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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TOYOTA MOTOR CORP.,

Petitioner,

v.

EMERGING AUTOMOTIVE LLC,

Patent Owner.

Case No. IPR2024-00786

US Patent No. 9,171,268

Case No. IPR2024-00814

US Patent No. 11,396,244

Friday, April 11, 2025

9 a.m. (PDT)

REMOTE DEPOSITION OF SAM MALEK, PhD

(This proceeding was conducted via Zoom.

All participants appeared remotely.)

STENOGRAPHICALLY REPORTED BY:

Deanna J. Dean, RDR, CRR

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Friday, April 11, 2025

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9:00 a.m. (PDT)

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Remote deposition of SAM MALEK, PhD,

6

held via Zoom videoconference, before

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Deanna J. Dean, a Registered Diplomate

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Reporter, Certified Realtime Reporter,

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and licensed stenographic court reporter

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of the state of New Hampshire.

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1 A P P E A R A N C E S

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1 I N D E X

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3 Examination Page

4 SAM MALEK, PhD

5 By Attorney Davies 6

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9 E X H I B I T S

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11 Number Description Page

12 None.

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1 P R O C E E D I N G S

2 THE REPORTER: Here begins the remote
3 deposition of Dr. Sam Malek, taken in the matter
4 Toyota Motor Corp., Petitioner, versus Emerging
5 Automotive LLC, Patent Owner, before the Patent
6 Trial and Appeal Board, Case No. IPR2024-00786
7 for US Patent No. 9,171,268, and Case No.
8 IPR2024-00814 for US Patent No. 11,396,244.

9 Today's date is April 11, 2025.

10 The time is now 9 a.m. PDT.

11 This deposition is being held remotely by
12 Zoom videoconferencing. I am the licensed court
13 reporter, Deanna Dean, presenting on behalf of
14 Henderson Legal Services.

15 Will counsel please introduce themselves
16 and state whom they represent, beginning with
17 the party noticing the deposition.

18 ATTORNEY DAVIES: This is Ryan Davies from
19 Finnegan Henderson representing petitioner
20 Toyota.

21 ATTORNEY TICE: Jerry Tice, Bunsow DeMory,
22 representing the patent owner, Emerging
23 Automotive, and the witness.

24 ATTORNEY GOLDBERG: Joshua Goldberg, also
25 for the petitioner.

1 THE REPORTER: At this time, do all
2 parties agree to waive any objection, now or in
3 the future, to me swearing in the witness
4 remotely?

5 ATTORNEY DAVIES: Petitioner agrees.

6 ATTORNEY TICE: No objection from patent
7 owner.

8 SAM MALEK, PhD,
9 a witness called for examination, having been first
10 duly sworn according to law, was deposed and
11 testified as follows:

12 EXAMINATION

13 BY ATTORNEY DAVIES:

14 Q. Good morning, Dr. Malek. My name --

15 A. **Good morning.**

16 Q. My name is Ryan Davies. Sorry.

17 And I'd like to ask you some questions
18 today in connection with your role as patent
19 owner's expert.

20 Could you please state your full name.

21 A. **Sure. My name is Sam Malek.**

22 Q. Where are you today?

23 A. **I'm at my house in Irvine, California.**

24 Q. Do you understand you're under oath?

25 A. **Yes.**

1 Q. And that's the same oath that you would
2 take in the event that you would appear for live
3 testimony in this case?

4 A. **Yes.**

5 Q. Is there any reason you wouldn't be able
6 to provide your most complete and truthful
7 testimony today?

8 A. **No.**

9 Q. Haven't taken any medication that's going
10 to affect you?

11 A. **No.**

12 Q. Okay. So my goal today is to ask clear
13 questions, and if at any point I ask a question
14 that you don't understand, please just let me know
15 and I'll try to clarify it. Okay?

16 A. **Okay.**

17 Q. And we'll try to take breaks every hour.
18 But if there's any point you'd like to take a
19 break, please let me know. I would just ask that
20 you answer any question that's pending before we
21 break. Okay?

22 A. **Okay.**

23 Q. And can we agree that you won't
24 communicate with anybody during breaks concerning
25 this deposition?

1 **A. Yes. Understood.**

2 Q. Thanks.

3 Since we're on Zoom, could you please
4 silence your cell phone and keep it somewhere away
5 from you during the course of the deposition?

6 **A. Okay. It is silenced.**

7 Q. Thank you.

8 Dr. Malek, is there anyone else in the
9 room with you?

10 **A. No.**

11 Q. Do you have any programs other than Zoom
12 open on your computer?

13 **A. No. I mean, I have Zoom and I have just
14 some PDF documents: my report and Dr. Almeroth's
15 report and the patents at dispute in this case. I
16 have those on a PDF reader.**

17 Q. When you say "report," do you mean
18 declaration?

19 **A. Yes. My declaration in the case, yes.**

20 Q. Okay. Do you have any other screens in
21 the room?

22 **A. Yes. I have two screens. I have -- they
23 are connected to my computer. So I have one screen
24 where I have the Zoom and I have another screen
25 where I can look at documents.**

1 Q. Are they both connected to the same
2 computer?

3 A. **Yes.**

4 Q. And your document reader with those PDF
5 documents, are those clean copies?

6 A. **They are clean copies, yes. There are no**
7 **notes on them.**

8 Q. They are not annotated?

9 A. **No.**

10 Q. Okay. Do you have any paper copies of
11 documents in front of you?

12 A. **Yes. I also have -- I have my**
13 **declarations in both '268 and '244 IPRs, and then I**
14 **have the petition, and then I have the patents**
15 **themselves printed, and then I also have the main**
16 **reference in each IPR printed as well.**

17 Q. Those are clean copies as well?

18 A. **They're all clean, yes.**

19 Q. Okay. If there's any document I reference
20 during the course of this that you don't have in
21 front of you, I plan to send it through the chat,
22 if that's okay.

23 A. **Okay.**

24 Q. So I'd like to ask that you use your
25 computer just for the purpose of answering

1 questions and not communicating with anybody else
2 during the deposition. Okay?

3 **A. Okay. Understood.**

4 Q. How much time did you spend preparing for
5 today's deposition?

6 **A. Well, we had another depo with you on**
7 **Monday. Was it on Monday? I think it was on**
8 **Monday.**

9 **So I would say, you know, I probably spent**
10 **at least some subset of my time in the past few**
11 **days reviewing my declarations in the two IPRs and**
12 **the patents and the material in the case. So I**
13 **would estimate about maybe 20 hours.**

14 Q. Did you spend time separately from your
15 preparation in connection with to the District
16 Court litigation?

17 **ATTORNEY TICE: Objection. Form.**

18 **A. Yeah. This is -- so I basically prepped**
19 **for this since my last depo in District Court,**
20 **which was on Monday. So it would have been**
21 **Tuesday, Wednesday, and Thursday.**

22 Q. Did you meet with anybody to prepare
23 during that time?

24 **A. Yes, I did.**

25 Q. And who was that?

1 A. I met with Mr. Tice and Ms. -- I think
2 it's -- I don't know how to say her last name.

3 Entzminger. Brenda Entzminger.

4 Q. Are those attorneys from Bunsow DeMory?

5 A. Yes.

6 Q. Did you meet with anyone else besides
7 those two attorneys?

8 A. No.

9 Q. Okay. I'd like to first talk about the
10 '268 patent, which is the subject of IPR2024-00786.

11 Do you have your declaration in front of
12 you? And that's Exhibit 2011.

13 A. So this is for the 26 IPR -- the '268
14 patent?

15 Q. For the '268 patent, IPR2024-00786.

16 A. Yes, I have that.

17 Q. How much time did you spend preparing your
18 declaration?

19 A. This was from several months ago. I don't
20 have an exact estimate, but, you know, in total,
21 reviewing the patents, reviewing the --
22 Dr. Almeroth's report, petition, all the prior art,
23 I'm estimating it would have taken me, you know, I
24 mean, several days. I don't know how many days I
25 spent on that. It's been -- it's been a few

1 months.

2 Q. Understood.

3 Okay. I'd like to dive in and start
4 talking about some of the references.

5 I'll start first with the reference
6 Hayashi, which is Exhibit 1013. And my question
7 is, with respect to this reference, you take issue
8 with Dr. Almeroth's certain things in Hayashi as
9 not being user settings. Right?

10 A. Well, yeah, I have several opinions about
11 it. One is that I don't think it's analogous art
12 in the same field. So I have an opinion about, you
13 know, a POSA would not be motivated to combine.

14 But, also, I believe I do offer opinions
15 about how Hayashi doesn't teach or suggest Xiao's
16 failures, and I think that starts on page 70 of my
17 report.

18 Q. You reviewed the Hayashi reference.
19 Right?

20 A. I did, yes.

21 Q. And it's your opinion that it doesn't
22 disclose settings?

23 A. So my understanding of Hayashi is it aims
24 to provide a solution where a driver or an operator
25 of a vehicle gets into a new car and they don't

1 know how to use that car, and then Hayashi shows
2 them -- you know, provides, like, voice guidance or
3 video guidance to help the driver to identify where
4 those functions are, how to use those functions of
5 the vehicle. I don't think it deals with settings.

6 Q. Okay. Let's look at Hayashi, which is
7 Exhibit 1013, and if you could go to paragraph 120.
8 Just let me know when you're there.

9 A. Paragraph 120. Okay.

10 Q. Do you see where it says, "Shift lever,
11 parking brake, seat adjustment function, or mirror
12 adjustment function are extracted"?

13 A. Yeah.

14 Q. And if you go back to your declaration,
15 which is Exhibit 2011, in paragraph 86 of that
16 declaration, you cite shift lever and parking
17 brake. Right?

18 A. Paragraph 86?

19 Q. Paragraph 86 of your declaration, yes.

20 A. Okay. Yeah.

21 Q. And you cite shift lever and parking brake
22 of Hayashi. Right?

23 A. Yeah, I see the statement there.

24 Q. And you don't cite seat adjustment or
25 mirror adjustment?

1 **A. Well, I think I'm citing something from**
2 **the petition here.**

3 Q. In this paragraph 86, you don't cite seat
4 adjustment or mirror adjustment, do you?

5 ATTORNEY TICE: Objection. Asked and
6 answered.

7 **A. I'm citing, I think, a statement from the**
8 **petition. That's my understanding. And those**
9 **words don't show here, but I'm citing something**
10 **from the petition.**

11 Q. Understood. Thanks.

12 Let's look next at the '268 patent, which
13 is Exhibit 1011.

14 Sorry. It's Exhibit 1001.

15 **A. Is that Xiao?**

16 Q. No. The '268 patent.

17 **A. Okay. Oh, 1001. Okay. Yeah, I have**
18 **that.**

19 Q. Okay. And I'll direct you to column 21.

20 **A. Yes.**

21 Q. Column 21 starting at line 45.

22 Do you see where it says that settings can
23 include things like seat position for the user --
24 sorry -- seat position for the size of the user,
25 mirror position?

1 **A. Line 45? Sorry. I can't find it.**

2 **Did you say column 21, line 45?**

3 Q. Yes. Column 21, line 45, the sentence
4 beginning "Settings can include cloud settings or
5 local settings such as seat position for the size
6 of the user, mirror position," and then goes on to
7 list a few other settings.

8 Do you see that?

9 **A. Yeah, I see that.**

10 Q. And if we go to column 33 of the patent.

11 **A. Column 33?**

12 Q. Yes.

13 **A. Okay.**

14 Q. In Claim 13 specifically, it's column 33,
15 line 58. Do you see that the '268 patent claims
16 seat settings?

17 **A. I mean, I see the words "seat settings"**
18 **there, yes.**

19 Q. Are seat settings and mirror settings
20 covered by the '268 patent?

21 ATTORNEY TICE: Objection. Form.

22 **A. They -- I mean, they are claimed in this**
23 **claim. They are part of this claim.**

24 Q. I'd like to turn to another reference now,
25 which is the Patenaude reference, Exhibit 1011.

1 **A. Okay.**

2 Q. You reviewed this reference; right?

3 **A. I did, yeah.**

4 Q. Does Patenaude disclose learning patterns?

5 **A. I mean, I know it talks about learning of**
6 **some sort. I don't know if it uses the word**
7 **"pattern" or not.**

8 Q. Okay. Could you go to Figure 4.

9 **A. Okay.**

10 Q. What does the text box of S406 say?

11 **A. It says, "Determine patterns in**
12 **entertainment selections."**

13 Q. If we go to Figure 6, could you look at
14 that one, too.

15 **A. Okay.**

16 Q. Do you see what it says in box S604?

17 **A. "Determine the user pattern for the**
18 **specific user."**

19 Q. Patenaude referenced -- when describing
20 those steps, he makes some descriptions. I'll
21 direct you to paragraph 73.

22 **A. Okay.**

23 Q. Do you see in paragraph 73 where it says
24 that the processor 122 retrieves the user-specific
25 entertainment selection profile from the in-vehicle

1 memory 128?

2 A. Paragraph 73?

3 Q. Yes.

4 A. Okay. I see it says, "Processor 122 in
5 the telematics unit retrieves the user-specific
6 entertainment selection profile."

7 Is that what you're referring to?

8 Q. Yes.

9 A. Okay.

10 Q. So in that scenario, the profile is being
11 sent from the memory 128 to the processor 122.
12 Right?

13 A. So in this case, the processor in the
14 telematics unit is retrieving the user-specific
15 entertainment selection profile stored in the
16 vehicle memory. It's retrieving it. It's not the
17 other way around.

18 Q. Does the profile go from memory 128 to the
19 processor 122?

20 ATTORNEY TICE: Objection. Vague and
21 ambiguous.

22 A. So, I mean, as it says, the telematic --
23 the telematics unit retrieves the user-specific
24 entertainment selection profile stored in the
25 vehicle memory.

1 **So it's the telematics unit that retrieves**
2 **it. It's not the other way around where something**
3 **is being sent. Rather, it says the telematics unit**
4 **retrieves the user-specific entertainment selection**
5 **profile stored in the vehicle memory.**

6 Q. Does retrieval involve transmission?

7 A. **It depends how retrieval is implemented.**

8 Q. Okay. Let's go to Figure 1 of Patenaude.

9 And do you see where the box 120 contains another
10 box 128?

11 A. **Box 120 contains another box 128. I don't**
12 **see a 128 here.**

13 Q. Take a little time and look at the figure.

14 A. **Figure 1?**

15 Q. Figure 1.

16 A. **I see 124. 126 repeated twice. 130.**
17 **132. 130. Looks like 130 is repeated twice. 134.**
18 **And 122.**

19 **I don't see a 128 inside of 120.**

20 Q. Maybe if you zoom in.

21 A. **Are we talking about Figure 1?**

22 Q. Figure 1.

23 You don't see box 128 in this figure?

24 A. **No. I'm sorry.**

25 Q. Do you see another component that's

1 labeled 134?

2 **A. Yes.**

3 Q. Is that a mobile device 134?

4 **A. It's depicted as a mobile device. I have**
5 **to look up the -- how the patent reference refers**
6 **to it.**

7 Q. Do you see there are arrows between the
8 various components in the figure?

9 **A. Yes.**

10 Q. Let's turn to the '268 patent again.

11 **A. '268 patent? Okay.**

12 Q. Yeah. Exhibit -- actually, before we do
13 that -- sorry.

14 Are you still on Figure 1 of the Patenaude
15 reference?

16 **A. Figure 1? Okay.**

17 Q. You mentioned before it has 124, 126.
18 Right?

19 **A. Yeah.**

20 Q. And what comes after that?

21 **A. After 126, I see another 126.**

22 Q. And what's after that repeated 126?

23 **A. 130.**

24 Q. Could it be that that repeated 126 is
25 actually 128?

1 ATTORNEY TICE: Objection. Speculation.

2 A. I mean, I -- now you're asking me a very
3 specific question. I have to read the entire
4 patent to see if that's the case or not. I mean, I
5 will need to review it to tell you to see how it's
6 being discussed.

7 Q. Dr. Malek, are you looking at the screen
8 or a paper copy?

9 A. I'm looking at the screen. I mean, if you
10 want, you can maybe share your screen. I'm looking
11 at what was served, basically, and I don't see a
12 128 in that box. If you are seeing it, you can
13 share it and I can look at your screen.

14 Q. I've uploaded a document into the chat.
15 Could you download it and open it.

16 A. Okay. Hmm. That is so weird. I see 128
17 here, but not in the copy that I have, and that's
18 the one that was served in the case as well. So I
19 don't know why that is.

20 Q. And the document that I just sent to you,
21 on the first page, do you see that it says Toyota
22 Exhibit 1011?

23 A. Yes.

24 Q. Could you confirm this is the Patenaude
25 reference?

1 A. It's the same publication number. Yeah,
2 it's the same publication number.

3 Q. It's Publication No. 2006-0136106?

4 A. Yes.

5 Q. And in Figure 1 on page 2 of that
6 document, you see that there is a box 128?

7 A. Yes.

8 Q. Is box 128 within box 120?

9 A. Box 128 is depicted as being inside of box
10 120.

11 Q. So 128 is part of 120?

12 A. It's depicted as being inside of 120. I
13 have to read the spec to see how it's discussing
14 these to be able to tell you if it's inside of it
15 or not. But as far as the figure goes, it shows it
16 as being a box inside of box 120.

17 Q. Okay. And the figure that's on your
18 screen, do you also see the mobile device 134?

19 A. Yes, I see that.

20 Q. And you see the arrows connecting the
21 various boxes within 120?

22 A. I see some arrows inside of 120, yeah.

23 Q. And you see that 120 is connected to other
24 things by arrows?

25 ATTORNEY TICE: Objection. Form.

1 **A. I see some -- yeah. I see some arrows**
2 **between box 120 and other -- and other, I guess,**
3 **icons or boxes shown on this figure.**

4 Q. Okay. Now I think let's go to the '268
5 patent.

6 **A. Okay.**

7 Q. And if you'll go to column 33, I'd like to
8 look at the claims again.

9 **A. Okay.**

10 Q. Column 33, line 38, do you see where it
11 says, "Sending the learned settings to the user
12 profile for use or transfer to the selected
13 vehicle"?

14 **A. Column 33, line 30? Is that what you**
15 **said?**

16 Q. Line 38.

17 **A. 38. Okay.**

18 **It says, "Sending the learned settings to**
19 **the user profile for use or transfer to the**
20 **selected vehicle."**

21 Q. Does the claim recite where the user
22 profile is?

23 **A. What do you mean exactly by "where the**
24 **user profile is"?**

25 Q. Does the claim specify any location for

1 the user profile?

2 A. Well, I mean, Claim 12 is a dependent
3 claim from Claim 10. Claim 10A says "receiving at
4 a server information for a user profile of a user."
5 And then it goes on to describe, you know, what the
6 user profile is.

7 So the claim does -- so, you know, Claim
8 10A does disclose that a server receiving
9 information for a user profile of a user.

10 Q. That part you just referenced from Claim
11 10, do you see that it says "receiving at a server
12 information for a user profile of a user"?

13 A. Yes.

14 Q. Does a user profile have to be in the
15 server?

16 A. Well, I mean, the claim requires what the
17 claim states. Right? The claim states that the --
18 you know, the method involved receiving at a server
19 information for a user profile of a user.

20 Q. The claim recites receiving information.
21 Right?

22 A. Information for a user profile of a user.

23 Q. Okay. Let's go back to the Patenaude
24 reference.

25 A. Yeah.

1 Q. Patenaude deals with entertainment
2 selections like we talked about.

3 I just want to ask generally, how does a
4 user make entertainment selections in Patenaude?

5 ATTORNEY TICE: Objection. Form.

6 A. **I'll have to review the Patenaude to -- is**
7 **it "Patenaude"? [pronouncing.]**

8 **Patenaude, I'll have to review to see what**
9 **are the different ways that it discloses a user may**
10 **select entertainment.**

11 Q. You're the patent owner's technical expert
12 in this case. Right?

13 A. **Yes.**

14 Q. And you reviewed Patenaude?

15 A. **Yes.**

16 Q. And you wrote a declaration?

17 A. **Yes.**

18 Q. So I'm just asking about the reference in
19 general. Does it talk about how a user makes
20 entertainment selections?

21 ATTORNEY TICE: Objection. Form.

22 A. **Well, I'm happy to review it and answer**
23 **your question. It's just -- I mean, I haven't**
24 **memorized everything about these references. There**
25 **are several references. Right?**

1 But, I mean, if you like, I'm happy to
2 review it and answer your question. I just want to
3 be precise in my answers. I can -- I can answer
4 questions from memory, but I think it's better if I
5 actually review the patent -- review the reference
6 and give you a more precise answer.

7 Q. Let's look at one passage in Patenaude in
8 particular. Go to paragraph 57.

9 A. Okay.

10 Q. Do you see that it talks about a user
11 making selections of different FM radio stations?

12 A. I don't think this paragraph discloses how
13 the -- how the user is selecting different
14 entertainment choices. At least it's not explicit.

15 Q. Can you go to paragraph 56. Do you see
16 the first sentence that says, "In one embodiment,
17 the algorithm determines an FM radio is tuned more
18 than one time"?

19 A. Yes.

20 Q. Would tuning an FM radio be an
21 entertainment selection?

22 A. Yeah, it could be.

23 Q. Okay. Can you go to paragraph 77 next.

24 A. 77. Okay.

25 Q. Do you see -- in the second sentence, it

1 looks like -- that it talks about the operator
2 choosing to operate the CD player?

3 **A. I see the part of the sentence that says**
4 **chooses to operate the CD player. I see that.**

5 Q. So a user could make a selection to use
6 the CD player?

7 **A. I mean, the sentence says that a user can**
8 **choose to operate the CD player.**

9 Q. Can you go to paragraph 79.

10 **A. Okay.**

11 Q. Do you see that it says, "The user may
12 enunciate selections of an entertainment unit"?

13 **A. Yes.**

14 Q. Would this be an example of making a
15 selection through voice recognition?

16 **A. Yes, potentially.**

17 Q. And the voice recognition would be
18 embodied within telematics unit 120?

19 **A. It says "the speech recognition system**
20 **embodied within the telematics unit."**

21 Q. In general, that telematics unit, would it
22 typically have a touchscreen?

23 ATTORNEY TICE: Objection. Form.

24 **A. I mean, it depends on the telematic unit.**
25 **It depends on what kind of telematic unit you have.**

1 Q. Sometimes it has a touchscreen?

2 A. I think it's possible to have telematics
3 units that have units that have touchscreen, yes.

4 Q. If we could go back to Figure 1.

5 A. Okay.

6 Q. Do you see what Patenaude calls a wireless
7 communications network 142?

8 A. I see -- I see the number 142 there, yes.

9 Q. Within a cloud?

10 A. Looks like some kind of a cloud is shown
11 there, yeah.

12 Q. Do you also see network 144?

13 A. So I'm looking in the spec. It's
14 referring to 144 as land network and 142 as
15 communication network, and I see that in the
16 figure.

17 Q. Do you see arrows connecting the clouds?

18 A. I see some arrows, yeah. I see some
19 arrows on this figure connecting various elements
20 including the cloud icons.

21 Q. Do those elements communicate with one
22 another?

23 A. Well, the spec says these are
24 communication networks and, you know, to the extent
25 they are used for that purpose, then they would be

1 **communicating with each other.**

2 Q. Okay. Thanks.

3 Do components -- sorry. Let me rephrase
4 that.

5 Components in this system that's shown in
6 Figure 1 provide services. Right?

7 **A. Which component are you referring to?**

8 Q. Let's use as an example -- as an example,
9 say, 164. Patenaude calls that a web server.

10 **A. So it looks like the web server is hosting**
11 **a website.**

12 Q. So it provides the service of hosting a
13 website?

14 **A. It depends on what the website is doing.**
15 **I think what Patenaude is disclosing is that the**
16 **web server is hosting a website.**

17 Q. Do you see in paragraph 29 where it says
18 "web server 164 provides web services"?

19 **A. Paragraph 29?**

20 Q. Yes.

21 **A. Yeah, I see how it's describing details of**
22 **how a web server could be implemented in terms of**
23 **hardware or software.**

24 Q. So again looking at Figure 1, is the web
25 server providing services to other components in

1 the system?

2 **A. Well, it says the web server is hosting a**
3 **website. I don't think it's providing services to**
4 **the other components of the system, because a**
5 **website would be used by a user, not by other**
6 **components of the system.**

7 **I think you're asking me if the components**
8 **of the system are receiving a service from the web**
9 **server. I think the web server is hosting a**
10 **website.**

11 **Q. Providing music is a service, isn't it?**

12 **A. Depends on the context. It could be.**

13 **Q. All right. Let's go to your declaration.**

14 **A. Okay.**

15 **Q. Can you go to paragraph 54.**

16 **Let me know when you get there.**

17 **A. Okay.**

18 **Q. In paragraph 54 of your declaration,**
19 **you're discussing claim elements 10(c) and 20(a).**
20 **Right?**

21 **A. Paragraph 54 is making references to**
22 **claims 10(c) and 20(a). That's right.**

23 **Q. Your opinion is that these elements**
24 **require the server in Claim 10 and the processor in**
25 **Claim 20 to perform a compatibility check. Right?**

1 **A. What I'm saying here is that the parties**
2 **have agreed to that.**

3 Q. You say you were informed that the parties
4 in the District Court litigation agree that these
5 claims require the server and processor to perform
6 a compatibility check?

7 **A. Yes, that's what I say.**

8 Q. So your opinion is that Claims 10 and 20
9 require the server and processor to perform a
10 compatibility check that's based on the agreement
11 you were informed about?

12 **A. Well, my understanding is that the parties**
13 **have agreed to that, and my understanding is that**
14 **the court's preliminary construction in District**
15 **Court is that it, you know, has essentially adopted**
16 **what the parties agreed to, which is that the**
17 **claims require a compatibility check. Those claims**
18 **require a compatibility check.**

19 Q. That informed your analysis?

20 **A. Which analysis are you talking about?**

21 Q. Do you have an opinion as to whether
22 Claims 10 and 20 require the server or processor to
23 perform a compatibility check?

24 **A. My opinion is consistent with what the**
25 **parties have agreed to and what the court -- the**

1 **District Court has already -- preliminarily, at**
2 **least -- construed that those claims require a**
3 **compatibility check.**

4 Q. So you considered what the parties agreed
5 and what the District Court said?

6 A. **I think my understanding of those**
7 **limitations is consistent with -- with the court's**
8 **preliminary construction of what is required by**
9 **those claim elements and what the parties have**
10 **agreed to.**

11 Q. Let's talk about some of the dependent
12 claims of the '268 patent.

13 Do you agree that some of the claims
14 recite accounts?

15 A. **I believe that's -- I recall that, but if**
16 **you can point me to the specific dependent claims,**
17 **I can give you a more precise answer.**

18 **But I believe that to be the case that the**
19 **word "account" shows up in some of the dependent**
20 **claims.**

21 Q. I want to talk about accounts.

22 Can an account include another account?

23 A. **Which claim are you talking about?**

24 Q. If you'll look at column 34, line -- it
25 looks like 17.

1 A. Yes. So this claim requires having --
2 associating one or more sub-user accounts to the
3 user profile, and then the sub-user accounts having
4 predefined privileges for the selected vehicle.

5 Q. So I'll ask my question again: Can an
6 account include another account?

7 A. Are you asking me generally, irrespective
8 of these patents, in the abstract? Or are you
9 asking me about what Claim 17 requires?

10 Q. Do you have an understanding of what an
11 account is in the context of the '268 patent?

12 A. Yeah, I have an understanding of it.

13 Q. What is that understanding?

14 A. I mean, again, I've applied the plain
15 ordinary meaning of the term. So it would be what
16 a POSA's understanding would be of an account.

17 Q. Do you consider yourself a person of
18 ordinary skill in the art?

19 A. I consider myself to be a person of
20 extraordinary skill in the art. But I've applied
21 the plain and ordinary meaning of the terms, unless
22 I would specify, you know. But generally speaking,
23 for terms that have not been construed by the
24 board, I have applied the plain and ordinary
25 meaning of those limitations.

1 Q. What's the plain and ordinary meaning of
2 an account?

3 A. I mean, the word "account" has a plain and
4 ordinary meaning. That is the plain and ordinary
5 meaning of what an account is to a POSA. I think a
6 POSA understands what an account is.

7 Q. What is the plain and ordinary meaning?

8 A. It's account. I think you are asking me
9 to construe it, and I won't be able to do it in
10 real time. Right? I won't be able to do it right
11 now in real time. But I can tell you I think a
12 POSA understands what is the meaning of an account,
13 and I've applied the plain and ordinary meaning of
14 it. I can't construe it in real time. I would
15 need to, you know, think about it.

16 Q. I'm not asking you to construe it. I'm
17 just asking what's the meaning that you applied to
18 the word "account"?

19 ATTORNEY TICE: Objection. Asked and
20 answered.

21 A. I applied the plain and ordinary meaning
22 of "account."

23 Q. Which is what?

24 A. Which is account.

25 So, I mean, Claim 17 requires sub-user

1 accounts, plural, and that's the plain and ordinary
2 meaning that I've applied in offering opinions
3 about Claim 17. I didn't try to construe that term
4 because I don't think it's necessary. I think a
5 POSA understands what is an account.

6 Q. So your only opinion is that an account
7 means an account?

8 A. My opinion is that I'm not going to be
9 able to offer you construction in real time. I'm
10 happy to think about it and, and, you know,
11 contemplate it, look at the entire reference in the
12 context of that opinion that you want me to offer.

13 But, you know, I haven't been asked to
14 construe what the term means, and I can't do it in
15 real time. I've applied the plain and ordinary
16 meaning of -- of the terms in the claim in offering
17 my opinions.

18 Q. Dr. Malek, we've been going for about an
19 hour. Would you like to take a break?

20 A. Sure.

21 Q. Okay. Why don't we take a 10-minute
22 break.

23 A. Okay. Thank you.

24 Q. And come back at -- is it -- what time is
25 it in California now?

1 **A. So it would be 10:13 when we come back.**

2 Q. Okay. We'll come back at 10:13 Pacific
3 time.

4 **A. Okay. Thanks.**

5 THE REPORTER: Off the record at
6 10:03 a.m.

7 (Recess taken from 10:03 a.m.
8 to 10:14 a.m. PDT.)

9 THE REPORTER: Back on the record at
10 10:14 a.m.

11 BY ATTORNEY DAVIES:

12 Q. Welcome back, Dr. Malek.

13 **A. Thank you.**

14 Q. Did you talk with anyone during the break?

15 **A. No, I didn't.**

16 Q. Okay. Before the break, we were talking
17 about accounts. I'd like to stick on that for a
18 little bit.

19 And if I could get you to go to the '268
20 patent.

21 **A. Okay.**

22 Q. And please turn to column 6.

23 **A. Okay.**

24 Q. Do you see where it says, around line 41,
25 that, in an embodiment, "once a configuration is

1 saved to the profile account of a user."

2 A. Yeah.

3 Q. Do you see that?

4 A. Yes.

5 Q. Could an account include a configuration?

6 A. Well, I do see some embodiments as
7 described in '268, the configuration can be saved
8 to the profile account of a user.

9 Q. So the account could have a configuration
10 saved to it. Right?

11 A. In some embodiments, according to '268, a
12 configuration can be saved to the profile account
13 of a user.

14 Q. Could a configuration include settings of
15 the vehicle?

16 A. I mean, this specific embodiment that
17 we're looking at, in this specific sentence it just
18 says configurations can be saved to the profile
19 account of a user.

20 And earlier in column 6, the spec is
21 talking about the cloud services provide access to
22 user accounts and access to settings,
23 configurations, applications, and other
24 customization defined by the user. At least the
25 portion of the spec that I'm reviewing right now,

1 it doesn't say configurations are settings. I'm
2 happy to review it in more detail to give you a
3 more, you know, a complete answer.

4 Q. Would a configuration include settings?

5 A. Well, the portion that I reviewed doesn't
6 say that, at least this -- on column 6, this part
7 that I just read.

8 I'm happy to review the spec or if you
9 know where I should be looking at to give you a
10 more specific answer as to configuration and
11 settings.

12 Q. Does the '268 specification -- sorry. Let
13 me ask a different question.

14 Do you know what a configuration is?

15 A. In the context of '268?

16 Q. As the technical expert in your role in
17 this case, do you know what a configuration is?

18 A. Yes.

19 Q. And what is a configuration?

20 A. So the plain and ordinary meaning of
21 "configuration," the English word, is
22 configuration.

23 Q. So your opinion is that "configuration"
24 means configuration?

25 A. My understanding is that's English word,

1 **yes. I mean, it has a plain and ordinary meaning.**

2 Q. Do you know what settings are?

3 A. Yes.

4 Q. What are settings?

5 A. Again, I've applied the plain and ordinary
6 meaning of "settings" in the context of '268. It
7 gives some examples of what they are, which is
8 consistent with that plain and ordinary meaning of
9 it.

10 Q. Do you know whether configuration can
11 include settings?

12 A. Well, I mean, the patent uses
13 configuration in various places. In some places --
14 for example, in column 15 around lines 38, it says,
15 "Figure 4 shows one sample of many potential
16 configuration settings for a given vehicle." So in
17 this case, it's talking about a configuration of
18 settings as shown in Figure 4.

19 Q. So a configuration can include settings
20 like those shown in Figure 4?

21 A. I think it's more like the settings can
22 have some kind of a configuration, basically.
23 Right? So when it's using it in that way, like in
24 the context of Figure 4, it says, "Figure 4 shows
25 one sample of many potential confirmation settings

1 **for a given vehicle." So in this case, it's**
2 **referring to the specific settings shown in Figure**
3 **4 as the configuration settings.**

4 Q. So this would be a configuration of
5 settings. Right?

6 ATTORNEY TICE: Objection. Asked and
7 answered.

8 A. These are settings that are configured --
9 that are configured. So that there's a specific
10 configuration for the settings, basically.

11 Q. You have an understanding of what a
12 configuration is. Right?

13 A. Yeah. I'm applying the plain and ordinary
14 meaning of the word "configuration."

15 Q. And you have an understanding of what
16 settings are?

17 A. Yes.

18 Q. Under that understanding, can you tell me
19 whether configuration can include settings?

20 A. As I said, I think the context matters.
21 Right?

22 So, for example, in Figure 4, it says
23 configuration settings. So this is about specific
24 configuration of the settings. I think the context
25 matters. And so I think a POSA, for example, would

1 read this portion of the spec and realize that it
2 is talking about specific configuration of the
3 settings that are shown in that figure.

4 Q. You said your understanding was the plain
5 and ordinary meaning. Right?

6 ATTORNEY TICE: Objection. Vague and
7 ambiguous.

8 A. Plain and ordinary meaning in the context
9 of the claim or the spec. Right? So, you know,
10 you don't take a single word -- single word and
11 then try to construe it. The meaning would be --
12 would be determined based on what is the plain and
13 ordinary meaning of that term in the context of the
14 claim or the specification.

15 Q. Are you saying that more than one meaning
16 applies?

17 A. Well, I mean, my understanding of how one
18 analyzes a patent is not in vacuum, is not -- is
19 not in the context -- so you don't ignore the
20 specification. You don't ignore the claim
21 language. You consider the claim language, you
22 consider the specification, and then a POA's
23 understanding of what that term means in the
24 context of spec and claim. And that's what I've
25 done.

1 Q. You said that Figure 4 shows
2 configuration. Right?

3 A. **It shows one sample of potential**
4 **configuration settings for a vehicle.**

5 Q. And it shows that associated with User 2.
6 Right?

7 A. **This is showing user -- User 2's login**
8 **settings for login: CHILD.**

9 Q. So a configuration would be specific to a
10 user. Right?

11 A. **So, I mean, if you read the rest of that**
12 **paragraph, it says, "In this case, User 2 has a**
13 **login created for him or her named 'CHILD.'**

14 And then it says, "This login contains a
15 **set of settings that may or may not be**
16 **configureable by User 2 since User 2 is not an**
17 **administrator. Only a subset of settings are open**
18 **to him or her to alter."**

19 Q. Looking at this figure, is it your opinion
20 that this is a configuration for User 2?

21 A. **This is showing the configuration settings**
22 **for User 2.**

23 Q. Okay. Thanks.

24 And if we jump back to the part of the
25 specification that I was referencing earlier,

1 column 6, lines 41 to 43.

2 A. Column 6, lines what? 40 --

3 Q. 41 to 43.

4 A. Okay.

5 Q. Do you see that it says a configuration

6 "is saved to the profile account of a user"?

7 A. I see that sentence, yes.

8 Q. So there's a configuration for a user.

9 Right?

10 A. A user can have configuration settings.

11 At least in some embodiments.

12 Q. Right. So a configuration could be for a

13 user?

14 A. Configuration settings could be for a

15 user.

16 Q. But configuration would have some settings

17 associated with it. Right?

18 A. Well, I mean, yeah. You will have the

19 settings configured in some specific way. So I

20 think that's what the claim -- or that's what the

21 spec refers to as configuration settings.

22 Q. So you'll have settings configured in some

23 specific way, and that is specific to an account.

24 Right?

25 A. I mean -- so, again, I don't know what

1 specific claim you are asking me questions about.
2 I mean, what really matters are the limitations of
3 the claim. You're asking me about the embodiments
4 of '268, and I don't know how to answer your
5 question, because there's so many embodiments.
6 There are different embodiments in '268. So I
7 don't really know what specific question you're
8 asking me right now.

9 Q. I'm asking about the word "account." And
10 you said you applied the plain and ordinary
11 meaning, and you also said that this takes into
12 account the specification of the '268.

13 So you took into account embodiments like
14 these we've been discussing. Right?

15 A. Well, I mean, the claim language can be
16 broader than specific embodiments that you have.
17 Right? So embodiments are examples, and so I'm not
18 going to port limitations from the embodiment into
19 the claim itself. What I was saying is that the
20 meaning of what the terms mean is plain and
21 ordinary meaning in the context of the disclosures
22 in the patent. Right?

23 So that's what I was saying. I wasn't
24 saying that we should take specific limitations
25 from embodiments and port them to the claim if the

1 **claim doesn't already -- if the claim doesn't**
2 **require it.**

3 Q. Right. I'm not saying that they're --
4 these specific examples are required. But the
5 claims could include them; right?

6 A. The claims -- yeah, the claims can read
7 on -- yeah. I mean, if you have -- I mean, it
8 depends on how many embodiments you have, how the
9 claims are drafted. But, yeah, the claims could
10 cover some of the embodiments in the patent.

11 Q. Dr. Malek, I'd like to go to another
12 exhibit. It's 1011 -- no, I'm sorry. It's not
13 that one. Mistake.

14 Let's go to Exhibit 1010. Do you have
15 that?

16 A. That's Xiao? Yes.

17 Q. And if you could go to paragraph 65.

18 A. Okay.

19 Q. Do you see in the last sentence of this
20 paragraph where it says "a plurality of accounts
21 each associated with one or more automobiles 112,
22 one or more automobile operators, and/or one or
23 more mobile devices 110"?

24 A. Okay. You just read the last sentence of
25 paragraph 65. Right?

1 Q. Yes.

2 A. Yeah, I see that.

3 Q. Is that an example of there being multiple
4 accounts?

5 A. Well, I think what the sentence is saying
6 is that Figure 6 is showing one account, but then
7 it's saying that there could be multiple accounts
8 as well.

9 Q. Yeah. There could be multiple accounts.
10 For example, if there were -- sorry. Let me
11 rephrase that.

12 There could be a plurality of accounts and
13 each of them could be associated with the things
14 listed. Right?

15 ATTORNEY TICE: Objection. Form.

16 A. It says that "It is to be appreciated that
17 storage device may contain automobile key service
18 information for plurality accounts, each associated
19 with one or more automobiles, one or more
20 automobile operators, and/or one or more mobile
21 devices."

22 Q. So there could be a plurality of accounts
23 where each of them is associated with one or more
24 automobiles 112, one or more automobile operators,
25 and/or one or more mobile devices 110. Right?

1 **A. Yeah. That's what it says in this part of**
2 **Xiao's reference.**

3 Q. So an account could be associated with a
4 mobile device. Right?

5 **A. It says -- it says -- yeah. He says each**
6 **account can be associated with one or more mobile**
7 **devices.**

8 Q. That means there could be an account for
9 mobile device 1 and there could be an account for
10 mobile device 2?

11 **A. I -- yeah. At least this particular**
12 **embodiment in Xiao I think is saying that an**
13 **account or each account can be associated with one**
14 **or more mobile devices.**

15 Q. Okay. Thanks.

16 And an account could be associated with a
17 user?

18 **A. It says each -- each of the plurality of**
19 **accounts can be associated with one or more**
20 **automobile operators.**

21 Q. Yeah. So, for example, there could be an
22 account for one operator and there could be an
23 account for another operator?

24 **A. Well, there could be an account associated**
25 **with one or more automobile operators. So an**

1 **account could be associated with one mobile**
2 **operator or more than one mobile operator.**

3 Q. And he also says a plurality of accounts.
4 Right?

5 A. **Yes, I see that.**

6 Q. So there could be a plurality of accounts:
7 one account for User 1, one account for User 2?

8 A. **Well, as I said, what it says that you**
9 **have a plurality of accounts, each associated with**
10 **one or more automobile operators.**

11 Q. "Or" means either-or. Right?

12 A. **Yes. I'm applying the English meaning of**
13 **the word "or," yes.**

14 Q. So an account could be associated with one
15 automobile operator. Right?

16 A. **An account could be associated with one or**
17 **more automobile operators.**

18 Q. That's not what I'm asking, though. About
19 a plurality of operators. I mean -- I'm sorry -- a
20 plurality of accounts.

21 ATTORNEY TICE: Objection. Form.

22 A. **Well, it says a plurality of accounts,**
23 **comma, each.**

24 **So each account can be associated with one**
25 **or more automobile operators.**

1 Q. Right. In that situation you just
2 described, there's still a plurality of accounts.
3 Right?

4 A. Well, this is saying each. Each account.
5 Right? Each of the plurality of accounts can be
6 associated with one or more automobile operators.

7 Q. Right. And applying the ordinary English
8 meaning of the word "or," each account could be
9 associated with one automobile operator. Right?

10 A. I think I discuss this in my report. It
11 basically answers the question you're asking. I
12 say, on page 63 of my report, that -- at the very
13 top, I say Xiao instructs that operator information
14 may include automobile permissions associated with
15 each operator on the account. For example, Xiao's
16 family account may include a father and mother who
17 may have permissions -- or who may have permission
18 to operate every automobile on the account, whereas
19 a child may only have a permission -- may only have
20 permission to operate the child's automobile or the
21 family automobile.

22 And then I go on in paragraph 117 to say
23 that, accordingly, as explicitly disclosed by Xiao,
24 the relied-upon family members are simply different
25 operators on one account (the account) as opposed

1 to the recited sub-user accounts of claims 17 and
2 19.

3 So, basically, to answer your question, he
4 can have -- Xiao discloses that he can have
5 multiple family members on one account. But it's
6 not disclosing, you know, the sub-user accounts,
7 plural, of claims 17 and 19.

8 Q. But I'm not asking you about that part of
9 Xiao right now.

10 The part of the report you referenced, 63,
11 paragraph 63, that doesn't refer to paragraph 65 of
12 Xiao, does it?

13 A. But it's the same thing. I mean, it's
14 describing the same thing.

15 Q. Paragraph 63 of your report doesn't
16 reference paragraph 65 of Xiao, does it?

17 ATTORNEY TICE: Objection. Asked and
18 answered.

19 A. I think I'm citing to paragraph 76. But
20 this is all in the context of what Xiao is
21 teaching, and I think paragraph 76 is consistent
22 with paragraph 65 we're looking at.

23 Q. If we go back and look at paragraph 65 of
24 Xiao.

25 Now, I don't disagree with you that there

1 could be the situation of a account where it's
2 associated with multiple users. But I'm asking
3 about what Xiao discloses here, which is that there
4 could be a plurality of accounts, each associated
5 with, and one of those things is one or more
6 operators.

7 If you go back to paragraph 65, you see
8 where that's written. Right?

9 **A. Yeah. And that's consistent with what I**
10 **just read from my report. So I said -- in my**
11 **report I say that how Xiao, he can have an account**
12 **like a family account, and he can have a father,**
13 **mother, and child in that account. And then**
14 **Xiao -- you know, they can have permissions to**
15 **operate different vehicles, but they're all part of**
16 **the same account.**

17 Q. Let's talk about paragraph 120 of your
18 declaration now. This is where you reference the
19 family accounts and different permissions.

20 **A. Okay.**

21 Q. So a permission is associated with
22 operating the automobile. Right?

23 ATTORNEY TICE: Objection. Form.

24 **A. Well, as I say here, at the end of**
25 **paragraph, or -- sorry -- in the middle of**

1 paragraph 120, I say, "The relied-upon permissions
2 of Xiao refer to which automobiles an operator may
3 operate, not anything regarding settable settings
4 of the selected vehicle."

5 Q. And I'm asking about permissions.

6 If a user is permitted -- if a user has
7 permission, they can operate the vehicle. Right?

8 ATTORNEY TICE: Objection. Form and
9 scope.

10 A. Again, we're talking about Xiao. Right?
11 In the context of Xiao, as I say here, permissions
12 of Xiao refer to which automobiles an operator may
13 operate.

14 Q. So if a user has permission, he can
15 operate an automobile. Right?

16 ATTORNEY TICE: Objection. Same
17 objections, and asked and answered.

18 A. Again, we're talking about Xiao, the prior
19 art reference here.

20 So I say in the context of Xiao, Xiao uses
21 the word "permission" to refer to which automobiles
22 an operator may operate in that context.

23 Q. Right. You seem to draw a distinction
24 between this reference to which automobiles a user
25 can operate. And so you say if a user has

1 permission, he can operate it. If a user doesn't
2 have permission, he can't operate it. Right?

3 A. We're talking about Xiao. Right?

4 In the context of Xiao, which is a prior
5 art here, I'm saying that the permissions that
6 Dr. Almeroth has relied on in Xiao are described in
7 Xiao to refer to which automobiles an operator may
8 operate.

9 Q. Yeah. And I'm trying to understand what
10 you mean by which automobiles the operator may
11 operate.

12 If an operator has permission, he can
13 operate the vehicle. That's what you mean. Right?

14 A. So, again, we're talking about Xiao,
15 specific prior art that Dr. Almeroth has relied
16 upon for his opinions.

17 In the context of Xiao, as I say here,
18 Xiao teaches that the automobile permissions
19 associated with each operator may identify the
20 automobile the operator is permitted to operate.

21 Q. So the permissions of Xiao identify
22 whether a user can operate a particular automobile.
23 Right?

24 ATTORNEY TICE: Objection. Asked and
25 answered.

1 A. As I said, and as I say in my report, in
2 the context of Xiao -- which is a specific prior
3 art that Dr. Almeroth has relied on for his
4 opinions -- I'm saying that Xiao discloses that the
5 automobile permissions associated with each
6 operator may identify the automobile the operator
7 is permitted to operate. But these permissions as
8 to which automobile the operator is permitted to
9 operate fails to disclose settable settings of the
10 selected vehicle that can be enabled or disabled,
11 which is the context of this paragraph.

12 Q. Yeah. So let's just focus on an operator
13 who may or may not permission to operate a
14 particular vehicle.

15 In that context, if a user doesn't have
16 permission, can he operate the automobile?

17 ATTORNEY TICE: Objection. Form.

18 A. You asked me something that is outside of
19 the scope of what I'm saying here. So I'm offering
20 opinions about the specific limitation in Claim 17,
21 18, and 19, where it's about settable settings, you
22 know, being enabled or disabled. And what I'm
23 offering here is Xiao, which is the specific prior
24 art that Dr. Almeroth has relied on, teaches that
25 the automobile permissions associated with each

1 operator, they identify the automobile the operator
2 is permitted to operate. They don't -- they fail
3 to disclose settable settings of the selected
4 vehicle that can be enabled or disabled for Claim
5 18.

6 Q. Right. You're responding and relying on
7 what Xiao says, for example, in paragraph 76. So I
8 want to understand what you understand paragraph 76
9 is saying.

10 You say that permissions of Xiao refers to
11 which automobiles an operator may operate. And in
12 paragraph 76, Xiao states, "The father and mother
13 may have permission to operate automobile 112 on
14 the account, whereas a child may only have
15 permission to operate the child's automobile 112 or
16 the family automobile 112."

17 So there are certain automobiles that the
18 child does not have permission to operate. Right?

19 ATTORNEY TICE: Objection. Form.

20 A. Well, I mean, the -- Xiao is saying --
21 Xiao is saying a child may only have permissions to
22 operate the child's automobile or the family
23 automobile.

24 Q. He only has permissions to some
25 automobiles. Right?

1 **A. He has permissions to operate the child's**
2 **automobile or the family automobile.**

3 Q. And the automobiles that he has permission
4 to access are different from those of the father
5 and mother. Right?

6 **A. Well, not if those are the only vehicles**
7 **they have in the family.**

8 Q. Xiao is saying that the mother and father
9 have permission to operate every automobile.
10 Right?

11 **A. Yes, he says that.**

12 Q. The next sentence says "whereas."
13 Do you see that?

14 **A. Yes.**

15 Q. That means that the child has permissions
16 to something different. Right?

17 **A. Well, potentially, if the family -- if the**
18 **family only has two cars, the child's automobile**
19 **and the family automobile, then they all have the**
20 **same permissions.**

21 Q. Right. That could be one.

22 But there could also be a situation where
23 the father and mother have access to more
24 automobiles than the child. Right?

25 **A. If there are more vehicles, you mean?**

1 Q. Yes.

2 A. Yeah. I think the child -- I mean,
3 Xiao -- like what it says, the -- in one
4 embodiment, automobile permissions might imply the
5 automobile's operator is permitted to operate in
6 connection with the disclosed wireless automobile
7 key service. For example, in a family account, the
8 father and mother may have permissions to operate
9 every automobile on the account, whereas the child
10 may only have permission to operate the child's
11 automobile or the family automobile. But they're
12 all part of the same account.

13 Q. Right. So in that situation that there
14 are more automobiles that the father and mother can
15 operate than the child, then the child doesn't have
16 permission to operate certain automobiles. Right?

17 A. I mean, I believe I've already answered
18 that in my report. I say, for example, Xiao's
19 family account may include a father and mother who
20 may have permissions to operate every automobile on
21 the account, whereas the child may only have
22 permission to operate the child's automobile or the
23 family automobile. I say that on page 63 at the
24 end of paragraph 116.

25 Q. Dr. Malek, while we're on the reference of

1 Xiao, I'd like to direct you to paragraph 95.

2 A. Okay.

3 Q. I want to ask you about the process of
4 authentication in Xiao.

5 Do you see in paragraph 95 where it says,
6 "The operator may log in to page 900 by inputting
7 the operator's username, password, biometric data,
8 and/or other authentication information to mobile
9 device 110"?

10 A. Yes.

11 Q. And do you see that that information is
12 transmitted, it says "to automobile service
13 center" -- sorry -- "to automobile service server
14 118"?

15 A. Yeah, I see that.

16 Q. And then the server 118 checks that
17 information against authentication information 612
18 corresponding to the mobile ID and/or the operator
19 ID in the stored account information?

20 A. Okay.

21 Q. And if there is successful authentication,
22 then the server retrieves the profile information
23 614.

24 Do you see that?

25 A. Yes.

1 Q. Do you see in the next paragraph, also
2 paragraph 96, where it says, "The operator may
3 access and log in to the website by inputting the
4 user's username, password, biometric data, and/or
5 other authentication information to terminal device
6 122"?

7 A. Yes.

8 Q. Xiao discloses authenticating the user.
9 Right?

10 A. So Xiao is disclosing user providing, you
11 know, username password and whatnot for, you know,
12 for authentication.

13 Q. Right. So Xiao has this authentication
14 happening, and it's based on some information.
15 Right? The information you just mentioned, like
16 username, password, and whatnot?

17 A. I don't agree that username and password
18 are information for a user profile of a user.

19 Q. That's not what I asked.

20 A. What did you ask?

21 Q. You said Xiao discloses providing
22 username, password, and whatnot for authentication.

23 My question is, in Xiao there's an
24 authentication that happens based on this
25 information: username, password, and whatnot.

1 Right?

2 ATTORNEY TICE: Objection. Vague and
3 ambiguous.

4 A. In Xiao, the authentication happens based
5 on username, password, biometric data, and things
6 that are mentioned here.

7 Q. After authentication, these paragraphs
8 that we just read through in Xiao, for example, 95,
9 96, it said that after authentication, then it
10 retrieves profile information 614. Right?

11 Let me just direct you to paragraph 95,
12 the second-to-last sentence. Do you see where it
13 says, "If server 118 properly authenticates the
14 operator, server 118 may retrieve the operator's
15 profile information 614 and default automobile ID
16 617 for the operator"?

17 A. Yes, I see that sentence.

18 Q. All right. Dr. Malek, it's been about
19 another hour. Would you like to take a break?

20 A. Sure.

21 Q. Okay. So we'll continue at --

22 A. 11:27.

23 Q. -- 11:27.

24 Thank you.

25 THE REPORTER: Off the record at 11:17.

1 (Recess taken from 11:17 a.m.
2 to 11:27 a.m. PDT.)

3 THE REPORTER: We are back on the record
4 at 11:27 a.m.

5 ATTORNEY DAVIES: Welcome back, Dr. Malek.

6 THE WITNESS: Thank you.

7 ATTORNEY DAVIES: I have no further
8 questions for you. So I'd like to thank you for
9 your time --

10 THE WITNESS: Thank you.

11 ATTORNEY DAVIES: -- and call it a day.

12 ATTORNEY TICE: And nothing from patent
13 owner.

14 THE REPORTER: Okay. We are off the
15 record at 11:28 a.m.

16 (Witness excused and deposition concluded
17 at 11:28 a.m. PDT.)

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1 J U R A T

2

3 I, Sam Malek, PhD, do hereby certify that
4 I have read the foregoing transcript of my
5 testimony, and is an accurate record of said
6 testimony (except for the following corrections
7 listed below):

8	Page	Line	Correction
9	58	17	I don't agree that Xiao's username and password

10

11

12

13

14

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16

17



18 Sam Malek, PhD

19

20 Sworn to and subscribed before me this 16th
21 day of April, 2025.

22

23

24 Notary Public/Justice of the Peace

25 My commission expires:

1 CERTIFICATE OF REPORTER

2

3 I, Deanna J. Dean, Registered Diplomate
4 Reporter, Certified Realtime Reporter, and New
5 Hampshire licensed court reporter, the officer
6 before whom the proceedings were taken, do hereby
7 certify that the foregoing transcript is a true and
8 accurate record of these proceedings; that said
9 proceedings were taken in Stenotype note by me on
10 Friday, April 11, 2025, commencing at 9 a.m. (PDT)
11 and ending at 11:28 a.m. (PDT).

12 I further certify that present on behalf of
13 Party Toyota Motor Corp. was Ryan T. Davies of
14 Finnegan, Henderson, Farabow, Garrett & Dunner LLP,
15 and on behalf of Party Emerging Automotive LLC was
16 Jerry Tice of Bunsow De Mory LLP.

17 I further certify that I am not related to, nor
18 associated with any of the parties or their
19 attorneys, nor do I have any disqualifying
20 interest, personal or financial, in the actions
21 within.

22 Dated this 14th day of April, 2025, at Hillsborough
23 County in the State of New Hampshire.

24

25



A	49:1,6 50:4	annotated 9:8	39:6 49:17	authenticates
a.m 1:17 2:3	50:19	answer 7:20	51:17 52:24	59:13
5:10 35:6,7,8	accurate 61:5	24:22 25:2,3	53:18 58:19	authenticating
35:10 60:1,2	62:8	25:6 31:17	asking 20:2	58:8
60:4,15,17	actions 62:20	37:3,10 43:4	24:18 29:7	authentication
62:10,11	adjustment	49:3	32:7,9 33:8	57:4,8,17,21
able 7:5 21:14	13:11,12,24	answered 14:6	33:16,17	58:5,12,13
33:9,10 34:9	13:25 14:4,4	33:20 39:7	43:1,3,8,9	58:22,24
abstract 32:8	administrator	49:18 51:17	47:18 48:11	59:4,7,9
access 36:21	41:17	52:25 56:17	49:8 50:2	automobile
36:22 55:4	adopted 30:15	answering	51:5	44:22 45:17
55:23 58:3	affect 7:10	9:25	associated	45:20,24
account 31:19	ago 11:19	answers 25:3	41:5 42:17	46:20,25
31:22,22	agree 6:2 7:23	48:11	44:21 45:13	47:10,15,17
32:6,6,11,16	30:4 31:13	anybody 7:24	45:18,23	47:25 48:6,9
33:2,3,5,6,8	58:17	10:1,22	46:3,6,13,16	48:14,18,20
33:12,18,22	agreed 30:2,13	Appeal 1:3 5:6	46:19,24	48:21 50:22
33:24 34:5,6	30:16,25	appear 7:2	47:1,9,14,16	51:15 52:18
34:7 36:1,5,8	31:4,10	appeared 1:21	47:24 48:6,9	52:20,22
36:9,12,19	agreement	applications	48:14 50:2,4	53:5,6,8,16
42:6,23 43:9	30:10	36:23	50:21 52:19	53:25 54:1
43:12,13	agrees 6:5	applied 32:14	53:5,25	54:13,15,16
45:6 46:3,6,8	aims 12:23	32:20,24	62:18	54:22,23
46:9,13,13	algorithm	33:13,17,21	associating	55:2,2,9,18
46:16,22,23	25:17	34:2,15 38:5	32:2	55:19 56:4,6
46:24 47:1,7	Almeroth 52:6	43:10	Attorney 4:5	56:9,11,11
47:7,14,16	52:15 53:3	applies 40:16	5:18,21,24	56:20,22,23
47:24 48:4,8	53:24	applying 39:13	6:5,6,13	57:12,13
48:15,16,18	Almeroth's	47:12 48:7	10:17 14:5	59:15
48:25,25	8:14 11:22	appreciated	15:21 17:20	automobile's
49:5 50:1,11	12:8	45:16	20:1 21:25	56:5
50:12,13,16	alter 41:18	April 1:16 2:2	24:5,21	automobiles
54:14 56:7,9	ambiguous	5:9 62:10,22	26:23 33:19	44:21 45:19
56:12,19,21	17:21 40:7	arrows 19:7	35:11 39:6	45:24 51:2
57:19	59:3	21:20,22,24	40:6 45:15	51:12,21,24
accounts	analogous	22:1 27:17	47:21 49:17	52:7,10
31:14,21	12:11	27:18,19	50:23 51:8	54:11,17,25
32:2,3 34:1	analysis 30:19	art 11:22 12:11	51:16 52:24	55:3,24
35:17 36:22	30:20	32:18,20	53:17 54:19	56:14,16
44:20 45:4,7	analyzes	51:19 52:5	59:2 60:5,7	Automotive
45:9,12,18	40:18	52:15 53:3	60:11,12	1:8 5:5,23
45:22 46:19	and/or 44:22	53:24	attorneys 3:5	62:15
47:3,6,9,20	45:20,25	asked 14:5	3:20 11:4,7	Avenue 3:6
47:22 48:2,5	57:8,18 58:4	33:19 34:13	62:19	

B	Brenda 11:3	48:19 50:13	clean 9:5,6,17	8:23 9:2,25
B 4:9	broader 43:16	54:14,18,21	9:18	concerning
back 13:14	Bunsow 3:19	55:15,24	clear 7:12	7:24
23:23 27:4	5:21 11:4	56:2,9,15,15	cloud 15:4	concluded
34:24 35:1,2	62:16	56:21	27:9,10,20	60:16
35:9,12	C	child's 48:20	36:21	conducted
41:24 49:23	C 3:1 5:1	54:15,22	clouds 27:17	1:20
50:7 60:3,5	CA 3:22	55:1,18	column 14:19	configuration
based 30:10	California 6:23	56:10,22	14:21 15:2,3	35:25 36:5,7
40:12 58:14	34:25	CHILD.' 41:13	15:10,11,14	36:9,12,14
58:24 59:4	call 60:11	choices 25:14	22:7,10,14	37:4,10,14
basically	called 6:9	choose 26:8	31:24 35:22	37:17,19,21
10:18 20:11	calls 27:6 28:9	chooses 26:4	36:20 37:6	37:22,23,24
38:22 39:10	Camino 3:21	choosing 26:2	38:14 42:1,2	38:10,13,16
48:11 49:3	car 12:25 13:1	cite 13:16,21	combine 12:13	38:17,19,22
beginning	cars 55:18	13:24 14:3	come 34:24	39:3,4,10,12
5:16 15:4	case 1:11,13	citing 14:1,7,9	35:1,2	39:14,19,23
begins 5:2	5:6,7 7:3	49:19	comes 19:20	39:24 40:2
behalf 5:13	8:15,19	City 3:22	comma 47:23	41:2,4,9,20
62:12,15	10:12 17:13	claim 15:14,23	commencing	41:21 42:5,8
believe 12:14	20:4,18	15:23 22:21	62:10	42:10,12,14
31:15,18	24:12 31:18	22:25 23:2,3	commission	42:16,21
56:17	37:17 38:17	23:3,3,7,7,10	61:25	configuratio...
better 25:4	39:1 41:12	23:16,17,17	communicate	36:18,23
biometric 57:7	CD 26:2,4,6,8	23:20 29:19	7:24 27:21	37:1
58:4 59:5	cell 8:4	29:24,25	communicat...	configureable
bit 35:18	center 57:13	31:9,23 32:1	10:1 28:1	41:16
board 1:3 5:6	certain 12:8	32:9 33:25	communicat...	configured
32:24	54:17 56:16	34:3,16 40:9	27:15,24	39:8,9 42:19
box 16:10,16	CERTIFICATE	40:14,20,21	communicat...	42:22
18:9,10,11	62:1	40:24 42:20	27:7	confirm 20:24
18:11,23	Certified 2:8	43:1,3,15,19	compatibility	confirmation
20:12 21:6,8	62:4	43:25 44:1,1	29:25 30:6	38:25
21:8,9,9,16	certify 61:3	53:20 54:4	30:10,17,18	connected
21:16 22:2	62:7,12,17	claimed 15:22	30:23 31:3	8:23 9:1
boxes 21:21	chat 9:21	claims 15:15	complete 7:6	21:23
22:3	20:14	22:8 29:22	37:3	connecting
brake 13:11,17	check 29:25	30:5,8,17,17	component	21:20 27:17
13:21	30:6,10,17	30:22 31:2	18:25 28:7	27:19
break 7:19,21	30:18,23	31:12,13,16	components	connection
34:19,22	31:3	31:20 44:5,6	19:8 28:3,5	6:18 10:15
35:14,16	checks 57:16	44:6,9,9 49:1	28:25 29:4,6	56:6
59:19	child 41:8	49:7	29:7	consider
breaks 7:17,24		clarify 7:15	computer 8:12	32:17,19

40:21,22 considered 31:4 consistent 30:24 31:7 38:8 49:21 50:9 construction 30:14 31:8 34:9 construe 33:9 33:14,16 34:3,14 40:11 construed 31:2 32:23 contain 45:17 contains 18:9 18:11 41:14 contemplate 34:11 context 29:12 32:11 34:12 37:15 38:6 38:24 39:20 39:24 40:8 40:13,19,24 43:21 49:20 51:11,20,22 52:4,17 53:2 53:11,15 continue 59:21 copies 9:5,6 9:10,17 copy 20:8,17 Corp 1:5 5:4 62:13 Correction 61:8 corrections 61:6 correspondi... 57:18	counsel 5:15 County 62:23 course 8:5 9:20 court 2:9 5:12 10:16,19 30:4,15,25 31:1,5 62:5 court's 30:14 31:7 cover 44:10 covered 15:20 created 41:13 CRR 1:25 customization 36:24 D D 4:1 5:1 data 57:7 58:4 59:5 date 5:9 Dated 62:22 Davies 3:9 4:5 5:18,18 6:5 6:13,16 35:11 60:5,7 60:11 62:13 day 60:11 61:21 62:22 days 10:11 11:24,24 DC 3:7 De 3:19 62:16 deals 13:5 24:1 Dean 1:25 2:7 5:13 62:3 Deanna 1:25 2:7 5:13 62:3 declaration 8:18,19 11:11,18 13:14,16,19	24:16 29:13 29:18 50:18 declarations 9:13 10:11 default 59:15 defined 36:24 DeMory 5:21 11:4 dependent 23:2 31:11 31:16,19 depends 18:7 26:24,25 28:14 29:12 44:8 depicted 19:4 21:9,12 depo 10:6,19 deposed 6:10 deposition 1:18 2:5 5:3 5:11,17 7:25 8:5 10:2,5 60:16 describe 23:5 described 36:7 48:2 52:6 describing 16:19 28:21 49:14 Description 4:11 descriptions 16:20 detail 37:2 details 28:21 Determine 16:11,17 determined 40:12 determines 25:17 device 19:3,4	21:18 45:17 46:4,9,10 57:9 58:5 devices 44:23 45:21,25 46:7,14 different 24:9 25:11,13 37:13 43:6 48:24 50:15 50:19 55:4 55:16 Diplomate 2:7 62:3 direct 14:19 16:21 57:1 59:11 disabled 53:10 53:22 54:4 disagree 49:25 disclose 12:22 16:4 23:8 53:9 54:3 disclosed 48:23 56:6 discloses 24:9 25:12 49:4 50:3 53:4 58:8,21 disclosing 28:15 49:6 58:10 disclosures 43:21 discuss 48:10 discussed 20:6 discussing 21:13 29:19 43:14 dispute 8:15 disqualifying 62:19 distinction	51:23 District 10:15 10:19 30:4 30:14 31:1,5 dive 12:3 document 9:4 9:19 20:14 20:20 21:6 documents 8:14,25 9:5 9:11 doing 28:14 download 20:15 Dr 5:3 6:14 8:8 8:14 11:22 12:8 20:7 34:18 35:12 44:11 52:6 52:15 53:3 53:24 56:25 59:18 60:5 drafted 44:9 draw 51:23 driver 12:24 13:3 duly 6:10 Dunner 3:4,12 62:14 E E 3:1,1 4:1,9 5:1,1 earlier 36:20 41:25 either-or 47:11 EI 3:21 elements 27:19,21 29:19,23 31:9 embodied 26:18,20 embodiment
--	---	--	---	--

25:16 35:25 36:16 43:18 46:12 56:4 embodiments 36:6,11 42:11 43:3,5 43:6,13,16 43:17,25 44:8,10 Emerging 1:8 5:4,22 62:15 enabled 53:10 53:22 54:4 English 37:21 37:25 47:12 48:7 entertainment 16:12,25 17:6,15,24 18:4 24:1,4 24:10,20 25:14,21 26:12 entire 20:3 34:11 Entzminger 11:3,3 enunciate 26:12 ESQ 3:9,16,24 essentially 30:15 estimate 10:13 11:20 estimating 11:23 event 7:2 exact 11:20 exactly 22:23 examination 4:3 6:9,12 example 26:14 28:8,8 38:14 39:22,25	45:3,10 46:21 48:15 54:7 56:7,18 59:8 examples 38:7 43:17 44:4 excused 60:16 exhibit 11:12 12:6 13:7,15 14:13,14 15:25 19:12 20:22 44:12 44:14 expert 6:19 24:11 37:16 expires 61:25 explicit 25:14 explicitly 48:23 Explorer 3:13 extent 27:24 extracted 13:12 extraordinary 32:20 F fail 54:2 fails 53:9 failures 12:16 family 48:16 48:21,24 49:5 50:12 50:19 54:16 54:22 55:2,7 55:17,18,19 56:7,11,19 56:23 far 21:15 Farabow 3:3 3:11 62:14 father 48:16 50:12 54:12 55:4,8,23	56:8,14,19 field 12:12 figure 16:8,13 18:8,13,14 18:15,21,22 18:23 19:8 19:14,16 21:5,15,17 22:3 27:4,16 27:19 28:6 28:24 38:15 38:18,20,24 38:24 39:2 39:22 40:3 41:1,19 45:6 financial 62:20 find 15:1 Finnegan 3:3 3:11 5:19 62:14 first 6:9 11:9 12:5 20:21 25:16 FM 25:11,17 25:20 focus 53:12 following 61:6 follows 6:11 foregoing 61:4 62:7 Form 10:17 15:21 21:25 24:5,21 26:23 45:15 47:21 50:23 51:8 53:17 54:19 Friday 1:16 2:2 62:10 front 9:11,21 11:11 full 6:20 function 13:11 13:12	functions 13:4 13:4 further 60:7 62:12,17 future 6:3 G G 5:1 Garrett 3:3,11 62:14 general 24:19 26:21 generally 24:3 32:7,22 give 25:6 31:17 37:2,9 given 38:16 39:1 gives 38:7 go 13:7,14 15:10 16:8 16:13 17:18 18:8 22:4,7 23:23 25:8 25:15,23 26:9 27:4 29:13,15 35:19 44:11 44:14,17 48:22 49:23 50:7 goal 7:12 goes 15:6 21:15 23:5 going 7:9 34:8 34:18 43:18 Goldberg 3:16 5:24,24 Good 6:14,15 guess 22:2 guidance 13:2 13:3 H H 4:9	Hampshire 2:10 62:5,23 happening 58:14 happens 58:24 59:4 happy 24:22 25:1 34:10 37:2,8 hardware 28:23 Hayashi 12:6,8 12:15,18,23 13:1,6,22 held 2:6 5:11 help 13:3 Henderson 3:3 3:11 5:14,19 62:14 Hillsborough 62:22 Hmm 20:16 hosting 28:10 28:12,16 29:2,9 hour 7:17 34:19 59:19 hours 10:13 house 6:23 I icons 22:3 27:20 ID 57:18,19 59:15 identify 13:3 52:19,21 53:6 54:1 ignore 40:19 40:20 implemented 18:7 28:22 imply 56:4 in-vehicle
--	---	---	--	---

include 14:23 15:4 31:22 32:6 36:5,14 37:4 38:11 38:19 39:19 44:5 48:14 48:16 56:19	J J 1:25 2:7 61:1 62:3 Jerry 3:24 5:21 62:16 JOSH 3:16 Joshua 5:24 joshua.gold... 3:17 jtice@bdipla... 3:25 jump 41:24	22:18 learning 16:4 16:5 Legal 5:14 let's 13:6 14:12 18:8 19:10 22:4 23:23 25:7 28:8 29:13 31:11 44:14 50:17 53:12 lever 13:10,16 13:21 licensed 2:9 5:12 62:5 limitation 53:20 limitations 31:7 32:25 43:2,18,24 line 14:21 15:1 15:2,3,15 22:10,14,16 31:24 35:24 61:8 lines 38:14 42:1,2 list 15:7 listed 45:14 61:7 litigation 10:16 30:4 little 18:13 35:18 live 7:2 LLC 1:8 5:5 62:15 LLP 3:4,12,19 62:14,16 local 15:5 location 22:25 log 57:6 58:3 login 41:7,8,13 41:14	look 8:25 13:6 14:12 16:13 18:13 19:5 20:13 22:8 25:7 31:24 34:11 49:23 looking 20:7,9 20:10 27:13 28:24 36:17 37:9 41:19 49:22 looks 18:17 26:1 27:10 28:10 31:25	44:7,7 47:19 49:13 52:10 52:13 54:20 55:25 56:2 56:17 meaning 32:15 32:21,25 33:1,4,5,7,12 33:13,17,21 34:2,16 37:20 38:1,6 38:8 39:14 40:5,8,11,13 40:15 43:11 43:20,21 47:12 48:8 means 34:7,14 37:24 40:23 46:8 47:11 55:15 medication 7:9 meet 10:22 11:6 members 48:24 49:5 memorized 24:24 memory 17:1 17:11,16,18 17:25 18:5 25:4 mentioned 19:17 58:15 59:6 met 11:1 method 23:18 middle 50:25 mirror 13:11 13:25 14:4 14:25 15:6 15:19 Mistake 44:13 mobile 19:3,4
including 27:20 information 23:4,9,12,19 23:20,22 45:18 48:13 57:8,11,17 57:17,19,22 58:5,14,15 58:18,25 59:10,15 informed 30:3 30:11,19 inputting 57:6 58:3 inside 18:19 21:9,12,14 21:16,22 instructs 48:13 interest 62:20 introduce 5:15 involve 18:6 involved 23:18 IPR 9:16 11:13 IPR2024-007... 1:11 5:6 11:10,15 IPR2024-008... 1:13 5:8 IPRs 9:13 10:11 irrespective 32:7 Irvine 6:23 issue 12:7	K keep 8:4 key 45:17 56:7 kind 26:25 27:10 38:22 know 7:14,19 10:9 11:2,20 11:23,24 12:13 13:1,2 13:8 16:5,6 20:19 23:5,7 23:18 27:24 29:16 30:15 32:22 33:15 34:10,13 37:3,9,14,17 38:2,10 40:9 42:25 43:4,7 49:6 50:14 53:22 58:11 58:11	lever 13:10,16 13:21 licensed 2:9 5:12 62:5 limitation 53:20 limitations 31:7 32:25 43:2,18,24 line 14:21 15:1 15:2,3,15 22:10,14,16 31:24 35:24 61:8 lines 38:14 42:1,2 list 15:7 listed 45:14 61:7 litigation 10:16 30:4 little 18:13 35:18 live 7:2 LLC 1:8 5:5 62:15 LLP 3:4,12,19 62:14,16 local 15:5 location 22:25 log 57:6 58:3 login 41:7,8,13 41:14	M main 9:15 making 25:11 26:14 29:21 Malek 1:18 2:5 4:4 5:3 6:8 6:14,21 8:8 20:7 34:18 35:12 44:11 56:25 59:18 60:5 61:3,18 material 10:12 matter 5:3 matters 39:20 39:25 43:2 mean 8:13,17 11:24 15:17 15:22 16:5 17:22 20:2,4 20:9 22:23 23:2,16 24:23 25:1 26:7,24 32:14 33:3 33:25 36:16 38:1,12 40:17 41:11 42:18,25 43:2,15,20	means 34:7,14 37:24 40:23 46:8 47:11 55:15 medication 7:9 meet 10:22 11:6 members 48:24 49:5 memorized 24:24 memory 17:1 17:11,16,18 17:25 18:5 25:4 mentioned 19:17 58:15 59:6 met 11:1 method 23:18 middle 50:25 mirror 13:11 13:25 14:4 14:25 15:6 15:19 Mistake 44:13 mobile 19:3,4
	L L 3:16 labeled 19:1 land 27:14 language 40:21,21 43:15 law 6:10 learned 22:11			

21:18 44:23 45:20,25 46:4,6,9,10 46:14 47:1,2 57:8,18 Monday 10:7,7 10:8,20 months 11:19 12:1 morning 6:14 6:15 Mory 3:19 62:16 mother 48:16 50:13 54:12 55:5,8,23 56:8,14,19 motivated 12:13 Motor 1:5 5:4 62:13 multiple 45:3,7 45:9 49:5 50:2 music 29:11	notes 9:7 noticing 5:17 number 4:11 21:1,2 27:8 NW 3:6 O O 5:1 oath 6:24 7:1 objection 6:2 6:6 10:17 14:5 15:21 17:20 20:1 21:25 24:5 24:21 26:23 33:19 39:6 40:6 45:15 47:21 49:17 50:23 51:8 51:16 52:24 53:17 54:19 59:2 objections 51:17 offer 12:14 34:9,12 offering 34:2 34:16 53:19 53:23 OFFICE 1:1 officer 62:5 Oh 14:17 okay 7:12,15 7:16,21,22 8:6,20 9:10 9:19,22,23 10:2,3 11:9 12:3 13:6,9 13:20 14:17 14:17,19 15:13 16:1,8 16:9,15,22 17:4,9 18:8 19:11,16	20:16 21:17 22:4,6,9,17 23:23 25:9 25:23,24 26:10 27:5 28:2 29:14 29:17 34:21 34:23 35:2,4 35:16,21,23 41:23 42:4 44:18,24 46:15 50:20 57:2,20 59:21 60:14 once 35:25 open 8:12 20:15 41:17 operate 26:2,4 26:8 48:18 48:20 50:15 51:3,7,13,15 51:22,25 52:1,2,8,11 52:13,20,22 53:7,9,13,16 54:2,11,13 54:15,18,22 55:1,9 56:5,8 56:10,15,16 56:20,22 operating 50:22 operator 12:24 26:1 46:22 46:23 47:2,2 47:15 48:9 48:13,15 51:2,12,22 52:7,10,12 52:19,20 53:6,6,8,12 54:1,1,11 56:5 57:6,18 58:2 59:14	59:16 operator's 57:7 59:14 operators 44:22 45:20 45:24 46:20 46:25 47:10 47:17,19,25 48:6,25 50:6 opinion 12:12 12:21 29:23 30:8,21,24 34:6,8,12 37:23 41:19 opinions 12:10,14 34:2,17 52:16 53:4 53:20 opposed 48:25 ordinary 32:15 32:18,21,24 33:1,4,4,7,13 33:21 34:1 34:15 37:20 38:1,5,8 39:13 40:5,8 40:13 43:10 43:21 48:7 outside 53:18 owner 1:9 3:20 5:5,22 6:7 60:13 owner's 6:19 24:11 P P 3:1,1 5:1 Pacific 35:2 page 4:3,11 12:16 20:21 21:5 48:12 56:23 57:6	61:8 paper 9:10 20:8 paragraph 13:7,9,15,18 13:19 14:3 16:21,23 17:2 25:8,12 25:15,23 26:9 28:17 28:19 29:15 29:18,21 41:12 44:17 44:20,25 48:22 49:11 49:11,15,16 49:19,21,22 49:23 50:7 50:17,25 51:1 53:11 54:7,8,12 56:24 57:1,5 58:1,2 59:11 paragraphs 59:7 parking 13:11 13:16,21 part 15:23 21:11 23:10 26:3 37:6 41:24 46:1 49:8,10 50:15 56:12 participants 1:21 particular 25:8 46:11 52:22 53:14 parties 6:2 30:1,3,12,16 30:25 31:4,9 62:18 party 5:17 62:13,15
---	---	--	--	--

passage 25:7 password 57:7 58:4,11,16 58:17,22,25 59:5 Patenaude 15:25 16:4 16:19 18:8 19:14 20:24 23:23 24:1,4 24:6,7,8,14 25:7 27:6 28:9,15 patent 1:1,3,9 1:12,14 3:20 5:5,5,7,8,22 6:6,18 11:10 11:14,15 14:12,16 15:10,15,20 19:5,10,11 20:4 22:5 24:11 25:5 31:12 32:11 35:20 38:12 40:18 43:22 44:10 60:12 patents 8:15 9:14 10:12 11:21 32:8 pattern 16:7 16:17 patterns 16:4 16:11 PDF 8:14,16 9:4 PDT 1:17 2:3 5:10 35:8 60:2,17 62:10,11 Peace 61:24 pending 7:20 perform 29:25 30:5,9,23	permission 48:17,19,20 50:21 51:7 51:14,21 52:1,2,12 53:13,16 54:13,15,18 55:3,9 56:10 56:16,22 permissions 48:14,17 50:14,19 51:1,5,11 52:5,18,21 53:5,7,25 54:10,21,24 55:1,15,20 56:4,8,20 permitted 51:6 52:20 53:7,8 54:2 56:5 person 32:17 32:19 personal 62:20 petition 9:14 11:22 14:2,8 14:10 petitioner 1:6 3:5 5:4,19,25 6:5 PhD 1:18 2:5 4:4 6:8 61:3 61:18 phone 8:4 places 38:13 38:13 plain 32:14,21 32:24 33:1,3 33:4,7,13,21 34:1,15 37:20 38:1,5 38:8 39:13 40:4,8,12	43:10,20 plan 9:21 player 26:2,4,6 26:8 please 5:15 6:20 7:14,19 8:3 35:22 plural 34:1 49:7 plurality 44:20 45:12,18,22 46:18 47:3,6 47:9,19,20 47:22 48:2,5 50:4 point 7:13,18 31:16 port 43:18,25 portion 36:25 37:5 40:1 POSA 12:13 33:5,6,12 34:5 39:25 POSA's 32:16 40:22 position 14:23 14:24,25 15:5,6 possible 27:2 potential 38:15,25 41:3 potentially 26:16 55:17 precise 25:3,6 31:17 predefined 32:4 preliminarily 31:1 preliminary 30:14 31:8 preparation 10:15	prepare 10:22 preparing 10:4 11:17 prepped 10:18 present 62:12 presenting 5:13 printed 9:15 9:16 prior 11:22 51:18 52:4 52:15 53:2 53:23 privileges 32:4 probably 10:9 proceeding 1:20 proceedings 62:6,8,9 process 57:3 processor 16:24 17:4 17:11,13,19 29:24 30:5,9 30:22 profile 16:25 17:6,10,15 17:18,24 18:5 22:12 22:19,22,24 23:1,4,6,9,12 23:14,19,22 32:3 36:1,8 36:12,18 42:6 57:22 58:18 59:10 59:15 programs 8:11 pronouncing 24:7 properly 59:13 provide 7:6 12:24 28:6 36:21	provides 13:2 28:12,18 providing 28:25 29:3 29:11 58:10 58:21 Public/Justice 61:24 publication 21:1,2,3 purpose 9:25 27:25
Q				
question 7:13 7:20 12:6 20:3 24:23 25:2 32:5 37:13 43:5,7 48:11 49:3 58:23 questions 6:17 7:13 10:1 25:4 43:1 60:8				
R				
R 3:1 5:1 61:1 radio 25:11,17 25:20 RDR 1:25 read 20:3 21:13 37:7 40:1 41:11 44:6,24 50:10 59:8 61:4 reader 8:16 9:4 real 3:21 33:10 33:11,14 34:9,15 realize 40:1 really 43:2,7 Realtime 2:8				

62:4	refers 19:5	requires 23:16	47:4,11,15	22:18 23:3
reason 7:5	42:21 54:10	32:1,9 33:25	48:1,3,5,7,9	23:11 25:16
recall 31:15	regarding 51:3	respect 12:7	49:9 50:8,22	26:3,7,11,19
receiving 23:3	Registered 2:7	responding	51:7,10,15	27:23 28:17
23:8,11,18	62:3	54:6	51:23 52:2,3	29:2 35:24
23:20 29:8	related 62:17	rest 41:11	52:13,23	36:18 38:14
Recess 35:7	relied 52:6,15	Reston 3:14	54:6,18,25	38:24 39:22
60:1	53:3,24	retrieval 18:6	55:5,10,16	41:12,14
recite 22:21	relied-upon	18:7	55:21,24	42:5 44:20
31:14	48:24 51:1	retrieve 59:14	56:13,16	45:16 46:1,5
recited 49:1	relying 54:6	retrieves	58:9,13,15	46:5,5,18
recites 23:20	remote 1:18	16:24 17:5	59:1,10,18	47:3,8,22
recognition	2:5 5:2	17:23 18:1,4	role 6:18 37:16	54:7 55:11
26:15,17,19	remotely 1:21	57:22 59:10	room 8:9,21	55:12 56:3
record 35:5,9	5:11 6:4	retrieving	Ryan 3:9 5:18	57:5,12 58:2
59:25 60:3	repeated	17:14,16	6:16 62:13	59:13
60:15 61:5	18:16,17	review 20:5	ryan.davies...	scenario 17:10
62:8	19:22,24	24:6,8,22	3:10	scope 51:9
Redwood 3:22	rephrase 28:3	25:2,5,5 37:2		53:19
refer 49:11	45:11	37:8	S	screen 8:23,24
51:2,12,21	report 8:14,15	reviewed	S 3:1 4:9 5:1	20:7,9,10,13
52:7	8:17 11:22	12:18 16:2	S406 16:10	21:18
reference 9:16	12:17 48:10	24:14 37:5	S604 16:16	screens 8:20
9:19 12:5,7	48:12 49:10	reviewing	Sam 1:18 2:5	8:22
12:18 15:24	49:15 50:10	10:11 11:21	4:4 5:3 6:8	seat 13:11,24
15:25 16:2	50:11 53:1	11:21 36:25	6:21 61:3,18	14:3,23,24
19:5,15	56:18	right 12:9,19	sample 38:15	15:5,16,17
20:25 23:24	REPORTED	13:17,22	38:25 41:3	15:19
24:18 25:5	1:24	16:2 17:12	saved 36:1,7	second 25:25
34:11 46:2	reporter 2:8,8	19:18 23:17	36:10,12,18	second-to-last
49:16 50:18	2:9 5:2,13	23:21 24:12	42:6	59:12
51:19,24	6:1 35:5,9	24:25 28:6	saying 30:1	see 13:10,23
56:25	59:25 60:3	29:13,20,22	40:15 43:19	14:22 15:8,9
referenced	60:14 62:1,4	29:25 33:10	43:23,24	15:15,17
16:19 23:10	62:4,5	33:10 36:10	44:3 45:5,7	16:16,23
49:10	represent 5:16	36:25 38:23	46:12 48:4	17:4 18:9,12
references	representing	39:5,12,21	52:5 53:4,19	18:16,19,23
12:4 24:24	5:19,22	40:5,9 41:2,6	54:9,20,21	18:25 19:7
24:25 29:21	require 29:24	41:10 42:9	55:8	19:21 20:4,5
referencing	30:5,9,17,18	42:12,17,24	says 13:10	20:11,16,21
41:25	30:22 31:2	43:8,14,17	14:22 16:11	21:6,13,18
referring 17:7	44:2	43:22 44:3,5	16:16,23	21:19,20,22
27:14 28:7	required 31:8	44:25 45:14	17:4,22 18:3	21:23 22:1,1
39:2	44:4	45:25 46:4	20:21 22:11	22:10 23:11

24:8 25:10 25:15,25 26:3,4,11 27:6,8,8,12 27:15,17,18 27:18 28:17 28:21 35:24 36:3,6 42:5,7 44:19 45:2 47:5 50:7 55:13 57:5 57:11,15,24 58:1 59:12 59:17 seeing 20:12 select 24:10 selected 22:12 22:20 32:4 51:4 53:10 54:3 selecting 25:13 selection 16:25 17:6 17:15,24 18:4 25:21 26:5,15 selections 16:12 24:2,4 24:20 25:11 26:12 send 9:21 Sending 22:11 22:18 sent 17:11 18:3 20:20 sentence 15:3 25:16,25 26:3,7 36:17 42:7 44:19 44:24 45:5 55:12 59:12 59:17 separately	10:14 served 20:11 20:18 server 23:4,8 23:11,15,18 28:9,10,16 28:18,22,25 29:2,9,9,24 30:5,9,22 57:13,16,22 59:13,14 service 28:12 29:8,11 45:17 56:7 57:12,13 services 5:14 28:6,18,25 29:3 36:21 set 41:15 settable 51:3 53:9,21 54:3 settings 12:9 12:22 13:5 14:22 15:4,4 15:5,7,16,17 15:19,19 22:11,18 36:14,22 37:1,4,11 38:2,4,6,11 38:16,18,19 38:21,25 39:2,3,5,8,10 39:16,19,23 39:24 40:3 41:4,8,15,17 41:21 42:10 42:14,16,19 42:21,22 51:3 53:9,21 54:3 share 20:10,13 shift 13:10,16 13:21	show 14:9 showing 41:7 41:21 45:6 shown 22:3 27:10 28:5 38:18,20 39:2 40:3 shows 13:1 21:15 31:19 38:15,24 41:1,3,5 silence 8:4 silenced 8:6 simply 48:24 single 40:10 40:10 situation 48:1 50:1 55:22 56:13 size 14:24 15:5 skill 32:18,20 software 28:23 solution 12:24 sorry 6:16 14:14,24 15:1 18:24 19:13 28:3 37:12 44:12 45:10 47:19 50:25 57:13 sort 16:6 speaking 32:22 spec 21:13 27:13,23 36:20,25 37:8 40:1,9 40:24 42:21 specific 16:18 20:3 31:16 36:16,17 37:10 39:2,9 39:23 40:2 41:9 42:19	42:23,23 43:1,7,16,24 44:4 52:15 53:2,20,23 specifically 15:14 specification 37:12 40:14 40:20,22 41:25 43:12 specify 22:25 32:22 Speculation 20:1 speech 26:19 spend 10:4,14 11:17 spent 10:9 11:25 start 12:3,5 starting 14:21 starts 12:16 state 2:10 5:16 6:20 62:23 statement 13:23 14:7 states 1:1 23:17,17 54:12 stations 25:11 stenographic 2:9 STENOGRA... 1:24 Stenotype 62:9 steps 16:20 stick 35:17 storage 45:17 stored 17:15 17:24 18:5 57:19 Street 3:13 sub-user 32:2	32:3 33:25 49:1,6 subject 11:10 subscribed 61:20 subset 10:10 41:17 successful 57:21 suggest 12:15 Sure 6:21 34:20 59:20 swearing 6:3 sworn 6:10 61:20 system 26:19 28:5 29:1,4,6 29:8 T T 3:9 4:9 61:1 62:13 take 7:2,17,18 12:7 18:13 34:19,21 40:10 43:24 59:19 taken 5:3 7:9 11:23 35:7 60:1 62:6,9 takes 43:11 talk 11:9 24:19 31:11,21 35:14 50:17 talked 24:2 talking 12:4 18:21 30:20 31:23 35:16 36:21 38:17 40:2 51:10 51:18 52:3 52:14 talks 16:5 25:10 26:1
--	---	--	---	---

teach 12:15	27:2 28:15	62:13	14:11	57:7 58:4,11
teaches 52:18	29:3,7,9 31:6	TRADEMARK	unit 17:5,14,23	58:16,17,22
53:24	33:5,8,11,15	1:1	18:1,3 26:12	58:25 59:5
teaching 49:21	34:4,4,10	transcript 61:4	26:18,20,21	users 50:2
technical	38:21 39:20	62:7	26:24,25	uses 16:6
24:11 37:16	39:24,25	transfer 22:12	UNITED 1:1	38:12 51:20
telematic	42:20 45:5	22:19	units 27:3,3	
17:22 26:24	46:12 48:10	transmission	uploaded	V
26:25	49:19,21	18:6	20:14	v 1:7
telematics	56:2	transmitted	use 9:24 13:1	VA 3:14
17:5,14,23	Thursday	57:12	13:4 22:12	vacuum 40:18
18:1,3 26:18	10:21	Trial 1:3 5:6	22:19 26:5	Vague 17:20
26:20,21	Tice 3:24 5:21	true 62:7	28:8	40:6 59:2
27:2	5:21 6:6	truthful 7:6	user 12:9	various 19:8
tell 20:5 21:14	10:17 11:1	try 7:15,17	14:23,24	21:21 27:19
33:11 39:18	14:5 15:21	34:3 40:11	15:6 16:17	38:13
term 32:15	17:20 20:1	trying 52:9	16:18 22:11	vehicle 12:25
34:3,14	21:25 24:5	Tuesday 10:21	22:19,21,24	13:5 17:16
40:13,23	24:21 26:23	tuned 25:17	23:1,4,4,6,9	17:25 18:5
terminal 58:5	33:19 39:6	tuning 25:20	23:9,12,12	22:13,20
terms 28:22	40:6 45:15	turn 15:24	23:14,19,19	32:4 36:15
32:21,23	47:21 49:17	19:10 35:22	23:22,22	38:16 39:1
34:16 43:20	50:23 51:8	twice 18:16,17	24:4,9,19	41:4 51:4,7
testified 6:11	51:16 52:24	two 8:22 10:11	25:10,13	52:13 53:10
testimony 7:3	53:17 54:19	11:7 55:18	26:5,7,11	53:14 54:4
7:7 61:5,6	59:2 60:12	typically 26:22	29:5 32:3	vehicles 50:15
text 16:10	62:16		36:1,8,13,19	55:6,25
thank 8:7	time 5:10 6:1	U	36:22,24	versus 5:4
34:23 35:13	10:4,10,14	U 61:1	41:5,7,7,10	video 13:3
59:24 60:6,8	10:23 11:17	understand	41:12,16,16	videoconfer...
60:10	18:13 25:18	6:24 7:14	41:20,22	2:6
Thanks 8:2	33:10,11,14	52:9 54:8,8	42:6,8,10,13	videoconfer...
14:11 28:2	34:9,15,24	understandi...	42:15 46:17	5:12
35:4 41:23	35:3 60:9	12:23 14:8	47:7,7 51:6,6	voice 13:2
46:15	today 6:18,22	30:12,13	51:14,24,25	26:15,17
thing 49:13,14	7:7,12	31:6 32:10	52:1,22	
things 12:8	today's 5:9	32:12,13,16	53:15 58:8	W
14:23 21:24	10:5	37:25 39:11	58:10,18,18	waive 6:2
45:13 50:5	top 48:13	39:15,18	user's 58:4	want 20:10
59:5	total 11:20	40:4,17,23	user-specific	24:3 25:2
think 10:7 11:1	touchscreen	understands	16:24 17:5	31:21 34:12
12:11,16	26:22 27:1,3	33:6,12 34:5	17:14,23	54:8 57:3
13:5 14:1,7	Toyota 1:5 5:4	Understood	18:4	Washington
22:4 25:4,12	5:20 20:21	8:1 10:3 12:2	username	3:7
				wasn't 43:23

way 17:17 18:2 38:23 42:19 42:23	written 50:8 wrote 24:16	York 3:6	112 44:21 45:24 54:13 54:15,16	1875 3:13 19 49:2,7 53:21
ways 24:9	X	Z	116 56:24	2
we'll 7:17 35:2 59:21	X 4:1,9	zoom 1:20 2:6 5:12 8:3,11 8:13,24 18:20	117 48:22	2 21:5 41:5,12 41:16,16,20 41:22 46:10 47:7
we're 8:3 36:17 49:22 51:10,18 52:3,14 56:25	Xiao 14:15 44:16 46:12 48:13,23 49:4,9,12,16 49:20,24 50:3,11,14 51:2,10,11 51:12,18,20 51:20 52:3,4 52:6,7,14,17 52:18,21 53:2,4,23 54:7,10,12 54:20,21 55:8 56:3 57:1,4 58:8 58:10,13,21 58:23 59:4,8	0	118 57:14,16 59:13,14	2 21:5 41:5,12 41:16,16,20 41:22 46:10 47:7
we've 34:18 43:14		1	12 23:2	2's 41:7
web 28:9,10 28:16,18,18 28:22,24 29:2,8,9		1 18:8,14,15 18:21,22 19:14,16 21:5 27:4 28:6,24 46:9 47:7	120 13:7,9 18:9,11,19 21:8,10,11 21:12,16,21 21:22,23 22:2 26:18 50:17 51:1	20 10:13 29:25 30:8,22
website 28:11 28:13,14,16 29:3,5,10 58:3		10 23:3,11 29:24 30:8 30:22	122 16:24 17:4 17:11,19 18:18 58:6	20(a) 29:19,22
Wednesday 10:21		10-minute 34:21	124 18:16 19:17	20001-4413 3:7
weird 20:16	Xiao's 12:15 46:2 48:15 56:18	10(c) 29:19,22	126 18:16 19:17,21,21 19:22,24	2006-0136106 21:3
Welcome 35:12 60:5	Y	10:03 35:6,7	128 17:1,11,18 18:10,11,12 18:19,23 19:25 20:12 20:16 21:6,8 21:9,11	2011 11:12 13:15
whatnot 58:11 58:16,22,25	yeah 10:18 12:10 13:13 13:20,23 14:17 15:9 16:3 19:12 19:19 21:1 21:22 22:1 23:25 25:22 27:11,18 28:21 32:12 36:2 39:13 42:18 44:6,7 44:9 45:2,9 46:1,5,11,21 50:9 52:9 53:12 56:2 57:15	10:13 35:1,2	13 15:14	20190-6023 3:14
wireless 27:6 56:6		10:14 35:8,10	130 18:16,17 18:17 19:23	202 3:8,15
witness 5:23 6:3,9 60:6,10 60:16		1001 14:14,17	132 18:17	2025 1:16 2:2 5:9 61:21 62:10,22
word 16:6 31:19 33:3 33:18 37:21 37:25 39:14 40:10 43:9 47:13 48:8 51:21		1010 44:14	134 18:17 19:1 19:3 21:18	21 14:19,21 15:2,3
words 14:9 15:17		1011 14:13 15:25 20:22 44:12	142 27:7,8,14	244 9:13
world 40:10		1013 12:6 13:7	144 27:12,14	26 11:13
wouldn't 7:5		10A 23:3,8	14th 62:22	268 9:13 11:10 11:13,15 14:12,16 15:15,20 19:10,11 22:4 31:12 32:11 35:19 36:7,11 37:12,15 38:6 43:4,6 43:12
		11 1:16 2:2 5:9 62:10	15 38:14	29 28:17,19
		11,396,244 1:14 5:8	164 28:9,18	3
		11:17 59:25 60:1	17 31:25 32:9 33:25 34:3 49:1,7 53:20	30 22:14
		11:27 59:22,23 60:2,4	18 53:21 54:5	318-6774 3:23
		11:28 60:15,17 62:11		
		110 44:23 45:25 57:9		

33 15:10,11,14 22:7,10,14 34 31:24 38 22:10,16,17 38:14 4 4 16:8 38:15 38:18,20,24 38:24 39:3 39:22 41:1 40 42:2 408-4361 3:8 408-6092 3:15 41 35:24 42:1 42:3 43 42:1,3 45 14:21 15:1 15:2,3 5 54 29:15,18,21 56 25:15 57 25:8 58 15:15 6 6 4:5 16:13 35:22 36:20 37:6 42:1,2 45:6 612 57:17 614 57:23 59:10,15 617 59:16 63 48:12 49:10 49:11,15 56:23 65 44:17,25 49:11,16,22 49:23 50:7 650 3:23 7 70 12:16	701 3:21 73 16:21,23 17:2 76 49:19,21 54:7,8,12 77 25:23,24 79 26:9 8 86 13:15,18,19 14:3 9 9 1:17 5:10 62:10 9,171,268 1:12 5:7 9:00 2:3 900 57:6 901 3:6 94063 3:22 95 57:1,5 59:8 59:11 96 58:2 59:9			
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