:27
6		further. And I am saying that the easiest way for	13:40:29
7		me to explain it is to refer you to the	13:40:33
8		application specifications.	13:40:38
9	Q	And I'm just asking you a simple	13:40:41
10		yes-or-no question.	13:40:43
11	A	I don't believe it is a simple	13:40:46
12		yes-or-no question. I think you're trying to get	13:40:48
13		me to say that the term means something other than	13:40:51
14		the construction that I proposed.	13:40:54
15	Q	No. I'm merely trying to understand	13:41:00
16		your construction. And I'm saying, if somebody	13:41:02
17		said that your construction meant that it was	13:41:04
18		required that the file contents are not	13:41:06
19		communicated to the user until the user initiates	13:41:07
20		the communication, would that be correct?	13:41:10
21	A	I haven't studied, at length, the issue	13:41:22
22		of the transfer being required or not. I think	13:41:24

1 that would require further analysis, including 13:41:31

2 looking at the parent application specifications. 13:41:38

3 Q So why might a person see a 13:42:22

4 representation of the at least one folder and 13:42:25

5 decide not to download it? 13:42:28

6 MR. DAHLGREN: Objection. Form. 13:42:33

7 A Can you repeat that question, please? 13:42:49

8 Q Yeah. So we're talking about the claim 13:42:54

9 term "representation of the at least one folder," 13:42:56

10 correct? 13:42:58

11 A I don't believe that was the question 13:43:00

12 that you asked. 13:43:01

13 Q Sure. Okay. I'm going to ask a new 13:43:03

14 question. 13:43:07

15 Why might a person see a representation 13:43:08

16 of the at least one folder and then decide not to 13:43:11

17 download the folder? 13:43:15

18 A Could it be because they don't want or 13:43:21

19 need to see the contents of the folder? 13:43:24

20 Q So, a user might want to see a copy of 13:43:30

21 the folder but not have the contents available 13:43:35

22 locally; is that correct? 13:43:39

1	A	No.	13:43:41
2	Q	Isn't that what you said?	13:43:46
3	A	No. I didn't use the word "copy" at	13:43:47
4		all. You only -- only you used the word "copy."	13:43:51
5	Q	Well, you framed yours as a question.	13:44:02
6		So are you saying that the person	13:44:06
7		might -- is it correct -- scratch that. Start	13:44:09
8		over.	13:44:14
9		Is it your testimony that a person	13:44:14
10		might see a representation of the at least one	13:44:16
11		folder and decide not to download the folder	13:44:19
12		because they don't want or need to see the	13:44:21
13		contents of the folder?	13:44:24
14	A	My answer is that I see folders that I	13:44:40
15		don't necessarily want to open or potentially	13:44:45
16		download.	13:44:51
17	Q	And why is that?	13:44:55
18	A	I might know that that folder is 5	13:44:58
19		gigabytes in size, and I don't have enough	13:45:01
20		bandwidth to perform that download, for example.	13:45:05
21	Q	So you might have a concern about the	13:45:14
22		bandwidth of your Internet connection for	13:45:17

1	downloading; is that correct?	13:45:21
2	A That would be one example.	13:45:23
3	Q What would another example be?	13:45:25
4	A That I have two folders and I would	13:45:33
5	like to see one but not the other.	13:45:35
6	Q And why would you not want to see the	13:45:39
7	other?	13:45:41
8	A I'm not sure I understand your	13:45:53
9	question. But in general, and this may or may not	13:45:55
10	be relevant to the case, there might be documents,	13:45:58
11	for example, in an IPR deposition, there might be	13:46:01
12	a folder that I know contains marked-up versions	13:46:06
13	of PDFs, whereas the other folder does not contain	13:46:09
14	marked-up versions of PDFs. So I would not	13:46:12
15	download, under instruction, the folder with	13:46:17
16	marked-up versions of PDF.	13:46:19
17	Q So you mentioned concerns about	13:46:26
18	bandwidth of the Internet connection. Might there	13:46:27
19	also be concerns about space on the hard drive to	13:46:30
20	where you were -- to where you were downloading	13:46:33
21	the folder?	13:46:37
22	A Are you asking this as a general	13:47:24

1 question or are you asking this to elicit my 13:47:26
2 opinion as a person of ordinary skill in the art 13:47:31
3 at the time of the invention, 2012? 13:47:35

4 Q The latter. 13:47:56

5 A In 2012, it was -- it is possible that 13:48:02
6 you would at least think about the size of the 13:48:08
7 storage unit that you might have on your local 13:48:13
8 machine and, therefore, potentially choose or not 13:48:16
9 choose to download a particularly large file or a 13:48:23
10 folder with particularly large files. 13:48:31

11 Q And your bandwidth example would also 13:48:43
12 apply to 2012, correct? 13:48:45

13 A In general. And, again, I'm not sure 13:48:49
14 how this relates to the case. But, in general, 13:48:51
15 that's true; that it might be difficult to 13:48:56
16 download a very large file on a wireless 13:49:00
17 connection, for example, in that era. 13:49:06

18 Q Now, can we scroll in your declaration 13:49:17
19 to paragraph 81. 13:49:21

20 A I see that. 13:49:38

21 Q In paragraph 81, you say that you're 13:49:39
22 relying on the language of claims 1 and 7 to 8 as 13:49:42

1	support for your proposed construction.	13:49:46
2	Do you see that?	13:49:52
3	A I do. I also see that I cited Philips	13:49:52
4	here, which is a legal cite that probably	13:49:55
5	shouldn't have been in my declaration. There are	13:49:58
6	a number of typographical errors in my declaration	13:50:00
7	that I have subsequently discovered.	13:50:04
8	I referred to one of them earlier, the	13:50:06
9	empty table of exhibits.	13:50:07
10	But I do see, in paragraph 81, these	13:50:12
11	aspects of Patent Owner's proposed construction	13:50:17
12	are further supported by the claims of language 1	13:50:19
13	and 7 to 8.	13:50:22
14	Q And further on in paragraph 81, after	13:50:25
15	the case citations, you refer specifically to	13:50:27
16	elements 1[h] to [j], correct?	13:50:31
17	A I see, for example, claim elements 1[h]	13:50:38
18	through [j] specify that, one, the contents of the	13:50:42
19	files and the representation of the at least one	13:50:47
20	folder are not stored at the second node, despite	13:50:49
21	the representation existing among the folders in	13:50:52
22	the second node's file explorer interface. And,	13:50:55

1	two, the contents of the files and the	13:50:58
2	representation of the folder are not communicated	13:51:00
3	to user at the second node until the user sends an	13:51:02
4	indication to open the at least one file in the at	13:51:05
5	least one folder.	13:51:09
6	MS. HERRIOT: And if we could scroll	13:51:20
7	down a little bit further. Keep going. Keep	13:51:22
8	going. There we go. Let's stop.	13:51:29
9	Q You cite, from element 1[h], the	13:51:31
10	language there in green in support of your	13:51:35
11	position, correct?	13:51:39
12	A Yes. I see where the storage at the	13:51:47
13	second node does not store the at least one file	13:51:50
14	when the creation of the representation of the at	13:51:56
15	least one folder is caused.	13:51:59
16	Q And you're citing that language in	13:52:02
17	support of your construction, correct?	13:52:04
18	A Yes. I refer to clause 1[h] when I say	13:52:16
19	that, for example, claim elements 1[h] to [j]	13:52:24
20	specify that the contents of the files and	13:52:27
21	representation of at least one folder are not	13:52:31
22	stored in the second node, despite the	13:52:33

1 representation existing among the folders in the 13:52:35
2 second node's file explorer interface. 13:52:37

3 Q And you cite to element 1L, which says 13:52:41
4 "Detect, at the second node, an indication to open 13:52:44
5 the at least one file in the at least one folder," 13:52:48
6 correct? 13:52:51

7 MR. DAHLGREN: Objection. Form. 13:52:54

8 A Can you repeat that question, please? 13:52:59

9 Q Apologies. And you cite to element 13:53:06
10 1[i], I said 1L, but it's 1[i], "Detect, at the 13:53:11
11 second node, an indication to open the at least 13:53:16
12 one file in the at least one folder," correct? 13:53:18

13 A Yes, that is correct. And that was the 13:53:20
14 basis of my query. I did not think we had a 1L. 13:53:22
15 Thank you for that correction. 13:53:25

16 The answer is, yes, I see "Detect, at 13:53:26
17 the second node, an indication to open the at 13:53:29
18 least one file in the at least one folder." 13:53:31

19 Q And then if we go to the next -- sorry, 13:53:34
20 go ahead, sir. 13:53:35

21 A And I did -- I did include that since 13:53:36
22 1[i] is part of 1[h] through 1[j], I did cite that 13:53:40

1	clause.	13:53:48
2	Q Thank you.	13:53:53
3	And if we go to the next page, we see	13:53:53
4	1[j], which says "In response to detection of the	13:53:56
5	indication to open the at least one file and the	13:54:02
6	at least one folder, cause retrieval of the at	13:54:05
7	least one file via the at least one network for	13:54:08
8	permitting display of the at least one file at the	13:54:11
9	second node."	13:54:14
10	You cited that in support of your	13:54:15
11	construction as well, correct?	13:54:17
12	A Yes. I cited 1[j] as part of the cite	13:54:25
13	1[h] through 1[j].	13:54:30
14	Q And you contend that this claim	13:54:38
15	language supports your claim construction for	13:54:39
16	representation of the at least one folder,	13:54:44
17	correct?	13:54:45
18	A I contend that these claim elements,	13:54:59
19	1[h] through [j], are examples of support that	13:55:02
20	support the construction of representation of the	13:55:06
21	at least one folder that I have proposed.	13:55:21
22	Q And you can contend that this language	13:55:29

1 in claim 1 supports your construction because it 13:55:31
2 means that its shared folder's file contents are 13:55:34
3 stored remotely and are not communicated to the 13:55:38
4 user until the user initiates the communication, 13:55:41
5 correct? 13:55:43

6 A Can you repeat that question, now that 13:55:46
7 I have my construction in front of me? 13:55:48

8 Q You contend that this language in 13:55:51
9 claim 1 supports your construction because it 13:55:52
10 means that a shared folder's file contents are 13:55:55
11 stored remotely and are not communicated to the 13:55:59
12 user until the user initiates the communication, 13:56:01
13 correct? 13:56:03

14 A These claim elements, when taken with 13:56:27
15 the claims as a whole, and the specifications, 13:56:29
16 including the specifications of the parent 13:56:32
17 applications, again, as I say, when taken as a 13:56:37
18 whole, support the construction. 13:56:41

19 Q Your position is that the phrase "the 13:56:51
20 storage at the second node does not store the at 13:56:53
21 least one file when the creation of the 13:56:56
22 representation of the at least one folder is 13:56:58

1 caused from claimant element 1[h]" means files are 13:57:00
2 not stored at the user's node when the 13:57:03
3 representation of the at least one folder is 13:57:07
4 caused, correct? 13:57:10

5 A I was scrolling back from my 13:57:13
6 construction to 1[h]. So could you, just quickly, 13:57:16
7 repeat your question, please, now that I have 1[h] 13:57:20
8 in front of me? 13:57:23

9 Q Sure. I'm looking at paragraph 81 and 13:57:23
10 1[h]. And your position is that the phrase "the 13:57:26
11 storage at the second node does not store the at 13:57:31
12 least one file when the creation of the 13:57:34
13 representation of the at least one folder is 13:57:37
14 caused from claim element 1[h]," means files are 13:57:39
15 not stored at the user's node when the 13:57:45
16 representation of the at least one folder is 13:57:47
17 caused, correct? 13:57:49

18 A No. 13:57:50

19 Q Well, I'm looking at paragraph 7 -- not 13:57:59
20 73. At paragraph 81, and you say "Claim elements 13:58:01
21 1[h] to [j] specify the contents of the files and 13:58:08
22 their representation that the at least one folder 13:58:12

1	are not stored at the second node."	13:58:15
2	A That's correct.	13:58:17
3	Q But your position is not that claim	13:58:21
4	element 1[h] means the files are not stored at the	13:58:24
5	user's node when the representation of the at	13:58:27
6	least one folder is caused?	13:58:30
7	MR. DAHLGREN: Objection. Form.	13:58:33
8	A No. No. My position is that you	13:58:34
9	cannot take a portion of a clause and say that	13:58:38
10	that portion, alone, of a clause supports the	13:58:45
11	construction. I am saying that you need to take	13:58:52
12	claim elements 1[h] to [j] as a whole, as an	13:59:00
13	example of the support for the construction.	13:59:07
14	Support also includes the claims, when	13:59:14
15	read as a whole, a specification of the '520	13:59:16
16	patent, when read as a whole, and the	13:59:20
17	specifications of the applications incorporated by	13:59:24
18	reference, as a whole, are all taken together.	13:59:28
19	Q So how does the cited language from	13:59:33
20	claim 1[h] support your construction?	13:59:35
21	A The support is in the term highlighted	13:59:47
22	in green.	13:59:50

1	Q	And how does the term highlighted in	13:59:53
2		green support your construction?	13:59:55
3	A	The term highlighted in green shows	14:00:00
4		that the contents of the files and the	14:00:05
5		representation of the at least one folder are not	14:00:10
6		stored at the second node.	14:00:13
7	THE WITNESS:	I note that it's 11:00	14:00:46
8		now. Would it be appropriate to take another very	14:00:50
9		short break?	14:00:52
10	MS. HERRIOT:	Let me just ask one	14:00:54
11		follow-up question.	14:00:55
12	Q	You said it shows they are not stored	14:00:57
13		at the second node.	14:00:59
14		Does it show that they are not stored	14:01:01
15		at the second node until the user initiates the	14:01:03
16		communication?	14:01:09
17	A	Can you repeat the question, please?	14:01:10
18		Are you referring -- can you repeat the question,	14:01:11
19		please?	14:01:13
20	Q	Yes. So, does that language in	14:01:14
21		claim 1[h] show they're not stored at the second	14:01:17
22		node until the user initiates the communication?	14:01:19

Transcript of Michael Smith, Ph.D.
Conducted on January 9, 2025

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1	MR. DAHLGREN: Objection. Form.	14:01:32
2	A Again, I would say that you're trying	14:01:38
3	to take small pieces of not just a claim, but a	14:01:40
4	clause. So you're taking one of three subclauses,	14:01:46
5	in a clause of a claim that has many parts, to try	14:01:51
6	and pull the construction apart, when the	14:01:58
7	construction, as I've explained in my declaration,	14:02:06
8	must be made by looking at more than just one	14:02:09
9	subclause.	14:02:13
10	MS. HERRIOT: Okay. We can take your	14:02:23
11	break. Do you want five minutes or do you want	14:02:24
12	longer?	14:02:26
13	THE WITNESS: No, I would prefer two or	14:02:27
14	three minutes so we can --	14:02:29
15	MR. DAHLGREN: Actually, Dr. Smith, can	14:02:33
16	I request just a ten-minute break, and then we can	14:02:34
17	do shorter ones, subsequently.	14:02:37
18	THE WITNESS: Yep. I have no problem	14:02:40
19	with that.	14:02:41
20	MS. HERRIOT: Of course, Derek.	14:02:42
21	MR. DAHLGREN: Thank you very much.	14:02:44
22	THE VIDEOGRAPHER: We are going off the	14:02:46

1	record. The time is 2:02 p.m.	14:02:46
2	(Recess taken.)	14:02:49
3	THE VIDEOGRAPHER: We are back on the	14:16:13
4	record. The time is 2:16 p.m.	14:16:15
5	BY MS. HERRIOT:	14:16:17
6	Q Dr. Smith, is your family still okay?	14:16:26
7	A Yes. Thank you.	14:16:28
8	Q Glad to hear it.	14:16:31
9	Now, before the break, we were talking	14:16:33
10	about paragraph 81 of your declaration.	14:16:35
11	Do you recall that?	14:16:40
12	A Yes.	14:16:42
13	Q So if we could go up a little bit to	14:16:46
14	the beginning.	14:16:49
15	You say, at the top of page 39, that	14:16:52
16	claim elements 1[h] to 1[j] specify two different	14:16:55
17	things. And what I'm just trying to understand is	14:16:59
18	how each piece of evidence supports your	14:17:05
19	construction.	14:17:08
20	And before the break, I asked you if	14:17:13
21	claim 1[h] supported the fact that the	14:17:17
22	representations are -- sorry, that the files,	14:17:23

1 themselves, are not stored at the second node 14:17:25
2 until the user initiates the communication. Which 14:17:27
3 is part 2 of your paragraph 39. And you were 14:17:31
4 unable to answer that question. 14:17:36

5 Are you still unable to answer that 14:17:39
6 question? 14:17:41

7 A I believe I answered every question 14:17:42
8 that you asked me. So you're going to have to ask 14:17:44
9 me the question that you think I did not ask -- 14:17:49
10 answer again, please. 14:17:51

11 Q Okay. Does claim element 1[h] show 14:17:55
12 that the file contents are not stored at the 14:18:07
13 second node until the user initiates the 14:18:09
14 communication? 14:18:11

15 A And could you read back my answer to 14:18:14
16 that question? 14:18:16

17 Q I'm asking you that question right now. 14:18:25

18 A I believe, if you asked me that 14:18:27
19 question before, I gave you an answer. And I'm 14:18:30
20 asking if you could read back the answer that I 14:18:32
21 gave you previously. 14:18:34

22 Q I'm trying to understand how each piece 14:18:42

1 of evidence supports your construction. 14:18:44

2 Can you, please, tell me how claim 14:18:48

3 element 1[h] supports your construction? 14:18:51

4 A Can I, first, ask if I'm allowed to ask 14:18:53

5 you to read back responses to my previous 14:18:56

6 questions? 14:18:59

7 Q Is there a reason you can't just answer 14:19:02

8 the question right now? 14:19:04

9 A I can, if you would permit me to have 14:19:06

10 you read back a previous answer. 14:19:09

11 Q I'm asking a question, sir, and I'm 14:19:11

12 asking you a question right now. It is -- I'm 14:19:13

13 asking you a different question than before. And 14:19:17

14 what I'm asking you is, I would like to understand 14:19:19

15 how each piece of evidence supports your 14:19:24

16 construction. 14:19:26

17 Can you, please, tell me how element 14:19:28

18 1[h] supports your construction? 14:19:30

19 A Yes, I can answer that question. But I 14:19:34

20 had been focusing on the fact that you had said 14:19:36

21 that you had asked a question that I had not 14:19:39

22 answered. That confused me. You've now said that 14:19:42

1 you're asking a new question. So let's focus on 14:19:46

2 that new question. 14:19:48

3 Could you repeat your new question, 14:19:49

4 please? 14:19:51

5 Q Does claim element 1[h] show that the 14:19:58

6 contents of the files are not stored at the second 14:20:01

7 node until the user initiates the communication? 14:20:06

8 A I think my answer to your question 14:20:11

9 would be similar to the question that you were 14:20:12

10 referring to previously, in that you're trying to 14:20:15

11 pull apart a web of evidence and trying to get me 14:20:19

12 to point to just one tiny subclause and say that 14:20:27

13 that alone, in isolation, supports the claim 14:20:34

14 construction that I've proposed. 14:20:42

15 And similarly to my previous answer, I 14:20:45

16 would point to the fact that there are several 14:20:47

17 places in my declaration where, for example, I 14:20:52

18 have, in green, highlighted that support which I 14:20:56

19 believe most closely corresponds to the support 14:21:01

20 for the issue that you're talking about, the 14:21:05

21 storage, and it is not the subclause of 1[h], 14:21:12

22 alone, that would support the construction. It is 14:21:17

1 not only that subclause of 1[h], but, also, the 14:21:24
2 other clauses in the range 1[h] through [j]. And, 14:21:30
3 also, other claims. Also, the claims as they 14:21:35
4 appear in their entirety, read as a whole, as well 14:21:43
5 as the specification of the '520 patent, as well 14:21:48
6 as the specification of those applications that 14:21:53
7 are incorporated by reference. 14:21:58

8 Q So that did not answer my question. 14:22:00

9 I'm asking what support this clause, 14:22:03
10 1[h], provides. 14:22:07

11 Can you answer that question? 14:22:09

12 A Clause 1[h] or the subclause part of 14:22:13
13 1[h], that is highlighted in green, that is where, 14:22:18
14 and then the green starts, the storage at the 14:22:22
15 second node does not store the at least one file 14:22:24
16 when the creation of the representation of the at 14:22:28
17 least one folder is caused, is part of the support 14:22:31
18 for the fact that the contents of files in the 14:22:36
19 representation of the at least one folder are not 14:22:40
20 stored. 14:22:43

21 Now, you are, I believe, trying to 14:22:45
22 refer to a different part of the support. So I 14:22:48

1	would reiterate that the support that I've just	14:22:51
2	read back is part of the support for the storage	14:22:56
3	element, amongst other --	14:23:01
4	Q So which portion --	14:23:05
5	A -- claim elements.	14:23:09
6	Q I thought you were done.	14:23:10
7	Which portion of 1[h] through [j]	14:23:11
8	provides support for item 2 of that paragraph, the	14:23:15
9	contents of the files and the representation of	14:23:19
10	the folder are not communicated to the user at the	14:23:21
11	second node until the user sends an indication to	14:23:24
12	open the at least one file in the at least one	14:23:29
13	folder?	14:23:32
14	A So I tried to as clear as possible in	14:23:33
15	my declaration. And in my declaration I say, the	14:23:36
16	contents of the files in the representation of the	14:23:39
17	folder are not communicated to the user at the	14:23:42
18	second node until the user sends "an indication to	14:23:45
19	open the at least one file in the at least one	14:23:51
20	folder." And that reference is to claim elements	14:23:55
21	1[i] and 1[j].	14:24:01
22	1[i] says "detect at the second node."	14:24:06

1	And here, the language is "an	14:24:12
2	indication to open the at least one file and the	14:24:14
3	at least one folder."	14:24:17
4	1[j] contains the language "in response	14:24:20
5	to detection of the indication to open the at	14:24:22
6	least one file and the at least one folder cause	14:24:24
7	retrieval of the at least one file by the at least	14:24:28
8	one network permitting display of at least one	14:24:32
9	file at the second node."	14:24:36
10	That is support for part 2 of the	14:24:41
11	example support that I've given on page 39 of my	14:24:45
12	declaration. But it is not the only support.	14:24:51
13	MS. HERRIOT: I've lost track. I	14:25:09
14	apologize. What is the next exhibit?	14:25:10
15	PLANET DEPOS TECHNICIAN: Next in order	14:25:18
16	in Exhibit 8.	14:25:18
17	MS. HERRIOT: Perfect. I would like to	14:25:19
18	introduce Exhibit 8, tab 4.	14:25:21
19	(Smith Exhibit 8 marked for	14:25:22
20	identification and attached to the transcript.)	14:25:22
21	Q Dr. Smith, please let me know when you	14:25:38
22	have that in front of you. You may download it,	14:25:40

1	if you'd like.	14:25:42
2	A I have Exhibit 8 in front of me. I did	14:25:47
3	not have that exhibit available to download until	14:25:54
4	just this instant. So I'm now downloading it.	14:25:58
5	Q Thank you, sir.	14:26:03
6	A I see Houston, patent assigned to	14:26:18
7	Houston, or inventor Houston 8,825,597.	14:26:24
8	Q Would you prefer to call it Houston	14:26:37
9	rather than Houston?	14:26:43
10	A I don't mind. Either is acceptable to	14:26:44
11	me?	14:26:45
12	Q And you know what I mean, regardless of	14:26:46
13	whether we say Houston or Houston?	14:26:47
14	A I do know. And can distinguish between	14:26:51
15	those two pronunciations. But I understand that	14:26:54
16	they refer to the same patent.	14:26:57
17	Q That's the '597 patent, correct?	14:27:02
18	A 597 are the last three digits of the	14:27:05
19	patent that I am currently looking at.	14:27:08
20	Q And you provide opinions regarding the	14:27:10
21	Houston patent in your declaration you submitted	14:27:14
22	in connection with the 286 IPR proceeding,	14:27:17

1	correct?	14:27:20
2	A I did use Houston -- I did analyze	14:27:21
3	Houston as part of my declaration.	14:27:26
4	Q And when was the last time you reviewed	14:27:29
5	Houston?	14:27:32
6	A I don't understand your question.	14:27:42
7	Q When was the last time you reviewed the	14:27:44
8	reference, sir?	14:27:46
9	A I don't understand your question.	14:27:48
10	Q Have you ever reviewed this reference,	14:27:50
11	sir?	14:27:52
12	A Yes, I have reviewed Houston. To the	14:27:52
13	extent that, on occasions, I have read parts of	14:27:57
14	Houston. On occasions, I have read the entirety	14:28:02
15	of Houston.	14:28:04
16	Q When was the last time you read the	14:28:07
17	entirety of the Houston?	14:28:09
18	A I do not recall the exact time that I	14:28:12
19	reviewed the entirety of Houston, from the	14:28:14
20	beginning, the abstract, to the end.	14:28:19
21	Q When was the last time you reviewed any	14:28:22
22	portion of Houston?	14:28:24

1 A The last time I looked at a portion or 14:28:30
2 portions of Houston was yesterday. 14:28:32

3 Q Please turn to lines 130 -- line 1 -- 14:28:43
4 what am I saying? Column 1, lines 32 to 35. 14:28:48

5 Please let me know when you have in 14:29:07
6 front of you column 1, lines 32 to 35, sir. 14:29:08

7 A I believe I have column 1, line 32, in 14:29:12
8 front of me. If you would tell me which sentence 14:29:17
9 you are looking at, that would allow me to confirm 14:29:21
10 that I am looking at the right portion of Houston 14:29:24
11 or Houston. 14:29:28

12 Q Do you see the sentence that begins 14:29:31
13 "however, if the user is accessing the document 14:29:32
14 remotely"? 14:29:35

15 A I do see a sentence that begins 14:29:37
16 "however, if the user is accessing the document 14:29:40
17 remotely." 14:29:44

18 Q And that full sentence reads "However, 14:29:45
19 if the user is accessing the document remotely and 14:29:49
20 loses his connection, he my lose his changes, be 14:29:53
21 unable to continue, and may end up with a 14:29:57
22 corrupted document." 14:30:00

1	Do you see that?	14:30:02
2	A I do see that sentence in Houston, at,	14:30:02
3	approximately, line 32, column 1.	14:30:04
4	Q And that sentence is talking about a	14:30:09
5	user accessing an existing document, correct?	14:30:11
6	A Can you repeat that question, please?	14:30:24
7	Q Sure. It says "if the user is	14:30:26
8	accessing the document remotely." That's a	14:30:28
9	reference to an existing document, correct?	14:30:30
10	MR. DAHLGREN: Objection. Form.	14:30:49
11	A In general, I read this sentence,	14:31:16
12	though it is not precise, as meaning that because	14:31:21
13	the sentence goes on to say "and he loses his	14:31:24
14	changes," it might be reasonable to infer that he	14:31:26
15	is changing a document that already exists. And	14:31:30
16	this sentence says that that document that he's	14:31:33
17	trying to access is remote.	14:31:36
18	Q I apologize, sir, just a second.	14:31:46
19	Dangers of three kids in the winter.	14:31:54
20	MS. HERRIOT: Okay. Let's introduce	14:32:03
21	Exhibit 9, tab 5.	14:32:04
22	(Smith Exhibit 9 marked for	14:32:06

1 identification and attached to the transcript.)

14:32:06

2 A Again, I see the exhibit on the Zoom
3 screen, but I don't have it available for download
4 yet.

14:32:25

14:32:28

14:32:31

5 Q Please let me know when you do and when
6 you have it downloaded.

14:32:34

14:32:36

7 A So I have no easy way of telling
8 because the file name is cut off after tab
9 two-digit number, latest.

14:32:56

14:32:59

14:33:05

10 Q Tab 5 is the correct one.

14:33:09

11 A Thank you. Without that tab
12 information, I have no way of knowing.

14:33:11

14:33:13

13 I have U.S. 9,633,125, assigned to
14 Garcia.

14:33:27

14:33:32

15 Q And you'll understand if I refer to the
16 '125 patent as Garcia, correct?

14:33:37

14:33:39

17 A Yes, I do. I made a mistake. It's
18 assigned to Dropbox and the inventor is Garcia. I
19 do understand, if you refer to '125 or Garcia,
20 that you are referring to this patent.

14:33:44

14:33:47

14:33:51

14:33:55

21 Q And you reviewed Garcia in preparing
22 your declaration submitted in connection with the

14:33:56

14:33:58

1	286 IPR proceeding, correct?	14:34:02
2	A Again, we've been through this. I do	14:34:07
3	not understand your question with respect to	14:34:13
4	"review," whether you are asking for whether I	14:34:15
5	reviewed portions or all of it.	14:34:19
6	Q In connection with preparing the	14:34:23
7	declaration you submitted in the 286 IPR	14:34:24
8	proceeding, did you review all of Garcia or only	14:34:28
9	portions of it?	14:34:32
10	A I have done both. At times I have read	14:34:34
11	the patent, the Garcia patent, from the start,	14:34:37
12	abstract to finish. And at times, including, for	14:34:42
13	example, yesterday, I have reviewed or read	14:34:46
14	portions of the Garcia patent.	14:34:52
15	Q And in connection with the 286 IPR	14:34:58
16	proceeding, you provided opinions regarding the	14:35:02
17	Garcia patent in your declaration, correct?	14:35:04
18	A I did analyze Garcia as part of my	14:35:07
19	declaration.	14:35:11
20	Q And as part of your declaration in the	14:35:12
21	286 IPR proceeding, correct?	14:35:15
22	A I believe that is correct.	14:35:23

1	Q	And, also, as part of your declaration	14:35:26
2		in connection with the 287 IPR proceeding,	14:35:28
3		correct?	14:35:31
4	A	Yes. I believe Garcia was analyzed in	14:35:32
5		both 286 and 287 applications.	14:35:36
6	Q	So --	14:35:42
7	A	I beg your pardon. I misspoke. In	14:35:43
8		both of those IPR proceedings.	14:35:46
9	Q	Thank you so much for clarifying. And	14:35:51
10		I apologize for my cough. Especially to the court	14:35:54
11		reporter.	14:35:58
12		So, please, turn to column 5 of Garcia.	14:35:59
13		And once you're there, please go to line -- the	14:36:07
14		paragraph beginning on line 44.	14:36:12
15		Please let me know when you're there.	14:36:15
16	PLANET DEPOS TECHNICIAN:	I'm sorry.	14:36:21
17		Which column?	14:36:21
18	MS. HERRIOT:	Column 5.	14:36:23
19	A	I'm looking at the paragraph that	14:36:41
20		begins "in response to detecting a change."	14:36:43
21	Q	Then we are looking at the same	14:36:48
22		paragraph. Thank you for confirming.	14:36:49

1	So that first sentence says "in	14:36:55
2	response to detecting a change in a folder in the	14:36:58
3	virtual drive, the folder is updated on the	14:37:01
4	synchronization server (step 2025)," correct?	14:37:04
5	A Yes. I see that first sentence as you	14:37:10
6	have expressed -- spoken.	14:37:14
7	Q So this section is discussing what	14:37:22
8	happens when a user makes changes to a folder in	14:37:24
9	Garcia's virtual drive, correct?	14:37:28
10	A Yes. The sentence -- the paragraph	14:37:32
11	starts "in response to detecting a change in a	14:37:34
12	folder in the virtual drive."	14:37:37
13	Q And so, it's discussing what happens	14:37:45
14	when a user makes changes to a folder in Garcia's	14:37:47
15	virtual drive, correct?	14:37:51
16	A I would have to read the entire	14:37:58
17	paragraph to make sure that that is correct. If	14:37:59
18	you will allow me to do so.	14:38:03
19	Q Of course.	14:38:05
20	A I have read the paragraph that starts	14:38:40
21	at column 5, line 44.	14:38:42
22	Could you, now, repeat your question,	14:38:45

1	please?	14:38:50
2	Q Sure. This paragraph discusses what	14:38:50
3	happens when a user makes changes to a folder in	14:38:52
4	Garcia's virtual drive, correct?	14:38:54
5	A Yes. The paragraph, starting at	14:38:57
6	line 44, does describe some of what happens in	14:38:59
7	Garcia when changes are made to a folder in	14:39:04
8	Garcia's virtual drive.	14:39:07
9	Q Now, looking within that paragraph, at	14:39:11
10	lines 49 to 52.	14:39:13
11	Do you see that section?	14:39:19
12	A I see a sentence that starts "in one	14:39:23
13	embodiment."	14:39:26
14	Q Yes. That sentence says that remote	14:39:29
15	clients that are registered for notices of changes	14:39:31
16	to the folder will be notified of a change to the	14:39:33
17	folder, correct?	14:39:37
18	A There are two sentences and they read,	14:39:43
19	"In one embodiment, all synchronization clients	14:39:45
20	that have an interest in updates to the 'folder	14:39:47
21	'register," with register in quotes, for notice --	14:39:50
22	notices of changes to the folder.	14:39:56

1	Second sentence, "The identified	14:40:00
2	clients are notified of the changes to the folder	14:40:03
3	(step 2035)."	14:40:07
4	End of that sentence.	14:40:14
5	Q Okay. Thank you. In those two	14:40:15
6	sentences, lines 49 to 52, it says that remote	14:40:17
7	clients that are registered for notices of changes	14:40:20
8	to the folder will be notified of a change to the	14:40:23
9	folder, correct?	14:40:26
10	A In general, I believe that is a valid	14:40:38
11	rewording of these two sentences. I don't	14:40:44
12	understand why you would have to reword these two	14:40:46
13	sentences.	14:40:49
14	Q Let's look at the next sentence. It	14:40:59
15	says "In response to the change being a change to	14:41:01
16	content within the folder, the content of the	14:41:04
17	folder is automatically updated on any identified	14:41:07
18	remote clients that have a corresponding folder."	14:41:10
19	Do you see that?	14:41:13
20	A Yes, I see that sentence.	14:41:17
21	Q And that sentence means that remote	14:41:20
22	clients automatically receive updates to a file,	14:41:23

1	correct?	14:41:25
2	MR. DAHLGREN: Objection. Form.	14:41:29
3	A Could you repeat that question, please?	14:41:38
4	Q Sure. That sentence, beginning at	14:41:42
5	line 53, means that remote clients automatically	14:41:44
6	receive updates to a file, correct?	14:41:47
7	A No.	14:41:55
8	Q The sentence says "If the content	14:42:03
9	within the folder is changed, it is automatically	14:42:08
10	updated on any identified remote clients that have	14:42:10
11	a corresponding folder," correct?	14:42:12
12	A No. That's not exactly what the	14:42:15
13	sentence says.	14:42:17
14	Q What is inaccurate about that	14:42:27
15	description of the sentence?	14:42:29
16	A Much of what you've said. The complete	14:42:30
17	sentence reads "in response to" the change being	14:42:32
18	-- "a change to content within the folder, the	14:42:34
19	content of the folder is automatically updated on	14:42:38
20	any identified remote clients that have a	14:42:41
21	corresponding folder."	14:42:45
22	You must include "identified," and you	14:42:49

1 must include "have a corresponding folder." You 14:42:50
2 did not include those words or, indeed, those 14:42:52
3 concepts in your attempted summary of the 14:42:59
4 sentence. 14:43:01

5 Q Okay. So, this sentence is saying that 14:43:06
6 any identified remote clients that have a 14:43:11
7 corresponding folder automatically receive updates 14:43:15
8 to a file that is located within that folder? 14:43:20

9 MR. DAHLGREN: Objection. Form. 14:43:26

10 A I believe that was a statement and not 14:43:32
11 a question. 14:43:33

12 Q That was a question. 14:43:34

13 A Your question being? 14:43:36

14 Q Is it correct that this sentence is 14:43:38
15 saying that any identified remote clients that 14:43:41
16 have a corresponding folder automatically receive 14:43:43
17 updates to a file that is located within that 14:43:46
18 folder? 14:43:48

19 MR. DAHLGREN: Objection. 14:43:51

20 THE WITNESS: Go ahead, Derek. 14:43:53

21 MR. DAHLGREN: Objection. Form. 14:43:55

22 A I do not understand why you would take 14:43:57

1	what is, perhaps, not fairly clear, but a	14:44:01
2	sentence, nonetheless, and keep trying to chop it	14:44:05
3	up and change the order of noun/verb/object.	14:44:08
4	Are you trying to get me to say it	14:44:13
5	means something different than it says here or...	14:44:15
6	Q I'm trying to get your understanding of	14:44:19
7	that sentence, sir. And I'm asking if I'm	14:44:21
8	correct -- if my description of it is correct?	14:44:23
9	A Well, I'm having a hard time	14:44:30
10	understanding why you would take a sentence,	14:44:32
11	butcher it, leave pieces out, and ask me if it's	14:44:35
12	correct. It's a standalone sentence and it says	14:44:39
13	what it says.	14:44:42
14	What it means is, in response to the	14:44:43
15	change, being a change to content within the	14:44:45
16	folder, that's important. The content of the	14:44:47
17	folder is automatically updated. That's	14:44:50
18	important. On any identified remote clients.	14:44:52
19	That's important. That have a corresponding	14:44:56
20	folder. That's important. And by "important," I	14:45:00
21	mean it's important to the sentence.	14:45:03
22	I think if you -- if you start omitting	14:45:13

1	some of these phrases within the sentence, you	14:45:16
2	change the meaning of the sentence.	14:45:18
3	So, no, then I can't agree that that	14:45:20
4	sentence that you've altered is the same as the	14:45:23
5	meaning of this sentence in the specification.	14:45:26
6	Q Okay. Let's go to column 10, line 52.	14:45:33
7	Please let me know when you're there.	14:45:54
8	A I see Figure 10. Illustrates one way.	14:45:59
9	Q You're there. Perfect. Thank you for	14:46:04
10	confirming.	14:46:06
11	It states, in fact, in that first	14:46:08
12	sentence of that paragraph, "Figure 10 illustrates	14:46:09
13	one way in which a user may access items and	14:46:14
14	objects displayed in the client sync application,"	14:46:18
15	correct?	14:46:23
16	A Yes, I see that sentence.	14:46:23
17	Q Then the next sentence says, in this	14:46:30
18	particular example, the files and objects are	14:46:34
19	folders, correct?	14:46:36
20	A Close.	14:46:46
21	Q And the next sentence begins "In this	14:46:46
22	particular example, the items are files and the	14:46:48

1	objects are folders," correct.	14:46:53
2	A That is correct.	14:46:56
3	Q So it's saying -- sorry, go ahead, sir.	14:46:57
4	A That is the sentence or portion of the	14:47:00
5	sentence that I see.	14:47:01
6	"In this particular example, the items	14:47:03
7	are files and the objects," I think you omitted	14:47:06
8	"the" in one of your questions, "are folders."	14:47:09
9	Q So, in the particular example shown in	14:47:18
10	Figure 10, the items are files and the objects are	14:47:21
11	folders?	14:47:24
12	A That is what these two sentences,	14:47:40
13	together taken, express.	14:47:41
14	Q And then if we go down to line 49 --	14:47:46
15	sorry, 59 to 60, it says "as seen in Figure 10,	14:47:49
16	any file and folders 1005 in the synchronization	14:47:54
17	system may be accessed through a virtual drive	14:48:00
18	1010, including folders located only on a remote	14:48:03
19	device, e.g., work computer 240, or folders	14:48:07
20	located only on the synchronization server 220,"	14:48:11
21	correct?	14:48:15
22	A I do see that sentence.	14:48:15

1 Q So this sentence is saying that as seen 14:48:26
2 in Figure 10, files in folder 1005 may be accessed 14:48:28
3 either through virtual drive -- sorry, may be 14:48:33
4 accessed through virtual drive 1010, including 14:48:37
5 folders located only on a remote device, and, 14:48:41
6 also, folders located only on the synchronization 14:48:44
7 folder 220, correct? 14:48:48

8 A Well, again, you changed the form of 14:48:58
9 the sentence. But, generally, your sentence maps 14:49:00
10 and follows the sentence in the specification. 14:49:03
11 I'm not sure why you keep changing conjunctions 14:49:05
12 and so forth. 14:49:08

13 Q Let's go to Figure 10. 14:49:16
14 Do you have Figure 10 in front of you, 14:49:34
15 sir? 14:49:36

16 A I do have Figure 10. You have it 14:49:36
17 sideways. This is barely legible on my copy. 14:49:45
18 Let's proceed. 14:49:56

19 Q Okay. I think it was rotated sideways 14:49:56
20 on the screen so that it would be easier to see 14:50:01
21 because it is sideways in the patent. 14:50:04

22 Would you prefer it to be up and down? 14:50:08

1 A No, I can see it fine. I'm just 14:50:10
2 pointing out that it's barely legible. 14:50:12

3 Q So what is shown in Figure 10 is not a 14:50:23
4 way for a user to send and receive emails, 14:50:25
5 correct? 14:50:28

6 A Well, it is barely legible. But on the 14:50:39
7 right-hand side, I can imagine there would be an 14:50:42
8 icon there that looks like an envelope, that might 14:50:44
9 allow me to send emails, I don't know. So I can't 14:50:48
10 answer your question. 14:50:52

11 Q When you say an icon of an envelope, 14:50:53
12 what would that be, that you're thinking of? 14:50:55

13 A I have no idea. Your question was, can 14:50:58
14 I send an email using anything in this figure? 14:51:00
15 And I don't know. 14:51:05

16 Q I was not asking about whether you 14:51:12
17 could double-click on an icon in that figure in 14:51:16
18 order to open an email application. 14:51:20

19 A Then could you repeat your question, 14:51:24
20 please? 14:51:25

21 Q Putting aside that scenario, what is 14:51:27
22 shown in Figure 10 is not a way for a user to send 14:51:31

1	and receive emails, correct?	14:51:36
2	MR. DAHLGREN: Objection. Form. And I	14:52:00
3	also want to object just to the exhibit, itself,	14:52:02
4	under 43106.	14:52:08
5	A I have magnified this image to try and	14:52:20
6	make out what's going on here on the two windows	14:52:24
7	that I see. For the record, on the left-handed	14:52:27
8	side, I see a long rectangular, long in the	14:52:33
9	vertical direction, window, but I can barely read	14:52:37
10	anything in that window.	14:52:45
11	I also see a window on the right side,	14:52:49
12	which is another rectangular window, short, turned	14:52:51
13	in the vertical direction, with what looks like --	14:52:58
14	I can make out one word, "desktop," on the	14:53:04
15	left-hand side of that window, I can make out what	14:53:13
16	looks like file names on the right-hand side of	14:53:15
17	that window. I can barely make out anything else.	14:53:19
18	On the extreme right of this figure, I see what	14:53:23
19	looks like what we would refer to, normally, as a	14:53:28
20	ribbon, with what looked like a large number of	14:53:31
21	stacked icons. But I can't make any of them out.	14:53:37
22	So, I'm afraid that with this exhibit	14:53:42

1	in front of me, it's very hard for me to	14:53:48
2	definitively answer that question.	14:53:53
3	Q Okay. Let's go back to column 10,	14:53:58
4	line 48.	14:54:03
5	The first sentence we discussed	14:54:25
6	earlier.	14:54:28
7	A Sorry. I had to adjust the	14:54:28
8	magnification of my screen --	14:54:30
9	Q Of course.	14:54:33
10	A -- because I previously zoomed in as	14:54:33
11	far as I could to try and make out, as best as I	14:54:36
12	could, what was in Figure 10. I've now got my	14:54:39
13	magnification sorted out.	14:54:43
14	And can you, now, please, again, tell	14:54:45
15	me which column and line I'm looking for?	14:54:48
16	Q Sure. Column 10, line 52.	14:54:50
17	A I see a paragraph that starts	14:54:59
18	"Figure 10 illustrates one way."	14:55:00
19	Q "Figure 10 illustrates one way in which	14:55:05
20	a user may access items and objects displayed in	14:55:08
21	the client sync application," correct?	14:55:11
22	A Yes. I see that sentence.	14:55:14

1	Q	A client sync application is not an	14:55:19
2		email application, correct?	14:55:22
3		MR. DAHLGREN: Objection. Form.	14:55:24
4	A	In general, this may or may not be	14:55:31
5		relevant to this case, it's very difficult to	14:55:33
6		prove a negative. In general, it's unlikely that	14:55:35
7		it would be, but it's hard to prove a negative.	14:55:41
8	Q	And virtual drive 1010 in Garcia isn't	14:55:56
9		a way to send and receive emails, correct?	14:55:59
10	A	No, that's not correct.	14:56:10
11	Q	Okay. Let's go to column 11, lines 44	14:56:45
12		to 45.	14:56:48
13	A	Column 11, lines 44 to 45. Is that the	14:56:52
14		correct reference?	14:56:56
15	Q	Begins Figures 13 to 14.	14:56:59
16	A	I have a paragraph that begins	14:57:03
17		"Figures 13 to 14 illustrate the corresponding web	14:57:05
18		interface."	14:57:09
19	Q	"Figures 13 to 14 illustrate the	14:57:14
20		corresponding web interface 1305 for the	14:57:17
21		synchronization system," correct?	14:57:20
22	A	That is the sentence that I'm looking	14:57:21

1	at, yes.	14:57:24
2	Q And then the next sentence states	14:57:27
3	"similar to the user interface for the desktop	14:57:29
4	client, the web interface 1305 has," and then it	14:57:33
5	proceeds to list various views in a search fields,	14:57:36
6	correct?	14:57:40
7	A Yes, the list is content view, a	14:57:43
8	sharing view, an activity view, and a search	14:57:46
9	field.	14:57:49
10	Q So the web interface is similar to the	14:57:52
11	user interface for the desktop client, correct?	14:57:56
12	A The sentence in this patent says	14:58:00
13	"similar to the user interface for the desktop	14:58:04
14	client."	14:58:08
15	Q And when it's saying "similar to," it's	14:58:10
16	saying it's referring to the web interface,	14:58:14
17	correct?	14:58:17
18	A That is what I understand by this	14:58:21
19	sentence?	14:58:22
20	Q And then, if we go to the next	14:58:27
21	sentence, it's talking about things that are	14:58:29
22	within the content view 1310, correct?	14:58:32

1	A	I see "within the content view," and	14:58:41
2		I'm leaving out the references to the callouts.	14:58:44
3		So, within the content view the web interface has	14:58:49
4		a my cloud tab, a shared folders tab, and a shared	14:58:52
5		web link tab.	14:58:56
6	Q	So similar to the user interface for	14:59:02
7		the desktop client, the web interface has a shared	14:59:05
8		folders tab?	14:59:08
9		MR. DAHLGREN: Objection. Form.	14:59:24
10	A	It appears, though I have not analyzed	15:00:47
11		this in detail, that the shared folders tab is	15:00:50
12		similar in Figure 3, for example, to the tab in	15:00:55
13		Figure 10, though it is hard to read these figures	15:00:58
14		that are extremely blurred.	15:01:07
15	Q	Okay. Thank you.	15:01:37
16		MS. HERRIOT: We have been going for	15:01:42
17		about 45 minutes, and I know you requested	15:01:42
18		frequent breaks, Dr. Smith.	15:01:46
19		Do you want to take a break or do you	15:01:48
20		want to keep going?	15:01:50
21		THE WITNESS: I can take a short break.	15:01:51
22		I don't know if you want to take a break for lunch	15:01:52

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1	at some point, based on the time zones that we're	15:01:54
2	in. The time zones our host coordinators are in.	15:01:56
3	But I'm okay with taking short breaks rather than	15:02:06
4	longer breaks.	15:02:09
5	MS. HERRIOT: Why don't we take a break	15:02:10
6	right now and discuss that briefly?	15:02:12
7	THE VIDEOGRAPHER: We are going off the	15:02:14
8	record. The time is 3:02 p.m.	15:02:14
9	(Recess taken.)	15:02:18
10	THE VIDEOGRAPHER: We are back on the	15:33:27
11	record. The time is 3:33 p.m.	15:33:29
12	MR. DAHLGREN: Liv, if it's okay, I	15:33:33
13	just want to note on the record the Patent Owner	15:33:35
14	objects to the videotaped deposition, under 37 CFR	15:33:38
15	32.53.	15:33:43
16	MS. HERRIOT: As we discussed, we're	15:33:44
17	fine to delete the videotape afterwards and we	15:33:45
18	have no objection to that, but we'll continue to	15:33:48
19	use the videographer for now, since I think that's	15:33:50
20	helping with the exhibit-sharing process.	15:33:53
21	MR. DAHLGREN: Yeah. That's fine.	15:33:56
22	MS. HERRIOT: Perfect.	15:34:01

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1	BY MS. HERRIOT:	15:34:02
2	Q All right. Seems like my cough came	15:34:02
3	back with me. So, apologies for that.	15:34:04
4	Dr. Smith, you assured me, on the	15:34:07
5	break, that your family was still okay, but I	15:34:08
6	reiterate my request that if anything happens such	15:34:11
7	that you need to take a break, you'll let us know?	15:34:13
8	A I acknowledge that I will do so. I'll	15:34:17
9	let you know if there's any reason that I can't	15:34:19
10	continue or I'm distracted or anything that's	15:34:22
11	relevant.	15:34:25
12	Q Perfect. I'm glad that your family, so	15:34:27
13	far, remains okay. Albeit, with bottled water.	15:34:30
14	A Thank you.	15:34:33
15	MS. HERRIOT: So, let's, now, move to a	15:34:35
16	new exhibit, 10, tab 15.	15:34:37
17	(Smith Exhibit 10 marked for	15:34:41
18	identification and attached to the transcript.)	15:34:41
19	PLANET DEPOS TECHNICIAN: Stand by.	15:34:47
20	Q Dr. Smith, please let me know when you	15:35:09
21	have that in front of you.	15:35:10
22	A I do not see tab 15 in my -- on the	15:35:12

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1	right-hand side of my screen yet. I do, however,	15:35:16
2	see Exhibit Smith 10 on the Zoom screen to the	15:35:18
3	left.	15:35:28
4	PLANET DEPOS TECHNICIAN: It's a large	15:35:29
5	file. It's still uploading to the chat.	15:35:30
6	THE WITNESS: I'll wait.	15:35:34
7	PLANET DEPOS TECHNICIAN: Okay. You	15:35:36
8	should see it now.	15:35:37
9	A I see tab 15. Downloading now.	15:35:39
10	In front of me I have what appears to	15:35:50
11	be my declaration in regards to IPR 2024-00287.	15:35:53
12	Q Thank you, Dr. Smith.	15:36:01
13	And this is the second declaration that	15:36:02
14	you submitted with respect to the '520 patent,	15:36:05
15	correct?	15:36:07
16	A Yes. This is the 287 IPR and the	15:36:09
17	one -- the second of which -- or rather, the first	15:36:16
18	of which was 286. So this is the second, 287.	15:36:22
19	Q Thank you.	15:36:26
20	And if you could turn to page 28 of	15:36:26
21	your declaration, paragraph 40 -- 58, apologies,	15:36:31
22	5-8.	15:36:40

1	MS. HERRIOT: You're going to wrong	15:36:41
2	way.	15:36:42
3	Up, up, up.	15:36:48
4	A I have --	15:36:51
5	Q Yeah, page 28, paragraph 58.	15:36:53
6	A I believe I have that paragraph.	15:36:57
7	Q Okay. And do you see below that	15:37:00
8	paragraph, heading B, representation of the at	15:37:03
9	least one file, with a table beneath it that has	15:37:07
10	two columns?	15:37:11
11	A Yes, I do.	15:37:12
12	Q And the column on the left is entitled	15:37:15
13	"term," and the column on the right is entitled	15:37:18
14	"Patent Owner's proposed construction."	15:37:22
15	Is that correct?	15:37:27
16	A That's correct.	15:37:28
17	Q Now, is the patent owner's proposed	15:37:28
18	construction also your proposed construction?	15:37:30
19	A Yes, it is my proposed construction.	15:37:33
20	Q And your opinion is that the term	15:37:38
21	"representation of the at least one file" should	15:37:41
22	be construed to mean a file that can be displayed	15:37:45

1 at the user's node, but whose at least one file 15:37:48
2 content is stored remotely and is not communicated 15:37:53
3 to the user until the user initiates the 15:37:56
4 communication, correct? 15:37:58

5 A Yes. That is what this proposed 15:38:00
6 construction reads as. 15:38:03

7 Q And as of today, your declaration lists 15:38:08
8 all the support for your construction, correct? 15:38:12

9 MR. DAHLGREN: Objection. Form. 15:38:18

10 A No. 15:38:19

11 Q As of the time you prepared your 15:38:21
12 declaration -- sorry, scratch that. 15:38:24

13 At the time you prepared the 15:38:29
14 declaration, did you include in it all the support 15:38:30
15 you had for this proposed construction? 15:38:36

16 A I know I'm not supposed to help you 15:38:42
17 here, but I think I can help and short-circuit a 15:38:44
18 lot of these questions by pointing out, as I did 15:38:47
19 earlier, with respect to the 286 applications, 15:38:51
20 that the list of exhibits was omitted in the 15:38:53
21 287 declaration, and the list of exhibits was 15:38:59
22 empty in the 286 declaration. And, therefore, as 15:39:05

1 I was instructed by my legal counsel, I correctly, 15:39:09
2 I believe, answered all your questions with 15:39:12
3 respect to the references that I cited. 15:39:15

4 You asked me did I list them, and I 15:39:22
5 answered no, because the lists are not here. I'm 15:39:25
6 also informed, by my counsel, that it is not a 15:39:29
7 legal requirement, to include those lists. 15:39:33

8 I hope that clarifies the answers to 15:39:35
9 some of my earlier questions and the answer to my 15:39:37
10 questions now. 15:39:40

11 Q Did you discuss that answer with your 15:39:42
12 counsel during the break? 15:39:44

13 A No, I did not. We did discuss it 15:39:45
14 yesterday and I, along with a number of other 15:39:48
15 errors and typographical problems, discovered 15:39:53
16 those during the course of conversation with 15:39:56
17 counsel. I attempted to bring those up to you, 15:39:59
18 but I'm not sure if you got the message. 15:40:05

19 Q So the body of your declarations 15:40:10
20 includes all of the support for your constructions 15:40:14
21 upon which you intend to rely? 15:40:17

22 A That, I believe, is a correct 15:40:20

1 statement. In other words, all of the citations
2 that I used and the references that I used for
3 analysis are, as far as I know, contained in both
4 declarations.

5 Q Thank you.

6 Returning to your proposed construction
7 on page 28 in the table below paragraph 58.

8 Do you have that in front of you?

9 A I'm going back to it now. I was just
10 at the beginning, looking for the list of contents
11 and making sure what I told you was correct.

12 I am now back on page 28. I'm now
13 looking at the table of my proposed construction
14 and am ready for your questions.

15 Q So your proposed construction requires
16 that at least one file content is stored remotely
17 and is not communicated to the user until the user
18 initiates the communication, correct?

19 A Again, I do find that, under
20 instruction of counsel, I must object to
21 characterizations of important terms and sentences
22 where you quote a partial, or a portion of that

1 term or sentence, or even change words within that 15:41:53
2 sentence. I've been instructed that I must answer 15:41:57
3 no in that situation. 15:42:00

4 So, again, in this situation, I must 15:42:02
5 answer no, that is not the complete construction. 15:42:05

6 I'm afraid you're the victim of one of 15:42:10
7 your colleagues in a previous deposition, where 15:42:13
8 she would quietly change a word and give a 15:42:16
9 sentence quite a different meaning. I might not 15:42:19
10 have noticed that. 15:42:22

11 Q Okay. Well, I'm trying to understand 15:42:27
12 your construction. 15:42:30

13 Are you unable to explain your 15:42:31
14 construction? 15:42:33

15 A Again, I think I would refer back to 15:42:34
16 the previous discussion on a construction of a 15:42:37
17 term that's very similar to this, that refers to a 15:42:41
18 folder instead of a file. And I can but give you 15:42:48
19 the same type of answers here, that we spent -- 15:42:51
20 that is myself, in cooperation and conjunction 15:42:57
21 with my legal team, a great deal of time coming up 15:43:00
22 with a construction that -- that was proper when 15:43:03

1 looking at the claim term in the context of the 15:43:06
 2 claims, the claims as a whole, the specification 15:43:11
 3 as a whole, and the application specifications in 15:43:14
 4 their entirety. 15:43:18

5 So, I can't subdivide pieces of this 15:43:19
 6 claim construction and point to pieces of my 15:43:26
 7 declaration. You must look at the whole. 15:43:30

8 MS. HERRIOT: I apologize. I'm going 15:43:34
 9 to step away for one second to turn the light back 15:43:35
 10 on. The auto light is not recognizing me. I'll 15:43:38
 11 be right back. 15:43:41

12 And I'm back. Thank you. 15:43:52

13 Q So, under your construction, the remote 15:43:56
 14 storage always happens, correct? 15:44:01

15 A No, I can't accept that paraphrase and 15:44:08
 16 characterization of this construction. 15:44:11

17 Q What's incorrect about it? 15:44:14

18 A It's just different from the 15:44:16
 19 construction. You're shortening it. You're 15:44:18
 20 changing the meaning, potentially. Without 15:44:20
 21 studying your construction, I can't tell whether 15:44:24
 22 it's the same as my construction. I just haven't 15:44:25

1 studied that. It's an important issue, in fact, 15:44:29
2 perhaps the central issue of this case. So I'm 15:44:32
3 afraid, no, I can't accept some paraphrase or 15:44:36
4 alternative construction that you propose. That's 15:44:40
5 a legal issue, I think, not something that I can 15:44:44
6 pronounce on. 15:44:47

7 Q So there's no further explanation of 15:44:48
8 your construction that you can provide? 15:44:50

9 A There is an enormous amount of 15:44:53
10 exploration of the construction of this term in my 15:44:57
11 declaration. I'm not prepared to change it in a 15:44:59
12 summary form because you want to shorten it or 15:45:07
13 change its meaning. 15:45:09

14 Q I'm just trying to understand your 15:45:13
15 construction. 15:45:16

16 Is there any further explanation that 15:45:18
17 you can provide regarding whether the remote 15:45:19
18 storage always occurs? 15:45:27

19 A Is there a particular part of my 15:45:29
20 declaration that you don't understand? The 15:45:32
21 construction, itself, is plain. 15:45:34

22 Is there a part of the explanation, the 15:45:36

1 lengthy explanation in my declaration? Could you 15:45:39
2 point me to that? I could, perhaps, explain that 15:45:42
3 to you. 15:45:45

4 Q I'm pointing to your construction and 15:45:45
5 I'm asking you to explain to me what is meant by 15:45:46
6 "at least one file content is stored remotely and 15:45:54
7 is not communicated to the user until the user 15:45:59
8 initiates the communication"? 15:46:02

9 A I'm sorry. But I don't understand what 15:46:19
10 part of that construction you don't understand. 15:46:21
11 It's plain, it's simple, it's direct. It 15:46:23
12 corresponds to the support in the claims. The 15:46:26
13 claim elements, the claims as a whole, 15:46:32
14 specification of the '520 patent, and the 15:46:35
15 specification of the applications that support the 15:46:38
16 '520 patent, or included by reference in the '520 15:46:43
17 patent. 15:46:47

18 (Smith Exhibit 11 marked for 15:46:47
19 identification and attached to the transcript.) 15:46:47

20 Q All right. Exhibit 11, which is tab 15:47:29
21 17. 15:47:32

22 A I have tab 17 and now downloading the 15:47:57

1 document. 15:48:04

2 I have in front of me a patent 15:48:13

3 publication 2013/0046833, Riepling. 15:48:19

4 Q I always wondered how to pronounce it. 15:48:29

5 We'll call it Riepling. That works for me. 15:48:31

6 So if we refer to Exhibit 11 to your 15:48:35

7 deposition as Riepling or Riepling, will you 15:48:38

8 understand what I'm referring to? 15:48:42

9 A I understand that you can use those 15:48:43

10 alternative pronunciations of Riepling, 15:48:45

11 R-I-E-P-L-I-N-G, for the benefit of the reporter. 15:48:48

12 Either will work. 15:48:52

13 Q Thank you. 15:48:58

14 And you reviewed Exhibit 11, Riepling, 15:49:00

15 in preparing your declaration you submitted in 15:49:04

16 connection with the 287 IPR, correct? 15:49:08

17 A Yes, I have reviewed Riepling. I have 15:49:10

18 read the entirety of Riepling on occasions and I 15:49:14

19 have read portions of Riepling on occasion. 15:49:21

20 Q And when did you most recently read the 15:49:24

21 entirety of Riepling? 15:49:26

22 A I cannot remember when I last read 15:49:27

1	Riepling from beginning to end. But the last time	15:49:29
2	I reviewed portions of Riepling was yesterday.	15:49:33
3	Q And you provided an opinion regarding	15:49:40
4	Riepling in your declaration that you submitted in	15:49:42
5	connection with the 287 IPR, correct?	15:49:46
6	A I did use Riepling and analyzed	15:49:48
7	Riepling in creation of my declaration 287.	15:49:51
8	Yes.	15:50:04
9	Q Can you, please, turn to paragraph 28	15:50:05
10	of Riepling. Keep going. It's going to have a 2	15:50:09
11	at the top. There you go.	15:50:17
12	A I have paragraph 28, which begins	15:50:24
13	"moving to Figure 3," F-I-G, period, 3.	15:50:26
14	Q Great, thank you.	15:50:33
15	And you've anticipated my first	15:50:34
16	question. Paragraph 28 is describing Figure 3,	15:50:35
17	correct?	15:50:39
18	A Paragraph 28 says "Figure 3 presents."	15:50:54
19	And so, what I would say is that figure -- that	15:50:59
20	paragraph 28 shows some, potentially all, of what	15:51:02
21	is shown in Figure 3, but may not describe all of	15:51:07
22	Figure 3.	15:51:11

1	Q	Thank you.	15:51:13
2		If we go to the -- I believe it's the	15:51:17
3		third sentence that begins "in one embodiment."	15:51:24
4		Do you see that?	15:51:28
5	A	I see the sentence starting "in one	15:51:28
6		embodiment, upload parameter dialog 301."	15:51:31
7		And then the sentence continues.	15:51:35
8	Q	So, it states "upload parameter	15:51:42
9		dialogue 301 includes upload parameter interface	15:51:47
10		302," correct?	15:51:50
11	A	The complete sentence reads "In one	15:51:53
12		embodiment, upload parameter dialog 301 includes	15:51:55
13		upload parameter interface 302."	15:51:59
14	Q	And then the next sentence lists	15:52:04
15		several items that are included in upload	15:52:07
16		parameter interface 302?	15:52:12
17	A	The sentence, and I may as well read	15:52:16
18		it, says "upload parameter interface 302 includes	15:52:19
19		file format checkboxes 320, size limit field 321,	15:52:24
20		file number field 322, invitation expiration field	15:52:29
21		323, invitation password field 324, number of uses	15:52:35
22		field 326, send button 330, and reset button 331."	15:52:41

1	So, yes, that is a list.	15:52:48
2	Q Thank you.	15:52:56
3	And the list includes, for example, the	15:52:57
4	file format checkboxes 320?	15:53:00
5	A I see that that list does include file	15:53:06
6	format checkboxes 320.	15:53:10
7	Q And as indicated in paragraph 28, the	15:53:13
8	upload parameter interface 302 also includes the	15:53:16
9	send button 330?	15:53:19
10	A The list does include send button 330.	15:53:24
11	Q And the list also -- sorry, scratch	15:53:29
12	that.	15:53:32
13	The list for the upload perimeter	15:53:34
14	interface 302 also includes the invitation	15:53:35
15	expiration field 323?	15:53:39
16	A Sorry, can you repeat that again? What	15:53:44
17	did you ask? Just, please, repeat the question.	15:53:47
18	Q Sure. According to paragraph 28, the	15:53:51
19	upload parameter interface 302 also includes the	15:53:54
20	invitation expiration field 323?	15:53:59
21	A Yes, invitation expiration field is --	15:54:03
22	323 is in the list, and the list is of the upload	15:54:06

1	parameter interface.	15:54:12
2	Q And the final sentence of paragraph 28	15:54:15
3	reads "In some embodiments, the upload parameters	15:54:17
4	can be set differently for each contact," correct?	15:54:20
5	A Yes, the final sentence does read "In	15:54:24
6	some embodiments, upload parameters can be set	15:54:27
7	differently for each contact."	15:54:31
8	Q Let's turn to Figure 3.	15:54:34
9	Another one of those weird sideways	15:54:49
10	ones.	15:54:51
11	Do you have that in front of you?	15:54:52
12	A Yes, just going there now. Just want	15:54:53
13	to re-read that paragraph, as we go away from it,	15:54:56
14	so that I don't have to keep asking you to go	15:54:59
15	backwards and forwards, or at least I may limit	15:55:02
16	the number of times that we have to go backwards	15:55:05
17	and forwards.	15:55:07
18	I see Figure 3.	15:55:16
19	Q And in Figure 3, we see the upload	15:55:18
20	parameter dialog 301.	15:55:21
21	A Again, I cannot, without asking you to	15:55:32
22	go backwards and forwards, confirm that 301 is, in	15:55:35

1	fact, the upload parameter dialog, but...	15:55:38
2	Q You're welcome to go back.	15:55:46
3	A Okay. Then I should go back. I can't,	15:55:47
4	unfortunately, split screen. I wish I could.	15:55:52
5	Perhaps we can do this another way. Perhaps I can	15:55:56
6	keep Figure 3 up. And in your Zoom window -- we	15:55:58
7	can do it either way around. Either you can keep	15:56:03
8	Figure 3 up in your Zoom window, perhaps that's	15:56:06
9	better, and then on the PDF, I will go back to the	15:56:09
10	paragraph that explains portions of Figure 3.	15:56:14
11	Can you remind me what the paragraph	15:56:20
12	number is, please?	15:56:21
13	Q 28.	15:56:23
14	A 28. I'm searching for it. I can't	15:56:30
15	find it. I'll go there directly.	15:56:35
16	Q Got number 2 at the top, if that helps.	15:56:39
17	A I don't know why I can't search for	15:56:43
18	0028.	15:56:44
19	Q I believe it's a non-searchable PDF for	15:56:46
20	some reason.	15:56:49
21	A Yes, maybe. Okay.	15:56:49
22	301 is the upload parameter dialog.	15:56:56

1	Q	And we see that in Figure 3.	15:57:02
2	A	I see 301 in Figure 3.	15:57:05
3	Q	And then we see, within 301, the	15:57:10
4		upload -- sorry, yeah, the upload parameter	15:57:13
5		interface 302?	15:57:15
6	A	I see the callout for 302 on Figure 3.	15:57:24
7	Q	And then --	15:57:29
8	A	I see --	15:57:31
9	Q	Sorry, go ahead?	15:57:32
10	A	I see in paragraph 28, in the list,	15:57:33
11		that parameter dialog 301 includes upload	15:57:37
12		parameter interface 302.	15:57:45
13	Q	And then, within upload parameter 302,	15:57:48
14		we see a variety of fields, correct?	15:57:52
15	A	No, that's not precisely correct.	15:58:14
16	Q	Okay. Fine. Why don't we do it this	15:58:18
17		way: Looking at Figure 3, within the 302 box, we	15:58:20
18		see something labeled 320, correct?	15:58:25
19	A	Yes. I see 320 as the callout.	15:58:30
20	Q	And you see 321 as a callout?	15:58:33
21	A	I do see 321 as a callout.	15:58:36
22	Q	322 as a callout?	15:58:39

1	A	Yes. I see 322 as a callout.	15:58:41
2	Q	323 as a callout?	15:58:45
3	A	I see 323 as a callout.	15:58:47
4	Q	324?	15:58:49
5	A	I see 324 as a callout.	15:58:50
6	Q	These are all fields, correct?	15:58:53
7	A	Yes. My objection, or reticence	15:58:56
8		earlier, to say -- was to say that all of the	15:59:00
9		items within this dialog box are fields; they are	15:59:03
10		not. Your question implied that everything inside	15:59:08
11		this box 300 was a field, and that is not correct.	15:59:11
12		And that was my answer.	15:59:16
13	Q	I see. So, and then we see field 325.	15:59:18
14		MR. DAHLGREN: Objection. Form.	15:59:25
15	A	No. And here you are, obviously trying	15:59:26
16		to trick me. 325 is not necessarily a field.	15:59:29
17	Q	I was not trying to trick you, but,	15:59:36
18		okay.	15:59:39
19	A	Well, I think --	15:59:40
20	Q	So we see --	15:59:41
21	A	-- trick or trip would be appropriate.	15:59:42
22		Seems to have tripped up your expert. I'm not	15:59:46

1	sure what else might have happened. But, no, it's	15:59:49
2	not a field.	15:59:52
3	Q Okay. You see the callout 325?	15:59:52
4	A I do see the callout 325.	15:59:54
5	Q You see the callout 326?	15:59:57
6	A I see the callout 326.	16:00:00
7	Q You see the callout 330?	16:00:02
8	A I see callout 330.	16:00:06
9	Q See callout 331?	16:00:09
10	A I see callout 331.	16:00:12
11	Q And all of those things we just	16:00:14
12	discussed are within 302, correct?	16:00:17
13	A They are within 300. They are a part	16:00:26
14	of 302.	16:00:30
15	Q Thank you for that clarification.	16:00:36
16	And, now, 330 is a send button,	16:00:40
17	correct?	16:00:43
18	A 330 appears to be a button that has the	16:00:45
19	word "send" on it. It's indistinguishable from	16:00:51
20	some of the other interface elements in the	16:00:54
21	figure.	16:00:57
22	Q Let's turn to paragraph 34.	16:01:04

1	Let me know when you have that in front	16:01:17
2	of you.	16:01:18
3	A I have paragraph 34, which starts "send	16:01:26
4	button 330 may be used."	16:01:30
5	Q Then we're in the right place.	16:01:37
6	This full sentence reads "Send button	16:01:39
7	330 may be used to send a digital invitation	16:01:41
8	restricted by the one or more upload parameters	16:01:46
9	specified in upload parameters dialog 301,"	16:01:49
10	correct?	16:01:52
11	A Yes, that sentence does read "Send	16:01:53
12	button 330 may be used to send a digital	16:01:55
13	invitation restricted by the one or more upload	16:01:58
14	parameters specified in upload parameter dialog	16:02:01
15	301."	16:02:05
16	Q So the user specifies the upload	16:02:07
17	parameters in upload parameter dialog 301?	16:02:11
18	A The specification uses the term "may be	16:03:11
19	specified," for these parameters. I do not find	16:03:13
20	any reference to how they are specified, and I do	16:03:16
21	not reference -- see any reference to any	16:03:18
22	interrelationship between these. So, in other	16:03:21

1	words, what I'm saying is, if the user specifies	16:03:25
2	one parameter, would that affect another	16:03:30
3	parameter? I don't know.	16:03:32
4	Q I don't think I asked if one upload	16:03:42
5	parameter affected another parameter.	16:03:44
6	A That would affect the answer to your	16:03:46
7	question.	16:03:48
8	Q One or more upload parameters may be	16:03:54
9	specified in upload parameter dialog 301, correct?	16:03:56
10	A Paragraph 28 explains which parameters	16:05:05
11	are in the parameter dialog box 301. And says in	16:05:10
12	former embodiments, upload parameters can be set	16:05:15
13	differently for each contact. From that, I infer	16:05:19
14	that the user is able to set those parameters,	16:05:21
15	that are specified in this list. And that would	16:05:24
16	be 320, 321, 322, 323, 324, 326. I do not see how	16:05:29
17	the user could set send button 330 and reset	16:05:44
18	button 331.	16:05:51
19	Q Okay. Going back to paragraph 34. The	16:06:18
20	upload parameters that are specified in upload	16:06:26
21	parameter dialog 301 may restrict a digital	16:06:32
22	invitation, correct?	16:06:42

1	A	Paragraph 34 says send button 330 may	16:06:54
2		be used to send a digital invitation restricted by	16:06:56
3		the one or more upload parameters specified in	16:07:00
4		upload parameter dialog 301, no more, no less. No	16:07:04
5		more, no less, to indicate my feeling that that	16:07:12
6		sentence is very straightforward and really	16:07:17
7		doesn't require us to alter it.	16:07:22
8	Q	And paragraph 33 states "One or more	16:07:26
9		upload parameters placing restrictions on the	16:07:28
10		digital invitation may be specified in upload	16:07:31
11		parameter dialog 301 as well," correct?	16:07:35
12	A	I believe this is the first time we've	16:07:38
13		looked at paragraph 33. Let me scroll up.	16:07:39
14		Paragraph 33 begins "One or more upload parameters	16:07:43
15		placing restrictions to the digital invitation may	16:07:46
16		be specified in upload parameter dialog 301 as	16:07:50
17		well."	16:07:53
18	Q	So, again, I repeat my question. The	16:07:54
19		upload parameters specified in upload parameter	16:07:57
20		dialog 301 may restrict a digital invitation,	16:08:00
21		correct?	16:08:04
22	A	I'm not sure I agree with your	16:08:58

1 rephrasing of the specification. For example, the 16:09:00
2 message might be restricted in other ways. So I'm 16:09:06
3 comfortable with paragraphs 32, 33, and 34, as 16:09:10
4 they stand. Without further analysis, I'm not 16:09:17
5 sure that I can stretch to your simplification. 16:09:21

6 Q We're not discussing whether it might 16:09:32
7 be restricted in other ways. I'm just asking, 16:09:33
8 merely, whether that paragraph states that one or 16:09:36
9 more upload parameters placing restrictions on the 16:09:39
10 dialog box may be specified in upload parameter 16:09:43
11 dialog 301 and, therefore, whether it states one 16:09:48
12 or more upload parameters may place restrictions 16:09:54
13 on the digital invitation? 16:09:58

14 MR. DAHLGREN: Objection. Form. 16:10:00

15 A First, that's the longest question that 16:10:02
16 I've heard in a deposition. And second, that's 16:10:05
17 not the question that you asked me to which I 16:10:09
18 responded earlier. 16:10:11

19 Q Okay. Well, I'm not discussing whether 16:10:15
20 it can be restricted in other ways. I'm merely 16:10:17
21 asking, can (lost audio) upload a digital 16:10:20
22 invitation? 16:10:29

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1	A	Your audio cut out. Hello?	16:10:29
2	Q	Hello. Can you hear me now?	16:10:36
3	A	Yes, I can hear you now.	16:10:38
4	Q	So I'm not discussing whether it might	16:10:40
5		be restricted in other ways. What I'm asking is	16:10:41
6		whether the one or more upload parameters,	16:10:44
7		specified in the upload parameter dialog 301, may	16:10:46
8		place restrictions on the digital invitation?	16:10:51
9	A	That, I will agree with. That's not	16:10:54
10		the question that you asked me initially. That	16:10:56
11		statement that you just gave me, I will agree	16:10:59
12		with.	16:11:01
13	Q	And then, the send button 330 may be	16:11:19
14		used to send that digital invitation, correct?	16:11:22
15	A	Paragraph 34 states "Send button 330	16:11:28
16		may be used to send a digital invitation	16:11:32
17		restricted by the one or more upload parameters	16:11:34
18		specified in upload parameter dialog 301."	16:11:38
19		So to the extent your paraphrase	16:11:44
20		represents exactly that sentence that I just read,	16:11:47
21		that is correct.	16:11:49
22	Q	Let's go to paragraph 30 -- sorry. 27.	16:12:05

1	A	I have paragraph 27, which starts	16:12:16
2		"after the selection of the contact."	16:12:18
3	Q	Great. We're at the right paragraph.	16:12:27
4		"After the selection of the contact, the	16:12:31
5		registered user may also use revoke access button	16:12:33
6		236 instead of grant access button 235 to create a	16:12:34
7		revocation of any digital invitations previously	16:12:39
8		transmitted to the selected contact," correct?	16:12:42
9	A	Yes, I read the first sentence of 27 as	16:12:46
10		"After the selection of the contact, the	16:12:49
11		registered user may also" revoke access button --	16:12:51
12		"may also use revoke access button 236 instead of	16:12:55
13		grant access button 235 to create a revocation of	16:13:01
14		any digital invitations previously transmitted to	16:13:04
15		the selected contact."	16:13:07
16	Q	So, clicking the revoke access button	16:13:11
17		236 would revoke any digital invitations	16:13:16
18		previously transmitted to the selected contact,	16:13:20
19		correct?	16:13:22
20	A	Can you repeat that question, please?	16:13:31
21	Q	Sure. If the registered user clicks on	16:13:35
22		the revoke access button 236, it would revoke any	16:13:40

1	digital invitations previously sent to a selected	16:13:45
2	contact, correct?	16:13:48
3	A No. That is not correct.	16:13:48
4	MR. DAHLGREN: Form.	16:13:51
5	THE WITNESS: Sorry, Derek.	16:13:52
6	A No, that is not correct.	16:13:54
7	Q The registered user may use the revoked	16:13:59
8	access button 236 to revoke any digital	16:14:02
9	invitations previously transmitted to the selected	16:14:05
10	contact?	16:14:09
11	A That was a statement, a paraphrase of	16:14:10
12	paragraph 27, however, it was not correct. You're	16:14:14
13	doing the same thing again. You're changing	16:14:18
14	words. You're changing the meaning.	16:14:20
15	I can't agree to that.	16:14:25
16	Q You don't agree that the revoke access	16:14:29
17	button 236 revokes any digital invitations	16:14:31
18	previously sent to a selected contact?	16:14:34
19	A No, I don't. And I can explain.	16:14:37
20	Q You don't agree that the revoke access	16:15:01
21	button 236 may revoke any digital invitations	16:15:05
22	previously sent to a selected contact?	16:15:13

1	A	No. I don't agree with that either.	16:15:21
2	Q	Okay.	16:15:29
3	A	It says what it says. It says it	16:15:31
4		creates a revocation. I offered to explain.	16:15:34
5	Q	Oh, I see.	16:15:42
6		So, the revoke access button creates a	16:15:44
7		revocation of any digital invitations previously	16:15:50
8		transmitted to the selected contact?	16:15:54
9	A	That is what paragraph 27 says. No	16:15:56
10		more and no less. Your attempts to adjust the	16:15:59
11		wording alter the meaning.	16:16:03
12	Q	Let's go to paragraph 46.	16:16:18
13	A	I have paragraph 46, proceeding to	16:16:30
14		fig -- Figure 6, F-I-G, period.	16:16:34
15	Q	So, paragraph 46 is describing	16:16:44
16		Figure 6, correct?	16:16:46
17	A	No.	16:16:52
18	Q	It's not describing Figure 6?	16:17:03
19	A	No. I have the same reticence to agree	16:17:05
20		based on an earlier discussion. Paragraph 46	16:17:11
21		describes, possibly, some elements of Figure 6,	16:17:13
22		possibly all of Figure 6. But that's all.	16:17:16

1 Q Okay. So paragraph 46 describes at 16:17:24
2 least some portions of Figure 6? 16:17:26

3 A That is correct. Paragraph 46 is a 16:17:29
4 short paragraph that says, no more, no less, the 16:17:33
5 following: "Figure 6 presents a diagram of the 16:17:39
6 dialogue box associated with a revoked digital 16:17:42
7 invitation, according to one embodiment of the 16:17:45
8 present invention. Diagram 600 of Figure 6, 16:17:48
9 including dialogue 601," and I pause here. 16:17:53
10 Period. "Dialogue 601 includes blocked interface 16:18:07
11 603. Blocked interface 603 includes revocation 16:18:12
12 message 604." 16:18:16

13 If I may, I would like to go to 16:18:20
14 Figure 6 to see if that, indeed, describes all of 16:18:23
15 Figure 6. If you want to do the same as we did 16:18:26
16 before, previously, and you bring up Figure 6 or I 16:18:31
17 can bring up Figure 6 and you leave the 16:18:34
18 description of Figure 6 there, as it is now, 16:18:36
19 perhaps that would be easier and I will scroll to 16:18:38
20 Figure 6. 16:18:42

21 Q I just wanted to ask you a little bit 16:18:45
22 of the questions, first, before we go to Figure 6, 16:18:46

1	about paragraph 46.	16:18:48
2	A Well, I'm at Figure 6 now and I see	16:18:54
3	one, two, three, four, callouts, 600, 601, 604,	16:18:56
4	and 603.	16:19:03
5	Q And those are the same callouts listed	16:19:05
6	in paragraph 46?	16:19:07
7	So in paragraph 46, it states that	16:19:13
8	Figure 6 includes a dialog box 601, correct?	16:19:17
9	A Give me a little bit of time. I did	16:19:23
10	the same thing as I did last time.	16:19:24
11	Q It's still on the screen, I believe,	16:19:27
12	sir.	16:19:29
13	A Yes, I can't really see that easily.	16:19:29
14	It's much easier for me to manage the PDF. It	16:19:32
15	just takes me five seconds to scroll.	16:19:37
16	I'm back at paragraph 46, proceeding to	16:20:05
17	Figure 6.	16:20:08
18	Q And it explains that Figure 6 includes	16:20:10
19	the dialog box 601, correct?	16:20:16
20	A I see the sentence in paragraph 46,	16:20:19
21	diagram 600 in Figure 6 includes dialog 601.	16:20:23
22	Q And then it states that dialog 601	16:20:29

1	includes the blocked interface 603?	16:20:32
2	A That's correct. Next-to-last sentence	16:20:35
3	reads "dialog 601 includes blocked interface 603."	16:20:37
4	Q And then it explains that the blocked	16:20:43
5	interface 603 includes the revocation message 604?	16:20:45
6	A It's one sentence that says "blocked	16:20:50
7	interface 603 includes revocation message 604."	16:20:52
8	Q Okay. And when we go, now, to	16:20:59
9	Figure 6, which you were looking at previously.	16:21:01
10	A Let me go back to Figure 6, please.	16:21:03
11	Q We, in fact, see --	16:21:11
12	A Could you just wait one more second?	16:21:13
13	Q Of course.	16:21:17
14	A It's sideways, so I have to do the	16:21:20
15	magnify and switch everything around again in	16:21:22
16	order to see it. I'm now at Figure 6, the right	16:21:25
17	way up, and it's a size where I can read it.	16:21:28
18	Please, ask your question.	16:21:32
19	Q So in Figure 601, we see the dialog box	16:21:33
20	601 -- sorry, scratch that. I'll start over.	16:21:36
21	In Figure 6, we see the dialog box 601,	16:21:39
22	correct?	16:21:43

1	A	I see a box labeled 601.	16:21:52
2	Q	And then, within 601, we see the	16:21:55
3		blocked interface 603?	16:21:58
4	A	I see a callout 603, pointing to a	16:22:00
5		portion of 600.	16:22:04
6	Q	And then we see the callout 604,	16:22:07
7		pointing to a portion of 603, correct?	16:22:09
8	A	No. That's not correct.	16:22:15
9	Q	604 is pointing to something within	16:22:21
10		603, correct?	16:22:24
11	A	No. That's not correct.	16:22:27
12	Q	What is 604 pointing to?	16:22:29
13	A	The same thing that 603 is pointing to.	16:22:31
14	Q	604 is pointing to the revocation	16:22:46
15		message, correct?	16:22:49
16	A	I can't tell that from this figure. It	16:22:50
17		looks to me like 603 and 604 are the same thing.	16:22:51
18	Q	All right. Thank you.	16:22:56
19	MS. HERRIOT:	We've been going, I	16:22:58
20		think, sir, for almost an hour, and I know you	16:22:58
21		wanted frequent breaks. Would you like to take	16:23:01
22		another three-minute break to check in with your	16:23:03

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Conducted on January 9, 2025

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1	family?	16:23:06
2	THE WITNESS: Sure. Thanks very much.	16:23:07
3	THE VIDEOGRAPHER: We are going off the	16:23:09
4	record. The time is 4:23 p.m.	16:23:10
5	(Recess taken.)	16:23:18
6	THE VIDEOGRAPHER: We are back on the	16:28:06
7	record. The time is 4:28 p.m.	16:28:06
8	BY MS. HERRIOT:	16:28:08
9	Q Now, Dr. Smith, are you aware that	16:28:17
10	there was previously a trial between	16:28:22
11	Motion Offense and Dropbox?	16:28:25
12	A Yes, I am aware that there was a trial	16:28:28
13	between Motion Offense and Dropbox.	16:28:31
14	Q You did not attend that trial, correct?	16:28:34
15	A I did not attend the Motion Offense v.	16:28:36
16	Dropbox trial.	16:28:39
17	Q You did not testify at that trial,	16:28:42
18	correct?	16:28:44
19	A I did not testify at the Motion Offense	16:28:44
20	v. Dropbox trial.	16:28:46
21	Q Do you know the outcome of that trial?	16:28:50
22	A I do not know the complete details of	16:28:54

1 the outcome of that trial. I didn't even know 16:28:55
2 that the trial had completely finished. 16:29:00

3 Q You said you do not know the complete 16:29:07
4 details of the outcome of that trial. Do you know 16:29:10
5 any details about the outcome of that trial? 16:29:12

6 A Yes, I know some details. And I 16:29:14
7 believe I covered the details that I do know in my 16:29:18
8 declarations. 16:29:23

9 Q Well, what do you know about the 16:29:23
10 outcome of the trial? 16:29:25

11 A Can you point me to the part of my 16:29:35
12 declaration where I discuss that, or should I 16:29:38
13 bring out my declaration? 16:29:42

14 Q I'm just asking what you recall, right 16:29:45
15 now, about the outcome of the trial. 16:29:47

16 A To refresh my memory, I would like to 16:29:51
17 bring up the document where I discuss this. It's 16:29:55
18 not something that I completely committed to 16:30:00
19 memory. 16:30:02

20 Q Do you recall anything about the 16:30:04
21 outcome of the trial? 16:30:05

22 A The parts that I can recall would be 16:30:10

1 that there was some issue of whether HTML language 16:30:14
2 was used or not. 16:30:22

3 I recall that the claims that were at 16:30:26
4 issue in the trial were different from the claims 16:30:31
5 at issue here. 16:30:35

6 Q What is the basis for that 16:30:40
7 understanding? 16:30:42

8 A I'd like to request to refer to my 16:30:55
9 declaration, please. 16:30:57

10 Q Let's look at paragraph 84 of your 16:31:07
11 declaration. 16:31:09

12 A That would be tab which? 16:31:12

13 Q Actually, before I go there, let me 16:31:14
14 just ask you: Do you know what the jury found 16:31:16
15 with respect to priority date? 16:31:20

16 A No, I do not. I do not know if I know 16:31:23
17 or if I ever knew or I do not recall that. 16:31:25

18 Q Do you know what the Court found with 16:31:30
19 respect to priority date? 16:31:32

20 MR. DAHLGREN: Objection. Form. 16:31:36

21 A No, I do not recall. 16:31:39

22 Q Are you aware that the Court entered 16:31:42

1	judgment, finding that none of the asserted claims	16:31:44
2	were entitled to a priority date of	16:31:46
3	September 25th, 2012?	16:31:48
4	A I do not recall knowing the details of	16:31:54
5	that.	16:31:57
6	Q Well, are you aware of that or not?	16:32:01
7	A For example, I do not recall the exact	16:32:05
8	priority dates.	16:32:08
9	Q Are you aware that the Court entered	16:32:13
10	judgment, finding that none of the asserted claims	16:32:14
11	were entitled to the priority dates Motion Offense	16:32:16
12	was suggesting in 2012?	16:32:20
13	MR. DAHLGREN: Objection. Form.	16:32:25
14	A Can you repeat that question, please?	16:32:27
15	Q Are you aware that the Court entered	16:32:32
16	judgment, finding that none of the asserted claims	16:32:34
17	were entitled to a priority date of 2012?	16:32:35
18	A I think that was slightly different	16:32:40
19	from the question that you originally asked. But	16:32:41
20	in any case, the answer to that last question is,	16:32:43
21	no, I was not aware. I do not recall being aware	16:32:46
22	of that fact.	16:32:50

1 Q And let's go to paragraph 84 of your 16:32:52
2 declaration. 16:32:55

3 A Again, could you tell me what tab 16:33:01
4 number, please? 16:33:04

5 Q Second-to-last. Tab 15. 16:33:07

6 A And paragraph? 16:33:11

7 Q 84. Page 40. 16:33:12

8 A Yep. I have page 40. 16:33:31

9 Q I just have a simple question for you 16:33:36
10 here about paragraph 84. 16:33:38

11 You do not refer to the Court's 16:33:41
12 judgment in that paragraph, correct? 16:33:43

13 A I merely refer to the portions of the 16:34:07
14 case that I refer to here, in paragraph 84. In 16:34:10
15 prior litigation, Patent Owner alleged that 16:34:16
16 Dropbox infringed previous patents to the '520 16:34:19
17 patent. 16:34:25

18 Q Right. And you do not refer to the 16:34:27
19 trial in that previous litigation, in this 16:34:29
20 paragraph, correct? 16:34:31

21 A I'm not sure I understand the question. 16:34:38
22 What do you mean by "trial," and what difference 16:34:39

1 between trial and litigation are you trying to 16:34:41
2 imply or question? 16:34:43

3 Q You do not refer to any trial that 16:34:47
4 occurred in that prior litigation in this 16:34:50
5 paragraph, correct? 16:34:52

6 A Well, at the end of the paragraph, I 16:35:00
7 state the District Court denied Dropbox's motion. 16:35:02

8 Q That is a pretrial motion, correct? 16:35:07

9 A I'm not a lawyer. I'm not qualified to 16:35:11
10 give legal opinions. I'm not familiar with legal 16:35:12
11 technical jargon. I'm not sure what question 16:35:16
12 you're asking me. 16:35:20

13 Q You don't -- 16:35:22

14 A Whether the actual trial, the trial 16:35:23
15 date. I have no knowledge of the trial, the trial 16:35:26
16 date. 16:35:28

17 Q You don't refer to a jury verdict in 16:35:32
18 this paragraph? 16:35:35

19 A In this paragraph, 84, I do not see the 16:35:36
20 word "jury" or "verdict"? 16:35:39

21 Q And in this paragraph 84, you do not 16:35:41
22 refer to a judgment entered by the Court, correct? 16:35:44

1	A	Can you ask that question again,	16:35:52
2		please?	16:35:54
3	Q	Are you aware that after the jury	16:36:02
4		issues its verdict, the Court enters a judgment?	16:36:04
5	A	I don't believe --	16:36:08
6		MR. DAHLGREN: Objection. Foundation.	16:36:09
7		THE WITNESS: Go ahead, Derek. Sorry.	16:36:13
8		MR. DAHLGREN: Objection. Foundation.	16:36:15
9	A	I've asked you to repeat the question.	16:36:21
10		And I think you repeated -- you did not repeat the	16:36:24
11		question. You asked me another question. I'm	16:36:26
12		going to ask you to repeat that second question.	16:36:28
13	Q	Are you aware that after the jury	16:36:32
14		issues its verdict, the Court enters a judgment?	16:36:34
15		MR. DAHLGREN: Same objection.	16:36:41
16	A	I have no knowledge of anything other	16:36:44
17		than is contained in my declaration. And if	16:36:45
18		you're asking questions about this paragraph, I	16:36:51
19		believe the answer is no.	16:36:52
20		MS. HERRIOT: Okay. I'd like to take a	16:36:55
21		short break.	16:36:57
22		THE VIDEOGRAPHER: We are going off the	16:36:59

1	record. The time is 4:37 p.m.	16:36:59
2	(Recess taken.)	16:37:03
3	THE VIDEOGRAPHER: We are back on the	16:41:01
4	record. The time is 4:41 p.m.	16:41:02
5	BY MS. HERRIOT:	16:41:15
6	Q Mr. Smith, is -- sorry. Dr. Smith, is	16:41:16
7	your family still okay?	16:41:19
8	A Yes, thank you.	16:41:20
9	Q And have you spoken with your counsel	16:41:21
10	during any of the breaks today about the substance	16:41:23
11	of your testimony?	16:41:26
12	A Nothing about my testimony. We have	16:41:27
13	talked about the situation in LA and nothing else.	16:41:30
14	Q I would be very surprised if Derek	16:41:35
15	didn't want to discuss with you the situation in	16:41:38
16	LA, so that makes sense to me.	16:41:40
17	Have you spoken with anyone else today	16:41:42
18	about the substance of your testimony?	16:41:44
19	A I haven't spoken to anyone today about	16:41:49
20	the substance of my testimony.	16:41:51
21	MS. HERRIOT: Derek, I pass the	16:41:53
22	witness.	16:41:54

1	MR. DAHLGREN: Can we take a ten-minute	16:41:57
2	break?	16:41:59
3	MS. HERRIOT: Of course.	16:42:00
4	MR. DAHLGREN: Thank you.	16:42:01
5	THE VIDEOGRAPHER: We are going off the	16:42:02
6	record. The time is 4:42 p.m.	16:42:02
7	(Recess taken.)	16:45:45
8	THE VIDEOGRAPHER: We are back on the	16:49:19
9	record. The time is 4:49 p.m.	16:49:20
10	EXAMINATION BY COUNSEL FOR THE PATENT OWNER	16:49:22
11	BY MR. DAHLGREN:	16:49:25
12	Q Dr. Smith, do you recall being asked	16:49:25
13	questions about the litigation between	16:49:27
14	Motion Offense and Dropbox and the jury trial?	16:49:31
15	A Yes. I recall some of that	16:49:38
16	interaction, that we had just now.	16:49:39
17	Q Would you, please, turn to Exhibit 7,	16:49:44
18	and it's tab 2. It's your declaration in the 286	16:49:46
19	IPR.	16:49:54
20	A I have that declaration.	16:49:55
21	Q Could you, please, review paragraph 48	16:49:58
22	through 52 of your declaration in the 286 IPR,	16:49:59

1	Exhibit 7. And, please, let me know when you're	16:50:06
2	done.	16:50:10
3	A I see 48.	16:50:11
4	Q If you could just, please, review	16:50:14
5	paragraphs 48 to 52, and just let me know when	16:50:16
6	you've finished.	16:50:19
7	A I've skimmed through those paragraphs,	16:50:49
8	and that has helped refresh my memory.	16:50:50
9	Q So, and that's what I want to ask you,	16:50:55
10	if that refreshes your recollection regarding the	16:50:58
11	outcome of that jury trial?	16:51:01
12	A Yes.	16:51:09
13	Q So you understand that the jury found	16:51:09
14	that the asserted claims involved in the trial	16:51:11
15	were invalid and not infringed, correct?	16:51:15
16	A Yes. I see paragraph 48, that I, in	16:51:18
17	fact, did state the jury returned the verdict that	16:51:23
18	the patents were invalid and not infringed.	16:51:26
19	Q And if you look at paragraph 52.	16:51:30
20	Do you see any reference to priority?	16:51:35
21	A Yes, I see reference to priority,	16:51:44
22	September 22nd, 2012. I did not remember the	16:51:46

1 exact dates. I believe I remembered that there 16:51:49
2 are two applications that may have priority dates, 16:51:53
3 three days apart, but I did not remember the exact 16:51:57
4 dates. I remember thinking it was interesting 16:52:01
5 that they were three days apart, but I could not 16:52:03
6 remember the exact dates. 16:52:06

7 Q And my question here is, does the fact 16:52:07
8 that Dropbox successfully challenged the priority 16:52:14
9 date of the claims involved in that trial, does 16:52:19
10 that change your opinion, or any of your opinions 16:52:22
11 offered in the 287 IPR regarding the priority date 16:52:26
12 of the involved claims of the '520 patent? 16:52:32

13 A No. 16:52:38

14 MR. DAHLGREN: No further questions. 16:52:39

15 MS. HERRIOT: Can we just take a short, 16:52:41
16 two-minute break? 16:52:44

17 MR. DAHLGREN: Sure. 16:52:45

18 THE VIDEOGRAPHER: We are going off the 16:52:46
19 record. The time is 4:52 p.m. 16:52:47

20 (Recess taken.) 16:52:57

21 THE VIDEOGRAPHER: We are back on the 16:56:26
22 record. The time is 4:56 p.m. 16:56:27

1 MS. HERRIOT: Dr. Smith, thank you so 16:56:32
 2 much for your time today. Our thoughts are with 16:56:33
 3 your family. I hope everybody remains safe and 16:56:36
 4 does not need to evacuate. 16:56:39

5 And I believe Mr. Dahlgren had one 16:56:41
 6 thing he wanted to say. 16:56:45

7 MR. DAHLGREN: Yeah. I just wanted to 16:56:46
 8 note, on the record, that we reserve reading and 16:56:47
 9 sign. 16:56:50

10 And, Dr. Smith, again, I want to echo 16:56:50
 11 Liv's comments, and thank you very much. And I 16:56:52
 12 hope everything goes well with your family. 16:56:54

13 THE WITNESS: Thank you both. And, 16:56:58
 14 also, thoughts with Lucas, as well, in Glendale. 16:56:58

15 MS. HERRIOT: Absolutely. 16:57:07

16 MR. DAHLGREN: Yes. Absolutely. 16:57:07

17 THE VIDEOGRAPHER: Thank you. And I 16:57:08
 18 will close this out. 16:57:09

19 This marks the end of the deposition of 16:57:10
 20 Dr. Michael Smith. We are going off the record. 16:57:12

21 The time is 4:57 p.m. Eastern. 16:57:14

22 THE STENOGRAPHER: Regular delivery on 16:57:56

1 the transcript? 16:57:58

2 MS. HERRIOT: I think we have a 16:57:59

3 standing order there, so I would never want to 16:58:00

4 argue with my paralegals. Whatever our standing 16:58:02

5 order is applies. 16:58:06

6 MR. DAHLGREN: And we'll take regular, 16:58:08

7 just regular delivery. 16:58:09

8 (Off the record.)

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1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC

2
3 I, Judith E. Bellinger, Certified Reporter
4 and Notary Public within and for the Commonwealth
5 of Virginia do hereby certify:

6 That MICHAEL SMITH, PH.D., the
7 witness whose deposition is hereinbefore set
8 forth, was duly sworn by me before the
9 commencement of such deposition and that such
10 deposition was taken before me and is a true
11 record of the testimony given by such witness.

12 I further certify that the adverse party,
13 Motion Offense, LLC, was represented by counsel at
14 the
15 deposition.

16 I further certify that the deposition of
17 MICHAEL SMITH, PH.D., occurred remotely
18 on Thursday, January 9, 2025, commencing at
19 12:03 p.m. EST.

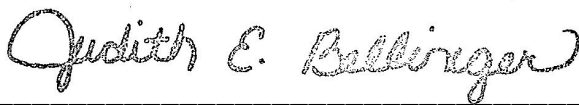
20 I further certify the inspection, reading
21 and signing of said deposition was not discussed
22 on the record.

1 I further certify that I am not related to
2 any of the parties to this action by blood or
3 marriage, I am not employed by or an attorney to
4 any of the parties to this action, and that I am
5 in no way interested, financially or otherwise, in
6 the outcome of this matter.

7
8 IN WITNESS WHEREOF, I have hereunto set my
9 hand this 22 day of January, 2025.

10
11 My commission expires:

12 September 30, 2028

13 
14 _____

15 E-NOTARY PUBLIC IN AND FOR THE
16 Commonwealth of Virginia
17
18
19
20
21
22

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