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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

MOTION OFFENSE, LLC	*	May 15, 2023
	*	
VS.	*	CIVIL ACTION NO.
	*	
DROPBOX, INC.	*	6:20-CV-251

BEFORE THE HONORABLE ALAN D ALBRIGHT
JURY TRIAL PROCEEDINGS
Volume 1 of 5

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DROPBOX 1130
DROPBOX v. MOTION OFFENSE
IPR2024-00287

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Proceedings recorded by mechanical stenography; transcript produced by computer-aided transcription.

09:30

09:36 (Hearing begins.)

09:36 THE BAILIFF: All rise.

09:36 THE COURT: Good morning. You may be seated.

09:36 Jen, would you call the case, please?

09:36 DEPUTY CLERK: A civil action in Case 6:20-CV-251, Motion Offense, LLC versus Dropbox, Incorporated. Case called for a jury trial proceeding.

09:36 THE COURT: Good morning, Mr. Devlin.

09:36 Announcements from counsel?

09:36 MR. DEVLIN: Good morning, Your Honor. May it please the Court.

09:36 Tim Devlin on behalf of now named the plaintiff for this trial, Motion Offense. And with me I have Mr. Donald Puckett, also from Devlin Law Firm, Mr. Derek Dahlgren and our corporate representative, Mr. Andrew Gordon.

09:37 THE COURT: Pleasure.

09:37 MR. DEVLIN: Thank you, Your Honor.

09:37 THE COURT: Good morning. How are you doing?

09:37 And for defendant?

09:37 MR. LANTIER: Good morning, Your Honor. May it please the Court.

09:37 Greg Lantier on behalf of Dropbox, Inc.,

that now named the defendant. With me is Amanda Major, Mr. Gil Gillam and our corporate representative, Jason Terk.

THE COURT: And welcome to all of you.

I understand you have some issues this morning. I'm happy to take them up.

MR. LANTIER: I think that's correct, Your Honor. Would you like to begin with the slides for the openings?

THE COURT: Yeah. If you'll hand them to me, I'll take a look at them.

MR. LANTIER: All right. I believe that all have been resolved that we had. So we don't have any objections to the current -- the plaintiff's current opening slides, but I believe Mr. Devlin has some he'd like to discuss with Your Honor to ours.

THE COURT: Okay.

MR. PUCKETT: Your Honor, we do have a few objections to the slides. The only --

THE COURT: If you'll just hand them up and tell me what number of pages they are.

MR. PUCKETT: Your Honor, the only copy that I have in my hand has some written notes, Your Honor.

So if -- does Dropbox have a copy of your

own slides for the Court?

I don't want to hand up the copy with my notes.

Thank you, Your Honor.

Your Honor, just very briefly --

THE COURT: If you'll just tell me what page you're on.

MR. PUCKETT: Certainly. I think I'd actually like to start with Slide 15.

THE COURT: Okay.

MR. PUCKETT: And, Your Honor, I'll start by saying we have essentially similar objections to Slides 3, 8, 10 and 11, but I'll use 15 for sort of my illustration.

And the basic objection is that the evidence that is on this slide is all hearsay, and it is not --

THE COURT: That's overruled.

What else?

MR. PUCKETT: So, Your Honor, we have similar objections with respect to 3, 8, 10 and 11, the playing of YouTube videos that are unauthenticated, depicting the screen -- hearsay descriptions.

THE COURT: Where is that? I'm --

MR. PUCKETT: So starting on Slide 3,

09:39 Your Honor.

THE COURT: Okay.

MR. PUCKETT: Or sorry. Slide 3 will be a little bit different than the videos. But Slide 3, our understanding is that this is a recently created snapshot that is a -- purports to be some depiction of a present version of their system, appears like it was created recently with a snapshot of Baylor, that sort of thing.

This is not evidence that has been produced to us. We think that it's not sponsored by any witness and that it'll be hearsay.

THE COURT: Okay. That's overruled.

What else?

MR. PUCKETT: And then similarly with respect to playing YouTube videos that are unauthenticated, not from a witness in the case, just it's --

THE COURT: They're playing YouTube videos during opening argument?

MR. PUCKETT: That's my understanding.

THE COURT: What are you playing?

MR. LANTIER: That's not correct, Your Honor.

Your Honor, I believe we're on about --

DDX-1.11 would be an example. This is what we would show the jury during the opening, just this still.

THE COURT: That's fine with me.

MR. LANTIER: Okay. Thank you, Your Honor.

MR. PUCKETT: Last one, Your Honor, is Slide 16. And our concern there is Motion in Limine No. 18 with respect to Dropbox pointing at their own patents as descriptions of what they practice or as being descriptive of their system without testimony supporting.

That MIL was granted, but it appears that there's a picture of a Dropbox patent on Slide 16. We don't know exactly how they're going to use it, but it would appear to risk violation of MIL 18.

THE COURT: What is the patent on 16? What do you intend to say about it?

MR. LANTIER: I just intend to say, Your Honor, that Dropbox filed patents at the time that described its system which the MIL did allow. This is a patent that was cited by Dr. Shamos, our invalidity expert, in his report as evidence of the way that the prior art Dropbox systems function.

THE COURT: How close is the title of this patent to the title of the asserted patents?

09:41 MR. LANTIER: It's not close, Your Honor. The title of the asserted patents I won't get right, but it's something like a method and apparatus for transmission of a data object.

09:41 THE COURT: Okay. To the extent you're going to make those statements during your opening argument, I'm fine with those as well.

09:41 MR. LANTIER: Thank you, Your Honor.

09:41 THE COURT: Anything else in the slides?

09:42 Mr. Devlin?

09:42 MR. DEVLIN: Thank you, Your Honor.

09:42 One more thing that we received a little late, there's going to be a magnet board, I guess, they're going to use and put some magnets up on it. It's all fine.

09:42 THE COURT: No.

09:42 (Laughter.)

09:42 MR. DEVLIN: All fine. One of the magnets, and we didn't see this until a little late, it says: Same as Smart Sync.

09:42 This is a big deal. Smart Sync is the functionality that they added after the patents were filed and that we think is largely responsible for infringement.

09:42 They're trying to tie their old version

of their products to the current product, and they're going to have some evidence that links some things up. And, factually, Your Honor said, that's okay. They have a witness who can say we had this feature then, whatever.

No witness has ever said that what they did before is the same as Smart Sync. That it's -- and it is a huge issue.

Now, I spoke with Mr. Lantier about this. If they put a witness on the stand and that witness says it and we cross them, then we can talk about it for closing. I'm happy to do that.

But as the record stands now, no witness has said that, and it is a huge, wrong fact.

THE COURT: As opposed to saying -- crossing their witnesses saying, you heard this in opening and that's not true?

MR. DEVLIN: I'd rather -- yes, Your Honor. I understand Your Honor's point, but I'm extremely worried about primacy and then the jurors adopting that and having it in their heads, and it be hard to --

THE COURT: Because you know when they leave -- when they leave -- when they go back this morning, they're going to remember every single thing

y'all said on opening, and it's going to --

MR. DEVLIN: I just think this one is -- the only reason I'm raising this one, Your Honor, is it is a particularly big deal, and I would prefer not to see it on opening. It's definitely wrong.

And if Your Honor's point is that there's a tactical choice that I might make --

THE COURT: No, no, no. I'm just saying that however I do it, you -- a good lawyer like you would be fine. I'm more sanguine that you all -- unless you said something maybe about President Trump's trial last week or talk at CNN or what Mr. Biden said or something that they might actually remember, I'm less convinced after 50 trials that they'll remember anything that's said during opening argument.

I know it's a big deal to you all. I did what you did for a long time.

Let me hear from the other side about why you should get to use it during your opening.

MR. LANTIER: Your Honor, the magnet board is a timeline that lays out our view of the evidence which is that Dropbox had developed all the functionalities that the asserted claims describe earlier in time.

And what the relevant portion of the

09:44 board refers to is there's an allegation that in Smart
09:44 Sync, the use of what they call "representations"
09:44 infringes certain of the claims that talk about
09:44 representations.
09:44 Our position -- and we have an
09:44 anticipation position set forth by our expert on
09:45 invalidity -- is that that technology of the
09:45 representations was developed many years earlier by
09:45 Dropbox and used in the Dropbox mobile app at that
09:45 time.
09:45 So all that the board will say to the
09:45 jury is that these representations were developed
09:45 earlier before the patents and that just like Smart
09:45 Sync has representations, the prior art also has
09:45 representations.
09:45 THE COURT: You have a witness that's
09:45 going to say that?
09:45 MR. LANTIER: Yes. We have an expert
09:45 witness who will say it, and we have a fact witness.
09:45 THE COURT: Mr. Devlin, how do I keep
09:45 them from having something on their -- in their opening
09:45 that they're -- that he's representing to me they have
09:45 a witness that's going to say that?
09:45 MR. DEVLIN: Having heard that
09:45 explanation and taking into account Your Honor's wise

advice, we're happy with it. Thank you.

THE COURT: Okay. Is there anything else we need to take up before we bring the jury in?

MR. LANTIER: Your Honor, I think the answer is yes on two small points I need to raise for record purposes. But to make sure we fulfill Your Honor's preference, there are exhibit objections that I don't think need to be heard before the jury comes in unless you want to hear the objections relevant to the first witness before we bring the jury in.

THE COURT: Is there a reason why they can't offer the exhibit and you can't object at that time? Is there something so horrible --

MR. LANTIER: No, Your Honor. Not at all.

THE COURT: Okay. Let's do that.

MR. LANTIER: The only other question then is --

THE COURT: I'm old-fashioned. I actually understand the exhibit much better if I hear it in the context of the direct.

MR. LANTIER: That sounds good, Your Honor.

The other one is there are certain objections on deposition designations. I don't think

those have to be heard now but wanted to raise them.

THE COURT: If you all will print out the depos, the transcripts you plan to use, and highlight parts you object to and write down what the objections are, I'll read those while the witnesses are on, and I'll let you know how I rule at a break.

MR. LANTIER: That's perfect.

So, Your Honor, the two things for record purposes. As Your Honor knows, Judge Gilliland and Your Honor have ruled on a number of evidentiary issues being Dauberts and motions in limine and whatnot. I just wanted to make sure that those objections are preserved, and we don't need to stand up every time a piece of evidence comes in.

THE COURT: No. If you raised them -- now, if there's some other evidentiary --

MR. LANTIER: Sure.

THE COURT: -- reason, then you need to do it at that time. But you have -- for example, to the extent what you're saying is that you think their expert's -- their damages expert's argument is -- fails the Daubert standard, I don't think that's even an objection at trial. I mean, I think that's a matter of law that I've ruled on.

So I think by me allowing your witnesses,

who they're unhappy about with Daubert and their witnesses that you're unhappy about with Daubert, I've ruled on those as a matter of law. And I think -- I don't think you need to object other than -- I'll make it up -- to hearsay or something if you think there's something substantive.

MR. LANTIER: Okay. Thank you, Your Honor.

And the second is this.

THE COURT: But the plaintiffs do have to object. No. I'm kidding.

(Laughter.)

THE COURT: It's the same for both.

MR. LANTIER: Dropbox had raised a defense in this case that the patents are invalid under 35 USC Section 101. We had moved for summary judgment on that issue which was denied with a finding by Magistrate Judge Gilliland, affirmed by Your Honor, that the claims are not directed to an abstract idea at Step 1 of the Alice analysis.

The parties had agreed that to the extent that there was any remaining issue on Alice, it would be the subject of a bench trial, not an issue tried to the jury. And I just wanted to raise it at the outset of the trial to make sure, A, you don't need us to

raise it to the jury; and B, I think the way the summary judgment was decided, and maybe the judgment has been entered against us on the issue already, but I was hoping Your Honor might clarify that.

THE COURT: I think the judgment has been entered against you, and you don't need to raise it again, but if, you know, things change during the course of trial, if there's evidence that comes in where you believe that you have over -- you know, it's a summary judgment as opposed to -- which always leaves it open what may come in through the evidence, if you think during the course of the trial -- I don't think I've had this happen -- but if you believe that there is evidence by which you want to -- that you want to raise that argument again, possibly for the reason that I might need to submit something to the jury on the second question if you persuade me to change my mind, you are -- that's fine, and I would encourage you to do it if you think that evidence comes in.

MR. LANTIER: Okay, Your Honor. As I understand it, though, we will not put in expert testimony on the 101 issue during this trial affirmatively. And I can re-raise at the end of the trial whether we need to have a bench trial or not.

THE COURT: I think what might be safer

for you is -- and I know more about brain surgery than appellate law -- but I think what'll be safer for you and which I would be happy to do is while the jury's out to conduct a bench trial outside of their presence and allow you to put down on the record what you would have put on. And I -- and that way the plaintiff can also cross-examine the witness and can -- or object or whatever you want.

But I say that now on Monday morning. That doesn't mean I will remember that on -- and I've had -- I did have one trial where they told me -- I think it was inequitable conduct -- said we have an inequitable -- they said we have an inequitable conduct claim, and I said I'll take that up at the end of the trial while the jury's out, and they never mentioned it again, and then came a couple weeks later and said when are we having that trial and -- to which I said never.

Because it will be up to you all to remind me. If you want to have that trial, I'll be happy to do that while the jury's out and get that in the record for you.

MR. LANTIER: Thank you, Your Honor. And I think maybe the parties can confer because of the nature of the prior ruling was at Step 1, there may be no reason to have a trial right now; and Step 2,

because if we lost at Step 1, we don't get to Step 2?

THE COURT: That's what I think, but I'm happy to do whatever --

MR. LANTIER: Sure.

THE COURT: -- you want me to do to protect your record.

MR. LANTIER: Thank you, Your Honor.

THE COURT: I'm just reminding you it's up to you to remind me to protect your -- I'm happy to do it, but I'm not going to remember -- I don't know that I would ask you at the end of trial.

MR. LANTIER: I understand it. It is our obligation. Understood. Thank you, Your Honor.

THE COURT: And if I didn't -- did I scold you all in advance about confidential -- the confidential record? If I have, I won't do it now.

MR. LANTIER: I'm not sure.

THE COURT: So I'm presuming that while, for example, the plaintiff is putting on their damages expert or technical, either one, that the defendant might want the courtroom to be sealed. So the way -- that's fine. I will always do it. But then the obligation is on the party asking the courtroom to be sealed to pay attention to when it should become unsealed.

09:52 And if I find that you all -- and it's usually -- I'm picking on you because it's usually defendant wants it to be sealed -- if I find that an hour goes by and Kristie or one of us has to say, oh -- then you lose that privilege because I want -- I'll seal it whenever it needs to be sealed, but it's -- y'all need to make sure I know when it should be unsealed. I want the record -- I want this to be public as much as possible.

MR. LANTIER: We understand.

THE COURT: Okay. Very good.

MR. LANTIER: Thank you.

THE COURT: Mr. Devlin?

MR. DEVLIN: Sorry, Your Honor. It's just one sanity check to clarify before we do openings.

My understanding of the timing rules on openings is that we can go a little beyond 30 minutes and then that counts against us, our 11 hours.

THE COURT: I really want you all to finish up pretty close to 30 minutes, but I won't make you sit down at 30 minutes.

MR. DEVLIN: Thank you. Yeah, I've been timing it. 35 minutes, 34.

THE COURT: Now, that is, I should say, partially because they're here, that is the Morgan

09:52 Chu/Bill Lee rule. Because in one of my trials I think
09:53 they each went, like, two hours. And that -- I never
09:53 did that again. So -- they were great trials, but that
09:53 was when I began imposing time limits on openings and
09:53 closing were because of Bill Lee and Morgan Chu.
09:53 And so -- but, you know, I wouldn't go --
09:53 I would try to be getting it done by about 35 minutes
09:53 just --
09:53 MR. DEVLIN: That's exactly where I am,
09:53 Your Honor. I just want to make sure we're not getting
09:53 cut off at 30.
09:53 THE COURT: That's fine.
09:53 MR. DEVLIN: Thank you.
09:53 THE COURT: If I tell you I think it's
09:53 time to wrap up, though, I'm...
09:53 MR. DEVLIN: I'll wrap up.
09:53 THE COURT: Yeah. That would be good
09:53 because occasionally lawyers don't.
09:53 Yes, sir?
09:53 MR. LANTIER: I apologize, Your Honor.
09:53 Ms. Major just informed me that there was one issue
09:53 that I forgot to mention that does need to be addressed
09:53 this morning.
09:53 THE COURT: Sure.
09:53 And by the way, I think -- William, where

are we at on the jury? Okay.

MS. MAJOR: Very briefly, Your Honor, and hopefully to save yourself some time with respect to the deposition designations. Our objection is not to line-by-line issues in the testimony but to exhibits that Motion Offense is seeking to admit via that testimony. There's one category that we're objecting to and that has to do with documents that list revenues of Dropbox.

In this case, Motion Offense has never alleged that the entire market-value rule applies, and so their revenues that are in these documents are not relevant including because their damages expert gets to his damages number by simply applying a royalty to the number of subscriber months.

So the revenue --

THE COURT: Why don't we take this up when we're a little closer to the damages. Are those witnesses going to be put on this morning?

MR. DEVLIN: No, Your Honor. They will probably come this afternoon but definitely not before lunch.

THE COURT: Okay. Go ahead.

MS. MAJOR: Well, so just to clarify, that's our -- really our only objection to their

09:55 deposition designations.

09:55 THE COURT: So are you asking that those exhibits be excluded or redacted?

09:55 MS. MAJOR: We would be amenable to redactions. We proposed that to Motion Offense, but I understand that was not acceptable to them.

09:55 THE COURT: Well, here's the way I would encourage the parties to work before the lunch break is if the plaintiff can show -- if you have identified to the plaintiff the sections that you are unhappy about and would like redacted, then it will be up to the plaintiff to be able to show me where the damages expert -- why -- where he relies on them in his report.

09:55 To the extent they can -- that the plaintiff can tether anything you're unhappy about with something that you've been given notice of from the expert he might want to talk about, I would -- I will overrule your objection, which I don't think would make you -- since the -- your basis is it's not in his report. The question will be whether or not the plaintiff can show me that it is. And if I find that it is, it'll come in. And if I find I agree with you, then I would keep it out.

09:56 MS. MAJOR: Thank you, Your Honor. We can do that.

09:56 THE COURT: Anything else to take up?
09:56 MR. DEVLIN: Nothing, Your Honor.
09:56 THE COURT: Okay. I'll go back, and pretty close to 10:00 a.m. we'll come out.
09:56 THE BAILIFF: All rise.
09:56 (Recess taken.)
10:03 THE BAILIFF: All rise.
10:03 THE COURT: Please remain standing for the jury.
10:03 (Jury entered the courtroom.)
10:03 THE COURT: Thank you. You may be seated.
10:04 Jen, would you call the case, please?
10:04 DEPUTY CLERK: A civil action in Case 6:20-CV-251, Motion Offense, LLC versus Dropbox, Incorporated. Case called for a jury trial proceeding.
10:04 THE COURT: Could I have announcements from counsel, please?
10:04 MR. DEVLIN: Good morning, Your Honor. May it please the Court.
10:04 Tim Devlin on behalf of plaintiff Motion Offense. With me, I have my colleagues Mr. Donald Puckett, Mr. Derek Dahlgren. And we have Motion Offense's corporate representative, Mr. Andrew Gordon.
10:04 THE COURT: Thank you.

10:04 MR. DEVLIN: Thank you, Your Honor.

10:04 THE COURT: Mr. Lantier?

10:04 MR. LANTIER: Good morning, Your Honor. May it please the Court?

10:04 THE COURT: Yes.

10:04 MR. LANTIER: Greg Lantier on behalf of the defendant Dropbox, Inc. With me today is my law partner Amanda Major, Gil Gillam and our corporate representative, Mr. Jason Terk.

10:04 THE COURT: Okay. And do you intend to give your opening immediately following theirs?

10:04 MR. LANTIER: We do, Your Honor. Thank you.

10:05 THE COURT: Very good.

10:05 And does either side wish to invoke the rule?

10:05 MR. DEVLIN: I think the parties have agreed on the invocation of the rule, Your Honor. Thank you.

10:05 THE COURT: Very good. Okay.

10:05 Mr. Devlin -- one second. Let me go ahead and introduce myself since the lawyers have.

10:05 Ladies and gentlemen of the jury, my name is Alan Albright. I'm the United States district judge for the Waco Division of the Western District of Texas.

10:05 It's an amazing -- I'm unbelievably lucky to have this job and unbelievably proud to have it. You sit in a -- some of you may have to drive a great distance to get here. The Waco Division is unbelievably large. But to put it in perspective, the -- El Paso is also in our district, and El Paso is closer to Los Angeles than it is to us. So that gives you an idea of the distances we have in our district.

I'm enormously grateful for you all being here to serve on a civil jury. It's the greatest system of justice in the world. It's guaranteed by the Constitution that folks can have civil disputes, and they can -- they could ask for me and I could preside over it, but the Constitution provides them the opportunity to have a jury, and they've invoked it.

So the way I try to run my courtrooms is there are some things I have to do, but mostly you have to do as the judges in this case. So throughout the course of the trial, I try to defer as much as possible to you, the judges, about how we run things, for example, in terms of timing and all that.

I will give you -- this morning we started at 10:00, usually we'll start at 9:00. You'll have a break in the morning. You'll have a break in the afternoon. We usually go till about 5:30 or 6:00.

10:06 If you need a break sooner than when I'm giving you one, I have many great powers, but the ability to read your mind is not one of them. You're going to have to let William or someone sitting down here know. And if you all need a break sooner than when I think you need a break, you'll get one.

10:07 So now we have one of the -- my favorite parts of the trial which is the opening arguments where -- this is not evidence. The evidence will not begin until you hear the first witness take the stand. But this is a very important part of the case because the lawyers are going to do their best to set out a blueprint or a guide for you all to understand what their case is about and what they anticipate the evidence will prove.

10:07 But remember, nothing that you hear from the lawyers, as good as they are, is evidence in this case. It's simply their opening arguments.

10:07 Mr. Devlin, would you like any warning? By that, I mean time warning, not just generic.

10:07 MR. DEVLIN: Understood, Your Honor. I was only pausing to wait until I got to the microphone.

10:07 Five minutes, Your Honor, if you think I'm running too long.

10:07 THE COURT: I'll give you one.

10:07 MR. DEVLIN: But I think we're going to be in good time. Thank you, Your Honor.

OPENING STATEMENT ON BEHALF OF THE PLAINTIFF

MR. DEVLIN: May it please the Court.

Ladies and gentlemen of the jury, thank you.

This is a case about fairness, about every inventor getting a fair compensation for his or her inventions, for their contributions to technology and the products that we all use.

So in this case, a gifted inventor, Mr. Paul Morris, saw ways to improve what companies like Dropbox were doing with respect to sharing files and folders on our computers.

So Mr. Morris filed patent applications for his ideas, and he received multiple patents. We're going to actually be talking about four of those patents this week. Those are the patents that Dropbox is using, the defendant. You're going to see that in the evidence.

Now, no one disputes that Dropbox was out there already in the business. They were doing great. They had a good product. They were in the marketplace. They deserve a contribution and compensation as well for what they provided. That's fair.

10:08 But Mr. Morris does as well. And that's
10:09 where his inventions come in because no software
10:09 product is perfect, and Dropbox doesn't have a monopoly
10:09 on good ideas. So Mr. Morris saw ways that could
10:09 improve what these companies were doing.
10:09 And you're going to see that Dropbox's
10:09 older system from ten or more years ago, it had certain
10:09 drawbacks. It had certain problems.
10:09 Mr. Morris' inventions helped solve those
10:09 problems. It's those inventions that are the subject
10:09 of the patents in this case, and it's those patented
10:09 inventions that Dropbox is using today. That's
10:09 infringement, and you're going to see that in the
10:09 evidence this week.
10:09 Now, as you heard from the patent video,
10:09 you heard from the Judge, when you infringe someone
10:09 else's patents, you have to pay royalties, like rent,
10:09 for using someone's property. That's also fair.
10:09 But Dropbox, as you're going to see, has
10:09 refused to pay any royalties to Motion Offense or to
10:09 Mr. Morris for use of his patented inventions.
10:10 Instead, they've argued, and I think you're going to
10:10 see this week, excuse after excuse after excuse as to
10:10 why they shouldn't have to pay.
10:10 And so that's why we are here in this

courtroom asking you for a fair resolution, for a reasonable royalty for Dropbox's use of Mr. Morris' patented inventions. That's what you're going to see in the evidence this week.

So good morning. My name, again, is Tim Devlin. I represent the patent owner here. That's Motion Offense. And with me this week, you'll meet and see -- you've already met my colleague Donald Puckett and Derek Dahlgren. We'll be here with you primarily as we present the evidence to you.

Let me tell you right off the bat, let me offer my own personal thank you for your service this week. Everybody said it, and it's true. Jury service is one of the foundational and really unique aspects of our trial system, but we know that it is a tax on people's time, that you guys are all making real sacrifices to be here.

This case is tremendously important to Motion Offense and to Mr. Morris. So we really thank you for your service this week.

So in the time I have with you this morning, I want to talk about three things.

First, I'm going to talk about Mr. Morris, his inventions, the patents that he received and the company that he partnered with, Motion

Offense.

Second, we'll talk about Dropbox and its products and services, what they were doing back then, before and around the time of the inventions, and what they're doing currently. And we'll talk about the issues of infringement and damages and just preview a tiny bit of the evidence that you're going to see on that.

And then third, we're going to talk about what I think you're going to hear from Dropbox, some of the excuses that I think you're going to hear maybe in opening but certainly this week, because I think there's going to be several of them.

So let's talk first about Mr. Morris and his inventions. He's here with us today.

Mr. Morris, raise your hand.

There he is, right there. So Mr. Morris is going to be our first witness. You'll hear from him right after both of these opening statements.

And what you're going to learn during this trial is that Mr. Morris has really a special gift for solving technical and scientific problems. It is a unique approach to inventing. And he's listed as an inventor on literally hundreds of patent applications and has had around 150 different patents in total

issued to his name.

So for years, Mr. Morris has made his living as an inventor. His entire livelihood, how he pays his bills, how he feeds his family, depends on our patent system and on companies like Dropbox respecting that patent system and paying royalties when they're using someone else's inventions.

So you're going to hear in the testimony that Mr. Morris had particular experience in this technical field. Years before, he had worked with photo sharing and putting photos on the cloud, and he put that experience to use in this case. He figured out ways to have files, in general, shared more easily, more secure, make it much simpler on the user.

You all know how it is when you have to go from one app to another app, one device to another. He figured out a way to make things simpler, ease the burden on the user and ease the burden on the network so not much information is going back and forth, much less storage required, and it became more secure. So you're going to hear more about that in his testimony.

So what are these improvements that he came up with? Let's just preview those very quickly.

There's two different concepts that we're going to be talking about in this case. So one of them

10:13 is called "folder share."

10:13 Now, you guys should have monitors there
10:13 in front of you. Let me ask you, does everyone -- just
10:13 nod -- does everybody have a good view? Anyone have a
10:13 bad view? Okay. If you had a bad view, we could
10:13 rearrange them.

10:13 All right. So one of the concepts we're
10:13 going to be talking about is "folder share." And this
10:13 gets at when you're sharing collections, organized
10:13 collections of folders and files, like you store on
10:13 your own computer. So you have folders of things.
10:13 They might have documents and files in them. You might
10:13 have sub-folders and so forth.

10:13 So this folder share concept is when you
10:13 want to share a whole folder of information with
10:14 another user.

10:14 And what did Mr. Morris do? His idea was
10:14 this: If one user shared a photo or -- sorry, a folder
10:14 with another, that recipient would look like they had
10:14 received that folder on their regular file system.
10:14 Nowhere special, just right in their normal Windows or
10:14 Mac file structure. And they could open it up, they
10:14 could see the files, et cetera. But nothing was
10:14 actually there. It wasn't there yet.

10:14 What they saw was something called a

10:14 "representation" of the folder and the files. Just
10:14 like as if it were all there. Just like what the
10:14 sender had sent. And they could look in there and see
10:14 what was available. But only when they actually wanted
10:14 a particular document or file, when they tried to open
10:14 it or the like, then that file gets downloaded to them.
10:14 So using these representations, the
10:14 recipient can see everything in the same organized
10:14 fashion in which it was sent, but they don't get a lot
10:15 of excess files downloaded to their system
10:15 automatically. Because you can imagine that some
10:15 folders have enormous amounts of files in them, and you
10:15 might not want them all. Takes a long time to
10:15 download. Takes a lot of storage space. There might
10:15 be malicious files on there that you're not aware of
10:15 that are now on your computer.
10:15 So Mr. Morris' invention helped prevent
10:15 all that from happening. That's folder share. Okay?
10:15 All right. The other main concept is
10:15 something called "file request," and these were out
10:15 there. People could request files from someone if they
10:15 knew something specific that they wanted to receive.
10:15 So what did Mr. Morris have as ideas
10:15 about that? Well, the first was to use those same
10:15 representations if I had requested a file and then that

file was sent to me. Sometimes it's multiple files; sometimes it's one. And so you want to make sure that what you're getting is what you want before you open it up. So same thing. Use those representations of those files that then come down in response to your request rather than all the files at once.

And another idea -- and you'll hear about both these on file request -- is that you could set a deadline built into the request. And so if the responder, now the sender of the document, didn't respond in time, they just weren't able. And that helps make sure that people get documents when they actually need them, and also helps make sure that the wrong files or malicious files might not be sent later.

Okay. So those are all the ideas. And Mr. Morris is going to go through those. We've got some diagrams for you. He'll go through those and explain those inventions during his testimony.

Now, to be clear, there are other components and features of each of these inventions, and they are recited in the patent claims. That's the part of the patent that we're going to be talking about a lot. So you're going to see all that in the evidence this week lining up all of it with all the features of the patent claims.

10:16 So what did Mr. Morris do? He has these ideas, has these inventions. Well, he writes them down, and he files two separate patent applications. And this was in September of 2012. They were days apart. Two applications.

And those applications were the foundation -- became the foundation of the patent family that's at issue here and the four patents that we're going to be talking about this week.

So September 2012, he files two patent applications. You're going to see those in the evidence.

Now, looking at this timeline, again, no one's disputing that Dropbox was already out there. They were out there before for a few years. And Mr. Morris was completely transparent about that with the Patent Office.

Here's a snippet from one of the applications, and we'll see this later. And this is in the background section of the patent application where Mr. Morris is describing and explaining to the Patent Office, and eventually the whole world, what the state of the art was then at the time that he's filing his applications.

And you can see he talks about Dropbox,

notes its existence right there for the patent examiner and everyone else. There's some other things in there. Right above that, it says Samba file systems. These are other things that were out there in the state of the art.

So there's no mystery here. Everybody knew exactly what was out there. And now what Mr. Morris had come up with, that was new.

So ultimately Mr. Morris received multiple patents on these ideas and four of the patents are at issue in this case.

Right here. These are the four patents we're going to be talking about this week. You don't need to write these numbers down. You're going to hear a lot about them. These are the four patents that we're talking about.

And you can see on our timeline they were granted between the years -- after years of examination between the years of 2018 and 2021.

Now, the evidence is going to show that Dropbox is infringing at least one claim of each of these patents. That's all that's required for infringement, infringement of a single claim. That's why we don't need to go through them all this week thankfully.

10:18 One quick note. I think you heard on
10:18 Thursday that there were six patents in the case. So
10:19 you'll be glad to know that the parties have really
10:19 worked to continue to streamline the evidence and the
10:19 presentation to narrow the disputes and to narrow what
10:19 we have to do this week with y'all. So we're going to
10:19 be just talking about four patents this week.
10:19 Now, let me talk about patents generally
10:19 for a moment. You learned something about them in the
10:19 patent video. You learned something about them from
10:19 the Judge. A patent gives an inventor an exclusive
10:19 right to his or her inventions for a limited period of
10:19 time. And it's that exclusive right that encourages
10:19 people to spend their time and money to come up with
10:19 new ideas.
10:19 You heard that patents are so important
10:19 that they're in our Constitution from the start. The
10:19 founders of our country knew that it's this exclusive
10:19 right that creates the incentive for people to spend
10:19 their time and money, sometimes their entire
10:19 livelihoods, to come up with new ideas. The founders
10:20 knew that patents promote and encourage innovation.
10:20 Because of our patent system, for
10:20 250 years American industry has thrived. We are the
10:20 greatest innovators in the history of the world.

10:20 Let me tell you something else you're going to hear about the patent system. It's designed to encourage people to disclose their ideas openly. You might recall this from the patent video. You might recall a little bit from the Judge.

Rather than keeping something secret, like a trade secret, a patent inventor has to lay out in the text of the patent very detailed disclosure of the idea so that someone in the field can make and use that invention. The whole point is to get the idea out there into the public so others can see it, even during the pendency of the patent, and then build upon it, grow technology more, to do all that openly. And that's exactly what happened here as you're going to see.

And likewise, you've heard this concept of prior art, the prior technology that is used to measure the validity of the patent here in court. Prior art has to be public. You're going to hear that from the Judge. And that's what makes our system fair. Everyone is encouraged to share ideas openly so that others can build upon them.

So back to this case.

Mr. Morris has these ideas. He has these inventions. What can he do? Well, you're going to

10:21 hear it's not a very welcoming environment for small inventors. A lot of big companies don't like to pay royalties even if someone else came up with the idea first.

So Mr. Morris teamed up with a gentleman who specializes in patent licensing and that's Mr. Gordon. He's the CEO of Motion Offense, and you're going to hear from him. He'll be the second witness right after Mr. Morris.

So Mr. Gordon will explain how his business works helping inventors obtain value for their inventions. And you're going to learn, unfortunately, it's rarely easy. Often you have to bring lawsuits. Sometimes you try to be creative. In this case, that's what happened.

So Motion Offense filed a first lawsuit against one of the big corporate customers of Dropbox for using this functionality. And sure enough, that induced Dropbox to step in. They filed this lawsuit, and they've been fighting tooth and nail ever since to avoid paying royalties. You're going to hear about that, I'm sure.

But that's the story of Mr. Morris' inventions and his patents, at least so far.

We all will get a chance to write one of

10:22 the final chapters.

10:22 Let me turn to my second topic, and
10:22 that's what Dropbox was doing before the time of these
10:22 inventions back around 2012 and earlier and then up to
10:22 currently today. And we'll talk about infringement and
10:22 damages along the way in this section.

10:22 So as you heard, everyone agrees Dropbox
10:22 was in this business in 2012. I think it was back to
10:22 about 2007, 2006 or so, but their system then was not
10:22 the same as their system now. Their system was slower,
10:22 little bit more cumbersome, had some drawbacks. So
10:22 what did Dropbox do?

10:23 Well, you're going to hear that the
10:23 middle of the last decade, around 2015 or so, they
10:23 undertook a rebuild of one of the core components of
10:23 their whole software system. It's called the sync
10:23 engine. The sync engine.

10:23 And as you'd expect, that rebuild
10:23 resulted in a lot of improvements, a lot of new
10:23 features, et cetera.

10:23 Now, that happened in 2017 when they kind
10:23 of got done, that rebuild, and that's when they
10:23 launched something called Smart Sync. You're going to
10:23 hear about Smart Sync in this case and see it in the
10:23 evidence. So Smart Sync is launched about five years

10:23 after Mr. Morris' inventions and the filing of his
10:23 patent applications.
10:23 Now, let me say something while we're
10:23 looking at this timeline. Everyone agrees that the
10:23 patents in this case were granted and issued after
10:23 Smart Sync. But the important date to measure the
10:23 invention, you'll hear from the Judge and really the
10:24 experts will agree, was when the invention was
10:24 conceived by Mr. Morris and when he filed his patent
10:24 applications back in 2012. And you can see that was
10:24 years earlier than Smart Sync.
10:24 So what is Smart Sync? What happened
10:24 with Dropbox at that time?
10:24 Well, Smart Sync was an improved way to
10:24 share folders so that if you were the recipient of a
10:24 folder, it looked like the folder and its contents were
10:24 right there in your normal file and folder structure,
10:24 but -- raise your hand if you've heard this before --
10:24 they're not actually there.
10:24 They are representations right there in
10:24 your normal file and folder structures, integrated in
10:24 until you interact with a document. You try to open it
10:24 or whatnot, and then it gets downloaded, just like
10:24 Mr. Morris' inventions.
10:24 So here's one bit of the evidence you'll

10:24 see on that. So what we're looking at here is a
10:24 screenshot of actual Dropbox currently in use.
10:25 And by the way, let me note a couple
10:25 things here. So you see these blacked-out areas?
10:25 There's a lot of times where information that's not
10:25 relevant and might be confidential, we'll sort of black
10:25 out and redact on images like this. It means no one's
10:25 going to be talking about it basically. Sometimes it's
10:25 gray; sometimes it's black.
10:25 So the focus is on what else is there?
10:25 What can we see?
10:25 Well, on the left-hand side, we can
10:25 see we're in our normal Windows file interface. You
10:25 can see that column on the left: This PC, desktop,
10:25 documents. We're right in Windows. Right in the norm.
10:25 We're not anywhere special.
10:25 And one of those windows, one of those
10:25 options, is Dropbox right in that file structure there
10:25 on the left. That's what's in gray highlighted.
10:25 And then on the right are the folders
10:25 that are available to this user that have been shared
10:25 through Dropbox, and they look like regular Windows
10:25 folders, except Dropbox does add one little icon in the
10:25 folder, and that's at the bottom left of each of those
10:25 folders. You see either a green checkmark or a gray

10:26 cloud. It's hard to see, but that's a gray cloud. And
10:26 we've boxed one of those called "Fifth Test."
10:26 That gray cloud, that means files aren't
10:26 there yet. It's just a representation. Only when you
10:26 interact with the file, like some of these other
10:26 folders have done, does that turn into a green check.
10:26 That says you've got something downloaded in here
10:26 actually.
10:26 But where there's that gray cloud, it's
10:26 just a representation, just like Mr. Morris'
10:26 inventions.
10:26 This is made possible by the Smart Sync
10:26 feature that we just talked about. We've all heard
10:26 about how rapidly the software industry moves. Smart
10:26 Sync is five years after Mr. Morris' inventions.
10:26 That's a lifetime. But you're going to hear from them
10:26 that it was obvious the whole time. Talk about that
10:26 more in a minute.
10:26 So another feature they implemented years
10:26 after Mr. Morris' invention was using representations
10:27 on file requests. You're going to see that.
10:27 Another feature they implemented years
10:27 after Mr. Morris' inventions was being able to build a
10:27 deadline right into the request, just like Mr. Morris'
10:27 inventions. Let's look at just some evidence on that

10:27 that you'll see real quick.

10:27 This is a screenshot of the Dropbox interface for a user. You see at the top "Create new request." This is the file request interface.

10:27 And right there near the middle, towards the bottom, blocked out in red, "Set a deadline." You can do it right in the interface, set a deadline.

10:27 So you're going to see this evidence, and you're going to see a lot more as we go through the case this week.

10:27 So when we examine the issue of infringement, you're going to see all that evidence. And what we're going to be going through is the patent claims. Recall that the key part of any patent is the claims, and that's what we're going to be dealing with in the infringement evidence this week.

10:27 And so let's look at one of these claims just very briefly.

10:27 So this is one of the claims we're going to be going through. We're going to go through it in detail. Now, it looks daunting. You don't have to read it now, but you can tell there's a lot of technical language in that claim. So allow me to make a few observations.

10:28 First, jurors like you have been deciding

10:28 patent cases in this country for 200 years. Our system
10:28 trusts citizens just like you to decide patent cases,
10:28 and everyone in this courtroom is confident that you
10:28 can do it here.
10:28 Second, as I said, we've worked to narrow
10:28 the disputes and narrow the number of patents that
10:28 we're really going to be talking about this week so we
10:28 have just the four patents. And even though those
10:28 patents have dozens and dozens of individual claims in
10:28 them, we're only going to be talking about eight, eight
10:28 total claims across all four patents this week.
10:28 And lastly, to show infringement -- well,
10:28 let me note for a second, even going through the eight
10:28 is going to take a couple of hours. So we're going to
10:28 do our best to present it to you as efficiently as we
10:28 can, but it will take some time. So we appreciate your
10:28 patience on that.
10:28 So to do that, to help show infringement,
10:29 though, we're going to bring you one of the premier
10:29 experts in the field. His name is Dr. Robert Akl.
10:29 You'll get to meet him. He may almost certainly be on
10:29 the stand this afternoon. He'll be our third witness.
10:29 And he is a professor at the University
10:29 of North Texas. He's been there for 20 years. He had
10:29 a 4.0 GPA all through college, all through his

master's, all through his doctorate. He's very impressive.

He's going to go through all the evidence with you step-by-step and explain exactly how Dropbox is infringing.

And, of course, that's not all we're going to bring you. You're going to see evidence from Dropbox's own files, their confidential internal documents and some of their top secret source code. These are things they keep under lock and key.

Let me say something about that and be fair to Dropbox, perfectly acceptable for them to keep their proprietary technical information confidential. That's fine. It's a business choice they made, though, that's going to be relevant here. Because unlike the description in your patent of your invention, which is public, and unlike the prior art that gets measured against the claims for purposes of validity, which is public, patent infringement does not have to be public.

Infringement in secret is still infringement. The only thing that matters is that the accused product or system meets every element of the claims, and you're going to see in the evidence that that's the case. And you're going to see it from some of Dropbox's own internal documents and their software

code.

Now, we're also going to bring you evidence on damages. And for that, we're going to have another expert, an experienced financial expert. His name is Mr. Stephen Dell.

Now, Mr. Dell will help explain the value of these inventions to Dropbox and its business. And he'll go through a detailed economic analysis of what a reasonable royalty is for Dropbox's use, because that's all that Motion Offense is seeking here, a reasonable royalty.

We're going to have evidence from Dropbox's own documents on damages as well. Here's one example.

So this is a survey that Dropbox took several years ago, before Smart Sync, where they were thinking about different features, what customers might like, what customers really care about. And you can see one of the main features that customers cared about was shared folders.

So Mr. Dell will go through this with you in detail and lots of other documents to explain what a reasonable royalty should be in this case.

Now, as you heard on Thursday, this case could involve some large numbers. But let me start

10:31 with a small one, ten cents. Ten cents. That's what
10:31 Motion Offense will be asking for for each month of use
10:31 by a paying customer of Dropbox, ten cents.
10:31 So Dropbox itself receives at least $12
10:31 per month, sometimes more for more complicated plans,
10:31 but $12 or more per month, per customer. And Motion
10:32 Offense will be seeking ten cents. Mr. Dell will go
10:32 through that number with you.
10:32 Now, Dropbox has been very successful.
10:32 And so when you add it all up, they've been paid for
10:32 about 350 million user months, 350 million.
10:32 Now, that term "user months" may sound
10:32 odd, but all it means is the number of users times the
10:32 number of months. So one user for a full year, that's
10:32 12 user months. Make sense?
10:32 Ten users for two months would be 20 user
10:32 months. Make sense?
10:32 So Dropbox has millions and millions of
10:32 users over the course of several years here of
10:32 infringement and that totals up to 350 million user
10:32 months. You'll see that. Mr. Dell will give that
10:32 calculation for you.
10:32 When you multiply that by ten cents, it's
10:32 around $35 million, and that will be our damages claim
10:32 here for Dropbox's use so far.

10:32 Sounds like a large number, but you're going to see how it all fits into the grand scheme of Dropbox's revenue, their profits and how all of this invention fits into their system.

10:33 So Dropbox is going to keep all the rest of their revenue, and you know what? That's totally fair. They built products. They built a system. They market it. They sold it. They deserve fair contribution or fair consideration for their own contributions.

10:33 But so does Mr. Morris. And Mr. Dell's going to go through all that with you and explain what is the fair division here between these two parties. You're going to see that in the evidence.

10:33 Let me turn briefly to my last topic, which is what I think you're going to hear from Dropbox, the excuses you're going to hear, because I do believe that you're going to hear several of them.

10:33 So, first, I think you're going to hear that Dropbox doesn't infringe. That somehow their current system now doesn't line up exactly with what the patent claims require. And part of that, I think, is they'll argue that some of what the claims are talking about happens at the user's computer rather than the Dropbox server where they're running their own

software and managing everything. And they're not responsible for what goes on at the user's computer, they'll say, because they don't own it.

There's going to be a couple of problems with that argument. You'll hear them this week, but let me just talk about one right now, and that is the language of the patent claims which always is the most important.

You're going to see the actual components and steps that are recited by the claims are things that are at the Dropbox server components there, functionality there.

The claims reference things that go on at the user side. Absolutely. But you'll see that the way they're framed and the way they're phrased, the actual activity happens at the Dropbox server and that's going to be the basis for our infringement claim.

Here's an example. This is just one snippet of one of the claims we'll go through. And you see the first word -- this is a series of steps in this claim -- and at this step something's going to cause something else to happen. It's going to cause something to happen at a first node.

Sounds odd, but the first node is one of

the users. So it's the first node, that's a user computer; and there's a second node, that's another user computer. You'll see all that.

This claim's talking about causing something to happen there. And what you're going to see is that the Dropbox servers, the Dropbox part of the system, causes things to happen because it's the thing that's managing what's going on, sending out code, sending out instructions to the users' computers.

Let me give you another example.

Here's another phrase. Something has to be sent to a second node via at least one network. "Via at least one network," that's Dropbox. They're sitting there on the network between the users managing the communications, sending things back and forth. So you're going to see this in the evidence.

The claims reference things that go on at the user side, but the actual recited and claimed activity is what Dropbox does on its side. So you're going to see that in the evidence.

Now, I don't know what Dropbox may completely say about the issue of infringement. I don't know everything that they might bring up this week, but whatever they do, we will answer it in the evidence.

10:36 Now, I think you're also going to hear that the patent claims are invalid. And part of that story from Dropbox is that they had this system beforehand. They were doing things earlier, and so somehow these patent claims are -- they aren't new or they're obvious. And you're going to hear that in the evidence.

10:36 Well, again, nobody disputes that Dropbox was here first, but you're going to see that what they were doing in 2012 and earlier is different than what they were doing now -- are doing now.

10:36 And you know what? Obviously that's true. Every software company is constantly providing updates, introducing new features and services. They do it all the time. You see it on your phones regularly, all these updates you got to do. Every tech company's doing that. Of course.

10:37 And remember, Dropbox first introduced that Smart Sync in 2017, years after the patents and inventions in this case. So there's no conflict between infringement and validity here. Dropbox now falls clearly and squarely within these patent claims it infringes. Dropbox then was different. You're going to see that in the evidence.

10:37 Now, what are they going to say about

that? They know Smart Sync wasn't introduced till 2017. What are they going to tell you about that?

Well, I think you might see some wiggle words to try to deal with this. I want you to keep an ear out for something this week. Something that tries to link up what they were doing before with what they're doing now.

So you might hear things like their core technology was the same or the basic functionality hasn't changed. You might hear some wiggle words like that. And I want you to keep an ear out for them throughout this week.

And then you're going to be able to compare that massaging language, those wiggle words, to the actual evidence here which is that Smart Sync introduced the features that cause and allow the infringement and that was not introduced until 2017. So you're going to hear all that in the evidence.

Which brings up a point. During this trial, you're going to hear a lot of technical information, a lot of technical evidence. We're going to do our best to bring it to you as clearly as we can.

But this is a trial. And like any trial, it's just going to involve some basic detective work and common sense. What did people actually do and why

10:38 did they do it? What did they say and write at
10:38 different times? What motivation did they have back
10:38 then for saying and writing what they wrote back then
10:38 when there was no lawsuit, when there was no reason to
10:38 say anything other than the simple truth? And what
10:39 motivation do they have now to say what they're saying
10:39 now?

10:39 You get to decide those issues just like
10:39 any trial. So let me touch on a couple of the other
10:39 arguments I think you're going to hear from Dropbox.
10:39 And I know there's a few I'm going through because I
10:39 think you're going to hear a lot. So I just want to
10:39 touch upon the major ones that I think you're going to
10:39 hear.

10:39 So another is that I think they're going
10:39 to point to their old mobile app. So they had a mobile
10:39 application back in 2010, 2009, around that time before
10:39 the inventions here. And on the mobile app you could
10:39 see where files were available without actually seeing
10:39 the file. So they're going to say that's the same as a
10:39 representation. That's the same as Smart Sync.

10:39 And the problem with that is that that
10:39 mobile application was fundamentally different in how
10:39 it worked. It never synced up with your normal file
10:39 system. It was in a special app off somewhere else.

10:39 And you're going to see that in the evidence. It's
10:39 fundamentally different.
10:39 And, in fact, we're not accusing the
10:40 mobile app of infringement even now because it's so
10:40 fundamentally different. So you're going to hear about
10:40 that, I think, and you can decide on all that.
10:40 Another odd argument I want to touch upon
10:40 is that I think you're going to hear that the patent
10:40 claims in this case somehow don't deserve the benefit
10:40 of that earlier filing date in 2012. And there's some
10:40 weird rules around that, and you're going to see
10:40 evidence about how the applications changed over the
10:40 years and so forth.
10:40 Sounds complicated. You're going to get
10:40 instructions from the Judge. But one simple fact is
10:40 going to resolve this in the end, I would submit to
10:40 you, which is that their expert ignores the most
10:40 important disclosures and descriptions in those earlier
10:40 applications, descriptions that completely obviate the
10:40 argument that they're trying to make.
10:40 So you'll see that when we talk about it
10:40 with the experts, if that comes up.
10:40 Okay. Finally, I think you're going to
10:40 hear that even if Dropbox infringes, even if the
10:40 patents are totally valid, well, they're not worth all

10:40 1 that much. Dropbox is going to tell you that they
10:41 2 should pay a single one-time small lump-sum fee, one
10:41 3 payment for use of these patents forever. That's what
10:41 4 they're going to tell you, but that's not what the law
10:41 5 says.
10:41 6 And you're going to see it right here,
10:41 7 and you're going to see it in Mr. Dell's testimony.
10:41 8 This is the statute on damages that Mr. Dell, the
10:41 9 damages expert, is going to talk about. And you can
10:41 10 see that the damages should be "adequate to compensate
10:41 11 for the infringement but no less than a reasonable
10:41 12 royalty." So the reasonable royalty is the minimum
10:41 13 that the law says that the patentee should get, and
10:41 14 that's all we're going to be asking for here,
10:41 15 reasonable royalty.
10:41 16 But that reasonable royalty is "for the
10:41 17 use made of the invention by the infringer." "The use
10:41 18 made of the invention by the infringer." That's
10:41 19 Dropbox.
10:41 20 But they want to ignore the extent of
10:41 21 their use, just pay a single, small one-time fee no
10:41 22 matter how much they used this invention and no matter
10:42 23 what their own documents say about how important these
10:42 24 features are to their business. You're going to see
10:42 25 that in the evidence, and then you can decide for

yourselves whether that argument for a small one-time fee makes sense.

Now, they may say other things in defense as well. You may hear things even in the opening that I haven't addressed here. Whatever it is, we will answer it in the evidence this week.

And one important fact will cut through everything: The language of the patent claims. You heard it from the Judge. You heard it from the patent video. It's the language of the claims that matters for infringement. And we will bring you back to that language again and again and again. And over and over and over you're going to see in the evidence how the Dropbox system meets every element of these patent claims. Nothing else matters for infringement.

So on behalf of Motion Offense, on behalf of our entire trial team, I want to thank you again. We know it's a real sacrifice for every one of you to be here. We look forward to presenting the evidence to you this week. We're going to do it as quickly and as efficiently as we possibly can. When it's all done, I'll get a chance to come up here again and visit with you and discuss it once more with you.

So I look forward to doing that, and until then, thank you very much again for your time and

your service and your attention this week.

OPENING STATEMENT ON BEHALF OF THE DEFENDANT

MR. LANTIER: Is everyone able to see the board?

Very good.

We're ready to proceed, Your Honor.

Good morning, ladies and gentlemen. My name, again, is Greg Lantier. And it's my honor to be here representing the men and women who work at Dropbox. Even before I reintroduce you to our team, I'm going to make three points about the evidence that I hope you'll remember.

The first is that although my client, Dropbox, is called the defendant, we filed this lawsuit. We sued Motion Offense, and we had to do that because Motion Offense sued one of Dropbox's customers. That customer is named Sprouts Organic Market. It's a grocery store. It was selling groceries, and Motion Offense sued it for patent infringement just because it was using Dropbox. So we filed this lawsuit to protect customers like Sprouts from that type of activity.

The second point is this: There is no infringement. That's not an excuse. That's a fact. That's not wiggle words. Dropbox does not use any of these patents. And, in fact, until Motion Offense sued

10:46 Sprouts, Dropbox had never heard of Motion Offense. It had never heard of Mr. Morris, and it had never heard of any of these patents.

And years before that, Dropbox had done all the hard work to invent and build all of the Dropbox technology that you'll be hearing about this week. Dropbox did the work, and Dropbox did it before Motion Offense's patents even existed.

The third point is this: The people that are behind Motion Offense -- and you're going to learn who those people are this week -- they could all see Dropbox when they wrote the patent claims because they were all Dropbox users.

And one thing that Mr. Devlin I don't think mentioned during Motion Offense's opening statement is that five years after Mr. Morris filed his original patent applications in 2012 -- so this is in 2017 -- the people behind Motion Offense filed new patent applications in an attempt to describe what Dropbox was already doing.

Now, they're going to ask you to help them backdate those 2017 applications to 2012 so that they can claim credit for Dropbox's work.

But you're going to learn this week that there are a couple of problems with that scheme. And

10:48 one problem is that nobody who's involved with Motion
10:48 Offense has ever actually developed a product.
10:48 And so when they went to write the patent
10:48 claims starting in 2017, they didn't get it exactly
10:48 right. They didn't realize that Dropbox innovations
10:48 had continued to develop. And when they wrote those
10:48 claims, they didn't describe the way Dropbox actually
10:48 works. There will be no infringement for that reason.
10:48 The other problem with what Motion
10:48 Offense did was that through this scheme of adding new
10:48 material to the patent applications in 2017 and then
10:48 trying to backdate it to 2012, they've invalidated
10:48 their own patents.
10:48 So now let me take a step back and thank
10:49 you for your service. We really do know that serving
10:49 as a member of a jury for an entire week is a very big
10:49 imposition on each and every one of your time. And I
10:49 assure you that Dropbox would not have done this if it
10:49 wasn't very important to the people who work at Dropbox
10:49 and its users to put an end to what Motion Offense has
10:49 done here. So thank you.
10:49 As I said, my name is Greg Lantier. My
10:49 law practice is mostly doing patent cases, and it's
10:49 something that I've been doing for about 20 years. I'm
10:49 married. My wife is a small business owner. She owns

10:49 a retail store that she started from scratch about
10:49 15 years ago. And we have three children. All girls.
10:49 We have identical twins who are 13 and their
10:50 nine-year-old little sister. I'll be missing them
10:50 while I'm here with you this week.

10:50 As Mr. Gillam mentioned last week, home
10:50 for me is up in Wyoming. As Mr. Gillam also mentioned
10:50 and I said this morning, I have with me Amanda Major.
10:50 She's my law partner. And she and her husband also
10:50 have three children. Hers are a little bit younger.
10:50 They have two girls and a boy, all between the ages of
10:50 four and eight, and they live in Washington, D.C.

10:50 And then Mr. Gillam, who visited with you
10:50 during the jury selection process last week, he's from
10:50 here but lives over in Longview. And the three of us
10:50 will be here this week to represent Dropbox.

10:50 So let me take a moment to introduce you
10:50 to our client and to its technology. And here you can
10:50 see some pictures from Dropbox's offices.

10:50 As you've heard, Dropbox is both the name
10:51 of my client and it's the name of the product that my
10:51 client has built. Dropbox is an innovative company
10:51 with real software engineers working at it that have
10:51 built a great product.

10:51 Now, this is a picture of what you might

10:51 see if you were to log in to a Dropbox account. And
10:51 what we can see here in blue are a set of folders. You
10:51 can also see some individual files, such as that little
10:51 thumbnail of a photograph.
10:51 Dropbox's product is what is called a
10:51 cloud-based system. Now, I expect that some of you are
10:51 familiar with what that term "cloud" means. It's
10:51 something that is familiar to some of us at this point
10:51 in time.
10:51 But if you take yourself back to before
10:51 Dropbox, that term wasn't used nearly as much. And the
10:51 reason that Dropbox is a cloud-based file storage and
10:52 sharing platform is that it harnesses the power of
10:52 remotely located computers and computer storage to
10:52 enable its users to store and share things out in the
10:52 cloud so that they're available any time, any place.
10:52 All you need to do is log in to your Dropbox account.
10:52 And for most users, Dropbox is something
10:52 that you get to use for free. There's no charge to use
10:52 Dropbox. It's only about 2 percent of the companies
10:52 and individuals who use Dropbox that are asked to pay
10:52 for it.
10:52 Now, as you'll hear this week, the people
10:52 who built and continue to build Dropbox believe in
10:52 innovation. Dropbox strongly believes that people

10:52 should get patents that cover the technologies that
10:52 they actually invent. Dropbox itself has many patents
10:53 that have been awarded for the inventions of its
10:53 employees and its founders.
10:53 But at the same time, patents can't
10:53 properly be used to make money from work that you did
10:53 not do or to charge people for using technology that
10:53 you did not invent. That's not what our patent system
10:53 allows, and that's what this case is going to be about
10:53 this week.
10:53 So allow me to spend a few minutes
10:53 describing some of the history of Dropbox and how the
10:53 product was first built.
10:53 The Dropbox platform was conceived
10:53 17 years ago by a computer software engineering student
10:53 named Drew Houston. And Mr. Houston still leads the
10:54 company today, but back in 2006 he was a college
10:54 student at MIT university. And there, he had an idea
10:54 for a better way for people to store and share their
10:54 documents and their photos, their videos and their
10:54 other information. It's what we now call a cloud-based
10:54 storage and sharing platform.
10:54 And the core of what Mr. Houston
10:54 conceived is called a "magic folder." He imagined that
10:54 Dropbox users would be able to store computer files in

10:54 Dropbox folders that were out in the cloud, and then
10:54 they would be able to access those things no matter
10:54 where they are at any time or any place. Just like
10:54 magic, their folders and files would just appear
10:55 whether they were using their own computer, their
10:55 mobile phone or even using a computer at the public
10:55 library.

10:55 Now, of course, having an idea and
10:55 building something that works are two very different
10:55 things. And it took Mr. Houston and many others two
10:55 years of hard work to bring that idea into the world as
10:55 a real product, up until the year 2008. That's when
10:55 Dropbox was launched.

10:55 Now, this case isn't about all of
10:55 Dropbox. Dropbox has hundreds of different functions.
10:55 It's about only a few of those, and you'll hear about
10:56 them this week.

10:56 And the important thing to remember is
10:56 that the few Dropbox functions that you will be hearing
10:56 about, they go all the way back to the very early years
10:56 of Dropbox. The foundational Dropbox technology, the
10:56 magic folder that Dropbox's servers could share with
10:56 other people, that's always been a part of Dropbox
10:56 going all the way back -- and you'll see evidence at
10:56 least back until 2009.

10:56 And you're going to hear testimony that using folder sharing in Dropbox, Dropbox users would share magic folders with one another as a way to request each other's files all the way back to 2009.

10:57 And that's not the only technology that Dropbox had already developed back around that time. Let me talk about one other.

10:57 And if you can remember back to 2009, it's at that time when smartphones were first beginning to become popular. Not nearly as many people had an iPhone or an Android phone as they do today. But it was in the ramp-up when they were really gaining popularity and a lot of companies were coming out with mobile apps. And Dropbox launched its mobile app in 2009.

10:57 But there were challenges that Dropbox's engineers needed to solve in order to have a great mobile app. And one of those challenges was that in 2009, most phones didn't have a lot of memory. So what Dropbox's engineers did was they invented a file explorer in the mobile app that showed representations of all the folders and files that were in the user's Dropbox account, but those files and folders would not be stored on the user's mobile phone until the user clicked on them.

10:58 Now, that may sound to you a lot like the Dropbox Smart Sync representations technology that Mr. Devlin was describing to you as the invention of the folder sharing patents that he mentioned, and folder sharing was first announced as a product feature in 2017. But the reason that what I just described about the mobile app sounds so much like what Mr. Devlin called the invention is because it is. Dropbox had that technology by 2009 when the mobile app was first released.

And now, Dropbox didn't use the name "Smart Sync" to describe the use of representations in the mobile app. But this is a patent case. So it's about the technology, not about what you call the technology.

And in terms of what Motion Offense is accusing of infringement in this case, the representations of folders and files in the mobile app was the same as the use of those representations in Smart Sync.

Dropbox developed that technology 14 years ago. Motion Offense has no case that the folder sharing -- on the folder sharing patents because Dropbox did it first.

Now, finally, I have to mention one other

technology that you heard about during Mr. Devlin's opening. You'll hear testimony this week that early on there were people that were Dropbox users who were themselves software engineers. And some of them wrote free software that was seamlessly integrated with Dropbox.

Now, if you look at the screen, one piece of software like that was called "AirDropper." And as you can see here, what AirDropper did was to provide a feature called "File Request" that was used with Dropbox.

And so if you wanted to request files from someone else, for example, someone you were working with on a project, you'd use this AirDropper file request interface. You would ask them for the files, and AirDropper would send them an e-mail with the request.

Once they uploaded their files, and we can see this on the left side of this screen, the files would arrive right in your Dropbox. That was back in 2010.

And if it sounds a lot like what Mr. Devlin was describing as Mr. Morris' invention, this file request, that's because it is. Dropbox users were already using that technology in 2010, two years

before Mr. Morris ever filed a patent application and, as you'll come to learn, seven years before any of the patent applications for the patents in this case were first filed.

That means that Motion Offense has no case on these patents. Motion Offense didn't do it first.

And none of this was a secret. In fact, back in the 2010 time frame, Dropbox received a lot of recognition for its technology. And not only that, but Dropbox also filed patent applications on behalf of its employees describing how the Dropbox system worked back then, and it was awarded patents. Here's one example of a Dropbox patent filed in 2010, and this one describes Dropbox's network folder synchronization.

Mr. Drew Houston, who you'll remember is the one who first came up with the idea for Dropbox, is one of the named inventors. You'll hear about this and some other Dropbox patents this week. There are many.

Now, if I could, Dropbox employees who are here in the courtroom, would you please stand for a moment?

Thank you. You may sit down.

Ladies and gentlemen, you'll hear the testimony from some of those employees this week. As I

11:03 mentioned, at counsel table with us is Mr. Jason Terk, a software engineer from Dropbox.

And what Mr. Terk and his software engineering colleagues will explain to you is how Dropbox works and who did the work to create Dropbox. And you will learn that Mr. Morris' patents don't have anything to do with either of those things.

Now, let me talk for a moment about Motion Offense. Motion Offense was first created in the year 2018. Motion Offense has no employees. It sells no product. It has never developed any product, and, in fact, it's never tried to develop any products.

It was started by and is run by a single attorney. And for him, it's a part-time thing. The only line of business that Motion Offense is in is trying to make money by the assertion of patents.

Now, let me talk about the history of the Motion Offense patents that are at issue this week.

You heard Mr. Devlin refer to two patent applications that Mr. Morris filed in September of 2012. And Mr. Devlin said it was -- I think he said it was not disputed that that's the date that everybody agrees should be used for measuring what -- whether these inventions are valid or not. It's very much in dispute, and I'll explain why right now.

11:05 As you'll learn this week, those 2012 patent applications don't show that Mr. Morris is entitled to claim credit for what Dropbox did first because those patent applications don't describe a cloud-based storage system as what the invention is. In fact, they do the opposite.

They say that cloud-based storage systems are not the invention. This is an image of the -- one of the September 2012 patent applications that Mr. Morris filed. And I'd like to show you the same paragraph that Mr. Devlin flashed on the screen during his opening. I'd like to walk through it with you so that you can see what it actually says.

Now, this is Mr. Morris' September 2012 patent application. It's what he officially files with the Patent and Trademark Office. And remember, this is four years after Dropbox has launched. So cloud-based file storage and sharing systems are already well-known and popular.

So let's walk through this. Remember, these are Mr. Morris' own words. It's the first thing he says to the Patent Office in his applications. That's why it's called the background.

First sentence: A variety of means exists for sharing files, folders and other data via

network.

So he's saying, I didn't invent the idea of sharing network files and folders. That's already known.

But the next sentence says: The problem with that is that for each of those systems, the "user must know how to configure and/or set up the sharing."

And he gives two examples of existing -- preexisting file sharing platforms. He says: For example, sharing a file via a Samba system -- that's one -- is different than sharing via cloud-based storage system such as Dropbox.

So he's saying to the Patent Office, Dropbox already exists. It's one of these means for sharing files and folders. The problem with it is you have to configure it. You have to set it up if you want to use it to share your files.

Next sentence: Sharing via e-mail is still different. He's saying, sharing via an e-mail is different than sharing using the Dropbox folder sharing technology that's existed since 2009.

But he says there's a problem with e-mail sharing too, and that's that people usually just attach files and copies of the files to the e-mails. So let's read the last sentence of that paragraph because it's

11:09 describing what he's telling the Patent Office in September 2012 is the invention.

He says: It would be useful if sharing files, folders, directory data and other network accessible data were as easy as sending an attachment in an e-mail.

And that's what the 2012 patent applications go on to describe, one person sending an e-mail to another person without attaching a copy of the file or folder that they want to share to the e-mail.

Now, I imagine you might be wondering, well, what happened to those patent applications? Where are they now?

They're nowhere. They were abandoned. Mr. Morris and the lawyers involved in Motion Offense decided to give up on them. They never became patents.

And instead -- and this is critically important -- what happened was that on October 3rd, 2017, they filed two new patent applications, and these were called "continuation-in-part" applications.

And that -- you'll need to remember that term, "continuation-in-part," and look for it this week. It's going to be very important during this trial.

11:10 And what you'll learn is that a continuation-in-part patent application is a patent application which, in part, is the same as an earlier patent application, but which, in part, adds new material to that earlier patent application.

And all of the asserted patents in this case trace back to the two continuation-in-part patent applications filed for the first time on October 3rd, 2017.

And the new matter added to those patent applications was an attempt to describe how folder sharing in Dropbox has always worked.

Now, remember, Mr. Morris was a Dropbox user. All the people involved with Motion Offense were Dropbox users. And starting in October of 2017, the people behind Motion Offense began trying to claim Dropbox's work as their own.

But as you can imagine, that's not the way our system works. Filing a new patent application describing what you see others already doing and then trying to backdate it is not allowed. And at the end of this week, we'll be asking you to reject Motion Offense's attempt to backdate those 2017 applications back to 2012.

Now, as I said, the evidence will show

11:12 that nobody involved with Motion Offense had actually done the work to design a cloud-based storage system. And as you would expect, that's pretty hard. It took Dropbox's engineers two years to first launch. They continued to innovate on that every single day. The lawyers behind Motion Offense have never even tried to do it.

So when the people behind Motion Offense added this new material and then they wrote patent claims to try to claim credit for Dropbox, they didn't get it right. They failed to appreciate that after 2012, Dropbox had continued to innovate. And because -- Dropbox is doing that because it's always improving its products for its customers.

And what you'll learn is that what the claims of the patents describe is not Dropbox. Dropbox is different.

Professor Gibbons, could you stand?

Ladies and gentlemen, this is Professor Phillip Gibbons. He teaches at Carnegie Mellon University.

You may sit, sir.

One of -- he teaches at Carnegie Mellon University. It's one of the most prestigious computer science institutions in America. And there he's been

11:14 training computer software engineers since the year 2000.

Professor Gibbons is going to explain to you that the claims that the lawyers behind Motion Offense wrote do not describe the way that Dropbox is built. Dropbox does not infringe. Professor Gibbons is going to explain why.

Professor Shamos, could you please stand, sir?

Ladies and gentlemen, this is Professor Michael Shamos, and he also teaches at Carnegie Mellon University.

You may sit.

He's been teaching computer science there for over 30 years. And we asked Professor Shamos to take a look at the evidence, to apply his independent judgment to how that evidence of what Dropbox was doing before the patents were filed compares to the claims of the patents, and he reached three conclusions.

The first is that everything in the claims was being done by Dropbox before any of these patents was filed.

The second is that Motion Offense added new material in the year 2017, October 3rd, 2017, and that their attempt at that point to describe Dropbox

11:15 folder sharing is not supported by the 2012 patent
11:15 applications. They can't backdate back to 2012.
11:15 And the third is that Motion Offense is
11:15 claiming technology that Mr. Morris did not invent, and
11:15 that that makes the patent claims invalid. Professor
11:15 Shamos will explain exactly why the claims are invalid
11:15 this week.
11:15 The patents are not infringed and they're
11:16 invalid.
11:16 Now, just for a moment, let me turn to
11:16 the final issue which is the issue of damages in this
11:16 case. And I'm not going to spend much time on it
11:16 because our position is crystal clear.
11:16 Dropbox does not infringe these patents
11:16 and these patents are invalid. So it owes no damages
11:16 to Motion Offense. Zero dollars.
11:16 You can see the timeline here. The
11:16 evidence will come in this week, and you'll be able to
11:16 match it up with this timeline. Dropbox did the work
11:16 and Dropbox did it first. And in 2017, Motion Offense
11:16 set in motion a scheme to try and take credit for
11:16 Dropbox's work. It's really that simple.
11:16 Now, you've already gotten a sense of
11:16 some of the types of arguments that Motion Offense is
11:16 going to make this week. I can't predict what each one

11:16 of them will be, but I can make you a promise. We will
11:17 address every single one of them this week during the
11:17 testimony. And you will see that this is the timeline,
11:17 and that Motion Offense does not deserve any credit for
11:17 the work that Dropbox did.
11:17 Thank you all again for your service.
11:17 Dropbox and we all greatly appreciate it, and we really
11:17 look forward to presenting the evidence to you this
11:17 week. Thank you.
11:17 THE COURT: Thank you, sir.
11:17 Mr. Devlin?
11:17 MR. DEVLIN: Your Honor, we call our
11:17 first witness Mr. Robert Paul Morris.
11:17 And, Your Honor, if I may just step out
11:17 for one moment? I need a -- step out of the room just
11:17 one moment. I'll be right back to the podium. Thank
11:17 you.
11:17 THE COURT: Ladies and gentlemen, we're
11:18 very formal in this courtroom, and the lawyers
11:18 sometimes -- it may seem silly to you, but it's the way
11:18 we're trained -- is they ask permission to do pretty
11:18 much everything in here. So I just didn't want you all
11:18 to think that was odd.
11:18 MR. DEVLIN: Your Honor, may I approach?
11:18 MR. LANTIER: And, Your Honor, may we

take the board down?

THE COURT: Please. I wish you would.

(The witness was sworn.)

MR. DEVLIN: We have a request for more paper, I believe, from a juror.

(Off-the-record discussion.)

DIRECT EXAMINATION

BY MR. DEVLIN:

Q. Thank you, sir. Good morning. Could you state your full name for the record, please?

A. Yes. My name is Robert Paul Morris.

Q. Thank you.

One thing you might do is that microphone is sort of pointed towards the middle -- yeah. If you could turn it to yourself just a bit, that might help.

A. How's this?

Q. Thank you.

Where do you live currently, sir?

A. I live in Cary, North Carolina, right outside Charlotte -- I mean, Raleigh, sorry.

Q. Why are you here to testify today?

A. I'm the inventor of the patents at issue in this case.

Q. Let me ask you, how many patents total have been issued in your name roughly?

11:21 A. I've seen different figures between 100 and 200.

11:21 Q. Okay. Let's talk about your background a little bit that got you here. Where were you born?

11:21 A. I was born in what was West Pakistan. It's now Pakistan.

11:21 Q. Pakistan, the country?

11:21 A. That's right.

11:21 Q. How'd that happen?

11:21 A. My parents were missionaries.

11:21 Q. How long did you live there?

11:21 A. My parents moved when I was about three and a half.

11:21 Q. Moved back to the U.S.?

11:21 A. That's correct.

11:21 Q. Where'd you settle down?

11:21 A. I lived most of my life after Pakistan in South Carolina.

11:22 Q. Uh-huh. What did your parents do once you got back here to the U.S.?

11:22 A. My father was a seminary professor and my mother a homemaker. She took care of the family.

11:22 Q. Okay. You had some siblings?

11:22 A. Three brothers and two sisters.

11:22 Q. Okay. You have a family now, sir? Are you

11:22 married?

A. I am.

Q. Any children?

A. I have a son and a daughter. They're adults.

Q. Okay. Thank you.

Did you have any interest or hobbies growing up?

A. Loved sports. Played, you know, all that were available. I played high school basketball and ran track. A small town. There was two churches in town, and they were the center of the community. So I spent a lot of time at church. My father always said if the church doors are open, we're there. I was a boy scout as well.

Q. What was the highest rank you achieved? I'm going to force you to say it.

A. I was an Eagle Scout.

Q. Thank you.

What was your family life like back then with your parents and all your siblings?

A. It was crowded. I shared a room with at least one of my brothers during the time that I lived at home. You know, we played together. We fought together. We always had work to do. But, you know, we cared about each other and looked out for each other.

11:23 Q. Did you personally work while you were growing up?

11:23 A. The first job I had was when I was 12 years old. My brother and I had an afternoon paper route. And since that time, I've worked continuously.

11:23 Q. Were you able to keep up with your school work?

11:23 A. Yeah. I was a good student. It wasn't something I wanted -- you know, I wanted people to think I really didn't try at school, but I graduated at the top of my high school class. There were 50 students. It was a small school.

11:24 Q. Did you go to college?

11:24 A. I did.

11:24 Q. Tell us about that. Where did you attend?

11:24 A. I went to Davidson College which is outside of Charlotte, North Carolina.

11:24 Q. What did you study?

11:24 A. At first I was going to major in economics and -- but midway through my junior year, I switched to religion, religious studies.

11:24 Q. Did you take other types of coursework while you were there?

11:24 A. Davidson's a liberal arts education, and you have to take courses through a range of -- you have to

take certain -- minimal number of science and math and philosophy and social sciences. So yeah. I got a very broad education.

Q. Did you feel you had sort of an affinity for any particular type of subject matter?

A. I liked math and science courses the best because I had a -- I knew when I was finished with my homework when -- you knew you had the math problem right or wrong. The social sciences and sciences are -- soft sciences, sometimes they're called, I never really knew when I was done. So yeah. I like science and math.

Q. Did you receive a degree?

A. I did.

Q. What year was that?

A. 1978.

Q. What was the degree?

A. Bachelor's degree in religious studies.

Q. Did you graduate with honors?

A. I graduated magna cum laude. That's right.

Q. What'd you do next after you graduated from Davidson College?

A. I didn't really know what I wanted to do. My father, you know, is a professor, and so I knew that life. I thought I wanted to be a college professor so

I entered University of North Carolina in sociology.

Q. Sociology department?

A. That's right.

Q. Uh-huh. Did you complete that degree?

A. No. I didn't.

Q. What'd you do?

A. Well, I realized it wasn't really what I wanted to do so I accepted a job teaching math and -- to junior high schoolers in Midland, Texas.

Q. How was Midland back then in the late '70s, early '80s?

A. Wow. That was the oil boom in late '70s. And coming from a small, relatively poor area of South Carolina, there was -- there were people in Midland who had money like I never knew.

I taught at a private school and the -- some of the students had allowances that were bigger than I got paid. But I liked Midland. I liked the students and enjoyed the teaching.

Q. How'd the students like you?

A. Well, you know, I wasn't that much older than they were, and I don't know that they'd seen someone like me. I didn't dress the way they dressed. If they wanted to give me a gift, they had to get permission from the school. Students can't give teachers gifts.

11:26 And they gave me some clothes for Christmas because I
11:26 didn't -- I wasn't dressed as fashionably as they were.
11:27 I took it as a symbol of -- I took it as a
11:27 sign of their affection for me.
11:27 Q. How long were you at that teaching job?
11:27 A. Although I enjoyed it, I was only there about
11:27 a year.
11:27 Q. What'd you do after that?
11:27 A. Well, I wanted to get back east. That's the
11:27 reason I left the job that I enjoyed. I realized
11:27 living in Midland that I could only go home about once
11:27 a year at Christmastime.
11:27 So there are friends I wasn't seeing at all
11:27 and losing touch with family. So I went back with the
11:27 idea that I would get some more education in math and
11:27 teach high school math, and I entered the University of
11:27 North Carolina.
11:27 Q. So you reenrolled --
11:27 A. I went back.
11:27 Q. Uh-huh. And what year is this roughly?
11:27 A. Let's see, '78 -- '79/'80.
11:27 Q. Yeah.
11:27 A. Right.
11:27 Q. And you were studying math, you said?
11:27 A. In the math department.

11:28 Q. Did you receive that degree, a master's degree, in the math department?

11:28 A. I did.

11:28 Q. Okay. What'd you do after you received that degree?

11:28 A. Well, just before I finished my master's in math, I took a computer programming class. And I never really had exposure to computers, and I thought, oh, this is great. And it's way easier than teaching junior high school students or high school students.

11:28 And so I just -- that's really the first time I felt like I knew what I wanted to do. And there was a -- so I entered the computer science program at North Carolina. It's a relatively new program.

11:28 Q. So you had finished the math program, now you entered computer science?

11:28 A. Entered computer science. That's right.

11:28 Q. Did you complete that degree program in computer science from UNC?

11:28 A. Almost, but no. I didn't finish it.

11:28 Q. Why not? Tell us that story.

11:28 A. I had a summer job at IBM, and at the end of the summer, they told me that when I finished the graduate program in computer science that they would guarantee me a job.

11:29 And I was recently married, and I liked work better than school, and then I liked making a little more money. So I asked IBM if I could start right away. They didn't like the fact that I was leaving school, but they agreed.

Q. How was working for IBM around that time?

A. Oh, that was great. I loved it.

Q. Tell us more about that.

A. I got to work with some of the early PCs. I didn't get to do that in graduate school. I could go in, they gave me a PC. I could take it apart. I learned all the parts. I got a really good understanding of how computers worked, better than I did in graduate school where I only had access to the big mainframe computers, and I got to write code all day.

That was my job. I'd come in in the morning and next thing I know, it was end of the day. The day just flew by.

Q. When you say "write code," just so we're clear, you mean software code that computers run?

A. That's right. That's right.

Q. And what types of products or features or components were you working on back then?

A. PCs were not originally networked. So I was

working in the network and hardware division, and I wrote code that went into the networking hardware that you'd plug into a PC that connected it to what are called "local area networks." And that's still the way PCs are connected to networks is through local area networks.

Q. Did you stay focused on those local area network connections at IBM or did it expand out at all over time?

A. No. The hardware division -- most of the employees in the hardware division were electrical engineers, and they constantly reminded me that I was not an engineer.

But anyway, I moved into the software division, and I got exposure to a lot of other networking protocols, to routers and switches, gateways, network management. And eventually, my last couple of years at IBM, I worked in their -- I forget the -- their brand name for it, but it was their Internet division.

And the Internet was fairly new. This was mid '90s. And I got to work with web browsers and web servers and client-server computing, the distributed computing and writing web applications. It was on the edge. It was pretty exciting stuff.

11:31 Q. Did any of that, your education and your work at IBM so far that we've talked about, help prepare you for your inventions in this case?

11:31 A. Sure. Those technologies are still being used today, particularly -- well, really all of it. I moved out of coding and did more design work. And part of design is you take different perspectives when you do design. And that ability to switch perspectives turned out to be, you know, very valuable to me in my inventing.

11:32 Q. Just very briefly, if you could explain a difference between design and coding. Is one of those more sort of architectural and the other is the details or -- you put it in your own words, sir.

11:32 A. Yeah. When I first started at IBM, I didn't really -- I didn't do design work. Someone else had done the design work. And my job was to implement -- to make things work.

So, I mean, most of the major decisions had been made about how the code was going to be structured, what it was going to be interfaced with. My job was to write the code and just make it work.

And design work, it's higher level. It's usually not -- designers -- architects don't usually write code. They're responsible for how the code gets

distributed, you know, is it client-server? Is it cloud-based? Is it just on the PC?

What the components are, what the interfaces are, they make sure everything works together -- I'm sorry -- like an architect or an engineer who's designing a bridge.

Q. Thank you.

How long did you end up working at IBM?

A. 14 years.

Q. Okay. And why did you leave?

A. Well, I guess as a reward for being a good programmer, they gave me more responsibility where I had to interact with people like -- you know, I became the chief programmer, lead programmer. So I had to corral all the programmers and make sure that they were doing the right things. I also had to talk to marketing and sales.

So my job became more about my people skills -- as much about my people skills as my technical skills, and I'm much more comfortable with the technical stuff. I'm not very extroverted.

I think one of the reasons I realized later that I enjoyed the technical stuff so much is because it's actually creative. I know that you can be creative about dealing with people, but that's not

really my talent.

Q. So what did you do for -- after you left IBM? And this is sort of the mid, late 1990s; is that right?

A. This was -- yeah. 1998.

Q. Okay. So what did you do then?

A. I knew some people that were at a startup that had -- that was a spinout of Apple. It was called FlashPoint Technology, and they had started an office in Research Triangle Park in North Carolina. And --

Q. What was the business of FlashPoint generally?

A. FlashPoint had an operating system for digital cameras, and cameras then were primarily hardware-based.

Q. Can you tell the jury, just very briefly, what's an operating system?

A. Well, at home, you have a Windows or Mac computer. Windows is an operating system. It manages the hardware, manages -- allocates the resources and provides a platform that applications can be written on.

IOS is -- in your iPhone is an operating system. If you have an Android phone, then Android is an operating system.

Q. Thank you.

Now, did FlashPoint make -- FlashPoint, the

company you were working at, did they make the cameras?

A. No. They didn't make cameras.

Q. What did it do for the cameras? What was it making?

A. FlashPoint licensed the cameras. They had licenses with most of the major camera manufacturers: Sony, HP, Epson, Kodak, pretty much all of them. I'm not sure about Polaroid.

But, yeah, they -- and they also used -- they licensed the operating system for use in digital printers as well.

Q. Okay. So they were making the operating system, licensing it to the hardware camera makers?

A. Right. They didn't make anything you could go to the store and buy.

Q. Got it.

Do you recall how much FlashPoint licensed its software for?

A. I wasn't privy to the details, but we were told that it was about $1 a camera.

Q. Okay. And what was your role there specifically? How did you fit in at FlashPoint?

A. Well, initially when I started at FlashPoint, the operating system had to be customized for every camera that they wanted it to run in, which was a lot

of work.

And if you wrote -- if you wrote code to run in our operating system, let's say for a Sony camera, it might not run for an HP camera or a Kodak camera.

So my job was to restructure the operating system. And this is an architect's-level job because it required new code, but I didn't write the new code. And what I did was restructured the operating system or at least tell other programmers how to restructure the operating system so that the camera could easily port across hardware, but also so that the camera manufacturers and third parties could write apps like -- you know, you have apps on your iPhone and Android as well.

Q. What year is this when you're writing these, allowing companies and individuals to write apps for --

A. Well, it was when I first went to work at FlashPoint. So it was '98, '99, and it was, I guess, eight or ten years before the iPhone.

Q. Okay. Did any of that work on that software platform or the options available, did that involve any sharing or cloud storage of anything?

A. Not at first, but after I did the restructure on their operating system, they asked me to take a look at -- since I had a networking background, the cameras

11:38 were not connected to networks, especially the Internet
11:38 because the Internet didn't really make it all the way
11:38 to mobile devices.
11:38 And they asked me, well, how can we take
11:38 advantage of the Internet? So I did some architecture
11:38 and design work there, and I proposed a set of
11:38 protocols for communicating images and apps and, you
11:38 know, e-mail messages from the camera to get it, you
11:38 know, out to the network. And as a result of that
11:38 work, FlashPoint built a service for Sprint.
Q. For Sprint, you said?
11:39 A. For Sprint.
11:39 Q. Sir, if you could just lower that mic a little
11:39 bit towards your --
11:39 A. Okay.
11:39 Q. Yeah. You don't have to lean forward.
11:39 A. Sorry. I don't do this very often.
11:39 Q. That's okay.
11:39 A. FlashPoint built a service for Sprint that
11:39 allowed business people who use cameras, like real
11:39 estate agents and insurance adjusters, to go out in the
11:39 field and take their pictures and have those pictures
11:39 transferred to a server which you could access from the
11:39 web or to a, you know, website. Multiple servers.
11:39 And it was -- it was my belief that that was

the first website that enabled mobile users to upload their pictures for access from the web.

Q. Did FlashPoint file any patent applications based on your work?

A. Yes. They -- FlashPoint had apps that they -- that were transferred from Apple when it was spun out. But apps were very -- patent applications were very important. It was at FlashPoint that -- when I was at IBM, I wanted a patent because it was like an award, right? You got a plaque. You got a little bit of money, and you said you're an inventor. I didn't really understand the value of patents, and I started to understand that at FlashPoint.

Q. Did you learn anything about the patent application process while you were at FlashPoint?

A. Yes. I was very fortunate that FlashPoint had a CTO who was an experienced inventor. And he was the one that when I would be doing my work and I would send him documents, he would say that's a patentable idea, because I didn't know it was patentable. And then -- and he would encourage me, you know, to talk to him and we would identify these ideas.

And FlashPoint also had a patent prosecutor, an attorney, who was willing to spend time with me because I was very interested in the process, to

11:41 explain to me, you know, what was in a patent
11:41 application. I'd -- the first time I read claims, I
11:41 didn't know what they were talking about. I mean, some
11:41 of you all might have had the same reaction that I had
11:41 when you see the first set of claims. I didn't know
11:41 what they meant.
11:41 And he also taught me about the patents -- at
11:41 least started to teach me about the patent prosecution
11:41 process as well. And I just thought all that was
11:41 really fascinating stuff.
11:41 Q. Just for clarity, you've used the term
11:41 "prosecution," "patent prosecution," once or twice.
11:41 Let me just make sure. When you say that, in this
11:42 weird patent world we live in, that relates to the
11:42 application process in the Patent Office, right?
11:42 A. It relates to the interaction between the
11:42 attorney or whoever filed the patent application and
11:42 the Patent Office. That's called patent prosecution.
11:42 Q. Okay. How long were you at FlashPoint?
11:42 A. I think about five years.
11:42 Q. What'd you do next?
11:42 A. FlashPoint -- when the -- when the Internet
11:42 bubble collapsed in early 2000, FlashPoint went from
11:42 150 employees to four, and FlashPoint was unable to get
11:42 the funding they needed. And we weren't getting the

11:42 revenue we needed because our -- this is what my
11:42 understanding -- our -- our licensees were using our
11:42 technology. They would do one camera with us, and then
11:42 we would see our technology showing up in their other
11:43 cameras.
11:43 And the investors could have sold the company,
11:43 but they decided that they wanted to get their return.
11:43 They wanted to get their -- they wanted to get their
11:43 investment dollars returned by licensing the portfolio.
11:43 And I stayed with FlashPoint.
11:43 The portfolio was really in two parts, and
11:43 they split one part out and they transferred to
11:43 Scenera.
11:43 Q. So Scenera was formed as part of that
11:43 splitting of these patents into two separate
11:43 portfolios?
11:43 A. It's part of the effort to get the investors'
11:43 money back.
11:43 Q. And you're -- the patents that you had, did
11:43 they -- they went with the Scenera part or stayed with
11:43 the FlashPoint part?
11:43 A. Yeah. I filed -- sorry. FlashPoint filed
11:43 maybe 20 patent applications of which I was named
11:43 inventor, and most of those were Internet related
11:43 and/or moved to Scenera Research, yes.

11:44 Q. Okay. So then you joined Scenera. And did you -- well, tell us first, what did you do at Scenera generally?

11:44 A. Well, what they wanted me to do at first was to build the database. So I went back to writing code. And the -- the database to help them manage the license of their patent portfolio. And I would get to work with the -- when you license it, it always involves attorneys is what I learned, IP attorneys, and so I got to work with the IP attorneys as well.

But before I started, I talked to the owner to make it clear -- his name is Stan Fry -- to make it clear to him that I wanted to invent. I was thinking of leaving FlashPoint anyway. I would've invented it all back then, but I didn't know how to fund it because I didn't know what it meant to be an independent inventor. I didn't know anybody who made a living that way.

But I told him I was going to invent whether they were really interested or not, and I wanted to make that clear to him. And he said, well, that's great. He said, you can submit your ideas to us, and we'll pay you when we file, and we'll pay you something when it issues, and we agreed on those amounts.

Q. Okay. And how many patent applications were

filed listing you as an inventor -- well, first, before we get -- how long were you at Scenera roughly?

A. Until July of 2009. So that's, what, six years.

Q. Six years. Okay. So in that five, six years or so, about how many patent applications were filed listing you as an inventor?

A. Somewhere between 150 and 200, I think.

Q. And as part of that, did you continue to learn about the patenting process, the prosecution and so forth?

A. Scenera is where I really got to use what I learned at FlashPoint. I asked Stan Fry, who was the owner, I told him, I said -- I said I -- I think I can teach people how to do this because I learned how to do it. And he said, well -- he said, well, okay.

And he let me hire some technical people, engineers and researchers. I hired people who had some experience inventing. And he let me put together an in-house patent prosecution team, and I worked with the patent prosecutors to teach the inventors to be more productive than they had been.

And I think over that five-year period at Scenera I had built a portfolio of about 300 patents.

Q. And you said you were there until around 2009;

11:46 is that right?
11:46 A. That's right.
11:46 Q. And what happened then? Why'd you leave?
11:46 A. Well, about a year and a half before that,
11:47 Stan Fry put his 29-year-old son, 29, 30-year-old son
11:47 in charge, and he was quite different than Stan. He
11:47 was very concerned about cash flow, and I -- and
11:47 concerned about the bonus money that I was getting for
11:47 the patents because, you know, when you file a patent,
11:47 you don't know whether it's valuable.
11:47 And I said I understood that, and I said but I
11:47 was confident in the work I was doing. So I said I'll
11:47 trade this guaranteed money for part of the revenue
11:47 basically, you know, something like a stake in equity.
11:47 Q. A stake in the equity of the company?
11:47 A. That's right.
11:47 Q. Uh-huh. Go ahead. Sorry.
11:47 A. And he agreed, and so they stopped paying the
11:47 bonuses right away. But 18 months later, I didn't have
11:47 any equity, and it was pretty clear it wasn't going to
11:47 come.
11:47 Q. And did some lawsuit arise out of that?
11:47 Just yes or no?
11:48 A. Yes.
11:48 Q. Okay. And without getting into any details,

11:48 did you receive a monetary judgment at the end of that
11:48 case?
11:48 A. I did.
11:48 Q. Okay. So you've left Scenera now. Let's talk
11:48 about this. And you've become -- so what did you do
11:48 when you're leaving Scenera in 2009?
11:48 A. Well, I was 54. The whole thing with Scenera
11:48 was pretty traumatic. I was about to go back. I was
11:48 about to just give in. And my wife said, you can't do
11:48 that. She said, that wouldn't be good for you. Do
11:48 what -- excuse me.
11:48 MR. DEVLIN: Your Honor, may I approach
11:48 with a bottle of water?
11:48 A. She -- thank you.
11:48 BY MR. DEVLIN:
11:48 Q. Take your time.
11:48 A. She knew I enjoyed the inventing. She said do
11:48 that. We'll figure it out. And so I did. I tried it,
11:48 and I decided to go to being an independent inventor.
11:49 Q. All right. How'd that feel at the time,
11:49 striking out on your own?
11:49 A. Well, I was in litigation with Scenera at the
11:49 time. So I had legal bills. I had a mortgage, kids in
11:49 college. So yeah. That was stressful. I don't think
11:49 I have to explain that.

11:49 Q. Were there positives to it?

11:49 A. Oh, yeah. And my wife saw this before I did. I didn't have a boss and that was great for me. I could invent the way I wanted to. You know, there's no compromising with team members and stuff like that. And I got -- it was intimidating first to write my own patent applications but that was an enjoyable and satisfying process. So yeah. It was really good for me.

11:49 Q. Were you able to make a living right away?

11:49 A. Well, that was questionable. But patents -- like I've mentioned, patents aren't valuable right away. It takes time.

11:49 So the first few years -- so there wasn't any income, but I had some business ideas around the patents. And I had put together a business plan, and I was pitching it to VCs and investors around town. And I found one to partner with, and I was able to do some consulting around IP and that brought in some income.

11:50 And then I found some financial backers for my patent work. And with their help, I was able to sell some patents after they matured. This was several years after I'd been inventing. And we -- and they got a license.

11:50 Q. All right. Let's change gears a little bit,

and I want to talk about your general process for coming up with inventions.

So do you -- let me ask it this way. Do you start with a particular specific problem and then try to solve it or is your process different from that?

A. Well, I tried -- I tried what you just described because that's what I was taught. When I -- when they taught how to invent at IBM and other places is you identify a problem and then you find a solution.

And, you know, I'm sure that works for some people, but I was just inventing. I'd read about -- read biographies and got interested in other creative professions like art --

Q. Yeah. Let's pull that mic down. Just -- no. You don't lean forward, just push it down a couple inches. There you go.

A. Sorry. And I decided that invention was much more open-ended than that. And I --

Q. How'd you work it then?

A. Well, I learned that you didn't have to identify the problem first. A lot of things you find by accident. And I was really interested in the brain.

And it occurred to me, your brain -- your brain is a prediction engine that you take experiences and your brain provides explanations. You know, why

did my wife say that? Why is there water on the floor?

And so you take those past experiences and your brain predicts. And I'm kind of a worrier, and that's me -- I'm predicting what might happen in the future. And I have some pretty wild things that I can worry about. And I thought, well, there's a way to harness that and that's by seeding your brain.

Q. Did you say "seeding"?

A. Seeding it with information so that you let your brain do what it normally does, particularly your unconscious part, but you refocus it away from the things that you normally concern yourself with, you know, in day-to-day life.

So that was the sort of key insight for me is I developed techniques to invent.

Q. What types of information are you seeding your brain with in that process?

A. Well, of course, you need -- you need knowledge of the field in which you're inventing, but I'd been acquiring that for 20 years or more. And you have to keep up.

But what I found was that, you know, your brain sees patterns. In fact, it has to see patterns. It tries to see patterns. It makes associations. It makes causal inferences, and so really anything that

11:53 feeds that sort of pattern-matching recognition.

11:53 So an example is, you know, at some point in your life you learn about what a hierarchy is, and once you --

11:53 Q. Could you explain hierarchy just so all of us have gotten to that point in life?

A. Well --

11:53 Q. A couple of sentences, what a hierarchy is.

11:53 A. Okay. Well, your family is structured as a hierarchy with the parents at the top and the kids.

11:53 Q. Got it.

11:53 A. And businesses are structured as hierarchies, CEOs and...

11:54 But once somebody tells you what a hierarchy is, in some contexts, you see it all over the place, right? And that's -- your brain makes those associations. So it's a simple example.

11:54 So you seed your brain. And, you know, I found that what I learned in college and religion and math and philosophy is useful in inventing because your brain's just going to make associations whether you're even trying to or not.

11:54 So I found really broad -- you can seed it with a really broad range of information.

11:54 Q. Is this a rapid process, would you say?

11:54 A. Well, it takes a while to get the knowledge that you need. No. It's not a particularly fast process.

11:54 Q. So eventually in this process, is the identification of a technical problem a part of that inventive process?

11:55 A. Well, yeah. To have an invention, it has to be useful, which means it solves some problem.

11:55 Q. And how do you document your work? How do you write it down, keep track of it?

11:55 A. Well, architects and designers have ways of -- there's standard ways of documenting work, but I had to figure out how to write patent applications efficiently. So I started documenting what I did in patent-like language.

11:55 Q. And what would happen next with this document that you'd write?

11:55 A. Well, your brain doesn't start making the associations, but you have to -- you have to write a patent application so that someone else -- the term is "someone skilled in the art," and that's a legal term -- someone else with similar sets of skills as yours can understand what you're saying and can build the invention.

11:56 Q. Uh-huh. Got it.

11:56 A. And so you spend a lot of time working on that
11:56 and describing it. And you get down to the low levels,
then you come back up to the high levels. There's a
11:56 lot of iteration involved.
11:56 Q. Let's turn to the work that you did that led
11:56 to those -- you were here during the opening. You
11:56 heard about those two patent applications in 2012 and
11:56 the patents here in this case.
11:56 Let's -- we're going to talk about that now.
11:56 All right?
11:56 A. Right.
11:56 Q. Yeah. Okay.
11:56 So this is back in the early part of the last
11:56 decade, 2012, and around that time frame a little
11:56 before.
11:56 Did you have some sense in terms of this
11:56 files, cloud storage and so forth, did you have some
11:56 sense of what was out there in the marketplace in 2010,
11:56 2011, 2012?
11:56 A. Sure. You -- nobody creates something out of
11:56 nothing. You have to -- you add something to it.
11:57 That's what inventions are. So -- and you can't invent
11:57 in a field that you're not up to date in. I don't
11:57 think it's possible.
11:57 Q. Got it.

11:57 And what were your goals in coming up with inventions in this particular field at that time?

Did you have a particular goal?

A. Well, these patents -- and I have to confess, my memory's not -- my memory's not as good as it used to be so I don't remember the details of writing these apps. But these apps, when you read them, you can see that they're very user focused. And I wrote a lot of apps. I've been writing patents -- I've been inventing in photo sharing since the early 2000s at FlashPoint.

Q. Uh-huh.

A. So that was all there. And when you deal with users, the goal -- one goal to lead to patentable ideas is simplify. Simplify things for users. So that was a motivating factor.

Q. Uh-huh. Is that an easy thing to do usually, to make something simpler?

A. Well, if it was, the world would be easier. I mean, we -- I think it's pretty clear -- I think people who use their electronic devices know that they're not particularly simple to use.

Q. Now, eventually did you come up with some ideas that you thought met that goal?

A. Yeah. I did.

Q. All right. Let's talk about that.

11:58 And have you helped prepare some demonstrative, sort of simple animations, that can help explain your inventions?

A. Yes.

Q. All right. So let's take a look at those. And they should be coming up on the screen now. Okay.

MR. DEVLIN: So do you all see -- everyone seeing the screen?

BY MR. DEVLIN:

Q. Okay. So we're going to talk about this folder share idea first, okay?

And in your own words, just generally what is folder sharing and how -- then we're going to talk about how you built upon that, okay?

A. Okay. So folder share's a -- just a term that we came up with for one of the features that is invented here. I don't know if it's a good term.

But anyway, it's basically a method for sharing a folder.

Q. Got it.

Okay. So let's take a look at how your idea was for sharing folders. So we've got on the screen a diagram here.

Tell us before we do anything, what are we looking at on the screen?

11:59 A. Okay. You see two screens -- two user interfaces there. The one on the left is for the user that wants to share a folder. We'll call that the share -- the "sender."

Q. Okay.

A. And on the right is the screen of the user that the sender wants to share a folder with. We'll call that the "receiver."

Q. Okay.

A. And in the middle is this cloud, and there's a box there.

Q. Okay. What is the cloud here in the box?

A. Well, the cloud includes lots of things, you know. It's a very simple picture. But that's a network. It's the Internet.

Q. A network?

A. Right.

Q. And the Internet, you said, in this case?

A. And the Internet.

Q. Okay. Go ahead.

A. And the box could represent basically anything that's in the cloud that's involved, the server, a web -- you know, like a website or a server farm.

So I'm sorry. I've lost --

Q. I think you did -- I think I was asking you to

12:00 explain the cloud and the box, which you just did.

12:00 And I think I got you right that that box represents -- it could be a bunch of different computer servers or processors up there in the cloud somewhere?

12:00 A. That's right.

12:00 Q. Okay. Thank you.

12:00 So what's the -- what are we going to look at first here in this animation?

12:00 A. We're going to start on the sender side.

12:00 Q. Okay. Let's take a look at that and go through a little bit of this animation.

12:00 A. So you see a vacation folder there, and it has stuff in it. And we're going to take a look at what's in it.

12:00 Q. Okay.

12:00 A. So you see in it, it has another folder, a photos folder, that contain -- maybe it contains one image, maybe it contains thousands of images. And then there are two files, one related to an itinerary and then another file related to -- with flight information in it.

12:01 Q. Okay. Let's look at the next step here, what's going to happen.

12:01 So what's just happened there?

12:01 A. So the sender has indicated he wants to share

12:01 the vacation folder and a message he's created. We're showing an e-mail here. It could be an instant message. It could be sent by any form of communication.

So there's an e-mail message here to be sent to the recipient on the other side to tell the recipient, I want to share this folder with you.

Q. Got it.

A. Because the recipient might not want it.

Q. All right. And I think we just -- if everyone saw, we just saw that message go through the network in cloud and down to the recipient's computer.

Got that right?

A. That's right.

Q. Okay. So then what happens on the receiver or recipient side?

A. Well, the receiver doesn't have to accept it, but in this case, we're going to show the receiver is indicating that he wants the folder.

Q. Okay. And then what just happened there after the receiver clicked that link indicating acceptance?

A. You see another icon there that says "vacation." It looks like the vacation on the other side. And this is in the user's file system.

Q. What do you mean by that, "in the user's file

12:02 system"?

12:02 A. For those of you -- if you use a PC or Mac, PC has its own file system. It's not a separate application-specific area. It's just a file system that's accessible to all the applications that are running. The same thing on the Mac. So it's just the PC's file system.

12:02 Q. Got it. Thank you.

12:03 And can we -- so tell us more about this vacation folder.

12:03 A. Okay. So it looks like the folder is there, and -- but it's not there. This -- the word we use is "representation." It's a representation of the folder.

12:03 But the simplification here for the user is he hasn't had to download anything. And it works just like it is -- was there.

12:03 Q. Let's take a look at that. It works like it's actually there, you said?

12:03 A. That's right.

12:03 Q. All right. So we're opening it up. What do we see?

12:03 A. Then you see what looks like what happened when you opened it on the other side except the photos folder is not really there on the receiver side, and the two files, itinerary, flights, they're not there

12:03 either. But as far as the user's concerned, he works
12:03 with them just as if they were there.
12:03 Q. Okay. How do they get there? What's the next
12:03 step here?
12:03 A. Just any indication that indicates that the
12:03 files are needed, like if the user wants to look at --
12:03 wants to look in the folder or look at the files.
12:04 Q. Let's take a look at that.
12:04 A. So here he's indicated, the user, he or she,
12:04 wants to look at the file. It comes over, opens up,
12:04 and he looks at it.
12:04 Q. All right. That's folder share?
12:04 A. That's folder share.
12:04 Q. All right. Do we have similar animations for
12:04 the file request innovations?
12:04 A. We do.
12:04 Q. All right. Let's take a look at those.
12:04 Let's just go to the start. Now, just to be
12:04 clear, when we're looking now at the start of this file
12:04 request animation, we're starting over. We're not
12:04 picking up where we just left off at the end of the
12:04 prior stuff?
12:04 A. That's right. This is new.
12:04 Q. Totally new. All right. So tell us what
12:04 we're looking at here. Again, just before anything

moves, what are we looking at?

A. So in this case, the same two screens, but the screen on the left is the user with the data that the user on the right needs. So we're going to call the user on the right the requester, and we're going to call the screen on the left the screen for the responder.

Q. Requester on the right and the responder on the left. Just to have some lingo to talk about. Okay.

So what is the requester doing?

A. The requester is creating a structured request that the system understands. It's not just -- it's not just an e-mail message that says, hey, I want you to send me this file. It's something that both -- that the entire -- that the system can understand and help the user -- help the users in processing.

So, again, it could be the name of a file, but it could be, like, a search query, you know, that has file types or looks for other things that are associated with files or folders.

Q. Okay. So what happens with that request once that's formed?

A. Well, it gets communicated to the responder.

Q. All right. We just saw that happen on the

screen. And what happens on the responder side when they receive that request?

A. Well, in this example that we're talking about, the system can do some work for the responder automatically. The system can find that file for the responder so that he doesn't have to open his file system and go and look for stuff. And you see that -- and that can be pretty powerful if you're using a search.

But in this case, the file is located either by the user or by the system, and then the responder needs to send a response to indicate what was found that was -- that matched the request.

Q. Got it. And does the responder have to do that manually or could it happen automatically or either one?

A. It could be either way.

Q. Either way. Okay.

So then once this response is generated, what happens next? And we're seeing the response on the screen right now; is that right?

A. That's right. You're looking at a response. And, again, it's in the form of an e-mail, but it doesn't have to be an e-mail.

Q. Okay. So in this example, what happens?

12:07 A. It's communicated back to the requester.

12:07 Q. All right. We just saw that.

12:07 And then the requester does what?

12:07 A. The requester gets to see what was found and gets to decide what he wants -- what he wants. What he's interested in.

12:07 Q. So he clicks on that link?

12:07 A. He indicates what he's interested in.

12:07 Q. Uh-huh.

12:07 A. And then just like before in the previous scenario we looked at, a representation of the -- what he's interested in, in this case the flights file, appears within his storage, his data file system.

12:07 Q. So let me just make sure I got that right.

12:07 So there's a request that goes over, then there's a message that goes back so the requester sees some link. But when they click on that, what they get on their screen in their -- on their desktop or laptop, that's a representation?

12:08 A. Right. And it doesn't have to be a link. It's just anything that a user can interact with, a button or whatever.

12:08 Q. Understood. Okay.

12:08 And is this representation shown in the normal file structure just like with the folder share?

12:08 A. Correct.

12:08 Q. Okay. And then -- well, let's see it, but you tell us how it operates.

12:08 A. Well, it -- just as before, it's not there, but the user -- when the user interacts with it, it appears just -- it acts just as if it was there. It's pulled in when the user needs it.

12:08 Q. Got it. Thank you.

12:08 I think we have one more of these. Let's take a look at that. And this was called -- our label's "timed file request."

12:08 What are we talking about here?

12:08 A. This is an alternative or feature. So, again, you want something, but if it comes up, you may want it by the end of the day or the end of the week or -- and after that you don't need it. It's just not useful to you.

12:09 So the idea here is to send out a request where the system enforces that time restriction. Because getting back particularly big files and folders are -- is -- it's just more work if you don't need it anymore. And in the normal way you would share things, sharing things that are unneeded just creates additional security risks as well.

12:09 So we can step through this.

12:09 Q. All right. Let's take a look at this one.

12:09 So, again, we're -- are we -- we're starting at the start; is that right?

12:09 A. That's right. And --

12:09 Q. Okay.

12:09 A. And just as before, we got the requester on the right and the responder on the left, and it's going to look very similar to the scenario we went through, and I'll point out the differences.

12:09 Q. All right. So we've got a request for flights file, but it's got some little clock on there.

12:09 What's that represent?

12:09 A. It's a deadline or a time period indication.

12:10 Q. Okay. So let's see that move.

12:10 A. So that -- the request goes through, and the green indicates that the deadline has not been met, you know, the time period's still running and -- which allows a response. A response can be allowed.

12:10 So just as before, the files or folders that match the response are found, the message is created, the -- as we see here on the left, and then it can be sent back as long as the deadline has been met, indicated by the green on the clock there.

12:10 Q. Got it. Let's look at an example where the deadline isn't met. Very simple. Oh, I see. We're

12:10 going to --
12:10 A. This is where it is.
12:10 Q. Okay.
12:10 A. And so we're going to do it again.
12:10 Q. All right. So we've started again now?
12:10 A. Now --
12:10 Q. All right.
12:10 A. -- so the request goes from the requester to the responder on the left. The time -- the deadline has not been reached yet. Now it has been reached, as indicated by the red, and now the system prevents a response from going back from the responder so the requester's not troubled with it. Doesn't have to deal with it.
12:11 Q. Uh-huh. Now, we've shown -- great. Now we'll -- anything else?
12:11 Is that the end of the animations?
12:11 A. That's the end of the animations.
12:11 Q. Okay. Thank you.
12:11 So now during this time period in 2012 or so, did you have occasion to actually use any of the services that were already out there at that time?
12:11 A. I did.
12:11 Q. Okay. Tell us about that.
12:11 A. Well, I -- I used Dropbox during this time

12:11 period. I received an e-mail from someone I was
12:11 working with and it had a Dropbox link in it.
12:11 Q. Uh-huh.
12:11 A. And I don't think I had a Dropbox account. So
12:12 in order to access the link, I had to create a free
12:12 account. And Dropbox mentioned they allow free
12:12 accounts. And I downloaded the file or files. I don't
12:12 remember how many it was.
12:12 Q. Uh-huh.
12:12 And just at a very high level and just really
12:12 talking about your personal impression, did you see
12:12 during that process anything that looked like the ideas
12:12 that you'd come up with?
12:12 A. No.
12:12 Q. And now stepping back away from that little
12:12 instance with Dropbox but just stepping back more
12:12 broadly, either then or later on, were you able to
12:12 perceive some of the advantages of your ideas compared
12:12 to the technologies that existed around that time when
12:12 you were coming up with your inventions?
12:12 A. Sure. Sorry.
12:13 When you're inventing, you have goals,
12:13 advantages, that you are trying to achieve -- you know,
12:13 you know you are. But a sign of a good invention is
12:13 that afterwards when you invent it, you realize you

12:13 solved some other problems you really weren't trying to
12:13 solve. So in this case, you know, I said the goal was
12:13 to simplify things for the user. I think we did that.
12:13 What I -- and I don't -- I really -- my memory
12:13 at this period is really not good, but I doubt that I
12:13 was worried about network performance at the time. And
12:13 you can see that this invention, the network is not
12:13 utilized unnecessarily. You're not sending lots of
12:13 files that the user doesn't want. That's only being
12:13 sent when they're wanted. You're not taking up disk
12:13 space on the user's --
12:13 Q. Disk space means storage space?
12:13 A. Storage space on the side of the user that the
12:13 files are being shared with.
12:14 E-mail and IM systems are not very secure.
12:14 I'm sure people are careful with their e-mail. They
12:14 don't send -- they don't send their social security
12:14 number through e-mails, at least I don't.
12:14 In this case, files aren't transmitted unless
12:14 they're needed and that adds to security. And they're
12:14 not really sent through the messaging system or --
12:14 they're sent through the system that underlies it,
12:14 whether it's client server or whether it's cloud, which
12:14 are really similar.
12:14 Q. Uh-huh. Okay. Do -- did you eventually file

12:14 patent applications for these ideas?
A. I did.
Q. And how many applications did you file?
A. Two.
Q. Two.
When were they filed?
A. September 2012.
Q. Okay. Let's take a look at -- in your binder, you should have -- your binder right in front of you, you should have something labeled PTX-13 --
THE COURT: Counsel, about how much more time do we have with this gentleman? A while?
MR. DEVLIN: It's a perfect time for a break, Your Honor. Yes. Thank you.
THE COURT: Ladies and gentlemen of the jury, we're going to take our afternoon -- or our lunch recess.
Couple of instructions for you to think about. One is: Until you begin deliberating at the end of the week, you cannot discuss anything you've heard during the trial. You can talk about the weather, Cowboys, whatever it is you all talk about. I've never been in the jury room. But you can't talk about the evidence that you've heard.
Number two, for those of you who are on

12:15 social media -- I don't know what that is. My college sons tell me it exists, but -- you can stay on social media, if that's something you do, but please don't post anything about the trial.

And, three, please don't access Google or whatever you might access to do any independent research about what you've heard about, Mr. Devlin or me or the case or whatever it is. We want you to form your opinions about the case exclusively on what you hear and the evidence that will take place this week.

So in the old days, I used to have to worry about newspaper reports, but I don't think we have a newspaper in Waco anymore. So I haven't had to worry about that in quite a while.

So -- but with those three instructions, we will be in recess. If you'd be back here please at 1:30, we'll -- there is a -- right next door there is a -- like Union Hall, which has a bunch of little restaurants that serve every kind of food you can imagine. And there are other restaurants close to here too, but most jurors tell me they go there because it's just quick.

So I'll see you at 1:30. Thank you.

THE BAILIFF: All rise.

(Jury exited the courtroom.)

12:16 THE COURT: You may be seated.

12:17 Counsel, is there anything that we need to take up now?

12:17 Mr. Lantier?

12:17 MR. LANTIER: Yes, Your Honor. I don't think this is in dispute, but by invoking the rule, we understand that the expert witnesses and the corporate representative may remain in the courtroom through the trial?

12:17 THE COURT: That is right. And also as I said earlier, each of you have a corporate representative that you get to talk to regardless of where they're at in terms of their testimony.

12:17 Mr. Devlin, who do you anticipate getting through the day with today?

12:17 MR. DEVLIN: We will definitely get through Mr. Morris. We will get through almost certainly Mr. Gordon, and I expect -- then we have a little bit of depo testimony to read in. That's only about 10-ish, 12-ish minutes collectively total, probably get done with that as well. And then I expect to start our technical expert, Mr. Akl.

12:18 That's the -- unless the crosses go really long on those first two, I think we're going to start Dr. Akl today.

12:18 THE COURT: Very good. And who -- would the damages expert follow him?

12:18 MR. DEVLIN: Correct. And I don't think we're going to get through Dr. Akl today, but we'll see Mr. Dell tomorrow.

12:18 THE COURT: And would you rest after that?

12:18 MR. DEVLIN: Yes. 99 percent sure.

12:18 THE COURT: Subject to -- yes. I got it.

12:18 MR. DEVLIN: Yeah. Thank you.

12:18 THE COURT: So we have -- I just want to make sure we have folks through the end of today's trial day.

12:18 MR. DEVLIN: Absolutely.

12:18 THE COURT: Because we'll go till 5:30 or 6:00.

12:18 MR. DEVLIN: Okay. Thank you, Your Honor.

12:18 THE BAILIFF: All rise.

12:18 (Recess taken.)

01:38 THE BAILIFF: All rise.

01:38 THE COURT: Please remain standing for the jury.

01:38 (Jury entered the courtroom.)

01:38 THE COURT: Thank you. You may be

seated.

Counsel?

MR. DEVLIN: May it please the Court?

01:39 Thank you, Your Honor.

01:39 BY MR. DEVLIN:

01:39 Q. When we broke for lunch, we were talking -- just about to look at one of the two patent applications that you had filed.

01:39 So if you could turn in your binder, there should be a label for PTX-1333. It might be the last one. 1333.

01:39 A. 1333.

01:39 Q. Are you there, sir?

01:39 A. I am.

01:39 Q. All right. Can you just describe what that is, just name it basically?

01:39 A. It's a declaration.

01:39 Q. Okay. That's a declaration that's filed with the patent application?

01:39 A. Yes.

01:39 Q. Is that your declaration for that application?

01:39 A. Yes. It is.

01:39 Q. Okay. And then go a page or two into -- the first page of what looks like a patent application.

01:40 Do you see that?

A. Yes. I do.

Q. Could you tell us what that is? Not just the first page, but the rest of the document.

A. I'm sorry. Would you repeat?

Q. Could you tell us what that is, the rest of the document, starting at that page?

A. It's the -- at least the specification, right, but it's the patent application.

Q. Your patent application. All right.

MR. DEVLIN: We're going to offer PTX-1333, Your Honor.

MS. MAJOR: No objection.

THE COURT: Admitted.

BY MR. DEVLIN:

Q. All right. So now we can -- now that we've offered it into evidence and it's admitted, we can look at it on the screen.

So we're just going to look at one of those snippets, and, in fact, it's going to be that same one -- were you here for the opening statements, sir?

A. I was.

Q. You were. I pointed you out.

So we're going to look at that same little clip.

MR. DEVLIN: Do we have that, Mr. Gooden?

01:40 Thank you.

BY MR. DEVLIN:

01:40 Q. While we're loading it up, let me just ask you. You remember you put Dropbox in there. You talked about them a little bit?

01:40 A. Yes. I do.

01:40 Q. Okay. Why'd you do that?

01:40 A. I was identifying -- I think it's called admitted prior art is what the examiners call it.

01:41 Q. Uh-huh. So this is what was already out there before your invention?

01:41 A. That's right.

01:41 Q. And why do you do that? Why do you make examiners aware of what's out there, just in general, your understanding?

01:41 A. It's required that you tell the examiner everything you know that could be considered prior art.

01:41 Q. Okay. Thank you.

01:41 MR. DEVLIN: And it's Page 4, Mr. Gooden, fifth paragraph down.

01:41 Thank you. Yeah. Background section and that full paragraph at the bottom.

01:41 Thank you, sir.

BY MR. DEVLIN:

01:41 Q. You -- were you able to see the screens from

where you were sitting --

A. Yes.

Q. -- from the opening?

Okay. So do you remember counsel for Dropbox went through this paragraph a little bit?

You remember that?

A. I do.

Q. Okay. Did you get the impression that somehow the implication was suggested that you had distinguished your inventions and ideas in this application from something in the cloud?

Did you get that impression?

A. The impression was that it doesn't have anything to do with the cloud.

Q. Uh-huh. And do you think that's a fair characterization of what your inventions were?

A. No.

Q. Why's that?

A. It distinguishes that the patent is about something additional to the prior art. You're building on the existing art because you don't create out of nothing.

Q. Okay. Thank you, sir.

If you could turn in your binder now -- we're just going to introduce the other application, and that

should be 1332. Right before that one. Yeah.

A. Okay. I'm there.

Q. And what's that first page again?

A. It's another declaration.

Q. Your inventor declaration?

A. That's right.

Q. Okay. Can you just confirm whether the rest of it is your patent application -- the other of the two patent applications filed in 2012?

A. Yes. It is.

Q. All right.

MR. DEVLIN: Offer 1332. PTX-1332.

MS. MAJOR: No objection.

THE COURT: Admitted.

MR. DEVLIN: All right.

BY MR. DEVLIN:

Q. Now, these applications were filed with the U.S. Patent Office, sometimes called the PTO; is that right?

A. Correct.

Q. Okay. And as the application process proceeded -- sometimes called the prosecution process proceeded, did you stay involved at all with that?

A. Well, yes. Through my attorneys. Yes.

01:43 Q. Okay. So you had lawyers also helping at some point?

01:43 A. That's right. That was fortunate. Yes.

01:43 Q. That was what?

01:43 A. That was fortunate.

01:43 Q. I couldn't tell if you said fortunate or unfortunate.

01:43 A. No. It was fortunate.

01:43 Q. Okay. I wouldn't take offense.

01:43 Anyone we know, the lawyers that were helping you?

01:43 A. Mr. Gordon.

01:43 Q. Mr. Gordon right here?

01:43 All right. We'll talk with him a little later.

01:43 Is that -- so when he first got involved, was that when you transferred your patents to Motion Offense or was it a little earlier?

01:44 A. That was before the transfer to Motion Offense.

01:44 Q. Okay. And when you had this help from the attorneys in this patent application process, in the prosecution, what did that allow you to do?

01:44 A. It allowed me to invent rather than respond to what are called Office Actions that you get from the

Patent Office.

Q. And at some point, were there additional patent applications, related patent applications, ever filed based on these two original applications from 2012?

A. Yes. There were.

Q. And is that an unusual process to file related applications that reference back the original one or ones?

A. No. It's common.

Q. Okay. And those are called -- that's continuations and continuation-in-parts and something called the divisional.

Are you familiar with those?

A. Yes. I know what those are.

Q. All right. During the opening, we had this timeline up here -- not we -- counsel for Dropbox had this timeline up here.

Do you remember that?

A. I couldn't see it, but I heard it.

Q. Okay. Did you hear when they said that the original applications were abandoned?

Did you hear that?

A. I heard that.

Q. Okay. Is that -- have you worked on a lot of

different patent applications across your career?

Is that fair to say?

A. Yes. I have.

Q. Okay. When you have a related application on file, one of these continuing applications, is it a problem if the earlier application is abandoned?

A. As long as there are other continuing applications, you don't abandon the subject matter of a patent.

Q. That was my next question. When those original applications were abandoned in the Patent Office in favor of the related applications, are you abandoning your ideas?

A. No. I wouldn't do that.

Q. Okay. Are you abandoning your inventions that you had put in those original applications?

A. No.

Q. Okay. Thank you, sir.

So the four patents in this case, do they -- are they among the patents that relate, through this series of continuing applications, to those two original 2012 applications?

A. Yes.

Q. All right. Thank you.

Let's just introduce the patents into

evidence. And we'll look at them later. We're not going to look at them in detail now, but we just want to get them into evidence.

So if you could turn in your binder to PTX-1?

A. PTX-1?

Q. 1, yeah. Thank you.

A. Okay.

Q. And could you just tell us what that is? There's the patent number on the face?

A. It's -- you want me to read the whole number?

Q. Just the patent number. It should be like a seven- or eight-digit number, a U.S. patent number, top right.

A. It's Patent No. 10,013,158.

Q. And are you the inventor on that patent?

A. Yes. I am.

Q. All right.

MR. DEVLIN: Offer PTX-1.

MS. MAJOR: No objection.

THE COURT: Admitted.

BY MR. DEVLIN:

Q. Let's look at PTX-2. We're going to do the same thing. Just tell us that patent number on there, and you can just tell us right away whether that's one of your patents.

A. That's one of my patents.
Q. Okay.
MR. DEVLIN: Offer PTX-2.
MS. MAJOR: No objection.
THE COURT: Admitted.
BY MR. DEVLIN:
Q. Same with PTX-4. We're skipping 3 and 5 for reasons we've talked about.
So PTX-4?
A. That's one of my patents as well.
MR. DEVLIN: Offer PTX-4.
MS. MAJOR: No objection.
THE COURT: Admitted.
BY MR. DEVLIN:
Q. And PTX-6?
A. That's one of my patents.
MR. DEVLIN: Offer PTX-6.
MS. MAJOR: No objection.
THE COURT: Admitted.
BY MR. DEVLIN:
Q. Okay. So we'll talk about those more with the expert. I think at this point, I think you've -- we've done your invention.
So one thing we have to do here, you understand that it's Motion Offense that owns the

patents that are in this suit. It's now the patent owner, right?

A. Yes. I know that.

Q. Okay. So -- and do you understand we actually need to put the evidence in that shows that?

A. I do.

Q. All right. Let's get that out of the way.

And before we look at the actual documents, let me ask you a few general questions so I don't have to ask them each time.

Did your patents and -- your patent applications and patents that led to the four patents here, did those go through a series of transfers from the time when you first filed those original applications up through today as you managed your business and your patent rights?

A. They did.

Q. Okay. And were you generally always involved with the various companies that had ownership of the patents along the way?

A. Yes.

Q. Okay. And did you have authority in each of the instances where you signed on behalf of one of the companies, either the seller or the buyer or sometimes both, maybe, did you have authority to do that as best

you understood?

A. I had authority to do that.

Q. Okay. Thank you.

If you could look at PTX-7C? So it should be kind of in the middle of that binder. There's a series that end with 7 but then letters. So 7C.

A. I see it.

Q. Do you recognize that?

A. I know what it is.

Q. Okay. Can you tell us at a very high level what it is?

A. It's a patent assignment or documentation associated with a patent assignment.

Q. Okay. And is -- who's the assignment from and who's it to?

A. The assignment is from Deep River Ventures, LLC -- I'm sorry. That's the receiving party. It's from me.

Q. Okay. So it's from you to something called Deep River Ventures, LLC; is that right?

A. That's correct.

Q. Okay. Is that for one of the patent applications, original ones?

A. It -- it looks like it's just one, yes.

Q. Okay.

MR. DEVLIN: Offer PTX-7C.

MS. MAJOR: No objection.

THE COURT: Admitted.

BY MR. DEVLIN:

Q. Okay. So -- and then if you could go to PTX-7G?

A. G?

Q. G.

A. Okay. I'm there.

Q. All right. Can you tell us what that is just briefly?

A. It's another patent assignment cover sheet.

Q. All right. And who's -- it has assignment behind it?

A. It does.

Q. Okay. And who's the assignment from and to?

A. It's from me again to Deep Rivers Ventures, LLC.

Q. Deep River Ventures.

Is this for the other of the two original patent applications?

A. That's correct.

Q. Okay.

MR. DEVLIN: Offer PTX-7G.

MS. MAJOR: No objection.

THE COURT: Admitted.

BY MR. DEVLIN:

Q. Now, just so clear -- Deep River Ventures was an entity that you owned or controlled at that time?

A. I owned half the company, and I had a -- and I was a managing member.

Q. Okay. Thank you.

If you could look at PTX-7F, as in "Frank"?

A. Okay.

Q. All right. Can you tell us what that is? There may be a cover sheet on front, but generally could you tell us what the document is?

A. This is an assignment from Deep River Ventures, LLC to another entity that I had authority over, Cedar Point Partners.

Q. So this is now Deep River Ventures to Cedar Point Partners?

A. That's correct.

MR. DEVLIN: Offer PTX-7F.

MS. MAJOR: No objection.

THE COURT: Admitted.

BY MR. DEVLIN:

Q. Look at PTX-7D.

A. D?

Q. D, as in "dog" or "David."

A. I'm there.

Q. All right. And tell us what that is. Same way.

A. This is another assignment, and it's an assignment from Cedar Point Partners, LLC to Sitting Man, LLC.

Q. What is Sitting Man?

A. Sitting Man, it's a corporate -- it's me. It's my LLC.

Q. Got it. Okay.

MR. DEVLIN: Offer PTX-7D.

MS. MAJOR: No objection.

THE COURT: Admitted.

BY MR. DEVLIN:

Q. You still own Sitting Man by the way? That's still your company?

A. I do.

Q. Okay. Great.

And as we're talking about these different assignments from one entity to the next, do they -- are they assigning the rights to the various applications that are all related to these earlier two applications?

A. Yes.

Q. Thank you.

All right. Let's look at PTX-138. This is

the last one.

A. Last one?

Q. Yeah. 138.

A. I'm sorry. You said it was the last one?

Q. No, no, no. It's not the last one in your binder. It's the last one we'll have to deal with. Thank you. Sorry about that.

A. Okay.

Q. 138.

A. Okay.

Q. And what is this document?

A. Okay. It is a -- looks like a number of things.

Q. Is it a patent sale agreement?

A. Yes. It's a patent sale agreement.

Q. And does it assign rights from -- on the patents from one party to another? And you can just name the parties, if you know?

A. Let's see. It's an assignment of rights from Sitting Man to -- LLC to Motion Offense, LLC.

Q. Thank you.

MR. DEVLIN: Offer PTX-138.

MS. MAJOR: No objection.

THE COURT: It'll be admitted.

MR. DEVLIN: All right.

01:53 BY MR. DEVLIN:

Q. So I don't think you'll need that. You might keep that open, but I don't think you'll need it for these questions.

So now Motion Offense -- after that series of transfers, now Motion Offense owns the patents; is that right?

A. That's right. I don't have control of them anymore. That's the point.

Q. Thank you.

Let's talk about the financial arrangement between you -- between Sitting Man and Motion Offense and anyone else involved here at this point.

In those documents, what's the percentage that -- of the recoveries, of the net revenues, profits, that come from all the patent licensing, what percentage does Sitting Man get?

A. Okay. After all expenses and -- whatever's left, I get -- Sitting Man gets 50 percent.

Q. 50 percent?

A. That's right.

Q. Okay. And Sitting Man gets it. But that's to you and your family?

A. Yes. It's to me.

Q. Okay. Thank you.

Who gets the other 50 percent?

A. 49 percent goes to Mirai Ventures, and one -- Motion Offense keeps 1 percent.

Q. So Motion Offense keeps 1 percent, you've got 50, and then 49 to an entity called Mirai Ventures, you said?

A. That's right.

Q. Just tell us briefly who's Mirai Ventures? What is that?

A. Mirai Ventures is -- Mirai Ventures backed my patents through patent prosecution. They paid all the expenses through patent prosecution.

Q. Okay. So they have an interest in recoveries here also?

A. They have a financial interest. They're investors.

Q. Okay. Do you consider all that a fair deal?

A. I do. Yes.

Q. Why is that?

A. I've never been able to own my patents before. I never got a percentage of revenues. You know, they were bought, and then whatever was received I didn't really get part of.

Q. Okay. What are you seeking in this lawsuit? What's your goal?

A. One, I want -- I want -- I want to -- I want my financial backers to receive a fair recovery from their investment in these assets, not in everything that they've done but in these assets.

And, you know, I'll participate in that, and I think that's great and -- but I also want the patents -- I want an affirmation that the patents are valuable, because from the day you file a patent application, it's under attack.

And the patent attorney told me that when I filed an application. He said, you have the most rights when you file the patent, and from there on out, it's under attack.

Q. All right. Thank you, sir.

MR. DEVLIN: Pass the witness, Your Honor.

MS. MAJOR: May it please the Court?

CROSS-EXAMINATION

BY MS. MAJOR:

Q. Good afternoon, Mr. Morris.

A. Good afternoon.

Q. Nice to see you again.

A. Good afternoon.

Q. You mentioned towards the end of your testimony that you have a relationship with your

financial backers; is that right?

A. Yes.

Q. Okay. Well, if you can turn in your binder to Tab 16, please?

A. I'm sorry. It's kind of thick.

Q. No problem. Just let me know when you're there, sir.

A. Okay.

Q. Do you recognize what's at Tab 16?

A. It looks like some version of the financial backer agreement.

Q. Okay. And this is a financial backers agreement that you yourself signed, correct?

A. Well, yes. I signed it.

Q. Okay. And it applied to your 2012 applications; is that right?

A. Yes. It did. I'm sorry. I don't know.

Q. Okay. Well, we can walk through that if you'd like, sir.

MS. MAJOR: First, Your Honor, I move to admit the exhibit, PTX-1519.

MR. DEVLIN: No objection.

THE COURT: Admitted.

BY MS. MAJOR:

Q. All right. So on Page 1 of PTX-159 (sic), do

you see that this is an agreement between Cedar Point Partners and Mirai Ventures?

A. I do.

Q. Those are two of the LLCs that you just mentioned during your direct testimony, right?

A. That's right.

Q. And Cedar Point Partners is one of the entities that had the 2012 applications at some point in time, correct?

A. Correct.

Q. And this particular agreement is dated October 30th, 2015, sir?

A. Yes.

Q. So if we turn to Exhibit A on Page 9, please?

A. I'm sorry. Exhibit A within this tab?

Q. Within the tab, Page 9. And we'll pull it up on the screen as well in case that's easier for you to follow, sir.

A. Can I just look at it on the screen?

Q. That's absolutely fine.

A. Okay.

Q. About halfway down the page, do you see reference to DR0149, date 9/22/12, followed by several numbers ending in 906?

Do you see that, sir?

01:59 A. Yes.
01:59 Q. And that is reference to one of the 2012 applications you provided testimony about on direct?
01:59 A. Yes. I recognize the docket number.
01:59 Q. Okay. And two lines below that, do you see the Docket No. 264, dated 9/25/2012?
01:59 A. Yes.
01:59 Q. And do you recognize that as the docket number for the other 2012 application that we were discussing?
01:59 A. I don't remember the docket number, but I have no reason to doubt that it is.
02:00 Q. All right. So does that confirm for you, sir, that this agreement covered the 2012 applications that you've been testifying about?
02:00 A. Yes. And thank you, because I thought it was another agreement.
02:00 Q. So -- now, one thing that you didn't discuss during your direct testimony is the patent license agreement that you provided to Mirai Ventures in connection with this arrangement with your financial backers, correct?
02:00 A. We didn't discuss that? I don't remember that we discussed it. No.
02:00 Q. Okay. And a patent license grants certain rights to patents, correct?

A. That's my understanding. I'm not -- you know, we discussed this in our deposition. When we start talking about licensing, it gets over my head pretty quickly.

Q. Okay. But you talked about FlashPoint on your direct and how --

A. Right.

Q. -- there was licensing that you were familiar with at that company, correct?

A. Right. I can use the term at a very general level. Yes.

Q. Okay. So let's take a look at the license granted under this agreement for the 2012 application.

So if you turn now to Page 24, which is Exhibit C, and we'll pull that up on the screen as well.

A. I'm just going to look at it on the screen.

Q. That's fine.

Do you see there, sir, this is a portion titled "Nonexclusive License"?

A. I see that.

Q. And is that your signature on the line under Cedar Point Partners, sir?

A. It certainly looks like my signature. Yes.

Q. And do you understand, pursuant to this

nonexclusive license, Cedar Point Partners was granting a nonexclusive license to Mirai Ventures?

Do you see that?

A. I'm sorry. I just -- I didn't catch that.

Q. I'm sorry. I'll speak up, sir.

Do you see in the first sentence Cedar Point Partners is licensing to Mirai Ventures for a payment of $100?

A. I see that.

Q. Okay. So you licensed your 2012 applications to Mirai Ventures for $100, correct?

A. That's what this says. Yes.

Q. Okay. But you understand -- you were here for Mr. Devlin's opening statement this morning, correct?

A. I was.

Q. And you understand that Motion Offense is seeking $35 million from Dropbox in this case?

A. No. I didn't understand that.

Q. You heard Mr. Devlin say that this morning?

A. I didn't hear a figure. Did he say a figure?

Q. I thought I heard it. I think he at least said the number of subscriber months and a royalty?

A. I didn't do the math.

Q. Okay. All right. Well, let's shift gears a little, sir.

Now, you testified a couple times during your direct testimony that you don't have a very good memory from the era that we were talking about?

A. You know, things that I do repeatedly, my memory's pretty good. But my memory's good -- like most people, my memory on some things is good. It's not on others.

Q. Of course. Of course.

But this morning you talked for about 20 minutes about the ideas in your 2012 applications, right?

A. I don't agree with that. Well, we talked -- you mean, the flow that we did?

Q. Yes. You showed us about 20 or so slides?

A. Yes.

Q. Fair to say that lawyers helped you prepare those slides?

A. I did work with the legal team to prepare those.

Q. Yeah. Mr. Devlin and his team?

A. Can I -- yes.

Q. Okay. And you showed us slides about sharing folders?

A. I did.

Q. And about requesting files?

02:03 A. Yes. I did.
02:03 Q. And you also showed us slides about what you called a timed file request?
02:04 A. I did.
02:04 Q. But you did not show us any portion of the text in the body of those patent applications, did you, sir?
02:04 A. I don't recall that we did. That's right.
02:04 Q. And you didn't show us any figures from the patent themselves, did you, sir?
02:04 A. No. I didn't.
02:04 Q. You didn't show us any figures from the patents depicting folder sharing, did you?
02:04 A. No. I didn't.
02:04 Q. And you didn't show us any figures depicting file requests, correct?
02:04 A. No -- I mean, correct.
02:04 Q. And no figures from the patents about carrying out a timed file request, right?
02:04 A. Correct.
02:04 Q. So even though you testified for about 20 minutes regarding those patent applications and showed us about 20 slides, we didn't see anything from your patent applications or the patents that have issued to you, correct, sir?

A. Correct.

Q. Now, you would agree that the term "folder share" does not actually show up anywhere in your 2012 applications, correct?

A. Correct. And I said it was just a label we were using.

Q. Okay. Same with file requests, correct?

A. I don't remember. I don't know.

Q. You don't know, sir, whether the words "file request" appear in the 2012 applications that you filed?

A. No. I don't.

Q. Okay. And the term "file" -- the term "timed file request," that doesn't appear in your 2012 applications, does it, sir?

A. Again, I don't know. I suspect you're correct, but I don't know.

Q. Okay. Now, you testified that you've been issued between 100 and 200 patents, right?

A. That's my understanding. I don't have firsthand knowledge.

Q. Okay. You've filed more than 300 applications, right?

A. They were filed by someone else with my -- when I was an inventor.

Q. Okay. But you're aware that there have been between 300 and 400 applications filed with you as a named inventor; is that fair?

A. That's what I've been -- I understand that.

Q. All right. Now, despite all of those patents and applications, you've never personally been involved in developing an actual product that's been sold to customers, correct?

A. I disagree.

Q. Well, sir, do you recall giving a deposition in this case?

A. I recall some of it. I don't recall it all.

Q. Okay. That was on July 8th, 2022, correct?

A. I don't remember the date.

Q. You recall giving a deposition where you were under oath, correct, sir?

A. Correct.

Q. And you and I actually had a chance to visit in that deposition?

A. I actually don't remember that it was you, but yes. I'll take your word for it.

Q. All right. Well, if you could turn in your binder to Tab 1, please?

A. Which -- I'm sorry. Which one?

Q. The binder that we passed up to you, Tab 1.

A. Tab 1?
Q. Yes.
A. Okay.
Q. Are you there, sir? Okay.
If you could look at Page 63, please, starting at Line 12?
A. Question?
Q. Yes.
A. There's two sets of page numbers. Am I looking at -- I have one that says 63, Pages 246 to 249. Which page number are you referring to?
Q. Tab 1 of your binder.
A. I know, but there are -- on each page, there are four pages.
Q. Apologies, sir.
A. We have double pages.
Q. Yes. And let me clear that up. So on the smaller pages within the document that you're looking at, I'm looking for Page 63 of the four-page --
A. Okay. Thank you.
Q. -- section.
A. Okay.
Q. Right. So are you at 63, Lines 12 through 14?
A. I am.
Q. Okay. So at your -- the deposition you gave

in this case, do you recall being asked the question: Have you personally been involved in developing products that have been sold or licensed to customers?

And on Line 17 your answer: No. I'm just one person.

Do you see that?

A. Yes. I'm referring to the patents that I developed when I was an independent inventor.

Q. That was --

A. That's a different question.

Q. That was the testimony that you gave at your deposition, sir?

I read that correctly?

A. Those are my words. Right.

Q. Okay. Well, focusing on the four patents that are being asserted in this case, you haven't been involved in developing any software products that practice any of the claims in the four asserted patents, have you, sir?

A. As I understand the word "product," I haven't. I have been writing code for those. Yes.

Q. Now, you testified this morning that the purpose or the idea was to make things easier for users, right?

A. That's the motivation. One of the

motivations.

Q. Okay. Now, those original applications that we talked about were filed in 2012, right?

A. Correct.

Q. And we're now in 2023, right?

A. Yes.

Q. So more than a decade later. But despite that time and filing the original patent applications in 2012, you've never undertaken an effort to develop a product based around the ideas in your 2012 applications.

Do I have that right?

A. That's right.

Q. Now, let's turn to who's been involved in obtaining and asserting these patents.

A. I'm not hearing everything. Would you repeat that?

Q. Sure. Let's turn to who's been involved in obtaining and asserting these patents.

A. I'm sorry. Again, I didn't understand what you said.

Q. I just want to turn to who's been involved in obtaining and asserting these patents.

Is that okay, sir?

A. Yes.

02:10 Q. All right. Now, you know Motion Offense is asserting the patents, and you talked about Mr. Gordon on direct, right?

02:10 A. Yes.

02:10 Q. He's a lawyer, correct?

02:10 A. I understand -- yes. He's a lawyer.

02:10 Q. And you've teamed up with Mr. Gordon before, haven't you, sir?

02:11 A. What do you mean by "teamed"? I've worked with Mr. Gordon before, and I testified to that.

02:11 Q. Yeah. And Mr. Gordon is also the manager of other LLCs that own and assert patents on which you're the named inventor, correct, sir?

02:11 A. That's correct.

02:11 Q. Does it sound correct to you that Mr. Gordon manages at least six other LLCs that hold patents on which you're the named inventor?

02:11 A. I wouldn't have -- I wouldn't have given that number, but I'm not going to -- I don't dispute it.

02:11 Q. Okay. So that's Mr. Gordon. Then there's Mr. Patrick Caldwell, who's involved in this -- the patents that are at issue in this case, correct?

02:11 A. Correct.

02:11 Q. He's another attorney, right?

02:11 A. Correct.

Q. And to round it out, there's one more gentleman named Mr. Kevin Zilka, correct?

A. There is a gentleman named Kevin Zilka. Yes.

Q. He has some connection to the Mirai Ventures entity that you mentioned during your direct exam; is that right?

A. Correct.

Q. And you understand he's another lawyer as well?

A. I do understand that he's a lawyer. Yes.

Q. Okay. So you and three attorneys are the ones involved in getting the four patents that Motion Offense is asserting in this case; is that fair?

A. I don't agree because I don't understand. You mean we're the only ones or?

Q. Certainly you, Mr. Gordon, Mr. Caldwell and Mr. Zilka have all had some involvement in either securing the patents or in bringing this lawsuit; is that fair?

A. That's correct.

Q. All right. Well, let's go back to 2012, if we can. Fair to say you can only guess at how you came up with the ideas in the 2012 applications?

A. For these specific applications, I don't -- yes, you're correct. I don't remember.

Q. And you don't know how much time you spent working on the ideas that are reflected in the 2012 applications, correct?

A. I work for -- I didn't track my ideas. No. I mean, sorry. I didn't track my hours.

Q. Understood.

But even if you can't give us the specifics about how you came up with those ideas or how much time you spent drafting a patent application, you can tell us a few things that you don't claim to have invented, can't you?

A. Sure.

Q. Okay. Well, people were sharing files via Dropbox prior to September 2012, correct?

A. Yes. And the application -- one of the applications says that.

Q. And so you don't claim to have invented that, correct?

A. I didn't invent Dropbox.

Q. And people were sharing a folder or file using a link to a shared folder in a message prior to 2012, correct?

A. Correct.

Q. You don't claim to have invented that, do you?

A. No.

Q. People were sharing a file without including a file as an attachment in an e-mail message prior to the submission of your applications in 2012, correct?

A. That's the same -- they were sharing by a link. Yes. That's correct.

Q. Specifically in an e-mail message, correct? You would agree that's not something you invented, sir?

A. Yeah. I invented what was claimed. Yes. I didn't -- yes.

Q. Okay. All right. User interfaces existed prior to the submission of your applications in 2012, correct?

A. Particular interfaces, but I think -- I'm sorry. I don't understand the question.

Q. In general, user interfaces were not something new when you filed your applications in 2012, correct?

A. You mean I didn't invent the ability to put a user interface on a screen?

Q. Correct.

A. That's correct. I did not invent that.

Q. All right. And user interface elements existed prior to the submission of your applications in 2012, right?

A. That's correct.

Q. You don't claim to have invented that, right?

A. No. I didn't invent that.

Q. Okay. So just to be clear, you don't claim, obviously, to have invented any technology that existed before your September 2012 applications, right?

A. That's not -- that's not right the way you asked the question. No.

Q. Okay. Fair to say -- sorry, sir. I didn't mean to interrupt you.

A. Go ahead.

Q. Fair to say that there were a number of aspects of sharing folders and requesting files that existed prior to your submission of your applications in 2012? Is that fair?

A. That's fair.

Q. Okay. Let's shift gears again and talk a little about your familiarity with Dropbox. You testified this morning that you signed up for a free Dropbox account in 2012.

Do I have that right?

A. That's what I remember. Yes.

Q. It was actually on June 11th, 2012 that you signed up, correct?

A. I don't know that. I take it you do know that.

Q. Well, I'll direct you in your binder,

Mr. Morris, to Tab 4, sir.

Let me know when you have that.

A. I'm there.

Q. You've used different e-mail accounts, correct, over the course of your work?

A. Yes.

Q. And one of the e-mail addresses you've used is paul.morris@nc.rr.com, correct?

A. I'm sorry. I don't see that Tab 4 has -- it's another patent application.

Q. Tab 4 -- yes -- at Page 317. And I'll put this on your screen. We're not going to admit it. I just would like you to look at it to confirm the e-mail address.

MR. DEVLIN: If it's not in evidence, it shouldn't go on the screen, Your Honor. It's not impeachment. It's not in evidence.

MS. MAJOR: Just on his screen, Your Honor. I wouldn't need it to display in the courtroom.

MR. DEVLIN: No objection.

MS. MAJOR: Can we do that, Mr. Lee?

A. Page 317 is an application data sheet.

BY MS. MAJOR:

Q. And do you see your e-mail -- or an e-mail address paul.morris@nc.rr.com?

02:17 A. I do see that.
02:17 Q. And then -- and that's an e-mail address that you told the Patent Office was one they could use to contact you, correct?
02:17 A. Yes.
02:17 Q. Okay. Now, I'd like you to move forward in your binder to Tab 5, sir?
02:17 A. I'm there.
02:17 Q. And do you see reference at -- in the document at Tab 5 to that e-mail address, paul.morris@nc.rr.com, under basic user info?
02:18 A. Oh, yes. Yes. I see that.
02:18 Q. And your name is listed there as well, sir, Paul Morris?
02:18 A. That's my name.
02:18 Q. And there's a joined date for the Dropbox account.
02:18 Do you see that?
02:18 A. Is it in the basic user info?
02:18 Q. Just a little further down the page, sir.
02:18 A. Under account information?
02:18 Q. Yeah. Joined 2012/06/11.
02:18 Do you see that?
02:18 A. In the account information? I don't see it.
02:18 Q. Sir, if you look at the fifth bullet down in

the area where you're looking?

A. Under account information?

Q. Yes. It says "Joined Basic User Info." I'm sorry. Under --

A. Okay. Not the account information.

Q. Yes. I'm sorry. Under the basic user info section, five bullets down?

A. I see that.

Q. All right. And that portion indicates to you that you signed up for your Dropbox account on June 11th, 2012.

Do you see that?

A. I see that.

And I assume Dropbox is the source of this document?

Q. I'll confirm that for you, sir.

And you certainly don't have any reason to dispute that that's the date when you signed up for that free account, correct?

A. I can't confirm. I really can't say anything about it. It's not my document.

Q. Okay. But you told us you signed up for an account in 2012, correct?

A. I believe I did. Yes.

Q. Okay. So let's make a timeline here. And

I'll put that up on the screen.

Just for everyone's clarity, this is not evidence. This will just be a demonstrative.

But let's put that date that we find in that Dropbox document --

MR. DEVLIN: Your Honor, I would object. This is not in evidence. This is not impeachment.

MS. MAJOR: Your Honor, it's a demonstrative.

MR. DEVLIN: Oh, I'm sorry. Demonstrative, okay. Fine. My apologies.

THE COURT: That's okay.

BY MS. MAJOR:

Q. So we've put up on the screen that June 11th, 2012 date.

Do you see that?

A. I see it.

Q. All right. Now, you talked on your direct about your '906 application. That's one of the 2012 applications that you submitted?

A. I believe that's correct.

Q. All right. And you're welcome to look at that, sir, in the binder that you used earlier today or whichever binder is easiest for you, but that's PTX-1332.

A. Did I need to look?

Q. I just want to confirm the date on which that application was filed. So if you'll turn to that, please, sir?

We can pull it up on the screen if that's easiest.

A. Yeah. That would be easier.

Q. All right.

MS. MAJOR: This one was already entered into evidence with your counsel. So PTX-1332.

BY MS. MAJOR:

Q. And do you see that the date of the application, when you signed what you submitted to the Patent Office, was September 22nd, 2012?

A. Yes.

Q. All right.

MS. MAJOR: So let's add that to the timeline as well.

BY MS. MAJOR:

Q. And you assigned it to that Deep River Ventures, LLC that you mentioned shortly after you filed the application, correct?

A. Correct.

Q. Okay. And just for timeline purposes, September 22nd, 2012 is just about 100 days after that

June 11th, 2012 date that we saw in the Dropbox document?

A. That sounds right.

Q. Okay.

MS. MAJOR: So let's now pull up PTX-1333.

BY MS. MAJOR:

Q. And this is just your other 2012 application, sir, correct?

A. Yes.

Q. You filed this with the Patent Office on September 25th, 2012, correct?

A. Correct.

Q. And that's also about a hundred days after that Dropbox account being set up, correct?

A. Correct.

Q. All right.

MS. MAJOR: Let's add the '635 application to our timeline.

BY MS. MAJOR:

Q. Now, you talked earlier you were aware of Dropbox when you filed the '635 application, right?

A. I was aware. I said it in the spec.

Q. Okay.

MS. MAJOR: So let's pull up that portion

of the patent application. It's at Paragraph 5 in Page 4 of PTX-1333.

BY MS. MAJOR:

Q. Now, Mr. Morris, you have to be truthful in what you say to the Patent Office, correct?

A. Correct.

Q. And, in fact, when you file a patent application, you have to sign an oath, don't you?

A. That's correct.

Q. So looking at Paragraph 5 of your 2012 application, this part's called "Background," correct?

A. Correct.

Q. And in this portion of the -- of your application, you told the Patent Office that a variety of means already existed for sharing files, folders and other data via a network, correct?

A. Those are the words there. Yes.

Q. So you weren't claiming to have invented those concepts, correct?

A. You mean these actual products? They're not concepts.

Q. Sharing files, folders and other data via network, that wasn't your idea, was it, sir?

A. Sharing -- photo sharing was going on before I filed these inventions.

Q. And you then identified some of the different means that were already available, didn't you, sir?

A. That's right.

Q. Please read for us the -- that sentence beginning "for example."

Do you see that?

A. Yes.

Q. Could you please read that into the record, sir?

A. Sure.

For example, sharing a file, a Samba file system, is different than sharing via -- sorry. There's some grammatical errors here.

Can I start over?

Q. Of course, sir.

A. For example, sharing a file, a Samba file system, is different than sharing a via cloud-based storage system such as Dropbox.

Q. So Dropbox was a cloud-based storage system for sharing files and folders that already existed when you filed this application in 2012, correct?

A. That was my understanding. Correct.

Q. And looking at the next paragraph, Paragraph 6, you said: There exists a need for methods, systems and computer program products for sharing a data object

in a data store via a communication.

Do you see that?

A. That's right.

Q. You said something different was needed than what already existed, right?

A. You can't have an invention unless you're doing something different.

Q. Okay. That's what you told the Patent Office, sir, right?

A. Yes. When you file a patent application, you're telling the Patent Office that you've got something that's different.

Q. And that something different was what you were saying was your invention, right?

A. What was in the specification. Right.

Q. All right.

MS. MAJOR: So let's pull up our timeline demonstrative again and add to the '635 application entry: Distinguishes Dropbox.

BY MS. MAJOR:

Q. Now, we talked a little earlier about the '906 application being abandoned.

You acknowledged that is the case, right?

A. The application itself was abandoned. Correct.

Q. The '635 application was also abandoned, sir, correct?

A. I don't know. I don't recall. I'm not disputing what you said. I just don't remember --

Q. You don't remember whether it was abandoned. You're not disputing that it's abandoned?

A. Yeah. I don't remember all the prosecution details.

Q. Okay. Just for purposes of the record, I'll direct you to Tab 4 in your binder.

And if you look at Page 2, sir?

A. Which page?

Q. Page 2 of Tab 4.

Do you see a notice of abandonment associated with your application numbered 635 as the last three digits?

A. I see that.

Q. Does that refresh your recollection that the '635 patent was indeed -- patent application was abandoned?

A. Well, I don't know that I ever had a recollection, but I see the abandonment.

Q. Okay. Thank you.

MS. MAJOR: So let's add a note on our timeline that those applications were abandoned.

BY MS. MAJOR:

Q. Now, let's talk about how the patents that Motion Offense is asserting here came about.

You did not file any of the patent applications that underlie the patents asserted in this action until October 2017, correct, sir?

A. I don't keep all the dates correct, but I believe you.

Q. Okay. We can pull up PTX-1, which is the first patent your counsel admitted during your direct testimony. This is the '158 patent.

Do you see that, sir?

A. Can I ask a favor? Can you put this in two notebooks so I can actually flip these pages?

Can that be done?

MS. MAJOR: Only if Your Honor would care to take a break?

THE COURT: Of course.

William, can you help?

A. It would just speed things up.

THE COURT: Thank you for letting us know.

THE WITNESS: Sorry to give you extra work.

(Off-the-record discussion.)

MS. MAJOR: Thank you, Your Honor.

BY MS. MAJOR:

Q. Are you ready to resume, Mr. Morris?

A. Yes.

Q. Okay. So if we look at PTX-1, which is the '158 patent, and this is on your screen as well, sir, if that's more convenient, do you see that this application was filed October 3rd, 2017?

A. Yes.

Q. That's more than five years after your 2012 applications were filed, correct, sir?

A. That's correct.

Q. And the application for the '158 patent is what's called a continuation-in-part application, correct?

A. Correct.

Q. So the application for the '158 patent is not identical to either of those applications that you filed in 2012, sir, correct?

A. You're not asking me a legal question, are you? You're just asking me literally are the words exactly the same?

Q. Exactly, sir. It's not identical to what you'd filed in 2012, is it?

A. I think the introductory material was

different. It's just the specification. The detailed description is identical.

Q. But there is language in your 2017 application that was not in your 2012 applications.

Do I have that right?

A. In some of the -- some of the initial parts, right, of the abstract, things like that.

Q. So we're in agreement that your 2017 application is not identical to the 2012 applications, correct?

A. It has -- yes. The words are different.

Q. All right. Now, sir, you testified this morning that you're relatively familiar with the patenting process, didn't you?

A. The patenting process? For an inventor, yes.

Q. Yes. And you know there's actually a different kind of application you can file called a continuation application that is identical to earlier applications that have been filed, correct?

A. I know that.

Q. But a continuation application is not what you filed in 2017, is it, sir?

A. No. It's not.

Q. All right. What was filed in 2017 was not identical to the applications filed in 2012, correct?

A. Correct.

Q. Now, the application that became the '052 patent was also filed on October 3rd, 2017, correct?

And we can pull up PTX-2, if you'd like to verify that, sir.

A. October 3rd, 2017 is what it says.

Q. And the application for the '052 patent was also filed as a continuation-in-part, correct?

A. I believe that -- yes. That's correct.

Q. So, again, the application for the patent that's currently on your screen, PTX-2, is not identical to the applications that you filed in 2012, correct?

A. The words are not all exactly the same.

Q. So let's add that to our timeline and add a note that there's new language added to the new applications.

So to be clear, more than five years after you filed the original applications and then abandoned those applications, you submitted new applications with new content added to them.

Do I have that right?

A. That's correct. Had not abandoned the subject matter. That's correct.

Q. Lawyers helped you prepare the applications in

2017, correct?

A. Yes.

Q. And getting claims issued in the '052 patent was a collaborative effort with patent attorneys, correct?

A. We worked together. Yes.

Q. Now, an LLC named Sitting Man, you talked a little about that during your direct exam. That's the entity that filed the application for the '548 patent, correct?

A. Lot of numbers.

Q. Okay. But let's pull up PTX-4.

A. Just -- one of the original or not?

Q. I'll bring it up on your screen so we can be looking at the same document. This is PTX-4 which is the '548 patent.

Do you see, sir, that this patent was filed in May 20, 2018?

A. I see that.

Q. All right. And let's move to PTX-6. This is the last patent asserted in this case, the '215 patent, correct?

A. Correct.

Q. And the application for the '215 patent was filed February 27th, 2020.

Do you see that?

A. That's correct.

Q. So every patent asserted in this case had its application filed October 3rd, 2017 or later, correct?

A. Well, for -- I think so. I believe so.

Q. So to summarize, you signed up for Dropbox in 2012, right?

A. That's right.

Q. You filed patent applications in September 2012, correct?

A. I did.

Q. Those patent applications were abandoned, sir, correct?

A. That's correct.

Q. Then more than five years later you filed new patent applications, correct?

A. Correct.

Q. Lawyers helped you prepare those applications?

A. Lawyers helped me.

Q. And those patent applications are not identical to what you filed in 2012, correct?

A. They are not word-for-word identical. That's right.

Q. Now, you continued using Dropbox since the time those 2012 applications were abandoned, haven't

you?

A. I have.

Q. For instance, you've used Dropbox to store financial documents, correct?

A. Like tax documents?

Q. Documents with Mirai Ventures.

A. Oh, you mean agreements?

Q. Agreements, documents relating to your Sitting Man company?

A. Yes.

Q. All right.

A. I don't know if they're -- I don't think of them as financial, but yes.

Q. Okay. You didn't stop using Dropbox after this case was filed, did you, sir?

A. No. It wasn't my choice, but yeah. I'm still using it.

Q. So you're using Dropbox even though you're aware Motion Offense is saying that Dropbox infringes the patents that have been issued in your name, correct?

A. I am.

Q. Okay. Let's shift gears, Mr. Morris, and discuss the supposed significance of the asserted patents. So we talked a little earlier about Motion

Offense seeking $35 million in this case.

Do you recall that?

A. I still didn't see that or -- but I'll take -- if that's what they're asking for, then I'm not going to dispute that.

Q. Okay. Well, in your day-to-day life, people don't ask you about the patents asserted in this case, correct?

A. No. I don't -- I don't talk -- no. People are not really interested in having -- talking about technical topics. Their eyes glaze over.

Q. And beyond having the patents themselves granted, you're not aware of the asserted patents having received any awards, correct?

A. Awards? I don't even know of any patent awards. But, no. They haven't.

Q. Now, the four patents involved in this case all say on their faces that they're related in some way to the two applications that you filed in September 2012, right?

A. That's correct.

Q. And when you filed those 2012 applications, you assigned them to Deep River Ventures, correct?

A. I believe we went through that. Yes.

Q. Okay. So if -- we'll get to a little more

about Deep River Ventures in a moment.

So let's turn to Tab 13 in your binder, please.

A. The binder that you gave me?

Q. Yes, sir.

A. Okay.

Q. Do you see that document's been marked DTX-324?

A. Yes.

Q. Okay. And do you recognize DTX-324 as the operating agreement of Deep River Ventures?

A. Yes.

Q. All right.

MS. MAJOR: Move to admit, Your Honor.

MR. DEVLIN: No objection.

THE COURT: Admitted.

BY MS. MAJOR:

Q. Thank you.

Now, DTX-324 is an agreement where you committed to make an initial contribution to this company Deep River Ventures, correct?

A. You have to do that, yes, as part of the formation of the company.

Q. And your contribution was supposed to be 20 inventions. Do I have that right?

02:38 A. That's what's in the agreement. Yes.
02:38 Q. Okay. And those 20 inventions that you committed to assign to Deep River Ventures were valued at a total of $200,000 according to the agreement, correct?
02:39 A. I'm not sure what that means. You're saying that that -- go ahead.
02:39 Q. Sure. So let's turn to Schedule 1 at Page 29 of DTX-324. And it's on your screen, sir.
02:39 And Schedule 1, do you see your name on the left?
02:39 A. That's right.
02:39 Q. And do you see beside your name $200,000, where that's described as 100 percent undivided interest in the 20 existing inventions set forth in Schedule 3?
02:39 A. I see that.
02:39 Q. And your business partner, whose name appears above yours, was making a cash contribution of $200,000 to the business, correct, sir?
02:39 A. He said he would. Yes.
02:39 Q. Okay. So doing some simple math, $200,000, the value of your contributions, divided by those 20 patent assets, $10,000, right? Apiece?
02:40 A. That's the math.

Q. Now, two of the 20 patent assets that you committed to assign to Deep River are actually the two 2012 patent applications that we've been hearing about today, correct, sir?

A. Correct.

Q. All right.

MS. MAJOR: So let's add that to our timeline.

BY MS. MAJOR:

Q. Now, you talked, sir, during your direct testimony about the patent applications being assigned from Deep River Ventures to Cedar Point Partners.

Are you with me?

A. I am.

Q. So if you could please turn in your tab to Tab 14?

A. Okay.

Q. And at Tab 14, you should find DTX-320.

Do you see that?

A. I see it.

Q. Do you recognize DTX-320 as a withdrawal agreement between you and Deep River Ventures?

A. I do.

Q. Okay.

MS. MAJOR: Your Honor, I move to admit

DTX-320.

MR. DEVLIN: No objection.

THE COURT: Admitted.

BY MS. MAJOR:

Q. And this withdrawal agreement is dated August 25th, 2014, correct?

A. Yes. That's correct.

Q. Now, as part of the withdrawal agreement, Deep River Ventures agreed to assign the 2012 patent applications to Cedar Point Partners, correct?

A. That's not correct.

Q. As part of the withdrawal agreement, there was an understanding that Cedar Point Partners owned the '906 and the '635 patent application free and clear, correct?

A. I don't know what you're asking me.

Q. Okay.

MS. MAJOR: Let's pull up Section 2.1 on Page 2.

BY MS. MAJOR:

Q. And if you'll look with me at the sentence: The parties acknowledge and agree that as of the time of the liquidating distribution, Cedar Point shall hold free and clear of all claims and encumbrances those 29 patent assets identified and set forth in Exhibit A-1.

Do you see that?

A. 2.1, distribution?

Q. Yes. On your screen, sir, if that's easier to review the highlighted sentence?

A. It says that. That's not what you asked.

Q. So pursuant to this withdrawal agreement, Cedar Point Partners had possession of your 2012 applications without any encumbrances; is that fair?

A. What do you mean by "encumbrances"? Because --

Q. I'm just reading the language in the agreement --

A. -- Cedar Point already owned all of these applications.

Q. But this document that we see on the screen, the withdrawal agreement, indicates that there's no dispute those are held free and clear by Cedar Point Partners, correct?

A. Right. Right. That's right.

Q. Okay. And according to this withdrawal agreement, Deep River Ventures and you agreed that Cedar Point Partners would operate according to an LLC agreement attached as Exhibit A in the exhibit before you, correct, sir?

MS. MAJOR: Let's pull up Section 2.3.

A. I don't know that I agree with what you said, but go ahead.

BY MS. MAJOR:

Q. Okay. Section 2.3 says that: On the execution date, the company and withdrawing member shall enter into that certain limited liability company operating agreement in the form attached hereto as Exhibit A.

Do you see that?

A. It says that. It says what it says. I'm not -- I don't remember all the legalities and --

Q. Sure.

A. -- and this was -- I don't remember who was withdrawing from what.

Q. Fair enough. It was some time ago, sir.

But you would agree that you -- after this withdrawal, you were managing Cedar Point Partners; is that fair?

A. I was managing Cedar Point Partners after and before the agreement.

Q. Okay. And looking at the operating agreement at Tab -- or at Page 12 of DTX-320, do you recognize this as the limited liability company operating agreement of Cedar Point Partners?

A. I do.

Q. You signed this, sir?
A. I'm sure I did. Let me check.
You know what page the signatures are on? Oh, okay. I found it.
Q. It's on your screen also.
A. Yes. I signed it.
Q. Okay. So according to this agreement, if we go to Section 4.5.1, it says here that: If any assets of the company -- meaning assets of Cedar Point -- are distributed in kind to the interest holders, those assets shall be valued on the basis of their fair market value, correct?
A. It says that. Yeah. I would need a lawyer to help me understand what this means.
Q. But you were managing Cedar Point Partners at the time?
A. Under this operating agreement?
Q. Correct.
A. Yes. I was.
Q. All right.
MS. MAJOR: So let's add to the timeline the date of this agreement, August 25th, 2014, and note that requirement to distribute assets at fair market value.
BY MS. MAJOR:

Q. Do you see that?

Now, sometime after this, the patent applications were moved from Cedar Point Partners to Sitting Man, correct?

A. To me, to Cedar Point. Correct.

Q. Cedar Point to Sitting Man, correct?

A. Yes. But I'm -- effectively, I'm Sitting Man.

Q. Fair enough. Fair enough.

Now, at the time that Cedar Point moved the patent applications to Sitting Man, Sitting Man did not pay any money in that transfer, correct?

A. That's correct. There's no money exchanged.

Q. Okay.

MS. MAJOR: So let's add that to the timeline as well.

BY MS. MAJOR:

Q. And, sir, you testified about that assignment from Cedar Point to Sitting Man being in February of 2018 during your direct examination.

Does that sound right in terms of the time frame?

A. Yes. I was assigning the patents to myself effectively.

Q. Okay. And again, when you did so, the applications were assigned to Sitting Man for zero

dollars, correct?

A. I'd have to go back and look at the agreements, but I was basically assigning them to me because I was the only member of Cedar Point, and I was the only member of Sitting Man.

Q. Well, you -- sir, you -- you weren't the only member of Cedar Point Partners at the time, were you?

A. This operating agreement -- I -- is I -- you'll have to help me. This -- you showed this to me as part of the withdrawal agreement.

Q. Correct.

A. And from that I took it that what was happening was that this was when Cedar Point separated from Cedar Point.

Q. From Deep River, sir?

A. From Deep River. Cedar Point was severed from Deep River.

Q. But your business partner in Deep River maintained some share of interest in Cedar Point, correct?

A. Right.

Q. Okay.

A. The assets were assigned upon the dissolution of Cedar Point.

Q. Okay. So --

A. And legally -- I'm sorry.
Q. I'm sorry.
A. I really need help as to what all that means. So when you're asking me questions here, I really don't understand what you're asking me.
Q. Let's move on, sir, to just sum up.
MS. MAJOR: So if we could pull up DDX-211?
BY MS. MAJOR:
Q. The patent applications moved from yourself to Deep River, to Cedar Point, to Sitting Man, to Motion Offense, correct?
A. That's correct.
Q. And what we have here are applications you filed in 2012, correct?
A. Yes.
Q. They moved among all these different companies, correct?
A. They were assigned from one to another. Yes.
Q. And they've landed with Motion Offense, correct?
A. Assigned to Motion Offense. Correct.
Q. And Deep River valued the two applications for an average of $10,000 each, correct?
A. I don't agree with that.

Q. Well, we looked at how you committed to assign 20 different applications to Deep River, and it was 20 applications for $200,000, correct?

A. It says that, but I don't agree with your conclusion.

Q. Okay. Fair enough.

And then when the patent applications moved from Cedar Point to Sitting Man, you agreed, zero dollars changed hands, correct?

A. Upon the dissolution of Cedar Point, they were assigned to Sitting Man.

Q. And zero dollars changed hands, correct?

A. That's right. Zero dollars -- well, I really don't remember. Anyway, it really didn't matter. I was transferring them to myself so why would I pay myself? But go ahead.

Q. Well, you also know, sir, that when the patents were sold by Sitting Man to Motion Offense, there was no upfront payment, correct?

A. Didn't it say $100 or something like that?

Q. Well, I believe, sir, that was --

A. I don't remember.

Q. Okay.

A. If the document says zero, it says zero. I just don't remember.

Q. Okay. You wouldn't dispute that you received -- you and Sitting Man received no money up front when the patents -- the patent applications were sold from Sitting Man to Motion Offense, correct?

A. I don't dispute what the contract says.

Q. Okay. Thank you, sir.

MS. MAJOR: I have no further questions.

THE WITNESS: Okay.

REDIRECT EXAMINATION

BY MR. DEVLIN:

Q. I have a few follow-up questions, Mr. Morris.

MR. DEVLIN: And if I can ask my colleagues on the other side, we don't -- you and I both saw that timeline for the first time.

Can we pull that up, please? I think it was 2.10.

2.10.

Thank you.

BY MR. DEVLIN:

Q. It's on the screen. All right.

Let's talk about this timeline a little bit.

You see it on your screen?

A. I see it.

Q. Okay.

MR. DEVLIN: And actually, we can go to

2.7. I think that would be easier to start.

Great.

BY MR. DEVLIN:

Q. So this just looks at -- well, we got your Dropbox user there when you signed up.

To the best of your memory, is that instance the thing that you were talking about on your direct when you happened to -- someone sent you something and you signed up?

A. No. I think -- from my memory, what I was talking about, I believe the e-mail I saw had a July date. I could be wrong. Maybe this was the June date.

Q. Okay.

A. But that could be separate instances.

Q. Might have been twice you used it around that time?

A. Right. Right.

Q. Great. Okay. So set that aside.

I want to talk about these other three dates on the screen. So the impression here, again, when I'm looking at this, if I didn't know anything else, it looks to me like this is saying that these two first applications were abandoned way back in 2012 because that's where the label is, and then nothing else happens until some new filings in 2017.

Do you see that impression here?

A. That's what it looks like.

Q. Okay. Is that reality?

A. No. That's not reality.

Q. Does this in any way, shape or form reflect the actual sets of applications that were filed along the way and when things happened?

A. No. The Patent Office wouldn't allow this.

Q. Great. Thank you for saying that.

MR. DEVLIN: If we could -- I'm going to flip back and forth here, I'm sorry. So if we could have PTX-1, please.

And if we could look at that related U.S. application data, left side, middle of the column on the left side, heading for Related U.S. Application Data. Yep, right there. If you can pull that up, Mr. Gooden?

It's right at the top left of the screen now. There's a heading that says "Related U.S. Application Data." And I need the -- all the text under it too, that box, for about six or seven lines if we can expand that out?

Yeah. Thank you. Perfect. All right.

BY MR. DEVLIN:

Q. So this is what -- you remember talking about

this on your cross-examination?

A. Yes.

Q. And there were some questions about whether some of the language was different and some of the language was the same and -- throughout these sets of continuations and continuations-in-part.

Do you remember that?

A. I remember that.

Q. Okay. And one of the applications here is referenced, it was filed in 2014.

Do you see that? Second line down.

A. I see that.

Q. Did you hear anything about that from them?

A. I'm sorry? Do I remember what?

Q. I'll withdraw that question.

So the -- now, this is the face of the patent we're looking at, right? One of the patents in this suit; is that right?

A. That's right.

Q. So on the face of a patent --

MR. DEVLIN: If you could pop out just a second, Mr. Gooden?

Great.

BY MR. DEVLIN:

Q. So this is the cover page of the patent. It

has a whole bunch of information that the Patent Office puts on the cover page to inform people who are interested various information about the patent.

Does that sound right?

A. That's right.

Q. Okay. So one of the things that the Patent Office put on the cover page was this related U.S. application data, right?

A. That's right.

Q. Okay.

MR. DEVLIN: Can we pull that up again?

BY MR. DEVLIN:

Q. So the patent -- do you remember in opening when this issue came up a little bit when defendant's counsel was speaking, and I think I heard the line that you -- Motion Offense or someone or you invalidated your own patents through this process.

Do you remember that line?

A. I remember something like that.

Q. Okay. So this is telling us the U.S. Patent Office knows exactly what the history of the various applications is leading from October 2012 and ending with the issuance of the '158 patent, Exhibit 1?

MS. MAJOR: Objection, Your Honor, leading.

THE COURT: Sustained.

BY MR. DEVLIN:

Q. Does this related application data show what the Patent Office knew about the series of applications starting in October of 2012 -- sorry, September of 2012 up to the issuance of this patent?

A. It does.

Q. Okay. Did the Patent Office issue the patent?

A. They did.

Q. Okay. So did the Patent Office think that this series of steps invalidated your own invention?

MS. MAJOR: Objection, leading.

THE COURT: Overruled.

BY MR. DEVLIN:

Q. You can answer.

A. Well, they issued it, so no.

Q. Thank you.

MR. DEVLIN: All right. Let's go back to that timeline and this time DTX-2.10, please?

BY MR. DEVLIN:

Q. All right. Now we're looking at -- so just to -- now that we're back on this timeline, this is great.

Where it says "abandoned," that's the wrong date; is that right? Or is it the right date when this

says "abandoned"?

A. The right date for what?

Q. When these applications were abandoned.

A. When the -- that particular line of prosecution was abandoned. Yes.

Q. And were they abandoned right then on these dates where these stamps are labeled in September 2020 (sic)?

A. I don't know.

Q. Okay. Were they abandoned on the dates they were filed?

A. Abandoned on the dates they were filed?

Q. Right.

A. No. They weren't abandoned on the dates they were filed.

Q. Okay. Thank you.

And I think we talked about it earlier, but when you abandoned those particular applications, did you or did you not have related applications already pending?

A. I did.

Q. Okay. So did you abandon your ideas and your inventions when you let these particular applications go abandoned?

A. No. I didn't abandon the inventions.

Q. Okay. Thank you.

All right. Now I want to focus on some of these red items, these zero dollars and so forth.

Okay. First, we have an agreement in July of 2012 that values applications at $10,000 each.

Do you see that?

A. I see that on the chart.

Q. Okay. And that was the Deep River Ventures formation, right?

Did you also have an ownership interest in Deep River Ventures?

A. I did. I owned 50 percent of Deep River.

Q. Okay. And at the time that you formed that entity and entered into this agreement, had these applications even been filed?

A. They had not.

Q. Okay. This -- without reference to the particulars here, there were a series of other agreements you looked at that had different dollar amounts here or there or zero dollars.

Were there other consideration in those agreements that you or your entities were receiving for the exchange of all the stuff that was being exchanged in them?

A. Yes. There were other things that were part

of the exchange, not necessarily in the agreement or not -- no. I think they were actually in the agreement.

Q. Okay. So these were broader agreements where people are contributing and receiving various things?

A. Sure. Services, promises.

Q. Okay. I remember one of them was that $100 payment when Mirai got involved.

Do you remember that?

A. Yes.

Q. And was Mirai infringing the patents when you entered into that agreement?

A. No.

Q. Okay. Were they making massive use of the patents when you entered into that agreement?

A. No. And they gave me an interest in the revenue.

Q. Okay. Thank you.

Do you -- I know we talked about your inventions. We didn't talk a ton about the text of your applications.

Do you remember in great detail the actual text of these various applications?

A. No. You know, I hate to say it, but I read them now. I have a hard time keeping it all in my head

like I used to be able to do.

Q. Do you understand there's going to be experts that talk about some of those issues of validity when getting into the details?

A. Yeah. And I'm grateful that there are experts to do that.

Q. There's an issue about offering products ever in your life, have you ever worked on a product and so forth. And we saw a little of your deposition testimony.

Do you remember that issue?

A. Well, what was --

Q. Yeah. Just explain what you were -- explain what you were trying to get at there.

A. Well, I -- the implication was that I've never worked on a product. Well, on direct I talked about working at IBM. When you -- I worked on Windows. I was one of the people that added networking code to what was then OS2 in Windows.

When you -- for example, when you attach a printer at home, you attach your PC to a printer, I was involved in writing NetBIOS, which is the protocol that was used. And I don't know if it's still used, but I wrote that code.

I wrote code that ran in the protocol stacks

for IBM for their proprietary protocols, something called SNA, S-N-A. I've written code in the TCP/IP stack run on PCs. Some in workstation computers and in -- as well as mobile.

I wrote code at Scenera. The first 25 years of my life, I wrote a lot of code.

Q. When you became an independent inventor, did you view yourself more as a coder or more as the architect?

A. More as an architect. And one of the great things about the patent system is that you don't have to build a product. That's the -- that's what you had to do -- that's one of the things that was unique about the U.S. patent system is that you didn't have to build a product.

Q. Thank you, sir.

MR. DEVLIN: Nothing further, Your Honor. Pass the witness.

MS. MAJOR: Nothing further, Your Honor.

THE COURT: May this witness be excused?

MR. DEVLIN: Yes, Your Honor.

THE COURT: What that means, sir, is you are free to stay in the courtroom or leave or do whatever you want.

THE WITNESS: Okay. I can stay?

THE COURT: Yes, sir.

THE WITNESS: Okay.

THE COURT: Sometimes I tell people they're free to leave, and they leave and they don't want to. So you're free to stay.

THE WITNESS: Okay.

THE COURT: Who would your next witness be, Mr. Devlin?

MR. DEVLIN: Your Honor, plaintiff calls Mr. Andrew Gordon.

(The witness was sworn.)

DIRECT EXAMINATION

BY MR. DAHLGREN:

Q. Good afternoon. Could you please state your full name for the record?

A. George Andrew Gordon.

Q. Mr. Gordon, why are you here to testify today?

A. I'm the founder and manager of Motion Offense, the owner of the patents-in-suit, and I'm here to testify on their behalf.

Q. Mr. Gordon, I'd like to talk about your background just a little bit.

Where do you live currently?

A. I live in Frisco, Texas. It's a suburb just north of Dallas.

Q. Is that where you're originally from?
A. No. I was born in Nashville, Tennessee.
Q. How long did you stay in Nashville?
A. Not very long. My father, he was a doctor in the military, so we moved around quite a bit. I spent some time in Alaska and Utah, North Carolina, Washington state, Virginia, a few other places.
Q. Where did you end up graduating high school?
A. We eventually settled in northern Utah, and that's where I graduated high school.
Q. And you said your father was a military doctor, right?
A. Correct.
Q. What'd your mother do?
A. Well, she was a nurse, and then she became a homemaker when she started having kids.
Q. Do you have any siblings?
A. I do. I have seven. I have two brothers and five sisters.
Q. And do you have your own family now?
A. Yes. Yes. My wife Miranda, we've been married for 25 years. We have four kids; two boys, two girls. My oldest is 22. She graduated college last week, makes me feel very old, and my youngest is 11.
Q. Well, congratulations.

And while you were growing up, did you have any hobbies?

A. I did. I was a pretty active kid. I played a lot of sports: Swimming, wrestling, basketball, mountain biking, skiing.

My father, he liked to do all things that didn't have a motor. And so my friends, you know, they had motocross and jet skis and snowmobiles, and I was on the mountain bike and cross-country skiing. And I remember being jealous at the time but, you know, looking back, I'm grateful.

Q. And did you have any jobs growing up as well?

A. Yeah. I worked part-time all through high school.

Q. So how did you manage going to school and working and then having, you know, so many active hobbies?

A. Well, it blended. And I remember I was in southern Utah at the time, St. George. I was in high school, and I had a job that was six miles away, and I had to ride my bike to work and a perfectly drivable vehicle was in the driveway. I was frustrated with that. But if it was hotter than 105, then I was allowed to drive the car. But the climate was very similar to Las Vegas.

Q. So what did you do after high school?
A. I went to college at Utah State University.
Q. And what'd you study there?
A. I studied electrical engineering and computer science.
Q. While you were in college, did you work as well?
A. I did. Yeah. I was a prep cook at a local restaurant. I did computer repair and support. I did some research for some professors. And then the last year, I worked at Bourns Integrated Circuits.
Q. What was Bourns Integrated Circuit?
A. It was a local device manufacturer of computer chips.
Q. Did you receive a degree from Utah State?
A. I did. I graduated in 1998 with a bachelor's in electrical engineering and a minor in computer science.
Q. And do you have any other degrees?
A. Yes. I also have an MBA and a law degree.
Q. And have you ever practiced as a lawyer?
A. Yes. Yes. I transitioned from engineering after, I don't know, a dozen or so years. I found that my background in engineering, business and law, it was very beneficial for patent licensing.

Q. Okay. I'd like to talk about your work history a little bit.

How did your career proceed after college?

A. Well, I stayed on at Bourns for two years. And then my wife found out -- it was just my wife and I at the time. We moved to Boise. I worked for a semiconductor fab for a year. And then I worked at a startup called Ovonyx. It's spelled O-v-o-n-y-x.

Q. What'd you --

A. Go ahead.

Q. Are you finished? I apologize.

A. No, no. That's fine. I worked at -- yeah -- a startup called Ovonyx.

Q. And what'd you do at Ovonyx?

A. Well, I did research and development on a new type of computer memory. It's called phase-change memory. And Ovonyx, they had patents and -- patents that covered the technology, and they would license those to big companies like Intel. And we did joint development work to bring a product to market.

Q. And were you personally involved in that research and development that Ovonyx was doing?

A. Yes.

Q. And were you ever named on any patent applications filed by Ovonyx based on that research?

A. Yeah. I'm named inventor on over a dozen patents for my work at Ovonyx.

Q. Does Ovonyx own all of the patents which you're named as an inventor?

A. No. Some are owned by Ovonyx. Some are owned by Intel. Some are owned by STMicroelectronics. Some are owned by Micron.

Q. And I think we're both speaking very rapidly to, I guess, try to get through things quickly for everyone, but for the court reporter, I think it'd be helpful if we both slow down. So...

A. No. I had an energy drink during lunch, and I think I'm a little amped up. I apologize.

Q. No. Understand.

So who else -- apologies. But we were talking about the patents that Ovonyx has and you said, I believe, that there was some other companies that owned those patents that you were named as an inventor on?

A. Yes.

Q. What companies were you referring to?

A. Yeah. So Intel -- sorry. I want to bring this a little closer.

Intel owned some of those patents, Micron, STMicroelectronics.

Q. Did Ovonyx make any products or sell any

products?

A. No. No. They didn't make any products. They only did research and development on the technology. We were licensing that to other companies and trying to help them bring a product to market.

Q. And what did you do after your work at Ovonyx?

A. Well, being an inventor, I was interested in patent law, and so I enrolled in law school. And eventually I hired on at a local law firm, Zilka-Kotab PC. It was in San Jose.

Q. What year was that?

A. That would have been summer of 2008.

Q. What type of work did you do at Zilka-Kotab?

A. Yeah. Initially, I helped support the attorneys with prosecuting patent applications and then eventually transitioned to help with licensing for some of the large corporate clients of the firm.

Q. And when did you graduate from law school?

A. That would have been May of 2010.

Q. And which state bar did you take?

A. The California bar.

Q. And did you pass?

A. I did.

Q. So after you took the bar and finished law school, what'd you do next?

A. I accepted a position helping license technology, helping companies license their patent technology.

Q. And --

A. I also did some legal work on the side or continued to do legal work.

Q. Where was that position?

A. It was in Texas.

Q. And is that the job that you're still working at today?

A. Yes.

Q. I'd like to talk a little bit about the licensing work that you do.

Could you explain how that licensing job works?

A. Yeah. I partner with inventors and patent owners, and I help those individuals protect their intellectual property, develop a strong patent portfolio and then license those patents or sometimes sell them.

Q. How do you go about finding inventors or patent owners to work with?

A. Yeah. It varies. Sometimes my team and I will find inventors. Sometimes they'll, you know, contact me. It's -- I mean, I've found there's a lot

of inventors out there who don't know what to do with their patents. They don't know how to license or enforce them. They don't have the resources to do that or the expertise, and that's the service that I provide.

Q. Do you end up doing deals with most of the inventors that you speak with?

A. No. I come across a lot of opportunities, but I do very few deals with patent owners.

Q. Why is that?

A. Well, it's a huge investment in both time and resources, and I want to make sure that the fit is right.

Q. What percentage of the opportunities that are available to you result in a partnership with an inventor?

A. It's less than 1 percent. It's very few.

Q. And how do you decide which inventors you choose who ultimately you work with?

A. Well, I'll spend a lot of time looking at the specification of the application, the patent application. I'll look at the patent that issued. I'll look at the market to see if there's potential licensees who are infringing the invention that's disclosed in the original patent or the application,

and I'll also kind of think about the direction the market is heading to see if potentially there would be licensees in the future.

Q. And how much time does this process take for each, you know, each potential, you know, inventor that you're considering working with?

A. It takes a lot of time. I spend, you know, dozens of hours looking at the patent application, the specification, you know, the market. And then I'll talk to the inventors, and then even more time making sure that it's a good fit.

Q. Do you have any standard terms that you use when you partner with the inventors?

A. Yeah. It does vary. In general, I try and acquire the patents for little or no money down. And the inventor gets a tale, is what we call it, where they get a portion of the proceeds in the event the licenses or the patents are licensed.

And I feel that this aligns all of the parties. The inventor isn't using this to cash out. The inventor's still very interested in the process. The inventor is going to support, you know, the campaign going forward, and it really aligns all the parties' interests.

Q. When you do partner with an inventor, what

company typically holds the patents?

A. Yeah. Usually -- I usually create a new company, a new LLC, that'll hold those patents for the deal. And I do it because it makes it easier to keep track of and also simplifies the accounting.

Q. And once you have that set up, you have a company with patents, how do you go about getting licenses?

A. Well, I look at the -- so there's a number of ways that we do it. Some of them are referred to me by colleagues who know what I do. I'll also look at -- we have a service that we subscribe to and we'll look for pending applications that look like they may be abandoning for failure to prosecute.

A lot of times in those cases it's because the inventor doesn't have -- you know, he's kind of running out of money and he doesn't have the resources to continue with their invention.

We've -- I mean, it really varies. We've looked at startup companies who were a little too early. So there's leading edge technology and then right in front of that is called bleeding edge technology. And I've been on a couple of those projects where you're just -- you're ahead of the market and so you're just burning cash.

The market may get there eventually. Your inventions are very valuable. But those companies just don't have the resources to continue with those -- you know, with their ideas. It gives the investment -- investors an ability to recoup some of their investment.

There's really a, you know, a variety of ways in which I find these inventors to work with.

Q. And after you find these inventors and you've partnered with them, how do you go about finding people to take licenses to the inventions to their patents?

A. Yeah. Now, what I do, it's no different than what I did at -- you know, when I worked for a law firm for these large corporations. Sometimes we'll send letters out notifying companies that they may be infringing the technology. Sometimes lawsuits are filed.

Q. What makes a lawsuit necessary?

A. Well, unfortunately, I mean, it's my experience that large companies, they don't like to pay inventors, other inventors, for their inventions. And they know that patent litigation, it's incredibly expensive.

And they -- the companies know this. They know that most small inventors don't have the resources

to enforce their patents. And so they kind of rely on a David and Goliath scenario where, well, you know, you're never going to be able to afford to come after me.

And that's why, you know, a lawsuit is required because otherwise they just ignore other advances. If we contact them and send them a letter, they'll just kind of put it in the junk mail pile or the waste basket.

Q. Do you think you've helped the inventors that you've worked with?

A. Absolutely. Yeah. And not just inventors.

Q. What do you mean by that?

A. Well, you know, I've used the same framework to help several charities.

Q. Could you provide a few examples?

A. Yeah. I can think of a couple. The first one, they help -- they support abused and neglected children. And the second one provides affordable daycare and education.

And in both of those cases, we donated the patents to those entities, and then those entities received a portion of the proceeds from the licensing revenue. I believe it was 33 percent. Collectively they received millions of dollars.

Q. I'd like to talk a little bit about your history with Mr. Morris. When did you first get involved with Paul Morris?

A. I think it was around 2012 or 2013.

Q. And in what context were you first involved with him?

A. Yeah. I was assisting with some of his patent prosecution for his inventions.

Q. And we've talked a little bit about patent prosecution, but that's just the back and forth, the application process with the Patent Office, correct?

A. Yeah. That's correct. Don't ask me why they call it that. It doesn't make a lot of sense. I think prosecution, I think something different. But, yeah. Patent prosecution is the act of obtaining a patent for your invention.

Q. Have you gotten to know Mr. Morris over time?

A. Yes.

Q. What's your impression of him?

A. Oh, yeah. I'm very impressed with him. He's a great guy. He's a great inventor. And I deal with a lot of inventors, and Mr. Morris is really a level above everybody else, both the breadth and the depth of his inventions. And I really enjoy working with him.

Q. Did your first deal with Mr. Morris involve

the patents at issue in this case?

A. No. No. Those were different patents.

Q. When did you first start working with Mr. Morris on the patents that are at issue here?

A. I believe it was 2014.

Q. And what did you end up doing?

A. Well, we received notification from the USPTO, the U.S. Patent & Trademark Office, that some of Mr. Morris' applications were granted or were allowed, rather, which means that the USPTO, after evaluating the arguments and the prior art, they decided that Mr. Morris was entitled to a patent on his invention. And so they sent notification.

MR. GILLAM: Your Honor, we object at this time. We need to approach the bench.

(Bench conference.)

MR. GILLAM: Your Honor, we specifically tried to ask Mr. Gordon during his deposition about the patent prosecution related to these patents. He always claimed privilege. We were not allowed to get into that. He shouldn't be able to talk about it now.

MR. DAHLGREN: He's talking about forming the company. He's not getting into specifics. All he said was received notice of allowance, which is public, and then they formed the company. He's not talking

about the details of prosecution.

MR. GILLAM: He's talking about 2014 and forward. He formed this company in 2018.

THE COURT: So why is he talking about these events?

MR. DAHLGREN: He's just talking about the timing when they formed Motion Offense after receiving a notice of allowance, which is a public --

THE COURT: I understand.

MR. DAHLGREN: He's not talking about any of the details of the prosecution. And I'm -- we're not going to talk about it anymore. That was -- it was just timing.

THE COURT: Okay. I mean, he can answer these questions because that was public, but don't go over with him anything else about the prosecution.

MR. DAHLGREN: Absolutely. Thank you.

(Bench conference concludes.)

BY MR. DAHLGREN:

Q. So, Mr. Gordon, I believe you were discussing having received a notice of allowance and forming a company at some point after that.

Was that Motion Offense?

A. Yes. Yes. After a notification was received that the patents were allowed, I formed a new entity,

Motion Offense, and that's where the patents were then placed.

Q. And so Motion Offense owns the patents that are being asserted in this case, correct?

A. Yes.

Q. Now, Mr. Gordon, I want to hand you -- these are demonstratives, and we saw these in opening, but I just wanted to ask you --

MR. DAHLGREN: Your Honor, may I hand these to the witness?

BY MR. DAHLGREN:

Q. Mr. Gordon, could you please explain what those documents are that I just handed you?

A. Yes. So these are the -- they're called the ribbon copies. Sometimes called the red ribbon copy. This is for the '215 patent; this is for the '548 patent; this is for the '052 patent, and this is for the '158 patent.

Q. How many ribbon copies does the Patent Office make for each respective patent?

A. Only one. So after you receive a notice of allowance from the Patent Office saying that they will grant your patent, the applicant pays a fee, the USPTO issues the patent and then mails this document to the patent owner.

Q. And why is it that Motion Offense has the ribbon copies?

A. Because Motion Offense is the owner of these four patents.

Q. Now, Mr. Gordon, is it correct that Motion Offense receives 1 percent of any proceeds that are obtained?

A. Yes. 1 percent.

Q. Do you think that's a fair deal?

A. Definitely.

Q. Why is that?

A. Well, as an inventor, I feel like the contribution of the -- you know, the inventors should be recognized and appropriately compensated.

Now, in this case, I didn't put up any capital to acquire the patents. Mr. Morris put in all the work. We wouldn't be here today but for his invention. And I'm proud that, you know, Mr. Morris gets the majority of the licensing revenue from these patents.

Q. I'd like to turn to this lawsuit with Dropbox.

When did the lawsuit begin?

A. Oh, it's been a number of years. I think it was July of 2019.

Q. And did Motion Offense file this suit?

A. No. Not the instant suit. No.

Q. And what's the story on that? We heard a little bit about it, but what's your -- what's the story on that?

A. Yeah. So initially Motion Offense sued a large corporate customer of Dropbox.

Q. Did that get Dropbox's attention?

A. It did.

Q. And what happened after that?

A. Well, we contacted the large corporate customer, and they agreed to be bound by whatever result happens in this case. And so we stayed that case and then proceeded with the instant case against Dropbox.

Q. And "stayed" just means paused, right? Like there's nothing going on in that other lawsuit while this one proceeds; is that right?

A. Exactly. It just -- it's paused.

Q. Why did you do it that way?

A. Well, you know, in my experience, it's hard to get large companies to come to the table. And we thought that we would make more progress with the large corporate customers of Dropbox, but Dropbox, they came in and attacked the patents anyway.

Q. What are your goals in this lawsuit?

A. I want Dropbox to pay a reasonable royalty

rate for Paul Morris' inventions.

Q. And you'll personally benefit from that?

A. Yes. I get 1 percent.

Q. And is that 1 percent all you're after here?

A. No. When I partner with inventors like Paul Morris, I try and do the best job that I can for them. And, you know, I hope I do the same in this case.

Q. All right.

MR. DAHLGREN: Your Honor, we'll hand over the witness.

CROSS-EXAMINATION

BY MR. GILLAM:

Q. Good afternoon, Mr. Gordon.

A. Good afternoon.

Q. So you, like Mr. Morris, have been a Dropbox user since 2012 time frame.

Is that about right?

A. That sounds about right. I don't have the exact date of when I became a Dropbox user.

Q. Got a couple of Dropbox accounts, as I understand; is that right?

A. That's true.

Q. Now, you understand that the jury in this case has to deal with three questions, do you not?

A. Yes.

Q. The first question is whether or not Dropbox infringes these four patents, right?

A. Yes.

Q. You're not here to provide testimony to this jury on the question of infringement, are you, sir?

A. I'm not testifying on behalf of whether or not Dropbox infringes. No.

Q. You hired Dr. Akl to do that, right?

A. I believe that's who we have. I mean, Motion Offense litigation counsel hired an expert to testify on behalf of infringement. Yes.

Q. That's Dr. Akl.

Do you know Dr. Akl? Have you met him?

A. Yes. I have met him.

Q. Okay. You're not going to provide any testimony to the jury on infringement, though. That's coming from him?

A. That's correct.

Q. You know the second question that these folks have to deal with is the question of validity of these patents, right?

A. Yes.

Q. You're not going to provide any testimony to them to help them with this question, are you, sir?

A. No. No. There's a separate expert for that.

Q. And who's that expert?
A. I think that's your expert, right?
Q. You have your own expert to talk about validity, do you not?
That's Dr. Akl as well.
Did you know that?
A. Yeah. Yeah. That sounds right.
Q. Okay. Fine.
The next question that this jury has to deal with is the question of damages.
You're not here to provide testimony on damages of this case either, are you, sir?
A. No. I'm not.
Q. You hired Mr. Dell to do that, right?
A. Yes. Yes. Mr. Dell was hired to provide his legal -- or his expert opinion on damages.
Q. So the three questions that this jury is dealing with: Infringement, validity and damages, those aren't your areas of testimony?
A. They are not. No.
Q. Now, as a lawyer and someone with an MBA, you know how to set up businesses, correct?
A. That is true. Yes.
Q. And you've set up a lot of businesses, correct?

A. I have set up several. Yes.

Q. Now, my colleague, Mr. Lantier, a few moments ago during opening statement talked about the people behind Motion Offense.

The truth of the matter is there's only one person behind Motion Offense; isn't that true?

A. I'm sorry. I misheard you. Can you repeat that?

Q. You're the manager of Motion Offense, right?

A. Yes.

Q. You're the sole owner of Motion Offense?

A. Yes.

Q. You're the only investor in Motion Offense --

A. Yes.

Q. -- right?

You put about $10,000 into that company to set it up, right?

A. I'm not sure. I'm not sure how much I put to initially set it up.

Q. Okay. Motion Offense has no employees today, do they, sir?

A. Just me.

Q. Since you founded Motion Offense in 2018, some five years ago, you haven't had any employees, right?

A. It's been me the whole time.

Q. So you said in June 2018 -- or we looked at some documents earlier, Motion Offense acquired the applications that eventually became the patents in this case.

Does that sound right?

A. I'm not sure which documents you're referencing.

Q. Well, does Motion Offense contend that it owns the patents today in this case?

A. Yes.

Q. As the owner of the patent, you have certain rights that go with the ownership of the patent, don't you?

A. Yes.

Q. You have the right to take the patent -- or take the inventions that are described in the patent and you've got a right to build products, don't you?

A. Yeah. I agree with that.

Q. You have the right to manufacture products and go out into the marketplace and compete in the marketplace, don't you, as the owner of these patents?

A. Yes.

Q. Couple of these patents have been around since 2018; is that right?

A. Yes. Yes. I believe so.

Q. One in 2020 and one in 2022.

Does that sound right?

A. It might be '21, '22. But yeah. Recently. More recently.

Q. Whatever, in the time that you've owned these patents, you had the right to go out, build products, sell products, try to compete in the marketplace with companies that are involved in cloud-based storage.

You had that right?

A. Yes. I agree with that.

Q. Now, in the time that you've owned these patents, you have never built a product, have you, sir?

A. I'm sorry. Just to be -- just to clarify, are you talking about me personally?

Q. I'm talking about Motion Offense.

A. Motion Offense has not built any products. No.

Q. Motion Offense didn't help the inventors develop these products -- the inventor develop these products, did you?

A. Motion Offense, the entity, is not a named inventor on these patents. Paul Morris is the sole inventor.

Q. In fact, not only has Motion Offense not made or sold or competed in the marketplace, but to the best

of your knowledge in the history of these patents, there have been no products or competing in the marketplace with respect to these patents; isn't that true, sir?

A. No. I don't agree with that.

Q. You're saying that these patents were used to build products and go out and compete in the marketplace?

A. I'm not sure if I can -- I can agree or disagree with that statement.

Q. You know that you didn't do so or your company didn't do so, Motion Offense?

A. That's true. That's true.

Q. Now, you described your company -- let's see if I got the terminology right here.

You described it as a licensing entity; is that right?

A. Yes.

Q. You've also referred to it as a patent monetization industry or patent monetization company; is that right?

A. I don't recall characterizing it that way, but it is synonymous, patent licensing monetization. Yes.

Q. And what that simply means is trying to make money off the patents, in some form or fashion, either

by licensing or otherwise, like you've already described to the jury; is that correct?

A. Yes. Yes. Trying to compensate inventors for their inventions.

Q. Now, you talked to the jury about licenses, going out and getting licenses.

You recall that?

A. Yes.

Q. Now, a license is something -- is simply something where someone takes a license or has a right to use the patents, correct?

A. Yes.

Q. You know, the lawsuit that you talked about against Sprouts, that grocery company?

A. Yes. The Dropbox user. Yeah.

Q. Yes, sir.

Did you go out to Sprouts before you filed your lawsuit and say, hey, we think you might be infringing these patents. You ought to take a license from us?

A. No.

Q. Before you filed your claims in this lawsuit, did you go to Dropbox after it filed its declaratory -- after it filed its action here and say we think that you ought to take a license to these, or did you simply

file your claims back against Dropbox?

A. Well, we've always been open to negotiations for licensing with Dropbox.

Q. That wasn't my question, sir.

My question is, did you go to Dropbox and say we think you ought to take a license?

A. Well --

Q. Let's have a negotiation about that?

A. I think it was inherent in us counterclaiming against Dropbox when they filed their DJ.

Q. Did you go to Dropbox and say we think you ought to take a license?

A. I'm not sure -- did I physically go to Dropbox headquarters and knock on the door?

Q. Did you call Dropbox, did you call them, did you send a letter to them, did you notify them in any way before you filed your claim against them that you thought they ought to take a license?

A. Yes. I think it was inherent with the lawsuit that we filed.

Q. In other words, the notice that you gave Dropbox is when you sued them?

A. Well, they sued us.

Q. The notice that you gave Sprouts, the grocery company, is when you sued them?

A. Yes. That's true.
Q. Without any notice whatsoever?
A. That's true.
Q. In fact, isn't it true, sir, that there has been no attempt by Motion Offense to license a patent without first filing a lawsuit?
A. I can't agree with that statement.
Q. Mr. Gordon, do you recall giving your deposition in this case?
A. Yes.
Q. Can you pull up your transcript -- can you pull up your deposition transcript, Page 73?
Now, as a lawyer, you know what a deposition is, correct.
A. Yes. I apologize. I'm kind of adjusting here so I don't hit the microphone.
Q. Sure. Take your time.
A. And this is Page 73?
Q. Yes, sir.
A. Okay.
Q. You know what a deposition is, right?
A. Yes.
Q. It's when you're sworn to tell the truth just like you're sworn to tell the truth in this courtroom, correct?

A. Yes. Yes. I took the same oath.

Q. And you're asked questions by lawyers and you're supposed to respond to those questions truthfully; is that right, sir?

A. Yes.

Q. At that time, beginning at Page 73, Line 10, were you asked this question: Sitting here today, as the representative of Motion Offense, are you aware of Motion Offense ever attempting to license a patent without first filing a lawsuit?

MR. DAHLGREN: Objection, Your Honor. It's on the screen.

MR. GILLAM: Take the screen off, please.

THE COURT: I'm not sure what your objection was.

MR. DAHLGREN: We're good, Your Honor.

THE COURT: Okay.

Counsel, would you repeat that for us, please?

MR. GILLAM: I will, Your Honor.

Would you pull up the deposition, please, at Page 73, Line 10?

BY MR. GILLAM:

Q. And the question asked to you at your deposition was: Sitting here as representative of

Motion Offense, are you aware of Motion Offense ever, ever attempting to license a patent without first filing a lawsuit?

And your answer at that time was: Sitting here today, without the benefit of, you know, written responses with which we provided after researching this question, no. I don't recall an attempt by Motion Offense to license a patent without first filing a lawsuit, but, again, it's possible.

That was your answer at that time, was it not?

A. Yes.

Q. So you don't recall an attempt by Motion Offense to license a patent without filing a lawsuit; is that correct, sir?

That was your sworn testimony at that time, was it not, sir?

A. Yes. I mean, it was qualified with a line above it that says "without the benefit of the responses for which we provided after researching it."

As part of, you know, lawsuits, the attorneys will ask questions and allow me the opportunity to investigate the answer. We provide written responses. During my deposition, the attorney asked me a question. I couldn't remember. I asked to reference the written responses, and this answer was provided, you know,

without looking at the written responses.

And I stand by my answer today is just as true as my answer in my deposition that I don't recall Motion Offense making an assertive effort to license without litigating.

Q. I'm not sure I got that. You don't recall Motion Offense ever trying to get a license without filing -- or trying to get a license without filing a lawsuit; is that right?

A. Well, and maybe I can explain this so I'm not trying to parse words.

Q. My question is very simply, sir, this, yes-or-no question.

A. Okay.

Q. As you sit here today, are you telling us that Motion Offense has ever just gone out to a company and said we think you ought to give us a license without first just going out and filing a lawsuit against them?

A. I don't know the answer to that sitting today. I believe we provided a written response after we did an investigation, and those are in our rog responses.

And I'll stand by, you know, what I said in the written response after I did research, but I don't recall whether we sent notice letters before we filed a lawsuit against Sprouts.

Q. Not to belabor this point, the bottom line is the first time that anyone ever tried to get a license to these patents is by filing a lawsuit against a company called Sprouts without any notice whatsoever.

That's true, is it not, sir?

A. I can't agree with that. No.

Q. Well, you know you didn't give Sprouts notice?

A. I honestly don't recall, sitting today.

Q. Now, you live in Frisco, north of Dallas; is that right?

A. Yes.

Q. But your office for Motion Offense is 211 West Tyler Street in Longview, Texas?

A. Yes.

Q. How often do you get over there?

A. Not -- I haven't -- not as regular as I used to.

MR. GILLAM: Can you pull up the demonstrative -- there we go.

BY MR. GILLAM:

Q. Now, this is a picture of your office there in Longview; is it not?

A. Yes.

Q. 211 West Tyler Street in Longview?

A. Yes.

Q. Now, did you know I live in Longview, Texas?
A. I did not. I suspected based on the accent. But I did not know that you lived in Longview.
Q. So do you know I drive by that building regularly?
A. I did not know that.
Q. How many employees are in that building?
A. I don't know.
Q. Well, it's your building, is it not?
A. No.
Q. You rent that building?
A. No.
Q. That's where your office is?
A. Yes.
Q. For Motion Offense?
A. Yes.
Q. You've already told us Motion Offense doesn't have any employees, right?
A. Well, myself. Other than myself.
Q. Other than yourself. Nobody -- let's -- nobody works in this office in Longview, Texas connected to Motion Offense, do they?
A. Only I -- I'm only -- you know, I'm Motion Offense. And I don't regularly work out of the Longview office. That's true. I work from home.

Q. Now, Motion Offense isn't your only job, correct?

A. Yeah. That's correct.

MR. GILLAM: If we could zoom in on the right side of that picture a little bit?

BY MR. GILLAM:

Q. You're also involved with a company called Stragent, LLC, right?

A. Yes.

Q. That's another patent monetization firm that works -- that does the same type of work you're talking about here today?

A. Yes.

Q. You're involved with that company, are you not, sir?

A. I am. And Stragent is the same thing. We help inventors make money off their ideas and their inventions.

Q. You're involved with a company called Aloft Media. That's another company you set up, right?

A. No. That's not true.

Q. You involved with Aloft Media?

A. Yes.

Q. Okay. That's another patent monetization firm where you go out and bring lawsuits against people to

try to license patents; is that right, sir?

A. Sometimes.

Q. Offices out of this same office, don't they?

A. Yes. And then just to qualify, they're separate offices within the same office.

Q. You got office suites within the same building, right?

A. Yes.

Q. You're involved with a company called Azure -- you can barely see it on there -- Azure Networks?

A. No. And I'll -- I'm just trying to be helpful here. Azure Networks, I was involved with it, and it's no longer operating. It's a dissolved entity.

Q. Well, when it was operating, it did the same thing that you're doing here in this case, and that's going out, trying to make money off patents, right?

A. Helping inventors make money off their ideas off patents. Yes.

Q. Involved with a company called Jenam or Jenam Tech?

A. Jenam Tech, yes.

Q. Jenam Tech?

A. Yes.

Q. Jenam Tech's another patent monetization company doing the same thing you're doing here today,

right?

A. Jenam is very similar to Motion Offense. Yes.

Q. Patent monetization company?

A. Help inventors make money off their ideas, yes.

Q. They're also in this same building?

A. Yes.

Q. What about a company called -- I may be mispronouncing this -- Magen Tech?

A. Magen Tech. Yeah. And when it came to their -- they're acronyms for my kids. So Magen is Miranda, my wife, Andrew, Jessica, Ethan, Noah. Those are my kids. And then Jenam is just reorganizing those same names. Yeah.

Q. Whatever the origin of the name, the business is the same, right?

A. Yes. They own patents, and they help inventors license their inventions.

Q. You went out and bought patents under the name of Magen Tech, right?

A. No. That's not true.

Q. You created Magen Tech and then it -- how did you acquire the patents with Magen Tech?

A. Those are my own invention.

Q. Oh, those are your invention?

A. Yes.

Q. All right. Let me leave that one alone then. That's still a patent monetization firm operating out of this building?

A. Well, it -- we have not asserted any patents. I'm happy to talk about Magen and my inventions.

Q. Okay. What about OSO IP? Another company does the same thing?

A. That one -- it's complicated because there's several entities. I'm not a -- there's several OSO entities affiliated with this address that are not me.

Q. Are you affiliated with OSO?

A. Not OSO.

Q. Is it a patent monetization firm operating out of the same building?

A. Not that I'm aware.

Q. All right. What about -- I may be mispronouncing this one -- Gummarus?

A. Yeah. I call it Gummarus, but maybe you're right. Gummarus.

Q. Are you involved with Gummarus, Gummarus?

A. Yes.

Q. Operates out of this same building?

A. Yes. I believe so.

Q. It does the same thing you're doing here,

right?

A. Yes. Helping inventors make money off their ideas, off their inventions.

Q. So how many companies have you or are you operating out of this building over here in Longview, Texas?

A. I am not -- I mean, I think you hit -- I think you hit them all. I'm not certain.

Q. All right. Now, you entered into a patent sale agreement with Sitting Man, correct?

A. Yes.

Q. And we heard Mr. Morris testify a few moments ago, but you put no money up front to purchase these patents; isn't that right, sir?

A. Yes.

Q. Now, do you know what a hypothetical negotiation is in the concept of patent law or patent damage lawsuits?

A. Yes. I'm familiar.

Q. Okay. A hypothetical negotiation, which this jury's going to hear about later, is when a patent damages expert gets up and talks about what a royalty would be or a reasonable royalty would be, right? And you assume there's a date where the licensor, potential licensor, and the licensee get together and they would

work out some kind of deal to license a patent, and that would be your damages.

Do you understand that?

A. Yes. Yes. I understand that.

Q. So do you know what the hypothetical negotiation date that your damages expert is going to talk about in this case is?

A. I'm not sure.

Q. Well, what you do know is that when you set up Motion Offense and when you took these patents or bought these patents or acquired these patents from Sitting Man, you paid nothing, right?

A. Yes. There was no upfront costs.

Q. Now, I want to make sure that I do understand this. Under the terms of this agreement that you've got, it's not the only company that's going to benefit if you recover this $35 million that you're seeking in this case; is that right?

A. Yes. Yes. That's true.

Q. So under the terms of that, if you recover $35 million for you doing this, you're going to get 3.5 million.

Does that come out about right?

A. I have to check with a calculator, but that sounds great to me.

Q. So for you paying nothing for these patents, you're going to take $3.5 million if you recover what you're asking this jury for?

A. I think it's 350,000, but I like your number better.

Q. Is it 350,000? Did I miss --

A. Well, I get 1 percent, not 10 percent.

Q. You're right. It's 1 percent. You get $350,000?

A. Yeah.

Q. That's the only money you're going to get out of this; is that right?

A. Yes.

Q. You're not being paid anything else as a result of this?

A. Correct.

Q. No other fees?

A. No.

Q. Now, in addition to the money that you're going to get, 49 percent is going to a company called Mirai Ventures.

Do you understand that?

A. Yes.

Q. Do you know who Mirai Ventures is?

A. Vaguely.

Q. You used to work for them?

A. I -- yes. I worked for -- I do contract work as an attorney, and I worked for one of the attorneys that represents --

Q. Mirai -- I'm sorry. Are you finished?

A. That represents --

Q. Mirai Ventures is a couple of lawyers, right?

A. The owner -- no. I don't think that's true.

Q. Okay. You've done work for Mirai Ventures, right?

A. Yes.

Q. You understand that if this lawsuit is successful, in addition to the money that you're going to get, Mirai Ventures is going to get 49 percent of this?

A. Yes.

Q. I think that's all I have for you, Mr. Gordon. Thank you for your time.

A. Thank you.

REDIRECT EXAMINATION

BY MR. DAHLGREN:

Q. Mr. Gordon, you were asked about an office building that you have -- I believe it was in Longview.

Is that a legal address that you use for your various businesses?

A. Yes. Yeah. When you file paperwork for an LLC in the state of Texas, you have to have a legal address that can accept service.

Q. And the various companies, aside from the one that has your patents that you're the inventor on, what's the purpose of those companies?

A. Well, the -- I'm sorry. Can you re-ask the question?

Q. Sure. So aside from -- carving out the one company with the -- that's holding the patents that you're the inventor on.

A. Okay. The Magen, yes.

Q. Yeah. Are those companies similar to Motion Offense? Are they examples where you're working with inventors?

A. Yes. Yes. And the inventors receive the majority share of the proceeds.

Q. And how many different inventors have you partnered with since you started in this business?

A. Oh, dozens.

Q. And do you think that you've -- they've benefitted from working with you?

A. Definitely. Definitely. It's very expensive to do patent monetization to protect your intellectual property. It takes a certain level of expertise.

And, you know, the defense, they made a big deal about there's a bunch of lawyers. Well, you know, right or wrong, it takes lawyers who are skilled in the art and can navigate this patent process.

Q. And you've been doing this since around 2010; is that correct?

A. In Texas. Yes. Since 2010.

Q. And in all that time, how many trials have you been in?

A. This is the second trial.

MR. DAHLGREN: No further questions.

Thank you, Mr. Gordon.

THE COURT: Anything else, Counsel?

MR. GILLAM: Just one area, Your Honor.

RECROSS-EXAMINATION

BY MR. GILLAM:

Q. So you took the bar in California; is that right?

A. Yes.

Q. And you're doing all this business here in Texas.

Are you licensed here in the state of Texas as a lawyer?

A. I'm not licensed in the state of Texas. I don't practice Texas law. Patents are federal law.

And my work at the USPTO, I am licensed to practice before the USPTO.

Q. But you're setting up all these --

THE COURT: Mr. Gillam, I am sorry.

Did you say "I am licensed"?

THE WITNESS: I am licensed.

THE COURT: Thank you.

THE WITNESS: Yes.

BY MR. GILLAM:

Q. You're licensed at the Patent Office, you're licensed in California, you're setting up all these Texas businesses to try to make this money off of patents, but you're not licensed in the state of Texas.

Is that about right?

A. Well, it's my understanding that any individual can file paperwork in the state of Texas for themselves or for their business. I'm not filing it on behalf of my brother or my neighbor.

Q. I'm only asking you if you're licensed in the state of Texas.

A. I'm not.

Q. Thank you.

MR. GILLAM: Pass the witness, Your Honor.

MR. DAHLGREN: No questions, Your Honor.

03:57 THE COURT: You can step down.

03:57 Ladies and gentlemen, why don't we take a short recess?

03:57 And if you'll remember my instructions from earlier, don't discuss the case amongst yourselves. We'll come back in about ten minutes.

03:57 THE BAILIFF: All rise.

03:57 (Jury exited the courtroom.)

03:57 THE COURT: You may be seated.

03:57 Counsel, is there anything we need to take up?

03:57 MR. GILLAM: Not from Dropbox, Your Honor.

03:58 MR. DEVLIN: Nothing from Motion Offense.

03:58 THE COURT: We can go off the record.

03:58 (Off-the-record discussion.)

03:58 (Recess taken.)

04:13 THE BAILIFF: All rise.

04:13 THE COURT: Please remain standing for the jury.

04:13 (Jury entered the courtroom.)

04:13 THE COURT: Thank you. You may be seated.

04:13 Counsel, you may call your next witness.

04:13 MR. DEVLIN: Your Honor, we have a couple

of witnesses that we are going to read in by way of deposition. And so I'm not sure if Your Honor wanted to introduce the concept or I can?

THE COURT: I'm happy to.

MR. DEVLIN: Thank you, Your Honor.

THE COURT: Thank you for asking.

So ladies and gentlemen of the jury, there are witnesses who -- when the lawyers are preparing the case for trial, they'll take what's called a deposition of a witness.

They'll -- one side will say I'd like to take a witness. Usually, it's someone who might work for the other side, but it could be anybody that's relevant to the case.

And the lawyers meet with the witness. There is always a court reporter, not as good as my court reporter, I'm sure, but a court reporter, and the witness will be sworn in under oath.

And the lawyers on both sides get to ask whatever questions they want, and the answers that are given are under oath.

And we're in Waco, Texas. So there are some witnesses the lawyers can invite to show up and they have to show up, but there are other folks that they can invite and they don't have to show up, and so

we play their depositions for you.

The important thing to remember is this: You all are the judges of the evidence. You've had two witnesses who've appeared live and been sworn and they testified.

These witnesses will be appearing having been sworn, they just won't be here. But they deserve equal dignity in terms of their credibility, which means, just like the first two witnesses, you can accept what they said as true, not true, however -- y'all are the judges.

And the only thing I want you to understand is the fact that they're not here should not impact your decision with respect to their credibility. You need to make up your mind about whether or not they're being truthful or not just as if they were here in person.

Mr. Devlin?

MR. DEVLIN: Thank you, Your Honor.

Little more detail. So we are -- we don't have video for all of them so we're just going to read them in.

We have two members of our team who can read. And if Your Honor would like the witness in the stand, we can do that, or they can stand at the podium.

Whatever is --

THE COURT: It'd be better for Kristie, I think, for them to be at the stand -- I'm sorry -- in the witness stand.

MR. DEVLIN: Thank you. So we're going to have Mr. Andrew Sherman be reading the questions, and Ms. Jill Callahan be acting as the witness and reading the answers.

And these are the combined designations from both parties that will be read in.

Thank you.

MR. SHERMAN: Thank you, Your Honor. May it please the Court?

The first deposition testimony we're going to read today is from Pearl Shu, the director of growth strategy and operations at Dropbox, as of the testimony that took place on September 14th, 2022.

And as Mr. Devlin stated, we -- the parties have agreed to citations, and I'm going to read them in order. And Ms. Callahan will respond in kind.

So here we go.

(Deposition of Pearl Shu read as follows.)

Q. Could you please state your name for the record?

A. My name is Pearl Shu.

Q. And can you state your current employer?
A. Current employer is Dropbox.
Q. And what is your position at Dropbox?
A. My position at Dropbox is director of growth strategy and operations.
Q. And to achieve the revenue targets, Dropbox raised the price of the standard and advanced plans.

What made Dropbox think that 20 percent was the appropriate price by which to raise the pricing for the standard and advanced plans?
A. So, again, I was not part of the process for determining -- determining exactly how many -- how much we should be increasing the prices. But my team does follow a standard, probably like a three-pronged approach we call it.

One is actually looking at the value to the customer. Second is competitive dynamics, and the third is financial implications to the Dropbox, primarily costs. So we would take into all those considerations.
Q. What were the inputs that Dropbox considered in setting the pricing for its products prior to February 2022?
A. So from my conversations with my team, who are involved in some -- definitely some decisions prior to

2022, we take it -- the same approach as we do today, which is a three-pronged approach that I mentioned earlier, which is, one, concerning the value to the customer of those features.

The second one is competitive dynamics and what our competitors are doing, and the third is just financial implications to Dropbox and costs.

Q. When you say "market research," what do you mean?

A. So my team, in order to understand the first bucket that I mentioned in our three-pronged approach, uses market research, which is both a combination of qualitative research in which we are directly interviewing customers or doing focus groups, and quantitative research in which we are actually conducting surveys, such as Conjoint Analysis or Van Westendorp, to understand new willingness to pay and the value to the customer.

Q. You anticipated two of my questions which is: What is Conjoint Analysis?

A. So Conjoint Analysis is a survey method, various statistical, back heavy, that allows us to understand what a customer's willingness to pay and their value to a feature or a set of features is without directly having to ask them in the survey.

Q. So is Conjoint Analysis one of the things that Dropbox does in order to understand what customers want from products? Is that right?

A. Yes. That's correct. It's one input into many inputs.

Q. So are Conjoint Analysis and Van Westendorp analysis standard in the industry or are they something unique that only Dropbox uses?

A. It is pretty standard across the industry based off of my experiences at multiple companies.

Q. Is it something you used when you were at Spotify as well, Van Westendorp and Conjoint Analysis?

A. Yes. We used both at Spotify.

Q. And do you know if those are, in your experience, generally accepted as standard tools for trying to attain customer preferences in the industry?

A. It is.

Q. And what do you mean by value? Are we talking about in dollar value or is it -- I think this is important kind of value -- more of a qualitative amorphous value?

A. Conjoint gives us what we call a utility score. So it is a quantitative value, but it's not necessarily a dollar amount of value. It is a utility score that is relative to each other, relative to other

features that you test it with.

Q. Does Dropbox ever apply a dollar value to customer preferences?

A. We don't apply a dollar value to a particular feature or feature set. We only apply what we call a utility score to understand a relative importance of a feature if we were to, let's say, place in our plans -- or not place in our plans -- to help us make a decision of how to package it.

Q. Is it only storage that changes when you change tiers of plans at Dropbox?

A. It's not the only thing that changes. However, we have found through a consistent market research at the company that storage is one of the main factors why -- that affects how Dropbox customers choose a plan today.

Q. My understanding is based on your testimony -- and, again, please correct me if I'm misstating it -- but based on your testimony that Dropbox uses quantitative research such as the Conjoint Analysis and the Van Westendorp analysis we discussed earlier in its pricing strategy; is that right?

A. That's correct.

Q. And how does Dropbox determine whether it can rely on the Conjoint Analysis and the Van Westendorp

analysis in this pricing strategy?

A. So Van Westendorp and Conjoint are just one input into the final decision for any pricing decision we make. Within those specific survey methodologies, we -- again, we work with either external vendors or we do some of that internally within our pricing and packaging team. But in order for it to be reliable, it is to ensure that, you know, you don't ask misleading questions or that we have a robust enough sample size as some indication of reliability.

Q. So if I understand your answer, Dropbox attempts to make sure that it has a statistically significant sample size in its surveys and that it properly formulates the survey questions so that they are not misleading; is that right?

A. We take steps to ensure that all the surveys we do for quantitative research are robust and reliable by taking into account things like sample sizes, statistical significance, and that we have, you know, asked all the right types of questions.

Q. And how, if at all, do individual features of the Dropbox products factor into the Dropbox pricing decisions?

A. I would say it is an input into our pricing decision, but no one feature or, you know, even a set

of features will be the driver of a pricing decision.

Q. When did Dropbox most recently raise its prices?

A. Dropbox most recently raised its price for the standard and advanced plans in July 2022, which we announced in June.

Q. Are you aware of a Dropbox feature called Smart Sync?

A. I am aware.

Q. Did Smart Sync play a role in Dropbox's price increase in July of this year?

A. No. Smart Sync did not play a role in our price increase in July 2022.

Q. Are you aware of a Dropbox feature called File Request?

A. Yes. I'm aware.

Q. Did File Request play a role in Dropbox's price increase in July of this year?

A. File Request did not play a role in our price increase of July 2022.

Q. Did you use Dropbox prior to joining Dropbox?

A. I did. I used Dropbox on a personal basis prior to joining Dropbox.

Q. And when did you first start using Dropbox?

A. I first started using Dropbox in November of

2011. I took a look at my Welcome to Dropbox e-mail as part of preparing for this deposition, and it was dated November 2011.

Q. And how did you use Dropbox in November of 2011?

A. When I first used Dropbox, it was primarily for backing up my files and syncing it to the cloud and being able to access it on multiple devices.

Q. Since November of 2011, have you used Dropbox for anything other than backing up files?

A. I have. Since 2011, I've started to share files and photos with my friends and family on Dropbox. I started doing that around -- when I graduated college which was in 2012.

Q. What is your understanding regarding whether Dropbox could be used to share files prior to 2012?

A. So as part of that Welcome to Dropbox e-mail I did take a look at, it did state that I was able at that time in 2011 to share files and photos with my friends and family.

MR. SHERMAN: Your Honor, that concludes the testimony of Pearl Shu. For the record. We'd now like to move on to the testimony of Deborah Holstein, who is the VP of global marketing at Dropbox as of the date of this testimony on June 30th, 2022.

(Deposition of Deborah Holstein read as follows.)

Q. Can you state your name for the record?

A. Deborah Holstein.

Q. So we're going to start with what is your current position, employment position?

A. I'm the VP of global marketing at Dropbox.

Q. Well, do you have an understanding of what the phrase "upselling" means?

A. I do.

Q. And what is your understanding?

A. To upsell from a current plan into a higher level, a more premium plan.

Q. And does Dropbox attempt to upsell customers from the free -- or what Dropbox calls the Basic plan into other plans?

A. Yes. We try to -- we try to monetize the Basic users by getting them to purchase more premium plans.

Q. And what does "monetize" mean?

A. Sorry. We try -- I'm sorry. I used the term "monetize," but what I mean is -- is to go from free to paid.

Q. So if they convert or upsell from a Basic plan to a paid plan, then they are now contributing to the ARR; is that right?

A. If they upsell from free to paid, then they would be contributing to the annual recurring revenue.

Q. And does Dropbox have marketing plans that attempt to convert Basic customers to paid customers?

A. We do.

Q. And does Dropbox have a way of determining the effectiveness of those programs?

A. Yeah. We're able to tell from e-mail campaigns how many of the people that were targeted did end up going from free to paid.

Q. You mentioned written reports regarding surveys. What do you mean by that?

A. Our research and insights team, if they're doing a -- a study, they'll -- they might do -- they might do a survey of customers, and then they would build a report.

Q. And does the marketing team rely on the surveys that the research and insights team does to help understand what customers value from Dropbox?

A. Inputs like that are one part of building a marketing strategy.

Q. So is it accurate to say that multiple divisions within Dropbox use the surveys and the user experience information that the research team provides?

A. I would say that the -- yeah. The -- the

research and insights -- the output from that team is used by multiple different departments.

Q. And who are Dropbox's competitors?

A. We have a number of different competitors because we address a number of different use cases. So I'd say our biggest competitors include Box, Google, Microsoft.

Q. And does marketing try and determine what functionality customers value in the product?

A. We want to understand -- different customers are going to value different things because they're trying to do different things. So what we're trying to do is make sure that they're talking -- that we are talking about the value -- all the different ways that people can use Dropbox such that when the need arises, they know that we're there.

Q. So if we're looking at the same document, the first page of this document should have what appears to be a title that says "LTG: Personal Strategy," and then underneath that, it says "PSR Domain inputs, Period May 2019."

Do you see that?

A. I do.

Q. And at the bottom right-hand corner of that page, it should say DRBX_MOOFF_, and then 0000,

followed by the number 18634.

Do you see that?

A. I do.

Q. Is this a type of document you've seen while you've been working at Dropbox?

A. It looks like a primary -- like I said, a strategy document.

Q. And what is a strategy document?

A. It sort of outlines the reasons why -- or it's proposing a way forward, right? We see this happening in the market, we suggest doing these things.

Q. So setting aside this particular document, are these -- this type of document would be the ones that would be considered and, if they decide to move forward with the strategy, relied upon in forming that strategy; is that right?

A. We would -- we would use the input -- we would use the insights that are from this to help to inform the execution strategy.

Q. Okay. If you'd go to the first page of the document, it has a title "Dropbox Feature, Pricing and Portfolio Optimization."

Do you see that?

A. I do.

Q. And it has a Bates number on the right-hand

corner ending in 30882?

A. Yes.

Q. Excellent.

This document appears to have what is a date in the bottom left-hand corner that says July 2014.

Do you see that?

A. I do.

Q. And my understanding is that based on our earlier conversation, that that's well before you joined Dropbox; is that correct?

Is that right?

A. That's correct.

Q. Is this a type of document that you've seen since you've joined Dropbox?

A. What it appears to be is a research readout -- you know, research results readout. So I have seen research results.

Q. And earlier we talked about the research and insights team and external consultants as both being inputs that marketing might use to develop its strategies; is that right?

A. Yes.

Q. And is this document the type of input from either one, either research and insights or an external consultant, that marketing would use to develop a

strategy?

A. We would use it as an input. Yeah.

Q. Okay.

A. As one input.

Q. Is the graphic in the center of the document, does that represent a user survey?

A. The way I understand the slide is that they're showing an example of a choice-based conjoint study. Generally conjoint studies involve surveying others.

Q. And do you know what a choice-based conjoint study is?

A. It's a type of analysis where the survey's helping folks -- the survey is -- is getting survey results from people who are looking at packages of features and functionality and -- and determining how much they would pay for that particular set of packaged-up features and functionality.

Q. And so this is the type of survey that the research and insight team or external consultant might do for Dropbox that would then be provided to marketing to use in formatting a strategy; is that right?

A. That's right. Generally, what would happen is that this would be an input into a pricing strategy, and then the pricing strategy would then come to marketing where we would then help with the execution

of that.

Q. The first page of this document ends in Bates No. 34,000 and appears to be a PowerPoint slide with the title "Relative Feature Value."

Do you see that?

A. I see it.

Q. And it says it's a user's -- it says user survey by Donovan and appears to have a date underneath that, July 2015.

Do you see that?

A. I see it.

Q. Is this a type of document that you are familiar with from your experience at Dropbox?

A. This is -- this looks like a research readout from a -- from a survey.

Q. And what do you mean by "readout from a survey"?

A. Sorry. The presentation of the findings. It looks like presentations of the findings of the -- of the user survey.

Q. And is this the kind of report that the marketing group would use and refer to in designing marketing programs?

A. If they -- they would -- they would allow us to see the results or they would give us the results of

a -- of a research report like this.

Q. What is the primary way that marketing attempts to differentiate the Dropbox products from its competitors?

A. What we try to do is to educate our -- educate our prospects and our customers on all the different features and functionalities that Dropbox has.

Every customer is going to value something different, and so we want to make sure they have a full understanding of all the different features and functionality that there are.

Q. Are there any particular features or functionality that Dropbox emphasizes in its marketing?

A. We try to focus it on those use cases that -- that are -- that, you know, segment. So for personal-use cases, we'd be talking about photo and video backup.

For those that we're focusing more on the, you know, Teams, for folks who might buy the Teams plans, we'd be focusing on how do their marketing teams, how do their creative teams, how do their sales teams -- what are those outcomes that those teams are after, and then talk about those particular use cases can be accomplished with Dropbox features.

Q. Are there any use cases where Dropbox would

focus on the file sharing functionality?

A. In general, we never talk about, like, just one feature. It's always part of everything that we're doing when we're talking about a full scope of all the different features and functionality that could be used.

There would be occasions in use cases where one of many different features and functionalities that we would talk -- that we would also talk about file sharing.

Q. Did you use Dropbox prior to joining Dropbox?

A. I did. I used it for personal use.

Q. When did you first use Dropbox for personal use?

A. I cannot remember the exact date of it, but it's well over ten years.

Q. And how did you use Dropbox prior to joining Dropbox?

A. I was using it to store important filings.

Q. What is your understanding regarding whether Dropbox could be used to share folders prior to 2012?

A. I was aware that it could be used to share folders.

Q. Do you understand that a man named Robert Paul Morris is the named inventor on the patents that Motion

Offense is asserting against Dropbox?

A. I only learned of him after the lawsuit was filed.

Q. And have you heard of any of those asserted patents before the lawsuit was filed?

A. No.

Q. What features does Dropbox market to its customers?

A. We market -- we try to talk to all of our customers and educate them about all of the different features and functionality of Dropbox so that they can use it the way they want and need to use it. So we don't focus on any one in particular.

Q. Do you market the same features to every customer or does it vary by audience?

A. What we market varies by audience because they have different use cases.

Q. What are some of the features that Dropbox markets?

A. We talk a lot about the ease of use, storage and backup, security. These are all -- these are fairly common -- common ones that we talk about.

Q. And do you have an understanding for why customers choose Dropbox over its competitors?

A. They choose -- they choose us for -- for

different reasons. Everyone is kind of using Dropbox in their own unique way. And so we have, you know, there's some commonalities around ease of use, storage, backup, things like that.

But in general, each customer is using it the way that they're choosing to use it.

MR. SHERMAN: Your Honor, that concludes the designated testimony for Deborah Holstein. Both witnesses.

THE COURT: Is that all the depos?

MR. SHERMAN: Yes, Your Honor.

THE COURT: Thank you, ma'am.

Next witness?

MR. DEVLIN: Your Honor, Motion Offense calls Dr. Robert Akl. This is our testifying expert on the issues of -- technical issues of infringement and validity, infringement for now.

(The witness was sworn.)

DIRECT EXAMINATION

BY MR. DEVLIN:

Q. Good afternoon, Dr. Akl.

A. Good afternoon.

Q. Could you state your full name for the record again?

A. Robert Akl.

Q. And who retained you in this case?
A. Counsel for Motion Offense.
Q. And have you helped prepare a set of slides that we'll use to assist your testimony today?
A. I did.
Q. Okay.
MR. DEVLIN: Let's pull those up. And go to the first slide, Mr. Gooden -- second slide, I mean.
BY MR. DEVLIN:
Q. What were your assignments in this case, Dr. Akl?
A. I had three. My first assignment was to evaluate infringement of the asserted patents, then I was asked to evaluate the validity of the asserted patents. And finally, I was asked to provide technical opinions that would be relevant to damages.
Q. And are you going to talk about all three of those topics in your testimony today and probably tomorrow morning?
A. I'm going to talk about mostly No. 1 and No. 3 a little bit.
Q. And No. 2, we're going to reserve until later in the case, if needed?
A. Yes.
Q. Before we get into the details of your

04:37 background and your opinions, what did you determine,
04:37 just in summary, about whether the Dropbox service
04:37 infringes the patent claims that are asserted here?
04:38 A. It is my opinion that Dropbox infringes the
04:38 asserted patents.
04:38 Q. Let's talk about some of your background and
04:38 experience that helps you render that opinion.
04:38 MR. DEVLIN: Go to the next slide,
04:38 please.
04:38 BY MR. DEVLIN:
04:38 Q. Tell us a little bit about your educational
04:38 background.
04:38 A. So I have a bachelor of science in computer
04:38 science, a bachelor of science in electrical
04:38 engineering, a master's of science in electrical
04:38 engineering and a doctor of science in electrical
04:38 engineering all from Washington University in
04:38 St. Louis.
04:38 Q. Thank you.
04:38 I see you -- I said this before -- had a 4.0
04:38 GPA all the way through?
04:38 A. Yes. I've always been very proud of that.
04:38 Q. Okay. It's a round number.
04:38 MR. DEVLIN: Next slide, please.
04:38 BY MR. DEVLIN:

Q. Tell us about your work history since you graduated with your doctoral degree.

A. So after graduating from Washington University, I was a senior systems engineer at ComSpace Corporation in the DFW area.

And then I moved to New Orleans. I was an assistant professor there before coming back to the University of North Texas, where I have been a tenured professor in the computer science and engineering department for just over 20 years.

Q. Thank you.

I see there's a couple of other bullets at the bottom. Were they during -- while you were still a student in part?

A. Yes. So the bottom three, when I was a research assistant and my work with Teleware and MinnMax was in the '90s while I was pursuing my master's and doctorate.

Q. Okay.

MR. DEVLIN: Next slide, please.

BY MR. DEVLIN:

Q. Tell us a little bit about your -- the experience in your work, the relevant experience, that allows you to render opinions in this case.

A. So I'm relying on my experience being a

professor for the last 20-plus years. During that time, I have designed and taught courses in computer systems and in networking, and I've designed networking systems. And my students have graduated and worked for different companies like Google and Microsoft and so on.

Q. But you have a bullet here about some research and educational grants you've received. Tell us about that.

A. Yes. So starting in 2005, I wanted to have students -- basically middle school and high school students. That's where the research showed that we lose them in the sense they -- they lose interest in science or engineering.

So I started doing summer camps for middle and high school students in the summer. They would come for a week to UNT. And we started with a small grant from the State of Texas. And it was mainly for women and minorities, and then we started adding young men.

And I did that over many years. And we went from just teaching them robotics to teaching them app programming, to teaching them computer programming. And over those years I've been able to raise over a million dollars so those students can come and attend for free.

Q. Are you a member of any professional organizations?

A. Yes.

Q. Let's talk about that.

A. So I am a member of the IEEE, which is the Institute for Electrical and Electronics Engineers. I'm a senior member.

Q. I see some awards you've received from the IEEE and other organizations. Let's talk about that.

A. Yes. So I have received from the IEEE a Professionalism Award in 2008, and from the Fort Worth chapter for my work in promoting engineering.

I've also received a College of Engineering Outstanding Teacher Award from UNT, and I also received a Tech Titan of the Future Award. I've received others but these are ones I'm most proud of.

Q. You have a number of publications in the field; is that right?

A. Yes.

Q. Without belaboring them or listing all of them, can you give us some basics there?

A. Sure. There's always the saying, you know, publish or perish. So as a professor, we have to continuously do research, and I've worked with my Ph.D. students over the years, and I have several journal

publications, conference publications, book chapters and technical presentations.

Q. Have you testified as an expert in a patent case before?

A. Yes.

Q. On the types of issues that we're going to be talking about today like infringement?

A. Yes. I have done that before.

Q. Have you ever been disqualified as an expert for any soundness of your opinion or the like?

A. No.

Q. Are you being compensated for the time that you're spending here to testify?

A. Yes. I am being compensated for my time.

Q. And have you been compensated for your time throughout the work you've done for the case?

A. Yes.

Q. Is -- has your compensation ever in any way been related to the opinions that you've given or the outcome of this case or anything like that?

A. No. I have no financial interest at all in this case.

MR. DEVLIN: I'd like to offer Dr. Akl as an expert in the area of computer systems and networking.

04:43 MR. LANTIER: No objection from Dropbox, Your Honor.

04:43 THE COURT: He'll be recognized as an expert.

04:43 MR. DEVLIN: Thank you.

04:43 Go to the next slide, please.

04:43 BY MR. DEVLIN:

04:43 Q. So you understand, Dr. Akl, that when you're looking at the question of infringement in a patent case, you have to analyze that issue from the perspective of someone who's referred to as a person of ordinary skill in the art.

04:43 Do you understand that?

04:43 A. Yes.

04:43 Q. Okay. Who -- what is that? Describe that, a person of ordinary skill in the art.

04:43 A. So this is not a real person. This is a hypothetical person that, as an expert looking at the patents, I need to first determine the qualifications of such a person.

04:44 Q. And did you in fact do that? Did you define the qualifications of such a person, and then having done that, viewed all the issues of infringement from that hypothetical person's perspective?

04:44 A. Yes.

Q. Okay. Is -- do we have here on the screen your opinion about what the level of skill would be of a person of ordinary skill in the art?

And I may say POSITA from now on. It's an odd acronym, but it's easier than saying the whole thing.

So is this your definition?

A. Yes.

Q. Okay. Tell us about it.

A. So a POSITA, or a person of ordinary skill in the art, for the asserted patents here, it would be this hypothetical person with this background. And this background or set of qualifications would be a bachelor's degree in electrical engineering, computer engineering, computer science or a related field, and two to three years of experience in the design or development of computer systems and networking, or the equivalent, or additional graduate education.

Q. Thank you.

Now, does this describe you now? This definition?

A. No. I am considered an expert. So my qualifications are beyond or more advanced than what a POSITA is.

Q. So how do you apply this person's perspective?

A. So as an expert in the field, it's my job to

think of this definition and put myself in the shoes of a POSITA and render opinions, not as me personally as an expert, but in the shoes of what a person of ordinary skill in the art would know in coming up with the opinions and conclusions.

Q. Now, Dropbox has an expert on these issues of infringement, Dr. Gibbons. And you understand he has a slightly different definition of the knowledge and experience of a POSITA?

A. Yes.

Q. If you had applied his definition, would your opinions regarding infringement change at all?

A. No. The two definitions are fairly similar, and my opinions are the same under either definition.

Q. Thank you.

Have you reviewed the four patents in this case?

A. Yes.

Q. What parts of the patents do you focus on for your infringement analysis?

A. We focus on the claims and the asserted claims.

Q. All right. Have you studied the entirety of the patents nevertheless?

A. Yes.

Q. Okay. Let's talk briefly about the relationship between the various patents. We've been talking about them in two groups; folder share, file request; is that right?

A. Yes.

Q. Okay. Are they all related in some way nevertheless?

A. Yes.

Q. How so?

A. So they're part of the same patent family.

Q. Okay. What do you mean when you say "patent family"?

A. So they all come from a common application.

Q. Okay. In this case, you know there's two applications; is that right?

A. Yes.

Q. Is the family here defined by the related applications and patents going back to those two applications in September 2012?

A. That's correct.

Q. Thank you.

They all have Mr. Morris as the inventor?

A. Yes.

Q. Thanks.

Have you looked at the Dropbox service that's

accused of infringement?

A. Yes.

Q. And what exactly is accused of infringement here?

A. So what's accused of infringement is the Dropbox service specifically that practices the invention when users use Dropbox.

Q. What generally -- how does that Dropbox service operate, just at a very high level?

A. So Dropbox owns servers and those servers are throughout, and those servers communicate over the Internet with users that either have a free plan or a paid plan but have a Dropbox account, and then they install Dropbox software and use Dropbox services.

Q. Thank you.

Now, does Dropbox offer other products and services besides the thing that's called Dropbox service?

A. Yes.

Q. What are those?

A. So there's a couple other like Dropbox Paper. There's a couple other apps that they offer that I'm not rendering opinions on.

Q. I was just going to ask you, are you offering any opinion -- are they accused of infringement here at

all?

A. No.

Q. Okay. In the Dropbox service that is accused, are there particular features that we're going to be focusing on?

A. Yes.

Q. What are those?

A. So we're going to be -- from the Dropbox point of view, we're going to be looking at folder sharing, which incorporates Smart Sync, and we're going to be looking at file request that also incorporates Smart Sync.

Q. Okay. Does Dropbox offer different plans or different levels of the service?

A. Yes.

Q. Are they organized in any fashion?

A. Yes. They have, like, Personal plans and they have Business plans.

MR. DEVLIN: Let's take a look at the next slide, 10.

BY MR. DEVLIN:

Q. So can you just identify for the record what the Personal plans are and what the Business plans are?

A. Yes. So on the Personal side, there's the free plan that's not accused, and then there is a Plus

Personal plan and then there is a Family Personal plan. Those are paid plans.

And on the Business side, what's accused is the Professional plan, a Business Standard, a Business Advanced and a Business Enterprise.

Q. Thank you.

I think you mentioned there's a -- we heard there's a free Dropbox plan?

A. Yes. There's a Basic free plan that is not accused on the Personal side.

Q. Thank you.

That's what my next question -- that's not accused of infringement here?

A. Correct.

Q. Okay. Does that include Smart Sync?

A. No.

Q. That's the Basic plan?

Is Smart Sync included in all of the Personal and Business plans, the paid plans, that are infringing, in your opinion?

A. Yes.

Q. As an aside, is there any plan that includes just the accused features and nothing else? Or are they sold in these groups?

A. No. Basically the plans include multiple

features, including what's accused.

Q. Okay. Let me talk about the evidence that we're going to look at and how it's organized. So is the evidence that we're going to see, does all of it relate to both the Personal plans and the Business plans, or is there some other organization?

A. It relates to both.

Q. Okay.

A. I mean, some relate specifically to one or the other, but I've looked at both to render my opinions.

Q. Okay. When we're looking at evidence that relates to the Personal plan, does it relate to each of the plans in the Personal column?

A. Yes.

Q. So in other words, we don't have different evidence for Personal Plus versus Personal Family, same evidence for those?

A. That is correct.

Q. Okay. And same on the Business side, one set of evidence for all the Business plans; is that right or wrong?

A. Yes. That is correct.

Q. Okay. Thank you.

And for the record, since these are United States patents, is the Dropbox service offered in the

United States?

A. Yes.

Q. Thank you.

Let's turn to your infringement analysis and turn first to the asserted claims that we're going to be going through.

MR. DEVLIN: Is that the next slide? Yes.

So I'll just read them in and you, the jury, will have access to them on your forms that you need.

BY MR. DEVLIN:

Q. For the '158 patent, Claims 3, 6 and 14; is that right?

A. Yes.

Q. Okay. The '215 patent, Claim 18, right?

A. Yes.

Q. '052, Claims 12, 20 and 27?

A. Yes.

Q. And the '548 patent, Claim 46; is that right?

A. Yes. We refer to the patents by the last three digits. It makes it easier.

Q. Okay. Now, some of these -- are some of these claims what are referred to as independent claims?

A. Yes.

04:52 Q. And are others referred to as dependent claims?

04:52 A. Yes.

04:52 Q. Okay. We'll look at that, but just explain to the jury, please, what the relationship is between an independent claim and a dependent claim.

04:52 A. So an independent claim is a claim that stands on its own and doesn't reference any other claim.

04:52 A dependent claim is one that usually starts by referencing a previous claim. And so for a dependent claim, because it references a previous claim, we have to go through all of those elements including the elements in that dependent claim to show infringement.

04:52 Q. Thank you.

04:52 And when you're showing infringement of any single patent claim, in terms of the level of detail, what exactly do you need to show?

04:53 A. So I have to look at every word in the claim and I have to be able to show whether or not an accused product infringes or practices or carries out that functionality that's in the claim language.

04:53 Q. And you do that for every single element of the claim, every feature?

04:53 A. Yes.

04:53 Q. And when you analyzed infringement in this case, did you attend to all those details, every element of every asserted claim?

04:53 A. Yes.

04:53 Q. How many hours, roughly, did you spend on your work in this case?

04:53 A. Hundreds of hours. Over 100 hours looking at different aspects, including Dropbox source code, Dropbox documents, tests that -- snapshots that I took, testing that I did. And there's a lot of other materials that I looked at.

04:54 Q. Thank you.

Speaking of that, let's look at the materials that you considered. So is -- we're looking at Slide 12.

Is this a full listing, roughly, of the materials that you considered for this case?

04:54 A. Yes.

04:54 Q. All right. Did you -- I know you just identified them, but is there anything on this list that sparks your memory of something --

04:54 A. So of course, I started out with the patents. I studied those patents, and then I -- looking at the Dropbox, I looked at Dropbox source code. I looked at the Dropbox apps. I looked at testimony from Dropbox

employees, documents that were produced by Dropbox, publicly available information on Dropbox websites, and then I also read the reports and the testimony of Dropbox experts.

Q. Will we have time today to go through all of the evidence that you looked at for your analysis?

A. No.

Q. Is that a "no"?

A. Yes. I mean, there's no -- I -- it took me, you know, months. But I will try to summarize key evidence for at least every limitation and describe what I looked at.

Q. Okay. You used the word "limitation" there. And we hate ourselves sometimes.

Is that another word that patent lawyers use to describe an element of a claim?

A. Yes. So a claim is made up of a lot of different lines. And sometimes we refer to those individual lines or phrases as an element or a limitation because, in a way, they narrow the claims. It's a limitation that we have to show exists in a product.

Q. All right. Let's dive right into the first of these claims. And I'll warn everyone, this will take awhile.

Let me say this. So we've got two folder share claims and we've got -- sorry -- two folder share patents and a variety of claims there. We've got two file requests patents and a variety of claims there.

Within the folder share claims, are there some overlap in the elements between the different claims? Does that make sense?

A. Yes.

Q. Okay. So when we go through the first one, will we have to go through every single line and element?

A. Yes.

Q. Okay. But will that save us a little time in the later ones hopefully?

A. Yeah. So the first one is the longest because this is the first one we start with. And then there's going to start being overlap, and then things are going to go faster.

Q. Okay. And then is the same true for the set of file requests claims, first one will be long and then we'll gain some --

A. Yes. The later claims will -- there'll be some overlap and there's even going to be some overlap with the -- some of the elements we discuss today when I continue tomorrow.

04:56 Q. Okay. Great. Thank you.

So first, did you analyze whether the Dropbox service infringes Claim 3 of the '158 patent?

A. I did.

Q. And did you analyze Claim 3 in light of all of the materials that you spoke about earlier that you considered?

A. I did.

Q. And so I don't have to ask that question again, when you were looking at your infringement analysis for every single one of these claims, did you look at all of those sorts of materials that we just referenced before?

A. Yes. I looked at documents, the Dropbox documents. I looked at source code. I looked at testing. I looked at testimony. So these are examples, but I looked at everything for every single line of each claim that I examined.

Q. Thank you.

And what is your opinion regarding whether the Dropbox service infringes Claim 3 of the '158 patent?

A. My conclusion is that it does infringe.

Q. Okay. Can we agree that when I just say Dropbox service, I'm referencing those six plans that you had on that slide earlier and that you named?

A. Yes.

Q. Thank you. All right.

MR. DEVLIN: Let's look at the first -- we're looking at it right now, Claim 3 of the '158 patent.

BY MR. DEVLIN:

Q. This is the claim we're talking about?

A. Yes.

Q. All right. Now, did you put this claim on a chart that we can go through a little more clearly?

A. Yes.

Q. Okay. Let's take a look at that.

And I think, just so we're all not getting ahead of ourselves, there's actually more of the claim on a second chart like this?

A. Yes.

Q. This is the first part of it.

MR. DEVLIN: There you go.

Okay. So if we can go back to the front part.

BY MR. DEVLIN:

Q. So we've highlighted this first what we're going to call "element" of the claims here in green. And then we've got Personal and Business on the right.

You see those columns?

A. Yes.

Q. What are those for, those columns?

A. So those are going to be where we're going to check off if the analysis shows and the evidence shows that Dropbox Personal and Dropbox Business infringe or carry out the functionality in that element.

Q. Okay. And on the far left, we've got a column that says P, 3[a], 3[b].

Are they actually -- are those labels part of the claim?

A. No. Those are what I put in just so that it makes it easier for us to refer to different lines from the claim.

Q. Okay. Thank you.

And for the jury's benefit, when they're later -- if they're ever looking at these patents, where are the claims in the patents generally, in the front, middle, wherever?

A. They're at the very end --

Q. Okay.

A. -- of the patent.

Q. Thank you.

All right. So here we're at the start of Claim 3, it says "an apparatus comprising," and we go down to the words "execute the instructions to."

Do you see that?

A. Yes.

Q. Does the Dropbox service meet this element of the claims?

A. Yes.

Q. Let's take a look at some of the evidence on that.

What are we looking at here? This is PTX-262.

A. So this is a Dropbox document that shows that -- at the bottom are Dropbox servers. And so the Dropbox servers are going to be -- have processors that are going to communicate using at least memory, because servers will have memory and will have nontransitory memory. And servers will have processors, and those processors are going to execute instructions.

So I am paraphrasing or looking at some of the words in the claim just to convey what that language is instead of reading every single word. But my analysis is based on every single word, but I'll try to summarize it instead of just reading every word.

Q. Thank you.

Let's look at the next piece of evidence, please.

What are we looking at here?

A. So this is -- we're looking at another

document. I think it's testimony. It says, "That's why we created Smart Sync. It's a better way to access all your work." And it's saying that "without them taking up any space, until you need them." So you can preview the files.

So this is Dropbox describing their own Smart Sync functionality.

Q. Okay. And is this because what is going on at this part of the claim is we're introducing this apparatus and it's going to execute instructions to do something?

A. Yes.

Q. And the something is going to be later on, the other elements of the claim?

A. Yes. So the elements build on each other. So right now it says we have this memory that's going to store instructions and we have processors that are going to execute the instructions to, and it continues on. So it's setting it up.

Q. All right. And then the Dropbox service, this relates to what the instructions are going to do?

A. Yes. So the Smart Sync is part of the instructions that are going to be executed on the processors that are on the Dropbox servers.

Q. Okay. So in your opinion, is this element, P,

met by the Dropbox service?

A. Yes.

Q. Thank you.

MR. DEVLIN: Let's go back to our summary chart. Can we check that off?

BY MR. DEVLIN:

Q. Does that look right?

A. Yes.

Q. Okay. Let's look at the next element. All right. Now we're getting into more of the functionality.

And this element, for the record, starts with the words "cause, at a first node," and ends with the words "at least one network."

And let's look at just the first part of this language. We'll break it up a little more, look at the first part, and talk about the evidence.

So is this evidence for the Personal --

MR. LANTIER: Your Honor, I apologize for objecting -- for interrupting, but I do need to lodge an objection.

I don't object to the slide. I do object to the extent that the exhibit that's numbered there would be coming into evidence based on his testimony.

MR. DEVLIN: Can we have a side-bar, Your

Honor?

(Bench conference.)

MR. LANTIER: Your Honor, the exhibit is PTX-316. And it's just a compilation of various photographs taken from various areas that counsel for the plaintiff has put together. And so it's not an evidentiary exhibit. It didn't come from the files of Dropbox or anything. It's just a demonstrative.

MR. DEVLIN: It's not a demonstrative. So this a collection of screenshots that were taken -- counsel took with his approval.

THE COURT: This is what formed his opinion in the report?

MR. DEVLIN: These are in his report. Counsel took the screenshots. He looked at them, compared them to his use of actual Dropbox and said they're fine, put them in his report.

THE COURT: He took the screenshots?

MR. DEVLIN: He did not take the screenshots himself, but he reviewed them. He did work with the Dropbox service itself. He compared the screenshots to his own experience with Dropbox. He confirmed that the screenshots were accurate. He put them in his report. They were produced four months before the report. He put them in his report.

They had every chance to -- sorry -- to examine him in deposition on his report and on these screenshots. So it's been in the record for months and months and months. And it's absolutely something that he looked at, he confirmed was accurate, formed the basis of his opinion. He put it into his expert report and they deposed him on it.

MR. LANTIER: Your Honor, my objection is not to any individual screenshot. And he can talk about any individual screenshot. My objection is this is 150 pages of random screenshots put together and they look like they're a single document that came from someone. They're not.

MR. DEVLIN: I'm happy to work with counsel on that. And what we can -- any screenshot that he does not show and he does not rely on here in court, we absolutely can remove from that.

MR. LANTIER: They should be individual exhibits.

THE COURT: He's saying -- he's agreeing with you, I think.

MR. LANTIER: I don't think it should be one exhibit.

THE COURT: No. I get that. But let's do this. Just to keep going. For now, y'all introduce

it as whatever exhibit it is, and then once we figure out what he actually testifies about, if it's okay with you, that'll be Exhibit 11A, 11B, whatever it is.

MR. DEVLIN: They're all numbered, so we can just refer to the numbers.

THE COURT: That'll even be better.

MR. LANTIER: As long as they don't go into individual exhibits.

THE COURT: I think Mr. Devlin's fine.

(Bench conference concludes.)

MR. DEVLIN: All right. Let's put that back up. Thank you.

BY MR. DEVLIN:

Q. So -- all right. Where we were was we are now getting into the first highlighted part of this claim language and we're looking at PTX-316.11. I'm not going to say the zeros. 316.11.

Now, can you just tell the jury generally what type of evidence this is that we're looking at?

A. So this is a screenshot from a web page that -- if a user using Dropbox.

Q. Okay. And to be clear, did you take these screenshots personally?

A. No.

Q. But did you review the screenshots before or

as part of your analysis and confirm they were accurate?

A. Yes.

Q. Okay. And then did you place the screenshots within your expert report?

A. Yes.

Q. Okay. Thank you.

What is this particular screenshot showing us with respect to this claim language here, which feel free to summarize the claim language.

A. So the first word is "cause," and all of those claims are going to start with, like, a verb. And what's doing this is what was the first thing we read. Which is the server.

So the server is going to cause, and in this case it's the Dropbox server that's going to cause.

And then "at a first node" -- that just means the first user -- to "display at least one first interface with a first user interface element."

So all of this means is we're going to see on a computer of a first user a first user interface element, and this is what I'm going to show on those screenshots. So the screenshots will contain a user interface, and I will call out which will be counted as the first element of this user interface.

Q. Okay. Let me get our lingo right. So just generally what is an "interface" or "user interface"?

A. An interface is just anything that, you know, is displayed on your screen can count as an interface.

Q. Okay. And then what is an "interface element"?

A. That's part of it. Like a small part of what is displayed can be that element.

Q. Okay. So if you have any sort of subsection of the display, do I have you right, that that's sort of the interface element?

A. Yes.

Q. Okay. Do you have to be able to interact with it?

A. You don't need to.

Q. Okay.

A. You can. But that's not a requirement.

Q. Okay. Thank you.

So what on here, as we're looking on this screenshot PTX-316.11, what is the interface?

A. So here I'm just showing you how we're going to get to what will be the first interface. So this can be an example of the first interface.

But really, on the right, so this is what the user will see, and when you click "create shared

folder," that's going to give us the second screen, so I'm showing this as context and also as an example of a first interface.

Q. All right.

MR. DEVLIN: Let's go to the next slide.

BY MR. DEVLIN:

Q. What are we looking at here? This is PTX-316.151.

A. Yes. So when you click that "create folder," that same web page is going to now display this window. And this is going to be our first interface.

And what I've highlighted in red is going to be a first user interface element where you can enter a name. And in this case, in the example I've done, I'm creating a folder and the name of the folder is going to be called "fifth_test."

Q. Great.

MR. DEVLIN: Let's look at the next slide.

BY MR. DEVLIN:

Q. This is for Business now, PTX-316.87. What are we looking at here?

A. So this looks like what we just saw, but this is coming from a Dropbox document.

Q. Okay. And is this for the Business plans?

A. Yes.

Q. Thank you. Okay. But same thing generally?

A. Yes.

MR. DEVLIN: Next slide.

BY MR. DEVLIN:

Q. What are we looking at here? This is PTX-267.

A. This is also an example of how you can click "share" and that would be your first user interface element. And this is coming from a Dropbox document.

Q. Thank you.

MR. DEVLIN: Next slide.

BY MR. DEVLIN:

Q. All right. So now we're going to look at the second part of the claim, got the first interface, interface element. What is the second part of the claim getting at generally?

A. So the second part is going to say "utilizing first hypertext markup language" -- and this just means the language that's used by web browsers. We know it as HTML, but that's the actual words for it -- "equipped code," and it's going to be sent over at least one network. So an example would be the Internet.

And so since this is a coming from a web page, it does meet the utilizing HTML code and it's coming

from -- it's being created by Dropbox servers and so -- over the Internet. So it meets this claim language.

Q. So if I understand you, we're looking at the same evidence, but because it came over the Internet, we know we got the second part of this claim language. Do I understand you?

A. Yes. And because it's in a web page, it meets the hypertext and the Internet language.

Q. Thank you.

MR. DEVLIN: Next slide.

BY MR. DEVLIN:

Q. Same thing here?

A. Yes.

Q. All right. That's 316.151.

Next slide is 316.87. Same thing here?

A. These are all being created from a web page in a web browser, and so they are utilizing the hypertext markup language-equipped code and it's sent over the internet.

MR. DEVLIN: Okay. Next slide, please.

BY MR. DEVLIN:

Q. Same thing with this evidence for Business?

A. Yes.

Q. Okay. So this is sent as a web page; is that right?

A. Yes. And you can see -- you can see the web page, it's Dropbox, Inc. So this is a Mac version. So sometimes I show Windows versions, sometimes I show Mac versions. This is on a Mac computer based on the icons on the top tool bar.

Q. Okay. Thank you.

MR. DEVLIN: Now, let's see the next slide, please.

BY MR. DEVLIN:

Q. Did you review any source code with respect to the -- this particular claim Element 3[a]?

A. Yes.

Q. And what is source code in general?

A. So source code is the actual computer instructions that Dropbox engineers write and that run on the Dropbox servers.

Q. And why are there three different items listed here?

A. So --

MR. LANTIER: Your Honor, I raise an objection here just to the form of the evidence. And I believe the parties are in general agreement that this is three separate exhibits, I believe, and we perhaps could handle it the same way that we discussed with the prior exhibit.

MR. DEVLIN: I'm happy to work with counsel on that. And we'll do that, Your Honor.

Thank you.

THE COURT: Okay.

BY MR. DEVLIN:

Q. All right. So I think you were explaining why there's three separate, you know, lines here and what they mean.

A. Yes. So the Dropbox source code was made available, and some of it was printed. And when we print it, we print it -- on paper, there's going to be numbers that -- kind of like a serial number, it's called the Bates number, for every single page printed.

And there's different sections that are printed. And so those different numbers, like page numbers of what is printed, is what we're seeing. And then the far right, if there are specific line numbers from that page, that's what's the "ll."

So as an example, the top -- the first row is showing -- we're looking at what's from Page 200 -- or Bates Page 200 to Page 206, and we're looking at Lines 10 to 28, because every line of source code is also numbered.

Q. Okay. Now, just any idea how much -- how many lines of source code it takes for Dropbox's servers to

run?

A. I would say, like, in the thousands to millions.

Q. Thousands to millions. Okay.

Is the source code that you review -- and did you have access to all of it?

A. I got access to code that Dropbox produced.

Q. Okay. And you looked -- you with an assistant have reviewed all that code --

A. Yes.

Q. -- and pulled what you think is relevant?

A. Yes.

Q. Thank you.

Is that source code confidential?

A. Yes.

Q. Is it anything that you could have seen absent a lawsuit like this?

A. No.

Q. Are we going to look at each of these individual files as we go?

A. No. We're going to -- I'm going to -- at the very end, I'm going to provide, like, a sample and walk you through an example of what the source code does. We're going to look at other source code that isn't confidential throughout.

Q. Thank you.

So based on your review of all the evidence, does Dropbox meet this claim element, both Personal and Business?

A. Yes.

Q. Okay.

MR. DEVLIN: Can we check that off? Thank you.

BY MR. DEVLIN:

Q. Let's go on to the next element.

Okay. And let's look at the first part again.

And can you tell us, again, in plain English, what's going on here and then at the evidence?

A. Yes. So now this is the element that, you know, I'm calling 3[b]. And it requires that you're going to receive -- that the Dropbox servers now are going to receive from the computer of the user using -- over the Internet and they're going to receive an indication of this one file that the -- that's what's named or an indication of that file from that first user interface element.

So each line's going to build on the previous. So the previous, we had the first element. And, for example, I entered the example fifth_test.

Now we need to show that the Dropbox servers

are going to receive it, this fifth_test. So what -- and this is what we're looking at here.

Q. Let me back up a second.

I think you said an indication of the file, but we're talking about a folder here; is that right?

A. Yes. Sorry.

Q. Okay. No problem.

And so what the user typed in before, this received element is Dropbox servers receiving information about what the user typed in and what they want to share?

A. Yes.

Q. Okay. And we're looking at PTX-316.92.

What is this screenshot showing us?

A. So this is source code, but this is different than the other confidential source code because this is source code associated with the web browser.

And when you -- when you download a web page or the web page interacts with a server, that source code you can actually see because it's not secret. It's part of what's transmitted and runs.

So this one -- this is a snapshot of the code that I can take without discovery or without Dropbox producing it in a lawsuit.

Q. Thank you.

And what is this code showing us? What is this actual screenshot showing us?

A. So this is showing that the actual folder name in my example, which was fifth_test, is the value, and that is being -- is going to be received by the Dropbox server.

Q. Okay.

MR. DEVLIN: Next slide, please.

BY MR. DEVLIN:

Q. Still looking at evidence for Personal. This is now PTX-316.90.

What are we looking at here?

A. So this is also another snapshot of the source code within a web browser that's going to be communicated over the Internet.

Q. Okay. So let me be clear, the user is using a web browser to share a folder?

A. Yes.

Q. Okay. And then as the user is inputting information into the various boxes and interface elements, that's what's going up to the server?

A. Yes.

Q. Okay. And the server's receiving this code exactly?

A. Yes.

Q. Okay. Thank you.

MR. DEVLIN: Let's look at the next slide.

BY MR. DEVLIN:

Q. This is evidence for Personal and Business?

A. Yes.

Q. Is that right?

When -- you see on the right-hand side at the top, when it's -- when the Personal or Business is highlighted, does that mean the evidence is for both?

A. Yes.

Q. And if it's -- only one's highlighted, it's for one or the other?

A. Yes. So on the top right, either I am highlighting Personal alone with Business being white, which means it's only for Personal. If only Business is highlighted, it means it's just for Business. And if both, it means it's for both.

Q. Thank you.

All right. We're looking at PTX-284 at 57.

Can you tell us what this is? And sorry --

A. So this is a Dropbox document that's describing some aspect of their source code. And this is showing the --

MR. LANTIER: Your Honor, I apologize. I

think we may need -- I think we need to seal the courtroom at this point.

THE COURT: Okay. If anyone is in the courtroom who's not covered by the protective order, they need to excuse themselves for this portion.

(Sealed proceedings.)

MR. DEVLIN: Your Honor, I'm trying to look ahead and see how much back and forth there's going to be between confidential and nonconfidential information, and it looks like it's going to be fairly regular, just for the Court's information.

Which is to say, whatever Your Honor wants to do, but we may see some, you know, some public information, then we're going to go right back to confidential documents.

THE COURT: Then let's just stay on the confidential record.

MR. DEVLIN: Okay. Thank you, Your Honor.

BY MR. DEVLIN:

Q. Okay. So now we're looking at not a screenshot or code, but a Dropbox internal document?

A. Yes.

Q. Okay. And what does this internal document tell us about whether the server receives that

information from the user?

A. So this is an internal Dropbox document describing what happens in their source code, and it describes how a folder is created with a specific path. And the path is, for example, the directory or the hierarchy.

And so this would meet the -- both the Personal and the Business of creating a folder that Dropbox servers is going to receive that folder name, which in this example is the first user interface element.

Q. Okay. Thank you.

MR. DEVLIN: Let's go on to the next slide.

BY MR. DEVLIN:

Q. So now we've got the second part of the claim element.

And can you just tell us what's going on here with the second part of this claim element?

A. Yeah. So some of these claim elements are going to refer to things that we've already shown, but it's saying that it has to be because of it. So the receiving by Dropbox, which is the first word, "of," and we already shown the first part is utilizing the "at least one first interface."

So we've already shown the first interface, which was that window, and then the first interface element, which was that word. So this is further confirming that same evidence that we looked at which includes the fifth_test, which was the name of the folder in the first interface, is being received by Dropbox servers.

Q. Okay. So just try to plain English this again.

So what we just saw, having the receive, was something that was created or inputted utilizing that first interface that we saw before?

A. Yes.

Q. Okay. And that's why we're looking at the same evidence?

A. Yes.

Q. Okay. To link it all up. All right.

So this is 316.92.

To streamline this, if we just see some of the same evidence, we'll -- in your opinion, is this element met, this part of the element?

A. Yes. So the same evidence we looked at for the first interface is what is going to meet the utilizing the first interface.

Q. Okay. Thank you.

MR. DEVLIN: So let's just look at the next slide.

BY MR. DEVLIN:

Q. What is this briefly? This is 316.90.

A. Yes.

Q. Same thing as before?

A. Yeah. So this is what we looked at before and this is a snapshot of the web browser source code.

Q. Thank you.

MR. DEVLIN: Next slide, please.

BY MR. DEVLIN:

Q. And, again, here same as before to show that it is utilizing the at least one first interface?

A. Yes.

Q. Okay. So based on all the evidence that you've looked at, in your opinion, is this element met by Dropbox service?

A. Yes. And we can check it.

Q. Thank you.

MR. DEVLIN: Let's go to the next element.

BY MR. DEVLIN:

Q. And we're going to look at the first part again. And try to -- let's just talk in plain English first. What's going on in this part of the element --

or the whole claim element, if you wanted, to link it up to the -- what we've just seen.

A. Yes. So now the Dropbox server is going to cause, so it's going to have on the user's computer, that same user, a second interface is going to appear, and that interface is through a web page. It's going to be using HTML. And this is going to happen over the Internet.

Q. Okay. And so we're looking at a screenshot again?

A. Yes.

Q. 316.98 for the record.

And what's the screenshot showing us?

A. So this is an example of this second interface, and the second interface element is going to be the name or the e-mail of the person that you want to share this folder that you created in the previous interface.

Q. Okay. So the second interface element is going to be used to input the e-mail of the person you want to send the folder to; is that right?

A. Yes.

Q. Okay. Thanks.

This is for Personal.

MR. DEVLIN: Let's look at the next

slide, 41.

BY MR. DEVLIN:

Q. This is for Business. What are we looking at here?

A. So this is for Business. It's looking for a slightly different interface but it's the same thing. This is the second interface and the second interface element is where you would enter someone's e-mail address.

Q. Okay. And that someone is who's going to receive the folder?

A. Yes.

Q. Thank you.

And this was 316.105.

MR. DEVLIN: Let's look at the next slide, please.

BY MR. DEVLIN:

Q. Okay. What are we looking at here? We're still talking about the first part of this.

A. Yes. So this is an example. This is from a document, this is from a Dropbox document showing the Business plan working on a web browser on an Apple computer.

Q. Okay. And someone's entering the e-mail address of a person that they want to share a folder

with?

A. Yes.

Q. In this example? Okay. And that's PTX-267, Page 7 for the record.

MR. DEVLIN: Let's go to the next slide.

BY MR. DEVLIN:

Q. Now we're talking about the second half of this claim element. And is this getting at the fact again that this is happening over the Internet with a web browser?

A. Yes.

Q. Okay. Explain that.

A. Yes. So the second part says you're also going to use second HTML code over the Internet. And so we're going to be looking at the same evidence because the evidence itself is a web page which uses HTML-equipped code. And so we're going to look at the same evidence, which will meet this second part of being HTML-equipped code.

Q. Okay. Let me see if I understand you. So we're looking at evidence for the first part of this, and other elements, and we're seeing how that's met.

And then the second part is saying it had to all be done on the Internet or through the Internet, right? But it happens to be the same evidence that

shows that it was the Internet; is that right?

A. Yes. On a web browser also.

Q. On a web browser. Thank you very much.

So let's just -- looking at 316.98, does this show that for the Personal plan?

A. Yes.

Q. Okay.

MR. DEVLIN: Let's go to the next slide.

BY MR. DEVLIN:

Q. And we see 316.105 again that we just saw. Does this show it for the Business plan?

A. Yes.

Q. Okay. Thank you.

MR. DEVLIN: Next slide.

BY MR. DEVLIN:

Q. And same thing here, this document, PTX-267, Page 7, is this showing it again for the Business plan?

A. Yes.

Q. Okay.

MR. DEVLIN: Let's go back to our -- thank you.

BY MR. DEVLIN:

Q. You reviewed source code for this element as well?

A. Yes.

Q. And did the source code -- I didn't say this the first time, but for this element, did this source code that you looked at when you saw actually how the servers run and work, did it confirm or somehow undermine what you had seen in the documentary evidence?

A. So the source code that I looked at running on Dropbox servers confirmed what Dropbox does, and it confirms that Dropbox infringes.

Q. So I don't have to ask that question every time, we're going to see other slides like this that have items of code that you looked at. In any instance, did the source code ever conflict or undermine with what you were seeing in the other evidence, the screenshots and the documentation and so forth?

A. No. It always confirmed what the servers were doing and how they practiced or infringed the claim elements.

Q. Okay. Thank you.

MR. DEVLIN: Let's go back to our summary chart.

BY MR. DEVLIN:

Q. And in your opinion, does the Dropbox service meet this claim element based on what we've seen?

A. Yes. So check, check.

Q. Thank you.

MR. DEVLIN: Let's go to the next element.

BY MR. DEVLIN:

Q. So this -- sorry. This element begins with the word "receive, from the first node" and ends with the words "at least one second interface." Just saying that for the record.

So now same deal. In plain English what's going on at this stage?

A. So very similar to what we saw before, a user entered a name of a folder and then that was received by Dropbox. Then the second thing, the user entered the e-mail address. Now this element is that e-mail address or indication of it is going to be received also by Dropbox servers.

Q. Got it. Okay.

And so let's look at the evidence here. We're looking at PTX-190. Is this a document, or what are we looking at?

A. This is a Dropbox document describing their source code, how it is receiving the e-mail from the user's computer.

Q. Okay. Thank you.

This is PTX-190 at 10 for the record.

How is this showing that the server's receiving the e-mail?

A. So the claim language says "receive, from the first node," you know, over the Internet, an indication associated with one e-mail address via the second user interface.

So this is the e-mail address that the user would have placed, and we saw already that evidence. This is just saying that whatever user did, that's going to be received by the Dropbox server.

Q. Okay. Thank you.

MR. DEVLIN: Next slide.

BY MR. DEVLIN:

Q. And so what are we looking at here? We're still talking about this receiving the e-mail address element. And just high level, without going into the substance of it, what is this that we're looking at, this type of evidence?

A. So this is another type of evidence that I looked at, which is testimony of Dropbox representatives who's actually sitting here today. And this is Mr. Jason Terk. And this is his testimony under oath.

Q. And what is the testimony telling us about

this particular claim element, the server receiving that e-mail address?

A. So he was asked what is sent to the Dropbox servers as the user interacts with the recipient box. That's where you enter your e-mail address.

And he said: The partial text that the user types into the box is sent to the server so that the server can complete or suggest recipients.

And then he was asked, would this be an e-mail address?

And he said it would be whatever is entered into the box.

Q. Okay. Great.

MR. DEVLIN: Let's go to the next slide.

BY MR. DEVLIN:

Q. So now we're talking about the latter part of this claim, which is, again, just confirming that what was happening was happening from that second interface. And did you confirm that?

A. Yes.

Q. Okay. We're looking at PTX-190, Page 10 again. Tell us how this evidence shows that.

A. Yes. So the same evidence that we already looked at, how the -- what the second user interface, which is where a user would enter the e-mail address,

this is the second user interface. And the e-mail address entered in the second user interface is being used because that's where the -- the e-mail address is going to be entered, and then it's going to be received by Dropbox servers.

Q. Thank you.

MR. DEVLIN: Let's go to our next slide.

BY MR. DEVLIN:

Q. And you reviewed source code for this element as well?

A. Yes.

Q. Confirmed what you had found in the other evidence?

A. Yes.

Q. All right.

MR. DEVLIN: Let's go back to our summary chart.

BY MR. DEVLIN:

Q. In your opinion, is this element met by the Dropbox service based on all the information that you looked at?

A. Yes.

Q. And I'm just going to say this once: When I say "based on all the information you looked at," I'm referring not only to the sample evidence that we're

looking at but everything that you reviewed as part of your analysis.

Do you understand that?

A. Yes.

Q. And when I say that in the future, that's what I'm going to mean, okay?

A. Yes.

Q. So we'll use that in your answer. Thank you.

So all the evidence confirms this element's met?

A. Yes.

Q. Thank you.

MR. DEVLIN: Let's go to the next element, please.

BY MR. DEVLIN:

Q. All right. This element, for the record, begins with the word "receive from the first node" and ends with the words "at least one folder."

MR. DEVLIN: Let's take a look at the evidence on this.

BY MR. DEVLIN:

Q. So we're going to deal with this one all at once?

A. Yeah.

Q. Meaning, we're not looking at highlighted

pieces of the text, see at the top?

A. Yes.

Q. Okay. We're looking at 316.109, and what is this screenshot showing us?

First, in plain English, tell us what this element's about.

A. So now that Dropbox server is going to receive over the Internet that you want to share a folder.

Q. So it got the name of the folder, it got the recipient, and now it's going to get the confirmation, go. I do want to share it.

Is that what you're saying?

A. Yes.

Q. What is this screenshot showing us here, 316.109?

A. So this is example of a source code where there is a button, that's the share button, which is kind of like the go, the share, go ahead. And this is what the user would click, but the Dropbox server is going to receive that the user is ready to share that folder.

Q. And how is -- what -- in this evidence, we've highlighted some boxes here.

What are we seeing there?

A. This is a screenshot of the code running in a

web browser.

Q. Thank you.

And do we see this fifth_test in there somewhere?

MR. DEVLIN: Yeah.

BY MR. DEVLIN:

Q. Top box, almost to the right; is that correct?

A. Yes.

Q. Is that the test that you were running?

A. Yes.

Q. Okay. Thank you.

MR. DEVLIN: Let's go to the next slide.

BY MR. DEVLIN:

Q. This is PTX-285 at 265.

Is this a Dropbox document or something else?

A. This is a Dropbox document describing Dropbox source code.

Q. All right. What is it telling us about this claim element?

A. It's describing how a shared folder works with collaborators. This is what Dropbox uses for different people being able to receive and share folder.

Q. Okay. And is it confirmed that Dropbox does -- in fact, the servers receive that indication to go ahead and share the folder?

A. Yes.

MR. DEVLIN: Next slide, please.

BY MR. DEVLIN:

Q. This is -- whenever we see Mr. Terk, this is going to be from his deposition testimony; is that right?

A. Yes. Under oath.

Q. Okay. And then your understanding is we'll talk to him later in this trial as well, not you personally but we will?

A. Yes.

Q. What is this deposition testimony telling us?

A. So he was asked what happens when a user clicks the share button. And he responded that the JavaScript running in the browser -- so you have HTML code and you have JavaScript code that is in a web browser, and this is going to send a shared folder request to the server.

So this is again confirming this Element 3e.

Q. Okay. So this is where it's sending -- the user sends a share folder request to our server, that indicates that the server then receives that request.

Is that what you're getting at?

A. Yeah.

Q. Okay. Thank you.

Is this the source code that you reviewed in connection -- I shouldn't say that.

Is this the source code that in your analysis supports your opinion regarding infringement and confirms that documentary evidence we've just seen?

A. Yes.

Q. Okay. Thank you.

MR. DEVLIN: Let's go back to our summary chart.

BY MR. DEVLIN:

Q. Based on all the evidence that you analyzed, in your opinion, is this element met by the Dropbox service?

A. Yes. And we can check it.

Q. Thank you.

All right. We've got a longer element here. Let's go to the first part of it.

And tell us again, plain English, what's going on in this first part of this claim element, highlighted --

THE COURT: Can I have counsel up here?

(Bench conference.)

THE COURT: I was trying to find a good place to break.

Is this one?

MR. DEVLIN: This is perfect. Yeah. Yeah.

MR. LANTIER: Pardon me. I missed that.

THE COURT: I was just asking if this was a good place to break.

MR. LANTIER: Oh, sure.

THE COURT: That's all I wanted.

MR. DEVLIN: Great. Thank you, Your Honor.

(Bench conference concludes.)

THE COURT: Ladies and gentlemen of the jury, I talked to the lawyers about whether we should take a break now and they wanted to go another two hours and I said -- I'm kidding.

(Laughter.)

THE COURT: I say that every time. That's the only reason I brought them up here.

And so, ladies and gentlemen, we're done for the afternoon. You've been very patient with us, and I appreciate that.

If you all would be so kind as to be here by 8:45 tomorrow, we will start at 9:00.

Please remember my instructions. Probably the one that is the most tempting is to talk about the case when you go home. Please don't talk

about anything that you heard and the evidence here today with anyone.

Thank you.

THE BAILIFF: All rise.

(Jury exited the courtroom.)

THE COURT: You may be seated.

So tomorrow we will resume with the good doctor. And I'm assuming between your direct and the cross and all that, we'll probably take most of the morning. I'm not holding you to that. I'm just assuming.

So after that, we'll have -- we're done with depos from the plaintiff's perspective?

MR. DEVLIN: Yes, Your Honor. Yes.

THE COURT: And then we'll have the damages expert. So we'll finish with your case tomorrow -- again, I understand you may have someone, but we'll basically finish with your case tomorrow?

MR. DEVLIN: I think we will, Your Honor. It'll be a close call maybe, but we'll do our best.

THE COURT: Then who will the defendant's first witness be?

MR. LANTIER: Your Honor, it'll be Mr. Terk.

THE COURT: Okay. And he'll be here --

he has no choice. I'm sure he'd rather not be.

And just in case, will you have a witness to go after him in the event we finished with him tomorrow?

MR. LANTIER: We'll be prepared to call our next witness, who will be Mr. Belanger.

THE COURT: Very good.

So is there anything we need to take up this evening?

MR. DEVLIN: Nothing for plaintiff, Your Honor. Thank you.

THE COURT: I've forgotten. And y'all mentioned something about depositions and then I think we worked it out this morning, but there's nothing -- I didn't get anything. So I'm assuming there's nothing for me to do.

MR. LANTIER: That's correct, Your Honor.

MR. DEVLIN: That's correct.

THE COURT: Okay. If you all would be here -- if you have issues for me to take up tomorrow, I get here -- I try to get here by 8:30, but it'll be pretty close. And you can let Nolan know.

If you don't have issues to take up before we start, you just need to be here by 9:00.

Now, it's typical -- we can go off the

05:39 record for this.

05:39 (Off-the-record discussion.)

UNITED STATES DISTRICT COURT)
WESTERN DISTRICT OF TEXAS)

I, Kristie M. Davis, Official Court Reporter for the United States District Court, Western District of Texas, do certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

I certify that the transcript fees and format comply with those prescribed by the Court and Judicial Conference of the United States.

Certified to by me this 29th day of May 2023.

/s/ Kristie M. Davis
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